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Thursday
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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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Food and Drug Administration

Equal Employment Opportunity
Occupational Safety and Health Administration

Freedom of Information
Environmental Protection Agency

Government Employees
Personnel Management Office

Government Procurement
Defense Department
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Federal Communications Commission

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Surface Mining
Surface Mining and Enforcement Office

Television Broadcasting
Federal Communications Commission

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WASHINGTON, DC

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is amending its regulations concerning the establishment, adjustment, and termination of special salary rate schedules. Specifically, the changes include a description of the factors we consider when establishing, adjusting, or terminating special salary rate schedules, and provide that such special salary rate schedules be published for comment in the **Federal Register**. In addition, the regulations have been updated and reorganized for clarity and contain certain technical changes.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: William M. Gualtieri, (202) 632–7858.

SUPPLEMENTARY INFORMATION:

Law

Section 5303 of title 5, United States Code, authorizes the President to establish special minimum rates of basic pay for one or more grades, occupational groups, series, classes, or subdivisions of classes subject to statutory pay schedules, in one or more areas or locations, when the pay rates in private enterprise are so substantially above the statutory pay rates for the positions concerned as to handicap significantly the Government's recruitment or retention of well-qualified persons.

Executive order

Section 301(a) of Executive Order 11721 of May 23, 1973, as amended, authorizes us to exercise the authority conferred upon the President by the provisions of section 5303 of title 5, United States Code, to establish and revise special minimum pay rates and to prescribe conversion rules for adjusting an employee's pay for positions classified under the General Schedule and certain other pay systems.

Regulations

We published proposed regulations on May 23, 1985 (50 FR 21266). The regulations revised Subpart C of Part 530 to describe the factors we consider in determining whether special rates should be established or adjusted, and in deciding at what level to set such special rates. The regulations provided an additional option for the construction of special salary rate schedules involving increasing some, but not all, of the rates of the regular schedule. The regulations also proposed a number of technical and editorial changes that clarified and reorganized the existing regulations.

The public comment period ended on June 24, 1985. We received eight written comments—one from an employee, three from agencies, three from unions, and one from a professional association. In addition, we received a number of comments by telephone. There were a number of suggestions for specific improvements in the regulations that have been adopted, either in whole or in part, in these final regulations. Specific comments received and related decisions are summarized below.

Comments

A labor organization was concerned that the use of the term "certain employees" in § 530.301 is vague since it does not specifically mention nurses as being among those employees. However, we disagree with this conclusion since "certain employees" is already more specifically defined to include nurses in the following section, § 530.302(b). The labor organization's suggestion to modify § 530.301 was, therefore, not adopted.

One agency requested that we include language in § 530.302(b) to explicitly define the scope of coverage of the regulations as applying only to special salary rates authorized under section 5303 of title 5, United States Code. As written, the agency felt the proposed regulations could be mistakenly interpreted to apply to special salary rates authorized by the Veterans Administration under section 4107(g) of title 38, United States Code. We agree and language was added to § 530.301 for clarification.

The same agency noted that § 101(a)(1) of Pub. L. 98–528, Veterans Health Care Act of 1984, expanded the coverage of 38 U.S.C. 4107(g) to include Veterans Administration police officers. In response, we have modified § 530.302(b) accordingly.

A labor organization was concerned with the inability of § 530.303(a) to deal with circumstances other than pay (for example, hospitals located in high-crime urban areas) as causes of staffing problems which would be alleviated through the establishment of special salary rates, and suggested liberalizing the proposed regulations to account for such circumstances. However, we cannot adopt this suggestion since the statute upon which the regulations are based specifically limits the basis upon which special salary rates may be approved to higher pay rates in private enterprise.

An employee disagreed with our including in the proposed § 530.303(a) a provision allowing us to increase some, but not all, of the rates of a regular rate schedule whenever special minimum rates are initially authorized. The employee argued that the implementation of such a proposal would not result in cost savings and, further, would confuse personnelists responsible for setting salaries. We disagree with both comments. We believe savings will result in all cases in which there are employees on the rolls having rates above the special minimum rate since such employees will not receive the increase. Regarding pay administration, an issue of concern to one union as well, we do not expect personnelists to become confused by any change in the construction of special salary rate schedules. In addition, to assure that confusion does not occur, we plan to issue additional procedural guidance at such time as the specially constructed schedules are authorized. Further, actual use of this alternative will be preceded by a period for comment in the **Federal Register**, during which time interested parties can

bring potential pay administration problems to our attention.

Also with respect to § 530.303(a), an agency and a labor organization were concerned with how a special salary rate schedule of less than 10 steps would be applied to occupations for which special salary rates were authorized at the full performance level of the occupation. We share their concern, and for this reason we do not anticipate that we will authorize a special salary rate schedule of less than 10 steps for such occupations. Rather, we expect special salary rate schedules of less than 10 steps to be authorized, if at all, for occupations/grades where employees typically spend only 1 or 2 years before being promoted. (For example, a pharmacist, frequently hired at GS–9, is typically promoted within a year or two, assuming satisfactory performance.) Nonetheless, we are not precluding the possibility of using this alternative at the full performance level of an occupation when there is a clear cost benefit for the Government to do so; for example, when there is a severe recruitment problem, but no retention problem, at the full performance level.

A professional organization suggested that all requests to establish or adjust special salary rates should be transmitted to our regional offices, rather than to the central office, as proposed in § 530.303(c). However, we have determined that this function should be centralized, with regard to both us as the approving authority and the agencies as the requesting authority, to ensure that these decisions are made in full cognizance of the Government's and the agencies' budgetary goals.

One union was concerned that the actual rates of pay for comparable positions in private enterprise was not listed as a criterion in § 530.303(d) for determining special pay rates. Because of the statute's clear reference to "pay rates in private enterprise" (5 U.S.C. 5303(a)), our consideration of private pay rates in determining the cause of any staffing problems was implied in the proposed regulations. Nonetheless, we have revised it to explicitly show private pay rates as being a criterion.

This union, and an agency, were concerned with our use of quit and, especially, quit for pay rates as criteria for establishing special salary rates. The union went further to suggest that we should limit ourselves to considering only private sector pay in determining whether to establish special salary rates. However, such a proposal is clearly inconsistent with the statute, which specifically states that the "Government's recruitment and retention" of individuals must be considered. We are, therefore, obliged to collect data on agencies' ability to retain their employees. The statute's clear reference to higher private sector pay as being the reason for staffing problems just as clearly requires us to attempt to determine the extent to which non-competitive Federal pay is the cause of any retention problems. Agencies are well aware of our requirement that they collect quit and quit for pay data to document their requests for new or adjusted special salary rates, and it is their responsibility to develop management systems which can be relied upon to produce accurate retention data on their employees. Retention data, combined with other indicators of both retention and recruitment problems, allow us to determine the full extent of agencies' staffing difficulties.

Also regarding § 530.303(d), a professional organization recommended adding elements reflecting the quality of applicants, who have either quit or refused appointments because of salary considerations, to the list of those items considered when establishing or adjusting special rate schedules. However, we believe the reference to "well qualified" personnel already mentioned in § 530.303(a) is sufficient and, for the sake of avoiding redundancy, we are not making any changes in § 530.303(d) as a result of this suggestion.

A professional association was concerned that the wording of § 530.303(f) (which explains that none of the factors outlined in paragraphs (d) or (e) to establish or adjust special salary rate schedules requires those schedules to be established or adjusted to any given level) will lend itself to the impression that our determinations are arbitrary and capricious. To the extent that this mistaken impression would be implied by the wording of the paragraph as it was proposed, we have revised paragraph (f) to avoid that impression.

One union suggested that we should publish our reasons for denying agencies' special salary rate requests. The decision to request special salary rates is an agency management decision, based on the need to adequately staff the positions which it could not otherwise fill because of non-competitive Federal pay compared to pay in private enterprise in a labor market. While special salary rates, when approved, would coincidentally benefit employees, the decision to submit a request for special salary rates is not based on an agency management's desire to confer additional benefits on its employees. For this reason, if we deny special salary rate requests we explain our reasons to the requesting agency, not to its employees. It is the agency's prerogative to decide whether and to what extent it should inform its employees of our negative special salary rate determination.

A labor organization was concerned that §§ 530.304(a) and 530.305 do not provide for public comment on proposed special salary rate adjustments. In stating in these sections, as well as in § 530.303(a), that notice of special salary rate schedules will be published in the **Federal Register**, it was our intention to have periods for public comment. Since there seems to be some doubt as to our intentions in this regard, we have revised the above sections to specifically state that public comments will normally be invited on special salary rate proposals. However, in emergency situations—such as those involving national security—schedules may be established or increased on an interim basis, as provided for in the Administrative Procedure Act (5 U.S.C. 551 et seq.).

A union also suggested that the regulations governing special rate schedules need to include a provision for OPM to publish the findings of the data gathering. While we do not intend to publish the findings related to each approved request to initially establish or to increase a special salary rate schedule, we will make those findings available for public inspection. We will normally accept comments on all proposed special salary rates, and the **Federal Register** notice showing the proposed and final rates will appear as posting bulletins in the Federal Personnel Manual.

One agency stated that the language in § 530.304(c) should be changed to provide for a decrease in the pay schedules identified in § 530.301. We have recently addressed the possibility of a decrease in the General Schedule in another rulemaking (50 FR 20422, May 16, 1985). For the sake of completeness then, the agency suggested that the fact that a decrease does not affect a special salary rate schedule should be mentioned. The agency also suggested we explain how increases in the General Schedule could affect special rate schedules. We agree with these comments. Special salary rates are administratively set by a legal mechanism (5 U.S.C. 5303 for General Schedule rates) separate from the statutes under which the regular rates are adjusted (5 U.S.C. 5305 for General Schedule positions). An increase or decrease in any of the schedules in § 530.301, therefore, has no effect on

special salary rate schedules. However, except for an employee receiving a rate of basic pay under Part 540 of this chapter, a special salary rate may not be less than the rate for the corresponding numerical step or rate in the regular rate range for the grade or level involved. These changes are reflected in § 530.304(c).

A labor organization was also concerned that § 530.304(c) does not provide for an automatic increase in special salary rate schedules when any of the regular pay schedules are increased. As stated above, special rate schedules are adjusted based on a separate provision of law. It would therefore not be appropriate to adopt the association's suggestion to provide for an automatic increase.

Upon further review, we have made a technical revision in § 530.306(a)(2)(ii). This change clarifies our intent that when a special rate is initially established or increased, an employee in a position subject to the new special rate who is retaining a rate above the old maximum under an authority other than Part 536 of this chapter will receive an increase equal to the amount of the increase in the maximum rate. This provision includes employees receiving a retained special rate resulting from the reduction or termination of a special salary rate schedule before the first pay period beginning on or after January 11, 1979.

In addition to this revision, the parenthetical expression in § 530.306(a)(2)(ii) was revised to add the words "day of the first" which were omitted at the time of printing.

We have also made technical revisions in § 530.306(a)(2) (i) and (ii) in response to an agency's comment. This change clarifies our intent that when a special salary rate is initially established or increased, an employee in a position subject to the new special salary rate who is retaining a rate above the old maximum under Part 536 of this chapter or 5 U.S.C. 3594 will receive an increase equal to 50 percent of the increase in the maximum rate of the applicable rate range.

One agency pointed out the perceived inconsistency in § 530.306(b)(iii) in entitling special rate employees to receive pay retention when their basic pay is in excess of the maximum rate for the regular or decreased special rate schedule, when at the same time regular General Schedule employees would not be so entitled by virtue of a proposed change (50 FR 20422) in the regulations on pay retention. (The purpose of that proposed change was to clarify that pay retention does not apply when there is a statutory reduction in scheduled rates of pay under General Schedule, including a reduction authorized by a presidential alternative pay plan.) As stated earlier, special salary rate are administratively set by a legal mechanism separate from the statutes under which the regular rates are adjusted. An increase or decrease in any of the schedules in § 530.301, therefore, has no effect on special rate schedules.

A union was concerned with the clarity of § 530.306(b)(2). This section addresses two different rates, but the last clause of the last sentence concludes, "The employee shall be entitled to *this rate* as provided . . ." While it is possible to determine which rate that means, we have clarified the paragraph to remove all doubt. In addition, a statement was added clarifying the effect of decreased or discontinued special salary rates on employees receiving a rate of basic pay below the minimum rate of the regular schedule and established under Part 540.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, because they apply only to Federal employees and agencies.

List of Subjects in 5 CFR Part 530

Government employees, Wages, Administrative practice and procedure.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Accordingly, OPM is revising Subpart C of Part 530 of Title 5, Code of Federal Regulations, to read as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

* * * * *

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

Sec.

530.301 Applicability.
530.302 Authority.
530.303 Establishing and adjusting special salary rate schedules.
530.304 Annual review.
530.305 Revising or discontinuing special salary rate schedules.
530.306 Determining employee rates.

Authority: 5 U.S.C. 5303; E.O. 11721, as amended.

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

§ 530.301 Applicability.

Except as provided in § 530.302(b) of this subpart, this subpart applies to agencies having positions that would otherwise be covered by (a) the General Schedule, under section 5332(a) of title 5, United States Code; (b) the pay scales for certain employees in the Department of Medicine and Surgery of the Veterans Administration, under chapter 73 of title 38, United States Code; and (c) the pay schedules for personnel paid under section 403 of the Foreign Service Act of 1980.

§ 530.302 Authority.

(a) In lieu of the pay schedules identified in § 530.301, the Office of Personnel Management (OPM) may establish, and agencies must pay, special salary rates under section 5303 of title 5, United States Code, Executive Order 11721, and this subpart.

(b) The Veterans Administration may use other authorities to establish and pay special salary rates. Special salary rates may be established for (1) Department of Medicine and Surgery General Schedule employees providing direct patient care or services incident to direct patient care under 38 U.S.C. 4107(g); (2) employees who are Veterans Administration police officers providing services under section 218 of title 38 of the United States Code; and (3) nurses and certain other employees of the Department of Medicine and Surgery appointed under chapter 73 of title 38, United States Code.

§ 530.303 Establishing and adjusting special salary rate schedules.

(a) OPM may increase the minimum rates otherwise payable under the pay schedules identified in § 530.301 in one or more areas or locations to the extent it considers necessary to overcome significant handicaps in the recruitment and retention of well-qualified personnel when these handicaps result from pay rates in private enterprise that are substantially above the pay rates of those schedules. When a minimum rate is increased under this authority, increases may also be made in one or more of the remaining rates of the affected grade or level. In no event may an increased minimum rate exceed the maximum rate prescribed by law for the grade or level. Notice of these special salary rate schedules will be published in the **Federal Register.** Comments will normally be invited on special salary rate proposals.

(b) An agency may propose to OPM that special salary rates be established or adjusted. The agency initiating such a request, and all other agencies wishing to be included, are responsible for submitting complete supporting data, as specified by OPM, including, after consulting with OPM, a survey of prevailing pay rates in private enterprise in the relevant labor market.

(c) All requests to establish or adjust special salary rate schedules must be transmitted directly to OPM's central office by the agency's headquarters. Each request must include a certification by the head of the agency that the special salary rates are necessary to ensure staffing adequate to the accomplishment of the agency's mission and that funds are available to cover the increased expenditures for salaries and benefits that would result from the approval of the request. (If the special salary rate request covers fewer that 200 employees and would increase annual salary costs by less than $200,000, this certification may be provided by a headquarters official designated to act on behalf of the head of the agency.)

(d) In establishing or adjusting special salary rate schedules, OPM considers—

(1) The number of vacant positions and the length of time they have been vacant;

(2) The number of employees who have quit, including the number quitting for higher paying positions in private enterprise;

(3) The number of vacancies the agency tried to fill compared with the number of hires and offers made;

(4) The degree to which the agency has considered relevant non-pay solutions to the staffing problems, such as conducting an adequate recruiting program, using appropriate appointment authorities, redesigning jobs, establishing training programs, and improving working conditions;

(5) The impact of the staffing problem on the agency's mission; and

(6) The level of rates paid by private enterprise for comparable positions.

(e) In determining at what level to set special salary rates, OPM considers—

(1) The level of rates it believes necessary to recruit or retain an adequate number of well-qualified persons;

(2) The offsetting costs that will be incurred if special salary rate schedules are not authorized; and

(3) The level of rates paid by private enterprise for comparable positions.

(f) No one factor or combination of factors specified in paragraphs (d) or (e) of this section requires special salary rate schedules to be established or to be adjusted to any given level. Each agency request to establish or adjust special salary rate schedules is judged on its own merits based on the extent to which it meets the criteria specified in paragraphs (c) and (d) of this section.

§ 530.304 Annual review.

(a) OPM reviews special salary rate schedules annually to determine whether there is a continuing need for them. Notice of adjustments to existing special salary rate schedules made as a result of this review will be published in the **Federal Register**. Comments will normally be invited on proposed adjustments.

(b) In conducting the annual review, OPM will designate lead agencies for assistance in coordinating the collection of relevant data. All agencies are responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.

(c) An adjustment in a pay schedule identified in § 530.301 has no effect on special salary rate schedules authorized under this subpart. However, except for an employee receiving a rate of basic pay under Part 540 of this chapter, a special salary rate may not be less than the rate for the corresponding numerical step or rate in the regular rate range for the grade or level involved.

§ 530.305 Revising or discontinuing special salary rate schedules.

OPM and agencies shall initiate action to discontinue or revise special salary rate schedules when it is determined that these schedules are no longer needed, or no longer needed at existing levels, to ensure satisfactory recruitment and retention. No employee's pay shall be reduced because of such discontinuation or revision. Notice of decreased or discontinued schedules will be published in the **Federal Register** and comments will be invited on these proposed adjustments.

§ 530.306 Determining employee rates.

(a) *Initial establishment and increases.* (1) Except as otherwise provided in this section, when an employee is in a position to which a special rate schedule becomes initially applicable or for which the the special salary rate schedule is increased, the agency shall fix this employee's rate of basic pay at the step in the new or increased special salary rate schedule that corresponds to the employee's existing numerical step or rate of the grade or level.

(2) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by an employee who is receiving basic pay at a rate in excess of the maximum rate of the applicable rate schedule, the agency shall increase the employee's rate of basic pay as follows:

(i) If the employee is retaining a rate under Part 536 of this chapter or section 3594 of title 5, United States Code, the agency shall increase the employee's rate of basic pay by an amount equal to 50 percent of the increase in the maximum rate of the applicable rate range, except as provided in § 536.205(d).

(ii) If the employee is retaining a rate under an authority other than Part 536 of this chapter (including a retained special rate resulting from the reduction or termination of a special salary rate schedule before the first day of the first pay period beginning on or after January 11, 1979), or section 3594 of title 5, United States Code, the agency shall increase the employee's rate of basic pay by the amount of the increase in the maximum rate of the applicable rate range.

(3) When a special salary schedule becomes initially applicable to, or increased for, a position occupied by an employee covered by the Performance Management and Recognition System, the employee's rate of basic pay shall be determined under § 540.106.

(b) *Decreased and discontinued rates.* (1) Except as provided in paragraph (b)(2) of this section, when the special salary rate schedule for a position is discontinued or decreased, the agency shall determine the rate of basic pay for an employee in the position as follows:

(i) If the employee is receiving a rate of basic pay equal to one of the rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at that rate.

(ii) If the employee is receiving a rate of basic pay at a rate between two rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at the two rates.

(iii) If the employee is receiving a rate of basic pay at a rate in excess of the maximum rate for the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at his or her existing rate, and the employee shall be entitled to this rate as provided in § 536.104(a)(3).

(2) If the employee is receiving a rate of basic pay established under Part 540 of this chapter, the employee shall receive his or her existing rate. This rate may be lower than the minimum rate of the regular schedule as provided in § 540.106(c)(3). If the employee's existing

rate exceeds the maximum rate for the regular or decreased special salary rate schedule for the employee's grade or level, the employee shall be entitled to the existing rate, as provided in § 536.104(a)(3).

(c) *Initial appointments.* (1) The agency shall determine the rate of basic pay for an individual receiving an initial appointment (including an appointment after a break in service of at least 1 work day) to a position to which a special salary rate schedule applies under the regulations governing the pay system under which the employee is appointed without regard to the special salary rate schedule, and shall use the step or rate thus determined to fix the employee's rate at the corresponding step or rate in the special salary rate schedule.

(2) A special salary rate may not be considered an employee's highest previous rate, except as provided in § 531.203(d)(3).

(d) *General exception.* Except as provided in paragraphs (e), (f), and (g) of this section, all other actions of promotion, reduction in grade, transfer, or reassignment are governed by the pay-fixing rules established for the appropriate pay system to which, or in which, the personnel action is taken.

(e) *Reassignments and transfers.* When an employee is reassigned or transferred at the same grade or level under the same pay system to a position to which a special salary rate schedule applies, the agency shall fix the employee's rate in the special salary rate schedule at the step or rate in the special salary rate schedule for the employee's grade or level which corresponds to the employee's existing numerical step or rate in the salary rate schedule for the employee's grade or level.

(f) *Promotions.* When an employee in a position to which a special salary rate schedule does not apply is promoted to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the higher grade or level without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which promoted.

(g) *Reductions in grade.* When an employee not entitled to a retained grade or rate under appropriate authority is reduced in grade to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the lower grade without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which reduced.

[FR Doc. 85-19504 Filed 8-14-85; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia and Maryland; Amendment of Subpart—Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim final rule.

SUMMARY: The Department of Agriculture (USDA) has decided to leave in effect an interim final rule which amended rules and regulations pertaining to procedures for cherry growers' applications to divert cherries from reserve pool participation, and methods of sale by which cherries are released from reserve pools. The revisions were designed to enable growers to make management decisions with respect to diverting or placing cherries in the reserve pool, and handlers to make necessary decisions pertaining to the sale of reserve pool cherries.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule with request for comments was issued on June 11, 1985, and published in the **Federal Register** (50 FR 24899) on June 14, 1985. Comments were due by July 15, 1985. None were received. The rule amended § 930.101 (Diversion application), § 930.102 (Diversion fees), § 930.103 (Diversion), and § 930.591 (Conditions governing the sale of reserve pool cherries).

These amendments of the rules and regulations were issued under Marketing Order 930 (7 CFR Part 930), regulating the handling of tart cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). These amendments were based upon the recommendations and information submitted by the Cherry Administrative Board at its April 10, 1985 meeting, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 930

Marketing Agreements and Orders, Cherries.

PART 930—[AMENDED]

1. The authority citation for 7 CFR Part 930 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. The interim final rule published in the **Federal Register** (June 14, 1985; 50 FR 24899) amending §§ 930.101, 930.102, 930.103, and 930.591 is adopted as a final rule.

Dated: August 12, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-19486 Filed 8-14-85; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1941

Operating Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulation concerning Operating Loans. This action is being taken to renumber an Agency administrative form referenced in the regulation. The intent of this action is to renumber an administrative form into the current agency numbering system.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: William J. French, Management Analyst, Organization, Management and Training Division, Farmers Home Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 475-4741.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which

implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with regard to such rules. The amended regulation reflects a change in a form number from Form FmHA 141–2, "Notice of Visit or Meeting" to Form FmHA 2006–9. This form is completed by FmHA personnel for the purpose of establishing a date for a visit or meeting. The recipient of the notice may use the form to reply to FmHA concerning establishment of such visit or meeting. Therefore, this action is not published for proposed rulemaking since it involves only the renumbering of the form for administrative purposes and publication for comment is unnecessary.

The Catalogue of Federal Domestic Assistance Number for Operating Loans is 10.406.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This final action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1941

Crops, Livestock, Loan programs, Agriculture, Rural areas, Youth.

PART 1941—OPERATING LOANS

1. The authority citation for Part 1941 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart A of Part 1941, Chapter XVIII, Title 7, Code of Federal Regulations is amended by revising the forms list in section B. of Exhibit A by changing "141–2" to "2006–9" as follows:

Exhibit A of Subpart A—Processing Guide—Insured Operating Loans

* * * * *

B. Field Visit

* * * * *

Form No.	Name	
2005–9 ...	Notice of visit or meeting.....	(x)

* * * * *

Dated: June 18, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85–19402 Filed 8–14–85; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Methylprednisolone Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Tech-America Group, Inc., providing for safe and effective oral use of 1- and 2-milligram methylprednisolone tablets in dogs and cats as an anti-inflammatory agent.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Tech-America Group, Inc., P.O. Box 338, Elwood, KS 66024, filed NADA 135–771 providing for oral use of 1- and 2-milligram methylprednisolone tablets as an anti-inflammatory agent for treatment of dogs and cats. Based on data and information submitted, the NADA is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. In § 520.1408 by revising paragraphs (a) and (b), to read as follows:

§ 520.1408 Methylprednisolone tablets.

(a) *Specifications.* Each table contains 1, 2, or 4 milligrams of methylprednisolone.

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter for use of 1- and 4-milligram tablets; see No. 013983 for use of 1- and 2-milligram tablets.

* * * * *

Dated: August 8, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–19374 Filed 8–14–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1977

Section 11(c) Complaint Filing Period

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final interpretative rule.

SUMMARY: A provision of 29 CFR Part 1977, an interpretative rule issued under section 11(c) of the Occupational Safety and Health Act of 1970, is being deleted in order to conform the rule to Supreme Court case law. The deleted provision, contained in 29 CFR 1977.15(d)(3), states that the 30-day period for filing a section 11(c) complaint is tolled where the complaining employee has, within the

30-day period, resorted in good faith to the grievance-arbitration procedures set forth in the collective bargaining agreement, or filed a complaint regarding the same general subject with another agency. The revised rule does not permit the 30-day period to be tolled during the pendency of grievance-arbitration proceedings, or filing with another agency.

DATE: This interpretation is effective August 15, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3637, Washington, D.C. 20210 (202–523–8151).

SUPPLEMENTARY INFORMATION: I. Reasons for Issuance of the Interpretative Rule. Sections 11(c) (1) and (2) of the Occupational Safety and Health Act of 1970 (hereinafter the "OSH Act"), 29 U.S.C. 660(c) (1) and (2), provide:

(c)(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

On January 29, 1973 the Assistant Secretary of Labor for Occupational Safety and Health issued several interpretations of section 11(c). The interpretations were published in 29 CFR Part 1977—Discrimination Against Employees Exercising Rights under the Williams-Steiger Occupational Safety and Health Act of 1970. 38 FR 2681. One of the interpretations, 29 CFR 1977.15, discussed the time period within which discrimination complaints must be filed with the Secretary of Labor. Paragraphs (d) (1) and (2) of 29 CFR 1977.15 provide as follows:

(d) *Time for filing.* (1) Section 11(c)(2) provides that an employee who believes that he has been discriminated against in violation of section 11(c)(1) "may, within 30-days after such violation occurs," file a complaint with the Secretary of Labor.

(2) A major purpose of the 30-day period in this provision is to allow the Secretary to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

Furthermore, paragraph (d)(3), the provision being modified by this interpretative rule, provides for tolling, i.e., suspending, the 30-day period under the following circumstances:

(3) However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, *resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency;* or where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifyng a tolling of the 30-day period, untimely complaints will not be processed (Emphasis added)

The emphasized provision is no longer valid in light of Supreme Court precedent, discussed below, under Title VII of the Civil Rights Act of 1964, as amended, an analogous employment discrimination statute whose precedent has guided the courts in section 11(c) cases. See *Marshall* v. *N.L. Industries, Inc.*, 618 F.2d 1220 (7th Cir. 1980).

The grievance-arbitration tolling provision in § 1977.15(d)(3) was issued at a time when some courts had ruled that the pendency of grievance-arbitration proceedings or other method of collateral review tolled the filing period under 42 U.S.C. 2000e–5(e), section 706(d) of the Civil Rights Act of 1964, as amended. *See Malone* v. *North American Rockwell Corp.*, 457 F.2d 779 (9th Cir. 1972); *Culpepper* v. *Reynolds Metals Co.*, 421 F.2d 888 (5th Cir. 1970); *Hutchings* v. *United States Industries, Inc.*, 428 F.2d 303 (5th Cir. 1970).

In 1976 the United States Supreme Court ruled in *International U. of Elec. Wkrs.* v. *Robbins & Myers*, 429 U.S. 229 (1976), that the statutory period for filing a Title VII claim with the Equal Employment Opportunity Commission (EEOC) was not tolled during the pendency of grievance or arbitration procedures under a collective bargaining agreement, or some other method of collateral review. The holding was based on the principle that the statutory right under Title VII and other rights, such as those under collective bargaining agreements, had legally independent origins and were equally available to employees. This principle had been enunciated in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 54 (1974) (an arbitrator's decision under a collective bargaining agreement to deny relief does not bar a subsequent suit in federal court under Title VII) and *Johnson* v. *Railway Express Agency*, 421 U.S. 454, 461 (1975) (the timely filing of a charge with the EEOC does not toll the running of the statute of limitations applicable to an action, based on the same facts, brought under 42 U.S.C. 1981).

Relying on *Alexander*, the Court in *Robbins & Myers* also rejected the argument that substantial policy considerations, based on the central role of arbitration in labor-management relations, dictated a finding that the Title VII limitations period must be tolled during the pendency of proceedings under a collective-bargaining agreement. The Court also did not find that the danger of a possible conflict resulting from the concurrent pursuit of both collective-bargaining and Title VII remedies warranted the tolling of the Title VII limitations period while the collective-bargaining case proceeded to conclusion. It stated that one proceeding may be stayed while the other one proceeds, but, more importantly, that Congress had created a Title VII remedy independent of other remedies. The Court also dismissed the contention that tolling would impose almost no costs, since the delays occasioned by the grievance-arbitration process would be "slight." Thus, the Court concluded that ". . . Congress has already spoken with respect to what it considers acceptable delay when it established a 90-day (now 180-day) limitations period, and gave no indication that it considered a 'slight' delay followed by 90 days equally acceptable." 429 U.S. at 240.

In 1980 the Supreme Court again faced the tolling issue in *Delaware State College* v. *Ricks*, 449 U.S. 250, 261 (1980). The Court, reaffirming *Robbins & Myers*, held:

(We) already have held that the pendency of a grievance, or some other method of collateral review of an employment decision, does not toll the running of the limitations period.

The holdings and reasoning of *Robbins & Myers* and *Delaware State College* compel the conclusion that the pendency of a grievance-arbitration proceeding under a collective bargaining agreement or filing with another agency

does not toll the running of the 30-day period for filing complaints with the Secretary of Labor under section 11(c), a statutory employment discrimination provision analogous to Title VII. Section 11(c), like Title VII, is a statutory remedy independent of remedies under a collective bargaining agreement. Indeed, in *N.L. Industries*, 618 F.2d. at 1222, the Seventh Circuit held that:

> Like Title VII, this legislation the OSH Act was passed to mobilize the resources of the federal government in an effort to eradicate a specific group of problems confronting workers nationwide. See *Whirlpool Corp.* v. *Marshall*, —— U.S. at ——, 100 S.Ct. at 890. Enacted after the Supreme Court developed its policies encouraging deference to arbitration in a pure collective bargaining context, the OSHA legislation was intended to create a separate and general right of broad social importance existing beyond the parameters of an individual labor agreement and susceptible of full vindication only in a judicial forum.

Thus, the current interpretation of section 11(c) set forth in 29 CFR 1977.15(d)(3) providing for the tolling of the 30-day period for filing complaints due to the pendency of grievance-arbitration proceedings or filing with another agency no longer comports with relevant Supreme Court case law. It is essential to make our interpretation consistent with the law and to inform employees of the new interpretation in order to avoid causing confusion among employees regarding when their section 11(c) complaints must be filed. Therefore, the grievance-arbitration and filing with another agency tolling provisions are being deleted from 20 CFR 1977.15(d)(3) and that paragraph is being modified to expressly state that the pendency of grievance-arbitration proceedings or filing with another agency does not toll the 30-day period for filing of section 11(c) complaints.

II. Regulatory Impact Analysis

In accordance with Executive Order 12291 (46 FR 13193, February 17, 1981), OSHA has carefully assessed the potential impact of this change in the interpretation of section 11(c). Based on the guidelines of the Executive Order, OSHA has concluded that the interpretation is not a "major" action which would necessitate further economic impact evaluation and the preparation of a regulatory analysis. Requiring employees who invoke the grievance-arbitration procedures under their collective bargaining agreements, or who file with other agencies to file their section 11(c) complaints within 30 days following the discrimination will impose minimal costs, if any, on OSHA, employers, or employees. Although some complaints may be filed under the new interpretation which would not have been filed under the prior interpretation, the number of such complaints is expected to be small. Moreover, little additional investigative costs are expected to accrue since most of the grievance-arbitration procedures will have been completed before OSHA has expended significant time and resources in conducting an investigation. Since some employees will find the results of their grievance-arbitration procedures to be satisfactory, or get positive results from another agency, further investigation by OSHA will therefore be unnecessary.

Finally, OSHA finds that the provisions fo the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164, 5 U.S.C. 601 et seq.), which require an assessment of the impact of certain regulatory actions upon small entities, are inapplicable to this interpretative rule.

III. Procedure

This rule is an interpretative rule because it interprets, or explains, section 11(c)(2) of the OSH Act in conformance with Supreme Court precedent under an analogous statute. Therefore, pursuant to 5 U.S.C. 553(b)(A), notice of proposed rule making and an opportunity for comments are not required. Similarly, pursuant to 5 U.S.C. 553(d)(2), this interpretative rule may be made effective upon publication in the **Federal Register.**

IV. State Plan Applicability

Section 11(c) applies throughout the United States. In addition, 25 States with their own OSHA-approved occupational safety and health plans have provisions prohibiting retaliation against employees for occupational safety or health activity, which, may differ from section 11(c). The States with approved plans are: Alaska, Arizona, California, Connecticut (State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (States and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming.

V. Authority

This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. This interpretation is issued pursuant to sections 8(g)(2) and 11(c)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2), 660(c)(2)), 5 U.S.C. 553, and Secretary of Labor's Order No. 9–83 (48 FR 35736)).

List of Subjects in 29 CFR Part 1977

Civil rights, Equal employment opportunity, Labor-management relations, Occupational safety and health.

PART 1977—DISCRIMINATION AGAINST EMPLOYEES EXERCISING RIGHTS UNDER THE WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Accordingly, 29 CFR Part 1977 is amended as set forth below.

1. The authority citation for Part 1977 is revised to read as follows:

> **Authority:** Secs. 11(c)(2) and 8(g)(2) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 660(c)(2) and 657(g)(2), 5 U.S.C. 553, and Secretary of Labor's Order 9–83 (48 FR 35736, August 5, 1983)

2. Section 1977.15 is amended by revising paragraph (d)(3) to read as follows:

§ 1977.15 Filing of complaint for discrimination.

* * * * *

(d) *Time for filing.* * * *

(3) However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; or where the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency, among others, are circumstances which do not justify tolling the 30-day period. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

Signed at Washington, D.C., this 15th day of July, 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 85–17208 Filed 8–14–85; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Approval of Permanent Program Amendment From the State of Arkansas Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Arkansas as an amendment to the State's permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed program amendment submitted by Arkansas on May 21, 1985, would allow for a violation abatement period of more than 90 days under certain conditions and would establish procedures for conducting informal assessment conferences. On June 25, 1985, OSM published a notice in the **Federal Register**, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 26221–26222). The public comment period ended July 25, 1985.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director of OSM has determined that the amendment meets the requirements of SMCRA and the Federal regulations and is approving it. The Federal rules at 30 CFR Part 904 codifying decisions concerning the Arkansas program are being amended to implement this action. This final rule is being made effective immediately in order to expedite the State program amendment process and to encourage States to implement the Federal standards without undue delay: consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Field Office Director, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 745–7927.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas State Program

On February 18, 1980, Arkansas submitted its proposed regulatory program to OSM. On November 21, 1980, following a review of the proposed programs outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of four minor deficiencies (45 FR 77003–77013).

II. Submission of the Proposed Amendments

Arkansas submitted to OSM on May 21, 1985, a proposed amendment to the Arkansas regulatory program which would allow the extension of a violation abatement period for more than 90 days and which would establish procedures for conducting informal assessment conferences (Administrative Record No. AR–290). Specifically, Arkansas amended its regulations at 843.12 to allow the permittee to request an abatement period of more than 90 days under certain conditions. In addition, Arkansas included regulatory language at 845.18, 845.19 and 845.20 which establishes procedures for assessment conferences and for appeal of the proposed penalty and fact of violation, and which sets forth the requirements for final assessment and payment of penalties.

On June 25, 1985, OSM published a notice in the **Federal Register** announcing receipt of the amendment, inviting public comment, and providing the opportunity to request a public hearing on the proposed amendment (50 FR 26221–26222). Since no one requested a hearing, none was held. The public comment period ended July 25, 1985. No public comments were received during the comment period.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the program amendment submitted by Arkansas on May 21, 1985 meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

A. Extension of Abatement Period Beyond 90 Days

The Arkansas rules at 843.12 establish procedures for granting an extension of violation abatement periods beyond 90 days under certain circumstances. Specifically, the Arkansas regulations at 843.12(c) have been amended to allow for an abatement period of more than 90 days under the conditions set forth at 843.12(f). These conditions include: (1) Circumstances in which the permittee has applied for and is diligently pursuing a permit renewal or other necessary approval that will not be issued within 90 days; (2) situations in which a valid judicial order precluding abatement within 90 days exists, provided the permittee is pursuing all rights of appeal and as to which there is no other effective legal remedy; (3) situations where the permittee cannot abate within 90 days because of a labor strike; (4) circumstances where abatement within 90 days would require the permittee to take actions that violate safety standards established by the Mine Safety and Health Act; and (5) climatic conditions precluding abatement within 90 days. Extensions may be granted for climatic conditions only if abatement would cause more environmental harm than it would prevent. No extension granted under these States provisions may exceed 90 days.

The Federal rule at 30 CFR 843.12 also requires all permittees to meet certain conditions before they are granted an extension of violation abatement periods beyond 90 days. The Arkansas rule does not permit extensions under conditions other than those permitted in the Federal regulations. Therefore, the Director finds that the Arkansas regulations at 843.12 (c) and (f) are no less effective than the Federal regulations.

B. Procedures for Conducting Informal Assessment Conferences

Arkansas added regulations at 845.18 to establish procedures for conducting informal assessment conferences. Specifically, the Arkansas regulations allow the Arkansas Department of Pollution Control and Ecology (ADPCE) to hold informal assessment conferences to review the proposed assessment or reassessment upon written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment was mailed.

The Arkansas regulations at 845.18(b)(1) require that the assessment conference be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later, but provided, that a failure by the ADPCE to hold such a conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

Arkansas has also revised its regulations at 845.19 to alter the procedures by which persons charged with a violation may request a hearing. Specifically, the person charged with the violation may contest the proposed penalty or the fact of violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the

reassessed or affirmed penalty to the Director of ADPCE within 30 days of receipt of the proposed assessment or reassessment or within 15 days from the date of service of the conference officer's action, whichever is later.

In addition, Arkansas revised regulatory language at 845.20 to state that if the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessment, ADPCE will, within 30 days of receipt of the order, refund to the person assessed all or part of the escrowed amount.

The Director finds that the Arkansas regulations at 845.18, 845.19 and 845.20 are no less effective than 30 CFR 845.18, 845.19, and 845.20, and no less stringent than section 518(c) of SMCRA.

IV. Public Comments

Of those Federal agencies invited to comment pursuant to section 503(b) SMCRA and 30 CFR 732.17(h)(10)(i), acknowledgments were received from the Department of Agriculture, Soil Conservation Service and the Department of the Interior, U.S. Fish and Wildlife Service. The comments were limited and did not identify any deficiencies in the proposed program amendment.

This disclosure of Federal agency comments is made pursuant to section 503 (b)(1) and SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the Arkansas program amendment, provided that Arkansas promulgates these regulations in a form identical to that submitted to OSM on May 21, 1985. The Director is amending Part 904 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Requirements

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1929(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption for sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from peparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 9, 1985

Jed D. Christensen,

Acting Director, Office of Surface Mining.

Part 904—ARKANSAS

1. The authority citation for Part 904 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 904.15 is amended by adding a new paragraph (b) as follows:

§ 904.15 Approval of regulatory program amendments.

* * * * *

(b) The following amendment submitted to OSM on May 21, 1985, is approved effective August 15, 1985: Modifications to the Arkansas regulations at section 843.12, 845.18, 845.19 and 845.20. This approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSM's review and approval.

[FR Doc. 85–19449 Filed 8–14–85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 938

Approval of Permanent Program Amendment From the State of Pennsylvania Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Pennsylvania as an amendment to the State's permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides for the mandatory suspension or revocation of a blaster's license upon a finding by the Department of Environmental Resources, the State agency which administers the Pennsylvania program, of an operator's willful conduct with respect to certain actions.

Pennsylvania submitted the proposed program amendment by letter dated April 19, 1985 (Administrative Record No. PA 551). An earlier opinion from the State dated February 27, 1985 (Administrative Record No. PA547) established that "due cause" for suspension or revocation under section 210.2(f) of the State regulations includes but is not limited to the same basis for suspension or revocation set forth in 30 CFR 850.15(b)(1). Pennsylvania's April 19, 1985 letter establishes that it is the State's policy that, in cases of willful conduct, including the bases for suspension or revocation set for in 30 CFR 850.15(b)(1), suspension or revocation is mandatory. OSM published a notice in the **Federal Register** on June 18, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 25267). The public comment period ended July 18, 1985.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations, and is approving it. The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: August 15, 1985.

FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South Second Street, Suite L–4, Harrisburg, Pennsylvania 17101; Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Pennsylvania program was conditionally approved by the Secretary of the Interior on July 31, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050–33083).

II. Submission of Program Amendment

On April 4, 1985, the Director announced his approval of an amendment to the Pennsylvania program which established a program for the training, examination and certification of blasters (50 FR 13315). The Director found the State's program to be consistent with the Federal standards for certification of blasters at 30 CFR Part 850 with one exception unlike 30 CFR 850–15(b)(1). The State's blaster certification program did not provide for mandatory license suspension or revocation upon a finding of willful conduct with respect to any of the following actions:

1. Noncompliance with any order of the regulatory authority.
2. Unlawful use in the work place of, or current addiction to, alcohol, narcotics or other dangerous drugs.
3. Violation of any provision of State or Federal explosives laws or regulations.
4. Providing of false information or a misrepresentation for purpose of obtaining a license.

Therefore, as set forth under 30 CFR 938.16(a), the Director required Pennsylvania to submit a program amendment by June 3, 1985, which would provide for mandatory license suspension or revocation in a manner consistent with the Federal regulation at 30 CFR 850.15(b).

In satisfaction of this requirement, Pennsylvania submitted to OSM a letter dated April 19, 1985, which sets forth the Department's policy with respect to mandatory suspension or revocation of a blaster's license (Administrative Record No. PA 551). The letter states that in cases involving willful conduct it is DER's policy to suspend or revoke a blaster's license, following a hearing. The letter further states that this policy represents DER's application of section 210.2(f) of Chapter 210 of Title 25 of the Pennsylvania Code.

In its letter the Department indicated that it was preparing a program guidance memorandum which would state that in cases of willful conduct, the Department shall suspend or revoke a blaster's license following the conduct of a hearing.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the program amendment submitted by Pennsylvania on April 19, 1985 meets the requirements of SMCRA and 30 CFR Chapter VII.

Specifically, the Director finds that the Pennsylvania Department of Environmental Resources' policy statement provides mandatory license suspension or revocation provisions which are no less effective than the Federal requirements at 30 CFR 850.15(b)(1).

IV. Public Comments

Of the Federal agencies invited to comment, only the U.S. Soil Conservation Service responded, and that agency provided no comments. No other public comments were received.

The disclosure of Federal agency comments is made pursuant to Section 503(b) (1) and (2) of SMCRA of 30 CFR 732.17(h)(10(i).

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Pennsylvania program as submitted on April 19, 1985. The Director is amending Part 938 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 9, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 938—PENNSYLVANIA

30 CFR Part 938 is amended as follows:

1. The authority citation for Part 938 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 938.15 is amended by adding a new paragraph (h) as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(h) The following amendment submitted to OSM on April 19, 1985 is approved effective August 15, 1985: Amendment to Pennsylvania's blaster certification program, as contained in the Pennsylvania Department of Environmental Resources' policy statement as submitted by Pennsylvania on April 19, 1985.

3. 30 CFR 938.16 is amended by removing and reserving paragraph (a) as follows:

§ 938.16 Required program amendments.

* * * * *

(a) [Reserved]

[FR Doc. 85–19450 Filed 8–14–85; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 946

Approval of Amendment to the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of an amendment submitted by the Commonwealth of Virginia as a modification to its permanent regulatory

program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of State statutory changes altering the criteria used to determine whether a surface coal mining operation affects two acres or less. On June 26, 1985, OSM published a notice in the **Federal Register**, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 26387–26388). The public comment period ended July 26, 1985.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations and is approving it. The Federal rules at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Penn, Acting Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. Information pertinent to the general background, revisions, modifications and amendments to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register** (46 FR 61088–61115).

On April 22, 1983, OSM published a final rule in the **Federal Register** disapproving Sections 45.1–364.A.1, 45.1–364.A.3 and 45.1–364.A.4 of Chapter 23 of the Code Virginia and the implementing regulations thereunder (48 FR 17558). This action was taken by the Director of OSM because he determined that the above cited sections of Chapter 23 (governing mines two acres or smaller in size) were inconsistent with SMCRA, the Federal regulations at 30 CFR 700.11 and 701.5 and the permanent regulatory program administered by Virginia under Chapter 19 of the Code of Virginia. Also, on April 22, 1983, OSM published a proposed rulemaking in the **Federal Register** to supersede and preempt the above sections of Chapter 23 and its implementing regulations (48 FR 17562). Subsequently, the Secretary of the Interior, pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), published a final rule in the **Federal Register** to supersede and preempt those specific sections of Chapter 23 and its implementing regulations (October 11, 1983, 48 FR 46028).

II. Submission of Amendment

By letter dated May 1985, Virginia submitted Chapter 331 of the Virginia Acts of Assembly, 1985 session, as enacted on March 17, 1985. The proposed amendment, as received by OSM on June 6, 1985, would repeal section 45.1–364 of Chapter 23 of the Code of Virginia and replace it with a new section 45.1–364.1. These revisions establish new criteria to be used in determining whether a surface coal mining operation will be regulated under Chapter 23, or whether it is subject to the permanent program requirements of Chapter 19. Specifically, section 45.1–364.1 provides that the criteria established in Chapter 19 and the regulations issued thereunder shall be used to determine the size of the affected area.

On June 26, 1985, OSM published a notice in the **Federal Register** which announced procedures for a public comment period and for requesting a public hearing on the substantive adequacy of the proposed amendment (50 FR 26387–26388). The public hearing scheduled for July 22, 1985, was not held since no requests were made to conduct the hearing. The public comment period on the proposed amendment ended on July 26, 1985.

III. Director's Findings

In accordance with SMCRA and pursuant to 30 CFR 732.15 and 732.17, the Director finds that the program amendment submitted by Virginia in May 1985, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

The statutory amendment which repeals section 45.1–364 of Chapter 23 and adds a new 45.1–364–1 establishes new criteria to be used in determining whether a surface coal mining operation will be regulated under Chapter 23 or whether it is subject to the permanent program requirements of Chapter 19. Specifically, the new section provides that in determining the size of the affected area for the purposes of Chapters 23 and 19, the criteria established in Chapter 19 or regulations promulgated thereunder shall control. The Director finds the revisions consistent with the actions taken by the Department of the Interior on April 22, 1983 (48 FR 17558) and October 11, 1983 (48 FR 46028). Further, the revisions are in accordance with section 528 of SMCRA and are no less effective than the Federal regulations at 30 CFR 700.11.

IV. Public Comments

No comments were received on this proposed amendment.

V. Director's Decision

The Director, based on the above findings, is approving the Virginia program amendment submitted to OSM in May 1985. The Director is amending Part 946 of 30 CFR Chapter VII to implement this decision and to modify the existing disapproval and preemption and supersession sections to reflect this action.

VI. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 9, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 946.12 is revised to read as follows:

§ 946.12 State program provisions disapproved.

(a) The following provisions are disapproved effective April 22, 1983: Paragraphs 3.01(a)(1), 3.01(a)(4) and 3.01 (a)(5) of the Virginia Coal Surface Mining and Reclamation Regulations for Operations Disturbing Two Surface Acres or Less.

3. 30 CFR 946.13 is revised to read as follows:

§ 946.13 State program provisions set aside.

(a) Paragraphs 3.01(a)(1), 3.01(a)(4) and 3.01(a)(5) of the Virginia Coal Surface Mining and Reclamation Regulations for Operations Disturbing Two Surface Acres or Less are inconsistent with and less effective than the Federal provisions for the two-acre exemption and are set aside in their entirety under the provisions of section 505(b) of the Surface Mining Control and Reclamation Act of 1977.

4. 30 CFR 946.15 is amended by adding a new paragraph (p) as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(p) The following amendment is approved effective August 15, 1985: Repeal of section 45.1–364 of Chapter 23 of the Code of Virginia and addition of a new section 45.1–364.1, as enacted by the General Assembly of Virginia on March 17, 1984, and submitted to OSM in May 1985.

[FR Doc. 85–19451 Filed 8–14–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 297

[DoD Instruction 5120.4]

DoD Newspapers and Civilian Enterprise Publications

AGENCY: American Forces Information Services, DoD.

ACTION: Final rule.

SUMMARY: The last revision of DoD Instruction 5120.4 was dated March 15, 1973. Between then and the November 14, 1984 publication of the latest update, there were changes in laws and DoD policies and practices relating to DoD Newspapers and Civilian Enterprise (CE) publications. Improvements in mission support and cost-effectiveness of DoD newspapers were needed. There were voids in policy and procedural guidance for the editorial and administrative or business operations of both command/installation newspapers and the overseas *Stars & Stripes* which were detrimental to mission accomplishment by these medial. Finally, many of the policies and procedures outlined in the 1973 Instruction were not sufficiently clear. All of these factors combined to form the impetus for the 1984 update of the Instructions.

DATE: Effective date is November 14, 1985.

ADDRESS: Department of Defense, American Forces Information Service, 1735 N. Lynn Street, Arlington, VA 22209–2086.

FOR FURTHER INFORMATION CONTACT: Colonel Stanley F. Jensen, telephone (202) 696–5271/2/3.

SUPPLEMENTARY INFORMATION: Since the publications governed by DoD Instruction 5120.4 are directed at the internal Department of Defense audience, there is minimal impact on the public. A few provisions of this Part provide guidelines for contracting by installation commanders with commercial publishers for the publication of Civilian Enterprise publications.

The Instruction was published originally of September 21, 1954. Subsequent revisions have been issued on September 5, 1957, September 27, 1960, April 30, 1970, March 15, 1973, and now November 14, 1984.

List of Subjects in 32 CFR Part 297

Government publications, Newspaper and magazines.

Title 32 of the Code of Federal Regulations is amended by adding a new Part 297 to read as follows:

PART 297—DoD NEWSPAPER AND CIVILIAN ENTERPRISE PUBLICATIONS

Sec.

297.1 Purpose.
297.2 Applicability.
297.3 Definitions.
297.4 Policy.
297.5 Procedures.
297.6 Responsibilities.
Enclosure 1—Funded Newspapers
Enclosure 2—Civilian Enterprise Publications
Enclosure 3—*Stars and Stripes*
Enclosure 4—Mailing of DoD Newspapers and Civilian Enterprise Publications Other Than Newspapers; Sales and Distribution of Non-DoD Publications
Enclosure 5—American Forces Press and Publications Service

Authority: 10 U.S.C. 121 and 133.

§ 297.1 Purpose.

This part reissues DoD Instruction 5120.4, "Policies and Guidelines Governing Armed Forces Newspapers and Civilian Enterprise Publications," March 15, 1973 implements DoD Directive 5122.10 "American Forces Information Service," March 19, 1980 and updates policy, procedures, and responsibilities concerning DoD newspaper and civilian enterprise (CE) publications other than newspapers in support of the DoD Internal Information Program.

§ 297.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein refers to the Army, Navy, Air Force, and the Marine Corps.

§ 297.3 Definitions.

(a) *CE publications other than newspapers.* Authorized publications containing advertising which are prepared and published under contract with commerical publishers. The right to circulate this advertising in these publications to the DoD readership constitutes contractual consideration instead of money to pay for these DoD publications. They become property of the command, installation, or intended recipient upon delivery in accordance with terms of the contract. Categories of these publications are:

(1) *Guides or Directories.* Publications that provide DoD personnel information

about the mission of their command; the availability of command, installation or community services; local geography; historical background; and other information.

(2) *Installation Maps.* Publications designed for orientation of new arrivals or for visitors.

(b) *DoD Newspapers.* Authorized publications that support DoD command communication requirements. Usually, they are distributed daily or weekly. DoD newspapers contain most of the following elements to communicate with the intended DoD readership: commanders' comments, letter-to-the-editor columns, news, features, editorials, sports, announcements, entertainment items, photography, and artwork. The term includes also publications in other formats that contain these categories of information. These publications are within the purview of this part. DoD newspapers do not necessarily reflect the offical views of endorsement of content by the Department of Defense.

(1) *CE Newspapers.* Newspapers published by commercial publishers under contract with DoD Components or their subordinate commands. Normally, the news and editorial content is prepared by the internal information section of the public affairs staff. These newspapers contain advertising sold by the commercial publisher on the same basis as for CE publications other than newspapers. They become property of the command, installation or intended recipient upon delivery in accordance with terms of the contract.

(2) *Funded Newspapers.* Newspapers published by DoD Components or their subordinate commands using appropriate funds. Normally, the editorial content of these newspapers is prepared by the internal information section of the public affairs staff. Usually, these newspapers are printed under contract by a commercial publisher in accordance with DoD or Component printing regulations.

(3) *Overseas UC Newspapers.* Newspapers such as *S&S*, approved by the Secretary of Defense to provide world, U.S. and regional news from commercial sources, syndicated columns, editorial cartoons, and applicable U.S. Government, DoD, Component, and subordinate command news and information.

(4) *News Bulletins and Summaries.* Publications of isolated commands and ships compiled from national and international news and opinion obtained from authorized sources. News bulletins or summaries may be authorized by the next higher echelon of command when no daily English language newspapers are readily available.

(c) *Organizational Terms.*—(1) *Command.* A unit or units, an organization or an area under the command of one individual. In this part this term includes organizations headed by senior civilians which require command information type media.

(2) *DoD Components.* See § 297.2.

(3) *Installation.* A military facility or ship which serves as the base for one or more commands. Media covered by this part may serve the command communication needs of one or several commands located at one installation.

(4) *Major Command.* A designated command such as the Air Force Strategic Air Command or the Army Forces Command which serve as the headquarters for subordinate commands or installations which have the same of related missions.

(5) *Subordinate Echelons.* Lower levels of command.

(d) *Supplements.* Sections of comic strips, cartoons, features, or advertising printed with or inserted into publications for distribution.

§ 297.4 Policy.

Department of Defense policy is that a free flow of news and information shall be provided to all military personnel without censorship or news management. The calculated withholding of unfavorable news is prohibited.

§ 297.5 Procedures.

(a) *General.* (1) National security information shall be protected in accordance with DoD Directive 5200.1 and DoD 5200.1–R. Certain unclassified information may be released under DoD Directive 5400.7 and DoD 5400.7–R.

(2) Specific items of internal information content of interest to DoD personnel and their dependents prepared for publication in DoD newspapers may be made available to requesters under DoD Directive 5400.7 and DoD 5400.7–R.

(3) DoD newspaper shall be operated according to principles that govern U.S. commercial newspapers.

(4) Editorial policies of DoD newspapers and CE publications other than newspapers shall be designed to improve the ability of DoD personnel to execute the missions of the Department of Defense.

(5) DoD newspaper editors shall conform to applicable regulations and laws involving libel, copyright, and U.S. Government printing and postal regulations.

(6) DoD newspapers and CE publications other than newspapers shall comply with DoD Directive 5400.11.

(b) *News Coverage and Content.* (1) News coverage and content in DoD newspapers and publications shall be factual and objective. News and headlines shall be selected using the dictates of good taste. Morbid, sensational, or alarming details not essential to factual reporting shall be avoided.

(2) Newspapers shall distinguish between facts and opinion both of which may be a part of a news story. When an opinion is expressed, the person or source shall be identified. Accuracy and balance in coverage are paramount.

(3) News content shall be based on releases, reports, and materials provided by commercial news-gathering agencies, when authority exists to use such services; DoD Components, their subordinate echelons; and members of the staffs of DoD newspapers

(4) Overseas Unified Command (UC) newspaper may purchase or contract for and carry news stories, features, syndicated columns, and editorial cartoons from commercial services or sources. A balanced selection of commercial news or opinion shall appear in the same issue and same page, whenever possible, but in any case, over a reasonable time period. Selection of commercial news sources, syndicated columns, and editorial cartoons to be purchased or contracted for shall be approved by the UC Commanders based on evaluation and recommendations of the *Stars and Stripes (S&S)* Advisory Board. The Board shall review the balance of news, features, and editorial column and cartoon content of the newspaper at least semiannually.

(5) Funded or CE command or installation newspapers normally shall not be authorized the use of commerical news and opinion sources. The use of such sources is beyond the scope of the mission of command or installation newspapers and puts them in direct competition with commercial newspaper. The use of such sources may be authorized for a specific Funded or CE newspaper by the cognizant DoD Component only when other sources of national and international news and opinions are not available.

(6) The masthead of all DoD newspapers and CE publications shall contain the following disclaimer printed in type no smaller than 6-point:

(i) "This (type of DoD newspaper or CE publication other than newspaper) is an authorized (for *S&S* add "unofficial") publication for members of the Military

Services (add "overseas" in publications outside the United States). Contents of (name of the DoD newspaper or CE publication other than newspaper) are not necessarily the official views of, or endorsed by, the U.S. Government, the Department of Defense, or (the name of the publishing DoD Component)." Those publications containing advertising shall contain the following statements:

(A) "The appearance of advertising in this publication, including inserts or supplements, does not constitiute endorsement by the Department of Defense, or (name of commercial publisher) or products or services advertised."

(B) "Everything advertised in this publication shall be made available for purchase, use, or patronage without regard to race, color, religion, sex, national origin, age, marital status, physical handicap, political affiliation, or any other nonmerit factor of the purchaser, user of patron." If a violation or rejection of this equal opportunity policy by an advertiser is confirmed, the publisher shall refuse to print advertising from that source until the violation is corrected.

(C) In CE Publications add: "Published by (name), a private form in no way connected with the (Department of Defense, the U.S. Army, the U.S. Navy, the U.S. Air Force or the U.S. Marine Corps) under exclusive written contract with (DoD Component or subordinate echelon)."

(7) Overseas UC newspapers, news bulletins and news summaries authorized to carry national and world news include coverage of U.S political campaign mews from commercial news sources. Presentation of such political campaign news shall be made on a balanced, impartial, and nonpartisan basis.

(8) Funded newspaper and CE publications may not contain campaign news or editorials dealing with candidates or issues. CE newspapers may carry paid political advertisements by legitimate candidates or parties provided equal opportunity to advertise is afforded.

(9) During election years, DoD newspapers shall support the Federal Voting Assistance Program by carrying factual information about registration and voting laws, especially those on absentee voting requirements of the various states, the District of Columbia, Puerto Rico and U.S. territories and possessions. These newspapers shall use voting materials provided by the Director, Federal Voting Assistance Program, the OSD, and the Military Departments. Such information is designed to encourage DoD personnel to register as voters and to exercise their right to vote as outlined in DoD Directive 1000.4.

(10) DoD newspapers and CE publications shall comply with DoD Instruction 1100.13 pertaining to polls, surveys, and stray votes.

(i) DoD Components and subordinate echelons may authorize polls on matters of local interest, such as, soldier of the week, and favorable athlete.

(ii) No DoD newspaper or CE publication may conduct a poll, a survey, or a straw vote relating to a political campaign.

(c) *Advertising.* (1) No DoD newspaper or CE publications other than newspapers may:

(i) Contain any material that implies that DoD Components or their subordinate echelons, endorse or favor a specific commercial product, commodity, or service.

(ii) Subscribe, even at no cost, to a commercial or feature wire or other service whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

(iii) Carry any advertisement that implies discrimination (see b 2(6)(i)(B) above).

(2) It is DoD editorial policy that commercial sponsors shall be mentioned routinely with other pertinent facts in news stories and announcements on Armed Forces Professional Entertainment Program events in DoD newspapers.

(3) Book, radio, television, movie, and other entertainment reviews may be carried if written objectively and if there is no implication of endorsement by the Department of Defense or any of its Components of their subordinate echelons.

(d) *Establishment of DoD Newspapers.* (1) Commanders are encouraged to establish Funded (enclosure 1), or CE newspapers (enclosure 2), when:

(i) A valid mission requirement exists:

(A) Command or installation newspapers provide the commander a primary means of communicating mission-essential information to members of the command. They provide feedback through such forums as letters to the editor columns. This alerts the commander to the emotional status and state of military knowledge of the command. The newspaper is used as a return conduit for command information to improve attitudes and correct knowledge shortcomings.

(B) News and feature treatment on individuals and organizational elements of the command provides a crossfeed of military information which improves internal cooperation and mission performance. Recognition of excellence in individual or organizational performance motivates and sets forth expected norms for mission accomplishment.

(C) The newspaper improves morale by quelling destructive rumors, and keeping members informed on personnel and other military information which will affect their futures. It provides information and assistance to dependents which improves their spirits and thereby the effectiveness of their member. The newspaper encourages participation in various positive leisure-time activities to improve member's morale and steer them away from alcohol abuse and other pursuits which will impair their ability to perform.

(D) The newspaper discourages command members from using drugs and other activities which will detract from mission performance.

(E) CE newspapers provide advertisements which guide command members to outlets where they may fulfill their purchasing needs. A by-product of this commercial contact is increased installation-community communication which enhances mutual support.

(F) The newspaper increases command cohesiveness and effectiveness by providing a visual representation of the essence of the command itself.

(G) Good journalistic practice is vital, but is not an end itself. It is the primary means to enchance receptivity of command communication through the newspaper.

(H) These newspapers exist to facilitate accomplishment of the command or installation mission. That is the only basis for the expenditure of DoD resources to produce them.

(ii) A newspaper is determined by the commander and the next higher echelon of command to be the most cost-effective means to fulfill the command communication requirement.

(2) The use of appropriated funds is authorized to establish a Funded newspaper if a CE newspaper is not feasible.

(3) Funded and CE newspapers are mission activities. The use of nonappropriated funds for any aspect of their operations is not authorized.

(4) Appropriated funds may not be used to pay any part of the commercial publisher's costs incurred in publishing a CE publication.

(5) Only one DoD newspaper is authorized for each command or installation.

(6) If a newspaper is required at a location where more than one command, or headquarters is collocated, the host commander shall be responsible for publication of one Funded or CE newspaper for all. The host command shall provide balanced and sufficient coverage of the other commands, their personnel, and activities in that locality. These commands, or headquarters shall assist the staff of the host newspaper with coverage. If required by unusual circumstance, a commander other than the host may public the single authorized newspaper when the majority of affected organizations concur. This provision is not intended to prohibit the headquarters of a geographically dispersed Major command that receives its local coverage to the host-command newspaper from publishing a command-wide newspaper.

(7) When, in the opinion of the Assistant Secretary of Defense (Public Affairs), or the UC Commander, a UC newspaper is needed, establishment shall be directed by the Secretary of Defense. Both appropriated and nonappropriated funds may be used in the publication of overseas UC newspapers (for (*S&S*) see enclosure 3).

(e) *Establishment of CE Publications Other than Newspapers.* When valid communication requirements exist, publications in this category may be established by the commander, if feasible (see enclosure 1). Only one publication of each category other than newspapers is authorized for each command or installation. The requirements of § 297.5(d)(1)(i)(F) of this section apply to CE publications other than newspapers. These publications shall be approved by the next higher echelon. Care shall be exercised by approval authorities not to overburden community advertisers.

(f) *Use of Trademark.* DoD Components and their subordinate echelons are encouraged to trademark the names of their publications.

(g) Mailing Requirements and Sales and Distribution of Non-DoD Publications: See enclosure 4.

(h) American Forces Press and Publications Service (AFPPS): See enclosure 5.

§ 297.6 Responsibilities.

(a) *The Assistant Secretary of Defense (Public Affairs) (ASD(PA)),* consistent with DoD Directive 5122.5 shall:

(1) Develop policies and provide guidance on the administration of the DoD Internal Information Program.

(2) Provide policy and operational direction to the Director, American Forces Information Service (AFIS).

(3) Monitor and evaluate overall mission effectiveness within the Department of Defense for matters under this part.

(b) The *Director, American Forces Information Service (AFIS),* shall:

(1) Develop and oversee the implementation of policies and procedures pertaining to the management, content, and publication of DoD newspapers and CE publications other than newspapers.

(2) Serve as DoD point of contact with the Joint Committee on Printing, Congress of the United States, for matters under this Part.

(3) Serve as the DoD point of contact in the United States for UC newspaper matters.

(4) Monitor effectiveness of business and financial operations of DoD newspapers and provide business counsel and assistance, as appropriate. Ensure that officers being assigned to supervise *S&S* business operations have a masters degree in business administration, funding if necessary.

(5) Provide guidance to the UCs and Military Departments pertaining to DoD newspapers and CE publications other than newspapers.

(6) Sponsor a DoD Interservice Newspaper Committee composed of representatives of the Military Services to coordinate DoD command or installation newspaper matters.

(7) Provide a press service on joint-Service news and information for use by military editors DoD-wide.

(c) The *Secretary of each Military Department* shall:

(1) Provide policy guidance and assistance to the Department's DoD newspaper and CE publications.

(2) Encourage the use of CE newspapers when they are the most cost-effective means of fulfilling the command communication requirement.

(3) Ensure that adequate resources are available to support authorized command communications media under this Part.

(4) Designate a member of his public affair to serve on the DoD Interservice Newspaper Committee.

(d) The *Secretary of the Army* shall provide administrative and logistic support to overseas UC newspapers administered as nonappropriated fund instrumentalities.

(e) *Commanders of Overseas Unified Commands* shall:

(1) Publish overseas UC newspapers, if authorized. In discharging this responsibility the UC Commander shall ensure that policy, direction, resources, and administrative support are provided, as required, to produce a professional quality newspaper to support the command mission.

(2) If the UC newspaper is *S&S:*

(i) Select and appoint the Editor-in-Chief and the Deputy or Assistant Editors-in-Chief, who shall be military officers.

(ii) Establish and maintain an *S&S* Advisory Board.

(iii) Establish and maintain and *S&S* Fund Council.

(3) Monitor and evaluate overall mission effectiveness and ensure compliance with applicable directives.

(4) Ensure that the UC newspaper is prepared to support U.S. forces in the command area during contingencies, and armed conflict.

Enclosure 1—Funded Newspapers

A. Purpose

Funded newspapers support the command communication requirements of the DoD Components and their subordinate commands. Normally, printing is accomplished by a commercial printer under contract or in government printing facilities in accordance with DoD or component printing regulations. The editorial content of these newspapers and distribution are accomplished by the contracting command. Overseas, Funded newspapers are authorized to be printed under contract with the *S&S*. Where printing by *S&S* is not feasible because of distance or other factors, Funded newspapers may be printed by other means.

B. Name

The name of the publication may include the name of the command or installation, or, the name of the command or installation may appear separately in the nameplate. The emblem of the command or installation may be included in the nameplate, also.

C. Assignment of Personnel

Military and DoD civilian personnel may not be assigned to duty at the premises of the commercial publisher to perform any job function of officials or employees which are part of the business activities or contractual responsibilities of the commercial publisher. The public affairs officer and staff members who produce editorial content may work on the premises as liaison and monitor to specify and coordinate layout and other details of production provided for in the command contract with the commercial printer. A member of the public affairs staff shall review proof copy to prevent mistakes. Text-editing-system pagination and copy terminals owned by the commercial printer may be placed in the command or installation public affairs office by the publisher to enable the newspaper staff to specify layout and prepare editorial materials.

D. Masthead

The masthead shall include the following: "The editorial content is edited, prepared, and provided by the Public Affairs Office of

(name of command or installation)." The names and editorial titles of military and civilian personnel assigned the duty of preparing the command or installation news and information content may be listed in a section of the masthead entitled "(name of command or installation) Editorial Staff."

E. Sources of News Materials

Only the commander of public affairs staff shall provide the news, information, photographs, editorial, and other materials to be used. Other authorized news and information sources include the Office of the Assistant Secretary of Defense, Public Affairs (OASD(PA)), AFIS, the Military Services and their subordinate echelons of command. The paper may publish civilian community service news and announcements for the benefit of personnel assigned to the command or installation and their dependents.

F. Funding

Normally, the expense of publishing and distributing Funded newspapers is charged to appropriated funds of the contracting command.

G. Contracting for Printing

The contract for printing of a Funded newspaper shall be handled in accordance with DoD Component printing regulations in conjunction with public affairs as the office of primary interest.

H. Distribution

Funded newspapers may be distributed through official channels. Appropriated funds and manpower may be used for distribution of Funded newspapers, as required.

I. Advertising

Noncommercial news stories and announcements concerning nonappropriated fund activities and commissaries may be published in Funded newspapers. Funded newspapers may carry no commercial advertising. As a service, the Funded newspaper may carry nonpaid listings of personal items and services for sale by members of the command.

J. Employment and Gratuities

DoD personnel may not accept employment by or gratuities from commercial printers under contract to print Funded newspapers

Enclosure 2—Civilian Enterprise Publications

A. Purpose

CE publications are economical communication vehicles that support command communication within the DoD Components and their subordinate commands. The DoD Component or subordinate command provides the editorial content. The commercial publisher prints the publications, sells advertising to cover costs and secure earnings, and may make all or part of the distribution. Periodically, qualified commercial publishers have the opportunity to compete for the contract with particular DoD Components or their subordinate commands to publish these publications. The essence of these contracts is an exchange of rights as consideration rather than payment of funds. Appropriated or nonappropriated monies may not be used to pay for any part of the commercial publisher's costs incurred in publishing a CE publication.

B. Name

The name of the publication may include the name of the command or installation, or the name of the command or installation may appear separately in the nameplate. The emblem of the command or installation may be included in the nameplate, also.

C. Assignment of Personnel

Military and DoD civilian personnel may not be assigned to duty at the premises of the commercial publisher to perform any job functions which are part of the business activities or contractual responsibilities of a commercial publisher, his official or employees. The public affairs officer and staff who produce the non-advertising content may work on the premises as installation liaison and monitor to specify and coordinate layout and other details provided for in the command contract with the commercial publisher to obtain the most effective possible presentation of the news and information content. One or more members of the public affairs staff shall review proof copy to prevent mistakes. Text-editing-system pagination and copy terminals owned by the commercial publisher may be placed in the command or installation public affairs office for use by the public affairs staff to specify layout and prepare editorial materials. All costs of these terminals shall be borne by the commercial publisher.

D. Masthead

The masthead shall include the following in addition to that required in § 297.5(b)(5) of this part. "The editorial content is edited, prepared, and provided by the Public Affairs Office of (name of command or installation)." The names and editorial titles of military and civilian personnel assigned the duty of preparing the command editorial content may be listed in a section of the masthead entitled "(name of the command or installation) Editorial Staff."

E. Sources of News Materials

Only the commander or the public affairs staff shall provide the news, information, photographs, editorial, and other materials to be used in a CE publication in the space allotted for that purpose by written contract with the commercial publisher. Other authorized news and information sources include the OASD(PA), AFIS, the Military Services and their subordinate echelons of command. The paper may publish civilian community service news and announcements for the benefit of command or installation personnel and their dependents. Only the publisher shall utilize the space agreed upon for advertising.

F. Contracting for a CE Publication

1. DoD Components and their subordinate commands are authorized to contract for CE publications. The underlying premise of the CE concept is that DoD Components and their subordinate command will save money by transferring certain publishing and distribution burdens to a private sector publisher selected by competitive bid. Rights and authorizations as legal contractual consideration, instead of money, pay for each CE publication, which is printed and delivered to the command, installation, or its readership, in accordance with terms of a written contract. The right to sell and circulate advertising to the complete readership in the CE publication provides the publisher revenue to cover costs and secure earnings. The contracting organization guarantees first publication and distribution of the editorial content in the publication. The publication becomes the property of the command, installation, or intended reader upon delivery in accordance with the terms of the contract.

2. In negotiating CE contracts, DoD Components and their subordinate commands shall seek to have the publisher perform as many of the publishing and distribution functions as possible to generate maximum savings. In the contractual relationship command comunication needs and requirements shall be paramount.

3. A written contract with the selected commercial publisher shall be established by the commander for each CE publication. The contract will include provisions which reflect appropriate guidance from this Instruction and cover local requirements. Only reputable firms shall be used. Disreputable business activity in connection with CE publications can damage relationships with the civilian community.

4. A selection group shall be formed to select a commercial publisher. The chairperson shall be a senior member of the command or activity. Membership shall include legal, procurement, printing, and other functional specialists with skills relevant to the selection and contracting process. The public affairs officer shall serve as executive secretary and advisor. The contracting officer shall execute the contract in accordance with applicable directives. This group shall hear presentations and review written data by prospective commercial publishers or their representatives, secure and review independent data, and make onsite inspections to gather information upon which to base their selection. They shall investigate the competence, reliability, technical, production, and business capabilities and resources of each viable bidder prior to selection. Since exchange of rights is consideration in a CE contract, the best obtainable product and service in exchange for those rights will be the primary criteria for selection. If there is only one bidder, the group may decide that the offer if not sufficient to warrant producing the publication and make no selection. The group may negotiate through the chairperson with a single bidder to obtain the best possible service and product before deciding to accept the bid for contract.

5. A CE commercial publisher will not be required to pay money to the command or installation, or to provide goods, services, or considerations not directly related to the CE publications he has contracted to provide. In selecting a publisher, fair and equal opportunity shall be afforded any

responsible, qualified bidder who may wish to submit a proposal to publish the CE publication. The command shall advertise for proposals from the widest possible selection of commercial publishers available. Modern technology may make feasible invitations to bid by commercial publishers located a considerable distance from the command or installation.

6. CE contracts may be entered into for one year with annual options for renewals based on satisfactory performance for up to 4 years, after which they must be rebid. The contract shall not be renewed if the commercial publisher has not executed the provisions of the contract in a satisfactory manner. Contracts will contain a provision for termination for cause whenever the products and services to be provided under the contract become unsatisfactory or contract provisions are not met. The conditions for termination will be included in each contract. Unsatisfactory performance must be documented.

The selection group will perform reviews to decide on annual contract option renewals and terminations for cause. If a CE newspaper contract is terminated, it may be necessary to establish a Funded newspaper temporarily to maintain command communication. If one or more bidders for a CE newspaper contract are not available, it may be necessary to establish a permanent Funded newspaper.

7. Invitations for bid proposals for CE publications must include a description of the categories of news, comics, features, and factural information to be carried plus other required provisions of the contract.

8. A separate contract is not required for CE comics or feature supplements intended for distribution with the CE newspaper by the commercial publisher provided that the contract stipulates that any such supplement shall have the prior approval of the commander.

9. All CE contracts will contain a provision which prohibits CE commercial publishers from entering exclusive advertising agreements with any firm, broker, or individual.

10. In reviewing bids of publishers seeking to enter CE agreements and in negotiating actual agreements, the amount of advertising that will allow the publisher to perform the publishing burdens and still make a reasonable profit shall be taken into consideration. All CE contracts will specify ground rules for inclusion of advertising in each publication. Advertising may be run of the publication, printed in sections within the publication, or included as supplements printed with the publication or inserted, or combinations of these methods. The Military Departments will coordinate a standard set of ratios of editorial to advertising copy for multiples of pages for the use of run of the publication advertising in CE newspapers that will be included in all DoD Component regulations supplementing this Instruction. Contract provisions will be formulated to prohibit the amount of advertising a publisher sells from forcing the contracting command or installation public affairs staff to produce editorial content exceeding that required for the command communication mission of the publication.

11. CE contracts shall provide that the commander or public affairs officer shall specify design and layout of editorial content. They shall require that the commercial publisher do design, layout, typesetting, pasteup, distribution and other work. The commander or public affairs officer may specify advertising layout to enhance communications effectiveness of the publication. Maximum command-contractor cooperation is mandatory to produce maximum command communication effectiveness.

12. The Military Departments shall develop in conjunction with AFIS, a standard list of required and recommended contract provisions for inclusion in DoD Component regulations supplementing this Part. These standardized provisions shall be issued by AFIS and utilized by DoD Components and their subordinate commands which contract for CE publications.

G. Distribution of CE Publications

1. A Funded newspaper may not be distributed as an insert to a CE newspaper, nor may a CE newspaper be distributed as an insert to a Funded newspaper.

2. Comic and feature supplements may be inserted into and distributed with a CE newspaper.

3. A CE comic or feature supplement with commercial advertising may be distributed as an insert to a CE newspaper provided a fair and equal opportunity is offered to responsible organizations or personnel to compete for this privilege as provided herein, and the front page of the supplement carries the statement prescribed in § 297.5(b)(5) (i) and (ii) of this part.

4. The commercial publisher of a CE publication shall make as much of the distribution to the intended readership as possible. CE publications may be distributed through official channels.

5. Except as authorized by the next higher headquarters for special situations or occasions (such as an installation open house), CE newspapers may not be distributed outside the intended DoD audience, which includes dependents. The publisher may provide a copy of each specific issue of a CE publication to an advertiser whose advertisement is carried therein.

H. Responsibilities Regarding Advertising

1. The commander shall ensure an environment conducive to successful mission performance and preservation of command morale and discipline. DoD Directive 1325.6 gives the commander the authority to prohibit distribution on the installation of a CE publication containing advertising that promotes a situation involving potential riots of other disturbances or when the circulation of such advertising may present a danger to loyalty, discipline, or morale of his personnel. Each commander shall determine whether particular advertisements to be placed by the publisher in a CE publication serving the command or installation may interfere with successful mission performance. Some considerations in this decision are the local situation, the content of the proposed advertisement, and the identity and reputation of the advertiser.

2. Before each issue of a CE publication is printed, the public affairs staff shall review advertisements to identify any that are contrary to law or to DoD or Military Service regulations or that may pose a danger or detriment to DoD personnel or their dependents, or that interfere with the command or installation missions. If any such advertisements are identified, the public affairs officer shall request, in writing if necessary, that the commercial publisher delete them. If the publisher prints the issue containing the offensive advertisement(s), the commander may prohibit distribution.

3. The publisher of a CE publication shall place advertisers on notice of the requirement set forth in § 297.5(b)(5) (i) and (ii) of this part.

4. CE publications may carry paid or nonpaid advertising of the products and services of nonappropriated fund activities and commissaries, if allowed by DoD and Military Service regulatory documents.

I. Civilian Enterprise Guides, Directories, and Maps

1. The name of the publication may appear on the front cover, inside the front cover, or on the first page. It may include the name and emblem of the command or installation.

2. At the discretion of the commander, emergency and service telephone numbers, such as hospitals, military police, and fire numbers may be included.

3. A CE mission and services pocket guide for transient personnel that contains advertising from businesses in the community whose services may be needed by transients may be contracted for in addition to the installation guide or directory, if needed. Normally, these pocket guides will be procured as a part of the installation guide or directory contract.

J. Employment and Gratuities

DoD personnel may not accept employment by or gratuities from a commercial publisher under CE contract with a command. Other than investigation of the business capability of prospective publishing companies during the bidding process and general monitoring of ongoing business capability to fulfill the contract, personnel of the command or installation may not be connected with the business affairs of the CE publication or other business affairs of commercial publishers under contract.

Enclosure 3—Stars and Stripes

A. Purpose

The European and Pacific *S&S* are the UC newspapers of the U.S. European and Pacific Commands. The *S&S* newspapers are mission activities of the Department of Defense.

B. Background

The forerunner of today's *S&S* newspapers was first published in France for U.S. forces participating in World War I. Following the armistice, the newspaper was disestablished. Publication of the *S&S* resumed in Europe in 1942 and in the Pacific in 1945. Since then, both have been published continuously as the newspaper for DoD personnel serving in the U.S. European and Pacific Command areas.

C. Mission

1. To bring DoD personnel and their dependents the same international, national, and regional news and opinion from commercial sources available to newspapers throughout the United States. This news makes possible the continued intelligence exercise of the responsibilities of citizenship by DoD personnel while they serve away from home. It helps their moral and readiness by dispelling rumor and by keeping them in touch with many aspects of life in the United States while they live in unfamiliar surroundings.

2. To provide applicable U.S. Government, DoD, command, and local news and information, which improves individual capability for mission accomplishment and brings a sense of joint mission purpose to the Army, Navy, Air Force and Marine personnel operating together to carry out the U.S. defense mission overseas.

D. Operation

The operations of the *S&S* newspapers shall be conducted similar to comparable commercial newspaper publishing, book and magazine resale, and job printing activities. Modern commercial business techniques and practices shall be used in the operation of *S&S*.

E. Responsibilities

1. In accordance with DoD Directive 5122.10 and this part, the Director, AFIS, shall exercise overall cognizance in the Department of Defense over *S&S* matters on behalf of the ASD(PA).

2. The Secretary of the Army, through the Office of the Adjutant General or other designated office as appropriate, shall:

a. Designate the successor-in-interest to the *S&S*.

b. In coordination with the Director, AFIS, and UC Commanders, ensure the application of financial policies and procedures prescribed by DoD Instruction 7000.12.

c. Provide administrative and logistical support of *S&S* in accordance with DoD Directive 5100.3.

3. The Commander/Editor-in-Chief, *S&S*, shall:

a. Be responsible to the UC Commander for execution of DoD and UC policy concerning the operation of the *S&S*, the publication and distribution of the newspaper, and the operation of *S&S* resale and job printing activities at maximum efficiency while providing the best possible service to DoD personnel in the command area.

b. Supervise continuous planning and execution of initiatives to ensure successful future mission accomplishment.

F. S&S Advisory Board

1. Organization and Management

a. The Commanders-in-Chief of the U.S. European and Pacific Commands each shall be assisted by an *S&S* Advisory Board in exercising responsibility for the *S&S* newspapers published for their command areas.

b. It shall be chaired by the UC Director of Public Affairs and shall be composed of one voting representative each from the Military Service component commands. The Commander/Editor-in-Chief and Managing or Executive Editor of *S&S* shall be members.

c. The Board shall meet not less than twice a year. The minutes of each meeting will be signed by the UC Commander-in-Chief. Recommended actions or editorial guidelines he wishes to become directive will be communicated in writing to the Commander/Editor-in-Chief. Permanent policy will be incorporated in UC regulations.

2. Functions.

The purposes of the Board are:

a. To recommend editorial guidelines to the UC Commander.

b. To evaluate at each meeting compliance with DoD and UC editorial policies to include those concerning free flow of information to DoD personnel. Status and recommendations will be reported to the UC Commander.

c. To serve as a forum for expression and medication of the interests of *S&S* and the commands involved.

d. To evaluate at each meeting the balance of presentation of news articles, opinion columns, and editorial cartoons. To recommend changes, if needed.

e. To maintain an awareness of the newspaper's financial posture.

G. Fund Council

1. Organization and Management

a. The Fund Council shall recommend guidance and provide advice to the UC Commander and Commander/Editor-in-Chief on all business operations of *S&S*. This will include but not be limited to finance and accounting, product pricing, marketing, organization and management, manpower and personnel, circulation, and transportation.

b. The chairperson shall be the Commander/Editor-in-Chief. The membership shall include one voting member each from the Office of Public Affairs and the Comptroller of the UC and at least one member from each Military Service component command. Members shall be appointed by the UC Commander and shall be the best qualified personnel available in the command in business-related disciplines. The improvement and successful accomplishment of *S&S* business operations shall be the sole interest of Fund Council members while serving in that capacity. Fund Council members shall be appointed by the UC Commander for a 3-year term, which he may extend or curtail. The Fund Council shall meet no less than quarterly. The UC Commander shall sign the proceedings of Fund Council meetings. Actions and policies he desires to become directive shall be communicated to the Commander/Editor-in-Chief in writing. Permanent policies shall be incorporated into command regulations.

2. Functions

a. The Fund Council shall monitor planning and execution of initiatives to ensure successful future mission accomplishment.

b. The Fund Council shall assist the Commander/Editor-in-Chief's with continuous evaluation of external factors which will impact *S&S* such as changes in force levels and economic conditions.

c. The Fund Council shall recommend to the UC Commander approval or disapproval of the Commander/Editor-in-Chief's annual financial plan, to include the capital expenditure budget. It shall monitor execution quarterly. The Fund Council shall recommend approval or disapproval of quarterly changes to the capital expenditure budget. The Commander/Editor-in-Chief shall provide sufficient documentation to Fund Council members between quarterly meetings to keep them informed on progress.

d. The Commander/Editor-in-Chief will present a 2-year forecast annually to the Fund Council which will be provided in writing to the UC Commander.

H. Procedures

1. The *S&S* are Category II Resale and Revenue Sharing Morale, Welfare, and Recreation (MWR) activities of the Department of Defense. Nonappropriated fund financial operations shall be administered as Category II nonappropriated fund instrumentalities (NAFIs) by the Department of the Army under DoD Directive 1015.1.

2. Nomination of candidates for the Commander/Editor-in-Chief and Deputy positions shall be made by proposal of the Military Departments through the Director, AFIS, to the UC Commander, who shall make the final selection.

3. The UCs and *S&S* are authorized direct contact with the Military Departments on personnel matters and with the Department of the Army on financial matters.

4. *S&S* officers directly supervising business affairs shall possess a master's degree in business administration and shall have public affairs experience. *S&S* shall endeavor to recruit civilian personnel, with solid experience, education, and performance credentials in business, publishing, or editorial disciplines. *S&S* shall endeavor to maintain a balanced mix of long-term employees to provide stability and shorter-term employees from industry to bring a new ideas and techniques. The Military Departments shall provide their highest quality public affairs personnel for *S&S* asignments and shall fill military positions at the required grade level.

5. The *S&S* newspapers and other *S&S* services are for overseas DoD organizations, personnel, and their dependents. The newspaper and other services may be made available to other U.S. Government and U.S. Government contractor personnel serving in the UC areas.

6. The *S&S* shall endeavor to provide the newspaper and other services for DoD personnel engaged in military operations, contingencies, and exercises in the most expeditious manner possible in coordination with the participating commands. These services shall be provided on a reimbursable basis, either from the commands concerned or from the individuals receiving the service. In times of armed conflict, the Department of the Army shall provide appropriated funding for production and fee distribution of the *S&S* newspaper to forces within designated combat zones, subject to reimbursement by the other Military Services based on percentages of Military Service member population in the designated combat area.

7. *S&S* newspapers may take no editorial positions and shall maintain balance in presentation of commercial news and opinion. Each *S&S* news or feature story and each in a series shall present a balanced view of the issues involved.

8. As determined by the UC Commander, news of information that may adversely affect the security of our country of endanger the safety of DoD personnel may not be disclosed. This may not be construed to permit the calculated withholding of unfavorable news. Any decision to withhold news or information under this provision shall be reported immediately to the Assistant Secretary of Defense, Public Affairs.

9. In UC areas, U.S. Ambassadors shall be relied upon the notify the UC Commander of issues that may endanger our national security. The UC Commander shall provide guidance to the Commander/Editor-in-Chief.

10. The *S&S* shall cover the news of the command, good or bad, on a balanced, objecteve, and impartial basis. *S&S* is not an investigative function within the military community; it is a reporting function. It may report on open or completed investigations by agencies that perform investigative functions, as legally appropriate. *S&S* military reporters may wear military or civilian clothes at the discretion of the Command/Editor-in-Chief. *S&S* has the right to gather and publish information, both positive and negative, within the guidance and constraints of this Part.

11. *S&S* reporters shall make complete inquiry to ascertain the most factual and up-to-date information available before publication of a story. The need for accuracy is paramount. When there is more then one command or viewpoint involved in a story, the story shall be presented with a balanced view. Commanders and public affairs officers shall respond to *S&S* news inquiries on the same basis they respond to commercial media inquiries. *S&S* reporters shall be accorded the same treatment, access to restricted areas, or gatherings provided to reporters from the commercial media. *S&S* reporters may not use their military status or credentials to gain treatment, acess to restricted areas of gatherings, or advantages not accorded civilian media. Commanders and public affairs officers may not use the U.S. Government status of *S&S* news personnel to block the release of or access to otherwise releasable news, information or event.

12. The Commander/Editor-in-Chief shall ensure that all editorial personnel are fully informed on the military missions and other key aspects of the UC and its subordinate command echelons. Also, editorial personnel shall be taught *S&S* editorial policy and fully understand the mission and stauts of *S&S* as a U.S. Government instrumentality as set forth in this instruction and supplementing UC directives. Field reporters and news bureau members shall be the most mature and professional personnel assigned to *S&S*. All shall have *S&S* newsroom experience before being given independent assignments.

13. The *S&S* may use special project reporting teams. One purpose of these teams is balanced, in-depth reporting on operations, actions, or achievements within the UC area. Another is to examine concerns of area commands or the readership to inform on elements of issues or problems progress toward solutions, official and unofficial viewpoints, and the help available, if appropriate. Reporting shall be accomplished in a balanced, accurate, objective, and nonsenational manner. Topics and their planned treatment shall be review by the *S&S* Advisory Board who will provide counsel and arrange command assistance.

14. As the official responsible for both *S&S* and public affairs policy within the UC, the UC Commander shall provide the leadership required to maintain professional working relationships and keep problems resolved between *S&S* and subordinate echelons of the UC.

15. The Armed Forces Radio and Television Service (AFRTS) sensitive subjects summaries may not be used in conjunction with the publication of *S&S*. Representatives of other governments who indicate an interest in the content of the *S&S* shall be informed that the newspaper does not represent the official position of the U.S. Government or the DoD. The *S&S* is a compendium of the commercial news and opinion available to newspapers in the United States, and DoD, command, and local news and information, presented without an editorial position, sensationalism, or censorship for DoD personnel and their dependents serving overseas.

16. Any apparent wrongdoing discovered by *S&S* personnel in the performance of their duties shall be reported immediately to the Commander/Editor-in-Chief who shall notify the appropriate authorities.

17. To serve the news and information needs of DoD personnel, the *S&S* newspapers shall provide the widest possible selection of resale publications for sale at the most reasonable prices possible, either directly or through other authorized sales outlets at their discretion, throughout the areas they serve. To accomplish this mission the *S&S* shall have throughout their service areas the same authorities and rights for resale publications that DoD Exchange Services have on military installations for other non-subsistence goods and services. The cognizant UC Commander shall adjudicate publications resale issues within his command area which cannot be resolved by *S&S* at the operating level (currently an exception to DoD Directive 1320.9 but in consonance with DoD Instruction 1330.18. This guidance shall not be used to restrict sales or distribution of publications to DoD personnel by commercial publishers (see enclosure 4, paragraph D.)

18. The assortment of books and magazines and like products made available for sale to DoD personnel through *S&S* bookstores in each UC area shall approximate that commercially available in the United States. Decisions on which publications to include in this assortment shall be made by the *S&S* on the basis of marketability and service.

I. Management Review and Evaluation

1. The Director, AFIS, shall monitor current business and editorial operations to advise and assist the UC Commander, as required, to maintain high-quality, financially viable *S&S* operations. Annually, the Director, AFIS, shall meet with responsible UC representatives and the Commanders/Editors-in-Chief shall each provide a short high-points briefing to the ASD(PA) and other senior DoD officials in the Washington area who have *S&S* responsibilities. This briefing shall include a 2-year financial forecast.

2. AFIS shall fund commercial audits every 2 years at each *S&S* (an exception to paragraph V.A.2 of DoD Instruction 7600.6. These audits shall be contracted by *S&S* on a reimbursable basis. The results shall be provided to the UC Commander and to the Director, AFIS. The UC Commander; Director, AFIS; and the *S&S* Management Action Group shall assist as appropriate in the resolution of problem areas highlighted by audits.

J. S&S Management Action Group

1. Organization and Management.

The Director, AFIS, shall be assisted by an *S&S* Management Action Group composed of senior level personnel highly qualified in business and management disciplines from AFIS (chairperson), Office of the Assistant Secretary of Defense (Manpower, Installations and Logistics), and other OSD offices with the authority and expertise to assist in solutions to *S&S* problems. A steering committee, chaired by the Director, AFIS, and composed of members at the Deputy Assistant Secretary level or above shall guide and assist the work of the *S&S* Management Action Group, when appropriate. Normally, members of the steering committee will be the supervisors of group members.

2. Functions.

The *S&S* Management Action Group shall execute the following tasks:

a. Monitoring of financial health.

b. Early detection of impending financial crises.

c. Formulating plans, providing leadership, and carrying out actions to assist in resolution of financial problems.

d. Assisting the UC Commander and *S&S* with problem-solving, as required.

K. Financial

1. *S&S* operations shall be funded to the maximum extent possible through the sale of the newspaper; books, magazines, and like products; job printing; authorized advertising revenues; and other income.

2. *S&S* are authorized appropriated fund support as follows:

a. As provided under the provisions of DoD Instruction 1015.4 and DoD Directive 1330.2.

b. Direct funding support when adverse conditions in national and international economics, major increases or decreases in the population served, or other circumstances make such funding necessary to ensure the survival of the newspaper without impairment of its mission capability.

c. Regional air transportation or satellite transmission of the newspaper when long distances require these modes to ensure timely delivery.

d. Authorization is granted to the European *S&S* to use indicia or other DoD official postage for mailing of the *S&S* newspaper to

locations outside of the Federal Republic of Germany and to remote and isolated areas. Changes may be made to accommodate fluctuations in the circulation of the newspaper; however, European *S&S* shall continue to use in-house or other nonpostal means of transportation to distribute the newspaper to areas that are not remote or isolated.

3. Appropriated fund support of *S&S* is the responsibility of the Department of the Army. Appropriated funding may be provided by other Military Departments in accordance with existing agreements and procedures or when required by special circumstances or as otherwise stated herein.

L. Nonappropriated Funds

1. The Commander/Editor-in-Chief may apply for nonappropriated funds from the Department of the Army. Submissions shall be routed through the UC Commander to the Director, AFIS. Requests for funds must be recommended by the Fund Council and approved by the UC Commander. AFIS will forward valid requests to the Secretary of the Army for appropriate action.

2. The Fund Council, by unanimous vote, may declare funds excess to the needs of the business, subject to approval of the UC Commander. Such excess funds shall be forwarded in accordance with disposition instructions from the Department of the Army. Funds may be declared excess only after the following requirements are met:

a. Working capital is at a safe level, to be recommended by the Commander/Editor-and-Chief and Fund Council and approved by the UC Commander.

b. Funds required to complete all planned and foreseeable capital expenditure projects and fulfill other legitimate business needs are available in sinking funds.

c. Retirement and severance accounts are fully funded.

d. An emergency sinking fund, designed to sustain *S&S* through foreseeable periods of financial crisis created by adverse economic conditions or any other cause is fully funded. The amount of this sinking fund will be determined by the Fund Council and approved by the UC Commander.

e. The price of the newspaper is at or below the most prevalent charge for similar U.S. newspapers, to be determined by the Fund Council from the statistics of the American Newspaper Association.

f. Book, magazine and like product prices and job printing are discounted to an appropriate level, to be determined by the Commander/Editor-in-Chief and the Fund Council and approved by the UC Commander.

3. Investment of funds shall be managed by the Commander/Editor-In-Chief and monitored by the Fund Council.

M. Advertising to DoD Personnel Overseas

1. The masthead shall contain the statement specified in § 297.5(b)(5)(i) of this Part.

2. The following may be published free of charge:

a. Factual news stories concerning special DoD-affiliated tours or entertainment opportunities for DoD personnel and their dependents.

b. Promotion of AFRTS schedules and services.

3. The *S&S* may promote the newspaper, books, magazines, and like products; authorized advertising; and job printing services (except appropriated fund) in the newspaper, book, magazine, and like product promotions may include publications by name, title, author, and price. The *S&S* shall work with AFRTS outlets to promote these products and services within AFRTS guidelines.

4. To serve the readership the *S&S* are authorized to solicit, sell, publish, and circulate supplement section advertising, which includes prices and brand names of products and services sold or provided by the following: Nonappropriated fund (DoD Instruction 1015.2) and other authorized activities and their concessionaires providing goods, services and entertainment to DoD personnel and dependents; DoD supervised banks and U.S. Federal Credit Unions; colleges and universities affiliated with DoD organizations to provide educational services to DoD personnel and their dependents; and North Atlantic Treaty Organization elements and host-government instrumentalities that offer goods and services to DoD personnel and their dependents. *S&S* has the right to refuse any advertising considered to be illegal, misleading, prejudicial, confusing, or in bad taste. Transactions on advertising will be handled only between *S&S* and the authorized advertisers listed above.

5. The *S&S* may accept paid classified advertising from DoD personnel and their dependents to aid the exchange of personally-owned goods and individual services.

6. The *S&S* may sell through commercial advertising agencies run of the paper advertising of DoD recruiting and retention.

Enclosure 4—Mailing of DoD Newspapers and Civilian Enterprise Publications Other Than Newspapers; Sales and Distribution of Non-DoD Publications

A. Policy

It is DoD policy that mailing costs shall be kept at a minimum consistent with timeliness and applicable postal regulations (see DoD Instructions 4525.7 and 4525.8). Responsible officials shall consult with appropriate postal authorities to obtain resolution of specific problems.

B. Definition

DoD official postage includes all means of paying postage using funds appropriated for DoD. These means include postage and fees paid indicia, postage metered mail, permit mail, and official mail postage stamps.

C. Use of Official Postage

1. DoD official postage shall be used only for:

a. Mailing copies to satisfy mandatory distribution requirements.

b. Mailing copies to other public affairs offices and for administrative purposes.

c. Mailing copies to headquarters in the chain of command.

d. Bulk mailings of DoD newspapers to subordinate units for distribution to members of the units.

e. Mailing information copies to other U.S. Government agencies, Members of Congress, libraries, hospitals, schools, and depositories.

f. Mailing of an individual copy of a newspaper in response to an unsolicited request from a private person, firm, or organization, if such response is in the best interest of the DoD Component or its subordinate echelons of command.

g. By European *S&S* for mailing of the newspaper to authorized recipients outside the geographical area of the Federal Republic of Germany and to remote and isolated areas.

h. European and Pacific *S&S* for official managerial and administrative mailings related exclusively to the business of the U.S. Government.

i. Mailing copies of DoD newspapers and CE publications other than newspapers to incoming DoD personnel and their families to orient them to their new command, installation, and community.

2. DoD official postage may not be used for mailing:

a. To the general readership of DoD newspapers and publications other than newspapers, unless specifically excepted in this Instruction.

b. By a CE publisher.

c. CE publications other than newspapers in bulk.

d. *S&S* resale and job printing products.

3. Generally, DoD newspapers shall be mailed as controlled circulation, third-class bulk, third-class, fourth-class mail.

D. Non-DoD Publications

A commander may afford reputable distributors of other publications the opportunity to sell or give away publications at the activity he commands. Such publications may not be distributed through official channels. These publications shall be made available only through subscription or placed in specific general use areas designated by the commander, such as the foyers of open messes or exchanges. Paid subscriptions to community newspapers may be home delivered by the commercial distributor in installation residential areas.

E. Legal Prohibitions

Compliance with Section 18 U.S.C. 1302 and 1307 is mandatory. Section 1302 of Title 18, United States Code, Sections 1302 and 1307 prohibits the mailing of publications containing advertisements of any type of lottery or scheme that is based on lot or chance. This covers such activities a friendly bingo games. Section 1307 of Title 18 authorizes exceptions pertaining to authorized State lotteries. Lottery is defined as containing the following three elements:

1. Prize (whatever items of value are offered in the particular game).

2. Chance (random selection of numbers to produce a winning combination).

3. Consideration (requirement to pay a fee in order to play).

F. Review of Mailing and Distribution Effectiveness

1. Mailing and distribution lists shall be reviewed annually to determine distribution effectiveness and continuing need of each recipient to receive the publication.

2. Distribution techniques, target audiences, readers per-copy ratios, and use of postal facilities to ensure the most economical use of mail services consistent with timeliness shall be revalidated annually.

Enclosure 5—American Forces Press and Publications Service

A. General

The American Forces Press and Publications Service (AFPPS), an element of AFIS, provides a variety of print media products in support of the DoD Internal Information Program. These materials include:

1. The American Forces Press Service (AFPS), a monthly feature news service printed and distributed principally to DoD newspaper editors, is camera-ready and contains a broad spectrum of feature materials and artwork intended to supplement material received from other sources.

2. *Defense (year)* magazine, a monthly DoD policy-oriented publication of the Secretary of Defense, intended for worldwide distribution by the Military Departments to military officers, senior-level civilian employees and senior enlisted personnel.

3. Pamphlets, booklets, and posters covering a variety of inter-service information topics.

B. Use of Materials Published by American Forces Press and Publications Service

With the exception of copyrighted matter, all materials published by AFPPS may be reproduced or adapted for use by DoD newspaper editors as appropriate. When AFPPS material is edited or revised, accuracy and conformance to DoD policy and accepted standards of good taste will be maintained. Due to the policy oriented nature of *DEFENSE (year)* magazine contents, particular care will be taken to preserve the original context, tone and meaning of any material adapted, revised or edited from this publication.

C. Activities Eligible to Receive AFPS

1. All DoD newspapers including *S&S*.

2. Headquarters of DoD Components and their subordinate commands.

3. Proponent offices of DoD periodicals published by DoD Components.

4. AFRTS networks and outlets.

5. Isolated commands and detachments at which DoD newspapers are not readily available.

D. Procedures

1. The AFPS is mailed directly to requesting commands. Requests should be forwarded directly to:

American Forces Press Service (AFPS), 1735 North Lynn Street (Room 210), Arlington, VA 22209.

2. Requests shall include name and address of newspaper or activity, frequency of publication, and whether the requesting newspaper is Funded or CE.

3. Notification of changes of address, newspaper title, or other status shall be forwarded immediately to the above address.

E. Mandatory Distribution

One copy of each published issue of all DoD newspapers (Funded, CE, and *S&S*) shall be forwarded to the AFPS at the address indicated above.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 8, 1985.

[FR Doc. 85-19224 Filed 8-14-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 85-33]

Special Local Regulations; Armstrong Chamber of Commerce Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 44.0 to 45.0, Allegheny River. The "Armstrong Chamber of Commerce Regatta", an approved marine event, will be held on August 17 and 18, 1985, at Kittanning, Pennsylvania. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 9:00 a.m. on August 17, and terminate at 8:00 p.m. on August 18, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103. (314) 425-5977.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Allegheny River between miles 44.0 and 45.0 during the "Armstrong Chamber of Commerce Regatta", August 17 and 18, 1985. This event will consist of several classes of outboard race boats, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was not received until July 2, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, project officer, Boating Technical Branch, and Lt. R.E. Kilroy, USCG, project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In Part 100, a new temporary § 100.35-0233 is added, to read as follows:

§ 100.35-0233 Allegheny River, miles 44.0 through 45.0

(a) *Regulated Area.* The area between Mile 44.0 and 45.0 Allegheny River is designated the regatta area, and may be closed to commercial and recreational navigation or mooring between the hours of 9:00 a.m. on August 17, and 8:00 p.m. on August 18, 1985. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed three (3) hours in duration. Mariners will be afforded enough time between such closure

periods to transit the area in a timely manner.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0233 will be effective from 9:00 a.m. on August 17, and terminate at 8:00 p.m. on August 18, 1985. (local time).

Dated: August 1, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 85–19435 Filed 8–14–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD2 85–34]

Special Local Regulations; Beaver County River Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 0.0 to 1.0, Beaver River. The "Beaver County River Regatta", an approved marine event, will be held on August 17 and 18, 1985, at Beaver, Pennsylvania. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 8:00 a.m. on August 17, and terminate at 9:30 p.m. on August 18, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103. (314) 425–5977.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Beaver River between miles 0.0 and 1.0 during the "Beaver County River Regatta", August 17 and 18, 1985. This event will consist of power boat races, row boat races, water ski shows and a lighted boat parade, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The final schedule of events was not received until July 30, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 or 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, project officer, Boating Technical Branch, and LT. R.E. Kilroy, USCG, project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In part 100, a new temporary § 100.35–0234 is added, to read as follows:

§ 100.35–0234 Beaver River, miles 0.0 through 1.0.

(a) *Regulated Area.* The area between Mile 0.0 and 1.0 Beaver River is designated the regatta area, and may be closed to commercial and recreational navigation or mooring between the hours of 8:00 a.m. on August 17, and 9:30 p.m. on August 18, 1985. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed three (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35-0234 will be effective from 8:00 a.m. on August 17, and terminate at 9:30 p.m. on August 18, 1985. (local time).

Dated: August 1, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 85-19436 Filed 8-14-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-85-20]

Special Local Regulations; Frostbite Regatta—Niagara River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Frostbite Regatta to be held on the Niagara River. This event will be held on 4, 5 and 6 October 1985. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 4 October 1985 and terminate on 6 October 1985.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received until August 2, 1985, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A.R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Frostbite Regatta will be conducted on the Niagara River on 4, 5 and 6 October 1985. This event will have approximately 90 hydroplanes and inboard racing runabouts which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group, Buffalo, NY).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority for Part 100 continues to read as follows:

Authority: 33 U.S.C 1233; 49 CFR 1.46(c)(5) and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0920 to read as follows:

§ 100.35-0920 Frostbite Regatta, Niagara River.

(a) *Regulated Area.* That portion of the East Branch of the Niagara River, Tonawanda Channel, from the overhead cable, 1300 yards northwest of the South Grand Island Bridge, to an east-west line through the Tonawanda Channel Buoy 35 (LLP 29).

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorage from 2:00 P.M. (local time) until 5:00 P.M. on 4 October 1985 and from 10:00 A.M. (local time) until 7:00 P.M. on 5 and 6 October 1985.

(2) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: August 7, 1985.

B.K. Schaeffer,

Captain, U.S. Coast Guard, Chief of Staff, Ninth Coast Guard District.

[FR Doc. 85-19438 Filed 8-14-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 5-85-07]

Special Local Regulations; Regatta; Havre De Grace Power Boat

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Havre De Grace Power Boat Regatta. This event will be held on the Susquehanna River, between Garrett Island and the western shoreline at Havre De Grace, MD. It will consist of 75 inboard hydroplanes and runabouts and outboard performance crafts with speeds up to 140 miles per hour. Vessels will range from 13 feet to 19 feet in length racing a circular course in the Susquehanna River, west of Garrett Island. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective for the following times and dates:

11:30 am through 6:30 pm, 24 August 1985

11:30 am through 6:30 pm, 25 August 1985

If the event is postponed, the Patrol Commander will issue a Broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398-6204.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations.

Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 26 July 1985, and there was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafters of this regulation are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Walter J. Brudzinski, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulations

The Susquehanna Optimist Club is sponsoring the Havre De Grace Power Boat Regatta which will consist of a Standard American Power Boat race around an approximately 1⅘ mile course for 3 laps. 3 to 12 boats race at one time with speeds of up to 140 miles per hour. Races continue for 4 to 5 hours. Closure of the entire waterway is not anticipated and marine traffic will be allowed to proceed up the Susquehanna River using the waterway east of Garrett Island.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

Part 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section is added to Part 100 to read as follows:

§ 100.35–0505 Susquehanna River, Havre De Grace, MD.

(a) *Regulated Area.* The waters of the Susquehanna River west of Garrett Island, bounded by the Conrail Railroad bridge on the south and the B&O Railroad bridge on the north.

(b) *Special Local Regulations.* Except for participants in the Susquehanna River Power Boat Race, or persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the above area. The operator of any vessel in the immediate vicinity of this area shall:

(1) Stop his vessel immediately upon being directed to do so by any Coast Guard officer or petty officer on board a vessel displaying a Coast Guard Ensign, and

(2) Proceed as directed by any Coast Guard officer or petty officer.

(c) Any spectator vessel may anchor outside of the area specified in paragraph (a) of these regulations.

(d) The Coast Guard Patrol Commander is a commissioned officer of the Coast Guard who has been designated by the Commander, Fifth Coast Guard District. The Patrol Commander will be stationed on board Coast Guard Cutter CG–41454.

(e) The Coast Guard Patrol Commander has been authorized to stop the race to allow the transit of backed up marine traffic through the regulated area.

(f) These regulations and other applicable laws and regulations will be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard Ensign.

Dated: August 2, 1985.

James C. Irwin,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 85–19437 Filed 8–14–85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD2 85–35]

Special Local Regulations; Savanna Festival Championships

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 537.0 to 538.0, Upper Mississippi River. The "Savanna Festival Championships", an approved marine event, will be held on August 17 and 18, 1985, at Savanna, Illinois. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 12:00 noon on August 17, and terminate at 4:00 p.m. on August 18, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Oliver St., St. Louis, MO 63103. (314) 425–5977.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Upper Mississippi River between miles 537.0 and 538.0 during the "Savanna Festival Championships", August 17 and 18, 1985. This event will consist of approximately (20) twenty heats of power boat races, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The final schedule of events was not received until July 29, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information: The drafters of this regulation are BMCM W.L. Giessman, USCGR, project officer, Boating Technical Branch, and LT. R.E. Kilroy, USCG project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 C.F.R. 100.35.

2. In part 100, a new temporary 100.35–0235 is added, to read as follows:

§ 100.35–0235 Upper Mississippi River, Miles 537.0 Through 538.0

(a) *Regulated Area:* The area between Mile 537.0 and 538.0 Upper Mississippi River is designated the regatta area, and may be closed to commercial and recreational navigation or mooring between the hours of 12:00 noon on August 17, and 4:00 p.m. on August 18, 1985. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed four (4) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0235 will be effective from 12:00 noon on August 17, and terminate at 4:00 p.m. on August 18, 1985. (local time).

Dated August 2, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 85–19434 Filed 8–14–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–85–14]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the Broad Causeway drawbridge, mile 1081.4, at Bay Harbor Islands by shifting the authorized opening times by 15 minutes. This change is being made because of a change in the type of vessels using the waterway over the last ten years. This action will facilitate navigation with no impact on vehicular traffic.

EFFECTIVE DATE: These regulations become effective on September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskoswky, (305) 350–4103.

SUPPLEMENTARY INFORMATION: On June 3, 1985 the Coast Guard published (50 FR 23316) a proposal to revise these regulations. The proposed regulations were also published in a public notice issued by Commander, Seventh Coast Guard District on June 18, 1985. In each notice interested persons were given until July 18, 1985 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations impose no additional restrictions on navigation and continue to exempt tugs with tows and regularly scheduled cruise vessels. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.261(y)(2) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

* * * * *

(y) * * *

(2) The draw of the Broad Causeway bridge, mile 1081.4, at Bay Harbor Islands shall open on signal except that, from 8 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour.

* * * * *

Dated: August 6, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 85–19431 Filed 8–14–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Miami, Florida Regulation CCGD7–85–39]

Safety Zone Regulations; in Biscayne Bay, off the Southeastern End of Lummus Island; Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the drilling and blasting operations at the southeastern end of Lummus Island, Miami, Florida. The blasting will be in an area bounded by a line extending south 500 feet from the southeastern end of Lummus Island, then west 1200 feet, then north 500 feet to the Gantry Crane dock. The zone is needed to protect swimmers, pleasure boaters, commercial traffic and construction personnel from safety hazards associated with the drilling and blasting operations. Entry

into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 2 August 1985. It terminates on 2 November 1985 unless completion of the drilling and blasting operation occurs first.

FOR FURTHER INFORMATION CONTACT: CWO3 P.J. MacDonald, c/o Commanding Officer, U.S. Coast Guard, Marine Safety Office, Miami, FL 33130, Tel. (305) 350–5691.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after the **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential hazards to personnel and vessels involved.

Drafting Information

The drafters of this regulation are CWO3 P.J. MacDonald, project officer for the Captain of the Port, and LCDR K.E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is the drilling and blasting operation off the southeastern end of Lummus Island, Biscayne Bay, Miami, Florida, commencing on 2 August, 1985 and continuing until approximately 2 November, 1985. This operation is necessary for the excavation of the area off the Gantry Crane Dock located at the southeastern end of Lummus Island. During the period 2 August, 1985 through 2 November, 1985, between the hours of 8:00 am and 5:00 pm daily, Monday through Friday with the exception of Holiday's, blasting operations will be conducted. Five minutes prior to each blast, the drilling rig will signal it's intention to blast with a series of 10 long horn signals. At this time the area of Fishermans Channel in a radius of 300 yards of the drilling rig will be closed to all traffic. One minute prior to blasting, the drilling rig will signal it's intention to blast with a series of 3 long horn signals. After the blast, 1 long horn signal will be given as an "All Clear". At all times, vessels are restricted from penetrating a fifty yard radius of the drilling rig. Vessels transitting this area should minimize the effects of their wake.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T–07–39 is added to read as follows:

§ 165.T–07–39 Safety Zone: In Biscayne Bay, off the southeastern end of Lummus Island, Miami, Florida.

(a) *Location:* The following area is a Safety Zone: An area bounded by a line extending south 500 feet from the southeastern end of Lummus Island, then west 1200 feet, then north 500 feet to the Gantry Crane dock. This safety zone is required for the excavation of the area off the Gantry Crane Dock located at the southeastern end of Lummus Island, Miami, Florida. During the period 2 August, 1985 through 2 November, 1985, between the hours of 8:00 am and 5:00 pm daily, Monday through Friday with the exception of Holiday's, blasting operations will be conducted. Five minutes prior to each blast, the drilling rig will signal it's intention to blast with a series of 10 long horn signals. At this time the area of Fishermans Channel in a radius of 300 yards of the drilling rig will be closed to all traffic. One minute prior to blasting, the drilling rig will signal it's intention to blast with a series of 3 long horn signals. After the blast, 1 long horn signal will be given as an "All Clear". At all times, vessels are restricted from penetrating a fifty yard radius of the drilling rig. Vessels transitting this area should minimize the effects of their wake.

(b) Regulations:

(1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is prohibited, unless authorized by the Captain of the Port.

(2) Vessels transitting this area should minimize the effects of their wake.

Dated: August 2, 1985.

R.N. Roussel,

Commander, U.S. Coast Guard, Captain of the Port, Miami, Florida.

[FR Doc. 85–19432 Filed 8–14–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Wilmington, NC; Regulation 85–05]

Safety Zone Regulations; Cape Fear River From Military Ocean Terminal, Sunny Point, NC, to State Ports Authority, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard will establish a moving safety zone which will encompass an area 100 yards around the M/V CPL LOUIS J. HAUGE JR. while enroute from the Military Ocean Terminal, Sunny Point, North Carolina (MOTSU) at the State Ports Authority at Wilmington, North Carolina, and while the M/V CPL LOUIS J. HAGUE JR. is enroute from the State Ports Authority to MOTSU. A stationary safety zone will be established while the M/V CPL LOUIS J. HAGUE JR. is moored at State Ports Authority encompassing an area 100 yards around the vessel. These zones are needed to safeguard the vessel during Military Preposition Ship (MPS) operations. Entry into these zones is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 5:00 a.m., Eastern Daylight Savings Time, August 26, 1985. It terminates at 8:00 p.m., Eastern Daylight Savings Time, August 30, 1985.

FOR FURTHER INFORMATION CONTACT: LT. J.C. Hendrix, Chief Operations Department, U.S. Coast Guard Marine Safety Office, Suite 500, 272 N. Front Street, Wilmington, North Carolina 28401, Phone: 919 343–4892.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action was needed to prevent possible loss of life, and damage to the vessel's equipment, and personnel during this operation.

Drafting information: The drafter of this regulation is Lieutenant J.C. Hendrix, Project Officer, for the Captain of the Port.

Discussion of regulations: The Safety Zone is established in conjunction with this office and the Military Traffic Management Command in support of MPS operations.

List of Subjects in 33 CFR Part 165

Harbors marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation: In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46, and 33 CFR 1.05–1(g), 6.04–6 and 160.5.

2. A new section 165.T505 to read as follows:

§ 165.T505 Cape Fear River.

(a) *Location:* The following areas are safety zones: An area 100 yards around the M/V CPL LOUIS J. HAGUE JR. while enroute from Military Ocean Terminal, Sunny Point, North Carolina (MOTSU) to the State Ports Authority at Wilmington, North Carolina and while the M/V CPL LOUIS J. HAGUE JR. is enroute from the State Ports Authority to MOTSU. Also, an area 100 yards around M/V CPL LOUIS J. HAGUE JR. while the vessel is moored at State Ports Authority.

(b) *Regulations:* In accordance with the general regulations in § 165.23 of this port, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: July 30, 1985.

D.L. McCord,

Commander, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 85–19433 Filed 8–14–85; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6609

[C–28316]

Colorado; Transfer of Administrative Jurisdiction Rocky Mountain National Park

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order transfers administrative jurisdiction of approximately 49 acres of national forest land to the National Park Service as a part of the Rocky Mountain National Park. Acquisition of the land by a Forest Service exchange and its jurisdictional transfer to the National Park Service were authorized by Pub. L. 96–560. The land will remain closed to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, BLM Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205 303–294–7626.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and as mandated by section 111(b) of Pub. L. 96–560, 94 Stat. 3272; it is ordered as follows:

1. Subject to valid existing rights, the following described land, which was acquired by the U.S. Forest Service under the authority of section 111(b) of Pub. L. 96–560, 94 Stat. 3272, within the Roosevelt National Forest is hereby transferred to the National Park Service and reserved as a part of the Rocky Mountain National Park.

Roosevelt National Forest

Sixth Principal Meridian

T. 7 N., R. 73 W.,

Sec. 30, that portion of the S½SE¼ located within the boundaries of Rocky Mountain National Park.

The area described contains approximately 49 acres in Larimer County.

July 29, 1985.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85–19422 Filed 8–14–85; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 200 and 201

Federal Disaster Assistance (Public Law 91–606)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule; Withdrawal of parts.

SUMMARY: This action removes from the Code of Federal Regulations 44 CFR Parts 200 and 201 which concern disaster assistance under the Federal Disaster Assistance Act of 1970. This Act has been superseded by the Disaster Relief Act of 1974.

DATE: This action takes effect August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202–646–3616).

SUPPLEMENTARY INFORMATION: 44 CFR Parts 200 and 201 prescribe standards and procedures in implementing Public Law 91–606, the Disaster Relief Act of 1970. This Act was superseded by the Disaster Relief Act of 1974 (Public Law 93–288). Virtually all matters under the 1970 Act have now been completed and the files closed, so there is no longer any need for these regulations. Therefore, they should be withdrawn. Since the 1970 Act has long since been replaced by the 1974 Act, notice and public procedure with respect to this withdrawal are unnecessary and there is no need to delay the effective date. Therefore, the rule will be effective on publication. However, any applications for Federal disaster assistance which may remain open under the Disaster Relief Act of 1970 will continue to be administered under the regulations which are being withdrawn by this action.

Accordingly, Subchapter D of Chapter 1, Title 44, Code of Federal Regulations, is amended by removing the reserving Parts 200 and 201 as follows:

PART 200—[REMOVED AND RESERVED]

By removing and reserving Part 200 in its entirety.

PART 201—[REMOVED AND RESERVED]

By removing and reserving Part 201 in its entirety.

Authority: 42 U.S.C. 3535.

Dated: August 12, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85–19421 Filed 8–14–85; 8:45 am]

BILLING CODE 6718–01–M

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44 CFR Part 309

Federally Assisted Construction

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Withdrawal of Part.

SUMMARY: This action removes 44 CFR Part 309, Federally Assisted Construction, from the Code of Federal Regulations.

EFFECTIVE DATE: This action will take effect August 15, 1985.

FOR FURTHER INFORMATION CONTACT: William R. Booker, Jr., Office of General Counsel Federal Emergency Management Agency, 500 C Street, SW., Washington, D.C. 20472 (202–646–4098).

SUPPLEMENTARY INFORMATION: 44 CFR Parts 309 concerns procedures, criteria, terms and conditions concerning federally assisted construction under the Federal Civil Defense Act of 1950, as amended.

The regulation was adopted in 1973 by the Defense Civil Preparedness Agency in the Department of Defense during the time the civil defense function was delegated to the Department of Defense.

The requirements described in the regulation to the extent such are not obsolete are covered in the Federal Emergency Management Agency's Civil Preparedness Guide (CPG 1–3) "Federal Assistance Handbook: Emergency Management, Direction and Control Programs;" and CPG 1–32 "Financial Assistance Guidelines" which are made available to FEMA assistance program grantees and subgrantees. Notice of the need to meet these requirements is contained in the Comprehensive Cooperative Agreement and other assistance documents signed by FEMA program applicants.

For the reasons noted above, the regulation should be withdrawn, and notice and public procedure are unnecessary. There is no need to delay the effective date of the withdrawal and therefore it shall be effective upon publication.

(50 U.S.C. App. 2251 *et seq.*)

List of Subjects in 44 CFR Part 309

Civil Defense, Grant programs—National security, Reporting and recordkeeping requirements.

Accordingly, Subchapter E of Chapter 1, Title 44 Code of Federal Regulations is amended by removing Part 309 as follows:

PART 309—[RESERVED]

By removing and reserving Part 309 in its entirety.

Date: August 12, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85–19420 Filed 8–14–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–1045; RM–4827]

Television Broadcast Stations in Llano, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Llano Broadcasting Company, assigns UHF Television Channel 14– to Llano, Texas, as that community's first television broadcast service.

EFFECTIVE DATE: September 19, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Llano, Texas); MM Docket No. 84–1045, RM–4827.

Adopted: July 25, 1985.
Released: August 13, 1985.

By the Chief, Policy and Rules Division.

1. The Commission considers herein the *Notice of Proposed Rule Making*, 49 FR 46448, published November 26, 1984, proposing the assignment of UHF Television Channel 14– to Llano, Texas, as that community's first television broadcast service. The *Notice* was issued in response to a petition filed by Llano Broadcasting Company ("petitioner"). Petitioner filed supporting comments reaffirming its intention to apply for the channel.

2. Llano (population 3,071),[1] seat of Llano County (population 19,144), is located in south central Texas approximately 110 kilometers (70 miles) northwest of Austin, Texas.

3. We believe the public interest would be served by the assignment of Channel 14– to Llano, Texas, in order to provide that community with its first television service. The channel assignment can be made in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

4. Since Llano is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence from the Mexican government has been obtained.

5. Accordingly, pursuant to the authority contained in section 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 19, 1985, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
Llano, Texas	14–

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–19376 Filed 8–14–85; 8:45 am]

BILLING CODE 6712–01–M

[1] Population figures are from the 1980 U.S. Census.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 212, 217, 218, 219, and 225

[FRA Docket No. RSOR–6, Notice No. 8]

Control of Alcohol and Drug Use in Railroad Operations; Implementation Conferences

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of conferences on final rule.

SUMMARY: This notice sets forth the schedule for conferences designed to assist the railroad industry in implementing the final rule on Control of Alcohol and Drug Use in Railroad Operations.

DATES: The two day conferences will be held on September 9 and 10, 23 and 24, October 7 and 8, 21 and 22, and 28 and 29, 1985, at the times and places set forth below.

ADDRESSES: The conferences will be held at the following locations and times:

(1) Fort Worth, Texas (Beginning Mon., September 9, 1985, at 9:00 a.m.)—Fort Worth Hilton, 1701 Commerce Street.

(2) Chicago, Illinois (Beginning Mon., September 23, 1985, at 9:00 a.m.)—Quality Inn—Downtown, 1 Mid City Plaza.

(3) Salt Lake City, Utah (Beginning Mon., October 7, 1985, at 9:00 a.m.)—Salt Lake Hilton, 150 West and 500 South.

(4) Washington, DC (Beginning Mon., October 21, 1985, at 9:00 a.m.)—FAA Auditorium, Building FOB 10A, 800 Independence Avenue, S.W.

(5) Atlanta, Georgia (Beginning Mon. October 28, 1985, at 9:00 a.m.)—Ramada Hotel—Capitol Plaza 2, 450 Capitol Avenue.

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Executive Assistant to the Associate Administrator for Safety, FRA, Washington, DC 20590 (Telephone: 202–426–0895).

SUPPLEMENTARY INFORMATION: On July 29, 1985, FRA issued a final rule on Control of Alcohol and Drug Use in Railroad Operations (50 FR 31508; Aug. 2, 1985). In order to assist the railroads and their employees in implementing these regulations, FRA is scheduling a series of conferences across the United States (dates and locations set forth above). At the conferences, FRA will present the final rule, introduce the Field Manual, explain the FRA enforcement role, and respond to questions of clarification and interpretation. So that FRA can ensure that adequate facilities and materials are provided, those interested in attending are requested to contact Mr. Walter Rockey (address and telephone number above), indicating the date, location, number of persons attending, and affiliation.

Issued in Washington, D.C., on August 9, 1985.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85–19429 Filed 8–14–85; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 50, No. 158
Thursday, August 15, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-230 et al]

FM Broadcast Station in Apple Valley, Palomar Mountain and Long Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: In response to three separately-filed petitions, this action proposes optional plans for the assignment of noncommercial educational FM broadcast Channel 210A to Apple Valley and Palomar Mountain, California, or the substitution of Channel 201B1 for Channel 201A and modification of the license of Station KLON(FM) at Long Beach, California.

DATES: Comments must be filed on or before October 4, 1985, and reply comments on or before October 21, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.504(b), table of allotments, noncommercial educational FM broadcast stations. (Apple Valley, Palomar Mountain and Long Beach, California), MM Docket No. 85-230; RM-4806; RM-4852; RM-4898.

Adopted: July 22, 1985.

Released: August 13, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration are three separately-filed proposals which are jointly considered herein since they are in some manner related. The first petition, filed by Apple Valley Educational Broadcasting Foundation ("AVEBF") (RM-4806) proposes the allotment of Channel 201A to Apple Valley, California, as that community's first local noncommercial educational FM service. The second petition, filed by Family Stations, Inc. ("FSI") (RM-4852) proposes the allotment of Channel 201A to Palomar Mountain, California, as that community's first local noncommercial educational FM service. The third petition, filed by California State University Long Beach Foundation ("CSU") (RM-4898) proposes the substitution of Channel 201B1 for Channel 201A at Long Beach and modification of its license for Station KLON-FM to reflect the change. Each petitioner has indicated its intent to apply for their requested channels, if allotted.

2. A staff engineering study reveals that, although the proposed allotment of Channel 201A to Apple Valley would comply with the minimum distance separation requirements of our Rules, petitioner stated it would locate its transmitter site 9 miles northwest of the community. However, AVEBF should note that a Class A station generally does not provide a 70 dBu, city-grade signal, at a distance exceeding 8 miles. However, the transmitter site location is a matter to consider at the application stage.

3. Also, we have determined that the proposed allotment of Channel 201A to Palomar Mountain would comply with the minimum distance separation requirements provided at site 11.2 km (7 miles) north of the community is utilized to negate a short spacing to a pending proposal to allot Channel 201A to Tecate, Mexico.

4. The proposed substitution of Channel 201B1 for Channel 201A at Station KLON-FM's present site would conform with the minimum spacing requirements of our Rules. However, CSU should note that, in conformity with Commission precedent, should another interest in the allotment be shown, the modification could not be made unless at least one additional equivalent channel is available in the community to accommodate any other expressions of interest. See, *Modification of FM and TV Station Licenses*, 56 RR 2d 1253 (1984).

5. None of the proposals herein pose any potential interference with dometic TV Channel 6 stations. However, each of the proposals is within 320 kilometers (199 miles) of the common U.S.-Mexico border, and therefore, concurrence of the Mexican Government must be obtained.

6. We have determined that the Apple Valley and Palomar Mountain proposals are mutually compatible, but each is short spaced to the proposed upgrading of Station KLON(FM) at Long Beach. Therefore, we shall provide each proponent, and other interested parties, an opportunity to demonstrate in their comments to the *Notice* why their community should receive the proposed allotment.

7. Accordingly, we propose the following optional revisions to the Noncommercial Educational FM Broadcast Table of Allotments, Section 73.504(b) of the Commission's Rules, as follows:

Community	Channel No.	
	[illegible]	[illegible]
Option I		
Apple Valley, California		201A
Palomar Mountain, California		201A
Option II		
Long Beach, California	201A	[illegible]

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before October 4, 1985, and reply comments on or before October 21, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners; or their counsel or consultant, as follows:

F. Joseph Brinig, Esq., Fortas and Hardman, 1200 29th Street, NW.,

Washington, D.C. 20007–3385 (Counsel for Apple Valley Educational Broadcasting Foundation)
Michael J. McCarthy, Esq., Nancy L. Wolf, Esq., Dow, Lohnes and Albertson, 1255 23d Street, NW., Suite 500, Washington, D.C. 20037 (Counsel for Family Stations, Inc.)
Ernest T. Sanches, Esq., Janice F. Hill, Esq., Danielle R. Srour, Esq., Arter and Hadden, 1919 Pennsylvania Avenue, NW., Suite 400, Washington, D.C. 20006 (Counsel for California State University Long Beach Foundation)

10. The Commission has determined that the relevant provisions of the regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the noncommercial Educational FM Table of Allotments, § 73.504(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comment officially filed at the Commission, or oral presentation required by the Commission. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schoot,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §§ 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 85–19377 Filed 8–14–85; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 27 and 52

Federal Acquisition Regulation (FAR); Rights in Data and Copyrights

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; notice of availability and request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision of the Federal Acquisition Regulation (FAR) that adds a new Subpart 27.4, Rights in Data and Copyrights.

COMMENT DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 30, 1985.

ADDRESS: Interested parties may obtain copies of the proposed text from the FAR Secretariat, and written comments should be submitted to: General Services Administration, ATTN: FAR Secretariat (VRS), Room 4041, GS Building, 18th & F Streets, NW., Washington, D.C. 20405. Please cite FAR Case 85–39 in all Correspondence on this subject.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION: .

A. Background

FAR Subpart 27.4 is modified to implement the policy regarding the Government's need for an contractors' legitimate proprietary interests in data as required by section 301 of Pub. L. 98–577, Technical Data Management, and section 1216(a) of Pub. L. 98–525, Rights in Technical Data. Additionally, Subpart 27.4 now sets forth detailed implementation, policies procedures, and instructions for all civilian agencies with respect to rights in data and copyrights and acquisition of data. The Department of Defense (DoD) shall issue

its detailed implementation, procedures, and instructions regarding rights in data and copyrights and acquisition of data in the DoD FAR supplement because of DoD's specialized defense acquisition and logistics support needs for national security and the requirements of 10 U.S.C. 2320 (Pub. L. 98–525, section 1216(a)).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, specifies circumstances under which a regulatory flexibility analysis is required in connection with the issuance of a general notice of proposed rulemaking or the promulgation of a final rule, and provides that such requirements do not apply to any proposed or final rule if it is certified that the rule will not have a significant economic impact on a substantial number of small entities.

It is hereby certified that the proposed rules on Rights in Data and Copyrights will not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule regarding Rights in Data and Copyrights amends the FAR to implement section 301 of Pub. L. 98–577 and section 1216(a) of Pub. L. 98–525, and to provide policy and clauses for rights in data under contracts. Such coverage will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements which would require such entities to change their business practices, incur additional costs or otherwise affect their competitive position.

List of Subjects in 48 CFR Parts 27 and 52

Government Procurement.

Dated: August 12, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 85–19508 Filed 8–14–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Ch. V

[Docket No. T84–01; Notice 5]

Updated Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplemental request for comments.

SUMMARY: This notice seeks public comments on updated data on passenger motor vehicle thefts in calendar years 1983 and 1984 that the agency has received from the National Crime Information Center (NCIC). These data will be used for the purpose of determining the theft rates for existing passenger motor vehicle lines manufactured in calendar years 1983 and 1984 and for determining the median theft rate for all those lines. Lines with a theft rate in those two years that exceed the median rate will be subject to selection for coverage under the theft prevention standard.

This notice also seeks comment on methods for differentiating between reports of multiple thefts of a vehicle and apparent duplicate reports of a single theft of a vehicle. The agency is seeking the best method for minimizing the effects of apparent duplicate theft reports on the theft data and rankings.

DATE: Comments are due not later than August 26, 1985.

ADDRESSES: Comments on this notice should refer to the docket number and should be submitted to: Docket Section, Room 5109, 400 7th Street, SW., Washington, D.C. 20590 (Docket hours: 8:00 a.m. to 4:00 p.m., Monday–Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, Room 5313, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202–426–1740).

SUPPLEMENTARY INFORMATION: On May 2, 1985, NHTSA published a notice seeking public comments regarding data on passenger motor vehicle thefts that the agency obtained from NCIC and the National Automobile Theft Bureau (NATB). The notice stated that the agency contemplated selecting the NCIC data for use in implementing portions, including those relating to the theft prevention standard, of Title VI of the Motor Vehicle Information and Cost Savings Act.

This notice supplements the May notice by publishing NCIC theft data that has been revised in three different respects. First, it includes two weeks of data that NCIC had omitted from its previous submission to NHTSA. Second, it incorporates several different methods for reducing the possibility of multiple counting of the same vehicle theft. Third, it concludes a few thefts that were not included in the May notice due to a computer error.

The agency received comments from 13 organizations on the May notice. With one exception, each commenter supported the tentative selection of the NCIC data for establishing passenger vehicle theft rates. In addition, a few vehicle manufacturers raised questions about the existence of multiple theft reports concerning the same Vehicle Identification Numbers (VIN's). They asked that the agency attempt to assure the legitimacy of any duplicate VIN entries so as to avoid any multiple counting of thefts.

In response to the public comments, the agency requested NCIC to recalculate its previously reported theft figures to exclude any duplicate VIN entries made on the same day for the same vehicle. The agency believed, as did NCIC, that this adjustment of the data would virtually eliminate multiple counting of the same theft due to inadvertent duplicate entries by local reporting agencies.

In the process of making these recalculations, NCIC discovered that it had inadvertently omitted theft data for the last two weeks of calendar year 1983 from the data provided to NHTSA and published in the May notice. NCIC indicated to the agency that these two weeks of data include a large number of pending theft and cancellation records that the reporting law enforcement agencies cleared from their files during that period in preparation for the beginning of the new calendar year. An NCIC letter regarding the above circumstances has been placed in the docket.

The revised theft data, including these two weeks of data, appears at the end of this notice. The revised data also include the VIN's for a few stolen vehicles that were not included in the May notice due to a computer error. Specifically, the thefts involved two 1984 Mazda 626 vehicles and one 1984 Ferrari 308 vehicle. The inclusion of these three thefts does not affect the ranking of these vehicles in relation to the median rate. Regardless of whether those thefts are included, both car lines have rates that exceed the median.

With the inclusion of these previously omitted data, the agency believes that the NCIC theft data in this notice represent the most compehensive theft data available. The agency requests comment on the validity of that belief.

These data have been used to re-rank all existing passenger motor vehicle lines in descending order of theft rate. The effect of the additional data was not substantial. For the method of handling duplicate reports of thefts of the same vehicle proposed to be adopted by the agency in this notice, two car lines that were listed above the median rate in the

May notice are now below that rate and another two car lines moved from below the rate to above it.

Three versions of the revised theft data are set forth, representing three different methods for attempting to minimize the possibility of multiple counting of the same vehicle theft. Table I excludes all duplicate VIN's for vehicles with the same date of theft. This method addresses the most obvious potential errors based on duplicate entries by an operator or on an operator choosing to delete and re-enter a record instead of revising the first entry to reflect new information on that vehicle. Table II excludes duplicate VIN's of stolen vehicles reported within seven calendar days of each other. This method focuses on errors due to the cancellation of the original entry and a new entry by operators instead of revising the existing theft entry to reflect new or additional data. Table III excludes all duplicate VIN's in the same calendar year, regardless of the dates of their entry.

The agency has tentatively selected the method underlying Table II. This table appears to offer a reasonable compromise between the first and third tables. It should eliminate much of the duplication due to the actions of operators while at the same time making allowance for the fact that some vehicles are stolen more than once in a calendar year. Table I may not go far enough to eliminate the duplicate entries that may be made over a several day period as the result of data entry errors or as a result of the cancellation and re-entry of a theft instead of correction of the original entry. Table III may go too far in eliminating all duplicate entries. Agency contacts with police and insurance officials indicate that multiple thefts of a single vehicle in the same calendar year are not uncommon. The agency requests comments on these three methods and on the agency's tentative selection of the second approach.

NHTSA is giving only a 10 day comment period for these data, instead of the normal 45 day comment period. Section 603(a)(3) of the Cost Savings Act [15 U.S.C. 2023(a)(3)] requires the agency to select the high theft lines among these existing lines not later than October 24, 1985. The determination of whether an existing line is a high theft line is a factor to be considered when the agency makes its preliminary determination of whether new lines should be selected as high theft lines, and the agency has proposed making those preliminary determinations not later than August 24, 1985. Before using the data in Table II of this notice as the basis for these preliminary determinations, the agency desires to provide the opportunity for public comment on the above-explained revisions and alternatives. Therefore, the comments must be received as soon as possible.

The agency will respond to the comments received on its May 2, 1985 notice when it publishes the final theft data. Manufacturers are asked not to repeat comments they have already submitted, but instead to focus on the new data published in this notice and on the proposed method for reducing the possibility of multiple countings of the same vehicle theft. While recognizing that the 10 day comment period is less than is usually allowed, the agency believes it is sufficient for commenters to respond adequately in this limited area.

Authority: 15 U.S.C. 2021 and 2023; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on August 9, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

TABLE I.—DUPLICATE VINS WITH SAME DATE OF THEFT DELETED

Manufacturer	Make/Model (line)	Thefts (FBI)		Production (manufacturers)		Combined thefts/product (1983 and 1984) (1,000)
		1983	1984	1983	1984	
1 General Motors	Buick Riviera	788	939	48,908	56,094	16 4473
2 Toyota	Celica Supra	429	426	26,147	29,990	15 2306
3 General Motors	Cadillac Eldorado	1,046	958	66,601	76,656	13 9868
4 General Motors	Chevrolet Corvette (*)	0	630	0	49,510	12 7247
5 General Motors	Pontiac Firebird	770	1,538	66,939	117,033	12 5454
6 Mazda	RX-7	674	569	60,743	41,306	12 1804
7 General Motors	Chevrolet Camaro	1,620	2,984	143,614	244,192	11 8719
8 Porsche	911	68	48	5,070	5,316	11 1689
9 General Motors	Pontiac Grand Prix	866	893	85,693	77,313	10 7910
10 General Motors	Oldsmobile Toronado	411	499	38,499	46,462	10 7108
11 General Motors	Buick Electra	672	645	79,021	50,413	10 1751
12 General Motors	Oldsmobile Cutlass Supreme/Cruiser (RWD)	2,608	3,843	294,245	344,330	10 1022
13 General Motors	Chevrolet Monte Carlo	828	1,394	91,336	131,016	9 9932
14 Ford Motor Co	Lincoln-Mercury Town Car	645	755	51,662	89,901	9 9532
15 General Motors	Buick Regal	2,006	2,330	220,363	216,864	9 9170
16 General Motors	Cadillac Deville/Brougham (RWD)	1,670	1,490	170,338	153,855	9 7473
17 General Motors	Cadillac Seville	337	322	29,753	39,080	9 5739
18 Ford Motor Co	Lincoln-Mercury Mark	125	369	30,104	32,460	8 2156
19 General Motors	[illegible]	849	634	113,290	70,351	8 0755
20 Mitsubishi	Starion	44	48	6,297	5,557	7 7611
21 Nissan	280ZX/300ZX	611	406	55,832	75,374	7 7512
22 Toyota	Celica ST/GT/GTS	708	680	119,131	91,156	6 6005
23 Ford Motor Co	Lincoln-Mercury Capri	131	120	21,832	16,825	6 4930
24 General Motors	Cadillac Limousine	5	7	940	978	6 2565
25 Mercedes-Benz	380SL	56	53	8,763	8,751	6 2236
26 Ford Motor Co	Ford Mustang	629	836	109,377	129,586	6 1307
27 Toyota	[illegible]	199	232	39,015	36,426	5 7131
28 Toyota	Corolla/Corolla Sport	1,164	740	166,883	178,058	5 5198
29 Audi	Quattro	3	0	522	36	5 3763
30 Mercedes-Benz	380SEC/500SEC	11	8	1,910	1,625	5 3748
31 BMW	3-Series	211	271	25,505	66,506	5 2385
32 BMW	5-Series	72	98	16,233	16,667	5 1672
33 Mazda	GLC	170	364	50,151	53,509	5 1515
34 Jaguar	XJ-S	10	11	1,344	2,812	5 0529
35 BMW	6-Series	16	13	2,635	3,119	5 0400
36 BMW	7-Series	35	42	5,541	9,968	4 9649
37 General Motors	Oldsmobile Delta 88/Custom Cruiser	957	1,426	209,453	278,093	4 8883
38 Porsche	928	11	13	2,062	2,850	4 8860

TABLE I.—DUPLICATE VINS WITH SAME DATE OF THEFT DELETED—Continued

Manufacturer	Make/Model (line)	Thefts (FBI)		Production (manufacturers)		Combined thefts/ product (1983 and 1984) (1,000)
		1983	1984	1983	1984	
39 Jaguar	XJ	42	50	6 452	12,685	4.7626
40 Volkswagen	Rabbit	231	[illegible]	77,523	96,361	4.7095
41 General Motors	Cadillac Cimarron	[illegible]	[illegible]	19,070	21,767	4.5547
42 Ford Motor Co	Ford Thunderbird	350	[illegible]	113,834	162,124	4.5333
43 Ferrari	308	2	[illegible]	513	[illegible]	[illegible]
44 Ferran	Mondial 8	[illegible]	1	113	113	4.4248
45 Toyota	Starlet	21	[illegible]	7,634	1,213	[illegible]
46 General Motors	Buick Lesabre	583	745	139,164	[illegible]	4.3815
47 General Motors	Chevrolet Impala/Caprice	863	1,201	213,224	[illegible]	4.3424
48 Chrysler Corp	Chrysler Fifth Avenue/Newport	414	292	83,525	79,662	4.3266
49 Mazda	626	162	[illegible]	47,406	75,287	4.2790
50 Mitsubishi	Tredia	50	70	14,378	14,000	[illegible]
51 Chrysler Corp	Chrysler Executive Sedan/Limousine	2	2	[illegible]	789	4.1841
52 Saab	900	97	138	23,273	33,011	4.1753
53 General Motors	Pontiac 6000	181	[illegible]	[illegible]	122,196	4.0755
54 Mitsubishi	Cordia	42	51	12,250	13,239	4.0410
55 General Motors	Pontiac Bonneville	205	333	[illegible]	72,791	[illegible]
56 Maserati	Quattroporte	0	1	[illegible]	[illegible]	[illegible]
57 Ford Motor Co	Lincoln-Mercury Cougar	192	572	[illegible]	124,576	[illegible]
58 Chrysler Corp	Dodge Aries	423	[illegible]	113,182	121,101	3.9055
59 Nissan	810/Maxima	212	[illegible]	[illegible]	[illegible]	[illegible]
60 Chrysler Corp	Dodge Diplomat	[illegible]	24	11,402	22,174	3.6633
61 Ford Motor Co	Lincoln-Mercury Continental	71	[illegible]	16,485	[illegible]	3.6276
62 Mercedes-Benz	380SEL/500SEL	[illegible]	7	5,213	3,618	3.6236
63 Volkswagen	Scirocco	12	71	[illegible]	[illegible]	[illegible]
64 Chrysler Corp	Chrysler LeBaron/Town and Country	217	357	[illegible]	101,377	[illegible]
65 Audi	5000	119	131	16,502	[illegible]	3.2954
66 Mercedes-Benz	300SD/380SE	74	57	19,173	[illegible]	[illegible]
67 AMC/Renault	Alliance/Encore	255	770	126,742	[illegible]	3.2682
68 Chrysler Corp	Plymouth Reliant	401	557	145,916	153,101	[illegible]
69 Porsche	944	42	47	12,309	[illegible]	[illegible]
70 Ford Motor Co	Ford LTD	[illegible]	610	144,676	[illegible]	3.1724
71 Bertone	X-1/9	[illegible]	[illegible]	1,064	521	[illegible]
72 General Motors	Chevrolet Chevette	470	[illegible]	150,775	212,311	[illegible]
73 General Motors	Buick Century	324	[illegible]	118,116	[illegible]	[illegible]
74 Chrysler Corp	Dodge Charger	105	175	41,500	54,279	2.9234
75 Chrysler Corp	Dodge 600/400	[illegible]	[illegible]	59,511	61,776	[illegible]
76 Ford Motor Co	Ford Exp	57	64	19,243	[illegible]	[illegible]
77 Chrysler Corp	Chrysler E-Class/New Yorker	[illegible]	272	73,168	[illegible]	[illegible]
78 Chrysler Corp	Dodge Omni	74	237	42,620	[illegible]	[illegible]
79 General Motors	Oldsmobile Cutlass Ciera/Cruiser (FWD)	[illegible]	[illegible]	157,544	[illegible]	[illegible]
80 Alfa Romeo	GTV6	[illegible]	[illegible]	[illegible]	1,022	[illegible]
81 Chrysler Corp	Plymouth Gran Fury	[illegible]	23	7,458	14,524	[illegible]
82 Chrysler Corp	Dodge Colt/Colt Vista	[illegible]	92	31,536	[illegible]	2.5931
83 Toyota	Tercel	[illegible]	337	152,820	117,654	2.5917
84 Chrysler Corp	Plymouth Turismo	74	137	[illegible]	49,747	[illegible]
85 Nissan	Pulsar	137	121	[illegible]	[illegible]	2.5531
86 Nissan	Sentra	540	560	[illegible]	[illegible]	2.5412
87 Alfa Romeo	Spider Veloce 2000	[illegible]	[illegible]	1,307	[illegible]	[illegible]
88 Volkswagen	Jetta	[illegible]	100	9,757	[illegible]	[illegible]
89 Nissan	200 SX	118	121	27,573	68,331	[illegible]
90 Ford Motor Co	Lincoln-Mercury Lynx	[illegible]	153	74,981	[illegible]	[illegible]
91 Chrysler Corp	Plymouth Horizon	73	[illegible]	46,476	[illegible]	[illegible]
92 Rolls-Royce/Bentley	Corniche	1	0	[illegible]	[illegible]	2.4331
93 General Motors	Pontiac 2000/Sunbird	144	[illegible]	[illegible]	148,172	2.3939
94 Mercedes-Benz	240D/300D/300CD/300TD	[illegible]	[illegible]	36,012	21,552	2.3626
95 Ford Motor Co	Ford Escort	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
96 Isuzu	I-Mark	[illegible]	11	8,072	[illegible]	2.3444
97 Chrysler Corp	Plymounth Colt/Colt Vista	[illegible]	[illegible]	27,466	[illegible]	[illegible]
98 General Motors	Pontiac T1000/1000	50	[illegible]	24,952	[illegible]	[illegible]
99 Volkswagen	Quantum	18	[illegible]	9,542	15,637	[illegible]
100 General Motors	Chevrolet Celebrity	237	[illegible]	[illegible]	[illegible]	[illegible]
101 Subaru	Subaru	161	245	[illegible]	101,200	2.1011
102 Ford Motor Co	Lincoln-Mercury Marquis	175	151	[illegible]	97 577	[illegible]
103 Audi	4000/Coupe	18	[illegible]	8,350	[illegible]	[illegible]
104 Avanti	Avanti II	0	[illegible]	[illegible]	170	[illegible]
105 Honda	Prelude	50	133	[illegible]	57,614	1.9062
106 General Motors	Buick Skylerk	160	212	[illegible]	[illegible]	[illegible]
107 General Motors	Buick Skyhawk	117	[illegible]	59,552	[illegible]	1.8711
108 Ford Motor Co	Ford LTD Crown Victoria	192	249	92,877	143,969	1.8620
109 General Motors	Oldsmobile Omega	[illegible]	72	47,277	42,316	[illegible]
110 General Motors	Chevrolet Cavalier	271	[illegible]	[illegible]	[illegible]	1.7611
111 Volvo	760 GLE	15	24	[illegible]	13,427	1.7396
112 Peugeot	504/505	30	22	11,580	[illegible]	1.7091
113 General Motors	Oldsmobile Firenza	58	[illegible]	[illegible]	73,054	1.6910
114 General Motors	Chevrolet Citation	[illegible]	151	[illegible]	[illegible]	1.6801
115 Nissan	Stanza	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
116 AMC/Renault	Fuego	37	[illegible]	18,581	[illegible]	1.6611
117 Honda	Accord	[illegible]	[illegible]	221,192	260,717	[illegible]
118 Volvo	DL/GL	125	[illegible]	74,571	[illegible]	1.5647
119 Honda	Civic	232	[illegible]	142,164	[illegible]	[illegible]
120 Ford Motor Co	Lincoln-Mercury Grand Marquis	120	[illegible]	[illegible]	[illegible]	[illegible]
121 General Motors	Pontiac Phoenix	30	[illegible]	[illegible]	14,490	[illegible]
122 Pininfarina	Spider 2000	1	[illegible]	1,073	1,093	[illegible]
123 AMC/Renault	181/Sportwagon	10	[illegible]	[illegible]	[illegible]	1.1153
124 Zimmer	Classic/Elegante/Cabriolet	0	0	[illegible]	59	0.0000

TABLE I.—DUPLICATE VINS WITH SAME DATE OF THEFT DELETED—Continued

Manufacturer	Make/Model (line)	Thefts (FBI) 1983	Thefts (FBI) 1984	Production (manufacturers) 1983	Production (manufacturers) 1984	Combined thefts/product (1983 and 1984) (1,000)
125 Rolls-Royce/Bentley	Silver Spirit/Silver Spur/Mulsanne	0	0	245	[illegible]	0.0000
126 Rolls-Royce/Bentley	Camargue	0	0	11	10	0.0000
127 Peugeot	604	0	0	217	417	0.0000
128 Bitter GMBH	Bitter	0	0	[illegible]	[illegible]	0.0000
129 Aurora	GRX Aurora	0	0	41	38	0.0000
130 Aston Martin	Saloon/Vantage/Volante	0	0	[illegible]	[illegible]	0.0000

TABLE II.–7 DUPLICATE VINS STOLEN WITHIN SEVEN DAYS DELETED

Manufacturer	Make Model Line	Thefts (FBI) 1983	Thefts (FBI) 1984	Production (Manufacturers) 1983	Production (Manufacturers) 1984	(1983 and 1984) (1,000)
1 General Motors	Buick Riviera	787	[illegible]	[illegible]	[illegible]	16.3997
2 Toyota	Celica Supra	427	424	26,147	[illegible]	15.1593
3 General Motors	Cadillac Eldorado	1,038	955	[illegible]	76,656	13.9121
4 General Motors	Chevrolet Corvette (#)	[illegible]	625	[illegible]	49,510	12.6237
5 General Motors	Pontiac Firebird	765	1,529	[illegible]	117,033	12.4693
6 Mazda	RX-7	670	[illegible]	60,743	41 306	12.1118
7 General Motors	Chevrolet Camaro	1,606	2,963	143,614	244,192	11.7817
8 Porsche	911	[illegible]	47	5,070	5,316	11.0726
9 General Motors	Pontiac Grand Prix	[illegible]	[illegible]	85,693	77,313	10.7542
10 General Motors	Oldsmobile Toronado	410	497	[illegible]	46,462	10.6755
11 General Motors	Buick Electra	670	[illegible]	79,021	50,413	10.1133
12 General Motors	Oldsmobile Cutlass, Supreme/Cruiser (RWD)	2,599	3,826	294,245	344,330	10.0615
13 General Motors	Chevrolet Monte Carlo	[illegible]	1,391	91,336	131,016	[illegible]
14 Ford Motor Co	Lincoln-Mercury Town Car	[illegible]	753	51,662	89,901	[illegible]
15 General Motors	Buick Regal	1,993	2,318	220,363	216,864	[illegible]
16 General Motors	Cadillac Deville/Brougham (RWD)	1,661	1,483	170,338	153,855	9.6979
17 General Motors	Cadillac Seville	335	319	29,753	[illegible]	9.5013
18 Ford Motor Co	Lincoln-Mercury Mark	125	[illegible]	30,104	32,460	[illegible]
19 General Motors	Oldsmobile 98	[illegible]	[illegible]	113,290	70,351	8.0374
20 Mitsubishi	Starion	[illegible]	48	6,297	5,557	7.7611
21 Nissan	280ZX/300ZX	611	[illegible]	55,832	75,374	7.7435
22 Toyota	Celica ST/GT/GTS	[illegible]	[illegible]	119,131	91,156	6 5815
23 Ford Motor Co	Lincoln-Mercury Capri	128	119	21,832	16,825	[illegible]
24 General Motors	Cadillac Limousine	5	7	[illegible]	[illegible]	6 2565
25 Mercedes-Benz	380SL	55	53	8,763	8,751	[illegible]
26 Ford Motor Co	Ford Mustang	[illegible]	[illegible]	109,377	129,586	6.1265
27 Toyota	Cressida	[illegible]	232	39,015	36,426	5.7131
28 Toyota	Corolla/Corolla Sport	1,163	735	166,883	178,058	5.5024
29 Audi	Quattro	3	[illegible]	522	[illegible]	5.3763
30 Mercedes-Benz	380SEC/500SEC	11	[illegible]	1,910	1,625	5.3748
31 BMW	3-Series	219	271	25,505	[illegible]	5.3255
32 Mazda	GLC	170	[illegible]	50,151	[illegible]	5.1225
33 BMW	5-Series	72	[illegible]	16,233	16,667	5.0760
34 BMW	6-Series	[illegible]	13	2,635	3,119	[illegible]
35 BMW	7-Series	34	42	5,541	9,968	4 9004
36 Porsche	928	11	13	2,062	2,850	4 8860
37 General Motors	Oldsmobile Delta 88/Custom Cruiser	[illegible]	1,423	209,453	278,033	4.8740
38 Jaguar	XJ-S	9	11	1,344	2,812	4.8123
39 Jaguar	XJ	42	50	6,452	12,865	4.7626
40 Volkswagen	Rabbit	228	[illegible]	77,523	96,381	4.6577
41 Ford Motor Co	Ford Thunderbird	[illegible]	899	113,834	162,124	4.5188
42 Ferrari	308	2	2	513	378	4.4893
43 General Motors	Cadillac Cimarron	[illegible]	92	19,070	21,767	4.4812
44 Ferrari	Mondial 8	[illegible]	1	113	113	4.4248
45 Toyota	Starlet	21	18	7,634	1,213	4.4083
46 General Motors	Buick LeSabre	577	743	139,164	163,928	4.3551
47 General Motors	Chevrolet Impala/Caprice	[illegible]	1,191	213,224	262,084	4.3172
48 Chrysler Corp	Chrysler Fifth Avenue/Newport	412	[illegible]	83,525	79,652	4.3021
49 Mazda	626	161	[illegible]	47,406	75,287	4.2708
50 Mitsubishi	Tredia	[illegible]	70	14,378	14,000	4.2286
51 Chrysler Corp	Chrysler Executive Sedan/Limousine	2	[illegible]	167	[illegible]	4.1841
52 Saab	900	97	[illegible]	23,273	33,011	4.1753
53 General Motors	Pontiac 6000	180	592	[illegible]	122,196	4.0493
54 Mitsubishi	Cordia	42	61	12,250	13,239	4.0410
55 General Motors	Pontiac Bonneville	[illegible]	333	80,652	72,791	4.0145
56 Maserati	Quattroporte	[illegible]	1	52	[illegible]	3.9683
57 Ford Motor Co	Lincoln-Mercury Cougar	192	570	69,979	124,576	3.9166
58 Chrysler Corp	Dodge Aries	420	[illegible]	113,182	121,101	[illegible]
59 Nissan	810/Maxima	212	319	63,284	76,293	3.8044
60 Chrysler Corp	Dodge Diplomat	[illegible]	24	11,402	22,174	[illegible]
61 Mercedes-Benz	380SEL/500SEL	25	7	5,213	3,618	[illegible]
62 Ford Motor Co	Lincoln-Mercury Continental	71	[illegible]	16,485	[illegible]	3.6061
63 Volkswagen	Scirocco	12	71	[illegible]	18,261	[illegible]
64 Chrysler Corp	Chrysler LeBaron/Town and Country	217	355	70,364	101,377	[illegible]
65 Audi	5000	118	131	16,502	59,361	3.2822
66 Mercedes-Benz	300SD/380SE	74	56	19,173	20,703	3.2601
67 AMC/Renault	Alliance/Encore	255	764	126,742	186,887	3.2491
68 Porsche	944	42	47	12,309	15,538	[illegible]
69 Chrysler Corp	Plymouth Reliant	397	[illegible]	145,916	153,101	3.1804
70 Ford Motor Co	Ford LTD	[illegible]	610	144,676	192,608	3.1665

TABLE II.–7 DUPLICATE VINS STOLEN WITHIN SEVEN DAYS DELETED—Continued

Manufacturer	Make Model Line	Thefts (FBI)		Production (Manufacturers)		(1983 and 1984) (1,000)
		1983	1984	1983	1984	
71 Bertone	X-1/9	0	5	1,064	521	[illegible]
72 General Motors	Chevrolet Chevette	[illegible]	[illegible]	150,775	212,311	[illegible]
73 General Motors	Buick Century	[illegible]	[illegible]	118,116	[illegible]	[illegible]
74 Chrysler Corp	Dodge Charger	105	174	41,5000	[illegible]	[illegible]
75 Ford Motor Co	Ford Exp	57	[illegible]	19,243	[illegible]	[illegible]
76 Chrysler Corp	Dodge 600/400	162	[illegible]	59,511	[illegible]	[illegible]
77 Chrysler Corp	Chrysler E-Class/New Yorker	[illegible]	[illegible]	73,164	[illegible]	[illegible]
78 Chrysler Corp	Dodge Omni	74	[illegible]	42,820	[illegible]	2.8006
79 General Motors	Oldsmobile Cutlass Ciera/Cruiser (FWD)	[illegible]	[illegible]	157,544	[illegible]	2.7057
80 Alfa Romeo	GTV6	[illegible]	[illegible]	[illegible]	1,022	[illegible]
81 Chrysler Corp	Plymouth Gran Fury	35	[illegible]	7,458	14,524	[illegible]
82 Chrysler Corp	Dodge Colt/Colt Vista	[illegible]	[illegible]	31,536	[illegible]	2.5931
83 Toyota	Tercel	[illegible]	[illegible]	152,820	117,654	2.5770
84 Nissan	Pulsar	137	121	[illegible]	[illegible]	2.5531
85 Chrysler Corp	Plymouth Turismo	74	135	[illegible]	49,747	[illegible]
86 Nissan	Sentra	537	557	[illegible]	[illegible]	2.5274
87 Alfa Romeo	Spider Veloce 2000	2	[illegible]	1,307	[illegible]	[illegible]
88 Ford Motor Co	Lincoln-Mercury Lynx	193	153	74,981	[illegible]	[illegible]
89 Chrysler Corp	Plymouth Horizon	73	237	46,476	[illegible]	[illegible]
90 Volkswagen	Jetta	10	99	9,757	[illegible]	[illegible]
91 Nissan	200 SX	117	119	27,573	[illegible]	[illegible]
92 Rolls-Royce/Bentley	Corniche	1	0	191	220	2.4331
93 General Motors	Pontiac 2000/Sunbird	141	[illegible]	[illegible]	148,172	2.3752
94 Mercedes-Benz	240D/300D/300CD/300TD	[illegible]	[illegible]	36,012	[illegible]	2.3626
95 Ford Motor Co	Ford Escort	611	[illegible]	[illegible]	[illegible]	[illegible]
96 Isuzu	I-Mark	24	11	[illegible]	[illegible]	[illegible]
97 Chrysler Corp	Plymouth Colt/Colt Vista	55	93	27,466	36,322	[illegible]
98 General Motors	Pontiac T1000/1000	50	89	[illegible]	[illegible]	[illegible]
99 Volkswagen	Quantum	[illegible]	39	[illegible]	15,637	2.2636
100 General Motors	Chevrolet Celebrity	232	713	[illegible]	[illegible]	2.1073
101 Subaru	Subaru	160	245	[illegible]	[illegible]	[illegible]
102 Ford Motor Co	Lincoln-Mercury Marquis	174	[illegible]	[illegible]	[illegible]	[illegible]
103 Audi	4000/Coupe	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
104 Avanti	Avanti II	0	[illegible]	[illegible]	270	[illegible]
105 Honda	Prelude	50	[illegible]	[illegible]	[illegible]	[illegible]
106 General Motors	Buick Skylark	160	211	95,895	[illegible]	1.8943
107 General Motors	Buick Skyhawk	116	[illegible]	[illegible]	[illegible]	1.8609
108 Ford Motor Co	Ford LTD Crown Victoria	[illegible]	[illegible]	[illegible]	[illegible]	1.8535
109 General Motors	Oldsmobile Omega	[illegible]	[illegible]	47,277	[illegible]	1.7747
110 General Motors	Chevrolet Cavalier	267	[illegible]	[illegible]	[illegible]	1.7436
111 Volvo	760GLE	15	24	[illegible]	13,427	[illegible]
112 Peugeot	504/505	[illegible]	[illegible]	11,580	[illegible]	1.7091
113 General Motors	Oldsmobile/Firenza	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
114 AMC/Renault	Fuego	37	[illegible]	18,561	[illegible]	1.6611
115 General Motors	Chevrolet Citation	148	150	[illegible]	[illegible]	[illegible]
116 Nissan	Stanza	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
117 Honda	Accord	345	421	221,182	260,717	[illegible]
118 Volvo	DL/GL	125	[illegible]	74,571	[illegible]	1.5547
119 Honda	Civic	232	[illegible]	142,164	[illegible]	[illegible]
120 Ford Motor Co	Lincoln-Mercury Grand Marquis	120	[illegible]	[illegible]	139,473	1.4279
121 Pininfarina	Spider 2000	1	2	1,073	1,093	[illegible]
122 General Motors	Pontiac Phoenix	[illegible]	[illegible]	[illegible]	15,499	[illegible]
123 AMC/Renault	181/Sportwagon	10	0	[illegible]	[illegible]	1.1153
124 Zimmer	Classic/Elegante/Cabriolet	0	[illegible]	280	[illegible]	[illegible]
125 Rolls-Royce/Bentley	Camargue	0	[illegible]	11	10	[illegible]
126 Rolls-Royce/Bentley	Silver Spirit/Silver Spur/Mulsanne	0	[illegible]	245	850	[illegible]
127 Peugeot	604	0	[illegible]	217	417	[illegible]
128 Bitter GMBH	Bitter	0	0	[illegible]	[illegible]	[illegible]
129 Aurora	GRX Aurora	0	0	41	[illegible]	0.0000
130 Aston Martin	Saloon/Vantage/Volante	0	0	[illegible]	[illegible]	[illegible]

TABLE III.—ALL DUPLICATE VINS DELETED

Manufacturer	Make/model (line)	Thefts (FBI)		Production (manufacturers)		Combined [illegible] product (1983 and 1984) (1,000)
		1983	1984	1983	1984	
1 General Motors	Buick Riviera	766	[illegible]	[illegible]	[illegible]	16.0187
2 Toyota	Celica Supra	419	414	26,147	[illegible]	[illegible]
3 General Motors	Cadillac Eldorado	1,014	[illegible]	[illegible]	76,658	13.5979
4 General Motors	Chevrolet Corvett (*)	0	613	0	49,510	12.3813
5 General Motors	Pontiac Firebird	748	1,488	[illegible]	117,033	12.1540
6 Mazda	RX-7	[illegible]	555	[illegible]	41,306	11.8864
7 General Motors	Chevrolet Camaro	1,571	2,902	143,614	244,192	11.5341
8 Porsche	911	[illegible]	[illegible]	5,070	5,316	[illegible]
9 General Motors	Pontiac Grand Prix	[illegible]	[illegible]	[illegible]	77,313	10.5272
10 General Motors	Oldsmobile Toronado	401	488	[illegible]	[illegible]	[illegible]
11 General Motors	Oldsmobile Cutlass Supreme/Cruiser (RWD)	2,554	3,727	294,245	344,330	[illegible]
12 General Motors	Buick Electra	[illegible]	615	79,021	50,413	[illegible]
13 General Motors	Chevrolet Monte Carlo	[illegible]	1,365	91,336	131,016	9.7773
14 Ford Motor Co	Lincoln-Mercury Town Car	[illegible]	[illegible]	51,662	[illegible]	9.6777
15 General Motors	Buick Regal	1,950	2,259	[illegible]	[illegible]	9.6266
16 General Motors	Cadillac Deville/Brougham (RWD)	1,614	1,447	170,338	153,855	9.4419

TABLE III.—ALL DUPLICATE VINS DELETED—Continued

	Manufacturer	Make/model (line)	Thefts (FBI) 1983	Thefts (FBI) 1984	Production (manufacturers) 1983	Production (manufacturers) 1984	Comprehensive thefts/product (1983 and 1984) (1,000)
17	General Motors	Cadillac Seville	321	315	29,753	39,080	9.3850
18	Ford Motor Co	Lincoln-Mercury Mark	125	364	30,104	32,460	8.1357
19	General Motors	Oldsmobile 98	625	610	113,290	70,351	7.8142
20	Nissan	280ZX/300ZX	605	400	55,832	75,374	7.6597
21	Mitsubishi	Starion	43	46	6,297	5,557	7.7380
22	Toyota	Celica ST/GT/GTS	872	864	119,131	91,156	8.4483
23	Ford Motor Co	Lincoln-Mercury Capri	127	118	21,832	16,695	6.3378
24	General Motors	Cadillac Limousine	5	7	940	870	6.2565
25	Mercedes-Benz	380SL	56	52	8,763	8,751	6.1094
26	Ford Motor Co	Ford Mustang	620	620	109,377	129,585	6.0386
27	Toyota	Cressida	196	230	39,015	36,420	5.6456
28	Ford Motor Co	Ford Thunderbird	644	873	113,834	162,124	5.4972
29	Toyota	Corolla/Corolla Sport	1,144	727	166,885	178,058	5.4241
30	Audi	Quattro	3	0	522	36	5.3763
31	Mercedes-Benz	380SEC/500SEC	11	8	1,910	1,625	5.3748
32	BMW	3-Series	256	287	25,505	66,506	5.1407
33	BMW	5-Series	70	86	16,233	16,667	5.0456
34	BMW	6-Series	16	13	2,635	3,119	5.0400
35	Mazda	GLC	167	353	50,151	53,509	5.0164
36	Porsche	928	11	13	2,062	2,850	4.8860
37	BMW	7-Series	52	42	5,541	9,166	4.8359
38	Jaguar	XJ-S	8	11	1,344	2,812	4.8123
39	General Motors	Oldsmobile Delta 88/Custom Cruiser	934	1,393	209,453	278,033	4.7735
40	Jaguar	XJ	42	49	9,452	12,665	4.7109
41	Volkswagen	Rabbit	226	575	77,523	96,361	4.6060
42	Ferrari	308	2	2	513	376	4.4890
43	General Motors	Cadillac Cimarron	90	91	19,070	21,767	4.4323
44	Ferrari	Mondial 8	0	1	113	113	4.4248
45	Toyota	Starlet	20	18	7,634	1,213	4.2952
46	General Motors	Chevrolet Impala/Caprice	979	1,160	213,224	262,064	4.2596
47	General Motors	Buick Lesabre	580	726	139,164	163,926	4.2495
48	Mitsubishi	Tredia	50	76	14,378	14,000	4.2286
49	Chrysler Corp	Chrysler Fifth Avenue/Newport	402	587	83,525	79,653	4.2224
50	Mazda	626	158	357	47,406	75,287	4.1975
51	Chrysler Corp	Chrysler Executive Sedan/Limousine	2	2	167	789	4.1841
52	Saab	900	85	135	23,273	33,011	4.0864
53	Maserati	Quattroporte	0	1	52	250	3.9683
54	Mitsubishi	Cordia	42	58	12,250	13,239	3.9625
55	General Motors	Pontiac 6000	179	571	88,450	122,196	3.9339
56	General Motors	Pontiac Bonneville	276	327	80,652	72,791	3.9296
57	Ford Motor Co	Lincoln-Mercury Cougar	190	557	89,979	124,576	3.8395
58	Chrysler Corp	Dodge Aries	413	382	113,182	121,101	3.8202
59	Nissan	810/Maxima	209	317	85,354	76,253	3.7685
60	Mercedes-Benz	380SEL/500SEL	25	7	5,213	3,516	3.6256
61	Chrysler Corp	Dodge Diplomat	99	21	11,402	22,174	3.5740
62	Ford Motor Co	Lincoln-Mercury Continental	71	84	15,485	29,526	3.5529
63	Volkswagen	Scirocco	12	71	8,253	18,281	3.3844
64	Chrysler Corp	Chrysler Laberon/Town and Country	213	348	70,364	101,377	3.2665
65	AMC/Renault	Alliance-Encore	252	753	126,742	186,867	3.2044
66	Porsche	944	42	47	12,309	15,536	3.1960
67	Mercedes-Benz	300SD/380SE	72	55	19,173	20,700	3.1848
68	Audi	5000	111	129	16,502	58,361	3.1836
69	Bertone	X-1/9	0	5	1,064	521	3.1548
70	Chrysler Corp	Plymouth Reliant	332	547	145,916	153,101	3.1403
71	Ford Motor Co	Ford LTD	451	601	144,676	192,508	3.1250
72	General Motors	Chevrolet Chevette	460	548	150,775	212,311	3.0481
73	General Motors	Buick Century	319	620	118,116	205,291	2.9034
74	Chrysler Corp	Dodge Charger	104	171	41,500	54,279	2.8712
75	Ford Motor Co	Ford Exp	57	83	19,243	22,640	2.8651
76	Chrysler Corp	Dodge 600/400	158	183	59,511	61,776	2.8115
77	Chrysler Corp	Chrysler E-Class/New Yorker	195	267	73,158	92,822	2.7893
78	Chrysler Corp	Dodge Omni	74	223	42,620	68,071	2.7735
79	General Motors	Oldsmobile Cutlass Ciera/Cruiser (FWD)	421	692	157,544	250,831	2.6603
80	Chrysler Corp	Plymouth Gran Fury	34	23	7,458	14,524	2.5930
81	Nissan	Pulsar	137	120	84,509	96,540	2.5432
82	Chrysler Corp	Plymouth Turismo	74	134	32,125	49,747	2.5406
83	Chrysler Corp	Dodge Colt/Colt Vista	85	89	31,536	40,863	2.5380
84	Toyota	Tercel	361	325	152,820	117,654	2.5363
85	Nissan	Sentra	527	555	230,240	202,624	2.4998
86	Volkswagen	Jetta	10	99	9,757	34,308	2.4756
87	Chrysler Corp	Plymouth Horizon	73	233	45,476	78,581	2.4469
88	Nissan	200 SX	116	118	27,573	50,331	2.4309
89	Rolls-Royce/Bentley	Corniche	1	0	191	220	2.4331
90	Ford Motor Co	Lincoln-Mercury Lynx	188	152	74,981	94,526	2.4229
91	Mercedes-Benz	240D/300D/300CD/300TD	82	53	38,012	21,557	2.3452
92	Isuzu	I-Mark	24	11	8,072	5,857	2.3444
93	Ford Motor Co	Ford Escort	804	888	259,006	346,010	2.3123
94	General Motors	Pontiac 200/Sunbird	138	356	66,126	146,172	2.3052
95	Chrysler Corp	Plymouth Colt/Colt Vista	54	91	27,466	36,322	2.2732
96	Volkswagen	Quantum	18	38	8,542	15,637	2.2638
97	Alfa Romeo	Spider Veloce 2000	1	6	1,307	2,891	2.2511
98	General Motors	Pontiac T1000/1000	50	96	24,952	25,684	2.2429
99	Subaru	Subaru	159	243	80,030	101,200	2.0804
100	General Motors	Chevrolet Celebrity	429	696	139,629	208,616	2.0627
101	Ford Motor Co	Lincoln-Mercury Marquis	171	147	58,699	97,577	2.0219
102	Audi	4000/Coupe	18	52	8,350	26,516	2.0019

TABLE III.—ALL DUPLICATE VINS DELETED—Continued

Manufacturer	Make/model (line)	Thefts (FBI)		Production (manufacturers)		Combined thefts/product (1983 and 1984) (1,000)
		[illegible]	1984	1983	1984	
103 Avanti	Avanti II	[illegible]	[illegible]	[illegible]	270	1.9881
104 Honda	Prelude	50	131	[illegible]	57,614	1.8854
105 General Motors	Buick Skylark	156	[illegible]	95,995	[illegible]	[illegible]
106 Ford Motor Co.	Ford LTD Crown Victoria	187	[illegible]	92,877	143,969	1.8366
107 General Motors	Buick Skyhawk	115	[illegible]	[illegible]	136,056	1.8251
108 Volvo	760 GLE	15	24	[illegible]	13,427	1.7396
109 General Motors	Chevrolet Cavalier	[illegible]	[illegible]	202,540	[illegible]	1.7155
110 General Motors	Oldsmobile Omega	[illegible]	71	47,277	42,316	1.7077
111 Peugeot	504/505	[illegible]	22	11,580	[illegible]	1.6762
112 AMC/Renault	Fuego	37	[illegible]	18,581	6,510	1.6611
113 Nissan	Stanza	[illegible]	[illegible]	62,159	44,860	1.6352
114 General Motors	Chevrolet Citation	146	145	[illegible]	[illegible]	1.6205
115 Alfa Romeo	GTV6	[illegible]	[illegible]	[illegible]	1,022	1.6146
116 Honda	Accord	344	418	221,192	260,717	1.5812
117 General Motors	Oldsmobile Firenza	45	127	[illegible]	73,054	1.5637
118 Volvo	DL/GL	124	[illegible]	74,571	90,737	1.5365
119 Honda	Civic	[illegible]	223	142,164	[illegible]	1.4765
120 Ford Motor Co.	Lincoln-Mercury Grand Marquis	117	207	[illegible]	139,473	1.4062
121 Pininfarina	Spider 2000	1	[illegible]	1,073	1,093	1.3850
122 General Motors	Pontiac Phoenix	28	[illegible]	[illegible]	15,499	[illegible]
123 AMC/Renault	18i/Sportwagon	10	0	6,133	[illegible]	1.1153
124 Zimmer	Classic/Elegante/Cabriolet	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
125 Rolls-Royce/Bentley	Silver Spirit/Silver Spur/Mulsanne	[illegible]	[illegible]	245	[illegible]	[illegible]
126 Rolls-Royce/Bentley	Camargue	[illegible]	[illegible]	11	10	[illegible]
127 Peugeot	604	0	0	217	417	0.0000
128 Bitter GMBH	Bitter	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
129 Aurora	GRX Aurora	[illegible]	[illegible]	41	38	[illegible]
130 Aston Martin	Saloon/Vantage/Volante	0	0	[illegible]	20	[illegible]

[FR Doc. 85-18804 Filed 8-9-85; 11:24 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 158
Thursday, August 15, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Pine Beetle Suppression, Southern Region; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an environmental impact statement on Southern Pine Beetle suppression for Federal and non-Federal lands in the Southern Region. This will include the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and a portion of West Virginia.

The statement will include an analysis and disclosure of environmental effects of suppressing Southern Pine Beetle in Wilderness areas with additional site specific analysis on those in Alabama, Arkansas, Louisiana, Mississippi and Texas.

The Southern Pine Beetle suppression environmental impact statement is being prepared to provide an evaluation of current treatment alternatives or combination of alternatives, so that a fully documented, up-to-date, visible decision can be presented to all affected or interested parties.

A reasonable range of alternatives will be formulated by an interdisciplinary team. One of these will be a no-action alternative. Other alternatives will consider various combinations of all or some of the various Integrated Pest Management techniques such as no action with monitoring for spot growth, cut and remove, cut and leave, cut and treat with insecticide, as well as new methodology that is being developed. The selected alternative will guide the Southern Pine Beetle Program of the Southern Region through establishment of treatment standards and guidelines.

Early in the environmental analysis, Federal and State agencies, organizations, and individuals who may be interested in or affected by the decision will be invited to participate in a scoping process. This process will include: (a) Identification of those issues to be addressed; (b) identification of those issues to be analyzed in depth; and (c) elimination from detailed study those issues which are not significant, or which have been covered by prior environmental review. To accomplish this scoping effort, the Southern Region will publish an announcement in August 1985 in appropriate newspapers and send information packets to and solicit comments from: Federal and State agencies; Indian tribes; a cross-section of user groups; and individuals and organizations who have expressed an interest in the past.

John E. Alcock, Regional Forester, Southern Region, Atlanta, Georgia, is the responsible official.

The analysis is expected to take about eight months. The Draft Environmental Impact Statement should be available for public review by November 1985. The Final Environmental Impact Statement is scheduled to be completed by February 1986.

Written comments and suggestions concerning the analysis should be sent to Regional Forester, Southern Region, 1720 Peachtree Road, N.W., Atlanta, Georgia 30367.

Questions about the proposed action and Environmental Impact Statement should be directed to Kirby Brock, Environmental Impact Statement Team Leader, Southern Region, Phone 404 881–2787.

Dated: August 5, 1985.

John E. Alcock,

Regional Forester, R–8.

[FR Doc. 85–19507 Filed 8–14–85; 8:45 am]

BILLING CODE 3410–11–M

Inyo National Forest Grazing Advisory Board; Meeting

The Inyo National Forest Grazing Advisory Board will meet at 10 a.m. on September 17, 1985, in the Inyo National Forest Conference Room in Bishop, California. The purpose of the meeting is to:

Review FY 85 range accomplishments.
Update FY 86 range management projects.
Receive Grazing Advisory Board recommendations.
Establish sub-committees.
Establish next meeting date.

The meeting will be open to the public. Persons who wish to attend may notify Inyo National Forest—telephone (619) 873–5841. Written statements may be filed with the committee before or after the meeting. Members of the public wishing to speak at the meeting will be recognized by the committee chairman at the appropriate time.

Dated: August 7, 1985.

Leon R. Silberberger,

Acting Forest Supervisor.

[FR Doc. 85–19494 Filed 8–14–85; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Environmental Statements; Copper Basin Critical Area Treatment Measure Fannin County, GA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Copper Basin Critical Area Treatment Measure, Fannin County, Georgia.

FOR FURTHER INFORMATION CONTACT: B.C. Graham, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 404–546–2273.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, B.C. Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns a plan for the treatment of critically eroding areas. The planned works as described in the Finding of No Significant Impact consists of the establishment of erosion control measures on 83 acres.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency, Federal, State, and local agencies, and interested parties. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. B.C. Graham. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901 Resource Conservation and Development Program—Pub. L. 87–703 16 U.S.C. 590 a-f,q. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: August 7, 1985

Don Stewart,

Assistant State Conservationist.

[FR Doc. 85–19416 Filed 8–14–85; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

University of Maryland; Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In FR Doc. 85–17473 beginning on page 29995 in the issue of Tuesday, July 23, 1985, make the following correction: On page 29996, in the first column, at the end of the document, the signature and title were inadverently omitted, and should be inserted before the **Federal Register** document line to read as follows:

Frank W. Creel,

Director, Statutory Import Programs Staff.

BILLING CODE 1505-01-M

Short Supply Review on Certain Galvanized Wire Stick-Collated Brads, Galvanized Weld Wire Collated Coil Roofing Nails, and Angle Coiled Weld Wire Collated Common-Headed Nails; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to certain galvanized wire stick-collated brads, galvanized weld wire collated coil roofing nails, and angle coiled weld wire collated common-headed nails specifically designed for use in pneumatic nailers.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3709, (202) 377–1102.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods or other relevant factors), an additional tonnage shall be allowed for such category or sub-category . . . ."

We have received a short supply request for the following types of collated brads and nails specifically designed for use in pneumatic nailers:

(1) Galvanized wire stick-collated brads produced from drawn galvanized low-carbon steel wire The dimensions for these brads are: (a) 19 gauge; (b) oval heads with maximum lenght of 0.078 inch, maximum width of 0.05 inch and thickness of 0.035 inch; (c) oval shank cross-section with maximum length of 0.05 inch and maximum width of 0.041 inch; and (d) shank length of either 0.591 inch, 0.787 inch or 0.984 inch. They are collated in sticks of 100. Optionally, the uppermost 0.25 inch of the brad may be painted.

(2) Weld wire collated coil roofing nails produced from low-carbon steel wire than electro-galvanized. The dimensions for these nails are: (a) 11 guage; (b) head diameter of 0.407 inch and thickness of 0.027 inch; (c) shank diameter of 0.12 inch; and (d) shank length of either 0.875 inch or exactly one inch. The entire nail is coated except for the uppermost 0.315 inch. A 0.4-inch long section of the shank, beginning 0.375 inch from the top of the nail, is grooved. The nails are welded to two connecting wires at a 15-degree angle, spaced 0.315 inch apart, measured center to center. Segments containing 120 nails are then coiled:

(3) Angle coiled weld wire collated common-headed nails produced from low-carbon steel wire with either a bright or galvanized finish. The dimensions for these nails are: (a) head diameter of 0.215 inch; (b) shank diameter of either 0.08 inch or 0.09 inch; and (c) shank length of either one inch, 1.25 inches, 1.5 inches, 1.75 inches, two inches or 2.125 inches. Smooth, ring or screw type shanks may be used. The entire nail is coated except for the uppermost 0.25 inch. Either 350 0.08-inch or 300 0.09-inch diameter nails are welded to two connecting wires at an angle ranging from 10 to 20 degrees and spaced between 0.27 and 0.33 inch apart, measured center to center. These strips are then wound counter-clockwise on a mandrel into flat coils 4 inches in diameter.

Parties interested in commenting on any of these products should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also include with it a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Dated: August 8, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–19409 Filed 8–14–85; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Countervailing Duty Order; Live Swine From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations, the United States Department of Commerce (the Department) and the United States International Trade Commission (ITC) have determined that live swine from Canada are receiving benefits which constitute subsidies within the meaning of the countervailing duty law, and that sales of live swine from Canada are materially injuring a United States Industry. In its determination, the Department also found that fresh, chilled and frozen pork products from Canada are receiving benefits which constitute subsidies within the meaning of the countervailing duty law. However, the ITC determined that imports of these pork products are not materially injuring, threatening material injury to, or materially retarding the establishment of, a United States Industry.

Therefore, based on these findings, all entries of live swine from Canada, which are entered or withdrawn from warehouse, for consumption on or after April 3, 1985, the date on which the Department published its preliminary countervailing determination in the **Federal Register**, will be liable for the possible assessment of countervailing duties. Furthermore, a cash deposit of estimated countervailing duties must be made on all such entries, and withdrawals from warehosue, for consumption, on or after the date of publication of this countervailing duty order in the **Federal Register**.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-0161 (Taverman) or 377-3464 (Martin).

SUPPLEMENTARY INFORMATION: The product covered by this order is live swine, as currently provided for in item 100.8500 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

In accordance with section 703 of the Act (19 U.S.C. 1671b), on April 3, 1985, the Department published its preliminary determination that there was reason to believe or suspect that imports of live swine and fresh, chilled and frozen pork products from Canada received benefits which constitute subsidies within the meaning of the countervailing duty law (50 FR 13264). In accordance with section 705 of the Act (19 U.S.C. 1671d), on June 17, 1985, the Department published its final determination that these imports are being subsidized (50 FR 25097).

On August 1, 1985, in accordance with section 705(d) of the Act (19 U.S.C. 1671d(d)), the ITC notified the Department of its determination that imports of live swine are materially injuring a United States industry, and that imports of fresh, chilled and frozen pork products are not materially injuring, threatening material injury to, or materially retarding the establishment of, a United States industry.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department directs United States Customs officiers to assess, upon further advice by the administering authority pursuant to section 706(a)(1) and 751 of the Act (19 U.S.C. 1671e(a)(1) and 1675), countervailing duties equal to the amount of the net subsidy for all entries of live swine for Canada. These countervailing duties will be assess on all unliquidated entries of live swine from Canada entered, or withdrawn from warehouse, for consumption, on or after April 3, 1985, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determination" in the **Federal Register**.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated customs duties on the merchandise, a cash deposit of Can $0.04386/lb. on all entries of live swine from Canada. For any entries for which an actual deposit of estimated duties was collected, Customs officials should refund the difference between the rate published on our final determination and the rate established by this order.

The Department also directs that suspension of liquidation be discountinued for entries of fresh chilled and frozen pork products. All estimated countervailing duties deposited on such entries shall be refunded and the appropriate bonds or other security released at time of liquidation.

This determination constitutes a countevailing duty order with respect to live swine from Canada pursuant to section 706 of the Act (19 U.S.C. 1671e) and 355.36 of the Commerce Regulations (19 U.S.C. 355.36).

We have deleted from the Commerce Regulations Annex III to 19 CFR Part 355 which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act 19 U.S.C. 1675(a)(1), the Department hereby gives notice that if requested it will commence an administrative review of this order. For further information regarding this reveiw, contact Mr. Richard Moreland (202) 377-2786.

This notice is published in accordance wtih section 706 of the Act (19 U.S.C. 1671e) and 355.36 of the Commerce Regulations (19 U.S.C. 355.36).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 9, 1985.

[FR Doc. 85-19483 Filed 8-14-85; 8:45 am]

BILLING CODE 3510-DS

Galvanized Steel Wire Strand From South Africa; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Terminate Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Terminate Suspended Countervailing Duty Investigation.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty case on galvanized steel wire strand from South Africa. The review covers the period from October 1, 1983. The petitioners in this proceeding have notified the Department that they are no longer interested in the countervailing duty case. These affirmative statements of no interest provide a reasonable basis for the Department to terminate the suspended investigation. Therefore, we intend to terminate the suspended investigation. The termination will apply to all galvanized steel wire strand entered, or withdrawn from warehouse, for consumption on or after October 1, 1983. Intertested parties are invited to

comment on these preliminary results and tentative determination to terminate.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 19451) a notice of suspension of countervailing duty investigation on galvanized steel wire strand from South Africa.

The petitioners, Florida Wire and Cable Company, Indiana Steel and Wire, and Bethelehem Steel Corporation, informed the Department that they were no longer interested in the case and stated their support of termination of the suspended investigation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may terminate a suspended countervailing duty investigation that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of South African galvanized steel wire strand. Such merchandise is currently classifiable under items 642.1142 and 642.1144 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1983.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty case on galvanized steel wire strand from South Africa provide a reasonable basis for termination of the suspended investigation. Therefore, we tentatively determine to terminate the suspended investigation on this product effective October 1, 1983. The current requirements of the agreement suspending the investigation will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to terminate within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on termination, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to terminate, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 2, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–19482 Filed 8–14–85; 8:45 am]

BILLING CODE 3510–DS–M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on August 27, 1985, 2:30 p.m., 30th Floor, 11 West 42nd Street, New York, New York 10036. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

General Session: 2:30 p.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 3:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande, (202) 377–3737.

Dated: August 12, 1985

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–19484 Filed 8–14–85; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Application for Approval To Transfer Ownership of a U.S. Fishing Vessel to a U.S. Corporation Under Foreign Control

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of proposed fishing vessel transfer, and request for comments.

SUMMARY: The Maritime Administration (MarAd) has received an application to transfer ownership of the tuna purse seiner PAMELA ANN to Vivian Ann Fishing, Inc. This would subject the vessel to foreign control since Vivian Ann Fishing, Inc., is 100 percent owned by Venezuelan citizens. Written comments are requested.

DATE: All comments must be postmarked no later than September 16, 1985.

ADDRESSES: Comments should be mailed to Michael L. Grable, Chief, Financial Services Division, NMFS, NOAA, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: John A. Kelly, Jr. (Financial Assistance Specialist), 202–634–7496.

SUPPLEMENTARY INFORMATION:

Application for approval of the transfer of vessel Pamela Ann (O.N. 644053, built 1981, reg. length 200.6') owned by Marine Engineering Services, Inc., was received by MarAd on July 16, 1985. If the transfer is approved, the vessel will remain documented in the fisheries of the United States and continue to be operated as a tuna seiner in the Eastern Tropical Pacific. Approval of the transfer is required by section 9 of the Shipping Act, 1916 (the Act) as amended (46 U.S.C. 808) because although Vivian Ann Fishing, Inc., a California corporation, meets the citizenship requirements for Federal documentation of a vessel in the fisheries of the United States, it is not a citizen of the United States within the meaning of section 2 of the Act because 100 percent of its stock is owned by Venezuelan citizens. The MarAd is the Federal Agency responsible for the approval of applications submitted under the Act. Where a foreign transfer involves a fishing vessel, MarAd customarily

requests NMFS to review the application. In turn, we are soliciting the views of interested persons in this regard.

All written comments received on time will be considered before we respond to MarAd. However, since the Shipping Act provides little basis for disapproving the transfer of a fishing vessel, our response to MarAd will indicate no objection unless information received supports a conclusion that this sale would significantly affect the fishery F/V PAMELA ANN will engage in. No public hearing is contemplated at this time.

Dated: August 8, 1985.

Richard B. Roe,

Acting Director, Office of Fisheries Management.

[FR Doc. 85-19489 Filed 8-14-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations With the Government of Malaysia To Review Trade in Category 369pt. (Shop Towels)

August 12, 1985.

On July 30, 1985, the Government of the United States requested consultations with the Government of Malaysia with respect to Category 369pt. (shop towels in T.S.U.S.A. number 366.2740). This request was made on the basis of the agreement between the Governments of the United States and Malaysia relating to trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products, effected by exchange of notes dated July 1 and July 11, 1985. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement may establish a prorated specific limit of 125,082 pounds for the entry and withdrawal from warehouse for consumption of textile products in Category 369pt., produced or manufactured in Malaysia and exported to the United States during the period beginning on October 28, 1985 and extending through December 31, 1985.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution concerning this category, to control imports during the ninety-day consultation period (July 30, 1985 through October 27, 1985) at a level of 204,862 pounds. In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed enter, may be charged to the level established during the subsequent restraint period.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 369pt. is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Association, U.S. Department of Commerce, Washington, D.C. 20230. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreement.

Malaysia—Market Statement

Category 369 Part—Cotton Shop Towels

July 1985.

Summary and Conclusions

U.S. imports of Category 369 Part, shop towels, from Malaysia were 730,399 pounds during the period of November 1984 through May 1985. There were no imports prior to November 1984. This sharp and substantial entrance of imports was into a sector already adversely affected by imports.

Malaysia was the third largest supplier of cotton shop towels during January–May 1985, accounting for 11 percent of the total imports. These imports from Malaysia are entered at duty-paid landed values which are below the U.S. producer price for comparable towels. The continuation of increasing low-priced imports from Malaysia threatens to intensify the market disruption occurring in the U.S. for such towels.

U.S. Producers' Market Share

The U.S. producers' share of Category 369pt. shop towel market declined from 59 percent in 1981 to 47 percent in 1984.

U.S. Production

U.S. production of cotton shop towels declined from 162 million units in 1981 to 126 million in 1982, a decrease of 22 percent. Production regained some of the loss in 1983 and 1984 to a level of 138 million units in 1984, up 10 percent over the recession impacted 1982 level. Production in 1984 was far below any level on record prior to 1982.

U.S. Imports

U.S. imports of Category 369Pt., after remaining relatively flat at 94 million units during 1982 and 1983 due in part to the soft domestic market and the action taken by the United States on antidumping and countervailing duty cases with specific major suppliers, increased substantially in 1984. Imports in 1984 soared to a record high of 158 million units.

Import Penetration

The ratio of imports to domestic production increased from 69 percent in 1982 to 115 percent in 1984.

Import Values

Imports of cotton shop towels from Malaysia are entered at duty-paid landed values below the U.S. producer prices for comparable towels.

August 12, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Commisioner: Under the terms of Section 204 of the Agriculture Act of 1956 as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement effected by exchange of notes dated July 1, and July 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 16, 1985, entry into the United States of consumption and withdrawal from warehouse for consumption of textile products in Category 369pt.[1], produced or manufactured in Malaysia, and exported during the ninety-day period which began on July 30, 1985 and extends through October 27, 1985, in excess 204,862 pounds.[2]

Textile products in Category 369pt.[1] which have been exported to the United States prior to July 30, 1985 shall not be subject to this directive.

Textile products in Category 369pt.[1] which have been released from the custody of the

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[1] In Category 369 only T.S.U.S.A. number 366.2740.

[2] The level has not been adjusted to reflect any imports exported after July 29, 1985.

U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-19410 Filed 8-14-85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Turkey on Category 348 (Women's, Girls' and Infants' Cotton Trousers)

On July 29, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Turkey to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton trousers in Category 348, produced or manufactured in Turkey.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Turkey the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of women's, girls' and infants' cotton trousers in Category 348, produced or manufactured in Turkey and exported to the United States during the twelve-month period which began on July 29, 1985, and extended through July 28, 1986 may be restrained at a level of 389,682 dozen.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 348 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Turkey—Market Statement

Category 348—Women's, Girls' and Infants' Cotton Trousers, Slacks and Shorts (WGI Cotton Trousers)

July 1985.

Summary and Conclusions

WGI cotton trouser imports from Turkey reached 415,036 dozens during the year ending May 1985, when Turkey was the seventh largest supplier of Category 348. In 1984, these imports reached 221,742 dozens. Moreover, Turkey contributed a fourth of the 1983 to 1984 growth in the entire Category for 1984. WGI cotton trouser imports from Turkey during the first five months of 1985 totaled 266,244 dozens, over two and a half times the imports a year earlier and 20 percent more than had been from Turkey in the entire 1984 calendar year.

U.S. Imports

For every ten pairs of WGI cotton trousers produced in the U.S. in 1984, another eight were imported. Category 348 imports have increased 51 percent since 1980 and 5 percent from 1983 to 1984. The 12,535,000 dozens imported in 1984 equalled 83 percent of domestic production.

The 1984 import-to-production ratio for Category 348 is the highest recorded and is three percentage points higher than was recorded in 1983.

U.S. Production

Domestic WGI cotton trouser production was 15,191,000 dozens in 1984. In contrast to imports which increased five percent that year, U.S. production stagnated. U.S. manufacturers accounted for only a little over half of the Category 348 market in 1984. Indicators point to no improvement in the U.S. position in 1985, cuttings of women's slacks were down about six percent during January–April 1985.

Import Unit Values and Domestic Producers Price

Seventy percent of the Category 348 imports from Turkey entered under TSUSA No. 383.4726—WGI woven, not ornamented shorts; and 23 percent under 383.4761—women's woven, not ornamented trousers. These garmets are imported at landed, duty-paid values below the U.S. producers price for comparable items.

[FR Doc. 85-19485 Filed 8-14-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 6, 1985.

The USAF Scientific Advisory Board's Electronic System Division Advisory Group will meet at Hanscom Air Force Base, Massachusetts on September 19 and 20, 1985.

The purpose of the meeting will be to review on-going projects in the field of Cruise Missile Surveillance and Tactical Battle Management. The meeting will convene from 8:30 a.m. to 5:00 p.m. on September 19 and from 8:30 a.m. to 12:00 noon on September 20.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-19414 Filed 8-14-85; 8:45 am]

BILLING CODE 3910-01-M

Senior Executive Service; Performance Review Boards; List of Members

Below is a listing of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat

Andrew E. Bilinski
Durward E. Timmons
Bernard H. Paiewonsky

Air Staff

Robert K. Beacom

Harold W. Sorenson
Robert W. Thornett
BG Denis M. Brown
BG Gerald C. Schwankl

AFSC

John P. Braily
William J. Edwards
Gary M. Grann
Raymond L. Haas
Charles H. Hooper
Raymond L. Johnson
Joseph G. La Quanti
Johnny M. Rampy
James T. Van Kuren
Horst R. Wittman
LG William E. Thurman
MG Brien D. Ward
BG John D. Slinkard
BG Charles P. Winters

AFLC

MG William P. Bowden

Others

Nickolai Charczenko
David Finkleman
BG Roy M. Goodwin

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-19415 Filed 8-14-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Application Notice for Noncompeting Continuation Awards for Fiscal Year 1986; International Research and Studies Program

Applications are invited for noncompeting continuation awards under the International Research and Studies Program for fiscal year (FY) 1986.

Authority for this program is contained in section 605(a) of Title VI of the Higher Education Act of 1965, as amended (20 U.S.C. 1125(a)).

The International Research and Studies Program provides funds to qualified public and private agencies, organizations, institutions, and individuals to conduct research designed to improve and strengthen instruction in modern foreign languages, area studies, and other related fields needed to provide full understanding of the places in which those languages are commonly used.

Closing dates for transmittal of applications: To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered by February 21, 1986. If the application for a noncompeting continuation award is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.017B, International Research and Studies Program, 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Eligible applicants: For the International Research and Studies Program eligible applicants include public and private agencies, organizations, and institutions of higher education as well as individuals.

Available funds: The Administration's budget for fiscal year 1986 does not request an appropriation of U.S. dollars or foreign currencies for the International Research and Studies Program. However, applications are invited for noncompeting continuation awards to allow for sufficient time to evaluate them and complete the grants process prior to the end of the fiscal year, should the Congress appropriate funds for this program.

Application forms: Application forms and program information packages are expected to be available for mailing on September 13. They may be obtained by writing to the Center for International Education, Office of Postsecondary Education, U.S. Department of Education, (Room 3923, ROB-3), Mail Stop 3308, 400 Maryland Avenue, SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. The program information package is intended to aid applicants applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition.

The Secretary urges that applicants not submit information that is not requested.

These forms are approved under the Paperwork Reduction Act of 1980.

(Approved by the Office of Management and Budget under Control Number 1840-0068).

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the International Research and Studies Program, 34 CFR Parts 655 and 660.

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further Information: For further information contact Robert R. Dennis, Program Manager, International Research and Studies Program, Center for International Education, (Room 3928, ROB-3), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 245-9425.

(20 U.S.C. 1125)

(Catalog of Federal Domestic Assistance No. 84.017, International Research and Studies Program)

Dated: August 12, 1985

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85-19405 Filed 8-14-85; 8:45 am]

BILLING CODE 4000-01-M

Application Notice for New Awards for Fiscal Year 1986; International Research and Studies Program

Applications are invited for new awards under the International Research and Studies Program for fiscal year (FY) 1986.

Authority for this program is contained in section 605(a) of Title VI of the Higher Education Act of 1965, as amended (20 U.S.C. 1125(a)).

The International Research and Studies Program provides funds to qualified public and private agencies, organizations, institutions, and individuals to conduct research designed to improve and strengthen instruction in modern foreign languages, area studies, and other related fields needed to provide full understanding of the places in which those language are commonly used.

Closing dates for transmittal of applications: An application for an award must be mailed or hand delivered by November 4, 1985.

Applications Delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.017A, International Research and Studies Program, 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Seceretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or a least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Eligible Applicants: For the International Research and Studies Program eligible applicants include public and private agencies, organizations, and institutions of higher education as well as individuals.

Program Information: Applications for awards will be evaluated in accordance with the selection criteria contained in the regulations for this program (34 CFR 660.31 through 660.33 and 660.35). New projects may be proposed for a period of from one three years. An applicant requesting support for more than one year must provide the information required in 34 CFR 75.117.

Funding Priorities: The regulations governing the International Research and Studies Program (34 CFR 660.34) provide for the establishment of funding priorities by the Secretary in any given year. For FY 1986, the Secretary has established funding priorties for new awards for research. These priorities will be applied in accordance with the provisions of 34 CFR 75.105(c)(2)(ii) and are in the following areas:

(1) The use computers for improving foreign language instruction.

(2) Foreign language acquisition.

(3) Improved teaching methodologies for foreign languages.

(4) Foreign language proficiency testing.

(5) Instructional materials development for uncommonly taught languages.

In preparing an application in the area of instructional materials development for uncommonly taught languages, applicants for new awards should consult the report, *A Survey of Material Development Needs in the Less Commonly Taught Languages in the United States*, published by the Center for Applied Linguistics, 1118 22nd Street, NW., Washington, DC 20037. Telephone: (202) 429–9292. The Secretary consults this report in determining priorities for instructional materials development for uncommonly taught languages. The report is also available through the Educational Resources Information Clearinghouse (ERIC). Telephone: (202) 254–7934.

Available funds: The Administration's budget for fiscal year 1986 does not request an appropriation of U.S. dollars or foreign currencies for the International Research and Studies Program. However, applications are invited to allow for sufficient time to evaluate them and complete the grants process prior to the end of the fiscal year, should the Congress appropriate funds for this program.

Application forms: Application forms and program information packages are expected to be available for mailing on September 13. They may be obtained by writing to the Center for International Education, Office of Post-secondary Education, U.S. Department of Education, (Room 3923, ROB–3), Mail Stop 3308, 400 Maryland Avenue, SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. The program information package is intended to aid applicants applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition.

The Secretary urges that applicants not submit information that is not requested.

These forms are approved under the Paperwork Reduction Act of 1980.

(Approved by the Office of Management and Budget under Control Number 1840–0068.)

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the International Research and Studies Program, 34 CFR Parts 655 and 660.

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further information: For further information contact Robert R. Dennis, Program Manager, International Research and Studies Program, Center for International Education, (Room 3928, ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 245–9425.

(20 U.S.C. 1125)

(Catalog of Federal Domestic Assistance No. 84.017, International Research and Studies Program)

Dated: August 12, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–19406 Filed 8–14–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-85-020; OFP Case No. 67044-9282-20-24]

Powerplant and Industrial Fuel Use

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notion of Acceptance of Petition for Exemption and Availability of Certification by University Cogeneration, Inc.

SUMMARY: On July 8, 1985, University Cogeneration, Inc. (UCI), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed cogeneration facility to be located in the Little Signal Hills, 3.5 miles south of the city of Taft in the western valley of Kern County, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8310 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501 and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is to consist of one General Electric Frame 6 turbine generator rated at 38,700 kW. The firing rate for the turbine would be approximately 425 MMBtu per hour (LHV). The turbine would be fueled by natural gas. The gross generating capacity would be 38.7 MW peak. All electrical power used by the cogeneration facilities would be generated by the facility. The average net generating capability would be 36.7 MW. Steam would be generated from the exhaust heat of the gas turbine in a Heat Recovery Steam Generator (HRSG). The HRSG would generate a maximum of 350,000 pounds of steam per hour.

The project will exceed the heat input threshold and is expected to sell more than 50 percent of the net annual electrical power to Pacific Gas and Electric Company (PG&E), causing the new cogeneration facility to be classified as a powerplant under FUA.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons, therefore, would be published in the **Federal Register**.

DATES: Written comments are due on or before September 30, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-FC-85-020 should be printed on the outside of the enevlope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: UCI proposes to construct and operate a cogeneration facility in Little Signal Hills, Kern County, California. The facility will generate electrical power for sale to PG&E and generate steam that would be piped to the producing oil well fields of the Berry Holding Company for the enhanced tertiary recovery of oil. The facility will consist of a combustion turbine generator system, which would utilize a closed circuit cooling system with a supplementary firing system to heat exhaust gases to increase the amount of steam produced.

The cogeneration facility is classified as an electric power plant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), UCI has certified to ERA that:

1. The gas to be consumed by the subject cogeneration unit will be less than that which would otherwise be consumed in the absence of the unit, pursuant to the methodoloty for calculating such savings set forth in 10 CFR 503.37(b); and

2. The use of mixture of oil and gas and coal or an alternative fuel for the cogeneration unit is not economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certification discussed above), UCI has included as part of the petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis as required under 10 CFR 5603.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's Guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) and Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that UCI is entitled to the exemption requested. That determination will be

based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., August 8, 1985

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-19407 Filed 8-14-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Remedial Order to the Thriftway Co. and Opportunity for Objection

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to the Thriftway Company (Thriftway). This Proposed Remedial Order charges Thriftway with unlawful receipt of $670,923, exclusive of interest, in small refiner bias entitlements arising from Thriftway's improper reporting in December 1976 and January 1977 of 361,743 barrels of crude oil refined pursuant to processing agreements with another refiner.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from the Freedom of Information Public Reading Room (Rm. 1E-190), U.S Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Within fifteen (15) days of publication of this notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193. Failure to file a Notice of Objection shall be deemed to be an admission of the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C., on the 26th day of July, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85-19408 Filed 8-14-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-660-000, et al.]

Electric Rate and Corporate Regulation Filings; Georgia Power Co., et al.

Take notice that the following filings have been made with the Commission:

1. Georgia Power Company

[Docket No. ER85-660-000]

August 7, 1985.

Take notice that Georgia Power Company ("Georgia Power"), on August 1, 1985, tendered for filng proposed changes in its FERC Electric Tariff, Origional Volume No. 1 (full requirements service). Based on the twelve-month period ending July 31, 1986, the proposed changes would increase revenues from jurisdictional full requirements service by $229,000. The filing contains proposed Rate Schedule FR-5 which would replace Rate Schedule FR-4 (full requirements). Georgia Power has stated an effective date of September 30, 1985 for the changes. Georgia Power has designed rates which will produce the FR-5 increase in two steps (Level A—$210,000 and Level B—an additional $19,000). The Company requests that it be peritted to withdraw its Level A rates as of the date its Level B rates are permitted to become effective.

Georgia Power asserts that its costs have escalated steadily since the filing of its FR-4 rates, resulting in a large increase in the revenue required from wholesale service. The data submitted with Georgia Power's filing allegedly demonstrate that FR-4 rates do not provide a fair return on Georgia Power's wholesale service.

Geortia Power states that copies of the filing ere served upon all of its jurisdictional customers.

Comment date: August 21, 1985.in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER-85-654-000]

August 7, 1985.

Take notice that on July 30, 1985, Pacific Gas and Electric Company (PGandE) tendered for filing proposed changes in its rate schedule FPC No. 53 for service to the City and County of San Francisco (San Francisco, or the City). The proposed adjustments are based on settlements reached among PGandE, San Francisco, the Modesto Irrigation District (MID) and the Turlock Irrigation District (TID).

The filing proposes increases in the support charge for supplemental power service and proposes the implementation of wheeling transmission rates which were previously filed with the California Public Utilities Commission. The propsed change in the rate for Supplemental Power would increase revenues by a total of $7,320,000 per year.

PGandE, MID, TID, and San Francisco have requested a waiver of the 60-day notice period required by § 35.3 of the Commission's Regulations. The proposed effective date for the proposed rate schedules changes contained in these agreements is July 1, 1985.

Copies of this filng were served upon the affected customer, the Modesto Irrigation District, the Turlock Irrigation District, N. I. Industries, Inc., and the California Public Utilities Commission.

Comment date: August 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Hampshire

[Docket No. ER85-655-000]

August 7, 1985.

Please take notice that on July 30, 1985 Public Service Company of New Hampshire ("PSNH") filed rate schedule supplements or revisions revising PSNH's fuel adjustment clause to implement the Commission's policy of treatng fuel cost savings resulting from the generation of test power as a reduction in plant investment rather than as a reduction in fuel costs to be flowed through currently under the fuel adjustment clause. *Pennsylvania Power & Light Company* ("*PP&L*"), Docket Nos ER82-493-000 and ER82-494-000, Opinion No. 176, 23 F.E.R.C. ¶6,395 (June 22, 1983). PSNH requests that this filing be made effective November 26, 1984 when PSNH began to generate coal-fired test energy at its Schiller station in Portsmouth, New Hampshire.

PSNH was ordered by the New Hampshire Public Utilities Commission in Order No. 14,131 dated March 17, 1980 in Docket No. DE 79-141 to convert Units 4, 5 and 6 at Schiller Station from oil-burning to coal-burning units. The units have capacities of approximately 45 to 50 megawatts. Subsequent to their conversion, but prior to the date of commercial operation, each unit produced energy while undergoing test operations. The following table show the date when each unit began producing test energy and the date when it began commercial operation:

Unit	Date of initial production of test power	Date of commercial operation
4	11/26/84	12/21/84
6	04/30/85	05/15/85
5	06/14/85	07/07/85

During the months when the Schiller units were generating test energy, PSNH calculated its wholesale fuel adjustment, in accordance with the *PP&L* policy, as if that energy were not available. PSNH only recently discovered that a filing is necessary to implement this treatment.

The filing consists of supplements and revisions to the following rate schedules:

Customer	Rate schedule
Concord Electric Co	FERC No. 24.
Ashland, New Hampshire, Electric Department.	FERC No. 28.
New Hampton, New Hampshire, Village Precinct.	FERC No. 29.
Exeter & Hampton Electric Co.	FERC No. 35.
New Hampshire Electric Cooperative, Inc.	FERC Nos. 50 and 71.
Town of Wolfeboro, New Hampshire.	FERC No. 72.
Citizens Utilities Co	FERC No. 110.

The rate schedules listed above have been revised in the present filing to provide for two adjustments to current period fuel costs which PSNH made during the months when it was generating test energy at the Schiller station: (1) The actual current period fuel costs were reduced to eliminate fuel costs incurred to generate test energy and (2) the current period fuel costs as so adjusted were increased by the fair value of the test energy; *i.e.*, they were increased to the same level of fuel costs that PSNH would have incurred if the test energy had not been available and PSNH had had to rely on higher cost sources of energy.

The net effect of the two adjustments was to increase current period fuel costs allocable to wholesale service by $43,296.

PSNH's accounting entries have the effect of reducing the investment in the Schiller station included in PSNH's wholesale rate base by the net increase in current period fuel costs resulting from the two adjustments. The effect of this filing and the associated accounting and ratemaking is to permit PSNH to retain the fuel costs savings resulting from test generation at each converted unit until the date of commercial operation and to return those savings to ratepayers over the service life of that unit.

PSNH requests waiver of the fuel clause regulations and the 60-day notice requirement in order to permit this filing to become effective November 26, 1984. Since the filing conforms with *PP&L* policy and will have a minimal impact on wholesale customers PSNH believes that good cause exists to grant these requests for waiver.

PSNH has served each affected wholesale customer and pertinent state commissions with copies of its filing.

Comments date: August 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company-Services, Inc.

August 7, 1985.

[Docket No. ER85-661-000]

Take notice that on August 1, 1985, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company ("Southern Companies"), tendered for filing Service Schedule R to an interchange contract between Florida Power & Light Company ("FPL") and Sothern Companies.

Service Schedule R provides for non-firm energy sales from Southern Companies to FPL and allows FPL to purchase such energy in substitution for energy under a unit power sales agreement among the parties. The price of energy under Service Schedule R will be at the incremental cost of Southern Companies. Southern Companies and FPL request that the new service Schedule be allowed to become effective on August 2, 1985.

Comment date: August 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

August 7, 1985.

[Docket No. ER85-662-000]

Take notice that on August 1, 1985, Souther Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company ("Southern Companies"), tendered for filing service Schedule R to an interchange contract between Jacksonville Electric Authority ("JEA") and Southern Companies.

Service Schedule R provides for non-firm energy sales from Southern Companies to JEA and allows JEA to purchase such energy in substitution for energy under a unit power sales agreement among the parties. The price of energy under Service Schedule R will be at the incremental cost of Southern Companies. Southern Companies and JEA request that the new service Schedule be allowed to become effective on August 2, 1985.

Comment date: August 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Electric Power Company

August 7, 1985.

[Docket No. ER85-468-002]

Take notice that on July 29, 1985, Southwestern Electric Power Company (SWEPCO) submitted for filing, in accordance with the Commission's order of June 28, 1985, a revised set of the cost of service formulas to be attached to and incorporated in the Transmission Service Agreement between SWEPCO and the Oklahoma Municipal Power Authority (OMPA) originally filed in these proceedings.

SWEPCO also filed a Request for Rehearing of the Commission's June 28, 1985 order, asking that the Commission enter an order on the revised formulas submitted herewith pursuant to Commission order to become effective May 1, 1985, without suspension.

Comment date: August 21, 1985, in accordance with Standard Paragraph H at the end of this notice.

7. Vermont Electric Power Company, Inc.

[Docket No. ER85-657-000]

August 7, 1985.

Take notice that on July 31, 1985, Vermont Electric Power Company, Inc. ("VELCO"), tendered for filing a rate schedule for service to the State of Vermont ("Vermont"), acting through the Vermont Department of Public Service, for the transmission of power and associated energy recently acquired by Vermont from the New York Power Authority ("NYPA"). The proposed rate schedule would supersede Supplement No. 5 to FERC Rate Schedule 1, under which the NYPA purchase is currently transmitted.

The proposed rate schedule would not increase transmission rates above the level charged in the superseded schedule. VELCO proposes that the transmission rate schedule become effective on October 1, 1985, the day after the requested effective date of VELCO's notice of cancellation of Supplement No. 5. Such notice of cancellation is filed in a separate docket simultaneously with the filing herein.

VELCO states that it has served the filing upon the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: August 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Vermont Electric Power Company, Inc.

[Docket No. ER85-656-000]

August 7, 1985.

Take notice that on July 31, 1985, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a notice of proposed cancellation of FERC Rate Schedule 1 and Supplement No. 5 to FERC Rate Schedule 1.

VELCO requests that the notice of cancellation be permitted to become effective as of end-of-day September 30, 1985.

VELCO states that it has served the filing upon the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: August 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Oglethorpe Power Company v. George Power Company

[Docket No. EL85-40-000]

August 8, 1985.

Take notice that on July 26, 1985, Oglethorpe Power Corporation (Oglethorpe) submitted for filing its complaint against Georgia Power Company (Georgia) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure and section 206(a) of the Federal Power Act.

Oglethorpe requests that the Commission:

(1) Initiate an investigation into the reasonableness and justness of the rates contained in the Georgia Power PR Tariff;

(2) set a hearing on the Georgia Power PR Tariff rates and require Georgia Power to show why these rates are not unjust and unreasonable;

(3) establish lower, just and reasonable rates for partial requirements customers of Georgia Power; and

(4) grant such other and further relief as the Commission finds appropriate in this matter.

Comment date: September 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19380 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2644-001 et al.]

Availability of Environmental Assessment and Finding of no Significant Impact; Bowerstock Mills & Power Co. et al.

August 8, 1985

In the matter of.

Bowerstock Mills and Power Co.	Project No. 2644-001.
Sterling Enterprises, Inc.	Project No. 8014-000.
Iowa Electric Light and Power Company.	Project No. 8364-000.
Gregory B. and Pernina P. Ryan.	Project No. 8704-000.
Wayne J. Summers	Project No. 8739-000.
Paterson Municipal Utilities Authority and Great Falls Hydroelectric Co.	Project No. 2814-004.
Beaver Falls Municipal Authority.	Project No. 3451-003.
Tehama County Flood Control and Water Conservation District.	Project No. 5350-001.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
Exemptions					
2644-001	Kansas River	KS	Kansas River	Lawrence	Bowerstock, Mills and Power Company.
8014-000	Slack Dam	VT	Black -River	Springfield	Sterling Enterprises, Inc.
8364-000	Anamosa Dam	IA.	Wapsipincon River	Anamosa	Iowa Electric Light and Power Company.
8704-000	Nichols Gap	OR	An unnamed tributary to Nichols Branch.	Eagle Point	Gregory B. & Pernan P. Ryan.
8739-000	Spring Valley "T"	CA	Unnamed stream, tributary to Campbell Creek.	Colfax	Wayne J. Summers.
Licenses					
2814-004	Great Falls	NJ	Passaic River	Paterson	Paterson Municipal Utilities Authority and Great Falls Hydroelectric Co.
3451-003	Townsend Dam	PA	Beaver River	New Brighton	Beaver Falls Municipal Authority.
5350-001	South Fork Battle Creek.	CA	South Fork Battle Creek.	Mineral	Tehama County Flood Control and Water Conservation District.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analysis of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825

North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb.

Secretary.

[FR Doc. 85-19382 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-15-20-000 & 001]

Proposed Changes in FERC Gas Tariff; Algonquin Gas Transmission Co.

August 8, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on August 2, 1985 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Alternate Eighth Revised Sheet No. 201
Third Revised Sheet No. 241
Third Revised Sheet No. 311
Ninth Revised Sheet No. 201

Algonquin Gas states that such tariff sheets are being filed to reflect the effect of Texas Eastern Transmission Corporation's ("Texas Eastern") July 31, 1985 filing in compliance with the Commission's Order on Rehearing issued July 12, 1985 in Docket Nos. RP83-35, *et al.* Such Order requires Texas Eastern to implement a modified fixed variable rate design, including allocation of demand costs based on demand cost determinants reflecting both the peak and annual consumption.

Algonquin Gas requests that the Commission accept Alternate Eighth Revised Sheet No. 201, Third Revised Sheet No. 241, and Third Revised Sheet No. 311 to be effective August 1, 1985 to coincide with the proposed effective date of Texas Eastern's rate change; and to accept Ninth Revised Sheet No. 201 to be effective September 1, 1985 which is the effective date of Algonquin Gas' amortizing adjustment.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before August 16, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19384 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-75-009]

Compliance Filing; Arkla Energy Resources, a Division of Arkla, Inc.

August 8, 1985.

Take notice that on July 26, 1985, Arkla Energy Resources, a division of Arkla, Inc. (AER) tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Rate Schedule G-2 and Original Volume No. 3, Rate Schedule X-26 to comply with Article V of the Stipulation and Agreement accepted by the Commission on February 17, 1983 and Commission Opinion No. 235, issued June 18, 1985. AER States that these proposed revised tariff sheets are being filed only to be effective in accordance with their terms during the locked-in period from June 1, 1982 through January 31, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19385 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-179-000]

Petition of Consolidated Gas Transmission Corporation for Authority to Institute Direct Billing Procedure for Retroactive Order No. 94 Payments; Consolidated Gas Transmission Corp.

August 8, 1985.

Take notice that on August 1, 1985, Consolidated Gas Transmission Corporation (Consolidated) filed a Petition for Authority to Institute Direct Billing Procedure for Retroactive Order No. 94 Payments. Consolidated states that it seeks authorization to bill customers directly for retroactive Order No. 94 costs because of what it states are inequities and undesirable market distortions inherent in recovering such costs through purchased gas adjustment (PGA) filings. As is more fully explained in the filing, Consolidated proposes to allocate retroactive Order No. 94 costs based upon each customer's share of Consolidated's total sales for the production period over which the Order No. 94 obligation arose and to directly bill the resulting amounts, including paid and accrued interest. Consolidated states that its direct billing proposal will most closely approximate the cost assignment that would have occured had the payments been made at the same time as the gas purchases to which they relate.

Consolidated requests waiver of the Commission's regulations and of its PGA clause, section 12 of the General Terms and Conditions of its tariff, to permit the direct billing procedure.

Consolidated states that it has served a copy of the Petition on its customers, interested state commissions and others.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19386 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-3-22-000 and TA85-3-22-001]

Proposed Changes in FERC Gas Tariff; Consolidated Gas Transmission Corp.

August 8, 1985.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on August 1, 1985, filed revised tariff sheets pursuant to sections 12 (PGA Clause), 12A (Incremental Pricing Surcharges), and 13 (Research,

Development and Demonstration Cost Adjustment) of the General Terms and Conditions of its tariff. The revisions, shown on Sixth Revised Sheet No. 31, provide for Consolidated's semiannual PGA to be effective September 1, 1985.

Consolidated has included in its filing:

(a) Rate changes from pipeline suppliers in the amount of $29.9 million;

(b) Rate changes from producer suppliers in the amount of $0.6 million;

(c) A surcharge of 2.5 cents per dekatherm to recoup amounts accumulated in account 191, Unrecovered Purchased Gas Costs.

(d) A refund credit of 12.11 cents per dekatherm to flow through supplier refunds.

Concurrently with these PGA changes, Consolidated also includes a separately stated rate surcharge to recover its funding of take-or-pay payments made by Tennessee Gas Pipeline Company under the procedures approved in the Commission's order issued on April 16, 1985, in *Columbia Gas Transmission Corporation* v. *Tennessee Gas Pipeline Company, et al.*, in Docket Nos. RP83–8, *et al.* The take-or-pay surcharge is 0.10¢/Dt.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before August 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–19387 Filed 8–14–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST80–78–004, et al.]

Extension Reports; Delhi Gas Pipeline Corp., et al.

August 8, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations: A "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before August 26, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [2]
ST80–78–004	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Transwestern Pipeline Co	07–02–85	D	08–30–85	
ST82–17–002	Cranberry Pipeline Corp., 125 High St., Boston, MA 02110	Tennessee Gas Pipeline Co	07–10–85	C	10–09–85	
ST82–20–002	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	United Gas Pipe Line Co	07–01–85	G	09–29–85	
ST82–22–002	Tennessee Gas Pipeline Co. P.O. Box 2511, Houston, TX 77001	United Gas Pipe Line	07–12–85	G	10–16–85	
ST82–28–002	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Monterey Pipeline Co	07–05–85	B	10–05–85	
ST82–41–002	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	El Paso Natural Gas Co	07–05–85	C	10–06–85	
ST82–42–002	Oasis Pipe Line Co., P.O. Box 1188, Houston, TX 77001	El Paso Natural Gas Co	07–05–85	C	10–06–85	
ST82–49–002	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	Texas Gas Transmission Co	07–09–85	C	10–13–85	
ST83–643–001 [1]	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Transcontinental Gas Pipe Line Corp	07–10–85	G	08–31–85	10–06–85
ST84–7–001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Natural Gas Pipeline Co. of America	07–03–85	G	10–03–85	
ST84–41–001	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	Texas Eastern Transmission Corp	07–09–85	C	10–10–85	
ST84–47–001	Valley Gas Transmission, Inc., P.O. Box 32999, San Antonio, TX 78216.	Vista Transmission Co	07–15–85	B	10–14–85	
ST84–58–001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	Kansas Power and Light Co	07–02–85	B	09–30–85	
ST84–60–001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	Houston Pipe Line Co	07–03–85	B	10–01–85	
ST84–63–001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Intratex Gas Co	07–12–85	B	10–10–85	

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [1]
ST84-115-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Florida Gas Transmission Co	07-15-85	G	10-21-85	
ST84-703-001 [2]	Mississippi Fuel Co., 1100 First National Center East, Oklahoma City, OK 72102.	Transcontinental Gas Pipe Line Corp	07-02-85	C	07-01-85	12-30-85
ST84-921-002	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Mississippi River Transmission Corp	07-02-85	D	10-01-85	
ST85-1203-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Southern Natural Gas Co., *et al*	07-01-85	D	09-04-85	09-25-85

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.
Note.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-19388 Filed 8-14-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP 85-180-000]

Tariff Filing; Equitable Gas Co., a Division of Equitable Resources, Inc.

August 8, 1985.

Take notice that on August 2, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. ("Equitable") tendered the following tariff sheets:

FERC Gas Tariff, First Revised Volume No. 1

Rate Schedule TS-1; First Revised Sheet No. 10-II Superseding Original Sheet No. 10-II

FERC Gas Tariff, First Revised Volume No. 2

Rate Schedule X-1, Second Revised Sheet No. 8 Superseding First Revised Sheet No. 8
Rate Schedule X-2, Fifth Revised Sheet No. 29 Superseding Fourth Revised Sheet No. 29
Rate Schedule X-8, First Revised Sheet No. 23-D Superseding Original Sheet No. 23-D
Rate Schedule X-9, First Revised Sheet No. 111 Superseding Original Sheet No. 111
Rate Schedule X-10, First Revised Sheet No. 124 Superseding Original Sheet No. 124
Rate Schedule X-11, First Revised Sheet No. 134 Superseding Original Sheet No. 134
Rate Schedule X-12, First Revised Sheet No. 145 Superseding Original Sheet No. 145

Equitable states that the tariff sheets are submitted in accordance with § 154.63 of the Federal Energy Regulatory Commission's ("Commission") regulations, which tariff sheets relate to an increase in the rate for transportation service. The proposed changes would increase revenues from jurisidictional sales and service by $721,000 based on the twelve-month period ending March 31, 1985, as adjusted.

The proposed changes are necessary for Equitable to recover its cost of operations and to realize a reasonable return on its investment in facilities utilized to provide transportation services.

Equitable requests that these tariff sheets become effective thirty (30) days from the date of filing, or August 30, 1985.

Equitable states that it has served copies of its filing upon all transportation customers to be affected by the proposed change in rates, the Pennsylvania Public Utility Commission and the West Virginia Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commisson, 825 North Capitol Street, NE., Washinton, DC. 20460, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19389 Filed 8-14-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-1-24-000 and TA85-1-24-001]

Proposed Change in Rates; Equitable Gas Company, a Division of Equitable Resources, Inc.

August 8, 1985.

Take notice that Equitable Gas Company (Equitable), a Division of Equitable Resources, Inc., on August 2, 1985, tendered for filing with the Commission Eighth Revised Sheet No. 6-F to its FERC Gas Tariff, First Revised Volume No. 1, to become effective September 1, 1985. Equitable Gas Company states that the change in rates results from the application of the Purchase Gas Cost Rate Adjustment provision in Section 6 of Rate Schedule GS-1 of FERC Gas Tariff, First Revised Volume No. 1 approved by the Commission in Docket Nos. CP79-290, RP79-69, and RP79-49.

Equitable states that a copy of its filing has been served upon the purchaser and interested state commissions (and upon each party on the service list of Docket Nos. CP79-290, RP79-69, and RP79-49.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19390 Filed 8-14-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP85-41-000]

Petition for Declaratory Order; J.R. Simplot Co. and Sacramento Bank for Cooperatives

August 9, 1985.

J.R. Simplot Company (Simplot) is suing its natural gas supplier, Southern California Gas Company (SoCal), in the Los Angeles County Superior Court. Simplot alleges that, during the period April 24, 1980 to May 1, 1981, SoCal improperly refused to recognize Simplot's use of natural gas to produce ammonia as an "agricultural use." Such

uses of natural gas are exempt from incremental pricing and pursuant to the Natural Gas Policy Act or 1978 and orders and regulations of the Department of Agriculture and the Federal Energy Regulatory Commission. Simplot asserts that SoCal improperly billed Simplot at the non-exempt rate. The Superior Court has instructed Simplot and the Sacramento Bank for Cooperatives to request from the Commission a declaratory order addressing whether Simplot's use of natural gas (including its use as "process fuel' to raise steam in ammonia production) was an "agricultural use" exempt from incremental pricing for the period at issue.

The Superior Court has approved and all parties to the lawsuit between Simplot and SoCal have stipulated to the following facts for the Commission's consideration:

1. Simplot filed an exemption affidavit with the Commission on November 6, 1979, and served a copy on SoCal. This affidavit claimed an exemption from incremental pricing for all natural gas used at Simplot's ammonia production facility, including its use as boiler fuel to raise steam in ammonia production.

2. At all pertinent times, Simplot's exemption affidavit was proper on its face to claim the exemption.

3. The affidavit was filed prior to the Secretary of Agriculture's April 24, 1980 amendment to 7 CFR 2900.2, which added to the regulation a definition of "process fuel" which certified boiler fuel used to raise steam in the production of agricultural chemicals as an essential agricultural use. 45 FR 27741 (April 24, 1980).

4. Simplot, in reliance on the Secretary of Agriculture's April 24, 1980 certification, left its aforementioned affidavit on file with the Commission after that date and continued to claim the exemption from incremental pricing from SoCal. SoCal continued to deny the exemption and to bill Simplot at the non-exempt rate. Simplot filed no new affidavit after April 24, 1980.

Based on these facts, petitioners ask the Commission to rule on whether Simplot was within the class of users encompassed by the Commission's October 23, 1980 partial stay (45 FR 76681 (Nov. 20, 1980)) and April 23, 1981 order amending the partial stay (46 FR 25,559 (May 8, 1981)) of the October 6, 1980 interim rule. This rule provides that only those uses of natural gas certified by the Secretary of Agriculture as "essential agricultural uses" on or before October 15, 1979, shall be considered "agricultural uses" of natural gas for purposes of incremental pricing (45 FR 67,276 (Oct. 9, 1980)). Petitioners ask whether Simplot is deemed to be one of those users "who have filed incremental pricing exemption affidavits in reliance on the Secretary of Agriculture's certification" (Order Delineating Effect of Judicial Action on Commission's Regulations, 46 FR 41034, 41036 (Aug. 14, 1981), *reh. and stay denied*, 46 FR 45752 (Sept. 15, 1981)).

Any person desiring to be heard concerning, or to make any protest to, this petition for declaratory order should file within ten days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19391 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-31-000]

Application for Declaratory Order; Monsanto Oil Co.

August 8, 1985.

On May 31, 1985, Monsanto Oil Company (Monsanto) filed with the Federal Energy Regulatory Commission (Commission) an application for declaratory order to charge and collect the just and reasonable rate provided in § 2.56(a)(5), (the Opinion No. 699-H rate) for natural gas produced from the Altman, Braund, Rau and Buesing wells in the Christmas Field Area, DeWitt County, Texas.

Monsanto sells gas from the subject wells to Trunkline Gas Co. (Trunkline) pursuant to a January 11, 1971 contract. Monsanto claims that deliveries of gas under this contract did not commence until March 29, 1973. Monsanto states that the subject sales are made under "contracts for sale of natural gas in interstate commerce for gas from wells commenced prior to January 1, 1973, and not previously sold in interstate commerce prior to January 1, 1973", in accordance with the standard set forth in 18 CFR 2.56a(a)(5)(ii). By meeting these requirements, Monsanto believes the rate established by Opinion No. 699-H remains the applicable rate. Trunkline, on the other hand, refuses to pay the Opinion No. 699-H rate stating that the gas was dedicated to interstate commerce in 1972. Trunkline asserts that the Opinion No. 749 rate applies.

Monsanto, in light of the above circumstances, requests the Commission to issue a declaratory order establishing the Order No. 699-H rate foir their gas. In the alternative, Monsanto requests a waiver under section 4(d) of the Natural Gas Act and the Commission's Regulations to enable Monsanto to charge and collect the Opinion No. 699-H rate.

Within thirty days of publication in the **Federal Register**, any person may file a protest or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Anyone wishing to become a party to this proceeding must file a petition to intervene pursuant to rules 214 or 211.[1]

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19392 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-18-002]

Petition to Amend Special Billing Procedure and for Further Waiver of PGA Procedures; Natural Gas Pipeline Co. of America

August 8, 1985.

Take notice that on August 1, 1985, Natural Gas Pipeline Company of America (Natural) filed its Petition to Amend Special Billing Procedure and for Further Waiver of PGA Procedures. Natural states that the purpose of the special billing procedure is to recover from its customers retroactive, under a special lump sum billing procedure as authorized in Docket No. RP85-18-000, payments for "production-related costs" related to the period of July 20, 1980 through December 31, 1984 which are made to producers through August 30, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before August 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

[1] 18 CFR 385.214 or 385.211 (1984).

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19393 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-151-000]

Rescheduling of Informal Settlement Conference; Northern Border Pipeline Co.

August 7, 1985.

Take notice that on August 15, 1985, at 10:00 a.m., an informal settlement conference will be convened in the above-captioned matters. The conference, to consider various issues related to Northern Border Pipeline Company's proposed change in rates will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

All interested parties and Commission Staff are invited to attend; however, attendance at the conference will not confer party status. Any person wishing to become a party to these proceedings must file a Motion to Intervene in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

For further information contact Demetrios G. Pulas, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5758.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19394 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST85-1065, etc.]

Self-Implementing Transactions; Panhandle Eastern Pipe Line Co., et al.

August 8, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and Section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's regulations:

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR § 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before August 26, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules

Kenneth F. Plumb,

Secretary.

Docket No. and Transporter/Seller[1]	Recipient	Date filed	Subpart	Expiration date	Transportation rate (¢/MMBtu)
ST85-1065 Panhandle Eastern Pipe Line Co	Wayne Pet Foods	05-03-85	F(157)		
ST85-1066 National Fuel Gas Supply Corp	Angelica Healthcare Services Group	05-03-85	F(157)		
ST85-1067 Tennessee Gas Pipeline Co	Texas Gas Transmission Corp	07-01-85	G		
ST85-1068 Valero Transmission Co	Texas Eastern Transmission Corp	07-08-85	C		
ST85-1069 Natural Gas Pipeline Co. of America	Transcontinental Gas Pipe Line Corp	06-03-85	G		
ST85-1070 Valero Transmission Co	El Paso Natural Gas Co	07-08-85	C		
ST85-1071 Valero Transmission Co	El Paso Natural Gas Co	07-08-85	C		
ST85-1072 Transok, Inc	HNG Industrial Natural Gas Co	06-27-85	C		
ST85-1073 Panhandle Eastern Pipe Line Co	Phenix Transmission Co	06-04-85	B		
ST85-1074 Trunkline Gas Co	Colonial Natural Gas Co	06-04-85	B		
ST85-1075 Tennessee Gas Pipeline Co	Brooklyn Union Gas Co	06-04-85	B		
ST85-1076 Transok, Inc	HNG Industrial Natural Gas Co	06-20-85	D		
ST85-1077 Transok, Inc	Natural Gas Pipeline Co. of America	06-20-85	D		
ST85-1078 El Paso Natural Gas Co	Phelps Dodge Corp	06-05-85	F(157)		
ST85-1079 El Paso Natural Gas Co	Magma Copper Co	06-05-85	F(157)		
ST85-1080 Transcontinental Gas Pipe Line Corp	Hunterdon Development Center	06-05-85	F(157)		
ST85-1081 Transcontinental Gas Pipe Line Corp	Raritan Steel	06-05-85	F(157)		
ST85-1082 Transcontinental Gas Pipe Line Corp	Coastal Eagle Point Oil Co	06-05-85	F(157)		

Docket No. and Transporter/Seller[1]	Recipient	Date filed	Subpart	Expiration date	Transportation rate (¢/MMBtu)
ST85-1083 Transcontinental Gas Pipe Line Corp	Tuscan Dairy Farms, Inc	06-05-85	F(157)		
ST85-1084 United Gas Pipe Line Co	Louisiana State Gas Corp	06-05-85	B		
ST85-1085 United Gas Pipe Line Co	Clajon Industrial Gas, Inc	06-05-85	B		
ST85-1086 United Gas Pipe Line Co	Texas Eastern Transmission Corp	06-05-85	G		
ST85-1087 Texas Gas Transmission Corp	Westvaco, Inc	06-05-85	F(157)		
ST85-1088 ANR Pipeline Co	Louisiana Gas System, Inc	06-06-85	B		
ST85-1089 Northwest Pipeline Corp	Southern Union Gas Co	06-06-85	B		
ST85-1090 United Gas Pipe Line Co	Mississippi River Transmission Corp	06-06-85	G		
ST85-1091 United Gas Pipe Line Co	Louisiana State Gas Corp	06-06-85	B		
ST85-1092 United Texas Transmission Co	NEWMART, Inc	07-01-85	C		
ST85-1093 Texas Gas Transmission Corp	Ralston Purina Co	06-07-85	F(157)		
ST85-1094 Texas Gas Transmission Corp	Archer Daniels Midland Co	06-07-85	F(157)		
ST85-1095 ANR Pipeline Co	Southeastern Michigan Gas Co	06-07-85	B		
ST85-1096 Texas Gas Transmission Corp	Archer Daniels Midland Co	06-07-85	F(157)		
ST85-1097 United Gas Pipeline Co	Florida Gas Transmission Co	06-10-85	G		
ST85-1098 Valero Transmission Co	El Paso Natural Gas Co	07-08-85	C		
ST85-1099 Northern Natural Gas co	Consolidated Aluminum Corp	05-21-85	F(157)		
ST85-1100 Texas Eastern Transmission Corp	United Gas Pipe Line Co	05-23-85	G		
ST85-1101 El Paso Natural Gas Co	Northern Natural Gas Co	05-24-85	G		
ST85-1102 United Gas Pipe Line Co	Entex, Inc	06-11-85	B		
ST85-1103 Transcontinental Gas Pipe Line Corp	Public Service Co. of NC, Inc	06-10-85	B		
ST85-1104 Transcontinental Gas Pipe Line Corp	Mannington Mills	06-10-85	F(157)		
ST85-1105 Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	07-03-85	B		
ST85-1106 THC Pipeline Co	(3)	06-10-85	C	11-07-85	12.00
ST85-1107 United Gas Pipe Line Co	Texas Gulf South Pipeline Co	06-11-85	B		
ST85-1109 Colorado Interstate Gas Co	Southern Union Gathering Corp	06-10-85	B		
ST85-1110 United Gas Pipe Line Co	Scott Paper Co	06-12-85	F(157)		
ST85-1111 United Gas Pipe Line Co	Middletown Paperboard Co., et al	06-12-85	F(157)		
ST85-1112 Columbia Gas Transmission Corp	Ellwood City Forge Corp	06-12-85	F(157)		
ST85-1113 Columbia Gulf Transmission Co	Ellwood City Forge Corp	06-12-85	F(157)		
ST85-1114 Columbia Gulf Transmission Co	Babcock & Wilcox Co	06-12-85	F(157)		
ST85-1115 Texas Gas Transmission Corp	U.S. Gypsum Co	06-13-85	F(157)		
ST85-1116 Producer's Gas Co	Michigan Consolidated Gas Co	06-13-85	D		
ST85-1117 Nueces Co	Mountain Fuel Resources, Inc	06-13-85	C		
ST85-1118 Columbia Gas Transmission Corp	Babcock & Wilcox Co	06-12-85	F(157)		
ST85-1119 Tennessee Gas Pipeline Co	Roanoke Gas Co	07-01-85	B		
ST85-1120 United Gas Pipe Line Co	IMC Pipeline Co	06-14-85	B		
ST85-1121 United Gas Pipe Line Co	LGS Intrastate, Inc	06-14-85	B		
ST85-1122 Panhandle Eastern Pipe Line Co	N-Ren Corp	06-14-85	F(157)		
ST85-1123 Trunkline Gas Co	Louisiana Intrastate Gas Co	06-14-85	B		
ST85-1124 Panhandle Eastern Pipe Line Co	Phenix Transmission Co	06-14-85	B		
ST85-1125 Panhandle Eastern Pipe Line Co	Olin Corp	06-14-85	F(157)		
ST85-1126 Natural Gas Pipeline Co. of America	N-Ren Corp	06-17-85	F(157)		
ST85-1127 El Paso Natural Gas Co	Southern Union Gas Co	06-17-85	B		
ST85-1128 Consolidated Gas Transmission Corp	Archer Daniels Midland Co	06-17-85	F(157)		
ST85-1129 Transcontinental Gas Pipe Line Corp	New Jersey Zinc Co., Inc	06-17-85	F(157)		
ST85-1130 Transcontinental Gas Pipe Line Corp	American Hoechst Corp	06-17-85	F(157)		
ST85-1131 Midwestern Gas Transmission Co	Northern Natural Gas Co	07-15-85	G		
ST85-1132 Northwest Pipeline Corp	Fairchild Air Force Base	06-18-85	F(157)		
ST85-1133 Tennessee Gas Pipeline Co	Elizabethtown Gas Co	07-11-85	B		
ST85-1134 Texas Eastern Transmission Corp	New Jersey Natural Gas Co	06-18-85	B		
ST85-1136 United Gas Pipe Line Co	Ellwood City Forge Corp	06-19-85	F(157)		
ST85-1137 Texas Gas Transmission Corp	Goodyear Tire and Rubber Co	06-19-85	F(157)		
ST85-1138 El Paso Natural Gas Co	Richardson Fuels, Inc	06-20-85	B		
ST85-1139 Tennessee Gas Pipeline Co	Midwestern Gas Transmission Co	07-18-85	G		
ST85-1140 Williston Basin Interstate Pipeline Co	Cominco American, Inc	06-20-85	F(157)		
ST85-1141 Tennessee Gas Pipeline Co	Gas Systems Network, Inc	07-11-85	B		
ST85-1142 Tennessee Gas Pipeline Co	Elizabethtown Gas Co	07-19-85	B		
ST85-1143 El Paso Natural Gas Co	CAN-AM Industries, Inc	06-21-85	F(157)		
ST85-1144 United Gas Pipe Line Co	Bethlehem Steel Corp	06-21-85	F(157)		
ST85-1145 Gulf South Pipeline Co	Orange and Rockland Utilities, Inc	06-21-85	G(HS)		
ST85-1146 Panhandle Gas Co	HNG Industrial Natural Gas Co	06-21-85	D		
ST85-1147 Columbia Gas Transmission Corp	Connecticut Natural Gas Corp	06-21-85	B		
ST85-1148 Columbia Gas Transmission Corp	Verhoff Alfalfa	06-21-85	F(157)		
ST85-1149 Columbia Gas Transmission Corp	U.S. Gypsum Co	06-21-85	F(157)		
ST85-1150 Columbia Gas Transmission Corp	ICI Americas, Inc	06-21-85	F(157)		
ST85-1151 Columbia Gas Transmission Co	Connecticut Natural Gas Corp	06-21-85	B		
ST85-1152 Columbia Gas Transmission Co	Verhoff Alfalfa	06-21-85	F(157)		
ST85-1153 Columbia Gas Transmission Co	U.S. Gypsum Co	06-21-85	F(157)		
ST85-1154 Northwest Central Pipeline Corp	Archer Daniels Midland Co	06-21-85	F(157)		
ST85-1155 ANR Pipeline Co	Baltimore Steam Co	06-21-85	F(157)		
ST85-1156 ANR Pipeline Co	Northern Illinois Gas Co	06-21-85	B		
ST85-1157 United Gas Pipe Line Co	Dayton Power and Light Co	06-21-85	B		
ST85-1158 Oklahoma Natural Gas Co	Northern Natural Gas Co	06-24-85	C	11-21-85	12.00
ST85-1159 Mountain Fuel Resources, Inc	Fairchild Air Force Base, et al	06-24-85	F(157)		
ST85-1160 Algonquin Gas Transmission Co	Central Hudson Gas and Electric Co	06-24-85	B		
ST85-1161 Ozark Gas Transmission System	Brooklyn Union Gas Co	06-24-85	B		
ST85-1162 Ozark Gas Transmission System	Philadelphia Electric Co	06-24-85	B		
ST85-1163 El Paso Natural Gas Co	ASARCO, Inc	06-24-85	F(157)		
ST85-1164 El Paso Natural Gas Co	Inspiration Consolidated Copper Co	06-24-85	F(157)		
ST85-1165 Northern Natural Gas Co	CAN-AM Industries, Inc	06-24-85	F(157)		
ST85-1166 Panhandle Eastern Pipeline Co	Harbison Walker Refractories	06-24-85	F(157)		
ST85-1167 Panhandle Eastern Pipeline Co	National Distillers & Chemical Corp	06-24-85	F(157)		
ST85-1168 Panhandle Eastern Pipeline Co	Emge Packing Co., Inc	06-24-85	F(157)		
ST85-1169 Trunkline Gas Co	Gas Systems Network, Inc	06-24-85	B		
ST85-1170 Trunkline Gas Co	ANR Pipeline Co	06-24-85	G		
ST85-1171 Texas Gas Transmission Corp	Green River Steel Corp	06-24-85	F(157)		
ST85-1172 Valero Transmission Co	El Paso Natural Gas Co	07-23-85	C		
ST85-1173 Taft Pipeline Co	Northwest Pipeline Corp	06-24-85	C		
ST85-1174 Northern Natural Gas Co	Inspiration Consolidated Copper Co	06-25-85	F(157)		
ST85-1175 Northern Natural Gas Co	Chino Mines Co	06-25-85	F(157)		

Docket No. and Transporter/Seller[1]	Recipient	Date filed	Subpart	Expiration date	Transportation rate (¢/MMBtu)
ST85-1176 Northern Natural Gas Co	Apache Power Co	[illegible]-26-85	F(157)		
ST85-1177 Northern Natural Gas Co	ASARCO, Inc	[illegible]-26-85	F(157)		
ST85-1178 Northern Natural Gas Co	Interlake, Inc	[illegible]-25-85	F(157)		
ST85-1179 Texas Gas Transmission Corp	Velsicol Chemical Corp	[illegible]-25-85	F(157)		
ST85-1180 Texas Eastern Transmission Corp	A. E. Staley Manufacturing Co	[illegible]-25-85	F(157)		
ST85-1181 Texas Eastern Transmission Corp	New Jersey Natural Gas Co	[illegible]-25-85	B		
ST85-1182 Texas Eastern Transmission Corp	B. F. Goodrich Co	06-25-85	F(157)		
ST85-1183 Texas Eastern Transmission Corp	Philadelphia Electric Co	06-25-85	B		
ST85-1184 Texas Eastern Transmission Corp	Central Hudson Gas and Electric Co	06-25-85	B		
ST85-1185 Texas Eastern Transmission Corp	American Distribution Co	06-25-85	B		
ST85-1186 United Gas Pipe Line Co	Ralston Purina Co., et al	06-27-85	F(157)		
ST85-1187 El Paso Natural Gas Co	Chino Mines Co	06-27-85	F(157)		
ST85-1188 El Paso Natural Gas Co	Apache Power Co	06-27-85	F(157)		
ST85-1189 Transok, Inc	HNG Industrial Natural Gas Co	06-27-85	C		
ST85-1190 Great Lakes Gas Transmission Co	Southeastern Michigan Gas Co	06-27-85	B		
ST85-1193 Acadian Gas Pipeline Corp	Pontchartrain Natural Gas System	06-27-85	C		
ST85-1196 Northern Natural Gas Co	Texas Gas Transmission Corp	[illegible]-28-85	G		
ST85-1197 Columbia Gulf Transmission Co	Northern Natural Gas Co	06-27-85	G		
ST85-1199 Mountain Fuel Resources, Inc	Rocky Mountain Natural Gas Co., Inc.[2]	07-05-85	B		
ST85-1201 Trunkline Gas Co	Bridgeline Gas Distribution Co	[illegible]-28-85	B		
ST85-1202 Houston Pipe Line Co	HNG Industrial Natural Gas Co	[illegible]-28-85	C		
ST85-1009 Valero Transmission Co[3]	Transcontinental Gas Pipeline Corp	06-21-85	C		
ST85-1019 Arkla Energy Resources[3]	Mississippi River Transmission Corp	06-21-85	G		
ST85-1023 Tennessee Gas Pipeline Co[3]	Pontchartrain Natural Gas System	06-21-85	B		
ST85-1026 Tennessee Gas Pipeline Co[3]	Pontchartrain Natural Gas System	06-21-85	B		
ST85-1042 Equitable Gas Co[3]	New Jersey Natural Gas Co	06-21-85	B		
ST85-1048 Valero Transmission Co[3]	El Paso Natural Gas Co	07-08-85	C		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.
[3] THC filed a petition for rate approval without identifying a specific recipient. They wish to obtain an approved rate with the Commission before commencing their transportation transactions.
[4] These docket numbers are noticed out of sequence. They were initially filed as 48 hour reports and assigned docket numbers at that time. However, only initial full reports and petitions for rate approval are noticed. The official filing date is when the appropriate filing fee is received.

[FR Doc. 85-19395 Filed 8-14-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP73-49-004, et al.]

Filing of Pipeline Refund Reports and Refund Plans; South Georgia Natural Gas Co. et al.

August 8, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before August 16, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
7/15/85	South Georgia Natural Gas Co.	RP73-49-004	Report.
7/15/85	Texas Gas Pipe Line Corp.	RP84-45-002	Do.

APPENDIX—Continued

Filing date	Company	Docket No.	Type filing
7/18/85	Bayou Interstate Pipeline System.	RP84-78-004	Do.
7/22/85	Southern Natural Gas Company.	RP73-64-014	Do.
7/26/85	Arkla Inc	RP82-75-008	Do.
7/29/85	do	RP82-75-010	Do.

[FR Doc. 85-19396 Filed 8-14-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-173-000]

Tariff Filing; Southern Natural Gas Co.

August 8, 1985.

Take notice that on July 26, 1985, Southern Natural Gas Company (Southern) tendered for filing Second Revised Sheet No. 30D to its FERC Gas Tariff, Sixth Revised Volume No. 1. Southern states it is filing the revised sheet pursuant to Ordering Paragraph (B) of the Commission's June 7, 1985 order in Docket No. CP85-464-000. Southern's proposed Second Revised Sheet No. 30D sets forth the rates to be effective under its Flexible Discount Rate Schedule during August of 1985. Southern requests that the proposed tariff sheet be accepted effective August 1, 1985.

Southern indicates it has served copies on its jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19397 Filed 8-14-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-4-17-003]

Proposed Changes in FERC Gas Tariff; Texas Easter Transmission Corp.

August 8, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Easter) on August 2, 1985 tendered for filing as a part of its FERC Gas Tariff Fourth Revised Volume No. 1, six copies each of the following tariff sheets.

Substitute Revised Seventy-third Revised Sheet No. 14 (3 pages)
Substitute Revised Seventy-third Revised Sheet No. 14A
Substitute Revised Seventy-third Revised Sheet No. 14B
Substitute Revised Seventy-third Revised Sheet No. 14C
Substitute Revised Seventy-third Revised Sheet No. 14D

The above tariff sheets are being filed in compliance with Ordering Paragraph (E) of the Commission's order issued July 19, 1985 in Docket No. TA85–4–17–000, et al. with respect to the requirement that Texas Eastern revise its rates to reflect the removal of exchange volumes from the sales volumes utilized in computing monthly Account No. 191 balances. Texas Eastern requests a stay of the requirement that revisions to its PGA clause be filed to amend the language governing the computation of its monthly Account No. 191 balances consistent with such July 19, 1985 order.

The rates on the above tariff sheets are increased $0.0022/dth as a result of removing net exchange volumes from sales volumes as directed. Texas Eastern proposes that the Commission not place the above tariff sheets into effect and allow the tariff sheets filed on June 19, 1985 to be effective July 1, 1985.

Texas Easter believes that the Commission is in error in its July 19, 1985 order in stating that Texas Eastern's handling of exchange gas volumes is in violation of the Commission's Regulations. Indeed Texas Eastern believes that the Commission's requirement in the order with respect to exchange volumes is in violation of its Regulations. As a result Texas Eastern requests that the Commisssion not place into effect the tariff sheets filed herein in compliance with the order, and stay its requirement to revise Texas Eastern's PGA clause until such time as all differences of opinion can be aired, developed and resolved. Texas Eastern will file an application for rehearing of the Commission's July 19, 1985 order with respect to the exchange gas issue. Texas Eastern believes that good cause is shown for this stay. The public interest is served by avoiding a rate increase at the present time. Such an increase could conceivably lead to lost sales, the effect of which is irreparable. Finally, Texas Eastern submits that the public interest is served by having the Commission consider Texas Eastern's application for rehearing prior to ordering an additional rate increase at a time when Texas Eastern seeks to reduce its rates.

The proposed effective date of the above tariff sheets is July 1, 1985.

In addition in compliance with Ordering Paragraph (F) of the July 19, 1985 order, Texas Eastern has submitted the additional information regarding its supporting schedules to Account No. 191. The additional information is enclosed as Schedule No. 31.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but wil not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–19398 Filed 8–14–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85–5–17–000, TA85–5–17–001]

Proposed Changes in FERC Gas Tariff; Texas Eastern Transmission Corp.

August 8, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 2, 1985 tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies each of the following primary tariff sheets:

Substitute Seventy-fourth Revised Sheet No. 14 (3 pages)
Substitute Seventy-fourth Revised Sheet No. 14A
Substitute Seventy-fourth Revised Sheet No. 14B
Substitute Seventy-fourth Revised Sheet No. 14C
Substitute Seventy-fourth Revised Sheet No. 14D

The above primary revised tariff sheets are being issued to reflect in Texas Eastern's rates the impact of Texas Eastern's latest exercise of "market-out" provisions in certain of its gas purchases contracts. Texas Eastern has exercised such market-out provisions to reduce the price under those certain gas purchase contracts to $2.50 per dth plus taxes effective August 1, 1985. In addition, the above primary revised tariff sheets reflect cost reductions Texas Eastern has experienced from one of its major pipeline suppliers, Texas Gas Transmission Corporation (Texas Gas). The impact of such cost reduction on Texas Eastern's rates is a reduction of $0.011/dth in the demand component of rates and a reduction of $0.1090/dth in the commodity component.

On June 19, 1985 Texas Eastern filed its PGA filing requesting the appropriate waivers in order to make its regular semiannual tracking filing effective one month early on July 1, 1985 coincident with its market-out action to $2.75/dth plus taxes. The Commission granted waivers and conditionally accepted Texas Eastern's filing effective July 1, 1985 by Order issued July 19, 1985. Texas Eastern concurrently herewith has filed a revision to such July 1, 1985 rates in compliance with such July 19, 1985 order.

As mentioned above Texas Eastern has filed concurrently herewith in compliance with the Commission's July 19, 1985 order a revision to its July 1, 1985 rates. The revision results in an increase in rates. Texas Eastern proposes that the Commission not place into effect the rate increase embodied in its compliance filing. However in the event that the Commission accepts the compliance rates to be effective July 1, 1985, Texas Eastern also tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies each of the following alternate tariff sheets:

Alternate Substitute Seventy-fourth Revised Sheet No. 14 (3 pages)
Alternate Substitute Seventy-fourth Revised Sheet No. 14A
Alternate Substitute Seventy-fourth Revised Sheet No. 14B
Alternate Substitute Seventy-fourth Revised Sheet No. 14C
Alternate Substitute Seventy-fourth Revised Sheet No. 14D

At the time of the June 19, 1985 filing Texas Eastern did not anticipate its market-out action to $2.50/dth plus taxes effective August 1, 1985. Nor was Texas Eastern able to include in its filing of June 19, 1985 rate changes by Texas Gas proposed to be effective both July 1, 1985 and August 1, 1985 equating to a net reduction. Because of the magnitude of the rate reduction resulting from its market-out action and the magnitude of its supplier reduction, Texas Eastern requests waiver of the Commission's Regulations to permit the immediate flow through in rates to its customers of the substantial impact of

these cost reductions effective August 1, 1985.

The above primary revised tariff sheets are based upon the current cost of gas adjustment and surcharge adjustment filed on June 19, 1985 adjusted only to reflect the cost reduction resulting from Texas Eastern's exercise of market out provisions effective August 1, 1985 and the net reduction in cost resulting from Texas Gas' rate changes effective July 1, 1985 and August 1, 1985.

The alternate tariff sheets reflect the increase resulting from compliance with the Commission's July 19, 1985 order, in conjunction with the rate reductions proposed by the instant filing.

The proposed effective date of the above tariff sheets is August 1, 1985.

Texas Eastern has respectfully requested waiver of the provisions of its tariff, and any Regulations that the Commision may deem necessary to accept the above tariff sheets to be effectiv August 1, 1985, coincidently with the cost reduction resulting from Texas Eastern's exercise of market-out provisions, as well as to reflect the Texas Gas reduction.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19399 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-45-000]

Petition for Adjustment; Woods Exploration and Producing Co. and Southeastern Pipe Line Co.

Issued August 8, 1985.

Take notice that on July 31, 1985, Woods Exploration and Producing Company and Southeastern Pipe Line Company filed with the Commission a petition for adjustment under Section 502(c) of the Natural Gas Policy Act of 1978. Woods and Southeastern seek relief from the August 30, 1985 deadline established by the Commission in Order 399-B for making Btu refunds.

Petitioners state that they have retained funds monthly for Btu reimbursement and will be in a position to make partial payment in August 1985. Petitioners request an additional 120 days within which to complete payment of their Btu refund obligation. Petitioners state that the additional time is required in order to avoid cash flow problems and disruption of their business.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commision's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19400 Filed 8-14-85; 8:45 am]

BILLING CODE 6712-01-M

[Docket Nos. CP85-727-000, et al.]

Natural Gas Certificate Filings; Columbia Gas Transmission Corp., et al.

Take notice that the following filings have been made with the Commission

1. Columbia Gas Transmission Corporation

[Docket No. CP85-727-000]

August 8, 1985.

Take notice that on July 18, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-727-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of ICI Americas, Inc. (ICI), under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 2,400 Mcf of natural gas per day for ICI. It is stated that the gas to be transported would be purchased from Industrial Energy Service Company (IESCO) and would be used as process gas and boiler fuel in ICI's plant in Hopewell, Virginia. Columbia would receive the gas from IESCO at an existing point on its pipeline in Clearfield, Pennsylvania, and would redeliver the gas at an existing interconnection with Commonwealth Gas Pipeline Corporation (CGPC), which would redeliver the gas to Commonwealth Gas Services, Inc. (CGS), the distributor serving ICI's plant in Hopewell, Virginia. It is proposed that the transportation service would continue through October 31, 1985.

It is stated that Columbia would charge one of the rates in its Rate Schedule TS-1 for the transportation service: gas received from receipt points other than Leach, Kentucky,—29.93 cents per MMBtu provided the volumes are within CGPC's and CGS's total daily entitlements (TDE) and 41.27 cents per MMBtu for volumes in excess of the TDE. It is further stated that Columbia would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP85-643-000]

August 8, 1985.

Take notice that on June 24, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-643-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Texas American Energy Corporation, through its unincorporated division, Western Kentucky Gas Company (Western), as agent for Green River Steel Corporation (Green River), under the certificate issued in Docket No. CP82-407-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Assuming the Commission extends the blanket end-user program, Texas Gas proposes to transport beyond the primary term ending June 30, 1985, to October 31, 1985, up to 2,000 MMBtu equivalent of low-priority natural gas per day on an interruptible basis for ultimate delivery to Green River at its Owensboro, Kentucky, plant.

Texas Gas proposed to charge for its service the rate provided in its Rate Schedule TSC-3 for Rate Schedule G sales customers, which is currently 21.90

cents, and the GRI surcharge of 1.25 cents.

Texas Gas indicates that the proposed transportation would be through the use of existing facilities. Texas Gas would transport the gas from the tailgate of the Champlin Petroleum Company plant in Panola County, Texas, to an existing interconnection between Western and Texas Gas in Daviess County, Kentucky, for further transportation by Western to Green River.

Texas Gas indicates that the gas would be used in firing soaking pits for the purpose of heating steel and in annealing furnaces and boilers at Green River's Owensboro plant. Green River is said to have purchased its gas supplies from EnTrade Corporation in a first sale.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP84–624–002]

August 8, 1985.

Take notice that on July 18, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP84–624–002 a petition to amend the authorization in Docket No. CP84–624–000, as previously amended, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas, under the certificate issued in Docket No. CP82–426–000 pursuant to Section 7(c) of the Natural Gas Act, on behalf of Tuscan Dairy Farms, Inc., Hunterdon Development Center and Raritan River Steel Company (collectively referred to as the three end-users), all of whom Transco indicates are being represented by Energy Marketing Exchange, Inc., all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Transco states that it would receive the gas at: (1) The interconnection with GHR Transmission Corporation (GHR) in the Agua Dulce Field, Nueces County, Texas; (2) the Sun TCB plant in the Canales Field, Jim Wells County, Texas; (3) the Sun Starr plant in Starr County, Texas; (4) the interconnection with Valero Transmission Company in LaSalle County, Texas; (5) the interconnection with Victoria Gas Company on Transco's Bayou Piquant lateral in Terrebonne Parish, Louisiana; (6) the interconnection with Gas Gathering Company in Goliad County, Texas; (7) the interconnection with GHR at Miranda Prospect, Duval County, Texas; and (8) the tailgate of the Katy Exxon plant in Waller County, Texas. Transco states it would redeliver, on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up) to existing points of delivery between Transco and Elizabethtown Gas Company (Elizabethtown), which in turn, would redeliver such gas to the three end users' plants as follows:

to Tuscan Dairy Farms, Inc., at its plant in Union, New Jersey—on a peak day 550 dt; on an average day 300 dt; and on an annual basis 109,500 dt;

to Hunterdon Development Center at is facility in Clinton, New Jersey—on a peak day 1,000 dt; on an average day 700 dt; and on an annual basis 225,500 dt;

to Raritan River Steel Company at its plant in Perth Amboy, New Jersey—on a peak day 4,120 dt; on an average day 3,000 dt; and on an annual basis 921,500 dt.

It is stated that the total volume of gas to be transported to the three end-users' plants on a peak day is 5,670 dt; on an average day is 4,000 dt; and on an annual basis is 1,247,500 dt and represent all of the gas requirements of each plant. Transco states that the transportation for the three end-users would continue through October 31, 1985. Transco would charge the rates provided by its Rate Schedule T–II (43.6 cents per dt plus a 1.21-cent Gas Research Institute allowance and a 6.6 percent fuel allowance). Transco states that the terms and conditions of transportation for the three end-users would be the same as for the end-users as authorized in Docket No. CP84–624–000, as previously amended.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–726–000]

August 7, 1985.

Take notice that on July 19, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85–726–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of American Hoechst Corporation (American Hoechst), which is being represented by the Commission of Public Works, City of Greer, South Carolina (Greer), as agent, under the certificate issued in Docket No. CP82–426–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to transport through October 31, 1985, an average daily volume of 2,750 dekatherms equivalent of natural gas on an interruptible basis for boiler fuel use in American Hoechst's Greer, South Carolina, plant. Transco estimates the peak day and annual volumes to be 3,000 and 440,000 dekatherms equivalent of natural gas, respectively. Transco states that Greer, acting as agent for American Hoechst, is purchasing gas from Transco Energy Marketing Company at various locations in Texas. It is further stated that Transco would receive the gas at existing interconnections with GHR Transmission Corporation (GHR) in Nueces and Duval Counties, Texas, Valero Transmission Company (Valero) in LaSalle County, Texas, and at the tailgate of the Katy Exxon Plant (Katy Plant) in Waller County, Texas. It is also stated that the gas received from Valero would be transported by Valero, on Transco' behalf, from an interconnection with GHR in Webb County, Texas' and that the gas received at the Katy Plant would be transported by United Texas Transmission Company (UTTCO), on Transco's behalf, from an interconnection with GHR in Webb County, Texas, to the Katy Plant. Transco would deliver equivalent quantities of gas (less quantities retained for compressor fuel and line loss make-up) to Greer at existing delivery points for delivery to American Hoechst. Transco also requests that it be granted "flexible authority" to add and/or delete sources of supply and/or receipt points.

It is stated that Transco's transportation would be pursuant to Transco's Rate Schedule T–11, FERC Gas Tariff, Second Revised Volume No. 1.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Williston Basin Interstate Pipeline

[Docket No. CP85–722–000]

August 8, 1985.

Take notice that on July 18, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), 304 East Rosser Avenue, Suite 200, Bismarck, North Dakota 58501, filed in Docket No. CP85–722–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate one sales tap and appurtenant facilities under the certificate issued in Docket No. CP83–1–000, *et al.*, pursuant to Section 7 of the

Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to construct and operate one sales tap and appurtenant facilities on its natural gas transmission system for the delivery of gas under its T–3 program. Williston Basin states the proposed sales tap would be used to deliver up to 65,000 Mcf of natural gas annually to Western Gas Processors, Ltd. (Western), to provide fuel to a field gathering compressor used in gathering gas condensate and oil well gas to be ultimately processed at a gas processing plant. Williston Basin states further that the estimated cost for the sales tap would be $6,000 and would be 100% reimbursed by Western.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–19381 Filed 8–14–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP85–713–000, et al.]

Natural Gas certificate filings; ANR Pipeline Co., et al.

I. ANR Pipeline Company

[Docket No. CP85–713–000]

August 8, 1985.

Take notice that on July 17, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85–713–000 a request pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Admiral Appliance, Division of Magic Chef, Inc. (Admiral), through its agent, Petro Source Energy, Inc. (Petro Source), under the certificate issued in Docket No. CP82–480–000 pursuant to section 7 of the Natural Gas Act, all as more fuly set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport up to three billon Btu equivalent of natural gas per day on an interruptible basis for Petro Source on behalf of Admiral under §157.209 of the Regulations through October 31, 1985. ANR states that Admiral has entered into a gas sales agreement to purchase gas from Petro Source and that such gas was not committed or dedicated to interstate commerce on November 8, 1978. Petro Source will deliver up to three billion Btu equivalent of natural gas per day to Transok, Inc. (Transok), for delivery to ANR at various points of interconnection of the pipeline systems of ANR and Transok in Oklahoma. ANR would redeliver such natural gas, less 6.23 percent for fuel use and lost and unaccounted-for gas, to Illinois Power Company (IPC) for Petro Sources' account on behalf of Admiral at the interconnection of the pipeline systems of IPC and ANR in Henry County, Illinois. IPC would transport and deliver the gas to Admiral at its Galesburg, Illinois, facility.

ANR proposes to charge a transportation rate of 25.8 cents per dth for all gas transported on behalf of Admiral. The rate is based upon Rate Schedule EUT–1 on file in ANR's FERC Gas Tariff, Original Volume No. 1, it is explained.

ANR also requests flexible authority to add and/or delete receipt and/or delivery points. Any changes made under the flexible authority would be to Admiral's facility in Galesburg, Illinois, and would be within the proposed transportation volumes, it is explained.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP85–713–001]

August 8, 1985.

Take notice that on July 17, 1985, ANR pipline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85–713–001 an application pursuant to section 7(c) of the Natural Gas act for a certificate of public concenience and necessity authorizing transportation of natural gas on behalf of Admiral Appliance, Division of Magic Chef, Inc. (Admiral), through its agent Petro Soruce Energy, Inc. (Petro Source), all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR proposes to transport up to three billon Btu equivalent of natural gas per day on an interruptible basis for Petro Source on behalf of Admiral under §157.6 of the Commission's Regulations for a period, from November 1, 1985, through December 31, 1986, following the termination of service for which authorization is sought in Docket No. CP85–713–000. ANR states that Admiral has entered into a gas sales agreement to purchase gas from Petro Source and that such gas was not committed or dedicated to interstate commerce on November 8, 1978. It is stated that Petro Source will deliver up to three billion Btu equivalent of natural gas per day to Transok, Inc. (Transok), for delivery to ANR at various points of interconnection of the pipeline systems of ANR and Transok in Oklahoma. ANR would redeliver such natural gas, less 6.23 percent for fuel use and lost and unaccounted-for gas, to Illinois Power Company (IPC) for petro Soruces' account on behalf of Admiral at the interconnection of the pipeline systems of IPC and ANR in Henry County, Illinois. IPC would transport and deliver the gas to Admiral at its Galesburg, Illinois, facility.

ANR proposes to charge a transportation rate of 25.8 cents per dt for all gas transported on behalf of Admiral. The rate is based upon Rate Schedule EUT–1 on file in ANR's FERC Gas Tariff, Original Volume No. 1, it is explained.

ANR also requests flexible authority to add and/or delete receipt and/or delivery points. Any changes made under the flexible authority would be to Admiral's facility in Galesburg, Illinois, and would be within the proposed transportation volumes, it is explained.

Comment date: August 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. ANR Pipeline Company

[Docket No. CP85–716–000]

August 8, 1985.

Take notice that on July 17, 1985, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85–716–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible transportation of natural gas for Bethlehem Steel Corporation (Bethlehem), all as more fully set forth in the application on file with the

Commission and open to public inspection.

Applicant proposes to transport up to 25,000 dt equivalent of natural gas per day, imported from Canada, on a best-efforts basis for Bethlehem pursuant to a transportation agreement dated April 24, 1985. The agreement provides that Applicant would receive natural gas which Bethlehem purchases from Northridge Petroleum Marketing, Inc., and which Bethlehem causes Midwestern Gas Transmission Company (Midwestern) or Great Lakes Gas Transmission Company (Great Lakes) to deliver to Applicant at an existing interconnection of the pipeline systems of Applicant and Midwestern near Marshfield, Wisconsin, and at an existing interconnection of the pipeline systems of ANR and Great Lakes near Crystal Falls, Michigan.

Applicant states that it would transport and deliver thermally equivalent volumes, less one percent retained for fuel and lost and unaccounted-for gas, to Natural Gas Pipeline Company of America (NGPL) for Bethlehem's account at the existing interconnection of the pipeline systems of Applicant and NGPL near Joliet, Illinois. It is alleged that NGPL would provide further transportation and Northern Indiana Public Service Company will transport and deliver the gas to Bethlehem for use at its Burns Harbor, Indiana, facility. The term of the proposed service would expire on November 1, 1986.

Bethlehem would pay 12.6 cents per dt for all gas received from Great Lakes and transported on behalf of Bethlehem and 11.2 cents per dt for all gas received from Midwestern and transported on behalf of Bethlehem.

Comment date: August 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP85-747-000]

August 9, 1985.

Take notice that on July 31, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-747-000 a request pursuant to § 157.205 of the Regulations under the National Natural Gas Act (18 CFR 157.205) for authoization to revise the maximum daily volume obligation for delivery to Public Service Company of Colorado (PSCo) at the Fort Morgan Country Club delivery point and to construct and operate appurtenant facilities to effectuate changes in delivery pressure to PSCo at the Fort Morgan delivery point and to Greeley Gas Company (Greeley) at the Canon City delivery point under its certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG proposes to decrease the maximum daily volume obligation to PSCo at the Fort Morgan delivery point located in Morgan County, Colorado, from 150 Mcf per day to 100 Mcf per day in order to provide a more realistic volume for delivery by CIG at that location based upon estimated requirements by PSCo. CIG also proposes to increase the delivery pressure at the Fort Morgan delivery point from 60 p.s.i.g. to 150 p.s.i.g. in order to enable PSCo to provide service to a new residential development that would be served by deliveries through Fort Morgan. CIG states that it would change the delivery pressure at Fort Morgan by modifying the existing facilities at that delivery location.

CIG further proposes to change the delivery pressure at the Canon City delivery point in Fremont County, Colorado, pursuant to a request from Greeley. It is stated that the delivery pressure would be changed from line pressure but not less than 100 p.s.i.g. to a minimum of 100 p.s.i.g. and a maximum of 150 p.s.i.g. It is further stated that for normal operations, CIG's line pressure is greater than the 150 p.s.i.g. maximum pressure requested by Greeley. CIG proposes to change the delivery pressure at Canon City by modifying the existing facilities at that delivery location. It is asserted that the change would enable Greeley to operate its regulating facility at Canon City in a more effective manner.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP85-731-000]

August 9, 1985.

Take notice that on July 23, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-731-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to use an existing delivery point to accommodate natural gas deliveries to Northern States Power Company (NSP) and Northern States Power Company of Wisconsin (NSP-WI) under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern requests authority to use an existing delivery point located at the interconnection between the facilities of Northern and ANR Pipeline Company (ANR) at Janesville, Wisconsin, to deliver natural gas on a best-efforts basis to NSP and NSP-WI. Northern states that gas deliveries to NSP and NSP-WI at Janesville would be made within the existing authorized level of firm entitlement for NSP and NSP-WI under Rate Schedule CDO-1 of Northern's F.E.R.C. Gas Tariff. Northern states that the Janesville delivery point is presently used to deliver about 170,000 Mcf of natural gas on a peak day to ANR. It is stated that, on a best-efforts basis, additional volumes of up to 10,000 Mcf per day will be delivered to NSP and up to 10,000 Mcf per day will be delivered to NSP-WI at the Janesville delivery point.

Northern states that the natural gas to be delivered to NSP-WI at Janesville will be used to satisfy the natural gas requirements of the community of Eau Claire, Wisconsin, where additional gas is required to serve existing and anticipated loads. It is further stated that gas deliveries to NSP at Janesville will be used to satisfy NSP's general system requirements, primarily in the communities of Fargo and Grand Forks, North Dakota.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Central Pipeline Corporation

[Docket No. CP85-742-000]

August 9, 1985.

Take notice that on July 29, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-742-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon the transportation of gas for a direct sale of natural gas to High Plains Corporation (High Plains), formerly Petro Fuels Corporation (Petro Fuels), and to abandon by reclaim certain measuring, regulating, and appurtenant facilities located in Sedgwick County, Kansas, under the abandonment authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central states that said facilities were installed in 1970 under authorization issued in Docket No. CP70–166, to make a direct sale of natural gas to Petro Fuels for office heating. Northwest Central further states that it has been requested by High Plains to terminate their gas sale contract. Northwest Central is, therefore, proposing to abandon its transportation of gas to High Plains and to reclaim the facilities installed.

Northwest Central avers the facilities it proposes to reclaim are located above ground on its transmission pipeline in Sedgwick County, Kansas. Northwest Central estimates it would cost $225 to reclaim said facilities and that the facilities have a $25 salvage value.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Gas Transmission Corporation

[Docket No. CP85–737–000]

August 9, 1985.

Take notice that on July 26, 1985, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP85–737–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas to the Town of Basile, Louisiana (Basile), for resale, and to construct and operate facilities therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell Basile up to 750 Mcf per day of natural gas from its general system supply, with an annual maximum of 78,500 Mcf, for residential, commercial and agricultural use. Such service would be rendered pursuant to Applicant's Rate Schedule SG–SL.

Applicant proposes to construct and operate a sales meter station and related facilities, in order to render service to Basile. The cost of such facilities is estimated at $47,140 and would be financed by Applicant from funds on hand.

Applicant states that Basile currently purchases natural gas on a day-to-day basis from the city of Eunice, Louisiana.

Comment date: August 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–102–001]

August 9, 1985.

Take notice that on July 19, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85–102–001 a request for amendment to the authorization granted in Docket No. CP85–102–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for further authorization to add a second end-user, to add three receipt points, and to increase peak day volumes delivered to the existing end-user, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that it would transport gas on behalf of Witco Chemical Company (Witco) in addition to Diamond Glass Company (Diamond Glass) as previously authorized. It is stated that receipt points would be added using existing facilities at Charlene Field, Live Oak County, Texas; at the Katy Exxon Plant in Weller County, Texas; and at an existing interconnection with Victoria Gas Corporation in Terrebonne Parish, Louisiana. It is further stated that peak day volumes delivered to Diamond Glass' Royersford, Pennsylvania, plant would be increased from 1,000 dt to 3,500 dt equivalent of gas on a peak day, from 1,000 dt to 2,500 dt equivalent of gas on an average day, and from 328,500 dt to 912,500 dt equivalent of gas on an annual basis.

Transco explains that it would transport up to 2,060 dt on a peak day for Witco, 1,133 dt on an average day and 412,000 dt on an annual basis. It is further explained that the gas for Witco would be purchased from Energy Marketing Exchange Inc. and would be redelivered at existing points of interconnection to Philadelphia Electric Company, the distributor serving Witco's plant in Trainer, Pennsylvania.

It is asserted that the transportation for both end-users would continue through October 31, 1985. In all other respects the transportation would remain the same as authorized in Docket No. CP85–102–000.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP85–723–000]

August 9, 1985.

Take notice that on July 18, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 filed in Docket No. CP85–723–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a tap in order to implement the delivery of natural gas to Entex, Inc. (Entex) under its certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, as more fully set forth in the request on file with the Commission and open to public inspection.

United requests authorization to install a 2-inch tap on its Billeaud Sugar Mill 4-inch pipeline in Lafayette Parish, Louisiana. It is stated that the proposed tap would enable United to sell and deliver natural gas to Entex for resale through Entex's Cade, Louisiana, distribution system for residential and commercial use. It is further stated that United would sell an estimated daily average of 70 Mcf to Entex through the proposed delivery point.

It is asserted that the proposed tap would not result in an increase in Entex's aggregate base requirements or contractural Maximum Daily Quantity under United's curtailment plan.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. Zenith Natural Gas Company and Northwest Central Pipeline Corporation

[Docket No. CP85–718–000]

August 9, 1985.

Take notice that on July 18, 1985, Zenith Natural Gas Company (Zenith), 15 W. Sixth Street, Tulsa, Oklahoma 74119, and Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101 filed in Docket No. CP85–718–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Zenith proposes to transport natural gas in connection with a direct sale of up to 1,000 Mcf of natural gas per day to Doskocil Companies, Incorporated (Doskocil), for use in Doskocil's plant near Hutchinson, Kansas. It is stated that the point of sale would be at the interconnection of facilities of Zenith and Northwest Central in Barber County, Kansas. Zenith states that the price to be paid by Doskocil would equal the sum of (1) Zenith's weighted average cost of gas during the month in which deliveries occur and (2) the cost of service component of Zenith's sale for resale tariff approved by the Commission for sales of gas to Panhandle Eastern Pipe Line Company (Panhandle) at the same delivery point. Zenith further states that the volumes to be purchased by Doskocil would reduce Zenith's sales to Panhandle.

Northwest Central proposes to transport up to 750 Mcf of natural gas per day or 180,000 Mcf on an annual basis for Doskocil. It is stated that Northwest Central would receive gas from Zenith for Doskocil's account in Barber County and transport and redeliver such gas to The Gas Service Company (Gas Service) for Doskocil's account at an existing interconnection of facilities in Reno County, Kansas. It is stated that Gas Service would deliver such gas to Doskocil's plant near Hutchinson, Kansas.

Northwest Central states that since the direct sale to Doskocil by Zenith displaces an equivalent amount of existing sales on its system, Northwest Central proposes a transportation rate designed to allow recovery of the same amount of revenues less gas costs that Northwest Central would have recovered if it had continued to sell the gas proposed to be transported. Northwest Central proposes that 37.90¢ per Mcf, Northwest Central's presently effective Rate Schedules I–1 rate, less gas costs, be charged for the transportation service. It is stated that the I–1 rate is the applicable rate for gas currently sold by Northwest Central to Gas Service for resale to Doskocil.

Comment date: August 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–19383 Filed 8–14–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF85–618–000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Robert N. Fackrell, et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Robert N. Fackrell

[Docket No. QF85–618–000]

August 8, 1985.

On July 25, 1985, Robert N. Fackrell (Applicant), of P.O. Box 1, Preston, Idaho 83263 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2.5 megawatt hydroelectric facility (P. 8646) is located near Mink Creek in Franklin County, Idaho.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Borough of Slatsburgh, Pennsylvania and Pennsylvania Renewable Resources Associates

[Docket No. QF85–621–000]

August 8, 1985.

On July 24, 1985, Borough of Slatsburgh, Pennsylvania and Pennsylvania Renewable Resources Associates (Applicants), of 1700 Broadway, Suite 2501, New York, New York 10019 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 15 megawatt hydroelectric facility (P. 3207) is located near the Conemaugh River and Lake in Westmoreland County, Pennsylvania.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. General Electric Company

[Docket No. QF85–617–000]

August 8, 1985.

On July 23, 1985, General Electric Company, (Applicant) of 1 River Road, Building 2—7th floor, Schenectady, New York 12345, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined cycle cogeneration facility will be located adjacent to Mobay's Chemical Plant in Baytown,

Texas. It will consist of three combustion turbine-generating units with three supplementary fired waste heat recovery boilers, and an extraction/condensing steam turbine-generating unit. Steam produced by the facility will be supplied to meet the Mobay process steam requirements. The net electric power production capacity of the facility will be 253 MW. The primary energy source will be natural gas. The installation of the facility will begin in November 1985.

4. Gregg Falls Hydroelectric Assoc.

[Docket No. QF85-619-000]

August 8, 1985.

On July 24, 1985, Gregg Falls Hydroelectric Assoc. (Applicant), of 77 Franklin Street, 9th Floor, Boston, Massachusetts 02110, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located on the Piscataguog River in Hillsborough County, near Goffstown, New Hampshire. The facility will consist, in part, of two hydroelectric generators. The electric power production capacity of the facility will be 3.8 MW. The primary source of energy is water.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

5. Indian Country Development, Inc.

[Docket No. QF85-622-000]

August 8, 1985.

On July 25, 1985, Indian Country Development, Inc. (Applicant), of 1498 Goodwin Avenue, St. Paul, Minnesota, 55119, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located in Brule, Wisconsin. The facility will consist, in part, of a wood fired boiler, a steam turbine/generator, and a cooling tower. The electric power production capacity of the facility will be 25,000 kW. The primary source of energy will be biomass in the form of wood sawdust, chips, and bark.

6. Kaiser Foundation Hospital, Inc.

[Docket No. QF85-623-000]

August 8, 1985.

On July 22, 1985, Kaiser Foundation Hospital, Inc., (Applicant) of 4647 Zion Avenue, San Diego, California 92120, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility will be located at San Diego, California. It will consist of a reciprocating engine/generator set with waste heat recovery facilities. Steam produced by the facility will be used for heating, cooling, and domestic hot water generation. The electric power production capacity of the facility will be 580 kW. The primary energy source will be natural gas. The installation of the facility will begin in October 1985.

7. Mark Technologies Corporation

[Docket No. QF85-616-000]

August 8, 1985.

On July 25, 1985, Mark Technologies Corporation (Applicant), of Markwind Power Station, 333 Hayes Street, San Francisco, California 94102, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 14 megawatt wind facility will be located on Section 28 of the San Gorgonio Pass/Coachella Valley area near Palm Springs, California.

8. Pembroke Hydro Associates

[Docket No. QF85-620-000]

August 9, 1985.

On July 24, 1985, Pembroke Hydro Associates (Applicant), of 77 Franklin Street, Boston Massachusetts 02110 Submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility is located on the Suncook River in Merrimack County, near Pembroke, New Hampshire. The facility will consist, in part, of a hydroelectric generator. The electric production capacity is 2.6 MW. The primary source of energy is water.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19503 Filed 8-14-85; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Beverly Hills Hotel Corp. et al.; Hearing Designation Order

In re Applications of MM Docket No. 85-236; Beverly Hills Hotel Corporation, File No. BPCT-850129KF; Moore Broadcast Industries, Inc. File No. BPCT-850211KE; Faye Daye Corporation, File No. BPCT-850320KE; Susan S. Mulkey, File No. BPCT-850320KF; Koontz Communications Limited Partnership, File No. BPCT-850320KH; Family 55 TV, Inc., File No. BPCT-850320KI; Catawba Communications, Inc., File No. BPCT-850320KJ; DSL Broadcasting, Inc., File No. BPCT-850320KP; Urban Broadcasting, Ltd., File No. BPCT-850320KQ; Rock Hill Telecasters Associates, Ltd., File No. BPCT-850320KW; Neisler Limited Partnership, File No. BPCT-850320LE; Metrolina Media Inc., File No. BPCT-850320LF. For Construction

Permit for New Television Station Rock Hill, South Carolina.

Adopted: July 30, 1985.
Released: August 12, 1985.

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 55, Rock Hill, South Carolina.

2. On May 6, 1985, the Association of Maximum Service Telecasters (AMST) filed informal objections against DSL Broadcasting, Inc. (DSL) and Metrolina Media Inc. (Metrolina), on the grounds that their transmitter sites would be short-spaced 10.5 miles and 4.7 miles, respectively to television station WAXA, Channel 40, Anderson, South Carolina.[1] However, on May 6, 1985, DSL and Metrolina each amended its application to change its transmitter to a site that meets all Commission requirements. Consequently, AMST's objections with respect to these two applications will be dismissed as moot. AMST also filed an informal objection against Moore Broadcast Industries, Inc. (Moore) on the grounds that Moore's transmitter site would be short-spaced 6.9 miles to television station WAXA, Anderson, South Carolina. Sections 73.610 and 73.698, Table VI, of the Commission's rules require a minimum separation of 75 miles between a station operating on Channel 55 and a station or city to which Channel 40 is allocated. Accordingly, an issue will be specified to determine whether circumstances exist warranting a waiver of the rule. In assessing the circumstances to determine whether a waiver is warranted, the Administrative Law Judge will consider the fact that the other applicants have specified fully-spaced sites.

3. No determination has been reached that the tower heights and locations proposed by Beverly Hills Hotel Corporation, Moore, Faye Daye Corporation, Susan S. Mulkey, Koontz Communications Ltd. Partnership, DSL and Neisler Limited Partnership would not each constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Moore and DSL did not certify their financial qualifications. Rock Hill Telecasters indicated that at some future date it "will certify to financial qualifications after completing the necessary documentation." Moore, DSL and Rock Hill Telecasters will each be given 20 days from the release date of this Order to review its financial proposal in light of Commission, requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, FCC Form 301, as to its financial qualifications. If Moore, DSL or Rock Hill Telecasters cannot make the required certification, each shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82-378 (released July 15, 1982).

6. Section II, Item 9, FCC Form 301, inquires whether there are any documents, instruments, contracts or understandings related to ownership or future ownership rights including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, or debentures. Item 10, of Section II, inquires whether or not documents instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a priviate or public sale of stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be otained. Moore has failed to answer these questions. Moore will be required to submit an amendment providing its answer to the presiding Administrative Law Judge within 20 days after this Order is released.

7. Susan S. Mulkey's application indicates that the applicant is a limited partnership. Section II, Item 5(a), FCC Form 301, requires that if the applicant is a partnership, the requested information must be given for each general or limited partner. Ms. Mulkey's application identifies only the general partner and states that the identity of its limited partners would be submitted later. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part*, FCC 85-252, released June 24, 1985, the Commission stated that, henceforth, limited partners' interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partners will not be involved in any material respect in the business or operation of the station. 97 FCC 2d at 1023. The Commission defined the degree of noninvolvement in paragraphs 48-50 of the June 24 decision on reconsideration. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards, 97 FCC 2d at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the lmited partners if Ms. Mulkey can submit the necessary certification. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, Ms. Mulkey will be required either to sate that her limited partners have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interests.

8. Section V-C, Item 10, FCC Form 301, requires an applicant to submit the area and population within its predicted Grade B contour. Rock Hill Telecasters has not done so. Rock Hill Telecasters, therefore, will be required to submit an amendment showing the required information, within 20 days of the release of this Order, to the presiding Administrative Law Judge.

9. Rock Hill Telecasters stated, in its environmental narrative statement, that it believes that its proposed site is available to it but it has not yet completed arrangements which would constitute reasonable assurance that the site is available. Under those circumstances, an issue will be required to determine whether the applicant has

[1] On May 13, 1985, Mark III Broadcasting Company, Inc., licensee of Station WAXA, filed a pleading adopting AMST's objection.

reasonable assurance that its proposed site will be available.

10. Section 73.685(f) of the Commission's rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Neisler has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy each to the Chief, Television Branch, and Chief, Hearing Branch, Mass Media Bureau, within 20 days of the release of this Order.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Moore Broadcast Industries, Inc., whether the proposal is consistent with § 73.610 of the Commission's rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

2. To determine with respect to Rock Hill Telecasters Associates, Ltd., whether the applicant has reasonable assurance that its proposed transmitter site will be available.

3. To determine with respect to Beverly Hills Hotel Corporation, Moore Broadcast Industries, Inc., Faye Daye Corporation, Susan S. Mulkey, Koontz Communications Ltd. Partnership, DSL Broadcasting, Inc. and Neisler Limited Partnership, whether there is a reasonable possibility that the tower heights and locations proposed by each would constitute a hazard to air navigation.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, That, Moore Broadcast Industries, Inc., DSL Broadcasting, Inc. and Rock Hill Telecasters Associates, Ltd. shall, within 20 days of the release of this Order each submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

14. It is further ordered, That, Moore Broadcast Industries, Inc., shall submit its response to Section II Items 9 and 10, FCC Form 301, to the presiding Administrative Law Judge within 20 days of the release of this Order.

15. It is further ordered, That, Susan S. Mulkey shall submit the certification, statement and/or information requried by paragraph 8, *supra*, to the presiding Administrative Law Judge within 20 days of the release of this Order

16. It is further ordered, That, Rock Hill Telecasters Associates, Ltd. shall submit an amendment stating the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge within 20 days of the release of this Order

17. It is further ordered, That, Neisler Limited Partnership shall submit an amendment providing the information required by § 73.685(f) of the Commission's rules, to the presiding Administrative Law Judge and a copy each to the Chief, Television Branch and to the Chief, Hearing Branch, within 20 days of the release of this Order.

18. It is further ordered, That, Association of Maximum Service Telecasters, Inc., and Mark III Broadcasting Company, Inc., are made parties respondent to this proceeding.

19. It is further ordered, That the objections filed by the Association of Maximum Service Telecasters, Inc. are dismissed as moot with respect to DSL Broadcasting, Inc. and Metrolina Media Inc.

20. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 3.

21. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

22. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau

[FR Doc. 85-19369 Filed 8-14-85; 8:45 am]

BILLING CODE 6712-01-M

Nelson Media, Inc., et al.; Hearing Designation Order

In re Applications of: MM Docket No. 85238; Nelson Media, Inc., File No. BPCT-850208KF; Burwood Broadcasting Corporation, File No. BPCT-850417KI; Sumner County Television, Inc., File No. BPCT-850422KE; Channel 50, Tennessee Broadcasting Limited Partnership, File No. BPCT-850422KQ; Peggy Gutierrez, File No. BPCT-850422KZ. For Construction Permit, Hendersonville, Tennessee.

By Chief, Video Services Division:

Adopted: July 31, 1985.
Released: August 12, 1985.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 50, Hendersonville, Tennessee.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower height and location proposed by Channel 50, Tennessee Broadcasting Limited Partnership and Peggy Gutierrez each would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and

tabulated at least every 10° plus any minima or maxima. Nelson Media, Inc.'s application did include the tabulation, but it is not tabulated in accordance with § 73.685(f). Accordingly, Nelson Media, Inc. will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

5. On May 1, 1985, the Federal Aviation Administration (FAA) issued a determination that the tower height and location proposed by Burwood Broadcasting Corporation would constitute a hazard to air navigation. Since the Commission traditionally defers to the FAA in such matters, Burwood must, within 20 days after the date of release of this Order or such additional time as the presiding Administrative Law Judge may allow, amend its application to specify a tower height and location which will meet with the approval of the FAA.

6. Thomas Nelson Publishers (TNP) is the 100 percent owner of Nelson Media, Inc. Brownlee O. Currey, Jr., as member of the board of directors of TNP is the chairman of the *Nashville Banner* a daily newspaper in Nashville, Tennessee. Nashville is within the applicant's proposed City Grade contour. Section 73.3555(c) of the Commission's Rules states that no license for a television station shall be granted to any party if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in the Grade A contour encompassing the entire community in which such newspaper is published. Consequently, Mr. Currey's interests in the newspaper and in the applicant may violate § 73.3555. However, in *Attribution of Ownership Interests,* 97 FCC 2d 997, 1025–1026 (1984), *recon. granted in part,* FCC 85–252, released June 24, 1985, the Commission stated that it is appropriate to provide attribution relief for corporate officers or directors of multi-faceted parent corporations where these individuals' duties and responsibilities are neither directly nor indirectly related to the activities of any broadcast licensee in which their corporation has a cognizable interest.[1] Under this policy, an eligible officer or director will be accorded an exemption from attribution upon submission of the individual's name, his full title and a description of his duties and responsibilities, along with an explanation of why an interest, should not be attributed to that person. Furthermore, the Commission has retained the cross-interest policy as to other attributable media interests in the same geographical area, 97 FCC 2d at 1030. Although Nelson Media, Inc., has stated that Mr. Currey will have no duties or responsibilities relating to the proposed television station, we do not have enough information regarding Mr. Currey's duties as a director of TNP to determine whether Mr. Currey will be sufficiently insulated. Additionally, Mr. Currey has not indicated the nature and extent of any future relationship between the *Nashville Banner* and the proposed station. Accordingly, an issue will be specified to determine whether Mr. Currey's interest in the newspaper and his position as a director of TNP is consistent with § 73.3555 of the rules and the Commission's cross-interest policy, and, if not, whether grant of the application is in the public interest.

7. Peggy Gutierrez states that the applicant is a limited partnership. The general partner has been identified; however, the applicant indicates that the limited partners are to be determined. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests, supra,* the Commission stated that, henceforth, limited partnership interests were not attributable for the purpose of the multiple ownership rules, if the applicant certifies that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station, 97 FCC 2d at 1023. The Commission defined the degree of noninvolvement in paragraphs 48–50 of the June 24 decision on reconsideration. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards, 97 FCC 2d at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Ms. Gutierrez can submit the necessary certification. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, Ms. Gutierrez, upon determining the limited partners, will be required either to state that the limited partners have or will have no other media interests subject to the cross-interests policy or identify the limited partners with such interest, identify the other local media and state the nature and extent of the ownership interest.

8. At the time Peggy Gutierrez filed her application, she indicated that Exhibit A to Section II, item 6(b), FCC Form 301, would be forthcoming. To date, the exhibit, which pertains to the applicant's other broadcast interests, has not been received. Accordingly, Ms. Gutierrez will be required to submit Exhibit A to Section II, item 6(b), to the presiding Administrative Law Judge, within 20 days after this Order is released.

9. In Section V–G, item 5, FCC Form 301, Peggy Gutierrez specifies an overall height above ground (OHAG) of the tower as 1,047 feet and the overall height above mean sea level (OHAMSL) as 2,049 feet. The corresponding information filed with the FAA specifies the OHAG of the tower as 1,006 feet and the OHAMSL as 3,014 feet. Accordingly, Ms. Gutierrez will be required to file a clarifying amendment with the presiding Administrative Law Judge, within 20 days after this Order is released.

10. The transmitter sites proposed by Sumner County Television, Inc., Channel 50, Tennessee Broadcasting Limited Partnership and Peggy Gutierrez now meet all of the Commission's minimum separation requirements. There is, however, a rulemaking proposal (RM–4910) pending which would allocate Channel 50 to Salem, Indiana. If this proposal is adopted, each of these transmitter sites would be 149 miles out of the required 155 miles from the reference point in Salem. Therefore, each of the transmitter sites would be 6 miles short-spaced. An issue would then be required to determine whether circumstances exist which would warrant a waiver of § 73.610 of the Commission's rules. In assessing the circumstances to determine whether a waiver would be warranted, the presiding Administrative Law Judge would consider the fact that the remaining 2 applicants have specified sites which would comply with the separation requirements. Accordingly, a contingent issue with respect to the possible short-spacing will be specified.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity.

[1] Thomas Nelson Publishers is a publicly held corporation which publishes and markets bibles, religious and secular books.

Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Channel 50, Tennessee Broadcasting Limited Partnership and Peggy Gutierrez, whether the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine, with respect to Nelson Media, Inc., whether Brownlee O. Currey's interest in the *Nashville Banner* and his position as a director of Thomas Nelson Publishers, parent corporation of the applicant, is consistent with Section 73.3555 of the Commission's Rules and the Commission's cross-interest policy and, if not, whether grant of the application is in the public interest.

3. In the event that the Commission adopts the pending rulemaking proposal to allocate Channel 50 to Salem, Indiana, to determine, with respect to Sumner County Television, Inc., Channel 50, Tennessee Broadcasting Limited Partnership and Peggy Gutierrez, whether circumstances exist which would warrant a waiver of § 73.610 of the Commission's rules.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, That, the Federal Aviation Administration is made a party Respondent with respect to issue 1.

14. It is further ordered, That Nelson Media, Inc. shall submit an amendment providing a tabulation of relative field pattern tabulated as required by § 73.685(f) of the Commission's rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and Chief, Hearing Branch, Mass Media Bureau, within 20 days after the release date of this Order.

15. It is further ordered, That, within 20 days after this Order is released or such additional time as the presiding Administrative Law Judge may allow, Burwood Broadcasting Corporation shall amend its application as may be necessary to meet with the approval of the Federal Aviation Administration.

16. It is further ordered, That Peggy Gutierrez shall submit the certification, statement and/or information required by paragraph 6, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordered, That Peggy Gutierrez shall submit Exhibit A to Section II, item 6(b), FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

18. It is further ordered, That Peggy Gutierrez shall submit an amendment which clarifies the overall height above ground and the overall height above mean sea level of her proposed tower, to the presiding Administrative Law Judge, within 20 days after this Order is released.

19. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

20. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communicatioins Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-19370 Filed 8-14-85; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 9, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from the Commission by calling Doris R. Peacock, (202) 632-7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB No.: 3060-0079

Title: Application to Renew or Modify an Amateur Club, RACES, or Military Recreation Station License.

Form No.: FCC-610B.

Action: Revision.

Estimated Annual Burden: 1,000 Respondents; 83 Hours.

OMB No.: 3060-0068.

Title: Application for Consent to Assignment of Radio Station Construction Permit or License—Other than Broadcast.

Form No.: FCC 702.

Action: Extension.

Estimated Annual Burden: 50 Respondents; 250 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-19368 Filed 8-14-85; 8:45 am]

BILLING CODE 6712-01-M

Radio Page Communications et al.; Memorandum Opinion and Order Designating Applications for Hearing

In re applications of: J.M. Blodgett d/b/a/ Radio Page Communications For Authority to construct an additional facility for Station KWT885 to operate on frequency 35.58 MHz in the Public Land Mobile Service at Penns Grove, New Jersey, CC Docket No. 85-237, File No. 20100-CD-P-79; Answering Service of Trenton, Inc. for authority to construct an additional facility for Station KED352 to operate on frequency 35.58 MHz in the Public Land Mobile Service at Penns Grove, New Jersey, File No. 20540-CD-P-79; Radio Broadcasting Co., For authority to construct a new facility for Station WXR961 to operate on frequency 35.58 MHz in the Public Land Mobile Service at Wilmington, Delaware, File No. 20582-CD-P-79 (Dismissed).

Adopted: July 30, 1985.
Released: August 12, 1985.

By the Common Carrier Bureau:

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of J.M. Blodgett d/b/a Radio Page Communications (Radio Page), Answering Service of Trenton, Inc. (ASOT), and Radio Broadcasting Company (RBC); a letter request of Radio Page to dismiss ASOT's application as defective, and ASOT's response; Radio Page's Petition for Expedited Issuance of a Hearing Designation Order and for Other Relief, and responsive pleadings; and ASOT's Motion to Strike, and responsive pleadings. Also pending are Radio Page's Informal Objection and Request for Commission Action respecting RBC's application, and RBC's dismissal request.

2. Radio Page's application was filed on October 12, 1978 and was placed on public notice on October 23, 1978. ASOT's application was filed on December 15, 1978 and was placed on public notice on December 26, 1978. RBC's application was filed on December 21, 1978 and was placed on public notice on January 2, 1979.

3. On August 27, 1980, Radio Page filed a letter requesting that ASOT's application be dismissed as defective. Radio Page asserted that it "now understands that ASOT has been marketing paging in the Penns Grove area through some sort of Intercarrier Agreement with Radiofone, another carrier." Since ASOT's application does not disclose that ASOT is marketing and providing service in the Penns Grove area and also does not include a traffic load study of the facility involved in the Intercarrier Agreement, Radio Page argues that ASOT's application is defective and should be dismissed. ASOT opposed Radio Page's request and asserted that there is no Intercarrier Agreement but rather a "Dealership Agreement" executed by ASOT and Radiofone. ASOT asserts that it acts as an independent dealer in the Trenton area in making available to the general public leased pagers on Radiofone's frequency. Radiofone's tariffs are applicable to the leased pagers, and "the agreement does *not* provide for any interconnection between ASOT's and Radiofone's *separate* radio paging services, nor are their respective coverage areas combined for the marketing of a single paging service." ASOT argues that neither disclosure of its "Dealership Agreement" nor a traffic load study are required, so Radio Page's dismissal request should be denied.

4. On February 25, 1985, Radio Page filed a Petition for Expedited Issuance of a Hearing Designation Order and for Other Relief. The Petition was filed in the instant proceeding and in a separate mutually exclusive proceeding involving Radio Page and ASOT applications.[1] As pertinent here,[2] Radio Page requested that the ASOT application be dismissed, or that the aplications be immediately designated for comparative hearing. ASOT filed an Opposition which opposed dismissal but supported designation for a comparative hearing.

5. Radio Page filed a Reply which asserted: "If the Commission chooses not to immediately dismiss ASOT's Penns Grove application, at the very least ASOT should be required to produce the agreement for review by the Commission and Radio Page, and appropriate issues should be included in the hearing designation order." Radio Page also provided "Model Language" for the issues it seeks to have designated against ASOT. ASOT filed a Motion to Strike Radio Page's Reply. ASOT argues that Radio Page's Reply constitutes a premature request for the addition of issues in contravention of § 1.229 of the Commission's rules. Radio Page filed an Opposition.

Discussion

6. On June 3, 1985, Radio Page filed an Informal Objection against RBC's application. Radio Page seeks dismissal of RBC's application, noting that control of RBC was subsequently acquired by Metromedia, Inc. (Metromedia) which, on December 1, 1982, filed a 900 MHz application co-located with RBC's application. Radio Page argues that the 900 MHz application was a major amendment of RBC's application rendering it cut-off and subject to dismissal. On June 14, 1985, RBC filed a letter which requests the dismissal. On June 14, 1985, RBC filed a letter which requests the dismissal of its 35.58 MHz application.

7. Initially, we will grant RBC's request for dismissal of its application. The dismissal of RBC's application moots the Informal Objection filed by Radio Page.

8. After careful consideration, we have concluded that ASOT's Motion to Strike should be denied. Section 1.229 of the Commission's Rules does not preclude the filing of a pre-designation request for the designation of a factual issue against an applicant. However, while Radio Page's request is procedurally permissible, we find that its request is defective for failure to support its factual allegations with "affidavits of a person or persons having personal knowledge thereof." Furthermore, we believe that Radio Page's vague assertion that it "understands" that "some sort of Intercarrier Agreement" exists has been sufficiently rebutted by ASOT's detailed September 24, 1980 description of its "Dealership Agreement" with Radiofone. Accordingly, we will deny Radio Page's request for the designation of factual issues against ASOT. Radio Page's dismissal request is predicated upon the existence of an Intercarrier Agreement between ASOT and Radiofone, an assertion which has been rebutted. Furthermore, Radio Page is incorrect in its assertion that the existence of an Intercarrier Agreement between ASOT and Radiofone would require ASOT to provide a traffic load study of the involved facility. Section 22.516(a) of the Commission's Rules does not require the submission of any traffic load study where the applicant is not an existing licensee in the area sought to be served. Since ASOT has no existing licensed facility in the Penns Grove area, no traffic load study is required. Accordingly, we will also deny Radio Page's dismissal request.

9. The involved applications of Radio Page and ASOT are electrically mutually exclusive. Public Notice, No. PMS–85–15, released May 8, 1985. After careful consideration, we find the applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. Since the applications were filed prior to August 1981, these applications are not subject to lottery selection;[3] therefore, a comparative hearing will be held to determine which applicant would best serve the public interest.

10. Accordingly, it is ordered, that the June 14, 1985 dismissal request of Radio Broadcasting Company is granted, and that its application in File No. 20582–CD–P–79 is dismissed.

11. It is further ordered, that the Motion to Strike filed by Answering Service of Trenton, Inc. is denied.

12. It is further ordered, that the requests of J.M. Blodgett d/b/a Radio Page Communications to dismiss the application of Answering Service of Trenton, Inc., File No. 20540–CD–P–79, as defective, or to designate factual issues against Answering Service of Trenton, Inc. are denied.

13. It is further ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of J.M. Blodgett d/b/a Radio Page Communications, File No. 20100–CD–P–79, and Answering Service of Trenton, Inc., File No. 20540–CD–P–79, are designated for hearing in a Consolidated Proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including

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[1] File No. 21012–CD–P–78, a Radio Page application to modify the antenna system of Station KWT885 at its base station operating on frequency 35.58 MHz at Atlantic City, New Jersey; File No. 21284–CD–P–78, an ASOT application to construct a new facility for Station KED352 on frequency 35.58 MHz at Stafford Township, New Jersey; and File No. 21325–CD–P–78, a Radio Page application to construct a new facility for Station KWT885 on frequency 35.58 MHz at Forked River, New Jersey.

[2] Radio Page's requests for consolidation and for interim authority were denied in *Memorandum Opinion and Order*, Mimeo No. 5617, released July 8, 1985.

[3] *See*, Second Report and Order, Gen. Docket 81–768, released May 27, 1983, 91 FCC 2d 911, para. 129.

the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within 43 dBu contours,[4] based upon the standards set forth in § 22.504(a) of the Commission's Rules [5] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

14. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

15. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

16. It is further Ordered, that the applicants shall file written notices of appearance under Section 1.221 of the Commission's Rules within 20 days of the release date of this Order.

17. This order is issued under § 0.291 of the Commission's rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-19371 Filed 8-14-85; 8:45 am]

BILLING CODE 6712-01-M

[4] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[5] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this peoceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-3-MD-1]

The Maryland Radiological Emergency Response Plan Site-Specific to the Calver Cliffs Nuclear Power Plant; Certification of FEMA Findings and Determination

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Maryland submitted its plans relating to the Calvert Cliffs Nuclear Power Plant to the Regional Director of FEMA Region III on May 26, 1982, for FEMA review and approval. On April 8, 1985, the Regional Director forwarded his evaluation of plans and preparedness to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans, an evaluation of the joint exercises conducted on September 14, 1983, September 28, 1982, and November 17, 1981, in accordance with § 350.9 of the FEMA rule, and a public meeting held on May 25, 1982, to discuss the site-specific aspects of the State and local plans around the Calvert Cliffs Nuclear Power Plant, in accordance with § 350.10 of the FEMA rule. In addition, the Regional Director submitted an addendum dated April 30, 1985, that considered the revision in plans and preparedness. This addendum reported that the remaining outstanding deficiencies have been resolved.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the Calvert Cliffs Nuclear Power Plant are adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting the standards set forth in the Nuclear Regulatory Commission/FEMA criteria in NUREG-0654/FEMA-REP-1, Rev.1, Appendix 3, and in the "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants" (FEMA-43).

FEMA will continue to review the status of offsite plans and preparedness associated with the Calvert Cliffs Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-3-MD-1 maintained by the Regional Director, FEMA Region III, Liberty Square Building (Second Floor), 105 South Seventh Street, Philadelphia, Pennsylvania, 19106.

Dated: August 8, 1985.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-19442 Filed 8-14-85; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL HOME LOAN BANK BOARD

[No. 85-699]

Agency Information Collection Activities Under OMB Review; Application for Membership and Subscription to Stock in the Federal Home Loan Bank System

Dated: August 9, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted an extension, without revision, of its information collection request, "Application for Membership and Subscription to Stock in the Federal Home Loan Bank System, to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Kathy O'Dea, Office of the District Banks. Phone: 202–377–6789.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85–19444 Filed 8–14–85; 8:45 am]

BILLING CODE 6720–01–M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

August 9, 1985.

The Depository Library Council to the Public Printer will next meet October 16–18, 1985, at the Government Printing Office in Washington, D.C.

The purpose of this meeting is to discuss the Depository Library Program.

The meeting will be open to the public. Anyone who wishes to attend should notify the Meeting Coordinator, U.S. Government Printing Office, Library Programs Service (SL), Washington, D.C. 20401. Telephone: (202) 275–1114.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Dated: August 9, 1985.

Ralph E. Kennickell, Jr.,

Public Printer.

[FR Doc. 85–19500 Filed 8–14–85; 8:45 am]

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85M–0369]

Coopervision, Inc.; Premarket Approval of Horizon ™ Model 2000 ND:YAG Ophthalmic Laser

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CooperVision, Inc., Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of the HORIZON ™ Model 2000 Nd:YAG Ophthalmic Laser. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by September 16, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On January 7, 1985, CooperVision, Inc., Irvine, CA 92714, submitted to CDRH an application for premarket approval of the HORIZON ™ Model 2000 Nd:YAG Ophthalmic Laser. The device is a neodymium:yttrium-aluminum-garnet (Nd:YAG) ophthalmic laser that is indicated for discussion of the posterior capsule of the eye (posterior capsulotomy). On May 13, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 12, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 16, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 8, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–19375 Filed 8–14–85; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Medical Technology; Scientific Evaluations; Cardiac Rehabilitation Services

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, and for use of specific elements involved in providing cardiac rehabilitation services. Specifically, we are interested in the medical necessity of exercise therapy programs known as "cardiac rehabilitation services" for cardiac patients; the criteria for selection of patients who might benefit from such services; the content as well as duration of a course of therapy; the medical necessity of continuous EKG telemetric monitoring during cardiac rehabilitation; and the measurement of improvement in the cardiac status of patients receiving cardiac rehabilitation services. We are also interested in determining the specific time period

within which cardiac rehabilitation program services should start after onset of the cardiac event being treated. In particular, what is the optimal period after acute myocardial infarction, coronary artery bypass surgery, or stable angina pectoris for initiating cardiac rehabilitation program services?

For the purposes of this announcement "cardiac rehabilitation services" are defined as a form of exercise therapy for patients who have had a documented diagnosis of myocardial infarction within the preceding 12 months, have had coronary bypass surgery, and/or have stable angina pectoris. Comments are invited regarding this proposed definition of the subject services.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on these assessments, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than November 13, 1985.

Written material should be submitted to: Ernest Feigenbaum, M.D., National Center for Health Services Research and Health Care Technology Assessment, Office of Health Technology Assessment, Park Building, Room 3–10, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4990.

Dated: August 6, 1985.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85–19413 Filed 8–14–85; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A–18943 and A–19271]

Conveyance of Public Land; Reconveyed Land Opened to Entry; Arizona

August 7, 1985.

Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the following described lands were transferred out of Federal ownership in exchange for privately-owned land. The lands transferred into private ownership are described as follows:

T. 10 N., R. 7 W., GSR Mer., Arizona,
Sec. 18, lots 2, 3, 4, N½NE¼, E½W½;
Sec. 19, lots 1, 2, 3, 4, E½W½, E½.
T. 10 N., R. 8 W.,
Sec. 13, N½.
T. 13 S., R. 19 E.,
Sec. 1, lot 4, SW¼NE¼, SW¼NW¼, NW¼SW¼, W½SE¼;
Sec. 12, E½NW¼.
T. 6 S., R. 26 E.,
Sec. 32, lots 3, 4.
T. 8 S., R. 26 E.,
Sec. 3, SW¼SW¼;
Sec. 4, NW¼SE¼;
Sec. 9, SE¼NE¼, E½SE¼;
Sec. 10, NW¼NW¼, S½NW¼, W½SW¼;
Sec. 15, W½NW¼, SE¼NW¼, N½SW¼;
Sec. 18, E½NW¼;
Sec. 20, SW¼SW¼;
Sec. 21, W½NE¼NE¼, W½NE¼, E½NE¼NW¼, SE¼NW¼, NE¼SW¼, E½NW¼SW¼, SW¼SW¼, NW¼SE¼;
Sec. 22, S½SW¼;
Sec. 28, NW¼NW¼;
Sec. 29, NW¼NW¼.
T. 9 S., R. 26 E.,
Sec. 6, lot 4.
T. 20 S., R. 32 E.,
Sec. 15, E½SE¼;
Sec. 23, lots 3, 4.

The above-described lands comprise 3,081.72 acres in Cochise Graham, and Yavapai Counties.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and the acquisition of private land by the Federal Government.

The following described land acquired by the Federal Government in this exchange will be open to entry under the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 18, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

T. 3 S., R. 16 E., GSR Mer., Arizona,
Sec. 16, lots 1, 2, 3, 4, S½S½.
T. 5 S., R. 21 E.,
Sec. 32, NE¼, S½;
Sec. 36, all lands lying south of the San Carlos Indian Reservation Boundary.
T. 2 S., R. 22 E.,
Sec. 2, lots 1, 2, 3, 4;
Sec. 36, S½NE¼, NW¼, S½.
T. 3 S., R. 22 E.,
Sec. 36, N½, W½SW¼.
T. 4 S., R. 22 E.,
Sec. 2, lots 1, 2, 3, 4.
T. 3 S., R. 23 E.,
Sec. 16, all.
T. 4 S., R. 24 E.,
Sec. 32, all;
Sec. 36, SW¼SE¼.
T. 5 S., R. 24 E.,
Sec. 2, S½N½, W½SW¼, N½SE¼.

The above-described lands comprise 4,156.73 acres in Gila and Graham Counties.

At 9 a.m. on September 18, 1985, the reconveyed land described above will be open to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 9 a.m. on September 18, 1985, the reconveyed land described above will be open to applications and offers under the mineral leasing laws, subject to existing State-issued leases and permits for the terms of said leases and permits. All applications and offers received prior to 9 a.m. on September 18, 1985 will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Those applications and offers received thereafter shall be considered in the order of filing.

The following described land acquired by the Federal Government in this exchange will not be open to appropriation under the public land laws, including the mining and mineral leasing laws:

T. 5 S., R. 9 E., GSR Mer., Arizona,
Sec. 14, that part of the NW¼SW¼ lying northwesterly of the west bank of the Florence-Casa Grande Canal, described as follows:
Beginning at the west quarter corner of said Section 14, Thence east along the east-west mid-section line to the west bank of the Florence-Casa Grande Canal;
Thence southwesterly along the west bank of the Florence-Casa Grande Canal to the intersection of the west line of said Section 14;
Thence northerly along the west line of said NW¼SW¼ to the point of beginning.
T. 6 S., R. 9 E.,
Sec. 6, that part of the SW¼SE¼ lying westerly of the west bank of the Florence-Casa Grande Canal, described as follows:
Beginning at the south quarter corner of said Section 6, Thence northerly 100 feet along the north-south mid-section line;
Thence South 89°51' East being parallel with the South line of said Section to a

point, from which the westerly bank of said Florence-Casa Grande Canal lies South 89°51' East 100 feet;
Thence northeasterly and parallel with the West bank of said Canal 50 feet to a point;
Thence South 89°51' East 100 feet to the Westerly bank of said Canal;
Thence Southwesterly along said Westerly bank of the Canal to the South line of said Section 6;
Thence North 89°51' West along said South line to the point of beginning.

T. 3 S., R. 17 E.,
Sec. 16, lots 1, 2, 3, 4, S½S½.
T. 3 S., R. 23 E.,
Sec. 2, lots 3, 4, S½NW¼, NW¼SW¼.
T. 3 S., R. 24 E.,
Sec. 32, all.
T. 4 S., R. 24 E.,
Sec. 2, NW¼SW¼.
T. 13 S., R. 27 E.,
Sec. 25, lots 1, 2, 3, 4, W½E½, W½;
Sec. 36, lots 1, 2, 3, 4, W½E½, W½.
T. 14 S., R. 28 E.,
Sec. 16, N½, SW¼, N½SE¼.

The above-described lands comprise 2,867.45 acres in Cochise, Gila, Graham, and Pinal Counties.

The exchange was made based on approximately equal values.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-19425 Filed 8-14-85; 8:45 am]
BILLING CODE 4310-32-M

[M 58537]

Conveyance and Opening of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance and Order Providing for Opening of Public Land in Fergus County, Montana.

SUMMARY: The order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq. (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document. No minerals were transferred by either party in the exchange.

DATE: At 9 a.m. on September 25, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including the mining laws, but not from exchange, by the Notices of Realty Action published in the Federal Register on March 1, 1984 (49 FR 7663) an on December 19, 1984 (49 FR 49384). The segregation terminated on issuance of the quitclaim deed on July 3, 1985.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following described surface estate was conveyed to Thomas J. DeMars and Jacqueline DeMars:

Principal Meridian, Montana

T. 21 N., R. 19 E.,
Sec. 35, SW¼
T. 20 N., R. 20 E.,
Sec. 4, W½SW¼;
Sec. 5, lot 12, E½SE¼;
Sec. 6, lots 1-4, 7-14, 17-19;
Sec. 8, SE¼NE¼.
T. 21 N., R. 20 E.,
Sec. 31, lots 3, 4, E½SW½.

Aggregating 1,160.59 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following land in Fergus County, Montana:

Principal Meridian, Montana

T. 23 N., R. 22 E.,
Sec. 17, lots 6, 7, NW¼SW¼;
Sec. 18, lot 13, SW¼SE¼; and
Sec. 19, lots 1 and 2.

Containing 241.10 acres.

3. The following described public lands were segregated from settlement, sale, location and entry, including the mining laws, by the Notice published on March 1, 1984, but were not used in the exchange:

Principal Meridian, Montana

T. 20 N., R. 20 E.,
Sec. 8, N½NE¼, SW¼NE¼, NW¼

Containing 280 acres.

4. The values of Federal public land and the nonfederal land in the exchange were both appraised at $136,000.

5. At 9 a.m. on September 25, 1985, the lands described in paragraph 2 above that were conveyed to the United States and those lands described in paragraph 3 above that were segregated from entry will be open to the operation of the public land laws.

Dated: August 5, 1985.
John A. Kwiatkowski,
Acting State Director.

[FR Doc. 85-19424 Filed 8-14-85; 8:45 am]
BILLING CODE 4310-DN-M

Meeting; Lakeview District Grazing Advisory Board

Notice is hereby given, in accordance with Pub. L. 92-463 of a meeting of the Lakeview District Grazing Advisory Board to be held September 5, 1985. The meeting will take place at 10:00 a.m. in the conference room of the Bureau of Land Management office located at 1000 South 9th Street, P.O. Box 151, Lakeview, Oregon 97630. The agenda will center on the following information items:

1. Opening remarks and current issues by the District Manager.
2. Allocation of forage.
3. Grazing Board charter.
4. Fiscal year 1986 funding.
5. Range Maintenance Evaluation.
6. Range Monitoring Policy.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the board is requested to contact the District Manager at the above address prior to August 30, 1985. Summary minutes of the meeting will be available for review within 30 days following the meeting.

Dated: August 13, 1985.
Dick Harlow,
Associate District Manager.

[FR Doc. 85-19445 Filed 8-14-85; 8:45 am]
BILLING CODE 4310-84-M

Bakersfield District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Grazing Board Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) and the Federal Land Policy and Management Act (Pub. L. 94-579) that the Bakersfield District Grazing Advisory Board will meet formally from 9 a.m. to 4 p.m. on Thursday, September 19, 1985 in Room 335 of the Federal Building, 800 Truxtun Avenue, Bakersfield, California.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include discussion of FY85 project accomplishments, FY 86 planned projects, the nationwide grazing fee study, the experimental stewardship

program, and the range improvement maintenance policy.

The meeting is open to the public. Interested persons may make oral statements to the Board, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify, in writing, the Bakersfield District Manager (Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301) by September 16, 1985.

Summary minutes of the meeting will be maintained in the Bakersfield District Office and will be available for reproduction, during business hours, within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Tim Burke, District Range Conservationist, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301; (805) 861–4191

Dated: August 8, 1985.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 85–19479 Filed 8–14–85; 8:45 am]

BILLING CODE 4310–40–M

Butte District Montana; Grazing Advisory Board Meeting

The Butte District Grazing Advisory Board will meet on Wednesday, September 18, 1985 in the conference room of the Dillon Resource Area Office, at the Ibey Building, Dillon, Montana. The meeting will begin at 7:00 a.m.

The meeting will consist of a field trip in conjunction with the Butte District Advisory Council to various activities and points of interest in the Centennial Valley.

The field trip is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make an oral statement should make advance arrangements with the District Manager, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702.

Summary minutes of the meeting will be maintained in the district office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: August 8, 1985.

Jack A. McIntosh,

District Manager.

[FR Doc. 85–19480 Filed 8–14–85; 8:45 am]

BILLING CODE 4310–DN–M

Butte District Montana; District Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Butte District Advisory Council will be held Tuesday and Wednesday, September 17 and 18, 1985.

The meeting will begin at 1 p.m., September 17 in the conference room of the Dillon Resource Area Office, Ibey Building, Dillon, Montana. The agenda will include (1) the Montana land adjustment program, (2) the drought situation, (3) the BLM/Forest service Interchange, (4) stream access and hunger access, and (5) council topics. On Wednesday there will be a field trip to various points of interest in the Centennial Valley.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make an oral statement should make advance arrangements with the District Manager.

Summary minutes of the meeting will be maintained in the district office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: August 8, 1985

Jack A. McIntosh,

District Manager.

[FR Doc. 85–19481 Filed 8–14–85; 8:45 am]

BILLING CODE 4310–DN–M

[A–19162]

Public Land Exchange; Pima County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange; Public Lands in Pima County, AZ.

SUMMARY: BLM is considering the following described public lands for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 12 S., R. 11 E., Sec. 33: Lot 2; Lot 3: S½; Lot 4: S½, S½S½S½NW¼; Lots 5, 6, 7, 11; E½SW¼NE¼; E½E½W½SW¼NE¼; E½W½E½W½SW¼NE¼; SW¼NW¼; W½W½SE¼NW¼; W½W½E½W½ SE¼NW¼; W½E½W½E½W½SE¼ NW¼; W½E½E½W½E½W½SE¼ NW¼.

Comprising approximately 323 acres.

In exchange for these lands, the federal government would acquire approximately 295 acres from John Woodin of Marana, Arizona. These private lands are within crucial desert bighorn sheep range in the Silver Bell Mountains northwest of Tucson, Arizona.

Publication of this notice terminates scrip classification A 58 on all the above described federal land and segregates them from appropriation, under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Upon completion of the environmental assessment and land use decision, a final Notice of Realty Action will be published. The Notice will provide a final description of the Federal and private lands to be exchanged, including reservations.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including a listing of the selected privately owned lands, may be obtained from the Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of forty-five (45) days from date of issuance of this notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: August 9, 1985.

Marlyn V. Jones,

District Manager.

[FR Doc. 85–19492 Filed 8–14–85; 8:45 am]

BILLING CODE 4310–32–M

Emergency Closure of King Range Roads; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of road closure.

SUMMARY: Pursuant to 43 CFR 8364.1 the following roads are being closed to public vehicular use to protect people and property and hazardous conditions, prevent trespass on private property, protect resource values, and minimize potential impact to wilderness study areas: (1) Cooskie Creek Road in Sections 5, 8, and 9 of T. 3 S., R. 2 W., H.M., (2) a portion of Johnny Jack Ridge Road in Section 6, T. 2 S., R. 3 W., H.M., (3) Whale Gulch Road, (4) Smith-Etter Road west of Telegraph Ridge, and (5)

access to Spanish Ridge Road is Sections 14, 15, and 23 of T. 3 S., R. 2 W., H.M. This is an emergency closure which will continue in effect until vehicle route designations are completed for the entire King Range National Conservation Area.

DATES: This closure is effective August 9, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Cann, Outdoor Recreation Planner, Arcata Resource Area, P.O. Box II, Arcata, California 95521, telephone (707) 822–7648.

Dated: August 7, 1985.

Timothy P. Julius,

Acting District Manager.

[FR Doc. 85–19493 Filed 8–14–85; 8:45 am]

BILLING CODE 4310–40–M

Oregon: Diamond Craters Recreation Management Plan; Draft

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Draft Diamond Craters Recreation Management Plan availability.

SUMMARY: This notice sets forth the public comment period when written and verbal comments will be accepted on the Diamond Craters Recreation Management Plan draft document.

DATES: September 3, 1985; Draft document available: October 2, 1985 30-day comment period ends.

ADDRESS: For further information contact: Joshua L. Warburton, District Manager, Burns District, Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720. Telephone (503) 573–5241.

Copies of the Diamond Craters Recreation Management Plan are available for review at the following public libraries or obtainable at the following BLM offices:

Harney County Library, 80 West 'D' Street, Burns, OR 97720 (503) 573–6670

Grant County Library, 507 S. Canyon Boulevard, John Day, OR 97845 (503) 575–1992

BLM—Burns District Office, 74 South Alvord Street, Burns, OR 97720 (503) 573–5241

BLM—Oregon State Office (912), 825 N.E Multnomah Street, Portland, OR 97208 (503) 231–6274

SUPPLEMENTARY INFORMATION: This plan provides more detail than a previous management plan. It outlines the management direction the Bureau of Land Management will be taking in the coming years on the public land in Diamond Craters Outstanding Natural Area which is known for its great variety of basaltic igneous-volcanic structures. During the public comment period, no public meetings are scheduled, as this document is a result of public comments and recommendations from interested people in numerous public meetings held throughout 1979 and 1980 prior to when Diamond Craters was designated as an Outstanding Natural Area (ONA) and Area of Critical Environmental Concern (ACEC).

Dated: August 7, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85–19490 Filed 8–14–85; 8:45 am]

BILLING CODE 4310–33–M

Meeting: Montrose District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Montrose District Grazing Advisory Board meeting notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Montrose District Grazing Advisory Board will be held in Paonia, Colorado.

DATE: Friday, September 13, 1985, 10:00 a.m. at the Town Hall located at 214 Grand Avenue, Paonia, Colorado. Requests to present oral comments must be received by September 11, 1985. Depending on the number of persons requesting time, a per person time limit may be established by the District Manager.

ADDRESS: Submit requests to comment or for further information to: District Manager, Montrose District Office, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, (303) 249–7791.

SUPPLEMENTARY INFORMATION: All meetings of the Grazing Advisory Board are open to the public. Interested persons may file written statements or make oral statements to the Board between 10:00 and 11:00 a.m. The business meeting will include the following topics:

1. Review District Rangeland Improvement proposals;
2. Briefing on Grazing Advisory Board and current member status;
3. Briefing on the Wild Horse Removal and Adoption Project;
4. Update on the BLM/FS Interchange Program and the Montrose District Planning efforts;
5. Advisory Board expenditures for Range Improvement work;
6. Arrangements for the next meeting.

Summary minutes of the board will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Dated: August 9, 1985.

Paul W. Arrasmith,

District Manager.

[FR Doc. 85–19496 Filed 8–14–85; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Sohio Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Sohio Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6280, Block 165, East Breaks Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on August 5, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The prupose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and

procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 7, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico, OCS Region.

[FR Doc. 85-19498 Filed 8-14-85; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Jordan Aqueduct, Bonneville Unit, Central Utah Project, UT; Proposed Draft Contracts With Salt Lake County Water Conservancy District, Metropolitan Water District, and Central Utah Water Conservancy District Available

In accordance with procedures established by the Department of the Interior concerning public participation in water service and repayment contract negotiations, the Bureau of Reclamation announces the availability of two draft repayment contracts, one with the Salt Lake County Water Conservancy District (SLCWCD) and the other with the Metropolitan Water District (MWD) of Salt Lake City. The contracts will repay 66 percent of the costs of the Jordan Aqueduct. The remaining 34 percent of the Jordan Aqueduct costs will be repaid by the Central Utah Water Conservancy District (CUWCD) under the provisions of an existing 1965 repayment contract. The CUWCD will be a party to each of the aforementioned contracts.

The Jordan Aqueduct is a feature of the municipal and industrial system of the Bonneville Unit, Central Utah Project. The contract is written pursuant to Reclamation Laws and authorized under the Act of Congress approved April 11, 1956 (70 Stat. 105). The Jordan Aqueduct was constructed to deliver 70,000 acre-feet of M&I water to communities in Salt Lake County. These two contracts will provide total repayment coverage for the Aqueduct, which is near completion.

The terms and conditions of the proposed contracts were approved as to form by CUWCD on August 8, 1985, by MWD on August 9, 1985, but have not yet been approved by SLCWCD and the Secretary of the Interior, which will be necessary before the contracts are executed.

The public is invited to submit written comments on the form of the proposed contracts no later than August 28, 1985. The Commissioner of Reclamation will review comments submitted. Based on the number, source, and nature of the comments, he will decide whether to hold a public hearing.

Requests for copies of the proposed contracts and comments on the contracts should be addressed to: Regional Director, Bureau of Reclamation, Attention: 400, P.O. Box 11568, Salt Lake City, Utah 84147.

Dated: August 12, 1985.

Clifford I. Barrett,

Acting Commissioner.

[FR Doc. 85-19522 Filed 8-14-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[No. 39976; Ex Parte No. 346 (Sub-No. 8)]

CSX Railroads; Multi-Carrier Boxcar Contracts and Quotations; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of dismissal of exemption petition.

SUMMARY: The Commission dismisses a petition by the CSX Railroads seeking exemption of multi-carrier boxcar freight rate contracts and Opportunity Pricing Actions (OPA's) from the contract filing requirements of 49 U.S.C. 10713. (OPA's are unsigned written confirmations of oral transportation agreements.) The Commission finds that these contracts and OPA's do not constitute joint rates and are not subject to the Commission's reasserted jurisdiction over boxcar joint rates [50 FR 20419].

ADDRESSES: Petitions and replies referring to N. 39976 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and served on all parties to Ex Parte No. 346 (Sub-No. 8).

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: July 25, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissoners Simmons and Lanboley dissented with separate expressions.

James H. Bayne,

Secretary.

[FR Doc. 85-19418 Filed 8-14-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree In Action To Enjoin Emission of Air Pollutants; Dennison Monarch Systems, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Dennison Monarch Systems, Inc.*, Civil Action No. 85-CIV-5656, has been lodged with the United States District Court for the Southern District of New York. The consent decree establishes a compliance program for the New Windsor, Orange County, New York plant owned and operated by Dennison Monarch Systems, Inc., to bring the plant into compliance with the Clean Air Act, 42 U.S.C. 7401 *et seq.* and the New York State Implementation Plan ("SIP"), relating to the emission of volatile organic compounds ("VOC"), and requires payment of a civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *Dennison Monarch Systems, Inc.*, D.J. Ref. No. 90-5-2-1-683.

The consent decree may be examined at the office of the United States Attorney, Southern District of New York, One St. Andrews Plaza, New York, New York 10007; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.00 (10 cents per page

reproduction charge) payable to the Treaurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-19491 Filed 8-14-85; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Justice Assistance

Criminal Justice Discretionary Grants; Extension of Program Deadline for Family Violence Intervention Demonstration Program

AGENCY: Bureau of Justice Assistance.

ACTION: Notice.

SUMMARY: This notice supplements the earlier **Federal Register** Notice of Friday, July 26, 1985 (50 FR 30.664). Part VI, Subpart I of that notice described a demonstration program for Family Violence Intervention.

SUPPLEMENTARY INFORMATION: Because of delays in the preparation of the noted program reference materials, the program deadlines are being extended as follows:

The due date for Family Violence Intervention concept papers is extended one month from August 30, 1985, to September 30, 1985. Best qualified candidates selected by the Bureau of Justice Assistance and inter-agency screening panels will be invited to submit applications by October 31, 1985. Project awards are projected for mid-December, 1985.

No other deadlines in the original Notice are changed.

Mack Vines,

Director, Bureau of Justice Assistance.

[FR Doc. 85-19478 Filed 8-14-85; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Fermi-2 Facility; Issuance of a Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a decision pursuant to 10 CFR 2.206 concerning a petition filed by Stanley Nietubicz. The Petitioner requested that the Commission institute legal action to rectify the alleged lack of viable evacuation routes under flood conditions for certain areas near the Fermi-2 facility.

After considering the Petitioner's request, the staff has determined that adequate measures have been taken to resolve the issue raised by the Petitioner. The reasons for this decision are more fully explained in the "Director's Decision Under 10 CFR 2.206" (DD-85-13) issued today. A copy of this decision will be available for public inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555 and in the local public document room at the Monroe County Library, Reference Department, 3700 South Custer Road, Monroe, Michigan 41861.

A copy of the decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, decides to review that decision.

Dated at Bethesda, Maryland, this 12th day of August 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-19497 Filed 8-14-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-447]

General Electric Co.; General Electric Standard Safety Analysis Report (GESSAR II BWR/6 Nuclear Island Design); Issuance of Amendment No. 1 to Final Design Approval No. FDA-1

Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has issued Amendment No. 1 to FDA-1, the Final Design Approval for the BWR/6 Nuclear Island design described in the General Electric Standard Safety Analysis Report GESSAR II. FDA-1, which was issued by the NRC staff on July 27, 1983 (48 FR 35050), permitted the GESSAR II design to be referenced in utility applications for operating licenses for those plants that referenced the Preliminary Design Approval for the GESSAR-238 Nuclear Island design (PDA-1) at the construction permit stage. Amendment No. 1 to FDA-1 removes the present constraint on the foreward referenceability of the GESSAR II design and permits it to be referenced in new construction permit and operating license applications as provided by Paragraph B.3.b of the Commission's "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants" (50 FR 32138).

GESSAR II contains final safety-related design information for the nuclear island portion of a BWR-6/Mark III containment boiling water reactor type nuclear power plant which includes the nuclear steam supply system (NSSS), engineered safety feature systems, reactor building (including shield building and containment), auxiliary building, control building, radwaste building, fuel handling building, and related systems and structures. The BWR/6 Nuclear Island reference design is for a facility which would operate at a core thermal power level of 3730 megawatts (1269 megawatts electrical, nominal net).

The GESSAR II design was reviewed by the NRC staff pursuant to Appendix 0 to 10 CFR Part 50. The Safety Evaluation Report (SER), NUREG-0979, dated April 1983 and Supplement 1 thereto dated July 1983 document the results of the NRC staff's review and evaluation of the GESSAR II design including Amendments 1 through 16 thereto. The SER also addresses the comments of the Advisory Committee on Reactor Safeguards (ACRS) as reflected in its report to the Commission dated June 15, 1983. A copy of the ACRS' report is included to Appendix F to SER Supplement 1.

Based on its review, the NRC staff has concluded, subject to the conditions set forth in Amendment 1 to FDA-1, that the information provided in GESSAR II complies with the requirements of 10 CFR Part 50, Appendix 0, and with Paragraph B.3.b(1) of the Commission's "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants," and is acceptable for incorporation by reference in utility applications for construction permits and operating licenses. Upon completion of NRC Staff and ACRS review for severe accident considerations, this Final Design Approval will be further amended.

Issuance of Amendment No. 1 to FDA-1 does not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards and other presiding officers in any proceeding under Subpart G of 10 CFR Part 2. This action only approves the design of a facility for use for reference purposes in applications for construction permits and operating licenses for nuclear power plants. It does not authorize the operation of any nuclear power plant or any other facility. The environmental impacts associated with any facility proposed to be operated utilizing the approved reference design will be considered in accordance with the

Commission's regulations in 10 CFR Part 51.

The Final Design Approval as amended is effective as of its date of issuance and shall be further amended at the completion of the severe accident review described in Paragraph 6(c) therein to implement the results of that review.

For further details with respect to this action, see (1) Amendment No. 1 to FDA–1 and Attachment A thereto; (2) the NRC staff's Safety Evaluation Report, NUREG–0979, dated April 1983 and Supplement 1 thereto, dated July 1983; (3) the report of the Advisory Committee on Reactor Safeguards dated June 15, 1983; (4) the General Electric Standard Analysis Report GESSAR II and Amendments 1 through 16 thereto; and (5) the Commission's "Policy Statement on Severe Reactor Accidents regarding Future Design and Existing Plants." These documents are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555. A copy of Amendment No. 1 to FDA–1 and Attachment A thereto may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and Supplement 1 thereto may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7982.

Dated at Bethesda, Maryland, this 9th day of August, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr., Director,

Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85–19499 Filed 8–14–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–352]

Limerick Generating Station, Unit No. 1 Issuance of Facility Operating License

Notice is hereby given that pursuant to the approval given in a Memorandum and Order dated August 8, 1985, the Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF–39 to the Philadelphia Electric Company, (the licensee) which authorizes operation of the Limerick Generating Station, Unit No. 1 (the facility), by Philadelphia Electric Company at reactor core power levels not in excess of 3293 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. On October 26, 1984, the Commission issued Facility Operating License No. NPF–27, which authorized operation of the Limerick Generating Station, Unit No. 1. Facility Operating License No. NPR–39 supersedes Facility Operating License No. NPF–27.

The Limerick Generating Station, Unit No. 1, is a boiling water nuclear reactor located on the licensee's site in Montgomery and Chester Counties, Pennsylvania on the banks of the Schuylkill River approximately 1.7 miles southeast of the city limits of Pottstown, Pennsylvania and 21 miles northwest of the city limits of Philadelphia, Pennsylvania.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on August 21, 1981 (46 F.R. 42557–42558).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity autorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details in respect to this action, see (1) Facility Operating License NPF–39 complete with Technical Specifications and the Environmental Protection Plan; (2) the interim report of the Advisory Committee on Reactor Safeguards, dated October 18, 1983; (3) the subsequent report of the Advisory Committee on Reactor Safeguards dated November 6, 1984; (4) The Commission's Safety Evaluation Report, dated August 1983, Supplement No. 1 dated December 1983, Supplement No. 2 dated October 1984, Supplement No. 3 dated October 1984, Supplement No. 4 dated May 1985, Supplement No. 5 dated July 1985 and Supplement No. 6 dated August 1985; (4) the Final Safety Anslysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) the Final Environmental Statement dated April 1984; and (7) the Commission Memorandum and Order dated August 8, 1985.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania, 19464. A copy of Facility Operating License NPF–39 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its supplements 1, 2, 3, 4, 5 and 6 (NUREG–0991) and the Final Environmental Statement (NUREG–0974) may be purchased by calling 301–492–9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or may be purchased from the National Technical Information Service, Department of Commerce 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 8th day of August 1985

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 85–19500 Filed 8–14–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System; Interest Rate for Deposits and Redeposits in 1985

AGENCY: Office of Personnel Management.

ACTION: Notice of Interest Rate to be Charged on Unpaid Balances as of December 31, 1985.

SUMMARY: The Office of Personnel Management announces that a 13 percent interest rate will be charged on the unpaid balance as of December 31, 1985, for certain deposits and redeposits to the Civil Service Retirement Fund.

FOR FURTHER INFORMATION CONTACT: John Ray, Office of Pay and Benefits Policy, Office of Personnel Management, Washington, D.C. 20415, (202) 254–7052.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1982, (Pub. L. 97–253) provided that, beginning in calendar year 1985, the interest rate charged applicants for certain deposits for noncontributory service and redeposits for prior refunds would change from 3 percent to a variable rate determined by the Secretary of the Treasury. Further, § 831.105(g) of the Code of Federal Regulations states that, "For calendar

year 1985 and for each subsequent calendar year, OPM will publish a notice in the **Federal Register** that will be in effect during that calendar year." This notice will serve to satisfy that regulatory requirement.

The variable interest rate applies only to: (1) Deposits of refunds when the application for refund was received after September 30, 1982; (2) deposits for noncontributory service performed after September 30, 1985; and (3) deposits for post-1956 military service paid after September 30, 1985, or two years after the applicant was first employed in a position subject to the Civil Service Retirement System, whichever is later.

For calendar year 1985, the interest rate is 13 percent. However, this rate will only apply to certain deposits or redeposits unpaid on December 31, 1985. Therefore, individuals either making or considering making deposits will not be directly affected by this change in the interest rate until December 31, 1985.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 85-19454 Filed 8-14-85; 8:45 am]

BILLING CODE 6325-01-M

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, September 5, 1985
Thursday, September 12, 1985
Thursday, September 19, 1985
Thursday, September 20, 1985

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management represenatatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Managemnet under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW, Washignton, D.C. 20415 (202) 632-9710).

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

August 12, 1985.

[FR Doc. 85-19455 Filed 8-14-85; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension

File No. and Rule/Form

270-128—Rule 20(b), Rule 100(a), 20(c) & .23, Form U-1, Form U-A
270-129—Rule 24, Rule 50
270-162—Rule 44
270-169—Rule 29a, Rule 29b, Rule 72
270-166—Rule 62, Form U-R-I
270-79—Rule 93, Rule 94, Part 256, Part 256a, Form U-13-60
270-164—Rule 45
270-83—Rule 2, Form U-3A-2
270-77—Rule 3, Form U3A-3-1
270-74—Rule 95, Form U-13E-1
270-81—Rule 20(d), Rule 47(b), Form U-6B-2
270-168—Rule 1(a), Rule 1(b) Rule 1(c), Form U5A, Form U-5B, Form U5S
270-75—Rule 7, Rule 7(d), Form U-7D
270-163—Rule 42
270-161—Rule 71(a), Form U-12(I)A, Form U-12(I)B
270-82—Rule 83
270-80—Rule 87, Rule 88, Form U-13-1
270-78—Rule 26

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension the following rules/forms under the Public Utility Holding Company Act of 1935:

Rule 20(b), Rule 100(a), 20(c) & .23, Form U-1, Form U-A—Family of Form U-1, Amendments thereto; filings containing data following U-1 required for hearings;
Rule 24, Rule 50—Reports of consummation of transactions;
Rule 44—Sales of securities and assets;
Rule 29a, 29b, Rule 72—Filing of reports to stockholders and state commissions;
Rule 62, Form U-R-I—Solicitation of securities;
Rule 93, Rule 94, Part 256, Part 256a, Form U-13-60—Family of uniform system of accounts for mutual and subsidiary service companies;
Rule 45—Loans and capital contributions to associate companies in a registered holding company system;
Rule 2, Form U-3A-2—Statement by holding company claiming exemption;
Rule 3, Form U3A3-1—Statement by bank claim exemption;
Rule 95, Form U-13E-1—Reports required from affiliated and non-affiliated service companies, and companies principally engaged in performing services;
Rule 20(d), Rule 47(b), Form U-6B-2—Certificate of Notification;
Rule 1(c), Form U5S—Annual report of registered public utility holding company;
Rule 7, Rule 7(d), Form U-7D—Certificate;
Rule 1(a), Rule 1(b), Form U5-A, Form U5B—Family of registration filings;

Rule 42—Acquisition, retirement, and redemption of securities by issuer;
Rule 71(a), Form U–12(I)A, Form U–12(I)B—Family of reports on Section 12(I) activities;
Rule 83—Exemption in the case of transactions with foreign associates;
Rule 87, Rule 88, Form U–13–1—Approval of mutual service companies, organization and conduct of business of a subsidiary service company;
Rule 26—Financial statement and recordkeeping requirements for registered holding companies and subsidiaries.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

August 7, 1985.

[FR Doc. 85–19459 Filed 8–14–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23788; 70–7137]

The Connecticut Light and Power Co., Proposal To Issue and Sell First and Refunding Mortgage Bonds

August 8, 1985.

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric and gas utility subsidiary of Northeast Utilities ("NU"), a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6(b), and 9(c) under the Public Utility Holding Company Act of 1935 ("Act") and Rules 40 and 50 thereunder.

CL&P proposes to issue up to $150,000,000 principal amount of its First and Refunding Mortgage Bonds (Bonds) in one or more series from time to time, through December 31, 1986. The Bonds may be sold through public offerings ("Public Offering Bonds") or private placements ("Private Placement Bonds") or through a combination of public offerings and private placements.

The Bonds will be issued under a Supplemental Indenture to the Indenture of Mortage and Deed of Trust ("Indenture").

Each series of the Bonds would have a maturity of two to thirty years. The interest rate and the price, exclusive of accrued interest, shall not be less than 98% nor more than 100% of the principal amount.

The net proceeds from the issue and sale of the Bonds will be used to refund four series of approximately $138 million outstanding CL&P bonds bearing relatively high interest rates ("High Coupon Bonds"), with fixed redemption dates in 1985 and 1986.

Any net proceeds from the issue and sale of a series of the Bonds that are in excess of the amount necessary to redeem High Coupon Bonds will be used to repay short-term borrowings or construction trust borrowings. Since the Bonds will probably be sold in advance of the redemption of the High Coupon Bonds, the net proceeds may be invested temporarily in high-grade securities, or they may be used to repay outstanding short-term or construction trust borrowings, pending subsequent short-term or construction trust borrowings to finance redemptions.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 3, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–19460 Filed 8–14–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14667; File No. 812–6020]

Eaton Vance Government Obligations Trust; Application for an Order Permitting Monthly Distributions of Long-Term Capital Gains

August 9, 1985.

Notice is hereby given that Eaton Vance Government Obligations Trust ("Applicant"), 24 Federal Street, Boston, MA 02110, filed an application on January 10, 1985, and amendments thereto on June 4 and June 20, 1985, requesting an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from the provisions of section 19(b) of the Act and Rule 19b–1 thereunder to the extent necessary to permit Applicant to distribute as often as monthly its long-term capital gains, including gains resulting from options and futures transactions and sales of portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, and to the Act and the rules thereunder for the text of their relevant provisions.

According to the application, Applicant is registered under the Act as an open-end, management investment company whose investment objective is to realize a high current return by investing in securities issued, quaranteed or otherwise backed by the United States Government (including Government National Mortgage Association mortgage-backed certificates and issues of federal agencies and federally chartered corporations) and by engaging in active management strategies with options on these securities. Applicant states that it will also engage in future transactions and related techniques for hedging purposes. Eaton Vance Management, Inc. ("EVM") acts as investment adviser to Applicant managing its investments and affairs subject to the supervision of the Applicant's Board of Trustees.

Applicant states that it pays monthly dividends from net investment income and may also make distributions of short-term capital gains as often as monthly. Applicant states further that pursuant to Rule 19b–1 under the Act, it is permitted to make distributions of long-term capital gains only once for each fiscal year.

According to the application, Applicant does not expect to recognize any long-term capital gains on transactions in portfolio securities during the period from inception to June 30, 1985, and intends that long-term gains on portfolio securities transactions will be a de minimus component of dividends and distributions paid by Applicant in the future. However, Applicant may be required to recognize long-term capital gains or losses in connection with its transactions in options, futures and options on futures. Applicant represents that, under the Internal Revenue Code, gains or losses incurred on such transactions are treated as 60% long-term and 40% short-term for Federal income tax purposes. Although Applicant might be able to elect out of such 60/40 treatment for the gains and losses incurred on proposed options and futures transactions, it has

decided not to pursue this possibility because it believes such 60/40 treatment to be more favorable to its tax-paying shareholders than treating 100% of gains and losses from these transactions as short-term gains and losses.

Applicant asserts that, if it is not permitted to distribute more often than annually all of its long-term capital gains from options and futures transactions, a portion of gains and losses from these transactions would be reported and distributed monthly to shareholders while the remainder of such gains and losses would be reported and distributed annually. Applicant represents that this practice would give to shareholders a distorted and confusing picture of the return earned on Applicant's investments, especially since the source and character of the 60% of gains and losses treated as long-term are no different from the 40% of gains and losses treated as short-term.

According to the application, gains or losses recognized on the sale of portfolio securities pursuant to the exercise of an option or delivery of securities under a futures contract involve two elements of gain or loss. Gain or loss attributable to the options or futures transaction receives 60/40 treatment without regard to the length of Applicant's holding period. On the other hand, gain or loss reflecting ordinary appreciation or depreciation in the value of the securities is treated as short-term or long-term depending on the length of Applicant's holding period. Applicant believes that shareholders may be confused if the portion of long-term gains or losses on the sale of portfolio securities attributable to options and futures transactions were being distributed and reported monthly while gains or losses attributable to ordinary appreciation or depreciation in the value of portfolio securities were being distributed annually. Applicant further represents that its proposed distribution and reporting of all income and capital gains distributions on the same schedule would also simplify the calculation of distributions and the administration of Applicant.

Applicant states that the concerns which led to the adoption of section 19(b) of the Act and Rule 19b–1 thereunder are inapplicable to the Applicant's proposed procedure for distributing long-term capital gains and losses monthly. In response to the Commission's concern that shareholders would be misled by mixing dividends and short-term capital gains distributions with long-term capital gains distributions, Applicant asserts that such mixing has become unavoidable due to the Internal Revenue Code's arbitrary characterization of gains and losses from options and futures transactions as 60% long-term and 40% short-term. Applicant proposes to minimize confusion by providing statements to shareholders that itemize the amount and percentage of dividends and distributions attributable to each type of transaction.

In addition, Applicant states that there will be no improper pressure to realize long-term capital gains on options and futures transactions because such gains are artifically created by the 60/40 rule. Applicant further believes that its portfolio managers are under no pressure to generate long-term capital gains on portfolio securities transactions because, as stated expressly in Applicant's prospectus, capital appreciation is not an investment objective of Applicant.

Applicant also asserts that its proposed distribution procedure will not give rise to improper sales practices relating to long-term gains because there is no measurable value in promoting Applicant by emphasizing long-term capital gains on futures and options transactions. The same assertion is made with respect to long-term gains on portfolio securities transactions, because Applicant is being marketed, consistent with its investment objective, as an income fund, not as a fund designed to generate long-term capital gains.

Finally, Applicant states that administrative expenses would not be significantly increased if it were permitted to distribute long-term capital gains more frequently than once a year, since Applicant undertakes in any event to compute dividends daily, declare and pay dividends monthly and compile periodic reports. Furthermore, under the proposed distribution procedure, all dividends and distributions could be reported on one monthly statement.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–19461 Filed 8–14–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23791; 70–7134]

Jersey Central Power and Light Co.; Proposal to Enter Fuel Lease Agreement

August 9, 1985.

Jersey Central Power and Light Company ("JCP&L), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, a subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application with this Commission pursuant to 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

JCP&L proposes to enter into a nuclear fuel lease agreement ("Lease") with PruLease, Inc. ("Lessor"), an affiliate of The Prudential Insurance Company of America. Under the terms of the proposed Lease, the Lessor would acquire from and simultaneously lease to JCP&L certain nuclear fuel, fuel assemblies and component parts ("Nuclear Material") for use in its Oyster Creek nuclear generating station ("Oyster Creek"). JCP&L expects that, based upon past operating history and its current operational expectations, the Nuclear Material covered by the Lease would be used in the reactor for approximately eight years.

Title to the Nuclear Material so acquired will vest and remain with the Lessor. The Lessor would also made payments for related milling, conversion, enrichment and fabrication services, pursuant to contracts for such services assigned to the Lessor by JCP&L, and other costs generally associated with the Nuclear Material. The Lease provides that the Lessor's unrecovered acquisition costs for Nuclear Material and payments for such related services and other cost ("Acquisition Costs"), may not exceed, in the aggregate, $60 million outstanding at any one time. The initial Lease term will be for approximately six months and, subject to the satisfaction of certain conditions, will be extended for monthly periods thereafter, subject to certain termination provisions.

During the term of the Lease, JCP&L would pay to the Lessor, in advance, a monthly rental payment consisting of a British Thermal Unit, or so-called "burn-up", charge ("BTU Charge"), and a lease rate ("Lease Rate"). The BTU Charge will consist of an amount, estimated in advance, based upon the anticipated rate of consumption of the fuel in the reactor. During the Lease term, JCP&L may revise the BTU Charge to reflect changes in the anticipated operating life, energy output or utilization of the Nuclear Material, as initially estimated. To the extent that JCP&L makes BTU Charge payments to the Lessor under the Lease, the amount of outstanding Acquisition Costs will be correspondingly reduced, thereby creating additional availability under the Lease for the Lessor to acquire Nuclear Material.

The Lease Rate, which will be based upon the unamortized cost of the Nuclear Material from time to time, will be 2% above the yield adjusted rate charged on 30-day dealer placed commercial paper issued by Prudential Funding Corportion (an affiliate of the Lessor), as such rate is in effect from time to time on the 15th day of each month. (At the date hereof, the Lease Rate would be approximately 9.5% per annum.) JCP&L will be required to make monthly Lease Rate payments to the Lessor from the time the Nuclear Material is acquired by the Lessor or in the event Acquisition Costs reach $60 million, and to make BTU Charge payments beginning as of the time fuel consumption commences. Pending installation of the Nuclear Material in Oyster Creek, Lease Rate payments may be deferred and included as an Acquisition Cost.

Except as provided below, upon termination of the Lease, JCP&L would be obligated to pay to the Lessor the "Stipulated Casualty Value" ("Value") of any Nuclear Material acquired by Lessor, which amount is designed to reflect the then unamortized cost of the Nuclear Material. However, JCP&L would use its best efforts to dispose of such Nuclear Material on behalf of the Lessor to a third party; the proceeds of any such disposition in excess of the Value would be paid to the Lessor. The Lease may be terminated voluntarily by either party upon five months written notice. If the Lease is so terminated by the Lessor, JCP&L would be required to purchase the Nuclear Material but may, at its option, do so during such notice period at the higher of its then fair market value and Value. If JCP&L does not exercise such option, or in the event JCP&L elects to terminate the Lease, JCP&L would pay the Lessor the Value of the Nuclear Material, in the manner described above. If JCP&L is unable to dispose of the Nuclear Material to a third party upon termination of the Lease, the Lessor may then convey the Nuclear Material to JCP&L.

JCP&L has agreed to pay the Lessor a lease origination fee of $75,000 (representing ⅛ of 1% of the total Acquisition Costs of $60 million of the Nuclear Material, which may be outstanding at any one time) upon execution and delivery of the Lease, together with Lessor's expenses in connection with the execution of the Lease and consummation of the transactions contemplated thereby. JCP&L will also indemnify the Lessor against certain liabilities, hazards, contingencies and risks of loss in connection with the Lessor's acquisition and lease of Nuclear Material to JCP&L.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 3, 1985 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as amended or as it may be further amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19462 Filed 8-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14662; 812-6139]

Keystone Tax Exempt Trust; Filing of Application for an Order Granting Exemption

August 7, 1985.

Notice is hereby given that Keystone Tax Exempt Trust (" Applicant"), 99 High Street, Boston, Massachusetts 02110, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on June 24, 1985, pursuant to section 6(c) of the Act for an order of the Commission, exempting Applicant from the provisions of section 2(a)(32), 2(a)(35) and 22(c) of the Act and Rule 22c-1 thereunder to the extent necessary to permit Applicant to assess a contingent deferred sales charge on certain redemptions of its shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and regulations for the text of relevant provisions thereof.

Applicant proposes to offer its shares without imposition of a sales load at the time of purchase, thereby permitting shareholders to have the benefit of greater investment dollars working for them from the time of their purchase of Applicant's shares. Instead of the traditional sales charge assessed at purchase, Applicant proposes to assess a contingent deferred sales charge on certain redemptions of its shares.

Applicant proposes to sell its shares through Keystone Massachusetts Distributions, Inc. (("KMDI") as principal underwriter, and to finance in part the distribution of its shares under a distribution plan pursuant to Rule 12b-1 under the Act. Applicant's Rule 12b-1 plan provides for the payment, out of Applicant's assets, of commissions on sales of Applicant's shares made by KMDI. Applicant's distribution fee would be computed quarterly on the basis of a maximum amount approximately equal to 1.25% per year of Applicant's average daily net assets.

Accordingly to the Application, the contingent deferred sales charge will never exceed 4% of the lesser of that net asset value of the shares redeemed or the total cost of such shares. Where a contingent deferred sales charge is imposed, the amount of the charge will depend on the number of years since the purchase payment comprising the source of the redemption was made, starting at 4 percent, decreasing one percent a year.

Applicant represents that no contingent deferred sales charge will be imposed when the investor redeems (1) shares with respect to which Applicant did not pay a commission on issuance (including shares acquired through reinvestment of divided income and capital gains distributions), (2) shares which, together with exchanged shares, have been held during all or part of more than four consecutive calendar years, or (3) shares exchanged for shares in other mutual funds in the Keystone Massachusetts Group; however, if such shares are subject to a contingent deferred sales charge, The

charge and calendar year of purchase will carry over to the shares being acquired. The application states that in determining whether a contingent deferred sales charge is payable, and, if so, the percentage charge applicable, it is assumed that shares held the longest are the first to be redeemed.

Applicant submits that the imposition of the contingent deferred sales charge in the manner described above would not cause its shares to fall outside the definition of "redeemable securities" in section 2(a)(32) of the Act. Applicant states that the imposition of the contingent deferred sales charge in no way restricts a shareholder from receiving a proportionate share of the current net assets of Applicant, but merely defers the deduction of a sales charge and makes it contingent upon an event which may never occur. Accordingly, Applicant requests an exemption from section 2(a)(32) of the Act to the extent necessary to permit implementation of the proposed contingent deferred sales charge.

Applicant asserts that the proposed contingent deferred sales charge is consistent with the intent of the definition of "sale load" contained in section 2(a)(35) of the Act. Applicant contends that the deferral of the sales charge, and is contingency upon an event which may not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. Accordingly, Applicant requests an exemption from the provisions of section 2(a)(35) to the extent necessary to implement the proposed charge.

Applicant contends that when a redemption of its shares is effected the price of the shares that when a redemption of its shares is effected, the price of the shares on redemption will be based on current net asset value. The contingent deferred sales charge will merely be deducted form the redemption proceeds at the time of redemption in arriving at the net proceeds payable to the shareholder. Applicant requests an exemption from the provisions of section 22(c) of the Act and Rule 22–1 thereunder to the extent necessary to permit implementation of the proposed contingent deferred sales charge.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 30, 1985, at 5:50 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–19463 Filed 8–14–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23787; 70–7087]

New England Electric System; Proposed Issuance and Sale of Short-Term Notes to Banks

August 8, 1985.

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

By order in this proceeding dated March 26, 1985 (HCAR No. 23641), NEES was authorized to issue and sell up to a maximum aggregate outstanding principal amount of $40,000,000 of short-term notes to a group of banks from time to time through March 31, 1987. NEES now proposes that such short-term borrowing authority be increased to $100,000,000. The notes will mature in less than one year from the date of issuance. The effective interest cost of borrowings will not be greater than the effective interest cost of borrowings at the bank's base or prime lending rate with compensating balance requirements of 10% of the line of credit and 10% of any borrowings thereunder. Based upon a prime rate of 9.5%, the effective interest cost would not exceed 11.9% per annum. NEES believes the requested short-term borrowing authority is necessary to enable the company to meet the financial needs of its subsidiaries.

The post-effective amendment to the declaration and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 3, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–19464 Filed 8–14–85; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–14054]

Application and Opportunity for Hearing; People Express Airlines, Inc.

August 9, 1985.

Notice is hereby given that People Express Airlines, Inc. ("Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "1939 Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of United States Trust Company of New York ("U.S. Trust") under two indentures qualified under the 1939 Act are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify U.S. Trust from acting as trustee under the indentures.

The application alleges that:

(1) Applicant filed on June 5, 1985, a Registration Statement on Form S–3 covering the offering of $25,000,000 principal amount of non-specified interest bearing Secured Equipment Certificates Due 1990 (the "Series A Certificates") and $75,000,000 principal amount of non-specified interest bearing Secured Equipment Certificates Due 1995 (the "Series B Certificates"). The Series A Certificates and the Series B Certificates were to be issued pursuant to two seprate Secured Equipment Indentures and Lease Agreements, each dated as of June 15, 1985, between U.S. Trust and Applicant (collectively the "Indentures"). By pre-effective amendment to the Form S–3 filed with the Commission on June 13, 1985, the Applicant set the annual interest rates on the Series A and Series B Certificates at 13½% and 14%, respectively, and

increased the principal amount of the Series B Certificates to $100,000,000. The Registration Statement on Form S–3 was declared effective under the Securites Act of 1933 and the Indentures were qualified under the 1939 Act on June 13, 1985.

(2) Applicant believes that no material conflict of interest will result from U.S. Trust acting as trustee under the Indentures since the Series A Certificates and the Series B Certificates are secured by wholly separate and distinct collateral consisting of identified aircraft. In event that U.S. Trust should have the occasion to proceed against the security under one the Indentures, such action would not affect the security, or the use of any security, under the other Indenture. As a result, Applicant believes that the trusteeship of U.S. Trust under one of the Indentures should in no way inhibit or discourage the actions of U.S. Trust under the other Indenture.

Each of the Indentures contains the provisions permitted by the proviso of section 310(b)(1) of the 1939 Act which alllow the Applicant to make the application under section 310(b)(1)(ii).

Applicant has waived (a) notice of hearing, (b) hearing on the issues raised by this application and (c) all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 5th Street, NW., Judiciary Plaza, Washington, D.C. 20549.

Notice is further given that any interested person may, not later than September 4, 1985 request, in writing, that a hearing be held on such matter, stating the nature of his interests, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection on of investors, unless a hearing is ordered by the Commission.

For the Commission, pursuant to delegated authority, by the Division of Corporation Finance.

John Wheeler,

Secretary.

[FR Doc. 85–19465 Filed 8–14–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No.IC–14659; 812–6148]

Putnam Tax-Free Income Trust, et al. Notice of Application for Exemptive Order Relating to Contingent Deferred Sales Charge

August 6, 1985.

Notice is hereby given that Putnam Tax-Free Income Trust ("Trust"), One Post Office Square, Boston, Massachusetts 02109, an open-end, diversified, management, series investment company registered under the Investment Company Act of 1940 ("Act"), and Putnam Financial Services, Inc., its principal underwriter ("Distributor"), collectively, "Applicants"), filed an application on July 3, 1985, for an order pursuant to section 6(c) of the Act exempting Applicants from the provisions of sections 2(a)(32), 2(a)(35), 11(a) and 22(c) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the assessment (and waiver in certain cases) of a contingent deferred sales charge ("CDSC") on certain redemptions of Trust shares. Applicants request that the exemptive relief by applicable to any future series of the Trust and to any other registered investment companies in the Putnam family of mutual funds that may be formed in the future for which the Distributor or one of its affiliates serves as principal underwriter. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

According to the application, the trust was organized as a Massachusetts business trust in June, 1985. It is managed by The Putnam Management Company Inc. ("Manager"). Applicants propose to offer Trust shares without imposition of a sales load at the time of purchase, thereby permitting shareholders to have the benefit of greater investment dollars working for them from the time of their purchase of Trust shares.

Applicants represent that the CDSC imposed upon redemption would not, in the aggregate, exceed five percent of the aggregate purchase payments made by the investor. The CDSC would generally be imposed if an investor redeems shares within six years of purchasing them. However, no CDSC would be imposed to the extent that the shares redeemed (1) were purchased within six years of redemption, (2) resulted from reinvestment of net investment income or capital gain distributions, (3) resulted from an exchange of shares of a Putnam fund with a "front-end" load for shares of the Trust, (4) represent net appreciation in the value of shares purchased during the six years preceding the redemption. Applicants state that the CDSC will be waived on redemptions made by a certain defined class of purchasers comprising its officers and trustees and employees of certain affiliated companies in compliance with Rule 22d–1 of the Act.

Applicants state that, in determining whether a CDSC is applicable, the Trust will first redeem shares purchased more than six years before redemption, shares representing reinvestment of capital gains and dividends and shares obtained through exchanges. If these shares are insufficient to cover the number of shares to be redeemed, shares attributable to appreciation of shares purchased during the preceding six years will be redeemed next. The Trust will attribute such shares to each of the preceding six years in proportion to the appreciation of shares purchased in each year. The amount of the charge will depend on the number of years since the investor purchased shares and the aggregate cost of purchases in each year. During the first year after purchase, the charge will be five percent of the amount redeemed. Thereafter, the charge will decrease one percent annually until the expiration of six years, at which time no charge would be imposed. Applicants state that in determining the amount of any applicable CDSC, the amount of dollars redeemed will be charged against the aggregate cost of shares purchased in each year not previously subject to a charge, beginning with the oldest.

The Trust proposes to finance distribution expenses pursuant to a distribution plan adopted under Rule 12b–1 under the Act. Under the proposed distribution plan, the Trust will pay an annual fee equal to one percent of its average daily net asset value to the Distributor for services provided and expenses incurred by the Distributor in connection with the offering of the Trust's shares. These expenses include sales charges paid to broker-dealers at the time of sale.

Applicants state that when a shareholder of the Trust transfers shares, the transferring shareholder will

pay no CDSC. The Trust proposes to transfer shares in the following manner. The Trust will compute the proportion of shares being transferred to the total number of shares owned by the shareholder. The Trust will then transfer a proportional amount of share (i) owned by the transferring shareholder for more than six years or acquired through reinvestment or transfer out of a fund with a "front-end" sales load and (ii) those purchased by the transferring shareholder in each of the six years preceding the transfer. When the receiving shareholder redeems the transferred shares, he will be treated as if he acquired the transferred shares in the same manner and at the same time as the transferring shareholder for purposes of applying the CDSC to the transferred shares.

Applicants further state that when a shareholder of the Trust exchanges shares in one series for shares in another series of the Trust or for shares in any future Putnam fund with a CDSC, or exchanges shares of any such future fund for shares of the Trust, the shareholder will be able to exchange such shares without paying a CDSC. When the shareholder redeems the shares he acquired through the exchange, he will be treated as if no exchange took place for purposes of applying the CDSC when the shares acquired by the exchange are redeemed.

The Applicants submit that the proposed CDSC is consistent with all provisions of the Act. However, to avoid any possibility that questions may be raised as to the potential applicability of various definitional and regulatory sections of the Act, the Applicants request exemption to the extent necessary or appropriate from the provisions of sections 2(a)(32), 2(a)(35), 11(a) and 22(c) of the Act and Rule 22c–1 thereunder.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 30, at 5:30 p.m. do so by submitting a written request setting forth in the nature of his/her interest, the reasons for the request and the specific issues of fact or law that are disputed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-lay, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–19466 Filed 8–14–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14663; 813–65]

Shearson Lehman Brothers Capital Partners-85 and SLB Investment Inc; Notice of Application for an Exemption From Certain Provisions and an Order Granting Confidential Treatment

August 7, 1985.

Notice is hereby given that Shearson Lehman Brothers Capital Partners-85, a limited partnership organized under the laws of the State of New York ("Partnership") 55 Water Street, New York, New York 10041, and SLB Investment Inc., a Delaware corporation, the general partner of the Partnership ("General Partner") (Partnership and General Partner collectively, "Applicants"), filed an application on February 22, 1985, and amendments thereto on May 1, 1985, and June 12, 1985, pursuant to sections 6(b) and 6(e) of the Investment Company Act of 1940 ("Act"), exempting Applicants and all similar partnerships offered to the same class of investors as the limited partner investors in the Partnership and entities formed to serve a general partners thereof ("Subsequent Partnerships") (Subsequent Partnerships and the Partnership collectively, "Partnerships"), from all provisions of the Act and the rules and regulations thereunder except: (1) Sections 9, 17(a) and 17(d) (with certain exceptions), 30 (with certain exceptions), 36 and 37 of the Act and the rules and regulations thereunder necessary to implement the above referenced Sections of the Act, and (2) all administrative and jurisdictional Sections of the Act, and the rules and regulations thereunder necessary to enforce compliance with the terms of the order as granted. Applicants also request an order, pursuant to section 45(a) of the Act, granting confidential treatment for certain reports to be filed with the Commission. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicants state that the Partnership was organized on February 13, 1985, to enable certain key employees of Shearson Lehman/American Express Inc. ("Shearson Lehman"), an indirect wholly-owned subsidiary of American Express Company ("American Express") and its affiliates, to pool their investment resources and participate in investment opportunities which come to the attention of Shearson Lehman. Applicants state their intention is for the General Partner to serve as general partner for the Subsequent Partnerships, and that the Partnerships are expected to contain substantially identical limited partnership agreements ("Agreements"). Applicants may create one or more separate, direct or indirect, wholly-ownerd subsidiaries of Shearson Lehman or one of its affiliates to serve as general partner to one or more of the Subsequent Partnerships. Any such entities will be subject to each relevant reference to the General Partner made herein.

The Partnerships are expected to operate as non-diversified, closed-end, management investment companies. The investment objectives and policies of the Partnerships may very, and Applicants state that the specific investment objectives for a particular Partnership will be set forth in a private placement memorandum provided to selected, eligible employees in connection with an investment in the Partnerships.

Applicants represent that units in the Partnerships ("Units") will be offered only to certain senior officers and employees of Shearson Lehman and certain upper level officers of Shearson Lehman affiliates ("Eligible Employees") who must (1) qualify as an "accredited investor" under Rule 501(a)(7) of Regulation D under the Securities Act of 1933 ("Securities Act") and, (2) have had a minimum reportable income from employment in excess of $100,000 in the calendar year. Eligible Employees will be experienced professionals in the investment, banking, securities, commodities or insurance businesses, or in administration or operation activities related to the various businesses engaged in by American Express and its subsidiaries. Units representing capital contributions of $1,000 each will be offered to Eligible Employees without fee by the Partnerships in reliance upon the exemption from registration provision of section 4(2) of the Securities Act. A committee of the Board of Directors of Shearson Lehman/American Express Holdings, Inc., Shearson Lehman's immediate parent, will determine the number of Units each Eligible Employee may be permitted to purchase. The purchase price may be payable either in cash upon commencement of the Partnership's

operations or in installments as determined by the General Partner. Applicants reserve the right not to sell Units in the event a specified number of Units are not sold.

Transferability of Units by limited partners, Applicants state, is prohibited unless the General Partner consents thereto, and then only to a member of the limited partner's immediate family. Units will not generally be redeemable; however, the Agreements may provide that the General Partner may or must repurchase Units under certain circumstances for a price determined based on the duration of Unit ownership.

Applicants state that management of the Partnerships will be exclusively invested in the General Partner which will be responsible for all investment decisions. No compensation will be paid to the General Partner for its services other than reimbursement for reasonable and necessary out-of-pocket expenses incurred during the course of conducting the Partnership business and any interest from loans the General Partner makes to the Partnerships. Applicants have undertaken to contribute capital to the Initial Partnership in an amount equal to five times the aggregate capital contributed by limited partners, and that Applicants recognize that the General Partner will be obligated to make contributions to Subsequent Partnerships in substantially similar amounts. The General Partner will be entitled to a cumulative return on the unreturned portion of its capital contribution, compounded semiannually and allocable annually ("Fixed Return"). The Fixed Return will be determined at the time the General Partner makes a capital contribution to the Partnership based upon all relevant facts and circumstances. The Fixed Return will be calculated with reference to the rate imposed in connection with certain loans under Section 7872 of the Internal Revenue Code of 1954, as amended. Applicants state the Fixed Return is a form of compensation to the General Partner for its disproportionate capital contribution. Applicants further state that the General Partner will be capitalized so as to satisfy Internal Revenue Service guidelines with respect to tax classification of partnerships.

Applicants state that Shearson Lehman and its affiliates may receive compensation from companies in which Shearson Lehman and the Partnerships invest. These amounts will be paid by the portfolio companies and not the Partnerships. Shearson Lehman may also make loans to the Partnerships and, in consideration therefor, will be entitled to receive out-of-pocket expenses incurred as well as interest on the loan at the prime rate as charged from time to time by a major money center bank.

The Partnerships may invest in opportunities offered to or by, or that come to the attention of, Shearson Lehman and its affiliates, including opportunities in which Shearson Lehman and its affiliates may invest for their own respective accounts. The Partnership may also sell securities positions to Shearson Lehman.

The General Partner will have discretion on distributing cash and proceeds from a Partnership's investments to the limited partners. The General Partner expects that its policy with respect to the Partnerships will be to distribute the proceeds of long-term investments upon the disposition thereof, and to determine, on a transaction by transaction basis, whether to distribute or reinvest the proceeds of short-term investments.

Profits and losses of the Partnerships will be distributed and determined in accordance with the Agreements; aside from distributions made first to the General Partner pursuant to the Fixed Return and to limited partners to pay taxes on allocation of Partnerships items, thereafter the General Partner, until its capital contribution is returned, will receive 10% of Partnership profits and losses and limited partners will receive 90% of Partnership profits and losses, except that the General Partner will remain liable for losses exceeding Partnership assets.

Applicants state that limited partners will receive annual reports regarding the Partnerships, audited by certified public accountants, that disclose any outstanding debts of the Partnerships. A report will also be sent to limited partners as soon as practicable at the end of the Partnerships' tax years setting forth distributive shares of income, gains, losses, credits and other items for federal income tax purposes resulting from Partnership operations during the year. Partnerships will have a scheduled term of 25 years unless dissolved upon the occurrence of certain events set forth in the Agreements. On the basis of the foregoing, and for other reasons set forth in the application, it is submitted that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

An exemption from section 17(a) is requested to the extent necessary to permit the Partnerships to engage in certain transactions as principal with Shearson Lehman or its affiliates. The exemption is requested to permit the Partnership (a) to purchase from Shearson Lehman or its affiliates securities or interests in properties previously acquired for the account of Shearson Lehman or its affiliates; (b) to sell to Shearson Lehman or its affiliates its securities or interests in properties previously acquired by the Partnerships; (c) to invest in other investment vehicles, including partnerships, offered, sponsored or managed by Shearson Lehman or its affiliates ("SL Investments") or to purchase securities from an SL Investment; (d) to purchase interests in persons of which Shearson Lehman or its affiliates owns 5% or more of the outstanding voting securities, or that are otherwise affiliated with the Partnerships; (e) to purchase securities that are underwritten by Shearson at Lehman or its affiliates unless such purchase is on terms at least as favorable as those offered to persons other than affiliated persons of Shearson Lehman; (f) to participate as a selling shareholder in a public offering that is underwritten by Shearson Lehman or an affiliate or as a member of a selling group; (g) to invest in money market funds managed or underwritten by Shearson Lehman or its affiliates; (h) to purchase short-term instruments from, or sell to, Shearson Lehman or its affiliates at market value, and (i) to enter into repurchase transactions with Shearson Lehman pending investment by a Partnership.

Applicants represent that the Partnerships will not purchase investments from Shearson Lehman or its affiliates unless they were designated for future sale to a Partnership at the time of acquisition by Shearson Lehman. Applicants further state that the Partnerships will not pay any fees in connection with the purchase of short-term instruments from Shearson Lehman or its affiliates, and that Partnership funds invested in Shearson Lehman managed money market funds will be subject to those fees charged to and paid by persons unaffiliated with Shearson Lehman.

Applicants submit that the requested exemption under Section 17 of the Act is to assure that the Participants are able to invest in attractive companies or properties in which Shearson Lehman has an interest. Because Shearson Lehman's purpose is to reward existing employees and to attract highly qualified personnel, Applicants contend that such investments will not disadvantage the Partnerships.

Applicants also note the community of interest between the Partnerships and the General Partner, and that the General Partner is making a significantly larger capital contribution to the capital of the Partnerships. Applicants therefore maintain that the General Partner will always have a strong economic disincentive to engage in transactions to the detriment of the Partnerships.

Each transaction pursuant to the section 17(a) exemption, Applicants state, will be effected only upon a determination by the Board of Directors of the General Partner that the terms of the transaction are reasonable and fair and do not involve overreaching of the Partnership or its limited partners on the part of any person concerned. Applicants also acknowledge that any transactions subject to section 17(a) for which exemption has not been granted will require specific Commission approval.

Applicants also request an order for exemption from section 17(d) of the Act to the extent necessary to permit a Partnership to make an investment in which Shearson Lehman, a Shearson Lehman affiliate, or any officer, director or employee of the General Partner ("General Partner Employee") is a participant of plans concurrently or otherwise directly or indirectly to become a participant. The exemption is requested to permit one or more Partnerships to invest (a) in a company, partnership or investment vehicle offered, sponsored or managed by Shearson Lehman or a Shearson Lehman affiliate (1) in which Shearson Lehman or a Shearman Lehman affiliate or a General Partner Employee ("Co-Investors") is a participant or plans to become a participant, or (2) with respect to which a Shearson Lehman or a Shearson Lehman affiliate is entitled to receive placement fees, brokerage commissions or other economic benefits; (b) in an SL Investment, or (c) in one or more Partnerships in which an SL Investment is a participant or plans to become a participant, including instances in which Shearson Lehman or a Shearson Lehman affiliate or one or more General Partner Employees has a partnership interest or other interest in, or has some compensation arrangement with the SLV. Applicants represent that such concurrent investments by a Partnership will be made on the same basis as other persons.

Applicants expressly condition any order under section 17(d) upon the terms that the (1) General Partner invests at least (a) at any time prior to the date in which the General Partner has received as a distribution, in cash or kind, an amount equal to seventy-five percent of its capital contribution plus the Fixed Return ("Distribution Date") an amount equal to the amount invested by the Partnership, or (b) at any time on or after the Distribution Date, an amount equal to three times the amount invested by the Partnership ("Required Investment"), and (2) the General Partner obtains from the Co-Investor an undertaking to (a) maintain its investment in an amount equal to the Required Investment, (b) to give the General Partner sufficient, but not less than one day's notice of its intent to dispose of its investment, and (c) to refrain from any disposition unless the Partnership has the opportunity to dispose of its investment prior to or concurrently with, and on the same terms as, the Co-Investor.

Applicants state that for purposes of comparing the amount of a Co-Investor's investment with that of the Partnership, a portion of the General Partner's contribution to the capital of the Partnership may be added to the amount invested directly by the Co-Investor. The portion that may be added will be an amount equal to the product after an unreturned balance of the General Partner's capital contribution to the Partnership multiplied by a fraction, the numerator of which is the aggregate amount invested by the Partnership in a joint investment and the denominator of which is the aggregate of all Partnership investments. In any case, a joint investment may be made when the amount of the Co-Investor's investment is less than the Required Investment provided that (1) all joint investments by the Patnership, including any investments by a Co-Investor in an amount less than the Required Investment, will in the aggregate satisfy the undertaking that the amount invested by a Co-Investor will be at least equal to the Required Investment, (2) the Partnership will be premitted by the Co-Investor to determine what portion of the available investment the Partnership desires to purchase so that the Partnership would not be limited in its investment with respect to the Co-Investor; and (3) the Co-Investor undertakes to the Partnership that it will abide by the determination of the Partnership as to (a) disposition of the joint investment, of (b) exercise of any right to vote incident to the Joint Investment.

Applicants undertake, as a condition to the requested exemption, that the General Partner's officers and directors will review each joint investment and will make a determination that the investment by the Co-Investor will not disadvantage a Partnership in its investment, maintaining its position or in its disposition. Applicants also agree to make available for inspection by the Commission and limited partners the minutes of the meetings of the Boards of Directors of the General Partner, including the policies adopted by the General Partner for investment evaluation. Applicants acknowledge that any transactions for which exemption has not been granted will require approval by the Commission. Applicants further acknowledge that the General Partner is subject to, and will comply with the provisions of section 36 of the Act; and the recordkeeping requirements contained in section 57(f)(3), and 57(h) of the Act.

Applicants contend that the requested exemption is consistent with the Act's objectives and that the Partnership's participation in joint investments will be on a basis no different or less advantageous than that of SL Affiliates. Applicants concede that the General Partner will be allocated an amount equal to its capital contribution prior to any allocation of profits to the limited partners. However, Applicants assert that the General Partner will continue to have a strong economic disincentive to permit the Partnership to engage in unfavorable Joint Transactions because it will continue to share in the Patnership profits and will remain liable for the extent Partnership losses exceeds its assets. Applicants further submit that Co-Investors will at a minimum invest an amount equal to the Required Investment, thereby assuring the Partnership's participation is on a basis no less advantageous or different than that of the Co-Investor.

Applicants also request an order for exemption from sections 30(a), (b), (c), and (d) to the extent necessary to exempt the Partnerships from filing periodic reports with the Commission, but in lieu thereof will: (1) provide limited partners with the reports required under the terms of their respective Agreements, (2) file with the Commission, within 120 days after a Partnership's fiscal year end, a copy of the report sent to the limited partners pursuant to the Agreement, and (3) to file semi-annual reports on Form N–SAR with the Commission and to send copies thereof or limited partners. Applicants contend limited partners will thus receive the equivalent benefits that section 30 provides, and that granting the relief requested would be consistent with the protection of investors and the policies fairly intended by the act.

Applicants further request that any filings made under section 30 be afforded confidential treatment under section 45(a) of the Act. Such confidential treatment is requested on the basis that the investments made by the Partnerships are not generally available to the public, and that if the investments were made known to the public, unwarranted or incorrect impressions or expectations among investors could result.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 27, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-19467 Filed 8-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14668; 812-6126]

Shearson Lehman Special Portfolios; Application for Order Permitting Assessment (and Waiver) of a Contingent Deferred Sales Load and Permitting Offer of Exchange

August 9, 1985.

Notice is hereby given that Shearson Lehman Special Portfolios ("Applicant"), Two World Trade Center, New York, NY 10048, filed an application ("Application") on May 29, 1985, and an amendment thereto on July 26, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") (1) exempting Applicant from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22d-1 under the Act of the extent necessary to permit Applicant to assess a contingent deferred sales charge on redemptions of its initial and future series of shares, and to permit Applicant under certain circumstances to waive or apply credits against the contingent deferred sales charge, and (2) exempting Applicant from the provisions of section 11(a) of the Act to permit Applicant to offer to exchange shares of each of Applicant's series for shares of any other of Applicant's series on the basis of relative net asset values per share of the series at the time of the exchange, subject to a $5.00 service charge on each exchange. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable statutory provisions.

According to the Application, Applicant is an open-end, diversified, management investment company that was organized as a business trust under the laws of the Commonwealth of Massachusetts on March 12, 1985. Applicant states that it is a series company currently composed of three series-the Option Income Portfolio, the Tax-Exempt Income Portfolio and the Intermediate Term Government Securities Portfolio (collectively the "Portfolios"). Applicant states further that shares of all of the Portfolios are distributed by Shearson Lehman Brothers Inc. ("Shearson Lehman"), and affiliates of Shearson Lehman serve as the investment advisers to the various Portfolios. According to the Application, The Boston Company Advisors, Inc. ("Boston Advisors"), an indirect wholly-owned subsidiary of Shearson Lehman, serves as the investment adviser of the Option Income Portfolio, and Bernstein-Macaulay, Inc., a wholly-owned subsidiary of Shearson Lehman, serves as the investment adviser of the Intermediate Term Government Securities Portfolio. The application states that the investment adviser of the Tax-Exempt Income Portfolio is Shearson Asset Management, Inc., a wholly-owned subsidiary of Shearson Lehman. The Application also states that Boston Advisors, in addition to its role as sub-investment adviser for the Tax-Exempt Income Portfolio and the Intermediate Term Government Securities Portfolio and as the administrator for each of the Portfolios.

According to the Application, Applicant Proposes to (1) offer shares of each Portfolio subject to a contingent deferred sales charge, (2) institute a plan of distribution in accordance with Rule 12b-1 under the Act and (3) provide Applicant's shareholders with the right to exchange shares of one Portfolio for shares of another Portfolio.

Under Applicant's proposal, shares of each of the Portfolios would be offered and sold without the deduction of a sales load at the time of the purchase. Applicant represents that certain redemption of shares of the Portfolios, however, would be subject to a contingent deferred sales charge, (the "Charge"). Applicant states that the proceeds of the Charge would be paid to Shearson Lehman and would be used by Shearson Lehman in whole or in part to defray costs incurred in connection with the sale of Applicant's shares, including payments of sales commissions to Shearson Lehman Financial Consultants on the sale of those shares.

According to the Application, the Charge would be imposed on a redemption of shares of any Portfolio that causes the current value of the shares of the Portfolio held by a shareholder to fall below the total dollar amount of payments for the purchase of shares of the Portfolio made by the shareholder during the preceding five years. The Application states that no Charge would be imposed to the extent that the net asset value of the shares redeemed by a shareholder does not exceed (1) the current net asset value of shares of the Portfolio purchased more than five years prior to the redemption ("Old Shares Value"), plus (2) the current net asset value of shares of the Portfolio purchased through reinvestment of dividends or capital gains distributions ("Reinvestment Shares Value"), plus (3) increases in the net asset value of the shares of the Portfolio above purchase payments made during the preceding five years ("Appreciation Value").

The Application states that, in effecting a particular redemption request of shares of a Portfolio made by a shareholder, Applicant would first redeem an amount that represents Appreciation Value. It the amount of the requested redemption exceed Appreciation Value, Applicant would next redeem an amount that represents Reinvestment Shares Value. If the amount of the redemption exceeded Appreciation Value and Reinvestment Shares Value, Applicant would then redeem an amount that represents Old Shares Value. The amount by which a redemption exceeds the total of Appreciation Value, Reinvestment Shares Value and Old Shares Value would be subject to the Charge.

Applicant represents that the amount of the Charge would depend on the number of years that have elapsed since the shareholder made the purchase payment from which an amount is being redeemed. Such charge would be 5% in the first year and decrease by 1% per year. Applicant also states that the amount of the Charge (if any) would be calculated by first determining the date

on which the purchase that is the source of the redemption was made, and then applying the appropriate percentage to the amount of the redemption subject to the Charge. All purchase payments for shares of a Portfolio made by a shareholder during a particular Shearson Lehman statement month will be aggregated and deemed to have been made on the last day of the preceding Shearson Lehman statement month for purposes of determining the number of years that have elapsed since the purchase payments were made.

Applicant states that, in determining whether a Charge is payable and, if so, the percentage Charge that is applicable, Applicant will assume that the purchase payment for shares of a Portfolio from which a redemption is made is the earliest purchase payment from which a full redemption has not already been effected. In addition, Applicant will assess no Charge on exchanges of shares between Portfolio. Moreover, when shares of one Portfolio are exchanged for shares of another Portfolio, the purchase date for the shares of the Portfolio exchanged into, will be assumed by Applicant to be the date on which the shares were purchased in the Portfolio from which the exchange was made.

Under Applicant's proposal, the Charge would be waived on the following redemptions: (1) Any partial or total redemption of shares of a shareholder who dies or becomes disabled, so long as the redemption is requested within one year of death or initial determination of disability; (2) any partial or complete redemption in connection with certain distributions form Individual Retirement Accounts ("IRA's") or other qualified retirement plans; (3) redemptions effected pursuant to Applicant's automatic cash withdrawal plan, under which a shareholder who owns shares of a Portfolio with a value in excess of $10,000 may elect to receive periodic cash payments of at least $50 monthly; (4) redemptions effected pursuant to Applicant's right to liquidate a shareholder's account if the aggregate net asset value of the shares held in the account is less than $250; (5) redemptions effected by (i) employees of American Express and its subsidiaries, (ii) IRA's, Keogh plans and employee benefit plans for those employees, and (iii) spouses and minor children of those employees, so long as orders for Applicant's shares on behalf of the spouses and children are placed by the employees; (6) redemptions effected by accounts managed by investment advisory subsidiaries of American Express registered under the Investment Advisers Act of 1940; (7) redemptions effected by directors or trustees of any investment company for which Shearson Lehman serves as distributor; and (8) redemptions effected by an investment company registered under the Act in connection with the combination of the investment company with Applicant by merger, acquisition of assets or by any other transaction. Applicant also proposes to institute a one-time only reinvestment privilege under which a shareholder who redeems shares subject to the Charge and reinvests the proceeds of the redemption within 30 days of the redemption would receive a credit against the amount of the Charge paid. Applicant represents that the percentage of the Charge credited to the shareholder would be the same as the percentage of the redemption proceeds that are reinvested.

Applicant proposes to finance its distribution expenses pursuant to a plan (the "Plan") adopted pursuant to Rule 12b–1 under the Act. Applicant states that, under the Plan, Applicant will pay an annual fee of .75 percent to Shearson Lehman for expenses incurred in connection with the offering of Applicant's shares.

Applicant proposes to offer to exchange shares of each Portfolio for shares of any other Portfolio at their relative net asset values. According to Applicant, a $5.00 service fee, however, which will be paid to Shearson Lehman, will be deducted on each exchange. Applicant points out that the $5.00 service charge is merely an administrative fee that will be paid by a shareholder to defray the expense of facilitating the exchange. The imposition of the service fee, Applicant contends, does not affect the basis on which exchanges between Portfolios will be made. Each exchange, Applicant submits, will be undertaken on the basis of the relative net asset values of the Portfolios involved and, for that reason, should be viewed as being consistent with the requirements of section 11(a).

Applicant submits that its proposal is consistent with the policies underlying the Act. Nonetheless, to avoid any possibility that questions may be raised as to the various definitional and regulatory sections of the Act, Applicant seeks an exemption to the extent necessary or appropriate from the provisions of section 2(a)(32), 2(a)35), 11(a), and 22(c) of the Act and Rules 22c–1 and 22d–1.

Applicant believes that the Charge and the exchange privilege are fair and in the best interests of Applicant's shareholders for a number of reasons. Applicant submits that the operation of the Charge will enable Applicant's shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of Applicant's shares than would be the case if Applicant's shares were sold subject to a traditional front-end sales load. Applicant asserts further that the Charge is fair to shareholders because it applies only to redemptions of amounts representing purchase payments for shares of the Portfolios and does not apply to either increases in the value of a shareholders account through capital appreciation or to increases representing reinvestment of distributions.

Applicant contends that certain of the waivers from the Charge are justified on basic considerations of fairness to shareholders. Applicant submits, for example, that its waiving the Charge in the extraordinary circumstances of death or total disability of a shareholder is inherently fair to shareholders. Waiving the charge on an involuntary redemption effected pursuant to Applicant's right to liquidate shareholder accounts of an aggregate net asset value less than $250 is also justified, Applicant believes, on basic considerations of fairness, because to impose a charge for an involuntary redemption would be equivalent to the imposition of a penalty upon a shareholder. Applicant submits that its proposed waiver on redemptions effected pursuant to Applicant's automatic cash withdrawal plan is fair, because it will enable Applicant's shareholders to receive the full benefit of that plan.

Applicant believes that its proposed waiver of the Charge on redemptions in connection with certain distributions from IRA's or other qualified retirement plans is appropriate for public policy reasons. Waiving the Charge on certain distributions from qualified retirement plans, Applicant submits, is fully consistent with the Code's provisions granting favored tax treatment to accumulations under those plans and imposing additional taxes on early distributions from IRA's and other plans.

A number of the proposed waivers from the Charge, Applicant believes, are appropriate because they involve the redemption of shares sold at little or no selling expense to Shearson Lehman. Included in this group of waivers, Applicant states, are those on (1) redemptions effected by accounts managed by registered investment advisory subsidiaries of American Express, (2) redemptions by employees of American Express and its

subsidiaries and individuals and plans related to those employees, (3) redemptions effected by directors or trustees of any investment company for which Shearson Lehman serves as distributor, and (4) redemptions effected by a registered investment company in connection with the combination of the investment company with Applicant.

Applicant submits that, like its proposed waivers of the Charge, its proposed one-time only credit of all or a portion of the Charge applicable to a shareholder who redeems shares subject to the Charge and reinvests the proceeds of the redemption within 30 days of the redemption is in the interests of shareholders. Applicant notes that the crediting procedure will afford a shareholder of Applicant the opportunity to determine without fear of being subjected to the Charge whether the redemption was the best means of satisfying his current financial needs.

Applicant notes that the proposed exchange privilege will provide shareholders the opportunity to change their investment objective from time to time. Applicant submits that the imposition of the $5.00 service charge on exchange between Portfolios is fair and will not harm shareholders or discriminate among shareholders of any Portfolio. Applicant points out that the service charge is designed merely to compensate Shearson Lehman for the costs incurred in facilitating exchanges between Portfolios.

Notice is further given that any interested person wishing to request a hearing on the Application may, not later than August 28, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the Application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19468 Filed 8-14-85; 8:45 am]

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[Release No. 34-22306; File No. SR-AMEX-85-29]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to an AUTOAMOS Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1984, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 2, 1985 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to implement an AUTOAMOS pilot program for the automatic execution of certain Major Market Index (XMI) options contracts. The details of the pilot program are described below in Item 3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange implemented the Amex Options Switch (AMOS) System in 1979, which permits member firms to electronically route certain orders directly to specialists' posts for execution, and to receive back confirmations of trades by the same route. In 1983, the speed and accuracy of the AMOS system were substantially improved with the advent of touch-screen technology called AUTOAMOS. Under this new subsystem, market and marketable limit orders input into AMOS are automatically routed to the specialist for display on a touch-screen. The specialist, upon execution of these orders then touches the screen to enter the appropriate trade information—such as the number of contracts executed, the price, and the identity of the contra-broker(s)—and an execution report is then sent automatically to the firm which originally placed the order. Currently, the AUTOAMOS size parameters are ten contracts for both market and limit orders.

AUTOAMOS is utilized on a floorwide basis for all listed options and, on average, has reduced turnaround time from over two minutes to an average of 35 seconds. Its operational efficiency is particularly important for rapid executions in XMI index options, the Exchange's most actively traded option. As XMI trading volume continues to set new records and the number of firms using the system increases, it is anticipated that AUTOAMOS may strain under the increased order flow, and operational difficulties may result for both the system and the specialist. In fact, some operational inefficiency has surfaced in XMI options during limited periods of extreme order influx because (as noted above) (the specialist must manually enter various trade data into the system for each order.

To alleviate this inefficiency, the Exchange proposes to implement a three-month pilot program for the automatic execution and reporting of AUTOAMOS XMI options orders. The proposed system will provide automatic execution capabilities while protecting the limit order book. Under the pilot program, the AUTOAMOS system will be enhanced to differentiate between limit orders on the book and all other bids and offers. This information will be input by the reporter on the Floor at the time a quotation is submitted or updated for an options series eligible for automatic execution. If the best bid and/or offer in the marketplace is a book bid and/or offer, such information will be stored in and recognized by AUTOAMOS.

Pursuant to the pilot program, member firms may route public customers' market and marketable limit orders up to ten contracts through the system to be executed against the best bid or offer at the time the order is entered. If the best bid or offer is an order on the specialist's book, AUTOAMOS will recognize it as such, and route the order to the touch-screen terminal at the specialist's post for manual execution against the limit order book. Accordingly, all orders on the book will

retain priority over all orders in the crowd with regard to the execution of AUTOAMOS orders.

If the AUTOAMOS order (currently limited in size to ten contracts) is for a large number of contracts than the number of contracts bid or offered on the book, the specialist will have the affirmative obligation to fill the balance of the order at the same price as the quoted market. This will ensure that AUTOAMOS orders are executed at a single price at the quoted market. The system would then send an instantaneous report back to the member firm entering the order. In addition, a report of last sale, price and volume would be generated for dissemination to the public.

If the best bid or offer is not on the book, the order will be routed by the AUTOAMOS system for automatic execution at the best prevailing price. Orders will be assigned on a trade-by-trade rotational basis either to one of the Amex marketmakers (Registered Options Traders), who has signed on the system as a contra-broker, or to the specialist, who would participate with them in the automatic rotation. To ensure the integrity of the pilot program, the Exchange would require participating marketmakers to maintain adequate levels of capital and trading volume. Penalties would be levied against marketmakers who sign off the system prematurely. Moreover, participating marketmakers would not be permitted to place limit orders on the specialist's book.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by substantially reducing the operational burdens of executing and reporting XMI AUTOAMOS orders during heavy trading, while maintaining the traditional primacy of orders on the limit order book. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The XMI Trading Procedures Committee has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19470 Filed 8-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-2229; SR-Amex-85-13]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing guidelines for Real Estate Investment Trusts

The American Stock Exchange, Inc. ("Amex") submitted on April 26, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend section 114 of the Amex *Company Guide* to permit Amex Listing of Real Estate Investment Trusts ("REITs") with total operating expenses of up to 2% of their average invested assets in any fiscal year. According to the Amex, the proposed rule would be consistent with guidelines for REITs provided by the North American Securities Administrators Association ("NASAA") and thereby facilitate processing of REIT listing applications by the Exchange.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22081, May 29, 1985) and by publication in the **Federal Register** (50 FR 23567, June 4, 1985).[2] No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

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[1] The proposed Amex definition of "total operating expenses" is the same as the current NASAA definition and excludes costs for direct property operation, maintenance and management. *See* NASAA Statement of Policy Regarding REITs, Section 7.5-1(1) ("Statement"). NASAA, however, recently proposed to amend its definition of total operating expenses to include among other things, direct property operation, maintenance and management costs. *See* Proposed Amendments to Statement, proposed Section 7.5-1(a), issued July 15, 1985. According to a NASAA official, NASAA membership is scheduled to vote on the proposal at its September 1985 meeting. Telephone conversation between Donald Nisonoff, SEC, and Jeffrey Smith, Pennsylvania Securities Commission, on July 18, 1985. The Amex has indicated that it will reconsider the definition of the term, "total operating expenses," if NASAA adopts its proposed amendment to such term. Telephone conversation between Donald Nisonoff, SEC, and Michael Emen, Vice President, Amex, August 1, 1985.

[2] On June 4, 1985, the Commission issued a release providing temporary accelerated approval for the above-mentioned Amex proposal relating to REITs. *See* Securities Exchange Act Release No. 22112, June 4, 1985, 50 FR 24728, June 12, 1985. The Amex's request for temporary accelerated approval for the Amex REIT proposal was submitted to the Commission as SR-Amex-85-21. In its release, the Commission indicated that it had published for public comment separate notice of SR-Amex-85-13.

applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 6, 1985.

John Wheeler,

Secretary

[FR Doc. 85-19472 Filed 8-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22307; File No. SR-AMEX-85-28]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Emergency Procedures for the Execution of AUTOAMOS Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 2, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes a policy change to permit the implementation of emergency procedures for the execution of AUTOAMOS orders during unusual market conditions. The details of the policy change are set forth below in Item 3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange implemented the Amex Options Switch (AMOS) System in 1979, which permits member firms to electronically route certain orders directly to specialists' posts for execution, and to receive back confirmations of trades by the same route. In 1983, the Exchange upgraded the AMOS system by implementing AUTOAMOS, whereby marketable options orders are routed directly to the specialist and displayed on a touch-screen terminal.

Under current procedures, AUTOAMOS orders are exposed to the crowd by the specialist for execution at the best available price. Executions may be against an order on the book, the specialist as principal, or one or more brokers or traders in the crowd. To complete the transaction, information indentifying the broker(s) on the other side of the AUTOAMOS trade ("contra-broker") is entered on the touch-screen terminal by the specialist, and a report is automatically sent back to the firm initiating the order.

AUTOAMOS, which is currently used for up to ten contract orders, has proven to be a highly efficient system during usual market conditions of moderate order flow. It enables specialists to execute AUTOAMOS orders and dispatch reports to the firms within an average of 35 seconds.

The AUTOAMOS system, however, becomes less efficient during breakout situations (i.e., when there is an extremely large influx of both system and non-system orders). Occurring infrequently and usually for only a brief period, breakouts historically have impaired the usefulness of AUTOAMOS. As a result, turnaround time for AUTOAMOS orders are substantially increased.

Delays in the execution and reporting of AUTOAMOS orders result primarily from the requirement that specialists expose each AUTOAMOS order to the trading crowd. The problem is exacerbated when more than one party participates in the trade because for each participant (contra-broker) the specialist must input information regarding the number of contracts, the execution price, clearing symbol, and badge number. In comparison, if a specialist executes an AUTOAMOS order against an order on the book, turnaround time is decreased because contra-broker identification is more easily entered. Additionally, when an order is executed with the specialist as principal, turnaround time is further reduced since all pertinent information as to the specialist's clearing agent and badge number is automatically entered from files maintained in the system.

To ensure the continued and prompt execution of AUTOAMOS orders during breakout situations, the Exchange proposes that certain emergency procedures be adopted. Specifically, the Exchange proposes that during a breakout situation, a specialist be permitted to execute AUTOAMOS orders against the book or against himself, as principal, without exposing the orders to the crowd. A breakout situation could be declared with the authorization of two Floor Governors. The same two Floor Governors also would be responsible for monitoring the situation for abatement and termination of the emergency condition. Both the imposition and removal of a breakout emergency condition will be announced at the trading post.

It should be noted that the Exchange's proposal would continue to provide protection for limit orders at all times since specialists would continue to fulfill their agency obligations for all orders entrusted to them before executing an AUTOAMOS order as principal. In addition to substantially improving turnaround times (by reducing the amount of contra-broker information required to be input into the system), the proposed procedures would allow specialists more time to handle non-system orders during these critical periods of high order flow.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by developing procedures to maintain the speed and efficiency of the AUTOAMOS system. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The XMI Trading Procedures Committee has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 9, 1985.

[FR Doc. 85-19471 Filed 8-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22310; File No. SR-CBOE-85-34]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Incorporated; Relating To Fees, Dues and Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 6, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Pursuant to Exchange Rules 2.20 and 2.22, the Exchange proposes to revise certain of its dues, fees and other charges as described below; the revisions are intended to become effective on September 1, 1985, with the exception of the revision concerning member dues, which is intended to become effective on October 1, 1985.

	Present fee	Proposed fee
Member dues	$1,000 per year	$2,000 per year.
Trade match [1]	3 cents	4 cents.
RAES-market makers (OEX).		25 percent per contract.
Market maker (OEX)	4 cents	5 cents.
OBO fees	70 cent average.	30 percent discount.

[1] For fiscal 1986, the trade match fee increase of 1¢ will be reviewed on a quarterly basis. If the Exchange's fiscal year-to-date average daily contract volume exceeds 660,000 contracts at the end of any fiscal quarter, the 1¢ increase will not be effective for the next quarter.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Procedures of the Self-Regulatory Organization

The purpose of this proposed rule change is to enable the Exchange to remain both competive and fiscally sound. The statutory basis for the proposed revisions is section 6(b)(4) of the Securities Exchange Act of 1934 (the Act), in that they provide for an equitable allocation of reasonable dues, fees and other charges among Exchange members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed fee revisions impose a burden on competition, though some floor broker members believe that the OBO fee decrease may have an impact on competition. If the OBO fee decrease has any impact on floor brokers' ability to compete with the public order book, it is a limited impact. Only certain kinds of orders can be booked. Floor brokers can compete with the book by means of the quality of services provided and/or their ability to discount their fees. Moreover, the Exchange believes that the decrease is necessary in order to compete with other option exchanges.

(C) Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants or Others

Attached to this filing are two letters received and considered by the Exchange from floor-broker groups opposed to the reduction in OBO fees. The Exchange has responded to these comments in Items three and four above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above ahd should be submitted by September 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 9, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19473 Filed 8-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22309; SR-CBOE-85-24]

Self-Regulatory Organizations: Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule

The Chicago Board Options Exchange, Incorporated ("CBOE"), submitted on June 10, 1985, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder which would convert the Standard and Poor's 500 Stock Index option ("SPX") from an American to a European-style option. The Commission solicited comments on the proposal, but received none.[3]

As an American-style option, SPX options currently can be exercised at any time until the expiration date. As a European-style option, however, SPX options will be able to be exercised only on the last trading day prior to expiration, and not at any other time during the term of the contract. The proposal also provides that the expiration cycle for the SPX European-style option will be four consecutive months,[4] and that the cash-settlement feature of the index option will remain the same.[5]

To accommodate the listing and trading of European-style options on CBOE, the proposed rule change amends CBOE Rule 24.1 to include paragraph (j), which defines the term "European option" to mean "an option contract that can be exercised only on the last trading day prior to the day it expires." In addition, the proposal includes new paragraph (c) in CBOE Rule 24.9, Terms of Option Contracts, to provide for European-style exercises. This paragraph states that "options on the Standard and Poor's 500 Stock Index can be exercised only on the last trading day prior to the option's expiration."

In its filing, CBOE indicates that European-style SPX options may offer some significant advantages in certain strategies for some index option market participants. For example, the proposal should facilitate the ability to hedge portfolios of stocks because the seller of European-style call options need not be concerned about the early assignment of his short options position. Essentially, this should preclude the portfolio from being forced into an unanticipated partially or wholly unhedged position. Accordingly, CBOE indicates that the exposure to risk (*i.e.*, to price movements that may work against the portfolio manager) should be reduced with the use of European-style options. CBOE also notes that the absence of an early exercise appears to benefit investors who hold spread positions in SPX, as well, because it would be impossible to have a spread strategy defeated through the exercise of one leg of the position during the term of the option contract.[6]

Because the use of spreads and related strategies enhances the depth and liquidity of trading markets, CBOE believes the use of European-style options should lead to greater depth and liquidity in the SPX market. CBOE states that the proposal should facilitate transactions in SPX, consistent with section 6(b)(5) of the Act.

The Commission recognizes that trading American-style options have proven to be successful and that the European-style options may limit the flexibility of options purchasers (because it is impossible to exercise the option prior to the day before its expiration). Nevertheless, the Commission believes that the European-style exercise feature may facilitate certain trading strategies. As a precondition to the listing of these types of contracts, however, CBOE must arrange for OCC to incorporate in the options disclosure documents a description of European-style options and the unique risks associated with the use of these options for hedging and various other purposes. In this connection, the Commission understands that CBOE in conjunction with OCC, expects to make the appropriate disclosures, in a suitable and timely manner.[7] Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

August 9, 1985.

[FR Doc. 85-19474 Filed 8-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22306; File No. SR-MSRB-85-14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of Municipal Securities Rulemaking Board

On May 17, 1985, the Municipal Securities Rulemaking Board ("MSRB") filed with the Commission a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The proposal requires municipal securities brokers and dealers to apply for the assignment of CUSIP numbers when specified actions taken by the broker or dealer cause a previously assigned CUSIP number no longer to identify a single, fully-fungible municipal securities issue. Notice of the

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] Notice of the CBOE proposal was published in Securities Exchange Act Release No. 22143 (June 14, 1985), 50 FR 25640 (June 20, 1985).

[4] *See* letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Heidi S. Coppola, Esq., Division of Market Regulation, SEC, dated June 18, 1985.

[5] The Commission notes that currently there are no European-style options trading on any of the national securities exchanges. Accordingly, prior to listing this contract, the options disclosure documents must be amended by the Options Clearing Corporation ("OCC") to include a description of European-style options and any risks attendant to their trading. *See* discussion *infra*.

[6] Investors with spread positions in American-style options, on the other hand, often find that one leg of their spread position has been exercised against them, leaving them with an out-of-position investment that may involve significantly greater exposure to risk.

[7] CBOE staff members have been informed by OCC that OCC will revise the options disclosure documents to include a description of European-style options and the attendant risks of trading this type of investment vehicle prior to October 1, 1985, the earliest anticipated commencement date. CBOE has agreed to defer the listing and trading of these options until this time. Telephone conversation between Anne Taylor, Associate General Counsel and Secretary, CBOE, and Heidi Steinberg Coppola, Attorney, SEC, July 16, 1985.

proposal was published in Securities Exchange Act Release No. 22128 (June 7, 1985), 50 FR 25140 (June 17, 1985). The Commission did not receive any comments on the proposal. As discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends MSRB Rule G–34, which currently requires municipal securities brokers and dealers (collectively "dealers") that acquire, as principal or agent, new issues of municipal securities for distribution to apply for the assignment of CUSIP numbers, if CUSIP eligible, and affix the numbers to the securities certificates. The rule change will require dealers that take specified actions that impair the fungibility of an outstanding issue to apply for new CUSIP numbers. Dealers will be subject to the rule change if they do any of the following acts: (1) Distribute a new issue the process of which will be used to refund an outstanding issue in such a way that the outstanding issue is no longer fungible;[1] (2) purchase bond insurance on a portion of an outstanding issue or maturity; [2] or (3) sell a portion of an outstanding issue or maturity subject to a put or tender option written by a person other than issuer or issuer's agent.[3] The rule change does not require the new CUSIP numbers to be affixed to securities certificates of these outstanding issues.

The rule change provides a number of exceptions to its general requirements. First, the rule change does not apply to municipal securities issues, including securities with secondary market enhancements, that are not eligible for CUSIP numbers. Second, the rule change does not apply to parts of a municipal securities issue with secondary market enhancements that have already been issued CUSIP numbers. Finally, the MSRB states in its filing that the rule change applies only to municipal securities brokers and dealers who are responsible for secondary market enhancements or who acquire a new issue for distribution under MSRB Rule G–34 (a) and (b).

II. MSRB's Rationale

The MSRB states in its filing that certain events may occur after the underwriting and distribution of a municipal securities issue that affect the integrity of the CUSIP number originally assigned to the issue. For example, a new municipal securities issue can be used to advance-refund part of the prior issue, or all of the prior issue, to different redemption dates and prices. Dealers also can purchase insurance on, or attach put or tender options to, part of a municipal securities issue. Under these circumstances, the original CUSIP number will not distinguish one part of the original issue from another. As a result, market participants experience difficulties in trading, clearing, and settling non-fungible parts of the original issue.

The MSRB believes its rule change will reduce those difficulties by arranging for the assignment of CUSIP numbers for each distinct part of the original issue. The new CUSIP numbers should enable market participants to identify more easily trades and settlement obligations to the several distinct parts of the original issue. Accordingly, the MSRB believes that the proposal is consistent with Section 15B(b)(2)(C) of the Act in that it, among other things, "foster[s] cooperation and coordination with persons engaged in . . . clearing, settling, processing information with respect to, and facilitating transaction in municipal securities. . . ."

The MSRB received 16 comments on the proposed rule change. In light of those comments, the MSRB made a number of revisions to its proposal prior to filing that proposal with the Commission.[4] The MSRB notes in its filing, however, that it was unable to accommodate several suggestions made by commenters. For example, commenters suggested that the MSRB require issuers and customers of dealers to comply with the rule change. Other commenters suggested that secondary market enhancements that can be detached and separately traded, *e.g.* certain put or tender options, should receive new CUSIP numbers. The MSRB states in its filing that it does not believe it has the authority to incorporate those suggestions in its rule change.[5]

The MSRB states in its filing that several commenters indicated that transfer agents for municipal securities maintain their bondholder files based on CUSIP numbers. Those commenters believed that the MSRB does not have authority to require transfer agents to switch to new CUSIP numbers assigned under the rule change. Moreover, commenters noted that issuers and transfer agents may have no interest in secondary market enhancements and would be unwilling to pay the costs of changing their operations to accommodate the new CUSIP numbers. Those commenters suggested the MSRB require permanent depository immobilization of municipal securities with secondary market enhancements.[6]

The MSRB rejected this suggestion but, in response to those comments, notes that the CUSIP Board have revised its eligibility standards to require depository immobilization of certain enhanced securities. Accordingly, if an enhanced security were not immobilized and not CUSIP eligible, dealers would not be required to apply for a new CUSIP number.

As indicated above, the rule change does not require municipal securities

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[1] Specifically, the rule change applies if part of the outstanding issue, previously assigned a single CUSIP number, is refunded to one or more redemption date(s) and price(s) or all of an outstanding issue is refunded to more than one redemption date and price. Under those circumstances, the dealer must apply in writing for a reassignment of a CUSIP number to each part of the outstanding issue refunded to a particular redemption date and price. In addition, the dealer must provide the CUSIP Board, or its designee, the following information (with supporting documentation) concerning the refunding: (1) The previously assigned CUSIP number(s); (2) the redemption dates and prices established by the refunding for each CUSIP number(s); and (3) for each redemption date and price, a designation of the portion of the issue to which the redemption date and price applies, *e.g.*, designation of proceeds, series, or certificate numbers.

[2] The rule change applies to any dealer who, in connection with a sale or an offering for sale of part, but not all, of an outstanding maturity of an issue of municipal securities acquires or arranges for the acquisition of a transferrable instrument applicable to such part that alters the security or source of payment of such part. In addition to insurance, the rule change covers put and tender options letters of credit or guarantee, and any other similar devices. *See* MSRB Rule G–34(b).

[3] For municipal securities with secondary market enhancements attached (*e.g.*, insurance, put or tender options, letters of credit or guarantee, or other similar devices) the rule change requires affected dealers to apply for a new CUSIP number for the unit, *i.e.*, the municipal security with the attached secondary market enhancement. The underlying municipal security would retain its original CUSIP number. MSRB Rule G–34(b) also requires the dealer to provide the CUSIP Board or its designee with the following: the original CUSIP number; the nature of the transferrable instrument acquired; the name of the party obligated for debt service under the terms of such instrument; and documentation to evidence the basis for CUSIP number assignment and nature of the instrument acquired.

[4] *See* File No. SR–MSRB–85–14.

[5] Specifically, the MSRB states that issuers and customers of dealers are not within its jurisdiction. With respect to detached and separately traded enhancements, the MSRB believes these instruments may not be municipal securities and therefore not subject to its authority. The MSRB notes, however, that dealers can nonetheless apply for CUSIP numbers for those instruments.

[6] Problems and confusion could be created if transfer agents identified securities with one CUSIP number but other market participants used several CUSIP numbers to identify specifically the enhanced securities. If, however, the enhanced securities were immobilized until maturity the transfer agent would not effect transfers of the enhanced securities and its reliance on original CUSIP numbers would not affect securities processing.

brokers and dealers to affix to securities certificates of outstanding issues new CUSIP numbers resulting from the rule change. The MSRB and commenters noted that dealers may not have physical possession of affected certificates and, therefore, compliance with such a requirement would be very difficult. Moreover, commenters noted that because transfer agents may not acknowledge the new CUSIP numbers, the new number would be lost in the transfer process.[7] Furthermore, the MSRB stated in its filing that exception processing under its rules can be utilized to confirm trades using new CUSIP numbers and good delivery can be made if the new CUSIP number on the confirmation has been assigned as an alternative to the original CUSIP number on the certificates.

III. Discussion

The Commission agrees with the MSRB that the rule change is consistent with the Act and should be approved. Specifically, the Commission believes that the rule change is consistent with section 15B(b)(2)(C) of the Act because it fosters coordination in the clearance of municipal securities transactions and removes impediments to and perfects the mechanism of a free and open market in municipal securities. The Commission also believes the rule change is consistent with Section 17A of the Act because it should facilitate the prompt and accurate clearance and settlement of transactions in municipal securities in the National Clearnace and Settlement System ("National System").

The Commission believes that the CUSIP numbering system is essential to efficient, automated securities processing in the National System. The CUSIP system enables market participants to identify complex investment products with uniform multi-digit numbers. Once a unique CUSIP number has been assigned to a security, market participants can trade, compare, settle and otherwise communicate information about the security based on its CUSIP number. If the unique character of a CUSIP number is impaired, as it is when a dealer alters the character of part of a securities issue, the efficiencies created by initial CUSIP number assignment can be lost entirely or impaired significantly.[8]

Accordingly, the Commission believes the MSRB's proposal should help to assure that each distinct investment security receives its own CUSIP number, thereby enabling efficient identification of, and processing of transactions in, those securities.

Although the MSRB and commenters note that the rule change does not guarantee that all distinct municipal securities and derivative products will receive individual CUSIP numbers, the Commission believes the rule change is an important and progressive step towards that goal. Accordingly, the Commission is approving the rule change.

Conclusion

It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 9, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19475 Filed 8-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22292; File No. SR-NASD-85-21]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to NASD Index Options Program Amendments

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 1, 1985, the National Association of Secruties Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes incorporates index option rules and procedures previously proposed in File No. SR-NASD-80-10, complete the NASD's index option rules consistent with the Commission's determinations in Release No. 24-22026 (May 8, 1985) 50 FR 20310 (May 15, 1985), defer the automatic execution feature from the initial phase of NASDAQ index options trading pending further systems development, reduce the market maker firm quote obligation from three contracts to one contract, adopt a position limit of $300 million on the same side of the market consistent with position limits previously approved by the Commission for other self-regulatory organizations, and limit the scope of certain proposed rules to NASDAQ index options. The NASD has also submitted under separate cover a NASDAQ index options surveillance plan for which it has requested confidential treatment.

The terms of substance of the entire proposal are contained in the "NASDAQ Index Options Program: An Overview", which follows:

NASDAQ Index Options Program—an Overview

Introduction. The National Association of Securities Dealers, Inc. (the "NASD"), has developed a program for the quotation display of put and call options written on the NASDQ-100 and NASDAQ-Financial Indexes.

These index options eligible for NASDAQ display, have been selected in accordance with criteria established by the NASD, The Options Clearing Corporation ("OCC") and the Commission. As is the case with index options listed on the various exchanges, OCC will act as the issuer of all NASDAQ index options.

Standardized as to exercise price, expiration date, and unit of trading, continuous markets for NASDAQ index options will be maintained by qualified NASDAQ index options market makers registered, as such, with the NASD.

NASDAQ index options will be registered under the Securities Act of 1933 and in the various states by OCC. Covered by OCC's prospectus and a risk disclosure document meeting the requirements of Rule 9b-1 of the Securities Exchange Act of 1934, as amended, each NASDAQ index option will be exercisable through OCC.

In order to utilize the services and facilities of OCC, the NASD will become an OCC participant by acquisition of stock prior to the commencement of trading in NASDAQ index options.

In structuring the NASDAQ Index Options Program, the NASD determined to preserve the essential elements of a competitive dealer market and to incorporate standards comparable to those applied to exchange-traded options, including rules and regulations governing members' trading and sales practices. Included among these are a provision for the last sale price reporting of completed transactions in NASDAQ index option contracts to the Options

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[7] Upon cancellation of the old certificate and issuance of a new certificate, the transfer agent would ignore the new CUSIP number and issue the new certificate under the old CUSIP number.

[8] For example, registered clearing agencies may make such a security ineligible for automated processing in the National System.

Price Reporting Authority ("OPRA"). In this connection, a trading system is being designed for the NASDAQ Index Options Program. The trading system will create "locked-in" trades for price reporting and clearing purposes and support market surveillance capabilities for NASDAQ index options.

Such will be accomplished through the use of new transactions, referred to as Order Confirmation Transactions ("OCTs") and Internalized Trade Transactions ("ITTs"). Using OCTs, transactions in options may take place along conventional lines, i.e., be negotiated via the telephone. Immediately thereafter, the order entry firm will enter the trade detail into his NASDAQ terminal and the message will be routed to the market maker. When an OCT entered into the trading system is accepted by the contra-party, both parties will have the advantages of the "locked-in trade" feature and a trade report will automatically be generated. The OCT mode will be utilized by the options participants to execute and/or report all trades where the market maker is not also the order entry firm. ITT will be utilized for internalized trades.

All NASDAQ index option transactions will be required to be executed and reported via this trading system. Therefore, all trades in NASDAQ index options will be affirmatively accepted by both parties through an OCT, or reported via ITT. In either event, option trades will be "locked-in" for clearing purposes. For this reason, an options trade comparison processor for NASDAQ index options will not be needed and awkward, inefficient and costly procedures associated with the reconciliation of options transactions will be eliminated.

A description of the program, including a discussion of the related regulation and public customer protections governing transactions in NASDAQ options follows.

Underlying Indexes. The indexes to be subject to NASDAQ index options are the NASDAQ–100 Index ™ (File No. SR–NASD–85–5) and NASDAQ-Financial Index ™ (File No. SR–NASD–85–10).

The NASDAQ–100 Index ™ is comprised of 100 of the largest NASDAQ/NMS nonfinancial issues. The NASDAQ-Financial Index ™ is comprised of 100 of the largest issues of NASDAQ/NMS operating financial companies.

NASDAQ Index Options And The NASDAQ System. The NASDAQ System will be technically modified to accommodate the display of NASDAQ index options. Once modified, the NASDAQ index options quotation system and the present NASDAQ securities quotation system will be substantially the same. Accordingly, the two levels of service described below will provide for similar registration, updating and retrieval techniques.

Level 2 terminals will display each NASDAQ index option and list each registered index options market maker with its most recently entered quotations, in addition to the last reported sales prices for the index option, the most recent computation for the underlying index, daily high and low, daily volume, time of last sale and inside index options quotations.

Level 3 terminals will provide registered NASDAQ index option market makers with the ability to enter or update quotations in a particular NASDAQ index option.

The symbol identification utilized to represent the idex options series will conform to present industry standards. Accordingly, an index options series will be identified by a symbol containing five characters. Of this number, three such characters will be used to identify the underlying NASDAQ index. The symbol NDQ will be utilized for NASDAQ–100 Index™ option and the symbol NDF will be utilized for NASDAQ-Financial Index™ option. Following the underlying index characters, another single character will be used to designate the particular expiration month and type of option, and the last character in the symbol will denote the strike price for each option series. Expiration and strike price codes will be as follows:

EXPIRATION MONTH CODES

	Calls	Puts
January	A	M
February	B	N
March	C	O
April	D	P
May	E	Q
June	F	R
July	G	S
August	H	T
September	I	U
October	J	V
November	K	W
December	L	X

STRIKE PRICE CODES

A	205	305	405	K	255	355	455
B	210	310	410	L	260	360	460
C	215	315	415	M	265	365	465
D	220	320	420	N	270	370	470
E	225	325	425	O	275	375	475
F	230	330	430	P	280	380	480
G	235	335	435	Q	285	385	485
H	240	340	440	R	290	390	490
I	245	345	445	S	295	395	495
J	250	350	450	T	300	400	500

By way of summary, the basic symbol format for all series of NASDAQ index options will be (1) underlying index—three characters, (2) expiration month—one character, and (3) striking price—one character. For example, a NASDAQ–100 Index" call option expiring in January with a strike price of $250 would be represented by the symbol NDQAJ.

The NASDAQ System will provide for the last-sale price reporting of completed transactions in NASDAQ index options contracts. The Association will interface with OPRA, and last sale trade price information in NASDAQ index options will be transmitted to OPRA and distributed by OPRA over the OPRA Tape. Last sale price reports for OCT transmissions will be reported at the time the OCT message is affirmatively accepted by the market maker. Unaccepted OCT will be "timed out" two minutes after entry. The order entry firm will have the responsibility for entering OCT's into the system. ITT will be reported to OPRA when entered.

The terms of NASDAQ index options will be standardized as to exercise price, expiration date and index multiplier in accordance with the By-Laws and Rules of the Association and those of OCC. The NASD will utilize an index multiplier of $100 for both the NASDAQ–100 and NASDAQ-Financial indexes.

The Corporation will establish a class of index options (that is, all index options contracts of the same type in the same underlying index) eligible for NASDAQ display. Within each class of options, there will be twelve or more series of options contracts. A series of options will include all options on a NASDAQ index having the same exercise price, and expiration date. The unit of trading for NASDAQ index options will be the stated value of the underlying index multiplied by the index multiplier. NASDAQ index options will have three consecutive monthly expirations. Strike prices of NASDAQ index options will be authorized at prices related to the most recent computation of the underlying index in the following manner:

- Strike prices shall be fixed at an index value which is an integer.
- Regardless of the value of an index, the interval between strike prices will be $5.00.
- New series of index option contracts may be added up to the fifth business day prior to expiration.
- When a new expiration for index option contract is opened for trading, two strike prices above and two strike prices below the current index value will be added.

• When the value of the index underlying a class of index options reaches a strike price, the Corporation will add one or more additional strike prices such that there are at least two strike prices above and two strike prices below the strike price which has been reached.

• In unusual market conditions, the Corporation may add additional series of index option contracts.

NASDAQ Index Options Service. The system will be utilized to enter and accept trades in NASDAQ index options. When an OCT is entered into the system and the entry is accepted by the contra-party, both parties will have the advantage a "locked-in trade" and reporting features.

Participation will be mandatory for all NASDAQ index options market makers and order entry firms. Therefore, all NASDAQ index options transactions will be locked-in for clearing, trade reporting and surveillance purposes.

The Order Confirmation Transaction will allow an order entry firm to contact a NASDAQ index options market maker via telephone and negotiate a trade and then report and lock-in the trade using an OCT. OCT may also be used to direct orders to market makers on an unsolicited basis. All OCT must be priced by the order entry firm and directed to a specified market maker. Fields will be provided in the OCT to indicate information to be reported to the OPRA Tape and the trade will be reported to OPRA upon the acceptance of the OCT by the market maker. The market maker receiving the OCT via the system will be given a time limit of two minutes in which to accept the message which will provide all the fields of trade information required to be "locked-in" for clearing purposes. If the message is accepted, the transaction becomes a "locked-in" trade to be reported to OCC at the end of the trading day. In the event a member fails to respond to an OCT message within two minutes, such message will be "timed out". However, participants will have the capability of scanning records to review rejected or timed-out OCT during the trading day and all OCT entered will be captured by the system.

An Internalized Trade Transaction ("ITT") will be utilized when the order entry firm executes its customer's order on a principal basis and will generate a trade report when entered.

The OCT will be designed with a cancellation capability which will permit the firm entering an OCT, and the firm accepting the trade, to "break" the trade by mutual agreement in the event an incorrect OCT message is inadvertently accepted by the contra-party. ITT may also be cancelled by the entering firm. Data regarding such "broken" trades will also be captured.

Order entry firms will be able to enter orders either for their firm or on behalf of another approved member firm. The system will process orders entered between the hours of 10:00 a.m. and 4:10 p.m. (Eastern Time). Market maker index options quotations displayed in the system prior to these operating hours will include a close indicator. The system will begin accepting orders after 10:00 a.m., when current index calculations are disseminated and close indicators are removed from market maker's preopening quotations.

Execution notices for accepted OCTs will be immediately forwarded to the terminal specified by the order entry firm for input. In addition, hard copy execution reports will be immediately forwarded to the order entry firm's designated printer.

Market makers will be notified of execution by the immediate forwarding of an execution notice to the market maker's specified terminal and hard copy execution reports will also be forwarded to the market maker's designated printer at that time. During the day, the market maker will have the opportunity to query the system to obtain data on individual trades.

Commitment Rules for Index Option Market Makers. Index option market makers will be subject to commitment rules which will obligate them to continuously quote all index options in which they make markets through the completion of all expiration cycles which are open for trading in such markets at the time the member's market maker registration becomes effective. Such obligation will also apply to any new index option series added in those expiration cycles during the term of the market maker's commitment. Thus, a member becoming a market maker in NASDAQ-100 Index™ options at the expiration of the October options will be required to remain in the market through the expirations of all November, December and January NASDAQ-100 Index™ options, a period of approximately three months.

Further, should the market maker elect to commence quotations in options series in a subsequent expiration cycle, the market maker's commitment to continuously quote index options will extend through the expiration of such index options. This will extend the market maker's commitment for an additional month.

Thus, in the example above, if the market maker in NASDAQ-100 Index™ options commences quotations in new February NASDQ-100 Index™ options upon the commencement of trading in these options in November, the member will be obligated to quote all index options in the February expiration cycle until the end of that expiration cycle, i.e., for a period of three months.

Any index option market maker failing to abide by these commitments will have its market maker registration revoked and will not be permitted to re-register as an index options market maker in such index options until the expiration of both the near term expiration cycle and the expiration cycle which follows. Thus, a market maker in NASDQ-100 Index™ options withdrawing quotations from the system prior to the expiration of a December index option would have its market maker registration in the index options terminated and would not be permitted to re-register as a market maker in the index options until the expiration of the January options.

The above-referenced sanctions will apply for unexcused absences from the system or voluntary terminations by index options market makers.

In addition to the above-referenced sanctions, index options market makers whose quotations are withdrawn during the 15 business days preceding the expiration of an index option series may be found in violation of Article III, section I of the Association's Rules of Fair Practice which obligates members to act in accordance with high standards of commercial honor and just equitable principles of trade.

To assure that all NASDAQ index option market makers maintain quotations which are reasonably related to the prevailing market, the Association's index options rules contain quote spread and price continuity parameters comparable to those of the options exchanges.

To further enhance the liquidity and competitiveness of the NASDAQ index option markets, the Association will not authorize new classes of index options unless there are at least five registered market makers and will not authorize new index option series in the index option class unless there are at least three market makers.

Market Surveillance and Customer Protection. The Association's NASDAQ Index Options Program will provide for the surveillance and regulation of the market for NASDAQ index options through a comprehensive monitoring program under which all transactions executed by all market makers and members in NASDAQ index options will be closely surveilled.

Other specialized rules have been developed to govern NASDAQ index

options trading by market makers, retail firms and their customers. These rules are comparable to the standards presently applied to options trading on the various exchanges. They are intended to prevent manipulative abuses in NASDAQ index options and to assist in the detection of manipulative activities. These rules include the following:

• *Position and Exercise Limits.*—The size of positions, whether long or short, and exercises in any five day period, permitted for any market maker, member or associated person or public customer will be limited to a number of contracts having an aggregate value not in excess of $300 million.

• *Liquidation of Positions.*—Aggregate positions of a market maker, member or associated person in index options which exceed the position limits referenced above will be required to be reduced by the amount of excess.

• *Limits on Uncovered Short Positions.*—The Association's rules also will permit it to impose limitations as to the total number of uncovered short positions in a given class of index options.

• *Restrictions on Options Transactions and Exercises.*—The Association's rules will permit it to impose restrictions on transactions in, or exercises of, one or more series of index options in the interests of fair and orderly markets for index options.

• *Reporting of Options Positions.*—The Association's rules will require that market makers submit reports concerning each account in which a member, associated persons or customers have established an aggregate position of 200 or more option contracts, long or short of the put class and the call class on the same side of the market covering the same underlying index.

• *Allocation Procedures for Exercise Notices.*—Association rules require members to use an approved random or first-in, first-out method of allocating exercise notices and to advise customers and the Association of their allocation method.

Market and Member Surveillance. A key feature of the NASDAQ Index Options Program will be the unified surveillance and regulation of the trading markets for both NASDAQ index options and indexes underlying securities. This simultaneous surveillance and regulation will be performed by the Association's Market Surveillance Section in a manner comparable to that in which NASDAQ equity securities are presently surveilled.

The locked-in trade features will provide an unimpeachable audit trail for index options transactions when trade data is integrated with clearing data. Thus, the Association will be able to capture and analyze all trade data for index options in addition to all quotation changes.

As a complement to its daily market surveillance activities, the Association's field inspection program of members will be expanded to give comprehensive coverage to all rules, regulations and procedures pertaining to NASDAQ index options trading.

Trading Comparison, Clearing and Settlement. The "locked-in trade" features will facilitate the comparison, clearing and settlement of NASDAQ index options transactions. Because the term of OCT executed trades will be captured on-line as trades occur, these trades may be reported to OCC as compared trades at the end of the trading day.

Exercise, Delivery and Payment. Subject to the ruels of OCC and to Association rules identical to those of the options exchanges, a NASDAQ index option contract will be exercisable by its holder on any business day on or before the expiration date of the index option contract. An exercise notice must be submitted to OCC by a clearing member acting on behalf of an exercising holder of an unexpired long index option contract. An exercise notice accepted by OCC will be assigned on a random basis to a clearing member(s) maintaining an open short position in the series of index options involved. Association rules will also require that exercise notices must be received or prepared by members by 4:10 p.m. (Eastern Time) with each form time stamped at the time it is received or prepared. Additionally, in instances where a member intends to submit an exercise notice for 25 or more contracts in the same index options series, for a market maker or firm account or for an individual customer, the member must notify the Association no later than 4:10 p.m. (Eastern Time).

Margin Requirements. NASDAQ index options will be subject to margin requirements contained in section 4(a)(iv) of Appendix A to section 30 of the Association's Rules of Fair Practice. Pursuant to these rules, the minimum margin for customers' uncovered short positions will be an amount equal to the current market value of the index option premiums, plus 10% of the closing index option contract value less the amount by which the option is out-of-the-money, with the minimum amount equal to the current market value of the index option premium plus 2% of the closing contract value.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission, in Release No. 34–22026 (May 8, 1985) 50 FR 20310 (May 15, 1985) approved, in principle, as being consistent with the Securities Exchange Act of 1934, the index option elements of the NASDAQ Options Plan, previously submitted to the Commission in File No. SR–NASD–80–10 and File No. SR–NASD–85–5, subject to the NASD's completion of its index option rules and submission of an adequate surveillance plan. The proposed rule change incorporates those elements of the NASDAQ Index Options Program previously approved, in principle, by the Commission, and supplements them with additional rules deemed necessary by the Commission to complete the NASD's index option rules including a provision that there be at least five index options before trading can commence, a provision that no new series could be authorized unless there are at least three index options market makers, and a special exercise notice provision for this cash settled index option product.

Pursuant to the Commission's determinations in Release No. 34–22026, the NASD is also submitting, under separate cover a surveillance plan which will utilize trading data captured by its system and apply surveillance parameters and systems which are adequately designed to monitor potential abuses in the trading of index options. The NASD requests confidential treatment of the contents of its surveillance plan.

The proposed rule change also includes modifications to certain rule changes previously proposed contained in File No. SR–NASD–80–10 to expedite

the commencement of trading in index options prior to the commencement of trading in equity options which await Commission action on the NASD's Petition for Reconsideration. These modifications include deferral of the automatic execution feature from the initial phase of index options trading pending further systems developments, reduction of the firm quote obligation for index options transactions from three contracts to one contract, and adoption of a position limit of $300 million on the same side of the market consistent with position limits approved by the Commission for other self-regulatory organizations.

The NASD has determined to submit the proposed rule changes in a new rule filing rather than by further amendment to File No. SR–NASD–80–10 to facilitate prompt Commission consideration and approval of the NASDAQ Index Option Program. The NASD desires and has made operational preparations to permit commencement of trading of NASDAQ index option contracts in September, 1985.

The purpose of the proposed change to section 33 of Article III of the Corporation's Rules of Fair Practice is to redefine "option" to clearly include the various new options products, such as index options, and to retain sufficient flexibility to address new options products as they arise. The proposed rule change does that by defining an "option" as any put, call, straddle or other option or privilege which is a "security" as defined in section 2(1) of the Securities Act of 1933, as amended. The proposed rule change to section 33 is identical to that proposed in File No. SR–NASD–80–10.

The proposed rule changes to Appendix E to section 33 of the Corporation's Rules of Fair Practice proposed in File No. SR–NASD–80–10 have been modified to implement only those changes necessary or appropriate to establish rules, regulations and procedures for transactions in NASDAQ index options contracts. Definitions of "Group of Options" and "NASDAQ Industry Index Options" set forth in section 2(m) and 2(zz) in File No. SR-NASD–8010 have been deleted because they have no practical application to the NASDAQ Index Options Program. Section 3(a)(5) in File No. SR–NASD–80–10 which proposed criteria for determining NASDAQ equity options position limits has been deleted. Section 3(b)(1) in File No. SR–NASD–80–10 has been amended to reflect NASDAQ index option position limit of $300 million on the same side of the market consistent with Commission approval for other self-regulatory organizations trading index option contracts. Section 3(b)(2) in File No. SR–NASD–80–10 establishing position limits for industry index options has been deleted since the NASD is not proposing to trade industry index options. The proposed rule change contained in section 12 in File No. SR–NASD–80–10 has been modified in that the last sentence relating to integrated market making in equity options has not been incorporated into this rule filing which is limited to NASDAQ index options. Newly proposed section 23(a)–(d) was previously approved by the Commission as section 63 of the Corporation's Uniform Practice Code. Section 23(a) has been expanded to include NASDAQ index options in addition to exchange-listed options. Section 23(e), which has not previously been submitted to the Commission, contains exercise procedures for NASDAQ options including a 4:10 p.m. (Eastern Time) cut-off time. Section 23(e) is consistent with the rules of other self-regulatory organizations and is designed to protect investors from being exercised on the basis of post-close news reports.

The proposed rule changes to Part IV, Schedule D of the Corporation's By-Laws proposed in File No. SR–NASD–80–10 have been modified to implement only those changes necessary or appropriate to establish trading rules, regulations and procedures for transactions in NASDAQ index option contracts. The proposed rule changes have also been modified to reflect that automatic execution service will not be available during the initial phase of NASDAQ index options trading. Section 1(ss) has been added to define "Cabinet Transaction" which refers to accommodation transactions at a price of $1 for options of nominal value. Section 4(d) has been modified to reflect that market maker quotes for index options must be firm for one contract rather than for three contracts as specified in File No. SR–NASD–80–10. Section 7(e) is a new provision which has been added to clarify that all NASDAQ index option contract orders must be priced and directed to a specific market maker. A new section 9 has been added to provide that there must be at least five index option market makers before trading in an index option may be authorized and that no new option series could be authorized unless there are at least three index option market makers. Section 11(b)(1) specifies that the NASD will authorize three expiration months for NASDAQ index options. Section 12(b)(2) has been modified to include specific criteria for adding new exercise prices. All exercises will be integers with strike price intervals of $5. New index option series may be added up to the fifth day prior to expiration. Where a new expiration is opened, the NASD will authorize two in-the-money and two out-of-the money options series. When the value of the underlying index reaches an authorized strike price, one or more additional strike prices will be added. In unusual market conditions, the NASD may add additional series of NASDAQ index options up to three strike prices above and below the current index price.

The proposed rule changes are consistent with the Act. Section 15A of the Securities Exchange Act of 1934 provides, pursuant to subsection (b)(2), that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that its Rules provide it with the capacity to carry out the purposes of the Act, to enforce compliance with the Act by its members and persons associated with its members, and the rules and regulations thereunder, and to protect investors and the public interest. Further, the Commission must determine pursuant to subsection (b)(6) that the Rules of the Corporation are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general to protect investors and the public interest. Finally, the Rules of the Corporation are required by subsection (b)(7) to provide that its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the Act or the rules and regulations thereunder, or the Rules of the Corporation and under subsection (h)(1), by adjudication and the subsequent imposition of appropriate sanctions. The provisions of Article III, section 33 prohibit a member or a person associated with a member from effecting transactions in options if such were inconsistent with the rules, regulations and procedures adopted by the Board of Governors. Under the authority granted pursuant to section 33, the Board has developed a regulatory program of rules, regulations and procedures contained in Appendix E, which meet or exceed existing options plans and Securities and exchange Commission requirements.

The proposed rule changes set forth in Section 33, Appendix E and Part IV, Schedule D of the Corporation's By-Laws are consistent with the provisions of Section 15A(b)(2), 15A(b)(6) and 15A(b)(7) of the Act in providing a

system of regulation for trading of NASDAQ index options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not anticipate that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, by introducing index option trading to the NASDAQ market, the Corporation believes that it is enhancing competition in a manner entirely consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule changes contained in this filing. However, numerous comments regarding certain of the proposed rule change were received in response to the Securities and Exchange Commission's Release No. 34–20853, dated April 12, 1984 to which the Corporation has responded. A Summary of Comments received was prepared by the Commission staff may be found in File No. SR–NASD–80–10.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

In its filing with the Commission, the NASD requests that the Commission approve the proposed rule change prior to September 16, 1985, based upon a finding of good cause for accelerating approval pursuant to section 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 5, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

August 6, 1985.

[FR Doc. 85–19476 Filed 8–14–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22301; File No. SR–NSAD–85–22]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Certificate of Incorporation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on July 31, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the third paragraph of the NASD Certificate of Incorporation by removing the phrase "in any part of the United States of America" from the section of the Certificate that enables the NASD to transact business useful for the purposes of the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD believes that as a self-regulatory organization it must be capable of responding to fundamental changes in the structure of the securities marketplace. The proposed rule change is necessary to enable the NASD to fulfill its responsibilities in a securities marketplace that is increasingly international in character.

These changes are consistent with section 15A(b)(6) of the Securities Exchange Act, which requires that NASD rules facilitate securities transactions, prevent fraudulent and manipulative acts, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule changes do not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Dates of Effectiveness of the Proposed Rule Change in Timing of Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 5, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 8, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-19477 Filed 8-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14669 (File No. 812-6099)]

Trident Acceptance Corp.; Application

August 9, 1985.

Notice is hereby given that Trident Acceptance Corporation ("Applicant"), 4700 Six Forks Road, Raleigh, North Carolina 27609, filed an application on April 24, 1985, and amendments thereto on April 30, June 27, and August 6, 1985, for an order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting it from all provisions of the Act on the terms and in the circumstances summarized below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein and to the Act for the text of all applicable provisions thereof.

Applicant is a wholly-owned subsidiary of Trident Financial Corporation, a North Carolina corporation which provides advisory and financial services to thrift institutions and other entities engaged in real estate mortgage activities. Applicant states that it will issue series of bonds ("Bonds") in "multiple participant bond financings," through which it will provide to smaller thrift institutions, home builders, commercial banks and mortgage bankers access to the capital markets and will provide to similar larger entities an opportunity to reduce their reinvestment risk and their interest rate exposure (the "Mortgage Lenders"). It is further stated that each series of Bonds will be issued pursuant to an indenture ("Indenture") between the Applicant and an independent trustee ("Trustee"), and each series of Bonds will receive one of the two highest ratings from one or more nationally recognized rating agencies that are unaffiliated with Applicant.

Applicant may also issue series of bonds ("Other Bonds") collateralized by mortgages and/or mortgage-backed securities that it has acquired through open-market purchases or privately-negotiated transactions, a sufficient portion of which will represent "interests in real estate" so that if Applicant were to issue only series of such Other Bonds it claims it would be excepted from the Act's definition of an investment company pursuant to section 3(c)(5)(C). Applicant states that it would like to be certain that, in undertaking multiple participant bond financings, it will not be considered an investment company for the purposes of the Act, and thus Applicant is requesting relief pursuant to section 6(c) of the Act only for transactions related to the issuance of Bonds.

Each series of Bonds will be separately secured primarily by mortgage collateral which may include (i) promissory notes ("Notes") issued by the Mortgage Lenders or limited purpose subsidiaries of such Mortgage Lenders ("Finance Subsidiaries") and purchased by the Applicant, which Notes are secured by Mortgage Certificates and/or Pledged Loans (each as defined below), (ii) conventional mortgage loans, mortgage loans insured by the Federal Housing Administration ("FHA Loans") and mortgage loans guaranteed by the Veterans Administration ("VA Loans") ("Pledged Loans") and (iii) "fully-modified pass-through" mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), mortgage participation certificates guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), mortgage pass-through securities guaranteed by the Federal National Mortgage Association ("FNMA Certificates"), and mortgage pass-through certificates, mortgage collateralized obligations or other interests in mortgages issued by any other person or entity ("Other Mortgage Certificates," and, collectively with GNMA Certificates, FHLMC Certificates and FNMA Certificates, "Mortgage Certificates"). Mortgage Collateral includes Mortgage Certificates and Pledged Loans. Substantially all the Mortgage Collateral securing each series of Bonds will be provided by Mortgage Lenders and/or Finance Subsidiaries and will be either (i) mortgage loans originated by the related Mortgage Lender (or a predecessor of such Mortgage Lender), (ii) Mortgage Certificates as to which the Mortgage Lender and/or Finance Subsidiary will have represented that, except for de minimus amounts, the mortgage loans underlying such Mortgage Certificates were originated by such Mortgage Lender or its predecessor) or (iii) GNMA Certificates, FHLMC Certificates or FNMA Certificates acquired by a Mortgage Lender or Finance Subsidiary upon settlement of a repurchase agreement or similar financing transaction initiated by using a Mortgage Certificate of the type described in (ii) above.

In addition to the Mortgage Collateral, the collateral for the Bonds may include a debt service reserve fund, a buy-down reserve fund, other reserve funds, insurance policies, surety bonds, and proceeds accounts ("Permitted Collateral"). A debt service reserve fund would consist of cash, a letter of credit, or eligible investments in an amount which, together with reinvestment earnings thereon, would be sufficient to cover any potential cash flow shortfall relating to any Pledged Loans consisting of, or Mortgage Certificates backed by, graduated payment mortgage loans. A buydown reserve fund would consist of cash, a letter of credit, or eligible investments in an amount which, together with reinvestment earnings thereon, would be sufficient to cover any potential cash flow shortfall relating to any Pledged Loans subject to payment subsidy, or "buydown", plans. Other reserve funds would provide additional security for the related series of Bonds and might be funded with various assets, including the excess cash flow relating to the particular series of Bonds. The amount held in such reserve funds for any series of Bonds is expected to be insubstantial. Proceeds accounts for each series of Bonds will be established by the Trustee to receive all monthly principal and interest

distributions on the Mortgage Collateral securing such series.

According to the application, the Mortgage Lenders and the Finance Subsidiaires may sell or pledge the Mortgage Collateral to the Applicant in exchange for all or a part of the net proceeds of the sale of the related series of Bonds. Substantially all of the net proceeds of the sale of any series of Bonds will be used to purchase Notes issued by the Mortgage Lender and/or its Finance Subsidiary (such Lender or Finance Subsidiary, collectively, the "Participants"), or to directly purchase Mortgage Collateral. Each Note issued by a Participant will be secured primarily by the grant by such Participant to Applicant of a security interest in certain Mortgage Collateral and in certain other collateral. The Participants will pay the Notes issued by them by making, or causing to be made, payments to the Trustee in such amounts as are necessary, together with reinvestment income thereon at assumed rates acceptable to the nationally recognized rating agency or agencies that initially rate the Bonds ("Reinvestment Income"), to pay the principal of and interest on the related series of Bonds as the same shall become due. Applicant states that each Mortgage Lender will be expected to use some or all of the net proceeds of the sale of any such Mortgage Collateral or Notes to repay indebtedness to lenders or others incurred in connection with the funding or acquisition of mortgage loans on family residences financed by it or in its general business, primarily in the origination of other real estate related loans, and each Finance Subsidiary will be expected to distribute the net proceeds of the sale of any such Mortgage Collateral or Notes to its parent Mortgage Lender, so that its parent Mortgage Lender may use such proceeds for the aformentioned purposes.

Each pool of Mortgage Collateral securing a series of Bonds will be fixed when the Bonds are issued, subject to a limited right of substitution. Participants will only be allowed to substitute GNMA Certificates for GNMA Certificates, to substitute GNMA Certificates, FHLMC Certificates, and/or FNMA Certificates for FHLMC Certificates, FNMA Certificates or Other Mortgage Certificates, and to substitute Pledged Loans for Pledged Loans, provided in the case of Pledged Loans that the substitute Pledged Loan is of higher or equal quality (that is, such substitute Pledged Loan is insured up to at least the same level by a mortgage insurer the claims-paying ability of which is rated at least as high as that of the insurer of the Pledged Loans being replaced by the rating agency or agencies rating the Bonds, or if the Pledged Loan being replaced is not so insured, the substitute Pledged Loan has a loan-to-value ratio no higher than the Pledged Loan being replaced). In the event that Pledged Loans originated more than one year prior to substitution are substituted, each such substituted Pledged Loan will be reviewed for continuing underwriting qualification. The substitute collateral will be required to have scheduled cash flows at least equal to those of the Mortgage Collateral it replaces. After giving affect to any such substitution, the scheduled cash flows on the Mortgage Collateral and related Permitted Collateral, together with the Reinvestment Income thereon at assumed rates acceptable to rating agencies that rate the Bonds, will be sufficient to make payments on the Bonds in accordance with their terms and to retire each class of Bonds not later than its stated maturity. It will be a further condition of any such substitution that the outstanding ratings of the Bonds not be affected by such substitution.

The Applicant does not anticipate that substitution of Mortgage Collateral will occur frequently. In practice, substitution is likely to occur, if at all, only where (i) a Participant desires to remove a particular mortgage loan from the Mortgage Collateral in order to have greater discretion in dealing with a particular homeowner, (ii) as a corrective measure in the event that any representation or warranty with respect to such Mortgage Collateral is found to be incorrect, or any related documentation is found to be defective, in any material respect, or (iii) to allow the Participants to satisfy their commitments when, for various administrative reasons, it takes more time than anticipated to effect the assignment to the Trustee of a security interest in certain of the Mortgage Certificates. Applicant expects that such substitution would occur within three months after the closing of the sale of the Bonds, but in any event prior to the first payment date for the Bonds.

Applicant states that it may from time to time engage in financings in which principal payments on the Bonds are made through redemptions, which may include redemptions at the option of bondholders. Any such redemptions will permitted only to the extent that payments received on the Mortgage Collateral (and related amounts withdrawn from certain reserve funds and other Permitted Collateral) are available to pay the outstanding principal plus accrued interest on the Bonds so redeemed. Redemptions of Bonds of any series at the option of Bondholders will not be permitted from the portion of any redemption fund attributable to scheduled payments of principal and interest received on the Mortgage Collateral for such series. Any such redemption fund is expected at all times to be small in relation to the amount of Mortgage Collateral; funds are expected to be held in such redemption fund only for short periods of time; and the amount received upon a redemption will be equal to the outstanding principal amount of Bonds redeemed plus accured interest and will not be based upon a proportionate amount of the Applicant's net assets.

The Mortgage Collateral pledged to secure each series of the Bonds will be pledged and assigned to the Trustee, held by the Trustee or independent custodian banks acting as agent for the Trustee and registered, or an assignment thereof recorded, in the name of the Trustee, its nominee or such a custodian, each of which will be independent of the Applicant. The Notes and all other Permitted Collateral, other than buydown funds, will be held by the Trustee or such a custodian, or in an account in the name of the Trustee or such a custodian with an independent depository institution. At the time a series of Bonds is issued, the collateral value of the Mortgage Collateral for such series (together with amounts deposited in reserve funds, if any, and accounts and funds further securing such series) will be at least equal to the principal amount of the Bonds. The collateral value of collateral represents the principal amount of Bonds, the principal of and interest on which can be paid from the cash flows on such collateral and related Reinvestment Income.

The Applicant states that it will provide computer data concerning any Pledged Loans and mortgage loans underlying any Other Mortgage Certificates securing a series of Bonds to the rating agency or agencies rating the series of Bonds for their review with respect to relevant credit considerations and that independent accountants or other independent third parties will verify the accuracy of the data by examining the original loan files, using statistical sampling or other generally accepted methods. The Applicant states that such verification will include review of the mortgage note, the mortgage or deed of trust, the appropriate insurance policies, the appraisal report, the loan application,

and other documentation relevant for the purpose. Based upon their review, the rating agencies must confirm the collateral values assigned to the loans. The Applicant believes that the foregoing procedures, conducted by independent third parties, will be sufficient to determine the quality and value of such Mortgage Collateral.

Applicant represents that it is a limited purpose finance company whose only significant assets will be Mortgage Collateral, and Notes secured by Mortgage Collateral, pledged as collateral for each series of Bonds. It submits that neither the proposed operations of Applicant nor the proposed offering and sale of the Bonds resemble those of a typical investment company. The structure of the offering is based on a pay-through concept, which matches the amount of funds needed to pay Bondholders with the cash flow from the Mortgage Collateral securing such Bonds. Applicant also submits that it is to be formed for the primary purpose of facilitating the financing of mortgage loans to expand the availability of residential mortgages, a critical national need.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19469 Filed 8-14-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

National Environmental Policy Act (NEPA) Implementing Procedures

[CGD 85-058]

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of copies of the newly revised Commandant Instruction M16475.1B, National Environmental Policy Act (NEPA) Implementing Procedures. The Instruction establishes Coast Guard procedures for implementing the National Environmental Policy Act of 1969 (NEPA) in compliance with regulations of the Council on Environmental Quality, Executive Order No. 12114 on Environmental Effects Abroad of Major Federal Actions, and the environmental analysis requirements of other laws affecting USCG programs. These changes affect USCG internal procedures only.

FOR COPIES AND/OR FURTHER INFORMATION CONTACT: LTJG Wood-Thomas, Environmental Compliance and Review Branch, Office of Marine Environment and Systems, United States Coast Guard at (202) 426-3300. Mail requests should be addressed to: Commandant (G-WP-3), U.S. Coast Guard, 2100 Second Street SW, Washington, DC 30593.

Dated: August 8, 1985.

J.H. Parent,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 85-19443 Filed 8-14-85; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

[Docket S-771]

Application for a Waiver to Permit Participation in a Space-Charter Agreement With a Foreign-flag Carrier; Lykes Bros. Steamship Co., Inc.

Lykes Bros. Steamship Co., Inc. (Lykes), by application dated July 25, 1985, requests a waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), if a waiver is necessary, for Lykes' participation in a space charter agreement with Trans Freight Lines, Inc. (TFL), a wholly owned subsidiary of an Australian company.

The TFL/Lykes Space Charter Agreement, for purposes of identification referred to as Agreement 217-010792, would permit Lykes to charter space on TFL's vessels for the carriage of cargo and equipment in the trade between United States Gulf ports and inland points via such ports, and ports and inland points in Northern Europe (LeHavre-Hamburg range) and the United Kingdom. The term "equipment" includes containers and chassis.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on August 29, 1985. This notice is published as a matter of discretion and publication should in no way be considered a favorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies.)

By Order of the Maritime Administrator.

Dated: August 9, 1985.

Murray A. Bloom,

Assistant Secretary.

[FR Doc. 85-19411 Filed 8-14-85; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

High Pressure Composite Hoop Wrapped Cylinders 4500 P.S.I.G. Marked Service Pressure; Cylinders—II5-4

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: DOT-E 7235, Exemption related notice.

SUMMARY: The purpose of this notice is to require all cylinders manufactured under DOT-E 7235 that are marked DOT-E 7235 4500 and not equipped with neckrings, be removed from service before October 1, 1985. This action is being taken because MTB believes continued use of these cylinders without neckrings may pose a safety problem.

Notes.—Cylinders addressed in this notice are other than those specifically identified in FR Notices August 11, 1983, (48 FR 36559) and July 17, 1985, (50 FR 29038) as being subject to unconditional recall.

FOR FURTHER INFORMATION CONTACT: Arthur Mallen, Office of Hazardous Materials Regulation, Materials Transportation Bureau, U.S. Department

of Transportation, Washington, D.C. 20590, (202) 755–4906.

SUPPLEMENTARY INFORMATION: While the basic cause of the failure of cylinders manufactured under exemption DOT–E 7235 has not as yet been determined, metallurgical analysis indicates that the fractures are intergranular and result from sustained load crack propagation.

On February 27, 1984, the Materials Transportation Bureau (MTB) published a notice (49 FR 7182) specifying a reduction in filling pressure from 4500 psi to 4000 psi for all cylinders manufactured under exemption DOT–E 7235 and marked DOT–E 7234–4500. This action was based on failure analysis and testing performed by the manufacturer, Luxfer USA Limited (Luxfer), which demonstrated that reducing the maximum filling pressure from 4500 psi to 4000 psi would substantially decrease the likelihood of a catastrophic failure.

On November 1, 1984, MTB published a notice (49 FR 44047) specifying that exemption DOT–E 7235 had been amended to authorize filling to 4500 psi of acceptable cylinders marked DOT–E 7235–4500 and equipped with a steel neckring installed under the supervision of Luxfer. This action was based on results of a series of hydrostatic and hydro-pneumatic burst tests performed by Luxfer on preflawed cylinders with and without neckrings. Luxfer's test results showed that all test cylinders with neckrings failed by leakage only while a considerable number of test cylinders without neckrings failed by rupturing.

Since the type of failure experienced in these cylinders is considered "time dependent", MTB believes that prolonged usage of cylinders without neckrings may present a safety problem even when the filling pressure is limited to 4000 psi. Accordingly, MTB has amended DOT–E 7235 to require that any cylinder manufactured under exemption DOT–E 7235, which is marked DOT–E 7235–4500 and is not equipped with a neckring be removed from service, prior to October 1, 1985.

Issued in Washington, D.C. on August 9, 1985 under authority delegated in 49 CFR Part 106, Appendix A.

Thomas J. Charlton,

Acting Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85–19487 Filed 8–14–85; 8:45 am]

BILLING CODE 4910–60–M

Technical Hazardous-Liquid Pipeline Safety Standards Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the Technical Hazardous-Liquid Pipeline Safety Standards Committee on September 18, 1985, at 9:00 a.m., in Room 3442, Nassif Building, 400 Seventh Street, SW., Washington, DC, 20590.

The purpose for the meeting is to develop a report on the technical feasibility, reasonableness, and practicability of three proposed amendments of the Hazardous Liquids Pipeline Safety Standards (49 CFR Part 195).

Part I—Proposed Amendments of 49 CFR Part 195

1. Welding procedures for gas and hazardous liquid pipelines (§195.214 and 195.227): Identical performance standards (excepting sections referenced) to be proposed for welding procedure qualification under Parts 192 and 195.

2. Updating steel line pipe specifications (§195.3): The American Petroleum Institute (API) has replaced API Specifications 5L, 5LS, and 4LX with specification API 5L. Proposed rule will update Parts 192 and 195 to include API Specification 5L, the 1985 edition.

3. Definition of rural gathering lines (§195.1(b)(4)): The exception of rural gathering lines from Part 195 requirements would be clarified by proposed new definitions.

Part II—Terminal Storage Facilities

The Committee will receive and discuss a preliminary report on terminal storage facilities.

Part III—Overpressure Protection

The Committee will be briefed on and discuss a recently initiated project to clarify application of §195.406(b) and to extend overpressure protection to unregulated facilities.

Attendance is open to the public, but limited to the space available. With approval of the chair of the Committee, members of the public may present oral statements on any items scheduled for discussion. Due to the limited time available, each person who wants to make an oral statement is requested to notify Betty Clark, Room 8409, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, telephone 202–426–1640, of the topics to be addressed and the time requested to address each topic. The chair may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any session of the meeting.

Dated: August 12, 1985.

Richard L. Bean,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 85–19501 Filed 8–14–85; 8:45 am]

BILLING CODE 4910–60–M

Technical Pipeline Safety Standards Committee/Technical Hazardous Liquid Pipeline Safety Standards Committee; Joint Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1), notice is hereby given of a joint meeting of the Technical Pipeline Safety Standards Committee on September 17, 1985, at 9:00 a.m. in Room 3442 Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590.

The purpose of the meeting is to obtain the joint Committee's review of and comments on a number of reports (including user fees, State grant-in-aid allocation formula, federal/state pipeline safety roles) being prepared for submission to Congress.

Attendance is open to the public, but limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements on the subject. Due to the limited time available, each person who wants to make an oral statement is requested to notify Betty Clark, Room 8409, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, telephone 202–426–1640, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any session of the meeting.

Dated: August 12, 1985.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 85–19502 Filed 8–14–85; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 24-85]

Treasury Notes, Series C-1995

Washington, August 8, 1985.

The Secretary announced on August 7, 1985 (50 FR 32508; August 12, 1985), that the interest rate on the notes designated Series C-1995, described in Department Circular—Public Debt Series—No. 24-85 dated August 1, 1985, will be 10-½ percent. Interest on the notes will be payable at the rate of 10-½percent annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-19447 Filed 8-14-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 23-85]

Treasury Notes, Series T-1988

Washington, August 7, 1985.

The Secretary announced on August 6, 1985 (50 FR 32507; August 12, 1985), that the interest rate on the notes designated Series T-1988, described in Department Circular—Public Debt Series—No. 23-85 dated August 1, 1985, will be 9½ percent. Interest on the notes will be payable at the rate of 9½ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-19448 Filed 8-14-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 25-85]

Treasury Bonds of 2015

Washington, August 9, 1985.

The Secretary announced on August 8, 1985 (50 FR 32511; August 12, 1985), that the interest rate on the Bonds of 2015, described in Department Circular—Public Debt Series—No. 25-85 dated August 1, 1985, will be 10⅝ percent. Interest on the notes will be payable at the rate of 10⅝ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-19446 Filed 8-14-85; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 158
Thursday, August 15, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:15 p.m. on Thursday, August 8, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Security Bank & Trust Company, Midwest City, Oklahoma, which was closed by the Bank Commissioner for the State of Oklahoma on Thursday, August 8, 1985; (2) accept the bid for the transaction submitted by Security Bank of Midwest City, Midwest City, Oklahoma, a newly-chartered State nonmember bank subsidiary of Comban Shares, Inc., Oklahoma City, Oklahoma; (3) approve the applications of Security Bank of Midwest City, Midwest City, Oklahoma, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in Security Bank & Trust Company, Midwest City, Oklahoma, and for consent to establish the sole branch of Security Bank & Trust Company as a branch of Security Bank of Midwest City; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B) Consider recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings involving certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof;

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(6), (c)(8), (c)(9)(A)(ii));

(C)(1) Accept the bid of Peoples Bank, National Association, Houston, Texas, a newly-chartered National bank subsidiary of Bay Bancshares, Inc., La Porte, Texas, for the purchase of certain assets of and assumption of the liability to pay deposits made in Riverside National Bank of Houston, Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, August 1, 1985, and (2) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

(D) Consider a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 9, 1985.

Federal Deposit Insurance Corporation.

Noyle L. Robinson,

Executive Secretary.

[FR Doc. 85-19535 Filed 8-13-85; 11:24 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:55 p.m. on Friday, August 9, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in State Bank of Farmersville, Farmersville, Illinois, which was closed by the Commissioner of Banks and Trust Companies for the State of Illinois on Friday, August 9, 1985; (2) accept the bid for the transaction submitted by Litchfield Bank and Trust Company, Litchfield, Illinois, an insured State nonmember bank; (3) approve the application of Litchfield Bank and Trust Company, Litchfield, Illinois, for consent to purchase certain assets of and assume the liability to pay deposits made in State Bank of Farmersville, Farmersville, Illinois, and for consent to establish the sole office of State Bank of Farmersville as a facility of Litchfield Bank and Trust Company; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director of H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 12, 1985.

Federal Deposit Insurance Corporation.

Hoyle J. Robinson,

Executive Secretary.

[FR Doc. 85-19536 Filed 8-13-85; 11:25 am]

BILLING CODE 6714-01-M

3

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION. Addition of item to meeting agenda.

DATE OF MEETING: August 7-8, 1985.

PLACE: Council offices, Suite 1100, 850 SW. Broadway, Portland, Oregon.

SUMMARY: The Government in the Sunshine Act, 5 U.S.C. 552b, requires **Federal Register** notice whenever an agency adds an item to its meeting agenda after the meeting has been

publicly announced. At its August 7–8, 1985 meeting in Portland, Oregon, the Northwest Power Planning Council voted unanimously (with Council member Donald Godard absent) to add to its agenda "Consideration of Extending the Public Comment Period for the Model Conservation Standards Rulemaking". The Council also found that Council business required the addition and that no earlier announcement of the addition was possible because the issue was raised by public comments soon before the meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Bess Atkins, (503) 222–5161, 1–800–222–3355 (toll-free in Idaho, Montana and Washington) or 1–800–452–2324 (toll-free in Oregon).

Edward Sheets,

Executive Director.

[FR Doc. 85–19556 Filed 8–13–85; 11:49 am]

BILLING CODE 3000–66–M

federal register

Thursday
August 15, 1985

Part II

Environmental Protection Agency

40 CFR Part 2

Public Information Regulations; Collection of Fees; Interim Final Rule

Public Information and Confidentiality Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL-2832-3(b)]

Public Information Regulations; Collection of Fees

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: This interim rule modifies the Environmental Protection Agency's regulations on the collection of fees under the Freedom of Information Act. On March 17, 1983, the Agency published a final rule on collection of fees, the potential impact of which raised some public concern. In response to public comment and in settlement of litigation on the matter, the Agency is publishing this interim final rule which reinstates the procedures in effect prior to March 17, 1983.

EFFECTIVE DATE: August 15, 1985.

ADDRESS: Contracts and Information Law Branch (LE-132G), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jane S. Roemer, Office of General Counsel, Telephone 202/382-5460.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency's (EPA's) procedures for handling requests for information under the Freedom of Information Act (FOIA) appear in 40 CFR Part 2, Subpart A. In another **Federal Register** notice (scheduled to be published the same date as this notice) EPA is proposing certain changes in those procedures and in the procedures for handling of confidential business information at 40 CFR Part 2, Subpart B. The instant notice addresses two subsections of 40 CFR Part 2, Subpart A, §§ 2.120(c) and 2.120(e). Rather than making proposed changes, this notice establishes interim final changes in those subsections.

Subsections (c) and (e) of § 2.120 relate to the collection of fees under the FOIA. On March 17, 1983 (48 FR 11270), EPA published in the **Federal Register** a final rule concerning the collection of fees for FOIA requests. That rule change EPA's fee collection policy to require full payment of estimated search and copying fees before any records are searched for, copied, or released.

After publication of the rule, EPA received comments from the public raising concerns about the potential impact the regulation might have on requestors obtaining information under the FOIA.

In response to the public comments and in settlement of litigation challenging the new procedures, EPA agreed to amend the March 17 final rule and revert to its prior procedures. An interim final rule was prepared, approved and implemented by the Agency. The approved rule was misplaced, however, and never published in the **Federal Register**. The Agency is correcting this error by issuing an interim rule to formally establish the interim final rule which reflects our current practices. These interim procedures are identical to EPA's fee collection procedures (40 CFR Part 2) which were in existence prior to the March 17, 1983 rule. They were published after notice and opportunity for comments on September 1, 1976 and September 8, 1978 (41 FR 36902 and 43 FR 40000).

The Agency is considering what its future policy should be with respect to procedures for the payment of fees. The Agency believes it needs a procedure to require payment before responsive documents are released to the requestor, especially in cases where large costs are involved. Such a procedure would reduce the costs to the government of collecting unpaid fees and would avoid defaults by individuals who make requests for large volumes of records. Comments are invited on this issue.

Other changes to § 2.120 are made in proposed form and appear in the related **Federal Register** notice mentioned herein.

This regulation will not have a significant economic impact on a substantial number of small entities. These changes to EPA's procedures will not impose additional costs for small entities. Therefore, a Regulatory Flexibility Analysis is not required.

Dated: July 17, 1985.

Lee M. Thomas,

Administrator.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Confidential business information.

For the reasons set forth above EPA is amending 40 CFR Part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 553; secs. 114, 208, 301, and 307 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7542, 7601, 7607; secs. 308, 501, and 509(a) of the Clean Water Act, as amended, 33 U.S.C. 1318, 1361, 1369(a); sec. 13 of the Noise Control Act of 1972, 42 U.S.C. 4912; secs. 1445 and 1450 of the Safe Drinking Water Act, 42 U.S.C. 300j-4, 300j-9; secs. 2002 and 3007 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6927; sec. 14 of the Toxic Substances Control Act, 15 U.S.C. 2613; secs. 10, 12, and 25 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136h, 136j, 136v; sec. 408(f) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 345(f); and secs. 104(f) and 108 of the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1414(f), 1418.

2. Section 2.120 is amended by revising paragraphs (c) and (e) to read as follows:

§ 2.120 Fees; payment; waiver.

* * * * *

(c) *Prepayment or assurance of payment.* If an EPA office determines or estimates that the unpaid fees attributable to one or more requests by the same requestor exceed or will exceed $25.00, that office need not search for, duplicate or disclose records in response to any request by the requestor until the requestor pays, or makes acceptable arrangement to pay, the total amount of fees due (or estimated to become due) under this section. In such a case, the EPA office shall promptly inform the requestor (by telephone, if practicable) of the need to make payment or arrangement to pay. See also § 2.112(d).

* * * * *

(e) The EPA Freedom of Information Officer shall maintain a record of all fees charged requestors for searching for and reproducing requested records under this section. If after the end of 60 calendar days from the date on which request for payment was made the requestor has not submitted payment to the EPA Freedom of Information Officer, the Freedom of Information Officer shall place the requestor's name on a delinquent list. If a requestor whose name appears on the delinquent list makes a request under this part, the EPA Freedom of Information Officer shall inform the requestor that EPA will not process the request until the requestor submits payment of the overdue fee from the earlier request. Any request made by an individual who specifies an affiliation with or representation of a corporation, association, law firm or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization placed on the delinquent list can show that the

person who made the request for which payment was overdue did not make the request on behalf of the organization, the organization will be removed from the delinquent list but the name of the individual shall remain on the list. A requestor shall not be placed on the delinquent list if a request for a reduction or for a waiver is pending under paragraph (d) of this section.

[FR Doc. 85-19439 Filed 8-14-85; 8:45 am]
BILLING CODE 6560-30-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL-2832-3(a)]

Public Information and Confidentiality Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify the Environmental Protection Agency procedures for handling requests for information under the Freedom of Information Act and for protecting confidential business information. It adds new sections for handling business information obtained under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the Motor Vehicle Information and Cost Savings Act. This proposal also updates the special confidentiality rules to relfect amendments to the Clean Air Act and the Solid Waste Disposal Act.

DATE: Comments must be submitted on or before September 16,1985.

ADDRESS: Comments should be addressed to the Office of General Counsel, Contracts and Information Law Branch (LE–132G), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments will be available for public inspection in room M3600 at this address from 8:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane S. Roemer, Office of General Counsel, Contracts and Information Law Branch (LE–132G), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Telephone: 202/382–5460.

SUPPLEMENTARY INFORMATION:

Background

The Environmental Protection Agency's (EPA's) procedures for handling requests for information under the Freedom of Information Act (FOIA) and for the treatment of information submitted to EPA and claimed confidential appear in 40 CFR Part 2. These procedures are divided into two subparts. Subpart A of 40 CFR Part 2 contains the Agency's basic regulations concerning responses to requests for Agency records under the FOIA. Subpart B sets forth the Agency's policy and procedures for handling business information obtained either by EPA, its contractors, or subcontractors which may be entitled to confidential treatment.

Since EPA last amended these regulations, it has become clear that certain provisions in both subparts require modification. This **Federal Register** notices proposes changes in the following sections of each subpart.

Subpart A

§ 2.100 Definitions.
§ 2.106 Where requests for agency records shall be filed.
§ 2.107 Misdirected written requests.
§ 2.111 Action by office responsible for responding to request.
§ 2.113 Initial denials of requests.
§ 2.114 Appeals from initial denials; manner of making.
§ 2.115 Appeals determination; by whom made.
§ 2.120 Fees; payment; waiver.

Subpart B

§ 2.202 Applicability of subpart; priority where provisions conflict; records containing more than one kind of information.
§ 2.204 Initial action by EPA office.
§ 2.205 Final confidentiality determination by EPA legal office.
§ 2.209 Disclosure in special circumstances.
§ 2.211 Safeguarding of business information penalty for wrongful disclosure.
§ 2.301 Special rules governing certain information obtained under the Clean Air Act.
§ 2.305 Special rules governing certain information obtained under the Solid Waste Disposal Act, as amended.
§ 2.310 Special rules to implement the Comprehensive Environmental Response, Compensation and Liability Act of 1980.
§ 2.311 Special rules to implement the Motor Vehicle Information and Cost Savings Act.

The following is a brief summary by Subpart of each of the above changes:

Changes in Subpart A

Section 2.100, which defines what records in EPA's possession are "EPA records" for purposes of responding to the FOIA, would be revised to make clear that "EPA records" may include records of other Federal government agencies.

Section 2.106 would be updated to reflect changes in addresses of some of the EPA regional offices to which requests may be sent.

Section 2.107 would be revised to clarify when the 10 working days allowed for issuance of an initial determination begins in the case of misdirected requests for records. The 10-day period would only begin when the Freedom of Information Officer receives the written request for information.

Section 2.111 would be modified to add a provision that the date of the Agency's receipt of a request will ordinarily be the date for determining which records are responsive to a request. The section would also be changed to provide that EPA offices would either consult with other agencies when EPA finds in its files records belonging to another agency or transfer requests for such records to the other agency, so informing the requester, provided that the other agency is subject to the FOIA.

Section 2.113(f) and 2.114(a) would be amended to make clear that only initial denials of existing, located records may be appealed to the Agency.

Sections 2.115(b) and 2.120(d) would be modified to reflect an organizational change by substituting the Assistant Administrator for External Affairs for the EPA Office of Public Awareness. This proposal would allow the Assistant Administrator for External Affairs to delegate authority under §§ 2.115(b) and 2.120(d) to the Deputy Assistant Administrator for External Affairs. In addition, proposed § 2.115(b) would exempt from the review by the Assistant Administrator for External Affairs matters on appeal from initial determinations by the Office of Inspector General. The exemption would preserve the independent operation of the Office of Inspector General and would avoid the possible disclosure of identities of confidential sources or the possible premature disclosure of sensitive audit or investigative information.

Section 2.120(a) would be modified to increase search fees for processing FOIA requests and to raise the total fee for which no charge will be made.

Section 2.120(b) would be amended to require that payment of FOIA-related fees be made within 30 days of date of billing. The establishment of this due date would allow EPA improved recordkeeping and collection follow-up. Placement of the requestor's name on a delinquent list would still occur after 60 days of nonpayment, in accordance with § 1.120(e).

Section 2.120(d) would be amended to state that fees "shall," rather than "may," be reduced if the public interest would be served thereby. This change would make the regulation language consistent with the related language in the FOIA itself at 5 U.S.C. 552(a)(4)(A).

Changes in Subpart B Confidentiality Procedures

As stated above, Subpart B of 40 CFR Part 2 sets forth EPA's policy and procedures for protecting confidential business information. Sections 2.201 through 2.215 of this Subpart describe the Agency's general procedures for the confidentiality of business information. These sections include procedures for asserting and, when necessary, substantiating confidentiality claims for business information submitted by persons to EPA, its contractors or subcontractors. They also contain the procedures EPA uses to determine whether business information is entitled to confidential treatment and the steps it must follow to notify businesses of these determinations.

In addition to the general procedures governing confidentiality of business information, EPA's Subpart B regulations contain special rules (sections 2.301 through 2.311, as proposed) for handling data gathered under specific statutes administered by EPA.

EPA is proposing certain changes to the general and special rules of Subpart B. It is revising some of the special rules to reflect amendments to existing legislation and to create new special rules for implementing new legislation and to create new special rules for implementing new legislation. It is revising the general rules on disclosure to Congress.

Changes to the General Rules

Section 2.202 would be amended to reflect the addition of 2.310 and 2.311 to the special rules.

Section 2.204(d)(1)(iii) would be modified so that information concerning preliminary determinations of entitlement to confidential treatment would be forwarded by the appropriate EPA office to the EPA legal office after the time has elapsed for receipt of comments from the business, rather than upon sending the notice of opportunity to comment. This change is consistent with the proposed change that comments from businesses be sent to the designated EPA office rather than to the EPA legal office.

Section 2.204(e)(1) would be modified to indicate that businesses will be directed to send their comments on confidentiality claims to the appropriate EPA office, rather than to an EPA legal office, unless the General Counsel instructs otherwise.

Section 2.204(f) would be amended to add the business's comments on entitlement of its information to confidential treatment to those materials which must be forwarded to the EPA legal office taking action under § 2.204.

Sections 2.204(e)(2) and 2.25(b)(1), (b)(4), and (d)(1) would be amended to reflect a change in the way the time period for opportunity for businesses to comment on their business confidentiality claims is calculated. The date received shall be determined by the date of postmark or the date of hand delivery to the specified EPA office, rather than by date of receipt. EPA believes this change will provide a more objective and documentable means of calculating the comment period while at the same time removing the possibility that a submitter will be penalized by delays within mail channels.

Section 2.209(b): EPA is proposing to delete the current requirement that affected businesses receive 10 days' notice prior to disclosure of confidential business information to Congress or the Comptroller General. EPA believes this courtesy of advance notice may in some instances unduly delay the transmission of information needed by the Congress or the Comptroller General. The proposed rule would provide for notice of the disclosure to the affected business, but such notice would not need to be in advance of disclosure. EPA has also considered eliminating this notice requirement entirely and solicits comment on this alternative.

Section 2.211(d) would be modified to include references to new special confidentiality regulations and to add a requirement that EPA contractors and subcontractors properly safeguard business information and follow security measures imposed by EPA.

Changes to the Special Rules

EPA is updating the special rules to reflect amendments to existing statutes and new statutes. The following sections of the special rules are amended (sections 2.301 and 2.305) or added (sections 2.310 and 2.311):

Section 2.301—Clean Air Act
Section 2.305—Solid Waste Disposal Act and Amendments
Section 2.310—Comprehensive Environmental Response Compensation and Liability Act (CERCLA)
Section 2.311—Motor Vehicle Information and Cost Savings Act (MVICSA)

Special Rules for CERCLA

Proposed section 2.310 would set out special rules for business information submitted to EPA under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. These special rules are necessary because section 104 of CERCLA establishes special provisions for the treatment and disclosure of information obtained under CERCLA. These special provisions require that the basic rules in Supart B be modified by special rules. The changes to the basic rules which are reflected in proposed § 2.310 are as follows:

(1) The special rules apply to any information submitted to EPA under section 104(e)(1) of the Act or which could have been obtained by EPA under section 104(e)(1).

(2) Since all information submitted under section 104(e)(1) is required by statute, none of that information is voluntarily submitted information as described in § 2.201(i) of 40 CFR.

(3) Information that is confidential would be disclosed when relevant to a proceeding under CERCLA pursuant to the rules set out in § 2.301(g).

(4) Information that may not be disclosed to the public would be provided to authorized representatives of EPA. The term "representatives" would include contractors and State and local government agencies. EPA would provide this information in accordance with the procedures set out in § 2.301(h).

(5) Except for these modifications, all the general rules of Subpart B would apply to this information without change.

Special Rules for MVICSA

Proposed section 2.311 would set out special rules for business information submitted to EPA under section 505 of the Motor Vehicle Information and Cost Savings Act. These special rules are necessary because section 505 of MVICSA establishes special procedures for information obtained under the Act. These special provisions require changes in the basic rules concerning the confidentiality of information. Those changes are reflected in proposed § 2.311 as follows:

(1) The special rules would apply to any information submitted under section 505 of the Act or which could have been required to be submitted under section 505.

(2) Since all information submitted under section 505 is required to be submitted by statute, none of the information is voluntarily submitted information as described in section 2.201(i).

(3) Information that is confidential would be disclosed when relevant to a proceeding under MVICSA pursuant to the rules set out in section 2.301(g).

(4) Except for those modifications, all the general rules of Subpart B would apply to this information without change.

Proposed Amendments to Special Rules for the Clean Air Act

There are three proposed technical amendments to 40 CFR 2.301(b) which are necessary to update the existing regulations to conform to the 1977 amendments to the Clean Air Act. In addition, § 2.301(g) is amended to clarify the types of proceedings to which subsections (g)(2), (g)(3), and (g)(4) apply. This provision is adopted for certain other special regulations, as indicated in those regulations.

Proposed Amendments to Special Rules for the Solid Waste Disposal Act, as Amended

Section 2.305 is revised to reflect the amendment of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, in 1980 and 1984. The section is also amended to redefine the term "proceeding" to more accurately reflect the types of proceedings that occur under the Act.

This regulation will not have a significant economic impact on a substantial number of small entities. These changes to EPA's procedures will not impose additional costs for small entities. Therefore, a Regulatory Flexibility Analysis is not required.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Confidential business information.

Dated: July 17, 1985.

Lee M. Thomas,

Administrator.

Therefore EPA proposes to amend 40 CFR Part 2 as follows:

1. The Authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C 301, 522, 553; secs. 114, 208, 208, 301, and 307 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7525, 7542, 7601, 7607; secs. 308, 501 and 509(a) of the Clean Water Act as amended, 33 U.S.C. 1318, 1361, 1369(a); sec. 13 of the Noise Control Act of 1972, 42 U.S.C. 4912; secs. 1445 and 1450 of the Safe Drinking Water Act, 42 U.S.C. 300j–4, 300j–9; secs. 2002, 3007, and 9005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6927, 6995; secs. 6(c), 11, and 14 of Toxic Substances Control Act, 15 U.S.C. 2607(c), 2610 and 2613; secs. 10, 12, and 25 of Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136h, 136j, 136v; sec. 408(f) of the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 346(f); secs. 104(f) and 106 of the Marine Protection Research and Sanctuaries Act of 1972, 33 U.S.C. 1414(f), 1418; sec. 104(e)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9603; sec. 505 of the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 2005.

2. The Table of Sections for Part 2 is amended by revising the title for § 2.305 and adding titles for §§ 2.310 and 2.311 to read as follows:

PART 2—PUBLIC INFORMATION

Sec.

2.305 Special rules governing certain information obtained under the Solid Waste Disposal Act, as amended.

* * * * *

2.310 Special rules governing certain information obtained under the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

2.311 Special rules governing certain information obtained under the Motor Vehicle Information and Cost Savings Act.

3. Section 2.100 is amended by revising paragraph (b) to read as follows:

§ 2.100 Definitions.

* * * * *

(b) "EPA record" or, simply "record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and which is, was, or is alleged to be possessed by EPA. It may include copies of the records of other Federal agencies (See § 2.111(d)). The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by EPA, its predecessors, its officers, and employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are legally owned by an EPA officer or employee in his or her purely personal capacity or personal notes of an individual not made available to other persons in the agency and not filed with agency records. Nor does the term include materials published by non-Federal organizations which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in EPA's possession.

* * * * *

4. Section 2.106 is amended by revising paragraphs (b)(3), (b)(4), (b)(6), (b)(7), (b)(8), and (b)(9) to read as follows:

§ 2.106 Where requests for agency records shall be filed.

* * * * *

(b) * * *

(3) Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia): U.S. Environmental Protection Agency, Freedom of Information Officer, 841 Chestnut Street, Philadelphia, PA 19107.

(4) Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): U.S. Environmental Protection Agency, Freedom of Information Officer, 345 Courtland Street, NE., Atlanta, GA 30365.

* * * * *

(6) Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): U.S. Environmental Protection Agency, Freedom of Information Officer, (6M–MC), 1201 Elm Street, Dallas, TX 75270.

(7) Region VII (Iowa, Kansas, Missouri, Nebraska): U.S. Environmental Protection Agency, Freedom of Information Officer, 726 Minnesota Avenue, Kansas City, KS 66101.

(8) Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): U.S. Environmental Protection Agency, Freedom of Information Officer, One Denver Place, 999 18th Street, Suite 1300 Denver, CO 80202–2413.

(9) Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territory of Pacific Islands, Wake Island): U.S. Environmental Protection Agency, Freedom of Information Officer, 215 Fremont Street, San Francisco, CA 94105.

* * * * *

5. Section 2.107 is amended by revising paragraph (a) to read as follows:

§ 2.107 Misdirected written requests; oral requests.

(a) EPA cannot assure that a timely or satisfactory response under this subpart will be given to written requests that are addressed to EPA offices, officers, or employees other than the Freedom of Information Officers listed in § 2.106. Any EPA officer or employee who receives a written request for inspection or disclosure of EPA records shall promptly forward a copy of the request to the appropriate Freedom of Information Officer, by the fastest practicable means, and shall, if appropriate, commence action under § 2.111. For purposes of § 2.112, the time allowed with respect to initial determination shall be computed from the day on which the appropriate

Freedom of Information Officer receives the request.

* * * * *

6. Section 2.111 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 2.111 Action by office responsible for responding to request.

* * * * *

(c) In determining which records are responsive to a request, the EPA office responding shall ordinarily include those records within the Agency's possession as of the date of the Agency's receipt of the request.

(d) When a request for EPA records encompasses records of another Federal agency, the EPA office shall either: (1) respond to the request after consulting with the originating agency when appropriate or (2) transfer responsibility for responding to the request to the originating agency provided that the other agency is subject to the FOIA. Whenever the EPA officer refers a request to another agency, it shall notify the requestor of the referral.

7. Section 2.113 is amended by revising paragraph (f) to read as follows:

§ 2.113 Initial denials of requests.

* * * * *

(f) Each initial determination which denies, in whole or in part, a request for one or more existing, located EPA records shall state that the requestor may appeal the initial denial by sending a written appeal to the address shown in § 2.106(a) within 30 days of receipt of the determination. An Initial determination which does not produce a record because it is not known to exist (subsection (a) of this section) or because it is not in EPA's possession (subsection (b) of this section) is not a denial and may not be appealed to the Agency.

* * * * *

8. Section 2.114 is amended by revising paragraph (a) to read as follows:

§ 2.114 Appeals from initial denials; manner of making.

(a) Any person whose request for one or more existing, located EPA records has been denied in whole or in part by an initial determination may appeal that denial by addressing a written appeal to the address shown in § 2.106(a).

* * * * *

9. Section 2.115 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 2.115 Appeal determinations; by whom made.

* * * * *

(b) Whenever the General Counsel has determined under paragraph (a)(3) of this section that a record is exempt from mandatory disclosure but legally may be disclosed and the record has not been disclosed by EPA, the matter shall be referred to the Assistant Administrator for External Affairs. If the Assistant Administrator determines that the public interest would not be served by disclosure, a determination denying the appeal shall be issued by the General Counsel. If the Assistant Administrator determines that the public interest would be served by disclosure, the record shall be disclosed unless the Administrator (upon a review of the matter request by the approriate Assistant Administrator, Associate Administrator, Regional Administrator, or the Director of a Headquarters Staff Office) determines that the public interest would not be served by disclosure, in which case the General Counsel shall issue a determination denying the appeal. This review by the Assistant Administrator for External Affairs shall not apply to appeals from initial determinations by the Office of Inspector General to deny requests.

* * * * *

(d) The Assistant Administrator for External Affairs may delegate the authority under paragraph (b) of this section to the Deputy Assistant Administrator for External Affairs.

10. Section 2.120 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 2.120 Fees; payment; waiver.

(a) *Fee schedule.* Fees will be charged requestors for searching for and reproducing requested records in accordance with the following schedule:

(1) Record search time (EPA employees):

(i) Personnel (GS–8 and below). For each ½ hour, or portion thereof, spent searching for a requested record, $3.50.

(ii) Personnel (GS–9 and above). For each ½ hour, or portion thereof, spent searching for a requested record, $7.00.

(iii) Computer programming time (EPA employees), $8.50 per half hour.

(iv) Reproduction of documents (paper copy of paper original), $0.20 per page.

(2) Other costs of searching for or duplicating records (including such items as computer system time; contractor computer programming time, contractor search time; contractor reproduction costs; reproduction of photographs, microfilms, or magnetic tape; computer printouts, and transportation of records), will be the actual direct cost to EPA.

(3) No charge shall be made—

(i) For examination and evaluation of records which have been located and which are known to be among those requested;

(ii) For the cost of preparing or reviewing letters of response to a request or appeal;

(iii) If the total fee in connection with a request is less than $25.00, or if the costs of collecting the fee would otherwise exceed the amount of the fee;

(iv) For responding to a request for one copy of the official personnel record of the requestor;

(v) For furnishing records requested by either House of Congress, or by a duly authorized committee or subcommittee of Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(vi) For furnishing records requested by and for the official use of other Federal agencies; or

(vii) For furnishing records needed by an EPA contractor or grantee to perform the work required by the EPA contract or grant.

(b) *Method of payment.* All fee payments shall be in the form of a check or money order payable to the "U.S. Environmental Protection Agency" and shall be sent (accomplished by a reference to the pertinent Request Identification Number(s)) to the appropriate Headquarters or Regional Financial Management Officer. Payment shall be due within thirty (30) calender days of date of billing.

* * * * *

(d) *Reduction or waiver of fee.* The fee chargeable under this section shall be reduced or waived by EPA if the Agency determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Reduction or waiver of fees shall be considered (but need not necessarily be granted) in connection with each request from a representative of the press or other communications medium, or from a public interest group. A request for reduction or waiver of fees shall be addressed to the appropriate Freedom of Information Officer or the EPA office which is responding to the request for records. The latter office shall initially determine whether the fee shall be reduced or waived, and shall so inform the requestor. This initial determination may be appealed by letter addressed to the appropriate Freedom of Information Officer. The Assistant Administrator for External Affairs or, if delegated the authority, the Deputy

Assistant Administrator for External Affairs, shall decide such appeals.

* * * * *

11. Section 2.202 is amended by revising paragraphs (b) and (c) to read as follows:

§ 2.202 Applicability of subpart; priority where provisions conflict; records containing more than one kind of information.

* * * * *

(b) Various statutes (other than 5 U.S.C. 552) under which EPA operates contain special provisions concerning the entitlement to confidential treatment of information gathered under such statutes. Sections 2.301 through 2.311 prescribe rules for treatment of certain categories of business information obtained under the various statutory provisions. Paragraph (b) of each of those sections should be consulted to determine whether any of those sections applies to the particular information in question.

(c) The basic rules of §§ 2.201 through 2.215 govern except to the extent that they are modified or supplanted by the special rules of §§ 2.301 through 2.311. In the event of a conflict between the provisions of the basic rules and those of a special rule which is applicable to the particular information in question, the provision of the special rule shall govern.

* * * * *

12. Section 2.204 is amended by revising paragraphs (d)(1)(iii), (e)(1), and (e)(2), redesignating and revising paragraphs (f) (8) and (9) as (f) (9) and (10), and adding (f)(8) to read as follows:

§ 2.204 Initial action by EPA office.

* * * * *

(d) * * *

(1) * * *

(iii) Refer the matter to the appropriate EPA legal office, furnishing the information required by paragraph (f) of this section after the time has elapsed for receipt of comments from the affected business.

* * * * *

(e) * * *

(1) Whenever required by paragraph (d)(1) of this section, the EPA office shall promptly furnish each business a written notice stating that EPA is determining under this subpart whether the information is entitled to confidential treatment, and affording the business an opportunity to comment. The notice shall be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. The notice shall state the address of the office to which the business's comments shall be addressed (the appropriate EPA office, unless the General Counsel has directed otherwise), the time allowed for comments, and the method for requesting a time extension under § 2.205(b)(2). The notice shall further state that EPA will construe a business's failure to furnish timely comments as a waiver of the business's claim.

(2) If action under this section is occasioned by a request for the information under 5 U.S.C. 552, the period for comments shall be 15 working days after the date of the business's receipt of the written notice. In other cases, the EPA office shall establish a reasonable period for comments (not less than 15 working days after the business's receipt of the written notice). The time period for comments shall be considered met if the business's comments are postmarked or hand delivered to the office designated in the notice by the date specified. In all cases, the notice shall call the business's attention to the provisions of § 2.205(b).

* * * * *

(f) * * *

(8) A copy of the business's comments on whether the information is entitled to confidential treatment;

(9) The office's comments concerning the appropriate substantive criteria under this subpart, and information the office possesses concerning the information's entitlement to confidential treatment; and

(10) Copies of other correspondence or memoranda which pertain to the matter.

13. Section 2.205 is amended by revising paragraphs (b)(1), (b)(4), and (d)(1) to read as follows:

§ 2.205 Final confidentiality determination by EPA legal office.

* * * * *

(b) * * *

(1) Each business which has been furnished the notice and opportunity to comment prescribed by § 2.204(d)(1) and § 2.204(e) shall furnish its comments to the office specified in the notice in time to be postmarked or hand delivered to that office not later than the date specified in the notice (or the date established in lieu thereof under this section).

* * * * *

(4) If a business's comments have not been received by the specified EPA office by the time the period for comments has elapsed, that office shall promptly inquire whether the business has complied with paragraph (b)(1) or (b)(2) of this section. If the business has complied with paragraph (b)(1) but the comments have been lost in transmission, duplicate comments shall be requested. The EPA office shall verify compliance with paragraph (b)(2) of this section and ascertain the new due date for comment by contacting the appropriate EPA legal office.

* * * * *

(d) * * *

(1) If the EPA legal office finds that a business has failed to furnish comments under paragraph (b) of this section by the specified due date, it shall determine that the business has waived its claim. If, after application of the preceding sentence, no claim applies to the information, the office shall determine that the information is not entitled to confidential treatment under this subpart and, subject to § 2.210, is available to the public.

* * * * *

14. Section 2.209 is amended by revising paragraph (b) to read as follows:

§ 2.209 Disclosure in special circumstances.

* * * * *

(b) Disclosure to Congress or the Comptroller General. Upon receipt of a written request by the Speaker of the House, President of the Senate, chairman of a committee or subcommittee, or the Comptroller General, as appropriate , EPA will disclose business information to either House of Congress, to a committee or subcommittee of Congress, or to the Comptroller General, unless a statute forbids such disclosure. If the request is for information claimed as condfidential or determined to be confidential, the EPA office processing the request shall provide notice to each affected business of the type of information disclosed and to whom it is disclosed. Notice prior to disclosure is left to the discretion of the office holding the information. Such notice may be given by notice published in the **Federal Register** or by letter sent by certified mail return receipt requested or telegram. At the time EPA discloses the business information, EPA will inform the requesting body of any unresolved business confidentiality claim known to cover the information and of any determination under this subpart that the information is entitled to confidential treatment.

* * * * *

15. Section 2.211 is amended by revising paragraph (d) to read as follows:

§ 2.211 Safeguarding of business information; penalty for wrongful disclosure.

* * * * *

(d) Each contractor or subcontractor with EPA, and each employee of such contractor or subcontractor, who is furnished business information by EPA under § 2.301(h), 2.302(h), 2.304(h), 2.305(h), 2.306(j), 2.307(h), 2.308(i) or 2.310(i) shall use or disclose that information only as permitted by the contract or subcontract under which the information was furnished. Contractors or subcontractors shall take steps to properly safeguard business information including following any security procedures for handling and safeguarding business information which are contained in any manuals, procedures, regulations or guidelines provided by EPA. Any violation of this paragraph shall constitute grounds for suspension or debarment of the contractor or subcontractor in question. A willful violation of this paragraph may result in criminal prosecution.

16. Section 2.301 is amended by revising paragraphs (b)(1) (i)(C) and (ii), redesignating and revising (b)(4) and (b)(5) as (b)(5) and (b)(6), respectively, adding a new paragraph (b)(4), and revising (g)(2), the first sentence of (g)(3), and the first sentence of (g)(4) to read as follows:

§ 2.301 Special rules governing certain information obtained under the Clean Air Act.

* * * * *

(b) * * *
(1) * * *
(i) * * *

(C) of carrying out any provision of the Act (except a provision of Part II of the Act with respect to a manufacturer of new motor vehicles or new motor vehicle engines);

(ii) Provided or obtained under section 208 of the Act, 42 U.S.C. 7542, for the purpose of enabling the Administrator to determine whether a manufacturer has acted or is acting in compliance with the Act and regulations under the Act, or provided or obtained under section 206(c) of the Act, 42 U.S.C. 7525(c); or

* * * * *

(4) Information will be considered to have been provided or obtained under section 206(c) of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 206(c) regardless of whether section 206(c) was cited as authority for any request for the information, whether an action was brought under section 204 of the Act, 42 U.S.C. 7523, or whether the information was provided directly to EPA or through some third person.

(5) Information will be considered to have been provided or obtained under section 307(a) of the Act if it was provided in response to a subpoena issued under section 307(a), or if its production could have been requested by subpoena under section 307(a), regardless of whether section 307(a) was cited as the authority for any request for the information, whether a subpoena was issued by EPA, whether a court issued an order under section 307(a), or whether the information was provided directly to EPA or through some third person.

(6) This section specifically does not apply to information obtained under section 111(j) or 211(b) of the Act, 42 U.S.C. 7411(j), 7545(b).

* * * * *

(g) * * *

(2) In connection with any proceeding other than a proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies may be made available to the public under this paragraph (g)(2). No information shall be made available to the public under this paragraph (g)(2) until any affected business has been informed that EPA is considering making the information available to the public under this paragraph (g)(2) in connection with an identified proceeding, and has afforded the business a reasonable period for comments (such notice and opportunity to comment may be afforded in connection with the notice prescribed by § 2.204(d)(1) and § 2.204(e)). Information may be made available to the public under this paragraph (g)(2) only if, after consideration of any timely comments submitted by the business, the General Counsel determines that the information is relevant to the subject of the proceeding and the EPA office conducting the proceeding determines that the public interest would be served by making the information available to the public. Any affected business shall be given at least 5 days notice by the General Counsel prior to making the information available to the public.

(3) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies may be made available to the public, or to one or more parties of record to the proceeding, under this paragraph (g)(3). * * *

(4) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies may be made available to one or more parties of record to the proceeding, under this paragraph (g)(4). * * *

* * * * *

17. Section 2.305 is amended by revising the section heading and paragraphs (a), (b), (g)(1), and (h)(1) and adding (h)(4) as follows:

§ 2.305 Special rules governing certain information obtained under the Solid Waste Disposal Act, as amended.

(a) *Definitions.* For purposes of this section:

(1) "Act" means the Solid Waste Disposal Act, as amended, including amendments made by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*

(2) "Person" has the meaning given it in section 1004(15) of the Act, 42 U.S.C. 6903(15).

(3) "Hazardous waste" has the meaning given it in section 1005(5) of the Act, 42 U.S.C. 6903(5).

(4) "Proceeding" means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act including the issuance of administrative orders and the approval or disapproval of plans (e.g. closure plans) submitted by persons subject to regulation under the Act, but not including determinations under this subpart.

(b) *Applicability.* This section applies to information provided to or obtained by EPA under section 3001(b)(3)(B), 3007, or 9005 of the Act, 42 U.S.C. 6921(b)(3)(B), 6927, or 6995. Information will be considered to have been provided or obtained under section 3001(b)(3)(B), 3007 or 9005 of the Act if it was provided in response to a request from EPA made for any of the purposes stated in the Act or if its submission could have been required under the Act regardless of whether a specific section was cited as the authority for any request for the information or whether the information was provided directly to EPA or through some third person.

* * * * *

(g) *Disclosure of information relevant in a proceeding.* (1) Under sections 3007(b) and 9005(b) of the Act (42 U.S.C. 6927(b) and 6995(b)), any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made

only in accordance with this paragraph (g).

(h) *Disclosure to authorized representatives.* (1) Under sections 3001(b)(3)(B), 3007(b), and 9005(b) of the Act (42 U.S.C. 6921(b)(3)(B), 6927(b), and 6995(b)), EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

* * * * *

(4) At the time any information is furnished to a contractor or subcontractor under this paragraph (h), the EPA office furnishing the information to the contractor or subcontractor shall notify the contractor or subcontractor that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the contractor or subcontractor and its employees to penalties in section 3001(b)(3)(B), 3007(b)(2), or 9005(b)(1) of the Act (42 U.S.C. 6921(b)(3)(B), 6927(b), or 6995(b)).

18. By adding § 2.310 to read as follows:

§ 2.310 Special rules governing certain information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(a) *Definitions.* For purposes of this section:

(1) "Act" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq.

(2) "Person" has the meaning given it in section 101(21) of the Act, 42 U.S.C. 9601(21).

(3) "Facility" has the meaning given it in section 101(9) of the Act, 42 U.S.C. 9601(9).

(4) "Hazardous substance" has the meaning given it in section 101(14) of the Act, 42 U.S.C. 9601(14).

(5) "Release" has the meaning given it in section 101(18) of the Act, 42 U.S.C. 9601(18).

(6) "Proceeding" means any rulemaking or adjudication conducted by EPA under the Act or under regulations which implement the Act (including the issuance of administrative orders under section 106 of the Act), or any action taken by EPA in response to the release or threat of release of a hazardous substance, but not including determinations under this subpart.

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under section 104(e)(1) of the Act, 42 U.S.C. 9604(e)(1), by or from any person who stores, treats, or disposes of hazardous wastes; or where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled hazardous substances. Information will be considered to have been provided or obtained under section 104(e)(1) of the Act if it was provided in response to a request from EPA or a representative of EPA made for any of the purposes stated in section 104(e)(1), or if its submission could have been required under section 104(e)(1), regardless of whether section 104(e)(1) was cited as authority for any request for the information or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and 2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies; however, no information to which this section applies is voluntarily submitted information.

(f) [Reserved]

(g)(1) Under section 104(e)(2)(A) of the Act (42 U.S.C. 9604(e)(2)(A)) any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made only in accordance with this paragraph (g).

(2–4) The provisions of paragraphs 2.301(g)(2), (g)(3), and (g)(4) are to be used as paragraphs (g)(2), (g)(3), and (g)(4), respectively, of this section.

(h) *Disclosure to authorized representatives.* (1) Under section 104(e)(1) of the Act (42 U.S.C. 9604(e)(1)), EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

(2–3) The provisions of paragraphs 2.301(h)(2) and (h)(3) are to be used as paragraphs(h)(2) and (h)(3), respectively, of this section.

19. By adding § 2.311 to read as follows:

§ 2.311 Special rules governing certain information obtained under the Motor Vehicle Information and Cost Savings Act.

(a) *Definitions.* For the purposes of this section:

(1) "Act" means the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1901 et seq.

(2) "Average fuel economy" has the meaning given it in section 501(4) of the Act, 15 U.S.C. 2001(4).

(3) "Fuel economy" has the meaning given it in section 501(6) of the Act, 15 U.S.C. 2001(6).

(4) "Fuel economy data" means any measurement or calculation of fuel economy for any model type and average fuel economy of a manufacturer under section 503(d) of the Act, 15 U.S.C. 2003(d).

(5) "Manufacturer" has the meaning given it in section 501(9) of the Act, 15 U.S.C. 2001(9).

(6) "Model type" has the meaning given it in section 501(11) of the Act, 15 U.S.C. 2001(11).

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under Title V, Part A of the Act, 15 U.S.C. 2001 through 2012. Information will be considered to have been provided or obtained under Title V, Part A of the Act if it was provided in response to a request from EPA made for any purpose stated in Title V, Part A, or if its submission could have been required under Title V Part A, regardless of whether Title V Part A was cited as the authority for any request for information or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and 2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies, except that information that is fuel economy data is not eligible for confidential treatment. No information to which this section applied is voluntarily submitted information.

(f) [Reserved]

(g) *Disclosure of information relevant to a proceeding.* (1) Under section 505(d)(1) of the Act, any information to which this section applies may be released by EPA because of the relevance of the information to a proceeding under Title V, Part A of the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information to which this section applies because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).

(2–4) The provisions of paragraphs 2.301(g)(2), (g)(3), and (g)(4) are to be used as paragraphs (g)(2), (g)(3), (g)(4), respectively, of this section.

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Federal Register

Thursday
August 15, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 761

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Surface Coal Mining; Areas Designated by Act of Congress; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 761

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Surface Coal Mining; Areas Designated by Act of Congress

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to revise its rule specifying how close surface coal mining operations can occur to rivers that are under study pursuant to the Wild and Scenic Rivers Act (WSRA). In a December 17, 1984, brief filed by the Secretary of the Interior in response to a legal challenge of the existing rule, the Secretary recognized that a conflict exists between the guidelines for study rivers established under the WSRA and the challenged rules. The WSRA guidelines designate a boundary for protection of study river areas as *at least* one-quarter mile from each bank of a study river. OSM's rules specified that the boundary be *no more than* one-quarter mile from each bank of the river. This proposed rule would prohibit mining along study rivers or study river corridors as established in any guidelines pursuant to the Wild and Scenic Rivers Act rather than specifying any maximum distance requirement. If a study river or study river corridor is not designated a Wild and Scenic River (or corridor) and loses its study status, the protection of section 522(e) of the Surface Mining Act would no longer apply.

DATES: Written comments must be received before 5:00 p.m. eastern daylight time on or before October 24, 1985.

Public hearings. Upon request, OSM will hold public hearings on the proposed rule in Washington, D.C.; Denver, Colorado; and Knoxville, Tennessee, at 9:30 a.m. local time on October 17, 1985. Upon request, OSM also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5:00 p.m. eastern daylight time on October 3, 1985.

ADDRESSES: Written comments. Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5124B, 1100 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5124B–L, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240

Public hearings. Department of the Interior Auditorium, 18th and C Streets, NW., Washington, D.C.; Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for public hearings. Submit in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT"** by the time specified under **"DATES."**

FOR FURTHER INFORMATION CONTACT: Stann Chase, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; telephone: 202–343–5587 (commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) will not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings.

OSM will hold public hearings on the proposed rule on request only.

The times, dates, and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates, and addresses for the hearings at the remaining locations have not yet been scheduled but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating in a hearing at a particular location should notify Stann Chase (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing location by 5:00 p.m. eastern daylight time on September 26, 1985. If no one has contacted Mr. Chase to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions to clarify issues, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA, Pub. L. 95–87) sets forth the general regulatory requirements governing surface coal mining operations and the surface impact of underground coal mining. OSM has by regulation (30 CFR Chapter VII) implemented or clarified many of the general requirements of the Act and established performance standards to be achieved by different operations. As part of that process, on September 14, 1983 (48 FR 41312), the Secretary of the Interior promulgated final rules amending certain portions of its permanent regulatory program.

In part, the rules affected were those in 30 CFR Part 761, which implemented section 522(e) of SMCRA by setting forth the prohibitions and limitations of mining in areas designated by Congress as unsuitable for all or certain types of surface coal mining operations. More specifically, the rules affected mining along study rivers in the Wild and Scenic Rivers System designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)). Existing 30 CFR 761.11(a) prohibits mining within a maximum of one-quarter mile from each bank of a study river. However, the rule was found to be in conflict with the guidelines established under the Wild and Scenic Rivers Act, which designate a boundary for protection of study river areas as at least one-quarter mile from

each bank of a study river. Therefore, the guidelines established pursuant to the Wild and Scenic Rivers Act can allow a wider corridor of protection along study rivers than the rule promulgated under SMCRA.

The 1983 regulatory revision to the permanent surface mining regulations, 30 U.S.C. 1201 *et seq.*, was challenged in Round III of *In re: Permanent Surface Mining Litigation II*, Civil Action No. 79–1144 (D.D.C.). As a result of the Round III challenge, the Secretary has reviewed the rule pertaining to study rivers and concluded that this rule is inconsistent with the guidelines established pursuant to the Wild and Scenic Rivers Act. Consequently, this proposed rule would establish under the Surface Mining Control and Reclamation Act the same boundary for study river areas as is established under the Wild and Scenic Rivers Act.

III. Discussion of Proposed Rule

Secton 761.11: Areas Where Mining is Prohibited or Limited

Section 761.11(a): Wild and Scenic Rivers

On June 10, 1982 (47 FR 25278), OSM published a notice of proposed rulemaking to amend 30 CFR Chapter VII, Subchapter F. Included in the proposed rules was a revision to 30 CFR 761.11(a), which enumerated certain national systems within whose boundaries surface coal mining operations could not be conducted, subject to valid existing rights considerations. Among those systems was the Wild and Scenic Rivers System. The rule implemented section 522(e)(1) of the Act, which states that "[N]o surface coal mining operations . . . shall be permitted . . . on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress."

The OSM rule proposed on June 10, 1982 (47 FR 25278), was based on guidelines proposed by the National Park Service (NPS) on January 18, 1981, to establish the boundary for study river areas in the Wild and Scenic Rivers System (46 FR 9148). The objective of OSM's rule was to establish those areas in which mining would be prohibited along study rivers. Consequently, OSM adopted the standard of the NPS that a study corridor was "a corridor extending not more than one-quarter mile from each bank for the length of the segment being studied." This was in keeping with the NPS proposed phrase that a study area is "normally defined as an area extending the length of the study segment and extending in width one-quarter mile from each bank of the river." However, the final NPS guidelines were published with revised wording in which the phrase "normally defined as" had been replaced with the phrase "as a minimum," resulting in the present conflict (47 FR 39456, Sept. 7, 1982). OSM now proposes to revise § 761.11(a) so that the permanent rule will be consistent with the guidelines established pursuant to the Wild and Scenic Rivers Act. Additionally, the specific boundary of the study river corridor is not stated in the proposed rule. This will prevent future conflicts in the event that the boundary is changed at a later date under the Wild and Scenic Rivers Act.

Effect in Federal Program States

The proposed rules would apply through cross-referencing to the following Federal Program States: Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

IV. Procedural Matters

Federal Paperwork Reduction Act

No information collection requirements are contained in 30 CFR 761.11(a) which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The Department of the Interior (DOI) has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule would not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) of any impacts that this proposed rulemaking might have on the human environment. This EA is on file in the OSM Administrative Record at the address listed in the "ADDRESSES" section of this preamble. An EA on the final rule will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule.

List of Subjects in 30 CFR Part 761

Coal mining, Surface mining, Underground mining, Wild and scenic rivers, Wildlife refuges.

Accordingly, it is proposed to amend 30 CFR Part 761 as follows:

Dated: July 25, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

1. The authority citation for Part 761 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

2. Section 761.11 is amended by revising paragraph (a) to read as follows:

§ 761.11 Areas where mining is prohibited or limited.

* * * * *

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) or study rivers or study river corridors as established in any guidelines pursuant to that Act, and National Recreation Areas designated by Act of Congress.

* * * * *

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August 15, 1985

Part IV

Department of Transportation

Coast Guard

33 CFR Part 137
Deepwater Port Liability Fund; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 137

[CGD 79–158]

Deepwater Port Liability Fund

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing, with clarifying modifications and procedural changes, the interim final Deepwater Port Liability Fund Regulations published in the **Federal Register** issue of June 24, 1982. The regulations implement provisions of the Deepwater Port Act of 1974 as amended by the Deepwater Port Act Amendments of 1984. Although effective upon publication, the June 1982 rules were considerably narrowed in scope from the proposed rules. The general public was, therefore, given additional time to comment. Comments, additional internal agency review, and statutory amendment resulted in several revisions to the interim rule.

EFFECTIVE DATE: This final rule is effective August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Frank A. Martin, Jr., Chief, Funds Management Branch, Financial Responsibility Division, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, DC 20593, (202) 472–5052.

SUPPLEMENTARY INFORMATION: By notice published in the **Federal Register** on June 24, 1982 (47 FR 27478) the Coast Guard added a new Part 137 to Title 33, Code of Federal Regulations. This new part established procedures for payment of fees to the Deepwater Port Liability Fund (Fund), settlement of claims, vessel owner/operator financial responsibility, and notification of spills under the Deepwater Port Act of 1974.

Although made effective upon publication (June 24, 1982), Part 137 was promulgated as an interim rule because it had been considerably narrowed in scope from the proposed rule. Furthermore, the Coast Guard desired to evaluate the workability and effectiveness of several of the financial responsibility demonstration provisions of Part 137 before completing this rulemaking. Therefore, the general public was given an additional 60 day period, until August 23, 1982, to also comment on interim Part 137.

Comments on the interim rule were received from Getty Oil Company; Water Quality Insurance Syndicate (WQIS); the American Waterways Operators, Inc. (AWO); American Institute of Merchant Shipping (AIMS); Patton, Boggs and Blow, counsel for the LOOP deepwater port; and Texaco, Inc. In addition, the Fund Administrator received from the Steamship Mutual Underwriting Association (Bermuda) Limited financial responsibility documentation, under § 137.303(a), on behalf of the Texaco fleet of vessels likely to call at the LOOP deepwater port. Analysis of this information was helpful in evaluating the effectiveness of the interim rules and related determinations on the appropriate level of Coast Guard oversight needed.

Unresolved Issue

The Getty Oil Company expressed concern that the final rules are being promulgated without resolution of the issue of *harmful quantity* of oil which constitutes a *discharge* in the context of U.S. deepwater port activities. Such action, according to Getty, is misleading to the public.

While the lack of a definition of "harmful quantity" may cause some short term enforcement problems, e.g., regarding the assessment of civil penalties in the event of a spill, or the enforcement of criminal sanctions for failure to give notice of a spill, we are of the view that these problems are outweighed by the merits of promulgating the rules. First, there is already one U.S. deepwater port in operation and the Fund has been established.

Secondly, the Administrator of the Environmental Protection Agency (EPA), who is required under 33 U.S.C. 1517(m)(3) to issue regulations concerning the discharge of quantities of oil determined harmful, has established an active regulatory project to do so. EPA published a Notice of Proposed Rulemaking on this issue on March 11, 1985 (50 FR 9776–83), and is evaluating the comments received. The EPA currently expects to publish the final rule in August 1986. In the interim, this final rule is necessary to simplify the procedure for providing pollution liability insurance coverage of vessels presently calling at the LOOP deepwater port, and for otherwise administering the Deepwater Port Liability Fund program.

Compliance Costs

The Getty Oil Co. also expressed concern that the Coast Guard's cost analysis failed to fully consider private sector costs, particularly the taking of $100 million in barrel fees that would ultimately constitute the Fund.

Based on our experience under the interim rules, we are increasing the estimated compliance costs of the regulations. Additional compliance costs include costs associated with the preparation and submission of information to the Fund Administrator and deepwater port licensees, which establishes that the owners or operators of vessels calling at a deepwater port to unload cargo oil can meet their pollution liability. These administrative costs will fall primarily to the involved vessel owner, operator, or insurer, and, under the procedures currently in effect, are estimated to total approximately $25,000 per year.

The actual costs likely to be incurred by a deepwater port licensee in invoicing, collection, and accounting operations associated with the barrel fees on oil unloaded at its facility are not compliance costs of these regulations. It is the statute rather than the regulations which requires licensees to collect the barrel fees. The regulations merely prescribe the manner and times for delivery of those fee collections to the Fund. Likewise, the $100 million in barrel fees (discussed below) that might have ultimately been taken out of the private sector (from the owners of the oil at the time of unloading at a deepwater port), was a statutory requirement, not a compliance cost of these regulations.

Payment of Fees

The Getty Oil Co. also commented on the seemingly arbitrary rate of 2¢ per barrel paid on each barrel of oil loaded or unloaded at a deepwater port and the apparent unfairness to those initial shippers using a deepwater port who contribute to the Fund, as opposed to those users after the Fund has reached its statutory ceiling and the barrel fee collections have been suspended. While this may be a valid concern, it is not a consequence of the regulations. Again, it is the statute which both sets the 2¢ barrel fee and mandates that collections shall cease when the amount of money in the Fund reaches the specified ceiling.

Since publication of the interim rule and the Getty Oil Co. comment discussed above, the Deepwater Port Act Amendments of 1984 (Pub. L. 98–419) were enacted. These amendments, as of September 25, 1984, reduce the $100 million Fund ceiling figure to a lower ceiling of $4 million. The amendments also authorize suspension of the 2¢ per barrel fee collections by licensees while the balance of the Fund remains above $4 million.

As the balance of the Fund was approximately $7.4 million when the amendments took effect, fee collections were suspended on September 26, 1984. Because interest income from investments more than offset

administrative costs, it is not likely fee collections will be resumed in the foreseeable future. This presumes, of course, there are no catastrophic deepwater port oil spills which reduce the Fund balance below $4 million.

Getty Oil Co. also commented that the terms prescribed for payment of fees due the Fund (§ 137.207) are contrary to normal business transactions and are restrictive to a licensee's and vessel operator's cash flow positions. In contrast, we have experienced no difficulties under the interim rule and the LOOP deepwater port licensee has not requested any change.

LOOP has chosen the electronic transfer of funds for depositing fees with the Fund and this method is increasingly being used in commercial transactions. This method is retained in the rule.

The requirement that a check be certified has been eliminated. Depositing the funds in the proper account is the responsibility of the Coast Guard and need not be addressed in the regulations.

It is the owner of the oil at the time of unloading who is responsible for payment of the fees to the licensee. Payment by the licensee to the Fund is correlated with the monthly throughput report required by § 150.707. The regulations do not address either the form or timing of the financial transactions between the licensee and the owner of the oil, who is frequently not the vessel operator. Therefore, timing of the payment to the Fund has not been changed.

In order to conform the fee suspension requirement in § 137.211(a) to the Deepwater Port Act Amendments of 1984, that section has been revised to reflect the new fee collection suspension threshold figure of $4 million. Under 5 U.S.C. 553(b)(3)(B), it has been determined that additional notice and public procedure before making this change is unnecessary and contrary to the public interest because the statute controls the change in this instance.

Authority

Getty also commented that it was of the view the authority citation found at the end of the Table of Contents for Part 137 did not sufficiently authorize the Fund audit requirements contained in § 137.215. We agree and are revising that citation by adding a reference to section 13(a) of the Act (33 U.S.C. 1512(a)),* which more directly authorizes imposition of the requirements in § 137.215.

The last recommendation by Getty was to add a paragraph to § 137.509 to clarify limitations on liability. The statute is sufficiently clear in this regard and the limitations need not be repeated in the regulations.

Vessel Financial Responsibility Applicability

The WQIS, AWO, AIMS, and counsel for the LOOP deepwater port all raised the issue of whether the vessel financial responsibility requirements under the statute and regulations are intended to apply to the owners and operators of vessels which provide bunker fuel, supply, or other services at deepwater ports. The contention here is that the statute was meant to deal with the transfer of oil cargo between tankers and the deepwater port facility, i.e., the financial responsibility provisions should be applied only to those tankers which use the port for its basic purpose. This interpretation appears reasonable, but only within the narrow context of section 18(1) of the Act.

The statutory provision establishing the financial responsibility requirement, 33 U.S.C. 1517(1), applies to ". . . any owner or operator of a vessel using any deepwater port, ..." The modifying phase *using any deepwater port* seems controlling in this instance. When this language is matched against the statutory definition of "deepwater port" it is apparent that bunkering, supply, or other types of service craft that may use the port are *not* the kind of vessels Congress intended to include within the scope of the financial responsibility requirements since these types of vessels are not using the port for the ". . . loading or unloading and further handling of oil for transportation to any State. . . ." Rather, a bunkering vessel might use a deepwater port to supply fuel to a tanker for that tanker's own use, not for transportation to any State.

Accordingly, to remove uncertainty in the final rule as to which vessel owners or operators are required to comply with the financial responsibility provisions, we are revising the definition of vessel to mean a tanker which is moored at a deepwater port or which is within a deepwater port's safety zone for loading or unloading oil as cargo, exclusive of bunkers. Since this definition relates only to a vessel's status concerning documentation of financial responsibility, we have moved the definition to a new paragraph (b) in § 137.301, Subpart D, Vessel Financial Responsibility.

In all other contexts, where the term "vessel" appears in the final rule outside of Subpart D, that term has the same meaning as defined in the Act. This change in no way affects questions of vessel owner/operator liability or other responsibilities under section 18 of the Act.

Period of Validity of Financial Responsibility Documentation

Texaco, Inc. requested confirmation and clarification that "once a vessel has been certified as to financial responsibility, that this certification remains valid until the vessel has a change of ownership." This is partly but not entirely true. Obviously, if the underlyng insurance or bond terminates, the related certification terminates as well.

For the benefit of other readers, we point out that the required Certificate of Financial Responsibility (Water Pollution) issued under section 311(p)(1) of the Federal Water Pollution Control Act (see 33 CFR Part 130) is not the "certification" referred to by Texaco. While tankers serving LOOP are required to have such a Certificate, the only vessel certification designed specifically for deepwater port pollution liability is certification provided by an insurer or surety pursuant to the option in § 137.303(a)(2) of this final rule.

Another possible circumstance, besides change in ownership, which affects the continued validity of financial responsibility certification is a determination by the Fund Administrator that a particular guarantor is no longer acceptable because of factors affecting ability to pay a claim. A new paragraph (e) is added to § 137.303 in the final rule to require notice of such circumstances to the Fund Administrator and the involved deepwater port licensee.

The references to self-insurance as a method of establishing financial responsibility, in §§ 137.303(a), 137.305(a), and 137.305(a)(3), have been deleted from the final rule. This method was deleted because it is not being used by vessel owners or operators, is not required by the Act and is not the type of financial responsibility favored by the Fund Administrator or the Coast Guard's Financial Responsibility Division.

Financial Responsibility Documentation

The remainder of this preamble discussion addresses issues related primarily to the clarification and simplification of the vessel financial responsibility provisions in the interim rule, at §§ 137.303 and 137.305. This discussion and modification of the interim rule results from review of the

* Hereinafter, "Act" refers to the Deepwater Port Act of 1974 as amended by the Deepwater Port Act Amendments of 1984.

additional comments, our experience with the interim rule, the intervening transfer of Federal Maritime Commission (FMC) vessel financial responsibility functions to the Coast Guard in September 1983 (See 48 FR 46178–215, October 11, 1983) and review with LOOP vessel scheduling personnel and International Protection and Indemnity (P&I) Club underwritings providing the vessel insurance coverage.

Section 137.303 of the interim rule gives an insurer or surety providing evidence of financial responsibility the option to do so by means of "certification" or an appropriate endorsement to Form FMC–225 or FMC–322. Further review of this provision leads us to conclude additional explanation and minor modification is warranted.

First, we are deleting the reference to Insurance Forms FMC–225 and FMC–322. Those forms were used in connection with pollution liability under section 311 of the Federal Water Pollution Control Act (FWPCA). Since the transfer of functions from the FMC to the Coast Guard, Insurance Form CG–5358–9 has been used to demonstrate financial responsibility on behalf of vessel owners or operators for purposes of the FWPCA. Because the FWPCA also applies at deepwater ports, Form CG–5358–9 is now the appropriate form upon which to base the endorsement (or rider) option for demonstrating the additional insurance coverage required to meet Deepwater Port Act pollution liability. Section 137.303(b)(1) is therefore revised accordingly.

Second, our experience to date has enabled us to clarify interim § 137.303(b)(1) concerning our intent with respect to the clause "as approved by the Fund Administrator". P&I Club representatives have interpreted this clause to mean that the Fund Administrator must explicitly approve, in advance of submission, the specific form underwriters wish to establish as their standard endorsement or rider form. This is not necessarily what was intended, but that approach will be adopted in this final rule. We are doing so because only P&I Clubs have participated in this program to date, and because a standard, preapproved endorsement is their (and LOOP's) preferred method of evidencing financial responsibility on behalf of vessel operators. The standard endorsement approach also reduces paperwork and eliminates uncertainty as to acceptability of an endorsement. The danger of delays to vessels also is eliminated. (Of course, for any guarantors who do not wish to use a preapproved standard method, the certification method [§ 137.303(a)(2)] remains available.)

The Fund Administrator has approved a standard endorsement to new Insurance Form CG–5358–9 which insurers currently have on file with the Coast Guard for purposes of compliance with section 311(p)(1) of the FWPCA. The language of that endorsement is available upon request and is already being utilized by P&I Clubs to reduce paperwork.

Section 137.303(b)(2) of the final rule is amended in this document by revising the endorsement submission requirements. Endorsements are no longer submitted to the FMC, due to the transfer of that agency's vessel certification function to the Coast Guard. The original now is submitted to the Fund Administrator with a copy going to the involved deepwater port licensee.

Under the deepwater port license conditions and these regulations, verification of vessel financial responsibility coverage is a shared responsibility of the Fund Administrator and deepwater port licensees. The Fund Administrator provides general direction and oversight, yet relies on a deepwater port licensee to take a responsible role in checking evidence of financial responsibility before a vessel is permitted to enter the safety zone of a deepwater port. This is why, in both the endorsement method and certification method, the involved deepwater port licensee receives a copy of the evidence of financial responsibility. For the sake of consistency, this final rule also amends § 137.303(a)(2) concerning submission of documentation for the certification method of establishing financial responsibility, by revising the language of that provision to parallel that used in paragraph (b)(2) of the section concerning endorsements. The original of the certification is now provided to the Fund Administrator with a copy submitted to the involved deepwater port licensee.

To simplify and present a more readable section on certification contents, we have rewritten § 137.305. Except as discussed below, the information required under the interim rule has not been substantively changed. The rewrite is based, in part, on the language LOOP has been using in information packets providing guidance to its cargo agents concerning financial responsibility requirements, and which the Steamship Mutual Underwriting Association (Bermuda) Ltd. has used in its 1982 certification of the Texaco fleet. (Steamship Mutual has since changed its coverage method to the standard endorsement).

Under the certification method of the interim rules [§ 137.305(a)(3)], an insurer or surety was required to designate a U.S. agent for service of process. However, neither the statute nor the regulations establish a direct cause of action against persons providing evidence of financial responsibility. The statute places strict, joint and several liability for pollution on vessel owners and operators, not their guarantors. Accordingly, we have deleted the requirement to name an agent for service of process for purposes of § 137.305.

Notice of Discharge

The notification requirements in § 137.403 of the interim rule are revised in two respects. First, we have deleted the specific officials, listed in paragraph (a), to whom notice of a spill is given, and added a cross-reference to the part in this chapter concerning notification procedures prescribed under section 311 of the FWPCA. Second, we have deleted paragraph (b) of § 137.403, which contained information requirements regarding a deepwater port-related discharge. These changes conform the notification procedures for discharges occurring in connection with U.S. deepwater port activities to the procedures already widely used for FWPCA purposes. The latter change will also reduce mandatory information collection requirements.

Administrative Matters

Since the interim rule was published, the Coast Guard has completed an internal Headquarters reorganization affecting the name, location, and mail routing symbol of the organizational element within its Office of Marine Environment and Systems which manages the daily activities of the Fund program. Accordingly, editorial changes updating this information appear in the final rule at §§ 137.101, 137.103, and 137.505.

Further, the term "Fund Administrator", defined at § 137.5 in the interim rule, is revised to reflect the fact that that individual is the Chief, Office of Marine Environment and Systems, in the Coast Guard organizational structure. Future rulemaking will conform the regulations in Parts 135 and 136, governing the Offshore Oil Pollution Compensation Fund, to these organizational changes.

For administrative and industry convenience, we are republishing entire Part 137 in this document.

Regulatory Evaluation—Paperwork Reduction Act

The regulatory evaluation information published with the interim rule has not substantively changed. Under current regulatory policies and procedures the final rule, as republished here, remains "non-major" and "non-significant". The information collection requirements are, in fact, reduced further by eliminating the requirements to name an agent for service of process and to give detailed information with the notice of discharge for deepwater port spill incidents. Moreover, routine paperwork and correspondence will be reduced for insurers and LOOP by our adoption of a standard endorsement.

The reduction of information collection requirements from the interim rule, and those which remain in this final rule (§§ 137.303, 137.305, and 137.503(a)), have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35) and have been assigned OMB control number 2115–0545.

Regulatory Flexibility Act

Since the economic impact of this final rule is expected to be minimal, in accordance with paragraph 605(d) of the Regulatory Flexibility Act (94 Stat. 1164), the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Effective Date

Since the changes constitute organizational modifications, procedural simplifications, and paperwork reductions, it has been determined there is good cause, under 5 U.S.C. 553(d)(3), to make this final rule effective upon publication.

List of Subjects in 33 CFR Part 137

Deepwater ports, Oil pollution fund, Vessel financial responsibility, Claims procedures, Harbors, Insurance, Reporting and recordkeeping requirements.

In consideration of the foregoing, Chapter I of Title 33, Code of Federal Regulations, is amended by revising Part 137 to read as follows:

PART 137—DEEPWATER PORT LIABILITY FUND

Subpart A—General

Sec.

137.1 Purpose.
137.3 Applicability.
137.5 Definitions.

Subpart B—Fund Organization, Administration, and Management

137.101 General.
137.103 Fund address.
137.105 Fund Administrator's authority, delegation.
137.107 Fund Administrator's powers, duties, and obligations.

Subpart C—Fund Revenues, Accounting, and Audit

137.201 Purpose.
137.203 Applicability.
137.205 Computation of barrel fees due the Fund.
137.207 Payment of fees.
137.209 Adjustments.
137.211 Suspension of fee collections.
137.213 Oil excluded from fee collection.
137.215 Audit.

Subpart D—Vessel Financial Responsibility

137.301 Purpose.
137.303 Financial responsibility documentation.
137.305 Certification contents.

Subpart E—Notification

137.401 Purpose.
137.403 Notification.

Subpart F—Claims Procedures

137.501 Purpose.
137.503 General.
137.505 Information.
137.507 Filing claims.
137.509 Claims allowed.
137.511 Trans-Alaska Pipeline oil pollution.
137.513 Review of claims against the Fund.

Authority: 33 U.S.C. 1509(a), 1512(a), 1517(j)(1); 49 CFR 1.46.

Subpart A—General

§ 137.1 Purpose.

This part contains the policies, procedures, and administrative practices regarding the management and operation of the Deepwater Port Liability Fund and related requirements.

§ 137.3 Applicability.

This part applies to each person who—

(a) Has been granted a license by the Secretary of Transportation to construct, operate, and maintain a deepwater port facility offshore of the United States;

(b) Owns or operates any vessel subject to section 18 of the Act;

(c) Provides financial responsibility for any vessel using a deepwater port; and

(d) Sustains cleanup costs or damages as a consequence of oil pollution from United States deepwater port activities.

§ 137.5 Definitions.

As used in this part—

"Act" means the Deepwater Port Act of 1974 as amended (33 U.S.C. 1501);

"Barrel" means 42 U.S. gallons at atmospheric pressure and 60 degrees Fahrenheit;

"Fund" means the Deepwater Port Liability Fund established by section 18(f)(1) of the Act;

"Fund Administrator" means the Chief, Office of Marine Environment and Systems at U.S. Coast Guard Headquarters; and

"Fund Claims Adjuster" means a person authorized to receive, review, adjust, and pay claims on behalf of the Fund.

Subpart B—Fund Organization, Administration, and Management

§ 137.101 General.

Management of the Fund program daily activities is conducted by the Funds Management Branch staff, Financial Responsibility Division, located within the Office of Marine Environment and Systems at U.S. Coast Guard Headquarters.

§ 137.103 Fund address.

The address to which correspondence relating to the Fund program should be directed is: Funds Management Branch, Commandant (G–WFR–1) U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

§ 137.105 Fund Administrator's authority, delegation.

The Fund Administrator is delegated authority to perform those functions of the Commandant, U.S. Coast Guard, under section 18 of the Act, that are necessary to administer the Funds.

§ 137.107 Fund Administrator's powers, duties and obligations.

(a) The Fund Administrator conducts the activities of the Fund, including but not limited to the following:

(1) Development, promulgation, and revision of program policies and regulations incidental to Fund administration.

(2) Receipt and verification of Fund revenues comprised of barrel fees, penalties and interest income earned on Fund investments of those revenues.

(3) Verification and payment of costs and expenses reasonably necessary to Fund administration and the settlement of claims against the Fund.

(4) Investment, as provided in section 18(f)(3) of the Act, of all Fund revenues not needed for administration and the satisfaction of claims.

(5) Recovery of any monies to which the Fund is entitled as subrogee under circumstances set forth in section 18(h)(3) and (4) of the Act.

(6) Determinations of the character and nature of Fund obligations and expenditures, and the manner in which those obligations and expenditures are incurred, allowed, and paid.

Subpart C—Fund Revenues, Accounting, and Audit

§ 137.201 Purpose.

This subpart contains the requirements concerning the calculation and delivery to the Fund, by deepwater port licensees, of the barrel fee revenues collected from the owners of oil loaded or unloaded at a deepwater port and the accounting for and audit of the Fund revenues.

§ 137.203 Applicability.

This subpart applies to each deepwater port licensee.

§ 137.205 Computation of barrel fees due the Fund.

Each deepwater port licensee shall compute the barrel fees due the Fund, at the rate of 2¢ per barrel, on the basis of the monthly oil throughput report required by § 150.707 of this chapter.

§ 137.207 Payment of fees.

(a) Each licensee shall pay the barrel fees due the Fund, on oil loaded or unloaded at the port during the preceding month, by one of the methods listed in paragraph (b) of this section.

(b) Barrel fees due the Fund must be paid by—

(1) Electronic transfer of funds as arranged with the Fund Administrator;

(2) A check or bank draft made payable to the U.S. Coast Guard; or

(3) Money order drawn to the order of the U.S. Coast Guard.

(c) The payment must be transmitted in time to be received by the Fund Administrator at the address listed in § 137.103 by the fifteenth of each month, or the closest following business day.

(d) Each payment to the Fund must be for the exact amount of oil loaded or unloaded at the port during the preceding month unless the licensee is concurrently reporting a variance under § 137.213(b) of this subpart.

§ 137.209 Adjustments.

(a) The Fund Administrator reveiws each payment to the Fund and notifies each licensee if any apparent discrepancies are found.

(b) In general, each licensee may make adjustments to correct mathematical errors resulting in either overpayment or underpayment of the fees due the Fund.

(c) The manner and time by which adjustments for overpayment or underpayment are made are determined by the Fund Administrator and normally will occur with the following month's payment to the Fund.

§ 137.211 Suspension of fee collections.

(a) When the Fund Administrator determines the unobligated Fund balance less unliquidated debts to the United States Treasury exceeds $4 million, collection of the 2¢ barrel fee by any licensee is suspended.

(b) The Fund Administrator notifies each licensee by the twentieth of the month if the collection of fees is to be suspended.

(c) After any suspension of barrel fee collections by the Fund Administrator, each licensee shall resume collection of fees and resume payments to the Fund as prescribed in § 137.207, when directed by the Fund Administrator.

(d) Any suspension of barrel fee collections under this section does not relieve a deepwater port licensee of the oil throughput reporting requirements in § 150.707 of this chapter.

§ 137.213 Oil excluded from fee collection.

(a) A deepwater port licensee shall not collect barrel fees on any bunker or fuel oil for use by a vessel, or any oil which was transported through the Trans-Alaska Pipeline system (TAPS).

(b) When making the barrel fee payments due the Fund, each licensee shall explain in writing, in the oil throughput report, at the time of each payment, the reasons for any variance in the number of barrels of oil reported and payment submitted that is attributed to any bunker or fuel oil or the TAPS oil referred to in paragraph (a) of this section.

§ 137.215 Audit.

(a) The Fund Administrator audits barrel fee payments to the Fund. Each deepwater port licensee shall permit the Fund Administrator (or his representative) access to all financial records, reports, and files maintained by the licensee relevant to the computation, charging, collecting, and payment of barrel fees to the Fund, including the oil throughput log required by § 150.757 of this chapter.

(b) To facilitate Fund audits, each licensee shall keep the financial data identified in paragraph (a) of this section in a manner which makes it readily accessible for audit.

(c) The time period a licensee shall retain the financial records necessary to conduct Fund audits, and the specific type of records to be retained, shall be agreed upon by each licensee and the Fund Administrator. The period of retention will generally be for three years or until any Fund audits are approved by the Fund Administrator, whichever occurs first.

Subpart D—Vessel Financial Responsibility

§ 137.301 Purpose.

(a) This subpart contains requirements concerning the demonstration of financial responsibility by a vessel owner or operator, in an amount sufficient to meet the liabilities imposed on an owner and operator by section 18 of the Act.

(b) For the purpose of this subpart, "vessel" means any tanker which is moored at a deepwater port or which is within the designated safety zone of a deepwater port for the purpose of loading or unloading oil as cargo, exclusive of bunkers.

§ 137.303 Financial responsibility documentation.

(a) In addition to obtaining a Certificate and Financial Responsibility pursuant to 33 CFR Part 130 and complying with the requirements of any other applicable laws and regulations, the owner or operator of any vessel shall—

(1) Have insurance or surety bond coverage in the amount of $150 per gross ton of the vessel or $20,000,000, whichever is less, to meet the additional liability imposed by section 18 of the Act; and

(2) Provide to the Fund Administrator an original certification executed by the insurer or surety, with a copy to the involved deepwater port licensee. That certification shall contain the information set forth in § 137.305(a).

(b) The owner or operator of a vessel need not comply with paragraph (a)(2) of this section if—

(1) The insurer providing the insurance necessary to meet the liability imposed by section 18 of the Act, has executed an endorsement, approved by the Fund Administrator, to an existing Form CG–5358–9 (33 CFR Part 130), thereby demonstrating acceptable evidence of financial responsibility; and

(2) The insurer has submitted the original endorsement to the Fund Administrator, with a copy to the involved deepwater port licensee.

(c) A certification or endorsement, signed by a person who the Fund Administrator determines is not acceptable for purposes of providing evidence of financial responsibility, shall not be considered acceptable evidence of financial responsibility.

(d) Whenever there is any change to the financial responsibility documentation under this subpart,

including cancellation or non-renewal of insurance or surety coverage, the vessel owner, operator or underwriter shall immediately provide written notice of the changes to the Fund Administrator and the involved deepwater port licensee.

§ 137.305 Certification contents.

(a) The certification referred to in § 137.303(a)(2) must be in English and must be signed and dated by the person, or authorized representative of the person, providing the insurance or surety coverage. The certification must include the following:

(1) Name and address of the insurer or surety providing coverage for purposes of compliance with the section 18 of the Act and the regulations in this subpart.

(2) Name of vessel, and name of owner or operator covered, jointly and severally, against cleanup costs and damage liability under section 18 of the Act.

(3) Type of financial responsibility coverage provided, i.e., insurance or surety.

(4) Amount of financial responsibility coverage provided, i.e., $150 per gross ton of the vessel or $20,000,000, whichever is less.

(5) A statement that the coverage provided is not conditioned or dependent in any way upon any agreement or understanding between the underwriter and the owner or operator, and that only the defenses provided under section 18 of the Act are applicable.

(6) The effective date of the coverage provided.

(7) A statement that the coverage applies to the named vessel or vessels in respect of discharge incidents which give rise to claims under section 18 of the Act and which occur on or after the effective date and before the expiration date of the coverage.

(b) No provision contained in the certification referred to in paragraph (a) of this section may nullify, modify or limit the effect or intent of the seven statements listed in that paragraph. Any provision which may be construed as so nullifying, modifying, or limiting is void to the extent of such nullification, modification, or limitation.

(c) The definitions contained in the Act, § 137.5 and § 137.301(b) of this subpart apply to the language of the certification provided in accordance with paragraph (a) of this section.

Subpart E—Notification

§ 137.401 Purpose.

This subpart contains the requirements concerning the notice of a discharge of oil from a vessel or from a deepwater port.

§ 137.403 Notification.

The immediate notification of a discharge of oil required by 33 U.S.C. 1517(b) must be made by telephone, radiotelecommunication, or a similar rapid means of communication, as specified in Subpart B of Part 153 of this chapter.

Subpart F—Claims Procedures

§ 137.501 Purpose.

This subpart contains the procedures for the filing and payment of claims against the Fund for cleanup costs and damages resulting from a discharge of oil from deepwater port activities.

§ 137.503 General.

(a) Except where modified or supplemented by the provisions of this subpart, or excepted in paragraph (c) of this section, the requirements in Part 136 of this chapter, Offshore Oil Pollution Compensation Fund Claims Procedures, apply to the settlement and adjudication of claims against the Fund.

(b) For the purpose of this subpart, the terms "economic loss," "offshore facility," and "vessel," as used in Part 136 of this chapter, mean "damages or cleanup costs," "deepwater port," and "vessel" respectively as defined in the Act.

(c) The following sections of Part 136 of this chapter do not apply to the filing, processing, and payment of claims authorized under section 18 of the Act:

(1) Subpart A—§§ 136.1 through 136.7;

(2) Sections 136.101, 136.105, 136.109, 136.115 (a)(4) and 136.129(c);

(3) Sections 136.207(a), 136.213, 136.231 through 136.235; and

(4) Subpart D—§§ 136.301 through 136.309.

§ 137.505 Information.

Any person who desires to file a claim under section 18 of the Act may obtain information and specific guidance from the Fund staff by writing to Funds Management Branch, Commandant (G-WFR-1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

§ 137.507 Filing claims.

(a) A claim may not be filed against the Fund without filing a claim against the deepwater port licensee or the owner or operator of the vessel which is the source of the discharge.

(b) A claim may be filed with the Fund simultaneously with filing a claim against the deepwater port licensee or the owner or operator of a vessel which is the source of the discharge; however, the Fund does not act on the claim until it appears, to the satisfaction of the Fund Administrator, that a settlement of the claim against the source of the discharge will not be timely reached.

(c) A claim against the Fund may be filed not more than three years after the date of the discharge giving rise to the claim.

(d) A claim against the Fund is considered filed on the date the claim is actually received by a Fund Claims Adjuster or the Fund Administrator.

§ 137.509 Claims allowed.

(a) Claims resulting from a discharge of oil may be filed for cleanup costs and damages, including but not limited to damages—

(a) Suffered by any person;

(2) Involving real or personal property;

(3) Involving natural resources of the marine environment; and

(4) Involving the coastal environment of any nation.

(b) The damages in paragraph (a) of this section may be claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources.

(c) For all claims, a claimant must establish that the source of the oil pollution was a deepwater port, a vessel within a safety zone, or a vessel which has received oil from another vessel at a deepwater port.

(d) A claim for loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources may be presented by any person deriving income from activities which utilize, or are related to the utilization of, the property or natural resource.

§ 137.511 Trans-Alaska Pipeline oil pollution.

Damages from a discharge of Trans-Alaska Pipeline oil from a deepwater port are compensated in accordance with section 18 of the Act and the requirements of this part.

Note.—Claims involving Trans-Alaska Pipeline oil discharged from a vessel are filed under the provisions of 43 CFR Part 29.

§ 137.513 Review of claims against the Fund.

(a) Administrative review of any determination by a Fund Claims Adjuster concerning the denial of a claim against the Fund is conducted by the Fund Administrator in accordance with section 18 of the Act and the regulations in this part.

(b) A claimant must initiate administrative review of a claim against the Fund within 30 days of the denial of

a claim, by submitting a written request for review, together with any supporting data, to the Fund Administrator.

(c) The Fund Administrator's decision after administrative review of the denial of a claim is final agency action.

(d) Judicial review of any final determination on claims against the Fund is in accordance with section 18(j)(3) of the Act.

Dated: July 22, 1985.

J.H. Parent,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 85-19430 Filed 8-14-85; 8:45 am]

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Thursday
August 15, 1985

Part V

National Aeronautics and Space Administration

48 CFR Part 1801 et al.
NASA FAR Supplement; Miscellaneous Changes; Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1802, 1804–1808, 1814–1817, 1819, 1822, 1832, 1833, 1836, 1839, 1842, 1844, 1845, 1848, 1851–1853.

[NASA FAR Supplement Directive 85–4]

Miscellaneous Changes to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a large number of miscellaneous changes which have been previously issued as interim rules, publicized as proposed rules or which deal solely with NASA internal or administrative matters.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–2119.

SUPPLEMENTARY INFORMATION: (1) An interim rule on unpriced options was published at 50 FR 20417 (May 16, 1985) with a comment period ending June 17, 1985. None of the received comments contained specific recommendations for substantive changes; however, minor changes have been made for clarification purposes. (2) Proposed rule making on contract financing was published at 50 FR 23159 (May 31, 1985) with a comment period ending July 1, 1985. No comments were received from potentially affected private sector entities. (3) Proposed rule making was published at 50 FR 25434 (June 19, 1985), which made available to the public a copy of miscellaneous revisions for review and possible comment for a period ending July 19, 1985. No comments were received. (4) In addition to the above material, this rule includes a number of changes to NASA's internal procedures, administrative changes and corrections, i.e., matters which affect only NASA's operatins and do not affect or place requirements on the public.

Impact

For item 4, above, the Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. For items 2 and 4, above, NASA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 48 CFR Parts 1801, 1802, 1804–1808, 1814–1817, 1819, 1822, 1832, 1833, 1836, 1839, 1842, 1844, 1845, 1848, 1851–1853.

Government procurement.

Dated: July 23, 1985.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1801, 1802, 1804–1808, 1814–1817, 1819, 1822, 1832, 1833, 1836, 1839, 1842, 1844, 1845, 1848, 1851–1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION FEDERAL ACQUISITION REGULATION SUPPLEMENT

Subpart 1801.1—Purpose, Authority, Issuance

2. Sections 1801.105, 1801.105–1, and 1801.105–2 are revised to read as follows:

1801.105 OMB approval under the Paperwork Reduction Act.

1801.105–1 NASA FAR Supplement requirements.

The following OMB control numbers apply:

NASA FAR supplement segment	OMB control No.
18–12	2700–0056
18–23	2700–0051
18–27	2700–0052
18–32	2700–0055
18–43	2700–0054
NF 533	2700–0009
NF 667	2700–0004
NF 1018	2700–0017
All requirements	2700–0042

1801.105–2 Solicitations and contracts.

Various requirements in an RFP/IFB or contract, generally in the statement of work, are not tied to specific pararaphs cleared in 1801.105–1, but yet require information collection or recordkeeping. OMB control number 2700–0042 applies to these requirements. The OMB control number will be displayed in the upper right hand corner of each solicitation/contract. Overprinting is authorized by 1853.104.

Subpart 1801.4—Deviations From the FAR and NASA FAR Supplement

1801.470 [Amended]

3. Section 1801.470 is amended by changing "which requires the citation of an authority to negotiate." to read "that is competed or that must be authorized under FAR 6.302."

PART 1802—DEFINITIONS OF WORDS AND TERMS

Subpart 1802.1—Definitions

1802.100 [Redesignated as 1802.101]

4. Section 1802.100 is redesignated as 1802.101; newly redesignated 1802.101 is amended by revising the definition of "Head of contracting activity" and by replacing "Subpart 2.1" with "Subpart 2.101" in the definitions for "Procurement" and "Procurement Officer".

1802.101 Definitions.

* * * * *

"Head of the contracting activity" in NASA this term includes the Director (or other Head) of a NASA field installation; and the Assistant Administrator for Procurement for NASA Headquarters.

* * * * *

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.1—Contract Execution

5. Section 1804.103 is revised to read as follows:

1804.103 Contract clause.

The contracting officer shall include the clause at FAR 52.204–1, Approval of Contract, in contracts and supplemental agreements, and solicitations leading to such contracts, that are subject to Master Buy Plan procedures (see 1807.71) and either (a) have been selected for Headquarters approval, in which case the Assistant Administrator for Procurement shall be designated in the Schedule as the approving official, or (b) are required to be approved by the Procurement Officer, who shall therefore be designated in the Schedule as the approving official.

Subpart 1804.6—Contract Reporting

§ 1804.671 [Amended]

6. The heading of section 1804.671 is amended by changing "(NASA Form 507)" to read "(NASA Form 507 and NASA Form 507A)."; the text is amended by changing "NASA Form 507" to read "NASA Form 507 and NASA

Form 507A" and by changing "Department of Labor" to read "Department of Commerce".

7. In section 1804.671–1, the introductory paragraph is amended by changing "require an NF 507 are" to read "require NF 507 Forms are"; and paragraph (c) is added to read as set forth below:

§ 1804.671–1 Applicability and coverage.

* * * * *

(c) NASA Form 507A (CICA data) will *not* be required in the FACS system on the following types of procurement actions:

(1) Grant Awards (PPC's ST and WT)

(2) Cooperative Agreements and Space Act Agreements (PPC's SW, SX, WW and WX)

(3) Intragovernmental Awards (PPC 98)

(4) B(a) Awards (PPC PS)

(5) Small Purchases (PPC's BC, DC, KC, NC, RC, SC, TC, WC, XC and YC)

§ 1804.671–2 [Amended]

8. Section 1804.671–2 is amended by changing "NASA Form 507" to read "NASA Form 507 and NASA Form 507A".

9. Section 1804.671–4 is amended as follows:

a. Heading is revised.

b. In introductory paragraph, change "Form 507" to "Forms 507 and 507A".

c. Paragraph (d) is revised.

d. Paragraph (f), Code 02, "Headquarters Support Division" is changed to read "Headquarters Logistics Section".

e. Paragraphs (i) through (pp) are redesignated (j) through (qq), respectively, and new paragraph (i) is added.

f. In newly redesignated paragraph (o), "enter D in the first position." is changed to read "enter an estimated date.".

g. Newly redesignated paragraphs (p) and (q) are revised.

h. Newly redesignated paragraph (s)(1) is amended by adding "13 Firm Fixed Price Level-of-Effort Term (see FAR 16.207)." to the end of the list of 2-digit codes.

i. Newly redesignated paragraph (v) is revised.

j. Newly redesignated paragraph (x) is amended by revising paragraphs (x) (2) through (5).

k. Newly redesignated paragraphs (dd), (ee), (gg), and (hh) are revised.

l. Newly redesignated paragraph (nn) is revised.

m. Paragraph (rr) through (uu) are added.

§ 1804.671–4 Preparation of Individual Procurement Action Reports (NASA Form 507 and NASA Form 507A).

* * * * *

(d) *Item 3—Modification number* (4 positions). Enter the applicable supplementary procurement contractual identification code and serial number assigned to the modification action; *e.g.*, S001, M002, C003, etc. Applicable codes are as follows:

Identification Codes

A for *Amendments*
C for *Change Orders*
D for *Delivery Orders*
K for *Call Orders*
L for *Letter Contracts*
M for *Modification*
O for *Task Orders*
S for *Supplemental Agreement*

* * * * *

(i) *Item 7A—CICA applicability* (1 position).

(1) *Code 1 Pre-CICA* is entered if the contract action is a new contract resulting from a solicitation issued prior to April 1, 1985, irrespective of the award date. All within scope modifications to these contracts and new work modification awards resulting from a solicitation issued prior to April 1, 1985 are to be reported by this code. When this code is used, do not complete NF–507A.

(2) *Code 2 Post-CICA* is entered if the contract action is a new contract or a new work modification award resulting from a solicitation issued on or after April 1, 1985. When this code is used, NF 507 and NF–507A must be completed. This item will be left blank for grants, cooperative agreements, space act agreements, and intragovernmental awards.

* * * * *

(p) *Item 15—Procurement placement code* (2 positions). Enter a 2-position alpha code which identifies Pre-CICA and Post-CICA procurements, the type of solicitation process used, and the extent of competition on the procurement. See 180 4.671–7 for PPC matrices. *Pre-CICA Code* is entered if the contract action is a new contract resulting from a solicitation issued prior to April 1, 1985, irrespective of the award date. Refer to PPC matrix for Procurement Placement Code. *Post-CICA Code* is entered if the contract action is a new contract or a new work modification award resulting from a solicitation issued on or after April 1, 1985. For Post-CICA new work modifications on a Pre-CICA initial contract award use a new Post-CICA Procurement Placement Code. For Post-CICA new work modifications on a Post-CICA initial contract award, also use a new Post-CICA Procurement Placement Code even if the Code selection is the same as was used on the initial contract award. Procurement Placement Codes *are required* on all Post-CICA new work modifications. The FACS reporting system will be able to provide information on "noncompetitive procurements using competitive procedures," as required by Public Law 98–369, by selection procurements that are coded 1 in Item 43 (Number of Offers Received) and code 1, 2, 3, or 4 in Item 46 (Method of Solicitation). These procurements must have one of the following competitive Procurement Placement Codes: AX, AE, AF, BX, BE, BF, FX, FE, FF, GF, KX, KE, QX, RS, RE, UX, TX, TE, XX, XE, and XD.

(q) *Item 16—Kind of Action.* Enter a 2-numeric code which identifies in general terms the kind of procurement and the action taken to initiate the procurement or modification thereto. Following is a list of codes to be used:

New Contracts/Grants/Orders

01 *New letter contract*—Enter this code when a new letter contract has been executed.

02 *Definitive contract superseding letter contract*—Self explanatory.

03 *Definitive contract*—Enter this code for new procurements when the first binding document contains all the terms and conditions of the agreement.

04 *Order under NASA contract*—Enter this code when reporting orders against a NASA indefinite delivery type contract.

05 *Intragovernmental*—Enter this code for orders issued to other Federal agencies.

06 *Grants*—Enter this code for new grants.

21 *Cooperative agreement and space act agreement*—Enter this code for new cooperative agreements and Space Act Agreements.

22 *Order under another Agency's contract*—Enter this code when reporting contract actions against another agency's contract. Do *not* include 8(a) awards placed with the Small Business Administration.

23 *Order under Mandatory GSA–FSS*—Enter this code when reporting contract actions under mandatory GSA Federal Supply Schedule contracts (see FAR 8.404).

24 *Order under Optional (Nonmandatory) GSA–FSS*—Enter this code when reporting contract actions under nonmandatory GSA Federal Supply Schedule contracts (see FAR 8.404–2).

Modifications to Existing Contacts

07 *New work modifications*—Enter this code for reporting modifications to existing contracts which add new procurement. New procurement for the purpose of this report shall be a modification action which usually requires the preparation of a Justification for Less than Full and Open Competition (see FAR 6.303).

08 *Supplemental agreement*—Use this code for reporting bilateral, definitized

modifications except those covered in code 10.

09 *Change order*—Enter this code for reporting change orders issued pursuant to the "Changes" clause of the contract.

10 *S/A Definitizing change order*—Enter this code when definitizing change orders.

11 *Administrative*—Enter this code when reporting unilateral modifications and administrative type changes such as incremental funding modifications and novation agreements.

12 *Termination for default*—Enter this code when reporting a termination for default.

13 *Termination for convenience*—Enter this code when reporting a termination for convenience.

* * * * * *

(v) *Item 21—Extent of competition* (1 position).

Advertised/Sealed Bid Competition

(1) *Two-step*—Enter this code for procurements which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids or as a result of sealed bidding following request for an evaluation of technical proposals (see FAR 14.503). Use an Advertised or Sealed Bid procurement placement code when reporting this type of procurement award.

(2) *Other*—Enter this code for procurements which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids or as a result of sealed bidding. (See FAR 14.101). Use an advertised or Sealed Bid procurement placement code when reporting this type of procurement award.

Competitive

(3) *Source evaluation board*—Enter this code when offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially, where the awards were made on the basis of price, design, or technical competition and where Source Evaluation Board procedures were used to evaluate the proposals (see FAR 15.506–2). This code will also be used where Architect-Engineer Selection Board procedures were used (see FAR 36.603–2). Use a competitive procurement placement code when reporting this type of procurement award.

(4) *No source evaluation board*—Enter this code when offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially, where the awards were made on the basis of price, design, or technical competition, and where Source Evaluation Board procedures were not used to evaluate the proposals. Use a competitive procurement placement code when reporting this type of procurement award.

Noncompetitive

(5) *Follow-on after competition*—For Post-CICA awards, enter this code when the procurement is for the continued development or production of a major system or highly specialized equipment, including major components thereof, deemed to be available only from the original source when it is likely that award to any other source would result in (1) substantial duplication of cost to the Government that is not expected to be recovered through competition or (2) unacceptable delays in fulfilling NASA's requirements (FAR 6.302–1(b)(2)). For Pre-CICA awards, this code should be used when the procurement is for similar reasons stated in FAR 6.302–1(b)(2) and cited above.

(6) *Other noncompetitive negotiated*—Enter this code when only one offer was solicited and only one offer was received capable of satisfying the Government's requirements wholly or partially and where the work involved is not a follow-on procurement reportable under Code 5 above. Use a noncompetitive procurement placement code when reporting this type of procurement award.

(7) *Unsolicited proposal*—Enter this code to identify procurement awards resulting from a written offer to perform work which does not result from a formal or informal request for proposals issued by NASA (see FAR 15.501). Use a noncompetitive procurement placement code when reporting this type of procurement award.

All Post-CICA new work modifications will be coded with applicable "Extent of Competition" code listed above.

* * * * * *

(x) *Item 23—Type of service or product* (4 positions). * * *

(2) If the procurement involves space research and development, enter one of the following codes:

R&D code	Type of R&D procurement
AR1[1]	Aeronautics & Space Technology
AR2[1]	Space Science and Applications
AR3[1]	Space Transportation Systems
AR4[1]	Tracking and Data Acquisition
AR5[1]	Space Station R&D
AR7[1]	Commercial Programs R&D
AR9[1]	Other Space R&D

[1] See paragraph (x)(3) below.

(3) If the procurement involves other than space research and development, see 1804.671–8(b) for a suitable code. For the fourth digit of the code use "0" or one of the following "stages of R&D":

Code and Meaning

1—Research
2—Exploratory Development
3—Advanced Development
4—Engineering Development
5—Operational Systems Development
6—Management and Support
7—Commercialization

Definitions of Stages of R&D

1. *Research*—includes all effort of scientific and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of social, economic, political, physical, or military problems. It forms a part of the base for subsequent exploratory and advanced developments in the various technologies, and new or improved functional capabilities in areas such as communications, construction, detection, tracking, surveillance, energy conversion, materials and structures, transportation, personal support, and social services.

2. *Exploratory development*—includes all effort directed toward the solution of specific problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming, and planning efforts. It would thus include studies, investigations, and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

3. *Advanced development*—includes all effort directed toward projects which have moved into the development of hardware for test. The prime result of this type of effort is proof of design concept rather than the development of hardware for service use. Projects in this category have a potential application.

4. *Engineering development*—includes those projects in full-scale engineering development for Government use but which have not yet received approval for production or had production funds included in the budget submission for the current or subsequent fiscal year. This area is characterized by major line item projects and program control will be exercised by review of individual projects.

5. *Operational system development*—includes those projects still in full-scale engineering development but which have received approval for production, or production funds have been included in the budget submission for the current or subsequent fiscal year. Program control will be exercised by review of the individual projects.

6. *Management and support*—includes all effort directed toward support of installations or operations required for general research and development use. Included would be construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft equipment, or ships. Costs of laboratory personnel, either in-house or contract-operated, would be assigned to appropriate projects or as a line item in the Research, Exploratory Development or Advanced Development Program areas, as appropriate.

7. *Commercialization*—is the process of transferring a new or improved technology from engineering development into the competitive market place. This process is generally accomplished by the private sector on its own but the Federal Government may take an active role as a stimulator when there are strong national benefits, such as reduced dependence on oil imports or improved environmental performance. Appropriate Federal action may include some combination of information dissemination, regulation, commercial demonstration, and/

or financial incentives, depending on the particular case.

(4) *Other services.* Enter one of the service codes listed in 1804.671–8 which identifies the principal type of services or construction procured under the contract. (Do *not* use these codes for R&D services and procurement of supplies and equipment.) For reporting procurements that are determined to be for "consulting services" consistent with the definition of consulting services in FAR 37.201 and that have been approved by NASA Headquarters in accordance with NASA FAR Supplement 1837.205–70, use the following FPDS codes which have been defined as Consulting-Related Advisory and Assistance Services by the President's Cabinet Council on Management and Administration: R402, R403, R406–R409, R414, R497, R498, all R500 series, R702–R704, R708, R799, U001, U002, U004, U006, U009 and R&D codes A–6.

(5) *Supply and equipment contracts.* For contracts for off-the-shelf supplies and equipment, enter one of the codes listed in 1804.671–8 to identify the principal item of supply or equipment procured under the contract.

* * * * *

(dd) *Item 29—New technology clause* (1 position). Enter Y (yes) or N (no) to indicate whether a "Patent Rights" or "New Technology" clause is included in the contract. (See 1827.373). For purchases under Federal Supply Schedule contracts, enter N (no).

(ee) *Item 30—Subcontracting program plan* (1 position). Enter Y (yes) or N (no) to indicate whether the contract contains a subcontract plan requiring the contractor to furnish the information prescribed on Standard Forms 294 and 295 (see 1804.674 and FAR 19.702). Enter W (Waiver) when there are no subcontracting opportunities; for contracts performed entirely outside the U.S.; and for GSA Federal Supply Schedule contracts containing plans. Code Y will be used for corporate plans with individual contract goals.

* * * * *

(gg) *Item 32–SBIR Award* (1 position). Enter Code N (no) if the contract action is not in support of the Small Business Innovation Research Program (Pub. L. 97–219). Enter Code 1 if the contract action is related to a Phase I contract in support of the Small Business Innovation Research Program. Enter Code 2 if the contract action is related to a Phase II contract in support of the Small Business Innovation Research Program.

(hh) *Item 33—[Reserved.]*

* * * * *

(nn) *Item 39—Trade data.* Enter *one* numeric (0–9) to indicate the number of firms that offered foreign end products. Entry required regardless of whether Buy American Act is invoked or not. If none enter *0.* If 9 or more enter *9.*

(1) *Percent difference* (2 positions)—If the evaluation factor under Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and the low firm offering a foreign end product, computed before application of the Buy American Act differential, i.e., the difference divided by the price of the low firm offering a foreign end product. Enter percentage as a whole number. If the evaluation factor under Buy American is not used, enter *00.*

(2) *Country of manufacturer* (2 positions)—If the product is manufactured, mined or grown in the U.S.A. (the 50 states and the District of Columbia), or the service is performed by a U.S. contractor, enter "US". If the product is manufactured, mined or grown in a foreign country or U.S. outlying area, enter the code from NBS–FIPS PUB 104 of that country/area. In the case of a service—if the service is performed by a foreign contractor (including U.S. outlying area contractor)—enter the code from NBS–FIPS PUB 104 of that country/area.

* * * * *

(rr) *Item 43—Number of offers received—not used for 8(a) awards.*

(1) *Code 1* is to be used when only one offer is solicited and only one offer is received. When this applies, Item 21 must be coded 5, 6, or 7; Item 44 must be coded L; Item 45 must be completed; and Item 46 must be coded 5.

(2) *Code 1* is to be used when more than one offer is solicited and only one offer is received. When this applies, Item 21 must be coded 1, 2, 3, or 4; Item 44 must be completed; Item 45 must be blank; and Item 46 must be coded 1, 2, 3, or 4.

(3) *Code 2* is to be used when more than one offer is received. When this applies, Item 21 must be coded 1, 2, 3, or 4; Item 44 must be completed; Item 45 must be blank; and Item 46 must be coded 1, 2, 3, or 4.

(ss) *Item 44—Competitive solicitation procedures.* This item pertains to the requirements of FAR Part 6, Subparts 6.1 (Full and Open Competition), 6.2 (Full and Open Competition After Exclusion of Sources), and 6.3 (Other Than Full and Open Competition), with the exception of the statutory authorities for other than full and open competition (Subpart 6.3) which are reported in Item 45. Codes A through L designate the competition alternates described in FAR Part 6. Codes N and P designate actions which do not require application of these requirements. Modifications within the scope of a contract, and delivery order contract actions under requirements, or definite quantity contracts shall be reported the same as the initial contract. Delivery order contract actions under indefinite quantity contracts shall be reported the same as the initial contract when the following conditions, in FAR 6.001(f), are met: "Orders placed under indefinite-quantity contracts that were entered into pursuant to this Part when—The contract was awarded under Subpart 6.1 (Full and Open Competition) or Subpart 6.2 (Full and Open Competition After Exclusion of Sources) and all responsible sources were realistically permitted to compete for the requirements contained in the order; or The contract was awarded under Subpart 6.3 (Other than Full and Open Competition) and the required justification and approval adequately covers the requirements contained in the order."

(1) *Code A—Normal Full and Open Competition* is entered when the action resulted from an award pursuant to FAR 6.102(a), Sealed bids (see 6.401(a)); or 6.102 (b), Competitive proposals (see 6.401(b)); or 6.102(c), Combination of competitive procedures. When this code is used, Items 21 and 46 must be coded competitive. This code will be used for Single Award Schedule contracts (i) Mandatory, unless information in the schedule indicates otherwise; (ii) Optional, if you competitively solicit the procurement and the GSA FSS contract is selected). This code may be used for ADP procurements except for those procurements where the solicitation utilized specific make or model specifications (see Item 44, Code L).

(2) *Code B—Architect-Engineer* is entered if the action resulted from selection of sources for architect engineer contracts in accordance with P.L. 92–582 and procedures in FAR Subpart 36.6 (see FAR 6.102(d)(1)). The selection of a potential A&E contractor is made by an A&E Evaluation Board conducted in accordance with 41 U.S.C. 541 et. seq. This selection process is considered a competitive procedure and for reporting purposes shall be reported as a competitive award. When this code is used, Item 43 must be coded 2; Item 45 must be blank; Item 46 must be coded 4; and Item 21 must be coded 4.

(3) *Code C—Basic Research Proposal* is entered if the action resulted from competitive selection of basic research proposals as a result of (i) a broad

agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and (ii) a peer or scientific review (see FAR 6.102(d)(2)). When this code is used, Item 46 must be coded 4.

(4) *Code D—Multiple Award Schedule* is entered if the action is an order issued against a multiple award schedule using the procedures in FAR (see FAR 6.102(d)(3)). When this code is used, Item 46 must be coded 4. This code will be used for Multiple Award Schedule contracts (Mandatory or Optional). This code may be used for ADP procurements except for those procurements where the solicitation utilized specific make or model specifications (see Item 44, Code L). The use of Multiple Award Schedule program is considered to be a competitive procedure because competitive procedures were used by GSA to make the basic multiple award schedule contract awards under 41 U.S.C. 259(b)(3)(A). For reporting purposes, an order issued against a multiple award schedule shall be reported as a competitive award. When this code is used, Item 43 must be coded 2; Item 45 must be blank; Item 46 must be coded 4; and Item 21 must be coded 4.

(5) *Code E—Alternate Source—Reduced Cost* is entered if the action was taken pursuant to FAR 6.202(a)(1), which states that agencies may exclude a particular source from a contract in action is order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition, of such supplies or services. When this code is used, Item 46 must be coded 1, 2, or 3.

(6) *Code F—Alternate Source—Mobilization* is entered if the action was taken pursuant to FAR 6.202(a)(2), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization. When this code is used, Item 46 must be coded 1, 2, or 3.

(7) *Code G—Alternate Source—Engineering/R&D Capability* is entered if the action was taken pursuant to FAR 6.202(a)(3), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being required if the agency head determines that to do so would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center. When this code is used, Item 46 must be coded 1, 2, or 3.

(8) *Code H—Small Business Set-Aside* is entered if the action resulted from use of procedures for small business set-asides pursuant to FAR 6.203 which states that contracting officers may set aside solicitations to allow only such business concerns to compete. This code includes contract actions under the Small Business Innovation Research Program established under P.L. 97–219. When this code is used, Item 46 must be coded 1, 2, or 3 and Item 21 must be coded 4. SBIR awards must be coded 2 in Item 46.

(9) *Code J—Labor Surplus Ared Set-Aside* is entered if the action resulted from use of procedures for labor surplus area set-asides pursuant to FAR 6.203 which states that contracting officers may set aside solicitations to allow only such business concerns to compete. When this code is used, Item 46 must be coded 1, 2, or 3.

(10) *Code K—Combined LSA/Small Business Set-Aside* is entered if the action resulted from use of procedures for combined LSA/Small Business Set-Asides pursuant to FAR 6.203. When this code is used, Item 46 must be coded 1, 2, or 3.

(11) *Code L—Other than Full and Open Competition* is entered if the action resulted from use of other than full and open competition pursuant to 10 U.S.C. 2304(c). The certain conditions or exceptions that permit contracting without providing full and open competition are prescribed in FAR 6.302. This code will be used for Optional Single Award Schedules when the procurement was *not* competitively solicited and the GAS FSS contract was selected. This code will also be used for all ADP procurements where the solicitation utilized specific make and model specifications. When this code is used, Item 43 must be coded 1; Item 45 must be coded; Item 46 must be coded 5; and Item 21 must be coded 5, 6, or 7.

(12) *Code N—8(a) Program* is entered when the procurement action is made under Authority Section 8(a) of the Small Business Act, which authorizes the Small Business Administration to enter into all types of contracts with other agencies and let subcontracts, for performing these contracts, to eligible minority firms (see FAR Subpart 19.8). When this code is used, Items 43, 45, and 46 must be blank. Contracts awarded under the 8(a) Program are *not* addressed in FAR Part 6.

(13) *Code P—Otherwise Authorized by Statute* is entered when using contracting procedures that are expressly authorized by statute and *not* addressed in FAR Part 6. When this code is used, Items 43, 45 and 46 must be blank. This code should not be used for statutes addressed in FAR 6.302–5 as these statutes require Code N and Item 45 must be coded M.

(tt) *Item 45—Authority for Other than Full and Open Competition.* If Item 7A is coded 2 and Item 44 is coded L, then this item must be completed. The categories listed below apply only to the solicitation process and not the extent of competition used in the award of the contract.

(1) *Code A—Unique source* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(1) when the agency's minimum needs can only be satisfied by unique supplies or services available from only one source or only one supplier with unique capabilities (see FAR 6.302–1(b)(1)).

(2) *Code B—Follow-on contract* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(1) when it is likely that the award of follow-on contracts must be to the original source because award to any other source would result in (i) substantial duplication of cost to the Government that is not expected to be recovered through competition or (ii) unacceptable delays in fulfilling the agency's requirements (see FAR 6.302–1(b)(2)).

(3) *Code C—Unsolicited research proposal* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(1) as the result of acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which (i) is not otherwise available to the Government and (ii) does not resemble the substance of a pending competitive acquisition (see FAR 6.302–1(b)(3)). When this code is used, Item 43 must be code 1.

(4) *Code D—Patent/Data rights* is entered when the contract action was awarded under 10 U.S.C. 2404(c)(1) because the existence of limited rights in

data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (see FAR 6.302–1(b)(4)).

(5) *Code E—Utilities* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(1) when acquiring electric power or energy, gas (natural or manufactured), water, or other utility services and circumstances, dictate that only one supplier can furnish the service or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system (see FAR 6.302–1(b)(5)).

(6) *Code F—Standardization* is entered when the contract action was awarded under 10 U.S.C. 2404(c)(1) because the agency head has determined under the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items and only one source is available (see FAR 6.302–1(b)(6)).

(7) *Code G—Only one source—other* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(1) to a single source and codes A through F above do not apply (see FAR 6.302–1(b)).

(8) *Code H—Urgency* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(2) because (i) an unusual and compelling urgency precludes full and open competition, and (ii) delay in award of a contract would result in serious injury, financial or other, to the Government (see FAR 6.302–2(b)).

(9) *Code J—Mobilization* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization (see FAR 6.302–3(b)(1)).

(10) *Code K—Essential R&D capability* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center (see FAR 6.302–3(b)(2)).

(11) *Code L—International agreement* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(4) because full and open competition is precluded by (i) the terms of an international agreement or treaty between the U.S. and a foreign government or international organization or (ii) the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services (see FAR 6.302–4).

(12) *Code M—Authorized by statute* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(5) because a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source (see FAR 6.302–5(a)(2)(i)).

(13) *Code N—Authorized resale* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(5) for a brand-name commercial item for resale through commissaries or other similar facilities (see FAR 6.302–5(a)(2)(ii)).

(14) *Code P—National security* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(6) because disclosure of the Government's needs would compromise the national security (see FAR 6.302–6).

(15) *Code Q—Public interest* is entered when the contract action was awarded under 10 U.S.C. 2304(c)(7) because the agency head has determined that full and open competition is not in the public interest in the particular acquisition concerned.

(uu) *Item 46—Method of solicitation.*

(1) *Code 1—Sealed bid* is entered when Sealed Bidding method of contracting was used (see FAR Part 14). Use this code when more than one offer is *solicited.*

(2) *Code 2—Competitive proposal* is entered when the FAR Part 15 Contracting by Negotiation procedures were used for a competitive solicitation. (For Item 44 contract actions coded B Architect-Engineer; C Basic Research Proposal; and D Multiple Award Schedule, use code 4 below). Use this code when more than one offer is *solicited.*

(3) *Code 3—Combination/Competitive procedure* is entered when any combination of competitive procedures (e.g., two-step sealed bidding) was used. Use this code when more than one offer is *solicited.*

(4) *Code 4—Other competitive* is entered when any competitive procedure (e.g., competitive solicitation for quotation) other than the competitive procedures listed in codes 1, 2, and 3 above. (See FAR 15.400 and FAR 13.107 for procedures). Also use this code for contract actions coded B Architect-Engineer; C Basic Research Proposal; and D Multiple Award Schedule in Item 44. Use this code when more than one offer is *solicited.*

(5) *Code 5—Noncompetitive* is entered when codes 1 through 4 above do not apply. This code is to be used for contracts awarded without providing for full and open competition. Use this code when only one offer is *solicited.* This code will be used for all ADP procurements where the solicitation utilized specific make and model specifications.

Note.—NASA Form 507A (Items 43 through 46) is *not* required to be completed for the following types of procurement actions:

a. Small Purchases (applicable PPC's are BC, DC, KC, NC, RC, SC, TC, WC, XC and YC)

b. Grant Awards (applicable PPC's are ST and WT)

c. Cooperative Agreements and Space Act Agreements (applicable PPC's are SW, SX, WW and WX)

d. Intragovernmental Awards (applicable PPC is 98)

10. Section 1804.671–5 is revised to read as follows:

1804.671–5 Limited preparation of NASA Form 507 and NASA Form 507A.

(a) *New intragovernmental basic procurement.* The following items will be completed on NF–507 (all other items will be blank):

1—Type of Record (N)
2—Contract/Other Number
4—Accounting Installation Number
5—Procuring Installation Number
7—CIC Number
8—Contractor Name
9—Contractor Division (when applicable)
10—Contractor Address
11—Place of Performance—City
12—Place of Performance—State and Zip
13—Contract Date
14—Completion Date
15—Procurement Placement Code (98)
16—Kind of Action (05)
23—Type of Service or Product
34—Contract Physically Complete (when applicable)
40—Total Price or Estimated Cost
42—Description of Contract

(b) *New grants, cooperative agreements and space act agreements.* The following items will be completed on NF–507 (all other items will be blank):

1—Type of Record (N)
2—Grant/Cooperative Agreement/Space Act Agreement Number
4—Accounting Installation Number
5—Procuring Installation Number
7—CIC Number
8—Contractor Name
9—Contractor Division (when applicable)
10—Contractor Address
11—Place of Performance—City
12—Place of Performance—State and Zip
13—Contract Date
14—Completion Date
15—Procurement Placement Code (ST, WT, SX, WX, SW, or WW)
16—Kind of Action (06 or 21)
17—Type of Contractor (05–12)

19—Labor Surplus Area (N or 1)
21—Extent of Competition (6 or 7)
23—Type of Service or Product
34—Contract Physically Complete (when applicable)
40—Total Price or Estimated Cost
42—Description of Grant, Cooperation Agreement or Space Act agreement

(c) *Pre-CICA new basic orders under mandatory and optional (nonmandatory) GSA Federal supply schedule contracts.* The following items will be completed on NF–507 (all other items will be blank):

1—Type of Record (N)
2—Contract/P.O. Number
4—Accounting Installation Number
5—Procuring Installation Number
6—Other Agency Order Number
7—CIC
7A—CIC Applicability (1)
8—Contractor Name
9—Contractor Division (when applicable)
10—Contractor Address
11—Place of Performance—City
12—Place of Performance—State and Zip
13—Contract Date
14—Completion Date
15—Procurement Placement Code (AY, BY, FY, or KY)
16—Kind of Action (23 or 24)
17—Type of Contractor (03–04)
19—Labor Surplus Area (N or 1)
21—Extent of Competition
23—Type of Service or Product
24—Proposed Procurement Synopsized (Optional FSS Orders should be coded 1; Mandatory FSS Orders should be coded 2)
34—Contract Physically Complete (when applicable)
36—Woman-Owned Business (Y, N, or 1)
40—Total Price or Estimated Cost
42—Description of Procurement

(d) *Post-CICA new basic orders under mandatory and optional (nonmandatory) GSA Federal supply schedule contracts.* The following items will be completed (all other items will be blank):

1—Type of Record (N)
2—Contract/P.O. Number
4—Accounting Installation Number
5—Procuring Installation Number
6—Other Agency Order Number
7—CIC
7A—CIC Applicability (2)
8—Contractor Name
9—Contractor Division (when applicable)
10—Contractor Address
11—Place of Performance—City
12—Place of Performance—State and Zip
13—Contract Date
14—Completion Date
15—Procurement Placement Code (AY, BY, FY, or KY)
16—Kind of Action (23 or 24)
17—Type of Contractor (03 or 04)
19—Labor Surplus Area (N or 1)
21—Extent of Competition
23—Type of Service or Product
24—Proposed Procurement Synopsized (Optional FSS Orders should be coded 1; Mandatory FSS Orders should be coded 2)
34—Contract Physically Complete (when applicable)
36—Woman-Owned Business (Y, N, or 1)
40—Total Price or Estimated Cost
42—Description of Procurement
43—Number of Offers Received (1 or 2)
44—Competitive Solicitation Procedures (Mandatory must be coded A or D; optional must be coded A, D, or L)
45—Authority for Other than Full and Open Competition (must be coded when Item 44 is coded L)
46—Method of Solicitation

(e) *Post-CICA new basic orders under another agency's contract.* The following items will be completed (all other items will be blank):

1—Type of Record (N)
2—Contract/P.O. Number
4—Accounting Installation Number
5—Procuring Installation Number
6—Other Agency Order Number
7—CIC
7A—CIC Applicability (2)
8—Contractor Name
9—Contractor Division (when applicable)
10—Contractor Address
11—Place of Performance—City
12—Place of Performance—State and Zip
13—Contract Date
14—Completion Date
15—Procurement Placement Code (AY, BY, FY, or KY)
16—Kind of Action (22)
17—Type of Contractor
19—Labor Surplus Area (N or 1)
21—Extent of Competition (1, 2, or 4)
23—Type of Service or Product
24—Proposed Procurement Synopsized (2)
34—Contract Physically Complete (when applicable)
36—Woman-Owned Business (Y, N, or 1)
40—Total Price or Estimated Cost
42—Description of Procurement
45—Authority for Other than Full and Open Competition (M)
46—Method of Solicitation (4)

(f) *Reportable modifications.* Only the following items need to be completed on NF–507:

1—Type of Record (N)
2—Contract/Grant P.O. Number
3—Modification Number
4—Accounting Installation Number
5—Procuring Installation Number
7A—CICA Applicability (when applicable)
13—Modification Date
14—Completion Date (when applicable)
15—Procurement Placement Code (required when Item 7A is coded 2 and Item 16 is coded 07)
16—Kind of Action (07–13)
18—Type of Contract (when applicable)
21—Extent of Competition (required when Item 7A is coded 2 and Item 16 is coded 07)
24—Proposed Procurement Synopsized (when applicable)
28—Cost Accounting Standards Clause (when applicable)
30—Subcontracting Program Plan (when applicable)
31—Report on Geographical Distribution of NASA Subcontracts (when applicable)
34—Contract Physically Complete (when applicable)
35—Modification Obligations (when applicable)
37—MRR: Cost and Performance Reporting (when applicable)
38—MRR: Property and Space Hardware Reporting (when applicable)
40—Total Price or Estimated Cost (when applicable)
41—Total Profit or Fee (when applicable)
42—Description of Modification
43—Number of Offers Received (when applicable)
44—Competitive Solicitation Procedures (when applicable)
45—Authority for Other than Full and Open Competition (when applicable)
46—Method of Solicitation (when applicable)

Note.—All Post-CICA *new work* modifications will require Item 15 (Post-CICA PPC) and Item 16 (Extent of Competition) to be coded on NF–507, along with any other applicable item.

(g) *Corrections.* Only the following items need to be completed on NF–507:
1—Type of Record (C)
2—Contract/Grant/PO Number
3—Modification Number (when applicable)
4—Accounting Installation Number
5—Procuring Installation Number, Plus items to be corrected. If an item needs to be corrected to a blank, enter an asterisk.

11. Section 1804.671–6 is revised to read as follows:

1804.671–6 Special procurement placement codes (PPC) for certain procurements under $25,000 (no NASA Form 507 required).

(a) The accounting copies on all procurements under $25,000 to Disadvantaged Business Firms—Direct shall be coded with a second letter M of the PPC, *e.g.*, BM, KM, etc. (See PPC matrix).

(b) The accounting copies on all procurements under $25,000 to "Women-Owned Business Firms" shall be coded with a second letter W of the PPC, *e.g.*, BW, KW, etc. (See PPC matrix).

(c) All procurement awards over $25,000 and the Accounting copies on procurement actions under $25,000 (no NASA Form 507 required) placed through the Small Business Administration to a disadvantaged business firm under Section 8(a) of the Small Business Act shall be coded with PPC *PS*.

(d) All procurement awards funded through the Small Business Innovation Research (SBIR) program shall be coded with PPC *HS*.

12 Section 1804.671–7 is added to read as follows:

1804.671–7 Procurement placement codes.

Procurement placement code matrices which contain alpha codes required for

coding all procurements are available in the FPDS Product and Service Coding Manual located in the Procurement Administrative Office at each NASA installation. The codes are applicable to Item 15 on the NASA Form 507 and are used to identify Pre-CICA and Post-CICA type of procurements, the type of procurement solicitation process used, and the extent of competition on the procurement.

13. Section 1804.671.8 is added to read as follows:

1804.671-8 Product and service codes.

(a) The following product and service codes will be used to code all procurements. The codes are applicable to Item 23 on the NASA Form 507 and are used to identify the type of effort or product procured under the contract. NASA is required to provide this information to the Federal Procurement Data System (FPDS) which collects contract award information from all Federal Agencies.

(b) Only the codes normally required by the typical range of NASA procurements are listed. If in unusual circumstances an appropriate code cannot be found, consult the FPDS Product and Service Coding Manual located in the Procurement Administrative Office at each NASA installation.

14. Section 1804.675 is revised to read as follows.

1804.675 NASA contractor financial management reporting.

When financial management reporting on the NASA Form 533 series of reports is required (see NASA Management Instruction 9501.1D "NASA Contractor Financial Management Reporting System") such requirement will be set forth in the procurement request, and the appropriate clauses prescribed at 1804.675–1 shall be included in the contract.

PART 1805—PUBLICIZING CONTRACT ACTIONS

Subpart 1805.2—Synopses of Proposed Contracts

15. Section 1805.207(b) is revised to read as follows:

1805.207 Preparation and transmittal of synopses.

* * * * *

(b) All options (including unpriced options) must be included in the description required by FAR 5.207(b)(4)(viii); or there must be a separate synopsis of the option as a new procurement prior to its exercise. See FAR 17.207(c)(4).

PART 1806—COMPETITION REQUIREMENTS

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

16. Section 1806.202(b) is revised to read as follows:

1806.202 Establishing or maintaining alternative sources.

* * * * *

(b) The authority to make the determination required by FAR 6.202(b)(1) is hereby delegated to the same approval levels specified in FAR 6.304 and 1806.304.

17. Section 1806.202–70(a)(2), the introductory text, is revised to read as follows:

1806.202–70 Determinations and findings.

(a) * * *

(2) Each request for determination over $10,000,000 under 10 U.S.C. 2304(b)(1) (FAR 6.202) shall consist of—

* * * * *

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

1807.102 [Amended]

18. Section 1807.102 is amended by removing "Project Approval Document (PAD)," and adding "However, all procurement plans will comply with FAR 7.104(c), 7.105(b)(2), and when appropriate, 7.106." at the end of the text.

19. Section 1807.7102 (b) and (e) are revised.

1807.7102 Applicability.

* * * * *

(b) Information on the above listed procurements is required to be submitted to NASA Headquarters in accordance with 1807.7103 for determination as to which individual procurement actions are to be submitted to NASA Headquarters for review and approval and which ones are to be approved at the installation level. These individual procurement actions may include one or more of the following: procurement plans, requests for proposals, source evaluation board appointments and source selections, prenegotiation positions, contracts (including supplemental agreements) and leases (see 1807.7106).

* * * * *

(e) The Master Buy Plan Procedure also applies to supplemental agreements that extend contract performance pursuant to unpriced options contained in the contract.

* * * * *

1807.7103–3 [Amended]

20. Section 1807.7103–3(a) is amended by removing "and the officials to whom the justifications for noncompetitive procurements are to be submitted for approval".

1807.7104 [Amended]

21. Section 1807.7104(a), is amended by removing "justifications for noncompetitive procurements (1815.105–70),".

1807.7105 [Amended]

22. Section 1807.7105(a) is amended by removing "justifications for noncompetitive procurements and".

23. Section 1807.7106 is revised to read as follows:

1807.7106 Format of Master Buy Plan.

In accordance with the requirements of 1807.7103–1 and 1807.7103–2, Master Buy Plans and amendments to Master Buy Plans will be prepared in the following format:

Master Buy Plan Procedure

Installation: _____
Date: _____

Cognizant HDQ program office (1)	Descriptive title of procurement (2)	Estimated dollar value	Proc plan	RFP	SEB	Pre-neg	Contract review	Current status (3)	Remarks (4)

FY 19___ Documents Selected for Headquarters Review and Approval Not Yet Completed (5)

(1) Include 3 digit Unique Project Number (UPN) as listed in FMM 9130.

(2) Include N to indicate new or FO to indicate follow-on procurement.

(3) Indicate current status and scheduled date for next event.

(4) Include data that the installation considers pertinent and indicate expected date for placement of contract. If less than full and open competition is involved, indicate the authority being used, state the name or names of the firm(s) to whom the procurement is being limited, and indicate the current status of the justification document.

(5) List procurements from prior fiscal year(s) Master Buy Plans and amendments to Master Buy Plans that have not been completed (1807.7103–1).

(6) Name and FTS number of cognizant installation procurement person under Remarks.

(7) List one procurement per page and number sequentially.

(8) Number each page.

(Form should be prepared on 8½ X 11 size paper. Use separate sheets as necessary.)

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

24. Section 1808.002–74 is amended as follows:

a. In paragraph (f)(1), "1808.002–74(l)" is changed to read "1808.002–74(j)".

b. In paragraph (f)(2), "the Office of Space Flight (Code MOC–8) and HQ," is changed to read "Headquarters," and 1808.002–74(l) is changed to read "1808.002–74(j)".

c. Paragraph (i) is revised as follows:

1808.002–74 Acquisition of propellants.

* * * * *

(i) *NASA coordination.* The Kennedy Space Center shall be responsible for coordinating the review of all data and for establishing NASA policy and procedures. The data will then be used as the basis for NASA requirements reports to various Government Agencies for planning and supply support.

* * * * *

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1808.1—Excess Personal Property

25. Section 1808.103 is revised to read as follows:

1808.103 Information on available excess personal property.

In addition to the sources identified in FAR 8.103, Installation personnel shall review the availability of NASA property on lists—

(a) Maintained by the Installation Property Disposal Officer, and

(b) Maintained by the Installation Equipment Visibility System (EVS) coordinator.

PART 1814—SEALED BIDDING

Subpart 1814.4—Opening of Bids and Award of Contract

26. Section 1814.404–170 is revised to read as follows:

1814.404–170 Delegation of authority.

(a) The authority to make the determination at FAR 14.404–1(c) to cancel the invitation and reject all bids is delegated to the contracting officer, except as provided in paragraph (b)(2) below.

(b) A determination under FAR 14.404–1(c) (6) or (7) that includes an authorization to complete the acquisition through negotiation (see FAR 14.404–1(e)) shall be approved by—

(1) The contracting officer, if the solicitation is to be cancelled because no responsive bid has been received from a responsible bidder; or

(2) The Administrator, if the solicitation is to be cancelled because (i) all otherwise-acceptable bids received are at unreasonable prices, (ii) only one bid is received and the contracting officer cannot determine the reasonableness of the bid price, or (iii) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

1814.407 [Removed]

27. Section 1814.407 is removed.

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.5—Unsolicited Proposals

28. Section 1815.507 is revised to read as follows:

1815.507 Contracting methods.

(a) The technical office sponsoring the procurement shall support its recommendation with a Justification for Acceptance of Unsolicited Proposal (JAUP), except as noted in 1815.507(b), which includes facts and circumstances that preclude competition, along with consideration of the evaluation factors listed in FAR 15.506–2(a). The law (10 U.S.C. 2304(f)(4)) requires that this justification and any related information shall be made available for inspection by the public consistent with the provisions of the Freedom of Information Act. (See FAR 6.305 and 1806.305.) Accordingly, care should be taken not to include information which need not be released under the Freedom of Information Act, unless that information is essential to the justification. The JAUP shall be in writing and shall be submitted for the approval of the Procurement Officer or a designee after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable.

(b) For contractual actions, a "Justification for Other Than Full and Open Competition (JOFOC)" is required in accordance with FAR 6.302. A JAUP shall not be substituted for a JOFOC for contractual actions. A JAUP is not necessary for contractual actions if the technical office complies with FAR 6.303–1(b).

(c) Under FAR 15.507(b)(4), the contracting officer must comply with the preaward synopsis requirement of FAR Subpart 5.2. However, a proposal for research shall not be synopsized, provided the conditions for the exception at FAR 5.202(a)(7) are met.

Subpart 1815.6—Source Selection

29. Sections 1815.613–71 (a)(1) and (b)(1) are revised.

1815.613–71 Evaluation and negotiation of procurements conducted in accordance with the Source Evaluation Board Manual (NHB 5103.6).

(a) *Applicability.* (1) These procedures shall be used in all competitive negotiated procurements of $5 million or more including those where the initial contract is less than $5 million but where it is likely that the source selected will receive contracts for follow-on or later phases of the same project which when combined would total $5 million or more. (Examples would be: options; agreements-to-agree; and later phases as in A–109 procurements.) Exceptions to the above include procurements where:

(i) Sealed Bids will be used;

(ii) Architect-Engineer (A&E) services are being procured; or

(iii) ADP subject to the Brooks Act (40 U.S.C. 759), as implemented by the Federal Information Resources Management Regulation (FIRMR) (41 CFR Ch. 201), is being procured. However, the use of the Manual is optional for procurements of ADP subject to the Brooks Act.

* * * * *

(b) *Evaluation and selection procedures.*—(1) *Responsibility of source selection official.* In the final analysis, NASA judgment on the totality of the evaluation will be that of the Source Selection Official. This includes assessment of the procedures followed by the Board, the validity of its substantive evaluations, the relative significance of the several areas of evaluation, and the weightings previously assigned by the SEB, in the light of all the information produced by the source evaluation and selection process. In addition, if the RFP contained the provision at 1852.217–71, Evaluation of Unpriced Option, the Source Selection Official must, in order to be able to have an unpriced option exercised under 1817.207–71, consider the unpriced option, the proposal's budget estimate for this option, and the Government's most probable cost assessment of this budget estimate.

* * * * *

Subpart 1815.9—Profit

30. Section 1815.904 is added to read as follows:

1815.904 Solicitation provision and contract clause.

Before contract award, the contracting officer shall ascertain whether the winning offeror has claimed facilities capital cost of money as an allowable cost pursuant to 52.215–30, Facilities Capital Cost of Money. If the offeror has not claimed the cost, said clause shall be deleted at the time the contract is executed. If the offeror has claimed the cost, the clause at 52.215–31, Waiver of Facilities Capital Cost of Money, shall be deleted. It is important that only one of these clauses be included in the contract so that the paying office will know whether or not the cost is allowable.

PART 1816—TYPES OF CONTRACTS

Subpart 1816.3—Cost-Reimbursement Contract

31. Section 1816.370 is revised to read as follows:

1816.370 Forms

Contractors shall use NASA Form 778, Contractor's Release, NASA Form 779, Assignee's Release, NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts, and NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts, to fulfill the assignment and release requirements of the clauses prescribed at FAR 16.307 (a) and (g).

PART 1817—SPECIAL CONTRACTING METHODS

Subpart 1817.1—Multiyear Contracting

32. Sections 1817.103 and 1817.103–1 are added to read as follows:

1817.103 Procedures.

1817.103–1 General.

Under 10 U.S.C. 2306(g), multiyear contracting with funds that would otherwise be available for obligation only within the fiscal year for which appropriated is permitted for periods of not more than five years for certain types of services. For such services, a written determination and findings is required by 10 U.S.C. 2306(g) and 2310 to be made at the levels listed below (this is in addition to the approval required under 1817.102 above):

(a) Contracts in excess of three years—Administrator or Deputy Administrator.

(b) Individual contracts that do not exceed three years—contracting officer.

Subpart 1817.2—Options

33. Section 1817.206–70 is added to read as follows:

1817.206–70 Unpriced options.

This section does not apply to options contained in solicitations issued prior to April 1, 1985, and contracts resulting therefrom. This section applies only to options wherein price or estimated cost and fee are the only undefined elements. If there are other elements of the option that are not fully defined; e.g., quantities or statement of work, the option must be approved by NASA Headquarters, Code HS, prior to synopsis of the solicitation for the basic contract.

(a) The contracting officer may consider an option in the evaluation of a contract proposal (see 1817.208) if—

(1) The documentation specified in FAR 17.205 was provided before issuance of the solicitation;

(2) The option was synopsized (see FAR 17.207(c)(4));

(3) The solicitation specifically provided for how the option would be evaluated (see FAR 15.406–5(c)) and the solicitation included the provision at 1852.217–71, Evaluation of Unpriced Option; and

(4) The solicitation included the clause at 1852.217–72, Unpriced Option.

(b) An option shall not be evaluated if paragraph (a) above is not complied with. Unevaluated options shall not be exercised unless FAR 6.3 is complied with.

34. Sections 1817.207—71, 1817.208, and 1817.208–70 are added to read as follows:

1817.207–71 Exercise and pricing of unpriced options.

In exercising an unpriced option that was evaluated in accordance with 1817.206–70, the contracting officer shall provide a preliminary written notice of intent to exercise the option at least 90 (preferably 120) calendar days before the option expires. The notice shall state that the Government anticipates that it will exercise the option but is not bound to do so, and shall request a cost proposal if a current proposal is not already on hand. Thereafter, the contracting officer shall attempt to negotiate a reasonable price or estimated cost and fee for the option. If agreement is reached, a contract modification shall be issued exercising the option and specifying the agreed-to price or estimated cost and fee. If agreement cannot be reached before the option expires, the contracting officer shall determine a reasonable price or estimated cost and fee for the work covered by the option. In this event, prior to the date the option expires, the contracting officer shall issue a unilateral contract modification exercising the option and setting forth the price or estimated cost and fee determined by the contracting officer. The modification shall also state that this determination constitutes a final decision for purposes of the Contract Disputes Act of 1978, and otherwise comply with the requirements of FAR 33.211.

1817.208 Solicitation provisions and contract clauses.

The provisions and clauses prescribed in FAR 17.208 apply only to priced options. They shall not be included in solicitations or contracts containing unpriced options unless the solicitations or contracts also contain priced options.

1817.208–70 Provisions and clauses for unpriced options.

(a) The contracting officer shall insert the provision at 1852.217–71, Evaluation of Unpriced Option, in solicitations if—

(1) The solicitation contains an unpriced option clause;

(2) The option is not to be exercised at the time of contract award; and

(3) The price or estimated cost and fee of the option is to be negotiated after the award of the contract.

(b) The contracting officer shall insert the clause at 1852.217–72, Unpriced Option, in contracts if the provision cited in paragraph (a) above is used, and all terms and conditions in the basic contract, except price or estimated cost and fee, are to apply to the option.

Subpart 1817.70—Procurement With Military Departments

1817.7002–4 [Amended]

35. Section 1817.7002–4 is amended by changing "1852.217–1" to read "1852.217–70".

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1819.8—Contracting With the Small Business Administration (The 8(a) Program)

36. Section 1819.809–1(a)(1) introductory text, and (b)(8)(ii), introductory text, are revised to read as follows:

1817.809–1 General.

(a) *Supplies and services (including research and development).* (1) As required by FAR 19.809–1(a), the contracting officer shall prepare a Standard Form 26 for execution with the

SBA. This contract shall include a statement as follows:

* * * * *

(2) * * *

(b) *Construction.*

* * * * *

(8) * * *

(ii) Prepare Standard Form 1442 or other appropriate forms for execution with the SBA. This contract shall include a statement as follows:

* * * * *

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1822.6—Walsh-Healey Public Contracts Act

37. Sections 1822.608 and 1822.608–5 are added to read as follows:

1822.608 Procedures.

1822.608–5 Award.

For contract awards for which NF 507, Individual Procurement Action Report, is filed (see 1804.671), the submission of SF 99 pursuant to FAR 22.608–5(b) is not required.

PART 1832—CONTRACT FINANCING

Subpart 1832.5—Progress Payments Based on Costs

38. Section 1832.501–170 is added to read as follows:

1832.501–170 NASA rates.

Customary rates of 80 percent for contracts with other than small businesses and 90 percent for contracts with small businesses shall be substituted for the rates of 90 and 95 percent in FAR 32.501–1(a).

PART 1833—PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1—Protests

39. Section 1833.104, paragraphs (b) and (c) are revised to read as follows:

1833.104 Protests to GAO.

* * * * *

(b) *Protests before award.* (1) The contracting officer shall provide Headquarters Code HP with information and recommendations relevant to a determination under FAR 33.104(b)(1) to award a contract prior to resolution of a protest. The determination shall be made by the Assistant Administrator for Procurement, who for purposes of this requirement is the "head of the contracting activity." The notification to GAO required by FAR 33.104(b)(2) will be made by Code HP.

(2) The notices and requests required by FAR 33.104(b)(3) will be made by the contracting officer.

(c) *Protests after award.* (1) A file containing the documents required by FAR 33.104(a)(2) (i) thru (v) shall be forwarded by the contracting officer to Headquarters Code HP within 3 work days of receipt of notice of filing of the protest. The contracting officer's statement (FAR 33.104(A)(2)(vi)) shall be forwarded to Code HP within 10 work days.

(2) The contracting officer shall consult with Headquarters Code HP prior to terminating a protested contract. If FAR 33.104(c)(5) applies, the contracting officer shall consult with Code HP prior to taking any action.

(3) Any request for a determination under FAR 33.104(c)(2) to authorize performance notwithstanding a protest shall be submitted to Headquarters Code HP. The determination shall be made by the Assistant Administrator for Procurement, who for purposes of this requirement is the "head of the contracting activity." The notification to GAO required by FAR 33.104(c)(3) will be made by Code HP.

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

40. Subpart 1836.3 is added to read as follows:

Subpart 1836.3—Special Aspects of Sealed Bidding in Construction Contracts

1836.303 Invitations for bids.

1836.303–70 NASA IFB's.

When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for a first or base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In such case, the low bidder and the bid items to be awarded shall be determined as set forth in the provision at 1852.236–71, Additive or Deductive Items. The contracting officer, prior to the opening of bids, shall determine and record in the contract file the amount of funds available for the project. The amount so recorded shall be controlling for determining the low bidder but may be increased for determining the bid items to be awarded to said bidder provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

1836.370 Solicitation provision.

The contracting officer shall insert the provision at 1852.236–71, Additive or Deductive Items, in invitations for bids for construction when it is desired to add or deduct bid items to meet available funding.

41. Part 1839 is added to read as follows:

PART 1839—MANAGEMENT ACQUISITION AND USE OF INFORMATION RESOURCES

Sec.

1839.000 Federal information resources management.

Subpart 1839.70—Procedures

1839.7000 Scope of subpart.
1839.7001 Policy.
1839.7002 Applicability.
1839.7003 Installation requests.
1839.7003–1 Responsibility.
1839.7003–2 Request format.
1839.7003–3 Submission.
1839.7004 ADP acquisition plans.
1839.7005 Coordination.
1839.7006 DPA transmittal.
1839.7007 Numbering provisions and clauses.

Authority: 42 U.S.C. 3473(c)(1).

1839.000 Federal Information Resources Management.

Contracting for ADP, telecommunications, and related resources shall be accomplished in accordance with 41 CFR Ch. 201, Federal Information Resources Management Regulation (FIRMR).

Subpart 1839.70—Procedures

1839.7000 Scope of subpart.

This Subpart prescribes the internal NASA procedures to be used by installations in obtaining GSA authorization to contract for ADP, telecommunications and related resources.

1839.7001 Policy.

The Assistant Administrator for Procurement has responsibility for submitting Agency Procurement Requests (APR's) to the General Services Administration (GSA) to obtain Delegations of Procurement Authority (DPA's) for ADP. Telecommunications services shall be obtained in accordance with NMI 2530.3, Delegation of Authority—To Prescribe Standards for and to Approve Procurement and Utilization of Telecommunications Services.

1839.7002 Applicability.

This subpart is applicable to all ADP actions for which the FIRMR requires issuance of specific DPA's.

1839.7003 Installation requests.

1839.7003-1 Responsibility.

The installation procurement officer is responsible for—

(a) Determining or verifying that a DPA is necessary.

(b) Ensuring that internally required approvals are sufficient to allow initiation of the acquisition.

(c) Ensuring that any required documentation is uniquely identifiable, complete, adequate, severable, and readily available in files controlled by the contracting office.

(d) Timely submitting to the Office of Procurement (Code HP) information to be used as the basis of an APR.

(e) Conducting the acquisition action in accordance with the terms of the applicable DPA and initiating a request for a revised DPA in the event of changed circumstances which invalidate the existing DPA or require additional or modified authorization from GSA.

1839.7003-2 Request format.

Headquarters will prepare an APR, consistent with the FIRMR, from the installation—supplied information. Installations shall use the format set forth below, subject to the following conditions:

(a) The exact numbering style and headings shall be used (except for parenthetical material) unless otherwise noted.

(b) Parenthetical material, except paragraph numbering, is instructional and should be omitted in the submitted document.

(c) Material should be prepared to allow verbatim incorporation into the APR NASA will submit to GSA. Note that internal material of interest only to Headquarters, as may be required by parenthetical notes, will be deleted.

Format

Installation APR

Date: ———

(1) *Installation information:*

(i) (Installation name)

(ii) Procurement contact: (name/title/telephone no.)

(iii) Technical contact: (name/title/telephone no.)

(2) *Project title and description:*

(i) Project title: (Use brief, informative name. Actual project title preferred, if suitable. Provide a brief description of the nature and scope of the program the contemplated buy will support. The description may be as techncial as necessary but make sure a non-technical, non-ADP reader can, in general, understand the request).

(ii) Existing components: (Provide a brief but specific description of the major system components, including ADPE configuration, or services currently supporting the program. Limitations dictating the present action may be mentioned).

(iii) To-be-acquired: (Provide a brief but specific description of the major system components or services to be acquired during the systems life of the requirement. The reason for the buy should be made clear, if not already covered above. A brief summary, followed by a reference to a "Justification for other Than Full and Open Competition" is also appropriate. Describe resources required for system expansion, i.e., anticipated augmentations, upgrades, and other system modifications, during the systems life. Note that the DPA provided by GSA will be limited to acquisition of the resources described in this section.)

(3) *Acquisition strategy:*

(i) (Indicate the contemplated type of competition, i.e., full and open, full and open after exclusion of sources or other than full and open. If the latter, cite the appropriate circumstance at FAR 6.302.)

(ii) (Indicate whether or not the proposed procurement approach is to satisfy a requirement using a specific make and model specification; whether compatibility limited requirements will be used on either a mandatory or nonmandatory basis; and specify the type of contract expected to be used. If lease is contemplated, indicate the option and/or ownership plans.)

(iii) Solicitation will be issued: ——— Qtr FY ——. Contract will be signed: ——— FY ——.

(iv) This request does not involve a pilot or prototype. (If preceding statement is *not true* replace it with a description of the strategy for follow-on implementation.)

(4) *Estimated contract life and cost:*

Type of request	Estimated contract cost	Estimated contract life	Estimated system life
ADPE system	Contr. $XXX Option $XXX	Firm (Yrs/mos) Option (yrs/mos)	(yrs/mos) (yrs/mos)

(Use applicable parts of above sample. Typical types of request are one or more of the following: ADP system replacement or augmentation, Proprietary software, Equipment maintenance. Other ADP services. Include all anticipated optional quantities, services and periods. Note that contract cost is specified, *not* overall system life cost. Detailed cost breakout may be attached if necessary to clearly describe costs. The delegation will be limited to the quantities and periods indicated.)

(5) *Regulatory compliance:*

(i) All of the applicable regulations have been reviewed and complied with. No waivers are contemplated. (Alternatively, list those deviations to the FIRMR that apply to this request for which approval is sought and provide an explanation for each regulatory deviation request pursuant to FIRMR Subpart 201–1.4. Any contemplated deviations to the FAR or NASA FAR Supplement should be handled pursuant to FAR Subpart 1.4: they are not to be listed here.)

(ii) The following documentation has been prepared and conforms with NFS 1839.7003–1(c): (Enter document date of most recent update or N/A as appropriate. Identify *only* those documents noted below. *Do not* send copies of documents to Code HP unless requested. Exception: Fully signed and dated justifications for other than full and open competition, if required by FAR 6.303, must be provided.)

(A) (Requirements analysis, as per FIRMR 201–30.007).

(B) (Analysis of alternatives, as per FIRMR 201–30.009).

(C) (Performance evaluation for the currently installed ADP system, as per FIRMR 201–30.007(d)(9) and 201–34.002).

(D) (Findings to support the use of compatibility limited requirements, as per FIRMR 201–30.009–3).

(E) (Software conversion study, as per FIRMR 201–30.012–1).

(F) (Certified data to support a contemplated requirement available from only one responsible source, as per FIRMR 201–11.002(b).

(G) (Justification to support a contemplated requirement using a specific make and model specification, as per FIRMR 201–30.013–2).

(H) (Description of those planned actions necessary to foster competition for subsequent acquisitions, as per FIRMR 201–30.012).

(6) *Remarks:* (Provide additional information deemed necessary concerning any of the above items or special conditions associated with this acquisition; e.g., required building construction/modification by GSA. Indicate any special problems or conditions regarding funding or ADP

acquisition plan approvals. State any urgency factors.)

(7) *References:* (Provide GSA case numbers, if any, of previous authorizations specifically related to the requested action. Reference any significant meetings or other event within NASA or GSA which may have a major bearing on the action.)

(8) *Submitted by:* (Typed name/signature of procurement officer)

1839.7003–3 Submission.

Installation requests shall be forwarded in 2 copies to the Assistant Administrator for Procurement (Attn: Code HP). A minimum of nine weeks lead-time should be allowed starting when the request leaves the installation. (See also NFS 1839.7004). Direct electronic transmission of APR's to the Code HP telecommunication facility requires prior approval by Code HP.

1839.7004 ADP acquisition plans.

(a) Where NHB 2410.1 requires that an ADP acquisition plan be approved by Headquarters, the procurement officer shall determine from the initiating activity that the plan has been approved by Headquarters, or is under review by the Headquarters Automated Information Systems Division (Code NT).

(b) Where NHB 2410.1 provides for approval of a ADP acquisition plan at the local level, a copy of the approved plan shall be enclosed with the APR unless it has been previously sent to Code NT.

(c) The existence of a copy of the acquisition plan in the contract file does not in and of itself meet the documentation criteria set forth in NFS 1839.7003–1(c).

1839.7005 Coordination

(a) Installation APR's are subject to general review, comparison with acquisition plans and code HP-NT discussion prior to the forwarding of an APR to GSA.

(b) Communications with GSA regarding submitted APR's will be through the Headquarters Procurement Policy Division (Code HP), unless that office directs otherwise. Installations may respond to contacts initiated by GSA, but should inform Code HP of the contact and its nature.

(c) NASA will not normally make presentations to GSA regarding APR's unless so requested by GSA. Any exceptions are subject to HP-NT coordination.

1839.7006 DPA transmittal.

Delegations of Procurement Authority for specific buys are made to the Assistant Administrator for Procurement (or designee, Code HP) and in turn redelegated to the appropriate procurement officer. This is done by transmitting the signed DPA with a delegation letter containing additional instructions and guidance. Questions regarding the DPA shall be referred to Code HP, rather than directly to any GSA individual specified in the DPA.

1839.7007 Numbering Provisions and Clauses.

Where adherence to the FIRMR results in the use of provisions or clauses in solicitations or contracts which are not prescribed in the FAR or NFS, use the applicable FIRMR number and FIRMR provision or clause title.

PART 1842—CONTRACT ADMINISTRATION

Subpart 1842.2—Assignment of Contract Administration

42. In section 1842.202–70, Paragraph "(e)" is redesignated "(f)"; and a new paragraph "(e)" is added to read as follows:

1842.202–70 Delegations to contract administration offices.

* * * * *

(e) *Property Administration and Plant Clearance.* Property administration and plant clearance are ordinarily delegated by NASA to DOD pursuant to FAR 42.302. When delegated, special instructions prepared and distributed by the Headquarters Supply and Equipment Management Branch, Code NIE, should be issued to the Contract Administration Office (CAO). Property administration and plant clearance are typically retained, however, and performed by NASA when the contract work is to be performed on a NASA installation. When retained, the functions should be performed in accordance with Subpart 1845.72.

* * * * *

1842.202–71 [Amended]

43. In section 1842.202–71(a), "Federal Management Circular Number 73–6," is changed to read "OMB Circular Number 88, Revised,".

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1844.3—Contractors' Purchasing Systems Review

44. Section 1844.302–70(a) is revised to read as follows:

1844.302–70 Contractors' purchasing system reviews conducted by the Department of Defense.

(a) Under FAR 42.202 and 42.302(a)(50), assignment of contract administration functions automatically confers authority to conduct contractor's purchasing system reviews (CPSR's) and approve or disapprove a contractor's purchasing system. In accordance with FAR 44.307(b), the contracting officer shall include in the letter of delegation of contract administration functions a requirement for the contract administration office to send one copy of each CPSR Summary Report to the cognizant NASA contracting officer.

* * * * *

PART 1845—GOVERNMENT PROPERTY

Subpart 1845.3—Providing Government Property to Contractors

45. Section 1845.302–70(a) is revised to read as follows:

1845.302–70 Securing approval of facilities projects.

(a) If a facilities project involves leasing, construction, expansion, modification, rehabilitation, repair, or replacement of real property, facility project approval shall be obtained from the contracting officer pursuant to NASA Management Delegation A7330.1B.

* * * * *

Subpart 1845.4—Contractor Use and Rental of Government Property

46. Section 1845.402 is added to read as follows:

1845.402 Authorizing Use of Government Production and Research Property.

(a) A NASA contracting officer desiring to authorize use of Government production and research property under the cognizance of another contracting officer shall request the latter to give his concurrence in such use. If concurrence is denied, the matter shall be raised to a level above the cognizant contracting officer.

(b) Use of NASA production and research property in the possession of the contractor on contracts of other agencies of the Government may be authorized to the extent that such use will not interfere with the primary NASA purpose of the facilities or extend beyond the anticipated completion date of the NASA contract. In such cases, approval, on a non-interference basis, for use may be given by the NASA

contracting officer having cognizance of the property.

Subpart 1845.5—Management of Government Property in the Possession of Contractors

47. Section 1845.505–2 is added to read as follows:

1845.505–2 Records of pricing information.

Whenever DD Form 250's are to be used by a NASA Installation as invoices or DD 250's or other shipping/delivery documents are to be used for property receiving purposes, unit prices must be shown for each item of Government property included on the forms.

PART 1848—VALUE ENGINEERING

Subpart 1848.1—Policies and Procedures

48. Section 1848.102 is revised to read as follows:

1848.102 Policies.

(a) As authorized at FAR 48.102(a), NASA has elected to exempt all contracts other than fixed-price construction contracts and certain production-type supply contracts from the value engineering requirements at FAR Part 48. With respect to production-type supply contracts, contracting officers should consider inserting the value engineering clause at FAR 52.248–1 in solicitations and contracts under the following circumstances:

(1) the estimated price of the contract exceeds $1,000,000;

(2) the predominant requirement of the statement of work is delivery of hardware items;

(3) the contract type is neither cost-plus-fixed fee nor cost-plus-award fee; and

(4) the use of the clause for the anticipated contract is otherwise permitted by the FAR.

(b) Pursuant to FAR 48.102(b), NASA contracting officers shall permit sharing of future contract savings on all future contract units to be delivered under contracts awarded for essentially the same item during the sharing period, even if the scheduled delivery date is outside the sharing period. Accordingly, the contracting officer shall modify the Value Engineering clause subdivision (i)(3)(i) and the first sentence under subparagraph (3) of the definition of acquisition savings by substituting "under contracts awarded during the sharing period" for "during the sharing period."

(c) NASA contracting officers are not authorized to use alternates I, II, or III in FAR 52.248–1.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

49. Subpart 1851.70 is added to read as follows:

Subpart 1851.70—Contractor Employee Air Transportation

Sec.
1851.7001 General.
1851.7002 Policy.
1851.7003 Eligible contractors.
1851.7004 Procedures.
1851.7005 Contract clause.

Subpart 1851.70—Contractor Employee Air Transportation

1851.7001 General.

The General Services Administration (GSA) negotiates agreements with air carriers for transportation of passengers between specific city-pairs at rates substantially lower than those available to the general public. The primary purpose of these agreements is to provide economical air transportation to Government employees on official business. These rates are also authorized for use by eligible contractors.

1851.7002 Policy.

Contracting officers shall structure contracts with eligible contractors so as to require contractors to use Government discount air passenger transportation rates to the maximum extent practicable in accordance with contractual provisions.

1851.7003 Eligible contractors.

NASA contractors meeting all of the following conditions are eligible for Government discount passenger airfares:

(a) The contract is a new or existing cost reimbursement contract;

(b) Costs for such transportation are otherwise allowable and are charged as direct costs to the contract.

(c) Contractor is on- or near-site at a NASA installation with a Scheduled Airline Traffic Office (SATO) from which the reduced fares are available.

(d) It is reasonably anticipated that there will be contractor employee air travel.

1851.7004 Procedures.

(a) Individual airline tariffs as well as airline business strategies govern the availability of the discount fares. These rules and practices will be interpreted and applied by SATO's when contractors request service and are the reason for the provision in paragraph (g) of the clause at 1852.251–70. Where airline tariffs permit use of discount fares which are in addition to the GSA contract fare, such additional fares should also be used.

(b) The basic procedures for obtaining GSA City-Pairs Contract and other government discount passenger air transportation rates to be followed by contractors is set forth in the clause at 1852.251–70. (SATO's and Installation Travel Offices will comply with guidance provided by the Transportation Management Office.)

(c) For both new and amended contracts, the contracting officer shall notify the installation travel office that the clause in (b), above, has been used and furnish contractor name, contract number, and period of performance.

1851.7005 Contract clause.

The contracting officer shall insert the clause at 1852.251–70, Contractor Employee Air Transportation, in solicitations and contracts with contractors determined eligible in accordance with 1851.7003. The clause implements the following special conditions, based on NASA-Air Transport Association agreements, which must be observed in authorizing a contractor to use reduced GSA-negotiated passenger airfares:

(a) Tickets can be obtained only through local installation SATO's.

(b) Service must be ordered on SF 1169, U.S. Government Transportation Request (GTR).

(c) Tickets may be obtained only for bona-fide contractor employees, e.g., the procedures cannot be used to obtain tickets for Government employees.

(d) Air carriers are not obligated to make city-pairs contract fares or other Government discount fares available to NASA contractors (See 1851.7004).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1852.1—Instructions for Using Provisions and Clauses

50. Section 1852.103 is revised and section 1852.103–70 is added to read as follows:

1852.103 Identification of provisions and clauses.

In the hypothetical example of clause identification at FAR 52.103(d)(2), NASA contracting offices shall number their first clause 52.236–90, the second clause 52.236–91 etc., (see FAR 1.303(a) and 1801.104–2(b)). Centers may use suffix numbers from –90 to –199. Numbers of –200 and higher are reserved for the

Automated Procurement Documentation System.

1852.103-70 Identification of modified provisions and clauses.

(a) When a FAR clause or provision is included in a solicitation or contract and the NFS sets forth the exact wording of a modification, the title line shall identify the modification as shown below. This format shall be used for both incorporation by reference and when using full text:

52.232-1 Payments (APR 1984)—as modified by 1852.232-1 NASA FAR Supplement (APR 1984)

(b) When (1) a FAR or NFS clause or provision is indicated for use "substantially as follows," or nonspecific modifications are allowed, (2) a modified version is in fact being used, and (3) the modifications are so extensive that the procedures at FAR 52.104(b) and (c) are impractical, the clause or provision shall be included in full text and the title line shall include the word "(MODIFICATION)" followed by the Center name and the date (or the date the modification was last changed, if it is a standard modification used Centerwide).

Subpart 1852.2—Texts of Provisions and Clauses

51. Section 1852.204-71 is revised to read as follows:

1852.204-71 NASA Contractor Financial Management Reporting.

As prescribed by 1804.675-1(a), insert the following clause in contracts that require financial management reporting.

NASA Contractor Financial Management Reporting (August 1985)

(a) Financial Management Reports shall be submitted by the Contractor on NASA Form 533 reports in accordance with the instructions set forth in the NASA Handbook "Procedures for Contractor Reporting of Correlated Cost and Performance Data" (NHB 9501.2B) and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with technical and schedule reporting, will be set forth in the Schedule of this contract. Implementation by the Contractor of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category, and will give due regard to the Contractor's established financial management information system.

(b) Lower level detail, which the Contractor utilizes for its own management purposes to validate information reported to NASA, shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule of this contract or as designated administratively in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract schedule line items, the Contracting Officer may direct the Contractor to submit 533 reports on a quarterly basis only.

(d) The Contractor agrees to insert the substance of this clause in all first tier cost type subcontracts specifically identified in writing by the Contracting Officer and shall include the cost of such subcontracts in its cost reports.

(e) During the performance of this contract, if NASA requires a change, either an increase or decrease in the information or reporting requirements specified in the Schedule, or as provided for in (a) or (c) above, such change shall be effected by the Contracting Officer in accordance with the procedures of the Changes clause of this contract.

(End of clause)

52. Section 1852.204-72 is revised to read as follows:

1852.204-72 NASA Contractor Financial Management Reporting (Performance Analysis Report).

As prescribed in 1804.675-1(b), insert the following clause in contracts that require the Monthly Performance Analysis Report.

NASA Contractor Financial Management Reporting (Performance Analysis Report) (August 1985)

Monthly reporting of contract performance shall be accomplished on the NASA Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P) in accordance with the instructions set forth in the NASA Handbook "Procedures for Contractor Reporting of Correlated Cost and Performance Data" (NHB 9501.2B) and on the reverse side of the form, as supplemented in the Schedule of this contract.

(End of clause)

53. Section 1852.216-7 is revised to read as follows:

1852.216-7 Allowable Cost and Payment.

In subdivision (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216-7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; *provided*, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215-1, Examination of Records by Comptroller General. Paragraph (a) of the clause at FAR 52.216-7 shall be modifed as specified in 1852.216-770. See FAR 16.307(a) for modifications required if the contract is with a nonprofit or educational concern or a State or local government.

1852.217-70 [Amended]

54. The clause in section 1852.217-70 is amended by changing "(APRIL 1984)" to read "(August 1985)"; and by changing "R-2" to read "Code 7".

55. Section 1852.217-71 is added to read as follows:

1852.217-71 Evaluation of Unpriced Option.

As prescribed in 1817.208-70(a), insert the following provision:

Evaluation of Unpriced Option (August 1985)

(a) The government will evaluate unpriced option(s) for award purposes as one of the Other Factors and separate from the evaluation of the Cost Factors. The offeror shall submit with its proposal a budget estimate for the unpriced option which shall be presented to, and considered by, the Selection Official, along with the Government's most probable cost assessment of this budget estimate.

(b) Evaluation of the option does not obligate the Government to exercise the option, nor does the exercise of the option obligate the Government to accept the budget estimate as a reasonable cost for the option.

(End of provision)

56. Section 1852.217-72 is added to read as follows:

1852.217-72 Unpriced Option.

As prescribed in 1817.208-70(b), insert the following clause:

Unpriced Option (August 1985)

(a) This clause applies only to optional quantities of supplies or services for which specific prices or estimated cost and fee have not been negotiated at the time of award of the basic contract. Any other option clauses contained in this contract do not apply to such unpriced options.

(b) The Government may extend the term of this contract for the option quantities of supplies or services and period specified in the Schedule by written modification of this contract before the current contract performance period expires; provided that the Government shall give the Contractor a preliminary written notice of intent to extend at least 90 calendar days before the option expires. The preliminary notice does not commit the Government to exercise the option.

(c) Except for the price or estimated cost and fee, all other terms and conditions in the contract apply to the option. Upon receipt of the preliminary notice, the parties shall undertake to negotiate a reasonable price or estimated cost and fee for the option. The modification exericising the option shall specify the price or estimated cost and fee, if agreed upon. If the price or estimated cost and fee for the option are not agreed upon at the time the government exercises the option the Contractor is nevertheless bound to perform the option work in accordance with all other terms and conditions of this contract. In such an event, a reasonable price or estimated cost and fee for the option shall be determined by the Contracting Officer and shall be set forth in the modification exercising the option. This determination of a reasonable price or estimated cost and fee

shall constitute a final decision by the Contracting Officer on a question of fact within the meaning of the Disputes clause in this contract and the Contract Disputes Act of 1978.

(d) If the Government exercises this option, the extended contract shall be considered to include this option. However, the total duration of this contract, including the exercise of any option(s) shall not exceed . . .*. . . years.

(End of clause)

57. Section 1852.232–16 is added to read as follows:

1852.232–16 Progress payments.

(a) In the clause at FAR 52.232–16, change the rate of 90 percent to 80 percent in paragraphs (a)(1), (a)(5), and (b).

(b) In Alternate I of FAR 52.232–16, in the preface and in subparagraph (a)(1) change the rate of 95 percent to 90 percent.

(c) When using the clause at FAR 52.232–16 in—

(1) Competitive procurements (IFB's and RFP's when adequate price competition is expected) and other procurements when paragraph (c)(2) below does not apply, replace the first sentence of that clause with the following:

Progress payments shall be made to the Contractor as work progresses within 30 days after receipt of each progress payment request, which may not be submitted more frequently than monthly, in amounts approved by the Contracting Officer, under the following conditions.

(2) Negotiated procurements when the price is based on cost analysis and frequency of payment requests was considered in the negotiation (see 1815.970–1(c)(2)), replace the first sentence of that clause with the following:

Progress payments shall be made to the Contractor as work progresses within 30 days after the receipt of each progress payment request in amounts approved by the Contracting Officer under the following conditions:

58. Section 1852.236–71 is added to read as follows:

1852.236–71 Additive or Deductive Items.

As prescribed in 1836.370, insert the following provision:

Additive or Deductive Items (August 1985)

The low bidder for purposes of award shall be the conforming reponsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000 and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and the third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid for which funds are determined to be available at the time of the award, provided that award of such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

1852.243–70 [Amended]

59. Section 1852.243–70, Alternate II of the clause (April 1984), is amended by changing "first" to read "second".

60. Section 1852.245–70 is revised.

1852.245–70 Acquisition of Existing Government Equipment.

As prescribed in 1845.106–70(a), insert the following clause in all solicitations and contracts which contain a Government property clause:

Acquisition of Existing Government Equipment (August 1985)

(a) "Centrally reportable equipment," as used in this clause means that plant equipment, special test equipment (including components), special tooling and non-flight space property (including ground support equipment) which is (1) generally commercially available and used as a separate item or component of a system, (2) is valued at $1,000 or more, and (3) is identifiable by a manufacturer and model number.

(b) Prior to the acquisition of any item of centrally reportable equipment under this contract (unless for incorporation into flight qualified or flight monitoring deliverable end items), the Contractor shall provide the Contracting Officer, at the earliest possible date, a detailed listing of requirements for screening of existing Government inventories. DD Form 1419, DoD Industrial Plant Equipment Requisition, will be prepared for each item of centrally reportable equipment to be acquired and forwarded through the Contracting Officer to the Equipment Visibility System Coordinator at the cognizant NASA installation at least (30) days in advance of his intention to acquire or fabricate such equipment. In the event a certificate of non-availability is not received within such period, the contractor may proceed to acquire the equipment or components, subject to any other applicable provisions of this contract. Instructions for preparing the DD Form 1419 are contained in the NASA FAR Supplement 1845.7103. Upon receipt of the equipment described on the DD Form 1419 (regardless of whether it is Contractor-Acquired or Government-Furnished), the contractor shall prepare and submit a DD Form 1342 in accordance with NASA FAR Supplement 1845.505–670.

(End of clause)

61. Section 1852.251–70 is added to read as follows:

1852.251–70 Contractor Employee Air Transportation.

As prescribed at 1851.7005, insert the following clause:

Contractor Employee Air Transportation (August 1985)

(a) To the maximum extent practicable consistent with travel requirements, the Contractor shall use the reduced air transportation rates and services provided through available Government-discount airfares for bona-fide employees' travel that is otherwise reimbursable as a direct cost pursuant to this contract.

(b) Upon initial receipt of this contract or amendment, the Contractor shall notify the travel office of the issuing installation of the name and title of the Contractor employee responsible for authorizing each individual airline ticket purchase and provide a copy of the Contractor's document by which such authorization is made. At a minimum, this document shall require that ticket purchases be supported with the name and position of the traveler, the purpose of the travel, the itinerary (places and dates), and the dated signature and position of the authorizing official. Revised notifications shall be made to accommodate changed responsibilities.

(c) The Contractor will acknowledge receipt of Standards Form 1169, Government Transportation Request (GTR) by signing the Transmittal document (NASA Form 1622) and returning it to the issuing travel office.

(d) The Contractor shall order Government-discount airfare services only from the Scheduled Airline Traffic Office (SATO) designated by the travel office issuing the GTR, and shall order these services only through issuance of a GTR. The authorized Contractor official shall obtain the installation travel officer's signature on the requisite number of GTR's for each billing period—However, a maximum of one GTR per applicable contract per billing period shall be provided to the (SATO).

(e) All tickets purchased at Government discount rates will be obtained with the GTR and each ticket shall have at least one flight coupon at Government discount rates.

(f) The Contractor shall account for each issued GTR, safeguard GTR's against unauthorized use, and return unused GTR's to the issuing NASA office upon completion of

*See FAR 17.200 and 17.204(e)

the contract. The installation travel office and the SATO shall be promptly notified of lost or stolen GTR's. Standard Form 1170, "Redemption of Unused Tickets" shall be used to obtain refunds for tickets ordered and issued, but not used.

(g) Nothing in this clause shall authorize obtaining transportation or services which are not otherwise reimbursable as direct costs under this contract, or for use by Government employees. Nothing in this clause requires air carriers to make available to the Contractor city-pair contract fares or other Government discount fares.

(End of clause)

PART 1853—FORMS

Subpart 1853.2—Prescription of Forms

62. Section 1853.204–70 is revised.

1853.204–70 General (NF's 507, 507A, 533M, 533P, 533Q, 667, 1098, 1356, 1611, 1612, DD 1593).

(a) *NASA Form 507, Individual Procurement Action Report.* NF 507, prescribed at 1804.671–4, shall be used to provide acquisition records and statistics.

(b) *NASA Form 507A, Individual Procurement Action Report Supplement.* NF 507A, prescribed at 1804.671–4, shall be used to provide additional data on procurement actions resulting from solicitations issued subsequent to March 30, 1985.

(c) *NASA Form 533M, Monthly Contractor Financial Management Report.* NF 553M, prescribed at 1804.675, shall be used when financial management reporting is required.

(d) *NASA Form 533P, Monthly Contractor Financial Management Performance Report.* NF 553P, prescribed at 1804.675, shall be used when monthly performance analysis reports are required.

(e) *NASA Form 533Q, Quarterly Financial Management Report.* NF 533Q, prescribed at 1804.675, shall be used when quarterly cost projection reports are required.

(f) *NASA Form 667, Report on NASA Subcontracts.* NF 667, prescribed at 1804.672, shall be used by contractors to submit information to NASA on each subcontract or modification thereof in excess of $10,000.

(g) *NASA Form 1098, Checklist for Negotiated and Advertised Contract File Content (Award File).* NF 1098, prescribed at 1804.7205, shall be used as a guide in compiling contract files and shall accompany contracts and supplemental agreements submitted to Headquarters for approval.

(h) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* NF 1356, prescribed at 1804.7202, shall be used to report information applicable to colleges and universities.

(i) *NASA Form 1611, Contract Completion Statement.* NF 1611, prescribed at 1804.804–2, shall be used for closeout of contract files when another office administers the contract.

(j) *NASA Form 1612, Contract Closeout Checklist.* NF 1612, prescribed at 1804.804–5, shall be used for contract closeout when the NASA contracting office retains contract administration.

(k) *DOD Form DD 1593, Contract Administration Completion Record.* Form DD 1593, prescribed at 1804.804–5, shall be used for closeout when the NASA contracting office retains contract administration.

1853.216–70 [Amended]

63. Section 1853.216–70 is amended by changing "1816.370(a)" to read "1816.370" wherever it occurs.

64. Section 1853.232(b) is revised to read as follows:

1853.232 Contract financing (SF 272, 272A).

* * * * *

(b) *Standard Form 272A, Federal Cash Transaction Report Continuation,* prescribed at 1832.406–70, is used in conjunction with SF 272 when reporting more than one contract.

1853.242–70 [Amended]

65. Section 1853.242–70(b) is amended by changing "1842.20–70(a)(4)," to read "1842.202–70(a)(4),".

66. Section 1853.251 is added to read as follows:

1853.251 Contractor Employee Air Transportation (SF's 1169, 1170, NF 1622.

The following forms, prescribed at 1851.7005, shall be used in conjunction with employee air transportation under specified contracts:

(a) *Standard Form 1169, U.S. Government Transportation Request.* Form 1169 shall be used by contractors to obtain tickets.

(b) *Standard Form 1170, Redemption of Unused Tickets.* Form 1170 shall be used by contractors in returning unused, spoiled or invalidated tickets.

(c) *NASA Form 1622, Transmittal and Acknowledgement of Government Transportation Requests.* From 1622 shall be used in transmitting the NASA Forms 1169 to contractors.

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Federal Register

Thursday
August 15, 1985

Part VI

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1985.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of August 1, 1985, of 244 rescission proposals and 75 deferrals contained in the first 11 special messages of FY 1985. These messages were transmitted to the Congress on October 1, October 31, and November 29, 1984; and January 4, February 6 (two special messages), March 1, March 22, May 16, June 20, and July 31, 1985.

Rescissions (Table A and Attachment A)

As of August 1, 1985, there were no rescission proposals pending before the Congress. Attachment A shows the history and status of the 244 rescissions proposed by the President in 1985.

Deferrals (Table B and Attachment B)

As of August 1, 1985, $4,437.3 million in 1985 budget authority was being deferred from obligation and $5.5 million in 1985 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1985.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984
Vol. 49, FR p. 44870, Friday, November 9, 1984
Vol. 49, FR p. 47804, Thursday, December 6, 1984
Vol. 50, FR p. 1420, Thursday, January 10, 1985
Vol. 50, FR p. 6582, Friday, February 15, 1985
Vol. 50, FR p. 6648, Friday, February 15, 1985
Vol. 50, FR p. 9410, Thursday, March 7, 1985
Vol. 50, FR p. 12504, Thursday, March 28, 1985
Vol. 50, FR p. 21014, Tuesday, May 21, 1985
Vol. 50, FR p. 26510, Wednesday, June 26, 1985
Vol. 50, FR p. 31696, Monday, August 5, 1985

Joseph R. Wright,
Acting Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$1,843.3
Accepted by the Congress	0
Rejected by the Congress	1,843.3 a/
Pending before the Congress	0

****

TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$15,339.3 b/
Routine Executive releases through August 1, 1985 (OMB/ Agency Releases of $11,199.0 million and cumulative adjustments of $302.5 million)	-10,896.5
Overturned by the Congress	0
Currently before the Congress	$ 4,442.8 c/

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a/ Rescission proposals transmitted with the FY 1986 Budget were released immediately following expiration of the 45-day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

b/ This amount includes $170.0 million transmitted by the Comptroller General on June 24, 1985, for the General Services Administration.

c/ This amount includes $5.5 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of August 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs	R85-1	99,000		2-6-85		99,000	4-25-85	
International Development Assistance Functional development assistance program	R85-2	5,168		2-6-85		5,168	4-25-85	
Peace Corps Peace Corps operating expenses	R85-3	1,231		2-6-85		1,231	4-25-85	
Overseas Private Investment Corporation Overseas Private Investment Corporation	R85-4	838		2-6-85		838	4-25-85	
DEPARTMENT OF AGRICULTURE								
Office of the Secretary Office of the Secretary	R85-5	114		2-6-85		114	4-25-85	
Departmental Administration Departmental Administration	R85-6	149		2-6-85		149	4-25-85	
Office of Governmental and Public Affairs Office of Governmental and Public Affairs	R85-7	497		2-6-85		497	4-25-85	
Office of the Inspector General Office of the Inspector General	R85-8	41		2-6-85		41	4-25-85	
Office of the General Counsel Office of the General Counsel	R85-9	24		2-6-85		24	4-25-85	
Agricultural Research Service Agricultural Research Service	R85-10	1,313		2-6-85		1,313	4-25-85	
Buildings and facilities	R85-11	16,950		2-6-85		16,950	4-25-85	
	R85-12	20,950		2-6-85		20,950	4-25-85	
Cooperative State Research Service Cooperative State Research Service	R85-13	151		2-6-85		151	4-25-85	
Extension Service Extension Service	R85-14	310		2-6-85		310	4-25-85	
National Agricultural Library National Agricultural Library	R85-15	11		2-6-85		11	4-25-85	
Statistical Reporting Service Salaries and expenses	R85-16	206		2-6-85		206	4-25-85	
Economic Research Service Salaries and expenses	R85-17	132		2-6-85		132	4-25-85	
World Agricultural Outlook Board World Agricultural Outlook Board	R85-18	32		2-6-85		32	4-25-85	
Foreign Agricultural Service Foreign Agricultural Service	R85-19	424		2-6-85		424	4-25-85	
Office of International Cooperation and Development Salaries and expenses	R85-20	52		2-6-85		52	4-25-85	
Scientific activities overseas (special foreign currency program)	R85-21	9		2-6-85		9	4-25-85	
Agricultural Stabilization and Conservation Service Salaries and expenses	R85-22	100		2-6-85		100	4-25-85	
Dairy indemnity program	R85-23	88		2-6-85		88	4-25-85	
Federal Crop Insurance Corporation Administrative and operating expenses	R85-24	1,906		2-6-85		1,906	4-25-85	
Commodity Credit Corporation Commodity Credit Corporation fund	R85-25	31		2-6-85		31	4-25-85	
Office of Rural Development Policy Salaries and expenses	R85-26	36		2-6-85		36	4-25-85	
Rural Electrification Administration Salaries and expenses	R85-27	288		2-6-85		288	4-25-85	
Reimbursement to the Rural Electrification and Telephone revolving fund	R85-28	215,964		2-6-85		215,964	4-25-85	
Purchase of Rural Telephone Bank capital stock	R85-29	30,000		2-6-85		30,000	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of August 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently Before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Farmers Home Administration								
Salaries and expenses	R85-30	1,315		2-6-85		1,315	4-25-85	
Soil Conservation Service								
Conservation operations	R85-31	5,174		2-6-85		5,174	4-25-85	
River basin surveys and investigations	R85-32	235		2-6-85		235	4-25-85	
Watershed planning	R85-33	133		2-6-85		133	4-25-85	
Watershed and flood prevention operations	R85-34	918		2-6-85		918	4-25-85	
Great plains conservation program	R85-35	126		2-6-85		126	4-25-85	
Resource conservation and development	R85-36	164		2-6-85		164	4-25-85	
Animal and Plant Health Inspection Service								
Salaries and expenses	R85-37	1,464		2-6-85		1,464	4-24-85	
Federal Grain Inspection Service								
Salaries and expenses	R85-38	94		2-6-85		94	4-25-85	
Agricultural Marketing Service								
Marketing services	R85-39	150		2-6-85		150	4-25-85	
Office of Transportation								
Office of Transportation	R85-40	18		2-6-85		18	4-25-85	
Food Safety and Inspection Service								
Salaries and expenses	R85-41	2,473		2-6-85		2,473	4-25-85	
Food and Nutrition Service								
Food stamp administration	R85-42	684		2-6-85		684	4-25-85	
Food stamp program	R85-43	8,762		2-6-85		8,762	4-25-85	
Human Nutrition Information Service								
Human Nutrition Information Service	R85-44	34		2-6-85		34	4-25-85	
Packers and Stockyards Administration								
Packers and Stockyards Administration	R85-45	117		2-6-85		117	4-25-85	
Agricultural Cooperative Service								
Salaries and expenses	R85-46	50		2-6-85		50	4-25-85	
Forest Service								
Forest research	R85-47	923		2-6-85		923	4-25-85	
State and private forestry	R85-48	463		2-6-85		463	4-25-85	
National forest system	R85-49	12,134		2-6-85		12,134	4-25-85	
Construction	R85-50	1,922		2-6-85		1,922	4-25-85	
Land acquisition	R85-51	68		2-6-85		68	4-25-85	
DEPARTMENT OF COMMERCE								
General Administration								
Salaries and expenses	R85-52	3,700		2-6-85		3,700	4-25-85	
	R85-53	499		2-6-85		499	4-25-85	
Economic Development Administration								
Salaries and expenses	R85-54	120		2-6-85		120	4-25-85	
Economic development assistance programs	R85-55	24,000		2-6-85		24,000	4-25-85	
	R85-56	179,000		2-6-85		179,000	4-25-85	
Bureau of the Census								
Salaries and expenses	R85-57	241		2-6-85		241	4-25-85	
Periodic censuses and programs	R85-58	791		2-6-85		791	4-25-85	
Economic and Statistical Analysis								
Salaries and expenses	R85-59	433		2-6-85		433	4-25-85	
International Trade Administration								
Operations and administration	R85-60	2,783		2-6-85		2,783	4-25-85	
	R85-60A	18,750		2-6-85		18,750	4-25-85	
Participation in United States expositions	R85-61	6		2-6-85		6	4-25-85	
Minority Business Development Agency								
Minority business development	R85-62	305		2-6-85		305	4-25-85	
United States Travel and Tourism Administration								
Salaries and expenses	R85-63	468		2-6-85		468	4-25-85	
	R85-63A	3,417		2-6-85		3,417	4-25-85	

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National Oceanic and Atmospheric Administration								
Operations, research, and facilities....	R85-64	4,140		2-6-85		4,140	4-25-85	
	R85-64A	100,200		2-6-85		100,200	4-25-85	
Fisheries loan fund.....	R85-65	1,550		2-6-85		1,550	4-25-85	
Patent and Trademark Office								
Salaries and expenses.....	R85-66	1,472		2-6-85		1,472	4-25-85	
National Bureau of Standards								
Scientific and technical research and services.....	R85-67	1,019		2-6-85		1,019	4-25-85	
National Telecommunications and Information Administration								
Salaries and expenses.....	R85-68	183		2-6-85		183	4-25-85	
Public telecommunications facilities, planning and construction.....	R85-69	32		2-6-85		32	4-25-85	
	R85-69A	9,968		2-6-85		9,968	4-25-85	
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
General investigations.....	R85-70	2,000		2-6-85		2,000	4-25-85	
Construction, general.....	R85-71	4,000		2-6-85		4,000	4-25-85	
Operation and maintenance, general.....	R85-72	8,000		2-6-85		8,000	4-25-85	
General expenses.....	R85-73	1,200		2-6-85		1,200	4-25-85	
Flood control, Mississippi River and tributaries.....	R85-74	1,000		2-6-85		1,000	4-25-85	
Revolving fund.....	R85-75	3,900		2-6-85		3,900	4-25-85	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Special programs.....	R85-76	80,000		2-6-85		80,000	4-24-85	
Office of Bilingual Education and Minority Languages Affairs								
Grants to schools with substantial numbers of immigrants.....	R85-77	30,000		2-6-85		30,000	4-24-85	
Office of Postsecondary Education								
Higher education.....	R85-78	59,750		2-6-85		59,750	4-24-85	
Departmental Management								
Salaries and expenses.....	R85-79	4,189		2-6-85		4,189	4-24-85	
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Atomic energy defense activities.....	R85-80	8,280		2-6-85		8,280	4-25-85	
Energy Programs								
General science and research activities.	R85-81	38		2-6-85		38	4-25-85	
Energy supply, research and development activities.....	R85-82	2,676		2-6-85		2,676	4-25-85	
Uranium supply and enrichment activities	R85-83	968		2-6-85		[illegible]	4-25-85	
Fossil energy research and development..	R85-84	3,276		2-6-85		3,276	4-25-85	
	R85-85	860		2-6-85		[illegible]	4-25-85	
Naval petroleum and oil shale reserves..	R85-86	181		2-6-85		181	4-25-85	
Energy conservation.....	R85-87	931		2-6-85		931	4-25-85	
Strategic petroleum reserve.....	R85-88	156		2-6-85		156	4-25-85	
Energy Information Administration.....	R85-89	846		2-6-85		[illegible]	4-25-85	
Emergency preparedness.....	R85-90	51		2-6-85		51	4-25-85	
Economic regulation.....	R85-91	156		2-6-85		156	4-25-85	
Federal Energy Regulatory Commission....	R85-92	204		2-6-85		204	4-25-85	
Alternate fuels production.....	R85-93	23		2-6-85		23	4-25-85	

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Power Marketing Administration								
Operation and maintenance, Alaska Power Administration	R85-94	29		2-6-85		29	4-25-85	
Operation and maintenance, Southeastern Power Administration	R85-95	15		2-6-85		15	4-25-85	
	R85-243	23,402		5-16-85		23,402	7-19-85	
Operation and maintenance, Southwestern Power Administration	R85-96	243		2-6-85		243	4-25-85	
Construction, rehabilitation, operation and maintenance, Western Area Power Administration	R85-97	432		2-6-85		432	4-25-85	
Departmental Administration								
Departmental administration	R85-98	2,786		2-6-85		2,786	4-25-85	
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration								
Salaries and expenses	R85-99	2,194		2-6-85		2,194	4-25-85	
Health Resources and Services Administration								
Health resources and services	R85-100	2,263		2-6-85		2,263	4-25-85	
Indian health	R85-101	161		2-6-85		161	4-25-85	
Centers for Disease Control								
Disease control	R85-102	2,261		2-6-85		2,261	4-25-85	
National Institutes of Health								
National Cancer Institute	R85-103	4,362		2-6-85		4,362	4-25-85	
National Heart, Lung and Blood Institute	R85-104	1,401		2-6-85		1,401	4-25-85	
National Institute of Dental Research	R85-105	166		2-6-85		166	4-25-85	
National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases	R85-106	1,171		2-6-85		1,171	4-25-85	
National Institute of Neurological and Communicative Disorders	R85-107	462		2-6-85		462	4-25-85	
National Institute of Allergy and Infectious Diseases	R85-108	428		2-6-85		428	4-25-85	
National Institute of General Medical Sciences	R85-109	211		2-6-85		211	4-25-85	
National Institute of Child Welfare and Human Development	R85-110	309		2-6-85		309	4-25-85	
National Eye Institute	R85-111	173		2-6-85		173	4-25-85	
National Institute of Environmental Health Sciences	R85-112	542		2-6-85		542	4-25-85	
National Institute on Aging	R85-113	196		2-6-85		196	4-25-85	
Research resources	R85-114	250		2-6-85		250	4-25-85	
John E. Fogarty International Center	R85-115	241		2-6-85		241	4-25-85	
National Library of Medicine	R85-116	354		2-6-85		354	4-25-85	
Office of the Director	R85-117	182		2-6-85		182	4-25-85	
Alcohol, Drug Abuse, and Mental Health Administration								
Alcohol, drug abuse, and mental health	R85-118	3,972		2-6-85		3,972	4-25-85	
Office of Assistant Secretary for Health								
Public health service management	R85-119	493		2-6-85		493	4-25-85	
Health Care Financing Administration								
Program management	R85-120	1,540		2-6-85		1,540	4-25-85	
Human Development Services								
Human development services	R85-121	1,334		2-6-85		1,334	4-25-85	
Family social services	R85-122	396		2-6-85		396	4-25-85	
Community services block grant	R85-123	34		2-6-85		34	4-25-85	
Departmental Management								
General departmental management	R85-124	1,246		2-6-85		1,246	4-25-85	
Office of the Inspector General	R85-125	496		2-6-85		496	4-25-85	

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Payments for operation of low income housing projects	R85-126	253,138		2-6-85		253,138	4-25-85	
Management and Administration								
Salaries and expenses	R85-127	6,919		2-6-85		6,919	4-25-85	
DEPARTMENT OF INTERIOR								
Bureau of Land Management								
Management of lands and resources	R85-128	5,778		2-6-85		5,778	4-25-85	
Oregon and California grant lands	R85-129	679		2-6-85		679	4-25-85	
Working capital fund	R85-130	2,951		2-6-85		2,951	4-25-85	
Minerals Management Service								
Minerals and royalty management	R85-131	1,764		2-6-85		1,764	4-25-85	
Office of Surface Mining Reclamation and Enforcement								
Regulation and technology	R85-132	546		2-6-85		546	4-25-85	
Abandoned mine reclamation fund	R85-133	333		2-6-85		333	4-25-85	
	R85-133A	2,900		2-6-85		2,900	4-25-85	
Bureau of Reclamation								
Construction program	R85-134	2,571		2-6-85		2,571	4-25-85	
General investigations	R85-135	209		2-6-85		209	4-25-85	
Operation and maintenance	R85-136	1,540		2-6-85		1,540	4-25-85	
General administrative expenses	R85-137	1,468		2-6-85		1,468	4-25-85	
Geological Survey								
Surveys, investigations and research	R85-138	4,519		2-6-85		4,519	4-25-85	
Bureau of Mines								
Mines and minerals	R85-139	1,355		2-6-85		1,355	4-25-85	
United States Fish and Wildlife Service								
Resource management	R85-140	3,869		2-6-85		3,869	4-25-85	
Construction	R85-141	40		2-6-85		40	4-25-85	
National Park Service								
Operation of the national park system	R85-142	8,598		2-6-85		8,598	4-25-85	
National recreation and preservation	R85-143	94		2-6-85		94	4-25-85	
Construction	R85-144	397		2-6-85		397	4-25-85	
Land acquisition and state assistance	R85-145	52		2-6-85		52	4-25-85	
	R85-146	30,000		2-6-85		30,000	4-25-85	
Bureau of Indian Affairs								
Operation of Indian programs	R85-147	5,570		2-6-85		5,570	4-25-85	
Office of Territorial Affairs								
Administration of territories	R85-148	107		2-6-85		107	4-25-85	
DEPARTMENT OF JUSTICE								
General Administration								
Salaries and expenses	R85-149	166		2-6-85		166	4-25-85	
Working capital fund	R85-150	3,000		2-6-85		3,000	4-25-85	
Legal Activities								
Salaries and expenses, General Legal Activities	R85-151	470		2-6-85		470	4-25-85	
Salaries and expenses, Antitrust Division	R85-152	65		2-6-85		65	4-25-85	
Salaries and expenses, United States Attorneys and Marshals	R85-153	889		2-6-85		889	4-25-85	
Fees and expenses of witnesses	R85-154	309		2-6-85		309	4-25-85	
Salaries and expenses, Community Relations Service	R85-155	43		2-6-85		43	4-25-85	
Federal Bureau of Investigation								
Salaries and expenses	R85-156	3,505		2-6-85		3,505	4-25-85	

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Drug Enforcement Administration								
Salaries and expenses	R85-157	[illegible]		2-6-85		876	4-25-85	
Immigration and Naturalization Service								
Salaries and expenses	R85-158	947		2-6-85		947	4-25-85	
Federal Prison System								
Salaries and expenses	R85-159	451		2-6-85		451	4-25-85	
National Institute of Corrections	R85-160	[illegible]		2-6-85		894	4-25-85	
Buildings and facilities	R85-161	13		2-6-85		13	4-25-85	
Office of Justice Programs								
Justice assistance	R85-162	2,031		2-6-85		2,031	4-25-85	
DEPARTMENT OF LABOR								
Employment and Training Administration								
Program administration	R85-163	[illegible]		2-6-85		[illegible]	4-25-85	
	[illegible]-163A	1,703		2-6-85		1,703	4-25-85	
Training and employment services	R85-164	11,447		2-6-85		11,447	4-24-85	
	R85-164A	244,291		2-6-85		244,291	4-24-85	
Labor-Management Services Administration								
Salaries and expenses	R85-165	1,678		2-6-85		1,678	4-25-85	
Employment Standards Administration								
Salaries and expenses	R85-167	1,635		2-6-85		1,635	4-24-85	
	R85-167A	[illegible]		2-6-85		[illegible]	4-24-85	
Occupational Safety and Health Administration								
Salaries and expenses	R85-168	1,694		2-6-85		1,694	4-24-85	
Mine Safety and Health Administration								
Salaries and expenses	R85-169	1,776		2-6-85		1,776	4-24-85	
Bureau of Labor Statistics								
Salaries and expenses	R85-170	[illegible]		2-6-85		[illegible]	4-25-85	
	R85-170A	5,000		2-6-85		5,000	4-25-85	
Departmental Management								
Salaries and expenses	R85-171	728		2-6-85		728	4-24-85	
Inspector General salaries and expenses	R85-172	3,766		2-6-85		3,766	4-24-85	
Special foreign currency program	R85-173	[illegible]		2-6-85		20	4-24-85	
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R85-174	2,432		2-6-85		2,432	4-25-85	
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration								
Motor carrier safety	R85-175	164		2-6-85		164	4-25-85	
National Highway Traffic Safety Administration								
OPerations and research	R85-176	767		2-6-85		767	4-25-85	
Trust fund share of operations and research	R85-177	[illegible]		2-6-85		408	4-25-85	
Highway traffic safety grants	R85-178	250		2-6-85		250	4-25-85	
Federal Railroad Administration								
Office of the Administrator	R85-179	[illegible]		2-6-85		100	4-25-85	
Railroad research and development	R85-180	170		2-6-85		170	4-25-85	
Rail service assistance	R85-181	[illegible]		2-6-85		90	4-25-85	
Railroad safety	R85-182	140		2-6-85		140	4-25-85	
Northeast corridor improvement program	R85-183	[illegible]		2-6-85		200	4-25-85	
Urban Mass Transportation Administration								
Urban mass transportation fund, administrative expenses	R85-184	265		2-6-85		265	4-25-85	
Federal Aviation Administration								
Operations	R85-185	18,888		2-6-85		18,888	4-25-85	
Headquarters administration	R85-186	1,065		2-6-85		1,065	4-25-85	
Operation and maintenance, Washington metropolitan airports	R85-187	17		2-6-85		17	4-25-85	

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Facilities and equipment (Airport and airway trust fund)	R85-188	10,000		2-[illegible]		10,000	4-25-85	
Coast Guard Operating expenses	R85-189	14,724		2-6-85		14,724	4-25-85	
Acquisition, construction and improvements	R85-190	500		2-6-85		500	4-25-85	
Reserve training	R85-191	441		2-[illegible]		441	4-25-85	
Research, development, test, and evaluation	R85-192	135		2-6-85		135	4-25-85	
Maritime Administration Operations and training	R85-193	888		2-6-85		888	4-25-85	
Office of the Inspector General Salaries and expenses	R85-194	300		2-6-85		300	4-25-85	
Office of the Secretary Salaries and expenses	R85-195	435		2-6-85		435	4-25-85	
Transportation planning, research and development	R85-196	65		2-6-85		65	4-25-85	
DEPARTMENT OF THE TREASURY								
Office of the Secretary Salaries and expenses	R85-197	869		2-6-85		869	4-25-85	
Office of Revenue Sharing Salaries and expenses	R85-198	80		2-6-85		80	4-25-85	
Federal Law Enforcement Training Center Salaries and expenses	R85-199	75		2-6-85		75	4-25-85	
Financial Management Service Salaries and expenses	R85-200	972		2-6-85		972	4-25-85	
Bureau of Alcohol, Tobacco and Firearms Salaries and expenses	R85-201	397		2-[illegible]		397	4-25-85	
United States Customs Service Salaries and expenses	R85-202	1,223		2-6-85		1,223	4-25-85	
Bureau of the Mint Salaries and expenses	R85-203	87		2-6-85		87	4-25-85	
Bureau of the Public Debt Administering the public debt	R85-204	52		2-6-85		52	4-25-85	
Internal Revenue Service Salaries and expenses	R85-205	190		2-6-85		190	4-25-85	
Processing tax returns and executive direction	R85-206	781		2-6-85		781	4-25-85	
Examinations and appeals	R85-207	1,588		2-6-85		1,588	4-25-85	
Investigation, collection, and taxpayer service	R85-208	1,633		2-6-85		1,633	4-25-85	
United States Secret Service Salaries and expenses	R85-209	1,465		2-6-85		1,465	4-25-85	
ENVIRONMENTAL PROTECTION AGENCY								
Salaries and expenses	R85-210	1,863		2-6-85		1,863	4-26-85	
Research and development	R85-211	4,125		2-[illegible]		4,125	4-26-85	
Abatement, control, and compliance	R85-212	7,413		2-6-85		7,413	4-26-85	
GENERAL SERVICES ADMINISTRATION								
Real Property Activities Federal buildings fund	R85-213	3,204		2-6-85		3,204	4-25-85	
Personal Property Activities Operating expenses	R85-214	300		2-6-85		300	4-25-85	
General supply fund	R85-215	30,848		2-6-85		30,848	4-25-85	
Office of Information Resources Management Operating expenses	R85-216	45		2-6-85		45	4-25-85	
Consumer information center fund	R85-217	63		2-6-85		63	4-25-85	

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Federal telecommunications fund.....	R85-218	415		2-6-85		415	4-25-85	
Automatic data processing fund.....	R85-219	145		2-6-85		145	4-25-85	
Federal Property Resources Activities Operating expenses.....	R85-220	207		2-6-85		207	4-25-85	
Expenses, disposal of surplus real and related personal property.....	R85-221	1,832		2-6-85		1,832	4-25-85	
General Activities General management and administration, salaries and expenses.....	R85-222	403		2-6-85		403	4-25-85	
Office of the Inspector General.....	R85-223	35		2-6-85		35	4-25-85	
Allowances and staff for former Presidents.....	R85-224	19		2-6-85		19	4-25-85	
Working capital fund.....	R85-225	8		2-6-85		8	4-25-85	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and program management.....	R85-226	4,000		2-6-85		4,000	4-25-85	
OFFICE OF PERSONNEL MANAGEMENT								
Salaries and expenses.....	R85-227	1,161		2-6-85		1,161	4-25-85	
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses.....	R85-228	3,781		2-6-85		3,781	4-25-85	
VETERANS ADMINISTRATION								
Medical care.....	R85-229	10,261		2-6-85		10,261	4-25-85	
Medical and prosthetic research.....	R85-230	323		2-6-85		323	4-25-85	
Medical administration and miscellaneous operating expenses.....	R85-231	2,109		2-6-85		2,109	4-25-85	
General operating expenses.....	R85-232	4,334		2-6-85		4,334	4-25-85	
Construction, minor projects.....	R85-233	377		2-6-85		377	4-25-85	
OTHER INDEPENDENT AGENCIES								
ACTION Operating expenses.....	R85-234	1,139		2-6-85		1,139	4-24-85	
Corporation for Public Broadcasting Public broadcasting fund.....	R85-244	14,000		5-16-85		14,000	7-19-85	
Federal Emergency Management Agency Salaries and expenses.....	R85-235	786		2-6-85		786	4-25-85	
Emergency management planning and assistance.....	R85-236	1,287		2-6-85		1,287	4-25-85	
National Archives and Records Administration Operating expenses.....	R85-237	166		2-6-85		166	4-25-85	
National Labor Relations Board Salaries and expenses.....	R85-238	1,070		2-6-85		1,070	4-24-85	
National Science Foundation Research and related activities.....	R85-239	2,002		2-6-85		2,002	4-25-85	
Nuclear Regulatory Commission Salaries and expenses.....	R85-240	4,329		2-6-85		4,329	4-25-85	
Tennessee Valley Authority Tennessee Valley Authority fund.....	R85-241	1,538		2-6-85		1,538	4-25-85	
United States Information Agency Salaries and expenses.....	R85-242	433		2-6-85		433	4-25-85	
Subtotal, rescissions.....		1,843,315	0			1,843,315		

Note: Rescission proposals transmitted with the FY 1986 Budget were released immediately following expiration of the 45 day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

Attachment B - Status of Deferrals - Fiscal Year 1985

As of August 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit.....	D85-24	4,939,500		11-29-84	4,929,500				10,000
Economic support fund.....	D85-2	280,500		10-1-84					
	D85-2A		3,826,000	11-29-84					
	D85-2B		73,233	1-4-85	3,874,233				305,500
Military assistance.....	D85-3	18,500		10-1-84					
	D85-3A		782,770	11-29-84	778,950				22,320
International military education and training.....	D85-25	55,521		11-29-84	55,521				0
Peacekeeping operations.....	D85-38	7,000		1-4-85	7,000				0
Agency for International Development									
International disaster assistance.....	D85-73	110,000		6-20-85	43,000				67,000
Operating expenses, Agency for International Development.....	D85-74	1,300		6-20-85					1,300
African Development Foundation									
African Development Foundation.....	D85-40	2,287		2-6-85					2,287
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,704		10-1-84					
	D85-4A		3,471	3-1-85	5,000			5,000	13,175
Expenses, brush disposal.....	D85-5	55,850		10-1-84					
	D85-5A		22,063	3-1-85					77,913
Foreign Assistance Programs									
Expenses, Public Law 480, Foreign Assistance Programs, Agriculture.....	D85-72	167,200		6-20-85	50,000				117,200
Soil Conservation Service									
Watershed and flood prevention operations.....	D85-59	8,365		3-1-85					8,365
DEPARTMENT OF COMMERCE									
Patent and Trademark Office									
Salaries and expenses.....	D85-41	15,993		2-6-85					15,993
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6	300,008		10-1-84					
	D85-6A		906,322	11-29-84	916,886			82,978	372,422
Family Housing									
Family housing, all services.....	D85-26	230,790		11-29-84	218,990				11,800
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D85-7	1,127		10-1-84					
	D85-7A	-	64	1-4-85	190			135	1,137
DEPARTMENT OF ENERGY									
Energy Programs									
Energy supply research and development.....	D85-70	15,000		5-16-85					15,000
Uranium Supply and Enrichment Activities...	D85-65	90,000		3-22-85					90,000
Fossil energy research and development.....	D85-27	4,871		11-29-84					
	D85-27A		43,525	2-6-85	13,696				34,700
Fossil energy construction.....	D85-28	2,165		11-29-84					
	D85-28A		2,973	2-6-85					5,137

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Naval petroleum and oil shale reserves.....	D85-29	23		11-29-84					
	D85-29A		155,644	2-6-85					
	D85-29B		1	3-22-85					155,668
Energy conservation.....	D85-30	3,398		11-29-84					
	D85-30A		2,374	3-22-85					
	D85-30B		552	6-20-85					6,324
Strategic petroleum reserve.....	D85-31	401		11-29-84					
	D85-31A		270,337	2-6-85					270,738
SPR petroleum account.....	D85-42	827,028		2-6-85					827,028
Energy security reserve and alternative production.....	D85-32	852		11-29-84					
	D85-32A		297	2-6-85					
	D85-32B		89	3-22-85					1,238
Power Marketing Administration Southeastern Power Administration, Operation and maintenance.....	D85-16	12,467		10-31-84					
	D85-16A		3,494	2-6-85	1,216				14,745
Southwestern Power Administration, Operation and maintenance.....	D85-17	7,260		10-31-84					
	D85-17A		1,514	2-6-85					8,774
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....	D85-18	3,000		10-31-84					
	D85-18A		27,300	2-6-85					
	D85-18B		2,000	5-16-85					32,300
Departmental Administration Departmental administration.....	D85-43	8,501		2-6-85					8,501
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	D85-8	424		10-1-84					
	D85-8A		590	1-4-85					1,013
Health Care Financing Administration Program management.....	D85-66	4,271		3-22-85					4,271
Social Security Administration Limitation on administrative expenses (construction).....	D85-9	15,488		10-1-84					
	D85-9A		224	3-1-85					15,712
Limitation on administrative expenses (information technology systems).....	D85-44	81,926		2-6-85					81,926
Limitation on administrative expenses.....	D85-67	9,176		3-22-85					9,176
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)..	D85-10	49		10-1-84					49
National Park Service Construction (trust fund).....	D85-45	38,172		2-6-85	38,172				0
Land Acquisition.....	D85-68	3,356		3-22-85					3,356
Bureau of Indian Affairs Construction.....	D85-33	8,918		11-29-84	893				8,025
DEPARTMENT OF JUSTICE									
General Administration Salaries and expenses.....	D85-46	3,890		2-6-85					3,890
Legal Activities Support of United States prisoners.....	D85-47	5,319		2-6-85					5,319
Federal Prison System Buildings and facilities.....	D85-19	44,534		10-31-84					44,534
Office of Justice Programs Justice assistance.....	D85-60	13,026		3-1-85					13,026

Attachment B - Status of Deferrals - Fiscal Year 1985

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DEPARTMENT OF LABOR									
Employment and Training Administration									
Program administration	D85-61	162		3-1-85					162
State unemployment insurance and employment service operations	D85-34	3,767		11-29-84					
	D85-34A			3-1-85					3,767
	D85-62	37,000		3-1-85					37,000
Unemployment trust fund (veterans employment and training)	D85-63	119		3-1-85					119
Pension Benefit Guaranty Corporation									
Pension Benefit Guaranty Corporation	D85-64	228		3-1-85					228
Bureau of Labor Statistics 1)									
Salaries and expenses	D85-35	5,000		11-29-84	5,000				0
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D85-20	32,928		10-31-84					
	D85-20A		153	1-4-85	34,999			20,000	18,081
DEPARTMENT OF TRANSPORTATION									
Federal Highway Administration									
Limitation on general operating expenses	D85-48	2,155		2-6-85					2,155
Federal Railroad Administration									
Rail service assistance	D85-49	413		2-6-85					413
Northeast corridor improvement program	D85-50	30,000		2-6-85					30,000
Railroad rehabilitation and improvement financing funds	D85-51	7,200		2-6-85					7,200
Urban Mass Transportation Administration									
Research, training and human resources	R85-52	25,206		2-6-85					25,206
Federal Aviation Administration									
Construction, metropolitan Washington airports	D85-53	910		2-6-85					910
Facilities and equipment (airport and airway trust)	D85-11	537,205		10-1-84					
	D85-11A		652,957	1-4-85					
	D85-11B		11,731	2-6-85	163,000			163,000	1,283,894
Maritime Administration									
Operations and training	D85-54	8,500		2-6-85					8,500
Office of the Secretary									
Salaries and expenses	D85-55	800		2-6-85					800
Payments to air carriers	D85-69	14,741		3-22-85					14,741
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D85-12	55,400		10-1-84	32,561			31,395	54,234
	D85-13	19,900		10-1-84	14,439			33	5,494
GENERAL SERVICES ADMINISTRATION									
Federal Property Resources Activities									
National defense stockpile transaction fund	2)	170,000		6-24-85					170,000
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses	D85-21	4,408		10-1-84	4,408				0
National Archives and Records Service									
Operating expenses	D85-36	4,700		11-29-84					4,700

Attachment B - Status of Deferrals - Fiscal Year 1985

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National Science Foundation									
Science and engineering education activities	D85-56	31,450		2-6-85					31,450
Panama Canal Commission									
Operating expenses	D85-37	6,346		11-29-84	6,346				0
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	D85-14	14,300		10-1-84	5,000				9,300
Railroad Retirement Board									
Milwaukee railroad restructuring, administration	D85-15	108		10-1-84					
	D85-15A		7	2-6-85					115
Limitation on administration	D85-57	3,098		2-6-85					3,098
Limitation on Railroad Unemployment Insurance Administration fund	D85-58	502		2-6-85					502
Tennessee Valley Authority									
Tennessee Valley Authority fund	D85-71	9,000		5-16-85					9,000
U. S. Information Agency									
Salaries and expenses	D85-22	2,433		10-31-84					2,433
Acquisition and construction of radio facilities	D85-75	16,005		7-30-85					16,005
Salaries and expenses, special foreign currency program	D85-23	852		10-31-84					
	D85-23A		1,617	6-20-85					2,469
U.S. Institute of Peace									
U.S. Institute of Peace	D85-39	4,000		1-4-85					4,000
TOTAL, DEFERRALS		8,465,994	6,873,302		11,199,000	0		302,541	4,442,837

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

1) The Bureau of Labor Statistics deferral of $5.0 million (D85-35) was released and the funds were proposed for rescission as part of R85-170A.
2) The General Services Administration deferral of $170.0 million was transmitted to Congress by the Comptroller General on June 24, 1985, under section 1015 (a) of the Impoundment Control Act.

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Part VII

Environmental Protection Agency

Preliminary Determination Concluding Special Review of Pesticide Products Containing Dicofol; Availability of Supporting Documentation; Amended Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/37B; FRL 2883-1]

Amended Notice of Preliminary Determination Concluding Special Review of Pesticide Products Containing Dicofol; Availability of Supporting Documentation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amended Notice of Preliminary Determination Concluding the Special Review of Pesticide Products Containing Dicofol; Notice of Transmittal of Notice to Secretary of Agriculture; Notice of Availability of Supporting Documentation.

SUMMARY: This Notice describes EPA's preliminary determination regarding risks and benefits associated with the use of pesticide products containing dicofol to control mites on cotton, citrus, and other sites. EPA has concluded that there are substantial risks to the environment associated with the presence of DDT and related impurities (DDTr) as contaminants of technical dicofol, but these risks can be reduced significantly by lowering the total amount of DDTr in dicofol products. EPA has also concluded that there is limited evidence that dicofol poses oncogenic risks to humans through dietary and worker exposure. After weighing the benefits of using dicofol against the potential for human oncogenic risks and the environmental risks expected to result from use of dicofol products with levels of DDTr reflected in current Confidential Statements of Formula, EPA has determined that the use of dicofol products will cause unreasonable adverse effects on the environment. EPA has further determined, however, that if the registrants reduce the amount of DDTr in their products and amend the labels of their products to require mixer/loaders to wear gloves while handling the product, these modifications will reduce the risks to a level where it is no longer appears that use of dicofol products will cause unreasonable adverse effects to man or the environment. Accordingly, EPA proposes to allow continued registration of pesticide products containing dicofol, provided that these modifications are made.

Copies of this Notice and supporting documentation have been sent to the Secretary of Agriculture and the Scientific Advisory Panel for review and comment. Comments from the public are invited.

DATE: Written comments must be received on or before September 16, 1985.

ADDRESS: Submit three copies of written comments, identified with the document control number "OPP-30000/37B" by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice of the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Bruce Kapner, Special Pesticide Review Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

Copies of supporting documentation are available from Mr. Bruce Kapner.

SUPPLEMENTARY INFORMATION: This Notice is organized into four units. Unit I is the Introduction. Unit II describes the legal framework within which this Notice is issued. Unit III sets forth EPA's revised assessment of the risks and benefits of using dicofol products and an explanation of its proposed regulatory action. Unit IV sets forth the procedures for responding to this Notice.

I. Introduction

Pesticide products containing the active ingredient dicofol have been registered in the United States since 1957. Dicofol is manufactured abroad, and technical formulations of the active ingredient are registered by Rohm and Haas Company, Makhteshim Agan, Inc., and Aceto Agrichemicals Corporation. EPA records indicate that there are 196 federally registered pesticide products containing the active ingredient dicofol. In addition, there are another 86 products, distributed solely in intrastate commerce, which contain dicofol.

Dicofol products are registered to control many mite species on a wide variety of food and feed crops, as well as on ornamental turf and plants, and houseplants. Mites cause damage by sucking the juices from the leaves, stems, buds, and fruit of plants. This tends to cause defoliation, loss of plant vigor, and lower quality and quantity of yield.

An estimated 2.3 to 3.3 million pounds of dicofol are applied annually in the United States, and the overall volume used appears to be increasing gradually. Mite control on cotton and citrus accounts for about 60 percent of dicofol usage. The remainder is used on seed crops, stone and pome fruits, figs, vegetables, small fruits, tree nuts, mints, ornamental plants, turf grasses, greenhouse crops, houseplants and sites in and around domestic dwellings, and commercial and agricultural buildings.

Notice of the initiation of the Special Review was published in the **Federal Register** of March 21, 1984 (49 FR 10569). That notice was based on the concern that dicofol is contaminated with DDT, DDE, and/or closely related compounds (collectively referred to as DDTr) that can cause significant adverse effects on nontarget wildlife. EPA had concluded that pesticide products containing dicofol met one of the risk criteria for intensive review of the risks and benefits to determine whether continued registration will cause unreasonable adverse effects on the environment. Accordingly, a Special Review (formerly called the Rebuttable Presumption Against Registration (RPAR) process) was initiated for all registered pesticide products containing dicofol. The notice also noted that dicofol had induced liver tumors in a National Cancer Institute (NCI) bioassay in mice, but EPA had not been able to validate the study.

After reviewing comments received on the first notice, EPA issued a preliminary notice of intent to cancel registrations of pesticide products containing dicofol which was published in the **Federal Register** of October 10, 1984 (49 FR 39820). That notice proposed cancellation of all uses of dicofol based on the ecological risks posed by the DDTr contaminants in dicofol. The notice also stated that EPA had concerns that tests have indicated that dicofol produces tumors in test animals. However, the notice did not evaluate the oncogenic risk to humans because the

NCI bioassay on dicofol was still considered invalid.

In response to this notice, registrants of dicofol products informed EPA that they would be able to manufacture products containing substantially lower levels of DDTr. They indicated that at the end of 2 years they could produce commercial quantities of technical dicofol that contained no more than 0.1 percent DDTr contamination. They further indicated that they were currently producing, or would shortly be able to produce, technical dicofol with DDTr contamination levels substantially below those reported on their Confidential Statements of Formula on file with EPA.

The Scientific Advisory Panel (SAP) reviewed EPA's earlier notice of preliminary determination, the supporting Position Document 2/3, and the registrants' proposal to reduce the level of DDTr contaminants. The SAP concluded that if the proposed reduction of DDTr contamination levels to 0.1 percent is implemented, it does not appear that there would be a threat to the environment.

In addition, after the October 10, 1984 Notice, EPA received information regarding the validity of the NCI study. EPA originally considered the NCI study to be invalid due to reported decomposition of the test material during the test period. However, NCI informed EPA that subsequent chemical analysis of the archived test materials showed that it was representative of technical dicofol, and that there was no evidence of decomposition. Based on this information, EPA concluded that the NCI bioassay was valid.

This Notice presents EPA's revised assessment of the risks and benefits of using dicofol and sets forth a new set of proposed regulatory actions. It incorporates by reference the discussion of the risk of adverse ecological effects contained in EPA's earlier Notice of Preliminary Determination (49 FR 39820), but amends that notice by adding a discussion of the oncogenic risks of dicofol use and the impacts of reducing the level of DDTr contaminants in dicofol.

In accordance with FIFRA, EPA sent a copy of this Notice and the supporting documentation to the Secretary of Agriculture and the Scientific Advisory Panel for review. EPA is also inviting public comment on these documents within 30 days. After reviewing any comments received within the applicable time limits, EPA will determine what final regulatory actions are appropriate.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment," under FIFRA sec. 3(c)(5). The term "unreasonable adverse effects on the environment" is defined under FIFRA sec. 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practice.

The burden of proving that a pesticide satisfies the standard for registration rests on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of registration whenever he determines that the pesticide appears to cause unreasonable adverse effects on the environment.

In determining whether the risks of a registered pesticide outweigh its benefits, EPA considers possible changes to the terms and conditions of registration which can reduce risks and the impacts of such modifications on the benefits of use. If EPA determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registrations. Alternatively, EPA may determine that no change in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose unreasonable adverse effects.

In that event, the Administrator may issue a notice of his intent to cancel the registration or to hold a hearing to determine whether it should be cancelled under FIFRA sec. 6(b). In determining whether to issue such a notice, the Administrator must take into account the impact of the action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days before formally issuing such a notice, he must inform the Secretary of Agriculture in writing of the substance of the proposed actions and supply the Secretary with an analysis of the expected impact on the agricultural economy. At the same time, under FIFRA sec. 25(d), the Administrator is required to submit the proposal to the SAP for comment as to the impact on health and the environment of the action proposed in cancellation notices.

EPA also follows a practice of informing the public of its proposals to issue cancellation notices so that registrants and other interested persons can also comment or provide relevant information before any final Notice of Intent to Cancel is issued. Registrants and other interested persons are invited to review the data upon which the proposal is based and to submit data and information to address whether EPA's initial determination of risk was in error. In addition to evidence relating to risk, comments may include evidence as to whether any economic, social and environmental benefits of use of the pesticide outweigh the risks of use.

If, after reviewing the comments received, EPA decides to issue a Notice of Intent to Cancel dicofol products, any adversely affected person may request a hearing to challenge the action. In the hearing, any party opposing cancellation would have an opportunity to present data, witness testimony, and other evidence to show that the registrations of dicofol should be permitted to continue. Other interested parties could intervene to present evidence in favor of cancellation. At the end of the hearing EPA will decide on the basis of the evidence presented whether or not to cancel or restrict the registration of dicofol products. If no hearing is requested, each registration would be cancelled by operation of law 30 days after receipt by the registrant or publication in the **Federal Register** of the final notice, whichever occurs later.

III. Summary of Risk and Benefit Determinations and Proposed Regulatory Actions

A. Risks of Adverse Effects on Wildlife

As discussed in EPA's earlier notice of preliminary determination, EPA believes that nontarget wildlife would be adversely affected by the use of dicofol products containing DDTr at the current levels of contamination. In preparing its risk assessment, EPA assumed that the average level of contamination was approximately 10 percent of the technical grade material. The registrant's proposed reductions would significantly lower the amount of DDTr released into the environment as the

result of using dicofol. Use of products contaminated with DDTr at 0.1 percent, the level which registrants indicate they can reach by 1987, would result in the introduction into the environment of approximately 100 times less DDTr than could legally occur under current registrations. At this proposed level of DDTr contamination, the new contribution of DDTr to the environment would be difficult to distinguish from background levels of DDTr attributed to use of DDT prior to its cancellation in 1972.

SAP reviewed EPA's earlier notice of preliminary determination, supporting Position Document 2/3, and the registrants' proposal to reduce the level of DDTr contaminants. The SAP concluded that if the proposed reduction of DDTr contamination levels to 0.1 percent is implemented, it does not appear that there would be a threat to the environment.

In summary, although EPA cannot determine that the dicofol contaminated with 0.1 percent DDTr would have no adverse environmental impacts, it agrees with the SAP's recommendation and has concluded that a reduction of the DDTr contaminants to 0.1 percent would significantly reduce the existing risks.

B. Risk of Oncogenic Effects on Humans

1. *Introduction.* An oncogenic risk assessment generally consists of a qualitative hazard assessment, a dose-response assessment, an exposure assessment, and an overall characterization of the risk. Specific guidance for conducting risk assessments for cancer is found in EPA's "Proposed Guidelines for Carcinogen Risk Assessment," published in the **Federal Register** of November 23, 1984 (49 FR 46294).

For oncogenicity, the hazard assessment examines the available scientific data (e.g., long-term animal studies, short-term tests, human data) in order to evaluate the weight of the evidence supporting a conclusion regarding the chemical's human oncogenic potential. The dose-response assessment uses mathematical modeling of experimental data to estimate the chemical's potency in inducing an oncogenic response, assuming that the chemical is, in fact, a human oncogen. The exposure assessment estimates the extent to which human populations are exposed to the chemical. In the case of dicofol, this exposure is through dietary intake and application of the pesticide to crops. Finally, in the risk characterization step, the exposure assessment and dose-response assessment is generally combined to provide some quantitative estimate of the potential oncogenic risk to humans. This quantitative estimate is tempered, however, by the overall weight-of-the-evidence judgment that the chemical is likely to be a human oncogen. In cases where the qualitative evidence is not sufficient to support a quantitative oncogenic risk to humans, EPA must rely on its qualitative risk determination, including consideration of the uncertainties involved.

2. *Qualitative hazard assessment.* In this section, the results of long-term animal studies on dicofol are discussed, followed by a presentation and evaluation of the supporting data relating to the carcinogenicity of the compound. The section closes with an integrated discussion, leading to a weight-of-the-evidence conclusion on whether dicofol may be a human carcinogen.

a. *Long-term animal studies of dicofol.* In its January 1985 evaluation of the carcinogenicity of dicofol, DDT, DDE and DDD, EPA reviewed the results of a 1978 NCI bioassay in which male B6C3F1 mice exposed to dicofol at two dose levels were reported to have hepatocellular carcinomas (non-metastasizing) at elevated levels in both dose levels when compared to controls. There were no other statistically significant increases in tumors reported in either sex of mice. A concurrent study did not show any statistically significant increase in tumors in either sex of Osborne-Mendel rats.

b. *Supporting data sources.* Other types of information which may be helpful in evaluating the carcinogenicity of dicofol are somewhat limited. There are no epidemiological studies which can be used to assess the direct response of humans to the chemical.

EPA's "Guidance Document for the Reregistration of Pesticide Products Containing Dicofol" indicated that EPA had no information on the mutagenicity of dicofol and directed that the full battery of tests be submitted by December 1986. EPA's review, therefore, did not include mutagenicity studies on dicofol, per se.

Dicofol is structurally similar to other DDT-related chemicals, for example, DDE, a carcinogenic metabolite of DDT. It is possible that dicofol may be metabolized or interconverted to DDT metabolites, such as DDE. Preliminary results from a poultry metabolism study appear to indicate that dicofol does not metabolize to DDE in chickens. It should be noted that EPA has not had the opportunity to review all of the data from the poultry study thoroughly. Moreover, results from a metabolism study in rats required as part of the reregistration process should shed additional light on this issue. Until such studies are submitted and validated, the possible metabolic link between dicofol and DDT-related compounds remains tentative.

This limited evidence tends to reduce the weight of the structural relationship argument. However, in order to assess fully the potential of dicofol to be metabolized or interconverted to oncogenic DDT metabolities, further study is required. In addition, the mechanism of toxicity could be related to the physical structure of the compounds and not to a particular, common metabolite. The January report noted the structural similarity between dicofol, DDT, DDE and DDD. Based on this structural relationship, a determination that DDT is a "probable human carcinogen" (EPA's category B2), and the NCI test results for dicofol, the report concluded that the weight-of-evidence also argued for a B2 classification for dicofol.

Subsequently, EPA received comments and supplementary information from the Rohm and Haas Company concerning the carcinogenicity of dicofol, DDT and DDE. These comments asserted that short-term and chronic data on dicofol do not indicate that the compound is carcinogenic. Specifically, Rohm and Haas argued that the observed mouse liver tumors are not adequate evidence for carcinogencity and that the DDT carcinogenicity data should not be used to characterize the oncogneic potential of dicofol.

In order to resolve some of the issues raised about the dicofol long-term study, EPA requested a reevaluation of the pathology slides by scientific personnel at the National Toxicology Program. These results, together with the original readings, are shown in the following Table 1:

TABLE 1.—DICOFOL MALE MOUSE LIVER TISSUE RESULTS

Tumor type	Control	Low	High
Hepatocellular carcinomas:			
1985 NTP Reviews	2/18 (11%)	12/48 (25%)	9/47 (19%)
1978 NCI Review	3/18 (17%)	22/50 (44%)	35/47 (74%)
Hepatocellular adenomas:			
1985 NTP Reviews	0/18 (0%)	13/48 (27%)	23/47 (49%)
1978 NCI Review	0/18 (0%)	1/50 (2%)	1/47 (2%)

TABLE 1.—DICOFOL MALE MOUSE LIVER TISSUE RESULTS—Continued

Tumor type	Control	Low	High
Hepatocellular carcinomas or hepatocellular adenomas:			
1985 NTP Review	2/18 (11%)	25/48 (52%)	32/47 (68%)
1978 NCI Review	3/18 (17%)	23/50 (46%)	36/47 (77%)

While the vast majority of tumors in the original study were classified as carcinomas, the more recent slide evaluation reports a more significant proportion of benign tumors, the adenomas. This difference may reflect changes which have evolved during the intervening years in conventions in the pathology community for classifying tumors. The combined incidence of benign and malignant tumors shows little change.

The EPA Proposed Guidelines (49 FR 46294) recognize that "there are widely diverging scientific views" about the validity of certain mouse liver tumors, and give specific guidance for the assessment of such tumors. The Guidelines take the position that the mouse-liver-only tumor response, when other conditions for a classification of "sufficient" evidence in animal studies are met, should be considered as "sufficient" evidence of carcinogenicity with the understanding that this classification could be changed to "limited" if warranted when a number of factors such as the following are observed:

(1) The occurrence of tumors only in the highest dose group and/or only at the end of the study.

(2) No substantial dose-related increase in proportion of tumors that are malignant.

(3) The occurrence of tumors that are predominately benign, showing no evidence of metastasis or invasion.

(4) No dose-related shortening of the time to the appearance of tumors.

(5) Negative or inconclusive results from a spectrum of short-term tests for mutagenic activity.

(6) The occurrence of excess tumors only in a single sex.

(7) Other data.

In the following paragraphs, each of these factors is discussed as it relates to the available information on dicofol.

(1) *The occurrence of tumors only in the highest dose group and/or only at the end of the study.* The data in Table 1 indicate that tumors were observed in both dicofol dose groups. Statistical analysis of the data in Table 1 shows that, for the combined tumors (adenomas and carcinomas), statistically significant increases were observed at both the low ($p = .0035$) and the high dose ($p < .001$). Therefore, on this basis, there is no reason to change the classification from "sufficient."

This criterion also speaks of the time in the study at which the tumors occurred. In the case of dicofol, the design of the experiment did not call for interim sacrifice; therefore, definitive evaluation of time-to-tumor-occurrence cannot be made. However, it can be noted that the mortality of the animals during the study was not remarkable. This at least suggests that the liver tumors were generally not life-shortening and possibly did not occur until the end of the study.

(2) *No substantial dose-related increase in the proportion of tumors that are malignant.* Examination of the 1985 NTP slide diagnoses (Table 1), reveals that there is no statistically significant dose-response relationship for the malignant tumors (carcinomas). Therefore, this would argue for reclassifying the dicofol data as "limited."

(3) *The occurrence of tumors that are predominately benign, showing no evidence of metastasis or invasion.* The data in Table 1 indicate that the ratio of percentage adenomas to percentage carcinomas goes from 0 to 1 to 2.6 in the control, low dose and high dose, respectively. This observation, which is consistent with the lack of a dose-related increase in malignant tumors noted in (2) above, supports a conclusion that benign tumors are the ones which are predominately related to the administered chemical. Further, the carcinomas in this case show no evidence of metastasis. Therefore, this information is supportive of a classification of "limited" for dicofol.

(4) *No dose-related shortening of the time to the appearance of tumors.* As indicated in (1) above, the design of the experiment was such that this information could not be obtained.

(5) *Negative or inconclusive results from a spectrum of short-term tests for mutagenic activity.* As noted above, EPA was unaware of data on the mutagenicity of dicofol and required the registrants to submit such data. However, in its response to the Special Review, Rohm and Haas indicated the existence of numerous studies. Reviews by their pathology panel led to the conclusion that dicofol is "clearly not a mutagen and appears to have little, if any, clastogenic potential." While EPA has not had the opportunity to review these data, on the basis of this information and a 1982 International Agency for Research on Cancer (IARC) evaluation of the mutagenicity of dicofol, there may be some support for reclassifying the dicofol data as "limited."

(6) *The occurrence of excess tumors only in a single sex.* This is the case for the dicofol mouse study. Therefore, this supports a "limited" classification for dicofol.

(7) *Other data.* The male mouse liver tumor incidence is not corroborated by a positive response in either sex of a comparably conducted Osborne-Mendel rat study. Therefore, this does not support the higher classification.

In addition, in the mouse study there was no other apparent response beyond that seen in the male mouse liver, a response whose relevance to humans has been questioned. This low response, without corroboration in other target organs, would tend toward reclassifying to "limited."

c. *Weight of the evidence classification.* The information discussed in subunit b. above is summarized in the following Table 2:

TABLE 2.—CONSIDERATION FOR RECLASSIFYING THE ONCOGENIC CLASSIFICATION OF DICOFOL MOUSE LIVER TUMORS FROM "SUFFICIENT" TO "LIMITED"

Criterion for reclassifying	Maintain (+) or reclassifying (−)
1. High dose only; occurrence only at the end of the study.	+
2. Dose-response of malignant tumors.	?
3. Tumors predominately benign; no metastases or invasion.	−
4. Dose-response of time-to-tumor	?
5. Mutagenicity test results	−/?
6. Response in only one sex	−
7. Negative in another species	−

Taken as a whole, this analysis supports the conclusion that the evidence for the oncogenicity of dicofol should be reclassified as "limited" (as opposed to "sufficient") from studies in experimental animals.

In reaching a final hazard assessment position, consideration was also given to: (1) The plausible, but unverified, structure-activity relationship with the DDT series; (2) the limited negative connection between dicofol and the DDT related compounds via metabolism; and (3) the lack of human studies. Based on all of these considerations, EPA concludes that, at this time, there is limited qualitative evidence to support a conclusion that dicofol is a potential human carcinogen. According to EPA's proposed

Guidelines, dicofol would be classified in Group C: "This category is used for agents with limited evidence of carcinogenicity in animals in the absence of human data." EPA does recognize that there is some evidence which might suggest a different classification and has requested additional information to resolve the remaining issues.

3. *Dose-response assessment.* The second step in the risk assessment process calls for generation of a dose-response estimate. The EPA Proposed Guidelines discuss approaches to the mathematical extrapolation procedures used in this process. The Proposed Guidelines were followed by EPA in the generation of its January 1985 report.

However, as a result of the reassessment of dicofol discussed above which has transpired since the January report, EPA has concluded that the current dicofol data base provides limited evidence in support of the conclusion that dicofol is a potential human carcinogen. The confidence in any quantitative aspect of the risk estimate can be only as strong as the confidence in the qualitative hazard assessment on which it is based. As a result of there assement of dicofol previously discussed, which has transpired since the January 1985 report, EPA has concluded that the current dicofol data base provides limited evidence in support of the conclusion that dicofol is a potential human carcinogen. In fact, the analysis shows that the current evidence for potential human oncogenic effects is so limited that EPA has concluded that no quantitative risk assessment should be used for regulatory purposes for dicofol.

4. *Risk characterization.* The data base for dicofol consists primarily of two long-term animal studies (rat and mouse) in which the only statistically significant increase in tumors was observed in the male mouse liver. While the incidence of combined adenomas and carcinomas of this response was statistically significant at both the low and high dose, the malignant tumors did not appear in a dose-related manner, nor did they appear to be metastatic. The benign, rather than the malignant, tumors responded proportionately as the dose increased. Coupling these observations with a lack of corroborating evidence within the study (i.e., responses in other tissues and sex), from studies in another species, and from mutagenicity, metabolism and human studies, EPA finds that, at this time, no reliance can be placed on any quantitative risk estimates for dicofol.

Notwithstanding that there is only limited evidence at this time to support a conclusion that dicofol is a potential human carcinogen, it should not be overlooked that dicofol does generate tumors in the livers of male mice. While the significance of this response, particularly in light of the mitigating factors discussed above, is difficult to assess, it is of concern to EPA. The data clearly indicate that dicofol can interact *in vivo* to generate an oncogenic response, albeit one whose relevance to humans is also difficult to assess. Additional data are being collected which are expected to shed more light on the matter.

C. Summary of Benefit Determinations

Dicofol, unlike most of the viable alternatives, is a selective miticide, not a broad spectrum pesticide (insecticide/miticide). Its use is recommended in many integrated pest management programs because it does not destroy beneficial insects such as pollinators and most parasites and predators. Dicofol is more efficacious against certain types of mite species than most other miticides and had both contact and residual activity. In addition, dicofol labeling includes more use sites with fewer phytotoxicity problems than other miticides. EPA has conducted an analysis to assess the benefits associated with the continued use of dicofol.

1. *Methodology.* EPA has evaluated the pesticidal properties of dicofol and, where data permitted, has compared its effectiveness to that of other pesticides, registered for the control of mites on the same sites. The alternatives to dicofol were evaluated on the basis of their fit into the treatment schedule, guided by labeling statements such as the preharvest interval; pre- or post-harvest restrictions; number, timing and frequency of applications allowed; reentry time; required safety equipment or restricted applicator use; and pests controlled on which sites. Other important factors that determine whether a pesticide is an alternative to dicofol include comparative efficacy (degree of control), compatability in mixtures with other pesticides, phytotoxicity, local resistance limitations, and efficacy at a given temperature.

Specific efficacious alternatives have been indentified, and an indication of the economic benefits of the continued registration of dicofol has been obtained by estimating the additional costs associated with using the available alternatives.

To evaluate alternatives to dicofol, EPA split several of the site groupings because some individual sites have alternatives and others do not. Another consideration involves the lack of alternatives for certain mite pests on a site or a site in a specific geographic location. In other situations, alternatives are available but their use will incur an unknown economic cost because of localized resistance, lower efficacy, or timing modifications. For cotton and caneberries, at least, there is an economic cost to alternatives. For a number of sites, the alternatives listed are currently being rotated with dicofol as needed or on a yearly or within season basis. Refer to the Unit III.B.6 on Mite Resistance to Pesticides which discusses this in more detail.

The following sites and site groupings are considered to lack suitable alternatives: Ornamentals and turf (commercial), homegardens, cucurbits (cucumbers, melons, pumpkin and squash), peppers, Bermudagrass (seed crop), cyclamen mite on strawberries, areas east of the Rockies for dry beans, and spider mites on tomatoes.

The data indicate that overall 60 percent of the dicofol is used on cotton and citrus, 10 percent on apples and 10 percent on the combination of ornamentals and turf (commercial) plus homegarden sites. The remaining 20 percent is used on all the other sites.

2. *Cotton.* The greatest portion of the economic impacts resulting from the cancellation of all dicofol registrations would be felt by cotton producers in the San Joaquin Valley of California and to a lesser degree Arizona. Unlike most other cotton-producing areas of the United States, this region frequently encounters severe, early-season mite infestations. Available information indicates that, unless dicofol is used, these infestations cannot be controlled effectively without either imposing significant financial loss to growers or compromising the market life of propargite, the only possible alternative to dicofol. Another registered material, sulfur, is ineffective under climatic conditions existing early in the growing season for cotton in the San Joaquin Valley. The other alternative, propargite, is phytotoxic to yung cotton plants; therefore, it is estimated that growers would lose 3 to 5 percent in yield because it cannot be used early enough in the season. The unavailability of dicofol for early-season infestations would result in yield losses and increased control costs to San Joaquin Valley cotton producers estimated to reach $11.6 to $18.2 million annually.

Cancellation of the use of dicofol on cotton would have considerably smaller impacts in areas outside the San Joaquin Valley. In Arizona, cotton producers now using dicofol could switch to

propargite at an additional cost estimated to be approximately $3.62 per acre-treatment, or $200,000 in the aggregate. Use of other broad spectrum pesticides is also possible where IPM systems are not implemented. In the southeast United States and the Mississippi Delta, dicofol users could switch to monocrotophos or other possible alternatives at no incremental costs, unless they have a pest management program that would require propargite as an alternative.

3. *Citrus* (grapefruit, lemons, oranges). The economic impacts of cancelling the use of dicofol on citrus (primarily grapefruit, lemons, and oranges) are estimated to be between $3.1 and $10.4 million annually due to the higher cost of using alternatives. Based on current information, EPA does not expect significant impacts on quality or quantity of yield when alternatives are used. The available alternatives vary by region due to labeling limitations, differences in mite species, mite resistance, and climatic conditions. The alternatives include chlorobenzilate plus oil, oxythioquinox, propargite, cyhexatin, fenbutatin-oxide, and ethion plus oil.

4. *Apples.* Based upon more complete data, EPA finds that apple growers, primarily in the northeast and northcentral regions, would incur annual, incremental treatment costs ranging from $4.1 to $6.4 million due to more costly alternatives. This impact reflects a substantial increase in EPA's estimate of dicofol usage in comparison with that made in the PD ⅘. Moreover, the dicofol usage on apples is trending upward concurrent with reports of mite resistance to alternatives.

As in the case for citrus, the alternatives identified are currently used in rotation with dicofol; therefore, it is anticipated that their increased usage will further hasten development of mite resistance to them.

5. *Minor uses.* The use sites for which alternatives have been identified and costs estimated include stone fruits (apricots, cherries, peaches/nectarines, plums/prunes); caneberries (blackberries, dewberries (boysenberries and loganberries), and raspberries); figs; alfalfa (seed crop); sugarbeets (seed crop); red clover (seed crop); pears; peanuts; grapes; pecans; mints (peppermint and spearmint); hops; eggplant; strawberries; tomatoes; dry beans west of the Rockies; and field corn (California only).

Those sites which appear to have no adequate alternatives have been cited earlier.

Although the additional costs involved are low, on dry beans (California), field corn (California), melons, cherries, alfalfa (seed crop), Bermudagrass (seed crop), and the mints and hops, the percentage of acreage treated with dicofol represents a significant portion of the acreage grown. The same appears to be true of ornamentals and turf (commercial) and the homegarden sites, but hard data are lacking.

The total cost of cancelling dicofol for all minor sites is approximately $1.5 to $3.9 million.

6. *Mite resistance to pesticides.* Finally, EPA recognizes that for all uses of dicofol there are benefits which are not readily demonstrable or quantifiable in monetary terms but which, nonetheless, may be important. One of these benefits relates to the impact of dicofol's cancellation on mite resistance. It is well established that intensive use of a pesticide often creates selective environmental pressures that lead to pest populations resistant to that pesticide. This is more likely to be true of multivoltine mite and insect species (that is, those producing many generations annually). Data show that mite species in some areas and crops are resistant to various registered miticides, including dicofol. The number of selective miticides is limited, and if that number is reduced, pest resistance may appear more rapidly than it would if the use of dicofol were allowed to continue. EPA expects this phenomenon to be more significant in crops where mite infestations recur annually (e.g., some cotton, citrus, and apple acreage) than in crops where the level of mite infestations (i.e., economic vs. non-economic) fluctuate widely from year to year.

7. *Summary.* The immediate quantifiable impacts from cancellation of dicofol products would range from about $21 to $39 million per year, with the bulk of such impacts (approximately 90 percent of the total) accruing to producers of cotton in the San Joaquin Valley, citrus (mainly in Florida), and apples (mainly in the northeast and northcentral States) who are current users of dicofol. Given the competitive nature of agriculture, it is unlikely that the affected growers would be in a position to pass these incremental costs on to consumers.

It must be clearly recognized that the range of $21 to $39 million represents at most a partial estimate of the total impact from cancellation. EPA was unable to quantify monetary benefits from dicofol use on a number of sites. In view of the usage on these sites, and the lack of selective miticide alternatives, the impact from cancellation is likely to be significant. Moreover, should all of the potential developments actually come to pass (e.g., resistance, phytotoxicity from alternatives, etc.), the total impact from cancellation would probably exceed the $21 to $39 million range.

D. Regulatory Options for Dicofol

Three basic regulatory options were considered by EPA:

Option 1. Cancel registrations of dicofol for some or all uses. This would mean that the sale or distribution of the pesticide would be prohibited.

Option 2. Continue the registrations of dicofol, but amend the terms and conditions of registration to require the registrants to lower the DDTr contamination level in technical dicofol and to add label statements that would reduce exposure to dicofol. The registrants have indicated that the lowest level that they could attain for DDTr in their technical dicofol products would be 0.1 percent. EPA would set 0.1 percent as the maximum total DDTr contamination level. One potential label amendment would be a requirement for mixer/loaders and applicators to wear gloves. Another modification, to require applicators to wear protective clothing was considered but rejected because of the impracticality of wearing these types of clothing in hot weather in areas where dicofol is applied (California, Texas, Arizona, and Florida). EPA also considered the option of modifying application practices (such as adjusting the length of the pre-harvest interval) to reduce dietary exposure. However, EPA lacked adequate data on which to evaluate these modifications.

Option 3. Continue the registrations of dicofol and impose no restrictions.

E. Proposed Regulatory Action

Based on current information, EPA has determined that the substantial benefits of using dicofol outweights the environmental risk and its questionable oncogenic risk to humans provided that the registrants make certain modification to the terms and conditions of the registrations of their products as specified in this Notice and the Dicofol Guidance Document issued on December 30, 1983. EPA recognizes that the dicofol data base is currently limited and incomplete, and additional information to resolve some of the remaining issues is being required from the registrants. However, EPA believes that it is necessary and appropriate to take action at this time in order to mitigate known environmental risks related to dicofol exposure in the interim until the additional data are generated

and evaluated. EPA's determination is based on several factors.

With respect to the potential oncogenicity of dicofol in humans, EPA believes that the evidence that dicofol may be an oncogen in humans is limited. Existing animal bioassays in both rats and mice show a significant response in only one sex (male), one species (mouse), and for one tissue type (liver). The weight of the evidence evaluated by EPA indicates that there is limited evidence supporting a conclusion that dicofol is a possible human carcinogen. Because of the limited evidence of carcinogenicity in the current data base for dicofol, no confidence should be placed on the quantitative risk assessment for dicofol. Accordingly, EPA does not believe that the quantitative risk estimates previously generated by EPA should be used in reaching a regulatory decision. The SAP reviewed a draft of this Notice in a meeting on July 8, 1985. It concluded that the weight of evidence is weak and that a quantitative risk assessment is not justified (see Unit IV.B.).

With respect to environmental risk, EPA has concluded that the potential environmental risk can be substantially reduced by lowering the level of DDTr contamination in technical dicofol to 0.1 percent. If this level is achieved, EPA believes that, even though the risk will not be zero, the impact of DDTr from dicofol use will not be distinguishable from background levels of DDTr. The SAP reviewed EPA's earlier notice of preliminary determination supporting Position Document 2/3, and the registrants' proposal to reduce the level of DDTr contaminants and concluded that if the proposed reduction of DDTr contamination levels to 0.1 percent is implemented, it does not appear that there would be a threat to the environment (see Unit IV.A.).

A third factor is the limited and incomplete data on dietary residues. These data are required to be submitted in December 1986, and could lower the risk estimates.

Finally, the benefits of dicofol are a significant factor. The use of dicofol in integrated pest management programs and the phytotoxicity and resistance problems encountered with its possible alternatives all contribute to the substantial benefits of dicofol use.

In summary, EPA concludes that the risks from using dicofol—the adverse effects on nontarget wildlife resulting from exposure to the DDTr contamination in the dicofol products and the possible oncogenic risk to humans—are outweighed by the benefits provided that these risks are reduced by lowering such exposures.

Exposure to DDTr can be acceptably reduced by making changes in the manufacturing process which will result in lower amounts of DDTr in the product. Registrants have indicated that they will be able to produce dicofol products containing no more than 2.5 percent DDTr by January 1986 and, within 2 years, lower the amount of DDTr to no more than 0.1 percent. The additional time needed to produce products with the lower levels of DDTr is needed by the registrants to build new commercial scale facilities.

With respect to the possible oncogenicity of dicofol to humans, EPA concludes that exposure can be acceptably reduced by requiring people handling dicofol products to wear gloves. This would reduce the dermal exposure by an order of magnitude. Additionally, there would be no impact on benefits from such a requirement.

If these risk reduction measures are implemented, EPA concludes that use of dicofol would not cause unreasonable adverse effects on the environment. Accordingly, EPA will cancel the registration of a pesticide product containing dicofol unless:

1. By 30 days after publication of EPA's Final Notice of Intent to Cancel in the **Federal Register**, the registrant applies to amend the registration of his product to include the following statement: "Skin contact with this pesticide may be hazardous; wear impervious gloves when mixing, loading or applying this product;"

2. By January 1, 1986, the registrant has amended the registration of his product to certify an upper limit on the amount of DDTr (calculated as the total amount of DDT, DDE, DDD and extra-chlorine DDT) in his product which is equivalent to 2.5 percent of the percentage of technical dicofol in the product; and

3. By July 1, 1987, the registrant has amended the registration of his product to certify an upper limit on the amount of DDTr (calculated as the total amount of DDT, DDE, DDD and extra-chlorine DDT) in his product which is equivalent to 0.1 percent of the percentage of technical dicofol in the product.

IV. Comments of the Scientific Advisory Panel

Pursuant to section 25(d) of FIFRA, notices of intent issued under section 6(b) are to be submitted to an advisory panel "for comment as to the impact [of the proposed action] on health and the environment."

EPA transmitted the PD 2/3 to the Scientific Advisory Panel (SAP) for review. At that time, the SAP was asked to comment on the environmental concerns. On April 17, 1985 the SAP responded to EPA. EPA then sent to SAP an amended Notice in draft form concerning EPA's concerns with the oncogenicity of dicofol. On July 8, 1985, they responded to EPA. Because FIFRA requires that the SAP's comments be printed, comments from both meetings are reproduced in their entirety.

A. Comments Following the April 1985 Meeting

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel

Review of a Set of Scientific Issues Being Considered by EPA in Connection With the Special Review on Dicofol

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of a number of scientific issues associated with the Special Review of the pesticide dicofol. The review was conducted in an open meeting held in Arlington, Virginia, on April 17, 1985. All Panel members except Dr. Richard Griesemer and Dr. Rosmarie von Rumker were present for the review.

Public notice of the meeting was published in the **Federal Register** on Friday, March 29, 1985.

In consideration of all matters brought out during the meeting and careful review of the scientific issues in connection with the review of dicofol, the Panel unanimously submits the following report:

Report of SAP Recommendations

The Scientific Advisory Panel has reviewed the dicofol Position Document 2/3 and other materials prepared by EPA, as well as materials provided by the principal registrant, Rohm and Haas Company. On the basis of this review, and the testimony presented at the April 17 meeting, the SAP would like to make the following statements:

Clearly, there are many unresolved differences between the Agency position and that of the principal registrant, differences which, in many cases, cannot be easily resolved. Given the current high DDTr levels in the compound, the recommendation in the PD 2/3 document that dicofol registrations be cancelled might well be justified on environmental grounds, despite the fact that all factors going into the proposed decision are not necessarily well founded. However, if the proposed reduction of DDTr contamination levels to 0.1% is implemented, then dicofol use does not appear to the Panel to represent a threat to the environment, including endangered species.

The proposed contamination reduction program, from the present level of 5.75% down to 2.5% shortly, with 0.1% to be reached by the Spring of 1987, is adequate and appropriate, and the Panel recommends that the Agency use this as guidance in its regulatory activities relating to dicofol.

The Panel also urges that metabolism and field studies currently underway be carried to completion at an early date.

Finally, the SAP urges that all affected parties, including EPA, the registrants, and appropriate state officials, work together to ensure that an adequate monitoring system is put in place in order that future levels and trends of DDTr in the environment may be accurately known.

For the chairman: Certified as an accurate report of the findings:

Philip H. Gray, Jr.,

Executive Secretary, FIFRA Scientific Advisory Panel.

Dated: April 17, 1985.

B. Comments From the July 1985 Meeting

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel

Review of the Oncogenicity Issue Being Considered by EPA in Connection With the Special Review on Dicofol

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of the issue of oncogenicity being considered by the Agency in connection with the Special Review of the pesticide dicofol. The review was conducted in an open meeting held in Alexandria, Virginia, on July 7, 1985. All Panel members were present for the review except for Dr. Rosmarie von Rumker. Public notice of the meeting was published in the **Federal Register** on June 21, 1985. In consideration of all matters brought out during the meeting and careful review of the scientific issues in connection with the review of dicofol, the Panel unanimously submits the following report:

Report of SAP Recommendations

The Scientific Advisory Panel has reviewed the dicofol Position Document 2/3 and other materials prepared by EPA, as well as materials provided by the principal registrant, Rohm and Haas Company. In response to the four scientific questions posed to the SAP by the Agency, each question is listed below, together with the Panel's response:

Question 1. Examining the carcinogenicity data base of dicofol alone (i.e., the NCI study, the Maronpot re-reading of the slides, the short term results, etc.) and independent of consideration of structurally related compounds, how strong is the weight of evidence case that dicofol is a potential human carcinogen?

Response. The SAP believes that the evidence that dicofol is a potential human carcinogen is weak.

Question 2. Given what we know about the metabolism of dicofol and related compounds (e.g., DDT and DDE), to what degree should the Agency incorporate consideration of DDT and DDE data in reaching a weight of the evidence on the potential human carcinogenicity of dicofol?

Response. Consideration of structural relationships between different compounds can be a powerful tool for determining priorities for testing, but should not be used as a basis for regulatory action. Based on existing data, there is no evidence that dicofol is metabolized to DDT, DDE, or their metabolites. Therefore, EPA should not incorporate considerations of DDT and DDE data in reaching a weight-of-evidence judgment on the potential human carcinogenicity of dicofol.

Question 3. The Science Advisory Board has noted that on the spectrum of weight of the evidence for potential human carcinogenicity a point is reached at which use of the data for a quantitative risk assessment can no longer be justified. From this perspective, is a quantitative risk assessment for dicofol justified?

Response. The Panel believes that a quantitative risk assessment for dicofol as a carcinogen cannot be justified. The SAP further suggests that such a risk assessment be omitted from dicofol documents until there are sufficient data to justify such an assessment.

Question 4. Are the methods used for estimating human exposure to dicofol appropriate for the problems at hand? How should the results of those procedures be characterized; e.g. gross overstatements, gross understatements, or reasonable estimates?

Response. In the absence of sufficient information, the Panel is unable to characterize the dietary and applicator exposure estimates. The SAP does believe however, that more realistic dietary exposure could be derived utilizing the new Tolerance Assessment System.

For the Chairman: Certified as an accurate report of Findings:

Philip H. Gray, Jr.

Executive Secretary, FIFRA Scientific Advisory Panel.

Date: July 29, 1985.

C. Response to Comments of the SAP

The SAP commented concerning the registrants' proposal to lower the DDTr contamination level to 0.1 percent and the resulting environmental impacts. EPA agrees with this comment that this lower DDTr contamination level will not represent a threat to the environment, including endangered species.

EPA agrees with the SAP concerning the need for metabolism and field studies to be completed at an early date. A poultry metabolism study has been completed by the Rohm and Haas Company, and a rat metabolism study is nearing completion.

In regard to the SAP comments urging that EPA, the registrants, and appropriate State officials work together to establish systems for the monitoring of DDTr levels in the environment, EPA is receiving and examining data that are collected through monitoring programs established by Federal and State agencies. For example, California, whose annual use of dicofol accounts for as much as one-half of the dicofol applied in the U.S., monitors annually for DDTr compounds in their inland waterways, and the U.S. Fish and Wildlife Service conducts a national monitoring program every 2 to 3 years for DDT and other organo-chlorine compounds in birds and fish. Also, EPA has a compliance monitoring scheme to ensure that registrants comply with the requirements for particular levels of DDTr in thier dicofol products.

EPA agrees with the SAP conclusion that the evidence for the carcinogenicity of dicofol is weak and that the structural relationship between dicofol and DDT should not be used for regulatory purposes. EPA also agrees that because there is no evidence that dicofol metabolizes to DDT, DDE, or related chemicals, these compounds should not be included in a weight of the evidence judgment of dicofol.

EP also agrees with the SAP regarding the inappropriateness of conducting a quantitative risk assessment in this case and therefore the quantitative risk assessment has been omitted in favor of the qualitative one previously discussed.

EPA would like to point out that the basic dietary values used in the quantitative risk assessment were derived from the Tolerance Assessment System and assumed that raw agricultural commodities were contaminated at the tolerance level.

V. Procedural Matters

This Notice announces EPA's intent to cancel the registrations of dicofol unless the terms and conditions of registration are modified to require mixer/loaders and applicators to wear gloves when handling dicofol formulations and the DDTr contamination level is lowered to 0.1 percent in the technical product within 2 years. This unit of the Notice describes the procedures for referral of this Notice to the Secretary of Agriculture and the Scientific Advisory Panel for review as required by FIFRA secs. 6(b) and 25(d). The previous preliminary notice of intent to cancel (49 FR 39820) describes the procedures EPA is following to implement its regulatory decisions for intrastate pesticide products.

Finally, under sections 6(b)(1) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected persons would be able to request a hearing on any actions that EPA finally initiates. Unless a hearing is properly requested with regard to a particular registration or application, that action will be final.

This unit of the Notice also explains how such persons will be able to request a hearing in the event that EPA issues a final cancellation and denial Notice (and the consequences of requesting a

hearing and failing to request a hearing in accordance with those procedures).

A. Referral to the Secretary of Agriculture

As required by FIFRA secs. 6(b) and 25(d), EPA has transmitted copies of this Notice, together with the supporting documentation, to the Secretary of Agriculture and the Scientific Advisory Panel.

If the Secretary or the SAP comments in writing on EPA's proposed action within 30 days of receipt of this Notice, EPA must issue the comments and EPA's responses with the final Notice of Intent for publication in the **Federal Register**. Moreover, unless the time constraints are waived or modified, EPA may not issue the final Notice of Intent to Cancel sooner than 60 days after sending this Notice to the Secretary or the SAP. If, however, the Secretary or the SAP does not comment within the 30 days, EPA could issue its final Notice of Intent at the end of the 30-day period.

B. Procedures for Requesting a Hearing

Registrants, applicants, and other persons who would be adversely affected by any decision to modify the registration of dicofol products would be entitled to request a hearing in which to contest EPA's final decision. Under FIFRA, they must submit their requests for a hearing within 30 days either of receipt of the final Notice of Intent or of its publication in the **Federal Register**, whichever is later. In addition, a hearing request would have to contain certain information concerning the basis of the request, as EPA will explain in detail in any final Notice of Intent. If a timely, properly formulated hearing request is submitted, the product registrations which are the subject of the request will remain in effect during the cancellation hearing. Similarly, applications with respect to which valid and timely hearing requests have been filed remain pending unless and until they are denied or granted by order of the Administrator at the conclusion of the hearing.

If a proper and timely hearing request is not submitted for a product, and the modifications to the terms and conditions of registration are not implemented, the registrations for dicofol will be cancelled.

It should be noted that registrants and applicants are not required to request a hearing at this time in order to be allowed to continue to sell and distribute their products.

Dated: August 9, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-19572 Filed 8-14-85; 8:45 am]

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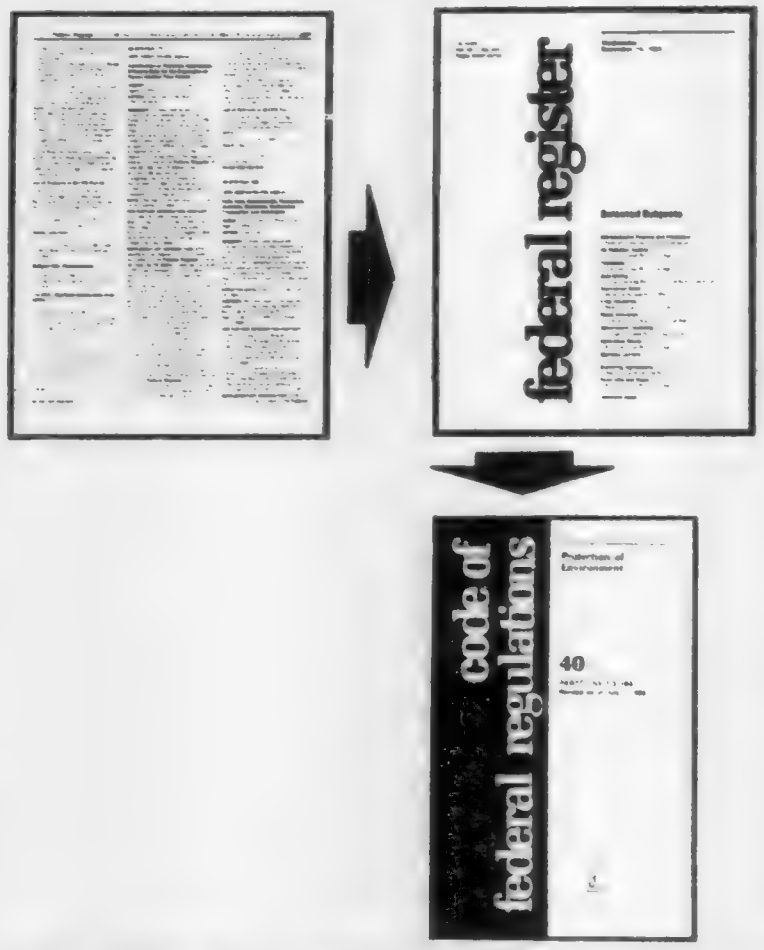
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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 6 and 27; at 9 am (identical sessions).

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call Martin Franks, Workshop Coordinator, 202–523–5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington starting in November. The January 1986 workshop will include facilities for the hearing impaired. Dates will be announced later.

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Presidential Documents

Title 3—

The President

Proclamation 5361 of August 13, 1985

Polish American Heritage Month, 1985

By the President of the United States of America

A Proclamation

The history of Polish Americans is an inspiring part of our Nation's heritage. The first massive wave of Polish immigrants came to America to flee the political and economic oppression thrust upon their homeland by the 19th century imperial powers of Eastern and Central Europe. While they came with few material possessions, they brought something much more important—a deep faith in God and a determination to succeed in this land of opportunity. And succeed they did. They established churches, schools, and fraternal benefit societies. They worked hard in the mines, steel mills, and stockyards. They understood the importance of education, so that today, the children and grandchildren of the first immigrants can be found in America's leading businesses and educational institutions.

Americans of Polish descent have made, and continue to make, enormous contributions to the culture, economy, and democratic political system of the United States. The names of Tadeusz Kosciuszko and Kazimierz Pulaski, heroes of the American Revolution, have left a lasting imprint upon our history. Highways, bridges, and towns dedicated to the preservation of their memory dot our countryside. In the future, other public facilities and institutions will be named for today's prominent Polish Americans, such as those serving our Nation in the Executive branch, in Congress, the armed services, and in state capitols and city halls from coast to coast.

The dedication of Polish Americans from all walks of life to the ideals of freedom and independence, which Kosciuszko and Pulaski fought for in America and in Poland, and which their worthy successors within the Solidarity movement are struggling for in Poland today, serves as a model for all Americans. That struggle remains alive today and two Polish leaders of international stature—Pope John Paul II and and Lech Walesa—provide inspiring examples of moral leadership for us all.

The Congress, by House Joint Resolution 106, has designated August 1985 as "Polish American Heritage Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 1985 as Polish American Heritage Month. I urge all Americans to join their fellow citizens of Polish descent in observance of this month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of August, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-19817
Filed 8-15-85; 11:13 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5362 of August 13, 1985

National Neighborhood Crime Watch Day, 1985

By the President of the United States of America

A Proclamation

A Nation promising justice for all must ensure that its citizens are free from fear of crime in their homes and on the streets. Yet crime continues to be a substantial problem for American society. Twenty-three million households were touched by crime in 1984 and felt, in varying degrees, the pain, economic loss, sense of violation, and frustration that accompany crime victimization.

Fewer households were victims of crime in 1984 than in any of the previous nine years, due in part to greater public awareness and understanding of crime. This Administration is committed to increasing that awareness and understanding, thereby assisting in our Nation's effort to combat crime.

We recognize the effectiveness and the growth of local crime watch organizations throughout the country and the major role they have played in turning the tide against crime. By working together and in cooperation with their local law enforcement agencies, citizens have always been one of our most effective deterrents against crime. Such citizen action reaffirms those values of community, respect for the law, and individual responsibility that are so much a part of our national heritage.

It is important that all of the citizens of this Nation are aware of the significance of community crime prevention programs and the valuable impact that their participation can have on reducing crime in their neighborhoods. A "National Night Out" campaign will be conducted on August 13, 1985 to call attention to the importance of community crime prevention programs. All Americans will be urged to spend the hour between 8–9 p.m. on that evening on their lawns, porches, and steps in front of their homes to signify that neighbors looking out for one another is the most effective form of crime prevention.

Participation in this nationwide event also will demonstrate the value and effectiveness of police and community working together in a partnership on crime prevention. It will generate support for, and participation in, local crime watch programs; strengthen neighborhood spirit in the anticrime effort; and send a message to criminals that neighborhoods across America are organized and watching. This is a unique effort to remind the American people of the crucial role they can play in making their streets and neighborhoods safer. Strong, safe communities don't just happen. They are built by people who care and volunteer their time and energy to make the community a good place to live.

The Congress, by Senate Joint Resolution 168, has designated August 13, 1985, as "National Neighborhood Crime Watch Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 13, 1985, as National Neighborhood Crime Watch Day. I call upon the people of the United States to spend the period from 8 to 9 o'clock p.m. that day with their neighbors in front of their homes to demonstrate the importance and effectiveness of community participation in crime prevention efforts.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of August, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-19818
Filed 8-15-85; 11:14 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 159
Friday, August 16, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

Grade and Size Requirements for Limited Use Olives; Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.
ACTION: Final rule.

SUMMARY: This rule extends until July 31, 1986, the current grade and size requirements for processed olives which are used in the production of limited use styles olives (such as, halved, segmented, sliced, or chopped canned ripe olives). This action affords handlers the opportunity to market larger quantities of olives and permits the use of olives too small to be desirable for use as whole (pitted or unpitted) ripe olives to be utilized in the production of other styles of olives. This action will benefit olive producers and consumers.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of California olives for the benefit of producers and consumers and will not substantially affect costs for those handlers directly regulated.

This regulation is issued under the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), regulating the handling of olives grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the California Olive Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

Section 932.52(a)(3) provides that use of processed olives smaller than the sizes prescribed for whole and pitted styles may be established annually for limited use and the subparagraph further provides that such minimum sizes may also include a size tolerance as recommended by the committee and approved by the Secretary. Therefore, this action approves the establishment of minimum sizes contained in § 932.52(a)(3) for olives from the 1985–86 crop. These requirements are the same as those established for the 1984–85 crop year.

This action was recommended at a public meeting at which all present could state their views. It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) There is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to affectuate the declared policy of the act; (2) handlers are aware of this action as proposed by the California Olive Committee; and (3) compliance with this regulation will require no special preparation by handlers because this regulation is the same as the one currently in effect.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, California, Olives.

PART 932—[AMENDED]

1. The authority citation for 7 CFR Part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 932.153 is revised to read as follows:

§ 932.153 Establishment of Grade and Size Requirements for Processed 1985–86 Crop Year Olives for Limited Use.

(a) *Grade.* On and after August 1, 1985, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1985, and meet the grade requirements specified in § 932.52(a)(1) as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1985, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1985 through July 31, 1986, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1985 or after July 31, 1986.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh 1/30 pound: *Provided,* That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/30 pound;

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/140 pound;

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh 1/180 pound: *Provided,* That not to exceed 20 percent of the olives in any lot or sublot may be smaller than 1/180 pound;

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 20 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

Dated: August 13, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–19614 Filed 8–15–85; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Parts 1032 and 1050

Milk in the Southern Illinois and Central Illinois Marketing Areas; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends certain diversion provisions of the Southern Illinois and Central Illinois orders that relate to how much milk may be moved directly from farms to nonpool plants and still be priced under the orders. The action removes the limits on such movements of milk under each of the orders during August 1985. The suspension was requested by Prairie Farms Dairy, Inc., a cooperative association that represents producers who supply each of the markets. The action is necessary to assure the efficient disposition of an increasing supply of milk by producers who have regularly supplied the fluid milk needs of the respective markets.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Suspension: Issued July 18, 1985; published July 24, 1985 (50 FR 30203).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the orders on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the orders and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the orders regulating the handling of milk in the Southern Illinois and Central Illinois marketing areas.

Notice of proposed rulemaking was published in the **Federal Register** on July 24, 1985 (50 FR 30203) concerning a proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the month of August 1985 the following provisions of the orders do not tend to effectuate the declared policy of the Act:

1. In 7 CFR Part 1032 (Southern Illinois) in § 1032.13(b)(2), the words "on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

2. In 7 CFR Part 1050 (Central Illinois):

a. In § 1050.13(d)(1), the words "During May, June and July".

b. In § 1050.13, paragraphs (d) (2), (3), (4), and (5).

Statement of Consideration

The action removes the limits on the amount of milk that may be moved directly from farms to nonpool plants and still be priced under the Southern Illinois and Central Illinois orders during August 1985. During August, such movements of milk to nonpool plants under the Southern Illinois order are limited to not more than 12 days' production of a producer. Under the Central Illinois order, diversions to nonpool plants may not exceed the number of days of production that is received at pool plants, provided that the total quantity of producer milk diverted does not exceed 35 percent of the amount of milk physically received at pool plants.

The suspension was requested by Prairie Farms Dairy, Inc., a cooperative association that supplies milk to handlers regulated under each of the orders. The cooperative association indicates that milk production under both orders is significantly above year earlier levels and that a greater proportion of the available milk supplies will have to be shipped to manufacturing plants than can be accommodated under the current diversion provisions of the orders. Thus, the cooperative contends that, in the absence of a suspension action, costly and inefficient movements of milk would have to be made solely for the purpose of pooling the milk of dairy farmers who have supplied the fluid milk needs of the respective markets.

No comments in opposition to the proposed action were received. However, two cooperative associations that represent producers who supply handlers regulated under the Southern Illinois order supported the suspension action for that order. Both cooperative associations (Mid-America Dairymen, Inc., and Land O'Lakes, Inc.) supported the suspension to facilitate the efficient disposition of the available supply of producer milk.

Milk production is significantly above year-earlier levels and consequently, a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. For example, under the Southern Illinois order, about 50 percent of the market's producer milk was used in other than fluid milk products during June 1985 compared with only 36 percent for June 1984. Similarly, for the Central Illinois market, about 52 percent of the producer milk supply was used for other than fluid milk products in June 1985 compared to about 42 percent a year earlier. There is every indication that favorable feed and weather conditions will result in the need to dispose of a greater proportion of milk supplies during August than can be accommodated under the applicable diversion limitations of the orders. A suspension action will permit the efficient disposition of the increased milk supplies and provide market participants with time to evaluate the production and sales relationships for the markets to consider appropriate marketing adjustments prior to September. In the absence of a suspension action, it is evident that costly and inefficient movements of milk would have to be made solely for the purpose of pooling the milk of dairy farmers who have regularly supplied the fluid milk needs of the respective markets.

It is hereby found and determined that thirty days' notice of the effective date here of is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing areas in that without the suspension costly and inefficient movements of milk will be made solely to qualify the available milk for pool status under the orders;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Parts 1032 and 1050

Milk Marketing Orders, Milk, Dairy Products.

The authority citation for 7 CFR Parts 1032 and 1050 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

It is therefore ordered, That the following language in § 1032.13(b)(2) of the Southern Illinois order and in § 1050.13(d) (1), (2), (3), (4) and (5) of the Central Illinois order is hereby suspended for August 1985:

PART 1032—[AMENDED]

§ 1032.13 [Temporarily suspended in part]

1. In 7 CFR Part 1032 (Southern Illinois) in § 1032.13(b)(2), the words "on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

PART 1050—[AMENDED]

§ 1050.13 [Temporarily suspended in part]

2. In 7 CFR Part 1050 (Central Illinois):

a. In § 1050.13(d)(1), the words "During May, June and July".

b. In § 1050.13, paragraphs (d) (2), (3), (4) and (5).

Signed at Washington, D.C., on: August 12, 1985.

Karen K. Darling,

Deputy Assistant Secretary Marketing & Inspection Services.

[FR Doc. 85–19559 Filed 8–15–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24749; Amdt. No. 1301]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR and (FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97:

Approaches, Standard instrument procedures.

Issued in Washington, D.C., on August 9, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

* * * *Effective September 26, 1985*

Idaho Falls, ID—Fanning Field, VOR RWY 2, Amdt 4
Idaho Falls, ID—Fanning Field, VOR RWY 20, Amdt 6
New Orleans, LA—Lakefront, VOR RWY 18R, Amdt 2
New Orleans, LA—Lakefront, VOR/DME RWY 36L, Amdt 5
New Orleans, LA—Lakefront, VOR-A, Amdt 15
New Orleans, LA—Lakefront, VOR-B Amdt 6
Ruston, LA—Ruston Muni, VOR/DME-A, Amdt 8
Cut Bank, MT—Cut Bank Muni, VOR RWY 31, Amdt 12
Chillicothe, OH—Ross County, VOR RWY 22, Orig
Aurora, OR—Aurora State, VOR/DME-A, Amdt 1
Killeen, TX—Killeen Municipal, VOR-A, Orig
Cable, WI—Cable Union, VOR/DME-A, Amdt 4

3. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF-DME SIAPs identified as follows:

* * * *Effective September 26, 1985*

Ocala, FL—Ocala Muni/Jim Taylor Field, LOC RWY 36, Amdt 4
Idaho Falls, ID—Fanning Field, LOC BC RWY 2, Amdt 2
Campbellsville, KY—Taylor County, LOC RWY 23, Orig
St. Paul, MN—St. Paul Downtown Holman Fld, LOC RWY 30, Amdt 10
Portland, OR—Portland Intl, LOC/DME RWY 20, Amdt 6

4. By amending § 97.27 NDB and NDB/DME SIAPS identified as follows:

* * * *Effective September 26, 1985*

Ocala, FL—Ocala Muni/Jim Taylor Field, NDB RWY 36, Orig
Idaho Falls, ID—Fanning Field, NDB RWY 20, Amdt 6
Columbus, IN—Columbus Muni, NDB RWY 22, Amdt 8
Campbellsville, KY—Taylor County, NDB RWY 23, Orig
Three Rivers, MI—Three Rivers Muni Dr. Haines, NDB RWY 27, Amdt 7
St. Paul, MN—St. Paul Downtown Holman Fld, NDB RWY 30, Amdt 4
Chillicothe, OH—Ross County, NDB RWY 22, Amdt 3
Sandy Springs, OK—William R. Pogue Muni, NDB RWY 35, Orig
Moen Island, TT—Truk Intl, NDB/DME RWY 4, Orig
Yap Island, TT—Yap International, NDB/DME RWY 7, Orig
Cable, WI—Cable Union, NDB-B, Amdt 8

* * * *Effective August 2, 1985*

French Lick, IN—French Lick Muni, NDB RWY 26, Amdt 5, Cancelled

5. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective September 26, 1985*

Idaho Falls, ID—Fanning Field, ILS RWY 20, Amdt 5
Columbus, IN—Columbus Muni, ILS RWY 22, Amdt 5
St. Paul, MN—St. Paul Downtown Holman Fld, MLS RWY 30 (Interim), Amdt 6

* * * *Effective August 29, 1985*

Binghamton, NY—Edwin A. Link Field-Broome County, ILS RWY 34, Amdt 20
Richmond, VA—Richard Evelyn Byrd Intl, MLS RWY 2, Orig

* * * *Effective August 1, 1985*

Saginaw, MI—Tri City, ILS RWY 23, Amdt 2

6. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective September 26, 1985*

Florence, SC—Florence-City-County, RADAR-1, Orig

7. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective September 26, 1985*

Atlantic City, NJ—Atlantic City Muni/Bader Field, RNAV RWY 11, Amdt 3
Massena, NY—Massena Intl-Richards Field, RNAV RWY 5, Amdt 4
Massena, NY—Massena Intl-Richards Field, RNAV RWY 23, Amdt 5
Cable, WI—Cable Union, RNAV RWY 34, Amdt 3

[FR Doc. 85-19509 Filed 8-15-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9169]

Associated Mills, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires the Chicago, Ill. manufacturer and seller of the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699, among other things, to cease representing, contrary to fact, that this portable household air cleaning appliance removes most tobacco smoke and substantially all ragweed pollen and dust from the air people breathe under household conditions and that the appliance effectively filters all the air in a 14 foot × 18 foot room in less than an hour. The order also bars the firm from misrepresenting the ability of any such appliance or equipment to clean or remove any quantity of indoor air contaminants, or the conditions of use under which the appliance would remove the contaminants. Further, the company is required to possess competent and reliable evidence to support any claim relating to the performance characteristics of such appliance; and maintain written records of all materials that substantiate, contradict, or qualify performance claims.

DATE: Complaint issued Oct. 24, 1983. Order issued July 23, 1985.[1]

FOR FURTHER INFORMATION CONTACT: FTC/B-411-5, Judith Wilkenfeld, Washington, D.C. 20580. (202) 376-8648.

SUPPLEMENTARY INFORMATION: On Tuesday, Feb. 5, 1985, there was published in the **Federal Register**, 50 FR 4980, a proposed consent agreement with analysis In the Matter of Associated Mills, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.10–5 Knowingly by advertising agent; § 13.170 Qualities or properties of product or service; § 13.170–16 Cleansing, purifying; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1762 Tests, purported. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Household air cleaning appliances, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–19550 Filed 8–15–85; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–3159]

Decorating Products Association of Central Florida; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: This consent order requires Decorating Products Association of Central Florida (DPACF), an association composed of wallcovering retailers and suppliers, among other things, to cease, individually or in concert with others, engaging in conduct having the purpose or effect of fixing prices, terms or conditions of sale of wallcoverings; coercing sellers of wallcoverings to adopt or abandon any practice or policy concerning pricing, conditions of sale, distribution method, or choice of customers. DPACF is also barred from suggesting or recommending to its members that they refuse to deal or otherwise attempt to affect a supplier's pricing or distribution methods; and from assisting any affiliated organization or its members in engaging in the prohibited conduct. The organization is further required to mail a copy of the order to each of its members and to publish it in its newsletter in a timely fashion. Finally, the order obligates DPACF to require its members to agree in writing to be bound by the terms of the order as a condition of membership; and to terminate for a period of one year any member believed to have engaged in the prohibited practices after the effective date of the order.

DATE: Complaint and Order issued July 26, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Ed Glynn, FTC/L–502–4, Washington, D.C. 20580. (202) 634–6608.

SUPPLEMENTARY INFORMATION: On Tuesday, May 14, 1985, there was published in the **Federal Register**, 50 FR 20107, *correction*, 50 FR 23316, a proposed consent agreement with analysis In the Matter of Decorating Products Association of Central Florida, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.367 Members; § 13.370 Suppliers and sellers. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions; § 13.425 To enforce or bring about resale price maintenance; § 13.433 To fix prices; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Wallcoverings, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–19548 Filed 8–15–85; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–3158]

Hawaii Dental Service Corp., Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires the Hawaii Dental Service Corporation ("HDS"), an organization engaged in the administration and operation of pre-paid dental care programs whose dentist members provide dental care service for a fee, among other things, to cease basing its decision to send dentists to the counties of Maui, Kauai, and Hawaii, on the approval or consent of member dentists who reside in those counties. The order bars the organization from denying membership to any dentist licensed to practice in Hawaii, based in whole or in part on the approval of other dentists in the geographic location of the dentist's proposed practice, and from including, encouraging, or assisting any dentist or other non-governmental organization to take any of the prohibited actions. Within thirty days from the effective date of the order, HDS is required to remove from its constitution and bylaws or other guidelines, any provision, interpretation or policy statement that is inconsistent with the order and publish in its newsletter and another publication, a notice of such removal.

DATE: Complaint and Order issued July 26, 1985 [1].

FOR FURTHER INFORMATION CONTACT: Erika R. Wodinski, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, CA 94102. (415) 556–1270.

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[1] Copies of the Complaint and the Decision and Order are filed with the original document.

[1] Copies of the Complaint and the Decision and Order are filed with the original document

SUPPLEMENTARY INFORMATION: On Monday, April 29, 1985, there was published in the **Federal Register**, 50 FR 16708, a proposed consent agreement with analysis In the Matter of Hawaii Dental Service Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.350 Customers or prospective customers; §13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.388 To control allocation and solicitation of customers; § 13.425 To enforce or bring about resale price maintenance; § 13.475 To restrict competition in buying; §13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–37 Formal regulatory and/or statutory requirements; § 13.533–40 Furnishing information to media; § 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Dental services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–19549 Filed 8–15–85; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–2859]

Salomon/North America, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order modifies the 1977 consent order (42 FR 6797) issued with respondent by deleting provisions in the original order that prohibited the company from barring transshipment (sales between retailers) or limiting the retail locations from which dealers may sell its products. The modifying order is the result of respondent's request to the Commission for modification of the terms of the original order.

DATES: Consent Order issued Jan. 6, 1977. Modifying Order issued July 30, 1985.

FOR FURTHER INFORMATION CONTACT: FTC/L–301, Daniel P. Ducore, Washington, D.C. 20580. (202) 634–4642.

SUPPLEMENTARY INFORMATION: In the Matter of Salomon/North America, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are modified by deleting the following: Subpart—Combining or Conspiring: § 13.450 To limit distribution or dealings to regular, established or acceptable channels or classes.

List of Subjects in 16 CFR Part 13

Ski bindings and equipment, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Order Reopening and Modifying Order

Commissioners: James C. Miller III, Chairman; Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga.

In the Matter of Salomon/North America, Inc., Docket No. C–2859.

Issued: January 6, 1977.

On March 25, 1985, respondent Salomon/North America, Inc. ("Salomon") filed its "Request of Salomon/North America, Inc. for Modification of Consent Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding in Docket No. C–2859 and to modify the order issued by the Commission in this case on January 6, 1977, by deleting the provisions that restrict Salomon's ability to limit the transshipping of its products and that prohibit Salomon from limiting the retail locations from which dealers may sell its products. Salomon also requests deletion of Paragraph II of the order which creates a limited exception to the order's provision that restricts Salomon's ability to limit the transshipment of its products. Salomon's Request was on the public record for thirty days and no comments were received.

After reviewing Salomon's request and other available information, the Commission has concluded that the public interest warrants reopening and modification of the order in the manner requested by Salomon. The transshipment and location restriction provisions of the order (subparagraphs I.B and I.C) were adopted principally as "fencing-in" restraints ancillary to the order's ban on resale price maintenance ("RPM") Salomon has shown that it does not fix the prices at which its authorized dealers resell Salomon ski products, that Salomon ski product prices vary from dealer to dealer, and that the transshipment and location restriction provisions therefore have served their purpose to encourage the emergence of intrabrand price competition in Salomon products. To the extent that subparagraphs I.B and I.C were intended as a remedy for the alleged anticompetitive effects of transshipment and location restrictions independent of RPM, the Supreme Court's ruling in *Continental T.V. Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 26 (1977), constitutes a change in law that justifies reexamination of the provisions. Such a reexamination, based on the record presented by Salomon and other information, demonstrates that transshipment and location restraints by Salomon would pose no threat to interbrand competition.

Salomon's inability to ban transshipping and sales from unauthorized locations would likely cause Salomon significant competitive injury by, among other things, lessening the efficiency of Salomon's distribution system, discouraging dealers from remaining with Salomon, exposing Salomon's customers to increased risk of injury and, consequently, exposing Salomon to personal injury claims.

The transshipment and location restriction provisions in question appear to have served their remedial purpose. There is no indication that Salomon has engaged in RPM (or has breached the order's transshipping and location restriction provisions) from January 6, 1977, to date, and nothing in the record suggests that there is a need to continue the order's transshipment and location restriction provisions to ensure that RPM is not reinstituted by Salomon.

Accordingly, it is ordered that this matter be, and it hereby is, reopened and that subparagraphs I.B, I.C and Paragraph II of the order be, and they hereby are, deleted.

Issued: July 30, 1985.

By the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–19547 Filed 8–15–85; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

20 CFR Part 450

42 CFR Parts 400, 405, 408, 409, 442, 456, 481, 485, 488 and 491

[BERC-260-F]

Medicare and Medicaid; Corrections and Conforming Changes

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rules and corrections.

SUMMARY: This document—

1. Removes unnecessary rules from the Social Security regulations.

2. Removes reporting requirements that never went into effect because they were not approved by the Office of Management and Budget.

3. Corrects errors and omissions in final rules published in December 1982 and March 1983.

4. Makes technical corrections and conforming changes in other Medicare and Medicaid regulations that deal with payment of benefits, exclusions from Medicare, beneficiary appeals, and physician certification. These changes are needed primarily to conform certain rules to changes made in other regulations since the rules were last published.

5. Redesignates Parts 481 and 488 to make possible a more logical organization of Subchapter E—Standards and Certification.

EFFECTIVE DATE: These rules are effective September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 245–0383.

SUPPLEMENTARY INFORMATION: Part 450 of Chapter III of Title 20 of the Code of Federal Regulations, which deals with grants to demonstrate the effectiveness of health care rate regulation, as authorized under section 1526 of the Public Health Service Act, is removed as unnecessary because—

- We have never approved any demonstration projects under these rules;
- For the past several years, Congress has not appropriated any funds to implement the section 1526 authority; and
- Section 1886(c) of the Medicare statute, enacted in September 1982 and amended in April 1983, allows States to request HCFA approval of a State's hospital reimbursement control system under which payment for services provided by hospitals in the State may be made in accordance with the State's system, rather than in accordance with other provisions of title XVIII. Thus, demonstration projects for health care rate regulation are unnecessary.

Two sets of final rules are corrected by this document. The first, published on December 15, 1982 (47 FR 56282), established Part 488, the rules for the comprehensive outpatient rehabilitation facility (CORF) services authorized under section 1861(cc) of the Social Security Act. Part 488 (which is being redesignated as Part 485) needed only the correction of the statement that a CORF psychologist must hold a master's degree "from a training program approved by the State." Since training programs are not approved by the State and do not grant degrees, we corrected the statement to read ". . . a master's degree in psychology from an educational institution approved by the State in which it is located."

The second was published on March 25, 1983 (48 FR 12526) to implement 13 statutory provisions and to clarify, reorganize, and renumber a major portion of the Medicare hospital insurance regulations. Most of the corrections are required because of unintended omissions. In one case (§ 409.12) it was necessary to revise the language because it did not clearly describe the statutory exclusion of private duty nursing. The definition of "provider" is amended to include a hospice; and the definition of "State", to reflect the extension of Medicaid funding to American Samoa.

A third set of final rules, published on September 1, 1983 (48 FR 39752) implemented sections 602 (e), (h), and (k) of Pub. L. 98–21 (the Social Security Amendments of 1983), which amended the Act to (1) exclude from Medicare payment any service (other than physicians' services) furnished to hospital inpatients unless the service is furnished by, or under arrangements made by, the hospital; (2) require hospitals to agree, as a condition for approving a provider agreement, to furnish directly or under arrangements any inpatient hospital services (except physicians services) that are covered by Medicare; and (3) provide that the first two requirements may be waived for any cost reporting period that begins before October 1986, if a hospital has, since before October 1982, allowed direct billing under Part B so extensively that immediate implementation of the exclusion would threaten the stability of the care furnished to the hospital's inpatients. The rules published on September 1, 1983 added a new paragraph (m) to § 405.310 to reflect the new exclusion and the exceptions to that exclusion. Because the language of that paragraph (m) is unclear and could be misleading, we are revising it to ensure proper understanding and application. We are also updating other paragraphs of § 405.310 as explained below in the discussion of changes to Subpart C of Part 405 of the Medicare rules. This document also corrects and conforms other Medicare regulations in Subparts A, C, F, G, K, and P of Part 405, and in Parts 456 and 474, as explained below:

1. In Subpart A, which deals with payment of hospital insurance benefits, we:

a. Revised § 405.165 to —

- Substitute the term "posthospital SNF care" for "posthospital extended care services" wherever it appears, and add "participating hospital that has a swing-bed approval" as a place (in addition to a SNF) where Medicare pays for SNF care. (These changes are needed for consistency with the rules published on March 25, 1983 at 48 FR 12541–12546, which change the terminology and specify coverage of SNF care furnished in any hospital that has an agreement to use some of its beds to furnish SNF type care.)
- Delete the parenthetical statement "(other than a doctor of podiatry or surgical chiropody)" because, under section 1861(r)(3) of the Social Security Act (the Act) as amended by section 951 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499), a doctor of podiatric medicine is recognized as a physician for purposes of certifying need for services, if specified conditions are met.
- Delete the reference to Part 463 Professional Standards Review Organization (PSRO) because those organizations no longer function to review Medicare claims.
- Substitute reference to "§§ 409.20 and 409.30–409.36" for reference to §§ 405.125 through 405.128a", because the latter sections were renumbered by the March 25, 1983 regulations cited above.
- Delete the reference to § 405.133 because that section was removed from the Medicare regulations by the March 25, 1983 publication. Section 405.133 dealt with the "presumed coverage" provision that was formerly contained in section 1814 of the Act, and was repealed by section 941 of Pub. L. 96–499.
- Conform the content on inpatient hospital services (required before admission to the SNF) to §§ 409.3 and 409.30 of the March 25, 1983 regulations (48 FR 12542 and 12544).

b. Revised § 405.166 to —

• Change "posthospital extended care services" to "posthospital SNF care".

• Indicate briefly the content of cited § 405.1137.

• Revise paragraph (b) to reflect the fact that it is PROs rather than PSROs that may now assume responsibility for review of SNF care.

c. Revised § 405.167 to—

• Change "posthospital extended care services" to "posthospital SNF care".

• Update the content to show that—

(1) HCFA (rather than the Secretary) makes the determination, as is set forth in § 489.50 of the Medicare regulations.

(2) The provisions also apply to SNF care furnished by a hospital that has a swing-bed approval.

• Delete unnecessary cross-references.

d. Revised § 405.170 to—

• Delete the word "posthospital" wherever it appears because the requirement that home health services be related to prior inpatient hospital care was removed from section 1812(b)(3) of the Act by section 930 of Pub. L. 96–499.

• Delete the details of certification requirements because they duplicated the content of § 405.1633, which contains the applicable rules on certification for home health services and is cited in § 405.170.

• Delete content pertinent to the presumed coverage provision that was repealed.

• Include reference to § 409.42, which contains other conditions for coverage of home health services.

• Remove paragraph (c) which dealt with the revoked "presumed coverage" provision explained above in the discussion of § 405.165.

e. Made other minor editorial changes and corrections.

2. In Subpart C, which deals with exclusions from Medicare and exceptions to those exclusions, we have, in addition to revising the recently added paragraph (m) of § 405.310, as discussed above, made the following kinds of changes:

a. *Updating to reflect statutory changes already in effect.* Sections 936 and 939 of Pub. L. 96–499 amended section 1862 of the Act to broaden benefits by (1) extending coverage of inpatient hospital care in connection with dental procedures to situations in which hospitalization is required because of the severity of the dental procedures, and (2) encompassing treatment of warts of the foot. Section 1 of Pub. L. 96–611 added sections 1861(s)(10) and 1862(a)(1)(B) to the Act to provide coverage for pneumococcal vaccine and vaccination to the extent that it is reasonable and necessary for the prevention of illness. These additional services are covered as exceptions to specific exclusions from Medicare. Accordingly, they are reflected, respectively, in revised paragraphs (i), (1), and (e) of § 405.310.

b. *Updating to reflect statutory changes already implemented by final rules.* Section 122 of Pub. L. 97–248 amended section 1812 of the Act to expand Medicare Part A coverage to include hospice care. Implementing rules were published on December 16, 1983 (48 FR 56008). The hospice rules provide exceptions to three of the § 405.310 exclusions: custodial care (paragraph (g)), personal comfort services (paragraph (j)), and services not reasonable and necessary (paragraph (k)).

c. *Conforming and clarifying editorial changes.* We made minor editorial changes in paragraphs (a) through (d), (f), and (h) of § 405.310, to achieve consistency of style and terminology with the paragraphs that required the substantive changes discussed above.

d. *Removal of duplicative content.* We removed paragraph (n) of that section because its content was transferred to § 409.30 by the final rules published on March 25, 1983, and discussed above.

3. In Subpart D, which deals with principles of reimbursement, we have:

• Removed reporting requirements that never became effective because they were not approved by the Executive Office of Management and Budget (EOMB). (Paragraph (h) of § 405.421, which is removed, contained reporting requirements applicable to providers that receive grants for primary care training programs. It was published with a note indicating that it would not go into effect until approved by EOMB).

4. In Subpart F, in § 405.658, which deals with emergency services furnished by nonparticipating hospitals, we have corrected cross-references.

5. In Subpart G, which sets forth the policies and procedures for beneficiary appeals under the hospital insurance program, we have made the following changes:

• Removed the appendix that reproduced the Social Security regulations that contain provisions applicable to beneficiary appeals (20 CFR Part 404, Subparts J and R). We supplied the appendix so that users of HCFA regulations could get the complete picture without having to refer to another title of the CFR. However, when the Social Security regulations were revised, our appendix became outdated. We have concluded that the cost of maintaining the appendix outweighs the advantages that it might provide.

• Deleted a reference to that appendix (§ 405.701).

• Corrected cross-references in § 405.710(b).

6. In Subpart K, which sets forth the conditions of participation for skilled nursing facilities (SNFs), we amended §405.1121 to—

• Remove reporting requirements that have never gone into effect because they were not approved by the Office of Management and Budget; and

• Substitute language that reflects only the provisions of section 1861(j)(14) of the Act, which is clear, and sufficient to ensure the protection of funds belonging to SMF patients.

7. In Subpart P, which sets forth the requirements for physician certification and recertification, we removed an outdated cross-reference in § 405.1625–1, revised §§ 405.1629 and 405.1632 to conform their terminology to previously published revisions of §§ 405.1627, 405.1633, and 405.1634. In addition —

We amended § 405.1632 to —

• Substitute the term "posthospital SNF care" for "posthospital extended care services" wherever it appears.

• Delete content pertaining to the "presumed coverage" provisions that were repealed by section 941 of Pub. L. 96–499 and removed from other Medicare regulations by the final rules published on March 25, 1983.

• Make clear that the rules of the section apply to SNF care furnished by a swing-bed hospital as well as that furnished by a SNF.

• Conform the "content of certification" rule to §§ 409.3 and 409.30 of the March 25, 1983 regulations (48 FR 12542 and 12544).

• Provide captions that make the section easier to use and understand.

We amended § 405.1634 to —

• Clarify who must sign a plan for speech pathology service.

• Reflect the provisions of sections 2341 and 2342 of the Deficit Reduction Act of 1984 (Pub. L. 98–369), as they affect outpatient physical therapy (OPT) services. Section 2341 provides that, if specified conditions are met, a doctor of podiatric medicine is considered a physician for the requirement that OPT services be furnished while the beneficiary is under the care of a physician. Section 2342 provides that a physical therapist (as well as a physician) may establish a plan of treatment for OPT services. The plan must be reviewed by a physician.

• Incorporate the content of § 405.250–1, which is more appropriate to this section.

8. In part 408, Subpart A, which deals with eligibility and entitlement to

hospital insurance (Medicare Part A), we have substituted designated subpart titles for undesignated headings, to facilitate references to these rules.

9. In Part 409, Subpart A, which deals with Medicare Part A benefits, we amended §409.42(b)(2) to provide that, if specified conditions are met, a doctor of podiatric medicine (as well as a doctor of medicine or osteopathy) is considered a physician to fulfill the requirements that home health services be provided while the beneficiary is "under the care of a physician". We have also substituted a designated subpart title for each undesignated heading, to facilitate reference to these rules.

10. In Part 442, which sets forth standards for Medicaid payment for skilled nursing and intermediate care facility services, we revised three sections to conform to the changes made in the Medicare rules on protection of patients' funds. Previous proposals to revise §§ 442.311, 442.404, 442,406, and to remove 442.320 did not go into effect because they would have made applicable to Medicaid the Medicare information collection requirements (§ 405.1121(m)) that EOMB did not approve. Now that § 405.1121(m) has been revised to include only the statutory requirements, there is no reason no to make it applicable to Medicaid. We have removed the effective date note at the end of § 442.320. Section 442.320 was to be deleted effective October 22, 1980, upon EOMB approval of the regulations at § 405.1121(m) Since EOMB did not approve those regulations, § 442.320 will remain and the effective date note will be removed.

11. In Part 456, Subpart F, which deals with utilization control activities in SNFs, we amended § 456.360 to reflect the amendment to section 1903(g)(1)(A) of the Act by section 137(b)(12) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248). The amendment extends to private ICFs for the mentally retarded (ICFs/MR) timing of recertification provisions previously applicable only to public ICFs/MR.

12. We redesignated Part 481 as Part 491, and Part 488 as Part 485, to permit a more logical organization of Subchapter E.

Impact Analysis Statement

Executive Order 12291

Executive Order 12291 requires agencies to prepare a regulatory analysis for any rule that is likely to have an annual impact of $100 million or more on the general economy; cause a major increase in costs or prices; or meet other thresholds specified in section 1(b) of the Order. We have determined tht none of the conforming amendments will affect the economy by more than $100 million. These provisions were self-implementing upon date of enactment. Therefore, these regulations have no additional impact beyond that which results from the statutory provisions.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) requires agencies to prepare and publish a regulatory flexibility analysis (RFA) for any regulation that will have "a significant impact on a substantial number of small entities". A small entity is a small business, a nonprofit enterprise, or a government jurisdiction (such as a county or township) with a population of less than 50,000. The purpose of the analysis would be to anticipate the impact and to seek alternatives that would have a less negative effect.

An RFA is not required for these rules because we have determined, and the Secretary certifies, that they will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Section 405.1632(b) through (f) of this final rule contains information collection requirements subject to approval by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. When approval is obtained, we will publish a notice in the **Federal Register** to that effect.

Waiver of Proposed Rulemaking

The changes made by these rules are of three types:

- Minor technical corrections, such as the removal of rules that never went into effect.
- Minor clarifying editorial revisions.
- Minor amendments needed to conform the rules to changes in the law or in other regulations. In no instance does any of the amendments affect the substance of the Medicare or Medicaid rules, apart from the changes in the law or other regulations. Therefore we find that the usual notice and opportunity for public comment are unnecessary.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 408

Health facilities, Kidney diseases, Medicare.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 456

Administrative practice and procedure, Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 481 (Redesignated as Part 491)

Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 488 (Redesignated as Part 485)

Health facilities, Medicare, Reporting and recordkeeping requirements.

Title 20—Employees' Benefits

20 CFR Chapter III is amended as set forth below:

PART 450—RESEARCH GRANTS AND CONTRACTS [REMOVED]

20 CFR Part 450 is removed as outdated and unnecessary, and the table of contents of Chapter III is amended to reflect this change.

Title 42—Public Health

42 CFR Chapter IV is amended as set forth below:

I. PART 400—INTRODUCTION; DEFINITIONS

A. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

B. *§ 400.203 [Amended]*

In § 400.203, in the definition of "*State*", "American Samoa," is added immediately after "Guam,".

II. PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart A—Hospital Insurance Benefits

1. The authority citation for Subpart A continues to read as follows:

Authority: Secs. 1102, 1814, 1815, 1861, 1866(d), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395g, 1395x, 1395cc(d), and 1395hh).

2. *§ 405.150 [Amended]*

In § 405.150, reference to "§ 405.156" is removed, and reference to "Subpart F of this Part 405" is changed to "Part 489 of this chapter".

3. *§ 405.152 [Amended]*

a. In § 405.152(a), introductory text, reference to "§ 405.151" is changed to "§ 409.69", and the phrase "—see § 405.606)" is changed to "and Part 489 of this chapter)".

b. § 405.152(a)(2), the phrase "meets the requirements of § 405.102;" is removed, and "is entitled to hospital insurance benefits;" is inserted.

c. In § 405.152(a)(4), reference to "Subpart F of this Part 405" is changed to "Part 489 of this chapter".

d. In § 405.152(a)(7), reference to "§ 405.606" is changed to "Part 489 of this chapter."

e. In § 405.152(b), the phrase "(see § 405.116)" is removed.

4. *§ 405.157 [Amended]*

In § 405.157, introductory text, the phrase "(see § 405.102)" is removed.

5. *§ 405.158 [Amended]*

In § 405.158(a)(1), reference to "§§ 405.113 through 405.115" is changed to "§§ 409.80, 409.82, 409.83, and 409.87".

6. *§ 405.160 [Amended]*

In § 405.160(d), reference to "§ 405.116" is changed to "§§ 409.10 through 409.18".

7. Section 405.165 is revised to read as follows:

§ 405.165 Payment for posthospital SNF care.

Medicare Part A pays for posthospital SNF care furnished in a SNF or a participating hospital that has a swing-bed approval if the following requirements are met:

(a) *Request for payment.* A written request for payment is filed by or on behalf of the individual to whom the services were furnished.

(b) *Physician certification.* A physician provides certification and recertification in accordance with § 405.1632.

(c) *Other requirements.* (1) The conditions for coverage set forth in §§ 409.20 and 409.30 through 409.36 of this chapter are met.

(2) Payment is not prohibited under §§ 405.166 and 405.167.

8. Section 405.166 is revised to read as follows:

§ 405.166 Prohibition against payment for posthospital SNF care after a utilization review finding that further care is not medically necessary.

(a) *SNF system of utilization review (UR).* If a finding has been made, under a SNF UR system required by § 405.1137, that further posthospital SNF care is not medically necessary, payment may be made only for care furnished before the fourth day following the day the SNF received notice of the finding.

(b) *PRO system of review.* If a PRO has assumed review responsibility and has found that further SNF care is not medically necessary, or should be furnished more economically or on an outpatient basis or in an inpatient facility of a different type, payment may be made for up to two days after the SNF receives notice of the PRO finding, but only if—

(1) The PRO has determined that additional time is required to arrange for post-discharge care; and

(2) It is determined, under § 405.332, that the SNF did not know, and could not reasonably have been expected to know that Medicare payment would not be made.

9. Section 405.167 is revised to read as follows:

§ 405.167 Prohibition against payment for posthospital SNF care furnished by a facility that fails to make timely utilization review (UR).

(a) *Determination and notice.* If HCFA determines that the facility has failed substantially to make timely UR of long-stay cases, it will notify the SNF and any hospital with which the SNF has a transfer agreement (or the hospital that has a swing-bed approval) and the public, that payment to the facility will be limited, and specify the effective date of the determination.

(b) *Limitation on payment.* Payment may not be made for SNF care furnished after the 20th consecutive day of care furnished to an individual admitted to the facility after the effective date of HCFA's determination.

10. Section 405.170 is revised to read as follows:

§ 405.170 Payment for home health services: Conditions.

Medicare Part A pays for home health services if the following conditions are met:

(a) *Request for payment.* A written request for payment is filed by or on behalf of the individual to whom the services were furnished.

(b) *Physician certification.* A physician provides certification and recertification in accordance with § 405.1633.

(c) *Other conditions.* The requirements of § 409.42 of this chapter are met.

11. *§ 405.195 [Amended]*

In § 405.195(d)(1), reference to "§ 405.106" is changed to "§ 405.196".

12. *§ 405.196 [Amended]*

In § 405.196(a), the phrase "(see § 405.131)" is removed.

B. Subpart B—Supplementary Medical Insurance Benefits; Enrollment, Exclusions, and Payments

1. The authority citation of Subpart B is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

2. *§ 405.250 [Redesignated]*

§ 405.250–1 is redesignated as § 405.1634(b) and revised elsewhere in this document. The table of contents of Subpart B is amended to reflect this change.

C. Subpart C—Exclusions, Recovery of Overpayments, Liability of a Certifying Officer and Suspension of Payment

1. The authority citation of Subpart C is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

2. Section 405.310 is revised to read as follows:

§ 405.310 Particular services excluded from coverage.

The following services are excluded from coverage.

(a) *Routine physical checkups such as—*

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptom, complaint, or injury; or

(2) Examinations required by insurance companies, business establishments, government agencies, or other third parties.

(b) *Eyeglasses or contact lenses, except for* post-surgical lenses customarily used during convalescence from eye surgery in which the lens of the eye was removed (e.g., cataract surgery); or prosthetic lenses for patients who lack the lens of the eye because of congential absence or surgical removal.

(c) *Eye examinations* for the purpose of prescribing, fitting, or changing eyeglasses or contact lenses for refractive error only and procedures performed in the course of any eye

examination to determine the refractive state of the eyes, without regard to the reason for the performance of the refractive procedures. Refractive procedures are excluded even when performed in connection with otherwise covered diagnosis or treatment of illness or injury.

(d) *Hearing aids* or examinations for the purpose of prescribing, fitting, or changing hearing aids.

(e) *Immunizations, except for*—

(1) Vaccinations or inoculations directly related to the treatment of an injury or direct exposure such as antirabies treatment, tetanus antitoxin or booster vaccine, botulin antitoxin, antivenom sera, or immune globulin; and

(2) Pneumococcal vaccinations that are reasonable and necessary for the prevention of illness.

(f) *Orthopedic shoes* or other supportive devices for the feet, *except when* shoes are integral parts of leg braces.

(g) *Custodial care, except as necessary* for the palliation or management of terminal illness, as provided in Part 418 of this chapter. (Custodial care is any care that does not meet the requirements for coverage as posthospital SNF care as set forth in §§ 409.30 through 409.35 of this chapter.)

(h) *Cosmetic surgery* and related services, *except* as required for the prompt repair of accidental injury or to improve the functioning of a malformed body member.

(i) *Dental services* in connection with the care, treatment, filling, removal, or replacement of teeth, or structures directly supporting the teeth, *except for* inpatient hospital services in connection with such dental procedures when hospitalization is required because of—

(1) The individual's underlying medical condition and clinical status; or

(2) The severity of the dental procedures.[1]

(j) *Personal comfort services, except* as necessary for the palliation or management of terminal illness as provided in Part 418 of this chapter. The use of a television set or a telephone are examples of personal comfort services.

(k) *Any services that are not reasonable and necessary* for one of the following purposes:

(1) For the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

(2) In the case of hospice services, for the palliation or management of terminal illness, as provided in Part 418 of this chapter.

(3) In the case of pneumococcal vaccine, for the prevention of illness.

(l) *Foot care.*—(1) *Basic rule.* Except as provided in paragraph (1)(2) of this section, any services furnished in connection with the following:

(i) *Routine foot care,* such as the cutting or removal of corns, or calluses, the trimming of nails, routine hygienic care (preventive maintenance care ordinarily within the realm of self care), and any services performed in the absence of localized illness, injury, or symptoms involving the feet.

(ii) *The evaluation or treatment of subluxations of the feet,* regardless of underlying pathology. (Subluxations are structural misalignments of the joints, other than fractures or complete dislocations, that require treatment only by nonsurgical methods.)

(iii) *The evaluation or treatment of flattened arches* (including the prescription of supportive devices) regardless of the underlying pathology.

(2) *Exception.* Treatment of warts is covered, and the services excluded under paragraph (l)(1), of this section are covered if they are furnished—

(i) As an incident to, at the same time as, and as a necessary integral part of a primary covered procedure performed on the foot; or

(ii) As initial diagnostic services (regardless of the resulting diagnosis), in connection with a specific symptom or complaint that might arise from a condition whose treatment would be covered.

(m) *Services to hospital inpatients.*—(1) *Basic rule.* Except as provided in paragraph (m)(2) of this section, any service furnished to an inpatient of a hospital by an entity other than the hospital, unless the hospital has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the hospital's inpatients.[2]

(2) *Exceptions.* (i) Physicians' services that meet the criteria of § 405.550(b) for payment on a reasonable charge basis, and services of an anesthetist employed by a physician that meet the conditions of § 405.553(b)(4), are not excluded.

(ii) The exclusion may be waived temporarily by HCFA, in accordance with § 489.23 of this chapter.

(Services subject to exclusion under this paragraph include, but are not limited to, clinical laboratory services, pacemakers, artificial limbs, knees, and hips, intraocular lenses, total parenteral nutrition, and services incident to physicians' services.)

(n) [Removed]

D. Subpart F—Notice, Election, and Agreements

1. The authority citation of Subpart F is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

2. *§ 405.658 [Amended]*

In § 405.658, the following references are corrected:

a. In paragraph (b)(1), "§§ 405.607 through 405.610" is changed to "Subpart C of Part 489 of this chapter".

b. In paragraph (b)(2), "§§ 405.618 through 405.621" is changed to "Subpart D of Part 489 of this chapter".

E. Subpart G—Reconsiderations and Appeals Under the Hospital Insurance Program

1. The authority citation of Subpart G is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

2. *§ 405.701 [Amended]*

In § 405.701(c), the comma following the parenthesis and the phrase "reprinted in the appendix to this subpart" are removed.

3. *§ 405.710 [Amended]*

In § 405.710(b), reference to "§ 405.704(b)" is changed to "§ 405.704(c)" wherever it appears.

4. *Appendix—[Removed]*

The Appendix to Subpart G is removed and the table of contents of the subpart is amended to reflect this change.

F. Subpart K—Conditions of Participation; Skilled Nursing Facilities

1. The authority citation for Subpart K is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

2. *§ 405.1121 [Amended]*

Section 405.1121 is amended by adding a new paragraph (m) to read as follows:

* * * * *

(m) *Standard: Protection of patients' funds.* The facility establishes and maintains a system that—

(1) Ensures full and complete accounting of its patients' personal funds; and

(2) Precludes commingling of a patient's funds with funds of the facility or of any person other than another patient.

3. The Effective Date Note at the end of § 405.1121 and the small print

[1] Paragraph (i)(2) is effective for services furnished after June 30, 1981.

[2] This exclusion was effective as of October 1, 1983.

paragraphs (k)(6) and (m) following the Note are removed.

G. Subpart P—Certification and Recertification; Claims and Benefit Payment Requirements; Check Replacement Procedures

1. The authority citation for Subpart P is revised to read as follows:

Authority: Secs. 1102, 1814, 1835, 1871, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395h, 1395hh, and 1395tt).

2. *§ 405.1625–1 [Amended]*

Section 405.1625–1 is amended by removing the reference to § 405.133.

3. *§ 405.1629 [Amended]*

Section 405.1629 is amended by substituting "must" for "should" wherever it appears.

4. Section 405.1632 is revised to read as follows:

§ 405.1632 Posthospital SNF care: Certification and recertification.

(a) *General provisions.* As a condition for Medicare Part A payment for posthospital SNF care furnished in a SNF or in a hospital with a swing-bed approval, the requirements of this section must be met. As used in this section, the term "facility" means either a SNF, or a hospital that has approval to furnish SNF care.

(b) *Content of certification.* A physician must certify that—

(1) Posthospital SNF care is or was required because the individual needs or needed on a daily basis skilled nursing care (furnished directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in a SNF or a swing-bed hospital on an inpatient basis.

(2) The SNF care is or was needed for a condition for which the individual received inpatient care in a participating hospital or a qualified hospital, as defined in § 409.3 of this chapter.

(c) *Timing of certification.* The certification must be obtained at the time of admission or as soon thereafter as is reasonable and practicable.

(d) *Content of recertification.* The recertification statement must certify continued need for services and contain the following information:

(1) An adequate explanation of the reasons for the continued need for SNF care.

(2) The estimated period of time the individual will need to remain in the facility.

(3) Plans for home care, if appropriate.

(4) If the continued need for SNF care is for a condition that arose after the individual's transfer to the facility and while he or she was still in the facility for treatment of a condition for which he or she had received inpatient hospital services, a statement to that effect.

(e) *Timing of recertification.*—(1) *Initial recertification.* The first recertification is required no later than the 14th day of SNF care. A facility, may, at its option, provide for an earlier date or vary the timing of the first recertification within the 14-day period, by diagnostic or clinical categories.

(2) *Subsequent recertifications.* Subsequent recertifications are required at least every 30 days, and may be made at shorter intervals established by the utilization review committee and the facility.

(3) *Recertification requirement fulfilled by UR.* At the option of the facility, extended stay review under the facility's UR plan may take the place of the second and subsequent physician recertifications.

(4) *Description of procedures.* The facility must have available in its files a written description of its procedures for timing of recertifications—that is, the intervals at which recertifications are required, and whether review of extended stay cases by the UR committee takes the place of the second and subsequent physician recertifications.

(f) *Signature of certifications and recertifications.* Certifications and recertifications must be signed by the physician responsible for the case or, if authorized by the responsible physician, by a physician on the staff of the facility, or the physician who is available in case of an emergency and who has knowledge of the case.

4. Section 405.1634 is amended by revising paragraph (a)(3), adding (a)(4) and (a)(5), revising paragraph (b) to incorporate the content of § 405.250–1, and redesignating and revising paragraph (b)(2) as (c). As amended, § 405.1634 reads as follows:

§ 405.1634 Medical and other health services furnished by a participating provider or ESRD facility: Certification and recertification.

(a) *Basic rules.*

* * * * *

(3) *Documentation.* The certification may be made on a record retained by the provider or facility, or on a special form, or a physician's written order may be accepted as certification.

(4) *Signature.* (i) For outpatient physical therapy and speech pathology services for which the plan is established by a physician, the certification must be signed by the physician who establishes the plan.

(ii) For outpatient physical therapy and speech pathology services for which the plan is established by a physical therapist or speech pathologist, and for all other services not specified in paragraph (a)(4)(i) of this section, the certification must be signed by a physician who has knowledge of the case.

(5) *Timing.* (i) For outpatient physical therapy and speech pathology services, the certification statement must be obtained at the time the plan of treatment is established or as soon thereafter as possible.

(ii) For other services, the certification statement may be obtained at the time the services are furnished or, if they are furnished on a continuing basis, at the beginning or at the end of a series of visits.

(b) *Content of certification: Outpatient physical therapy and speech pathology services.* With respect to outpatient physical therapy and speech pathology services, the physician must certify that—

(1) The individual needs or needed physical therapy or speech pathology services;

(2) The services are furnished under a written plan of treatment that meets the following requirements:

(i) A physician, or the speech pathologist who will furnish the speech pathology services, or the physical therapist who will furnish the physical therapy services, establishes a written plan before treatment is begun, and promptly signs it.[3]

(ii) The plan prescribes the type, amount, frequency, and duration of the services to be furnished and specifies the diagnosis and anticipated goals.

(iii) The plan is reviewed periodically by a physician as often as the patient's condition requires, but at least as often as the physician recertifies the continued need for services. Each review is dated and initialed by the physician who performs it.

(iv) Any changes in the plan are made by the physician directly or through orders given to a staff physician, or a registered nurse, or a qualified physical therapist or speech pathologist (as appropriate), and promptly entered in the patient's record and signed.

(3) The services are furnished while the individual is under the care of a physician. For physical therapy services, a doctor of podiatric medicine is considered a physician, if the

[3] Before January 1981, only a physician could establish a plan of treatment for speech pathology services. Speech pathologists were authorized to establish plans effective July 1, 1981; occupational therapists, effective July 18, 1984.

requirements of § 405.1633(a)(1)(iii) are met.[4]

(c) Content of certification: Home dialysis support services. With respect to home dialysis support services, a physician must certify that the services are furnished in accordance with a written plan of treatment established and periodically reviewed by a team that includes the patient's physician and other professionals familiar with the patient's condition.

III. PART 408—MEDICARE ELIGIBILITY AND ENTITLEMENT

A. The table of contents and the authority citation are amended as set forth below:

1. The Subpart A title is revised to read: "Subpart A—Hospital Insurance Eligibility and Entitlement: General Provisions".

2. The undesignated heading immediately preceding § 408.10 is revised to read: "Subpart B—Hospital Insurance Without Premiums".

3. The undesignated heading immediately preceding § 408.20 is revised to read: "Subpart C—Premium Hospital Insurance".

4. The undesignated heading immediately preceding § 408.30 is revised to read: "Subpart D—Special Circumstances that Affect Entitlement to Hospital Insurance".

5. The authority citation is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

B. The text of Part 408 is amended as set forth below:

1. *Subparts B, C, and D—[Headings added]*

The undesignated headings preceding §§ 408.10, 408.20 and 408.30 are removed, and §§ 408.10 through 408.13 are designated as Subpart B—Hospital Insurance Without Premiums, §§ 408.20 through 408.26 are designated as Subpart C—Premium Hospital Insurance, and §§ 408.30 and 408.31 are designated as Subpart D—Special Circumstances that Affect Entitlement to Hospital Insurance.

2. *§ 408.2 [Amended]*

In the first line, "Subparts A through D of this part" is substituted for "This subpart".

3. *§ 408.5 [Amended]*

In paragraphs (a)(3) and (b), "Subpart B of this part" is substituted for "Sections 408.10 through 408.13" and "§§ 408.10 through 408.13" respectively.

4. *§ 408.6 [Amended]*

In § 408.6(d)(4), the phrase "under § 408.10 that is" is inserted immediately after "application".

5. *§ 408.11 [Amended]*

In § 408.11(b)(3), "3 months" is changed to "third month".

6. *§ 408.20 [Amended]*

In paragraphs (a) and (b)(3), "Subpart B of this part" is substituted for "§§ 408.10 through 408.13".

IV PART 409—MEDICARE BENEFITS, LIMITATIONS, AND EXCLUSIONS

A. The table of contents and authority citation of Part 409 are amended as set forth below:

1. The Subpart A title is revised to read: Subpart A—Hospital Insurance Benefits: General Provisions.

2. The undesignated heading immediately preceding § 409.10 is revised to read: Subpart B—Inpatient Hospital Care.

3. The undesignated heading immediately preceding § 409.20 is revised to read: "Subpart C—Posthospital SNF Care".

4. The undesignated heading immediately preceding § 409.30 is revised to read: "Subpart D—Requirements for Coverage of Posthospital SNF Care".

5. The undesignated heading immediately preceding § 409.40 is revised to read: "Subpart E—Home Health Services Under Hospital Insurance".

6. The undesignated heading immediately preceding § 409.60 is revised to read: "Subpart F—Scope of Hospital Insurance Benefits".

7. The undesignated heading immediately preceding § 409.80 is revised to read: "Subpart G—Hospital Insurance Deductibles and Coinsurance".

8. The authority citation is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

B. The text of Part 409 is amended as set forth below:

1. *§ 409.2 [Amended]*

In the first line, "Subparts A through G of this part" is substituted for "This subpart".

2. *§ 409.3 [Amended]*

In the first line, "part" is substituted for "subpart".

3. *§ 409.10 [Amended]*

In paragraph (a), "set forth in this subpart" is substituted for "paragraph (b) of this section and in §§ 409.11 through 409.19".

4. *§ 409.12 [Amended]*

In § 409.12, the phrase "Except as provided in paragraph (b) of this section," is inserted at the beginning of paragraph (a), paragraphs (b) and (c) are removed, and a new paragraph (b) is added to read as follows:

* * * * *

(b) *Exception.* Medicare does not pay for the services of a private duty nurse or attendant. An individual is not considered to be a private duty nurse or attendant if he or she is a hospital employee at the time the services are furnished.

5. *§ 409.20 [Amended]*

In paragraph (a), "this subpart and Subpart D of this part" is substituted for "paragraph (b) of this section and §§ 409.22 through 409.35".

6. *§ 409.27 [Amended]*

In § 409.27, "they are" is inserted immediately after "if".

7. *§ 409.35 [Amended]*

In § 409.35(a), "$100" is changed to "$500".

8. *§ 409.41 [Amended]*

In paragraph (a), "Subpart B of this part" is substituted for §§ 409.11 through 409.18".

9. *§ 409.42 [Amended]*

a. In paragraph (b)(3), a comma is substituted for the word "or", and "or podiatric medicine" is inserted before the semicolon.

b. In paragraph (b)(3), second sentence, the word "continued" is removed.

10. *§ 409.60 [Amended]*

In paragraph (b), "Subpart G of this part" is substituted for "§§ 409.82 through 409.87".

11. *§ 409.68 [Amended]*

a. In the table of contents, in the heading for § 409.68, "before" is substituted for "prior to".

b. In paragraph (a), "Available benefit days" is substituted for "coverage days".

c. In paragraph (a)(1), "available benefit days" is substituted for "available days of coverage".

d. In paragraph (a)(2), "available benefit days" is substituted for "available days of coverage".

e. In paragraph (b)(1), the first "plus" is removed.

V. PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

A. The authority citation is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

B. The text of Part 442 is amended as set forth below:

---

[4] For the specified purpose, a doctor of podiatric medicine is considered a physician effective July 18, 1984.

1. Section 442.311(e) is revised to read as follows:

§ 442.311 Written policies and procedures: Residents bill of rights.

* * * * *

(e) *Financial affairs.*

The ICF must comply with the requirements specified in § 405.1121(m) of this chapter with respect to the protection of patients' personal funds.

* * * * *

2. The Effective Date Note and the small print paragraph (e) at the end of § 442.311 are removed.

3. The Effective Date Note that follows § 442.320 is removed.

4. Section 442.404(e) is revised to read as follows:

§ 442.404 Residents bill of rights.

* * * * *

(e) *Financial affairs.*

Each resident's personal funds must be protected in accordance with the requirements of § 405.1121(m) of this chapter.

* * * * *

5. The Effective Date Note and the small print paragraph 442.404(e) at the end of § 442.404 are removed.

6. Section 442.406 is revised to read as follows:

§ 442.406 Resident finances.

(a) Each resident must be allowed to possess and use money in normal ways or be learning to do so.

(b) The ICF/MR must comply with the requirements specified in § 405.1121(m) of this chapter with respect to the protection of patients' funds.

7. The Effective Date Note and the small print § 442.406 at the end of § 442.406 are removed.

VI. PART 456—UTILIZATION CONTROL

A. The authority citation for Part 456 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

B. *§ 456.360 [Amended]*

In paragraphs (b)(2)(i) and (b)(2)(ii), the word "an" is substituted for "a public".

VII. PART 481—CERTIFICATION OF CERTAIN HEALTH FACILITIES

A. The authority citation for Part 481 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

B. Part 481 is redesignated as Part 491 with no change in content, and all current references throughout Title 42 to Part 481 are changed to refer to Part 491

VIII. PART 488—CONDITIONS OF PARTICIPATION; SPECIALIZED PROVIDERS

A. The authority citation for Part 488 continues to read as follows:

Authority: Secs. 1102, 1861aa, 1861cc, and 1971 of the Social Security Act: 42 U.S.C. 1302 1395x, and 1395hh.

B. Part 488 is redesignated as Part 485, with no change in content, and all current references throughout Title 42 to Part 488 are corrected to refer to Part 485.

C. In redesignated Part 485, § 485.70(g) is revised to read as follows:

§ 485.70 Personnel qualifications.

* * * * *

(g) A *psychologist* must be certified or licensed by the State in which he or she is practicing, if that State requires certification or licensing, and must hold a masters degree in psychology from and educational institution approved by the State in which the institution is located.

* * * * *

(Catalog of Federal Domestic Assistance, Program No. 13.714, Medical Assistance Program; No 13.773, Medicare—Hospital Insurance; and Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: April 25, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 24, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-19601 Filed 8-15-85; 8:45 am]

BILLING CODE 4120-01-M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins and Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by American Hoechst Corp., providing for safe and effective use of a complete broiler feed manufactured with separately approved bambermycins and monensin premixes. The feed is used for prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: American Hoechst Corp., Animal Health Division, Route 202-206 North, Somerville, NJ 08876, filed a supplement to NADA 98-340 providing for use of bambermycins at 1 to 2 grams per ton in combination with monensin 90 to 110 grams per ton in complete broiler feeds. The feeds are used for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima* and for increased rate of weight gain and improved feed efficiency. The supplemental NADA is approved and the regulations are amended accordingly. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.95 by revising the introductory text of paragraph (e)(1)(vi) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(e) * * *

(1) * * *

(vi) *Amount per ton.* Bambermycins, 1 to 2 grams plus monensin, 90 to 110 grams.

* * * * *

3. In § 558.355 by revising paragraph (f)(1)(vi) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(1) * * *

(vi) *Amount per ton.* Monensin, 90 to 110 grams plus bambermycins, 1 to 2 grams. See § 558.95(e)(1)(vi).

* * * * *

Dated: August 9, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-19512 Filed 8-15-85; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2617

Determination of Plan Sufficiency and Termination of Sufficient Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on determination of plan sufficiency that appeared at page 31167 in the **Federal Register** of Thursday, August 1, 1985 (50 FR 31167). This action is needed to correct typographical and editorial errors in cross references.

FOR FURTHER INFORMATION CONTACT: Mrs. Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202-254-4856 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 85-18269 appearing at 31167 in the issue of August 1, 1985:

§ 2617.12 [Corrected]

On page 31170, column two, in § 2617.12 (d), "paragraph (b)" is corrected to read "paragraph (a)" and the phrase "or, if applicable, paragraph (c) of this section" is removed.

David M. Walker,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-19505 Filed 8-15-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 581

Army Discharge Review Board

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: On August 26, 1982, the Department of Defense published 32 CFR Part 70 in the **Federal Register**, which provided guidance to the military departments on the procedures and standards for the Discharge Review Boards. The guidelines were intended to ensure that applicants to the DRBs of the Military Services are fully aware of the proper procedures for submitting an application for discharge review and the conduct of the review. The rule being published today is the Army Discharge Review Board's implementing regulations.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Matthews, Deputy Assistant Secretary (DA Review Boards, Personnel Security and Equal Employment Opportunity Compliance and Complaints Review) Room 1E520, Pentagon, Washington, D.C. 20310 Phone: 202-697-9641.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1982 the Department of the Defense, acting through the Director of the Department of the Army Military Review Boards Agency, published in the **Federal Register** 32 CFR Part 70. This final rule is the Army's implementation of 32 CFR Part 70.

This rule governs the actions and composition of the Army Discharge Review Board (ADRB) under Pub. L. 95-126; Title 10, United States Code (U.S.C.) section 1553; and Department of Defense (DOD) Directive 1332.28. It governs applications and ADRB motions for discharge review, public inspection copying, and distribution of ADRB documents through the Armed Forces Discharge Review/Correction Board Reading Room; preparing decisional documents and index entries; and processing complaints regarding them.

Executive Order 12291

The Department of the Army has determined that this document does not meet the criteria for a "major rule" as specified in section I (6) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The Department of the Army has determined that Pub. L. 96-354, 5 U.S.C. 601 et seq. does not apply.

Paperwork Reduction Act

The Department of the Army has determined that this document does not contain information collections that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 32 CFR Part 581

Administrative practice and procedure, Archives and records, Disability benefits, Military personnel.

PART 581—[AMENDED]

Accordingly, 32 CFR Part 581 is amended as set forth below:

1. The authority citation for Part 581 is revised to read as set forth below, and any other authority citation appearing under any section in Part 581 is removed.

Authority: 10 U.S.C. 1552, 1553, 1554, 3012; 38 U.S.C. 3103a.

2. Part 581 is amended by revising § 581.2 to read as follows:

§ 581.2 Army Discharge Review Board.

(a) *Purpose.*—This regulation implements 10 U.S.C. 1553, Pub. L. 95-126, and DOD Directive 1332.28 (app. A).

(b) *Explanation of terms.*—(1) *Legal consultant of the Army Discharge Review Board (ADRB).* An officer of The Judge Advocate General's Corps assigned to the ADRB to provide opinions and guidance on legal matters relating to ADRB functions.

(2) *Medical consultant of the ADRB.* An officer of the Army Medical Corps assigned to the ADRB to provide opinions and guidance on medical matters relating to ADRB functions.

(3) *Video tape hearing.* A hearing conducted by an ADRB hearing examiner at which an applicant is given the opportuntiy to present his/her appeal to the hearing examiner, with the entire presentation, including cross-examination by the hearing examiner, recorded on video tape. This video tape presentation is later displayed to a full ADRB panel. Video tape hearings will be conducted only with the consent of the applicant and with the concurrence of the President of the ADRB.

(c) *Composition and responsibilities.*—(1) *Authority.* The ADRB is established under Pub. L. 95-126 and 10 U.S.C. 1553 and is responsible for the implementation of the Discharge Review Board (DRB) procedures and standards within DA.

(2) *The ADRB president.* The president is designated by the Secretary of the Army (SA). The President—

(i) Is responsible for the operation of the ADRB.

(ii) Prescribes the operating procedures of the ADRB.

(iii) Designates officers to sit on panels.

(iv) Schedules panels to hear discharge review appeals.

(v) Monitors the DOD directed responsibilities of the SA on service discharge review matters for the DOD.

(3) *ADRB panels and members.* The ADRB will have one or more panels. Each panel, when in deliberation, will consist of five officers. The senior officer (or as designated by the president ADRB) will act as the presiding officer.

(4) *Secretary Recorder (SR) Branch.* The Chief, SR—

(i) Ensures the efficient overall operation and support of the ADRB panels.

(ii) Authenticates the case report and directives of cases heard.

(5) Secretary Recorder. The SR is an officer assigned to the SR Branch whose duties are to—

(i) Schedule, coordinate, and arrange for panel hearings at a designated site.

(ii) Administer oaths to applicants and witnesses under Article 136 UCMJ.

(iii) Ensure that the proceedings of the cases heard and recorded into the case report and directive of cases.

(6) Administrative Specialist. An Administrative Specialist is an enlisted member assigned to the SR Branch whose duties are to—

(i) Assist the SR in arranging panel hearings.

(ii) Operate and maintain video and voice recording equipment.

(iii) Aid the SR in the administrative operations of the panels.

(7) *Administrative personnel.* Such administrative personnel as are required for the proper functions of the ADRB and its panels will be furnished by the SA.

(d) *Special standards.*—(1) Under the November 27, 1979, order of the United States District Court for the District of Columbia in "Giles v. Secretary of the Army" (Civil Action No. 77–0904), a former Army service member is entitled to an honorable discharge if a less than honorable discharge was issued to the service member who was discharged before 1 January 1975 as a result of an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purpose of entry into a treatment program or to monitor progress through rehabilitation or follow up).

(2) Applicants who believe they fall within the scope of paragraph (d)(1) of this section should place the work CATEGORY "G" in block 7, DD Form 293, (Application for Review of Discharge or Dismissal from the Armed Forces of the United States). Such applications will be reviewed expeditiously by a designated official who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (d)(1) of this section or forward the application to the ADRB if the individual does not fall within the scope of paragraph (d)(1) of this section. The action of the designated official will not constitute an action or decision by the ADRB.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85–19322 Filed 8–15–85; 8:45 am]

BILLING CODE 3710-08-M

POSTAL SERVICE

39 CFR Part 775

Amendments to Environmental Procedures and Floodplain Management and Protection of Wetlands Procedures

Correction

In FR Doc. 85–19061 appearing on page 32411 in the issue of Monday, August 12, 1985, make the following correction:

In the first column, fifth line from the bottom, "775.5" should read "775.6".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SC–008; A–4–FRL–2882–1]

South Carolina: Revision in 111(d) Plan for TRS From Existing Kraft Pulp Mills; Negative Declaration for Primary Aluminum Plants

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a source-specific revision in South Carolina's 111(d) plan for total reduced sulfur (TRS) emissions from existing kraft pulp mills. On December 13, 1984, the State submitted a revised emission standard and an extended compliance schedule for two emission points at Stone Container Corporation's Florence mill which are presently exceeding TRS emission standards. The submittal included economic and technical information justifying the new limit and compliance schedule. The approval of this 111(d) plan revision is consistent with EPA policy on welfare-related pollutants.

EPA is also taking action on a negative declaration made by the State of South Carolina. On May 3, 1983, South Carolina certified that there were no primary aluminum plants in the State which were subject to the requirements of section 111(d) of the Clean Air Act. All States are required to adopt control plans for designated facilities, or certify that a plan is unnecessary because no such facilities exist in the State. EPA is now approving South Carolina's negative declaration for primary aluminum plants.

EFFECTIVE DATE: These actions are effective September 16, 1985.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV Office, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Management Branch, at the above address and following phone: 404/881–3286, or FTS 257–3286.

SUPPLEMENTARY INFORMATION: On Decmeber 13, 1984, the South Carolina Department of Health and Environmental Control (SCDHEC) submitted a 111(d) plan revision for Stone Container which included alternate emission limits for the digesters and an extended compliance schedule for the evaporator hotwell vents. Complete documentation justifying the State's proposed plan revision was included in the submittal.

The digester system at Stone Container's mill is presently subject to a TRS regulation emission standard of 5 ppm (.02 lb TRS per ton of air-dried pulp). The State is relaxing this allowable limit to 1847 ppm, or .29 lb TRS per ton of air-dried pulp (TADP). This represents current actual emission levels at the digester vents. The new regulation standard permits a change in allowable TRS emissions of

approximately 66 tons per year, or about 16 pounds per hour. EPA presently allows emission limit relaxations for welfare pollutant sources if it can be demonstrated that control costs are unreasonable.

The evaporator hot-well vents at the Stone Container facility are presently emitting .39 lb TRS/TADP, which is above their regulation emission limit of .02 lb TRS/TADP (5 ppm). The company plans to construct a TRS incineration system which would bring the evaporator system into compliance with regulation standards. Final compliance will be required forty-nine weeks from today. Under South Carolina air regulations, a source may request an alternate compliance schedule if adherence to the existing schedule is not technically feasible.

Except for the evaporators and digesters, all significant TRS emission points at Stone Container's Florence mill are being controlled to guideline levels. The State has submitted information justifying the company's plans to bring these two sources into compliance.

Stone Container Corporation has documented that the digesters are already emitting low levels of TRS (20 percent of the typical uncontrolled levels) and that the estimated costs to control the digesters at their Florence mill would be $2.48 per ton of air-dried pulp. The company has also modeled the total TRS emissions from their mill to determine the air quality impact of this plan revision. Modeled concentrations at selected population points three to ten miles from the mill were below detectible threshold levels. The company has also substantiated their request for an alternate digester emission limit by such factors as rural mill location and lack of public complaints.

The company has agreed to control TRS emissions from the evaporator hot-well vents by incinerating the noncondensable gases in an existing power boiler. A new compliance schedule was submitted to EPA which would allow the evaporators, and thus the entire mill, to be in compliance with regulatory TRS standards forty-nine weeks after the plan revision is approved by EPA.

EPA has reviewed this documentation and has found that the State's request is adequately justified by economic, technical, and other related criteria. Proposed approval of this 111(d) plan revision was published in the **Federal Register** on April 17, 1985 (50 FR 15186). Only one comment was received on the proposed action. The letter from Stone Container Corporation expressed total support for the TRS plan revision and urged EPA approval without further modification. EPA is therefore taking final approval action on the emission limit relaxation and extended compliance schedule as submitted by South Carolina for Stone Container Corporation.

In addition, South Carolina is required to submit a 111(d) plan for the control of fluoride emissions from existing primary aluminum plants. Since there are no facilities of this type in the State, the State must submit a letter to that effect (negative declaration). The absence of such plants in the State was certified by a letter from John E. Jenkins, P.E., Deputy Commissioner for Environmental Quality Control, to Mr. Charles R. Jeter, Regional Administrator, on May 3, 1983. EPA proposed to approve South Carolina's negative declaration for primary plants on April 17, 1985 (50 FR 15186); today EPA is announcing final approval of that negative declaration.

Final Action

Based on the above information, EPA is approving the § 111(d) TRS plan revision for Stone Container Corporation, as submitted by South Carolina on December 13, 1984. EPA is also approving the State's negative declaration for existing primary aluminum plants.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur.

Dated: August 7, 1985.

Lee M. Thomas,

Administrator.

Part 62 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart PP—South Carolina

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 62.10100 is amended by adding a new paragraph (b)(2) as set forth below:

§ 62.10100 Identification of plan.

* * * * *

(b) * * *

(2) A revision to South Carolina's 111(d) plan for total reduced sulfur which was submitted on December 13, 1984. This revision approved an alternate emission limit for the digesters and an extended compliance schedule for the evaporators at Stone Container Corporation.

3. Section 62.10120 is amended by revising paragraph (4) as follows:

§ 62.10120 Identification of sources.

* * * * *

(4) Stone Container Corporation in Florence.

4. Section 62.10140 and a new center heading are added as follows:

Fluoride Emissions From Existing Primary Aluminum Reduction Plants

§ 62.10140 Identification of Plan—Negative declaration.

The South Carolina Department of Health and Environmental Control submitted on May 3, 1983, a letter certifying that there are no existing primary aluminum plants in the State which are subject to Part 60, Subpart B, of this Chapter.

[FR Doc. 85–19427 Filed 8–15–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 150

[CGD 83–047]

Compatibility of Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: 46 CFR Part 150 contains requirements for compatible stowage of bulk liquid hazardous materials on tank vessels. This final rule updates 46 CFR Part 150 by adding recently authorized exceptions to the Compatibility Chart and cargoes approved for carriage since the final rule was published on April 14, 1983 (48 FR 16059). This final rule also incorporates CHRIS codes into Table 1, corrects typographical errors, specifies reactivity differences within chemical groups, and deletes descriptive phrases, such as, "inhibited", "stabilized", and "%" when these have no effect on the compatibility classification of the material. (CHRIS codes are three letter codes that have been assigned to every chemical contained in the Coast Guard's Chemical Hazards Response Information System (CHRIS).)

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Michael C. Parnarouskis, (202) 426–1577.

SUPPLEMENTARY INFORMATION: On January 11, 1985 (50 FR 1551), the Coast Guard published a notice of proposed rulemaking. Interested persons were given a deadline of February 11, 1985 for submission of written comments. A public hearing was to be scheduled if requested by anyone raising a genuine issue. No request for a public hearing has been received. However, comments were received that brought attention to a few editorial changes, and these are included in this final rule. It should be noted that the Compatibility Chart, and its authorized exceptions and companion Tables, listing chemicals alphabetically and by group, will be updated periodically as the Coast Guard approves new chemical cargoes for carriage.

Several changes are made to correct typographical errors of no substantive effect.

Regulatory Evaluations

These regulations are considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

The addition of commodities to the Tables in Part 150 neither authorizes nor prohibits the carriage of a particular cargo. Authorized cargoes are listed in 46 CFR 30.25, 46 CFR 151.01–10, Table I of 46 CFR 153, Appendix I of 46 CFR 154, and Appendices A and B of 46 CFR 154a. The regulations in Part 150 identify those cargoes which are not compatible and prescribe minimum standards for keeping incompatible cargoes separated while being carried, thus, the rules in this part have only minimal economic impact. Because the economic impact of this final rule has been found to be so minimal, further evaluation is unnecessary.

Regulatory Flexibility Act

Since the economic impact of this final rule is expected to be minimal, in accordance with paragraph 605(d) of the Regulatory Flexibility Act (94 Stat 1164), the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 150

Hazardous materials transportation.

Accordingly, Part 150 of Title 46 of the Code of Federal Regulations is amended as follows:

1. By revising the Part heading to read as follows:

PART 150—COMPATIBILITY OF CARGOES

2. By revising the authority citation for Part 150 to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46.

3. By revising § 150.120 to read as follows:

§ 150.120 Definition of incompatible cargoes.

Except as described in § 150.150, a cargo of hazardous material is incompatible with another cargo listed in Table I if the chemical groups of the two cargoes have an "X" where their columns intersect in Figure 1 and are not shown as exceptions in Appendix I. (See also § 150.140.)

4. By revising § 150.140 to read as follows:

§ 150.140 Cargoes not listed in Table I or II.

A cargo of hazardous material not listed in Table I or II must be handled as if incompatible with all other cargoes until the Commandant (G–MTH) (tel. no. (202) 426–1577) assigns the hazardous material to a compatibility group. (Table I lists cargoes alphabetically while Table II lists cargoes by compatibility group).

5. By revising § 150.150 to read as follows:

§ 150.150 Exceptions to the Compatibility Chart.

The Commandant (G–MTH) authorizes, on a case by case basis, exceptions to the rules in this subpart under the following conditions:

(a) when two cargoes shown to be incompatible in Figure 1 meet the standards for a compatible pair in Appendix III, or

(b) when two cargoes shown to be compatible in Figure 1 meet the standards for an incompatible pair in Appendix III.

Appendix I contains cargoes which have been found to be exceptions to Figure 1, the Compatibility Chart.

6. By revising the introductory text of § 150.160 to read as follows:

§ 150.160 Carrying a cargo as an exception to the Compatibility Chart.

The Operator of a vessel having on board a cargo carried as an exception under § 150.150 but not listed in Appendix I, Exceptions to the Chart, shall make sure that—

* * * * *

7. By revising the Figure 1—Compatibility Chart to read as follows:

BILLING CODE 4910–14–M

Figure 1.—Compatibility Chart

CARGO COMPATIBILITY / CARGO GROUPS	1. NON-OXIDIZING MINERAL ACIDS	2. SULFURIC ACID	3. NITRIC ACID	4. ORGANIC ACIDS	5. CAUSTICS	6. AMMONIA	7. ALIPHATIC AMINES	8. ALKANOLAMINES	9. AROMATIC AMINES	10. AMIDES	11. ORGANIC ANHYDRIDES	12. ISOCYANATES	13. VINYL ACETATE	14. ACRYLATES	15. SUBSTITUTED ALLYLS	16. ALKYLENE OXIDES	17. EPICHLOROHYDRIN	18. KETONES	19. ALDEHYDES	20. ALCOHOLS, GLYCOLS	21. PHENOLS, CRESOLS	22. CAPROLACTAM SOLUTION	
1. NON-OXIDIZING MINERAL ACIDS		H			H	X	X	H	X	X	X	H	X				H	X					1
2. SULFURIC ACID	X		H	H	H	X	H	H	H	X	X	H	X	H	H	H	X	X	X	X	H	X		2
3. NITRIC ACID		H			H	H	X	X	X	X	X	H	H	H	X	H	X	X	X	X	X			3
4. ORGANIC ACIDS		X			X	H	X	H				H				X	X							4
5. CAUSTICS	H	H	X	H							H	H				X	X		X	X	H	H		5
6. AMMONIA	H	X	H	X						X	H	H	X			H	X		H					6
7. ALIPHATIC AMINES	H	H	X	X							H	H	H	X	X	X	H	X	X	H	H	X		7
8. ALKANOLAMINES	H	H	X	X							H	H	H	X	X	X	X		H					8
9. AROMATIC AMINES	H	H	H								H	H							H					9
10. AMIDES	X	X	H			H						H									H			10
11. ORGANIC ANHYDRIDES	X	X	H		X	H	H	X	H															11
12. ISOCYANATES	X	X	H	X	X	X	H	X	H	H										X		X		12
13. VINYL ACETATE	X	X	H			H	H	H																13
14. ACRYLATES		H	H				H	X																14
15. SUBSTITUTED ALLYLS		X	X				X	H																15
16. ALKYLENE OXIDES	X	X	X	X	H	X	H	X																16
17. EPICHLOROHYDRIN	X	X	X	X	X	X	H	H																17
18. KETONES		X	H				X																	18
19. ALDEHYDES		H	H		H	H	X	X	X															19
20. ALCOHOLS, GLYCOLS		H	H		H		H					H												20
21. PHENOLS, CRESOLS		H	H		X		X			X														21
22. CAPROLACTAM SOLUTION		X			H		X					X												22
30. OLEFINS		X	X																					30
31. PARAFFINS																								31
32. AROMATIC HYDROCARBONS			X																					32
33. MISCELLANEOUS HYDROCARBON MIXTURES			X																					33
34. ESTERS		X	X																					34
35. VINYL HALIDES			X																			X		35
36. HALOGENATED HYDROCARBONS																								36
37. NITRILES		H																						37
38. CARBON DISULFIDE							H	H																38
39. SULFOLANE																								39
40. GLYCOL ETHERS		X										X												40
41. ETHERS		X	X																					41
42. NITROCOMPOUNDS					X	X	X	X	X															42
43. MISCELLANEOUS WATER SOLUTIONS		X										H												43
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22		

BILLING CODE 4910-14-C

8. By revising Table I, including the footnote, as follows:

TABLE I—ALPHABETICAL LIST OF CODES

Chemical name	Group No.	Chris code	Related Chris codes
Acetaldehyde	19	AAD	
Acetic acid	4	AAC	
Acetic anhydride	11	ACA	
Acetone	18	ACT	
Acetone cyanohydrin	*20	ACY	
Acetonitrile	37	ATN	
Acetophenone	18	ACP	
Acetyl tributyl I citate	34		
Acrolein	*19	ARL	
Acrylamide solution	10	AAM	
Acrylic acid	*4	ACR	
Acrylonitrile	*15	ACN	
Adiponitrile	37	ADN	
Alcohols (mixed)	20		
Alkyl benzene sulfonic acid	**20	ABS	
Alkyl phthalates	34		
Allyl alcohol	*15	ALA	
Allyl chloride	15	ALC	
2-(2-Aminoethoxy)ethanol	8	AEX	
Aminoethylethanolamine	8	AEE	
N-Aminoethylpiperazine	*7	AEP	
2-Amino-2-methyl-1-propanol	*8	APR	
Ammonia, anhydrous	8	AMA	
Ammonium bisulfite solution	*45(2)		ASU
Ammonium hydroxide (28 pct. or less Ammonia).	8	AMH	
Ammonium nitrate, Urea solution (containing Ammonia).	6	UAS	
Ammonium nitrate, Urea solution (not containing Ammonia).	43	ANU	
Ammonium polyphosphate solution.	43		
Ammonium sulfate solution	40		AMS
Ammonium sulfide solution	*5	ASS	
Amyl acetate	34		IAT/AML/AMS/AVA
Amyl alcohol	20		IAA/AAN
Amylene	*30		
Amyl methyl ketone	*18	AMK	
Amyl tallate	34		
Aniline	9	ANL	
Asphalt	33	ASP	
Asphalt blending stocks, roofers flux.	33	ARF	
Asphalt blending stocks, straight run residue.	33	ASR	
Behenyl alcohol	20		
Benzene	32	BNZ	
Benzene, Hydrocarbon mixtures (10 pct. Benzene or more)	*32	BHB	
Benzenesulfonyl chloride	*20	BSC	
Benzene, Toluene, Xylene mixtures.	32	BTX	
Benzyl alcohol	*21	BAL	
Benzyl chloride	*36	BCL	
Butadiene	30	BDI	
Butadiene, Butene mixtures (cont. Acetylenes).	*30	BBM	
Butane	31	BNX	IBT/BUT
Butene	30	BTN	IBL
Butyl acetate	34		IBA/BCN/BTA/BYA
Butyl acrylate	14	BAR	BAI/BTC
Butyl alcohol	20		IAL/BAN/BAE/BAT
Butylamine	7	BTY	IAM/BAM/BTL/BUA
Butyl benzyl phthalate	34	BBH	
Butylene	30		BTN/IBL
Butylene glycol	*20		
Butylene oxide	18	BYO	
Butyl ether	A1	BTE	
Butyl formate	*34	BFM	BFI
Butyl heptyl ketone	18		
Butyl methacrylate	14	BMR	BMI/BMM
Butyl methacrylate, Decyl methacrylate, Cetyl eicosyl methacrylate mixture.	14	DBR	

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Butyraldehyde	19	BAE	BADI/BTR/BFA
Butyric acid	4	BRA	
gamma-Butyrolactone	*20	BLA	
Calcium bromide solution	43		
Calcium chloride solution	43		CLC
Calcium sulfonate, Calcium carbonate, Hydrocarbon solvent mixture.	†35		
Camphor oil	18	CPO	
Caprolactam solution	32	CLS	
Carbolic oil	21	CBO	
Carbon black base	33		
Carbon disulfide	36	CSB	
Carbon tetrachloride	36	CST	
Cashew nut shell oil (unreacted).	8	CSN	
Caustic potash solution	*5	CPS	
Caustic soda solution	*5	CSS	
Cetyl eicosyl methacrylate	*14	CEM	
Chlorine	†0	CLX	
Chloroacetic acid solution	*4	CHM	CHL/MCA
Chlorobenzene	36	CRB	
Chlorodifluoromethane	*36	MCF	
Chloroform	36	CRF	
Chloronitrobenzene, see o-Nitrochlorobenzene.			CNO/CNP
Chlorosulfonic acid	†0	CSA	
Chlorotoluene	†36	CHI	CTM/CTO/CRN
Choline chloride solutions	20		
Corn syrup	43	CSY	
Creosote	21	CCW	CCT/CWD
Cresols	21	CRS	CRL/CSL/CSO
Cresylate spent caustic	5	CSC	
Cresylic acid	21	CRY	
Crotonaldehyde	*19	CTA	
Cumene	32	CUM	
Cycloaliphatic resins	31		
Cyclohexene	31	CHX	
Cyclohexene oxidation product acid water.	*4		
Cyclohexanol	20	CHN	
Cyclohexanone	18	CCH	
Cyclohexanone, Cyclohexanol mixtures.	**18	CYX	
Cyclohexylamine	7	CHA	
Cyclopentadiene polymers	30		
Cyclopentadiene, Styrene, Benzene mixtures.	30	CSB	
Cymene	32	CMP	
Decaldehyde	19		IDA/DAL
Decane	31	DDC	
Decene	30	DCE	
Decyl acrylate	14	DAT	IAI/DAR
Decyl alcohol	20		ISA/DAN
Decyl benzene	32	DBZ	
Dextrose solution	43	DTS	
Diacetone alcohol	20	DAA	
Diammonium salt of Zinc EDTA solution.	43	DSZ	
Dibutylamine	7	DBA	
Dibutyl phthalate	34	DPA	
Dichlorobenzene	36		DBM/DBO/DBP
Dichlorodifluoromethane	36	DCF	
1,1-Dichloroethane	36	DCH	
2,2'-Dichloroethyl ether	A1	DEE	
2,2'-Dichloroisopropyl ether	36	DCI	
Dichloromethane	36	DCM	
2,4-Dichlorophenol	21	DCP	
Dichloropropane	36	DPX	DPB/DPP/DPC/DPL
1,3-Dichloropropene	15	DPS	DPF/DPU
Dichloropropene, Dichloropropane mixtures.	15	DMX	
2,2-Dichloropropionic acid	4	DCN	
Dicyclopentadiene	30	DPT	
Diethanolamine	8	DEA	
Diethanolamine salt of 2,4-D acid Dichlorophenoxyacetic acid solution.	*43	DIZ	
Diethylamine	7	DEN	
Diethylbenzene	32	DEB	

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Diethylene glycol	A0	DEG	
Diethylene glycol monobutyl ether.	A0	DME	
Diethylene glycol monobutyl ether acetate.	34	DEM	
Diethylene glycol monoethyl ether.	A0	DGE	
Diethylene glycol monomethyl ether.	A0	DGM	
Diethylene glycol monophenyl ether.	A0		
Diethylenetriamine	7	DET	
Diethylethanolamine	8	DAE	
Di-2-ethylhexylphthalate	*34		
Diethyl sulfate	34	DSU	
Diglycidyl ether of Bisphenol A.	A1	BDE	BPA
Diheptyl phthalate	34	DDHP	
Di-n-hexyl adipate	*34		
Diisobutylamine	*7	DSU	
Diisobutyl carbinol	20	DBC	
Diisobutylene	30	DBL	
Diisobutyl ketone	18	DIK	
Diisodecyl phthalate	34	DID	
Diisononyl adipate	*34		
Diisononyl phthalate	34	DIN	
Diisooctyl phthalate	34	DIO	
Diisopropanolamine	8	DIP	
Diisopropylamine	7	DIA	
Diisopropyl benzene	32		
Diisopropyl naphthalene	32		
Dimethyl acetamide	10	DAC	
Dimethyl adipate	*34		
Dimethylamine	7	DMA	DMC/DMG/DMY
Dimethylamine salt of 2,4-D solution.	*0(2)	DDA	DSX
Dimethylcyclicsiloxane hydrolyzate.	*34		
N,N-Dimethylcyclohexylamine	7	DXN	
Dimethylethanolamine	8	DMB	
Dimethylformamide	10	DMF	
Dimethyl furan	*41		
Dimethyl glutarate	*34		
Dimethyl hydrogen phosphite	**34	DPI	
2,2-Dimethyloctanoic acid	4	DMO	
Dimethyl phthalate	34	DTL	
Dimethyl polysiloxane	34	DMP	
2,2-Dimethylpropane-1,3-diol	20		
Dimethyl succinate	*34		
Dinonyl phthalate	34		
Dioctyl phthalate	34	DOP	
1,4-Dioxane	A1	DOX	
Diphenylene	30	DPN	
Diphenyl, Diphenyl oxide	*33	DDO	DTH
Diphenylmethane diisocyanate.	12	DPM	
Diphenyl oxide, Diphenyl phenyl ether mixture.	41		
Di-n-Propylamine	7	DNA	
Dipropylene glycol	A0	DPG	
Dipropylene glycol dibenzoate.	34		
Distillates, flashed feed stocks.	33	DFF	
Distillates, straight run	33	DSR	
Diundecyl phthalate	34	DUP	
Dodecane	31		
Dodecanol	20	DDN	LAL
Dodecene	30	DDD	DDC
Dodecylamine, Tetradecylamine mixture.	*7	DTA	
Dodecylbenzene	32	DDB	
Dodecyl diphenyl oxide disulfonate solution.	43	DDS	
Dodecyl methacrylate	*14	DDM	
Dodecyl, Pentadecyl methacrylate.	14	DDP	
Dodecyl phenol	*21	DDL	
Epichlorohydrin	17	EPC	
Epoxy resin	18		
Ethane	31	ETH	
Ethanolamine	8	MEA	
Ethoxylated alcohols, C11-C15.	20		EDD/ENP/EOP/EOT/ETD

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Ethoxy triglycol	40	ETG	
Ethyl acetate	34	ETA	
Ethyl acetoacetate	*34	EAA	
Ethyl acrylate	14	EAC	
Ethyl alcohol	20	EAL	
Ethylamine	7	EAM	
Ethylamine solution	*7	EAN	
Ethyl benzene	32	ETB	
Ethyl butanol	20	EBT	
N-Ethyl-n-butylamine	7	EBA	
Ethyl butyrate	*34	EBR	
Ethyl chloride	36	ECL	
N-Ethyl cyclohexylamine	*7	ECC	
Ethylene	30	ETL	
Ethylene chlorohydrin	20	ECH	
Ethylene cyanohydrin	20	ETC	
Ethylenediamine	*7	EDA	EMX
Ethylene dibromide	36	EDB	
Ethylene dichloride	36	EDC	
Ethylene glycol	20	EGL	
Ethylene glycol monobutyl ether.	40	EGM	
Ethylene glycol monobutyl ether acetate.	34	EMA	
Ethylene glycol monoethyl ether.	40	EGE	
Ethylene glycol monoethyl ether acetate.	34	EGA	
Ethylene glycol monoisopropyl ether.	40		
Ethylene glycol monomethyl ether.	40	EME	
Ethylene glycol phenyl ether	40		
Ethylene oxide	10	EOX	
Ethylene oxide, Propylene oxide mixture.	*16	EPM	
Ethylene, Vinyl acetate copolymer emulsion.	*43		
Ethyl ether	41	EET	
Ethylhexaldehyde	19	EHA	
2-Ethylhexanol	20	EHX	
2-Ethylhexanoic acid	8		
2-Ethylhexyl acrylate	14	EAI	
2-Ethyl hexylamine	7	EHM	
Ethyl hexyl tallate	34	EHT	
Ethylidene norbornene	*30	ENB	
Ethyl methacrylate	14	ETM	
2 Ethyl-6-methyl-N-(1-methyl-2-methoxyethyl)aniline.	8	EEM	
Ethyl propionate	*34	EPR	
2-Ethyl-3-propylacrolein	*19	EPA	
Fatty acid amides	33		
Formaldehyde, Methanol mixtures.	*19		
Formaldehyde solution	19	FMS	
Formamide	*10	FAM	
Formic acid	4	FMA	
Furfural	19	FFA	
Furfuryl alcohol	20(2)	FAL	
Gas oil, cracked	33	GOC	
Gasoline blending stock, alkylates.	28	GAK	
Gasoline blending stock, reformates.	28	GRF	
Gasolines:			
Automotive (not over 4.23 grams lead per gal.).	28	GAT	
Aviation (not over 4.86 grams lead per gal).	33	GAV	
Casinghead (natural)	28	GCS	
Polymer	28	GPL	
Straight run	33	GSR	
Glutaraldehyde solution	19	GTA	
Glycerine	20	GCR	
Glyceryl triacetate	34		
Glycidyl ester of Versatic acid.	34		
Glycol diacetate	34		
Glycols, Resins, and Solvents mixture.	33		
Glyoxal solutions	19	GOS	
Heptane	31	HPT	
n-Heptanoic acid	4	HEP	
Heptanol	*20	HTN	
1-Heptene	30	HTE	
Herbicide (C15-H22-N02-Cl)	33		
Hexamethylenediamine solution.	*7	HMC	HMD

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Hexamethylenetetramine	*7	HMT	
Hexamethylenimine	7	HMI	
Hexane	31	HXA	HAI/HOA
Hexanol	20	HXN	
Hexene	30	HXE	
Hexylene glycol	20	HXG	
Hydrochloric acid	1	HCL	
Hydrochloric acid, spent	*1	HCS	
Hydrofluoric acid	1	HFA	
Hydrofluorosilicic acid	1	HFS	
Hydrogen peroxide solutions	10		HPM/ HPS/ HPO
2-Hydroxyethyl acrylate	D(2)	HAI	
Industrial waste (containing Dimethyldisulfied, Methyl mercaptan, and Methomyl).	*32	INW	
Isophorone	*18	IPH	
Isoprene	30	IPR	
Jet fuels:			
JP-1	33	JPO	
JP-3	33	JPT	
JP-4	33	JPF	
JP-5	33	JPN	
Kaolin clay slurry	43		
Kerosene	33	KRS	
Ketone residue	*16		
Kraft black liquor	*5		
Latex, liquid synthetic	43	LLS	
Lignin liquor	43		
Magnesium chloride solution	*30		
Magnesium nonyl phenol sulfide.	33		
Maleic anhydride	11	MLA	
Maleic anhydride copolymer	43		
Mesityl oxide	*18	MSO	
Methacrylic acid	8	MAC	
Methacrylonitrile	*15	MET	
Methane	31	MTH	
Methoxy triglycol	40	MTG	
Methyl acetate	34	MTT	
Methyl acetoacetate	34		
Methyl acetylene, Propadiene mixture.	30	MAP	
Methyl acrylate	14	MAM	
Methyl alcohol	20	MAL	
Methylamine	7	MTA	
Methylamine solutions	7	MSZ	
Methyl amyl acetate	34	MAC	
Methyl amyl alcohol	20	MAA	
Methyl amyl ketone	*18	MAK	
Methyl bromide	36	MTB	
Methyl tert-butyl ether	*41	MBF	
3-Methyl butyraldehyde	19		
Methyl butyrate	*34	MBU	
Methyl chloride	36	MTC	
4,4'-Methylene dianiline (43 pct. or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixtures.	*9	MDB	
2-Methyl-6-ethyl aniline	9	MEN	
Methyl ethyl ketone	18	MEK	
2-Methyl-5-ethyl pyridine	8	MEP	
Methyl formal	41	MTF	
Methyl formate	*34	MFM	
Methyl heptyl ketone	18	MHK	
2-Methyl-1,2-hydroxy-3-butyne.	20	MHB	
Methyl isoamyl ketone	18		
Methyl isobutyl carbinol	20	MIC	
Methyl isobutyl ketone	18	MIK	
Methyl methacrylate	14	MMM	
Methyl naphthalene	32	MNA	
Methylolureas	19	MUS	
Methyl pyridine	8		MPE/ MPF/ MPH
N-Methyl pyrrolidone	9	MPY	
alpha-Methyl styrene	30	MSR	
Mineral spirits	33	MNS	
Molasses	20		
Monochlorodifluoromethane	36	MCF	
Morpholine	7	MPL	
Motor fuel antiknock compounds containing lead alkyls.	10	MFA	
Naphtha:			
Coal tar	33	NCT	
Cracking fraction	*33		

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Petroleum	33	PTN	
Solvent	33	NSV	
Stoddard solvent	33	NSS	
Varnish Makers' and Painters'.	33	NVM	
Naphthalene	32	NTM	
Naphthenic acid	4	NTI	
Nitric acid (70 pct. or less)	3	NCO	
Nitric acid (greater than 70 pct.).	*8		NAC
Nitrobenzene	42	NTB	
o-Nitrochlorobenzene	42	ONO	ONF
Nitroethane	*42	NTE	
o-Nitrophenol	*39	NTP	NIP/NPH
Nitropropane	42	NPM	NPN/NPP
Nitropropane, Nitroethane mixture.	*42	NNM	
Nitrotoluene	42	NIT	NME/NTT/ NTR
Nonane	31	NAN	
Nonene	30	NON	NNE
Nonyl alcohol	20	NNN	
Nonyl phenol	21	NNP	
Nonyl phenol (ethoxylated)	40		
Nonyl phenol sulfide solution	33		NPS
1-Octadecene	30		
Octadecenoamide	15		
Octane	31	OMN	KOO
Octene	30	OTE	
Octyl alcohol	20	OTA	KOA
Octyl aldehyde	19		KOC
Octyl epoxytallate	34	OET	
Octyl nitrate	*34		
Octyl phenol	*21		
Oils:			
Clarified	33	OCF	
Coal	33		
Crude	33	OIL	
Diesel	33	ODS	
Residual	33		
Road	33	ORD	
Transformer	33	OTF	
Edible oils, including:			
Babassu	34		
Castor	34	OCA	
Coconut	34	OCC	
Coconut, methyl ester	34		
Corn	34		
Cotton seed	34	OCS	
Cotton seed, fatty acid	34		
Fish	34	OFS	
Lard	34	OLD	
Olive	34	OOL	
Palm	34	OPM	
Peanut	34	OPN	
Rapeseed	34		
Rice bran	34		
Safflower	34	OSF	
Soya bean	34	OSB	
Soybean (epoxidized)	40		EVO
Sunflower seed	34		
Tucum	34	OTC	
Vegetable	34	OVG	
Fuel oils:			
No. 1	33	DON	
No 1-D	33	DOD	
No. 2	33	DTW	
No. 2-D	33	DTD	
No. 4	33	DFR	
No. 5	33	DFV	
No. 6	33	DSX	
Miscellaneous oils, including:			
Absorption	33	OAB	
Aliphatic	33		
Aromatic (5 pct. or less Benzene).	35		
Coal tar	33	OCT	
Petroleum distillate	33		
Linseed	33	OLE	
Lubricating	33	OLB	
Mineral	33	OMN	
Mineral seal	33	OMS	
Motor	33	OMT	
Neatsfoot	33	ONF	
Oiticica	34		
Penetrating	33	OPT	
Range	33	ORG	
Resin	33	ORS	
Resinous petroleum	33		

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Rosin	33	ORN	
Seal	34		
Soapstock	34		
Sperm	[illegible]	OSP	
Spindle	[illegible]	[illegible]	
Spray	33	OSY	
Tall	[illegible]	OTL	
Tall, fatty acid	*34		
Tanner's	[illegible]	OTN	
Tung	34		
Turbine	[illegible]	[illegible]	
White (mineral)	33		
Oleic acid	[illegible]	OLA	
Oleum	[illegible]	OLM	
Oxyalkylated alkyl phenol formaldehyde	*33		
Pentachloroethane	[illegible]	PCE	
Pentadecanol	[illegible]	POC	
1,3-Pentadiene	30	PDI	PDN
Pentaethylenehexamine, Tetraethylenepentamine mixture	*7	PEP	
Pentane	31		IPT/PTA
1-Pentene	30	PTE	
Pentene, Miscellaneous hydrocarbon mixture.	[illegible]		
3-Pentenenitrile	37	PNT	
Pentyl aldehyde	19		
Perchloroethylene	[illegible]	PER	
Petrolatum	33	PTL	
Phenol	21	PHN	
Phosphonic acid	[illegible]	PAC	
Phosphorus	[illegible]		PPW/PPR/PPS
Phthalic anhydride	11	PAN	
Pinene	[illegible]		
Polyalkenyl succinic anhydride amine.	*33		
Polybutadiene, hydroxyl terminated.	*20		
Polybutene	[illegible]	PLB	
Polydimenthylsiloxane	*34		
Polyethylene glycols	[illegible]		
Polyethylene polyamines	7	PEB	
Polymethylene polyphenyl isocyanate	12	PPI	
Polymethylsiloxane	*34		
Polypropylene	[illegible]	PLP	
Polypropylene glycol	40	PGC	
Polypropylene glycol methyl ether	40	PGM	
Polyvinylbenzyltrimethyl ammonium chloride solution.	[illegible]	PVB	
Propane	31	[illegible]	
Propanolamine	[illegible]		MPA/PLA/PRM
Propionaldehyde	[illegible]	PAD	
Propionic acid	[illegible]	PNA	
Propionic anhydride	11	PAH	
Propionitrile	37	PCN	
Propyl acetate	[illegible]		IAC/PAT
Propyl alcohol	[illegible]		IPA/PAL
Propylamine	7		IPO/IPP/PRA
Propylene	30	PPL	
Propylene butylene polymer	[illegible]	PBP	
Propylene glycol	[illegible]	PPG	
Propylene oxide	16	POX	
Propylene tetramer	30	PTT	
Propyl ether	41	PMM	IPE
Pseudocumene	[illegible]		TME
Pyridine	[illegible]	PRD	
Pyridine bases	*9	PRB	
Rum	*20		
Salicylaldehyde	*19	SAL	
Sewage sludge	43		
Sodium borohydride, Sodium hydroxide solution.	[illegible]	SBX	SBH/SBI
Sodium carbonate solutions	[illegible]		
Sodium chlorate solution	[illegible]	SDO	SDC
Sodium cyanide solution	5	SCS	SCN
Sodium dichromate solution	[illegible]	SDL	SCR
Sodium dimethyl naphthalene sulfonate solution	[illegible]		
Sodium hydrosulfide solution	[illegible]	SHR	
Sodium hypochlorite solution	5	SHP	SHC
Sodium 2-mercaptobenzothiazol solution.	*5	SMD	

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Sodium polyacrylate solution	[illegible]		
Sodium salt of Ferric hydroxy-ethylenediamine triacetic acid solution.	*43	STA	
Sodium silicate solution	[illegible]	SSC	
Sodium sulfide, hydrosulfide solution.	[illegible]		SSH/SSI/SSJ
Sodium thiocyanate solution	[illegible]	[illegible]	SCY
Sorbitol solutions	[illegible]		SBT
Stearic acid	[illegible]	SRA	
Styrene	[illegible]	STY	
Sulfolane	[illegible]	SFL	
Sulfur	[illegible]	SXX	
Sulfuric acid	[illegible]	SFA	
Sulfuric acid, spent	[illegible]	SAC	
Tallow	[illegible]	TLO	
Tallow fatty acid	[illegible]		
Tallow fatty alcohol	[illegible]	TFA	
Tallow nitrile	37		
1,1,2,2-Tetrachloroethane	[illegible]	TEC	
Tetradecanol	[illegible]	TTN	
Tetradecene	[illegible]	TTD	
Tetradecylbenzene	32	[illegible]	
Tetraethylene glycol	40	TTG	
Tetraethylenepentamine	[illegible]	TTP	
Tetrahydrofuran	[illegible]	THF	
Tetrahydronaphthalene	32	THN	
Tetrasodium salt of EDTA solution.	43		
Titanium tetrachloride	*2	TTT	
Toluene	32	TOL	
Toluenediamine	[illegible]	TDA	
Toluene diisocyanate	12	TDI	
o-Toluidine	9	TLI	
Triarylphosphate	[illegible]		
Tributyl phosphate	[illegible]	TBP	
1,2,4-Trichlorobenzene	36	TCB	
1,1,1-Trichloroethane	36	TCE	
1,1,2-Trichloroethane	36	TCM	
Trichloroethylene	[illegible]	TCL	
1,2,3-Trichloropropane	*36	TCN	
1,1,2-Trichloro-1,2,2-trifluoroethane	[illegible]		
Tridecane	[illegible]		
Tridecanol	[illegible]	TDN	
Tridecene	[illegible]	TDC	
Tridecylbenzene	[illegible]		
Triethanolamine	[illegible]	TEA	
Triethylamine	7	TEN	
Triethyl benzene	[illegible]	TEB	
Triethylene glycol	[illegible]	TEG	
Triethylene glycol butyl ether mixture	[illegible]		
Triethylene glycol ether mixtures.	[illegible]		
Triethylenetetramine	7	TET	
Triethyl phosphate	[illegible]		
Triethyl phosphite	[illegible]	TPI	
Triisooctyl trimellitate	34		
Triisopropanolamine	[illegible]	TIP	
Triisopropanolamine salt of 2,4-D acid solution.	*43	TSA	
Trimethyl benzene	32		TMD/TME/TMB
2,2,4-Trimethyl pentanediol-1,3-diisobutyrate.	[illegible]		
2,2,4-Trimethyl-3-pentanol-1-isobutyrate.	[illegible]		
Tripropylene	[illegible]		
Tripropylene glycol	[illegible]	TGC	
Tripropylene glycol monomethyl ether	*40		
Trisodium nitrilotriacetate	*34		
Turpentine	30	TPT	
Undecanol	20	[illegible]	
Undecene	[illegible]	UDC	
Undecylbenzene	32	[illegible]	
Urea, Ammonium nitrate solution (containing Ammonia).	[illegible]	UAS	
Urea, Ammonium nitrate solution (not containing Ammonia).	43	ANU	
Valeraldehyde	*19	VAK	IVA/VAL
Vanillin black liquor	*5	VBL	
Vinyl acetate	13	VAM	
Vinyl acetate, Fumarate copolymer	[illegible]		

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Vinyl chloride	35	VCM	
Vinyl ethyl ether	*13	VEE	
Vinylidene chloride	[illegible]	VCI	
Vinyl neodecanate	13	VND	
Vinyl toluene	13	VNT	
Waxes			
Carnauba	*34	WCA	
Paraffin	*31	WPF	
Xylene	32	XLX	XLM/XLO/XLP
Zinc bromide, calcium bromide solution.	43		

* New addition to 46 CFR Part 150.

[1] Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G-MTH-3), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-1577.

[2] See Appendix I—Exceptions to the Chart.

9. By revising Table II to read as follows:

Table II—Grouping of Cargoes

0. *Unassigned Cargoes*
   - Acetone cyanohydrin *(2)
   - Alkyl benzene sulfonic acid *(1,2)
   - Benzenesulfonyl chloride *(2)
   - gamma-Butyrolactone *(2)
   - Chlorine (1)
   - Chlorosulfonic acid (1)
   - Dimethylamine salt of 2,4-D solution *(2)
   - Ethylene (1)
   - 2-Hydroxyethyl acrylate *(2)
   - Magnesium chloride solution *(2)
   - Motor fuel antiknock compounds containing Lead alkyls (1)
   - Nitric acid (greater than 70 pct.) (1)
   - o-Nitrophenol *(2)
   - Oleum (1,2)
   - Phosphorus (1)
   - Sodium chlorate solution *(2)
   - Sodium dichromate solution *(2)
   - Sodium sulfide, hydrosulfide solution *(1)
   - Sodium thiocyanate solution *(2)
   - Sulfur (1)

1. *Non-Oxidizing Mineral Acids*
   - Hydrochloric acid
   - Hydrochloric acid, spent *
   - Hydrofluoric acid
   - Hydrofluorosilicic acid
   - Phosphoric acid

2. *Sulfuric Acids*
   - Sulfuric acid
   - Sulfuric acid, spent (2)
   - Titanium tetrachloride *

3. *Nitric Acid*
   - Nitric acid (70 pct. or less)

4. *Organic Acids*
   - Acetic acid
   - Acrylic acid (2)
   - Butyric acid
   - Cashew nut shell oil (untreated)
   - Chloroacetic acid solution *
   - Cyclohexane oxidation product acid water*
   - 2,2-Dichloropropionic acid
   - 2,2-Dimethyloctanoic acid
   - 2-Ethylhexanoic acid
   - Formic acid
   - n-Heptanoic acid

Methacrylic acid
Naphthenic acid
Nonanoic acid
Oleic acid
Propionic acid
Stearic acid

5. *Caustics*
Ammonium sulfide solution *
Caustic potash solution (2)
Caustic soda solution (2)
Cresylate spent caustic
Kraft black liquor *
Sodium borohydride, Sodium hydroxide solution
Sodium carbonate solutions
Sodium cyanide solution
Sodium hydrosulfide solution
Sodium hypochlorite solution
Sodium 2-mercaptobenzothiazol solution *
Vanillin black liquor *

6. *Ammonia*
Ammonia, anhydrous
Ammonium hydroxide (28 pct. or less Ammonia)
Ammonium nitrate, Urea solution (containing Ammonia)
Urea, Ammonium nitrate solution (containing Ammonia)

7. *Aliphatic Amines*
N-Aminoethylpiperazine *
Butylamine
Cyclohexylamine
Dibutylamine
Diethylamine
Diethylenetriamine
Diisobutylamine *
Diisopropylamine
Dimethylamine
N,N-Dimethylcyclohexylamine
Di-n-propylamine
Dodecylamine, Tetradecylamine mixture (2)
Ethylamine
Ethylamine solution *
N-Ethyl-n-butylamine
N-Ethyl cyclohexylamine *
Ethylenediamine (2)
2-Ethyl hexylamine
Hexamethylenediamine solution *
Hexamethylenetetramine *
Hexamethylenimine
Methylamine
Methylamine solutions
Morpholine
Pentaethylenehexamine, Tetraethylenepentamine mixture *
Polyethylene polyamines
Propylamine
Tetraethylenepentamine
Triethylamine
Triethylenetetramine

8. *Alkanolamines*
2-(2-Aminoethoxy)ethanol
Aminoethylethanolamine
2-Amino-2-methyl-1-propanol
Diethanolamine
Diethylethanolamine
Diisopropanolamine
Dimethylethanolamine
Ethanolamine
Propanolamine
Triethanolamine
Triisopropanolamine *

9. *Aromatic Amines*
Aniline
2-Ethyl-6-methyl-N-(1-methyl-2-methoxyethyl)aniline
4,4'-Methylene dianiline (43 pct. or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixtures
2-Methyl-6-ethyl aniline
2-Methyl-5-ethyl pyridine
Methyl pyridine
N-Methyl pyrrolidone
Pyridine
Pyridine bases *
Toluenediamine
p-Toluidine

10. *Amides*
Acrylamide solution
Dimethyl acetamide
Dimethylformamide
Formamide *
Octadecenoamide

11. *Organic Anhydrides*
Acetic anhydride
Maleic anhydride
Phthalic anhydride
Propionic anhydride

12. *Isocyanates*
Diphenylmethane diisocyanate
Polymethylene polyphenyl isocyanate
Toluene diisocyanate

13. *Vinyl Acetate*
Vinyl acetate
Vinyl ethyl ether *
Vinyl neodecanate
Vinyl toluene

14. *Acrylates*
Butyl acrylate
Butyl methacrylate
Butyl methacrylate, Decyl methacrylate, Cetyl eicosyl methacrylate mixture
Cetyl eicosyl methacrylate *
Decyl acrylate
Dodecyl methacrylate*
Dodecyl, Pentadecyl methacrylate
Ethyl acrylate
2-Ethylhexyl acrylate
Ethyl methacrylate
Methyl acrylate
Methyl methacrylate

15. *Substituted Allyls*
Acrylonitrile (2)
Allyl alcohol (2)
Allyl chloride
1,3-Dichloropropene
Dichloropropene, Dichloropropane mixtures
Methacrylonitrile*

16. *Alkylene Oxides*
Butylene oxide
Ethylene oxide, Propylene oxide mixtures
Propylene oxide

17. *Epichlorohydrin*
Epichlorohydrin

18. *Ketones*
Acetone
Acetophenone
Amyl methyl ketone*
Butyl heptyl ketone
Camphor oil
Cyclohexanone
Cyclohexanone, Cyclohexanol mixtures* (2)
Diisobutyl ketone
Epoxy resin
Ketone residue*
Isophorone (2)
Mesityl oxide (2)
Methyl amyl ketone*
Methyl ethyl ketone
Methyl heptyl ketone
Methyl isoamyl ketone
Methyl isobutyl ketone

19. *Aldehydes*
Acetaldehyde
Acrolein (2)
Butyraldehyde
Crotonaldehyde (2)
Decaldehyde
Ethylhexaldehyde
2-Ethyl-3-propylacrolein (2)
Formaldehyde, Methanol mixtures (2)
Formaldehyde solution
Furfural
Glutaraldehyde solution
Glyoxal solutions
3-Methyl butyraldehyde
Methylolureas
Octyl aldehyde
Pentyl aldehyde
Propionaldehyde
Salicylaldehyde *
Valeraldehyde *

20. *Alcohols, Glycols*
Alcohols (mixed)
Amly alcohol
Behenyl alcohol
Butyl alcohol
Butylene glycol (2)
Choline chloride solutions
Cyclohexanol
Decyl alcohol
Diacetone alcohol
Diisobutyl carbinol
2,2-Dimethylpropane-1,3-diol
Dodecanol
Ethoxylated alcohols, C11–C15
Ethyl alcohol
Ethyl butanol
Ethylene chlorohydrin
Ethylene cyanohydrin
Ethylene glycol
2-Ethylhexanol
Furfuryl alcohol
Glycerine
Heptanol
Hexanol
Hexylene glycol
Methyl alcohol
Methyl amyl alcohol
2-Methyl-2-hydroxy-3-butyne
Methyl isobutyl carbinol
Molasses
Nonyl alcohol
Octyl alcohol
Pentadecanol
Polybutadiene, hydroxyl terminated
Propyl alcohol
Propylene glycol
Rum
Sorbitol solutions
Tallow fatty alcohol
Tetradecanol
Tridecanol
Undecanol

21. *Phenols, Cresols*
Benzyl alcohol *
Carbolic oil
Creosote
Cresols
Cresylic acid
2,4-Dichlorophenol
Nonyl phenol
Octyl phenol *
Phenol

22. *Caprolactam Solutions*

Caprolactam solution
23–29. *Unassigned*
30. *Olefins*
Amylene *
Butadiene
Butadiene, Butene mixtures (cont. Acetylenes) *
Butene
Butylene
Cyclopentadiene polymers
Cyclopentadiene, Styrene, Benzene mixture
Decene
Dicyclopentadiene
Diisobutylene
Dipentene
Dodecene
Ethylene
Ethylidene norbornene (2)
1-Heptene
Hexene
Isoprene
Methyl acetylene, Propadiene mixture
alpha-Methyl styrene
Nonene
1-Octadecene
Octene
1.3-Pentadiene
1-Pentene
Pentene, Miscellaneous hydrocarbon mixture * (2)
Pinene
Polybutene
Polypropylene
Propylene
Propylene butylene polymer
Propylene tetramer
Styrene
Tetradecene
Tridecene
Tripropylene
Turpentine
Undecene
31. *Paraffins*
Butane
Cycloaliphatic resins
Cyclohexane
Decane
Dodecane
Ethane
Heptane
Hexane
Methane
Nonane
Octane
Pentane
Propane
Waxes:
Paraffin*
32. *Aromatic Hydrocarbons*
Benzene
Benzene, Hydrocarbon mixtures (10 pct. Benzene or more)*
Benzene, Toluene, Xylene mixtures
Cumene
Cymene
Decyl benzene
Diethylbenzene
Diisopropyl benzene
Diisopropyl naphthalene
Dodecylbenzene
Ethyl benzene
Industrial waste (containing Dimethyldisulfide, Methyl mercaptan, and Methomyl)*
Methyl naphthalene
Naphthalene
Pseudocumene
Tetradecylbenzene
Tetrahydronaphthalene
Toluene
Tridecylbenzene
Triethyl benzene
Trimethyl benzene
Undecylbenzene
Xylene
33. *Miscellaneous Hydrocarbon Mixtures*
Asphalt
Asphalt blending stocks, roofers flux
Asphalt blending stocks, straight run residue
Calcuim sulfonate, Calcium carbonate, Hydrocarbon solvent mixture*
Carbon black base
Diphenyl, Diphenyl oxide
Distillates, flashed feed stocks
Distillates, straight run
Fatty acid amides
Fuel oils:
No. 1
No. 1–D
No. 2
No. 2–D
No. 4
No. 5
No. 6
Gas oil, cracked
Gasoline blending stock, alkylates
Gasoline blending stock, reformates
Gasolines:
Automotive (not over 4.23 grams lead per gal.)
Aviation (not over 4.86 grams lead per gal.)
Casinghead (natural)
Polymer
Straight run
Glycols, Resins, and Solvents mixture
Herbicide (C15–H22–NO2–Cl)
Jet Fuels:
JP–1
JP–3
JP–4
JP–5
Kerosene
Magnesium nonyl phenol sulfide
Maleic anhydride copolymer
Mineral spirits
Miscellaneous oils, including:
Absorption
Aliphatic
Aromatic (5 pct. or less Benzene)
Coal Tar
Heartcut distillate
Linseed
Lubricating
Mineral
Mineral seal
Motor
Neatsfoot
Penetrating
Range
Resin
Resinous petroleum
Rosin
Sperm
Spindle
Spray
Tanner's
Turbine
White (mineral)
Naphtha:
Coal tar
Cracking fraction (2)
Petroleum
Solvent
Stoddard solvent
Varnish Makers' and Painters'
Nonyl phenol sulfide solution
Oxyalkylated alkyl phenol formaldehyde*
Oils:
Clarified
Coal
Crude
Diesel
Residual
Road
Transformer
Petrolatum
Polyalkenyl succinic anhydride amine*
34. *Esters*
Acetyl tributyl citrate
Alkyl phthalates
Amyl acetate
Amyl tallate
Butyl acetate
Butyl benzyl phthalate *
Butyl formate
Dibutyl phthalate
Diethylene glycol monobutyl ether acetate
Di-(ethylhexyl)phthalate*
Diethyl sulfate
Diheptyl phthalate
Di-n-hexyl adipate*
Diisodecyl phthalate
Diisononyl adipate*
Diisononyl phthalate
Diisooctyl phthalate
Dimethyl adipate*
Dimethylcyclicsiloxane hydrolyzate*
Dimethyl glutarate*
Dimethyl hydrogen phosphite
Dimethyl phthalate
Dimethyl polysiloxane*
Dimethyl succinate*
Dinonyl phthalate
Dioctyl phthalate
Dipropylene glycol dibenzoate
Diundecyl phthalate
Edible oils, including:
Babassu
Castor
Coconut
Coconut, methyl ester
Corn
Cotton seed
Cotton seed, fatty acid
Fish
Lard
Olive
Palm
Peanut
Rapeseed
Rice bran
Safflower
Soya bean
Sunflower seed
Tucum
Vegetable
Ethyl acetate
Ethyl acetoacetate*
Ethyl butyrate*
Ethylene glycol monobutyl ether acetate
Ethylene glycol monoethyl ether acetate
Ethyl hexyl tallate
Ethyl propionate*
Glyceryl triacetate
Glycidyl ester of Versatic acid

Glycol diacetate
Methyl acetate
Methyl acetoacetate
Methyl amyl acetate
Methyl butyrate*
Methyl formate*
Miscellaneous oils, including:
Oiticica
Seal
Soapstock
Tall
Tall, fatty acid*
Tung
Octyl epoxytallate
Octyl nitrate* (2)
Polydimethylsiloxane*
Polymethylsiloxane*
Propyl acetate
Sodium dimethyl naphthalene sulfonate solution (2)
Tallow
Tallow fatty acid (2)
Triarylphosphate
Tributyl phosphate
Tridecane
Triethyl phosphate
Triethyl phosphite * (2)
Triisooctyl trimellitate (2)
2,2,4-Trimethyl pentanediol-1,3-diisobutyrate
2,2,4-Trimethyl-3-pentanol-1-isobutyrate
Trisodium nitrilotriacetate *
Vinyl acetate, Fumarate copolymer
Waxes:
Carnauba

35. *Vinyl Halides*
Vinyl chloride
Vinylidene chloride

36. *Halogenated Hydrocarbons*
Benzyl chloride *
Carbon tetrachloride
Chlorobenzene
Chlorodifluoromethane
Chloroform
Chlorotoluene *
Dichlorobenzene
Dichlorodifluoromethane
1,1-Dichloroethane
2,2'-Dichloroisopropyl ether
Dichloromethane
Dichloropropane
Ethyl chloride
Ethylene dibromide
Ethylene dichloride
Methyl bromide
Methly chloride
Monochlorodifluoromethane
Pentachloroethane
Perchloroethylene
1,1,2,2-Tetrachloroethane
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene (2)
1,2,3-Trichloropropane *
1,1,2-Trichloro-1,2,2-trifluoroethane

37. *Nitriles*
Acetonitrile
Adiponitrile
3-Pentenenitrile
Propionitrile
Tallow nitrile

38. *Carbon Disulfide*
Carbon disulfide

39. *Sulfolane*
Sulfolane

40. *Glycol Ethers*
Diethylene glycol
Diethylene glycol monobutly ether
Diethylene glycol monoethyl ether
Diethylene glycol monomethly ether
Diethylene glycol monophenyl ether
Dipropylene glycol

Edible oils Soybean (epoxidized)
Ethoxy triglycol
Ethylene glycol monobutyl ether
Ethylene glycol monoethyl ether
Ethylene glycol monoisopropyl ether
Ethylene glycol monomethly ether
Ethylene glycol phenyl ether
Methoxy triglycol
Nonyl phenol (ethoxylated)
Polyethylene glycols
Polypropylene glycol methyl ether
Polypropylene glycols
Tetraethylene glycol
Triethylene glycol
Triethylene glycol butyl ether mixture
Triethylene glycol ether mixture
Tripropylene glycol

41. *Ethers*
Butyl ether
2,2'-Dichloroethyl ether
Digylcidyl ether of Bisphenol A
Dimethyl furan *
1,4-Dioxane
Diphenyl oxide, Diphenyl phenyl ether mixture *
Ethyl ether
Methyl-tert-butyl ether (2)
Methyl formal
Propyl ether
Tetrahydrofuran

42. *Nitrocompounds*
Chloronitrobenzene, see o-Nitrochlorobenzene
Nitrobenzene
o-Nitrochlorobenzene
Nitroethane
Nitropropane
Nitropropane, Nitroethane mixture *
Nitrotoluene

43. *Miscellanous Water Solutions*
Ammonium bisulfite solution *(2)
Ammonium nitrate, Urea solution (not containing Ammonia)
Ammonium polyphosphate solution
Ammonium sulfate solution
Calcium bromide solution
Calcium chloride solution
Corn syrup
Dextrose solution
Diammonium salt of Zinc EDTA solution
Diethanolamine salt of 2,4-D acid solution *
Dodecyl diphenyl oxide disulfonate solution
Ethylene, Vinyl acetate copolymer emulsion *
Kaolin clay slurry
Latex, liquid synthetic
Lignin liquor
Polyvinylbenzyltrimethyl ammonium chloride solution
Sewage sludge
Sodium polyacrylate solution (2)
Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution *
Sodium silicate solution (2)
Tetrasodium salt of EDTA solution
Triisopropanolamine salt of 2,4-D acid solution *
Urea, Ammonium nitrate solution (not containing Ammonia)
Zinc bromide, Calcium bromide solution

(*) New addition to 46 CFR Part 150.

(1) Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G–MTH–3), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426–1577.

(2) See Appendix I—Exceptions to the Chart.

10. By revising Appendix I, to read as follows:

Appendix I—Exceptions to the Chart

a. The binary combinations listed below have been tested as prescribed in Appendix III and found not to be dangerously reactive. These combinations are exceptions to the Compatibility Chart (Figure 1) and may be stowed in adjacent tanks.

Member of reactive group	Compatible with
Acetone cyanohydrin (0)	Acetic acid (4).
Acrylonitrile (15)	Triethanolamine (8).
1,3-Butylene glycol (20)	Morpholine (7).
Caustic potash, 50 pct. or less (5).	Ethyl alcohol (20).
	Methyl alcohol (20).
	iso-Octyl alcohol (20).
Caustic soda, 50 pct. or less (5).	Butyl alcohol (20).
	tert-Butyl alcohol, Methanol mixtures.
	Decyl alcohol (20).
	Diacetone alcohol (20).
	Diethylene glycol (40).
	Ethyl alcohol (20).
	Ethylene glycol (20).
	Ethylene glycol, Diethylene glycol mixture (20).
	Ethyl hexanol (Octyl alcohol) (20).
	Methyl alcohol (20).
	Nonyl alcohol (20).
	Propyl alcohol (20).
	Propylene glycol (20).
	Sodium chlorate (0).
Dodecyl and Tetradecylamine mixture (7).	Tall oil, fatty acid (34).
Ethylenediamine (7)	Butyl alcohol (20).
	Butylene glycol (20).
	Creosote (21).
	Diethylene glycol (40).
	Ethyl alcohol (20).
	Ethylene glycol (20).
	Ethyl hexanol (20).
	Glycerine (20).
	Isononyl alcohol (18).
	Isophorone (18).
	Methyl butyl ketone (18).
	Methyl iso-butyl ketone (18).
	Methyl ethyl ketone (18).
	Propyl alcohol (20).
	Propylene glycol (20).
Oleum (0)	Hexane (31).
	Methylene chloride (36).
Sulfuric acid (2)	Coconut oil (34).
	Coconut oil acid (34).
	Palm oil (34).
	Tallow (34).
Sulfuric acid, 98 pct. or less (2).	Choice white grease tallow (34).

b. The binary combinations listed below have been determined to be dangerously reactive, based on either data obtained in the literature or on laboratory testing which has been carried out in accordance with procedures prescribed in Appendix III. These

combinations are exceptions to the Compatibility Chart (Figure 1) and may not be stowed in adjacent tanks.

Acetone cyanohydrin (0) is not compatible with Groups 1–12, 16, 17 and 22.

Acrolein (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Acrylic acid (4) is not compatible with Group 9, Aromatic Amines.

Alkyl benzene sulfonic acid (0) is not compatible with Group 1–3, 5–9, 15, 16, 18, 19, 30, 34, 37, and strong oxidizers.

Allyl alcohol (15) is not compatible with Group 12, Isocyanates.

Benzenesulfonyl chloride (0) is not compatible with Group 5–7, and 43.

gamma-Butyrolactone (0) is not compatible with Group 1–9.

Crotonaldehyde (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Cyclohexanone, Cyclohexanol mixture (18) is not compatible with Group 12, Isocyanates.

Dimethylene salt of 2,4-D solution (0) is not compatible with Groups 1–5, 11, 12, and 16.

Dimethyl hydrogen phosphite (34) is not compatible with Groups 1 and 4.

Ethylenediamine (7) is not compatible with Ethylene dichloride (36).

Ethylene dichloride (36) is not compatible with Ethylenediamine (7).

Ethylidene norbornene (30) is not compatible with Groups 1–3 and 5–8.

2-Ethyl-3-propylacrolein (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Fish oil (34) is not compatible with Sulfuric acid (2).

Formaldehyde (over 50%) in Methyl alcohol (over 30%) (19) is not compatible with Group 12, Isocyanates.

Formic acid (4) is not compatible with Furfural alcohol (20).

Furfuryl alcohol (20) is not compatible with Group 1, Non-Oxidizing Mineral Acids and Formic acid (4).

2-Hydroxyethyl acrylate is not compatible with Groups 2, 3, 5–8 and 12.

Isophorone (18) is not compatible with Group 8, Alkanolamines.

Magnesium chloride solution (0) is not compatible with Groups 2, 3, 5, 6 and 12.

Mesityl oxide (18) is not compatible with Group 8, Alkanolamines.

Methyl tert-butyl ether (41) is not compatible with Group 1, Non-oxidizing Mineral Acids.

Naphtha, cracking fraction (33) is not compatible with strong acids, caustics or oxidizing agents.

o-Nitrophenol (0) is not compatible with Groups 2, 3, and 5–10.

Octyl nitrates (all isomers) (34) is not compatible with Group 1, Non-oxidizing Mineral Acids.

Oleum (0) is not compatible with Sulfuric acid (2).

Pentene, Miscellaneous hydrocarbon mixtures (30) are not compatible with strong acids or oxidizing agents.

Sodium chlorate solution (50% or less) (0) is not compatible with Groups 1–3, 5, 7, 8, 10, 12, 13, 17 and 20.

Sodium dichromate solution (70% or less) (0) is not compatible with Groups 1–3, 5, 7, 8, 10, 12, 13, 17 and 20.

Sodium dimethyl naphthalene sulfonate solution (34), is not compatible with Group 12, Formaldehyde and strong oxidizing agents.

Sodium polyacrylate solution (43) is not compatible with Group 3, Nitric Acid.

Sodium silicate solution (43) is not compatible with Group 3, Nitric Acid.

Sodium thiocyanate (56% or less) (0) is not compatible with Groups 1–4.

Sulfuric acid (2) is not compatible with Fish oil (34), or Oleum (0).

Tallow fatty acid (34) is not compatible with Group 5, Caustics.

Trichloroethylene (36) is not compatible with Group 5, Caustics.

Triethyl phosphite (34) is not compatible with Groups 1, and 4.

11. By revising paragraph (3) of Appendix II to read as follows:

Appendix II—Explanation of Figure 1

* * * * *

(3) If both group numbers do not fall between 30 and 43 inclusive, locate one of the numbers on the left of the chart (Cargo Groups) and the other across the top (Reactive Groups). (Note that if a group number is between 30 and 43, it can only be found on the left side of the chart.) The box formed by the intersection of the column and row containing the two numbers will contain one of the following:

(a) Blank—The two cargoes are compatible.

(b) "X"—The two cargoes are not compatible.

(Note that reactivity may vary among the group members. Refer to Table I or Table II to find whether the products in question are referenced by a footnote which indicates that exceptions exist and are listed in Appendix I. Unless the combination is specifically mentioned in Appendix I, it is compatible.)

* * * * *

12. By revising the first paragraph of the Procedure in Step 2 of Appendix III to read as follows:

Appendix III—Testing Procedures for Determining Exceptions to the Chart

* * * * *

Procedure—These separate mixes of the proposed binary combination will be tested. These are 2 ml : 18 ml, 10 ml : 10 ml, and 18 ml : 2 ml, respectively, to result in a final mixture of about 20 ml in each case.

* * * * *

Dated: August 2, 1985.

B. G. Burns,

Captain, U.S. Coast Guard, Acting Chief Officer of Merchant Marine Safety

[FR Doc. 85–19441 Filed 8–15–85; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

46 CFR Part 298

Obligation Guarantees

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department of Transportation published a final rule on obligation guarantees on March 8, 1985 (50 FR 9437). The final rule prescribes conditions, terms and procedures for applying for and administering Federal ship financing assistance in the form of obligation guarantees. (An "obligation guarantee" is a pledge of the full faith and credit of the United States to the payment of the unpaid principal and interest on the guarantee of a note, bond, debenture, or other evidence of indebtedness as defined in the Merchant Marine Act, 1936.) A notice of proposed rulemaking (NPRM) was published on that same date (50 FR 9456), asking for comments on the following issues: procedures for the calculation of the internal rate of return, used to assist in determining the economic soundness of a project proposed for an obligation guarantee; and the anticipated economic impact of the proposed requirement. It also requested comment on proposed changes to confidential information disclosure and insurance reporting requirements pertaining to obligation guarantee applications. Since no comments were received on the NPRM, this final rule adopts calculation procedures based on the total project cost, as set out in the NPRM.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: James L. Westcott, Director, Office of Ship Financing, Maritime Administration, 400 Seventh Street, SW., Washington, D.C. 20590, Telephone (202) 382–0389.

SUPPLEMENTARY INFORMATION:

Comments

MARAD received no comments on the NPRM. Therefore, MARAD is publishing this final rule which adopts the proposals in the NPRM with no changes.

Background

Section 298.14 of the existing rule on obligation guarantees provides that no letter of commitment for an obligation guarantee will be issued by MARAD without finding that the proposed project will be economically sound. It also provides that economic soundness be determined by considering factors including, among other things: the vessel's potential for employment in the

market over the life of the guarantee, projected revenues and expenses of operation, the length of the guarantee period and any charters or transportation agreements. A final rule was issued on obligation guarantees on March 8, 1985 (50 FR 9451). Section 298.14 of that final rule, required that certain "objective criteria" be added to the existing rule for the determination of economic soundness by MARAD.

To demonstrate economic soundness, MARAD required in the final rule that the applicant submit a cash flow analysis statement including, among other things, an internal rate of return (IRR) analysis. Each project would have to meet certain objective criteria to be considered economically sound: the projected long-term demand for the vessels to be financed must exceed the supply of vessels with similar capacity in applicable markets; the project's projected cash flow must be sufficient to meet the projected Title XI debt service requirements; and the IRR analysis must provide a minimum real rate of return of ten percent.

MARAD included the requirement that applicants provide an IRR of at least ten percent to aid it in evaluating the relative merits of competing applications, and promote uniformity in the procedures followed and the format used by applicants seeking financial assistance under the Title XI program. An IRR analysis shows the relative projected profitability of a proposed project, and whether the facilities or equipment to be acquired, rehabilitated, improved, constructed, developed, or established with the proceeds of the obligation will be economically and efficiently used.

Calculation of the IRR

Although comments were specifically invited in the NPRM, accompanying the final rule discussed above, on the merits of using an IRR analysis in evaluating Title XI applications, no specific comments were requested on procedures for calculation of the IRR. Moreover, the final rule did not clearly indicate what procedures for IRR calculation were being proposed by MARAD nor the relative merits of any particular procedures.

MARAD believes applicants should have clear and precise procedures for complying with an IRR analysis requirement. It is convinced that specific, clear procedures would produce more accurate and complete information that will assist its selection of successful applicants.

In this final rule, MARAD sets out procedures for calculation that would be based on the total project cost. These procedures, involving calculation of the ten percent IRR based on the total project cost, follow procedures and application formats similar to those used by applicants for loan guarantees issued by the Federal Railroad Administration under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (49 U.S.C. 1651 *et seq.*) (Pub. L. 94–210).

Amendments to Confidential Information Disclosure Provision

MARAD is revising paragraph (d)(2) and deleting paragraph (d)(3) of § 298.3 which concern applicant claims of exemption from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. § 552). The revision of paragraph (d)(2) changes the requirement that MARAD make a determination on an applicant's claim of exemption at the time the application is filed. MARAD has found this requirement to be administratively burdensome and to impede expeditious processing of applications. Claims for exemption instead will be reviewed and a determination made at the time a specific request for information is made pursuant to the FOIA by a third party. The present requirement that the applicant assert a claim of exemption from the disclosure provisions of FOIA at the time of filing will not be affected by the revision.

The deletion of paragraph (d)(3) will eliminate the requirement that this information be returned if the applicant receives an unfavorable exemption determination and desires to have it returned. MARAD has found it to be administratively burdensome to collect and return voluminous materials by mail to applicants. It assumes that applicants will have retained copies of such important material.

Insurance Reporting Requirements

This provision (§ 298.42) requires a Title XI obligor to furnish statements from its insurance underwriter(s) or broker(s) confirming that the company is current on its payment of premiums and indicating the effective term of the insurance. Under current practice, MARAD may never be notified that a Title XI obligor has allowed an insurance policy to lapse. This means that the collateral securing the loan guarantee could be accidentally destroyed and the Secretary could not recover on the loss.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administration has determined that this final rule is not a major rule as defined in E.O. 12291, but it is a significant rule under DOT regulatory policies and procedures (49 FR 11034; Feb. 26, 1979). The rule is considered to be significant under DOT Order 2100.5 because it concerns a matter on which there is substantial public interest. Since the great majority of applicants for Title XI obligation guarantees have revenues far in excess of the exisitng Small Business Administration criteria for a small business under the classification of "transportation and warehousing" (13 CFR 121.3–3.10(f)), the Maritime Administrator certifies that this rulemaking will not, under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), exert a significant economic impact on a substantial number of small entities. MARAD believes that since many applicants presently perform IRR analyses of prospective projects in order to make their investment decisions, they will incur only minor administrative cost in complying with any final regulation. Thus, MARAD believes a full regulatory evaluation is unnecessary. MARAD estimates the total annual administrative cost of compliance with these computation requirements to be $1,491 per application, per project. MARAD estimates the total annual administrative cost of preparing and submitting the semiannual insurance confirmation to be $1,500 per applicant per project.

This final rulemaking contains information collection requirements in the following sections: § 298.14 and § 298.42. They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). and have been approved for six months by the OMB under control number 2133–0018. The OMB granted the six month approval pending possible program change increases resulting from comments to the NPRM. Since there were no comments regarding the information collection requirements, MARAD is requesting OMB approval of the information collection requirements for the full three year period.

List of Subjects in 46 CFR Part 298

Banks, Banking, Loan programs, Transportation, Maritime Administration, Maritime carriers, Mortgages, Mortgage insurance, Uniform system of account, Vessels.

PART 298—[AMENDED]

For the reasons set out in the preamble, Part 298, Subparts A, B, and

E, Chapter 11 of Title 46, Code of Federal Regulations are amended as follows:

1. The authority citation for Part 298 is revised to read as follows:

Authority: Secs. 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b)) Pub. L. 97-31, August 6, 1981. 49 CFR § 1.66.

2. Section 298.14 is amended by adding a paragraph (b)(4) to read as follows:

§ 298.14 Economic Soundness.

* * * * *

(b) * * *

(4) The project shall have at least a ten percent (in real terms) internal rate of return using the following computation procedures:

(i) A detailed narrative description of the project. This description must present the following: The objectives of the project, e.g., what vessels will be constructed, reconstructed, or reconditioned, and how they will be used. It must also describe any other work to be done as part of the project, and any operating changes, including retirement of assets, which will accompany the investment. For these purposes, the project shall be deemed to include all expenditures (including those for which no Federal assistance is requested) necessary to carry out its objectives.

(ii) A detailed narrative description of the base case. The base case is the most favorable alternative action the applicant could take with little or no investment. The description must be comparable in scope to the description of the project. In some cases, the most favorable alternative action may be to do nothing, i.e., make no change in the current situation. In other cases, the applicant may take other alternative actions such as rerouting traffic, changing operating practices (perhaps with an increase in operating costs), or relying more heavily on vessels or equipment belonging to others. The applicant shall consider such alternative proposals as different ship designs, modification of existing vessels versus new equipment, and analysis of leasing versus direct ownership. If the applicant has considered more than one alternative action (requiring little or no investment) to the project, the applicant must describe each of the actions considered and give the rationale for the selection of the base case from among those other actions.

(iii) A narrative discussion of key assumptions. All general assumptions and those relating only to a particular cash flow impact which substantially affect the IRR should be explained. Assumptions regarding traffic volumes deserve particular attention. The applicant must specify how much revenue is expected if the project or base case are undertaken, and where the difference, if any, between the project and base case is expected to come from. Other key assumptions may relate to actions by third parties, such as regulatory agencies. The applicant shall conduct a sensitivity analysis that takes into account the applicant's historical market share, past market fluctuations, availability of long-term charters, potential government actions, especially in areas of intended foreign operations.

(iv) A narrative discussion of each cash flow impact resulting from the project or base case. The applicant must identify all the cash receipts and disbursements resulting from the project but not the base case, and vice-versa. Cash flows which would be the same in either event should not be considered. For each cost and benefit used in the IRR computations, the applicant must explain why the particular cash flow will result from the project or base case, and how the size of the cash flow and the corresponding measure in physical units were estimated. In addition, the applicant must identify and discuss important costs and benefits which it has not been able to quantify. The applicant must note which of the benefit and cost items could be measured to confirm the predictions in the IRR computation, and must suggest how such measurements could be made. [Appendix A of this subpart lists the most common cash flow impacts of investment projects and base case alternatives, indicates the kinds of actions likely to involve a type of cash flow, suggests how each might be measured (both in physical and monetary units), and discusses special problems associated with each. Appendix A is not exhaustive; other cash flow items should be included in the analysis as appropriate.]

(v) A discussion of the principal areas of uncertainty. This discussion must indicate why particular values might be different from those used in the computation, and the range into which each uncertain value could be expected to fall. It must also indicate the applicant's subjective level of confidence that the computed IRR is a reasonably close prediction of the project's and base case's financial performance. In some circumstances, the applicant must point out where the IRR fails to incorporate certain important features of the project or the base case, or both. The applicant may enhance its discussion by presenting examples of its own prior experiences with IRR, stating, perhaps, that an audit of past computations has shown marked deviations from actual results regardless of the detail of those computations.

(vi) For the project, (as it relates to its base case alternative), a thorough presentation of all the computations underlying the IRR using the Forms I–V of Appendix B to this subpart shall be prepared and provided. State and local tax impacts need not be included in the computations, unless the applicant has determined that their inclusion substantially affects the IRR. The computation of the IRR must follow the four steps described below. (This procedure cannot be used if the project consists of replacing an asset, usually equipment, which would otherwise remain in service (at high cost) for only a few more years. In that situation, the lifetime of the project (the new asset) is substantially longer than the lifetime of the base case (the old asset), so that it is not possible to get a differential cash flow in every year of the project's life. A possible approach for handling such case is to determine the discount rate which gives the same average annual cost per unit of output for both the project and the base case.)

(A) Step 1: the applicant must determine, for each year of the project's expected useful life, up to a maximum of 25 years (unless the cash flow impacts of later years would substantially affect the IRR), both the project's and base case's before-tax cash flow impacts (receipts and disbursements). The cash flow estimates must be done in constant dollars. The effects of financing must also be excluded; that is the cash flows must be estimated as if the required cash were immediately available at no cost.

(*1*) The various cash flow impacts for this step 1 must be shown on Forms I through V of Appendix B as explained below. On Forms I through V, cash flow impacts occurring in the first year of the project and base case are assigned to and recorded in the time period year 1. Cash flows in subsequent years are all assigned to and recorded in the year in which they occur regardless of whether they occur at the beginning or end of the year. For purposes of assigning and recording cash flow impacts of the project and base case, it will be assumed that the project's starting date and, thus, the commencement of year 1 begins as of the first of the January following the year in which an application for financial assistance is filed.

(*2*) Capitalized investments which would occur as a part of the project but

hot in the base case must be entered in Column 1 of Form I. The capitalized investment includes capitalized engineering work, installation expenditures and other startup costs allowable in reporting to the IRS. The total investment for the project must be divided into portions which are homogeneous with respect to depreciation method (if depreciable), depreciation period (if depreciable), year in which the assets enter service, and whether the assets qualify for investment tax credit. (If applicant has a considerable tax credit carry forward, the tax credit must be shown only in the year or years it will result in a reduction of tax payments). A separate form should be completed for each such portion. Similarly, a set of Forms I must be completed for a capitalized investment which would be made as part of the base case but not the project.

(*3*) Sales of released assets (as useful assets or as scrap), which would occur as a part of the project or the base case, must be entered in Column I of Form II. As was the case for the capitalized investments there must be a separate Form II for each portion of the assets sold, such that each portion is homogeneous with respect to tax treatment and year of sale. Form II must also be completed for retirements of assets, even though the sale price is zero, if the retirement will affect the applicant's income taxes and thereby the applicant's cash flow. The sale or retirement of an asset at the end of the project's life, if the cash flow impact is substantial enough to merit inclusion in the computation, must also appear on one or more Forms II. (If a project would continue as asset already owned in its prior use but the base case would put the asset to an alternative use, and if the cash flow from that alternative use is difficult to determine, the applicant may do the analysis as if the asset were to be sold in the base case at its fair market value when put to the alternative use. Similarly, if the base case would continue the asset in its present use but the project would result in the asset being employed in an alternative use, the anticipated cash flow of which would be difficult to determine, the asset in the project may be treated as a sale at fair market value in the IRR computations. In either event, the market value of the asset otherwise put to an alternative use would be entered in Column 1 of Form II and the asset in its current use (in either the project or base case, as the case may be) would be recorded, as to continuing depreciation and income tax credit, if any, on Form I and, as to expenses and contribution to profit, on Form III. However, whenever possible, the anticipated cash flow of the alternatives use, whether in the project or base case, should be entered of Form III rather than treated as a theoretical sale at a fair market value).

(B) Step 2: The applicant must compute the annual cash flows after Federal income tax corresponding to each of the before-tax flows recorded on each Form I and Form II in the previous step. If the applicant expects to pay taxes in some years but not others, the applicant will undoubtedly carry forward (or back) the tax losses and credit from years in which no tax was paid, so as to take full advantage of them. In that case, the applicant must estimate when such tax benefits will actually be received, and include them in the cash flow stream at the appropriate time. The appropriate tax rate for such computations is the applicant's marginal tax rate. This is the rate which would apply to one additional dollar of income earned by the applicant. The average or effective tax rate (found by dividing firm's actual tax payments by its net income before taxes) is not appropriate for this purpose. If the computations assume the applicant will not pay taxes in certain years, then those assumptions must be explained in the discussion of key assumptions. The tax-related computations must be shown on the same forms as were used to record the pretax cash flows. Additional working papers should be submitted as necessary to clarify the computations. The computations to be done on the two forms are as follows:

(*1*) On each Form I, the applicant must indicate in Column 2 the depreciation schedule which it expects to use in reporting to the IRS. In Column 3, the applicant must indicate how much its tax bill will be reduced as a result of the depreciation shown in Column 2. In Column 4, the applicant must indicate the tax reduction, if any, it expects from investment tax credit. (The effect of the tax credit must be computed using the flow-through method, in which investment credits are generally treated as reductions in incomc tax expense of the year in which the credits are actually realized, rather than being deferred and amortized over the productive life of the acquired property.) Column 5 is the net after-tax cash flow associated with the investment.

(*2*) On each Form II, the applicant must indicate in Column 2 the increase (or decrease) in its Federal income tax payments resulting from the difference between the sale price and the book value of assets to be sold by reason of the project or base case. If an asset is released without a sale or a corresponding writdown of book value, Form II is not used, but For I is used to reflect continuing depreciation as before the release. In Column 3, the applicant must record any recapture of investment tax credit by the IRS. Finally, Column 4 records the net cash flow in or out.

(C) Step 3: The applicant must determine the project's aggregate after-tax cash flow using Form IV. This shall be done as follows:

(*1*) For each year, the corresponding after-tax cash flow (Column 5 on the various Forms I on which the "project" box was checked are summed, and the total entered into Column 1 of Form IV. Then the net after-tax cash flows on the base case Forms I as summed and entered into Column 2 of Form IV.

(*2*) Similarly, the project and base case Forms II (Column 4) are consolidated and entered into Columns 3 and 4, respectively, of Form IV.

(D) Step 4: The applicant shall enter the operating income for the project and the base in Form III for each year of the project's life and shall determine and enter the after-tax cash flow. If the applicant excpects to pay no Federal income tax, columns three and four will be identical. If the applicant expects to pay taxes in some years but not others, the applicant must incorporate the effects of carrying losses forward (or back) into the estimated after-tax cash flow. The aggregate net cash flow for the project relative to the base case is then found and entered on Form IV.

(E) Step 5: The aggregate net cash flow for the project relative to the base case is then found and entered in Column 7 of Form IV. All estimates shall be in constant dollars.

(F) Step 6: The applicant must determine the discount rate for which the present value of the differential cash flow stream is zero. Computer programs for calculating the rate of return are widely available. If a program is utilized, copies of the printout showing input and output data, and a brief explanation of the program function must be included in the application. The applicant should furnish:

(*1*) Copies of all financial analyses which the applicant did on rejected alternatives to the project, including changes in scale or scope. The applicant need not do any such analyses beyond those already done, nor need the format, assumptions, or procedures used in those analyses be changed to conform to the requirements of these regulations, and

(*2*) A reconciliation between the cash flows used in the IRR computations and

all forecasted data presented in the application, both before (for the base case) and after (for the project). This reconciliation must indicate what inflation factor or factors were used in developing the forecasted financial statements as compared to the constant dollar figures used in the IRR computations. The reconciliation must also show how each of the individual parts and subparts of the project relates to the applicant's forecasted financial statements.

* * * * *

3. In § 298.3, paragraph (d)(3) is removed and (d)(2) is revised to read as follows:

§ 298.3 Application.

* * * * *

(d) * * *

(2) The Secretary, Maritime Administration, shall make a determination as to any claim of exemption at the time a request is made for the information pursuant to the Freedom of Information Act. If the Secretary, Maritime Administration makes a determination unfavorable to the applicant as to any item of information in the application or amendment, the applicant will be advised that the Maritime Administration will not honor the request for confidentiality at the time of any request for production of information made pursuant to the Freedom of Information Act by third parties.

* * * * *

4. Section 298.42 is amended by adding paragraph (c) to read as follows:

§ 298.42 Reporting requirements—financial statement.

(c) The Company shall furnish, along with its semi-annual report, a letter of confirmation issued by its insurance underwriter(s) or broker(s) that the Company has paid premiums on insurance applicable to the preservation, protection and operation of the asset, which information shall state the term for which the insurance is in force.

5. Part 298 is amended by adding Appendix A and B to Subpart B to read as follows:

Appendix A—Selected Cash Flow Impacts

Investments usually affect the investor's cash flow by changing some of the following things:

Use of assets.

Labor requirements.

Requirements for trailers, and containers.

Energy consumption.

Expenditures needed to meet legal requirements.

Salvage value.

While this list is not exhaustive it does identify the common cash flow impacts.

Some of the items listed are almost costs of projects or base cases, rather than benefits. Others, such as salvage items, however, may be either project or base case benefits or costs, depending on the particular situation.

Use of Assets

Characteristic Actions: Assets are often released for sale or alternative uses when they are replaced or made unnecessary by new assets.

Monetary Value: The value of an asset released by an action depends on what will be done with it. Depending on the particular circumstances, any of the following might be involved: Payment received from selling the asset; a multi-year stream of income produced by the asset in some use; tax paid on the sale of the asset; expenditures for dismantling and/or moving the asset; recapture by the IRS of investment tax credit taken when the asset was purchased.

In cases in which the asset is transferred to another use which provides income over several years, the effect of releasing the asset extends over several years, and must be expressed as a series of annual cash flows, rather than a lump sum.

Labor Requirements

Characteristic Actions: Labor requirements are often reduced by automation or facility consolidation.

Physical Units: Man-hours, number of employees.

Monetary Value: The value of labor depends on the particular situation. If the action results in a change in the number of employees or in overtime hours, the wages and fringe benefits associated with that change directly affect the cash flow.

Requirements for Trailers and Containers

Characteristic Actions: Actions which change turnaround time.

Energy Consumption

Characteristic Actions: Actions changing efficiency.

Monetary Value: Found by multiplying the fuel by the current price per unit.

Salvage Value

Characteristic Actions: Acquisition of new assets or disposal of existing assets.

Physical Units: List of the particular assets involved.

Monetary Value: The cash flow resulting from disposing of the assets or using them elsewhere.

When salvage values are small relative to other benefits and costs, and when they are heavily discounted (because they occur far in the future), their impact on the IRR is likely to be negligible. In such cases, the salvage value can be safely ignored.

Expenditures Needed To Meet Legal Requirements

Characteristic Actions: Actions permitting abandonment of old vessels or equipment may reduce the need for such expenditures. New vessels may make some such expenditures unnecessary.

Appendix B—Forms To Be Used in Computing IRR

Form I—Analysis of Capitalized Investment (Constant Dollars)

Applicant _____ Date _____ Portion of investment covered by this sheet

Project _____ Sheet No. _____ Depreciation method used _____

This investment would occur in the Project Base case (check one)

Year	(1) Amount capitalized	(2) Depreciation	(3) Tax reduction from depreciation	(4) Tax reduction from investment tax credit	(5) Net cash flow in (out)
1					
2					
3					
4					
5					
6					

Year	(1) Amount capitalized	(2) Depreciation	(3) Tax reduction from depreciation	(4) Tax reduction from investment tax credit	(5) Net cash flow in [illegible]
7					
8					
9					
10					
11					
12					
13					
14					
15					
Totals					

Instructions:
Use separate forms for portions of the investment which would receive different tax treatment or which would enter service in different years.
Estimate amounts in cols. 1–4 as would be done in reporting to IRS.
Col. 5 equals col. 3 plus col. 4 minus col. 1.

Form II—Analysis of Sale or Retirement of Assets (Constant Dollars)

Applicant _____ Sheet No. _____ Book value of assets at time of sale _____
Project _____ Assets covered by this sheet _____
Date _____ Depreciation method used _____ Depreciation period _____

This sale would occur in the Project Base case (check one)

Year	(1) Sale price	(2) Tax on gain (for tax saving on loss) from [illegible]	(3) Tax credit recapture	(4) Net cash flow in [illegible]
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Instructions:
Use a separate form for each portion of the assets which would receive different tax treatment or be disposed of at different times.
Estimate amounts in cols. 1–3 as would be done in reporting to the IRS.
Col. 4 equals col. 1 minus col. 2 (plus col. 2 if a tax saving occurs) minus col. 3.

Form III—Analysis of Operating Income

Applicant _____ Date _____ Sheet No. _____
Project _____

Year	(1) Operating revenues	(2) Operating expenses	(3) Pre-tax net operating income	(4) After-tax operating income
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Form IV—Consolidation of Cash Flows (Constant Dollars)

Applicant _____ Date _____ Sheet No. _____
Project _____

Year	Form I totals		Form II totals		Form III totals		(7) Net cash flow in (out)
	(1) Project	(2) Base case	(3) Project	(4) Base case	(5) Project	(6) Base case	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
Totals							

Instructions: Cols. 1 through 5 are found by summing the right most columns on the indicated forms.

Form V—Computation of IRR (Constant Dollars)

Applicant _____ Date _____ Sheet No. _____
Project _____

Year	(1) Cash flow	Present value		
		(2) Value factor at 10 pct	(3) Value factor at 25 pct	(4) Value factor at 40 pct
1		0.909	0.800	0.714
2		.826	.640	.510
3		.751	.512	.364
4		.633	.410	.260
5		.621	.328	.186
6		.564	.262	.133
7		.513	.210	.095
8		.467	.168	.066
9		.424	.134	.045
10		.386	.107	.035
11		.350	.086	.025
12		.319	.069	.018
13		.290	.055	.013
14		.263	.044	.009
15		.239	.035	.006
Total				

Present Value of Cash Flow Stream
IRR = _____

Instructions:
1. Col. 1 is brought from form IV col. 7.
2. Cols. 2, 3, and 4 are found by multiplying col. 1 each time by the indicated factor.

Dated: August 9, 1985.
Murray A. Bloom,
Assistant Secretary, Maritime Administration.
[FR Doc. 85-19412 Filed 8-15-85; 8:45 am]
BILLING CODE 4910-81-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 706 and 715

[AIDAR Notice 85-8]

Acquisition Regulation Concerning Competition in Contracting and Miscellaneous Amendments

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to finalize the interim rule (AIDAR Notice 85-5, published in the April 24, 1985 **Federal Register**) implementing the Competition in Contracting Act of 1984 (CICA) under the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: GC/CCM, Mr. Kenneth E. Fries, telephone (202) 632-1170.

SUPPLEMENTARY INFORMATION: On April 24, 1985, AIDAR Notice 85-5 was published as an interim rule and request for comment (50 FR 16086). Three comments were received during the comment period that questioned the policy in 706.101-70 and the selection procedures in 715.613-70 and 715.613-71. The commentors contended that the policy and selection procedures did not meet the CICA requirement that the marketplace be used to ensure full and open competition. We have made modifications which take those concerns into account. The following changes have been made to the interim rule:

—New coverage has been added to the policy statement in 706.101-70 to make it clear that procurements under 715.613-70 and 715.613-71 must be publicized as required by FAR 5.201;

—The term "required skills" has been deleted and the required institutional relationship has been clarified; and
—The synopsizing requirements of FAR 5.201 have been made explicit by the addition of language to 715.613–70(d)(3) and 715.613–71(e)(4).

We believe these changes are in keeping with the Congressional intent of the CICA and adequately address the commentors' concerns.

We have determined that the changes being made by this Notice are not significant or major changes as defined by FAR 1.303(b) or 1.501, or E.O. 12291. The subject matter of Notice was submitted for OMB review under OMB Bulletin No. 85–7 and issued for public comment as AIDAR Notice 85–5, published in the April 24, 1985 **Federal Register** (50 FR 16086). This Notice addresses the public comments received. within that framework.

As required by the Regulatory Flexibility Act, it is hereby certified that this Notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Parts 706 and 715

Government procurement.

The interim rule published as AIDAR Notice 85–5 in the April 24, 1985 **Federal Register** (50 FR 16086) is adopted as final, with the following changes:

1. The authority citations in Parts 706 and 715 are unchanged, and continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended: E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

PART 706—COMPETITION REQUIREMENTS

Subpart 706.1—Full and Open Competition

2. Section 706.101–70 is revised to read as follows:

706.101–70 Policy.

The selection procedures in 715.613–70 and 715.613–71 of this chapter meet the requirement for full and open competition when the determinations required by 715.613–70(c) and 715.613–71(b)(1)(ii) are properly made. No other justifications or approvals are required.

PART 715—CONTRACTING BY NEGOTIATION

Subpart 715.6—Source Selection

3. Section 715.613–70, Educational institution and international research center selection procedure, is amended by revising paragraphs (a); (c); and (d)(1), (2), (3), (5), and (8), as follows:

715.613–70 Educational institution and international research center selection procedure.

(a) *Scope of subsection.* This subsection prescribes policies and procedures for the selection of contractors to perform projects which have been determined to require an institutional relationship with an educational institution or international research center (see paragraphs (b) and (c) of this subsection.

* * * * *

(c) *Applicability.* The provisions of this subsection are applicable when it has been determined by the project office, with the approval of the contracting officer, that the required institutional relationship (i.e., the prime contractor must have the institutional commitment and capacity to provide research, training, or extension services under an ongoing academic or international research program which will continue at least throughout the life of the contract) is available only from educational institutions or international research centers. This subsection is not applicable to contracts for collaborative assistance (see 715.613–71 of this subpart), or for architect-engineer services (see AIDAR 736.6 and FAR 36.6).

(d) *Solicitation, evaluation, and selection procedures.* (1) A sufficient number of sources shall be solicited to ensure full and open competition; this requirement shall be deemed satisfied when a contractor is selected under the procedures of this subsection.

(2) Following the approval of the contracting officer in the decision that the required institutional relationship is available only from an educational institution or international research center (see paragraph (c) of this section), the project office shall:

(i) Prepare selection criteria for evaluation of potential contractors for use in preparing the source list, determining predominantly qualified sources, and selecting the contractor;

(ii) Prepare an intitial list of sources considered qualified to perform the proposed project;

(iii) Provide a statement providing a description of qualifications and areas of expertise considered essential, a statement of work, estimate of personnel requirements, special requirements (logistic support, government furnished property, and so forth) for the contracting officer's use in preparing the request for technical proposal (RFTP).

(iv) Send a memorandum incorporating paragraphs (d)(2)(i) through (iii) of this section, together with the "Action" copy of the PIO/T to the contracting officer, requesting him/her to prepare and distribute the RFTP.

(3) Upon receipt and acceptance of the project officer's request, the contracting officer shall prepare the RFTP. The RFTP shall contain sufficient information to enable an offeror to submit a responsive and complete technical proposal, this includes a definitive statement of work, an estimate of the personnel required, and special provisions (such as logistic support, government furnished equipment, and so forth), a proposed contract format, and evaluation criteria. No cost or pricing data will be requested or required by the RFTP. The RFTP will be distributed to the sources recommended by the project office, and to others, if appropriate. The RFTP will be synopsized, as required by FAR 5.201, and will normally allow a minimum of 60 days for preparation and submission of a proposal.

* * * * *

(5) The evaluation committee will evaluate all proposals in accordance with the criteria set forth in the RFTP, and will prepare a selection memorandum which shall:

(i) State the evaluation criteria;

(ii) List all of the sources whose proposals were reviewed:

(iii) Report on the ranking and rationale therefor for all proposals;

(iv) Indicate the sources considered best qualified.

* * * * *

(8) If the selection memorandum is approved, the contracting officer shall obtain cost, pricing, and other necessary data from the selected sources and shall conduct negotiations with said sources. If a satisfactory contract cannot be obtained, the contracting officer will so advise the evaluation committee. The evaluation committee may then recommend alternate sources.

4. Section 715.613–71, Collaborative assistance selection procedure, is amended by revising paragraphs (b)(1)(ii); (d)(2); and (e)(1), (2)(ii) and (iii), (3)(iii), (4), (5), and (7), as follows:

§ 715.613–71 Collaborative assistance selection procedure.

* * * * *

(b) *Definition.*

(1) * * *

(ii) The required institutional relationship (i.e., the prime contractor must have the institutional commitment and capacity to provide research, training, or extension services under an ongoing academic, international research, or cooperative development

program which will continue at least throughout the life of the contract) has been determined by the project office, with the approval of the contracting officer, to be available only from an educational institution, international research center (as defined in 714.613–70(b) of this subpart), or cooperative development organization (which are organizations recognized and listed as such by the Assistant Administrator, Bureau of Food for Peace and Voluntary Assistance).

* * * * *

(d) *Determination.*

* * * * * *

(2) Based upon this preliminary finding, the project office shall establish an evaluation panel consisting of a representative of the project office as chairman; a representative of the Bureau for Science and Technology, for projects where an institutional relationship with an educational institution or international research center is deemed necessary; a representative of the Bureau for Food for Peace and Voluntary Assistance, for projects where an institutional relationship with a cooperative development organization is deemed necessary; a representative of the contracting officer; and any other representatives considered appropriate by the chairman.

* * * * *

(e) *Evaluation and selection.*

(1) A sufficient number of sources will be considered to ensure full and open competition; this requirement shall be deemed satisfied when a contractor is selected under the procedures of this subsection.

(2) * * *

(ii) Prepare an initial source list including all potential sources known to have the institutional relationship required by the proposed project; and

(iii) Evaluate the list, using the evaluation criteria previously determined, for the purpose of making a written determination of the sources considered most capable of performing the project.

* * * * *

(3) * * *

(iii) The recommended source list and the rationale therefor, and requesting the contracting officer to prepare a request for expressions of interest from the qualified sources.

(4) The contracting officer will prepare a request for expressions of interest (REI), containing sufficient information to permit an offeror to determine its interest in the project, and to discuss the project with AID representatives, if appropriate. The request for expression of interest should include a concise statement of the purpose of the project, any special conditions or qualifications considered important, a brief description of the selection procedure and evaluation criteria which will be used, the proposed contract format, and any other information considered appropriate. The REI will be issued to the sources recommended by the panel, and to others, as appropriate; it will be synopsized, as required by FAR 5.201, and it will normally allow a minimum of 60 days for preparation of an expression of interest. Guidelines for preparation of expressions of interest are contained in Attachment 1 to AIDAR Appendix F.

(5) The contracting officer will transmit all expressions of interest to the evaluation panel for evaluation and selection recommendation. The panel may conduct on site evaluations at its discretion, as part of the evaluation process.

* * * * *

(7) The contracting officer will review the selection recommendation, obtain necessary cost and other data, and proceed to negotiate with the recommended sources.

Dated: August 7, 1985.

John F. Owens,

Procurement Executive.

[FR Doc. 85–19557 Filed 8–15–85; 8:45 am]

BILLING CODE 6116–01–M

Proposed Rules

Federal Register
Vol 50, No. 159
Friday, August 16, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-31]

Proposed Alteration of a Transition Area; Alturas, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter and redefine the transition area at Alturas, California, to provide controlled airspace for aircraft executing a Non-Directional Beacon (NDB) Standard Instrument Approach Procedures at Alturas Municipal Airport. This proposal also describes the transition area using geographical coordinates for clarification. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

DATE: Comments must be received on or before September 15, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

The official docket may be examined in the Office of the Western-Pacific Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536-6540.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWP-31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above, both before and after closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 15000 Aviation Boulevard, Hawthorne, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide alteration of the Alturas, California, transition area to accommodate aircraft executing NDB standard instrument approach procedures to Alturas Municipal Airport. Currently, the transition area description uses the NDB for a reference and this proposal uses geographical coordinates to provide a precise description that is easier to depict. The intended effect of this proposal is to ensure segregation of aircraft using approach procedures in instrument weather conditions. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones/transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Alturas, CA—[Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 41°34'00" N., long 120°46'20" W.; to lat. 41°37'00" N., long. 120°28'40" W.; to lat. 41°11'30" N., long. 120°21'00" W.; to lat.

41°08'45" N., long. 120°38'10" W.; thence to the point of beginning; that airspace extending upward from 1200 feet above the surface beginning at lat. 41°22'10" N., long. 120°58'00" W.; to lat. 41°28'20" N., long. 120°44'20" W.; to lat. 41°19'10" N., long. 120°41'30" W.; to lat. 41°15'00" N., long. 120°51'00" W.; thence along the east edge of V-452 to the point of beginning; and that airspace extending upward from 1200 feet above the surface beginning at lat. 41°33'30" N., long. 120°27'40" W.; to lat. 41°34'30" N., long. 120°20'00" W.; to lat. 41°25'50" N., long. 120°18'30" W.; to lat. 41°25'00" N., long. 120°25'00" W.; thence along the west edge of V-165 to the point of beginning.

Issued in Los Angeles, California on August 6, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85-19510 Filed 8-15-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 84N-0362]

Neurological Devices; Premarket Approval of the Implanted Diaphragmatic/Phrenic Nerve Stimulator

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the implanted diaphragmatic/phrenic nerve stimulator, a medical device. The agency also is summarizing its proposed findings on the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and on the benefits to the public from use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Comments by October 15, 1985; requests for a change in classification by September 3, 1985.

ADDRESS: Written comments or requests for a change in classification to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: E. Carolyn Derrer, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

SUPPLEMENTARY INFORMATION:

Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) provides for the classification of medical devices into one of three regulatory classes: class I, general controls; class II, performance standards; and class III, premarket approval. As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been, or are being, classified by FDA. For convenience, this proposal refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, establish as a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515 of the act, to premarket approval. (Section 515(f) of the act prescribes, as an alternative procedure for premarket approval, development of a PDP, the last stage of which is for FDA to declare that a PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or notice of completion of a PDP until 90 days after FDA's promulgation of a regulation requiring premarket approval for the device. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR Part 812) until the date stipulated by FDA in the regulation requiring premarket approval for that device.

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a regulation to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing (1) the proposed regulation, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved application for premarket approval and the benefit to the public from use of the device, (3) an opportunity for the submission of comments on the proposed regulation and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate reclassification under section 513(e) of the act. If FDA does not initiate reclassification of the device, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed regulation and consideration of any comments received, promulgate a final regulation to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a regulation requiring premarket approval for a preamendments device is made final, section 501(f) of the act requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final regulation, or 30 months after final classification of the device, whichever is later. If a PMA or notice of completion of a PDP for such a device is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334). Shipment of the device in commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final regulation within which an application or notice is required to be filed. The House Report on the amendments states that "the thirty

month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H.R. Rept. No. 94–853, 94th Cong., 2d Sess. 42 (1976).

A device that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device must have an approved PMA or declared completed PDP before entering the market.

Classification of the Implanted Diaphragmatic/Phrenic Nerve Stimulator

In the **Federal Register** of September 4, 1979 (44 FR 51771), FDA issued a final regulation (21 CFR 882.5830) classifying the implanted diaphragmatic/phrenic nerve stimulator into class III. The preamble to the proposed classification regulation (43 FR 55719; November 28, 1978) included the recommendations of the Neurological Devices Panel (formerly the Neurological Device Section of the Respiratory and Nervous System Devices Panel) (the Panel), an FDA advisory committee, regarding the classification of the implanted diaphragmatic/phrenic nerve stimulator. (On April 24, 1984, the Respiratory and Nervous System Devices Panel was terminated. Concurrently, FDA established the Neurological Devices Panel (see 49 FR 17446; April 24, 1984).) The Panel's recommendation included a summary of the reasons why the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the implanted diaphragmatic/phrenic nerve stimulator. The preamble to the final regulation classifying the device advised that the date by which a PMA for the device (or notice of completion of a PDP) could be required was May 28, 1982, or 90 days after promulgation of the regulation proposed by this document, whichever occurred later.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA published a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating regulations requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using these factors, FDA has determined that the implanted diaphragmatic/phrenic nerve stimulator, identified in § 882.5830(a), has a high priority for initiating a proceeding to require premarket approval. Therefore, FDA is commencing a proceeding under section 515(b) of the act to require that the implanted diaphragmatic/phrenic nerve stimulator have an approved PMA or PDP that has been declared completed.

Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the implanted diaphragmatic/phrenic nerve stimulator within 90 days after promulgation of any final regulation based on this proposal. An applicant will be permitted to continue marketing the implanted diaphragmatic/phrenic nerve stimulator during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days, of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final regulation based on this proposal will stipulate that as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any implanted diaphragmatic/phrenic nerve stimulator (1) which is not legally on the market on or before that date or (2) which is legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for this device is not filed with FDA within 90 days after the date of promulgation of any final regulation requiring premarket approval for the implanted diaphragmatic/phrenic nerve stimulator, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

Description of Device

The implanted diaphragmatic/phrenic nerve stimulator is a device that applies an electrical current to a patient's phrenic nerve(s) to cause the diaphragm to contract rhythmically and produce breathing in patients who have hypoventilation (a state in which an abnormally low amount of air enters the lungs) caused by brain stem disease, high cervical spinal cord injury, or chronic lung disease. The device consists of an implanted radiofrequency (RF) receiver, electrodes that are placed around the patient's phrenic nerve, a pocket-sized external RF transmitter, and an external coil (antenna). The RF pulses are transmitted via the antenna through the patient's skin to the subcutaneously placed RF receiver. The receiver converts the RF energy to electrical pulses, which are delivered via lead wires to the electrodes on the phrenic nerve.

The device's electrodes are applied to the phrenic nerve by surgically exposing the nerve. The receiver is implanted under the skin through an incision. A tunnel is made beneath the patient's skin to accommodate the wires that extend from the receiver to the electrode. When stimulation of both phrenic nerves is required, two devices are implanted.

Proposed Findings With Respect To Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the implanted diaphragmatic/phrenic nerve stimulator to have an approved PMA or declared completed PDP and is identifying the benefits to the public from use of the device.

Degree of Risk

Surgical procedures. Implantation of the electrodes requires that the patient's phrenic nerve be exposed either in the cervical area under local anesthetic or by entering the chest through the third intercostal space under general anesthetic. Two additional incisions are

required to implant the receiver and the electrode wires. As with any surgical procedure, complications may occur because of the surgery. Glenn et al. (Ref. 11) reported infections in 5 of 37 (14 percent) quadriplegics implanted with the device. Infection at the site of any of the implanted components usually requires removal of all of the components (Ref. 5). Also, infections can damage the phrenic nerve (Refs. 2 and 3). In general, the reported rate of infection due to the surgery is not unusual for surgical procedures involving device implantation.

Injury to the phrenic nerve. Injury to the phrenic nerve can cause paralysis of the diaphragm (Refs. 3, 11, and 14). Once the phrenic nerve has been damaged, electrical stimulation can no longer be used. As a result, the patient may become totally dependent upon mechanical ventilation, a major cause of morbidity and mortality (Ref. 10). Phrenic nerve injury may be caused by attaching and securing the electrode to the nerve, by mechanical irritation of the nerve by the continuing presence of the electrode, by the electrical current used for stimulation, by infection, or by the formation of scar tissue around the nerve. Glenn et al. (Ref. 11) reported injury to the phrenic nerve from manipulation at the time of placement of the device's electrode in 11 of 37 (30 percent) patients. Kim et al. (Ref. 14) reported severe degeneration in five of seven (71 percent) human phrenic nerves obtained at autopsy and concluded that the injury was due to placement of the implanted diaphragmatic/phrenic nerve stimulator's electrodes on the nerve. Numerous animal and clinical reports have shown that mechanical damage to the nerve can result from the continued presence of the device's electrode (Refs. 3 through 5, 7, 8, 11, 13 through 16, and 22). Glenn et al. (Ref. 3) reported that 11 of 75 (16 percent) phrenic nerves of their patients sustained injury from the physical presence of the device's electrode. One author (Ref. 2) reported that when infection associated with the implanted diaphragmatic/phrenic nerve stimulator involves the phrenic nerve, prolonged nerve conduction times persist for many months following removal of the electrode. Scar tissue from the surgery required to implant the device's electrode also may damage the nerve (Ref. 3).

The electrical current used for stimulation may injure the phrenic nerve (Refs. 3, 19, and 20), and Lieu, Loew, and Hunt (Ref. 16) reported such injury in one patient. Other studies (Refs. 11 and 13 through 15) indicate that stimulation with a relatively low charge density, i.e., using the latest current necessary to effect maximum tidal volume, does not cause injury to the phrenic nerve. Oda et al. (Ref. 19), in a study designed to evaluate the effects of various electrical parameters for diaphragm pacing in dogs, reported that, although injury to the phrenic nerve from monophasic stimulation can occur, a charge density of 3.7 microcoulombs per square centimeter (an adequate charge to stimulate the phrenic nerve) does not result in injury. Glenn et al. (Ref. 11), in a series of 37 patients paced for up to 5 years, concludes that, based on the observation that the average current required to cause minimal contraction of the diaphragm (threshold) has declined after the initial 6 months of treatment, the electrical stimulus does not injure the phrenic nerve (Ref. 11).

Injury to the diaphragm. Repeated stimulation may cause fatigue of the diaphragm muscle and result in permanent damage to the muscle. As with the phrenic nerve, when the diaphragm has been damaged, electrical stimulation can no longer be used, and the patient may become totally dependent upon mechanical ventilation (Ref. 10). Until recently, fatigue of diaphragm muscle has prevented continuous stimulation of one or both hemidiaphragms for more than 12 consecutive hours. In a clinical series of 18 patients, Glenn, Hogan, and Phelps (Ref. 5) reported three deaths (17 percent) related to diaphragm fatigue. Lieu, Loew, and Hunt (Ref. 16) reported widespread diaphragm degeneration in an infant who died after being stimulated continuously for 19 days.

The relationship of diaphragm muscle degeneration to fatigue of the muscle by electrical stimulation has been demonstrated in dogs by Hershberg et al. (Ref. 13) and more recently by Ciesielski, Fukuda, and Glenn (Ref. 1). Hershberg et al. studied animals stimulated with trains of 60 hertz (Hz) pulses repeated 18 to 42 times per minute and found moderate to severe muscle fiber atrophy and necrosis of the diaphragm. Ciesielski and colleagues' study revealed severe structural and biochemical changes resembling those seen in myotonic dystrophy or chronic neurogenic atrophy in the diaphragm muscles of animals who underwent stimulation with 27 to 33 Hz pulses repeated 20 times per minute for 48 to 52 weeks. This damage is irreversible (Refs. 16 and 19).

Several investigators have attempted to evaluate pacing schedules and parameters in dogs to minimize diaphragm fatigue. In a series of 35 dogs, Sato et al. (Ref. 23) studied the comparative effects of unidirectional, alternating bidirectional, cathodal or anodal current in combination with various durations and respiratory rates and concluded that alternating bidirectional current with maximum pulse intervals prolonged effective diaphragm contraction. Oda et al. (Ref. 19) implanted 23 dogs with stimulators and evaluated various pacing parameters to determine which level of current, stimulation waveform, electrode design, pulse frequency, and pulse train repetition rate caused least fatigue of the diaphragm muscle. Results revealed that stimulation at a current level sufficient to produce maximum tidal volume resulted in greater fatigue than stimulation at a lesser current level. Marked differences were noted with the use of different stimulation frequencies and repetition rates: high-frequency, narrow pulse intervals (33 Hz; 30 millisecond) caused rapid and marked fatigue; low-frequency, wide pulse intervals (11 Hz; 90 millisecond) increased tidal volume over time and did not produce any muscle fatigue; a repetition rate of 10 per minute produced less fatigue than a rate of 20 per minute.

Based on animal studies (Refs. 1, 13, 16, 19, and 23), investigators over the past 15 years have reduced the stimulation parameters in an attempt to avoid inducing fatigue of diaphragm muscle. In 1970, Glenn et al. (Ref. 6) reported using 200 microsecond pulses at 60 Hz. The repetition rate used was 15 per minute. Between 1971 and 1981, 17 quadriplegic patients were treated at 25 to 30 Hz at a respiratory rate of 12 to 17 per minute (Ref. 10). In a recent article, Glenn et al. (Ref. 10) reported using 150 microsecond pulses at 7 to 8 Hz with a repetition rate of 5 to 9 per minute for continuous simultaneous stimulation of both hemidiaphragms in five quadriplegic patients; fatigue was not observed in these patients. However, a relatively small amount of air is needed to meet basal tidal-volume requirements in quadriplegia because patients with a generalized paralysis are constantly at rest. It is not known, therefore, whether such low-frequency stimulation and long pulse intervals will provide adequate ventilation in other types of patients.

Upper airway obstruction. Use of the device may induce upper airway obstruction or worsen the obstruction if it is already present. Glenn (Ref. 2) reported on a group of 24 patients with central alveolar hypoventilation who had been implanted with the device, 18 of whom demonstrated upper airway obstruction during sleep. Pacing

accentuated the obstruction in 16 of these patients; in the other 2, pacing induced obstruction. It appears likely that this effect is caused by augmentation of the inspiratory action of the diaphragm, which collapses parts of the upper airway. Airway obstruction may also occur because the inspiratory action of the diaphragm is not coordinated in time with that of the upper airway muscles (Ref. 18).

Interference with demand type cardiac pacemakers. Use of the device has been shown to interfere with the function of some demand type cardiac pacemakers. Wicks, Davison, and Belic (Ref. 25) reported stimulator interference with the function of demand pacemakers in 14 of 27 patients (52 percent). The phrenic nerve stimulator pulses resulted in either temporary inhibition or conversion to the asynchronous mode in the cardiac pacemakers. In 5 of these 27 patients (19 percent), interference was still observed when the transmitter was placed more than 5 centimeters from the pacemaker.

Respiratory arrest. In patients requiring total ventilatory support (e.g., quadriplegics), malfunction or failure of the device could result in death within minutes. Failures are most commonly due to receiver malfunction, breakage of antenna wires, battery depletion, transmitter malfunction, or electrode wire breakage (Ref. 5). In 1977, Glenn et al. (Ref. 8) reported failures of 33 of 86 implanted receivers (38 percent) occurring at an average of 16.8 months after implantation. More recent estimates of failure rates have not been published. Mechanical breakage of the battery and antenna connectors also have been reported as troublesome problems (Refs. 7 and 8). Electrode fracture has been reported in one patient (Ref. 6). Electrical components subjected to the severe environmental stress imposed by biological fluids are particularly at risk for malfunction, and most reported failures of the device have involved the receiver (Ref. 11).

Tissue toxicity. The stimulator is made of materials that are generally recognized to be biocompatible. However, the surface of the implanted device, lead wires, or electrodes may contain material that is not biocompatible, or some of the materials may have unknown constituents that cause subtle changes not recognized in the reported studies. Contaminants may be introduced during manufacture or sterilization of the device. Injury to the phrenic nerve by ethylene oxide residues from gas sterilization of the electrode has been hypothesized in one case (Refs. 2, 6, and 9).

Benefits of the Device

The device has been reported to be beneficial in providing ventilatory assistance in some patients with chronic ventilatory insufficency, central in origin, who are dependent upon mechanical ventilation and in whom function of the phrenic nerves, lungs, and diaphragm is adequate to sustain ventilation by electrical stimulation (Refs. 3, 7, and 15). Patients treated with this device have included quadriplegics, patients with central alveolar hypoventilation from various causes (e.g., encephalitis, brain stem infarct or tumor, Pickwickian syndrome), and one patient with chronic obstructive lung disease (Refs. 2 and 4).

Quadriplegia. Damage to the upper cervical spinal cord above the third to fifth cervical vertebrae (C_3–C_5) results in paralysis of the body below the neck, including the diaphragm and intercostal muscles. Control of the muscles of the upper airway, however, is not affected. This type of injury is usually secondary to motor vehicle or sports accidents or to penetrating injuries such as gunshot wounds (Ref. 18). Because the respiratory muscles are completely paralyzed in these patients, quadriplegics require ventilatory support at all times. Various cumbersome devices are traditionally used to support quadriplegics, e.g., iron lungs or tank respirators.

The implanted diaphragmatic/phrenic nerve stimulator has been used in those quadriplegics where injury to the cervical spinal cord occurred above C_3–C_4, i.e., did not involve the phrenic nerves. Quadriplegics are not generally considered to be candidates for implantation of the device until they have fully recovered from their acute injuries and it has been determined that they will require long-term ventilatory support. Disuse of respiratory muscles in the early months following injury leads to weakened or atrophied diaphragm muscles (Refs. 5 and 18). It is therefore necessary to condition the diaphragm muscles by gradually increasing the time that the stimulator is used (Refs. 3 and 5). This conditioning may take 6 to 8 months or more before a quadriplegic can withstand full-time stimulation (Ref. 3), and some patients never attain full-time stimulation schedules because of diaphragm muscle fatigue. Glenn (Ref. 3) has estimated that the device will provide total ventilatory need in only 40 percent of respiratory paralysis patients. Glenn et al. (Ref. 11) reported a series of 37 quadriplegic patients, in which 13 patients (35 percent) were placed on full-time stimulation schedules. Ten of the 37 patients achieved at least half-time pacing schedules. The remaining 14 patients could not be satisfactorily stimulated.

Because the electrical stimulation is not synchronized with the spontaneous opening of the upper airway, an open tracheostomy is required during sleep to prevent upper airway obstruction. The tracheostomy may be closed during the day.

The primary benefit of electrical stimulation of the phrenic nerve to the quadriplegic patient is freedom from mechanical ventilation, which allows the patient to leave the hospital and begin a meaningful rehabilitation program. The social and psychological benefits of freedom from cumbersome mechanical equipment are considered to be important advantages whether these devices are used only on a part-time basis or throughout a 24-hour period (Refs. 7, 12, 17, and 24). Glenn et al. (Refs. 9 and 11) reported quadriplegic patients who, with the use of the device, have been able to resume such normal activities as operating a home business or returning to school.

Central hypoventilation. Central hypoventilation syndromes are characterized by a reduced sensitivity of the respiratory center of the brain that controls breathing. Central hypoventilation may be congenital (in neonates), idiopathic (in adults), or due to anatomic damage to the respiratory center as a result of surgery, infection, cardiovascular accidents, tumors, or secondary to prolonged hypoxia (Ref. 18).

Some central hypoventilation patients are adequately ventilated during waking hours, but experience significant hypoventilation or periods where breathing ceases during sleep (sleep apnea). Sleep apnea can result in respiratory arrest and death. Other patients may be chronically hypoventilated at all times. These patients may maintain a somnolent or cyanotic state and experience recurrent episodes of heart failure. Traditional forms of treatment include rocking beds and mechanical ventilators.

Glenn (Ref. 2) reported successful treatment of 35 of 36 (97 percent) patients with central hypoventilation from a variety of causes with the implanted diaphragmatic/phrenic nerve stimulator. Thirty-three of these patients required stimulation only during sleep. Although two authors (Refs. 19 and 20) state that full-time ventilatory support cannot be provided by the device in young children with congenital central hypoventilation because of the immaturity of the lungs, chest wall, and diaphram, Radecki and Tomatis (Ref. 21)

reported the continuous bilateral stimulation of a single infant for 142 days. Infants, however, require bilateral stimulation and cannot, at present, be stimulated continuously for 24 hours, even when their condition requires total ventilatory support (Ref. 21). It is not known how the implanted device will adapt to the growing structures of children and whether nerve function will be comprised later in the children's life (Ref. 18).

The device prevents respiratory arrest during sleep in patients who have sleep-induced apnea. Glenn (Ref. 2) reported increased alertness during waking hours, lessening of cyanosis, reduction in pulmonary hypertension, and elimination of right heart failure (Refs. 2 through 4) in central hypoventilation patients. As with quadriplegic patients, the social and psychological benefits to central hypoventilation patients of not being dependent upon cumbersome mechanical equipment are considered to be important advantages (Refs. 7, 12, 17, and 24).

Chronic obstructive lung disease. Obstructive lung disease is characterized by decreased ability to exhale all air from the lungs. Causes include chronic bronchitis, asthma, emphysema, and cystic fibrosis. Although oxygen therapy has been shown to improve cardiac and cerebral function and partially reduce pulmonary arterial hypertension in patients with chronic bronchitis and emphysema (Ref. 4), these patients frequently experience ventilatory depression during oxygen administration (Refs. 2 through 4). Glenn, Gee, and Schacter (Ref. 4) reported that use of the device in properly selected obstructive lung disease patients not only ameliorates carbon dioxide retention and augments ventilation, but, more importantly, prevents ventilatory depression during oxygen administration. This allows safe oxygenation which may prevent fatal apneic episodes when pulmonary function worsens later in the course of the disease.

Discussion of Risks and Benefits

FDA classified the device into class III because insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has weighed the probable benefits to health from use of the device and believes that the studies discussed above present evidence of significant risks associated with the use of the device and raise questions about whether probable benefits from use of the device outweigh risks of injury from such use.

FDA believes that use of this device carries a significant risk of permanent damage to the phrenic nerve, which could severely affect the health of the patient or even result in death. This risk appears to be inherent in the implantation procedure and also has been reported to occur in a large percentage of patients as a result of the physical presence of the device. Although damage to the phrenic nerve caused by the electrical current has been reported, FDA believes that there is evidence that electrical damage to the phrenic nerve may be avoided by carefully limiting the charge density of the stimulus.

FDA also believes that use of the device carries a significant risk of permanent damage to the muscle of the diaphragm from fatigue, which could severely affect the health of the patient or even result in death. Recent evidence suggests that damage to the diaphragm caused by fatigue of the muscle may be minimized by use of very low-frequency pulses, maximum pulse widths, and minimum repetition rates required to adequately ventilate the patient (Ref. 10). This finding, however, has not been confirmed.

Published reports indicate that the device is not suitable for use in all patients with respiratory insufficiency. The device has been reported to exacerbate or induce some conditions (e.g., upper airway obstruction) (Ref. 2). The device can interfere with other implanted devices such as demand type cardiac pacemakers. Some physicians (Ref. 4) consider chronic obstructive lung disease patients to be candidates for the stimulator only if they have a significant hemodynamically compromising hypoxia, if the failure or the presence of a high risk from well-controlled oxygen therapy is evident, if they have an adequate expiratory flow, and if adequate function of the diaphragm can be clearly demonstrated. Most investigators report that young children, who all require continuous bilateral stimulation, cannot be adequately ventilated by use of this device (Refs. 16, 18, and 19). FDA therefore believes that appropriate patient selection is extremely important. FDA believes, however, that there may be conditions for which the probable benefits of the device outweigh the risk of using the device.

Accordingly, FDA believes that the question of proper stimulation parameters for this device has not been resolved. FDA also believes that appropriate patient selection criteria that do not expose patients to unreasonable risks of serious injury or death remain to be established.

For all these reasons, FDA believes that the implanted diaphragmatic/phrenic nerve stimulator should undergo premarket approval to reduce or eliminate the risks associated with the device and to determine whether the risks or using the device are balanced by the benefits to the patient.

Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(iv) of the act and § 860.132 of FDA's regulations governing classification of devices (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in FDA's proposals to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402, 53411; November 26, 1982).

A request for a change in the classification of the implanted diaphragmatic/phrenic nerve stimulator is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by September 3, 1985.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in classification of the implanted cerebellar stimulator is submitted, the agency will by October 15, 1985, after consultation with the appropriate FDA advisory committee, and by an order published in the **Federal Register**, either deny the request or given notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and § 860.130 of the regulations.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested

persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Ciesielski, T.E., Y. Fukuda, and W.W.L. Glenn, "Response of the Diaphragm Muscle to Electrical Stimulation of the Phrenic Nerve. A Histological and Ultrastructural Study," *Journal of Neurosurgery*, 58(1): 92–100, 1983.

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9. Glenn, W.W.L., et al., "Total Ventilatory Support in a Quadriplegic Patient with Radiofrequency Electrophrenic Respiration," *New England Journal of Medicine*, 286(10): 513–516, 1972.

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12. Goodwin, D. V., "Diaphragm Pacemaker Proves successful," Research Resources Reporter, III(3): 1–4, 1979.

13. Hershberg, P. I., et al., "Histologic changes in Continuous, Long-term Electrical Stimulation of a Peripheral Nerve," *Institute of Electrical and Electronic Engineers Transactions on Biomedical Engineering*, 14: 109–114, 1967.

14. Kim, J. H., et al., "Diaphragm Pacing. Histopathological Changes in the Phrenic Nerve Following Long-term Electrical Stimulation," *Journal of Thoracic and Cardiovascular Surgery*, 72(4): 602–608, 1976.

15. Kim, J.H., et al., "Light and Electron Microscopic Studies of Phrenic Nerves After Long-term Electrical Stimulation," *Journal of Neurosurgery*, 58(1): 84–91, 1983.

16. Lieu. H.M., J.M. Loew, and C.R.E. Hunt, "Congenital Central Hypoventilation Syndrome: A Pathological Study of the Neuromuscular System," *Neurology*, 28: 1013–1018, 1978.

17. Lozewicz, S., et al., "Diaphragm Pacing in Ventilatory Failure," *British Medical Journal*, 283: 1015–1016, 1981.

18. Nochomovitz, M.L., "Electrical Activation of Respiration," Engineering in Medicine and Biology Magazine, June 27–31, 1983.

19. Oda, T., et al., "Evaluation of Electrical Parameters for Diaphragm Pacing: An Experimental Study," *Journal of Surgical Research*, 30: 142–153, 1981.

20. Pudenz, R.H., "Adverse Effects of Electrical Energy Applied to the Nervous System," *Neurosurgery*, 1: 190–197, 1977.

21. Radecki, L.L., and L.A. Tomatis, "Continuous Bilateral Electrophrenic Pacing in an Infant with Total Diaphragmatic Paralysis," *Journal of Pediatrics*, 88: 969–971, 1976.

22. Richardson, R., N. Johnson, and L.J. Cerullo, "Diaphragm Pacing in Central von Recklinghousen's Disease: A Case Report," *Neurosurgery*, 3(1): 75–78, 1978.

23. Sato, G., et al., "Further Experience with Electrical Stimulation of the Phrenic Nerve: Electrically Induced Fatigue," *Surgery*, 68: 817–826, 1970.

24. Vanderlinden, R.G., et al., "Electrophrenic Respiration in Quadriplegia," *Canadian Nurse*, 70(1): 1–4, 1974.

25. Wicks, J., R. Davison, and N. Belic, "Malfunction of a Demand Pacemaker Caused by Phrenic Nerve Stimulation," *Chest*, 74:303, 1978.

Environmental Impact

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has examined the economic consequences of this proposed regulation in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the proposal would not be a major rule as specified in the Order. The agency believes that only one small firm will be affected by this proposed regulation. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed regulation would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final regulation based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 882

Medical devices, Neurological devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 882 be amended as follows:

PART 882—NEUROLOGICAL DEVICES

1. The authority citation for 21 CFR Part 882 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10; Sections 882.5820(c), 882.5830(c), and 882.5840(c) also issued under secs. 501, 515, 520(g), 52 Stat. 1049–1050 as amended, 90 Stat. 552–559, 569–571 (21 U.S.C. 351, 360e, 360j(g)).

2. In § 882.5830 by adding new paragraph (c), to read as follows:

§ 882.5830 Implanted diaphragmatic/phrenic nerve stimulator.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with FDA on or before (date to be 90 days after date of promulgation of final regulation) for any implanted diaphragmatic/phrenic nerve stimulator that was in commercial distribution before May 28, 1976, or that has on or before (date to be 90 days after date of promulgation of final regulation) been found to be substantially equivalent to an implanted diaphragmatic/phrenic nerve stimulator that was in commercial distribution before May 28, 1976. Any other implanted diaphragmatic/phrenic nerve stimulator shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Interested persons may, on or before October 15, 1985, submit written comments regarding this proposal to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before September 3, 1985, submit to the Dockets Management Branch written requests to change the classification of the implanted diaphragmatic/phrenic nerve stimulator. Two copies of any requests are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-19517 Filed 8-15-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 50716-5116]

Variety Naming Requirements for Plant Patent Applications

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend certain of the rules of practice for plant patent applications. Under the proposed rules of practice, an applicant for a plant patent will, in addition to the present requirements for obtaining a plant patent, also be required to designate and record a variety name for the plant. These proposed rules fulfill an obligation imposed by the Convention of the International Union for the Protection of New Plant Varieties, to which the United States adheres.

DATE: Comments on the proposed rules must be submitted by October 31, 1985, to assure their consideration in formulating the rules put into effect.

ADDRESSES: Address comments to the Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231. All comments received will be made publicly available in the Patent and Trademark Office, Crystal Plaza, Arlington, Virginia, Room 3-11C28. No public hearing is planned.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley D. Schlosser, Office of Legislation and International Affairs, by telephone at (703) 557-3065 or by mail addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The requirement for designating a variety by name and recording that name arises from Article 13 of the UPOV (International Union for the Protection of New Plant Varieties) Convention. This Convention became applicable to the United States on November 8, 1981. In the terminology of Article 13, this designation and recordation is referred to as the registration of the variety name. Registration is required for each plant variety protected in a member state of this Union (hereafter referred to as a member state) either by means of a plant patent or an award of breeders' rights.

It is left to each member state to determine exactly how registration will be effected. For the United States, the issuance of a plant patent, including in the patent the name of the variety patented, will constitute registration. The patent examining process will include a consideration of the suitability for registration of the proposed variety name.

A variety name will be registered if it is judged by the Patent and Trademark Office as not likely to mislead or cause confusion regarding the characteristics, value or identity of the variety, or the identity of the breeder. Also, a variety name to the registered must not impair or conflict with any trademark or another name in which other person has a proprietary right. Ordinarily, the patent applicant wil be required to register the same variety name (or a translation thereof) for a particular variety in each member sate adhering to the UPOV Convention. These are, in broad terms, the conditions set forth in UPOV Article 13 for the registration of a variety name.

A variety name is the generic name by which the variety is popularly or commonly known. The commercial use of a registered variety name, however, will not be regulated by the Patent and Trademark Office. Rather, use of a variety name, whether registered or unregistered (in cases where the variety is not patented), will be regulated by any applicable state and federal unfair competition and trademark laws.

Variety names are referred to in the UPOV Convention as "variety denominations" and often in plant breeding circles as "cultivar names." For the purposes of these rules of practice, the three terms are considered synonymous.

Attention is called to the Commissioner's Notice (**Federal Register**/Vol. 46, No. 22/October 20, 1981) stating that appropriate rules for the naming of plant varieties, as required by the UPOV Convention, will be issued. The **Federal Register** Notice also provides information about interim procedures to be followed until rules of practice are adopted.

The proposed amendments to the rules of practice when finally adopted will replace the interim procedures announced in the **Federal Register** on October 20, 1981, in regard to the patenting in the United States of asexually reproduced plants. These proposed amendments will not apply, however, to any protection sought under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), administered by the Department of Agriculture and applying only to sexually reproduced plant varieties.

The proposed amendment to § 1.163 prescribes the obligation (as set forth in the UPOV Convention) for registering the name of each patented plant variety. The proposed name will be selected by the patent applicant for inclusion in the title of the application, where it will be easiest for a reader of the patent to find. It will be judged for registrability by the examiner to whom the patent application is assigned for examination, who, however, may receive advice or information from officials of the trademark examining operation. As examples of suitable naming practice, note the titles of plant patents Nos. 5,413 and 5,414, "Plum Tree 'Mr. Paul'" and "Chrysanthemum Plant Named Foxy," respectively.

The requirement for registration applies only to plant patent applications actually filed in the United States on or after November 1, 1981, the date on which the UPOV Convention took effect for the United States, even though the application may be entitled to an earlier United States filing date under the provisions of 35 U.S.C. 120, or claim the right of priority in accordance with 35 U.S.C. 119.

The procedure for judging registrability of a variety name will utilize the Office's compilation of variety names in use in the United States and foreign countries. This compilation has been and will continue to be obtained from horticultural, agricultural, floral and other professional societies, other national examination offices, the UPOV Secretariat, standard references, and other sources. Designation of a variety by name is a formal requirement for obtaining a patent, and will be generally administered in the same manner as other formal requirements.

Proposed new § 1.168(a) sets forth the requirement for naming a variety to be patented. The criteria to be applied will be those set forth in the International Code of Nomenclature for Cultivated Plants—1980. Its articles 1 to 32 provide substantive rules for naming varieties. The other articles, concerned with non-statutory registration authorities, earlier publication, amendment of the Code and other matters unrelated to the registration criteria, of course, will not be involved. Copies of the Code are available from any of the following: The International Bureau for Plant Taxonomy and Nomenclature, Tweede

Transitorium, Uithof, Utrecht, Netherlands; the American Horticultural Society, Mt. Vernon, Virginia 22121; the Crop Science Society of America, 677 South Sego Rd., Madison, Wisconsin 53711; and the Royal Horticultural Society, Vincent Sq., London, SW IP, 2PE, Great Britain.

Registrability will also take into account the Office's file of both registered trademarks and those proposed for registration. If a conflict exists between a proposed variety name and a registered trademark or one proposed for registration, the variety name will not be registered and a new name will be required.

Proposed § 1.168(b) concerns patent applications failing to include a proposed variety name. The examiner will require the submission of a variety name and set a period for compliance.

Proposed § 1.168 (c) and (d) concern an examiner's refusal to register a proposed variety name. Paragraph (c) requires the applicant, upon a final determination of unregistrability, to submit another variety name. Paragraph (d) assures the applicant's right instead to petition the Commissioner in cases where the proposed name is not accepted. The petition will be subject to a fee and the other requirements of these rules applicable to petitions.

The UPOV Convention requires the breeder to identify the patented variety by the same variety name (or a translation thereof) in all member states. A different name may be registered in a particular member state, however, in cases where the name registered earlier in another member state is unsuitable for registration. The Convention's requirements for the consistent naming of varieties are incorporated in proposed § 1.168(e). The applicant may during the course of prosecuting the application be required to inform the Office of any other names by which the variety is known, either in the United States or foreign countries, and to provide a translation into English of any such names.

Specific criteria for unsuitability cannot always be defined in advance, but must develop on a case-by-case basis. Certain criteria for unsuitability can be stated at the outset, however. Names that are difficult to pronounce by English speakers, names having adverse business connotations, and names in non-English characters are examples of unsuitability. The applicant must when submitting a name for registration different from that used in another member state explain in writing why the name used in that other state is unsuitable.

A patent owner or the assignee of a patent will, at times, learn that the registered variety name conflicts with another person's trademark or other proprietary right, or be ordered by a court to commercialize the variety under another name. At other times, a registered variety name may turn out to conflict with an earlier-registered variety name or one already in use. Also, changes in language or custom may render an earlier-registered variety name unsuitable for commercial use. In these cases, a different or substitute name may be submitted for registration. Proposed § 1.168(f) concerns the issuance of a certificate of correction under 35 U.S.C. 255 for the registration of a substitute name in such situations. The patent owner in applying for the registration of a substitute name will be required to explain in writing why it is necessary to do so.

It is, of course, in the patent applicant's interest to know or learn as early as possible if the proposed variety name conflicts with another's trademark or other proprietary right. Accordingly, proposed § 1.168(g) authorizes the Patent and Trademark Office to publish in the *Trademark Official Gazette* each proposed variety name. The Office will also regularly publish in the *Trademark Official Gazette* lists of registered variety names, and such names will be identified in each plant patent and in the *Patent Official Gazette*.

The publication of proposed variety names should greatly reduce the possibility of later conflicts. Conflicts between proposed variety names and proprietary rights will be resolved in an ex parte manner. No inter partes proceedings will be held to resolve a conflict.

Any substitute name registered for a variety will also be published in the *Trademark Official Gazette*, and a certificate of correction containing the substitute name will be issued. If the patent has been assigned, the opportunity to register a different variety name will be available only to the assignee.

In the event a plant breeder proceeds to protect a plant variety under the provisions of section 101 of the patent laws (title 35, U.S.C.), the variety naming requirements of these proposed rules shall also apply to that patent application. This possibility is acknowledged in the proposed amendment to section 1.71. Applications for the patenting of microorganisms under section 101 will, however, not be subjected to this variety naming requirement.

Article 13 of the UPOV Convention of October 23, 1978, referred to above, reads:

Article 13

Variety Denomination

(1) The variety shall be designated by a denomination destined to be its generic designation. Each member State of the Union shall ensure that subject to paragraph (4) no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the protection.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30(1)(b). If it is found that such denomination does not satisfy the requirements of paragraph (2), that authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

(4) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority referred to in Article 30(1)(b) shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted in member States of the Union under the same denomination. The authority referred to in Article 30(1)(b) shall register the denomination so submitted, unless it considers that denomination unsuitable in its State. In the latter case, it may require the breeder to submit another denomination.

(6) The authority referred to in Article 30(1)(b) shall ensure that all the other such authorities are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority referred to in Article 30(1)(b) may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (4), prior rights do not prevent such use.

(8) When the variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

UPOV Article 30(1)(b), referred to in Article 13, reads as follows:

Article 30

Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services

(1) Each member State of the Union shall adopt all measures necessary for the application of this Convention; in particular, it shall:

(a) . . .

(b) set up a special authority for the protection of new varieties of plants or entrust such protection to an existing authority;

(c) . . .

Other Considerations: The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. There are no information collection requirements in the proposed rule change.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The variety naming requirement will impose very little or no extra work on patent applicants (whether small or large businesses or individuals). The rule will help avoid litigation over variety names and trademark rights, which are far more burdensome than the procedures under the proposed rule.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patients.

For the reasons set out in the preamble, 37 CFR Part 1 is proposed to be amended by amending §§ 1.71, 1.163, 1.168 and 1.17 as set forth below. All proposed additions are printed between arrows.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.17 is proposed to be amended by adding the following items in numerical order to the list in paragraph (h) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(h) * * *

►—§1.168(d) For petitioning the Commissioner to register a plant variety name. . . .

—§ 1.168(e) For petitioning the Commissioner to register a substitute plant variety name. . . .◄

* * * * *

3. Section 1.17 is proposed to be amended by adding paragraph (d) to read as follows:

§ 1.71 Detailed description and specification of the invention.

* * * * *

►(d) In the case of an application for the patenting of a plant variety filed under the provisions of section 101 of title 35, United States Code, the requirements for the naming of a variety specified under §§ 1.163 and 1.168 shall apply thereto.◄

4. Section 1.163 is proposed to be amended by adding the following three sentences at the end of paragraph (a):

§ 1.163 Specification

(a) * * *►The title of the invention must include a proposed name for the variety to be patented, where it may be easily recognized as such. A substitute variety name may be proposed during the pendency of the application provided its consideration will not significantly delay disposition of the application. The granting of the patent will be deemed the registration of the variety name for the patented plant for purposes of complying with Article 13 of the International Convention for the Protection of New Varieties of Plants (UPOV), as revised on October 23, 1978.◄

* * * * *

5. A new § 1.168 is proposed to be added, which reads as follows:

►§ 1.168 Variety name, submission to the Office, examination.

(a) The variety name submitted by the patent applicant under § 1.163 or § 1.71(d) will be examined for compliance with § 1.163 using as guidelines for this examination the cultivar naming requirements of the International Code of Nomenclature for Cultivated Plants—1980.

(b) If a proposed variety name is not included as part of the title of the application, as filed, the examiner will set a period of not less than thirty days for providing such name.

(c) If the examiner determines that a proposed variety name is not suitable for registration, or that the proposed name conflicts with a registered trademark or a trademark proposed for registration, the examiner shall refuse registration and set forth in an Office action the reasons for such refusal. Such reasons shall be included in the examiner's action provided under § 1.104, subject to the provisions of § 1.105. An applicant in disagreement with such refusal may request reconsideration and withdrawal of the refusal, giving the reasons therefor. If the examiner's refusal to register a proposed variety name is repeated and made final, the examiner will at the same time require the applicant to propose another variety name for registration.

(d) After a final requirement by the examiner for submission of a proposed new variety name, the applicant, in addition to making any response due on the remainder of the action, may in lieu of proposing a new variety name petition the Commissioner for review of the examiner's holding together with the fee set forth in § 1.17(h).

(e) The applicant will be required to submit for registration the same variety name (or a translation thereof) as that previously registered or proposed for registration in an earlier filed application for protection of the variety in another UPOV member state. Such applicant may submit another name for registration, however, upon a showing satisfactory to the examiner as to why the name originally submitted in another UPOV member state is unsuitable for registration. During the pendency of an application, the examiner may require the applicant to provide any name for the same variety registered or proposed for registration in other UPOV member states before the United States application was filed. If not in English characters, a translation or transliteration of such name or names may be required. An applicant dissatisfied with the examiner's decision

concerning the unsuitability of a variety name may petition the Commissioner, together with that fee set forth in § 1.17(h).

(f) A patentee, in order to avoid a conflict between a registered variety name and a trademark, or where the registered variety name is likely to be confused with another variety name, or where a registered variety name has acquired an adverse connotation, may propose for registration a substitute variety name for that already registered. Such a proposal shall be in the form of a petition to the Commissioner, together with the fee set forth in § 1.17(h). The proposed substitute name will be examined in the same manner as the name originally registered, and upon registration shall be promptly published in the *Official Gazette*. A certificate of correction indicating such substitute name shall be issued for the patent. If the patent has been assigned, only the assignee of record may apply for registration of a substitute name.

(g) The Commissioner shall upon its receipt in the Office promptly publish in the *Trademark Official Gazette* any variety name proposed for registration and the genus and species of the plant involved. Correspondence from a person other than the patent applicant concerning the registrability of a proposed or registered variety name shall be served on the applicant by such person and a certificate of such service shall appear on the copy of the correspondence filed in the Patent and Trademark Office. Such correspondence will be placed in the official file, and in the case of an application will be considered by the examiner in an ex parte manner during the examination of the application.◄

Dated: July 11, 1985.

Donald J. Quigg,

Acting Commissioner of Patent and Trademarks.

[FR Doc. 85-19401 Filed 8-15-85; 8:45 am]

BILLING CODE 3510-16-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 85-3]

Cancellation of Completed Registrations

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is considering adoption of a new regulation with respect to cancellation practices and procedures under the Copyright Act of 1976. The effect of the proposed regulation is to specify the conditions under which the Copyright Office will cancel a completed registration form.

DATE: All comments should be received on or before September 16, 1985.

ADDRESSES: Interested persons should submit ten copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Department DS, Washington, D.C. 20540, or if by hand, to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Ave., SE., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, Telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION: Cancellation is an action taken by the Copyright Office to expunge an already completed registration. Section 410(b) of the Copyright Act of 1976 provides authority for the Register of Copyrights to refuse registration when he or she determines the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason. Section 410(b) also provides authority for the Register to cancel a completed registration that was made in error or which was made in the wrong classification.

1. Background and Present Practice

Cancellation of registrations of claims in works that are not subject to copyright was established under the 1909 Act, and has continued under the 1976 Act.

In Copyright Office Supplementary Practice No. 15, entitled, "Cancellation Cases," a cancellation case is defined as:

> One in which the number assigned to a completed registration will not be used for that particular work, and an accounting action is therefore necessary. The case may involve either:
>
> (a) Complete elimination of any registration for the work in question; or
>
> (b) A new registration for the work under a different class and number.[1]

As an illustration of (a) above, the practice provides:

> Where it is discovered only after registration that the notice for a published work is fatally defective, the fee is refunded or recredited.[2]

Cancellation Under the 1909 Act

In the past, members of the public have requested the Office to cancel registrations—their own and those made by others—where it was not clear that the registration was invalid. As a result, nearly thirty years ago the Office issued regulations to inform the public of the conditions under which corrections of the record, including cancellations could be made. That regulation, entitled "No Cancellations," provided that—

> No correction or cancellation of a Copyright Office registration or other record will be made (other than a registration or record provisional upon receipt of fee as provided in Section 201(6) after it has been completed *if the facts therein stated agree with those supplied the Office for the purpose of making such record.* However, it shall be within the discretion of the Register of Copyrights to determine if any particular case justifies the placing of an annotation upon any record for the purpose of clarification, explanation, or indication that there exists elsewhere in the records, indexes or correspondence files of the Office, information which has reference to the facts as stated in such record.[3] (Emphasis added.)

This language was interpreted by the Office in a Report which forms a part of the legislative history of the 1976 Act:

> The present Copyright Office Regulations (37 CFR 201.5(a)) allow correction or cancellation of a completed registration only if "the facts therein stated" do not "agree with those supplied to the Office for the purpose of making such record"—in other words, if the Copyright Office itself made an error in registering the claim or failed to catch an error that should have been apparent during its examination of the claim.[4]

The Copyright Office takes seriously the matter of changing completed registration records. And it regards cancellations as the most serious of those changes.[5] In implementating the

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[1] Compendium of Copyright Office Practices (Compendium I), Supplementary Practice No. 15, p. S-48 (1966) [hereinafter Supplementary Practice No 15]. This administrative staff manual, although available previously for inspection and copying, was first available through the Superintendent of Documents of the Government Printing Office in 1970.

[2] *Id.* The fee is no longer refunded, however, because Pub. L. No. 97-366, 96 Stat. 1759 (October 25, 1982) changed the nature of the copyright fees from a registration service fee to a filing fee

[3] 37 CFR 201.5(a) (1957) (amended 1978). Also see, generally, Advisers, Inc. *v.* Weisen-Hart, Inc., 236 F.2d 706 (6th Cir. 1956), *cert. denied*, 353 U.S. 949 (1957) (regulation is cited, corrective registration presumed valid).

[4] Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, 1965 Revision Bill, Copyright Law Revision, Part 6, 89th Cong., 1st Sess. 120 (Comm. Print 1965) [hereinafter cited as "1965 Supplementary Report of the Register"].

[5] For example, only Section Heads and higher ranking Copyright Office officials can authorize cancellation of a registration.

1976 Act, the Office continued the cancellation practices in effect under the 1909 Act in substantially the same manner.

Cancellations Under the 1976 Act

Section 201.5(a)(2) issued pursuant to the 1976 Act follows the same approach as the former regulation in distinguishing between corrections requested by members of the public and corrections of errors made by the Copyright Office. It provides that:

> No correction or amplification of the information in a basic registration will be made except pursuant to the provisions of this § 201.5. As an exception, where it is discovered that the record of a basic registration contains an error that the Copyright Office itself should have recognized at the time registration was made, the Office will take appropriate measures to rectify its error.[8]

The Office has applied the language "appropriate measures to rectify [the Coypright Office's] error" to include the cancellation practices followed under the 1909 Act. If registration should not have been made at all, because the work is not copyrightable subject matter or the other legal requirements have not been satisfied, the "appropriate measure" is to simulate the action which would have been taken but for the erroneous registration. If the error had not been made, or the erroneous information had not been submitted, registration would have been refused. In such cases, cancellation, operating as a kind of refusal to register, appears the only approrpiate measure to take where the Register believes registration is not permitted by law. In *Bouve v. Twentieth Century Fox Film Corp.*, the court said, "it seems obvious, also, that the Act establishes a wide range of selection within which discretion must be exercised by the Register in determining what he has no power to accept."[7]

Compendium II of the Copyright Office Practices, issued under the 1976 Act,[8] provides that when it is apparent that the basic registration should not have been made, registration will be concelled, giving the following as an example:

> The basic registration states that the work was first published in 1979. The Applicant now asserts that the work as actually first published in 1977. Since copies as first published are required for work first published before 1978, an application for a basic registration accompanied by the required deposit should be submitted. If, however, the work was first published without an acceptable copyright notice, the basic registration will be cancelled.[9]

As it did under the 1909 Act, the Office cancels registrations where the registration fee has not been paid, [10] and where the claim is patently invalid for substantive reasons. The Office additionally cancels registration numbers, as opposed to claims, where the claim has been numbered in the wrong series—for example, an unpublished number (VAu 123–456) is given to a published claim (VA 123–456).[11]

2. Authority to Cancel

Cancellation of registrations for works that are not the subject matter of copyright or that fail to satisfy other legal requirements seems required by section 410 of the Copyright Act. That section requires the Register to refuse to register a claim to copyright in a work that does not constitute copyrightable subject matter, or satisfy the other legal and formal requirements of the Copyright Act.

> In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.[12]

Because the Register has no authority to register works in the public domain, there is no alternative except to cancel where the Office discovers such an error only after registration has been made.[13]

Moreover, the current statute accords the certificate of registration prima facie evidence of the validity of the copyright.[14] Unless erroneous registrations are expunged from the records, the integrity of copyright registration records would be seriously compromised, and the justification for the court's reliance on those records would be destroyed.

> . . . [I]f the Copyright Office were to register claims and issue certificates without regard to the copyrightability of the material, the result would be to mislead the applicant and the public. What materials are copyrightable is a rather esoteric question on which the general public is not well informed. Many applications are received in the Copyright Office for the registration of uncopyrightable materials such as titles, names, ideas, mechanical devices, tools, toys and almost anything imaginable, usually under a misapprehension by the applicant of the copyright law. . . . Registration of a copyright claim in such material would lull the applicant into a false sense of security in believing he had copyright protection, instead of seeking advice and other means of protecting his interests; and the public would often be given the false impression that the material is copyrighted. Further consequences also seem evident: the registration records and certificates would be cluttered with unfounded claims; registration records and certificates would be unreliable and would lose much of their probative value for copyright claimants, for other persons dealing with them, and for the courts; and many unfounded claims would probably be the source of litigation.[15]

In the same way, it appears that to refuse to cancel invalid registrations would erode the certificate's presumption of validity, mislead the public, and vex the courts.

3. Proposed Regulations

Although the authority of the Copyright Office to cancel invalid registrations has been exercised since 1909, the regulations of the Office do not, and never have, described the cancellation practice in detail. In order to inform the public more explicitly of the cancellation practices, the Office proposes to adopt regulations that describe the nature of cancellations and codify the practices under which completed registrations will be cancelled. The proposed regulations also provide that the copyright claimant will be given 30 days to present arguments against cancellation, where the proposed action is based on substantive grounds (i.e., the work is not copyrightable subject matter or fails to satisfy the legal and formal requirements of the Act). Where cancellation is required on the ground of an uncollectible check, the Office will inform the claimant that the claim has been cancelled for failure to pay the

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[6] 37 CFR 201.5(a)(2)(1978).

[7] Bouve *v.* Twentieth Century Fox Film Corp., 122 F.2d 51 (D.D.C. 1941).

[8] Compendium of Coypright Office Practices, Chapter 15, Corrections and Amplifications of Copyright Office Records, Supplementary Registrations (1984) (Compendium II).

[9] Compendium II, 1507.08(d), 1500–19 (1984).

[10] The Office's initial uncollectible check policy (under the new law) was later amended and notice thereof was published in its commentary issued with the amended regulation. The Office notifies the remitter by letter that the registration is being cancelled because of an uncollectible check. 37 CFR 201.6 (1981). 46 F.R. 30221 (June 5, 1981).

[11] Cancelled numbers represent the majority of the cancellations made. Altogether (except for one class of claims, serials) the Office has cancelled approximately 4300 registrations since Jan. 1, 1978. Of these, it has cancelled at least 130 claims for lack of substantive validity.

[12] 17 U.S.C. 410 (b)(1976).

[13] See generally, Berger, Authority of the Register of Copyrights To Reject Applications For Registration, Copyright Law Revision Study No. 18, 86th Cong., 2d Sess. (Comm. Print 1960) (hereafter, "Berger, Study No. 18").

[14] 17 U.S.C. 410(c)(1976).

[15] Berger, Study No. 18 at 95.

statutory fee.[16] Cancellation of registration *numbers* and reassignment of another number, to correct classification errors will also be taken without prior notification, but the copyright claimant will receive a corrected certificate of registration.

As a rule, a cancellation action will be initiated solely because the Office itself has discovered a material error in the registration, which should have been noticed by the examiner before registration. By this regulation, the Office intends to confirm existing practices. It does not intend to establish a new procedure for adversarial review of completed registrations. The overwhelming bulk of registrations are made free from error and are entitled to prima facie evidentiary weight if made before or within five years of first publication. The Office does not invite, and will generally not respond favorably to, requests to cancel a completed registration by a party other than the owner of copyright.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[17]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Acting Register of Copyrights has determined that this proposed regulation will have no significant impact on small businesses.

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[16] Because copies or phonorecords deposited from registration are the property of the United States Government [17 U.S.C. 704(a)], they are not returned if the registration is cancelled.

[17] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

List of Subjects in 37 CFR Part 201

Claims to copyright, Copyright.

Proposed Regulations

PART 201—[AMENDED]

In consideration of the foregoing, the Copyright Office proposes to amend Part 201 of 37 CFR, Chapter II.

1. The authority citation for Part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.7 also issued under 17 U.S.C. 409, 410.

2. By adding a new § 201.7, to read as follows:

§ 201.7 Cancellation of completed registrations.

(a) *Definition.* Cancellation is an action taken by the Copyright Office where, in order to correct an error of the Office, either the registration for the work is eliminated on the ground the registration is invalid as a matter of law, or the registration number is eliminated and a new registration is made for the work under a different class and number.

(b) *General policy.* The Copyright Office will cancel a completed registration only in those cases where: (1) It is clear that no registration should have been made because the work does not constitute copyrightable subject matter or fails to satisfy the other legal and formal requirements for obtaining copyright; (2) registration may be authorized but the application, deposit material, or fee does not meet the requirements of the law and Copyright Office regulations, and the Office is unable to get the defect corrected; or, (3) an existing registration in the wrong class is to be replaced by a new registration in the correct class.

(c) *Circumstances under which a registration will be cancelled.* (1) Where the Copyright Office becomes aware after registration that a work is not copyrightable, either because the authorship is de minimis or the work does not contain authorship subject to copyright, the registration will be cancelled. The copyright claimant will be notified by correspondence of the proposed cancellation and the reasons therefor, and be given 30 days, from the date the Copyright Office letter is mailed, to show cause in writing why the cancellation should not be made. If the claimant fails to respond within the 30 day period, or if the Office, after considering the response, determines that the registration was made in error and not in accordance with title 17 U.S.C., Chapters 1 through 8, the registration will be cancelled.

(2) When a check received in payment of a registration fee is returned to the Copyright Office marked "insufficient funds" or is otherwise uncollectible, the Copyright Office will immediately cancel any registration(s) for which the dishonored check was submitted and will notify the remitter the registration has been cancelled because the check was returned as uncollectible.

(3) Where registration is made in the wrong class, the Copyright Office will cancel the first registration, replace it with a new registration in the correct class, and issue a corrected certificate.

(4) Where registration has been made for a work which appears to be copyrightable but after registration the Copyright Office becomes aware that, on the administrative record before the Office, the statutory requirements have apparently not been satisfied, or that information essential to registration has been omitted entirely from the application or is questionable, or correct deposit material has not been deposited, the Office will correspond with the copyright claimant in an attempt to secure the required information or deposit material or to clarify the information previously given on the application. If the Copyright Office receives no reply to its correspondence within 30 days of the date the letter is mailed, or the response does not resolve the substantive defect, the registration will be cancelled. The correspondence will include the reason for the cancellation. The following are instances where a completed registration will be cancelled unless the substantive defect in the registration can be cured:

(i) Eligibility for registration has not been established;

(ii) A work was registered more than 5 years after the date of first publication and the deposit copy or phonorecord does not contain a statutory copyright notice;

(iii) The deposit copies or phonorecords of a work published before January 1, 1978 do not contain a copyright notice or the notice is defective;

(iv) A renewal claim was registered after the statutory time limits for registration had apparently expired;

(v) The application and copy(s) or phonorecord(s) do not match each other and the Office cannot locate a copy or phonorecord as described in the application elsewhere in the Copyright Office or the Library of Congress;

(vi) The application for registration does not identify a copyright claimant or it appears from the transfer statement on the application or elsewhere that the

"claimant" named in the application does not have the right to claim copyright;

(vii) A claim to copyright is based on material added to a preexisting work and a reading of the appliction in its totality indicates that there is no copyrightable new material on which to base a claim;

(viii) A work subject to the manufacturing provisions of the Act of 1909 was apparently published in violation of those provisions;

(ix) For a work published after January 1, 1978 the only claimant given on the application was deceased on the date the aplication was certified;

(x) A work is not anonymous or pseudonymous and statements on the application and/or copy vary so much that the author cannot be identified; and

(xi) Statements on the application conflict or are so unclear that the claimant cannot be adequately identified.

(d) *Minor substantive errors.* Where a registration includes minor substantive errors or omissions which would generally have been rectified before registration, the Copyright Office will attempt to rectify the error through correspondence with the remitter. Except in those cases enumerated in paragraph (c) of this section, if the Office is unable for any reason to obtain the correct information or deposit copy, the registration record will be annotated to state the nature of the informality and show that the Copyright Office attempted to correct the registration.

Dated: August 6, 1985.

Donald C. Curran,

Acting Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85–18462 Filed 8–15–84; 8:45 am]

BILLING CODE 1410-03-M

POSTAL SERVICE

39 CFR Part 111

Prohibition Against Mailing Odd-Shaped Items in Letter-Size Envelopes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend its regulations to extend the prohibition against mailing odd-shaped items in letter-size envelopes to include items mailed in letter-size envelopes at bulk third-class rates. Odd-shaped items, such as pens and bottle caps, are not permitted in letter-size envelopes Mailed as First-, single piece third-, or fourth-class mail because they jam mail processing equipment and can injure postal employees when an envelope containing an odd-shaped item bursts. The Postal Service is now beginning to use high-speed automated equipment to process bulk third-class mail. Accordingly, the increased risk of damage to other equipment and of injury to postal employees from odd-shaped bulk third-class mail has moved the Postal Service to propose this rule prohibiting odd-shaped items in letter-size envelopes mailed at bulk third-class rates.

DATE: Comments must be received on or before September 26, 1985.

ADDRESS: Written comments should be mailed or delivered to the Office of Mail Classification, Rates and Classification Department, Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–5371. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FUTHER INFORMATION CONTACT: F.E. Gardner, (202) 245–5756.

SUPPLEMENTARY INFORMATION: Section 124.47 of the Domestic Mail Manual provides that pens, bottle caps, and similar odd-shaped items contained in letter-size envelopes may not be mailed as First-, single piece third-, or fourth-class mail. These items are prohibited because they jam mail processing equipment, causing damage both to the equipment and to other mail. They also can injure postal personnel when the envelope contaning an odd-shaped item bursts. Section 121.324 of the Domestic Mail Manual, however, has been interpreted to authorize the mailing of odd-shaped items in letter-size envelopes at bulk third-class rates.

The Postal Service is now making more use of mail processing machinery, including new high-speed automated equipment, to process bulk third-class mail. The increased processing of bulk third-class mail by machine increases the risk of damage to postal equipment and to other mail and of injury to postal personnel by permitting odd-shaped items contained in letter-sized envelopes to be mailed as bulk third-class mail. In addition, since undeliverable-as addressed bulk third-class mail may be processed on automated equipment when it is returned, there is also risk of injury or damage from odd-shaped items contained in letter-sized envelopes when processing returned bulk third-class mail.

In order to prevent the damage and injuries that odd-shaped items contained in letter-size envelopes cause, the Postal Service proposes to amend sections 121.324 and 124.47 to extend the prohibition against such mail to bulk third-class. If adopted, the proposal would require that pens, bottle caps, and similar odd-shaped items would have to be packaged in a way that would preclude processing of such mail on equipment which might be damaged.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621, 42 U.S.C. 1973cc–13, 1973cc–14.

PART 121—PACKAGING

2. In 121.32 revise .324 to read as follows:

32. Acceptable containers

* * * * *

.324 Envelopes.

a. *General.* Envelopes may be used as containers for articles when the package can reasonably be expected to be processed and delivered without damage to the contents or other mail:

b. *Letter-Size Envelopes.* Letter-size envelopes are nongusseted, flat envelopes which meet the requirements of 128.2. Envelopes of this type are acceptable as containers for nonrigid stationery and material of a similar nature (See 124.47).

c. *Other Envelopes.* Envelopes exceeding the dimensions described in 128.2 are acceptable for easy loads up to 5 pounds when they are made from envelope paper equivalent to 28 substance weight or greater, or are made from extra-strength materials with a Mullen strength in excess of 90 pounds per square inch. Envelopes designed as photographic film mailers, or gusseted (three dimensional) envelopes are acceptable when they are made from envelope paper equivalent to 24 substance weight or greater.

PART 124—NOMMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

3. In 124.4, revise .47 to read as follows:

.4 Restricted Matter

* * * * *

.47 Odd-Shaped Items in Envelopes. Pens, bottle caps, and similar odd-shaped items are not acceptable in letter-size envelopes because they could burst the envelope and damage mail processing equipment or injure employees. (See 123.431). Such items must be placed in suitable packages that can effectively contain the contents.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-19600 Filed 8-15-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FBL-2882-9]

Approval and Promulgation of Implementation Plans; Texas Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: As required by section 110(a) of the Clean Air Act and the October 5, 1978 (43 FR 46246), promulgation of national ambient air quality standards (NAAQS) for lead, the State of Texas has submitted revisions to its State Implementation Plan (SIP) for lead for the El Paso area of the State. EPA announced its approval/disapproval action on the El Paso SIP on August 13, 1984 (49 FR 32184). This action announces EPA's proposed approval of the State's request for a two year extension of the attainment date for the lead NAAQS for a limited area in El Paso, Texas. The rest of the Texas lead SIP was previously approved by EPA (except for the Dallas and El Paso part of the SIP) in a **Federal Register** notice published on October 4, 1983 (48 FR 45246).

DATE: Interested persons are invited to submit comments on this proposed action or or before September 16, 1985.

ADDRESSES: Written comments should be sent to John Hepola, Chief, State Implementation Plan (SIP) Section, EPA (6AW-AS), 1201 Elm St., Dallas, TX 75270. Copies of the State submittal is available for public review during normal business hours at the following locations: Texas Air Control Board, 6330 Hwy. 290 East, Austin, Texas 78723, and EPA, Region 6, Library, 28th Floor, Interfirst Two Bldg., 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: John Hepola, State Implementation Plan Section, Air Branch, EPA, Region 6, at (214) 767-1599 or FTS 729-1599.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the NAAQS for lead was promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (μg lead/m3) averaged over a calendar quarter. As required by section 110 of the Clean Air Act (CAA), and the October 5, 1978 promulgation of the NAAQS for lead, all States must submit a SIP which will provide for attainment and maintenance of the lead NAAQS within three years from the date of approval of the plan. Section 110(e) of the Clean Air Act allows EPA to grant up to a two-year extension of the lead NAAQS attainment date if the Governor of a State requests it for a specified area of the State, and if the State's SIP provides a proper justification for the need for a two-year extension (explained below).

On June 12, 1980, the Governor of Texas submitted to EPA the State's SIP for attainment and maintenance of the NAAQS for lead. On October 4, 1983 (48 FR 45246), EPA approved the Texas lead SIP except for the part of the SIP concerning the Dallas and El Paso areas. On June 20, 1984, the Governor of Texas submitted to EPA the State's lead SIP for El Paso County. On August 13, 1984 (49 FR 32184), EPA approved the Texas lead SIP and Regulations for El Paso County, except for a disapproval of one compliance date for the Regulations (explained in the August 13 **Federal Register** notice), and except for a no-action on the lead NAAQS attainment date for El Paso County. Today's notice explains EPA's proposed approval of the State's request for a two-year extension of the lead NAAQS for a limited area around the ASARCO primary lead smelter in El Paso County, Texas. This notice also explains that the attainment date for the main part of El Paso County will be August 13, 1987.

II. Description of the State's Request

The State of Texas submitted to EPA the final lead SIP for El Paso County in a letter dated June 20, 1984, from the Governor of Texas. In that letter, the Governor requested a two-year extension of the lead NAAQS attainment date be granted by EPA for a limited area around the ASARCO smelter in El Paso, pursuant to section 110(e) of the Clean Air Act. The Governor's letter explained that, despite the application of state-of-the-art controls to all stacks at the smelter, and stringent controls on all significant fugitive sources at the ASARCO smelter, values slightly above the lead NAAQS were predicted by dispersion modeling to be possible for areas in Texas in the vicinity of the smelter when the smelter is operating at maximum production. The State provided justification for the request for the two-year extension in the attachments to the Governor's letter. The State explained that Texas Regulation III, as adopted by the Texas Air Control Board (TACB) on February 17, 1984, provides for the implementation of lead emissions control measures at the ASARCO lead and copper smelter in El Paso. The Regulation III provisions ensure that: (A) All point sources (stacks) at ASARCO having the potential to emit significant quantities of lead have emission limitations requiring the use of reasonably available control technology (RACT) such as baghouses, electrostatic precipitators, or scrubbers, and (B) all significant sources of fugitive lead emissions are controlled by RACT methods such as enclosure or local hooding of emission points with routing to a ventilation system, and paving, cleaning, wetting and/or chemical treatment of plant roads and open unpaved plant property.

The State believes that it has developed a control plan for El Paso which requires that all lead control measures which are technically feasible and reasonably available are to be implemented at the ASARCO smelter in El Paso. The State explained that the additional lead control measures required by Regulation III, along with the reductions expected in lead emissions from mobile sources due to the lead-phasedown-in-gasoline Federal program, will result in substantial reductions in ambient lead levels in the El Paso area. The State explained that although state-of-the-art particulate control technology was either currently installed at ASARCO or was required to be installed expeditiously, the results of the State's dispersion modeling predicted that under maximum production operations at ASARCO the lead NAAQS would still be exceeded in the immediate vicinity of the smelter.

The State has submitted to EPA, in a letter dated June 11, 1984, commitments for TACB to do additional studies at the ASARCO-El Paso smelter in order to determine what additional lead control measures are possible and which parts of the smelter are most crucial for the application of additional lead control measures. The studies are scheduled to be completed in late 1986, with TACB committed to decisions in early 1987 as to what additional lead control measures will be adopted by Texas so that a demonstration of attainment of the lead NAAQS in all areas around the smelter can be finalized. The compliance plan for the installation of these additional lead control measures is scheduled to be accomplished no later than July 1989. The additional studies and TACB's commitments to require additional lead control measures have been reviewed and approved by EPA in a rulemaking dated August 13, 1984 (49 FR 32184). The two-year extension request by Texas specifically concerns only the additional lead control measures which TACB will develop for implementation beyond an August 13, 1987 deadline date. By August 13, 1987, EPA expects all control measures to be implemented as specified in the approved SIP. EPA's approval of the Texas lead SIP and the control plans is explained in the August 13, 1984 rulemaking (49 FR 32184).

III. EPA Reasons for Approval

EPA proposes to approve the State's request for a two-year extension of the attainment date for the lead NAAQS in El Paso County. This request was made by the Governor of Texas as required by Section 110(e) of the Federal Clean Air Act. The extension will provide the time necessary for the State to assess the results of the new Regulation III requirements, to determine the need for possible additional controls to attain the lead NAAQS, and to identify and propose adequate control measures as necessary to provide for attainment by the extended attainment date. The State's compliance with each of the requirements of Section 110(e) is demonstrated as follows:

(1) *Section 110(e)(1)(A).*—Requirement—The Administrator must detemine that "one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be availabie soon enough to permit compliance within such three-year period".

Response—Technical analysis by the staff of the Texas Air Control Board has shown that lead emissions from a major nonferrous smelter operated by ASARCO, Incorporated, and from the use of leaded gasoline in automobiles and other gasoline-powered vehicles account for most of the measured lead concentrations in El Paso. The smelter is the principal contributor to lead concentrations at the ambient monitors closest to the smelter where the highest concentrations have been measured as determined by modeling and by analyses of the monitor filters. Since the use of leaded gasoline is projected to continue to decline with the phase-out of older vehicles and since the smelter is the greatest contributor to the concentrations, the control strategy for attainment of the lead standard is based primarily on lead emission reductions at the ASARCO facility. All point sources (stacks) at the smelter are already equipped with RACT, including baghouses, electrostatic precipitators (ESP's), or ESP's followed by an acid plant. Installation of additional lead control equipment on these point sources at this time is therefore not generally judged to be feasible or reasonable. Nevertheless, some reductions were gained by lowering previously applicable emission limitations for certain baghouses consistent with the demonstrated capabilities of those specific units. Large reductions, however, are expected to result from controlling fugitive lead emissions. The newly adopted Regulation III requirements provide for the installation and implementation of all fugitive emission control equipment and workplace practices determined to be feasible and reasonable for the smelter, such as secondary hoods and associated control equipment installed on the copper converters, improved enclosure and ventilation of the lead blast furnaces, the lead dross reverberatory furnaces, and the lead kettles, plus the paving, cleaning, wetting and/or chemical treatment of plant property.

Even with the implementation of all of these control measures, dispersion modeling done by TACB predicts ambient concentrations slightly above the lead NAAQS if the smelter were to operate at a maximum production rate. This modeling also predicts that emissions from four baghouses in the smelter account for a large portion of the maximum predicted impact after all controls are considered. Since baghouses currently represent the state-of-the-art in particulate control equipment, technology to provide for additional controls necessary to meet the NAAQS is believed to be neither currently available nor expected to become available soon enough to achieve compliance by mid-1987. Nevertheless, the plan comtemplates development of such additional control measures as necessary to attain the standard, as committed by Texas to EPA in a letter dated June 11, 1984.

(2) *Section 110(e)(1)(B).*—Requirement—The Administrator must determine that "the State has considered and applied as a part of its plan, reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved".

Response—The Texas Air Control Board has studied all sources of lead emissions in the ambient air in the El Paso area and has determined that control of lead emissions from the major nonferrous smelter is the only means available to reduce emissions adequately to attain the primary NAAQS for lead in El Paso County. The recently adopted Regulation III requirements will implement all feasible and reasonable technology based controls at the smelter. However, the State submittal did not discuss the possible use of curtailments in production rate, or hours of operation, or other similar measures that might result in attainment within 3 years as alternative means of reducing emissions. Prior to EPA taking final action approving this extension, the State must submit adequate justification to EPA indicating why such measures are not appropriate alternative means of reducing emissions either as permanent control measures or at least during the period following the three-year attainment date while the State completes action on other control measures to achieve compliance. If the State fails to provide such justification, or if the justification it submits is determined by EPA to be inadequate, EPA will disapprove the State's request for a two-year extension of the attainment date and may provide for additional controls through federal rulemaking. The TACB has indicated that they will submit the necessary justification within four months. (See additional discussion under EPA ACTION.)

The dispersion modeling performed by TACB was consistent with EPA guidelines, and predicted that the lead NAAQS may be exceeded slightly at maximum smelter production rates after all currently required controls are

implemented. Accordingly, attainment within three years cannot currently be predicted using EPA-approved methodology. However, considering the substantial reductions in predicted impact from 33.8 μg/m3 to 1.99 μg/m3 and the uncertainty in dispersion model predictions, attainment of the standard may, in fact, be achieved. Whether the standard is achieved or not, all technology based controls currently identified as being feasible and reasonable are being applied. As committed to in the June 11 letter, additional studies will be conducted by Texas for the purpose of refining the predictions of ambient lead concentrations to determine if currently proposed controls will, in fact, result in attainment of the standard. The studies will also focus on identifying additional controls that could be applied to the smelter to provide for attainment of the NAAQS.

(3) *Section 110(e)(2)(A).*—Requirement—The Administrator must determine that the State plan provides for "application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) within the three-year period".

Response—This requirement is believed to be met because there are no lead sources subject to the control of the TACB, other than the smelter and vehicles, which impact the affected area which is exceeding the lead NAAQS. The State plan, as submitted on Feb. 17, 1984, did not provide for application of the provisions of the plan requiring secondary hooding and associated control equipment on the copper converters within three years after approval of the plan. However, this deficiency is being addressed through federal rulemaking. (See 50 FR 493 (January 4, 1985).)

(4) *Section 110(e)(2)(B).*—Requirement—The Administrator must determine that the State plan provides for "such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances."

Response—EPA believes that the currently approved Texas SIP provides for implementation of all technology based controls at the smelter which appear to be feasible and reasonable at this time. The availability of other interim mesures of control (e.g., curtailment) which would reduce the predicted lead concentrations in the area immediately around the smelter must be addressed by the State in order for EPA to approve the extension. (See discussion under Item II above.)

IV. Extent of Attainment Date Extension Area

The extensive dispersion modeling that Texas did for the ASARCO facility demonstrate that for most of El Paso County in Texas, and for all of the Anapra area in New Mexico (which is across the State boundary to the West of the Smelter), the lead NAAQS would be attained and maintained by the implementation of the lead control measures required in the final Texas lead SIP. The Texas dispersion modeling did predict, for maximum production at the smelter, that there is the possibility of exceedances in a small area directly around the smelter even after all SIP control measures are installed by August 13, 1987. The dimensions of the area are delineated by the modeling, and include an area which extends outward from the ASARCO smelter's copper stack: 0.5 Km to the West and South of the copper stack, 2.0 Km to the North and East of the copper stack, and 1.5 Km to the Southeast of the copper stack. These are the dimensions which EPA is using to identify the area in El Paso for which a two year extension of the lead NAAQS is being considered for approval, allowing attainment up to August 13, 1989. As predicted by modeling, all other parts of El Paso County, plus all areas across the State line in New Mexico, will be in attainment of the lead NAAQS by August 13, 1987, when all currently required lead control equipment should be installed at the ASARCO smelter in El Paso.

EPA Action

EPA has reviewed Texas' request for a two year extension of the date for attaining the lead NAAQS in El Paso, and EPA is proposing to approve an extension to August 13, 1989 for a limited area around the ASARCO smelter in El Paso. However, as indicated above, in order for EPA to fully approve this extension request, the State must address the issue of the use of curtailments and other similar measures that might result in attainment within 3 years as a possible alternative means of reducing emissions either as a permanent control measure or at least during the period following the 3 year attainment date while the State completes action on other control measures to achieve compliance. EPA with this notice is requesting the TACB to submit such justification within four months of today. Failure to provide the necessary justification or failure to provide adequate justification, will result in EPA taking a disapproval action on the extension request. A copy of the State's submittal will be made available to anyone requesting it. EPA requests that anyone wishing to receive a copy notify the Regional Office by the date listed in the **DATES** section so that copies can be provided to interested parties as soon as they are available. On receipt of the justification, the comment period will be reopened for a short time.

The area to which the extension is applicable includes the part of El Paso County which is: 0.5 Km to the West and South from the ASARCO's copper stack, 2.0 Km to the North and East from the smelter's copper stack, and 1.5 Km to the Southeast from the smelter's copper stack. EPA proposes to approve the request that the attainment date for the lead NAAQS for that area to be August 13, 1989. EPA proposes to approve the lead attainment date for the rest of El Paso to be August 13, 1987.

EPA proposes approval of the request for a two year extension of the attainment date for lead in the El Paso part of the Texas lead SIP, and advises the public that interested persons may participate by submitting written comments to the Region 6 office. Comments received on or before the date listed in the **DATES** section will be considered. Comments received will be available for public inspection at the EPA Region 6 Office listed in the **ADDRESSES** section of this notice.

The Administrator's final decision to approve or disapprove the request for extension of the lead attainment date will be based on the comments received, the State's response to the request for additional information on curtailments as alternative means of reducing emissions and on whether the two year extension request meets the requirements of sections 110 (a) and (e) of the Clean Air Act and 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (Sec. 46 FR 8709.)

Lists of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter Carbon monoxide, Hydrocarbons, and Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: August 9, 1985.

Dick Whittington,

Regional Administrator.

[FR Doc. 85-19587 Filed 8-15-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2882-8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a site-specific revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP) as it applied to the Villa Grove Farmers Elevator Company (Villa Grove), which is located in Bongard, Champaign County, Illinois. The revision would allow Villa Grove to delay compliance with requirements of Illinois Rule 203(d)(8)(B)(ii) until September 1, 1987. This action is being taken in response to a February 6, 1985, request from the State of Illinois.

DATE: Comments on this revision and on the proposed USEPA action must be received by September 16, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396, before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 353-0396.

SUPPLEMENTARY INFORMATION: On February 6, 1985, the Illinois Environmental Protection Agency (IEPA) submitted a proposed site-specific revision to its TSP SIP for Villa Grove's "Dump and Boot Pit" emissions in Champaign County, Illinois. Villa Grove is located in Champaign County, which is classified as attainment with respect to the TSP National Ambient Air Quality Standards (NAAQS).

The state is proposing that Villa Grove's Dump and Boot Pit be allowed to delay compliance with the 90 percent control requirements of Illinois Rule 203(d)(8)(B), until September 1, 1987. Rule 203(d)(8)(B) requires that dump pit emissions shall be controlled by 90 percent at any new or modified facility with an annual throughput of more than 300,000 bushels but less than 2,000,000 bushels which is located outside a major population area.

Villa Grove is in the process of modifying its facility. Two small dump pits are to be replaced by a larger dump pit, and a rack dryer will be replaced by a column dryer. Rule 203(d)(8)(F) requires that modified grain handling operations comply with the reqirements of Rule 203(d)(8)(B).

Rule 203(d)(8)(B)(ii) would require Dump and Boot Pit emissions to be controlled by 90 percent to 0.76 tons per year, a 6.8 ton year reduction. If the proposed SIP revision is approved, this reduction will not immediately occur, and the Dump and Boot Pit emissions will remain 7.56 tons per year. However, some of the other emissions from the facility will be reduced due to the modifications. The Headhouse Receiving Leg emissions, for instance, will be subject to Rule 203(d)(8)(B)(iii) for Internal Transferring Area, which also requires 90 percent control. This will provide an enforceable emission reduction of 5.85 tons per year.

Because the delayed compliance will not cause an increase in actual emissions in Champaign County (in fact the modification will provide an enforceable emission reduction of 5.68 tons per year), and because the facility is in an attainment area, this temporary variance will not interfere with maintenance of the TSP NAAQS. Therefore, USEPA is proposing to approve the temporary variance as a SIP revision. USEPA notes, however, that this revision does not affect the issue of whether the Villa Grove facility is subject to USEPA's new source performance standard (NSPS) or new source review requirements.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401-7642.

Dated: July 15, 1985.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 85-19585 Filed 8-15-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 84-884; FCC 85-442]

Eligibility and Operations in the Telephone Maintenance Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making proposing amendments to the rule governing eligibility and operations in the Telephone Maintenance Radio Service (TMRS), one of the Commission's private land mobile radio services. This action is being taken as a result of evaluating comments from the public received in response to the October 1984, Notice of Inquiry in this proceeding. The Commission is proposing to amend the TMRS Rule (47 CFR § 90.81) to remove the division of frequencies between wireline carriers and microwave carriers on the VHF and UHF frequencies allocated to the TMRS. The Commission is also soliciting comments on a proposal to allow TMRS eligibles, in limited circumstances, to use their TMRS facilities to maintain customer premises equipment and enhanced service offerings as well as their communications common carrier facilities.

DATES: Comments are due October 15, 1985; reply comments are due November 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Harold Salters, Land Mobile & Microwave Div., Private Radio Bureau (202) 632-7597.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

In the matter of amendment of § 90.81 of the Commission's rules regarding the Telephone Maintenance Radio Service (PR Docket No. 84-884).

Notice of Proposed Rule Making

Adopted: August 5, 1985.
Released: August 16, 1985.

By the Commission.

Background

1. On September 13, 1984, the Commission adopted a *Notice of Inquiry* in this proceeding to solicit public comment on any proposed amendments to the Rule, 47 CFR 90.81, governing eligibility and operations in the Telephone Maintenance Radio Service.[1] The Commission was concerned that amendments may be required in light of the massive changes experienced by the telecommunications industry in the wake of the divestiture of the Bell Operating Companies (BOCs) by the American Telephone and Telegraph Company (AT&T). The Telephone Maintenance Radio Service was established in 1958,[2] at a time when the majority of communications common carrier facilities in the United States, both local exchange and interexchange (long distance), were owned by AT&T directly or its BOCs.

2. Today, eligibility in the Telephone Maintenance Radio Service is limited to communications common carriers offering wireline or wireline and radio communications service to the public for hire (hereafter referred to as the wireline carriers), and radio communications common carriers authorized in the Point-to-Point Microwave Radio Service under Part 21 of the Commission's Rules, 47 CFR 21.700 *et seq.*, (hereinafter referred to as the microwave carriers).

3. The wireline carriers have available for their exclusive use two low-band VHF frequencies, two high-band VHF frequencies and six frequency pairs at 450/470 MHz in the UHF band used for mobile relay operations. The microwave carriers (e.g., MCI, GTE, Sprint, Wold Communications, etc.) have available twelve frequency pairs in the UHF band which they must share with eligibles in the Power, Petroleum, Forest Products and Manufacturers Radio Services.[3] In the 470–512 MHz band (Subpart L of Part 90) and the 800 MHz band (Subparts M and S of Part 90) there is no division of frequencies between wireline carriers and microwave carriers, nor are there any frequencies allocated for the Telephone Maintenance Radio Service's exclusive use.

4. The *Notice of Inquiry* observed that the current division of frequencies effectively allocates exclusive frequencies for the use of the wireline carriers while it offers not exclusive frequencies to the microwave carriers who must share their frequencies with the Power, Petroleum, Forest Products and Manufacturers Radio Services.

5. Our *Inquiry* solicited comments on five broad issues facing the Telephone Maintenance Radio Service (TMRS) in the post-divestiture telecommunications environment:

—AT&T's status as an eligible in the Telephone Maintenance Radio Service.
—The division of frequencies between wireline and microwave carriers; the role of interservice frequency coordination; and the allocation of additional spectrum to the TMRS.
—The primary orientation of the TMRS as between maintaining local exchange service facilities or maintaining interexchange service facilities.
—The use of TMRS frequencies to maintain customer premises equipment and enhanced service offerings furnished by the separated subsidiaries of AT&T and the BOCs.
—The economic impact of changes in eligibility and operations in the TMRS on smaller independent telephone companies and rural telephone companies and cooperatives.

6. Comments and reply comments in response to the issues raised in the *Notice of Inquiry* in this proceeding were submitted by the following parties:

Comments

Central Committee on Telecommunications of the American Petroleum Institute (API)
American Telephone and Telegraph Company (AT&T)
Bell Operating Companies (BOCs) [4]
Continental Telecom, Inc. (Contel)
Forest Industries Telecommunications (FIT)
Illinois Telephone Association
Manufacturers Radio Frequency Advisory Committee (MRFAC)
National Telephone Cooperative Association & Organization for the Protection and Advancement of Small Telephone Companies (NTCA/OPASTCO filing jointly)
United States Telephone Association (USTA)
Utilities Telecommunications Council (UTC)

Reply Comments

American Telephone and Telegraph Company [5]
Bell Operating Companies
NTCA/OPASTCO
United States Telephone Association
Western Tele-Communications, Inc. (WTCI)
Western Union Telegraph Company

Discussion

A. AT&T's Status as an Eligible in the TMRS

7. Upon divestiture of its BOCs on January 1, 1984, pursuant to the Modified Final Judgment in *U.S. v. AT&T*,[6] AT&T was no longer a provider of local exchange telephone service. The provision of this local exchange service formed the basis of AT&T's eligibility for wireline carrier frequencies in the TMRS. The *Notice of Inquiry* noted that AT&T is an interexchange (long distance) carrier operating in competition with other interexchange carriers, like GTE Sprint and MCI, who themselves have eligibility in the TMRS on the microwave carrier frequencies based on their status as licensees in the Point-to-Point Microwave Radio Service under Part 21 of the Rules. The *Notice of Inquiry* asked whether AT&T should continue to be eligible in the TMRS under the wireline carrier classification and whether AT&T should be "grandfathered" to use the frequencies on which it currently operates.

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[1] *Notice of Inquiry* (FCC 84–423), released September 28, 1984, 49 FR 39082 (October 3, 1984).

[2] The Telephone Maintenance Radio Service is one of the 20 radio services which together constitute the Private Land Mobile Radio Services governed by Part 90 of the Commission's Rules (47 CFR 90.1 *et seq.*). Facilities in the Telephone Maintenance Radio Service are used for the transmission of communications related to the construction, repair, maintenance or operation of communications common carrier facilities. *See First Report and Order*, Docket 11991, 42 FCC 820, 831–2 (1958). *See also Report and Order*, Docket 19853, 50 FCC 2d 165 (1974), where eligibility in the TMRS was extended to microwave carriers licensed under Part 21 of the Rules.

[3] *See* 4 CFR 90.81(c), (d)(1) and (d)(4). The Power, Petroleum, Forest Products and Manufacturers Radio Services, together with the Telephone Maintenance Radio Service, constitute five of the ten radio services in the Industrial Radio Services. *See* 47 CFR 90.59–90.81.

At times throughout this *Notice*, we label the frequencies exclusively allocated to the wireline carriers pursuant to § 90.81(d)(1) as the "limitation 1" frequencies, and the frequencies to which the microwave carriers have access pursuant to §90.81(d)(4) are labelled the "limitation 4" frequencies.

[4] For ease of reference, the following Telephone Companies which jointly submitted their comments and replies are called the "Bell Operating Companies": The Bell Telephone Company of Pennsylvania; the Chesapeake and Potomac Telephone Companies; The Diamond State Telephone Co.; Illinois Bell Telephone Co.; Indiana Bell Telephone Co., Inc.; Michigan Bell Telephone Co.; The Mountain States Telephone and Telegraph Co.; Nevada Bell; New England Telephone and Telegraph Co.; New Jersey Bell Telephone Co.; New York Telephone Co.; The Northwestern Bell Telephone Co.; The Ohio Bell Telephone Co.; Pacific Bell; Pacific Northwest Bell Telephone Co.; South Central Bell Telephone Co.; Southern Bell Telephone and Telegraph Co.; Southwestern Bell Telephone Co.; and Wisconsin Bell, Inc.

[5] Reply comments in this proceeding were due January 4, 1985. AT&T filed their reply comments on January 8, 1985, accompanied with a *Motion for Acceptance of Late Filed Reply Comments*. AT&T's *Motion* requested that the Commission accept these reply comments since they were the final set of pleadings to be filed in this *Notice of Inquiry* and thus no party would be prejudiced by the Commission's consideration of them. We agree, and hereby accept them.

[6] 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983)

8. AT&T is the largest single user of Telephone Maintenance Radio Service facilities. In its comments, AT&T observed that divestiture resulted in a 50% increase in plant and facilities over that which it previously held.[7] This increase resulted from the transfer to AT&T of the inter-LATA communications links owned by the BOCs.[8] While AT&T assumed responsibility for maintaining these additional facilities, only one TMRS base station (in a rural part of Washington State) and associated mobile units were transferred from the BOCs to AT&T. Thus AT&T states that its need for TMRS frequencies to maintain its facilities has increased significantly. Citing its embedded investment in the TMRS, and its post-divestiture investments in TMRS facilities,[9] AT&T proposes that if it were to be displaced from the "limitation 1" frequencies, that its currently authorized frequencies and facilities be grandfathered for the useful life of the equipment in order to allow it to recover its investment in embedded TMRS plant. AT&T contends failure to grandfather these faciities would force it to convert all its TMRS equipment utilizing "limitation 1" frequencies to operate on different frequencies or force the wholesale replacement of its equipment utilizing those frequencies.

9. Every party in this proceeding that chose to address the issue of AT&T's status as an eligible in the TMRS commented in support of AT&T's continued access to its present TMRS frequency assigments either through "grandfathering" or by the elimination of the fence between the wireline frequencies and the microwave frequencies. Organizations representing users of the Private Land Mobile Radio Services sharing frequencies with the TMRS (MRFAC, UTS, API) were concerned that any displacement of AT&T from the frequency assignments designated for wireline carrier use would produce severe congestion on the already shared "limitation 4" frequencies. Organizations representing local exchange carriers (Contel, USTA, NTC/OPASTCO) also supported AT&T's continued access to its existing frequency assignments regardless of whether these groups supported the continuation of the frequency fence between the wireline carriers and the microwave carriers.[10] All parties agreed that displacement of AT&T from the wireline frequencies would not only "strand" AT&T's embedded capital investment in TMRS facilities, but would also result in a predominance of TMRS users on one side of the frequency fence (the microwave, or interexchange, carrier side) while leaving a glut of frequency capacity on the other side (the wireline carrier side.)[11]

B. Division of Frequencies in the TMRS

10. The *Notice of Inquiry* requested comments on the following issues: whether all the VHF (30–50 MHz band and 150 MHz band) and UHF (450–470 MHz band) frequencies how allocated to the TMRS should be made available to both wireline and microwave carriers on an equal basis (i.e., removal of the frequency fence); the role of interservice frequency coordination on the twelve UHF frequency pairs that the TMRS shares with the Power, Petroleum, Forest Products and Manufacturers Radio Services; the allocation of additional spectrum to the TMRS; and the current problems existing between and among wireline and microwave carriers in the 470–512 MHz band and the 800 MHz band, where there is no division of frequencies or exclusive allocations for the TMRS.

11. The USTA, MRFAC, AT&T, UTC, API and WTCI supported dropping the frequency fence, claiming that this division of frequencies was arbitrary in today's increasingly complex telecommunications environment where the technologies employed by interexchange and local exchange carriers are often the same. USTA, the national trade association for local exchange telephone companies, urged the adoption of a "pragmatic" approach which emphasizes the purpose of the TMR—the use of radio for the efficient construction, repair maintenance and operation of common carrier facilities—rather than an "artificial" division of frequencies among carriers. USTA states:

> Many of our members (and their affiliates) currently have diverse interests in all aspects of telephone communications, including provision of interexchange services, customer premises equipment (CPE) and enhanced services. Such wireline carriers and their operations cannot be neatly assigned to either the wireline or the microwave category, as the Rule is currently constructed.[12]

12. Organizations representing users of the Private Land Mobile Radio Sercices sharing frequencies with the TMRS generally supported dropping the division of frequencies. MRFAC noted that with the growing overlap of wireline and interexchange common carrier service and technologies, there is no longer any practical reason to designate certain frequencies for the exclusive use of wireline carriers. API notes that removal of the frequency fence would likely equalize use of all TMRS frequencies. However, these organizations are concerned that removal of the frequency fence may lead to an increased number of applications for the shared TMRS frequencies with a concomitant increase in congestion on these frequencies. MRFAC and UTC propose to relieve additional frequency congestion on the shared frequencies by allowing microwave carriers to use the currently allocated wireline frequencies. MRFAC and UTC would designate the current wireline "limitation 1" frequencies as the primary frequencies for all common carriers and allow those carriers access to the 12 shared frequencies only when the "primary" frequencies in their geographic area are exhausted.

13. The BOC's, NTCA/OPASTCO, the Illinois Telephone Association and Contel support the retention of the frequency fence in order to preserve the access of local exchange carriers to the exclusive wireline frequencies. The BOCs claim that the maintenance and repair of local exchange facilities inherently requires greater use of TMRS facilities than the maintenance and repair of microwave stations. Citing the "limited number" of microwave towers in any given geographic area, and claiming that conventional

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[7] The added plant and facilities acquired by AT&T as a result of divestiture represents a 69% increase in point-to-point microwave radio facilities, and a 30% increase in cable sheath miles. (AT&T *Comments*, p. 6.)

[8] Pursuant to the *Modified Final Judgment*, Local Access and Transport Area (LATA) boundaries were drawn to differentiate "exchange" and "interexchange" services for the purposes of the MFJ. The BOCs provide service within the LATAs (intra-LATA), and interexchange carriers, including AT&T, provide service between the LATAs (inter-LATA).

[9] AT&T embedded investment in TMRS facilities as of January 1, 1984 was approximately $6.6 million. Additionally, AT&T's expenditures for the construction of base stations and the purchase of mobile radio equipment for TMRS use during 1984 were approximately $3.0 million. (AT&T *Comments*, p. 7.)

[10] The BOCs would indirectly "grandfather" AT&T's use of "limitation 1" frequencies by designating one wireline frequency pair, presumably the one most used by AT&T, as the exclusive frequency pair for the use of the microwave carriers, including AT&T. *see* paragraph 13, *infra*.

[11] AT&T is licensed on all ten of the exclusive "limitation 1" frequencies and for the three of the "limitation 4" frequencies. The most heavily used is "limitation 1" frequency 451.325 MHz which accounts for 85% of base station, repeater and mobile TMRS frequencies authorized to AT&T. AT&T's maintenance personnel have at their disposal 465 TMRS base stations and repeaters, 1559 vehicular units, 354 portable units and 22 airborne units. (AT&T *Comments*, pp. 4–5).

[12] USTA *Comments*, p. 3.

communications systems, such as telephones, are often pre-installed at the site of the microwave tower, the BOCs claim microwave carriers are much less dependent upon TMRS facilities for internal communications than are wireline carriers. The BOCs recommend that we maintain the existing frequency fence but reallocate one of the UHF wireline frequency pairs to the microwave carriers for their exclusive use, allow microwave licensees of any wireline frequency three to five years to migrate to the designated exclusive microwave frequency pair,[13] and allow the same time frame for any existing wireline licensees to migrate away from that exclusive microwave frequency pair.

14. NTCA/OPASTCO would maintain the frequency fence, but change the distinction between the sides of the fence in order to more clearly reflect the new telecommunications environment. According to NTCA/OPASTCO, the more accurate distinction is between exchange carriers and interexchange carriers. They assert the term "microwave carrier" no longer has the meaning it once did, since many exchange carriers as well as many interexchange carriers employ microwave circuits, and many interexchange carriers use "wires" of one type or another (e.g., fiber optics) to carry traffic. NTCA/OPASTCO believes some sort of frequency fence in the TMRS is necessary to assure that interference between the maintenance and repair activities of local exchange and interexchange carriers is minimized. Recognizing that there may be instances where the requirements of one class exceed the number of frequencies available to it in a given geographic area, NTCA/OPASTCO would permit limited access to each other's pools within the existing standard.[14]

15. All commenters to this proceeding that addressed the issue of interservice frequency coordination of the 12 UHF frequency pairs the TMRS shares with the Power, Petroleum, Forest Products and Manufacturers Radio Services vigorously supported continued interservice frequency coordination.[15] The BOCs and NTCA/OPASTCO noted the likelihood of service deterioration due to increased harmful interference if interservice frequency coordination were absent. API commented on interservice frequency coordination, stating:

> This coordination approach has been successful in avoiding interference between users. Both Congress and the FCC have recently recognized the value of frequency coordination procedures for licensees in the Private Land Mobile Radio Services. [Footnote omitted.] These benefits should continue to be extended to assignments shared between TMRS operators and other Part 90 users. The Commission has recently adopted a Notice of Proposed Rule Making in the Docket No. 83-737 proceeding designed to examine frequency coordination issues. Interservice coordination procedures specified in that Notice of Proposed Rule Making may make these interservice coordination efforts even easier than they are today.[16]

16. Commenters generally agreed that the allocation of additional frequencies to the TMRS would alleviate certain congestion problems in that service. The USTA viewed implementation of the Commission's proposal in General Docket No. 84-1233 to allocate additional spectrum in the 900 MHz band to the Private Land Mobile Radio Services as a prerequisite to actual elimination of the frequency fence.[17] AT&T believes sufficient spectrum should be allocated to the TMRS commensurate with the service's importance in order to reduce frequency congestion in certain areas. NTCA/OPASTCO and the BOCs believe the Commission should study the issue of frequency allocations to the TMRS in more detail by "collecting concrete data." During this study period, these parties propose the Commission "freeze" current TMRS assignments and defer action on all pending AT&T applications for "limitation 1" frequencies until the issuance of an Order in this proceeding.[18]

17. None of the comments or reply comments discussed current problems existing between and among wireline and microwave carriers in the 470-512 MHz band the 800 MHz band—bands where there is no division of frequencies among carriers or even any exclusive frequency allocations for the TMRS.

C. Orientation of the TMRS: Local Exchange vs. Interexchange

18. The *Notice of Inquiry* observed that the TMRS was primarily established in 1958 to provide for the maintenance and operation of "basic transmission facilities." This led us to inquire whether TMRS facilities should be oriented toward the maintenance of local exchange service facilities (i.e., the local loop) or the maintenance of interexchange service facilities (long distance lines).

19. The USTA and API believe that the concept of "basic transmission facilities" ultimately includes both local exchange and long distance service, and that neither type of service should take precedence over the other. For USTA, any proposed modification of the TMRS Rule should aim to enhance the maintenance and operation of overall telecommunications services. NTCA/OPASTCO, the BOCs and the Illinois Telephone Association argue that the maintenance of local exchange facilities should have precedence over the maintenance of interexchange facilities. These parties submit, for reasons also discussed in paragraph 13, *supra*, that interexchange carriers have alarm and testing points on their circuits that are concentrated and enploy redundant circuitry to connect two or more points on their network, while local exchange carriers have long loop lengths and large service areas which make it expensive to install alarm and testing points. These differences make local exchange carriers more dependent on the TMRS.

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[13] Aside, of course, from AT&T, whom the BOCs label as a "microwave" carrier in the post-divestiture environment, the number of cases where traditional microwave carriers employ wireline frequencies is extremely small. The TMRS rule does not give microwave carriers the option of applying for "wireline" frequencies when all their "microwave" frequency pairs are assigned in their geographic area. Therefore, in only a limited number of instances, pursuant to the Part 90 waiver process, 47 CFR § 90.151, has the Commission permitted microwave carriers to employ wireline frequencies.

[14] NTCA/OPASTCO suggest permitting access to the other pool when all frequencies for which the applicant is primarily eligible are assigned within 35 miles of the proposed base station. *See* 47 CFR 90.81(d)(4).

[15] Interservice frequency coordination is the process by which the Commission assures that applications for facilities on frequencies that are shared between two or more private land mobile services do not cause interference to the operations of co-channel users within a certain geographic radius from the site of proposed operation. Thus, applicants for frequencies on any of the 12 UHF frequency pairs that are shared between these five services can request one of the shared frequency pairs only when all of the base and mobile frequencies for which the applicant is primarily eligible are assigned within 35 miles of the proposed base station. The frequency coordination committees for all five services must concur with the application, pursuant to 47 CFR § 90.81(d)(4).

The Commission-recognized organization responsible for frequency coordination activities in the TMRS is the Telephone Maintenance Frequency Advisory Committee (TELFAC). For background on the frequency coordination process in the private land mobile services, see *Notice of Proposed Rule Making*, PR Docket 83-737, 49 FR 45454 (November 16, 1984).

[16] API *Comments*, p. 9.

[17] General Docket No. 84-1233, *Amendment of Parts 2, 15 and 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 896-902 MHz and 935-941 MHz Band for Private Land Mobile Use*, FCC 84-575, released January 3, 1985, 50 FR 1582 (January 11, 1985).

[18] BOC *Comments*, p. 6; NTCA/OPASTCO *Reply Comments*, pp. 6-7.

according to these parties. AT&T, in its *Reply Comments*, vigorously rebuts these arguments, emphasizing the similarities in TMRS requirements between local exchange carriers and interexchange carriers. AT&T points out that it is precisely the large number of alarm and testing points on its 26,000 sheath miles of buried cable, 1,230 miles of fiber optic cable, and 3,200 microwave stations, which requires the use of TMRS facilities to dispatch work crews when these alarms are activated.[19]

D. Using the TMRS to Maintain CPE and Enhanced Service Offerings

20. The *Notice of Inquiry* requested comment on the use of TMRS facilities to install, maintain and repair customer premises equipment (CPE) and equipment associated with enhanced service offerings. All parties who addressed this issue generally agreed that TMRS facilities should not be employed for communications related to installing and maintaining CPE or enhanced service offerings.[20] AT&T and the BOCs strongly emphasized that neither AT&T Information Systems (ATTIS—AT&T's separated subsidiary) or the separate subsidiaries of the BOCs who market and install CPE and enhanced services, should be permitted to use TMRS facilities for these activities. The BOCs, AT&T, and the organizations representing Private Land Mobile Radio Service users, would also prohibit communications common carriers on whom no separate subsidiary requirement is imposed, as well as any other entities, from using TMRS facilities for activities involving the installation and maintenance of CPE and enhanced services. API's statement below summarizes the position of the majority of commenters:

> These enhanced service and CPE providers should not be allowed access to the limited TMRS spectrum. To permit these companies, with massive growth potential, access to the frequency assignments available to the TMRS would be detrimental both to those who employ this spectrum for basic transmission service maintenance needs and those, such as Central Committee members, who share, on an interservice basis, UHF assignments, with TMRS licensees.[21]

21. USTA recommends that the TMRS Rule be amended to allow local exchange carriers and "facilities-owning" interexchange common carriers, and their subsidiaries, to be eligible in the TMRS for construction, repair, operation and maintenance of all their common carrier facilities.[22] USTA points out that carriers now eligible in the TMRS have chosen, or been required, to use various types of corporate structures for their operations for transmission facilities, CPE and enhanced service offerings.

Consequently, USTA argues that any distinction in the TMRS Rule based on corporate structure would be arbitrary, forcing those carriers using common equipment and personnel for different activities, solely due to TMRS eligibility requirements, to separate these operations or maintain duplicative radio facilities.

22. Thus, USTA would extend TMRS eligibility to a carrier's subsidiaries, but not to its affiliates, contending that a carrier should not be penalized simply because it uses a subsidiary for construction and maintenance activities. Affiliates, however, would not be eligible in the TMRS because the eligible carrier cannot control its other affiliates as it can control its own subsidiaries.[23]

E. Economic Impact on Small and Rural Telephone Companies

23. Pursuant to our responsibilities under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, the *Notice of Inquiry* solicited comments specifically on the economic impact of changes in TMRS eligibility and operations on smaller independent telephone companies and rural telephone companies and cooperatives.

24. NTCA/OPASTCO, national organizations representing small and rural exchange carriers, assert that removal of the frequency fence would have an adverse effect on the operations of small and rural exchange carriers. When filing their comments, NTCA/OPASTCO asserted that quantifiable dollar impacts were not available. They believe that removal of the frequency fence would increase the need for frequency coordination and also drive up its cost. To the extent that TMRS frequencies would not be available in a given geographic area, NTCA/OPASTCO asserts that the cost of maintaining rural telecommunications plant would rise. They do not show, however, that congestion on the TMRS frequencies is a problem in the largely rural areas served by their membership.

25. NTCA/OPASTCO expressed concern that any prohibition on using TMRS facilities to install and maintain CPE and enhanced services would severely affect small and rural telephone companies that use common equipment and personnel to maintain both their basic transmission facilities and CPE/enhanced facilities. NTCA/OPASTCO described the problem:

> . . . [T]he crew may start its day fixing a subscriber's drop wire, then move to replacing another subscriber's CPE, then test and repair some distribution facilities, and finally install and test out an enhanced service for a third subscriber. Permitting the crew to use its vehicle's radio only for some tasks and not for others would be an administrative nightmare for both the carrier and the crews, would cause the carrier to incur needless costs, and would waste time and money. For these reasons, carriers not subject to the separate subsidiary requirements for the provision of CPE and enhanced services should be allowed to use the TMRS frequencies for all operations.[24]

Proposal

26. The Commission is impressed by the quality of the comments and reply comments submitted in response to the *Notice of Inquiry*. All parties recognized the complexity of the post-divestiture telecommunications environment, and the Commission's special public interest responsibility to inquire into modifying the TMRS Rule to make it consistent with the new structure of the industry.

27. After careful review of the comments and replies, we are proposing to remove the frequency fence and make all TMRS frequencies available to both local exchange and interexchange carriers on an equal basis. The twelve UHF frequency pairs that are shared with the Power, Petroleum, Forest Products and Manufacturers Radio Services would continue to be subject to interservice sharing and interservice frequency coordination under our proposal. We are not proposing to permit the use of TMRS facilities for the installation and maintenance of CPE or enhanced service offerings except where these activities are undertaken by a TMRS eligible using common equipment for the maintenance of both its basic

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[19] AT&T *Reply Comments*, pp. 5–9.

[20] NTCA/OPASTCO's position is that the use of TMRS frequencies for the provision of CPE and enhanced services should be limited to local exchange carriers with no separate subsidiary requirement. As their comments apply to the operations of small and rural exchange carriers, they are discussed at Section E.

[21] API *Comments*, p. 14.

[22] By restricting eligibility to "facilities-owning" interexchange common carriers, USTA's proposal would prevent those entities engaged in pure resale of communications common carrier capacity from holding TMRS authorizations.

[23] Under USTA's proposal, ATTIS would still be barred from TMRS eligibility. ATTIS is a subsidiary of parent AT&T. AT&T Communications (ATTCom), the existing TMRS eligible owning transmission facilities, is also a subsidiary of parent AT&T. Because ATTIS is an affiliate, but not a subsidiary, of ATTCom, ATTIS could not hold a TMRS authorization because it is not under the control of ATTCom.

[24] NTCA/OPASTCO *Comments*, pp. 12–13.

transmission facilities and its CPE/enhanced offerings.[25]

28. The comments demonstrate to us that the existing division of frequencies in the TMRS between "wireline" carriers and "mircowave" carriers makes little sense in today's telecommunications environment where all communications common carriers use various transmission media to carry their traffic. The comments also demonstrate to us on two counts that the requirements of local exchange carriers and interexchange carriers for facilities in the TMRS are comparable. First, the comments do not convince us that the requirements of any single class of carrier should have precedence in the TMRS. We believe the underlying purpose of the TMRS, promulgated in 1958, still applies: facilities in this service are used to allow communications common carriers to increase the efficiency with which they can construct, maintain, repair and operate their basic transmission facilities, with the benefits of this greater efficiency accruing to the public. We also believe that basic transmission facilities subsume both local exchange service and interexchange (long distance) service. Second, the post-divestiture telecommunications environment has altered the traditional distinctions between what constitutes, and who provides, local exchange service and interexchange service. Today, many local exchange carriers provide interexchange service. Consequently, the BOCs have both local exchange and intra-LATA interexchange responsibilities.[26]

29. We propose to remove the frequency fence in keeping with our policy that the sharing of channels among like users tends to increase spectrum utilization.[27] We are mindful of the concerns of those commenters, such as NTCA/OPASTCO and the BOCs, that in the absence of a frequency fence, problems of harmful interference between the TMRS operations of local exchange carriers and interexchange carriers can be expected. However, two points persuade us that we can propose removing the frequency fence without engendering harmful interference on shared channels. First, we note the lack of any comments from any party to the effect that they have experienced interference to their TMRS operations in the 470–512 MHz band [28] and the 800 MHz band—bands where there is no division of frequencies based on the class of carrier. Second, we are confident that the existing frequency coordination mechanism can resolve any potential interference in the TMRS. The USTA made the point well:

> Dissolution of the fence, rather than imposition of reassignments for all (or many) carriers, will better promote long term coordination in the service. Adoption of a mandatory reassignment proposal would require the dislocation of many companies from those TMRS frequencies which they use currently, with concomitant expenditures of resources.

USTA's proposal to eliminate the fence would not mandate any dislocations. AT&T could continue to operate on its licensed frequencies. The local exchange companies could similarly continue to use those frequencies they currently use. Coordination issues which arise would be resolved by TELFAC [29] under the same standards which TELFAC has applied since its inception. The coordination entity, in keeping with its charter, would continue to promote efficiency and limit potential interference as it conducts its coordination activities.[30]

30. We also believe that resolution of two pending proposals involving the allocation of spectrum to the private land mobile radio services may well alleviate, to some extent, the frequency congestion problems in the major metropolitan areas alluded to by many of the commenters. In General Docket No. 84–1233 (*see* note 17, *supra*), we proposed releasing 12 MHz of spectrum from the 900 MHz land mobile reserve for private land mobile use; 20% of this spectrum is proposed to be apportioned to the Industrial/Land Transportation pool, of which the TMRS is a constituent. In General Docket No. 85–172, we proposed expanding the sharing between the private land mobile services and the UHF–TV broadcast service.[31] This proposal would result in one to three additional UHF–TV channel pairs (12–36 MHz of spectrum) being made available for land mobile sharing in eight large urban areas.

31. We fundamentally agree with the majority of the commenters that TMRS facilities should not be used for the installation and maintenance of CPE and enhanced service offerings. Expanding TMRS eligibility to the growing numbers of terminal equipment providers could present the TMRS with severe frequency congestion problems in the larger urban areas. CPE and enhanced service offerings are not common carrier functions today. Hence, the use of TMRS frequencies for their installation and maintenance is not an appropriate use of TMRS facilities. Facilities in the Business Radio Service and the Specialized Mobile Radio Service are available to meet the internal communications requirements of CPE/enhanced service providers.

32. However, we are very concerned that those exchange carriers who have CPE and enhanced service functions and who employ common equipment and personnel in the maintenance of both their basic transmission facilities and their CPE/enhanced service offerings should not have to incur needless costs in duplicating radio facilities merely to meet the requirements of the TMRS eligibility rule. The points made by NTCA/OPASTCO and USTA in this regard are well-taken. Therefore, we propose to apply the principles enunciated in our Report and Order in the *Permissible Communications* proceeding [32] to permit the use of TMRS

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[25] In the proceeding in CC Docket 83–115 *et al.*, Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies (*Report and Order* (BOC Separation Order, 95 FCC 2d 1117 (1984), *Memorandum Opinion and Order on Reconsideration* (BOC Separation Order Reconsideration), 49 FR 26056 (June 26, 1984), *appeal dismissed sub nom. Illinois Bell Telephone Co.* v. *FCC*, 740 F.2d 465 (7th Cir. 1984)), we determined that each of the seven divested Regional Holding Companies (RHCs) must form a separate subsidiary if it wants to sell or lease CPE. The rule proposed here would not permit any RHC or its separated CPE subsidiary to secure an authorization in the TMRS because only the operating companies owned by the RHCs (*see* fn. 4, *supra*) are the eligible communications common carriers. Under this proposal, individual operating companies would only be able to use TMRS facilities to maintain CPE/enhanced services to the extent that they, (1) had responsibilities pursuant to state Public Service Commission requirements to install and maintain CPE or enhanced service offerings, and (2) used the same vehicles to maintain CPE/enhanced services that they use to maintain their basic transmission facilities as a communications common carrier.

[26] NTCA/OPASTCO *Comments*, p. 11, note 5.

[27] *See Report and Order*, PR Docket No. 84–370, *Amendment of Part 90 of the Commission's Rules concerning the sharing of two Police Radio Service frequency pairs with eligibles in the Fire and Special Emergency Radio Services*, FCC 84–619, released December 13, 1984, 49 FR 49637 (December 21, 1984).

[28] The 470–512 MHz band is allocated to the Private Land Mobile Radio Services only in the nation's larger metropolitan areas. Thus we are particularly impressed by the absence of interference reports in the TMRS in this band. We ascribe this to the coordination efforts of TELFAC, the recognized frequency coordinator for the TMRS, and the efforts of the other private land mobile frequency coordination committees performing their interservice sharing function.

[29] The Telephone Maintenance Frequency Advisory Committee (TELFAC) is the Commission-recognized organization responsible for frequency coordination activities in the TMRS.

[30] USTA *Reply Comments*, p. 5.

[31] *Further Sharing of the UHF Television Band by Private Land Mobile Radio Services*, Notice of Proposed Rulemaking, FCC 85–289, released June 10, 1985, 50 FR 25587, (June 20, 1985).

[32] PR Docket 84–109, *Amendment of Part 90 of the Commission's Rules and Regulations to eliminate*

Continued

facilities to maintain CPE and enhanced service offerings when the existing TMRS eligible uses common equipment to maintain both its basic transmission facilities and CPE/enhanced offerings.[33] Comments on this proposal are specifically solicited. While we do not believe this requires any specific changes to the TMRS Rule, commenters are encouraged to submit specific language if they think rule amendments are required to implement this approach.

33. In the *Permissible Communications* proceeding, we limited the relaxation of permissible communications rules to operations on exclusive channel assignments in the private land mobile services. However, we also removed restrictions on *all* frequencies used by the Special Industrial Radio Service and the TMRS that precluded the transmission of administrative and sales-related information, because these restrictions would require the duplication of radio facilities.[34] Paragraph (a)(2) of the permissible communications rule, 47 CFR 90.405(a)(2), which was not changed by the Report and Order, permits "[c]ommunications directly related and necessary to those activities which make the licensee eligible for the station license held under this part." It is our opinion that the use of TMRS facilities to maintain CPE and enhanced services by a TMRS eligible employing common equipment to perform its maintenance functions, should be construed as an activity directly related and necessary to those activities which make the licensee eligible.

34. Western Union's *Reply Comments* emphasized their historical eligibility in the TMRS as a user of the exclusive "wire-line" frequencies. We recognize that when the TMRS was established in 1958, the term "wire-line or wire-line and radio communications service" literally meant a common carrier service that employed wire cable as part of its transmission facilities.[35] As a result of this, the Western Union Telegraph Company was granted station licenses in the TMRS during the early 1960's utilizing the two exclusive high-band VHF frequencies (151.985 MHz base and 158.340 MHz mobile) allocated to "wire-line" carriers. Today, Western Union's plant for the rendition of its common carrier services includes, along with extensive radio facilities, approximately 10,000 miles of "wire-line" (copper wire) facilities. They now operate 130 TMRS stations, the majority of which utilize those two VHF frequencies.[36]

35. Since 1958, the term "wireline carrier" has come to mean the provision of landline local exchange telephone service.[37] The BOCs urge the Commission to adopt a Part 90 definition of wireline carrier that conforms to the Part 22 definition. We agree that any Part 90 definition of a wireline common carrier ought to conform to the Part 22 definition. However, we do not believe the public interest would be served by undermining the basis of Western Union's eligibility in the TMRS. Therefore, we propose to use the formal Part 22 definition of a wireline common carrier in the TMRS Rule and add wire-telegraph carriers as an eligibility category in the TMRS. We believe we must include the phrase "provision of landline local exchange telephone service" in the TMRS Rule in order to differentiate eligibility with respect to radio common carriers, who are specifically excluded from the eligibility provision.[38] We solicit comments from the public on this proposal and invite suggestions as to language in a TMRS eligibility rule that preserves the basis of TMRS eligibility while recognizing Western Union's, and any other wire-telegraph carrier's, traditional eligibility in the TMRS.[39]

Administrative

36. Notice is hereby given that it is proposed to amend 47 CFR Part 90 in accordance with the proposal set forth in the attached appendix.

Initial Regulatory Flexibility Analysis

37. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. *Reasons for Action:* The Commission is proposing these actions in order to make changes to the rule governing the Telephone Maintenance Radio Service so that it conforms to the structure of the telecommunications industry in the aftermath of the divestiture of the BOC's by AT&T, pursuant to the Modified Final Judgment in *U.S.* v. *AT&T.*

II. *Objective:* The objective of this proposal is to conform the rule governing the TMRS to the current structure of the telecommunications industry while enhancing the utilization of the existing TMRS frequency allocation.

III. *Legal Basis:* This proposal is authorized pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, which authorizes the Commission to make such rules and regulations as may be necessary.

IV. *Description, Potential Impact and Number of Small Entities Affected:* The *Notice of Inquiry* in this proceeding specifically requested comments on the economic impact changes in the TMRS Rule might have on smaller Independent telephone companies and rural telephone companies and cooperatives. NTCA/OPASTCO, national organizations representing small and rural exchange carriers, expressed concern that removal of the frequency fence could increase the need for frequency coordination, drive up its cost, and, to the extent that TMRS frequencies would not be available in a given area, increase costs of maintaining rural telecommunications plant. The number of carriers affected and quantification of the potential impact were not available. NTCA/OPASTCO also expressed concern that any prohibition on using TMRS facilities to

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the permissible communications restrictions in the Private Land Mobile Radio Services, FCC 85-27, released January 31, 1985, 50 FR 6179 (February 14, 1985).

[33] The draft revision to the TMRS eligibility rule submitted by USTA in its *Comments* would permit a carrier that employs common equipment to maintain both its CPE and basic transmission facilities to use its TMRS facilities for both functions. However, the USTA revision, with its emphasis on subsidiaries and the relationship between subsidiaries and affiliates of a parent corporation, would unnecessarily embroil the Commission in precisely defining terms and result in the expenditure of Commission resources to interpret the application of the rule to various corporate structures. We believe our proposed application of the *Permissible Communications* precepts to this issue allows us to reach the same result more efficiently.

[34] *Permissible Communications, supra*, para. 7-8.

[35] See the original rules governing the TMRS, Part 11, Subpart P, §§ 11.751-11.754, set out in Appendix K to the *First Report and Order*, Docket 11991, 42 FCC 820, 868-9 (1958).

[36] Western Union *Reply Comments*, p. 1.

[37] Part 22 of the Commission's Rules, which governs the Public Mobile Services, defines a wireline common carrier as a common carrier which is in the business of providing landline local exchange telephone service. *See Revision and Update of Part 22 of the Public Mobile Radio Services Rules*, CC Docket No. 80-57, 95 FCC 2d 769, 772-3 (1983).

[38] The *First Report and Order* in Docket 11991 promulgating the TMRS stated: "With respect to those communications common carriers whose service is entirely by wireless facilities, it is believed that their needs can and should be accommodated in the Business [Radio] Service, and they are being excluded from the [TMRS] eligibility provision." 42 FCC 832 (1958).

Part 22 defines a radio common carrier as "a common carrier engaged in the provision of public mobile service, which is not also in the business of providing landline local exchange telephone service." 47 CFR § 22.2.

[39] In the recent Memorandum Opinion and Order in *Cellular Communications Systems*, CC Docket No. 79-318, (FCC 84-416, released October 19, 1984), the Commission reaffirmed its earlier ruling that, for purposes of Part 22, a "wireline" carrier is one that provides local exchange telephone service. Petitioners had challenged Western Union's eligibility for the nonwireline cellular frequency blocks on the basis, among other things, that Western Union held TMRS licenses on the wireline carrier frequencies. The Commission agreed with Western Union that even though it held "wireline" frequencies in the TMRS, for Part 22 purposes Western Union is a nonwireline entity because it does not own local exchange facilities nor provide local exchange telephone service. (*MO&O*, paras. 14-15.)

install and maintain CPE/enhanced services would impact those of their members who use common equipment and personnel to maintain both their basic transmission facilities and CPE/enhanced facilities.

V. *Reporting, Recordkeeping, and Other Compliance Requirements:* The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to contain no new or modified form, information collection and/or recordkeeping, labelling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public. Additionally, no new compliance requirements are being proposed.

VI. *Federal Rules Which Overlap, Duplicate or Conflict With This Rule:* None.

VII. *Significant Alternatives:* Significant alternatives to our proposal to permit entities employing TMRS facilities to maintain both their CPE/enhanced and basic transmission facilities were contemplated and dismissed because of their severe adverse impact on these small entities. In regard to our proposal to remove the frequency fence, we considered, and declined, to retain the frequency fence. For reasons discussed at para. 24, *supra*, we believe that spectrum congestion is not a problem in the largely rural areas served by these entities. We also expect that TMRS frequencies will still be available in these areas, with or without the frequency fence, and hence, the costs of maintaining rural telecommunications plant would not increase.

Procedural Matters

38. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding, must prepare a written summary of that presentation. On the day of that oral presentation, a written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

39. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communication Act of 1934, as amended, 47 U.S.C. 154(i), 303(r). Pursuant to the procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before October 15, 1985, and reply comments on or before November 15, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments provided that such information or a writing indicating the nature and source of such information is placed in the public files and provided that the fact of the Commissioner's reliance on such information is noted in the Report and Order.

40. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

41. It is ordered that the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration, and that the Secretary shall also cause a copy of this Notice to be published in the **Federal Register**

42. Point of contact on this matter is Harold Salters, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7597.

Federal Communication Commission.

William J. Tricarico,

Secretary.

Appendix

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Subpart D—Industrial Radio Services

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 90.81 is amended by revising (a) and (d)(4) and by removing (d)(1) to read as follows, and all references to limitation 1 are removed from the Table at paragraph (c).

§ 90.81 Telephone Maintenance Radio Service.

(a) *Eligibility.* Communications common carriers engaged in the provision of landline local exchange telephone service, or interexchange communications service, or who provide wire-telegraph service, and radio communications common carriers authorized in the Point-to-Point Microwave Radio Service under Part 21 of this chapter are eligible to hold authorizations in the Telephone Maintenance Radio Service.

* * * * *

(d) * * *

(1) [Reserved]

* * * * *

(4) This frequency is available on a shared basis in the Power, Petroleum, Forest Products, Manufacturers, and Telephone Maintenance Radio Services. Except for assignments made to eligibles authorized in the Telephone Maintenance Radio Service, it may be assigned only when all of the base and mobile frequencies in the 450–470 MHz band for which the applicant is primarily eligible are assigned within 35 miles (56 km) of the proposed base station. Applications for this frequency must be coordinated with all five services.

* * * * *

[FR Doc. 85-19378 Filed 8-15-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 50834-5034]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 9 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The measures contained in this amendment will reduce bycatches of species fully utilized by United States fishermen by closing the area within 20 miles of the Aleutian Islands to foreign trawling; provide NMFS with more timely catch information necessary for adequate inseason management; implement the NMFS habitat conservation policy; and introduce a definition of directed fishing. Each measure is intended to respond to biological, ecological, or socioeconomic problems that have been identified by the fishing industry and the management agencies. Implementation of these measures is necessary for conservation and management of the groundfish resources and for the orderly conduct of the fishery.

DATES: Written comments must be received on or before September 30, 1985.

ADDRESSES: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. Copies of the amendment, the environmental assessment, and the regulatory impact review/initial regulatory flexibility analysis may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501, 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, (Resource Management Specialist, NMFS) 907-586-7230.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fishery in the exclusive economic zone (EEZ) in the Bering Sea and Aleutian Islands area is managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented January 1, 1982 (46 FR 63295, December 31, 1981).

Prior to 1984, the Council would receive proposals to amend the FMP during any of its scheduled meetings. At its April 1984 meeting, the Council adopted a policy whereby proposals for amendments would be received only once a year. Proposals contained in Amendment 9 were requested by the Council in September 1984 with a deadline set at December 7, 1984. After receiving proposals, the Council instructed its Plan Team to review and rank each proposal. At its February 1985 meeting, the Council reviewed the recommendations of the Plan Team, the Scientific and Statistical Committee, and the Advisory Panel, and selected five proposals for inclusion in Amendment 9. Other proposals were identified for development and consideration for inclusion in a future amendment. The Council directed its Plan Team to analyze the biological, ecological, and socioeconomic impacts of each of the five proposals and alternatives to each, as required by the National Environmental Policy Act of 1969 and other applicable law. The Plan Team then prepared drafts of an environmental assessment and a regulatory impact review/initial regulatory flexibility analysis (RIF/IRFA). The Council reviewed these documents at its March 26-29, 1985 meeting and then released them for public review, inviting comments from the interested public, fishing associations, and government agencies until May 3, 1985. In response to comments received, the Plan Team revised the draft analyses for consideration by the Council at its May 21-24, 1985 meeting. At that meeting, the Council reviewed the analyses, heard further public comment, and voted to recommend that the Secretary implement its preferred alternatives for three parts of Amendment 9.

A description of and reasons for each part of Amendment 9 follow:

1. Foreign trawling is prohibited within 20 miles of the Aleutian Islands in Area IV.

The rapid expansion of U.S. fishing operations in the Bering Sea and Aleutian Islands has led to greatly increased utilization of groundfish species, including full utilization of Pacific ocean perch, sablefish, and Atka mackerel. Despite reduction of foreign directed fishing effort in the area through reduced allocations, incidental catches of these fully utilized species continue to be taken, and it is unlikely that such incidental catches could be eliminated through modification of fishing practices. A substantial portion of the foreign catches of fully utilized species has been taken in a narrow zone roughly 20 miles to the north and south of that portion of the Aleutian Islands west of 170° W. longitude in Area IV (see figure 2 of § 611.9).

The proposed elimination of foreign trawling within this 20-mile zone would greatly reduce the incidental catch within that zone of species fully utilized by the U.S. fishing industry. Additional benefits would accrue to the U.S. fishing fleet, including (1) elimination of the potential for gear conflicts with, or grounds preemption by, foreign trawl fleets, and (2) increases in catch rates and operating efficiency resulting from groundfish stocks remaining unfished by foreign trawlers.

The RIR/IRFA concluded that fishery resources are readily available outside the closure zone and that the impact of the closure on the ability of foreign nations to harvest their groundfish allocations would be insignificant. The only two target species which may not be entirely available for harvest by foreign fleets outside of the proposed closed area are turbot and the "other rockfish" complex. Under the worst-case situation, 8 percent of the total allowable level of foreign fishing (TALFF) for turbot and 33 percent of the TALFF for the "other rockfish" complex could go unharvested. The major impact on the foreign fleet would be the displacement of trawl vessels, which has to a large extent already occurred under voluntary measures adopted in 1984.

The U.S. Fleet would directly benefit from the elimination of foreign incidental catches within the 20-mile closure zone, which in 1983 represented a potential U.S. harvest estimated at $0.5 million dollars, or a total discounted value over a 5-year period of $2.7 million. In 1984, however, reduced foreign incidental catches, reduced this discounted value to less than $706 thousand for the whole of Area IV.

Two other benefits to the U.S. industry, addressed although not quantified by the RIR/IRFA, are (1) an increase in operating efficiency of U.S. vessels and (2) encouragement of further expansion of domestic fishery efforts in the area. Excluding foreign effort would increase fishing time and operating efficiency of U.S. vessels by decreasing competition and possible gear conflicts. Fish not harvested by foreign trawling operations would remain concentrated, decreasing the amount of unproductive fishing time by U.S. vessels.

2. A reporting system for catch held aboard for 14 days or more is established.

A reporting system is established whereby applicants are required to indicate on their application for a Federal groundfish permit whether their vessels are to be used for (1) harvesting/processing, (2) mothership processing, (3) harvesting only, or (4) support only. If vessel usage fits (1) or (2), vessel operators will be required to check in and out of regulatory areas or districts. Such harvesting/processing vessels and motherships that catch and hold, or receive and hold, groundfish for periods of 14 days or more will be required to submit a weekly catch report to the Regional Director. Vessels that freeze or dry-salt their catches are considered to be in these categories. This requirement is directed at those vessels that are expected to remain at sea for periods of time sufficiently long that catch estimates are needed by fishery managers for inseason management decisions.

The objective of this proposal is to ensure that fishery managers receive timely estimates of catch by all domestic vessels so that fishery closure notices can be promptly issued when optimum yields (OYs) are reached. With the rapid recent growth of the domestic fishing fleet, increasing importance is placed on timely reporting of domestic harvests in order to ensure that OYs are not exceeded. Vessels which deliver their catch to shore-based processors land their catch frequently enough to allow timely estimation of total catch under existing regulations. However, vessels which freeze, salt, or otherwise preserve their catch aboard frequently remain at sea for extended periods; these are not currently required to report their catch until the time of landing.

Some 25 catcher/processor vessels could be operating in the Bering Sea and Aleutian Islands Area in 1985. Based on past catcher/processor landing records, the combined hold capacity of these vessels is approximately 13,000 metric tons (mt). Because OYs for some fishing areas are significantly smaller than this, these vessels are capable of harvesting entire OYs or significant portions of them on a single trip. Existing fishing regulations do not require reports of the catch aboard these vessels until landing. In addition, these vessels are not required to notify fishery managers when they begin fishing operations. Since domestic groundfish fishing vessels are not marked for identification by enforcement overflights, the number of catcher/processor vessels actually fishing in a given management area is not known until they land. Without knowledge of effort levels, fishery managers are not able to make projections of catch aboard.

Delayed catch reporting by domestic mothership operations poses similar problems for managers. In these operations, catcher vessels without processing capability deliver their catch, usually by cod-end transfers, to a mothership which processes it. Current regulations at § 675.5 require an Alaska Department of Fish and Game (ADF&G) fish ticket to be filled out each time a catcher vessel lands fish or delivers them to a mothership at sea and also require these fish tickets to be forwarded to ADF&G within 7 days of the date the fish were delivered. To date, domestic mothership operations have all occurred in sheltered waters with at least periodic access to U.S. mail service, so compliance with this requirement has been feasible. However, these mothership operations are expected to occur with greater frequency in the EEZ, where no method of filing the fish tickets with ADF&G within the 7-day period required by law is available.

With such large processing capacities and increasing numbers of catcher/processor and mothership vessels, the risks of overharvesting groundfish resources under the current reporting system are high. Because of the delays involved in reporting catches under current regulations, groundfish resources could be significantly overharvested before fishery managers discover that OYs have been exceeded. Since many of the groundfish species concerned are slow growing and long-lived, overharvesting can have considerable impacts on future production.

The Council considered the importance to NMFS of receiving timely catch information on which to make its inseason management decisions and the importance to the fishing industry of obtaining reasonably accurate projections of upcoming fishery closures. The Council then adopted a three-part proposal for the collection of additional information from catcher/processors and motherships. The first part requires the operators of catcher/processors and moterhships to so indicate on their applications for Federal fishing permits, showing their capability and intent to preserve their catch at sea. The second part requires them to notify the Regional Director of the date, hour, and position, 24 hours before starting and upon stopping fishing in a fishing area. This requirement enables NMFS and/or the Coast Guard to check compliance with fishery openings and closures and weekly catch report requirements, and to verify fishing effort by area. The third part requires each operator of a catcher/processor or mothership to provide the Regional Director a weekly written report of the amounts of groundfish caught or received by species or species group in metric tons by area when holding groundfish at sea for more than 14 days after catching or receiving them.

A definition of "directed fishing" is also proposed. The purpose of this difinition is to establish a rebuttable presumption that when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest that results from any fishing over any period of time, such fishing was directed fishing for such fish during that period.

In addition, NMFS has proposed some minor changes in the information required from applicants for a Federal permit to fish for groundfish in the Bering Sea and Aleutian Islands area, which will allow enforcement officials to better identify groundfish fishing vessels at sea and improve NMFS' enforcement of the groundfish fishery regulations.

These requirements will allow NMFS to make informed and well-reasoned inseason management decisions to adjust fishing areas and seasons and to apportion surplus groundfish among the user groups. This is a conservation measure that is intended to control the harvest by species or species group and prevent overfishing, thereby conveying a long-term benefit to the U.S. fishing industry.

3. The NMFS habitat conservation policy is implemented.

This part of Amendment 9 modifies and adds sections to the FMP to address the habitat requirements of individual species in the Bering Sea and Aleutian Islands Area groundfish fishery. The amendment describes the diverse types of habitat within the area, delineates the life stages of the groundfish species, identifies potential sources of habitat degradation and the potential risk to the groundfish fishery, and describes existing programs applicable to the area that are designed to protect, maintain, or restore the habitat of living marine resources. The amendment responds to NMFS' Habitat Conservation Policy (48 FR 53142, November 25, 1983), which advocates consideration of habitat concerns in developing or amending FMPs and strengthening NMFS' partnerships with States and the Councils on habitat issues.

The habitat policy is not implemented by a codified regulation. It serves as a

framework within which to develop regulations specific to habitat conservation objectives. One such regulation was adopted by the Council and is proposed along with regulations implementing the other two parts of Amendment 9. It requires vessel operators to retrieve their own fishing gear and to make a reasonable attempt to retrieve any abandoned or discarded fishing gear that they may encounter.

Classification

This proposed rule is published under section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97–453, which requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data and comments received during the comment period.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address above.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR/IRFA prepared by the Council. A copy of the RIR/IRFA may be obtained from the Council at the address listed above.

This rule, if approved, will have a significant beneficial economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. This determination is also based on the RIR/IRFA. A summary of the RIR/IRFA follows:

Prohibiting foreign trawling within 20 miles of the Aleutian Islands will convey a potential benefit to the U.S. fishing industry over five years of $2.7 million (discounted value using a 5% real interest rate). The potential for gear conflicts and ground preemptions between foreign and U.S. trawl gear will be avoided. The prohibition will not prevent foreign trawl fleets from harvesting their allocations of pollock, yellowfin sole, and "other flatfish".

The catcher/processor and mothership reporting requirements will convey an annual benefit to the U.S. industry in terms of conservation of groundfish stocks off Alaska. This benefit is estimated to be $2.3 million, which is the value of groundfish that otherwise might be lost due to overfishing if timely catch reports are not available.

Incorporation of the NMFS habitat policy into the FMP will highlight the Council's concerns, not only for the fishery resources under management, but also for the marine environment and the qualify of the habitat in which these resources live. The policy would also give the Council authority to consider and recommend implementation of regulations designed to protect the integrity of the marine habitat.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 13, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Parts 611 and 675 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. In § 611.93, paragraphs (c)(2)(i) and (c)(2)(ii)(D) are removed; paragraph (c)(2)(ii) is redesignated as paragraph (c)(2); paragraphs (c)(2)(ii)(A), (ii)(B), (ii)(C), and (ii)(E) are redesignated as paragraphs (c)(2)(i), (ii), (iii), and (v) respectively; within new paragraph (c)(2)(v), subparagraphs (*1*) (*i*) and (*ii*) and (*2*) (*i*), (*ii*), and (*iii*) are redesignated as subparagraphs (A) (*1*) and (*2*) and (B) (*1*), (*2*), and (*3*) respectively; and a new paragraph (c)(2)(iv) is added, to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(c) * * *

(2) *Trawling.* * * *

(iv) At all times within the FCZ in the area bounded by straight lines connecting the following coordinates in the order listed:

53°30′ N—170°00′ W
53°30′ N—172°00′ W
53°00′ N—172°00′ W
53°00′ N—176°00′ W
52°30′ N—176°00′ W
52°30′ N—177°00′ E
53°00′ N—177°00′ E
53°00′ N—175°00′ E
53°30′ N—175°00′ E
53°30′ N—170°00′ E
52°00′ N—168°26′ E
52°00′ N—175°00′ E
51°00′ N—175°00′ E
51°00′ N—180°
50°30′ N—180°
50°30′ N—178°30′ W
47°55′ N—178°30′ W
48°45′ N—172°00′ W
52°00′ N—172°00′ W
52°00′ N—170°00′ W
53°30′ N—170°00′ W

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIANS ISLANDS AREA

3. The authority citation for Part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In the table of contents, a new section is added in proper order to read as follows:

Sec.
675.25 Disposal of fishing gear and other articles.

5. In § 675.2, the following definition is added in proper alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Directed fishing, with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of any significant quantity of such fish. It will be a rebuttable presumption that, when any species, stock or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest that results from any fishing over any period of time,

such fishing was directed fishing for such fish during that period.

* * * * *

6. In § 675.4, paragraphs (b) and (d), are revised to read as follows:

§ 675.4 Permits.

* * * * *

(b) *Application.* The vessel permit required under paragraph (a) of this section may be obtained by submitting to the Regional Director a written application containing the following information:

(1) The vessel owner's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The type of fishing gear to be used;

(6) The length and net tonnage of the vessel;

(7) The hull color of the vessel;

(8) The names of all operators and/or lessees of the vessel;

(9) Whether the purpose of the vessel is harvesting/processing, mothership/processing, harvesting only, or support only; and

(10) The signature of the applicant.

* * * * *

(d) *Notification of change.* (1) Except as provided in paragraph (d)(2) of this section, any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(2) A permit issued under this section will authorize either harvesting or support operations, but not both. The notification to the Regional Director under paragraph (d)(1) of this section of a change in the type of operations in which that vessel is to engage must be completed before that vessel begins the new type of operation.

* * * * *

7. In § 675.5, a new paragraph (a)(3) is added to read as follows:

§ 675.5 Reporting requirements.

(a) * * *

(3) *Catcher/Processor and Mothership/Processor Vessels.* The operator of any fishing vessel regulated under this part who retains any part of its catch of groundfish on board that vessel for a period of more than 14 days from the time it is caught or who receives groundfish at sea from a fishing vessel regulated under this part must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Twenty-four hours before starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT and the area of such activity. No such operator may retain any part of that vessel's catch or cargo of fish on board that vessel for a period of more than 14 days from the time it was caught or received unless the Regional Director was notified as required under paragraph (a)(3) (iv) of this section during that period.

(ii) When shifting operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of beginning fishing or receiving groundfish in the new area, and the position of the new activity. The notice must be sent to the Regional Director within 48 hours of shifting.

(iii) The notices required in paragraphs (a)(3) (i) and (ii) should be sent by private or commercial communications facilities to the U.S. Coast Guard at Juneau, Alaska, who will relay them to the Regional Director. Only if adequate private or commercial communications facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(iv) After the first catch or receipt of groundfish at sea by that vessel during that period and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel must submit a weekly catch or receipt report for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period, during which groundfish were caught or received at sea. Catch or receipt reports must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 675.4 of this part. These reports must contain the following information:

(A) Name and radio call sign of vessel;

(B) Federal permit number for the Bering Sea and Aleutian Islands groundfish fisheries;

(C) Month and days fished or during which fish were received at sea;

(D) The estimated round weight of all fish caught or received at sea by that vessel during the reporting period by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), whether retained, discarded, or off-loaded;

(E) The area in which each species or species group was caught; and,

(F) If any species or species groups were caught in more than one area during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by area.

8. A new § 5675.25 is added to read as follows:

§ 675.25 Disposal of fishing gear and other articles.

(a) *Intentionally discarded or abandonded gear.* No fishing vessel may intentionally discard or abandon fishing gear, net fragments, or other articles which may interfere with fishing activities or cause damage to fishery resources and other marine animals. Exceptions to this rule will be allowed in case of emergencies involving the safety of the ship and/or crew or when officially authorized to do so.

(b) *Encountered abandoned or discarded gear.* If abandoned or discarded fishing gear, net fragments, or any other article described in paragraph (a) of this section is encountered, or in the event of accidental or emergency placing of such article into the FCZ, the operator of the vessel must make a reasonable attempt to recover the article or immediately report the incident to the Regional Director giving the

(1) Name of the reporting person and his vessel;

(2) Nature of the article;

(3) Location of the article; and

(4) Time and date of the incident.

[FR Doc. 85-19656 Filed 8-14-85; 9:57 am]
BILLING CODE 3510-22-M

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50 CFR Part 650

[Docket No. 50835-5035]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement management measures prescribed in the proposed Amendment 1 (Amendment) to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). This action (1) establishes a four-ounce standard for Atlantic sea scallops, which becomes the minimum that the ten smallest sea scallops in a one-pint sample must weigh to achieve the maximum average meat count on an annual basis; (2) extends the enforcement of this standard beyond the point of first transaction in the United States; and (3) eliminates the adjustable meat count/shell height standard. The new measure is intended to improve the conservation

program for Atlantic sea scallops by reducing the mortality of small, immature sea scallops and enhancing yield per recruit and the reproductive potential of the resource.

DATE: Comments on the proposed rule must be received on or before September 27, 1985.

ADDRESSES: Comments on the proposed rule, Amendment 1, or supporting documents should be sent to Mr. Richard H. Schaefer, Acting Regional Director, National Marine Fisheries Service, Federal Building—14 Elm Street, Gloucester, Massachusetts 01930. Clearly mark "Comments on Scallop Amendment 1" on the envelope.

Copies of Amendment 1, the environmental assessment and the draft regulatory impact review/initial regulatory flexibility analysis are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Carol Kilbride, Scallop Management Plan Coordinator, 617–281–3600, ext. 244.

SUPPLEMENTARY INFORMATION: The FMP was approved and implemented by final regulations effective August 13, 1982 (47 FR 35990). This Amendment to the FMP was prepared by the New England Fishery Management Council (Council). A notice of availability for the Amendment was published in the **Federal Register** on July 18, 1985 (50 FR 29240). Copies of the Amendment are available from the Council upon request at the address given above.

Amendment 1 proposes a new management measure, a four-ounce standard for the ten smallest sea scallops in a one-pint sample, to reduce the potential for mixing unacceptably small sea scallops with large ones, and to achieve a 30-meat count average on an annual basis. The measure is intended to reduce the landing of immature scallops by harvesters.

When the Council originally developed the FMP, it was with the expectation that an average meat count/shell height standard would provide sufficient protection for small scallops to enhance yield per recruit and the reproductive potential of the resource. Analysis of catch and processing data since FMP implementation, however, shows that these measures have not provided sufficient protection for small scallops. During the spring and summer of 1983, significant numbers of very small, immature sea scallops recruited into the fishery in the South Channel area of Georges Bank were harvested at sizes as small as 80-meat count, and mixed with larger scallops taken in other resource areas to achieve the average meat count standard required by the FMP. A similar situation has occurred on the Northern Edge and Peak of Georges Bank, and in the New York Bight area during 1985.

Selective harvest of small sea scallops will, if continued, dissipate the benefits anticipated from FMP implementation by reducing yield per recruit and reproductive potential of the sea scallop resource. The Council and the industry have recognized this, and in an attempt to revise the management program to help achieve the original management objectives, they have agreed to impose a four-ounce standard corresponding to a 40-meat count minimum scallop size. The long-term analysis indicates that a 40-meat count minimum applied on a per-trip basis will result in approximately a 30-meat count average on an annual basis. This new measure is designed to reduce substantially the harvest and mixing of undersized scallops, while allowing fishermen some tolerance to cover those situations in which reasonable diligence to avoid the mixing of small scallops is not entirely successful. Additonally, the sampling technique for monitoring compliance with the new standard has been changed to a volumetric equivalent in order for fishermen to better gauge compliance at sea. Given the rapid growth rates of sea scallops, potential impacts will likely be mitigated at the end of one year after implementation for vessels that shuck at sea. The elimination of the shell height standard proposed by the Amendment may impose potentially greater impacts on any existing shellstockers (vessels that land sea scallops in the shell) because they will have to fish conservatively to avoid violating the four-ounce standard after the trip is shucked out. Landings for shellstockers should be made up at the beginning of the second year of implementation.

The existing FMP provides for enforcement of its measures only up to the point of first transaction in the United States. That provision recognizes that scallops, which when landed comply with the average meat count or minimum shell height, could later be sorted and graded into sizes that would not comply with the meat count if sampled at a later point. The Council has decided to impose the four-ounce standard as a possession prohibition to improve the ability of enforcement agents to monitor harvests for compliance. This action would authorize the National Marine Fisheries Service to enforce the new four-ounce standard on sea scallops at all times and places in the United States once they have been landed.

Although the average meat count/shell height standard could previously be adjusted within a certain given range, the Council proposes in the Amendment that the four-ounce standard will not be subject to regulatory change. Therefore, the fact-finding process which resulted in the temporary adjustment of the meat count/shell height standard would be abandoned. Annual review of the status of the resource by the Regional Director and the amendment process would now be the sole basis for any further change in the management of the fishery.

Changes in the Proposed Rule

The section on Compliance and Sampling Procedures (§ 650.21) has been modified from that proposed by the Council. The proposed regulatory text submitted by the Council spoke in terms of a sample group. It specifically provided that "[T]he person in possession of the scallops may request that as many as ten one-pint samples be examined as a sample group". This language is a vestige of the sampling procedure used to determine compliance with the average meat count measure that these regulations would supersede. It is inappropriate to the four-ounce standard, as compliance with this standard is not dependent upon a sample group.

The four-ounce standard, in essence, establishes a tolerance level for the number off containers or bags of small scallops that may be landed. It prescribes that only two bags or containers of scallops that do not meet the four-ounce standard may be landed. If a third bag or container of scallops in the total amount of scallop meats in possession is determined not to meet the four-ounce standard, this constitutes a violation of the regulations. Obviously, the person in possession of the scallops would not then demand to have seven more samples taken. Any more samples which were found not to meet the four-ounce standard would merely serve to compound the violation. Under the average meat count standard, the taking of more samples could certainly benefit the person in possession of the scallops since the authorized officer might weigh out samples which were well below the average. Thsee below-average scallop samples would offset those scallop samples which were above the average and possibly negate the existence of a violation.

The equities embraced in the sampling procedure pertaining to the average meat count standard have been preserved. If an authorized officer takes

a sample from a bag or container and determines that it fails to meet the four-ounce standard, the person in possession of the scallops may requre that another sample be taken from the bag or container. The officer will then average the scallop meats weighing less than four ounces in each sample. The average will determine if the sample meets the four-ounce standard. For example, if the first sample contains twelve scallops which together weigh less than four ounces and the second sample has only seven, this would yield a sample average of 9.5 scallops weighing less than four ounces. The bag or container would meet the four-ounce standard.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by the Council within 30 days of receipt of an amendment and proposed regulations. At this time, the Secretary has not determined that the Amendment proposed to be implemented by these rules is consistent with the National Standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views and comments received during the comment period.

The Council prepared an environmental assessment for this Amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address listed above.

The NOAA Administrator has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed rule will result in a maximum $17.3 million reduction in goods to the national economy during the first year of implementation. Administrative and enforcement requirements are expected to remain either unchanged or be reduced. Thus, there are no impacts on Federal, State, or local government agencies. The purpose of the Amendment is to enhance productivity, and thus promote investment and innovation in the fishery once the industry has absorbed initial losses. Therefore, the proposed rule will not have a significa nt adverse effect on the United States sea scallop industry. The Council prepared a regulatory impact review (RIR) which concludes that this rule will produce long-term benefits associated with the achievement of the FMP objectives within the third year of implementation. A copy of this review may be obtained from the Council at the address listed above.

This proposed rule is exempt from the review procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97–453, require the Secretary to publish this proposed rule within 30 days of its receipt. The proposed rule is being reported to the Director of the Office of Management and Budget with an explanation why it is not possible to follow the review procedures of the order.

The Council prepared an initial regulatory flexibility analysis as a part of the RIR, which concludes that this proposed rule, if adopted, would not have a significant economic effect on a substantial number of small entities because all vessels operating in the fishery will be affected in the same way, and that there will be no differential effects. A copy of this analysis may be obtained from the Council at the address given above.

This proposed rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting requirements.

Dated: August 13, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR Part 650 as set forth below:

PART 650—[AMENDED]

1. The authority citation for Part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The Table of Contents is amended by revising the headings for §§ 650.20 and 650.22 to read as follows:

Subpart B—Management Measures

Sec.

650.20 Four-ounce standard.

* * * * *

650.22 Review of resource status.

§ 650.1 [Amended]

3. In § 650.1, the last sentence of the paragraph is amended by adding the phrase, ", and possession of Atlantic sea scallops in the fishery conservation zone and anywhere in the United States."

4. In § 650.2, the definition of *First transaction in the United States* is removed, the definition of *Non-conforming Atlantic sea scallops* is revised, and the definition of the *Four-ounce standard* is added alphabetically as follows:

§ 650.2 Definitions.

* * * * *

Non-conforming Atlantic sea scallops means scallops which do not meet the standards specified in § 650.20 of these regulations, *unless*, for the purposes of compliance with the four-ounce standard measurement provisions of that section, the scallops have been certified, through a procedure specified by the Regional Director, to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations. Certified sea scallops will be deemed to be non-conforming unless they are accompanied at all times by positive documentary evidence of their certification.

* * * * *

Four-ounce standard means that the ten smallest sea scallops in a one-pint sample must weigh at least four ounces.

* * * * *

5. In § 650.7, the paragraph (a) is revised to read as follows (the introductory text is reprinted without change for the convenience of the reader):

§ 650.7 Prohibitions.

It is unlawful for any person:

(a) To possess any non-conforming Atlantic sea scallops once they have been landed in the United States.

(1) Atlantic sea scallops will be subject to inspection at all times and places in the United States for conformance with the four ounce standard, in accordance with the compliance and sampling procedures specified in § 650.21.

(2) Atlantic sea scallops will be subject to inspection at all times and places in the United States for

conformance with certification provision, where applicable.

* * * * *

6. Section 650.20 is revised to read as follows:

§ 650.20 Four-ounce standard.

A four ounce standard corresponding to a 40-meat count minimum size shall apply to all sea scallops, whether the scallops are shucked at sea or landed in shell.

7. Section 650.21 is revised to read as follows:

§ 650.21 Compliance and sampling procedures.

(a) Compliance with the four-ounce standard will be subject to inspection at all times and places in the United States. For the purposes of inspecting scallops in the shell to determine compliance with the four-ounce standard, an authorized officer may, at his discretion, direct the person in possession of the scallops to shuck, or delay inspection until sufficient scallops have been shucked, to allow the taking of samples as specified below.

(b) The authorized officer will take one-pint samples from the total amount of scallop meats in possession. A sample fails to comply with the four-ounce standard if ten or more scallop meats in the sample weigh less than four ounces. If a sample fails to meet the four-ounce standard, the authorized officer may take, at the request of the person in possession, another sample from the bag or container from which the offending sample was drawn. The authorized officer will average the number of scallops weighing less than four ounces from both samples. The average number of scallop meats weighing less than four ounces will determine if the bag or container fails to meet the standard. Non-compliance with the four-ounce standard occurs if three or more samples from the total amount of scallop meats in possession fail to meet the four-ounce standard.

8. Section 650.22 is revised to read as follows:

§ 650.22 Review of resource status.

(a) *Scope and purpose of review.* The Regional Director will review the status of the Atlantic sea scallop resource on a continuing basis, and will, at least annually, prepare a report concerning the status of the fishery and possible changes in the resource, fishery, or industry which might require amendment of the EMP. The Council may, at any time, request that such a report be prepared within sixty days.

(b) *Sources of information.* The Regional Director will consider all available resource and assessment information, especially the most recently completed survey and assessment, when preparing his report. The Regional Director will also consider: reports and records maintained by fishermen and made available as a part of the fishery statistics program; other fishery statistics; and any other available information which increases understanding of prevailing conditions of the stock, the fishery, and the industry.

[FR Doc. 85-19657 Filed 8-14-85; 9:27 am]
BILLING CODE 3510-22

Notices

Federal Register
Vol. 50, No. 159
Friday, August 16, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Intent to Establish the Agriculture Structure Planning Advisory Committee and Notice of Meeting

Notice is hereby given that the Secretary of Agriculture intends to establish the Agriculture Structure Planning Advisory Committee.

The purpose of the committee will be to review and evaluate USDA-developed proposals concerning the organizational structure of the Department and future program delivery.

Establishment of this committee is in the public interest in connection with the performance of duties of the Department. Written comments on the proposed establishment of this committee may be submitted to Charles Grizzle, Room 241E, Administration Building, Washington, D.C. 20250, until September 3, 1985.

Contingent upon the timely establishment of the committee, and pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, as amended, notice is hereby given that the first meeting of the committee will be held on September 4–5, 1985, at the Shoreham Hotel, Washington, D.C. The meeting will commence at 8:00 a.m. and end at 5:30 p.m. on September 4 and commerce at 8:00 a.m. and end at 4:30 p.m. on September 5.

The committee will be reviewing proposals developed within USDA relating to administrative support and headquarters/field structures and developing comments on those proposals which will be presented to the Department at the close of the meeting.

The meeting will be open to the public, however, limited space will be available. Written comments may be submitted to Mr. Grizzle at the above address. Persons desiring more specific information concerning the meeting should contact Mr. Grizzle at 202–447–3590.

John J. Franke, Jr.,
Assistant Secretary for Administration.
August 13, 1985.

[FR Doc. 85–19558 Filed 8–15–85; 8:45 am]
BILLING CODE 3410-01-M

Proposal To Exclude Department of Agriculture Programs From Executive Order 12372

AGENCY: Department of Agriculture, USDA.

ACTION: Notice.

SUMMARY: This Notice proposes that Rural Electrification Loans and Loan Guarantees, Rural Telephone Loans and Loan Guarantees, and Rural Telephone Bank Loans to either nongovernmental or governmental entities be excluded from coverage under Executive Order 12372, "Intergovernmental Review of Federal Programs." Public comment is sought on these proposed exclusions. A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, at 48 FR 29100, dated June 24, 1983.

DATE: Comments must be received on or before September 30, 1985.

ADDRESS: Interested persons should submit comments to Ms. Lyn Zimmerman, Office of Finance and Management, USDA, Room 2117–B, Auditors Building, 201 14th Street, SW., Washington, D.C. 20250. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Supervisory Program Analyst, Office of Finance and Management, USDA, Room 2117–B, Auditors Building, 201 14th Street, SW., Washington, D.C. 20250. (Telephone (202) 382–1553).

Background

In a recent report to the President on Executive Order 12372, the Office of Management and Budget (OMB) concluded that although the Order has improved Federal, State, and local government relations, a number of procedural changes would improve the Order's implementation. Prominent among the procedural changes was a reexamination of existing coverage to determine that exclusions are justified on the basis that the program does not directly affect State and local governments.

Executive Order 12372 has as one of its purposes the development of a review process to replace OMB Circular A–95. Although REA-financed activities were never subject to Circular A–95 review, a determination was made that loans or loan guarantees made to those REA borrowers deemed to be governmental entities (71 of approximately 2,000 borrowers) would be included within the scope of the Executive Order, even though REA makes no distinctions in its treatment of loan requests from governmental versus nongovernmental borrowers.

On January 24, 1983, the Department indicated in a notice of proposed rulemaking (48 FR 3082) that REA loans and loan guarantees to nongovernmental entities would be excluded from coverage under the Executive Order. The proposed exclusion produced only five letters and only one of the five requested that REA Electrification Loans and Loan Guarantees be subject to Executive Order 12372. No comments were received regarding Rural Telephone Loans and Loan Guarantees or Rural Telephone Bank Loans. On June 24, 1983, the Department published its final rule (48 FR 29100) excluding REA loans and loan guarantees to nongovernmental entities from coverage under the Executive Order.

SUPPLEMENTARY INFORMATION: On May 8, 1973, The Committee of Conference on S. 394, which amended the Rural Electrification Act, articulated Congressional intent regarding the Office of Management and Budget (OMB) Circular A–95 coverage of the Rural Electrification Administration (REA) loan programs as follows:

> Since January 1, 1973, loans for rural electrification and rural telephone facilities have been processed pursuant to section 306(a)(1) of the Consolidated Farm and Rural Development Act. Under this Act the Secretary of Agriculture is required to submit all such loan applications for review and comment to multijurisdictional substate areawide general purpose planning and development agencies which have been officially designated as clearinghouse agencies under OMB Circular A–95, and to county and municipal governments having

jurisdiction over the area in which the proposed facilities will be located.

In the case of loans for rural electrification and rural telephone facilities, this requirement serves no useful purpose, and imposes unnecessary delays on loan approval procedures. It has never been applied to Rural Electrification Act loan programs. One of the principal purposes of S. 394 is to reinstate a rural electrification and rural telephone loan program which will operate free of these requirements for review by units of local government and multijurisdictional planning agencies.

It is the specific understanding and the clear intent of the conferees that direct loans, insured loans, and loan guarantees, approved pursuant to the Rural Electrification Act of 1936, as amended, shall not be subject to review by any such multijurisdictional substate planning or development agency or commission or by any unit of local government, or by any Federal agency other than REA.

The above stated Congressional intent formed the basis for excluding REA loan programs from OMB Circular A–95 review requirements.

Even though they are private organizations, REA-financed systems are subject to State and local requirements that are applicable to the planning and construction of utility facilities in their service areas including zoning and the use of streets and highways. In those cases where REA-financed systems come under the jurisdiction of State public utility commissions (PUCs), their activities, including the receipt of financial assistance from REA, are reviewed by PUCs. In a number of States REA borrowers receive a franchise to provide utility service in a specified geographical area.

In those cases where the consideration of extending REA financial assistance requires the preparation of an environmental impact statement, such statements are sent to State and local agencies and other interested groups for review and comment in accordance with the requirements of the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. In the event that REA will prepare an environmental assessment under the CEQ regulations or the proposal will be located in a flood plain or wetlands, local public notice is provided. State and local agencies and the general public are thus afforded an opportunity to review and comment on a proposal prior to any REA determination concerning financial assistance. Even for minor projects which do not require public notice, REA-financed systems normally contact state and local environmental and planning agencies prior to making application to REA for financial assistance.

Based on the adequacy of the existing consultation requirements, the REA programs listed below by Catalog of Federal Domestic Assistance Numbers and as they pertain to both governmental and nongovernmental entities, are proposed for exclusion from the scope of Executive Order 12372:

10.850 Rural Electrification Loans and Loan Guarantees
10.851 Rural Telephone Loans and Loan Guarantees
10.852 Rural Telephone Bank Loans

Following the end of the comment period, the Department will study all comments received and make a determination on whether to exclude or include the REA programs. A Notice will be published in the **Federal Register** announcing the determination.

Dated: August 9, 1985.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 85–19615 Filed 8–15–85; 8:45 am]

BILLING CODE 3410–15–M

Forest Service

Ridge Timber Sale; Okanogan National Forest, Okanogan County, WA; Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of the Ridge Timber Sale on the Twisp Ranger District. The environmental impact statement will be prepared in accordance with existing approved land and resource management plans.

A range of alternatives for timber harvest in the assessment area will be considered. One of the alternatives will be No Action. Other alternatives will consider harvest ranging from approximately 7,000 mbf to 9,000 mbf on approximately 1000 to 1600 acres. Road construction alternatives include no construction to approximately 16 miles of new roads.

Federal, State and local agencies, potential purchasers, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed.
2. Identification of issues to be analyzed in-depth.
3. Elimination of insignificant issues, those covered by previous environmental analysis, and those issues not within the scope of this decision.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Forest Supervisor will accept written comments and suggestions to his office at the Okanogan National Forest, Okanogan, Washington until November 29, 1985. The Twisp District Ranger or his staff will be available to accept comments and suggestions via telephone or in person November 17–21 at the Twisp District Office (509) 997–2131.

William D. McLaughlin, Forest Supervisor of the Okanogan National Forest is the responsible official.

The analysis is expected to take about 4 months. The draft environmental impact statement should be available for public review by April, 1986.

Written comments and suggestions concerning the analysis should be sent to William D. McLaughlin, Forest Supervisor, 1240 2nd Avenue, Box 950, Okanogan, Washington 98840.

Questions about the proposed action and environmental impact statement should be directed to John C. Erickson, Forest Service, USDA; Twisp Ranger District, Okanogan National Forest, P.O. Box 188, Twisp, Washington 98856. Information packets are available upon request from the Okanogan National Forest Supervisor's office or the Twisp Ranger District office.

Dated: August 5, 1985.

William D. McLaughlin,

Forest Supervisor.

[FR Doc. 85–19551 Filed 8–15–85; 8:45am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Illinois Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on September 6, 1985, at the U.S. Commission on Civil Rights, 230 South Dearborn Street, Room 3280—Conference Room, Chicago, IL. The purpose of the meeting is to discuss Civil Rights developments in the state and future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzberg or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371 (TDD 312/886–2188).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-19577 Filed 8-15-85; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:00 p.m. on September 14, 1985, at the Holiday Inn, 5851 South Virginia Street, Tahoe C. Room, Reno, Nevada. The purpose of the meeting is to discuss plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth Nozero or Philip Montez, Director of the Western Regional Office at (213) 688-3437, (TDD 213/894-0508).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, August 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-19578 Filed 8-15-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Construction Project Report (Multifamily Residential)
Form number: Agency—C-700 (R); OMB—0607-0163
Type of request: Extension of a currently approved collection
Burden: 3,000 respondents; 7,500 reporting hours

Needs and uses: This report is used to collect the amount of construction put in place each month from a nationwide sample of new townhouses and apartment projects. These statistics are used extensively by the Federal government in making policy decisions and they become part of the GNP. They are also used by the private sector for market analysis and other research.

Affected public: Businesses or other for-profit institutions
Frequency: Monthly
Respondent's obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 12, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-19606 Filed 8-15-85; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 27-85]

Proposed Foreign-Trade Zone—Sparks, NV Within the Reno Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Nevada Development Authority, a Nevada non-profit corporation and grantee of FTZ 89, Las Vegas, requesting authority to establish a general-purpose foreign-trade zone in Sparks, Nevada, within the Reno Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 2, 1985. The applicant is authorized to make this proposal under section 237A.030 of the Nevada Revised Statutes.

The proposed foreign-trade zone will involve a 24-acre site on Spice Island Drive near the Reno International Airport, to be operated by the Nevada International Trade Corporation, an affiliate of the Economic Development Authority of Western Nevada. Zone warehousing services will be provided by Dermody Properties, Inc., a warehousing firm and developer that owns the site.

The application contains evidence on the need for zone services in the Reno area. A number of firms have indicated an interest in using zone procedures for storage and manipulation of products such as energy equipment, paper, semi-conductor components, computer and other electronic equipment, skis and gaming equipment. No specific manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul R. Andrews, District Director, U.S. Customs Service, Pacific Region, 555 Battery St., San Francisco, CA 94111; and Colonel Wayne J. Scholl, District Engineer, U.S. Army Engineer District Sacramento, 650 Capitol Mall, Sacramento, CA 95814.

As part of its investigation, the examiners committee will hold a public hearing on September 11, 1985, beginning at 9:00 a.m., in Washoe County Commission Chambers, 1205 Mill St., Reno NV 89502.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by September 3. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 11, 1985.

A copy of the applicaton and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1755 E. Plumb Lane, #152, Reno, NV 89502

Office of the Executive Secretary, Foreign-Trade Zones board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230

Dated: August 12, 1985.

John J. Da Ponte Jr.,

Executive Secretary.

[FR Doc. 85-19605 Filed 8-15-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 50719-5119]

Proposed Federal Information Processing Standard for Specification for a Data Descriptive File for Information Interchange (DDF)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of proposed Federal Information Processing Standard.

SUMMARY: This proposed standard adopts a voluntary International standard, ISO 8211—Specification for a Data Descriptive file for Information Interchange (DDF), for Federal use. The American National Standards Institute (ANSI) is expected to approve this standard in October 1985 as an American National Standard (ANS).

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval as a Federal Information Processing Standard (FIPS), it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard, is provided in its entirety in this notice; and (2) a specification portion which deals with the technical requirements of the standard, ISO 8211—Specification for a Data Descriptive File for Information Interchange (DDF). Interested parties may obtain a copy of the technical specifications from the Computer and Business Equipment Manufacturers Association (CBEMA), Attn: X3 Secretariat, 311 First Street, NW, Washington, DC 20001, (202) 737-8888.

DATE: To be considered, comments on this proposed FIPS must be received on or before November 14, 1985.

ADDRESS: Comments concerning the adoption of ISO 8211 as a FIPS are invited and may be sent to Director, Institute for Computer Sciences and Technology, ATTN: Proposed FIPS for DDF, National Bureau of Standards, Technology Building, Room B154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Upperman, Center for Programming Sciences and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-2431.

Dated: August 13, 1985.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication

Date

Announcing the Standard for Specification for a Data Descriptive File for Information Interchange (DDF)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to Section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Specification for a Data Descriptive File for Information Interchange (DDF) (FIPS PUB ——).

2. *Category of Standard.* Software Standard, Information Interchange.

3. *Explanation.* This publication announces the adoption of the international Standard ISO 8211, Specification for a Data Descriptive File for information Interchange (DDF), as a Federal Information Processing Standard (FIPS). ISO 8211 specifies media/independent and system-independent file and record formats for the interchange of information between computer systems. The standard is intended for use with physical media as well as with communications media in applications where a high volume of data is to be interchanged, rather than for an isolated interchange of a single or small number of records. The purpose of the standard is to provide a mechanism to allow data structures to be easily transported from one computer system to another computer system, independent of make, with the capability of restructuring the data without loss of content or meaning. The standard is for use by implementors and users who have a need to represent data structures and data definitions in a standard format for information interchange purposes so that the data can be transported from one system to another while maintaining the integrity of the data.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* ISO 8211—Specification for a Data Descriptive File for Information Interchange (DDF).

7. *Objectives.* The primary objectives of this standard are:

—To permit data structures, data files, data definitions, and databases to be easily transported from one computer system to another computer system, where the two systems are not necessarily compatible, without loss of content or meaning.

—to reduce the cost of information interchange when data must be transported from one computer system to another computer system where the two systems are not necessarily compatible.

—to provide a standard interchange format when migration from one computer system to another computer system occurs.

—to provide a standard interchange format for achieving data for future recall by assuring that standard software will be available for this purpose.

8. *Applicability.*

a. This standard is intended for use in information interchange applications that are either developed or acquired for government use. It is suitable for representing and interchanging a broad spectrum of data structures including: elementary data, vectors, arrays, and hierarchies. User file structures such as sequential, hierarchical, relational, and indices can be converted into the interchange format. Network structures can be interchanged but additional pre-processing and post-processing is necessary to preserve logical linkages. The data to be interchanged can be in character representation or binary representation. The intermediate structure through which the information passes is designed for interchange purposes only and is not intended to be used for general processing. This standard should be used unless a more efficient or cost effective alternative already exists. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of more specialized data interchange software such as the Initial Graphics Exchange System (IGES), Computer Graphics Metafile (CGM), or other application specific data interchange software.

b. The use of this standard is strongly recommended when one or more of the following situations exist:

—The data file or database is maintained at a central facility for a decentralized system that employs computers of different makes and models that must utilize the data.

—The data file or database is intended for conversion or is being converted from one computer system to another computer system where the two systems are not necessarily compatible.

—The data file or database is being migrated from one computer system to another computer system where the two systems are not necessarily compatible.

—The data file or database is intended for information interchange between a source system and a target system that are not necessarily compatible.

—The data file or database is intended for archival purposes and the format of an access to a standardized structure is critical to guarantee long life availability and utilization of the data through standardized software support.

c. Non-standard features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard features can be very useful, it should be recognized that the use of these or any other non-standard elements may make the interchange of data and future conversion to a revised standard or replacement processor more difficult and costly.

9. *Specifications.* ISO 8211—Specifications for a Data Descriptive File for Information Interchange (DDF) contains the specifications for FIPS DDF. The ISO 8211 document defines the scope of the specifications, control fields, format controls, leaders, directories, and requirements for a conforming implementation. All of these specifications apply.

10. *Implementation.* The implementation of this standard involves two areas of consideration: acquisition of DDF software and interpretations of DDF software.

10.1 *Acquisition of Data Interchange Software.* This publication is effective (date of approval of this document). Data interchange software acquired for Federal use after this date should implement this standard when the applicability criterion in section 8 has been met. Conformance to FIPS DDF should be considered whether data interchange software is developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce data interchange software conforming to the standard. The transition period begins on the effective data and continues for eighteen (18) months thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, data interchange software not conforming to FIPS DDF may be acquired for interim use during the transition period.

10.2 *Interpretation.* Resolution of questions regarding this standard will be provided by NBS. Questions concerning the content and specifications of this FIPS PUB should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: DDF Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

[FR Doc. 85-19521 Filed 8-15-85; 8:45 am]
BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of Japan To Review Trade in Categories 313 (Cotton Sheeting) and 340 (Men's and Boys' Woven Cotton Shirts)

August 13, 1985.

On July 29, 1985 the Government of the United States requested consultations with the Government of Japan with respect to Categories 313 and 340. This request was made on the basis of the Agreement, effected by exchange of notes dated August 17, 1979, as amended and extended, between the Governments of the United States and Japan relating to trade in cotton, wool and man-made fiber textiles and textile products and on the basis of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may request the Government of Japan to limit exports in Categories 313 and 340, produced or manufactured in Japan and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985 at levels of 5,966,740 square yards and 95,552 dozen, respectively.

Summary market disruption statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 313 and 340 under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of Japan, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Japan—Market Statement

Category 313—Cotton Sheeting

July 1985.

Summary and Conclusions

United States imports of Category 313 from Japan during the year-ending May 1985 were 5.4 million square yards, almost five times the exports of a year earlier. Imports from Japan increased from 885,000 in 1983 to 2,130,000 square yards in 1984.

The U.S. market for cotton sheetings has been severely disrupted by imports for several years. Imports were near or above domestic production during the 1981 through 1984 period, exceeding domestic production by 37 percent in 1984. The sharp and substantial increase in imports from Japan are contributing to the disruption and a continuation of the growth creates real risks of more intensive disruption.

U.S. Production and Market Share

U.S. production of Category 313 has sharply declined over the past decade and one-half. Production in 1984 was 299 million square yards, the second lowest level on record; the recession year of 1982 was 6 percent less. Production for the first quarter of 1985 was 80,511 square yards, up marginally from January-March 1984. Second quarter production, according to trade reports, was down due to a glut of supplies available for a very soft market.

The U.S. producers share of the market for domestically produced and imported Category 313 dropped sharply to 42.1 percent in 1984 from 70.1 percent in 1979.

U.S. Imports and Import Penetration

U.S. imports of Category 313 from all sources trended upwards for a number of years. They reached a record 410.6 million square yards in 1984, up 80 percent from 1979 and 28 percent from 1983. Imports during the first quarter of 1984 were down from the record imports of the January-March 1984 period; however, imports surged in April and May when they totaled 78.4 million square yards. This compares with 71.3 million square yards imported a year earlier.

The ratio of imports to domestic production increased from 42.7 percent in 1979 to 137.3 percent in 1984. Although there was a decline in the ratio during the first quarter of 1985, the surge in April and May coupled with a slowdown in domestic production indicate that the ratio drop in the first quarter was temporary.

Duty-Paid Values and U.S. Producer Prices

Approximately 37 percent of the Category 313 imports from Japan enter under TSUSA No. 320.2934. This is grey fabric with yarn count in the twenties, under six ounces in weight. Grey fabrics of various types, including TSUSA No. 320.2934, make up 50 percent of the total imports. The remaining imports are scattered over a number of TSUSA numbers. The duty-paid landed values of these fabrics from Japan are below the U.S. producer prices for comparable fabrics. The value/price comparison for TSUSA No. 320.2934 is indicative of these differences.

Summary and Conclusion

United States imports of Category 340 from Japan were 85,000 dozens for the year-ending May 1985. Imports were 21,000 dozens for the same period one year earlier. Full year 1984 imports were 58,000 dozens, up nearly three-fold from the 15,000 dozens imported in 1983.

Import growth from Japan of Category 340 has been sharp and substantial, adding to the existing market disruption in this category. Continued uncontrolled growth would intensify the market disruption.

General Imports

Imports of Category 340 from all sources increased 29 percent between 1983 and 1984. In the first five months of 1985 imports of this category increased 33 percent from the same period in 1984. The overall growth rate from 1980 to 1984 was 45 percent; seventy-two percent of this growth occurred in 1984 alone.

U.S. Production and Market Share

U.S. Production of this category has declined over 50 percent since 1973. Between 1980 and 1983 production declined from 5,526,000 dozens to 4,493,000 dozens, a drop of 19 percent. Production in 1984 reached 5,125,000 dozens up 14 percent from 1983, but still below the 1980 level. Cuttings of all men's and boys' woven shirts declined 5.3 percent in the first four months of 1985.

Imports have captured much of the market growth and have also displaced domestically produced MB cotton woven shirts in the market. The U.S. Category 340 market increased over 2 million dozens during 1980–1984. During that time imports increased by about 2.8 million dozens, while domestic production was reduced by 401,000 dozens. The U.S. producers' market share for Category 340 was 46.7 percent in 1980 and only 35.8 percent in 1984.

Import Penetration

The import-to-production ratio for this category has increased sharply over the last 5 years. In 1980 the ratio topped 100 percent for the first time, reaching 114 percent. By 1983 the ratio had climbed over 44 percentage points to 158.5 percent. The substantial increase in imports in 1984 helped boost the ratio an additional 20.5 percentage points, to 179.0 percent.

Employment

Employment in the men's and boys' shirt industry was 99,200 workers in 1984.[1] This is approximately the same level as in 1980. In the first five months of 1985 employment was down 4.0 percent from the same period one year earlier.

Import Value vs Domestic Producers' Price

Approximately 90 percent of Category 340 imports from Japan entered under two TSUSA numbers. These were 379.5520—other men's cotton dress shirts, and 379.5520—other men's cotton sport shirts. These items entered at duty-paid values below the U.S. producers' price for comparable garments.

[FR Doc. 85–19608 Filed 8–15–85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Republic of South Africa on Trade in Categories 347/348 and 604

August 13, 1985.

On July 31, 1985 the Government of the United States, under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of the Republic of South Africa to enter into consultations concerning exports to the United States of man-made fiber yarns in Category 604 and cotton trousers in Category 347/348, produced or manufactured in South Africa.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in these categories, produced or manufactured in South Africa and exported to the United States during the twelve-month period which began on July 31, 1985 and extends through July 30, 1986 at levels of 246,859 dozen (Category 347/348) and 966,346 pounds (Category 604).

Anyone wishing to comment or provide data or information regarding the treatment of Ctegories 604 and 347/348 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Republic of South Africa—Market Statement

Category 604—Man-Made Fiber Spun Yarn

July 1985.

Summary and Conclusions

U.S. imports of man-made fiber spun yarn from the Republic of South Africa were 1.1 million pounds during the year-ending May 1985 compared with 125,000 a year earlier and only 18,000 in 1983. Category 604 imports from the Republic of South Africa are heavily concentrated in TSUSA No. 310.5049—plied acrylic yarn and 310.4047—polyester singles yarn. The plied acrylic yarns imports during January—May 1985 were 199,493 pounds or 49 percent of the total category imports of 408,155 pounds. Polyester singles yarns imports were 203,191 pounds or 50 percent of the total.

[1] SIC 2321, Men's and boys' shirt and nightwear industry.

The Republic of South Africa was the third largest supplier of polyester yarns, accounting for 12 percent of total imports during the year ending May 1985. All of South Africa's polyester yarn exports to the U.S. in 1984 and 1985 were polyester singles yarn. The Republic of South Africa was the largest supplier of polyester singles yarn, accounting for 22 percent of the total imports during the year ending May 1985. Imports during that period were 725,000 pounds, more than 10 times the imports of a year earlier. Imports of plied acrylic yarn during the year ending May 1985 were 312,166 pounds, more than six times the amount imported a year earlier.

The U.S. markets for both the plied acrylic and polyester yarns are being disrupted by imports and the imports from the Republic of South Africa are contributing to these disruptions.

U.S. Production and Market Share

Data are not yet available on U.S. production of Category 604 as a whole; however, current data are available on both the polyester and plied acrylic parts which the Republic of South Africa ships. Production of Category 604, prior to 1984, was erratic following no distinct trend. The U.S. producer's share of the market for domestically produced and imported Category 604 was around 95 percent recently.

Production of plied acrylic yarn (shipments by domestic industry) trended downward dropping from 44.7 million pounds in 1981 to 35.8 million in 1984. The U.S. producer share of the market declined from 76.5 percent in 1981 to 63.6 percent in 1984. Production for the first five months of 1985 was 14.7 million pounds, down 12 percent from January—May 1984.

Production of polyester sales yarn, 31 count and finer, declined from 6.4 million pounds in 1981 to 4.7 million in 1984. The U.S. producers share of the market declined from 79 percent in 1981 to 50 percent in 1984. Production for the first four months of 1985 was 1,794,000 pounds, down five perent from a year earlier.

U.S. Imports and Import Penetration

U.S. imports of Category 604 increased from 19.0 million pounds in 1981 to 33.1 million in 1984. The ratio of imports to production increased from 3.1 percent in 1981 to 3.8 percent in 1983 and probably some what higher in 1984 since imports increased.

U.S. imports of plied acrylic yarn increased by 48 percent from 1981 through 1984. Imports for the first five months of 1985 were up 1.59 percent from a year earlier. May 1985 imports were double those of a year earlier. The ratio of imports to domestic production of plied acrylic yarn increased from 30.8 percent in 1981 to 57.1 percent in 1984. The ratio during January—May 1985 was 58.0 percent.

Polyester yarn imports, 31 count and finer, increased two and three-quarter times from 1,721,000 pounds in 1981 to 4,756,000 in 1984. The ratio of imports to production increased from 26.8 percent to 100.3 percent over the period. The ratio jumped to 160.5 percent during the first four months of 1985.

Values and Prices

The duty-paid landed values of imports from the Republic of South Africa are below the U.S. producer prices for comparable yarns.

Summary and Conclusions

United States imports of Categories 347/348 from the Republic of South Africa were 283,000 dozens for the year ending May 1985. This was over nine times greater than the 29,000 dozens imported one year earlier. Imports from the Republic of South Africa were 174,000 dozens for full-year 1984, 7,000 dozens in 1983 and 3,000 dozens in 1982.

The markets for Categories 347 and 348 have been disrupted and the substantial growth in imports from the Republic of South Africa contributed to this disruption. Continuation of this rapid growth would further disrupt the markets.

U.S. Market

The markets for domestically produced and imported cotton trousers increased by close to 7 million dozens during 1982–1984. Imports captured over 85 percent of the gain. Since 1982, imports have increased by 6 million dozens. During this same time period, the U.S. producers' share of the cotton trouser markets declined from 75 percent to 68 percent.

U.S. Production

Cotton trouser production was up in 1984, increasing to 40,895,000 dozens from 39,715,000 in the previous year. Indicators are that U.S. producers are facing a worsening position in 1985. Cuttings of men's trousers were down 5.1 percent and women's trousers were off 6.3 percent for the first four months of 1985. Also, average weekly man-hours in the men's and boys' trouser industry during January—May 1985 were off by 7.9 percent compared to the same period in 1984.

Imports and Import Penetration

Imports were relatively stable during the late seventies and early eighties. However, they increased sharply in 1983 and significantly in 1984. The ratio of imports to domestic production increased from 32.9 percent in 1982 to 45.5 percent in 1983 to 46.9 percent in 1984.

Duty-Paid Value and U.S. Producer's Price

Approximately 80 percent of the Republic of South Africa's imports of this combined category entered under Category 348 in the year ending May 1985. Over 70 percent of the Category 348 imports entered under four TSUSA numbers. These were 383.4726—WGI other cotton shorts, not knit or ornamented, 383.4747—women's other cotton trousers and slacks denim, not knit or ornamented, 383.4753—women's cotton trousers, slacks, etc., corduroy, NSPF, not knit or ornamented and 383.4761—women's other cotton trousers, slacks, etc., NSPF, not knit or ornamented. Close to three-quarters of the Category 347 imports entered under three TSUSA numbers. These were 379.6210—men's and boys' cotton shorts, not knit or ornamented, 379.6220—men's cotton trousers and slacks, denim, not knit or ornamented, and 379.6250—boys cotton trousers and slacks, denim, not knit or ornamented. These trousers entered at duty-paid values well below the U.S. producers' prices for comparable trousers.

[FR Doc. 85–19609 Filed 8–15–85; 8:45 am]

BILLING CODE 3510-DR

Adjusting Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Taiwan

August 13, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 13, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

The bilateral agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan provides, among other things, for percentage increases in certain categories during an agreement year for swing, provided corresponding reductions in equivalent square yards are made in other specific limits or sublimits during the same year. Pursuant to terms of the agreement, as amended, the import restraint limit established for Category 448 (women's, girls' and infants' wool trousers), exported during the twelve-month period which began on January 1, 1985 is being increased from 11,792 dozen to 12,382 dozen. The limit for Category 319 (cotton duck fabric) is being reduced to 19,003,599 square yards.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 F.R. 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 13, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On December 21, 1984, the Chairman of the Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse

for consumption, of goods exported during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Taiwan, in excess of designated restraint limits. The Chairman further advised you that the restraint limits are subject to adjustment.[1]

Effective on August 13, 1985, the directive of December 21, 1984 is hereby further amended to include adjusted restraint limits for the following categories.

Category	Adjusted 12-mo. restraint limit [1]
319	19,003,599 square yards.
448	12,382 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-19607 Filed 8-15-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1985 commodities and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: August 16, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 10 and June 7, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 19777 and 50 FR 24018) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1985:

Commodities

Potatoes, White, Fresh: 8915-00-456-6111 (Whole), 8915-00-228-1945 (Diced)
(Requirements for Defense Logistics Agency in North Carolina and South Carolina only)

Services

Commissary Shelf Stocking and Custodial, Altus Air Force Base, Oklahoma

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following commodity is hereby deleted from Procurement List 1985:

Bag, Lunch: 8105-00-664-3715

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 85-19596 Filed 8-15-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before September 18, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystall Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodities

Bookcase, Steel, Contemporary: 7110-00-601-[illegible]
Pillow, Bed Feather: 7210-01-015-5190
(portion of Government requirement not on Procurement List)

Services

Commissary Shelf Stocking and Custodial, Fort Leavenworth, Kansas
Commissary Shelf Stocking and Custodial, Carlisle Barracks, Pennsylvania
Commissary Shelf Stocking and Custodial, Commissary and Commissary Annex, Fort Bliss, Texas
Commissary Shelf Stocking and Custodial, Fort Belvoir, Virginia
Janitorial/Custodial, Resources Management Office Building, 400 Riverside Drive, Clarkston, Washington

Deletions

It is proposed to delete the following commodities and services from Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodities

Circuit Card Assembly: 1430-00-409-7997
Circuit Card Assembly: 5826-00-237-0949
Pallet, Material Handling: 3990-00-599-5326

[1] The agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan provides that (1) specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year; (2) certain specific limits or sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided an equal amount in square yards equivalent is deducted from designated categories and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Services

Janitorial Service, Naval Air Station Miramar, San Diego, California
Janitorial/Custodial (Grass cutting), U.S. Army Reserve Centers, Marcella Road, Hampton, Virginia, Butler Farm Road, Hampton, Virginia
Seedling Harvesting, USDA, Forest Service, Humboldt Nursery, McKinleyville, California

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 85-19597 Filed 8-15-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to the Southern States Energy Board (SSEB) in the amount of $99,992 in partial support of the Coal Trade Dialogue, which is a coal export project, investigation of coal use technologies, and evaluation of the imports of coal and electricity imports on the Southern economy. Pursuant to section 600.7(b) of the Federal Assistance Rules, 10 C.F.R. Part 600, DOE has determined that eligibility for this grant award shall be limited to the SSEB.

Procurement Request Number: 01-85PE60765.000

Project Scope

SSEB is a non-profit interstate agency governed by 16 member states and the Commonwealth of Puerto Rico. The Board serves as energy and environmental advisers to the Southern Governor's Association (SGA) and the Southern Legislative Conference Energy Committee.

The purpose of SSEB is to study the impacts on the southern economy and to provide scientific and technical expertise on energy and environmental quality matters to state officials and the general public.

The DOE is vitally interested in the work of SSEB and has determined that this award to SSEB on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Ronald White, MA-452.1, 1000 Independence Avenue SW., Washington, D.C. 20585.

Issued in Washington, D.C., on August 9, 1985.

Ben Goldman,

Director, Contract Operations Division A, Office of Procurement Operations.

[FR Doc. 85-19537 Filed 7-15-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy; Coal Policy Committee of the National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Data and Time: Thursday, September 5, 1985; 3:00 p.m. to 5:00 p.m.

Place: J.W. Marriott Hotel at National Place, 1331 Pennsylvania Avenue NW, Washington, DC.

Contact: Cecilia MacCarthy, U.S. Department of Energy, Room C-156, Office of Fossil Energy (FE-23), Germantown, Maryland 20545, Telephone: 301/353-2847.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Committee: To review requests for advice, information, etc., from the Secretary of Energy to the National Coal Council, and to recommend to the Council studies to be undertaken by the Council.

Tentative agenda:

- Opening remarks by the Chairman.
- Discussion of possible studies to be conducted by the Council in the coming year.
- Discussion of any other business brought before the Committee.
- Public Comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Cecilia MacCarthy at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on August 12, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-19533 Filed 8-15-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy; National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Friday, September 6, 1985; 10:00 a.m. to 12:00 Noon.

Place: J.W. Marriott Hotel at National Place, 1331 Pennsylvania Avenue NW., Washington, D.C.

Contact: Cecilia MacCarthy, U.S. Department of Energy, Room C-156, Office of Fossil Energy (FE-23), Germantown, Maryland, 20545, Telephone: 301/353-2847.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

- Call to Order by John N. Dalton, Chairman of the National Coal Council.
- Remarks by John N. Dalton, Chairman of the National Coal Council.
- Remarks by Donald P. Hodel, Secretary of the Interior.
- Report of Members and Discussion of Activities by Chairmen of the Finance Committee and the Coal Policy Committee.
- Discussion of Any Other Business Properly Brought Before the National Coal Council by the Members and the Public Present.
- Public Comment—10 Minute Rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Cecilia MacCarthy at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between 9:00 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 12, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85–19534 Filed 8–15–85; 8:45 am]

BILLING CODE 6450-01-M

Grant; Common Study of Alcohol and Alcohol Blends as Motor Fuel

Summary

The Department of Energy announces that pursuant to 10 CFR 600.7(b), eligibility for a grant has been restricted to Swedish Motor Fuel Technology Company (SMFTC) to collect, classify and comment on data obtained by international experience in the generation and use of a alcohol and alcohol blends as motor fuels.

Background

The growing need for saving petorleum derivatives in transportation has led to the development of more energy-efficient cars and to the investigation of the potential for replacing petroleum derivatives partly or totally by alcohol. In order to increase the use of alcohol as a motor fuel, there is a need for establishing the conditions for its use under a broad range of operating and climatic situations. A state-of-the-art review and a thorough systems analysis approach to the technologies required for alcohol fuel production and application are necessary for that purpose. To provide as broad a background as possible and share experiences, several countries have, through the International Energy Agency (IEA), agreed to share their information, with comnpilation and presentation conducted by the Swedish Motor Fuel Technology Company.

This agreement is a cost shared project and has been generated through a series of meetings held in accordance with the IEA Agreement, which is supported by Canada, New Zealand, Sweden and U.S.A. The SMFTC is partially owned by the Swedish Government and was selected by that government to conduct the work for which the Swedish Government is responsible.

SMFTC has been the lead organization in Sweden on alcohol fuels processing and utilization R&D since 1975.

This activity contributes directly to the Alternative Fuels Utilization Program in that it supplements findings and documentation provided by contract activities in other countries.

Solicitation Number: DE–FG01–85CE50074

Scope of Project

The Grantee, the Swedish Motor Fuel Technology Company, under terms of the IEA Agreement entitled "Common Study of Alcohol and Alcohol Blends as Motor Fuels," shall classify and comment on data obtained by international experience in the generation and use of alcohol and alcohol blends as motor fuels.

Through the mechanisms of informing the participants on the Agreement as to the material to be covered, organization thereof, and the drafting of material via committee meetings and informal exchange, the grantee will develop the final document(s).

For further information contact: Mr. Craig C. Ashline, Contracting Officer, U.S. Department of Energy, Office of Procurement Operations MA–543.1, 1000 Independence Avenue, SW., Washington, D.C. 20585

Issued in Washington, D.C., on August 8, 1985.

Edward T. Lovett,

Acting Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 85–19581 Filed 8–15–85; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant); Restriction of Eligibility

AGENCY: Department of Energy, San Francisco Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that it plans to award a Grant to the University of Hawaii, Department of Engineering and Computer Science in the amount of $100,000. The Statutory Authority authorizing the use of a grant award is Pub. L. 95–91, DOE Organization Act, and Pub. L. 93–577, Federal Non-Nuclear Energy Research and Development Act.

Grant No. DE–FG03–85SF15799

Scope of Project

The University of Hawaii proposes to conduct "Geothermal Research at the Puna Facility." Specifically, the proposed investigations will result in a better understanding of the scope and extent of the geothermal reservoir underlying the Puna area on the Big Island of Hawaii. The objective of the proposed research is to develop methods for extracting silica from the spent geothermal fluids of the Puna field, which will provide more efficient reinjection of the fluids and possible economic uses for recovered silica.

This award to the University of Hawaii, Department of Engineering and Computer Science is intended for specific goal-oriented geothermal research which will allow for more effective utilization of the Hawaii geothermal resource over the coming years. It is possible the application of the results of this research may extend the commercial life of the resource for a significant period of time.

The University of Hawaii has made substantial contributions to support the development and dissemination of geothermal resource data to the public sector, so that private industry and others will be stimulated to utilize the geothermal resources of the State as an economic alternative to fossil fuels. The University of Hawaii has published professional papers on its contributions to geothermal technology. There is no other such source of unique, independent knowledge and competence in the State of Hawaii. This award to the University on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Aundra Richards, U.S. Department of Energy, San Francisco Operations Office, Contracts Management Division, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, California, August 7, 1985

Donald W. Pearman, Jr.,

Acting Manager.

[FR Doc. 85–19579 Filed 8–15–85; 8:45am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant); Restriction of Eligibility

AGENCY: Department of Energy, San Francisco Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that it plans to award a Grant to the University of Hawaii at Manoa, Division of Natural Energy Institute, in the amount of $75,000. The Statutory Authority authorizing the use of a grant award is Pub. L. 95–91, DOE Organization Act, and Pub. L. 93–577, Federal Non-Nuclear Energy Research & Development Act.

Grant No.: DE–FG03–85SF15798

Scope of Project

The University of Hawaii proposes to conduct a project which involves utilizing the Puna geothermal well and surface facilities (donated previously by DOE to the State of Hawaii) and the recently constructed Puna Geothermal Research Facility as a locus for assisting private individuals, small businesses and industry in the evaluation of direct uses for geothermal fluids.

It is imperative that strategies be developed to insure that the public sector become familiar with and utilize the geothermal technologies resulting from DOE-sponsored research and development. This proposed research provides a one-of-a-kind opportunity for the University of Hawaii to use their facilities and trained staff to assure geothermal research activities reach users in the public sector. Inasmuch as the DOE and its Natural Laboratory system is not adequately represented in the State of Hawaii and does not have the staff and facilities to effectively conduct a geothermal technology transfer program in that region; it is appropriate to use the sole significant source of geothermal expertise and knowledge in Hawaii, the University of Hawaii to carry out the geothermal technology transfer function. This award to the University of Hawaii on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Aundra Richards, U.S. Department of Energy, San Francisco Operations Office, Contract Management Division, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, California, August 7, 1985.

Donald W. Pearman, Jr.,

Acting Manager.

[FR Doc. 85-19580 Filed 8-15-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ES85-53-000]

Application; Idaho Power Co.

August 8, 1985.

Take notice that on July 17, 1985, Idaho Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act, seeking an Order authorizing the issuance and sale of up to 1,000,000 shares of Common Stock, par value of $2.50 per share, pursuant to the Applicant's Dividend Reinvestment and Stock Purchase Plan.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before August 16, 1985, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19649 Filed 8-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-55-002

Rate Change; Mountain Fuel Resources, Inc.

August 12, 1985.

Take notice that Mountain Fuel Resources, Inc. (Mountain Fuel) on July 29, 1985, tendered for filing and acceptance Substitute Second Revised Sheet No. 13, Substitute Second Revised Sheet Nos. 58 through 60 and 62, and Substitute First Revised Sheet Nos. 61 and 63, all to its FERC Gas Tariff, First Revised Volume No. 1.

Mountain Fuel states that through a review of the Schedule A information submitted in its May 1, 1985, PGGA filing, two general adjustments are being made to the forecast of gas costs. The total amount of these adjustments amounts to $3,295,168, and the impact of the adjustments results in a revised Base Cost of Purchased Gas as Adjusted of $2.83359/Dth.

Mountain Fuel states that it is submitting Substitute Second Revised Sheet Nos. 58 through 60 and 62, and First Revised Sheet Nos. 61 and 63, of its FERC Gas Tariff, First Revised Volume No. 1, in accordance with ordering paragraph D of the May 31, 1985, order in this proceeding, 31 FERC ¶61,253 (1985), and to satisfy the Federal Energy Regulatory Commission's concerns over a previously proposed optional adjustment to Mountain Fuel's twelve-month surcharge adjustment. Mountain Fuel states that these tariff sheets also clear up certain ambiguities with regard to compliance by Mountain Fuel with the sub-accounting procedures for Account No. 191 as set forth in the Commission's Uniform System of Accounts.

Mountain Fuel has proposed that the tariff sheets submitted in its filing be made effective June 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19650 Filed 8-15-85; 8:45am]

BILLING CODE 6717-01-M

[Docket No. RP85-69-002]

Motion To Place Into Effect Substitute Tariff Sheet; Penn-York Energy Corp.

August 12, 1985.

Take notice that on July 31, 1985, Penn-York Energy Corporation (Penn-York) moved pursuant to section 4(e) of the Natural Gas Act and Section 154.67 of the Commission's Rules and Regulations to place into effect as of August 1, 1985, subject to refund, Substitute First Revised Sheet No. 7 of Second Revised Volume No. 1 of Penn-York's FERC Gas Tariff. The tendered tariff sheet would increase Penn-York's existing rate under Rate Schedule SS-1 from $1.1851 per Mcf to $1.2674 per Mcf of Annual Storage Volume.

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 6, 1985.

The Commission's Order in this proceeding of February 28, 1985 (30 FERC ¶61,223), as modified on April 4, 1985 (31 FERC ¶61,024), accepted for filing, suspended and permitted to become effective August 1, 1985, subject to refund, Penn-York's First Revised Sheet No. 7 of Second Revised Volume No. 1. That tariff sheet provided for a rate under Penn-York's Rate Schedule SS-1 of $1.4460 per Mcf of Annual Storage Volume. By its Motion, Penn-York has submitted a substitute tariff sheet showing a rate under Penn-York's Rate Schedule SS-1 of $1.2674 per Mcf of Annual Storage Volume which reflects exclusion of all costs associated with facilities not in service on July 31, 1985, in accordance with the aforesaid Commission Order.

Penn-York states that a settlement has been reached in principle respecting all issues in this proceeding which will be submitted for Commission approval.

Penn-York further states that copies on the Motion were mailed to each of the Company's jurisdictional customers and interested state commissions, as well as all parties in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19651 Filed 8-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2207-000]

Lee W. Randall; Filing

August 12, 1985.

The filing Company submits the following:

Take notice that on August 1, 1985, Lee W. Randall (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Louisiana Power & Light Company—Public Utililty

Vice President, New Orleans Public Service Inc.—Public Utililty

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19652 Filed 8-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-624-000 and QF85-624-001]

City of San Buenaventura; Application for Commission Certification of Qualifying Status of a Cogeneration Facility and a Small Power Production Facility

August 9, 1985.

On July 22, 1985, City of San Buenaventura, (Applicant) of P.O. Box 99, Ventura, California 93002 submitted for filing an application for certification of a facility as a qualifying cogeneration and small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed combined small power production and topping-cycle cogeneration facility will be located at the Ventura Water Renovation Facility, 1400 Spinnaker Drive, Ventura, California 93001. The facility will consist of 548 kW internal combustion engine generator set. The engine will operate on both natural gas and digester gas. Heat will be recovered from the oil cooler, water cooler, water jacket, exhaust and possibly the turbo-charger after cooler to heat the digesters. The primary fuels for small power production and for cogeneration part of the facility will be digester gas and natural gas respectively. The net electric power production capacity of the facility is 548 kW of which 238 kW is assigned to small power production and 310 kW to cogeneration. The facility is expected to be installed in June, 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19658 Filed 8-15-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of June 24 Through June 28, 1985

During the week of June 24 through June 28, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

American Federation of Government Employees, 06/25/85, HFA-0295

The American Federation of Government Employees (AFGE) filed an Appeal from a denial by the Inspector General of the Department of Energy of a Request for Information that the AFGE submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the requested document was not in existence and that the request therefore was properly denied.

Natural Resources Defense Council, 06/28/85, HFA-0297

The Natural Resources Defense Council (NRDC), filed an Appeal of a determination issued by the Director, Office of Intelligence Resources and Analysis, Office of the Assistant Secretary for Defense programs of the DOE of a request for information submitted under the Freedom of Information Act. In that determination, the Director denied in part a request for documents concerning the location of nuclear power plants in the Soviet Union. In the Appeal, NRDC questioned the adequacy of the search for responsive documents in light of the fact that only two such documents were identified. In reviewing the matter, the DOE pointed out that a representative of the Director had stated that the reason that only two documents were identified was that the FOIA request had been framed very narrowly. The DOE determined that the search for documents responsive to NRDC's request encompassed serveral DOE offices and that there was no support for the appellant's argument that a thorough sarch had not been performed. Accordingly, the Appeal was denied.

Plumbers and steamfitters Local Union 467, 06/28/85, HFA-0292

The Plumbers and Steamfitters Union Local 467 (Union), filed an Appeal from a determination issued to it by the Authorizing Official of the San Francisco Operations Office of the Department of Energy partially denying the Union's request under the Freedom of Information Act for payroll records of a DOE subcontractor. After searching the DOE record system, the Authorizing Official determined that no responsive documents existed. In considering the Union's Appeal, the DOE found that the scope of the search for the documents was adequate. The Union also appealed the

failure of a contractor to list a subcontractor in performing a federally funded job. The DOE rejected this aspect of the Union's Appeal, finding that the FOIA does not require that particular information be included in a given document. Accordingly, the Appeal was denied.

University of California at Santa Cruz, 06/24/85, HFA–0291

The Stevenson Program on Nuclear Policy at the University of California at Santa Cruz (Program) filed an Appeal from a determination issued to it by the DOE Director of Reference and Information Services. In that determination, the Director denied the Program's request for a waiver of search and copying fees to be charged in connection with the DOE's response to a request for information regarding nuclear safeguards, which the Program filed pursuant to the Freedom of Information Act (FOIA). In considering the Program's Appeal, the DOE determined that the Program should be granted a reduction in search and copying fees because (1) the requested information pertained to a subject of current public interest; (2) the Program had the qualifications and ability to analyze, interpret, and disseminate the requested information; (3) presentation of the requested information in the context of the Program's research project would benefit the free exchange of ideas among policy makers and bring the information into the public domain; and (4) disclosure of the requested information would not serve the personal interests of the requester. The DOE found, however, that the Program did not qualify for a full waiver of search and copying fees because most of the requested material was likely to be exempt from disclosure and might therefore not be informative on the issue found to be in the public interest. Accordingly, the DOE granted the Program a fee waiver reduction of 75%. In addition, the DOE found that the Director's fee estimate of $5,000 included the cost of segregating releasable material from exempt material, which is not an allowable charge under the FOIA regulations. The DOE ordered the Director to recalculate the estimated search and copying fees according to the regulations. Accordingly, the Appeal was granted in part.

Requests for Exception

Busch Distributors, 06/25/85, HEE–0147

Busch Distributors filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the amount of time spent by the firm in completing the form was less than the average time estimated for completing that task. The DOE therefore determined that the firm would not be adversely affected by fulfilling its reporting obligation. Accordingly, exception relief was denied.

Cooper Petroleum, Inc., 06/25/85, HEE–0146

Cooper Petroleum, Inc. filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In responding to Cooper's allegation that its records did not provide the information requested by the form, the DOE pointed out that the instructions to the form specifically permit firms to submit reasonable, estimated data. Consequently, the DOE found that the firm would not be adversely affected by fulfilling its reporting obligation. Accordingly, exception relief was denied.

Spradling's Texaco Petroleum Products, 06/24/85, HEE–0133

Spradling's Texaco Petroleum Products filed an Application for Exception seeking relief from the requirements that it prepare and file Forms EIA–782B, "Reseller/Retailer's Monthly Petroleum Product Sales Report," and EIA–821, "Annual Sales Report of Fuel Oil and Kerosene." In considering the request, the DOE found that there was some merit to the firm's contentions that it was burdened by the requirement that it file EIA–782B. The DOE noted that the firm spent more than six hours per month completing that form, whereas most firms were able to complete the form in approximately two hours. The DOE also found that the reporting requirement imposed a significantly greater burden on Spradling's than on other similar reporting firms due to the nature of Spradling's bookkeeping system and its financial position. After balancing this burden against the public interest in gathering reliable energy data, the determination was made that a limited form of exception relief was appropriate. Accordingly, exception relief was granted to simplify the Form EIA–782B reporting requirements. The DOE further determined that Spradling's did not suffer an inordinate burden in fulfilling its obligation to file Form EIA–821. Accordingly, exception relief regarding that requirement was denied.

Motions for Discovery

Engineered Operating Company J.W. Aiken Economic Regulatory Administration, 06/24/85, HRZ–0241, HRD–0073, HRH–0073, HRZ–0242, HRD–0156, HRH–0156.

The Office of Hearings and Appeals of the Department of Energy issued a decision concerning several motions filed in connection with Statements of Objections to a Proposed Remedial Order (PRO) issued to Engineered Operating Company by the Economic Regulatory Administration. The PRO alleged that Engineered, an operator of crude oil leases, incorrectly classified certain crude oil production. Subsequent to the issuance of the PRO, J.W. Aiken, a previous operator of the leases, was joined as a party to the proceeding. In the decision, the OHA permitted Engineered to file a supplement to its Statement of Objections, noting that the information that the firm wished to submit was brief, comprised documentary evidence directed to allegedly factual issues, and would not delay the proceeding. Consistent with this determination, OHA denied the ERA's Motion to Strike the Supplement from the record. OHA also considered Motions for Discovery filed by Engineered and Aiken, and determined that these motions should be partially granted. Specifically, in order to resolve inconsistencies between the PRO and attached exhibits, OHA directed the ERA to respond to an interrogatory concerning certain overcharges associated with crude oil sales from a particular lease. OHA also found that ERA should produce certain audit workpapers detailing the average daily production rates for the audited leases and those reflecting the posted prices used to calculate the alleged overcharges. Finally, OHA determined that the Motions for Evidentiary Hearing filed by Engineered and Aiken should be denied because the issues identified were legal rather than factual issues.

J.D. Streett & Company, Inc., 06/28/85, HRD–0069, HRH–0069, HRZ–0255.

J.D. Streett & Company, Inc. filed a Motion to Dismiss, a Motion for Discovery and a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order which the Economic Regulatory Administration issued to the firm. In considering these motions, the Office of Hearings and Appeals first determined that the PRO issued to Streett established a prima facie case of violation of the reseller-retailer price regulations. Therefore, OHA found that Streett's Motion to Dismiss the PRO should be denied. OHA granted Streett's request for discovery of any audit workpapers that (i) contain computations of the overcharges alleged in the PRO, and (ii) explain the basis for the margins used by the ERA in calculating Street's maximum lawful selling prices. OHA denied the remainder of Streett's Motion for Discovery. Finally, OHA determined that the firm's Motion for Evidentiary Hearing should be denied except insofar as it pertained to the proper margin used by ERA in computing Streett's maximum lawful selling prices. OHA decided that the issue should be dismissed without prejudice and that Streett should be permitted to file a new Motion for Evidentiary Hearing in accordance with the terms of the Decision and Order.

Request For Temporary Exception

Andi-Co Appliances, Inc., 06/28/85, HEL–0002.

Andi-Co Appliances, Inc. filed an Application for Temporary Exception from the provisions of 10 CFR Part 430, Subpart B, Appendix C with respect to the testing of the energy usage of the AEG model 525 dishwasher. In considering the request, the DOE found that it was impossible for Andi-Co to comply with the applicable testing regulations, since the dishwasher operated at a different water temperature and voltage from those specified in Appendix C. The DOE determined that denial of immediate relief would thwart the public interest by denying consumers the opportunity to purchase a potentially energy-saving dishwasher. Accordingly, temporary exception relief was granted under which Andi-Co was permitted to use alternative testing procedures with respect to 300 units of the model 525 dishwasher during the pendency of the firm's underlying Application for Exception.

Refund Applications

APCO Oil Corporation/May Oil Company, et al., 06/26/85, RF83–3, et al.

The DOE issued a decision granting refunds to 19 purchasers of motor gasoline and/or middle distillates from an escrow account by Apco Oil Corporation, pursuant to

a consent order that the firm entered into with the DOE. The refunds to the 19 firms total $41,959.26, representing $32,963.42 in principal and $8,995.84 in interest. All of the refund applicants had submitted claims for less than the $5,000 threshold, below which a detailed showing of injury is not required.

Bayou State Oil Company/Matthews Oil Company, et al., 06/24/85, RF117-1, et al.

The DOE issued a decision granting refunds to six purchasers of petroleum products from an escrow account funded by Bayou State Oil Company, pursuant to a consent order that the firm entered into with the DOE. The refunds to the six firms total $17,869, representing $12,802 in principal and $5,061 in interest. All of the refund applicants had submitted claims for less than the $5,000 threshold, below which a detailed showing of injury is not required.

J. A. L. Oil Company/S & J Ridgewood Corporation, et al., 06/24/85, RF71-1, et al.

The DOE issued a decision granting refunds to seven purchasers of motor gasoline from an escrow account funded by J. A. L. Oil Company, pursuant to a consent order that the firm entered into with the DOE. The refunds to the seven firms total $8,468.81, representing $5,298.09 in principal and $3,170.72 in interest. All of the refund applicants had submitted claims for less than the $5,000 threshold, below which a detailed showing of injury is not required.

Standard Oil Company (Indiana)/West Virginia, et al., 08/25/85, RM21-5, et al.

The States of West Virginia and New York sought permission to modify their previously-approved refund plans involving the Standard Oil Company (Indiana), Belridge Oil Company and Palo Pinto Oil & Gas refund proceedings. West Virginia sought to change one of the three approved highway routes for the placement of information signs. Since the new route was more frequently traveled than the previous one, the DOE granted the request. New York sought to expand its energy conservation bank funds to include all age groups of low-imcome recipients. The previously-approved plan limited assistance to low-income individuals who were also senior citizens. The DOE granted New York's request, since a broader class of injured consumers would benefit by the modification.

Dismissals

The following submissions were dismissed:

Name and Case No.

Department of Interior/Glenrock—HEE-0124
Red Diamond Oil Company—HRO-0263, HRW-0025
Rogers Hydrocarbon Corporation—HRO-0294

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 8, 1985.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 85-19653 Filed 8-15-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of July 22 Through July 26, 1985

During the week of July 22 through July 26, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Martin M. Young & Associates, 7/26/85, HFA-0300

Martin M. Young & Associates (MMYA) filed an Appeal from a fee waiver denial issued to it by the Freedom of Information Officer at the DOE's Oak Ridge Operations Office. The basis of MMYA's Appeal was that the documents which it requested under the Freedom of Information Act would be used primarily to benefit the general public. However, the DOE concluded that MMYA had failed to show that it would adequately disseminate the requested information. Consequently, MMYA's fee waiver Appeal was denied.

Remedial Orders

Doma Corporation, Don Martin, 7/25/85, HRO-0209

In a Proposed Remedial Order (PRO) issued jointly to Doma Corporation (Doma) and Mr. Don Martin, Doma's president, the Economic Regulatory Administration (ERA) sought to hold Doma and Martin jointly and severally liable for violations of the DOE's pricing and certification regulations. The Respondents denied all of the ERA's substantive allegations. In addition, Martin objected to the agency's claim that he should be held personally liable for the alleged violations committed by Doma.

The OHA determined that the Respondents had violated the certification regulations by purchasing refined petroleum products which they mixed with crude oil and then certified and sold as crude oil, and by selling uncertified barrels of crude oil as new or stripper crude oil. The OHA also determined that the Respondents had violated the applicable pricing regulations by selling crude oil at prices in excess of their maximum legal selling prices.

Furthermore, the OHA held that "an individual corporate officer is liable for all the overcharges resulting from his company's violations of the DOE's regulations, if he both participated in and derived some benefit from any of those violations." The record in the case clearly demonstrated that Martin had actually performed the transactions cited in the PRO as violating the agency's regulations, and that he had derived substantial benefit from those transactions. Accordingly, Martin was held severally liable with Doma for the entire amount of the overcharges.

Energy Reserves Groups, Inc., 7/25/85, BRO-1144

Energy Reserves Group, Inc. objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on February 19, 1980. In the PRO, the ERA found that Energy Reserves, in its sales of the crude oil which it produced, committed violations of the DOE price regulations, resulting in overcharges of $863,781. The DOE therefore concluded that the PRO should be issued as a final Remedial Order. The important issue discussed in the Decision and Order was whether amendments to the price regulations changed the status of uncertified "new" oil to "old" oil for purposes of the cumulative deficiency rule.

Request for Exception

Ed Joyce Fuel & Feeds, 7/25/85, HEE-0143

Ed Joyce Fuel & Feeds filed an Application for Exception in which the firm sought relief from its obligation to file the monthly Form EIA-782B. In considering the request, the DOE found that exception relief was appropriate because the absence of the firm's owner due to medical problems and the accounting changes which would be required to enable the firm to complete the form made the reporting obligation unduly burdensome. Accordingly, exception relief was granted.

Requests for Modification and/or Rescission

Consolidated Materials, Inc. 7/23/85, HRR-0083, HRH-0023

Consolidated Materials, Inc. filed Motions for Reconsideration and for Evidentiary Hearing which relate to a Proposed Remedial Order (PRO) issued to the firm by the Economic Regulatory Administration (ERA) on December 7, 1982. The PRO charges that Consolidated violated the "New Item Rule" at 10 CFR 212.111(b)(3). The PRO also designates Williams Energy Company as a "nearest comparable outlet." As a preliminary matter, the DOE dismissed the Motion for Reconsideration as moot, since it pertained to a previous denial of discovery no longer relevant to the amended PRO. In its Motion for Evidentiary Hearing, the firm requested an evidentiary hearing to allow it to present testimony regarding (i) whether Consolidated and its successor in interest constitute a single firm; (ii) the individual transactions described by the ERA in the PRO; and (iii) Consolidated's and Williams' general characteristics. The DOE denied the first two portions of the firm's motion since those requests did not meet the requirements for evidentiary hearing set forth at 10 CFR 205.199. However the DOE determined that Consolidated's third request did meet those requirements and that it was appropriate to resolve the disputed factual issues regarding Williams' and Consolidated's general characteristics at an evidentiary hearing.

Accordingly, Consolidated's Motion for Evidentiary Hearing was granted in part.

Crown Central Petroleum Corporation, 7/24/85, HRR-0096

Crown Central Petroleum Corporation filed a Motion for Reconsideration of a previous OHA determination. In the earlier decision the refiner's resubmission of certain cost allocation reports was held to be invalid insofar as those resubmissions attempted to reallocate costs retroactively and make other changes in the refiner pricing formula. At issue were $209,180,698 in disputed increased costs the refiner had attempted to recover in its gasoline sales over a seven year period. OHA denied the Motion for Reconsideration.

Whitaker Oil Compny, 7/23/85, HER-0107

Whitaker Oil Company filed an Application for Modification of a Decision and Order which was issued to the firm on February 22, 1985. *Whitaker Oil Co.*, 12 DOE ¶ 81,024 (1985). That Decision granted the firm's Application for Exception in part, and relieved the firm of the obligation to refund revenues received as a result of overcharges in its sales of motor gasoline. Exception relief was denied with respect to the firm's pricing of other products. In its Application for Modification, Whitaker sought exception relief for its sales of those other products. The DOE dismissed the Application because the firm failed to make a showing of significantly changed circumstances, as required by 10 CFR 205.135(b).

Implementation of Special Refund Procedures

Thompson Oil Co., et al., 7/24/85, HEF-0179, et al.

The DOE issued a Decision and Order establishing special refund procedures for distributing $5,179,933.84, obtained through consent orders entered into with six firms. These firms engaged in diverse operations, including resale of natural gas liquids and refined petroleum products. The DOE found that refunds should be granted to applicants who demonstrate that they made purchases from any of the consent order firms during the period covered by the relevant consent order, and establish that they were injured as a result of those purchases. However, the DOE found that applicants requesting refunds of $5000 or less from any single consent order fund would not be required to provide a separate, detailed showing of injury. The Decision set forth specific information to be included in refund applications.

Refund Applications

Apco Oil Corporation/Little Bear Oil Company, et al., 7/24/85, RF83-56, et al.

The DOE issued a decision granting refunds to 71 purchasers of motor gasoline, middle distillates and/or other products from the Apco Oil Corporation deposit escrow fund. The refunds to these firms total $192,896.48, representing $150,606.38 in principal and $42,290.10 in interest. All of the refund applicants had submitted claims for less than the $5,000-per-claimant threshold, below which injury is presumed.

Gulf Oil Corporation/ D.L. Cheaves Gulf Service, et al., 7/23/85, RF49-00509, et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund filed by retailers of Gulf motor gasoline. The claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. The applicants also indicated that they had purchased motor gasoline directly from Gulf. After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total of $94,019 ($83,117 principal + $10,902 interests) based upon a total volume of 68,129,678 gallons of Gulf purchases.

Gulf Oil Corporation/Galloway's Gulf Service Station, et al., 7/24/85, RF40-01632, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed by retailers of Gulf motor gasoline. The claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. The applicants also indicated that they had purchased motor gasoline directly from Gulf. After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total of $89,476 ($79,098 principal + $10,378 interest) based upon a total volume of 64,834,427 gallons of Gulf purchases.

Gulf Oil Corporation/Hertz Corporation, 7/22/85, RF40-2609

The Hertz Corporation sought a portion of the Gulf Corporation consent order fund based upon settlement of a private claim by Hertz arising out of alleged cost violations by Gulf during the consent order period. The refund procedures allow for consideration of applications of this type, provided the amount of the settlement is approved by the Office of Special Counsel. After verifying that the Application meets the criteria established in the refund procedures, the DOE concluded that Hertz should receive a refund based on the amount of its settlement with Gulf. Accordingly, the Application for Refund was granted.

Gulf Oil Corporation/Joseph Matvya Gulf Service, et al., 7/23/85, RF40-01148, et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed by retailers of Gulf motor gasoline. All of the claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. The applicants also indicated that they had purchased motor gasoline directly from Gulf. After examining the evidence and supporting documentation, the DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this decision total $101,402.

Gulf Oil Corporation/Walker Gulf Service, et al., 7/25/85, RF40-01322, et al.

The DOE issued a Decision and Order concerning 45 Applicatjons for Refund filed by retailers of Gulf motor gasoline. All of the claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. The applicants also indicated that they had purchased motor gasoline directly from Gulf. After examining the evidence and supporting documentation, the DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this decision total $88,498.

The Hertz Corporation/Adolph Coors Company, United Airlines, 7/23/85, RF76-161, RF76-162

The DOE issued a Decision and Order concerning two Applications for Refund filed by Adolph Coors Co. (Coors) and United Airlines (United) in connection with their purchases of Hertz motor gasoline. A previous Decision and Other had been issued to United in which the firm's refund was incorrectly calculated. This Decision and Order rescinded the refund approved to United and approved a new refund of $2,204. In addition, a $151 refund was approved for Coors.

OKC Corporation/Highway Oil, Inc., 7/26/85, RF13-9

The DOE issued a Decision and Order concerning an Application for Refund filed by Highway Oil, Inc. Highway sought a portion of the settlement fund obtained by the DOE through a consent order entered into with OKC Corporation. Highway is an independent reseller of petroleum products which purchased motor gasoline directly and indirectly from OKC during the period covered by the consent order. Highway submitted certification from its immediate supplier which confirmed Highway's claim that it purchased OKC motor gasoline during the consent order period. The DOE granted Highway's refund request based upon standards established in *Office of Enforcement: In the matter of OKC Corp.*, 9 DOE ¶ 82, 551 (1982). The refund granted Highway totaled $54,218.

Dismissals

The following submissions were dismissed:

Company Name and Case No.

Gulf Oil Corporation—DRO-0194
International Crude Corporation/Gregg Pritchard—HRO-0210
Pacific Lighting Energy Systems—HFA-0302
Whitt's Gulf II—RF40-2298
Whitt's Gulf I—RF40-2299
Wyoming Refining Company—RF21-10704

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available

in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 9, 1985.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 85-19654 Filed 8-15-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2882-7]

Extension of the Public Comment Period on Notice of Intent Not to Regulate Epichlorohydrin

AGENCY: Environmental Protection Agency.

ACTION: Extension of the public comment period.

SUMMARY: This notice announces an extension of the public comment period provided in EPA's Notice of Intent not to specifically regulate epichlorhydrin under the Clean Air Act published on June 11, 1985 (50 FR 24575). That notice announced EPA's intent not to regulate routine emissions of epichlorohydrin based on a preliminary analysis of the available exposure and risk data. In response to the 30-day public comment period provided in the notice, which was scheduled to close on July 11, 1985, a request was submitted for an extension of the public comment period. For this reason the public comment period has been extended for an additional 45 days and will now close on Monday, August 26, 1985.

Dated: August 7, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-19610 Filed 8-15-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2884-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 29, 1985 through August 2, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-E65035-NC, Rating LO, Croatan and Uwharrie Nat'l Forests, Land and Resource Mgmt. Plan. NC. **SUMMARY:** EPA's review concludes that the proposed alternative is consistent with good environmental practices. EPA lacks objection to the project.

ERP No. D-AFS-J65138-OO, Rating EC2, Custer Nat'l Forest, Land and Resource Mgmt. Plan, SD, ND, and MT. **SUMMARY:** EPA's review found the plan did not provide sufficient information to enable EPA to fully evaluate potential impacts on water quality, or determine if potential salt water spills would be adequately regulated. EPA is concerned because of the lack of specifics addressing the possible impacts of oil and gas development, such as road construction and erosion. Water quality monitoring appears insufficient to evaluate the effectiveness of Best Management Practices (BPM). Although monitoring is proposed, no budget for this purpose is shown.

ERP No. D-AFS-J65139-MT, Rating EC2, Deerlodge Nat'l Forest, Land and Resource Mgmt. Plan, MT. **SUMMARY:** EPA finds there is insufficient information to adequately evaluate air and water quality impacts. The RMP describes water quality monitoring, but details are lacking to determine if the proposal is adequate. No provision is made to fund the monitoring required to verify compliance with water quality standards.

ERP No. D-AFS-L65096-AK, Rating EC2, 1986-90 Alaska Pulp Long-Term Sale Area, Operating Plan, Designation, Tongass Nat'l Forest, AK. **SUMMARY:** The EPA review identified a number of concerns with the sale's impact on water quality. The water quality impacts for each alternative are difficult to compare due to the lack of historical water quality data to form a point of reference for future impacts. EPA is concerned that assuring the best management practices are implemented may not ensure that the Alaska Water Quality Standards are met. The impacts of the sale on wetlands (Sect. 404 Clean Water Act requirements) cannot be adequately assessed based on the information provided in the DEIS. EPA requested additional detailed information on wetland mapping, wetland type, and function and values of wetlands in the study area.

ERP No. DS-COE-E34025-AL, Rating EC2, Frank Jackson State Park Earthfill Dam and Reservoir Construction, 404 Permit, AL. **SUMMARY:** EPA continues to be uncertain that the sacrifice of environmental amenities attendant to facility construction will be sufficiently counterbalanced by societal need. EPA requests an evaluation of all recreational facilities within the Frank Jackson State Park service area, rather than the more restricted perspective (i.e. boating and skiing) used in the DEIS.

ERP No. DS-FHW-D40080-VA, Rating EC2, East-West Expressway Construction, Jefferson Ave. in Newport News to Armistead Ave. in Hampton, VA. **SUMMARY:** EPA completed its review of the DSEIS and identified two major areas, the selection of the preferred alternative and noise impact studies, to be deficient. Both areas were recommended for further study in the FSEIS.

ERP No. D-FHW-H40134-MO, Rating EC2, Rt. 54 Relocation, Rt. 42/134 West to the Grand Glaize Bridge, Acquisition, MO. **SUMMARY:** EPA believes the DEIS does not provide sufficient data or analysis to support the identification of a recommended alternative and recommends the EIS present information, such as traffic counts and the results of local models, for each alternative. EPA recommended the scope of the EIS be expanded to include the overall plan to improve the carrying capacity of US 54 from Osage Beach to Camdenton, Missouri. FHWA was asked to describe the overall plan and define the relationship of the currently proposed action (the DEIS's recommended alternative) to the alternatives of the overall plan. EPA found the DEIS generally subjective and that important issues and conclusions were discussed without presentation of supporting data and EPA suggested the FEIS should be more objective analyses. Sufficient socioeconomic, traffic and safety data should be presented to support the recommended alternative.

ERP No. D-NPS-K61085-OO, Rating EC2, Lake Mead Nat'l Recreation Area, General Mgmt. Plan, Improvement, AZ and NV. **SUMMARY:** The EPA review noted the following concerns with the proposed action: (1) a lack of provision for adequately protecting water quality and public health by reducing the amount of human waste entering shoreline waters; (2) inadequate treatment of CWA Sect. 404 requirements for protecting riparian and wetland areas during construction and operation; and (3) impacts of construction of roads, docks, and flood control structures on water quality, including fish spawning areas.

Final EISs

ERP No. F-BIA-G08009-NM, Norton-Tesuque 115 kV Overhead,

Transmission Line and Substation, Right-of-Way Permit and Approval, NM. **SUMMARY:** The FEIS adequately responded to EPA comments issued on the DEIS. EPA has not identified any new issues of concern with regard to the proposed action.

ERP No. FA–COE–E32022–NC, Manteo (Shallowbag) Bay Project, Dredging, Design, Oregon Inlet, NC. **SUMMARY:** EPA continues to believe that the magnitude and kind of marine processes experienced by the Outer Banks will limit the effectiveness of the proposed structures, and/or result in an acute failure of the facility.

ERP No. F–MMS–K03013–CA, Pt. Pedernales Field Offshore Oil and Gas OCS Development Projects, Approval, Central Santa Maria Basin Area Study, CA. **SUMMARY:** EPA emphasized two principal areas of concern for the FEIS. EPA noted that it was critical for adequate enforceable mitigation measures to be adopted by the Minerals Management Service. EPA considers this necessary so that onshore ozone violations will not occur. Also, EPA commented that future discussions are needed regarding future onshore air quality impacts resulting from cumulative OCS related emissions.

Regulations

ERP No. R–UPS–A86219–OO, 39 CFR Pts. 775 and 776, Floodplain Mgmt. and Protection of Wetlands, Amendments to Environmental Procedures. **SUMMARY:** EPA has no objection to the proposed amendments.

Dated: August 13, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–19584 Filed 8–15–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2883–9]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed August 5, 1985 through August 9, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850334, Draft, COE, HI, Kahawainui Stream Flood Damage Reduction Plan, Honolulu County, Due: September 30, 1985, Contact: James Maragos (808) 438–2263.

EIS No. 850335, Final, AFS, SC, Sumter National Forest, Land and Resource Management Plan, Due: September 16, 1985, Contact: Donald Eng (803) 765–5222.

EIS No. 580336, Final, BLM, WA, Spokane District Resource Management Plan, Due: September 16, 1985, Contact: Joseph Buesing (509) 456–2570.

EIS No. 850337, DSuppl, FHW, VA, Springfield Bypass and Extension, Construction, I–66 to the Braddock Road/VA–620 Intersection, Cannon Ridge Alternative, Fairfax County, Due: September 30, 1985, Contact: James Tumlin (804) 771–2371.

EIS No. 850338, Final, FHW, CA, CA–55/Newport Boulevard Improvement, US 1/Pacific Coast Highway to US 73/Corona Del Mar Freeway, Orange County, Due: September 16, 1985, Contact: Glenn Clinton (916) 440–3578.

EIS No. 850339, Draft, BLM, NV, Elko Resource Area, Resource Management Plan and Wilderness Designation Study, Elko, Lander and Eureka Counties, Due: November 15, 1985, Contact: Rodney Harris (702) 738–4071.

EIS No. 850340, Final, FHW, OR, SW 257th Avenue Extension, I–84 to Stark Street, Construction, Modified Build Alternatives, Right-of-Way Acquisition, Multnomah County, Due: September 16, 1985, Contact: Dale Wilken (503) 399–5749.

EIS No. 850341, Final, FHW, CA, I–5/Santa Ana Freeway and CA–55/Newport-Costa Mesa Freeway Improvements, I–5 and I–55 Interchange Reconstruction, CA–22 to I–405, Orange County, Due: September 16, 1985, Contact: Glen Clinton (916) 440–3578.

EIS No. 850342, Draft, CDB, NY, Pierrepont Street Office Development, Construction, UDAG, Kings County, Due: September 30, 1985, Contact: Mira Ledman (212) 669–8930.

EIS No. 850343, FSuppl, COE, KY, Yatesville Lake Multipurpose and Local Protection Project, Lawrence County, Due: September 16, 1985, Contact: John Justice (304) 529–5712.

EIS No. 850344, DSuppl, COE, OR, WA, Bonneville Lock and Dam Navigation Development and Disposal Plan, Construction, Due: September 30, 1985, Contact: Eric Braun (503) 221–6096.

Amended Notices

EIS No. 850213, Draft, AFS, NM, Gila National Forest, Land and Resource Management Plan, Due: October 8, 1985, Published FR 5–31–85—Review extended.

EIS No. 850214, Draft, COE, FL, Occidental Wetland Phosphate Mining Operations, Dredge and Fill Permit, Hamilton County, Due: August 19, 1985, Published FR 5–31–85—Review extended:

Dated: August 16, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–19583 Filed 8–15–85; 8:45 am]

BILLING CODE 6560–50–M

[WH–FRL–288 2–4]

Report to Congress Required by Section 3007(e)(2) of the Resource Conservation Recovery Act (RCRA)

AGENCY: Environmenal Protection Agency.

ACTION: Request for comment.

SUMMARY: Section 3007(e)(2) of the Resource Conservation and Recovery Act (the Act) as amended requires that the Administrator of the Environmental Protection Agency submit a report to Congress on the potential for inspections of hazardous waste treatment, storage, and disposal facilities by nongovernmental inspectors as a supplement to governmental inspections. EPA is seeking comments on any information relating to this report and in particular the issues raised in this notice.

DATE: Comments must be submitted on or before September 16, 1985.

ADDRESS: Comments may be mailed to Jackie Tenusak, Office of Waste Programs Enforcement (WH–527), U.S. Environmental Protection Agency, 401 M Street, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jackie Tenusak, Office of Waste Programs Enforcement (WH–527), U.S. Enivronmental Protection Agency, 401 M Street SW., Washington D.C. 20460, (202) 475–8729.

SUPPLEMENTARY INFORMATION:

Background

Regulatory inspections of treatment, storage, and disposal facilities are a necessary element of an effective hazardous waste control program. Officers, employees and representatives of the States and EPA are authorized by section 3007(a) of the Act to enter and inspect any facility where hazardous waste is being handled. The 1984 amendments to the Act add a new subsection (e) to section 3007, requiring inspections at least every two years at all treatment, storage, and disposal facilities for which a permit is required under section 3005. The purpose of this amendment is to ensure periodic inspections of these facilities. The hazardous waste inspection program

must also ensure that owners and operators of hazardous waste facilities comply with the strengthened requirements, as well as the standards already in place prior to the amendments. The Agency has been exploring the possibility of using private inspection services and those insurance companies that offer liability insurance to supplement the inspection program. The report will include a discussion of funding mechanisms for inspections, such as fee systems, and will explore questions of confidentiality and possible conflicts of interest were the agency to authorize the use of nongovernmental inspectors. The report to Congress may contain recommendations for legislation or regulations if necessary to implement the recommended alternative(s).

EPA has an incentive to consider the use of private inspection firms to supplement the present inspection program because the RCRA regulations are wide-ranging and the inspection requirements are diverse and extensive. Therefore, expertise in a variety of areas is necessary to fully monitor compliance with the requirements. Private inspection firms may be able to provide specialized skills when such skills are needed to determine whether a member of the regulated community is in compliance.

The Agency notes that private companies have performed functions which are similar though not identical to the role of a government inspector. In particular, many firms have auditing programs that evaluate and attempt to ensure that their facilities are managed efficiently and in compliance with environmental requirements. Insurance companies may also perform risk assessments to determine whether the site is managed in an environmentally sound manner before issuing the liability coverage required of RCRA facilities. Thus, there is considerable expertise in the private sector that might be useful toward inspections pursuant to section 3007(e).

However, if EPA and state agencies use private inspectors to supplement inspections by regulatory officials, then EPA and Congress must be assured that such private action will present objective, unbiased results and that private inspectors would not present potential confidentiality or confict of interest problems.

Request For Comments

The Agency has not yet determined whether private inspectors may supplement its inspection program, or the role of such inspectors if an affirmative decision is made. This notice summarizes obtained from representatives from the insurance industry, private inspection firms, states, environmental groups and industry. EPA is seeking additional comment on the issues and options presented here and other suggestions or recommendations regarding the use of private inspectors as a supplement to the current inspection program.

The following are questions that the Agency has about private inspection companies and the role they could play in the hazardous waste inspection program.

1. Will there be a conflict of interest if a private inspection firm receives its funding from the company whose facility is the object of inspection, or would the private inspection firm's credibility with the regulatory agency ensure that this would not be a problem?

2. Should the owner or operator of the facility be able to choose the inspection firm?

3. Are there conflict of interest or confidentiality problems when an inspection firm inspects a facility in lieu of governmental inspectors and also serves the owner or operator of that facility in other capacities such as performing inspections for insurance purposes, performing environmental audits, or general environmental counseling?

4. Can EPA count on the cooperation of a private inspection firm after the inspection through any possible enforcement actions?

The following are options that have been suggested to the Agency for the role private inspection firms could play in the hazardous waste program.

A. Private inspectors could be used for a program that EPA is just starting, such as the program for underground storage tanks, because EPA may not have enough trained personnel when the program starts.

B. Private inspectors could be used in highly technical areas, such as groundwater monitoring and financial responsibility reviews, because there may not be personnel available with the specific skills required to perform these inspections.

C. The private inspection firm could provide preliminary or supplemental inspections. It could perform certain specified portions of the inspections (i.e. paperwork review, company file reviews, site reviews related to determination of functioning safety equipment, etc.) prior to the regulatory agency's visit. This would allow the official agency team to concentrate its efforts and limited resources on the more complex aspects of the inspection.

D. EPA could encourage or mandate laboratory certification (which could be done by a private inspection firm) of all regional and state laboratories or any laboratory that would conduct analyses for RCRA purposes.

E. EPA could explore the possibility of a private inspection firm certifying that compliance information submitted by a regulated facility is accurate and fulfills the agency's requirements. Examples of areas where this might work are groundwater data and financial responsibility requirements.

F. A private inspection team could act as a surrogate for official inspection teams, performing all aspects of the inspections, based on the appropriate requirements, and report the results to the appropriate regulatory authorities for official action. Official action could include enforcement, certification of compliance, regulatory follow-up, etc. As part of this approach, the regulatory authority could maintain its own limited inspection team(s) for quality control audits of the private team's work and for enforcement-related follow-up in special cases. The private inspection team could receive payment either from the company receiving the service, or from the responsible regulatory agency mandating the inspection.

G. Many large firms can afford an internal auditing program that measures that their facility will be managed efficiently and be in compliance with environmental requirements. Many medium and small size firms use private inspection services to audit their facilities because they cannot afford a regular in-house auditing program. When certifying private inspection firms, EPA could also certify firms which perform environmental audits. This type of a certification program might encourage small and medium size firms to initiate environmental auditing programs. There are two approaches EPA can take: (1) Develop standards for certification; or (2) use EPA resources to provide training and certification.

H. In conjunction with a program including nongovernmental inspectors, EPA or the states could charge fees to support inspections, either through an inspection charge or an annual permit fee, to provide additional resources to government agencies. While a fee system will generate additional revenues, it must be noted that industry already pays for state inspection through taxes.

Dated: August 8, 1985.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 19428 Filed 8-15-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0041
Title: Verification of Income for Occupants of Temporary Housing

Abstract: The information is used to support determinations regarding appropriate forms of continued assistance for occupants of temporary housing provided under Section 404. The form is required to verify income only when the occupant does not possess a verification document, such as an earnings statement.

Type of respondents: Individuals or Households
Number of respondents: 500
Burden hours: 42

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, S.W., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 9, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85–19524 Filed 8–15–85; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0048
Title: Insurance Commitment
Abstract: Form is used to document statutory compliance with law to obtain and maintain insurance.
Type of Respondents: State or Local Governments Non-Profit Institutions.
Number of Respondents: 100.
Burden Hours: 200.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, S.W., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 9, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85–19523 Filed 8–15–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010798.
Title: Galveston Terminal Agreement.
Parties:
The Board of Trustees of the Galveston Wharves (Galveston Wharves)
Container Terminal of Galveston, Inc. (Container Terminal)

Synopsis: The agreement provides for the management and operation of the Galveston Wharves' East End Container Terminal by Container Terminal. The terminal will be operated as a public marine container terminal subject to the provisions and charges published in the Board of Trustees of the Galveston Wharves' Container Terminal Tariff No. 1–B, FMC–T No. 12. The initial term of the agreement is for a period of one month with an option for a one month extension. The parties have requested a shortened review period for the agreement.

Agreement No.: 217–010801.
Title: Westwood Transpacific Service/Canadian Transport Company Space Charter Agreement.
Parties:
Westwood Transpacific Service
Canadian Transport Company

Synopsis: The proposed agreement would permit Canadian Transport company to charter vessel space to Westwood Transpacfic Service in the trade from ports in the Japan/Korea range to ports on the West Coast of the United States for cargo moving between such ports to inland destinations under Westwood Transpacific Service's international bills of lading and intermodal rates.

Agreement No.: 224–010802.
Title: Long Beach Terminal Agreement.
Parties:
Salen Shipping Agencies, Inc. (Salen)
City of Long Beach (City)

Synopsis: The agreement provides for the preferential assignment by the City of Salen of terminal facilities at Berths 1 and 2, Pier A, within the Long Beach Harbor District in the Port of Long Beach. Salen will use the premises to conduct a marine terminal operation including all related activities thereto. Salen will pay to the City compensation as provided for in Terminal Tariff No. 4 for the first 150,000 metric revenue tons of merchandise, and fifty percent of the tariff wharfage charges on amounts in excess of 150,000 metric tons. Salen shall also collect dockage charges in accordance with the agreement, remitting seventy-five percent of the amount collected to the City. Salen shall be entitled to retain the remaining twenty-five percent of dockage charges. The term of the agreement shall be for a period of two years with an option to extend the term for two additional periods of two years each.

Agreement No.: 224–010803.
Title: Port Royal Terminal Agreement.
Parties:
South Carolina State Ports Authority (Authority)
Port Royal, Inc. (Port Royal)

Synopsis: Agreement No. 224–010803 provides that Port Royal, Inc., will be the marine terminal operator for State Pier 21 at Port Royal, South Carolina. They will operate the pier as an export and import, intercoastal and ocean freight terminal. Port Royal will pay to the Authority a fixed monthly license fee based on monthly tonnage. Wharfage, dockage, and handling cargo rates will be those contained in the South Carolina State Ports Authority Terminal Tariff No. 1–B. The term of the agreement will

for five years with two consecutive five-year option terms available.

Agreement No.: 221–010804.

Title: Los Angeles Terminal Agreement (Premises).

Parties:

The City of Los Angeles, by its Board of Harbor Commissioners (City)

Evergreen Marine Corporation (Taiwan) Ltd.

Synopsis: Agreement No. 221–010804 entitles Evergreen to receive wharfage credit from the City in the amount of $275,000, against terminal generated revenue from the cost of construction of certain improvements made by Evergreen at Berths 233–236 in the Port of Los Angeles. Under Agreement No. T–4087 Evergreen has been granted preferential use of Berths 233–236. Evergreen shall not be obligated to pay any wharfage charges to the City until the full amount of the credit is used. The term of the agreement shall terminate when all wharfage credit has been used, but in no event shall it extend beyond five years from its effective date.

Dated: August 13, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc 85–19643 Filed 8–15–85; 8:45 am]

BILLING CODE 6730–01–M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on August 6, 1985, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201–002631–006.

Title: New Orleans Assessment Agreement.

Parties: Members of the New Orleans Steamship Association (NOSSA).

Synopsis: Agreement No. 201–002631–006 amends the basic agreement between the members of NOSSA, which covers the Guaranteed Annual Income Plan Agreement and Declaration of Trust. This amendment was adopted in accordance with the provisions of Article 16 of the NOSSA agreement. The purpose of the amendment is to change the funding formula in Article 3 of the agreement.

Dated: August 13, 1985.

By Order of the Federal Maritime Commission

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–19627 Filed 8–15–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 9, 1985.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–6880)

Proposal to approve under OMB delegated authority the extension without revision of the following reports:

1. Report title: Survey of Terms of Bank Lending (STBL)

Agency form number: FR 2028A, 2028A–S, 2028B

OMB Docket number: 7100–0061

Frequency: Quarterly

Reporters: Commercial banks

Small businesses are affected.

General description of report: This information collection is voluntary 12 U.S.C. 248(a)(2) and is given confidential treatment 5 U.S.C. 552(b)(4).

The STBL collects information on interest rates, including the prime rate, and selected nonprice terms of lending on individual loans to business and farmers from a sample of insured commercial banks.

Board of Governors of the Federal Reserve System, August 9, 1985.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 85–19573 Filed 8–15–85; 8:45 am]

BILLING CODE 6210–01–M

First Leesport Bancorp, Inc. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 9, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Leesport Bancorp, Inc.*, Leesport, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Leesport, Leesport, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Indiana National Corporation*, Indianapolis, Indiana; to acquire 32 percent or more of the voting shares of Lafayette National Corporation, Lafayette, Indiana, thereby indirectly acquiring Lafayette National Bank, Lafayette, Indiana.

2. *Pinnacle Bancshares, Inc.*, Paw Paw, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Paw Paw, Paw Paw, Illinois.

Board of Governors of the Federal Reserve System, August 12, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19574 Filed 8-15-85; 8:45 am]

BILLING CODE 6210-01-M

Hudson Financial Associates et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies, and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulatory Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hudson Financial Associates*, Wayne, New Jersey; to become a bank holding company by acquiring 24.9 percent of the voting shares of Hubco, Inc., Union City, New Jersey, thereby indirectly acquiring Hudson United Bank.

Applicant has also applied to acquire Hub Leaservice, Union City, New Jersey and Hub Financial Services, Inc., Union City, New Jersey, thereby engaging in leasing of personal property and providing access to data processing services and facilities and will acquire proprietary rights and soft-ware program. These activities are to be to be conducted in the New Jersey and metropolitan New Yrok areas.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Wachovia Corporation*, Winston-Salem, North Carolina; to become a bank holding comapny by acquiring Wachovia Corporation, Winston-Salem, North Carolina and First Atlanta Corporation, Atlanta, Georgia, thereby indirectly acquiring Wachovia Bank and Trust Company, N.A., Winston-Salem, North Carolina; The First National Bank of Atlanta, Atlanta, Georgia; The First National Bank of Dalton, Dalton, Georgia; and First Bank of Savannah, Savannah, Georgia.

Applicant has also applied to acquire the following companies and thereby engage in the listed activities; Wachovia Mortgage Company, Winston-Salem, North Carolina (origination and processing of residential mortgage and construction loans; purchase and sale or placement of mortgage loans; administration and servicing of mortgage loans; management and sale of properties acquired through foreclosure or transfers in lieu of foreclosure; sale, as agent, of credit life, hospital, disability and accident and health insurance; sale, as agent, of property and casualty insurance directly related to extensions of credit. The insurance activities are permissible pursuant to section 4(c)(8)(A) and (D) of the Act. Applicant does not propose any expansion in the geographic scope of these activities.); Wachovia Services, Inc., Winston-Salem, North Carolina (data processing, investment advice and loan servicing activities with respect to student loans; acquiring and servicing student loans for the account of others including but not limited to state or other governmental authorities; acting as investment or financial advisor to state and governmental authorities and other entities in connection with the acquisition and servicing of student loans; providing data processing services in connection with the acquisition and servicing of student loans for state and governmental authorities and other entities); Financial Life Insurance Company of Georgia, Atlanta, Georgia (underwriting, as reinsurer, of life and accident, and health insurance which is directly related to extensions of credit by First Atlanta and its subsidiaries pursuant to section 4(c)(8)(A) of the Act); First Atlanta Leasing Company, Atlanta, Georgia (hold leases acquired from other First Atlanta subsidiaries); First Atlanta Mortgage Corporation, Atlanta, Georgia (administrating and servicing of mortgage loans; origination and placement of residential and commercial permanent real estate loans; sale, as agent, of property damage and liability insurance with respect to extensions of credit. The insurance activities are permissible pursuant to section 4(c)(8)(D) of the Act. Applicant does not propose any expansion in the geographic scope of this activity); and Tharpe & Brooks of Florida, Atlanta, Georgia (making loans secured by real estate and servicing loans).

Board of Governors of the Federal Reserve System, August 12, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19575 Filed 8-15-85; 8:45 am]

BILLING CODE 6210-01-M

North Georgia Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *North Georgia Bancshares, Inc.*, Canton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of North Georgia Savings & Loan Association, Inc., Canton, Georgia (to be converted to a state member bank, North Georgia Bank).

Applicant has also applied to acquire N.G.B.S. Investments, Inc., Canton, Georgia, thereby engaging in general insurance activities in a place with a population not exceeding 5,000, pursuant to section 4(c)(8)(C)(i) of the Act. These activities are to be conducted in Canton and Woodstock, Georgia.

Board of Governors of the Federal Reserve System, August 12, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19576 Filed 8-15-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 9, 1985.

Public Health Service

Food and Drug Administration

Subject: Investigational Device Exemption Reports and Records—Extension (0910-0078)
Respondents: Businesses or other for-profit institutions, small businesses or organizations
Subject: Labeling for Weight Control Food—Existing Collection
Respondents: Businesses or other for-profit, small businesses or organizations
Subject: Food Additives—Revision (0910-0016)
Respondents: Businesses or other for-profit institutions
Subject: Color Additive Petitions—Revision (0910-0185)
Respondents: Businesses or other for-profit institutions, small businesses or organizations
OMB Desk Officer: Bruce Artim

Social Security Administration

Subject: Statement Regarding Contributions—SSA-783—Extension (0960-0020)
Respondents: Individuals
Subject: Electronic Wage Reporting Questionnaire—SSA-1831—New
Respondents: Businesses or other for-profit institutions, small businesses or organizations.
Subject: Application for Benefits Under the Federal Mine Safety and Health Act of 1977, As Amended (Widow's Claim, Child's Claim, Dependent's Claim)—SSA-47, 48 and 49—Extension (0960-0118)
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh

Health Care Finance Administration

Subject: Attending Physician's Statement and Documentation of Medicare Emergency—HCFA-1771—Extension (0938-0023)
Respondents: Physicians
Subject: Hospital Survey Report Form—HCFA-1537—Extension (0938-0382)
Respondents: State/local governments
Subject: Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program—HCFA-64—Revision (0938-0067)
Respondents: State/local governments
Subject: End Stage Renal Disease Facility Survey—HCFA-2744—Reinstatement (0938-0064)
Respondents: Designated transplant centers
Subject: End Stage Renal Disease Death Notification—HCFA-2746—Reinstatement
Respondents: Designated transplant centers
Subject: End Stage Renal Disease Transplant Information—HCFA-2745—Reinstatement
Respondents: Designated transplant centers
Subject: Recipient Use and Expenditures for Medicaid Enrollees Covered Under Section 1619 (a) and (b) of the Social Security Act—HCFA-498—New
Respondents: State/local governments
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: August 12, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-19569 Filed 8-15-85; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Open Meetings; Modification of NIOSH Recommendations for Calculation of Permissible Load Limits for Repetitive Lifting Tasks, and Pulmonary Hypersensitivity of Industrial Agents

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease

Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Modification of NIOSH Recommendations for Calculation of Permissible Load Limits for Repetitive Lifting Tasks

Date: September 10, 1985
Time: 2 p.m.-5:30 p.m.
Place: Writing Room #3, Nittany Lion Inn, North Atherton Street, State College, Pennsylvania 16802
Purpose: To review procedures for calculation of action limits and maximum permissible limits for tasks involving repetitive lifting; and, if warranted, to develop alternate procedures for performing these calculations.
Additional information may be obtained from: Donald W. Badger, Ph.D., Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–8286, Commercial: 513/533–8286

Pulmonary Hypersensitivity of Industrial Agents

Date: September 27, 1985
Time: 9 a.m.—3 p.m.
Place: Room B–85, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226
Purpose: To review and discuss the scientific merit of an experimental investigation of the asthmogenic potential of vanadium pentoxide inhalation.
Additional information may be obtained from: Edwin A. Knecht, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–8275, Commercial: (513) 533–8275

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: August 12, 1985.

Elvin Hilyer,

Associate Director of Policy Coordination, Centers for Disease Control.

[FR Doc. 85–19513 Filed 8–15–85; 8:45 am]

BILLING CODE 4160-18-M

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control Cancer Control Science Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Control Science Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 18, 1985, Building 31, First Floor, A-Wing, Conference Room 2, 9000 Rockville Pike, Bethesda, Maryland 20205. The entire meeting will be open to the public from 7:00 p.m. to 9:00 p.m., and the current and future programs of the Cancer Control Science Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20205 (301/427–8630) will furnish substantive program information.

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–19538 Filed 8–15–85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control Centers and Community Oncology Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Centers and Community Oncology Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 5, 1985, Building 31, Room 2A52, 9000 Rockville Pike, Bethesda, Maryland 20205. The entire meeting will be open to the public from 8:30 a.m. to adjournment, and the current and future programs of the Centers and Community Oncology Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20205 (301/427–8630) will furnish substantive program information.

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 19539 Filed 8–15–85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, September 26–27, 1985, Building 31, Conference Room 8, National Institutes of Health which was published in the **Federal Register** on July 29, (50 FR 30763).

The committee was to have convened at 8:30 am. on September 26; however, it has been changed to 8:30 a.m. on October 31 and November 1, 1985, Building 31, Conference Room 8, as the previous date would constitute a conflict of schedule for the acting executive secretary.

The meeting will be open to the public from 8:30 a.m. to 9:00 a.m. on October 31, 1985 and will be closed from 9:00 a.m. to recess. The meeting will also be closed on November 1, 1985 from 8:30 a.m. until adjournment for the review of grant applications.

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–19540 Filed 8–15–85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Treatment; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, October 3–4, 1985, Building 31, 6th Floor, "C" Wing, Conference Room 10, Bethesda, Maryland 20205. This meeting will be open to the public on October 3, 1985, from 8:30 a.m. until 5:45 p.m., and again on October 4, 1985, from 8:30 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be a scientific review by one of the programs in the Division. Attendance by

the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, Bethesda, Maryland 20205 (301–496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A–52, National Institutes of Health, Bethesda, Maryland 20205 (301–496–4291) will furnish substantive program information.

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–19541 Filed 8–15–85; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 28–29, 1985, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The Committee will meet in Building 31, Conference Room 9, C Wing.

The entire meeting will be open to the public from 9:00 AM to 5:00 PM on October 28, and from 9:00 AM to adjournment on October 29, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 9, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–19542 Filed 8–15–85; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Cardiology Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, October 28–29, 1985, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 8:00 a.m. on October 28 to adjournment on October 29. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–4236, will provide summaries of the meeting and rosters of the Committee members.

Eugene R. Passamani, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20205, telephone (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: August 9, 1985.

Betty. J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–19543 Filed 8–15–85; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Meeting; Coordination Maintenance and Committee

Notice is hereby given that the ICD–9–CM Coordination and Maintenance Committee will convene on Thursday, September 19 and Friday, September 20, 1985 from 9:00 a.m. to 5:00 p.m. both days in Room 303A–305A of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is Co-Chaired by the National Center for Health Statistics and the Health Care Financing Administration. This first meeting of the Committee will be devoted to organizational details, identification of functions and scope, and planning for future quarterly meetings.

For further information, contact Ms. Sue Meads, Co-Chairperson, National Center for Health Statistics, Room 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7019.

Dated: August 8, 1985.

Manning Feinleib, M.D., Dr.P.H.,

Director, National Center for Health Statistics.

[FR Doc. 85–19570 Filed 8–15–85; 8:45 am]

BILLING CODE 4160–17–M

Meeting; National Committee on Vital and Health Statistics

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Statistical Aspects of Physician Payment Systems established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Tuesday, September 10, 1985 from 9:30 a.m. to 5:00 p.m. in Room 405–A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will continue to hear presentations from public and private insurers on the ambulatory care data flow for the patient-physician encounter in their respective programs or organizations and from other users of ambulatory care data.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Marjorie Greenberg, National Center for Health Statistics, Room 2–28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Dated: August 8, 1985.

Manning Feinleib, M.D., Dr. P.H.,

Director, National Center for Health Statistics.

[FR Doc. 85–19571 Filed 8–15–85; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Proposed Exchange of Public Lands; Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Exchange of Public Lands in Riverside County.

SUMMARY: The following described public lands are determined to be suitable for disposal by exchange under the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 5 S., R. 22 E.,
Sec. 15: that portion of the SE¼ west of Midland Road;
Sec. 21: S½;
Sec. 22: all west of Midland Road;
Sec. 23: all west of Midland Road;
Sec. 25: that portion of the N½S½ west of Midland Road;
Sec. 26: N½;
Sec. 27: N½,SW¼;
Sec. 28: S½.

In exchange for these lands, the Federal Government may acquire an equal value of lands owned by the Nature Conservancy within the boundaries of the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and state listed as endangered. The Bureau of Land Mangement's ultimate goal is to acquire approximately 6700 acres of land within the preserve. Other state and federal agencies will acquire the remaining portions of the preserve.

Acquisition of lands within the preserve follows recommendations in the Draft Coachella Valley Fringe-toed Lizard Habitat Conservation Plan (1984).

The purpose of this notice is to segregate the subject public lands from nuisance applications and entries while the above proposal is being evaluated. An appraisal has not been done. A survey may be required to lot out those lands lying adjacent to Midland Road.

Lands to transferred from the United States will be subject to the following reservations, terms, and conditions:

1. The reservation to the United States of a right-of-way for ditches and canals constructed under the authority of the Act of August 30, 1890 (43 U.S.C. 945).

2. An oil and gas lease granted by the United States to Natural Resources Corporation, its successor and assigns, by lease CA–9570 under the authority of the Act of February 25, 1920 (30 U.S.C. 181).

3. An existing electric powerline right-of-way granted by the United States to SRN Pacific Communications Company, its successors and assigns, by right-of-way grant CA–13526 under the authority of the Act of October 21, 1976 (43 U.S.C. 1761).

4. An existing right-of-way for railroad purposes granted from the United States to California Southern Railroad Company, its successors and assigns, by right-of-way grant LA–028991 under the authority of the Act of March 3, 1875 (43 U.S.C. 934–939).

5. An existing transmission right-of-way granted from the United States to Southern California Edison Company, its successors and assigns by right-of-way grant LA–0123107 under the authority of the Act of March 4, 1911 (43 U.S.C. 961).

Upon publication of this Notice of Realty Action in the **Federal Register**, the public lands will be segregated from all appropriations under the public land laws and the mining laws, except for mineral leasing, for a period of two (2) years or upon issuance of patent or other conveyance document. Information concerning the exchange proposal, including the Feasibility Report evaluating the effect of acquiring a portion of the proposed fringe-toed lizard preserve, is available for review at the California Desert District Office, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, at the above address. Objections will be reviewed by the State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: August 7, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 85–19560 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–45–M

Utah Combined District Advisory Board Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a joint meeting of Utah District Grazing Boards will be held September 10 and 11, 1985. The meeting will begin with a field tour of the Randolph Stewardship Area. The tour will depart at the Dunmar Motel west entrance, Highway 30, Evanston, Wyoming at 7:00 a.m. on September 10.

A business meeting will be held at 8:30 a.m. on September 11 at the Dunmar Motel. The agenda for this meeting will include:

1. An update on current rangeland policy.
2. Noxious weed infestations.
3. Update on grasshopper control efforts.
4. Other insect infestation problems.
5. Report of the individual Advisory Board on Range Improvement activities.
6. Other items of interest.

The meeting is open to the public. Interested persons must furnish their own transportation. Anyone wishing to participate or present a statement should notify the Public Affairs Office, Utah State Office, 324 South State Street, Suite 301, or telephone 801–524–3146 by September 6, 1985.

FOR FURTHER INFORMATION: For additional information contact Ken Boyer, Range Conservationist, BLM State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111, (801–524–3121).

Dated: August 9, 1985.

Jim Moorhouse,

Acting State Director.

[FR Doc. 85–19514 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–84–M

[ORE 09947, ORE 010418]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration proposes that two land withdrawals for the Redmond and John Day Air Navigation Sites continue for an additional 20 years. The lands would remain closed to surface entry and mining. Of the total 284.88 acres involved, 164.88 acres are already open and 120 acres would be opened to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration proposes that the existing land withdrawals made by Public Land Order No. 2141 of June 30, 1960, and Public Land Order No. 3076 of May 7, 1963, be

continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved include two parcels of land; one containing 120 acres located seven miles west of Redmond in Section 21, T. 15 S., R. 12 E., W.M., Deschutes County, Oregon, and the other containing 164.88 acres located 22 miles east of Mitchell in Section 3, T. 11 S., R. 25 E., W.M., Wheeler County, Oregon.

The purpose of the withdrawals is to protect the Redmond and John Day Very High Frequency Omnirange and Tactical Air Navigation (VORTAC) facilities. The withdrawal segregates the lands from operation of the public land laws generally, including the mining laws, and 120 acres from operation of the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal except to open 120 acres so that the entire 284.88 acres are open to applications and offers under the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 9, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-19566 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-33-M

[OR 37063 (WASH)]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bonneville Power Administration proposes that a portion of the land withdrawal for the Moxee Substation continue for an indefinite period. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy, Bonneville Power Administration, proposes that a portion of the existing land withdrawal made by the Secretarial Order of January 28, 1910, be contined for an indefinite period pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located approximately four miles east of Yakima and contains 12.31 acres within Section 24, T. 13 N., R. 19 E., W.M., Yakima County, Washington.

The purpose of the withdrawals is to protect the Bonneville Power Administration Moxee Substation. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 9, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-19567 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-33-M

[OR 33199 (WASH)]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that a land withdrawal for the Columbia River at the Mouth Project continue for an additional 100 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The Department of the Army, Corps of Engineers, proposes that the existing land withdrawal made by the Executive Order of February 26, 1952, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located at Cape Disappointment near the mouth of the Columbia River and contains approximately 921.90 acres within Sections 8 and 9, T. 9 N., R. 11 W., W.M., Pacific County, Washington.

The purpose of the withdrawal is to protect Corps of Engineers Columbia River at the Mouth Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 9, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations

[FR Doc. 85-19568 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-33-M

Competitive Sales of Public Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action. Competitive Sales of Public Lands in San Bernardino County, California.

SUMMARY: The public lands described in this notice have been examined and found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713). Sale will be by sealed bid. In no case shall lands be sold for less than the appraised market value. The following public lands will be offered for sale at 10 a.m., October 8, 1985 in the Baker Community Hall, located on Baker Avenue, Baker, California. Unsold parcels may be reoffered for sale through a subsequent Notice of Realty Action.

Parcel No.	Serial No.	Legal Description	Acres	Appraised Value (dollars)	Encumberances and/or reservations
		T. 14 N., R. 8 E., SBM			
		Section 24			
B1	CA-17714	E½E½SW¼, E½W½NE¼ SW¼.	50.0	$10,000.00	A-1,14,15; C-1.
		Section 25			
B2	CA-17715	S½NE¼NE¼NE¼, N½SE¼N E¼NE¼.	10.0	5,000.00	A-1,4,11,12,14,15; C-1.
B3	CA-17716	NW¼NE¼NE¼	10.0	5,000.00	A-1,4,9,14,15; C-1.
B4	CA-17717	S½SW¼NE¼NE¼	5.0	2,500.00	A-1,12,14,15; C-1.
B5	CA-17718	NW¼NE¼, NE¼SW¼NE¼, E½SE¼SW¼NE¼, E½E½ NE¼NW¼, NW¼NE¼NE¼ NW¼.	67.5	33,750.00	A-1,9,12,14,15; C-1.
B6	CA-17719	SW¼NE¼SE¼NE¼	2.5	1,250.00	A-1,4,14,15; C-1.
B7	CA-17720	W½SE¼NE¼	20.0	10,000.00	A-1,4,14,15; C-1.
		T. 14 N., R. 9 E., SBM			
		Section 19			
B8	CA-17721	S½ lot 1 of SW¼	40.0	8,000.00	A-1,9,12,14,15; B-1,2; C-1.
B9	CA-17722	Lot 2 of SW¼	75.0	15,000.00	A-1,6,9,12,14,15; B-1,2; C-1.
		Section 30			
B73	CA-17727	NE¼NE¼NW¼NE¼	2.5	1,250.00	A-1,5,14,15; B-1,2
B74	CA-17728	SE¼NE¼NW¼NE¼	2.5	1,250.00	A-1,14,15; B-1,2.
B80	CA-17733	NE¼NE¼SE¼SW¼, S½NE¼S E¼SW¼.	7.5	3,000.00	A-1,2,10,14,15; B-1,2.
B81	CA-17734	NW¼NE¼SE¼SW¼, NW¼SE¼SW¼.	12.5	5,000.00	A-1,2,11,14,15; B-1,2.
		Section 30			
B82	CA-17735	S½SW¼SE¼SW¼	5.0	2,000.00	A-1,2,8,9,14,15; B-1,2.
B83	CA-17736	NE¼NE¼NE¼SE¼	2.5	1,000.00	A-1,9,14,15; B-1,2.
B84	CA-17737	W½NE¼NE¼SE¼	5.0	1,500.00	A-1,2,9,14,15; B-1,2.
B85	CA-17738	SE¼NE¼NE¼SE¼	2.5	1,000.00	A-1,8,9,14,15; B-1,2.
B86	CA-17739	W½NW¼NE¼SE¼, NW¼SW¼NE¼SE¼.	7.5	2,000.00	A-1,2,3,14,15; B-1,2.
B87	CA-17740	NE¼SW¼NE¼SE¼	2.5	1,000.00	A-1,8,9,14,15; B-1,2.
B88	CA-17741	SW¼SW¼NE¼SE¼	2.5	1,000.00	A-1,8,9,14,15; B-1,2.
B89	CA-17742	SE¼SW¼NE¼SE¼	2.5	1,000.00	A-1,8,9,14,15; B-1,2.
B90	CA-17743	NW¼SE¼NE¼SE¼	2.5	1,000.00	A-1,8,9,14,1.5; B-1,2.
B91	CA-17744	SW¼SE¼NE¼SE¼	2.5	1,000.00	A-1,8,14,15; B-1,2.
B93	CA-17745	SE¼SW¼NW¼SE¼, W½SE¼NW¼SE¼.	7.5	2,000.00	A-1,14,15; B-1,2.

The purpose of this sale is to dispose of scattered, isolated tracts of public land consistent with the California Desert Plan. The tracts, because of their location and other characteristics, are difficult and uneconomical to manage as part of the public lands, and are not suitable for management by another Federal department or agency.

Publication of this Notice of Realty Action in the **Federal Register** segregates the public lands from appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

BLM may accept or reject any and all bids or withdraw any land from sale at any time, if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

Each parcel will be offered individually for sale by sealed bid only. All sealed bids must be submitted to the BLM's Barstow Resource Area Office at 831 Barstow Road, Barstow, California 92311, no later than 4:30 p.m., October 7, 1985. Sealed bids will be for not less than the appraised values specified in this notice with a separate bid submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior, BLM for not less than 10% of the amount bid. The sealed bid envelopes must be marked on the front, lower left corner as shown in the following *example:*

BID FOR PUBLIC LAND SALE
NOTICE OF REALTY ACTION
Parcel No. _____, Serial No. _____
Sale Date: October 8, 1985

If two or more envelopes containing valid bids of the same amount are received for the competitive sale parcels, the determination of which is to be considered the highest bid shall be by supplemental biddings.

The successful bidder shall submit the remainder of the full bid price prior to the expiration of 180 days from the sale date. Failure to submit the balance of the full bid within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited and disposed of as other receipts of sale.

A successful bid will require an application for those mineral interests offered for conveyance in the sale. The mineral interests being offered for conveyance have no known mineral value. Some of the sale parcels do have prospectively valuable leaseable minerals which will be reserved to the United States. Only those mineral interests specified in this notice will be reserved. All other mineral interests will be conveyed with the surface estate. The declared high bidder will be required to deposit, within 30 days of the sale date, a $50.00 nonrefundable application fee for conveyance of the mineral estate, in accordance with section 209(b), FLPMA (90 Stat. 2757; 43 U.S.C. 1719). Failure to deposit this filing fee will result in disqualification as the high bidder.

I. Reservations to the United States

A. Rights-of-Way

A-1. A right-of-way for ditches or canals constructed by authority of the United States. The Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

A-2. Those rights for a public highway granted to the State of California, Department of Transportation under the Federal Aid to Highways Act of August 27, 1958 (72 Stat. 885; 23 U.S.C. 317); Grant No. LA-0166224.

A-3. Those rights for a public highway granted to the State of California, Department of Transportation under the Act of November 9, 1921 (42 Stat. 212); Grant No. R-01718.

B. Mineral Reservations

B–1. Sodium and Potassium

B–2 Oil and Gas

All minerals (or partial or specific mineral interests, where applicable) shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation will be incorporated in the patent document, is available for review at the Barstow BLM Office.

II. Rights of the Third Parties

The conveyances made by these land patents are subject to all valid existing rights, including the following:

A. Rights-of-Way

A–4. Those rights for a railroad line granted to the Tonopah and Tidewater Railroad Company under the Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934–949); Grant No. R–4266.

A–5. Those rights for a 12 kV power transmission line granted to Southern California Edison Company under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. LA–0169749.

A–6. Those rights for a 12 kV powerline and substation granted to Southern California Edison Company under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. LA–0120280.

A–7. Those rights for telephone and telegraph lines granted to Pacific Bell, Incorporated, under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. LA–0153023.

A–8. Those rights for telephone and telegraph lines granted to Pacific Bell, Incorporated, under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761); Grant No. LA–047573.

A–9. Those rights for a 132 kV powerline and telephone line granted to Southern California Edison Company under the Act of December 21, 1928 (45 Stat. 1057; 43 U.S.C. 617); Grant No. R–01730.

A–10. Those rights for telephone and telegraph lines granted to Pacific Bell, Incorporated, under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. LA–087350.

A–11. Those rights for telephone and telegraph lines granted to Pacific Bell, Incorporated, under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. LA–087417.

A–12. Those rights for a powerline application to Southern California Edison Company under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761); Application No. CA–6276.

A–14. Rights-of-way for roadways and public utility purposes around the boundaries of each parcel along all section and quarter section lines subject to a 40-foot width and a 33-foot width along all other parcel boundaries under the Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1718).

A–15. Those rights for power transmission lines granted to the Intermountain Power Project under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761); Grant No. CA–8294.

C. Flood Hazard

C–1. Conveyance documents will contain a covenant requiring all future developments to be in conformance with Ordinance 2417, adopted by the San Bernardino County Board of Supervisors on May 3, 1980. The ordinance regulates development in flood hazard/flood plains, and implements National Flood Insurance requirements (Executive Order 11988 of May 24, 1977).

III. All Bidders Must Be Either

(1) 18 years of age or older and provide proof of U.S. citizenship; or (2) a State, State instrumentality or political subdivision authorized to hold property; or (3) a corporation must be subject to the laws of the State of California or of the United States; or (4) an entity legally capable of conveying the holding lands or interests therein under the laws of the State of California, and where applicable, the entity shall also meet the requirements for 1 and 3 above. Proof of meeting these requirements shall accompany bids.

FOR FURTHER INFORMATION: An information packet with a description of the sale area and the sale procedures is available for review at the Barstow Resource Area Office, 831 Barstow Road, Barstow, California 92311. The environmental assessment and land report for the sale may also be reviewed at the Barstow Office. Additional information concerning this sale may be obtained by contacting Arnold Schoeck, Realty Specialist, at the Barstow Resource Area Office or at (619) 256–3595.

SUPPLEMENTAL INFORMATION: For a period of 45 days from the date of publication of the notice, interested parties may submit comments to the District Manager, California Desert District, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 7, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 19585 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–40–M

[F–14825–A]

Alaska Native Claims Selection; Alakanuk Native Corp.

In accordance with Department regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to Alakanuk Native Corporation for approximately 1.91 acres. The lands involved are in the vicinity of Alakanuk, Alaska within lot 1, U.S. Survey No. 4092.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the THE TUNDRA DRUMS. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 16, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal.

Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–19592 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–JA–M

[F–84656]

Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(e), and

sec. 12(b)(6) of the Act of January 2, 1976, 43 U.S.C. 1611 nt, will be issued to Cook Inlet Region, Inc., for approximately 40 acres. The lands involved are located in the W2W2SW4, Sec. 31, T. 4 S., R. 7 W., Fairbanks Meridian, southeast of Nenana, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in THE ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 16, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–19588 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–JA–M

[F–19155–39[1]]

Alaska Native Claims Selection; Doyon, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 98,535 acres. The lands involved are in the vicinity of the Fortymile National Wild and Scenic River Corridor, Alaska.

Fairbanks Meridian, Alaska

T. 4 S., R. 25 E. Unsurveyed
T. 3 S., R. 26 E. Unsurveyed
T. 4 S., R. 26 E. Unsurveyed
T. 2 S., R. 27 E. Unsurveyed
T. 3 S., R. 27 E. Unsurveyed
T. 4 S., R. 27 E. Unsurveyed
T. 2 S., R. 28 E. Unsurveyed
T. 3 S., R. 28 E. Unsurveyed
T. 4 S., R. 28 E. Unsurveyed
T. 4 S., R. 29 E. Unsurveyed
T. 5 S., R. 30 E. Unsurveyed
T. 5 S., R. 31 E. Unsurveyed
T. 4 S., R. 32 E. Unsurveyed
T. 4 S., R. 33 E. Unsurveyed

A notice of the decision will be published once a week for four (4) consecutive weeks, in the FAIRBANKS DAILY NEWS-MINER. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 16, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–19589 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–JA–M

Alaska Native Claims Selection; Eklutna, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Eklutna, Inc. The lands involved are:

Serial No.	Land description	Approximate acreage
AA–6661–C	T. 17 N., R. 1 E., Seward Meridian.	221
AA–6661–C	T. 18 N., R. 2 E., Seward Meridian.	96

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions shall have until September 16, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–19590, Filed 8–15–85; 8:45 am]

BILLING CODE 4310–JA–M

[AA–6661–A, AA–6661–B, AA–6661–D]

Alaska Native Claims Selection; Eklutna, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Eklutna, Inc., notice of which was published in the **Federal Register** on July 25, 1985, Vol. 50, No. 143, pp. 30306–30307 is modified by correcting the land description, changing the paragraph concerning navigability, and deleting another paragraph.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box, 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until 30 days after publication (September 16, 1985) to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

[1] F–21901–21, F–21901–23, F–21901–25, F–21901–78, F–21904–48, F–21904–68, F–21904–72, F–21904–80, F–21904–85, F–21905–22, F–21905–27, F–21905–38, F–21905–71, F–21905–74, F–21905–75, F–21905–81.

Except as modified, the decision, notice of which was given July 25, 1985, is final.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-19591 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-JA-M

Alaska Native Claims Selection; Sealaska Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of secs. 14(h)(1), 14(h)(7) and 22(j), of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(h)(1), 1613(h)(7), 1621(j), will be issued to Sealaska Corporation. The lands involved are within the Tongass National Forest.

COPPER RIVER MERIDIAN, ALASKA

[illegible] Number	Land description	Approximate [illegible]
AA-10465	T. 80 S., R. 86 E., Sec. 36; T. 80, S., R. 87 E., Sec. 31;	[illegible]
AA-10506	T. 52 S., R. 88 E., Sec. 29;	[illegible]
AA-10527	T. 42 S., R. 63 E., Secs. 16 and 17	[illegible]

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decisions shall have until 30 days after September 16, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-19593 Filed 8-16-85; 8:45 am]

BILLING CODE 4310-JA-M

Arizona; Yuma District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Yuma (Arizona) District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Yuma District Advisory Council will be held Friday, September 20, 1985, at 9 a.m. in the Conference Room of the District Office located at 3150 Winsor Avenue, Yuma, Arizona.

The agenda for the District Advisory Council meeting includes:

1. District Manager's Update.
2. Resource Management Plan Update.
3. Concessions Program Update.
4. Long-Term Visitor Area Program Update.
5. Wilderness.
6. Sanitary Landfills.
7. Communication Sites.
8. Advisory Council Initiated Topics.q02

The meeting is open to the public. Interested persons may make oral statements to the Council on September 20, or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address by 4 p.m., September 19, so time can be reserved. Depending on the number of persons wishing to address the Council, a per person time limit may be considered.

FOR FURTHER INFORMATION CONTACT: Douglas B. Stockdale, (602) 726-6300.

SUPPLEMENTARY INFORMATION: Summary minutes of the District Advisory Council meeting will be maintained in the Yuma District Office and will be available for inspection and reproduction during regular business hours (7:45 a.m.-4:30 p.m.) within 30 days of the meeting.

Dated: August 8, 1985.

J. Darwin Snell,

District Manager.

[FR Doc. 85-19564 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-32-M

[W-81925-I]

Proposed Reinstatement of Terminated Oil and Gas Lease, Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-81925-I for lands in Natrona County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the data of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16-⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-81925-I effective January 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tershis,

Chief, Leasing Section.

[FR Doc. 85-19562 Filed 8-15-85; 8:85 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Becharof National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The U.S. Fish and Wildlife Service has issued a Record of Decision (ROD) on the Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Becharof National Wildlife Refuge, Alaska, pursuant to sections 304 (g) (1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act 1964, and section 102(2) (C) of the National Environmental Policy Act of 1969.

DATE: This ROD on the CCP/EIS will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3399.

Copies of the ROD will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the ROD may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service has selected *Alternative B* as described in the Becharof National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review for implementation. The Service is also recommending two additions on the Becharof National Wildlife Refuge to the National Wilderness System: (1) The northeast section of the refuge including the drainages of Big Creek, the eastern reaches of the King Salmon River, and Gertrude Creek; and (2) the southeast section of the refuge including the Mount Peulik-Gas Rocks area, Mount Becharof, and the drainages of Otter Creek, Featherly Creek and Island Arm.

Alternative B provides the highest degree of resource protection and the greatest opportunity for achieving the purposes set forth in ANILCA while balancing conservation of fish and wildlife populations and habitats with opportunities for compatible fish and wildlife-oriented recreation. In order to implement some aspects of the plan, the Service will commence preparation of regulations governing resource management on Becharof NWR for public review. They will be published in a proposed form and public hearings will be conducted in the vicinity of the refuge to solicit public input prior to their finalization.

Dated: August 12, 1985.

David L. Olsen,

Acting Regional Director.

[FR Doc. 85-19515 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-55-M

Izembek National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The U.S. Fish and Wildlife Service has issued a Record of Decision (ROD) on the Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Izembek National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act 1964, and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This ROD on the CCP/EIS will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3399.

Copies of the ROD will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the ROD may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service has selected *Alternative A* as described in the Izembek National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review for implementation. The Service is not recommending any additions on the Izembek National Wildlife Refuge to the National Wilderness System.

Alternative A, continuing current management practices, provides the highest degree of resource protection and the greatest opportunity for achieving the purposes set forth in ANILCA including conservation of fish and wildlife populations and habitats.

Dated: August 12, 1985.

David L. Olsen,

Acting Regional Director.

[FR Doc. 85-19516 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Ashland Exploration, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6094, Block 211, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on August 8, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: August 9, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-19552 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Assateague Island National Seashore Establishment

The Act of September 21, 1965 (79 Stat. 824; 16 U.S.C. 459F), requires that a declaration of the establishment of Assateague Island National Seashore be published in the **Federal Register** when it is determined that land, water areas, or interests therein have been acquired in sufficient quantities within the Seashore area depicted on map NS-AI-7100A, dated November 1964, to provide an administrable unit.

Since the land and water areas, or interests therein, acquired for this Seashore are in sufficient quantities to provide an administrable unit, I hereby give notice that the Assateague Island National Seashore is declared established.

Further, notice is hereby given that the refined boundaries of the Seashore are as depicted on map 622-30,003, dated September, 1972, which map is on file and available upon request in the office to the Superintendent, Assateague Island National Seashore, Route 2, Box 294, Berlin, Maryland 21811, and in the Offices of the National Park Service, Department of the Interior, Washington, DC 20240. As nearly as practicable, the boundaries so depicted are identical to

those described under Section 1 of the Act, supra.

Dated: August 9, 1985.

William Penn Mott, Jr.,

Director.

[FR Doc. 85–19613 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–70–M

Name Change; Fort Donelson National Military Park

The Act of September 8, 1960 (74 Stat. 875), authorizes redesignation by the Secretary of the Interior from National Military Park to National Battlefield upon acquisition of additional lands. Ninety-seven percent of the land at the Park has been acquired; 420 acres have been acquired since 1960.

Pursuant to the above Act, the area formerly known as "Fort Donelson National Military Park," established pursuant to the Act of March 26, 1928 (45 Stat. 367), shall henceforth be known as the "Fort Donelson National Battlefield."

Dated: August 9, 1985.

William Penn Mott, Jr.,

Director.

[FR Doc. 85–19612 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30710]

Altra Railroad Co.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission grants the petition of Altra Railroad Company for exemption from the requirements of prior approval under (a) 49 U.S.C. 10901 with respect to the operation of a line of railroad between Mabel and Tarrytown in Sumter County, FL, and (b) 49 U.S.C. 11301 with respect to the issuance of certain common stock and the issuance of debt obligations in an aggregate amount of up to $500,000.

DATES: This exemption will be effective on August 15, 1985. Petitions to reopen must be filed by September 5, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30710 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll-free (800) 424–5403.

Decided: August 7, 1985.

By the Commission, Chairman Taylor, Vice Chairman, Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Chairman Taylor did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85–19528 Filed 8–15–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB 256X; Finance Docket No. 30652]

Ottumwa Connecting Railroad Co.; Exemption; Discontinuance of Operations at Ottumwa, IA and Colorado and Eastern Railroad Co.; Exemption; Operation at Ottumwa, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts (1) the discontinuance of operations by Ottumwa Connecting Railroad Co. from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, and (2) the operation by the Colorado and Eastern Railroad Company of 1.89 miles of rail line at Ottumwa, IA from the prior approval requirements of 49 U.S.C. 10901.

DATES: This exemption is effective August 15, 1985. Petitions to reopen must be filed by September 5, 1985.

ADDRESSES: Send pleadings referring to AB 256X or Finance Docket No. 30652 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 2043

(2) Gary W. Flanders, Colorado and Eastern Railroad Company, 76 S. Sierre Madre, Suite 230, Colorado Springs, CO 80903

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call toll free (800) 424–5400 or 289–4357 (DC Metropolitan Area).

Decided: August 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–19527 Filed 8–15–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30703]

Soo Line Railroad Co.; Joint Use of Lines; Chesapeake and Ohio Railway Co.; Exemption

On July 17, 1985, the Soo Line Railroad Company (SOO) and the Chesapeake and Ohio Railway Company (C&O) filed a notice of exemption for a relocation project under 49 CFR 1180.4(g). The notice involves SOO's relocation of certain of its overhead operations between Detroit, MI and Chicago, IL pursuant to a joint use agreement between SOO and C&O. The applicable rail yards are the Rougemere Yard at Detroit and the Shiller Park Yard at Chicago. The Railway Labor Executives' Association filed a letter requesting the imposition of labor protective conditions.[1]

SOO indicates at present a portion of its traffic moves between Chicago, IL and points west, on the one hand, and points east of Detroit, MI, on the other. SOO further represents that in conjunction with its affiliate, CP Rail, they own several lines of railroad between Detroit, MI and Chicago, IL by which SOO and CP Rail conduct rail freight operations. C&O and its affiliates own or have access to several lines between the two cities and by this agreement C&O will move SOO's overhead traffic, over certain lines of railroad between these points with none of the subject traffic being originated, terminated or interchanged by C&O at any point along the routes used used for the movements. By this transaction, SOO's overhead traffic will be handled more efficiently since it will be moved over shorter routes and will be handled in special C&O train service which will eliminate delays resulting from the interchange of traffic and related yard and terminal operations. The parties anticipate that the operating economies and efficiencies to be achieved by this joint use agreement will enhance the financial viability of both railroads and

[1] Position statements have been filed in opposition to the notice of exemption proceeding by the Chicago and North Western Transportation Company and the Grand Trunk Corporation. The Commission has instituted a proceeding in response. Interested parties should contact Louis E. Gitomer at (202) 275–7245 for further information.

permit them to better utilize existing facilities for transportation purposes.

The Notice of Exemption indicates that this joint project involves the relocation of a line(s) of railroad which does not disrupt service to shippers and falls within the class of transaction identified at 49 CFR 1180.2(d)(5) which the Commission has found to be exempt under 49 U.S.C. 10505. See *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Notice cites *Southern Pac. Transp. Co. & SSW Ry. Co.—Exemption*, 363 I.C.C. 848, 851–52 (1981) in which the Commission found that the existing class exemption for relocation projects includes transactions wherein a carrier transfers operations from one line to another, so long as service to shippers is not disrupted. In *Southern Pac.*, the Commission likewise concluded such relocation transactions generally do not affect matters which are of regulatory interest.

As a condition to the use of this exemption, any employees affected by this joint use agreement shall be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Finally, if the notice of exemption contains false or misleading information, the notice will be considered void *ab initio*.

Decided: August 9, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–19530 Filed 8–15–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–26 (Sub-30X)]

Southern Railway Co., Abandonment Exemption in Bibb and Shelby Counties, AL

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 11.37 mile line of railroad between Milepost 19.42–S at Boothton and Milepost 30.79.79–S at Blocton, together with 5.77 miles of adjacent branch lines between Milepost PB–0.0 at Seymour and Milepost PB–3.82 at Piper and between Milepost BE–0.0 at Ardela and Milepost BE–1.95 at Belle Ellen, for a total of 17.14 miles in Bibb and Shelby Counties, AL. Applicant was authorized to discontinue operations over these lines in 1965.[1]

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandoment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 15, 1985, (unless stayed pending reconsideration). Petitions to stay must be filed by August 26, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 5, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Nancy Fleischman, 1050 Connecticut Avenue, NW., Suite 740, Washington, DC 20036.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 5, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–19529 Filed 8–15–85; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388 (Sub-4)]

Intrastate Rail Rate Authority; Florida

AGENCY: Interstate Commerce Commission.

ACTION: Assumption of Commission Jurisdiction over Florida Intrastate Rail Transportation.

SUMMARY: Pursuant to a request from the Florida Public Service Commission (FPSC), the Commission will assert jurisdiction over intrastate freight rates in Florida and vacate FPSC's provisional certification.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: In Ex Parte No. 388 (Sub-No. 4), *Intrastate Rail Rate Authority—Florida* (not printed), served March 16, 1983, the Commission extended the provisional certification of Florida pursuant to 49 U.S.C. 11501 to allow the State time to make necessary amendments, in conformance with Federal law, as set forth in that decision.

In a letter filed July 1, 1985, Florida states that it will not seek final certification to regulate intrastate freight rates. Florida also requests that this Commission exercise jurisdiction over Florida's intrastate railroad freight rates effective October 1, 1985.

We will assume jurisdiction over Florida intrastate rail rates on October 1, 1985, to permit Florida to complete its deregulatory process and facilitate a smooth transfer of authority. At the same time, Florida's provisional certification to regulate intrastate rates will be terminated. Rail carriers in Florida must comply with Commission regulations, including the filing of intrastate tariffs with the Commission. Parties that seek to continue litigating cases that were pending before FPSC must advise Deputy Director Louis E. Gitomer, Rail Section, Office of Proceedings. In the case of any remaining pending State section 229 cases, parties must consult immediately with Chief Administrative Law Judge David Allard. In this way, we will develop, with the parties, appropriate steps in each case to transfer the records and establish procedural schedules.

This decision does not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 11501.

Decided: August 7, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–19526 Filed 8–15–85; 8:45 am]

BILLING CODE 7035–01–M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use

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[1] Finance Docket No. 23228, *Southern Ry. Co. and L&N R.R. Co.-Abandonment of Operations between Gurnee Jct. and Blocton, AL* (not printed), served February 5, 1965.

compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and Address of Principal Office: Brendle's Incorporated, 1919 North Bridge Street, Elkin, North Carolina 28621.

2. Wholly-Owned Subsidiaries Which Participate in the Operations, and State(s) of Incorporation:

(i) Brendle Transport, Inc., a North Carolina corporation.

1. Parent Corporation and address of principal office: Dart & Kraft, Inc., 2211 Sanders Road, Northbrook, IL 60062.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

A. Dart Industries Inc. (Delaware).
(i) Duracell, Inc. (Delaware).
(ii) Duracell Inc. (Delaware).
(iii) Precor Incorporated (Delaware).
B. Hobart Corporation (Delaware).
C. Kraft, Inc. (Delaware).
(i) Celestial Seasonings, Inc. (Delaware).
(ii) Celestial Transport, Inc. (Colorado).
(iii) Churny Company, Inc. (Delaware).
(iv) Cosmopolitan Ice Cream Company (New York).
(v) Früsen Gladjé, Ltd. (New York).
(vi) Ridg's Finer Foods, Inc. (Delaware).
(vii) Westman Commission Company (Colorado).
(viii) Lender's Bagel Bakery (Division).

1. Parent corporation and address of principal office: Savannah Foods & Industries, Inc., P.O. Box 339, Savannah, GA 31402.

2. Wholly-owned subsidiaries which will participate in the operations, address of their principal office, and state of incorporation:

State of Incorporation

(a) Everglades Sugar Refinery, Inc., P.O. Box 278, Clewiston, FL 33440, Florida.
(b) Transales Corporation, P.O. Box 9177, Savannah, GA 31402–0339, Delaware.
(c) Food Carrier, Inc., P.O. Box 2287, Savannah, GA 31402–2287, Georgia
(d) Sunaid of Florida, Inc., P.O. Box 427, Hialeah, FL 33011–0427, Delaware.
(e) Georgia Canada Blending Enterprises Corporation, 1000 Canada Bldg. 374 Quellette Avenue, Windsor, ON N9E 1A9, Ontario
(f) Michigan Sugar Company, P.O. Box 1348, Saginaw, MI 48605, Michigan
(g) Pioneer Food Service Corporation, 2218 Enterprise Avenue, Jackson, MI 49201, Michigan
(h) Great Lake Sugar Terminal, Inc., P.O. Box 728, Fremont, OH 43420, Ohio
(i) Great Lakes Sugar Company, P.O. Box 89, Findlay, OH 45840, Ohio
(j) American Fuel Trading Company, P.O. Box 369, Federalsburg, MD 21632, Delaware.

1. Parent Corporation: Witco Chemical Corporation, 520 Madison Avenue, New York, NY 10022, State of Incorporation-Delaware.

2. Wholly owned subsidiaries which will participate in the operations:

(a) Aero Oil Company, Inc., 2215 No. Alvord Street, Indianapolis, IN 46205 State of Incorporation—Indiana.
(b) Beam Oil Co., Inc., 1533 Marietta Road, NW., Atlanta, GA 30377, State of Incorporation—Georgia.
(c) Continental Carbon Co., 10500 Richmond Avenue, Houston, TX 77042, State of Incorporation—Delaware.
(d) Pearsall Chemical Corp., 10500 Richmond Avenue, Houston, TX 77042, State of Incorporation—New Jersey.
(e) Southwest Peto-Chem., Inc., 1400 So. Harrison, Olathe, KS 66061, State of Incorporation—Delaware.
(f) U.S. Peroxygen Co., 850 Morton Avenue, Richmond, CA 94804, State of Incorporation—Delaware.
(g) Argus Chemical Corporation, 633 Court Street, Brooklyn, NY 11231, State of Incorporation—Delaware.
(h) Chemprene, Inc., 570 Fishkill Avenue, Beacon, NY 12508, State of Incorporation—Delaware.
(i) Empak Transportation Co., 1400 So. Harrison, Olathe, KS 66061, State of Incorporation—Delaware.
(j) Richardson Chemical Co., Allied-Kelite Div., 2701 Lake Street, Melrose Park, IL 60601, State of Incorporation—Delaware.
(k) The Richardson Co., 2701 Lake Street, Melrose Park, IL 60160, State of Incorporation—Delaware.

James H. Bayne,

Secretary.

[FR Doc. 85–19525 Filed 8–15–85; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N1301, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Collection of Information in Current Rules

Occupational Safety and Health Administration
Construction Crane Rating Chart and Limitation Instructions
OSHA 228
Recordkeeping

Business or other for profit; small businesses or organizations
19 respondents; 4550 hours; 0 forms

Construction crane rating charts, assigned machine use limitations, and attachment capacity ratings are necessary for crane use by employers using a crane, regardless of user entity. These documentations are used to prevent overloading, misuse and procedures that will cause employee injuries.

Occupational Safety and Health Administration
Portable Fire Extinguishers; Hydrostatic Test Record
OSHA 205
On occasion
State or local governments; businesses or other for profit; federal agencies or employees; small businesses or organizations
7,058,824 respondents; 2,964,706 hours; 0 forms

Requires that portable fire extinguishers be hydrostatically tested every 5 to 12 years depending upon the type of shell construction. A record of the test containing the date of test, the test pressure, and the name of the individual or agency doing the test.

Occupational Safety and Health Administration
Crane or Derrick Annual Inspection Record Construction
OSHA 229
Recordkeeping
Businesses or other for profit; small businesses or organizations
113,000 respondents; 1,090,450 hours; 0 forms

Construction employers are required to keep a record of the thorough annual inspection of hoisting machinery and each piece of equipment in order to assure timely replacement and service necessary for safe use of the machinery.

Reinstatement

Occupational Safety and Health Administration
Maritime—Material Handling Hooks and Unfired Pressure Vessels 1218–0052; OSHA 237
Recordkeeping
Businesses or other for profit; Federal agencies or employees; small businesses or organizations
900 respondents; 1,350 hours; 0 forms

To ensure that hooks that are used for materials handling and unfired pressure vessels that have not been rated by the manufacturer or a standards organization and are used by shipyard personnel are examined and tested before use.

Occupational Safety and Health Administration
Installation and Operation of Resistance Welding Equipment
29 CFR 1910.252(c)(6)
1218–0056; OSHA 219
Recordkeeping
Businesses or others for profit; non-profit institutions; small businesses or organizations
150,000 respondents; 50,000 hours; 0 forms

The information is needed to assure the effectiveness of the regulation. The recordkeeping provides the Agency with adequate information to indicate the equipment is maintained properly and may prevent severe physical harm or death.

Occupational Safety and Health Administration
Construction Oxygen and Toxic Gas Test
1218–0054; OSHA 230
Recordkeeping
Businesses or others for profit; small businesses or organizations
196 respondents; 703 hours; 0 forms

The required information is needed when internal combustion engines exhaust into an enclosed space to assure that oxygen and toxic gas level are properly controlled to eliminate employee exposure to a hazardous environment.

Signed at Washington, D.c. this 13th day of August, 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–19633 Filed 8–15–85; 8:45 am]

BILLING CODE 4510–26–M

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: September 10, 1985, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, D.C., this 12th day of August 1985.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 85–19634 Filed 8–15–85; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

United States Employment Service; Labor Certification Process for the Temporary Employment of Aliens in Agriculture; 1985 Adverse Effect Wage Rates and Plans for 1986

AGENCY: Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of Adverse Effect Wage Rates for 1985 and Plans for 1986.

SUMMARY: The Director, U.S. Employment Service, announces 1985 adverse effect wage rates (AEWRs), that is, the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S and alien workers by employers of temporary alien agricultural workers. AEWRs are established and set to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers. The Director also announces plans for AEWRs for 1986.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Telephone: 202–376–6228.

SUPPLEMENTARY INFORMATION:

Requirement of Notice

The Department of Labor (DOL) has published regulations at 20 CFR Part 655, Subpart C, for the certification of non-immigrant aliens for temporary employment in the United States in agriculture and logging. These regulations require the Director, United States Employment Service (USES), to cause a notice to be published in the **Federal Register** each calendar year, announcing the adverse effect wage rates (AEWRs) for agricultural workers (except sheepherders) in fourteen States and for sugar cane workers in Florida. 20 CFR 655.207(b).

Agricultural Adverse Effect Wage Rates: 1985

Based upon 1983–1984 aggregate average weekly wage data supplied by the Bureau of Labor Statistics and upon

the methodology set forth at 20 CFR 655.207(b)(1), DOL has computed the 1985 AEWRs. The AEWRs set forth in the table below have been computed using the methodology adopted by DOL by rulemaking on September 2, 1983. The AEWR for each State has been changed from last year's AEWR by the same percentage change as the percentage change (from the second year previous to the year previous) in the ES–202 report's aggregate average weekly wage rates for the appropriate group of agricultural workers. The appropriate group of agricultural workers are those U.S. agricultural workers described in the regulation at 20 CFR 655.207(b)(1).

The 1985 AEWRs, along with the 1984 AEWRs and the percentage changes in the various rates over the year, are published in the table below.

AGRICULTURAL ADVERSE EFFECT WAGE RATES: 1985

[illegible]	1984 rates [1]	1985 [illegible]	Percent-[illegible] change [2]
Arizona	$4.10	[illegible]	+2.5
Colorado	(3)	(3)	
Connecticut	4.11	4.16	+1.3
Florida (except sugarcane)	4.54	4.91	+8.1
Florida (sugarcane only)	5.61	6.06	+8.1
Maine	4.21	4.26	+1.3
Maryland	4.54	4.63	+2.0
Massachusetts	4.11	4.16	+1.3
New Hampshire	4.41	4.47	+1.3
New York	4.26	4.32	+1.3
Rhode Island	4.11	4.16	+1.3
Texas	4.97	4.20	+5.8
Vermont	4.34	4.40	+1.3
Virginia	4.55	4.54	+2.0
West Virginia	4.40	4.49	+2.0

[1] 49 FR 31787 (August 8, 1984).
[2] Based upon the Bureau of Labor Statistics ES–202 reports' aggregate average weekly wage data for appropriate groups of workers and the formula published at 20 CFR 655.207(b)(1).
[3] DOL has determined that there are not yet available data sufficient to set an AEWR for Colorado. See 49 FR 31784 (August 8, 1984). When such data are available, the Director, U.S. Employment Service, will announce that State's AEWR in the FEDERAL REGISTER.

Plans for 1986

Since the U.S. Department of Agriculture (USDA) has resumed the collection of data on agriculture wage rates on a quarterly basis, DOL intends to immediately start the process to develop a methodology for utilizing USDA data for AEWRS for 1986. If a methodology results from this process, it will be publicized through informal rulemaking procedures, and a proposed rule will be published with appropriate opportunity for comment by all interested parties. This process will begin as soon as possible.

Signed at Washington, D.C. this 12th of August, 1985.

Richard C. Gilliland,

Director, U.S. Employment Service.

[FR Doc. 85–19623 Filed 8–15–85; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–85–12–M]

Chevron Resources Co; Petition for Modification of Application of Mandatory Safety Standard

Chevron Resources Company, Manila Star Route, Vernal, Utah 84078 has filed a petition to modify the application of 30 CFR 56.9088 (rollover protective structures; ROPS) to its Vernal Pit (I.D. No. 42–00998) and Vernal Mill (I.D. No. 42–00164) both located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that rollover protective structures (ROPS) be installed on the mine's D–4E side boom pipe layer.

2. This machine is a track-type tractor equipped with a side boom principally used to travel along a graded right-of-way and position lengths of pipe either on the right-of-way or in a trench alongside the right-of-way.

3. As an alternate method, petitioner proposes to use this pipe layer without ROPS and believes that use of a side boom for positioning pipe along a right-of-way is more practical and just as safe as using a wheel-mounted crane equipped with ROPS for the same purpose.

4. Petitioner further states that the equipment manufacturer states that this equipment is not compatible with ROPS.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (September 16, 1985). Copies of the petition are available for inspection at that address.

Dated: August 8, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–19635 Filed 8–15–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–85–74–C]

Gateway Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Gateway Coal Company, 1200 First Security Plaza, Lexington, Kentucky 40507 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Gateway Mine (I.D. NO. 36–00906) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Peititioner has a pump room which is located in and near entries that were driven in 1935 to transport coal from the mine workings to the river tipple. All three of these entries are maintained as intake airways; there are no return airways available for ventilating the pump room.

3. As an alternate method, petitioner proposes to install an active fire suppression system in lieu of ventilating the pump room into a return airway. The pump room is of fireproof construction, consisting of steel, concrete and concrete block with a sand rock top, and will have doors that are self closing.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1985. Copies of the petition are available for inspection at that address.

Dated: August 8, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–19636 Filed 8–15–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M-85-9-M]

Hydrocarbon Resources Co.; Petition for Modification of Application of Mandatory Safety Standard

Hydrocarbon Resources Company, Star Route 2, Box 192, Randlett, Utah 84063 has filed a petition to modify the application of 30 CFR 57.19102 (shafts) to its Cottonwood Mine (I.D. No. 42-01789) located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a means be provided to guide the movement of a shaft conveyance.

2. As an alternate method, petitioner proposes to use glancing boards on the shaft ends and the walls of the shaft for the sides.

3. Due to the narrowness of the vein, the shaft walls can be cut to accommodate the conveyance. The interface between the Gilsonite and the rock walls is smooth, which allows the conveyance to move freely in the shaft.

4. Because the vein is narrow, petitioner states that a guide rail would restrict the ingress and egress from the conveyance, creating a potential hazard.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1985. Copies of the petition are available for inspection at that address.

Dated: August 8, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-19637 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-76-C]

LJ's Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

LJ's Coal Corporation, P.O. Box 98, St. Charles, Virginia 24282 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-12741 and 44-05668) located in both Harlan County, Kentucky and Lee County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric fact equipment.

2. The minimum height of the present working section ranges from 44 to 54 inches; the overall height of the mine ranges from 44 to 62 inches.

3. Petitioner states that use of a canopy on the mine's scoops and shuttle cars would result in a diminution of safety for the miners affected because the canopy will restrict the equipment operator's seating position and limit the operator's visibility, increasing the chances of an accident.

In addition, petitioner states that use of a canopy on the mine's roof bolters would hinder the operation of the machine due to the added weight.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1985. Copies of the petition are available for inspection at that address.

Dated: August 8, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-19638 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-63-C]

Preece Energy, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Preece Energy, Inc., P.O. Box 408, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-09916) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 mine is in the Thacker seam and ranges from 40 to 47 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the canopies can strike and dislodge roof support, increasing the chances of an accident. The canopies also limit the equipment operator's visability and restrict the operator's seating position, creating a potential hazard.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1985. Copies of the petition are available for inspection at that address.

Dated: August 9, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-19639 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-10-M]

Tenneco Minerals Co.; Petition for Modification of Application of Mandatory Safety Standard

Tenneco Minerals Company, P.O. Box 1167, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.21-46 (crosscut intervals) to its Soda Ash Project (I.D. No. 48-01295) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that crosscuts be made at intervals not in excess of 100 feet between entries and between rooms.

2. As an alternate method, petitioner proposes to develop rooms up to 350 feet before crosscuts or a breakthrough occurs during the retreating phase of panel extraction. During this process, a room is driven approximately 300 feet through a solid block of ore between panels, causing a breakthrough into the previously mined panel. This

breakthrough enables the panel ventilation to flow over the continuous miner as crosscuts are cut retreating from the room.

3. In support of this alternate method, petitioner states:

(a) A blowing auxiliary fan and tubing will deliver at least 4,000 cfm of air over the continuous miner at all times during the driving of the 350-foot room;

(b) After breakthrough occurs, the entire panel ventilation will be coursed through the room and exhaust into a previously mined panel;

(c) The turning and cutting of the crosscuts will take place with substantial ventilation flowing over the continuous miner and away from the miners; and

(d) By cutting the crosscuts in retreat from the room, the miners would be always working next to a solid block of ore, increasing the safety of the miners. In addition, the mined out area is abandoned, preventing exposure of the miners to potentially hazardous roof and rib conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1985. Copies of the petition are available for inspection at that address.

Dated: August 8, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-19640 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-43-M

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: that an alternative method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: August 8, 1985.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M-81-41-M	46 FR 45453	United Salt Corp	30 CFR 57.4-42	Petitioner's proposed three-part response program in the event of a fire in the structure which houses the mine opening and main fan considered acceptable alternate method. Granted with specific conditions.
M-81-42-M	46 FR 45453	do	30 CFR 57.4-62	Do.
M-81-43-M	46 FR 45453	do	30 CFR 57.4-43	Do.
M-84-36-M	49 FR 50125	Signal Mountain Cement Co	30 CFR 56.16-14(b)	Operation of the overhead crane without automatic switches to halt uptravel of the blocks before they strike the hoist considered acceptable alternate method. Granted with conditions.
M-84-23-M	49 FR 47130	International Salt Co	30 CFR 57.21-21(b)	Petitioner's proposal that a responsible person be in attendance in the immediate area of the main fan(s) while persons are underground considered acceptable alternate method. Granted with conditions.
M-84-24-M	49 FR 50123	do	30 CFR 57.21-20(b)	Do.
M-84-25-M	50 FR 572	do	30 CFR 57.21-20(f)	Do.
M-84-27-M	49 FR 50124	Rio Algom Mining Corp	30 CFR 57.21-46	Mining a maximum distance of 500 feet prior to making a connection between entries and rooms considered acceptable alternate method. Granted with conditions.
M-82-102-C	48 FR 4574	Consolidation Coal Co	30 CFR 75.1101-8	Use of a single line of automatic sprinklers for its fire protection system at main and secondary belt conveyor drives considered acceptable alternate method. Granted in part with conditions.
M-83-121-C	49 FR 676	Emerald Mines Corp	30 CFR 75.1700	Petitioner's proposal to plug and mine through oil and gas wells with specified precautions considered acceptable alternate method. Granted with conditions.
M-83-145-C	49 FR 4567	Big Hill Coal Co	30 CFR 75.1710	Use of cabs or canopies on the mine's electric fact equipment in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-84-12-C	49 FR 11027	Lambert Coal Co., Inc	30 CFR 75.506(d) and 75-1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-38-C	49 FR 14214	Jim Walter Resources, Inc	30 CFR 75.326	Petitioner's proposal to isolate the belt entries which are used as intake entries from other intake and return entries with permanent-type stopping constructed of specified substantial, incombustible material considered acceptable alternate method. Granted with conditions.
M-84-39-C	49 FR 15159	do	30 CFR 75.326	Do.
M-48-59-C	49 FR 40498	E.T.R. Mining Co., Inc	30 CFR 75.506(d) and 75.1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-71-C	49 FR 22578	North River Energy Corp	30 CFR 75.1103-4(a)	Installation of a carbon monoxide monitoring system along the beltline considered acceptable alternate method. Granted with conditions.
M-84-72-C	49 FR 14214	do	30 CFR 75.326	Petitioner's proposal to use the belt-track entries as intake air-courses with specified safeguards considered acceptable alternate method. Granted with conditions.
M-84-83-C	49 FR 22575	Deer Creek Mining Co	30 CFR 75.1710	Use of cabs or canopies in specified low mining heights would result in a diminution of safety. Granted in part.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M-84-90-C	49 FR 10724	Eastern Associated Coal Corp	30 CFR 75.506(d) and 75.1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-110-C	49 FR 22577	K.M. and K. Coal Co	30 CFR 75.301	Proposed airflow reduciton, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-84-111-C	49 FR 26161	Empire Energy Corp	30 CFR 75.326	Use of low-level continuous carbon monoxide monitoring devices in belt lines used for intake airways considered acceptable alternate method. Granted with conditions.
M-84-125-C	49 FR 22574	Ash Coal Co	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-84-134-C	49 FR 23259	Old Ben Coal Co	30 CFR 75.1700	Petitioner's proposal to plug and mine through oil and gas wells with specified precautions considered acceptable alternate method. Granted with conditions.
M-84-140-C	49 FR 35052	H.A.T. Coal Co	30 CFR 75.301	Proposed airflow reduciton, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-84-157-C	49 FR 31176	Consolidation Coal Co	30 CFR 75.1101-8	Use of a single line of automatic sprinklers for fire protection at main and secondary belt conveyor drives considered acceptable alternate method. Granted with conditions.
M-84-168-C	49 FR 31182	Twin Oak Coal Co	30 CFR 75.301	Proposed airflow reduciton, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-84-176-C	49 FR 40501	Peabody Coal Co	30 CFR 75.503	Use of a bracket on the battery with a set screw-type arrangement to lock it down on the mine's scoops considered acceptable alternate method. Granted with conditions.
M-84-181-C	49 FR 40505	U.S. Steel Mining Co., Inc	30 CFR 75.1700	Petitioner's proposal to plug and mine through oil and gas wells with specified precautions considered acceptable alternate method. Granted with conditions.
M-84-186-C	49 FR 40503	Quarto Mining Co	30 CFR 75.506(d) and 75.1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-187-C	49 FR 40500	Peabody Coal Co	30 CFR 75.305	Due to adverse roof conditons, establishing air measurement stations at specific locations considered acceptable alternate method. Granted with conditions.
M-84-188-C	49 FR 31175	Chestnut Coal Co	30 CFR 75.301	Proposed airflow reduciton, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-84-191-C	49 FR 31178	Kitt Energy Corp	30 CFR 75.1700	Petitioner's proposal to plug and mine through oil and gas wells with specified precautions considered acceptable alternate method. Granted with conditions.
M-84-213-C	49 FR 46823	Canada Coal Co., Inc	30 CFR 75.305	Due to a rock fall, establishing of an air measurement station considered acceptable alternate method. Granted with conditions.
M-84-228-C	49 FR 46827	Thac West Mining, Inc	30 CFR 75.1710	Use of cabs or canopies in specified mining heights on the mine's electric face equipment would result in a diminution of safety. Granted with conditions.
M-84-229-C	49 FR 46826	Mid-Continent Resources, Inc	30 CFR 75.1303	Use of the nonpermissible explosives and detonating devices without evacuating personnel outby the portals considered acceptable alternate method. Granted with conditions.
M-84-252-C	49 FR 50123	C.R. and C. Coal Co	30 CFR 75.301	Proposed airflow reduciton, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

[FR Doc. 85-19641 Filed 8-15-85; 8:45 am]
BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupation Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letter dated February 27, 1985, from Commissioner Dominic N. Fornaro, Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to (1) 29 CFR 1910.19, 29 CFR 1910.1000, 29 CFR 1910.1047 and Appendices A,B,C, and D, pertaining to Ethylene Oxide as published in the **Federal Register** of June 22, 1984, (49 FR 25795–25802), and (2) 29 CFR 1910.1043 pertaining to corrections to Cotton Dust Standard as published in the **Federal Register** of October 10, 1980 (49 FR 67339–67340). The standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after public hearings on October 12, 1984. These standards were effective February 25, 1985.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, PA 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, Room N-3476, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law, including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective August 16, 1985.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Philadelphia, Pennsylvania, this 26th day of June, 1985.

Linda R. Anku,

Regional Administrator.

[FR Doc. 85–19842 Filed 8–15–85; 8:45 am]

BILLING CODE 4510-29-M

Pension and Welfare Benefit Programs Office

[Application No. D–5333]

Withdrawal of the Proposed Exemption Involving the Muesco, Inc. Profit Sharing Plan, (the Plan) Located in Houston, Texas

In the Federal Register dated October 26, 1984 (49 FR 43129), the Department of Labor (the Department) published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of the Plan.

By letter of July 17, 1985, the Department informed the applicant's representative that because of the failure of the Plan's independent fiduciary to respond to comments raised with respect to the proposed exemption or to schedule a conference with respect to the proposed exemption, the Department had made a final decision to withdraw the notice of pendency of the proposed exemption from the Federal Register.

Accordingly, this application is hereby withdrawn from consideration by the Department of Labor.

Signed at Washington D.C., this 9th day of August 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–19863 Filed 8–15–85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85–134; Exemption Application No. D–5793 et al.]

Grant of Individual Exemptions; Ironworkers Local No. 4, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Ironworkers Local No. 6 Pension Fund (the Plan) Located in Buffalo, New York

[Prohibited Transaction Exemption 85–134; Exemption Application No. D–5793]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase by the Plan of an unimproved parcel of real property from the Ironloc No. 6 Corporation, a party in interest with respect to the Plan, provided that the terms of such transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 21, 1985 at 50 FR 20962.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Atkinson Trading Co., Inc. Pension Plan (the Plan) Located in Gallup, New Mexico

[Prohibited Transaction Exemption 85–135; Exemption Application No. D–5805]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease beyond June 30, 1984 of certain real property by the Plan to Atkinson Trading Co., Inc. the employer, provided the terms and conditions of such lease are as favorable to the Plan as those obtainable in a similar transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1985 at 50 FR 24066.

Effective Date: July 26, 1984

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Consultants in Cardiology, P.A. Pension Plan (the Plan) Located in Millburn, New Jersey

[Prohibited Transaction Exemption 85–136; Exemption Application No. 5897]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the loan (the

Loan) of $100,000 by the Plan to Consultants in Cardiology, P.A. (the Employer); and (2) the guarantee of repayment of the Loan by Drs. Donald Rothfeld and Roland Werres,the shareholders of the Employer; provided that the terms of the Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 18, 1985 at 50 FR 25349.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Profit Sharing Plan and Trust of Laboratory Medicine and Pathology, Inc. (the Plan) Located in Radford, Virginia

[Prohibited Transaction Exemption 85–137; Exemption Application No. D–5963]

Exemption

The sanctions rersulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase by the Plan of a certain parcel of unimproved real property (the Property) located in Montgomery County, Virginia from Antonio and Enrique Perez, the sons of Antonio and Ana Perez, the owners of the Plan sponsor and the Plan participants, for $25,000 cash, provided that such price is no more than the fair market value of the Property at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 2, 1985 at 50 FR 27385.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemption are supplemental to and not in derogation of, any other provisions of the act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington DC, this 8th day of August, 1985.

Elliott I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–19662 Filed 8–15–85; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission—new, revision, or extension: New.

2. The title of the information collection: Generic Letter to Collect Operator Licensing Examination Data.

3. The form number if applicable: N/A.

4. How often the collection is required: Annually.

5. Who will be required or asked to report: All power reactor licensees and applicants for an operating license.

6. An estimate of the number of responses: 88 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 176 annually.

8. Section 3504(h). Pub. L. 96–511 does not apply.

9. Abstract: This generic letter to nuclear power facilities requests the estimated number of candidates and dates for operator licensing examinations. This letter also requests the anticipated dates for requalification examinations. This information is requested for four fiscal years, commencing with the present. This information would be used to plan budgets and resources in regards to operator examination scheduling in order to meet the needs of the nuclear industry.

ADDRESSES: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 396–7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 12th day of August, 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–19617 Filed 8–15–85; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Licensee Event Report System.

3. The form number if applicable: NRC Forms 366, 366A, and 366B.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Holders of Operating Licenses for Commercial Nuclear Power Plants.

6. An estimate of the number of responses: 2,360.

7. An estimate of the total number of hours needed to complete the requirement or request: 118,000.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC collects reports of operational events at commercial nuclear power plants in order to incorporate lessons of that experience in the licensing process, and to feed back the lessons of that experience to the nuclear industry.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 9th day of August, 1985

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–19818 Filed 8–15–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–254, License No. DPR–29, EA 84–123]

Commonwealth Edison Co. (Quad Cities Plant, Unit 1); Order Imposing Civil Monetary Penalty

I

Commonwealth Edison Company (the "licensee") is the holder of Operating License No. DPR–29 (the license") issued by the Nuclear Regulatory Commission (the "Commission"). The license authorizes the licensee to operate the Quad Cities Plant, Unit 1, in accordance with the conditions specified therein. The license was issued on December 12, 1972.

II

A special inspection of the licensee's activities was conducted during the period October 25—November 4, 1984. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with Commission requirements and the conditions of its license. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated December 12, 1984. The Notice states the nature of the violation, the requirements of the Commission regulations or license conditions that were violated, and the amount of civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty with a letter dated February 15, 1985.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and arguments regarding rescission or mitigation contained therein, as set forth in the Appendix to this Order, the Director Office of Inspection and Enforcement, has determined that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1984, as amended, 42 U.S.C. 2282, Pub. L. 96–295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thrity days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, washington, D.C. 20555 and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thrity days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II above; and

(b) Whether on the basis of such violation this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 9th day of August, 1985.

James M. Taylor

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The licensee's February 15, 1985 response to the December 12, 1984 Notice of Violation and Proposed Imposition of Civil Penalty for the Commonwealth Edison Company (CE) Quad Cities Plant, Unit 1 admits the facts occurred as stated in the Notice but denies that a violation occurred. The violation involved a Unit 1 licensed operator who left his assigned position unattended, with the Unit operating at full power, for a period of approximately 15 minutes while he responded to an event that was in progress on the adjacent Unit. During this period, there was no licensed operator at the controls of Unit 1 except when the Unit 1 operator responded to an annuciator on his own Unit. The licensee's arguments and the NRC's evaluation are as follows:

Restatement of the Violation

10 CFR 50.54(k) states, "An operator or senior operator licensed pursuant to Part 55 of this chapter shall be present at the controls at all times during the operation of the facility."

Technical Specification 6.2.A. requires that detailed written procedures be prepared, approved, and adhered to for operating activities involving nuclear safety.

Station Procedure QAP–300–2, Conduct of Shift Operations, paragraph 9, delineates responsibilities of all operating department personnel licensed by the Nuclear Regulatory Commission as *Rreactor Operators* and performing the duties of a reactor operator. Section 9b of responsibilities and duties states, "b. To be present at the controls of his assigned shift position at all times."

The duty is further clarified by a notation in the procedure which states in part:

Paragraph k of 10 CFR Part 50 states "An operator or senior licensed pursuant to part 55 of this chapter shall be present at the controls at all times during the operation of the facility." In order to comply with this paragraph, an operator will be considered to be at the reactor controls if he (she) is physically within the operation area in front of the unit panels.

Contrary to the above, on October 25, 1984, the Unit 1 operator licensed pursuant to Part 55 was not present at the controls at all times during the operation of the facility. The Unit 1 operator left his assigned unit unattended with the Unit at full power, for a period of approximately 15 minutes, while responding to event occurring on the adjacent Unit. Specifically, the Unit 1 operator left his position to assist the Unit 2 operator in bypassing the Rod Worth Minimizer and then manually initiated the High Pressure Coolant Injection system on Unit 2. During this period there was no operator at the controls physically within the operating area in front of the unit panels of Unit 1, except when he responsided to an annunciator on his Unit.

This is a Severity Level III violation (Supplement I). (Civil Penalty—$50,000).

Summary of Licensee's Response

The licensee argues that the "at-the-controls" language of § 50.54(k) is vague and subject to differing interpretations. CE notes that the Notice of Violation cited Quad Cities Station Procedure QAP–300–2 as a basis for the proposed violation (see restatement of violation for QAP–300–2 language) but contends that additional language in this procedure is relevant.

The licensee contends that the Unit 1 operator was always in a position to view the Unit 1 visual alarms and was always within audible range of the Unit 1 annunciators during the fifteen minute period in question. It is the licensee's position that the distinct locations of Unit 1 and 2 annunciators, at opposite ends of the control room, precluded the possibility of confusing a Unit 2 annunciator with a Unit 1 annunciator. The licensee also contends that the conduct of the Unit 1 operator showed professionalism that was consistent with the letter and spirit of 10 CFR 50.54(k). Commonwealth Edison argues that a citation in this case would be inconsistent with the NRC's position in the past. The licensee states that procedures similar to the procedure in question have been in effect since at least 1977 and have always been understood as not precluding the operator of a stable unit from assisting an operator experiencing difficulty at another unit as long as his actions did not interfere with his ability to respond to potential safety events at his unit. The licensee further argues that Quad Cities operators have done so in the past and were never criticized by the NRC for such conduct.

CE requests that if the Notice of Violation is not withdrawn for the reasons stated above, the penalty should be mitigated because CE has instituted certain short-term and long-term corrective measures. In the short-term the corporate office directed that operating personnel shall not leave the immediate area of the control room for which they have responsibility. Long-term action included amending the Quad Cities Conduct of Operations Directive and Station Procedures. It is CE's position that since the company's response to the NRC's concerns was timely and consistent with the situation, and CE conducted an immediate investigation of the incident and issued comprehensive guidance addressing the concerns, a basis was formed for mitigation of the civil penalties if the violation is not withdrawn.

NRC Evaluation

The NRC staff has carefully reviewed the licensee's response and has concluded that the licensee did not provide any information that was not already considered in determining the significance of the violation and the appropriate civil penalty. While the licensee maintains that the operator acted in a professional manner in assisting the Unit 2 operator, the facts are unchanged that the operator left the controls of a reactor operating at 100 percent power for a period of time without proper relief or authorization.

The NRC does agree with the licensee's statement that the operator was within audible range of the Unit 1 annunciators under some circumstances. There were, however, at least two circumstances which could have interfered with proper attention to Unit 1 operation or problems if they had occurred. First, the operator had his back to the Unit 1 panels during the time he was working on a Unit 2 system and was presumably concentrating on Unit 2 concerns. Second, if a scram at Unit 2 had occurred, with the many alarms associated with such a scram, the NRC believes there is a real probability that the Unit 1 operator would not have been able to differentiate a Unit 2 annunciator from a Unit 1 annunciator.

With the respect to the licensee's argument that the NRC is changing its interpretation of 10 CFR 50.54(k), it has *always* been the NRC position that the operator must be present at the controls at all times during operation of the facility except in an emergency when action is immediately needed to protect the public health and safety (10 CFR 50.54(x)). Section 50.54(k) is clear on this point. Regulatory Guide 1.114, Paragraph B, provides further amplification, if any is needed, as to what 10 CFR 50.54(k) requires. It states:

> In order for the operator at the controls of a nuclear power plant to be able to carry out these and other responsibilities in a timely fashion, he must give his *attention* to the condition of the plant *at all times* [emphasis added].

It is the responsibility of the licensee to ensure that station procedures are consistent with the regulations. The licensee's procedures state "... an operator will be considered to be at the reactor controls if he (she) is physically within the operating area in front of the unit panels. An operator is not at the controls when behind the panels or out of the control room." Although this procedure describes some examples of not being at the controls, it does not cover all of the possible situations such as the one at issue here. To read it as describing all of the impermissible situations would be inconsistent with the regulations and inappropriate.

The NRC was also concerned that the off-going Shift Control Room Engineer (SCRE), by leaving the control room to go and talk to the Shift Engineer, did not exercise adequate control over the control room operators during the transient. Because the SCRE was out of the control room he was (1) unaware that Unit 1 was unattended and (2) the Unit 1 operator did not receive proper relief or authorization when leaving the controls.

NRC inspectors have always taken the position that when a reactor operator was away from the control panels, another licensed operator must monitor the status of the "unattended" unit except in an emergency as described above. This was not such an emergency. To the extent that Quad Cities personnel have previously acted in a fashion similar to that which is the subject of the violation at issue, such actions were improper. The NRC was unaware of such past practice and, had it been aware, would not have condoned it.

With respect to mitigation of the civil penalty, the NRC staff can find no basis for such action. As stated in the NRC's December 12, 1984 letter to CE, this violation is indicative of poor performance in the area of adherence to operating procedures which define responsibilities for the control of control room operations. Your corrective actions for previous violations in this area should have precluded this latest event. In fact, the latest event, in conjunction with prior events, could be used as basis for escalation of the base civil penalty. However, since your corrective actions were prompt and extensive, no increase in the civil penalty was proposed.

NRC Conclusion

For the above reasons, the NRC staff believes that the violation occurred as stated. As previously stated, although the NRC staff does recognize that the licensee has taken corrective actions, mitigation of the proposed penalty is not warranted. Thus, the violation occurred as stated and a civil penalty in the amount of $50,000 is appropriate.

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[Docket No. 30-20982, License No. 37-23370-01, EA 85-01]

North American Inspection, Inc.; Order Imposing Civil Monetary Penalties

I

North American Inspection, Inc., 3906 Main Street, P.O. Box 88, Laurys Station, Pennsylvania (the "licensee"), is the holder of License No. 37-23370-01 (the "license") issued by the Nuclear Regulatory Commission (the "NRC") which authorizes the licensee to possess and use radioactive materials in accordance with conditions specified therein. License No. 37-23370-01 was issued on April 5, 1984.

II

A safety inspection of the licensee's activities under the license was conducted on October 18-19, 1984 at the licensee's facility in Laurys Station, Pennsylvania, and at a radiography field site in Bethlehem, Pennsylvania. Another NRC safety inspection was conducted on January 10, 1985 at the licensee's facility in Laurys Station, Pennsylvania, and on January 16, 1985 at a radiography field site in Lebanon, New Jersey. As a result of the inspections, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated February 6, 1985. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalties. Responses dated February 21 and 26, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalties were received from the licensee. In addition, at the request of the NRC, a financial statement was provided by the licensee by letter dated April 10, 1985.

III

Upon consideration of the licensee's reponses and the statements of fact, explanations, and arguments for remission or mitigation of the proposed civil penalties contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Five Thousand Dollars ($5,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties; and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 7th day of August 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

In the licensee's February 21 and 26, 1985 and April 10, 1985 responses to the Notice of Violation and Proposed Imposition of Civil Penalties dated February 6, 1985, the licensee denies some of the violations and admits others; requests reduction of the severity level of the violations; and requests that the penalties be waived, claiming that imposition of the civil penalties will be a financial burden to the company. Provided below are (1) a restatement of each violation; (2) a summary of the licensee's response regarding each violation; and (3) the NRC's evaluation of the licensee's response.

Restatement of Violation A

10 CFR 34.31(a) requires that no individual act as a radiographer until that individual can demonstrate his understanding of the instructions which he has received regarding the subjects covered in Appendix A of Part 34 and has successfully completed a written test and a field examination on the subjects covered.

Contrary to the above, on October 18, 1984, at a field site in Bethlehem, Pennsylvania, individuals were permitted to act as radiographers prior to demonstrating their understanding of the subjects outlined in Appendix A of Part 34, prior to passing a written test, and prior to demonstrating their competence to use the licensee's radiographic exposure devices, survey instruments, and related handling tools.

Summary of Licensee's Response Regarding Violation A

The licensee concedes that, for Individual B, management did not produce documents to support Individual B's radiographer status at the time of the inspection.

NRC Evaluation of Licensee's Response Regarding Violation A

At the time of the inspection, the licensee's President (who was also the acting Radiation Safety Officer), the licensee's Operations Manager, and Individual A, who is the husband of Individual B, each told the NRC inspectors that Individual B was only qualified to be a Radiographer's Assistant. At the time of the inspection and at the enforcement conference on November 14, 1984, the licensee did not provide any information to indicate that Individual B had completed all training requirements of the license and 10 CFR Part 34. A recent inspection conducted on June 13 and 14, 1985 at NAI revealed that Individual B had completed the radiographer's examination in April 1984, but did not compete the required practical factors test until February 1985. Since Individual B performed as a radiographer without having satisfied

the required program for qualification, the violation remains as stated.

The fact that Individual C also performed as a radiographer without completing the required training was not disputed in the licensee's response. Therefore, the violation remains as proposed.

Restatement of Violation B

10 CFR 34.41 requires the radiographer or radiographer's assistant to maintain direct surveillance of the operation to protect against unauthorized entry into a high radiation area.

Contrary to the above, on October 18, 1984, at a field site in Bethlehem, Pennsylvania, a high radiation area existed in a building adjacent to the area where radiographic operations were being performed, and direct surveillance was not maintained to protect against unauthorized entry into the high radiation area.

Restatement of Violation C.1

10 CFR 20.105(b) requires that radiation levels in unrestricted areas be limited so that an individual who was continuously present in the area could not receive a dose in excess of 2 millirems in any hour or 100 millirems in any seven consecutive days.

Contrary to the above, on October 18, 1984, at a field site in Bethlehem, Pennsylvania, radiation levels of 200 millirems per hour existed in an unrestricted area of an adjacent building when radiography was being conducted using a cobalt-60 source. Access to this area was not controlled for the purposes of radiation protection.

Summary of Licensee's Response Regarding Violations B and C.1

The licensee's response states that as a service company they were subordinate to Bethlehem Steel Corporation's Radiation Safety Program. The licensee's consultant states that the NRC inspector did not identify the area correctly, access was limited and posted, and surveillance was maintained. The consultant further states, ". . . where the readings were taken by the inspector in the adjacent bay was at an overhead roll-up position and was the worst exposure condition for the day . . ."

NRC Evaluation of Licensee's Response Regarding Violations B and C.1

The licensee's contention that it is subordinate to Bethlehem Steel's Radiation Safety Program is incorrect, and demonstrates an inadequate understanding of the responsibilities of an NRC licensee. The inspectors observed that licensee personnel did not survey and control access to the storage bay adjacent to the end of the building where radiography was taking place, and in this area, the NRC inspector measured a radiation dose rate of 200 millirems per hour. Although the licensee contends that Bethlehem was aware of its radiography activity and restricted personnel from being in the area, Bethlehem Steel representatives informed the inspectors that their Fire Marshall was required to enter this area periodically during his routine tours of the Bethlehem facility. The licensee acknowledges that it did not maintain direct surveillance of this area. Therefore, the violations remain as proposed.

Restatement of Violation C.2

10 CFR 20.105(b) requires that radiation levels in unrestricted areas be limited so that an individual who was continuously present in the area could not receive a dose in excess of 2 millirems in any hour or 100 millirems in any seven consecutive days.

Contrary to the above, on October 4, 1984, radiation levels in excess of the limits set forth in 10 CFR 20.105(b) existed in a restaurant which is located 44 feet from the licensee's facility in Laurys Station, Pennsylvania in which radiography took place.

Summary of Licensee's Response Regarding Violation C.2

The licensee contends that the radiation levels outside the licensee's facility in Laurys Station, Pennsylvania never exceeded the limits of 10 CFR 20.105.

NRC Evaluation of Licensee's Response Regarding Violation C.2

The licensee's survey report for October 4, 1984, which was examined at the time of the NRC inspection, indicated that a radiation level of two millirems per hour existed at 200 feet from the source in all directions. While the licensee now contends that this recorded survey is in error, the licensee does not provide the reasons why the record of the survey was incorrect, and did not provide any information in their response regarding the actual radiation levels measured by the radiographer in the unrestricted area in the vicinity of the Laurys Station facility. This would include the areas outside the unshielded bay doors on the south side of the facility, and all other areas to which access is not controlled by the licensee. Therefore, the violation remains as proposed.

Restatement of Violation D

10 CFR 34.29(b) requires that each entrance used for personnel access to the high radiation area in a permanent radiographic installation have both visible and audible warning signals to warn of the presence of radiation. The visible signal is required to be actuated by radiation whenever the source is exposed and the audible signal is required to be actuated when an attempt is made to enter the installation while the source is exposed.

Contrary to the above, as of October 19, 1984, the permanent radiographic installation located in the Laurys Station, Pennsylvania facility did not have the required warning signals installed.

Summary of Licensee's Response Regarding Violation D

The licensee contends that the facility located in Laurys Station, Pennsylvania is not a permanent radiographic installation.

NRC Evaluation of Licensee's Response Regarding Violation D

10 CFR 34.29 defines a permanent radiographic installation as ". . . a shielded installation or structure designed or intended for radiography and in which radiography is regularly performed."

In their response, the licensee indicates that the Laurys Station facility is a shielded structure and also indicates that two different radiography firms have performed radiography there since at least 1979. Further, information supplied by the licensee to the NRC indicated that this facility was used regularly between April and October 1, 1984. Since the facility is shielded, apparently intended for radiography, and radiography was regularly performed there, the Laurys Station facility met the definition of a "permanent radiographic installation" as defined by 10 CFR 34.2(h). Therefore, since the required warning signals were not installed, a violation of 10 CFR 34.29 remains as proposed.

Restatement of Violations E.1, E.2, and E.3

10 CFR 71.5(a) requires that licensed material being transported comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170–189.

1. 49 CFR 172.403(c) requires that packages containing radioactive material with radiation levels in excess of 50 millirem per hour at the package surface or 1 millirem per hour at three

feet be affixed with a Radioactive Yellow III label.

Contrary to the above, on October 19, 1984, a radioactive exposure device exhibiting radiation levels of 60 millirem per hour at the surface and 1–2 millirem per hour at three feet was transported without a Radioactive Yellow III label affixed to the device.

2. 49 CFR 172.504(a) requires that a vehicle carrying packages bearing the Radioactive Yellow III level be placarded on each end and each side with "Radioactive" placards.

Contrary to the above, on October 19, 1984, a radioactive exposure device that should have been labeled with a Radioactive Yellow III label was transported in a vehicle which was not properly placarded.

3. 49 CFR 173.448(a) requires each shipment of radioactive material to be secured in order to prevent shifting during normal transportation conditions.

Contrary to the above, on October 18, 1984, a radioactive exposure device was transported without being secured to the vehicle in order to prevent shifting during normal transportation.

Summary of Licensee's Response Regarding Violations E.1, E.2, and E.3

The licensee states ". . . management personnel disclosed that there exists a lack of understanding in part of this procedure," referring to 49 CFR 171 through 177. The licensee contends that the NRC inspector did not witness the use of the truck, but obtained hearsay information from a licensee employee and contends that the materials were in storage. The licensee also contends that the procedure in its manual specifies compliance with DOT regulations.

NRC Evaluation of Licensee's Response Regarding Violations E.1, E.2, and E.3

At the time of the inspection, the inspectors were informed by licensee personnel that the vehicle they had inspected was used the previous day to transport licensed material and that the truck was in the same condition when the inspectors observed it as it was the previous day.

The NRC utilizes observations by the inspectors, statements by licensee personnel, records maintained by the licensee and measurements made by inspectors as the bases for determining compliance with NRC regulations and license conditions. In this instance, NRC measurement of the radiation levels from the package in question and statements from licensee employees concerning the conditions of transport of the package provided the bases for the violation. Further, regarding the licensee's procedures which specify compliance with DOT regulations, the failure to implement these procedures and comply with the appropriate regulations were the bases for the violation. Therefore, the violations remain as proposed.

Restatement of Violation F

10 CFR 34.23(b) requires that a physical radiation survey be made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device must be surveyed and, if the device has a source guide tube, the survey must include the entire length of the guide tube.

Contrary to the above, on October 18, 1984, a radiographer's assistant did not perform a survey that was adequate to determine that the sealed source had returned to its shielded position in that the survey did not include the entire circumference of the exposure device and the entire length of the guide tube.

Summary of Licensee's Response Regarding Violation F

The licensee acknowledges the violation, but contends the requirement's intent was fulfilled. The licensee urges these requirements be administered and implemented with discretion.

NRC Evaluation of Licensee's Response Regarding Violation F

The meaning of the requirement is clear; namely, that a complete survey of the entire circumference of the exposure device and the entire length of the guide tube must be made after each radiographic exposure. The inspectors observed that neither Individual B nor Individual C performed these surveys as required. Therefore, the violation remains as proposed. The inspector noted that Individual A, the only qualified individual performing radiography the day of the inspection, did survey the guide tube.

Restatement of Violation G

10 CFR 34.27 requires that a utilization log be maintained indicating the plant or site where the radiation expsoure devices are used.

Contrary to the above, on October 19, 1984, a cobalt-60 exposure device was used at a field site in Bethlehem, Pennsylvania, but such use was not indicated in the utilization log.

Summary of Licensee's Response Regarding Violation G

The licensee contends that this was a misunderstanding by the NRC inspector because he thought the "check-out and storage form" was being used as a utilization log. The licensee states that the storage utilization log would have been completed when the radiographer's shift was completed.

NRC Evaluation of Licensee's Response Regarding Violation G

10 CFR 34.27 requires that a log be maintained current where devices are used. The purpose of the log is defeated if entries are made when use of the device is complete and the device is returned to the storage location. The storage utilization log is intended to record the location of the exposure devices when they are in the field. The NRC inspector verified, while reviewing the form, that a device had been removed from storage and the storage utilization log was not completed to reflect this removal. Therefore, the violation remains as proposed.

Restatement of Violation H

10 CFR 20.408(b) requires that a report be sent to the NRC of an individual's exposure to radiation when he terminates employment.

Contary to the above, since April 5, 1984, four individuals terminated employment, but as of October 19, 1984, termination reports were not provided to the NRC.

Summary of Licensee's Response Regarding Violation H

The licensee acknowledges this violation.

NRC Evaluation of Licensee's Response Regarding Violation H

No evaluation required.

Restatement of Violation I

Condition 17 of License No. 37–23370–01 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in the application dated January 31, 1984, and letters dated March 22, 1984 and May 4, 1984.

Item 5.3.3 on page 5.2 of the application dated January 31, 1948, requires that a person hired with radiographer credentials from another company complete a practical performance examination before being assigned to perform radiography.

Contrary to the above, as of January 11, 1985, a person hired with radiographer credentials from another company did not complete a practical performance examination before being assigned to perform radiography.

Summary of Licensee's Response Regarding Violation I

The licensee does not deny this violation.

NRC Evaluation of Licensee's Response Regarding Violation I

No evaluation required.

Restatement of Violation J

10 CFR 34.22(a) requires that, during radiography operations, the sealed source assembly be secured in the shielded position each time the source is returned to that position.

Contrary to the above, on January 16, 1985, a radiographer performed a number of radiographic exposures and cranked the source from the end of the guide tube to the shielded position in the exposure device each time, but did not secure the source between each exposure.

Summary of Licensee's Response Regarding Violation J

The licensee stated ". . . we do not consider 'secure' to having the same meaning as 'lock'. Otherwise, why would both words be used in paragraph 10 CFR 34.22(a) & (b) if one word meant the same as both." The licensee stated that the radiographer properly surveyed his camera to assure that the source was in the secured position and the camera was under his constant surveillance at all times.

NRC Evaluation of Licensee's Response Regarding Violation J

The requirement in 10 CFR 34.22 to secure the source assembly in the shielded position each time means that the licensee must do more than merely retract the source to the shielded position and keep it under observation. Some positive action is required to prevent the inadvertent release of the source from the shielded position if the device or crank is moved. For most radiographic sources this may indeed mean using the locking device on the source. But the requirement to secure it after each exposure is separate from the requirement to keep the source.locked if it is not under direct surveillance. In this case the device was not locked or otherwise positively secured between exposures and the violation remains as proposed.

Summary of Licensee's Response to Proposed Imposition of Civil Penalities

The licensee maintains that the civil penalty should be withdrawn due to its financial condition. It claims to have been in business only a short time (approximately 16 monhts) and to have been undercapitalized from the outset. At the request of NRC Region I, the licensee submitted financial statements in support of this position indicating that it has a substantial accumulated debt. It further maintains that this civil penalty, when coupled with current tax liabilities and operating costs, will force the company to file for protection under the Federal Bankruptcy Laws, Chapter 11.

NRC Evaluation of Licensee's Response to Proposed Imposition of Civil Penalities

The Enforcement Policy makes clear that is not the intent of a civil penalty to put a licensee out of business or adversely affect a licensee's ability to safely conduct licensed operations. The assessment of a civil penalty should take into account a licensee's ability to pay. However, after the staff analysis of the financial statement submitted with the licensee's letter of April 10, 1985, the NRC is not convinced that civil penalties of the magnitude proposed ($5,000) will put this licensee out of business. Although it is conceded that the company may have a cash flow problem, the licensee's net sales for the last nine months of CY 1984 should enable the licensee to pay the civil penalty and to safely conduct licensed operations. This is especially true since much of the company's debt is owed to either its majority or minority stockholders.

NRC Conclusion

The licensee's response does not justify withdrawal of any of the violations, or reducing the severity level of the violations. Accordingly, civil penalities of Five Thousand Dollars are imposed.

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[Docket No. 50–387]

Pennsylvania Power and Light Co. et al.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part requests by the licensee for amendments to Facility Operating License NPF–14, issued to the Pennsylvania Power and Light Company, for operation of the Susquehanna Steam Electric Station, Unit 1 located in Luzerne County, Pennsylvania. The Notice of Consideration of Issuance of Amendments was published in the Federal Register on December 31, 1984 and January 23, 1985 (49 FR 252) and (50 FR 3051) respectively.

The amendments as proposed by the licensee, would change the Unit 1 Technical Specifications as follows: (1) Page 3/4 3–55/Table 4.3.6–1: Changing Channel Calibration surveillance intervals to be less conservative than the present requirement. Experience has shown that electrical equipment will tend to drift or fail and as a result surveillance requirements were established. The frequency of surveillance has been based on the difficulty in conducting the surveillance test and the consequence of equipment failure. The staff has defined the required surveillance intervals on a generic basis in the standard Technical Specifications. The licensee has proposed substantial departures from the requirements in the standard Technical Specifications, but has not provided an acceptable basis for this departure from the staff's judgment. Therefore, the staff has denied the licensee's request. (2) Page 3/4 3–8: Incorporating a quarterly surveillance interval for the channel functional test for the Scram Discharge Volume (SDV) float switches. The staff has denied this request and requires the licensee to test on a monthly basis. The objective of the SDV modification was to provide reliable instrumentation which can accommodate a single random failure or potential common-cause failures for all postulated SDV filling events. The basis for this denial is the same as that stated above. Additionally, experience has shown that problems have been experienced in the past with these SDV float switches and these problems have been discovered as a result of the surveillance tests. Therefore, the staff finds the monthly testing interval to serve a useful purpose. (3) Page 3/4 5–5/ Insert A: Including a new surveillance requirement to test the LOCA/false LOCA logic in support of two unit operation. The staff has denied this proposal due to the potentially long time lapses between testing of the LOCA/ false LOCA logic. The staff finds that the licensee's proposal does not provide good assurance that the LOCA/false LOCA logic will be surveilled on an appropriate schedule. The staff understands that the licensee has undertaken a study to determine more accurately an appropriate surveillance requirement based on this study. It is the staff's understanding that when this study is completed the licensee will submit it to the staff along with a request for new surveillance requirement for review and approval. (4) Page 3/4 7–9 through 3/4 7–30/Snubbers:

Revising the snubber Technical Specifications by placing the inspection schedule of snubbers on a system basis rather than a plant or unit basis. The staff has denied this request based on the fact that the intent of visual inspection is to survey all snubbers in a plant and to locate those which may suffer from an identified failure mode, which may not always be system specific. Operating experience has indicated that snubber inoperabilities are not generally related to the systems on which they are installed. Such inoperabilities are usually caused by either:

1. An isolated incident such as installation error,
2. A problem related to the snubber design, or
3. A general environment problem, such as high temperature or radiation. None of the above causes are system unique. The staff believes that the visual inspections should be used to identify the type of inoperable snubbers, and reinspection intervals should be based on the number of failures within the identified type instead of the specific system to which the original inoperable snubber was attached. All other portions of the proposed amendments were granted on April 12, 1985 Amendment 36 and April 23, 1985 Amendment 41. Notice of issuance of Amendment Nos. 36 and 41 were published on April 23, 1985 (50 FR 16024) and May 21, 1985 (50 FR 21002).

By September 18, 1985, the licensee may demand a hearing with respect to the denials described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC.

For further details with respect to this action see (1) the application for amendments dated May 18, 1984 as supplemented on September 20, 1984, March 11 and 13, 1985 and April 4, 1985; and application dated November 13, 1985, (2) the Commission's letters to the licensee dated April 12, 1985 and April 23, 1985 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland, this 5th day of August 1985.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 85-19621 Filed 8-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-267]

Public Service Company of Colorado (Fort St. Vrain Nuclear Generating Plant); Order Modifying License Confirming Licensee Commitments on Post-TMI Related Issues

I

Public Service Company of Colorado (PSC or the licensee) is the holder of Facility Operating License No. DPR-34 which authorizes the operation of the Fort St. Vrain Nuclear Generating Station (the facility) at a steady-state power level not in excess of 842 megawatts thermal. The facility is a high temperature gas-cooled reactor (HTGR) located at the licensee's site in Weld County, Colorado.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

PSC responded to Generic Letter 82-33 by letter dated April 14, 1983. By letters dated July 5, 1983, March 9, 1984, and April 30, 1985, PSC clarified some dates as a result of negotiations with the NRC staff. In these submittals, PSC made commitments to: (1) Complete all of the basic requirements prior to returning to operation following the fourth refueling outage (currently scheduled to begin in January 1987); (2) perform a verification and validation effort to evaluate the completed activities; and (3) resolve any problems detected during the verification and validation effort by the fifth refueling outage. The attached Table summarizing PSC's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by PSC.

PSC's commitments include (1) dates for providing required submittals to the NRC, and (2) dates for implementing certain requirements.

The NRC staff reviewed PSC's April 14, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee clarified certain dates by letters dated July 5, 1983, March 9, 1984, and April 30, 1985. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide the required upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of PSC's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that facility operating license No. DPR–34 is modified to provide that the licensee shall: Implement the specific items described in the Attachment to this order in the manner described in PSC's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, NRR, for good cause shown.

V

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Regional Administrator, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. A copy should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 2nd day of August, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	1a. Complete 11/13/84.
	1b. SPDS fully operational and operators trained.	1b. 4th refueling.[1]

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737—Continued

Title	Requirement	Licensee's completion schedule (or status)
2. Detailed Control Room Design Review (DCRDR).	2a. Submit a program plan to the NRC.	2a. Complete 7/13/83.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	2b. Complete 4/ 80/85.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	3a. Complete 2/ 28/85.
	3b. Implement (installation or upgrade) requirements.	3b. 4th refueling.[1]
4. Upgrade Emergency Operating Procedures (EOPs).	4a. Submit a Procedures Generation Package to the NRC.	4a. October 31, 1985.
	4b. Implement the upgrade EOP.	4b. April 30, 1987.
5. Emergency Response Facilities.	5a. Technical Support Center.	5a. Complete as of April 14, 1983.[2]
	5b. Operational Support Center.	5b. Complete as of April 14, 1984.[2]
	5c. Emergency Operations Facility.	5c. Complete as of April 14, 1983.[2]

[1] Currently scheduled for January 1987.
[2] Operational except for data systems as described in licensee submittal dated April 14, 1983, fully functional at fourth refueling currently scheduled for January 1987.

[FR Doc. 85–19622 Filed 8–15–85; 8:45 am]
BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on September 4 and 5, 1985, Room 1046, 1717 H Street NW., Washington, DC.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss General Electric proprietary information.

The agenda for subject meeting shall be as follows:

Wednesday, September 4, 1985—8:30 a.m. until the conclusion of business
Thursday, September 5, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will review Regulatory Guide 1.99, Revision 2, and other related concerns, and discuss the status of the NDT of piping program and the HSST program. The Subcommittee will also review steam generator girth weld cracks.

Oral statement may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff members as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634/1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one of two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 13, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–19625 Filed 8–15–85; 8:45 am]
BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Reactor Operations; Meeting

The ACRS Subcommittee on Reactor Operations will hold a meeting on September 9, 1985, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, September 9, 1985—1:00 p.m. until the conclusion of business

The Subcommittee will discuss recent operating occurrences.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 12, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-19628 Filed 8-15-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: Hydropower Assessment Steering Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- River assessment study
- Anadromous fish section—Hydro Assessment Study
- Discussion of Issue Papers
- FERC update
- Other
- Public comment

Status: Open

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee.

DATE: August 13, 1985. 10:00 a.m.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-19553 Filed 8-15-85; 8:45 am]

BILLING CODE 0000-00-M

Production Planning Advisory Committee; Notice

AGENCY: Production Planning Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Discussion of productivity analysis issue paper
- Discussion of production investment policies issue paper
- Discussion of resident fish substitutions issue paper
- Other
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee.

DATE: August 14, 1985. 9:30 a.m.

ADDRESS: The meeting will be held in the Council's meeting room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-19554 Filed 8-15-85; 8:45 am]

BILLING CODE 0000-00-M

Resident Fish Substitutions Advisory Committee; Meeting

AGENCY: Resident Fish Substitutions Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Discussion of resident fish substitutions issue paper
- Discussion of productivity analysis issue paper
- Discussion of production investment issue
- Resident fish productivity test area report
- Other
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby annouces a forthcoming meeting of its Resident Fish Substitutions Advisory Committee.

DATE: August 20, 1985. 9:30 a.m.

ADDRESS: The meeting will be held at the Ramada Inn, Room 200, Spokane International Airport, Spokane, Washington.

FOR FURTHER INFORMATION CONTACT: Marty Montgomery, 208-334-2843.

Edward Sheets,

Executive Director.

[FR Doc. 85-19555 Filed 8-15-85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14670; File No. 812-6147]

The Life Insurance Company of Virginia et al.; Exemptive Application

August 9, 1985.

Notice is hereby given that The Life Insurance Company of Virginia (the "Company"), Life of Virginia Separate Account I ("Account"), and Life of Virginia Security Sales, Ltd. ("Security Sales"), referred to collectively herein as "Applicants", 6610 West Broad Street, Richmond, Virginia 23230, filed an application on July 1, 1985, for an order of the Commission, pursuant to sections 11(a) and 11(c) of the Act, approving the terms of certain offers of exchange in connection with certain flexible premium variable life insurance contracts. All interested persons are referred to the application on file with the Commission for a statement of Applicant's representations, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant statutory provisions.

The Company is a stock life insurance company organized under the laws of the Commonwealth of Virginia and is admitted to do business in 47 states and the District of Columbia. The Company is the sponsor-depositor for the Account. The Account, a segregated investment "separate account" of the Company, is registered under the Act as a unit investment trust. The Account meets all conditions set forth in section (a) of Rule 6e–3(T) under the Act and was established for the purpose of funding flexible premium variable life insurance contracts ("the Contracts"), as defined in paragraph (c)(1) of Rule 6e–3(T). Security Sales, a registered broker-dealer, is the principal underwriter of the Contracts. Net payments made on the Contracts are allocated to the only investment subdivision of the Account, Separate Account I, which invests exclusively in shares of the Common Stock Portfolio (currently, the single operating portfolio) of the Life of Virginia Series Fund, Inc. ("the Fund"). The Fund is registered under the Act as an open-end, diversified management investment company and is incorporated under the laws of the Commonwealth of Virginia as a series type company with four classes of capital stock (each consisting of one portfolio). Applicants received an order from the Commission pursuant to section 6(c) of the Act granting exemptions from the provisions of sections 2(a)(35), 26(a), and 27(c)(2) of the Act, and Rule 6e–3(T) thereunder, in connection with the issuance of these existing flexible premium variable life insurance contracts ("Commonwealth One contracts"). (Order, Investment Company Act Rel. No. 14475, April 17, 1985; Notice, Investment Company Act Rel. No. 14428, March 19, 1985.)

Applicants propose to permit contractowners of Commonwealth One contracts to exchange their existing contracts for a new version of the contract ("Commonwealth Two contracts"). Under Commonwealth Two contracts, net premiums may be allocated among the Common Stock, and the newly created Bond, Money Market, and Total Return investment subdivisions of the Account. each of these subdivisions will invest exclusively in newly created separate portfolios of the Fund. Applicants represent that the exchange is designed to allow existing contractowners the opportunity to gain access to additional investment options and that the exchange will have no other economic impact on existing contractowners.

Applicants state that upon approval of Commonwealth Two contracts in a particular state, the Company will cease to offer Commonwealth One contracts in that state. Thereafter, they represent, each contractowner of a Commonwealth One contract in that state will be given written notice of a 90 day right to replace the Commonwealth One contract with a Commonwealth Two contract of equal specified amount and cash value as of the date of exchange. Applicants represent that this will be the functional equivalent of an exchange at "net asset value." Applicants further represent that: (1) The new contract issued will have the same contract and issue date as the existing contract, (2) the contractowner will not pay any additional sales load or administrative charges, (3) the death benefit and cash value will be carried over, (4) the cost of insurance charge deducted under the new contract will be calculated using the same assumptions that would have been used under the existing contract, and (5) there will be no tax consequences to a contractowner as a result of the exchange.

Thus, Applicants assert that the proposed exchange offer is equitable to all contractowners and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly, Applicants request Commission approval under sections 11(a) and 11(c) of the Act to the extent necessary to permit contractowners to exchange Commonwealth One contracts for Commonwealth Two contracts.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19598 Filed 8–15–85; 8:45 am]

BILLING CODE 8010-01-M

[34-22305; SR-CBOE-85-25]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Position Limits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1935, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Note.—Additions are italicized; deletions are bracketed.

Position Limits

Rule 24.4.

(a) In determining compliance with Rule 4.11, option contracts on a market index shall be subject to a contract limitation fixed by the Board, which shall not be larger than [the equivalent of a $300 million position] *15,000 contracts in all series of such market index with the same expiration date on the same side of the market.* [For this purpose a position shall be determined by the product of the current index value times the index multiplier times the number of contracts on the same side of the market.]

(b) No change.

(c) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change modifies the index option position and exercise limit rule in two respects. First, the limit is set in contracts rather than using a dollar value, to eliminate the possibility that positions and exercise limits would

be reduced by the fortuity of increased value of a market index. Because the current dollar value comfortably allows in excess of 15,000 contracts given the dollar value of the currently traded Exchange index options, 15,000 contracts has been established as the Board's fixed contract limit since trading on index options has commenced, and appears an appropriate number to place in this rule.

Second, the proposed rule change sets the limit for contracts per expiration cycle, rather than in the aggregate, for a given class of index options. This modification is intended to expand the position limits for index options, while being cognizant of the Commission staff's continuing interest in not currently expanding the permissible size of index options positions which can expire on a given expiration cycle. The Exchange understands that the Commission staff continues to have interest in retaining the limit of size of positions for a given expiration cycle due to the potential concerns that certain arbitrage strategies between index options and component stocks might have substantial effects on the closing component stock prices and index values on expiration Fridays, due to unwinding of stock basket positions simultaneously with the close of trading. *See, e.g.,* SR–CBOE–84–05, a rule change proposing a higher aggregate position limit in broad based index options, on which the Commission has deferred action due to the foregoing concern. As the Commission staff is aware, this Exchange has assumed a substantial role in studying the effects of stock basket arbitrage activity, and in attempting to address the phenomenon, including initiating a proposal for additional disclosure language in the Options Clearing Corporation's, Disclosure Document. The Exchange also continues to work with the Commission in developing other remedies.

While the Commission and market participants continue to search for solutions for the described phenomenon, this new proposed rule change maintains the status quo on the position limits on a given expiration. At the same time, this proposed rule change will permit market participants to increase their overall activity in index options. The beneficial consequences of this increased activity will, in particular, be the increase in depth and liquidity of further term index options, since market participants will have separate position limits for each expiration cycle. Moreover, this rule change will thereby encourage useful options trading strategies such as time spreading.

A review of trade volume data in OEX for representative dates in March, April and May 1985 discloses that approximately 90 percent of the trade volume has been in the first and second month options. In April and May 1985, the volume in the first month options has been in the range of 55 to 77 percent of total volume. One reason for this concentration is the inadequacy of the current 15,000 contract position limit. Because of the large size of positions in the near-term options, the current position limit does not permit either institutions or market-makers with large positions to increase materially the size of their positions in further term options.

In OEX, the large size customers and institutional orders are responded to by a relatively small group of market-makers who are, as a consequence, consistently at or near the existing position limit. In some instances, it has been necessary to grant market-makers from this group exemptions from existing position limits. Also, some market-makers have violated the position limit rule. There were, for example, six position limit violations in OEX in April and five in March.

The Exchange believes that the foregoing information discloses a need for position limit relief in index options. First, market-makers who are providing size markets for large size OEX public and institutional orders are constrained by the existing position limits from performing their function of providing depth and liquidity as well as they could with higher limits. Second, establishing separate position limits for each expiration cycle will encourage market participants who maintain large size positions to increase activity in the futher term options, thereby increasing the depth and liquidity of those options. Third, the Exchange understands that many institutions are unable to use OEX effectively because the current position limits are inadequate to serve as a useful hedge for their large equity portfolios.

The proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and, in particular, section 6(b)(5) thereof, in that the rule change will increase market efficiency and market depth and liquidity.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 9, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 9, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19599 Filed 8–15–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 12, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Cigna Corporation
$4.10 Series "C" Cum. Conv. Exchange Preferred $1.00 Par Value (File No. 7–8538)
First Nationwide Financial Corporation
Common Stock, $0.10 Par Value (File No. 7–8539)
Health America Corporation
Common Stock, $0.01 Par Value (File No. 7–8540)
SunTrust Banks, Inc.
Common Stock, $2.50 Par Value (File No. 7–8541)
International Thoroughbred Breeders, Inc.
Common Stock, $0.10 Par Value (File No. 7–8542)
Unicorp American Corporation (New)
Common Stock, $0.01 Par Value (File No. 7–8543)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 3, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19646 Filed 8–15–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 12, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Atlantic Richfield Company
Common Stock, $2.50 Par Value (File No. 7–8535)
Atlantic Richfield Company
$3.00 Cumulative Convertible Preferred Stock (File No. 7–8544)
Atlantic Richfield Company
$2.80 Cumulative Convertible Stock (File No. 7–8545)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 3, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19647 Filed 8–15–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 12, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Floating Point Systems, Inc.
Common Stock, No Par Value (7–8536)
Masco Corporation
Common Stock, $1.00 Par Value (7–8537)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 3, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc 85–19648 Filed 8–15–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22312; File No. SR–Amex–83–27; Amdt. Nos. 2 and 3]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Relating To Exchange Equities Specialist Performance and Allocation and Preallocation Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby files for Commission approval of its equities

specialist performance and allocation and reallocation procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In November 1981, the Commission staff ("Staff") recommended that the Exchange file its evaluation, allocation and reallocation procedures with the Commission for its approval.[1]

In October, 1983, Amex submitted for Commission approval its evaluation, allocation and reallocation procedures.[2] On February 7, 1985, Amex submitted Amendment No. 2 to these procedures which provided for three principal changes to its original filing (SR–Amex–83–27).[3] These changes are: (1) The addition of a new section on procedural safeguards, including an expansion of a section on due process rights with respect to reallocation of securities; (2) an addition to the list of circumstances under which the Allocation Committee may be convened to reallocate securities; (3) a change in the category designation of the four questions in the specialist evaluation questionnaire as well as the addition of new questions on the specialists' dealer function.

Each of the additional provisions included in Amendment No. 2 are set forth below in subsections (1), (2), and (3).[4]

1. *Procedural Safeguards.—Throughout the performance evaluation process, specialist units are made aware of their ratings, and are offered the opportunity to meet with the Performance Committee and its subcommittees. As discussed below, under certain circumstances the Committee may require members to appear before it, pursuant to its authority under Article II, Section 4(b) of the Exchange Constitution. It is also important to note that under the provisions of Article V, Section 1(a) of the Constitution, a member may have the assistance of legal or other counsel in any hearing or investigation conducted by the Performance Committee or its subcommittees.*

—Individual Performance Situations

Each time an individual performance situation is reviewed by a subcommittee, or a full Committee where a matter has been referred to it, the specialist unit involved is notified of the review and is given access to all material to be reviewed.

Members of a specialist unit may, if they wish, meet with the subcommittee or Committee to offer explanations, justifications, or to raise mitigating factors relating to their performance. If the instance under review is especially complex or potentially serious, or if a specialist unit so requests, the Performance Committee may meet with members of the specialist unit more than once.

After an individual performance situation is rated, the rating and the Committee's reasoning is discussed with the specialist unit by a member of the Committee.

—Quarterly Performance Ratings

Final quarterly Performance Committee ratings are reviewed with specialist units after they are conferred, as follows: In the case of units receiving ratings ranging from 1 to 3, at the unit's request; in the case of 4 or 5 rating, which precludes the unit from eligibility for allocations, the unit is requested to meet with a subcommittee of the Performance Committee and Trading Analysis to review the reasons for the rating and discuss measures for improvement. In addition, where a unit which receives a 4 or 5 rating has received poor ratings in previous quarters, follow-up meetings are held as needed during the succeeding quarter to closely monitor remedial measures being taken by the unit.

—Questionnaire

Although the responses to the questionnaire are kept in confidence, Trading Analysis furnishes any explanatory comments received to the units on an anonymous basis. These are furnished in summary form if necessary to protect confidentiality. If a specialist unit requests it, and a responding broker has elected the box which shows his willingness to discuss his comments further, Trading Analysis will arrange a meeting so that the broker may discuss the comments in person with the unit.

—Performance Reallocation

In any case in which the Performance Committee determines that it will consider recommending reallocation of a security or securities as a result of poor performance, it first provides formal notice and an opportunity to be heard to the specialist unit.

Notice to the specialist unit is in writing and contains the specific grounds to be considered as the basis for reallocation. If a specialist unit does not wish to appear, it must sign a waiver of the right to a hearing.

The members of the specialist unit have an opportunity to be heard on the specific grounds to be considered by the Performance Committee, and a written record of any such hearing is maintained. Following any such proceeding, the Performance Committee informs the members of the unit in writing of its decision and reasons. The decision of a majority of the members of the Committee is fianl, subject to the right of appeal to the Board of Governors, pursuant to Article II, Section 2 of the Exchange Constitution.

—Emergency Reallocations Based on Financial or Operating Considerations

In the case where the Chairman or President of the Exchange, in consultation with all available Floor Governors, determines that a specialist unit cannot be permitted to continue to specialize in one or more of its specialty securities with safety to investors, its creditors, or other members due to its financial or operating condition, the Chairman or President may, on written notice to the specialist unit, request the Allocations Committee to convene to reallocate one or more of the securities on an emergency basis. If time and circumstances permit, the specialist unit will be given an opportunity to appear before the Allocations Committee

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[1] See letter from Douglas Scarff, Director, Division of Market Regulation, to Robert Birnbaum, President, Amex, dated November 10, 1981.

[2] These procedures were published for notice and comment in November 1983. See Securities Exchange Act Release No. 20353 (November 4, 1983) 48 FR 51992, (November 15, 1983).

[3] Amex submitted Amendment No. 1 on April 23, 1984. The Division of Market Regulation determined not to publish this amendment for notice and comment but instead to await further clarifying amendments. These clarifications were submitted under Amendment No. 2 to this filing and are being published for notice herein.

[4] In addition to the proposed changes described above, under the "Appeals" section of the filing the Exchange has made the following change: "[P]ursuant to the Board's delegation of authority appeals from either committee are heard *de novo* by the Board's Executive Committee." (The two committees referred to are the Performance Committee and the Allocations Committee).

However, if due to the nature of the emergency and time constraints involved, it is not feasible to provide a prior hearing, the Allocations Committee may proceed with the reallocation and the specialist unit will be granted a full hearing by the Allocations Committee as soon as possible after the reallocation. Any determination by the Allocations Committee may be appealed by the specialist unit to the Board of Governors, pursuant to Article II, Section 2 of the Exchange Constitution. In such an appeal proceeding the specialist will be granted a de novo hearing.

If the conditions which led to the reallocation are corrected or no longer exist, either the Chairman or President in consultation with the Floor Governors, or the specialist unit may request the Allocations Committee to reconvene to consider whether the security or securities subject to the reallocation should be restored to the unit. The Allocations Committee is obligated to consider the equities of all parties involved, and it may, in its discretion, restore the security or securities to the unit or allow the original reallocation to remain undisturbed.

The procedures set forth above in no way abrogate or limit the authority of the Exchange to take action in accordance with the provisons of Article V, Section 3 and Article IV, Section 5 of the Exchange Constitution.

2. *Reallocation Procedures.* An Allocations Committee may be convened to reallocate securities under the following circumstances:

(1) The Performance Committee recommends reallocation on the basis of a failure of a specialist unit to maintain satisfactory performance standerds in a particular instance; as a result of consistently poor performance ratings; or a significant change within a unit, such as by merger or dissolution;

(2) A specialist unit requests to be relieved of a particular security;

(3) Cancellation of a specialist's registration due to disciplinary action;

(4) *A specialist unit has been determined to be in such financial or operating condition that it cannot be permitted to continue to specialize in one or more of its specialty securities with safety to investors, its creditors or other members.*

A new Committee would be convened for each reallocation and is structured in the manner described above for allocations of new issues.[5]

3. *Specialist Unit Evaluation Questionnaire.* The second major evaluation tool used by the Exchange is the Specialist Unit Evaluation Questionnaire for Equities ("Questionnaire").[6] On a quarterly basis, the Exchange distributes the Questionnaire to floor brokers and registered traders, who are requested to evaluate the performance of specialist units based on their day-to-day experience. Members use a 1 to 5 rating system (1=outstanding; 2=good; 3=average; 4=below average; 5=weak) in their evaluations and are instructed to use a rating of 6 (no opinion) when, due to insufficient contact with a particular unit, they are unable to render a judgment as to its capabilities.

Floor members evaluate every specialist unit in each of four categories: *Quality of markets maintained,* [fiduciary] *Professional* responsibility, [specialist unit staff,] communication function, and auction market maintenance *and staffing.* The Questionnaire sets forth an explanation of specialist duties and responsibilities in each category, highlighting particular factors members should consider in responding to each question.

The identity of any specific comments provided by responding members is strictly confidential, although no survey is accepted unless it is signed, for validation purposes. Members assigning a 4 or 5 rating to a unit in any category are required to furnish written comments in support of the rating.

All questions are given equal weight, and a specialist unit's over-all rating is based on the combined evaluations of the responding brokers on all four questions by compiling an average of all responses submitted. This numerical rating (1 to 5) is provided to the Allocation Committee. As is the case with a unit which receives a 4 or 5 Performance Committee rating, a unit which receives a 4 or 5 rating on the Questionnaire in any quarter is precluded from applying for any allocation until its quarterly performance rating has improved. The Performance Committee will consider recommending reallocation where a unit receives a 4 or 5 Questionnaire rating coupled with a similar Performance Committee rating over two consecutive quarters and lesser remedial efforts to improve performance have failed.

In May, 1985, Amex submitted Amendment No. 3 to SR–Amex–83–27 to amend the "Allocations Procedure" section of its filing. The purpose of this amendment is to describe the Amex pilot program which permits a newly listed company to choose the specialist in its stock from a list of seven specialist units selected by the Exchange's Allocation Committee. The Commission recently approved the extension of this pilot program for an additional six month period until December 31, 1985.

Amendment No. 3 reads as follows:

In July 1984, the Exchange instituted on a one year pilot basis a new "modified" procedure which expands a company's participation in the selection of its specialist. (*See* File No. SR–Amex–84–9 and Order Approving Proposed Rule Change, Securities Exchange Act Release No. 21062 (June 18, 1984), 49 FR 25726 (July 22, 1984). Under the new modified procedure, if the company chooses to participate, of all responses submitted. This numerical rating (1 to 5) is provided to the Allocation Committee. As is the case with a unit which receives a 4 or 5 Performance Committee rating, a unit which receives a 4 or 5 rating on the Questionnaire in any quarter is precluded from applying for any allocation until its quarterly performance rating has improved. The Performance Committee will consider recommending reallocation where a unit receives a 4 or 5 Questionnaire rating coupled with a similar Performance Committee rating over two consecutive quarters and lesser remedial efforts to improve performance have failed.

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[5] The full "Reallocation Procedures" provision was included in Securities Exchange Act Release No. 20353, 48 FR 51992 (November 15, 1983).

[6] A copy of the specialist evaluation questionnaire was included in the filing as Exhibit 3. Copies of the Questionnaire can be obtained in the Commission's Public Reference Room or from the American Stock Exchange.

chooses to participate, the Allocations Committee selects a list of seven specialist units based on the same performance-related criteria it uses for every allocation, and the company selects its specialist form that list. A company remains with its initial specialist for at least 120 days. After that time, but during the first 12 months after listing, the company may request that the stock be reallocated should it become dissatisfied with its specialist. This is the case whether or not a company has participated in the selection process. The company is expected to furnish an explanation of the basis for its dissatisfaction, and if after counseling the company and the specialist unit such a change were still desired, the Exchange would reallocate the stock within 30 days. In any such reallocation, the Exchange would follow the limited participation allocation procedure. Should a company so desire, the Allocations Committee may also select a specialist unit without any company participation. A company may invoke the reallocation request once during the year period following its listing. The modified procedure has been available only to those companies which complete the listing process during the pilot period. The pilot procedure was scheduled to terminate on July 1, 1985; the Commission has extended the pilot program until December 31, 1985. *See* Securities Exchange Act Release No. 22185, June 28, 1985, 50 FR 27872 (July 7, 1985). The Exchange intends to make available to companies listing on or after July 1, 1985, this modified allocations procedure. A company will therefore have three available options: (1) Allocation by the Allocations Committee without any company input, (2) limited participation enabling a company to eliminate from the Allocations Committee's further consideration up to three specialist units from a list of ten units selected by the Committee, or (3) "issuer choice" participation enabling a company to select its specialist unit from a list of seven eligible units selected by the Allocations Committee.

(b) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the Exchange's procedures are designed to promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange's procedures encourage specialists to compete with each other for the allocation of new issues and the retention of those securities in which they are currently registered. The proposed rule change rewards superior performance and thus promotes and enhances competition among Exchange specialists.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should be submitted by September 9, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19644 Filed 8-15-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22317; File No. SR-Amex-85-25]

Self-Regulatory Organizations; Proposed Rule Changes by American Stock Exchange, Inc. Relating to the Exchange's Policy Concerning Specialists' Contacts With Companies Under the Exchange's Equities Allocation Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 9, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is filing its policy regarding specialists' contacts with prospect companies under the Exchange's equities allocation procedure which permits a newly-listed company to participate in the choice of its specialist unit.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

[1] In July, 1984, the Exchange instituted on a one year pilot basis procedures to expand a company's participation in the selection of its specialist. *See* Securities Exchange Act Release No. 21082 (June 18, 1984), 49 FR 25126 (June 22, 1984) (SR-Amex-84-9). The Commission recently approved the extension of this pilot program for an additional six month period until December 31, 1985. *See* Securities Exchange Act Release No. 22185, (June 28, 1985), 50 FR 27872, (July 8, 1985) (SR-Amex-85-24).

most significant aspects of such statement.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In order to reduce the likelihood of specialists developing inappropriate or prohibited relationships with issuers, the Exchange has filed with the Commission certain procedures applicable to all equity specialists. Under these procedures, specialists are required to notify the Exchange's Marketing Department, in advance, of any contacts they wish to initiate with unlisted companies, as well as any significant unplanned discussions with prospective companies promptly after the contact. Once a prospect company has determined to list on the Exchange, specialist units are prohibited from making any direct or indirect independent contact with the company for the purpose of influencing its decision in the choice of a specialist. The prohibition includes the company's investment bankers or other advisors, or any other person in a position to influence the company's management. Once the Exchange's Committee on Equities Allocations ("Allocations Committee") has selected the seven specialists units to be considered by the new listing candidates, those units are prohibited from initiating any direct or indirect communications with company management, the company's investment banker, or any person in a position to influence the company. If the company wishes to interview individual specialist units, the Exchange will arrange for such interviews.

To assure compliance with these restrictions, the Exchange will refer any violations of this policy to the Exchange's Committee on Specialist and Registered Trader Performance ("Performance Committee"), which may declare a unit ineligible for consideration by the Allocations Committee for the specific allocation in question or future allocations for a specified period of time. The Performance Committee also may refer the unit to the Exchange's Compliance Department for appropriate disciplinary action.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 6, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 12, 1985.

[FR Doc. 85–19645 Filed 8–15–85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM–8/872]

Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on September 26, 1985 at 9:30 a.m. in the first floor Theater, Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, D.C.

Study Group 4 deals with matters relating to systems of radiocommunications for the fixed service using satellites. The purpose of the meeting will be to discuss preparations for the international meeting of Study Group 4 in September/October, 1985.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520, telephone (202) 632–2592.

Dated: August 5, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85–19630 Filed 8–15–85; 8:45 am]

BILLING CODE 4710-07-M

[CM–8/873]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 4, 1985 at 9:30 a.m. in Room 1205, Department of State, 2201 C Street, NW., Washington, D.C.

The purpose of this meeting is to consider contributions to October

meetings of CCITT Study Group XI Working Parties.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, D.C.; telephone (202) 632–5832. All attendees must use the C Street entrance to the building.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

August 8, 1985.

[FR Doc. 85–19628 Filed 8–15–85; 8:45 am]

BILLING CODE 4710-07-M

[CM–8/874]

Study Group 8 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 8 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet September 4, 1985 in Conference Room 4234–36–38, Federal Aviation Administration Building, 800 Independence Avenue, SW., Washington, D.C. The meeting will begin at 9:30 a.m.

Study Group 8 studies matters relating to systems of radiocommunications and radiodetermination for the mobile services. The purpose of the meeting is to review preparations for the special international meeting of Study Group 8 in July 1986.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to the office of Mr. Richard E. Shrum, State Department, Washington, D.C. 20520; telephone (202) 632–2592.

Dated: August 12, 1985.

William H. Jahn,

Acting Director, Office of International Radio Communications.

[FR Doc. 85–19629 Filed 8–15–85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended August 9, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further procedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
8–8–85	43336	Midway Airlines (1984), Inc., c/o Joel Stephen Burton, Ginsburg, Feldman and Bress, Suite 900, 1250 Connecticut Avenue, NW., Washington, DC 20036 Application of Midway Airlines (1984), Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing scheduled interstate and overseas air transportation of persons, property and mail. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 5, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85–19602 Filed 8–15–85; 8:45 am]

BILLING CODE 4910-62-M

[Docket Nos. 38418, 40201, 38570, 38978, 38720, 39783, 38883, 38184, 38571, 41061]

Employee Protection Program Investigations; Continuing Assignments

The Department's Order 85–8–27, issued August 9, 1985, lifted the stay on procedural steps in the Employee Protection Program Investigations (EPP cases) which had been imposed by the CAB orders 84–8–85 and 84–11–54. Accordingly, these investigations will be reactivated and the procedural steps resumed.

The Chief Judge's order of November 22, 1983, consolidated the *Air New England* investigation in Docket 40201 and the *Mackey International Airlines* investigation in Docket 39783 into a single proceeding, and designated the four EPP cases to be heard in the first round of hearings. Pursuant to the Department's order, the processing of the initial four cases will be continued to permit the Department to consider contemporaneously a representative cross-section of the cases. The transfer of functions from CAB to DOT will not affect the prior assignment of cases to particular Administrative Law Judges.

Accordingly, this notice is to advise that the following proceedings continue to be assigned to the Administrative Law Judges indicated:

1. *Air New England/Mackey International Employee Protection Program Investigation,* Docket 40201, to Chief Administrative Law Judge Elias C. Rodriguez.

2. *Braniff International Airways Employee Protection Program Investigation,* Docket 38978, to Administrative Law Judge Ronnie A. Yoder.

3. *Pan American World Airways Employee Protection Program Investigation,* Docket 38883, to Administrative Law Judge John M. Vittone.

4. *United Air Lines Employee Protection Program Investigation,* Docket 38571, to Administrative Law Judge William A. Kane, Jr.

The remaining EPP investigations instituted by CAB will be deferred in

accordance with Order 85–8–27 until after the four lead cases are decided.

1Entered this 12th day of August, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85–19603 Filed 8–15–85; 8:45 am]

BILLING CODE 4910-62-M

Fitness Determination of Resort Commuter, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination; Order 85–8–31, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Resort Commuter, Inc. is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

Responses

All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Special Authorities Division, Department of Transportation, 400 7th SW., Washington, DC 20590 (202) 755–3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–8–31 is available from the Documentary Services Division, Room 4107, 400 7th Street SW., Washington, DC 20590. Persons outside the metropolitan area may send a postcard request for Order 85–8–31 to that address.

Dated: August 12, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–19604 Filed 8–15–85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Advisory Circular; Installation of Turbosuperchargers in Small Airplanes with Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft advisory circular (AC) availability and request for comments.

SUMMARY: This AC provides information and guidance concerning an acceptable means of showing compliance with § 23.909 of Part 23 of the Federal Aviation Regulations (FAR), for the installation of turbosuperchargers in small airplanes with reciprocating engines.

DATE: Commenters must identify File AC 23.909–X; Subject: Installation of Turbosuperchargers in Small Airplanes with Reciprocating Engines, and comments must be received on or before October 15, 1985.

ADDRESSES: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard F. Yotter, Aerospace Engineer, Regulations and Policy Office (ACE–110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374–6941, or FTS 758–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE–110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

Exhaust gas-driven turbosuperchargers are available for use with reciprocating engines to increase takeoff and maximum continuous power available at sea level and altitude, to maintain maximum continuous or cruise power at altitudes, and to provide a source of air to pressurize the cabin of a small airplane. Section 23.909 contains requirements for approval of turbosuperchargers and refers to design standards required in Part 33. The applicant is expected to substantiate, through suitable engineering investigations and/or tests, that the turbosupercharged engine installation complies with the applicable airworthiness requirement for the airplane in which the installation is made. The turbosupercharger should be approved as part of the engine, and compliance shown with the applicable portions of Part 33.

Issued in Kansas City, Missouri, August 5, 1985.

Don Jacobsen,

Acting Manager, Aircraft Certification Division.

[FR Doc. 85–19511 Filed 8–15–85; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket No. S–772]

Lykes Bros. Steamship Co., Inc.; Application To Provide Privilege Service to the Canary Islands in Conjunction With Its Existing Services on TR 13 and T/A 4

Lykes Bros. Steamship Co., Inc. (Lykes), by application dated August 1, 1985, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreement, Contract No. MA/MSB–451 in order to permit calls at the Canary Islands on a privilege basis in conjunction with its Trade Route No. 13 U.S. Gulf and South Atlantic/Mediterranean service and in conjunction with its Trade Area No. 4 Great Lakes/Mediterranean, India, Persian Gulf and Red Sea service.

Lykes states that this request is being made in order to permit Lykes to better serve certain exporters who are shipping mining equipment from the Great Lakes area to the Canary Islands under existing and proposed mining projects. In support of its request, Lykes notes that there is currently no regular U.S.-flag liner service to the Canary Islands from the U.S. Lykes intends to handle this cargo on its Trade Area No. 4 service from the Great Lakes during the Great Lakes shipping season. While the Lakes are closed, Lykes intends to move this cargo either via the Gulf or the South Atlantic on its Trade Route No. 13 service.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW, Washington DC 20590. Comments must

be received no later than 5:00 P.M. on August 30, 1985.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Dated: August 12, 1985.

Murray A Bloom,

Assistant Secretary.

[FR Doc. 85-19595 Filed 8-15-85; 8:45 am]

BILLING CODE 4910-81-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 159
Friday, August 16, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

1

FEDERAL HOME LOAN MORTGAGE CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 32827, Wednesday, August 14, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 1:00 p.m., Thursday, August 15, 1985.

PLACE: 1776 G Street, NW., Washington, DC, Conference Room 8–C.

STATUS: Closed.

CHANGE IN MEETING: 2:30 p.m.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, DC 20013, (202) 789–5097.

Date Sent to Federal Register: August 14, 1985.

Maud Mater,

Secretary.

[FR Doc. 85–19730 Filed 8–14–85; 2:54 pm]

BILLING CODE 6720-02-M

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federal register

Friday
August 16, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications To General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Kansas: KS84–4052	Aug. 25, 1984.
Michigan: MI84–5026	Dec. 21, 1984.
New Jersey: NJ85–3031	Aug. 2, 1985.
New York: NY85–3040	July 26, 1985.
Pennsylvania:	
PA82–3010	Mar. 15, 1982.
PA83–3051	Nov. 25, 1983.
PA84–3002	Feb. 10, 1984.
PA81–3091	Dec. 28, 1981.
PA82–3012	Mar. 5, 1982.
PA84–3003	Feb. 10, 1984.
PA85–3017	Apr. 5, 1985.
PA85–3030	June 21, 1985.
PA82–3011	Mar. 12, 1982.
PA82–3028	Sept. 10, 1982.
PA83–3052	Nov. 25, 1983.
PA84–3004	Feb. 17, 1984.
PA84–3042	Dec. 14, 1984.
PA84–3000	Jan. 13, 1984.
PA84–3037	Oct. 5, 1984.
Virginia: VA85–3020	Apr. 6, 1985.
Wisconsin: WI84–5028	Dec. 21, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Nebraska: NE83–4025 (NE85–4033).	Apr. 1, 1983.

Signed at Washington, DC, this 9th day of August 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510–27–M

DECISION #KS84-4052-MOD.#4 49FR33780-August 24, 1984 Sedgwick County, Kansas	Basic Hourly Rates	Fringe Benefits
ADD: METAL BUILDING ASSEMBLERS	$7.65	

DECISION NO. MI84-5026 - Mod. #7 (49 FR 49812 - December 21, 1984) Statewide, Michigan	Basic Hourly Rates	Fringe Benefits
Change: Carpenters: Zone 1	$16.69	$1.70 +22%

DECISION NO. NJ85-3031 MOD. NO. 1 (50 FR 31459 - August 2, 1985) Bergen, Essex, Hudson (excluding Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey	Basic Hourly Rates	Fringe Benefits
CHANGE: LABORERS: ZONE 18: (Heavy & Highway Construction): Group 1	$13.20	3.30
Group 2	13.40	3.30
Group 3	13.70	3.30
Group 4	13.90	3.30
Group 5	14.15	3.30
Group 6	15.70	3.30
(Free Air Tunnel Jobs): Group 1	15.95	3.30
Group 2	14.25	3.30
Group 3	14.10	3.30
Group 4	13.60	3.30

DECISION NO. NY85-3040 MOD. #1 (50 FR 30594, July 26, 1985) ALBANY, COLUMBIA, GREENE, FULTON, MONTGOMERY, RENSSELAER, SARATOGA, SCHENECTADY, SCHOHARIE, WASHINGTON	Basic Hourly Rates	Fringe Benefits
PLUMBERS & STEAMFITTERS: Area 1	16.72	3.15
Area 2	15.11	4.35
Area 3	17.20	3.10
Area 4	15.15	2.60

DECISION NO. PA82-3010 MOD. NO. 17 (47 FR 9684 - March 15, 1982) Clinton, Centre, Huntingdon, Fulton, & Mifflin Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE: Ironworkers: Huntingdon & Mifflin Counties	$17.515	4.75
Plumbers & Steamfitters: Centre, Mifflin & Fulton Counties	17.85	2.82
Clinton County	16.06	3.64
Sheet metal workers: Centre, Huntingdon, Fulton & Mifflin Counties	16.73	4.92

DECISION NO. PA83-3051 MOD. NO. 8 (48 FR 53264 - November 25, 1983) Franklin County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE: Ironworkers	17.515	4.75
Plumbers	17.85	2.82
Sheet metal workers	16.73	4.92

DECISION NO. PA84-3002 MOD. NO. 9 (49 FR 5295 - February 10, 1984) Adams & York Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE: Asbestos Workers	17.91	2.04
Ironworkers	17.515	4.75

DECISION NO.PA84-3002, MOD. NO. 9, Cont'd.	Basic Hourly Rates	Fringe Benefits
Laborers: General Laborers	$10.74	1.92
Operator of Jackhammer (etc.)	10.94	1.92
Wagon drill operator	11.04	1.92
Handling of all materials (etc.)	10.99	1.92
Laborers assisting tile (etc.)	10.79	1.92
Handling & using dynamite	11.07	1.92
Caisson work (top men)	10.99	1.92
Caisson work (bottom men)	11.19	1.92
Mixer man	11.14	1.92
Plumbers & Steamfitters	17.85	2.82
Sheet metal workers	16.73	4.92

DECISION NO. PA81-3091 MOD. NO. 13 (46 FR 62761 - December 28, 1981) Greene, Somerset, and Potter Counties, Pa.	Basic Hourly Rates	Fringe Benefits
CHANGE: Electricians: Potter County	13.06	3.97
[illegible]: Potter County		
Class 1	13.60	23%
Class 2	13.85	23%
Class [illegible]	14.40	23%

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA82-3012		
MOD. NO. 14		
(47 FR 9681 - March 5, 1982)		
Columbia, Montour, & Snyder County, Pennsylvania		
CHANGE:		
Asbestos Workers		
Snyder County	$17.91	2.04
Electricians:		
Montour County in its entirety; North of U. S. Highway #522 & Selinsgrove Twp. in Snyder County; and Remainder of Columbia County	15.65	3%+ 1.70
Ironworkers:		
Montour & Snyder Cos.	17.515	4.75
LABORERS:		
Columbia County		
Class 1	10.19	2.90
Class 2	10.59	2.90
Class 3	10.29	2.90
Class 4	10.44	2.90
Montour County		
Class 1	9.45	1.50
Class 2	9.60	1.50
Snyder County		
Group 1	10.70	1.68
Group 2	11.17	1.68
Group 3	10.10	1.68
Group 4	11.37	1.68
LINE CONSTRUCTION:		
Lineman, dynamite man, heavy equipment operator	16.04	1.25+ 3/8%
Winch truck operator	11.34	1.25+ 3/8%
Groundman	10.05	1.25+ 3/8%
Painters: Brush	12.55	2.70
" Tapers	13.21	2.70
" Structural Steel	14.21	2.70
Piledrivermen	15.97	7.76+d
Plasterers:		
Snyder & Montour Cos.	14.20	
Plumbers & Steamfitters	17.85	2.82
ADD:		
Laborers:		
Snyder County		
Fork Lift	12.12	1.71

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA84-3003		
Mod. No. 4		
(49 FR 5297 - February 10, 1984)		
Lancaster County, Pennsylvania		
CHANGE:		
Asbestos Workers	$17.91	2.04
Elevator Constructors	15.90	3.29+ a+b
Elevator Constructors Helpers	70%/30%	3.29+ a+b
Elevator Constructors Helpers (Prob.)	50%/50%	
Ironworkers:		
Western part of County	17.515	4.75
Laborers	10.74	1.92
DECISION NO. PA85-3017		
MOD. NO. 1		
(50 FR 13702 - April 5, 1985)		
Carbon, Monroe County including Tobyhanna Army Depot and Pike County, Pennsylvania		
CHANGE:		
Laborers:		
Zone 1		
Class 1	12.80	3.07
Class 2	12.95	3.07
Class 3	13.20	3.07
DECISION NO. PA85-3030		
MOD. NO. 1		
(50 FR 25852 - June 21, 1985)		
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania		
CHANGE:		
Ironworkers:		
Structural, Ornamental & Reinforcing	17.515	4.75
Piledrivermen	15.97	7.76+d
ADD:		
Laborers:		
Forklift Laborers	12.12	1.71

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA82-3011		
MOD. NO. 13		
(47 FR 10963 - March 12, 1982)		
Bradford, Tioga & Union Counties, Pennsylvania		
CHANGE:		
Ironworkers:		
Structural, Ornamental & Reinforcing		
Union County	$17.515	4.75
DECISION NO. PA82-3028		
MOD. # 12		
(47 FR 29972 - September 10, 1982)		
Elk, Forest, McKean, & Warren Counties, Pennsylvania		
CHANGE:		
Laborers:		
Group 1	13.60	23%
Group 2	13.85	23%
Group 3	14.40	23%
Group 4	13.60	23%
DECISION NO. PA83-3052		
MOD. NO. 5		
(48 FR 53264 - November 25, 1983)		
Lawrence & Mercer Counties, Pennsylvania		
CHANGE:		
Landscaping Laborers:		
Class 1	10.77	26%
Class 2	11.19	26%

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA84-3004		
MOD. NO. 7		
(49 FR 6209 - February 17, 1984)		
Armstrong, Beaver, Butler, Fayette, Indiana, Washington, Allegheny & Westmoreland Counties, Pa.		
CHANGE:		
LABORERS		
Landscaping		
Class 1	10.77	26%
Class 2	11.19	26%
DECISION NO. PA84-3042		
MOD. NO. 4		
(49 FR 48888 - December 14, 1984)		
Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford, & Venango Counties, Pennsylvania		
CHANGE:		
LABORERS		
Zone 3		
Class 1	13.60	23%
Class 2	13.85	23%
Class 3	14.40	23%
Landscaping		
Zone 1		
Class 1	10.77	26%
Class 2	11.19	26%
Sheet metal workers		
Zone 2	16.73	4.92
Roofers		
Zone 1	16.48	2.28

DECISION #PA84-3000 - Mod. #11 (49 FR 1851 - January 13, 1984) Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, & Westmoreland Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
OMIT: TRUCK DRIVERS HEAVY & HIGHWAY CONSTRUCTION ISSUED IN MOD.#10, 50 FR - 30586 - 7-26-85:		
ADD: TRUCK DRIVERS SCHEDULE ATTACHED TO INCLUDE ALL THIRTY THREE COUNTIES IN PENNSYLVANIA		
Pick-up Farm tractor (when pulling or hauling), Helpers, Warehouseman	$ 9.00[b]	19%
Single Axle Fork lift	11.00[b]	19%
Tri-axle Tandem axle & Tractor pulled Trailers	12.00[b]	19%
Specialty Vehicles Heavy off-the-road equipment (rated 45 tons and over), Lowboys	13.48[b]	19%

TRUCK DRIVERS (Cont'd.):	Basic Hourly Rates	Fringe Benefits
Partsmen will be paid on basis of vehicle utilized.		
Dual Purpose Truck (when load has been loaded or unloaded with truck winch loading, hauling & unloading) will be paid according to axle of truck.		
FOOTNOTE 'b':		
Travel, with vehicle, to and from project site and company's office or yard will be at the federally estsblished minimum wage rate of $ 3.35 per hour when a full eight hours of job site work is scheduled. (First trip in and last trip out daily, to a maximum of one hour each trip per day). Fringe benefit payments for this work will be based upon project site rate for similar vehicle.		

DECISION NO. PA84-3037 MOD. NO. 2 (49 FR 39436 - October 5, 1984) Lebanon, Lycoming, Northumberland, Schuylkill & Sullivan Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers		
Zone 1	$17.515	4.75
Laborers		
Zone 2		
Class 1	8.45	1.50
Class 2	8.60	1.50
Zone 5		
Class 1	12.87	2.90
Class 2	13.27	2.90
Class 3	13.07	2.90
Class 4	13.19	2.90
Zone 3		
Class 1	10.70	1.68
Class 2	11.17	1.68
Class 3	10.10	1.68
Class 4	11.37	1.71
Zone 4		
Class 1	9.45	1.20
Class 2	9.65	1.20
Zone 1		
Class 1	10.20	1.25
Class 2	10.30	1.25
Plumbers:		
Zone 3	17.85	2.82
Roofers:		
Zone 3		
Shingle, Slate, and Tile Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; clean-up debris	14.15	2.42
All Other work	6.25	2.42
Mechanic II (for all other work) - handles and transports all materials, tools and equipment; clean-up debris	20.12	3.83+e
Steamfitters	8.25	3.83+e
Zone 3	17.85	2.82
Sheet metal workers		
Zone 1	16.73	4.92

DECISION NO. PA84-3037 (cont'd):	Basic Hourly Rates	Fringe Benefits
ADD:		
Laborers:		
Zone 3		
Class 5		
Fork Lift Operator	12.12	1.71

DECISION #WI84-5028-MOD#3 (49 FR 49827-December 21, 1984) Bayfield & Douglas Counties Wisconsin	Basic Hourly Rates	Fringe Benefits
CHANGE:		
SHEET METAL WORKERS:		
Building	17.15	2.75
Residential	10.98	2.75

DECISION NO. VA85-3020-MOD. #3 (50 FR 13706-April 6, 1985) HENRICO AND THE Independent City of Richmond	Basic Hourly Rates	Fringe Benefits
CHANGE:		
SHEET METAL WORKERS (All)	14.50	2.32

	Basic Hourly Rates	Fringe Benefits

STATE: Nebraska COUNTY: Lancaster
DECISION NO.: NE85-4033 DATE: Date of Publication
Supersedes Decision No. NE83-4025, dated April 1, 1983, in 48 FR 14313
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS/MECHANICAL INSULATORS	$ 7.00	
BRICKLAYERS	10.06	
CARPENTERS	9.23	
CEMENT MASONS	8.18	
DRYWALL FINISHERS	9.72	.62
DRYWALL HANGERS	9.34	.61
ELECTRICIANS	10.42	3.80
GLAZIERS	14.27	1.58
INSULATORS (BATT & BLOWN)	6.51	
LABORERS:		
Unskilled	5.85	
Mason tenders	5.95	
LANDSCAPE LABORERS	4.00	
PAINTERS	$ 9.38	
PLASTERERS	12.78	
PLUMBERS & PIPEFITTERS	10.25	2.76
ROOFERS	8.99	
SHEET METAL WORKERS	9.38	2.13
SPRINKLER FITTERS	16.67	3.38
TILE SETTERS	12.70	
TRUCK DRIVERS	6.54	
POWER EQUIPMENT OPERATORS:		
Backhoes	9.28	
Concrete finishing machines	7.50	
Cranes	11.11	
Front end loaders	8.66	
Motor graders	10.36	
Rollers	8.50	
Tractors	6.75	
Scrapers	9.52	

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 85-19319 Filed 8-15-85; 8:45 am]
BILLING CODE 4510-27-C

federal register

Friday
August 16, 1985

Part III

Department of Education

Office of Educational Research and Improvement

34 CFR Parts 76, 768, 769, 770, 771, and 772

Library Services and Construction Act; State-Administered Program and Direct Grant Programs for Indian Tribes and Hawaiian Natives, Foreign Language Materials Acquisition, and Literacy; Final Regulations

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

34 CFR Parts 76, 768, 769, 770, 771, and 772

Library Services and Construction Act; State-Administered Program and Direct Grant Programs for Indian Tribes and Hawaiian Natives, Foreign Language Materials Acquisition, and Literacy

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is issuing final regulations governing the Library Services and Construction Act State-Administered Program and final regulations governing the direct grant programs under the Act. These regulations implement the Library Services and Construction Act (LSCA) Amendments of 1984 (Title I of Pub. L. 98–480, 98 Stat. 2236 (1984)). These regulations include information on the types of program activities the Secretary supports with funds appropriated under the LSCA and the selection criteria for evaluating applications under the direct grant programs.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Klassen, Chief, State and Public Library Services Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Brown Building, Room 613, Washington, DC 20202–1630. Telephone: (202) 254–9664.

SUPPLEMENTARY INFORMATION:

Background

The LSCA Amendments of 1984 (Title I of Pub. L. 98–480), enacted on October 17, 1984, authorize Federal assistance through fiscal year 1989 for Titles I through IV of the Act, and through fiscal year 1988 for Titles V and VI of the Act.

The Act was originally enacted as the Library Services Act in 1956 (Pub. L. 84–597, 70 Stat. 293). In 1964 authorization for spending on construction projects was added, to be followed in 1966 by authorization for spending on interlibrary cooperation projects and projects for the institutionalized and the physically handicapped. In 1970, major amendments were made to the Act including the enactment of provisions for strengthening State library administrative agencies and metropolitan libraries which serve as national or regional resource centers, the removal of matching requirements for interlibrary cooperation, and the streamlining of State plan procedures.

The 1977 amendments to the Act extended the Act for five years and, among other things, established the requirement that Federal funds spent to cover administrative costs be matched with State or other non-Federal funds, as well as providing for special assistance to major urban resource libraries under certain circumstances.

The Omnibus Budget Reconciliation Act (Pub. L. 97–35, 95 Stat. 357 (1981)) extended Title I (Library Services) and Title III (Interlibrary Cooperation) through fiscal year 1984. No funds were authorized to be appropriated for Title II (Public Library Construction) for fiscal years 1982, 1983 and 1984. No provision was made for Title IV (Older Readers Services). Therefore, the final regulations published March 30, 1984, included no provisions relating to Titles II and IV.

Summary of Major Amendments

(1) The Library Services and Construction Act State-Administered Program

(a) *Amendments to Title I (Library Services).* Sections 109, 110, and 111 of Pub. L. 98–480 contain amendments to Title I of the Act. Section 109, for example, expands the specific purposes of Title I grants. Thus, a State may use funds under Title I for the establishment, extension, and improvement of public library services to meet the needs of geographic areas or groups of persons in the State who lack those services or for whom current services are inadequate. Other types of projects a State may carry out with funds under Title I include: making library services accessible to individuals who, by reason of distance, residence, handicap, age, literacy level, or other disadvantage, are unable to receive the benefits of public library services regularly made available to the general public; assisting libraries to serve as community information referral centers; and assisting libraries in providing literacy programs for adults and school dropout in cooperation with other agencies and organizations, if appropriate. (See § 770.10.)

Section 110 of Pub. L. 98–480 amends section 102(a)(1) of the Act by adding that Federal funds under Title I may be used to assist libraries to serve as community centers for information and referral. A provision is also added, by section 111 of Pub. L. 98–480, to ratably reduce the level of fiscal effort which a State must maintain for State institutional library services, and for library services, to the physcially handicapped and institutionalized individuals, to the extent that Federal allocations to a State are reduced. Section 111 of the LSCA Amendments of 1984 also (1) requires a State to describe how it will develop programs for the elderly which may include one or more of seven different activities listed in section 111; and (2) describes the manner in which funds for programs for handicapped individuals will be used to make library services more accessible to such individuals. (See §§ 770.10 and 770.40(c)(2).)

Although Title IV of the Act and the regulations would provide funding directly to Indian tribes and organizations primarily serving and representing Hawaiian natives, the House Committee indicated its intent than Indian tribes coordinate library service programs with State libraries in order to insure maximum benefit from Federal library funds. (See H.R. Rep. No. 165, 98th Cong., 1st Sess. 7 (1983).)

(b) *Amendments to Title II (Public Library Construction).* Under section 112 of the LSCA Amendments of 1984, the Federal share of the cost of construction of any project assisted under Title II cannot exceed one-half of the total cost of the project. This section also contains a provision entitling the Department to recover a portion of its equity interest within 20 years after completion of the construction of any library facility constructed in part with funds made available under Title II, if the recipient or its successor in title or possession ceases or fails to be a public or nonprofit institution or the facility ceases to be used as a library facility. However, the Secretary has the option of determining whether there is good cause for releasing the institution from this obligation. (See §§ 770.41(b) and 770.42.)

(c) *Amendments Affecting Both Titles I and II.* Section 108 of Pub. L. 98–480 allows a State to expend funds received under Titles I and II for administrative costs in connection with programs and activities carried out under Title I, II, and III. Administrative expenditures under these titles for any fiscal year may not exceed the greater of 6 percent of the sum of the amounts allotted to each State under Titles I and II for any fiscal year, or sixty thousand dollars ($60,000). (See § 770.43.)

(d) *Amendments to Title III (Interlibrary Cooperation and Resource Sharing).* Section 113 of Pub. L. 98–480 amends Title III of the Act and changes

its title from "Interlibrary Cooperation" to "Interlibrary Cooperation and Resource Sharing". Pursuant to section 113, States must now include in their long-range and annual programs a Statewide resource sharing plan which is directed toward eventual compliance with the new section 304 (Resource Sharing) of the Act. (See §§ 770.12(b)(1)(ii) (A) and (B), 770.23(c)(1)(i), and 770.24(d).)

In reference to direct grant funding under Title IV, the House Committee expressed its belief that Indian tribes should participate in resource sharing to the extent possible. (See H.R. Rep. No. 165, 98th Cong., 1st Sess. 7, (1983).)

(e) *Other Changes to the Library Services and Construction Act State-Administered Program Regulations.* A new clause is added to these regulations prohibiting the inclusion of in-kind contributions among the amounts the State declares that it will have available for expenditure for maintenance of effort purposes under paragraph (b)(5)(i) of § 770.24. This addition is not due to any amendment to the Act, but rather to the fact that section 7(a) of the Act refers to sums from State or local sources, or both, "available for expenditure" and "actually expended".

These regulations also contain a new clause in § 770.50 to make clear that 34 CFR 76.401(b) of EDGAR, which exempts State agencies from having to offer an opportunity for a hearing under certain State-administered programs, does not apply to public library construction grants. This is due to the fact that under section 203 of the Act, with respect to a project for construction of public library facilities, a State must provide an opportunity for a hearing to every local or other public agency whose application for a subgrant for construction has been denied.

(2) The Library Services and Construction Act Library Services for Indian Tribes and Hawaiian Natives Program

Pub. L. 98-480 deletes Title IV (Older Readers Services) and introduces a new Title IV entitled "Library Services for Indian Tribes" in its place. The new Title IV was prompted by the findings of the Congress that: (1) most Indian tribes receive little or no funds under the State-administered Titles I, II, and III of the Act; (2) Indian tribes and reservations are generally considered to be separate nations and seldom are eligible for direct library allocations from States; and (3) the vast majority of Indians living on or near reservations do not have access to adequate libraries or have access to no libraries at all.

Under Title IV, for the purpose of making grants to Indian tribes there will be available 1.5 percent of the amounts appropriated for Titles I, II, and III for each fiscal year. For the purpose of making grants to organizations primarily serving and representing Hawaiian natives (Hawaiian native organizations), there will be available 0.5 percent of the amounts appropriated for Titles I, II, and III for each fiscal year. The Secretary makes basic grants from these separate allotments to Indian tribes and Hawaiian native organizations which have submitted approved applications under section 403 (Applications for Library Services to Indians) of the Act. After consultation with the Secretary of the Interior, the Secretary has determined that for purposes of this program, an Indian tribe means an Indian tribe, band, nation or other organized group or community certified by the Secretary of the Interior as being eligible for Federal special programs and services. Any allotted funds for which an Indian tribe or Hawaiian native organization has not applied, or has applied but has not qualified, will be reallocated by the Secretary among Indian tribes and Hawaiian native organizations which have submitted approved plans under section 404 (Plans for Library Services to Indians) of the Act as special projects grants. In accordance with sections 403 and 404 of the Act, these final regulations implement: (1) The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program, and (2) The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.

(3) The Library Services and Construction Act Foreign Language Materials Acquisition Program

Title V (Foreign Language Materials Acquisition) of the Act, established under section 115 of the LSCA Amendments of 1984, authorizes a new program of grants to State and local public libraries for the acquisition of foreign language materials.

Under Title V, State and local public libraries may submit grant applications to the Department for the acquisition of foreign language materials. The term "foreign language materials" is defined in these regulations to mean "library materials for various age levels in a language other than English." Recipients of grants under Title V will be selected on a competitive basis, and grants awarded are not to exceed fifteen thousand dollars ($15,000) for any fiscal year.

(4) The Library Services and Construction Act Library Literacy Program

Title VI (Library Literacy Programs) of the Act, established under section 115 of the LSCA Amendments of 1984, authorizes a new program of grants to State and local public libraries for the support of library literacy programs. Under Title VI, grants to State public libraries are to be used for coordinating and planning library literacy programs and for making arrangements to train librarians and volunteers for carrying out these programs. Grants to local public libraries are to be used for: promoting the use of voluntary services of individuals, agencies, and organizations in providing literacy programs; acquiring materials for literacy programs; and providing for the use of library facilities for literacy programs.

The Library Literacy Program was prompted by the finding of the Congress that the role of public libraries has expanded to include literacy training for illiterate and functionally illiterate adults. Literacy activities otherwise permissible under Title I (Library Services) of the Act, such as assisting libraries in providing literacy programs for adults and school dropouts, should not be in conflict with the purposes of the Library Literacy Program.

It was also the recommendation of the House Conference Committee (H.R. Rep. No. 1075, 98th Cong., 2d Sess. 21 (1984), also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984)) that applicants for funding show that any proposed project is not in conflict with the State plan required under section 6 of the Act, and that any proposed project demonstrate evidence of cooperation and coordination with other service providers, as appropriate, including State adult education officials or their local representatives.

Recipients of grant awards under the Library Literacy Program will be selected on a competitive basis and no grant for any fiscal year shall exceed twenty-five thousand dollars ($25,000).

(5) Definition Under the Library Services and Construction Act Amendments of 1984, Pub. L. 98-480

No new definitions were added under section 103 to the State-Administered Program (Titles I through III); however, an insertion was made to the definition of "construction" in section 3(2) of the Act. (See § 770.11.) In the definition of "State institutional library services" at section 3(9) of the Act, the words in parentheses were added to clarify the

types of handicapping conditions permissible under State institutional library services.

(See §§ 770.10 and 770.40 (c)(1).)

Section 103 of Pub. L. 98-480 adds two new definitions to the Act, those of "Indian tribe" and "Hawaiian native", which are provided in § 771.4(b) and cross-referenced in § 772.4(b).

Other Information

Readers' attention is drawn to the provision in the Education Department General Administrative Regulations (EDGAR) requiring a State to make available for public inspection "all State plans and related official materials". (34 CFR 76.106(a)). In the case of the Library Services and Construction Act State-Administered program, the State plan and all related materials—as described in § 770.21—includes: (1) The basic State plan covering all three types of grants provided under the program, (2) the long-range program that addresses each type of grant for which the State is applying, and (3) the annual program for each type of grant for which the State is applying.

Significant Differences Between the NPRM and the Final Regulations

On May 16, 1985, the Secretary published in the **Federal Register** the Notice of Proposed Rulemaking (NPRM) for the Library Services and Construction Act—State-Administered Program, and the Direct Grant Programs for Indian Tribes and Hawaiian Natives, Foreign Language Materials Acquisition, and Library Literacy (50 FR 20522). During the period allowed for public comments in response to the proposed regulations, comments and questions were received from 39 persons including Members of the Congress.

The provisions of these final regulations are substantially the same as those of the NPRM. However, after careful consideration of the public comments on the proposed regulations, the Secretary has made some changes.

In §§ 768.4(c), 769.4(c), 770.4(c), 771.4(b), 772.4(b), the definition of "Library materials" has been expanded to include "computer software" as so many public libraries are now purchasing and circulating computer software.

Sections 770.11(b)(4) (Architectural services) and § 770.11(b)(5) (Acquisition of land) have been deleted. Sections 770.11(b)(6) and 770.11(b)(7) have been renumbered as §§ 770.11(b)(4) and 770.11(b)(5), respectively, and § 770.11(b)(5) has been changed so that it now reads: "Any combination of activities referred to in paragraphs (b)(1) through (b)(4) of this section (including architect's fees and the cost of acquisition of land)". Section 771.10(c) and 772.10(c) have been changed in a manner consistent with the changes made to § 770.11(b).

Section 768.4(a) now references "State library administrative agency" and § 768.4(c) now includes the following: "State public library" means, "for this program, the State library administrative agency" as defined in section 3(10) of the Act.

The word "reading" was unintentionally omitted from the definition of the term "limited English-speaking proficiency" in the proposed regulations and has been included under § 770.4(c) of these final regulations for the LSCA State-Administered Program.

Section 770.10(b)(10)(ii), has been changed to read "library services to the physically handicapped" in order to distinguish between the three possible "handicapping conditions" projects for which library services grant funds may be permissively expended. Other projects for the "handicapped" and "State institutional library services" projects are covered in § 770.10(b)(4)(i)(B), and § 770.10(b)(10)(i), respectively, of the regulations.

The words "but are not restricted to" in proposed § 770.12(b) have been deleted because section 302(a) of the statute limits the permissible uses of Title III funds to two types of activities.

A clarification has been made in § 770.23(a)(1) to the effect that the "long-range program" is "a comprehensive description of the State's identified present and projected library needs," rather that just a description of the State's needs with regard to library services, public library construction, and interlibrary cooperation and resource sharing as contained in the proposed regulations. A conforming change has been made in § 770.21(b).

A clarification has been made in § 770.22(c) to the effect that the State shall give an assurance in the basic State plan that the State will give priority to programs and projects designed to carry out the objectives of section 6(b)(4) of the Act, rather than just an assurance that the State will give priority to carry out one or more of the objectives as stated in the proposed regulations. This should not however be construed to mean that priority may be given only to those projects designed to carry out all of the listed objectives.

A change has been made in § 770.24(a)(1) so that in its annual program each State is required to provide: "A description of the projects and activities the State plans to carry out—and the basis upon which the State plans to award subgrants—during the specified year . . ."

Clarification has been made in § 770.24(c) so that it now reads: "In the case of an application for a Public Library Construction grant, the State shall also include in its annual program a description of how the State plans to use funds that year, consistent with the long-range program, for approved construction projects in areas of the State lacking the library facilities necessary to provide adequate library services."

A change has been made in § 770.40(b) that now reads: "The State shall provide the difference between—(1) The cost of carrying out the State's annual program; and (2) The Federal share of these costs, as specified in section 7(b) of the Act."

Section 770.40(c)(1) has been changed so that it now provides that the amount spent from Federal, State, and local sources for State institutional library services, and for library services for physically handicapped and institutionalized individuals, must be no less than the amount spent from those sources for those services during the second year preceeding the year for which the grant is made.

Other Changes

Certain other technical changes have been made. Certain technical revisions have been made to the selection criteria in §§ 768.31, 769.31, and 772.31. No substantive changes are intended, and no amendments to the applications are necessary.

Comments and Responses

A summary of comments received and the Secretary's responses to those comments can be found in the Appendix to these final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 (1982) and to the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. (Please note that Federally recognized Indian tribal governments are not subject to Executive Order 12372.)

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 768

Education, Foreign language—library, Grant programs—education, Libraries, Reporting and recordkeeping requirements.

34 CFR Part 769

Education, Education of disadvantaged, Grant programs—education, Literacy program—libraries, Reporting and recordkeeping requirements.

34 CFR Part 770

Aging—libraries, Construction—libraries, Correctional institutions—libraries, Education, Education of disadvantaged, Grant programs—education, Handicapped, Libraries, Mental health programs—libraries, Penal institutions—libraries, Prisons—libraries, Reporting and recordkeeping requirements.

34 CFR Part 771

Construction—libraries, Grant programs—education, Hawaiian natives—libraries, Indian tribes—libraries, Reporting and recordkeeping requirements.

34 CFR Part 772

Construction—libraries, Grant programs—education, Hawaiian natives—libraries, Indian tribes—libraries, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Numbers: 84.034 (Library Services); 84.154 (Public Library Construction); 84.035 (Interlibrary Cooperation and Resource Sharing); 84.163 (Basic Grants to Indian Tribes and Hawaiian Native Program and Special Projects Grants to Indian Tribes and Hawaiian Natives Program); 84.166 (Library Services and Construction Act Foreign Language Materials Acquisition Program); and 84.167 (Library Services and Construction Act Library Literacy Program))

Dated: August 12, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

1. Part 768 is added to read as follows:

PART 768—THE LIBRARY SERVICES AND CONSTRUCTION ACT FOREIGN LANGUAGE MATERIALS ACQUISITION PROGRAM

Subpart A—General

Sec.

768.1 The Library Services and Construction Act Foreign Language Materials Acquisition Program.
768.2 Who is eligible to apply for a grant under the Foreign Language Materials Program?
768.3 What regulations apply to the Foreign Language Materials Program?
768.4 What definitions apply to the Foreign Language Materials Program?

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

768.30 How does the Secretary evaluate an application?
768.31 What selection criteria does the Secretary use?

Authority: Library Services and Construction Act, Pub. L. 91–600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98–480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 768.1 The Library Services and Construction Act Foreign Language Materials Acquisition Program.

Under the Library Services and Construction Act Foreign Language Materials Acquisition Program—referred to in this part as the Foreign Language Materials Program—the Secretary provides Federal financial assistance for the acquisition of foreign language materials.

(20 U.S.C. 371)

§ 768.2 Who is eligible to apply for a grant under the Foreign Language Materials Program?

State public libraries and local public libraries are eligible to apply for grants under the Foreign Language Materials Program.

(20 U.S.C. 371)

§ 768.3 What regulations apply to the Foreign Language Materials Program?

The following regulations apply to the Foreign Language Materials Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 768.

(20 U.S.C. 371)

§ 768.4 What definitions apply to the Foreign Language Materials Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Library service
Public library
Public library services
State library administrative agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Budget
Department
EDGAR
Equipment
Facilities
Grant
Project
Secretary
State
Supplies

(c) *Definitions that apply to this part.* The following definitions also apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91–600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98–480).

"Foreign language materials" means library materials for various age levels in a language other than English.

"Library materials" means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

"State public library means, for this program, the State library administrative agency.

(20 U.S.C. 351 *et seq.*)

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 768.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 768.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 371(b))

§ 768.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(f) *Need and anticipated benefits.* (20 points)

(1) The Secretary reviews each application to determine the need for the proposed project and the anticipated benefits of the project.

(2) The Secretary considers—

(i) The extent to which the applicant has surveyed or otherwise studied the geographic area for which it provides public library services to determine the need for library materials in a particular foreign language or particular foreign languages;

(ii) The extent to which the applicant has received requests for materials in that language or those languages;

(iii) Whether the proposed project would duplicate in the geographic area other collections of library materials available to the general public in the same foreign language or languages; and

(iv) The benefits likely to be derived by the general public or a particular segment of the public as a result of the proposed project.

(20 U.S.C. 371(b))

2. Part 769 is added to read as follows:

PART 769—THE LIBRARY SERVICES AND CONSTRUCTION ACT LIBRARY LITERACY PROGRAM

Subpart A—General

Sec.

769.1 The Library Services and Construction Act Library Literacy Program.
769.2 Who is eligible to apply for a grant under the Library Literacy Program?
769.3 What regulations apply to the Library Literacy Program?
769.4 What definitions apply to the Library Literacy Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

769.10 For what types of projects does the Secretary provide assistance to State public libraries?
769.11 For what types of projects does the Secretary provide assistance to local public libraries?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

769.30 How does the Secretary evaluate an application?
769.31 What selection criteria does the Secretary use?

Authority: Library Services and Construction Act, Pub. L. 91–600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98–480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 769.1 The Library Services and Construction Act Library Literacy Program.

Under the Library Services and Construction Act Library Literacy Program—referred to in this part as the Library Literacy Program—the Secretary provides Federal financial assistance for literacy projects.

(20 U.S.C. 375(a))

§ 769.2 Who is eligible to apply for a grant under the Library Literacy Program?

State public libraries and local public libraries are eligible to apply for grants under the Library Literacy Program.

(20 U.S.C. 375(a))

§ 769.3 What regulations apply to the Library Literacy Program?

The following regulations apply to the Library Literacy Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 769.

(20 U.S.C. 375(a))

§ 769.4 What definitions apply to the Library Literacy Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Public Library
State library administrative agency.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Budget
Department
EDGAR
Equipment
Facilities
Grant
Project
Secretary
State
Supplies

(c) *Definitions that apply to this part.* The following definitions also apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91–600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98–480).

"Adult" means an individual in any State who has exceeded the maximum age for compulsory schooling in that State.

"Functionally illiterate adult" means an adult whose minimal skills in reading, writing, or comprehension or in performing basic arithmetical computations precludes the individual from functioning in society without assistance from others.

"Illiteracy" means the inability to read, write, or comprehend or to perform basic arithmetical computations.

"Library materials" means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

"Literacy" means the ability of an individual to read, write, and comprehend and to perform basic arithmetical computations.

"Literacy program" means a project or activity designed to help individuals improve their ability to read, write, or comprehend or to perform basic arithmetical computations.

"State public library" means, for this program, the State library administrative agency.

(20 U.S.C. 351 *et seq.*)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§769.10 For what types of projects does the Secretary provide assistance to State public libraries?

(a) The Secretary provides assistance to State public libraries for projects designed to do either or both of the following:

(1) Coordinate and plan library literacy programs.

(2) Arrange for the training of librarians and volunteers to carry out these types of programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Assisting libraries to provide literacy programs for adults in cooperation with other agencies and organizations, if appropriate.

(2) Providing in-service training for librarians and volunteers in the use of appropriate library materials for illiterate or functionally illiterate adults.

(3) Assisting or training librarians and volunteers in extending library literacy programs to groups and individuals that may not be adequately served by existing programs. Examples of these types of persons include—

(i) The handicapped;
(ii) The institutionalized;
(iii) Older Americans; and
(iv) Other disadvantaged individuals.

(20 U.S.C. 357(b))

§769.11 For what types of projects does the Secretary provide assistance to local public libraries?

(a) The Secretary provides assistance to local public libraries for projects designed to do one or more of the following:

(1) Promote the use of the voluntary services of individuals, agencies, and organizations in providing literacy programs.

(2) Acquire library materials for literacy programs.

(3) Use library facilities for literacy programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Promoting the use of volunteers in disseminating information about literacy programs.

(2) Training volunteers to serve local literacy programs.

(3) Acquiring library materials designed to improve the literacy of illiterate and functionally illiterate adults.

(4) Conducting literacy programs for adults.

(5) Encouraging other libraries in the community to volunteer the use of their facilities for literacy programs.

(20 U.S.C. 357(c))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§769.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 769.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 375(d))

§769.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial of ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to he project.

(2) The Secretary considers the extent to which—

(i) The facilities that the application plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(f) *Cooperation and coordination.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to cooperate and coordinate its proposed project with other parties providing similar or related services.

(2) The Secretary considers—

(i) The extent to which the applicant—

(A) Has identified other providers of literacy-related services, including State or local adult education agencies or both, as appropriate;

(B) Has identified the services provided by these parties; and

(C) Has communicated with officials of these parties or their representatives; and

(ii) The specific measures of cooperation and coordination the applicant has proposed.

(20 U.S.C. 357(d); H. Conf. Rept. No. 98–1075, 98th Cong. 2d Session (1984), p. 21)

3. Part 770 is revised to read as follows:

PART 770—THE LIBRARY SERVICES AND CONSTRUCTION ACT STATE-ADMINISTERED PROGRAM

Subpart A—General

Sec.

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770.10 What types of projects may be funded under Library Services grants?
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770.42 What other financial obligations does a recipient have under a Public Library Construction grant?
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Subpart F—What Are the Administrative Responsibilities of a State and Its Subgrantees?

770.50 Under what circumstances must a State provide an applicant with an opportunity for a hearing?

Authority: Library Services and Construction Act, Pub. L. 91–600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98–480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 770.1 The Library Services and Construction Act State-Administered Program.

Under the Library Services and Construction Act State-Administered Program—referred to in this part as the State-Administered Program—the Secretary provides Federal funds to assist States to—

(a) Extend and improve public library services;

(b) Construct and renovate public libraries; and

(c) Develop and strengthen interlibrary cooperation and resource sharing.

(20 U.S.C. 351, 353, 355b, 355e)

§ 770.2 Who is eligible to apply for a grant under the State-Administered Program?

Under the State-Administered Program the following parties are eligible to apply:

(a) States are eligible to apply to the Secretary for—

(1) Library Services grants under title I of the Act;

(2) Public Library Construction grants under title II of the Act; and

(3) Interlibrary Cooperation and Resource Sharing grants under title III of the Act.

(b)(1) Public libraries are eligible to apply to their respective States for subgrants under each type of grant specified in paragraph (a) of this section.

(2) In the case of Interlibrary Cooperation and Resource Sharing grants, a State may also permit other types of libraries to apply for subgrants.

(20 U.S.C. 351d, 352, 355a, 355e)

§ 770.3 What regulations apply to the State-Administered Program?

The following regulations apply to the State-Administered Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 770.

(20 U.S.C. 351 *et seq.*)

§ 770.4 What definitions apply to the State-Administered Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Annual program
Basic State plan
Indian tribe
Hawaiian native
Library service
Library services for the physically handicapped
Long-range program, except that this program may cover a period of not fewer than three nor more than five years.

(20 U.S.C. 351d)

Major urban resource library
Public library
Public library services
State Advisory Council on Libraries
State institutional library services
State library administrative agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Acquisition
Applicant
Application
Department
EDGAR
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary
State
Subgrant
Subgrantee

(c) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91–600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98–480).

"Community information referral center" means a center that provides information and makes referrals to link people in need of services to appropriate resources.

"Disadvantaged persons" means persons whose socio-economic or educational deprivation or whose cultural isolation from the general community may preclude them from benefiting from public library services to the same extent as the general community benefits from these services.

"Handicapped" means, for purposes of this program, mentally retarded, hearing impaired, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or otherwise health impaired.

"Illiteracy" means the inability of an individual to read, write, or comprehend or to perform basic arithmetical computations.

"Interlibrary cooperation" means the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers.

"Interlibrary Cooperation and Resource Sharing grants" means Federal financial assistance provided by the Secretary under title III of the Act.

"Library materials" means books, periodicals, newspapers, documents, pamphlets photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

"Library Services grants" means Federal financial assistance provided by the Secretary under title I of the Act.

"Limited English-speaking proficiency," where used with reference to individuals, means individuals who—

(1) (i) Were not born in the United States or whose native tongue is a language other than English;

(ii) Come from environments where a language other than English is dominant; or

(iii) Are American Indian and Alaskan Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Because of the reason(s) listed in paragraph (1) (i), (ii), or (iii) of this definition, have sufficient difficulty speaking, reading, writing, or understanding the English language to be denied the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in society. (See section 703 (a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 3223).)

"Literacy" means the ability of an individual to read, write, and comprehend and to perform basic arithmetical computations.

"Literacy program" means a project or activity designed to help individuals improve their ability to read, write, or comprehend or to perform basic arithmetical computations.

"Public Library Construction grants" means Federal financial assistance provided by the Secretary under title II of the Act.

(20 U.S.C. 351 *et seq.*)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 770.10 What types of projects may be funded under Library Services grants?

(a) The Secretary awards Library Services grants to assist projects designed to plan for, establish, extend, or improve public library services.

(b) The types of projects referred to in paragraph (a) of this section may include, but are not restricted to, the following:

(1) Extending public library services to areas and populations that lack these services.

(2) Improving public library services to ensure that these services are adequate to meet the needs of specific areas and populations.

(3)(i) Making public library services accessible to individuals who, because of a disadvantage, are unable to benefit from public library services regularly made available to the general public.

(ii) These disadvantages include, but are not restricted to, distance, residence, handicap, age, literacy level, and limited English-speaking proficiency.

(4)(i) Improving State and local public library services for—

(A) The elderly; and

(B) Handicapped, institutionalized, and other disadvantaged individuals.

(ii) Services for the elderly may include, but are not restricted to, the following:

(A) Training librarians to work with the elderly.

(B) Conducting special library programs for the elderly, particularly for the elderly who are handicapped.

(C) Purchasing special library materials for use by the elderly.

(D) Paying salaries for elderly persons who work in libraries as assistants on programs for the elderly.

(E) Providing to the elderly home visits by librarians and other library personnel.

(F) Establishing programs to notify the elderly about the availability of library services.

(G) Furnishing transportation to enable the elderly to have access to library services.

(5) Adapting public library services to meet particular needs of individuals.

(6) Assisting libraries to serve as community information referral centers.

(7)(i) Assisting libraries in providing literacy programs for adults and school dropouts.

(ii) If possible and appropriate, applicants shall propose to conduct these literacy programs in cooperation with other agencies and organizations.

(8) Strengthening the capacity of the State library to meet the needs of the people of the State with regard to library services, facilities, and resources.

(9) Supporting and expanding the services of major urban resource libraries that meet the demands of individual users and other libraries.

(10) Establishing, expanding, and operating programs to provide—

(i) State institutional library services;

(ii) Library services to the physically handicapped; and

(iii) Library services for the disadvantaged in urban and rural areas.

(11) Strengthening metropolitan libraries that serve as national or regional resource centers.

(12) Increasing public library services or access to these services through effective use of technology.

(20 U.S.C. 351(a), 351a, 351 note (b)(4), 352, 353)

§ 770.11 What types of projects may be funded under Public Library Construction grants?

(a) The Secretary awards Public Library Construction grants to assist projects designed to carry out the activities in paragraphs (b) and (c) of this section.

(b) As used in this part, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3)(i) Initial equipment for any building referred to in paragraphs (b)(1) and (b)(2) of this section.

(ii) As used in paragraph (b)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (b)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities referred to in paragraphs (b)(1) through (b)(4) of this section (including architect's fees and the cost of acquisition of land).

(c) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

(20 U.S.C. 351a(2), 355a, 355c; EO 11490, as amended)

§ 770.12 What types of projects may be funded under Interlibrary Cooperation and Resource Sharing grants?

(a) The Secretary awards Interlibrary Cooperation and Resource Sharing grants to assist projects designed to enable various types of libraries to share resources and materials.

(b) These types of projects include only the following:

(1)(i) Planning for, and taking other steps leading to the development of, cooperative library networks.

(ii) Planning may include—

(A) Development of a statewide resource sharing plan directed toward eventual compliance with section 304 of the Act; or

(B) One or more of the items listed in section 304(c) of the Act.

(2)(i) Establishing, expanding, or operating local, regional, or interstate cooperative library networks.

(ii) As used in paragraph (b)(2)(i) of this section, "cooperative library networks" are those networks designed to—

(A) Provide for the systematic and effective coordination of the resources of various types of libraries, including school, public, academic, and special libraries and information centers; and

(B) Improve supplementary services for the special clientele served by these types of libraries.

(20 U.S.C. 351(a), 355e, 355e–1(a), 355e–2)

Subpart C—How Does a State Apply for a Grant?

§ 770.20 What must a State do to receive a grant under the State-Administered Program?

(a) In order to receive a grant under the State-Administered Program, a State must—

(1) Establish a State Advisory Council on Libraries; and

(2) After consulting with the council, submit to the Secretary by the various dates established by the Secretary the three parts of a State plan, as described in § 770.21.

(b) The Secretary does not consider the other parts of the plan until the Secretary has approved the basic State plan.

(20 U.S.C. 351d(a))

§ 770.21 What must a State plan include?

A State plan must consist of the following three parts:

(a)(1) A basic State plan, as described in § 770.22, covering a five-year period.

(2) The State shall submit one basic plan to cover all three types of grants provided under this program:

(i) Library Services grants.

(ii) Public Library Construction grants.

(iii) Interlibrary Cooperation and Resource Sharing grants.

(b) (1) A long-range program, as described in § 770.23, covering a period of not fewer than three years and not more than five years.

(2) The State library administrative agency shall develop the long-range program—

(i) With the advice and assistance of the State Advisory Council on Libraries; and

(ii) In consultation with the Secretary.

(3) The State shall—

(i) Submit a long-range program that provides a comprehensive description of the State's identified library needs and a description of the activities to be taken toward meeting those needs supported with the assistance of the LSCA State-Administered Program;

(ii) Review the program each year;

(iii) Revise the program each year according to changing needs and the results of evaluations and surveys; and

(Iv) Submit the revised program to the Secretary.

(c) An annual program, as described in § 770.24, for each type of grant for which the State is applying.

(20 U.S.C. 351d(a))

§ 770.22 What must a State include in a basic State plan?

A State shall include the following in its basic State plan:

(a) Assurance that the State library administrative agency—

(1) Will administer or supervise the administration of all programs and projects in the State assisted under the State-Administered Program;

(2) Has the fiscal and legal authority and capability to administer or supervise the administration of programs and projects assisted under the State-Administered Program;

(3) Has established or will establish policies, priorities, criteria, and procedures necessary to implement the program in the State;

(4) (i) Will make the reports the Secretary reasonably requires to—

(A) Carry out the Secretary's functions under the program; and

(B) Determine the extent to which funds provided under the program have been effective in carrying out the purposes of the program;

(ii) Will include in these reports, if requested by the Secretary, reports of evaluations made under the State plan; and

(iii) Will make the reports in the form and containing the information reasonably required by the Secretary; and

(5) (i) Will keep the records the Secretary finds necessary to assure the correctness and verification of the reports referred to in paragraph (a) (4) of this section; and

(ii) Will give the Secretary access to the records as the Secretary finds necessary.

(b) Assurances that—

(1) Any funds paid to the State under a long-range program and an annual program will be expended only for the purposes for which the funds have been authorized and appropriated; and

(2) The State has adopted the necessary fiscal control and fund accounting procedures to assure proper disbursement of, and to account for, Federal funds paid—

(i) To the State under the State-Administered Program; and

(ii) By the State to any other agency under the program.

(c) An assurance that the State will give priority to programs and projects designed to carry out the following objectives:

(1) To improve access to public library resources and services for the least served populations in the State, including—

(i) Projects for individuals with limited English—speaking proficiency;

(ii) Projects for individuals who are handicapped; and

(iii) Projects in urban and rural areas.

(2) To serve the elderly.

(3) To combat illiteracy.

(4) To increase library services and access to services through effective use of technology.

(20 U.S.C. 351a(11), 351d(b))

(Approved by the Office of Management and Budget under control number 1850–0528.)

§ 770.23 What must a State include in a long-range program?

(a) A State shall include the following in a long-range program:

(1) A comprehensive description of the State's identified present and projected library needs.

(2) A plan for meeting those identified needs with Federal funds made available through the appropriate type of grant under the State-Administered Program.

(3) (i) The State's policies, priorities, criteria, and procedures for administering this type of grant and appropriate subgrants under the State-Administered Program.

(ii) A description of how the State plans to implement the priorities in § 770.22(c).

(4) A description of the State's policies and procedures regarding each of the following:

(i) The periodic evaluation of the effectiveness of projects supported under this type of grant.

(ii) The appropriate dissemination of—

(A) The results of the evaluation referred to in paragraph (a)(4)(i) of this section; and

(B) Other information pertaining to these projects.

(iii) The coordination of projects assisted under this type of grant with similar library programs and projects operated by other libraries, institutions, and agencies in the State.

(b) In the case of an application for a Public Library Construction grant, the State shall also include in its long-range program the policies and procedures to be followed by the State library administrative agency in providing an opportunity for a hearing to a local or other public agency whose application for a subgrant is denied.

(c) In the case of an application for an Interlibrary Cooperation and Resource Sharing grant, the State shall also include the following in its long-range program:

(1) (i) A statewide resource sharing plan directed toward eventual compliance with the provisions of section 304 of the Act.

(ii) In developing the plan, the State library agency, with the assistance of the State Advisory Council on Libraries, shall consider recommendations from current and potential participating institutions in interlibrary cooperation and resource sharing projects authorized under the Act.

(2) (i) An identification of interlibrary cooperation and resource sharing objectives to be achieved during the period covered by the basic State plan and the long-range program.

(ii) These objectives may include, but are not restricted to, one or more of the items listed in section 304(c) of the Act.

(20 U.S.C. 351(a), 351a(12), 355c, 351d(a)(d); 355e, 355e–2, 355e–3)

(Approved by the Office of Management and Budget under control number 1850–0528.)

§ 770.24 What must a State include in an annual program?

(a) A State shall include the following in an annual program:

(1) A description of the projects and activities the State plans to carry out—and the basis upon which the State plans to award subgrants—during the specified year with regard to library services, public library construction, or interlibrary cooperation and resource sharing, as appropriate.

(2) A description of how these projects and activities would—

(i) Be consistent with purposes specified in the Act and in §§ 770.10, 770.11, or 770.12, as appropriate;

(ii) Fulfill the objectives of the State's long-range program or the update of the long-range program; and

(iii) Meet the needs identified by the State in the long-range program.

(3) A description of the criteria the State plans to use in allocating funds.

(4) (i) A demonstration that the manner in which the State proposes to carry out the annual program is consistent with the policies, criteria, priorities, and procedures specified in the long-range program or the update of the long-range program.

(ii) In meeting this requirement, the State shall address, among other items, policies and procedures regarding evaluations, dissemination, and coordination, as described in § 770.23(a)(4).

(5) A description of how proposed projects and activities are to be based on the results of evaluations undertaken according to the long-range program.

(6) A demonstration that proposed projects and activities would meet the assurance given by the State in its basic State plan to implement the priorities specified in § 770.22(c), if appropriate.

(7) The amount of Federal funds the State plans to spend to carry out its administrative functions under the grant, as specified in § 770.43.

(b) In the case of an application for a Library Services grant, the State shall

also include the following in its annual program:

(1) The criteria the State plans to use to ensure that the State meets the financial obligations specified in § 770.40(c).

(2) A description of how the State plans to allocate funds to support and expand library services of major urban resource libraries if—

(i) The sum appropriated for the year exceeds the amount specified in section 102(c)(1) of the Act; and

(ii) The State has one or more cities with populations of at least 100,000 individuals.

(3) A description of how the State plans to use funds for projects and activities for the elderly.

(4) A description of how the State plans to use funds to make library services more accessible to handicapped persons.

(5) (i) To enable the Secretary to make a determination of payment under section 7(a) of the Act (Payments), a statement of the amounts the State will have available for expenditure for the proposed projects and activities during the period covered by the annual program from—

(A) State sources; and

(B) Local sources.,

(ii) The State may not include in-kind contributions among the amounts the State declares it will have available for expenditure under paragraph (b)(5)(i) of this section.

(c) In the case of an application for a Public Library Construction grant, the State shall also include in its annual program a description of how the State plans to use funds that year, consistent with the long-range program, for approved construction projects in areas of the State lacking the library facilities necessary to provide adequate library services.

(d) In the case of an application for an Interlibrary Cooperation and Resource Sharing grant, the State shall also include in its annual program a description of how the proposed projects and activities would meet the requirements of the Act and of § 770.23(c) with respect to—

(1) The statewide resource sharing plan; and

(2) The interlibrary cooperation and resource sharing objectives identified in the long-range program.

(20 U.S.C. 351, 351a(13), 351d(a), (b)(4); 351e(a)(1), 354, 355c, 355e–2, 355e–3)

(Approved by the Office of Management and Budget under control number 1850–0528.)

Subpart D—How Does the Secretary Make a Grant to a State?

§ 770.30 What special conditions does the Secretary apply in considering an application for a grant?

(a) The Secretary considers an applicant's long-range program and annual program for a grant under this part only if the Secretary has approved the applicant's basic State plan.

(b)(1) In the case of an application for a Library Services grant, the Secretary makes a grant to a State only if the Secretary has determined that the State will have the following amounts available for expenditure for the projects and activities proposed in its annual program during the period covered by the annual program:

(i) From combined State and local sources an amount—

(A) Sufficient to enable the State to receive not less than its minimum allotment under the Act; and

(B) Not less than the total amount actually expended from State and local sources for services provided under a Library Services grant during the second year preceding the year covered by the annual program.

(ii) From State sources an amount not less than the total amount actually expended from State sources for services provided under a Library Services grant during the second year preceding the year covered by the annual program.

(2) The requirements in paragraph (b)(1) of this section do not apply to an application from the Trust Territory of the Pacific Islands.

(20 U.S.C. 351e, 354, 355c, 355e–2)

Subpart E—What Conditions Must Be Met by a State and Its Subgrantees?

§ 770.40 What are a State's financial obligations under a Library Services grant?

A State that receives a Library Services grant shall meet the following financial obligations:

(a) The State shall meet the maintenance-of-effort requirement in § 770.30(b).

(b) The State shall provide the difference between—

(1) The cost of carrying out the State's annual program; and

(2) The Federal share of these costs, as specified in section 7(b) of the Act.

(c) (1) For State institutional library services, and library services to the physically handicapped and institutionalized individuals, the State shall spend from Federal, State, and local sources an amount not less than the amount the State spent from those sources for those services during the second year preceding the year for which the Secretary makes the grant.

(2) If the Federal allocation for the State's Library Services grant is reduced, the Secretary informs the State that the amount the State is required to spend under paragraph (c)(1) of this section is ratably reduced.

(d) If the amount of the grant obligates the State to allocate funds to support and expand library services of major urban resource libraries (see sections 102(a)(3) and (c) of the Act and § 770.24(b)(2)), the State may not reduce the amount it pays to an urban resource library below the amount the State paid to that library in the preceding year.

(20 U.S.C. 351(e)(b), 354)

§ 770.41 What are a State's financial obligations under a Public Library Construction grant?

(a) A State that receives a Public Library Construction grant shall provide, from State or local sources or both, the difference between—

(1) The costs of projects financed under the grant for that year; and

(2) The Federal share of these costs, as specified in section 7(b) of the Act.

(b) In case of any individual project under a Public Library Construction grant, at least one half of the total cost must be supplied by State or local sources or both.

(20 U.S.C. 351e(b), 355b(b))

§ 770.42 What other financial obligation does a recipient have under a Public Library Construction grant?

(a) Unless released from the obligation by the terms of paragraph (c) of this section, a recipient of Federal financial assistance under a Public Library Construction grant—or the recipient's successor in title or possession—shall repay to the United States on request an amount as specified in paragraph (b) of this section if, within 20 years of the completion of construction of the library facility—or part of a facility—for which the assistance was received—

(1) The recipient or its successor ceases or fails to be a public or nonprofit institution; or

(2) The facility ceases to be used as a library facility.

(b) The amount the recipient or its successor may be obligated to repay is an amount that equals—

(1) The value of the facility or part of the facility at the time of the occurrence specified in paragraph (a)(1) or (a)(2) of this section; multiplied by

(2) The ratio of—

(i) The amount of the Federal assistance under the grant or subgrant; to

(ii) The cost of the facility or part of the facility for which the assistance was received.

Example. In 1974 a local public library completed a project to enlarge its reading room. The project had been assisted by a subgrant from the State under a Public Library Construction grant. The total cost of the project was $300,000; the subgrant had amounted to $120,000 a ratio of 2 to 5 or 40 percent of the cost.

In 1986 the local library moves to another district, and the facility for which it received assistance in 1974 ceases to be used as a library facility. It is determined that the part of the facility for which assistance was received has a current market value of $400,000.

The United States is entitled to recover from the local public library an amount equal to 40 percent of the current market value of the facility or portion of the facility assisted with Federal funds; that is, 40 percent of $400,000 or $160,000.

(c) The Secretary may decide, for good cause, to release the recipient from its obligation under paragraph (a) of this section.

(d) The provisions of this section apply to any facility constructed at any time with assistance under Title II of the Library Services and Construction Act.

(20 U.S.C. 355b)

§ 770.43 What administrative costs are allowable under this program?

(a) A State library administrative agency may spend funds received under a Library Services grant and funds received under a Public Library Construction grant to carry out its administrative functions under a Library Services grant, a Public Library Construction grant, and an Interlibrary Cooperation and Resource Sharing grant.

(b) The total amount the agency may spend to carry out its administrative functions under all of these grants during any year may not exceed the amount specified in section 8 of the Act (Administrative Cost).

(c) The agency may spend the funds for administrative costs in connection with the following activities:

(1) Administration of the State plan, including obtaining the services of consultants.

(2) Statewide planning for and evaluation of library services.

(3) Dissemination of information concerning library services.

(4) Activities of the State Advisory Council on Libraries and of any other advisory groups and panels necessary to assist the State library administrative agency in carrying out its functions.

(20 U.S.C. 351f, 353(b))

Subpart F—What Are the Administrative Responsibilities of a State and Its Subgrantees?

§ 770.50 Under what circumstance must a State provide an applicant with an opportunity for a hearing?

(a)(1) In the case of a Public Library Construction grant, if a State denies funds to a local or other public agency that applies for a subgrant for construction of public library facilities, the State library administrative agency shall give the local or other public agency an opportunity for a hearing.

(2) The provision in 34 CFR 76.401(b) (which exempts State agencies from having to offer an opportunity for a hearing under certain State-administered programs) does not apply to Public Library Construction grants.

(b) In providing opportunity for a hearing, the State library administrative agency shall follow the appropriate policies and procedures included in the State's long-range program for the Public Library Construction grant.

(20 U.S.C. 355c)

4. Part 771 is added to read as follows:

PART 771—THE LIBRARY SERVICES AND CONSTRUCTION ACT BASIC GRANTS TO INDIAN TRIBES AND HAWAIIAN NATIVES PROGRAM

Subpart A—General

Sec.

771.1 The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program.
771.2 Who is eligible to apply for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program?
771.3 What regulations apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?
771.4 What definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

771.10 What types of projects may be funded under this program?

Subpart C—How Does One Apply for a Grant?

771.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a basic grant?

Subpart D—How Does the Secretary Make an Award?

771.30 What factors does the Secretary consider in making an award?

Subpart E—What Conditions Must Be Met by a Grantee?

771.40 What are the financial obligations of a tribe that supports a public library system?

Authority: Library Services and Construction Act, Pub. L. 91-600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98-480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 771.1 The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program.

Under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program—referred to in this part as the Basic Grants to Indian Tribes and Hawaiian Natives Program—the Secretary provides Federal financial assistance to establish or improve public library services for Indians residing on or near reservations and for Hawaiian natives.

(20 U.S.C. 351, 351c (c)(1), (d)(1), (d)(2); 361)

§ 771.2 Who is eligible to apply for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program?

The following are eligible to apply for grants under the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(a) Indian tribes, as defined in § 771.4(b).

(b) Organizations—

(1) Primarily serving and representing Hawaiian natives; and

(2) Recognized by the Governor of the State of Hawaii.

(20 U.S.C. 351, 351a (15), (16); 351c(d)(1), 361)

§ 771.3 What regulations apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

(a) The following regulations apply to an Indian tribe or an organization primarily serving and representing Hawaiian natives that applies for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 771.

(b) An organization primarily serving and representing Hawaiian natives that applies for a grant under this part is also subject to 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 351 *et seq.*)

§ 771.4 What definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

The following definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Contract
Department
EDGAR
Grant
Grantee
Project
Public
Secretary

(b) *Definitions that apply to this part.* The following definitions also apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91–600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98–480).

"Hawaiian native" means an individual having an ancestor, who prior to 1778, was a native in the area that now comprises the State of Hawaii.

"Indian tribe.

(1)(i) This term means an Indian tribe, band, nation, or other organized group or community determined by the Secretary to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(ii) After consultation with the Secretary of the Interior, the Secretary has determined that, for purposes of this program, an Indian tribe means an Indian tribe, band, nation, or other organized group or community certified by the Secretary of the Interior as being eligible for Federal special programs and services.

(2) The term includes an Alaskan Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act.

"Library materials."

(1) This term means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

(2) (i) The term also includes restricted collections of cultural materials of Indian tribes or Hawaiian natives, as appropriate.

(ii) "Restricted collection" means library materials not placed in general circulation.

(20 U.S.C. 351a, 362(c))

"Library service" means the performance of all activities of a library relating to—

(1) The collection and organization of library materials; and

(2) Making the materials and information of a library available to users.

"Public library."

(1) This term means a library that—

(i) Serves free of charge all residents of a community, district, or region; and

(ii) Receives its financial support in whole or in part from public funds.

(2) The term also includes a research library; that is, a library that—

(i) Makes its services available to the public free of charge;

(ii) Has extensive collections of books, manuscripts, and other materials that are—

(A) Suitable for scholarly research; and

(B) Not available to the public through public libraries;

(iii) Disseminates humanistic knowledge through services to readers, fellowships, educational and cultural programs, publication of significant research, and other activities; and

(iv) Is not an integral part of an institution of higher education.

"Public library services" means library services furnished by a public library free of charge.

(20 U.S.C. 351 *et seq.*)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 771.10 What types of projects may be funded under this program?

(a) The Secretary provides Federal financial assistance under this program to an Indian tribe to conduct one or more of the following projects:

(1) Assessment of tribal library needs.

(2) In-service or preservice training of Indians as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Indians to have access to library services.

(7) Conduct of special library programs for Indians.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.

(9) Contracts to—

(i) Provide public library services to Indians living on or near reservations; or

(ii) Carry out any of the projects listed in paragraphs (a)(1) through (a)(8) of this section.

(b) The Secretary provides Federal financial assistance under this program to an organization primarily serving and representing Hawaiian natives to conduct one or more of the following projects:

(1) Assessment of library needs of Hawaiian natives.

(2) In-service or preservice training of Hawaiian natives as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Hawaiian natives to have access to library services.

(7) Conduct of special library programs for Hawaiian natives.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.

(c) As used in paragraphs (a)(8) and (b)(8) of this section, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3) (i) Initial equipment for any building referred to in paragraphs (c)(1) and (c)(2) of this section.

(ii) As used in paragraph (c)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (c)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities referred to in paragraphs (c)(1) through (c)(4) of this section (including architect's fees and the cost of acquisition of land).

(d) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

(20 U.S.C. 351a, 351c(d)(2), 362)

Subpart C—How Does One Apply for a Grant?

§ 771.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a basic grant?

To be considered for a basic grant under this program, an Indian tribe or an organization primarily serving and representing Hawaiian natives must submit to the Secretary an application containing the following:

(a) Information showing that the applicant is—

(1) An Indian tribe, as defined in § 771.4(b); or

(2) An organization primarily serving and representing Hawaiian natives and recognized by the Governor of the State of Hawaii.

(b) A description of the project or projects—from among those listed in § 771.10 (a) or (b), as appropriate—the applicant proposes to conduct under its grant.

(c) A description of how the proposed project is likely to establish or improve public library services for—

(1) Indians living on or near a reservation; or

(2) Hawaiian natives.

(d) In the case of an Indian tribe that supports a public library system, an assurance that the tribe will expend from Federal, State, and local sources an amount sufficient to meet the maintenance-of-effort requirement in § 771.40.

(20 U.S.C. 351c (d)(1), (d)(2); 361, 362, 363)

(Approved by the Office of Management and Budget under control number 1850–0568.)

Subpart D—How Does the Secretary Make an Award?

§ 771.30 What factors does the Secretary consider in making an award?

The Secretary awards a basic grant to an applicant if—

(a) The applicant meets the requirements of eligibility in § 771.2; and

(b) The Secretary determines that the application meets the requirements at § 771.20.

(20 U.S.C. 351c (c)(1), (d)(1), (d)(2); 351d(g)(1), 361(c), 363)

(Approved by the Office of Management and Budget under control number 1850–0568.)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 771.40 What are the financial obligations of a tribe that supports a public library system?

If an Indian tribe that receives a grant under this program supports a public library system, the tribe shall expend from Federal, State, and local sources for public library services an amount not less than the amount the tribe expended from those sources for public library services during the second year preceding the year for which the Secretary has approved a grant to the tribe under this program.

(20 U.S.C. 362(b))

5. Part 772 is added to read as follows:

PART 772—THE LIBRARY SERVICES AND CONSTRUCTION ACT SPECIAL PROJECTS GRANTS TO INDIAN TRIBES AND HAWAIIAN NATIVES PROGRAM

Subpart A—General

Sec.

772.1 The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.
772.2 Who is eligible to apply for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?
772.3 What regulations apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?
772.4 What definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

772.10 What types of projects may be funded under this program?

Subpart C—How Does One Apply for a Grant?

772.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a special projects grant?

Subpart D—How Does the Secretary Make an Award?

772.30 How does the Secretary evaluate an application?
772.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Grantee?

772.40 What are the financial obligations of a grantee?
772.41 What are the additional financial obligations of a tribe that supports a public library system?

Subpart F—What Are the Administrative Responsibilities of a Grantee?

772.50 Who must administer funds under a special projects grant to an Indian tribe?

Authority: Library Services and Construction Act, Pub. L. 91–600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98–480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 772.1 The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.

Under the Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program—referred to in this part as the Special Projects Grants to Indian Tribes and Hawaiian Natives Program—the Secretary provides Federal financial assistance to establish or improve public library services for Indians residing on or near reservations and for Hawaiian natives.

(20 U.S.C. 351, 351c (c)(2), (d)(1), (d)(2); 361(d))

§ 772.2 Who is eligible to apply for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

The following are eligible to apply for grants under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(a) Indian tribes, as defined in 34 CFR 771.4(b), that have received grants under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program (34 CFR Part 771).

(b) Organizations that—

(1) Primarily serve and represent Hawaiian natives;

(2) Are recognized by the Governor of the State of Hawaii; and

(3) Have received grants under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program (34 CFR Part 771).

(20 U.S.C. 351, 351a, 351c (c)(2), (d)(1), (d)(2); 361(d))

§ 772.3 What regulations apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

(a) The following regulations apply to an Indian tribe or an organization primarily serving and representing Hawaiian natives that applies for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department

Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in 34 CFR Part 771, as appropriate.

(3) The regulations in this Part 772.

(b) An organization primarily serving and representing Hawaiian natives that applies for a grant under this part is also subject to 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 351 *et seq.*)

§ 772.4 What definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

The following definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Contract
Department
EDGAR
Equipment
Facilities
Grant
Grantee
Project
Public
Secretary
Supplies

(b) *Definitions in 34 CFR Part 771.* The following terms used in this part are defined in 34 CFR 771.4(b) (the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program):

Act
Hawaiian native
Indian tribe
Library materials, including restricted collections of cultural materials
Library service
Public library
Public library services

(c) *Definition that applies to this part.* The following definition also applies to this part:

"Librarian" means an individual with training or experience in providing or managing library services.

(20 U.S.C. 351, 351a, 362c)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 772.10 What types of projects may be funded under this program?

(a) The Secretary provides Federal financial assistance under this program to an Indian tribe to conduct one or more of the following projects:

(1) Assessment of tribal library needs.

(2) In-service or preservice training of Indians as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Indians to have access to library services.

(7) Conduct of special library programs for Indians.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.

(9) Contracts to—

(i) Provide public library services to Indians living on or near reservations; or

(ii) Carry out any of the projects listed in paragraphs (a)(1) through (a)(8) of this section.

(b) The Secretary provides Federal financial assistance under this program to an organization primarily serving and representing Hawaiian natives to conduct one or more of the following projects:

(1) Assessment of library needs of Hawaiian natives.

(2) In-service or preservice training of Hawaiian natives as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Hawaiian natives to have access to library services.

(7) Conduct of special library programs for Hawaiian natives.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.

(c) As used in paragraphs (a)(8) and (b)(8) of this section, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3)(i) Initial equipment for any building referred to in paragraphs (c)(1) and (c)(2) of this section.

(ii) As used in paragraph (c)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (c)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities referred to in paragraphs (c)(1) through (c)(4) of this section (including architect's fees and the cost of acquisition of land).

(d) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

(20 U.S.C. 351a, 251c (c)(2), (d)(2); 361(d), 362; EO 11490, as amended)

Subpart C—How Does One Apply for a Grant?

§ 772.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a special projects grant?

(a) To be considered for a special projects grant under this program, an Indian tribe or an organization primarily serving and representing Hawaiian natives must submit to the Secretary—

(1) A plan for the year for which the applicant is seeking Federal financial assistance; and

(2)(i) A long-range program; or

(ii) If the tribe or organization has a long-range program on file with the Secretary in conjunction with a grant under this program, an update, if necessary, of that long-range program.

(b)(1) The Secretary regards the plan as an application for Federal financial assistance under Subpart D of this part.

(2) The project or projects the applicant proposes to carry out in its plan must be from among those listed in § 772.10 (a) or (b), as appropriate.

(c) The long-range program must be a comprehensive program that—

(1) Covers a period of not fewer than three years and not more than five years;

(2) Contains a clear and concise description of objectives; and

(3) Includes the following:

(i) Identification of the need for public library services by—

(A) Indians living on or near a reservation; or

(B) Hawaiian natives.

(ii) Identification of the specific service or services needed.

(iii)(A) A description of the project or projects to be undertaken toward meeting those specifically identified needs with assistance under this program.

(B) The project or projects must be from among those listed in § 772.10 (a) or (b), as appropriate.

(20 U.S.C. 351c (c)(2), (d)(2); 351d(g)(2), 361, 362, 364)

(Approved by the Office of Management and Budget under control number 1850-0565.)

Subpart D—How Does the Secretary Make an Award?

§ 772.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 772.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 351c (c)(2), (d)(2); 351d(g)(2), 361(d), 364)

§ 772.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan. (5 points)*

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for applicant to carry out the proposed public library services from among the projects listed in § 772.10 (a) or (b), as appropriate.

(2) In making this determination the Secretary considers—

(i) The needs to be addressed by the project, including the extent and severity of these needs as indicated by the number or percentage of individuals in the area to be served by the project who require the proposed library services;

(ii) A description of other library services in the area—including any offered by the applicant—that are designed to meet the same needs as those to be addressed by the project;

(iii) Evidence that these other library services are insufficient in quantity or quality or both, or an explanation of why they are not used by individuals who require the proposed public library services; and

(iv) A description of how the project is likely to meet these needs by establishing or improving public library services for—

(A) Indians living on or near a reservation; or

(B) Hawaiian natives.

(g) *Consistency with long-range program.* (20 points)

(1) The Secretary reviews each application to determine the consistency of the project with the applicant's long-range program submitted under § 772.20.

(2) The Secretary considers—

(i) How the project is designed to help meet one or more of the specific needs identified in the long-range program; and

(ii) The extent to which the project is likely to meet one or more of the long-range objectives described in the program.

(h) *Community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the community are involved in the project.

(2) The Secretary considers the extent to which individuals to be served and other members of the community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(20 U.S.C. 351c (c)(2), (d)(2); 535d(g)(2), 361(d), 364)

(Approved by the Office of Management and Budget under control number 1850-0565.)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 772.40 What are the financial obligations of a grantee?

A tribe that receives a grant under this program shall provide the difference between—

(a) The costs of carrying out the plan approved by the Secretary for that year; and

(b) The Federal allocation, which, in no case, exceeds 80 percent of the costs.

(20 U.S.C. 351e(c))

§ 772.41 What are the additional financial obligations of a tribe that supports a public library system?

If an Indian tribe that receives a grant under this program supports a public library system, the tribe shall expend from Federal, State, and local sources for public library services an amount not less than the amount the tribe expended from those sources for public library services during the second year preceding the year for which the Secretary has approved a grant to the tribe under this program.

(20 U.S.C. 362(b))

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 772.50 Who must administer funds under a special projects grant to an Indian tribe?

Funds granted to an Indian tribe under this program must be administered by a librarian.

(20 U.S.C. 351c(c)(2))

PART 76—STATE-ADMINISTERED PROGRAMS

6. Paragraph (v) of § 76.102 is amended by removing the words "and the annual programs" and inserting instead the words "a long-range program, and an annual program".

Appendix A—Summary of Comments and Responses

[Editorial Note.—The following Appendix will not appear in the Code of Federal Regulations.]

The following is a summary of the public comments received on the proposed regulations published in the FEDERAL REGISTER on May 16, 1985 (50 FR 20522), and the Secretary's responses to those comments including any changes. The comments and responses are organized in the same order as the referenced sections are organized in these final regulations.

Parts 768 and 769—The Library Services and Construction Act Foreign Language Materials Acquisition Program and Library Literacy Program

Comment. One commenter felt that applications for funds under the Foreign Language Materials Acquisitions Program and the Library Literacy Program being forwarded directly to the Secretary for review would prevent statewide coordination, particularly in the case of the Library Literacy Program.

Response. No change has been made. Title V (Foreign Language Materials Acquisition) provides that the Secretary will carry out a discretionary program for making grants available directly to State and local public libraries for the acquisition of foreign language materials. Title VI (Library Literacy Program) provides that the Secretary will carry out a discretionary program for making grants available directly to State and local public libraries for the purpose of supporting literacy programs. However, the House Conferees recommended that applicants for funding under the Library Literacy Program show that the proposed projects are not in conflict with the State plan required under the Act, and demonstrate evidence of cooperation and coordination with other service providers as appropriate, including State adult education officials or their local representatives (See H.R. Rep. No. 1075 98th Cong., 2d Sess 21 (1984), also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984). Section 769.31(f) contains a selection criterion on cooperation and coordination with other service providers. In addition, local public libraries are encouraged to indicate in their application to the Secretary that their applications are not in conflict with the State plan. This should result in the coordination of projects funded under Titles V and VI with those of other service providers.

Sections 768.1 and 769.1 How does the Secretary evaluate an application?

Comment. One commenter observed that "Both 34 CFR 768.31 and 769.31 provide detailed scoring information used by the Secretary to evaluate applications for grants under Titles V and VI of the Act". The commenter asked what approach, beyond this scoring method, would be used to award grants when all applications cannot be funded?

Response. No change has been made. All applications are evaluated and scored by a review panel. If the successful applications request funds greater than the amount of grant funds available, the Department negotiates with the successful applicants.

Sections 768.4, 769.4, 770.4, 771.4, and 772.4 What definitions apply to the five parts of the Library Services and Construction Act?

Comment. One commenter suggested that the definition of "library materials" in all five parts of the regulations be expanded to include "computer software" as so many libraries are now purchasing and circulating computer software to users.

Response. A change has been made. Sections 768.4(c), 769.4(c), 770.4(c), and 771.4(b), now read: "Library materials" means "books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped." This revised definition is referenced in § 772.4(b).

Section 768.4 What definitions apply to the Foreign Language Materials Program?

Comment. One commenter requested that a definition for "State public library" be included in the definitions.

Response. A change has been made. Section 768.4(a) now references "State library administrative agency" which is defined in section 3 of the Act. Section 768.4(c) now includes the following: "State public library" means, "for this program, the State library administrative agency" as defined in section 3(10) of the Act. However, since some State library administrative agencies are responsible only for the extension and development of public libraries within their respective States and have no responsibility for a circulating collection of books and other library materials, the State library administrative agency in those States should request that the library at the State level responsible for circulating library materials statewide, submit the application for funds under the LSCA Foreign Language Materials Program. In determining what was meant by the term "State public library", as used in Title V of the Act, consideration was given to Congressman Simon's statement in the House hearings on H.R. 2878, (130 Cong. Rec. H258 (daily ed. January 31, 1984)) to the effect that Title V would ". . . not only benefit library users who speak English as a second language," (limited English-speaking proficiency under the LSCA State-Administered Program), "but it will also provide an incalculable resource to English-speakers who are learning a second language". (LSCA Foreign Language Materials Program)

Section 769.4 What definitions apply to the Library Literacy Program?

Comment. One commenter asked why the term "State public libraries" was not defined in the Library Literacy Program Part of the NPRM.

Response. No change has been made. Section 769.4(a) references the "State library administrative agency" and § 769.4(c) provides that for the Library Literacy Program "State public library" means the "State library administrative agency".

Comment. One commenter suggested that the definition of "functionally illiterate adult" as defined in § 769.4(c) could apply to the "developmentally disabled" and notes that a distinction is not made between these two groups in reference to "illiteracy" under Title I of the LSCA State-Administered Program.

Response. No change has been made. Section 601(a) of the Act provides that the Secretary shall carry out a program of making grants from sums appropriated pursuant to section 4(a)(5) of the Act to State and local public libraries for the purposes of supporting literacy programs. Section 601(a) provides for grants to State public libraries for the purposes of coordinating and planning library literacy programs and making arrangements for training librarians and volunteers to carry out such programs. Grants to local public libraries are for coordinating and planning library literacy programs, the acquisition of materials for literacy programs, and using library facilities for such programs. Neither the Act nor Parts 769

and 770 of these final regulations preclude the inclusion of the developmentally disabled in the definition of "functionally illiterate adult".

Comment. One commenter suggested that the definition of "library materials" include materials designed to assist in the training of literacy tutors.

Response. No change has been made. The definition does not address the uses of materials. It merely lists the kinds of materials that are considered to be library materials for the purposes of this program.

Section 769.31 What selection criteria does the Secretary use?

Comment. One commenter suggested, in order to assure coordination with other Statewide literacy projects, § 769.31 should include a provision requiring the submission of a copy of the grant application to the State library administrative agency for review and comment. The commenter also suggested that the grant application specify how the project may relate to a Statewide plan for literacy.

Response. No change has been made. However, instructions in the direct grant application package for local public libraries state that the Secretary encourages applicants to indicate in the narrative that they have contacted the State library administrative agency to determine the proposed project is not in conflict with the Library Services and Construction Act State-Administered Program literacy provisions. (34 CFR Part 770). (See H.R. Rep. No. 1075, 98th 2d Sess. 21 (1984), also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984)

Part 770—The Library Services and Construction Act State-Administered Program

Comment. In reference to the Preamble to the NPRM, several commenters questioned how State library administrative agencies "should assist Indian tribes and eligible Hawaiian organizations with Title I funds in planning and developing library services to meet their needs," and "assist Indian tribes and Hawaiian natives to participate in resource sharing to the extent possible" under Title III.

Response. No change has been made. Many of the States where there are Indian tribes, have been and will continue assisting these tribes under the provisions of Titles I and III of the LSCA State-Administered Program. For example, in the past under the provisions of Title I (Library Services), Indian tribes and Hawaiian Natives have received assistance through projects targeting areas without services, areas with inadequate services, the disadvantaged, and the physically handicapped, institutionalized individuals, individuals with limited English-speaking proficiency, and the elderly. Indian tribes and Hawaiian natives have also received Title I assistance through projects intended to strengthen State library administrative agencies and through literacy projects. Under the provisions of Title III (Interlibrary Cooperation and Resource Sharing), States have included Indian tribes' and Hawaiian natives' school libraries, public libraries, and college libraries in interlibrary cooperation and resource sharing projects. Therefore, although Pub. L. 98–480 authorizes Title IV (Library Services for Indians), with provisions for Indian tribes and organizations primarily serving and representing Hawaiian natives exclusively, Indian tribes and Hawaiian natives need not be restricted to the provisions of Title IV and should continue to be assisted under the LSCA State-Administered Program. Also, Indian tribes having "public libraries" as defined under section 3(4) of the Act may submit applications to the Secretary for direct grants under the provisions of the LSCA Foreign Language Materials Acquisition or Library Literacy Programs. Finally, it should be noted that although Title IV funding goes directly to Indian tribes it was the stated intention of the House Committee on Education and Labor that the tribes themselves coordinate library service programs with State libraries in order to insure maximum benefit from Federal library funds. (See H.R. Rep. No. 98–165, 98th Cong., 1st Sess. 7 (May 16, 1983)).

Comment. Several commenters believed the interpretation in the Preamble to the NPRM, that administrative costs may not exceed the greater of six percent of the sum of the amounts allotted to each State under Titles I and II for any fiscal year, or sixty thousand dollars, was incorrect because section 8 of the Act indicated six percent of the State's title III allotment was also to be included but deducted from either the Title I or Title II allotments.

Response. No change has been made. Section 8 (Administrative Costs) of the Act states: "A State may expend funds received under titles I and II for administrative costs in connection with programs and activities carried out under titles I, II, and III, but such administrative expenditures under such titles for any fiscal year may not exceed the greater of (1) 6 per centum of the sum of the amounts allotted to such State under such titles for such fiscal year or (2) $60,000". The House Conference Report states: "Section 8 of the House bill requires that a State may expend funds received under Titles I and II of the Act for administrative costs, but those expenditures may not exceed 5 percent of the amount appropriated under those titles or $50,000, whichever is greater. The Senate amendment has no comparable provision. The Senate recedes with an amendment that raises the percentage of *Title I or II funds that can be expended for State administrative costs* to 6 percent and the amount to $60,000, whichever is greater". (See H.R. Rep. No. 1075, 98th Cong., 2d Sess. 19 (1984), also printed at 130 Cong. Rec. H 10137, daily ed. September 25, 1984) (emphasis added.)

Comment. Several commenters suggested that the technical amendments to the Library Services and Construction Act (H.R. 1997) passed by the House of Representatives on May 21, 1985, should be incorporated into the final regulations.

Response. No changes can be made in the regulations until both Houses of the Congress have resolved differences in the proposed technical amendments to the LSCA, and the President has signed the resulting bill into law. Until such time as such technical amendments become law, these regulations can only reflect the amended LSCA statute currently in effect.

Comment. A commenter asked if it were possible for the regulations to include a provision which allows for carryover of allotments.

Response. No change has been made. The issue of carrying over appropriations to the next fiscal year is addressed in section 412(b) of the General Education Provisions Act (Pub. L. 90–247), and at 34 CFR 76.705(a). Section 4(b) of the LSCA also makes provision for sums appropriated to "be available for obligation and expenditure for the year specified in the Appropriation Act and for the next succeeding year".

Section 770.2 Who is eligible to apply for a grant under the State-Administered Program?

Comment. Several commenters felt that under § 770.2(b)(1) "State-supported institutions", "public library systems", "other eligible recipients as defined in the State plan", "library networks," and "other appropriate providers of library services" would not be eligible to apply to respective States for subgrants as

these entities are not included in the Act's definition of "public library".

Response. No change has been made. In pertinent part, section 3(5) of the Act defines the term "public library" as a library which provides services to residents of a community, district, or region and receives its financial support in whole or part from public funds. Moreover, the "State library administrative agency", as defined in section 3(10) of the Act, is the agency "charged by law of that State with the extension and development of public library services throughout the State. . .". The means by which a State library administrative agency does so is left to the discretion of each State library administrative agency so long as it remains in compliance with the State plan and the terms and requirements of the Act. Thus, although the entities listed by the commenters are not specifically included in the statutory definition of "public library" they are not thereby necessarily precluded from applying to their respective States for subgrants under the State-Administered Program.

Comment. One commenter requested that "information centers" be included under § 770.2(b)(2) as being eligible to apply for subgrants under the Interlibrary Cooperation and Resource Sharing Program.

Response. No change has been made. Section 302(a) (Uses of Federal Funds) of the Act provides that Title III funds shall be used for "establishing, expanding, and operating local, regional, and interstate cooperative networks of libraries, which provide for the systematic and effective coordination of the resources of school, public, academic, *and special libraries and information centers* for improved supplementary services for the special clientele served by each type of library or center" (emphasis added). Thus, subgrants of Title III funds may be awarded for projects which provide for the coordination of the resources of special libraries and information centers with those of school, public and academic libraries. Although the Act does not prohibit the issuance of a subgrant for such a project to an "information center" the Secretary does not consider it necessary to specifically include "information centers" in § 770.2(b)(2).

Section 770.4 What definitions apply to the State-Administered Program?

Comment. Several commenters asked why the term "handicapped" is defined at § 770.4(c) when it is defined at sections 3(4) and 3(9)(B) of the Act. The Act uses the terms "handicapped" at section 2(a)(2), "handicapping conditions" at section 6(b)(4)(A), "handicap" at section 101(1), "library services to the physically handicapped" at section 102(a)(2)(B)(ii), and "handicapped individuals" at section 103(5).

Response. No change has been made. The definition of "handicapped" in § 770.4(c), is retained in these final regulations. Although the legislative history indicates a clear Congressional concern for the "handicapped" (See for example H.R. Rep. No. 1075, 98th Congress, 2d Sess. 19 (1984), also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984)) and, as noted by the commenter, numerous references to the handicapped appear throughout the Act, the Act does not define this term except in the course of defining terms such as "State institutional library services" and "library services for the physically handicapped". A uniform definition applicable to all States is necessary for the administration of the program, and thus one is included in these regulations.

Comment. One commenter asked why the definitions for "illiteracy" and "literacy" at § 770.4(c) do not contain grade level correlations.

Response. No change has been made. Uniform definitions of the statutory terms "literacy" and "illiteracy" are necessary to the administration of the State-Administered Program. However, it is felt that grade level correlations would be rather meaningless in the context of public library literacy programs.

Comment. One commenter suggested adding a definition for "information centers" or at least clarifying whether "information centers" as used in Title III (Interlibrary Cooperation and Resource Sharing) of the Act are included in the definition of "community information referral centers", as used in Title I (Library Services) of the Act and defined at § 770.4(c) of these regulations.

Response. No change has been made. The definition for "community information referral centers" in § 770.4 is the same as the one used by the Interdepartmental Task Force on Information and Referral, an organization of 12 Federal agencies which determined that a uniform definition was necessary to promote a clearer understanding of, and facilitate a more consistent approach in the provision of information and referral services. The term "community information referral centers" addresses public libraries only under the provisions of Title I (Library Services) of the Act and should not be confused with "special libraries and information centers" as used under section 302(a)(2) of the Act for Title III purposes.

Comment. Several commenters requested that the definition for "interlibrary cooperation" in § 770.4(c) be consistent with the language in § 770.12(b)(2)(ii) and suggested that it would be consistent if the definition for "interlibrary cooperation" were made to read: "interlibrary cooperation means activities which are intended to provide for effective coordination of the resources of school, public, academic and special libraries and information centers".

Response. No change has been made. As defined in § 770.4(c) "interlibrary cooperation" means: "the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers". This definition is already consistent with the language in § 770.12(b)(2)(ii) which provides that as used in § 770.12(b)(2)(i) "cooperative library networks" are those networks designed to "provide for the systematic and effective coordination of the resources of various types of libraries . . .".

Comment. One commenter noted that "Under the definition of the term *Public library* it is referred to as a 'library that serves free of charge all residents of a community, district, or region and receives its financial support in whole or in part from public funds . . .'. Under the new definitions the term public funds is no longer defined. This would allow for inclusion of funds raised, for example locally in a financial support drive and remove the necessity for governmental funds. Is this your intention"?

Response. No change has been made. Section 770.4(b) of these regulations references "public" as defined in EDGAR which reads: "as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government". Therefore, public funds as applied to Title I (Library Services) and used in the definition of "public library" are funds deposited in accordance with State and local laws and regulations, to the account of the State or political subdivision or agency, organization, or institution without conditions or restrictions that would negate their character as public funds.

As applied to Title II (Public Library Construction), the expenditures that the State shall consider in computing its share for construction under Title II (Public Library Construction) of the Act are those made by the applicant for that

purpose, regardless of the source of funds. Section 202(b) of the Act provides "For the purposes of subsection (a), the Federal share of the cost of construction of any project assisted under this title shall not exceed one-half of the total cost of such project". The recommendation was made in the Conference Committee (H.R. Rep. No. 1075, 98th Cong., 2d Sess. 20 (1984), also printed at 130 Cong. Rec. H10137 (daily ed., September 25, 1984) that the inclusion of section 202(b) of the Act "will allow Federal funding to go further in financing construction projects and will hopefully encourage private sector involvement in raising construction funds for libraries".

Comment. One commenter noted that the term "reading" had been omitted under § 770.4(c) from the definition for "limited English-speaking proficiency" and asked why this activity was omitted.

Response. A change has been made. The term "reading" was unintentionally omitted from this section of the NPRM and has been inserted in the last paragraph of the definition for "limited English-speaking proficiency".

Section 770.10 What types of projects may be funded under Library Services grants?

Comment. Several commenters asked if the term "handicapped" in § 770.10(b)(4)(i)(B) meant the same as "library services to the handicapped" at § 770.10(b)(ii) and if the term "institutionalized" in § 770.10(b)(4)(i)(B) meant the same as "State institutional library services" in § 770.10(b)(10)(i). Commenters felt that if these terms are synonymous there is no need to repeat them. However, several commenters believed that "library services to the physically handicapped" was not listed as a type of project which may be funded under Library Services grants.

Response. A change has been made. Section 770.10(b)(10)(ii) now reads: "Library services to the physically handicapped; . . ." and relates to the provisions of section 102(a)(2)(B)(ii) of the Act. The term "handicapped" in § 770.10(b)(4)(i)(B) relates to section 103(5) of the Act which requires States to describe in their annual programs, "the manner in which funds for programs for handicapped individuals will be used to make library services more accessible to such individuals". The term "institutionalized" in § 770.10(b)(4)(i)(B) relates to "institutionalized individuals" as provided for in section 2(a)(2) and section 103(3) of the Act. Section 2(a)(2) relates to "improving State and local public library services for older Americans, and for handicapped, insitutionalized and other disadvantaged individuals;". The term "State insitutional library services" in § 770.10(b)(10)(i) relates to the provisions of section 102(a)(2)(B)(i) of the Act which contemplates the use of Federal LSCA funds for "State institutional library services".

Comment. One commenter noted that the regulations for implementation of Title VI (LSCA Library Literacy Programs) make repeated reference to *volunteer* service and asked if this would impose a limitation on the LSCA State-Administered Program, Title I—Library Services, to the effect that Title I funds could not be used to pay literacy tutors or adult basic education tutors for their services.

Response. No change has been made. Section 101 of Title I of the statute provides: "The Secretary shall carry out a program of making [Title I] grants to States which have approved basic State plans under section 6 and have submitted annual programs under section 103(4) *for assisting libraries in providing literacy programs* for adults and school dropouts in cooperation with other agencies and organizations, if appropriate". (emphasis added). Thus, States may expend Title I funds for the salaries of literacy program tutors.

Section 770.11 What types of projects may be funded under Public Library Construction Grants?

Comment. Two commenters requested that the regulations provide for insuring that construction projects assisted under Public Library Construction grants are carried out in compliance with section 106 of the National Historic Preservation Act.

Response. No change has been made. Although section 3(2) of the Act allows for the purchase of existing historic buildings for conversion to public libraries, there are no provisions in the Act requiring compliance with section 106 of the National Historic Preservation Act. Therefore, these regulations do not contain such a requirement. It should be noted, however, that EDGAR does contain requirements which apply to historic buildings purchased with Federal Public Library Construction Grant funds. Specifically, 34 CFR Part 76 (State-Administered Programs) states at § 76.600 (Construction) that "(a) A State or a subgrantee that requests program funds for construction, shall comply with the rules on construction that apply to applicants and grantees under 34 CFR §§ 75.600–75.615. (b) The State shall perform the functions that the Secretary performs under §§ 75.602 (Preservation of historic sites) and 75.605 (Approval of drawings and specifications) of this title. (c) The State shall provide to the Secretary the information required under 34 CFR 75.602(a) (Preservation of historic sites)". 34 CFR 75.602(a) states "an applicant shall describe in its application the relationship of the proposed construction to and probable effect on any district, site, building, structure, or object that is—(1) Included in the National Register of Historic Places; or (2) Eligible under criteria established by the Secretary of Interior for inclusion in the National Register of Historic Places".

In addition, Part V, of the application for Federal assistance for construction programs (OMB Circular A–102 (Revised)), page 36, Assurance 15, requires the applicant to assure that it "will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a–1 *et seq.*) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirments established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties."

Comment. Several commenters requested clarification as to whether under § 770.11 unused public school buildings may be converted into public libraries with LSCA Title II funds.

Response. No change has been made. The Act does not address unused public school buildings and therefore they are not specifically addressed in the regulations. However, the conversion of public school buildings into public libraries is permissible under § 770.11. Indeed, it was the recommendation of the Conference Committee (H.R. Rep. No. 1075, 98th Cong., 2d Sess. 18 (1984), also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984)) that *priority* be given, when economically feasible, to the acquisition and conversion of historic buildings and unused public school buildings for use as libraries.

Comment. Several commenters wanted a justification as to why "nuclear fallout shelter spaces" were included in § 770.11(b)(6)(i) as there are

no references in the Act or EDGAR to nuclear fallout shelter spaces.

Response. No change has been made. Nuclear fallout shelter spaces were included among public library spaces for which Title II funds may be used, because Executive Order 11490, "Assigning Emergency Preparedness Functions to Federal Departments and Agencies", provides that "all construction projects using Federal funds may use construction funds for nuclear fallout shelters".

Comment. Several commenters felt that § 770.11(b)(7) should be clarified because the proposed section indicates "any combination of two or more of the activities referred to in paragraphs (b)(1) through (b)(6) of this section" would not constitute construction. Section 770.11 (b)(4) and (b)(5) refer to architectural services and acquisition of land respectively, and commenters felt these two combined do not constitute construction.

Response. A change has been made. Section 770.11 (b)(4) (Architectural service) and § 770.11(b)(5) (Acquisition of land) have been deleted. Sections 770.11(b)(6) and 770.11(b)(7) have been renumbered as §§ 770.11(b)(4) and 770.11(b)(5), respectively, and § 770.11(b)(5) has been changed so that it now reads: "Any combination of activities referred to in paragraphs (b)(1) through (b)(4) of this section (including architect's fees and the cost of acquisition of land)". (Sections 771.10(c) and 772.10(c) have been changed in a manner consistent with the changes made to § 770.11(b).)

Comment. One commenter suggested the States need further clarification, guidance and interpretations of the term "alterations" although the term "remodeling" has been adequately defined in § 770.11(c).

Response. No change has been made. Neither the Act nor EDGAR draw a distinction between "remodeling" and "alteration", which are *both* included in the Act's definition of "construction". However, both Webster's Third New International Dictionary (1971) and Roget's International Thesaurus (Third Edition) use these terms interchangeably, and the Secretary does not consider it necessary to provide any further clarification. In cases where States have questions involving specific situations and circumstances, the Department may be contacted for technical assistance.

Comment. One commenter asked if the phrase "all other items necessary for the functioning of a particular facility" in § 770.11(b)(3)(E) meant that "library materials" could be included under "all other items", and if so, whether the "library materials" purchased for collection purposes during a construction contract period, could be applied for matching purposes.

Response. No change has been made. The phrase "all other items necessary for the functioning of a particular facility" refers to items of equipment and not to "library materials". (See section 3(2) of the Act.) "Library materials", as defined in § 770.4(c) of these regulations, may not be purchased with funds awarded under Title II (Public Library Construction), nor may the cost of such library materials be applied toward satisfying the Title II matching requirement. Section 202(a) (Uses of Federal Funds) under Title II of the LSCA State-Administered Program requires that Title II funds be used for the *construction* (as defined in section 3(2)) of public libraries.

Comment. Several commenters asked if these regulations apply to public libraries constructed with funds granted under Pub. L. 98-8, the Emergency Jobs Act.

Response. No change has been made. These regulations will apply only to construction carried out under grants made after the effective date of the regulations. However, to the extent the regulations incorporate the statutory amendments enacted in 1984. Grants made prior to October 17, 1984, are subject to the regulations in effect at that time.

Comment. One commenter asked what is meant by "nominal cost" in § 770.11(b)(6)(ii).

Response. No change has been made. Pursuant to Executive Order 11490, nuclear fallout shelters may be constructed with Title II funds as part of a larger project within a public library, and at a nominal cost. Generally, in pertinent part, 34 CFR 75.607 requires a grantee to insure that a construction project is "(1) Functional; (2) Economical; and (3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area . . . ". In the case of the use of Title II funds for nuclear fallout shelters within public libraries, not only must the project meet the requirements of 34 CFR 75.607, but the expense incurred must be reasonable and necessary in light of the size of the shelter as compared with the size of the overall project.

Section 770.12 What types of projects may be funded under Interlibrary Cooperation and Resource Sharing grants?

Comment. One commenter noted that "interlibrary cooperation" is defined in § 770.4(c) and asked why "resource sharing" is not defined.

Response. No change has been made. The LSCA Amendments of 1984 contain, among other findings, the Congressional finding that the role of libraries has expanded to include the sharing of resources and materials among a variety of libraries. (Section 101.) The definition in § 770.4(c) provides that "Interlibrary cooperation means the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers". Section 304 (Resource Sharing) of the Act, describes the kinds of activities a State may engage in to systematically and effectively coordinate library resources and materials. Consequently, it is not felt that a definition of "resource sharing" is necessary.

Comment. Several commenters suggested listing in § 770.12(b)(1)(ii)(B) the items specified in Section 304(c) of the Act.

Response. No change has been made. It is believed that repeating the objectives listed in the statute at section 304 serves no useful purpose in these regulations since State library administrative agencies must use both the statute and these regulations in developing their programs.

Comment. Several commenters requested a definition of the term "eventual compliance", as used in § 770.12(b)(1)(i)(A).

Response. No change has been made. The Conferees did not provide a definition or clarification for the term "eventual compliance". (See H.R. Rep. No. 1075 98th Cong. 2d Sess. 20 1984, also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984)) The Joint Explanatory Statement of the Committee of Conference, states: "(19) The House bill specifies that the State plan be directed toward eventual compliance with the provisions of this section. The Senate amendment does not specify 'eventual compliance'. The Senate recedes".

Comment. One commenter recommended deleting the words "may include but are not restricted to" under § 770.12(b), of the types of projects permissible under Interlibrary Cooperation and Resource Sharing grants because section 302(a) of the Act limits the grants to two activities: "(1) for planning for, and taking other steps leading to the development of cooperative library networks, and (2) establishing, expanding, and operating local, regional and interstate cooperative networks of libraries . . .".

Response. A change has been made. The words "but are not restricted to,"

have been removed from § 770.12(b), which now reads: "These types of projects include only the following:".

Section 770.20 What Must a State Do To receive a Grant Under the State-Administered Program?

Comment. Several commenters asked if the State must submit to the Department a list of members of the State Advisory Council on Libraries established pursuant to § 770.20(a)(1) and section 3(8) of the Act.

Response. No change has been made. It is not required that a State submit a list of members of the State Advisory Council on Libraries. The State must, however, assure the Secretary in its Basic State Plan that "it has established a State Advisory Council on Libraries pursuant to the requirements of section 3(8) of the Act". (See Section 6(a)(3)).

Section 770.21 What Must a State Plan Include?

Comment. Several commenters asked why the regulations state at § 770.21(a)(1) that the basic State plan covers five years when the State library administrative agencies were instructed and required to submit a basic State plan covering three years in order to acquire their FY 85 allotments under Titles I through III of the Act.

Response. No change has been made. Section 76.103, "Three-Year State Plans", of EDGAR provides that: "(a) Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period". On October 17, 1984, the President signed legislation reauthorizing the LSCA and pursuant to 34 CFR 76.103(a), a basic State plan covering a three year period was forwarded to every State library administrative agency. In order to reduce paperwork under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and pursuant to the authority provided by 34 CFR 76.103(a), these regulations now provide for basic State plans covering periods of five years.

Comment. One commenter noted that in § 770.21(a)(1), a basic State plan is described as covering a five year period and that this is in conflict with State law in a few States. They have been advised by their Office of Attorney General that they cannot sign assurances and commit State funds that have yet to be appropriated by the State legislature. The commenter suggested that the section be changed to provide that the basic State plan cover a one to five year period. This would allow those States in which a five-year commitment is legal to take advantage of the paperwork reduction offered by the five-year plan, but would allow for the signing of a one-year plan by those States unable to sign a longer one.

Response. No change has been made. Section 76.103(a) of EDGAR states, "Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period." Because the LSCA State-Administered Program is authorized for a period of five years, the regulations provide that the effective period of the basic State plan will be for five years. The Department will work with those States for which this presents a problem on a case by case basis.

Comment. Several commenters asked if the State plan consisted of the basic State plan, a long-range program and an annual program or if it consisted, as 34 CFR 76.102(v) states, of the basic State plan and the annual program.

Response. A change has been made. The State plan consists of (1) the basic State plan, (2) the long-range program, and (3) the annual program described in § 770.21 under the provisions in section 6 of the Act. A conforming change has been made in 34 CFR 76.102(v).

Section 770.22 What Must a State Include in a Basic State Plan?

Comment. One commenter felt that the provision in proposed § 770.22(c), requiring an assurance that "the State will give priority to proposed projects designed to carry out one or more of the following objectives" could be interpreted that a State may give priority to only one of the objectives.

Response. A change has been made. The words "one or more of" are not used in section 6(b)(4) of the Act and have been removed from these final regulations. Section 770.22(c) now reads: "An assurance that the State will give priority to programs and projects designed to carry out the following objectives". However, this should not be construed to mean that priority may be given only to those projects designed to carry out *all* of the listed objectives.

Comment. Several commenters were pleased to note that under § 770.22(a)(4), an assurance was required from State library administrative agencies that reports would be submitted showing, among other things, the extent to which funds awarded under the Act have been effective in carrying out the purposes of the program. The commenter felt it is important for the Department to aggregate, summarize, and disseminate widely these reports because such information helps ensure that "(1) States are able to take advantage of program results in other States and (2) the information is valuable to library users, librarians, and local, State, and Federal policymakers."

Response. No change has been made. Under a State-administered program, the requirement for performance reports appears in 34 CFR 76.720 which references other pertinent sections of EDGAR.

Comment. A number of commenters noted that in this section there is a list of assurances which are to be included in a basic State plan and that currently this plan is an ED preprinted OMB approved form. They asked if this section does not imply the State will develop the plan and submit it to the Department for approval. They asked, further, if ED would accept a basic State plan developed by the State that includes only the items enumerated in § 770.22 rather than the ED preprinted form.

Response. No change has been made. The preprinted basic State plan includes the assurances required in the statute and the pertinent parts of EDGAR listed in § 770.3. It is designed to assist States to ascertain that they are complying with all applicable Federal requirements.

Section 770.23 What Must a State Include in a Long-Range Program?

Comment. Several commenters felt that the long-range program should be a comprehensive plan that identifies each State's library needs. Section 3(12) of the Act defines the "long-range program" as the compehensive five-year program which identifies a State's library needs and sets forth the activities to be engaged in toward meeting the identified needs supported with the assistance of Federal funds made available under the Act. These regulations limit the long-range program to library services, public library construction, and interlibrary cooperation and resource sharing, as appropriate. The commenters felt that this ignores the definition given in the Act which requires a compehensive program which identifies a State's library needs with no limitation on the areas of need to be identified. The commenters proposed that it is when the State "sets forth the activities to meet the needs" that the State may limit the activities to those "supported with the assistance of Federal funds . . .".

Response. A change has been made. Section 770.23(a)(1) of the final regulations now reads: "A compehensive description of the State's identified present and projected library needs".

Section 770.24 What Must a State Include in an Annual Program?

Comment. Several commenters felt that requiring the State to give a description of the projects and activities to be carried out or for which the State plans to award subgrants under library services, public library construction, or interlibrary cooperation and resource sharing, when the annual program is submitted to the Department, would be difficult to accomplish. Several commenters felt that § 770.24(a)(1) should read: "a description of the projects and activities the State plans to carry out—and the basis upon which the State plans to award subgrants—during the specified year with regard to library services, public library construction, or interlibrary cooperation and resource sharing, as appropriate". The commenters noted that at the time an annual program is developed, decisions on the approval of specific subgrants have not been made and ongoing programs such as library services for the physically handicapped would be delayed.

Response. A change has been made. In pertinent part, § 770.24(a)(1) now reads: "A description of the projects and activities the State plans to carry out—and the basis upon which the State plans to award subgrants—during the specified year . . .". Section 3(13) of the Act defines the term "annual program" to mean: "the projects which are developed and submitted to describe the specific activities to be carried out annually toward achieving fulfillment of the long-range program". Section 3(13) of the Act also provides that these annual programs are to be submitted "in such detail as required by regulations promulgated by the Secretary." Pursuant to applicable statutory provisions and pursuant to § 770.24(a)(1) of these final regulations, States must convey in their annual programs the manner in which they intend to expend their LSCA allotments, that is, the various permissible program purposes or activities on which they intend to expend their allotments. Moreover, States must provide detailed information regarding specific program activities, that is, information reflecting attention to particular elements within the overall LSCA State-Administered Program. Those States which have subgrant information available to them at the time their annual programs are being compiled and prepared for submission to the Department, are strongly urged to include such subgrant information as well. The majority of the States with library programs involving the issuance of subgrants to local libraries currently submit subgrant information in their annual program. This practice has proven to be advantageous in many respects both for the States and for the Department, and States are encouraged to continue submitting subgrant information whenever possible.

Comment. Several commenters requested that "State institutional library services" and "library services to the physically handicapped" be added for clarity under § 770.24(b)(1) instead of requesting the reader to refer to § 770.40(c).

Response. No change has been made. The financial obligations a State must meet under a Library Services grant, including those regarding State institutional library services and library services to the physically handicapped, are all listed under § 770.40. It would serve no useful purpose to repeat them in § 770.24 which describes what a State must include in its annual program.

Comment. One commenter asked for a clarification as to whether the reference to Library Services in-kind contributions in § 770.24(b)(5)(ii) meant that local libraries should not report in-kind contributions to the State, since the State did not include in-kind contributions to the Federal Government among the amounts the State declares it will have available for expenditure under § 770.24(b)(5)(i).

Response. No change has been made. The State may request that a local applicant requesting Federal Library Services grant funds report in-kind contributions, but such contributions may not be included among the amounts the State declares it will have available for expenditure under § 770.24(b)(5)(i).

Comment. One commenter felt that many of the timelines in the previous Public Library Construction grant regulations were helpful since the regulations do not define what is meant by "completion of construction" and that conceivably construction projects could go on indefinitely.

Response. No change has been made. The applicable EDGAR regulation at 34 CFR 75.605, "Beginning the Construction", states that a grantee must begin work on construction within a reasonable time after the grant for the construction is made. 34 CFR 75.606, "Completing the Construction", states that the grantee must complete its construction within a reasonable time and in accordance with its application and approved drawings and specifications. Thus, the applicable regulations in EDGAR provide sufficient guidance for the timely completion of an approved construction project.

Comment. Several commenters felt that the provisions of § 770.24(b)(2) and section 102(c)(1) of the Act regarding "major urban resource libraries" (MURLs), were unfair because in Fiscal Year 85 the total appropriation for title I was $75 million less $1.5 million for Indian tribes and Hawaiian natives, and yet both the statute and the regulations as written require States with MURLs to reserve the entire excess above $60 million (that is, the full $15 million) in calculating the amount of each State's MURL grant.

Response. No change has been made. Section 102(c)(1) of the Act provides that when the appropriation for Title I exceeds $60 million, each State having MURLs must reserve that portion of the State's allotment attributable to the amount in excess of $60 million, in the manner required in section 102(c)(2) of the Act. Unless there is an amendment to this statutory provision, States must continue to apply the entire amount over $60 million in determining the amount each must reserve for MURL purposes.

Comment. One commenter suggested that providing a statement of the amounts each State will have available from local sources as required in § 770.24(b)(5)(i)(B), should be optional.

Response. No change has been made. The requirement at § 770.24(b)(5)(i)(B) is based on the statutory requirement in section 7 (Payments) of the Act.

Comment. Several commenters felt that § 770.24(c) was unclear because it requires States to describe only how they plan to use funds, but does not require States to list specific approved construction projects to be funded with Public Library Construction grants.

Response. A change has been made. Section 770.24(c) now reads: "In the case of an application for a Public Library Construction grant, the State shall also include in its annual program a description of how the State plans to use funds that year, consistent with the long-range program, for approved construction projects in areas of the State lacking the library facilities necessary to provide adequate library services".

Comment. Several commenters reasoned that the use of "in-kind contributions" toward meeting the State match requirement was permissible under Public Library Construction grants since § 770.24(b)(5)(ii) provides that in the case of an application for library services grant a State may not include "in-kind contributions" among the amounts the State declares it will have available for expenditure from State or local sources, whereas § 770.24(c) contains no such prohibition.

Response. No change has been made. As a result of the 1984 Amendments to the LSCA, adding the new subsection 202(b), in-kind contributions may be included by States in calculating the non-Federal share of the cost of Public Library Construction projects. ("Third party in-kind contributions", as defined in 34 CFR 74.51, "means property or services which benefit a grant supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant".) Section 202(b) of the Act states that: "For the purposes of subsection (a), the Federal share of the cost of construction of any project assisted under this title shall not exceed one-half of the total cost of such project." The Conferees' explanation of why the Federal share can not be greater than one-half for any individual Public Library Construction project, is that: ". . . it will allow Federal funding to go further in financing construction projects and will hopefully encourage private sector involvement in raising construction funds for libraries." (See H.R. No. 1075, 98th Cong., 2d Sess. 17 (1984), also printed at 130 Cong. Rec. H 10137, daily ed. September 25, 1984)

Section 770.30 What Special Conditions Does the Secretary Apply in Considering an Application for a Grant?

Comment. One commenter noted that in § 770.30, reference is made to maintenance of effort requirements but not to matching requirements.

Response. No change has been made. The provision which contains the matching requirements for States receiving Library Services grants is § 770.40(b), which describes a State's financial obligations regarding the matching of Federal grant funds for States receiving funds under the Library Services grant program.

Section 770.40 What are a State's Financial Obligations Under a Library Services Grant?

Comment. Several commenters asked in reference to § 770.40(c)(1) if three separate maintenance of effort requirements were being imposed for State institutional library services, library services to institutionalized individuals, and library services to the physically handicapped.

Response. No change has been made. Pursuant to the amendments to section 103 of the Act, adding the words "and institutionalized individuals" after the word "handicapped" in clause (3), effort must be maintained for State institutional library services, and for library services to the physically handicapped and institutionalized individuals. The Amendments do not contain a definition of the term institutionalized individuals. The Conference Report contains no clarification of what is meant by the term. However, the Secretary does not consider that three separate maintenance of effort requirements have been imposed by the amendment, rather that effort must be maintained in the areas of State institutional library services, as well as in the area of library services to physically handicapped individuals and to those individuals institutionlized in facilities other than State facilities.

Comment. One commenter asked in reference to § 770.40(c)(2) whether in the event that the Federal allocation for Library Services is reduced the total amount would be ratably reduced by the same percentage as the allocation reduction, or whether one of these areas could be reduced by a greater amount than the other as long as the *overall* reduction was the same as the percentage of the allocation reduction.

Response. A change has been made. Section 770.40(c)(1) of these regulations now provides that the amount spent from Federal, State and local sources for State institutional library services and for library services to the physically handicapped and to institutionalized individuals must be no less than the amount spent from those sources for those services during the second year preceding the year for which the grant is made. Under the 1984 Amendments to the LSCA, section 103 of the Act was amended to provide that when the amounts of "Federal allocations to the State are reduced" the amount which the State is required to expend pursuant to section 103(3) (that is, for State institutional library services and library services to the physically handicapped and to institutionalized individuals), must be ratably reduced. (Section 103(7)). Pursuant to this statutory amendment, the percentages of expenditure reductions for these services may be reduced only by amounts which equal the percentage of the Fedral allocation reduction for Title I (Library Services).

Comment. One commenter felt that § 770.40(b) was too restrictive since section 7(a) of the Act states that ". . . the Secretary shall pay to each State an amount equal to the Federal share of the total sums expended by the State and its political subdivisions in carrying out such plan. . . .". The commenter felt that the Federal share should be based on the overall Title I program, not just particular services financed under the grant for that fiscal year.

Response. A change has been made. Section 770.40(b) of the final regulations provides: "The State shall provide the difference between—(1) The cost of carrying out the State's annual program; and (2) The Federal share of these costs, as specified in section 7(b) of the Act".

Comment. In reference to the provision on "major urban resource libraries" (MURLs) in § 770.40(d), one commenter raised the following: if the Federal appropriation is reduced from that of the previous year, or falls below the $80 million could MURL funding be eliminated.

Response. No change has been made. The first sentence after clause 7 of section 103 of the Act provides that the amount paid to a MURL may not be reduced below the amount paid to such library in the preceding fiscal year. Therefore, if the Federal appropriation is reduced from the amount appropriated in the preceding fiscal year, the State must nonetheless pay the MURL the same amount paid in the preceding fiscal year. In reference to the second question, if the appropriation for Title I falls below $80 million, the MURL provisions of the Act would not apply.

Comment. One commenter wanted to know, if under the provisions of § 770.40(d) a State contracted with a MURL for two consecutive years and the *MURL* fails to expend its grant fully in the second year, would the State be challenged by the Department as failing to meet maintenance of effort.

Response. No change has been made. There are no provisions in the Act requiring maintenance of effort by individual MURLs, although there is the requirement that States not reduce the amount paid to individual MURLs from one year to the next (See section 103(7) of the Act).

Comment. One commenter believed that the regulations should incorporate the penalties or consequences of failure to comply with maintenance of effort requirements.

Response. No change has been made. Neither penalties for nor consequences of failing to comply with maintenance of effort are contained in the regulations as none are contained, as such, in the Act. Note, however, that the Secretary is not authorized to make payment to a State under Title I unless he has determined that State and local funds are available for expenditure as specified in section 7(a)(1) and (a)(2) of the Act, and that this provision is contained in § 770.30(b) of these regulations.

Section 770.41 What Are a State's Financial Obligations Under a Public Library Construction Grant?

Comment. Several commenters asked if the requirement in § 770.41(b), that at least one-half of the total cost of an individual project must be supplied by State or local sources or both, could be met by using funds available from another local project that had local funds in excess of 50 percent, or was funded entirely with local funds.

Response. No change has been made. Section 202(b) of the Act provides that ". . . the Federal share of the cost of construction of any project assisted under [Title II (Public Library Construction)] shall not exceed one-half of the total cost of such project". The Conference Committee noted that the inclusion of Section 202(b) of the Act ". . . will allow Federal funding to go further in financing construction projects and will hopefully encourage private sector involvement in raising construction funds for libraries." (H.R. Rep. No. 1075, 98th Cong., 2d Sess. 17 (1984), also printed at 130 Cong. Rec. H 10137, daily ed. September 25, 1984). The amendment requires that each project be funded with *at least* 50 percent non-Federal funds. However, as is specifically stated in the Conference Report, "there is no limitation on the amount of State funds which go into Title II LSCA that may be used for individual construction projects", nor does the Act prohibit, or in any way limit, the non-Federal sources from which or the amounts of local dollars with which such projects may be funded.

Section 770.42 What Other Financial Obligations Does a Recipient Have Under a Public Library Construction Grant?

Comment. Several commenters suggested that § 770.42(c) provide a definition of "good cause". Language such as, "Good cause shall include the transfer of the Federal interest to another library facility of quality at least equal to that of the LSCA facility" was recommended.

Response. No change has been made. Section 202(c) of the Act provides "If, within 20 years after completion of construction of any library facility which has been constructed in part with funds made available under this title—(1) the recipient (or its successor in title or possession) ceases or fails to be a public or nonprofit institution, or (2) the facility ceases to be used as a library facility, unless the Secretary determines that there is *good cause for releasing the institution from its obligation,* the United States shall be entitled to recover . . .". (emphasis added). This section of the Act provides the Secretary with broad discretion to determine whether or not there is "good cause" based on relevant facts and information provided by each institution, and the Secretary will make this determination on a case by case basis.

Comment. Several commenters asked whether the provisions in section 202(c) of the Act relative to the recovery of portions of the equity interest within 20 years after completion of the construction of any library facility, apply retroactively to Public Library Construction projects completed in the 1960's and whether they apply retroactively to construction projects completed under Emergency Jobs Act funding.

Response. No change has been made. Section 202(c) applies to any facility constructed prior to or after the date of enactment of the 1984 Amendments to the LSCA with funds made available under Title II of the LSCA. (Section 112 (b)(2), Pub. L. 98–480). Therefore, section 202(c) applies to construction projects completed with funds appropriated under the Emergency Jobs Act (Pub. 98–8) and authorized under that Act to be administered under the provisions of Title II (Public Library Construction), as well as to construction projects completed in the 1960's, as is made clear in § 770.42(d) of these regulations.

Comment. One commenter asked if § 770.42(a) took precedence over § 75.603 (EDGAR), "Grantee's title to site", and if so, suggested that § 75.603 be changed to conform to § 770.42(a).

Response. No change has been made. Section 770.42(a) reiterates the statutory requirements contained in section 202(c) of the Act which provides in pertinent part that if, within 20 years after completion of construction of any library facility which has been constructed in part with funds made available under Title II (Public Library Construction), a facility ceases to be used as a public library facility the United States shall be entitled to a monetary recovery. These program-specific statutory and regulatory provisions would, in any event, supersede 34 CFR 75.603.

Comment. One commenter asked whether continuing public library construction projects funded with appropriations from the Emergency Jobs Act (Pub. L. 98–8), and authorized to be administered under the provisions of Title II, and therefore in accordance with Title II regulations that were in effect prior to September 30, 1984, would continue to have those regulations apply to them. If so, the commenter also asked whether those would be published in Title 34 of the Code of Federal Regulations.

Response. No change has been made. Public library construction projects approved by the States through September 30, 1984, under the provisions of Title II and thus in accordance with the Title II regulations in effect at that time, continue to have *those* regulations apply to them. However, those regulations will not be republished.

Section 770.43 What Administrative Costs are Allowable Under This Program?

Comment. One commenter asked if the cost of an audit is considered a direct or indirect cost.

Response. No change has been made. The question is not relevant to these regulations and the commenter is directed to 34 CFR Part 74 Appendix C, which contains principles for determining the permissibility of costs applicable to grants such as those awarded under Title II of the LSCA, including guidelines for determining whether allowable costs, such as the costs of certain audits, are direct or indirect.

Comment. One commenter asked whether State library administrative agencies are required to report the amount of State funds expended in the course of administering the LSCA program.

Response. No change has been made. Section 8 of the Act provides that: "A State may expend funds received under titles I and II for administrative costs in connection with programs and activities carried out under titles I, II, and III, but such administrative expenditures under such titles for any fiscal year may not exceed the greater of (1) 6 per centum of the sum of the amounts allotted to such State under such titles for such fiscal year, or (2) $60,000". The reporting of State funds expended on the administration of the LSCA program is not a statutory requirement, nor is it a requirement in these regulations.

Comment. One commenter asked if indirect cost charges under a State indirect cost allocation plan would have to be reported as an "administrative expense". In the commenter's opinion, if that were the case, the effect would be to create a cap or ceiling on allowable indirect costs, which would be in conflict with OMB Circular A–87 "Cost Principles for State and Local Governments".

Response. No change has been made. Section 102(b)(1) of the Act allows for funds to be used "to pay the cost of

administering the State plans submitted and approved under this Act (including obtaining the services of consultants)". 34 CFR Part 74, Appendix C(II)(A), sets standards for selected items of cost which apply whether the cost is treated as direct or indirect; 34 CFR Part 74, Appendix C(II)(B), provides definitions of cost such as those for advisory councils, audits, legal expenses, materials, meetings and conferences, printing and reproductions, and travel, incurred in the course of administering a program. Thus some of the indirect charges are reportable under sections 8 and 102(b)(1) of the Act. The concept of a cap on indirect costs is not in conflict with OMB Circular A–87 because, pursuant to section A(1) of Circular A–87, the principles "are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law". Section F(3)(a) of Circular A–87 states also that "Federal grants may be subject to laws that limit the amount of indirect costs that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Circular, whichever is the smaller". Since section 8 of the Act puts a limitation of 6 percent or $60,000 on Federal LSCA funds used to administer the LSCA State-Administered Program, and since this statutory limitation overrides the provisions in A–87, for purposes of administering the LSCA State-Administered Program, there is, in fact, a cap on allowable costs for administration.

Parts 771 and 772—Library Services and Construction Act Basic and Special Projects Grants to Indian Tribes and Hawaiian Natives Programs

Comment. One commenter was pleased that Title.IV, (Library Services for Indian Tribes), had become law but was of the opinion that although a means has been found to develop or improve public library services, there was now a need to make certain that these goals would be reached under Title IV and that the title is not abused. Secondly, the commenter suggested that a statement be placed into the regulations for Title IV to clearly state that Title IV funds should not be used to supplant funding from other titles of the LSCA.

Response. No change has been made. The regulations for Parts 771 and 772 implement the statutory provisions in Title IV of the Act and other pertinent parts of the statute relating to Indian tribes and Hawaiian natives. In response to the commenter's concern with potential supplanting of Title IV funds, it should be noted that under section 402(b) of the Act: "any tribe that supports a public library system [must] continue to expend from Federal, State, and local sources an amount not less than the amount expended by the tribe from such sources for public library services during the second fiscal year preceding the fiscal year for which the determination is made." This provision is reflected in §§ 771.40 and 772.41 of these regulations.

Comment. One commenter felt the term "near reservations" as used in this part of these regulations needs to be clearly defined in the definitions section of these regulations.

Response. No change has been made. Indian tribes and Indians located in the States of California, Oklahoma, and Alaska, which do not have reservations, should note that sections 404 and 401(c) of the Act provide that funds under Title IV (Library Services to Indian Tribes), are to be awarded to Indian tribes for library services to "Indians living on or near reservations", or that public library services are to be provided "on or near reservations". Thus, Indian tribes and Indians in those States that would not be able to satisfy the program purposes of sections 404 and 401(c) of the Act, would not be considered for funding under either Part 771 or 772.

Comment. One commenter "strongly recommends that the wording of the proposed regulations be modified to allow Tribal Organizations and Alaska Native Regional Non-profits to apply for Basic Grants under Library Services, if so authorized by the recognized tribal governing bodies of the Indian tribes via a tribal resolution. Currently, in order for the tribes to authorize the Regional Non-profits to provide library services, the 15 recognized tribes in our region would have to: all apply and contract separately with the regional non-profit to provide services, or—all would have to pass a resolution authorizing a single tribe to apply on their behalf. This single tribe would then have to submit an application and when awarded, subcontract with the Regional Tribally authorized Non-Profit to provide services". The commenter goes on to say that either option requires a proliferation of paperwork and it is believed the regulations would deny grants to some of the tribes as they do not all have the technical expertise to develop an application.

Response. No change has been made. In pertinent part, the definition of "Indian tribe" under section 3(15) of the Act is "any Indian tribe, band, nation, or other organized group or community including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, . . .". Section 771.4(b) includes the definition for "Indian tribe" based on the statutory language in section 3(15) of the Act. The definition of "Indian tribe" addresses who is eligible to apply for grants but does not address the processes whereby applications are submitted to the Department.

Sections 771.4 and 772.4 What definitions apply to the Basic and Special Projects grants to Indian Tribes and Hawaiian Natives Programs?

Comment. One commenter suggested that the definition of "library materials" be expanded to include "computer software" as so many libraries are now purchasing and circulating computer software to users.

Response. A change has been made. In § 771.4(b), the definition for "library materials" now includes "computer software". (This revised definition is referenced in § 772.4(b).)

Comment. One commenter agreed that "restricted collection" as defined under "library materials" in § 771.4(b) "was a positive step not only because it has the potential to help preserve Native American cultures but also because it may help protect the privacy of these very same cultures". However, the commenter proposed that other tribal special collections such as a special mineral collection dealing with tribal resources also be recognized under this definition.

Response. No change has been made. The portion of the definition of "library materials" concerning "restricted collection" is based on the provision of sections 5(d)(2) and 402(c) of the Act. The definition does not specifically list what may constitute a "restricted collection", but refers to it as "library materials not placed in general circulation". Beyond this what constitutes a "restricted collection" should be determined by each Indian tribe or organization primarily serving and representing Hawaiian natives.

Comment. One commenter felt that "expanding the definition of an Indian tribe" in § 771.4(b) "to include all entities defined under the Alaska Native Claims Settlement Act unnecessarily dilutes the limited funds available. A preferable definition, according to the commenter, would limit the definition of

Indian tribes to those Federally recognized and working with the Bureau of Indian Affairs. Further, as it stands now, tribes that have one member will receive the same amount of funds as a tribe which has 170,000 members (as is the case with the Navajo Nation). The commenter proposed that a "two tiered" funding system should be developed: a guaranteed minimal sum that every tribe would be entitled to and a sum derived from a formula which would consider the population and geographical size of a tribe. In this manner, according to the commenter, tribes which have larger populations and geographical sizes would receive increasing funding. As proposed these funding levels would be arranged in such a manner as to fit within the amounts allocated for title IV.

Response. No change has been made. The definition for "Indian tribe" in § 771.4(b) is based on the language in section 3(15) of the Act.

Comment. One commenter requested clarifications under Title IV (Library Services for Indian Tribes), as to whether tribally controlled community college libraries would be eligible because the definition of "public library" under section 3(5) of the Act and § 770.4(c), excludes an institution of higher education from participation under the LSCA; and (2) whether elementary and secondary school libraries under either BIA or tribal contract could serve as a "public library".

Response. No change has been made. Under the provisions of Pub. L. 93–133 (National Foundation on the Arts and the Humanities Amendments of 1973), an amendment was made to the LSCA definition of "public library" to allow a "research library", as described under clauses (A) through (D) of section 3(5) of the Act, to receive funds under the LSCA State-Administered Program. This amendment allows a "research library" such as the Folger Shakespeare Library, the Newberry Library, the Linda Hall Library, or other research libraries not associated with an institution for higher education, to receive grants under the Library Services Program of the LSCA State-Administered Program. It would also be permissible, however, for community colleges, and elementary and secondary school libraries under the control of BIA or Tribal Councils, to serve as public libraries when these are extending library services beyond their own special clientele to the community at large.

Sections 771.10 and 772.10 What types of projects may be funded under these programs?

Comment. Several commenters felt that these sections should be clarified as they now indicate "any combination of two or more of the activities referred to in §§ 771.10(c)(7) and 772.10(c)(7) would constitute construction". Sections 772.10(c) (4) and (5) and 772.10(c) (4) and (5) refer to architectural services and acquisition of land, respectively, and the commenters felt that these two combined do not constitute construction.

Response. A change has been made. Section 771.10(c)(4) (Architectural services) and § 771.10(c)(5) (Acquisition of land) have been deleted. Sections 771.10(c)(6) and 771.10(c)(7) have been renumbered as §§ 771.10(c)(4) and 771.10(c)(5), respectively, and § 771.10(c)(5) has been changed so that it now reads: "Any combination of activities referred to in paragraphs (c)(1) through (c)(4) of this section (including architect's fees and the cost of acquisition of land)". (Section 772.10(c) has been changed in a manner consistent with the changes made to § 771.10(c).)

Section 771.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a basic grant?

Comment. One commenter believed that eligible applicants for Title IV grants should be expanded because there are 15,746 Native Americans living in their State, but none are eligible for funding under Title IV as they do not live on or near reservations.

Response. No change has been made. The regulations are based on the statutory language of the Act and the use of the phrase "living on or near reservations" in reference to the eligibility of "Indian tribes," which appears in sections 401(b)(1), 401(c), and 402(a)(9) of the Act. In addition, section 401(a) of the Act contains the following pertinent Congressional findings: "(1) most Indian tribes receive little or no funds under titles I, II, and III of this Act; (2) Indian tribes *and reservations* are generally considered to be separate nations and seldom are eligible for direct library allocations from States; (3) the vast majority of *Indians living on or near reservations* do not have access to adequate libraries or have access to no libraries at all; and (4) this title is therefore required specifically to promote special efforts to provide Indian tribes with library services". (emphasis added).

Section 771.30 What factors does the Secretary consider in making an award?

Comment. One commenter said "The factors considered by the Secretary in awarding a grant are too unrestricted. There should be rules drafted which insure that funds will be used for public library services, have the potential for making a long-term difference, and encourage tribes to actively establish permanent public library programs. According to the commenter, as it is now, the rules are so loosely structured that the potential for abuse is too great.

Response. No change has been made. Section 771.30 states: "The Secretary awards a basic grant to an applicant if—(a) The applicant meets the requirements of eligibility in § 771.2; and (b) the Secretary determines that the application meets the requirements of § 771.20." The regulations are based on the statutory language of the Act and in particular, upon the provisions in section 401(b) of the Act which states: "It is therefore the purpose of this title (1) to promote the extension of public library services to Indian people living on or near reservations; . . .".

Section 771.40 What are the financial obligations of a tribe that supports a public library system?

Comment. A commenter recommended that the maintenance of effort requirement in § 771.40 be deleted because those tribes that have shown initiative in the past and may have reduced revenues in the current year might be penalized.

Response. No change has been made. Pursuant to section 402(b), each Indian tribe applying for funds under sections 403 or 404 of the Act, must, if the tribe supports a public library system, continue to expend from Federal, State, and local sources, an amount not less than the amount expended by the tribe from such sources during the second fiscal year preceding the fiscal year for which the determination is made.

Section 772.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a special projects grant?

Comment. One commenter felt that under § 772.20 a statement should be inserted "calling for the submission of an information copy of grant applications to the State library agency. This would assure State agency awareness of overall library planning in the State".

Response. No change has been made. Section 772.20 is based on the statutory language and provisions of Section 404

(Plans for Library Services to Indians), of the Act. Moreover, the grants awarded under Title IV are awarded as direct grants and the statute makes no provision for State library administrative agency involvement.

Section 772.50 Who must administer funds under a Special Projects grant to an Indian tribe?

Comment. Several commenters suggested that the requirement under § 772.50 that a "librarian administer funds" should be changed to require administration by tribal management, as few tribes have available to serve them persons holding a MLS or equivalent degree.

Response. No change has been made. The Act mandates, under section 5(c)(2)(a), that no funds can be allocated to an Indian tribe unless such funds will be administered by a librarian. However, the regulations do not specify the extent of training or experience required of libraries, because it is recognized that setting a single standard is not feasible because of the diversity of tribal sizes. Some larger tribes with existing libraries may well, on their own, require a MLS or equivalent degree of their librarian. For others, that requirement would be unreasonable. Therefore, although the statute and the regulations require a "librarian" for the administration of special projects grant funds, the definition of the term has been left broad enough to accommodate concerns similar to that of the commenters.

[FR Doc. 85-19404 Filed 8-15-85; 8:45 am]
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Federal Register

Friday
August 16, 1985

Part IV

Department of Education

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 503 and 548

Bilingual Education: State Educational Agency Program; Final Regulations With Invitation To Comment

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 503 and 548

Bilingual Education: State Educational Agency Program

AGENCY: Department of Education.

ACTION: Final regulation with invitation to comment.

SUMMARY: The Secretary issues final regulations with invitation to comment under section 732 of Part B of the Bilingual Education Act, as amended. Recent amendments to the Act, enacted in Pub. L. 98–511, necessitate the changes incorporated in these final regulations. The State Educational Agency Program provides financial assistance to State educational agencies (SEAs) to collect, analyze, and report data on limited English proficient persons and the educational services provided or available to such persons. The program further provides for additional services in support of programs of bilingual education funded under the Bilingual Education Act in the States.

DATES: *Effective Date:* These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations call or write the Department of Education contact person.

Date: Comments must be received on or before October 15, 1985.

ADDRESSES: Comments should be addressed to Mr. Luis A Catarineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, (Room 421, Reporters Building), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–2922.

FOR FURTHER INFORMATION CONTACT: Mr. Luis A. Catarineau. Telephone (202) 245–2922.

SUPPLEMENTARY INFORMATION: The State Educational Agency Program is authorized under Section 732 of the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965 as amended by Pub. L. 98–511, (Title VII of the Act). (20 U.S.C. 3221–3262).

This program provides financial assistance to State educational agencies (SEAs) to collect, analyze, and report data on limited English proficient persons and educational services provided or available to such persons in their States. The program further provides for additional services that support programs of bilingual education in the States. The final regulations implement Section 732 of Part B of the Bilingual Educational Act, as amended (the Act), and incorporate the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79), except as otherwise noted.

These final regulations authorize grants to State educational agencies (SEAs) for the implementation of required activities as specified in § 548.10 and additional activities as specified in § 548.11.

These final regulations provide that the amount paid to any SEA for any fiscal year shall not be less than $50,000 or greater than 5% of the total amount paid to local educational agencies (LEAs) within the State under section 721 of the Act, during the prior fiscal year.

In most instances, the data and information required in § 548.10(b) and (c) of the final regulations will have been included in LEA applications under section 721 of the Act in accordance with the requirements of section 721(c)(2). LEAs who apply for funding under section 721 of the Act are required to submit their applications to the SEAs for review and comments in accordance with the requirements of section 721(e)(4) of the Act.

The selection criteria used to award a grant are contained in § 548.32.

These final regulations will govern the award of all SEA grants in Fiscal Year 1985.

Summary of Significant Comments and Responses

On May 28, 1985, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** at 50 FR 21766. The following is a summary of significant comments received on the NPRM and the Secretary's responses.

General

Supplementary Information: Preamble

Comment. One commenter stated that it was not practical to request SEAs to submit to the secretary data that pertains to the fiscal year in which the award is made. The commenter further contended that this guidance in the preamble may be difficult or even impossible for a number of States to accomplish.

Response. No change has been made. Submitting the information to the Secretary for the fiscal year in which the award is made, will assist OEMLA in the administration of the statute. In most instances this information will have already been submitted to SEAs at an earlier date, by LEAs in their State who applied for funding under section 721 of the Act during the same fiscal year, in accordance with the requirements of sections 721 (e)(4) and 721(c)(2).

Section 548.10 What activities are required under this program?

Comment. One commenter stated that requiring the SEA to report data on students enrolled in private schools raises a question of both Federal and State authority for imposing reporting requirements on private schools. The commenter stated further that the criteria used by private schools for purposes of identification of limited English proficient students may be totally inconsistent with those prescribed by State law and the State Board of Education. The commenter proposed a change in the wording of the regulations which would make the activity to collect data on private school students, "desired" but "not required."

Response. No change has been made. The data collection under § 548.10 of the regulations is required by section 732(b) of the Act.

Section 548.30 How are funds distributed to an SEA?

Comment. One commenter stated that while § 548.30(b)(1) of the proposed regulations adheres to the statutory provisions set forth in Section 732(d) of the Act, § 548.30(b)(2) does not, because it eliminates the statutory minimum of $50,000 for Fiscal Year 1985 awards. Accordingly, the commenter recommended that paragraph (b)(2) be deleted from the final regulations.

Response. A change has been made. The language in § 548.30(b)(2) has been revised to include the statutory $50,000 minimum for these awards.

Comment. One commenter recommended that the minimum amount of $50,000 paid to an SEA should be waived until such time as funding levels are adequate to support every applicant to its full funding, since only $5,000,000 is available nationally for this program.

Response. No change has been made. This provision is a statutory requirement.

Comment. One commenter stated that budgetary inflexibility exists in the proposed regulations because separate budgets are requested for required activities under § 548.10 and additional activities under § 548.11. The commenter recommended that a single budget should be substituted for both activities under §§ 548.10 and 548.11.

Response. No change has been made. An SEA grantee is required to conduct the activities under Section 732(b) of the Act. It is necessary for the budget to be detailed to ensure that the required activities will be accomplished. SEAs have flexibility in proposing their additional budget outlining the expenditure of all additional funds.

Comment. One commenter recommended the elimination or rewording of § 548.32(a)(2)(v), which references "project participants" since the SEA "project participants" are LEAs, not individuals.

Response. No change has been made. In instances when project participants are individuals, this section applies. When project participants are not individuals, this section does not apply.

Other Changes

After a review of the proposed regulations it was determined that a survey form was not necessary to collect the data required under § 548.10; therefore, language has been deleted to conform with this change.

Certain technical revisions have been made to § 548.4—definitions, § 548.10—activities required under this program, and to § 548.32—selection criteria. No substantive changes are intended, and no amendments to applications submitted to the Department are necessary.

The required activities under § 548.10(c) include the statutorily required collection of statewide data and information concerning the number of children enrolled in elementary and secondary public schools; the number of children enrolled in elementary and secondary private schools who reside in the area(s) served by the State's local educational agencies (LEAs); the number of limited English proficient children enrolled in public and private schools in the area(s) served by the State's LEAs; method(s) used to identify the limited English proficient children; evidence of the educational condition of the limited English proficient children such as reading, mathematics, and subject matter test scores and, where available, data on grade retention rates, rates of referral to and placement in special education programs, and student dropout rates; the number of limited English proficient children enrolled in instructional programs specifically designed to meet their educational needs, and a description of those programs, and the educational services provided or available. Also required is the collection of data and information from LEAs within the State on the number of limited English proficient children enrolled in public or private schools in the area served by the LEAs who need or could benefit from programs assisted under Title VII, the number of children who are to receive instruction through the program proposed by LEAs within the State under section 721 of Title VII, and the extent of their educational needs; a statement of each applicant's ability in the State to serve children of limited English proficiency; an assessment of the qualifications of personnel who will participate in the proposed programs and of the need for further training of these personnel; the resources needed to develop and operate or improve the proposed programs; the activities that would be undertaken under the proposed programs and how these activities will improve the educational attainment of students and expand the capacity of the applicants to operate programs, such as those assisted under Title VII, when Federal assistance under section 721 of the Act is no longer available; and the specific educational goals of the proposed programs and how achievement of these goals will be measured.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Invitation to Comment

The Secretary is issuing these regulations in final form, following an opportunity for public comment in response to the notice of proposed rulemaking and consultation with interested organizations through the National Advisory and Coordinating Council on Bilingual Education (NACCBE) consistent with the requirements of the Bilingual Education Act and the General Education Provisions Act. However, the timing in the appointment of the new NACCBE members and the issuance of these particular regulations unfortunately permitted only limited consultation with NACCBE and other interested organizations. Recognizing NACCBE's role, the Secretary would like to provide a fuller opportunity for consultation with NACCBE and for further comments by interested organizations and individuals. The Secretary therefore invites further comments and suggestions on these regulations from any interested organizations or individuals and will carefully consider making appropriate amendments to these regulations, based on any further comments received, in continued consultation with NACCBE.

Interested persons may send comments to the address given at the beginning of this document until October 15, 1985. The Secretary will consider all of these comments.

All comments submitted in response to these regulations will be available for public inspection during and after the comment period in Room 421, Reporters Building, 300 7th Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunity to reduce any regulatory burdens found in these regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 548

Bilingual education, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: August 13, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by removing Part 503 and adding a new Part 548 as follows:

PART 503—BILINGUAL EDUCATION: STATE EDUCATIONAL AGENCY PROJECTS FOR COORDINATING TECHNICAL ASSISTANCE [REMOVED]

1. Part 503 is removed.

2. A new Part 548 is added to read as follows:

PART 548—BILINGUAL EDUCATION: STATE EDUCATIONAL AGENCY PROGRAM

Subpart A—General

Sec.

548.1 State Educational Agency Program.
548.2 Who is eligible to apply for assistance under the State Educational Agency Program?
548.3 What regulations apply to the State Educational Agency Program?
548.4 What definitions apply to the State Educational Agency Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

548.10 What activities are required under this program?
548.11 What additional activities may a State educational agency (SEA) provide under this program?

Subpart C—How Does an SEA Apply for an Award?

548.20 What must an SEA include in its application?

Subpart D—How Does the Secretary Make an Award?

548.30 How are funds distributed to an SEA?
548.31 How does the Secretary evaluate an application?
548.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Recipient?

548.40 What requirements apply to an SEA?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98–511, 98 Stat. 2370 (20 U.S.C. 3221–3262), unless otherwise noted.

Subpart A—General

§ 548.1 State Educational Agency Program.

The State Educational Agency Program provides financial assistance to State educational agencies (SEAs) to—

(a) Collect, aggregate, analyze, and publish data and information on the limited English proficient persons in their States and the educational services provided or available to those persons; and

(b) Carry out activities designed to improve the effectiveness of programs of bilingual education in their States, such as those assisted under Tilte VII.

(20 U.S.C. 3242)

§ 548.2 Who is eligible to apply for assistance under the State Educational Agency Program?

An SEA is eligible to apply for assistance under this program.

(20 U.S.C. 3242)

§ 548.3 What regulations apply to the State Educational Agency Program?

The following regulations apply to the State Educational Agency Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), except for § 75.217(a)(3) and (c)–(e) (relating to review of applications), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 548.

(20 U.S.C. 3242(a))

§ 548.4 What definitions apply to the State Educational Agency Program?

(a) The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Elementary school
Fiscal year
Grant
Grantee
Local educational agency
Nonpublic
Private
Project
Public
Secondary school
Secretary
State
State educational agency

(b) The definitions in 34 CFR 500.4 apply to awards made subsequent to Fiscal Year 1985.

(20 U.S.C. 3242)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 548.10 What activities are required under this program?

(a) An SEA that receives a grant under this program shall collect, aggregate, analyze, and publish data and information on the limited English proficient persons in the State and the educational services provided or available to those persons.

(b) The SEA shall report the data and information required to be collected under this section to the Secretary.

(c) The data and information collected under this section must include—

(1) Statewide data and information described in Section 721(c)(2) (A)–(E) of the Act, and statewide data and information on educational services provided or available to LEP persons as required by Section 732(a) of the Act; and

(2) Information, as described in Section 721(c)(2) (F)–(J) of the Act, from local educational agencies (LEAs) that have applied for Federal assistance under Title VII, Part A of the Act.

(Approved by OMB under control number 1885–0509)

(d) An SEA shall submit to the Secretary the data and information required under paragraph (c) of this section, on or before the date established by the Secretary in the Federal Register.

(e) An SEA shall make the data and information reported to the Secretary available for publication and dissemination to the public, particularly to persons of limited English proficiency in the State.

(20 U.S.C. 3242(b))

§ 548.11 What additional activities may a State educational agency (SEA) provide under this program?

(a) An SEA may propose any of the following additional activities:

(1) Planning and developing educational programs such as those assisted under Title VII.

(2) Reviewing and evaluating programs of bilingual education, including bilingual education programs that are not funded under Title VII.

(3) Providing, coordinating, or supervising technical and other forms of non-financial assistance to LEAs, community organizations, and private elementary and secondary schools that serve limited English proficient persons.

(4) Developing and administering instruments and procedures for the assessment of the educational needs and competencies of limited English proficient persons.

(5) Training SEA and LEA staff to carry out the purposes of programs assisted under Title VII.

(6) Other activities and services designed to build the capacity of SEAs and LEAs to meet the educational needs of limited English proficient persons.

(b) An SEA shall indicate its priorities for funding.

(20 U.S.C. 3242(c))

Subpart C—How Does an SEA Apply for an Award?

§ 548.20 What must an SEA include in its application?

An SEA shall assure the Secretary in its application that it will work cooperatively with and coordinate efforts with the Multifunctional Resource Centers, the Bilingual Evaluation Assistance Centers, the National Clearinghouse for Bilingual Education, and other LEA technical assistance service providers in the State.

(20 U.S.C. 3242)

Subpart D—How Does the Secretary Make an Award?

§ 548.30 How are funds distributed to an SEA?

(a) The Secretary may award to an SEA funds necessary for the proper and efficient conduct of a project under this program.

(b)(1) The amount paid to an SEA for any fiscal year may not be less than $50,000 nor greater than 5 percent of the total amount paid to LEAs within the State under Part A of Title VII during the fiscal year preceding the year for which assistance is sought.

(2) The amount paid to an SEA for Fiscal Year 1985 may not be less than $50,000 or greater than 5 percent of the total amount paid in Fiscal Year 1984 to LEAs under the Basic Projects Program and the Demonstration Projects Program previously authorized under section 721 of Title VII, as amended by Pub. L. 95–561 and 34 CFR Parts 501 and 502 (1984), respectively.

(c) In determining the amount of an award to an SEA the Secretary considers—

(1) The reasonableness of an SEA's proposed budget to carry out the activities required under § 548.10;

(2) The need for any of the additional activities proposed under § 548.11; and

(3) The total funds available for awards to SEAs under this program.

(20 U.S.C. 3242(d))

§ 548.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria listed in § 548.32 in deciding whether to approve a program under section 732.

(b) The Secretary awards a maximum of 100 points to evaluate the activities under § 548.10 and the additional activities an SEA may propose under § 548.11.

(c) The maximum possible score for each complete criterion is indicated in parentheses after the heading for each criterion.

(d) The Secretary awards a grant to each SEA that—

(1) Meets the applicable requirements in Section 732 and in this part; and

(2) Submits an application that achieves a score of at least 50 points under the selection criteria.

(e) The Secretary permits an SEA to modify and resubmit an application that has been disapproved under paragraph (d)(2) of this section.

(20 U.S.C. 3242)

§ 548.32 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purposes of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(vi) The methods the SEA proposes to use to provide services; and

(vii) The SEA's plans to work cooperatively with and coordinate activities with other providers of technical assistance to avoid duplication of services to the LEAs in the State.

(b) *Capacity building.* (25 points) The Secretary reviews each application for—

(1) A clear and concise plan for developing resources, including activities such as the training of SEA personnel, that will increase the capacity of the State to—

(i) Collect and analyze data necessary to identify and promote effective educational programs and practices for limited English proficient students; and

(ii) Carry out other activities assisted under this part; and

(2) The commitment of the State to incorporate and build the proposed activities into the State's overall ongoing programs designed to improve services to LEAs in the State.

(c) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) Participation of trained personnel in fields related to the objectives of the project;

(iv) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the activities of the project, as well as other evidence that the applicant provides.

(d) *Cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective for the proposed activities under section 732.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary considers—

(i) The method used to determine effectiveness of activities included in the SEA plan;

(ii) How the applicant determines the effect of the activities on LEA operations; and

(iii) Methods used to improve delivery of services to LEAs.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3242)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 548.40 What requirements apply to an SEA?

An SEA shall use funds made available under this program to supplement and, to the extent practical, increase the level of funds that, in the absence of the grant, would have been made available by the State for activities required and authorized under this program. In no case may the funds made available under this program be used to supplant funds already being provided, or funds that would have been provided, by the State for these activities.

(20 U.S.C. 3242(e))

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federal register

Friday
August 16, 1985

Part V

Department of Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Education; Final Regulations

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the establishment of local contribution rates under the Impact Aid program. The rates are used by the Secretary to compute maintenance and operations assistance to local educational agencies (LEAs) in federally affected areas.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2109, Washington, D.C. 20202–6272. Telephone: (202) 245–1975.

SUPPLEMENTARY INFORMATION: Under section 3 of Pub. L. 81–874 (the Act), commonly referred to as the Impact Aid program, the Secretary provides assistance for maintenance and operations to certain LEAs. LEAs eligible to participate in the program are those providing a free public education to certain types of so-called federally connected children: that is, children residing on Federal property; children residing with a parent who is employed on Federal property; children residing with a parent who both resides on and is employed on Federal property; and children with a parent on active duty in one of the uniformed services.

The amendments to the regulations affect implementation of section 3 of the Act. This section contains the procedure used by the Secretary to calculate payments to eligible applicants. Except for the changes to the provisions governing local contribution rates and additional assistance under sections 3(d)(2)(B) and 3(d)(3)(B)(ii) of the Act, these regulations contain no other changes to the regulations implementing Pub. L. 81–874. The majority of the provisions are very similar to the interim final regulations published in the Federal Register on August 7, 1984, except that two new provisions, §§ 222.33(c) and 222.37, have been added in response to public comments.

The amount of a section 3 payment is determined by several factors: The number(s) and type(s) of federally connected children attending the schools of an applicant LEA; the applicant's local contribution rate; the amount of the annual appropriation; and the distribution formula contained in the appropriation legislation. Among other provisions, section 3 requires the Secretary to establish for each applicant a local contribution rate and, in the case of certain applicants, to determine which LEAs in their respective States are generally comparable to those applicants. The majority of applicants under the Impact Aid program are paid on the basis of the minimum rate guaranteed by the Act. These regulations governing local contribution rates and the identification of generally comparable LEAs apply to a very small but important group of applicants.

Because of a number of inquiries regarding the methods used by the Secretary to identify generally comparable LEAs, the Secretary reviewed the current practices and regulations for the program and determined that the provisions governing those methods should include objective factors that would produce more uniform results for districts with similar characteristics.

The Secretary proposed changes including such objective factors to the regulations governing local contribution rates originally in an NPRM published in the Federal Register on March 30, 1984 (49 FR 12950). The public was given 45 days in which to comment on the NPRM. After reviewing the comments that were received and adopting several of the recommended changes, the Department published interim final regulations on August 7, 1984 (49 FR 31628). They became effective on September 21, 1984. Because of the interest in these regulations, the Secretary invited the public to comment during an additional 60-day period following the publication of the interim final regulations.

The Secretary has incorporated into these final regulations several of the recommendations received from the public during the second comment period. Because this involved a number of significant changes, another NPRM was published in the Federal Register of June 14, 1985 (50 FR 25024). A 30-day public comment period was provided for this second NPRM.

Summary of Changes From the Interim Final Regulations

In response to public comments, the Secretary has changed the way LEAs may be grouped using the grade-span factor in § 222.33(a). After consulting with the applicant LEAs in its States, an SEA has the option of grouping all LEAs by the specific grade spans they serve, or it may group LEAs into elementary, secondary, or unified grade-span groups, as appropriate LEAs serving approximately the same span of grades should not have significant differences in educational costs. This change will allow applicants in States with small numbers of LEAs serving their identical grade span to use the rate method in these regulations. A summary of the comments and responses is contained in the Appendix to these regulations.

After further review by the Department, other editorial and technical changes have been made to make the regulations clearer.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing, Reports and recordkeeping requirements.

Citation of Legal Authority:

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations)

Dated: August 13, 1985.

William J. Bennett,

Secretary of Education.

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

The Secretary amends Part 222 of Title 34 of the Code of Federal Regulations as follows:

1. The table of contents for Subpart D is revised to read as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates

Sec.
222.30 Determination of local contribution rates: general.
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Authority: Pub. L. 81-874, as amended, 64 Stat. 1100 (20 U.S.C. 236-244), unless otherwise noted.

2. Subpart D of Part 222 is revised to read as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates

§ 222.30 Determination of local contribution rates: general.

(a) Before computing the amount to be paid to an applicant local educational agency (LEA) under section 3 of the Impact aid program, the Secretary—after consultation with the LEA and its State educational agency (SEA)—determines the LEA's local contribution rate.

(b) The provisions in §§ 222.31 through 222.34 describe the methods that may be recommended by LEAs to be used by the Secretary in the determination of local contribution rates.

(c) Except as specified in §§ 222.31(a)(2) and 222.32(b), the provisions in §§ 222.31 through 222.37 do not apply to applicant LEAs located in—

(1) Puerto Rico;
(2) Wake Island;
(3) Guam;
(4) American Samoa;
(5) The Northern Mariana Islands;
(6) The Virgin Islands; and
(7) Any State in which there is only one LEA.

(20 U.S.C. 238(d)(3))

§ 222.31 Recommendation of local contribution rate.

An LEA shall recommend to the Secretary one of the following types of local contribution rates. If the recommended local contribution rate meets the requirements of the Act and this Part 222, the Secretary accepts the recommendation and bases the LEA's payment on that rate.

(a) *Guaranteed Minimum Rate.* (1) The LEA may recommend the local contribution rate guaranteed by the Act.

(2) In the case of a jurisdiction listed or identified in § 222.30(c), the Secretary establishes as the local contribution rate the rate guaranteed by the Act.

(3) The provisions governing this rate are in § 222.32.

(b) *Generally Comparable LEA Rate.* (1) The LEA may recommend a local contribution rate based on appropriate data from generally comparable LEAs within its State.

(2) The provisions governing this rate are in §§ 222.33 through 222.35.

(c) *"Hold-Harmless" Rate for FY 1984.* (1) For fiscal year (FY) 1984 only, an LEA that was paid on a rate above the rate guaranteed by the Act in FY 1981 may recommend a rate 37.57 percent greater than its FY 1981 rate.

(2) To compute the amount of a rate under paragraph (c)(1) of this section, multiply the FY 1981 section 3 local contribution rate by 1.3757.

(3) If, during FY 1981, the LEA received additional assistance under section 3(d)(2)(B) or 3(d)(3)(B)(ii) of the Act as well as a regular payment under section 3, the LEA may apply the 37.57 percent increase only to the rate used for determining its regular payment under section 3 for FY 1981.

(d) *"Hold-harmless" Rate for FY 1985 and Subsequent Years.* (1) If the generally comparable LEA method described in § 222.33 results in a regular section 3 rate for the current fiscal year that is at least 10 percent less than an applicant's prior fiscal year regular section 3 rate, the applicant may recommend that its rate for the current fiscal year be 90 percent of its prior fiscal year rate.

(2) To compute the amount of a rate under paragraph (d)(1) of this section, multiply the prior fiscal year section 3 local contribution rate by .90.

(3) If, during the prior fiscal year, the LEA received additional assistance under sections 3(d)(2)(B) or 3(d)(3)(B)(ii) of the Act as well as a regular payment under section 3, the LEA may apply the .90 multiplier only to the rate used for determining its regular payment under section 3 for the prior fiscal year.

(20 U.S.C. 238(d)(3); 242(b))

§ 222.32 Local contribution rate guaranteed by the Act.

(a) Except as provided in paragraph (b) of this section, the local contribution rate guaranteed by the Act is the greater of—

(1) Fifty percent of the average per pupil expenditure in the LEA's State during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed; or

(2) Fifty percent of the average per pupil expenditure in all of the 50 States and the District of Columbia during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(b) If a rate resulting from paragraph (a)(2) of this section exceeds 100 percent of the average per pupil expenditure in the LEA's State for the second fiscal year preceding the fiscal year for which the local contribution rate is being computed, the Secretary approves a local contribution rate that is equal to that State's average per pupil expenditure for the second preceding fiscal year.

(20 U.S.C. 238(d)(3)(B))

§ 222.33 Identification of generally comparable LEAs.

(a) If an LEA wishes to recommend to the Secretary a rate based on appropriate data from generally comparable LEAs within its State, the SEA for that State shall use data from the second fiscal year preceding the fiscal year for which the local contribution rate is being computed to group all of its LEAs as follows:

(1) *Grouping by Grade Span/Legal Classification Alone.* Divide all LEAs into groups that serve the same grade span and then subdivide the grade span groups by legal classification, if the Secretary considers this classification relevant and sufficiently different from grade span within the State. As an alternative grade-span division, after consultation with the applicant LEAs in the State, divide all LEAs into elementary, secondary, or unified grade-span groups, as appropriate, within the State.

(2) *Grouping by Grade Span/Legal Classification and Size.* (i) Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and legal classification, if relevant and sufficiently different from grade span and size. The SEA shall include all applicant LEAs when determining each group.

(ii) List all LEAs within each group in descending order by size as measured by average daily attendance (ADA), placing the LEA with the *largest* ADA at the top of the list. A State that does not tabulate actual annual ADA shall use the same formula for establishing ADA for the purpose of ranking LEAs by size as the Department of Education has

approved for the purpose of calculating section 3 payments for applicant LEAs in the State.

(iii) After consultation with the applicant LEAs in the State, divide each group into either two subgroups or three subgroups.

(iv) To determine the subgroups, divide each list at the point(s) that will result in as nearly equal numbers of LEAs in each subgroup as possible, so that no group is more than one LEA larger than any other group.

(3) *Grouping by Grade Span/Legal Classification and Location.* Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and, if relevant and sufficiently different from grade span and location, legal classification; then subdivide these groups by location, as determined by placement inside or outside a metropolitan statistical area (MSA) as defined by the U.S. Bureau of the Census. The Department of Education will supply SEAs with lists of MSA classifications for their LEAs, and only the classifications on those lists will be recognized by the Department for the purposes of these regulations.

(4) *Grouping by Grade Span/Legal Classification, Size, and Location.* (i) Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and, if relevant and sufficiently different from grade span, size, and location, legal classification; then subdivide these groups by size (into two or three subgroups for each grade span, as described in paragraph (a)(2) of this section); and further subdivide these groups by location (inside or outside an MSA).

(ii) In using both the size and location factors, the SEA shall subdivide according to the size factor before the location factor.

(b) After applying the following restrictions, the SEA shall compute a local contribution rate according to the provisions of § 222.35 for each group of generally comparable LEAs identified under paragraph (a) of this section:

(1) The SEA shall not, when computing a local contribution rate, include the following heavily impacted LEAs in any group of generally comparable LEAs:

(i) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed—20 percent or more of its ADA composed of children identified under section 3(a) of the Act.

(ii) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed—50 percent or more of its ADA composed of children identified under section 3(b) of the Act, or under both sections 3(a) and 3(b) of the Act.

(2) The SEA shall not compute a local contribution rate for any group that contains fewer than 10 LEAs.

(c)(1)(i) In the case of an applicant LEA that satisfies the requirements contained in paragraph (c)(2) of this section, the SEA, in consultation with the LEA, may select a subgroup of 10 or more generally comparable LEAs from the group identified under paragraph (a)(2) of this section that includes the applicant LEA.

(ii) An LEA that otherwise meets either of the requirements of paragraph (c)(2) of this section but serves a different span of grades from all other LEAs in its State (and therefore cannot match any group of generally comparable LEAs under paragraph (a)(2) of this section) must be matched, for purposes of this paragraph (c) only, to a group using legal classification and size as measured by ADA. The group identified using legal classification and size will be the applicant's group under paragraph (a)(2) for purposes of this paragraph (c) only.

(2) In order to qualify under paragraph (c)(1) of this section, an applicant LEA must either—

(i)(A) Be located entirely on Federal land; and

(B) Be raising either no local revenues or an amount of local revenues the Secretary determines to be minimal; or

(ii)(A) Be located in a State where State aid makes up no more than 40 percent of the State average per pupil expenditure in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed;

(B) Have federally connected children identified in the current year under section 3(a) of the Act equal to at least 20 percent of its total ADA; and

(C) Have federally connected children identified in the current year under both sections 3(a) and 3(b) of the Act equal to at least 50 percent of its total ADA.

(3) In the case of an applicant LEA that meets either of the requirements contained in paragraph (c)(2) of this section, the SEA, in consultation with the LEA, may select 10 or more generally comparable LEAs that share one or more common factors of general comparability with the eligible applicant LEA, as follows:

(i)(A) The SEA shall consider one or more generally accepted, objectively defined factors that affect the applicant's cost of educating its children. Examples of such cost-related factors include location inside or outside an MSA, sparsity of population, an unusually large geographical area, economically depressed area, low-income families, handicapped children, neglected or delinquent children, low-achieving children, children with limited English proficiency, and minority children.

(B) The SEA shall not consider cost-related factors that can be varied at the discretion of the applicant LEA or its generally comparable LEAs or factors dependent on the wealth of the applicant LEA or its generally comparable LEAs. Examples of factors that shall not be considered include special alternative curricular programs, pupil-teacher ratio, and per pupil expenditures.

(ii) The SEA shall apply the factor(s) of general comparability recommended under paragraph (c)(3)(i) of this section in one of the following ways in order to identify 10 or more generally comparable LEAs for the eligible applicant LEA, none of which may be heavily impacted LEAs:

(A) The SEA identifies all of the LEAs in the group that the eligible applicant LEA belongs to under paragraph (a)(2) of this section that share the recommended factor(s). If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding heavily impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The local contribution rate for the eligible applicant LEA shall be computed using the data for all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA contains a designated economically depressed area, and the SEA recommends "economically depressed area" as an additional factor of general comparability. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA identifies two subgroups, those LEAs that contain a designated economically depressed area and those that do not. The entire subgroup identified by the SEA that includes the eligible applicant LEA is that LEA's new group of generally comparable LEAs if it contains at least 10 LEAs.

(B) The SEA identifies all of the LEAs in the group that the eligible applicant LEA belongs to under paragraph (a)(2) of this section that share the recommended factor(s). The SEA then systematically orders all of the LEAs in the group that includes the eligible applicant LEA. The SEA may further divide the ordered LEAs into subgroups by using logical division points (e.g., the median, quartiles, or standard

deviations) or a continuous interval of the ordered LEAs (e.g., a percentage or a numerical range). If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding heavily impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The local contribution rate for the eligible applicant LEA shall be computed using the data for all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA serves an unusually high percentage of handicapped children, and the SEA recommends proportion of "handicapped children" as an additional comparability factor. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA lists the LEAs in descending order according to the percentage of handicapped children enrolled in each of the LEAs. The SEA divides the list of LEAs into four groups containing equal numbers of LEAs. The group containing the eligible applicant LEA is that LEA's new group of generally comparable LEAs if it contains at least 10 LEAs.

Example. An eligible applicant LEA serves an unusually high percentage of minority children, and the SEA recommends proportion of "minority children" as an additional comparability factor. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA lists the LEAs in descending order according to the percentage of minority children enrolled in each of the LEAs. The SEA chooses from the list of LEAs the 15 LEAs whose percentages of minority children are closest to the eligible applicant LEAs. These 15 LEAs will be the eligible applicant LEA's new group of generally comparable LEAs.

(C) The SEA may recommend and apply more than one factor of general comparability in selecting a new group of 10 or more generally comparable LEAs for the eligible applicant LEA. If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding heavily impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The local contribution rate for the eligible applicant LEA shall be computed using the data from all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA is very sparsely populated and serves an unusually high percentage of children with limited English proficiency. The SEA recommends "sparsity of population" and proportion of "children with limited English proficiency" as additional comparability factors. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA identifies all LEAs that are sparsely populated. The SEA further subdivides the sparsely populated LEAs into two groups, those that serve an unusually high percentage of children with limited English proficiency and those that do not. The subgroup of sparsely populated LEAs that serve a high percentage of children with limited English proficiency is the eligible applicant LEA's new group of generally comparable LEAs.

(4)(i) Using the new group of generally comparable LEAs selected under paragraph (c)(3) of this section, the SEA shall compute the local contribution rate for the eligible applicant LEA according to the provisions of § 222.35.

(ii) The SEA shall recommend the resulting local contribution rate to the Secretary and provide the Secretary a description of the additional factor(s) of general comparability and the data used to identify the new group of generally comparable LEAs.

(iii) The Secretary reviews the recommended local contribution rate and supporting data and accepts them if the Secretary determines that they meet the purposes and requirements of the Act and this Part 222.

(20 U.S.C. 238(d)(3)(A); 242(b))

(Approved by OMB under Control No. 1810–0036)

§ 222.34 Local contribution rate based on generally comparable LEAs.

(a) In selecting its recommended rate, the LEA shall use the following steps:

(1) *Step 1.* The LEA shall select the factor or factors in § 222.33 the LEA wishes to use as the basis for general comparability.

(2) *Step 2.* Using State-supplied data, the LEA shall identify within the State the entire group of LEAs (containing at least 10 LEAs exclusive of heavily impacted LEAs) that matches the factor or factors selected in step 1 and that contains the applicant LEA or would contain the applicant LEA if it were not heavily impacted.

(3) *Step 3.* The LEA shall recommend to the Secretary the local contribution rate, which the SEA has computed according to the provisions of § 222.35, based on the group identified in Step 2.

(b) A heavily impacted LEA is entitled to—

(1) Apply for assistance under the program: and

(2)(i) Recommend as its local contribution rate any type of rate described in § 222.31 for which the LEA is eligible, including a rate based on generally comparable LEAs; and

(ii) Under the generally comparable LEA method, recommend for itself the local contribution rate of any group it would be included in based on grade span/legal classification, size, and/or location, if it were not excluded as heavily impacted in paragraph (b)(1) of § 222.33.

Example. An LEA applies for assistance under section 3 of the Impact Aid Program and wishes to recommend to the Secretary a local contribution rate based on generally comparable LEAs within its State.

Characteristics of Applicant LEA

The grade span of the applicant LEA is kindergarten through grade 8 (K–8). In the applicant's State, legal classification of LEAs is based on grade span, and thus does not act to further subdivide groups of LEAs.

The ADA of the applicant LEA is above the median ADA of LEAs serving only K–8 in the State.

The applicant LEA is located outside an MSA.

Characteristics of Other LEAs Serving Same Grade Span

The SEA of the applicant's State groups all LEAs in its State according to the factors in § 222.33.

The SEA identifies the following groups:

One hundred and one LEAs serve only K–8. The SEA has identified a group of 50 LEAs having an ADA above the median ADA for the group of 101, one LEA having an ADA at the median, and a group of 50 LEAs having an ADA below the median ADA; and according to § 222.33(a)(2)(i), the SEA considers 51 LEAs to have an ADA below the median ADA.

Of the 101 LEAs in the group, the SEA has identified a group of 64 LEAs as being inside an MSA and a group of 37 LEAs as being outside an MSA.

Among the group of 50 LEAs having an ADA above the median, the SEA has identified a group of 35 LEAs as being inside an MSA and a group of 15 LEAs as being outside an MSA.

Among the group of 51 LEAs having an ADA at or below the median, the SEA has identified a group of 29 LEAs as being inside an MSA and 22 LEAs as being outside an MSA.

One LEA has 20 percent of its ADA composed of children identified under section 3(a) of the Act and, therefore, must be excluded from any group it falls within before the SEA computes a local contribution rate for the group. The LEA has an ADA below the median ADA and is located outside an MSA.

On the basis of § 222.35, the SEA computes the local contribution rate for each group of generally comparable LEAs that the SEA has identified.

Selection of Generally Comparable LEAs

The applicant LEA selects the group of generally comparable LEAs matching the factor or factors it wishes to use as the basis for general comparability.

Under the requirements of § 222.33, the applicant LEA must begin with the group that includes all LEAs with its grade span, and, if relevant and sufficiently different, legal classification. In this case, grade span and legal classification happen to be the same. Thus, the group would include 100 LEAs,

after excluding the one heavily impacted LEA.

The applicant LEA then has several options:

Option 1. The applicant LEA may select as its group of generaly comparable LEAs on which to base its recommended local contribution rate the entire group of 100 LEAs serving K–8, after excluding the one heavily impacted LEA. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 2. Instead of selecting the group of 100, the applicant LEA may select as its generally comparable group only those LEAs within the 101 (the heavily impacted LEA must be included initially for the purpose of determining the median ADA) that have an ADA above the median ADA, that is, the group of 50. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for the group be the SEA.

Option 3. Instead of selecting either of the groups described in Options 1 and 2, the applicant LEA may select as its generally comparable group only those LEAs within the 100 that are outside an MSA; that is, the group of 36, after excluding the one heavily impacted LEA. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 4. Instead of selecting any of the groups described in Options 1, 2, and 3, the applicant LEA may select as its generally comparable group only those LEAs that *both* have an ADA above the median ADA for the 101 and are outside an MSA; that is, the group of 15. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

However, as provided in § 222.33(b)(2), if the SEA were to have identified fewer than 10 LEAs under any factor or combination of factors, the SEA would not have computed a rate for such a group. Therefore, an applicant LEA included in such a group would not be able to use this factor or combination of factors in recommending its local contribution rate to the Secretary.

The heavily impacted LEA, while included for determining the median ADA, is excluded from the computation of any group's local contribution rate. However, the heavily impacted LEA may recommend for itself the local contribution rate of any group it matches in grade span/legal classification, size, and/or location (that is, in the case of the heavily impacted LEA referred to in this example, below the median ADA and outside an MSA), provided the group contains at least 10 LEAs that are not heavily impacted.

(20 U.S.C. 238(d)(3)(A); 242(b))

(Approved by OMB under Control No. 1810–0036)

§ 222.35 Computation of local contribution rates.

Except as otherwise specified in the Act, the SEA, subject to the Secretary's review and approval, shall compute a local contribution rate for each group of generally comparable LEAs within its State that was identified using the factors in § 222.33, as follows:

(a)(1) The SEA shall compile the aggregate local current expenditures of the comparable LEAs in each group for the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(2) For purposes of this section, the SEA shall consider only those aggregate current expenditures made by the generally comparable LEAs from revenues derived from local sources. No State or Federal funds may be included.

(b) The SEA shall compile the aggregate number of children in ADA to whom the generally comparable LEAs in each group provided a free public education during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(c) The SEA shall divide—

(1) The aggregate current expenditures determined under paragraph (a) of this section; by

(2) The aggregate number of children determined under paragraph (b) of this section.

(d) If a rate computed under this section is lower than the rate guaranteed by the Act, the Secretary bases the LEA's payment on the guaranteed rate.

(20 U.S.C. 238(d)(3)(A))

§ 222.36 Determination of additional assistance.

(a) The provisions of this section govern an LEA that applies to the Secretary for additional assistance under section 3(d)(2)(B) of the Act, as well as applying for a regular payment under section 3.

(b) If the LEA is applying for a regular payment under section 3 based on a local contribution rate guaranteed by the Act, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers the LEA comparable to all LEAs in its State; and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(c) If the LEA, in applying for a regular payment under section 3, recommends to the Secretary a local contribution rate based on generally comparable LEAs in its State, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers as comparable LEAs the same LEAs that the applicant identifies as comparable in its application for a regular payment under section 3; and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(d) In the case of an applicant that recommends the "hold-harmless" rate, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers as comparable LEAs the group of LEAs that produces the highest regular section 3 rate under the generally comparable LEA method, as described in § 222.33(a); and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(20 U.S.C. 238(d)(2)(B); 242(b))

§ 222.37 Determination of compensation for unusual geographical factors.

(a) The Secretary may determine, after reviewing the data provided under paragraph (c) of this section, that an applicant LEA cannot provide a level of education equivalent to that provided by the generally comparable LEAs on which the applicant's local contribution rate is based because the applicant's current expenditures are affected by unusual geographical factors, and, as a result, those current expenditures are not reasonably comparable to the current expenditures of the generally comparable LEAs.

(b) If the Secretary makes the determination in paragraph (a) of this section, the Secretary increases the applicant LEA's local contribution rate up to the amount the Secretary determines will compensate the applicant for the increase in its current expenditures necessitated by the unusual geographical factors, but no more than is necessary to allow the applicant to provide a level of education equivalent to that provided by its generally comparable LEAs.

(c) When applying for compensation under this section, an applicant shall provide the Secretary the following information—

(1) A specific description of the unusual geographical factors on which the applicant is basing its request for compensation under this section, and objective data demonstrating that the applicant is more severely affected by these factors than any other LEA in its State;

(2) Objective data demonstrating the specific ways in which the unusual geographical factors affect the applicant's current expenditures so that they are not reasonably comparable to the current expenditures of the generally comparable LEAs on which the

applicant's local contribution rate is based;

(3) Objective data demonstrating the specific ways in which the unusual geographical factors prevent the applicant from providing a level of education equivalent to that provided by the generally comparable LEAs on which the applicant's local contribution rate is based;

(4) Objective data demonstrating that the applicant's fiscal effort per student based on expenditures of State and local revenues for the provision of free public education in the preceding fiscal year was at least equal to the same fiscal effort per student for the second preceding fiscal year; and

(5) Any other information that the Secretary may reasonably require to make the determination under paragraph (a) of this section.

(d) The Secretary does not provide compensation under section 3(d)(3)(B)(ii) to an applicant in a State that takes such compensation into account in an equalization program that qualifies under section 5(d)(2) of the Act.

(20 U.S.C. 238(d)(3)(B)(ii); 242 (b))

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Note To Readers.—This appendix will not be codified in the Code of Federal Regulations.

Appendix—Summary of Comments and Responses to the Notice of Proposed Rulemaking

Part 222—Impact Aid Program

General

A number of commenters expressed support for the proposed regulations, particularly the new provision in § 222.33(c) which applies to certain heavily impacted applicant LEAs. Summaries of the substantive comments follow.

Comment. Several commenters stated that 30 days for comments was not enough time to undertake the analysis required for the proposed regulations. Four commenters formally requested more time.

Response. No change has been made. These regulations have been promulgated in compliance with the rulemaking provisions of section 431 of the General Education Provisions Act, 20 U.S.C. 1232, which, among other things, allow the Department to provide a 30-day period for public comments. The Secretary believes that 30 days is adequate because the proposed regulations contain only one major change from the interim final regulations. This change is the new provision for certain heavily impacted LEAs in § 222.33(c) and was added in response to public comments. The proposed regulations were mailed in advance of publication to the applicant LEAs that the Department believed might qualify under § 222.33(c) so that those LEAs could begin their review of the new provision. The other major provisions have been offered for public comment for a total of 135 days over a period of 15 months.

Comment. One commenter contended that the regulations should not take effect until FY 1986 because of the "hold-harmless" rate provision in the 1985 appropriation act and because the fiscal year for LEAs has ended and they have already received and spent their payments.

Response. No change has been made. These regulations will become effective for FY 1985. This effective date means that qualified LEAs will be able to take advantage of the new special provision for certain heavily impacted LEAs in § 222.33(c). Also, any LEA that can qualify for a local contribution rate under the regulations that is higher than the rate it would receive under the "hold-harmless" provision in the appropriation act will be able to receive that higher rate. No LEA will receive a lower rate because of the regulations taking effect for FY 1985.

Comment. One commenter stated that the Department should "take all steps to assure Indian students receive their fair entitlement" and "Indian parents and community organizations should exercise a meaningful role in the budgetary process and other critical areas determining the quality and quantity of educational programs available to their children." Another commenter asserted that many Indian LEAs did not have adequate time or information to analyze and respond to these regulations. In the commenter's view, the Department's action on the regulations was a violation of the Department's own policy, and certain legal requirements, to ensure the participation of Indian parents and tribes.

Response. No change has been made. The Department is committed to operating all of its programs under the terms and conditions specified in the authorizing legislation and the annual appropriation legislation. This means that all applicants for Impact Aid funds receive the full amounts that they are entitled to receive under the laws in effect at the time.

The Department has attempted to solicit the widest possible participation from the interested public in the development of these regulations. Usually, publication in the **Federal Register** is considered adequate notice of a proposed change in Federal policy. However, the Department mailed over 4,000 copies of the regulations directly to applicant LEAs (including Indian LEAs), SEAs, the Congress, and other interested individuals as soon as the copies were available. In addition, these regulations were discussed by Department staff at a series of meetings beginning with those held in December 1984 with SEA representatives, and including the March 1985 conference of the National Association of Federally Impacted Schools, and the annual National Indian Impaction conference held in June. In addition to these efforts, Department staff have provided technical assistance freely to applicants whenever they have requested help in applying the provisions in the regulations. The Secretary believes that the Department's policies have been fully implemented in the development and publication of these regulations.

The Impact Aid program law has a special provision that specifically requires LEAs that receive funds under this program on behalf of children residing on Indian lands to solicit parent and community involvement in the development of the curricular designed to serve these children. Commenting on regulations such as these is one way that Indian parents and community organizations can also influence policies that affect their children's educational programs. They can accomplish this too by keeping informed of activities at all levels of government that may affect the programs, and generally communicating their views to government agencies and congressional representatives.

Comment. One commenter pointed out that these regulations failed "to address critical problems in the Impact Aid program, such as ambiguities relating to funding under section 3(d)(2)(B)."

Response. No change has been made. The subject of these regulations is the establishment of local contribution rates, and they were not intended to implement section 3(d)(2)(B) of the Act. The Secretary may publish regulations concerning section 3(d)(2)(B) in the future.

Comment. One commenter believed that the Department should commit itself to reviewing the regulations after they have been in effect for one year to ensure that they meet the needs of Indian districts.

Response. No change has been made. Program policies are routinely reviewed to make sure that they comply with the requirements and intent of the Act and are effective and appropriate. The policies contained in these regulations

will also be subject to the same kind of Departmental review.

Section 222.30 Determination of local contribution rates: general.

Comment. One commenter asserted that the "hold-harmless" provision contained in these regulations "suffers the same infirmities as the corresponding provision for 1984. That is, the provision perpetuates the use of rates formerly derived in violation of the Impact Aid Law," continuing the "inequitable levels of funding obtained in 1981, due to the operation of the $50.00 rule."

Response. No change has been made. The "hold-harmless" provision has been included in these regulations as a result of numerous public comments. Further, many comments were received during the most recent comment period commending the Department for including the provision. The Secretary continues to believe that the "$50 rule" was a valid method under the Act and previous regulations for determining which LEAs are generally comparable to an applicant. Two recent court decisions have upheld this view. Use of that rate method has been discontinued, however, because the Secretary believes that the method contained in these regulations is sounder and more equitable.

Comment. One commenter objected to the Department prohibiting applicants from basing a rate under the "hold-harmless" provision on a rate established under section 3(d)(3)(B)(ii) and, in 1984, prohibiting applicants in states with unorganized territory from using the generally comparable LEA rate method at all, including the "hold-harmless" provision.

Response. No change has been made. The Secretary has determined that it would not be appropriate to apply the "hold-harmless" provision to rates established under section 3(d)(3)(B)(ii) or section 3(d)(2)(B) of the Act because applicants must apply for rates under these sections every year and must demonstrate financial need, among other requirements, for an increased rate to be approved under either section. Although an LEA may be eligible one year for an increased rate under one of these sections, it may not be eligible the following year.

The Department also has not made the generally comparable LEA rate method retroactively available to LEAs in States with unorganized territory for FY 1984 because the Act provides the Secretary the discretionary authority to assign the guaranteed minimum rate to LEAs in States with unorganized territory.

Section 222.31 Recommendation of local contribution rate.

Comment. One commenter requested that the Department modify the "hold-harmless" provision in § 222.31(d) so that local contribution rates for small Indian districts will not decrease by more than 5 percent from their prior year's rates, rather than the 10 percent currently in the regulations. Another commenter suggested that the regulations guarantee that "no LEA shall, by virtue of the establishment of a rate under the hold harmless provision, suffer a total LEA budget decrease of more than four percent."

Response. No change has been made. The Secretary believes that the 10 percent "hold-harmless" provision allows LEAs an adequate transition to the generally comparable LEA rate method contained in these regulations. Further, the "hold-harmless" provision in § 222.31(d) will not be effective until FY 1986 because of the "hold-harmless" provision in the FY 1985 appropriation act. This should give applicant LEAs sufficient time to adjust their budgets, if necessary, to avoid disruption to their school programs. The Secretary has no authority to control the amount of an applicant's payment in the manner suggested by the second commenter.

Section 222.33 Identification of generally comparable LEAs.

Comment. One commenter stated that the regulations should be amended "to require the SEA to inform the LEAs of the processes and rationale used at every stage of the procedures described in §§ 222.33(a) and 222.33(b)," and to define the term consultation "in a way that assures LEAs will receive advance written notice of the processes and rationale the SEA intends to use."

Response. No change has been made. The majority of the procedures required of the SEA in §§ 222.33 (a) and (b) are not discretionary in nature. Where they are, as in the division of LEAs by grade span and size, the Secretary does require the SEA to consult with the applicant LEAs in its State. However, the Secretary does not believe that it is appropriate or necessary to specify a particular form for this consultation.

Comment. One commenter again declared that ADA will, in effect, be the only criterion used to identify generally comparable LEAs even under the new special provision for certain heavily impacted LEAs.

Response. No change has been made. The generally comparable LEA method in these regulations is based on a number of factors of general comparability including grade span, legal classification (if the Secretary regards this classification as relevant and sufficiently different from other factors used), size as measured by ADA, and location as determined by metropolitan status. No option in these regulations uses ADA as the only factor on which comparability is determined. Heavily impacted LEAs that qualify to use the special provision in § 222.33(c) may use any of a variety of cost-related factors for identifying their groups of generally comparable LEAs in addition to grade span/legal classification and size.

Comment. One commenter stated that his LEA could not use any of the options under the generally comparable LEA rate method because there are fewer than 10 LEAs in the State with the same grade span and legal classification. This commenter, as well as several others, requested that the regulations be amended to allow the use of groups with fewer than 10 generally comparable LEAs.

Response. A change has been made. While the minimum number of 10 generally comparable LEAs has not been changed, the first commenter's circumstances have been addressed. The regulations have been amended to allow an SEA, in consultation with the applicant LEAs in the State, to divide all LEAs into elementary, secondary or unified grade-span groups. The Secretary believes that, for general comparability purposes, it is appropriate to allow the grouping of LEAs serving approximately the same span of grades. In the case of the first commenter, this change will mean that the 12 other LEAs in his State serving grades K–12 or 1–12 that are classified as "city" districts can be grouped together under § 222.33(a)(1).

Comment. One commenter requested that the regulations be amended to include a provision allowing the Secretary to exempt Indian LEAs from the requirement that their groups of generally comparable LEAs contain at least 10 LEAs. (Several other commenters objected generally to the requirement that a group contain at least 10 LEAs.) The commenter suggested that the provision also include authority for the Secretary to adjust downward any rate found to be inconsistent with the purposes of the Impact Aid program.

Response. No change has been made. The Secretary does not believe that such an exemption is warranted because this sytem of determining local contribution rates provides applicants with widely varying circumstances sufficient flexibility to identify generally comparable LEAs. The requirement in the regulations for a minimum number of

LEAs in a group is consistent with the view expressed in the legislative history that the larger the number of comparable LEAs on which a local contribution rate is based, the more objective and equitable the resulting rate will be. The commenter's last suggestion has not been adopted because the Secretary is required to calculate local contribution rates according to a formula specified by the Act which does not allow the Secretary to adjust rates in the manner suggested by the commenter.

Comment. One commenter complained that dividing all LEAs by size into only two groups would adversely affect smaller schools. The commenter requested that SEAs be allowed to use their discretion when dividing LEAs into groups based on size.

Response. No change has been made. Section 222.33(a)(2) allows an SEA, after consulting with the applicant LEAs in its State, to divide each grade span/legal classification group into either two or three subgroups. This option of dividing into two or three subgroups was proposed in comments on the interim final regulations, published August 7, 1984.

Comment. One commenter contended that the qualifier "relevant" should not be applied to the factor of legal classification in § 222.33(a)(1), and presumably in the other sections in which it is used, since the term "legal classification" is not modified in such a way in the legislative history of the Act. The commenter stated that the legislative history indicates that legal classification is the first factor that must be used to identify generally comparable LEAs, and that it is to be considered relevant as a matter of fact.

Response. No change has been made. While the legislative history presumes that legal classification under State law is relevant in identifying generally comparable LEAs for the purpose of establishing local contribution rates, this is not the case in many States. Where it does have a relationship to educational costs, these regulations require its use in that identification of generally comparable LEAs. In many States, it will not be necessary to use legal classification, either because it is based on grade span, size, or metropolitan location and would be redundant under these regulations, or because it has no bearing on an LEA's ability to raise local revenues or on educational costs.

Comment. One commenter questioned whether his school district would qualify under § 222.33(c)(2)(i) if small amounts of property in the district, which is located entirely on an Indian reservation, are privately owned. Another commenter recommended amending the regulations so that LEAs with small amounts of private property would qualify under § 222.33(c)(2)(i).

Response. No change has been made. Section 222.33(c)(2)(i) was designed to apply to the most extreme cases where LEAs have no taxable land within their boundaries. To be eligible under this section of the regulations, the LEA must be composed entirely of Federal land. The presence of any privately owned land in the district will disqualify an LEA under this section. However, it is possible that the first commenter's LEA, and others like it, would meet the criteria under § 222.33(c)(2)(ii) and, therefore, would qualify to apply for a special local contribution rate under that section.

Comment. One commenter requested that the less than 40 percent State aid requirement in § 222.33(c)(2)(ii) be eliminated because it would prevent too many LEAs from using the new special provision for certain heavily impacted LEAs.

Response. No change has been made. The Secretary believes that these regulations work well for the majority of applicants under this program. Section 222.33(c) is intended to apply to those LEAs whose extreme circumstances warrant special treatment. The requirements of this section, including the one that an LEA be located in a State that provides, on the average, 40 percent or less of the average per pupil expenditure, are designed to identify a limited number of LEAs with unusual circumstances that result in a restricted ability to raise local revenues and a greater dependence on funds received under the Impact Aid program.

Comment. One commenter stated that the "requirement of a 'b' student presence should be eliminated from § 222.33(c)(2)(ii)(C)."

Response. No change has been made. To qualify for the special rate provision, an LEA must have "a" children equal to at least 20 percent of its total ADA and federally connected children totalling at least 50 percent of its total ADA. The 50 percent federally connected children can include "b" children as well as "a" children, but an LEA is not required to have any "b" children to be eligible under this provision.

Comment. One commenter requested that an LEA qualifying for a special local contribution rate under § 222.33(c) be allowed to identify its subgroup of generally comparable LEAs by first applying a non-wealth related factor and then dividing by size.

Response. No change has been made. The Secretary believes that size as measured by ADA has a significant influence on educational costs and should be one of the first factors applied in identifying subgroups of generally comparable LEAs.

Comment. Two commenters requested that the Secretary amend § 222.33(c) to allow the heavily impacted LEAs eligible under that section to identify their generally comparable LEAs from any of the groups under § 222.33(a) and not just from the second group based on grade span/legal classification and size.

Response. No change has been made. The Secretary believes that the two factors of grade span/legal classification and size are particularly relevant to educational costs and should be used by all of the heavily impacted LEAs eligible under § 222.33(c).

Comment. One commenter asserted that the distinction between allowable and non-allowable factors under § 222.33(c) would penalize Indian schools that are attempting to upgrade their curricula, and that the concept of local control "means that the federal government has no business determining which educational programs are variable at the instance of the school board and which are not." The commenter further stated that there is no objective, uniform way to determine allowable cost factors, especially in States providing relatively high amounts of State aid.

Response. No change has been made. While the *programs* that serve children with special needs cannot be used as a factor for identifying generally comparable LEAs under § 222.33(c), the presence of *children* requiring these programs can be used as a factor. The Secretary believes that it is possible and appropriate to distinguish between those factors that are cost-related and those that are not. Making this distinction is consistent with the Secretary's broad discretion to identify LEAs that are generally comparable to applicants. The validity of the factors that may be used under § 222.33(c) and their relationship to school costs are widely recognized by school finance authorities. The level of State funding does not alter the factors that affect LEAs' costs. It should be pointed out, however, that applicants in States providing relatively high levels of State aid are not eligible to use the special provisions of § 222.33(c).

Comment. Two commenters asserted that it would be impossible to identify 10 non-heavily impacted LEAs using objectively defined criteria that are in any way comparable to their LEAs. These commenters recommended that in cases such as theirs, applicants should be allowed to show, using a process

similar to that described in § 222.37 (the provision governing the determination of compensation for increased expenditures as a result of geographical factors), how socially-related factors have increased their expenditures.

Response. No change has been made. The authority to provide compensation for geographical factors is found in section 3(d)(3)(B)(ii) of the Act. There is no similar provision governing additional compensation for the types of socially-related factors mentioned by the commenters. However, such social factors may be used to identify a group of generally comparable LEAs by an applicant qualifying for a local contribution rate under § 222.33(c). It is not necessary for an applicant to identify a group of 10 LEAs that are identical in their circumstances. Instead, it is only necessary for an applicant to identify a group of LEAs that share a cost-related factor to some degree. The commenters may want to consider alternative ways of applying the factors they mention to identify groups of generally comparable LEAs. The examples found in § 222.33(c) should be helpful in suggesting ways of applying appropriate factors so that a group of at least 10 LEAs could be identified. Applicants should feel free to contact Department staff for assistance in utilizing this special provision.

Comment. Four commenters stated that the special provision in § 222.33(c) does not adequately address the needs of the applicants whose boundaries are coterminous with the boundaries of Federal military installations because the effect of the regulations is to reduce their local contribution rates to the statutory gruaranteed minimum rate (in their case, one-half the national average per pupil expenditure). They suggested that for such districts the Secretary either allow the LEAs to select 10 comparable LEAs from their subgroup to determine their local contribution rates, or assign these LEAs local contribution rates equal to 100 percent of the national average per pupil expenditure. Another commenter simply asserted that the special provision fails to address the needs of heavily impacted LEAs.

Response. No change has been made. In the preamble to the notice of proposed rulemaking published June 14, 1985, the Secretary made a special request for specific suggestions for an alternative procedure based on objective factors if commenters did not find that the new provision in § 222.33(c) met the needs of the applicants for whom it was designed. While objecting to the provision as it appeared in the regulations, these commenters have failed to provide a specific, substantive alternative as requested by the Secretary. The use of cost-related factors to identify groups of generally comparable LEAs makes the procedure in § 222.33(c) more objective, systematic, and statistically reliable than simply allowing the selection of any 10 LEAs without reference to any criteria, as the commenters suggested. If the commenters are able to use objective factors to identify a group of 10 generally comparable LEAs that spend an amount equal to the national average per pupil expenditure from local sources and the Secretary finds that the selection process meets the purposes of the Act and the requirements of these regulations, the Secretary will approve that amount for their local contribution rates.

Section 222.35 Computation of local contribution rates.

Comment. Four commenters requested that payments be made on the basis of average daily membership (ADM) instead of average daily attendance (ADA). One commenter suggested that payments, especially to Indian LEAs experiencing high truancy rates, should be based on no less than 95 percent of an applicant's ADM. The commenter contended that because the Department does not use current ADA data, his district would not benefit from this year's improved attendance.

Response. No change has been made. The Act requires that section 3 payments be calculated using the number of federally connected children in average daily attendance in the applicant's schools. The Department uses the most current and best ADA data available to calculate payments. Several years ago, in an effort to reduce the paperwork burden on applicants, a decision was made not to require applicant LEAs to report final ADA data at the end of the school year. Instead, a ratio of the prior year's attendance to membership is applied to the current year's membership to determine the ADA used to calculate an applicant's payment. Any improvement in this year's attendance is reflected automatically in the following year's payment.

Comment. Three commenters objected to eliminating, for military coterminous LEAs, local funds spent for capital outlays and payments toward the retirement of regular and revenue bonds for the calculation of their local contribution rates.

Response. No change has been made. Expenditures for capital outlays and debt service are specifically excluded by the Act from the calculation of the local contribution rate for any applicant.

Section 222.37 Determination of compensation for unusual geographical factors.

Comment. One commenter stated his belief that § 222.37 apparently allows only one LEA in each State to qualify for an increased local contribution rate under section 3(d)(3)(B)(ii) of the Act. The commenter further stated that this result contradicts the provision in the Act which offers increased funding to all the LEAs that qualify, no matter how many there may be.

Response. No change has been made. Section 222.37 allows more than one LEA in each State to qualify for increased funding due to unusual geographical factors under section 3(d)(3)(B)(ii), as long as each qualifying LEA uses a different factor or factors. Consistent with the legislative history, § 222.37(c)(1) requires that an applicant demonstrate that it is more severely affected by its particular factor or factors than any other LEA in its State. *See* H. Rept. 2287, 81st Cong., 2d Sess. 14 (1950).

Comment. One commenter contended that § 222.37 utilizes an analysis more appropriate to an eligibility determination under section 3(d)(2)(B) of the Act than under section 3(d)(3)(B)(ii). The commenter did not believe it would be necessary to show that an applicant cannot maintain a level of education equivalent to that provided by generally comparable LEAs in order to qualify for funding under section 3(d)(3)(B)(ii) of the Act.

Response. No change has been made. The legislative history specifically provides that "[t]he amount of the increase [in a section 3(d)(3)(B)(ii) applicant's local contribution rate] will be the amount necessary to enable it to maintain a level of education equivalent to that maintained in the school districts determined by the [Secretary] to be [generally] comparable." *See* H. Rept. 2287, 81st Cong., 2d Sess. 14 (1950).

Comment. One commenter objected to the requirement in § 222.37(c)(1) that an applicant under section 3(d)(3)(B)(ii) must show that it is more severely affected by unusual geographical factors than any other LEA in its State. The commenter felt that the proper comparision would be between the applicant and its generally comparable LEAs. The commenter believed that the interpretation of the statutory language contained in § 222.37(c)(1) was too restrictive.

Response. No change has been made. Section 3(d)(3)(B)(ii) requires the

Secretary to compare the current expenditures of an applicant with those of its generally comparable LEAs as part of the process of determining if an increase in funding is necessary. However, the legislative history states that section 3(d)(3)(B)(ii) is to apply to an LEA that "is so unique because of unusual geographical factors that no school districts in the State could reasonably be said to be comparable to it." *See* H. Rept. 2287, 81st Cong., 2d Sess. 14 (1950). The legislative history further states that this provision in the Act is to apply to unusual situations, indicating that a limited number of LEAs are intended to qualify for increased funding under this provision. The Secretary believes that § 222.37 carries out the letter and the spirit of section 3(d)(3)(B)(ii) of the Act.

Comment. One commenter objected to the fact that § 222.37(c)(4) contains a general maintenance of effort requirement that must be satisfied in order to qualify for funding under section 3(d)(3)(B)(ii) of the Act. The commenter asserted that this kind of requirement should not be applied selectively to section 3(d)(3)(B)(ii) applicants, but should be applied to applicants under all sections of the Act or not at all.

Response. No change has been made. Eligibility under section 3(d)(3)(B)(ii) is based, in part, on the applicant's need for additional funds to compensate for the increase in current expenditures caused by unusual geographical factors. Basic payments under section 3 are made without regard to an applicant's need. The Secretary believes that it is appropriate to require maintenance of effort under section 3(d)(3)(B)(ii) to underscore the fact that financial need for these funds must be demonstrated. In addition, the Secretary does not believe that an applicant or its State should be allowed to decrease their financial effort and expect the Federal Government to make up the difference by increasing the applicant's payment under section 3(d)(3)(B)(ii).

Comment. One commenter stated that there is no statutory authority for § 222.37(d) which precludes an applicant in a State with an equalization program from receiving an increased local contribution rate. The commenter asked that at least the regulatory provision be clarified to state that an applicant may not receive an increased local contribution rate under section 3(d)(3)(B)(ii) if the increased funds will be deducted from the applicant's State aid payment.

Reponse. No change has been made. The Secretary does not believe that it is appropriate to provide supplementary payments to enable an applicant to maintain an equivalent level of education to that maintained by its generally comparable LEAs, only to have the State make an offsetting reduction in State aid. The regulations do allow applicants to receive payments under section 3(d)(3)(B)(ii) if their States do not take them into account when distributing State aid.

[FR Doc. 85-19545 Filed 8-15-85; 8:45 am]

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Federal Register

Friday
August 16, 1985

Part VI

Department of Education

34 CFR Part 650

National Graduate Fellows Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 650

National Graduate Fellows Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to implement the National Graduate Fellows Program, established by Title IX, Part C of the Higher Education Act, as amended. These regulations specify how an individual applies for a fellowship under this program, what conditions must be met by a fellow for continued eligibility, and how the amount of a fellowship award will be determined. In addition, these regulations describe the responsibilities of the National Graduate Fellows Program Fellowship Board (the Fellowship Board).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §650.44(b). Section 650.44(b) will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joel D. West, Executive Director of the National Graduate Fellows Program, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, (Room 3082, ROB–3) 400 Maryland Avenue SW., Washington, D.C. 20202, telephone (202) 245–9274.

SUPPLEMENTARY INFORMATION: The National Graduate Fellows Program is authorized under Title IX, Part C, of the Higher Education Act of 1965, as amended. The statute provides for fellowships to be awarded to students to study at the doctoral level in selected fields of the humanities, arts and social sciences. Many of the responsibilities under this program regarding procedures and criteria for selection of fellows and general policies for the program are vested in the Fellowship Board. The Fellowship Board is composed of individual representatives of both public and private institutions of higher education appointed by the President. The regulations do not establish rules on matters for which the Fellowship Board has responsibility.

On June 3, 1985, the Secretary published in the **Federal Register** (50 FR 23390—23392) a notice of proposed rulemaking for the National Graduate Fellows Program (NGFP). Interested parties were provided 30 days to submit their comments to the Secretary. The following is a summary of the significant comments received and the Secretary's responses to those comments:

Summary of Comments and Responses

Comment. One commenter recommened the inclusion of language in proposed § 650.1 to highlight that this program is aimed at students of "superior ability and exceptional promise."

Response. A change has been made. Section 650.1 has been revised to state that this program makes awards of fellowships to students "of superior ability selected on the basis of demonstrated achievement and exceptional promise." This revision incorporates statutory language that describes and clarifies the purpose of the program.

Comment. Several commenters questioned the inclusion of continuing/ongoing graduate students in the pool of eligible candidates for awards under this program. Section 650.2(a) of the proposed regulations states that at the time of application, an individual is eligible to apply for an award if he or she is "eligible to begin or has begun graduate study." These commenters requested a limitation of eligible applicants to those students who have fewer than 20 semester hours of graduate credit.

Response. No change has been made. The statutory provisions for this program do not explicitly restrict eligibility to prospective or recently-matriculated graduate students. Such restrictions, if made for this program, call for policy judgments that are entrusted and delegated to the Fellowship Board.

Comment. One commenter raised a question on the meaning of the term "institution" in proposed § 650.4. The commenter questioned whether this term included institutions other than "institutions of higher education," such as libraries and research and development centers.

Response. No change has been made. In establishing this program, Congress indicated that only institutions of higher education may participate in this program. The term "institution of higher eduation" is defined in section 1201(a) of the Higher Education Act. Educational institutions, such as libraries and research and development centers may, under appropriate circumstances, meet this statutory definition, and accordingly would not be excluded from participating in this program. The determinations of whether given libraries, or other institutions meet this definition may vary from case to case.

Comment. Three commenters questioned the basis for the $6,000 institutional allowance as set forth in proposed §650.5(b). One commenter recommended a "full cost" allowance for tuition and fees; another questioned the statutory basis for the $6,000 limitation. On this matter, two commenters recommended a "flat amount" of at least $6,000 to all institutions that participate in the program.

Response. No change has been made. The maximum amount of $6,000 for tuition and fees were established by the Secretary after considerable analysis of other comparable fellowship programs and stipend levels. In the Secretary's view, this maximum amount is at a reasonable level to compensate institutions for participating in the program. It also constitutes an appropriate administrative method of extending the program to a maximum number of institutions and, more importantly, enlarging the number of fellowship awards. The Secretary believes that establishment of a $6,000 institutional allowance maximum satisfies the statutory directive to the Secretary to set an "appropriate level." An institution which does not consider this amount adequate is free to choose not to participate in the NGFP.

Comment. One commenter questioned the reference to "members" in § 650.20(c). The commenter indicated that this reference was "ambiguous in its context" and recommended it be changed to "scholars." The rationale for this suggestion was that the review panels should be composed of distinguished representatives of the scholarly community.

Response. A change has been made. The term "individuals" will be used instead of "members" to avoid ambiguity.

Comment. One commenter questioned the provision in § 650.20(d) of the proposed regulations to award fellowships each year in two or more stages. This commenter recommended a single annual award in order "to maximize the leadership leverage of these awards."

Response. No change has been made. The rationale for disbursing fellowship awards in two or more stages is related to cost-efficiencies for the Federal Government.

Comment. One commenter recommended the words "of full-time enrollment" to follow "48 months" (§ 650.13(a)) in order to clarify the point that fellowship status can remain valid up to 48 months of full-time study rather than 48 calendar months from the time of the initial award.

Response. No change has been made. The period of 48 months is an absolute limit.

Comment. Several commenters questioned the inclusion of financial need in the calculation of the fellowship stipend, and the possible reduction of awards based upon an individual's financial need (§ 650.42(a)). There was a concern that such a reduction in the fellowship award might make it less attractive to many of the top graduate students, many of whom have access to other awards and financial assistance.

Response. No change has been made. The statutory scheme mandated by the Congress for this program requires the Secretary to determine appropriate fellowship stipends and to adjust "such stipends as necessary so as not to exceed the fellow's demonstrated level of need according to measurements of need approved by the Secretary." In compliance with this statutory directive, the Secretary has decided that institutions participating in this program should employ the same systems of needs analysis as those used in the campus-based programs to calculate a "fellow's demonstrated level of need." The purpose of this required calculation is to reduce the amount of funds to individuals who clearly do not need a public subsidy for graduate study.

Comment. Virtually all commenters raised serious concerns about a provision in the proposed § 650.42(b) that would have eliminated stipend support to fellows who have an adjusted family income in excess of $32,500. Commenters indicated that such a limitation was unnecessary in light of the needs analysis standards. Several also indicated that the Secretary lacked a statutory basis for this requirement, and that such an "income cutoff" was explicitly rejected by the Congress during deliberations on the FY 1986 Budget Resolution.

Response. A change has been made. Section 650.42(b) has been revised to eliminate the income cutoff originally proposed. The adjusted family income cap of $32,500 for this program was proposed in the context of an earlier administration proposal for student aid eligibility requirements. The Secretary has the statutory authority under this program to establish appropriate financial need criteria. The Secretary agrees that a financial review of individual fellowship recipients will be sufficient to prevent the allocation of Federal funds to those who do not need them, and therefore, has chosen to eliminate the cap.

Other Comments. A significant number of the commenters raised several additional and relatively minor points on the proposed rules. These included technical changes in eligibility requirements (§ 650.2(b)); adjustments to the annual awards to reflect inflationary costs (§ 650.20(d)); and a challenge to the requirement of a certified report to determine satisfactory progress of the fellowship recipient (§ 650.44(a)).

Response. No changes have been made. These assorted comments raised legitimate concerns which are commonly brought to the attention of the Secretary. However, it was determined that none of these minor changes in language or emphasis could be made without violating the statute establishing this program, legislative intent, or acceptable administrative procedures. In general, the provisions are responsive to the needs of institutions offering advanced graduate degrees, and the procedures as established would facilitate the successful implementation of this program.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. This program awards fellowships to students for study at the doctoral level in selected fields. Individuals are not considered to be small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in these regulations in § 650.44(b) will become effective after they have been submitted by the Department of Education and approved by the Office of Management and Budget.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 650

Colleges and universities, Education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parenthesis on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.173; National Graduate Fellows Program)

Dated: August 13, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 650 to read as follows:

PART 650—NATIONAL GRADUATE FELLOWS PROGRAM

Subpart A—General

Sec.

650.1 What is the National Graduate Fellows Program?
650.2 Who is eligible to apply for a fellowship under this program?
650.3 What regulations apply to the National Graduate Fellows program?
650.4 What definitions apply to the National Graduate Fellows program?
650.5 What does a fellowship award include?

Subpart B—How Does an Individual Apply for a Fellowship?

650.10 How does an individual apply for a fellowship?

Subpart C—How Are Fellows Selected?

650.20 What are the selection procedures?

Subpart D—What Conditions Must Be Met by Fellows?

650.30 Where may fellows study?
650.31 What is the duration of fellowship?
650.32 What conditions must be met by fellows?
650.33 May fellowship tenure be interrupted?
650.34 May fellows make changes in institution or field of study?
650.35 What records and reports are required from fellows?

Subpart E—What Are the Administrative Responsibilities of the Institution?

650.40 What institutional agreements are needed?
650.41 How are institutional allowances to be administered?

Sec.

650.42 How are stipends to be administered?
650.43 How are disbursement and return of funds made?
650.44 What records and reports are required from institutions?

Authority: Part C of Title IX of the Higher Education Act, as amended by Pub. L. 96-374, 94 Stat. 1367 (20 U.S.C. 1134h-1134k), unless otherwise noted.

Subpart A—General

§ 650.1 What is the National Graduate Fellows Program?

Under the National Graduate Fellows Program the Secretary awards fellowships to students of superior ability selected on the basis of demonstrated achievement and exceptional promise, for study at the doctoral level in selected fields of the arts, humanities, and social sciences.

(20 U.S.C. 1134h)

§ 650.2 Who is eligible to apply for a fellowship under this program?

An individual is eligible to apply for a fellowship under the National Graduate Fellows Program if the individual—

(a) At the time of application, is eligible to begin or has begun graduate study at the doctoral level at an accredited institution of higher education;

(b)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; and

(c) Meets any additional eligibility requirements established by the Fellowship Board.

(20 U.S.C. 1134h-1134k)

§ 650.3 What regulations apply to the National Graduate Fellows Program?

The following regulations apply to this program:

(a) The regulations in this Part 650.

(b) The regulations in EDGAR 34 CFR and Parts 74 and 75, except for the following provisions in EDGAR 34 CFR Part 75, which do not apply:

(1) Subpart C—How to apply for a grant.

(2) Subpart D—How grants are made.

(3) Sections 75.580-75.592 of Subpart E.

(c) For the purposes of the regulations in this part, the terms "grantee" and "recipient", as used in EDGAR, mean an institution of higher education that administers a fellowship award under this part.

(20 U.S.C. 1134h)

§ 650.4 What definitions apply to the National Graduate Fellows Program?

The following definitions apply to terms used in this part:

"Act" means the Higher Education Act of 1956, as amended.

"Fellow" means a fellowship recipient under this part.

"Fellowship" means an award made to a person for graduate study under this part.

"Fellowship Board" means the National Graduate Fellows Program Fellowship Board, composed of individual representatives of both public and private institutions of higher education who are appointed by the President to establish general policies for the program and oversee its operation.

"Institution of higher education" means an institution of higher education as defined in section 1201(a) of the Act.

"Satisfactory progress" means a fellow's progress, in the program for which the fellowship is awarded, that meets or exceeds the institution's norms or standards for doctoral student advancement, as verified by a certified report from the institution to the Secretary.

"Secretary" means Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Stipend" means the amount paid to an individual awarded a fellowship, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(20 U.S.C. 1134h-1134k)

§ 650.5 What does a fellowship award include?

The Secretary awards fellowships consisting of the following:

(a) A stipend paid to the fellow, based upon an annual determination of the fellow's financial need, as set forth in § 650.42.

(b) An annual allowance paid to the institution in which the fellow is enrolled, of (1) $6,000.00, or (2) tuition and other expenses otherwise required by the institution as part of its instructional program, whichever is less.

(20 U.S.C. 1134j)

Subpart B—How Does an Individual Apply for a Fellowship?

§ 650.10 How does an individual apply for a fellowship?

An individual shall apply to the Secretary for a fellowship award in response to an application notice published by the Secretary in the Federal Register.

(20 U.S.C. 1134h)

Subpart C—How Are Fellows Selected?

§ 650.20 What are the selection procedures?

(a) The Fellowship Board establishes criteria for the selection of fellows.

(b) Each year the Fellowship Board selects specific fields of study, and the number of fellows in each field (within the humanities, arts and social sciences), for which fellowships will be awarded.

(c) The Fellowship Board appoints panels of distinguished individuals in each field to evaluate applications.

(d) The Fellowship Board may make awards of the fellowships each year in two or more stages, taking into account at each stage the amount of funds remaining after the level of funding for awards previously made has been established or adjusted.

(20 U.S.C. 1134i)

Subpart D—What Conditions Must Be Met by Fellows?

§ 650.30 Where may fellows study?

A fellow may use the fellowship only for enrollment in a doctoral program at an institution of higher education which is accredited by an accrediting agency or association recognized by the Secretary, which accepts the fellow for graduate study, and which has agreed to comply with the provisions of this part applicable to institutions.

(20 U.S.C. 1134h-1134k)

§ 650.31 What is the duration of a fellowship?

(a) An individual may receive a fellowship under this program for up to 48 months or until receiving the doctoral degree being sought, whichever occurs first.

(b) A fellow who maintains satisfactory progress in his or her course of study may have the fellowship renewed annually, subject to the availability of funds.

(20 U.S.C. 1134h)

§ 650.32 What conditions must be met by fellows?

In order to continue to receive payments under a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the program for which the fellowship was awarded as determined by the institution of higher education;

(b) Devote essentially full time to study or research in the field in which the fellowship was awarded, as determined by the institution of higher education;

(c) Not engage in gainful employment during the period of the fellowship except on a part-time basis, for the institution of higher education at which the fellowship was awarded, in teaching, research, or similar activities approved by the Secretary; and

(d) Begin study under the fellowship in the academic year specified in the fellowship award.

(20 U.S.C. 1134h–1134k)

§ 650.33 May fellowship tenure be interrupted?

(a) A fellow may interrupt periods of study under the fellowship for a period of up to 12 months for the purpose of work, travel or independent study (not part of the fellow's program at the institution of higher education) away from the institution of higher education at which the fellow is enrolled only if—

(1) The work, travel, or independent study is a supportive of the fellow's academic program;

(2) The leave of absence is approved by the institution at which the fellow is enrolled; and

(3) The leave of absence is approved by the Secretary.

(b) The Secretary makes no awards to the fellow or the institution during the leave of absence.

(20 U.S.C. 1134h)

§ 650.34 May fellows make changes in institution or field of study?

After an award is made, a fellow may not make any change in the field of study or institution attended without the prior approval of the Secretary.

(20 U.S.C. 1134k)

§ 650.35 What records and reports are required from fellows?

Each individual who is awarded a fellowship shall keep such records and submit such reports as are required by the Secretary.

(20 U.S.C. 1134k)

Subpart E—What Are the Administrative Responsibilities of the Institution?

§ 650.40 What institutional agreements are needed?

Students enrolled in an otherwise eligible institution of higher education may receive fellowships only if the institution enters into an agreement with the Secretary to comply with the provisions of this part.

(20 U.S.C. 1134h–1134k)

§ 650.41 How are institutional allowances to be administered?

(a) An institution shall treat the institutional allowance paid by the Secretary to the institution on behalf of a fellow as full payment by the fellow, for the period covered by the allowance, for tuition and other expenses otherwise required by the institution as part of its instructional program.

(b) If the fellow is enrolled for less than a full academic year, the Secretary pays the institution a pro rata share of the allowance.

(20 U.S.C. 1134j)

§ 650.42 How are stipends to be administered?

(a) An institution shall calculate the amount of a fellow's financial need annually in the same manner as that in which the institution calculates its students' financial need under the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant programs (34 CFR Parts 674, 675, and 676), except that for this purpose any instructional costs covered by the institutional allowance under § 650.41 may not be treated as costs of attendance.

(b) The institution shall pay the fellow the stipend, in the amount of his financial need or $10,000, whichever is less, from funds advanced to the institution for this purpose by the Secretary. The institution shall return to the Secretary any unused funds advanced for a stipend at the time and in the manner as may be specified by the Secretary.

(c) If a fellow is enrolled for less than a full academic year, the institution shall pay the student a pro rata share of the stipend.

(20 U.S.C. 1134j)

§ 650.43 How are disbursement and return of funds made?

(a) An institution shall disburse a stipend to a fellow in installments. No fewer than two installments per academic year may be made. If the fellowship is vacated or discontinued, the institution shall return any unexpended funds to the Secretary at the time and in such manner required by the Secretary.

(b) A fellow who withdraws from an institution before completion of an academic period for which a stipend installment has been paid to him shall return to the institution a prorated portion of the stipend installment, as determined by the Secretary. The institution shall return the funds to the Secretary at the time and in the manner required by the Secretary.

(c) If a fellow withdraws from an institution before completion of an academic period, the institution shall refund to the Secretary a prorated portion of the institutional allowance it received with respect to that student at the time and in the manner required by the Secretary.

(20 U.S.C. 1134j)

§ 650.44 What records and reports are required from institutions?

(a) An institution shall provide to the Secretary, prior to receipt by such institution of funds for disbursement to a fellow, a certification from an appropriate official at the institution stating whether that fellow is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded.

(b) An institution shall keep such records as are necessary to establish the timing and amount of all disbursements of stipends

(20 U.S.C. 1134k)

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Part VII

Department of Education

Office of Vocational and Adult Education

34 CFR Parts 400, 401, 407, 408, 409, 410, 411, 412, 414, 415, 416, and 417
State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education; Final Regulations

New Projects Under the Vocational Educational Indian and Hawaiian Natives Program for Fiscal Year 1986; Extension of Closing Date for Transmittal of Applications; Notice

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

34 CFR Parts 400, 401, 407, 408, 409, 410, 411, 412, 414, 415, 416, and 417

State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends regulations governing the State Vocational Education Program and the Secretary's Discretionary Programs of Vocational Education. These regulations implement programs authorized by the recently enacted Carl D. Perkins Vocational Education Act. These regulations include information on the States' participation in the program, the types of activities the Secretary supports, and the selection criteria for evaluating applications under the national discretionary programs.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Buzzell, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, Room 620, Reporters Bldg., 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 732-2237.

SUPPLEMENTARY INFORMATION:

Background

The Carl D. Perkins Vocational Education Act ("Act"), which was signed by the President on October 19, 1984, continues Federal assistance for vocational education through fiscal year 1989. While the Act continues both State and national programs of vocational education, it replaces the Vocational Education Act of 1963 and arrays the Federal involvement in vocational education around two broad themes. First, the Act is intended to make vocational education programs accessible to all persons, including handicapped and disadvantaged persons, single parents and homemakers, adults in need of training and retraining, persons participating in programs designed to eliminate sex bias and stereotyping in vocational education, and incarcerated persons. Second, the Act is intended to improve the quality of vocational education program in order to give the Nation's workforce the marketable skills needed to improve productivity and promote economic growth.

The programs authorized by the Act reflect these two themes. The State Vocational Education Program has two major components, the basic State grant and the Special Programs authorized by Titles II and III of the Act, respectively. The basic State grant comprises the Vocational Education Opportunities Program, which represents fifty-seven percent of the funds available for programs under the basic State grant, and the Vocational Education Improvement, Innovation, and Expansion Program, which represents forty-three percent. Under the Vocational Education Opportunities Program the States must use funds for vocational education projects for handicapped individuals, disadvantaged individuals, adults in need of training and retraining, single parents and homemakers, individuals who participate in projects designed to eliminate sex bias and stereotyping, and criminal offenders who are serving in correctional institutions. Under the Vocational Education Improvement, Innovation, and Expansion Program, the States must use funds to expand, improve, modernize, or develop high quality vocational education programs, and are given a broad variety of program choices to accomplish these purposes.

There are five Special Programs under the State Vocational Education Program, each funded from a separate State allotment:

(1) State Assistance for Vocational Education Support Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education;

(3) Adult Training, Retraining, and Employment Development;

(4) Comprehensive Career Guidance and Counseling; and

(5) Industry-Education Partnership for Training in High-Technology Occupations.

Collectively, these programs reflect a desire to enhance the overall quality of the Nation's vocational education system by providing needed support services; drawing upon community resources, including those of the private sector; promoting the coordination of vocational education programs with complementary training efforts; and improving the effectiveness of consumer and homemaking education.

At the national level, the Act continues these broad themes in the Secretary's Discretionary Programs. Individuals with limited English proficiency will continue to be served under the Bilingual Vocational Programs, as will Indians and now Hawaiian Natives, under the Indian and Hawaiian Natives Program. In addition to continuing the National Center for Research in Vocational Education, and authorizing the National Institute of Education to conduct a national assessment of vocational education assisted under the Act, the Act also enhances the authority of the Secretary to carry out a comprehensive program of applied research in vocational education, under the National Vocational Education Research Program. Finally, Title IV of the Act also authorizes four new national programs that are designed to serve the vocational education needs of a number of specific populations and enhance the quality of State programs by making high-technology equipment available to local vocational education projects. These new programs include—

(1) Cooperative Demonstration Program;

(2) State Equipment Pools Program;

(3) Demonstration Centers for the Retraining of Dislocated Workers; and

(4) Model Centers for Vocational Education for Older Individuals.

These final regulations include revised Part 400, containing general provisions applicable to the programs under the Carl D. Perkins Vocational Education Act; a new Part 401, containing the provisions applicable to the State Vocational Education Program; a revised Part 408, containing the provisions applicable to the Bilingual Vocational Instructor Training Program; and a number of new parts applicable to the Secretary's Discretionary Programs of Vocational Education, including: Part 407, the Bilingual Vocational Training Program; Part 409, the Bilingual Vocational Materials, Methods, and Techniques Program; Part 410, the Indian and Hawaiian Natives Program; Part 411, Demonstration Centers for the Training of Dislocated Workers; Part 412, the Cooperative Demonstration Program; Part 414, State Equipment Pools; Part 415, Model Centers for Vocational Education for Older Individuals; Part 416, the Vocational Education Research Program; and Part 417, the National Center for Research in Vocational Education.

Summary of Major Provisions

(a) Changes in Response to Comments

The State Vocational Education Program and the Secretary's

Discretionary Programs of Vocational Education regulations were published as a notice of proposed rulemaking in the Federal Register on January 25, 1985 (50 FR 3626). The Secretary invited comments on whether the regulations should provide more explicit guidance on several issues. Summarized below are the comments received on those issues and the Secretary's responses. Appendix A to these regulations contains a summary of all the comments received and the Secretary's responses to those comments. Appendix B contains a summary of questions and answers on the notice of proposed rulemaking.

(1) Section 400.4(b)—Definitions.

(i) "*Economically depressed area.*" The proposed rule asked if the Secretary should prescribe additional criteria for designating areas as economically depressed. In response, commenters recommended that the Secretary prescribe additional criteria such as a heavy concentration of Chapter 1 students or a heavy concentration of students receiving free and reduced-price lunches.

Rather than possibly restricting the States' decisionmaking authority by prescribing additional criteria, the Secretary will provide States the latitude to develop additional criteria within the framework prescribed by section 521(13) of the Act. States must include the criteria they intend to use to identify economically depressed areas in the State plan. The Secretary will review the criteria along with other provisions of the plan.

(ii) "*Economically disadvantaged family or individual.*" Comments were requested on the proposed definition of economically disadvantaged family or individual. Commenters responded by suggesting that the standards be revised so that they reflect a person's eligibility for certain benefits rather than receipt of those benefits. One commenter recommended deleting several of the standards because of the lack of available data.

No change has been made in the final regulations. The criterion involving the Pell Grant continues to refer to a person's receipt of a Pell Grant or a comparable State program of need-based financial assistance because of the possible complexity of the eligibility determination. The other criteria, however, refer to a person's eligibility for benefits. Regarding the second comment, the definition permits States to choose from among the five standards. The lack of available data is one of the considerations a State may weigh in deciding which standards it will use to determine economic disadvantage.

Another commenter inquired as to the statutory authority for the definition of "economically disadvantaged family or individual" in § 400.4, pointing out that section 521(20) of the Act requires the Secretary to determine such families or individuals on the basis of low-income "according to the latest available data from the Department of Commerce." The commenter noted that the proposed regulatory definition permitted a State to select one or more of the standards of low income, prescribed by the Secretary, to apply for the purposes of its State program. However, not all of these standards are based on Department of Commerce data.

No change has been made in the final regulations. The Secretary believes the regulatory definition is consistent with the intent of Congress in enacting the Carl D. Perkins Act. The definition of economically disadvantaged family or individual in the Carl D. Perkins Act is substantially similar to the definition of "low income family or individual" in the Vocational Education Act (VEA) of 1963. Under the VEA, the term was used in connection with the identification of areas with large concentrations of such families or individuals (not the identification of families or individuals themselves) for the purpose of fund distribution. The Department's well-established administrative practice under this VEA definition of low income family or individual was to permit the use of substitute data, such as Aid to Families with Dependent Children data and data on school lunch program recipients, where Department of Commerce data either did not exist or for some other reason could not be meaningfully applied. Thus, the regulatory definition of economically disadvantaged family or individual under the Carl D. Perkins Act continues this history of administrative flexibility.

The statutory term "economically disadvantaged family or individual" has its principle application in the statutory allocation formulas for basic State grant funds reserved for handicapped individuals and disadvantaged individuals. Under section 203 of the Carl D. Perkins Act those funds are allotted among eligible recipients partly on the basis of actual enrollments of economically disadvantaged individuals. The use of economically disadvantaged enrollments to allocate funds reserved for handicapped and disadvantaged individuals was a feature of the Senate bill that was adopted in conference. With respect to the intended meaning of the term economically disadvantaged family or individual for this purpose, the Senate Report acknowledged the need for administrative flexibility and sanctioned the State practice of using existing student counts, such as eligibility for free or reduced-price school lunches or Pell grant recipients (Senate Report No. 98–507, 98th Cong. 2nd Sess. p. 16). Thus, the regulatory definition is consistent with this important aspect of the legislative history of the Carl D. Perkins Act.

Finally there is the question of administrative feasibility. While it would be possible for the Secretary to establish inflexible qualifying income levels that are based on Department of Commerce data for families and students at the secondary and postsecondary levels, every participating local educational agency or postsecondary educational institution would have to canvas their enrollments every year to identify students at or below the prescribed income level for the purpose of fund allocation. Clearly, this would be a substantial administrative burden upon eligible recipients, one that might discourage their participation in the program, and an intrusive practice with respect to intended program beneficiaries. There is no legislative history which suggests Congress intended to impose such burdens on eligible recipients, students, or their families. Moreover, these potential difficulties, as well as the risk of Federal intrusiveness, are eliminated by permitting the States and eligible recipients to utilize, on a uniform basis, the income data that is already available to them.

(2) Section 401.19—State Plans.

The Secretary requested comments on the contents of the State plans. Commenters responded as follows:

(i) *State plan—assurances.* One commenter asked why maintenance of effort was included in § 401.19(a)(1) and (b)(8).

The regulations have not been changed. Maintenance of effort is included in these subsections in order to highlight this requirement and to clarify that the Secretary may require States to substantiate their compliance with this requirement.

One commenter suggested that the regulations clarify that State-operated schools or institutions should be counted as part of the 80 percent local share.

In response to this comment, § 401.19(a)(4) has been changed to clarify that State-operated schools and

institutions are counted as part of the 80 percent local share.

Several commenters recommended that § 401.19(a)(10) clarify whether 20 percent of the eligible recipients or 20 percent of the programs must be evaluated each program year. Additionally, some commenters wanted to know it all programs must be evaluated during the five-year period, or if some programs could be evaluated twice in order to meet the 20 percent requirement. Other commenters recommended that the regulations clarify that the evaluation requirement applies only to project under the Act.

In response to comments, § 401.19(a)(10) now clarifies that each program year a State will evaluate all of the projects, services, and activities supported under Part 401 of at least 20 percent of the eligible recipients receiving funds under the Act so that by the end of a five-year period, every local program which has received Federal funds will have been evaluated.

Several commenters stated that § 401.19(a)(18) of the proposed rules appeared to set limits on the use of basic State grant funds reserved for vocational education services and activities for handicapped individuals and disadvantaged individuals, whereas section 204(a) of the Act seems broader, appearing to establish conditions that must be in place to receive those funds.

Although § 401.19(a)(18) was not intended to set limits on the use of such funds, a change has been made in the final regulations to clarify the Secretary's interpretation of the statute.

Both the regulations and the statute require the State to include certain assurances in the State plan prior to participating in programs under the State Vocational Education Program; in the sense, both the regulations and the statute establish preconditions to State participation. Section 204(a), however, requires the State board to make these assurances pertaining to the criteria applicable to the services and activities provided to handicapped individuals and disadvantaged individuals "with respect to" the basic State grant funds reserved for these populations. The statutory phrase "with respect to" is ambiguous. Broadly speaking, it might be read to mean that the receipt of Federal funds triggers the application of statutory criteria to the recipient's vocational education program. Or it might be read to mean that the recipient will comply with the statutory criteria in using the Federal funds for vocational education services and activities. In light of the available legislative history to section 204(a), the Secretary believes that the latter interpretation—that Congress intended to ensure that the State would comply with certain equal access criteria in using the Federal funds reserved for handicapped individuals and disadvantaged individuals—is the more plausible interpretation. The legislative history of section 204(a) does not indicate that Congress intended to expand the application of those equal access criteria beyond the reach of funds under the Act. However, it is the Secretary's interpretation that while States must use their funds reserved under the Act for handicapped and disadvantaged individuals in ways that are consistent with the mandated criteria, they need not expend those funds to comply with those criteria which are already being satisfied with funds from other sources.

(ii) *State plan—descriptions.* Several commenters noted that both § 401.19(b)(4) of the regulations and section 113(b)(5) of the Act require that eligible recipients located in economically depressed areas receive more of the Federal funds received by the State than eligible recipients not located in economically depressed areas. Commenters were concerned that if this provision is interpreted to mean at least $1.00 more than half of the State's total grant, such an interpretation would be excessively restrictive and would result in disproportionate allocations of funding, perhaps sending large amounts of money to areas with very small student populations. Commenters requested that the Secretary interpret the word "more" to mean that the economically depressed areas should receive proportionately more funding, e.g., on a per pupil or per capita basis.

The regulations have not been changed. Item 218 in the Conference Report (House Report No. 98–1129, 98th Cong. 2d Sess. p. 95) states that the intent of section 113(b)(5) was ". . . that eligible recipients in economically depressed areas [must] annually receive more total funds than the total amount of funding awarded to eligible recipients in areas which are not economically depressed." Section 401.19(b)(4) of the regulations is consistent with both the language and the intent of the statute as explained in the Conference Report.

Several commenters noted that § 401.19(b)(4) of the proposed regulations omitted the phrase "or which have high unemployment" which appears in section 113(b)(5) of the Act. The commenters pointed out that the omission of this phrase could have the effect of changing the in-State distribution requirements.

In response to this comment the regulations have been changed. References to areas of high unemployment have been added to the fund distribution requirement in § 401.19(b)(4) to more closely reflect the language of the statute. States may now identify areas of high unemployment as well as economically depressed areas for the purpose of this requirement. Corresponding changes have been made to §§ 401.19(b)(12) and 401.102.

(3) Section 401.22—Maintenance of Effort.

The Secretary requested comments on whether guidance was needed on the vocational education expenditures which form the basis of the maintenance of effort determination. Several commenters requested that maintenance of effort determinations be based on current expenses only. Another commenter asked for the legislative basis for the interpretation that only State sources are to be considered in maintenance of effort determinations.

The regulations have not been changed. However, section 503 of the Act states that to be eligible to receive funds under the Act. States must maintain their expenditures "for vocational education." The Secretary interprets the Act, consistent with prior practice under the Vocational Education Act, to include both current and capital expenditures for vocational education, as defined in section 521(31) of the Act and § 400.4(b) of the regulations. States may include vocational education construction costs, if they desire.

In regard to the second comment, the regulations are consistent with the language of the Act, which refers to the fiscal effort or expenditures "of each State." In addition, unlike the Vocational Education Act, the Carl D. Perkins Act does not require the maintenance of fiscal effort at the local level. It is reasonable to believe, therefore, that Congress did not believe that local expenditures should be included in State level maintenance of effort computations.

(4) Section 401.31(a)—Criteria for Reallotment of Funds.

In response to the request for comments, several commenters asked that the regulations provide more guidance with respect to the criteria the Secretary will use in realloting funds.

The Secretary rarely has occasion to reallot funds and therefore feels that the criteria in § 401.31(a)(1) are sufficient. In the future the Secretary may determine that additional guidance is desirable.

(5) Sections 401.52 and 401.53—Programs for Handicapped and Disadvantaged Individuals

The proposed rule asked if further guidance was needed on the services and activities that may be provided with funds under these programs. One commenter pointed out that §§401.52(b) and 401.53(a)(2) stipulate "expenditures for the comparable regular vocational education services and activities" while the statute refers to "expenditures for regular services and activities." The commenter asked why the words "comparable" and "vocational education" were added to the regulations.

The regulations have not been changed. The words "comparable" and "vocational education" were added in §§ 401.52(b) and 401.53(a)(2) of the proposed regulations to reflect the intent of section 201(c)(1) of the Act that the costs of non-mainstreamed programs for handicapped or disadvantaged persons be compared to the same types of programs for non-handicapped or non-disadvantaged individuals in order to obtain valid cost comparisons.

Another commenter expressed the view that §§ 401.52(b) and 401.53(a)(2) will impose burdensome data-gathering requirements on eligible recipients since those regulations require individual cost comparisons between non-mainstreamed programs for handicapped and disadvantaged individuals and comparable regular vocational education programs. The commenter recommended that the regulations permit State-level average cost differentials as opposed to individual program cost comparison by an eligible recipient.

The regulations have not been changed because section 201(c)(1) of the Act clearly requires individual program cost comparisons by an eligible recipient.

Still another commenter was concerned that while § 401.52 of the regulations accurately reflected the wording of section 201(c) of the Act, it might be read to encourage separate programs for handicapped individuals.

Although the regulations have not been changed, the Secretary wishes to emphasize that Item 91 of the Conference Report makes it clear that, even though a distinction is made between "excess" cost requirements for handicapped students in mainstreamed classes and those in separate programs, it is not the intent of Congress to in any way encourage the creation of separate programs for handicapped students. House Report No. 98–1129, 98th Cong. 2d Sess. p. 77.

Another commenter suggested changing the restriction in § 401.53(b)(2) that funds reserved for disadvantaged individuals may be used for acquiring modern machinery and tools, "only" in schools in which at least 75 percent of the students are economically disadvantaged. The commenter wanted "only" changed to "especially."

The regulations have not been changed. Item 81 of the Conference Report specifies that funds may be used to purchase equipment "only in" schools with a 75 percent or more economically disadvantaged enrollment. House Report No. 98–1129, 98th Cong. 2d Sess. p. 75.

(6) Sections 401.59 and 401.60—Use of Funds Under the Vocational Education Improvement, Innovation, and Expansion Program

Comments were requested on the use of funds under Title II, Part B of the Act to "expand, improve, modernize, or develop" high quality programs. Specifically, the Secretary asked if guidance was needed on (a) what activities constitute an expansion, improvement, or modernization, and (b) how many years a program may be "developed." Several commenters recommended that § 401.59 be revised to include a transition period to provide for phasing in the requirements of Title II, Part B of the Act. Their particular concern was that States have time to adjust to the "non-maintenance" requirement for some of the programs authorized under Title II, Part B of the Act.

With respect to a transition period, the regulations have not been changed. The Secretary recognizes the flexibility afforded States during the period of transition under section 3(a)(2) of Pub. L. 98–524 but believes that detailed, and possibly restrictive, regulations are not warranted. The Secretary believes the transition authority is best implemented on a case-by-case basis. Additional guidance regarding the use of the carryover funds and current year funds under section 3(a) of Pub. L. 98–524 is contained in Appendix B to these regulations.

A number of commenters objected to proposed § 401.59(b) which required States to use funds under Title II, Part B to expand, improve, modernize, or develop vocational education services and activities, and prohibited the use of those funds to maintain any existing services and activities. Several commenters felt that some of the services and activities authorized by section 251 of the Act inherently improve, expand, or develop existing vocational education programs. Others thought the proposed regulations prohibited the use of funds for existing programs, including those that are under development.

The regulations have been changed. The legislative history of Title II, Part B makes it clear that Congress intended services and activities funded under this program to represent an improvement, expansion, or development of vocational education programs. However, the Secretary believes that the commenters are correct in pointing out that certain of the services and activities authorized by section 251 do, by their very nature, contribute to the expansion, improvement, or development of vocational education programs. Because these services and activities are inherently related to the improvement of programs, it would be consistent with the intent of Congress to permit States and eligible recipients to maintain them where they already exist, but not the other services and activities authorized by section 251. Accordingly, §§ 401.59 and 401.60 have been rewritten to clarify which authorized activities are inherently related to the improvement of programs (§ 401.60 (b) and (c)) and those which are not (§ 401.60(a)). States and eligible recipients may use funds under Title II, Part B to continue their existing services and activities which fall into the former category, but not services and activities in the latter category. States and eligible recipients may use funds under this program to support only those particular aspects of their services and activities in the latter category (§ 401.60(a)) which represent an innovation, expansion, improvement, modernization, or development.

(7) Section 401.90—State Administrative Costs

The proposed rule requested comments on the use of State administrative funds. Many commenters read section 113(b)(4) of the Act to require a State to distribute all of the funds reserved for handicapped and disadvantaged individuals under Title II Part A of the act to eligible recipients. These commenters felt that § 401.90 of the proposed rule permitted the use of some of those funds for State administration and recommended that § 401.90 be changed to reflect the Act.

No change has been made. Although the Act lacks clarity on this issue, the Secretary believes the regulations reflect the intent of Congress. Section 113(b)(4) of the Act must be read in connection with section 102 of the Act, which allocates the funds in the basic State grant among State administration, the Vocational Education Opportunities

Program authorized by Part A of Title II of the Act, and the program improvement, innovation, and expansion activities authorized by Part B of Title II. In general, section 102 allocates 57 percent of the basic grant to Part A, 43 percent to Part B, and up to 7 percent for State administration. In addition, section 202 of the Act reserves all the basic grant funds available for Part A for six specified populations, including handicapped individuals and disadvantaged individuals, in precisely established proportions. To preserve the integrity of these various fund distribution requirements and the carefully wrought balance of interests they represent, the Secretary has interpreted the Act to require that the States reserve up to 7 percent for State administration prior to allotting the 57 percent and 43 percent for Parts A and B, respectively. This interpretation is consistent with the language of section 113(b)(4) because all the funds "available" for handicapped and disadvantaged individuals, after the reservation of funds for State administration, continue to flow to eligible recipients. In addition, the Secretary's interpretation promotes administrative convenience for the States and reflects the necessity for State-level administrative activity in connection with local programs for handicapped and disadvantaged individuals.

(8) Section 401.93—Local Administrative Costs

Comments were requested on the Secretary's interpretation of the provision regarding local administrative costs. One commenter asked for the statutory authority for limiting local administrative costs to "necessary and reasonable" cost.

The regulations have not been changed as the Secretary believes that the "necessary and reasonable" cost principle is implicit in the statute. This provision is consistent with Educational Department General Administrative Regulations (EDGAR, 34 CFR Part 74, Appendix C) on cost principles, and long-term Departmental practice.

(9) Section 401.95 and § 401.96—Distribution Formulas for Funds Reserved for Handicapped Individuals and Disadvantaged Individuals

The Secretary requested comments on the Secretary's interpretations in §§ 401.95 and 401.96. A variety of comments were received. Some commenters supported the interpretation that the allocation formula is based on participating eligible recipients. Other commenters asked why this interpretation was made.

The Secretary interpreted the distribution formulas as being based on "participating eligible recipients" in order to eliminate the unnecessary administrative burden States would face in having to make pupil counts in, and allocate funds to, eligible recipients which did not wish to participate in the programs (assuming the data were available from such disinterested eligible recipients). Also, allocations for disinterested eligible recipients which did wish to participate, thus creating an additional administrative burden on States.

One commenter requested that allocations for handicapped and disadvantaged individuals be based on the most recent data available rather than on counts made in the program year preceding the year in which the allocation is made.

The regulations continue to require that allocations be based on counts made in the year prior to the year for which determinations are made, as required by section 203(a) of the Act.

(10) Section 401.96(b)—Formula for Individuals With Limited English Proficiency

Comments were requested on the Secretary's interpretation of the formula for reserving funds for individuals with limited English proficiency from funds reserved for disadvantaged individuals under the Vocational Education Opportunities Program.

Several commenters responded by expressing the view that § 401.96(b) of the regulations establishes a method for determining a minimum expenditure level for individuals with limited English proficiency which could result in an inappropriate or inequitable minimum expenditure level for this population.

A change has been made. In general, section 203(a)(3) of the Act requires eligible recipients to support vocational education programs for persons with limited English proficiency from their allotments of Title II, Part A funds reserved for disadvantaged individuals in the same proportion as the number of persons with limited English proficiency "served" by the eligible recipient in the preceding year bears "to the population of the State." In an attempt to give the language of the statute a reasonable meaning, in the proposed regulations the Secretary interpreted "served" to mean served in vocational education, and interpreted the reference to the State's population to mean the total population of persons with limited English proficiency served in vocational education by all participating eligible recipients. The Secretary agrees that, as the commenters pointed out, the ratio between the number of persons with limited English proficiency served in vocational education by an eligible recipient and the number of such persons served in vocational education throughout the State is not always an equitable or appropriate means of allocating an eligible recipient's funds reserved for disadvantaged persons, including persons with limited English proficiency. For example, the ratio described in the proposed regulation does not accurately reflect the relative numbers of limited English proficient persons, and otherwise disadvantaged persons, in an eligible recipient who have a need for vocational education. Several of the commenters invited the Secretary to, in effect, rewrite section 203(a)(3) of the Act in order to establish a more equitable means of allocating funds for persons with limited English proficiency. While the Secretary is not authorized to rewrite the statute, the Department has forwarded to Congress a legislative proposal which would amend section 203(a)(3) and establish a more equitable ratio.

In the meantime, the final regulations essentially repeat the language of section 203(a)(3). The Secretary continues to believe that the interpretation reflected in the proposed regulation is a reasonable one, which the States are free to adopt, where equitable and appropriate; however, the States may adopt other reasonable interpretations, that are consistent with the purposes of the Act, as well. It should also be pointed out that the Secretary interprets section 203(a)(3) to establish a minimum funding requirement for persons with limited English proficiency from Title II, Part A funds reserved for disadvantaged individuals. Therefore a State would be permitted to adopt the interpretation provided in the proposed regulation, but spend additional funds for programs for persons with limited English proficiency when equitable and appropriate to do so. In addition, a new State plan requirement has been added, § 401.19(b)(14), which requires States to describe in their State plans how they will implement § 401.96(b).

(11) Section 401.97—State Match for Funds for Handicapped and Disadvantaged Individuals

The proposed rule requested comments on the statutory provision that States provide the non-Federal share of the cost of projects for handicapped individuals and for disadvantaged individuals under the

Vocational Education Opportunities Program equitably from State and local resources. Several commenters felt that States should be allowed to assume 100 percent of the non-Federal cost. Others felt that programs for handicapped and disadvantaged persons would be adversely affected in instances where the State assumed the total burden of meeting the matching requirement.

Although the regulations have not been changed, the Secretary wishes to clarify that the determination of what constitutes an equitable sharing of the matching requirement between the State and local levels is made, in the first instance, by the State. If a State determines that these costs cannot be reasonably provided by an eligible recipient, § 401.97 permits the State to assume 100 percent of the non-Federal costs for that eligible recipient.

(b) Other Changes

(1) Section 401.13(b) has been changed to require States, other than an Insular Area, to "reserve" rather than "expend" at least $60,000 to carry out activities of personnel assigned to eliminate sex discrimination and sex stereotyping under § 401.13(a). This change was made in order to allow States a period of up to 27 months to use the funds under § 401.13(b). This change makes the use of these funds consistent with the use of other funds under the Act.

(2) Section 401.16(b) was changed to require that State council responsibilities be carried out "during each State plan period." This change clarifies that the activities of the State council, listed in § 401.16(b), do not have to be performed each year.

(3) Section 401.112, dealing with State audit responsibilities, was changed to reflect enactment of the Single Audit Act of 1984, Public Law 98–502. That Act establishes audit requirements for State and local governments and applies to fiscal years that begin after December 31, 1984. The Secretary expects to issue regulations in the future to implement the provisions of the Single Audit Act.

(c) Other Provisions

These regulations do not implement all the provisions of the Carl D. Perkins Vocational Education Act. For example, the Act imposes a number of administrative requirements upon the Secretary for which regulations are unnecessary. In addition, the Act directs the Secretary to carry out or support a number of activities, such as the National Assessment of Vocational Education Programs (section 403 of the Act), and the Vocational Education Data System (section 421 of the Act), which the Act describes in some detail. These regulations do not implement either the National Assessment or the Vocational Education Data System. The Secretary is studying the desirability and need for regulations to implement these requirements and may develop regulations for them at a later date.

(d) Implementation of the Act

The Carl D. Perkins Vocational Education Act superseded the Vocational Education Act of 1963 on October 1, 1984. However, House Report No. 98–1129, 98th Cong. 2d Session, p. 101 clarifies that Congress did not intend the provisions of the new Act to be implemented until school year 1985–1986. During the remainder of school year 1984–1985, States must comply with the requirements of the Vocational Education Act of 1963, the regulations in the current 34 CFR Part 400, and their current State plan documents.

The appropriation for the Department for fiscal year 1985, Pub. L. 98–619, was enacted November 8, 1984. Pub. L. 98–619 appropriates funds for the support of vocational education programs during school year 1985–1986, and these funds became available to the States on July 1, 1985, the start of the first program year under the new Act.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Parts 400 and 401

Adult education, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Private schools, Reporting and recordkeeping requirements, Schools, School construction, Vocational education, Women.

34 CFR Parts 407, 408, and 409

Bilingual education, Reporting and recordkeeping requirements, Vocational education.

34 CFR Part 410

Indian education, Reporting and recordkeeping requirements, Vocational education.

34 CFR Parts 411, 412, 414, and 415

Educational facilities, Reporting and recordkeeping requirements, Vocational education.

34 CFR Parts 416 and 417

Colleges and universities, Educational research, Reporting and recordkeeping requirements, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations:

(Catalog of Federal Domestic Assistance Numbers 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), 84.051 (National Vocational Education Research Program and the National Center for Research in Vocational Education), 84.053 (State Councils for Vocational Education), 84.077 (Bilingual Vocational Training Program), 84.099 (Bilingual Vocational Instructor Training Program), 84.100 (Bilingual Vocational Materials, Methods, and Techniques Program), 84.101 (Indian and Hawaiian Natives Program). Catalog of Federal Domestic Assistance Numbers have not been assigned for: State Assistance for Vocational Education Support Programs by Community-Based Organizations; Adult Training, Retraining, and Employment Development Program; Comprehensive Career Guidance and Counseling Program; Industry-Education Partnership for Training in High-Technology Occupations Program; Demonstration Centers for Retraining Dislocated Workers; Cooperative Demonstration Program; State Equipment Pools Program; and Model Centers for Vocational Education for Older Individuals)

Dated: August 9, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Parts 400 and 408, and by adding new Parts 401, 407, 409, 410, 411, 412, 414, 415, 416, and 417 as follows:

1. Part 400 is revised to read as follows:

PART 400—VOCATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

Subpart A—General

Sec.

400.1 What are the purposes of the Carl D. Perkins Vocational Education Act?
400.2 What programs are authorized by the Carl D. Perkins Vocational Education Act?
400.3 What regulations apply to the Vocational Education Programs?
400.4 What definitions apply to the Vocational Education Programs?

Authority: Carl D. Perkins Vocational Education Act, 20 U.S.C. 2301 *et seq.*, as enacted by Pub. L. 98–524, unless otherwise noted.

Subpart A—General

§ 400.1 What are the purposes of the Carl D. Perkins Vocational Education Act?

The purposes of the Carl D. Perkins Vocational Education Act are to—

(a) Assist the States to expand, improve, modernize, and develop quality vocational education programs in order to meet the needs of the Nation's existing and future work force for marketable skills and to improve productivity and promote economic growth;

(b) Assure that individuals who are inadequately served under vocational education programs are assured access to quality vocational education programs, especially—

(1) Individuals who are disadvantaged;

(2) Individuals who are handicapped;

(3) Men and women who are entering nontraditional occupations;

(4) Adults who are in need of training and retraining;

(5) Individuals who are single parents or homemakers;

(6) Individuals with limited English proficiency; and

(7) Individuals who are incarcerated in correctional institutions;

(c) Promote greater cooperation between public agencies and the private sector in preparing individuals for employment, in promoting the quality of vocational education in the States, and in making the vocational system more responsive to the labor market in the States;

(d) Improve the academic foundations of vocational students and to aid in the application of newer technologies (including the use of computers) in terms of employment or occupational goals;

(e) Provide vocational education services to train, retrain, and upgrade employed and unemployed workers in new skills for which there is a demand in that State or employment market;

(f) Assist the most economically depressed areas of a State to raise employment and occupational competencies of its citizens;

(g) Assist the States to utilize a full range of supportive services, special programs, and guidance counseling and placement to achieve the basic purposes of the Act;

(h) Improve the effectiveness of consumer and homemaking education and to reduce the limiting effects of sex-role stereotyping on occupations, job skills, levels of competency, and careers; and

(i) Authorize national programs designed to—

(1) Meet designated vocational education needs; and

(2) Strengthen the vocational education research process.

(Sec. 2; 20 U.S.C. 2301)

§ 400.2 What programs are authorized by the Carl D. Perkins Vocational Education Act?

The Carl D. Perkins Vocational Education Act authorizes—

(a) The State vocational education program which includes—

(1) The Vocational Education Opportunities Program under the basic State grant, as described in 34 CFR 401.51 through 34 CFR 401.58;

(2) The Vocational Education Improvement, Innovation, and Expansion Program under the basic State grant, as described in 34 CFR 401.59 through 34 CFR 401.61; and

(3) Special Programs which include the—

(i) State Assistance for Vocational Education Support Programs by Community-Based Organizations as described in 34 CFR 401.71 and 34 CFR 401.72;

(ii) Consumer and Homemaking Education Program as described in 34 CFR 401.73;

(iii) Adult Training, Retraining, and Employment Development Program as described in 34 CFR 401.75;

(iv) Comprehensive Career Guidance and Counseling Program as described in 34 CFR 401.76; and

(v) Industry-Education Partnership for Training in High-Technology Occupations Program as described in 34 CFR 401.78; and

(b) National Programs which include—

(1) The Bilingual Vocational Training Program as described in 34 CFR Part 407;

(2) The Bilingual Vocational Instructor Training Program as described in 34 CFR 408;

(3) The Bilingual Vocational Materials, Methods, and Techniques Program as described in 34 CFR Part 400;

(4) The Indian and Hawaiian Natives Program as described in 34 CFR 410;

(5) Demonstration Centers for the Retraining of Dislocated Workers as described in 34 CFR Part 411;

(6) The Cooperative Demonstration Program as described in 34 CFR Part 412;

(7) The State Equipment Pools Programs as described in 34 CFR Part 414;

(8) Model Centers for Vocational Education for Older Individuals as described in 34 CFR Part 415;

(9) The National Vocational Education Research Program as described in 34 CFR Part 416; and

(10) The National Center for Research in Vocational Education as described in 34 CFR Part 417.

(20 U.S.C. 2301 *et seq.*)

§ 400.3 What regulations apply to the Vocational Education Programs?

In addition to the regulations contained in this part and the applicable program regulations, the programs under 34 CFR Parts 401, 407 through 412, and 414 through 417 are subject to the following Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(a) Part 74 (Administration of Grants);

(b) Part 75 (Direct Grant Programs), which applies only to Parts 407 through 412 and Parts 414 through 417;

(c) Part 76 (State-Administered Programs), which applies only to Part 401;

(d) Part 77 (Definitions that apply to Department of Regulations);

(e) Part 78 (Education Appeal Board); and

(f) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 2301 *et seq.*)

§ 400.4 What definitions apply to the Vocational Education Programs?

(a) *Definitions in EDGAR.* Unless otherwise provided, the following terms used in this part and 34 CFR Parts 401, 407 through 412, and 414 through 417 are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Budget
Contract
Department
ED
EDGAR
Facilities
Federally recognized Indian tribal government

Fiscal year
GEPA
Grant
Nonprofit
Nonpublic
Private
Project
Secondary school
Secretary
State
State educational agency
Supplies

(b) *Other definitions.* The following definitions also apply to this part and 34 CFR Parts 401, 407 through 412, and 414 through 417:

"Act" means the Carl D. Perkins Vocational Education Act.

"Administration" means activities of a State necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including curriculum development activities, personnel development, technical assistance, or research activities.

"Apprenticeship training program" means a program registered with the Department of Labor or the State apprenticeship agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act, which is conducted or sponsored by an employer, a group of employers, or a joint apprencticeship committee representing both employers and a union, and which contains all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

"Area vocational education school" means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college or community college or university operating under the policies of the State board and which provides vocational education in no less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraphs (3) and (4) of this definition, it admits as regular students both indivduals who have completed high school and individuals who have left high school.

"Career guidance and counseling" means those programs—

(1) Which pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decisionmaking, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities; and

(2) Which assist individuals in making and implementing informed educational and occupational choices.

"Community-based organization" means a private nonprofit organization of demonstrated effectiveness which is representative of communities or siginficant segments of communities and which provides job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001, Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973), agencies serving youth, agencies serving the handicapped, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), or an organization of demostrated effectiveness serving nonreservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

(Sec. 4(5) of the Job Training Partnership Act)

"Construction" includes construction of new buildings and acquisition, and expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees.

"Cooperative education" means a method of instruction of vocational education for individuals who, through written cooperative arrangements between the school and employers, receive instruction, including required academic course and related vocational instruction by alternation of study in school with a job in any occupational field, but the two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

"Criminal offender" means any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender.

"Correctional institution" means any—

(1) Prison;

(2) Jail;

(3) Reformatory;

(4) Work farm;

(5) Detention center; or

(6) Halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

"Curriculum materials" means instructional and related or supportive material, including materials using advanced learning technology, in any occupational field which is designed to strengthen the academic foundation and prepare individuals for employment at the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field, and appropriate counseling and guidance material.

"Disadvantaged" means individuals (other than handicapped individuals) who have economic or academic disadvantages and who require special services and assistance in order to enable them to succeed in vocational educational programs. The term includes individuals who are members of economically disadvantaged families, migrants, individuals who have limited English proficiency and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school. For the purpose of this definition, an individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose secondary school grades are below 2.0 on a 4.0 scale (where the grade "A" equals 4.0), or fails to attain minimal academic competencies may be considered "academically disadvantaged." The definition does not include individuals with learning disabilities.

(House Report No. 98–1129, 98th Cong., 2d Sess. p. 100 (1984))

"Economically depressed area" means an economically integrated area within any State in which a chronically low level of economic activity or a deteriorating economic base has caused such adverse effects as—

(1) A rate of unemployment which has exceeded by 50 per centum or more the average rate of unemployment in the State, or in the Nation, for each of the three years preceding the year for which the designation is made; or

(2) A large concentration of low-income families, the designation of which is approved by the Secretary as consistent with the purposes of the Act, with these criteria, and with such other criteria as the Secretary may prescribe.

"Economically disadvantaged family or individual" means a family or individual which the State board identifies as low income on the basis of uniform methods that are described in the State plan. A State must use one or more of the following standards as an indicator of low income:

(1) Annual income at or below the official poverty line established by the Director of the Office of Management and Budget.

(2) Eligibility for free or reduced-priced school lunch.

(3) Eligibility for Aid to Families with Dependent Children or other public assistance programs.

(4) Receipt of a Pell Grant or comparable State program of need-based financial assistance.

(5) Eligibility for participation in programs assisted under Title II of the JTPA.

"Eligible recipient" means a local educational agency or a postsecondary educational institution.

"Handicapped", when applied to individuals, means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or persons with specific learning disabilities, who by reason thereof require special education and related services, and who, because of their handicapping condition, cannot succeed in the regular vocational education program without special education assistance.

"High technology" means state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care.

"Homemaker" means an individual who—

(1) Is an adult; and

(2) Has worked as an adult primarily without remuneration to care for the home and family, and for that reason has diminished marketable skills.

"Institution of higher education" means an institution of higher education as defined in section 1201 of the Higher Education Act of 1965.

"Insular Area" means the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. For the purpose of 34 CFR 401.13, the term also includes Puerto Rico.

"JTPA" means the Job Training Partnership Act (P.L. 97-300).

"Limited English proficiency", when used with reference to individuals, means individuals—

(1)(i) Who were not born in the United States or whose native language is a language other than English;

(ii) Who came from environments where a language other than English is dominant; or

(iii) Who are American Indian and Alaskan Native students and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny those individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(20 U.S.C. 3223)

"Local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program.

"Postsecondary educational institution" means an institution legally authorized to provide postsecondary education within a State, or any postsecondary educational institution operated by or on behalf of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

"Private vocational training institution" means a business or trade school, or technical institution or other technical or vocational school, in any State, which—

(1) Admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by the institution;

(2) Is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

(3) Has been in existance for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this definition; and

(4) Is accredited—

(i) by a nationally recognized accrediting agency or association listed by the Secretary;

(ii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretaray; or

(iii) If the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of the category, which comittee shall prescribe the standards of content, scope, and quality which must be met by those schools and shall also determine whether particular schools meet those standards.

"Program year" means a period beginning on July 1 and ending on the following June 30.

"School facilities" means classrooms and related facilities, including initial equipment, and interests in lands on which the facilities are constructed. The term does not include any facility intended primarily for events for which admission is to be charged to the general public.

"Single parent" means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2) Has a minor child or children for which the parent has either custody or joint custody.

"Small business" means for-profit enterprises employing five hundred or fewer employees.

"State" means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern

Mariana Islands, or the Trust Territory of the Pacific Islands.

"State board" means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education, or for supervision of the administration of vocational education in the State.

"State council" means the State council on vocational education established in accordance with section 112 of the Act.

"Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, in such fields as agriculture, business occupations, home economics, health occupations, marketing and distributive occupations, technical and emerging occupations, modern industrial and agriculture arts, and trades and industrial occupations, or for additional preparation for a career in those fields, and in other occupations requiring other than a baccalaureate or advanced degree and vocational student organization activities as an integral part of the program. For purposes of this definition, "organized education program" means only—

(1) Instruction, including career guidance and counseling, related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from that training; and

(2) The acquisition, including leasing, maintenance, and repair, of instructional equipment, supplies, and teaching aids. The term does not mean construction, acquisition of initial equipment or buildings, or the acquisition or rental of land.

"Vocational student organizations" means those organizations for individuals enrolled in vocational education programs which engage in activities as an integral part of the instructional program. These organizations may have State and national units which aggregate the work and purposes of instruction in vocational education at the local level.

(Sec. 521; 20 U.S.C. 2471)

2. A new Part 401 is added to read as follows:

PART 401—STATE VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.

401.1 What is the State Vocational Education Program?
401.2 What regulations apply to the State Vocational Education Program?
401.3 What definitions apply to the State Vocational Edcuation Program?

Subpart B—How Does a State Participate in the State Vocational Education Program?

Sec.

401.10 What is the State board?
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Authority: Carl D. Perkins Vocational Education Act, 20 U.S.C. 2301 *et seq.*, as enacted by Pub. L. 98–524, unless otherwise noted.

Subpart A—General

§ 401.1 What is the State Vocational Education Program?

(a) Under the State Vocational Education Program, the Secretary makes grants to States, to assist them, local educational agencies, postsecondary educational institutions, and other agencies and institutions to administer the Federally assisted vocational education programs that are authorized by the Act.

(b) The State Vocational Education Program consists of the programs under the basic State grant for vocational education authorized by Title II of the Act and the Special Programs authorized by Title III of the Act.

(20 U.S.C. 2301 *et seq.*)

§ 401.2 What regulations apply to the State Vocational Education Program?

The following regulations apply to the State Vocational Education Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(20 U.S.C. 2301 *et seq.*)

§ 401.3 What definitions apply to the State Vocational Education Program?

The definitions in 34 CFR 400.4 apply to the State Vocational Education Program.

(Sec. 521; 20 U.S.C. 2471)

Subpart B—How Does a State Participate in the State Vocational Education Program?

§ 401.10 What is the State board?

A State that desires to participate in the programs authorized by the Act shall, consistent with State law, designate or establish a State board of vocational education which shall be the sole State agency responsible for the administration or the supervision of the State's vocational education program.

(Sec. 111(a); 20 U.S.C. 2321(a))

§ 401.11 What are the principal responsibilities of the State board?

The principal responsibilities of the State board must include—

(a) The coordination of the development, submission, and implementation of the State plan;

(b) The evaluation of the programs, services, and activities assisted under the Act, as required by § 401.19(a) (8) and (9);

(c) The development, in consultation with the State council on vocational education, and the submission to the Secretary of the State plan;

(d) Consultation with the State council on vocational education and other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs under the Act;

(e) Convening and meeting as a State board, consistent with State law and procedure, when the State board determines it is necessary to meet to carry out its functions under the Act, but not less than four times annually; and

(f) The adoption of those procedures the State board considers necessary to implement State level coordination with the State job training coordinating council in order to encourage cooperation between programs under the Act and programs under the JTPA.

(Sec. 111(a); 20 U.S.C. 2321(a))

§ 401.12 What are the additional responsibilities of the State board?

(a) The State board shall make available to each private industry council (PIC) established within the State under section 102 of the JTPA a current listing of all programs assisted under the Act.

(b)(1) The State board, in consultation with the State council on vocational education established under § 401.14, shall establish at least two technical committees to advise the State council and the State board on the development of model curricula to address State labor market needs. The technical committees shall develop an inventory of skills that may be used by the State board to define state-of-the-art model curricula. This inventory must identify the type of level of knowledge and skills needed for entry, retention, and advancement in occupational areas taught in the State.

(2) The State board shall establish procedures for membership, operation, and duration of the technical committees that are consistent with the purposes of the Act. Their membership must be composed of representatives of—

(i) Employees from any relevant industry or occupation for which the committee is established;

(ii) Trade or professional organizations representing any relevant occupations; and

(iii) Organized labor, where appropriate.

(3)(i) A State may use funds reserved under § 401.90(b)(2) for the Vocational Education Improvement, Innovation, and Expansion Program to support the activities of the technical committees it establishes under paragraph (b)(1) of this section.

(ii) For the purpose of § 401.19(a)(4), regarding the requirement that a State distribute at least eighty percent of its total basic State grant allotment to eligible recipients, a State shall consider

the funds used to support the technical committees as part of the State's portion (the portion that may not exceed twenty percent) of the State's allotment.

(c) The State board shall identify as a State imposed requirement any State rule or policy it imposes relating to the administration and operation of programs funded under the Act, including any rule or policy based on the State board's interpretation of any Federal law, regulation, or guideline.

(d) Except for the functions described in § 401.11, the State board may delegate any of its other administrative, operational, or supervisory responsibilities, in whole or in part, to one or more appropriate State agencies.

(Secs. 111(a), (c), (d), (e), 521(1); 20 U.S.C. 2321(a), (c), (d), (e), 2471(1))

§ 401.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State, other than an Insular Area, that desires to participate in the State Vocational Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 401.12(d) to administer vocational education programs within the State, to work full time to assist the State board to fulfill the purposes of the Act by—

(1) Administering the program of vocational education for single parents and homemakers described in § 401.55 and the sex equity program described in § 401.56;

(2) Gathering, analyzing, and disseminating data on the —

(i) Adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women, including the preparation of women for employment in technical occupations, new and emerging occupational fields, and occupations regarded as nontraditional for women; and

(ii) Status of men and women students and employees in the programs in paragraph (a)(2)(i) of this section;

(3)(i) Reviewing vocational educational programs, including career guidance and counseling, for sex stereotyping and sex bias, with particular attention to practices which tend to inhibit the entry of women in high technology occupations; and

(ii) Submitting recommendations for inclusion in the State plan for programs and policies to overcome sex bias and sex stereotyping in the programs in paragraph (a)(3)(i) of this section;

(4) Submitting to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping;

(5) Reviewing proposed actions on grants, contracts, and the policies of the State board to ensure that the needs of women are addressed in the administration of that Act;

(6) Developing recommendations for programs of information and outreach to women concerning vocational education and employment opportunities for women, including opportunities for careers as technicians and skilled workers in technical fields and new and emerging occupational fields;

(7) Providing technical assistance and advice to local educational agencies, postsecondary institutions, and other interested parties in the State, on expanding vocational opportunities for women; and

(8) Assisting administrators, instructors, and counselors in implementing programs and activities to increase access for women, including displaced homemakers and single heads of households, to vocational education and to increase male and female students' enrollment in nontraditional programs.

(b) A State, other than an Insular Area, shall, in accordance with § 401.91(b), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0030)

(Sec. 111(b); 20 U.S.C. 2321(b))

§ 401.14 Must a State establish a State council on vocational education?

A State, other than an Insular Area, that desires to participate in the State Vocational Education Program shall establish a State council on vocational education, which must be appointed by the Governor or, in the case of States in which the members of the State board of education are elected, including election by the State legislature, must be appointed by the State board of education.

(Sec. 112(a); 20 U.S.C. 2322(a); House Report No. 98–1129, 98th Cong. 2d Sess. p. 89 (1984))

§ 401.15 What are the membership requirements of the State council on vocational education?

(a) Each State council must be composed of thirteen individuals, and must be broadly representative of citizens and groups within the State having an interest in vocational education.

(b) Each State council must consist of—

(1) Seven individuals who are representative of the private sector in the State and who must constitute a majority of the membership—

(i) Five of whom must be representative of business, industry, and agriculture including—

(A) One member who is representative of small business concerns; and

(B) One member who is a private sector member of the State job training coordinating council established pursuant to section 122 of the JTPA; and

(ii) Two of whom must be representatives of labor organizations; and

(2) Six individuals, one of whom must be representative of special education, who are representative of—

(i) Secondary and postsecondary vocational institutions (equitably distributed among those institutions);

(ii) Career guidance and counseling organizations within the State; and

(iii) Individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations, including women, disadvantaged individuals, handicapped individuals, individuals with limited English proficiency, and minorities.

(c) In selecting individuals to serve on the State council on vocational education, the State shall give due consideration to the appointment of individuals who serve on a private industry council under the JTPA, or on State councils established under other related Federal programs.

(d) Each State shall certify to the Secretary the establishment and membership of the State council at least 90 days prior to the beginning of each program period described in § 401.17.

(Sec. 112 (a), (b); 20 U.S.C. 2322 (a), (b))

§401.16 What are the responsibilities of the State council on vocational education?

(a)(1) The State council on vocational education shall meet as soon as practical after the Secretary accepts its certification and shall select from among its membership a chairperson who must be a representative of the private sector.

(2) The State council on vocational education shall adopt rules that govern the time, place, and manner of meeting, as well as council operating procedures and staffing. The rules must provide for at least one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(b) Each State council on vocational education, during each State plan period described in § 401.17 unless otherwise indicated, shall—

(1) Meet with the State board or its representatives to advise on the development of the State plan, or any amendments to the State plan, while the State plan or amendment is being developed;

(2) Advise the State board and make reports to the Governor, the business community, and general public of the State concerning—

(i) Policies the State should pursue to strengthen vocational education, with particular attention to programs for the handicapped; and

(ii) Initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(3) Analyze and report on the distribution of all vocational education funds in the State and on the availability of vocational education activities and services within the State;

(4) Consult with the State board on the establishment of evaluation criteria for vocational education programs within the State;

(5) Submit recommendations to the State board on the conduct of vocational education programs conducted in the State which emphasize the use of business concerns and labor organizations;

(6) Assess and report on the distribution of financial assistance under the Act, particularly the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs;

(7) Recommend procedures to the State board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(8) Report to the State board on the extent to which the individuals described in § 401.51 are provided with equal access to quality vocational education programs; and

(9)(i) At least once every two years—

(A) Evaluate the vocational education program delivery systems assisted under the Act and the JTPA in terms of their adequacy and effectiveness in achieving their respective purposes; and

(B) Make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the JTPA; and

(ii) Advise, in writing, the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

(c)(1) Each State council on vocational education is authorized to—

(i) Obtain the services of whatever professional, technical, and clerical personnel are necessary to enable it to carry out its functions under the Act; and

(ii) Contract for whatever services are necessary to enable it to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals.

(2) The expenditure of funds awarded to a State council on vocational education by the Secretary must be solely determined by that State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual. Each State council on vocational education shall designate an appropriate State agency, or other public agency eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0030)

(Sec. 112(c)–(f); 20 U.S.C. 2322(c)–(f))

§ 401.17 What are the State plan requirements?

(a) A State that desires to participate in the State Vocational Education Program shall submit to the Secretary a State plan for a three program year period in the case of the initial plan and a two program year period thereafter, together with any annual amendments the State board determines to be necessary.

(b) Each State shall carry out its programs under the State Vocational Education Program on the basis of program years which coincide with program years under section 104(a) of the JTPA.

(c) The provisions of 34 CFR 76.103 do not apply to the State Vocational Education Program.

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(Sec. 113(a)(1); 20 U.S.C. 2323(a)(1))

§ 401.18 How is the State plan developed?

(a) In formulating the State plan, and any amendments to the State plan, the State board shall meet with and utilize the State council on vocational education established under § 401.14.

(b) After providing appropriate and sufficient notice to the public, the State board shall conduct at least two public hearings in the State for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan.

(c) In developing the State plan, the State board shall—

(1) Assess the current and projected occupational needs and the current and projected demand for general occupational skills within the State;

(2) Examine the needs of students, including adults, in order to determine how best to improve student skill levels in light of the State's occupational and skill requirements;

(3) Assess the special needs of groups of individuals described in § 401.51 for access to vocational education and vocational services in terms of labor market needs;

(4) Assess the quality of vocational education in terms of—

(i) The pertinence of programs to the workplace and to new and emerging technologies;

(ii) The responsiveness of programs to the current and projected occupational needs in the State;

(iii) The capacity of programs to facilitate entry into, and participation in, vocational eduction, and to ease the school-to-work and secondary-to-postsecondary transitions;

(iv) The technological and educational quality of vocational curricula, equipment, and instructional materials to enable vocational students and instructors to meet the challenges of increased technological demands of the workplace; and

(v) The capacity of vocational education programs to meet the needs for general occupational skills and the improvement of academic foundations in order to address the changing content of jobs;

(5) Determine the capacity of local educational agencies, with respect to secondary education, and postsecondary educational institutions, to deliver the vocational education services necessary to meet the needs identified through the assessments required by paragraphs (c) (1) through (4) of this section; and

(6) Determine, for each program year, how the services and activities supported under the Act may be expected to assist the State in meeting the needs identified through the assessments required by paragraphs (c) (1) through (4) of this section.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0029)

(Sec. 113(a)(3); 20 U.S.C. 2323(a)(3))

§ 401.19 What must the State plan contain?

(a) *Assurances.* To participate in the programs authorized under the State Vocational Education Program, the State

shall include the following assurances in its State plan:

(1) That the State board will comply with the requirements of Titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirement in § 401.22).

(Sec. 113(b)(1); 20 U.S.C. 2323(b)(1))

(2) That the State will comply with the distribution of assistance requirements contained in §§ 401.95 and 401.96.

(Sec. 113(b)(1)(B); 20 U.S.C. 2323(b)(1)(B))

(3) That, to the extent consistent with the number and location of handicapped and disadvantaged individuals who are enrolled in private elementary and secondary schools in the State, the State will provide for the participation of these individuals in the Vocational Education Opportunities Program.

(Sec. 113(b)(a)(C); 20 U.S.C. 2323(b)(1)(C))

(4) That the State will distribute at least eighty percent of its total basic State grant allotment to eligible recipients or combinations of eligible recipients. Funds distributed to State-operated schools or institutions are counted as if they were distributed to eligible recipients.

(Sec. 113(b)(4); 20 U.S.C. 2323(b)(4); House Report No. 98–1129, 98th Cong. 2d Sess. p. 96 (1984))

(5) That the State will distribute all of the State basic grant funds reserved for handicapped and disadvantaged individuals under § 401.92 (a) and (b) to eligible recipients or combinations of eligible recipients, in accordance with §§ 401.95 and 401.96.

(Sec. 113(b)(4); 20 U.S.C. 2323(b)(4))

(6) That is using funds allotted for single parents and homemakers under § 401.92(d)—

(i) The State will emphasize assisting individuals with the greatest financial need; and

(ii) That in serving homemakers, the State will give special consideration to homemakers who, because of divorce, separation, or the death or disability of a spouse, must prepare for paid employment.

(Sec. 113(b)(7); 20 U.S.C. 2323(b)(7))

(7) That the State will provide relevant training and vocational education activities to men and women who desire to enter occupations that are not traditionally associated with their sex.

(Sec. 113(b)(8); 20 U.S.C. 2323(b)(8))

(8) That the State will develop measures for evaluating the effectiveness of programs assisted under the Act in meeting the needs identified in the State plan, including measurements of such factors as—

(i) The occupations to be trained for, which must reflect a realistic assessment of the labor market needs of the State;

(ii) The levels of skills, to be achieved in particular occupations, which must reflect the hiring needs of employers; and

(iii) The basic employment competencies to be used in performance outcomes, which must reflect the hiring needs of employers.

(Sec. 113(b)(9)(A); 20 U.S.C. 2323(b)(9)(A))

(9) That the State will establish appropriate measures for evaluating the effectiveness of programs for the handicapped under the Act, as a component of the measures developed under paragraph (a)(8) of this section.

(Sec. 113(b)(9)(B); 20 U.S.C. 2323(b)(9)(B))

(10) That each program year the State will evaluate all of the projects, services, and activities, supported under this part, of at least twenty percent of the participating eligible recipients, so that by the end of a five year period every local program which has received Federal funds will have been evaluated.

(Sec. 113(b)(9)(C); 20 U.S.C. 2323(b)(9)(C); House Report No. 98–1129, 98th Cong. 2d Sess. p. 97 (1984))

(11) That the State will fund programs of personnel development and curriculum development that further the goals identified in the State plan.

(Sec. 113(b)(11); 20 U.S.C. 2323(b)(11))

(12) That the vocational education needs of those identifiable segments of the population in the State that have the highest rates of unemployment have been thoroughly assessed, and that those needs are reflected in, and addressed by, the State plan.

(Sec. 113(b)(12); 20 U.S.C. 2323(b)(12))

(13) That the State board will cooperate with the State council on vocational education in carrying out the State council's duties under this part.

(Sec. 113(b)(13); 20 U.S.C. 2323(b)(13))

(14) That none of the funds expended under the Act will be used to acquire equipment (including computer software) in any instance in which its acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity, or its employees, or any affiliate of such an organization.

(Sec. 113(b)(14); 20 U.S.C. 2323(b)(14))

(15) That for each program year, expenditures for career guidance and counseling from allotments for the basic State grant authorized by Title II of the Act, and the Comprehensive Career Guidance and Counseling Program under the Special Programs authorized by Title III, Part D of the Act, will not be less than the expenditures for guidance and counseling programs in the State that were assisted under section 134(a) of the Vocational Education Act of 1963 for fiscal year 1984.

(Sec. 113(b)(15); 20 U.S.C. 2323(b)(15))

(16) That Federal funds made available under the Act will be used to supplement, and to the extent practicable, increase the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in the State plan, and in no case to supplant those State or local funds.

(Sec. 113(b)(16); 20 U.S.C. 2323(b)(16))

(17) That the State will provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, Federal funds paid to the State, including Federal funds paid by the State to eligible recipients under the Act.

(Sec. 113(b)(17); 20 U.S.C. 2323(b)(17))

(18) That the State, in using basic State grant funds reserved for vocational education services and activities for handicapped individuals and disadvantaged individuals under § 401.92, will—

(i) Provide equal access to those individuals—

(A) In recruitment, enrollment, and placement activities; and

(B) To the full range of vocational programs available to nonhandicapped and nondisadvantaged individuals, including occupationally specific courses of study, cooperative education, and apprenticeship programs; and

(ii) Provide vocational education programs and activities for handicapped individuals—

(A) In the least restrictive environment in accordance with section 612(5)(B) of the Education of the Handicapped Act;

(B) Which are included, whenever appropriate, as a component of the individualized education program required under section 612(4) and section 614(a)(5) of that Act; and

(C) Which are planned through the coordination of appropriate representatives of vocational education and special education.

(Sec. 204(a); 20 U.S.C. 2334(a))

(19) That programs under the Adult Training, Retraining and Employment

Development Program authorized by Title III, Part C of the Act—

(i) Are designed with the active participation of the State council established under § 401.14;

(ii) Make maximum effective use of existing institutions, are planned to avoid duplication of programs or institutional capabilities, and, to the fullest extent practicable, are designed to strengthen institutional capacity to meet the education and training needs addressed by the Adult Training, Retraining, and Employment Development Program;

(iii) Involve close cooperation with and participation by public and private sector employers and public and private agencies working with problems of employment and training and economic development; and

(iv) Involve coordination with programs under the Rehabilitation Act of 1973 and the Education of the Handicapped Act, where appropriate.

(Sec. 322(b)(2); 20 U.S.C. 2372(b)(2))

(20) That funds received under the Industry-Education Partnership for Training in High-Technology Occupations Program authorized by Title III, Part E of the Act—

(i) Will be used solely for vocational education programs designed to train skilled workers and technicians in high-technology occupations, including programs providing related instruction to apprentices, and projects to train skilled workers needed to produce, install, operate, and maintain high technology equipment, systems, and processes; and

(ii) Will be used, to the maximum extent practicable, in coordination with the JTPA to avoid duplication of effort, and to ensure maximum effective utilization of funds under the Act and the JTPA.

(Sec. 342(b) (1), (2); 20 U.S.C. 2392(b) (1), (2))

(21) That not less than fifty percent of the aggregate costs of projects assisted under the Industry-Education Partnership for Training in High-Technology Occupations Programs authorized by Title III, Part E of the Act will be provided from non-Federal sources, except as provided in § 401.80(a)(3), and that not less than fifty percent of the non-Federal share of the aggregate costs in the State will be provided by participating business and industrial firms.

(Sec. 342(b)(3); 20 U.S.C. 2392(b)(3))

(22) That projects assisted under the Industry-Education Partnership for Training in High-Technology Occupations Program authorized by Title III, Part E of the Act will be—

(i) Coordinated with similar programs assisted under the basic State grant program and, to the maximum extent practicable (consistent with the purposes of programs assisted under the basic State grant program), supportive services will be organized to serve both programs; and

(ii) Developed with the active participation of the State council established under § 401.14.

(Sec. 342(b) (4), (5); 20 U.S.C. 2392(b) (4), (5))

(b) *Descriptions.* To participate in the programs authorized under the State Vocational Education Program, the State shall include the following descriptions in its State plan:

(1) The manner in which the State will comply with the requirements for programs for the handicapped and for the disadvantaged described in paragraph (a)(18) of this section and § 401.101.

(Sec. 113(b)(1)(A); 20 U.S.C. 2323(b)(1)(A))

(2) The planned uses of Federal funds available for vocational education for each program year for which the State plan is submitted and how the State carried out the requirements of § 401.18(c).

(Sec. 113(b)(2); 20 U.S.C. 2323(b)(2))

(3) The progress the State has made in achieving the goals set forth in each preceding State plan under the Act.

(Sec. 113(b)(3); 20 U.S.C. 2323(b)(3))

(4) The criteria the State board will use in approving applications of eligible recipients and allocating funds under the State Vocational Education Program to eligible recipients. These criteria must ensure that the State allocates more funds under the State Vocational Education Program to eligible recipients in units of local government that are in economically depressed areas (including both urban and rural units) or which have high unemployment, as determined by the State, than it allocates to eligible recipients that are not in economically depressed areas or areas which have high unemployment.

(Sec. 113(b)(5); 20 U.S.C. 2323(b)(5))

(5) Whatever methods of administration are necessary for the proper and efficient administration of the Act.

(Sec. 113(b)(6); 20 U.S.C. 2323(b)(6))

(6) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act, Chapter 1 of the Education Consolidation and Improvement Act, the Education of the Handicapped Act, and the Rehabilitation Act of 1973, and with apprenticeship training programs.

(Sec. 113(b)(10); 20 U.S.C. 2323(b)(10))

(7) Any delegation of functions under § 401.12(d).

(Sec. 111(a)(2); 20 U.S.C. 2321(a)(2))

(8) If the Secretary requires, the manner in which the State board will comply with the requirements of Titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirement in § 401.22).

(Sec. 113(b)(1); 20 U.S.C. 2323(b)(1))

(9) The uniform methods the State board will use to identify economically disadvantaged families and individuals.

(Sec. 521(20); 20 U.S.C. 2471(20))

(10) The appropriate criteria for determining which eligible recipients are exempt from the local application requirements under § 401.41.

(Sec. 115(c)(2); 20 U.S.C. 2325(c)(2))

(11) The methods and procedures the State will use for coordinating vocational education programs, services, and activities under the Adult Training, Retraining, and Employment Development Program authorized by Title III, Part C of the Act with programs of assistance for dislocated workers funded under Title III of the JTPA.

(Sec. 323(a); 20 U.S.C. 2373(a))

(12) The criteria the State uses to designate an economically depressed area or an area with high unemployment.

(Sec. 521(13); 20 U.S.C. 2471(13))

(13) A summary of the recommendations made at the public hearings on the State plan and the State board's response.

(Sec. 113(a)(2)(B); 20 U.S.C. 2323(a)(2)(B))

(14) The manner in which the State will comply with § 401.96(b).

(Approved by the Office of Management and Budget under OMB Control No. 1830-0029)

(Sec. 203(a)(3); 20 U.S.C. 2333(a)(3))

§ 401.20 What procedures does a State use to submit its State plan?

(a)(1) The State board shall submit its State plan for review and comment to the State legislature and the State job training coordinating council under section 122 of the JTPA not less than sixty days before the State plan is submitted to the Secretary.

(2) If the matters raised by the comments of the State legislature and the State job training coordinating council are not addressed in the State

plan, the State board shall submit those comments to the Secretary with the State plan.

(3) If the State legislature is not in session during the sixty-day period described in paragraph (a)(1) of this section, the State board shall submit the plan to the State legislature for review and comment at its next session, and forward any comments to the Secretary.

(b)(1) The State board shall submit its State plan for review and comment to the State council on vocational education not less than sixty days before the State plan is submitted to the Secretary.

(2) If the State council on vocational education finds that the final State plan is objectionable for any reason, including that it does not meet the labor market needs of the State, the State council shall file its objections with the State board.

(3) The State board shall respond to any objections of the State council in submitting the State plan to the Secretary.

(c)(1) The State board shall submit its State plan to the Secretary by the May 1 preceding the first program year for which the plan will be in effect.

(2) The State plan shall be considered to be the general application required by section 435 of the General Education Provisions Act.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0029)

(Sec. 114; 20 U.S.C. 2324)

§ 401.21 When are amendments to State plans required?

The State board, in consultation with the State council, shall submit one or more amendments to the State plan to the Secretary when required by 34 CFR 76.140 or when changes in program conditions, labor market conditions, funding, or other factors require substantial amendment of an approved State plan. All amendments must be subject to review by the State job training coordinating council and the State council on vocational education.

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(Sec. 113(c)(1); 20 U.S.C. 2323(c)(1))

§ 401.22 What is the maintenance of fiscal effort requirement under the State Vocational Education Program?

(a) The Secretary may not make a payment under the Act to a State for any fiscal year unless the Secretary determines that the fiscal effort per student, or the aggregate expenditures of that State, from State sources, for vocational education for the fiscal year (or program year) preceding the fiscal year (or program year) for which the determination is made, at least equaled its effort or expenditures for vocational education for the second preceding fiscal year (or program year).

(b)(1) If the Secretary makes a determination that a waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the State to meet the requirements of paragraph (a) of this section, the Secretary may waive those requirements for one year only. Examples of exceptional or uncontrollable circumstances affecting the financial ability of the State are a national disaster or an unforeseen and precipitous decline in financial resources.

(2) No level of expenditures permitted under a waiver may be used as a basis for computing the fiscal effort required under paragraph (a) of this section for subsequent years. Instead, for subsequent years, fiscal effort must be computed on the basis of the level of expenditures that would have been required had a waiver not been granted.

(Sec. 503; 20 U.S.C. 2463)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 401.30 How does the Secretary make allotments under the State Vocational Education Program?

(a)(1) From funds appropriated under section 3(a) of the Act for the basic State grant and section 3(b) of the Act for the programs that compose the Special Programs, the Secretary allots funds each fiscal year according to the provisions of section 101 of the Act.

(2) Upon approval of its State plan and any annual amendments, the Secretary makes one or more grant awards from those allotments to the State.

(b)(1) From funds appropriated under section 3(c) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1)(A) of the Act.

(2) Upon approval of the State plan and submission of an annual budget covering the proposed expenditures of the State council on vocational education for the following program year, the Secretary makes an award to the State council.

(Sec. 501(b); 20 U.S.C. 2461(b))

§ 401.31 How does the Secretary make reallotments under the State Vocational Education Program?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 401.30(a) will not be required for any fiscal year for carrying out the program for which the allotment was made, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to utilize them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Sec. 101(b); 20 U.S.C. 2311(b))

§ 401.32 When does the Secretary approve State plans and amendments?

(a)(1) The Secretary approves a State plan, or an amendment to a State plan, unless the amendments propose changes that are inconsistent with the requirements and purposes of the Act, within sixty days of its receipt if it complies with the requirements of the Act and applicable regulations.

(2) Before the Secretary finally disapproves a State plan, or an amendment to a State plan, the Secretary gives reasonable notice and an opportunity for a hearing to the State board.

(b) In reviewing a State plan, or an amendment to a State plan, the Secretary considers available comments from the State legislature, the State job training coordinating council, and the State council on vocational education.

(Sec. 114; 20 U.S.C. 2324)

Subpart D—How Does a State Make an Award to an Eligible Recipient?

§ 401.40 How does a State carry out the State Vocational Education Program?

(a) Unless otherwise indicated in the regulations in this part, a State board shall carry out projects, services, and activities under the State Vocational Education Program—

(1) Directly;

(2) Through a school operated by the State board;

(3) Through awards to State agencies or institutions such as vocational schools or correctional institutions; or

(4) Through awards to eligible recipients.

(b) For the purpose of paragraph (a) of this section, a State board acts directly when it—

(1) Carries out projects, services, or activities using its own staff (except at a school operated by the State board); or

(2) Contracts for State-wide projects, services, or activities such as research, curriculum development, and teacher training.

(c) The regulations in this part also authorize a State to carry out certain projects, services, and activities under the State Vocational Education Program by making an award to an entity other than an eligible recipient, such as a community-based organization, or an employer.

(d)(1) For the purpose of requirements dealing with local applications (§ 401.41) and the distribution of funds to eligible recipients (§§ 401.19(a) (4) and (5) and 401.19(b)(4)), projects, services, and activities carried out by a school operated by the State board under paragraph (a)(2) of this section, carried out by a State agency or institution under paragraph (a)(3) of this section, or carried out by an entity other than an eligible recipient under paragraph (c) of this section, are considered to be carried out by an eligible recipient.

(2) For the purpose of § 401.19(a)(4), regarding the requirement that a State distribute at least eighty percent of its total basic State grant allotment to eligible recipients, a State shall consider all funds awarded to an eligible recipient as part of this local portion (at least eighty percent) of the State's allotment.

(Secs. 113(b) (4), (5), 115, 201(f)(3), 201(h)(2), 203(a), 252(b); 20 U.S.C. 2323(b) (4), (5), 2325, 2331(f)(3), 2331(h)(2), 2333(a), 2342(b); House Report No. 98–1129, 98th Cong. 2d Sess. p. 96 (1984))

§ 401.41 What are the local application requirements under the State Vocational Education Program?

(a) Except as provided in paragraph (d) of this section, and unless otherwise provided by the regulations in this part, each eligible recipient that desires to receive funds under the State vocational education program shall submit to the State board an application for the use of those funds that—

(1) Satisfies the requirements established by the State board; and

(2) Is for any period of time covered by the State plan.

(b) The State board shall establish requirements for local applications, and amendments to local applications, except that each local application must—

(1) Describe the vocational education programs, services, and activities to be funded; and

(2) Describe how the proposed programs, services, and activities will be coordinated with relevant programs under the JTPA and the Adult Education Act, in order to avoid duplication.

(c) The eligible recipient shall make the local application available for review and comment by interested parties, including the appropriate administrative entity under the JTPA.

(d) The State board may exempt an eligible recipient which provides relatively few vocational education programs, services, and activities with a limited total of Federal and State funds, from the requirements of this section.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0030)

(Sec. 115; 20 U.S.C. 2325)

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic State Grant?

§ 401.50 What are the components of the basic State grant?

The basic State grant, authorized by Title II of the Act, consists of two programs—

(a) The Vocational Education Opportunities Program; and

(b) The Vocational Education Improvement, Innovation, and Expansion Program.

(20 U.S.C. 2331 *et seq.*)

§ 401.51 What is the Vocational Education Opportunities Program?

Each State shall use funds reserved in accordance with §§ 401.90(b) and 401.92 to provide vocational education services and activities designed to meet the special needs of, and enhance the participation of—

(a) Handicapped individuals;

(b) Disadvantaged individuals;

(c) Adults who are in need of training or retraining;

(d) Individuals who are single parents or homemakers;

(e) Individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education; and

(f) Criminal offenders who are serving in a correctional institution.

(Sec. 201 (a), (b); 20 U.S.C. 2331 (a), (b))

§ 401.52 How may funds under the Vocational Education Opportunities Program be used to serve handicapped individuals?

(a) A State shall use funds reserved for handicapped individuals in accordance with § 401.92(a) only for the Federal share of expenditures that are limited to supplemental or additional staff, equipment, materials, and services that are not provided to other individuals in vocational education and that are essential for handicapped individuals to participate in vocational education.

(b) If the conditions of handicapped students require a separate program, each State may use these funds only for the Federal share of the costs of the services and activities in separate vocational education programs for handicapped individuals which exceed the average per-pupil expenditures for the comparable regular vocational education services and activities of the eligible recipient.

(Sec. 201 (c)(1); 20 U.S.C. 2331(c)(1))

§ 401.53 How may funds under the Vocational Education Opportunities Program be used to serve disadvantaged individuals?

(a)(1) A state shall use funds reserved for disadvantaged individuals in accordance with § 401.92(b) only for the Federal share of expenditures that are limited to supplemental or additional staff, equipment, materials, and services that are not provided to other individuals in vocational education and that are essential for disadvantaged individuals to participate in vocational education.

(2) If the conditions of disadvantaged students require a separate program, each State may use these funds only for the Federal share of the costs of the services and activities in separate vocational education programs for disadvantaged individuals which exceed the average per-pupil expenditures for the comparable regular vocational education services and activities of the eligible recipient.

(b)(1) A State may use funds described in paragraph (a) of this section for—

(i) The improvement of vocational education services and activities designed to provide equal access to quality vocational education to disadvantaged individuals; and

(ii) Services and activities which apply the latest technological advances to courses of instruction for disadvantaged individuals.

(2) A State may also use funds described in paragraph (a) of this section to acquire modern machinery and tools, but only for schools at which at least seventy-five percent of the students enrolled are economically disadvantaged.

(Sec. 201 (c)(2), (d); 20 U.S.C. 2331 (c)(2), (d))

§ 401.54 How may funds under the Vocational Education Opportunities Program be used to serve adults who are in need of training or retraining?

(a) A State shall use funds reserved for adults in need of training or

retraining in accordance with § 401.92(c) to provide, improve, and expand adult and postsecondary vocational education services and activities to train and retrain adults.

(b) A State may use funds described in paragraph (a) of this section for—

(1) Services and activities developed in coordination with the State agency administering Title III of the JTPA;

(2) Additional training under Title III of the JTPA;

(3) Vocational education programs for training or retraining adults, including programs for older individuals and displaced homemakers;

(4) Services for adults in other vocational education programs, including the costs of instruction and the costs of keeping school facilities open longer;

(5) Individuals who have completed or left high school and who are enrolled in organized programs of study for which credit is given toward as associate of other degree, but which are not designed as baccalaureate or higher degree programs; and

(6) Individuals who have already entered the labor market, or have completed or left high school, and who are not described in paragraph (b)(5) of this section.

(Sec. 201(e); 20 U.S.C. 2331(e))

§ 401.55 How may funds under the Vocational Education Opportunities Program shall be used to serve individuals who are single parents or homemakers?

A State shall use funds reserved for individuals who are single parents or homemakers in accordance with § 401.92(d) only to—

(a) Provide, subsidize, reimburse, or pay for vocational education and training activities, including basic literacy instruction and necessary educational materials, that will give single parents or homemakers marketable skills;

(b) Make subgrants to eligible recipients for expanding vocational education services where this expansion directly increases the eligible recipients' capacity for providing single parents or homemakers with marketable skills;

(c) Make subgrants to community-based organizations for the provision of vocational education services to single parents or homemakers, if the State determines that a community-based organization has demonstrated effectiveness in providing comparable or related services to single parents or homemakers, taking into account the demonstrated performance of such an organization in terms of the cost and quality of its training and the characteristics of the participants;

(d) Make vocational education and training programs more accessible to single parents or homemakers by assisting them with child care or transportation services or by organizing and scheduling those programs so that they are more accessible; or

(e) Provide information to single parents or homemakers to inform them of vocational education programs and related support services.

(Sec. 201(f); 20 U.S.C. 2331(f))

§ 401.56 How may funds under the Vocational Education Opportunities Program shall be used to serve individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education?

(a) A State shall use funds reserved for individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education in accordance with § 401.92(e) for—

(1) Programs, services, and activities to eliminate sex bias and stereotyping in secondary and postsecondary vocational education programs;

(2) Vocational education programs, services, and activities for girls and women aged 14 through 25, designed to enable the participants to support themselves and their families; and

(3) Support services for individuals participating in vocational education programs, services, and activities described in paragraphs (a)(1) and (a)(2) of this section, including dependent-care services and transportation.

(b) A State may waive the age limitations in paragraph (a)(2) of this section if the person described in § 401.13(a) determines that the waiver is essential to meet the objectives of this section.

(Sec. 201(g); 20 U.S.C. 2331(g))

§ 401.57 How may funds under the Vocational Education Opportunities Program be used for criminal offenders who are serving in a correctional institution?

A State shall use funds reserved for criminal offenders who are serving in a correctional institution in accordance with § 401.92(f) to provide vocational education services and activities designed to meet the special needs of, and to enhance the participation of, criminal offenders who are serving in correctional institutions.

(Sec. 201(b); 20 U.S.C. 2331(b))

§ 401.58 In what additional ways may funds under the Vocational Education Opportunities Program be used?

(a) In addition to the services and activities authorized by §§ 401.52 through 401.57, a State may use funds under the Vocational Education Opportunities Program, in accordance with those sections, for—

(1) Basic skills instruction for vocational education students which is related to their instructional program, if the State board determines that the instruction is necessary to carry out the purposes of the Vocational Education Opportunities Program;

(2) Vocational education through arrangements with private vocational training institutions, private postsecondary educational institutions, and employers if these institutions or employers—

(i)(A) Can make a significant contribution to obtaining the objectives of the state plan; and

(B) Can provide substantially equivalent training at a lesser cost; or

(ii) Can provide equipment or services not available in public institutions; and

(3) Placement services for students who have successfully completed vocational education programs.

(b) To the extent practicable, a State shall include work-site programs, such as cooperative vocational education, work-study, and apprenticeship programs, in the programs it supports with funds under the Vocational Education Opportunities Program.

(Sec. 201 (h), (i); 20 U.S.C. 2331 (h), (i))

§ 401.59 What is the Vocational Educational Improvement, Innovation, and Expansion Program?

(a) A State shall use funds allotted under its basic State grant, and reserved in accordance with § 401.90(b)(2), to meet the needs identified in the State plan to expand, improve, modernize or develop high quality vocational education projects, services, or activities that will—

(1) Provide the Nation's existing and future workforce with marketable skills;

(2) Improve productivity; and

(3) Promote economic growth.

(b)(1) Funds used under § 401.60(a) may not be used to maintain existing projects, services, or activities.

(2) Funds used under § 401.60 (b) or (c) may be used to maintain existing services or activities.

(c) For the purpose of paragraph (b)(1) of this section, any vocational education project, service, or activity that was not provided by the recipient during the instructional term that preceded funding under this program may be considered a new, expanded, improved, modernized, or developed project, service, or activity, and may be considered so for up to three years.

(Secs. 2(1), 251(a); 20 U.S.C. 2301(1), 2341(a))

§ 401.60 How may funds under the Vocational Education Improvement, Innovation, and Expansion Program be used?

(a) A State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program to accomplish the purposes described in § 401.59, by supporting—

(1) The improvement of vocational education programs within the State designed to improve the quality of vocational education, including high-technology programs involving an industry-education partnership as described in § 401.78 and apprenticeship training programs;

(2) The expansion of vocational education activities necessary to meet student needs and the introduction of new vocational education programs, particularly in economically depressed urban and rural areas of the State;

(3) The introduction of new vocational education programs, particularly in economically depressed urban and rural areas;

(4) The creation or expansion of programs to train workers in skilled occupations needed to revitalize businesses and industries or to promote the entry of new businesses and industries into a State or community;

(5) Exemplary and innovative programs which stress new and emerging technologies and which are designed to strengthen vocational education services and activities;

(6) The improvement and expansion of postsecondary and adult vocational education programs and related services for out-of-school youth and adults, which may include upgrading the skills of—

(i) Employed workers;

(ii) Workers who are unemployed or threatened with unemployment as a result of technological change or industrial dislocation;

(iii) Workers with limited English proficiency; and

(iv) Displaced homemakers and single heads of households;

(7) The improvement and expansion of career counseling and guidance projects, services, or activities authorized by §§ 401.76 and 401.105;

(8) The expansion and improvement of programs at area vocational education schools;

(9) The conduct of special courses and teaching strategies designed to teach the fundamental principles of mathematics and science through practical applications which are an integral part of the student's prevocational or vocational program;

(10) The activities of vocational student organizations that are carried out as an integral part of the secondary and postsecondary instructional program;

(11) Prevocational programs;

(12) Modern industrial arts programs and agricultural arts programs;

(13) The provision of vocational education through arrangements with private vocational education institutions, private postsecondary educational institutions, and employers of these institutions or employers—

(i)(A) Can make a significant contribution to attaining the objectives of the Act; and

(B) Can provide substantially equivalent preparation at a lesser cost; or

(ii) Can provide equipment or services not available in public institutions; and

(14) The improvement or expansion of any other vocational education activities authorized under the Vocational Education Opportunities Program that would accomplish the purposes described in § 401.59.

(b) A State may also use funds to accomplish the purposes described in § 401.59, by supporting—

(1) Technical assistance and research;

(2) Programs relating to curriculum development in vocational education within the State, including the application of basic skill training;

(3) The assignment of personnel to work with employers and eligible recipients in a region in order to coordinate efforts to ensure that vocational programs are responsive to the labor market and supportive of apprenticeship training programs;

(4) The acquisition of equipment and the renovation of facilities necessary to improve or expand vocational education programs within the State;

(5) The provision of stipends for students entering or already enrolled in vocational education programs and who have acute economic needs which cannot be met under work-study programs. The amount of a stipend may be the larger of either the minimum wage prescribed by State or local law, or the minimum hourly wage set under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(6) Placement services for students who have successfully completed vocational education programs, including special services for handicapped individuals and cooperative efforts with rehabilitation programs;

(7) Day care services for children of students in secondary and postsecondary vocational education programs;

(8) The construction of area vocational education school facilities in areas having a demonstrated need for those facilities;

(9) The acquisition of high-technology equipment for vocational education programs; and

(10) The acquisition and operation of communications and telecommunications equipment for vocational education programs.

(c) A State shall use funds under this program for subgrants to support inservice and preservice training designed to increase the competence of vocational education teachers, counselors, and administrators, with special emphasis on the integration of handicapped and disadvantaged students in regular courses of vocational education.

(Sec. 251; 20 U.S.C. 2341)

§ 401.61 How may a State distribute funds under the Vocational Education Improvement, Innovation, and Expansion Program?

(a)(1) Subject to the requirements of §§ 401.59 and 401.60, a State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program in the manner best suited to carry out the purposes of the Act as implemented through the State vocational education program in that State.

(2) Any project assisted under the Vocational Education Improvement, Innovation, and Expansion Program must be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of students involved in the project.

(b) In addition to eligible recipients, a State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program to make awards to community-based organizations of demonstrated effectiveness—

(1) In areas of the State in which there is an absence of sufficient vocational education facilities;

(2) In areas of the State in which the vocational education programs do not adequately address the needs of disadvantaged students; or

(3) Wherever the community-based organization can better serve disadvantaged students.

(Sec. 252; 20 U.S.C. 2342)

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

§ 401.70 What are the Special Programs?

(a) The Special Programs authorized by Title III of the Act are the—

(1) State Assistance for Vocational Education Support Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education Program;

(3) Adult Training, Retraining, and Employment Development Program;

(4) Comprehensive Career Guidance and Counseling Program; and

(5) Industry-Education Partnership for Training in High-Technology Occupations Program.

(b) From the amount appropriated under section 3(b) of the Act for each program in paragraph (a) of this section, the Secretary makes a separate allotment to each State.

(Sec. 3(b), Title III; 20 U.S.C. 2302(b), 2351 *et seq.*)

§ 401.71 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) The State shall provide, in accordance with its State plan, and from its allotment for this program, financial assistance to joint projects of eligible recipients and community-based organizations within the State that provide the following special vocational education services and activities:

(1) Outreach programs that facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment, or other education and training.

(2) Transitional services such as attitudinal and motivational prevocational training programs.

(3) Prevocational educational preparation and basic skills development, conducted in cooperation with business concerns.

(4) Special prevocational preparations programs targeted to inner-city youth, non-English speaking youth, Appalachian youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs.

(5) Career intern programs.

(6) The assessment of students' needs in relation to vocational education and jobs.

(7) Guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

(b) Handicapped individuals who are educationally or economically disadvantaged may participate in projects under this program.

(Secs. 302, 521(5); 20 U.S.C. 2352, 2471(5))

§ 401.72 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) Each community-based organization and eligible recipient that desire to participate in this program shall jointly prepare and submit an application to the State board at the time and in the manner established by the State board.

(b) The State board may also establish requirements relating to the contents of the application, except that each application must contain—

(1) An agreement among the community-based organization and the eligible recipients in the area to be served, which includes the designation of one or more fiscal agents for the project;

(2) A description of how the funds will be used, together with evaluation criteria to be applied to the project;

(3) Assurances that the community-based organization will give special consideration to the needs of severly economically and educationally disadvantaged youth, ages sixteen through twenty-one, inclusive;

(4) Assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) A description of the efforts the community-based organization will make to collaborate with the eligible recipients participating in the joint project;

(6) A description of the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(7) Assurances that the projects conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0030)

(Sec. 301; 20 U.S.C. 2351)

§ 401.73 What activities does the Secretary support under the Consumer and Homemaking Education Program?

(a) The State shall conduct, in accordance with its State plan, and from its allotment for this program, consumer and homemaking education projects that may include—

(1) Instructional projects, services, and activities that prepare youth and adults for the occupation of homemaking;

(2) Instruction in the areas of—

(i) Food and nutrition;

(ii) Consumer education;

(iii) Family living and parenthood education;

(iv) Child development and guidance;

(v) Housing and home management, including resource management; and

(vi) Clothing and textiles.

(b) The State shall use the funds described in paragraph (a) of this section to support projects, services, and activities—

(1) In economically depressed areas;

(2) That encourage the participation of traditionally underserved populations;

(3) That encourage the elimination of sex bias and sex stereotyping;

(4) That improve, expand, and update consumer and homemaking education programs, especially those that specifically address needs described in paragraphs (b) (1), (2), and (3) of this section; and

(5) That address priorities and emerging concerns at the local, State, and national levels.

(c) The State may use the funds described in paragraph (a) of this section for—

(1) Program development and the improvement of instruction and curricula relating to—

(i) Managing individual and family resources;

(ii) Making consumer choices;

(iii) Managing home and work responsibilities;

(iv) Improving responses to individual and family crises;

(v) Strengthening parenting skills;

(vi) Assisting aged and handicapped individuals;

(vii) Improving nutrition;

(viii) Conserving limited resources;

(ix) Understanding the impact of new technology on life and work;

(x) Applying consumer and homemaking education skills to jobs and careers; and

(xi) Other needs as determined by the State; and

(2) Support services and activities designed to ensure the quality and effectiveness of programs, including—

(i) The demonstration of innovative and exemplary projects;

(ii) Community outreach to underserved populations;

(iii) The application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaking education programs;

(iv) Curriculum development;

(v) Research;

(vi) Program evaluation;

(vii) The development of instructional materials;

(viii) Teacher education;
(ix) The upgrading of equipment;
(x) Teacher supervision; and
(xi) State administration and leadership, including the activities of student organizations.

(Secs. 311, 312(a), (b); 20 U.S.C. 2361, 2362 (a), (b))

§ 401.74 What are the purposes of the Adult Training, Retraining, and Employment Development Program?

The purposes of the Adult Training, Retraining, and Employment Development Program are—

(a) To provide financial assistance to the States to enable them to expand and improve vocational education programs designed to meet urgent needs for training, retraining, and employment development of adults who have completed or left high school and are preparing to enter or have entered the labor market in order to equip adults with the competencies and skills required for productive employment; and

(b) To ensure that those programs are relevant to the labor market needs and accessible to all segments of the population, including women, minorities, handicapped individuals, individuals with limited English proficiency, workers fifty-five and older, and economically disadvantaged individuals.

(Sec. 321(b); 20 U.S.C. 2371(b))

§ 401.75 What activities does the Secretary support under the Adult Training, Retraining, and Employment Development Program?

The State shall conduct, in accordance with its State plan, and from its allotment for this program, the following adult training, retraining, and employment development projects, services, and activities:

(a) Vocational education and employment development projects, services, and activities that are authorized under the basic State grant and are designed to meet the needs of—

(1) Individuals who have graduated from or left high school and who need additional vocational education for entry into the labor force;

(2) Unemployed individuals who require training to obtain employment or increase their employability;

(3) Employed individuals who require retraining to retain their jobs, or who need training to upgrade their skills to qualify for higher paid or more dependable employment;

(4) Displaced homemakers and single heads of households who are entering or re-entering the labor force;

(5) Employers who require assistance in training individuals for new employment opportunities or in retraining employees in new skills required by changes in technology, products, or processes; and

(6) Workers fifty-five and older.

(b) Short term retraining projects designed to upgrade or update skills in accordance with changed work requirements.

(c) Education and training projects designed cooperatively with employers, such as—

(1) Institutional and work-site programs, including apprenticeship training programs (or combinations of these programs) especially tailored—

(i) To the needs of an industry or group of industries for skilled workers, technicians, or managers; or

(ii) To assist the existing work force or that industry or group of industries to adjust to changes in technology or work requirements; and

(2) Quick-start, customized training—

(i) For workers in new and expanding industries; or

(ii) To place workers in jobs that are difficult to fill because of a shortage of workers with the requisite skills.

(d) In order to serve more effectively the individuals described in paragraph (a) of this section, build more effective linkages between—

(1) Vocational education programs and private sector employers, through a variety of programs including programs in which secondary school students are employed on a part-time basis as registered apprentices, with a transition to full-time apprenticeships upon graduation; and

(2) Eligible recipients and economic development agencies and other public and private agencies providing job training and employment services.

(e) Cooperative education programs, between public and private sector employers and economic development agencies, including seminars in institutional or work-site settings designed to improve management and increase productivity.

(f) Entrepreneurship training programs that assist individuals in the establishment, management, and operation of small business enterprises.

(g) Recruitment, job search assistance, counseling, remedial services, and information and outreach programs designed to encourage and assist males and females to take advantage of vocational education programs and services, with particular attention to reaching women, older workers, individuals with limited English proficiency, handicapped individuals, and disadvantaged individuals.

(h) Curriculum development, acquisition of instructional equipment and materials, personnel training, pilot projects, and additional, related services and activities required to carry out effectively the Adult Training, Retraining, and Employment Development Program.

(i) The costs of serving adults in other vocational education programs, including paying the costs of instruction, or the costs of keeping school facilities open longer.

(j) Related instruction for apprentices in apprenticeship training programs as defined in 34 CFR 400.4(b).

(Sec. 322(b)(1); 20 U.S.C. 2372(b)(1))

§ 401.76 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Program?

(a) The State shall conduct, in accordance with its State plan and from its allotment for this program, career guidance and counseling projects, services, and activities that are—

(1) Organized and administered by certified counselors; and

(2) Designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students.

(b) The purposes of the projects, services, and activities described in paragraph (a) of this section must be to—

(1) Assist individuals to—

(i) Acquire self-assessment, career planning, career decisionmaking, and employability skills;

(ii) Make the transition from education and training to work;

(iii) Maintain the marketability of their current job skills in established occupations;

(iv) Develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(v) Develop mid-career job search skills and to clarify career goals; and

(vi) Obtain and use information on financial assistance for postsecondary and vocational education and job training; and

(2)(i) Encourage the elimination of sex, age, handicapping conditions, and race bias and stereotyping;

(ii) Provide for community outreach;

(iii) Enlist the collaboration of the family, the community, business, industry, and labor; and

(iv) Be accessible to all segments of the population, including women, minorities, handicapped individuals, and the economically disadvantaged.

(c) The projects, services, and activities described in paragraph (a) of this section must consist of—

(1) Instructional activities and other services at all educational levels to help students develop the skills described in paragraph (b)(1) of this section;

(2) Services and activities designed to ensure the quality and effectiveness of career guidance and conseling projects, such as—

(i) Counselor education, including the education of counselors working with individuals with limited English proficiency;

(ii) Training support personnel;

(iii) Curriculum development;

(iv) Research and demonstration projects;

(v) Experimental projects;

(vi) The development of instructional materials;

(vii) The acquisition of equipment;

(viii) State and local leadership; and

(ix) State and local administration, including supervision, subject to § 401.93(b);

(3) Projects that provide opportunities for counselors to obtain firsthand experience in business and industry; and

(4) Projects that provide students with an opportunity to become acquainted with business, industry, the labor market, and training opportunities, including secondary educational programs that—

(i) Have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency, in accordance with the National Apprenticeship Act;

(ii) Are conducted in concert with local business, industry, labor, and other appropriate apprenticeship training entities; and

(iii) Are designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites.

(Sec. 332 (a), (b); 20 U.S.C. 2382 (a), (b))

§ 401.77 What are the purposes of the Industry-Education Partnership for Training in High-Technology Occupations Program?

The purposes of the Industry-Education Partnership for Training in High-Technology Occupations Program are to—

(a) Provide incentives for business and industry and the vocational education community to develop programs to train the skilled workers needed to produce, install, operate, and maintain high-technology equipment, systems, and processes; and

(b) Ensure that those programs are relevant to the labor market and accessible to all segments of the population, including women, minorities, handicapped individuals, and economically disadvantaged individuals.

(Sec. 341(b); 20 U.S.C. 2391(b))

§ 401.78 What activities does the Secretary support under the Industry-Education Partnership for Training in High-Technology Occupations Program?

The State shall, in accordance with the State plan, under § 401.19(a) (20) through (22), and from its allotment for this program, establish and operate projects, services, and activities including—

(a) Necessary administrative costs of the State board and of eligible recipients associated with the establishment and operation of projects;

(b) Training and retraining of instructional and guidance personnel;

(c) Curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(d) The acquisition and operation of communications, telecommunications, and other high-technology equipment; and

(e) Other activities authorized under the Special Programs that are essential to the successful establishment and operation of projects, services and activities under the Industry-Education Partnership for Training in High-Technology Occupations Program, including activities and related services to ensure access of women, minorities, handicapped individuals, and economically disadvantaged individuals.

(Sec. 343(a); 20 U.S.C. 2393(a))

§ 401.79 What are the special considerations under the Industry-Education Partnership for Training in High-Technology Occupations Programs?

The State board, in approving projects, services, and activities under the Industry-Education Partnership for Training in High-Technology Occupations Program, shall give special consideration to the following:

(a) The level and degree of business and industry participation in the development and operation of the project.

(b) The current and projected demand within the State or relevant labor market area for workers with the level and type of skills the project is designed to produce.

(c) The overall quality of the proposal, with particular emphasis on the probability the prospective trainees will successfully complete the program and the capability of the eligible recipient, with assistance from participating business or industry, to provide high quality training for skilled workers and technicians in high technology.

(d) The commitment to serve all segments of the population, including women, minorities, handicapped individuals, and economically disadvantaged individuals, as demonstrated by the applicant's special efforts to provide outreach, information, and counseling, and by the provision of remedial instruction and other assistance.

(Sec. 343(b); 20 U.S.C. 2393(b))

§ 401.80 What additional fiscal requirements apply to the Industry-Education Partnership for Training in High-Technology Occupations Programs?

(a)(1) The business and industrial share of the costs required by § 401.19(a)(21) may be in the form of either expenditures or the fair market value of in-kind contributions such as facilities, overhead, personnel, and equipment.

(2) The State shall use equal amounts from its allotment under this program and from its basic State grant allotment to provide the Federal share of the cost of projects services and activities under this program.

(3) If an eligible recipient demonstrates, to the satisfaction of the State board, that it is incapable of providing all or a part of the non-Federal portion of the costs of projects, services, and activities under this program, as required by §§ 401.19(a) (20) through (22) and 401.78, the State board may use funds under the Vocational Education Improvement, Innovation, and Expansion Program, authorized by § 401.59, or funds available from State sources, to replace the shortfall in the non-Federal portion.

(b) A State may use no more than a total of ten percent of its allotment under this program for the first year this program is implemented, and a total of five percent of its allotment for each succeeding year, for the administration of this program by both the State and eligible recipients.

(Secs. 342(c), 343(c); 20 U.S.C. 2392(c), 2393(c))

Subpart G—What Conditions Must the State Meet Under the State Vocational Education Program?

§ 401.90 How does a State reserve funds under the basic State grant?

From its allotment under the basic State grant program, authorized by Title II of the Act, a State shall reserve—

(a) The amount of funds for State administration described in § 401.91; and

(b) From the remainder—

(1) Fifty-seven percent for the Vocational Education Opportunities Program; and

(2) Forty-three percent for the Vocational Education Improvement, Innovation, and Expansion Program.

(Sec. 102(a); 20 U.S.C. 2312(a))

§ 401.91 How does a State reserve funds under the basic State grant for State administration?

(a) A State shall reserve no more than seven percent of its allotment, subject to program (b) of this section, under the basic State grant program for State administration of the State plan.

(b)(1) From the amount reserved for State administration under paragraph (a) of this section, a State shall reserve the amount it needs to comply with § 401.13, but not less than $60,000.

(2) If the amount reserved under paragraph (b)(1) of this section exceeds one percent of the State's allotment under the basic State grant program, a State may reserve from that allotment an additional amount for State administration which is in excess of the seven percent permitted under paragraph (a) of this section and which equals the amount of that excess.

(c) For the purpose of § 401.19(a)(4), regarding the requirement that a State distribute at least eighty percent of its total basic State grant allotment to eligible recipients, a State shall consider the funds for State administration under paragraphs (a) and (b) of this section as part of the State's portion (the portion that may not exceed twenty percent) of the State's allotment.

Example: The allotment of State X under the basic State grant program is $20,000,000. State X determines that $220,000 is needed for it to comply with § 401.13. State X is authorized to reserve seven percent of its basic State grant allotment, or $1,400,000, for State administration. However, because the amount needed to comply with § 401.13 exceeds one percent of its allotment by $20,000, State X may reserve an additional $20,000 for State administration. (For example, this additional $20,000 may be taken from the funds otherwise reserved for the Vocational Education Improvement, Innovation, and Expansion Program.) Therefore, the total amount available for State administration is $1,420,000. Assuming the State reserves twenty percent of its allotment for State-wide activities under § 401.19(a)(4), or $4,000,000, the State must count the $1,420,000 for State administration against that $4,000,000.

(Secs. 102(b), 113(b)(4), 251(a)(16); 20 U.S.C. 2312(b), 2323(b)(4), 2341(a)(16))

§ 401.92 How does a State reserve funds under the Vocational Education Opportunities Program?

From the amount reserved for the Vocational Education Opportunities Program under § 401.90(b)(1), a State shall reserve the following amounts—

(a) Ten percent of the total amount described in § 401.90(b) for handicapped individuals;

(b) Twenty-two percent of the total amount described in § 401.90(b) for disadvantaged individuals;

(c) Twelve percent of the total amount described in § 401.90(b) for adults who are in need of training and retraining;

(d) Eight and one-half percent of the total amount described in § 401.90(b) for individuals who are single parents or homemakers;

(e) Three and one-half percent of the total amount described in § 401.90(b) for individuals who are participants in programs designed to eliminate sex bias and stereotyping in vocational education; and

(f) One percent of the total amount described in § 401.90(b) for criminal offenders who are in correctional institutions.

Example: Assuming the same facts in the example under § 401.91, State X has available for programs $18,580,000 under the basic State grant after reserving $1,420,000 for State administration. Of this $18,580,000, $7,989,400 ($18,580,000×43%) is reserved for the Vocational Education Improvement, Innovation, and Expansion Program and $10,590,600 ($18,580,000×57%) for the Vocational Education Opportunities Program. Under the latter program, $1,858,000 ($18,580,000×10%) is reserved for handicapped individuals; $4,087,600 ($18,580,000×22%) is reserved for disadvantaged individuals; $2,229,600 ($18,580,000×12%) is reserved for adults who are in need of training and retraining; $1,579,300 ($18,580,000×8.5%) is reserved for individuals who are single parents and homemakers; $650,300 ($18,580,000×3.5%) is reserved for individuals who are participating in programs designed to eliminate sex bias and sex stereotyping in vocational education; and $185,800 ($18,580,000×1%) is reserved for criminal offenders who are in correctional institutions.

(Sec. 202; 20 U.S.C. 2332)

§ 401.93 What are the administrative cost requirements under the State Vocational Education Program?

(a) *Basic State grant.* To administer—

(1) Its State plan, including Special Programs, a State shall use the amount reserved under § 401.91; and

(2) Its projects, services, and activities under the basic State grant, an eligible recipient may use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award is made.

(b) *Special Programs.* To administer—

(1) Each of the Special Programs under its State plan (other than the Industry-Education Partnership for Training in High-Technology Occupations Program) a State may use, in addition to funds reserved under § 401.91, no more than the amount of funds from its allotment for each program that is necessary and reasonable for the proper and efficient State administration of that program; and

(2) Its projects, services, and activities supported by an award under one of the Special Programs, other than the Industry-Education Partnership for Training in High-Technology Occupations Program, an eligible recipient may use no more than the amount of funds that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award is made.

(Sec. 102(b), Title II, Title III, Sec. 502(a)(1), (2); 20 U.S.C. 2312(b), 2331–2342, 2351–2393, 2462(a)(1), (2))

§ 401.94 What are the cost-sharing requirements under the State Vocational Education Program?

(a) The Secretary pays no more than the Federal share of costs under the State Vocational Education Program for each fiscal year.

(b) For the purpose of paragraph (a) of this section—

(1) Under the basic State grant, the Federal share of the cost of—

(i) State administration, except under paragraph (b)(4) of this section, is fifty percent;

(ii) The administration of projects, services, and activities by an eligible recipient, if fifty percent;

(iii) Projects, services, and activities for handicapped individuals, disadvantaged individuals, and adults who are in need of training and retraining under the Vocational Education Opportunities Program, if fifty percent;

(iv) Projects, services, and activities for individuals who are single parents or homemakers, individuals who are participants in programs designed to

eliminate sex bias and stereotyping in vocational education, and criminal offenders who are in correctional institutions under the Vocational Education Opportunities Program, is one hundred percent; and

(v) Projects, services, and activities under the Vocational Education Improvement, Innovation, and Expansion Program, if fifty percent;

(2) Under the Special Programs, the Federal share of the cost of—

(i) State administration, is fifty percent;

(ii) The administration of projects, services, and activities by an eligible recipient, if fifty percent; and

(iii) Projects, services, and activities, unless otherwise indicated in the regulations in this part, is one hundred percent;

(3) The Federal share of the cost of the State council on vocational education is one hundred percent; and

(4) The Federal share of the cost of complying with § 401.13 of this part is one hundred percent.

(c) Unless otherwise provided by the regulations in this part, a State or eligible recipient may not use the value of in-kind contributions to satisfy a cost-sharing requirement under the State Vocational Education Program.

Example: Assuming the same facts in the example under § 401.91, the Secretary pays one hundred percent of the $220,000 the State needs to comply with § 401.13. The State would be required to match, dollar-for-dollar, the remaining $1,200,000 ($1,420,000 minus $220,000) for State administration of the basic State grant portion of the State plan.

(Sec. 502(a); 20 U.S.C. 2462(a); House Report No. 98–1129, 98th Cong. 2d Sess. p. 98 (1984))

§ 401.95 How does a State allocate funds for handicapped individuals under the Vocational Education Opportunities Program?

A State shall allocate funds reserved for handicapped individuals in accordance with § 401.92(a) to participating eligible recipients according to the following formula:

(a) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of economically disadvantaged individuals enrolled in those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals enrolled in all of those eligible recipients within the State in that preceding program year.

(b) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of handicapped students served in vocational education programs by those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals served in vocational education programs by all of those eligible recipients within the State in that preceding program year.

Example: Assume that eligible recipient X enrolls 100 economically disadvantaged individuals and serves in its vocational education program 50 handicapped individuals. Assume further that among all participating eligible recipients, there are 1000 of those persons enrolled and 400 of those individuals are served, respectively. In the succeeding program year, eligible recipient X is eligible to receive under the Vocational Education Opportunities Program an amount for handicapped individuals equal to 1/10 (or 100 economically disadvantaged individuals enrolled by eligible recipient X/1000 economically disadvantaged individuals enrolled in the State) of ⅛ of the amount reserved for such individuals under § 401.92(a) and ⅛ (or 50 handicapped individuals served by eligible recipient X/400 handicapped individuals served in the State) of ½ of the same amount.

(Sec. 203(a)(1); 20 U.S.C. 2333(a)(1))

§ 401.96 How does a State allocate funds for disadvantaged individuals under the Vocational Education Opportunities Program?

(a) A State shall allocate funds reserved for disadvantaged individuals in accordance with § 401.92(b) to participating eligible recipients according to the following formula:

(1) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of economically disadvantaged individuals enrolled in those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals enrolled in all of those eligible recipients within the State in that preceding program year.

(2) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of disadvantaged individuals and individuals with limited English proficiency served in vocational education programs by those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals served in vocational education programs by all of those eligible recipients within the State in that preceding program year.

(b) A State shall ensure that funds allocated among participating eligible recipients under paragraph (a) of this section are used by each participating eligible recipient for vocational education services and activities for individuals with limited English proficiency in at least the same proportion as the number of individuals with limited English proficiency served by that eligible recipient in the fiscal year preceding the fiscal year for which the determination is made bears to the population of the State in that year.

Example: Assume that eligible recipient X enrolls 100 economically disadvantaged individuals and serves in its vocational education program 50 disadvantaged and limited English proficient individuals. Assume further that among all participating eligible recipients, there are 1000 of those persons enrolled and 400 of those individuals served, respectively. In the succeeding program year, eligible recipient X is eligible to receive under the Vocational Education Opportunities Program an amount for disadvantaged individuals equal to 1/10 (or 100 economically disadvantaged individuals enrolled in eligible recipient X/1000 economically disadvantaged individuals enrolled in the State) of ½ of the amount reserved for those individuals under § 401.92(b) and ⅛ (or 50 disadvantaged and limited English proficient individuals served by eligible recipient X/400 disadvantaged and limited English proficient individuals served in the State) of ½ of that same amount.

(Sec. 203(a)(2), (3); 20 U.S.C. 2333(a)(2), (3))

§ 401.97 How does a State match funds for handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?

A State shall provide the non-Federal share of the cost of projects, services, and activities for handicapped individuals and for disadvantaged individuals under the Vocational Education Opportunities Program equitably from State and local sources, except that the State shall provide the non-Federal share of the cost from State sources if the State board determines that an eligible recipient cannot reasonably be expected to provide for those costs from local sources.

(Sec. 502(b); 20 U.S.C. 2462(b))

§ 401.98 How does an eligible recipient use community-based organizations under the Vocational Education Opportunities Program?

Each local educational agency or other eligible recipient shall, to the extent feasible, use community-based organizations of demonstrated effectiveness to carry out projects, services, and activities under the Vocational Education Opportunities Program in areas of the State in which—

(a) There is an absence of sufficient vocational education facilities;

(b) Vocational education programs do not adequately address the needs of disadvantaged students; or

(c) The eligible recipient determines that the community-based organization can better serve disadvantaged students.

(Sec. 203(a)(4); 20 U.S.C. 2333(a)(4))

§ 401.99 What kinds of joint projects are authorized under the Vocational Education Opportunities Program?

(a) A State board may encourage any eligible recipient within the State that is eligible under the regulations in this part, or under the State plan, to receive an award of no more than $1,000 for any program year under the Vocational Education Opportunities Program, to operate its project, services, or activities jointly with another eligible recipient.

(b) Each local educational agency may use funds allocated under § 401.95 for joint projects with one or more other local educational agencies.

(Sec. 203 (a)(5), (b); 20 U.S.C. 2333 (a)(5), (b))

§ 401.100 How does a State distribute funds not reserved for handicapped or disadvantaged individuals under the Vocational Education Opportunities Program?

The State board shall establish the State's criteria for distributing funds under the Vocational Education Opportunities Program (other than those funds reserved for handicapped or disadvantaged individuals under § 401.92 (a) and (b)) to eligible recipients and, under § 401.55(c), to community-based organizations. The State's criteria must be designed to accomplish the purposes of the Vocational Education Opportunities Program.

(Sec. 203(c); 20 U.S.C. 2333(c))

§ 401.101 What are the "equal access" provisions that apply to handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?

(a) Each local educational agency that receives an allocation of funds under §§ 401.95 and 401.96 shall use those funds to provide information to handicapped and disadvantaged students and their parents concerning the opportunities available in vocational education and the requirements for eligibility for enrollment in vocational education programs, at least one year before the students enter the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade.

(b)(1) Each local educational agency described in paragraph (a) of this section shall provide to each handicapped or disadvantaged student that enrolls in a vocational education program—

(i) An assessment of the interests, abilities, and special needs of that student with respect to completing successfully the vocational education program;

(ii) Special services, including adaptation of curriculum, instruction, equipment, and facilities, designed to meet the needs established under paragraph (b)(1)(i) of this section;

(iii) Guidance, counseling, and career development activities conducted by professionally trained counselors who are associated with the provision of those special services; and

(iv) Counseling services designed to facilitate the transition from school to post-school employment and career opportunities.

(2) Consistent with the regulations in this part, a local educational agency may use the funds described in paragraph (a) of this section to pay for the cost of services and activities required by paragraph (b)(1) of this section.

(Sec. 204 (b), (c); 20 U.S.C. 2334 (b), (c))

§ 401.102 How must funds be used under the Consumer and Homemaking Education Program?

(a) A State shall use not less than one-third of its allotment under the Consumer and Homemaking Education Program in economically depressed areas or areas with high rates of unemployment for projects, services, and activities designed to assist consumers, and to help improve home environments and the quality of family life.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program, but not more than six percent of that allotment, to provide State leadership that is qualified by experience and preparation in home economics education.

(Secs. 312(c), 313; 20 U.S.C. 2362(c), 2363)

§ 401.103 How must a State use funds under the Adult Training, Retraining, and Employment Development Program?

(a) In making a grant to a State, the Secretary informs the State what percentage of its allotment under the Adult Training, Retraining, and Employment Development Program must be used for projects, services, and activities under that program for individuals who are single parents or homemakers.

(b) The full-time person required by § 401.13 may administer the projects, services, and activities supported with the funds described in paragraph (a) of this section.

(Secs. 3(b)(3)(B), 111(b); 20 U.S.C. 2302(b)(3)(B), 2321(b))

§ 401.104 How must a State coordinate programs under the Adult Training, Retraining, and Employment Development Program?

(a) The State board shall consult with the State job training coordinating council established under the JTPA so that the council takes account of projects under the Adult Training, Retraining, and Employment Development Program when it formulates recommendations to the Governor, for the Governor's coordination and special services plan required by section 121 of the JTPA.

(b) In order to achieve the most effective use of all Federal funds through programs that complement and supplement each other, and, to the extent feasible, provide an ongoing and integrated program of training and services for workers in need of that assistance, the State board shall adopt the procedures it considers necessary to encourage coordination between eligible recipients receiving funds under the Adult Training, Retraining, and Employment Development Program and the appropriate administrative entity established under the JTPA, in conducting their respective programs.

(Sec. 323(b); 20 U.S.C. 2373(b))

§ 401.105 How must funds be used under the Comprehensive Career Guidance and Counseling Program?

(a) A State shall use not less than twenty percent of its allotment under the Career Guidance and Counseling Program for projects, services, and activities designed to eliminate sex, age, and race bias and stereotyping under § 401.76(b)(2)(i) to ensure that projects, services, and activities under this program are accessible to all segments of the population, including women, disadvantaged individuals, handicapped individuals, individuals with limited English proficiency, and minorities.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program, but not more than six percent of that allotment, to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(Secs. 332(c), 333; 20 U.S.C. 2382(c), 2383)

Subpart H—What are the Administrative Responsibilities of a State Under the State Vocational Education Program?

§ 401.110 What are a State's responsibilities regarding the Vocational Education Data System?

A State that receives funds under the Act shall cooperate with the Secretary in supplying the information the Secretary requires, in the form the Secretary requires, and shall comply in its reports with the Vocational Education Data System developed by the Secretary under section 421 of the Act.

(Sec. 421(b)(2); 20 U.S.C. 2421(b))

§ 401.111 What are a State's responsibilities regarding a State occupational information coordinating committee?

(a) A State that receives funds under the Act shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State economic development agency, the State job training coordinating council, and the agency administering the vocational rehabilitation program.

(b) With funds made available to it by the National Occupational Information Coordinating Committee, the State occupational information coordinating committee shall—

(1) Implement an occupational information system in the State which will meet the common needs for the planning and operation of programs of the State board assisted under the Act and the programs of the administering agencies under the JTPA; and

(2) Use the occupational information system to implement a career information delivery system.

(Sec. 422(b); 20 U.S.C. 2422(b))

§ 401.112 What are a State's audit responsibilities under the Act?

A State shall obtain financial and compliance audits of any funds which it receives under the Act, and shall make these audits public within the State on a timely basis. Each State shall comply with the audit requirements of the Single Audit Act of 1984 with respect to any of its fiscal years that begin after December 31, 1984.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0030)

(Sec. 505; 20 U.S.C. 2465; 31 U.S.C. 7501 *et seq.*)

§ 401.113 What are a State's responsibilities to the National Center for Research in Vocational Education?

A State shall forward to the National Center for Research in Vocational Education a copy of an abstract for each new research, curriculum development, or personnel development project it supports, and the final report on each project.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0011)

(Sec. 404(b)(6); 20 U.S.C. 2404(b)(6))

Subpart I—What are the Enforcement Procedures Under the State Vocational Education Program?

§ 401.120 What enforcement procedures may the Secretary use?

(a) In addition to using the enforcement procedures authorized by Part E of the General Education Provisions Act, the Secretary may withhold funds under the State Vocational Education Program in accordance with the provisions of section 504 of the Act. Hearings under section 504 of the Act are conducted by the Education Appeal Board.

(b)(1) The Secretary conducts any hearings held under section 453 of the General Education Provisions Act in connection with funds under the State Vocational Education Program in the State of the affected unit of local government or geographic area within the State.

(2) For the purposes of paragraph (b)(1) of this section—

(i) "Unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(ii) "Geographic area within a State" means a special purpose district or other region recognized for governmental purposes within that State which is not a unit of local government.

(Sec. 504 (a), (b), (d); 20 U.S.C. 1234, 2464 (a), (b), (d))

§ 401.121 How under the Act may an eligible recipient appeal a final action of a State board?

In accordance with the provisions of section 504(c) of the Act, an eligible recipient that is dissatisfied with the final action of the State board, or other appropriate State administering agency, with respect to the approval of its local application, may file a petition for the review of that action with the United States Court of Appeals for the circuit in which the State is located.

(Sec. 504(c); 20 U.S.C. 2464(c))

3. A new Part 407 is added to read as follows:

PART 407—BILINGUAL VOCATIONAL TRAINING PROGRAM

Subpart A—General

Sec.
407.1 What is the Bilingual Vocational Training Program?
407.2 Who is eligible to apply for assistance under this program?
407.3 What regulations apply to this program?
407.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

407.10 What types of projects may be funded?

Subpart C—How Does One Apply for a Grant?

407.20 What must an applicant include?

Subpart D—How Does the Secretary Make a Grant?

407.30 How does the Secretary evaluate an application?
407.31 What selection criteria does the Secretary use?
407.32 How does the Secretary select an application for funding?

Authority: Sec. 441(a) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2441(a), as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 407.1 What is the Bilingual Vocational Training Program?

The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for individuals with limited English proficiency to prepare these individuals for jobs in recognized occupations and new and emerging occupations.

(Sec. 441(a)(1); 20 U.S.C. 2441(a)(1))

§ 407.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Local educational agencies (LEAs).

(3) Postsecondary educational institutions.

(4) Private nonprofit vocational training institutions.

(5) Other nonprofit organizations specially created to serve individuals who normally use a language other than English.

(b) Private for-profit agencies and organizations are eligible for contracts under this program.

(Sec. 441(a); 20 U.S.C. 2441(a))

§ 407.3 What regulations apply to this program?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 441(a); 20 U.S.C. 2441(a))

§ 407.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Sec. 441(a); 20 U.S.C. 2441(a))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 407.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Bilingual vocational training projects for individuals who have completed or left elementary or secondary school and who are available for education in a postsecondary educational institution;

(2) Bilingual vocational education and training projects for individuals who have already entered the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing manpower needs, expand their range of skills, or advance in employment; and

(3) Training allowances for participants in bilingual vocational training projects.

(b) Bilingual vocational training projects must include instruction in the English language to ensure that participants in that training will be equipped to pursue occupations in an English language environment.

(c) In the Commonwealth of Puerto Rico, the Bilingual Vocational Training Program may provide for the needs of students of limited Spanish proficiency.

(Sec. 441(a), (e)(2); 20 U.S.C. 2441(a), (e)(2))

Subpart C—How Does One Apply for a Grant?

§ 407.20 What must an application include?

(a) An application must—

(1) Provide that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(2) Describe a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of this program; and

(3) Be submitted to the State board or agency designated or established under section 111 of the Act for review and comment, including comment on the relationship of the proposed project to the State's vocational education program.

(b) An applicant shall include any comments received under paragraph (a)(3) of this section with the application.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 441(d) (1), (2); 20 U.S.C. 2441(d) (1), (2))

Subpart D—How Does the Secretary Make a Grant?

§ 407.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 407.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 407.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 407.31.

(e) Prior to making an award, the Secretary consults with the State board designated or established under section 111 of the Act to ensure an equitable distribution of assistance among populations of individuals with limited English proficiency within the State.

(Sec. 441(a), (d)(5); 20 U.S.C. 2441(a), (d)(5))

§ 407.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for specific information that shows the need for the proposed training in the local geographic area.

(2) The Secretary looks for information that shows—

(i) The need for the proposed project, including—

(A) The employment need to be met;

(B) How that employment need will be met; and

(C) Where appropriate, ongoing and planned activities in the community that pertain to that employment need; and

(ii) The relationship of the project to any appropriate economic development plan.

(b) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Program factors.* (10 points)

(1) The Secretary reviews each application for information that shows the applicant's understanding of key program factors.

(2) The Secretary looks for information that shows—

(i) An understanding of the key methodologies and techniques used in bilingual vocational training such as—

(A) Providing training and instruction in English and the native languages of the trainees;

(B) Providing job-related English-as-a-second language instruction;

(C) Coordinating job-related English-as-a-second language instruction with the occupational training; or

(D) Providing training and guidence to prepare trainees for working in an English language environment;

(ii) Procedures for recruiting persons with limited English proficiency who are in the greatest need for bilingual vocational training;

(iii) Procedures for evaluating the skills and needs of trainees;

(iv) An understanding of the importance of appropriate counseling and follow-up activities with former trainees;

(v) That the training will provide opportunities for employment in jobs

that have potential for career advancement or opportunities for entrepreneurship; and

(vi) That the project will be coordinated with the State board or agency designated or established under section III of the Act.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(c) The Secretary looks for information that shows–

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) Private sector involvement in the planning of the project; and

(ii) Private sector involvement in the operation of the project.

(i) *Employment opportunities.* (10 points)

The Secretary looks for information and documentation of the extent to which, upon the completion of their training under this program, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be pursuing additional training related to their training under this program.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 441(a); 20 U.S.C. 2441(a))

§ 407.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 470.31, and consulting with the appropriate State board under § 407.30(e), the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the equitable distribution of projects under this program within the affected State.

(Sec. 441(d)(5); 20 U.S.C. 2441(d)(5))

4. Part 408 is revised to read as follows:

PART 408—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Subpart A—General

Sec.

408.1 What is the Bilingual Vocational Instructor Training Program?
408.2 Who is eligible to apply for assistance under this program?
408.3 What regulations apply to this program?
408.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

408.10 What types of projects may be funded?

Subpart C—How Does One Apply for a Grant?

408.20 What must an application include?

Subpart D—How Does the Secretary Make a Grant?

408.30 How does the Secretary evaluate an application?
408.31 What selection criteria does the Secretary use?
408.32 How does the Secretary select an application for funding?

Authority: Sec. 441(b) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2441(b), as enacted by Pub. L. 98–524, unless otherwise noted.

Subpart A—General

§ 408.1 What is the Bilingual Vocational Instructor Training Program?

The Bilingual Vocational Instructor Training Program provides financial assistance for conducting training for instructors of bilingual vocational education and training programs for individuals with limited English proficiency.

(Sec. 441(b)(1); 20 U.S.C. 2441(b)(1))

§ 408.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible to apply for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Public and private nonprofit educational institutions.

(b) Private for-profit educational institutions are eligible for contracts under this program.

(Sec 441(b)(1); 20 U.S.C. 2441(b)(1))

§ 408.3 What regulations apply to this program?

The following regulations apply to the Bilingual Vocational Instructor Training Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec 441(b); 20 U.S.C. 2441(b))

§ 408.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Sec. 441(b); 20 U.S.C. 2441(b))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 408.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating or preparing to participate in bilingual vocational training programs; and

(2) Fellowships and traineeships for individuals participating in preservice or inservice training.

(b) The Secretary does not make an award under this program unless the Secretary determines that the applicant has an ongoing vocational training program in the field in which participants will be trained and can provide instructors with adequate language capabilities in the language other than English to be used in the project.

(Sec. 441(b) (2), (3))

Subpart C—How Does One Apply for a Grant?

§ 408.20 What must an application include?

An application must—

(a) Provide that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(c) Describe the qualifications of principal staff responsible for any project under the Bilingual Vocational Instructor Training Program;

(d) Describe minimum qualifications for trainees participating or preparing to participate in any project, and the selection process for these individuals;

(e) Contain the projected amount of the fellowships or traineeships, if any; and

(f) Contain sufficient information for the Secretary to make the determination required by § 408.10(b).

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 441(d)(1), (4); 20 U.S.C. 2441(d)(1)(4))

Subpart D—How Does the Secretary Make a Grant?

§ 408.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 408.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 408.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 408.31.

(e) Prior to making an award the Secretary consults with the State board designated or established under section 111 of the Act to ensure an equitable distribution of assistance among populations of individuals with limited English proficiency within the State.

(Sec. 441(b), (d)(5); 20 U.S.C. 2441(b), (d)(5))

§ 408.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for specific information that shows the need for the proposed training in the local geographic area.

(2) In making this determination the Secretary looks for information that shows—

(i) The need for the proposed training;

(ii) Specifically how the need will be met;

(iii) Ongoing and planned activities in the community that pertain to the need, where appropriate.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 441(b); 20 U.S.C. 2441(b))

§ 408.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 408.31, and consulting with the appropriate State board under § 408.30(e), the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the equitable distribution of projects under this program within the affected State.

(Sec.a 441(d)(5); 20 U.S.C. 2441(d)(5))

5. A new part 409 is added to read as follows:

PART 409—BILINGUAL VOCATIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM

Subpart A—General

Sec.

409.1 What is the Bilingual Vocational Materials, Methods, and Techniques Program?
409.2 Who is eligible to apply for assistance under this program?
409.3 What regulations apply to this program?
409.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

409.10 What types of projects may be funded?
409.11 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

409.20 What must an application include?

Subpart D—How Does the Secretary Make a Grant?

409.30 How does the Secretary evaluate an application?
409.31 What selection criteria does the Secretary use?

Authority: Sec. 441(c) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2441(c), as enacted by Pub. L. 98–524, unless otherwise noted.

Subpart A—General

§ 409.1 What is the Bilingual Vocational Materials, Methods, and Techniques Program?

The Bilingual Vocational Materials, Methods, and Techniques Program provides financial assistance for the development of instructional and curriculum materials, methods, or techniques for bilingual vocational training for individuals with limited English proficiency.

(Sec. 441(c)(1); 20 U.S.C. 2441(c)(1))

§ 409.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible to apply for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Educational institutions.

(3) Nonprofit organizations.

(b) The following are eligible for contracts under this program:

(1) Private for-profit organizations.

(2) Individuals.

(Sec. 441(c)(1); 20 U.S.C. 2441(c)(1))

§ 409.3 What regulations apply to this program?

The following regulations apply to the Bilingual Vocational Materials, Methods, and Techniques Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 441(c); 20 U.S.C. 2441(c))

§ 409.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Sec. 441(c); 20 U.S.C. 2441(c))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 409.10 What types of projects may be funded?

The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(a) Research in bilingual vocational training;

(b) The development of instructional and curriculum materials, methods, or techniques;

(c) Training projects to familiarize State agencies and training institutions with research findings and with successful pilot and demonstration projects in bilingual vocational education and training; and

(d) Experimental, developmental, pilot, and demonstration projects.

(Sec. 441.(c)(2); 20 U.S.C. 2441(c)(2))

§ 409.11 How does the Secretary establish priorities for this program?

(a) The Secretary may announce, through one or more notices published in the **Federal Register**, the priorities for this program, if any, from the types of projects described in § 409.10.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(Sec. 441(c)(2); 20 U.S.C. 2441(c)(2))

Subpart C—How Does One Apply for a Grant?

§ 409.20 What must an application include?

An application under this part must—

(a) Describe the qualifications of staff responsible for the project; and

(b) Provide that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 441(d)(1), (3); 20 U.S.C. 2441(d)(1), (3))

Subpart D—How Does the Secretary Make a Grant?

§ 409.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 409.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 409.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 409.31.

(Sec. 441(c), 20 U.S.C. 2441(c))

§ 409.31 What selection criteria does the Secretary use?

The Secretary used the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the proposed services and activities for individuals with limited English proficiency.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need; and

(ii) Specific information about how the need will be met.

(b) *Plan or operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 441(c); 20 U.S.C. 2441(c))

6. A new Part 410 is added to read as follows:

PART 410—INDIAN AND HAWAIIAN NATIVES PROGRAM

Subpart A—General

Sec.

410.1 What is the Indian and Hawaiian Natives Program?
410.2 Who is eligible to apply for assistance under this program?
410.3 What regulations apply to this program?
410.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

410.10 What types of projects may be funded?

Subpart C—How Does One Apply for a Grant?

410.20 How are applications submitted?

Subpart D—How Does the Secretary Make a Grant?

410.30 How does the Secretary evaluate an application?
410.31 What selection criteria does the Secretary use?
410.32 What are additional factors for declining an award?
410.33 Is the Secretary's decision not to make an award under the Indian Program subject to a hearing?

Authority: Sec. 103 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2313, as enacted by Pub. L. 98–524, unless otherwise noted.

Subpart A—General

§ 410.1 What is the Indian and Hawaiian Natives Program?

(a) The Indian and Hawaiian Natives Program provides financial assistance to Indian tribes and to organizations primarily serving and representing Hawaiian natives to plan, conduct, and administer projects, or portions of projects, that are authorized by and consistent with the Carl D. Perkins Vocational Education Act.

(b) The Secretary is also authorized to use remaining funds under this program to enter into an agreement with the Assistant Secretary of the Interior for Indian Affairs for the operation of vocational education programs authorized by the Act in institutions serving Indians eligible to receive educational benefits as Indians from the Bureau of Indian Affairs. The Secretary of the Interior is authorized to receive funds for this purpose.

(Sec. 103(b)(1), (c); 20 U.S.C. 2313(b)(1),(c))

§ 410.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible for grants, contracts, or cooperative agreements under this program:

(1) The tribal organization of any Indian tribe which is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(2) Any organization primarily serving and representing Hawaiian natives which is recognized by the Governor of Hawaii.

(b) Grants, contracts, or cooperative agreements under paragraph (a)(1) of this section are subject to—

(1) Section 102 of the Indian Self-Determination and Education Assistance Act; and

(2) The relevant provisions of sections 4, 5, and 6 of the Act of April 16, 1934.

(Sec. 103(b)(1),(c); 20 U.S.C. 2313(b)(1),(c); 25 U.S.C. 450f, 455–457)

§ 410.3 What regulations apply to this program?

The following regulations apply to the Indian and Hawaiian Natives Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 103; 20 U.S.C. 2313)

§ 410.4 What definitions apply to this program?

The following definitions apply to the Indian and Hawaiian Natives Program:

(a) The definitions in 34 CFR 400.4.

(b) The following additional definitions:

"Act of April 16, 1934" means the Act entitled "An Act authorizing the Secretary of the Interior to arrange with States or territories for the education, medical attention, relief of distress, and social welfare of Indians and other purposes."

(Sec. 103(a)(1)(A); 48 Stat. 596; 25 U.S.C. 452–457)

"Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

(Sec. 103(a)(1)(B); 20 U.S.C. 2313(a)(1)(B))

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(25 U.S.C. 450b)

"Tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by that governing body or which is democratically elected by the adult members of the Indian community to be served by the organization, which includes the maximum participation of Indians in all phases of its activities.

(25 U.S.C. 450b)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 410.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer projects or portions of projects which are authorized by and consistent with the Carl D. Perkins Vocational Education Act.

(b) Projects for Indians funded under this program are in addition to other programs, services, and activities made available to eligible Indians under other provisions of the Act.

Sec. 103(b)(1), (b)(3), (c); 20 U.S.C. 2313(b)(1), (b)(3), (c))

Subpart C—How Does One Apply for a Grant?

§ 410.20 How are applications submitted?

An application from a tribal organization must be submitted to the Secretary by the Indian tribe. An application for a project to serve more than one Indian tribe must be approved by each tribe to be served.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 103; 20 U.S.C. 2313, 25 U.S.C. 450b)

Subpart D—How Does the Secretary Make a Grant?

§ 410.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 410.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 410.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 410.31.

(Sec. 103; 20 U.S.C. 2313)

§ 410.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed project.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed activity;

(ii) Information which shows how the need will be met; and

(iii) Ongoing and planned activities in the community which pertain to the need, where appropriate.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) of this section will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows

the quality of the evaluation plan for the project.

Cross Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (10 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) private sector involvement in the operation of the project.

(h) *Employment Opportunities.* (10 points)

(1) The Secretary looks for information and documentation of the extent to which, upon the completion of their training under this program, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be pursuing additional training related to their training under this program.

(2) For Indian tribes only, the Secretary looks for information which shows that this employment is related to the tribal economic development plan.

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(Sec. 103; 20 U.S.C. 2313)

§ 410.32 What are additional factors for declining an award?

The Secretary may use any of the following additional factors in making a decision whether to award a grant or cooperative agreement to an applicant:

(a) The project duplicates an effort already being made.

(b) Funding the project would create an inequitable distribution among Indian tribes or among organizations serving or representing Native Hawaiians.

(c) The applicant has not performed satisfactorily under a previous Department of Education award.

(Sec. 103; 20 U.S.C. 2313)

§ 410.33 Is the Secretary's decision not to make an award under the Indian Program subject to a hearing?

After receiving notice that the Secretary will not award a grant or cooperative agreement to an eligible applicant under § 410.2(a)(1), the Indian tribal organization has 30 calendar days to request, in writing, a hearing to review the Secretary's decision.

(Sec. 103; 20 U.S.C. 2313, 25 U.S.C. 450f)

7. A new Part 411 is added to read as follows:

PART 411—DEMONSTRATION CENTERS FOR THE RETRAINING OF DISLOCATED WORKERS

Subpart A—General

Sec.

411.1 What is the Demonstration Centers for the Retraining of Dislocated Workers Program?
411.2 Who is eligible to apply for assistance under this program?
411.3 What regulations apply to this program?
411.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

411.10 What types of projects may be funded?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

411.30 How does the Secretary evaluate an application?
411.31 What selection criteria does the Secretary use?
411.32 How does the Secretary select an application for funding?

Authority: Sec. 415 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2415, as enacted by Pub. L. 98–524, unless otherwise noted.

Subpart A—General

§ 411.1 What is the Demonstration Centers for the Retraining of Dislocated Workers Program?

(a) The Demonstration Centers for Retraining Dislocated Workers Program provides financial assistance to establish one or more demonstration centers.

(b) These centers retrain dislocated workers in order to demonstrate the application of general theories of vocational education to the specific problems of retraining displaced workers.

(Sec. 415; 20 U.S.C. 2415)

§ 411.2 Who is eligible to apply for assistance under this program?

Any public or private agency, institution, or organization is eligible to apply for a grant, contract, or cooperative agreement under this program.

(Sec. 415; 20 U.S.C. 2415)

§ 411.3 What regulations apply to this program?

The following regulations apply to the Demonstration Centers for the Retraining of Dislocated Workers Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 415; 20 U.S.C. 2415)

§ 411.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program

(Sec. 415; 20 U.S.C. 2415)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

411.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements to establish one or more demonstration centers for the purposes described in § 411.1.

(b) Each demonstration center assisted under this program may—

(1) Provide retraining programs and counseling services;

(2) Seek additional resources;

(3) Disseminate information;

(4) Coordinate its activities with various other entities providing related services and activities; and

(5) Assist in the establishment of additional centers.

(Sec. 415; 20 U.S.C. 2415; House Report No. 98–1129, 98th Cong., 2d Sess. p. 87 (1984))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 411.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 411.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 411.31.

(c) Subject to paragraph (d) of this section the maximum possible points for

each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 411.31.

(Approved by the Office of Management and Budget under OMB control No. 1830-0013)

(Sec. 415; 20 U.S.C. 2415)

§ 411.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed demonstration center.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed demonstration center, including evidence of a high concentration of dislocated workers in the area to be served;

(ii) How the need will be met; and

(iii) Ongoing and planned activities in the community pertaining to the proposed demonstration center, where appropriate.

(b) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of training.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the training to be provided.

(2) The Secretary looks for information that shows that—

(i) The training is appropriate for the trainees in light of the labor market; and

(ii) Trainees will receive appropriate counseling.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relating to the objectives of the project.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Private sector involvement.* (5 points)

(1) The secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(i) *Employment opportunities.* (5 points)

The Secretary looks for information on and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(j) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques developed by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

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(Sec. 415; 20 U.S.C. 2415)

§ 411.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in §411.31, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Sec. 415; 20 U.S.C. 2415)

8. A new Part 412 is added to read as follows:

PART 412—COOPERATIVE DEMONSTRATION PROGRAM

Subpart A—General

Sec.

412.1 What is the Cooperative Demonstration Program?
412.2 Who is eligible to apply for an award under this program?
412.3 What regulations apply to this program?
412.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

412.10 What types of projects may be funded?
412.11 How does the Secretary establish priorities for this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

412.30 How does the Secretary evaluate an application?
412.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Recipient?

412.40 What cost sharing requirement is imposed under this program?

Authority: Sec. 411 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2411, as enacted by Pub. L. 98–524, unless otherwise noted.

Subpart A—General

§ 412.1 What is the Cooperative Demonstration Program?

(a) The Cooperative Demonstration Program provides financial assistance for—

(1) Model projects providing improved access to quality vocational education programs for certain individuals;

(2) Projects that are examples of successful cooperation between the private sector and public agencies in vocational education;

(3) Projects to overcome national skill shortages; and

(4) Other activities which the Secretary may designate that are related to the purpose of the Act.

(b) Projects eligible for assistance are described in § 412.10

(Sec. 411(a); 20 U.S.C. 2411(a))

§ 412.2 Who is eligible to apply for an award under this program?

The following are eligible to apply for an award under this program:

(a) State educational agencies (SEAs).

(b) Local educational agencies (LEAs).

(c) Postsecondary educational institutions.

(d) Institutions of higher education.

(e) Other public and private agencies, organizations, and institutions.

(Sec. 411(a); 20 U.S.C. 2411(a))

§ 412.3 What regulations apply to this program?

The following regulations apply to the Cooperative Demonstration Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 411; 20 U.S.C. 2411)

§ 412.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to the Cooperative Demonstration Program.

(Sec. 411; 20 U.S.C. 2411)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 412.10 What types of projects may be funded?

(a) The Secretary may support directly or through grants, cooperative agreements, or contracts the following types of projects:

(1) Model projects providing improved access to quality vocational education programs for—

(i) Handicapped individuals;

(ii) Disadvantaged individuals;

(iii) Adults who are in need of training and retraining;

(iv) Individuals who are single parents or homemakers;

(v) Individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education;

(vi) Criminal offenders who are serving in a correctional institution; and

(vii) Men and women seeking nontraditional occupations.

(2)(i) Projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, and building trade councils) and public agencies in vocational education, including State boards and eligible recipients.

(ii) The projects described in paragraph (a)(2)(i) of this section must be designed to demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment, including—

(A) Work experience and apprenticeship projects;

(B) Transitional worksite job training for vocational education students which is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(C) Placement services in occupations which the students are preparing to enter; and

(D) Where practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas.

(iii) The projects described in paragraphs (a)(2) (i) and (ii) of this section may include institutional and on-the-job training, support services authorized by the Act, and such other necessary assistance as the Secretary determines to be necessary for the successful completion of the project.

(3) Projects to overcome national skill shortages, as designated by the Secretary in cooperation with the Secretary of Labor, Secretary of Defense, and Secretary of Commerce.

(4) Such other activities which the Secretary may designate which are related to the purposes of the Act.

(b) All projects assisted under the Cooperative Demonstration Program must be—

(1) Of direct service to the individuals enrolled; and

(2) Capable of wide replication by service providers.

(Sec. 411 (a), (b), (c); 20 U.S.C. 2411 (a), (b), (c))

§ 412.11 How does the Secretary establish priorities for this program?

(a) The Secretary may announce through one or more notices published in the **Federal Register** the priorities for this program (including any national skill shortages to be addressed) if any, from the types of projects described in § 412.10.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(Sec. 411; 20 U.S.C. 2411)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 412.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 412.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 412.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 412.31.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 411; 20 U.S.C. 2411)

§ 412.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for and the soundness of the rationale for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of the need for the proposed project;

(ii) Specific evidence of the need for the project;

(iii) A description of any ongoing and planned activities in the community relative to the need, including, if appropriate, the relationship of any local, regional or State economic development plan;

(iv) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs;

(v) A clear statement of what the project seeks to demonstrate; and

(vi) Evidence that the project is likely to serve as a model in the future.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) Private sector involvement in the planning of the project; and

(ii) Private sector involvement in the operation of the project.

(h) *Employment opportunities.* (5 points)

The Secretary looks for information and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(i) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the demonstration project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

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(Sec. 411; 20 U.S.C. 2411)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 412.40 What cost sharing requirement is imposed under this program?

(a) A recipient shall provide not less than 25 percent of the cost of the demonstration project it conducts under this program.

(b) In accordance with Subpart G of 34 CFR Part 74, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Sec. 411(b)(2); 20 U.S.C. 2411(b)(2))

7. A new Part 414 is added to read as follows:

PART 414—STATE EQUIPMENT POOLS

Subpart A—General

Sec.

414.1 What is the State Equipment Pools Program?
414.2 Who is eligible to apply for assistance under this program?
414.3 What regulations apply to this program?
414.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program.

414.10 What types of projects may be funded?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

414.30 How does the Secretary evaluate an application?
414.31 What selection criteria does the Secretary use?

Authority: Sec. 413 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2413, as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 414.1 What is the State Equipment Pools Program?

The State Equipment Pools Program provides financial assistance for the operation of State programs involving the loan of high-technology, state-of-the-art equipment for use in local vocational education programs.

(Sec. 413; 20 U.S.C. 2413)

§ 414.2 Who is eligible to apply for assistance under this program?

State boards are eligible to apply for grants or cooperative agreements under this program.

(Sec. 413; 20 U.S.C. 2413)

§ 414.3 What regulations apply to this program?

The following regulations apply to the State Equipment Pools Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 413; 20 U.S.C. 2413)

§ 414.4 What definitions apply to this program?

The following definitions apply to the State Equipment Pools Program:

(a) The definitions in 34 CFR 400.4.

(b) For the purposes of this part, "High technology, state-of-the-art equipment" includes, but is not limited to—

(1) Computer-controlled equipment;

(2) Electro-optic equipment;

(3) Electronic testing equipment;

(4) Scientific instrumentation;

(5) Micrographic equipment;

(6) Earth resource equipment;

(7) Telecommunications equipment; and

(8) Computers and peripherals.

(Sec. 413; 20 U.S.C. 2413)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 414.10 What types of projects may be funded?

(a) The Secretary awards grants or cooperative agreements to State boards for the operation of State programs involving the loan of high technology, state-of-the-art equipment to eligible recipients for use in local vocational education programs.

(b) The State board shall establish its own criteria for evaluating applications by eligible recipients and for the effective use of equipment, including the redistribution of equipment, if necessary.

(c) No State may receive funds for more than two consecutive years under this program.

(Sec. 413; 20 U.S.C. 2413)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 414.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an applicant on the basis of the criteria in § 414.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 414.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 414.31.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 413; 20 U.S.C. 2413)

§ 414.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for and the soundness of the rationale for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of the need for specific high technology, state-of-the-art equipment in local educational agencies and postsecondary educational institutions; and

(ii) Specific evidence of that need.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for informaton that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (10 points)

The Secretary reviews each application for information that shows the involvement of the private sector; including—

(1) Involvement in program planning;

(2) Involvement in program evaluation; and

(3) Other forms of support.

(h) *Cooperative relationships.* (5 points)

The Secretary reviews each application for information that shows that in preparing the application, the State board has consulted with local educational agencies and postsecondary educational institutions.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 413; 20 U.S.C. 2413)

10. A new Part 415 is added to read as follows:

PART 415—MODEL CENTERS FOR VOCATIONAL EDUCATION FOR OLDER INDIVIDUALS

Subpart A—General

Sec.

415.1 What is the Model Centers for Vocational Education for Older Individuals Program?

415.2 Who is eligible for an award under this program?

415.3 What regulations apply to this program?

415.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

415.10 What type of projects may be funded?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

415.30 How does the Secretary evaluate an application?

415.31 What selection criteria does the Secretary use?

415.32 How does the Secretary select an application for funding?

Authority: Sec. 417 of the Carl D. Perkins Vocational Educational Act, 20 U.S.C. 2417, as enacted by Pub. L. 98–524, unless otherwise noted.

Subpart A—General

§ 415.1 What is the Model Centers for Vocational Education for Older Individuals Program?

The Model Centers for Vocational Education for Older Individuals Program (Model Centers) provides assistance to establish and operate model centers to focus greater attention on the special vocational needs of older individuals, and to promote employment opportunities for older individuals.

(Sec. 417(a); 20 U.S.C. 2419(a))

§ 415.2 Who is eligible for an award under this program?

Local educational agencies and postsecondary educational institutions are eligible for an award under this program.

(Sec. 417(b); 20 U.S.C. 2417(b))

§ 415.3 What regulations apply to this program?

The following regulations apply to the Model Centers Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 417; 20 U.S.C. 2417)

§ 415.4 What definitions apply to this program?

The following definitions apply to the Model Centers for Vocational Education For Older Individuals Program:

(a) The definitions referred to in 34 CFR 400.4.

(b) The following additional definition:

"Older Individual" means an individual fifty-five years of age or older.

(Sec. 417(d); 20 U.S.C. 2417(d))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 415.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants or cooperative agreements for projects to establish and operate model centers for vocational education for older individuals.

(b) Each model center assisted by the Secretary must—

(1) Provide training or retraining to update older individuals' skills;

(2) Prepare older individuals for new careers when their skills have been rendered obsolete by technological advances;

(3) Promote employment through training or retraining in areas of job potential in growth industries utilizing new technologies;

(4) Provide assistance for later-life career changes, with special emphasis on the needs of older individuals who are displaced homemakers;

(5) Provide information, counseling, and support services to assist older individuals in obtaining employment;

(6) Encourage providers of vocational education, including community colleges and technical schools, to offer more job

training opportunities targeted to or easily accessible to older individuals; and

(7) Promote training of paraprofessionals in gerontology and geriatrics.

(Sec. 417(b); 20 U.S.C. 2417(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 415.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 415.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 415.31.

(c) Subject to paragraph (d) of this section, the maximum possible points in each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 415.31.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 417; 20 U.S.C. 2417)

§ 415.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed Model Center.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed model center;

(ii) Ongoing and planned activities in the community supporting the need for the proposed model center; and

(iii) The relationship of the proposed model center to any local or State economic development plan.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups.

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(h) *Employment opportunities.* (5 points)

The Secretary looks for information and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(i) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description to the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques developed by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 417; 20 U.S.C. 2417)

§ 415.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 415.31, the Secretary determines whether the most highly rated applications are broadly and equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Sec. 417; 20 U.S.C. 2417)

11. A new Part 416 is added to read as follows:

PART 416—NATIONAL VOCATIONAL EDUCATION RESEARCH PROGRAM

Subpart A—General

Sec.

416.1 What are the purposes of the National Vocational Education Research Program?
416.2 Who is eligible for an award under this program?
416.3 What regulations apply to this program?
416.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

416.10 What types of projects does the Secretary fund under this program?
416.11 How does the Secretary establish priorities for this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

416.30 How does the Secretary evaluate an application?
416.31 What selection criteria does the Secretary use?
416.32 How does the Secretary select an unsolicited application for funding?

Authority: Secs. 401 and 402 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2401 and 2402, as enacted by Pub. L. 98–524, unless otherwise noted.

Subpart A—General

§ 416.1 What are the purposes of the National Vocational Education Research Program?

The purposes of the National Vocational Education Research Program are to—

(a) Improve access to vocational educational programs for handicapped individuals, disadvantaged individuals, men and women who are entering nontraditional occupations, adults who are in need of retraining, single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Improve the competitive process by which research projects are awarded;

(c) Encourage the dissemination of findings of research projects assisted under this Act to all States; and

(d) Authorize research activities which are readily applicable to the vocational education setting and are of practical application to vocational education administrators, counselors, instructors, and others involved in vocational education.

(Sec. 401; 20 U.S.C. 2401)

§ 416.2 Who is eligible for an award under this program?

(a) Any individual or public or private agency, organization, or institution may apply for an award under the program.

(b) Any individual researcher, community college, State advisory council, or State or local educator may submit an unsolicited research application.

(Sec. 402(a), (b)(2); 20 U.S.C. 2402(a), (b)(2))

§ 416.3 What regulations apply to this program?

The following regulations apply to the National Vocational Education Research Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Secs. 401, 402; 20 U.S.C. 2401, 2402)

§ 416.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Secs. 401, 402; 20 U.S.C. 2401, 2402)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 416.10 What types of projects does the Secretary fund under this program?

The Secretary directly, or through grants, cooperative agreements, or contracts, funds projects of applied research on aspects of vocational education that are specifically related to the Act, including applied research on—

(a) Effective methods for providing quality vocational education to handicapped individuals, disadvantaged individuals, men and women who are entering nontraditional fields, adults who are in need of training and retraining, individuals who are single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Strategies for coordinating local, State, and Federal vocational education, employment training, and economic development programs to maximize their effectiveness;

(c) Strategies for improving working training and retraining;

(d) The constructive involvement of the private sector in public vocational education;

(e) Successful methods of reinforcing and enhancing basic academic skills in vocational settings;

(f) The development of curriculum materials and instructional methods relating to new and emerging technologies, and assessments of the nature of change in the workplace and its effect on individual jobs;

(g) The identification of institutional characteristics which improve the preparation of youth and adults for employment;

(h) The development of effective methods for providing quality vocational education to individuals with limited English proficiency, including research related to bilingual vocational training; and

(i) Any other aspect of vocational education that is specifically related to the Act.

(Sec. 402(a); 20 U.S.C. 2402(a))

§ 416.11 How does the Secretary establish priorities for this program?

(a) The Secretary may announce, through one or more notices published in the **Federal Register**, the priorities for this program, from the topics described in § 416.10.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(c) The Secretary may announce in the **Federal Register** the amount of funds reserved for unsolicited research applications under this program.

(Sec. 402; 20 U.S.C. 2402)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 416.30 How does the Secretary evaluate an application?

(a) (1) The Secretary evaluates an application for a grant or cooperative agreement submitted in response to an application notice in the **Federal**

Register on the basis of the criteria in § 416.31.

(2) The Secretary may award up to 100 points including a reserved 15 points to be distributed in accordance with paragraph (a)(4) of this section, based on criteria in § 416.31 of this part.

(3) Subject to paragraph (a)(4) of this section, the maximum possible points for each criterion is indicated in parentheses after its heading.

(4) For each competition, as announced through an application notice published in the Federal Register, the Secretary may assign the reserved 15 points among the criteria in § 416.31 of this part.

(b) (1) The Secretary evaluates an unsolicited research application for a grant or cooperative agreement on the basis of the following criteria:

(i) The extent to which the aspect of applied research proposed is specifically related to the purposes of the Act.

(ii) The extent to which the project addresses an important national need.

(iii) The overall quality of the project, including, as appropriate, the quality of its design and management plan, the quality of key personnel, the adequacy of the applicant's resources, and the cost-effectiveness of the project.

(iv) The likelihood that the project will make an important contribution to vocational education.

(2) The criteria in paragraph (b)(1) of this section are not subject to 34 CFR 75.201(a).

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 402; 20 U.S.C. 2402)

§ 416.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate each application submitted in response to an application notice:

(a) *National need.* (20 Points)

(1) The Secretary reviews each application to what extent it addresses a national need in vocational education.

(2) The Secretary looks for information that shows the extent to which the project would make a contribution of national significance, as measured by factors such as—

(i) The need for the project in relation to any program priority announced in the Federal Register; and

(ii) The likelihood that the project will make an important contribution to vocational education.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of Key personnel.* (15 Points)

(1) The Secretary reviews each application for information that shows the qualification of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Dissemination plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the dissemination plan for the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(ii) A clear description of the project outcomes; and

(iii) A detailed description of how information and materials will be disseminated.

(h) *Postsecondary institutions.* (5 Points).

The Secretary gives preference to applications submitted by public and private postsecondary institutions.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 402; 20 U.S.C. 2402)

§ 416.32 How does the Secretary select an unsolicited application for funding?

(a) After evaluating an unsolicited research application on the basis of the criteria in § 416.30(b), the Secretary compares that application to any other unsolicited application the Secretary has received. If unsolicited applications are determined to be of equal quality, the Secretary gives a preference to one submitted by a public or private postsecondary institution.

(b) The Secretary may fund an unsolicited research application at any time during the fiscal year.

(Sec. 402; 20 U.S.C. 2402)

12. A new Part 417 is added to read as follows:

PART 417—NATIONAL CENTER FOR RESEARCH IN VOCATIONAL EDUCATION

Subpart A—General

Sec.

417.1 What is the National Center for Research in Vocational Education?
417.2 Who is eligible to apply to be the National Center?
417.3 What regulations apply to the National Center?
417.4 What definitions apply to the National Center?

Subpart B—What Kinds of Activities Does the Secretary Support at the National Center?

417.10 What kinds of activities does the National Center carry out?

Subpart C—How Does One Apply to be the National Center?

417.20 What must an application include?

Subpart D—How Does the Secretary Designate the National Center?

417.30 How does the Secretary evaluate an application?
417.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by the National Center?

417.40 Must the National Center have a Director?
417.41 What reports must the National Center submit to the Secretary?
417.42 What activities must be performed during the fifth year of funding?

Authority: Sec. 404 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2404, as enacted by Pub. L. 98–524, unless otherwise noted.

Subpart A—General

§ 417.1 What is the National Center for Research in Vocational Education?

(a) The Secretary supports the operations of the National Center for Research in Vocational Education ("National Center") established by section 404 of the Act and designated by the Secretary once every five years.

(b) In designating the National Center, the Secretary acts with the advice of a panel composed of individuals appointed by the Secretary who are not Federal employees and who are recognized nationally as experts in vocational education administration and research.

(Sec. 404; 20 U.S.C. 2402)

§ 417.2 Who is eligible to apply to be the National Center?

A nonprofit entity associated with a public or private nonprofit university which is prepared to make a substantial financial contribution towards the establishment of the National Center is eligible to be designated as the National Center.

(Sec. 404; 20 U.S.C. 2404)

§ 417.3 What regulations apply to the National Center?

The following regulations apply to the National Center:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 404; 20 U.S.C. 2404)

§ 417.4 What definitions apply to the National Center?

The definitions in 34 CFR 400.4 apply to the National Center.

(Sec. 404; 20 U.S.C. 2404)

Subpart B—What Kinds of Activities Does the Secretary Support at the National Center?

§ 417.10 What kinds of activities does the National Center carry out?

(a) (1) The primary purpose of the National Center are to design and conduct research and development projects that are consistent with the purposes of the Act, including—

(i) Longitudinal studies which extend over a period of years; and

(ii) Supplementary and short term activities.

(2) The National Center may conduct its research and development projects and activities directly, or through contracts with other public agencies and public or private institutions of higher education.

(b) The National Center shall—

(1) Conduct applied research and development on—

(i) Effective methods for providing quality vocational education to handicapped individuals, disadvantaged individuals, men and women in nontraditional fields, adults, individuals who are single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(ii) The constructive involvement of the private sector in public vocational education;

(iii) Successful methods of reinforcing and enhancing basic academic skills in vocational settings;

(iv) The development of curriculum materials and instructional methods relating to new and emerging technologies;

(v) Assessments of the nature of change in the workplace and its effect on individual jobs; and

(vi) The identification of institutional characteristics which improve the preparation of youth and adults for employment;

(2) Provide leadership development through an advanced study center;

(3) Provide in-service education activities for State and local leaders in vocational education;

(4) Disseminate the results of the research and development projects funded by the Center;

(5) Develop and provide information to facilitate national planning and policy development in vocational education;

(6) Provide technical assistance to programs serving special populations, including handicapped individuals and individuals with limited English proficiency;

(7) Act as a clearinghouse for information on contracts or grants made by the States to carry out research, curriculum, and personnel development activities and on contracts or grants made by the Secretary under Title IV of the Act. The National Center shall make available to the States, in a reasonable manner, abstracts on research, curriculum development, and personnel development projects;

(8) Work with States, local educational agencies, and other public agencies in developing methods of planning and evaluating programs, including follow-up studies of program completers, so that public agencies can offer vocational education programs which are more closely related to the types of jobs available in their communities, States, and regions; and

(9) After consultation with the National Commission for Employment Policy, report annually to the Congress, the Secretary, and the Secretary of Labor on the extent, efficiency, and effectiveness of joint planning and coordination under the Act and the Job Training Partnership Act.

(c) The Secretary awards a grant annually for the operation of the National Center.

(Sec. 404; 20 U.S.C. 2404)

Subpart C—How Does One Apply to be the National Center?

§ 417.20 What must an application include?

An application must describe the financial contribution the public or private nonprofit university will make towards the establishment of the National Center.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)
(Sec. 404; 20 U.S.C. 2404)

Subpart D—How Does the Secretary Designate the National Center?

§ 417.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 417.31.

(b) The Secretary may award up to 100 points based on the criteria in § 417.31.

(c) The maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(Sec. 404; 20 U.S.C. 2404)

§ 417.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Required functions.* (40 points)

The Secretary reviews each application for information that shows that each of the required services and activities the applicant will conduct under § 417.10(b) will be of high quality and effective.

(b) *Management.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the management plan.

(2) The Secretary looks for information that shows—

(i) The applicant's philosophy of management for the National Center;

(ii) How the applicant will implement that philosophy of management in organizing the National Center, particularly with regard to the public or private nonprofit university with which it is associated;

(iii) The applicant's plan for managing the National Center's activities and personnel, including quality control procedures for its activities and products and procedures for monitoring compliance with timeliness; and

(iv) Adequate budgeting, accounting, and recordkeeping procedures.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use for the National Center.

(2) The Secretary looks for information that shows—

(i) The qualifications of the Director;

(ii) The qualifications of each of the other key personnel to be used for the National Center;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the National Center, as well as other information that the applicant provides.

(d) *Vocational education experience.* (10 points)

(1) The Secretary reviews each application for information that shows the institutional experience of the applicant.

(2) The Secretary looks for information that shows—

(i) The applicant's experience in conducting applied research and development activities in the field of vocational education of the type described in the Act; and

(ii) The applicant's capacity for conducting applied research and development activities in the field of vocational education of the type described in the Act.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the National Center will have an adequate budget and will be cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the National Center is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(g) *External relations.* (5 points)

(1) The Secretary reviews each application for information that shows that the National Center will have cooperative productive relationships with interested and affected entities.

(2) The Secretary looks for information that explains the National Center's future relationship to—

(i) The National Commission for Employment Policy;

(ii) The advisory committee established under section 404(c) of the Act; and

(iii) Personnel at the State and local level who are working to improve vocational education programs, materials and curricula.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)
(Sec. 404; 20 U.S.C. 2404)

Subpart E—What Conditions Must be Met by the National Center?

§ 417.40 Must the National Center have a Director?

The National Center shall have a Director who is appointed by the university associated with the National Center and is assisted by the advisory committee established under section 404(c) of the Act.

(Sec. 404(a)(3); 20 U.S.C. 2404(a)(3))

§ 417.41 What reports must the National Center submit to the Secretary?

(a) The National Center shall submit the following to the Secretary:

(1) Minutes of each meeting of the advisory committee established under section 404(c) of the Act, within 30 days after each meeting.

(2) Quarterly performance reports which described the progress, problems, and future plans for each significant activity of the National Center, within 30 days of the end of each quarter.

(3) Quarterly financial status reports (Standard Form 269), within 30 days of the end of each quarter.

(4) Monthly exception reports which describe—

(i) Any problems, delays, or adverse conditions which materially impair the ability of the National Center to accomplish its purposes, along with an explanation of any action taken or contemplated to resolve the difficulties; and

(ii) Any favorable developments which will permit the National Center to accomplish its purposes sooner, at less cost, or more effectively than projected.

(5) Ten copies of all substantive reports and products produced under the grant.

(6) An annual performance report which summarizes the accomplishments of each significant activity of the National Center during that grant year, within 90 days of the end of the grant year. (The annual performance report may be submitted in place of the

quarterly financial status reports under paragraph (a)(3) of this section for the fourth quarter of each year.)

(7) A final performance report which summarizes the accomplishments of each significant activity of the National Center during the five year award cycle, within 90 days of the end of that cycle.

(b) The annual reporting requirement in 34 CFR 75.720(b) does not apply to this part.

(Sec. 404; 20 U.S.C. 2404)

§ 417.42 What activities must be performed during the fifth year of funding?

During the fifth year of the award cycle, the National Center shall develop and remain prepared to implement a contingency plan for completing all substantive work by the end of the eleventh month of that year and transferring all projects, services, and activities to a successor during the twelfth month of that year.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 404; 20 U.S.C. 2404)

Note.—This appendix is to be published in the **Federal Register** with the final regulations but is not to be codified in the Code of Federal Regulations.

Appendix A—Summary of Comments and Responses

The following is a summary of the comments received on the notice of proposed rulemaking for the State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education published on January 25, 1985. Each comment is followed by a response that indicates why a change has been made or why no change is considered necessary. Specific comments are arranged in order of the sections of the final regulations to which they pertain.

Part 400—Vocational Education Programs—General Provisions

Section 400.4(b) Definitions.

Comment. Several commenters recommended that their particular organizations be added to the list of examples included in the definition of a "community-based organization" in § 400.4(b).

Response. No change has been made. As § 400.4(b) states, the list of organizations is merely illustrative. Further, as directed by the Act, this definition is taken directly from Section 4(5) of the Job Training Partnership Act.

Comment. Several commenters suggested changing the definition of "community-based organization" (CBO) to also include reservation Indians and tribal organizations.

Response. No change has been made. The definition of "CBO" is taken from Section 4(5) of the Job Training Partnership Act (P.L. 97–300) as required by the Act, and includes tribal governments and Native Alaskan groups.

Comment. One commenter recommended that § 400.4(b) be changed by striking the phrase "of demonstrated effectiveness" from the definition of "community-based organization".

Response. No change has been made. The Congress included the phrase "of demonstrated effectiveness" in the definition of community-based organization.

Comment. One commenter wanted to modify the definition of "cooperative education" by changing the word "jobs" to "paid employment."

Response. No change has been made. The definition is taken directly from section 521(7) of the Act. The term "jobs" has traditionally been interpreted to mean paid employment.

Comment. One commenter maintained that the definition of "criminal offender" in § 400.4(b) was probably unconstitutional and should be modified. At present, the term is defined as "any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender." The commenter noted that the American system of justice presumes the innocence of the person charged with a crime, until actually convicted. The commenter asked that the "or" before "convicted" be changed to "and."

Response. No change has been made. The statutory and regulatory definition does not confer criminal status, but merely identifies persons eligible to participate in the program. In addition, the suggested change could work to the disadvantage of a person who is charged with a crime and incarcerated pending trial. The current definition would allow such an individual to share in the benefits of this vocational education program.

Comment. Several commenters noted that the proposed regulations did not include definitions of "dependent care, day care, or child care services," and recommended that definitions be added.

Response. No change has been made. The Secretary believes States should have the discretion to define the terms, consistent with the purposes of the Act.

Comment. Several commenters recommended that § 400.4(b) include a definition of "demonstrated effectiveness" to be used in evaluating the eligibility of community-based organizations.

Response. No change has been made. Since the ability to demonstrate effectiveness is subject to a variety of local needs and conditions, it has been left to the judgment of the States to determine if community-based organizations meet the condition of "demonstrated effectiveness." Item 45 of the Conference Report provides guidance for States to use in making such determinations:

"When deciding which institutions can deliver services in a cost effective manner, consideration should be given to expenses, such as the depreciation or rental cost of buildings and administrative expenses for all institutions so that comparisons on the ability to provide services on a competitive basis is an equitable one." House Report No. 98–1129, 98th Cong. 2d Sess. p. 70.

Comment. Several commenters asked that the definition of "disadvantaged" be changed to specifically address students in a postsecondary institution. The commenters recommended special definitions, including the following:

(a) A new enrollee from a secondary educational agency whose basic academic or overall grade point average is below 2.0 or who fails to attain minimal academic competencies as established by the local educational agency.

(b) Grade point average of less than 2.0 on a 4.0 scale in those courses designated for the occupational training program during the current and/or immediately previous enrollment periods in a postsecondary institution.

(c) Students with a record of repeated withdrawal from approved postsecondary courses.

(d) Secondary educational program dropout without a high school diploma or G.E.D.

Response. No change has been made. The criteria in the definition of "disadvantaged" are sufficiently broad that States may adjust the criteria to apply to either secondary or postsecondary settings.

Comment. Several commenters objected to the definition of "disadvantaged" as it applies to academically disadvantagement as being too restrictive. Some commenters felt that the "25th percentile" rule should be changed to the "40th percentile" so as to agree with practice under Chapter I. Others recommended a change to the 50th percentile. Still other commenters suggested that the definition not be changed.

Response. No change has been made. The language of the regulation is based on the intent of Congress as expressed in Item 246 of the Conference Report. While it is true that many local

educational agencies use the 40th percentile as an eligibility cut-off under Chapter I, many other local educational agencies do not. Finally, the Chapter I program is unlike the State basic grant program under the Act in several respects. For example, unlike Chapter I, under the State basic grant, the percentile selected would directly affect the allocation of funds to local educational agencies and the eligibility of students to participate in programs. Several other points should be noted—

(1) A State must use one or more of the three criteria contained in the definition;

(2) In the case of the standardized achievement or aptitude ranking, the State may use some cut-off point that is at or below the 25th percentile but not one which is greater than the 25th percentile;

(3) In the case of the grade-point average, the State may use some cut-off point that is less than 2.0, but not one that is 2.0 or higher; and

(4) Individuals who have limited English proficiency, as well as those who are dropouts from, or identified as potential dropouts from, secondary school are automatically defined as "academically disadvantaged," regardless of how they may score on the measures described under items (2) and (3) above.

Comment. One commenter pointed out that Item 246 of the Conference Report (in addressing the definition of "academically disadvantaged") calls for latitude in the application of these standards, allowing the State ". . . to select from among these standards, depending on the best means for determining this measure for their respective State." (House Report No. 98–1129, 98th Cong. 2d Sess. p. 100). The commenter asked if including the Report language in the regulations would serve to make congressional intent clear on this matter.

Response. No change has been made. The definition of "academically disadvantaged" does permit States to select from the standards promulgated to define this term.

Comment. Several commenters recommended that the Secretary prescribe additional criteria to be used in defining an "economically depressed area," such as a heavy concentration of Chapter 1 students or a heavy concentration of students receiving free and reduced-priced lunches.

Response. No change has been made. The Secretary does not believe that additional, and possibly restrictive, criteria are warranted at this time. As these and other criteria are proposed by States in their State plans, they will be evaluated by the Secretary on a case-by-case basis as defining an "economically depressed area." However, the Secretary believes the two criteria used as examples above may be appropriate in some instances.

Comment. Several commenters asked if the definition of "economically depressed area" should preclude the possibility that the entire State itself, rather than just areas within the State, be considered an economically depressed area.

Response. No change has been made. Section 521(13) of the Act defines "economically depressed area" as an area "within the State." The focus of section 113(b)(5) of the Act is not whether an entire State might be economically depressed in comparison with other States, but rather, which eligible recipients within the State need more funds to operate programs effectively, compared to less needy eligible receipients within the same State.

Comment. One commenter suggested eliminating three of the five standards in § 400.4(b) for judging economic disadvantagement in the definition of "economically disadvantaged family or individual," on the basis of possible non-availability of data.

Response. No change has been made. The definition of "economically disadvantaged family or individual" permits a State to choose from the five possible standards in judging economic disadvantagement. A State should consider the lack of data in determining which of the five standards it will use to judge economic disadvantagement.

Comment. One commenter inquired as to the statutory authority for the definition of "economically disadvantaged family or individual" in § 400.4(b) of the regulations, pointing out that section 521(20) of the Act seems to require the Secretary to determine such families or individuals on the basis of low-income "according to the latest available data from the Department of Commerce." The definition in § 400.4(b) permits a State to select one or more of the standards of low income prescribed by the Secretary that it will apply for the purposes of its State program. However, not all of these standards are based on Department of Commerce data.

Response. No change has been made. The Secretary believes the definition in § 400.4(b) is consistent with the intent of Congress. The definition of "economically disadvantaged family or individual" in section 521(20) of the Act is substantially similar to the definition of "low income family or individual" in the Vocational Education Act (VEA) of 1963. Under the VEA, the term was used in connection with the identification of areas with large concentrations of such families or individuals (not the identification of families or individuals themselves) for the purposes of fund distribution. The Department's well-established administrative practice under the VEA definition of "low income family or individual" was to permit the use of substitute data, such as Aid to Families with Dependent Children data and data on school lunch program recipients, where Department of Commerce data either did not exist or for some other reason could not be meaningfully applied. Thus, the definition of "economically disadvantaged family or individual" under the Act continues this history of administrative flexibility.

The statutory term "economically disadvantaged family or individual" has its principal application in the statutory allocation formulas for basic State grant funds reserved for handicapped individuals and disadvantaged individuals. Under section 203 of the Act those funds are allotted among eligible recipients partly on the basis of actual enrollments of economically disadvantaged individuals. The use of economically disadvantaged enrollments to allocate funds reserved for handicapped and disadvantaged individuals was a feature of the Senate bill that was adopted in conference. With respect to the intended meaning of the term "economically disadvantaged family or individual" for this purpose, the Senate Report acknowledged the need for administrative flexibility and sanctioned the State practice of using existing student counts, such as eligibility for free or reduced-price school lunches or Pell Grant recipients (Senate Report No. 98–507, 98th Cong. 2nd Sess. at 16). Thus, the definition in § 400.4(b) is consistent with this important aspect of the legislative history of the Carl D. Perkins Act.

Finally there is the question of administrative feasibility. While it would be possible for the Secretary to establish inflexible qualifying income levels that are based on Department of Commerce data for families and students at the secondary and postsecondary levels, every participating local educational agency or postsecondary educational institution would have to canvass their enrollments every year to identify students at or below the prescribed income level for the purpose of fund allocation. Clearly, this would be a substantial administrative burden upon eligible recipients, one that might discourage their participation in the program, and

an intrusive practice with respect to intended program beneficiaries. There is no legislative history which suggests Congress intended to impose such burdens on eligible recipients, students, or their families. Moreover, these potential difficulties, as well as the risk of Federal intrusiveness, are eliminated by permitting the States and eligible recipients to utilize, on a uniform basis, the income data that is already available to them.

Comment. One commenter suggested that however a State chooses to define an "economically disadvantaged family or individual," such criterion or criteria should be applied consistently throughout the State.

Response. No change has been made. The phrase "on the basis of uniform methods," in the definition, indicates that a State must use the same measures to identify low income families or individuals served by eligible receipients.

Comment. A commenter pointed out that § 400.4(b), in listing the options from which a State might choose in developing its own definition of the term "economically disadvantaged family or individual," mixes both receipt of benefits with eligibility to receive benefits. The commenter asked that this be clarified.

Response. No change has been made. The criterion involving the Pell Grants continues to refer to a person's receipt of a Pell Grant or comparable State program of need-based financial assistance. Eligibility determinations under such programs can be complex and time-consuming. It is unlikely that State or local officials administering programs under the Act could make such determinations in the abstract.

Comment. Several commenters suggested that the definition of "eligible recipient" be changed to include community-based organizations for the purposes of the Act except when they are prohibited from being eligible recipients by specific language in the regulations.

Response. No change has been made. Community-based organizations are not included in the statutory definition of eligible recipient. Although community-based organizations are eligible to receive funds directly from the State under § 401.55(c), they do not become eligible recipients, as defined in § 400.4, when such an award is made.

Comment. One commenter expressed the view that State-recognized consortia of high school be recognized as eligible recipients under the Act.

Response. No change has been made. If such consortia constitute local educational agencies, as defined in the Act, they are eligible recipients under the Act.

Comment. A number of commenters recommended that the definition of "handicapped" in § 400.4(b) be modified because they were under the impression that persons with multiple handicaps are excluded from the definition.

Response. A change has been made. The definition of "handicapped" in § 400.4(b) now includes "deaf-blind" and "multi-handicapped," and is now substantially the same as the definition of "handicapped children" in 34 CFR 300.5(a) applicable to Part B of the Education of the Handicapped Act, as amended.

Comment. Several commenters were concerned that the definition of "handicapped" in § 400.4(b) referred to "special education assistance" rather than to "special educational assistance."

Response. No change has been made. Section 521(15) of the Act, as did section 195(7) of the Vocational Education Act, refers to students who cannot succeed in regular vocational education programs without "special education assistance." The Secretary believes that the principal purpose of the statutory and regulatory definition is to identify the individuals who are eligible to be served with funds reserved for the handicapped under Title II of the Act and not to govern the types of supplementary or additional services that are provided or the administrative responsibilities for such services at the State level.

Comment. One commenter questioned why the definition of "handicapped" refers to "speech or language impaired" when the statute uses the term "speech impaired" only.

Response. No change has been made. The term "language impaired" was added to make the definition of "handicapped" consistent with the definition of the term in the Education of the Handicapped Act. Item 248 of the Conference Report shows that Congress intended the definitions to be consistent. House Report No. 98–1129, 98th Cong. 2d Sess. p. 100.

Comment. One commenter recommended that the definition of "handicapped" be extended to include language from Item 248 of the Conference Report which says:

"It is the managers' intent that handicapped individuals in secondary institutions fall under the definition of handicapped individual contained in the Education of the Handicapped Act, and therefore are enrolled in special education and have an individualized education program. Handicapped individuals enrolled in postsecondary institutions, who fall under the definition contained in section 521 of this Act, need not meet the criteria of being enrolled in special education."

Response. No change has been made. The Secretary interprets the language of the Conference Report to mean that to be eligible for services supported by funds reserved for handicapped individuals under Title II of the Act, handicapped individuals who are enrolled in postsecondary institutions need not have an individualized education program or be enrolled in a special education program. However, the Secretary does not believe it is necessary to include additional regulatory language in the definition.

Comment. One commenter wanted the definition of "limited English proficiency" expanded to include Hawaiian students.

Response. No change has been made. The definition is taken directly from section 521(18) of the Act which incorporates the definition in section 703(a)(1) of the Elementary and Secondary Education Act. The definition does cover Hawaiian students whose native language is a language other than English or who have sufficient difficulty speaking, reading, writing, or understanding the English language.

Comment. One commenter suggested that the definition of "local educational agency" be broadened to specifically include elementary or secondary schools on Indian Reservations operated directly by the Bureau of Indian Affairs or community controlled schools funded by the Bureau of Indian Affairs through contracts under the Indian Self-Determination Act.

Response. No change has been made. The definition of local educational agency is statutory.

Comment. One commenter noted that section 521(22) of the Act (definition of private vocational training institutions) requires the Secretary to publish a list of nationally recognized accrediting agencies or associations and State agencies which the Secretary determines to be reliable authority as to the quality of education or training afforded. The commenter asked if such a list has been published.

Response. No change has been made. The Secretary has published such a list which is entitled *Nationally Recognized Accrediting Agencies and Associations.*

Comment. One commenter suggested revisions to the definition of "vocational student organizations" to allow students who have been enrolled, but are not currently enrolled in vocational education programs, to continue to participate in the vocational student organization in keeping with the

organization's charter, by-laws, and constitution.

Response. No change has been made. The definition is statutory.

Comment. One commenter was pleased that the regulations did not define the terms "work-study," "work experience," and "work-site learning." Other commenters recommended that the term "marketable skills" in § 401.55(a) be defined.

Response. No change has been made. Since the Act does not define the terms, the Secretary believes the States should have the discretion to define the terms, consistent with the purposes of the Act.

Comment. Several commenters suggested adding language which would define occupationally specific program areas. For instance, commenters suggested definitions for modern agricultural arts and industrial arts.

Response. No change has been made. Adding a definition for each occupationally specific program area could prove unduly restrictive. Determinations about occupational program-specific definitions are appropriately left to the States.

Part 400—General

Comment. Several commenters asked that section 3(a) of Pub. L. 98–524 (Transition Provisions) be administratively interpreted to allow States flexibility in program administration for program year 1985–86. Other commenters felt that section 3(a)(2) of Pub. L. 98–524 provides a legal basis for States to phase in the application of the additional or supplemental cost requirement as it applies to separate programs for handicapped and disadvantaged students under Part A of Title II of the Act. Other commenters recommended that the regulations include a transition period in order to provide for the phasing in of the "non-maintenance" requirement for certain programs authorized by Title II, Part B of the Act.

Response. No change has been made. The Secretary recognizes the flexibility afforded States during the period of transition under section 3(a)(2) of Pub. L. 98–524, but believes that detailed and, possibly restrictive, regulations are not warranted. The Secretary believes the transition authority is best implemented on a case-by-case basis. Additional guidance regarding the use of the carryover funds and current year funds under section 3(a) of Pub. L. 98–524 is contained in Appendix B.

Comment. One commenter suggested that the regulations should require parental consultation in the design and implementation of programs, as authorized by section 427 of the General Education Provisions Act and should set forth criteria designed to encourage such participation.

Response. No change has been made. While the Secretary has authority to promulgate regulations designed to encourage parental participation in the administration of programs, and encourage State and local program administrators to do so whenever appropriate, the Secretary does not believe such regulations are warranted at the present time. The Secretary believes that these regulations provide adequate opportunities for parental involvement. For example, § 401.18(b) requires States to hold public hearings on the State plan during its development so that intended organizations and groups have an opportunity to present their views and make recommendations. In addition, at the local level, § 401.41(c) requires eligible recipients to make their local applications available for review and comment by all interested parties. The Secretary wishes to avoid unnecessarily detailed and inflexible requirements regarding parental participation. However, should these regulations not result in appropriate involvement by parents, the Secretary will consider additional, more prescriptive requirements.

Part 401—State Vocational Education Program

Section 401.11 State board responsibilities.

Comment. One commenter felt that § 401.11(b) should be changed to make it clear that the State Board for Vocational Education is the "ultimate authority in the development and evaluation of the State's program of vocational education."

Response. No change has been made. Section 401.11 of the regulations reflects the language of the Act and lists the non-delegable responsibilities of the State board which include program development and evaluation. Furthermore, § 401.10 stipulates that the "State Board of Vocational Education" shall be the "sole State agency responsible for the administration or the supervision of the State's vocational education program."

Comment. Several commenters proposed that § 401.11(f) include more guidance to State boards on matters such as what constitutes "necessary" procedures to implement State-level coordination with the State job training coordinating council under JTPA.

Response. No change has been made. The Secretary does not believe additional regulations are warranted. Each State has its own unique needs and conditions which affect such procedures. The States are free to develop their own methods of coordination which are most appropriate to their respective circumstances.

Comment. One commenter suggested that the State board should, among its other principal responsibilities, be given the task of monitoring the compliance of eligible recipients and other with civil rights laws.

Response. No change has been made. The non-delegable responsibilities of the State board are established by section 111(a)(1) of the Act. However, neither the Act nor the regulations prohibit the State board from carrying out additional related responsibilities.

Section 401.12 Additional responsibilities of the State board.

Comment. One commenter recommended a modification to § 401.12(a) which requires the State board to provide private industry councils formed under section 102 of JTPA with a listing of all programs assisted under the Act. The requested modification involved the timing of this requirement and the need for this listing to be repeated on a regular basis. Another commenter suggested that the regulations provide guidance on how the list of programs should be structured.

Response. A change has been made. Congress intended that vocational education programs be closely coordinated with training and retraining programs under other Federal statutes such as the JTPA. Therefore, § 401.12(a) now clarifies that the listing of programs under the Act given to private industry councils be kept current so that those councils have an up-to-date understanding of the programs assisted under the Act. This would require States, for example, to update the program listing whenever State plans are approved or when other significant funding decisions are made. The Secretary does not believe that more detailed, prescriptive requirements regarding program lists are warranted.

Comment. One commenter suggested replacing the requirement in § 401.12(b)(3)(ii) that support for technical committees come from the State's portion of the basic State grant allotment (no more than 20% of the total allotment) with ". . . a State *may* consider funds used to support technical committees as part of the State's portion." The commenter suggested that the change would allow States to delegate responsibility for technical committees to eligible recipients with expertise in curriculum development,

thereby avoiding using funds for State administration.

Response. No change has been made. Section 111(d) of the Act clearly imposes the requirement to establish technical committees upon State boards. As such, support funds must be counted against the maximum of 20 percent of the allotment allowed for State activities.

Comment. One commenter asked why § 401.12(b)(1) of the regulations requires States to establish "at least two technical committees" while section 111(d) of the Act uses the phrase "a limited number of technical committees." The commenter also asked why a number was specified, and suggested the number be left up to the States.

Response. No change has been made. Section 111(d) of the Act clearly requires that more than one technical committee be established. To clarify this requirement, the Secretary specified the least restrictive definition of this requirement which is "at least two technical committees." Apart from this interpretation of the Act, the States are free to establish whatever number of committees they deem appropriate.

Comment. Several commenters wanted a provision added to § 401.12 that would require the State board to ensure that all funds spent under the authority of § 401.13(a), including expenditures for the sex equity program and the program for single parents and homemakers, would be spent in a manner consistent with the requirements of the Act. The commenters also wanted language added to § 401.12 that would require the State board to establish an oversight and monitoring system to implement this requirement.

Response. No change has been made. No additional regulatory requirements are necessary. The State plan contains assurances that the State board will comply with all the requirements of Titles, I, II, III, and V of the Act, including those identified by the commenters, as well as a description of the planned uses of Federal funds. A separate administrative monitoring system, in addition to whatever administrative management system the State establishes to ensure compliance with the Act, would be burdensome and unnecessary.

Section 401.13 Duties of the sex equity coordinator.

Comment. Several commenters requested that § 401.13 include a more specific explanation of the role and responsibilities of the sex equity coordinator.

Response. No change has been made. The Secretary believes that the statute and these regulations provide sufficient guidance, and that additional regulations, which might inappropriately limit State flexibility, are not warranted. Section 111(b)(1) of the Act and § 401.13(a) of the regulations require the State to "assign one individual within the appropriate agency established or designated by the State board . . . to administer vocational education programs within the State, to work full time to assist the State board" to carry out a variety of activities intended to eliminate sex discrimination and sex stereotyping in vocational education programs. In addition, this full time individual must administer the program for single parents and homemakers and the sex equity program authorized by Title II of the Act. The Secretary believes that Congress intended the States to have considerable latitude in defining the exact organizational placement and responsibilities of this individual with respect to the performance of his or her mandated duties, and these regulations reflect that intended latitude.

Comment. One commenter requested clarification on the time frame for carrying out activities listed in § 401.13(a). The commenter particularly wanted to know whether the activities are required on an annual basis.

Response. No change has been made. The activities listed in § 401.13(a) are part of a State's continuing administrative activities, as set forth in its State plan. Thus, the activities must be performed during the period covered by the State plan..

Comment. One commenter recommended § 401.13(a)(1) be revised to permit the State to determine the individual who should administer the single parents and homemakers program.

Response. No change has been made. Section 111(b)(1)(A) of the Act specifically requires that the "sex equity coordinator" administer the single parents and homemakers program.

Comment. Several commenters suggested adding a requirement that the "sex equity coordinator" be responsible for supervising staff hired to assist in monitoring, oversight, and disbursement of funds for programs serving single parents and homemakers and those designed to eliminate sex bias and stereotyping.

Response. No change has been made. While section 111(b) of the Act refers to the "sex equity coordinator" as being assigned "within the appropriate agency established or designated by the State board . . . to administer vocational education programs," the Secretary does not believe that regulations dealing with such details as supervisory responsibilities are warranted. However, under the Act, the sex equity coordinator remains responsible for administering the sex equity program and the program for single parents and homemakers under Title II of the Act.

Comment. Several commenters suggested requiring the State board to ensure that funds for programs administered by the "sex equity coordinator" be used for the purposes and in the manner described in § 401.13(a) (1) through (8), which describes personnel requirements regarding the elimination of sex discrimination and sex stereotyping.

Response. No change has been made. The "sex equity coordinator" administers the programs within the State that serve single parents and homemakers and the programs designed to eliminate sex bias and stereotyping under sections 201 (f) and (g) of the Act, respectively. The uses of funds for these two programs are described in §§ 401.55 and 401.56 of the regulations. The suggested change would be inconsistent with the Act because the activities described in § 401.13(a) (1) through (8) are to be supported by the minimum $60,000 reserved under § 401.13(b).

Comment. Several commenters suggested adding a new paragraph to § 401.13 which would give the "sex equity coordinator," at the discretion of the State board, authority to administer all funds for vocational education programs serving single parents and homemakers and programs designed to eliminate sex bias and stereotyping under any provision of the Act where women are served, including Consumer and Homemaking and Industry-Education Partnership Programs under Title III of the Act.

Response. No change has been made. The regulations reflect the intent of Congress that the "sex equity coordinator" administer the programs described in sections 201 (f) and (g) of the Act which serve single parents and homemakers and those designed to eliminate sex bias and stereotyping as well as work full time to assist the State board to eliminate sex bias and stereotyping in vocational education. To the extent that additional programmatic requirements are fully consistent with these statutory requirements, these regulations do not preclude them. For example, § 401.103(b) authorizes the sex equity coordinator to administer programs under Title III, Part C for single parents or homemakers.

Comment. One commenter asked why § 401.13(b) requires the $60,000 minimum for eliminating sex discrimination and sex stereotyping to be reserved in a program year rather than a fiscal year. The commenter also asked the rationale for adding the phrase "including the provision of necessary and reasonable staff support."

Response. No change has been made. The substitution of "program year" for "fiscal year" in the proposed regulations was made to make funding, program, and reporting cycles consistent throughout the regulations. However, the reference to program year in the final regulations has been removed because it is not needed to explain that at least $60,000 must be reserved for the activities of the "sex equity coordinator" from each basic State grant allotment. The phrase "including the provision of necessary and reasonable staff support" was added in order to make clear that funds reserved for the "sex equity coordinator" may be used for his or her support staff.

Section 401.14 State council—establishment.

Comment. One commenter reasoned that, since the definition of "State board" in § 400.4(b) and other regulations (e.g., § 401.10) referred to the "State board of vocational education," then § 401.14, concerning appointment of the State Council, should be revised to substitute "State board of vocational education" for the "State board of education."

Response. No change has been made. A review of the legislative history of the Act, including Item 178 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 89, demonstrates that Congress intended the conditional appointment authority to be vested in the State board of education.

Comment. One commenter was concerned that § 401.14 does not make it sufficiently clear that the State council was intended to be an independent organization, free of programmatic or administrative control by other State boards, agencies, and individuals. This commenter implied that at least one State was contemplating assigning the State council's functions, or perhaps its staff, to some other agency.

Response. No change has been made. Section 401.16(c)(1)(ii) clearly states that State councils are to carry out their functions independent of programmatic and administrative control by other State boards, agencies, and individuals. A further indication of the Council's independence is found in § 401.16(c)(2) which provides that the expenditure of funds awarded to State councils are solely determined by the State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual.

Comment. Several commenters were concerned that, while the Act provides for an orderly transition from the National Advisory Council on Vocational Education to the National Council on Vocational Education (Title V, section 3(b)(2)), there is no similar "transition opportunity" regarding State Advisory Councils on Vocational Education. These commenters felt that the Congress meant to "maintain continuity" from one organization to the other, at both the national and State levels.

Response. No change has been made. The Secretary does not believe that detailed, and possibly inflexible, regulations governing the transition from State Advisory Councils for Vocational Education under the Vocational Education Act to State Councils on Vocational Education under the Carl D. Perkins Act are warranted. As a practical matter, the transition to State councils under the Carl. D. Perkins Vocational Education Act commenced long before the effective date of these regulations, as part of the broader effort States made to prepare for the operation of programs under that Act. Moroever, under the Act, State councils are intended to function with a great degree of independence. With respect to the transfer and disposition of property and records, of course, applicable Federal and State law does apply.

Section 401.15 State council—membership requirements.

Comment. One commenter suggested that the membership requirements of the State council be changed to mandate representation of specific groups with significant numbers of economically disadvantaged persons.

Response. No change has been made. The membership requirements of the State council are statutory. However, § 401.15(a) does require that each State council be broadly representative of citizens and groups within the State having an interest in vocational education.

Comment. One commenter suggested that, since State council members appointed under the Vocational Education Act had been appointed to staggered terms, the regulations for the Carl D. Perkins Act should stipulate this same arrangement.

Response. No change has been made. The Vocational Education Act mandated that members of State advisory councils be appointed to staggered terms; the Carl D. Perkins Act carries no such requirement. However, the State has the option of appointing its new State council membership in this way. If council members are appointed to staggered terms, the appointing authority must maintain a duly certified State council, as required by the Carl D. Perkins Act, throughout the State plan period.

Comment. Several commenters recommended that § 401.15 be revised to prohibit State board members or State agency employees who are directly involved in State administration of vocational education from serving as members of the State council.

Response. No change has been made. The Secretary does not believe that detailed regulations regarding the membership of the State councils are warranted. However, the Secretary believes that the appointments mentioned in the comment may be inconsistent with the intended independence of the State council.

Comment. One commenter requested that § 401.15(c) be revised to name the State Apprenticeship and Training Councils as a specific source from which to obtain members on the new State councils.

Response. No change has been made. Section 401.15(c) repeats the wording of the Act which stipulates that, "the State shall give due consideration to the appointment of individuals who serve on a private industry council under JTPA, or on State councils established under other related Federal programs." The State Apprenticeship and Training Council is such a State council, and it would be appropriate for members of this council, among others, to be considered for membership on the State Council on Vocational Education.

Section 401.16 State council—responsibilities.

Comment. One commenter asked why § 401.16(b)(1) states that the State council and the State board must meet while the State plan is being developed, while section 112(d)(1) of the Act requires that such meeting be held during the "planning year."

Response. No change has been made. The Act uses a variety of undefined terms concerning planning and program operations. These include "planning year," "planning period," and "planning program periods." In order to avoid confusion over these terms and carry out the intent of the Act that the Council be involved in the planning process, the regulations require that the meeting take place while the State plan is being developed.

Comment. One commenter recommended that § 401.16(b)(1) be modified by dropping the phrase "or its representative" because the development of the State plan is a non-delegated responsibility of the State board.

Response. No change has been made. The phrase "or its representatives" appears in section 112(d) of the Act. The statute and regulations do not contemplate a delegation of functions, but merely recognize that often State board members do not personally participate in meetings where State plan provisions are drafted or developed.

Comment. One commenter noted that neither the Act nor the proposed regulations indicate to whom the State Council on Vocational Education should direct its reports of fiscal and other analyses or studies mandated in § 401.16(b) (3) and (6). The commenter recommended that additional guidance be provided.

Response. No change has been made. The Act does not clearly indicate to whom the specified analyses should be directed, and the Secretary does not believe detailed regulations are warranted. It is apparent from the statute, however, that the required analyses are intended to stimulate the development and improvement of vocational education programs within the State and that this purpose would be frustrated unless the analyses are distributed to those organizations (including the State board) and individuals within the State that are interested in, or responsible for, doing so.

Comment. One commenter urged that § 401.16(b)(8) specifically require that the report to the State board by the State council on the extent to which special populations are being provided with "equal access to quality vocational education programs" correspond to the criteria in § 401.18(c)(4).

Response. No change has been made. While it would be appropriate in some cases to apply the criteria as set forth in § 401.18(c)(4) to the report requirement set forth in § 401.16(b)(8), the Secretary does not believe inflexible regulations are warranted.

Comment. One commenter indicated that § 401.16(b)(9)(ii) requires the State councils to issue their reports of findings and recommendations in writing. The commenter asked if this meant that no oral reports or recommendations can be made. The commenter also asked if there were a possibility that this requirement might inhibit informal communications between the State councils and the groups with which they must work.

Response. No change has been made. The Secretary believes that the requirement that the mandated reports be in writing is implicit in the statute. That requirement in no way restricts informal meetings and discussions that are usually conducted verbally.

Section 401.17 State plan—requirements.

Comment. One commenter pointed out that § 401.17(b) requires States to carry out programs under the Act on the basis of program years which coincide with program years under JTPA while the statute requires coterminous "planning program periods" for both Acts. The commenter asked why the language was changed.

Response. No change has been made. The term "program year" was used instead of "planning program periods" in order to use language which is consistent with the "program year" planning requirements of JTPA.

Section 401.18 State plan—development.

Comment. One commenter recommended that § 401.18, pertaining to the development of the State plan, be revised to require each State to consider the role of prevocational education as a contributor to subsequent enrollment in vocational education programs. The commenter felt that the regulations should require each State plan to provide for "specific treatment of each vocational service area's (including Industrial Arts) contribution to the achievement of each State's overall objectives for vocational education."

Response. No change has been made. Relative emphases on prevocational and occupationally specific instructional programs are decisions that should be left to the State. The Act does not impose such a requirement and the Secretary believes that within the requirements of the law, States should be free to develop their State plans according to their own needs.

Comment. Several commenters asked that § 401.18(a) be changed to require States to involve community-based organizations (CBOs) in the development of State plans. The commenters felt that both State boards and State councils should be required to collaborate with CBOs.

Response. No change has been made. The law and regulations adequately address the commenters' concerns and the Secretary does not believe that additional regulatory requirements are warranted. Section 401.18(b) requires that the State board "conduct public hearings in the State, after appropriate and sufficient notice, for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations." Thus, CBOs would have an opportunity to comment as part of the State plan development process at one of the statewide public hearings.

Comment. One commenter pointed out that § 401.18(b) of the regulations stipulates that the State shall conduct "at least two public hearings" to develop its plan while section 113(a)(2)(B) of the Act uses the term "hearings" without assigning a number. The commenter proposed the possibility that specifying a number might have a "chilling effect" and discourage States from holding more than two meetings.

Response. No change has been made. As with the number of technical committees which must be established, the Act speaks to the requirement for public hearings in the plural. The Act clearly requires that more than one hearing take place. The least restrictive interpretation of more than one is "at least two," and the Secretary does not believe that clarifying the statute in this regard will discourage States from holding a greater number of hearings.

Comment. Several commenters recommended that States include in their State plans the various needs assessments required by section 113(a)(3) of the Act and § 401.18(c) of the regulations

Response. No change has been made. Section 113(b)(2) of the Act stipulates only that each State plan shall "describe how the State did carry out the provisions of section 113(a)(3)." This refers to the methods or procedures used, not the findings that resulted from employing such methods or procedures. However, a State may decide to include in its State plan a summary of the findings, as support for its proposed use of Federal funds.

Comment. Several commenters pointed out that Item 213 in the Conference Report says: "In assessing the capability of programs for special needs groups and the general vocational student population in meeting general occupational skills and improvement of academic foundations, States shall assess whether the program use problem-solving and basic skills (including mathematics, reading, writing, science, and social studies) in a vocational setting. It is the intent to give a student experience in and understanding of all aspects of the industry in which the student is preparing to enter." (House Report No. 98–1129, 98th Cong. 2d Sess. p. 93). The

commenters recommended that this language be included in the regulations.

Response. No change has been made. In essence, the regulations in § 401.18(c) already reflect the Conference Report language, and the Secretary does not believe that additional regulatory language is warranted.

Comment. One commenter requested § 401.18(c)(3) be changed to require that the State board's assessment of the access of special needs groups to vocational education should include an assessment prepared by the personnel described in § 401.13.

Response. No change has been made. The regulations reflect the language of the Act and the Secretary does not believe that additional regulatory requirements regarding how the mandated assessments are performed are warranted. It should be noted that § 401.13(a)(4) requires the sex equity coordinator to submit to the State board an assessment of the State's progress in overcoming sex discrimination and stereotyping. The State board may utilize this assessment in complying with § 401.18(c)(3).

Section 401.19 State plan—content.

Comment. One commenter asked why maintenance of effort was specifically included in § 401.19 (a)(1) and (b)(8).

Response. No change has been made. The maintenance of effort requirement was specifically identified in § 401.19(a)(1) of the regulations in order to make clear to States that the general assurance requirement set forth in section 113(b)(1) of the Act included maintenance of effort. Section 401.19(b)(8) of the regulations makes clear that the Department may, at its discretion, require States to document their assurance that fiscal effort has been maintained.

Comment. One commenter pointed out that the intent of Congress as reflected in Item 226 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 96, was that awards by the State to State-operated schools or institutions should be counted as part of the 80 percent minimum local share. The commenter felt that the regulations did not make this point clear.

Response. A change has been made. Language has been added in § 401.19(a)(4) that makes clear that awards by the State to State-operated schools or institutions are counted as part of the 80 percent minimum of Title II funds that must go to eligible recipients.

Comment. One commenter felt that the requirement in § 401.19(a)(5) that 100 percent of the funds for handicapped and disadvantaged individuals be allotted to eligible recipients on a formula basis restricts the function of State agencies in adjusting programs, services, and activities to meet the needs of target groups.

Response. No change has been made. The requirement regarding the distribution of funds reserved for handicapped and disadvantaged individuals is statutory.

Comment. Several commenters felt that the statement in § 401.19(a)(6)(ii) "That in serving homemakers the State will give special consideration to homemakers who because of divorce, separation, or the death or disability of a spouse must prepare for paid employment" could be interpreted to mean that funds under section 201(f) of the Act could be used for programs and services designed to serve only such displaced homemakers. The commenters proposed that the regulations state that these funds may also be used for programs and services designed to serve only single parents.

Response. No change has been made. Section 113(b)(7) of the Act and § 401.19(a)(6)(ii) of the regulations merely require the State to give special consideration to the needs of certain displaced homemakers when funding programs under section 201(f) of the Act. Neither the Act nor the regulations authorizes the State to ignore the needs of other homemakers on single persons, and programs designed for such persons are authorized.

Comment. One commenter urged that the assurance in § 401.19(a)(8) concerning evaluation by the State board be more detailed, to the extent that all States would be required to use a single, common evaluation design. The commenter also recommended several additional evaluation criteria. Other commenters recommended different criteria, according to their own convictions or preferences.

Response. No change has been made. If the purpose of these State board evaluations were to compare programs and accomplishments in each State against the other States, there would be greater justification for this approach. However, the purpose of this in-State evaluation is to identify those programs which are effective and which can aid in program improvement. Each State is encouraged to tailor an evaluation system to meet its own needs and circumstances, building upon the minimum three measures required by the Congress in section 113(b)(9)(A) of the Act. The Secretary will provide technical assistance for these purposes as authorized under section 114(c)(1) of the Act.

Comment. One commenter recommended that § 401.19(a)(9) be expanded to include the following: "These appropriate measures shall evaluate the effectiveness of these programs according to the disability groups enumerated in the definition of 'handicapped': mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired persons, and persons with specific learning disabilities. Measures which only use the undifferentiated category of 'handicapped' shall be deemed not appropriate under these regulations."

Response. No change has been made. There is no support in the statute or its legislative history for such a requirement. States are provided the flexibility to determine the most appropriate evaluative measures.

Comment. Several commenters recommended that §401.19(a)(10) clarify whether 20 percent of the eligible recipients or 20 percent of the programs must be evaluated each program year. Some commenters wanted to know if all programs must be evaluated during the five-year period, or if some programs could be evaluated twice in order to meet the 20 percent requirement. Other commenters recommended that the regulations clarify that the evaluation requirement applies only to projects under the Act.

Response. A change has been made. Language has been added to § 401.19(a)(10) which clarifies that each program year a State must evaluate all projects, services, and activities of at least 20 percent of the participating eligible recipients supported under the Act in order that by the end of a five-year period, every local project which has received Federal funds will have been evaluated.

Comment. One commenter suggested that § 401.19(a)(10) be changed to require States to use a statistically reliable process to determine the number of programs, services and activities to be evaluated in the twenty percent of the eligible recipients to be evaluated annually.

Response. No change has been made. Item 231 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 97, makes clear that Congress intended each local project, service, or activity supported under the Act to be evaluated. To the extent that certain projects can be fairly evaluated using a statistically valid sampling process, the regulations do not preclude such an approach.

Comment. One commenter felt that the regulations should require the State plan to include provisions for curriculum and curriculum materials development by occupational areas for secondary schools.

Response. No change has been made. There is no statutory authority for such a requirement. In addition, §401.19(a)(11) requires States to fund curriculum development programs that further the goals identified in the State plan, and § 401.60(b)(2) (Proposed § 401.60(a)(8)) permits the State to use Title II, Part B funds for such development. The definition of "vocational education" in § 400.4(b) includes the various occupational fields. Accordingly, States have ample authority to pursue curriculum development in those areas in which there is a need.

Comment. Several commenters suggested that more specific directions be given in § 401.19(a)(13) on how cooperation between the State board and the State council might best be achieved.

Response. No change has been made. As a general matter, while the Secretary encourages maximum cooperation between State boards and State councils, the Secretary does not believe detailed, prescriptive regulations are appropriate. In addition, these regulations already provide for extensive coordination. For example, § 401.16(b)(1) provides that the State council must be closely involved in the development of the State plan, while § 401.16(b)(2) requires the councils to advise their respective State boards and make reports to the Governor, the business community, and the general public, on policies affecting vocational education. In addition to these general procedural safeguards, § 401.20(b) stipulates that, if the State council files any objection to the State plan for any reason, the State board must respond to such objection in submitting the plan to the Secretary. Regarding Part E of Title III of the Act, § 401.19(a)(22)(ii) requires an assurance in the State plan that projects assisted under that part will be developed with the active participation of the State council. Finally, regarding fiscal, programmatic, evaluative, and other data that the State council needs from the State board in order to carry out its various functions, section 113(b)(13) of the Act requires that the State plan submitted by the State board must include the assurance "that the State board will cooperate with the State council on vocational education in carrying out its duties under this part."

Comment. A commenter suggested that § 401.19(a)(13) be more specific as to how the State board will cooperate with the State council to carry out its duties. For example, the ability of the State council to (a) analyze and report on the distribution of all vocational education activities and services in the State, (b) assess the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs, and (c) report to the State board on the extent to which individuals described in § 401.51 are provided with equal access to quality vocational education programs requires the Council to be routinely provided with State fiscal, evaluation, and program data. The commenter recommended that the regulations should require that the State board routinely provide the State council fiscal, program, evaluation, and other data deemed appropriate in order for the Council to carry out its functions.

Response. No change has been made. As explained above, the Secretary believes that the intent of Congress that State boards cooperate closely with State councils so that the latter can perform their statutory functions is quite clear, and that detailed, and possibly inflexible regulations, are not warranted.

Comment. Numerous commenters wanted § 401.19(a)(18) to require an assurance that the State will use the basic grant funds reserved for vocational education services and activities for handicapped and disadvantaged individuals in accordance with the criteria specified in section 204(a) of the Act.

Response. No change has been made. Section 401.19(a) does require such an assurance.

Comment. Several commenters said that with respect to the assurances required in the State plan, § 401.19(a)(18) describes activities for which the handicapped set-aside funds should be used, while section 204(a) of the law requires that the State board provide assurances in order to be in compliance with the handicapped set-aside. The commenters felt that § 401.19(a)(18) sets limits on the use of funds, whereas the law establishes conditions that must be in place to receive the funds. The commenters recommended that the regulations be changed to reflect the Act.

Response. A change has been made. Both § 401.19 and the Act require a State to include assurances in the State plan prior to participating in programs under the State Vocational Education Program; in this sense, they both establish preconditions to State participation. Section 204(a) of the act, however, requires the State board to make these assurances pertaining to the criteria applicable to the services and activities provided to handicapped individuals and disadvantaged individuals "with respect to" the basic State grant funds reserved for these populations. The statutory phrase "with respect to" is ambiguous. Broadly speaking, it might be read to mean that the receipt of Federal funds triggers the application of the statutory criteria to the recipient's vocational education program. Or it might be read to mean that the recipient will comply with the statutory criteria in using the Federal funds for vocational education services and activities. In light of the available legislative history to section 204(a) of the Act, the Secretary believes that the latter interpretation—that Congress intended to ensure that the States would comply with certain equal access criteria *in using the Federal funds* reserved for handicapped individuals and disadvantaged individuals—is the more plausible interpretation. The legislative history of section 204(a) of the Act does not indicate that the Congress intended to expand the application of those equal access criteria beyond the reach of funds under the Act. However, an editorial change has been made in § 401.19(a)(18) to clarify that while States must use their funds reserved under the Act for handicapped and disadvantaged individuals in ways which are consistent with the mandated criteria, they need not expend those funds to comply with those criteria which are already being satisfied with funds from other sources.

Comment. One commenter suggested restricting the application of the equal access requirement for academically disadvantaged individuals in § 401.19(a)(18) to those students who have the academic ability to succeed in a program.

Response. No change has been made. The definition of "disadvantaged" individuals set forth in the Act and regulations refers to those who, by virtue of economic or academic disadvantagement, cannot succeed in a program without special services and assistance. The Secretary has identified, in § 400.4, the standards States may use to identify academically disadvantaged students. These standards are in accord with the standards suggested in Item 246 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 100, which does not propose a standard relating to the students' academic ability to succeed in a program.

Comment. Several commenters suggested that the "equal access" requirements in § 401.19(a)(18)(ii) (A)

and (B) be extended to include "appropriate subsections of section 504 of the Vocational Rehabilitation Act of 1973."

Response. No change has been made. The statutory language in section 204(a)(3)(A) of the Act refers to only the Education of the Handicapped Act.

Comment. One commenter felt that the regulations did not indicate what recourse the State council has if projects or programs under Title III of the Act are not developed with their active participation. The commenter recommended that § 401.19(a) (19)(i), (20), and (22)(ii) require State board certification of council involvement for funds expended under Title III of the Act.

Response. No change has been made. The Secretary believes the regulations are sufficiently detailed to ensure the active participation of State councils. Section 401.16(b)(1) provides that the State council must meet with the State board during the actual development of the State plan, and § 401.16(b)(2) describes the State council's responsibility to advise the State board and make reports to the Governor, the business community, and the general public. Section 401.11(c) indicates that, "the development, in consultation with the State council on vocational education, . . . of the State plan" is one of the major, non-delegable responsibilities of the State board. In addition to these general requirements, § 401.20(b) stipulates that if the State council files an objection to the State plan for any reason, the State board must respond to that objection in submitting the plan to the Secretary. Further, § 401.19(a)(22)(ii) requires an assurance in the State plan that projects assisted under Title III, Part E of the Act, will be developed with the active participation of the State council.

Comment. One commenter questioned why § 401.19(b)(1) uses the term "requirements" while the statute uses the term "criteria."

Response. No change has been made. Section 113(b)(1)(A) of the Act refers to "criteria required for programs" for handicapped and disadvantaged individuals. That Congress intended the application of these criteria as program requirements seems clear.

Comment. One commenter suggested that § 401.19(b)(2) require that the State plan include expenditures for inservice and preservice education of teachers by occupational areas.

Response. No change has been made. The Act does not impose such a requirement and the Secretary believes that such a detailed requirement is unwarranted.

Comment. Several commenters said that § 401.19(b)(2) should require State plans to include the goals of the State's program and the labor market needs addressed by the State program. The commenters also felt that each plan should contain a description of the planned uses for the Federal funds received under the Act rather than non-Federal funds.

Response. No change has been made. The regulations reflect the language of the Act, and the Secretary does not believe that additional, and possibly burdensome, State plan requirements are warranted. Moreover, section 113(b)(3) of the Act and § 401.19(b)(3) of the regulations do, in effect, require each State plan to contain a statement of goals. In addition, section 113(a)(3)(A) of the Act and § 401.18(c)(1) of the regulations require States, in developing their State plans, to "assess the current and projected occupational needs and the current and projected demand for general occupational skills within the State," and the Secretary believes that the statement of goals in the State plan will reflect the State's labor market needs.

Comment. Several commenters noted that both § 401.19(b)(4) and section 113(b)(5) of the Act require that eligible recipients located in economically depressed areas receive more of the Federal funds received by the State than eligible recipients not located in economically depressed areas. Commenters were concerned that if this provision is interpreted to mean at least $1.00 more than half of the State's basic grant, such an interpretation will result in disporportionate allocations of funds, perhaps sending large amounts of money to areas with very small student populations. Commenters requested that the Secretary interpret the word "more" to mean that the economically depressed areas should receive proportionately more funding, e.g., on a per pupil or per capita basis.

Response. No change has been made. Item 218 in the Conference Report, House Report No. 98–1129; 98th Cong. 2d Sess. p. 95, clarifies that the intent of section 113(b)(5) is "to see that eligible recipients in economically depressed areas annually receive more total funds than the total amount of funding awarded to eligible recipients in areas which are not economically depressed." Section 401.19(b)(4) of the regulations is consistent with both the language and the intent of the statute as explained in the Conference Report.

Comment. Several commenters noted that § 401.19(b)(4) of the proposed regulations omitted the phrase "or which have high unemployment" which appears in section 113(b)(5) of the Act. The commenters pointed out that the omission of this phrase could have the effect of changing the in-State distribution requirements.

Response. A change has been made. References to areas of high unemployment have been added to the fund distribution requirement in § 401.19(b)(4) to more closely reflect the language of the statute. States may now identify areas of high unemployment as well as economically depressed areas for the purpose of this requirement. Corresponding changes have been made to §§ 401.19(b)(12) and 401.102.

Comment. One commenter said that § 401.19(b)(4) failed to express the intent of Congress as set forth in Item 218 of the Conference Report which says: "In requiring States to allocate more funds to recipients in economically depressed areas, the intent of the managers is to see that eligible recipients in economically depressed areas annually receive more total funds than the total amount of funding awarded to eligible recipients in areas which are not economically depressed. Yet, for the purpose of program improvement, this does not mean that every eligible recipient must receive funds in every year. In fact, the conferees feel that, in order to make optimal use of program improvement and modernization funding, resources may need to be concentrated in some, not all eligible recipients."

Response. No change has been made. The fund distribution requirement in § 401.19(b)(4) accurately reflects section 113(b)(5) of the Act and the intent of Congress as expressed in the Conference Report. The requirement does not "entitle" any eligible recipient to funding in any year but involves, instead, an analysis of aggregate funding to eligible recipients in areas deemed economically depressed or afflicted with high unemployment in comparison to aggregate funding to eligible recipients not in such areas. The Secretary agrees with the language in the Conference Report that for maximum program effectiveness, funding may have to be concentrated in particular eligible recipients.

Comment. Several commenters recommended that the State plan include a description, in sufficient detail, of the criteria used by the State to distribute all funds, and the basis for those criteria.

Response. No change has been made. Section 401.19(b)(4) already requires the State plan to include a description of such criteria in sufficient detail to show how all funds will be distributed so that

eligible recipients in economically depressed areas or areas with high unemployment will receive more Federal funds under the Act, in the aggregrate, than eligible recipients not in such areas. The Secretary believes that this level of regulatory detail is sufficient.

Comment. One commenter suggested that § 401.19(b)(8) require a description of how the State board will comply with Titles I, II, III, and V of the Act.

Response. No change has been made. The Act does not require such descriptions, and they would be an unnecessary burden on the States. The Secretary retains the authority to request additional information when necessary.

Comment. One commenter felt that the definition of "economically depressed area" chosen by a State should be well-documented in the State plan. The commenter suggested that the Department should require the States to describe: (a) the State definition of "economically depressed area"; (b) the data used to make such determinations; and (c) how these determinations are compatible with other State-designated economically depressed areas.

Response. No change has been made. Section 401.19(b)(12) requires each State to include in its State plan the criteria the State will use to identify economically depressed areas and areas with high unemployment. If the Secretary needs additional information to understand these criteria, it will be requested on a case-by-case basis.

Comment. One commenter suggested that § 401.19 require the State plan to include comments submitted in connection with the public hearings held by the State.

Response. No change has been made. Section 401.19(b)(13) already mandates that a summary of recommendations made at the public hearings and the State board's responses to those recommendations be included in the State plan.

Section 401.20 State plan—submission.

Comment. One commenter recommended that § 401.20 require the State board to provide the State job training coordinating council (SJTCC) with a response to any objections the SJTCC has with the State plan. The commenter felt that this requirement would enhance the close coordination mandated by the Act between the State board and the SJTCC.

Response. No change has been made. The wording of § 401.20(a)(2) of the regulations repeats the wording of section 114(a)(1) of the Act, which states that "if the matters raised by the comments of the . . . State job training coordinating council are not addressed in the State plan, the State board shall submit those comments to the Secretary with the State plan." In contrast, section 114(b)(2) of the Act requires the State board to respond to any objections of the State council when submitting the State plan to the Secretary. It is clear that Congress intended that the comments of the State council and the SJTCC be treated differently by the State board. However, the Act does not prohibit a State board from responding directly to the SJTCC concerning its comments on the State plan.

Comment. One commenter suggested adding to § 401.20(b) (2) and (3) provisions for the "sex equity coordinator" to file objections concerning the State plan with the State board, and for the State board to respond to such objections.

Response. No change has been made. The Act neither requires nor prohibits the filing of such objections. In addition, § 401.13(b)(4) requires the "sex equity coordinator" to submit to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping. In preparing this assessment, the "sex equity coordinator" may raise concerns and criticisms of the State plan's provisions for programs designed to overcome sex discrimination and sex stereotyping.

Section 401.21 State plan—amendment

Comment. One commenter noted that while section 113(c)(1) of the Act contains the phrase "in consultation with the State council," § 401.21 of the proposed regulations omits this language.

Response. A change has been made. The phrase "in consultation with the State council" was inadvertently omitted and has been added to the first sentence in § 401.21 immediately following the phrase "the State board."

Comment. One commenter felt that, since the proposed regulations refer to procedures for making and submitting amendments to the State plan, a more precise definition of the term "amendment" should be inserted in the regulations.

Response. No change has been made. While § 401.21 provides general guidance on State plan amendments, each State must decide if and when changes in the program would require an amendment to the State plan. Additional guidance on State plan amendments may be found in 34 CFR 76.140 through 76.142.

Section 401.22 Maintenance of fiscal effort.

Comment. A number of commenters requested that § 401.22(a) be changed so that expenditures for purposes of determining maintenance of effort compliance would be as current expenses only.

Response. No change has been made. The Secretary does not believe that additional, detailed regulations regarding the maintenance of effort computation are warranted. However, section 503 of the Act states that to be eligible to receive funds under the Act, States must maintain their expenditures "for vocational education." The Secretary interprets the Act, consistent with prior practice under the Vocational Education Act, to include both current and capital expenditures for vocational education, as defined in section 521(31) of the Act and § 400.4(b) of the regulations. States may include vocational educational construction costs, if they desire.

Comment. One commenter noted that § 401.22(a) stipulates that the aggregate expenditures of the State to be maintained must be "from State sources." The commenter asked for the statutory basis of this provision.

Response. No change has been made. The regulations are consistent with the language of the Act, which refers to the fiscal effort or expenditures "of such State." In addition, unlike the Vocational Education Act, the Carl D. Perkins Act does not require the maintenance of fiscal effort at the local level. It is reasonable to believe, therefore, the Congress did not believe that local expenditures should be included in State level maintenance of effort computations.

Comment. One commenter noted that use of the term "program year" in addition to "fiscal year" in § 401.22(a) could make a significant difference in the maintenance of effort calculation. The commenter asked why "program year" was added.

Response. No change has been made. While section 503 of the Act refers to fiscal years as the basis for maintenance of effort computations, States are required under the Act to carry out their vocational education programs on the basis of program years. It is reasonable and appropriate, therefore, to provide the flexibility to the States to perform their maintenance of effort computations on either a fiscal year or a program year basis, and the Secretary does not believe that Congress intended to preclude such flexibility.

Comment. One commenter recommended that § 401.22 should specify that maintenance of effort shall be based on State funds directly applicable only to those vocational education programs supported under the Carl D. Perkins Act. The commenter reasoned that the law should not hold a State responsible for maintaining expenditures for programs not supported under the Act.

Response. No change has been made. The Act requires that the State maintain expenditures for vocational education. This includes all expenditures from State sources which meet the definition of vocational education as set forth in section 521(31) of the Act. The Secretary does not believe a more restrictive interpretation would accurately measure the level of fiscal effort for vocational education, or be appropriate.

Comment. One commenter expressed the view that § 401.22(a) should be changed to reflect fiscal year 1986 as the base year of determination for applying the maintenance of effort requirement. The commenter reasoned that it would be inappropriate to compare State expenditures under the Carl D. Perkins Act to those made by the State prior to the enactment of the new law.

Response. No change has been made. Section 503(a) of the Act clearly prescribes the preceding year and the second preceding year as the years of comparison for each maintenance of effort computation. The Secretary believes it is appropriate to compare State expenditures for vocational education in those two years, regardless of the enactment of the Carl D. Perkins Act, because those expenditures are an indicator of the countinuing level of State fiscal effort for vocational education.

Section 401.30 Allotments under the State Vocational Education Program.

Comment. One commenter asked whether payments to State councils are based upon an "approved" State plan.

Response. A change has been made. Section 501(b) of the Act specifies that a State plan must be approved before funds under the Act may be paid to the State council. Therefore, the phrase "upon approval of the State plan" has been added to § 401.30(b)(2). The statutory citation for this provision has also been added.

Comment. One commenter asked for the rationale behind § 401.30(b)(2) which requires a State council to submit to the Secretary an annual budget covering the proposed expenditures of the State council.

Response. No change has been made. The requirement is necessary for the Secretary to maintain accountability for expenditures under the Act, and reflects long-standing administrative practice.

Section 401.31 Reallotments under the State Vocational Education Program.

Comment. Several commenters requested that the regulations provide more guidance with respect to the criteria the Secretary will use in realloting funds under § 401.31(a)(1).

Response. No change has been made. In the past, the Secretary has rarely had occasion to reallot State grant funds and believes it is desirable to retain sufficient flexibility to meet unforeseeable circumstances in the future. Therefore, the Secretary does not believe that additional regulatory detail is warranted at this time.

Section 401.32 Approval of State plans and amendments by the Secretary.

Comment. One commenter pointed out that § 401.32(a) omits the phrase "unless the proposed changes are inconsistent with the requirements and purposes of the Act" as it appears in section 113(c)(2) of the Act.

Response. A change has been made. The phrase "unless such amendments propose changes that are inconsistent with the requirements and purposes of the Act" was inadvertently omitted in the proposed regulations and has been added to § 401.32(a)(1) immediately following the phrase ". . . to a State plan."

Section 401.40 How a State carries out the State Vocational Education Program.

Comment. One commenter was concerned that, since § 401.40(b)(3) of the proposed regulations said that a State board acts directly when it supports local projects, services, or activities at State institutions, a State may interpret this as a way to evade the requirement that 80 percent of the basic State grant be passed through to eligible recipients.

Response. No change has been made. Although the regulations have been changed to clarify the State board's authority to carry out programs either directly, through State institutions, or through eligible recipients, the regulations continue to authorize States to count funds awarded to State institutions towards satisfying the 80 percent eligible recipient share. Item 226 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 96, makes it clear that Congress intended that vocational schools which are administered by the State should be considered eligible recipients for purposes of section 113(b)(4) of the Act and funds allotted to these schools should count in the 80 percent eligible recipient share.

Comment. One commenter requested that § 401.40(c) be modified by adding "or other State agency" to the list of examples provided in this paragraph. The commenter reasoned that the addition of such language would make it clear that State agencies other than the State Board for Vocational Education (such as the Department of Corrections) can administer programs under the Act.

Response. A change has been made. With the exception of certain responsibilities, section 111(a)(1) of the Act provides clear authority for the State board to delegate any of its responsibilities involving administration, operation, or supervision of programs to one or more appropriate State agencies. In addition, § 401.40(a) authorizes a State board to make awards to a variety of State institutions to carry out programs under the Act.

Section 401.41 Local applications.

Comment. One commenter wanted the regulations to clarify that while a State may exempt small eligible recipients from the application requirements in § 401.41, the State is still required to abide by the other requirements of the Act for distributing funds to those small eligible recipients.

Response. No change has been made. The assurances that a State will comply with the requirements of the Act, including fund distribution, are contained in § 401.19, and no additional regulations are warranted. The commenter is correct that a waiver from local application requirements does not constitute a waiver from other provisions of the Act.

Comment. One commenter recommended that § 401.41(c) prescribe a methodology for the involvement of community-based organizations (CBOs) in the decision making process at the local level.

Response. No change has been made. Apart from the application requirements for the program for State assistance to the Community-Based Organizations under section 301 of the Act and § 401.72(b) of the regulations, the Act does not require the involvement of a CBO in the development of each local application. A State may require such involvement if it wishes.

Comment. One commenter pointed out that the statute requires the local application to cover the same period as the State plan while § 401.41(a)(2) of the regulations suggests that the period of the application could be shorter as long as it falls within the time frame of the

plan. The commenter asked for the rationale for this change. Other commenters pointed out that a multi-year local planning requirement is inconsistent with the annual planning cycle used by most eligible recipients.

Response. No change has been made. There is no indication in the legislative history that Congress intended that all local applications must be for multi-year periods. In addition, a requirement for multi-year local plans would be inconsistent with the annual allocation process as required by section 203(a) of the Act.

Section 401.52 and section 401.53 Program for handicapped and disadvantaged individuals.

Comment. One commenter suggested that § 401.52(b) exclude community-based organizations from excess cost requirements.

Response. No change has been made. Section 201(c) of the Act provides that funds reserved for handicapped and disadvantaged individuals be used solely for the supplemental or additional costs of such individuals, without exception. In addition, section 113(b)(4) of the Act requires that 100 percent of the funds reserved for handicapped and disadvantaged individuals be distributed to eligible recipients. Community-based organizations are not eligible recipients as defined in section 521(14) of the Act.

Comment. Commenters asked why §§ 401.52(b) and 401.53(a)(2) omitted the word "conditions" as it appears in section 201(c) of the Act.

Response. A change has been made. The Secretary omitted the word from the proposed regulation to clarify the meaning of the provision. However, the commenters' concern has persuaded the Secretary to adopt the language of the statute. The words "the condition of" have been added to the first sentences of §§ 401.52(b) and 401.53(a)(2).

Comment. One commenter expressed the view that the fiscal requirements attached to programs for handicapped and disadvantaged individuals as authorized in §§ 401.52, 401.53, and 401.94 will devastate vocational programs in correctional institutions and in State schools for the deaf and blind. The commenter referred specifically to the matching requirement and the "excess" cost requirements as applied to separate programs for handicapped and disadvantaged individuals.

Response. No change has been made. These fiscal requirements are set forth in sections 201 (c) and (d) and 502(a) of the Act.

Comment. One commenter pointed out that §§ 401.52(b) and 401.53(a)(2) stipulate "expenditures for the comparable regular vocational education services and activities" while the statute refers to "expenditures for regular services and activities." The commenter asked why the words "comparable" and "vocational education" were added to the regulations.

Response. No change has been made. The words "comparable" and "vocational education" were added in §§ 401.52(b) and 401.53(a)(2) to reflect the intent behind section 201(c)(1) of the Act that the costs of non-mainstreamed programs for handicapped and disadvantaged persons be compared to the same types of programs for non-handicapped or non-disadvantaged individuals in order to obtain valid cost comparisons.

Comment. One commenter expressed the view that §§ 401.52(b) and 401.53(a)(2) will impose burdensome data-gathering requirements on eligible recipients since those regulations require individual cost comparisons between non-mainstreamed programs for handicapped and disadvantaged individuals and comparable regular vocational education programs. The commenter recommended that the regulations permit the use of state-level average cost differentials in place of individual program cost comparisons by an eligible recipient.

Response. No change has been made. Section 201(c)(1) of the Act clearly requires individual program cost comparisons by an eligible recipient.

Comment. One commenter requested that the phrase "services and activities" as it appears in section 201 of the Act be interpreted so as to allow eligible recipients to expend funds received under the handicapped and disadvantaged set-asides for curriculum development and professional development for programs serving the handicapped or disadvantaged.

Response. No change has been made. Section 201 of the Act permits eligible recipients to use funds allotted for handicapped and disadvantaged individuals under Part A of Title II of the Act to provide for in-service training and curriculum development for vocational education programs serving handicapped or disadvantaged persons.

Comment. One commenter was concerned that while § 401.52 accurately reflected the wording of section 201(c) of the Act, it might be read to encourage separate rather than integrated programs for handicapped individuals.

Response. No change has been made. However, Item 91 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 77, makes it clear that, even though a distinction is made between "excess" cost requirements for handicapped students in mainstreamed classes and those in separate programs, it is not the intent of Congress to in any way encourage the creation of separate programs for handicapped students.

Comment. One commenter requested that the limitation in § 401.53(b)(2) on the use of funds for acquisition of modern machinery and tools for disadvantaged individuals be eliminated. The commenter felt that the requirement prevented the purchase of up-to-date equipment and materials for a home economics class.

Response. No change has been made. Section 201(d)(2) of the Act clearly imposes this limitation on the use of funds for the acquisition of modern machinery and tools, including equipment, materials, and supplies. It should be noted that this restriction applies only to funds under Title II, Part A reserved for disadvantaged individuals and applies to schools, not classes, in which at least 75 percent of the students enrolled are economically disadvantaged. Funds under Title II, Part B and Title III of the Act which may be used to purchase equipment are not subject to this restriction.

Comment. One commenter suggested changing the restriction in § 401.53(b)(2), which provides that funds reserved for disadvantaged individuals may be used for acquiring modern machinery and tools "*only*" in schools in which at least 75 percent of the students are economically disadvantaged. The commenter wanted "only" changed to "especially."

Response. No change has been made. Item 81 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 75, specifies that funds may be used to purchase equipment "only in" schools with a 75 percent or more economically disadvantaged enrollment.

Section 401.55 Vocational Education Opportunities Program—programs for single parents or homemakers.

Comment. Several commenters recommended that the regulations should clarify whether participants in programs used for the activities in § 401.55 must be both "single parents and homemakers."

Response. A change has been made. The Secretary interprets this section to mean that programs must serve individuals who are either single parents or homemakers, or both.

Comment. Several commenters recommended that the regulations clarify whether programs serving single

parents or homemakers must include all five activities listed in § 401.55.

Response. A change has been made. In reserving funds for programs serving single parents or homemakers, States may select one or more of the five activities listed under § 401.55.

Comment. One commenter pointed out that section 201(f)(1) of the Act contains the phrase "provide, subsidize, reimburse, or pay for vocational education" while § 401.55(a) of the proposed regulations uses only the term "provide." The commenter asked why the other statutory terms were omitted.

Response. A change has been made. In the proposed regulations, the Secretary attempted, where possible, to simplify the language of the Act without altering its meaning. However, because commenters raised concerns about this change, the exact wording of the Act has been added to § 401.55(a).

Comment. One commenter suggested that § 401.55(c) erroneously provides for "subgrants" to community-based organizations. The commenter felt that since the statute provides for "grants" to CBOs under section 201(f) of the Act, § 401.55 should be corrected.

Response. No change has been made. It is standard Education Department regulations terminology to refer to a grant award from the State in a State-administered program as a "subgrant."

Section 401.56 Vocational Education Opportunities Program—programs designed to eliminate sex bias and stereotyping.

Comment. One commenter expressed concern over funds under § 401.56(a)(2) being used for girls and women only. The commenter also felt that § 401.56 must clearly distinguish between programs which eliminate sex bias for both males and females and those which are for females only.

Response. No change has been made. Sections 201(g) (1) and (3) of the Act and § 401.56(a) (1) and (3) of the regulations clearly authorize programs that are meant to serve both males and females. Section 201(g)(2) of the Act and § 401.56(a)(2) of the regulations authorize programs, services, and activities for girls and women, aged 14 through 25.

Comment. One commenter suggested that § 401.56(a)(2) be changed to reflect the language of Item 93 of the Conference Report which provides that ". . . vocational education programs, services, and activities for girls and women provided under section 201(g)(2) of the Act [are to] be supplemental and designed to meet the special needs of girls and women desiring to enter nontraditional occupations or other fields enhancing their career opportunities." House Report No. 98–1129, 98th Cong. 2d Sess. pp. 77, 78.

Response. No change has been made. The suggested language refers to the supplemental nature of programs, services, and activities. The meaning of this language is unclear in light of the language contained in Item 80 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 75, which stipulates that this program is not subject to excess cost requirements. The balance of the proposed language in Item 93 of the Conference Report does appear in the regulations in proximate form.

Section 401.57 Vocational Education Opportunities Program—programs for criminal offenders.

Comment. One commenter requested that funds set aside for criminal offenders under section 201(b)(6) of the Act be excluded from the supplemental or additional cost requirement as set forth in section 201(c)(1) of the Act.

Response. No change has been made. The supplemental or additional cost requirement as set forth in section 201(c)(1) of the Act does not apply to expenditures for criminal offenders under section 201(b)(6) of the Act.

Section 401.58 Vocational Education Opportunities Program—additional uses of funds.

Comment. One commenter pointed out that Item 45 of the Conference Report contains guidelines for determining the cost effectiveness of providing vocational education through private vocational institutions, employers, or community-based organizations. The commenter suggested that these guidelines be incorporated into § 401.58(a)(2)(i)(B).

Response. No change has been made. The Conference Report explains with reference to section 201(h)(2) of the Act and § 401.58(a)(2) of the regulations that "when deciding which institutions can deliver services in a cost effective manner, consideration should be given to expenses, such as the depreciation of rental cost of buildings and administrative expenses for all institutions so that comparisons on the ability to provide services on a competitive basis in an equitable one." (House Report No. 98–1129, 98th Cong. 2d Sess. p. 71). While the Secretary believes these are excellent suggestions for determining the cost effectiveness of programs, and encourages States to consider these factors, the Secretary does not believe that detailed and possibly prescriptive regulations regarding the considerations that must be weighed are necessary or appropriate. In addition, the Secretary is confident that States will consider the factors suggested in the Conference Report without being required to do so in the regulations.

Section 401.59 Vocational Education Improvement, Innovation, and Expansion Program.

Comment. A number of commenters objected to proposed § 401.59(b) which required States to use funds under Title II, Part B to expand, improve, modernize, or develop vocational education services and activities and prohibited the use of those funds to maintain existing services and activities. Some commenters said that some of the services and activities authorized by section 251 of the Act inherently improve, expand, or develop existing vocational education programs. Others thought the proposed regulations prohibited the use of funds for existing programs, including those that are under development.

Response. A change has been made. The legislative history of Title II, Part B makes it clear that Congress intended services and activities funded under this program to represent an improvement, expansion, or development of vocational education programs. However, the Secretary believes that the commenters are correct in pointing out that certain of the services and activities authorized by section 251 do, by their very nature, contribute to the expansion, improvement, or development of vocational education programs. Because these services and activities are inherently related to the improvement of programs, it would be consistent with the intent of Congress to permit States and eligible recipients to maintain them where they already exist, but not the other services and activities authorized by section 251.

Accordingly, §§ 401.59 and 401.60 have been rewritten to clarify which authorized activities are inherently related to the improvement of programs (§ 401.60 (b) and (c)) and those which are not (§ 401.60(a)). States and eligible recipients may use funds under this program to continue existing services and activities which fall into the former category, but not services and activities in the latter category. States and eligible recipients may use funds under this program to support only those particular aspects of their services and activities in the latter category (§ 401.60(a)) which represent an innovation, expansion, improvement, modernization, or development.

Comment. A number of commenters expressed the view that the regulations should provide that the improvement or expansion requirement of Part B of Title II of the Act is met if an eligible recipient offers a program, service, or activity new to that eligible recipient and Federal funding under Part B of Title II does not exceed three years. Other commenters recommended that States be allowed to determine the length of time an activity may be considered new or improved.

Response. A change has been made. Section 401.59(b)(2) now clarifies that any vocational education project, service, or activity which has not been offered during the previous instructional term by a recipient may be considered as an improvement or expansion of the vocational education program of that recipient. In addition, such program, service, or activity may be considered as an improvement or expansion for a period of up to three years. The Secretary believes that this latter provision gives the States adequate flexibility while maintaining the essentially improvement-oriented nature of Title II, Part B. However, the Secretary does not feel that it would be appropriate to leave the determination of which programs inherently contribute to the improvement, expansion, or development of vocational education programs to the States.

Comment. One commenter was concerned that the prohibition, in § 401.59, regarding program maintenance would eliminate joint funding by the Federal and State governments of the salaries of counselors and technical assistance personnel.

Response. A change has been made. As noted above, § 401.59 has been changed to permit the maintenance of certain projects, services and activities, but not others. However, the prohibition against program maintenance would not prohibit joint funding of the salaries of counselors and technical assistance personnel by the Federal and State governments.

Section 401.60 Vocational Education Improvement, Innovation, and Expansion Program—use of funds.

Comments. Many commenters requested clarification of whether program activities in § 401.60 must be both improved and expanded.

Response. No change has been made. Programs, services, and activities satisfy the conditions of Title II, Part B of the Act when they improve an existing program, expand an existing program, or both improve and expand an existing program. However, funds may be used only for that portion of the existing program being improved or expanded, or both. Funds may also be used to support new activities.

Comment. Several commenters suggested a broad array of specific examples to be included in § 401.60 as program activities which improve vocational education.

Response. No change has been made. The Secretary agrees that some activities, by their very nature, improve the quality of vocational education. However, the Secretary believes that the inclusions of additional specific activities is not warranted. Item 38 of the Conference Report explains that "In listing the authorized activities under the State grant, the managers note that this list is intended to be general and illustrative, not limiting. States may fund activities that are not specifically listed but are in compliance with the purposes of the legislation." (House Report No. 98–1129, 98th Cong. 2d Sess. p. 69). Further, section 251(a)(24) of the Act and § 401.60(a)(14) of the regulations provide for the improvement or expansion of any other vocational education activities authorized under Title II, Part A of the Act.

Comment. A commenter suggested that since apprenticeship programs are of an on-going nature, apprenticeship programs funded under Part B of Title II of the Act should be excluded from the program improvement requirement in § 401.60(a)(1) of the regulations.

Response. No change has been made. Section 251(a)(1) of the Act specifically requires apprenticeship training programs to meet the program improvement condition for funding.

Comment. One commenter suggested that § 401.60(a)(9) (Proposed § 401.60(a)(11)) be changed to refer to practical applications "which are an integral part of the student's prevocational, vocational, or occupational program." The commenter felt that this change would clarify that reinforcement of mathematics and scientific principles via practical applications in prevocational, industrial arts and similar programs is permissible.

Response. A change has been made. Section 401.60(a)(9) has been changed to refer to practical applications "which are an integral part of the student's prevocational or vocational program." This change clarifies the intent of the law and gives the State more flexibility in its application.

Comment. One commenter wanted § 401.60(a) (11) and (12) (Proposed §401.60 (a) (14) and (15)) to incorporate language from Item 37 of the Conference Report which specifies that funds for prevocational, and modern industrial and agricultural arts programs be directed toward activities that are modern and incorporate the latest advances in technology.

Response. No change has been made. Item 37 of the Conference Report explains that in authorizing prevocational education, vocational agriculture, and industrial arts programs, Congress intended these programs "be directed, to the extent possible, toward those activities that are modern and incorporate the latest advances in technology," including programs designed to "provide students with awareness and basic skills in expanding and new technology areas such as robotics, lasers, computers, electronics, industrial power systems, fluidities, hydraulics, pneumatics, telecommunications, and biotechnology." (House Report No. 98–1129, 98th Cong. 2d Sess. p. 69). While the Secretary supports these goals and encourages States to adopt them, the Secretary believes they are implicit in the language of the Act and the regulations, especially given the improvement-oriented nature of the program, and that the requested level of regulatory detail is inappropriate.

Comment. One commenter wanted § 401.60(a)(12) (Proposed § 401.60(a)(15)) to clarify that "modern industrial and agricultural arts" means modern industrial arts programs and/or modern agricultural arts programs.

Response. A change has been made. Since there is no special instructional program called "modern industrial and agricultural arts," § 401.60(a)(12) refers to the two distinct programs of modern industrial arts and modern agricultural arts. The Secretary interpretes congressional intent to be that new techniques and new learning experiences be applied in these two different instructional programs.

Comment. One commenter expressed concern that expenditures for personnel to coordinate efforts for apprenticeship and training programs under § 401.60(b)(3) (Proposed § 401.60(a)(12)) would result in duplication of effort. In particular, the commenter suggested that such expenditures would duplicate efforts of agencies which already address apprenticeship coordination within a State.

Response. No change has been made. Avoiding duplication of effort is an important part of effective program management. States are expected to avoid such duplication. The regulations do not require the expenditure of funds for this purpose.

Comment. One commenter expressed concern that § 401.60(c) (Proposed

§ 401.60(b)) concerning the use of funds for preservice and inservice training under Title II, Part B of the Act could be construed as restricting the use of funds to programs serving handicapped and disadvantaged individuals. The commenter also requested that the regulations be changed to permit the use of funds under Title II, Part A of the Act for preservice and inservice training of vocational education personnel and guidance counselors.

Response. No change has been made. In § 401.60(c) (Proposed § 401.60(b)), preservice and inservice training which focuses on the integration of handicapped and disadvantaged students in regular vocational education courses is a program emphasis, but it is not intended to restrict preservice and inservice training programs to serving such individuals. With regard to the second portion of the comment, preservice and inservice training may be funded under Title II, Part B of the Act. In addition, while inservice training is authorized in some circumstances under Title II, Part A, the Secretary interprets Title II, Part A to prohibit the use of funds for preservice training.

Comment. One commenter suggested deleting the provision in § 401.60(c) (Proposed § 401.60(b)) that expansion, improvement, modernization, and development funds be awarded to "eligible recipients." Another commenter suggested that the words "to expand, improve, modernize, and develop" be deleted from § 401.60(b) of the proposed regulations because they are not found in the Act.

Response. A change has been made. The reference to eligible recipients in § 401.60(c) has been deleted. Section 401.60(c) now adheres more closely to the language of section 251(b) of the Act and requires each State to make awards for the specified purposes. In addition, the phrase "to expand, improve, modernize, and develop" has also been deleted from § 401.60(c). The phrase has been retained in § 401.59(a), however, because that phrase accurately reflects the intent of Congress with respect to Title II, Part B, as described in section 2(1) of the Act.

Comment. One commenter asked why, in describing preservice and inservice training, § 401.60(c) (Proposed § 401.60(b)) used the term "awards" when section 251(b) of the Act uses only the term "grants."

Response. A change has been made. The term "awards" has been changed to "subgrants" to more closely reflect the language of the Act.

Comment. One commenter requested clarification on the amount of funds under Title II, Part B of the Act that must be expended for preservice and inservice training. The commenter suggested that stipulating a minimum amount in the regulations would provide guidance.

Response. No change has been made. Neither the Act, section 251(b), nor the regulations, § 401.60(c), specify a minimum amount that must be used for preservice and inservice training. The States are the best judges of their needs in this area. However, the regulations do require the States to make awards for this purpose.

Comment. One commenter recommended that the regulations provide further guidance on the use of teachers to perform placement and follow-up services for vocational education students.

Response. No change has been made. The regulations neither prohibit nor require the use of teachers to perform placement and follow-up services, and the Secretary does not believe more prescriptive detail is warranted.

Comment. One commenter suggested that vocational education classes are often smaller and thus more costly than general education classes. The commenter suggested allowing the resultant added cost of vocational education courses to be funded under Title II, Part B.

Response. No change has been made. Title II, Part B funds are to be used for improving, expanding, modernizing, and developing vocational education programs. Funds may be applied to that portion of a program in which a service or activity improves, expands, modernizes, or develops an existing program. Funds may also be used for certain services and activities which, by their nature, improve the quality of vocational education. These activities are authorized regardless of class size or relative cost compared to general education courses.

Section 401.61 Vocational Education Improvement, Innovation, and Expansion Program—distribution of funds by a State.

Comment. A commenter recommended that § 401.61(a)(1) be rewritten to clarify that a State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program in the manner best suited to carry out the purposes of "the Act as implemented through" the State vocational education programs in that State.

Response. A change has been made. The provisions of § 401.61(a)(1) have been reworded to reflect more accurately the provisions of the Act. The phrase "the Act as implemented through" has been added before "the State Vocational Education Program in that State."

Section 401.71 Special Programs—State Assistance for Vocational Education Support Programs by Community-Based Organizations.

Comment. One commenter asked why § 401.71(b) incorporated the provision relating to handicapped individuals. Another commenter felt that § 401.71(b) should be deleted from the regulations since section 302 of the Act does not say that handicapped persons are to be served by the State Assistance for Vocational Education Support Programs by Community-Based Organizations.

Response. No change has been made. The definition of community-based organizations as set forth in JTPA includes such agencies serving handicapped individuals. The Secretary believes that Congress did not wish to preclude community-based organizations from serving educationally or economically disadvantaged individuals who also happened to be handicapped.

Section 401.72 Special Programs—application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations.

Comment. One commenter felt that funds under Title III of the Act should be given directly to community-based organizations without the joint application requirements in § 401.72(a).

Response. No change has been made. Section 301 of the Act requires a joint application for funding of CBOs under Title III.

Comment. One commenter requested that § 401.72 require community-based organizations to be bonded in order to participate in federally funded vocational education programs.

Response. No change has been made. The statute does not require bonding of community-based organizations as a precondition for eligibility.

Section 401.73 Special Programs—Consumer and Homemaking Education Program.

Comment. One commenter suggested changing the term "Consumer and Homemaker" to "Consumer and Homemaking" in §§ 401.70, 401.73 and 401.102 of the regulations to avoid confusion with the displaced homemaker or single parents and homemaker programs.

Response. A change has been made. This recommendation is accepted and

the necessary changes have been made in the regulations.

Comment. One commenter asked why, in describing activities under the Consumer and Homemaking Education Program, the phrase "including resource management" was omitted from § 401.73(a)(2)(v) of the regulations when such words appear in section 311 of the Act.

Response. A change has been made. In regulating, the Secretary tried to clarify the language of the Act without changing its meaning. However, based on concern raised during the comment period, § 401.73(a)(2)(v) has been changed to adhere to the language of the Act. The phrase "including resource management" has been added to § 401.73(a)(2)(v) immediately following the word "management."

Section 401.75 Special Programs—Adult Training, Retraining, and Employment Development Program.

Comment. One commenter objected to the use of "shall" in § 401.75, which provides that States "shall" conduct adult training, retraining, and employment development projects, services, and activities. The commenter suggested that "shall" is unnecessarily restrictive, and should be replaced with "may."

Response. No change has been made. In establishing the Adult Training, Retraining, and Employment Development Program, Congress clearly intended to require that particular purposes be achieved and individuals be served. The program is to be carried out in accordance with the State plan, which must specify those adult training, retraining, and employment development projects, services, and activities to be carried out.

Comment. One commenter pointed out that the Act requires, under section 322(b)(1)(D), that the programs under § 401.75(d) (1) and (2) serve the individuals identified in § 401.75(a). The commenter believed that the regulations incorrectly limit that requirement to programs under paragraph (d)(2).

Response. A change has been made. The requirements in § 401.75(d) to serve individuals identified in § 401.75(a) now clearly applies to programs under paragraphs (d) (1) and (2).

Comment. One commenter pointed out that, in describing authorized services and activities under the Adult Training, Retraining, and Employment Development Program, section 322(b)(1)(E) of the Act contains the words "cooperative education programs" while § 401.75(e) of the proposed regulations did not. The commenter asked why the statutory language was not included in the regulations.

Response. A change has been made. Section 401.75(e) has been changed to reflect more accurately the language of the Act.

Comment. One commenter thought the word "minorities" was inadvertently omitted from § 401.75(g).

Response. No change has been made. Section 322(b)(1)(G) of the Act, on which § 401.75(g) of the regulations is based, does not contain the word "minorities."

Comment. One commenter pointed out that, in describing services and activities authorized under the Adult Training, Retraining, and Employment Development Program, section 322(b)(1)(H) of the Act speaks to "related and additional services" while § 401.75(h) of the proposed regulations referred to "and additional related services." The commenter asked why the statutory language was not used in the regulations.

Response. No change has been made. The language was modified because it is the Secretary's view that Congress did not want to imply that additional unrelated services were authorized. If services are "unrelated," they are not considered as "required to effectively carry out the purposes of this part" as stated in section 322(b)(1)(H) of the Act.

Comment. One commenter suggested that the phrase "as defined in § 400.4(b)," be added after the words "apprenticeship training programs" in § 401.75(j).

Response. A change has been made. The phrase "as defined in § 400.4(b)" has been added after the words "apprenticeship training programs" in § 401.75(j) in order to clarify the reference to apprenticeship training programs.

Section 401.76 Special Programs—Comprehensive Career Guidance and Counseling Program.

Comment. One commenter objected to the stipulation, in § 401.76(a)(1), that comprehensive career guidance and counseling programs for vocational education students must be "organized and administered by certified counselors." The commenter felt that when the nation's extremely high student to counselor ratio is considered, it becomes obvious that counselors must continue to enlist the help of vocational education teachers if they are to meet student needs.

Response. No change has been made. While the Act clearly requires that career guidance and counseling programs for vocational education students be organized by and under the direction of certified counselors, there is no prohibition against certified counselors enlisting the aid of teachers or other assistants to carry out their programs.

Comment. One commenter asked why § 401.76(b)(2)(iii) used the phrase "reflect the collaboration" of the family, the community, business, industry, and labor while section 332(b) of the Act uses the phrase "enlist the collaboration . . ."

Response. A change has been made. The word "enlist" has been substituted for the word "reflect" in § 401.76(b)(2)(iii) in order to reflect more closely the language of the Act.

Comment. A commenter felt that the language of § 401.76(c), requiring that collegiate level counselor education programs conducted by university personnel be organized and administered by certified counselors, is not in keeping with the language of the Act.

Response. No change has been made. Section 332(a) of the Act requires that programs under Part D of Title III of the Act be "organized and administered by certified counselors." However, the Secretary does not interpret the language of the statute to require that all instruction in counseling necessarily be provided by certified counselors.

Comment. One commenter pointed out that § 401.76(c)(2)(ix) referred to "State and local . . . supervision." The and local administration" while section 332(b)(2) of the Act refers to "State commenter asked why the statutory language was not used in the regulation.

Response. A change has been made. The words "including supervision" have been added to § 401.76(c)(2)(ix) immediately following the word "administration." The Secretary believes that Congress did not intend to prohibit the use of funds for State and local administration, which includes supervision.

Section 401.79 Special Programs—special considerations under the Industry-Education Partnership for Training in High-Technology Occupations Program.

Comment. One commenter pointed out that, in requiring an applicant to demonstrate its special efforts to provide outreach, section 343(b)(4) of the Act uses the phrase "the commitment to serve all segments . . ." while § 401.79(d) of the proposed regulations used the phrase "the extent to which the project will . . ." The commenter asked why the statutory language was changed.

Response. A change has been made. The words "The extent to which the

project will serve . . ." have been deleted from § 401.79(d) and have been replaced by the words "The commitment to serve . . ." in order to reflect more accurately the language of the Act.

Section 401.80 Special Programs—fiscal requirements under the Industry-Education Partnership for Training in High-Technology Occupations Program.

Comment. One commenter asked why § 401.80(b) of the proposed regulations referred to "local" while section 343(a)(1) of the Act uses the term "eligible recipients."

Response. A change has been made. In order to reflect more closely the language of the statute, the phrase ". . . at both the State and local level" has been deleted from § 401.80(b) and replaced with the phrase ". . . by both the State and eligible recipients."

Section 401.90 Conditions a State must meet—reserving funds under the basic State grant.

Comment. Several commenters noted that section 113(b)(4) of the Act appears to require the State to distribute all funds for handicapped and disadvantaged individuals, under Title II, Part A, to eligible recipients, with none of these funds being retainable at the State level. The commenters felt that States should take funds for handicapped and disadvantaged individuals out of the allotment before reserving funds for State administration. They recommended that § 401.90 be modified to reflect this interpretation.

Response. No change has been made. Although the Act lacks clarity on this issue, the Secretary believes the regulation reflects the intent of Congress. Section 113(b)(4) of the Act must be read in connection with section 102 of the Act, which allocates the funds in the basic State grant among State administration, the Vocational Education Opportunities Programs authorized by Part A of Title II of the Act, and the program improvement, innovation, and expansion activities authorized by Part B of Title II. In general, section 102 of the Act allocates 57 percent of the basic grant to Part A, 43 percent to Part B, and up to 7 percent for State administration. In addition, section 202 of the Act reserves all the basic grant funds available for Part A for six specified populations, including handicapped individuals and disadvantaged individuals, in precisely established proportions. To preserve the integrity of these various fund distribution requirements and the carefully wrought balance of interests they represent, the Secretary has interpreted the Act to require that the States reserve up to 7 percent for State administration prior to alloting the 57 percent and 43 percent for Parts A and B, respectively. This interpretation is consistent with the language of section 113(b)(4) of the Act because all the funds "available" for handicapped and disadvantaged individuals, after the reservation of funds for State administration, continue to flow to eligible recipients. In addition, the Secretary's interpretation promotes administrative convenience for the States and reflects the necessity for State-level administrative activity in connection with local programs for handicapped and disadvantaged individuals.

Section 401.91 Conditions a State must meet—reserving funds for State administration.

Comment. One commenter expressed the view that the Secretary should specify in § 401.91 that the 20 percent reserved for State activities under Title II of the Act is to be reserved from Part B of Title II.

Response. No change has been made. Section 113(b)(4) of the Act permits the funds for State activities to be derived from both Parts A and B of Title II of the Act.

Comment. One commenter expressed the view that the 7 percent limitation on State administrative expenditures for the Title II allotment will place severe restrictions on State leadership activities in many States; particularly the smaller States. Another commenter felt that administrative costs should be taken from the Title II, Part B funds. Still another commenter felt the final regulations should prohibit States from using the 3.5 percent set-aside or the 8.5 percent set-aside for administrative support of the § 401.13 personnel.

Response. No change has been made. Section 102 of the Act clearly limits the funds available for State administration to 7 percent of the basic State grant (excluding any additional cost for the sex equity coordinator). The Secretary interprets sections 102 and 113(b)(4) of the Act to require the States to first reserve the amount for State administration and then to allocate funds for Title II, Part A and Part B according to the required percentages. Therefore, funds for State administration do not come out of funds reserved under Title II, Part A for single parents and homemakers or programs designed to eliminate sex bias and stereotyping, respectively.

Section 401.92 Conditions a State must meet—reserving funds under the Vocational Education Opportunities Program.

Comment. Several commenters suggested adding a provision that would allow funds to be diverted from Title II, Part B of the Act to supplement those reserved in Title II, Part A for vocational education programs serving single parents and homemakers and programs designed to eliminate sex bias and stereotyping in vocational education.

Response. No change has been made. Funds under Title II, Part B of the Act must be used to expand, improve, modernize, or develop quality vocational education programs. To the extent that the State vocational education program includes improving, expanding, modernizing, or developing vocational education programs serving single parents and homemakers or progams designed to eliminate sex bias and stereotyping, Title II, Part B funds may be used for such programs.

Comment. Several commenters suggested adding language to prohibit States from diverting funds for the sex equity and single parent and homemaker programs to other purposes. To prevent the diverting of funds, the commenters recommended that § 401.13 be changed to include a requirement that the expenditure and award of funds under the sex bias and single parents and homemakers programs be determined by the "sex equity coordinator" only.

Response. No change has been made. The Secretary does not believe that additional regulatory language is necessary. The Act and the regulations clearly reserve specific amounts for vocational education programs serving single parents and homemakers and programs designed to eliminate sex bias and stereotyping in vocational education; the amounts may not be diverted. In addition, the Act and the regulations require that the "sex equity coordinator" administer these programs.

Comment. A commenter suggested that the regulations clarify that the one percent set-aside for criminal offenders in § 401.92(f) is not the only source of funds under the Act in which correctional institutions or agencies can receive funding for vocational education programs and services.

Response. No change has been made. The Secretary believes that Congress intended that criminal offenders or any of the special groups covered by sections 201(b) and 202 of the Act be restricted to receiving services under Title II, Part A of the Act exclusively; additional regulations are not believed

necessary. For example, the regulations in § 401.60(a)(14) (Proposed § 401.60(a)(23)) stipulate that funds from Title II, Part B of the Act may be used for improvement or expansion of any activities authorized under Title II, Part A of the Act which would accomplish the purposes of Title II, Part B.

Section 401.93 Conditions a State must meet—administrative cost requirements.

Comment. One commenter asked for the statutory authority for the "necessary and reasonable" language as it relates to administrative costs in § 401.93 (a)(2) and (b).

Response. No change has been made. The Secretary believes the "necessary and reasonable" cost principle is implicit in the statute. This language is consistent with Department-wide regulations (34 CFR Part 74, Appendix C) on cost principles, and well established Departmental practice.

Section 401.94 Conditions a State must meet—cost sharing requirements.

Comment. One commenter requested that the matching requirements be made clearer and separately placed under each program rather than being grouped in § 401.94.

Response. No change has been made. The Secretary believes the regulations are clearer when organized by topics rather than by programs.

Comment. Several commenters were concerned that community-based organizations (CBOs) would not be able to provide the required 50 percent non-Federal match for administration of projects and activities in § 401.94 (b)(1)(ii) an (b)(2). The commenters felt that the 50 percent matching requirement should be deleted for CBOs.

Response. No change has been made. The matching requirements in § 401.94 (b)(1) (ii) and (b)(2) reflect the statute.

Comment. Several commenters pointed out that the expenditure requirements in § 401.94(b)(1)(iii) would force the closing of a substantial number of separate programs for handicapped and disadvantaged individuals because these programs can no longer be totally funded with Federal funds. The commenters requested that § 401.94 be changed to permit Federal funds to be used to pay the total cost of separate programs.

Response. No change has been made. Section 201(c) of the Act requires that Federal funds be used to pay no more than 50 percent of the expenditures for handicapped or disadvantaged individuals in separate programs which exceed the average per-pupil expenditures for regular services and activities. However, under Title II, Part B of the Act, the entire costs of such separate programs may be paid from Federal and matching funds as long as the requirements in §§ 401.59 and 401.60 are met.

Comment. One commenter requested that the matching requirement be waived by regulation for expenditures for modern machinery and tools acquired under section 201(d)(2) of the Act.

Response. No change has been made. Section 502(a)(3)(A) of the Act requires that expenditures of Federal funds for disadvantaged individuals under Part A of Title II of the Act be matched. It should be noted, however, that the matching requirements applies in the aggregate and need not be applied on a project-by-project basis.

Comment. Several commenters objected to the exclusion of in-kind contributions in meeting cost-sharing requirements under Title II, Part B of the Act. The commenters suggested changing § 401.94(c) to read: "A State may not use the value of in-kind contributions to satisfy cost-sharing requirements under the State Vocational Education Program, except under the Vocational Education Improvement, Innovation, and Expansion Program."

Response. No change has been made. Congressional intent regarding the use of in-kind contributions under the Act is described in Item 236 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 98, which clarifies that in-kind contributions may not be counted toward matching requirements. Under Title III, Part E, Industry-Education Partnership Program, the business and industrial share of the costs required by section 342(b)(3) of the Act may be in the form of cash or in-kind contributions (such as facilities, overhead, personnel, and equipment) fairly valued. The remainder of the non-Federal match for this program may not not be met by in-kind contributions.

Section 401.95 and Section 401.96 Conditions a State must meet—allocations for handicapped and disadvantaged individuals.

Comment. Several commenters strongly supported the interpretation that the allocation of funds be based on "participating" eligible recipients. Another commenter asked why the word "participating" was added to the term "eligible recipients" in §§ 401.95 and 401.96.

Response. No change has been made. The term "participating eligible recipients" was used in order to eliminate the unnecessary administrative burden States would face in having to make pupil counts in, and allocate funds to, eligible recipients that did not wish to participate in the programs (assuming the data were available from such disinterested eligible recipients). Also, allocations for disinterested eligible recipients would then have to be reallocated to those eligible recipients that did wish to participate, thus creating an additional administrative burden on States.

Comment. One commenter noted that §§ 401.95 and 401.96 appear to be silent on the reallocation of funds for handicapped and disadvantaged persons. The commenter felt that any funds returned to the State by an eligible recipient should be reallocated on a discretionary basis to areas with demonstated unmet needs. The commenter recommended that the regulations allow States to reallocate these funds without applying the formulas.

Response. No change has been made. Sections 401.95 and 401.96 describe the formulas for initially allocating Title II, Part A funds reserved for handicapped and disadvantaged individuals to participating eligible recipients. The regulations do not prohibit the reallocation of any of these funds which are not needed by a participating eligible recipient to other participating eligible recipients which do have a need for them. The Secretary interprets section 203(a) (1) and (2) of the Act to permit reallocation of unneeded funds from one participating eligible recipient to others either according to the statutory allocation formulas or to those participating eligible recipients which the State determines have the greatest need for additional funds.

Comment. One commenter requested that allocations for handicapped and disadvantaged individuals under section 203(a) of the Act be based on the most recent data available rather than on counts made in the program year preceding the year in which the allocation is made. The commenter pointed out that such a change would accommodate the different data collection methods used by the States.

Response. No change has been made. Section 203(a) of the Act requires that the allocations be based on counts made in the year prior to the year of determination.

Comment. Several commenters expressed the view that the distribution requirements under §§ 401.95 and 401.96 will severely limit the services that can be provided in sparsely populated areas or to special residential schools. The commenters asked that a sparsity factor be included in these regulations.

Response. No change has been made. The distribution requirements are mandated by section 203(a) of the Act.

Comment. Several commenters were concerned that the criteria for funds identifed in §401.96(a)(2) could penalize LEAs that have been unable to obtain adequate vocational education funding in the past, and, therefore, have not been able to serve their economically disadvantaged population with vocational education programs.

Response. No change has been made. The requirement in § 401.96(a)(2) that the distribution of funds be based, in part, on the number of economically disadvantaged individuals served in vocational education programs reflects the requirements of section 203(a)(2)(B)(ii) of the Act.

Comment. Several commenters expressed the view that § 401.96(b) of the regulations establishes a method for determining a minimum expenditure level for individuals with limited English proficiency which could result in an inappropriate or inequitable minimum expenditure level for this population.

Response. A change has been made. In general, section 203(a)(3) of the Act requires eligible recipients to support vocational education programs for persons with limited English proficiency from their allotments of Title II, Part A funds reserved for disadvantaged individuals in the same proportion as the number of persons with limited English proficiency "served" by the eligible recipient in the preceding year bears "to the population of the State." In an attempt to give the language of the statute a reasonable meaning, in the proposed regulations the Secretary interpreted "served" to mean served in vocational education and interpreted the reference to the State's population to mean the total population of persons with limited English proficiency served in vocational education by all participating eligible recipients. The Secretary agrees that, as the commenters pointed out, the ratio between the number of persons with limited English proficiency served in vocational education by an eligible recipient and the number of such persons served in vocational education throughout the State is not always an equitable or appropriate means of allocating an eligible recipient's funds reserved for disadvantaged persons, including persons with limited English proficiency. For example, the ratio described in the proposed regulation does not accurately reflect the relative numbers of limited English proficient persons and otherwise disadvantaged persons in an eligible recipient who have a need for vocational education. Several of the commenters invited the Secretary to, in effect, rewrite section 203(a)(3) of the Act in order to establish a more equitable means of allocating funds for persons with limited English proficiency. While the Secretary is not authorized to rewrite the statute, the Department has forwarded to Congress a legislative proposal which would amend section 203(a)(3) and establish a more equitable ratio.

In the meantime, the final regulations essentially repeat the language of section 203(a)(3). The Secretary continues to believe that the interpretation reflected in the proposed regulation is a reasonable one, which the States are free to adopt, where equitable and appropriate; however, the States may adopt other reasonable interpretations, that are consistent with the purposes of the Act, as well. It should also be pointed out that the Secretary interprets section 203(a)(3) to establish a minimum funding requirement for persons with limited English proficiency from Title II, Part A funds reserved for disadvantaged individuals. Therefore, a State would be permitted to adopt the interpretation provided in the proposed regulations, but spend additional funds for programs for persons with limited English proficiency when equitable and appropriate to do so. In addition, a new State plan requirement has been added, § 401.19(b)(14), which requires States to describe in their State plans how they will implement § 401.96(b).

Comment. One commenter suggested adding language which targets funds for programs serving limited-English proficient individuals according to incidence of ethnicity in the eligible population.

Response. No change has been made. The Act does not authorize such a provision. Individuals with limited English proficiency, by virtue of their limited language proficiency, are considered academically disadvantaged. Disadvantaged individuals require special services and assistance in order to enable them to succeed in vocational education programs. The Secretary expects that individuals enrolled in such programs shall be appropriately served, regardless of the incidence of their ethnic group in the eligible population.

Comment. One commenter recommended that § 401.96(b) be modified by adding the provision that no eligible recipient be required to spend more of its disadvantaged allocation for limited-English proficient individuals than it does on disadvantaged persons not so classified.

Response. No change has been made. The Act does not authorize such a provision.

Section 401.97 Conditions a State must meet—matching requirement for programs for handicapped and disadvantaged individuals.

Comment. A number of commenters objected to the requirement in § 401.97 that the non-Federal share of the cost of projects, services, and activities for handicapped and disadvantaged individuals under Part A of Title II be shared equitably from State and local sources. The commenters maintained that the State should have the discretion to assume 100 percent of these costs in order to promote local participation. Other commenters were pleased that no definition of "equitably" was provided.

Response. No change has been made. Section 401.97 of the regulations sets forth the requirements of section 502(b) of the Act. It should be noted, however, that section 502(b) of the Act and § 401.97 of the regulations permit a State to assume 100 percent of the non-Federal costs for handicapped and disadvantaged individuals if the State determines that these costs cannot be reasonably provided from local sources.

Comment. Several commenters expressed concern over the adverse effects on programs for handicapped and disadvantaged individuals that a strict interpretation of the matching requirement might have. These commenters also expressed concern in cases where the total burden of meeting the matching requirement was assumed at the State level.

Response. No change has been made. The Secretary believes that the matching requirement is sufficiently flexible. In addition, the determination of what constitutes an equitable sharing of the matching requirement, between the State and local funds, is made in the first instance by the State.

Section 401.98 Conditions a State must meet—use of community-based organizations under the Vocational Education Opportunities Program.

Comment. One commenter asked why § 401.98 of the proposed regulations used the phrase "each local educational agency or other eligible recipient" while section 203(a)(4) of the Act reads "each local educational agency shall use to the extent feasible, community-based organizations . . . in addition to other eligible recipients, . . ."

Response. No change has been made. The Secretary believes the language of the regulations accurately expresses the intent of Congress. Community-based

organizations are not defined as eligible recipients in section 521(14) of the Act as is implied by the language of section 203(a)(4). In addition, if read literally, section 203(a)(4) of the Act would seem to exempt eligible recipients other than local educational agencies from the requirement to use community-based organizations when appropriate. Yet the apparent intent of Congress was to expand the use of community-based organizations by eligible recipients under the Act.

Section 401.101 Conditions a State must meet—equal access provisions.

Comment. One commenter suggested that minimum guidelines should be established for determining "equal access" for handicapped and disadvantaged individuals.

Response. No change has been made. Adequate guidance for providing equal access to handicapped and disadvantaged individuals is provided in § 401.101. This includes pre-enrollment information about available opportunities, and once enrolled, an assessment of interests and abilities, adaptation of curriculum, instruction, and facilities, and the provision of guidance and counseling.

Comment. Several commenters suggested changing the requirement in § 401.101(a) that local educational agencies provide information about vocational education program eligibility and opportunities to handicapped children and their parents. Some commenters recommended that the regulations require instead that postsecondary institutions use their allocation of special needs funds to provide such information to handicapped and disadvantaged students. One commenter recommended adding a requirement to provide the information to adult handicapped and disadvantaged students.

Response. No change has been made. The Act does not authorize the rules requested by the commenters. Section 204(b) of the Act imposes "outreach" obligations only on local educational agencies.

Comment. One commenter recommended adding to § 401.101(a) a minimum age level for providing information to handicapped children and their parents about opportunities and eligibility requirements for vocational education programs. The commenter suggested that because many handicapped students might be in ungraded classes and never formally reach "the ninth grade," an age requirement would more fully address the intent of Congress.

Response. No change has been made. Regardless of whether students are in graded or ungraded classes, the State must meet its obligation of providing handicapped students and their parents with program information one year in advance of when the student may appropriately enter vocational education, but in no event later than the beginning of the ninth grade. Where students are enrolled in ungraded classes, the State must still comply with the law, by informing handicapped students and their parents about vocational education opportunities and eligibility requirements at least one year before the student is eligible to enter the appropriate vocational education program.

Comment. Several commenters suggested clarifying § 401.101, which requires local educational agencies to provide handicapped and disadvantaged students and their parents with information concerning eligibility and opportunities in vocational education programs. The commenters suggested adding examples of the kinds of information to be provided and a statement that the information may be provided more than once.

Response. No change has been made. The Secretary believes the Act and regulations are sufficiently clear as to the type of information that must be provided to students and parents, and does not wish to establish possibly inflexible rules in this area. In addition, while the Act and regulations specify when the information must be provided, they do not preclude its repetition.

Comment. One commenter asked why § 401.101 departs from the language of the Act. Section 204(b) of the Act provides that local educational agencies shall, "with respect to" funds reserved under the basic State grant for handicapped and disadvantaged students, provide information to such students and their parents concerning vocational education opportunities. Section 401.101(a) of the proposed regulations provides that each local educational agency that receives funds reserved for handicapped or disadvantaged students shall use funds to provide the required information.

Response. No change has been made. The Secretary believes § 401.101(a) correctly interprets the intent of Congress. The phrase "with respect to" is ambiguous. Broadly speaking, it might be read to mean that the receipt of Federal funds triggers the local educational agency's obligation to provide the required notice. On the other hand, it might be read to mean the recipient must use the Federal funds to provide the information. The Secretary believes that the latter interpretation is the more plausible one. The legislative history to section 204(b) of the Act indicates that while Congress intended to overcome the "lack of proper information regarding what vocational education has to offer," Senate Report No. 98–507, 98th Cong. 2d Sess. p. 18, handicapped and disadvantaged students, it did not intend to impose affirmative obligations upon local educational agencies apart from the use of funds under the Act. It is the Secretary's interpretation of section 204(b) of the Act that if the local educational agency is already providing the required information with non-Federal resources, it need not, of course, use the Federal funds available for those purposes to duplicate those expenditures.

Comment. One commenter suggested adding to § 401.101 a requirement that the set-aside monies shall be used in compliance with the matching and excess cost requirements under the law. The commenters expressed the concern that without such language some districts may decide that they can circumvent the matching and excess cost requirements by using set-aside dollars for evaluation, counseling, and other similar activities.

Response. No change has been made. Paragraph (b)(2) of § 401.101 provides that funds must be used under that section in a manner that is "consistent with the regulations in this Part," including matching and excess cost requirements.

Section 401.102 Conditions a State must meet—Consumer and Homemaking Education Program.

Comment. Several commenters felt that the word "projects" was erroneously inserted in § 401.102 in lieu of the word "programs" as found in sections 312 (a), (c), and 313(a) of the Act.

Response. No change has been made. The word "projects" simply connotes an undertaking by an eligible recipient within the program area of consumer and homemaking education. (See 34 CFR 77.1(c)—definition of "project.")

Comment. One commenter cited a colloquy on the House floor during which an understanding was reached by the participants in the colloquy that the 6 percent cap on "leadership" as set forth in sections 313(b) and 333(b) of the Act did not apply to State leadership activities involving direct services to local programs under the Consumer and Homemaking and Guidance and Counseling Programs. Items 50 and 53 of the Conference Report which limit

"administration" to 6 percent for these programs were also referred to in the cited colloquy. The commenter asked that the exclusion applying to "leadership" activities be included in the regulations.

Response. No change has been made. The language of the law is at odds with the agreement reached in the colloquy, 130 Cong. Rec. H. 11420 (daily ed. Oct. 4, 1984), and with the language in Items 50 and 53 in the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. pp. 71, 72. When the language of the law is clearly at odds with the legislative history, the Secretary must be bound by the language of the law. However, the Secretary believes that congressional intent is established by the language of Items 50 and 53 with regard to the category of expenditures to which the 6 percent cap applies for these programs. Consequently, the Secretary has offered a technical amendment to sections 313(b) and 333(b) of the Act which would strike the reference to "leadership" in these sections and substitute a reference to "administration."

Comment. Several commenters expressed the view that for a proper interpretation of the Act, the term "program" should be changed to "part" in § 401.102(b)(2).

Response. No change has been made. "Program" refers to the consumer and homemaking education program authorized by Title III, Part B of the Act.

Comment. One commenter requested that § 401.102(b)(2) be modified by inserting the phrase "and/or consumer education" after "home economics."

Response. No change has been made. The term "home economics" includes both consumer and homemaking education.

Section 401.103 Conditions a State must meet—Adult Training, Retraining, and Employment Development Program.

Comment. Numerous commenters wanted the word "may administer" in § 401.103(b) changed to "shall administer the programs for single parents and homemakers authorized by this section."

Response. No change has been made. While section 3(b)(3)(B) of the Act reserves funds under Title III, Part C for programs serving single parents and homemakers, section 111(b)(1)(A) of the Act requires that the sex equity coordinator administer only the programs for single parents and homemakers described in section 201(f) of the Act and the programs to eliminate sex bias and stereotyping in vocational education described in section 201(g) of the Act. However, the regulations continue to clarify that the sex equity coordinator may administer the programs for single parents and homemakers under Title III, Part C.

Section 401.110 State administrative responsibilities—Vocational Education Data System.

Comment. Several commenters suggested data requirements for inclusion in the new national Vocational Education Data Reporting and Accounting System mandated in section 421(a)(1) of the Act.

Response. No change has been made. The regulations do not include any rules governing data requirements for the Vocational Education Data Reporting and Accounting System. The Department is currently studying statistical methodologies that may be employed to collect data. Regulations for this activity, if necessary, will be developed and promulgated at a later date.

Section 401.111 State administrative responsibilities—State occupational information coordinating committee.

Comment. One commenter suggested that § 401.111(a) be changed to require that a State Occupational Information Coordinating Committee (SOICC) include a community-based organization or opportunities industrialization center representative as a SOICC member.

Response. No change has been made. The five members of the SOICC are all statutorily mandated by section 422(b).

Section 401.120 Enforcement procedures—procedures used by the Secretary.

Comment. One commenter asked why pertinent statutory requirements are cross-referenced in §§ 401.120 and 401.121 instead of being spelled out.

Response. No change has been made. The Secretary does not publish statutory provisions when references suffice. Moreover, these provisions are rarely invoked and require no regulatory interpretation.

Part 401—General

Comment. Numerous commenters wanted the regulations amended by inserting the term "sex equity coordinator" wherever there is a reference to the "person described in § 401.13."

Response. No change has been made. While the Secretary recognizes that the term "sex equity coordinator" is commonly used to refer to personnel described in § 401.13, the Secretary does not believe it is necessary to regulate such a matter.

Comment. Several commenters suggested expanding the role and responsibilities of the person described in § 401.13 by amending several sections of the regulations. In § 401.18(a) the commenters wanted to require the State board to meet with and utilize the person described in § 401.13. In § 401.19(a)(19)(i) commenters wanted to require the active participation of the person described in § 401.13(a) in the design of Adult Training, Retraining, and Employment Development Programs.

Response. No change has been made. The Act and regulations are quite specific concerning the duties and responsibilities of the person described in § 401.13(a), including how that person will assist the State board in carrying out the purposes of the Act. Clearly, States may choose to involve this person in the areas raised by the commenters.

Comment. Several commenters suggested standards of professional qualification for vocational education leadership. Qualifications that were suggested included requiring the State director and staff to be "bona fide" vocational educators. Other commenters suggested requiring vocational student organizations to be supervised by vocational teachers qualified in the occupational area of the student organization.

Response. No change has been made. Under the Act, States are responsible for administering their vocational education programs. The Secretary believes that States will use appropriately qualified personnel for administration, instruction, and other vocational education activities and services and that regulations in this area are not necessary.

Comment. A commenter felt that the regulations should ensure the development of postsecondary programs in agriculture, especially in those States where such programs are not in place, and should establish criteria to ensure that postsecondary programs build upon the secondary vocational agriculture programs. The commenter also suggested that the regulations permit the use of funds for preservice and inservice training of postsecondary teachers.

Response. No change has been made. Funding under the Act for postsecondary programs in agriculture, or any other occupational fields, should be based on the results of the State needs assessments performed as part of the development of the State plan, (with particular reference to labor market needs of the State) as required by § 401.18(c). It should also be noted that § 401.18(c) requires such assessments to include "the capacity of programs to

facilitate entry into, and participation in, vocational education, and to ease the school-to-work and "secondary-to-postsecondary transitions." Funds under Title II, Part B and under Title III, Part C, may be used for both preservice and inservice training of postsecondary vocational and technical teachers, while those under Title II, Part A may be used for inservice training.

Comment. Several commenters expressed concern that the regulations do not emphasize technical competence in a vocational field as a condition of membership for either the National Council on Vocational Education or the State Council on Vocational Education. The commenters stated that "members insensitive to the needs of large segments of the economy could make massive errors in judgement."

Response. No change has been made. The Secretary believes that neither the National Council on Vocational Education nor the State councils were intended to provide, from their memberships, detailed advice on the technical content of occupations. On the other hand, the Act does authorize these councils to obtain whatever technical competence they require to meet their advisory responsibilities. Section 431(c)(3) and (4) of the Act authorizes the chairperson of the National Council to "procure the services of experts and consultants" and to "accept voluntary and uncompensated services of professional personnel, consultants, and experts, notwithstanding any other provision of the law." Section 112(e) of the Act states that, "Each State council is authorized to obtain the services of such professional, technical, and clerical, personnel as may be necessary to enable it to carry out its functions under the Act. . . ." Finally, the State board is required by section 111(d) of the Act to establish in consultation with the State council, "a limited number of technical committees to advise the council and the board on the development of model curricula to address State labor market needs."

Comment. One commenter suggested that the regulations should allow for postsecondary institutions to use funds to provide preservice and inservice education.

Response. No change has been made. Under § 400.4(b), postsecondary institutions are eligible recipients. As such, they may use funds as any other eligible recipients. Preservice and inservice training are among the activities for which eligible recipients may use Title II, Part B funds.

Comment. One commenter questioned the substitution of "program year" in the proposed regulations in a number of instances where "fiscal year" is used in the Act.

Response. No change has been made. "Program year" was substituted for "fiscal year" in a number of instances in the regulations in order to achieve consistency for expenditure, program operation, and reporting periods. The Act does not define the term "fiscal year," and requires States and eligible recipients to plan, operate programs, and expend funds on a program year basis. The Secretary does not believe that the Congress intended to preclude the States from using a consistent period for accounting for these expenditures.

Comment. Several commenters suggested a series of definitions, prohibitions, and additions which would substantially alter the State council membership, the State's responsibility to conduct needs assessments, and the administration and use of funds.

Response. No change has been made. In promulgating the regulations, the Secretary was guided by the vocational education policy set forth by Congress in section 6 of Pub. L. 98–524. The policy emphasizes minimal Federal interference in the administration of vocational education programs. Incorporating the suggested prescriptions and definitions would result in overregulation contrary to vocational education policy established by Congress.

Part 407—Bilingual Vocational Training Program

Section 407.10 Types of projects.

Comment. One commenter felt that the phrase "bilingual vocational training projects for individuals who are . . . available for education in a postsecondary educational institution," in § 407.10(a)(1) of the proposed regulations repeats the first part of the paragraph which refers to "individuals who have completed or left elementary or secondary schools."

Response. No change has been made. The phrase is statutory and refers to individuals who can participate in an educational program at a postsecondary educational institution.

Section 407.20 Application requirements.

Comment. One commenter asked the reason for adding the requirement in § 407.20(a)(3) (Proposed § 407.20(b)(3)) that the State's vocational education board comment on the relationship of the proposed project to the State program.

Response. No change has been made. Section 441(d)(2) of the Act requires that applications to the Secretary for awards under the Bilingual Vocational Training Program be submitted to the State board for review and comment. The Secretary believes it is reasonable to interpret this requirement as including comment on the relationship of the proposed project to the State's vocational education program.

Section 407.31 Selection criteria.

Comment. Several commenters suggested that the point weights for various criteria for the Bilingual Vocational Training Program are different than the point weights assigned to criteria for other national discretionary programs. In addition, one commenter was concerned that the criterion in § 407.31(c), entitled "program factors," is used only for the Bilingual Vocational Training Program and should be deleted from the regulations.

Response. No change has been made. While individual criteria may be weighted differently than similar criteria in other programs, the different weights reflect a variety of factors, including program emphasis and expectations. In addition, the Secretary reserves the right in § 407.30(d) to assign a "reserved 15 points" among the criteria in § 407.31 to emphasize different aspects of the application process. As for § 407.31(c), the Secretary feels that it is necessary to add these "program factors" in order to encourage competition and better proposals in this particular program.

Comment. One commenter recommended that § 407.31(c)(2)(i) include the following examples of key methodologies and techniques used in bilingual vocational training—

(a) Providing training and instruction in English and the native languages of the trainees;

(b) Providing job-related English-as-a-second-language instruction;

(c) Coordinating job-related English-as-a-second-language instruction with the occupational training; and

(d) Providing training and counseling to prepare trainees for working in an English language environment.

Response. A change has been made. For greater clarity, the suggested examples of methodologies and techniques have been incorporated in the regulations.

Comment. One commenter pointed out that there are few private sector organizations and firms (other than community-based organizations which often are sponsors of Bilingual Vocational Training Programs) which have the necessary expertise to justify their involvement in the *operations* of a project. The commenter recommended

that the criterion "private sector involvement" in § 407.31(h) be deleted.

Response. No change has been made. Including private sector involvement as a selection criterion reflects section 2(3) of the Act which states that it is a purpose of the Act to "promote greater cooperation between public agencies and the private sector in preparing individuals for employment." Although the criterion has not been deleted as suggested, it has been revised to provide additional flexibility. The references to the private sector have been replaced by the term "employers," whether public or private.

Comment. One commenter suggested that there should be a requirement for agencies to place a certain percentage of bilingual vocational training program students to motivate them to become self-sufficient members of society.

Response. No change has been made. The selection criteria in § 407.31(i) includes a requirement for information and documentation of the extent to which more than 65 percent of the trainees, upon completion of their training, will be employed in jobs related to their training or seeking additional training.

Comment. Several commenters expressed the view that a 10-point award is excessive for the selection criteria under § 407.31(i), "the extent to which more than 65 percent of the trainees will be employed in jobs related to their training upon completion of their training." One commenter also asked the specific statutory authority for this criteria.

Response. No change has been made. The purpose of this criterion (and the 10 point weighting) is to ensure that training supported under the Act is meaningful in terms of labor market demands. The Secretary has explicit authority under the Carl D. Perkins Vocational Education Act to issue reasonable regulations to ensure that the intent of the Act is carried out. (Refer to section 2 of Pub. L. 98–524)

Section 407.32 Selection of applications for funding.

Comment. One commenter suggested that §§ 407.32 and 408.32 should make the State board, rather than the Secretary, responsible for determining whether "the most highly rated applications are equally distributed among populations of individuals with limited English proficiency in the affected State."

Response. No change has been made. The suggested change would transfer to the State boards authority Congress vested in the Secretary. The regulations cannot change this statutory authority.

Part 408—Bilingual Vocational Instructor Training Program

Section 408.10 Types of projects.

Comment. One commenter suggested that § 408.10(b), which prohibits an award to an applicant which does not have an ongoing vocational training program, was inappropriate for inservice training projects. The commenter said that typically the instructors participating in such programs do not need additional vocational training, but need training on how to teach limited English proficient persons.

Response. No change has been made. The requirement is statutory.

Section 408.20 Application requirements.

Comment. One commenter recommended changing, in § 408.20(b)(4), the words "participating or to participate" to "enrolling or to enroll." The commenter felt that "participants" might be interpreted to include staff as well as students.

Response. A change has been made. The regulations clarify that, among other information, the application is to describe the minimum qualifications of "trainees."

Section 408.31 Selection criteria.

Comment. One commenter suggested adding the following criterion "Program Factors" to § 408.31 and assigning it 10 points:

Program Factors

(1) The Secretary reviews each application for information that shows the applicant's understanding of key factors.

(2) The Secretary looks for information that shows—

(i) An understanding of the major components and operations of a Bilingual Vocational Training Program for limited English proficiency trainees;

(ii) An understanding of the key methodologies and instructional techniques used in bilingual vocational training, including coordination of instruction;

(iii) Procedures for curriculum development and revision for limited English proficiency trainees;

(iv) Procedures for selecting and adapting instructional materials for limited English proficiency trainees;

(v) Procedures for evaluating the skills and needs of limited English proficiency trainees;

(vi) Provisions for coordination of project activities with local Bilingual Vocational Training Programs; and

(vii) That the project will be coordinated with the State board or agency designated or established under section 111 of the Act.

Response. No change has been made. The suggested criterion is more appropriate for programs in which students with limited-English proficiency are to be taught. However, to the extent appropriate, the criterion is covered by other criteria in § 408.31.

Comment. One commenter recommended a reduction in the maximum number of points for the criterion "Evaluation Plan" in § 408.31(f) (Proposed § 408.31(e)). The commenter felt that reducing the points would encourage very basic evaluations which are more useful to projects than elaborate evaluations.

Response. No change has been made. The Secretary does not believe that assigning a maximum of 10 points on the basis of the quality of the evaluation plan will necessarily result in excessively elaborate evaluations, but does believe that applicants should give considerable thought to developing a high quality plan.

Part 409—Bilingual Vocational Materials, Methods, and Techniques Program

Section 409.10 Types of projects.

Comment. One commenter pointed out that section 441(c)(1) of the Act provides for". . . development of instructional and curriculum materials, methods, or techniques . . ." as eligible activities while §409.10(b) of the proposed regulations included only "instructional and curriculum materials." The commenter asked why the other activities were not included.

Response. A change has been made. The words "methods, or techniques" have been added to § 409.10(b) immediately following the word "materials" in order to adhere more closely to the language in the Act.

Part 410—Indian and Hawaiian Natives Program

Section 410.10 Types of projects.

Comment. One commenter suggested that § 410.10(b) should not exclude the word "Hawaiian Natives" from the text which says that projects for Indians funded under this program are *in addition* to other provisions of the Act.

Response. No change has been made. The Secretary has followed the language of section 103(b)(3) of the Act in limiting this paragraph of the regulations to Indians. However, Hawaiian Natives are not excluded from participation in other programs authorized by the Act.

Section 410.31 Selection criteria.

Comment. Several commenters felt that the 65 percent job placement rate is an unrealistic criterion for the Indian and Hawaiian Natives Program. These commenters thought § 410.31(h)(1) should be revised to include a more appropriate criterion, such as "positive termination," which would include continued training.

Response. A change has been made. A principal purpose of job training is job placement, and the criterion is believed necessary to ensure that the training supported under this program is meaningful in terms of labor market demands. However, the Secretary agrees that the criterion should be made more flexible, and has changed the criterion so that trainees who pursue additional training that is related to their training under this program would be included as part of the 65 percent.

Comment. One commenter was concerned that there is no rationale for greater point weights being placed on a few of the Indian and Hawaiian Natives Program selection criteria in § 410.31 than are in other national discretionary programs.

Response. No change has been made. An absolutely consistent weighting of these criteria among different programs should not be expected in light of differing program emphases, requirements, and criteria. Also, in § 410.30, the Secretary has reserved 15 points which may be assigned among the criteria in § 410.31. The purpose of reserving 15 points for the Secretary's use is to preserve the capability of emphasizing one or more criteria in a particular competition, if the Secretary deems this to be desirable.

Comment. One commenter felt that the requirement, in § 410.31(g), for private sector involvement is unrealistic in isolated rural settings and does not reflect regional differences among Indian tribes. The commenter requested that private sector involvement be redefined as "community involvement" in such settings.

Response. No change has been made. Including private sector involvement as a selection criterion reflects section 2(3) of the Act which states that it is a purpose of the Act to "provide greater cooperation between public agencies and the private sector in preparing individuals for employment." Further, private sector involvement includes the involvement of employers, whether public or private, philanthropic groups, and community organizations.

Comment. One commenter suggested a change in the title of the selection criterion in § 410.31(h) for the Indian and Hawaiian Natives Program. The commenter pointed out that this particular criterion is labeled "Employment Opportunities" in the regulations for other national discretionary programs, but is called "Quality of Training" in § 410.31.

Response. A change has been made. For consistency, § 410.31(h) is now titled "Employment Opportunities."

Comment. One commenter asked what the basis was for requiring, in § 410.31(h)(2), that Indian tribes applying under the Indian and Hawaiian Natives Program provide information which shows that the employment for which training is provided is related to the tribal economic development plan.

Response. No change has been made. This provision was incorporated into the regulations in order to ensure that training under this program is consistent with current job needs and opportunities as reflected in the tribal economic development plan.

Section 410.32 Additional factors for declining an award.

Comment. One commenter suggested deleting the provision set forth in § 410.32(b) which provides that the Secretary can decline an award under the Indian and Hawaiian Natives Program if funding the project would create an inequitable distribution among Indian tribes or among organizations serving or representing Native Hawaiians.

Response. No change has been made. The Secretary believes it is reasonable to reserve the authority to avoid an inequitable distribution of awards. This provision of the regulations reflects long standing administrative practice under the predecessor program authorized by the Vocational Education Act.

Section 410.33 Hearings under the Indian Program.

Comment. One commenter noted that § 410.33, in providing an opportunity for hearings, only mentions Indians. The commenter suggested that Hawaiians be included in this provision.

Response. No change has been made. Section 410.33 of the regulations specifically refers to Indians because it derives from the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended. See 25 U.S.C. 450f(b).

Part 415—Model Centers for Vocational Education for Older Individuals

Section 415.2 Eligible applicants.

Comment- One commenter expressed concern over the limited range of organizations eligible to apply under the Model Centers for Vocational Education for Older Individuals Program. The commenter suggested broadening eligibility to include "any public or private agency or organization serving older worker."

Response. No change has been made. Section 471(b) of the Act indicates that model centers are to be operated by eligible recipients. Section 251(14) of the Act defines eligible recipients as local education agencies and postsecondary educational institutions.

Section 415.10 Types of projects.

Comment. One commenter suggested that two additional requirements be included under § 415.10. They are:

(1) Encourage centers to utilize and coordinate services with other Federal programs including JTPA, Rehabilitation programs, and services provided through the U.S. Employment Service; and

(2) Work closely with private sector employers in the design of training programs and in the placement of older adults upon completion of training.

Response. No change has been made. The requirements in § 415.10 of the regulations have been taken directly from section 417(b) of the Act. Note, however, that the involvement of the private sector in the planning and operation of each project is one of the selection criteria used in evaluating each application.

Part 416—National Vocational Education Research Program

Section 416.1 Purpose.

Comment. One commenter suggested that the Department give more emphasis to guidance and counseling activities in the National Vocational Education Research Program.

Response. No change has been made. Section 416.1(d) of the regulations states that one of the four purposes of the National Vocational Research Program is to "authorize research activities which are readily applicable to the vocational setting and are of practical application to vocational education administrators, counselors, instructors, and others involved in vocational education." In addition, the regulations contain authority to conduct research activities to benefit and meet the practical needs of guidance counselors. Section 416.10(i) permits research to be conducted in "any other aspect of vocational education that is specifically related to the Act," which could include research to meet the needs of guidance counselors.

Section 416.10 Types of projects.

Comment. Several commenters suggested additional research areas for inclusion in § 416.10. The commenters felt that such additions would more fully ensure that authorized research would be commensurate with the purposes of the Act. Suggested additions included particular areas of vocational education, such as agriculture; office occupations; improvement of teacher preparation; classroom teaching and learning; inservice education; program development; curriculum development and improvement; materials preparation; student selection; personnel development and retention; student placement; and diffusion and introduction of current and new subject matter, focusing on high technology and other industry trends.

Response. No change has been made. Section 416.10 lists eight possible areas of applied research, and is taken from section 402(a) of the Act. Several of these areas potentially encompass those suggested by commenters. For example, § 416.10(e) might include issues of classroom teaching and learning, improvement of teacher preparation, and others. The eight possible areas listed are not exclusive. As stated in § 416.10(i), applied research may be on "any other aspect of vocational education that is specifically related to the Act."

Part 417—National Center for Research in Vocational Education

Section 417.10 Activities carried out by the National Center.

Comment. Several commenters were concerned that § 417.10 changed the intent of the Act by using the word "may" instead of "shall" in describing how the National Center is to conduct research. In addition, one commenter recommended that the regulations require the National Center to subcontract research which focuses on the special populations identified in section 404(b) of the Act.

Response. No change has been made. The language of the regulations is consistent with the intent of Congress. The use of the word "may" in § 417.10 provides the National Center the option of conducting research and development projects either directly or through contracts with public agencies and public or private institutions of higher education. While research on special populations is required by section 404(b) of the Act, the Act does not require that such research be carried out by contract.

Comment. One commenter noted that section 404(b) of the Act permits the National Center for Research in Vocational Education to conduct projects, programs, and activities through subcontracts with other public agencies and public or private institutions of higher education. The commenter asked why this language was not included in the regulations.

Response. A change has been made. The phrase "with other public agencies and public or private institutions of higher education" has been added to § 417.10(a)(2) to more closely follow the language of the Act. In addition, the final regulations omits the reference to subgrants, in order to reflect more closely the language of the statute.

Comment. One commenter felt that § 417.10(b)(7) should be changed to include language on how the National Center for Research in Vocational Education is to carry out its responsibilities as a clearinghouse for information on contracts and subgrants made by the States.

Response. A change has been made. To clarify the National Center's responsibilities, the following language has been added to § 417.10(b)(7): "The National Center shall make available to the States, in a reasonable manner, abstracts on research, curriculum development, and personnel development projects."

Section 417.31 Selection criteria.

Comment. One commenter asked what is meant by the selection criterion, "philosophy of management" as it appears in § 417.31(b) and how will it be judged.

Response. No change has been made. The selection criterion, "philosophy of management," refers to the rationale and principles which form the basis for the applicant's management procedures, methods, and strategies. The intent of this criterion is to assist reviewers in selecting an applicant who has a prudent, realistic, and systematic procedure of managing the financial, human, and physical resources of a national center.

Section 417.41 Reports

Comment. One commenter asked for the statutory authority and rationale for the reporting requirements set forth in § 417.41 of the regulations.

Response. No change has been made. The Secretary feels that it is reasonable and prudent to include reporting requirements in the regulations because of the broad scope of work and funding level of the National Center. The Secretary has explicit authority to issue needed regulations under section 2(b) of Pub. L. 98–524.

Section 417.42 Activities performed during the fifth year of funding

Comment. One commenter asked for the statutory authority for § 417.42 of the regulations.

Response. No change has been made. The Secretary has the explicit authority to issue needed regulations under section 2(b) of Pub. L. 98–524. The provision is reasonable and prudent in the context of section 404(a)(2) of the Act, which required that there be a new competition for the National Center grant every five years.

Parts 407 Through 417—General

Comment. One commenter identified a number of sections in the regulations in which the term "cooperative agreements" was added. These sections are: §§ 407.2, 407.10, 408.2, 408.10, 409.2, 409.10, 410.2, and 412.10. The commenter asked for the authority for including this type of financial arrangement in these sections of the regulations.

Response. No change has been made. The authority for adding "cooperative agreements" as a permissible type of financial arrangement is the Grant and Cooperative Agreement Act of 1977. This Act authorizes the Secretary to use cooperative agreements as well as grants when the intent of the program is one of an assistance relationship between government and the recipient. Additionally, there is not language in the Act or its legislative history to indicate that cooperative agreements are prohibited.

Comment. One commenter recommended that the criterion "need," in §§ 407.31(a)(1) and 408.31(a)(1), be revised to clarify that applications should relate the need for the project to the needs of the local geographic area in which the project will be located.

Response. A change has been made. A project is not intended to operate in isolation from the community in which it is located. The description of need is intended to reflect the specific needs of the local community and relationship of the project to those needs.

Comment. One commenter pointed out that the Act mandates the Secretary to perform certain administrative activities in carrying out §§ 412.1, 415.1, and 416.1 of the regulations. The commenter asked why the appropriate sections of the regulations did not reflect the mandatory nature of the statutory requirements.

Response. No change has been made. The Secretary agrees that the Act imposes certain requirements on the Secretary. However, it is the Secretary's

policy not to regulate the administrative responsibilities of the Department.

Comment. One commenter noted that section 402(a) of the Act states that the research program may be conducted through the National Institute of Education (NIE) or another division of the Department. The commenter asked what the role of the NIE will be, and why this language was omitted in the regulations.

Response. No change has been made. The Secretary is currently considering the appropriate roles of various offices and divisions within the Department in carrying out the research activities as set forth in section 402 of the Act. The Department's administrative plan for carrying out these research activities is not included in the regulations because it is the Secretary's policy not to regulate the administrative responsibilities of the Department.

Comment. One commenter noted that section 402(b)(1) of the Act requires the Secretary to initiate certain leadership and inservice education activities. The commenter asked how these activities will be implemented and why these requirements were not mentioned in the regulations.

Response. No change has been made. The activities set forth in section 402(b)(1) of the Act will be implemented through the Office of Vocational and Adult Education. These requirements were not set forth in the regulations because the Secretary does not ordinarily regulate the administrative responsibilities of the Department.

Note.—This appendix is to be published in the **Federal Register** with the final regulations but it is not to be codified in the Code of Federal Regulations.

Appendix B—Summary of Questions and Answers

The following is a summary of the questions received on the notice of proposed rulemaking for the State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education published on January 25, 1985. Questions and answers are arranged in order of the sections of the final regulations to which they pertain. A "general" section has also been provided for questions which pertain to several sections of the regulations.

Part 401—State Vocational Education Program

Section 401.11 and Section 401.12 State board responsibilities.

Question. May the non-delegable functions of the State board, under section 111(a)(1) of the Act, be carried out by "contracting out" for the performance of such functions?

Answer. Yes. Contracting for services should not be confused with "delegation." While the six responsibilities listed in § 401.11 cannot be assigned to another State agency, the State board may contract for assistance in discharging any of these responsibilities. Whether this contracting involves another State agency, a private for-profit firm, or some other entity, such arrangements do not in any way relieve the State board of its responsibility.

Question. A large number of questions were received concerning the technical committees mandated by section 111(d) of the Act and further explained by § 401.12(b). It may prove helpful to summarize the answers to all of these questions in a single list.

Answer. The "technical committees" mandated by section 111(d) of the Act:

a. Are Statewide committees; local advisory committees cannot take their place—even if they are of the technical variety;

b. Focus on vocational program instructional content, rather than on all aspects of vocational education—as was the case with local advisory councils on vocational education, under the Vocational Education Act, or as is the case with the State Councils on Vocational Education, under the Carl D. Perkins Act;

c. Are not limited to advising on "technical" occupations (or those occupations ordinarily filled by "technicians") but may focus on any occupation or field generally accepted as being part of vocational and technical education; and

d. If funded by Federal funds under the Act, may be funded from Title II, Part B, monies, and such expenditures must be credited to the 20 percent reserved for State-level activities under Title II.

While a minimum of two technical committees must be established in each State, technical committees can be established for all occupational fields. Individual committees might cover an entire occupational field such as health occupations, or a specific occupation such as Licensed Practical Nurse.

Section 401.13 Duties of the sex equity coordinator.

Question. Is the person designated as the "sex equity coordinator" responsible for administering a State's vocational education programs for single parents and homemakers, sex equity programs, and other duties as described in § 401.13(a), regardless of institutional level of the programs, agencies to which programs are delegated, or previous program administration assignments?

Answer. Yes. The "sex equity coordinator's" administrative responsibility, which encompasses all the activities specified in § 401.13(a), cannot be altered or avoided. The "sex equity coordinator" is the responsible administrator, regardless of the institutional level of the programs, agencies to which programs are delegated, or previous program administration assignments. However, additional full-time or part-time staff may be assigned to assist in program administration.

Question. Can the "sex equity coordinator" designated under § 401.13 also be assigned other responsibilities, such as State Director of Vocational Education or Office of Civil Rights responsibilities?

Answer. No. The person designated as "sex equity coordinator" under § 401.13(a) must be assigned to work full time to carry out the responsibilities set forth in § 401.13(a). The "sex equity coordinator" cannot be assigned the general responsibilities of another office which would preclude full-time attention to sex equity coordination responsibilities. However, to the extent that activities carried out by other offices, such as the Office of Civil Rights, are consistent with the duties of the "sex equity coordinator" set forth in § 401.13(a), the "sex equity coordinator" may contribute to them.

Question. For organizational purposes, is the "sex equity coordinator" responsible to the State Director?

Answer. The "sex equity coordinator" is assigned within the appropriate agency as designated or established by the State board. That agency, consistent with State board policy and the requirements of the Act, defines the organizational responsibilities of the "sex equity coordinator".

Question. Does the minimum $60,000 expenditure stipulated in § 401.13(b) cover salary and expenses of the "sex equity coordinator" and both full-time and part-time support personnel, including existing staff whose activities directly relate to § 401.13(a)?

Answer. Yes. Section 401.13(b) provides for "necessary and reasonable staff support." Support staff may be both full-time and part-time, and may include existing State staff who spend a portion of their time in activities directly related to those listed in § 401.13(a).

Section 401.14 State council—establishment.

Question. Can States that have elected State Boards of Education opt to have the Governor appoint the State Council on Vocational Education?

Answer. No. If the State Board of Education is elected, that board is the only entity in the State with legal authority to appoint State council members.

Section 401.15 State council—membership requirements.

Question. Can the State council have more than 13 members as long as the proportional representation of the groups specified in section 112(a) of the Act is maintained?

Answer. No. The Act specifies that there be 13 members, no more and no less. Additional persons may serve the council as resource persons, but may not be voting members.

Question. May the postsecondary membership on the State council be extended to include higher education institutions such as four-year colleges?

Answer. Yes. The Secretary does not believe that Congress intended to prohibit representatives of higher education institutions from membership on State councils. Therefore, if a State regards an institution of higher education which provides vocational education as a "postsecondary vocational institution" within the meaning of section 112(a)(2) of the Act, it may include a representative of that institution as a member of its State council.

Section 401.16 State council—responsibilities.

Question. Must a State council perform the duties listed in § 401.16 each year?

Answer. No. Unless otherwise indicated in the regulations, the State council responsibilities described in § 401.16 must be performed at least once during the period covered by the State plan.

Question. When does the State council submit the report required under § 401.16(b)(9)?

Answer. Section 401.16(b)(9) requires the council to submit a written report every two years. In order to be consistent with the State plan cycle, States should submit the first report by March 31, 1987 covering program years 1984–85 and 1985–86. Subsequent reports should be submitted every two years on March 31.

Section 401.19 State plan—content.

Question. Can expenditures for Part D, Title III of the Act, Comprehensive Career Guidance and Counseling, be applied to the hold harmless assurance of § 401.19?

Answer. Yes.

Question. In identifying programs in the State plan for which Federal funds will be spent under § 401.19(b)(2), may programs be described using local descriptions or must U.S. Department of Education codes be used?

Answer. In order to provide uniformity in data reporting, the Secretary strongly encourages the use of Classification of Instructional Program (C.I.P.) Codes. See National Center for Educational Statistics (NCES) publication, *A Classification of Instructional Programs*, Gerald Malitz, February 1981.

Question. Section 113(b)(15) of the Act requires that annual expenditures for career guidance and counseling from allotments for Title II and Title III, Part D, will not be less than the expenditures for such guidance and counseling in the State for the fiscal year 1984 assisted under section 134(a) of the Vocational Education Act of 1963, as amended in 1976. Since Part D of Title III is referenced, does this imply that the expenditures in question are 100 percent Federal funds?

Answer. Yes. The hold-harmless requirement applies only to the expenditures of Federal funds under the Act.

Question. When the regulations state that the State board must "consult" with another agency or council, exactly what does "consult" mean?

Answer. The Secretary interprets the term to mean the seeking or giving of advice, usually through a direct exchange of views. It does not mean that the advice need be taken, or that the person being "consulted" is thereby granted power to approve in the matter under consultation.

Question. Can the entire 20 percent State agency share of Title II funds be taken from Part B of that title?

Answer. Yes. The only restrictions on where these 20 percent funds may be drawn are that funds must be taken from Title II and, as stated in section 113(b)(4) of the Act, all of the funds available for handicapped and disadvantaged persons under paragraphs (1) and (2) of section 202 of the Act must be distributed to eligible recipients.

Question. May a State establish different criteria for identifying eligible recipients in economically depressed areas, depending upon the type of eligible recipient?

Answer. Yes. Consistent with the purposes of the Act, and section 113(b)(5) in particular, a State does have the flexibility to adopt different criteria for identifying eligible recipients in economically depressed areas, according to the type of eligible recipient, e.g., for programs at the secondary or postsecondary level. Each criterion used, however, must be authorized by section 113(b)(5) of the Act.

Question. How are funds to be counted for eligible recipients located in economically depressed areas?

Answer. If the attendance boundaries of an eligible recipient lie entirely within an economically depressed area then all funds allocated to the eligible recipient under the Act may be classified as being expended within an economically depressed area. If the attendance boundaries of an eligible recipient lie partly within an economically depressed area, then a portion of the funds received under the Act by the eligible recipient may be classified as being expended within an economically depressed area. The proportion of funds that may be so classified must be based upon an auditable trail of funds to schools in the economically depressed area or derived as equal to the proportion that the enrollment from economically depressed areas is of total enrollment of that eligible recipient.

Section 401.22 Maintenance of fiscal effort.

Question. Is the maintenance of effort determination based on State expenditures reported for matching purposes or on all State expenditures for vocational education?

Answer. The maintenance of effort determination is based on all expenditures from State sources for vocational education.

Section 401.40 How a State carries out the State Vocational Education Program.

Question. Can statewide activities (e.g., a staff development project operated by a university) be accounted for under the 80 percent portion of the Title II allotment that must pass through to eligible recipients?

Answer. Yes. In this instance, the recipient of the funds, a university, is a postsecondary educational institution and therefore an eligible recipient under the Act. All funds that go to eligible recipients may be counted towards the 80 percent portion of the Title II allotment.

Section 401.41 Local applications.

Question. Do local eligible recipients apply for funds for both Titles II and III of the Act through a local application?

Answer. Yes.

Question. Can any distribution of funds under the Act be made to an eligible recipient prior to State approval of an application from that eligible recipient?

Answer. No.

Question. Should the process and procedures used in developing the local application allow time for private industry councils, and other interested parties to review and comment on local applications before they are submitted to the State board?

Answer. Yes. Although section 115(b) of the Act does not clearly state that local applications are to be made available for review and comment before submission to the State board, the Secretary believes this was the intent of Congress. Any other interpretation would dramatically reduce the impact of the required opportunity for review and comment.

Question. Should the local application contain evidence of cooperation with the comments from third party reviewers i.e., special education and private industry councils?

Answer. Section 401.41(b)(2) requires that the local application contain only a description of the coordination with relevant programs conducted under JTPA and the Adult Education Act. The regulations do not require that the local application contain comments made by outside reviewers of the application. However, a State may establish such a requirement for local applications if it desires.

Section 401.51 Vocational Education Opportunities Program.

Question. Under sections 201(a) and (b) of the Act, can the phrase "vocational education services and activities" be interpreted to include those "program improvement and supportive services" included under Subpart 3 of Part A of the Vocational Education Act, making those services fundable with Title II, Part A set-aside funds?

Answer. Yes, as long as these services and activities meet the requirements of Title II, Part A of the Act.

Section 401.52 and Section 401.53 Vocational Education Opportunities Program—programs for handicapped and disadvantaged individuals.

Question. How should an eligible recipient compute the average per-pupil expenditure as required in section 201(c) of the Act for separate programs? How would a separate vocational school operated by the State board make the calculation?

Answer. Generally, an eligible recipient or a State-operated school would first identify each comparable program it provides to non-handicapped or non-disadvantaged students. Then it would calculate the total cost of offering each program on a fiscal year or program year basis. At a minimum, all direct costs—such as salaries, supplies, and equipment—would be included in the calculation. Indirect costs may also be included. These program costs are then divided by the number of Full Time Equivalent (FTE) pupils served in each program to determine an average per-pupil cost.

Using the same cost basis, the cost of operating the separate (or non-mainstreamed) program for handicapped or disadvantaged persons would be calculated on a per-FTE pupil basis. To the extent that the per-pupil costs in the separate program for the handicapped or disadvantaged students exceed the average per-pupil costs identified in the comparable regular programs, these costs may be paid from Federal funds allocated under section 203(a) of the Act. Matching funds must also be applied against these costs. When an eligible recipient can identify no comparable regular program within its offerings then it may use the average per-pupil costs of comparable regular programs offered by another eligible recipient. However, such costs must be truly comparable. That is, cost differentials between the eligible recipients such as salary levels would have to be adjusted for.

Question. Can funds for handicapped and disadvantaged individuals under Part A of Title II of the Act be allocated directly to teacher training institutions to support training for teachers to work with handicapped or disadvantaged students?

Answer. Yes. Postsecondary institutions are eligible recipients for funds allocated under section 203(a) of the Act. However, the within-State allocation requirements set forth in this section must be applied in determining allocations to all eligible recipients. Additionally, if such funds are to be used for teacher training, such courses must be confined to inservice education for vocational education teachers who serve handicapped or disadvantaged students.

Question. If a separate vocational program is necessary to address the special needs of handicapped and disadvantaged students, would it be allowable to purchase the same kinds of equipment, tools, materials, and supplies as are used in the regular vocational education program?

Answer. Yes. However, under §§ 401.52(b) and 401.53(a)(2) a State may use Federal funds only for the Federal share of costs of the services and activities in separate vocational education programs for handicapped and disadvantaged individuals which exceed the average per-pupil expenditures for the comparable regular vocational education services and activities.

Question. May funds under Title II, Part B of the Act used to serve handicapped or disadvantaged persons be used to help meet the Title II, Part A, set-aside percentages?

Answer. No. Although funds under Title II, Part B may be expended by eligible recipients to serve handicapped or disadvantaged persons, they are reported and used under the authority of Title II, Part B of the Act.

Question. Section 401.52(a) speaks to the use of Federal funds for "staff, equipment, materials, and services." However, § 401.52(b) speaks only to the use of Federal funds for "services and activities." Is the intent of this wording to preclude the use of Federal funds for "equipment" as specified in § 401.52(a)?

Answer. No. The list of authorized activities set forth in § 401.52(a) also applies to separate vocational education programs for handicapped persons as described in § 401.52(b). Additionally, the list of authorized activities set forth in § 401.53(a)(1) also applies to separate vocational education programs for disadvantaged persons as described in § 401.53(a)(2).

Question. Are machinery and tools purchased under the authority of section 201(d) of the Act considered as supplemental or additional costs?

Answer. Yes. Modern machinery and tools acquired under section 201(d)(2) of the Act for schools in which at least 75 percent of the students enrolled are economically disadvantaged are presumed to be "supplemental or additional" equipment for the purposes of section 201(c)(1) of the Act.

Question. Does section 201(d) of the Act means that funds under Part A of Title II can be spent for machinery and tools for programs for economically disadvantaged persons only in schools in which 75 percent of the students enrolled are economically disadvantaged?

Answer. No. Section 201(c)(2) authorizes the use of Title II, Part A funds to acquire modern machinery and tools for programs for economically disadvantaged persons. Such machinery and tools must be "supplemental or additional," "not provided to other individuals in vocational education."

and "essential for disadvantaged individuals to participate in vocational education." Modern machinery or tools acquired under section 201(c) could be placed in a school in which less than 75 percent of the students enrolled were economically disadvantaged.

Under section 201(d)(2) of the Act, Title II, Part A funds may be used to acquire modern machinery and tools for use in schools in which at least 75 percent of the students enrolled are economically disadvantaged. Machinery and tools acquired under section 201(d)(2) are deemed to satisfy the requirements in section 201(c)(2) that such equipment be "supplemental or additional, not provided to other individuals, and be essential for the participation of economically disadvantaged students." Also, machinery and tools acquired under section 201(d)(2) may be used to provide instruction to students who are not economically disadvantaged (but who are enrolled in schools at which at least 75 percent of the enrollment is economically disadvantaged). Of course, the matching requirements of § 401.94(b) of the regulations apply to acquisitions under sections 201(c)(2) and 201(d)(2) of the Act.

Question. Does the reference in § 401.53(b)(2) to "schools" in which 75 percent of the students are disadvantaged refer to (1) the school building, (2) the specific vocational education program offered by the district, or (3) the entire eligible recipient?

Answer. Neither the Act nor the regulations specifically define the term "school." However, the *Combined Glossary: Terms and Definitions From the Handbooks of the State Educational Records and Reports Series* published by the National Center for Education Statistics defines the term as "a division of the school system consisting of students comprising one or more grade groups or other identifiable groups, organized as one unit with one or more teachers to give instruction of a defined type, and housed in a school plant of one or more buildings. More than one school may be housed in one school plant, as is the case when the elementary school and secondary school programs are housed in the same school plant."

Question. Can the total cost of extended school day programs for the disadvantaged be funded from funds set aside for the disadvantaged under Part A of Title II of the Act?

Answer. No. Funds allocated for disadvantaged persons under Part A of Title II of the Act may not be used to support the total cost of providing vocational education in extended school day programs for disadvantaged persons. Title II, Part A funds may be used to pay the Federal share of the additional average per-pupil cost of such programs compared to a comparable regular program. Such programs might also be funded under Part B of Title II, subject to the matching requirement.

Question. The Act no longer includes the word "nonprofit" in the definition of postsecondary educational institution. In addition, it contains no definition of the term "postsecondary program." Does this mean that private, non-degree granting trade schools are now "eligible recipients?" If so, could such schools apply for Title II, Part A, disadvantaged and handicapped monies which are distributed by formula?

Answer. Any institution "legally authorized to provide postsecondary education within a State" is a "postsecondary educational institution" "under the Act. Therefore, a private, non-degree granting trade school which is authorized under State law to provide postsecondary education is an eligible recipient under the Act and may, consistent with State policy as expressed in the State plan, apply for Title II, Part A funds reserved for handicapped and disadvantaged individuals and distributed according to the statutory formula.

Section 401.54 Vocational Education Opportunities Program—programs for adult training or retraining.

Question. Can a program for adult training or retraining be jointly funded from both Parts A and B of Title II of the Act, and if so would the funds have to be accounted for separately by source?

Answer. Yes. A program for adult training and retraining may be funded from Parts A and B of Title II of the Act consistent with the requirements of both Parts. However, a State must account separately for funds derived from different parts of the Act so that it is possible to determine that the various requirements of the Act have been met.

Section 401.55 Vocational Education Opportunities Program—programs for single parents and homemakers.

Question. May local educational agencies request the following information from students desiring to participate in programs for single parents and homemakers:

(a) marital status;

(b) whether they are unmarried or legally separated; and

(c) whether they have sole or joint custody of a minor child or children?

Answer. To the extent it is necessary to request information regarding a person's marital and family status to establish his or her eligibility for programs intended for single parents and homemakers, States are authorized by the Act to make reasonable inquiries.

Question. Under Title II, Part A of the Act, may community-based organizations receive subgrants for programs serving single parents and homemakers?

Answer. Yes. Although community-based organizations are not defined as eligible recipients, 401.55(c) specifically allows a State to make subgrants to community-based organizations of demonstrated effectiveness for the provision of vocational education services to single parents and homemakers. The State must determine that a community-based organization has demonstrated effectiveness in providing comparable or related services to single parents and homemakers, taking into account cost and quality of training and characteristics of participants.

Question. May grants made directly to a local community-based organization for the provision of vocational education services to single parents and homemakers be considered part of the 80 percent flow-through to eligible recipients required in § 401.19(a)(4)?

Answer. Yes. Funds granted to community-based organizations under the authority of § 401.55(c) are considered part of the 80 percent flow-through under the authority of § 401.40(d)(1).

Section 401.56 Vocational Education Opportunities Program—programs designed to eliminate sex bias and stereotyping.

Question. May funds available under section 202(5) of the Act be used to support State agency responsibilities relating to the Methods of Administration (MOA) required by the Office of Civil Rights?

Answer. Funds made available under section 202(5) of the Act must be expended for programs, services, and activities set forth in section 201(g) of the Act. To the extent that these expenditures also address State responsibilities under the MOA, they may be used for this purpose.

Question. Regarding section 201(g) of the Act, what indicators are acceptable as "essential to meet the objectives of this section" in order to justify a waiver of the age limitations?

Answer. The conditions under which a waiver may be granted are determined by the full-time person assigned to eliminate sex bias and stereotyping

under § 401.13(a), and would relate to local circumstances and needs.

Question. Does § 401.56(a) require a State to carry out, during the period covered by the State plan, each of the three activities authorized to serve individuals who participate in programs designed to eliminate sex bias and stereotyping?

Answer. No. States may choose to fund one or more of the activities described in § 401.56(a).

Section 401.58 Vocational Education Opportunities Program—additional uses of funds.

Question. Must Title II, Part B programs meet requirements concerning excess costs and matching when such programs serve populations under Title II, Part A?

Answer. No. When funds from Title II Part B are used to serve populations described in Part A, the requirements of Part B apply.

Question. May a State use funds under the Vocational Education Opportunities Program to provide basic skills instruction to prepare students to enter regular vocational programs?

Answer. Basic skills instruction is authorized by § 401.58(a)(1) for students who are enrolled in a vocational education program, including a regular vocational education program, when that instruction is related to their vocational instruction, and when the State board determines that such instruction is necessary. Basic skills instruction is not authorized for students who are not enrolled in a vocational education program.

Question. Can funds under the Vocational Education Opportunities Program (Title II, Part A) be used to support the total cost of providing cooperative vocational education programs and apprenticeship programs, including the related classroom skill development instruction under the provisions of § 401.58(b)?

Answer. Yes, if the programs are for: (1) Single parents and homemakers; (2) individuals who are participants in programs to eliminate sex bias and stereotyping in vocational education; or (3) criminal offenders who are in correctional institutions. Programs for handicapped individuals, disadvantaged individuals, or adults who are in need of retraining, are subject to the 50 percent matching requirement. However, this matching requirement need not be satisfied on a project-by-project basis, but may be satisfied on an aggregate basis. In addition, programs for handicapped and disadvantaged individuals are subject to the supplementary or additional cost requirement.

Section 401.60 Vocational Education Improvement, Innovation, and Expansion Program.

Question. Is there any single method or formula for comparing the costs of operating a program in a proprietary vocational school versus operating the same program in a public vocational school?

Answer. No. Each State must develop a fair approach to this issue that accommodates the conditions and laws in that State. However, item 45 in the Conference Report states that, "When deciding which institutions can deliver services in a cost effective manner, consideration should be given to expenses, such as the depreciation or rental cost of buildings and administrative expenses for all institutions so that comparisons on the ability to provide services on a competitive basis is an equitable one." House Report No. 98–1129, 98th Cong. 2d Sess. p. 71.

Question. May funds under Title II, Part B be used to pay for the installation and servicing of new high-tech equipment as well as for the purchase of related software and materials?

Answer. Yes. Such expenditures would be permissible under the Act so long as they are reasonable and necessary.

Question. What guidance did Congress provide for the term "Modern Industrial Arts?"

Answer. Item 37 of the Conference Report contains the following guidance on the term "Modern Industrial Arts" as well as other terms:

"In adopting provisions allowing the support of pre-vocational education, vocational agriculture, and industrial arts programs, the conferees are particularly concerned that these programs be directed, to the extent possible, toward those activities that are modern and incorporate the latest advances in technology. These would include, but not be limited to, programs that are designed to provide students with awareness and basic skills in expanding and new technology areas such as robotics, lasers, computers, electronics, industrial power systems, fluidities, hydraulics, pneumatics, telecommunications, and biotechnology.

The program activities listed are not intended by the conferees to discourage or disallow traditional and existing vocational agriculture and industrial arts activities at the pre-vocational level." House Report No. 98–1129, 98th Cong. 2d Sess. p. 69.

Section 401.61 Vocational Education Improvement, Innovation, and Expansion Program—distribution of funds.

Question. In order to receive funds under § 401.61(b), must a community-based organization have demonstrated effectiveness over a three-year period as is required in JTPA?

Answer. No. There is no three-year period requirement relating to demonstrated effectiveness in the Act.

Section 401.72 Special Programs—application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations.

Question. Are there any age limitations on the students who can be served in prevocational programs under Part A of Title III?

Answer. No. There are no exclusive age limitations regarding the students who can be served in prevocational programs under Part A of Title III of the Act. However, the joint application to operate a program submitted under § 401.72 must contain an assurance that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages sixteen through twenty-one inclusive.

Section 401.73 Special Programs—Consumer and Homemaking Education Program.

Question. May funds under Title III, Part B of the Act be used to maintain consumer and homemaking programs only in economically depressed areas?

Answer. No. Funds under Title III, Part B of the Act may be used to maintain consumer and homemaking programs in areas that are not economically depressed or affected by high rates of unemployment. However, not less than one-third of the Federal funds must be expended in economically depressed areas or areas with high rates of unemployment.

Section 401.74 Special Programs—Adult Training, Retraining, and Employment Development Program.

Question. May funds available for the Adult Training, Retraining, and Employment Development Program under Title III of the Act be used to maintain existing postsecondary and adult programs?

Answer. No. As stated in section 321(b)(2) of the Act and § 401.74 of the regulations, the primary purpose of this program is to assist the States to expand and improve vocational education

programs to meet the urgent needs of adults.

Section 401.78 Special Programs—Industry-Education Partnership for Training in High-Technology Occupations Program.

Question. Who are eligible recipients under the Industry-Education Partnership Program under Title III, Part E of the Act?

Answer. Local educational agencies and postsecondary educational institutions may apply for assistance under the Industry-Education Partnership Program.

Section 401.90 Conditions a State must meet—reserving funds under the basic State grant.

Question. In reserving funds under the basic State grant, may a State channel all Title II, Part A funds to postsecondary institutions and all Title II, Part B funds to secondary institutions?

Answer. No. The Secretary does not believe that it would serve the purposes of Title II to reserve funds solely on the basis of institutional level. Part A funds are intended to provide vocational educational opportunities for a variety of individuals in six discrete groups, many of whom may be in secondary institutions. For example, the equal access provisions for handicapped and disadvantaged persons in section 204 of the Act clearly contemplate serving students in secondary institutions. Similarly, Part B funds are broadly intended to expand, improve, modernize, or develop a wide spectrum of vocational education services and activities. Concentrating all Title II, Part B funds on one institutional level would be inconsistent with this purpose.

Section 401.91 Conditions a State must meet—reserving funds for State administration.

Question. How is the 7 percent administrative reserve calculated, and what is the relationship of this service to the 20 percent a State may reserve for state-wide activities?

Answer. The reservation of not more than 7 percent for State administration is calculated as a percentage of the total State allotment for Title II prior to calculating the 57/43 percent division of Title II funds. The reservation for administration is counted against that maximum of 20 percent of the Title II allotment not distributed to eligible recipients, but reserved for State use.

Question. If an individual performs both administrative and technical assistance functions, must time log sheets be kept on both activities?

Answer. Yes. If the same individual performs both administrative and technical assistance functions and is supported with funds under the Act, appropriate time distribution records must be maintained.

Question. Does the 7 percent restriction on State administration in section 102(b) of the Act refer only to the State board staff or to the State agency staff as well?

Answer. The provision refers to State agency staff as well as State board staff. However, the definition of administration in section 521(l) of the Act provides some flexibility by specifically excluding from the definition of administration curriculum development activities, personnel development, technical assistance, and research activities.

Question. Must expenditures of funds from the 20 percent State share under Title II be accounted for by source of funds and by object and purpose of expenditure?

Answer. Yes. It is necessary to identify those expenditures by source of funds and by object and purpose to know if those expenditures are consistent with the requirements of the Act.

Question. May Title II, Part A funds from the 20 percent State share be used to meet set-aside requirements in Part A for programs other than those serving handicapped and disadvantaged individuals?

Answer. Yes.

Section 401.92 Conditions a State must meet—reserving funds under the Vocational Education Opportunities Program.

Question. From its Title II allotment, can a State expend more than is required by the percentages in § 401.92?

Answer. Yes. There is no impediment to using funds under Title II, Part B of the Act to serve one or more populations in Title II, Part A, so long as Title II, Part B requirements are met and the funds are reported under Part B.

Question. Will the States be deemed substantially out of compliance if the full set-asides for handicapped and disadvantaged individuals under Part A of Title II are not expended?

Answer. Yes. If States do not expend these funds during the authorized period for obligation, they will be substantially out of compliance with the requirements of the Act and must return the unobligated funds to the Secretary.

Question. If the State receives from eligible recipients local applications for programs for handicapped or disadvantaged individuals which propose to spend less than the formula allotments for these eligible recipients, can the State hold the funds not applied for for allocation later during the 27-month expenditure period, or does the 100 percent flow-through requirement forbid this?

Answer. The State may hold the funds for later allocation during the 27-month period for obligation. See the comment and response on this topic in Appendix A, §§ 401.95 and 401.96.

Question. May the Title II, Part A funds set aside under § 401.92(f) for criminal offenders in correctional institutions be awarded to postsecondary vocational-technical schools if those schools conduct vocational training for criminal offenders?

Answer. A State may use the funds reserved for criminal offenders under § 401.92(f) to provide vocational education programs, activities, or services for these individuals through eligible recipients, including postsecondary educational institutions, as defined in section 521 of the Act. The State may also provide these services directly or may contract for their provision.

Section 401.94 Conditions a State must meet—cost sharing requirements.

Question. Do the matching requirements that apply to Title II of the Act require that expenditures for individual activities be matched?

Answer. No. Under Title II, Part A of the Act, matching requirements apply on a total program basis, for example, the program for disadvantaged persons or the program for handicapped persons. Therefore, non-Federal funds need not match Federal funds for each service or activity supported.

Federal expenditures under Title II, Part B of the Act must be matched with non-Federal funds spent for the same purposes authorized by Part B of Title II, but the match requirement is aggregate and does not apply on an activity-by-activity basis.

Question. How are Federal funds that are used for required program evaluations and data collection to be matched?

Answer. A State must comply with the matching requirements applicable to that portion of the State's allotment from which Federal funds are taken to support data collection or evaluation activities. For example, if a State uses funds reserved for State administration to support data collection, the State must match those expenditures for administrative purposes on at least a dollar for dollar basis. Similarly, if a State uses funds under Title II, Part B for

data collection, the State must match those expenditures for program improvement, innovation, and expansion at least dollar for dollar.

Question. Can State or local funds used to maintain vocational education programs be used to match Federal expenditures under Part B of Title II of the Act?

Answer. Yes, if the State or local funds used for the match are spent for the costs of Vocational Education Improvement, Innovation, and Expansion of Programs authorized under § 401.60 (b) or (c). Also see § 401.59.

Question. Can State expenditures of non-Federal funds for evaluations required by section 113(b)(9) of the Act be used to match Federal funds used for State administration if the evaluations are conducted by review teams composed of local educators and community resource persons under contract to the State?

Answer. Yes. If the State considers the required evaluations to be an administrative cost as defined in section 521 of the Act, it may use non-Federal expenditures for such evaluations to match expenditures of Federal funds for State administration. However, if the State does not consider the evaluations to be an administrative cost, but, for example, research, a State may not use non-Federal evaluation expenditures to satisfy the matching requirement for the Federal funds reserved for administration. The regulations do not prohibit the evaluation of programs by review teams composed of local personnel who are under contract to the State.

Question. Where the law provides for 100 percent Federal funding, such as for single parent and homemaker programs, may a State allocate less than 100 percent to a local educational agency and require local support? For example, could a program be 75 percent federally supported and 25 percent locally supported?

Answer. Yes. Consistent with the purposes of the Act, States may impose reasonable cost-sharing requirements as a condition for approving an application from an eligible recipient. However, if a State pursues such a course, the State must identify the cost-sharing requirement as a State imposed requirement, and include it in the State plan as a criterion for distribution of funds.

Question. May a State use funds under Title II of the Act that are not reserved for State administration to pay the salaries of State staff who provide technical assistance, and match those expenditures on a State-wide aggregate basis rather than an activity-by-activity basis?

Answer. A State must comply with the matching requirements applicable to that portion of the State's allotment from which the Federal funds are taken to support the State staff. For example, if a State uses funds under Title II, Part B of the Act to provide technical assistance, it must match expenditures for program improvement, innovation, and expansion on at least a dollar-for-dollar basis. This matching requirement may be satisfied on a State-wide, aggregate basis and need not be satisfied on an activity-by-activity basis. Similarly, a State would have to comply with the matching requirements applicable to the various programs under Title II, Part A. However, funds under Title II, Part A that are reserved for handicapped individuals or disadvantaged individuals may not be used to pay the salaries of State staff, and the matching requirement for programs for adults who are in need of training and retraining may be satisfied on a State-wide, aggregate basis from non-Federal expenditures for such programs.

Question. Is it possible to fully fund projects solely for handicapped or disadvantaged individuals at State-supported institutions with Federal funds because they have no other support? The institutions would be State correctional institutions and State institutions for deaf and blind persons.

Answer. No. Title II, Part A funds must be distributed to eligible recipients. Assuming that the state institutions in question are local educational agencies, within the meaning of section 521 of the Act, Title II, Part A funds may be used to support separate programs for handicapped or disadvantaged individuals. However, these funds may not be used to pay the full cost of such programs, but are limited to the excess costs of such programs, in this case an amount which exceeds the recipient's average per-pupil expenditure for regular vocational education services and activities. The expenditure of Title II, Part A funds need not be matched on an activity-by-activity basis, but may be matched on an aggregate, program-by-program basis.

Section 401.95 and Section 401.96 Conditions a State must meet—allocations for handicapped and disadvantaged individuals.

Question. Is it the Department's interpretation, in § 401.96(b), that the special provision for the use of funds for persons with limited English proficiency applies only to the disadvantaged set-aside and not to the handicapped set-aside?

Answer. Yes. While section 203(a)(3) of the Act might be read so that the set-aside requirement for limited English proficient persons applies to funds reserved for handicapped persons as well as funds reserved for disadvantaged persons, the Secretary does not believe that Congress intended that result. First, such an interpretation would be contrary to years of program experience under the Vocational Education Act, and there is no legislative history to support such a dramatic shift. Second, there would be severe programmatic problems. While persons with limited English proficiency are defined as disadvantaged for purposes of the Act they are not defined as handicapped. Presumably, therefore, funds set aside for persons with limited English proficiency from the funds reserved for the handicapped could only be used to serve persons who were both handicapped and limited English proficient.

Question. Precisely which students must be counted for purposes of the within-State allocation of funds for handicapped individuals under sections 203(a)(1)(B)(i) and 203(a)(1)(B)(ii) of the Act? Which students must be counted for purposes of the within-State allocation of funds for programs for disadvantaged individuals under sections 203(a)(2)(B)(i) and 203(a)(2)(B)(ii) of the Act?

Answer. Under section 203(a)(1)(B)(i) of the Act, 50 percent of a participating eligible recipient's allotment from funds reserved to serve handicapped persons is determined by dividing the number of "economically disadvantaged" individuals enrolled in all programs offered by that eligible recipient (including those enrolled in vocational education programs) in the preceding program year by the total number of such individuals enrolled by all participating eligible recipients in the State during the same year. The enrollment count year is that State program year immediately preceding the program year in which the determination is made.

Under section 203(a)(1)(B)(ii), the remaining 50 percent of a participating eligible recipient's allotment for handicapped persons is determined by dividing the number of "handicapped" individuals served by that eligible recipient's vocational eduction programs, in the State program year immediately preceding the program year in which the determination is made, by the total number of such individuals served in vocational eduaction by all participating eligible recipients in the State during the same program year.

Under section 203(a)(2)(B)(i), 50 percent of a participating eligible recipient's allotment from funds reserved to serve disadvantaged persons is determined by exactly the same method as for section 203(a)(1)(B)(i), above. Consistency should be maintained in defining which grade-levels serve as beginning and ending points for these counts.

Under section 203(a)(2)(b)(ii), the remaining 50 percent of a participating eligible recipient's allotment for disadvantaged persons is determined by dividing the number of "disadvantaged" individuals served by that eligible recipient's vocational education programs, in the State program year immediately preceding the program year in which the determination is made, by the total number of such individuals served in vocational education programs by all participating eligible recipients in the State during the same program year.

The count of "disadvantaged" individuals includes those who are economically disadvantaged and those who are academically disadvantaged. Academically disadvantaged individuals include those individuals who have limited English proficiency, as well as those who are dropouts, from, or identified as potential dropouts, from secondary school. In addition, the count must include those individuals who qualify as "academically disadvantaged" under whatever special precentile, grade-point average, or academic competency measure, or combination of measures, that the State has elected to use under the definition of "academically disadvantaged" that appears in § 400.4(b) of the regulations. Note that individuals with learning disabilities must be counted as "handicapped." Also, some individuals (for example, migrants) may be classifiable as both "economically disadvantaged" and as "academically disadvantaged," if they can meet the necessary criteria. Such an individual may be counted once as part of the "first 50 percent" disadvantaged calculation (i.e., as an "economically disadvantaged" person enrolled in any program offered by the eligible recipient, whether vocational education or not) and may be counted once again as part of the "second 50 percent" disadvantaged calculation (as either an economically disadvantaged or an academically disadvantaged individual).

Question. Is every recipient that is eligible to receive funds under Title II, Part A for handicapped and disadvantaged persons required to accept and use these funds?

Answer. No. There is no statutory requirement that all agencies eligible to receive funds for handicapped and disadvantaged persons are required to participate in Federally-supported vocational education programs for these populations.

Question. Can an eligible recipient receive set-aside funds for limited English proficient students if no such students will be enrolled?

Answer. Title II, Part A funds reserved for disadvantaged persons are allocated to eligible recipients based on counts of economically disadvantaged individuals enrolled and disadvantaged individuals served in vocational education by the eligible recipient. An eligible recipient must spend a minimum percentage of these funds on persons with limited English proficiency as determined by the requirements of section 203(a)(3) of the Act. Regardless of the percentage which is calculated (based on a prior year count of LEPs served by the eligible recipient), if no LEPs are currently enrolled by the eligible recipients, no expenditures for this population are required.

Section 401.97 Conditions a State must meet—matching requirements for programs for handicapped and disadvantaged individuals.

Question. Please clarify § 401.97 which requires that the non-Federal contribution for the costs of vocational education programs, services, and activities for handicapped and disadvantaged individuals under Part A of Title II shall be furnished equitably by the State from State and local sources. What does "equitably" mean in this context?

Answer. A State has considerable discretion in determining what constitutes an equitable division of the required match. An equitable division could involve a range of cost-sharing percentages across eligible recipients based on relative local ability or any other reasonable criteria the State may choose.

Section 401.99 Conditions a State must meet—joint projects.

Question. When eligible recipients provide joint projects for handicapped and disadvantaged persons, must the funds be (1) reported separately by eligible recipients, or (2) reported separately by handicapped and disadvantaged persons served, or (3) both?

Answer. If there is a joint project, the eligible recipients involved must determine which of them will be the fiscal agent for the project, who will monitor the project, who will submit reports, and perform other necessary administrative functions. It two eligible recipients receive separate subgrants and are cooperating in the provision of services, then the funds must be accounted for separately. In both instances, funds for handicapped and disadvantaged persons must be accounted for separately.

Section 401.101 Conditions a State must meet—equal access provisions.

Question. Since the "equal access" requirements in § 401.101 relate to funds under §§ 401.95 and 401.96 only, may an eligible recipient choose not to receive these funds? Can this same eligible recipient receive funds under Title II, Part B of the Act?

Answer. Yes, an eligible recipient may choose not to apply for funds under §§ 401.95 and 401.96. However, if a local educational agency receives an allocation of funds under §§ 401.95 and 401.96, it is subject to § 401.101.

Question. Does the wording of §§ 401.101 and 401.19(a)(18) mean that all "equal access" actions pursued under § 401.101(b)(1) are automatically fundable with monies set aside under Title II, Part A of the Act for handicapped or disadvantaged persons?

Answer. No. The activities described in § 401.101(b)(1) are not "automatically" fundable with Title II, Part A funds set aside for handicapped and disadvantaged persons. However, as § 401.101(b)(2) states, those set-aside funds may be used to support the activities described in § 401.101(b)(1) "consistent with the regulations in this part," including the requirements that such activities be supplementary in nature and essential to participation in vocational education. The Secretary believes that in many instances States will be able to use the set-aside funds for these activities. Of course, if the local educational agency has already satisfied the requirements of § 401.101(b)(1) from State or local funds, it may use the Title II, Part A funds for other types of authorized activities for handicapped and disadvantaged individuals.

Question. Why are the benefits of § 401.101(b) (assessment, adaption of curriculum, counseling, transition, etc.) limited to handicapped or disadvantaged students who enroll in vocational education programs?

Answer. Section 204(c) of the Act requires each local educational agency that receives an allocation of Title II, Part A funds reserved for handicapped and disadvantaged persons to provide the services in question to "each student who enrolls in vocational education programs."

Section 401.102 Conditions a State must meet—Consumer and Homemaking Education Program.

Question. What is meant by the term "State leadership" with respect to the 6 percent cap on expenditures as set forth in sections 313(b) and 333(b) of the Act and reflected in §§ 401.102(b)(2) and 401.105(b)(2) of the regulations?

Answer. The Secretary interprets the references to State leadership activities in sections 313(b) and 333(b) of the Act to refer to the leadership activities mandated by sections 313(a) and 333(a) of the Act, respectively.

Section 401.105 Conditions a State must meet—Comprehensive Career Guidance and Counseling Program.

Question. Regarding section 332(c) of the Act, does the mandate to use a minimum of 20 percent of the funds to eliminate stereotyping and to ensure accessibility refer only to Title III, Part D funds, or does the requirement refer to all funds spent under the Act for career guidance and counseling?

Answer. The 20 percent requirement applies only to funds under Part D of Title III.

Part 401—General

Question. If a State chooses to distribute Title II, Part B funds based in part on counts of students served or enrolled, may the State establish a minimum allotment amount for eligible recipients?

Answer. Yes. A State may establish a minimum allotment amount when making awards to eligible recipients from funds under Title II Part B.

Question. Can funds from Title II of the Act be "shifted" or transferred to Title III of the Act, for instance, to use all Federal funds for guidance and counseling programs?

Answer. No. A State may not "shift" or transfer funds from Title II to Title III. However, where authorized, the State may use funds within these two titles for the same purposes. For instance, funds from Title II Part B and funds from Title III, Part D might both be used for guidance and counseling programs. However, the separate fiscal requirements for Title II and Title III would apply.

Question. Can funds be distributed by formula (data aggregated by geographic area) to an area planning entity that represents a selected geographic area and that further disburses those funds to eligible recipients through a regional planning process?

Answer. No. However, if the State has established intermediate school districts that satisfy the definition of a local educational agency, such entities may be considered eligible recipients.

Question. How should States utilize and report funds allotted under the Vocational Education Act (carryover funds) for fiscal years 1984 and 1985 that remain unobligated as of July 1, 1985?

Answer. The following information is general guidance to States regarding carryover funds. Specific questions regarding carryover should be directed to the Division of Vocational Education. At the outset, a brief examination of the applicable provisions of law is necessary. As applied to funds appropriated for use under the Vocational Education Act (VEA) or the Carl D. Perkins Vocational Education Act, the so-called Tydings Amendment, section 412(b) of the General Education Provision Act (20 U.S.C. 1225(b), as implemented in 34 CFR 76.705 and 76.706) provides, in general, that States may carry over obligated funds for one fiscal year. Thus, fiscal year 1984 funds appropriated under the VEA for use during the 1983–84 school year, remain available for obligation through September 30, 1985. Fiscal year 1985 funds appropriated under the VEA for use during the 1984–85 school year, remain available for obligation through September 30, 1986.

The Tydings Amendment also provides that funds carried over into the succeeding fiscal year must be obligated in accordance with the statute, regulations, and State plan that are in effect for that succeeding fiscal year. Thus, in general, the Tydings Amendment requires that funds which are appropriated for use under the VEA but are unobligated as of July 1, 1985, and are carried over for obligation after that date must be obligated in accordance with the Carl D. Perkins Vocational Education Act, its implementing regulations, and the State plan for that period approved by the Secretary under that Act. This approach not only promotes accountability, but also serves to avoid the confusion that would be caused by attempting to admininster the same program during a single fiscal year with funds from different grants which are subject to different legal requirements. In sum, under the Tydings Amendment, carryover VEA funds are generally to be treated as if they were current year funds under the Carl D. Perkins Vocational Education Act, except that fiscal year 1983 funds not obligated by September 30, 1985, and fiscal year 1984 funds not obligated by September 30, 1986, must be returned to the Secretary.

Another provision of law that bears on the use of carryover VEA funds after July 1, 1985, is the transition provision in section 3(a) of Pub. L. 98–524. Section 3(a) provides, in part, that States and eligible recipients may use funds received under the VEA to conduct planning for any program or activity authorized by the Carl D. Perkins Vocational Education Act or to conduct any other activity deemed necessary to provide for an orderly transition to the operation of programs under the Carl D. Perkins Vocational Education Act. Thus, in general, States and eligible recipients may use carryover VEA funds to take reasonable and necessary steps to implement an orderly transition to operations under the Carl D. Perkins Vocational Education Act.

In light of these provisions of law, States should, subject to possible exceptions described below, treat carryover VEA funds as if they were current year funds (except for their more limited period of availability) subject to all the various provisions of the Carl D. Perkins Vocational Education Act, including fund distribution requirements, cost requirements, and any limitations on authorized activities. The following table explains how carryover funds should be used.

VEA carryover	Carl D. Perkins Act
Sex Equity Coordinator	Title II, Basic Grant.
Subpart 2	Title II, Basic Grant.
Subpart 3	Title II, Basic Grant.
Subpart 4	Title II, Basic Grant.
Subpart 5	Title III, Part B (Consumer and Homemaking Educa-
State Planning Grant	Title II, Basic Grant.
State Advisory Council	State Council.

As of July 1, 1985, (and subject to possible exceptions described below), carryover funds described in the left hand column become subject to all the statutory and regulatory requirements of the portions of the Carl D. Perkins Vocational Education Act described in the right hand column. This means, for example, that carryover funds that are specifically reserved under the VEA for certain populations and purposes, such as services to handicapped or disadvantaged persons, or the support of the sex equity coordinator, lose that identifying characteristic on July 1, 1985, are carried over in accordance with the table above, and are used in accordance with the fund distribution requirements of the Carl D. Perkins Vocational Education Act. (Nevertheless, as discussed below, a State may choose to obligate its carryover funds so reserved under the VEA for only those populations and purposes, even after July 1, 1985, as part of its transition to the operation of programs under the Carl D. Perkins Vocational Education Act).

The sole exceptions to the guidance provided in the preceding paragraphs relate to the authority of States and eligible recipients to use carryover funds to implement an orderly transition to the Carl D. Perkins Act. For example, notwithstanding the preceding paragraph, a State or eligible recipient would be authorized by section 3(a) of Public Law 98–524 to use carryover funds after July 1, 1985, to complete a project, service, or activity that was planned and approved under the VEA and was commenced before July 1, 1985, if to do otherwise would frustrate the objectives of that project, service, or activity. In this case, carryover funds could be obligated after July 1, 1985, to support ongoing activities authorized by the VEA and subject to the VEA statutory and regulatory requirements that applied when the activities were begun.

Another possible application of section 3(a) would be the obligation of carryover funds after July 1, 1985, for new projects, services, or activities that are commenced after that date and reflect an important programmatic goal that is both consistent with the purposes of the Carl D. Perkins Vocational Education Act and is compelling in light of the need for an orderly transition from the VEA to that Act. For example, as noted above, a State that had not obligated all its funds specifically reserved for a particular purpose or population under the VEA, such as services to handicapped or disadvantaged persons, or the support of the sex equity coordinator, might (but need not) choose to obligate those carryover funds for that special population after July 1, 1985, under the authority and subject to the cost rules of the Carl D. Perkins Vocational Education Act. In this instance, the State would be using the obligational authority of the Carl D. Perkins Vocational Education Act, but would be departing from the fund allocation provisions of that Act to the extent necessary to accomplish an important programmatic goal compelled by the need for an orderly transition.

Each State that intends to obligate carryover VEA funds after July 1, 1985, must describe the use of those funds in the State Plan. In addition, each State that intends to invoke the transition authority provided by section 3(a) must describe in its State plan how that authority will be utilized. All VEA carryover funds that are not described in the State plan as subject to the transition authority should be carried over in accordance with the table above, and are subject to all the statutory and regulatory requirements of the applicable portions of the Carl D. Perkins Vocational Education Act.

VEA carryover funds obligated after July 1, 1985, under the section 3(a) transition authority of the Carl D. Perkins Vocational Education Act should be accounted for on the financial status report form used to report the fiscal year 1983 and fiscal year 1984 allotments. All other VEA carryover funds obligated after July 1, 1985, should be accounted for on a separate new financial status report form used to report the fiscal year 1986 allotment.

Question. How can States utilize the transition provision of the Carl D. Perkins Act for new grants in fiscal year 1986?

Answer. The following information is general guidance to States regarding the application of the transition provision in section 3(a) of Pub. L. 98–524. Specific questions regarding the transition provision should be directed to the Division of Vocational Education. Section 3(a) provides, in part, that States and eligible recipients may use funds received under the Carl D. Perkins Vocational Education Act to conduct any activity deemed necessary to provide for an orderly transition to the operation of programs under the Carl D. Perkins Act. For example, a State or eligible recipient would be authorized by section 3(a) of Pub. L. 98–524 to use fiscal year 1986 grant funds for an activity that is fully consistent with the purpose of the Carl D. Perkins Act but does not necessarily meet each requirement of the Act. In order to invoke this transition authority, a State must include the following explanations in its State plan:

(1) Why it is necessary to use the transitional authority?

(2) How the transitional authority will be used?

(3) How this use of the transitional authority is fully consistent with the purposes of the Act?

The Secretary will evaluate all such state plan provisions on a case-by-case basis.

Question. Are private vocational training institutions and private postsecondary educational institutions either for-profit or non-profit, eligible as grantees under Title II of the Act?

Answer. A private postsecondary educational institution, either for-profit or non-profit, is an eligible recipient as defined by the Act. In addition, a private vocational training institution may also be an eligible recipient under the Act if it satisfies the statutory definitions of postsecondary educational institution. However, sections 202(h)(2) and 251(a)(22) of the Act establish the conditions under which private postsecondary educational institutions and private vocational training institutions may enter into arrangements with the State to carry out projects authorized by Title II, Parts A and B, respectively.

Question. Section 401.58(a)(2) of the regulations authorizes States to use funds under Title II of the Act to provide vocational education through arrangements with private vocational training institutions, private postsecondary educational institutions, and employers when (among other conditions) such entities can provide substantially equivalent training at lesser cost. What does "lesser cost" mean?

Answer. "Lesser cost" means a cost that is lower than that of an equivalent program at a public institution.

Question. Does the 20 percent limit on State-level expenditures cover only Title II funds or does it extend to Title III?

Answer. The 20 percent limit on State agency expenditures applies only to Title II funds.

Question. Can the total cost of programs under sections 201(h) and (i) of the Act (basic skills instruction; vocational education through arrangements with private postsecondary institutions; and programs that include work-site training, cooperative vocational education, work-study and apprenticeship programs) be funded under Part A of the Act?

Answer. Title II, Part A funds reserved for handicapped and disadvantaged individuals may be used only to pay the excess costs of projects for such individuals and, therefore, may not be used to fund the total cost of programs. Title II, Part A funds reserved for other special populations are not subject to an excess cost requirement and may be used to pay the full cost of authorized activities. Title II, Part A funds reserved for handicapped individuals, disadvantaged individuals, and adults who are in need of training and retraining must be matched on a program-by-program basis.

Question. What sections of the regulations describe the conditions for awards to community-based organizations?

Answer. Conditions for making awards to community-based organizations for selected purposes are described in the following sections of the regulations:

a. Considered as an eligible recipient—§ 401.40(d)(1);

b. To serve single parents and homemakers—§ 401.55(c);

c. To serve the disadvantaged, under Title II, Part A—§ 401.98;

d. For program improvement, innovation, and expansion, Title II, Part B § 401.61(b); and

e. For Community-Based Organizations Special Program, Title III—§§ 401.71 and 401.72.

Question. May tuition paid by vocational students to postsecondary vocational institutions be used as part of the non-Federal match?

Answer. No. The use of tuition paid by students to satisfy a matching requirement is prohibited by 34 CFR 76.534.

Part 407—Bilingual Vocational Training Program

Section 407.2 Eligible applicants.

Question. Can Joint Apprenticeship Committees be considered as private non-profit vocational training institutions under the Bilingual Vocational Training Program and therefore be eligible to receive funds under this program?

Answer. It is very unlikely that a Joint Apprenticeship Committee would meet the requirements of a private vocational training institution as defined in the Act.

Part 414—State Equipment Pools

Section 414.4 Definitions.

Question. What is the source of the definition in § 414.4 relating to "high technology?"

Answer. The definition of "high technology state-of-the-art equipment" was developed by the Secretary based on the definition of "high technology" in section 251 of the Act.

Parts 407–409—General

Question. In §§ 407.30, 408.30, and 409.30, what is the purpose of reserving 15 points which the Secretary may assign among the criteria in §§ 407.31, 408.31, and 409.31?

Answer. The purpose of reserving 15 points for the Secretary's use is to permit the Secretary to emphasize one or more criteria in a particular competition, if the Secretary deems this to be desirable.

Question. Will the assignment of the 15 reserved points be announced in the **Federal Register** at the same time the application announcement is made?

Answer. Yes. The Assignment of the 15 reserved points will be announced in the **Federal Register** at the same time the application announcement is made for a particular competition.

[FR Doc. 85–19531 Filed 8–15–85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

New Projects Under the Vocational Education Indian and Hawaiian Natives Program for FY 1986; Extension of Closing Date for Transmittal of Applications

AGENCY: Department of Education.

ACTION: Extension of closing date for transmittal of applications for new projects under the Vocational Education Indian and Hawaiian Natives Program for fiscal year 1986.

SUMMARY: The August 16, 1985 closing date for transmittal of applications for fiscal year 1986 new projects under the Vocational Education Indian and Hawaiian Natives Programs is extended. The new closing date is August 30, 1985. The original closing date was published in the **Federal Register** of June 13, 1985, page 24811. Extension of the closing date is necessary because of a delay in publishing the final program regulations. The selection criterion in § 411.31(i), *Employment opportunities,* has been modified to show the extent to which, upon the completion of their training, more than 65 percent of the trainees will be employed in jobs, including military specialties, related to their training or will be pursuing additional related training. Prospective applicants should consult the final regulations published in this issue of the **Federal Register** for the change in wording in this section.

Applications are invited for new projects under the Vocational Education Indian and Hawaiian Natives Program. This notice covers awards for Indian tribes and Indian organizations and does not apply to awards for Hawaiian natives.

FOR FURTHER INFORMATION CONTACT: For further information contact Harvey Thiel or Timothy Halnon, Program Specialists, Special Programs Branch, Office of Vocational and Adult Education, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 372–2380.

(20 U.S.C. 2303)

(Catalog of Federal Domestic Assistance No. 84.101, Vocational Education—Programs for Indian Tribes, Indian Organizations, and Hawaiian Natives)

Dated: August 9, 1985.

Robert M. Worthington,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 85–19532 Filed 8–15–85; 8:45 am]

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Federal Register

Friday
August 16, 1985

Part VIII

Department of Education

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 515 and 562

Bilingual Education; Fellowship Program; Final Regulations With Invitation To Comment

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 515 and 562

Bilingual Education; Fellowship Program

AGENCY: Department of Education.

ACTION: Final Regulations With Invitation To Comment.

SUMMARY: The Secretary issues final regulations with invitation to comment under section 743 of Part C of the Bilingual Education Act, as amended by Pub. L. 98–511. These amendments to the Act necessitate the changes incorporated in these regulations. Institutions of higher education (IHEs) are eligible to apply for participation in the Fellowship Program. The Fellowship Program provides financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs of bilingual education such as teacher training, program administration, research and evaluation, and curriculum development.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comments must be received on or before October 15, 1985.

ADDRESSES: All written comments should be sent to Ramon M. Chavez, Jr., Education Program Specialist, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone: (202) 245–2595.

FOR FURTHER INFORMATION CONTACT: Ramon M. Chavez, Jr., Telephone: (202) 245–2595.

SUPPLEMENTARY INFORMATION: The authority for the Fellowship Program is under section 743 of Part C of the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98–511, enacted on October 19, 1984 (20 U.S.C. 3221–3262).

Although not eligible for funds, an IHE may apply for participation in the Fellowship Program. An individual submits an application for a fellowship to an IHE which is approved for participation in the Fellowship Program. A participating IHE forwards to the Secretary names of individuals nominated for fellowships. The Secretary selects Fellows from among the names nominated.

The final regulations include:

(a) *Subpart A—General.*

Section 562.1 of the regulations describes the scope and purpose of the program.

Section 562.2 identifies the parties eligible for assistance under this program.

Section 562.3 indicates what regulations apply to this program.

Section 562.4 indicates the definitions that apply to this program. The definitions in 34 CFR 500.4 apply to awards made subsequent to Fiscal Year 1985.

Section 562.5 describes allowable costs under the Fellowship Program.

(b) *Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?*

Section 562.10 describes how the Secretary approves IHEs. The Secretary determines whether to approve an IHE for participation in the Fellowship Program with regard to each language curriculum. The selection criteria the Secretary uses are listed in § 562.11. The Secretary then designates the maximum number of fellowships by language curriculum that may be awarded at the IHE.

(c) *Subpart C—How Does an Individual Apply for a Fellowship?*

Section 562.20 indicates how a participant applies for a fellowship award.

(d) *Subpart D—How Does the Secretary Select New Fellows?*

Section 562.30 contains the criteria the Secretary considers in selecting Fellows. The Secretary gives preference to individuals intending to study in certain specialized areas. The Secretary may also give preference to second- and third-year recipients.

Section 562.31 addresses the period of a fellowship award.

(e) *Subpart E—What Conditions Must Be Met by Fellows?*

Section 562.40 requires that Fellows, within 6 months of completion of their studies, must work in an activity related to programs of bilingual education.

Section 562.41 requires repayment of the fellowship assistance if the recipient does not work in one of the activities discussed in § 562.40.

Section 562.42 describes the repayment schedule for a fellowship award. Repayments begin within 6 months of the date that the Fellow ceases to be enrolled as a full-time student in the Fellowship Program, unless a deferment has been approved in accordance with § 562.44. If the Fellow ceases to work in an approved activity, he or she must repay a prorated amount of the fellowship.

Section 562.43 provides that the Secretary charges a recipient interest on the unpaid balance of a fellowship award in accordance with 31 U.S.C. 3717.

Section 562.44 describes circumstances under which repayment of a fellowship award is deferred.

Section 562.45 describes the length of deferment of repayment.

Section 562.46 describes circumstances under which repayment is waived.

Section 562.47 describes how a fellowship recipient shall account for his or her obligation.

These final regulations will govern all fellowship awards for fiscal year 1985 and will apply to the program until superseded by any future regulations adopted by the Secretary.

Summary of Comments and Responses

On June 24, 1985, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** at 50 FR 26132. The following is a summary of the significant comments received on the NPRM and the Secretary's responses:

Section 562.2 Who is eligible to apply for assistance under the Fellowship Program?

Comment. Several commenters questioned the requirement that Fellows be full-time students.

Response. No change has been made. The requirement that Fellows study full-time is consistent with the program goal of increasing the supply of bilingual education personnel as quickly as possible.

Section 562.5(b) (ii) What does a fellowship award include?

Comment. One commenter questioned the limitation of stipends to students who work fewer than 20 hours per week.

Response. No change has been made. Since the stipend is that part of the fellowship award which is provided as a living subsistence, it is the Secretary's view that persons who are gainfully employed more than 20 hours a week would not be in need of a stipend.

Comment. Several commenters questioned the limitation of $450 per month stipend allowance and $250 per year for books.

Response. No change has been made. Although a comparison of this program with other fellowship programs revealed a slightly higher stipend rate, it was also determined that the other programs considered individual financial need as

basis for awarding stipends. The Secretary also believes that a $250 allowance for books is adequate since recipients can seek other financial aid if necessary.

Section 562.11(b) What criteria does the Secretary use in reviewing applications for participation?

Comment. One commenter questioned the sufficiency of the criteria used to evaluate quality of faculty members. The commenter suggested that the language proficiency of faculty members, status, responsibilities and time commitments should be addressed in this section.

Response. No change has been made. The current criteria are adequate for the purposes of the program.

Section 562.30 How does the Secretary select new Fellows?

Comment. One commenter suggested that the term "special alternative instruction" be inserted in the regulations.

Response. No change has been made. The term "special alternative instruction programs" is included in the definition of "Program of bilingual education" in § 562.4(a). All instructional programs authorized under Part A of the Act are included in the definition.

Comment. One commenter suggested that proficiency in a language other than English is always relevant in the selection of Fellows, and requested that the Secretary deletes the phrase "if applicable" from § 562.30(c)(2).

Response. No change has been made. The Secretary desires maximum flexibility for IHE's in the selection of nominees for fellowships.

Section 562.31 What is the period of a fellowship?

Comment. Several commenters urged the Secretary to reconsider the proposed three year limitation for fellowships to students in doctoral programs. The commenters stated the length of time usually considered standard for the completion of a doctoral program is four years.

Response. No change has been made. The Secretary considers three years to be adequate time for a full-time doctoral student to complete coursework necessary as part of his or her degree program.

Comment. One commenter suggested that the language in § 562.31(d) be revised to read that the Secretary "shall give preference" instead of "may give preference" to renewing students in order to assure continued fellowship support to those recipients who are making satisfactory academic progress in the program.

Response. No change has been made. The Secretary views this approach as appropriate to award fellowships to the most deserving applicants. This approach provides for preference to be given to current recipients when these students are making satisfactory academic progress in the program.

Other Changes

Certain technical revisions have been made to the selection criteria in § 562.11. No substantive changes are intended and no amendments to the applications received for FY 1985 awards are necessary.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

Invitation to comment

The Secretary is issuing these regulations in final form, following an opportunity for public comment in response to the notice of proposed rulemaking and consultation with interested organizations through the National Advisory and Coordination Council on Bilingual Education (NACCBE) consistent with the requirements of the Bilingual Education Act and the General Education Provisions Act. However, the timing in the appointment of the new NACCBE members and the issuance of these particular regulations unfortunately permitted only limited consultation with NACCBE and other interested organizations. Recognizing NACCBE's role, the Secretary would like to provide a fuller opportunity for consultation with NACCBE and for further comments by interested organizations and individuals. The Secretary therefore invites further comments and suggestions on these regulations from any interested organizations or individuals and will carefully consider making appropriate amendments to these regulations, based on any further comments received, in continued consultation with NACCBE.

Among other changes, the Secretary is considering amending these regulations to improve administration and accountability of the program in institutions of higher education. The Secretary specifically proposes to require institutions of higher education to—

- Disburse funds to Fellows by installments,
- Adequately certify satisfactory progress by continuing Fellows,
- Notify the Secretary of any change in a Fellow's student status,
- Reallocate to an alternate Fellow or return to the Secretary any unexpended funds, and
- Maintain adequate financial records.

The Secretary is considering adopting rules similar to 34 CFR 650.40, 650.41(b), 650.43, and 650.44 in the regulations for the National Graduate Fellows Program published in this issue of the **Federal Register.**

Interested persons may send comments to the address given at the beginning of this document until October 15, 1985. The Secretary will consider all of these comments.

All comments submitted in response to these regulations will be available for public inspection during and after the comment period in Room 421, Reporters Building, 7th and D Streets, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

List of Subjects in 34 CFR Part 562

Bilingual education, Education, Elementary and Secondary education, Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: August 13, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by removing Part 515 and adding a new Part 562 as follows:

PART 515—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM—[REMOVED]

1. Part 515 is removed.

2. A new Part 562 is added to read as follows:

PART 562—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM

Subpart A—General

Sec.

562.1 Fellowship Program.
562.2 Who is eligible to apply for assistance under the Fellowship Program?
562.3 What regulations apply to the Fellowship Program?
562.4 What definitions apply to the Fellowship Program?
562.5 What does a fellowship award include?

Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?

562.10 How does the Secretary approve IHEs for participation?
562.11 What criteria does the Secretary use in reviewing applications for participation?

Subpart C—How Does an Individual Apply for a Fellowship?

562.20 Where does an individual apply?

Subpart D—How Does the Secretary Select New Fellows?

562.30 How does the Secretary select new Fellows?
562.31 What is the period of a fellowship?

Subpart E—What Conditions Must Be Met by Fellows?

562.40 What is the service requirement for a fellowship?
562.41 What are the requirements for repayment of the fellowship?
562.42 What is the repayment schedule?
562.43 What interest is charged?
562.44 Under what circumstances is repayment deferred?
562.45 What is the length of the deferment of payment?
562.46 Under what circumstances is repayment waived?
562.47 How shall the recipient account for his or her obligation?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98–511, 98 Stat 2370 (20 U.S.C. 3221–3262), unless otherwise noted.

Subpart A—General

§ 562.1 Fellowship Program.

The Fellowship Program provides financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs of bilingual education such as teacher training, program administration, research and evaluation, and curriculum development.

(20 U.S.C. 3253)

§ 562.2 Who is eligible to apply for assistance under the Fellowship Program?

(a) An institution of higher education (IHE) that offers a program of study leading to a degree above the bachelor's level as described in § 562.1 may apply for participation in the Fellowship Program.

(b) An individual is eligible to apply for a fellowship under this program if the individual—

(1)(i) Is a citizen, a national, or a permanent resident of the United States;

(ii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(iii) Is a permanent resident of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territories of the Pacific Islands; and

(2) Has been accepted for enrollment as a full-time student in a course of study offered by an IHE approved for participation in the program.

(20 U.S.C. 3253)

§ 562.3 What regulations apply to the Fellowship Program?

The following requirements apply to the Fellowship Program:

(a) The regulations relating to proof of nonprofit status in 34 CFR 75.51.

(b) The regulations in this Part 562.

(20 U.S.C. 3253)

§ 562.4 What definitions apply to the Fellowship Program?

The following definitions apply to Part 562:

(a) "Program of bilingual education" means any instructional program authorized under Part A of the Act.

(b) The definitions in 34 CFR 500.4 apply to awards made subsequent to Fiscal Year 1985.

(20 U.S.C. 3231–3262)

§ 562.5 What does a fellowship award include?

(a) *Allowable costs.* A student may use Fellowship funds under the program for—

(1) Tuition and fees—the normal and usual costs associated with the course of study;

(2) Books—up to $250;

(3) Travel—up to $250 for travel to field-study site; and

(4) A stipend, subject to the restrictions in paragraph (b) of this section.

(b) *Stipends.* (1) An individual may receive a Fellowship stipend if he or she is—

(i) A full-time student in a program of study which was approved by the Secretary in accordance with § 562.10; and

(ii) Not gainfully employed more than 20 hours a week or the annual equivalent.

(2) A stipend for an individual participating in the Fellowship Program may not exceed $450 per month.

(20 U.S.C. 3255)

Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?

§ 562.10 How does the Secretary approve IHEs for participation?

(a)(1) The Secretary determines whether to approve an IHE for participation with regard to each proposed language curriculum based on the quality of the application using the criteria listed in § 562.11.

(2) The Secretary awards up to a maximum of 100 points for all the criteria.

(3) The maximum possible score for each criterion is indicated in parentheses following the heading for each criterion.

(b) After the IHE's application has been evaluated according to the selection criteria, the Secretary rank orders the application.

(c) Following the rank order, the Secretary then designates the maximum number of fellowships by language curriculum that may be awarded at each IHE—

(1) Based on the IHE's capacity to provide graduate training in the areas proposed for fellowship recipients; and

(2) To the extent feasible, in proportion to the needs of various groups of individuals with limited English proficiency within the geographic area.

(20 U.S.C. 3253(a), 3254)

(Approved by the Office of Management and Budget under control number 1885–0001)

§ 562.11 What criteria does the Secretary use in reviewing applications for participation?

(a) *Institutional commitment.* (25 points)

(1) The Secretary reviews each application to determine the quality of the IHE's graduate program of study.

(2) The Secretary considers—

(i) The extent to which the program has been adopted as a permanent graduate program of study;

(ii) The organizational placement of the program;

(iii) The staff and resources which the IHE has committed to the program; and

(iv) The IHE's demonstrated competence and experience in programs and activities such as those authorized under Title VII of the Elementary and Secondary Education Act of 1965, as amended.

(b) *Quality of faculty members.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the faculty in the academic area.

(2) The Secretary considers the extent to which the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(c) *Quality of the instructional program.* (20 points)

(1) The Secretary considers the quality of the applicant's program of instruction.

(2) The Secretary considers—

(i) In the case of projects designed to prepare educational personnel for bilingual education programs that use English and a language other than English, whether the project incorporates the use of both English and a language other than English, to the extent necessary to develop the participants' competencies as bilingual education personnel;

(ii) The quality of the standards used to determine satisfactory progress in and completion of the program; and

(iii) The interdisciplinary aspects of the program.

(d) *Field based experience.* (15 points) The Secretary reviews each application to determine the extent to which the program provides field based experience through arrangements with local educational agencies (LEAs), State educational agencies (SEAs) and persons or organizations with expertise in programs of bilingual education.

(e) *Evidence of local or national need.* (10 points) The Secretary reviews each application to determine the need for more individuals trained above the bachelor's level in proportion to the needs of various groups of individuals with limited English proficiency in the local area, and throughout the country.

(f) *Recruitment plan.* (10 points) The Secretary considers the IHE's plans for recruiting and selecting nominees using the criteria listed in § 562.30 (b) and (c).

(20 U.S.C. 3253(a))

(Approved by the Office of Management and Budget under control number 1885–0001)

Subpart C—How Does an Individual Apply for a Fellowship?

§ 562.20 Where does an individual apply?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) Each participating IHE may establish procedures for receipt of applications from individuals.

(20 U.S.C. 3253(a))

Subpart D—How Does the Secretary Select New Fellows?

§ 562.30 How does the Secretary select new Fellows?

(a) The Secretary selects Fellows taking into consideration the rank orders prepared by the IHE, subject to the maximum number of fellowships per language curriculum designated for that IHE.

(b) The Secretary gives preference to individuals intending to study programs of bilingual education for limited English proficient students in the following specialized areas:

(1) Vocational education.

(2) Adult education.

(3) Gifted and talented education.

(4) Special education.

(5) Education technology.

(6) Literacy.

(7) Mathematics and science education.

(c) In recommending nominees, an IHE shall consider the following criteria:

(1) *Academic record.* The quality of the academic record of the applicant.

(2) *Language proficiency.* The applicant's proficiency in English and, if applicable, the language(s) to be studied.

(3) *Experience.* The extent of the applicant's experience in providing services to, teaching in, or administering programs of bilingual education.

(20 U.S.C. 3253(a))

(Approved by the Office of Management and Budget under control number 1885–0001)

§ 562.31 What is the period of a fellowship?

(a) Except as provided in paragraph (b) of this section—

(1) Fellowships may be awarded for a maximum of two one-year periods to a student who maintains satisfactory progress in a post-baccalaureate program of study; and

(2) Fellowships may be awarded for a maximum of three one-year periods to a student who maintains satisfactory progress in a doctoral program of study.

(b) Subject to the availability of funds and where adequate justification is provided by an IHE, the Secretary may extend a fellowship beyond the maximum period to a recipient who, for circumstances beyond his or her control, is not able to complete the program of study in that period.

(c) A recipient of a fellowship who seeks assistance beyond the initial one-year period must be renominated by the participating IHE.

(d) The Secretary may give preference to recipients in their second or third year who maintain satisfactory progress in the program of study prior to approving nominations of new students.

(20 U.S.C. 3253 (a))

Subpart E—What Conditions Must Be Met by Fellows?

§ 562.40 What is the service requirement for a fellowship?

(a) Upon selection for a fellowship, the recipient shall sign an agreement provided by the Secretary to work for a period equivalent to the period of time that the recipient receives assistance under the fellowship in one or more of the following activities:

(1) Training personnel to develop and conduct programs of bilingual education or teacher training programs at IHEs.

(2) Conducting research related to programs of bilingual education.

(3) Administering programs of bilingual education.

(4) Conducting evaluations of programs of bilingual education.

(5) Developing curriculum materials designed for programs of bilingual education.

(6) Working in any other activity, approved in advance by the Secretary in accordance with the procedures in § 562.47, which is related to programs and activities such as those authorized under Title VII.

(b) A recipient shall begin working in one or more of the activities listed in paragraphs (a)(1)–(6) of this section within six months of the date the recipient ceases to be enrolled at an IHE as a full-time student.

(20 U.S.C. 3253(c))

§ 562.41 What are the requirements for repayment of the fellowship?

(a) If a recipient does not work in one of the activities described in

§ 562.40(a)(1)–(6), he or she shall repay the full amount of the fellowship.

(b) The Secretary prorates the amount a recipient is required to repay based on the length of time the recipient worked in an authorized activity compared with the length of time during which he or she received assistance.

(20 U.S.C. 3253(c))

§ 562.42 What is the repayment schedule?

(a) A recipient required to repay all or part of the amount of a fellowship shall—

(1) Begin repayments within six months of the date he or she ceases to be enrolled as a full-time student at an IHE in the Fellowship program; or

(2) Begin repayments on a date and in a manner established by the Secretary, if he or she ceases to work in an authorized activity, of the prorated amount of his or her obligation.

(b) A recipient must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary. This period may be extended if the Secretary grants a deferment under § 562.44.

(20 U.S.C. 3253(c))

§ 562.43 What interest is charged?

(a) The Secretary charges a recipient interest on the unpaid balance owed by the recipient in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 562.44.

(20 U.S.C. 3253(c))

§ 562.44 Under what circumstances is repayment deferred?

The Secretary may defer repayment if the recipient—

(a) Suffers from a serious physical or mental disability that prevents or substantially impairs the recipient's employability in one of the activities described in § 562.40(a)(1)–(6);

(b) Demonstrates to the Secretary's satisfaction that he or she is conscientiously seeking but unable to secure employment in one of the activities described in § 562.40(a)(1)–(6);

(c) Re-enrolls as a full-time student at an IHE;

(d) Is a member of the Armed Forces of the United States on active duty;

(e) Is in service as a volunteer under the Peace Corps Act; or

(f) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(20 U.S.C. 3253(c))

§ 562.45 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(20 U.S.C. 3253(c))

§ 562.46 Under what circumstances is repayment waived?

The Secretary may waive repayment if the recipient demonstrates the existence of extraordinary circumstances that justify a waiver.

(20 U.S.C. 3253(c))

§ 562.47 How shall the recipient account for his or her obligation?

(a) Within six months of the date a recipient ceases to be enrolled as a full-time student at an IHE, the recipient shall submit to the Secretary one of the following items:

(1) A description of the employment in an activity listed in § 562.40(a)(1)–(6) in which he or she is employed.

(2) Repayment required under §§ 562.41–562.42.

(3) A request to repay the obligation in installments.

(4) A request for a deferment or waiver as described in §§ 562.44–562.46 accompanied by a statement of justification.

(b) A recipient who submits a description of employment under paragraph (a)(1) of this section shall notify the Secretary on a yearly basis of the period of time during the preceding year that he or she was employed in the activity.

(c) A recipient shall inform the Secretary of any change in his or her employment status.

(d) A recipient shall inform the Secretary of any change in his or her address.

(20 U.S.C. 3253(c))

(Approved by the Office of Management and Budget under control number 1885–0001)

[FR Doc. 85–19611 Filed 8–15–85; 8:45 am]

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federal register

Friday
August 16, 1985

Part IX

Department of Energy

Western Area Power Administration

Sacramento Area Office; Central Valley Project; Proposed Final Withdrawal Procedures; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

Sacramento Area Office; Central Valley Project Withdrawal Procedure

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of proposed final withdrawal procedures.

SUMMARY: The Sacramento Area Office of the Western Area Power Administration (Western) is issuing this notice of proposed final procedures for withdrawal of Central Valley Project (CVP) power allocations from its customers under varying circumstances prescribed by law. This notice also contains proposed final criteria governing the allocation and service of power to preference customers in Trinity, Tuolumne, and Calaveras Counties with statutory first preference rights to CVP power.

This proceeding is being conducted by Western for the purpose of developing and clarifying methods of withdrawal of CVP power from customers under circumstances prescribed by law or by contract. For further information regarding the specific circumstances prescribed by law or contract, and the proposed procedures and their alternatives, see the **Federal Register** notice dated January 16, 1985 (50 FR 2502, January 16, 1985).

DATES: The schedule for this proceeding has been revised and is given below. Persons planning to speak at the information/comment forum should provide their names and affiliation, in writing or by phone, to the address noted below at least 3 days prior to the date of the forum so that time may be set aside on the forum agenda for each speaker to present any prepared comments.

Public Information/Comment Forum—September 17, 1985, 10 a.m. in the Comstock Room II, Sacramento Inn, 1401 Ardenway, Sacramento, California.

Written Comments Due on Proposed Final Withdrawal Procedures—Due no later than 4:30 p.m. local time on October 4, 1985. Comments must be mailed or delivered to the address given below.

Publication of Final Procedures—October 31, 1985.

ADDRESS: For further information concerning this proceeding contact: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento CA 95825, Phone: (916) 978–4418.

Summary of Customer and Illustrative Examples—Western has prepared a booklet of all customer comments, a booklet of responses to the customer comments, and a booklet of illustrated examples (illustrating the execution of the Withdrawal Procedures). These booklets will be mailed to all customers and interested parties at least a week prior to the public comment forum specified above. These booklets will also be made available upon request. Such requests may be in writing or by phone to the address given above.

Proposed Procedures

1. Explanation of Terms

1.1 *Anniversary Date* means the successive 5th year anniversary of the date the Secretary of the Interior declared the availability of power from the powerplants in the Counties of Origin. The next Anniversary Date for First Preference Customers in Trinity County is January 1, 1987, and for First Preference Customers in Tuolumne and Calaveras Counties is April 5, 1987.

1.2 *Annual Average Generation* when used in reference to the entitlements of First Preference Customers means the average output of the plants located in the Counties of Origin as presented in Western's official planning forecast (see procedure 3.3 definition of variable A).

1.3 *Average Annual Load Factor or AALF* means the average of the most current 12 monthly load factors available, preceding the determination of the Maximum Entitlement of First Preference Customers.

1.4 *Project Auxiliary Service* for the purpose of these procedures, means power, other than Project Use, required to meet the needs of the CVP for such purposes as station service, plant load, lighting, station office loads, and other purposes, as determined by Western, necessary for supporting the operations of the CVP. This power is deducted from gross generation prior to determining the amount of power available for project pumping and preference sales.

1.5 *Contract 2948A or 2948A* means Contract No. 14–06–200–2948A, dated July 13, 1967, between Western and the Pacific Gas and Electric Company (PGandE) as amended, supplemented, replaced or superseded.

1.6 *Contract Rate of Delivery or CRD* means the amount of capacity allocated to a Contractor pursuant to power sales contracts between Western and such Contractor to provide firm electric power from the CVP.

1.7 *Counties of Origin* means Trinity, Calaveras, or Tuolumne Counties.

1.8 *Diversity Allocation* means allocations of CVP power made in accordance with the Power Marketing Plan of 1981 and sold pursuant to Diversity Contracts.

1.9 *Diversity Contracts* means those contracts with the National Aeronautics and Space Administration (NASA-Ames) and the Department of Energy (DOE) Laboratories providing for additional CVP allocations to such customers in exchange for their participation in Western's load control program.

1.10 *Firm CRD* means any power sale described herein which is not referred to as a Diversity Allocation, Renewable Resource Allocation, Type I Withdrawable Power, Type II Withdrawable Power, or Westlands Withdrawable Power.

1.11 *First Preference Customers* means those CVP customers in either Trinity, Tuolumne, or Calaveras Counties, as the case may be, which have satisfied the statutory requirements according to Reclamation Law for a right to power service of up to 25 percent of the additional power made available from the CVP power system as a result of the construction of the Trinity Division of the CVP or the New Melones Powerplant and their integration with the CVP.

1.12. *Load level* means the maximum allowable simultaneous demand for power during any month of all of those CVP customers whose CRD's are designated as contributing to the simultaneous demand.

1.13 *Maximum Entitlements of First Preference Customers (MEFPC)* means the maximum amount of power which is available to satisfy the rights of First Preference Customers. Such amounts will be calculated for preference customers located in Trinity County, and separately for preference customers locate in Calaveras and Tuolumne Counties.

1.14 *Maximum Entitlement of Westlands* means the maximum amount of CRD which is available to satisfy Westlands contract rights. Currently this amount is 50 MW, but is subject to reduction as provided herein.

1.15 *Maximum Simultaneous Demand or MSD* means the maximum level of simultaneous customer demand for power of preference customers of the CVP at the 1,152 MW load level, adjusted for losses to the CVP load center, in accordance with the provisions of Contract 2948A and the Santa Clara Settlement.

1.16 *Power Marketing Plan of 1981* means that Power marketing Plan created to market the additional 102

MW of MSD made available as a result of the Santa Clara Settlement (46 FR 51224, October 16, 1981).

1.17 *Project Use,* for the purposes of these procedures, means the power from the CVP required to operate the pumping facilities of the CVP. As such this definition refers only to the pumping aspects of the CVP and does not include the power required to fulfill the other needs of the project (see the definition for Project Auxiliary Service).

1.18 *Renewable Resource Allocation* means allocations of CVP power made in accordance with the 1981 Power Marketing Plan and sold pursuant to Western's Renewable Resource Contracts.

1.19 *Renewable Resource Contracts* means those contracts with Western customers, providing Renewable Resource Allocations in exchange for renewable resource or cogeneration development by the customer.

1.20 *Santa Clara Settlement or MOU* means the Memorandum of Understanding among Western, PGandE, the city of Santa Clara, and other CVP customers, dated February 8, 1980, providing for settlement of issues raised in the case of the City of Santa Clara v. Andrus, 572 F. 2d 660 (9th Cir. 1978), cert. denied, 439 U.S. 859 (1978), and for PGandE's agreement to allow Western the option of increasing the load level from 1,050 MW to 1,152 MW.

1.21 *Type I Withdrawable Power or Type I* means that portion of a customer's CDR which may be reduced by Western to maintain the 925 MW load level.

1.22 *Type II Withdrawable Power or Type II* means the 60 MW portion of the city of Santa Clara's CRD which may be reduced by Western to maintain the 1,050 MW load level pursuant to the Santa Clara Settlement.

2. Withdrawals to Serve Project Use

Under Western's existing contract with PGand E, its imports from the Northwest, and the low growth rate of Project Use, there is no immediate need to withdraw power for Project Use. Therefore, at this time, Western will not be formulating procedures for withdrawals to serve Project Use. Such procedures will be promulgated when the need for Project Use withdrawals arises.

3. Allocations to First Preference Customers

3.1 Western will seve the First Preference Customers from the capacity available under the 1,152 load level. Withdrawals of power required to provide such service will be as provided in sections 4 and 6 herein.

3.2 First Preference Customers will be subject to a minimum bill. The minimum bill will be computed as the CRD times the applicable CVP capacity rate in effect during the billing period.

3.3 MEFPC is an annual number, which can vary from year to year, and is determined for each year of a 5-year period in advance, once every 5 years, in accordance with the following formula:

MEFPC=(A−L−P)*0.25

Where:

A—The Annual Average Generation of the plants in the Counties of Origin taken from the Western Long-Term Annual Average Generation Study (AAGS) done for the Power Repayment Study. The AAGS used shall be the most recent AAGS available prior to the Anniversary Date for initial allocations in the respective County or Counties of Origin.

L—Transmission losses from generation to the CVP load center (currently 4 percent).

P—Project Used Withdrawals apportioned to the New Melones or Trinity River Division (since Project Use Withdrawls have been delayed. P is currently equal to zero).

3.4 CRD requested by First Preference Customers will be converted to an energy entitlement by multiplying the requested by CRD by the AALF of the First Preference Customer and the number of hours in the year (8760) and then adjusting for losses to the CVP load center (AALF*CRD*8760+losses to the CVP load center). The entitlement so determined will be used to award allocations to requesting First Preference Customers. To convert an entitlement to a CRD, the entitlement will be reduced for losses to the delivery point(s), and the result divided by the product of the AALF and 8760.

3.5 All requests for allocations shall not exceed the peak demand experienced prior to the date of the request or the estimated peak for the year in which the request is made. Western reserves the right to reduce any request which in Western's opinion is unreasonable.

3.6 If the request(s) of First Preference Customers for power becomes greater than the MEFPC, then Western will distribute the remaining entitlement in the following fashion.

3.6.1 An attempt will be made to first meet the request of First Preference Customers not previously allocated a share of the entitlement before any of the remaining entitlement is distributed in accordance with the formula in 3.6.2.

3.6.2 The remaining entitlement will be distributed among the requesting First Preference Customer(s) in accordance with the following formula:

CE=(IR/TR)*RE

Where:

CE—Customer entitlement rounded to the nearest kWh then converted to a CRD in accordance with procedure 3.4.

IR—Individual amount (CRD) requested by a First Preference Customer (converted to an entitlement in accordance with procedure 3.4, and subject to the conditions of 3.5).

TR—Sum total of all of the IR's.

RE—Amount of the MEFPC remaining (not allocated).

3.7 A First Preference Customer may request an increase in CRD by notifying Western in writing at least 6 months in advance of the month in which the increase is to be effective (increases in CRD's are effective the 1st day of a month). All such requests will be subject to the conditions of 3.5 and 3.6 above.

3.8 The MEFPC's will be redetermined once every 5 years using the AAGS (referred to as the "original AAGS") presented in 3.3 above. If the MEFPC determined from any subsequent AAGS, during the 5-year period, is less than 90 percent or greater than 110 percent of the MEFPC determined from the original AAGS, then Western reserves the right to redetermine the MEFPC based upon the new AAGS.

3.8.1 Should Western choose to redetermine the MEFPC and all of the MEFPC has been allocated, then the allocations of CRD's to the First Preference Customers will be adjusted in accordance with the following formula:

New CRD=(MEFPC/TE)*Old CRD

Where:

CRD=Contract Rate of Delivery

TE=Summation of the energy entitlements of the First Preference Customers in the County or Countries of Origin calculated as the sum of:

AALF*Old CRD*8760+losses (to the CVP load center)

3.8.2 Should Western decide to change the MEFPC, then Western will inform the affected First Preference Customers of the change in the MEFPC and any resultant changes in their CRD's in writing at least 6 months in advance.

3.9 The CRD's of First Preference Customers, determined in accordance with the above procedures and by application of reclamation law are not withdrawable for load level withdrawals.

3.10 First Preference Customers may reduce their CRD's upon 6 months' written notice to Western (subject to the provisions of Article 14(b) of Contract 2948A), unless otherwise agreed by Western.

3.11 All power sales to First Preference Customers are subject to the availability of facilities or the execution of contracts necessary, as determined by Western, to provide for the sale and delivery of CVP power.

3.12 The contract of any First Preference Customer which does not reflect the provisions of these procedures will be modified to be in accordance with these procedures prior to granting any increase in CRD to such First Preference Customer.

4. Withdrawals To Serve the Rights of First Preference Customers

4.1 First Preference Customer withdrawals, under this section 4, will be made only for First Preference Customers in Tuolumne and Calaveras Counties. Such withdrawals shall be initiated as a result of an 1,152 MW load level withdrawal.

4.2 Withdrawals to serve the rights of First Preference Customers in Tuolumne and Calaveras Counties will be made from the Firm CRD of the customers subject to such withdrawal.

4.3 CRD allocated to Westlands is withdrawable to serve the rights of First Preference Customers. Such withdrawals will reduce the entitlement of Westlands, and will necessitate a Westlands Withdrawal (see section 5).

4.4 Should a First Preference Customer withdrawal become necessary (as the result of an 1,152 MW load level withdrawal), then withdrawals will be made in accordance with the following formula:

WD=A*(P/SP)

Where:

WD—The amount to be withdrawn from the customer's CRD (rounded up to the nearest kW).

A—The total amount of CRD withdrawn from First Preference Customers in Tuolumne and Calaveras Counties as a result of an 1,152 MW load level withdrawal.

P—The total CRD of the customer.

SP—The sum of all the customer P's.

4.5 The formula given in 4.4 will be repeated, as necessary, until the sum of the WD's is greater than or equal to A. Withdrawals of CRD made pursuant to this section 4, to satisfy the rights of the First Preference Customers, will be subject to the limitations of procedures 6.4 and 6.5.3.

4.6 Should a withdrawal become necessary, Western will notify the affected customers at least 17 months in advance of such withdrawals. Notification of a pending 1,152 MW load level withdrawal will constitute notification of a pending First Preference Customer withdrawal.

4.7 There will be no separate reinstatement of power withdrawn to serve a First Preference Customer.

5. Withdrawals To Serve Westlands Water District

5.1 For the term of its CVP power sales contract and for the purposes specified in such contract, Westlands is entitled to increase its CRD up to a total CRD of 50 MW, except as reduced by withdrawals described in these procedures.

5.2 Only those customers receiving allocations of Westlands Withdrawable Power, as a result of the Power Marketing Plan of 1981, are subject to Westlands withdrawals. The amount of power allocated to such customers was determined in the following fashion:

WW=(TWWA/(TOACRD−10 MW))*OCRD=0.7095*OCRD

Where:

WW—The Westlands withdrawable portion of a customer's CRD.

TWWA—The original entitlement of Westlands (50 MW) less Westlands CRD as of March 1, 1983 (41.15 MW).

TOACRD—Total of the original allocations to those customers with Westlands Withdrawable Power (68 MW).

OCRD—Original allocation of power from the Power Marketing Plan of 1981.

5.3 Westlands Withdrawable Power will be reduced to satisfy the needs of Westlands Water District as a result of a request for an increase in CRD from Westlands, as the result of a First Preference Customer withdrawal, or as a result of an 1,152 MW load level withdrawal.

5.4 Should a withdrawal be necessary, withdrawals will be made in accordance with the following formula:

WD=A*(WW/WWS)

Where:

WD—Amount of Westlands withdrawable CRD to be deducted from a customer's CRD (rounded up to the nearest kW).

A—Total amount of CRD to be withdrawn.

WW—The Westlands Withdrawable Power of a customer prior to the withdrawal.

WWS—The sum of the WW's of all of the customers.

5.5 Western will notify the affected customers at least 90 days in advance in writing of any pending withdrawals. Notice of a pending 1,152 load level withdrawal will constitute notification of a pending Westlands withdrawal.

5.6 Should Westlands Withdrawable Power become available for reinstatement, it shall be reinstated in accordance with section 7 of these procedures.

6. Load Level Withdrawals

6.1 In any month in which a load level is exceeded, Western will withdraw power according to the procedures described below.

6.2 Withdrawals at the 925 and 1,050 MW load level will be completed before any withdrawals are made at the 1,152 MW load level. Western does not anticipate changing the procedures currently used to withdraw at the 925 and 1,050 MW load level.

6.3 All withdrawals of power at the 1,152 MW load level will be made from a customer's Firm CRD (as provided in Procedure 6.5 below).

6.4 No customer's Firm CRD will be reduced below 0.5 MW, unless, as determined by Western, such reduction is necessary to comply with reclamation law.

6.5 Withdrawals of CRD to satisfy the 1,152 MW load level limit will be made in the following order:

6.5.1 Type I Withdrawable Power (as a result of a 925 MW withdrawal).

6.5.2 Type II Withdrawable Power (as a result of a 1,050 MW load level withdrawal).

6.5.3 Twenty percent of a customer's Firm CRD, unless otherwise specified by contract.

6.6 Should the 1,152 MW load level be exceeded, then Western will withdraw from its customers using the following formula:

WD=A*(C/MSD)

Where:

WD—Amount of CRD to be withdrawn from a customer (rounded up to the nearest kW).

A—Total amount to be withdrawn (MSD—1,152 MW).

C—The contribution of the customer to the MSD.

MSD—The Maximum Simultaneous Demand of the Western system at the 1,152 MW load level (should equal the sum of the C's).

6.7 The formula given in 6.6 will be repeated, as necessary, until the sum of the C's (redetermined after withdrawal) is less than or equal to 1,152 MW.

6.8 First Preference Customers in Trinity, Tuolumne, and Calaveras Counties are not subject to load level withdrawals. First Preference Customers in Tuolumne and Calaveras Counties will be included in the 1,152 MW load level withdrawals, necessitating a First Preference Customer withdrawal, immediately following the 1,152 load level withdrawal, to restore the power withdrawn from the customers in Tuolumne and Calaveras Counties. This withdrawal will be subject to the terms

and conditions of section 4 of these procedures.

6.9 Following the withdrawal for First Preference Customers, a Westlands withdrawal will be made, as required, to serve the needs of Westlands Water District. This withdrawal will be subject to the terms and conditions of section 5 of these procedures. The amount of CRD to be withdrawn will be the sum of the amount withdrawn from Westlands to serve the needs of the 1,152 MW load level, and the needs of the First Preference Customers in Tuolumne and Calaveras Counties.

6.10 If, during the 12 months following a withdrawal to meet the 1,152 MW load level, there have been no such additional withdrawals, CRD's which have been reduced to meet the 1,152 MW load level will be reinstated effective on the 1st day of the 13th month following the month of withdrawal, subject to any agreement determined by Western to be necessary with PG&E prior to such reinstatement. Power reinstated will be subject to the terms and conditions of section 7 of these procedures.

6.11 Western will engage in a load monitoring system and will promote its own and customer load control programs to minimize withdrawals of power. In this regard, Western will provide incentives (including rate discounts and possible early reinstatements of power) for load management and control for customers which materially contribute (as determined by Western) to Western's programs.

6.12 Western reserves the right to include the First Preference Customer loads in that load level which will minimize withdrawals from all of its customers.

Reinstatement of Power

7.1 Except as provided in procedures 7.2 through 7.4, all reinstatements will be made in accordance with the following formula:

AR=A* (AW/SAW)

Where:

AR—Amount of CRD to be reinstated to the customer.

A—Amount of CRD or power to be reinstated.

AW—Amount of CRD withdrawn from the customer prior to reinstatement.

SAW—Sum of the AW's.

7.2 The amount of power to be reinstated for an 1,152 MW load level reinstatement will be the difference between the highest Maximum Simultaneous Demand during the 12-month period following the month of withdrawal and 1,152 MW or the total amount withdrawn to date, whichever is less. The amount withdrawn (AW) will include withdrawals made to serve the rights of First Preference Customers.

7.3 The computation presented in procedure 7.1 will be rounded up to the nearest kW and repeated until such time that the difference between the MSD and 1,152 MW equals zero or until no further reinstatements can be made without causing the MSD to exceed 1,152 MW.

7.4 The amount of power to be reinstated for a Westlands Withdrawable Power reinstatement will be the amount of CRD returned to Western by Westlands, the amount of the entitlement returned to Westlands as a result of a 1,152 MW load level reinstatement, or the amount withdrawn, whichever is less.

7.5 The computation presented in procedure 7.1 will be rounded down to the nearest kW to ensure that the sum of the reinstated CRD's is less than or equal to the amount to be reinstated (the sum of the AR's is less than or equal to A).

7.6 Western reserves the right to deny any reinstatement of power if in Western's opinion circumstances warrant such denial.

SUPPLEMENTARY INFORMATION:

Following is a statement of rationale for each of the proposed procedures:

Procedure 2: Under Contract 2948A, it is not necessary for Western to make Project Use withdrawals. This is because Project Use and Project Auxiliary Service are first supplied from the Project facilities, and the remaining CVP hydrogeneration is available for serving Preference Customer loads. The deficiency, if any, between the supported customer load and the hydrogeneration is purchased from PGandE or other resources. The net impact of an increase in Project Use is an increase in purchases rather than a reduction in the load served. In addition, current Bureau of Reclamation forecasts show little growth in Project loads. Therefore, Western does not anticipate making Project Use withdrawals. If it should appear that Project Use withdrawals may be required, Western will develop appropriate procedures at that time.

Procedure 3.1: Western has selected this procedure for dealing with the First Preference Customer withdrawals as a means of distributing the benefits of Federal power to the greatest extent possible, while minimizing and equitably sharing the impact of withdrawals on all customers.

Procedure 3.2: Western feels that the intent of reclamation law was to see that the entitlement provided by that law was distributed over the entire county involved and not just to a select few within the county. Recognizing that Western is extremely limited in its ability to ensure even distribution, the minimum bill provision is meant to encourage each utility in the county to request only the allocations it will use. Even with this limitation (at a 60-percent load factor), a customer would have to be using less than 40 percent of its CRD to receive a penalty. This does not appear to be a severe constraint to these customers, even under the most adverse circumstances.

Procedure 3.3: Western has interpreted the phrase, "additional electric energy," as its appears in reclamation law, to mean the average gross output of the plants in the County or Counties of Origin less the plant's share of Project Use and Project Auxiliary Service (realistically, this is all that is available to serve any preference customer since the needs of the Project take precedent over preference power sales). In addition, since CRD's are allocated at delivery point and not at the generator, the sale of power to preference customers, via a CRD allocation, must be adjusted for the losses required to get the power from the generator to the point of delivery. Consequently, Western has selected Alternative 1 of the entitlement forumlas as the means of determining the magnitude of the First Preference Customer allocations. However, recognizing that other preference allocations are not reduced for the effects of increased Project Use, Western has decided to extend this feature of its Power Marketing Program to the First Preference Customers (since they pay for it in Western's rates). Doing so will require that the MEFPC be reduced if and when Project Use withdrawals are required. Consequently, the P in Alternative 1 has been defined as the Project Use withdrawals apportioned to the plants located in the Counties of Origin. The exact details of the apportionment will be part of any future procedures developed to deal with Project Use withdrawals.

Western has rejected Alternative 2 because it does not embody Western's interpretation of the phrase "additional electric energy," nor does it take into account the circumstances related to the delivery of power from the generator to the customer.

Western has rejected Alternative 3 because it would base the entitlement and subsequent allocations of First Preference Customer power on a percentage of total power sold by the

CVP as integrated with PGandE under Contract 2948A. Western does not believe that this method was intended by the First Preference Customer statutes because the entitlement is not just based upon the contribution to the CVP of the specified units. An entitlement so determined would include, within its basis for determination, diversity in the system (a portion of which is there as a result of Western's lead monitoring program), unused allocations of other customers, and the conservation efforts of Western's other customers (which includes but is not limited to direct conservation efforts, high side metering expenditures, and the conversion of some customer receiving systems to voltages higher than 44 kV or direct service). Such a basis for determination of the MEFPC is in Western's opinion not consistent with the intent of reclamation law, or equitable to the other customers. See discussion of Alternatives 1, 2, and 3 in the Federal Register notice dated January 16, 1985 (50 FR 2502, January 16, 1985).

Procedure 3.4: The MEFPC is determined at the CVP load center. To convert the MEFPC to a CRD to be applied at a customer's point(s) of delivery will require that the MEDPC be adjusted for losses from load center to the point(s) of delivery. Since these losses and customer load factors may vary among First Preference Customers, the MEFPC might not be convertible to a CRD. It is the intent of these proceedings that the summation of all the First Preference Customer CRD's (in a County or Counties of Origin) converted to an entitlement in accordance with procedure 3.4, shall not exceed the MEFPC for the County or Counties of Origin.

Procedure 3.5: Western recognizes that there may be some incentive to overstate load projections to obtain the remaining MEFPC to exclusion of other First Preference Customers. To preclude this from happening, Western will examine all requests for reasonableness by comparing them against historical peaks, adjusted for reasonable growth based on historical growth patterns, and further adjusted for anticipated huge increases in load (such as sudden industrial growth or annexations). Should the customer's request exceed Western's estimate of the customer's load, Western will reduce such customer's request to match Western's estimate of that customer's load.

Procedure 3.6.1: Western's "widespread use policy" dictates that Western consider, to the extent possible, allocating First Preference Customer power to those qualifying entities which do not possess an allocation. The inclusion of procedure 3.6.1 attempts to implement this policy.

Procedure 3.6.2: This procedure recognizes that at some point in time, the requests for First Preference Customer power may exceed the available power. It attempts to distribute the remaining power in accordance with the needs of the customers (i.e., their requests).

Procedure 3.7: Six months' notice should give Western sufficient time to evaluate each customer request and allocate additional CRD based upon the customer request.

Given the uncertainty in forecasting loads, Western recognizes that actual loads may exceed requested allocations. If the customer does not possess an auxiliary contract with PGandE (or some other supplier) for the additional load, or if the unauthorized overrun is small, Western will generally (with PG and E's concurrence) agree to serve the unauthorized overrun at ten times the applicable CVP power rates. Should this situation occur, the customer will be responsible for initiating an immediate request for an increase in CRD in accordance with Western's procedure 3.6.

Procedure 3.8: Western believes that determining the MEFPC in advance for an extended period will make the administration of the First Preference Customer allocations easier. The 5-year period was chosen to coincide with the opening of the statutory window for serving new First Preference Customers.

The 10 percent provision was included to ensure that the First Preference Customers, as well as Western's other customers, are protected from adverse conditions not anticipated in the AAGS.

Procedure 3.9: First Preference Customers are entitled up to a fixed percentage of the additional output of the powerplants in the Counties of Origin by Reclamation Law. Since this entitlement can only be reduced to meet the needs of the Project, a load level withdrawal would only reduce a First Preference Customer's current allocation. The resulting lost allocation could be immediately requested by the First Preference Customer, returning its CRD to the before-withdrawal magnitude. The ultimate result is that the load level withdrawal would have no impact on the CRD of the First Preference Customers. Therefore, Western will not subject First Preference Customers to a load level withdrawal.

Procedure 3.10: Western feels that 6-months' advance notice will give it sufficient time to process the reduction and modify its billing records accordingly. Given the manner in which Western is triggering its First Preference Customer withdrawals, it will not be reinstating any power returned by a First Preference Customer. Such returns will be used to serve the loads of the customers at the 1,152 MW load level, which may or may not be reinstated depending upon the MSD at that load level.

Procedure 3.11: As with other power sales contracts, sales of power to First Preference Customers are dependent upon the availability of facilities to deliver the power. To the extent that the availability of facilities is dependent upon the existence of additional contracts, then the sale of power to First Preference Customers will depend upon the existence of such contracts.

Procedure 3.12: Contractual changes might be required to implement these procedures with respect to some First Preference Customers. Western will not grant any increases in CRD to such First Preference Customers until the power sales contract of that customer has been modified to reflect the provisions of these procedures.

Procedure 4.1: First Preference Customers are guaranteed by reclamation law up to 25 percent of the additional output made available to the CVP by the integration of the generating plants in the Counties of Origin into the CVP. Since this quantity is fixed once the MEFPC has been determined, it is not subject to withdrawal for load level, or to serve the loads of other First Preference Customers. As a consequence of this fact, a load level withdrawal (1,152 MW load level withdrawal) will, through the computational process of determining an amount to be withdrawn from each customer, reduce the amount of CRD allocated to a First Preference Customer, precipitating a First Preference Customer withdrawal to restore the withdrawn CRD. Because the customer group for a First Preference Customer withdrawal to serve preference customers in Trinity County is the same as the customer group for a 1,152 MW load level withdrawal, a First Preference Customer withdrawal for preference customers in Trinity County can be eliminated by excluding First Preference Customers in Trinity County from the 1,152 MW load level withdrawal. However, since Sacramento Municipal Utility District (SMUD) is not subject (by contract) to withdrawals to serve First Preference Customers in Tuolumne and Calaveras Counties, the customer group for the 1,152 MW load level withdrawal

and a First Preference Customer withdrawal for preference customers in Tuolumne and Calaveras Counties is not the same, and therefore, a First Preference Customer withdrawal for preference customers in Tuolumne and Calaveras Counties will have to be initiated each time there is an 1,152 MW load level withdrawal.

Procedure 4.2: First Preference Customers in Trinity are exempt from withdrawal and SMUD currently has a contract exemption from withdrawals to serve First Preference Customers in Tuolumne and Calaveras Counties.

Procedure 4.3: A Westlands Withdrawal will be necessary only to the extent that Westlands' entitlement exceeds its CRD. Prior to that time, any withdrawal of CRD from Westlands will result in a request from Westlands for additional CRD from their entitlement, forcing a Westlands withdrawal. The net effect of this whole process is that each time there is a First Preference Customer withdrawal, there will be a subsequent Westlands withdrawal, and the amount of Westlands CRD to be withdrawn will equal the amount of CRD withdrawn from Westlands to serve the rights of the First Preference Customers.

Procedure 4.4: Since SMUD has been excluded from First Preference Customer withdrawals, the 20 percent provision in the definition of "P" in the proposed procedures is no longer necessary, and has been changed to total CRD to simplify the computational procedures.

Procedure 4.5: Because the 0.5 MW limit on withdrawal is not removed from P prior to the computations, multiple iterations of the formula in procedure 4.5 may be required to complete the withdrawal.

Procedure 4.6: Since Western expects that sometime within the next 18 to 24 months the Western system wil be capable to exceeding the 1,152 MW load level limit at any time, necessitating a 1,152 MW load level withdrawal, First Preference Customer withdrawal, and a Westlands withdrawal, Western intends to issue a notice this spring to all CVP customers of pending withdrawals to be effective 17 months from the date of the letter and remain effective until the expiration of most contracts in the year 2004.

The 17-month notice period is consistent with the longest notification period in any of Western's customer power sales contracts.

Procedure 4.7: Since reductions in CRD by First Preference Customers either will not affect the MSD or will be manifested in a reduced MSD, and possibly a reinstatement of power at the 1,152 MW load level, Western will not separately reinstate withdrawals of power for First Preference Customers.

Procedure 5.1: See Supplementary Information procedure 4.3.

Procedure 5.2: Since Western has taken the position that no customer shall have its CRD reduced below 0.5 MW, and because some of Western's customers have CRD's equal to 0.5 MW, the 0.5 MW is Firm CRD and must be removed from a customer's CRD prior to determining the amount of Westlands Withdrawable Power included in a customer's CRD. This adjustment is reflected in the 10 MW (20 customers * 0.5 MW) subtraction from the total of the original allocations of Westlands unused entitlement under the Power Marketing Plan of 1981 in the formula presented in procedure 5.2.

Procedure 5.3: Self Explanatory.

Procedure 5.4: The application of the formula is straightforward. The results are rounded up to ensure that sufficient entitlement is recovered from the allocations of Westlands Withdrawable Power to satisfy the needs of Westlands Water District.

Procedure 5.5: The 90-day advance notice provision is consistent with the longest period required by all of Western's power sales contracts.

Procedure 5.6: Refer to procedure 7.4.

Procedure 6.1 and 6.2: Western reserves the right to change the procedures for withdrawing at the 925 MW and 1,050 MW load levels, but does not anticipate doing so at this time. In addition, no such change will be promulgated without consent of the affected parties, as required.

Procedure 6.3: Withdrawing from a customer's total CRD and not just its Firm CRD, will violate many of the principles and policies Western has adopted to encourage energy conservation, load management, and the widespread use of Federal power. In addition, withdrawing from the total CRD would increase Western's administrative burden by requiring Western to determine and keep track of the withdrawals made from the different categories of CRD. To avoid this problem, Western will determine the amount to be withdrawn based on a customer's contribution to the MSD and subtract it from a customers Firm CRD.

Procedure 6.4: Western in previous withdrawals established a policy of withdrawing until a customer's CRD reached less than 25 kW before it terminated the customer's contract. Once the contract was terminated, the customer ceased to be a customer of Western. The impact of such a policy, given Western reinstatement policy, was to shift that CRD to the larger customers at the expense of the smaller customers. Western no longer considers this an equitable policy, and therefore, has decided to place a limit on the amount of CRD that can be withdrawn from a customer. At 0.5 MW the average annual cost of serving a customer roughly equals the revenues obtained from such service. Consequently, it is generally not economic for Western to serve customers with CRD's below 0.5 MW. In addition, Western feels that the policy of guaranteeing all of its customers a CRD of 0.5 MW embodies the principle of its widespread use policy in that each customer is assured that it will remain a customer of Western, and retain benefits from Federal power for the term of the customer's power sales contract.

Procedure 6.5: Western believes that 20 percent of the Firm CRD of all of our customers should be sufficient to serve the needs of the First Preference Customers, and the limitations of the 1,152 MW load level. In addition, the expiration of the Renewable Resource, Diversity, and other Contracts in 1994 offer additional sources of reductions in CRD to support the First Preference Customers as well as the 1,152 load level limit. (It is not Western's intent to announce at this time that any contracts will not be renewed in 1994. Western is simply pointing out that one alternative to further withdrawals, if necessary, is allowing these contracts to expire.

These procedures do not apply to a situation where more power is required to be withdrawn than the amounts listed in procedure 6.5. If it appears that such a situation will exist, Western will formulate additional procedures, as necessary, at that time.

Procedure 6.6: This formula contemplates withdrawing WD from the allocation of a customer whether or not that customer is making full use of the allocation. In this way the formula does not penalize a customer for not using its allocation, although multiple iterations of the formula may be required to reduce the MSD to 1,152 MW. In addition, this formula does not penalize those customers with lower loss factors, or those customers which contribute less to the MSD.

Procedure 6.7: This procedure recognizes that the formula of procedure 6.6 will not yield a number in CRD units. The consequence is that multiple iterations will be required to reduce the MSD to 1,152 MW.

Procedure 6.8: By application of reclamation law, First Preference Customers are not subject to withdrawals to serve load level. It is necessary to include First Preference Customers in Calaveras and Tuolumne

Counties only to satisfy other contractual commitments. The consequence of such action is that each 1,152 MW load level withdrawal will necessitate a First Preference Customer withdrawal to serve the needs of the First Preference Customers in Calaveras and Tuolumne Counties.

Procedure 6.9: Since both the 1,152 MW load level withdrawal and the First Preference Customer withdrawal will reduce Westland's CRD, a Westlands withdrawal may be necessary to restore the withdrawn CRD to Westlands. A Westlands withdrawal may also be necessary any time Westlands requests additional CRD.

Procedure 6.10: Consistent with past practice, Western may reinstate CRD under the conditions described in procedure 6.10 (see section 7).

Procedure 6.11: Western intends to continue its current load control program. In addition, Western is considering reinstating CRD lost as the result of a withdrawal in months when Western's MSD is not expected to exceed 1,152 MW to encourage customer participation in Western's load control program.

Procedure 6.12: Western recognizes that it is possible for a 1,152 load level withdrawal to occur without withdrawals occurring at the 925 or 1,050 MW load levels. Western reserves the right to assign the loads to that load level which will minimize withdrawals to all of its customers.

Procedure 7.1: Western will reinstate Westlands Withdrawable Power or Firm CRD in proportion to the amount of CRD withdrawn.

Procedure 7.2: In the case of a 1,152 load level reinstatement, the amount to be reinstated will be equal to the difference between the MSD and 1,152 MW (MSD—1,152) or the amount of CRD withdrawn to date. A 1,152 MW load level reinstatement will necessitate a reinstatement of Westlands Withdrawable Power.

Procedure 7.3: Since the formula in procedure 7.1, under the conditions of a 1,152 load level reinstatement, will not yield an answer in CRD units, multiple iterations of the formula will be required to complete a reinstatement. Since each iteration of a withdrawal at the 1,152 MW load level involved rounding up, the reinstatement procedure must also employ this rounding mechanism to be equitable to all customers. Any other rounding procedure would require more iterations, which would favor those customers with the greatest amount of power withdrawn. The ultimate result of another procedure would be to shift power from those customers with the least withdrawn CRD (generally those customers with the smaller CRD's), to those customers with the most withdrawn CRD (generally those customers with the larger CRD's).

Procedure 7.4: This procedure contemplates that a Westlands reinstatement may occur if Westlands Water District should return any portion of their allocated CRD to Western, or as a result of a 1,152 MW load level reinstatement, a previously withdrawn portion of the Westlands entitlement is reinstated.

Procedure 7.5: Because normal rounding may result in reinstating more CRD than is available for reinstatement, the results of the computation of procedure 7.1 will be rounded down to the nearest 1 kW.

Procedure 7.6: Conditions may occur which would necessitate a withdrawal of CRD immediately following a reinstatement of CRD. Such an occurrence increases the administrative workload with little, if any, benefit to the customers. In general, if Western determines that the cost or benefits of a reinstatement do not justify the reinstatement, Western, under such circumstances, may deny a reinstatement.

Transition of Procedures—Western has revised the proposed procedures published in the January 16, 1985, **Federal Register** after careful consideration of all comments. In this section of the notice, the relevant and significant issues raised during this proceeding are identified, along with Western's response. As noted in the preamble of this notice, Western's detailed response to each comment is contained in a booklet which will be mailed to all customers and interested parties at least 1-week prior to the public comment forum in this proceeding. The following traces the transition of the withdrawal procedures from the January 16, 1985, proposal to the final proposal presented in this notice.

Withdrawals to Serve Project Use—There were many customer objections to one or more of the provisions presented in section 1 of the proposed procedures. For the reasons described in the Supplementary Information of this **Federal Register** notice, Western decided to postpone the formulation of procedures for Project Use withdrawals. Since Western decided to postpone the formulation of the procedures for Project Use withdrawals, there is no reason to discuss the concepts presented in procedures 1.1 through 1.8 of the proposed procedures, and consequently, section 2 of the proposed final procedures replaces section 1 of the proposed procedures.

Allocations to First Preference Customers—Procedures 3.1 and 3.2 of the final proposed procedures embody the main concept presented by procedures 2.1 and 2.2 of the proposed procedures. Much of the narrative presented in the proposed procedures has been eliminated to emphasize the central concept.

With respect to the alternatives presented in the proposed procedures, a dichotomy developed between Western's preference customers. The First Preference Customers preferred a modified version of Alternative 3, while the remaining customers preferred Alternative 1. Western, for the reasons given in 3.3 of the Supplementary Information, chose the modified version of Alternative 1 presented in procedure 3.3 of the final proposed procedures.

The concept embodied in procedure 2.4 of the proposed procedures has been expanded and included in procedure 3.8 of the final proposed procedures. Many of Western's preference customers objected to the modification of the MEFPC on a yearly basis because it did not give the customer much of a planning horizon. In addition, many customers were concerned that longer term entitlement determinations would not take into account adverse water conditions. The modified version presented in procedure 3.8 attempts to take into account all of these factors by providing for a 5-year predetermination of the MEFPC, monitoring it on a yearly basis to detect adverse changes in water conditions, and reserving the right to modify the MEFPC to mitigate the impact of any adverse conditions.

Procedure 2.5 of the proposed procedures has been split into two parts and incorporated into procedures 3.4 and 3.8 of the final proposed procedures. The first portion of procedure 2.5, which deals with the relationship of the CRD and the MEFPC, has been expanded to become procedure 3.4 in the final proposed procedures. The intent of procedure 3.4 of the final proposed procedures is to explicitly describe the conversion of a CRD to a MEFPC quantity and a MEFPC quantity to a CRD to preclude any questions or confusion which might be caused by the conversion process.

The remaining portion of procedure 2.5 of the proposed procedures has been expanded and explicitly described in procedure 3.8. The expansion was made to avoid any confusion concerning Western's meaning of the phrase "withdraw an amount of the customer's CRD which is proportionate to such excess."

Procedure 2.6 of the proposed procedures is now procedure 3.6 of the proposed final procedures, and has been expanded to describe how allocations will be made if requests for First Preference Customer power exceeds the available remaining MEFPC. This expansion, as with many of the other expansions included in the final proposed procedures, was made in response to comments made by Western's customers.

Based upon customer comments concerning the 1 MW automatic increase in CRD, the shortness of the notification period associated with increases of greater than 1 MW in CRD, and Western's desire that First Preference Customers request only the CRD they will actually use, Western has changed procedure 2.7 of the proposed procedures to expand the notification period to 6 months and eliminate the automatic increase provision presented in the proposed procedures. Procedure 2.7 is now procedure 3.7 of the proposed final procedures.

The essential concept of procedure 2.8 of the proposed procedures is embodied in procedure 3.2.

Procedure 2.9 of the proposed procedures is now procedure 3.10 of the final proposed procedures. Based upon customer comments and Western's reevaluation of its own processing time requirements, the 4 months' advance notice has been changed to 6 months' advance notice. For the reasons given in procedure 3.9 of the Supplementary Information, procedure 3.9 of the final proposed procedures was added.

Procedures 2.10 through 2.10.4 of the proposed procedures, concerning the qualification requirements for becoming a First Preference Customer, have been eliminated. Such requirements are set forth in Reclamation Law and need not be restated in these procedures.

Procedure 3.11 and 3.12 state two important concepts which Western believes should be incorporated in the final proposed procedures. The rationale behind the creation of these new procedures contained in procedures 3.11 and 3.12 of the Supplementary Information of the final proposed procedures.

Withdrawals to Serve the Rights of First Preference Customers—Procedure 3.1 as presented in the proposed procedures has been eliminated. The important concept presented in that procedure (determination of the amount of power to be withdrawn from the CVP customers to satisfy the rights of the First Preference Customers) has been incorporated into the other procedures of the final proposed procedures. The new procedure 4.1 describes the conditions under which a First Preference Customer withdrawal will be accomplished, and essentially incorporates procedure 3.10 of the proposed procedures by specifying that the withdrawal will be initiated by a 1,152 MW load level withdrawal. The rationale for the procedure is presented in procedure 4.1 of the Supplementary Information of the final proposed procedures.

Because of the method chosen by Western to do first preference withdrawals, procedure 3.2 of the proposed procedures is no longer necessary (SMUD is not subject to withdrawals to serve the rights of First Preference Customers in Tuolumne and Calaveras Counties), therefore, procedure 3.2 has been eliminated from the final proposed procedures.

Several of Western's customers have expressed disapproval of proposed procedures 3.3 and 3.5. Western does not agree with the objections presented by these customers. However, in an attempt to satisfy these customers' objections, and simplify the procedures, Western has eliminated these procedures from the final proposed procedures and substituted procedure 4.2 in their place.

The concepts of proposed procedures 3.4 and 3.7 have been incorporated into procedure 4.5 of the final proposed procedures. The apportionment described by procedure 3.7 of the proposed procedures has been changed to reflect the new conditions surrounding the initiation of a first preference withdrawal. The rationale for the change is provided by 4.4 of the Supplementary Information of the final proposed procedures.

Procedure 3.8 has been shortened and is now procedure 4.7 in the final proposed procedures. No separate reinstatement of CRD withdrawn to serve the needs of the First Preference Customers is contemplated by Western. The rationale behind this decision is given in 4.7 of the Supplementary Information of the final proposed procedures.

Western has extended the 90-day notification period of procedure 3.9 of the proposed procedures to 17 months based upon the requests of its customers and the longest notification period required by its customer contracts. This extension is procedure 4.6 in the final proposed procedures. For further information see 4.6 of the Supplementary Information of the final proposed procedures.

Withdrawals to Serve Westlands Water District—The concepts contained in procedures 4.1 through 4.6 of the proposed procedures (procedures 5.1 through 5.6 of the final proposed procedures) have not changed in the final proposed procedures. The formula presented in procedure 4.2 of the proposed procedures has been modified slightly to make it distinguishable from the other formulas presented in the final proposed procedures, procedure 4.3 has been changed to incorporate the current stance on Project Use withdrawals, and A replaces WD in the formula of procedure 4.4 in the proposed procedures.

In addition, procedure 4.5 of the proposed procedures has been expanded into procedures 5.6, 7.4, 7.5, and 7.6 of the final proposed procedures to specifically define the reinstatement process for Westlands Withdrawable Power.

The notice period in the first part of procedure 4.6 of the proposed procedures has been extended to 90 days to make the notification period consistent with the longest notification period required by a customer power sales contract. Procedure 4.6 of the proposed procedures is procedure 5.5 of the final proposed procedures.

Load Level Withdrawals.—There is no change between procedure 5.1 of the proposed procedures and procedure 6.1 of the final proposed procedures.

The specific limitation described by procedure 5.2 of the proposed procedures has been eliminated in favor of the general and more flexible wording of procedure 6.5.3 of the final proposed procedures.

Procedures 5.3 and 5.4 of the proposed procedures have been combined and the basic concept of both procedures has been incorporated into procedure 6.11 of the final proposed procedures. The basic purpose in condensing procedures 5.3 and 5.4 of the proposed procedures was to simplify the procedures by presenting the core concepts contained in the procedures while leaving the details of participation in Western's load monitoring program to the contracts which would govern a customer's participation in Western's load monitoring program.

The basic concept of procedure 5.5 of the proposed procedures is now procedure 6.12 of the final proposed procedures.

Because Western has decided to initiate a First Preference Customer withdrawal after the occurrence of a 1,152 MW load level withdrawal, the notice provisions of the First Preference Customer withdrawal determine or constrain the notice provisions of the 1,152 MW load level withdrawal. Western has satisified both obligations by notifying each customer of pending

withdrawals which may occur any time after August 1987. As a consequence of these developments, procedure 5.6 of the proposed procedures is not necessary and has been eliminated from the final proposed procedures.

Since it is Western's intention not to change the 925 or 1,050 MW load level withdrawal procedures at this time, the core concepts of procedures 5.7 through 5.8.3 of the proposed procedures have been condensed into procedures 6.2, 6.5.1 and 6.5.2 of the final proposed procedures.

The concepts contained in procedures 5.9.1, 5.9.2., 5.9.3.2, and 5.9.3.5 of the proposed procedures have been replaced by procedures 6.1, 6.2, 6.4, 6.5, and 6.8, respectively, of the final proposed procedures. In addition, one of Western's customers, SMUD, has submitted detailed comments explaining why it believes Western's proposal to exempt a portion of all customer's allocations from withdrawal is a violation of a Memorandum of Understanding (MOU) between SMUD and Western. The pertinent provisions of the MOU are discussed in the January 16, 1985 **Federal Register** notice, at 50 FR 2509. In these proposed final procedures, the basic difference is that the first 290 MW of SMUD's CRD are exempted from withdrawal for any purpose. Other customers have only a 0.5 MW exemption. Furthermore, 19.4 percent of SMUD's firm CRD is subject to withdrawal, while 20 percent of other customers' firm CRD may be withdrawn. As contemplated by the MOU, these proposed final procedures meet both the letter and the spirit of the MOU and other contractual provisions between SMUD and Western.

The limitations provided in procedures 5.9.3.1 and 5.9.3.3 of the proposed procedures have been eliminated and replaced by the general limitation of procedure 6.3 of the final proposed procedures. The rationale for procedure 6.3, and subsequent elimination of procedures 5.9.3.1 and 5.9.3.2, is provided in 6.3 of the Supplementary Information of the final proposed procedures.

The treatment of Westlands Water District in the 1,152 MW load level withdrawal, as described in procedure 5.9.3.4 of the proposed procedures, has been modified to fit the withdrawal procedures formulated by Western in its final proposed procedures. These new procedures are presented in procedure 6.9 of the final proposed procedures.

Western has selected Alternative 2 of procedure 5.9.4 of the proposed procedures for dealing with the 102 MW load level. This alternative provides that there will be no 102 MW load level withdrawal. Western sees no reason to treat those customers, added as a result of an increase in load level, any differently than its other customers when it comes to load level withdrawals, especially since they are already in a less advantageous position because of the Westlands withdrawable power. Consequently, any reference to a 102 MW load level has been eliminated from the final proposed procedures.

Western has selected Alternative 1 of procedure 5.9.5 of the proposed procedures for dealing with 1,152 MW load level withdrawals (procedure 6.6 of the final proposed procedures). Withdrawal of allocations, based upon the principle of customer contribution to the MSD, is the fairest means of withdrawing power allocations when a load level is exceeded. Such a procedure has less impact on those customers that contribute to the system diversity. This procedure is consistent with Western's past practice of making load level withdrawals, and its desire to encourage conservation and load control which benefits all customers.

Based upon customer comments, customer contracts, and Western's reevaluation of relationship of the First Preference Customer withdrawals and Westlands withdrawals to the 1152 MW load level withdrawal (as described by procedure 5.9.6 of the proposed procedures), Western has combined Alternative 1 and Alternative 2 to develop a procedure for dealing with First Preference Customer withdrawals and Westland withdrawals as a result of a 1,152 MW load level withdrawal. The new procedures are presented in procedures 6.8 and 6.9 of the final proposed procedures.

Western has restated procedure 5.9.7 of the proposed procedures in procedure 6.10 of the final proposed procedures. Procedure 5.9.7 has been further expanded to provide a formula for reinstatements in procedures 7.1, 7.2, and 7.3 of the final proposed procedures.

Regulatory Requirements

Regulatory Flexibility Act of 1980—Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western has determined that this proceeding relates to an administrative service of withdrawing power, and therefore is not a rule within the purview of the Regulatory Flexibility Act. Under 5 U.S.C. 6012(2), services are not considered "rules" within the meaning of the act. Therefore, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291—DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

National Environmental Policy Act—Western is required to conduct an environmental evaluation of certain power marketing actions in compliance with the National Environmental Policy Act (NEPA) of 1969, and the DOE regulations published in the **Federal Register** (45 FR 20694, as amended). Under the DOE guidelines, Western will make an evaluation and determination of the possible environmental impacts of the proposed withdrawal procedures.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for this proceeding will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, California 95825, (916) 440–2084.

Issued at Golden, Colorado, August 9, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85–19655 Filed 8–15–85; 8:45 am]

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federal register

Friday
August 16, 1985

Part X

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Limitation on the Reimbursement of Nonphysician Medical Services; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-337-P]

Medicare Program; Limitations on the Reimbursement of Nonphysician Medical Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that govern determining reasonable charges for certain nonphysician medical services under the Medicare Supplementary Medical Insurance Program (Part B).

- An additional charge factor would be added to those currently taken into consideration by carriers in determining reasonable charges for nonphysician services, supplies, and equipment that are reimbursed on a reasonable charge basis. This new factor, the "inflation-indexed charge," would represent the reasonable charge from the preceding fee screen year plus an inflation adjustment factor.
- For fee screen years beginning on or after October 1, 1986, the inflation adjustment factor to be used in determining the inflation-indexed charge would be the annual change in the level of the consumer price index for urban consumers for the 12-month period ending on March 31. For the fee screen year beginning on October 1, 1985, the inflation adjustment factor would be zero.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by September 16, 1985.

ADDRESS: Mail comments to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-337-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C.; or

Room 132, East High Rise Building, 6325 Security Blvd., Baltimore, Maryland.

In commenting, please refer to BERC-337-P. Comments will be available for public inspection, as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., phone (202) 245-7890.

FOR FURTHER INFORMATION CONTACT: Stan Weintraub, (301) 597-5345.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(b)(3) of the Social Security Act (the Act) provides that payment under the Medicare Supplementary Medical Insurance Program (Part B) for physician and other medical services must be based on reasonable charges. Under section 1842(b)(3)(B) of the Act and implementing regulations at 42 CFR 405.502, reasonable charges for a service may not exceed the lowest of—

- Actual charges;
- Physician's or supplier's customary charges;
- Prevailing charges of physicians or suppliers in the locality; or
- Charges applicable for a comparable service, under comparable circumstances, to the policyholders and subscribers of the carrier processing the Medicare claim.

Moreover, other factors, with respect to a specific item or service, that are determined to be appropriate and necessary to use in judging whether charges are inherently reasonable must be considered.

In addition, the paragraph following section 1842(b)(3)(F) of the Act provides that Medicare Part B payments for medical services, supplies, and equipment that generally do not vary significantly in quality from one supplier to another must be based on a reasonable charge that does not exceed the lowest charge level at which the items or services are widely and consistently available in a locality, except to the extent and under the circumstances specified by the Secretary.

As required by the paragraph following section 1842(b)(3)(F) of the Act, customary and prevailing charge levels for non-physician services, other than clinical diagnostic laboratory services, are updated annually on October 1st of each year based on charges in the 12-month period (ending March 31st) and preceding the update.

II. Proposed Changes

While section 1842(b)(3) of the Act requires that customary and prevailing charges be taken into consideration in determining reasonable charges, these are not the exclusive factors that may be considered in determining reasonable charges.

The reasonable charge methodology used to determine reimbursement for Part B services has been criticized as an inherently inflationary system because actual charges, which have continued to increase steadily over time and are not necessarily related to actual costs, affect such subsequent year's reasonable charges. As a control on the rate of increase in Medicare payments for physicians' services, increases in prevailing charges (recognized for reimbursement by Medicare) are limited (as required in the paragraph following section 1842(b)(3)(F) of the Act) to amounts that are justified by appropriate economic index data. On the other hand, year-to-year increases in charges for other Part B services, supplies, and equipment are not currently controlled.

To help control outlays for Part B services, Congress enacted section 2306 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which amended section 1842(b) of the Act by imposing a limitation on physician fees for a 15-month period beginning on July 1, 1984. Furthermore, section 2303 of Pub. L. 98-369 amended section 1833 of the Act to establish fee schedules to control payments for clinical diagnostic laboratory tests in lieu of the reasonable charge determination.

While this recent legislation established fiscal constraints for physician and clinical diagnostic laboratory services, reimbursement for all other Part B services paid for on a reasonable charge basis has been and, continues to be, virtually unconstrained.

It is our view that increases in the level of reimbursement for nonphysician services, supplies, and equipment beyond the general level of increase in the CPI (that is, beyond increases justified by a supplier's or provider's costs) are not reasonable despite increases in customary or prevailing charges.

In addition, we believe that suppliers should focus their attention on the need for efficient delivery of these items and services. Therefore, we are proposing to establish an additional criterion for determining the reasonable charge for purposes of Medicare payment for these items and services. A new § 405.509 would provide the following:.

- An additional charge factor would be added to those currently taken into consideration by carriers in determining reasonable charges for nonphysician services, supplies, and equipment that are reimbursed on a reasonable charge basis. This new factor, the "inflation-

indexed charge," would represent the reasonable charge from the preceding fee screen year plus an inflation adjustment factor.

• For fee screen years beginning on or after October 1, 1986, the inflation adjustment factor to be used in determining the inflation-indexed charge would be the annual change in the level of the consumer price index for urban consumers, as compiled by the Bureau of Labor Statistics, for the 12-month period ending on March 31. For the fee screen year beginning on October 1, 1985, the inflation adjustment factor would be zero.

We would also propose conforming changes in §§ 405.502 and 405.511.

In our view, the one-year inflation adjustment factor of zero is justified only in order to compensate for increases in reasonable charges that have occurred over the last several years in excess of the general rate of inflation. We refer the reader to the table on year-to-year percentage increases in section IV.A. of this document. It should be noted that customary and prevailing charges will continue to be calculated and updated as required by section 1842(b)(3) of the Act and these calculations would not be affected by the changes proposed by these regulations. The amount determined as the reasonable charge (that is, currently the lowest of either the actual charge, customary charge, prevailing charge, comparable service charge, inherently reasonable amount, or lowest charge level) would thus also be limited by an inflation-indexed charge applied to FY 1985 reasonable charges in determining FY 1986 reasonable charges. In subsequent years, the reasonable charge inflation adjustment factor would be tied to the annual change in the CPI.

The effect of this proposal would be to apply reimbursement limitations on Part B payments for nonphysician services, supplies, and equipment reimbursed on a reasonable charge basis. These limitations would be similar to those imposed on physician services. The items and services that would be affected by these proposed changes include the following:

• Durable medical equipment (DME), such as oxygen, oxygen equipment, wheelchairs, and hospital beds.

• Ambulance services.

• Prosthetic devices, braces, and artificial limbs and eyes.

• Outpatient physical therapy and speech pathology services.

• Portable X-ray services.

• Certain medical supplies used in connection with home dialysis delivery systems.

This proposal *would not apply* to rural health clinic services, ambulatory surgical center services covered by the facility payment rate, and clinical diagnostic laboratory tests because these services are reimbursed on other than a reasonable charge basis. In addition, this proposal would not apply to services provided on a bill-to-bill basis by health maintenance organizations (HMOs) and competitive medical plans (CMPs). However, for services furnished under arrangements by cost-based HMOs and CMPs, the proposed changes *would apply* to services that are limited by the reasonable charge (see §§ 417.532(a) and 417.546(b)).

It should be noted that, although the Medicare economic index is specifically designed to limit the year-to-year increases in prevailing charges for physicians' services, we are proposing (from October 1, 1986 onward) to use a more general index for these nonphysician services; that is, the CPI for all urban consumers (U.S. city average), as compiled by the Bureau of Labor Statistics. The CPI-Urban is a more appropriate index to use for inflating reasonable charge levels (of nonphysician services, supplies and equipment) than the CPI-medical because the primary goods paid for are wheelchairs, hospital beds, and other equipment. These goods, although fundamentally different in their nature, are subject to similar input cost increases as other manufactured goods whereas the primary components of the CPI-Medical are medical professional services. Moreover, the CPI-Urban is already used to update some other nonphysician services, that is, the clinical diagnostic laboratory fee schedules (section 1833 of the Act). We specifically invite comments on this part of our proposal.

III. Technical Changes

There are two listed items of DME, standard hospital beds and wheelchairs, that are subject to the lowest charge level provisions under section 1842(b)(3)(F) of the Act. Section 405.511 provides that the lowest charge level for these items must be updated semiannually—on July 1, based on charge data derived from claims processed during the preceding January through March period; and on January 1, based on charge data derived from claims processed during the preceding July through September period.

The updating of the lowest charge levels for hospital beds and wheelchairs on July 1 and January 1 is inconsistent with changes to the update periods for reasonable charges for physicians' and other medical services that were made to section 1842(b) of the Act by section 2306(b) of Pub. L. 98–369. Section 1842(b) of the Act now requires that the updating of the customary and prevailing charge levels occur on October 1 instead of July 1 of each year, beginning on October 1, 1985.

In order to make the update changes for items subject to the lowest charge levels consistent with the update change (October 1) for physicians' and other medical services, we are proposing that scheduled updates for lowest charge levels be on an annual basis (that is, October 1), beginning on October 1, 1986. The annual update would be based on charge data incurred or submitted on claims processed by carriers during the 12-month period of April 1st through March 31st preceding October 1st of each year.

We believe that items subject to the lowest charge levels are no more volatile or subject to wide swings in charges than physicians' and other medical services that are updated on an annual basis. Therefore, for the purpose of administrative simplicity, we are proposing to update the lowest charge levels on an annual basis in the same manner as physicians' and other medical services. We believe that this approach would help avoid both the possibility of carrier errors and confusion on the part of suppliers.

IV. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis on any proposed major rule. A major rule is defined as any regulation that is likely to: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We estimate that implementation of this rule would result in Medicare savings of approximately $750 million during the next five years, distributed as follows:

[In millions of dollars]

Fiscal year	[illegible]
1986	[illegible]
1987	100
1988	150

[In millions of dollars]

Fiscal year	Savings
1989	[illegible]
1990	[illegible]
Total	750

As required by Executive Order 12291, this proposed rule is considered a major rule because the $100 million threshold is exceeded. Therefore, we are providing an initial regulatory impact analysis.

Medicare spending for DME, prosthetic devices, ambulance transportation, and other non-physician medical services during FY 1984 equaled approximately $1.15 billion and represented an estimated 5.8 percent of total Part B spending. We believe that the bulk of spending (approximately two-thirds) that would be limited under this rule is for DME. We further estimate that without restraints expenditures will rise to approximately $1.5 billion in FY 1986 for these items and services, representing an annual increase of about 15 percent. Part of this increase in total payments is due to increased demand, while a portion simply reflects increased charges for the same items.

Estimated program savings for FY 1986 are equal to the expected increase in reasonable charges from FY 1985 to FY 1986. Estimated savings during FY 1987 through FY 1990 ($700 million) are a combination of: (1) savings from the effects of the FY 1986 limit on reasonable charges carried forward through FY 1990, and (2) the difference between the changes in the CPI throughout the period and the estimated changes that would occur in the reasonable charge levels without restraints. Historically, reasonable charges have increased at a higher rate than the general CPI as described in the table below.

YEAR-TO-YEAR PERCENTAGE INCREASES

Calendar year	[illegible] services other than certain nonphysician services [1]	Certain nonphysician services [1] [2]	Percentage of total [3]	CPI—Urban [4]	CPI—All medical [5]	CPI certain medical [6]
1979	15.4	17.2	6.8	11.3	9.3	[illegible]
1980	18.7	27.6	7.3	13.5	10.9	[illegible]
1981	15.3	27.1	[illegible]	10.4	10.8	10.5
1982	16.8	[illegible]	8.7	6.1	11.6	[illegible]
1983	16.4	22.5	[illegible]	[illegible]	8.7	[illegible]

[1] Percentage increases per enrollee for incurred Medicare Part B reasonable charges.
[2] Purchased and rented DME, ambulance services, prosthetic devices and appliances, and supplies.
[3] Percentage of certain nonphysician services to all Medicare Part B services.
[4] CPI for all urban consumers.
[5] CPI for medical care.
[6] CPI for nonprescription medical equipment and supplies.

The percentage increases in the table above show that the percentage increases in Medicare Part B reasonable charges per enrollee have far exceeded the increases in the CPI for medical care for the period of 1979 through 1983. In particular, the nonphysician services that is, those services for which we are proposing limitations, appear to be increasing in a relatively unconstrained manner. From 1979 to 1983, these services, as a percentage of total Medicare Part B services, have increased from 6.8 percent to 9.1 percent. We believe that this increase results, to some extent, from a lack of control or limitations on charges for Medicare Part B nonphysician services, supplies, and equipment.

The year-to-year percentage increase may be affected by increased utilization. We have taken the effects of increased enrollment into account by analyzing per capita expenditures. Nonetheless, we believe that a substantial portion of the increase is due to excessive charges. The increase for the virtually unconstrained nonphysician services exceeds the increase for Medicare services to which fiscal constraints are applied. In addition, the CPI for medical services was lower than the CPI for all urban consumers for 1979 and 1980, whereas the percentage of certain nonphysician services has continued to increase dramatically throughout the 1979 to 1983 period.

We reviewed a sample of the prevailing charge data available to us for certain nonphysician services from 1980 through 1984. These data are not collected and reported systematically for all nonphysician services, and we cannot determine whether our available data is representative for all such services. Nonetheless, our analysis showed that, although the all-urban CPI increase for that period was 28.1 percent, the majority of the prevailing charges for nonphysician services that were reviewed exceeded the CPI rate of increase.

Savings would accrue to beneficiaries obtaining items and services from suppliers accepting assignment because increases in coinsurance amounts (20 percent of reasonable charges) would be restrained as a result of the new factor for determining reasonable charges.

On the other hand, suppliers not accepting assignment may charge beneficiaries the difference between their actual charge and our reasonable charge, in addition to the 20 percent coinsurance amount. Many suppliers accept assignment only for some of the items and services they furnish and make their assignment decisions on a case-by-case basis. Further, those suppliers that routinely accept assignment for all Medicare covered items and services are not compelled to continue to do so. To the extent that suppliers increase their charges and change their assignment behavior in response to this change, beneficiaries' liability would be affected in a corresponding manner.

We estimate that implementation of the revised payment methodology would cost approximately $3.4 million of initial file conversions, claims processing changes, and the first run of base year charges. Once the system is implemented, the annual cost of updating the charge screens would equal approximately $200,000.

The proposed provision to perform lowest-charge-level updates annually at the same time as other updates is not likely to result in significantly different payment amounts. We would expect some savings in Medicare program administrative costs. However, as a percentage of total administrative expenses, and as compared to the overall impact of this rule, it would be negligible.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities.

For purposes of the RFA, all suppliers of Part B items and services are considered small entities. Since all nonphysician suppliers that currently bill under Part B would be affected by this rule, it is clear that a substantial number of small entities could be affected. In accordance with Departmental guidelines for implementing the RFA, if the annual impact of a rule on small entities is three to five percent or more, then it should be considered significant.

While we have some data regarding overall payments to nonphysician suppliers, we are unable to project the impact on particular types of items or services that would be affected. To illustrate this point, some items are purchased from large supply companies that also produce a wide range of products unaffected by this rule. In these instances, the impact of restraining payment increases under Medicare Part B may be minimal. In other instances, the items affected may represent the products of an entire business enterprise, in which case the impact may be more significant.

Recognizing that this proposal would affect some suppliers more than others, we believe that a significant number may be impacted by more than the three to five percent threshold. Therefore, we conclude that this proposal would have a significant economic impact on a substantial number of small entities.

C. Alternatives Considered

We considered taking no action regarding unwarranted increases in charges for nonphysician Part B services. However, to do so would result in unreasonably high payments by the Medicare program, and, in the form of additional coinsurance liability, by Medicare beneficiaries. It could also be perceived as unfairly discriminatory against other providers and suppliers who are subjected to payment limits of various kinds. Additionally, we hope to create long-term incentives to restrain the rapidly rising charges for Part B items and services. To take no action would result in disincentives and undercut that goal.

An alternative method of restraint on increases, which would establish specific price index values for each type of Part B item, was considered but rejected.

D. Conclusion

A benefit that would result from this proposal is increased control over the rate of increase of Part B expenditures. By limiting reasonable charges to a zero percent increase for one year and limiting increases in reasonable charges in the future, we would pay some suppliers substantially less than they would expect to receive in Medicare revenues in the absence of this proposal. Although we are not proposing to reduce payment for any particular item or service, the program savings we would achieve would be experienced as more limited increases in revenues by the suppliers. Suppliers would be motivated to limit charge increases in the future to no more than the rate of increase in the CPI. They also could have some increased incentive to refuse to accept assignment, which could result in increased costs to some beneficiaries. Nonetheless, we believe that the benefits are sufficient to outweigh the potential adverse effects.

In conclusion, we believe that this is a moderate restraint on suppliers and consistent with similar restraints on all other program participants.

E. Paperwork Reduction Act

These proposed changes would not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Other Required Information

A. Public Comment

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, if we decide to proceed with a final rule, we will consider all comments that we receive by the date specified in the "Date" section of this preamble, and we will respond to the comments in the preamble of that rule.

B. List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

We are proposing to amend 42 CFR Part 405, Subpart E as set forth below:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for Subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842(b) and (h), 1861(b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u(b) and (h), 1395x(b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww and 1395xx).

2. The Table of Contents of Subpart E is amended by adding the title of a new § 405.509 to read as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

Sec.

* * * * *

§ 405.509 Determining inflation-indexed charges.

* * * * *

3. Section 405.502 is amended by adding a new paragraph (a)(4) (previously reserved) to read as follows (the introductory language of paragraph (a) is being reprinted without change for the convenience of the reader):

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement to the various ways in which health services are furnished and charged for. The criteria for determining what charges are reasonable include:

* * * * *

(4) In the case of medical services, supplies, and equipment that are reimbursed on a reasonable charge basis (excluding physicians' services), the inflation-indexed charges as determined under § 405.509.

* * * * *

4. A new § 405.509 is added to read as follows:

§ 405.509 Determining inflation-indexed charges.

(a) *Definition.* For purposes of this section, "inflation-indexed charge" means the reasonable charge for services, supplies and equipment, reimbursed on a reasonable charge basis (excluding physician's services), that is in effect on September 30 of the previous fee screen year plus any increase resulting from the application of an inflation adjustment factor, as described in paragraph (b) of this section.

(b) *Application of inflation adjustment factor to determine inflation-indexed charge.* (1) For fee screen years beginning on or after October 1, 1986, the inflation-indexed charge is determined by adjusting the reasonable charges in effect on September 30 of the previous fee screen year by the annual change in the level of the consumer price index for all urban consumers, as compiled by the Bureau of Labor Statistics, for the 12-month period ending on March 31 of each year.

(2) For the fee screen year beginning October 1, 1985, the inflation adjustment factor is zero.

5. Section 405.511 is amended by redesignating and revising the

introductory language in paragraph (a) as paragraph (a)(1); revising and redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(1)(i) through (a)(1)(iv); adding a new paragraph (a)(1)(v); designating the flush paragraph that follows the current paragraph (a)(4) as paragraph (a)(2); and revising paragraph (c), to read as follows:

§ 405.511 Reasonable charges for medical services, supplies, and equipment.

(a) *General rule.* (1) A charge for any medical service, supply, or equipment (including equipment servicing) that in the judgment of the Secretary generally does not vary signficantly in quality from one supplier to another (and that is identified by a notice published in the **Federal Register**) may not be considered reasonable if it exceeds:

(i) The customary charge of the supplier (see § 405.503);

(ii) The prevailing charge in the locality (see § 405.504);

(iii) The charge applicable for a comparable service and under comparable circumstances to the policyholders or subscribers of the carrier (see § 405.508);

(iv) The lowest charge level at which the item or service is widely and consistently available in the locality (see paragraph (c) of this section); or

(v) The inflation-indexed charges, as determined under § 405.509, in the case of medical services, supplies, and equipment that are reimbursed on a reasonable charge basis (excluding physicians' services).

(2) In the case of laboratory services, paragraph (a)(1) of this section is applicable to services furnished by physicians in their offices, by independent laboratories (see § 405.1310(a)) and to services furnished by a hospital laboratory for individuals who are neither inpatients nor outpatients of a hospital. Allowance of additional charges exceeding the lowest charge level can be approved by the carrier on the basis of unusual circumstances or medical complications in accordance with § 405.506.

* * * * *

(c) *Calculating the lowest charge level.* The lowest charge level at which an item or service is widely and consistently available in a locality is calculated by the carrier in accordance with instructions from HCFA as follows:

(1) *For items or services furnished on or before September 30, 1986.*

(i) A lowest charge level is calculated for each identified item or service in January and July of each year.

(ii) The lowest charge level for each identified item or service is set at the 25th percentile of the charges (incurred or submitted on claims processed by the carrier) for that item or service, in the locality designated by the carrier for this purpose, during the second calendar quarter preceding the determination date. Accordingly, the January calculations will be based on charges for the July through September quarter of the previous calendar year, and the July calculations will be based on charges for the January through March quarter of the same calendar year.

(2) *For items or services furnished on or after October 1, 1986.*

(i) A lowest charge level is calculated for each identified item or service in October of each year.

(ii) The lowest charge level for each identified item or service is set at the 25th percentile of the charges (incurred or submitted on claims processed by the carrier) for that item or service, in the locality designated by the carrier for this purpose, during the 12-month period of April 1 through March 31 preceding the fee screen year (October 1 through September 30) for which the item or service was furnished.

(3) *Lowest charge levels for laboratory services.* In setting lowest charge levels for laboratory services, the carrier will only consider charges made for laboratory services performed by physicians in their offices, by independent laboratories which meet coverage requirements, and for services furnished by a hospital laboratory for individuals who are neither inpatients on outpatients of a hospital.

* * * * *

(Catalog of Federal Domestic Assistance Programs: No. 13.773, Medicare—Hospital Insurance Program)

Dated: May 28, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: July 29, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-19764 Filed 8-15-85; 8:45 am]

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Federal Register
Vol. 50, No. 160
Monday, August 19, 1985

Presidential Documents

Title 3—

The President

Executive Order 12529 of August 14, 1985

President's Commission on Americans Outdoors

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to revise the name of a presidential advisory commission to better describe its areas of responsibility, and to extend the date within which the commission must complete its responsibilities, it is hereby ordered that Executive Order No. 12503 is amended as follows:

The title of the Order and Section 1(a) are amended by deleting "Presidential Commission on Outdoor Recreation Resources Review" and inserting in lieu thereof "President's Commission on Americans Outdoors"; and

Section 4(b) of the Order is revised to provide as follows:

"The Commission shall submit its report no later than December 31, 1986, and shall terminate 30 days after its report.".

Ronald Reagan

THE WHITE HOUSE,
August 14, 1985.

[FR Doc. 85-19905
Filed 8-16-85; 10:51 am]
Billing code 3195-01-M

Editorial note: For the White House announcement on the appointment of the Chairman and members of the President's Commission on Americans Outdoors, which was released on August 15, 1985, see the *Weekly Compilation of Presidential Documents* (vol. 21, no. 33).

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Rules and Regulations

Federal Register
Vol. 50, No. 160
Monday, August 19, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1772

[REA Bulletin 345–185, REA Form 397g]

Performance Specification for Line Concentrators

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–185, REA Form 397g, Performance Specification for Line Concentrators. The revised form reflects the rapid pace of changes in this equipment and includes new developments considered advantageous to REA borrowers and their subscribers. All manufacturers of line concentrator equipment, and eventually many REA borrowers, will be impacted in that REA's requirements will reflect state of the art technology and will thus permit the construction of the best, most cost-effective facilities possible.

EFFECTIVE DATE: July 29, 1985.

FOR FURTHER INFORMATION CONTACT: C. F. Buster, Jr., Acting Director Telecommunications Engineering and Standards Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8663. The Final Impact Analysis describing the options considered in developing this rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–185, REA Form 397g, Performance Specification for Line Concentrators. This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans.

Background

The present REA Form 397g was developed in May 1978. Since that time, developments in technology have rendered the requirements contained therein obsolescent. The concentrator is an efficient means of providing service to small clusters of subscribers in less densely populated areas. Thus use of the latest technology in concentrators will permit REA borrowers to provide the best, most cost-effective service possible to rural America.

This revised specification sets standards for electrical parameters which are important for satisfactory operation. These minimum requirements will not affect the current designs or manufacturing techniques of concentrators.

REA publised a Notice of Proposed Rulemaking in the Federal Register on July 10, 1984, Volume 49, No. 133, page 28071. There were no comments as a result of this proposal.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, telecommunications, incorporations by reference.

In view of the above, REA hereby amends 7 CFR Part 1772.

1. The authority citation for 7 CFR Part 1772 continues to read:

Authority: 7 U.S.C. 901 et seq.

2. Section 1772.97 is amended by revising the entry 345–185 to read as follows:

§ 1772.97 Incorporation by reference of telephone standards and specifications.

* * * * *

345–185 . . . . . Form 397g . . . . . Performance Specification for Line Concentrators.

* * * * *

Dated: July 29, 1985.

Jack Van Mark,

Acting Administrator.

[FR Doc. 85–18643 Filed 8–16–85; 8:45 am]

BILLING CODE 3410–15–M

Farmers Home Administration

7 CFR Part 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Community Facilities regulations to renumber a form. This action is necessary in order to number the form according to FmHA's revised numbering system. The effect of this action is to change from a dual numbering system to a single system.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Justice, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, Room 6304 South Building, 14th and Independence Avenue, SW, Washington, D.C. 20250, telephone: (202) 382–1490.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management in that is does not affect either FmHA borrowers in particular or the public in general. Form FmHA 442–43 is being renumbered to Form FmHA 1942–43.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action however, is not published for proposed rulemaking

since it involves only internal Agency management, and publication for comments is unnecessary.

The FmHA program and projects which are affected by these instructions are subject to State and local review under section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

This change has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmFA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The Catalog of Federal Domestic Assistance program affected is No. 10.423, Community Facilities Loans.

List of Subjects in 7 CFR Part 1942

Business and industry, Community development, Community facilities, Grant programs—Housing and community development, Industrial park, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, Part 1942 of Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

§ 1942.5 [Amended]

2. Section 1942.5 is amended by changing the form number from "442–43" to "1942–43" in the first sentence of paragraph (a)(1), paragraph (a)(2), the first sentence of paragraph (a)(3), paragraph (b)(1)(ii)(C), and the second and fourth sentences of paragraph (c).

§ 1942.17 [Amended]

3. Section 1942.17 is amended by changing the form number from "442–43" to "1942–43" in the sixth sentence of paragraph (f)(1).

Subpart G—Industrial Development Grants

§ 1942.311 [Amended]

4. Section 1942–311 is amended by changing the form number from "442–43" to "1942–43" in paragraph (a)(2).

Dated: June 24, 1985.

Charles A. Jewell,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85–19700 Filed 8–16–85; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Part 390

[Docket No. 82–002C]

Freedom of Information; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule which was issued by the Food Safety and Inspection Servcie (FSIS) and the Agricultural Marketing Service (AMS), USDA. That rule amended certain sections of Titles 7 and 9 of the Code of Federal Regulations to reflect a departmental reorganization. This correction will only affect that portion of the document pertaining to Title 9 of the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Irwin Dubinsky, Acting Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6735.

SUPPLEMENTARY INFORMATION: On December 31, 1981, the Food Safety and Inspection Service and the Agricultural Marketing Service jointly published a final rule to amend certain sections of Titles 7 and 9 of the Code of Federal Regulations to reflect changes resulting from a June 17, 1981, Department reorganization (46 FR 63203; correction notice published February 4, 1982 (47 FR 5196)).

This document corrects an inadvertent error appearing on page 63204 of the December 31, 1981, **Federal Register**, in the amendments to Title 9 Chapter III, of the Code of Federal Regulations, Item 4. The first sentence of § 390.1 refers to Freedom of Information Act (FOIA) provisions in Title 7 as provisions "of this title." Upon transfer of the paragraph from Title 7 to Title 9 of the Code of Federal Regulations, "of this title" should have been changed to "of Title 7."

§ 390.11 [Amended]

FR Doc. 81–37220 in the issue of December 31, 1981, is corrected on page 63204, column one by adding the following item 6 to read as follows:

6. The first sentence of § 390.1 is revised to read as follows:

These regulations are issued pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), and in accordance with the directives of the Department of Agriculture regulations in Part 1, Subpart A, of Title 7. * * *

* * * * *

All other information contained in the final rule remains unchanged.

Done at Washington, DC on August 9, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85–19616 Filed 8–16–85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 85–12]

Rules, Policies and Procedures for Corporate Activities; Bank Service Corporations

AGENCY: Office of the Comptroller of the Currency; Treasury.

ACTION: Final rule.

SUMMARY: Section 709 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320, October 15, 1982) amended the Bank Service Corporation Act. The amended Act states that under certain circumstances national banks must obtain the prior approval of the Office of the Comptroller of the Currency (Office) for an investment in a bank service corporation. This final rule codifies the procedure and process for obtaining Office approval.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Director, Licensing Policy and Systems, or Mickey Fenyk-King, Financial Analyst, Licensing Policy and Systems, Office of the Comptroller of the Currency, (202) 447–1184.

SUPPLEMENTARY INFORMATION:

Purpose

The Bank Service Corporation Act (Act) codified at 12 U.S.C. 1861 *et seq.*, was significantly amended by section 709 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320, October 15, 1982). This final rule carries out the objectives of Section 709, and provides more specific and uniform guidance to national banks to obtain Office approval for investing in bank service corporations.

Summary of the Comments

On October 3, 1984, the Office published a notice of proposed rulemaking (49 FR 39066) describing proposed Office policies governing bank service corporations and setting forth proposed procedures for obtaining Office approval. One commenter responded to the proposed rule. That commenter felt that the proposed 90-day Office decision-making period is too long. The 90-day period is provided for in the amended Bank Service Corporation Act, 12 U.S.C. 1861 *et seq.* The Office has limited experience in processing this type of notification of investment and therefore has no basis for determining whether the decision period can be reduced to less than that provided in the Act. If the Office finds that it can respond to a national bank's request to invest in a bank service corporation in a more timely manner, it will. The Office does not intend to hold or delay action on any request, but will act as expeditiously as the case allows. For this reason the final rule retains the 90-day time limit.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Office finds that the final rule will not have a significant impact on a substantial number of small entities.

Executive Order 12291

This rule is not classified as a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under control number 1557–0163.

List of Subjects in 12 CFR Part 5

National banks, Bank service corporations.

Authority and Issuance

For the reasons set forth in the preamble, the Comptroller of the Currency amends 12 CFR Part 5 to read as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5—Rules, Policies, and Procedures for Corporate Activities is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93(a).

2. A new § 5.35 is added to read as follows:

§ 5.35 Bank service corporations.

(a) *Authority.* 12 U.S.C. 1867, 93a.

(b) *Rules of General Applicability.* Sections 5.8, 5.10, and 5.11 do not apply to national bank requests for approval to invest in bank service corporations.

(c) *Definitions.* The terms "bank service corporation," "depository institution," "invest," and "principal investor," as used in this section, have the same meaning and content as given such terms in 12 U.S.C. 1861.

(d) *General.* National banks are authorized to invest in bank service corporations pursuant to 12 U.S.C. 1862. However, a national bank may not invest more than ten percent of its paid-in and unimpaired capital and its unimpaired surplus in a bank service corporation. Also, a national bank may not invest more than five percent of its total assets in bank service corporations.

(e) *Policy and Procedure.* The Office will consider a national bank's request under 12 U.S.C. 1865(a) to invest in bank service corporations in accordance with the following requirements.

(1) *Filing Letter Requests for Approval.* (i) Approval is required as follows:

(A) Office approval is required for a national bank to invest in a bank service corporation that performs any service described in 12 U.S.C. 1864 (d) or (e).

(B) Federal Reserve Board approval is required for a national bank to invest in a bank service corporation that performs any service described in 12 U.S.C. 1864(f).

(C) If a bank service corporation in which a national bank proposes to invest performs a service that is authorized both by 12 U.S.C. 1864 (d) or (e) and 12 U.S.C. 1864(f), the bank should determine which subsection it desires to proceed under and must receive approval as described in either paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section, depending upon its choice.

(D) No regulatory approval is required for a national bank to invest in a bank service corporation that will perform only the services described in 12 U.S.C. 1863 and performs such services only for depository institutions.

(ii)(A) When Office approval is required, the national bank shall file a letter with the District Office in the district where the principal office of the bank is located. The letter must describe the name and location of the bank service corporation and the services to be performed. In addition, the letter must demonstrate that the amount invested in a bank service corporation is 10 percent or less of the bank's paid-in and unimpaired capital and unimpaired surplus and that the total amount invested in all bank service corporations is 5 percent or less of total assets. Finally, the letter should demonstrate, pursuant to 12 U.S.C. 1864 (b) and (d) or (e), that the investing banks are all located in the same state; and that the services to be performed by the bank service corporation are to be performed only at locations in the state at which the national bank shareholder(s) could be authorized to perform such services.

(B) The Office may require additional information from any applicant bank. In particular, for national banks subject to supervisory concerns, the Office may require additional information including: (*1*) the financial and managerial resources and future prospects of the bank and bank service corporation, including the financial capability of the bank to make the proposed investment; (*2*) any information needed to review and address unsafe and unsound banking practices; and (*3*) any other information the Office considers appropriate for the circumstances.

(2) *90-Day Decision Time Period.* The Office will render a final decision on the proposed investment within 90 days of the date the Office acknowledges receipt of a technically complete letter requesting approval. A technically complete letter will include the information required under paragraph (e)(1)(ii) of this section. If the Office fails to render a decision within 90 days after the date the Office acknowledges receipt of a technically complete letter, the investment may be deemed approved.

(3) *Conditions for Approval.* For banks not subject to special supervisory concerns, approval for investment in a bank service corporation generally will be granted provided that: (i) The services performed by the bank service corporation are legally permissible for a national bank; (ii) the services are performed only at locations in the state where the investing national bank(s) could be authorized to perform such services; (iii) the amount of the investment conforms with the 10 percent and 5 percent limitations noted in paragraph (d) of this section; and (iv) the investing banks are all located in the same state.

For banks subject to special supervisory concerns the request may be denied or it may be approved subject to conditions considered appropriate by the Office.

(f) *Examination and Supervision.* Each bank service corporation in which a national bank is the principal investor shall be subject to examination and supervision by the Office in the same

manner and to the same extent as the shareholder bank.

(g) *Forms.* None.

(Approved by the Office of Management and Budget under Control Number 1557-0163)

Dated: June 25, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85-19582 Filed 8-16-85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-36-AD; Amdt. 39-5123]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection of the fuselage skin lap splice between body stations 340 and 400 at stringers S6-L and S6-R on certain Boeing Model 747 series airplanes. This action is prompted by the recent finding of cracks of up to 18½ inches long on three airplanes. This action is necessary to ensure that an undetected crack will not result in sudden loss of cabin pressurization and the inability to withstand fail-safe loads.

EFFECTIVE DATE: September 26, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for and subsequent repair of cracked structure was published in the **Federal Register** on May 3, 1985 (50 FR 18874). The comment period for the proposal closed on June 24, 1985.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

A comment from the Air Transport Association (ATA) of America requested that the "crack" referred to in paragraph A. (4), should read "visual cracks." The FAA concurs that paragraph A. (4) should refer to cracks which are visible and the paragraph has been revised. In addition, paragraphs A. (3) and A. (4) have been revised to clarify crack length measurement. This is necessary because part of the .15 inch limit length of the crack, as described in Boeing Service Bulletin 747-53-2253, dated December 14, 1984, may be hidden under the head of the fastener. The visible crack length that extends from the edge of the fastener countersink must not exceed .10 inch without a modification.

Another commenter requested that the requirements of paragraph A. (4) be relaxed as they are unwarranted and could lead to grounding an airplane for a skin crack which is barely visible. Paragraph A. (4) requires modification prior to the next pressurized flight if a crack extends more than .15 inch from the edge of the hole. The FAA does not concur with the need to relax the requirements of paragraph A. (4) for two reasons: (1) This is a multiple crack initiation condition, with approximately 17 fasteners per row between each 20-inch frame station, and cracks in this area have the potential of joining up; and (2) .15 inch has been determined to be the critical crack length. Also, the inspections called for in paragraphs A. (1), A. (2), and A. (3) are specifically designed to alert the operator of impending maintenance during the crack growth period, which is a gradual process.

Another commenter stated that on some of the affected airplanes a crew door(s) may intersect the lap splices prior to the body station 400 frame, and suggested that there be a clarification of the final rule in this regard. The FAA concurs with the need for clarification, and paragraphs A. and B. of the final rule have been revised to acknowledge the presence of the door(s). The commenter also requested that training flights where cabin pressure differential is less than 1.5 psi not be counted in determinations of thresholds and repeat intervals. The FAA concurs and paragraph F. of the final rule has been added to reflect this change.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 151 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $48,320 for the initial compliance with the AD.

For reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 747-53-2253, dated December 14, 1984. To prevent failure of the fuselage skin lip splice between body stations 340 and 400, at stringer S6-L and S6-R, accomplish the following, unless already accomplished:

A. For airplanes that have not been modified in accordance with Boeing Service Bulletin 747-53-2253, dated December 14, 1984, or later FAA approved revisions: within the next 1,000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings, whichever is later, use high frequency eddy-current procedures to inspect for cracking at the fuselage skin lap splice between body stations 340 and 400, or aft as far as the crew door, at stringers S6-L and S6-R, in accordance with Boeing Service Bulletin 747-53-2253, dated December 14, 1984, or later FAA approved revisions.

(1) If no cracking is indicated, repeat the high frequency eddy current inspection at intervals not to exceed 5,000 landings.

(2) If a crack is indicated but is not visible externally, repeat a visual detailed inspection using 10X magnification at intervals not to exceed 500 landings.

(3) If a crack is visible and is less than .10 inch long, measured from the edge of the countersink, repeat a visual detailed inspection using 10X magnification at intervals not to exceed 100 landings.

(4) If a crack is visible and is more than .10 inch long measured from the edge of the countersink, modify in accordance with Boeing Service Bulletin 747–53–2253, dated December 14, 1984, or later FAA approved revisions, prior to the next pressurized flight. Inspections in accordance with paragraph B., below, are to continue after modification.

B. For airplanes that have been modified in accordance with Boeing Service Bulletin 747–53–2253, dated December 14, 1984, or later FAA approved revisions: within the next 2,500 landings after the effective date of this AD or prior to the accumulation of 10,000 landings after the modification, whichever is later, and thereafter at intervals not to exceed 5,000 landings, use high frequency eddy-current procedures to inspect for cracking at the fuselage skin lap splice between body stations 340 and 400, of aft as far as the crew door, at stringers S6–L and S6–R, in accordance with Boeing Service Bulletin 747–53–2253, dated December 14, 1984, or later FAA approved revisions. If a crack is found, repair in accordance with an FAA approved method and continue to inspect.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

E. Upon the request of an operator, an FAA Principal Maintenance Inspector subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD, if the request contains substantiating data to justify the change for that operator.

F. Flight cycles during which the cabin pressure differential does not exceed 1.5 psi do not need to be counted when determining the number of landings on an airplane for the inspection requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 26, 1985.

Issued in Seattle, Washington, on August 12, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–19665 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 82–CEF–1–AD; Amendment 39–4360]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. (MHI) MU–2B, –10, –15, –20, –25, –26, –30, –35, and –36 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 82–08–02, Amendment 39–4360 (47 FR 15569), applicable to Mitsubishi Heavy Industries, Ltd. (MHI) MU–2B, –10, –15, –20, –25, –26, –30, –35, and –36 airplanes. This correction is necessary because the identification of the basic model, MU–2B, was inadvertently omitted from the applicability statement when the AD was published in the **Federal Register**.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Sullivan, Aerospace Engineer, Airframe Section, ANM–172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007; Telephone (213) 536–6166.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 82–08–02, Amendment 39–4360 (47 FR 15569), applicable to MHI MU–2B, –10, –15, –20, –25, –26, –30, –35, and –36 airplanes, the FAA found that the identification of the basic model, MU–2B, was inadvertently omitted from the applicability statement when the AD was published in the **Federal Register**. This omission has raised questions as to the applicability of the subject AD. The serial numbers listed in the applicability statement are correct and do include the MU–2B as intended. Since the issuance of AD 82–08–02 the Honolulu Aircraft Certification Office has been closed. Accordingly, Paragraph C is also changed to reflect the current FAA organization. Therefore, action is taken herein to make these corrections. Since this action is clarifying in nature, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation Safety, Aircraft, Safety.

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By correcting the following AD:

In FR Doc. 82–8667 (47 FR 15569), appearing on page 15569 in the **Federal Register** of April 12, 1982, make the following corrections:

1. Correct the applicability statement to include the basic model MU–2B, by changing the statement to read as follows:

Mitsubishi Heavy Industries, Ltd. (MHI). Applies to MHI Models MU–2B, –10, –15, –20, –25, –26 (S/N 005 thru 347, except 313 and 321) and MU–2B–30, –35, –36 (S/N 501 thru 696, except S/N 652 and 661) airplanes certificated in any category.

2. Change Paragraph (C) to read as follows:

(C) An alternative means of compliance with this AD may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

Issued in Kansas City, Missouri, on August 6, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85–19664 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 85–AWA–33]

Establishment of Restricted Area R–4009, Thurmont, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R–4009 in the state of Maryland to enhance security and safety at the Naval Support Facility, Thurmont, MD.

EFFECTIVE DATE: 0901 G.m.t., August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW.,

Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

On June 27, 1985, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to supplement the special use airspace of Prohibited Area P–40 which is currently in effect at the Naval Support Facility in Thurmont, MD (50 FR 26583). The additional airspace was proposed to have the same lateral dimensions as P–40, i.e., a radius of 3 miles, and vertical limits from 5,000 feet above mean sea level (MSL) (the ceiling of P–40) up to 12,500 feet MSL. The proposal was intended to provide adequate safeguards for aeronautical activity at the Naval Support Facility and to separate nonparticipating traffic from that activity as well as to supplement the security purposes of P–40. The Aircraft Owners and Pilots Association (AOPA) submitted comments suggesting that the proposed special use airspace be reconfigured as follows: AOPA suggested that Prohibited Area P–40 be reduced in lateral size from a 3 to 2-mile radius and that its vertical limit remain the same. Under AOPA's proposal, the new Restricted Area would be established between the 2 and 3-mile radius around P–40 and would extend from the surface up to the vertical limit of P–40. Additionally, the new Restricted Area would lie over P–40 with a lateral limit of 3 NM and extend from 5,000 to 12,500 feet MSL. AOPA's proposal was based on the contention first that their proposed Restricted Area would provide an adequate security buffer, and second, that the charting of the Restricted Area proposed by the FAA, with the same lateral dimensions for P–40 and the overlying Restricted Area, would lead to pilot misunderstanding and confusion. AOPA believed the pilot would not be able to distinguish between the boundaries of the Prohibited and Restricted Area having the exact same lateral dimensions. The FAA does not concur with the AOPA suggestion. A reduction in the lateral limits of the Prohibited Area would be counter to the national security needs associated with P–40. In addition, the establishment of a 1-mile wide Restricted Area around the Prohibited Area provides neither air traffic control nor airspace users any practical or additional degree of access to usable airspace. With respect to charting, P–40 and R–4009 will be distinguished clearly on the chart by the designated numbers and a note indicating that R–4009 overlies P–40 from 5,000 feet MSL up to and including 12,500 feet MSL. Section 73.40 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations establishes Restricted Area R–4009 in the state of Maryland to enhance security and safety at the Naval Support Facility, Thurmond, MD, and to segregate nonparticipating aircraft from potentially hazardous air operations at the facility. The boundaries of R–4009 will encompass that airspace within a 3 NM radius of the Naval Support Facility. The designated altitudes are from 5,000 feet MSL to 12,500 feet MSL. Operations through or within R–4009 would be subject to prior ATC authorization. Authorizations may be requested from the Washington Air Route Traffic Control Center which serves as both the using and controlling agency.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

In consideration of the national security interest in implementing this rule, I find that good cause exists for making this rule effective on the next charting date.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 73.40 is amended as follows:

R–4009 Thurmont, MD

Boundaries. That airspace within a 3 NM radius of the Naval Support Facility (lat. 39°38'53" N., long. 77°28'01" W.).

Designated altitudes. 5,000 feet MSL to 12,500 feet MSL.

Time of designation. Continuous: Transit may be authorized by Washington ARTCC when conditions permit.

Controlling agency. FAA, Washington ARTCC.

Using agency. FAA, Washington ARTCC.

Issued in Washington, D.C., on August 13, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–19695 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 84C–0098]

Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additives for Coloring Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of the colored polymeric reaction product formed by chemically bonding Reactive Blue No. 4 with poly(hydroxyethyl methacrylate) to produce tinted contact lenses. This action responds to a petition filed by Bausch & Lomb, Inc.

DATES: Effective September 19, 1985, except as to any provisions that may be stayed by the filing of proper objectives; objections by September 18, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the Federal Register of April 19, 1984 (49 FR 15624), FDA announced that a color additive petition (CAP 4C0179) had been filed by Bausch & Lomb, Inc., Optics Center, P.O

Box 450, Rochester, NY 14692, proposing that § 73.3121 *Poly(hydroxyethyl methacrylate)-dye copolymers* (21 CFR 73.3121) of the color additive regulations be amended to provide for the safe use of Reactive Blue No. 4 [2-anthracenesulfonic acid, 1-amino-4-[3-[(4,6-dichloro-s-triazin-2-yl)amino)-4-sulfoanilino)-9,10-dihydro-9,10-dioxo, disodium salt] (CAS Reg. No. 4499–01–8) chemically bonded to the lens polymer for coloring contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

II. Applicability of the Act

The colored polymeric reaction product that is the subject of this petition is formed when the dye is bonded with poly(hydroxyethyl methacrylate) on the front surface of a contact lens to form a thin layer of colored polymeric material on that surface. This polymeric material colors the contact lens.

Under the Medical Device Amendments of 1976 (Pub. L. 94–295), a color additive for use in a medical device must be listed when the color additive comes in direct contact with the body for a significant period of time (section 706(a) of the act).

The polymeric reaction product of the reactive dye and poly(hydroxyethyl methacrylate), identified as "poly(hydroxyethyl methacrylate)-dye copolymer" in § 73.3121, is a color additive within the meaning of section 201(t) of the act (21 U.S.C. 321(t)) because it is a substance made by a process of synthesis or similar artifice, and because it is capable of imparting color to food, drugs, cosmetics, or the human body if added or applied thereto. In the use considered here, the reactive dye is merely a starting material and not a color additive subject to section 706 of the act. In the reaction process that occurs in bonding the reactive dye to the poly(hydroxyethyl methacrylate), the reactive dye ceases to exist as a separate entity.

The use of the poly(hydroxyethyl methacrylate)-dye copolymer as a color additive in contact lenses is subject to regulation under section 706(a) of the act. The lenses that have this colored polymeric material on their front surfaces are intended to be placed on the eye for several hours a day, each day, for 1 year or more. The color additive accordingly will come in direct contact with the body for a significant period of time. Consequently, the use of the color additive presented in the petition now before the agency is subject to the statutory listing requirements.

III. Analysis of Data

To establish that the color additive is safe for use in contact lenses, the petitioner submitted various toxicity data. In a primary ocular irritation study in rabbits with saline and cottonseed oil extracts of lens material containing the color additive, neither the saline nor the cottonseed oil extracts of the tinted lens material caused ocular irritation under the conditions of the test. The petitioner also conducted cytotoxicity studies of tinted lens material and of saline and cottonseed oil extracts of the tinted lens material, using L–929 mouse fibroblast cells. In these tests, neither the tinted lens material nor the extracts were cytotoxic.

FDA has concluded, that as a worst case, any material migrating from the color additive in the lens would not pose a greater safety concern than if the estimated maximum amount of reactive dye was placed in the lens unbound, and all of the reactive dye was to migrate into the eye over a 1-year period. The maximum amount of reactive dye available for migration would be equivalent to 50 micrograms of reactive dye starting materials per lens or a total of 270 nanograms per day for both eyes. The petitioner conducted a cytotoxicity study in which serial dilutions of the reactive dye were applied directly to L–929 mouse fibroblast cells. No toxic effect was seen at a concentration approximately 2,500 times the concentration in the eyes if 270 nanograms migrated into the eyes per day.

IV. Conclusion

On the basis of data contained in the petition, and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the proposed use of the reaction product formed by bonding poly(hydroxyethyl methacrylate) with Reactive Blue No. 4 for coloring contact lenses. On this basis also, the agency concludes that this color additive is suitable for its intended use. The agency, therefore, is amending § 73.3121 by adding Reactive Blue No. 4 to this list of reactive dyes in paragraph (a).

In addition, based on relevant data, FDA concludes that the safety margin (difference between the potential exposure to the dye and its highest observed no adverse effect level) is large enough to rule out any need for imposing a limitation on the amount of the color additive that may be present in the lens, beyond the limitation that only that amount necessary to accomplish the intended technical effect may be used. This color additive will also be subject to the requirement in § 73.3121(b) that the manufacturer wash the lens to remove any unbound reactive dye. On the basis of factors listed in § 71.20(b) (21 CFR 71.20(b)), the agency concludes that certification of the color additive is not necessary for the protection of the public health.

V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Assessment

The agency has carefully considerd the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The Agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(5).

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 18, 1985 file with the Dockets Management Branch (address above) written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objection shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual

information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulations may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Notice of the filing of objections or lack thereof will be published in the **Federal Register**.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—[AMENDED]

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 73 is amended as follows:

1. The authority citation for 21 CFR Part 73 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. In § 73.3121 by revising the introductory text of paragraph (a), by removing the word "and" before, and the period after, paragraph (a)(5), and by adding new paragraph (a)(6), to read as follows:

§ 73.3121 Poly(hydroxyethyl methacrylate)-dye copolymers.

(a) *Identity.* The color additives are formed by reacting one or more of the reactive dyes listed in this paragraph with poly(hydroxyethyl methacrylate), so that the sulfate group (or groups) or chlorine substituent of the dye is replaced by an ether linkage to poly(hydroxyethyl methacrylate). The dyes that may be used along or in combination are

* * * * *

(6) Reactive Blue No. 4 [2-anthracenesulfonic acid, 1-amino-4-(3-((4,6,-dichloro-s-triazin-2-yl)amino)-4-sulfoanilino)-9,10-dihydro-9,10-dioxo, disodium salt] (CAS Reg. No. 4499–01–8).

* * * * *

Dated: August 12, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–19672 Filed 8–16–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Hubbard Milling Co., providing for the manufacture of 5–, 10–, and 20–gram-per-pound tylosin premixes used to make completed feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–433–1414.

SUPPLEMENTARY INFORMATION: Hubbard Milling Co., 424 North Front St., Mankato, MN 56001, is the sponsor of a supplement to NADA 48–645 submitted on its behalf by Elanco Products Co. The supplemental NADA provides for the manufacture of new 5– and 20–gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The use of the currently approved 10-gram-per-pound premix is revised to include additional uses in swine, beef cattle, and chickens. The supplemental NADA is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.625 is amended by revising paragraph (b)(72) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(72) To 012190: 5, 10, 20, and 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Dated: August 13, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–19675 Filed 8–16–85; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW–FRL–2882–3]

Ocean Dumping; Extension of Interim Site Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA today extends the interim designation of several existing dredged material disposal sites to allow completion of final rulemaking with full public participation. The interim designations of the following sites are extended until July 31, 1988, or until final rulemaking is completed, whichever is sooner: Portland, ME; San Juan, PR; Wilmington Harbor, NC; Charleston Harbor, SC; Savannah River, GA; Sabine-Neches, TX; Mouth of Columbia River, OR. This action is necessary to provide acceptable ocean dumping sites for the disposal of dredged material essential to maintain navigation until formal rulemaking is completed.

DATES: This action will become effective on August 19, 1985. Comments must be received on or before September 18, 1985.

ADDRESS: Send comments to: Paul Pan, Chief, Environmental Analysis Branch (WH–556M), EPA, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Paul Pan, 202/755–9231.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.), was extended on January 16, 1980 (45 FR 3053 et seq.) and December 9, 1980 (45 FR 81042 et seq.), and was subsequently extended on February 7, 1983 (48 FR 5557 et seq.) and August 24, 1984 (49 FR 33647). That list established the Portland, ME; San Juan, PR; Wilmington Harbor, NC; Charleston Harbor, SC; Savannah River, GA; Sabine-Neches, TX; and Mouth of Columbia River, OR, sites as interim sites. The latest notice extended their period of use until July 31, 1985. Today's extension will continue the interim designations for these sites until July 31, 1988, or until final rulemaking is completed, whichever is sooner.

Preparation of Environmental Impact Statements (EIS's) for rulemaking has been completed on all of these sites. Designation of all consent decree sites ["National Wildlife Federation v. Costle," 629 F.2d 118 (D.C. Cir. 1980)] will proceed as expeditiously as possible. EPA cannot promulgate final designations for these sites and allow opportunity for full public participation within the existing deadline of July 31, 1985. The extensive opportunities for public participation are described in greater detail in the February 7, 1983, extension notice. Thirty-six months is a more realistic estimate of the amount of time EPA will need to complete the designation process for all of these sites. EPA expects to finish the designation process earlier for those sites where work is more advanced.

The Corps of Engineers has stated that they know of no adverse environmental impacts or substantive public opposition which would result from continued use of any of these historically used sites.

Continued designation of these interim dredged material disposal sites is necessary to assure the uninterrupted availability of the adjacent harbors to interstate and foreign commerce. These site designations expired on July 31, 1985. Accordingly, pursuant to the Administrative Procedure Act, 5 U.S.C 553(b)(3)(B), the Agency has determined that notice and public procedure on the interim designations, prior to their extension, is impracticable and contrary to the public interest. However, the Agency solicits public comment on the extension of the interim designations and will address any comments received in the final rulemakings designating these sites. For the same reasons, EPA has determined, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), that there is good cause to make this extension effective immediately.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this action does not necessitate preparation of a Regulatory Impact Analysis.

This action does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 7, 1985.

Henry Longest II,

Acting Assistant Administrator for Water.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 228.12 [Amended]

2. In Part 228, paragraph (a)(1)(ii) of § 228.12 is amended by revising the introductory text and adding paragraphs (K) to (O) to read as follows:

* * * * *

(a) * * *

(1) * * *

(ii) Until such time as formal rulemaking is completed or until July 31, 1988, whichever is sooner:

* * * * *

(K) Portland, ME.

(L) San Juan, PR.

(M) Charleston/Savannah/Wilmington (3 sites): Wilmington Harbor, NC; Charleston Harbor, SC; and Savannah River, GA.

(N) Sabine-Neches, TX (4 sites)

(O) Mouth of Columbia River, OR (5 sites).

[FR Doc. 85-19423 Filed 8-16-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 90

[OST Docket No. 43344]

Audits of State and Local Governments

AGENCY: Department of Transportation.

ACTION: Final rule and request for comments.

SUMMARY: This final rule establishes a requirement for all recipients of Department of Transportation (DOT) assistance funds to comply with the requirements of the Single Audit Act of 1984, Pub. L. 98-502, and Office of Management and Budget (OMB) Circular A-128, Audits of State and Local Governments. The OMB Circular A-128 directs agencies to publish regulations implementing it. OMB Circular A-128 is included as an appendix to the basic regulation.

DATES: This rule is effective September 18, 1985. Comments must be received on or before October 18, 1985.

ADDRESS: Interested persons should submit comments to Docket Clerk, OST Docket No. 43344, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Charles E. Ventura, Department of Transportation, Office of Installations and Logistics—M–63, 400 Seventh Street, SW., Room 9100, Washington, D.C. 20590, (202) 426–4160.

SUPPLEMENTARY INFORMATION: Recipients of financial assistance from the Department of Transportation are currently required to obtain organization-wide audits in accordance with the requirements of Attachment P, Audit Requirements, to OMB Circular A–102, Uniform Requirements for Grants to State and Local Governments. This requirement is contained in program directives issued by the operating administrations in the Department that award assistance funds. OMB Circular A–128 was issued on April 12, 1985, supersedes Attachment P, and requires each Federal agency to issue regulations that include the provisions of the OMB Circular. The Department does, however, request comments on this rule. Most Federal assistance agencies will be issuing a rule similar to this one. Comments sent to any Federal agency will be shared with the others as appropriate.

Regulatory Process Matters

This regulation is classified as a "non-major" regulation under Executive Order 12291, and is nonsignificant under the Department of Transportation's Regulatory Policies and Procedures. It is certified under the criteria of the Regulatory Flexibility Act that this regulation would not have a significant economic impact on a substantial number of small entities. The economic impact of the rule is expected to be minimal. This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et seq.).

In accordance with 5 U.S.C. 553, an opportunity for prior notice and public comment on this rule is not necessary, in that the rule simply makes applicable to recipients an already existing OMB Circular. OMB provided an opportunity for public comment in the Circular itself. DOT will, however, publish either a revision to this rule, if warranted, or a notice responding to comments that have been received during the comment period. Issued this 6th day of August, 1985, at Washington, D.C.

List of Subjects in 49 CFR Part 90

Audit requirements for state and local governments.

Elizabeth Hanford Dole,

Secretary of Transportation.

Subtitle A of Title 49 of the Code of Federal Regulations is amended by adding a new Part 90 to read as follows:

PART 90—AUDITS OF STATE AND LOCAL GOVERNMENTS

Sec.
90.1 Policy and scope.
90.3 Authority.
Appendix A—OMB Circular A–128, Audits of State and Local Governments.

Authority: Sec. 9(e)(2) of the Department of Transportation Act [49 U.S.C. 1657(e)(2)].

§ 90.1 Policy and scope.

The regulation in this part implements the Single Audit Act of 1984 (Pub. L. 98–502), 31 U.S.C. 75. All State and local government organizations that receive Federal assistance funds from the Department of Transportation, including funds received indirectly through other units of State and local governments, are required to meet the audit requirements of Appendix A (Office of Management and Budget Circular A–128, Audits of State and Local Governments). Specific guidance for individual assistance programs in the Department are contained in program guidance issued by the operating administrations in the Department that award Federal assistance funds.

§ 90.3 Authority.

This part is authorized by section 9(e)(2) of the Department of Transportation Act (49 U.S.C. 1657(e)(2)), which allows the Secretary to make such rules and regulations as may be necessary to carry out the Secretary's functions, powers, and duties.

BILLING CODE 4910-62-M

Appendix A—OMB Circular A–128, Audits of State and Local Governments

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A–128

April 12, 1985

To the Heads of Executive Departments and Establishments.
Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A–102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the

generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments." and Attachment F of Circular A–102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments,* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a

central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A–87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A–102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A–102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395–3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,

Director.

Attachment—Circular A–128

Definition of Major Program as Provided in Pub. L. 98–502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$30 million.

[FR Doc. 85–19632 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–62–T

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[No. 39777]

Negative Surcharge Tariffs; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules [Exemption].

SUMMARY: The Commission is adopting final rules (set forth in the appendix) permitting rail carriers unilaterally to publish rail allowance ("negative surcharge") tariffs to the extent such tariffs were authorized by section 10705a(a)(1)(A), which expired September 30, 1984. The Commission has found that continued regulation of rail allowances under provisions of 49 U.S.C. 10762(b)(2) that require concurrence or acceptance by other parties to the joint rate is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power.

EFFECTIVE DATE: These rules will be effective on September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Proposed new rules in this proceeding were published at 49 FR 34534, August 31, 1984.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Environment And Energy

This decision will not significantly affect either the quality of the human environment or energy conservation.

Regulatory Flexibility

We reaffirm our certification in the proposed rulemaking notice that this action will not have a significant economic effect of a substantial number of small entities.

List of Subjects in 49 CFR Part 1039

Railroads.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10505, 10321, and 10762.

Decided July 29, 1985.

By the Commission. Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

Appendix

Title 49 CFR Part 1039, *Contracts and Exemptions*, is amended as follows:

1. The authority citations appearing at the end of §§ 1039.3, 1039.10, 1039.11, 1039.13, 1039.14, 1039.15, 1039.16, and 1039.17 are removed, and the authority citation for 49 CFR Part 1039 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10713, 10762, and 11105; 5 U.S.C. 553.

2. A new § 1039.18 is added to read as follows:

§ 1039.18 Allowance ("negative surcharge") tariff exemption.

Rail allowance ("negative surcharge") tariffs reducing the total charges applicable to a movement subject to a joint-rate in which the carrier publishing the tariff participates, when the reduction is borne solely by that carrier, are exempt from the provisions of 49 U.S.C. 10762(b)(2) that require concurrence or acceptance by other parties to the joint rate.

[FR Doc. 85–19702 Filed 8–16–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 50456–5048]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces the modification of subarea commercial troll and recreational chinook and coho quotas and a management subarea boundary north of Cape Falcon, Oregon. The Director, Northwest Region, NMFS (Regional Director) has determined, in consultation with the Pacific Fishery Management Council (Council), the Washington Department of Fisheries (WDF), and the Oregon Department of Fish and Wildlife, that the following actions are necessary to protect weak Washington, coho stocks, more closely to achieve overall coho and chinook salmon quotas, and to assure the equitable distribution of fishing opportunities for commercial and recreational fishermen north of Cape Falcon: (1) An exchange of chinook and coho between the commercial and recreational fishery quotas; (2) a reduction in the coho quota and an increase in the chinook quota for the commercial all-species fishery north of Carroll Island, which began August 3; and (3) a modification of the subarea management boundary, a reduction of the coho quota, and a shortening of the season for the commercial troll all-species fishery off the Columbia River beginning August 21.

DATES: Modification of a subarea management boundary and of subarea chinook and coho quotas for the recreational and commercial fisheries from Cape Falcon, Oregon, to the U.S.-Canada border is effective at 0001 hours Pacific Daylight Time (PDT), August 14, 1985, until modified, superseded, or rescinded. Comments will be accepted until August 29, 1985.

ADDRESSES: Comments on this notice may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115. The information upon which this notice is based is available for public inspection from 8:00 a.m. to 4:30 p.m. weekdays at the Northwest Regional Office, NMFS, Building 1, 7600 Sand Point Way, NE., Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150.

SUPPLEMENTARY INFORMATION: Final regulations to implement the framework amendment to the fishery management plan for the commercial and recreational salmon fisheries off the coasts of Washington, Oregon, and California were published in the **Federal Register** on October 31, 1984 (49 FR 43879).

Under the provisions of the framework amendment, the 1985 management measures were published on May 2, 1985 (50 FR 18672). Regulations at §661.21(b) (5) and (6) provide authority for inseason modifications to certain management measures, including redistributing subarea quotas to achieve an overall quota and modifying boundaries to promote attainment of quotas.

The commercial fishery from Cape Alava to Leadbetter Point, Washington, opened on July 15, 1985, with subarea quotas of 16,100 chinook and 78,500 coho. The fishery was closed on July 18, 1985, when it was projected that the coho quota had been reached. Landings data through July 28, 1985, indicate that 136,300 coho were caught in the fishery, exceeding the subarea quota by 57,800 fish. Effort and catch rates were considerably higher than had been anticipated. However, only 11,300 chinook of the 16,100 chinook quota were caught in this fishery, leaving a surplus of approximately 4,800 chinook.

The recreational season from the U.S.-Canada border to the Queets River, Washington, opened on June 30, 1985, with quotas of 1,700 chinook and 28,400 coho. As of July 21, 1985, the fishery had harvested 1,006 chinook (59 percent of the quota) and only 3,017 coho (11 percent of the quota).

On July 24, 1985, the WDF closed the near-shore area from Cape Alava north to the Strait of Juan de Fuca in an effort to reduce the proportion of chinook being taken. Despite this, it appeared that further action was needed to prevent the recreational fishery from reaching its chinook quota and being closed before its coho quota was taken.

Council Recommendations

As a result of the surplus chinook in the commercial fishery and the unanticipated high catch of chinook by the recreational fishery, the Council met via telephone conference call on July 24, 1985, and again of July 31, 1985, to consider the need for inseason action

with respect to commercial and recreational fisheries north of Cape Falcon, Oregon. The following inseason actions were recommended by the Council.

1. Redistribution of Coho and Chinook Salmon Between the Recreational and Commercial Fisheries North of Cape Falcon, Oregon

Because the commercial fishermen had taken only 11,300 chinook of their 16,100 chinook quota in the fishery from Cape Alava to Leadbetter Point, and because they had substantially exceeded their 78,500 coho quota in the same fishery, an event which was expected to curtail subsequent all-species commercial fisheries, it is necessary to trade chinook for coho from the recreational fisheries in order to achieve the overall commercial quotas. It is also likely that the quota of 1,700 chinook in the recreational fishery from the Queets River to the U.S.-Canada border will be taken early and will result in an early closure in that area before the 28,400 coho quota can be taken. Representatives of the two user groups, therefore, have requested a trade of 750 chinook from the commercial quota for 3,000 coho from the recreational quota in order to increase the opportunity for them to achieve their overall quotas for both species.

After consideration of this proposal, the Council agreed that such an adjustment would not be detrimental to the salmon stocks involved and would be beneficial to both user groups. The Council recommended that the Regional Director make this exchange, consistent with the inseason action authority provided in the framework amendment and the 1985 management measures.

2. Reduction in the Coho Quota for the Commercial Fishery North of Carroll Island Beginning August 3, 1985

The Council reiterated its intent that the fisheries north of Cape Falcon be managed in 1985 to protect the Washington coho stocks of concern, i.e., the Skagit, Stillaguamish, Quillayute, Hoh, Queets, and Grays Harbor runs. Various options were considered that would curtail the two subsequent commercial fisheries, i.e., the fishery north of Carroll Island which was set to begin on August 3 with bare, blued hooks to concentrate on pink salmon with only incidental catches of chinook and coho, and the southern fishery (Leadbetter Point to Cape Falcon, Oregon) beginning August 21. This latter fishery would provide opportunity for commercial fishing primarily on Columbia River hatchery stocks. Council members stated their intention that any quota reduction for these two fisheries provide (1) no greater impacts on the weakest Washington coho runs than originally estimated when the 1985 seasons and quotas were set, and (2) equity between the commercial fishermen involved in the northern and southern fisheries.

During the July 31 telephone conference call, the Council recommended modification of the commercial season north of Carroll Island by prohibiting the retention of coho and limiting the catch of pink salmon to 200,000 rather than 250,000. These changes would substantially reduce the impact of the fishery on weaker coho stocks. By releasing all coho while catching 200,000 pink, only about 7,500 coho would be lost to hooking mortality, thus saving the 23,700 coho that would be taken if the original coho quota of 31,200 were maintained.

The Council also recommended that the bare, blued hooks, designed primarily for catching pink salmon in the special pink salmon fishery which began on August 3 should be made barbless. Present regulations do not allow inseason gear modifications; thus, if time permits, this restriction will be imposed by a separate emergency regulation.

The Council also recommended that, even though the 5,100 chinook impact allowance for the pink salmon fishery which began of August 3, 1985 (960 harvest quota and 4,140 hooking mortality) appeared adequate, the remaining 4,050 chinook not taken in the earlier fishery between Cape Alava and Leadbetter Point (16,100 chinook quota minus harvest of 11,300 chinook, minus trade of 750 chinook to the recreational fishery, leaving a balance of 4,050 chinook) should be transferred to this fishery, adding 760 to the harvest quota and 3,290 to the hooking mortality allowance. The result is an upward adjustment in the total chinook impact allowance for this fishery to 9,150 fish, including a harvest quota of 1,720 chinook and a hooking mortality allowance of 7,430 chinook.

3. Reduction in the Coho Quota and Movement of the Northern Subarea Management Boundary for the All-Species Commercial Season Off the Columbia River Beginning August 21, 1985

To further offset the overage in the number of coho harvested in the July commercial fishery and still provide some fishing opportunity for the non-mobile small boat commercial fishermen in the Columbia River area, the Council recommended that the coho quota for this fishery be reduced from 32,000 fish to 10,000 fish. This adjustment would further offset the earlier overharvest of coho by an additional 22,000 coho. The chinook quota of 2,700 fish appeared more than adequate for this reduced coho quota, so the Council recommended no action with respect to the chinook quota.

To further reduce the impacts on the weakest Washington coho runs, the Council recommended moving the northern boundary of this fishery from Leadbetter Point, Washington, to the Red Buoy Line south of the Columbia River mouth. This line extends seaward along the south jetty of the Columbia River to the visible tip of the jetty, then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, then to the Lightship Buoy, and then due west along 46°11'7" N. latitude.

The reason for moving this management boundary south is to further reduce the impacts of the commercial fishery on the weak Washington coho runs. The further south the fishery occurs, the smaller the percentage of critical Washington coho stocks which are caught.

Secretarial Action

The Secretary concurs with the above recommendations of the Council and by this notice sets forth the following inseason modifications to the management measures for the commercial and recreational fisheries north of Cape Falcon, Oregon. For the reasons discussed above, the following changes are made to the notice of 1985 management measures (50 FR 18672, May 2, 1985):

TABLE 1.—REVISED SUBAREA QUOTAS AND SUBAREA MANAGEMENT BOUNDARY [1] (1985)

Area and season	Chinook quota	Coho quota
Commercial Fishery		
U.S.-Canada border to Carroll Island, Aug. 3 through earlier of Aug. 31 or coho impact limitation	[2] 1,720	[3] 0
Red Buoy line [4] to Cape Falcon, 0001 hours to 2400 hours PDT Aug. 21 [5]	2,700	[6] 10,000
Recreational Fishery		
U.S.-Canada border to Queets River, June 30 through earlier of Sept. 19 or quotas. Sunday through Thursday only	2,450	25,400

[1] The States of Oregon and Washington have taken action to implement the Council's recommendations in State waters. Fishermen will have 24 hours after the season closes to land fish in Oregon ports and 48 hours to land fish in Washington ports.

[2] The 1,720 chinook listed here is a harvest quota. A hooking mortality allowance of 7,430 chinook also is established for this fishery.

[3] Retention of coho salmon is prohibited. A hooking mortality limit of 7,500 coho is established.

[4] This line extends seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, then to the Lightship Buoy, then due west along 46°11'6" N. latitude.

[5] Because of the anticipated large number of fishermen who may participate in this fishery, it is projected that the 10,000 coho quota may be taken in one day. After opening, it would not be possible to close the fishery in Federal waters in so short a time. Therefore, this notice not only makes adjustments in the coho quota and the northern management boundary but also closes the fishery after one day of fishing. The fishery will open at 0001 hours PDT on August 21, 1985, and will close at 2400 hours PDT on the same date. If a quota is not met, the fishery may be reopened in accordance with § 661.21(a)(2) to allow the remainder of the quota to be taken so long as at least 24 hours is needed to harvest the remainder of the quota.
[6] Conservation zone 1 is eliminated.

Classification

Because time does not permit a comment period prior to the date these management measures must be in effect, comments will be accepted until August 29, 1985.

The public had opportunity to comment on these inseason management changes during their development in the two conference call Council meetings which were open to the public.

As provided under § 661.23(e), all information relevant to this notice has been compiled in aggregate form and is available for public review at the above address.

This action is taken under the authority of 50 CFR Part 661 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: August 14, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-19777 Filed 8-14-85; 4:59 pm]
BILLING CODE 3510-22-M

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50 CFR Part 674

[Docket No. 50694-5094]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing for 10 days the fishery conservation zone (FCZ) off southeastern Alaska to commercial fishing for all salmon species. This action is necessary to allow coho salmon to escape the ocean fishery so they can move into the bays and inlets where the harvests can be managed more closely on a stock-by-stock basis. It complements similar actions taken by the State of Alaska for the commercial salmon fisheries in its waters. The intent of this action is to achieve better control over the numbers of each stock that (a) are harvested and (b) reach the spawning grounds.

DATE: This notice is effective at 0001 hours Alaska Daylight Time (ADT), August 15, 1985, and will expire at midnight (2400 hours) on August 24, 1985. Public comments on this notice are invited until September 16, 1985.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 30-day comment period, the data upon which this notice is based will be available for public inspection during business hours (0800 to 1630 ADT Monday through Friday) at the NMFS Alaska Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS) 907-586-7229.

SUPPLEMENTARY INFORMATION: Salmon fishing in the FCZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

The Alaska Board of Fisheries, under 5 AAC 33.365(b)(3), requires that the commercial salmon troll fisheries in Alaskan waters be closed "for approximately 10 days" unless "the coho salmon runs are larger than the last 10-year average and . . . acceptable number of coho salmon are moving into the in-shore salmon fishing areas."

As of August 8, 1985, the estimated coho harvest by commercial salmon trollers was 1.1 million coho (approximately three times the 1971-1980 average catch to the same date) whereas the harvest by the gillnet fisheries, which operate mostly in the territorial waters of Alaska, is about twice the average. The sport catches, also primarily from territorial waters, are a bit below average. Most of the troll catch has been made in the outer coastal areas of Alaskan waters and in the FCZ.

Although there is some evidence that the abundance of coho is greater than the average of the last 10 years, the evidence varies from area to area. Further, the high coho harvests being made by the troll fleet in the ocean have prevented an acceptable number of coho from moving into the inshore salmon fishing and spawn areas. Thus, on August 8, 1985, the Alaska Department of Fish and Game announced that it was closing the salmon troll fishery in Alaskan waters for 10 days, effective 12:01 a.m., August 15, 1985.

Regulations implementing the FMP, at § 674.23(a), provide that the Secretary of Commerce (Secretary) may modify the time and area limitations governing the fishery whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(a) The effect of overall fishing effort within any part of the management area;

(b) Catch per unit of effort and rate of harvest;

(c) Relative abundance of salmon stocks within the management area;

(d) Condition of salmon stocks throughout their ranges; and

(e) Any other factors relevant to the conservation of salmon.

Having reviewed evidence of the high offshore harvest, the Secretary has determined that the effect of overall fishing effort in the FCZ, the high catch per unit of effort and rate of harvest there, and the apparent high relative abundance of coho stocks within the FCZ portion of the management area indicate that the condition of coho stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a modification of time or area limitations if coho stocks are to be adequately conserved and managed. Therefore, he is implementing the 10-day closure prescribed by this action.

The closure will become effective after this notice has been filed for public inspection with the Office of Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stocks harvested in southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to

the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c).

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 14, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-19776 Filed 8-14-85; 4:59 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol 50, No. 160
Monday, August 19, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307, 318, and 381

[Docket No. 83-020P]

Expansion of Operating Schedules for Total Quality Control Establishments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Federal meat and poultry products inspection regulations (9 CFR 301.1 *et seq.* and 381.1 *et seq.*) to permit meat and poultry establishments under a USDA approved Total Quality Control (TQC) system to expand their approved operating schedule to up to 12 hours. TQC establishments are currently approved for an 8-hour operating schedule which prohibits the shipping of product that is produced after that 8-hour period. Establishments must either retain product produced after the 8-hour schedule in storage until the following day when the inspector is on duty or request that overtime inspection services be provided and reimburse the Department for those additional services. This proposal would allow establishments that have satisfactorily operated under an approved TQC system for one year to expand their approved operating schedule, under certain terms and conditions and in accordance with appropriate monitoring by inspectors as deemed necessary.

DATE: Comments must be received on or before November 14, 1985.

ADDRESS: Written comments should be sent in duplicate to the Policy Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. Oral comments as provided for under the Poultry Products Inspection Act should be directed to Mr. Bill F. Dennis, (202) 447–3840. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made an initial determination that this proposal is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based exterprises to compete with foreign-base enterprises in domestic or export markets.

This proposal would allow, under certain conditions, TQC establishments to expand their operating schedule to up to 12 hours. At this time, there are approximately 400 USDA approved TQC establishments. This proposal would be applicable to TQC establishments that have satisfactorily operated under a TQC system for one year.

The Department will also consider other points of view concerning the proposal which limits the expansion of operating schedules to TQC establishments. Comments submitted regarding this aspect of the proposal should include data and other information to support an alternative position.

Effect on Small Entities

The Administrator, FSIS, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601).

At present, there are over 400 establishments operating under a USDA approved TQC system. These establishments range from one-person operations to those operated by some of the Nation's largest processors.

TQC establishments are presently prohibited from shipping product produced after their approved 8-hour operating schedules. They must either retain such product in storage until the following day or request overtime services.

The proposal would allow TQC establishments, under certain conditions, to expand their operating schedules to up to 12 hours a day. This would be particularly beneficial for small TQC establishments that may not have the space available to store the product produced after the 8-hour operating schedule and, therefore, have no option but to pay for overtime services.

The proposal would not have a significant impact on TQC establishments, whether large or small. It would offer an alternative schedule for all TQC establishments on a voluntary basis. Although TQC establishments would be required to submit a plan to the Department for implementing certain provisions required of TQC establishments operating under expanded schedules, this paperwork burden would be a one-time exercise. Otherwise, the proposed rule would provide a positive impact upon TQC establishments qualifying for the expanded operating schedule.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Policy Office and must bear reference to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views as provided for under the Poultry Products Inspection Act should make such request to Mr. Dennis so that arrangements can be made for such views to be presented. All comments submitted pursuant to this proposal will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

On August 15, 1980, the Department published a final rule in the **Federal Register** (45 FR 54310) that, in part, permits an official establishment to be eligible for a program of inspection that places more responsibility on the establishment to control its own production through a quality control program. Under that rule, an

establishment can submit a proposed Total Quality Control (TQC) System to the Administrator for approval. If the Administrator finds the proposed system adequate to assure the preparation of meat and poultry products in accordance with the Federal Meat Inspection Act and/or the Poultry Products Inspection Act, the establishment can participate in TQC inspection. At this time, there are over 400 establishments approved to operate under a TQC system.

A TQC system identifies the critical control points in a plant's production process where compliance with FSIS regulations could be affected. This system specifies how the critical control points will be checked by plant management and what actions will be taken by the plant to verify compliance. The establishment is required to keep records showing the results of checking the critical points. An approved TQC system is an agreement between the processor and the Department which identifies how that establishment will control its production process to insure that all products are produced in accordance with the applicable regulations.

The Department verifies that the TQC system is operating in accordance with the approved plan through the review and evaluation of the records kept by the establishment. In addition, verification samples are taken to insure products are in compliance. If an establishment fails to comply with the provisions outlined in the approved TQC plan or if its products are found to be adulterated or misbranded, the TQC plan will be terminated and the establishment will be inspected under traditional methods.

Establishments under an approved TQC system can produce and ship product any time during their approved 8-hour operating schedule. The Department provides inspection services, without charge, up to 8 consecutive hours per shift during their approved operating schedule. A TQC establishment may continue to produce product beyond its operating schedule but may not ship that product until the start of its inspector's next tour of duty at which time the product is subject to inspection. Although an establishment can hold such product produced until the inspector resumes duty and has an opportunity to inspect the product, some establishments do not have adequate storage facilities to hold product. Overtime inspection is authorized when the TQC plant requests to ship product after 8 hours of inspection service without holding it for the next regular scheduled shift of the inspector.

The Department has determined the need to address the manner of inspection for a TQC establishment desiring to produce and ship product after its approved operating schedule. The basic philosophy underlying the TQC system at federally inspected establishments is that the Department is responsible for monitoring the TQC system and determining that the products prepared at the establishment are not adulterated and are otherwise in compliance with the Federal meat and poultry products inspection Acts (FMIA and PPIA) before they are passed and distributed from the establishment. This activity does not require the continued presence of the inspector at the establishments in all instances. Those establishments with an approved TQC system continue to operate under their TQC system and under Federal inspection regardless of the inspector's presence or absence. Thus, it appears to be unjustifiably burdensome to have separate requirements in all instances for shipping product after the establishment's 8-hour operating schedule. After evaluating this matter, the Department is proposing that eligible TQC establishments be permitted to expand their approved operating schedule to up to 12 consecutive hours per shift.

The Department would inspect TQC establishments approved for a 12-hour operating schedule by a variety of methods. If an establishment requests to change its operating schedule to up to 12 hours, the Department would verify that the establishment is operating according to its TQC plan after 8 hours of inspection service. Overtime inspection would be authorized for this purpose. The amount of overtime an establishment would incur would be determined by the circuit supervisor and depend upon the nature of the operation and the volume of product being shipped during its expanded hours.

Another provision of the proposal is that establishments would be required to provide a plan for random sampling of products shipped after 8 hours of operation and a plan for holding of the samples until the inspector's next scheduled tour of duty. These verification samples would be utilized to further assure the establishment is operating according to its TQC plan and preparing products in compliance with the FMIA and PPIA.

Under the proposal, immediate containers of products would be required to be coded to indicate when products are produced during the production shift. This would allow the Department to ascertain when any noncompliant product was produced.

In addition to these provisions, the Department would determine the level and intensity of inspection coverage for those establishments approved for expanding their operating schedules.

Establishments operating to up to 12 hours would be required to comply with all provisions of this proposal. Those found not to be in compliance would be subject to, at the minimum, the termination provisions found in 9 CFR 318.4(g) and 381.145(g).

The Proposal

Establishments that have satisfactorily operated under a USDA approved TQC system for at least one year may request to expand their operating schedules to up to 12 consecutive hours per shift under certain conditions. Applications for approval would be submitted to the Regional Director. Approval would be granted if it is determined that:

1. The TQC system has satisfactorily operated for at least one year.

Prior to allowing an establishment to expand its approved operating schedule, the Department would require a period of time to evaluate how well the system is functioning. This evaluation would be based on the establishment's quality control records, verification samples, the inspector's log book, and any other available information.

2. The production process after 8 hours of inspection is only a continuation of the process monitored by the inspector and in operation during the last hour of inspection.

The Department must be able to assure products shipped during expanded hours of operation are safe and wholesome and otherwise not adulterated. For this reason, establishments which have expanded their operating schedules would not be allowed to begin a new process after 8 hours of inspection service. During the last hour of inspection service, the ongoing production process may be continued and the resulting product may be shipped any time within the approved operating schedule. This would allow the inspector an opportunity to inspect the raw ingredients and the process for those products being shipped after 8 hours of inspection.

3. The establishment has made provisions for identifying when products were produced during a production shift.

In order to assure that products are in compliance, the Department must be able to determine when the products

were produced during a production shift. Therefore, establishments would be required to code or mark immediate containers of products to indicate a specified period of production.

4. Establishments would be required to submit a sampling plan.

Establishments would be required to provide a sampling plan for products shipped after 8 hours of inspection and provide a means for security of those samples until the inspector's next tour of duty. This would provide the Department the opportunity to further assure, through examination of the samples, that the product was produced in compliance with the approved TQC system and the FMIA and PPIA.

5. Establishments would be subject to overtime inspection services.

Under the provisions outlined above, the inspector would be authorized overtime to verify the TQC system is functioning according to the approved plan and assure that products prepared at the establishment are in compliance with the FMIA and PPIA. This overtime would be charged to the participating TQC establishment. The amount of overtime services would be determined by the circuit supervisor.

List of Subjects

9 CFR Part 307

Meat inspection, Quality control, Facilities, Overtime.

9 CFR Part 318.

Meat inspection, Quality control. Reporting and recordkeeping requirements, Preparation of products.

9 CFR Part 381.

Poultry products inspection, Quality control, Reporting and recordkeeping requirements.

The Federal meat and poultry products inspection regulations would be revised as follows:

PART 307—[AMENDED]

1. The authority citation for Part 307 would be revised to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 307.4(c) of the Federal meat inspection regulations (9 CFR 307.4(c)) would be amended by adding a new sentence at the end thereof to read as follows:

§ 307.4 Schedule of operations.

* * * * *

(c) * * *. These provisions are applicable to all official establishments except in certain cases as provided in § 318.4(h) of this subchapter.

* * * * *

PART 318—[AMENDED]

3. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

4. Section 318.4 of the Federal meat inspection regulations (9 CFR 318.4) would be amended by adding a new paragraph (h) to read as follows:

§ 318.4 Preparation of products to be officially supervised; responsibilities of official establishment; plant operated quality control.

* * * * *

(h)(1) *Operating Schedule Under Total Plant Quality Control.* An official establishment with an approved total plant quality control system may request approval for an operating schedule of up to 12 consecutive hours per shift. Permission will be granted provided that:

(i) The official establishment has satisfactorily operated under a total plant quality control system for at least one year.

(ii) All products prepared and packaged, or processed after the end of 8 hours of inspection shall only be a continuation of the processing monitored by the inspector and being conducted during the last hour of inspection.

(iii) All immediate containers of products prepared and packaged shall bear code marks that are unique to any period of production beyond the 8 hours of inspection. The form of such code marks will remain constant from day to day, and a facsimile of the code marks and their meaning shall be provided to the inspector.

(iv) The official establishment provides an acceptable plan for random sampling of products shipped after 8 hours of inspection and a means of securing such samples until the inspector's next plant visit.

(2) *Application.* Applications shall be submitted to the Regional Director, and shall specify how the conditions in § 318.4(h)(1) have been met.

(3) *Monitoring by Inspectors.* In order to verify that a plant is preparing and shipping product in accordance with the approved total plant quality control system and the Act and regulations after the 8 hours of inspection, the official establishment may be provided overtime inspection services at the discretion of the circuit supervisor and charged for such services.

PART 381—[AMENDED]

5. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

6. Section 381.37(c) of the poultry production inspection regulations (9 CFR 381.37(c)) would be amended by adding a new sentence at the end thereof to read as follows:

§ 381.37 Schedule of operations.

* * * * *

(c) * * *. These provisions are applicable to all official establishments except in certain cases as provided in § 381.145(h) of this subchapter.

* * * * *

7. Section 381.145 of the Federal poultry products inspection regulations (9 CFR 381.145) would be amended by redesignating the present paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

§ 381.145 Poultry products and other articles entering or at official establishments; examination and other requirements.

* * * * *

(h)(1) *Operating Schedule Under Total Plant Quality Control.* An official establishment with an approved total plant quality control program may request approval for an operating schedule of up to 12 consecutive hours per shift. Permission will be granted provided that:

(i) The official establishment has satisfactorily operated under a total plant quality control system for at least one year.

(ii) All products prepared and packaged, or processed after the end of 8 hours of inspection shall only be a continuation of the processing monitored by the inspector and being conducted during the last hour of inspection.

(iii) All immediate containers of products prepared and packaged shall bear code marks that are unique to any period of production beyond the 8 hours of inspection. The form of such code marks will remain constant from day to day, and a facsimile of the code marks and their meaning shall be provided to the inspector.

(iv) The official establishment provides an acceptable plan for random sampling of products shipped after 8 hours of inspection and a means of

securing such products until the inspector's next plant visit.

(2) *Application.* Applications shall be submitted to the Regional Director and shall specify how the conditions in § 381.145(h)(1) have been met.

(3) *Monitoring by Inspectors.* In order to verify that a plant is preparing and shipping product in accordance with the approved total plant quality control system and the Act and regulations after the 8 hours of inspection, the official establishment may be provided overtime inspection services at the discretion of the circuit supervisor and charged for such services.

Done at Washington, D.C., on: August 14, 1985.

L.L. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 85-19754 Filed 8-16-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 75

[Airspace Docket No. 84-AWP-3]

Proposed Alteration of VOR Federal Airways, Jet Routes and Tucson, AZ, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airways V-16, V-66, V-105, V-393, V-395, V-202 and Jet Routes J-11 and J-92. These actions result from the relocation of the Tucson Very High Frequency Omni-Directional Range and Tactical Air Navigation Facility (VORTAC) approximately 2½ nautical miles west southwest of its present location. Associated actions proposed in this docket include amended descriptions of the Tucson, AZ, Control Zone and Transition Area, and certain other related airspace actions.

DATES: Comments must be received on or before September 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWP-3, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participated in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWP-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.123, § 71.171, § 71.181 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to implement the following airspace actions associated with relocation of the Tucson VORTAC approximately 2½ miles west southwest of its present position: (1) Alter VOR Federal Airways V-16, V-66, V-105, V-202, V-393, V-395; (2) standardize the width of V-393 between the relocated Tucson VORTAC and Nogales VORTAC as a result of the Tucson relocation; (3) reduce the airway width of V-66 on the south side of the airway between the relocated Tucson VORTAC and Douglas VORTAC to prevent airway penetration of Restricted Area R-2303B; (4) replace alternate airway V-16S between Cochise and Tucson VORTACs with V-202. This action is consistent with the agency's overall effort to replace or delete alternate airways; (5) amend the Tucson International Airport, AZ, Control Zone; (6) amend Tucson, AZ, Transition Area; and (7) alter Jet Routes J-11 and J-92. Sections 71.123, 71.171, 71.181 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA had determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies ad Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

VOR Federal airways, Control zones, Transition areas, and Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-16—[Amended]

By removing the words "including a S alternate via INT Tucson 122° and Cochise 257° radials;"

V-66—[Amended]

After the words "Tucson, AZ;" add the words "3 miles south and 4 miles north of centerline between Tucson and Douglas"

V-185—[Amended]

After the word "Tucson" remove "296°" and subsitute "308 °T(286 °M)"

V-393—[Amended]

By removing the words ". (3 miles east and 4 miles west of centerline)"

V-395—[Amended]

After the words "INT Tucson" remove "126°" and substitute "129 °T (178 °M)"

V-282—[Amended]

By removing the words "From Cochise, AZ, via" and substituting the words "From Tucson, AZ, via INT Tucson 119 °T(107 °M) and Cochise, AZ, 258 °T(245 °M) radials, Cochise;"

3. Section 71.171 is amended as follows:

Tucson International Airport, AZ—[Amended]

By removing the words "within 3 miles each side of the Tucson VORTAC 273° radial extending from the 5-mile radius zone to 15 miles west of the VORTAC;" and substituting the words "within 3 miles each side of the 273 °T(260 °M) bearing from lat. 32°07'21" N., long. 110°49'12" W.; extending from the 5-mile radius zone to 15 miles west of lat. 32°07'21" N., long. 110°49'12" W."

4. Section 71.181 is amended as follows:

Tucson, AZ—[Amended]

By removing the words "within 16 miles NE and 13 miles SW of the Tucson VORTAC 136° radial extending from the 10-mile radius area to 16 miles SE of the VORTAC, within 1 mile NE and 9 miles SW of the Tucson VORTAC 318° radial, extending from the 10-mile radius area to 22 miles NW of the VORTAC and within 16 miles NE of the Tucson VORTAC 316° radial extending from the Tucson VORTAC to 30 miles NW of the VORTAC" and substituting the words "within 16 miles NE and 13 miles SW of the 138 °T(123 °M) bearing from lat. 32°07'21" N., long. 110°49'12" W.; extending from the 10 mile radius area to 16 miles SE of lat. 32°07'21" N., long. 110°49'12" W.; within 1 mile NE and 9 miles SW of a 318 °T(305 °M) bearing from lat. 32°07'21" N., long. 110°49'12" W.; extending from the 10-mile radius area to 22 miles NW of lat. 32°07'21" N., long. 110°49'12" W.; and within 16 miles NE of the 318 °T(305 °M) bearing from lat. 32°07'21" N., long. 110°49'12" W.; extending from lat. 32°07'21" W., long. 110°49'12" W.; to 30 miles NW of lat. 32°07'21" W., long. 110°49'12" W.,"

6. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

7. Section 75.100 is amended as follows:

J-11—[Amended]

By removing the words "via INT Tucson 316°" and substituting the words "via INT Tucson 320 °T(308 °M)"

J-82—[Amended]

By removing the words "INT of Casa Grande 145° and Tucson, AZ, 296° radials; Tucson, to the INT of the Tucson 185° radials and the United States/Mexican Border." and substituting the words "INT of Casa Grande 145 °T(131 °M) and Tucson, AZ, 300 °T(280 °M) radials; Tucson; to INT of Tucson 179 °T(167 °M) radials and the United States/Mexican Border."

Issued in Washington, D.C., on July 8, 1985.

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-19868 Filed 8-16-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-15]

Proposed Alteration of VOR Federal Airways V-269 and V-357; Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Federal Airways V-269 and V-357 by deleting reference to the airway not being in effect when the Juniper Military Operations Area (MOA) is activated. A recent change to the lateral boundaries of the Juniper MOA resulted in removing the airspace conflict within these airways. This amendment will allow better utilization of the navigable airspace and simplify flight planning.

DATES: Comments must be received on or before September 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain region, Attention: Manager, Air Traffic division, Docket No. 85-ANM-15, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANM-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation regulations (14 CFR Part 71) to amend VOR Federal Airways V–269 and V–357 by deleting reference to the airway not being in effect from 42 miles northwest of Wildhorse VOR to 41 miles southeast of Redmond VORTAC 11,000 feet MSL and above and from 32 miles southwest of the Wildhorse VOR to 13 miles northeast of Lakeview VORTAC. A recent change to the lateral boundaries of the Juniper MOA resulted in removing the airspace conflict with V–269 and a portion of V–357. This will allow better utilization of navigable airspace and aid in flight planning. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significnt economic impact on a subetantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.23 is amended as follows:

V–269—[Amended]

By removing the words "That portion of the airway 11,000 feet MSL and above from 42 miles northwest of Wildhorse VOR to 41 miles southeast of Redmond VORTAC is suspended during the time that the Juniper MOA is activated by NOTAM."

V–357—[Amended]

By removing the words "from 32 miles southwest of Wildhorse VOR" and substituting the words "from 26 miles southwest of Wildhorse VOR."

Issued in Washington, D.C., on July 9, 1985.

Sholomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–19607 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–2]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects the address for the informal airspace meeting scheduled for the Portland, OR, Airport Radar Service Area.

DATES: Comments must be received on or before November 1, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWA–2, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert C. Burns, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this Correction to NPRM must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWA–2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this Correction to NPRM may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Correction to Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this Correction. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Correction to the Proposal

This action corrects the address for the Portland, OR, informal airspace

meeting from Portland, OR, to Vancouver, WA.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas, Aviation safety.

Correction to the Proposed Amendment

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85–18032, as published in the **Federal Register** on August 2, 1985, (50 FR 31472) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By changing the Portland, OR, ARSA informal airspace meeting to read:

Portland International Airport, OR, ARSA
Date: September 9, 1985
Time: 6:30 p.m.
Location: Clark County College, 1800 E. McLaughlin Boulevard, Vancouver, WA.

Issued in Washington, D.C., on August 13, 1985.

James Burns, Jr.,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–19671 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–24]

Proposed Alteration of Brunswick, ME, Control Area, Maine Transition Area and Establishment of Machias, ME, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Brunswick, ME, Transition, Control Area and the Maine Transition Area and establish the Machias, ME, Transition Area due to the establishment of a new instrument approach at the Machias Valley Airport, ME.

DATES: Comments must be received on or before September 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, New England Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWA–24, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWA–24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering amendments to § 71.163 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Brunswick, ME, Control Area and the Maine Transition Area and establish the Machias, ME, Transition Area. An instrument approach is being established for the Machias Valley Airport, ME, which will require establishment of a 700-foot transition area. Since the airspace will extend beyond the current Maine Transition Area and extend into the present Brunswick, ME, Control Area, it is necessary to amend the above mentioned boundaries. Sections 71.63 and 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Additional control areas and transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.163 is amended as follows:

Brunswick, ME—[Revised]

In the title remove "Brunswick, ME" and substitute "Brunswick"

That airspace extending upward from 2,000 feet MSL west of long. 69°30'00" W., and from 5,500 feet MSL east of long. 69°30'00" W., beginning at lat. 42°43'15" N., long. 70°25'00" W.; to lat. 43°18'15" N., long. 70°25'00" W.; to lat. 43°30'00" N., long. 70°06'00" W.; to lat. 43°41'00" N., long. 69°36'00" W.; to lat. 43°44'09" N., long. 69°19'42" W.; to lat. 43°48'00" N., long. 69°03'00" W.; to lat. 43°52'00" N., long. 69°00'00" W.; to lat. 44°18'30" N., long. 67°56'00" W.; to lat. 44°20'10" N., long. 67°56'00" W.; extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°25'30" N., long. 67°30'00" W.; to lat. 44°23'00" N., long. 67°30'00" W.; to lat. 44°30'00" N., to long. 67°12'00" W.; to lat. 44°34'05" N., long. 67°13'08" W.; then via a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°47'45" N., long. 66°53'00" W.; then southerly via the Moncton Flight Information Region boundary to the north boundary of Control 1141; then westerly via the north boundary of Control 1141 to point of beginning.

3. § 71.181 is amended as follows:

Maine, ME—[Amended]

In the title by removing "Maine, ME" and substituting "Maine" and by removing the words "extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°20'10" N." and substituting the words "extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°34'05" N., long. 67°13'08" W.; to lat. 44°30'00" N., long. 67°12'00" W.; to lat. 44°23'00" N.; long. 67°30'00" W.; to lat. 44°25'30" N., long. 67°30'00" W.; extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°20'10" N.

Machias, ME—[New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Machias Valley Airport (lat. 44°42'01" N., long. 67°28'51" W.); and within 3 statute miles each side of the Machias NDB (lat. 44°42'11" N., long. 67°28'12" W.); 177°T(196°M) bearing extending from the 5-mile radius to 8.5 miles southeast.

Issued in Washington, DC, on July 8, 1985.

John Wattersen,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-19668 Filed 8-16-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-27]

Proposed Alteration of VOR Federal Airways, Kinston, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of VOR Federal Airways V-1 and V-70 located in the vicinity of Kinston, NC. This action is consistent with our agreement with the International Civil Aviation Organization (ICAO) to eliminate alternate route designations within the United States.

DATES: Comments must be received on or before September 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-27, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8526.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to

acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-1 by renumbering V-1E between Kinston, NC, and Cofield, NC. This action would extend VOR Federal Airway V-70 from Kinston to Cofield via the current alignment of V-1E. This action is consistent with our agreement to eliminate all alternate route designations from the National Airspace System. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Aviation safety.

The proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.123 is amended as follows:

V-1—[Amended]

By removing the words "including an east alternate segment from Kinston to Cofield via the intersection of Kinston 050° and Cofield 186° radials,"

V-70—[Amended]

By removing the words "to Kinston, NC." and substituting the words "Kinston, NC; INT Kinston, 050°T(055°M) and Cofield, NC, 186°T(192°M) radials; to Cofield."

Issued in Washington, DC, on July 8, 1985.

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-19669 Filed 8-16-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 85-ANM-26]

Proposed Establishment of Restricted Area R-6714E; Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new Restricted Area R-6714E directly above existing Restricted Areas R-6714A, B, C and D. The floor of which will be 29,000 feet MSL extending vertically to and including 55,000 feet MSL. These proposals would provide the necessary airspace for the testing of high altitude weapons. This airspace is expected to be used approximately 25 days per year.

DATES: Comments must be received on or before September 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 85-ANM-26, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andy Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-3128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with

FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.151 and § 73.67 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish new Restricted Area R–6714E, Yakima, WA. R–6714E will also be added to the Continental Control Area. The Department of Army has requested an increase in airspace to and including 55,000 feet MSL to accommodate high altitude weapons testing. The ceiling of the existing Restricted Areas R–6714A, B, C and D is 29,000 feet MSL. In order to achieve maximum firing capability for the testing of the high altitude weapons, it will be necessary to restrict airspace to and including 55,000 feet MSL. Sections 71.151 and 73.67 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Continental Control Area and Restricted Areas, Aviation safety.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

1,. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 71.151 is amended as follows:

R–6714E Yakima, WA—[New]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. § 73.67 is amended as follows:

R–6714E Yakima, WA—[New]

Boundaries. Beginning at lat. 46° 51′ 00″ N., long. 119° 58′ 00″ W.; along the west shore of the Columbia River to lat. 46° 36′ 30″ N., long. 119° 55′ 30″ W.; to lat. 46° 33′ 00″ N., long. 119° 55′ 30″ W.; to lat. 46° 33′ 00″ N., long. 120° 09′ 00″ W.; to lat. 46° 37′ 00″ N., long. 120° 20′ 00″ W.; to lat. 46° 40′ 35″ N., long. 120° 26′ 35″ W.; to lat. 46° 43′ 00″ N., long. 120° 26′ 38″ W.; to lat. 46° 51′ 00″ N., long. 120° 21′ 30″ W.; to lat. 46° 51′ 00″ N., long. 120° 16′ 30″ W.; to lat. 46° 54′ 35″ N., long. 120° 14′ 57″ W.; clockwise along the arc of a 12-mile radius circle centered at lat. 46° 44′ 45″ N., long. 120° 20′ 00″ W.; to lat. 46° 51′ 13″ N., long. 120° 08′ 05″ W.; to the point of beginning.

Designated altitudes. 29,000 feet MSL to and including 55,000 feet MSL.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Seattle ARTCC.

Using agency. U.S. Army, Commanding General, Fort Lewis, WA.

Issued in Washington, D.C., on July 9, 1985.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–19670 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 290

[Docket No. RM85–17 (Phase II)]

Regulation of Electricity Sales-for-Resale and Transmission Service

Issued: August 12, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice extending comment period and rescheduling conference.

SUMMARY: On June 28, 1985, the Commission issued a notice of inquiry in Phase II of this proceeding to explore how the Commission's regulation of requirements service affects efficiency in electricity markets and how it might be changed to encourage greater efficiency. (50 FR 27604, July 5, 1985). This notice changes the date for filing comments, the date of the public conference and the date for filing requests to participate in the conference.

DATES: Comments are due on or before October 4, 1985. Requests to participate in the public conference are also due on or before October 4, 1985, and must be filed separately from comments. The public conference will be held on November 13 and 14, 1985, at 10:00 a.m.

ADDRESSES: The public conference will be held in Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426. Comments and requests to participate should be filed with the Office of the Secretary at the same street address.

FOR FURTHER INFORMATION CONTACT: David E. Mead, Office of Regulatory Analysis, (202) 357–8024.

Extending Comment Period and Rescheduling Public Conference

Notice is hereby given that the date for filing comments in Phase II of this proceeding is extended to and including October 4, 1985. The public conference has been rescheduled for November 13 and 14, 1985, beginning at 10:00 a.m. Requests to participate in the conference are due on or before October 4, 1985, and should be filed separately from the participant's written comments.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–19756 Filed 8–16–85; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–370]

Underground Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of limited reopening of rulemaking record.

SUMMARY: OSHA is reopening the rulemaking record concerning the proposed revision of 29 CFR 1926.800 (underground construction of tunnels and shafts) for the limited purpose of receiving public comment on new data pertaining to the prevalence of certain gassy conditions in tunnel construction and the impact of these data on the costs of operating under those conditions. The record will remain open for 60 days, until October 18, 1985.

DATES: The record will remain open and public comment will be received until October 18, 1985.

ADDRESSES: Written submissions for the record should be submitted in quadruplicate to the Docket Officer, OSHA Docket No. S–370, Room N–3670, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523–7894. The JRB/SAIC report and data, all written submissions, and the entire record, will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Public Affairs, OSHA, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION: On August 5, 1983, OSHA published a Notice of Proposed Rulemaking [48 FR 35774] to revise 29 CFR 1926.800, which is found in Subpart S, "Tunnels and Shafts, Caissons, Cofferdams, and Compressed Air," of Part 1926, "Safety and Health Regulations for Construction." Section 1926.800 contains occupational safety and health standards to protect underground construction workers in tunnels and shafts. A public hearing was conducted March 13–15, 1984, to consider the issues raised by the proposed rulemaking. The record in the proceeding was closed and certified by Administrative Law Judge Charles P. Rippey on October 24, 1984.

In the Summary and Explanation of the proposal, OSHA discussed specific provisions for classifying an underground operation as gassy and for protecting employees in such operations from the hazards of fire and explosion. OSHA explicitly solicited comment on: whether an isolated gas pocket that exceeds the concentrations for a gassy classification warrants operating the entire job as gassy; what criteria should be applied to determine that the release of gas is from an isolated pocket; what conditions should permit the job to be declassified; and what procedures should be followed to assure that hazardous concentrations of gas do not subsequently endanger employees [48 FR 35808]. In addition, at the opening of the public hearing on the proposed standard, OSHA's Director of Safety Standards Programs again raised the issue whether a one-time air sample which indicates a potentially gassy condition warrants classifying the operation as gassy, or whether such classification should be based on air sampling conducted over a longer period of time (Tr. 13).

The public hearing generated considerable comment on the classification aspect of the proposal and the associated compliance costs. The thrust of these comments was that the OSHA proposal—and the economic analysis upon which it was based—did not fully address the economic impact of converting from a non-gassy to a gassy operation (e.g., Tr. 70–75; 104–111; 114–115; 174–175; 199–200; 363–366; 392–393). Several parties suggested a regulatory alternative establishing air quality criteria for classifying tunnels under a three-tiered system: non-gassy, potentially gassy, and gassy (e.g., Tr. 122–123; 496–499; 706–714).

As part of its review of the entire record in this proceeding, OSHA is currently analyzing such a tiered approach. The increased requirements of the "potentially gassy" and "gassy" classifications would be triggered if tunnel atmospheres reached specified levels. Under this system, tunnels would be classified as "potentially gassy" either if the tunnel atmosphere attained or exceeded 10 percent of the Lower Explosive Limit (LEL) for more than one day, or if the history of the geographic area or geological formation indicated that flammable gas in concentrations of 10 percent (or more) of the LEL was likely to be encountered. An increased frequency of air monitoring would then be required and, on the basis of the results of this sampling, any underground operation in which monitoring results remained for three consecutive days in the 10 to 20 percent LEL range despite the use of a permissible ventilation system would be classified as "gassy."

OSHA has recently received and is placing into the record new relevant data developed by a contractor, JRB Associates/Science Applications International Corporation (JRB/SAIC) as Exhibit #54. The new information affects costs attributable to underground construction activities which would be classified as "gassy" or "potentially gassy" as described above.

JRB/SAIC analyzed the geographic distribution of tunneling planned or expected to be constructed through the year 2000 and estimated the probability of tunnels in each location to be "potentially gassy." On the basis of the history of the geographic area or geological formation, JRB/SAIC estimates that approximately 17 percent of all projected tunneling operations for the years 1985 through 2000 will be classified as "potentially gassy" and will therefore require increased monitoring and permissible ventilation systems.

JRB/SAIC estimates that approximately five percent of these "potentially gassy" tunnels—about one percent of all identified tunnel projects—would probably not actually encounter gas at a level of 10 percent LEL, even though these tunnels would remain classified as "potentially gassy" based on the prior knowledge of the history of the area and the geological formation. The contractor also estimates that 90 percent of "potentially gassy" tunnels—about 15 percent of all identified tunnel projects—would reach or exceed 10 percent LEL, but for less than three consecutive days. The remaining five percent of "potentially gassy" tunnels—approximately one percent of all identified tunnel projects—would reach or exceed the 10 percent LEL trigger or three consecutive days despite the use of ventilation systems and, thus, would be classified as "gassy."

JRB/SAIC estimates that, of the tunnels being classified as "gassy," approximately 50 percent (or approximately 0.5 percent of all identified tunnel projects) would be reclassified "potentially gassy" by reducing the gas levels below 10 percent LEL using existing ventilation systems and other engineering methods. JRB/SAIC further estimates that the remaining 50 percent of these tunneling projects (or approximately 0.5 percent of all identified tunnel projects) would be required to operate as "gassy" for the remainder of the project.

JRB/SAIC has also provided estimates related to the cost of providing permissible ventilation systems with and without reversible controls at the surface.

OSHA has decided to invite the public to review the new data and to permit the submission of written comments on the JRB/SAIC report. Accordingly, the record will be reopened for 60 days for this limited purpose.

Authority

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary for Labor for

Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

This action is taken pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 [48 FR 35736], and 29 CFR Part 1911.

Signed at Washington, D.C., this 13th day of August, 1985.

Patrick R. Tyson,

Acting Assistant Secretary for Labor.

[FR Doc. 85–19755 Filed 8–16–85; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW–9–FRL–2884–8]

Nevada; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of Nevada for Final Authorization, Public Hearings and Comment Period.

SUMMARY: The State of Nevada has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Nevada's application and has made the tentative decision that Nevada's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State to operate its program in lieu of the Federal program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). Nevada's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the application if significant public interest is expressed.

DATES: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for September 30, 1985 at 1:00 p.m. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by September 20, 1985. EPA will determine by September 23, 1985, whether there is significant interest to hold the public hearing. Nevada will participate in the public hearing held by EPA on this subject if a hearing is to be held. All written comments on Nevada's final authorization application must be received by the close of business on September 20, 1985. However, should EPA decide to hold a public hearing, comments will be accepted until September 30, 1985.

ADDRESSES: Copies of Nevada's final authorization application are available during the hours of 9:00 to 5:00 at the following addresses for inspection and copying:

Nevada Division of Environmental Protection, 201 S. Fall Street, Carson City, Nevada 89710, Phone: (702) 885–4670

U.S. EPA Headquarters Library, PM 211D, 401 M Street, SW., Washington, D.C. 20460, Phone: (202) 382–5926

U.S. EPA Region 9, Library—Information Center, 215 Fremont Street, San Francisco, California 94105, Phone: (415) 974–8076

Written comments on the application and written or telephone communication of interest in EPA's holding a public hearing on the Nevada application must be sent to Gary Lance, EPA Region 9 (T–2–1), 215 Fremont Street, San Francisco, CA 94105. If you wish to find out whether or not EPA will hold a public hearing on the Nevada application based upon EPA's decision that there was significant public interest in such a hearing, write or telephone after September 23, 1985, the EPA contact person listed below, or telephone Mr. Verne Rosse, Program Director, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources, 201 S. Fall Street, Carson City, Nevada 89710, (702) 885–4670. If significant interest is expressed EPA will hold a public hearing on Nevada's application for final authorization at 1:00 p.m. on September 30, 1985 at the Legislative Building, Capitol Complex, Room 200, Carson City, Nevada.

FOR FURTHER INFORMATION CONTACT: Gary Lance, EPA Region 9, RCRA Programs Section (T–2–1), 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974–8125, FTS: 454–8125.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926(c)). EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers and tanks. Phase IIB covers incinerator facilities, and Phase IIC addresses landfills, surface impoundments, waste piles and land treatment facilities. By statute, all interim authorizations expire on January 31, 1986. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization, as described below.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1–271.23.

B. Nevada

Nevada received Phase I and Phase IIA&B interim authorization on July 19, 1983. On April 30, 1985, Nevada submitted a complete application for final authorization. Prior to its submission, Nevada solicited public comment on the draft application.

EPA has reviewed Nevada's official application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Nevada. In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on September 30, 1985 at the Legislative Building, Capitol Complex, Room 200, Carson City, Nevada, if significant public interest is expressed in holding a hearing. EPA reserves the right to cancel

the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by September 20, 1985. EPA will determine by September 23, 1985, whether there is significant interest to hold the public hearing. The public may also submit written comments on EPA's tentative determination until September 20, 1985. Copies of Nevada's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to Nevada. EPA expects to make a final decision on whether or not to approve Nevada's program by November, 1985 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the U.S. EPA. The Federal requirements no longer applied in the authorized State, and the U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. However, until new Federal requirements were adopted as State law, they did not take effect in the authorized State.

In contrast, under the newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in non-authorized States. The U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. Thus, while States must still adopt HSWA related provisions, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Nevada after final authorization. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. If the HSWA related requirements are more stringent than Nevada's, the U.S. EPA will administer and enforce those portions of the HSWA in Nevada until the State receives authorization to do so. Among other things, this may entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once Nevada is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time, the State will assist the U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, regulated handlers must comply with the more stringent State requirements. Nevada is not being authorized for any requirement implementing the HSWA.

Compliance with Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Nevada's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian Lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: August 14, 1985.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 85-19741 Filed 8-16-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF LABOR

Assistant Secretary for Veterans' Employment and Training

41 CFR Part 61-250

Annual Report From Federal Contractors

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Advance Notice of proposed rulemaking.

SUMMARY: Enactment of the Veterans' Compensation, Education, and Employment Amendments of 1982 (Pub. L. 97-306) established the requirements for a report at least annually from Federal contractors to be submitted to the Secretary of Labor as well as requirements for implementing regulations. The legislation requires that Federal contractors report the numbers of special disabled and Vietnam-era veterans in their workforce and hired during the reporting period. This advance notice serves to advise interested parties concerning the content and scope of a proposed rule and to solicit comments regarding its adequacy, coverage and effectiveness.

DATES: Written comments must be received no later than September 18, 1985.

ADDRESS: Comments should be addressed to Donald E. Shasteen, for Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Attention: Mr. Joseph C. Juarez, Director, Office of Veterans' Employment and Training Programs.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Juarez. Telephone (202) 523-9110.

SUPPLEMENTARY INFORMATION: Prior to January 29, 1982, it was a regulatory requirement for those contractors and subcontractors subject to 38 U.S.C. 2012(a) to submit a report, at least quarterly, to the appropriate office of the State employment service. Those reports were intended to provide both the State employment services and the Department of Labor with information regarding hiring and provision of required affirmative action for "special disabled veterans" and "veterans of the Vietnam-era," as defined under 38 U.S.C. 2011. Such a reporting requirement was not specifically required in the legislation at 38 U.S C 2012.

Subsequently, the regulatory requirement for the quarterly report at 41 CFR 60–250.4(d) was suspended until further notice by the Office of Federal Contract Compliance Programs in 47 FR 4258 (January 29, 1982). At that time the quarterly report had not been approved by the Office of Management and Budget under the Paperwork Reduction Act.

Pub. L. 97–306 was enacted on October 14, 1982. Section 310(a) requires Federal contractors subject to 38 U.S.C. 2012(a) to submit a report at least annually on the number of special disabled and Vietnam-era veterans in their workforce and the total number of employees and the number of such employees in each of the above veteran categories hired during the reporting period. Section 310(b) requires the Department of Labor to issue implementing regulations for that report. Responsibility for administering the reporting requirement lies with the Assistant Secretary for Veterans' Employment and Training (ASVET).

These regulations would not revise or replace the regulations in force at 41 CFR Part 60–250 which apply to veterans' affirmative action obligations of contractors and subcontractors administered by the Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, Department of Labor. The regulations would implement the reporting obligations by requiring compliance with a reporting clause to be added to the affirmative action clause required in all Federal contracts which are subject to 38 U.S.C. 2012 and the OFCCP implementing regulations at 41 CFR Part 60–250.

Because of the unknown impact on the Federal contractor community, the Department is publishing this notice to obtain comments and recommendations to help determine the most effective means to satisfy legislative obligations of both the Department and Federal contractors.

The Department is particularly interested in receiving information on the following:

(1) Convenience of the location of the subject regulations at 41 CFR Part 61–250 which is separate from but in close proximity to current regulations at 41 CFR Part 60–250 which covers Federal contractor obligations under 38 U.S.C. 2012(a),

(2) Impact of the rule as to cost and time burdens of the recordkeeping and reporting imposed,

(3) Suggestions on a specific report form or format for purposes of computerizing information, and

(4) Feasibility of incorporating the required veterans' data (the items listed in § 61–250(a) (1) and (2) are those specified in 38 U.S.C. 2012(c)) into the existing Equal Employment Opportunity Employer Information Report EEO–1 (Standard Form 100).

List of Subjects in Part 61–250

Government procurement.

Therefore, draft regulations upon which commentors may base recommendations are set forth below.

CHAPTER 61—OFFICE OF THE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, DEPARTMENT OF LABOR

PART 61–250—ANNUAL REPORT FROM FEDERAL CONTRACTORS

Sec.

61–250.1 Purpose and scope.
61–250.2 Definitions.
61–250.10 Reporting requirements contract clause.
61–250.11 Use of reports.
61–250.20 Monitoring of compliance.

Authority: Sec. 310(a), Pub. L. 97–306, 96 Stat. 1442 (38 U.S.C. 2012).

§ 61–250.1 Purpose

This Part 61.250 implements 38 U.S.C. 2012(d). Each contractor or subcontractor who enters into a contract in the amount of $10,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction) to whom 38 U.S.C. 2012(a) and 41 CFR Part 60–250 applies, shall submit a report according to requirements of § 61–250.10 of this part.

§ 61–250.2 Definitions.

(a) For the purposes of this part, and unless otherwise indicated in paragraph (b) of this section, the terms set forth in this part shall have the same meaning as set forth in 41 CFR Part 60–250.

(b) For the purposes of this part:

"Hiring location" means the establishment name and address where hiring takes place and personnel records are maintained.

"Job category" means any of the following: officials and managers, professionals, technicians, sales workers, office and clerical, craft workers (skilled), operatives (semiskilled), laborers (unskilled), service workers, as required by Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1.

"Special disabled veteran" means (i) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) for a disability rated at 30 percent or more, or (ii) a person who was discharged or released from active duty because of service-connected disability.

"Veteran of the Vietnam era" means a person who served more than 180 days of active military, naval, or air service, any part of which was during the period August 5, 1964, through May 7, 1975, and who (i) was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty because of a service-connected disability. No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

§ 61–250.10 Reporting requirements contract clause.

Each contractor or subcontractor described in § 61–250.1 of this part shall submit reports according to the following reporting requirements clause which shall be included in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract). It is the responsibility of the prime contractor to ensure that their subcontractors are informed of this reporting requirement contract clause. Such clause is considered as an addition to the affirmative action clause required by 41 CFR 60–250.4, the provisions of which continue in force until otherwise revised or amended. The reporting requirements clause is as follows:

Reporting Requirements

(a) The contractor agrees to report at least annually, to the Secretary of Labor, Attention: Office of the Assistant Secretary for Veterans' Employment and Training (OASVET), on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The report format shall be . . . (Note.—The format will be developed taking into account comments to this Advance Notice of Proposed Rulemaking).

(c) Reports shall 1) reflect employment activity as required in § 61–252.10(a)(1) for the most recent 12-month period ending March 31 of each year, and 2) the employment profile as required in § 61–250.10 (a)(2). Reports shall be due in accordance with instructions issued at the time report

forms are distributed. (This process is the same as for the EEO–1 report).

§ 61–250.11 Use of reports.

The reports received pursuant to § 61–250.10 of this part will be used to establish trends and identify practices of Federal contractors in hiring special disabled veterans and veterans of the Vietnam era. This information will be considered by the Office of Federal Contract Compliance Programs as one of several factors that are used in selecting contractors for compliance reviews.

§ 61–250.20 Monitoring of compliance.

During the course of its compliance reviews, OFCCP will affirm the contractor's fulfillment of the obligations pursuant to this part.

Comments on the above draft regulations should be submitted according to instructions previously stated in the "**ADDRESS**" section. Following analysis of the comments and recommendations received, the Department will issue proposed rulemaking.

Signed at Washington, D.C. This 9th Day of August, 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85–19624 Filed 8–16–85; 8:45 am]

BILLING CODE 4510–79

Notices

Federal Register
Vol. 50, No. 160
Monday, August 19, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Level of Donated-Food Assistance or Cash in Lieu Thereof for Nutrition Programs for the Elderly; Fiscal Year 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: A notice published in the February 21, 1985 **Federal Register** announced the level of assistance for the Nutrition Program for the Elderly for Fiscal Year 1985 (50 FR 7203–7204). This notice clarifies the procedures the Department will employ if there is a need to vary the previously announced per meal level of assistance provided by the Secretary for nutrition services under the Older Americans Act of 1965, as amended. Based on the number of meals reported for the first quarter meal estimates, the total number of meals served in Fiscal Year 1985 may be higher than anticipated. This notice also reaffirms that the program will be funded within the $120,800,000 authorization limit.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3660.

SUPPLEMENTARY INFORMATION: This action, which implements a mandatory provision of section 311 of the Older Americans Act of 1965, has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as "nonmajor" because it does not meet any of the three criteria in the definition of "major rule" in the Executive Order. It will not have an annual effect on the economy of $100 million or more, will not not cause a major increase in costs or prices, and will not have a significant impact on competition, employment, productivity, innovation, or the ability of U.S. enterprises to compete. The purpose of this action is to notify States of the level of donated-food assistance to be provided for nutrition services under the Older Americans Act during Fiscal Year 1985.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review.

Section 311(a)(4) of the Older Americans Act of 1965 requires the Secretary, in donating foods or providing cash in lieu thereof the nutrition programs for the elderly funded under the Act, to adjust the minimum level of assistance during each fiscal year to reflect changes in the series for food away from home of the Consumer Price Index (CPI) for all Urban Consumers published by the Bureau of Labor Statistics (BLS) of the Department of Labor. Notwithstanding this provision for adjustment, section 311(a)(2) of the Act requires the Secretary to reduce the level of assistance per meal in any fiscal year in which compliance with section 311(a)(4) costs more than the amount authorized to be appropriated for that year.

In other words, in instances in which the Secretary is required to use this authority, the per-meal level of assistance ultimately depends on the number of meals served. Whenever compliance with section 311(a)(4) costs more than the amounts of funds authorized, the per-meal rate is then determined by the following equation:

Meal rate = total funds authorized divided by total number of meals served.

Section 310 of Pub. L. 98–459, signed into law on October 9, 1984, amended section 311(c)(1) of the Act to authorize an appropriation of $120,800,000 for Fiscal Year 1985 to carry out the provisions of section 311(a)(4).

Based on meal participation data reported for Fiscal Year 1984, it was announced in the February 21 **Federal Register** notice that some 212,800,000 meals were anticipated to be served during Fiscal Year 1985. Given the total funding of $120.8 million, the Fiscal Year 1985 per meal level of assistance was set at 56.75 cents per meal in accordance with section 311(c)(2) of the Act.

The announcement also stated that a further adjustment in the level of assistance might be necessary should the actual meal participation vary from that anticipated and that notice of such a further adjustment would be given in the **Federal Register**.

On the basis of the number of meals reported for the first quarter, the total number of meals served in Fiscal Year 1985 may exceed the previous estimate of 212,800,000. It is estimated that the total number of meals may range between 220 million and slightly above 230 million. In order to provide assistance within the $120,800,000 authorization limit and yet take the increased number of meals into account, the per-meal level of assistance may need to be revised. Using the formula cited above, the following table provides examples of how the meal rate may vary depending on the final meal estimate:

Per meal subsidy (cents)	Meals served (millions)
54.90	220
53.69	225
52.52	230

However, because meal participation data for nutrition programs for the elderly are not required to be reported to FNS until 90 days following the close of each Federal fiscal quarter, final Fiscal Year 1985 data will not be available until approximately January 1, 1986. The final rate will be determined at that time, using the formula cited above, and will apply to all meals served during Fiscal Year 1985. States will be notified of the final rate by an announcement.

(42 U.S.C. 3030a)

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: August 14, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85–19728 Filed 8–16–85; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Modification of National Forest Boundaries in Florida and Georgia

Purusant to authority vested in the Secretary of Agriculture by section 11 of

the Act of March 1, 1911 (36 Stat. 961), as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Natural Resources and Environment, notice is hereby given of the boundary retraction of the Apalachicola National Forest in Florida and the extension of the boundary of the Ocala National Forest in Florida as were authorized July 26, 1982, as described below, and all lands acquired within the extended boundary of the Ocala National Forest that are subject to the Act of March 1, 1911, are designated for administration as part of the Ocala National Forest. The boundary of the Chattahoochee National Forest in Georgia as established November 27, 1959, and as described below is hereby rescinded due to disposal of all National Forest System lands within the described boundary.

Retraction of Boundary—Apalachicola National Forest, Florida, Tallahassee Meridian

Wakulla County

T. 3 S., R. 1 W.,
Sec. 9, NW¼, remove boundary;
Secs. 75, 76, and 77, retract boundary west to present location of U.S. Highway 319.
T. 4 S., R. 1 W.,
That part of Forest Service tract 1139a lying in unnumbered section north of section 90, remove boundary.
T. 4 S., R. 2 W.,
Sec. 24, retract boundary west to present location of U.S. Highway 319;
Sec. 36, retract boundary west to present location of U.S. Highway 319.

The area described contains 740 acres more or less.

Extension of Boundary—Ocala National Forest, Florida, Tallahassee Meridian

The boundary of the Ocala National Forest is extended to encompass lands acquired under authority of the Weeks Act of March 1, 1911, described as:

Lake County

T. 17 S., R. 27 E.,
Sec. 28, lots 3 and 4, SW¼, NW¼SE¼;
Sec. 29, SE¼SE¼.

The area described contains 324.19 acres more or less.

Rescission of Boundary—Chattahoochee National Forest, Georgia

Whitfield County

The boundary of the Chattahoochee National Forest as hereinafter described is identical to the description contained in Executive Order 10851, of November 27, 1959, establishing the Limestone Valleys Land Utilizations Project (GA–LU–23) as part of the Chatahoochee National Forest. All National Forest System lands within the described boundary have been transferred out of Federal ownership.

Beginning at a point on the Tennessee-Georgia State Line, the county line corner of Catoosa and Whitfield Counties, Georgia; thence south and west with said county line to Tiger Creek Road; thence southeasterly with said road to a point west of the northwest corner of U.S. Tract No. 158; thence due east to said corner; thence south with west boundary of tract 158; thence east with south boundary of said tract and continuing east to the westerly right-of-way line of the Southern Railroad right-of-way; thence south with said right-of-way to a point due east of the northeast corner of U.S. Tract No. 303; thence west to said corner with the north boundary thereof, continuing west to the westerly right-of-way line of Waring Road; thence south with said road to the north boundary line of U.S. Tract 156; thence with said tract to its southeast corner near the Pleasant Grove Road; thence in a southeasterly and northeasterly direction with said road to the west and right bank of Coahulla Creek; thence up and with said bank of Coahulla Creek 1¼ miles to a point where an unnamed branch of the Creek enters from the northeast; thence due east to a point on the right and west bank of the Conasauga River; thence up and with the meanders of the Conasauga River and Sugar Creek to the Tennessee State Line; thence west with the Tennessee-Georgia State Line to the place of beginning.

The boundary described encompasses about 55,905 acres. This rescission is effective upon publication in the **Federal Register.**

Dated: August 12, 1985.

Richard D. Siegel,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 85–19721 Filed 8–16–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–407]

Termination of Antidumping Duty Investigation; Barbed Wire and Barbless Fencing Wire From Brazil

AGENCY: International Trade Administration, Import Administration.

ACTION: Notice.

SUMMARY: On July 25, 1985, Forbes Steel and Wire Corporation withdrew its antidumping duty petition, filed on November 19, 1984, on barbed wire and barbless fencing wire from Brazil. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Jay Kenkel, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–4929.

SUPPLEMENTARY INFORMATION:

Case History

On November 19, 1984, we received a petition from Forbes Steel and Wire Corporation filed on behalf of the U.S. industry producing barbed wire and barbless fencing wire.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on December 10, 1984 (49 FR 49127). On January 3, 1985, the ITC found that there was a reasonable indication that imports of barbed wire and barbless fencing wire from Brazil materially injure, or threaten material injury to, a United States industry. On April 29, 1985, we made a preliminary determination that barbed wire and barbless fencing wire from Brazil were being, or were likely to be, sold in the United States at less than fair value (50 FR 18903). On May 24, 1985, we postponed the final determination (50 FR 24013).

Scope of Investigation

The products under investigation are barbed wire and barbless fencing wire, as currently provided for in the Tariff Schedules of the United States, Annotated (TSUSA) items 642.0200 and 642.1105.

Withdrawal of Petition

On July 25, 1985, petitioner notified us that it was withdrawing its petition, and requested that the investigation be terminated. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on arrangements with the Government of Brazil to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, and consuming interests and with the ITC. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioner's withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 12, 1985.

[FR Doc. 85–19746 Filed 8–16–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–433–401]

Certain Carbon Steel Product From Austria; Final Determination of Sales at Less Than Fair Value and Final Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that hot-rolled carbon steel flat-rolled products from Austria are being, or are likely to be, sold in the United States at less than fair value and that cold-rolled carbon steel flat-rolled products from Austria are not being, nor are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determinations. We are directing the U.S. Customs Service to continue to suspend the liquidation of all entries of hot-rolled flat-rolled products from Austria that are entered, or withdrawn from warehouse, for consumption, on or after June 3, 1985, and to require a cash deposit or bond for each entry in an amount equal to 2.2 percent *ad valorem*. We are directing the U.S. Customs Service to discontinue suspension of liquidation of all entries of cold-rolled flat-rolled products from Austria and to release all cash deposits or bonds.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3963

Final Determinations

Based upon our investigations, we have determined that hot-rolled flat-rolled products from Austria are being, or are likely to be, sold in the United States at less than fair value and that cold-rolled flat-rolled products from Austria are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C 1673d) (the Act).

We made fair value comparisons for all sales of merchandise to the United States during the period of investigation. Comparisons were based on the United States price and foreign market value. The weighted-average margin for cold-rolled flat-rolled products is 0.2 percent percent *ad valorem*. This is *de minimis* and our final determination with regard to cold-rolled products is negative and the investigation is terminated. The weighted-average margin for hot-rolled flat-rolled products is 2.2 percent percent *ad valorem* and our final determination with regard to hot-rolled products is affirmative.

Case History

On December 19, 1984, we received a petition from the United States Steel Corporation on behalf of the domestic carbon steel flat-rolled products industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of certain carbon steel products from Austria are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring or are threatening material injury to a United States industry. The petition also alleged that sales of the subject merchandise were being made at less than the cost of production. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping investigations. We notified the ITC of our actions and initiated such investigations on January 14, 1985 (50 FR 1911). On February 4, 1985, the ITC determined that there is a reasonable indication that imports of certain carbon steel products from Austria are materially injuring a U.S. industry (50 FR. 6070). However, no indication of injury was found on imports of galvanized flat-rolled products and this product was dropped from the investigations.

We presented an antidumping duty questionnaire to counsel for Voest-Alpine AG (VA), the sole Austrian producer of the products under investigation for export to the United States. On June 3, 1985, we made an affirmative preliminary determination (50 FR 23339). Between June 10 and July 2, we verified VA's questionnare response in Austria and New York. No hearing was requested by any of the parties to the proceeding.

Products Under Investigation

The products under investigation are hot-and cold-rolled carbon steel flat-rolled products. A further description of the products is contained in the appendix to this notice.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

We used the purchase price of the subject merchandise, as provided in section 772(b) of the Act, to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States. We calculated the purchase price based on the C.I.F duty paid price to the first U.S. unrelated purchaser. We deducted brokerage charges, U.S. duty, inland freight, ocean freight, and marine insurance.

Foreign Market Value

In accordance with section 773(a)(1), we used home market prices for calculating foreign market value. We made comparisons of "such or similar" merchandise based on grade, thickness, width surface treatment, and quality categories selected by Commerce Department industry experts.

We deducted home market discounts, where appropirate. We adjusted for differences in packing and merchandise, where appropriate. We made adjustments for differences in circumstances of sale related to commissions and credit expense pursuant to § 353.15 of our regulations. Where there were commissions in one market and not in the other, we offset the commissions with indirect selling expenses in the other market.

Respondent requested that we include an adjustment to the U.S. price for any profits or losses from dealing with an intermediate unrelated foreign trading company on certain sales to the United States. We are without authority to make an adjustment to purchase price. Instead, we made a circumstance of sale adjustment to foreign market value to account for these gains and losses (see response to comment 15).

The petitioner alleged that sales in the home market were at prices below the cost of production. We examined production costs, including materials, labor, and general expenses, and found some sales below cost. Where below-cost sales constituted more than 10 percent of sales in any merchandise

category, we eliminated them from our calculations. We still had sufficient home market sales for comparisons for all of the merchandise under investigation.

In calculating foreign market value, we made currency conversions from Austrian schillings to United States dollars in accordance with § 353.56(a)(1) of our regulations, using the certified daily exchange rates.

Verification

In accordance with section 776(a) of the Act, we verified the information provided by the respondent by using standard verification procedures, including examination of relevant sales and financial records of the company.

Petitioner's Comments

Comment 1: Specific product costs are understated in relation to VA's average cost for flat-rolled products. The disparity between costs of production alleged by VA and the average for all flat-rolled products may be attributable, in part, to misapplication of unfavorable manufacturing variances. Further, the costs alleged by VA for the products under investigation must be rejected unless and until individual product costs are reconciled with the average cost of all flat-rolled products.

DOC Position: In determining if the specific product costs were accurately submitted, the Department used it standard procedures. These procedures include verifying the cost to the company's records, determining the accuracy of the amounts and the appropriateness of the allocations of the variances and assessing the reasonableness of the relationship of product costs to other facts of the investigation. These other facts include the costs of the other product categories.

Comment 2: Cost of production or a surrogate for an arm's length price rather than transfer price should be used to value materials purchased from related companies.

DOC Position: We agree. We do not use transfer prices between related parties in our calculations as these prices may be established by the company for a variety of corporate purposes and may not reflect actual cost experience. Based on the verification and subsequent inquiry and analysis, we determined that the submitted costs of materials purchased from related companies approximated cost of production of the related company. Accordingly, we used the submitted costs to value these materials.

Comment 3: VA's energy cost appears to be unrealistically low.

DOC Position: The energy cost used in the calculations was verified from VA's records.

Comment 4: The selling, general and administrative (SG&A) expenses in VA's submission were not all calculated using actual costs and were therefore inconsistent. Further, the response and verification report do not indicate whether any G&A expenses for divisions other than the Metallurgy Division at the Linz plant were properly excluded.

DOC Position: We agree. We addressed these inconsistencies during the verification and have adjusted the submitted costs, using actual costs, for the final determination. We have excluded the G&A expenses of other divisions at the Linz plant from our calculation.

Comment 5: Because the costs of production are underestimated, the amount of SG&A expenses must also be underestimated. The response is unclear as to the allocation of expenses to the Linz plant. SG&A allocated to the Linz plant appears very small for a steel producer.

DOC Position: We determined during verification that general and administrative expenses were fully allocated among the Linz and other plants on a reasonable basis.

Comment 6: Interest income should not be offset against interest expense when allocating to cost of production. Rather, gross interest expenses should be allocated.

DOC Position: We disagree. Since the interest income was related to the steel-making operations and was a result of normal business activity, it was offset against interest expense.

Comment 7: Adjustments for differences in merchandise must be based on differences in variable manufacturing costs and not full cost of production of the products under investigation.

DOC Position: We agree. It is our policy to adjust only for costs directly related to the differences in physical characteristics of the particular products under investigation. Therefore, we considered only differences in variable manufacturing costs for the final determination.

Comment 8: Unrealized foreign exchange gains and losses must be included in the cost of production.

DOC Position: We requested that the company provide the sources giving rise to the unrealized exchange losses. VA did not provide sufficient detail for us to determine what portion of the losses should be attributed to the sales of other products and what portion should be identified with the cost of production. Therefore, we allocated the entire amount to cost of production.

Comment 9: The Department should compute VA's cost of production for merchandise sold in the home market using VA's home market SG&A expenses rather than an average for all markets.

DOC Position: We agree. In determining whether home market sales are being made at less than the cost of producing the merchandise under section 773(b), we compare actual home market sales prices with the costs of production attributable to those home market sales. We adjusted the submitted costs of production to include the home market portion of selling expenses.

Comment 10: As no actual credit expenses were submitted, we should impute them.

DOC Position: We agree. We have made an adjustment to foreign market value for the difference in circumstances of sale to account for the different credit terms in the U.S. and home markets. We applied an appropriate interest rate, which was provided by U.S. Steel as the best information available, to the average number of days payment was outstanding in each market to calculate the credit costs in those markets.

Comment 11: The respondent claims certain "discounts" and "rebates" paid to trading companies involved in home market sales. These trading companies receive payments which are, in reality, in the nature of commissions. The Department should therefore offset the deductions against indirect selling expenses in the United States.

DOC Position: We agree that these payments are commissions and not discounts or rebates. Home market purchasers contact VA to establish price and terms of sale. Once the parties have agreed on the terms of sale, the purchaser designates a trading company to handle the paperwork. VA then sells the steel to the trading company at a reduced price and the trading company resells to the purchaser at full price. Under these facts, the payments are clearly commissions paid to the trading company for services rendered in connection with the sale. Since these are not reductions of sales price to the ultimate purchaser, these are not discounts. We have therefore treated them as commissions.

Comment 12: No adjustments for commissions or discounts should be made on sales to related trading companies in the home market.

DOC Position: We agree. We do not use payments between related parties in our calculations as these payments may not reflect actual cost experience. We

have adjusted our calculations to reflect this.

Comment 13: A number of other discounts were not reported on a sale by sale basis and should be disregarded.

DOC Position: We disagree. The discounts were reported in sufficient detail to determine the amounts and to verify payment.

Comment 14: VAIT sales into the European "grey market" should not be taken into account in making margin calculations.

DOC Position: VA knew, when it sold the material, that the ultimate destination of the material was the United States. Therefore, the sales are properly included in our calculations. These sales constitute 60 percent of the imports of the products under investigation to the United States during the period of investigation.

Comment 15: We should take into account Austrian government subsidies in calculating cost of production.

DOC Position: We have examined the subsidies found in the concurrent countervailing duty investigation, and it was apparent that they would have an insignificant effect on the antidumping duty margins. Therefore, we have disregarded them as provided for in § 353.23 of our regulations.

Comment 16: The product groupings in the preliminary determination were too broad. The two steel quality groups used for grouping included a number of different grades of steel. Also, additional difference in merchandise adjustments should be made.

DOC Position: We agree. We are narrowing the groups by subdividing the quality groups by grades of steel, and we are making additional differences in merchandise adjustments where necessary to reflect the new groups and to correct any incorrect adjustments.

Comment 17: The selling expenses of related trading companies should be included in VA's cost of production.

DOC Position: We agree. When determining the costs of production, the Department uses the costs incurred by the consolidated corporate entity, which includes the parent company, its subsidiaries, and its related companies. The selling expenses incurred by the related trading companies are proper costs of the cost of production and have therefore been included.

Interested Party Comment

Comment: Sixty percent of the U.S. sales were reported in an untimely manner and should be disregarded.

DOC Position: We disagree. We had sufficient time to verify these sales and have used them in our comparisons.

Respondent's Comments

Comment 1: The use of average selling expenses for all markets in the computation of cost of production rather than only home market selling expenses is consistent with the statute and no adjustment to reported cost of production is necessary.

DOC Position: We disagree. Since market specific expenses will give a more precise cost of production, it has been the Department's policy to use home market selling expenses in the computation of cost of production when market specific expenses are determinable.

Comment 2: The differences in merchandise adjustment for floor plate, as submitted by VA, (direct materials, direct labor, variable overhead, fixed overhead, and SG&A expenses) is correct.

DOC Position: We disagree. Our policy is to compute differences in merchandise adjustments based on variable manufacturing costs (direct materials, direct labor, and variable overhead) since it is those inputs which directly contributes to the physical differences. Fixed overhead and SG&A expenses are allocated expenses which do not directly contribute to the physical differences.

Comment 3: Average costs by product category (hot-rolled coil, cold-rolled coil, and floor plate) provide an appropriate and adequate basis for cost of production comparisons.

DOC Position: We agree, in this case, that average costs by product category should be used because we have determined, from the best information available, that the costs were closely distributed around the average and that the average would be representative.

Comment 4: The allocation of gains and losses of subsidiary companies which supplied raw materials to VA to adjust transfer prices results in an accurate statement of the cost to VA.

DOC Position: We disagree with VA's methodology because transfer prices between related companies may not reflect actual costs. In this case, however, comparison with either unrelated supplier price or the costs incurred by the related company to produce the raw materials demonstrated that the prices in the submission were reasonable. Therefore, we used the submission prices.

Comment 5: The Department should make an adjustment to purchase price to account for the effect of VA's sales to U.S. customers through an unrelated third party.

DOC Position: We are without the authority to make such an adjustment. We can make only the adjustments specified in section 772(d) of the Act. The requested adjustment does not fall within any of these adjustments. Instead, we have made a circumstance of sale adjustment to foreign market value to account for the loss or gain to VA resulting from the third party's participation in the U.S. transaction. Because the third party's participation is a circumstance directly related to the U.S. sales under investigation, we are satisfied that it is a bona fide difference in the circumstances of the sales compared, which accounts, at least in part, for price differences, or lack thereof, in the two markets.

ITC Determination

In accordance with section 735(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether imports of hot-rolled flat-rolled products materially injure, or threaten material injury to a U.S. industry within 45 days after we make our final determinations. Since our final determination on cold-rolled flat-rolled products is negative, the ITC will not make a determination on that product.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of hot-rolled flat-rolled products from Austria that are entered, or withdrawn from warehouse, for consumption, on or after June 3, 1985. The United States Customs Service shall require a cash deposit equal to the weighted-average amounts by which the foreign market value of the merchandise subject to these investigations exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice. We are directing United States Customs Service to discontinue suspension of liquidation of all entries of cold-rolled flat-rolled products from Austria and to release any cash deposits or bonds.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both

antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit for that amount. The level of export subsidies has been determined in the final affirmative countervailing duty determination on certain carbon steel products from Austria which is being published in this issue of the **Federal Register**. Accordingly, we will subtract the level of export subsidies from the dumping margins for hot-rolled flat-rolled products for bonding or deposit purposes.

HOT-ROLLED FLAT-ROLLED PRODUCTS

Manufacturer/producer/exporter	Weighted-average margin percentage
Voest-Alpine	2.2
All Others	2.2

COLD-ROLLED FLAT-ROLLED PRODUCTS

Manufacturer/producer/exporter	Weighted-average margin percentage
Voest-Alpine	0.2
All Others	0.2

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Theodore W. Wu,

Acting Assistant Secretary for Trade Administration.

August 12, 1986.

Appendix

Scope of Investigations

The products under investigation are hot-rolled flat-rolled products and cold-rolled flat-rolled products.

The term "*hot-rolled flat-rolled products*" covers hot-rolled carbon steel products, whether or not corrugated or crimped, not cold-rolled, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal, and not clad; 0.1875 inch or more in thickness and over 8 inches in width and pickled, as currently provided for in item 607.8320 of the *Tariff Schedules of the United States, Annotated* (TSUSA), or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

The term "cold-rolled flat-rolled products" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal, and not clad; over 12 inches in width and 0.1875 inch in thickness, as currently provided for in item 607.8320 of the *TSUSA*, or over 12 not inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, 607.8360 of the *TSUSA*.

[FR Doc. 85-19747 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-455-501]

Termination of Antidumping Duty Investigations; Certain Carbon Steel Products From the German Democratic Republic (GDR)

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated August 5, 1985, the petitioner withdrew the antidumpting duty petition, filed on December 19, 1984, on certain carbon steel products (carbon steel plate, cold-rolled carbon steel flat-rolled products and hot-rolled carbon steel flat-rolled products) from the GDR. Based on the withdrawal, we are terminating these investigations.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Terri A. Feldman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3534.

SUPPLEMENTARY INFORMATION:

Case History

On December 19, 1984, we received a petition from United States Steel Corporation on behalf of the U.S. industrty producing certain carbon steel products from the GDR. After reviewing the petition, we determined that it contained sufficient grounds upon which the initiate antidumping duty investigations. We notified the International Trade Commission (ITC) of our action and initiated the investigations on January 18, 1985 (50 FR 1913). On February 14, 1985, the ITC found that there was a reasonable indication that imports of certain carbon steel products from the GDR materially injure, or threaten material injury to, a United States industry. On May 28, 1985, we made a preliminary determination that certain carbon steel products from the GDR were being, or were likely to be, sold in the United States at less than fair value (50 FR 23340).

Scope of Investigations

The products under investigation are carbon steel plate, hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products.

The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.8620 and 607.8625 of the *Tariff Schedules of the United States Annotated (TSUSA)*. Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

The term *"cold-rolled carbon steel flat-rolled products"* covers cold-rolled carbon steel flat-rolled products, whether or not corrogated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 inch or more in thickness; as currently provided for in item 607.8320 of the *TSUSA;* or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355 or 607.8360 of the *TSUSA*.

The term *"hot-rolled carbon steel flat-rolled products"* covers hot-rolled carbon steel flat-rolled products, whether or not corrogated or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled, and currently provided for in item 607.6610 of the *TSUSA*.

Withdrawal of Petition

In a letter dated August 5, 1985, counsel for United States Steel Corporation withdrew their December 19, 1984, antidumpting duty petition, and requested that the investigations be terminated. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upoon withdrawal of a petition, the administering authority

may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on a bilateral arrangement with the government of the GDR to limit the volume of imports of these products. We have assessed the public interest factors set out in section 734(a)(2) of the Act, and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigations and the ITC of petitioner's withdrawal and our intention to terminate.

For these reasons, we are terminating our investigations.

August 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19748 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-503]

Termination of Antidumping Duty Investigation; Oil Country Tubular Goods From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On June 26, 1985, U.S. Steel Corporation withdrew the antidumping duty petition on oil country tubular goods (OCTG) from Venezuela. On July 22, 1985, Lone Star Steel Company and CF&I Steel Corporation also withdrew. Based on the withdrawal, we are terminating this investigation.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-2830.

SUPPLEMENTARY INFORMATION:

Case History

On February 28, 1985, we received a petition from U.S. Steel Corporation on behalf of the U.S. industry producing OCTG. We subsequently allowed Lone Star Steel Company and CF&I Steel Corporation to become petitioners in this investigation.

After reviewing the petition, we determining that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated this investigation on March 20, 1985 (50 FR 12071). On April 15, 1985, the ITC found that there was a reasonable indication that imports of OCTG from Venezuela materially injure, or threaten material injury to, a United States industry.

Scope of Investigation

The products covered by this investigation are oil country tubular goods, which are hollow steel products of circular cross-section intended for us in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications, as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3216, 610.3219, 610.3233, 610.3249, 610.3252, 610.3256, 610.3258, 610.3721, 610.3722, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5240, 610.5242, 610.5243, and 610.5244.

Withdrawal of Petition

On June 26, 1985, U.S. Steel Corporation notified us that they were withdrawing their petition, and requested that the investigation be terminated. On July 22, 1985, Lone Star Steel Company and CF&I Steel Corporation also notified us that they were withdrawing. This withdrawal is based on an arrangement with the government of Venezuela to limit the volume of imports of these products. Under section 734(a) of the Tariff Act of 1930 (the Act), as amended by section 604 of the Trade and Tariff Act of 1984, upon withdrawal of a petition the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 12, 1985.

[FR Doc. 85-19749 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-433-402]

Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products From Austria

AGENCY: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Austria of certain carbon steel products. The estimated net subsidy is 2.27 percent *ad valorem*. We have notified the United States International Trade Commission (ITC) of our determinations.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-0167 or 377-3464.

SUPPLEMENTARY INFORMATION:

Final Determinations

Based upon our investigations, we determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Austria of certain carbon steel products. For purposes of these investigations, the following programs are found to confer subsidies:

- Equity Infusions;
- Grants to the Austrian Steel Industry;
- Kontrollbank Export Financing to Voest-Alpine AG; and
- Kontrollbank Export Financing to an East German Company.

We determine the estimated net subsidy to be 2.27 percent *ad valorem*.

Case History

On December 19, 1984, we received a petition from United States Steel Corporation of Pittsburgh, Pennsylvania.

filed on behalf of the U.S. industry producing certain carbon steel products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Austria of certain carbon steel products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on January 8, 1985, we initiated such investigations (50 FR 2318). We stated that we expected to issue preliminary determinations by March 14, 1985.

Since Austria is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. Therefore, we notified the ITC of our initiation. On February 4, 1985, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of hot-rolled carbon steel sheet and cold-rolled carbon steel plates and sheets from Austria. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of galvanized carbon steel sheets from Austria which are alleged to be subsidized 950 FR 6070).

We presented a questionnaire concerning the allegations to the government of Austria in Washington, D.C. on January 28, 1985. A supplemental questionnaire was presented on February 14, 1985. The government of Austria and Voest-Alpine AG, provided responses to our questionnaires on February 28, 1985. On the basis of the information contained in these responses, we made preliminary determinations on March 14, 1985, (50 FR. 11220). We verified the responses of the government of Austria and Voest-Alpine AG from March 25–29, 1985, and from June 10–14, 1985.

On March 22, 1985, United States Steel Corporation filed a request for extension of the deadline date for the final countervailing duty determinations to correspond with the date of the final determinations in the antidumping investigations of the same products. Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade Act of 1984, the Department granted an extension of the aforementioned deadline to August 12, 1985, the same deadline for the final determinations in the antidumping investigations.

Scope of the Investigations

The products covered by these investigations are certain carbon steel products, which comprise:

- Hot-rolled carbon steel sheet; and
- Cold-rolled carbon steel sheet.

These products are more fully described in the Appendix to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Voest-Alpine AG is the only producer in Austria of the products under investigation. For purposes of these determinations, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

The Department of Commerce has consistently held that government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company was a reasonable commercial investment. Voest-Alpine AG's shares are not publicly traded and there are no market-determined prices for its shares.

Therefore, we had to determine whether the equity infusions into Voest-Alpine AG were reasonable commercial investments. To make this determination, we reviewed and assessed Voest-Alpine AG's financial statements from 1971 to 1983 as well as its 1984 preliminary statements. In analyzing the financial statements, we considered the information from the viewpoint of an investor. More specifically, we analyzed the following data:

- Rate of return on sales;
- Rate of return from operations;
- Rate of return on equity;
- Debt to equity ratio; and
- Current ratio.

Based on our review of the financial statements, and responses of the company and government, we determine that the government's equity infusions into Voest-Alpine AG between 1978 and 1984 were on terms inconsistent with commercial considerations.

Based upon our analysis of the petition, the responses to our questionnaire, our verification and comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are provided to manufacturers, producers, or exporters in Austria of certain carbon steel products under the following programs:

A. Equity Infusions

Voest-Alpine AG received equity infusions, during the period 1975–1984, from Osterreichische Industrieverwaltungs-Akteiengesellshaft (OIAG), the government holding company for state-owned enterprises. Portions of the equity infusions into Voest-Alpine AG have been transferred to an affiliated company, Vereinigte Edelstahlwerke AG (VEW). Under the terms of applicable legislation, Voest-Alpine AG was required to transfer the funds to VEW. VEW does not produce or export any of the merchandise under investigation, and therefore we do not consider equity infusions to VEW to benefit the products under investigation.

As discussed in the "Analysis of Programs" section, we determine that Voest-Alpine AG was not a reasonable commercial investment and was unequityworthy from 1978 to 1984; thus the government equity infusions between 1978 and 1984 were on terms inconsistent with commercial considerations. Therefore, we determine that these equity infusions confer benefits which constitute a subsidy.

Following the methodology contained in the Subsidies Appendix, we have calculated the benefit from these equity infusions by multiplying the difference between Voest-Alpine AG's estimated rate of return on equity in 1984 and the national average rate of return on equity during the same period by the total amount of equity infusions made since 1978. The national average rate of return on equity was taken from *Capital International Perspective*. We then allocated the aggregate benefit over the value of total sales of all products produced by Voest-Alpine AG. On this basis we determine the estimated net subsidy to be .04 percent *ad valorem*.

B. Grants to the Austrian Steel Industry

Under Law 602/1981, the Austrian government authorized a grant of 2

billion Austrian schillings for the structural improvement of Voest-Alpine AG. These funds were disbursed through OIAG to Voest-Alpin AG in 1981 and 1982.

Law 589/1983 further permitted OIAG to raise new funds beginning in 1983. These funds were to be used for improving the economic structure of nationalized industrial enterprises. Of the funds raised by OIAG pursuant to the 1983 law, a portion went to Voest-Alpine AG in the form of equity infusions; these are discussed above. Another portion was made available to Voest-Alpine AG in the form of grants, approximately 85 percent of which had been disbursed by June 1985.

We find these grants to be limited to a specific enterprise or industry or to a specific group of enterprises or industries. Therefore, we determine these grants to be countervailable.

To calculate the amount of the benefit, we allocated the grants over 15 years (the average useful life of renewable assets in the steel industry). Discount rates have been developed for the years in which the grants were agreed upon. The grants authorized under the 1981 law have been allocated using Voest-Alpine AG's 1981 weighted cost of capital as our discount rate (where applicable Voest-Alpine AG's 1984 floating interest rates on its long-term loans, received in 1981, were used to determine the weighted cost of capital). For the grants authorized by the 1983 law, the date of agreement (allocation) varies, since the amounts and the date of allocation were the subject of negotiation between OIAG and Voest-Alpine AG. Therefore, for grants received pursuant to the 1983 law we have used Voest-Alpine AG's 1983 weighted cost of capital as our discount rate, and where applicable the 1984 floating interest rates on the capital were incorporated into these calculations. The portion of the grant authorized by the 1983 law, but which had not been disbursed as of June 1985, was not included in these calculations.

We allocated the aggregate benefit over the value of total sales of all products produced by Voest-Alpine AG. Based on this methodology we find the estimated net subsidy conferred by these grants to 1.54 percent *ad valorem*.

C. Kontrollbank Export Financing to Voest-Alpine AG

Under this program, export financing credits are extended by commercial banks, to exporters or buyers, which are then refinanced through one of the export financing schemes operated by Osterreichische Kontrollbank Aktiengesellschaft (OKB). The OKB was founded in 1946 to provide services not normally available from commercial banks. It has administered the official Austrain Export Credit and Guarantee Scheme on behalf of the Federal Ministry of Finance since 1950. OKB's twelve shareholders are exclusively Austrian credit institutions of which two are large nationalized banks.

Voest-Alpine AG received export financing from commercial banks, which was then refinanced by the Kontrollbank, at interest rates lower than the national average short-term interest rate in Austria during 1984. For purposes of these determinations, we have used 9.25 percent as the benchmark for short-term loans. This is the "Commercial Bank Lending Rate to Prime Borrowers" as reported in *World Financial Markets*. Since kontrollbank export financing is only available for use by exporters and the rates of interest charged are less than our benchmark, we determine that the provision of such financing constitutes a countervailable benefit.

The benefit provided under this program was determined by applying the interest rate differential between by applying the interest rate differential between the short-term benchmark and the interest rates paid by Voest-Alpine AG on the principal amount of all loans received by the company for the numbers of days the loans were outstanding. We then allocated the aggregate benefit over the value of exports of all products produced by Voest-Alpine AG. On this basis, we calculated an estimated net subsidy in the amount of .08 percent *ad valorem* for the products under investigation.

D. Kontrollbank Export Financing to an East German Company for U.S. Sales

Another financing scheme operated by the OKB provides for refinancing of short-term commercial bank loans granted to buyers of Austria's export products. In the past, the Department found that this type of financing, if preferential, confers a subsidy to the products under investigation when the recipient of the financing was a U.S. purchaser. See "Bars and Shapes from Mexico; Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders" (49 FR 32887). In this instance, however, OKB export financing was used to partially finance sales of the products under investigation to an East German company (i.e., a company that is neither Austrian nor American owned). The East German company then sold these goods to a trading company with the knowledge that these goods eventually would be sold to the United States.

We learned the details of these circuitous sales to the United States when, at our request, counsel for the respondent submitted additional information on sales of the products under investigation through this East German company. During verification, we verified the total sales of the products under investigation to the East German company, as well as the fact that commercial banks had, indeed, provided loans to the East German company which were then refinanced by OKB. However, we were unable to obtain information on the amount of OKB refinancing of the products under investigation sold to the United States that the East German company received.

Since the interest rate charged on the short-term OKB loans was lower than the national average short-term interest rate in 1984 and since this preferential financing is limited to Austrian exports, we determine that the provision of such financing confers a countervailable benefit on the exports of the products under investigation that were eventually sold to the United States. The interest rate charged by the OKB was 8.5 percent for 85 percent of the sales and 8.75 percent for 15 percent of the sales. Using best information available, we have assumed that 85 percent of the sales from Voest-Alpine to the East Germany company benefitted from this financing. This is the maximum amount of export financing available to importers from the Kontrollbank. Because the borrowing is denominated in Austrian schillings, we have used 9.25 percent as our benchmark.

The benefit provided under this program was determined by applying the interest rate differential to the value of sales financed and allocating the benefit over the value of the sales to the East German company. On this basis, we calculated an estimated net subsidy of .61 percent *ad valorem*.

II. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Austria of certain cabon steel products under the following programs:

A. Osterreichische Investitionskredit TOP-1 and TOP-2 Loans

The TOP-1 and TOP-2 loan programs are intended to further investments which are important for structural change by providing federal interest rate support for credits given by Austrian banks. These credits are refinanced on the Austrian capital market by the Investitionskredit AG. We verified that

loans were received by a range of sectors of the Austrian economy including electrical, chemical, metals, textiles, wood processing, ceramics, food, etc., and were primarily directed towards small- and medium-sized firms. Since these two TOP programs are neither limited to export promotion, nor to a specific industry or group of industries, we determine that the benefits from this program do not constitute a subsidy.

B. Labor Subsidies

1. Government-Funded Labor Training. Under the Labor Market Promotion Act, Law No. 31/1969, companies in Austria may receive funds from the Austrian government for the establishment of in-house training programs to improve worker skills or to teach workers new vocations. In addition, under this law, companies in Austria with low levels of capacity utilization may receive funds to be paid to the workers engaged in training in combination with reduced hours of work. Employees whose working hours are reduced receive support payments compensating them for the loss in earnings sustained. Workers receiving benefits under this program spend the difference between their reduced working hours and their normal working hours in training programs. We verified that funding for these labor training programs is available to all sectors of Austrian industry and not just to the iron and steel industry or to export-related industries. Because this program is not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that the program does not constitute a subsidy.

2. Special Assistance Act. The Special Assistance Act of 1973, Law No. 642/1973, provides enhanced unemployment benefits for former employees of sectors of the economy hit by the downturn which have been let go and are at least 55 years old for men or 50 years old for women. The Federal Minister of Social Affairs is empowered to determine by decree which sectors of the economy warrant application of the provisions of the law. In a decree issued on March 21, 1983, the iron and steel industry was included within the provisions of this law. We verified that payments under this law are made directly to the workers who have been laid off by an employer. The employer itself is not entitled to any support or subsidies under this law, and is not relieved from payment of any expenses or obligations which it would normally incur. Because this program provides assistance to workers and does not relieve Voest-Alpine AG of any expenses or obligations, we determine that the company does not receive any subsidy under this program.

C. Interest Subsidy Program—European Recovery Program (ERP) Loans

The government of Austria administered the European Recovery Program Fund of Austria from 1978–1981 to encourage the development of industrial projects. Under this program, qualifying investments were eligible for interest support, reducing the amount of interest payable on commercial loans obtained to finance such investments. All companies in Austria were eligible for this program and we verified it was used by a wide variety of industries. We also verified that this program was not confined to export-related projects. Because this program is not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that this program does not constitute a subsidy.

D. Loan Guaranty Program

Petitioner alleged that Voest-Alpine AG received loan guarantees from the Austrian government in 1981 and 1982. We verified that the only loan guarantees the Austrian government provided to Voest-Alpine AG were for loans issued by Austrian insurance companies pursuant to section 77 of the Insurance Supervisory Law of October 18, 1976, No. 5691/1978. This law requires insurance companies to secure their contingent liabilities by maintaining as security certain types of safe investments of the following classes: (1) High-grade loans and securities; (2) government-guaranteed securities; and (3) real estate. We also verified that Voest-Alpine has obtained a substantial amount of financing on an unguaranteed basis from ordinary commercial sources, and that the government guarantee of insurance company loans to Voest-Alpine AG enabled the insurance companies to find large-scale, legally eligible investments for placement of their investment portfolios. Accordingly, we determine that this program does not provide subsidies to Voest-Alpine AG.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers or exporters in Austria of certain carbon steel products did not use the following programs:

A. Local Incentives

Petitioner alleged that Voest-Alpine AG may have received benefits from a number of local investment incentives that are available to industries in Austria. We verified that during the review period no local incentives were applicable to the production of the merchandise under investigation.

B. Income Tax Deferral on Export Sales

In a submission dated January 31, 1985, petitioner alleged that the Austrian government provides an export subsidy to exporters by permitting them to deduct 15 percent of receivables originating from exports from their taxable income. Our verification revealed that Voest-Alpine AG did not use this program during the review period.

Petitioner's Comments

Comment 1: Petitioner argues that in quantifying the subsidy from loss coverage/restructuring funds (i.e., grants) received by the Austrian steel producer, the benefit should be allocated to the year of receipt and not spread over 15 years because of the recurring nature of the Austrian government's grant program.

DOC Position: We disagree. The grants given to Voest-Alpine AG by the Austrian government are not recurring in nature, since the Austrian Parliament must provide separate legislative authority for each of these infusions. Hence, we have calculated the benefits provided by these grants according to our normal grant methodology.

Comment 2: Petitioner contends that under both the current ITA standard and a private lender standard. Voest-Alpine AG has been uncreditworthy since at least 1973.

DOC Position: Voest-Alpine AG has issued bonds to private investors and has also obtained substantial amounts of credit from Austrian and non-Austrian commercial banks from 1973 forward: on this basis, we consider it to be creditworthy.

Comment 3: Petitioner argues that absent future government support, Voest-Alpine would not have been able to obtain commercial loans comparable to those which it did obtain.

DOC Position: We consider this issue to be irrelevant since the Department, in determining the creditworthiness of a company, does not speculate on the possible impact of future government support. Instead it analyzes the company's operations at the point in time at which the debt was incurred.

Comment 4: Petitioner contends that government loan guarantees to Voest-Alpine AG benefit the company rather than insurance company lenders.

DOC Position: We disagree. As stated above, the Department has found Voest-Alpine AG to be creditworthy because it

received numerous commercial loans without any government guarantee. Lenders included many commercial banks, both Austrian and non-Austrian. Therefore, Voest-Alpine AG has been able to obtain financing from commercial sources. Furthermore, because government guarantees of insurance company loans are necessary to enable the insurance companies to find investments that would be legally eligible for the placement of their portfolios, these government loan guarantees do not bestow a countervailable benefit on Voest-Alpine AG.

Comment 5: Petitioner argues that implicit government loan guarantees which reduce a State firm's borrowing costs should be found to constitute countervailable subsidies. In support of this, petitioner argues that state firms benefit from implicit government loan guarantees that are substantively no different from explicit government loan guarantees, and that failure to consider implicit government loan guarantees causes the subsidy from explicit government loan guarantees and preferential government loans to be understated.

DOC Position: We disagree. Government ownership of a firm does not *per se* guarantee the payment of a state-owned firm's unguaranteed debt. Moreover, the implicit guarantee theory would result in double-counting in cases where we find explicit government loan guarantees to be countervailable.

Comment 6: Petitioner argues that should the Department need to estimate a discount rate, then the interest rate component should reflect Voest-Alpine AG's uncreditworthiness (i.e., the commerical interest rate plus a risk premium).

DOC Position: Since we have determined that Voest-Alpine AG is creditworthy, this issue is moot.

Comment 7: Petitioner argues that because the response stated that the TOP loan program "subsidizes investment projects" and that an important criterion for project selection is the "share of goods [to be] exported into developed countries" the TOP loans therefore constitute countervailable export subsidies.

DOC Position: We disagree. We verified that this program was available to, and used by, a wide variety of industries. Furthermore, while the export effect of a particular project is one criterion of the TOP–1 and TOP–2 programs, it is only one of many criteria. Other pertinent criteria in determining what investment projects are eligible for the TOP program include: self-financing power; relevance of the program in terms of structural policy, including demand trend, product characteristics, innovative merits, employment structure of the project; side effects of the project, including domestic competitors, infrastructure demands, pollution; chances of the projects' success, etc. For these reasons, we have determined that the TOP–1 and TOP–2 programs do not confer export subsidies.

Comment 8: Petitioner argues that government equity infusions into Voest-Alpine AG benefit the firm as a whole, regardless of their application and, therefore, equity infusions passed through Voest-Alpine AG to its subsidiary, VEW, are countervailable.

DOC Position: We disagree. The equity infusions which were made to VEW, were specifically tied by law to VEW, therefore, funds were not available for Voest-Alpine's general corporate purposes. VEW's financial statements, annual reports, etc., are not combined with those of Voest-Alpine AG. Moreover, the subsidy calculations do not include any benefits received by VEW, nor are VEW's sales or exports included in the denominators of the calculations. For these reasons, we determine that the equity infusions made to VEW do not confer countervailable subsidies to Voest-Alpine AG.

Comment 9: Petitioner argues that equity infusions into Voest-Alpine AG (including its two state-owned predecessors) should be investigated back to 1968 since they constitute countervailable benefits.

DOC Position: We disagree. The petition alleged that Voest-Alpine AG received massive government equity infusions since 1975. We initiated on this allegation. During our investigation, we examined Voest-Alpine AG's equityworthiness during the years 1971–1984. Based on this information, we determined that Voest-Alpine AG was equityworthy unitl 1978.

Comment 10: Petitioner argues that government subsidies should be excluded from Voest-Alpine AG's reported profits to determine the government's actual rate of return on its equity in the company for purposes of analyzing Voest-Alpine AG's equityworthiness and for determining the net subsidy received by the company.

DOC Position: The Department, for purposes of analyzing the company's operations for the equityworthy determination and for determining the net subsidy received by the company, uses the rate of return from its business activity based on acceptable accounting principles.

In this case, the net profit/loss of VA included funds received as the principal amounts from borrowings and certain appropriations to and from reserve accounts. Since there amounts did not result from operations, the rate of return used by the Department to analyze the company and calculate the net subsidy did not include these amounts. In determining the equityworthiness of the company, the Department analyzes the operations of the company without considering the sources of the funds received. Funds received through other government programs, debt or equity may have been made in accordance with commercial considerations. If the Department concludes that such funds were not provided in accordance with commercial considerations, these are then countervailed under the other program.

Respondent Voest-Alpine AG's Comments

Comment 1: Respondent contends that the weighted cost of capital (discount rate) used in the grant calculations should take into account the floating interest rates on Voest-Alpine AG's long-term loans.

DOC Position: We agree. However, at the time of the preliminary determination we were unaware that these long-term loans had floating interest rates. In these final determinations, Voest-Alpine AG's verified long-term floating interest rates were used to calculate the weighted cost of capital.

Comment 2: Respondent argues that the 9.25 benchmark interest rate for short-term loans is too high and that information published by a U.S. bank with respect to interest rates prevailing in a foreign country does not constitute best available information, when other more reliable information has been provided and verified. Respondent also argues that information from Voest-Alpine AG, and from Austrian banks, concerning their 1984 bill of exchange and short-term loans' discount rates would be more appropriate "best information available" than information published in the U.S. by a U.S. bank regarding a type of financing that is not comparable to bill of exchange financing.

DOC Position: We disagree. There are no published short-term interest rates in Austria. Since we were unable to verify the short-term interest rates which the Austrian banks provided, we cannot consider these interest rates to be the best information available. Although respondent provided information that bills of exchange are an instrument of

short-term financing in Austria, no information was provided about the percentage of short-term financing that bills of exchange constitute. The information provided by respondents indicated that bills of exchange are not the predominant form of short-term financing in Austria and, therefore, they are not representative of the national average short-term interest rate.

Comment 3: Respondent contends that export financing given to a third country company (i.e. neither a U.S. nor Austrian company) by the OKB should not be regarded as a subsidy, since Voest-Alpine AG was not a recipient of any of the export financing.

DOC Position: We disagree. We assume that Voest-Alpine AG sold the East German company the merchandise under investigation for commercial purposes. And as we discussed above, a subsidy was bestowed on the goods which were eventually imported into the United States. Therefore, preferential loans provided to the East German purchaser by the Austrian government benefitted the goods exported to the United States.

Comment 4: Respondent contends that the Austrian export credit programs are not countervailable because they conform to OECD rules governing export credit programs and are, therefore, permissible under paragraph k of the "Illustrative List of Export Subsidies" which is annexed to the GATT Subsidy Code.

DOC Position: We disagree. The OECD rules governing such programs are only applicable to export credits of more than 2 years. The loans in question, however, have a duration of only 18 months and are therefore not subject to OECD's export credit regulations. Thus, we do not believe that the portion of paragraph k cited by respondent is relevant with respect to the loans in questions.

Comment 5: Respondent argues that OKB credits to a third country company are not made at subsidized rates since OECD found that the rates charged on its credits are "sufficient to earn a positive spread over OKB's cost of funds," and since these rates were at, or above, the prevailing rates in Austria for comparable types of loans.

DOC Position: We disagree. The OKB loans were not at, or above, the prevailing rates in Austria for comparable types of loans. Whether or not OKB's credits are sufficient to earn a positive spread over its cost of funds is irrelevant to our analysis.

Comment 6: Respondent argues that the grants and equity infusions received by Voest-Alpine AG could constitute a subsidy only with respect to the "manufacture, production or exportation" of the goods under investigation, and that because these funds were not used for the manufacture, production or exportation of these goods, ITA should not be countervail them.

DOC Position: We disagree. All equity infusions made to Voest-Alpine AG as of 1978, when it was deemed unequityworthy, are countervailable regardless of whether these infusions only benefit certain Voest-Alpine plants, since they were available to Voest-Alpine AG to utilize as it wished.

Comment 7: Respondent argues that the OKB rates for short-term loans are higher than its medium-term rates, which are in accord with OECD rules; and since, short-term interest rates are generally lower than longer term interest rates, the rates applicable to OKB's short-term financing are also in accord with the applicable international rules. The Department should conclude, therefore, that these rates are not preferential.

DOC Position: The fact that some of OKB's short-term rates are higher than some of its medium-term rates, which conform to OECD rules and/or other international rules, is irrelevant to our investigation. In determining whether loan rates given by central or state-owned banks are preferential, it is our policy to use a national average commercial interest rate as a benchmark, if the loan program is a broad, national lending program. In this case, we are using an average commercial rate in *World Financial Markets* which is published by Morgan Guarantee Trust and Co. as best information available.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determinations. Commerce officials spent from March 24–29, 1985, and from June 11–14, 1985, verifying the information submitted by the government of Austria and Voest-Alpine AG, and gathering additional information to be used in these determinations. During these verifications, we followed normal verification procedures including the inspection of documents and ledgers, and the tracing of information in the response to source documents, accounting ledgers and financial statements.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). A public hearing was not requested. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered in this determination.

Suspension of Liquidation

In accordance with our preliminary countervailing duty determinations published on March 20, 1985, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to collect the estimated net subsidy. The countervailing duty final determinations were extended to coincide with the antidumping final determinations on the same products, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Tariff Act). However, we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final determination. Therefore, on July 17, 1985, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after July 19, 1985, under the preliminary countervailing duty determinations. On July 19, 1985, United States Steel Corporation, petitioner in this case, obtained a temporary restraining order from the Court of International Trade enjoining the U.S. Department of Commerce and the U.S. Customs Service from terminating the suspension of liquidation in the countervailing duty investigations of certain carbon steel products from Austria. On July 25, 1985, the Court of International Trade lifted the July 19, 1985, temporary restraining order; therefore, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after July 26, 1985 under the preliminary countervailing duty determinations.

We will instruct the U.S. Customs Service to continue the suspension of liquidation of all entries, or withdrawal from warehouse, for consumption of the subject merchandise entered between March 20, 1985 and July 26, 1985. This suspension of liquidation does not apply to entries of the subject merchandise entered on or after July 26, 1985, and the final ITC determinations.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. We will allow the ITC

access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry 45 days after the publication of this notice.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited, or securities posted, as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue countervailing duty orders, directing Customs officers to assess countervailing duties on certain carbon steel products from Austria entered, or withdrawn from warehouse, for consumption as described in the "Suspension of Liquidation" section, equal to the estimated net subsidy amount of 2.27 percent.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Theodore W. Wu,

Acting Assistant Secretary for Trade Administration.

August 12, 1985.

Appendix—Description of Products, Austria

1. The term "*hot-rolled carbon steel flat-rolled products*" covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width and pickled, as currently provided for in item 607.8320 of the *TSUSA*; and not pickled and in coils; as currently provided in item 607.6610, or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

2. The term "*cold-rolled carbon steel flat-rolled products*" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, nor pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and 0.1875 or more in thickness, as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

[FR Doc. 85-19750 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-401-401]

Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products. The estimated net subsidy is 8.77 percent *ad valorem* for all manufacturers, producers, or exporters in Sweden of certain carbon steel products, except for Surahammars Bruks AB which is excluded from these determinations. We have notified the United States International Trade Commission (ITC) of our determinations.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Davies, Roy Malmrose, or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1785, 377-8320, or 377-3464.

SUPPLEMENTARY INFORMATION:

Final Determinations

Based upon our investigations, we determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products. For purposes of these investigations, the following programs have been found to confer subsidies:

- Regional Development Incentives;
- National Government Loans and Grants;
- Government Funds for Loss Coverage;
- Government Equity Infusions;
- Government Equity Guarantees;
- Government Acquisition of Assets for SSAB;
- Employment Promotion Grants; and
- Government Research and Development Grants to SSAB.

We determine the estimated net subsidy to be 8.77 percent *ad valorem* for all manufacturers, producers, or exporters in Sweden of certain carbon steel products, except for Surahammars Bruks AB which is excluded.

Case History

On December 19, 1984, we received a petition from the United States Steel Corporation of Pittsburgh, Pennsylvania, filed on behalf of the U.S. industry producing certain carbon steel products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Sweden of certain carbon steel products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing investigations, and on January 8, 1985, we initiated such investigations (50 FR 2319). We stated that we expected to issue preliminary determinations by March 14, 1985. On January 25, 1985, counsel for Surahammars Bruks AB requested that the company be excluded from any countervailing duty order pursuant to 19 CFR 355.38.

Since Sweden is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. Therefore, we notified the ITC of our initiation. On February 4, 1985, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of carbon steel plate, hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products from Sweden (50 FR 6070).

We presented a questionnaire concerning the allegations to the government of Sweden in Washington, D.C. on January 25, 1985. A supplemental questionnaire was presented on February 12, 1985. The government of Sweden, Svenskt Staal AB (SSAB), and Surahammars Bruks AB (Surahammars), the two Swedish producers and exporters of the products under investigation, provided responses to our questionnaire on February 25, 1985. We also received information pertaining to our questionnaire from Granges AB on February 19, 1985, and

from Luossavaara-Kiirunavaara AB (LKAB) on March 6, 1985. On the basis of the information contained in these responses, we made preliminary determinations on March 14, 1985 (50 FR 11224). We verified the responses of the government of Sweden, SSAB, Surahammars, and LKAB from March 25–April 4, 1985.

On March 21, 1985, the United States Steel Corporation filed a request for extension of the deadline date for these final determinations to correspond with the date of the final determinations in the antidumping investigations of the same products from Austria. Pursuant to section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984, the Department granted an extension of the aforementioned deadline to August 12, 1985, the deadline for the final determinations in the antidumping investigations.

Scope of Investigations

The products covered by these investigations are certain carbon steel products, which comprise

- Carbon steel plate;
- Hot-rolled carbon steel flat-rolled products; and
- Cold-rolled carbon steel flat-rolled products.

These products are more fully described in the Appendix to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the Federal Register (49 FR 18006).

The two producers and exporters of the products under investigation are SSAB and Surahammars. For purposes of these determinations, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition, the responses submitted by the government of Sweden, SSAB, Surahammars, and LKAB to our questionnaire, our verification, and comments submitted by interested parties, we determine the following:

I. Programs Determined To Confer Countervailable Benefits

We determine that subsidies are being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products under the following programs:

A. Regional Development Incentives

Petitioner alleged that the Swedish carbon steel producers have received various regional development incentives from the Swedish government.

We verified that SSAB has received regional development loans and grants from the government for location of industry, freight relief, regional investment projects, health care facilities, building and construction, various employment schemes, and labor training programs. We determine that all of the above programs are countervailable except for the employment and training programs, which we found to be not limited to a particular region or to a specific enterprise or industry or group of enterprises or industries.

For non-recurring grants, we evaluated the benefits using the grant methodology, and allocated the subsidy over 15 years (the average useful life of renewable physical assets for the steel sector). For the recurring benefits under the freight relief program, we considered the amount received during the review period only. Finally, for the location of industry loan, we calculated the benefits using the long-term loan methodology. We divided the sum of these benefits by total sales for the review period to arrive at an estimated net subsidy of 0.26 percent ad valorem.

B. National Government Loans and Grants

Petitioner alleged that the Swedish carbon steel producers have received preferential loans and grants from the government as part of a broad program for restructuring the Swedish steel industry.

We verified that SSAB received reconstruction loans and structural loans from the Swedish government. Both types of long-term loans initially were given to SSAB as part of the Swedish government's participation in the establishment of SSAB in 1978. Additional reconstruction and structural loans were awarded to SSAB by the government in later years.

The initial reconstruction loans received by SSAB in 1978 were intended to cover expected operating losses by SSAB during the 1978–1982 restructuring period and are discussed below in section I.C. Subsequent reconstruction loans were granted for employment promotion purposes and for investment in plant and equipment. These loans were interest-free for the first three years, after which they carried an interest rate of either 9.5 percent or 11.5 percent. Any accrued interest not paid in a given year is added to the loan principal at the end of the fiscal year. Up to half of the funds received may be written off at the end of the second fiscal year after initial disbursement, and the remainder of the unpaid principal may be forgiven entirely at the end of the ninth fiscal year after disbursement. Furthermore, principal and interest payments on these loans are required only if SSAB decides to distribute dividends to its shareholders. In each year dividend payments are made, SSAB is obligated to make a payment to the government on these loans in an amount equal to the dividends paid.

The structural loans received by SSAB were intended to finance a portion of designated investment projects. These loans were interest-free for the first three years, after which they carried an interest rate based on the prevailing state loan interest rate plus a 0.25 percent margin. The interest rate, which is adjusted every fifth year, initially was 5.25 percent and currently is 12.50 percent, including the 0.25 percent margin. The term of these loans is 25 years after disbursement. A portion of the initial set of structural loans was converted by the government in 1981 to new equity in SSAB (see section I.D. below).

Since all of the these loans were authorized under special government legislation and were given to SSAB on terms inconsistent with commercial considerations, we determine that the reconstruction and structural loans provide countervailable benefits to SSAB.

Petitioner alleged that SSAB has been uncreditworthy since its formation in 1978. To determine if SSAB was creditworthy during the 1978–1984 period, we focused on the ability of the company to meet its interest obligations. In addition, an important measure of creditworthiness is whether private lenders are lending the company significant amounts of funds free from any government involvement. Our examination of these factors leads us to conclude that SSAB has been and continues to be creditworthy.

We calculated the benefits conferred by these loans in accordance with our long-term loan methodology as contained in the Subsidies Appendix. For the benchmark interest rate on variable-rate loans, we used the prevailing short-term interest rate charged by commercial banks on checking accounts, as published in the *"Allman Manadasstatistik 1985:6."* To calculate the *ad valorem* benefit

conferred by these loans, we divided the sum of all 1984 loan benefits, less interest repaid in 1984, by the total value of SSAB's 1984 sales.

We treated those portions of the reconstruction loans which were written off prior to 1985 as grants. In accordance with the grant methodology in the Subsidies Appendix, we allocated the amount of the loan principal forgiven (the grant amount) over 15 years using the weighted-average cost of capital in the year when the terms of the original loan were agreed upon. To calculate the *ad valorem* benefit conferred by these grants, we divided the sum of all 1984 grant benefits by the total value of SSAB's 1984 sales.

The estimated net subsidy rate for the loan and grant benefits derived from SSAB's reconstruction and structural loans is 1.84 percent *ad valorem*.

C. Government Funds for Loss Coverage

In 1978 the Swedish government provided funds to SSAB to cover operating losses projected by SSAB to occur during the 1978–1982 startup period. Under Government Bill 1977/78:87, funds for loss coverage were authorized in the form of conditional reconstruction loans. Because they are recorded as contingent liabilities rather than ordinary debt and because they are considered to be an offset to the par value of the equity shares owned by SSAB's investors, the loss coverage reconstruction loans have characteristics common to both equity and debt.

Since these loss coverage reconstruction loans were authorized under special government legislation and were given to SSAB on terms inconsistent with commercial considerations, we determine that these loss coverage funds provide countervailable benefits to SSAB.

These loss coverage reconstruction loans contained essentially the same terms and repayment conditions as the reconstruction loans discussed in section I.B. above. A total of 1,600 million Swedish kronor (MSEK) was drawn down by SSAB during the 1978–1984 period. After a three year grace period, interest on each drawdown accrues at a rate of 9.5 percent, and any accrued interest not paid by the end of the fiscal year is added to the drawdown amount. According to the repayment terms, one-half of the amount of each drawdown may be forgiven by the government at the end of the second fiscal year after disbursement. At the end of the ninth fiscal year, the government has the option to demand total or partial repayment of the principal and accumulated interest or to forgive the entire amount.

We verified that one-half of the amount drawn down on these loss coverage loans was forgiven by the Swedish government two years after each drawdown. We also verified that during 1984 a payment was made on the first drawdown amounting to 25 MSEK, equal to the amount of dividends approved by the shareholders for fiscal year 1983. To calculate the benefits attributable to both the loan write-off and the remaining loan principal, we divided the sum of all 1984 loan and grant benefits, less dividends repaid in 1984, by the total value of SSAB's 1984 sales. The estimated net subsidy rate for the loss coverage funds is 2.21 percent *ad valorem*.

D. Government Equity Infusions

Petitioner alleged that, since its formation in 1978, SSAB has received mass government equity infusions on terms inconsistent with commercial considerations.

We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity infusions bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company is a reasonable commercial investment. Since SSAB's shares are not publicly traded, and there is no market-determined price for its shares, we must determine whether SSAB is equityworthy.

Two equity infusions were made by the government of Sweden. The first was made in 1978, at the time of formation of SSAB, and the second in 1981. In making our determination we analyzed each infusion separately from the viewpoint of an informed investor using data which were available at the time.

In analyzing the initial investment, we considered the financial results of the three primary producers and investors in SSAB, Norrbottens Jarnverk AB (NJA), Granges AB, and Stora Kopparbergs Bergslag AB (Stora), for the years, 1975 through 1977; the report commissioned by the government entitled "The Commercial Grade Steel Industry on the Eve of the Eighties"; and the investment plans and financial forecasts prepared for SSAB for the period 1978 through 1982.

Based on the facts available to an investor at the time the equity investment was made concerning: (1) The anticipated rate of return on equity, (2) the extended length of time before the company was projected to become profitable, (3) the prospects of the world steel industry, (4) the expected demand in Sweden and export markets, (5) the amount of capital and loss coverage investment required by SSAB, and (6) the cost structure of the company, the Department concluded that the equity investment was not made in accordance with commercial considerations.

When the second equity investment was made, both the experience in the steel industry and knowledge of the prospects of SSAB indicated that a reasonable return could not be expected on any new equity investment in SSAB. Additionally, we considered the action of the two private investors in SSAB, Stora and Granges. Stora chose to forgo its entire investment in SSAB rather than invest an additional 375 MSEK in new capital. Granges only agreed to invest after the government guaranteed the new investment and a rate of return on the new investment (see section I.E. below). The actions of the two private investors confirmed that private investors did not consider the company equityworthy. Therefore, we conclude that SSAB has been unequityworthy since its inception.

We verified that SSAB received two government equity infusions in 1978 and 1981. The 1978 government equity infusion was part of SSAB's 1978 formation agreement. Under the terms of the formation agreement, Granges, Stora, and NJA, a government-owned entity each transferred its steel assets to SSAB in exchange for 25 percent shares of SSAB. As part of the formation agreement, the government also contributed 700 MSEK in cash in exchange for a 25 percent share of SSAB. At the time of the formation of SSAB, the government also agreed to pay NJA 530 MSEK to fund the difference between the book value and the sale value of the assets sold to SSAB (see section I.F. below) and to provide 343.3 MSEK in funds to SSAB to purchase from Granges a railroad used to transport iron ore and steel (see section I.F. below).

Because the assets transferred by the two privately-owned steel companies to SSAB were part of a negotiated agreement, we consider the transfer value of the assets to represent a fair, negotiated, arms-length value. Thus, we determine that SSAB did not receive any countervailable benefits from the transfer of steel assets from the two private steel companies in exchange for 25 percent of the shares of SSAB. However, because the 700 MSEK in government funds and the 700 MSEK in assets contributed by a government-

owned entity, namely NJA, were given to an unequityworthy company, we determine that the funds and transferred assets constitute equity infusions inconsistent with commercial considerations and are therefore countervailable.

In 1981, SSAB required additional capital from its shareholders. As a result of the need for additional capital, Stora decided to relinquish its ownership in SSAB which was then absorbed by the government. The government contributed 575 MSEK in cash and coverted 550 MSEK in structural loans from debt to equity. Granges contributed 375 MSEK to maintain its proportional share as a 25 percent shareholder in SSAB (see section I.E. below) and provided a 150 MSEK debenture loan (see section II.B. below). Because the government contributed a total of 1125 MSEK in equity in 1981 to an unequityworthy company, we determine that the funds constitute an equity infusion inconsistent with commercial considerations.

Using the equity methodology in the Subsidies Appendix, we calculated the total 1984 benefits by multiplying the amount of equity received within 15 years of the 1984 review period by the 1984 rate of return shortfall in 1984, which is the difference between the national average rate of return on equity (23.3 percent) and SSAB's actual rate of return on equity (6.8 percent). We subtracted the amount of dividends paid to the government in 1984 from the total benefit and divided the result by SSAB's total sales for 1984 to arrive at an estimated net subsidy from government equity infusions of 3.33 percent *ad valorem*.

E. Government Equity Guarantees

As discussed above, in 1981 Granges contributed 375 MSEK in equity to SSAB. In a government bill passed prior to the 375 MSEK equity contribution, the government agreed to pay Granges 875 MSEK for its shares in SSAB in 1991, if Granges decides to sell its shares at that time. This agreement by the government, in essence, guarantees Granges an annual rate of return of approximately 9.5% on its 375 MSEK contribution. Although the funds provided to SSAB by Granges are ostensibly equity, equity infusions do not generally carry a specified rate of return. Therefore, we believe it is more appropriate to treat these funds as a long-term loan. We determine that the government's guarantee of an implicit rate of return bestows a countervailable benefit upon SSAB.

To calculate the benefits from the equity guarantee, we used the long-term methodology to compare the cash flow differences between a zero interest rate loan having a baloon payment of 875 MSEK in 1991 to a loan having annual principal repayments during the 1982–1991 period with a commercial interest rate of 14.15 percent. We calculated an estimated net subsidy from the equity guarantee of 0.24 percent *ad valorem*.

F. Government Acquisition of Assets for SSAB

As part of the formation agreement, SSAB purchased a railroad from Granges for 343.3 MSEK, the funds for which were provided by the government. We verified that the funds were received by SSAB as a grant. The payment to Granges was made in the form of a 14-year note issued by the National Debt Office with an interest rate of 8.25 percent.

The railroad was an intergral part of the steel production facilities and was used to transport both raw materials and finished products. From 1978 through 1981 SSAB invested approximately 53.2 million in capital improvements in the railroad.

Under another part of the formation agreement, the Swedish Government trasferred assest from NJA, a government-owned enfity, to SSAB. In return, NJA received stock from SSAB valued at 700 MSEK and cash of 530 MSEK for a total of 1,230 MSEK in value. We determine that that portion of NJA's assets which were exchanged for stock in SSAB is a countervailable equity infusion inconsistent with commercial considerations (see section I.D). We also determine that the remaining 530 MSEK, which was contributed by the government in order to effect this transfer, confers a countervailable benefit to SSAB. For purposes of valuing this benefit, we have treated the 530 MSEK as a grant.

Since SSAB used government funds to acquire assets used in its steel making operations, we determine that these government funds provided a countervailable benefit to SSAB. Using the grant methodology, we allocated the grant amounts over 15 years using the 1978 weighted-average cost of capital for SSAB as the discount rate. The estimated net subsidy is 0.84 percent *ad valorem*.

G. Employment Promotion Grants

We found at verification that both SSAB and Surahammars had received benefits under a special 1978–1979 government employment support program available only to the steel industry.

In response to the general economic recession in Sweden, the Swedish Parliament had passed Government Bill 1976/77:95 in March 1977 under which employment grants were paid to companies recognized as being the dominant employers in a particular community. In order to prevent layoffs, these grants were designed to cover 75 percent of the wages and salaries of surplus workers who performed work at the company unrelated to normal production activities. These benefits were available to all types of businesses throughout Sweden until June 1978.

In November 1977, the Swedish Parliament extended these benefits for an additional year to the steel industry under Government Bill 1977/78:59. Since these employment promotion grants were available only to the steel industry for the period July 1978 through June 1979, we determine that these benefits conferred a countervailable subsidy to SSAB and Surahammars.

To calculate the subsidy derived from these non-recurrent special employment grants, we applied the grant methodology to the amount of special employment grants received under the steel employment promotion program. The estimated net subsidy rate if 0.04 percent *ad valorem* for SSAB and 0.06 percent *ad valorem* for Surahammars.

H. Research and Development Grants to SSAB

At verification we discovered that the Swedish Board for Technical Development (STU) provides direct funding to Swedish industries for research and development purposes. Repayment of the monies given is conditional upon the success of the funded project. The results obtained from direct funding of individual corporate research and development projects are not publicly available.

We verified that SSAB, but not Surahammars, received direct government funding for research and development projects. We also verified that except for one government loan to buy equipment for a research and development project, SSAB was not repaying the government funds provided due to the present uncertainty of the successfulness of the projects funded.

While the type of research and development grants received by SSAB are not *de jure* limited to a specific enterprise or industry or group of enterprises or industries, we have no information that, *de facto*, these grants were not limited to a specific enterprise or industry or group of enterprises or industries. Moreover, the results of government funded corporate research and development projects are not publicly available. Therefore, we

determine the research and development funds provided to SSAB are countervailable.

We used the grant and long-term loan methodologies, as appropriate, to calculate the benefits conferred on SSAB by these research and development funds. The estimated net subsidy is 0.01 percent *ad valorem*.

II. Programs Determined Not To Be Countervailable

We determine that countervailable subsidies are not being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products under the following programs.

A. Iron Ore Inputs at Preferential Prices

Petitioner alleged that SSAB has an arrangement with LKAB, a state-owned mining company in Sweden, under which SSAB obtains iron ore at preferential prices.

In its response, SSAB reported that it obtains all of its external iron ore supplies from LKAB. At verification, we found that the three year contract between LKAB and SSAB provided for the annual negotiation of iron ore prices. Although SSAB and LKAB are both majority-owned by the government of Sweden, the iron ore price negotiations are carried on under arms-length conditions, with no government involvement. Based on information supplied at verification, we found that the 1983 and 1984 negotiated prices on LKAB iron ore sales to SSAB were at or above comparable prices charged by LKAB to its other iron ore customers.

During 1983 and 1984, SSAB received price rebates from LKAB to promote the increased utilization of iron ore pellets. At verification, LKAB officials explained that the iron ore pellet rebates were designed by LKAB to encourage its customers to convert to a new technology which allows greater use of iron ore pellets in raw steel production. We found that other iron ore pellet customers of LKAB received iron ore pellet rebates comparable to those received by SSAB. Furthermore, since SSAB has adopted the new iron ore pellet technology, LKAB is phasing-out the iron ore pellet rebates to SSAB during 1985–1986.

We determine, therefore, that SSAB is not receiving countervailable benefits resulting from the prices paid by SSAB to LKAB on iron ore pellets used as inputs in the production of carbon steel.

B. Government Loan Guarantees

Petitioner alleged that SSAB benefitted from loan guarantees provided by the Swedish government.

We verified that the only loan guarantee received by SSAB consisted of the government guarantee on the loan given by Granges to SSAB. In the government bill which provided for the equity guarantee to Granges (see section I.E. above), the Swedish government also agreed to guarantee a loan by Granges to SSAB. To determine whether the guarantee provides a countervailable benefit to SSAB, we first look to the cost of commercial guarantees. Where, as here, no comparable commercial guarantees exist, we look next to see if the government loan guarantee has effected the interest rate charged on that loan. We have compared the interest rate charged on the guaranteed loan with the company specific benchmark rate and have found that the rate on the guaranteed loan exceeds that on the benchmark. In addition, we verified that the Granges loan to SSAB is being fully repaid by SSAB. For these reasons, we find the government loan guarantee not to be countervailable.

C. Government Funds to Research and Development Organizations

Petitioner alleged that the Swedish government helps support steel-oriented research and development organizations in Sweden.

The Swedish Ironmasters' Association, or Jernkontoret, participates in joint research activities with practically all iron and steel companies in Sweden, Finland, Norway, and Denmark. Research activities are financed in three ways: special research levies from enterprises, government grants from STU, and contributions in kind from the industrial companies.

The Swedish Institute for Metals Research is sponsored by nearly all the Scandinavian steel industries. The financial and organizational basis for the activities at the Institute is a triennial agreement between private industry and STU. This agreement sets out the details of a general research program. Under the current agreement, the industry contributed 53 percent and the government 47 percent of the cost.

The Foundation for Metallurgical Research (MEFOS) owns and operates two experimental plants called the Metallurgical Research Plant and the Metal Working Research Plant. Approximately 60 percent of the Foundation's budget is provided by Foundation members and 40 percent is contributed by the government through STU.

We verified that STU provides research and development funds for a broad range of industries throughout the Swedish economy. Furthermore, the research and development results obtained through partial government funding of the organizations described above are publicly available. Therefore, we determine that the government funds provided to the metallurgical research and development organizations in Sweden are not countervailable.

III. Programs Determined Not To Be Used

We verified that the following programs were not used by the respondents.

A. Government Export Credits

Petitioner alleged that the Swedish government provides export credits to the Swedish steel industry.

Export credits in Sweden are provided by the Swedish Export Credit Corporation, which is owned 50 percent by the Swedish government and 50 percent by Swedish banks. We verified that neither SSAB nor Surahammars received subsidized export credits for U.S. exports of the products under investigation. Therefore, we determine that no countervailable benefits were provided to SSAB or Surahammars in the form of subsidized export credits.

B. Municipal and County Subsidies

Petitioner alleged that the Swedish steel industry receives subsidies from municipal and county governments.

The regional and municipal governments in Sweden are extensions of the national government. Industrial development programs are authorized and funded in Sweden by the Swedish national government. The programs authorized and funded by the national government have been analyzed above. Furthermore, at verification we found no evidence that either SSAB or Surahammars had used or received any benefits from municipal and county governments.

C. Government Restructuring Program for the Specialty Steel Industry

Petitioner alleged that Surahammars was involved in a 460 MSEK program to restructure the Swedish specialty steel company.

The restructuring program alleged by the petitioner involved the stainless steel industry. We verified that Surahammars does not produce stainless steel. Therefore, we determine that Surahammars did not benefit under the alleged restructuring program.

Petitioner's Comments

Comment 1: Petitioner argues that SSAB has been unequityworthy from its inception.

DOC Position: We agree. See our discussion in section I.D. above.

Comment 2: Petitioner argues that government subsidies should be excluded from SSAB's reported profits to determine the government's actual rate of return on its equity in SSAB for purposes of analyzing the company's equityworthiness and for determining the net subsidy received by the company.

DOC Position: The Department, in analyzing the company's operations for the equityworthy determination and in determining the net subsidy received by the company, uses the rate of return from its business activities based on accepted accounting principles. In this case, the net profit/loss recorded by SSAB included funds received as the principal amounts from borrowings and certain appropriations to and from reserve accounts. Since these amounts did not result from operations, the rate of return used by the Department to analyze the company and calculate the net subsidy did not include these amounts.

In determining the equityworthiness of the company, the Department analyzes the operations of the company as a private investor would at the time the investment was made without considering the sources of the funds received. Funds received through other government programs, debt or equity, may have been made in accordance with commercial considerations. If the Department concludes that such funds were not provided in accordance with commercial considerations, these are then countervailed separately.

Furthermore, we use the actual experience of the company as presented by generally accepted accounting principles in the country in which the company is located for determining the equityworthiness of the company. This provides a consistent standard for comparison to other companies which are conducting business in that country.

Finally, we already account for subsidies, other than equity, which the company received from the government by using methodologies specifically designed by the Department to calculate the benefit from these subsidies. If we countervailed these subsidies again when measuring the benefits to the company from an equity investment by the government, we would be double counting.

Comment 3: Petitioner contends that for purposes of quantifying the countervailable benefit, conditional reconstruction loans should be treated as grants, with future repayments being subtracted from the quantity of funds considered as the grant amount.

DOC Position: As noted in section I.C. above, we treated the forgiven amounts of the loans as grants, which we allocated over time. We then treated the funds which were not written-off as one year loans, rolled-over in subsequent years. This permits us to take into account the yearly changes in principal amounts due to capitalization of accrued interest payments and/or to any repayments of principal or interest actually made. The 1984 loan benefits were calculated by applying the 1984 short-term interest rate to the one year portion of the 1984 loan balance outstanding and then subtracting loan repayments made in 1984.

Comment 4: Petitioner argues that based on SSAB's financial ratios of times interest earned and debt coverage, and on SSAB's inability, without government support, to obtain commercial loans comparable to those received from the government, SSAB has been uncreditworthy from inception. Therefore, a risk premium should be added to the benchmark used in the Department's loan methodology.

DOC Position: We disagree. During 1979, 1980, 1982 and 1983, SSAB borrowed a total of 800 MSEK through commercial bonds at market interest rates. The bonds are held by private investors and are not guaranteed by the government of Sweden.

The Department uses as its primary criteria the private market place for determining the creditworthiness of a company. Given the significant amount of private borrowings by SSAB, the Department determined it to be creditworthy.

Comment 5: Petitioner argues that relief from standard borrowing costs (i.e., front and fees, stamp duties, and redemption commission) provides a countervailable benefit to SSAB.

DOC Position: In calculating the benefit to SSAB from preferential long-term loans, we have used as our benchmark the interest rate charged to SSAB on its comparable commercial long-term loans. To the extent that SSAB was required to pay associated loan charges or fees for the comparable commercial loans, these have been included in the benchmark interest rate. Therefore, the benefit accruing to SSAB as a result of its exemption from any additional charges on its preferential loans, would already be captured in the interest rate differential. and no additional calculations need be made.

For those subsidy programs in which we have applied our short-term loan methodology, we have used a national average short-term commercial borrowing rate of 16.08 percent as our benchmark. To this rate we added an additional fee of 0.72 percent which represents the national average fee paid on overdraft facilities. In this instance, we believe it is appropriate to include this fee in our benchmark, since the interest rate on comparable commercial loans would be fee-inclusive.

Comment 6: Petitioner contends that because SSAB is a state-owned company, it has benefitted from both explicit and implicit government loan guarantees. Petitioner argues that if SSAB, as a state-owned firm, incurs lower interest costs then private firms with similar creditworthiness, government loan guarantees—explicit or implicit—provide countervailable benefits. Petitioner further contends that failure to consider implicit government loan guarantees causes the subsidy from explicit government loan guarantees and preferential government loans to be understated.

DOC Position: With respect to explicit loan guarantees provided by the government, we have used the methodology outlined in the Subsidies Appendix to determine if such guarantees provide a countervailable benefit to SSAB.

We disagree, however, with petitioner's contention that implicit government loan guarantees provide a countervailable benefit, and that failure to consider such guarantees causes benefits from other loan programs to be understated. Government ownership of a firm *per se* does not guarantee payment of unguaranteed debt by a state-owned firm. Moreover, we do not consider any secondary effects that government ownership of, or debt and equity participation in, a firm might have, such as any signals perceived by private lenders when they make commercial investment decisions. In addition, taking into account the effect an implicit guarantee might have on interest rates would result in double-counting in cases where we find explicit government loan guarantees to be countervailable.

Comment 7: Petitioner argues that the 530 MSEK grant given by the government to NJA to cover the losses NJA sustained in selling its assets to SSAB is countervailable. Petitioner maintains that the 530 MSEK was part of the purchase price the government paid for the assets of SSAB and as such, is countervailable.

DOC Position: We agree. See our discussion in section I.E. above.

Comment 8: Petitioner contends that the purchase of the railroad from Granges for 343.3 MSEK, the funds for which were given to SSAB by the government, was part of the price

Granges charged SSAB for acquisition of Granges' steel assets. Petitioner argues that because the government funds covered a part of the cost of obtaining Granges' steel assets for SSAB, those funds are countervailable.

DOC Position: We agree that the acquisition of the railroad from Granges provided a countervailable benefit to SSAB. However, we do not agree with petitioner that the benefit occurs because the funds provided for the railroad paid part of the acquisition cost of obtaining Granges' steel assets. We believe that the benefit bestowed on SSAB is the government assumption of the cost SSAB would have had to pay were it to have purchased the railroad itself.

Comment 9: Petitioner argues that the employment promotion grants given to SSAB and Surahammars are, in effect, labor subsidies which should be countervailed.

DOC Position: Two types of employment promotion grants were provided to SSAB and Surahammars. One type of grant was not limited to an enterprise or industry or group of enterprises or industries, and is therefore not countervailable. We found that the other type of grant was limited to the steel industry, and we have countervailed it as explained in section I.G. above.

Comment 10: Petitioner argues that public availability of research and development results obtained through government financing should not be considered in determining whether government funds for research and development are countervailable.

DOC Position: Regardless of the merits of petitioner's position, the Department's determination with respect to the research and development grants described in sections I.H. and II.C would remain the same.

Comment 11: Petitioner argues that the discount rate use in the Department's methodology should include a risk premium.

DOC Position: We disagree. As we have stated in the Subsidies Appendix, we only include a risk premium in the marginal cost of debt variable of the weighted cost of capital formula when a company is found to be uncreditworthy.

Comment 12: Petitioner urged the Department to reconsider initiating an upstream subsidy investigation on iron ore inputs to the Swedish carbon steel industry.

DOC Position: After review of the evidence contained in petitioner's April 4, 1985 submission and the evidence obtained during verification, we decided not to initiate an upstream subsidy investigation.

The petition and the April 4 brief together contain sufficient allegations that LKAB receives subsidies from the Swedish government and that these subsidies potentially have a significant effect on the carbon steel production costs of SSAB. However, the Department determined that there is insufficient evidence on the record establishing a "reasonable basis to believe or suspect" that iron ore inputs from LKAB confer a "competitive benefit" on SSAB's production and exportation of carbon steel, within the meaning of 19 U.S.C. 1671b(g) to warrant an upstream subsidy investigation. The Department does, however, reserve the right to reconsider this determination in any section 751 review of this case.

Respondent's Comments

Comment 1: Counsel for Surahammars argues that the company should be excluded from the final determination since it received no benefits under any of the programs under investigation.

DOC Position: We agree. We excluded Surahammars because the benefits it received were *de minimis*.

Comment 2: Counsel for SSAB argues that it has been creditworthy throughout the period under investigation since SSAB was able to obtain long-term commercial loans without the aid of government action or guarantees.

DOC Position: We agree. See our discussion in section I.B. above.

Comment 3: SSAB argues that, except possibly for every small amounts received prior to 1980, any benefits which SSAB received under the grants for employment promotion schemes are not countervailable since they were generally available. SSAB further argues that those benefits which it did receive represented reimbursement for a portion of the wages of specific redundant employees who were kept on the payroll but assigned to non-productive work. Finally, SSAB argues that any benefits should be accrued only in the years of receipt of the reimbursement by SSAB.

DOC Position: See sections I.A. and I.G. above.

Comment 4: SSAB argues that grants for staff training projects and grants for health-care centers are not limited to an industry or group of industries, and therefore are not countervailable.

DOC Position: See section I.A. above.

Comment 5: SSAB argues that the following programs are not countervailable since they operate solely as cost-offsets: (1) Loans and grants for location of industry; (2) loans and grants for regional investment projects; and (3) grants for regional freight rate relief. SSAB also argues that the freight rate relief program confers no lasting benefit and should in all events, as a recurring program, be allocated only to the year of receipt.

DOC Position: Before the Department can offset these loans or grants by any amount, two conditions would have to be met. First, SSAB would have to demonstrate how the costs fall within one of the categories of "offsets" contained in section 771(6). Second, SSAB would have to establish some sort of linkage or relationship between the subsidy involved and the offset claimed (see, e.g., *Wool from Uruguay*, 46 FR 19288 (1981)). SSAB has met neither of these conditions.

Because grants for freight relief are available only to industries in certain regions of Sweden, we have determined that they are countervailable regional subsidies. Since the freight relief grants are recurring benefits, we used only the grants received during the review period to calculate the countervailable benefits.

Comment 6: SSAB argues that in computing the effect of the ITA's conditional reconstruction loans, the ITA should apply its traditional "Grant Cap" rule. Furthermore, SSAB argues that in determining the amount of the "grant equivalent" of each conditional reconstruction loan, appropriate adjustment must be made for those portions of the loan found not to be countervailable (i.e., for redundant employees) and also for the payments made by SSAB against these loans as a condition for the payment of dividends.

DOC Position: The Department has applied its "Grant Cap" rule to its calculations. The Department has not made any adjustment to the reconstruction loans for redundant employees since SSAB has not given the Department a sufficient basis to justify this offset (see DOC response to SSAB's Comment 5). The Department has, however, made appropriate adjustment for any principal or interest payments that SSAB made on its reconstruction loans.

Comment 7: SSAB argues that the preliminary decision miscalculated the countervailable benefit from the variable-rate structural loans, and failed to give full credit for interest paid thereon in 1984.

DOC Position: In this determination the Department has taken into account all interest paid on the variable-rate structural loans, including the interest paid in 1984.

Comment 8: SSAB argues that the preliminary determination erred in failing to deduct from the conditional reconstruction loans the cost to SSAB of compensating redundant employees beyond the legal requirement therefor.

DOC Position: We disagree. Despite repeated requests from the Department, SSAB has never identified which government funds were allegedly earmarked for redundancy costs, nor has it given the Department enough information to establish that these alleged redundancy costs could be considered offsets to the reconstruction loans under section 771(6) of the Act (also see respondent's Comment 5 above).

Comment 9: SSAB argues that SSAB has been equityworthy throughout its existence.

DOC Position: We disagree. See our discussion in section I.D. above.

Comment 10: SSAB claims that the following programs either do not exist, or that SSAB does not benefit from them: (1) Export financing; (2) credit guarantees; and (3) municipal subsidies.

DOC Position: We agree.

Comment 11: SSAB requested that the Department do additional verification on costs relating to early retirement and redundant employees.

DOC Position: The Department did not conduct a second verification because we did not feel that any purpose would be served by it. As the Department repeatedly informed SSAB, the information which SSAB submitted on the so-called redundant employee issue was deficient in a number of significant respects. In particular, none of SSAB's responses or submissions identified with any precision which funds SSAB is referring to, or what portion of the funds received were used to pay for redundant employees. The purpose of a verification is to determine the accuracy of submitted information. It is the responsibility of the respondents, not the Department, to correct deficiencies in submissions (see *Bicycle Tires and Tubes from Korea*, 44 FR 28727, 28729 (1982)).

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determinations. Commerce officials spent from March 25 - April 4, 1985, verifying the information submitted by the government of Sweden, SSAB, Surahammars, and LKAB, gathering additional information to be used in these determinations. During this verification, we followed normal verification procedures, including the inspection of documents and ledgers, and the tracing of information in the response to source documents, accounting ledgers and financial statements.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35) A public hearing was not requested. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered in these determinations.

Exclusion of Surahammars

On January 25, 1985, counsel for Surahammars Bruks AB requested that the company be excluded from any countervailing duty order pursuant to 19 CFR 355.38. We excluded Surahammars because we determined that the benefits it received were *de minimis*.

Suspension of Liquidation

In accordance with our preliminary countervailing duty determinations published on March 20, 1985, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to collect the estimated net subsidy. The countervailing duty final determinations were extended to coincide with the antidumping final determinations on the same products from Austria, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). However, we cannot impose a suspension of liquidation on the subject merchandise for more than 120 days without the issuance of a final determination. Therefore, on July 17, 1985, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after July 19, 1985. On July 19, the United States Steel Corporation, petitioner in this case, obtained a temporary restraining order enjoining the U.S. Department of Commerce and the U.S. Customs Service from terminating the suspension of liquidation in this case. On July 25, 1985, the Court of International Trade lifted the July 19, 1985 temporary restraining order; therefore, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after July 26, 1985, under the preliminary countervailing duty determination. We will instruct the U.S. Customs Service to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between March 20, 1985 and July 25, 1985. This suspension of liquidation does not apply to entries of the subject merchandise entered on or after July 26, 1985, and the final ITC determinations. We will reinstate suspension of liquidation if the ITC issues a final affirmative determination.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted, as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exists, we will issue a countervailing duty order, directing the Customs officers to assess countervailing duties on all entries of certain carbon steel products from Sweden (except for Surahammars) entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This notice is published in accordance with section 705(d) of the Act (19 U.S.C. 1671d(d)).

Theodore W. Wu,

Acting Assistont Secretary for Trade Administrotion.

August 12, 1985.

Appendix—Description of Products; Sweden

1. The term "*carbon steel plate*" covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not pickled; not cold-rolled; not in coils, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620 and 607.6625 of the *TSUSA*. Semi-finished products of solid rectangular cross-section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

2. The term "*hot-rolled carbon steel flat-rolled products*" covers hot-rolled carbon steeel products, whether or not corrugated, or crimped; not cold-rolled; not cut, not pressed, and not stamped to

non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled, as currently provided for in item 607.8320 of the *TSUSA*; and not pickled and in coils; as currently provided for in item 607.6610, or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

3. The term "*cold-rolled carbon steel flat-rolled products*" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 inch or more in thickness, as currently provided for in item 607.8320 of the *TSUSA;* or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

[FR Doc. 85-19751 Filed 8-16-85; 8:45 am]
BILLING CODE 3510-DS-M

[C-122-505]

Initiation of Countervailing Duty Investigation; Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Canada of oil country tubular goods (OCTG), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). The ITC will make its preliminary determination on or before September 5, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1985.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1248 or 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On July 22, 1985, we received a petition in proper form filed by Lone Star Steel Company and CF & I Steel Corporation which produce OCTG. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Canada of OCTG receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act. On August 8, 1985, we received a letter from petitioners' counsel amending and clarifying the bases for petitioner's subsidy allegations.

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on OCTG from Canada and have found that it meets those requirements. Therefore, we are initiating the countervailing duty investigation to determine whether manufacturers, producers, or exporters in Canada of OCTG, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1985.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods", which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item numbers 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes oil country tubular goods that are in both finished and unfinished condition.

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Canada of OCTG receive benefits under the following programs which constitute subsidies. We are initiating an investigation on the following allegations:

- Government grants for the purchase of certain fixed assets;
- Loans on terms inconsistent with commercial considerations;
- Industrial and Regional Development Program (IRDP);
- Low interest loans under the Enterprise Development Program (EDP);
- Program for Export Market Development (PEMD);
- Promotional Projects Program;
- Investment Tax Credit;
- Community-Based Industrial Adjustment Program (CIAP);
- Ontario Development Corporation Export Support Loans;
- Other Ontario Development Corporation loans and loan guarantees on terms inconsistent with commercial considerations;
- Programs sponsored by the Alberta Opportunity Company and the Saskatchewan Economic Development Corporation; and
- Department of Regional Industrial Enterprises Subsidiary Agreements.

We are not initiating on the following allegation:

Enterprise Development Program—Grants and Loan Insurance

Petitioners allege that the government of Canada provides grants and loan

insurance to finance plant expansion and modernization, to implement productivity improvements and/or product or process innovations and to cover the cost of market feasibility studies, and development proposals. In a past investigation, the Department found this program not to be countervailable (see "Final Negative Countervailing Duty Determinations: Certain Softwood Products from Canada" (48 FR 24159, May 31, 1983)). Petitioners have not presented new evidence nor have they alleged changed circumstances with respect to this program.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of OCTG from Canada. They claim that the products under investigation benefit from export subsidies that are inconsistent with the Agreement (the Subsidies Code), and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms, that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 5, 1985, whether there is a reasonable indication that imports of OCTG from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 12, 1985.

[FR Doc. 85-19752 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-504]

Initiation of Countervailing Duty Investigation; Oil Country Tubular Goods From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Taiwan of oil country tubular goods (OCTG), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). The ITC will make its preliminary determination on or before September 5, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1985.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0189 or 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On July 22, 1985, we received a petition in proper form filed by Lone Star Steel Company and CF & I Steel Corporation which produce OCTG. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Taiwan of OCTG receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Taiwan is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on OCTG from Taiwan and have found that it meets those requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Taiwan of OCTG, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1985.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods", which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item numbers 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5229, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes oil country tubular goods that are in both finished and unfinished condition.

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Taiwan of OCTG receive benefits under the following programs which constitute subsidies. We are initiating an investigation on the following allegations:

- Preferential Export Financing;
- Export Loss Reserves;
- Tax Exemptions for Export Sales;
- Preferential Prices for Raw Materials;

• Domestic Benefits Under the SEI:
—Preferential Income Tax Rate Ceilings;
—Accelerated Depreciation and Tax Holidays;
—Tax Deduction for Investment in Production Equipment;
—Duty Exemption and Deferral on Imported Equipment; and
—Preferential Long-Term Loans.

We are not initiating on the following allegations:

1. Equity Infusions

Petitioners allege that Article 84 of the SEI permits Taiwan authorities to establish a development fund to be used for sole or joint investments in important enterprises. Although petitioners provided no information that the Taiwan authorities invested in FEMCO or that FEMCO is unequity-worthy, they request that the Department examine whether FEMCO has received equity infusions through this program.

In our "Subsidies Appendix" attached to the notice of "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina" which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006), we state that government equity ownership *per se* does not confer a subsidy. Government ownership confers a subsidy only when it is on terms inconsistent with commercial considerations. Since petitioners have provided no information that the authorities in Taiwan have made equity investments in FEMCO or that any such investments are inconsistent with commercial considerations, we are not initiating on this allegation.

2. Raw Material Import Duty Exemptions

Petitioners allege that the OCTG industry in Taiwan benefits from the preferential exemption from, or reduction of, import duties on raw materials that are reexported. Under both U.S. law and the General Agreement on Tariffs and Trade, the remission of customs duties due on imported items which are physically incorporated into exported final products is not regarded as a subsidy. Since this allegation does not constitute a subsidy, we are not initiating on it.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of OCTG from Taiwan. They claim that the products under investigation benefit from export subsidies that are inconsistent with the Agreement (the Subsidies Code), and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assisant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 5, 1985, whether there is a reasonable indication that imports of OCTG from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 12, 1985.

[FR Doc. 85–19753 Filed 8–16–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–455–402]

Termination of Antidumping Duty Investigation; Carbon Steel Plate From Poland

AGENCY: International Trade Administration. Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated August 5, 1985, petitioner withdrew its antidumping duty petition, filed on December 19, 1984, on carbon steel plate from Poland. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–4136.

SUPPLEMENTARY INFORMATION:

Case History

On December 19, 1984, we received a petition from United States Steel Corporation, on behalf of the U.S. industry producing carbon steel plate.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on January 8, 1985 (50 FR 1915). On February 4, 1985, the ITC found that there was a reasonable indication that imports of carbon steel plate from Poland materially injure, or threaten material injury to, United States industry.

Scope of Investigation

The product under investigation is carbon steel plate which covers hot-rolled carbon steel products whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620 and 607.6625 or the *Tariff Schedules of the United States Annotated* (TSUSA). Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

Withdrawal of Petition

In a letter dated August 5, 1985, petitioner notified us that it was withdrawing its December 19, 1984 petition, and requested that the investigation be terminated. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on a bilateral arrangement with the Government of Poland to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioner's withdrawal and our intention to

terminate. For these reasons, we are terminating our investigation.

Dated: August 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19699 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-501]

Oil Country Tubular Goods From Argentina; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether oil country tubular goods (OCTG) from Argentina are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 5, 1985, and we will make ours on or before December 30, 1985.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Sackett; Office of Investigations, Import Administration, International Trade Administation, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1778.

SUPPLEMENTARY INFORMATION:

The Petition

On July 22, 1985, we received a petition in proper form filed by Lone Star Steel Company and CF&I Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Argentina are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. The petition also alleges that sales of the subject merchandise are being made at less than the cost of production. Petitioners were unable to obtain price information for U.S. sales. Therefore, they calculated United States price based on the Customs value for Argentine imports of the merchandise during the fourth quarter 1984 and first quarter 1985, with deductions for estimated inland freight costs in Argentina. Since petitioners also were unable to secure home market or third country prices for the merchandise subject to this investigation, foreign market value was based on Lone Star Steel's costs for the merchandise adjusted for cost differences in certain production inputs in Argentina. Using this comparison, petitioner allege dumping margins ranging from 42 to 113 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on OCTG from Argentina and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether OCTG from Argentina are being, or are likely to be, sold in the United States at less than fair value.

Petitioners also allege that there are no home market sales and that substantially all third country sales are at prices below the cost of production. Petitioners relied on the final determination in the antidumping investigation of OCTG from Argentina, 50 FR 12595 (March 19, 1985) which included a finding of sales below the cost of production. However, that finding was made with respect to the investigatory period, January 1, 1984 to June 30, 1984. In its petition in the present investigation, petitioners have supplied no information with respect to more recent home market or third country sales. Nor have they offered any information that would lead us to conclude that there has been no change from the earlier period. Consequently, we conclude that at this time, we do not have reasonable grounds to believe or suspect that sales are being made below the cost of production.

If our investigation proceeds normally, we will make our preliminary determination by December 30, 1985.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods" which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the *Tariff Schedules of the United States Annotated (TSUSA)* items 610.326, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are in both finished and unfinished condition.

Notification of ITC

Section 723(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for import Administration.

Preliminary Determination by ITC

The ITC will determine by September 5, 1985, whether there is a reasonable indication that imports of OCTG from Argentina are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: August 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19696 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-506]

Oil Country Tubular Goods From Canada; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether oil country tubular goods from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 5, 1985, and we will make ours on or before December 30, 1985.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Patrick O'Mara, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1168.

SUPPLEMENTARY INFORMATION:

The Petition

On July 22, 1985, we received a petition in proper form filed by Lone Star Steel Company and CF & I Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. Petitioners also allege the existence of critical circumstances.

The petitioners based United States price on price quotes for Canadian OCTG selling in the U.S. market during late 1984 and the first half of 1985. They deducted from these price quotes estimated amounts for a six percent distributor's commission, freight and U.S. customs duty to arrive at a net U.S. price for each item. Petitioners also calculated a weighted-average customs value for carbon steel and alloy casing and tubing based on Department of Commerce import statistics for the first quarter of 1985.

The petitioners based foreign market value upon actual price quotes for sales of OCTG in Canada. The net home market prices were arrived at by deducting estaimted freight and a six percent distributor's mark-up from actual price quotes for the first half of 1985. Petitioners also alleged sales of Canadian OCTG below the cost of production based on a comparison of the net home markets prices to the estimated Canadian costs. They estimated Canadian production costs for each of four representative types of OCTG by adjusting Lone Star's production costs for known differences in inputs and capacity utilization rates in Canada. Petitioners presented these costs as applied to an integrated producer and a nonintegrated producer. The integrated producer's costs were estimated by adjusting Lone Star's costs to take into account known differences in U.S. and Canadian input prices. The nonintegrated producer's costs were estimated by adjusting Lone Star's costs of converting hot-rolled sheet into OCTG to take into account known differences in Canadian and U.S. input prices, and adding to these conversion costs the cost of purchased hot-rolled sheet.

Based on a comparison of each net U.S. price with its estimated foreign market value, petitioners allege dumping margins ranging from 4.19 to 129.34 percent. Petitioners also calculated dumping margins based on a comparison of the average customs value of OCTG imported from Canada in the first quarter of 1985 and constructed values. Based on these comparisons, petitioners alleged dumping margins ranging from 1.36 to 117.24 percent for integrated producers and from 40.85 to 82.75 percent for nonintegrated producers.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on oil country tubular goods from Canada and have found that it meets the requirements of section 732(b) of the Act and § 353.36(a) of the Commerce Regulations (19 CFR 353.36b(a)). Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether oil country tubular goods from Canada are being, or are likely to be, sold in the United States at less than fair value. We will also investigate the allegation that the home market sales are below the cost of production. If our investigation proceeds normally, we will make our preliminary determination by December 30, 1985.

Scope of Investigation

The merchandise covered by this investigation is "oil country tubular goods" which are hollow steel products of circular cross section intended for use in drilling for oil or gas. These products include oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States Annotated (TSUSA)*: 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.2925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of OCTG from Canada. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this detemination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under the administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 5, 1985, whether there is a reasonable indication that imports of oil country tubular goods from Canada are causing material injury, or threaten material injury, to a United States industry. If its

determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: August 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19697 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-505]

Oil Country Tubular Goods From Taiwan; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether oil country tubular goods (OCTG) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. The petition also contains an allegation of critical circumstances. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 5, 1985, and we will make ours on or before December 30, 1985.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: John Kenkel; Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-4929.

SUPPLEMENTARY INFORMATION:

The Petition

On July 22, 1985, we received a petition in proper form filed by Lone Star Steel Company and CF&I Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. The petition also alleges that sales of the subject merchandise are being made at less than the cost of production, and that critical circumstances exist. Petitioners were unable to obtain price information for U.S. sales. Therefore, they calculated United States price based on the customs value for imports from Taiwan of the merchandise during the fourth quarter 1984 and first quarter 1985 with deductions for estimated inland freight costs in Taiwan. Since petitioners also were unable to secure home market or third country prices for the merchandise subject to this investigation, foreign market value was based on Lone Star Steel's costs for the merchandise adjusted for cost differences in certain production inputs in Taiwan. Using this comparison, petitioners allege dumping margins ranging from 175 to 213 percent. Petitioners state that their allegation of sales below cost of production is based on the estimated cost of producing OCTG in Taiwan in comparison with prevailing market prices for OCTG during the first quarter of 1985 in third country markets. The third country market prices were not specified.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition of OCTG from Taiwan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether OCTG from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Although the petitioners alleged that home market and third country sales are being made at less than the cost of production of the subject merchandise in Taiwan, they did not provide adequate home market or third country prices on which to base their allegations. Therefore, we will not undertake to determine whether there are sales at less than the cost of production at this time. If our investigation proceeds normally, we will make our preliminary determination by December 30, 1985.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods" which are hollow steel products of circular cross section intended for use in the drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) under item numbers 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. The investigation includes OCTG that are in both finished and unfinished condition.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of OCTG from Taiwan. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC acess to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 5, 1985, whether there is a reasonable indication that imports of OCTG from Taiwan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: August 9, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 19698 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

Biotechnology Technical Advisory Committee; Partially Closed Meeting

A meeting of the Biotechnology Technical Advisory Committee will be held September 23, 1985, at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to biotechnology and related equipment or technology.

Agenda

1. Welcoming remarks by the Chairman.
2. Introduction of members and guests.
3. Presentation of papers or comments by the public.
4. Discussion of the proposed definition of biotechnology.
5. Discussion of current DOC controls on biotechnology exports (CCL Groups 7 and 9, Interpretive Notes 24 and 28).
6. Action items and plans for next meeting.

Executive Session

7. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377–4217. For further information or copies of the minutes contact Jess M. Bratton (202) 377–2583.

Dated: August 13, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–19723 Filed 8–16–85; 8:45 am]

BILLING CODE 3510–DT–M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held September 24, 1985, at 9:30 a.m., the Herbert C. Hoover Building, Room 5230, 14th and Constitution Avenue NW., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Tutorial by 3–M Co. on optical recording technology.
4. Briefing by DOC on the new Export Administration Act and its impact on the Committee.
5. Response by DOC on the May 31 letter on floppy disks.
6. Report on membership by the Chairman and a request for nominations for committee membership.
7. Preview of the 1985 Annual Report.

Executive Session

8. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information or copies of the minutes call (202) 377–2583.

Dated: August 13, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–19724 Filed 8–16–85; 8:45 am]

BILLING CODE 3510–DT–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–076,706 (4,513,528)
Rope Wick Applicator
SN 6–497,657 (4,515,780)
Animal Nutrition
SN 6–742,485
Method for Predicting the Acceptability of Coarsely Ground Beef

Department of Commerce

SN 6–300,830 (4,445,389)
Long Wavelength Acoustic Flowmeter
SN 6–571,288 (4,520,320)
Synchronous Phase Marker and Amplitude Detector

Department of Health and Human Services

SN 6–708,517
Blood Lysis and Culture System

Department of the Air Force

SN 6–329,558 (4,513,429)
Sample Data Phase Locked Loop for Adaptive Doppler Tracker
SN 6–343,032 (4,516,759)
Synthesis of Arylene Siloxanylene Polymers and Copolymers
SN 6–347,391 (4,516,858)
Multiple Site Laser Excited Pollution

Monitoring System
SN 6–347,749 (4,517,568)
Angle Set-On Apparatus
SN 6–361,016 (4,510,525)
Stereoscopic Video Imagery Generation
SN 6–388,327 (4,510,622)
High Sensitivity Millimeter-Wave Measurement Apparatus
SN 6–388,574 (4,511,219)
Kalman Filter Preprocessor
SN 6–403,246 (4,520,504)
Infrared System with Computerized Image Display
SN 6–403,247 (4,511,228)
Measurement of Visual Contract Sensitivity
SN 6–431,434 (4,517,517)
Nickel-Cadmium Battery Conditioner and Tester Apparatus
SN 6–431,866 (4,517,464)
Sensor System
SN 6–439,439 (4,514,056)
Acoustically Tuned Optical Filter System
SN 6–442,496 (4,514,758)
Fall Velocity Indicator/Viewer
SN 6–452,601 (4,511,220)
Laser Target Speckle Eliminator
SN 6–471,550 (4,517,570)
Method for Tuning a Phased Array Antenna
SN 6–478,589 (4,508,662)
Pentafluorotelluriumoxide Fluorocarbons
SN 6–486,477 (4,519,055)
Optical Disc Transport System
SN 6–486,603 (4,520,364)
Attachment Method-Ceramic Radome to Metal Body
SN 6–529,412 (4,517,618)
Protection Circuitry for High Voltage Drivers
SN 6–566,352 (4,515,001)
Variable Radius Lead Former
SN 6–577,391 (4,510,377)
Small Cartridge Heater
SN 6–643,140 (4,515,847)
Erosion-Resistant Nosetip Construction
SN 6–741,644
Arithmetic Pipeline for Image Processing
SN 6–743,853
Harmonic Distortion Reduction Technique for Data Acquisition
SN 6–744,593
Liquid Crystal Non-Destructive Inspection of Metals

Department of the Army

SN 6–455,362 (4,508,929)
Recovery of Alcohol from a Fermentation Source by Separation Rather than Distillation
SN 6–730,125
Photosensitive Cartidge for Weapons Zeroing and Marksmanship Training
SN 6–732,335
Forward Field Autotransfusion Device
SN 6–740,610
Suture Needle Holder.

[FR Doc. 85–19717 Filed 8–16–85; 8:45 am]
BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Cotton, Wool and Man-Made Fiber Apparel Products Produced or Manufactured in India

August 14, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 20, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 21, 1982, as amended, between the Governments of the United States and India, provides for the borrowing of yardage from the succeeding year's limit (carryforward) with the amount used being deducted from the category limit in the succeeding year. Under the terms of the bilateral agreement, as amended, the limit established for cotton, wool and man-made fiber apparel products in Categories 330–359, 432–459, and 630–659, as a group, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1985, is being reduced by 3,482,693 square yeards equivalent to 111,007,307 square yards equivalent to account for carryforward used in 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 14, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC. 20229

Dear Mr. Commissioner: On December 21, 1984, the Chairman of the Committee for the Implementation of Textile Agreements, directed you to prohibit entry of cotton, wool and man-made fiber textile products exported during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985, produced or manufactured in India, in excess of designated limits. The Chairman further advised you that the limits are subject to adjustment.[1]

Effective on August 20, 1985, paragraph 1 of the directive of December 21, 1984 is hereby amended to include an adjusted limit of 111,007,307 square yards equivalent.[2] for Categories 330–359, 431–459, 630–659, as a group.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–19766 Filed 8–16–85; 8:45 am]
BILLING CODE 3510–DR–M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products From Malaysia Under a New Bilateral Agreement

August 14, 1985.

The chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 20, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and

[1] The term "adjustment" refers to those provisions of the bilateral agreement between the Governments of the United States and India which provide, in part, that: (1) group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1984.

Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Governments of the United States and Malaysia exchanged notes dated July 1, 1985 and July 11, 1985 on a new Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement beginning on January 1, 1985 and extending through December 31, 1989 for goods exported during that period. The agreement establishes specific limits for cotton, wool and man-made fiber textile products in Categories 313, 331, 333/334/335, 336, 338/339, 340, 341, 345, 347/348, 438pt. (only women's knit shirts and blouses), 445/446, 604, 638/639 and 640, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made firber textile products in the foregoing categories in excess of the designated twelve-month restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 14, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement effected by exchange of notes dated July 1, and July 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 20, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Malaysia and exported in 1985, in excess of the indicated restraint limits:

Category	12-mo. limits [1]
313	13,000,000 square yards.
331	620,100 dozen pairs.
333/334/335	100,228 dozen of which not more than 50,114 dozen shall be in Category 333 or in Category 335 and not more than 45,103 dozen shall be Category 334.
336	85,000 dozen.
338/339	510,000 dozen of which not more than 199,402 dozen shall be in Category 339.
340	348,182 dozen.
341	254,000 dozen.
345	74,250 dozen.
347/348	208,850 dozen of which not more than 109,203 dozen shall be in Category 348.
438 pt.[2]	11,000 dozen.
445/446	26,000 dozen.
604	1,365,854 pounds.
638/639	222,263 dozen.
640	260,000 dozen.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1984.

[2] In Category 438, only T.S.U.S.A. numbers 383.1307, 383.1309, 383.2511, 383.5234, 383.5810, 383.6310, 383.7724, 383.9540.

In carrying out this directive, entries of wool and man-made fiber textile products in the foregoing categories, except Categories 313, 336, 438 pt.,[1] 638/639 and 640, produced or manufactured in Malaysia which have been exported to the United States during the period beginning on January 1, 1984 and extending through December 31, 1984, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the restraint limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter. Textile products in Categories 336, 438 pt.,[1] 638/639, and 640 which have been exported before January 1, 1985 shall not be subject to this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement between the Governments of the United States and Malaysia which provide, in part, that: (1) specific limits or sublimits may be exceeded by not more than 5 percent, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limits; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–19767 Filed 8–16–85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 438, only T.S.U.S.A. numbers 383.1307, 383.1309, 383.2511, 383.5234, 383.5810, 383.6310, 383.7724, 383.9540.

Adjusting the Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

August 14, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 14, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 27, 1984 a notice was published in the **Federal Register** (49 FR 50238), announcing the establishment to import restraint limits for certain categories of cotton textiles and cotton textile products, including cotton gloves in Category 331, produced or manufactured in Pakistan and exported during 1985. The limit for Category 331 reflected an adjustment for carryforward applied to the 1984 limit for the category. CITA has determined that the carryforward was not used in 1984; accordingly, the 1985 limit is being increased by 33,601 dozen pairs, the

amount of unused carryforward, to 599,221 dozen pairs.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 14, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 which directed you to prohibit entry of certain cotton textiles and cotton textile products, produced or manufactured in Pakistan and exported during 1985.

Effective on August 14, 1985, the directive of December 21, 1984 is hereby further amended to include the following adjusted restraint limit for cotton textile products in Category 331:[1]

Category	Adjusted 12-mo restraint limit[1]
331	599,221 dozen pairs.

[1] The limit has not been adjusted to reflect any imports exported after December 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-19768 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The Bilateral Cotton Textile Agreement, effected by exchange of notes dated March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan, provides, among other things, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Requesting Public Comment on Bilateral Textile Consultations With Bangladesh on Categories 335 and 347/348

August 14, 1985.

On July 29, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Bangladesh to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton coats in Category 335 and cotton trousers, slacks and shorts in Category 347/348, produced or manufactured in Bangladesh.

The purpose of this notice is to advise the public that, if no agreement is reached in consultations with Bangladesh, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 335 and 347/348, produced or manufactured in Bangladesh and exported to the United States during the twelve-month period which began on July 29, 1985 and extends through July 28, 1986 at levels of 84,010 dozen (Category 335) and 615,044 dozen (Category 347/348).

Summary market statements for these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of the foregoing categories is invited to submit such comment or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., any may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Bangladesh—Market Statement

Category 335—Women's, Girls', and Infants' (WGI) Cotton Coats, etc.

July 1985.

Summary and Conclusions

United States imports of Category 335 from Bangladesh were 83,000 dozens in the year-ending May 1985. This is 131 percent higher than the 36,000 dozens imported in the previous twelve months. These imports compare with 5,200 dozens imported in 1983, 2,500 dozens in 1982 and less than 600 dozens in 1981.

These increases of low price imports have disrupted the market in this category.

Production

U.S. production of Category 335 coats averaged 1.5 million dozens during the first half of the seventies 905,000 dozens during the second half and, 665,000 dozens from 1980 through 1983. Production in 1983 amounted to 661,000 dozens, down 25 percent from the 782,000 dozens produced in 1982. Production in 1984 was down an additional 21 percent from 1983. Cuttings of women's coats and tailored jackets were also down 22 percent in the first four months of 1985.

Imports

U.S. imports of Category 335 from all sources were at a record level of 2,177,000 dozens in 1984, up 33 percent from the 1,632,000 dozens imported in 1983. Year-ending May 1985 imports were up 10 percent from the same period in 1984. Imports grew 55 percent between 1980 and 1985.

Import Penetration

During the first half of the seventies, the ratio of imports to domestic production of Category 335 averaged 30 percent. This almost tripled to 88 percent during the last half of the decade and rapidly escalated to 246 percent during the first four years of the eighties. The 1984 ratio reached an all time high of 414.7 percent, one of the highest ratios of all apparel items.

The domestic producers' share of the market for domestically produced and imported Category 335 declined precipitously during the seventies and continued downward in the early eighties. They accounted for only 19 percent of the market in 1984.

Bangladesh—Market Statement

Categories 347/348—Cotton Trousers, etc.

July 1985.

Summary and Conclusions

United States imports of Categories 347/348 from Bangladesh were 739,000 dozens for the year ending May 1985. This was over twelve times greater than the 59,000 dozens imported one year earlier. In the first five months of 1985 Bangladesh was the third largest supplier of these categories. Imports

from Bangladesh were 232,000 dozens for full-year 1984, 20,000 dozens in 1983 and less than 400 dozens in 1982.

The substantial growth in imports from Bangladesh creates a real risk of market disruption of these categories.

U.S. Market

The markets for domestically produced and imported cotton trousers increased by close to 7 million dozens during 1982–1984. Imports captured over 85 percent of the gain. Since 1982, imports have increased by 6 million dozens. During this same time period, the U.S. producers' share of the cotton trouser markets declined from 75 percent to 68 percent.

U.S. Production

Cotton trouser production was up in 1984, increasing to 40,885,000 dozens from 39,715,000 in the previous year. Indicators are that U.S. producers are facing a worsening position in 1985. Cuttings of men's trousers were down 5.1 percent and women's trousers were off 6.3 percent for the first four months of 1985. Also, average weekly man-hours in the men's and boys' trouser industry during January–May 1985 were off by 7.9 percent compared to the same period in 1984.

Imports and Import Penetration

Imports were relatively stable during the late seventies and early eighties. However, they increased sharply in 1983 and significantly in 1984. The ratio of imports to domestic production increased from 32.9 percent in 1982 to 45.5 percent in 1983 to 46.9 percent in 1984.

Duty-Paid Value and U.S. Producer's Price

Forty-three percent of Bangladesh's imports of this combined category entered under Category 347 in the year ending May 1985. Over 70 percent of the Category 347 imports entered under TSUSA Number 379.6210—men's and boys' cotton shorts, not knit or ornamented. Over 75 percent of the Category 348 imports entered under four TSUSA numbers. These were 383.4726—WGI other cotton shorts, not knit or ornamented, 383.4756—girls and infants cotton trousers and slacks, corduroy, not knit or ornamented, 383.4761—women's other cotton trousers, slacks, etc., NSPF, not knit or ornamented and 383.4764—other girls and infants cotton trousers and slacks, not knit or ornamented. These trousers entered at duty-paid values well below the U.S. producer prices for comparable trousers.

[FR Doc. 85–19769 Filed 8–16–85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Hong Kong to Review Trade in Category 637 (Man-Made Fiber Playsuits)

August 14, 1985.

On August 1, 1985 the Government of the United States requested consultations with the Government of Hong Kong with respect to Category 637. This request was made on the basis of the agreement, effected by exchange of notes dated June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the United States Government may request the Government of Hong Kong to limit exports in Category 637, produced or manufactured in Hong Kong and exported to the United States during 1985. The Government of the United States reserves the right to control imports in these categories at the established limit.

Anyone wishing to comment or provide data or information regarding the treatment of Category 637 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–19770 Filed 8–16–85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of the Republic of Korea Concerning Category 670 (Braided Luggage)

August 14, 1985.

On July 29, 1985, the United States Government, requested the Government of the Republic of Korea to enter into consultations concerning exports to the United States of braided luggage of man-made fibers in Category 670 pt (only T.S.U.S.A. number 706.3420), produced or manufactured in Korea.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations with Korea, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of such products produced or manufactured in Korea and exported to the United States during the twelve-month period which began on July 29, 1985 and extends through July 28, 1986 at a level of 2,618,256 pounds.

Anyone wishing to comment or provide data or information regarding the treatment of Category 670 pt is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–19771 Filed 8–16–85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Republic of Korea To Review Trade in Category 350

August 14, 1985.

On July 31, 1985, the Government of the United States requested consultations with the Government of the Republic of Korea with respect to

cotton dressing gowns in Category 350. This request was made on the basis of the agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Korea, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 350, produced or manufactured in Korea and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of this category from Korea under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-19772 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Socialist Federal Republic of Yugoslavia on Categories 434 and 435

August 14, 1985.

On July 31, 1985 the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested consultations with the Government of the Socialist Federal Republic of Yugoslavia to enter into consultations concerning exports to the United States of men's and boys' wool coats in Category 434 and women's, girls' and infants' wool coats in Category 435, produced or manufactured in Yugoslavia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Socialist Federal Republic of Yugoslavia, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 434 and 435, produced or manufactured in Yugoslavia and exported to the United States during the twelve-month period which began on July 31, 1985 and extends through July 30, 1986 at respective levels of 7,603 dozen and 32,555 dozen.

Summary market statements concerning these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 434 and 435 under Article 3 of the Multifiber Arrangement or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the categories, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Yugoslavia—Market Statement

Category 434—Other Wool Coats, Men's and Boys'

July 1985.

Summary and Conclusions

U.S. imports of Category 434—other (than suit-type) coats, men's and boys' from Yugoslavia during the year ending May 1985 were 7,872 dozens, more than double the imports of a year earlier. Imports of this category had increased from 3,315 dozens in 1983 to 7,713 dozens in 1984.

These imports are disrupting the United States market and are impeding the orderly development of trade.

U.S. Production and Market Share

U.S. production in 1984 continued the prevailing downward trend, declining from 314,000 dozens in 1983 to 293,000 dozens in 1984. Production in 1980 was 421,000 dozens. Imports almost tripled from 1980 to 1984 and the U.S. producer's share of the market for domestically produced and imported Category 434 dropped from 91 percent to 71 percent over the period.

U.S. Imports and Import Penetration

U.S. imports of Category 434 doubled from 59,502 dozens in 1983 to 119,309 dozens in 1984. Imports for the first five months of 1985 were up 45.6 percent from January–May 1984. The ratio of imports to domestic production increased geometrically from 9.6 percent in 1982 to 19.1 percent in 1983 to 40.6 percent in 1983. The sharp increase in imports in 1985 into a soft market indicates a further import penetration in 1985.

Duty-Paid Values and U.S. Producer's Prices

Approximately 82 percent of the year ending May 1985 imports from Yugoslavia entered under TSUSA No. 379.8315—overcoats, topcoats, and car coats. Yugoslavia was the second largest supplier of

these coats, accounting for 12.7 percent of the total imports. The imports from Yugoslavia are entered at duty-paid values below the U.S. producer prices for comparable coats.

Yugoslavia—Market Statement

Category 435—Women's, Girls' and Infants' (WGI) Wool Coats

Summary and Conclusions

Imports of WGI wool coats from Yugoslavia increased more than six fold during the year ending May to 33,385 dozens. This contrasts with the 1,795 dozens imported in calendar year 1983. During the twelve months ending May 1985, Yugoslavia accounted for nearly half of the growth in Category 435 imports from all sources and it became the third largest supplier of WGI wool coat imports to the United States.

These imports are disrupting the United States market and are impeding the orderly development of trade.

Production

U.S. producers faced production cutbacks in 1984 in the face of a weak market. Domestic production fluctuated marginally during 1980–1984 averaging about 1,164,000 dozens annually during this period. Production was 1,103,000 dozens in 1984.

U.S. Market and Domestic Producers Share

The U.S. WGI wool coat market slipped to 1,470,000 dozens in 1984 from a five year high of 1,544,000 dozens in 1983. Still, the 1984 level was above the five year annual average of 1,406,000 dozens.

Despite the relatively strong market, the U.S. producers' share declined in both 1983 and 1984, eroding to 75 percent in the latter year. In 1980, the U.S. market share was 86 percent.

Imports

Imports have nearly doubled in the last five-years, increasing from 190,000 dozens in 1980 to 367,000 dozens in 1984. The import-to-production ratio was 33.3 percent in 1984 compared with 16.3 percent in 1980. Category 435 imports were 20 percent higher during the year ending May 1985, at 360,680 dozens, than during the previous twelve months.

Import Values and U.S. Producer Price

Eighty-nine percent of the Category 435 imports from Yugoslavia entered under TSUSA No. 383.7220—WGI woven wool coats, other than suit-type, not ornamented and over 4 dollars per pound.

[FR Doc. 85–19773 Filed 8–16–85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 16 October 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, DC.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 14, 1985.

[FR Doc. 85–19774 Filed 8–16–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 8, 1985.

The USAF Scientific Advisory Board's Foreign Technology Division Advisory Group will meet at Wright-Patterson Air Force Base, Ohio on October 10 and 11, 1985. The meeting will convene from 8:00 a.m. to 5:00 p.m. on October 10 and from 8:00 a.m. to 1:00 p.m. on October 11.

The purpose of the meeting will be to receive classified briefings and advise on the feasibility and relevancy of applying artificial intelligence (AI) techniques to (a) technical intelligence analysis and (b) high volume data processing. Also, the structure of FTD's Mission Analysis program will be reviewed.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 19701 Filed 8–16–85 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday & Wednesday, 10–11 September 1985.

Times of Meeting: 0830–1630 hours September 10; 0800–1500 hours September 11.

Places: Pentagon 2E715B, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense Follow On will receive numerous briefings from various governmental agencies. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–19726 Filed 8–16–85; 8:45 am]

BILLING CODE 3710-08-M

Defense Contract Audit Agency

Senior Executive Service; Membership of the Defense Contract Audit Agency (DCAA) Performance Review Board

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice of membership of the Defense Contract Audit Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Contract Audit Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Contract Audit Agency, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Roger D. Kriesch, Personnel Management Specialist, Office of the Director of Personnel, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, VA. (202) 274–5798.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Board. They will serve a one-year term, effective upon publication of this notice.

Mr. Peter H. Tovar—Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency

Mr. John J. Quill—General Counsel, Defense Legal Services

Mr. Raymond E. Schmidt—Director, Contract Audit Management, Office of the Assistant Secretary (Comptroller), Office of the Secretary of Defense.

John van Santen,

Assistant Director, Resources.

[FR Doc. 85-19676 Filed 8-16-85; 8:45 am]

BILLING CODE 3820-01-M

Department of the Navy

Performance Review Board Membership

Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the Don's numerous Senior Executive Service (SES) Performance Review Boards. The purpose of the Boards is to provide fair and impartial review of the Senior Executive Service performance appraisals prepared by the senior executive's immediate and second level supervisors; to make recommendations to the Secretary of the Navy regarding acceptance or modification of the performance rating, transfer, reassignment, or removal from the SES of any senior whose performance is considered to be unsatisfactory; and to make nominations for financial performance awards. Composition of the particular Boards will be determined on an ad hoc basis from among those individuals listed below.

Department of the Navy

Nominees for Performance Review Board Membership

Dr. J.E. Andrews
Mr. E.P. Angrist
COMO C.E. Armstrong, USN
Mr. L.W. Arny
Mr. O.R. Ashe
Mr. R.J. Barnett
Mr. T.G. Berlincourt
Dr. E.A. Berman
Mr. J.T. Bolos
Mr. J.N. Brown
Mr. R.S. Buffum
Mr. F.J. Burchfield
Mr. R. Busow
Mr. C.H. Clark
CAPT. W.G. Clautice, USN
Dr. T. Coffey
The Honorable R.H. Conn
RADM P.C. Conrad, USN
RADM D.L. Cooper, USN
Mr. S. Cropsey
Dr. A.J. DiMascio
Mr. A.R. DiTrapani
Dr. A.M. Diness
Mr. H.L. Dixson
Dr. W.R. Ellis
RADM W.J. Finneran, USN
Mr. H.L. Fleck
COMO R.D. Frichtenicht, USN
Mr. P.A. Gale
Mr. R.G. Garant
Mr. H.E. Goldstein
Mr. C.V. Gorsey
Mr. R.L. Haas
Mr. G.R. Hamilton
Mr. K.B. Hancock
Mr. J.W. Hardman
Ms. M.H. Harris
Mr. W.R. Hattabaugh
Mr. B.W. Hays
Dr. L.L. Hill
Mr. R.M. Hillyer
Mr. P.M. Hitch
COMO L.J. Holloway, USN
COMO R. Horne, USN
Mr. T.A. Jacobs
Mr. R.V. Johnson
RADM J.P. Jones, Jr., USN
BGEN J.R. Joy, USMC
Mr. G. Keightley
Dr. C.V. Kincaid
Mr. H. Kitson, Jr.
CAPT R.W. Klementz, USN
Dr. R.A. Lefande
Mr. J.A. MacMillan
Mr. W.H. Lindahl
Mr. A.C. Magruder
Mr. W.H.J. Manthorpe
Mr. D.A. Matteo
RADM J. McArthur, USN
Mr. M.K. McElhaney
COMO D.W. McKinnon, Jr., USN
Mr. E.L. Messere
Mr. R.E. Metrey
Mr. J. Mills
RADM J.B. Mooney, Jr., USN
Dr. M.K. Moss
Mr. P.M. Murphy
Mr. R.A. Nagelhout
Mr. H.J. Nathan
Mr. C.P. Nemfakos
COMO M. Nielubowicz, USN
Mr. J.J. O'Conor
CAPT R.P. Onorate, USN
The Honorable M.R. Paisley
Mr. P.M. Palermo
Mr. F.A. Phelps
Mr. A.S. Prince
Dr. J.H. Probus
The Honorable E.A. Pyatt
COMO H.S. Quast, USN
Mr. W.G. Rae
BGEN G.M. Reals, USMC
Mr. W. Reese
Mr. D.W. Rehorst
Dr. B.B. Robinson
Mr. R.R. Rojas
Mr. R.L. Rumpf
Dr. F.E. Saalfeld
Mr. P.R. Sacilotto
Mr. H.R. Saldivar
Dr. A.I. Schindler
Mr P. Schneider
Dr. P.A. Selwyn
Mr. R.L. Shaffer
Dr. J.J. Shepard
Mr. F.L. Sheridan
Mr. J.N. Shrader
Mr. W.T. Skallerup, Jr.
Mr. R.A. Steele
Mr. F.S. Sterns
Mr. F.W. Swofford
Mr. J.K. Taussig, Jr.
COMO J.D. Taylor, USN
Mr. R.O. Thomas
Mr. D. Turner
Mr. C.J. Turnquist
Mr. C.G. Untermeyer
Dr. B. Wald
Mr. H. Wang
RADM J.H. Webber, USN
Mr. A.R. Weiss
Mr. H.J. Wilcox
RADM J.B. Wilkinson, USN
Mr. W.N. Williams
Mr. R.S. Winokur
Dr. A.D. Wood
Mr. F.E. Wyant
RADM H.L. Young, USN
Dr. S.F. Zornetzer

For additional information, contact: Mr. Vincent J. Prantl, Executive Personnel Section (OP-145C), Office of the Chief of Naval Operations, Department of the Navy, Washington, D.C. 20350, Telephone: (202) 694-5760.

Dated: August 14, 1985.

W.F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-19727 Filed 8-16-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

International Energy Program; Request for Comment on Proposed Approval by the Secretary of Energy Pursuant to Section 5 of the Voluntary Agreement

AGENCY: Department of Energy.

ACTION: Publication of Notice of Proposed Approval of Participation by U.S. Oil Companies in the International Energy Agency's Fifth Allocation Systems Test, and Request for Comment.

SUMMARY: A draft of a proposed letter of approval with respect to U.S. oil company participation in the Fifth Test of the International Energy Agency's Emergency Oil Allocation Systems, along with operating procedures and recordkeeping requirements for such participation, is being published for public comment.

DATE: Written comments to be submitted by September 6, 1985.

ADDRESS: Comments should be submitted to Samuel M. Bradley, Deputy Assistant General Counsel for International Trade and Emergency Preparedness, Department of Energy, Mail Stop 6E-079, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Deputy Assistant General Counsel for International Trade & Emergency Preparedness, Room 6A-167, GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION:

Background: The International Energy Program

The Agreement on an International Energy Program (IEP), TIAS 8272, November 18, 1984, is a U.S. Executive Agreement entered into in the aftermath of the 1973-74 Arab oil embargo targeted at the U.S. and the Netherlands. The IEP provided for creation of the International Energy Agency (IEA) as an autonomous agency of the Organization for Economic Cooperation and Development (OECD). The IEP's main purposes include reducing the Free World oil consuming nations' vulnerability to supply disruptions by encouraging self-sufficiency in oil supplies; avoiding competition for short supplies of available oil during a disruption through a program for equitably allocating those supplies among the signatory countries; establishing a comprehensive international information system; and creating a forum for cooperation with governments and consultation with oil companies. There now are 21 member countries, consisting of all OECD members except France, Finland and Iceland, and collectively accounting for about 70% of Free World oil consumption.

The IEP provides that the IEA's Emergency Sharing System can be activated whenever, because of a serious oil supply disruption, the group

as a whole ("general trigger") or any participating country ("selective trigger") sustains or reasonably can be expected to sustain a 7% or greater reduction in the daily rate of its final oil consumption. In the general trigger situation, the IEA sharing formula would distribute the group supply shortfall among IEA member countries on the basis of a combination of (1) a specified common reduction in consumption within each member country, and (2) the relative national import-dependency of the member countries (with the more import-dependent countries taking the greatest losses in supplies). The emergency sharing formula establishes national "supply rights" and attributes "allocation obligations" and "allocation rights" to the individual IEA countries depending on whether their available oil supplies exceed or fall short of their supply rights. A country having an allocation obligation would be required to supply, to other IEA countries having allocation rights, that quantity of oil equal to the excess over its supply right.

The oil industry has an important advisory and functional role in the IEA, particularly during real emergencies. A number of U.S. and foreign oil companies have agreed to serve as IEA "Reporting Companies." When there appears to be a serious possibility that an oil supply shortfall will develop, the IEA may request activation of its emergency data system, which calls for the Reporting Companies to submit directly to the IEA comprehensive data on their oil imports and exports, their indigenous production and their inventories. If this shortfall in fact should develop and the IEA's Emergency Sharing System were activated during an oil supply crisis, international oil allocation is expected to be accomplished in large measure through the voluntary supply measures of the Reporting Companies, coordinated by the companies' technical experts serving on the Industry Supply Advisory Group (ISAG) in Paris.

Antitrust Approval for U.S. Industry Participation in the IEA's Fifth Allocation System Test

In order for U.S. Reporting Companies and their employees to participate in IEP activities, section 252 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6272, makes available to U.S. oil companies a limited antitrust defense and a breach of contract defense for actions taken to carry out a voluntary agreement or plan of action to implement the allocation and information provisions of IEP. A Voluntary Agreement and Plan of Action to Implement the IEP (Voluntary Agreement) was approved by the U.S. Government in 1976. 2 CCH Federal Energy Guidelines, paragraph 15,845. Eighteen U.S. oil companies which are Reporting Companies currently participate in the Voluntary Agreement. Pursuant to section 252 of the EPCA, the Secretary of Energy monitors the carrying out of the Voluntary Agreement and is responsible for issuing antitrust approvals with respect thereto.

U.S. Voluntary Agreement participants have been requested to assist the IEA in conducting the IEA's Fifth Emergency Oil Allocation Systems Test (AST–5), which will begin with the transmission of a telex by the IEA Secretariat on September 20, 1985, announcing the hypothetical oil supply disruption. AST–5 is primarily a training exercise, involving aspects of the IEA Emergency Sharing System which were tested in prior allocation systems tests. AST–5 also will test certain aspects of the IEA's Emergency Oil Sharing System that have not been tested previously: (1) It will consider the ability of the IEA Emergency Management Organization to readjust voluntary supply arrangements late in a monthly allocation cycle if, for any reason, some portion of the supply reallocation plans made earlier in that allocation cycle should fail to be implemented by the oil companies; and (2) a recent modification to the IEA's established procedures for resolving trade data discrepancies which, from the available data, may appear to exist among IEA countries, or among oil companies in IEA countries, also will be reviewed.

As in previous IEA allocation systems tests, Reporting Companies will participate in AST–5 in several ways. First, Reporting Company employees will staff the ISAG in Paris. Second, Reporting Companies will provide the IEA and the ISAG with historical data on their imports, exports, indigenous production, and inventories for the period covered by the test. Finally, Reporting Companies will simulate the carrying out of certain hypothetical supply reallocation measures; in this connection, Reporting Companies may discuss with the IEA, the ISAG and other Reporting Companies, information or data which involves or may involve confidential or proprietary information or data, for the purpose of developing and implementing suitable hypothetical reallocation measures.

Section 5(b)(1) of the Voluntary Agreement conveys antitrust protection to the participating oil companies when, prior to an actual emergency, they take part in IEA allocation systems tests; this allows them to simulate in a systems test all of the kinds of supply activities which would take place in a real emergency. The need for an antitrust approval letter in connection with such a test arises because of the possibility that company confidential or proprietary information or data may be disclosed in the course of the test. On this subject, section 5(b) (2) of the Voluntary Agreement provides that disagregated, confidential or proprietary information or data may be disclosed by the companies in a test only to the extent approved by the Secretary of Energy, after consultation with the Secretary of State, with the concurrence of the Attorney General after he has consulted with the Federal Trade Commission. The purpose of a test approval letter is to set out the scope of the permission granted for the disclosure of confidential or propietary information or data, establish recordkeeping and reporting requirements, and describe how the U.S. Government will monitor the test.

The Department of Energy, in cooperation with the staffs of the Department of Justice, the Department of State and the Federal Trade Commission, has developed the drafts of the AST–5 approval documents which follow below and which are published today for comment. The first document published herein is a draft letter of approval for U.S. oil companies which are signatories to the Voluntary Agreement to participate in AST–5. This letter sets out the scope of permission granted in AST–5 to participating U.S. oil companies and personnel of these U.S. oil companies for the disclosure of confidential or proprietary information or data in connection with AST–5. The second document published herein, an attachment to the approval letter, is the "operating Procedures and Requirements for Recordkeeping by U.S. Companies in the Fifth Allocation Systems Test (AST–5)," which the U.S. participants will be required to observe in AST–5. DOE's regulations at 10, CFR Part 209, and the regulations of the Department of Justice at 28 CFR Part 56, are applied to AST–5 through these operating procedures and recordkeeping requirements.

The proposed approval letter is similar to that which was issued for the previous allocation systems test held in 1983. *See* 48 FR 20268 (May 5, 1983). However, the operating procedures and recordkeeping requirements used in the last test have been modified to incorporate improvements that have been made in analogous provisions of the most recent draft of a new "plan of action" to implement the IEP during an actual emergency, which provisions

themselves earlier were improved based on experience gained in the previous IEA systems test. Thus, based on the most recent draft plan of action considered by the U.S. oil companies and the appropriate Government agencies, the proposed operating procedures and recordkeeping requirements for AST–5 include definitions of "U.S. Voluntary Agreement participant" and "Covered Foreign Affiliate," and establish recordkeeping requirements and U.S. Government monitoring practices for covered foreign affiliates of U.S. companies, that are different from the requirements and practices applicable to their U.S. parent companies.

DOE has determined that utilization of a verbatim transcript for portions of the test is practicable. Accordingly, as provided in section 252(c)(3) of EPCA, it is contemplated that a transcript will be taken of many of the group sessions during AST–5. In addition, U.S. Government observers will maintain a full and complete record of AST–5 in the form of memoranda, documents and communications logs of U.S. oil company personnel involved in the test.

Comment Procedure

Written comments regarding the proposed approval letter and recordkeeping guidelines will be accepted and considered if received by 4:30 p.m., September 6, 1985. Any person submitting written comments with respect to the letter and recordkeeping requirements should submit ten (10) copies to Samuel M. Bradley, Deputy Assistant General Counsel for International Trade and Emergency Preparedness, Department of Energy, Mail Stop, 6E–079, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Comments should be identified on the outside of the envelope and on documents submitted with the designation "Proposed Approval Letter and Operating Procedures/Recordkeeping Requirements for AST–5".

Any information or data considered by the person furnishing it to be confidential or proprietary must be so identified and submitted in writing, in one copy only, in accordance with procedures set forth in 10 CFR 205.9(f). Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. The Department of Energy reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Issued in Washington, D.C., August 14, 1985.

J. Michael Farrell,
General Counsel.

Appendix

Proposed letter from the Secretary, United States Department of Energy, to United States Reporting Companies.

1. The International Energy Agency (IEA) will conduct in the near future its Fifth Allocation Systems Test (AST–5), the fifth test of the IEA Emergency Oil Sharing System. The Department of Energy (DOE) considers AST–5 an important part of our preparedness efforts. We hope your company will participate and provide full cooperation to the IEA in this undertaking.

2. This letter sets out guidelines for participation in AST–5 by U.S. oil companies and personnel of U.S. oil companies and provides required approvals for the disclosure or exchange of confidential or proprietary information or data in connection with AST–5, as required by the Voluntary Agreement and Plan of Action to Implement the International Energy Program ("Voluntary Agreement"), 2 CCH Federal Energy Guidelines, Paragraph 15,845. Participation by U.S. companies is governed by section 252 of the Energy Policy and Conservation Act (EPCA), DOE regulations at 10 CFR Part 209, Department of Justice regulations at 28 CFR Part 56, and the Voluntary Agreement.

3. The primary objective of AST–5 is to continue the program of periodic training of personnel of participating IEA governments, oil companies and the IEA Secretariat in the data systems and emergency oil allocation procedures developed to implement the provisions of the Agreement on an International Energy Program (IEP) (TIAS 8278, November 18, 1974), which are delineated in the Emergency Management Manual (EMM) and the Industry Supply Advisory Group/ Secretariat Operations Manual (ISOM). AST–5 also will include certain aspects of the Emergency Oil Sharing System that have not been tested previously: it will consider the ability of the sharing system to deal with the additional burden of matching voluntary offers of oil that, for unspecified reasons, have not been implemented subsequent to the initial matching process; and a recent modification to the procedure for resolving trade data discrepancies among countries and companies will be reviewed.

4. AST–5 will begin with the sending of a disruption telex on Friday, September 20, 1985, and will continue for approximately eight weeks. It will consist of one full and one curtailed allocation cycle. Prior to the completion of the full regular cycle commencing October 1, 1985, a second disruption telex will be released by the IEA Secretariat. Questionnaire A (QA) and Questionnaire B (QB) data will be submitted and allocation rights and allocation obligations will be calculated by the Secretariat and relayed to countries and companies for each cycle. Following communication of allocation rights and allocation obligations for the second cycle, the test will cease as far as IEA-directed activity is concerned. Thus the large majority of ISAG representatives will be involved for less than four weeks, although a few ISAG representatives may remain until the completion of the test.

5. Industry will participate in several ways. First, industry representatives will staff the ISAG; the ISAG, with the IEA's Allocation Coordinator, Secretariat and a Standing Group on Emergency Questions Emergency Group composed of representatives of IEA member countries, will comprise the IEA Emergency Management Organization at IEA headquarters in Paris, France, which will conduct the test. Second, Reporting Companies will submit QA and other data to the IEA Secretariat and the ISAG, and individually will discuss these data with the IEA Secretariat and with the ISAG to the extent required for the test; their affiliates will make similar data submissions and have similar individual discussions with the NESOs of the participating countries in which they operate. Third, Reporting Companies will propose and simulate the carrying out of certain hypothetical supply reallocation measures called "Type 2" allocation by the IEA; in this connection, Reporting Companies may communicate with other Reporting Companies (a) for the purpose of identifying suitable suppliers or receivers of oil to formulate "closed loop" Type 2 offers, (b) to enable Reporting Companies to work out logistics needed to implement Type 2 offers, or (c) to undertake needed subsequent modification of Type 2 offers which have previously been accepted by the Allocation Coordinator. Finally, it is our understanding that some NESOs may have employees of Reporting or Non-Reporting Companies or their affiliates as members or advisors.

6. In Paris, the test will be conducted, for notice purposes under the Voluntary Agreement, as a single meeting of ISAG carried out in accordance with Section 5 of the Voluntary Agreement. In addition to individual tasks and contacts with the Secretariat by ISAG members, working

sessions will include meetings of all ISAG members and smaller group meetings of several ISAG members, as well as joint working sessions of a few ISAG members assigned to solve particular problems. The ISAG Manager or his designee may meet with members of the AST–5 Control Group, consisting of the Chairman of the Industry Advisory Board, the Chairman of the Standing Group on Emergency Questions and the IEA Executive Director, or with members of the Standing Group on Emergency Questions Emergency Group. A verbatim transcript of certain sessions will be made under the supervision of U.S. Government observers; such transcripts will be available for review by participants in the sessions so transcribed, or their counsel, either during the test or later. For some ISAG sessions, a full and complete record will be prepared by U.S. Government observers who are present. A full and complete record of other communications will be maintained by the U.S. test participants. More detailed recordkeeping requirements, along with operating procedures, are set out in the attachment to this letter. These operating procedures and recordkeeping requirements, which have been prepared in cooperation with the Department of State, the Department of Justice and the Federal Trade Commission, are to be considered an integral part of this letter of approval. (The operating procedures and recordkeeping requirements have been based on recent drafts of a possible new "plan of action" to implement the IEP, which themselves reflect revisions in the procedures and requirements used in AST–4.)

7. In order to carry out the test, it will be necessary for Reporting Companies to provide the IEA Secretariat and the ISAG with certain information or data on IEA questionnaire forms and formats, and to submit voluntary offers to supply or receive reallocated oil, and they may have to engage in other communications with the IEA Secretariat or ISAG to clarify, amplify, correct, or supplement such data submissions and voluntary offers. Further, ISAG members may have to exchange this and other information or data among themselves, with members of the IEA Secretariat, with IEA Reporting Companies, and with NESOs. Access to such information or data and to ISAG discussions and work sessions will be open to official observers from the European Communities and IEA member countries authorized by the IEA to be present at the test. Aside from the IEA questionnaire and format data and information as to voluntary offers, much of the data or information will be available from public sources. Some such information or data, while actually public information, may not be definitely known to be publicly available by those exchanging it or it may be considered confidential by some companies. Some of the data or information needed to be provided or exchanged clearly will be confidential or proprietary.

8. Accordingly, approval under section 5(b) of the Voluntary Agreement is hereby given to Voluntary Agreement participants (including their foreign affiliates which are covered pursuant to Section 9(b)(3) of the Voluntary Agreement) and their employees engaged in AST–5 to submit and exchange the types of information or data listed below which involve or might involve disclosure of confidential or proprietary information or data. However, this approval is granted only to the extent that the submission or exchange of these types of confidential or proprietary information or data is necessary during the first cycle, and until allocation rights and allocation obligations have been determined and communicated by the IEA Secretariat in the second cycle, in order to implement the oil allocation procedures of the IEP as guided by the EMM, the ISOM, and the AST–5 Test Guide, and to meet specific problems as they arise during AST–5. Approval is further limited to information or data covering the historical period October 1984 through January 1985. This letter neither approves nor disapproves the activities of company employees serving on NESOs or any communication between a Voluntary Agreement participant and a NESO. Under these limitations, and those set forth in paragraphs 9, 10, 11, 12 and 13, the following types of information or data which may involve the disclosure of confidential or proprietary information or data may be communicated by or to Voluntary Agreement participants or their employees in carrying out AST–5:

(a) Disaggregated October 1984 through January 1985 Questionnaire A or B data submitted during AST–5 by Reporting Companies or NESOs, *i.e.*, data as required by the Questionnaire A and B reporting instructions in effect for AST–5 as further defined in the AST–5 Test Guide, and ISAG work formats derived from such data, including:

(i) Indigenous production of crude oil, natural gas liquids (NGLs) and feedstock;

(ii) Imports and exports of crude oil, NGLs and feedstock;

(iii) Petroleum product imports and exports (in crude oil equivalents);

(iv) International marine bunkers;

(v) Inventory levels and changes; and

(vi) Stocks at sea.

This data base will be amended by Reporting Companies, coordinating with their affiliates as required, and by NESOs for Non-Reporting Companies operating within their boundaries, based on the Secretariat's disruption telex at the beginning of each cycle, and as elaborated during each cycle by updating telexes from the Secretariat. Reporting Companies may mask data if they so choose in accordance with the procedures established in the AST–5 Test Guide. Reporting Companies will rearrange their international supply plans to reflect the reduced availability of certain types of crude oil as well as certain other restrictions as indicated in the disruption telex and updating telexes and will report the new supply plan on QA submitted to the Secretariat. In addition, each NESO will compile QB from information or data received from Reporting Companies or their affiliates operating within its country and by simulating comparable supply effects for the Non-Reporting Companies operating within its country and will submit QB to the Secretariat. Some of the data submitted by companies will be unaffected by the assumed supply disruption and will therefore be actual data. Such actual data are likely to include the following:

—Inventory level changes in October 1984 and inventories at the end of October 1984 from which inventories as of October 1, 1984, can be derived (see paragraph 9(b) with respect to provision of this data to the ISAG);

—indigenous crude/NGL production through all four months in the data base; and

—international marine bunkers.

(b) Capability of a refinery to process crude oil or specific crude oils, and the capability of a pipeline, dock or terminal or other storage or transit facility to receive, store, or throughput crude oil or specific crude oils or petroleum products or specific petroleum products.

(c) Capability of a port, installation, or waterway to receive or move vessels of various sizes and configurations.

(d) The availability of tankers and barges, including their location, routing, size, specifications and operating characteristics.

(e) Main characteristics of crude grades and product specifications.

(f) Actual and estimated historical production data on crude oils and NGLs for individual countries.

(g) Historical country supply patterns for crude oil, NGLs and petroleum products, *e.g.*, imports by country of origin, exports to country of destination, and inventory profiles.

(h) Specific refinery considerations that prevent acceptance or release of certain crudes, *e.g.*, the inability of a refinery to process specific types of crude oil or to make certain specialty products for which the crude oil is particularly suited; the inability of a type of crude oil to meet certain product specifications; hazards to refinery operations which processing of a particular type of crude oil might cause; or the need for a refinery to operate at a minimum throughput level.

(i) Identification of supply logistics problems relating to certain countries or regions of countries.

(j) Identification, without disclosure of specific costs, prices or financial information, or other underlying facts, of the existence of certain individual company considerations which would preclude or make impracticable a proposed movement of oil, involving:

(i) Commercial policy;

(ii) Supply or transportation factors;

(iii) Affiliate, third-party, concessional or other contractual arrangements; or

(iv) Constraints relating to actions or policies of governments.

(k) Identification of differences between the crude oil and petroleum product supply mix and demand for products in certain countries or regions of countries.

(l) Information or data concerning voluntary offers made by Reporting Companies or Non-Reporting Companies, or the implementation of Type 2 transactions.

(m) Clarification, amplification, correction, explanation or supplementation of the types of information or data specified in subparagraphs (a) through (l), provided that this subparagraph (m) does not supersede any specific prohibition contained in this approval letter.

(n) Such additional types of confidential or proprietary information or data as may be needed in implementing IEA oil allocation as guided by the EMM, the ISOM, and the AST–5 Test Guide, (i) if a communication of such types of information or data is approved in advance by the U.S. Government representatives at the allocation site or (ii) if communication of such types of information or data is needed on a timely basis and receipt of such advance approval is not practicable, provided, in the latter case, that prompt written notice of such communication together with a description of the circumstances necessitating such communication without such advance approval must be given to the representatives of the Secretary of Energy, the Attorney General and the Federal Trade Commission at the allocation site. Approval for the continued communication of such types of information or data can be terminated prospectively by the Department of Energy representative or the Department of Justice representative at the allocation site.

9. In order to carry out the test, these information and data must be provided and exchanged on a disaggregated basis and the finding required by section 5(b)(2) of the Voluntary Agreement in this regard is hereby made, with the following limitations:

(a) During the first test cycle, U.S. ISAG personnel will examine QAs and QBs to detect possible errors. After detecting a possible error, a U.S. ISAG member may discuss such possible error with Secretariat personnel, members of ISAG, the Reporting Company or NESO which transmitted the possibly erroneous QA or QB data and the Reporting Company whose data is included in a QB and which data is thought to be such a possible error. U.S. ISAG personnel may not discuss suspected errors with any other persons. The U.S. Government representatives at the allocation site shall be notified in advance of the time and place of any discussion of suspected errors among ISAG personnel in which U.S. members of ISAG participate. When responding to an inquiry from the ISAG member regarding such errors, a Voluntary Agreement participant may only confirm the accuracy of the reported data, provide corrected data, or discuss with ISAG members whether the reported data accurately reflect the cycle's reallocation and the cycle's disruption scenario. Any further explanation of such errors may only be provided to personnel of the IEA Secretariat.

(b) Company-specific opening inventory data as of October 1, 1984, data showing inventory level changes in October 1984 and the "check total" for October 1984 as reflected in QAs and QBs shall not be made available to ISAG personnel on a routine basis, but only as necessary to solve specific supply problems when they arise. A U.S. Government observer present at the AST–5 test site may give written approval for disclosure of such data, upon receipt and consideration of a written request from the ISAG Manager or his delegate stating that access to such data is necessary.

(c) It is understood that the IEA Secretariat will not permit any disaggregated QA data of a Reporting Company, other than QA data submitted by the Reporting Company in AST–5, to be made available to any other Reporting Company or ISAG representative thereof.

(d) The Department of Energy representative, with the concurrence of the Department of Justice representative, after consultation with the Federal Trade Commission representative at AST–5, may terminate this approval as it applies to the conduct of any supply analysis by U.S. ISAG personnel if such analysis may lead to unwarranted disclosure of competitively sensitive supply or logistical information, or have any other unwarranted anticompetitive effect.

10. This approval does not extend to provision or exchange of:

(a) Confidential or proprietary crude oil or petroleum product prices or related commercial terms;

(b) Company costs or market shares of crude oil or petroleum products (other than those which can be derived from the QA or QB data submitted during AST–5); or

(c) Individual company information regarding overall long-term programs for investment, divestment, refining, operating, transportation or marketing.

11. A Voluntary Agreement participant will be permitted to communicate confidential or proprietary information or data with another Reporting Company only after first cycle allocation rights and allocation obligations have been determined and communicated, and continuing until its second cycle QA has been submitted to the IEA Secretariat, and only to enable it to formulate "closed-loop" voluntary offers, to arrange the logistics needed to implement Type 2 offers, and to modify previously approved voluntary offers if necessary, for the purpose of carrying out first cycle supply reallocation measures. Type 2 transactions are those intended to balance allocation rights and allocation obligations and to alleviate differences between product demand and the available supply mix. These communications will be limited to discussions of the quality and volumes of oil that would be involved in a voluntary offer and the timing or logistics involved in effecting the physical transfer of such oil. No other confidential or proprietary information or data shall be discussed or exchanged. Prices or values of the oil shall not be discussed. Type 1 transactions, which for the most part are transactions made by a company to satisfy its own commercial objections in response to an oil supply emergency situation, will be

assumed to have occurred without communications between a Voluntary Agreement participant and another Reporting Company during AST–5.

12. Participation in AST–5 does not create an obligation on U.S. Voluntary Agreement participants or their employees serving on the ISAG to provide or exchange any information or data which may be confidential or proprietary.

13. In no case shall an employee of a Voluntary Agreement participant supply to his company or to any other person, any confidential or proprietary information or data obtained as a consequence of his membership in the ISAG or participation in any NESO, except such information or data as is necessary to be supplied in the course of carrying out AST–5 or related NESO activities. No Voluntary Agreement participant employee serving on the ISAG may remove any documents related to the test from the IEA premises, except as authorized in writing by a U.S. Government representative attending the test.

14. Each Voluntary Agreement participant shall provide one copy of its QA submitted to the IEA Secretariat in QA format as distinguished from telex form, to:

Ms. Catherine M. Keane, Voluntary Agreement Coordinator, International Affairs, IE–132, Department of Energy, Forrestal Building, Room 7G–076, 1000 Independence Avenue, SW., Washington, D.C. 20585; Telex No. 710–822–0176; TWX No. 710–822–0001

Ms. Melanie Stewart Cutler, Energy Section, Antitrust Division, Department of Justice, Post Office Box 14141, Washington, D.C. 20044; Telex No. 710–822–1907, TWX No. 710–822–1907

15. Any confidential or proprietary information or data exchanged or furnished pursuant to the test to or by a Voluntary Agreement participant or its employee serving on the ISAG shall be supplied by them, upon request, to U.S. Government observers from the Department of Energy, Department of State, Department of Justice or Federal Trade Commission.

16. This approval may be modified or revoked in writing by the Department of Energy representative, with the concurrence of the Department of Justice representative in consultation with the Federal Trade Commission representative, if developments during AST–5 indicate that modification or revocation is warranted. Any modification or revocation shall be in writing and conveyed to all participants in the Voluntary Agreement and the ISAG Manager or his designee. No modification or revocation shall have retroactive effect.

17. This approval of U.S. company participation in the test and of the provision of certain data and information (including the need to provide it in disaggregated form) has been the subject of consultation with the Department of State and has been concurred in by the Department of Justice, after consultation with the Federal Trade Commission, all as required by the Voluntary Agreement. Copies of correspondence reflecting our consultation with the Department of State, and the Department of Justice's concurrence in our approval, after consultation with the Federal Trade Commission, are annexed.

Operating Procedures and Requirements for Recordkeeping by U.S. Companies in the Fifth Allocation Systems Test (AST–5)

1. Introduction

The following operating procedures and requirements for recordkeeping are in further implementation of the existing U.S. recordkeeping requirements in section 252 of EPCA, 10 CFR Part 209, and 28 CFR Part 56, and apply to the Fifth IEA Allocation Systems Test (AST–5). These operating procedures and requirements apply, *inter alia*, to U.S. Voluntary Agreement participants and their employees serving on the ISAG who will be participating in the test at the Test Site. These requirements also apply to Covered Foreign Affiliates to the extent set forth in sections 7, 8 and 9.

If experience indicates the need, the U.S. Government observers at the Test Site will have discretion to allow alternative operating procedures and recordkeeping requirements consistent with section 252 of EPCA and existing regulations thereunder.

2. Definitions

For purposes of these procedures and requirements the following definitions apply:

(a) "Communication" means any written or unwritten disclosure, provision or exchange of information or data relating to the carrying out of AST–5, subject to the limitation contained in (b).

(b) "Communication" and "document" exclude the communication or documentation of administrative, procedural, or ministerial information or data (*e.g.*, scheduling of meetings, personnel assignments, arranging for support services, or messages involving merely routine administration of simulated petroleum sale or exchange transactions), communications or documents which are subject to attorney-client privilege (but see section 8(c)(iv)), and communications with or the documentation of communications with U.S. Government observers at the allocation site (but see section 8(c)(iii)).

(c) "Test site" means that space in IEA headquarters designated by the Allocation Coordinator as the work area in which AST–5 shall be conducted.

(d) "Test meeting" means the following group meetings held at the test site (with or without IEA Secretariat participation):

(i) Meetings of the entire ISAG;

(ii) Meetings of the ISAG's Country Supply, Supply Coordination or Supply Analysis subgroups; and

(iii) Meetings of the ISAG Manager or Deputy Manager and ISAG subgroup heads.

(e) "Test site communication" means and unwritten face-to-face communication occurring on, or telephonic communication received at or sent from, the test site, other than in a test meeting.

(f) "Off-site communication" means any unwritten face-to-face communication which does not occur on, or any telephonic communication which is neither received at nor sent from, the test site.

(g) "U.S. Voluntary Agreement participant" means any oil company whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) of the Voluntary Agreement, and also any affiliate of that oil company, organized under the laws of the United States (or any political subdivision thereof), that is covered pursuant to section 9(b)(3) of the Voluntary Agreement.

(h) "Covered Foreign Affiliate" means any affiliate of a U.S. Voluntary Agreement participant that is organized under the laws of a jurisdiction other than the United States (or any political subdivision thereof) and that is covered pursuant to section 9(b)(3) of the Voluntary Agreement.

3. U.S. Government Monitoring and Recordkeeping at the Test Site

(a) To the extent practicable, test activities of ISAG members shall be conducted at the test site, while a U.S. Government observer is in attendance at the test site. A U.S. Government observer must be present throughout all test meetings in which a Voluntary Agreement participant employee serving on the ISAG participates, and may elect to be present during any other test activities in which a Voluntary

Agreement participant employee member of ISAG participates, including communications (except communications between an individual Voluntary Agreement participant and his legal counsel). It is intended that U.S. Government observers will be in attendance continuously at the test site to monitor test meetings and communications by Voluntary Agreement participant employees serving on the ISAG during such regular hours as ISAG adopts, and at any extraordinary hours if given reasonable notice. Voluntary Agreement participant employees serving on the ISAG shall provide advance notice whenever they anticipate that test meetings or test site communications will occur during extraordinary hours, or that test activities will occur outside of the test site.

(b) A U.S. Government observer shall be responsible for keeping a written record of each test meeting in which a Voluntary Agreement participant employee serving on the ISAG participates, or for ensuring that a verbatim transcript is made. Failure of the U.S. Government to maintain a full and complete written record shall not vitiate the antitrust defense accorded by section 252 of EPCA for a Voluntary Agreement participant or its employees unless such failure is due to the willfull act of the Voluntary Agreement participant's employee serving on the ISAG or of the Voluntary Agreement participant.

(c) Unwritten communications of Voluntary Agreement participant employees serving on the ISAG which relate to test activities may occur outside of the test site only when circumstances make an off-site communication necessary, *i.e.*, when a need for an immediate communication arises unexpectedly or after normal working hours or otherwise makes a return to the test site impracticable or unreasonable, or when time zone differences involved in necessary communications otherwise would require early morning arrival or late night stay at the test site.

4. Unwritten Communications, Outside of Test Meetings, Involving Voluntary Agreement Participant Employees Serving on the ISAG

(a) These recordkeeping requirements for unwritten communications apply to test site communications and off-site communications by or to Voluntary Agreement participant employees serving on the ISAG, including communications with the IAB, but excluding communications with the IEA Secretariat, members of the SEQ-EG, or the U.S. NESO.

(b) Except when a U.S. Government observer is present, a Voluntary Agreement participant employee serving on the ISAG shall make a full and complete record of any test site communication or off-site communication, by means of entering in a standarized log the date, time, identity of the parties (by name and organization) and a description of the substance of the communication (including, *e.g.*, a description of the transaction or information or data discussed, including identification of any problem involved and any conclusions reached or recommendations made). The entry also shall state the special circumstances which necessitated an off-site communication, or a test site communication despite the absence of a U.S. Government observer from the test site, if such absence was known to such employee at the time of such communication.

(c) When a Voluntary Agreement participant employee serving on the ISAG has been assigned to a joint work session to solve a specific identified problem, the overall subject matter of which already is contained in a full and complete record of a test meeting, or the result of which work session will be reported at a meeting where a full and complete record will be maintained then notwithstanding subsection (b), the record of such session to be kept by such employee need only include the date, time and identity of the parties and a brief indication of the substance of the discussion during the work session, with a reference to the test meeting where it was more fully discussed.

(d) when more than one Voluntary Agreement participant employee serving on the ISAG is involved in a communication, the employees may designate who shall make and supply the record. Non-Voluntary Agreement participant employees serving on the ISAG may furnish the required records of communications with Voluntary Agreement participants and with Voluntary Agreement participant employees serving on the ISAG.

5. Disposition of Records by Voluntary Agreement Participant employees Serving on the ISAG.

(a) Each Voluntary Agreement participant employee serving on the ISAG shall provide to the U.S. Government observers at the tests site, within three working days of the first day it covers, a copy of any log kept pursuant to section 4(b), and within one working day of the occurrence, a copy of any other written communication which such employee prepares or receives that relates to test activities.

(b) The requirement imposed by paragraph (a) of this Section may be waived by the U.S. Government observers at the test site, to the extent that the IEA Secretariat will provide copies of such communications to the U.S. Government observers.

6. U.S. Government Monitoring at Voluntary Agreement Participant Offices

(a)(i) U.S. Government observers shall be permitted to interview all U.S. Voluntary Agreement participant employees engaged in carrying out the test, by telephone, and at the offices of, and upon reasonable advance notice to, the U.S. Voluntary Agreement participant involved. Any interviewed employee may have counsel present.

(ii) U.S. Government observers shall be permitted to interview all Covered Foreign Affiliate employees engaged in carrying out the test, by telephone, and at the offices of the parent company U.S. Voluntary Agreement participant of such Covered Foreign Affiliate or, at the election of such Covered Foreign Affiliate and such parent company, at the offices of such Covered Foreign Affiliate, upon reasonable advance notice to such parent company and to such Covered Foreign Affiliate. Any interviewed employee may have counsel present.

(b) U.S. Government observers shall be permitted to examine and copy, at U.S. Voluntary Agreement Participant headquarters during normal business hours and upon reasonable notice to the U.S. Voluntary Agreement Participant Company involved, any communication, document or other information source related to test activities which is not subject to attorney-client privilege, and which is in the possession or custody of such U.S. Voluntary Agreement participant, including any Covered Foreign Affiliate records forwarded to such U.S. Voluntary Agreement participant to section 8(c)(ii).

7. Recordkeeping Requirements for Voluntary Agreement Participants Other Than Employees Serving on the ISAG

(a) Each U.S. Voluntary Agreement participant and each Covered Foreign Affiliate promptly shall make or maintain a full and complete record of all of the following unwritten communications:

(i) Except as provided in section 7(d), communications with individuals serving on the ISAG (including any of its

own employees serving on the ISAG); and

(ii) Communications with another company (not including any affiliate).

(b) Records of such unwritten communications of a U.S. Voluntary Agreement participant should be made by the U.S. Voluntary Agreement participant in the manner described in section 4(b) for Voluntary Agreement participant employees serving on the ISAG.

(c) Records of such unwritten communications of a Covered Foreign Affiliate may be made in the manner described in section 4(b) or, at the election of the Covered Foreign Affiliate, may consist of a bi-weekly summary:

(i) Identifying (A) each individual serving on the ISAG with whom the Covered Foreign Affiliate has had a communication, (B) each nonaffiliated company with whom the Covered Foreign Affiliate has had a communication, and (C) each affiliate with whom the Covered Foreign Affiliate has had a communication;

(ii) Describing with particularity each agreement or other arrangement entered into with any such other company or affiliate, and each transaction simulated to carry out the test, setting forth all significant terms, including volume, crude or product type, origin, destination and time of delivery; and

(iii) Describing in summary terms, for each category of communications listed in subparagraph (i) of this subsection, the substance thereof, to the extent not already disclosed pursuant to subparagraph (ii) of this subsection.

A bi-weekly summary may be made by the Covered Foreign Affiliate or, at the election of the Covered Foreign Affiliate and its parent company U.S. Voluntary Agreement participant, by such parent company on behalf of the Covered Foreign Affiliate.

(d) A Voluntary Agreement participant need not make a record pursuant to this Section of a communication with any individual serving on the ISAG, when such Voluntary Agreement participant has agreed with such individual that the record of the communication will be made by and provided to U.S. Government by such individual in accordance with section 5(a), or provided by the IEA Secretariat in accordance with section 5(b).

(e) To the extent that any information required to be set forth pursuant to section 7(a) can readily be derived from a document deposited pursuant to section 8, a specific cross-reference to such document shall suffice.

8. Disposition of Records by Voluntary Agreement Participants

(a)(i) Each U.S. Voluntary Agreement participant shall deposit with the U.S. Government, in accordance with this Section, a copy of each record required to be made by it under section 7(a) which has not previously been furnished to the U.S. Government, and of:

(A) Each written communication with the ISAG (including any employee of the U.S. Voluntary Agreement participant serving on the ISAG); and

(B) Each written communication with another company (not including any of the U.S. Voluntary Agreement participant's affiliates), and each document relating to the test and setting forth any agreement or arrangement with any other company or with any affiliate, with respect to any Type 2 transaction.

Any portions of such records which are believed not to be subject to public disclosure should be specified.

(ii) Each Covered Foreign Affiliate (or, at the election of the Covered Foreign Affiliate and of its parent company U.S. Voluntary Agreement participant, such parent company) shall deposit with the U.S. Government, in accordance with this Section, a copy of each record required to be made by the Covered Foreign Affiliate under section 7(a) and of each document relating to the test and setting forth any agreement or arrangement between the Covered Foreign Affiliate and another company (including an affiliate) with respect to any Type 2 transaction. Any portions of such records which are believed not to be subject to public disclosure should be specified.

(b) Records of unwritten communications of U.S. Voluntary Agreements participants shall be sent to the U.S. Government within twenty-four hours after the close of the week (ending Saturday) of the occurrence of the communications recorded. In the case of communications of Covered Foreign Affiliates, this period shall be extended to two weeks. If possible, copies of written communications by a U.S. Voluntary Agreement participant shall be sent to the U.S. Government by the U.S. Voluntary Agreement participant simultaneously with and by the same means of transmission used to send the original. Copies of all other written communications or documents shall be sent to the U.S. Government within seven days (or in the case of communications or documents of Covered Foreign Affiliates, fourteen days) after the close of the week (ending Saturday) in which they occur.

(c)(i) Each U.S. Voluntary Agreement participant shall maintain, for a period of five years, a copy of each record required to be deposited pursuant to section 8(a), and of all other documents relating to the carrying out of the test, including all such intracorporate documents. If so requested by the U.S. Government observers in connection with an examination pursuant to section 6(b), such Voluntary Agreement participant, within two weeks of such request, shall forward a copy of each requested record to an appropriate office at company headquarters, where the records shall be maintained separately from other company records until completion of such examination.

(ii) Each Covered Foreign Affiliate shall maintain, for a period of five years, a copy of each record required to be deposited pursuant to section 8(b) and copies of all other documents relating to the carrying out of the test, including all such intracorporate documents. If so requested by the U.S. Government observers in connection with an examination pursuant to section 6(b), such Covered Foreign Affiliate, within four weeks of such request, shall forward a copy of each requested record to an appropriate office at the headquarters of such Covered Foreign Affiliate's parent company U.S. Voluntary Agreement participant, where the records shall be maintained until completion of such examination.

(iii) Notwithstanding section 2(b), each U.S. Voluntary Agreement participant shall maintain for a period of one year, a copy of each document relating to the carrying out of the test which involves administrative, procedural, or ministerial information or data, as described in section 2(b). Such documents shall be maintained separately from the records described in section 8(c)(i) and (ii), and from other company records, and upon request, shall be included among the records forwarded to the appropriate company office pursuant to section 8(c)(i) and (ii). Such documents may be subject to U.S. Government examination during and after the test process, as provided elsewhere in these recordkeeping requirements.

(iv) Notwithstanding section 2(b), copies of all documents relating to the carrying out of the test which are subject to attorney-client privilege shall be included among the records forwarded to the appropriate company office pursuant to section 8(c)(i) and (ii). Upon request, the Voluntary Agreement participant shall identify those records which are subject to attorney-client privilege. Those records which are not

subject to attorney-client privilege may be subject to U.S. Government examination during and after the allocation process, as provided elsewhere in these recordkeeping requirements.

9. Reports of Actions Taken

(a) Each Reporting Company U.S. Voluntary Agreement participant shall report to the Departments of Energy and Justice and the Federal Trade Commission, actions simulated by it and its covered affiliates to carry out Type 2 transactions. Communications with respect to developing or implementing a voluntary offer are to be reported as provided in sections 7 and 8.

(b) A report shall be submitted within seven days (or in the case of actions by Covered Foreign Affiliates, fourteen days) of the end of the week (ending Saturday) in which the action was simulated.

(c) Each Type 2 transaction that is implemented or planned to be implemented shall be described with particularity, including a statement of the volume, crude or product type, country of origin, original destination and recipient, new destination and recipient, time of delivery, and other significant terms involved. To the extent that a record submitted pursuant to Section 8 already discloses such information, a cross-reference to a specific record will suffice. In other respects, the style and content of the report are left to the discretion of the individual Reporting Company. It can be submitted in any fashion that the Reporting Company believes will reflect what it and its covered affiliates have done.

(d) Each Reporting Company is invited (but not required) to comment in such reports on these operating procedures and recordkeeping requirements, with respect to their use in systems tests or in a real emergency.

(e) A Reporting Company Voluntary Agreement participant may submit a similar report to the IEA Secretariat. The Reporting Company simultaneously should send a copy of any such report to the Departments of Energy and Justice and the Federal Trade Commission.

10. Reporting Addresses

Reports and records required hereunder to be sent to U.S. Government agencies should be addressed to:

Ms. Catherine M. Keane, Voluntary Agreement Coordinator, International Affairs, IE–132, Department of Energy, Forrestal Building, Room 7G–076, 1000 Independent Avenue, SW., Washington, D.C. 20585, Telex No. 710–822–0176, TWX No. 710–822–0001

Ms. Melanie Stewart Cutler, Energy Section, Antitrust Division, Department of Justice, Post Office Box 14141, Washington, D.C. 20044, Telex No. 710–822–1907, TWX No. 710–822–1907.

Mr. Harvey Blumenthal, Federal Trade Commission/CS–4, Washington, D.C. 20585

[FR Doc. 85–19783 Filed 8–16–85; 8:45 am]
BILLING CODE 6450–01–M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Tuesday, July 23, 1985 (50 FR 30003).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–2308

Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7313

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., August 14, 1985.

Yvonne M. Bishop

Director, Statistical Standards, Energy Information Administration.

DOE Forms Under Review by OMB

Form Nos. (1)	Collection title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Response description	Estimated number of respondents (7)	Annual respondent burden	Abstract
EIA–800 to 804, 806, 810 to 814; 816 to 818; 820; and 825.	Petroleum Supply Reporting System (PSRS) Package.	Revision	Weekly monthly, annually, triennially.	Mandatory; Voluntary (806 only).	Operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, and tankers and barges.	4,111	63,176	The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude petroleum, petroleum products, and natural gas liquids. These data are published by the EIA.

DOE Forms Under Review by OMB—Continued

Form Nos. (1)	Collection title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Response description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
EIA-846	Manufacturing Energy Consumption Survey (Pilot test).	New	One-time	Mandatory	Manufacturing establishments in SIC-20-39.	100	800	EIA-846 will collect data on the consumption of energy sources and the fuel-switching capability of establishments in the manufacturing sector. This data collection effort constitutes a pilot test of EIA-846 and no data will be published.

[FR Doc. 85-19782 Filed 8-16-85; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-670-000, et al.]

Commonwealth Edison Co., et al.; Electric Rate and Corporate Regulation Filings

August 12, 1985.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER85-670-000]

Take notice that Commonwealth Edison Company on August 2, 1985, tendered for filing proposed changes in its FERC Electric Service Tariff No. 2, an Interconnection Agreement, dated July 20, 1956, between Commonwealth Edison Company and Indiana & Michigan Electric Company.

The proposed change, which the parties have agreed to, provides for a revision in time periods previously agreed upon for the transmission of power through the Indiana & Michigan system as related to the capacity allocations to Commonwealth Edison from the Ludington Pumped Storage Plant.

Copies of the proposed rate schedule changes were served upon the Illinois Commerce Commission, Springfield, Illinois, the Public Service Commission of Indiana, Indianapolis, Indiana and Michigan Public Service Commission, Lansing, Michigan.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Power Company

[Docket No. ER85-675-000]

Take notice that Consumers Power Company ("Consumers") on August 5, 1985, tendered for filing Consumers' Amendment No. 3 to the Agreement For Sale of Portion of Generating Capability of Ludington Pumped Storage Plant with Commonwealth Edison Company (Commonwealth) and Indiana & Michigan Electric Company (Indiana Company) dated as of June 1, 1971.

Amendment No. 3 extends the time period during which Consumers sells its 51% of two units of generating capability of Ludington by one and four-tenths years (from the former termination date of August 7, 1985 to a new termination date of December 31, 1986). The rate charged for this transaction (a function of the annual fixed charge factor and the actual capital costs of the facilities) is not charged by this amendment. However, the revenue to be received by Consumers during the period from August 7, 1985 through December 31, 1986 will be greater because Consumers is selling its 51% share of the capability of two units rather than one.

Consumers requests waiver of the notice requirements to permit an effective date of July 1, 1985.

Consumers states that copies of the filing were served on Commonwealth, The Detroit Edison Company and the Michigan Public Service Commission.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. The Dayton Power and Light Company

[Docket No ER85-673-000]

Take notice that on August 5, 1985, The Dayton Power and Light Company (DP&L) tendered for filing a Notice of Cancellation of its Service Agreement with the Village of New Knoxville executed pursuant to its FERC Electric Tariff Original Volume 1, Pages 11 and 12.

The filing terminates the Service Agreement by which New Knoxville received full requirements for resale.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. The Detroit Edison Company

[Docket No ER85-674-000]

Take notice that The Detroit Edison Company (Detroit Edison) on August 5, 1985, tendered for filing Amendment No. 3 dated July 1, 1985 between Detroit Edison and Commonwealth Edison Company (Commonwealth) and American Electric Power Service Corporation (American Electric Power) which extends for approximately 1.4 years the sale of a portion of the generating capability of Ludington Pumped Storage Plant by Detroit Edison to Commonwealth under the "Agreement For Sale of Portion of Generating Capability of Ludington Pumped Storage Plant by The Detroit Edison Company to Commonwealth Edison Company," dated June 1, 1971 as amended by agreements dated August 15, 1971 and June 1, 1983 (herein after termed "Agreement as amended"). The Agreement as amended has been denoted The Detroit Edison Company Rate Schedule FERC No. 16.

Detroit Edison states that the amendment No. 3 extends the sale of two units of generating capability of Ludington Pumped Storage Plant 1.4 years from the period August 7, 1973–August 7, 1985 to the period August 7, 1973–December 31, 1986.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No ER85-663-000]

Take notice that on August 1, 1985, Florida Power Corporation (Florida Power) tendered for filing Service Schedule F providing for assured capacity and energy interchange service between Florida Power and the Fort Pierce Utilities Authority. Florida Power states that Service Schedule F is submitted for inclusion as a supplement to the existing contract for interchange service between Florida Power and the Fort Pierce Utilities Authority designated as Florida Power's Rate Schedule FERC No. 100.

Florida Power requests that Service Schedule F be permitted to become effective August 1, 1985 and, therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon the Fort Pierce Utilities Authority and the Florida Public Service Commission.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No ER85-676-000]

Take notice that on August 5, 1985, Florida Power Corporation (Florida Power) tendered for filing a contract providing for assured capacity and energy interchange service between Florida Power and Florida Power & Light Company. Florida Power states that the Contract for Assured Capacity and Energy is submitted for filing as a separate contract for interchange service between Florida Power and Florida Power & Light Company. The Contract for Assured Capacity and Energy incorporates by reference the general terms and conditions with respect to interconnected operations which are contained in the Contract for Interchange Service between Florida Power and Florida Power & Light Company.

Florida Power requests that the Contract for Assured Capacity and Energy be permitted to become effective August 5, 1985 and therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon Florida Power & Light Company and the Florida Public Service Commission.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company

[Docket No ER85-667-000]

Take notice that Florida Power & Light Company (FPL) on August 2, 1985, tendered for filing a document entitled "Amendment Number One to Contract for Interchange Service Between Florida Power & Light Company and City of Homestead, Florida".

FPL states that under the Amendment FPL and City of Homestead, Florida (Homestead) utilize the provisions of the existing Contract for Interchange Service between FPL and Homestead, the parties to establish additional service schedules. FPL states that the additional Service Schedule X provides the parties with the necessary vehicle to better maximize the overall economy of power production in the State of Florida.

FPL respectfully requests that the proposed Amendment be made effective no later than 60 days from the date of filing. According to FPL, a copy of this filing was served upon City of Homestead, Florida.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Gulf Power Company

[Docket No. ER85-664-000]

Take notice that Gulf Power Company on August 2, 1985, tendered for filing a rate schedule constituting an interchange contract between Gulf Power Company and Alabama Electric Cooperative, Inc. The service under the rate schedule is scheduled to commence on August 1, 1985. The interchange contract between Gulf Power Company and Alabama Electric Cooperative, Inc. provides for interconnection at two points between the respective electric systems. The interchange contract provides for emergency assistance, short-term power, transmission service and economy interchange transactions. Charges for such service are to be based on formulary rates set forth in the service schedules accompanying the Interconnection Agreement.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER85-668-000]

Take notice that on August 2, 1985, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Seventh Revised Sheet No. 5A, superseding Sixth Revised Sheet No. 5A (Index of Purchasers) of Pacific's FERC Electric Tariff, Original Volume No. 3 (Tariff), an Interconnection Agreement (Agreement) and Service Schedule A (Schedule A) between Pacific and the State of California Department of Water Resources (DWR).

The Agreement provides for interconnection between Pacific and DWR. Schedule A provides for the sale of nonfirm power and energy between Pacific and DWR. Such sales by Pacific to DWR will be in accordance with Service Schedule PP&L-3 under Pacific's Tariff.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER85-665-000]

Take notice that on August 2, 1985, Public Service Company of New Mexico (PNM) tendered for filing a Notice of Cancellation of PNM Rate Schedule PFC No. 23, as supplemented.

PNM requests an effective date of July 1, 1985 and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the United States Department of Energy's Los Alamos Area Manager and upon the New Mexico Public Service Commission.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. South Carolina Electric & Gas Company

[Docket No. ER85-666-000]

Take notice that South Carolina Electric & Gas Company on August 2, 1985, tendered for filing a proposed modification of F.P.C. Schedule No. 33, dated February 14, 1985, agreement between South Carolina Electric & Gas Company and South Carolina Authority.

The modification incoporates the addition of the 230 KV interconnection between South Carolina Electric & Gas Company's Pepperhill Station and South Carolina Public Service Authority's Mateeba Station into the Interchange Agreement dated August 21, 1978.

This modification is proposed to be effective 60 days after filing. South Carolina Electric & Gas Company has sent copies of this filing to South Carolina Public Service Authority.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER85-672-000

Take notice that Wisconsin Public Service Corporation ("the Company") on August 5, 1985, tendered for filing an executed service agreement to transfer, effective November 16, 1985, its all requirements customer, the Village of Stratford, Wisconsin, from all requirements service under a contract (FERC Rate Schedule Number 39, and the currently effective supplements thereto) to the same service under the company's all requirements tariff, Original Volume No. 2. The filing does not affect the rate charged to Stratford nor the revenues paid by the customer to the company. The company makes this change so that service will be under a tariff which is generally applicable to all customers.

Copies of the filing were served upon Stratford and the Public Service Commission of Wisconsin.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19660 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. OF85-615-000, et al.]

Cogenic Energy Systems Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

August 9, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Cogenic Energy Systems Inc.

[Docket No. QF85-615-000]

On July 19, 1985, Cogenic Energy Systems Inc., 307 South Leadbetter Road, Ashland, Virginia 23005, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at the Beachwood Sheraton, 26300 Chagrin Boulevard, Beachwood, Ohio 44122. The facility is a topping cycle cogeneration plan with a power production capacity of 100 kW. It will consist of an internal combustion engine fueled by natural gas with waste heat recovery from both jacket water and hot exhaust gases. The waste heat will be used to heat domestic hot water. Installation is planned to commence July 1, 1985 and completion is scheduled for July 30, 1985.

2. Fritz's Island Sewage Treatment Plant

[Docket No. QF85-636-000]

On August 2, 1985, Fritz's Island Sewage Treatment Plant, c/o Mr. Joseph F. Mitchell, City Engineer, City Hall, 815 Washington Street, Reading, Pennsylvania 19601, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at Fritz's Island Sewage Treatment Plant, Reading, Pennsylvania. The power production capacity of the facility is approximately 200 kW. The facility will consist of an internal combustion engine fueled by digester gas. The heat recovered from the engine will be used to heat the digester.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19690 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-1-000, 001]

Alabama-Tennessee Natural Gas Co.; Revised PGA Rate Adjustment

August 12, 1985.

Take notice that on August 5, 1985, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing Fourth Revised Sheet No. 4 as part of its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet is proposed to become effective August 15, 1985, and Alabama-Tennessee requests that there be granted any necessary waivers of the Commission's Regulations to accomplish this proposed effective date.

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 7, 1985.

Alabama-Tennessee states that the purpose of the revised tariff sheet is to reduce Alabama-Tennessee's rates to reflect a reduction in the rates of its principal supplier, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., filed on July 26, 1985, in Docket No. TA85-3-9-000, to be effective August 15, 1985.

Fourth Revised Sheet No. 4 provides for the following rates:

Rate schedule	Rates after current adjustment
G-1:	
Demand	D, $7.50
	D, 08.26¢
Commodity	[illegible]
Gas	[illegible]
SG-1:	
Commodity	21.41¢
Gas	[illegible]
I-1:	
Commodity	16.71¢
Gas	[illegible]

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19731 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-15-20-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 12, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on August 5, 1985 tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Eighth Revised Sheet No. 201
Substitute Third Revised Sheet No. 241
Substitute Ninth Revised Sheet No. 201

Algonquin Gas states that such revised tariff sheets are being filed to track revised rates filed by its pipeline supplier Texas Eastern Transmission Corporation ("Texas Eastern"), effective August 1, 1985. Such revised rates reflect a decrease resulting from (i) Texas

Eastern's latest exercise of "market-out" provisions in certain of its gas purchase contracts and (ii) the flow-through of cost reductions Texas Eastern has experienced from one of its major pipeline suppliers, Texas Gas Transmission Corporation. The impact of such cost reductions on Algonquin Gas' rates is a reduction of $0.009/MMBtu in the demand component of its rates and a reduction of $.1089/MMBtu in the commodity component.

The proposed effective date of Substitute Eighth Revised Sheet No. 201 and Substitute Third Revised Sheet No. 241 is August 1, 1985. The proposed effective date of Substitute Ninth Revised Sheet No. 201 is September 1, 1985.

Algonquin Gas also tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, the following alternate tariff sheets:

Alternate Substitute Eighth Revised Sheet No. 201
Alternate Substitute Third Revised Sheet No. 241
Alternate Substitute Ninth Revised Sheet No. 201

Algonquin Gas states that such alternate tariff sheets are being filed to reflect the rate increase resulting from Texas Eastern's compliance with the Commission's July 19, 1985 Order, in conjunction with the rate reduction proposed by Texas Eastern.

The proposed effective date of Alternate Substitute Eighth Revised Sheet No. 201 and Alternate Substitute Third Revised Sheet No. 241 is August 1, 1985. The proposed effective date of Alternate Substitute Ninth Revised Sheet No. 201 is September 1, 1985.

Algonquin Gas requests that the Commission accept those tariff sheets filed by Algonquin Gas to be effective August 1, 1985 and September 1, 1985 which synchronizes their rates with the underlying rates of Texas Eastern.

Algonquin Gas further requests that it be allowed to pass the effect of Texas Eastern's compliance filing through its Unrecovered Purchased Gas Cost Account (Account No. 191) for the month of July 1985 rather than revise its rates effective July 1, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filling are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19732 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-44-000]

Armco Inc.; Petition for Adjustment and Interim Relief

August 13, 1985.

On July 19, 1985, Armco Inc. (Armco) filed with the Federal Energy Regulatory Commission a petition for an adjustment pursuant to section 502(C) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3301, et seq.), and Part 385, Subpart K of the Commission's regulations. Armco seeks relief from incremental pricing surcharges under NGPA Title II and Part 282 of the Commission's regulations.

Armco alleges that the imposition of incremental pricing surcharges on its Kansas City facility is resulting in special hardship, inequity, and an unfair distribution of burdens within the meaning of NGPA section 502(c) and that adjustment relief is both necessary and warranted to prevent such results.

Armco states that its steel facility in Kansas City, Missouri, consumes natural gas subject to the incremental pricing program under NGPA Title II. Armco also alleges that the Kansas City facility's total cost of sales and operating expenses, including incremental pricing surcharges, exceed that facility's net sales revenues.

In addition, Armco requests interim relief, pursuant to Section 385.1113 of the Commission's regulations and a waiver of the applicable filing fee, pursuant to 18 CFR 381.106.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must make a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19733 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-668-000]

Cleveland Electric Illuminating Co. et al.; Amendment to Interconnection Agreement

August 12, 1985.

Take notice that on August 2, 1985, the CAPCO Group filed Amendment No. 3, entered into as of the 1st day of July 1984, to the CAPCO Basic Operating Agreement, as amended September 1 1980, which is on file with the Commission and identified by the Rate Schedule numbers shown for each listed company:

	FERC rate schedule No.
The Cleveland Electric Illuminating Company	15
Duquesne Light Company	15
Ohio Edison Company	144
Pennsylvania Power Company	[illegible]
The Toledo Edison Company	[illegible]

Amendment No. 3 amends the CAPCO Basic Operating Agrement:

1. to transfer the employees of the CAPCO Coordinating Office ("Office") from being carried for administrative purposes on the payroll of The Cleveland Electric Illuminating Company ("Illuminating Company") to the payroll of Ohio Edison Company ("Ohio Edison") and to transfer the responsibility for the administration of the Office from The Illuminating Company to Ohio Edison;

2. to amend Article 6 of the Agreement so that CAPCO Unit Back-Up Power shall not be available for a CAPCO Unit when such CAPCO Unit is out of service due to the failure of a party having an ownership interest in such CAPCO Unit to supply in a timely manner its required share of nuclear fuel for such CAPCO Unit, and to amend Section 8.01 and to add "Schedule I—Replacement Power" to provide that Replacement Capacity and Replacement Energy shall be available when such CAPCO Unit is out of service for the reasons set forth in Schedule I;

3. to amend Article 13 of the Agreement to provide a different billing procedure, a revised interest charge on any unpaid amounts, and a different payment schedule for monies due and owning as the result of a nonperty's

system's failure to make payment for transactions under the Agreement; and

4. to amend the compensation sections of Schedules A—CAPCO Back-Up Power, B—Short Term Power, and C—Non-Displacement Power of the Agreement to provide for flexibility in charging for the adders to the out-of-pocket costs associated with such power.

No new facilities will be installed nor will existing facilities be modified in order to provide the service covered by the proposed Amendment. It is requested that Amendment No. 3 become effective July 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–19734 Filed 8–16–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85–3–52–000, 001]

Western Gas Interstate Co.; Proposed PGA Rate Adjustment

August 12, 1985.

Take notice that on August 5, 1985, Western Gas Interstate Company ("Western") submitted for filing Third Revised Sheet No. 10, Third Revised Sheet No. 11, and First Revised Sheet No. 212 to its FERC Gas Tariff, First Revised Volume No. 1. Said tariff sheets are proposed to become effective on August 1, 1985.

Western states that the proposed change in rates reflected on Third Revised Sheet No. 10 is being filed in accordance with its Tariff's PGA clauses which permits the recovery of changes in the cost of gas and of unrecovered purchased gas costs. Western further states that Third Revised Sheet No. 10 provides for: (1) A decrease in Western's total rate per Mcf under its Rate Schedule G-N from $3.4570 to $3.3760; (2) a decrease in Western's total rate under its Rate Schedule G-S from $3.9012 to $3.8431; and (3) no change in Western's total rate under its Rate Schedule G-R. These changes are based on Western's cost of purchased gas for the 12 months ending April 30, 1985. The decreases in the total rates under Western's Rate Schedules G-N and G-S result from a combination of factors including lower gas costs. Western also seeks authority to defer billing the affected customer under Rate Schedule G-R the Account 191 balance of $405,645.59 until abandonment of service is authorized, and to collect the unrecovered balance at that time by means of a lump-sum payment under that rate schedule.

Western also states that First Revised Sheet No. 212 is being filed in order to state specifically that Western's surcharge, as filed for August 1 effectiveness each year, will be the same surcharge that Western put into effect the previous February 1 of each year.

Western states that copies of this filing were served upon Western's transmission system customers and the interested state regulatory commissions. The filing is on file with the Commission and open to public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inpsection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–19735 Filed 8–16–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER–85–658–000]

Wisconsin River Power Co.; Tariff Change

August 12, 1985.

Take notice that Wisconsin River Power Company (the "Company") on July 31, 1985 tendered for filing proposed changes in its FERC Electric Service Tariff.

The proposed changes have a proposed effective date of October 1, 1985; however, if the proposed rate schedule were in effect for the entire calendar year of 1985, the Company's revenues for the 12-month period ending December 31, 1985 nominally would increase by $1,265,846.

The proposed changes to the Company's rate schedule conform the Company's rate design to a conventional structure for electric utilities and provides for a rate of return consistent with levels customarily approved by the Commission. The rate of return provided in the proposed change in rate schedule will be in lieu of the rate of return currently earned by each of the Company's shareholders (all of which are electric utilities) in the form of a return on their investment in the Company pursuant to retail rate proceedings before the Public Service Commission of Wisconsin. All of the electric energy produced by the Company is sold to the Company's three shareholders. The proposed change in rate schedule, therefore, is not expected to impact materially the net cost of electric energy to the Company's customers.

Copies of the filing were served upon the public utility's jurisdictional customers and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.212 and 385.207 of the Commission's regulations. All such petitions or protests should be filed on or before August 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties of the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–19736 Filed 8–16–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3315, et al.]

Diamond Shamrock Exploration Co., and Diamond Shamrock Refining and marketing Co., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

August 13, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 26, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-3315, *et al.* C & D, July 31, 1985.	Diamond Shamrock Exploration Co., and Diamond Shamrock Refining and Marketing Company, P.O. Box 631, Amarillo, Texas 79173.	Northern Natural Gas Company, a division of Inter-North, Inc. and Panhandle Eastern Pipe Line Company, Certain acreage in Hutchinson County, Texas.	(1)	14.73
G-6631-000 and G-16740-000, D, July 11, 1985.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Tennessee Gas Pipeline Company, N. Government Wells Fields, Duval County, Texas.	(2)	
G-11072-002, D, July 15, 1985	do	Panhandle Eastern Pipe Line Company, Hansford (Prairie) Field, Hansford County, Texas.	(3)	
G-13634-002, D, July 15, 1985	do	Northern Natural Gas Company, Hugoton-Anadarko Area, Beaver County, Oklahoma and Ochiltree County, Texas.	(3)	
G-18303-000, D, Aug. 6, 1985	do	El Paso Natural Gas Company, Eumont Field, Lea County, New Mexico.	(4)	
C160-691-000, D, July 12, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Panhandle Eastern Pipe Line Company, Northwest Avard & Various Fields, Alfalfa, Dewey, Major and Woods Counties, Oklahoma.	(5)	
C163-195, D, Aug. 5, 1985	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	El Paso Natural Gas Company, Basin Dakota Field, San Juan County, New Mexico.	(6)	
C165-1369-001, July 15, 1985	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Natural Gas Pipeline Company of America, Santa Fe Field, Brooks County, Texas.	(7)	14.73
C166-816-006 C, July 19, 1985	Phillips Petroleum Company, 336 HS&L Bldg., Bartlesville, Okla. 74004.	Northern Natural Gas Company, Panhandle Area, Gary County, Texas.	(8)	14.73
C166-1152-000, E, July 22, 1985	Amoco Production Company (Succ. in Interest to Texaco Inc.), P.O. Box 50879, New Orleans, La. 70150.	Southern Natural Gas Company, West Delta Block 73 Field, Offshore Louisiana.	(9)	14.73
C173-639-005, July 18, 1985	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Southern Natural Gas Company, South Pass Area Block 61, Offshore Louisiana.	(10)	14.73
C176-586-006, July 18, 1985	do	do	(7)	14.73
C180-365-002, D, July 29, 1985	Conoco Inc.	ANR Pipeline Company, South Marsh Island Blocks 136 and 137, Offshore Louisiana.	(11)	
C182-237-002, D, July 29, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	do	(11)	
C185-219-000 (C177-428) (C177-677) (C176-578) (C176-579), B, July 22, 1985.	Southern Union Exploration Company, 1217 Main Street, Suite 400, Dallas, Texas 75202.	Southern Union Company, El Paso Natural Gas Company and Western Gas Interstate Company, North Vacuum Field, Lea County, New Mexico, WAW Fruitland, San Juan County, New Mexico, Lea and San Juan Counties, New Mexico.	(12)	
C185-585-000, F, July 15, 1985	Kerr-McGee Corporation (Succ. in Interest to Southwestern Oil and Refining Company), P.O. Box 25861, Oklahoma City, Okla. 73125.	Tennessee Gas Pipeline Company, a division of Tenneco, Inc., LaJara Field, Hidalgo County, Texas.	(13)	14.73
C185-586-000, F, July 18, 1985	Southern Union Exploration Company (Partial succ. to Supron Energy Corporation).	El Paso Natural Gas Company, McManus No. 12 Well, San Juan County, New Mexico and San Juan 29-6 Unit No. 106 Well, Rio Arriba County, New Mexico.	(14)	14.73
C185-587-000, A, July 18, 1985	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Southern Natural Gas Company, South Pass Block 67, Offshore Louisiana.	(15)	14.73
C185-588-000, A, July 22, 1985	do	Tennessee Gas Pipeline Company, West Cameron 66 Field, "E" Platform, Offshore Louisiana.	(16)	14.73
C185-589-000, F, July 23, 1985	Samson Resources Company (Succ. in Interest to Leben Oil Corporation), Samson Plaza, Two West Second Street, Tulsa, Okla. 74103.	Arkansas Louisiana Gas Company, Latimer, LeFlore, Pittsburg, and Coal Counties, Oklahoma; Bossier and Claiborne Parish, Louisiana; Sebastian County, Arkansas.	(17)	14.73
C185-590-000 (C169-286), B, July 18, 1985.	Sun Exploration and Production Co., P.O. Box 2880, Dallas Texas 75221-2880.	Natural Gas Pipeline Company of America, Riggs Unit, Well No. 1 So. Taloga Field, Dewey County, Oklahoma.	(18)	
C185-591-000 B, July 18, 1985	Sklar & Phillips Oil Co., P.O. Box 3735, Shreveport, La. 71133-3735.	Transcontinental Gas Pipe Line Corporation, Gueydan field, Vermilion Parish, Louisiana.	(19)	
C185-592-000 B, July 23, 1985	J. Burns Brown Operating Co., P.O. Box 130966, Tyler, Texas 75713..	Northern Natural Gas Company, Lohman, Field, Blaine County, Montana.	(20)	
C185-593-000 (C170-495), B, July 23, 1985.	John H. Hill, 100 Southland Center, Dallas, Texas 75201.	Western Gas Interstate Company, Northwest Six Mile Field, Beaver County, Oklahoma.	(21)	
C185-594-000, A	Southern Union Exploration Company	El Paso Natural Gas Company, Pictured Cliffs (Chaco), San Juan, New Mexico.	(22)	14.73
C185-595-000, A, July 22, 1985	Southern Union Exploration Company, 1217 Main Street, Suite 400, Dallas, Texas 75202.	do	(22)	14.73

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C185-596-000, A, July 26, 1985.....	TXP Operating Company, c/o Transco Exploration Company, P.O. Box 1396, Houston, Texas 77251.	Transcontinental Gas Pipe Line Corporation, Mustang Island Area Block A-111, Offshore Texas.	[19]	14.73
C185-598-000, A, July 29, 1985.....	Conoco Inc., P.O. Box 2197, Houston, Texas 77252...	Longhorn Pipeline Company, South Marsh Island Blocks 136 and 137, Offshore Louisiana.	[24]	14.73
C185-600-000, A, July 31, 1985.....	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Humble Gas Transmission Company, High Island Block 130, Offshore Texas.	[25]	14.73
C185-601-000 (G-3512), B, July 31, 1985.	Phillips Petroleum Company, 336 HS&L Bldg., Bartlesville, Okla. 74004.	Tennessee Gas Pipeline Company, Lizzie Field, Wharton County, Texas.	[26]	.....
C185-602-000, F, Aug. 1, 1985.....	TXO Production Corp. (Partial succ. in interest to Chevron U.S.A. Inc), First City Center, LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Texas Eastern Transmission Corporation, Hico-Knowles, Terryville, North Choudrant, Tremont, and North Carlton Fields, In Lincoln, Quachita, and Union Parishes, Louisiana.	[27]	14.73
C185-603-000 (C175-745), B, Aug. 5, 1985.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	United Gas Pipe Line Company, East Dykesville Fields, Claiborne Parish, Louisiana.	[28]	.....

[1] Applicants jointly request that the Commission partially consolidate several rate schedules to reflect the assignment of a lease by Exploration to W.L. Toney and the purchase of gas from that lease by Refining and Marketing for resale in interstate commerce.
[2] Partial Assignment and Bill of Sale executed on 5-1-85, effective 5-1-85 to Petroleum Equities Corporation.
[3] Partial Assignment and Bill of Sale executed on 5-15-85, effective 5-1-85 to Vernon E. Faulconer.
[4] Partial assignments of properties to Doyle Hartman.
[5] A portion of the acreage subject to R.S. 202 has been assigned.
[6] Surrender of the lease.
[7] Applicant is filing for an additional delivery point.
[8] Applicant is filing under Exchange Agreement dated 6-17-68, amended by amendment dated 6-1-85.
[9] Applicant is filing under Gas Purchase Contract dated 2-23-68, amended by ratified contract by agreement dated 5-31-74, amended by letter agreement dated 8-11-72 and letter agreement dated 8-15-83.
[10] Applicant is filing for the utilization of gas from the South Pass Block 61 Field in either the EOR Project at South Pass Block 61 Field, approved by the Commission 2-20-81, or the EOR Project at Chandleur Sound Block 25 Field, approved by the Commission 12-21-84.
[11] Conoco and ANR have agreed to a partial abandonment for a limited period of time over a (3) year period.
[12] Partial and termination of sales.
[13] Applicant is filing under a 6-14-85 rollover contract.
[14] Effective date of transfer of ownership: 12-31-80. Proposed effective date of assignment: 12-31-80.
[15] Applicant is filing under Gas Purchase Contract dated 4-15-85.
[16] Applicant is filing under Gas Purchase Contract dated 7-16-85.
[17] Effective date of transfer of ownership: 12-31-82. Proposed effective date of assignment: 12-31-82.
[18] Rigg Unit, Well No. 1 ceased producing in February of 1983 and that all leases within the proration unit expired.
[19] Gas production has ceased and no further development is planned. Pipe Line purchaser wishes to remove its facilities previously used to receive gas from the now depleted well.
[20] Well not commercial.
[21] The original purchaser has not taken any gas since 1978. Further, original purchaser does not intend to take any gas from Morrow Formation. In order to do so, the original purchaser would have to install compression equipment which the purchaser has determined is not cost effective.
[22] Applicant is filing under Gas Purchase Agreement dated 4-1-85.
[23] Not used.
[24] Applicant to sell gas to Longhorn under Gas Purchase contract dated 7-15-85 and is requesting a Limited-Term certificate of public convenience and necessity with Pre-Granted abandonment.
[25] Applicant is filing under Contract dated 5-1-85.
[26] The 6-1-74 Gas Purchase Contract expired by its own terms on 1-1-79. The Poole Unit No. 1 located in the A.J. Fry Survey A-434, Wharton County, Texas which was the only well covered under this sale was plugged and abandoned on 12-15-79. The oil and gas lease covering this property was released by Philips on 12-19-79.
[27] By an Assignment effective 10-12-83 Applicant acquired from Chevron U.S.A., Inc. Certain property. Applicant requests that its succession authorization be effective simultaneously with the effective date of the Assignment, 10-12-83.
[28] Last active well under contract was plugged and abandoned on 5-26-83. Sun and purchaser have mutually agreed to terminate contract.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-19737 Filed 8-16-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP85-40-000]

Petition To Reopen and Vacate Final Well Category Determination Anadarko Production Co.

August 13, 1985.

On July 31, 1985, Anadarko Production Company filed with the Federal Energy Regulatory Commission pursuant to section 275.205 of the Commission's Regulations a petition to reopen and vacate final well category determination made as to the Moore "C" No. 1 Well, Interstate Red Cave Field, Morton County, Kansas.

On May 29, 1980, Anadarko filed a well determination application before the Kansas Corporation Commission (Kansas) seeking determination that the well qualified as an NGPA 108 stripper well. The Kansas Corporation Commission determined on August 28, 1980, that the well qualified for stripper well status. The well determination became final forty-five days after the Commission had received notice.

Anadarko states that subsequent to the well category determination it discovered that while the well did not produce natural gas in excess of 60 Mcf per production day based on a 90-day production period, the well determination was in error. Unbeknownst to its administrative personnel, Anadarko's field staff had restricted production from the well and maintained a back pressure of 200-230 p.s.i., in order to inhibit the accumulation of liquids in the wellbore. Had the existence of the production restriction had been known no stripper well determination would have been made.

Anadarko requests that the Commission grant its petition to reopen the well determination proceeding as to the Moore "C" No. 1 Well and vacate the well's designation as a NGPA section 108 stripper well.

Any person desiring to be heard or to make any protest to Anadarko's petition, should file, within 30 days after this notice is published in the **Federal Register**, a motion to intervene or a protest under Rules 214 or 211 of the Commission's Rules of Practice and Procedure. Filings should be made with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C., 20426. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19738 Filed 8-16-85; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2883-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have

been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, 202–382–2740 or FTS 382–2740.

SUPPLEMENTARY INFORMATION:

• Title: TSCA section 8(c) Rule Evaluation Pilot Study (EPA #1269). (This is a one-time request.)

Abstract: This pilot study is designed to test an evaluation plan and industry mail survey methodology design under a previous EPA contract. The evaluation assesses the impact of the TSCA section 8(c) rule on chemical manufacturers/processors, while the pilot study is designed to refine the evaluation data collection instrument and fielding procedures for future use.

Respondents: Two hundred establishments falling under the Standard Industrial Classification (SIC) System.

Agency PRA Clearance Requests Completed by OMB

EPA #0283, Wastewater Permit Quarterly Noncompliance Report, was approved 7/19/85 (OMB #2040–0082; expires 7/31/88).

EPA #1000, Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, was approved 7/30/85 (OMB # 2070–0003; expires 7/31/88).

EPA #1012, Application for PCB Disposal Units, was approved 7/31/85 (OMB # 2070–0011; expires 7/31/88).

EPA #1050, New Source Performance Standards for Storage Vessels for Petroleum Liquids, was approved 7/25/85 (OMB # 2060–0121; expires 7/31/88).

EPA #1052, New Source Performance Standards for Fossil Fuel-Fired Steam Generators, was approved 7/25/85 (OMB # 2060–0028; expires 7/31/88).

EPA #1058, New Source Performance Standards for Municipal Incinerators—Reporting and Recordkeeping Requirements, was approved 7/25/85 (OMB # 2060–0040; expires 7/31/85).

EPA #1061, New Source Performance Standards for Phosphate Fertilizer Plants, was approved 7/25/85 (OMB # 2060–0037; expires 7/31/88).

EPA #1062, New Source Performance Standards for Monitoring for Coal Preparation Plants, was approved 7/25/85 (OMB # 2060–0122; expires 7/31/88).

EPA #1084, New Source Performance Standards for Non-metallic Mineral Processing Plants (SAR No. 1880), was approved 7/30/85 (OMB # 2060–0050; expires 7/31/88).

EPA #1230, Information Requirements for New Source Review and Prevention of Significant Deterioration Permitting Programs, was approved 7/27/85 (OMB # 2060–0003; expires 7/31/88).

EPA #1248, Census of State and Territorial Non-Hazardous Waste Programs, was approved 7/26/85 (OMB # 2050–0052; expires 7/31/86).

Comments on all parts of this notice may be sent to:

Nanette Liepman (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation and Information Management Division, 401 M Street, SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

. Dated: August 13, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85–19709 Filed 8–16–85; 8:45 am]

BILLING CODE 4560-50-M

[OPTS–59199B; FRL–2883–2]

Certain Chemical; Premanufacture Exemption Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME 85–56. The test marketing conditions are described below.

EFFECTIVE DATE: August 7, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611D, 401 M Street, SW., Washington, DC 20460, (202–382–3395).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test market exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–85–56. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. The production volume, use and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–85–56. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T 85–56

Date of Receipt: June 27, 1985.

Notice of Receipt: July 8, 1985 (50 FR 27847)

Applicant: Confidential.

Chemical: (S) Humic acids, chromium (3^+) salts.

Use: (G) Open, nondispersive use.

Production Volume: Confidential.

Number of Customers: One.

Worker Exposure: Confidential.

Toxicity Data: No data on the TME substance submitted.

Test Marketing Period: Six months.
Commencing on: August 7, 1985.
Risk Assessment: EPA identified no significant health or environmental concerns, based on expected poor absorption via all routes, and because the chromium is not expected to be bioavailable in this form. Therefore, the TME substance will not present any unreasonable risk of injury to health or the environment.
Public Comments: None.
The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 7, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-19713 Filed 8-16-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 13, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the extension with revision of the following reports:

1. Report title: Report of Commercial Paper Outstanding Placed by Brokers and Dealers, Report of Commercial Paper Outstanding Placed directly by Issuers, and Daily Report of Offering Rates on Commercial Paper
Agency form number: FR 2957 a, b, and d
OMB docket number: 7100-0002
Frequency: Daily, Weekly, Monthly (3 reports)
Reporters: Securities Brokers and Dealers and Direct Issuers of Commercial Paper
Small businesses are not affected.
General Description of report: This information collection is voluntary [12 U.S.C. § 353 et. seq.] and is given confidential treatment [5 U.S.C. § 552b(4)].
These reports provide information on the amount outstanding and selected offering rates on commercial paper, which is used by the Federal Reserve in monitoring developments in the commercial paper market for supervisory, regulatory, and monetary policy purposes.

Board of Governors of the Federal Reserve System, August 13, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19693 Filed 8-16-85; 8:45 am]

BILLING CODE 6210-01-M

Barclays U.S. Holdings Inc., Barclays PLC, Barclays Bank PLC, Barclays USA Inc. and Barclaysamerican-corporation, et al; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under §§ 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 9, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays U.S. Holding Inc.*, New York, New York; *Barclays PLC* and *Barclays Bank PLC*, both of London, England; *Barclays USA Inc.*, Wilmington, Delaware; and *Barclaysamericancorporation*, Charlotte, North Carolina; to acquire Northwestern Mortgage Corporation, Charlotte, North Carolina and certain construction and development loans from Northwestern Bank, thereby engaging in mortgage banking and the sale of credit life and credit, accident and health insurance, pursuant to section 4(c)(8) of the Act.

2. *Creditanstalt-Bankverein*, Vienna, Austria; to acquire 80 percent of the outstanding capital stock of McKenzie-Walker Investment Management, Inc. Larkspur, California, a registered investment advisor (with an option to purchase the remaining 20 percent), thereby engaging in providing portfolio investment advise.

Board of Governors of the Federal Reserve System, August 13, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19691 Filed 8-16-85; 8:45 am]

BILLING CODE 6210-01-M

City Holding Co., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 9, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *City Holding Company*, Charleston, West Virginia; to acquire 100 percent of the voting shares of The Bank of Cross Lanes, Cross Lanes, West Virginia.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Brownsville Bancshares Corporation*, Brownsville, Tennessee; to merge with Farmers Union Bancshares Inc., Ripley, Tennessee, thereby indirectly acquiring Farmers Union Bank, Ripley, Tennessee.

Applicant has also applied to acquire at least 80 percent of the voting shares of Union Savings Bank, Covington, Tennessee.

2. *Citizens Fidelity Corporation*, Louisville, Kentucky; to acquire 100 percent of the voting shares of The Winchester Bank, Winchester, Kentucky.

3. *Commerceamerica Corp.*, Jeffersonville, Indiana; to acquire 100 percent of the voting shares of Old Capital Financial Corporation, Corydon, Indiana, thereby indirectly acquiring Old Capital Bank & Trust Company, Corydon, Indiana.

4. *Junction City Holding Company*, Junction City, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Junction City Bancshares, Inc., Junction City, Arkansas, thereby indirectly acquiring Union State Bank, Junction City, Arkansas.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Wheatland Bankshares, Inc.*, Wheatland, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of American Bank of Wheatland, Wheatland, Wyoming.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Stockmen's Bancorp*, Kingman, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of The Stockmen's Bank, Kingman, Arizona.

Board of Governors of the Federal Reserve System, August 13, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19692 Filed 8-16-85; 8:45 am]

BILLING CODE 6210-01-M

Community Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 12, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Community Holding Company*, Inez, Kentucky; to acquire 54.298 percent of the voting shares of The First National Bank of Louisa, Louisa, Kentucky.

2. *Society Corporation*, Cleveland, Ohio; to acquire 100 percent of the voting shares of Society Bank of Northwest Ohio, Port Clinton, Ohio.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to merge with Farmers National Corporation, Shelbyville, Indiana, thereby indirectly acquiring The Farmers National Bank of Shelbyville, Shelbyville, Indiana.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Nicholas, Inc.*, Dillion, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank and Trust Company, Dillon, Montana.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ottawa Bancshares, Inc.*, Ottawa, Kansas; to acquire 84.7 percent of the voting shares of First State Bank, Hoisington, Kansas.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texstar Financial Corporation, Inc.*, Azle, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Azle, Azle, Texas.

Board of Governors of the Federal Reserve System, August 14, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19780 Filed 8-16-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85N-0131]

Globe Blood Plasma Center, Inc.; Opportunity for Hearing on Denial of Licensure

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is giving notice of an opportunity for a hearing on its denial of the issuance of an establishment license and product license to Globe Blood Plasma Center, Inc., for the manufacturer of Source Plasma. The denial of licensure was based on significant noncompliance with certain provisions of the biologics regulations specified in this document.

DATES: The firm may submit a written request for a hearing by September 18, 1985, and any data justifying a hearing must be submitted by October 19, 1985. Other interested persons may submit comments on the denial of licensure by October 18, 1985.

ADDRESS: Written requests for hearing, data, and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael L. Hooton,, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-443-3460.

SUPPLEMENTARY INFORMATION: FDA has denied issuance of an establishment license and product license to Globe Blood Plalsma Center, Inc., 2239 West Fond du Lac Ave., Milwaukee, WI 53206, for the manfacutre of Source Plasma. FDA based its denial of licenses on (1) FDA insepction of the firm that revealed significant deviations from the applicable biologics regulations (21 CFR Parts 600 through 640), (2) failure of the firm to adequately respond to questions relating to the license applications and to correct deficiencies, as the firm had committed itself to do, and (3) failure of the responsible head (§ 606.20) ot exercise control of the establishment in all matters relating to compliance with the provisions of the establishment and product license applications, the standard operating procedures manual, and the applicable regulations.

Licensing History

In 1983, Globe Blood Plasma Center, Inc., submitted to FDA under section 351 of the Public Health Service Act applications requesting licensure to produce source plasma. FDA refused to issue the licenses because of serious deficiencies in the applications and subsequent correspondence. In applications of May 22, 1984, the firm again requested licensure.

The applications were not acceptable to FDA; however, on August 9 and 24, 1984, the agency performed a limited prelicensure inspection of the establishment. Following further correspondence with the firm (FDA's letter of September 27, 1984), FDA permitted the establishment to begin limited prelicensure operations. On October 30 and 31, and November 1, 1984, FDA performed another limited prelicensure inspection that revealed significant deviations from the biologics regulations concerning labeling, quality control procedures, and improper temperatures in product storage freezers. After reviewing the firm's written response to the deviations found during that inspection, on December 17, 18, and 19, 1984, FDA performed an in-depth prelicensure inspection.

Findings of the Prelicensure Inspection of December 1984

The inspection revealed numerous deviations from the regulations regarding recordkeeping and standard operating procedures. Many of these deviations were the same as the deviations which FDA had noted in written correspondence with the firm and during the previous limited inspections above. FDA believes that these deviations demonstrate that Globe Blood Plasma Center, Inc., has failed to provide assurance that the health and safety of donors will be protected. The correspondence and inspections reveal that managerial personnel have not demonstrated a level of education and training that is necessary to safely operate a plasmapheresis center. The deviations found during the December 1984 prelicensure inspection included, but were not limited to, the following:

1. No serum protein electrophoresis (SPE) tests were performed on new donors' blood samples prior to December 14, 1984. Some donors had donated as often as five times prior to collection of a sample for SPE testing (21 CFR 640.65(b)(1) and 640.72(a)(2)).

2. Deviations related to hepatitis B surface antigen testing included:

(a) The date of collection of the plasma noted on the records for the test for hepatitis B surface antigen did not always match with the actual date of donation (21 CFR 600.12(a) and 606.160 (a) and (b)); and

(b) The firm's responsible personnel were unable to show that the test for the presence of hepatitis B surface antigen used by the testing laboratory was an FDA approved test (21 CFR 600.10 (a) and (b), 610.40, 610.41, and 640.67).

3. Inadequate or unsatisfactory facilities, misidentified reagents, and faulty equipment were demonstrated by the following:

(a) There was insufficient light to obtain a clear and accurate reading with the refractometer to assure that only those donors having an acceptable blood protein value were accepted for plasmapheresis (21 CFR 606.40(b) and 606.60(a));

(b) The lot of sodium chloride being used for laboratory testing during December 17 through 19, 1984, was incorrectly identified in the firm's supply records (21 CFR 606.160(a)(2) and (b)(7)(v)); and

(c) The refrigerators being used to store reagents contained an obviously faulty thermometer and temperatures were being recorded that were outside of the acceptable temperature storage range for the reagents with no indication that the discrepancy was recognized by management or that appropriate followup action was initiated (21 CFR 606.60(a), 606.65, and 606.160(b)(3)(iii)).

4. The calculation used to determine the final volume of plasma collected

was incorrect. During the calculation the weight of the plasma container was not subtracted. Accurate weight of the plasma collected is essential for an accurate plasma volume determination (21 CFR 606.100(b)(5) and 606.160(a)(1)).

5. Important changes in manufacturing methods, including a change in the testing laboratory responsible for performing the serum protein electrophoresis test and the test for the presence of hepatitis B surface antigen, were made without reporting the changes to FDA's Office of Biologics Research and Review (21 CFR 601.12).

6. No procedure was available to determine the maximum allowable weight of blood that may be collected at one time from light donors (weighing less than 175 pounds) and heavy donors (weighing 175 pounds or greater) to assure that no more than 500 milliliters of whole blood was collected from light donors and no more than 600 milliliters of whole blood was collected from heavy donors (21 CFR 640.65(b)(6)).

7. The written standard operating procedures (SOP) of the firm are inconsistent with actual practice or inadequate in certain manufacturing area because:

(a) The plasmapheresis apparatus described in the SOP is not the same as the equipment being used;

(b) No cardiopulmonary resuscitation (CPR) team is available, as specified in the SOP; and

(c) The SOP contains no screening procedure for personnel to review donor record files at appropriate time intervals, which would result in the failure of the personnel to appropriately collect serum samples for the required serum protein electrophoresis test (21 CFR 606.100).

8. In addition, the donor records of the firm were not adequate because:

(a) The records do not always identify the reason why donors were rejected (21 CFR 606.160(b)(1)(ii)); and

(b) The records do not always demonstrate that corrective actions were taken following an overbleed that would identify its cause and preclude a re-occurrence (21 CFR 606.160(b)(1)(vi)).

The deviations listed above are representative, but are by no means all inclusive, of the information reviewed and evaluated by FDA in formulating its decision to deny licensure to Globe Blood Plasma Center, Inc. Any information available to FDA regarding the firm may be applicable to any hearing that may result from publication of this notice of opportunity for hearing.

FDA's letter of January 28, 1985, issued under § 601.4(b) informed Globe Blood Plasma Center, Inc., that the firm does not meet the standards for licensure established by the regulations and that FDA was, therefore, denying the firm's applications. The letter detailed the grounds for the denial and instructed the establishment, among other things, to cease collection of Source Plasma related to its previously submitted license application. The letter also offered the firm the opportunity to request an opportunity for hearing on this matter. The firm, in a letter of January 30, 1985, to FDA, requested the opportunity for a hearing. Under 21 CFR 12.21(b) and 601.4(b), FDA issuing a notice of opportunity for hearing on the matter.

Copies of the List of Observations (Form 483) issued during the inspection of December 17, 18, and 19, 1984, FDA's letter of January 28, 1985, offering the firm the opportunity to request a hearing on the matter, and the firm's letter of January 30, 1985, requesting the opportunity for hearing are on file at the Dockets Management Branch (address above).

The Commissioner of Food and Drugs is offering an opportunity for a hearing under §§ 12.21 (a) and (b) and 601.4(b) on the denial of an establishment license and product license to Globe Blood Plasma Center, Inc., for the manufacture of Source Plasma. The establishment may submit a written request for a hearing to the Dockets Management Branch by September 18, 1985, and any data justifying a hearing must be submitted by October 18, 1985.

Other interested persons may submit comments on the denial of licensure to the Dockets Management Branch by October 18, 1985. The failure of a pending licensee to file a timely written request for a hearing constitutes an election of the pending licensee not to avial itself of the opportunity of a hearing concerning the denial of the license submission (21 CFR 12.21(b)).

FDA procedures and requirements governing a notice of opportunity for hearing, notice of appearance and request for hearing, grant or denial of hearing, and submission of data and information to justify a hearing are contained in 21 CFR Parts 12 and 601 and 21 CFR 314.200. A request for a hearing may not rest upon mere allegations or denials, but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the denial of the license, or when a request for hearing is not made in the required format, or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the applicant requesting the hearing, making findings and conclusions that justify denying a hearing.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1058 as amended (21 CFR 321, 351, 352, and 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and the redelegation at 21 CFR 5.67 (see the Federal Register of July 29, 1985; 50 FR 30696).

Dated: August 9, 1985.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 85–19674 Filed 8–16–85; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Alcohol, Drug Abuse, and Mental Health Administration

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 36163–7, August 19, 1975, as amended by 48 FR 5599, February 7, 1983) is amended to reflect the reorganization of the offices and divisions of the National Institute of Mental Health, ADAMHA, with the exception of the Division of Intramural Research Programs and Saint Elizabeths Hospital. This reorganization was effected to align the structure of the Institute to emphasize the Institute's mission of research, dissemination of research findings, and technical assistance in the promotion and the improvement of mental health services. The reorganization accomplishes the following: (1) Abolishes the Division of Extramural Research Programs, the Division of Human Resources, the

Division of Prevention and Special Mental Health Programs, the Office of Extramural Project Review, and the Office of State and Community Liaison; (2) retitles the Division of Biometry and Epidemiology to be the Division of Biometry and Applied Sciences; the Division of Communications and Education to be the Office of Scientific Information; the Office of Policy Development, Planning, and Evaluation to be the Office of Policy Analysis and Coordination; and the Office of Program Support to the Office of Resource Management; (3) establishes the Division of Basic Sciences, the Division of Education and Service Systems Liaison, the Division of Clinical Research, and the Division of Extramural Activities; and (4) modifies all functional statements for the above mentioned offices and divisions.

Section HM–B, Organization and Functions, is amended as follows:

Under *ADAMHA (HM),* delete all functional statements under the title of the *National Institute of Mental Health (HMM),* with the exception of the *Office of the Director (HMM1), Saint Elizabeths Hospital—Division of Clinical and Community Services (HMM8),* and the *Division of Intramural Research Programs (HMMB),* and substitute the following:

Office of Policy Analysis and Coordination (HMM13). (1) Directs, conducts, and supports long-range planning and policy development for Institute programs and activities and for other issues of national importance in the field of mental health; (2) recommends principles to be considered in formulation of operational planning, budget development and execution, and resource allocation; (3) coordinates and serves as policy liaison for the Institute within the Department, with the legislative and executive branches, and with special interest groups; (4) serves as focal point for legislative and regulatory matters; (5) conducts program analysis and evaluation activities; and (6) oversees an executive secretariat charged with operating a system to manage and assure quality of Institute and higher level correspondence.

Office of Resource Managment (HMM15). (1) Provides and coordinates a management strategy for the Institute; (2) advises the Director, NIMH, on managment policy and procedure interpretation and implementation; (3) oversees the development of Institute budget proposals and controls and monitors funds, facilities, and staff allocations; (4) coordinates grants and acquisition activities; (5) oversees and coordinates the provision of general administrative services throughout the Institute; (6) oversees the integration of management information systems and data bases; (7) develops short-range operational plans and monitors implementation of program activities for conformance to Instititute goals; and (8) manages personnel and program resources to ensure maximum performance.

Office of Scientific Information (HMM17). (1) Administers the Institute's public communication, scientific information dissemination, and media relations activities for both professionals and the public; and (2) provides for technical information services.

Division of Basic Sciences (HMM2). (1) Directs, plans' and supports programs of research research, training, and resource development in the neurosciences and the behavioral and psychobiological sciences; (2) reviews and assesses the performance of such programs; and (3) collaborates with other Federal agencies and with outside organizations.

Division of Clinical Research (HMM6). (1) Directs, plans, conducts, and supports programs of research, research training, and resource development in epidemiology, psychopathology, classification, assessment, etiology, genetics, clinical course, outcome, treatment, and prevention of mental disorders with special emphasis on schizophrenic disorders, affective and anxiety disorders, and mental disorders of children and adolescents and of the elderly; (2) reviews and assesses the performance of such programs; and (3) collaborates with other Federal agencies and with outside organizations.

Division of Biometry and Applied Sciences (HMM9). (1) Directs, plans, supports, and conducts programs of research, research training, and resource development on (a) service delivery and health economics at the clinical, institutional, and systems levels; (b) the understanding, treatment, and prevention of antisocial and violent behavior and the effects thereof, including law and mental health interaction; (c) the prevention, control and treatment of rape, other sexual assault, and the effects thereof; (2) directs, plans, supports, and conducts programs of minority research training and research resource development; (3) oversees a national reporting program to obtain, analyze, and disseminate statistics on the major characteristics of the Nation' mental health service systems; (4) oversees methodology development for research and data collection in biometry, services research, health economics, and demography; (5) provides statistical and mathematical consultative services to the Institute; (6) provides consultation to State and local mental health agencies on statistical methodology, mental health information systems, and the use of statistical and demographic data; (7) reviews and assesses the performance of the Division's programs; and (8) collaborates with other Federal agencies and with outside organizations.

Division of Education and Service Systems Liaison (HMMC). (1) Directs, plans, and supports programs to improve the quality of mental health treatment, rehabilitation, and prevention; (2) coordinates technical assistance and consultation to national organizations, State and local governments, service agencies, family and consumer groups, and educational institutions; (3) supports service system and human resource demonstration projects, State planning and human resource development projects, and training in the mental health disciplines and related fields; (4) coordinates disaster assistance and other mental health emergency services; and (5) reviews and assesses the performance of Division programs.

Division of Extramural Activities (HMMD). (1) Provides leadership and advice in developing, implementing, and coordinating extramural programs and policies; (2) represents the Institute on extramural programs and policy issuess within the Department and with outside organizations; (3) provides scientific and technical peer and objective review of applications for grants, cooperative agreements, and contracts; (4) provides information and guidelines for grant applications; and (5) oversees National Advisory Mental Health Council activities and provides committee management services.

Section HM. Delegations of Authority. All delegations and redelegations of authority made to ADAMHA officials, which were in effect immediately prior to this reorganization, shall continue in effect in them or their successors pending further redelegations.

Dated: August 12, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85–19716 Filed 8–16–85; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6661-C]

Alaska Native Claims Selection; Eklutna, Inc.

On July 8, 1985, Decision to Issue Conveyance (DIC) was issued to Eklutna, Inc., for the surface estate of certain lands within the Lake George Recreation Area, notice of which was published in the **Federal Register** (40 FR 27363–27364) on July 2, 1985.

The purpose of the decision is to vacate in its entirety the DIC of July 8, 1988, to allow for additional easement review and identification. A new decision will be issued at a later date.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–19729 Filed 8–16–85; 8:45 am]

BILLING CODE 4310-JA-M

[Alaska AA–48188–B]

Alaska; Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48188–B has been received covering the following units:

Copper River Meridian, Alaska

T. 11 N., R. 3 W.,
Sec. 15, E½SW¼.

(80 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accuring from November 1, 1984, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48188–B as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Mangement is proposing to reinstate the lease effective November 1, 1984, subject to the terms and conditions cited above.

Dated: August 8, 1985.

Robert E. Sorensen,

Chief, Branch of Mineral Adjudication.

[FR Doc. 85–19561 Filed 8–16–85; 8:45 am]

BILLING CODE 4310-JA-M

Casper District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Casper District Advisory Council Meeting.

SUMMARY: The Casper District Advisory Council will meet on September 11, 1985, in the conference room of the Bureau of Land Management's Casper District Office in Casper, Wyoming. The meeting will begin at 10:00 a.m. MDT.

The meeting agenda will include an update on cadastral survey activities in the Casper District; a report on wild horse management; potential conflicts of development activities with threatened or endangered species: a briefing on procedural steps to permit new oil and gas wells; and, comments from the public. Other topics may be considered as suggested by council members or the public.

Meetings are open to public participation. Persons who desire to address the council are asked to contact Runore Wycoff at 307/261–5101 in advance of the meeting.

DATE: September 11, 1985 at 10:00 a.m. MDT.

ADDRESS: Bureau of Land Management, 951 N. Poplar Street, Casper WY, 82601.

FOR FURTHER INFORMATION CONTACT: Runore Wycoff, Casper District Office, Bureau of Land Management, 951 N. Poplar Street, Casper, WY 82601.

Dated: August 8, 1985.

Whitney A. Bradley,

Acting District Manager.

[FR Doc. 85–19563 Filed 8–16–85; 8:45 am]

BILLING CODE 4310-22-M

[OR–39055]

Oregon; Proposed Withdrawal and Reservation of Lands and Opportunity for Public Meeting

Correction

In the issue of Wednesday, July 24, 1985, in the document beginning on page 30240 in the third column, make the following corrections on page 30241:

1. In the first column, in the last paragraph, in the sixth line, after "approved" insert "prior".

2. The dated line should read "July 15, 1985".

3. In the FR docket line, "85–17597" should read "85–17595".

BILLING CODE 1505-01-M

Minerals Management Service

Request for Comments on Appendix P: Analysis of Tract Selection and Areawide Leasing Approaches (an Appendix to the Secretarial Issue Document for the Upcoming Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program)

DATES: Comments must be received by September 13, 1985.

ADDRESSES: Comments should be submitted to the Deputy Associate Director for Offshore Leasing, Minerals Management Service, Room 4229, Mail Stop 641, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the Appendix may be requested by writing to the above address or by contacting Tim Redding at (202) 343–1072. Questions on the substance of the Appendix may be directed to Don Sant at (202) 343–3526 or Ted Heintz at (202) 343–7258.

SUPPLEMENTARY INFORMATION: An initial version of the Secretarial Issue Document for the new 5-year program (including Appendix P) was issued on March 21, 1985. Based on comments received on that initial version and additional analysis, a revised version of Appendix P has been prepared and is now available for further public comment. Comments on the revised version of Appendix P have been requested from the Governors of all coastal States.

SUMMARY: The change in 1983 from tract selection to areawide OCS lease sales caused considerable controversy on several grounds. This appendix analyzes those aspects of the controversy concerning investment and revenues. It evaluates the extent to which experience with areawide leasing has achieved its objectives and borne out the concerns expressed about its effects. It also discusses the implications of the new 5-year leasing program.

The most important conclusions from this analysis are that areawide leasing may have caused:

- Substantial increases in the investments in leasing and exploration needed to reap the energy and economic benefits of OCS resources;
- A relatively small part of the total decline in bonuses observed in leasing during 1983 and 1984; and
- A substantial increase in the total return to the U.S. treasury from accelerated leasing of OCS oil and gas.

Central to the analysis is the concept of the OCS lands as an inventory of investment opportunities. An analytic

framework is developed which accounts for changes in the inventory of unleased tracts that can occur as a result of changing economic conditions (particularly oil price expectations), changing geologic knowledge, and the different leasing rates that can occur. The status of the inventory depends not only on the economic and geologic conditions that make prospects valuable, but on the way in which tracts have been sold from the inventory in previous years. Changes in the Government's inventory of unleased tracts are reflected in changes in the characteristics of the tracts sold in subsequent sales. Thus, as sales proceed, the amount of acreage leased, its value, the cash bonus revenue collected by the Government, and the subsequent level of investment in exploration would be expected to change as the nature of the unleased inventory changed.

Two key objectives of areawide leasing were to expand the amount and location of acreage leased and to increase the rate of investment in exploration. Critics expressed related concerns that industry did not have the capital to expand its investment and that leases would be acquired, but not explored or developed until years later. This appendix examines data on the experience under tract selection and areawide leasing. It shows that during the 1976–1982 period, leasing and investment in exploration did not expand as price increases made more tracts attractive for investment. As a result, the Government's inventory of unleased acreage worth investing in grew in size and value. Areawide leasing in 1983 and 1984 substantially increased industry's investment in lease acquisition and exploration, particularly in the Gulf of Mexico. There is also evidence that there will continue to be increased exploration investment in the future, based on the exploration plans that have been submitted in recent years.

The buildup of the inventory in the 1976–1982 period and its drawdown in 1983–1984 also had important revenue consequences. Critics of areawide leasing charged that competition would be so thinned by offering much more acreage that bonus bids would decline and the fair market value requirement of section 18(a)(4) would be violated. This appendix shows that the restricted leasing in tract selection sales of the 1976–1980 period increased average bonus bids per acre, primarily by withholding tracts from sale while their value appreciated. Total revenues from bonuses in that period were limited because of the limited amount of acreage leased.

In contrast, areawide leasing in 1983 and 1984 drew down the inventory rapidly. This accelerated leasing resulted in receiving revenues much earlier than would have been the case under tract selection procedures. Bonuses have been received in the 1983–1984 period that would otherwise have been spread out over the 1983–1991 period. Ultimately, royalties and taxes will also be received earlier. This paper estimates that, under the actual leasing rates in the Central and Western Gulf of Mexico in 1983 and 1984, bonuses would have to have been increased, perhaps by as much as $8.5 million higher per tract, under the leasing rates of tract selection procedures to yield the same present value of revenues as will be realized by the Federal Government from areawide lease sales in those areas.

The drawdown in the inventory also resulted in decreasing average bids although total revenues from bonuses increased, particularly in 1983. Fewer high value tracts and more low value tracts were leased in subsequent sales. The trend of decreasing average bids began, however, in 1980, well before the start of areawide leasing. This appendix concludes that such variations in the average bid do not indicate a violation of the fair market value requirement. This provision does not require the Secretary to maximize bonus revenues by withholding tracts while their value appreciates. (In addition, the value of many tracts were probably decreasing during the 1983–1984 period because of declining oil price expectations and may have continued to decline in 1985.)

Critics of areawide leasing charged that it would thin competition by spreading a limited number of bidders and their limited capital over far more acreage. Less competition, they claimed, would mean lower bids and violation of the fair market value requirement of section 18(a)(4) of the OCS Lands Act. The Secretary and the courts recognized in 1982 that bonuses might decline under areawide leasing. The court rejected the claim that this meant a violation of the fair market value requirement. Nevertheless, the relationship between the pace of leasing, the number of bids, and the amount paid in bonuses remains a matter of controversy.

This appendix shows that the average number of bids per tract declined during the 1980–1984 period as average bids declined. The percentage of tracts receiving one bid increased while the percentage receiving two or more bids decreased. These trends began before the implementation of areawide leasing and continued in areawide sales. In addition, the sixfold increase in the minimum bid implemented in 1982 would be expected to lead to fewer bids per tract on average. It is difficult, however, to isolate the effects of fewer bids on the bid levels from the effects of declining tract values on the number of bids. Since average bids declined more on tracts receiving more than two bids than on tracts receiving only one or two bids, it is reasonable to conclude that most of the decline in average bids was caused by factors other than competition.

A statistical analysis of leasing and bidding data was performed to determine whether and to what extent the implementation of areawide leasing caused a reduction in bonuses. The conclusion from an approach using well accepted statistical techniques is that there is little evidence that areawide leasing was the primary cause of the substantial decline in bonuses. Further analysis using improved data and more sophisticated methods is needed to overcome important limitations identified in this analysis. The results at this stage, in the analysis, however, indicate that the bonus declines associated with areawide leasing were, in all likelihood, much smaller than the revenue gains from earlier leasing. There is good evidence that the Treasury will come out ahead.

Using the inventory concept, this appendix shows that if oil prices are expected to be stable and past areawide leasing has drawn down the inventory of unleased acreage, then areawide and tract selection procedures could cause similar types and amounts of acreage to be leased in future sales. The patterns of competition, the levels of bids, and the implications for meeting the fair market value requirement would also be similar.

If oil prices and price expectations rise, however, tract selection and areawide leasing procedures could yield different results. If tract selection sales withheld leasable tracts while tract values were appreciating, competition would tend to increase as the value of tracts offered rose. Areawide procedures would allow less appreciation in tract values before they drew bids, thus would cause a smaller increase in the number of bidders.

Dated: August 14, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85–19864 Filed 8–16–85; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, D.C. 20503, telephone 202–395–7340.

Title: Annual application
Abstract: The application form provides a summary format that functions as a state application for grant monies from the Historic Preservation Fund
Bureau Form Number: None
Frequency: Annually
Description of Respondents: State or local Governments
Annual Responses: 57
Annual Burden Hours: 5,301
Bureau Clearance Officer: Russell K. Olsen, (202) 523–5133.

Russell K. Olsen,
Information Collection Clearance Officer.
[FR Doc. 85–19718 Filed 8–16–85; 8:45 am]
BILLING CODE 4310–10–M

Illinois & Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan National Heritage Corridor Commission will be held August 28, 1985, beginning at 10 a.m. at the Will-Joliet Bicentennial Park, 201 West Jefferson at Bluff, Joliet, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. 461 to implement and support the conceptual plan.

Matters to be discussed at the meeting will include a temporary headquarters location, the status of interpretive contracts, and an update on current funding.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: August 7, 1985.

Randall R. Pope,
Acting Regional Director, Midwest Region.
[FR Doc. 85–19740 Filed 8–16–85; 8:45 am]
BILLING CODE 4310–70–M

North Country National Scenic Trail Advisory Council; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the North Country National Scenic Trail Advisory Council will be held September 7–8, 1985, beginning at 8:30 a.m. on September 7 at the Pittsburgh Airport Hilton Inn, Parkway West (State Route 60) at White Swan Park, Pittsburgh, Pennsylvania.

The council was originally established on November 28, 1980, pursuant to provisions of the National Trails System Act, 82 Stat. 919, 16 U.S.C. 1244 et seq., to advise the Secretary of the Interior on matters relating to the administration and development of the North Country National Scenic Trail.

Matters to be discussed at the meeting will include strategies for implementing the comprehensive management plan for the North Country National Scenic Trail and the status of development and management of the trail in each State.

The meeting will be open to the public. Interested persons may submit written statement to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Thomas L. Gilbert, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: August 7, 1985.

Randall R. Pope,
Acting Regional Director, Midwest Region.
[FR Doc. 85–19739 Filed 8–16–85; 8:45 am]
BILLING CODE 4310–70–M

Bureau of Reclamation

[INT–FES 85–29]

Tucson Aqueduct—Phase B, Central Arizona Project, AZ; Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental statement on the environmental consequences of the construction and operation of Phase B of the Tucson Aqueduct and its associated electrical transmission system. The Tucson Aqueduct—Phase B is the last segment of the Central Arizona Project aqueduct system. It will convey Colorado River water to Indian and non-Indian agricultural, municipal, and industrial water users in Pima County, Arizona.

Copies of the statement are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7425, Bureau of Reclamation, Washington, D.C. 20240, Telephone: (202) 343–4991
Library Branch, Division of Management Support, Engineering and Research Center, Room 450, Building 67, Denver Federal Center, Denver, CO 80225, Telephone: (303) 234–3019
Office of the Regional Director, Bureau of Reclamation, P.O. Box 427, Boulder City, NV 89005, Telephone: (702) 293–8411
Arizona Projects Office, Bureau of Reclamation, 23636 N. 7th Street, Phoenix, AZ 85024, Telephone: (602) 870–6767

Libraries

Phoenix, City Library, 12 East McDowell Road, Phoenix, AZ 85004
Tucson City Library, 200 South 6th Avenue, Tucson, AZ 85701.

Single copies of the final statement may be obtained on request to the Director, Office of Environmental Affairs, or the Regional Director at the above addresses. Please refer to the statement number.

Dated: August 14, 1985.

Terence Martin,

Acting Director, Office of Environmental Project Review.

[FR Doc. 85-19745 Filed 8-16-85; 8:45 am]

BILLING CODE 4310-09-M

Bedias Project, TX; Intent To Prepare an Environmental Statement and To Hold an Environmental Scoping Meeting; Correction

This document corrects a notice of intent to prepare an environmental statement on the Bedias Project, Texas, that appeared on page 32121 of the **Federal Register** of Thursday, August 8, 1985 (50 FR 32121). This action is necessary to correct the date a draft environmental statement is scheduled to be filed with the Environmental Protection Agency and be available for review and comment. The meeting date and place remain the same for the scoping meeting: September 5, 1985, Madisonville, Texas, in the Madisonville High School Auditorium, At 7:00 p.m.

Filing Date: The correct date that the draft environmental statement is scheduled to be filed with the Environmental Protection Agency and be available for review and comment is June 1988.

Dated: August 13, 1985.

Clifford Barrett,

Acting Commissioner.

[FR Doc. 85-19687 Filed 8-16-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 297 (Sub-7)]

Motor Carrier Rate Bureaus; Expansion of Collective Ratemaking Territory

AGENCY: Interstate Commerce Commission.

ACTION: Notice of withholding of disposition.

SUMMARY: Six motor carrier rate bureaus filed petitions seeking approval to expand the scope of the respective territories in which they publish tariffs and engage in collective activities. All petitions raised issues similar to those discussed in *Rocky Mountain Carriers—Agreement—Expansion to Nationwide Scope*, 48 FR 53192 (November 25, 1983). The rate bureaus were concerned that Commission action in *Rocky Mountain Carriers, supra*, prior to action on their own similar requests, would put them at a competitive disadvantage in serving their member-carriers that are also members of Rocky Mountain Carriers. In a decision served March 19, 1984 (49 FR 10381), the Commission consolidated the petitions to ensure that any forthcoming relief would be afforded to all bureaus on an equal basis. An oral argument was held on December 4, 1984. In an open voting conference held on May 21, 1985, the Commission voted (1) to withhold disposition of this proceeding and to hold the matter in abeyance pending approval or disapproval of the general commodity rate bureau agreements now before the Commission; and (2) to certify the existing record to Congress.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rothstein, (202) 275-7912

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision which is available for public inspection at the Office of the Secretary, Room 1227, 12th Street and Constitution Avenue NW., Washington, DC 20423. Copies may be purchased from T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

This notice and the decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: August 2, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Sterrett joined by Chairman Taylor concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-19703 Filed 8-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30698]

Burlington Northern Railroad Co.; Trackage Rights Exemption; Missouri-Kansas-Texas Railroad Co.; Exemption

Missouri-Kansas-Texas Railroad Company (MKT) has agreed to grant overhead trackage rights to Burlington Northern Railroad Company (BN) over a 13.11 mile line between Columbus (milepost 419.19) and Galena, KS (milepost 432.30). The trackage rights will be effective on August 6, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 6, 1985.

By the Commission.

James H. Bayne,

Secretary.

[FR Doc. 85-19704 Filed 8-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30699]

Burlington Northern Railroad Co. Trackage Rights Missouri-Kansas-Texas Railroad Co.; Exemption

Missouri-Kansas-Texas Railroad Company has agreed to grant overhead trackage rights to Burlington Northern Railroad Company between Oswego and Labette, KS, a distance of 6.45 miles. The trackage rights will be effective on August 6, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 7, 1985.

By the Commission,

James H. Bayne,

Secretary.

[FR Doc. 85-19705 Filed 8-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18; Sub-74X]

The Chesapeake and Ohio Railway Co.; Discontinuance of Service Exemption in Fayette County, WV; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights*, to discontinue service over portions of its Laurel Creek Subdivision extending between milepost 0.0 at Quinnimont and milepost 5.47 near Hemlock Hollow, and between milepost 0.0 near Hemlock Hollow and milepost 0.40 near Layland, a total of 5.87 miles in Fayette County, WV.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation

of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 18, 1985, (unless stayed pending reconsideration). Petitions to say must be filed by August 29, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 9, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Rene J. Gunning, 100 North Charles Street, Suite 2204, Baltimore, MD 21201

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 9, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-19706 Filed 8-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12; Sub-95X]

Southern Pacific Transportation Co.; Abandonment in St. Landry Parish, La; Exemption

Applicant had filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 1.70-mile line of railroad between milepost 25.00 near Nuba and milepost 26.70 (end of branch) in St. Landry Parish, LA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 18, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by August 29, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 9, 1985: Office of the Secretary, Case Control Branch Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: G.A. Laakos, One Market Plaza, Southern Pacific Building, San Francisco, CA 94105.

In the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 12, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-19707 Filed 8-16-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Preliminary Settlement Agreement Pursuant to the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act; Conservation Chemical Co. et al.

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on August 2, 1985 a proposed Preliminary Agreement in *United States* v. *Conservation Chemical Company, et al.*, Civil Action No. 82-0983-CV-W-5, was lodged with the United States District Court for the Western District of Missouri. The proposed Preliminary Agreement concerns a lawsuit filed under section 7003 of the Resource Conservation and Recovery Act (RCRA) and sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The Preliminary Agreement requires the defendant to implement a remedy at the Conservation Chemical Company hazardous waste landfill in Kansas City, Missouri, pursuant to RCRA and CERCLA. The agreement also gives to parties who have not signed the Preliminary Agreement a thirty-day period within which to join in the settlement of the lawsuit. Pursuant to the agreement, the defendants will undertake installation, construction, and maintenance of necessary pollution control equipment in accordance with a schedule set forth therein. Further, defendants are required to make restitution to the United States of $500,000 for investigatory and enforcement costs incurred prior to and during the course of the litigation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Conservation Chemical Company, et al.*, D.J. Ref. 90-7-1-8.

The proposed Preliminary Agreement may be examined at the office of the United States Attorney, Western District of Missouri, 549 U.S. Courthouse, 811 Grand Avenue, Kansas City, Missouri, and at the Office of the Regional Counsel, Region VII, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas. Copies of the Preliminary Agreement may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Preliminary Agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-19744 Filed 8-16-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D-4337 et al.]

Proposed Exemptions; Richard Dempsey Contracting Co., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefits Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice of Interested Persons

Notice of proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Richard Dempsey Contracting Company, Inc. Profit Sharing Plan and Trust (the Plan) Located in Minneapolis, Minnesota

[Application No. D-337]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the July, 1982 contribution of a contract for deed to the Plan by the Richard Dempsey Contracting Company, Inc. (the Employer); and (2) future sales or contributions to the Plan or contracts for deed by the Employer, provided the contracts for deed would be purchased for no greater than their fair market value if on a sale, and would be valued for contribution purposes at no greater than their fair market value if contributed.[1]

Effective Date: If this proposed exemption is granted it will be effective July 1, 1982.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with two participants, Richard Dempsey and his wife, Donna. the Dempseys are sole shareholders of the Employer and are also directors and officers of the Employee. Richard Dempsey is the trustee of the Plan. The Employer is in the business of purchasing undeveloped real estate and constructing residential dwelling units.

2. The applicant represents that a contract for deed is similar in form to a mortgage but offers greater protections to the vendor/seller than a mortgage. Unlike in the case of a mortgage, the purchaser/vendee does not have legal title to the property being conveyed, but only assumes legal title upon payment in full. Also, in the event of default under the terms of a contract for deed under Minnesota law, depending on the amount paid by the purchaser/vendee, the seller/vendor can gain repossession of the property within 90 days from the date of notice of a default. In addition, the seller/vendor can sell the property and keep the proceeds without liability to the defaulting purchaser/vendee for the amount which was previously paid by the purchaser/vendee on the contract for deed.

3. In May, 1975, the Employer issued a contract for deed to Thomas and Bonnie Stament (the Stament Contract), unrelated third parties, as purchasers/vendees. The Stament Contract had a face value of $40,000 and an interest rate of 8% per annum. In April, 1977, the Stament Contract was sold to the Plan by the Employer for the cash sum of $28,998. Upon the sale to the Plan, the Stament Contract represented approxiamtely 95% of Plan assets. The Stament Contract was paid in full in June, 1981.

4. On May 31, 1978, the Employer issued a contract for deed to Gayanne Lindbloom (the Lindbloom Contract), an unrelated party, as purchaser/vendee. The Lindbloom Contract had a face value of $45,500, and an interest rate of 8% per annum. On June 1, 1979, the Employer sold the Lindbloom Contract to the Plan for the cash sum of $31,850. At the time of the sale, the Lindbloom Contract represented approximately 52% of the Plan's assets. The Lindbloom Contract was paid in full on March 1, 1980.

5. The applicant recognizes that the sales of the Stament Contract and the Lindbloom Contract by the Employer to the Plan constitute prohibited transactions for which the Department is not providing exemptive relief. Accordingly, the Employee represents that it will pay all excise taxes applicable as a result of such prohibited transactions within 60 days of the publication in the **Federal Register** of the granting of the exemption proposed herein.

6. In July, 1975, the Employer issued a contract for deed to Norman and Linda Brody (the Brody Contract), unrelated

[1] Because Richard Dempsey and his wife Donna are the sole shareholders of the Employer and the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

third parties, as purchasers/vendees. The Brody Contract had a face value of $38,500, an interest rate of 8% per annum, and required payment in full in August, 1985. The Brody Contract was on residential property located in Golden Valley, Minnesota. In July, 1982, the Brody contract was contributed to the Plan by the Employer as its contribution for the fiscal year ending January 31, 1982. The contribution was valued at $23,151. This valuation represented a 31.5% discount on the remaining balance due on the contract. Prior to the contribution of the Brody Contract, the Employer contacted C.E. Campion and Associates, Inc., independent real estate investment counselors in Minneapolis, Minnesota, to obtain a written quotation as to the discount to be applied in order to derive the fair market value of the contract. At the time the Brody Contract was contributed, the Plan has assets of $144,500, none of which were invested in Employer-originated land contracts. The Brody Contract represented approximately 16% of total Plan assets upon contribution. On April 29, 1983, the Brody Contract was paid in full.

7. In addition to the contribution of the Brody Contract, the Employer is also requesting an exemption to permit future sales or contributions of Employer-originated contracts for deed to the Plan. The applicant represents that no such contract for deed will be transferred to the Plan unless the fair market value of the contract, when added to the fair market value of any such contract already in the Plan, does not exceed 25 percent of the Plan's assets. In addition, in the case of a sale to the Plan, such contracts for deed will be purchased for no greater than their fair market value, and will be valued for contribution purposes at no greater than their fair market value if contributed. The applicant represents that he will retain a qualified, independent appraiser to value any such future transactions.

8. The applicant represents that in the event any other employee of the Employer becomes eligible to participate in the Plan, a separate account will be established and maintained in the Plan for such participant, so that Mr. and Mrs. Dempsey are the only Plan particpants who would ever be affected by the subject transactions.

9. In summary, the applicant represents that the subject transaction meet the criteria of section 4975 (c) (2) of the Code because: (1) The Brody Contract represented only 16% of Plan assets at the time of contribution, and the fair market value of all contracts sold and contributed to the Plan in the future will not exceed 25% of Plan assets at any given time; (2) the Brody Contract was and all future contracts sold or contributed to the Plan will be valued by a qualified, independent appraiser; and (3) Mr. and Mrs. Dempsey are the only participants who will ever be affected by the subject transactions, and as Plan trustee Mr. Dempsey has determined that the subject transactions were and are in the best interest of the Plan.

Notice to Interested Persons: Because Mr. and Mrs. Dempsey are the sole shareholders of the Employer and the sole participants in the Plan it has been determined that there is no need to notify interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the Federal Register.

For further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Andron, Cechettini & Associates, Inc. Located in Lafayette, California

[Application No. D-4559]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I. Exemption for Certain Transactions Involving the Purchase of Interests in AC Investors (the Partnership).

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the purchase of interests in the Partnership by employee benefit plans (Participating Plans), if the general conditions set forth in Section II are met, and if:

1. Each purchase of interests in the Partnership by a Participating Plan is authorized in writing by a fiduciary (the Independent Fiduciary) of each Participating Plan who is independent of the Applicants [2] and their affiliates.[3] If such Independent Fiduciary directs that assets then under management by any of the Applicants be invested in the Partnership, such written authorization by the Independent Fiduciary shall specify such fact and the manner in which such assets shall be transferred to the Partnership.

2. The following persons may not acquire or hold any securities of any company whose securities the Partnership holds (provided, however, that the restrictions contained in this subsection shall not apply to any venture capital company that is controlled by or managed by Covered Persons as defined below and that is subject to the allocation formula described in section 6 of the Summary of Facts and Representations contained in this Proposed Exemption):

(a) The Applicants and officers, directors and general partners of the Applicants.

(b) Affiliates of AC Investors, AC Associates, Mr. Andron and Mr. Cechettini. ("Covered Persons").

3. The terms and conditions of the partnership agreement (the Partnership Agreement) at the formation of the Partnership and at the time of any purchase of an interest covered by this exemption shall be no less favorable to the Participating Plans than the terms and conditions available in arm's-length transactions between unrelated parties.

4. Prior to accepting any investment of assets in the Partnership by a Participating Plan, the Applicants shall furnish or cause to be furnished to each Independent Fiduciary authorizing such investment a copy of this exemption, the Partnership Agreement, a private placement memorandum which describes the respective rights of the general and limited partners to distributions and capital appreciation, services to be preformed by the general partner and the compensation payable therefor, all other material rights and obligations of the partners, and such other information as requested by the Independent Fiduciary.

5. A Participating Plan shall not, after the date of investment of Plan assets in the Partnership, pay to any of the Applicants a separate investment management fee or similar fee with respect to the Participating Plan's assets invested in the Partnership.[3] If a Participating Plan invests in the Partnership during any period for which the Plan has prepaid to any of the Applicants an investment management or similar fee, the amount of such fee will be returned to the Participating Plan. This condition shall not preclude payment by the Partnership to any of the

[2] See representations 1 in the Summary of Facts and Representations.

[3] All future references to the Applicants will also include affiliates of the Applicants.

[4] This condition shall not preclude the payment by the Participating Plans to the Applicants of investment management of other fees with respect to assets not invested in the Partnership.

Applicants of expenses and allocations provided in the Partnership Agreement.

6. No sales commissions or similar fees will be charged by the Applicants to any Participating Plan with respect to its investment in the Partnership. No redemption fee or other penalty shall be charged by the Applicants to any Participating Plan which transfers all or a portion of its Partnership interest as permitted by the Partnership Agreement, except that a Participating Plan must compensate the Partnership for reasonable fees and expenses incurred by the Partnership in its efforts to locate a suitable purchaser for the Participating Plan's Partnership interest.

7. The Partnership Agreement will require that limited partners receive auditied annual financial statements with respect to the Partnership as well as such other information as the limited partner (or a Participating Plan's Independent Fiduciary) may reasonably request concerning the operations and investments of the Partnership.

8. No Participating Plan may invest more than 10% of its assets in the Partnership.

Section II. General Conditions.

(a) The Applicants maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Seciton II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Applicants, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in section (2) of this paragraph (b) and notwithstanding any provisions of subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (a) of this Section II are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Partnership of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and,

(D) Any participant or beneficiary of any Participating Plan or any duly authorized employee or representative of such participant or beneficiary.

(b)(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of the Applicants, or commercial or financial information which is privileged or confidential.

Section III. Definitions and General Rules.

(a) An "aaffiliate" means a person with one or more of the following relationships to any of the Covered Persons;

(i) Any person directly or indirectly through one or more intermediaries, controlled by such Covered Persons; and

(ii) Officers, directors, highly compensated employees, relatives of or general partners in any such Covered Persons.

(b) The Term "control" means beneficial ownership, by Covered Persons in the aggregate, either directly or through one or more controlled companies, or more than 50% of a company's voting securities.

(c) The term "relative" means spouse and minor children sharing the same household of such Covered Person.

(d) The term "highly compensated employee" means a person whose compensation during the most recent fiscal year exceeds the greater of $30,000 or 10% of the total compensation earned by all employees of the employer.

(e) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Partnership as its proportionate interest in the total assets of the Partnership as calculated on the most recent preceding valuation date of the Partnership.

Summary of Facts and Representations

1. The Applicants are AC Associates, Andron, Cechettini & Associates, Inc, Jonathan Andron, and Ralph Cechettini. AC Associates is a proposed general partnership between Mr. Andron and Mr. Cechettini. Andron, Cechettini & Associates, Inc. is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment manager for pension plans and other clients. Mr. Andron and Mr. Cechettini are officers and sole shareholders of Andron, Cechettini & Associates, Inc.

2. AC Associates will act as general partner of the Partnership, which is a venture capital limited partnership.[5] The Partnership is organized for the purpose of making venture capital investments which shall include but not be limited to buying and selling securities. The Partnership shall be engaged primarily in the business of investing in securities of emerging and developmental stage companies (portfolio companies) and will participate in the management of such companies. The Partnership will commence on the date the certificate of limited partnership is recorded and will continue until 1992, however, AC Associates with limited partner consent may terminate the Partnership at any time.

3. Limited partnership interests in the Partnership will be offered to pension and profit sharing plans which are qualified under sections 401 and 501 of the Code (Participating Plans) and possibly other institutional investors and certain wealthy and sophisticated individuals. AC Associates anticipates that at least four limited partners will each invest a minimum of $1 million in the Partnership with an aggregate offering amount of between $4 million and $20 million. As general partner, AC Associates will contribute one percent of the total Partnership capitalization. A maximum of 10 percent of the assets of any one Participating Plan may be invested in the Partnership. The Partnership will maintain a capital account for each partner which will consist of such partner's capital contribution and the portion of Partnership profits and losses allocated to such account.

4. Prior to any investment in the Partnership, an independent fiduciary (the Independent Fiduciary) of each Participating Plan will receive a private placement memorandum (the Memorandum) which discloses the nature of the offering, capitalization of the Partnership, the estimated use of proceeds of the offering, the investment objectives and policies of the Partnership, the profits and cash flow distributions to be made to partners, the compensation of AC Associates, the federal tax consequences of an investment in the Partnership, a summary of the Partnership agreement, and any additional material information necessary or appropriate to fulfill the requirements for full and fair disclosure under the federal and state securities laws applicable to such an offering.

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[5] AC Associates may also act as general partner to other venture capital limited Partnerships. The Department in this proposed exemption is not providing relief for other partnerships established by the Applicants.

5. Limited partnership interests in the Partnership will be offered pursuant to the securities registration exemption provided by Regulation D promulgated under the Securities Act of 1933. No sales commissions will be charged to Participating Plans in connection with the purchase or sale of interests in the Partnership. The Participating Plans will not be charged a redemption fee in connection with the sale by a Participating Plan to the Partnership of interests in the Partnership. The Applicants represent that neither AC Associates nor any of the limited partners in the Partnership has a preferential right as to assignability or redemption of their interests in the Partnership. None of the Applicants will charge a Participating Plan any investment management fee or similar fee with respect to the Participating Plan's assets invested in the Partnership for the entire period of the investment, although the Partnership will pay AC Associates an annual management fee of 2.0 percent (.5 percent paid quarterly) of the net asset value of the Partnership and allocations of gain, pursuant to the Partnership Agreement.[6]

6. Each limited partner shall share in the profits and lossses of the Partnership allocated to the limited partners in the proportion that its capital contributions bear to the total capital contributions of all such limited partners. With respect to the allocation between limited partners and AC Associates, the Applicants represent that AC Associates will be allocated for each fiscal year 20 percent of the Partnership net realized capital gains calculated on a cumulative annual basis less (1) all amounts previously allocated to AC Associates as gain and (2) all amounts previously paid for operating expenses and as compensation to AC Associates. The balance of net realized capital gains and all other items of Partnership profits and losses will be allocated among all partners in proportion to each partner's capital contribution. Capital gains and other items of profits and losses shall be defined and determined in accordance with applicable federal income tax laws.[7]

The limited partners shall have no personal obligation for the debts or liabilities of the Partnership, except that each limited partner shall be obligated to pay its capital contribution. No limited partner shall be liable for the debts or liabilities of any other partner.

7. The Partnership and other partnerships established by the Applicants may have assets available for investment at the same time. The Applicants represent that opportunities for investment in securities of portfolio companies will be allocated by As Associates to the Partnership and other partnerships established by the Applicants, in an equitable manner, without preference given to any partnership. However, the Partnership, as will other partnerships established by the Applicants, will have a preferential right to make "follow-on" investments in its existing portfolio companies which require additional capitalization. If the follow-on investment amount required is in excess of what the Partnership or other partnerships established by the Applicants desire to invest, the other partnerships will be invited to participate in the investment. All such investments offered to partnership's will be allocated pro rata, to the extent of each partnership's available capital. The right to make preferential follow-on investments is represented to be common in venture capital financing.

8. Applicants believe that since they are parties in interest with respect to Participating Plans by virtue of serving as investment managers or service providers to such Plans, it may constitute a prohibited transaction for Participating Plans to invest in the Partnership because the Applicants may derive an economic benefit from compensation and fees received by AC Associates. The Applicants also represent that they will not accept subscriptions for interests in the Partnership from Plans for which they are presently acting as an investment adviser as distinguished from an investment manager within the meaning of section 3(38) of the Act. Accordingly, the Applicants request an exemption from section 406(a) of the Act and section 4975(c)(1) (A) through (D) of the Code to permit Participating Plans to invest in the Partnership.[8] The decision to invest in the Partnership will, in each instance, be made by a fiduciary of a Participating Plan, who is idependent of the Applicants and who has discretionary authority to make investment allocation decisions regarding the portfolio of the Plan.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Shearson Lehman/American Express Inc. and Boston Safe Deposit and Trust Company

[Application No. D–4931]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lending of securities to Shearson Lehman/ American Express Inc. (Shearson) by employee benefit plans for which Boston Safe Deposit and Trust Company (Boston Safe) acts as directed trustee or custodian and securities lending agent and to the receipt of compensation by Boston Safe in connection with these transactions, if the conditions incorporated in the representations set forth below are met.

Summary of Facts and Representations

1. Shearson, a wholly owned subsidiary of American Express Company, is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and also a member of the National Association of Securities Dealers. Shearson is one of the largest investment firms in the United States, with consolidated capital (equity and subordinated debt) which, prior to the recent acquisition of Lehman Brothers Kuhn Loeb, totaled nearly $1 billion.

2. Shearson, acting as principal, facilitates stock loans made by institutions to brokerage firms and other entities which need a particular security for a certain period of time in order to satisfy deliveries in cases of short sales or where a broker fails to receive securities it is required to deliver. Shearson is one of the largest institutional equity lenders in the United States, lending stocks equal in value to approximately $2 billion on an average daily basis. In making such loans,

[6] This proposed exemption does not address the receipt of compensation by the Applicants.

[7] See footnote 6 above.

[8] To the extent that, in the ordinary course of business, the Applicants are deemed to be fiduciaries by reason of rendering "investment advice" to a plan within the meaning of regulation 29 CFR 2510.3–21(c)(1)(ii)(B), the presence of an unrelated second ficuciary acting on the investment adviser's recommendation to invest in an Applicant sponsored partnership is not sufficient to insulate the Applicants from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984.) This proposed exemption provides no relief from any of the restrictions of section 406(b) either at the time of a plan's investment or during the operation of the Partnership.

Shearson carefully reviews the credit worthiness of the borrowing brokers.

3. Boston Safe is a wholly owned subsidiary of the Boston Company, Inc., which is a wholly owned subsidiary of Shearson. Boston Safe is organized as a trust company in Massachusetts and specializes in providing fiduciary services to institutions, including serving as trustee or custodian to employee benefit plans. Since 1981, Boston Safe also has been offering securities lending services to institutions. As of August 31, 1983, Boston Safe served as securities lending agent for four pension funds and two college endowments, representing about $2.1 billion in lendable securities. As securities lending agent, Boston Safe selects the brokers to whom securities are lent, negotiates the terms of the loans, assures that the required collateral is received by Boston Safe and that adequate levels of collateral are maintained. All of Boston Safe's procedures for lending securities are designed to comply with the applicable conditions of Prohibited Transaction Exemption (PTE) 81–6 and PTE 82–63.[9]

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to any interest, dividends or other distributions paid on those securities. The lender generally requires that the security loans be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities such as U.S. Government or Federal Agency obligations or certain bank letters of credit. When cash is the collateral, the lender generally invests the cash and rebates a portion of the earnings on the collateral to the borrower. The "fee" received by the lender would then be the difference between the earnings on the collateral and the amount of rebate paid to the borrower. Where a loan of securities is collateralized with Government or Federal Agency securities or bank letters of credit, a fee is paid directly by the borrower to the lender. Institutional investors often utilize the services of an agent in the performance of their securities lending transactions. The lending agent is paid a fee for its services which may be calculated as a percentage of the income earned by the investor from its securities lending activity.

5. Boston Safe requests an exemption for the lending of securities owned by certain pension plans for which it serves as directed trustee or custodian (client-plans) to Shearson, following disclosure of its affiliation with Shearson, under either of two arrangements described as Plan A and Plan B and for the receipt of compensation in connection with such transactions. Boston Safe will have no discretionary authority or control over the investment decisions of these plans. Its discretion will be limited to activities such as negotiating the terms of the securities loans with Shearson and investing any cash collateral on the loans. Because Shearson is the parent company of Boston Safe, the lending of securities to Shearson by plans for which Boston Safe serves as trustee or custodian may be outside the scope of relief provided by PTE 81–6 and PTE 82–63.[10]

6. When a loan is collateralized with cash, Boston Safe will invest the cash in short-term securities or interest-bearing accounts and will rebate a portion of the earnings to Sharson on behalf of the plan. Shearson will pay a fee to the lending plan based on the value of the loaned securities where the collateral consists of obligations other than cash. Under both Plan A and Plan B, the plan will pay a fee to Boston Safe for providing lending services to the plan which will reduce the income earned by the plan from the lending of securities to Shearson. The plan and Boston Safe will agree in advance to this fee which will represent a percentage of the income the plan earns from its lending activities. Several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the plan assets involved in the transactions. In addition, the applicant represents that each of the two arrangements incorporates the relevant conditions contained in PTE 81–6 and PTE 82–63.

7. *Plan A.* A fiduciary of a client-plan who is independent of Boston Safe and Shearson must sign a Securities Lending Authorization before the plan may participate in Boston Safe's securities lending program. This authorization describes the operation of the lending program and allows Boston Safe to lend securities held by the client-plan to securities brokers, including Shearson, as selected by Boston Safe. The authorization also sets forth, in an attachment, the basis and rate for Boston Safe's compensation from the plan for the performance of securities lending services.

8. The independent fiduciary also must sign a Shearson Lending Authorization before Boston Safe may include security loans to Shearson in the lending activities of the client-plan. The Shearson Lending Authorization will specify, in an attached exhibit, the method of determining the daily securities lending rates (fees and rebates) and the maximum rebate rate payable to Shearson. A client-plan may terminate both the Securities Lending Authorization and the Shearson Lending Authorization at any time.

9. Boston Safe, as securities lending agent, will negotiate a broker loan agreement (basic loan agreement) with Shearson on behalf of a client-plan. An independent fiduciary of the client-plan will approve the terms of the agreement before that fiduciary executes the Shearson Lending Authorization. The basic loan agreement will specify, among other things, the right of the client-plan to terminate a loan at any time (subject to the customary notification period) and the plan's rights in the event of any default by Shearson. The agreement will explain the basis for compensation to the plan for lending securities to Shearson under each category of collateral. The agreement also will contain a requirement that Shearson must pay all transfer fees and transfer taxes related to the security loans.

10. Before entering into a basic loan agreement, Shearson will furnish its most recent available audited and unaudited financial statements to Boston Safe, who, in turn, will provide the statements to a client-plan before the plan is asked to approve the terms of the agreement. The agreement will contain a requirement that Shearson must promptly notify lenders at the time of a loan of any material adverse changes in its financial condition. If any such changes have taken place, Boston Safe will request that an independent fiduciary of the plan approve the loan in view of the changed financial condition.

11. The client-plan and Boston Safe will agree to the fee Boston Safe will receive for its services as lending agent prior to the commencement of any lending activity. The agreement by Boston Safe to provide securities lending services to a client-plan will be in

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[9] PTE 81–6 (46 FR 7527, January 23, 1981) provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a registered broker-dealer or a bank which is a party-in-interest.

PTE 82–63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

[10] Condition 1 of PTE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

writing and subject to prior written approval of a fiduciary of the client-plan who is independent of Shearson and Boston Safe.[11] The agreement will allow termination by the plan without penalty to the plan within five business days of written notice. Before entering into an agreement, Boston Safe will provide the plan with any reasonably available information which it believes is necessary for the plan to make a determination whether to enter into or renew the agreement and such other information as the plan may request.

12. Each time a plan loans securities to Shearson pursuant to the basic loan agreement, Shearson and Boston Safe will execute a designation letter specifying, in part, the securities to be loaned, the necessary amount of collateral, the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the client-plan as those of an arm's-length transaction would be between unrelated parties.

13. Boston Safe will credit to the account of the client-plan all interest, dividends and the like on the loaned securities, including distributions and rights of any kind. The basic loan agreement will provide that the plan may terminate any loan at any time. Upon a termination, Shearson will deliver the loaned securities back to the client-plan within five business days of written notification. If Shearson fails to return the securities within the designated time, the client-plan has certain rights that it may exercise under the agreement.

14. Boston Safe will establish each day a written schedule of lending fees and rebate rates in order to assure uniformity of treatment among borrowing brokers and to limit the discretion Boston Safe would have in negotiating securities loans to Shearson. Loans to all borrowers on that day will be made at rates on the daily schedule or at rates which may be more advantageous to the client-plans. In no case will loans be made no Shearson at rates below those on the schedule. The daily rate schedule will be based on two variables: The current value of short-term funds, and market conditions as reflected by demand for securities by borrowers other than Shearson.

15. Boston Safe will also adopt a maximum daily rebate rate for cash collateral payable to Shearson on behalf of a plan. This maximum rebate will not exceed a stated percentage of the mean between the bid and asked quotations of the "brokers call rate" published daily in the Wall Street Journal for the previous day. Moreover, when cash is used as collateral, the daily rebate rate will always be at least 50 basis points lower than the rate of return available to Boston Safe from authorized investments for cash collateral.[12] If interest rates rise, the rebate rate applicable to Shearson will never be increased above the daily rate at which a loan was originally made. Boston Safe will submit the formula for determining the maximum daily rebate rate to an independent fiduciary of a client-plan for approval before lending any securities to Shearson on behalf of the plan.

16. For collateral other than cash, the rate charged by Boston Safe the previous day is reviewed for competitiveness. Based on the demand of the marketplace, this daily fee tends to remain constant and is currently one percent of the current value of the collateral. Because 50 percent or more of securities loans by client-plans will be to unrelated brokers or dealers, the competitiveness of Boston Safe's rate schedule will be continuously tested in the marketplace. Accordingly, loans to Shearson should result in competitive rate income to the lending client-plan.

17. Boston Safe will loan securities available for lending to borrowers on a first come, first served basis. This will provide additional assurance of uniformity of treatment among borrowing brokers.

18. Shearson will make a guarantee to each lending client-plan that the plan will incur no loss on its loans of securities to Shearson. Accordingly, Shearson will assure the plan that the rate of return on each loan will at a minimum equal the transactional cost to the plan of lending secrutites to Shearson. The applicant contends that, as a result of this guarantee, the rate of return earned by the plan from lending to Shearson will in total exceed the return from lending securities to other brokers.

19. Boston Safe will receive collateral from Shearson by physical delivery or book entry in a securities depository by the close of business on the day the loaned securities are delivered to Shearson. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government of its agencies or irrevocable bank letters of credit issued by the person other than Shearson or its affiliates. The market value of the collateral on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The basis loan agreement will give the client-plan a continuing security interest in and a lien on the collateral. Boston Safe will monitor the level of the collateral daily to ensure that it is maintained at no less than 102 percent. If the market value of the collateral falls below 102 percent of that of the loaned securities, Boston Safe will require Shearson to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

20. A client-plan that loans securities to Shearson will receive a weekly report with which to monitor lending activity, rates on loans to Shearson compared with loans to other brokers, and the level of collateral on the loans. The weekly report will show, on a daily basis, the market value of all outstanding security loans to Shearson and to other borrowers as compared to the total collateral held for both categories of loans.

21. The weekly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The weekly report also will state, on a daily basis, the rates at which securities are loaned to Shearson compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

22. Boston Safe also will send a monthly report to each client-plan participating in the lending program. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will show each security loaned, the number of shares involved, the value of the security for collateralization purposes, the current value of the collateral, the rate at which the security is loaned, and the number of days the security has been on loan.

23. Only client-plans with assests having an aggregate market value of at least $50 million will be permitted to loan securities to Shearson. The applicant maintains that this restriction is intended to assure that any lending to Shearson will be monitored by an independent fiduciary of above average

[11] This closely parallels conditions c and d of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary."

[12] These short-term investments include repurchase agreements, certificates of deposit, Treasury bills and an internal Boston Safe fund (the Short-term Investment Fund) used by pension and endowment clients of Boston Safe to invest their overnight cash.

experience and sophistication in matters of this kind.

24. Boston Safe will record on audio tape all telephone traffic between its securities lending department and all borrowers, including Shearson. The telephone tapes will be retained for a period of at least six months. This recording procedure will enable client-plans and the Department to review Boston Safe's adherence to its policy of lending securities at or above the daily specified rates to the first interested borrower.

25. *Plan B.* Shearson will directly negotiate "exclusive borrowing" agreements with client-plans for which Boston Safe serves as directed trustee or custodian. Under such an agreement, Shearson will have exclusive access for a specified period of time to borrow certain securities of a client-plan pursuant to certain conditions. Boston Safe will not participate in the negotiation of the agreement. The involvement of Boston Safe will be limited to such activities as handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the plans with certain reports.

26. Upon delivery of loaned securities to Shearson, Boston Safe, as securities lending agent for a plan, will receive from Shearson the same day by physical delivery or book entry in a securities depository collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit. The market value of the collateral on the preceding day will be at least 102 percent of the market value of the loaned securities. Boston Safe will monitor the level of the collateral daily and, if its market value falls below 102 percent, will require Shearson to deliver sufficient additional collateral on the following day. Boston Safe will provide a weekly report to the client-plan showing, on a daily basis, the aggregate market value of all outstanding security loans to Shearson and the aggregate market value of the collateral.

27. Before entering into an agreement, Shearson will furnish to the plan the most recent audited and unaudited statements of its financial condition. Further, the agreement will contain a representation by Shearson that for each time it borrows securities, there have been not material adverse changes in its financial condition.

28. In exchange for the exclusive right to borrow certain securities from a client-plan, Shearson will pay the plan either a flat fee of a minimum flat fee plus a prior negotiated percentage based on the total balance outstanding of borrowed securities. In light of this fee arrangement, all earning generated by cash collateral will be returned to Shearson. Boston Safe will credit to the account of the plan all interest, dividends or other distributions on any borrowed securities.

29. The "exclusive borrowing" agreement may be terminated by either party to the agreement at any time. Upon termination, Shearson will deliver any borrowed securities back to the plan within five business days of written notice of termination. If Shearson fails to return the securities or equivalent, the plan has certain rights under the agreement. Shearson will indemnify the plan against any losses due to its use of the borrowed securities equal to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default.

30. Boston Safe will receive a fee for its lending services which will be computed as a percentage of the income earned by the client-plan from its securities lending activity. The plan and Boston Safe will agree in advance to the fee. The agreement for Boston Safe to provide securities lending services to the client-plan will be in writing and subject to prior written approval of a plan fiduciary who is independent of Shearson and Boston Safe. The agreement will allow termination by the plan within five business days of written notice without penalty to the plan except for the return to Shearson of part of the flat fee paid by Shearson to the plan, if the plan also has terminated its "exclusive borrowing" agreement with Shearson. Before entering into an agreement with a client-plan to provide securities lending services to the plan, Boston Safe will furnish to the plan any reasonably available information which it believes is necessary for the plan to determine whether to enter into or renew the agreement.

31. In summary, the applicant represents that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Plan A requires approval of the basic loan agreement and the Shearson Lending Authorization by a plan fiduciary independent of Shearson and Boston Safe before a client-plan lends any securities to Shearson, while under Plan B Shearson will directly negotiate "exclusive borrowing" agreements with a client-plan; (b) the lending arrangements will permit the client-plans to benefit from Shearson's substantial market position as a securities lender and will enable the plans to earn additional income from the loaned securities while still receiving dividends, interest and other distributions on those securities; (c) Shearson will provide sufficient information concerning its financial condition to a client-plan before the plan lends any securities to Shearson; (d) the collateral on each loan to Shearson will be at least 102 percent of the market value of the loaned securities, which exceeds the 100 percent collateral required under PTE 81–6, and will be monitored daily by Boston Safe; (3) Boston Safe will furnish a weekly report and a monthly report to the client-plans so that an independent fiduciary may monitor a plan's lending activity to Shearson in comparison with the lending to other brokers; (f) security loans to Shearson, under Plan A, will not exceed 50 percent on average of the total loan volume, so that the competitiveness of the daily rate schedule may be tested; (g) only client-plans for which Boston Safe serves as directed trustee or custodian will lend securities to Shearson; (h) the terms of each loan will be at least as favorable to the plans as those of an arm's-length transaction between unrelated parties; and (i) all the procedures under Plans A and B will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–7902. (This is not a toll-free number.)

Gulf and Western, Inc. Commingled Trust for Pension and Profit Sharing Plan—the Catalina Employees' Retirement Plan (the plan) Located in Fullerton, California

[Application No. D–5504]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 18, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale by the Plan of certain improved real property (the Real Property) to Kayser-Roth Corporation (the Employer), provided the sales price for the Real Property is not less than its fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Employer, which was formerly known as Catalina, Inc., is a corporation organized and existing under the laws of the State of Delaware. The Employer is a subsidiary of Gulf and Western, Inc. and it maintains an office at 131 North Gilbert Street, Fullerton, California.

2. The Employer established the Plan as of January 1, 1952. On June 30, 1984, the Plan had 1,776 participants and total assets of approximately $4,192,439. The trustee of the Plan (the Trustee) is Manufacturers Hanover Trust Company. Investment decisions for the Plan are made by the Trustee and four investment advisers.

3. In 1956, the Employer conveyed a parcel of land containing 2.05 acres to the Plan as an in kind contribution. The Real Property comprises the Employer's business premises and it consists of a one-story industrial building and the land situated thereunder. On March 1, 1956, the Plan began leasing the Real Property (the Lease) to the Employer for a term ending February 29, 1971 and at an annual rental of $15,360. The Lease contained provisions granting the Employer a renewal option of 15 years' duration. The renewal option was exercised by the Employer on March 30, 1970.[13] The Lease also provided for two additonal renewal periods, each of 15 years' duration.

At the present time, the employer uses the Real Property for the purpose of manufacturing, processing, storing and distributing bathing suits, sweaters, knitwear products, clothing, yarn and similar products. The provisions of the Lease still remain in effect with the exception of the rent which has been increased periodically. In addition to rent, the Employer pays all utility bills and real estate taxes. It also maintains the entire premises but it does not make roof and exterior wall repairs.

4. By order of the Superior Court (the Court) of the State of California, County of Orange (the County) dated October 10, 1983, approximately .21 acres of the Real Property were condemned by the City of Fullerton (the City) for purposes of street widening and making other improvements. The City assessed a total condemnation award (the Award) of approximately $275,000. On November 28, 1984, the County tendered an auditor's warrant to the Trustee in the aggregate amount of the Award. This amount reflected the City's security payment that was originally required to be deposited with the Court. The proceeds were paid over to the Trustee at the Trustee's request. The proceeds, as well as additional recoveries, were to be retained by the Trustee and paid entirely to the Plan.

5. The 1.84 acres of the Real Property that were not part of the eminent domain proceeding were appraised by Messrs. Robert G. Weamer and Fenton E. Cross (Messrs. Weamer and Cross) who are independent appraisers affiliated with the appraisal division of Cushman and Wakefield of California, Inc., located in Los Angeles, California. Mr. Weamer is the manager of the Ontario Appraisal Division; Mr. Cross is a member of the American Institute of Real Estate Appraisers. On February 1, 1984, Messrs. Weamer and Cross placed the fair market value of the Real Property at $1,015,000 and the net annual economic rent at $112,545.

6. As stated briefly above, the Employer requests an exemption to acquire the Real Property from the Plan for its fair market value price as established by Messrs. Weamer and Cross. In addition to purchasing the Real Property, the Employer will pay the Internal Revenue Service the appropriate excise taxes that may be due by reason of the continuation of the Lease beyond June 30, 1984 within 60 days of the granting of the proposed exemption. The Employer will also make additional contributions to the Plan in order to bring the Lease payments up to the fair market rental value for the period July 1, 1984 until the time of sale. The Employer further proposes that the rental deficiency include interest payments that are based on an appropriate rate as determined by the Trustee.

7. The Trustee will serve as the independent fiduciary for the proposed transaction. The Trustee represents that its loans and deposits to the Employer's parent—Gulf and Western, comprise less than one percent of the Trustee's outstanding loans and total deposits as of December 31, 1984. The Trustee also states that there are no officers of the Employer or of Gulf and Western sitting on the Trustee's board of directors.

The Trustee believes the proposed sale of the Real Property by the Plan to the Employer is an appropriate transaction for the Plan and in the best interests of the participants and beneficiaries. In addition, the Trustee represents that the value as determined by the appraisal is fair and reasonable. The Trustee will review the proposed sales transaction at least five days prior to the date of the sale to determine whether the sales price reflects the fair market value of the Real Property and otherwise ensure that the Plan is made whole.

8. In summary, it is represented that the proposed transaction satisfies the conditions of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price will be based on the fair market value of the Real Property as established by an independent appraisal; (c) the Plan will receive the entire Award including any future recoveries; and (d) the Trustee, which will serve as the independent fiduciary for the Plan, believes the sale is an appropriate transaction for the Plan and in the best interests of its participants and beneficiaries.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Kellam & Klein, D.O., P.C., David Kellam, D.O., Defined Benefit Plan & Trust (the Kellam Plan) Kellam & Klein, D.O., P.C., Donald Klein, D.O., Defined Benefit Plan & Trust (the Klein Plan) (Collectively the Plans) Located in Metamora Township, Lapeer County, Michigan

[Application No. D–6072 and D–6073]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by each of the Plans of a one-half interest in a parcel of unimproved real property (the Property) constituting 93.077 acres in Metamora Township, Lapeer County, Michigan to David Kellam, D.O. (Dr. Kellam) and to Donald Klein, D.O. (Dr. Klein) as tenants in common for a purchase price in cash of $52,500 for each Plan, provided that the price received is no less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plans are both defined benefit pension plans. Kellam and Klein, D.O., P.C., a Michigan corporation, is the employer of Dr. Kellam and Dr. Klein and the sponsor of the Plans (the Plans' Sponsor). Dr. Kellam is an owner of a 33⅓% interest in the Plans' Sponsor and is the sole participant and trustee of the

[13] The exemption application states that the Lease has satisfied the conditions of section 414(c)(2) of the Act. However, the Department expresses no opinion on whether these provisions have been met.

Kellam Plan. Dr. Klein is an owner of a 33⅓% interest in the Plans' Sponsor and is the sole participant and trustee of the Klein Plan. Accordingly, Drs. Kellam and Klein are parties in interest to their respective Plans. As of June 30, 1983, the Kellam Plan had assets of $492,546.40, and the Klein Plan had assets of $568,388.80. The Property constitutes approximately 10.5% of the assets of the Kellam Plan and 9.1% of the Klein Plan.

2. The Property consists of lots #1, #2, and #3 containing 6.615, 30.659, and 55.803 acres respectively. The Plans each acquired in August 1984 a one-half interest in the Property through a rollover contribution from a prior pension plan for $105,000, which was the appraised value on July 18, 1983. It is represented that the Property provides no income to the Plans and that the Plans have received no offers, other than the subject transaction, to purchase the Property nor are any anticipated. The Property adjoins land currently owned by the Plans' Sponsor.

3. Dr. Kellam and Dr. Klein each propose to purchase as tenants in common a one-half interest in the Property from their respective Plans for a cash price of $52,500 from each doctor. It is represented that in addition Drs. Kellam and Klein will pay all fees associated with the sale and will pay to the Plans, as part of the purchase price any costs such as real estate taxes which the Plans have incurred during the time the Property was held.

4. Mr. Roy J. Holden (Mr. Holden) of R.J. Holden & Associates, 16 E. High Street, Metamora, Michigan, has appraised the market value of the Property. On January 31, 1984, Mr. Holden estimated the value of the Property at $105,000 based on the real estate assessed values of the Property for 1983. As of April 16, 1985, Mr. Holden states that the actual fair market value of the Property is $96,500 based on comparable sales which indicated prices below tax assessment values.

It is represented that Mr. Holden is independent, as he has no present or contemplated future interest in the Property and neither his employment to make the appraisal nor the compensation is contingent on the appraised value of the Property. It is also represented that Mr. Holden is qualified to make such valuations of the Property as a Certified Appraiser-Senior of the American Association of Certified Appraisers with fifteen years of experience in appraising residential, multiple, farm, vacant, commercial, and industrial properties in Lapeer and surrounding counties in Michigan. Mr. Holden states that the current zoning of the Property is R–2 Residential which allows one acre building sites, but that the current use of the Property is agricultural with no change in use foreseen. Mr. Holden maintains that the Property does not presently warrant any additional premium value even though the Property adjoins land currently owned by the Plans' Sponsor.

5. In summary, Drs. Kellam and Klein represent that the proposed sale meets the statutory criteria of section 406(a) of the Act because:

(a) The proposed transaction is a one time sale for cash;

(b) The proposed transaction will enable the Plans to divest of an asset which produces no income;

(c) The Plans will receive cash proceeds from the sale which can be invested to produce income.

(d) The Plans will receive a purchase price for the Property, which is no less than the fair market value of the Property;

(e) The Plans have received no other offers to purchase the Property; and

(f) The Plans will not have to pay any fees associated with the proposed sale transaction and will be paid for costs, such as real estate taxes, which the Plans incurred in holding the Property.

Notice to Interested Persons: Because Drs. Kellam and Klein are the sole participants in their respective Plans to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of propsed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Vernon E. Weldon, M.D., Inc. Defined Benefit Pension Plan (the Plan) Located in San Rafael, California

[Application No. D–6113]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of two paintings (the Paintings) to Vernon E. Weldon, M.D., (Dr. Weldon), the Plan's sole participant and trustee, for the greater of the appraised fair market value or the original purchase price for each Painting.[14]

Summary of Facts and Representations

1. The Plan is a defined benefit Plan with one participant, Dr. Weldon, and assets of $518,744. Dr. Weldon is the sole shareholder of the Plan sponsor and is the Plan's trustee.

2. The Plan purchased the Paintings from two galleries in San Francisco in October and November, 1980.[15] One painting, by Robert Surface (the Surface Painting), was purchased on November 21, 1980 from the Tom Luttrell Gallery for $2,400. The other painting, by Robert Gonzales (the Gonzales Painting), was purchased on October 15, 1980 from the Allrich Gallery for $3,700. The applicant represents that the Paintings were purchased as growth assets during a period of high inflation. During a period of low inflation, however, they will not provide much capital appreciation. Dr. Weldon wishes to sell the Paintings out of the Plan and to invest the proceeds in more appreciable, liquid assets.

3. The applicant represents that the Paintings have been stored in a locked and insulated storage room in Dr. Weldon's home.

4. The applicant represents that the Paintings have a limited market and that Dr. Weldon is the most readily available buyer for them.

5. The Paintings were appraised on May 20, 1985 by Carol A. Atieff, A.S.A., an independent fine arts appraiser. She appraised the fair market value of the Surface Painting at $2,250 and the Gonzales Painting at $4,500.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) This will be a one-time transaction for cash; (b) the Plan will receive the greater of the fair market value or the original purchase price for each of the Paintings; (c) the Plan will be able to invest the proceeds in more appreciable, liquid assets; and (d) Dr. Weldon is the only participant in the Plan, and he desires that the transaction be consummated.

Notice to Interested Persons: Because Dr. Weldon is the sole shareholder of the Plan and the only participant in the Plan, it has been determined that there

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[14] Since Dr. Weldon is the sole stock holder of Vernon E. Weldon, M.D., Inc., the Plan sponsor, and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[15] The Department expresses no opinion on whether the purchase and holding of the Paintings violated section 4975 of the Code.

is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

Don C. Quast, M.D. Professional Association Defined Benefit Pension Plan and Trust (the Plan) Located in Houston, Texas

[Application No. D–6205]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed sale by the Plan of certain real and personal property to Don C. Quast Enterprises, Inc. (Enterprises), a corporation wholly-owned by Don C. Quast, M.D., P.A. (the Employer), the sponsor of the Plan; (2) the proposed extension of credit by the Plan to Enteprises with respect to the sale; and (3) the guarantee of the obligations of Enterprises to the Plan by the Employer and by Don C. Quast and his wife, Audrey C. Quast, as individuals; provided that the terms and conditions of the transactions are no less favorable to the Plan than those available in like transactions with unrelated parties, and that the sale price of the property is no less than its fair market value on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan which had nine participants and net assets of approximately $1,523,533 as of December 31, 1982. The trustee (the Trustee) and decision-maker with respect to Plan investments is Don C. Quast, M.D. The Trustee and his wife, Audrey C. Quast, are the sole shareholders of the Employer. The Employer is in the business of providing medical services.

2. In 1978, the Plan invested $60,000 in a limited partnership interest in Rolf's Restaurant (the Partnership), a restaurant and real estate business located in Taos, New Mexico. The general partner (the General Partner) of the Partnership was Mr. Rolf M. Milke, an individual unrelated to the Plan, the Employer and the Trustee. In October, 1980, the General Partner defaulted on certain loan obligations owned to First State Bank of (the Bank) Taos and other parties, all of which are unrelated to the Plan, the Employer and the Trustee. The loan obligations were secured by certain improved real property (the Real Property), furnishings, fixtures and equipment (collectively, the Furnishings) and a New Mexico liquor license (the Liquor License), all of which were associated with the operation of a restaurant. Upon default by the General Partner, the Bank obtained a judgment against the Partnership and prepared to foreclose on the Real Property, Furnishings and Liquor License (collectively, the Partnership Property). Rather than allowing the Plan to lose its investment in the Partnership, the Trustee determined that the Plan should pay off the Partnership's loan obligations. Upon payment of these obligations on October 10, 1980, totaling $227,962.53, the Plan acquired all right, title and interest to the Partnership Property. Since its acquisition by the Plan, the Partnership Property has generated net income for the Plan of only $13,089.72. The net income is the result of a $14,550 one-year lease to an unrelated party and $1,460.28 in expenses incurred by the Plan with respect to the Partnership Property. Other expenses with respect to the Partnership Property were paid by the Employer. The Real Property has not been leased since 1982.

3. Since the Plan's acquisition of the Partnership Property, the Trustee has been concerned about the Plan's lack of adequate liquidity, the failure of the Partnership Property to provide an adequate rate of return to the Plan, and the need for further investment in improvements and maintenance of the Partnership Property. The Trustee represents that, since 1981, he has made numerous attempts to sell the Partnership Property to unrelated parties. However, he was unable to obtain any offers to purchase the Partnership Property at any amount closely approaching its fair market value.

4. The Partnership Property was appraised on November 13, 1981 by Mark Cowen, S.R.A., an independent appraiser with Robert C. Daigh & Associates, Taos, New Mexico. Mr. Cowen determined the fair market value, as of November 13, 1981, of the Real Property to be $310,000, the fair market value of the Furnishings to be $25,000 and the fair market value of the Liquor License to be $40,000. The Real Property consists of approximately two acres of land improved by a 6,085 square foot pueblo-style restaurant building which includes three dining areas, a bar/lounge, pantry and storage areas, a kitchen and small living quarters in the rear of the building.

Mr. Cowen's appraisals were updated on April 10, 1985 by Mr. G. William Sarsen, an independent fee appraiser also located in Taos, New Mexico. Based upon information in Mr. Cowen's appraisal, Mr. Sarsen's pesonal inspection of the Partnership Property, investigation of comparable sales and analysis of current market trends in the area, Mr. Sarsen states that $300,000 represents the fair market value of the Real Property as of April 10, 1985. Mr. Sarsen states that the decline in value is due to a lack of maintenance and upkeep. The applicants acknowledge the need to invest soon in maintenance and improvement of the Real Property, but state that such investment would further impar the Plan's already limited cash flow.

Mr. Sarsen also determined the value of the Furnishings as of April 10, 1985 to be $24,590 and the value of the Liquor License as of the same date to be $40,000. The applicants represent that Mr. Sarsen is completely independent of the Employer, Enterprises, and the Trustee. The total value of the Partnership Property, as appraised by Mr. Sarsen on April 10, 1985 is $364,590, representing approximately 24% of the Plan's current assets.

5. In order to get the Partnership Property out of the Plan and to avoid further expenses for the Plan, Enterprises proposes to purchase the Partnership Property from the Plan for its appraised value $364,590. Enterprises will pay $164,590 in cash and will execute a ten-year $200,000 promissory note (the Note) payable to the Plan, secured by a first deed of trust on the Real Property. The face amount of the Note constitutes approximately 13% of the Plan's current assets.

In addition, if the Plan incurs any additional expenses for maintenance of the Real Property between June 10, 1985 and the date the sale is consummated, Enterprises will reimburse the Plan, in cash, for the full amount of such expenses. No fees, commissions or other expenses will be paid by the Plan with respect to the sale.

6. The Note will bear interest at the rate of 2% over the prime rate, as adjusted quarterly, of the First National Bank in Albuquerque, New Mexico, and will be payable in 40 equal quarterly installments of $5000 of principal and 40

quarterly unequal installments of interest on the unpaid balance. All payments will be first applied to interest with the balance applied to principal. If for any reason the Real Property securing the Note should decline in value to an amount less than 150% of the outstanding principal loan balance, accelerated payments will be required so as to maintain the collateral at a level not less than 150% of the outstanding balance of the Note. The improvements on the Real Property will be kept fully insured over the term of the Note with the Plan named as beneficiary of such insurance policy to the extent of the outstanding balance and accrued interest on the Note.

7. The Note will be jointly and severally guaranteed by the Employer and by the Trustee and his wife. In addition to the $200,000 principal amount of the Note, the guarantee covers all interest on the Note, attorney's fees, and costs of collection which may be incurred by the Plan with respect to the Note. As of December 31, 1984, the Employer showed total assets of approximately $1,052,066 and stockholders' equity (net assets) of approximately $446,465. The Trustee and his wife each have net assets substantially in excess of $500,000.

8. Mr. A. Macy Smith (Mr. Smith) has been appointed to act as an independent fiduciary for the Plan with respect to the proposed transactions. Mr. Smith, who is a businessman and the trustee of a profit sharing plan and pension plan sponsored by his own companies, represents that he is completely independent of the Employer, Enterprises and the Trustee and that he has discussed his duties, responsibilities and liabilities as an independent fiduciary under the Act with an attorney experienced in ERISA matters. Mr. Smith has twenty-five years of business experience and has served as a consultant to and on the board of directors of many major corporations. Mr. Smith has reviewed the history of the Partnership Property, the appraisals, the Plan's portfolio and financial statements, the needs of the Plan, including its needs for liquidity and diversification, and all documents relating to the proposed sale, extension of credit and guarantee. Based upon this review, Mr. Smith states that the proposed transactions are in the best interest of the Plan and its participants and beneficiaries because of the lack of adequate return to the Plan from this investment. The Partnership Property currently represents approximately 24% of the Plan's assets, which together with other long-term investments held by the Plan, results in inadequate liquidity in the Plan's portfolio. Furthermore, the value of the Partnership Property will continue to decline if substantial investments in maintenance and improvements are not made in the near future. If the exemption is granted, the Plan will have a purchaser for the Partnership Property who is willing to pay its full appraised fair market value. The extension of credit by the Plan is protective of the Plan because the Note will at all times be secured by fully insured real property having an appraised fair market value of at least 150% of the outstanding balance of the Note, and because the personal guarantees of the Note, jointly and severally, by the Employer and by the Trustee and his wife will provide substantial additional security for the Plan. Mr. Smith will monitor all terms and conditions of the sale and the Note, including the quarterly interest adjustments and the value of the Real Property securing the Note, and will take any actions necessary to enforce the rights of the Plan with respect to the proposed transactions.

9. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The Plan will be able to divest itself of property constituting approximately 24% of its assets and will be able to reinvest the proceeds in more liquid and profitable investments;

(b) No fees, commissions or other expenses will be paid by the Plan with respect to the sale;

(c) The Plan will receive the appraised fair market value for the Partnership Property, and such amount exceeds the Plan's investment in the Partnership Property;

(d) The Note will at all times be secured by insured real property having an appraised fair market value of at least 150% of the outstanding balance of the Note;

(e) The Note will be guaranteed through the joint and several guarantees of the Employer and of the Trustee and his wife;

(f) An independent fiduciary for the Plan has reviewed the Plan's investment portfolio and liquidity and diversification needs, as well as all of the terms and conditions of the proposed transactions and has determined that the transactions are protective of and in the best interest of the Plan's participants and beneficiaries; and

(g) The terms and conditions of the transactions will be monitored and enforced by the independent fiduciary on behalf of the Plan.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. This is not a toll-free number.

General Information

The attention of interested persons is directed to the folllowing:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the expressed condition that the material facts and repesentations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 13th day of August, 1985.

Robert J. Doyle,

Deputy Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-19659 Filed 8-16-85; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-528]

Arizona Public Service Co., et al., Palo Verde Nuclear Generating Station, Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition filed under 10 CFR 2.206 by Myron L. Scott on behalf of the Coalition for Responsible Energy Education regarding the Palo Verde Nuclear Generating Station (PVNGS) Unit 1. The Petitioner requested that no license be issued for PVNGS Unit 1 until concerns relating to incentive plans and offsite emergency preparedness for PVNGS, are resolved. As a basis for the Petition, the Petitioner alleged that the incentive plans have not been adequately reviewed for their safety impact and that emergency preparedness of state and local agencies is inadequate since the agencies may be underfunded.

The Staff had considered the Petitioner's allegations and has determined that they do not provide an adequate basis for the relief requested. The reasons are fully described in a "Director's Decision Under 10 CFR 2.206," (DD-85-12), which is available for public inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell, Road, Phoenix, Arizona 85004

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland this 9th day of August, 1985.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-19775 Filed 8-16-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix J to 10 CFR Part 50 to the Omaha Public Power District (the licensee), for the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The requested exemptions are related to Section III of Appendix J to 10 CFR Part 50. Section III contains containment leakage testing requirements. Specifically, the license has requested an exemption from paragraph III.D.2(b)(ii) which states "Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than Pa." The licensee has also requested an exemption in regard to performing Type C leakage testing on the isolation valves associated with the Charging Pump Discharge Line (penetration M-3).

These proposed exemptions are responsive to the licensee's letter requesting exemptions dated January 26, 1983.

The Need for the Proposed Action

The existing Personnel Air Lock (PAL) doors are so designed that a full pressure test can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are needed since the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. The strong backs are extremely difficult to install and the outer door must be opened to remove the strong backs. As a result, about 18-24 hours are required to complete a full pressure test of an air lock. Alternately, the licensee proposes to leak test the door seals at 5 psig prior to returning to a plant operating condition requiring containment integrity, and conduct a full presure test on the PAL assembly within 2 weeks. The licensee contends that this proposal will provide adequate assurance of air lock integrity without imposing undue delays on return to power operations.

The containment isolation valves associated with penetration M-3 are part of the charging pump discharge line. The licensee believes that testing is unnecessary because the pressure of the fluid in the line will always be greater than the containment pressure, thereby providing a seal barrier against escape of the containment atmosphere.

Environmental Impacts of the Proposed Action

Our evaluation of the proposed exemption from Appendix J to 10 CFR Part 50 indicates that the granting of the exemptions will not impair containment integrity for the following reasons. If the periodic 6-month test of paragraph III.D.2(b)(i) of Appendix J and the test required by paragraph III.D.2(b)(iii) of Appendix J are current, there should be no reason to expect an air lock to leak excessively just because it has been opened during cold shutdown or refueling. Regarding the charging pump discharge line, the pressure of the fluid in the line will always be greater than the containment pressure, thereby providing a seal barrier against escape of the containment atmosphere.

Accordingly, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Fort Calhoun Station, Unit No. 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the letter requesting the exemptions dated January 26, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. 20555 and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Bethesda, Maryland this 1st day of August, 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-19776 Filed 8-16-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan Proposed Model Conservation Standard Amendments; Hearings and Public Comment

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council. (Northwest Power Planning Council).

ACTION: Extension of public comment period and rescheduling of public hearings.

SUMMARY: The Northwest Power Planning Council (Council) recently released for public comment proposed amendments to portions of its Northwest Conservation and Electric Power Plan (Plan) concerning model conservation standards (MCS), set a deadline for receipt of public comments regarding the amendments, and scheduled public hearings (50 FR 30654-61, July 26, 1985). To provide ample opportunity for interested parties to submit public comments, the Council has now extended the deadline for public comment and rescheduled two of the five originally-scheduled hearings.

DATES AND ADDRESSES: The public comment period regarding the proposed MCS amendments will now close at 5 p.m. Pacific time on September 13, 1985 (rather than August 26, as originally announced). Additionally, the public hearings originally set for Seattle, Washington, on August 20 and Missoula, Montana, on August 23 have been changed, resulting in the following final hearing schedule:

- Portland, Oregon, 9 a.m., August 6, 1985, at the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.
- Spokane, Washington, 3:30 p.m. to 5 p.m., August 20, 1985, Spokane Convention Center, meeting room A, W. 334 Spokane Falls Blvd., Spokane, Washington.
- Burley, Idaho, 1 p.m., August 22, 1985, at the Burley Inn, 800 N. Overland Ave., Burley, Idaho.
- Seattle, Washington, 9 a.m., September 9, 1985, at the Federal Building, Room 2866, 915 Second Avenue, Seattle, Washington.
- Missoula, Montana, 1:30 p.m., September 13, 1985, at the Missoula Sheraton, 200 S. Pattee St., Missoula, Montana.

The Council currently expects to take final action on proposed MCS-related amendments at its October 9-10, 1985, meeting in Missoula, Montana. The actual date on which the Council will make its final decision will be announced in accordance with applicable law and in accordance with the Council's practice of providing notice of its meeting agendas.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, at the Council's central office (850 S.W. Broadway, Suite 1100, Portland, Oregon, 97205 or 503-222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington, or 1-800-452-2324 in Oregon).

Edward Sheets,

Executive Director.

[FR Doc. 85-19689 Filed 8-16-85; 8:45 am]

BILLING CODE 0000-00-M

Losses and Goals Advisory Committee; Meeting

AGENCY: Losses and Goals Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council)

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Losses and Goals Advisory Committee.

DATE: August 22, 1985. 9:30 a.m.

ADDRESS: The meeting will be held at the Council's Hearing Room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-19688 Filed 8-16-85; 8:45 am]

BILLING CODE 0000-00-M

Activities will include:

- Update on Losses Statement.
- Discussion of production investment policies issue paper.
- Discussion of productivity analysis issue paper.
- Discussion of resident fish substitutions issue paper.
- Other.
- Public comment.

Status: Open.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14673; File No. 812-6116]

Counsellors Cash Reserve Fund, Inc., et al.; Application for Exemptive Order Permitting Separate Classes of Shares Representing Interests in the Same Portfolio

August 13, 1985.

Notice is hereby given that Counsellors Cash Reserve Fund, Inc. and Counsellors New York Tax Exempt Fund, Inc. (the "Funds"), and their investment advisor Warburg, Pincus Counsellors, Inc. and its parent, E. M. Warburg Pincus & Co., Inc. (collectively with the Funds, as the "Applicants"), each at 466 Lexington Avenue, New York, NY 10017 filed an application on May 14, 1985, requesting an order of the Commission pursuant to section 6(C) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of sections 18(f)(1), 18(g) and 18(i) of the Act to the extent necessary to permit the Funds, and all similar investment companies sponsored in the future by the Funds' investment adviser its parent corporation, to issue and sell separate classes of securities representing interests in their existing and future investment portfolios (including the allocation of voting rights thereto and the payment of dividends thereon) in the manner described below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of their relevant provisions.

According to the application, each of the funds is registered under the Act as an open-end, diversified management investment company, and has a currently effective registration statement. At present, each Fund offers a single class of common stock and a

single investment portfolio consisting of short-term taxable "money market" obligations and short-term tax-exempt debt obligations, respectively. (The Funds' existing and future investment portfolios are sometimes referred to hereinafter as "Portfolios", and the existing classes of shares representing interests in the Funds' existing Portfolios together with each initial class of shares that is created by Applicants in connection with any investment portfolio that is organized by the Applicants in the future are sometimes collectively referred to as "Existing Shares".)

The application states that the Funds' shares will be offered to persons whose assets are held of record by broker-dealers, investment advisers, banks, trust companies or other financial institutions acting in an agency capacity on behalf of their customer accounts. According to the application, all expenses of each Portfolio will be borne pro-rata by the shareholders of the Portfolio in accordance with the number of shares owned by each of them. The Funds' expenses consist of advisory, sub-advisory, administration, custodial and transfer agency fees, as well as other types of operating expenses. None of the Funds has adopted a plan pursuant to Rule 12b–1 under the Act ("12b–1 Plan"), or a shareholder services plan ("Shareholder Services Plan") for support services provided to their customers who are the beneficial owners of shares, and none currently pays its distributor for distribution services.

The Funds believe that it is highly desirable that they be able to offer services which are adapted, to the extent possible, to the investment needs of the particular investor. In order to broaden their range of services, and also to expand their marketing alternatives, the Funds are contemplating the creation of new classes of shares ("New Shares") with the following characteristics. The New Shares would be offered only to or through institutions and could not be purchased by individuals directly from the Funds. Further, except for its class designation and the allocation of certain expenses and voting rights as described below, each class of New Shares would be identical in all respects to one of the classes of Existing Shares. Among other things, the "matched" sets of New Shares and Existing Shares would be subject to the same investment objective, policies and limitations, the same dividend policies and the same purchase and redemption policies. They would differ, however, in that certain classes of Shares would be offered in connection with (1) a 12b–1 Plan adopted by the Fund involved pursuant to Rule 12b–1 under the Act; or (2) a Shareholder Service Plan adopted by the Board of Directors of each Fund involved pursuant to all the requirements of Rule 12b–1 (except those relating to shareholder voting rights and automatic termination of the plan upon its assigment); or (3) no plan at all. (Those 12b–1 Plans and Shareholder Services Plans are sometimes referred to hereinafter as "Plans.") The application states that the adoption and implementation of a Plan by one Fund would be made independently of, and would not be conditioned upon, the adoption or implementation of a Plan by any other Fund. In addition, each Plan would relate only to the shares of a particular Fund.

As described in the application, under each type of Plan, a Fund would enter into servicing agreements ("Servicing Agreements") with institutions concerning the provision of support services to the customers of the institutions who from time to time beneficially own shares which are offered in connection with the Plan ("Customers"). In addition, Servicing Agreements under a 12b–1 Plan would contemplate the provision of distribution assistance by an institution in connection with the Plan. Applicants state that the provision of support services and distribution assistance under the Plans would augment (and not duplicate) the services that are currently provided to the Funds by their service contractors (e.g. investment adviser, sub-investment adviser, administrator, distributor, custodian and transfer agent).

According to the application, under each type of Plan a Fund would pay participating institutions for their services and assistance in accordance with the terms of the Plan and the relevant Servicing Agreement (such payments are referred to hereinafter as "Service Payments"). Service Payments paid to an institution would not exceed 0.75% (on an annualized basis) under a 12b–1 Servicing Agreement, or 0.50% (on an annualized basis) under a Shareholder Servicing Agreement, of the average daily net asset value of those Shares beneficially owned by Customers of the institution with respect to which the institution provides services and assistance under the Servicing Agreement. Further, because a Servicing Agreement necessarily contemplates the provision of services and assistance by an institution to its customers, the funds would not knowingly enter into a Servicing Agreement with an institution in those institutions where the institution invests as principal. Applicants note that under state law and under recent letters of the Comptroller of the Currency, the ability of a bank to accept a fee from an investment company in connection with the investment of the assets of its fiduciary accounts may be restricted, and represent that to the extent that such investments are permitted each Fund will include in their prospectus relevant disclosures about the Comptroller's letters.

According to the application, a Fund's New Shares would represent interests in the same portfolios as its Existing Shares. Under this arrangement, each New and Existing Share in a particular Portfolio, regardless of class, would represent and equal pro-rata interest in the Portfolio and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (1) Each class of New Shares and Existing Shares would have different class designations; (2) each class of shares offered in connection with a Plan would bear the expenses of the Service Payments that were made under the Servicing Agreements that have been entered into with respect to that class; and (3) only the holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to the Plan, and the Servicing Agreements relating to such class or classes (for example, the adoption, amendment or termination of a Plan).

In particular, the application states that the net asset value of all outstanding shares representing interests in the same Portfolio would be computed on the same days and at the same times by adding the value of all portfolio securities and other assets belonging to the Portfolio involved, subtracting the liabilities charged to the Portfolio and dividing the result by the number of that Portfolio's outstanding shares. Further, the gross income of a Portfolio would be allocated on a pro rata basis to each outstanding share in the Portfolio regardless of class, and all expenses incurred by the Portfolio (for example, fees of the investment adviser, sub-investment adviser, administrator, directors, transfer agent, custodian, auditors and legal counsel, officers' salaries, registration and printing expenses, taxes, interest, brokerage fees and commissions, insurance premiums and extraordinary expenses) would be borne on a pro rata basis by such

outstanding shares, except for Service Payments made under a Plan that has been adopted in connection with one or more classes of shares. On the other hand, because of the Service Payments that would be borne by a class or classes of shares that is offered in connection with a Plan, the net income of (and dividends payable to) such class or classes would be somewhat lower than the net income of the "matched" class or classes of shares that is offered without a Plan, and might be somewhat higher or lower than the net income of other classes of shares of the same Portfolio that are offered in connection with a different Plan. Dividends paid to each class of shares in a Portfolio would, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the expense of Service Payments, would be determined in the same manner and paid in the same amounts.

Applicants request an exemptive order pursuant to section 6(c) of the Act to the extent that the proposed issuance and sale of classes of New Shares representing interests in the Funds' existing and future Portfolios, including dividends thereon as described above, might be deemed: (1) To result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (2) to violate the equal voting provision in section 18(i) of the Act. In support of the relief requested, the Funds assert that the issuance and sale of classes of New Shares in their Portfolios permit the Funds to both facilitate the distribution of their securities and expand the scope and depth of their services without assuming excessive accounting and bookkeeping costs or unncessary investment risks.

Applicants assert further that the proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a Plan and receiving the services provided thereunder would bear the costs associated with such services, but would also enjoy exclusive shareholder voting rights with respect to matters affecting that Plan. Conversely, investors purchasing shares that are not covered by such Plan would not bear such expenses or enjoy such voting rights.

In addition, Applicants submit that the requested exemption is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants assert that the proposed arrangement does not involve borrowings and does not affect the Funds' existing assets or reserves. Nor, it is asserted, will the proposed arrangement increase the speculative character of the shares in a Portfolio, since all shares will participate pro rata in all of the Portfolio's income and all of the Portfolio's expenses (with the exception of the proposed Service Payments). Applicants specifically state that all the representations and conditions contained in the application will apply to any future investment portfolio to which the exemptive relief will apply.

Applicants state that although they contemplate that Service Payments maybe made to institutional shareholders that may be deemed to be affiliated persons of the Funds because they own, control or hold with the power to vote 5% or more of the outstanding voting securities of a Portfolio, they are not requesting exemptive relief from section 17 of the Act because they believe that such payments would not be prohibited by that section.

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. The only differences between each class of Shares representing interests in the same Portfolio will relate solely to priorities with respect to: (a) The payment of dividends and such priority will reflect only the impact of the Service Payments made by the Funds under the Plans relating to particular classes of Shares, and (b) voting rights on matters which pertain to Plans (and Servicing Agreements and Service Payments thereunder). In addition, the designation of each class of Shares in a Portfolio would be different.

2. The Plans (including both 12b-1 Plans and Shareholder Services Plans), Servicing Agreements and Service Payments relating to Shares will be approved and reviewed by the relevant Fund's governing board of directors in accordance with the procedures set forth in Rule 12b-1 and, in addition, the 12b-1 Plans (and, to the extent required, the Servicing Agreements and Service Payments thereunder) relating to shares will be approved by those shareholders who are affected in accordance with that Rule. In addition, each governing board of directors, in approving and reviewing payments to an institution pursuant to any 12b-1 Plan or Shareholder Services Plan, will conclude in good faith based on information available to them that such expenditures are competitive with those offered in the industry.

3. Dividends paid by a Fund with respect to each class of shares in a Portfolio will be calculated in the same manner and will be in the same amount as dividends paid by the Fund with respect to each other class of shares in the same Portfolio, except that the expenses of any Service Payments made by the Fund under the Servicing Agreements relating to a class of shares will be borne exclusively by that class.

4. Each prospectus relating to a class of shares that is offered in connection with a Plan will: (a) Describe the services rendered by institutions under Servicing Agreements with respect to those shares and the fees payable by the Applicant involved for such services; and (b) state that the beneficial owners of those shares should read the prospectus in light of the terms governing their institutional accounts.

5. Each Servicing Agreements entered into by a Fund will contain representations by the institution involved that: (a) The institution will provide to its Customers a schedule of any fees charged by it to the Customers relating to the investment of their assets in the class of shares subject to the Servicing Agreements; and (b) the compensation paid to the institution under the Servicing Agreements, together with any other compensation the institution receives from its Customers for services contemplated by the Servicing Agreements, will not be excessive or unreasonable under the laws and instruments governing the institution's relationships with its Customers.

6. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make to institutions pursuant to Plans in reliance on the exemptive order.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 9, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order

disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19757 Filed 8-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22326; File No. SR-Amex-85-27]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc., Relating to Amex Rule 970

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is proposing to amend Amex Rule 970 to prescribe an earlier deadline for resolution of uncompared options trades after which uncompared options transactions must be closed out in accordance with the Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* Exchange Rule 970 requires that when a disagreement between members or member organizations arising from an uncompared option transaction cannot be resolved by mutual agreement prior to the opening of trading on the first business day following trade date ("T+1"), the parties must close out the transaction promptly, but no later than 3:30 p.m. on T+1. The purpose of Rule 970 is to assure the timely and fair resolution of uncompared options trades.

Under the Rule, members and member organizations are permitted either to recognize or reject uncompared option transaction reports (known as rejected option transaction notices, or "ROTNs") up until 10:00 a.m. on T+1. Since the assistance of a specialist is usually required in resolving ROTNs, members often present specialists with uncompared trades just prior to or at the opening when specialists are otherwise engaged and unable to respond to such requests in a timely manner. This has resulted in items remaining unresolved into the trading day, causing members some difficulty in complying with the 3:30 p.m. close out deadline.

In order to assure that uncompared trades are resolved in a timely fashion, the Exchange proposes to amend the Rule to establish an earlier deadline for resolution of uncompared trades after which members will be required to close out uncompared options transactions. Under the proposed rule change, members and member organizations will be required to recognize or reject all ROTNs no later than one half hour before the opening (i.e., 9:30 a.m. for equities and 8:30 a.m. for interest rate options). This change will provide specialists with ample time to address any questions regarding uncompared trades without impinging on their ability to prepare for the opening of trading.

(2) *Basis.* The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that by facilitating the timely resolution of uncompared options transactions, it will foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, and foster the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 9, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 13, 1985.

[FR Doc. 85-19758 Filed 8-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22323; SR-Amex-84-33, SR-CBOE-84-28, SR-NYSE-84-35, SR-PSE-85-19, SR-Phlx-85-18]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al.; Order Approving Proposed Rule Changes, Granting Accelerated Partial Approval of Proposed Rule Change, and Filing and Order Granting Accelerated Approval of Proposed Rule Changes

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Chicago Board Options Exchange ("CBOE") and the American ("Amex"), New York ("NYSE"), Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges have filed with the Commission proposed rule changes to permit the use of cash, cash equivalents, or one or more qualified equity securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options, in lieu of margin,[3] for a one year pilot period.[4]

II. Background

Section 220.8(a)(4)(i) of Regulation T[5] sets forth the types of collateral that must underlie an escrow agreement issued to cover a short call option position. Under that section, an escrow agreement can be used in lieu of margin for a short call option position if a bank holds the underlying security for the customer writing the option. It is difficult, however, to apply the traditional concept of cover to broad-based index options. First, because the existing options on broad-based stock indexes include from 20 to 1,500 securities it is often impracticable, if not impossible, for an index options writer to be "covered" by having appropriate positions in each security comprising the index. Second, because index options are cash settled instruments, the underlying security position deposited with a bank would never be delivered upon assignment. Accordingly, unlike individual stock options where a call writer would be required to produce the underlying security upon assignment, it may not be necessary to require an index option writer to hold all the underlying securities of the index to be adequately "covered" from an economic risk perspective.

As a result of these problems, from September 1983 to March, 1984 the options exchanges filed rule proposals to permit the use of escrow receipts for short call options positions in broad-based index options if a bank or trust company held for the customer at least ten qualified equity securities,[6] each issued by a different entity, the aggregate market value of which equaled or exceeded, the product of the current index value, the index multiplier, and the number of contracts covered by the collateral, computed at the time the call option contract was written.[7] Under the proposals no single security could respresent more than 15% of the total value of the collateral. In addition, as required by Regulation T for other forms of cover involving the issuance of escrow receipts, the bank or trust company issuing the receipt had to make a commitment to promptly pay the member organization the exercise settlement amount in the event of exercise.

In approving these proposed rule changes,[8] the Commission recognized that the use of such escrow receipts deviated somewhat from traditional concepts of cover because the proposals did not specifically require the value of the securities deposited with the bank issuing the escrow receipt to track changes in the index value. On the other hand, because of the special characteristics of index options[9] and certain safeguards in the proposals that assured that, except in the most unusual circumstances, the value of the collateral underlying the escrow receipts would remain far greater than the obligation of a call writer to deliver upon exercise the difference between the current index value and the exercise price of the option,[10] the Commission concluded that the proposals should be approved.[11] In approving the proposals the Commission also noted that the guarantor (bank or trust company), in addition to the member firm who would be responsible for paying the exercise settlement amount to the Options Clearing Corporations ("OCC"), would have an interest in assuring that the securities deposited were adequate to secure the obligation. The Commission also recognized that, after practicable experience with the proposed system of cover for index options, it may be necessary to make certain changes to the form or use of such receipts.

Following approval of the proposals, the exchanges became aware that escrow receipts for broad-based index options were not being used by market participants to the extent originally envisioned. Moreover, the exchanges found that the requirement that the collateral constitute a "basket of securities," comprised of 10 or more securities, proved impracticable in certain respects for the banks and trust companies issuing the receipts and uneconomic for the broker or customers seeking to obtain such receipts. First, it was found that many of the issuing

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] Notice of the Amex, CBOE, and Phlx proposals was given in the following releases: Securities Exchange Act Release Nos. 21493, November 16, 1984, 49 FR 45994, File No. SR-Amex-84-33; 21399, October 15, 1984, 49 FR 41128, File No. SR-CBOE-84-28; 22258, July 19, 1985, 50 FR 30553, File No. SR-Phlx-85-18. This Release notices the NYSE and PSE proposals which are essentially identical to the proposals of the other three exchanges. In their filings, the NYSE and PSE requested accelerated approval of their proposed rule changes concurrent with the approval of the other exchange proposals which were noticed and published for comment. The Amex, CBOE and NYSE also submitted amendments to their respective rule proposals to indicate that, if approved, the rules will be effective on a pilot basis for a one year period from the date of Commission approval. Both the Phlx and PSE included the one year pilot aspect of the proposals in their original filings.

[4] The Phlx also has proposed, among other things, to permit the use of cash or cash equivalents to cover short put options contracts overlying both broad-based stock index options and individual stock options. The other options exchanges currently have rules permitting such escrow receipts to be used, in lieu of margin, to cover short put positions in individual stock options and broad-based index options. *See, e.g.*, NYSE Rule 431(d)(2)(H)(iv).

[5] 12 CFR 220.8(a)(4)(i).

[6] Essentially, a "qualified security" is one (1) traded on a national securities exchange and substantially meeting the listing requirements of the NYSE or Amex; or (2) one enumerated in the current list of over-the-counter margin stocks published by the Board of Governors of the Federal Reserve System ("FRB"). *See, e.g.*, (CBOE Rule 24.11, Interpretation .03.

[7] Phlx did not submit such a proposal, however, because at that time it did not trade any broad-based index options. Since that time, Phlx has commenced trading a broad-based index option on the Value Line Average Stock Index, approved for trading by the Commission in Securities Exchange Act Release No. 21513, November 21, 1984, 49 FR 46857.

[8] *See* File Nos. SR-CBOE-83-31, Securities Exchange Act Release No. 20619, February 6, 1984, 49 FR 5221; SR-NYSE-83-37, Securities Exchange Act Release No. 20693, February 23, 1984, 49 FR 7485; SR-Amex-84-5, Securities Exchange Act Release No. 20732, March 7, 1984, 49 FR 9665; SR-PSE-84-7, Securities Exchange Act Release No. 21032, June 8, 1984, 49 FR 24964.

[9] *E.g.*, cash settlement and the large number of securities that underlie broad-based index options.

[10] *E.g.*, the requirement that the deposited securities equal the aggregate current index value and the diversification of the collateral in at least 10 stocks with no one security representing more than 15% of the collateral.

[11] The FRB also indicated that an escrow agreement, such as that proposed by the exchanges, could be used as cover in a cash account under § 220.8(a)(4)(i) of Regulation T, 12 CFR 220.8(a)(4)(i). *See* letter from Laura Homer, Securities Credit Officer, FRB, to Richard G. Ketchum, Associate Director, Division of Market Regulation, dated January 27, 1984, which discusses the escrow receipt filing proposed by the CBOE. Substantially similar rule proposals were subsequently filed by the NYSE, Amex and PSE.

banks and trust companies did not have recordkeeping procedures and segregation systems that could be easily applied to the ten stock requirement. Second, the resolution of assignments was complicated and delayed because no cash was readily available to the bank or trust company to meet the cash settlement of an index option position. Third, the fee structures of many banks were such that charges for escrow receipts were based on specific securities movements (*i.e.*, account entries indicating that specific securities were backing, or no longer backing, an escrow receipt). As a result, an escrow receipt collaterized by ten or more stocks is far more expensive to obtain than a traditional escrow receipt relating to a single stock.[12] As a result of these problems, the exchanges submitted their current proposals to the Commission that would change the type of collateral permitted to underlie a broad-based index option escrow receipt. In the exchanges' view, the proposed changes to the current broad-based index option escrow receipt should significantly reduce the operational difficulties previously encountered, reduce the actual costs incurred by customers using such receipts and provide greater flexibility to market participants writing index options positions. In addition, the exchanges believes that the changes will make index option products more competitive with similar futures products.[13]

III. Description of Proposals

Based on their experience with broad-based index option escrow receipts under existing rules, the exchanges submitted their current proposals that would permit such receipts to be collateralized by cash, cash equivalents, or one or more qualified securities, or a combination of the foregoing, for a one year pilot period. For the most part, the rules applicable to the use of broad-based index option escrow receipts under the previously approved rules will apply.[14] In addition, the rules' new definition for "cash equivalents" mirrors the definition provided in Regulation T under § 220.8(a)(3)(ii).[15] The rule change also provides that, in addition to the existing requirements as to a bank or trust companies eligibility to issue such receipts, the issuing entity also must be approved by the OCC if the receipt is to be forwarded to the OCC to meet the member's margin obligations to OCC.[16] Although the collateral may include only one, or even no securities, under the escrow receipt the customer must affirm that the customer was writing index options against a diversified stock portfolio. Finally, in response to a request from the Commission, the exchanges have proposed to implement the rule change for a one year pilot period. In this regard, the exchanges, the Commission and the FRB retain the authority to suspend, terminate or otherwise modify the pilot during the one year period.

In addition to the proposals concerning short call positions on broad-based index options, the Phlx is proposing to permit escrow receipts collateralized by cash or cash equivalents (as defined in § 220.8(a)(3)(ii) of Regulation T) to be used as cover, in lieu of margin, for short put options positions on individual stock options and broad-based index options. Under this aspect of the Phlx propsal the cash or cash equivalents underlying the escrow receipt must have an aggregate market value equal to or in excess of the exercise settlement amount of the put contract.

IV. Discussion

The Commission has concluded that the exchange proposals to permit, for a one-year pilot period, the use of cash, cash equivalents, or one or more qualified securities to collateralize escrow receipts issued to cover short call broad-based index options positions is consistent with the Act.[17] As discussed above, for several reasons the escrow receipts permitted under the existing rule were difficult and costly for market participants to use. As a result, the exchanges have proposed a pilot program they believe will reduce or eliminate many of the problems encountered under the existing rules.

The Commission believes that the wider range of collateral that can be used to underlie the escrow receipts under the proposals should provide greater flexibility for market participants. Moreover, permitting the posting of cash or cash equivalents should help to prevent settlement delays that have occurred under the existing rules. Reducing the minimum number of securities that can collateralize the escrow receipt from ten securities to one security also should eliminate many of the burdens associated with the use of such receipts under the current exchange rules.

In addition to solving certain problems, however, the Commission believes that the proposed changes raise certain concerns about the adequacy of the collateral that will be posted. For example, in approving the initial use of such receipts, the Commission indicated that the requirement that the securities posted as collateral be from 10 different issuers, with none of the securities representing more than 15% of the total value of the collateral, helped to ensure that even substantial decreases in the price of one or two of the deposited securities would not endanger the sufficiency of the collateral. Under the proposed rules, however, this would no longer be the case because it would be sufficient to have one security represent the total collateral underlying the escrow receipt. Furthermore, certain risks associated with the use of such receipts may be enhanced by the possibility that the security deposited is not representative of the market, and thus, its value will not fluctuate in correspondence to the index.[18]

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[12] In this regard, the CBOE indicated that because the bank fees for segregating so many securities and the fees imposed for substituting collateral were costly, institutional investors may choose not to enter into covered index options positions using the current procedures for escrow receipts. Moreover, the CBOE's view, the current escrow receipt is "prohibitively expensive and cumbersome when compared to arrangements for similar products traded on commodities exchanges." CBOE notes, for example, that while a short call position on 100 contracts in the S&P 100, valued at 165, requires a bank to segregate collateral equal to $1,650,000 in no less than 10 equity securities with no one security accounting for $247,500 of the collateral value, in he commodities markets a comparable position in S&P 500 futures contracts would simply require a $60,000 good faith deposit. *See* letter from Mary L. Bender, Assistant Vice President, CBOE, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated January 23, 1985.

[13] *See, id.*

[14] For example, the definition for "qualified equity security" under the current rule, noted above, is the same under the proposed rule change. In addition, the rule continues to require that the value of the collateral underlying the escrow receipt be equal to, at least, the aggregate initial position value (*i.e.*, the index value at trade date times the applicable index multiplier times the number of contracts covered by the collateral).

[15] 12 CFR 220.8(a)(3)(ii).

[16] In a separate release issued today, the Commission has approved a rule proposal by the OCC that establishes a pilot program permitting clearing members to deposit escrow receipts, collateralized by one or more securities, cash or cash equivalents, in lieu of margin, on short call broad-based index option positions carried for customer accounts. *See* Securities Exchange Act Release No. 34-22324, August 13, 1985.

[17] The FRB staff also has indicated that it would not object to the use of escrow receipts, collateralized as proposed, as cover in a cash account under § 220.8(a)(4)(i) during the pilot period. Telephone conversation between Laura Homer, Securities Credit Officer, FRB, and Brandon Becker, Assistant Director, Division of Market Regulations, SEC, on July 29, 1985.

[18] In this regard, the Commission notes that the definition of a "qualified security" for purposes of collateralizing the receipt is quite broad, including as it does all marginable securities. *See* note [6], *supra*. While such a broad definition was appropriate so long as the receipt included ten securities, the Commission is concerned that, because the receipt now only may include one security, the definition may be too expansive.

Nevertheless, the Commission believes that the proposed rule changes have enough safeguards to reduce its concerns to permit their implementation on at least a pilot basis. The exchanges, for example, together with OCC, have agreed to carefully monitor the use of index option escrow receipts during the pilot period. In this regard, specific data will be collected on both a quarterly and monthly basis regarding the use of escrow receipts from both the banks issuing such receipts and the brokers accepting the receipts.[19] Moreover, as noted above, under the pilot the exchanges, along with the Commission and the FRB, have the power to suspend, terminate or modify a member organization's ability to accept escrow receipts in lieu of margin for short call index option positions. This power, coupled with careful and continuous monitoring of the pilot, should help to ensure that the risks to the financial community will not be significantly increased under the new rule and that abuses do not occur.

In addition to the above factors, the Commission believes that, because the value of the deposited collateral (whether it be just one security and/or cash or cash equivalents) would have to equal the underlying index value at the time the option is written, its value should continue to be greater than the cash difference between the current index value and the exercise price of the option that must be delivered upon assignment. Further, this value requirement also should continue to ensure that the escrow receipts are not used to obtain increased leverage or to otherwise evade exchange and FRB margin requirements.

Finally, the Commission continues to believe that the industry will police itself with respect to possible risk expose. The bank or trust company obligated to meet the settlement requirements out of the proceeds of the deposited collateral will have an interest in ensuring that the securities deposited are adequate to secure the obligation both initially and throughout the period the option position is open and covered by the escrow receipt. In this regard, we note that when the bank or trust company initially issues the receipt it must certify that the collateral has a market value, at the time the option is written, of not less than 100% of the aggregate current index value. Moreover, the issuing bank or trust company will need to continuously monitor the value of the collateral because, under the terms of the escrow receipt, it is obligated to promptly notify the customer, and request that the collateral be supplemented, if its total market value falls below 55% of the current position value and immediately notify the OCC and the member firm for whose benefit the escrow receipt was issued, if the total market value of the collateral falls to less than 50% of the current position value.[20] Similarly, the member firms who are responsible for paying the exercise settlement amount to the OCC also will have an interest in ensuring the adequate value of the collateral, especially if the escrow receipt is being posted with the OCC to meet the members' margin requirements.[21] Because the issuance and acceptance of the escrow receipt will depend on the bank's and broker's analysis of the adequacy of the underlying collateral to secure the option position, and their duty to monitor the pilot, the Commission believes that expanding the type of collateral that can be used, as proposed, should not significantly increase the risks to the financial community.

The Commission believes that the hedging function served by writing index call options against a diversified portfolio of securities is among the important uses of broad-based stock index options. Thus, it is concerned that the impracticability or impossibility of establishing "covered" short index call options positions, when coupled with the restrictions in many state and federal statutes or regulations, as well as corporate and trust documents, that limit institutional investors to "covered" call options writing,[22] may impede use of index options in this manner. To facilitate this use, the exchanges have proposed, and the Commission is prepared to approve on a pilot basis, an approach that provides maximum flexibility in allowing customers to deposit a broad range of instruments to collateralize index options escrow receipts. It is hoped that this will avoid current inhibitions on the use of index options for hedging purposes and thereby give the industry experience with the use of broad-based index option escrow receipts.

The Commission is satisfied that the measures established by the exchanges, in cooperation with the OCC, adequately address its concerns about the proposals during the pilot period. The practical experience gained during the pilot period will permit the Commission, exchanges, OCC and industry to assess what further refinements are appropriate to assure the adequacy of the collateral deposited with the bank or trust company issuing the receipt. The expanded use of index

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[19] In particular, data will be collected on the number of contracts covered by the receipts, the number of such contracts which were assigned an exercise, the number and type of customers using the receipts and the maximum amount of outstanding receipts obtained by any one customer. In addition, once a month certain additional information will be collected including the type of collateral underlying each receipt then on deposit, the value of the stocks collateralizing each receipt on deposit and the percentage, in terms of dollar value, that is represented by each stock, cash and/or cash equivalent comprising the collateral for each receipt on deposit. *See* letter from Margaret Wiermanski, Supervisor, Department of Financial Compliance, CBOE, to Brandon Becker, Assistant Director, Division of Market Regulation, SEC, dated June 21, 1985, and letter from Brandon Becker to Margaret Wiermanski, dated July 19, 1985.

[20] Under the exchanges' rules, such escrow receipts must be submitted to the member organization in a form satisfactory to the exchange. Because the Commission only has reviewed the terms of the proposed escrow receipt submitted by the OCC (in its related filing being approved by the Commission in conjunction with the exchange proposals, *see* note [16], *supra*) which imposes an obligation on the banks to monitor the collateral to assure its value does not fall below these 55% and 50% levels and to notify the appropriate parties if it does, Commission approval of the exchange proposals only would permit the use of an escrow receipt containing terms and conditions substantively identical to those of the OCC escrow receipt. The Committee understands that the exchanges in promulgating their rules, as well as in circulars to their members advising them of the pilot program, will so indicate. *See, e.g.*, letter from Mary L. Bender, Assistant Vice President, CBOE, to Brandon Becker, Assistant Director, Division of Market Regulation, SEC, dated August 1, 1985. Any exchange seeking to use a substantively different form of escrow receipt thus would have to seek Commission authorization pursuant to section 19(b) of the Act.

[21] We note that if the value of the collateral underlying the escrow receipt falls below 50% of the current index value, the OCC and the member organization would disregard the escrow receipt and request that margin be deposited for the short position that previously had been covered. The exchanges have indicated that they will issue circulars to their member firms stating that, when they are notified by a bank that the value of the collateral has fallen below 50% of the current aggregate position value the escrow receipt will cease to be acceptable to the member firm in lieu of margin unless the member firm promptly obtains additional collateral.

[22] *See* Federal Reserve Board, Commodity Futures Trading Commission, SEC, A Study of the Effects on the Economy of Trading in Futures and Options, Appendix IV–B (December 1984). The Commission specifically notes that it is only addressing the question of whether deeming such collateralized escrow receipts as "cover" would adequately address the financial integrity concerns under the federal securities laws. Thus, although OCC will require that the issuers of such receipts obtain representations from the purchasers of the receipts that the receipts will be used to "cover" a broad-based portfolio of securities, the Commission takes no position on whether the revised escrow receipts permitted under the exchange rules would be deemed to meet the definition of cover for purposes of the various relevant state or federal laws or regulations or for relevant corporate or trust documents.

option escrow receipts as the result of the pilot will also allow issuing banks to better assess whether it is worthwhile for them to modify their systems or fee structures specifically to accommodate such receipts. In the Commission's view, if carefully monitored, the use of cash, cash equivalents or one more qualified securities to collateralize broad-based index option escrow receipts under the pilot, should not jeopardize the financial integrity of the securities industry, the options markets or the banks and trust companies acting as issuers during the pilot.

V. Conclusion

Pursuant to section 19(b)(2) of the Act, the Commission must approve the foregoing rule changes if it determines that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission has reviewed carefully these proposals to permit the use of escrow receipts collateralized by cash, cash equivalents or one or more qualified securities to cover short call board-based index options positions for a pilot one year period and has concluded that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder, and in particular, the requirements of section 6. Based on the above discussion, the Commission believes the pilot program, as proposed by the options exchanges, provides sufficient investor protection while facilitating transactions in broad-based index options.

The Commission also finds that the poriton of Phlx's proposed rule change pertaining to escrow receipts for short put positions on broad-based index options and individual stocks options is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, the requirements of Section 6.

Further, the Commission finds good cause for accelerating approval of the NYSE and PSE proposals and certain portions of the Phlx proposal prior to the thirtieth day after the date of publication of notice of filing in that these filings are indentical to those submitted by the CBOE and Amex which were noticed and published for a full 21 day comment period. We also note that no member of the public submitted a comment on the rule proposals of the other exchanges. Under the circumstances, any delay in permitting the NYSE, PSE and Phlx to particpate in the pilot program involving escrow receipts for short call broad-based index option positions would not be justified. In addition, the Commission finds good cause for accelerating approval of the portion of Phlx's proposal on escrow receipts for short put positions on broad-based index options and individual stock options because similar rules are already in existence on the other options exchanges. We note that no comments were received when the other exchanges proposed these changes to their rules.[22]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes, be, and hereby, are approved.

By the commission.

Dated: August 13, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19759 Filed 8-16-85; 8:45 am]

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[Release No. 34-22328; File No. SR-MSTC-85-4]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co. Relating To Amendments to Its By-Laws To Allow Staggered Terms for Members of the Board of Directors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 25, 1985 the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is the text of proposed amendments to MSTC's By-Laws allowing for staggered terms for members of the Board of Directors.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendments will allow MSTC to stagger its Board of Directors into three classes. As a result, MSTC will be able to elect directors for three year terms, divided into three classes. Currently all members of the Board of Directors are elected annually. This change in directors' terms is made possible by recent amendments to the Illinois Business Corporation Act (the "Act"), under which MSTC is incorporated. The additional amendments are of a technical nature and reflect other amendments to the Act. The approval of these amendments is requested to conform MSTC's By-Laws to the amended Act and to allow greater flexibility in managing MSTC's affairs.

The proposed amendments are consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the fair representation of MSTC's Participants in the selection of its directors and the administration of its affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

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[22] Interested persons will still be able to submit written data, views and arguments concerning the NYSE's and PSE's submissions within 21 days from the date of publication of this release in the Federal Register and can continue to submit comments on Phlx's proposal during its existing 21 day comment period. Persons desiring to make written comments should file six copies thereof wtih the Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File Nos. SR-NYSE-84-35, SR-PSE-85-19 and SR-Phlx-85-18. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and any subsequent amendments also will be available at the NYSE, PSE and Phlx.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 9, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 13, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19760 Filed 8-16-85; 8:45 am]

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[Release No. 34-22324; File No. SR-OCC-85-7]

Self-Regulatory Organizations; the Options Clearing Corp., Order Approving a Proposed Rule Change

The Options Clearing Corporation ("OCC") on May 29, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal to solicit public comment on June 21, 1985 (50 FR 25811). No comments were received. This Order approves the proposal.

OCC's proposal would establish a pilot program permitting Clearing Members to deposit escrow receipts with OCC in lieu of OCC margin on short index call option positions carried for customer accounts.[1] OCC currently does not accept escrow receipts for index option margin and believes that this has discouraged broad institutional participation in the index option markets.

I. Description.

OCC's proposal would amend OCC Rule 1801, which currently prohibits Clearing Members from depositing escrow receipts for index option margin. Under amended Rule 1801, escrow receipts could be deposited only for short index call option positions.[2] The escrow receipt would be issued by a bank or trust company approved by OCC (the "issuing bank" or "bank") holding an escrow deposit for the account of a clearing Member's customer. Escrow deposits may consist of any combination of cash, cash equivalents,[3] and one or more common stocks listed on a national securities exchange or included in the current List of Over-The-Counter ("OTC") Margin Stocks published by the FRB.[4]

Under the terms of the escrow receipt to be used by OCC, the customer on whose behalf a Clearing Member makes a deposit authorizes the liquidation of the deposit to the extent necessary to preform the issuing bank's obligations to OCC. Those obligatios arise when OCC certifies to the bank that an exercise notice for a specified number of index call option contracts of the series covered by the escrow receipt has been assigned to the customer's account of the Clearing Member that deposited the escrow receipt. The bank's obligations are to pay to OCC, out of deposited property or its proceeds, an amount of cash equal to the product of (a) the number of contracts assigned [5] and (b) the exercise settlement amount [6] plus all applicable commissions and other charges. All deposited property not paid to OCC under these provisions must remain in the custody of the bank until released by OCC.

Amended OCC Rule 1801 would protect OCC against the decline in value of deposited property. If the total market value [7] of deposited property falls under 50 percent of the product of (a) the number of option contracts covered by the deposit and (b) the aggregate current index value of the underlying index, then OCC may disregard the escrow receipt and require margin to be deposited to cover the short positions previously covered by the escrow receipt.

OCC's proposal also would make a conforming amendment to OCC Rule 610 to exempt from OCC's margin requirements short index call positions covered by escrow deposits. Other provisions of OCC Rule 610, which governs generally the deposit of underlying securities for margin purposes, would apply to index option escrow receipts.[8]

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[1] OCC's proposal coincides with several similar exchange proposals approved by the Commission concurrently with this proposal. *See* Securities Exchange Act Release No. 22323 (August 13, 1985) aproving File Nos. SR-Amex-84-33; SR-CBOE-84-28; SR-NYSE-84-35; and SR-Phlx-85-18 ("Exchange Order").

[2] OCC notes that, while escrow deposits theoretically could be accepted for short put option positions, there appears to be no significant demand for that at present. Also, OCC's processing system currently is not programmed to accept escrow receipt deposits for puts.

[3] Cash equivalents are financial instruments meeting the requirements of § 220.8(a)(3)(ii) of Regulation T of the Board of Governors of the Federal Reserve System ("FRB") (12 CFR 220.8(a)(3)(ii)).

[4] Although the deposit itself need not include any stocks, under the form or escrow receipt to be used by OCC the bank would be required to maintain a written affirmation from the customer that the customer was writing options against a diversified stock portfolio.

[5] Up to the number of contracts covered by the escow receipt.

[6] The "exercise settlement amount" is the difference between the aggregate exercise price and the aggregate current index value. *See* OCC Rule 1801 and Article XVII, OCC's By-Laws.

[7] In calculating the value of deposited property, cash equivalents and common stocks shall be valued at their closing sale prices (if subject to last sale reporting) or closing bid prices (if not subject to last sale reporting) on the day value is calculated. However, no value will be attributed to cash equivalents that do not meet the FRB's Regulation T requirements or to common stocks that are no longer listed on a national securities exchange or included in the FRB's current List of OTC Margin Stocks.

Clearing Members' customers would be permitted to substitute qualified property for property previously included in an escrow deposit if the current market value of the substituted property is at least as great as the property replaced.

[8] For example, deposits must be made in accordance with applicable law and must be

Continued

OCC's form of escrow receipt sets qualifications for banks issuing index option escrow receipts and establishes certain obligations of banks to provide additional safeguards to OCC. Issuing banks must be banks or trust companies regulated by state or federal authorities and must have capital stock of at least $20,000,000. The banks must maintain custody of deposited property either by holding specific certificates or by segregating part of a fungible bulk of securities on the books of a "financial intermediary" under the Delaware Uniform Commercial Code. The banks must certify that deposited securities are in good deliverable form or that the bank has unrestricted power to put them in good deliverable form. Banks also must certify that deposited property is qualified under amended OCC Rule 1801 and is of sufficient market value. In that regard, each issuing bank must provide OCC on request a current list of the contents of the deposit and must notify its customer and request that the customer supplement the deposit if its total market value is less than 55 percent of the current options position value. The bank also must notify OCC if the total market value of the deposit falls to less than 50 percent of current position value (at which point, OCC, under OCC Rule 1801, will disregard the escrow receipt and require OCC margin on the now substantially uncovered short positions). Finally, the depository may not subject (or permit the customer to subject) deposited property to any lien and must notify OCC promptly of any attempt to subject the property to a lien.

II. OCC's Rationale

OCC believes that the proposal would foster broader institutional participation in the index options markets. In addition, OCC believes that the proposal's limits on use of index option escrow receipts provide adequate protection for OCC and OCC's Clearing Members in the event of a default by a Clearing Member or its customer. OCC therefore believes that the proposal is consistent with the Act in general, and in particular with section 17A of the Act.

III. Discussion

For the following reasons, the Commission agrees with OCC that the proposal is consistent with the Act and should be approved. As more fully discussed in the Exchange Order,[9] the Commission agrees with OCC that the proposed pilot should remove an impediment to institutional participation in the index options market. The exchange and OCC proposals, taken together, allow OCC Clearing Members to accept and deposit with OCC, in lieu of OCC margin, escrow receipts received from customers (in lieu of customer margin).

The Commission believes that any program substituting for OCC's proven margin requirements must be structured carefully to protect OCC's financial integrity in the event of a default by an OCC Clearing Member or its customer. In light of the safeguards incorporated into the proposed form of escrow receipts, and the extensive monitoring efforts that will be undertaken during the pilot period, the Commission is satisfied that OCC's pilot is consistent with OCC's statutory duties to safeguard funds and securities in its custody or control or for which it is responsible.

The Commission notes that the initial value of escrow property will be many times greater than the margin OCC would have collected under OCC Rule 601, [10] and that banks must continuously monitor the value of deposited property. While OCC need only be notified if the value of deposited property falls to 50% of its original value, the Commission agrees with OCC that the market value of property initially required is large enough to protect OCC against most market movements with respect to deposited property or the index in question. Moreover, upon such notification, OCC may demand additional margin.

As more fully described in the Exchange Order, the exchanges will conduct an extensive program to monitor the use of escrow receipts and the market value of deposited property.[11] The exchanges will keep OCC fully informed of collected information on a timely basis and will notify OCC promptly of any adverse information concerning the escrow receipt program. The Commission is satisfied that these monitoring efforts should give adequate warning to OCC of any developing problems in the escrow receipt program, especially problems related to banks' obligations to monitor the value of deposited property. Nevertheless, the Commission expects OCC to take whatever steps it determines are necessary to maintain its financial integrity, including exercising its right under the terms of the proposed escrow receipt to receive accounts of the current market value of all deposited property at any time from each bank.

IV. Conclusion

In conclusion, the Commission believes that OCC's pilot escrow receipt program should encourage broader institutional participation in the index options market. Furthermore, the Commission believes that OCC's proposed rule change and form of escrow receipt, together with the proposed exchange monitoring program, are carefully designed to provide adequate safeguards to protect OCC from financial loss due to default of a Clearing Member or its customer.

On the basis of the foregoing, the Commission finds OCC's proposed rule change consistent with the Act and, in particular, with section 17A of the Act.

Accordingly, it is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change (SR–OCC–85–7) be, and it hereby is, approved.

By the Commission.

Dated: August 13, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19761 Filed 8–16–85; 8:45 am]

BILLING CODE 8010-01-M

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delivered to OCC or withdrawn from OCC in accordance with specified timeframes.

[9] *See* note 1, supra.

[10] OCC Rule 601 requires margin essentially equal to the in-the-money value of the Clearing Member's short option position, plus certain minimum amounts. Under the escrow receipt program, the bank would hold property of value initially at least as great as the initial index option position value.

[11] The Commission understands that some escrow receipts may not be deposited with OCC. During the pilot, however, the exchanges will collect data on all index option escrow receipts (whether or not deposited with OCC). Establishing the exchanges as the focal point for monitoring purposes in these circumstances therefore appears to be an efficient allocation of resources. Nevertheless, the Commission understands that OCC and the exchanges will coordinate their activities and will share data promptly.

[Release No. 34–22316; File No. SR–OCC–85–9]

Self-Regulatory Organizations; Options Clearing Corp.; Order Approving Proposed Rule Change

On May 29, 1985, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). Notice of the proposal was published in the **Federal Register** on July 8, 1985.[1] The Commission received no public comment on the proposal. This Order approves the proposal.

OCC's proposal amends Article VI, section 7 of OCC's By-Laws and section 7 of OCC's Restated Participant Exchange Agreement ("PEA"). The proposal clarifies the responsibility for

[1] 50 FR 27881.

losses resulting from a Participant Exchange's untimely submission of a matched trade report to OCC.

Under OCC's current By-Laws, OCC is not obligated on any Exchange transaction until it accepts the transaction [2] and such acceptance is subject to OCC's prior receipt of a matched trade report reflecting the transaction.[3] OCC's proposal will amend Article VI, section 7 of its By-Laws to clarify that OCC's obligation to accept an Exchange transaction is subject to receipt a matched trade report before such time as OCC specifies.[4] Additionally, the proposal will provide that OCC will not be obligated to any option purchaser or writer for losses resulting from an Exchange's untimely filing of a matched trade report or from any error in a matched trade report as filed.

OCC's proposal also will amend section 7 of the PEA. This section currently provides that a Participant Exchange's obligation to indemnify OCC for losses resulting from untimely reports does not apply to a delay caused by a Clearing Member in the filing of trade information with the Exchange. Under OCC's proposal, this provision will be deleted.

OCC believes that the proposed rule change is necessary because a Participating Exchange's failure to submit a timely matched trade report to OCC could expose Clearing Members to financial loss. If OCC delays its nightly processing to accommodate receipt of an untimely report, OCC might be unable to deliver its own reports to Clearing Members, including assignment notices, until after the opening of trading on the day after trade date. In this situation, Clearing Members carrying cash-settled options could incur losses.[5] Alternatively, if OCC proceeds with its nightly processing before receiving the untimely report, exercise notices for long positions opened on the previous day would be rejected by OCC because those positions would not yet appear on OCC's books. When OCC subsequently processes the untimely report, holders' long positions, instead of being exercised, would remain open and, consequently, would be subject to market risk.[6] Conversely, because OCC would have no record of closing purchases, exercise notices might be assigned to short positions that the writers had attempted to close. Thus, when the late report is processed, the closing purchases would be converted to opening purchases which entail market risk.

OCC believes that the proposed rule change is consistent with section 17A of the Act in that it promotes the safeguarding of securities and funds in OCC's custody or for which OCC is responsible. OCC believes that the proposal will protect OCC against potential financial exposure from events over which OCC has no control.

For the following reasons, the Commission agrees with OCC that the proposal is consistent with the Act and, in particular, section 17A of the Act and should be approved. The Commission agrees with OCC that it is inequitable to expose OCC and OCC Clearing Members to financial loss as a result of a Participating Exchange's failure to submit timely matched trade reports to OCC or a result of an error in a matched trade report. The Commission therefore agrees with OCC that it is appropriate for OCC to limit this exposure by clarifying the responsibility for losses resulting from a Participant Exchange's untimely submission of a matched trade report.

In addition, the Commission believes it appropriate for OCC to reduce the chances of delayed nightly processing or timely nightly processing of incomplete trade data that frustrates Clearing Member expectations. The proposal should help to ensure that OCC can deliver its own reports to Clearing Members based on complete matched trade data before opening of trading on the day after trade date, thus eliminating Clearing Members' exposure to the types of risks discussed above. The Commission therefore agrees with OCC that the proposal should assure the safeguarding of securities and funds in OCC's custody or control or for which it is responsible. Moreover, the Commission believes that the proposal should promote the prompt and accurate clearance and settlement of options transactions.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change (SR–OCC–85–8) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19762 Filed 8–16–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22318; File No. SR–PSE–85–21]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Addition of New Rules Designed to Regulate the Accessibility of Floor Facilities to Non-Registered Persons and Visitors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(L)(1), notice is hereby given that on August 2, 1985, the Pacific Stock Exchange, Inc., filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rules to further define and limit the accessibility of PSE floor facilities to only duly authorized and registered visitors and persons is designed to prevent unauthorized persons from making trades or improperly influencing the market. Those rules make the member or member organization responsible for the actions of the non-registered person so that any action by that unauthorized person can be held against the member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

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[2] OCC By-Law Article VI, section 5.

[3] OCC By-Law Article VI, section 7.

[4] The PEA provides that each Exchange must submit to OCC a daily report of matched trades prior to such time as OCC may prescribe, which will not be earlier than 7:00 p.m. Central time on trade date. OCC requires Participant Exchanges to submit those reports to OCC by 1:00 a.m. Central time the day after trade date.

[5] For example, when the short leg of an index option spread is assigned, the assigned Clearing Member is exposed to market risk on the long leg until that leg is closed out or until the short leg is re-opened. If that Clearing Member is not notified of the assignment until after the opening of trading on the next day, it could sustain a loss on the long leg if the market moves adversely between the opening and the time when the Clearing Member learns of the assignment.

[6] That risk would be substantial to holders of options on equity securities that were the subject of a tender offer when the previous day was the expiration date of that offer.

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rules were designed to enhance the ability of the PSE to adequately monitor and protect the general trading public by allowing it ot adequately insure that the PSE trading facilities will only be utilized by registered and approved persons. They will fit in with already existing rules regulating the use of floor facilities to members and properly authorized personnel. In this manner they comply with the requirements of sections 6 and 11A of the Securities Exchange Act of 1934.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, at 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 9, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 12, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19763 Filed 8-16-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX—San Diego Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Diego, will hold a public meeting at 9:00 a.m., on September 5, 1985, in the Federal Building, 880 Front Street, San Diego, California 92188, Room 4-S-29, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For futher information, write or call George P. Chandler, Jr., District Director, U.S. Small Business Adminstration, 880 Front Street, Room 4-S-29, San Diego, California 92188, (619) 293-5430.

Dated: August 12, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-19686 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

Region IX—Honolulu Advisory Council; Public Meeting

The U.S Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 9:00 a.m., on Wednesday, September 18, 1985, in the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 7325 (7th Floor), Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call David K. Nakagawa, District Director, U.S. Small Business Adminstration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850, (808) 546-8950.

Dated: August 12, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-19684 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

Las Vegas District Advisory Council; Public Meeting

The Small Business Administration, Las Vegas District Advisory Council will hold a public meeting on September 17, 1985, at the Small Business Administration Office, located at 301 East Stewart Avenue, Downtown Station, Post Office, 3rd Floor, Las Vegas, Nevada, from 10:00 a.m. to 12:00 noon, to discuss such matters as may be presented by Council members, staff of the Small Business Administration, or others present.

For further information, write or call Elizabeth Sutton, Secretary for Advisory Council, U.S. Small Business Administration, 301 East Stewart, Post Office Box 7527, Las Vegas, Nevada 89125, or call (702) 388-6611.

Dated: August 9, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-19685 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

Concord District Advisory Council; Public Meeting

The Small Business Administration, Concord District Advisory Council will hold a public meeting at 10:00 A.M., Thursday, September 5, 1985, in the Concord National Bank Board Room, Concord National Bank, 42 N. Main and Warren Streets, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call William Phillips, U.S. Small Business Administration, 55 Pleasant Street, Concord, New Hampshire 03301, (603) 224-4041.

Dated: August 7, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-19683 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0177]

Erie Small Business Investment Co.; Issuance of a Small Business Investment Company License

On May 30, 1985, a notice was published in the **Federal Register** (50 FR 23097) stating that an application has been filed by Erie Small Business Investment Company with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license as a small business investment company.

Interested parties were given until close of business June 30, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03-0177 on July 19, 1985, to Erie Small Business Investment Company to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 12, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-19678 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0452]

NPD Capital, Inc.; License Surrender

Notice is hereby given that NPD Capital, Inc., 375 Park Avenue, New York, New York 10152, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). NPD Capital, Inc. was licensed by the Small Business Administration on March 21, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on July 31, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 12, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-19679 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5303]

Princeton Finance Co.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1985)) by Princeton Finance Company, 1605 W. Olympic Boulevard, Suite 972, Los Angeles, California 90015 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
Albert J. Robilotta, 554 8th Street, Hermosa Beach, CA 90254.	General Manager	0
Anthony Lee Sinskey, 1229 Grandview Drive, Glendale, CA.	Director, President	90
Shanny Lee Sinskey, 1229 Grandview Drive, Glendale, CA 91202.	Chief Financial Officer, Secretary.	10
Chul-Ho Kim, 2740 Kennington Drive, Glendale, CA 91206.	Director	0
Cho-Kyun Rha Sinskey, 285 Commonwealth Avenue, Boston, MA 02115.	Director	0

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of California. As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy for facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 8, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-19680 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5364]

United Finance and Investment Co.; Application for License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et. seq.*) and the Rules and Regulations promulgated thereunder.

Applicant: United Finance and Investment Company.

Address: 327 W. Main Street, Alhambra, California 91801.

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Position	Percentage of interest
Peter Lee Tri, 327 W. Main Street, Alhambra, California 94801.	Chairman of the Board	80
Tran Qui Than, 1050 Overlook Road, Berkley, California 94708.	President/Director	8
Louis Dang, 573 O'Farrell Street, San Francisco, California 94102.	Secretary/Treasurer/Director	12

The Applicant will begin operatings with $1,000,000 in private capital, and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of California.

As a small business investment company under Section 301(d) of the

Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Alhambra, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 8, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 19681 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01

[Declaration of Disaster Loan Area No. 2196]

Declaration of Economic Injury Disaster Loan Area; Wyoming

As a result of the President's major disaster declaration on August 7, 1985, I find that Laramie County constitutes a disaster loan area because of damage resulting from severe storms, hail, and flooding beginning on August 1, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 7, 1985, and for economic injury until May 7, 1986, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825; or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (Non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 219806 for physical damage and for economic injury the number is 631800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 8, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-19682 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-85-21]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 29, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 13, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24346-1	Aeromar	14 CFR 91.303	To allow petitioner to operate four Stage 1 DC-8'54F aircraft until hushkits are installed.
24740	ANDES	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8-55 aircraft until hushkits are installed.

[FR Doc. 85-19694 Filed 8-16-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 12, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New
Title: Survey of Tax Practitioners

OMB Number: 1545–0227
Form Number: IRS Form 6251
Type of Review: Revision
Title: Alternative Minimum Tax Computation

OMB Number: 1545–0034
Form Number: IRS Forms 942 and 942PR
Type of Review: Extension
Title: Employer's Quarterly Tax Return for Household Employees Planilla Para la Declaracion Trimestral Del Patrono de Empleados Domesticos—la Contribucion FICS (P.R.)

OMB Number: 1545–0086
Form Number: IRS Form 1040C
Type of Review: Revision
Title: U.S. and Departing Alien Income Tax Return

OMB Number: 1545–0153
Form Number: IRS Form 3206
Type of Review: Revision
Title: Information Statement by United Kingdom Withholding Agents Paying Dividends from United States Corporations to Residents of the U.S. Certain Treaty Countries

OMB Number: 1545–0072
Form Number: IRS Form 2119
Type of Review: Revision
Title: Sale or Exchange of Principal Residence

OMB Number: 1545–0089
Form Number: IRS Form 1040NR
Type of Review: Revision
Title: U.S. Nonresident Alien Income Tax Return

Clearance Officer: Garrick Shear (202) 566–6150, Room 5171, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Bureau of the Public Debt

OMB Number: 1535–0005
Form Number: PD 3253
Type of Review: Extension
Title: Exchange Subscription for United States Savings Bonds of Series HH

Clearance Officer: Peter Laugesen (202) 376–4902, Bureau of the Public Debt, Room 445, 999 E. Street, NW., Washington, DC 20226

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,
Departmental Reports Management Office.
[FR Doc. 85–19765 Filed 8–16–85; 8:45 am]
BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "300 Years of German Painting and Drawing" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the Wallraf-Richartz Museum of Cologne, and the Smithsonian Institution Traveling Exhibition Service (SITES) of Washington, DC. I also determine that the temporary exhibition or display of the listed exhibit objects at the Indianapolis Museum of Art beginning on or about September 10, 1985, to on or about November 3, 1985; the Sunrise Museum and Foundation in Charleston, West Virginia, beginning on or about November 23, 1985, to on or about January 5, 1986; the Chrysler Museum in Norfolk, Virginia, beginning on or about January 25, 1986, to on or about March 9, 1986; the Center for the Fine Arts in Miami, Florida, beginning on or about March 29, 1986, to on or about May 18, 1986; and the Santa Barbara Museum of Art in California, beginning on or about June 7, 1986, to on or about July 16, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: August 13, 1985.

Thomas E. Harvey,
General Counsel and Congressional Liaison.
[FR Doc. 85–19806 Filed 8–16–85; 8:45 am]
BILLING CODE 8230-01

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

VETERANS ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held in the Omar Bradley Conference Room, of Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, on September 12 and 13, 1985. Both meetings will begin at 9 a.m. and conclude at 4:30 p.m.

These meetings will be open to the public to the seating capacity of the room. Anyone having questions concerning the meetings may contact Mr. Edward Lord, Associate Director for Administration and Development, Readjustment Counseling Service, Veterans Administration Central Office, at phone number 202/389–5419.

Dated: August 13, 1985.

By direction of the Administrator.

Rose Maria Fontanez,
Committee Management Office.
[FR Doc. 85–19722 Filed 8–16–85; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 160
Monday, August 19, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:15 p.m. on Wednesday, August 14, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available for the payment of insured deposits in State Bank of Herndon, Kansas, Herndon, Kansas, which had been closed by the State Bank Commissioner for the State of Kansas on Wednesday, August 14, 1985.

At that same meeting, the Board also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 14, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-19862 Filed 8-15-85; 3:32 pm]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday August 22, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R Coyne, Assistant to the Board (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 14, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19781 Filed 8-14-85; 4:45 pm]

BILLING CODE 6210-01-M

3

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close the meeting pursuant to Article II, section 4 of the Corporation's By-laws, section 116(f) of the said Act and Sections 4 and 5 of the said policy.

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Board Minutes
III. Consideration of Appendices to the Comprehensive Strategy Report
IV. Review of Pre-Qualification Proposals in Eastern Coal Solicitation
V. Negotiation Update on letter of Intent Projects
VI. Consideration of Fourth General Solicitation Projects
VII. Resolution to Close Meeting

Closed Session

VIII. Consideration of Negotiation Strategies
IX. Personnel Evaluations

TIME AND DATE: 1:00 p.m., August 21, 1985.

PLACE: 2121 K Street, NW., Room 503, Washington, DC, 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchison, Director-Media Relations, at (202) 822-6455.

Dated: August 15, 1985.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel-Corporate and Litigation.

[FR Doc. 85-19851 Filed 8-15-85; 2:46 pm]

BILLING CODE 0000-00-M

federal register

Monday
August 19, 1985

Part II

Department of Transportation

Office of the Secretary

14 CFR Part 221

Filing, Posting and Publishing of Tariffs by Air Carriers, and Foreign Air Carriers; Advance Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 221

[Docket No. 43343; Notice 85-10]

Filing, Posting and Publishing of Tariffs by Air Carriers and Foreign Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Sections 403 and 1601 of the Federal Aviation Act of 1958, as amended (the Act), require all U.S. and foreign airlines providing scheduled international air service to or from the United States to file tariff documents with DOT specifying the prices, terms, and conditions of that service. Once approved by the respective government aviation authorities under the procedures set forth in bilateral aviation agreements and Federal statutes, the published tariffs are legally binding documents. In addition, under section 403 of the Act and Subpart N of Part 221 of our Regulations (14 CFR 221), each airline is required to post a copy of its proposed and currently effective tariffs at each of its sales locations.

The paper tariff system has remained virtually unchanged since its establishment in 1938. Currently, DOT's Tariffs Division receives more than 500 tariff pages per day, containing approximately 25,000 changes in passenger fares, cargo rates, rules and related tariff material. Airlines and their tariff agents already utilize advanced computer and telecommunications technologies to communicate with each other and to produce the paper documents. DOT is considering possible amendment of its regulations to allow U.S. air carriers, foreign air carriers, and their agents to file international tariffs electronically, and to make tariff information available to the public at each sales location in an electronic format. This would not, however, relieve the airlines of their obligation to furnish a printed copy of the contract to the shipper or passenger, on request.

This notice asks for comments from the industry and the public on the potential costs and benefits of conversion to a computerized tariff system, possible ways that industry and government could cooperate in developing an automated system, and the impact that automation may have on tariff filing and review procedures and the aviation industry.

DATES: Comments should be received by November 18, 1985.

ADDRESS: Comment should be sent to Docket Clerk, C-55, Docket 43343, Department of Transportation, Room 4107, 400 7th Street SW., Washington, D.C. 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Desta McDowell or Tom Moore, Tariffs Division, Office of Aviation Operations, P-44, Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 472-5573.

SUPPLEMENTARY INFORMATION:

Background

When DOT inherited the Civil Aeronautics Board's (CAB) international aviation functions, it also inherited an avalanche of paper known as the international tariff filing system. As required by the Act and international aviation agreements, both U.S. and foreign airlines must file their international passenger fares, cargo rates, and related rules with DOT for approval prior to implementation. DOT is responsible for reviewing all proposed international fares, rates, and rules, determining whether they should be suspended or disapproved, certifying the accuracy of the tariffs, negotiating fares, rates, and rules with foreign governments, and maintaining the public tariff files.

All of this is now done manually, with an antiquated paper filing and review system that dates back to 1938. Although the major airlines and tariff filing agents have computerized their tariff data systems, DOT has not. As a result, airlines are often in the position of converting computerized fare and rate data back into printed form for the sole purpose of meeting the statutory filing requirements. The industry is now spending at least $5 million a year to produce, file, and distribute paper tariff documents. DOT is spending more than half a million dollars a year just to process the paper.

The tariff volume is enormous; there are more than one million currently effective international fares, rates, and rules on file at DOT, and the Office of Aviation Operations is reviewing new filings at the rate of more than 500 pages a day. Since 1980, the number of pages filed has increased at an average rate of four percent a year. That trend is likely to continue, as price competition continues to develop in international aviation markets. The more competitive the market, the more rapid the pace of tariff filings, as airlines jockey for market position.

In 1984, the CAB Tariffs Division handled almost 130,000 new tariff pages, reflecting fare, rate and rule changes by more than 100 U.S. and foreign airlines. At DOT in the first six months of 1985, the filing volume reached 76,000 pages—a 19 percent increase over the comparable period in 1984. The volume of international aviation tariffs is quickly approaching the point where manual tariff processing at DOT will be unmanageable without major staff increases.

The system has become expensive and unwieldy for the airlines as well, since they must print, file, and distribute a complete page of tariff data, printed on two sides, whenever a single item on a page is changed. Tariff publishers now charge an average preparation, printing, and handling fee of approximately $45.00 per side to product a tariff page. With the accelerated rate of filings in competitive markets, tariff production and distribution have become significant expense items for many airlines and a considerable administrative burden. Although DOT has adopted special expedited tariff procedures in an attempt to handle the enormous flow of filings as promptly as possible, the continuation of a paper tariff system imposes a substantial expense and an increasing regulatory burden on the aviation industry.

Handling massive data banks like this, with a constant, rapid flow of changes and revisions, is precisely what computers are designed to do. The CAB began looking at the feasibility of computerization before sunset, but was not in a position to take action. Since January 1985, however, DOT has been conducting preliminary staff work on the feasibility of automation, and investigating the system specifications, user needs, costs and potential benefits of conversion to a computerized tariff filing and review system.

Current Tariff Requirements and Procedures

The following description of present filing and review procedures makes it clear, we think, why DOT is considering computerization of the tariff system.

Faced with the sheer volume of international tariffs, the need to process the filings rapidly, the enormous cost and paperwork burden on the aviation industry, the time-consuming process of searching through paper tariffs to evaluate new filings and the unwieldy

manual record-keeping required to monitor tariff material, track filing fees, and maintain tariff files by hand, DOT is looking for ways to automate the system, cut costs for both the industry and the government, and reduce this regulatory burden.

There are now 145 currently effective tariffs on file with DOT; set up in the form of numbered loose-leaf binders, they contain approximately 20,000 pages of fares, rates, and rules. Individual tariffs range in size from a single airline document of only a few pages to a massive combined listing for numerous airlines that runs to 2,000 pages. The tariffs are organized into passenger and cargo volumes by publisher, world area, and airline.

In each of the pricing tariffs, specific fares and rates are listed by airline, city-pair market, fare/rate category, and direction, in U.S. dollars, foreign currencies, or currency-conversion units. Currency-conversion units, designated as FCUs (fares) or RCUs (cargo rates), reflect a system of indexing international fares and rates to adjust for currency exchange-rate fluctuations. Airlines may publish their prices in dollars and foreign currency, in dollars and FCUs/RCUs, or in all three forms. Each fare or rate listing also cites a rule number, referring to the accompanying rules tariffs which specify the terms and conditions under which the fare or rate shall be applied.

DOT maintains complete files of all effective and cancelled pages of current tariff volumes. Cancelled tariff volumes are kept on file at DOT for two years, then transferred to the Federal Records Center and stored for an additional three years as required by Federal regulations.

1. Filing Procedures

A few airlines file tariff material for themselves, but most use tariff agents to handle the filing process. Airlines transmit their instructions to their agents electronically or by mail; the agents have some discretionary authority to massage the data to comply with DOT technical specifications. Approximately 98 percent of all tariff filings are currently processed by agents, and two agents—Airline Tariff Publishers (ATP) and Official Airline Guides (OAG)—handle the majority of filings.

Airlines and tariff-filing agents currently present proposed fare, rate, and rule changes to DOT in three forms:

(a) Statutory tariff filings, submitted 30–75 days prior to the proposed effective date of the tariff material, as specified by the various governing bilateral aviation agreements and Part 221 of DOT's Economic Regulations;

(b) Special Tariff Permission Applications (STPs), filed to propose tariff revisions on less than statutory notice, pursuant to permissive provisions in the governing aviation agreements and Part 221; or

(c) Tariff material filed on short notice, pursuant to an approved STP.

At present, approximately 95 percent of all fare and fare rate changes are initially submitted as STP applications; DOT processes an average of 750 STPs each month. An STP application typically includes a full listing or description of the various fare, rate, or rule revisions the airline is proposing, but it does not in itself constitute a legal tariff. If the STP application is approved by DOT staff, the filing airline may implement that special short-notice permission by filing the necessary tariff pages within 15 days. Airlines or agents filing tariff pages pursuant to an approved STP often receive permission to put those tariffs into effect on as little as one day's notice, but must comply with any specific conditions set forth in the STP authorization.

General format requirements apply to both statutory filings and STPs. In addition, for filings that propose changes in fares or rates governed by specific standards established by agreements or statutory or regulatory requirements, certain types of additional tariff documentation are required, showing the percentage increases proposed relative to the regulatory fare or rate base levels and the allowable maximum levels. These comparison requirements may be waived in markets governed by liberal bilateral aviation agreements, and in cases where the airline is merely filing to match a direct competitor's prices or rules. When filing matching fares or rates, the airline need only cite the tariff page references, identifying the particular fares, rates, or rules being matched.

The technical format specifications for paper tariff filings are spelled out in Part 221 of DOT's Economic Regulations. The requirements for documentation in support of proposed tariffs are specified in section 1002 of the Act, Part 221, and various CAB and DOT orders and technical staff letters to the industry.

2. Fees

DOT filing fees are now assessed on a per-page basis, at the rate of $2 per side. There is no fee for pages reprinted without change—for example, the reverse side of a page filed with fare or rate revisions. The fee for STPs is a flat charge of $12 per filing. We also currently waive filing fees for all foreign carriers whose aviation authorities grant U.S. carriers a reciprocal waiver of fees; we do not anticipate any change in those reciprocal arrangements.

3. Tariff Evaluation Procedures

Both statutory filings and STP applications must be evaluated promptly. With respect to statutory filings, most U.S. aviation agreements set mandatory time limits; generally, if the U.S. Government wishes to prevent a proposed tariff change from taking effect, DOT must take action on the proposal by issuing a "notice of dissatisfaction" to the foreign government involved within 15 calendar days after receipt of the filing. To investigate and suspend a statutory tariff filing, DOT must then submit a formal "suspension order" to the President for review. The President has 10 calendar days to disapprove DOT's order on foreign policy grounds, as stipulated by section 801 of the Act. Under most U.S. aviation agreements, the entire process—evaluation of the proposed tariff, notice of dissatisfaction, suspension order, and Presidential review—must be completed within 30 calendar days after the original tariff filing. Failure to initiate the process with a timely notice of dissatisfaction is tantamount to U.S. Government approval of the proposed fares, rates, or rules.

For STP filings, rapid evaluation is a matter of aviation policy rather than a statutory requirement. DOT has encouraged the use of STP procedures in order to facilitate flexible, competitive airline responses to changing market conditions. Since delay in staff review of STP applications would obviously run counter to that policy objective, the applications are processed within 24 hours of receipt whenever possible.

Within these time limits, all filings are examined for compliance with statutory and technical requirements; 10 to 15 percent of the STP applications require further economic analysis, and all statutory filings involving major changes in rules or fares and rates subject to statutory or regulatory standards are forwarded to DOT's International Fares and Rates Division for economic evaluation.

Changes range from minor clerical corrections to filings in which an airline proposes to revise the entire structure of fares, rates, or rules it offers on its international routes.

Roughly 20 percent of all tariff filings involve (1) fares or rates governed by regulatory standards, (2) fares, rates, or rules proposed for a market or by an airline which DOT is monitoring for

various reasons, or (3) fares, rates, or rules which, by their own terms, raise policy questions, will have a major marketing impact, or are otherwise controversial. In those cases, the filing is subject to detailed economic review.

Preliminary Comments on the Operation of an Automated Tariff System

We are considering a system that would enable the airlines, or their agents, to transmit tariff changes electronically to a central data base, and to provide public access to tariff information through computer terminals at their sales locations. In addition to the industry's savings in printing and dissemination costs, we believe that an electronic system would speed up DOT's response time and enable airlines to react more quickly to changing market conditions.

1. Procedures

The electronic tariff system we envision would allow airlines or their agents to file fare, rate, and rule changes directly with a central data base via a telecommunications system. Authorized users would transmit data directly to the "proposed tariff" file of the electronic system. Security measures would be installed to prevent unauthorized users from accessing or manipulating data.

All three types of filings for fares, rates, and rules could be submitted electronically: Statutory tariff filings; special tariff permission applications (STPs); and tariffs filed pursuant to approved STPs. Rules tariffs, which are published in paragraph format, are more complex than fares and rates, but they could also be computerized, since they contain a fairly standard set of variables.

The system would incorporate each new filing into the data base, identifying the filing as approved, rejected, or pending, with appropriate proposed/approved/rejected/effective/expiry dates.

The computer would be programmed to add cancellation dates automatically whenever any element of a fare, rate, or rule is replaced by new, approved tariff material. The on-line system would be updated as each filing is processed to be completely current at all times.

With the development of computerized tariff filing procedures, the tariff-page system would become obsolete for most airlines. The relevant measure of volume, for example, would become the number of specific tariff entries changed per day or per month, rather than the number of pages filed. At present, a new page must be submitted whenever there is a change in any entry on the page; a single filing may involve 100 tariff pages or more, each of which may contain only one minor revision—for example, a single corrected routing code—or hundreds of substantive changes involving new markets, fare or rate categories, price levels, and rule numbers throughout an airline's system. In a recent sample, we found that each tariff page included an average of 50 revisions in specific data items: airline, market(s), fare or rate codes, U.S. dollar/FCU/foreign currency price levels, directional designators, rule numbers cited, routing codes, effective/expiry dates, or footnotes. By this estimate, the present rate of tariff filing—500 to 600 pages per day—is equivalent to a volume of 25,000 to 30,000 item revisions per day.

The use of computerized filing procedures would also make the tariff-page system obsolete as a means of identifying tariff transmissions. Each tariff entry changed would have to be tagged with a transaction identification code, in lieu of the present page-number identification system. The transaction code would provide the same information now shown on the tariff page: filing airline, publishing agent (if any), STP number (if any), filing date, effective date, expiry date (if any), and a numerically sequenced transaction number to identify the filing. A single transaction code could be used for all of the data entries filed in a single transmission, if all of the identifying elements noted above are the same for each data item in the transmission. A transmission involving tariff data for two or more airlines, STP numbers, or effective/expiry dates would require two or more transaction codes.

When an airline or agent transmits an entry to the "proposed tariff" file, the computer would perform a basic series of checks against reference data stored in the system, including routine comparisons to regulatory standards and maximum price levels. The system would also be updated daily to recognize and flag filings involving any special markets, airlines, or fare/rate/rule categories that require additional monitoring.

Comparisons would be displayed on the screen for the analyst's review, with printouts available as needed. Linking rules to fares and rates by means of the rule number, the system would allow the analyst to call up the supporting rule(s) when reviewing the fare or rate proposal. Upon completion of the review, the analyst would decide whether to accept, reject, or hold the filing for further evaluation, and would transmit a message to notify the airline or agent of the decision.

The analytical and checking procedures for both STPs and statutory filings are essentially identical. Once an STP has been approved, however, it would be held on-line in an "approved-unused" file until the implementing tariff material has been submitted. Upon receipt of the tariff material, the computer would check for compliance with the approved STP, enter the tariff material into the official effective tariff file, and annotate the STP with the date implemented before transferring it to storage. STPs that are not used or extended within 15 days would be automatically cancelled and stored in a separate file, as they are now under the manual tariff system.

Analysts would also need readily accessible reference data on mileages, certificate and permit authority, bilateral agreements, International Air Transport Association agreements, exchange rates, and service by market, to allow detailed market analysis when necessary. Optimally, all such reference data should be incorporated in a relational database by common data elements such as country, market, and airline, to enable analysts to perform a full range of on-line data comparisons.

A complete record of transactions would be created daily; major tariff proposals and staff actions would be summarized in a daily or weekly management report, and an automatic sequential log of all transactions, coded by transaction number, date, airline and market, would be stored off-line, with printouts produced as necessary. In addition, one or more terminals would be available at DOT for the public to use free of charge, so that current tariff information would continue to be accessible to anyone who desires to review it. We would charge a small fee for supplying printed documents, as we now charge for photocopies of printed tariff pages.

2. History

The on-line record would contain the present, immediately previous and proposed fares, rates, and rules. Historical records would also be necessary, however, to enable analysts to trace market developments, resolve international pricing questions, and evaluate current proposals.

On a day-to-day basis, analysts most frequently refer to records from the previous year to evaluate current tariff filings. Therefore, tariff records from the previous year must be readily available with minimal retrieval time. Older records would be needed for research and reference purposes, but less frequently. In addition to research

performed to evaluate current filings, resolve pricing disputes, and prepare economic analyses, DOT provides certified copies of tariff records for court cases. When researching tariff data, the critical question usually is, "What fare, rate, or rule was in effect for a specific airline in a specific market as of a specific date?" Any proposed system must allow users to retrieve any fare, rate, or rule in effect at any given time, and to produce printed copies of specific records.

The system should include annual historical tapes or disks, containing the record of all changes enacted during the year. History files of reference material in the system should also be maintained on a weekly, monthly, or annual basis, depending on the type of data.

Conversion to an automated tariff system would require some revisions in DOT regulations governing the retention of tariff files. During the transition period, the agency would maintain loose-leaf volumes of past tariff pages, as specified by current regulations. In practice, the present retention requirements, which specify that cancelled tariff volumes will be held for 5 years, result in the retention of records for much longer periods; if a tariff volume remains active for 7 years, for example, and is then held for the requisite 5 years as a cancelled volume, it will include data up to 12 years old. Once the data are fully automated, the agency is considering holding the historical computer tapes or disks for a minimum of 5 years.

3. Rules

Because passenger and cargo rules and conditions of service are published in the form of text, not tables, computerization of the rules tariffs would require some creativity. Most rules follow a standard format, listing advance-purchase periods, minimum/maximum-stay requirements, stopover conditions, weekend surcharges, refund provisions, and other travel or shipping requirements in a specific sequence of paragraphs. Each paragraph or subsection, however, may include a dozen or more variations on the rule's provisions, as individual airlines attempt to develop a market advantage by modifying the specified conditions of service.

Analysts must be able to retrieve the rules files not only by rule number and date, but by airline, country, and market. Because analysts frequently conduct comparative checks on proposed rules, the system should provide the capability to compare rules over time, rules for a given airline across markets, or rules for different airlines in a single market. In addition, analysts would need the capability to match fare or rate filings to the applicable rule in effect at a specific date; consequently, an index file must be created, listing each airline's fare codes, marketing names, and accompanying rule numbers at any given time.

The full text of each airline's rules must be available, of course, but it would also be necessary to develop an abbreviated rules file by coding the major rule components for quick access, comparison, and display. With an encoded rules file on-line, the analyst evaluating a proposed tariff rule change would be able to perform most of the necessary analytical checks with a minimum of file-search time. The full text of each rule would be stored in the system to be called up for display or printout as necessary. All entries—including changes in rule provisions—should be tagged with proposed, effective, and expiry dates.

4. Other Issues

At this preliminary stage, a number of questions remain unresolved. For example, any proposed format for computerized tariff transmissions would differ considerably from the standard page format now used in paper tariff filings. The format chosen should be (a) flexible enough to handle many different types of filings, (b) fully compatible with the industry's electronic-tariff capabilities, and (c) easily readable by DOT analysts and other system users.

In addition, the structure of DOT tariff filing fees would change. With the discontinuation of the tariff-page system, fees for tariff changes could be charged on the basis of computer and telecommunications system time-use, per data item or per transaction for fare and rate revisions, and per line or per transaction for the text of tariff rules. While the new fee structure has not yet been developed, by law the fees charged should cover the basic costs of processing the tariff material filed. It is our intention to ensure that an equitable fee structure is established that reflects actual costs and apportions those costs fairly among high- and low-volume users. Since airlines and agents now file hundreds of tariff pages to make only minor data changes, the switch to a computerized tariff system and revised fee structure should substantially reduce filing fees in many cases.

We are also considering the issue of whether electronic tariff filing procedures should be voluntary or mandatory, once an electronic system is in place. Most tariff publishing firms have already computerized their own operations, and should be able to make a transition to a computerized tariff system relatively easily. Not all airlines use filing agents, however, and some smaller airlines might find it expensive to acquire the necessary telecommunications facilities solely for tariff purposes. All airlines providing service to or from the United States must continue to file tariffs in one form or another, of course; but it is not our intention to impose an undue financial burden on any segment of the industry. Consequently, even if the majority of the industry were to convert to an electronic filing system, we anticipate a need to permit continued filing of paper tariff documents for any airlines which would experience financial hardship if compelled to use an electronic system.

Technical and Policy Issues

To ensure that a computerized aviation tariff system would fully meet the needs of the industry and the public, DOT is seeking public input at this preliminary stage. We are particularly interested in ascertaining the potential financial and technical impact on the aviation industry, and would welcome any analyses or comments that airlines, agents, or other interested parties may wish to provide. We also invite all interested parties to comment on the following issues:

1. What cost savings or expenses would airlines or agents experience in filing tariff changes electronically, compared to the present cost of filing paper tariffs?

2. What expenses would airlines or agents be likely to incur in developing electronic filing systems that will be consistent with DOT regulations?

3. Would computerization of tariff-filing procedures have a substantial effect on present contractual relationships between airlines and tariff filing agents?

4. What changes, if any, would be necessary in airlines' tariff-related concurrence and power-of-attorney documents?

5. What procedures should be established for the electronic filing of joint fares?

6. What additional data-security measures, if any, would be necessary to ensure that third parties cannot tamper with proposed, effective, or past tariff material?

7. What could be done to facilitate the computerization of tariff rules?

8. Tariffs are public documents. To what extent should direct terminal access to the central data base for purposes of reading proposed, effective, or past tariffs be provided for airlines, filing agents, travel agents, freight

forwarders, government agencies, and the general public?

9. What modifications, if any, would conversion to a computerized system require with respect to U.S. bilateral or multilateral aviation agreements, Federal statutes, of DOT regulations?

10. Have any other governments implemented an electronic tariff system? If so, how are the systems operating? What problems and benefits have been experienced?

11. Are there any feasible alternatives to the proposal discussed in this document?

12. In what ways could we best establish a cooperative effort between industry and government to develop an automated tariff system?

We are soliciting input from the public and the aviation industry at this time to ensure that DOT continues to meet the needs of the traveling and shipping public in terms of competitive air service, as well as specific fare, rate, and rule information, and to assure that the industry's capabilities are compatible with DOT's needs. Specifically, we request comments from the industry and the public on the potential cost and benefits of conversion to a computerized system, on the ways in which the industry could participate in the development of this system, and on the impact that automation may have on tariff filing procedures and the aviation industry.

We will give all comments careful consideration, to ensure that any automated system designed to handle international aviation tariffs will meet the needs of the industry, the public, and government aviation authorities.

Rulemaking Process Matters

This advance notice of proposed rulemaking discusses what, if further regulatory action is taken, would be a significant proposed or final rule under DOT's Regulatory Policies and Procedures. DOT would be obligated to prepare a regulatory evaluation for such a proposed or final rule. Based on information currently available, we have developed a preliminary economic analysis. A major purpose of this ANPRM is to request information that will enable us to make a complete evaluation.

Executive Order 12291 does not require DOT to obtain the approval of the Office of Management and Budget (OMB) for an advance notice of proposed rulemaking. However, any proposed or final rule resulting from the ANPRM wuld be subject to the Executive Order's OMB coordination requirements. At this time, we do not anticipate that a proposed or final rule resulting from this ANPRM would be a major rule under the Executive Order, but we will consider, based on the comments we receive, whether a subsequent rulemaking action should be regarded as major.

Preliminary Economic Analysis

This is a preliminary economic analysis based on our estimates of costs and benefits to the government and the industry. We would appreciate public comments on this analysis. We have also contracted with a private contractor to help develop more detailed economic data for use in further analysis of this issue.

More than one million currently effective international fares, rates, and rules are on file at DOT, with new tariff pages received at a rate of more than 500 per day. Our preliminary survey shows each page contains approximately 50 item changes, or 25,000 per day. During the first six months of 1985, page volume increased 19 percent over the same period in 1984—a trend that we expect to continue as competition develops in international markets. Without the conversion to an electronic system, DOT would have to add personnel in the future to process paper.

The Department now spends approximately half a million dollars a year to process the paper tariffs. The cost to industry is much greater. All major carriers file tariffs through two tariff-publishing agents. Tariffs publishers charge an average fee of $45 per side to prepare, print, and file a tariff page with DOT. Airlines must print, file, and distribute a complete page of tariff data, printed on both sides, whenever a single item is changed. Thus, changing a single fare in a single market costs an airline almost $100 in paperwork alone. Based on the 1984 volume of 130,000 pages, we estimate the cost to industry was $5.8 million.

A preliminary cost analysis conducted by our contractor indicates that development of the electronic tariff filing system will cost the government between $2.5 and $3 million over a 3–5 year period. The development costs should be recovered over time through user fees, which will replace the current per-page filing charge The airlines and publishing agents, which already utilize computer and telecommunications technology to communicate with each other, may experience short-term costs for technical adjustments to make their systems compatible with an automated tariff system.

We believe that the airlines will reap substantial long-term benefits through lower tariff-processing costs, faster and easier implementation of marketing strategies, and a new ability to respond to competitor's pricing initiatives, as well as a substantial reduction in paperwork.

Computerization of the tariff system should ultimately produce substantial taxpayer savings as well. Processing paper tariffs imposes an enormous regulatory burden on the industry, inhibits flexible marketing in today's environment of competitive pricing strategies, and represents an inefficient use of Federal resources, given the feasibility of automation at this point.

With automation, the cost of processing simple tariff changes should decline dramatically for both the government and the industry. At DOT, each approved tariff page is now handled a minimum of five times. The page is stamped with the date received, reviewed by a tariff examiner and in some cases by an industry analyst as well, stamped "official file", inserted into the proper current-tariff binder, later stamped with a cancellation mark, and then refiled in the appropriate cancelled-pages binder to be held for reference purposes. Computerization of this process would produce significant cost savings and efficiency gains, and lower long-term labor costs than would be necessary if the paper system is retained. For the industry, which must not only produce and file those pages with DOT, but also distribute copies to all sales locations, the savings should be even greater.

DOT requests comments on whether a proposed or final rule resulting from this ANPRM would have a significant economic effect on a substantial number of small entities.

We also request comments on the extent to which computerization of the DOT air tariff system would further the objectives of the Paperwork Reduction Act.

List of Subjects in 14 CFR Part 221

Air rates and fares, Explosives, Freight, Handicapped.

Issued this 10th day of August 1985, at Washington, D.C.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85–19631 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–62–M

federal register

Monday
August 19, 1985

Part III

Consumer Product Safety Commission

Approaches for Increasing Commission Support of Voluntary Standards; Public Hearings

CONSUMER PRODUCT SAFETY COMMISSION

Approaches for Increasing Commission Support of Voluntary Standards; Public Hearings

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearings.

SUMMARY: The Commission has always supported voluntary standards that effectively reduce risks of injury presented by consumer products. In recent years, however, the Commission has focused on possible ways to increased this support. To obtain the views of interested members of the public on this topic, the Commission has scheduled public hearings in Los Angeles and Washington, DC.[1] Oral comments (and written comments from those unable to attend) will be welcomed on ten possible approaches identified by the Commission and on any other alternative suggestions from the public.

DATES: The Los Angeles hearing will be on Friday, October 18, 1985, beginning at 9:30 a.m. Requests from members of the public who want to make presentations at this hearing must be received by October 11, and texts or summaries of presentations are due by October 15. The Washington, DC hearing will be on Wednesday, November 13, 1985, beginning at 9:30 a.m. Requests to participate must be received by November 6, and texts or summaries are due by November 8.

ADDRESS: The Los Angeles hearing will be at the Davidson Conference Center, University of Southern California, 3415 S. Figueroa Street, in the auditorium. The Washington, DC hearing will be at 1111 18th Street NW., in the third floor conference room.

FOR FURTHER INFORMATION CONTACT: For information about the subject of the hearings, contact Douglas Noble, Office of the Executive Director, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6550. To request the opportunity to make a presentation at one of the hearings, contact Sheldon Butts, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6800.

SUPPLEMENTARY INFORMATION:

A. Background

During its 12-year existence, the Consumer Product Safety Commission (CPSC) has supported voluntary standards that effectively reduce risks of injury presented by consumer products. Under existing regulations, the Commission participates in or monitors the development of voluntary standards. 16 CFR Part 1032—Commission Involvement in Voluntary Standards Activities. The regulations also address the Commission's role in the support of some voluntary standards that have been adopted and implemented, stating that the Commission may assist in disseminating information on them and may encourage their use by state and local governments. 16 CFR 1032.4(b).

The Commission has recently focused on ways to increase its support of effective voluntary standards. In June 1984 the Commission proposed an amendment to its regulations concerning possible "recognition" of such standards. 49 FR 25005 (June 19, 1984). In written and oral comments, 39 members of the public presented their views on the recognition proposal and on the general subject of Commission support for voluntary standards.

The proposed amendment on recognition was withdrawn in May 1985, but the Commission at that time noted its continuing strong support of effective voluntary standards and its intention to "consider alternatives designed to bolster that support." 50 FR 19700 (May 10, 1985). The Commission staff has prepared a briefing package discussing ten such alternatives, and, on May 8, 1985, orally briefed the Commission on them.

B. Staff Alternatives

Following are the Commission staff's ten possible alternatives for providing increased support of effective voluntary standards (the full briefing package which discusses them in detail, dated April 22, 1985, is available from the Commission's Office of the Secretary):

1. The Commission staff could be allowed to serve as voting members of voluntary standards development committees.

2. The Commission could publish, in a letter or through other means, a statement in support of a voluntary standard when it is decided that the standard satisfactorily addresses a safety hazard of particular concern to CPSC.

3. The Commission could recognize the improvement in the safety of *products*, not the voluntary standards with which they are certified to be in compliance.

4. Voluntary standards could be supported through Commission outreach activities, including CPSC publications, information and educational campaigns, and conferences.

5. Voluntary standards could be deferred to on a case-by-case basis, through procedures set forth in section 9 of the Consumer Product Safety Act. 15 U.S.C. 2058.

6. A pilot program could be established to provide support for a specific voluntary standard.

7. The Commission could enter into a formal agreement with a voluntary standards organization, through a memorandum of understanding (MOU), supporting selected voluntary standards activities.

8. CPSC staff could be more active in supporting voluntary standards in various ways, e.g., increased attendance at voluntary standards meetings, improved communications with industry, etc.

9. The Commission staff could enhance the programs of a voluntary standards project by meeting, individually, with manufacturers of the product involved at the beginning of the standards development process.

10. The Commission could issue a statement of policy that encourages State and local governments to consider voluntary standards as an alternative to regulations that these governments are developing.

For more information about these alternatives—such as a copy of the April 22, 1985 briefing package that discusses them—or about the general subject of CPSC support for effective voluntary standards, members of the public may contact Mr. Douglas Noble at the address and telephone number provided above. Mr. Noble is the Commission's Voluntary Standards Coordinator.

C. Hearings

Both hearings will begin at 9:30 a.m. and conclude the same day. The Los Angeles hearing will take place on Friday, October 18, 1985 at the Davidson Conference Center, University of Southern California, 3415 S. Figueroa Street, in the auditorium. The Washington, DC hearing will take place on Wednesday, November 13, 1985 at 1111 18th Street NW, in the third floor conference room.

The purpose of the hearings is for the Commission to receive comments on possible ways to increase its support of effective voluntary standards. Comments are welcome on the ten alternatives listed in section B above. In addition, comments and suggestions are particularly welcome on other alternative ways for the Commission to achieve the same result.

Every member of the public is welcome to make a presentation at one of the hearings, regardless of whether he

[1] The Commission approved the hearings by a vote of 3–0–1, with Commissioner Statler abstaining.

or she previously submitted written comments or presented oral comments on the June 1984 proposed amendment. The Commission is interested in the viewpoints of consumers, consumer organizations, industry members, trade associations, standards setting organizations, state and local governments, and any other interested parties. Presentations should be limited to approximately ten minutes, but the Commission reserves the right to impose further restrictions to avoid duplication or conserve time. If the length of any presentation is severely curtailed, the previously-submitted written text or summary will be entered into the official record.

Anyone interested in making a presentation at the Los Angeles hearing should contact Mr. Sheldon Butts (address and telephone number provided above) no later than October 11, 1985, and provide him with a written text or a summary of the presentation by October 15, 1985. For the Washington, DC hearing, Mr. Butts should be contacted by November 6, 1985, and receive a written text or summary by November 8, 1985.

Anyone who is interested in providing comments but is unable to attend either hearing may submit written comments to the Office of the Secretary, CPSC, Washington, DC 20207 no later than November 13, 1985.

Authority: Section 27(a) of the Consumer Product Safety Act; 15 U.S.C. 2076(a).

Dated: August 13, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-19661 Filed 8-16-85; 8:45 am]

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federal register

Monday
August 19, 1985

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting; Notice

Recombinant DNA Molecules Research, Proposed Actions Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20205, on September 23, 1985, from 9:00 a.m. to adjournment at approximately 5:00 p.m. This meeting will be open to the public to discuss:

Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols;
Containment for cloning of toxin genes;
Exchange list for gram positive bacteria;
Amendment of Guidelines; and
Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such opportunity at the discretion of the chair.

Dr. William J. Gartland, Jr., Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 3B10, telephone (301) 496–6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

Dated: August 13, 1985.

Thomas E. Malone

Deputy Director, NIH.

(OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.)

[FR Doc. 85–19719 Filed 8–16–85; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on September 23, 1985, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by September 18, 1985.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20205. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m. Comments received by close of business September 16, 1985, will be reproduced and distributed to the RAC for consideration at its September 23, 1985, meeting.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from Drs. Stanley Barban and Elizabeth Milewski, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following actions under the Guidelines for Research Involving Recombinant DNA Molecules.

I. Request for Permission To Clone Shiga-like Toxin From the Families Enterobacteriaceae and Vibrionaceae in E. coli K–12

Dr. Alison O'Brien of the Uniformed Services University of the Health Sciences had previously (49 FR 36052) received permission from the National Institutes of Health to clone the structural gene of the Shiga-like toxin (SLT) of *Escherichia coli* in *E. coli* K–12. The specific language concerning the permission reads as follows in the current version of the NIH Guidelines (49 FR 46279):

Appendix F–IV–H. The intact structural gene(s) of the Shiga-like toxin from *E. coli* may be cloned in *E. coli* K–12 under BL3 + EK1 containment conditions.

E. coli host-vector systems expressing the Shiga-like toxin gene may be moved from BL3 to BL2 containment conditions provided that: (1) The amount of toxin produced by the modified host-vector systems is no greater than that produced by the positive control strain 933 *E. coli* 0157H7, grown and measured under optimal conditions; and (2) the cloning vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325.

Nontoxinogenic fragments of the Shiga-like toxin structural gene(s) may be moved from BL3 + EK1 to BL2 + EK1 containment conditions or such nontoxic fragments may be directly cloned in *E. coli* K–12 under BL2 + EK1 conditions provided that the *E. coli* host-vector systems containing the fragments do not contain overlapping fragments which together would encompass the Shiga-like toxin structural gene(s).

Dr. O'Brien is now requesting permission to clone SLT structural genes, defined either by nucleotide sequence homology with SLT gene probes from *E. coli* or by antigenic cross-reactivity of their gene products with purified *E. coli* SLT, from bacterial species classified in the families *Enterobacteriaceae* or *Vibrionaceae* into *E. coli* K–12 under conditions similar to those specified in the previous permission. Dr. O'Brien wishes to broaden the scope of study of SLT toxin for the following reasons: (1) To investigate the potential role of SLT in the pathogenicity of a variety of bacteria; (2) to compare the SLT genes from various pathogenic bacteria; and (3) to facilitate the development of an experimental *Vibrio cholerae* vaccine strain deleted for SLT genes.

Dr. O'Brien has supplied information supporting this request to ORDA.

II. Request To Clone a Hybrid Toxin Gene in E. Coli K–12

Dr. John Murphy of the University Hospital of Boston University Medical Center requests permission to construct a hybrid molecule in which the gene coding for interleukin-2 (IL2) is joined to a segment of the gene encoding diphtheria toxin. The diphtheria toxin segment encodes the A subunit and portions of the B subunit. The hybrid gene would be cloned in *E. coli* K–12 host-vector systems.

III. Proposed Amendments of Appendix C–III of the NIH Guidelines

BioTechnica International, Cambridge, Massachusetts, proposes the following amendments to Appendix C–III of the NIH Guidelines. The first paragraph of Appendix C–III would be amended to read as follows:

Experiments which use *Saccharomyces cerevisiae* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines.

This amendment would extend the current exemption to include strains other than "laboratory strains."

A new second paragraph would be added to Appendix C–III to read as follows:

Experiments which use *Saccharomyces uvarum* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines.

The company has provided information concerning this request to ORDA.

IV. Points To Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols

Proposed "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols" were published for comment in the **Federal Register** of January 22, 1985 (50 FR 2940). Readers are referred to that announcement for detailed background information and the roster of the RAC Working Group on Human Gene Therapy. Fifteen letters were received during the comment period. Based on those comments, the RAC Working Group on Human Gene Therapy met on April 1, 1985, and prepared a revised proposed Points to Consider. The revised proposed Points to Consider and letters of comment were reviewed by the full RAC at its meeting on May 3, 1985. After extensive discussion, the RAC voted to incorporate changes suggested at the meeting, to accept the revised Points to Consider as a working document, and to republish the document for further comment. An additional section, entitled "Applicability," has been added to emphasize that the Points to Consider apply only to institutions receiving support for recombinant DNA research from the NIH.

The following Points to Consider document incorporating the recommended changes is now published for public comment. Comments received will be circulated to all RAC and working group members. The Points to Consider document and the public comments received will be considered at the next RAC meeting on September 23, 1985.

NATIONAL INSTITUTES OF HEALTH POINTS TO CONSIDER IN THE DESIGN AND SUBMISSION OF HUMAN SOMATIC-CELL GENE THERAPY PROTOCOLS

Working Group on Human Gene Therapy NIH Recombinant DNA Advisory Committee

Outline

Applicability
Introduction
I. Description of Proposal
  A. Objectives and Rationale of the Proposed Research
  B. Research Design, Anticipated Risks and Benefits
  1. Structure and Characteristics of the Biological System
  2. Preclinical Studies, Including Risk-Assessment Studies
  3. Clinical Procedures, Including Patient Monitoring
  4. Public-Health Considerations
  5. Qualifications of Investigators, Adequacy of Laboratory and Clinical Facilities
  C. Selection of Patients
  D. Informed Consent
  E. Privacy and Confidentiality
II. Special Issues
  A. Provision of Accurate Information to the Public
  B. Timely Communication of Research Methods and Results to Investigators and Clinicians
III. Requested Documentation
  A. Original Protocol
  B. IRB and IBC Minutes and Recommendations
  C. One-Page Abstract of Gene Therapy Protocol
  D. One-Page Description of Proposed Experiment in Non-Technical Language
  E. *Curricula vitae* for Professional Personnel
  F. Indication of Other Federal Agencies To Which the Protocol Is Being Submitted
  G. Other Pertinent Material
IV. Reporting Requirements

Applicability

These "Points to Consider" apply only to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by NIH directly.

Introduction

(1) Experiments in which recombinant DNA [1] is introduced into cells of a human subject with the intent of stably modifying the subject's genome are covered by Section III–A–4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules (49 FR 46266). Section III–A–4 requires such experiments to be reviewed by the NIH Recombinant DNA Advisory Committee (RAC) and approved by the NIH. RAC consideration of each proposal will be on a case-by-caes basis and will follow publication of a precis of the proposal in the **Federal Register**, an opportunity for public comment, and a review of the proposal by the working group of the RAC. RAC recommendations on each proposal will be forwarded to the NIH Director for a decision which will then be published in the **Federal Register**. In accordance with Section IV–C–1–b of the NIH Guidelines, the NIH Director may approve proposals only if he finds that they present "no significant risk to health or the environment."

(2) In general, it is expected that somatic-cell gene therapy protocols will not present a risk to the environment as the recombinant DNA is expected to be confined to the human subject. Nevertheless, Section I–B–4–b of the "Points to Consider" document asks the researchers to address specifically this point.

(3) This document is intended to provide guidance in preparing proposals for NIH consideration under Section III–A–4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules. Not every point mentioned in the "Points to Consider" document will necessarily require attention in every proposal. It is expected that the document will be considered for revision at least annually as experience in evaluating proposal accumulates and as new scientific developments occur.

(4) A proposal will be considered by the RAC only after the protocol has been approved by the local Institutional Biosafety Committee (IBC) and by the local Institutional Review Board (IRB) in accordance with Department of Health and Human Services (DHHS) Regulations for the Protection of Human Subjects (45 CFR Part 46). If a proposal involves children, special attention should paid to subpart D of these DHHS regulations. The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC and its working group. Consideration of gene therapy proposals by the RAC may proceed simultaneously with review by any other involved federal agencies [2] provided that the RAC

[1] Section III–A–4 applies to both recombinant DNA and DNA derived from recombinant DNA.

[2] The Food and Drug Administration (FDA) has jurisdiction over drug products intended for use in

Continued

is notified of the simultaneous review. Meetings of the committee will be open to the public except where trade secrets or proprietary information will be disclosed. The committee would prefer that the first proposal submitted for RAC review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. The public review of these protocols will serve to inform the public not only on the technical aspects of the proposals but also on the meaning and significance of the research.

(5) The clinical application of recombinant DNA techniques to human gene therapy raises two general kinds of questions: (1) The questions usually discussed by IRBs in their review of *any* proposed research involving human subjects; and (2) broader social issues. The first type of question is addressed principally in Part I of this document. Several of the broader social issues surrounding human gene therapy are discussed later in this Introduction and in Part II below.

(6) Following the Introduction, this document is divided into four parts. Part I deals with the short-term risks and benefits of the proposed research to the patient [3] to other people, as well as with issues of fairness in the selection of patients, informed consent, and privacy and confidentiality. In Part II, investigators are requested to address special issues pertaining to the free flow of information about clinical trials of gene therapy. These issues lie outside the usual purview of IRBs and reflect general public concerns about biomedical research. Part III summarizes other requested documentation that will assist the RAC and its working group in their review of gene therapy proposals. Part IV specifies reporting requirements.

(7) A distinction should be drawn between making genetic changes in somatic cells and in germ line cells. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into a patient's bone marrow cells *in vitro* and then reintroducing the cells into the patient's body. In germ line alterations, a specific attempt is made to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring. The RAC and its working group will not at present entertain proposals for germ line alterations but will consider for approval protocols involving somatic-cell gene therapy.

(8) The acceptability of human somatic-cell gene therapy has been addressed in several recent documents as well as in numerous academic studies. The November 1982 report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, *Splicing Life*, resulted from a two-year process of public deliberations and hearings; upon release of that report, a House subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, *Human Gene Therapy*, which brought these earlier documents up-to-date. As the latter report concluded:

> Civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies.

(9) Concurring with this judgment, the RAC and its working group are prepared to consider for approval somatic-cell therapy protocols, provided that the design of such experiments offers adequate assurance that their *consequences* will not go beyond their *purpose*, which is the same as the traditional purpose of all clinical investigations, namely, to benefit the health and well-being of the individual being treated while at the same time gathering generalizable knowledge.

(10) The two possible undesirable consequences of somatic-cell therapy would be unintentional (1) vertical transmission of genetic changes from an individual to his or her offspring or (2) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, this document requests information that will enable the RAC and its working group to assess the likelihood that the proposed somatic-cell gene therapy will inadvertently affect reproductive cells or lead to infection of other people (e.g., treatment personnel or relatives).

(11) In recognition of the social concern that surrounds the general discussion of human gene therapy, the working group will continue to consider the possible long-range effects of applying knowledge gained from these and related experiments. While research in molecular biology could lead to the development of techniques for germ line intervention or for the use of genetic means to enhance human capabilities rather than to correct defects in patients, the working group does not believe that these effects will follow immediately or inevitably from experiments with somatic-cell gene therapy. The working group will cooperate with other groups in assessing the possible long-term consequences of somatic-cell gene therapy and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

(12) Responses to the questions raised in these "Points to Consider" should be provided in the form of either written answers or references to specific sections of the protocol or its appendices.

I. Description of Proposal

A. Objectives and Rationale of the Proposed Research

State concisely the overall objectives and rationale of the proposed study. Please provide information on the following specific points:

1. Why is the disease selected for treatment by means of gene therapy a good candidate for such treatment?

2. Describe the natural history and range of expression of the disease selected for treatment. In your view, are the usual effects of the disease predictable enough to allow for meaningful assessment of the results of gene therapy?

3. Is the protocol designed to prevent all manifestations of the disease, to halt the progression of the disease after symptoms have begun to appear, or to reverse manifestations of the disease in seriously ill victims?

4. What alternative therapies exist? In what groups of patients are these therapies effective? What are their relative advantages and disadvantages as compared with the proposed gene therapy?

B. Research Design, Anticipated Risks and Benefits

1. Structure and Characteristics of the Biological System

Provide a full description of the methods and reagents to be employed for gene delivery and the rationale for their use. The following are specific points to be addressed:

a. What is the structure of the cloned DNA that will be used?

(1) Describe the gene (genomic or cDNA), the bacterial plasmid or phage

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clinical trials of human somatic-cell gene therapy. For general information on FDA's policies and regulatory requirements, please see the **Federal Register**, Volume 49, pages 50678–80, 1984.

[3] The term "patient" and its variants are used in the text as a shorthand designation for "patient-subject."

vector, and the delivery vector (if any). Provide complete sequence analysis or a detailed restriction map of the total construct.

(2) What regulatory elements does the construct contain (e.g., promoters, enhancers, polyadenylation sites, replication origins, etc.)?

(3) Describe the steps used to derive the DNA construct.

b. What is the structure of the material that will be administered to the patient?

(1) Describe the preparation, structure, and composition of the materials that will be given to the patient or used to treat the patient's cells.

(a) If DNA, what is the purity (both in terms of being a single DNA species and in terms of other contaminants)? What tests have been used and what is the sensitivity of the tests?

(b) If a virus, how is it prepared from the DNA construct? In what cell is the virus grown (any special features)? What medium and serum are used? How is the virus purified? What is its structure and purity? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials (nucleic acids, proteins, etc.) or contaminating viruses or other organisms in the cells or serum?

(2) Describe any other material to be used in preparation of the material to be administered to the patient. For example, if a viral vector is proposed, what is the nature of the helper virus or cell line? If carrier particles are to be used, what is the nature of these?

2. Preclinical Studies, Including Risk-Assessment Studies

Describe the experimental basis (derived from tests in cultured cells and laboratory animals) for claims about the efficacy and safety of the proposed system for gene delivery.

a. *Laboratory studies of the delivery system.* (1) What cells are the intended recipients of gene therapy? If recipient cells are to be treated *in vitro* and returned to the patient, how will the cells be characterized before and after treatment? What is the theoretical and practical basis for assuming that only the treated cells will act as recipients?

(2) Is the delivery system efficient? What percentage of the target cells contain the inserted DNA?

(3) How is the structure of the added DNA sequences monitored and what is the sensitivity of the analysis? Is the added DNA extrachromosomal or integrated? Is the added DNA unrearranged?

(4) How many copies are inserted per cell? How stable is the inserted DNA both in terms of its continued presence and its structural stability?

b. *Laboratory studies of gene expression.* Is the inserted gene expressed? To what extent is expression only from the desired gene (and not from the surrounding DNA)? In what percentage of cells does expression occur? Is the product biologically active? What percentage of normal activity results from the inserted gene? Is the gene expressed in cells other than the target cells? If so, to what extent?

c. *Laboratory studies pertaining to the safety of the delivery/expression system.* (1) If a retroviral system is used:

(a) What cell types have been infected with the retroviral vector preparation? Which cells, if any, produce infectious particles?

(b) How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement or recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

(c) What laboratory evidence is available concerning potential harmful effects of the treatment, e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses? What steps have been taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?

(d) Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ line cells? What is the sensitivity of the analyses?

(e) Has a protocol similar to the one proposed for a clinical trial been carried out in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

(2) If a non-retroviral delivery system is used: What animal studies have been done to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ line cells)? How long have the animals been studied after treatment? What tests have been used and what is their sensitivity?

3. *Clinical Procedures, Including Patient Monitoring*

Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study.

a. Will cells (e.g., bone marrow cells) be removed from patients and treated *in vitro* in preparation for gene therapy? If so, what kinds of cells will be removed from the patients, how many, how often, and at what intervals?

b. Will patients be treated to eliminate or reduce the number of cells containing malfunctioning genes (e.g., through radiation or chemotherapy) prior to gene therapy?

c. What treated cells (or vector/DNA combination) will be given to patients in the attempt to administer gene therapy? How will the treated cells be administered? What volume of cells will be used? Will there be single or multiple treatments? If so, over what period of time?

d. What are the clinical endpoints of the study? How will patients be monitored to assess specific effects of the treatment on the disease? What is the sensitivity of the analyses? How frequently will follow-up studies be done? How long will patient follow-up continue?

e. What are the major potential beneficial and adverse effects of treatment that you anticipate? What measures will be taken in an attempt to control or reverse these adverse effects if they occur? Compare the probability and magnitude of potential adverse effects on patients with the probability and magnitude of deleterious consequences from the disease if gene therapy is not performed.

f. If a treated patient dies, what special studies will be performed as part of the autopsy?

4. Public-Health considerations

Describe any potential benefits and hazards of the proposed therapy to persons other than the patients being treated. Specifically:

a. On what basis are potential public health benefits or hazards postulated?

b. Is there a significant likelihood that the inserted DNA will spread from the patient to other persons or to the environment?

c. Will any precautions be taken against such spread (e.g., to patients

sharing a room, health-care workers, or family members)?

d. What measures will be undertaken to mitigate the risks, if any, to public health?

5. Qualifications of Investigators, Adequacy of Laboratory and Clinical Facilities

Indicate the relevant training and experience of the personnel who will be involved in the preclinical studies and clinical administration of gene therapy. In addition, please describe the laboratory and clinical facilities where the proposed study will be performed.

a. What professional personnel (medical and nonmedical) will be involved in the proposed study? What are their specific qualifications and experience with respect to the disease to be treated and with respect to the techniques employed in molecular biology? Please provide *curricula vitae* (see Section III–D).

b. At what hospital or clinic will the treatment be given? Which facilities of the hospital or clinic will be especially important for the proposed study? Will patients occupy regular hospital beds or clinical research center beds? Where will patients reside during the follow-up period?

C. Selection of Patients

Estimate the number of patients to be involved in the proposed study of gene therapy. Describe recruitment procedures and patient eligibility requirements, paying particular attention to whether these procedures and requirements are fair and equitable.

1. How many patients do you plan to involve in the proposed study?

2. How many eligible patients do you anticipate being able to identify each year?

3. What recruitment procedures do you plan to use?

4. What selection criteria do you plan to employ? What are the exclusion and inclusion criteria for the study?

5. How will patients be selected if it is not possible to include all who desire to participate?

D. Informed Consent

Indicate how patients will be informed about the proposed study and how their consent will be solicited. The consent procedure should adhere to the requirements of DHHS regulations for the protection of human subjects (45 CFR Part 46). If the study involves pediatric or mentally handicapped patients, describe procedures for seeking the permission of parents or guardians and, where applicable, the assent of each patient. Areas of special concern highlighted below include potential adverse effects, financial costs, privacy, and long-term follow-up.

1. How will the major points covered in Sections I–A through I–C of this document be disclosed to potential participants in this study and/or parents or guardians in language that is understandable to them?

2. How will the innovative character and the theoretically-possible adverse effects of gene therapy be discussed with patients and/or parents or guaradians? How will the potential adverse effects be compared with the consequences of the disease? What will be said to convey that some of these adverse effects, if they occur, could be irreversible?

3. What explanation of the financial costs of gene therapy and any available alternative therapies will be provided to patients and/or parents or guardians?

4. Will patients and/or their parents or guardians be informed that the innovative character of gene therapy may lead to great interest by the media in the research and in treated patients? What special procedures, if any, will be followed to protect the privacy of patients and their families?

5. Will patients and/or their parents or guardians be informed:

a. That some of the procedures performed in the study will be irreversible.

b. That following the performance of such procedures it would not be medically advisable for patients to withdraw from the study?

c. That a willingness to cooperate in long-term follow-up (for at least three to five years) will be a precondition for participation in the study?

d. That a willingness to permit an autopsy to be performed in the event of a patient's death following treatment is also a precondition for a patient's participation in the study? (This stipulation is included because an accurate determination of the precise cause of a patient's death would be of vital importance to all future gene therapy patients.)

E. Privacy and Confidentiality.

Indicate what measures will be taken to protect the privacy of gene therapy patients and their families as well as to maintain the confidentiality of research data.

1. What provisions will be made to honor the wishes of individual patients (and the parents or guardians of pediatric or mentally handicapped patients) as to whether, when, or how the identity of patients is publicly disclosed?

2. What provision will be made to maintain the confidentiality of research data, at least in cases where data could be linked to individual patients?

II. Special Issues

Although the following issues are beyond the normal purview of local IRBs, the RAC and its working group request that investigators respond to questions A and B below.

A. What steps will be taken to ensure that accurate information is made available to the public with respect to such public concerns as may arise from the proposed study?

B. Do you or your funding sources intend to protect under patent or trade secret laws either the products or the procedures developed in the proposed study? If so, what steps will be taken to permit as full communication as possible among investigators and clinicians concerning research methods and results?

III. Requested Documentation

In addition to responses to the questions raised in these "Points to Consider," please submit the following materials:

A. Your protocol as approved by your local IRB and IBC. The consent form, which must have IRB approval, should be submitted to the NIH only on request.

B. Local IRB and IBC minutes and recommendations that pertain to your protocol.

C. A one-page scientific abstract of the gene therapy protocol.

D. A one-page description of the proposed experiment in nontechnical language.

E. *Curricula vitae* for professional personnel.

F. An indication of other federal agencies to which the protocol is being submitted for review.

G. Any other material which you believe will aid in the review.

IV. Reporting Requirements

A. Serious adverse effects of treatment should be reported immediately to both your local IRB and the NIH Office for Protection from Research Risks, and a written report should be filed with both groups. A copy of the report should also be forwarded to the NIH Office of Recombinant DNA Activities (ORDA).

B. Reports regarding the general progress of patients should be filed at six-month intervals with both your local IRB and ORDA. These twice-yearly reports should continue for a sufficient period of time to allow observation of major effects (at least three to five

years). In the event of a patient's death, the autopsy report should be submitted to the IRB and ORDA.

Dated: August 9, 1985.

James B. Wyngaarden,

Director, National Institutes of Health.

(OMB's "Mandatory Information requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.)

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August 19, 1985

Part V

Department of Agriculture

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under its Jurisdiction; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Food Distribution Program Regulations (7 CFR Part 250) by: (1) Strengthening provisions for inventory controls, use of program funds, audits, storage facilities and management evaluation reviews; (2) restructuring to provide for greater ease in the reading and understanding of the regulations; (3) revising provisions for the renewal of agreements; and (4) strengthening provisions for the processing of donated foods.

DATE: To be assured of consideration comments must be received or postmarked on or before November 18, 1985.

ADDRESS: Comments should be sent to: Beverly A. King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

Comments in response to these rules may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Beverly A. King, Chief, Program Administration Branch (703) 756–3660.

SUPPLEMENTARY INFORMATION: Any new information collection and recordkeeping requirements contained in this rule are subject to approval by the Office of Management and Budget before becoming effective.

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more nor will it have a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule has been reviewed with regard to the Regulatory Flexibility Act (Pub. L. 96–354). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Background

The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of the Food and Nutrition Service (FNS) and distributing agencies concerning the distribution and use of federally donated foods. The current regulations provide for the distribution of donated foods to a variety of domestic outlets, including entities participating in the child nutrition programs and nutrition programs for the elderly, charitable institutions, nonprofit summer camps for children, and certain low-income households and disaster organizations.

In accordance with Executive Order 12044, Part 250 was reviewed and determined to be in need of overall revision. A preliminary notice of intent to revise and republish the regulations appeared on June 22, 1979, (44 FR 36396) in the Federal Register.

Part 250 has not been subjected to an in-depth analysis to determine if all provisions provide for an efficient and effective administration of the Food Distribution Program since 1966. A Prenotice was published on December 16, 1980, (45 FR 82890), announcing that FNS had reviewed the provisions set forth under Part 250 to determine their adequacy and, as a result of that review, had determined that the regulations were in need of revision to strengthen existing provisions, including additional provisions to enhance program operations. Comments were solicited to assist FNS in developing regulations which will provide for a more efficient and effective operation of the Food Distribution Program.

Analysis of Comments

On December 16, 1980, FNS published a Prenotice which identified specific provisions contained in the Food Distribution Program Regulations (7 CFR Part 250) which were considered to be in need of revision. In an effort to assist FNS in revising Part 250, comments were solicited on these as well as all other provisions contained in Part 250. Sixty days were afforded the general public for comment on the proposed revision. Twenty-two comment letters were received. Comments were received from distributing agencies, FNS Regional Offices (FNSRO), School Lunch Program Managers, the Federation of Protestant Welfare Agencies and the National Indian Food and Nutrition Resource Center.

Restructuring

In an effort to simplify the organization of Part 250, various techniques for restructuring were discussed in the Prenotice. A total of 12 comments were recevied. Seven of the comments expressed a preference that the provisions be provided under one CFR Part with separate subparts as they relate to programs being served. Other commenters preferred the use of separate parts or a "question-and-answer" format.

This proposed rule sets forth the provisions under one part with separate subparts for: (1) General, (2) General Operating Provisions, (3) Processing and Labeling of Donated Foods, and (4) Eligible Recipient Agencies. This restructuring will provide for greater ease in the reading and understanding of the regulations and will do so in a manner that eliminates the need for a significant amount of repetition.

Three comments were received concerning the quoting of legislative provisions. One commenter suggested that the quoted provisions be deleted, one recommended that they be maintained, and one recommended that they be noted in the margins. The quoted legislative provisions have been deleted in the proposed rule. However section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended; sections 6 and 14 of the National School Lunch Act, as amended; section 32 of Pub. L. 74–320 as amended; section 311 of the Older Americans Act of 1965, as amended; section 416 of the Agricultural Act of 1949, as amended; and section 709 of the Food and Agriculture Act of 1965, as amended; have been included under definitions. These sections authorize the purchase and donation of food items. FNS will make available a summary of legislation authorizing food donations upon request.

Eligibility Determination for Recipient Agencies and Recipients

Section 250.6 of the current regulations requires distributing agencies to determine that recipient agencies or recipients to whom they distribute donated foods are eligible. The current regulations do not require distributing agencies to enter into an agreement and make donated foods available to all agencies which have applied for participation in the program and have been determined to be eligible.

Section 250.11 of the proposed rule has been revised to require that distributing agencies determine the eligibility of all applicants, to enter into agreements with those which are determined to be eligible and to make donated foods available. This requirement will ensure that all eligible recipient agencies which wish to participate in the program are afforded that opportunity.

Agreements

Section 250.5(c) of the current regulations requires distributing agencies to enter into an agreement with the Department prior to the inauguration of a distribution program. Section 250.12(a) of the proposed regulations contains this provision and requires those agreements to be effective for no longer than one year and to be completed by September 30 of each year. The September 30 requirement is being added to make the term of these agreements coincide with the Federal fiscal year, facilitating compliance with reporting requirements which are generally on a fiscal year basis. In addition, § 250.12(a) of the proposed rule requires State Agencies on Aging which receive cash in lieu of commodities in connection with a Nutrition Program for the Elderly to enter into an agreement with the Department which is effective for no longer than one year and completed by September 30 of each year. This requirement is necessary since Federal agencies may not obligate funds which have not yet been appropriated by the Congress, as would happen if such an agreement spanned two fiscal years.

Section 250.6(b) of the current regulations requires distributing agencies to enter into written agreements with subdistributing agencies and recipient agencies. In § 250.12(b) the Department is proposing to require that these agreements are also renewed annually. The Department believes that an annual agreement requirement will increase program accountability by requiring distributing agencies to regularly review their agreements with subdistributing agencies and recipient agencies.

Transfer of Donated Foods

Section 250.4(a) of the current regulations permits the transfer of donated foods between recipient agencies with the authorization of the distributing agency if such transfer is determined to be in the best interest of the program. As a result of donated foods being transferred to recipient agencies which were not eligible to receive them, § 250.13(a)(1) of the proposed rule requires that recipient agencies receive authorization from the distributing agency *and* the appropriate FNSRO prior to transferring donated foods which have been provided as part of an approved food package or authorized program level of assistance. Recipient agencies may continue to transfer donated foods which have been provided in addition to the State's authorized program level of assistance with prior authorization of the distributing agency alone.

Storage Facilities

Standards—Seven comments were received concerning the establishment of standards by FNS for use in determining whether a warehouse has proper facilities to safeguard against theft, spoilage and other loss. Four commenters opposed the development of warehousing standards by FNS and recommended the use of existing Federal and State requirements. To avoid possible conflict between FNS requirements, other existing Federal requirements and State requirements, Section 250.14(a) of the proposed rule sets forth only general standards for storage facilities and requires distributing agencies, subdistributing agencies and recipient agencies reasonsible for the contracting of storage facilities to ensure that the warehouse facilities meet existing Federal, State or local Health Department standards, whichever are more stringent.

Reviews—Fourteen comments were received concerning FNS' Prenotice proposal to require distributing agencies, subdistributing agencies and recipient agencies which are responsible for the contracting of storage facilities to conduct a review of the facilities prior to entering into or renewing a contract for the handling, storage and distribution of donated foods.

Nine commenters supported the proposal. Three commenters suggested that reviews be left to the discretion of the distributing agency. Some distributing agencies already conduct periodic inspections. One commenter suggested that facilities be inspected as part of administrative reviews and one commenter opposed the requirement on the grounds that the agencies involved lacked the necessary funds, personnel and technical knowledge.

Section 250.6(q) of the current regulations and § 250.14(a) of the proposed regulations require distributing agencies, subdistributing agencies and recipient agencies to provide storage facilities which will safeguard against theft, spoilage and other loss. To ensure that donated foods are stored in such a manner, § 250.14(b) of the proposed rule requires that the distributing agency ensure that a review of the storage facilities has been conducted prior to contracting or renewing a contract for the handling, storage, and distribution of donated foods.

Contracts—Comments were requested in the Prenotice concerning the requirement for a written contract between the distributing agency, subdistributing agency or recipient agency and the storage facility. Seven comments were received in support of requiring a written contract. One commenter opposed the requirement on the basis of the additional paperwork that would result.

In the event that donated foods are not properly stored and a loss occurs, the lack of a written contract setting forth the terms and conditions for the storage of the food could result in the responsible agency being placed in a difficult position should an attempt be made to recoup the loss. Thus, § 250.14(c) of the proposed rule requires distributing agencies, subdistributing agencies and recipient agencies to enter into annual written contracts with storage facilities which set forth the terms and conditions for the handling, storage, and distribution of donated foods.

Physical Inventory—Accountability and monitoring of donated foods are two areas that have been under close scrutiny as a result of nationwide audits conducted both by the Department's Office of Inspector General (OIG) and the General Accounting Office (GAO). OIG found that the system presently in use is inefficient for monitoring levels of donated foods.

In its 1981 report concerning the Food Distribution Program and the Department's overall commodity donation system, GAO stated that although program regulations provide that the distributing agency require subdistributing agencies and recipient agencies to maintain accurate and complete inventory records, there were many instances of general disregard of

this requirement. To alleviate the problems addressed in its audit, GAO made recommendations which would provide for better accountability of donated foods by recipient agencies. Specifically GAO stated that FNS should require that all recipient agencies take periodic physical inventories. The results would be submitted to the distributing agency along with copies of source documents used, and an explanation of any differences between physical inventory counts and the perpetual inventory balance.

To ensure stricter inventory controls and accountability of donated foods, § 250.14(d) of the proposed rule requires distributing agencies, subdistributing agencies, and recipient agencies to conduct semiannual physical inventories of all storage facilities being utilized for the handling, storage, and distribution of donated foods by June 30 and December 30 of each year. The physical inventory information is to be submitted to the appropriate FNSRO as part of the monthly inventory report for the months of June and December.

To determine what additional costs would be incurred by Federal, State, or local government agencies and benefits which would be derived as a result of this provision of the proposed rule, a cost/benefit analysis has been completed. The cost/benefit analysis is limited to the additional requirements associated with conducting semiannual physical inventories. A copy of the cost/benefit analysis will be made available upon request.

Excessive inventories—OIG and GAO also disclosed problems associated with excessive inventory levels. OIG recommended that FNS develop procedures to determine when inventory levels are in excess. The GAO audit disclosed that retention of excess inventories resulted in storage cost increase, greater potential for infestation and spoilage, and difficulty in effectively utilizing commodities. As recommended by GAO, § 250.14(e) of the proposed rule limits the level of inventory to a six-month supply. Distributing agencies will be required to determine if inventories at the subdistributing and recipient agency levels are excessive. Subdistributing agencies and recipient agencies may submit justifications for the retention of inventories exceeding a six-month level. The distributing agency will be responsible for approving or rejecting such justifications and monitoring inventory reports to ensure that the approved inventory level is not exceeded.

The FNSRO will monitor inventories of distributing agencies and approve or reject justifications submitted to them concerning excess inventory limits.

Claims for Improper Distribution of Loss of, or Damage to, Donated Foods

Section 250.6(m) of the current regulations requires distributing agencies to pursue claims arising in their favor immediately upon receipt of information regarding commodity loss, damage, or improper distribution. Certain exemptions from claims actions are provided for in instances of minimal inventory shortages or losses. FNS proposed in the Prenotice a revision of this section to clarify responsibilities of distributing agencies relative to required actions and timeframes. Seven comments were received concerning this proposal. Six commenters favored the revision of this section.

The distributing agency is liable to the Department for any claim which arises within the State as a result of donated foods which are improperly distributed, lost or damaged. However, § 250.15 (c) and (f)(1) have been reserved for further consideration as to the procedures for pursuing claims and the use of funds accrued as a result of such claims that should be set forth in the regulations.

Use of Program Funds

Allowable Administrative Expenses—Section 250.6(k) of the current regulations provides that funds which are derived from the sale of donated food containers, salvaged commodities, distribution or service charges assessed to recipient agencies, insurance, or recoveries from loss or damage claims may be used only for program purposes. Program purposes for which these funds can be used include transportation, storage and handling of foods, salaries of food distribution employees and other administrative expenses. FNS proposed in the Prenotice to expand this section to provide specific examples of "other administrative expenses."

A total of 11 comments was received concerning this proposal. Three commenters recommended that this section not be expanded to provide specific examples. Three commenters recommended that program funds be allowed the same usage as State administrative expense funds. Some commenters recommended that considerable latitude should be allowed in defining what expenses should be considered "administrative" while others provided examples of what expenses should or should not be allowed.

In an effort to provide as much flexibility as possible in the use of program funds, § 250.15(f)(2) of the proposed rule specifies the expenses for which program funds cannot be used, as described in Office of Management and Budget (OMB) Circular A–87, rather than attempting to provide an exhaustive list of allowable expenses.

Excess Funds—Section 250.6(k) also requires distributing agencies to review the receipt and expenditure of funds accruing from the sale of donated-food containers, salvaged commodities, distribution or service charges assessed to recipient agencies, insurance, or recoveries from loss or damage claims at least annually to determine that fund balances "are not in excess of program needs." FNS proposed in the Prenotice to expand this section to provide more precise guidelines to aid distributing agencies in determining when funds are "excess."

FNS received a total of 13 comments concerning this proposal. Eight commenters recommended that no dollar limit be set because distributing agencies use such funds for widely varying purposes. Other commenters recommended methods such as using an average of the previous three months' expenditures or the previous three years' expenditures.

Since distributing agencies use these funds for different purposes, no specific dollar limit is proposed. Section 250.15(f)(3) of the proposed rule defines "excess funds" as funds exceeding the previous three months' expenditures. The total expenditures for the previous three months is the "maximum" amount of funds which the distributing agency may have in its account. Funds which exceed this amount will be considered in excess of program needs unless the distributing agency provides justification as to the need for such funds and the justification is approved by the FNSRO. In some instances the FNSRO may consider funds equal to or less than the expenditures for the previous three months to be in excess of what is needed. In such instances the distributing agency will be required to reduce such funds. Expenditures of a nonrecurring nature will not be included when determining total expenditures for the previous three months.

Audit Requirements

Distributing agency-sponsored audits—Sections 250.6(t), 250.12(g) and 250.13(g) of the current regulations merely state the right of inspection and audit of pertinent records, reports, facilities or procedures by USDA representatives. The current regulations do not contain specific guidance on audits.

FNS proposed in the Prenotice the consolidation of the three sections

regarding audits and the inclusion of the following requirements: (1) Accessibility of records to representatives of the United States General Accounting Office; (2) State agency responses to Federal audit findings; (3) Distributing agency-sponsored audits to be conducted with appropriate frequency, depending on the volume or value of commodity assistance provided; (4) Development and implementation of corrective action on program deficiencies; and (5) Review of distributing agency-sponsored audit reports by the Department.

A total of 10 comments was received concerning the proposed expansion. Nine commenters supported the proposal.

Six comments were received relative to the frequency of conducting distributing agency audits. Three commenters recommended two-year intervals, one commenter recommended a three-year interval, and two recommended that they be made with "reasonable" frequency.

Section 250.18 of the proposed rule states the right of inspection and audit of pertinent records, reports, facilities or procedures by the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives such as the Office of the Inspector General and the General Accounting Office.

In addition, this section requires each distributing agency to provide for audits of all food distribution program operations including records pertaining to donated food acquisition, storage, distribution, processing activities within the State (except for that of multi-State processors) and financial information. Such audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I).

One commenter asked "who pays" for distributing agency-sponsored audits. Section 250.18(c) of the proposed rule provides that the cost of such audits may be considered part of administrative costs. Thus, State administrative expense funds may be used to pay any costs incurred for conducting audits of child nutrition programs in accordance with Part 235 of this chapter. In any case, the cost of distributing agency-sponsored audits is a distributing agency responsibility.

The proposed rule also requires that distributing agencies develop a written response to the FNSRO addressing deficiencies identified through Federal and distributing agency-sponsored audits. The response must include corrective action which has been or will be taken to eliminate any deficiency, timeframes for the implementation and completion of such action, a determination of what caused the deficiency, and deficiencies which have been identified that the distributing agency takes exception to and an explanation for the exception. The response must be submitted in accordance with timeframes established by the FNSRO.

Multi-State processors—The Department believes that to require each distributing agency to audit all processors which contract with contracting agencies within that State would be burdensome and duplicative. Therefore, Section 250.18 requires distributing agencies to audit only the processing activities within the State of any non-multi-State processors. "Multi-State processor" has been defined in § 250.3 as a processor which has entered into processing contracts with contracting agencies in more than one State or a processor which has entered into a processing contract with one or more contracting agencies located in a State other than the one in which the processor is located. In order to ensure that these processors are properly monitored without requiring distributing agencies to travel to the site of a processor in another State, § 250.18 requires that multi-State processors obtain an annual independent audit by a certified public accountant (CPA). Like the distributing agency-sponsored audits, these audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I). In addition, FNS will develop audit guidelines for use by the auditors to ensure that such audits are of sufficient scope to include a thorough review of program requirements. FNS will provide training for auditors of multi-State processors in accordance with requirements prescribed by the Secretary on the use of these guidelines. All costs associated with the CPA audit, including those travel expenses to attend any FNS training sessions, will be borne by the processor. All audit findings must be submitted by the processor to FNS.

Multi-State processors are also required to develop a written response addressing deficiencies identified through annual CPA audits. The response must include the same type of information as described in § 250.18 and must be submitted to FNS in accordance with timeframes established by FNS. Such information will be used by FNS in establishing priorities for multi-State processor reviews.

Management Evaluation Reveiws

Section 250.13(i) of the current regulations requires distributing agencies to monitor and review their operations to ensure compliance with provisions of the regulations and applicable FNS instructions.

Section 250.19 of the proposed rule would expand the current regulations to include procedures which will ensure accountability and high quality service to recipients of benefits while providing distributing agencies with flexibility in conducting reviews. This review system will provide both FNS and distributing agencies with a tool to identify program strengths and weaknesses and to evaluate the effectiveness of the distribution system.

In addition, § 250.19 of the proposed rule requires a review of certain recipient agencies (charitable institutions, nutrition programs for the elderly, and nonprofit summer camps for children). The proposed regulations also require that an annual review be conducted of storage facilities, processors (except those which are multi-State) and food service management companies. Multi-State processors are subject to review by FNSRO and/or FNS. The Department is proposing to limit the review requirement to those recipient agencies which are not already subject to review under other program regulations. However, due to the variance in the number of recipient agencies among States and the amount of donated foods which are being made available for each site, the frequency for conducting reviews of recipient agencies has not been established. To assist FNS in establishing in the final rule review requirements for recipient agencies, comments are requested. Comments should provide specific information regarding the number of recipient agencies by type in the State and the frequency of reviews which should be required.

In an effort to ensure that recipient agencies are receiving the value of the donated food contained in an end product, the Department is proposing in § 250.19(c)(2) to require distributing agencies to design and implement a system to verify sales in instances when a processor transfers end products to a distributor and the distributor sells the end products to recipient agencies at a discount in accordance with § 250.30(e). The Department is not proposing to require sales verification in instances when end products are sold under a refund system because sales information is submitted to the processor as well as

the contracting agency as part of the refund application and reviewed on an ongoing basis.

Distributing agencies will be responsible for reviewing on a quarterly basis the sales information for all processors which contract with contracting agencies within that State, including multi-State processors. In instances when deficiencies have been identified, the distributing agency shall pursue claims in accordance with FNS Instruction 410–1, non-Audit Claims, Food Distribution Program.

The verification must consist of the review of a statistically valid sample of the sales in each quarter to determine if the value of the donated foods has been properly passed on and that the end products have been properly distributed. The verification must be statistically valid so as to support the projection of a claim against a processor based on the review of the sample.

Distributing agencies may delegate the responsibility for sales verification to the processor. In such cases, the distributing agency must establish guidelines which the processor must follow in conducting sales verification. These guidelines must ensure that a statistically valid sample of sales is verified quarterly. Processors will be required to report their findings to the distributing agency on a quarterly basis as an attachment to the September, December, March and June performance reports which are required under § 250.30(m) of the proposed rule. The report is to be submitted in any format the distributing agency desires. The distributing agency must review the processor's sales verification system and the processor's findings for adequacy.

FNSRO's are encouraged to conduct annual management evaluation reviews of State processing systems. In addition, FNS will also conduct periodic reviews of FNSRO processing activities.

Nondiscrimination

Section 250.13(d) of the current regulations states that distributing agencies and recipients agencies are subject to the Department's regulations effectuating Title VI of the Civil Rights Act of 1964 (7 CFR Part 15), which prohibit discrimination on the grounds of race, color, or national origin. FNS proposed in the Prenotice to expand the regulations to include specific criteria relative to public notification, compliance reviews, data collection, and proper complaint handling. Eight comments were received concerning the proposed expansion. Three commenters concurred with the proposal. Other commenters did not agree with the proposed expansion, reasoning that the FNS Title VI Civil Rights Instruction for the Food Distribution Program is adequate to provide details and thus an expansion is unnecessary.

Section 250.21 of the proposed rule has been reserved. This section will be expanded to state the applicable prohibitions against discrimination on the grounds of age, sex, or handicap in accordance with Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. The regulations stating these prohibitions and containing provisions to ensure compliance are being developed for clearance separately for incorporation at a later date.

State Processing of Donated Foods

State Processing Program—Under § 250.15 of the current regulations, distributing agencies, subdistributing agencies and recipient agencies are permitted to enter into contracts for the processing of donated foods into various end products. In addition, for a two-year period, FNS entered directly into contracts for the processing of bonus dairy commodities under the National Commodity Processing (NCP) System. During the time the NCP System has operated, many State agencies discontinued all State processing agreements involving bonus dairy commodities, believing them to be duplicative of NCP efforts. FNS did publish a **Federal Register** Notice terminating NCP effective June 30, 1985. However, a one year extension of this program is contained in the Fiscal Year 1985 Supplemental Appropriations Bill for the Department of Agriculture. That bill is presently awaiting the President's signature.

However, in the past some recipient agencies have been unable to receive the benefit of end products from the processing of bonus commodities because distributing agencies have restricted the number as well as the types of recipient included under State processing contracts. In addition, some processors have been unable to participate in State processing activities due to the manner in which processing contracts have been granted. Thus, in an effort to ensure that recipient agencies receive the benefit of processed end products and that processors are treated on an equitable basis, the Department is proposing in § 250.30(a) to require distributing agencies to develop and implement a State processing program for bonus commodities.

At a minimum, a distributing agency must enter into a processing contract for a given end product containing a bonus commodity whenever a processor can prove the marketability of an end product which contains at least one truckload lot of a single bonus commodity. A processor must prove the marketability of an end product in the form of recipient agencies' written intent to purchase the end product or on the basis of past sales of the end product to recipient agencies under the distributing agency's authority.

Distributing agencies will enter such contracts on behalf of all eligible recipient agencies and provide the processor with a list of such agencies. In addition to those processing contracts which the distributing agency is required to enter into, distributing agencies must permit subdistributing agencies and recipient agencies to directly enter into processing contracts.

A distributing agency's eligibility to receive donated foods which are in addition to the State's authorized level of assistance (bonus commodities) will be contingent upon the operation of such a processing program. Distributing agencies are encouraged to operate a processing program for donated foods which are provided as part of the State's authorized level of assistance.

Distributing agencies must comply with the contracting procedures set forth in § 250.30(c), monitor all processing activities within the State, and approve all processing contracts.

If there is more than one distributing agency within a State, each distributing agency within the State may assume the responsibility for the administration of the processing program for their respective recipient agencies. However, at least one distributing agency must assume the responsibility for the administration of the program. The administering distributing agency must ensure that all eligible recipient agencies are permitted to participate in the program.

To defray costs associated with the processing of donated foods for use in Child Nutrition Programs, distributing agencies are eligible to receive State administrative expense (SAE) funds in accordance with Part 235, State Administrative Expense Funds Regulations. The Department is proposing, under separate rulemaking, to revise the allocation to assist distributing agencies in the establishment or expansion of State commodity processing programs.

FNS will be gathering information for dissemination to distributing agencies for use in developing "Model" processing systems.

Contract Value of Donated Foods—In § 250.3 of the proposed regulations the

term "contract value of donated foods" has been redefined to mean the price assigned by the Department which reflects the Department's costs for acquiring and delivering the donated foods to be processed as well as any processing costs related to the food. The alternate choice of using the processor's most recent documented purchase price of the same or better quality product has been eliminated. The elimination of this provision is the result of audit findings where evidence was provided that some processors could not demonstrate on an ongoing basis, commercial purchases of an identical product of equivalent quality and at a lower price than the Department's.

State Plan of Operations—In accordance with the intent of Executive Order 12372 to simplify and consolidate State Plan requirements, the provisions in §§ 250.6(w) and 250.15(b) of the current regulations relative to the development and submission of a State Plan of Operations for Processing have been eliminated in the proposed rule.

Processing Contracts—Section 250.15(d) of the current regulations requires that processing contracts be in a standard written form approved by FNSRO and terminate no later than one year after they have been approved. However, the contract may be renewed for one year by mutual agreement of all parties and upon written approval by the distributing agency.

Section 250.30(c)(1) of the proposed rule would require that processing contracts be in a standard written form and reviewed by FNSRO. The intent of the current regulations was to provide FNSRO the opportunity to review the contracts to ensure compliance with regulatory provisions. However, requiring approval of such contracts might cause some to argue that FNS is a party to the contract. In order to remedy any uncertainty, the proposed rule would require only "review" by the FNSRO.

The current regulations do not set forth procedures under which processing contracts are to be granted. In order to ensure that processors are given equitable treatment in the granting of contracts and to facilitate the implementation of the new processing requirements, the Department is proposing in § 250.30(c) to require contracting agencies to either enter into contracts with all processors which can demonstrate marketability of end products containing bonus foods, in accordance with § 250.30(a), or in instances when the contracting agency wishes to limit the number of processing, contracts, the contracting agency must utilize competitive bidding procedures. When the contracting agency chooses to utilize competitive bidding procedures, the contracting agency is required to solicit bids for any items or lines of items when a processor has demonstrated such proof of marketability.

Distributing agencies must select one of these methods of contracting for all contracts entered into for each school year. Although subdistributing agencies and recipient agencies are not required to enter into processing contracts, when such agencies choose to engage in such processing activities, they must also select one of these contracting methods for all contracts entered into for each school year.

This section also contains minimum standards to be followed by all contracting agencies when competitive bidding is used. The competitive bidding procedures require contracting agencies to select the lowest qualified bid, i.e., the lowest end product price including any refund or discount. The lowest bid may not be acceptable due to such things as the quality or the acceptability of the product. In instances when the lowest bid is not accepted, the bid must be submitted to the FNSRO or to the distributing agency when the contracting agency is a subdistributing agency or recipient agency for review. A written justification stating why the lowest bid was not acceptable, must also be submitted.

In addition, this section also sets forth the following minimum criteria which a processor must meet prior to entering into a processing contract with a contracting agency: (1) The ability to meet the terms and conditions of the regulations and the distributing agency agreement; (2) The ability to furnish prior to the delivery of any donated foods for processing, a performance bond, an irrevocable letter of credit in an amount acceptable to the distributing agency or an escrow account in an amount acceptable to the distributing agency; (3) The ability to distribute end products to eligible recipient agencies; (4) a satisfactory record of integrity, business ethics and performance; and (5) The ability to accept and provide storage for at least one truckload lot of a single commodity item. Meeting these minimum requirements will demonstrate the ability of a processor to meet administrative and financial program obligations.

All processing contracts must terminate within one year of the date on which they were entered into.

Section 250.15(d) of the current regulations requires that a processing contract contain a description of each end product to be processed and the quantity of each donated food and any other ingredient which is needed to yield a specific number of each end product, except that distributing, subdistributing or recipient agencies may permit processors to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of seasonings or flavorings.

Section 250.30(c)(4) of the proposed rule contains the additional requirement of a 100 percent yield factor requirement for all substitutable donated foods. The Department published a final rule implementing this provision in the **Federal Register** on May 15, 1985 (50 FR 20197). Language contained in the final rule is contained in this proposed rule for the sake of clarity only. The Department is not reopening the comment period by including this language.

To further ensure that processors participating in the program do not receive unjust enrichment, § 250.30(c)(4) of the proposed rule also requires the processing contract to contain language which requires that drawdowns on inventory be limited to the actual amount of donated foods contained in the end product. Additional commodity required to account for production loss must be obtained from non-donated foods.

Proposed § 250.30(c)(4) also permits distributing agencies to waive the requirement that processors list ingredients other than donated foods in end products upon the submission of a written request and justification by the processor. This change is being made to provide the distributing agency with more flexibility in negotiating processing agreements.

Section 250.15(d) of the current regulations permits the contracting agency to require a performance supply and surety bond, an irrevocable letter of credit payable in an amount acceptable to the distributing agency, an escrow account in an amount acceptable to the distributing agency or any other means of protecting itself. Since, in many instances, it has been difficult to recoup losses due to the fact that processors have not been required to protect the value of the donated foods, § 250.30(c)(4) of the proposed rule has been revised to require as a condition of the processing contract that processors furnish to the contracting agency documentation that one of the instruments specifically described above, has been obtained and that the instrument at a minimum, is sufficient to protect the contract value of all donated food inventory on hand and

on order. In addition, performance supply and surety bonds must be obtained from a surety company listed in the current U.S. Department of Treasury Circular 570.

In addition, § 250.30(c)(4) includes the new provision that each processing contract contain a provision requiring that the processor submit annual reconciliation reports and make payments to the distributing agency for all outstanding refund applications and excessive inventories in accordance with § 250.30(n)(2). Section 250.30(n)(2) requires that the annual reconciliation report be made no later than 90 days after the end of the year to which the contract pertains.

As a part of the reconciliation, the processor must pay the distributing agency for the contract value of any donated foods for which a refund application has not been submitted in accordance with paragraph (k) of this section and for inventories in excess of a six-month supply. In instances when the distributing agency has assigned an inventory level other than a six-month level, the processor shall pay the contract value of donated foods which are in excess of that level.

The details of the reconciliation relative to the submission of refund applications for end products delivered during the last month of the contract period are left up to the distributing agency. Distributing agencies are being afforded this discretion in an effort to eliminate any undue burden on the contracting agency or the processor. However, in order to ensure that recipient agencies and distributors receive prompt payment for refund applications which have been submitted in a timely manner, § 250.30(k) (1) and (2) requires that contracting agencies and distributing agencies forward refund applications within 10 days of receipt. Thus, the maximum time between the purchase of an end product and payment of the refund by the processor is 90 days.

These provisions are necessary to fully implement the new requirements for the submission of timely refund applications (§ 250.30(k)) and inventory controls (§ 250.30(n)(1)). The requirement that processors pay the distributing agency for unpaid refunds prevent processors from enjoying unjust enrichment when refunds are not submitted to them in accordance with paragraph (k) of this section. Requiring the processor to pay the distributing agency for excessive inventories will aid the distributing agency and processor in monitoring the processor's donated food inventories and in enforcing the inventory controls. Furthermore, it will allow distributing agencies to be more competitive in their contract negotiations. Distributing agencies will no longer have incentives to renew contracts with processors just because the processor has excessive inventories for which the distributing agency is ultimately responsible. By requiring the processor to pay for excessive inventories, the distributing agency's responsibility is limited to a six-month supply or the otherwise authorized level. Processors will no longer have access to donated food inventories as interest-free loans for use in their commercial food processing activities long after the end of the contract period. Section 250.30(n)(4) also provides that distributing agencies shall not submit donated food requisitions for those processors showing no activity during the prior year's contract period and having no specific plans for product promotion or sales expansion.

This section has also been revised to require a provision in the processing contract which describe the company's quality control system and assurance that such system will be maintained for the duration of the contract. The Department believes this provision is necessary to further ensure proper handling and accountability of donated foods.

This section has also been revised to require that processing contracts contain the following: (1) The annual CPA audit requirement for multi-State processors, as described in § 250.18(c); (2) the provision that inventory drawdowns be limited to the actual amount of donated foods contained in the end product in accordance with § 250.30(c)(4); (3) a description of the system under which end products are to be sold to recipient agencies as described in § 250.30(e); and (4) assurance that sales to recipient agencies will be verified in accordance with § 250.19(c)(2).

Sale of End Products by a Distributor—Section 250.15(f) of the current regulations requires that the sale and delivery of end products to recipient agencies by a distributor be done under a refund system unless the distributing agency receives FNSRO written concurrence to permit the use of any other system.

This requirement is revised in § 250.30(e) of the proposed regulations to permit the use of either a refund system or a system under which end products are sold to recipient agencies at a discount and distributors are provided a refund by the processors. This will provide distributing agencies with more flexibility in administering the processing program.

Substitution of Donated Foods With Commercial Foods—Section 250.15(g) of the current regulations permits distributing agencies to allow processors to substitute specific types of donated foods with commercial foods of the same generic identity and of equal or better quality.

The Department never intended to permit processors to substitute commercial foods for donated foods for any reason other than when such substitution was needed to produce end products and without substitution such production could not be accomplished. OIG audit reports have demonstrated that processors are obtaining blanket approval to substitute when contracts are signed. Section 250.30(f) of the proposed rule has been revised to require that distributing agencies monitor the substitution of donated foods and ensure that substitution is being made only in instances in which it is warranted. Such assurance may be provided by requiring processors to request approval prior to the actual substitution of any item.

Meat and Poultry Inspection Programs—Section 250.15(f) of the current regulations requires that whenever the value of the donated meat or poultry items to be processed under any contract at any one time is $10,000 or more, the processing must be performed under Food Safety and Quality Service (FSQS) acceptance service grading. The current regulations permit the distributing agency to waive this requirement in the event that an FSQS inspector is not available or when a school food authority needs product produced on short notice.

There has been a great deal of confusion over the definition of a processing run and the arbitrary $10,000 limit for requiring acceptance service grading. In addition, many distributing agencies have been indiscriminately waiving the requirement without attempting to obtain such service. Thus, § 250.30(g) of the proposed rule requires acceptance service grading for all meat and poultry processing. The reference to FSQS has been revised to Agricultural Marketing Service (AMS) to reflect the reorganization of functions within the Department.

Performance Reports—Section 250.15(n) of the current regulations sets forth the information which is required to be submitted by processors to distributing agencies regarding the receipt and distribution of donated foods. Section 250.30(m)(1) has been expanded to require processors to report the number of pounds of each donated food represented in sales to distributors

but not delivered to eligible recipient agencies. This provision will provide a clear audit trail for use in monitoring processor inventories. This section has also been expanded to identify all contracting agencies and their locations with which they have entered into processing contracts. In addition, § 250.30(o) requires distributing agencies to submit this information on the processing inventory reports to the FNSRO. The FNSRO will report this data to FNS. This reporting is necessary to enable FNS to identify multi-State sponsors and to ensure that they are properly monitored.

This section has also been expanded to require processors which are responsible for sales verification in accordance with § 250.19(c)(2) to submit sales verification information as part of their September, December, March and June performance reports.

Finally, this section has also been expanded to require that processors submit as part of the performance report a statement certifying that adequate inventories of donated foods are on hand or on order for production of end products to meet the requirements of the State processing contracts and that adequate commerical foods are maintained for the production of products sold commercially. This provision has been added as a result of audit findings which substantiate that some processors have used donated foods for long periods of time in their commercial operations to avoid purchase of foods needed to maintain their commercial production.

Processing Activity Guidance—Section 250.15(t) of the current regulations requires distributing agencies to develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors within 60 days of the annual agreement approval.

In an effort to provide distributing agencies with more flexibility in developing guidance material for use by contracting agencies, recipient agencies and processors, § 250.30(s) of the proposed rule requires that the guidance material be made available only at the time of the initial contract approval, when there have been regulatory or policy changes which necessitate changes in the guidance materials, and upon request. Thus these materials will not have to be repeatedly provided at each contract renewal when there have been no changes to the materials.

Charitable Institutions

Under Section 416 of the Agricultural Act of 1949, as amended, charitable institutions are eligible to receive commodities to the extent that they serve needy persons.

Section 250.6(d) of the current regulations requires distributing agencies to submit a description of the method or methods used to determine the number of needy persons in charitable institutions for FNS approval. Such methods may include, but are not limited to, those which identify the number of persons who do not pay the full charge assessed for the services provided to them or who are unable to pay the full cost of providing such services.

Section 250.41 of the proposed rule revises the current rule to establish a uniform means of determining the needy population of charitable institutions. In order to eliminate the varying and often unreliable methods for determining the number of needy persons in a charitable institution the proposed regulations require the distributing agency to determine the number of needy persons being served by: (1) Determining the percentage of subsidized income by dividing the subsidized income by the total subsidized and nonsubsidized income; and (2) multiplying that percentage by the average daily number of participants. For the purpose of this section "subsidized income" shall mean income from public tax funds which are provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax-exempt contributions which are provided for the care of participants which the institution has determined to be in need of financial assistance. "Nonsubsidized income" shall mean all other income, including payments made by institutional participants for services received and payments made on behalf of participants by persons legally responsible for their support. At a minimum, any time the number of participants in an institution or the amount of income increases or decreases by ten percent, the institution must notify the distributing agency. The distributing agency will revise financial and participation data to reflect such changes. The Department believes that this minimum requirement for reporting changes in the population or income of an institution is necessary as it may affect the level of assistance which the charitable institution is eligible to receive. Due to the diversity inherent in the operation of charitable institutions, distributing agencies may decide to require charitable institutions to report changes even when they are below ten percent.

The income and average daily participation figures reflected in the agreement shall be used in determining the number of needy persons being served by the institution in accordance with the above formula. These figures will be based on the institutions' financial and participation data for the previous year.

This formula, which is already widely used by distributing agencies, provides a highly accurate indicator of the need for food assistance within an institution.

In addition, the definition of "charitable institution" has been revised to specify that a charitable institution must not only be nonprofit but must operate a nonprofit meal service. The Department has always considered this provision inherent in the definition of such institutions. However, it has come to our attention that some questions have been raised regarding the status of the meal service.

Correctional Institutions

Five comments were received concerning the inclusion of the eligibility criteria for adult correctional institutions which are currently contained in FNS (FD) Instruction 706–3, *Eligibility of Adult Correctional Institutions in the Food Distribution Program in Part 250.* Three commenters recommended that the eligibility criteria be included. Two commenters recommended that the requirement relative to rehabilitative activities be deleted from the instruction. In the absence of express legislative authority for USDA food donations to nonfederal adult correctional institutions, the Department determined that such institutions which carry on programs of rehabilitation for their inmates may be classified as "charitable institutions" within the intent of section 416 of the Agricultural Act of 1949, as amended, even though the definition of that term in these regulations indicates that such outlets must be "nonpenal" in character. In order to distinguish between eligible correctional institutions and ineligible penal institutions, § 250.41(a)(3) of this proposed rule includes the eligibility policy set forth in FNS Instruction 706–3.

Accordingly, in order to receive donated foods, adult correctional facilities must conduct rehabilitation programs which are (1) available to a majority of inmates and (2) of sufficient scope to permit participation (for a minimum of 10 hours per week per inmate) by either a majority of the total inmate population or a majority of sentenced inmates.

In addition, § 250.8(f) of the current regulations permits the distribution of donated foods to State correctional institutions for minors in accordance with section 210 of the Agricultural Act of 1956. However, section 9(c) of Pub. L. 94–105 amended section 12(d) of the National School Lunch Act to define "school" in such a way as to include State correctional institutions for minors. Participation in the Food Distribution Program as a school makes such institutions eligible for a much broader array of food items than would be offered to them under section 210. Thus, reference to the institutions' eligibility under section 210 has been eliminated in the proposed rule.

Section 210 also authorizes the distribution of donated foods to federal penal institutions. Since donated foods are provided by the Commodity Credit Corporation to such institutions directly under a Memorandum of Understanding between the Department of Agriculture and the Department of Justice, these institutions are not covered by Part 250.

Nutrition Programs for the Elderly

Section 250.4(b)(4) of the current regulations provides that the total quantity of donated foods to be made available to any State to meet statutory levels of donations in nutrition programs for the elderly (NPE's), in accordance with section 311 of the Older Americans Act of 1965, is established on the basis of the number of meals that the State Agency on Aging reports as having been served, or where necessary, estimates will be served within the State during the year. This section also contains the provision that the amount of food donations to be received by any State for NPE's shall be reduced to the extent that the State elects to receive cash payments in lieu of donated foods it would otherwise receive.

Donated-food procurement and delivery for the few NPE's electing to receive commodities are made in conjunction with those for school lunch programs. Since the procurement and delivery period for schools is generally completed before FNS receives third and fourth quarterly NPE meal reports, FNS has had to rely on preliminary meal estimates, which may be revised numerous times. As a result, there have been some overallocations or underallocations of foods.

In order to alleviate this problem, § 250.42 of the proposed regulations specifies that no adjustments in commodity allocations will be made on the basis of meal reports or estimates received after the close of the third Federal fiscal quarter of the year to which they pertain.

Section 310(3) of Pub. L. 98–459 amended section 311(c) of the Older Americans Act of 1965 to provide that no State may receive cash-in-lieu of commodities payments unless the State submits its final reimbursement claims for meals within 90 days after the last day of the quarter. Accordingly, this requirement has been included in § 250.42(c)(4) of the proposed rule.

Emergency Food Assistance

Section 250.8(e) of the current regulations authorizes the distribution of donated foods to disaster victims by disaster organizations for the duration of the disaster as determined by the Secretary. In situations of distress in which the need for food assistance cannot be provided under these or other provisions of this part, § 250.10 authorizes the distributing agency, upon approval by the Secretary, to make donated foods available to disaster organizations for use in special group feeding programs on a temporary basis.

Sections 250.43 and 250.44 of the proposed rule expand the current regulation to clarify the responsibilities of the distributing agency and the disaster organizations in the use of donated foods during a major disaster, emergency or other situations of distress.

Section 250.43 describes the procedures for obtaining donated foods in instances when the Secretary has determined that a major disaster or emergency exists. This section also revises the procedures set forth in FNS Instruction 708–2 regarding household distribution on Indian reservations in cases of a major disaster or emergency. Under the instruction, Indian reservations may receive donated foods for household distribution in any instance of major disaster or emergency. Under § 250.43(c) of the proposed rule, Indian reservations will have to meet the same criteria as those set forth for other jurisdictions where the Food Stamp Program is in operation before receiving donated foods for household distribution. FNS Instruction 708–2 will be revised accordingly. This change does not alter the ability of Indian Tribal Organizations to receive both commodities and food stamps pursuant to 7 CFR Part 253.

Section 250.44 describes the procedures for obtaining donated foods in situations of distress in which the need for food assistance cannot be met under other provisions of Part 250. Donations under this section may only be made for special group food assistance. The current rule has been modified by § 250.44(a) to limit the distribution period to no longer than 30 days and to require that such assistance be targeted to groups which are predominately composed of needy persons.

Offer-and-Acceptance System

In accordance with section 6 of the National School Lunch Act, as amended, § 250.4(h) of the current regulations permits any school food authority which is participating under the National School Lunch Act to refuse up to 20 percent of the value of donated foods which cannot be used effectively and receive, in lieu of the refused commodities, other commodities to the exent that they are available.

Section 250.48(e)(2) of the proposed rule prohibits refusal of donated foods in instances when an offer-and-acceptance system is being maintained. Use of the offer-and-acceptance system permits school food authorities to order only the amounts and varieties of donated foods it desires for the school lunch program on the basis of advance notification by the distributing agency. Thus, the refusal provision is not warranted in instances when a offer-and-acceptance system is being maintained.

Special Supplemental Food Program for Women, Infants and Children (WIC Program)

State agencies which administer the WIC Program are eligible to receive donated foods from the Department. Section 250.51 of the proposed rule outlines the procedures by which State agencies may request the donated food for distribution to WIC Program participants. Those donated foods which are included in the WIC food package must be paid for by the State agencies with funds allocated to the State for the WIC Program. Donated foods which are provided to participants in addition to the quantities authorized for the food package are made available to the State agency free to charge.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Chapter II would be amended by revising Part 250 to read as follows:

SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

Subpart A—General

Sec.
250.1 General purpose and scope.
250.2 Administration.
250.3 Definitions.

Subpart B—General Operating Provisions

250.10 Eligible distributing and subdistributing agencies.
250.11 Eligibility determination for recipient agencies and recipients.
250.12 Agreements.
250.13 Distribution and control of donated foods.
250.14 Storage facilities.
250.15 Financial management.
250.16 Maintenance of records.
250.17 Reports.
250.18 Audits.
250.19 Management evaluation systems.
250.20 Sanctions.
250.21 Civil rights (Reserved).
250.22 Complaints.

Subpart C—Processing and Labeling of Donated Foods

250.30 State processing of donated foods.
250.31 National Commodity Processing System for Processing USDA Donated Foods.

Subpart D—Eligible Recipient Agencies and Programs

250.40 Nonprofit summer camps for children.
250.41 Charitable institutions.
250.42 Nutrition programs for the elderly.
250.43 Disaster organizations.
250.44 Special group food assistance programs.
250.45 Commodity Supplemental Food Program.
250.46 Food Distribution Program in the Trust Territory of the Pacific Islands.
250.47 Food Distribution Program on Indian Reservations.
250.48 Schools or school food authorities and commodity schools.
250.49 Nonresidential child care institutions.
250.50 Service institutions.
250.51 Special Supplemental Food Program for Women, Infants, and Children.

Subpart E—Where to Obtain Information

250.60 Program information.

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79–396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 81–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210 Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9 Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304, Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); (5 U.S.C. 301); sec. 1114(a), Pub. L. 97–98, 95 Stat. 1269 (7 U.S.C. 1431e); Title II, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note).

Subpart A—General

§ 250.1 General purpose and scope.

This part prescribes the terms and conditions under which donated foods may be obtained from the Department by Federal, State and private agencies for use in any State in child nutrition programs, nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, the Commodity Supplemental Food Program, the Special Supplemental Food Program for Women, Infants, and Children, and the assistance of needy persons.

§ 250.2 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the program. FNS will provide assistance to distributing agencies and evaluate all levels of program operations to assure that the goals of the program are achieved in the most effective and efficient manner possible.

(b) *Delegation to distributing agency.* The distributing agency is responsible for effective and efficient administration of program operations within its jurisdiction and shall administer the program in accordance with the requirements of this part and FNS guidelines and instructions. Distributing agencies may impose additional requirements for participation that are not inconsistent with the provisions of this part, except that this provision shall not apply to distribution to households on all or part of an Indian reservation which is participating in the Food Distribution Program under Part 253 of this chapter. The distributing agency shall provide guidance to subdistributing and recipient agencies on all aspects of program operations.

(c) *Personnel.* Adequate personnel, including supervisory personnel, shall be provided to review distribution programs and to effect distribution in accordance with the requirements of this part.

§ 250.3 Definitions.

"Charitable institution" means (a) a nonpenal, noneducational public (Federal, State or local) institution, (b) a nonprofit, tax-exempt, private hospital, or (c) any other nonprofit, noneducational, tax-exempt, private institution organized to provide charitable or public welfare services in the same place without marked changes and, at the Department's option, approved by a public welfare agency as meeting a definite need in the community by administering to needy persons, and provides a nonprofit meal service on a regular basis. Charitable institutions include any institution defined as "service institution;" "nonresidential child care institution;" or "school" which is not a commodity school or does not participate in a child nutrition program. For purposes of this paragraph, tax-exempt shall mean exempt from income tax under the Internal Revenue Code, as amended, and a charitable institution shall be considered "noneducational" even though educational courses are given, where such courses are an incident to the primary purpose of the charitable institution.

"Child nutrition program" means the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, or the Child Care Food Program. (Parts 210, 220, 225, and 226 respectively of this chapter).

"Commodities" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Donated Foods").

"Commodity school" means a school that does not participate in the National School Lunch Program under Part 210 of this chapter but which operates a nonprofit school food service under agreement with the State agency or FNSRO as provided for under Part 210 of this chapter and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under Part 240 of this chapter for processing and handling of the donated foods.

"Contract value of donated foods" means the price assigned by the Department to a donated food which shall reflect the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

"Contracting agency" means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

"Department" means the United States Department of Agriculture or the Commodity Credit Corporation, whichever is donor under the pertinent legislation.

"Disaster organizations" means organizations authorized by appropriate Federal or State officials to assist disaster victims.

"Disaster victims" means persons who, because of Act of God or manmade disasters, are in need of food assistance, whether or not they are victims of a major disaster or an emergency as defined in this section.

"Discount system" means a system whereby a recipient agency purchases end products directly from a processor at an established wholesale price minus the contract value of donated foods contained in the end products.

"Distributing agency" means a State, Federal or private agency which enters into an agreement with the Department for the distribution of donated foods to eligible recipient agencies and recipients and the Food and Nutrition Service of the Department when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies pursuant to the National Commodity Processing System. A distributing agency may also be a recipient agency.

"Distributor" means a commercial food purveyor or handler who is independent of a processor and both sells and bills for the end products delivered to recipient agencies.

"Donated foods" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Commodities").

"Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United State which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, health, and safety or to avert or lessen the threat of a disaster.

"End product" means a product containing any amount of donated foods which have been processed.

"Federal acceptance service" means the acceptance service provided by (a) the applicable grading branches of the Department's Food Safety and Inspection Service (FSIS), (b) the Department's Federal Grain Inspection Service, (c) the Department's Agricultural Marketing Service and (d) the National Marine Fisheries Service of the U.S. Department of Commerce.

"Fiscal year" means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"FNS" means the Food and Nutrition Service of the Department of Agriculture.

"FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the Department of Agriculture.

"Food service managment company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by a recipient agency to manage any aspect of its food service in accordance with § 250.12(c) or in accordance with Parts 210, 220, 225 or 226 of this chapter.

"Household" means a group of related or non-related individuals, exclusive of boarders, who are not residents of an institution, but who are living as one economic unit and for whom food is customarily purchased and prepared in common. It also means a single individual, living alone.

"In-kind replacement" means replacement of lost donated foods with a like quantity of the same foods of U.S. origin that are of equal or better quality than the lost foods and that are of at least equal monetary value to the Department's cost of replacing the lost foods.

"Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act of 1974 (42 U.S.C. 5121), above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. (This definition is taken from the Disaster Relief Act of 1974.)

"Multi-State processor" means a processor which has entered into a processing contract with contracting agencies in more than one State or a processor which has entered into a processing contract with one or more contracting agencies located in a State other than the one in which the processor is located.

"Needy persons" means (a) persons provided service by charitable institutions, who, because of their economic status, are in need of food assistance, (b) all the members of a household who are certified as in need of food assistance, and (c) disaster victims.

"Nonprofit meal service" means all food service operations conducted by a charitable institution or nonprofit summer camp for children principally for the benefit of the individuals served by those entities, all of the revenue from which is used solely for the operation or improvement of such food service.

"Nonprofit school food service" means all food service operations conducted by the school food authority principally for the benefit of school children all of the revenue from which is used solely for the operation or improvement of such food service.

"Nonprofit summer camps for children" means nonprofit camps which do not participate in the Summer Food Service Program for Children authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761), and in which, during the months of May through September, nonprofit meal services are conducted for children of high school grade and under.

"Nonresidential child care institution" means any child care center, day care home, or sponsoring organization (as those items are defined in Part 226 of this chapter), which participates in the Child Care Food Program authorized under section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766).

"Nutrition program for the elderly" means a project conducted by recipient of a grant or contract under Title III or Title IV of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a).

"Offer-and-acceptance system" means a procedure whereby a school food authority is given the opportunity to order only the amount and varieties of donated foods it desires for its school lunch program on the basis of advance notification by the distributing agency.

"Performance supply and surety bond" means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

"Processing" means (a) the conversion of a donated food or donated foods into a different end product or (b) the repackaging of a donated food or donated foods.

"Processing fee" means the amount charged to a contracting agency for a processor's services.

"Processor" means a commercial facility, other than a food service management company, which processes donated foods.

"Programs" means the Food Distribution Program.

"Recipients" means needy persons receiving commodities for household consumption.

"Recipient agencies" means nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, disaster organizations, school food authorities, schools, nonresidential child care institutions, service institutions, and welfare agencies, receiving foods for their own use or for distribution to eligible recipients.

"Refund application" means an application by a recipient agency in any form acceptable to a distributing agency and processor which certifies purchase of end products and which, upon forwarding to the processor by the distributing agency, obligates the processor to refund the contract value of the donated foods contained in the end products.

"Refund system" means a system whereby a recipient agency purchases a processor's end products and receives from the processor a payment equivalent to the contract value of the donated foods contained in the end products.

"School" means (a) an educational unit of high school grade or under except for a private school with an average yearly tuition exceeding $1,500 per child, operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade; (b) with the exception of residential summer camps which are eligible to participate in the Summer Food Service Program for Children, Job Corps Centers funded by the Department of Labor, and private foster homes, any distinct part of a public or nonprofit private institution or any public or nonprofit private child care institution, which (1) maintains children in residence, (2) operates principally for the care of children, and (3) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to, homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; half-way houses; orphanages; temporary shelters for abused children and for runaway children; long term care hospitals for chronically ill children; and juvenile detention centers; and (c) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

"School food authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a nonprofit school food service.

"School year" means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

"Secretary" means the Secretary of Agriculture.

"Section 4(a)" means section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). Section 4(a) authorizes the purchase of foods for distribution to maintain the traditional level of assistance for food assistance programs as are authorized by law, including institutions, supplemental feeding programs, disaster areas, summer camps for children, the Trust Territory of the Pacific Islands, and Indians whenever a tribal organization requests distribution of federally-donated foods under section 4(b) of the Food Stamp Act of 1977.

"Section 6" means section 6 of the national School Lunch Act, as amended (42 U.S.C. 1755). Section 6 authorizes the purchase of foods for distribution to schools and institutions participating in child nutrition programs under the National School Lunch Act and specifies the level of assistance which is to be provided.

"Section 14" means section 14 of the National School Lunch Act, as amended (42 U.S.C. 1762a). Section 14 authorizes the purchase of foods for distribution to maintain the annually programmed level of assistance for programs carried on under the National School Lunch Act, the Child Nutrition Act of 1966, and Title III of the Older Americans Act of 1965.

"Section 32" means section 32 of Public Law 74–320, as amended (7 U.S.C. 612c). Section 32 authorizes the Department to purchase nonbasic perishable foods available under surplus-removal operations, for the purpose of encouraging the domestic consumption of such foods by diverting them from the normal channels of trade or commerce.

"Section 311" means section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a). Section 311 authorizes the purchase of commodities for nutrition programs for the elderly.

"Section 416" means section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431). Section 416 authorizes the Department to donate basic nonperishable foods acquired through Federal price-support operations for use by needy persons, for use in nonprofit school lunch programs and nonprofit summer camps for children, and for use in charitable institutions to the extent that needy persons are served.

"Section 709" means section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1). Section 709 authorizes the purchase of adequate supplies of dairy products to meet the requirements of schools, domestic relief distribution, and other programs authorized by law when the stocks of the Commodity Credit Corporation are insufficient to meet those requirements.

"Service institutions" means camps or sponsors (as those terms are defined in Part 225 of this chapter) which participate in the Summer Food Service Program authorized under section 13 of the National School Lunch Act, as amended.

"Similar replacement" means replacement of lost donated foods with a like quantity of similar foods of U.S. origin of the same types as those normally donated by the Department and of at least equal monetary value to the Department's cost of replacing the lost foods. Such replacement shall be subject to the approval of the FNSRO.

"State" and "United States" means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"State Agency on Aging" means (a) the State agency that has been designated by the Governor and approved by the United States Department of Health and Human Service (DHHS) to administer nutrition programs for the elderly under Title III of the Older Americans Act of 1965, as amended or (b) the Indian tribal organization which has been approved by DHHS to administer nutrition programs for the elderly under Title VI of such act.

"Students in home economics" means students in regular classes wherein they are taught general home economics including food prepartion, cooking, serving, nutrition, food purchasing, child care and health.

"Subdistributing agency" means an agency performing one or more distribution functions for a distributing agency other than, or in addition to, functions normally performed by common carriers or warehousemen. A subdistributing agency may also be a recipient agency.

"Tuition" means the basic charge required for a student to matriculate at a school, excluding any amount paid for

the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child: (a) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (b) State, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In schools which vary tuition, to determine if the average yearly tuition exceeds $1,500 per child, add the total tuition receipts for the period of time in which the majority of children are in attendance, and divide by the total number of students enrolled during that period.

"Welfare agency" means a public (Federal, State of local) or private agency offering assistance on a charitable or welfare basis to needy persons, who are not residents of an institution, and to Tribal Councils designated by the Bureau of Indian Affairs.

Subpart B—General Operating Provisions

§ 250.10 Eligible distributing and subdistributing agencies.

(a) *State and Federal agencies.* Federal agencies and such State agencies as are designated by Governor of the State, or by the State legislature, and approved by the Secretary are eligible to become distributing agencies.

(b) *Private agencies.* Where distributing agencies are not permitted by law to make distribution to private recipient agencies, or to any class of private recipient agency, private agencies which agree to make distribution of donated foods on a Statewide basis which apply directly to FNS, and are approved by the Secretary are eligible to become distributing agencies.

(c) *Subdistributing agencies.* If distributing agencies use subdistributing agencies to distribute donated foods, the distributing agencies' responsibilities to the Department for overall management and control of the distribution program shall not be delegated to such subdistributing agencies.

§ 250.11 Eligibility determination for recipient agencies and recipients.

Distributing agencies shall determine the eligibility of any agency which submits an application for participation in the program. Once a recipient agency has been determined to be eligible for participation in the program, the distributing agency shall enter into an agreement with the agency in accordance with § 250.12(b) and make donated foods available.

Distributing agencies shall impose upon welfare agencies the responsibility for determining that recipients to whom welfare agencies distribute donated foods are eligible: *Provided, however,* That the State agency or FNSRO administering the applicable program shall determine the eligibility under this part of schools participating under part 210, of sponsors participating in the Summer Food Service Program for Children under Part 225 of this chapter, and of nonresidential child care institutions participating in the Child Care Food Program under Part 225 of this chapter.

§ 250.12 Agreements.

(a) *Agreements with Department.* Prior to the beginning of a distribution program, distributing agencies shall enter into written agreements with the Department which shall incorporate the terms and conditions set forth in this part. When requested by the Department an eligible agency shall present evidence of its authority to enter into such agreements. The agreements shall be effective for no longer than one year and must be completed by September 30 of each year. In addition, agreements between the Department and State Agencies on Aging which elect to receive cash in lieu of commodities shall also be effective for no longer than one year and must be completed by September 30 of each year.

(b) *Distributing agency agreements.* Distributing agencies shall enter into written agreements with subdistributing agencies, recipient agencies, warehouses, carriers, or other entities to which distributing agencies deliver donated foods under their distribution program. All agreements shall contain such terms and conditions as the distributing agency deems necessary to ensure that: (1) The distribution and use of donated foods is in accordance with this part, (2) Subdistributing agencies, recipient agencies, warehouses, carriers, or other persons to whom donated foods are delivered by the distributing agency are responsible to the distributing agency for any improper distribution or use of donated foods or for any loss of, or damage to, donated foods caused by their fault or negligence, (3) Subdistributing agencies and recipient agencies have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution, and (4) Subdistributing agencies and recipient agencies will take action to obtain restitution in connection with claims arising in their favor for improper distribution, use or loss of, or damage to, donated foods. To the extent that bills of lading and warehouse receipts satisfy the above-stated criteria, the distributing agency may consider such documents as appropriate agreements. The agreements shall be effective for no longer than one year.

(c) *Food service management company agreements.* Food service management companies may be employed to conduct the food service operations of nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, schools, nonresidential child care institutions, and service institutions. In instances when a food service management company is employed to provide such services, the recipient agency shall enter into a written contract with the food service management company which shall expressly provide that: (1) Any donated foods received by the recipient agency and made available to the food service management company shall be utilized solely for the purpose of providing benefits for the employing agency's food service operation; and (2) The books and records of the food service management company pertaining to the food service operation of the agency shall be available for a period of three years from the close of the Federal fiscal year to which they pertain. The contracts shall be effective for no longer than one year.

(d) *Storage facility agreements.* When contracting for storage facilities, distributing agencies, subdistributing agencies and recipient agencies shall enter into a written contract for the lease of storage facilities in accordance with § 250.14(c).

(e) *Processing agreements.* When contracting for the processing of donated foods, distributing agencies, subdistributing agencies and recipient agencies shall enter into agreements with processors in accordance with § 250.30(c).

§ 250.13 Distribution and control of donated foods.

(a) *Availability and use of donated foods.* (1) *Availability and use.* Donated foods shall be available only for distribution and use in accordance with the provisions of this part and, with respect to distribution to households on all or part of an Indian reservation, of Part 253 of this chapter. Donated foods

not so distributed or used (for any reason) shall not be sold, exchanged or otherwise disposed of without the approval of the Department. Donated foods which are provided as part of an approved food package or authorized program level of assistance may be transferred between recipient agencies only with prior authorization of the distributing agency and the FNSRO. Donated foods which are provided in addition to the State's authorized program level of assistance may be transferred between recipient agencies with the prior authorization of the distributing agency. The transfer of any donated foods between recipient agencies shall be substantiated by reflecting the transfer on the FNS–155 or FNS–152. In areas where the Food Stamp Program is in effect, there shall be no distribution of donated foods to households under this part except (i) to authorized Indian reservations; (ii) during major disasters or other emergency situations as determined by the Secretary; (iii) for the purpose of the Commodity Supplemental Food Program (7 CFR Part 247); and (iv) at the discretion of the Secretary in accordance with applicable legislative authority.

(2) *Allocations.* As foods become available for donation, FNS shall notify distributing agencies regarding the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food in addition to the general terms and conditions set forth herein. Every attempt shall be made to deliver the donated foods in accordance with requested schedules. However, the Department shall not be responsible for delay in delivery or for nondelivery of donated foods due to any cause.

(3) *Minimum donations.* Foods shall be donated only in such quantities as will protect the lower carload freight rate, except as deemed in the best interest of the program as determined by the Department.

(4) *Quantities.* (i) The quantity of donated foods to be made available for donation under this part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed to further the objectives of the pertinent legislation.

(ii) Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose similar restrictions on recipient agencies.

(5) *Demonstrations and tests.* Notwithstanding any other provision of this part, a quantity of any food donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, or for demonstrations or tests relating to the utilization of such donated food by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

(b) *Processing and other costs.* The Department shall pay such processing, reprocessing, transporting, handling and other charges accruing up to the time of transfer of title to distributing agencies as is deemed in the best interest of the Department.

(c) *Transfer of title.* Title to donated foods shall pass to distributing agencies upon their acceptance of donated foods at time and place of delivery, limited, however, by the obligation of the distributing agency to use such donated foods for the purposes and upon the terms and conditions set forth in this part.

(d) *Distribution of donated foods to recipient agencies or recipients*—(1) *Distribution.* Donated foods shall be distributed only to recipient agencies and recipients eligible to receive them under this part (see Subpart D). Distributing agencies shall require that welfare agencies and disaster organizations distribute donated foods only to recipients eligible to receive them under this part. It shall not be deemed a failure to comply with the provisions of this part if recipient agencies serve meals containing donated foods to persons other than those who are eligible under this part, when such persons share common preparation, serving or dining facilities with eligible persons (needy persons, children, participants in nutrition programs for the elderly) and at least one of the following is true: (i) Such other persons are common beneficiaries with the eligible persons of the program of the recipient agency, or (ii) such other persons are few in number compared to the eligible persons and receive their meals as an incident of their service to the eligible persons. Such other persons include, but are not limited to teachers, disaster relief workers, and staff members. Nothing in this paragraph shall be construed as authorizing allocation or issuance of donated foods to recipient agencies in greater quantity than that authorized for the assistance of persons eligible under this part.

(2) *Normal food expenditures.* Section 416 donated foods shall not be distributed to any recipient agencies or recipients whose normal food expenditures are reduced because of the receipt of donated foods.

(e) *Improper distribution, loss of or damage to donated foods.* (1) If a distributing agency improperly distributes or uses any donated foods or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, the provisions set forth in § 250.15(c) shall apply.

(2) In instances when it is determined by a distributing agency that a claim has arisen in favor of the distributing agency against a subdistributing agency, recipient agency, warehouse, carrier, processor or other person, the distributing agency shall pursue claims in accordance with § 250.15(c).

(f) *Disposition of damaged or out-of-condition foods.* Donated foods which are found to be damaged or out-of-condition and are declared unfit for human consumption by Federal, State, or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. Such instructions may direct that unfit donated foods be: (1) Sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department, (2) sold in a manner prescribed by the Department with the proceeds thereof retained for use in accordance with the provisions of § 250.15(f), (3) used in such a manner as will serve a useful purpose as determined by the Department, or (4) destroyed in accordance with applicable sanitation laws and regulations. Upon a finding by the Department that donated foods are unfit for human consumption at the time of delivery to the distributing agency and when the Department or appropriate health officials require that such donated foods be destroyed, the Department may pay to the distributing agency any expenses incurred in connection with such donated foods as determined by the Department. The Department may in any event repossess damaged or out-of-condition donated foods.

(g) *Redonations.* Whenever a distributing agency has any donated food on hand which it cannot efficiently utilize, it shall immediately make a request to the appropriate FNSRO, in writing, for instructions as to the disposition of such donated food. Distributing agencies requesting

authority to make redonation of any donated foods to the Department shall, upon the Department's request, have such donated foods federally inspected. Expenditures incurred by the distributing agency as a result of redonation shall be handled in accordance with § 250.15(e).

(h) *Embezzlement, misuse, theft, or obtainment by fraud of donated foods and donated food-related funds, assets, or property.* Notwithstanding paragraph (c) of this section concerning transfer of title to donated foods, whoever embezzles, willfully misapplies, steals, or obtains by fraud, donated foods or any funds, assets, or property deriving from donated foods or whoever receives, conceals, or retains such donated foods, funds, assets, or property for his/her own use or gain, knowing such donated foods, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended, or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended. For the purpose of this paragraph "funds, assets, or property" include, but are not limited to funds accruing from the sources identified in § 250.15(f) (1) and (2) donated foods which have been processed into different end products as provided for under Subpart C of this part, and the containers in which donated foods have been received from the Department. Distributing agencies shall immediately notify FNSRO of any suspected violation of section 12(g) or section 4(c) to allow the Department, in conjunction with the U.S. Department of Justice, to determine whether Federal criminal prosecution under section 12(g) or section 4(c) is warranted. Prosecution of violations by the Federal Government shall not relieve any distributing agency of its obligation to obtain recovery for improperly distributed or lost donated foods, as required by § 250.15(c).

§ 250.14 Storage facilities.

(a) *Standards for storage facilities.* Distributing agencies, subdistributing agencies and recipient agencies shall provide facilities for the handling, storage and distribution of donated foods which: (1) Are sanitary and free from rodent, bird, insect, and other animal infestation; (2) can safeguard against theft, spoilage and other loss; (3) can maintain foods at proper storage temperatures; (4) can stock and space foods in a manner so that USDA-donated foods are readily identifiable; (5) use pallets; and (6) take other protective measures as may be necessary. Distributing agencies, subdistributing agencies, and recipient agencies must ensure that storage facilities meet Federal, State or local Health Department standards, whichever are more stringent, prior to entering into a contract for the handling, storage, and distribution of donated foods.

(b) *Reviews.* The distributing agency shall ensure that a review of the storage facilities is conducted prior to entering into or renewing a contract for the handling, storage, and distribution of donated foods to determine if the storage facilities are acceptable in accordance with standards described in paragraph (a) of this section.

(c) *Contracts.* Distributing agencies, subdistributing agencies and recipient agencies responsible for the contracting of storage facilities shall enter into written contracts for the lease of storage facilities. The contract shall, at a minimum, contain the following: (1) Assurance that the storage facilities will be maintained in accordance with the standards specified in paragraph (a) of this section; (2) evidence that donated foods shall be clearly identified; (3) assurance that an inventory system shall be maintained and semiannual physical inventories will be conducted; (4) beginning and ending dates of the contracts; (5) a provision for immediate termination of the contract due to noncompliance on the part of the warehouse management; (6) a provision allowing for termination of the contract upon 30 days written notification; (7) the amount of any insurance coverage which has been purchased to protect the value of food items which are being stored; and (8) express written consent for inspection and inventory by the distributing agency, subdistributing agency, recipient agency, the Comptroller General, the Department, or any of their duly authorized representatives. Such contracts shall be effective for no longer than one year.

(d) *Physical inventory.* Distributing agencies, subdistributing agencies and recipient agencies shall conduct semiannual physical inventories of all storage facilities for which they have contracted or own and are being utilized for the handling, storage, and distribution of donated foods. The physical inventories shall be conducted by June 30 and December 30 of each year. In accordance with § 250.17(b), this information shall be included with the inventory report being submitted to the FNSRO for the months of June and December. Food items which have been lost, stolen, or found to be out-of-condition shall be identified during the physical inventory and reported by the distributing agency to FNS on FNS–155 or other format approved by FNS. Where applicable, the distributing agency shall determine and pursue claims in accordance with § 250.15(c).

(e) *Excessive inventories.* (1) The distributing agency shall determine if inventories are excessive based on inventory information submitted by subdistributing agencies and recipient agencies. The agency shall consider: (i) The rate of distribution; (ii) anticipated distribution; and (iii) other concerns such as logistical and economic considerations. (2) In no case may the inventory level of each donated food in storage exceed six months unless sufficient justification for additional inventory has been submitted and approved. Subdistributing agencies and recipient agencies shall submit sufficient justification for approval by the distributing agency in instances where more than a six-month inventory is needed. Justification shall be submitted by the distributing agency to the FNSRO for approval in instances where more than a six-month inventory is needed at the distributing agency level. (3) The distributing agency shall take corrective action to ensure that excess inventories are eliminated. Further, the distributing agency shall maintain, for FNS evaluation, records of inventory levels and documentation of actions taken to reduce excessive inventories.

§ 250.15 Financial management.

(a) *Distribution charges.* (1) Except as provided in paragraph (a)(2) of this section, recipient agencies may be required to pay part or all of the intrastate costs of distribution through a system of charges assessed by distributing or subdistributing agencies. Any system of assessment operated by the distributing or subdistributing agency shall have the prior approval of and be subject to review by the FNSRO. The charges assessed shall be used solely in accordance with the provisions of paragraph (f) of this section.

(2) For the period May 1, 1983, through September 30, 1985, whenever a commodity is donated to a State without charge or credit against entitlement, recipient agencies may not be assessed for any part of the intrastate costs of storage and transportation of such commodity that is in excess of the distributing or subdistributing agency's direct costs for such storage and transportation minus any amount that the Department provides to the State to pay such costs under Part 251 of this chapter.

(3) Under no circumstance shall recipients be required to make any payments in money, materials, or services for or in connection with the receipt of donated foods, nor shall voluntary contributions be solicited in connection with the receipt of donated foods for any purpose.

(b) *Sale of containers.* When containers in which donated foods are received are disposed of by sale, the proceeds of such sale shall be used solely in accordance with the provisions of paragraph (f)(2) of this section.

(c) *Claims.* [Reserved].

(d) *Demurrage.* Demurrage or other charges which accrue after a car or truck has been placed for unloading by the delivering carrier, or which accrue because placement of a car or truck is prevented, shall be borne by the distributing agency, except that demurrage or other charges may be borne by the Department where such charges accrue because of actions by the Department and without the fault or negligence of the distributing agency.

(e) *Redonation expenditures.* In accordance with Section 250.13(g), whenever a distributing agency requests authority to make redonation of any donated foods and the Department requests that the donated foods be federally inspected, these inspections will be made at the expense of the distributing agency. Any donated foods which the Department determines are acceptable for redonation shall be moved at the distributing agency's expense to the closest point within the FNS region in which the State is located where it can be utilized, or to a closer point outside the region, if such a transfer is mutually agreed to by the Department and the distributing agency. In those instances in which the distributing agency satisfactorily demonstrates to the Department that the need for any redonation resulted from no fault or negligence on its part, the Department shall assume such transportation costs as it determines to be proper. Whenver a redonation is made at the request of the Department, the Department shall pay all transportation and handling costs in connection with such redonation and shall pay to the distributing agency all storage and handling costs accrued on the donated foods at the time of redonation, as determined by the Department, except when the request is made as a result of negligence on the part of the distributing agency.

(f) *Use of funds accruing in operation of the program*—(1) *Funds accruing from claims.* [Reserved]

(2) *Other funds.* Funds accruing from the sale of containers, salvage of donated foods, assessment charges, or insurance shall be used only for the payment of expenses of the program which will improve program operations including, but not limited to, transportation, storage and handling of donated foods, salaries of persons directly connected with the program, and other program-related expenses. In instances when these funds are determined to be in excess of program needs, the funds shall be used in accordance with paragraph (f)(3) of this section. Funds accruing from the operation of the program shall not be used for: (i) Bad debts; (ii) contingencies; (iii) contributions and donations; (iv) entertainment; (v) fines and penalties; (vi) Governor's expenses; (vii) interest and other financial costs; (viii) legislative expenses; or (ix) underrecovery of costs under grant agreements, as described in the Office of Management and Budget Circular A–87.

(3) *Excess funds.* The distributing agency shall review the receipt and expenditure of funds annually to ensure that fund balances are not in excess of program needs. At a maximum, funds exceeding the previous three months' expenditures shall be considered in excess of program needs unless the distributing agency provides sufficient justification as to the need for such funds and receives approval from the FNSRO. In instances when it is determined that funds equal to or less than the expenditures for the previous three months are in excess of what is needed, the distributing agency shall reduce such funds. Expenditures of a nonrecurring nature, such as the purchase of automated data processing or other equipment, shall not be included when determining the previous three-months' expenditures. If excess funds accumulate by reason of collection of assessment charges, such excess funds shall be used to reduce such charges or shall be returned to contributors. If excess funds accrue from the sale of containers, salvage of donated foods, insurance, or recoveries of claims for the loss or damage of donated foods, such funds shall be (i) used to reduce assessment charges, (ii) used to purchase additional foods, (iii) used to improve program operations, or (iv) at the direction of the Department, paid to the Department. The distributing agency shall impose upon subdistributing agencies and recipient agencies similar provisions for the use of such funds accruing from the operation of their programs.

§ 250.16 Maintenance of records.

(a) *General requirements.* (1) Accurate and complete records shall be maintained with respect to the receipt, disposal, and inventory of donated foods including (i) end products processed from donated foods and (ii) the determination made as to liability for any improper distribution, use of, loss of, or damage to, such foods and the results obtained from the pursuit of claims by the distributing agency. Such records shall also be maintained with respect to the receipt and disbursement of funds arising from the operation of the distribution program, including the determination as to the amount of payments to be made by any processor, upon termination of processing contracts.

(2) Distributing agencies shall require all subdistributing and recipient agencies to maintain accurate and complete records with respect to the receipt, disposal and inventory of donated foods, including end products processed from donated food, and with respect to any funds which arise from the operation of the distribution program, including refunds made to recipient agencies by processors in accordance with Section 250.30(k).

(3) Unless a distributing agency maintains an offer-and-acceptance system in accordance with Section 250.48(e), the distributing agency shall maintain accurate and complete records with respect to amounts and value of commodities refused by school food authorities. School food authorities shall also be required to maintain such records of refusals.

(4) Any processor or other entity which contracts with a distributing agency, subdistributing agency or recipient agency shall be required to keep accurate and complete records with respect to the receipt, disposal, and inventory of such foods similar to those required of distributing agencies under this paragraph. Where donated foods have been commingled with commercial foods, the processor shall maintain records which will permit an accurate determination of the donated-food inventory. The processor shall also be required to keep formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use made of such foods and their subsequent redelivery, in whatever form, to any distributing agency, subdistributing agency or recipient agency.

(5) All recipient agencies shall be required to keep accurate and complete records showing the data and method used to determine the number of eligible persons served by that agency.

(6) Failure by a distributing agency, subdistributing agency, recipient agency, processor, or other entity to maintain records required by this section shall be considered prima facie evidence of improper distribution or loss of donated foods and the agency, processor or entity shall be subject to the provisions of § 250.13(e).

(b) *Length of maintenance.* All records required by this section shall be retained for a period of 3 years from the close of the Federal fiscal year to which they pertain. However, in instances when claims action and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such action or findings.

§ 250.17 Reports.

(a) *Monthly Report of Receipt and Distribution of Donated Foods (FNS–155).* Distributing agencies shall complete and submit to the FNSRO monthly inventory reports covering the receipt and distribution of donated foods on Form FNS–155 or other format approved by FNS. The report shall be submitted no later than 30 calendar days after the end of the reporting month. The distributing agency shall submit a list of individual food orders received for each food item delivered by the Department as an attachment to the FNS–155.

(b) *Physical inventory reports.* Distributing agencies shall complete and submit to the FNSRO semiannual physical inventory reports. In accordance with Section 250.14(d), such reports shall be submitted as an attachment to the June and December monthly inventory report. Physical inventory reports may be submitted in whatever format the distributing agency deems necessary. Physical inventory reports shall reflect a compilation of food items in inventory at the State level, at all processors and for each category of recipient agency at the local level.

(c) *Processing inventory reports.* Distributing agencies shall complete and submit a quarterly processing inventory report in accordance with Section 250.30(o).

(d) *Performance reports.* Monthly reports of performance shall be submitted by processors to distributing agencies in accordance with Section 250.30(m).

(e) *Other reports.* Distributing agencies shall complete and submit other reports relative to distribution operations in such form as may be required from time to time by the Department.

(Reporting requirements contained in paragraph (a) approved by the Office of Management and Budget under control number 0584–0001. Reporting requirements contained in paragraph (e) approved by the Office of Management and Budget under control numbers 0584–0028, 0584–0109, 0584–0288, and 0584–0293)

§ 250.18 Audits.

(a) *Rights of inspection and audit.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, may inspect and inventory donated foods in storage or the facilities used in the handling or storage of such donated foods, and may inspect and audit all records, including financial records, and reports pertaining to the distribution of donated foods and may review or audit the procedures and methods used in carrying out the requirements of this part at any reasonable time. Subdistributing agencies, recipient agencies, processors and food service management companies shall be required to permit similar inspection and audit by such entities or their representatives.

(b) *Distributing agency-sponsored audits.* (1) Each distributing agency shall provide for audits of all food distributing program operations including records pertaining to donated food acquisition, storage, distribution, processing activities within the State (except that of multi-State processors as defined in § 250.3) and financial information. Such audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I).

(2) The cost of these audits shall be considered part of administrative costs and State administrative expense funds may be used to pay any costs incurred for conducting audits of child nutrition programs in accordance with Part 235 of this chapter.

(c) *Independent CPA audits of multi-State processors.* (1) Multi-State processors shall obtain an independent audit by a certified public accountant (CPA) annually. Such audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I) and FNS audit guidelines. Processors shall ensure that auditors attend any FNS training sessions prescribed by the Secretary.

(2) The costs of the audits, including travel expenses to attend any FNS training sessions, shall be borne by the processors.

(3) Audit findings shall be submitted by the processor to FNS.

(4) Noncompliance with the audit requirement in paragraph (c)(1) of this section will render the processor ineligible to enter into another processing contract until the required audit has been conducted and deficiencies corrected.

(d) *Distributing agency or processor response.* Distributing agencies shall develop a written response to the FNSRO addressing deficiencies which have been identified through Federal and distributing agency-sponsored audits. Processors required to have annual CPA audits pursuant to paragraph (c) of this section shall develop a written response to FNS addressing deficiencies which have been identified in the audit. Such responses shall include: (1) Corrective action which has already been taken to eliminate the deficiency; (2) Corrective action which the distributing agency or processor proposes to take to eliminate the deficiency; (3) The timeframes for the implementation and completion of the corrective action; (4) A determination of what caused the deficiency; and (5) Deficiencies which have been identified that the distributing agency or processor takes exception to and an explanation for the exception. Distributing agencies shall submit a written response in accordance with timeframes established by the FNSRO. Multi-State processors shall submit a written response to FNS in accordance with timeframes established by FNS.

§ 250.19 Management evaluation systems.

(a) *General.* Each distributing agency shall establish a management evaluation system in order to assess the effectiveness of its food distribution program in meeting the requirements of these regulations. FNS will provide assistance to each distributing agency in discharging this responsibility.

(b) *Responsibilities of FNS.* FNS will establish evaluation procedures to determine whether distributing agencies have carried out the provisions of this part and FNS guidelines and instructions. FNS will conduct periodic reviews of multi-State sponsors.

(c) *Responsibilities of distributing agencies.* (1) Each distributing agency shall establish evaluation and review procedures encompassing eligibility, food ordering procedures, storage practices, inventory controls, reporting and recordkeeping requirements and compliance with nondiscrimination provisions. The procedures shall include: (i) A review of the following recipient agencies: (A) Charitable institutions; (B) Nutrition programs for the elderly; and (C) Nonprofit summer camps for children; (ii) An annual review of all storage facilities utilized by the distributing agency; (iii) An annual

review of all processors, except those that are multi-State processors as defined in § 250.3; and (iv) An annual review of all food service management companies under contract with recipient agencies in accordance with § 250.12(c) which are not under contract with a school participating in the National School Lunch Program or a commodity school under Part 210 of this chapter, or a school participating in the School Breakfast Program under Part 220 of this chapter.

(2) Each distributing agency shall design and implement a system to verify sales of end products to any recipient agencies under that distributing agency's authority in instances when a processor transfers end products to a distributor and the distributor sells the end product to the recipient agencies at a discount. At a minimum, such a system must: (i) Provide for the quarterly review of a statistically valid sample of sales information of all processors which contract with the distributing agency or contracting agencies under the authority of the distributing agency, including multi-State processors; (ii) support the projection of a claim against the processor when, in the review of the sample, it is determined that the value of donated foods has not been passed on to recipient agencies or when end products have been improperly distributed; and (iii) provide for the assessment of claims against the processor in accordance with FNS Instruction 410–1 Non-Audit Claims, Food Distribution Program, in instances when deficiencies have been identified. Distributing agencies may delegate the responsibility of sales verification to processors. In such instances, the distributing agency must establish guidelines which the processor must follow in conducting sales verification. These guidelines must ensure that a statistically valid sample of sales is verified quarterly. Processors shall report their findings to the distributing agency on a quarterly basis in accordance with Section 250.30(m). Distributing agencies must review the processor's sales verification system and the processor's findings for adequacy.

(3) The distributing agency shall submit a report of review findings to each entity reviewed. The report shall include: (i) Each deficiency found; (ii) The factors contributing to each deficiency; (iii) Recommendations for needed corrective action, including timetable for completion and/or claims action to be pursued, if any; and (iv) Provisions for evaluating effectiveness of corrective actions. A copy of each processor review report shall also be provided to the appropriate FNSRO.

(4) Distributing agencies shall monitor progress toward completion and the effectiveness of corrective actions taken in eliminating program deficiencies.

(5) In addition to the review requirements of paragraph (c)(1) of this section, each distributing agency shall make a continuing evaluation of all recipient agencies, and processors by monitoring performance reports, food requests, participation data, and data regarding refunds and discounts to recipient agencies and distributors for the receipt of end products.

(6) Distributing agencies shall, where applicable, require that subdistributing agencies monitor and review their operations in accordance with this paragraph.

(d) *Reponsibilities of State Agencies on Aging.* State Agencies on Aging which receive cash payments in lieu of donated foods in accordance with the provisions of § 250.42(c) shall monitor use of such cash after disbursement to nutrition programs for the elderly to ensure that the amounts so received are expended solely for the purchase of U.S. agricultural commodities and other foods of U.S. origin for such programs.

§ 250.20 Sanctions.

Any distributing agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection with it or any agreements entered into pursuant to it, may, at the discretion of the Department, be disqualified from further participation in any distribution program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

§ 250.21 Civil rights. [Reserved]

§ 250.22 Complaints.

Distributing agencies shall investigate promptly complaints received in connection with the distribution or use of donated foods. Irregularities which are disclosed shall be corrected immediately. Serious irregularities shall be promptly reported to the Department. Distributing agencies shall maintain on file evidence of such investigations and actions. The Department reserves the right to make investigations and shall have the final determination as to when a complaint has been properly handled.

Subpart C—Processing and Labeling of Donated Foods

§ 250.30 State Processing of donated foods.

(a) *General.* Distributing agencies shall, at a minimum, operate a processing program which permits the employment of commercial facilities by distributing agencies, subdistributing agencies or recipient agencies for the purpose of processing donated foods which have provided in addition to the States' authorized level of assistance. The availability of such commodities is contingent upon the operation of a processing program. In instances when a processor can prove marketability of an end product containing at least one truckload lot of a single donated food item which is being provided in addition to the State's authorized level of assistance, the distributing agency shall enter into a processing contract on behalf of all eligible recipient agencies in accordance with paragraph (c) of this section. A processor shall prove the marketability of an end product in the form of recipient agencies' written intent to purchase the end products or on the basis of past sales of the end product to recipient agencies under the distributing agency's authority. Distributing agencies are encouraged to operate a processing program for donated foods which are provided as part of the States authorized level of assistance. This section does not pertain to food service management companies.

(b) *Permissible contractual agreements.* (1) In addition to the requirements set fourth in paragraph (a) of this section, a distributing agency, subdistributing agency, or recipient agency may contract for processing, pay the processing fee, and deliver the end products to eligible recipient agencies through its own distribution system.

(2) In addition to the requirements set forth in paragraph (a) of this section, a distributing agency or subdistributing agency may contract for processing on behalf of one or more recipient agencies. All recipient agencies eligible to receive the donated foods to be processed may receive end products made from those foods and produced under such processing contracts by virtue of the distributing agency-recipient agency agreement required by Section 250.12(b). Under this arrangement (i) processors shall be required to utilize either a refund system as defined in Section 250.3 or a system which provides refunds to distributors and discounts to recipient agencies through a distributor in accordance with paragraph (e) of this section, or (ii) processors may, with the

approval of the distributing agency, utilize either a discount or a refund system when they sell end products directly to recipient agencies.

(3) Distributing agencies shall permit subdistributing agencies and recipient agencies to enter into processing contracts with a processor under arrangements similar to those described in paragraphs (b) (1) or (2) of this section.

(c) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form and be reviewed by FNSRO. Processing contracts shall terminate no later than one year after they have been entered into and cannot be extended without either renegotiation or competitive bidding. Each year, contracting agencies shall choose one of the following methods for entering into contracts and shall use that method to contract for all end products which the contracting agency has decided to contract for or is required to contract for pursuant to paragraph (a) of this section for that school year: (i) The contracting agency shall enter into contracts with all processors seeking contracts for those end products or (ii) the contracting agency shall solicit bids for all those end products. Competitive bidding procedures shall, at a minimum, include the following provisions: (A) All proposed contracts shall be publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement shall include the time and place of the bid openings; (B) The bids shall be publicly opened; and (C) When advertising for bids, the distributing agency shall adhere to the following minimum requirements: (*1*) The invitation to bid shall not specify a minimum price; (*2*) The invitation to bid shall contain standards upon which the bid shall be based; (*3*) Neither the invitation to bid nor the contract shall provide for loans or any other monetary benefit or term or condition to be made to distributing agencies by processors; and (*4*) The lowest qualified bid shall be accepted. The lowest bid shall be the lowest end product price including any refund or discount on the end product. In instances when the lowest bid is not accepted and the contracting agency is a distributing agency, the agency shall submit written justification to the FNSRO for review. In instances when the contracting agency is not the distributing agency, the bid shall be submitted to the distributing agency along with written justification as to why the lowest bid was not accepted. (iii) Regardless of the method used, contracting agencies shall not enter contracts with processors which cannot meet the following criteria: (A) The ability to meet the terms and conditions of the regulations and the distributing agency agreements; (B) The ability to furnish prior to the delivery of any donated foods for processing, a performance bond, an irrevocable letter of credit or an escrow account in an amount sufficient to protect the contract value of donated foods on hand or on order; (C) The ability to distribute end products to eligible recipient agencies; (D) A satisfactory record of integrity, business ethics, and performance; and (E) The ability to accept and provide storage for at least one truckload lot of a commodity item.

(2) Standard form contracts shall be prepared or reviewed by the appropriate State legal staff to assure conformity with the requirements of these regulations and of applicable Federal, State and local laws.

(3) The contract shall be signed for the processor by the owner, a partner, or a corporate officer duly authorized to sign the contract, as follows: (i) In a sole proprietorship, the owner shall sign the contract; (ii) In a partnership, a partner shall sign the contract; (iii) In a corporation, a duly authorized corporate officer shall sign the contract.

(4) At a minimum, each processing contract shall include: (i) The names and telephone numbers of the contracting agency and processor; (ii) A description of each end product, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasoning which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), and the yield factor for each donated food. The distributing agency may waive the requirement to list other ingredients upon written request and justification from the processor. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. The yield factor for substitutable donated foods must be at least 100 percent with no allowable tolerance; (iii) the contract value of each donated food to be processed and, where processing is to be performed only on a fee-for-service basis, the processing fee to the contracting agency for a specified number, wright or measure of the end products to be delivered; (iv) A provision for: (A) termination of the contract upon thirty days written notice by the contracting agency or the processor and (B) immediate termination of the contract when there has been noncompliance with its terms and conditions by the contracting agency or the processor; (v) In the event of contract termination, a provision for disposition of donated foods and end products in the processor's inventories or payment of funds in accordance with paragraph (j) of this section; (vi) A provision for inspection and certification during processing, where applicable, by the appropriate acceptance service in accordance with paragraph (g) and (h) of this section; (vii) A provision that end products containing donated foods that are not substitutable under paragraph (f) of this section shall be delivered only to recipient agencies eligible to receive such foods; (viii) Provisions that the processor shall: (A) fully account for all donated foods delivered into its possession by production and delivery to the contracting agency or eligible recipient agencies of an appropriate number of units of end products meeting the contract specifications, and where end products are sold through a distributor, that the processor remains fully accountable for the donated foods until refunds or any other credits equal to their contracted value have been made to eligible recipient agencies in accordance with paragraph (k) of this section or to distributing agencies in accordance with paragraph (n)(2) of this section; (B) furnish to the contracting agency prior to the delivery of any donated foods for processing documentation that a performance supply and surety bond from a surety company listed in the most recent U.S. Department of Treasury Circular 570, an irrevocable letter of credit or an escrow account has been obtained in an amount that is, at a minimum, sufficient to protect the contract value of all donated food inventory on hand or on order, since the distributing agency is held liable by FNS for any donated foods provided to a processor; (C) use or dispose of the containers in which donated foods are received from the Department in accordance with the instructions of the contracting agency; (D) apply as credit against the processing fee or return to the contracting agency (*1*) any funds received from the sale of containers, and (*2*) the market value or the price received from the sale of any by-products of donated foods or commercial foods which have been substituted for donated foods; (E) substitute donated foods with

commercially purchased foods only in accordance with paragraph (f) of this section; (F) meet the requirements of paragraph (i) of this section for labeling end products; (G) maintain accurate and complete records pertaining to the receipt, disposal, and inventory of donated foods in accordance with Section 250.16; (H) submit processing performance reports in accordance with paragraph (m) of this section; and (I) submit annual reconciliation reports and make payments to distributing agencies for any outstanding refund applications or excessive inventories in accordance with paragraph (n)(2) of this section; (ix) A provision that approval of the contract by the distributing agency shall not obligate that agency or the Department to deliver donated foods for processing; (x) A description of the processor's quality control system and assurance that an effective quality control system will be maintained for the duration of the contract; (xi) In instances when the processor is a multi-State processor as defined in § 250.3, a provision the processor agrees to obtain an independent audit by a certified public accountant in accordance with § 250.19(c); (xii) A requirement that inventory drawdowns shall be limited to the actual amount of donated foods contained in the end product. Additional commodity required to account for production loss shall be obtained from non-donated foods; (xiii) In instances when end products are sold through a distributor a description of the system which will be utilized for the sale of the end products to recipient agencies; and (xiv) In instances when the distributing agency has delegated the responsibility for sales verification for end products provided by a distributor to recipient agencies at a discount, assurance that the processor will submit sales verification data to the distributing agency in accordance with § 250.30(m)(1).

(5) The processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.

(d) *End products sold by processors.* When recipient agencies pay the processor for end products, the processing contract shall include: (1) The processor's established wholesale price schedule for quantity purchases of specified units of end products, (2) an assurance that the price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or a refund equal to such value made upon proof of purchase by an eligible recipient agency in accordance with paragraph (k) of this section; and (3) a provision that the contracting agency shall give the processor a list of all recipient agencies eligible to purchase end products under the contract.

(e) *End products sold by distributors.* When a processor transfers end products to one or more distributors for sale and delivery to recipient agencies, such sales shall be under either a refund system as defined in Section 250.3 or a system which provides refunds to distributors and discounts to recipient agencies. The processor shall make refund payments to distributors or recipient agencies in accordance with paragraph (k) of this section.

(f) *Substitution of donated foods with commercial foods.* The processing contract may provide that the processor may substitute for donated foods a like quantity of foods of the same generic identity and of equal or better quality; e.g., cheddar cheese for cheddar cheese, mozzarella cheese for mozzarella cheese, nonfat dry milk for nonfat dry milk. If the provision allowing substitution is included, the contract shall stipulate that (1) only butter, cheese, corn grits, corn meal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, soybean oil, spaghetti, and such other foods as FNS specifically approves may be substituted (substitution of meat and poultry items shall not be permitted) and (2) all components of commercial foods substituted for those donated must be of U.S. origin and be identical or superior in every particular of the donated-food specification as evidenced by certification performed by, or acceptable to, the applicable Federal acceptance service. Documentation must be maintained by both parties in accordance with Section 250.16. When there is substitution in accordance with this paragraph the donated foods may be utilized by the processor in his own commercial product but shall not otherwise be sold or disposed of in commercial channels. The applicable Federal acceptance service shall, upon request, determine if the quality analysis meets the requirements set forth by the Agricultural Stabilization and Conservation Service (ASCS) in the original inspection of donated foods, and when donated foods are non-substitutable, ensure against unauthorized substitutions, and verify that quantities of donated foods utilized are as specified in the contract. Distributing agencies shall monitor the substitution of donated foods and ensure that substitution is being made only in instances in which it is necessary to ensure uninterrupted production of an end product.

(g) *Meat and poultry inspection programs.* When donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection program. In addition to Food Safety and Inspection Service (FSIS) inspection, all meat and poultry processing shall be performed under Agricultural Marketing Service (AMS) acceptance service grading. The cost of this service shall be borne by the processor. In the event the processor cannot secure the services of an acceptance service grader, the processor shall notify the distributing agency who will in turn notify the appropriate FNSRO prior to any meat or poultry processing.

(h) *Certification by acceptance service.* (1) All processing activities or donated foods shall be subject to review and audit by the Department, including the applicable Federal acceptance service. The contracting agency may also require acceptance and certification by such acceptance service.

(2) In the case of substitutable donated foods, in deciding whether to require acceptance and certification, the contracting agency should consider the dollar value of the donated foods delivered to the processor.

(3) When contracting agencies require certification in accordance with paragraph (h) (1) or (2) of this section, the degree of acceptance and certification necessary under the processing contract shall be determined by the appropriate Federal acceptance service after consultation with the distributing agency concerning the type and value of the donated foods and anticipated volume of end products to be processed. The cost of this service shall also be borne by the processor.

(i) *Labeling end products.* (1) Except when end products contain donated foods that are substitutable under paragraph (f) of this section, the exterior shipping containers of end products and, where practicable, the individual wrappings or containers of end products, shall be clearly labeled

"Contains Commodities Donated by the United States Department of Agriculture. This Product Shall be Sold Only to Eligible Recipient Agencies."

(2) Labels on all end products shall meet applicable Federal labeling requirements.

(3) When a processor makes any claim with regard to an end product's contribution toward meal requirements of any child nutrition program, the processor shall follow procedures established by FNS, the Food Safety and Inspection Service of the Department, the National Marine Fisheries Service of the U.S. Department of Commerce or other applicable Federal agencies for approval of such labels.

(j) *Termination of processing contracts.* (1) When contracts are terminated and the processor has commodities remaining in inventory, the processor shall be directed, at the option of the distributing agency and the FNSRO, to do the following: (i) With respect to nonsubstitutable commodities, the processor shall (A) return the commodities to the contracting agency: (B) pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department: or (C) pay the contracting agency for the commodities based on the contract value stated in the processor's contract; (ii) With respect to substitutable commodities, the processor shall (A) with the concurrence of any affected contracting agencies, transfer the donated foods to the accounts of other contracting agency(ies) with which the processor has contracts; (B) return the donated foods to the contracting agency; (C) replace the commodities with the same foods of equal or better quality as certified in accordance with paragraph (f)(2) of this section and deliver such foods to the contracting agency; (D) pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or (E) pay the contracting agency for the commodities based on the contract value stated in the processor's contract.

(2) When a processor's contract is terminated at the processor's request or due to noncompliance or negligence on the part of the processor and commodities remaining in the processor's inventory are transported pursuant to paragraphs (j)(1)(i)(A), (j)(1)(ii)(B) or (j)(1)(ii)(C) of this section, the processor shall pay the transportation costs.

(3) Funds received by distributing agencies upon termination of contracts shall, at the option of FNS, be (i) used to replace the donated foods in kind, (ii) used by the distributing agency in the same manner as funds accruing from claims as described in Section 250.15(f)(1), or (iii) paid to the Department.

(k) *Refund payments.* (1) When end products are sold to recipient agencies in accordance with the refund provisions of paragraphs (d) or (e) of this section, each recipient agency shall submit refund applications to the contracting agency within 60 days of the date of purchase of end products in order to receive benefits. The contracting agency shall forward the refund application to the distributing agency within 10 days of receipt.

(2) The distributing agency shall review each application to verify that the recipient agency is an eligible purchaser and forward the application to the processor within 10 days of receipt.

(3) In instances where refunds are to be provided to distributors which have sold end products to recipient agencies at a discount, distributors shall submit refund applications to processors within 60 days of the date of sale to recipient agencies in order to receive benefits.

(4) Not later than 10 days after receipt of the application by the processor, the processor shall make a payment to the recipient agency or distributor equal to the stated contract value of the donated foods contained in the purchased end products covered by the application.

(l) *Contract approval.* Distributing agencies shall review and approve processing contracts entered into by subdistributing and recipient agencies prior to the delivery of commodities for processing under such contracts. The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processor, forward a copy to the appropriate FNSRO, and retain a copy for its files.

(m) *Performance reports.* (1) Processors shall be required to submit to distributing agencies monthly reports of performance under each processing contract. Processors contracting with agencies other than a distributing agency shall submit such reports to the distributing agency having authority over that particular contracting agency. Performance reports shall be received no later than the final day of the month following the reporting period. The report shall include: (i) A list of all recipient agencies purchasing end products under the contract; (ii) Donated-food inventory at the beginning of the reporting period; (iii) Amount of donated foods received during the reporting period; (iv) Amount of donated foods transferred to and/or from existing inventory;

(v) Number of units of approved end products delivered to each eligible recipient agency during the reporting period and the number of pounds of each donated food represented by these delivered end products; (vi) Donated-food inventory at the end of the reporting period; (vii) Number of pounds of each donated food represented in sales to distributors; (viii) Number of pounds of each donated food represented in sales to distributors but not delivered to eligible recipient agencies; (ix) List of all contracting agencies and their locations with which the processor has processing contracts; (x) In instances in which sales verification has been delegated to the processor pursuant to § 250.19(c)(2), sales verification findings shall be reported to the distributing agency as an attachment to the September, December, March and June performance reports in whatever format the distributing agency deem necessary; and (xi) A certification statement that sufficient donated foods are in inventory or on order to account for the quantities needed for production of end products for State processing contracts and that the processor has on hand or on order adequate quantities of foods purchased commerically to meet the processor's production requirements for commerical sales.

(2) Distributing agencies shall review and analyze reports submitted by processors to ensure that performance under each contract is in accordance with the provisions set forth in this section.

(n) *Inventory controls.* (1) Distributing agencies shall monitor processor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a six-month supply based on the processor's average monthly usage, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Under no circumstances should the amount of donated foods ordered by the contracting agency for processing purposes be in excess of anticipated usage or beyond the processor's ability to accept and store the donated foods at any one time. Distributing agencies shall make no further distribution to processors whose inventories exceed these limits until such inventories have been reduced.

(2) Processors shall complete and submit annual reconciliation reports to distributing agencies within 90 days

following the end of the agreement period. As a part of this annual reconciliation, processors shall pay distributing agencies for the contract value of donated foods (i) for any donated foods for which a timely refund application has not been submitted in accordance with paragraph (k) of this section and (ii) for inventories in excess of a six-month supply. In instances when the distributing agency has assigned an inventory level other than a six-month level, the processor shall pay the contract value of any donated food in excess of that level.

(3) Distributing agencies shall certify the accuracy of the annual reconciliation report and forward it to the ENSRO. All monies shall be used in accordance with § 250.15(f)(1).

(4) Distributing agencies shall not submit food requisitions for processors reporting no sales activity during the prior year's contract period unless documentation is submitted by the processor which outlines specific plans for proudct promotion or sales expansion.

(o) *Processing inventory reports.* Distributing agencies shall submit to the FNSRO not later than 60 days following the close of each Federal fiscal quarter a report showing separately for each processor under agreement with contracting agencies within the State: (1) The donated-food inventory at the beginning of the previous quarter; (2) amounts of donated foods received during the quarter; (3) amount of donated foods transferred to and/or from existing inventory; (4) amounts of donated foods used during the quarter; (5) inventory at the close of the quarter; and (6) each contracting agency and its location with which the processor has processing contracts.

(p) *Cooperation with administering agencies for child nutrition programs.* If the distributing agency which enters into or approves contracts for end products to be used in a child nutrition program does not also administer such program, it shall collaborate with the administering agency by (1) giving that agency an opportunity to review all such contracts to determine whether end products to be provided contribute to required nutritional standards for reimbursement under the applicable regulations for such program (7 CFR Parts 210, 225, and 226) or are otherwise suitable for use in such program; (2) consulting with that agency with regard to the labeling requirements for the end products; and (3) otherwise requesting technical assistance as needed from that agency.

(1) *FNSRO review of contracts and inventory reports.* The FNSRO shall (1) review all processing contracts and provide guidance, including written recommendations for termination, where necessary, to distributing agencies concerning any contracts which do not meet the requirements of this section; (2) allow distributing agencies 30 days to respond to any recommendation concerning contracts not meeting the requirements of this section; (3) review and analyze the processing inventory reports required by paragraph (o) of this section to ensure that no additional donated foods shall be distributed to processors with excess inventories until such inventories have been reduced; (4) assist distributing agencies in reducing such inventories; and (5) review annual reconciliation reports required by paragraph (n) of this section and ensure that payments for outstanding refund applications or excessive inventories have been made.

(r) *Availablity of copies of processing contracts.* Contracts entered into in accordance with this sectfon are public records and FNS will provide copies of such contracts to any person upon request. The FNSRO will retain copies of processing contracts submitted by distributing agencies for a period of three years from the close of the Federal fiscal year to which they pertain.

(s) *Processing activity guidance.* Distributing agencies shall develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors. Distributing agencies must revise these materials as necessary to reflect policy and regulatory changes. This guidance material shall be provided to contracting agencies, recipient agencies and processors at the time of the approval of the initial agreement by the distributing agency, when there have been regulatory or policy changes which necessitate changes in the guidance materials, and upon request. The manual shall include, at a minimum, statements of the distributing agency's policies and procedures on (1) contract approval, (2) monitoring and review of processing activities, (3) recordkeeping and reporting requirements, (4) inventory controls, and (5) refund applicatfons.

(t) *Funding.* Distributing agencies which operate a processing program are eligible to receive State administrative expense funds to defray costs associated with the processing of donated foods for use in child nutrition programs in accordance with State Administrative Expense Funds Regulations (7 CFR Part 235)

(Approved by the Office of Management and Budget under control number 0584-0007)

Subpart D—Eligible Recipient Agencies and Programs

§ 250.40 Nonprofit summer camps for children.

(a) *Distribution.* (1) The distributing agency shall distribute donated foods only to those summer camps which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement the summer camp shall provide verification of its tax-exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), the written agreement shall, at a minimum, include: (i) The name and location of the summer camp(s); (ii) Number of camps or sites; (iii) Number of sessions to be offered during camping season; (iv) Number of adults and children participating in the activities of the summer camp at each session; (v) Total number of days meals will be served; (vi) Number of meals to be served daily; (vii) Assurance that tax-exempt status will be maintained; (viii) Indication of whether the summer camp(s) will employ the services of a food service management company; (ix) Assurance that a brochure or public announcement of open admission policy will be provided and that the summer camp agrees to maintain racial/ethnic data; (x) Assurance that a physical inventory will be conducted and an inventory report submitted to the State distributing agency at the end of the camping session; and (xi) Assurance that any excess inventory will be returned.

(2) Distributing agencies shall distribute donated foods only after determining that the number of adults participating in camp activities, as compared with the number of children under 18 years of age, is not unreasonable in light of the nature of the camp and the characteristics of the children in attendance. Persons 18 years of age and over, including program directors, counselors, and others who engage in recreational, educational, and direct administrative functions, are to be considered as adults participating in the activities of a summer camp. Employees whose presence on camp premises is solely for the purpose of performing duties such as cooking, gardening, property maintenance, or similar support functions are not considered as adults participating in summer camp activities. In addition, persons such as nurses, therapists, and attendants who perform professional, supervisory, or custodial services are not considered as

adults participating in the activities of a summer camp if they perform services essential to the participation of mentally, emotionally, or physically handicapped children.

(3) Distributing agencies shall redonate all donated foods remaining in summer camps at the end of the camping seasons to other recipient agencies eligible to receive that type of donated food.

(4) Nonprofit summer camps for children may employ food service management companies to conduct food service operations in accordance with Section 250.12(c).

(b) *Quantities and value of donated foods.* Distribution of donated foods to eligible summer camps shall be made on the basis of the average number of meals to be served daily to children as evidenced by the most recent written caseload factor information contained in the agreement.

(c) *Types of donated foods authorized for donation.* Nonprofit summer camps for children are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

§ 250.41 Charitable institutions.

(a) *Distribution.* (1) The distributing agency shall distribute donated foods only to those charitable institutions which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement the charitable institution shall provide verification of the institution's tax-exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), written agreements shall, at a minimum, include: (i) The name and location of the charitable institution; (ii) Assurance that tax-exempt status will be maintained; (iii) Total number of days meals will be served; (iv) Average daily number of participants; (v) Number of meals to be served daily to needy persons; (vi) Financial data that show the total annual amount of funds received by the institution that are derived, respectively, from (A) subsidized income and (B) nonsubsidized income. For the purpose of this section "subsidized income" shall mean income from public tax funds which are provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax-exempt contributions which are provided for the care of participants which the institution has determined to be in need of financial assistance. "Nonsubsidized income" shall mean all other income, including payments made by institutional participants for services received and payments made on behalf of participants by persons legally responsible for their support; (vii) Assurance that at a minimum increases or decreases of 10 percent in population or income will be reported to the distributing agency; (viii) Indication of whether the charitable institution will employ the services of a food service management company to conduct its food service operations; (ix) Assurance that proper inventory controls will be maintained; and (x) Assurance that all reports will be submitted as required by the distributing agency.

(2) Adult correctional institutions are eligible to receive donated foods as charitable institutions, to the extent that needy persons are served, if they conduct rehabilitation programs that are: (i) Available to either a majority of the total inmate population (including inmates awaiting trial or sentencing) or to a majority of sentenced inmates; and (ii) of sufficient scope to permit participation for a minimum of 10 hours per week per inmate by either a majority of the total inmate population or a majority of sentenced inmates. Prior to executing an agreement for donation of foods to an adult correctional institution, the distributing agency shall require the institution's director or other responsible official to provide a written statement certifying that the institution conducts such rehabilitation programs. The statement shall be reviewed annually and maintained as part of the agreement.

(3) Charitable institutions may employ food service management companies to conduct food service operations in accordance with Section 250.12(c).

(b) *Quantities of donated foods.* Distribution of donated foods to eligible charitable institutions shall be made on the basis of the average number of meals served daily to needy persons. To determine the number of needy persons being served, the distributing agency shall determine the proportion of subsidized income by dividing the subsidized income by the total subsidized and nonsubsidized income (as defined in paragraph (a) of the section) and multiplying that number by the average daily number of participants. The distributing agency shall use the income and average daily participation figures reflected in the agreement in determining the number of needy persons being served by the institution in accordance with the above formula. Income and participation figures shall be based on the institution's records for the previous year and shall be adjusted, at a minimum, any time the population or income increases or decreases by ten percent. The distributing agency shall develop a system to review and update caseload factor information by September 30 of each fiscal year.

(c) *Types of donated foods authorized for donation.* Charitable institutions are eligible to receive donated foods under section 416, section 32, section 4(a), and section 709.

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§ 250.42 Nutrition programs for the elderly.

(a) *Distribution.* Distributing agencies shall enter into an agreement with the State Agency on Aging responsible for administering programs funded under Titles III or VI of the Older Americans Act of 1965 in accordance with § 250.12(b) unless that State Agency on Aging has elected to receive all cash in lieu of donated foods. Distributing agencies shall distribute donated foods only to nutrition programs for the elderly which have entered into such an agreement. Food service management companies may be employed to conduct food service operations in accordance with §250.12(c).

(b) *Quantities and value of donated foods*—(1) *Quantities.* Distribution of donated foods to nutrition programs for the elderly shall be based on the level of assistance per meal as required by the Older Americans Act of 1965, as amended, and on the number of eligible meals served within the State as evidenced by written caseload factor information provided by the State Agency on Aging.

(2) *Value.* (i) For the fiscal year ending September 30, 1979, and each fiscal year thereafter, the quantity of donated foods to be made available to each State Agency on Aging for distribution to nutrition programs for the elderly shall be valued at not less than 30 cents for each meal which such State Agency on Aging, in accordance with regulations and guidelines authorized by the Commissioner on Aging, United States Department of Health and Human Services, reports as having been served or, where necessary, estimates will be served within the State or to Indian Tribal Organizations during the year. The value of donated foods to be distributed to nutrition programs for the elderly, or, where applicable, the amount of cash payments will be adjusted on an annual basis to reflect changes in the series for food away from home of the Consumer Price Index for all urban consumers published by the

Bureau of Labor Statistics of the Department of Labor: *Provided, however,* That (A) this quantity will be reduced to the extent that a State Agency on Aging elects to receive cash in lieu of donated foods in accordance with paragraph (c) of this section and (B) the quantity of donated foods to be provided to any State Agency on Aging for any Federal fiscal year shall not be adjusted on the basis of meal reports or estimates submitted after July 1 of such fiscal year. (ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, in any fiscal year in which compliance with paragraph (b)(2)(i) of this section costs more than the amounts authorized to be appropriated under the Older Americans Act of 1965, as amended for that fiscal year, the Secretary shall reduce the cents per meal level determined pursuant to paragraph (b)(2)(i) of this section for that fiscal year as necessary to meet the authorization of appropriations for that fiscal year. If such action is necessary, the per meal level will be reduced uniformly for each meal served during that fiscal year.

(c) *Cash in lieu of donated foods.* (1) Any State Agency on Aging may, for the purposes of the programs authorized by Titles III and VI of the Older Americans Act of 1965, as amended, elect to receive cash payments in lieu of all or any portion of the donated foods that it would otherwise receive under paragraph (b) of this section during any Federal fiscal year.

(2) When a State Agency on Aging elects to receive cash payments in lieu of donated foods, that election shall be binding on the State Agency on Aging for the Federal fiscal year to which it pertains, and FNS shall make cash payments to the State Agency on Aging equivalent in value to the donated foods that would otherwise have been provided. Cash payments shall be made for each Federal fiscal quarter by means of Letters of Credit issued by FNS through the appropriate U.S. Treasury Regional Disbursing Office or, where applicable, by means of U.S. Treasury checks, based on the best data available to FNS as to the number of meals to be served by nutrition programs for the elderly administered by each State Agency on Aging during that fiscal quarter.

(3) In instances when it is necessary to reduce the annual level of assistance specified in paragraph (b)(2)(i) of this section, the level will be reduced in accordance with paragraph (b)(2)(ii) of this section. Once it has been established that the reduced per meal level will be sufficient to avoid any further adjustment, any remaining (up to the level of assistance specified in paragraph (b)(2)(i) of this section) funds will be disbursed so that each State will receive an equal amount on a per meal basis.

(4) To be eligible for reimbursement by FNS, claims for cash payment for meals served by nutrition programs for the elderly shall be submitted by State Agencies on Aging and Indian Tribal Organizations no later than 90 days following the close of the Federal fiscal quarter for which payment is claimed.

(5) The State Agency on Aging desiring to receive funds under this paragraph shall enter into a written agreement with FNS pursuant to § 250.12(a) to: (i) Promptly and equitably disburse any cash it receives in lieu of donated foods to nutrition programs for the elderly after consideration of the needs of such programs and the availability of other resources, including any donated foods available under paragraph (b) of this section; (ii) establish such procedures as may be necessary to ensure that the cash disbursements are used by nutrition programs for the elderly solely for the purpose of purchasing U.S. agricultural commodities and other foods of U.S. origin for their food service operations; (iii) maintain and retain for 3 years from the close of the Federal fiscal year to which they pertain complete and accurate records of (A) all amounts received and disbursed under paragraph (c) of this section and (B) the manner in which consideration was given to the needs and resources; and (iv) permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records at any reasonable time.

(6) Funds provided under paragraph (c) of this section shall be subject to the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

(d) *Types of donated foods authorized for donation.* Nutrition programs for the elderly are eligible to receive donated foods under section 416, section 32, section 311, section 709, and section 14.

§ 250.43 Disaster organizations.

(a) *Eligibility.* In instances when the Secretary has determined that a major disaster or emergency situation exists, disaster organizations are eligible to receive donated foods for distribution to disaster victims and shall remain eligible for the duration of the major disaster or emergency as determined by the Secretary. In areas where the Food Stamp Program is in operation donated foods may be distributed for household use only so long as the Secretary finds that the commercial channels of trade have been disrupted because of a major disaster or other emergency situation. Prior to providing donated foods to disaster organizations, the distributing agency shall require the disaster organization to make application for the receipt and distribution of donated foods in accordance with paragraphs (b) and (c) of this section. Such applications shall be confirmed in writing and maintained in accordance with the recordkeeping requirements of this part.

(b) *Distribution of donated foods for use in providing congregate meal service.* (1) In order to obtain donated foods for use in providing congregate meal service, disaster organizations shall request approval from the appropriate distributing agency, giving the following information to the extent possible: (i) Descriptions of disaster situation; (ii) Number of people requiring meals and congregate meal service period; (iii) Quantity and types of food needed for congregate meal service; and (iv) Number and location of sites providing congregate meal service.

(2) Following its approval of the request for donated foods, the distributing agency will make appropriate foods available to the disaster organization and within 24 hours shall report the information listed in paragraph (b)(1) of this section to the FNSRO.

(c) *Household distribution.* In order to obtain donated foods for household distribution in areas served by the Food Stamp Program when commercial food distribution channels are disrupted, the distributing agency shall request approval through the FNSRO. In the request, the distributing agency shall cite the following information: (1) Major disaster or emergency situation; (2) Number of households affected; (3) Anticipated distribution period; (4) Method of distribution available; and (5) Quantity and types of food needed for distribution.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to eligible disaster organizations based on the caseload factor information provided by the disaster organization.

(e) *Types of donated foods authorized for donation.* Disaster organizations providing major disaster or other emergency food asssistance under this part are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

(f) *Summary report.* Within 30 days following termination of the major disaster or the emergency, the distributing agency shall provide a

summary report to the appropriate FNSRO using Form FNS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* To the extent donated foods are available, FNS will replace donated foods used from the distributing agency's stocks for major disaster and emergency assistance. The distributing agency shall request the replacement of foods used for major disaster and other emergency food assistance, in writing to FNSRO, no later than 30 days following termination of the disaster or emergency.

§ 250.44 Special group food assistance programs.

(a) *Eligibility.* In situations of distress in which the need for food assistance cannot be met under other provisions of this part, and distributing agency may request, through the FNSRO, donated foods for use in special group food assistance programs. The request shall contain the following information: (1) Description of situation requiring special group food assistance; (2) Number of needy persons requiring meals; (3) Anticipated distribution period (not to exceed 30 days); (4) Quantities and types of foods needed for group food service; (5) Method of providing the special group food assistance (organization and facility); and (6) Name and address of disaster organization(s) that will conduct the special group food assistance program.

Once approval is granted by the Secretary, the distributing agency may distribute donated foods to the disaster organizations named in the request for use in conducting special group food assistance programs. Such distributions shall not exceed 30 days and shall be targeted to groups which are predominately composed of needy persons. The distributing agency and disaster organizations shall conduct any distribution under this section in accordance with instructions specified by the Secretary. The disaster organizations shall give to the distributing agency assurance that such special food assistance programs will be conducted in accordance with these instructions.

(b) *Quantities and value of donated foods.* Based on the caseload factor information contained in the request, the distributing agency shall make donated foods available to those disaster organizations named in the request.

(c) *Types of donated foods authorized for donation.* Disaster organizations providing disaster or other emergency food assistance under this part are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

(d) *Summary report.* Within 30 days following termination of the special group food assistance program, the distributing agency shall provide a summary report to the appropriate FNSRO using Form FNS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(e) *Replacement.* To the extent donated foods are available, FNS will replace donated foods used from the distributing agency's stocks for the special group food assistance program under this section. The distributing agency shall request the replacement of foods used for special group food assistance, in writing to FNSRO, no later than 30 days following termination of the special group food assistance programs.

§ 250.45 Commodity Supplemental Food Program.

(a) *Distribution.* The distributing agency shall distribute donated foods to the State agency which is designated by the State to administer the Commodity Supplemental Food Program for that State and which has entered into a written agreement with the Department for the administration of that program in accordance with 7 CFR part 247, the regulations for that program. The State agency administering the Commodity Supplemental Food Program shall distribute donated foods to local agencies for use by eligible recipients in accordance with the provisions of 7 CFR Part 247 and with the provisions of this part, and may enter into an agreement with the distributing agency for use of the distributing agency's facilities for distribution.

(b) *Quantities of donated foods.* Distribution of donated foods to the designated State agencies for the Commodity Supplemental Food Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies distributing donated foods through the Commodity Supplemental Food Program are eligible to receive such foods under section 32, 416, section 709 and section 4(a).

§ 250.46 Food Distribution Program in the Trust Territory of the Pacific Islands.

(a) *Distribution.* The distributing agency shall make donated foods available for distribution to households by those welfare agencies which certify households in accordance with a plan of operation approved by FNS, as required by paragraph (d) of this section. Distribution of donated foods to households shall be made in accordance with the approved plan of operation.

(b) *Quantities and value of donated foods.* Distribution of donated foods shall be based on the actual number of households in need of food assistance.

(c) *Types of donated foods authorized for donation.* Agencies which make distribution to needy persons are eligible to receive foods under section 416, section 32, section 709 and section 4(a).

(d) *Plan of operation.* Prior to making disribution to agencies or households, the distributing agency shall submit a plan of operation for approval by the appropriate FNSRO. Such plan shall incorporate the procedures and methods to be used in certifying households as in need of food assistance; in making distribution to households; and in providing a fair hearing to households whose claims for food assistance under the plan are denied or are not acted upon with reasonable promptness, or who are aggrieved by an agency's interpretation of any provision of the plan. No amendment to the plan of operation of the distributing agency shall be made without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. The distributing agency shall require welfare agencies making distribution to households to conduct distribution programs in accordance with all provisions of the State plan of operation. As a minimum, the plan shall include the following: (1) The name of the public welfare agency or agencies which will be responsible for certification of households; (2) The manner in which donated foods will be distributed, including, but not limited to, the identity of the agency that will distribute donated foods, the storage and distribution facilities to be used and the method of financing; (3) *The specific criteria to be used in certifying households as in need of food assistance.* The income and resource standards established by the distributing agency for use by welfare agencies in determining the eligibilty of applicant households, after October 1979, shall continue to be those standards used as of that date which were incorporated in a plan of operation approved by FNS, unless an amendment to such standard is required or approved by FNS; (4) The method or methods that will be used to verify the information upon which the certification of eligibility is based, including the kinds of documentary evidence that applicants are required to furnish to obtain certification; (5) Provisions for

periodically reviewing the certification of households to discover any change in their status which would necessitate a change in the determination of eligibility. The eligibility of households shall be reviewed at least every three months, except that such reviews may be made at longer periods, not to exceed 12 months, provided that such longer periods are based upon a determination by the certifying agency that the income and resources available to such households will probably remain essentially unchanged during such period; (6) Provisions for identifying each person who has been designated to receive donated foods for a household; (7) Assurance that the distribution of donated foods shall not be used as a means to further the political interest of any individual or party, and that there shall be no discrimination against recipients of donated foods because of race, color, national origin, sex, age or handicap; (8) Assurance that (i) citizenship or durational residence requirements shall not be imposed as a condition of eligibility and (ii) recipients shall not be required to make any payments in money, materials or services, for or in connection with the receipt of donated foods, and that they shall not be solicited in connection with the receipt of donated foods for voluntary cash contributions for any purpose; (9) The manner in which the distributing agency plans to supervise the program; and (10) Definitions of any terms used which cannot be determined by reference to Webster's New International Dictionary (third edition).

(e) *Operating expense funds*—(1) *Application for funds.* To receive administrative funds, the distributing agency shall submit Form AD–623, "Application for Federal Assistance," to the appropriate FNSRO at least three months prior to the beginning of the Federal fiscal year. Approval of the application by FNS shall be a prerequisite to payment of any funds to the distributing agency. The Department will make payments to the distributing agency to assist it in meeting operating expenses incurred in administering food distribution for needy persons.

(2) *Availability of funds.* FNS will review and evaluate the budget information submitted by the distributing agency in relationship to the distributing agency's plan of operation and any other factors which may be relevant to FNS' determination as to whether the estimated expenditures are reasonable and justified. FNS will give written notification to the distributing agency of (i) its approval or disapproval of any or all of the estimated expenditures; and (ii) the amount of funds which will be made available.

(3) *Payment of funds.* Payments shall be made to the distributing agency through a Letter of Credit or an advance by Treasury Check. These payments will be issued in accordance with Treasury Department procedures, Treasury Circular No. 1075 and through the appropriate Treasury Regional Disbursing Office (RDO).

(4) *Use of funds.* The distributing agency shall make every reasonable effort to ensure the availability of a food distribution program for needy persons in households and shall assign priority in the use of any funds received under this section to accomplish that objective. Any remaining funds shall be used to expand and improve distribution to needy households. Such funds may be used for any costs which are not disallowed under Office of Management and Budget Circular A–87 (a copy of which may be obtained from FNA) and which are incurred in distributing donated foods to households, including determining eligibility of recipients, except for the purchase cost of land and buildings. In no event shall such funds be used to pay any portion of any expenses if reimbursement or payment therefore is claimed or made available from any other Federal source.

(5) *Accounting for funds.* The distributing agency which receives administrative funds under this section shall establish and maintain an effective system of fiscal control and accounting procedures. The accounting procedures maintained by the distributing agency shall be such as to accurately reflect the receipt, expenditure and current balance of funds provided by FNS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the distributing agency. Any budget revisions by the distributing agency which require the transfer of funds from an FNS approved cost category to another shall be in accordance with the budget revision procedures set forth in Part 3015 and shall be approved by FNS prior to any transfer of funds.

(6) *Return, reduction and reallocation of funds.* (i) FNS may require the distribution agency to return prior to the end of the Federal fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to the distributing agency if FNS determines that: (A) The distributing agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FNS and the provisions of this part; (B) The amount of funds which the distributing agency requested from FNS is in excess of actual need, based on reports of expenditures and current projections of program needs; or (C) Circumstances or conditions justify the return, reallocation or transfer of funds to accomplish the purpose of this part.

(ii) The distributing agency shall return to FNS within 90 days following the close of each Federal fiscal year any funds received under paragraph (e) of this section which are unobligated at that time.

(7) *Financial reports.* The distributing agency shall submit quarterly and annual reports to FNS on Form SF–269 concerning the obligations, expenditure and status of funds received under this section. In addition, the distributing agency receiving funds under paragraph (e) of this section shall submit any other reports in such form as may be required from time to time by the Department.

(f) *Records, reports and audits.* The distributing agency shall (1) maintain, and retain for three years from the close of the Federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under paragraph (e) of this section, (2) keep such accounts and records as may be necessary to enable FNS to determine whether there has been compliance with this section, and (3) permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records and accounts at any reasonable time.

§ 250.47 Food Distribution Program on Indian Reservations.

(a) Distributing agencies which operate a food distribution program on an Indian reservation shall comply with the provisions set forth in §§ 250.1, 250.2, 250.3, 250.10, 250.11, 250.12, 250.13 (with the exception of paragraph (d)(2)), §§ 250.14, 250.15 and 250.30.

(b) In addition to complying with the provisions identified in paragraph (a) of this section, distributing agencies shall also comply with the provisions set forth in Part 253, Food Distribution Program on Indian Reservations.

§ 250.48 Schools or school food authorities and commodity schools.

(a) *Distribution.* Schools or school food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter or the School Breakfast Program under Part 220 of this chapter are eligible to receive donated foods.

The distributing agency shall distribute donated foods only to those schools whose eligibility for participation in the program has been confirmed in writing by the State agency or FNSRO administering the applicable program. Lists of participating schools which have been provided to the distributing agency by the administering State agency or FNSRO may serve as written confirmation of eligibility. Schools or school food authorities may employ food service management companies to conduct food service operations in accordance with Section 250.12(c) and Parts 210 and 220 of this chapter.

(b) *Quantities and value of donated foods*—(1) *Quantities.* Distribution of donated foods to school which participate in the National School Lunch Program or as commodity schools under Part 210 shall be made on the basis of the average daily number of meals to be served which meet the meal-type requirements prescribed in the regulations for the National School Lunch Program under Part 210 of this chapter, as evidenced by the most recent written caseload factor information provided by the administering State agency or FNSRO. The distributing agency shall develop a system to review and update caseload factor information by June 30 and December 30 of each year.

(2) *Value.* (i) For each school year, the national average value of donated foods to be made available to States for distribution to schools participating in the National School Lunch Program (7 CFR Part 210), or where applicable, cash payments in lieu thereof, shall not be less than 11 cents for each lunch and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for Food Used in Schools and Institutions prescribed by section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective as of the beginning of each school year. Not less than 75 percent of the food distribution assistance shall be in the form of donated foods. (ii) For each school year, the national average value of donated foods to be provided to States for distribution to commodity schools shall not be less than the amount specified in paragraph (b)(2)(i) of this section, plus an amount equal to the national average payment established under section 4 of the National School Lunch Act as amended, for each lunch served by such schools: *Provided, however,* That this amount shall be reduced to the extent that FNS provides up to 5 cents per lunch of this value in cash in lieu of donated foods for donated-food processing and handling expenses on behalf of such schools, in accordance with Part 240 of this chapter.

(c) *Cash in lieu of donated foods for schools.* Where a State has phased out its food distribution facilities prior to July 1, 1974, such State may, in accordance with Part 240 of this chapter, elect to receive cash payments in lieu of donated foods for use in school lunch programs which participate in the National School Lunch Program under Part 210 of this chapter.

(d) *Types of donated foods authorized for donation.* Schools or school food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14. Schools or school food authorities which participate in the School Breakfast Program under Part 220 are eligible to receive donated foods under section 416, section 32, section 709 and section 14.

(e) *Refusal of donated foods by school food authorities.* (1) Any school food authority participating in food service programs under the National School Lunch Act, as amended, may refuse, at the time they are offered, donated foods and other foods offered for delivery for lunches in any school year if such foods cannot be used effectively. The school food authority may receive, in lieu of the refused donated foods, other donated foods to the extent that they are available during the school year: *Provided, however:* That not more than 20 percent of the value of the donated foods offered to a school food authority for lunches during the school year shall be subject to replacement with other available donated foods unless replacement based on the refusal of more than 20 percent of such value is feasible and practical.

Prior to making distribution to schools, distributing agencies shall notify each school food authority of its right to refuse delivery and to receive other donated foods, if available, in lieu of those refused. Notification of donated food refusal rights shall be provided by means of a letter or by an addenum to the agreement required by Section 250.12(b) to each school food authority prior to the beginning of each school year.

(2) If the distributing agency demonstrates on the basis of existing records that it is maintaining an effective offer-and-acceptance system as defined in § 250.3, there can be no refusal of donated foods as provided in paragraph (e)(1) of this section.

(f) *Use of donated foods in home economics courses.* Schools or school food authorities receiving donated foods under this part may use such foods for the purpose of training students in home economics, including college students if the same facilities and instructors are used for training both high school and college students in home economics courses. Home economics includes classes in general home economics, food purchases, nutrition, food preparation, cooking, child care and health.

§ 250.49 Nonresidential child care institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those nonresidential child care institutions whose eligibility for participation in the Child Care Food Program has been confirmed in writing by the State agency or FNSRO administering the program, where applicable. Lists of participating nonresidential child care institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility. Nonresidential child care institutions may employ food service management companies to conduct food service operations in accordance with § 250.12(c) and Part 226 of this chapter.

(b) *Quantities and value of donated foods*—(1) *Quantities.* Distribution of donated foods to nonresidential child care institutions shall be made on the basis of the average daily number of lunches and suppers to be served which meet the meal-type requirements prescribed in the regulations for the Child Care Food Program under Part 226 of this chapter, as evidenced by the most recent written caseload factor information provided by the administering State agency or FNSRO. The distributing agency shall develop a system to review information by June 30 and December 30 of each year.

(2) *Value.* For each school year, the national average value of donated foods to be made available to States for distribution to nonresidential child care institutions, or cash payments in lieu thereof, shall not be less than 11 cents for each lunch and supper and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for Food Used in Schools and Institutions prescribed by section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective at the beginning of each school year.

(c) *Cash in lieu of donated foods.* In accordance with Part 240 of this chapter, State agencies may elect to receive cash payments in lieu of donated foods for use by institutions which participate in the Child Care Food Program under Part 226 of this chapter.

(d) *Types of donated foods authorized for donations.* Nonresidential child care institutions which participate in the Child Care Food Program under Part 226 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14.

§ 250.50 Service institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those service institutions whose eligibility to receive donated foods for use in the Summer Food Service Program under Part 225 of this chapter has been confirmed in writing by the State agency or FNSRO administering the program, where applicable. Lists of participating service institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility. Service institutions may employ food service management companies to conduct food service operations in accordance with Section 250.12(c) and Part 225 of this chapter.

(b) *Quantities and value of donated foods.* Distribution of donated foods to service institutions shall be made on the basis of the average daily number of meals to be served which meet the meal-type requirements prescribed in the regulations for the Summer Food Service Program for Children under Part 225 of this chapter as evidenced by the most recent written caseload factor information provided by the State agency or FNSRO administering the program by April 30 of each year.

(c) *Types of donated foods authorized for donation.* Service institutions which participate in the Summer Food Service Program for Children under Part 225 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, and section 14.

§ 250.51 Special Supplemental Food Program for Women, Infants, and Children.

(a) *Distribution.* At the request of the State agency responsible for administering the Special Supplemental Food Program for Women, Infants, and Children (WIC Program) under Part 246 of this chapter and with approval of the Department, donated foods may be made available for distribution to program participants. In instances when donated foods are made available, State agencies shall pay the Department using funds allocated to the State for the WIC Program for those donated foods which are provided to participants as part of the food package. Donated foods which are provided to participants in addition to the quantities authorized for the food package will be made available to the State agency free of charge.

(b) *Quantities and value of donated foods.* Distribution of donated foods to State agencies for the WIC Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies participating in the Special Supplemental Food Program for Women, Infants, and Children under Part 246 of this chapter are eligible to receive donated foods under section 416 and section 32.

Subpart E—Where to Obtain Information

§ 250.60 Program information.

Interested persons desiring information concerning the program may make written request to the following Regional Offices:

(a) Northeast Region, Food and Nutrition Service, USDA, 33 North Avenue, Burlington, Massachusetts 01803, for the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

(b) Mid-Atlantic Region, Food and Nutrition Service, USDA, Mercer Corporate Park, Corporate Blvd, CN 02150, Trenton, New Jersey 08650, for the following States: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia.

(c) Southeast Region, Food and Nutrition Service, USDA, 1100 Spring Street, NW, Atlanta, Georgia 30367, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(d) Midwest Region, Food and Nutrition Service, USDA, 50 East Washington Street, Chicago, Illinois 60602, for the following States: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

(e) Mountain Plains Region, Food and Nutrition Service, USDA, 2420 West 26th Avenue, Room 400–D, Denver, Colorado 80211, for the following States: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

(f) Southwest Region, Food and Nutrition Service, USDA, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75202, for the following States: Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

(g) Western Region, Food and Nutrition Service, USDA, 550 Kearney Street, Room 400, San Francisco, California 94108 for the following States: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory, and Washington.

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: August 12, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85–19594 Filed 8–16–85; 8:45 am]

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 884

Obstetrical-Gynecological Devices; Premarket Approval of the Contraceptive Intrauterine Device (IUD) and Introducer; Proposed Rule; Opportunity To Request Change in in Classification

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 84N-0375]

Obstetrical-Gynecological Devices; Premarket Approval of the Contraceptive Intrauterine Device (IUD) and Introducer

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the contraceptive intrauterine device (IUD) and introducer, a medical device. The agency also is summarizing its proposed findings on (1) the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and (2) the benefits to the public from the use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Comments by October 18, 1985; requests for change in classification by September 3, 1985.

ADDRESS: Written comments or requests for a change in classification are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION:

Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: class I, general controls; class II, performance standards; or class III, premarket approval. As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been, or are being, classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, establish a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515 of the act, to premarket approval. As an alternative procedure for premarket approval, section 515(f) of the act provides for development of a PDP, the last stage of which is for FDA to declare that the PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or a notice of completion of a PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR Part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. A device that was not in commerical distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing (1) the proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate a proceeding to reclassify the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f) of the act mandates that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule, or 30 months after final classification of the device, whichever is later. If a PMA or notice of completion of a PDP for such a device is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334). Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976).

Classification of the Contraceptive Intrauterine Device (IUD) and Introducer

In the **Federal Register** of February 26, 1980 (45 FR 12711), FDA issued a final rule (21 CFR 884.5360) classifying the IUD and introducer into class III. The

preamble to the proposal to classify the device (44 FR 19959; April 3, 1979) included the recommendation of the Obstetrics-Gynecology Devices Panel (formerly the Obstetrical and Gynecological Device Classification Panel) (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the IUD and introducer. The preamble to the final rule classifying the device advised that the date by which a PMA for the device (or notice of completion of a PDP) could be required was September 30, 1982, or 90 days after promulgation of a rule requiring premarket approval for the device, whichever occurred later.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA puublished a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using these factors, FDA has determined that the IUD and introducer, identified in § 884.5360(a), has a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the IUD and introducer have an approved PMA or a PDP that has been declared completed.

Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the IUD and introducer within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the IUD and introducer during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device, within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will stipulate that as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c) (1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any IUD and introducer (1) which is not legally on the market on or before that date or (2) which is legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the IUD and introducer is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

Description of Device

The IUD is a device used to prevent pregnancy. The device is placed high in the uterine fundus with a string extending from the device through the cervical os into the vagina. An introducer is considered part of the device. This generic type of device does not include IUD's that function by drug activity and therefore achieve their intended purpose through chemical action; such IUD's are subject to the new drug provisions of the act.

The proposed rule to require premarket approval of IUD's and introducers applies only to the IUD's and introducers that were being commercially distributed before May 28, 1976, and to devices introduced into commercial distribution since that date that have been found to be substantially equivalent to such IUD's. The two IUD's that currently meet these criteria and are therefore subject to this proposed rule are the Lippes Loop (manufactured by Ortho Pharmaceutical Corp., Rariton, NJ 08869), and the Saf-T-Coil (manufactured by Julius Schmid, Inc., Little Falls, NJ 07424, but not currently being marketed). Each of these devices is linear in design and is made of plastic materials. Based on the similarity in design and materials and the available published scientific evidence, FDA believes that the risks associated with these devices have been demonstrated to be relatively similar.

Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding (1) the degree of risk of illness or injury designed to be eliminated or reduced by requiring the IUD and introducer to have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the device.

Degree of Risk

In response to increased incidence of septic spontaneous abortions associated with the Dalkon Shield, in October 1974, FDA's ad hoc Obstetrics and Gynecology Advisory Committee (composed of the then Panel on Review of Obstetrical and Gynecological Devices and the Obstetrics and Gynecology (Drugs) Advisory Committee), after an open hearing and review of all available data, concluded that IUD's have been shown by extensive use and studies to be a relatively safe and reliable means of contraception and that they compare favorably with the standard in this field, namely oral contraceptives (Ref. 47). Nevertheless, the ad hoc committee also stated that limited data on IUD's suggest that certain serious hazards related to IUD use may exist. The ad hoc committee concluded, therefore, that the potential hazards of all IUD's should be evaluated.

In 1979, the Panel considered the appropriate classification of the IUD. After reviewing all available literature on IUD's the Panel recommended that the device be classified into class III (44 FR 19960; April 3, 1979). The Panel based its recommendation, in part, on its conclusion that the safety and effectiveness of the device depends on its design and that it is not possible to establish an adequate performance standard for this generic type of device. The Panel also identified several risks to health associated with the use of this device. Since that time, FDA has

evaluated the risks associated with IUD use. FDA now believes that the following are significant risks associated with the use of the Lippes Loop and the Saf-T-Coil:

Pelvic inflammatory disease (PID). One of the most serious complications of the use of an IUD is infection of the internal female reproductive organs, commonly described by the term "pelvic inflammatory disease" (PID) (Refs. 4, 5, 14, 25, 45, and 48). The risk of PID is higher among IUD users, not only immediately after insertion, but also for as long as the IUD remains in place (Refs. 4, 26, and 48). The risk of PID for IUD users is 1.6 to 9.3 times higher than for nonusers (Ref. 6). Also, it has been suggested that the risk of PID is much higher in women with a history of previous PID and those who have more than one sex partner or those who frequently change partners (Ref. 31). The common sequel of PID includes loss of reproductive functions, increased incidence of ectopic pregnancy, and death (Ref. 20).

A wide variety of microorganisms are implicated as causative agents for PID (Refs. 10, 14, 16, 20, and 49). Both gonococcal and nongonococcal organisms have been isolated from PID patients. In addition, *Chlamydia trachomatis* organisms have also been implicated as major causative agents in acute salpingitis (Ref. 19).

Recently there has been an increase in the number of reports of *Actinomyces israelii*, an anerobic organism, infecting the female genital tract, particularly in women using an IUD. PID caused by *Actinomyces israelii* is clinically indistinguishable from other forms of PID (Refs. 9, 21, 22, and 37). Pelvic actinomycosis is a chronic progressive disease affecting the fallopian tubes, ovaries, and uterus (Refs. 30, 39, and 43). The onset of this disease is usually insidious and clinical symptoms may be absent until tubal involvement. If the infection is unrecognized or inadequately treated, loss of fertility may result and, in certain cases, the infection may be fatal (Ref. 28). Of particular concern is the recent observation that actinomyces organisms are found more frequently in the genital tracts of women who have used IUD's for many years than in the genital tracts of short-term users (Ref. 6).

Tubal infertility. Recent studies (Refs. 51 and 52) show that IUD use increases the risk of acute PID leading to tubal infertility. The risk of infertility varied with the type of IUD used.

Daling et al. studied the association between IUD use and tubal infertility by interviewing 150 nulligravid women with tubal infertility to determine their prior IUD use (Ref. 52). Their responses were compared with those of a matched group of women each of whom conceived her first child at the time the infertile women started trying to become pregnant. These authors found that the risk of primary tubal infertility in women who ever had used any IUD was 2.6 times that in women who never had used an IUD. The relative risk associated with the use of the Dalkon Shield was found to be 6.8 compared with 3.2 for the Lippes Loop or Saf-T-Coil and 1.9 for copper-containing (drug) IUD's.

Daling et al. also found that a history of IUD-related PID was associated with a relative risk of 3.0 for tubal infertility when compared with the risk in women who never had used an IUD and who did not have a history of PID. Further, they found that the relative risk of tubal infertility associated with an IUD in women who did not have a history of PID either before or after IUD use was 2.6 when compared with the risk in women who never had used an IUD and who did not have a history of PID. The authors concluded that their observations suggest that the absence of pelvic inflammatory symptoms cannot be relied on to indicate that a nulliparous woman who is using an IUD is not at increased risk of tubal infertility.

Cramer, et al. studied the association between IUD use and PID by comparing the contraceptive histories of 4,185 white women, of whom 283 were nulliparous women with primary tubal infertility, 69 women with secondary tubal infertility, and 3,833 women admitted for delivery (Ref. 51). The authors found the relative risk of tubal infertility associated with the use of any IUD before a first live birth was 2.0 times that in women who never had used an IUD. Users of the Dalkon Shield only had a relative risk of 3.3. Women who used the Lippes Loop or Saf-T-Coil only had a relative risk of 2.9 and women who used copper-containing IUD's had a relative risk of 1.6. In addition, these authors reported that there was not an increased risk of tubal infertility among women who used any type of IUD and who reported having only one sexual partner.

Perforation. Uterine perforation is the most serious complication associated with IUD insertion. Most perforations are believed to occur at the time of insertion. The reported incidence of uterine perforations for all IUD's including Lippes Loop and Saf-T-Coil varies from 0.0 to 8.7 per 1,000 insertions (Refs. 23, 38, and 50); although less frequent, partial perforation may also occur at the time of insertion. In this situation, the IUD may remain in the same relative position or it may ultimately pass completely beyond the confines of the uterus causing foreign body reactions, peritonitis, adhesions, and intestinal obstruction (Refs. 1 and 33).

A number of factors are related to the causation and frequency of perforation. Primary among these is the skill of the individual doing the insertion (Refs. 36 and 38). Both the level of training and the amount of experience have repeatedly been shown to be inversely related to the perforation rate (Refs. 1 and 33).

A number of anatomical abnormalities have been associated with an increased perforation rate and may be considered as relative contraindications. These include sharply anteflexed or retroverted positions of the uterus, severe cervical stenosis, certain congenital uterine abnormalities, and, according to some investigators, involution during the early postpartum period (Refs. 1, 7, 8, and 11).

Pregnancy. Pregnancy may occur either after an unnoticed expulsion or with the device still in place. Pregnancies occurring with an IUD in situ have been reported in the uterus, fallopian tubes, and ovaries (Refs. 12, 33, 34, and 35). For many years it was believed that the use of an IUD did not increase the incidence of extrauterine pregnancy (Refs. 27, 41, and 46). However, there are new data suggesting that the use of IUD's is associated with an increased risk of ectopic pregnancy and this increased incidence of ectopic gestations may be related to the increased frequency of PID in IUD users (Refs. 2, 13, 15, 33, 42, and 45). The risk of uterine and ectopic pregnancies associated with the use of the Lippes Loop and the Saf-T-Coil has been demonstrated to be similar (Ref. 35). The risk of midtrimester fetal loss increases tenfold when the pregnancy occurs with an IUD in situ (Refs. 17 and 18). Also, pregnancy with an IUD in situ increases the risk of septic midtrimester abortion endangering the life of the user (Refs. 34, 35, and 47).

Bleeding and pain. These side effects appear to be related in general to the size, shape, and position of the device relative to the size and shape of the uterine cavity (Ref. 24). Also, they have been found to depend to some degree upon the particular material of which the device is made (Ref. 18).

The bleeding associated with the IUD may be intermenstrual but more often occurs as an increase in menstrual flow. It is most common in the early months of use, often subsiding over a variable

period of time. It is believed to be due either to direct erosion into the endometrium by the device or to a generalized increase in vascularity of the entire endometrium which leads to localized hemorrhage or, perhaps, to both (Ref. 40).

Bleeding and pain occurring together have produced IUD removal rates varying from 4.0 to 14.7 per 100 women users (Ref. 33). However, the removal rates due to cramping or bleeding associated with the same device vary widely from one study to another (Refs. 3 and 29). The removal rates due to bleeding/cramping range between 9 to 12 for Lippes Loop and 4 to 15 for Saf-T-Coil per 100 women users (Ref. 33). The most serious problem that may result from increased blood loss is iron-deficiency anemia. However, recently, a case-control study of almost 4,000 women found that IUD users were at no greater risk of being hospitalized for severe vaginal bleeding than women using barrier methods or no contraceptive method. Among those hospitalized for heavy bleeding, those who were anemic were no more likely to use IUD's than those who were not anemic (Ref. 35).

Expulsion. IUD's are most likely to be expelled during the first month of use and particularly during the first post-insertion menstruation (Ref. 33). The frequency of expulsion with various devices ranges from 0.7 to 19.3 per 100 women users (Ref. 33). The expulsion rates for both Lippes Loop and Saf-T-Coil range between 7.3 to 19.3 per 100 women users (Ref. 33). However, expulsion rates tend to decline with increasing age, parity, and successive months of use (Refs. 3 and 33). Expulsion can be complete or partial. If complete expulsion of the IUD goes unnoticed, it places the woman at risk of pregnancy. The same applies to a partial displacement or expulsion into the lower uterine segment. Partial displacement may also result in an increased risk of ascending uterine infection from the vagina (Ref. 44).

Benefits of the Device

The latest study of contraceptive effectiveness showed an IUD failure rate of 4.2 per 100 married women aged 15 to 44. The failure rate was much lower among women who were in their 30's and who were careful in checking for expulsion. In women using IUD's to delay or space pregnancy, the failure rate was 5.6 percent (Ref. 34). The contraceptive effectiveness of all IUD's, including IUD's that function by drug activity, is roughly equal. In comparative studies, pregnancy rates for the loops and copper devices are within the same range—from 0 to 3.8 per 100 women at 1 year after insertion (Ref. 34). In the United States, IUD's are somewhat less effective than oral contraceptives and sterilization, but more effective than barrier methods (Table I).

TABLE I.—EFFECTIVENESS OF VARIOUS CONTRACEPTIVE METHODS [1]

Contraceptive method	Effectiveness—Pregnancies/100 women when used for 1 year
Sterilization	0.00.
Oral contraceptives	2 to 3.
IUD	1 to 6.
Condoms	3 to 36.
Diaphragm	2 to 20.

[1] Source: "Contraception: Comparing the Options," HEW Publication No. (FDA) 78-3069.

The primary advantage of IUD's is that the effectiveness of the device does not entirely depend on specific actions of the user (use effectiveness) such as taking the pill every morning or using a barrier method of contraception at each act of intercourse.

In general, morbidity and mortality rates associated with the use of IUD's remain low. In the United States, the current mortality rate is estimated to be somewhere between 1 to 10 deaths per million women-years of use (Ref. 47). IUD's are believed to be associated with higher morbidity but a lower mortality rate than oral contraceptives (Ref. 47). In terms of mortality, IUD's are about twice as safe as oral contraceptives used by young women without conditions predisposing them to circulatory disease and three to five times safer than oral contraceptives used by older women (Ref. 47). Thus, FDA believes that the IUD is a reasonable contraceptive choice.

Discussion of Risks and Benefits

FDA classified the IUD into class III in part because the safety and effectiveness of the device depends on its design; therefore, it is not possible to establish an adequate performance standard for this generic type of device. In addition, the Panel identified several risks to health associated with the use of this device (44 FR 19980). Since the time that FDA classified the device into class III, experience with the IUD throughout the world has demonstrated that within certain limits, clinical and individual factors may also have an impact on the safety and effectiveness of the device. The skill of the physician during insertion and the care and followup are essential to reduce certain risks of IUD use (Refs. 34 and 35). Based on the published scientific evidence (Ref. 35), FDA believes that with the improved techniques of insertion, training of personnel, and conscientious followup, many of the risks associated with IUD use are minimized and the effectiveness improved.

FDA has evaluated the probable risks and benefits to the public from use of the device and believes that the risks and benefits are well-documented for the Lippes Loop and the Saf-T-Coil except for four major safety issues—pelvic actinomycosis, tubal infertility, duration of IUD use, and the safety of wearing the device in situ after menopause. FDA is seeking further information on the association between tubal infertility and IUD use, and the relationship between the increased incidence of infection among IUD users, specifically actinomycosis, and long-term IUD use. Also, FDA does not have adequate information on how long a particular IUD should remain in situ, nor when an IUD should be removed because contraception is no longer necessary due to infertility, e.g., after menopause. FDA believes that this information exists but must be assembled in such a way as to enable FDA to assess long-term safety of the device.

FDA believes, therefore, that the IUD and introducer should undergo premarket approval to determine whether the risks of using the device are adequately balanced by its benefits. Applicants should submit any PMA in accordance with FDA's "Guideline for the Arrangement and Content of a PMA Application" and "Guideline for the Evaluation of Non-Drug IUD's" (available upon request from Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910). As discussed previously in this section of the preamble the effectiveness of IUD's in general and the many risks associated with their use are well-documented in the published scientific literature with the exception of four major risks. The PMA, therefore, should contain a detailed discussion with supporting clinical studies of: (i) Pelvic actinomycosis; (ii) tubal infertility; (iii) the duration that the IUD should remain in situ; and (iv) the safety of leaving the IUD in situ when contraception is no longer indicated, e.g., after menopause, including a recommendation on whether, and under what conditions, the IUD should be removed.

In addition, the submission should contain all data and information on (i) the risks known to the applicant that have not been identified in this document, (ii) the specific effectiveness

of the IUD, and (iii) summaries of all existing preclinical and clinical data from investigations on the safety and effectiveness of the device for which premarket approval is sought.

Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(iv) of the act and § 860.132 of FDA's regulations governing classification of devices (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in the preambles to FDA's proposed rules to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402, 53411; November 26, 1982).

A request for a change in the classification of the IUD and introducer is to be the in form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by September 3, 1985.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in classification of the IUD and introducer is submitted, the agency will by October 18, 1985, after consultation with the appropriate FDA advisory committee, and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and § 860.130 of the regulations.

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The following references have been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has examined the economic consequences of this proposed regulation in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the proposal would not be a major rule as specified in the Order. The agency believes that only one or two firms will be affected by this proposed rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 884

Medical devices, Obstetrical and gynecological devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for Part 884 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10; § 884.5360(d) also is issued under secs. 501, 515 and 520(g), 52 Stat. 1049–1050 as amended, 90 Stat. 552–559, 569–571 (21 U.S.C. 351, 360e, 360j(g)).

2. In Part 884, § 84.5360 is amended by adding new paragraph (d), to read as follows:

§ 884.5360 Contraceptive intrauterine device (IUD) and introducer.

. . . . .

(d) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (a date 90 days after date of promulgation of a final rule) for any IUD and introducer that was in commercial distribution before May 28, 1976, or that has on or before (a date 90 days after date of promulgation of a final rule) been found to be substantially equivalent to an IUD and introducer that was in commercial distribution before May 28, 1976. Any other IUD and introducer shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Interested persons may, on or before October 18, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before September 3, 1985, submit to the Dockets Management Branch written requests to change the classification of the IUD and introducer. Two copies of any requests are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 18, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

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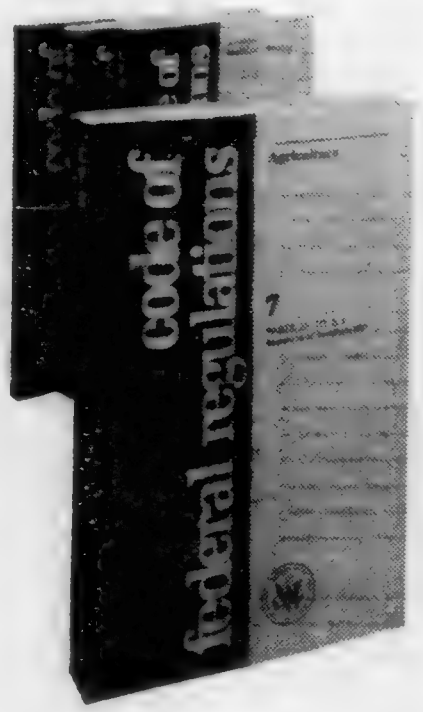
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-357]

Africanized Honey Bee

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Domestic Quarantine Notices" by adding "Africanized Honey Bee" regulations. These regulations quarantine a portion of Kern County in California because of the Africanized honey bee, and restrict the interstate movement of bees of the genus *Apis* (in any life stage) and certain other articles from the quarantined portion of Kern County. This document is necessary on an emergency basis to prevent the artificial spread of the Africanized honey bee into noninfested areas of the United States.

DATES: Effective date of this interim rule is August 15, 1985. Written comments concerning this interim rule must be received on or before October 21, 1985.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-357. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director of the National Program Planning Staff in charge of the Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period. Due to the possibility that the Africanized honey bee could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to help control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

This document amends the "Domestic Quarantine Notices" in 7 CFR Part 301 by adding "Africanized Honey Bee" regulations. These regulations quarantine a portion of Kern County in California because of the Africanized honey bee, and restrict the interstate movement of bees of the genus *Apis* (in any life stage) and certain other articles from the quarantined portion of Kern County.

The Africanized honey bee, *Apis mellifera scutellata*, is a dangerous agricultural pest. The Africanized honey bee includes bees with characteristics identifiable with subspecies *Apis mellifera scutellata* regardless of the purity of the strains of the bees. An infestation of Africanized honey bees in an area will mix with other bees in that area and produce changes in their genetic characteristics and thereby cause them to become Africanized. This process is known as "Africanization."

Africanized honey bees are very difficult to manage. Due to their nervousness, aggressiveness, and defensiveness, they are a danger to humans and animals. They also have a much greater tendency to swarm than other bees and often abscond without leaving any bees in the colony. The difficulty in managing Africanized honey bees and their tendency to abscond result in severe decreases in pollination services. This can severely damage important agricultural commodities that depend upon pollination by bees for production. These agricultural commodities include forage crops, fruits, vegetables, oil crops, and fiber crops.

An infestation of the Africanized honey bee was recently found in Kern County, California. The Africanized honey bee is not known to occur anywhere else in the United States.

Officials of the United States Department of Agriculture (USDA) and State and county agencies in California have begun an intensive Africanized honey bee survey and eradication program in the infested area in California. Also, as explained below, California has taken action to impose restrictions on the intrastate movement of certain articles from the quarantined area in order to prevent the artificial spread of the Africanized honey bee within California. However, it is also necessary to impose restrictions on the interstate movement of certain articles from the quarantined area in order to prevent the artificial spread of the Africanized honey bee to noninfested areas in other States. Accordingly, it is necessary as an emergency measure to establish Federal regulations for the purpose of preventing the artificial spread of the Africanized honey bee. These regulations are described below by section.

Section 301.94

Section 301.94 prohibits any common carrier or other person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the new regulations. A footnote has been added for informational purposes. This footnote (footnote 1) references the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to,

destroy, or otherwise dispose of regulated articles as provided in sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions (Section 301.94–1)

Section 301.94–1 contains, for informational purposes, definitions of the following terms: "Africanized honey bee," "Certificate," "Compliance agreement," "Deputy Administrator," "Infestation," "Inspector," "Interstate," "Moved," "Movement or move," "Person," "Plant Protection and Quarantine," "Quarantined area," "Regulated article," and "State." These terms are defined in accordance with definitions and authority set forth in the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee).

Regulated Articles (Section 301.94–2)

The regulations impose conditions on the interstate movement of articles which present a significant risk of spreading the Africanized honey bee if moved without restrictions from quarantined areas into or through noninfested areas. These conditions are necessary to prevent the artificial spread interstate of the Africanized honey bee by the movement of these articles. Such articles are designated as regulated articles and are prohibited from moving interstate from quarantined areas, except in accordance with conditions specified in §§ 301.94–4 through 301.94–9.

Section 301.94–2 designates the following articles as regulated articles:

(a) Bees of the genus *Apis*, in any life stage;

(b) Fresh or frozen bee sperm;

(c) Equipment, and shipping and storage containers that have been used at an apiary;

(d) Unprocessed comb;

(e) Vehicles that have been used to carry regulated articles other than fresh or frozen bee sperm; and

(f) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) through (e) of this section, when it is determined by an inspector that it presents a risk of spread of the Africanized honey bee and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions of this subpart.

Based on research and experience, the articles listed in § 301.94–2(a) through (e) as regulated articles are articles that are likely to cause the artificial spread of the Africanized honey bee. In addition, since other products, articles, or means of conveyance could, under certain circumstances, be found to present a risk of spreading the Africanized honey bee, these articles are regulated by paragraph (f). These articles would have to be determined by an inspector to present a risk on a case-by-case basis since it cannot be anticipated specifically which other products, articles, or means of conveyance, if any, would present such a risk. There is authority in sections 105 and 106 of the Federal Plant Pest Act to regulate on an emergency basis nonlisted products, articles, or means of conveyance as set forth in § 301.94–2(f). If it appears that these additional products, articles, or means of conveyance generally present a risk of spreading Africanized honey bee, an amendment to this rule to include such items in the list of regulated articles will be considered.

Quarantined Areas (Section 301.94–3)

It is necessary to designate as quarantined areas, areas in which the Africanized honey bee has been found, areas in which the Deputy Administrator has reason to believe the Africanized honey bee is present, and areas deemed necessary to regulate because of their proximity to the Africanized honey bee or their inseparability for quarantine enforcement purposes from localities where Africanized honey bees have been found.

In accordance with these criteria, it is necessary to designate as a quarantined area the following portion of Kern County in California:

That portion of the county beginning at a point where Garces Highway intersects Corcoran Road; then west along an imaginary line from said point to the northwest corner of sec. 14, T. 25 S., R. 19 E.; then south along an imaginary line from said corner to the southwest corner of sec. 35, T. 28 S., R. 19 E.; then east from said corner along an imaginary line to its intersection with Seventh Standard Road; then east along said road to the southeast corner of sec. 31, T. 28 S., R. 23 E., then north from said corner along an imaginary line to its intersection with Garces Highway; then west long said highway to the point of beginning.

Section 301.94–4

Section 301.94–4 allows regulated articles to be moved interstate from a quarantined area if accompanied by a certificate issued and attached as prescribed by §§ 301.94–5 through 301.94–9, and also allows regulated articles to be moved interstate from a quarantined area without a certificate under certain circumstances.

Section 301.94(b) allows a regulated article to be moved interstate from a quarantined area without a certificate, if:

(1) The article originated outside of any quarantined area and is moved directly through (without stopping except for brief refueling, or for normal traffic conditions, such as traffic lights or stop signs) the quarantined area;

(2) The article, if other than sperm or a vehicle, is in a bee-proof container, or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area;

(3) The article, if a vehicle, has all portions of the vehicle that had been used for carrying regulated articles (other than fresh or frozen sperm) enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(4) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

These requirements would be adequate to ensure that the regulated articles would not attract bees while moving through a quarantined area. These requirements would also be adequate to ensure that the identity of such articles is maintained while moving through a quarantined area.

Section 301.94–4(c) provides that a regulated article may be moved interstate from a quarantined area without a certificate, if:

(1) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(2) Moved pursuant to a permit issued by the Deputy Administrator;

(3) Moved in accordance with conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the dissemination of the Africanized honey bee, i.e., conditions of treatment, processing, shipment, disposal; and

(4) Moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

These requirements are in accord with the intent of the Federal Plant Pest Act to allow provisions for movement of articles pursuant to a permit. The conditions for movement are required to be specified on the permit in order to assure that they will be understood and followed.

In § 301.94–4, a footnote (footnote 2) is added to remind persons of other applicable domestic plant quarantine

and regulation requirements that need to be met during an interstate movement.

Section 301.94–5

Section 301.94–5 explains the conditions for issuing a certificate. Regulated articles accompanied by a certificate can be moved interstate to any destination.

Section 301.94–5(a) provides that a certificate shall be issued by an inspector for the interstate movement of a regulated article if the inspector:

(1)(i) Determines, if the article is a bee (usually the certificate would cover the movement of many bees), that it is not an Africanized honey bee, based on a microscopic inspection of a representative sample of the bees in the colony of origin and all other bees within 1,000 meters (3,281 feet) of the colony of origin, and has further determined that the bee is to be moved in a bee-proof container, or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth);

(ii) Determines, if the article is fresh or frozen sperm, that it is not sperm from Africanized honey bees, based on a microscopic inspection of a representative sample of the bees in the colony of origin and all other bees within 1,000 meters (3,281 feet) of the colony of origin;

(iii) Determines, if the article is equipment, a container, or unprocessed comb, that the article does not contain any bees, based on a visual examination of the article, and further determines that the article is to be moved while in the quarantined area in a bee-proof container or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth); or

(iv) Determines, if the article is a vehicle, that it does not contain any bees, based on a visual examination of the vehicle, and further determines that the vehicle is to be moved while in the quarantined area with all portions of the vehicle that had been used for carrying regulated articles (other than fresh or frozen bee sperm) enclosed or covered by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth); and

(2) Determines it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Africanized honey bee pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd);[3] and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such articles.

These provisions, other than those concerning sperm, would be adequate to ensure that the articles are free of Africanized honey bees. The provisions concerning sperm would be adequate to ensure that the sperm had not come from Africanized honey bees.

As noted above, determinations concerning the eligibility of bees and sperm to move interstate pursuant to a certificate are to be made based on inspections of representative samples of bees. Based on departmental experience, it has been determined that the provisions concerning the inspection of bees within 1,000 meters (3,281 feet) of the colony of origin would be adequate to ensure that the sampling of the colony of origin would not miss any stray Africanized honey bees that could have come from surrounding areas.

The provisions concerning the movement of articles in enclosed vehicles, in bee-proof containers, or with certain coverings are necessary as a precautionary measure to ensure that regulated articles do not attract bees. It is not necessary to include such provisions for bee sperm since bees would not be attracted to bee sperm.

A footnote (footnote 3) is added which explains that USDA can, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions against any article moving into or through the United States or interstate, or which has moved into the United States or interstate, and which is believed to be infested or infected by plant pests.

Section 301.94–5(b) allows any person who has entered into and is operating under a compliance agreement to execute and issue a certificate for the interstate movement of a regulated article once an inspector has made an initial determination that such article is eligible for a certificate in accordance with § 301.94–5(a). These initial determinations concerning the eligibility of regulated articles for issuance of a certificate are limited to inspectors because of their nature and complexity.

Also, § 301.94–5(c) contains provisions for the withdrawal of a certificate by an inspector upon a determination that the holder thereof has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.94–6

Section 301.94–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in the business of handling or moving regulated articles who agrees in writing to comply with the regulations and any conditions imposed pursuant thereto. Compliance agreements are provided for the convenience of persons who, because of their business, are involved in frequent shipments of regulated articles from quarantined areas and are designed to insure that persons issuing certificates are knowledgeable with respect to the requirements of the regulations and have agreed to comply with them.

Section 301.94–6 also provides that a compliance agreement may be cancelled by an inspector supervising its enforcement whenever the inspector finds that a person who has entered into such an agreement has failed to comply with any of the provisions of the regulations or any conditions imposed pursuant thereto. This section also contains provisions for notifying the holder of the compliance agreement of the reasons for cancellation and to provide such holder with an opportunity for a hearing to resolve a conflict as to any material fact. A footnote (footnote 4) is added to explain where compliance agreement forms can be obtained.

Sections 301.94–7, 301.94–8, and 301.94–9

Section 301.94–7 provides that any person who desires a certificate to move regulated articles should request inspection by an inspector as far in advance as possible (no less than 48 hours before the desired movement). A footnote (footnote 5) is added for informational purposes to indicate how to contact the inspectors for inspection and how to obtain additional information from offices of Plant Protection and Quarantine.

Section 301.94–8 requires the certificate issued for the movement of the regulated article to be attached to the regulated article, or to a container

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[3] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such a manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest, or which has moved into the United States, or interstate, or which he has reason to believe was infested or infected by or contained any such plant pest at the time of such movement.

carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement.

These provisions in §§ 301.94–7 and 301.94–8 are necessary for enforcement purposes and to ensure that persons desiring inspection services can arrange for them before the intended movement date.

Section 301.94–9 explains the Department's policy that services of an inspector needed in order for a person to comply with the provisions of the regulations are provided without cost during normal business hours, but that any other incidental costs or charges shall not be the responsibility of the Department.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This amendment affects the interstate movement of regulated articles from a portion of Kern County in California. The regulated articles that would be affected by this interim rule represent significantly less than 1 percent of such articles in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Africanized Honey Bee, Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended by adding a new "Subpart-Africanized Honey Bee" to read as follows:

Subpart—Africanized Honey Bee

Quarantine and Regulations

Sec.

Sec. 301.94 Restrictions on interstate movement of regulated articles.
Sec. 301.94–1 Definitions.
Sec. 301.94–2 Regulated articles.
Sec. 301.94–3 Quarantined areas.
Sec. 301.94–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
Sec. 301.94–5 Issuance and cancellation of certificates.
Sec. 301.94–6 Compliance agreement and cancellation thereof.
Sec. 301.94–7 Assembly and inspection of regulated articles.
Sec. 301.94–8 Attachment and disposition of certificates.
Sec. 301.94–9 Costs and charges.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

* * * * *

Subpart—Africanized Honey Bee

§ 301.94 Restrictions on interstate movement of regulated articles.[1]

No common carrier or other person shall move interstate from any quarantined area any regulated article except in accordance with the conditions prescribed in this subpart.

§ 301.94–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

Africanized honey bee. The insect known as *Apis mellifera scutellata* in any stage of development. This includes honey bees with characteristics identifiable with the subspecies *Apis mellifera scutellata* regardless of the purity of the genetic strains of the bees.

Certificate. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement.

Compliance agreement. A written agreement between Plant Protection and Quarantine and a person engaged in the business of handling or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

Infestation. The presence of the Africanized honey bee or the existence of circumstances that make it reasonable to believe that the Africanized honey bee is present.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of this subpart.

Interstate. From any State into or through any other State.

Moved. Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

Movement or move. The act of shipping, offering for shipment to a common carrier, receiving for transportation or transporting by a common carrier, or carrying, transporting, moving, or allowing to be moved by any means.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.

Quarantined area. Any State, or any portion thereof, listed in § 301.94–3(c) or otherwise designated as a quarantined area in accordance with § 301.94–3(b).

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Regulated article. Any article listed in § 301.94–2 or otherwise designated as a regulated article in accordance with § 301.94–2(f).

State. Each of the several States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other Territories and Possessions of the United States.

§ 301.94–2 Regulated articles.

(a) Bees of the genus *Apis,* in any life stage;

(b) Fresh or frozen bee sperm;

(c) Equipment, and shipping and storage containers that have been used at an apiary;

(d) Unprocessed comb;

(e) Vehicles that have been used to carry regulated articles other than fresh or frozen bee sperm; and

(f) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) through (e) of this section, when it is determined by an inspector that it presents a risk of spread of the Africanized honey bee and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions of this subpart.

§ 301.94–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a quarantined area in paragraph (c) of this section, each State, or each portion thereof, in which the Africanized honey bee has been found by an inspector, or in which the Deputy Administrator has reason to believe that the Africanized honey bee is present, or each portion of a State which the Deputy Administrator deems necessary to regulate because of its proximity to the Africanized honey bee or its inseparability for quarantine enforcement purposes from localities in which the Africanized honey bee occurs. Less than an entire State will be designated as a quarantined area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a quarantined area will otherwise be adequate to prevent the artificial interstate spread of the Africanized honey bee.

(b) The Deputy Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonquarantined area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The area described below is designated as a quarantined area:

California

Kern County. That portion of the county beginning at a point where Garces Highway intersects Corcoran Road; then west along an imaginary line from said point to the northwest corner of sec. 14, T. 25 S., R. 19 E., then south along an imaginary line from said corner to the southwest corner of sec. 35, T. 28 S., R. 19 E., then east from said corner along an imaginary line to its intersection with Seventh Standard Road; then east along said road to the southeast corner of sec. 31, T. 28 S., R. 23 E.; then north from said corner along an imaginary line to its intersection with Garces Highway; then west along said highway to the point of beginning.

§ 301.94–4 Conditions governing the interstate movement of regulated articles from quarantined areas.[2]

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate issued and attached in accordance with §§ 301.94–5 and 301.94–8;

(b) Without a certificate, if:

(1) The article originated outside of any quarantined area and is moved directly through (without stopping except for brief refueling, or for normal traffic conditions, such as traffic lights or stop signs) the quarantined area;

(2) The article, if other than sperm or a vehicle, is in a bee-proof container, or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area;

(3) The article, if a vehicle, has all portions of the vehicle that had been used for carrying regulated articles (other than fresh or frozen sperm) enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(4) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

(c) Without a Certificate, if:

(1) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(2) Moved pursuant to a permit issued for such article by the Deputy Administrator;

(3) Moved in accordance with conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the dissemination of the Africanized honey bee, i.e., conditions of treatment, processing, shipment, disposal; and

(4) Moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

§ 301.94–5 Issuance and cancellation of certificates.

(a) A certificate shall be issued by an inspector for the interstate movement of a regulated article if such inspector:

(1)(i) Determines, if the article is a bee (usually the certificate would cover the movement of many bees), that it is not an Africanized honey bee, based on a microscopic inspection of a representative sample of the bees in the colony of origin and all other bees within 1,000 meters (3,281 feet) of the colony of origin, and has further determined that the bee is to be moved in a bee-proof container, or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth);

(ii) Determines, if the article is fresh or frozen sperm, that it is not sperm from Africanized honey bees, based on a microscopic inspection of a representative sample of the bees in the colony of origin and all other bees within 1,000 meters (3,281 feet) of the colony of origin;

(iii) Determines, if the article is equipment, a container, or unprocessed comb, that the article does not contain any bees, based on a visual examination of the article, and further determines that the article is to be moved while in the quarantined area in a bee-proof container or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth); or

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(iv) Determines, if the article is a vehicle, that it does not contain any bees, based on a visual examination of the vehicle, and further determines that the vehicle is to be moved while in the quarantined area with all portions of the vehicle that had been used for carrying regulated articles (other than fresh or frozen bee sperm) enclosed or covered by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth); and

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Africanized honey bee pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C., 150dd);[3] and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such articles.

(b) Certificates for use for movement of regulated articles may be issued by an inspector or person engaged in the business of handling or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) of this section.

(c) Any certificate which has been issued or authorized may be withdrawn by an inspector, orally or in writing, if such inspector determines that the holder thereof has not complied with any conditions under the regulations for the use of such document. If the cancellation is oral, the decision and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.94–6 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of handling or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.[4] The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any conpliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.94–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates under § 301.94–5), who desires to move interstate a regulated article accompained by a certificate shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector[5] to take necessary action under this subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

§ 301.94–8 Attachment and disposition of certificates.

(a) A certificate required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document: *Provided however,* that the requirements of this section may be met by attaching the certificate to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate or shipping document to identify such article.

(b) The certificate for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.94–9 Costs and charges.

The service of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the regulations in this subpart, other than for the services of the inspector.

Done at Washington, D.C., this 15th day of August, 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–19819 Filed 8–19–85; 8:45 am]

BILLING CODE 3410-34-M

[3] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to destroy, or otherwise dispose of, in such a manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest, or which has moved into the United States, or interstate and which he has reason to believe was infested or infected by or contained any such plant pest at the time of such movement.

[4] Compliance Agreement forms are available without charge from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).

[5] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

7 CFR Part 301

[Docket No. 85-358]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on April 25, 1985, which amended the witchweed quarantine and regulations by adding areas in 7 counties in North Carolina to the list of suppressive areas, and by deleting 1 county and areas in 12 counties in North Carolina, and areas in 2 counties in South Carolina from the list of suppressive areas, and by making certain other nonsubstantive, editorial changes. This rule is necessary in order to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: August 20, 1985.

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

An interim rule published in the **Federal Register** on April 25, 1985, (50 FR 16209-16218) amended § 301.80-2a of the witchweed quarantine and regulations (7 CFR 301.80 *et seq.*). The interim rule amended the quarantine and regulations by adding areas in 7 counties in North Carolina to the list of suppressive areas, and by deleting 1 county and areas in 12 counties in North Carolina, and areas in 2 counties in South Carolina from the list of suppressive areas. In addition, the interim rule made certain other nonsubstantive, editorial changes. The interim rule became effective on the date of publication.

Comments were solicited for 60 days after publication of the interim rule. No comments were received in response to the interim rule. The factual situations which were set forth in the document of April 25, 1985, still provide a basis for the amendments made by the interim rule. Accordingly, it has been determined that the amendments should remain effective as published in the **Federal Register** on April 25, 1985.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule". Based on information compiled by the Department, it has been determined that this rule will have an annual effect on the economy of approximately $300; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, it has been determined that there are approximately 290,000 small entities that move regulated articles interstate from North Carolina and South Carolina, and many hundreds of thousands of small entities that move such articles interstate from other State. However, it has been determined that only 20 entities in North Carolina and South Carolina move regulated articles interstate from the areas that will be affected by this action. Further, the overall economic impact from this action is estimated to be only about $300.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 50 FR 16209-16218 on April 25, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 150ee, 161, 162; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 15th day of August 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-19871 Filed 8-19-85; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 51

[Docket No. 85-076]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the payment of indemnity for animals destroyed because of brucellosis by adding a bred association to the list of registered breed associations. This rule is necessary in order to include in the regulations all the registered breed associations that maintain records concerning the purebreeding of animals adequate to identify an animal as a registered animal of that breed association. The effect of this rule is to allow for proper payment of indemnities for cattle destroyed because of brucellosis, thereby encouraging the elimination of these cattle as a disease source.

EFFECTIVE DATE: August 20, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. G.H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

The "Animals Destroyed Because of Brucellosis" regulations (contained in 9 CFR Part 51 and referred to below as the regulations) provide for the payment of indemnities for certain cattle, bison, and swine destroyed because of brucellosis. Under these regulations indemnity is paid for such animals slaughtered because of brucellosis to encourage cooperation in the timely removal of infected animals from the hear or, in the case of herd depopulation, to remove a foci of infection and thereby prevent transmission of brucellosis to nearby susceptible herds. Under § 51.3(a) of the regulations, the indemnity shall not exceed $250 for any registered cattle or nonregistered dairy cattle or, with certain exceptions, $50 for any other nonregistered cattle or bison.

To receive indemnity for registered cattle destroyed because of brucellosis, a claimant must provide registration papers for each animal, issued in the name of or transferred by the registered breed association to the name of the owner. A claimant is eligible to receive indemnity for cattle as registered animals if they are registered with a breed association listed in § 51.1(cc) of the regulations.

An interim rule published in the **Federal Register** (50 FR 19162–19163) on May 7, 1985, amended § 51.1(cc) by adding the National Beefmaster Association of registered breed associations. The interim rule was made effective upon publication. Comments were solicited for 60 days following publication of the interim rule. No comments were received. The factual situation which was set forth in the document of May 7, 1985, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information complied by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This change will affect less than one percent of the cattle annually destroyed because of brucellosis in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Accordingly, the interim rule published at 50 FR 19162–19163 on May 7, 1985, amending § 51.1(cc) is adopted as a final rule.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 14th day of August, 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–19820 Filed 8–19–85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Furnaces

AGENCY: Federal Trade Commission.

ACTION: Rule related notice.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of efficiencies for furnaces have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on March 25, 1980 and April 17, 1980 remain in effect until new ranges are published.

EFFECTIVE DATE: August 20, 1985.

FOR FURTHER INFORMATION CONTACT: James Mills or Lucerne D. Winfrey, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580, (202) 376–8934.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published [3] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates

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[1] Pub. L. 94–163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

[3] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26038 (April 17, 1980), 46 FR 3829 (January 16, 1981).

for each product type.[4] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for furnaces have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on March 25, 1980 and April 17, 1980.[5]

In consideration of the foregoing, the present ranges for furnaces will remain in effect for the next year.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85–19827 Filed 8–19–85; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 10 and 140

Appeals to the Commission; Settlements

AGENCY: Commodities Futures Trading Commission.

ACTION: Final rule.

SUMMARY: Pursuant to sections 2(a)(4) and 2(a)(11) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(c) and 4a(j), the Commodity Futures Trading Commission has adopted a rule authorizing the Chief of the Commission's Opinions Section to decide procedural or technical matters on the Commission's appellate enforcement docket. The new rule will be designated as 17 CFR 10.109. This rule, together the with delegation contained in the Commission's reparation rules,[1] supersedes the delegation found at 17 CFR 140.71 (1983) and that rule is accordingly repealed upon publication of this notice. The Commission's action relates solely to agency organization, procedure, and practice.

EFFECTIVE DATE: This rule shall be effective August 20, 1985 and shall apply to all cases then pending.

FOR FURTHER INFORMATION CONTACT: James T. Kelly, Assistant Chief, Opinions Section, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581; Telephone: (202) 254–7110.

SUPPLEMENTARY INFORMATION: The purpose of this rule, like those provisions in the reparation rules which delegate certain authority to the Chief of the Opinions Section, is to relieve the Commission from the time and paperwork inherent in five members considering procedural and/or technical matters on the agency's appellate enforcement docket. This step will facilitate and expedite consideration of those matters properly warranting formal Commission attention. As adopted, the rule specifies particular procedural and technical matters to be handled by the Chief of the Opinions Section or a person under his direction. In addition, the rule authorizes the Chief, in his discretion, to submit any matter otherwise falling within the terms of this rule to the Commission for its consideration, and like the reparation rules, provides a route whereby a party may seek reconsideration by the Commission of a ruling by the Chief.

The Commission had determined that this amendment to the Rules of Practice relates solely to agency organization, procedure, and practice. Therefore, the provisions of the Administration Procedure Act, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. The Commission further finds that there is good cause to make this amendment effective upon publication in the Federal Register.

PART 10—[AMENDED]

17 CFR 10.109 Delegation of Authority to Chief of the Opinions Section is added.

Pursuant to the authority granted under sections 2(a)(4) and 2(a)(11) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(c) and 4a(j), the Commodity Futures Trading Commission amends its Rules of Practice, Subpart H of Part 10 of Chapter I of Title 17 of the Code of Federal Regulations as specified below:

§ 10.109 Delegation of Authority to Chief of the Opinions Section.

The Commodity Futures Trading Commission hereby delegates, until such time as it orders otherwise, the following functions to the Chief of the Opinions Section, to be performed by him or by such person or persons under his direction as he may designate from time to time:

(a) With respect to proceedings conducted pursuant to the Commodity Exchange Act, as amended, 7 U.S.C. 1 *et seq.*, and subject to the Commission's Rules of Practice as set forth in Part 10 of this chapter, to:

(1) Consider and decide miscellaneous motions for procedural orders that may be directed to the Commission pursuant to Part 10 of these rules after the initial decision or other order disposing of the entire proceeding has been filed; such motions may be acted upon at anytime, without awaiting a response;

(2) Remand, with or without specific instructions, initial decisions or other orders disposing of the entire proceeding to the appropriate officer in the following situations:

(i) Where a default order has been made pursuant to § 10.93 of these rules and a motion to vacate the default or equivalent request has been directed to the Commission under § 10.94 without the benefit of a prior ruling by the Administrative Law Judge;

(ii) Where, in his judgment, clarification or supplementation of the initial decision or other order disposing of the entire proceeding prior to Commission review is appropriate; however, the Chief may not direct that the record be reopened;

(iii) Where, in his judgment, a ministerial act necessary to the proper conduct of the proceeding has not been performed;

(3) Deny applications for interlocutory Commission review of a ruling of the Administrative Law Judge in cases in which the Administrative Law Judge has not certified the ruling to the Commission in the manner prescribed by § 10.101(a) of the rules; and the ruling does not concern the disqualification of, or a motion to disqualify, an Administrative Law Judge; and the ruling does not concern the suspension of, or failure to suspend, an attorney

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[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

[5] 45 FR 19529 (March 25, 1980). 45 FR 26038 (April 17, 1980).

[1] *See* 17 CFR 12.408 (1984).

from participation in a particular proceeding, or the denial of intervention or limited participation;

(4) Deny any application for interlocutory review in a proceeding if it is not filed in accordance with § 10.101(b) of these rules;

(5) Dismiss any appeal from an initial decision or other disposition of the entire proceeding by an Administrative Law Judge, where such appeal is not filed and perfected in accordance with § 10.102 of these rules;

(6) Strike any filing that does not meet the requirements of, or is not perfected in accordance with, Part 10 of these rules;

(7) Stay, for a limited period of time not to exceed ten working days, any order of the Commission entered in a proceeding subject to these rules;

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which the Chief of the Opinions Section believes it appropriate, he may submit the matter to the Commission for its consideration;

(c) Within seven (7) days after service of a ruling issued pursuant to paragraph (a) of this § 10.109, a party may file with the Hearing Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not operate to stay the effective date of such ruling;

(d) This rule is applicable to all proceedings pending as of August 20, 1985.

§ 140.71 [Removed]

17 CFR 140.71 is removed.

By the Commission (Chairman PHILLIPS and Commissioners HINEMAN, WEST, SEALE, and DAVIS).

Dated: August 15, 1985.

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 85-19848 Filed 8-19-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 84C-0135]

Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additive for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is republishing with editorial changes the document that confirmed the effective date of April 9, 1985, for a regulation that amended the color additive regulations to provide for the safe use in coloring contact lenses of the reaction product formed by chemically bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate). The document was published in the **Federal Register** of June 4, 1985 (50 FR 23406).

DATE: Effective date confirmed: April 9, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of March 8, 1985 (50 FR 9424), FDA amended the color additive regulations to provide for the safe use of the reaction product formed by bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) for coloring contact lenses. The final rule amended § 73.3121 (21 CFR 73.3121) by adding Reactive Blue No. 19 to the list of reactive dyes in paragraph (a).

In the final rule, FDA gave interested persons until April 8, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of March 8, 1985, for this color additive should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the final rule of March 8, 1985. Accordingly, the final rule amending § 73.3121 to provide for the safe use of the reaction product formed by chemically bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) in coloring contact lenses became effective April 9, 1985.

Dated: August 14, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-19802 Filed 8-19-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 436, 440, and 455

[Docket No. 85N-0173]

Antibiotic Drugs; Sterile Ticarcillin Disodium and Clavulanate Potassium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile ticarcillin disodium and clavulanate potassium. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective August 20, 1985; comments, notice of participation, and request for hearing by September 19, 1985 data, information, and analyses to justify a hearing by October 21, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, sterile ticarcillin disodium and clavulanate potassium. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 436, 440, and 455 (21 CFR Parts 436, 440, and 455) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively

have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The final rule, therefore, is effective August 20, 1985. However, interested persons may, on or before September 19, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before September 19, 1985, a written notice of participation and request for hearing, and (2) on or before October 21, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 440

Antibiotics, Penicillin.

21 CFR Part 455

Antibiotics, Certain other.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 436, 440, and 455 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. By adding new § 436.355 to read as follows:

§ 436.355 High-performance liquid chromatographic assay for ticarcillin-clavulanic acid.

(a) *Equipment.* A suitable high-performance liquid chromatograph equipped with:

(1) A suitable detection system specified in the monograph for the drug being testing;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) An analytical column, 10 to 30 centimeters long, packed with a material as defined in the monograph for the drug being tested; and if specified in that monograph, the inlet of this column may be connected to a guard column, 3 to 5 centimeters in length, packed with the same material of 40 to 60 micrometers particle size.

(b) *Procedure.* Perform the assay and calculate the drug content using the temperature, instrumental conditions, and calculations specified in the monograph for the drug being tested with a flow rate not to exceed 2.0 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale with typical chart speed of not less than 2.5 millimeters per minute. Use the equipment described in paragraph (a) of this section; and the reagents and working standard and sample solutions described in the monograph for the drug being tested. Equilibrate and condition the column by passage of 10 to 15 void volumes of mobile phase followed by five replicate injections of the same volume (between 10 and 20 microliters) of the working standard solution. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. The clavulanic acid peak is sharp and the chromatograms of standard and sample solutions show baseline separations between it and any neighboring peaks. The retention times for clavulanic acid and ticarcillin are approximately 3 minutes and 14 minutes, respectively. Record the peak responses and calculate the prescribed system suitability requirements described for the system suitability test in paragraph (c) of this section.

(c) *System suitability test.* Using the equipment and procedure described in this section, test the chromatographic system for assay as follows:

(1) *Tailing factors for the ticarcillin and clavulanic acid peaks.* Calculate the tailing factors (T), from distances measured along the horizontal line at 5 percent of the peak height above the baseline, as follows:

$$T = \frac{W_{0.05}}{2f}$$

where:

$W_{0.05}$ = Width of peak at 5 percent height; and
f = Horizontal distance from point of ascent to a point coincident with maximum peak height.

(2) *Efficiency of the column.* Calculate the number of theoretical plates (n) of the column as follows:

$$n = 5.545 \left[\frac{t_R}{W_{\frac{1}{2}}} \right]^2$$

where:

n = Efficiency, as number of theoretical plates for column;
t_R = Retention time of ticarcillin or clavulanic acid peaks; and
$W_{\frac{1}{2}}$ = Corresponding peak width at half-height

(3) *Resolution factor.* Calculate the resolution factor (R) as follows:

$$R = \frac{2(t_2 - t_1)}{W_1 + W_2}$$

where:

t_1 = Retention time of clavulanic acid peak;
t_2 = Retention time of ticarcillin peak; and
W_1 and W_2 = Widths of the bases of the corresponding peaks obtained by extrapolating the relatively straight sides of the peaks to the baseline.

When using the method to assay clavulanic acid alone, the resolution factor is not applicable.

(4) *Coefficient of variation (Relative standard deviation).* Calculate the coefficient of variation (S_R in percent) as follows:

$$S_R = \frac{100}{X}\left[\frac{\sum_{i=1}^{N}(X_i - X)^2}{N-1}\right]^{1/2}$$

where:
X is the mean of N individual measurements of X_i.

If the complete operating system meets the system suitability requirements of the monograph for the drug being tested, proceed as described in paragraph (b) of this section, using the sample solution in lieu of the working standard solution.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 440 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

4. By redesignating § 440.290 as § 440.290a and by adding new §§ 440.290 and 440.290b to read as follows:

§ 440.290 Ticarcillin disodium injectable dosage forms.

§ 440.290a Sterile ticarcillin disodium.

* * * * *

§ 440.290b Sterile ticarcillin disodium and clavulanate potassium.

(a) *Requirements for certification.*—(1) *Standards of identity, strength, quality, and purity.* Ticarcillin disodium and clavulanate potassium is a dry mixture of ticarcillin disodium and clavulanate potassium, in which the ratio of ticarcillin to clavulanic acid is 15:1 or 30:1. Its ticarcillin potency is not less than 755 micrograms of ticarcillin per milligram on an anhydrous basis if the ratio is 30:1 and 733 micrograms of ticarcillin per milligram on an anhydrous basis if the ratio is 15:1. Its ticarcillin disodium content is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of ticarcillin that it is represented to contain. Its clavulanate potassium content is satisfactory if it contains not less than 85 percent and not more than 120 percent of the number of milligrams of clavulanic acid that it is represented to contain. It is sterile. It is nonpyrogenic. Its moisture content is not more than 4.2 percent. Its pH of an aqueous solution containing 100 milligrams per milliliter is not less than 5.5 and not more than 7.5. The ticarcillin disodium conforms to the standards prescribed by § 440.90a(a)(1) except that it contains not less than 840 micrograms of ticarcillin per milligram on an anhydrous basis. The clavulante potassium conforms to the standards prescribed by § 455.15a(a)(1) of this chapter.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The ticarcillin disodium used in making the batch for potency, sterility, pyrogens, moisture, pH, and identity.

(*b*) The clavulanate potassium used in making the batch for potency, sterility, pyrogens, moisture, pH, identity, and clavam-2-carboxylate content.

(*c*) The batch for ticarcillin potency, ticarcillin content, clavulanic acid content, sterility, pyrogens, moisture, and pH.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The ticarcillin disodium used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*b*) The clavulanate potassium used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*c*) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: A minimum of 20 immediate containers collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.*—(1) *Ticarcillin and clavulanic acid contents.* Determine both micrograms of ticarcillin per milligram of sample and milligrams of both ticarcillin and clavulanic acid per container. Proceed as directed in § 436.355 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength between 220 and 230 nanometers, and a column packed with microparticulate (3 to 10 micrometers in diameter) reversed phase packing material such as octadecyl silane bonded silicas. Reagents, working standard and sample solutions, system suitability requirements, and calculations for ticarcillin or clavulanic acid content are as follows:

(i) *Reagents.*—(*a*) *0.1M Monobasic sodium phosphate buffer solution, pH 4.3.* Transfer 13.8 grams of monobasic sodium phosphate monohydrate to a 1-liter volumetric flask and dissolve in 900 milliliters of distilled water. Adjust the pH to 4.3±0.1 with 18*N* phosphoric acid or 10*N* sodium hydroxide. Dilute to volume with distilled water. Mix well.

(*b*) *Mobile phase.* Mix acetonitrile: 0.1*M* monobasic sodium phosphate buffer solution, pH 4.3 (5:95 v/v) and mix for no less than two minutes. Degas by passing through a 0.5-micrometer filter with vacuum. The mobile phase may be sparged with the helium through a 2-micrometer metal filter for the duration of the analysis. Adjust the ratio of acetonitrile to aqueous buffer as necessary to obtain satisfactory separation of the peaks.

(*c*) *Diluent.* 0.05*M* monobasic sodium phosphate buffer solution, pH 6.4 Transfer 6.9 grams of monobasic sodium phosphate to a 1-liter volumetric flask and dissolve in 900 milliliters of water. Adjust the pH to 6.4 with sodium hydroxide (10*N*). Dilute to volume with distilled water. Mix well. Use this diluent to prepare the working standard and sample solutions described in paragraph (b)(1)(ii) of this section.

(ii) *Working standard and sample solutions.*(*a*) *Preparation of working standard solution.* Accurately weigh a quantity of the ticarcillin working standard containing the equivalent of approximately 90 milligrams of ticarcillin activity and transfer into a 100-milliliter volumetric flask. Prepare a solution of the clavulanic acid working standard containing the equivalent of 30 milligrams or 60 milligrams of clavulanic acid activity in a 100-milliliter volumetric flask. Dissolve and dilute to volume with diluent. Transfer 10 milliliters of this solution into the flask containing the ticarcillin standard. Dilute the combined standard solution to volume with diluent. Mix. Use within 8 hours after preparation.

(*b*) *Preparation of sample solutions.*—(*1*) *Ticarcillin potency (micrograms of ticarcillin per milligram).* Accurately weigh the total contents of a container and dissolve with sufficient diluent to obtain a stock solution containing approximately 30 milligrams of ticarcillin per milliliter. Further dilute this solution with diluent to obtain a

final concentration of 0.9 milligrams of ticarcillin per milliliter (estimated).

(2) *Ticarcilin and clavulanic acid content (milligrams of ticarcillin and clavulanic acid per container).* Reconstitute the container with an appropriate volume of distilled water. Using a suitable hypodermic syringe, remove all of the withdrawable contents. Dilute with diluent to obtain a stock solution containing approximately 30 milligrams of ticarcillin per milliliter and 1 or 2 milligrams of clavulanic acid per milliliter. Further dilute this solution with the diluent to obtain a final concentration of 0.9 milligrams of ticarcillin per milliliter. The final solution will contain either 0.03 or 0.06 milligrams of clavulanic acid per milliliter (estimated) depending on the initial ticarcillin to clavulanic acid ratio.

(iii) *System suitability requirements*—(*a*) *Tailing factor.* The tailing factor (T) is satisfactory if it is not more than 2.0.

(*b*) *Efficiency of the column.* The efficiency of the column (n) is satisfactory if it is greater than 1,000 theoretical plates in a 25-centimeter column.

(*c*) *Resolution factor.* The resolution factor (R) between the clavulanic acid and ticarcillin peaks is satisfactory if it is not less than 5.0.

(*d*) *Coefficient of variation.* The coefficient of variation (S_R in percent) is satisfactory if it is not more than 2.0 percent.

If the system suitability requirements have been met, then proceed as described in § 436.355(b) of this chapter.

(iv) *Calculations*—(*a*) Calculate the micrograms of ticarcillin per milligram as follows:

$$\text{Micrograms of ticarcillin per milligram} = \frac{A_u \times P_s}{A_s \times C_u}$$

where:

A_u = Area of the ticarcillin peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ticarcillin peak in the chromatogram of the ticarcillin working standard;

P_s = Ticarcillin activity in the ticarcillin working standard solution in micrograms of anhydrous ticarcillin free acid per milliliter; and

C_u = Milligrams of sample per millilter of sample solution.

(*b*) Calculate the ticarcillin or clavulanic acid anhydrous free acid content of the container as follows:

$$\text{Milligrams of anhydrous ticarcillin or clavulanic acid free acid per container} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the ticarcillin or clavulanic acid peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ticarcillin or clavulanic acid peak in the chromatogram of the ticarcillin or clavulanic acid working standard;

P_s = Anhydrous ticarcillian or clavulanic free acid activity in the ticarcillin-clavulanic acid working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(*2*) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 100 milligrams of ticarcillin per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using a solution containing 100 milligrams per milliliter.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

5. The authority citation for 21 CFR Part 455 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

6. By adding new § 455.15a to read as follows:

§ 455.15a Sterile clavulanate potassium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Clavulanate potassium is the potassium salt of Z-(2R,5R)-3-(2-hydroxyethylidene)-7-oxo-4-oxa-1-azabicyclo[3.2.0]heptane-2-carboxylic acid. It is so purified and dried that:

(i) It is equivalent to not less than 755 micrograms and not more than 920 micrograms of clavulanic acid per milligram on an anhydrous basis.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not more than 1.5 percent.

(v) Its pH of an aqueous solution containing 10 milligrams per milliliter is not less than 5.5 and not more than 8.0.

(vi) It gives a positive identity test.

(vii) Its [3R,5S]-7-oxo-4-oxa-1-azabicyclo[3.2.0]heptane-3-carboxylic acid (clavam-2-carboxylate) content is satisfactory if it is not greater than .01 percent.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, moisture, pH, identity, and clavam-2-carboxylate content.

(ii) Samples, if required by the Director, Center for Drugs and Biologics: 12 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Clavulanic acid content.* Proceed as directed in § 455.15(b)(1) of this chapter.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 10 milligrams per milliliter of clavulanate potassium.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using a solution containing 10 milligrams per milliliter.

(6) *Identity.* Proceed as directed in § 436.211 of this chapter, using the sample preparation described in paragraph (b)(2) of that section.

(7) *Clavam-2-carboxylate content.* Proceed as directed in § 455.15(b)(5) of this chapter.

Dated: August 2, 1985.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85-19673 Filed 8-19-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8045]

Income Tax; Taxable Years Beginning After December 31, 1953; Below-Market Loans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the Federal tax treatment of both the lender and the borrower in certain below-market interest rate loan transactions. Changes to the applicable law were made by the Tax Reform Act of 1984.

The regulations exempt taxpayers who are parties to certain below-market interest rate loan transactions from the new rules which generally apply to below-market interest rate loans. See the text of the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register for rules which would affect taxpayers who enter into certain below-market loans and provide them with guidance needed to comply with the law.

DATES: The regulations apply to below-market term loans made after June 6, 1984, and below-market demand loans outstanding after June 6, 1984, and are effective June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T), 202–566–3828, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under section 7872 of the Internal Revenue Code of 1954.

In General

Prior to the enactment of section 7872, some taxpayers used interest-free loans or loans with an interest rate below the current market rate (in each case, "below-market loans") which purported to circumvent well-established rules of taxation. Thus, in family or similar situations below-market loans have been used which purported to have the effect of avoiding taxation under the grantor trust rules and deflecting income to others. Corporations have made below-market loans to shareholders with the effect of avoiding taxation of income at the corporate level which is the economic equivalent of receiving a deduction for dividends paid to those shareholders. Employers have made below-market loans to employees with the effect of providing compensation which has not been subject to employment taxes. Interest-free loans have also been used to convert non-deductible expenses into the equivalent of deductible expenses.

Section 7872 addresses these and similar practices, generally, by treating certain below-market loans described in one of the categories specified in section 7872(c) as economically equivalent to loans bearing interest at the applicable Federal rate coupled with a payment by the lender to the borrower sufficient to fund the payment of interest by the borrower. Thus, the lender is treated as making: (i) A loan to the borrower in exchange for a note requiring the payment of interest at the applicable Federal rate, and (ii) a transfer of funds to the borrower in an amount generally equal to the amount of interest imputed under section 7872. In the case of term gift loans, however, the amount of money treated as transferred by the lender to the borrower which is subject to gift tax, and the amount of the imputed interest payment by the borrower to the lender are unequal because they are calculated differently under the statute.

Exemption From Section 7872

These temporary regulations provide for the exemption of certain below-market loans from the rules of section 7872. Section 7872(g)(1)(C) provides regulatory authority for exempting from the application of section 7872 any class of transactions if the application of section 7872 would not have a significant effect on any Federal tax liability of the lender or the borrower. Accordingly, these temporary regulations provide that certain below-market loans which are not structured as such for tax avoidance purposes are exempted from the provisions of section 7872. If, however, such a loan is structured as one of the exempted loans for tax avoidance purposes, the Service may recharacterize the transaction according to its economic substance and apply section 7872 in accordance with its terms.

Notice of Proposed Rulemaking

The notice of proposed rulemaking, which is published in the Proposed Rules section of this issue of the Federal Register, provides taxpayers who enter into certain below-market loans with the guidance needed to comply with section 7872. Accordingly, those proposals would provide rules for determining:

(1) The type of transactions characterized as loans;

(2) The types of below-market loans subject to section 7872;

(3) The timing and amount of transfers in connection with gift demand and term loans;

(4) The special application of section 7872 to loans made directly between natural persons;

(5) The rule of *de minimis* amount of loans; and

(6) Other special rules.

As a result, these temporary regulations reserve all sections of the regulations other than § 1.7872–5T until the proposed regulations are published as either temporary or final regulations.

Inapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitue regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Howard A. Balikov of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.7872–1 to 1.7872–14

Income taxes, Gift taxes, Below-market loans.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.7872–5T also issued under 26 U.S.C. 7872.

Par. 2. New §§ 1.7872–1 through 1.7872–4 are added and reserved in the appropriate place.

Par. 3. New §§ 1.7872–6 through 1.7872–14 are added and reserved in the appropriate place.

Par. 4. New § 1.7872–5T is added in the appropriate place. The new section reads as follows:

§ 1.7872–5T Exempted loans (temporary).

(a) *In general*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, notwithstanding any other provision of section 7872 and the regulations thereunder, section 7872 does not apply to the loans listed in paragraph (b) of this section because the interest arrangements do not have a

significant effect on the Federal tax liability of the borrower or the lender.

(2) *No exemption for tax avoidance loans.* If a taxpayer structures a transaction to be a loan described in paragraph (b) of this section and one of the principal purposes of so structuring the transaction is the avoidance of Federal tax, then the transaction will be recharacterized as a tax avoidance loan as defined in section 7872 (c)(1)(D).

(b) *List of exemptions.* Except as provided in paragraph (a) of this section, the following transactions are exempt from section 7872:

(1) Loans which are made available by the lender to the general public on the same terms and conditions and which are consistent with the lender's customary business practice;

(2) Accounts or withdrawable shares with a bank (as defined in section 581), or an institution to which section 591 applies, or a credit union, made in the ordinary course of its business;

(3) Acquisitions of publicly traded debt obligations for an amount equal to the public trading price at the time of acquisition;

(4) Loans made by a life insurance company (as defined in section 816 (a)), in the ordinary course of its business, to an insured, under a loan right contained in a life insurance policy and in which the cash surrender values are used as collateral for the loans;

(5) Loans subsidized by the Federal, State (including the District of Columbia), or Municipal government (or any agency or instrumentality thereof), and which are made available under a program of general application to the public;

(6) Employee-relocation loans that meet the requirements of paragraph (c)(1) of this section;

(7) Obligations the interest on which is excluded from gross income under section 103;

(8) Obligations of the United States government;

(9) Loans to a charitable organization described in section 170(c), but only if at no time during the taxable year will the aggregate outstanding amount of loans by the lender to all such organizations exceed $10,000;

(10) Loans made to or from a foreign person that meet the requirements of paragraph (c)(2) of this section;

(11) Loans made by a private foundation or other organization described in section 170(c), the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B);

(12) Loans made prior to July 1, 1986, to the extent excepted from the application of section 482 for the 6-month (or longer) period referred to in § 1.482–2(a)(3);

(13) For periods prior to July 1, 1986, all money, securities, and property received by a futures commission merchant or by a clearing organization (i) to margin, guarantee or secure contracts for future delivery on or subject to the rules of a qualified board or exchange (as defined in section 1256(g)(7)), or (ii) to purchase, margin, guarantee or secure options contracts traded on or subject to the rules of a qualified board or exchange, and all money accruing to account holders as the result of such futures and options contracts;

(14) Loans the interest arrangements of which the taxpayer is able to show have no significant effect on any Federal tax liability of the lender or the borrower, as described in paragraph (c)(3) of this section; and

(15) Loans, described in revenue rulings or revenue procedures issued under section 7872(g)(1)(C), if the Commissioner finds that the factors justifying an exemption for such loans are sufficiently similar to the factors justifying the exemptions contained in this section.

(c) *Special rules*—(1) *Employee-relocation loans*—(i) *Mortgage loans.* In the case of a compensation-related loan to an employee, where such loan is secured by a mortgage on the new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee, acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The loan is a demand loan or is a term loan the benefits of the interest arrangements of which are not transferable by the employee and are conditioned on the future performance of substantial services by the employee;

(B) The employee certifies to the employer that the employee reasonably expects to be entitled to and will itemize deductions for each year the loan is outstanding; and

(C) The loan agreement requires that the loan proceeds be used only to purchase the new principal residence of the employee.

(ii) *Bridge loans.* In the case of a compensation-related loan to an employee which is not described in paragraph (c)(1)(i) of this section, and which is used to purchase a new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The conditions contained in paragraphs (c)(1)(i) (A), (B), and (C) of this section;

(B) The loan agreement provides that the loan is payable in full within 15 days after the date of the sale of the employee's immediately former principal residence;

(C) The aggregate principal amount of all outstanding loans described in this paragraph (c)(1)(ii) to an employee is no greater than the employer's reasonable estimate of the amount of the equity of the employee and the employee's spouse in the employee's immediately former principal residence, and

(D) The employee's immediately former principal residence is not converted to business or investment use.

(2) *Below-market loans involving foreign persons*—(i) Section 7872 shall not apply to a below-market loan (other than a compensation-related loan or a corporation-shareholder loan where the borrower is a shareholder that is not a C corporation as defined in section 1361(a)(2)) if the lender is a foreign person and the borrower is a U.S. person unless the interest income imputed to the foreign lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(ii) Section 7872 shall not apply to a below-market loan where both the lender and the borrower are foreign persons unless the interest income imputed to the lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(iii) For purposes of this section, the term "foreign person" means any person that is not a U.S. person.

(3) *Loans without significant tax effect.* Whether a loan will be considered to be a loan the interest arrangements of which have a significant effect on any Federal tax liability of the lender or the borrower will be determined according to all of the facts and circumstances. Among the factors to be considered are—

(i) Whether items of income and deduction generated by the loan offset each other;

(ii) the amount of such items;

(iii) the cost to the taxpayer of complying with the provisions of section 7872 if such section were applied; and

(iv) any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under section (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 12, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

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26 CFR Parts 1 and 35a

[T.D. 8048]

Registration Requirements With Respect to Certain Debt Obligations; Sanctions on Issuers of Registration-Required Obligations Not in Registered Form; and the Application of the Repeal of 30 Percent Withholding by the Tax Reform Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to the temporary regulations issued under T.D. 7965 and T.D. 7967 and published in the **Federal Register** beginning at 49 FR 33228 and 49 FR 33239, respectively. These regulations relate to the definition of the term "registration-required obligation" with respect to certain obligations, the imposition of sanctions on issuers issuing registration-required obligations in bearer form, and the repeal of 30 percent withholding by the Tax Reform Act of 1984. The regulations affect issuers of obligations held by foreign persons, issuers of certain other obligations, and payers and recipients of interest with respect to all such obligations. They provide the public with guidance necessary to comply with the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984. The text of these temporary regulations also serve as the text for an amended notice of proposed rulemaking published in this issue of the **Federal Register**.

DATES: The temporary regulations under § 1.163-5T(d) (pass-through certificates) generally apply to obligations issued after December 31, 1982. The temporary regulations under § 1.163-5T(c)(2)(v)(vi) which amend the regulations issued by T.D. 7965 (issuer sanctions) are generally effective with respect to obligations originally issued after September 21, 1984. The temporary regulations under § 35a.9999-5 which amend the regulations issued by T.D. 7967 (repeal of 30 percent withholding) are generally effective for payments made after September 19, 1985 with respect to obligations issued after July 18, 1984.

FOR FURTHER INFORMATION CONTACT: P. Ann Fisher of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (202-566-3289, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

These temporary regulations amend existing temporary regulations issued previously relating to the definition of the term "registration-required obligation," the imposition of sanctions on issuers issuing registration-required obligations in bearer form and the repeal of 30 percent withholding.

Need for Amendment

The temporary regulations which are being amended did not specifically address the application of the definition of the term "registration-required obligation" under section 163(f)(2)(A) to pass-through certificates, such as mortgage pass-through certificates, the application of the sanctions on issuers of "registration-required obligations" not in registered form to the issuers of such certificates and the underlying obligations, or the application of the partial repeal of 30 percent withholding to these certificates.

The effective date provision of the temporary regulations issued on August 22, 1984, defining what obligations are described under section 163(f)(2)(B) (the "temporary foreign-targeting regulations"), applied these regulations to any obligation issued after September 21, 1984, including an obligation issued after September 21, 1984 either pursuant to the exercise of a warrant that was issued on or before September 21, 1984 or on the conversion of a convertible debt obligation issued on or before such date. The amendments provide that the temporary foreign-targeting regulations generally effective after September 21, 1984 do not apply to obligations issued either pursuant to the exercise of a warrant or the conversion of a convertible debt obligation that complied with earlier temporary regulations in effect when the warrant or convertible debt obligation was issued.

The temporary foreign-targeting regulations which are being amended do not clearly define the scope of the rule which states that a transfer to an account in the United States is considered to be a payment inside the United States, and these amendments more precisely define this scope.

Finally, the temporary regulations issued in question and answer form on the subject of the repeal of 30 percent withholding do not explain completely how the certification requirements for repeal apply to foreign-targeted registered obligations held by clearing organizations and by foreign branches of United States financial institutions, and these amendments provide a more complete explanation.

Explanation of Provisions

Registration-Required Obligations

This amendment provides that a pass-through or participation certificate evidencing an interest in a pool of mortgage loans which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner (or similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust) ("pass-through certificate") is considered to be "a registration-required obligation" if the pass-through certificate is described in section 163(f)(2)(A), without regard to whether any obligation held by the fund or trust to which it relates is described in section 163(f)(2)(A). Also, a pass-through certificate is considered to satisfy the requirements of section 163(f)(2)(B) if it satisfies the requirements of section 163(f)(2)(B) without regard to the status of the underlying obligations. Mortgage pass-through certificates are therefore obligations to which section 163(f)(2) (A) or (B) may apply.

This amendment does not affect the determination of whether bearer obligations that are issued or guaranteed by the United States Government or backed by United States Government securities comply with the

requirements of section 163(f)(2)(B) and the regulations thereunder.

The amendment is also contained in a cross-reference notice of proposed rulemaking and, in that regard, the Service is especially interested in receiving comments as to: (1) What should qualify as a similar pooled fund or pooled trust treated as a grantor trust for purposes of section 163(f)(2) (A) and (B) (see § 1.163–5T(d) (1)) and (2) when the Commissioner's authority to characterize certificates (or similar evidences of interest in a pooled fund or pooled trust treated as a grantor trust) and obligations in accordance with the substance of the arrangement and to impose penalties as appropriate should be exercised (see § 1.163–5T(d)(4)).

Issuer Sanctions

Under the temporary foreign-targeting regulations, an issuer of a bearer obligation that is otherwise a "registration-required obligation" is not subject to certain sanctions if the issuer complies with the requirements contained in the regulations, including the requirement that interest be paid outside the United States. The temporary regulations provide that interest paid by transfer into an account maintained by the payee in the United States is considered paid in the United States if it is paid on an obligation issued by a United States person, a controlled foreign corporation, or a foreign corporation if 50 percent or more of its gross income for the 3-year period preceding the original issuance of the obligation is effectively connected with the conduct of a trade or business within the United States. This rule does not apply to payments to persons described in section 165(j)(3)(A), (B), or (C) and the regulations thereunder. The purpose of this rule is to prevent United States persons (except those persons who are permitted to hold bearer obligations) form depositing interest on bearer obligations into their accounts maintained in the United States. The transfer of interest to a United States account of a financial institution should not be considered payment inside the United States if this transfer is merely a step in the clearance of funds and the interest is promptly credited to an account maintained outside the United States by the financial institution or by the person for which the financial institution has collected the interest. Therefore, this amemdment provides an exception to permit a financial institution to have interest credited to an account it maintains in the United States if the payment is a step in the clearance of funds and the interest is promptly credited to an account maintained outside the United States by the financial institution or by the person for which the financial institution collected the interest.

This amendment also changes the effective date of the temporary foreign-targeting regulations. The prior effective date provision applied these regulations to an obligation issued after September 21, 1984. The amended effective date provision does not apply the temporary regulations issued on August 22, 1984 to an obligation issued after September 21, 1984 either pursuant to the exercise of a warrant issued on or before September 21, 1984, or on the conversion of a convertible debt obligation issued on or before September 21, 1984. The amended effective date provision instead applies the rules provided in temporary regulation § 5f.163–1(c), as in effect prior to its removal, to the determination of whether such an obligation issued after September 21, 1984 is described in section 163(f)(2)(B) and is therefore not required to be registered. However, an issuer who has substantially complied with the former proposed regulations provided in § 1.163–5(c) (superseded on August 22, 1984 by the temporary foreign-targeting regulations issued on that date) will considered to satisfy the requirements of section 163(f)(2)(B) with respect to an obligation issued after September 21, 1984 either pursuant to the exercise of a warrant issued on or before September 21, 1984 or on the conversion of a convertible debt obligation issued on or before September 21, 1984.

Repeal of 30 Percent Withholding

This amendment provides specific guidance on the application of the partial repeal of the 30 percent withholding tax to pass-through certificates. The amendment provides that interest paid to a holder of a pass-through certificate will qualify as portfolio interest under section 871(h)(2) or section 881(c)(2) if it is described in A–1 or A–8 or § 35a.9999–5, without regard to whether any obligations held by the fund or trust to which the pass-through certificate relates are described in A–1 or A–8. However, for purposes of A–1 and A–8 of § 35a.9999–5 and section 127 of the 1984 Act, a pass-through certificate will be considered as issued after July 18, 1984 only to the extent that the obligations held by the fund or trust to which the pass-through certificate relates are issued after July 18, 1984.

This amendment also provides that a pass-through certificate is considered to be an obligation that would be a registration-required obligation but for the fact that it is described in section 163(f)(2)(B) if the pass-through certificate is not described in section 163(f)(2)(A) (i), (ii), or (iii) (without regard to whether any obligation held by the fund or trust to which it relates is so described) and if the pass-through certificate is described in section 163(f)(2)(B) (without regard to whether any obligation held by the fund or trust to which it relates is so described).

This amendment also provides additional guidance on the certification requirements applicable to foreign-targeted registered obligations and on the determination by a withholding agent that 30 percent withholding on a payment of interest on any registered obligation is not required because the payee is a United States person.

With respect to foreign-targeted registered obligations, this amendment clarifies that the certificate of non-United States beneficial ownership must always be given to the United States person who would otherwise be required to deduct and withhold tax. The certificate must generally relate to ownership of the obligation on interest payment dates during the preceding and forthcoming years. The amendment changes the frequency of filing the certificate from a filing within the period beginning 90 days prior to each interest payment date (and ending on that date) to a single annual filing during the period beginning on January 15 and ending on January 31 of each year for all foreign-targeted registered obligations that have been held at any time during the immediately past year and that will be acquired at any time during the forthcoming year by the person providing the certificate.

Withholding agents paying interest to beneficial owners that are neither financial institutions nor members of clearing organizations may accept a statement on a Form W–8 or substitute form that the beneficial owner is not a United States person. However, a withholding agent that is a foreign branch of a financial institution and a United States person need not receive a statement provided that the beneficial owner furnishes to the withholding agent documentary evidence, as defined in subdivision (iii) of Q & A–5 of § 35a.9999–4T, to such effect.

The amendment provides that, if a United States person becomes a beneficial owner on an interest payment date, the withholding agent must be so notified within 30 days after such date. In such case the withholding agent is not required to withhold from the next interest payment if the withholding agent receives a Form W–9 (or a substitute form that is substantially similar) or a statement that the person

who provides the notification of United States beneficial ownership is either a controlled foreign corporation or a corporation 50 percent or more of the gross income of which for the preceding 3 years was effectively connected with the conduct of a United States trade or business.

As noted, the amendment provides that the certificate provided to the withholding agent must relate only to ownership of the obligation on interest payment dates, not to any period between such dates. This is consistent with the provision under § 1.1441–4(h) of the regulations, which states that tax is not required to be withheld on accrued interest paid by the buyer in connection with the sale of bonds between interest payment dates, even though the interest is subject to tax under section 871 or 881. The Internal Revenue Service is, however, studying the desirability of this provision. Any change with respect to the application of 30 percent withholding and any resulting change related to the exemption from 30 percent witholding under sections 871(h) and 881(c), including applicable certification requirements, would be made in future regulations and would apply on a prospective basis only.

Although these amendments are generally effective for payments made after September 19, 1985, the certificate required to be filed with the withholding agent between January 15 and January 31, 1986, is not required to certify the foreign status of a beneficial owner of an obligation before the date of the certificate, and the certification requirements presently in effect will, with two exceptions, continue to apply to interest payments prior to the filing of the certificate between January 15 and January 31, 1986.

The first exception is that those provisions of the amendments relating to which persons are required to provide or receive certificates or statements will apply to interest payments beginning September 19, 1985. Thus, for example, the U.S. person who would otherwise be required to deduct and withhold tax on such interest payments must receive the certificate of non-United States beneficial ownership.

The second exception is that the provisions relating to the situation where the withholding agent pays interest directly to the beneficial owner will apply beginning on September 19, 1985.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service has concluded that the regulations adopted hereby are interpretative and that the notice and public procedure requirements of 5 U.S.C. § 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Need for Temporary Regulations

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision by reason of the continuous issuance of obligations to foreign persons and the repeal of 30% withholding on the interest of such obligations issued after July 18, 1984. For this reason, it is found impracticable to issue these temporary regulations with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

The Q&As are not intended to address comprehensively the issues raised by the repeal of 30 percent withholding. Taxpayers may rely for guidance on these Q&As, which the Internal Revenue Service will follow in resolving issues expressly raised herein arising under section 127 of the Tax Reform Act of 1984 and the information reporting and backup withholding rules affected thereby. No inference, however, should be drawn regarding questions not expressly raised and answered.

Drafting Information

The principal author of these temporary regulations is P. Ann Fisher of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investment abroad.

26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

Adoption of Amendments to the Regulations

The following amendments to 26 CFR Parts 1, and 35a are hereby adopted:

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.163–5T is amended by revising paragraph (c)(2) (v) and (vi) and adding paragraph (d). The revised and added paragraphs read as follows:

§ 1.163–5T. Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.

* * * * *

(c) *Obligations, issued to foreign persons after September 21, 1984.* * * *

(2) *Rules for the application of this paragraph.* * * *

(v) *Interest payable outside of the United States.* Interest will be considered to be payable only outside the United States and its possessions if payment of such interest can be made only upon presentation of a coupon, or upon making of any other demand for payment, outside of the United States and its possessions to the issuer or a paying agent. The fact that payment is made by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account does not affect this result. Interest payments will not be considered to be made outside of the United States if the payments are made by a transfer of funds into an account maintained by the payee in the United States or mailed to an address in the United States, if—

(A) The interest is paid on an obligation issued by either a United States person, a controlled foreign corporation as defined in section 957(a), or a foreign corporation if 50 percent or more of the gross income of the foreign corporation from all sources of the 3-year period ending with the close of its taxable year preceding the original issuance of the obligation (or for such part of the period that the foreign corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States; and

(B) The interest is paid to a person other than—

(*1*) A person who may satisfy the requirements of section 165(j)(3) (A), (B), or (C) and the regulations thereunder; and

(*2*) A financial institution as a step in the clearance of funds and such interest is promptly credited to an account maintained outside the United States for

such financial institution or for persons for which the financial institution has collected such interest.

Interest is considered to be paid within the United States and its possessions if a coupon is presented, or a demand for payment is otherwise made, to the issuer or a paying agency (whether a United States or foreign person) in the United States and its possessions even if the funds paid are credited to an account maintained by the payee outside the United States and its possessions. Interest will be considered payable only outside the United States and its possessions notwithstanding that such interest may become payable at the office of the issuer or its United States paying agent under the following conditions: the issuer has appointed paying agents located outside the United States and its possessions with the reasonable expectation that such paying agents will be able to pay the interest in United States dollars, and the full amount of such payment at the offices of all such paying agents is illegal or effectively precluded because of the imposition of exchange controls or other similar restrictions on the full payment or receipt of interest in United States dollars. A lawsuit brought in the United States or its possessions for payment of the obligation or interest thereon as a result of a default shall not be considered to be a demand for payment. For purposes of this subdivision (v), interest includes original issue discount as defined in section 1273(a). For purposes of determining the amount of original issue discount on an obligation described in paragraph (c)T(2)(i) which is part of an issue that neither is registered with the Securities and Exchange Commission nor is part of a privately placed issue, section 1273(a) shall apply as if the obligation were registered with the Securities and Exchange Commission.

(vi) *Rules relating to obligations issued on or before September 21, 1984.* Whether an obligation originally issued on or before September 21, 1984, or an obligation originally issued after September 21, 1984, pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or obligation (including conversion privilege) was issued on or before September 21, 1984, is described in section 163(f)(2)(B) shall be determined under the rules provided in § 5f.163–1(c) as in effect prior to its removal. Notwithstanding the preceding sentence, an issuer will be considered to satisfy the requirements of section 163(f)(2)(B) with respect to an obligation issued on or before September 21, 1984 or after September 21, 1984 pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or obligation (including conversion privilege) was issued on or before September 21, 1984, if the issuer substantially complied with the proposed regulations provided in § 1.163–5(c), which were published in the **Federal Register** on September 2, 1983 (48 FR 39953) and superseded by temporary regulations published in the **Federal Register** on August 22, 1984 (49 FR 33228).

(d) *Pass-through certificates.* (1) A pass-through or participation certificate evidencing an interest in a pool of mortgage loans which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner (or similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust) ("pass-through certificate") is considered to be a "registration-required obligation" under section 163(f)(2)(A) and this section if the pass-through certificate is described in section 163(f)(2)(A) and this section, without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(A) and this section. A pass-through certificate is considered to be described in section 163(f)(2)(B) and this section if the pass-through certificate is described in section 163(f)(2)(B) and this section, without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(B) and this section.

(2) An obligation held by a fund or trust in which ownership interests are represented by pass-through certificates is considered to be in registered form under section 103(j) and the regulations thereunder or to be described in section 163(f)(2) (A) or (B) if the obligation held by the fund or trust is in registered form under section 103(j) and the regulations thereunder or is described in section 163(f)(2) (A) or (B), respectively, without regard to whether the pass-through certificate are so considered.

(3) For purposes of section 4701, a pass-through certificate is considered to be issued solely by the recipient of the proceeds from the issuance of the pass-through certificate (hereinafter the "sponsor"). The sponsor is therefore liable for any excise tax under section 4701 that may be imposed with reference to the principal amount of the pass-through certificate.

(4) In order to implement the purpose of section 163 and this section, the Commissioner may characterize a certificate or other evidence of interest in a fund or trust which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner and any obligation held by such fund or trust in accordance with the substance of the arrangement they represent and may impose the penalties provided under sections 163(f)(1) and 4701 in the appropriate amounts and on the appropriate persons. This provision may be applied, for example, where a corporation issues obligations purportedly in registered form, contributes them to a grantor trust as its only assets, and arranges for the sale to investors of bearer certificates of interest in the trust which do not meet the requirements of section 163(f)(2)(B). If this provision is applied, the obligations held by the fund or trust will not be considered to be issued in registered form or to meet the requirements of section 163(f)(2)(B). The corporation will not be allowed a deduction for the payment of interest on the obligations held by the trust, and the excise tax under section 4701, calculated with reference to the principal amount of the obligations held by the trust will be imposed on the corporation and may be collected from the corporation and its agents. This paragraph (d)(4) will not be applied so as to alter the tax consequences of transactions as to which rulings have been issued by the Internal Revenue Service prior to September 19, 1985.

(5) The rules set forth in this paragraph (d) apply solely for purposes of sections 4701, 163(f)(2)(A), 163(f)(2)(B), this section, and any other section that refers to this section for the definition of the term "registration-required obligation" (such as the regulations under sections 871(h) and 881(c)). The treatment of obligations described in this paragraph (d) for purposes of section 163(f)(2) (A) and (B) does not affect the determination of whether bearer obligations that are issued or guaranteed by the United States Government, a United States Government-owned agency, or a United States Government sponsored enterprise (within the meaning of § 1.163–5T(c)(1)) or that are backed (as described in the Treasury Department News Release R–2835 of September 10, 1984 and Treasury Department News Release R–2847 of September 14, 1984) by obligations issued by the United States Government, a United States Government-owned agency, or a United States Government sponsored enterprise comply with the requirements of section 163(f)(2)(B) and the regulations thereunder.

(6) *Example.* The provisions of this paragraph (d) may be illustrated by the following example:

Commercial Bank K forms a pool of 1000 residential mortgage loans, each made to a different individual homeowner, by assigning them to Commercial Bank L, an unrelated entity serving as trustee of the pool. Commercial Bank L immediately sells in a public offering certificates of interest in the trust of a maturity of 10 years in registered form. Commercial Bank L transfers the cash proceeds of the offering to Commercial Bank K. The certificates of interest in the trust are of a type offered to the public and are not described in section 163(f)(2)(B). Pursuant to paragraph (d)(1), the certificates of interest in the pool are registration-required obligations without regard to the fact that the obligations held by the trust are not registration-required obligations.

PART 35a—[AMENDED]

Par. 3. The authority for Part 35a continues to read in part:

Authority: 26 U.S.C. 871, 26 U.S.C. 881, 26 U.S.C. 1441, 26 U.S.C. 1442, and 26 U.S.C. 7805.

Par. 4. Section 35a.9999–5 is amended by—

1. Revising Q&As 10, 12, 14, and 15 of paragraph (b), and

2. Adding paragraph (d) consisting of Q&A 20. These revised and added provisions read as follows:

§ 35a.9999–5. Questions and answers relating to the repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal.

* * * * *

(b) *Rules Concerning Obligations in Registered Form.* * * *

Q–10. In the absence of the receipt of a certificate described in A–9 (or a certificate described in A–14 in the circumstances described in A–12) or a Form W–9 (or a substitute form that is substantially similar and completed under penalties of perjury), what United States persons are required to deduct and withhold tax under section 1441(a) or 1442(a) from interest otherwise qualifying as portfolio interest within the meaning of section 871(h)(2)(B) or 881(c)(2)(B)?

A–10. In general, any United States person who is otherwise a withholding agent for purposes of section 1441(a) or 1442(a) is required to deduct and withhold unless the certificate described in A–9 (or a certificate described in A–14 in the circumstances described in A–12) or a Form W–9 (or a substitute form that is substantially similar and completed under penalties of perjury) is received. However, a United States person is not required to withhold under section 1441(a) and 1442(a) regardless of whether the certificate is received under the following circumstances:

(i) The interest is paid to or collected on behalf of an exempt recipient at an address within the United States (other than an exempt recipient who is not a United States person); or

(ii) The interest is paid to a person at an address within the United States, and backup withholding is required with respect to that interest in accordance with the provisions of section 3406 (e.g., because neither a Form W–8 nor a Form W–9 has been received). For purposes of this A–10, an exempt recipient is a person described in § 1.6049–4(c)(1)(ii).

* * * * *

Q–12. Is a United States person (including a foreign paying agent of an issuer who is a United States person) who is otherwise required to deduct and withhold tax in accordance with A–10 required to obtain the certificate described in A–9 with respect to interest on a registered obligation that has been targeted to foreign markets?

A–12. The certificate described in A–9 is not required with respect to interest paid on a registered obligation that is targeted to foreign markets (in accordance with the provisions of A–13) if the interest is paid by a United States person to a registered owner at an address outside the United States, provided that the registered owner is a financial institution described in section 871(h)(4)(B). In that case, the United States person otherwise required to deduct and withhold tax may treat the interest as portfolio interest if it does not have actual knowledge that the beneficial owner is a United States person and if it receives the certificate described in A–14 from a financial institution or member of a clearing organization, which member is the beneficial owner of the obligation, or the documentary evidence or statement described in A–14 from the beneficial owner, in accordance with the procedures described in A–15.

* * * * *

Q–14. What is the certificate or documentary evidence that may be provided in lieu of the Form W–8 (or substitute form) in the circumstances described in A–12?

A–14. No particular form is required for the certificate or documentary evidence in lieu thereof described in this A–14, but it must be described in either subdivision (i) or subdivision (ii). The certificate described in subdivision (i) is required if the United States person otherwise required to deduct and withhold tax (the "withholding agent") pays interest to a financial institution described in section 871(h)(4)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation. The documentary evidence or statement described in subdivision (ii) is required if a withholding agent pays interest to a beneficial owner that is neither a financial institution described in section 871(h)(4)(B) nor a member of a clearing organization.

(i)(A) If the withholding agent pays interest to a financial institution described in section 871(h)(4)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation, the withholding agent must receive a certificate which states that, beginning at the time the last preceding certificate under this subdivision (i) was provided and while the financial institution or clearing organization member has held the obligation, with respect to each registered obligation that is targeted to foreign markets (in accordance with the provisions of A–13) which has been held by the person providing the certificate at any time since the provision of such last preceding certificate, either—

(*1*) The beneficial owner of the obligation has not been a United States person on each interest payment date; or

(*2*) If the person providing the certificate is a financial institution which is holding or has held an obligation on behalf of the beneficial owner, the beneficial owner of the obligation has been a United States person on one or more interest payment dates (identifying such date or dates), and the person making the certification has forwarded or will forward the appropriate United States beneficial ownership notification to the withholding agent in accordance with the provisions of A–15.

The person providing the certificate need not state the foregoing where no previous certificate has been required to be provided by the payee to the withholding agent under this subdivision (i).

(B) Whether or not a previous certificate has been required to be provided under this subdivision (i), each certificate under this subdivision (i) must further state that, with respect to each registered obligation that is targeted to foreign markets (in accordance with the provisions of A–13) held and every other such obligation to be acquired and held by the person providing the certificate during the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided, the beneficial owner of the

obligation will not be a United States person on each interest payment date while the financial institution or clearing organization member holds the obligation and that, if the person providing the certificate is a financial institution which is holding or will be holding the obligation on behalf of a beneficial owner, such person will provide a United States beneficial ownership notification to the withholding agent (and a clearing organization that is not a withholding agent where a member organization is required by this A–14 to furnish the clearing organization with a statement) in accordance with A–15 of this section in the event such certificate (or statement in the case of a statement provided by a member organization to a clearing organization that is not a withholding agent) is or becomes untrue with respect to any obligation. A clearing organization is an entity which is in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(C) The certificate described in subdivision (i) (A) and (B) must identify the obligation or obligations with respect to which it is given, except where the certification is given with respect to an obligation that has not been acquired at the time the certification is made. An obligation is identified if it or the larger issuance of which it is a part is described on a list (*e.g.*, $5 million principal amount of 12% debentures of ABC Savings and Loan Association due February 25, 1995, $3 million principal amount of 10% U.S. Treasury notes due May 28, 1990) of all registered obligations targeted to foreign markets held by or on behalf of the person providing the certificate and the list is attached to, and incorporated by reference into, the certificate. The certificate must identify and provide the address of the person furnishing the certificate.

(D) If the withholding agent pays interest to a depository of a clearing obligation, then the clearing organization must provide the certificate to the withholding agent.

(E) Any certificate that is provided by a clearing organization must state that the clearing organization has received a statement from each member which complies with this subdivision (i) of A–14 and with A–15 (as if the clearing organization were the withholding agent and regardless of whether the member is a financial institution described in section 871(h)(4)(B)).

(F) Subject to the requirements set out in A–15, a certificate or statement in the form described in this subdivision (i) of A–14, in conjunction with the next annual certificate or statement, will serve as the certificate that may be provided in lieu of a Form W–8 with respect to interest on all foreign-targeted registered obligations held by the person making the certification or statement and which is paid to such person within the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided.

(ii) If the withholding agent pays interest to the beneficial owner of an obligation that is neither a financial institution described in section 871(h)(4)(B) nor a member of a clearing organization, then such owner must provide the withholding agent a Form W–8 (or substantially similar form completed under penalties of perjury) as set forth in A–9 of this section. However, a withholding agent that is a foreign branch of a financial institution described in section 871(h)(4)(B) and a United States person need not receive any statement or certificate from such beneficial owner, provided that the beneficial owner furnishes the withholding agent with documentary evidence as described in subdivision (iii) of Q–5 of § 35a.9999–4T that the beneficial owner is not a United States person.

Q–15. What procedures apply with respect to the certificate described in A–14?

A–15. (i)(A) Where no previous certificate with respect to registered obligations that are targeted to foreign markets (in accordance with the provisions of A–13) has been provided to the withholding agent by the person providing the certificate under subdivision (i) of A–14, such certificate must be provided within the period beginning 90 days prior to the first interest payment date on which the person holds a foreign-targeted registered obligation. (The withholding agent may, in its descretion, withhold the tax under section 1441(a) or 1442(a) if the certificate is not received by the date 30 days prior to the interest payment.) Thereafter the certificate must be filed within the period beginning on January 15 and ending January 31 of each year. If a certificate provided pursuant to the first sentence of this subdivision (i)(A) is provided during the period beginning on January 15 and ending on January 31 of any year, then no other certificate need be provided during such period in such year.

(B) If on any interest payment date after the obligation was acquired by the person making the certification the beneficial owner of the obligation is a United States person, then the person to whom the withholding agent pays interest must furnish the withholding agent with a United States beneficial ownership notification within 30 days after such interest payment date. A United States beneficial ownership notification must include a statement that the beneficial owner of the obligation has been a United States person on an interest payment date (identifying such date), that such owner has provided to the person providing the notification a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), and that the person providing the notification has been and will be complying with the information reporting requirements of section 6049, if applicable.

(C) Where the person providing the notification described in subdivision (i)(B) of this A–15 is neither (*1*) a controlled foreign corporation within the meaning of section 957(a), nor (*2*) a foreign corporation 50 percent or more of the gross income of which from all sources for the three-year period ending with the close of the taxable year preceding the date of the statement was effectively connected with the conduct of trade or business in the United States, such person must attach to the notification a copy of the Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) provided by the beneficial owner. When a person that provides the United States beneficial ownership notification does not attach to it a copy of such Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), such person must state that it is either a controlled foreign corporation within the meaning of section 957(a), or a foreign corporation 50 percent or more of the gross income of which from all sources for the three-year period ending with the close of its taxable year preceding the date of the statement was effectively connected with the conduct of a trade or business in the United States. A withholding agent that receives a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) must send a copy of such form to the Internal Revenue Service Center, Cincinnati, OH. 45999, within 30 days

after receiving it and must attach a statement that the Form W–9 or substitute was provided pursuant to this A–15 with respect to a United States person that has owned a foreign-targeted registered obligation on one or more interest payment dates.

(D) If either a Form W–9 (or a substitute form that is substantially similar to a Form W–9 and completed under penalties of perjury) or the statement described in subdivision (C) of this A–15 is not attached to the United States beneficial ownership notification provided pursuant to subdivision (i)(B) of this A–15, the withholding agent is required to withhold tax under section 871 or 881 on a payment of interest made after the withholding agent has received the notification unless such form or statement (or a statement that the beneficial owner of the obligation is no longer a United States person) is received before the interest payment date from the person who provided the notification (or transferee). If, during the period beginning on the next January 15 and ending on the next January 31, such person certifies as set out in subdivision (i) (A) and (B) of A–14 (except that such person does not certify under subdivision (i)(A)(2) that it has forwarded all United States beneficial ownership notifications to the withholding agent in accordance with the provisions of A–15), then the withholding agent is not required to withhold tax during the year following such certification (unless such person again provides a United States beneficial ownership notification without attaching a Form W–9 or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury or the statement described in subdivision (C) of this A–15).

(E) Within the period beginning 10 days before the end of the calendar quarter and ending on the last day of each calendar quarter, any clearing organization (including a clearing organization that is a withholding agent) relying on annual certificates or statements from its member organizations, as set forth in A–14 of this section, must send each member organization having submitted such certificate or statement a reminder that the member organization must give the clearing organization a United States beneficial ownership notification in the circumstances described in subdivision (i)(B) of this A–15.

(F) The certificate described in subdivision (i) of A–14 must be retained in the records of the withholding agent for four years from the end of the calendar year in which it was received. The statement described in subdivision (i) of A–14 that is received by a clearing organization from a member organization must be retained in the records of the clearing organization for four years from the end of the calendar year in which it was received. The withholding agent who receives the certificate described in subdivision (i) of A–14 is not required to file Form 1042S to report payments of interest that are made with respect to foreign-targeted registered obligations held by the person providing the certificate and are made within the period beginning with the certificate date and ending on the last date for filing the next certificate.

(ii)(A) The documentary evidence (or Form W–8 or substantially similar form completed under penalties of perjury) described in subdivision (ii) of A–14 must be provided to the withholding agent within the period beginning 90 days prior to and ending on the first interest payment date on which the withholding agent pays interest to the beneficial owner. The withholding agent may, in its discretion, withhold the tax under section 1441(a) or 1442(a) if the documentary evidence (or Form W–8 or substantially similar form completed under penalties of perjury) is not received by the date 30 days prior to the interest payment. The beneficial owner must confirm to the withholding agent the continuing validity of the documentary evidence within the period beginning 90 days prior to the first day of the third calendar year following the provision of such evidence and during the same period every three years thereafter while the owner still owns the obligation. The withholding agent who receives the documentary evidence described in subdivision (ii) of A–14 is not required to file Form 1042S for payments of interest that are made with respect to foreign-targeted registered obligations held by the person who provides the documentary evidence and are made within the period beginning with the date on which the documentary evidence is provided and ending on the last date for confirming the validity of the documentary evidence. Where a Form W–8 (or substantially similar form completed under penalties of perjury) has been provided, it must be prepared, renewed, and retained in accordance with the procedures prescribed in § 1.6049–5(b)(2)(iv) and must be attached to the Form 1042S required to be filed with respect to the payment.

(B) If, on any interest payment date after the obligation was acquired by the person providing the documentary evidence (or Form W–8 or substantially similar form completed under penalties of perjury) described in subdivision (ii) of A–14, the beneficial owner of the obligation is a United States person, then the beneficial owner must so inform the withholding agent within 30 days after such interest payment date and must provide a Form W–9 (or substitute form that is substantially similar completed under penalties of perjury) to the withholding agent. However, the beneficial owner is not required to provide another Form W–9 (or substitute form that is substantially similar and completed under penalties of perjury) if such person has already provided it to the withholding agent within the same calendar year.

(iii) In accordance with the provisions of section 871(h)(4), the Secretary may make a determination in appropriate cases that a certificate or statement by any person, or class of persons, does not satisfy the requirements of that section. Should that determination be made, all payments of interest that otherwise qualify as portfolio interest to that person would become subject to the 30 percent withholding tax.

(iv) Notwithstanding the foregoing requirements of A–14 and A–15 of this section,

(A) Any certificate that is required to be filed with the withholding agent during the period beginning on January 15 and ending on January 31, 1986 is not required to state that the beneficial owner of an obligation, prior to the date of the certificate, either was not a United States person or was a United States person if the obligation was acquired by the person providing the certificate on or before September 19, 1985; and

(B) All of the requirements of A–14 and A–15 of § 35a.9999–5, as in effect prior to the effective date of these amendments, shall remain effective with respect to each interest payment prior to the filing of the certificate described in subdivision (A), except that (*1*) the provisions of A–14 relating to which persons are required to receive certificates or statements and (*2*) subdivisions (ii) of A–14 and (ii) of A–15 shall become effective with respect to each interest payment after September 19, 1985.

* * * * *

(d) *Application of the Repeal of 30*

Percent Withholding to Pass-through Certificates.

Q–20. Will interest paid to a holder of a pass-through certificate as described in § 1.163–5T(d)(1) qualify as portfolio interest for purposes of the exemption from 30 percent withholding under section 871(h)(2) or section 881(c)(2)?

A–20. (i) Interest paid to a holder of a pass-through certificate will qualify as portfolio interest under section 871(h)(2) or section 881(c)(2) for purposes of the exemption from 30 percent withholding if the interest satisfies the conditions described in A–1 or A–8 of this section. For purposes of A–1 and A–8 of this section and sections 871(h) and 881(c), interest is considered to be paid on or with respect to the pass-through certificate and not on or with respect to any obligations held by the fund or trust to which the pass-through certificate relates. Thus, except as set forth in the last sentence of this subdivision (i), interest paid to the holder of a pass-through certificate is portfolio interest if the pass-through certificate is described in A–1 or A–8 of this section, without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in A–1 or A–8 of this section. For example, a mortgage pass-through certificate in bearer form must meet the requirements set forth in A–1 of this section, but the obligations held by the fund or trust to which the mortgage pass-through certificate relates need not meet the requirements set forth in A–1 or A–8 of this section. However, for purposes of A–1 and A–8 of this section and section 127 of the Tax Reform Act of 1984, a pass-through certificate will be considered as issued after July 18, 1984 only to the extent that the obligations held by the fund or trust to which the pass-through certificate relates are issued after July 18, 1984.

(ii) Solely for purposes of A–1 of this section, a pass-through certificate is considered to be an obligation that would be a registration-required obligation within the meaning of section 163(f)(2)(A) but for the fact that it is described in section 163(f)(2)(B) if the pass-through certificate is not described in section 163(f)(2)(A) (i), (ii), or (iii) (without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in any of those subsections) and if the pass-through certificate is described in section 163(f)(2)(B), without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(B).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 13, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–19893 Filed 8–16–85; 10:29 am]

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26 CFR Parts 1 and 602

[T.D. 8047]

Reporting and Recordkeeping Requirements; Returns Relating to Mortgage Interest Received in a Trade or Business From Individuals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the requirement of reporting mortgage interest received in a trade or business from individuals. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect any person who is engaged in a trade or business and who, in the course of such trade or business, receives $600 or more of interest from any individual on any mortgage in a calendar year. The regulations provide these persons with the guidance necessary to comply with the law. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the Proposed Rules section of this issue of the **Federal Register**.

DATES: The regulations apply with respect to mortgage interest received after December 31, 1984, and are effective after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules relating to the reporting of mortgage interest received in a trade or business from individuals under section 6050H of the Internal Revenue Code of 1954. The regulations reflect the addition of section 6050H to the Code by section 145 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 685). The temporary regulations will remain in effect until superseded by final regulations on this subject.

This document also amends 26 CFR Part 602 to provide for the display of the OMB control numbers under the Paperwork Reduction Act.

Explanation of Provisions

Section 6050H provides that an information return must be made by any person who is engaged in a the trade or business and who, in the course of trade or business, receives from any individual $600 or more of interest on any mortgage in a calendar year. The term "mortgage" is defined separately for obligations in existence on December 31, 1984, and obligations incurred after December 31, 1984. Any person required to make an information return under section 6050H must also furnish a statement to the payor or, if applicable, payor of record on or before January 31 of the calendar year following the year in which the interest was received. The regulations under section 6050H provide that, in cases where there is more than one individual responsible for repayment of a mortgage, the mortgage interest recipient must report only with respect to the payor of record. A payor of record is defined in the regulations.

The regulations provide that amounts received from the Department of Housing and Urban Development on mortgages insured under section 235 of the National Housing Act (12 U.S.C. 1701–1715z (1982 & Supp. 1983)) should not be reported under section 6050H as received from the borrower. In addition, amounts received after December 31, 1986, from any governmental unit (or any agency or instrumentality thereof) under a mortgage subsidy program should not be reported under section 6050H as received from the borrower.

The regulations also require that interest paid by a seller on a purchaser's mortgage should not be reported under section 6050H as received from the purchaser. This rule will permit the Internal Revenue Service to effectively monitor proper treatment of such payments. For example, the Service would be assured that, if interest paid by the seller is properly deductible by the purchaser, the stated purchase price of the property would be reduced to reflect (and hence its basis would not include) the amount of the interest paid by the seller and deducted by the purchaser.

The Service has considered the use of Form 1098 (the form used to report under section 6050H) to report not only interest paid by a borrower, but also related

information about the amount (if any) of mortgage credit allowable to the borrower under section 25 of the Code. Section 25 permits a mortgage credit for certain borrowers in a state which has issued mortgage credit certificates. As issued in temporary form, these regulations do not require interest recipients to report the amount of the mortgage credit allowable under section 25. If the number of taxpayers claiming such credit or the level of noncompliance with the requirements of that section indicate that reporting to borrowers and the Service would be desirable, however, the Service may, by regulation, require reporting of this information for future years.

Due to the effective date of section 6050H, there is need for immediate guidance so that persons subject to the reporting requirement can make preparations to comply with these provisions. Therefore, these regulations have been drafted in question and answer format in order to facilitate their timely publication. No inference should be drawn, however, regarding issues not raised herein or from the inclusion of certain questions and not others in these regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required.

No general notice of proposed relumaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply a Regulatory Impact Analysis is not required for these regulations.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB. Control number 1545-0901

Drafting Information

The principal author of these regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.6001-1—1.6109-2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * section 1.6050H-1T also issued under 26 U.S.C. 6050H.

Par. 2. The following new section is added at the appropriate place.

§ 1.6050H-1T Questions and answers concerning information returns relating to mortgage interest received in a trade or business from individuals. (Temporary).

The following questions and answers relate to the requirement of reporting mortgage interest under section 6050H of the Internal Revenue Code of 1954, as added by section 145 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 685):

Requirement of Reporting

In general

Q-1: What does section 6050H provide with respect to the reporting of mortgage interest?

A-1: In general, section 6050H provides that an information return must be made by any person who is engaged in a trade or business and who, in the course of such trade or business, receives from any individual $600 or more of interest on any mortgage in a calender year. For purposes of this section—

(a) Any person who is engaged in a trade or business and who, in the course of such trade or business, receives interest on any mortgage is referred to as an "interest recipient"; and

(b) Any individual who pays interest on any mortgage is referred to as a "payor".

Interest Subject To Reporting

Q-2: Does the reporting requirement apply to all interest received by an interest recipient?

A-2: No. The reporting requirement applies only to interest received from a payor on a mortgage (as defined in A-4 and A-5 of this section). The reporting requirement does not apply to interest received from a trust, estate, partnership, association, company, or corporation.

Q-3: Does the reporting requirement apply to any amount of mortgage interest received from a payor?

A-3: No. The reporting requirement applies only if $600 or more of interest is received from a payor on any mortgage in a calendar year. The $600 threshold is determined on an obligation by obligation basis. Therefore, if the interest received from a payor on an obligation is less than $600, reporting with respect to that interest is not required even if the total interest received from the payor on all obligations held by the interest recipient exceeds $600 in a calendar year.

Q-4: What is a mortgage, for purposes of this section and section 6050H, with respect to obligations in existence on December 31, 1984?

A-4: An obligation in existence on December 31, 1984, that is secured primarily by real property (regardless of whether the property is located inside or outside the United States) is a mortgage unless, at the time the obligation was incurred, the interest recipient reasonably classified such obligation as other than a mortgage, real property loan, real estate loan, or other similar type of obligation. (See A-12 of this section for rules relating to interest received by foreign persons.) For example, if an obligation incurred in 1980 was secured primarily by real property, but the interest recipient reasonably classified the obligation as a commercial loan because the proceeds were used to finance the payor's trade or business, the obligation is not considered a mortgage for purposes of this section and section 6050H. If, however, a majority of the obligations in a particular class are primarily secured by real property, it is not reasonable to classify such obligations as other than mortgages, real property loans, real estate loans, or other similar types of obligations; such obligations are, therefore, mortgages for purposes of section 6050H and this section. For purposes of this definition, real property includes stock in a cooperative housing corporation. A mortgage does not include a credit card obligation that is secured primarily by real property or a line of credit that is secured primarily by real property.

Q-5: What is a mortgage, for purposes of this section and section 6050H, with respect to obligations incurred after December 31, 1984?

A–5: With respect to obligations incurred after December 31, 1984, a mortgage is any obligation that is secured primarily by real property, regardless of whether the property is located inside or outside the United States. (See A–12 of this section for rules relating to interest received by foreign persons.) For purposes of this definition, real property includes stock in a cooperative housing corporation. A mortgage does not include a credit card obligation that is secured primarily by real property or a line of credit that is secured primarily by real property. The determination of whether a particular obligation is a mortgage shall be made without regard to the interest recipient's classification of that obligation. For example, if an obligation is secured primarily by real property, but the interest recipient classifies the obligation as a commercial loan because the proceeds are to be used to finance the payor's trade or business, the obligation is nevertheless a mortgage for purposes of this section and section 6050H.

Q–6: If the amount of interest received on a mortgage in a calendar year is less than the amount of interest due on the mortgage, what amount of interest must be reported under this section?

A–6: The amount of interest received must be reported. For example, assume that $800 of interest is payable in a calendar year but only $600 of interest is received in the calendar year. The amount of interest received ($600) must be reported under this section. Similarly, assume that an interest recipient accrues $900 of interest on a mortgage in a calendar year but only $800 of interest is payable and is received in the calendar year (resulting in a $100 increase in the unpaid balance of the loan). The amount of interest received ($800) must be reported under this section.

Q–7: If a payor remits 13 payments of interest on any mortgage in a calendar year, but the interest recipient receives only 12 payments in the calendar year, what amount should the interest recipient report?

A–7: The interest recipient should report the interest actually received in the calendar year. For example, if a payor mails the 13th payment on December 31 or a calendar year, and the interest recipient does not receive it until the following calendar year, the interest recipient should report only the 12 payments received in the calendar year.

Trade or Business Requirement

Q–8: Must an interest recipient be engaged in the trade or business of lending money to be subject to the reporting requirement of this section?

A–8: No. An interest recipient (other than a governmental unit, or any agency or instrumentality thereof) is subject to this reporting requirement if the interest recipient is engaged in any trade or business and, in the course of such trade or business, receives from an individual $600 or more of interest on any mortgage in a calendar year. For example, if A, a real estate developer, provides financing to B, an individual, to enable B to purchase a house in a subdivision owner and developed by A, and that house is the primary security for the financing, A is subject to this reporting requirement. Alternatively, if C, a physician, who is not engaged in any other trade or business, lends money to D to enable D to purchase C's home, C is not subject to the reporting requirement of this section because C will not receive the interest in the course of his sole trade or business of being a physician.

Q–9: How does the trade or business requirement apply to a governmental unit?

A–9: A governmental unit (or any agency or instrumentality thereof) which receives from a payor $600 or more of interest on any mortgage in a calendar year is subject to the reporting requirement without regard to the requirement that the money be received in the course of a trade or business. A governmental unit (or any agency or instrumentality thereof) that is subject to the reporting requirement must designate an officer or employee to make the return. The designated officer or employee must make the return in the form and manner prescribed by this section.

Treatment of Cooperative Housing Corporations

Q–10: How does this reporting requirement apply in the case of cooperative housing corporation?

A–10: For purposes of section 6050H and this section, a cooperative housing corporation (as defined in section 216) is treated as a person who is engaged in a trade or business and who, in the course of such trade or business, receives interest from its tenant-stockholders on a mortgage. Therefore, a cooperative housing corporation is required to report under section 6050H and this section.

Interest Received on Behalf of Another

Q–11: If, in the course of a trade or business, a person receives (collects) interest on behalf of another, who is required to report?

A–11: The person first receiving (collecting) the interest is required to report. For example, a servicing bank that receives $600 or more of mortgage interest in a calendar year from a payor on behalf of a lender is required to report the interest received under this section. No reporting is required under this section upon the transfer of the interest from the servicing bank to the lender for whom the interest was received.

Interest Received by Foreign Persons

Q–12: Must an interest recipient that is a foreign person report under section 6050H and this section?

A–12: An interest recipient that is a foreign person must report with respect to mortgage interest that is received at a location within the United States. In the case of interest received at locations outside the United States, an interest recipient that is a foreign person must report—

(a) If the foreign person is a controlled foreign corporation within the meaning of section 957(a); or

(b) If the foreign person is a corporation any interest received from which would be considered to be from sources within the United States under section 861(a)(1)(C) (without regard to whether the interest is paid or credited by a domestic branch of a foreign corporation engaged in the commercial banking business).

Multiple Borrowers

Q–13: When there is more than one borrower on a mortgage, must the interest recipient report with respect to each borrower?

A–13: No. The interest recipient must report only with respect to the payor of record (as defined in A–14 of this section) on the mortgage. The amount of interest subject to reporting is the full amount received by the interest recipient with respect to the mortgage during the calendar year.

Q–14: Who is a payor of record?

A–14: For purposes of this section, the payor of record is the individual carried on the books and records of the interest recipient as the principal borrower or the individual designated by the interest recipient as the payor of record.

Interest Paid by Third Parties

Q–15: If an interest recipient receives interest on a mortgage from a person other than the borrower, must the interest recipient report this amount as received from the borrower?

A–15: In general, yes. Except as otherwise provided in this A–15 and A–15a of this section, an interest recipient must report all amounts received on a borrower's mortgage as received from the borrower under section 6050H and

this section. For example, assume that N is the borrower on a mortgage and that interest is received on the mortgage from N's mother. The interest that is received from N's mother on N's mortgage is reportable under section 6050H and this section as received from N. However, interest that is paid by a seller on a purchaser's mortgage shall not be reported under section 6050H and this section as received from the purchaser. For example, if a real estate developer deposits an amount in escrow with the interest recipient and advises the interest recipient to draw on the account to pay interest on a purchaser's mortgage, this interest is not reportable under section 6050H and this section. Similarly, if a real estate developer pays a lump sum to the interest recipient for interest on a purchaser's mortgage, this interest is not reportable under section 6050H and this section. In addition, amounts received by the interest recipient as housing assistance payments from the Department of Housing and Urban Development ("HUD") on a borrower's mortgage that is insured under section 235 of the National Housing Act (12 U.S.C. 1701–1715z (1982 & Supp. 1983)) shall not be reported as interest received from the borrower. In such a case, therefore, only the amount of interest received on the mortgage that exceeds the amount of housing assistance payments received from HUD shall be reported.

Q–15a: If an interest recipient receives, with respect to a borrower's mortgage, an amount from a governmental unit, or any agency or instrumentality thereof (other than an amount received from HUD as described in A–15 of this section), should the interest recipient report the amount as received from the borrower?

A–15a: If the interest is received after December 31, 1986, it must be reported in the same manner as interest on mortgages with respect to which housing assistance payments are received from HUD, as described in A–15 of this section. If the interest is received before January 1, 1987, it may, but need not, be reported.

Form and Manner of Return

Form of Return

Q–16: What form must be used to make a return required by section 6050H and this section?

A–16: An interest recipient must make the return on Form 1098 (with Form 1096 as the transmittal form). The interest recipient may, however, prepare and use a form that contains provisions substantially similar to those of Forms 1096 and 1098 if that person complies with any revenue procedures relating to substitute Forms 1096 and 1098 in effect at that time. A separate return must be made for each mortgage with respect to which $600 or more of interest is received for a calendar year.

Information Included on Return

Q–17: What information must an interest recipient include on Form 1098?

A–17: An interest recipient must include the following information on the Form 1098:

(a) The name, address, and TIN (as defined in section 7701(a)) of the payor or payor of record;

(b) The name and address of the interest recipient;

(c) The amount of interest (not including points and other prepaid interest) received on the mortgage in the calendar year; and

(d) Any other information as may be required by Form 1098 or its instructions.

Time for Filing

Q–18: When must an interest recipient file the return or returns required by section 6050H and this section?

A–18: An interest recipient must file the return or returns on or before February 28 of the year following the calendar year in which the mortgage interest is received.

Place for Filing

Q–19: Where must the return or returns required under section 6050H and this section be filed?

A–19: The return or returns must be filed with the same Internal Revenue Service Center where other returns of the interest recipient are filed.

Use of Magnetic Media

Q–20: What rules apply with respect to the use of magnetic media?

A–20: Any return required under section 6050H and this section must be filed on magnetic media to the extent required by section 6011(e) and the regulations thereunder. Any person not required by section 6011(e) to file returns on magnetic media may request permission to do so. See § 1.9101 for rules relating to permission to submit information on magnetic tape or other media. If a person required to file returns on magnetic media fails to do so, the penalty under section 6652 (failure to file an information return) applies.

Requirement of Furnishing Statements to Payors

In General

Q–21: What statements are required to be furnished to payors under section 6050H and this section?

A–21: Any interest recipient required to make an information return under section 6050H must also furnish a statement to the payor or, if applicable, payor of record (see A–13 and A–14 of this section). For the date when the statement must be furnished, see A–26 of this section.

Q–22: Is the statement considered to be furnished to the payor or payor of record if it is mailed to him at his last known address?

A–22: Yes.

Q–23: If an interest recipient furnishes a statement required under a Federal mortgage program will the requirements of A–21 of this section be met?

A–23: Yes, if the statement furnished contains all the information required under A–24 of this section and is furnished to the payors or payors of record by the date required under A–26 of this section.

Information Included on Statement

Q–24: What information must be included on the statement required to be furnished to payors or payors of record under section 6050H and this section?

A–24: The statement must include the following information:

(a) The information required under A–17 of this section;

(b) A legend stating that the information is being reported to the Internal Revenue Service; and

(c) A legend stating that the amount reported on the statement is deductible by the payor for Federal income tax purposes only to the extent the payor actually paid the amount and was not reimbursed by another person.

Copy of Form 1098 to Payors

Q–25: Can an interest recipient meet the requirement to furnish a statement to a payor or payor of record by furnishing a copy of the Form 1098 filed with respect to that payor or payor of record?

A–25: Yes. The requirement of furnishing a statement may be met by furnishing to the payor or payor of record a copy of the Form 1098 containing the same information filed with the Service with respect to such payor, or a form that contains provisions substantially similar to those of Form 1098, provided that the form bears the legends described in A–24 of this section

Time for Furnishing Statement

Q–26: When is a statement required to be furnished by an interest recipient to the payor or payor of record?

A–26: A statement is required to be furnished by the interest recipient to the payor or payor of record on or before

January 31 of the year following the calendar year in which the mortgage interest is received.

Penalties

In General

Q–27: Are there any penalties for failing to comply with the requirements of section 6050H and this section?

A–27: Yes. The penalty for failing to make an information return with respect to a payor or payor of record is provided in section 6652. The penalty for failing to furnish a statement to a payor or payor of record is provided in section 6678.

Q–28: Are there any penalties for failing to furnish a TIN upon request?

A–28: Yes. Any payor or payor of record is subject to a $50 penalty by the Internal Revenue Service if such payor fails to furnish his TIN upon the request of an interest recipient. For rules relating to the requesting of TINs by interest recipients, see A–30 and A–31 of this section.

Q–29: Is an interest recipient subject to any penalties for failing to furnish the TIN of a payor or payor of record?

A–29: Yes. In general, the penalties provided under section 6676 will be assessed against interest recipients who fail to furnish to the Internal Revenue Service the TIN of a payor or payor of record. With respect to mortgages in existence on December 31, 1984, however, the interest recipient will not be subject to the section 6676 penalties if the interest recipient followed the rules of A–30 and A–31 of this section for requesting TINs and properly processed the responses.

Requesting TINS

Q–30: What rules apply with respect to the requesting of TINs by interest recipients?

A–30: With respect to obligations incurred after December 31, 1984, the interest recipient must take all reasonable steps to obtain the TIN of the payor or payor of record at the time the obligation is incurred. With respect to any mortgage for which the interest recipient does not have the TIN of the payor or payor of record in its accounting system, the interest recipient must request, at least once a year, the TIN of such payor.

The request for a TIN need not be in a separate mailing. The request may be included, for example, in the interest recipient's regular mailings of payment coupon booklets or annual statements. However, if the interest recipient makes no other mailings to the payor or payor of record during 1985 (or during the year in which the obligation is incurred for obligations incurred after 1985), then the interest recipient must request the TIN in a separate mailing.

Q–31: What form must the interest recipient use to request the TIN of a payor or a payor of record?

A–31: No particular form must be used to request the TIN. However, the request must be made on a separate piece of paper and the request must clearly notify the payor that the Internal Revenue Service requires the payor to furnish his TIN in order to verify any deduction for mortgage interest. The interest recipient must also notify such payor that he is subject to a $50 penalty, imposed by the Internal Revenue Service, if he fails to furnish his TIN.

Effective Date

Q–32: When are section 6050H and this section effective?

A–32: Section 6050H and this section are generally effective for amounts of mortgage interest received after December 31, 1984. However, Q/A–15a of this section is effective for amounts of mortgage interest received after December 31, 1986.

PART 602—[AMENDED]

Reporting and Recordkeeping Requirements

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6050H–1T . . . 1545–0901."

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: August 9, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 85–19891 Filed 8–16–85; 8:45 am]
BILLING CODE 4830–01–M

POSTAL SERVICE

39 CFR Part 111

Examination of Postage Meters Not Set During 6-Month Period

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule changes the postage meter regulations to establish new follow-up notification procedures for postmasters to take when customers do not submit their postage meters for required six-month examinations. The former system was ineffective because the method of notification was not specified and there were no follow-up procedures.

EFFECTIVE DATE: September 19, 1985.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner (202) 245–5756.

SUPPLEMENTARY INFORMATION: A detailed explanation of the nature and background of the proposed rule, including the reasons for its proposed adoption and a discussion of the changes, accompanied its publication in the **Federal Register** on July 9, 1985 (50 FR 27992).

We received one letter of comment requesting relief for seasonal mailers who do not use postage meters during an off-season often lasting more than 6 months. The commenter suggested a 12, rather than a 6 month, examination cycle, based on actual usage of meters. We are not adopting this suggestion. It would be an unreasonable administrative burden to have to identify seasonal meter licensees who may not be using meters for more than 6 months out of a year and to deal with them on a special basis. In addition, we believe a 12 month examination cycle runs counter to a prudent and effective revenue protection program.

For the reasons given and after careful consideration, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service, Incorporation by reference.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 144—POSTAGE METERS AND METER STAMPS

2. Revise 144.62 to read as follows:

144.62 Examination

a. Review Forms 3610 quarterly. If no settings have been made during the previous six months, advise the local meter licensees in writing to bring in meters which have not

been set in this period for examination, as specified in 144.341. When the meter is set at another office, request the office which sets the meter to have it called in for examination. The office where the meter is set must then advise the office where Form 3610 is maintained of the results of the examination, so a suitable entry can be made on Form 3610.

b. Customers who do not bring in their meters after the initial written notification must be approached again within 15 days, preferably by personal contact. If no response is received within another 15 days, the postmaster must notify the meter license holder that the license is to be revoked, following the procedures for revocation in 144.23. A Form 1603, Meter Verification Card, or similar form must not be used as a method of verification and examination.

A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the **Federal Register** as provided in 39 CFR 111.3.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-19614 Filed 8-19-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-005; A-4-FRL-2877-8]

Approval and Promulgation of Implementation Plans; Tennessee: Chattanooga-Hamilton County Extension of Conditional Approval

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 22, 1983 (48 FR 11746), EPA conditionally approved the Part D plan for attainment of the Total Suspended Particulate (TSP) standard in Chattanooga, Tennessee. As a result of proposed changes in EPA's new source review regulations (August 29, 1983, 48 FR 38742), which may remove all obstacles to full approval, EPA extended the conditional approval until December 31, 1984 (49 FR 18826). Since the proposed regulations have not yet been finalized, EPA is again extending the conditional approval, this time until December 31, 1986.

EFFECTIVE DATE: This action will be effective on October 21, 1985 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State submittals are available for review during normal business hours at the following locations:

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 Ninth Avenue North, Nashville, Tennessee 37203

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407

FOR FURTHER INFORMATION CONTACT: Raymond S. Gregory, EPA Region IV, Air Management Branch, at the above listed address, and phone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On March 22, 1983 (48 FR 11946), EPA gave conditional approval to the State Implementation Plan (SIP) revision submitted by the State of Tennessee for Chattanooga, Hamilton County, Tennessee, as required by Part D of Title I of the Clean Air Act as amended in 1977, except for the permitting of any source which qualifies as a reconstruction under EPA's definition (40 CFR 51.18(j)(1)(ix)).

EPA approval of the SIP revision was given on condition that the State submit a definition of the phrase "Federally enforceable", and that all limitations and conditions, including permit restrictions, established under the authority of the plan be made Federally enforceable by December 31, 1983. The Agency noted (at 48 FR 11947, bottom of col 1) that because of a commitment by EPA to propose regulatory amendments as a result of the settlement agreement among EPA and petitioners in the Chemical Manufacturers Association litigation, conforming amendments to the plan revision might not be necessary for full approval. The note further stated that the conditional approval could be extended if on December 31, 1983, EPA was still in the process of revising the new source review requirements, but had not finalized the changes.

On August 25, 1983 (48 FR 38742), EPA proposed regulatory amendments which, if promulgated, would make amendment of the Part D Chattanooga TSP SIP unnecessary. Since final action was not taken on the proposed amendments by December 31, 1983, the conditional approval of the Chattanooga plan was extended until December 31, 1984 (49 FR 18826), and since final action has still not been taken, the conditional approval is again extended until December 31, 1986.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice, unless, within 30 days, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on 60 days from today.

Action

Based on the foregoing, EPA hereby extends the conditional approval of the Part D plan for TSP for Chattanooga, Tennessee.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. § 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter.

Dated: July 29, 1985.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2231, is revised to read as follows:

§ 52.2231 Control Strategy: Sulfur oxides and particulate matter.

Part D Conditional Approval.

(a) The Chattanooga primary TSP plan's provisions for review of new sources and modifications in the nonattainment area are approved on

condition that the State submit by December 31, 1986, a definition of the ferm "Federally enforceable" and provision for making Federally enforceable all limitations, conditions, and offsets, including permit restrictions, relied upon under the plan, and in the interim, implement these provisions in a manner consistent with EPA requirements.

[FR Doc. 85-18883 Filed 8-19-85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2884-7]

Approval And Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: Today's action announces USEPA's final rulemaking for the State of Michigan's revised Rule 336.1371, existing rule 336.1372, and new rule 336.1373 related to the control of fugitive dust emissions.

This Notice of Final Rulemaking incorporates into the Michigan State Implementation Plan (SIP) revised Rules 336.1371, 336.1372 and newly promulgated Rule 336.1373, because they provide a framework for the development of fugitive dust control programs. In addition, this notice disapproves Michigan's Total Suspended Particulate (TSP) SIP because it does not meet the Reasonable Available Control Technology (RACT) requirements of section 172(b)(3) of Part D of the Clean Air Act for fugitive dust sources located in nonattainment areas. New source restrictions, pursuant to section 110(a)(2)(I) of the Clean Air Act in the Michigan primary TSP nonattainment areas are effective 30 days from the date of publication of this notice.

EFFECTIVE DATE: September 19, 1985.

ADDRESSES: Copies of this revision to the Michigan SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Ms. Toni Lesser, at (312) 886-6037, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60601

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48821.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, (312) 886-6037.

SUPPLEMENTARY INFORMATION:

Background

USEPA conditionally approved Michigan's TSP SIP for nonattainment areas required by Part D of the CAA on May 6, 1980, (45 FR 29790) and May 22, 1981, (46 FR 27923). One of the conditions for final approval was that the State adopt and submit regulations requiring the application of Reasonably Available Control Technology (RACT) for the control of all traditional sources of fugitive particulate emissions for at least the Wayne County primary TSP nonattainment area. On March 6, 1981, Michigan submitted existing Rules 336.1371 and 336.1372 to satisfy this condition. In addition, the Michigan Department of Natural Resources (MDNR) subsequently submitted three separate letters to USEPA containing clarification and commitments as to how Rules 336.1371 and 336.1372 would be implemented to obtain control programs from sources of fugitive emissions in the primary TSP nonattainment area.

On November 15, 1982 (47 FR 51389), USEPA approved Rules 336.1371 and 336.1372, based on and including the additional commitments contained in the three letters, as revisions to the Michigan SIP. Rule 336.1371 established a discretionary procedure by which the Michigan Air Pollution Commission (Commission) was authorized, but not required, to request sources in attainment or non-attainment areas to develop and submit fugitive dust control programs to be incorporated into enforceable permits or administrtive orders. The required elements of such programs were set forth in Rule 336.1372. These rules were approved as representing RACT, as mandated by Section 172(b)(3) of the Clean Air Act.

Court Actions

USEPA's approval was challenged by the Natural Resources Defense Council (NRDC) in January 1983; *NRDC* v. *USEPA*, No. 83-3027 (6th Circuit). USEPA was granted a voluntary remand to reconsider its approval, and USEPA re-evaluated its approval of Rules 336.1371 and 336.1372 in light of issues raised by NRDC in its petition for review.

On December 2, 1983, (48 FR 54377), USEPA proposed to withdraw its approval of, and also disapprove, Rules 336.1371 and 336.1372. Defects in the rules' enforceability and the failure of the State of Michigan to cure these defects by obtaining enforceable RACT-based programs for the appropriate tugitive dust sources in the primary nonattainment area were the primary reasons for this proposed disapproval.

On October 1, 1984, the U.S. Court of Appeals for the Sixth Circuit directed Michigan to submit final fugitive dust rules by April 30, 1985. The State's submittal of April 25, 1985, was intended to satisfy this requirement. The Court also directed USEPA to propose action on the new rules and to take final action on that proposal, as well as the December 1983 proposal, by August 1, 1985.

State Action

The State of Michigan, on April 25, 1985, formally submitted its rules for the control or industrial fugitive particulate emissions from sources located in TSP attainment and nonattainment areas. Michigan's newly proposed industrial fugitive dust SIP consists of three rules: Revised Rule 336.1371, existing Rule 336.1372, and new Rule 336.1373. As revised and resubmitted, R336.1371 and R336.1372 apply only in TSP attainment areas. New Rule 336.1373 applies only in TSP nonattainment areas.

Michigan's Proposed Rule 336.1371 addresses the procedures and requirements for the development of fugitive dust control programs for facilities located in attainment areas. Rule 336.1372 remains unchanged from the State's original submittal which was approved by USEPA on November 15, 1982 (47 FR 51398). However, pursuant to revised Rule 336.1371, both rules are now limited in applicability to attainment areas.

Michigan's new Rule 336.1373 establishes fugitive dust control requirements for sources located in TSP nonattainment areas. These areas are listed in Table 36 of Rule 336.1371. The provisions of Rule 336.1373 apply to virtually all fugitive emission sources/operations, except for operations involving grain handling and drying (USEPA's Technical Support Document dated April 25, 1985, contains a detailed analysis of the rules).

USEPA's Action

On May 30, 1985 (50 FR 23028), USEPA published a notice of proposed

rulemaking which proposed the following actions:

- USEPA reaffirmed its proposal to withdraw its approval and disapprove Michigan's existing Rules 336.1371 and 336.1372 for Part D purposes, [i.e., insofar as they apply to TSP nonattainment areas as discussed in the December 2, 1983, rulemaking (48 FR 543771)].
- USEPA proposed to incorporate into the Michigan SIP the amended R336.1371 to replace the existing R336.1371 provisions, since amended R336.1371 provides a framework for the development of fugitive dust control programs in attainment areas.
- USEPA stated that existing R336.1372 would remain incorporated within the State's TSP SIP insofar as it applies to TSP attainment areas.
- USEPA proposed to incorporate into the Michigan SIP new Rule 336.1373. The new Rule 336.1373 provides a framework for the development of fugitive dust control programs in nonattainment areas.
- USEPA proposed to disapprove the overall Michigan Part D TSP SIP as not being adequate to meet the requirements of Part D of section 172(b) of the CAA.
- USEPA stated that, if final action is taken to withdraw approval and disapprove of the current federally approve fugitive dust rules, and USEPA finally disapproves the newly submitted fugitive dust Rule 336.1373 because it fails to satisfy the Part D requirements, then the new source restriction of section 110(a)(2)(I) of the CAA would apply in Michigan's primary TSP nonattainment areas.

USEPA's proposed rulemaking dated May 30, 1985 (50 FR 23028), provided a 30-day comment period. USEPA received 17 public comments. A detailed analysis of all the comments is contained in USEPA's Technical Support Document (TSD) dated July 23, 1985. In addition, USEPA received six comments on its proposal to withdraw approval of Michigan's Rules 336.1371 and 336.1372 (December 2, 1983; 48 FR 54377).

Below is a summary of all the comments received related to USEPA's December 2, 1983, and May 30, 1985, rulemaking actions and USEPA's responses to those comments.

Comments on USEPA's Proposal To Withdraw Approval of Rules 336.1371 and 336.1372 (December 2, 1983; 48 FR 54377)

A. *Comment:* USEPA cited several provisions of former Rule 336.1371 which it claims give the Michigan Air Pollution Control Commission too much discretion in controlling significant sources of fugitive dust as required by section 172(b)(3) of the Clean Air Act. USEPA misunderstands how these provisions operate or are intended to operate:

(1) USEPA cited as a deficiency that the requirement in Rule 336.1371 to submit a fugitive dust control program applies only to persons notified by the Commission, but Rule 336.1371 does not obligate the Commission to notify anyone. The "upon notification" language of Rule 336.1371(1) was a matter of form and was not intended to imply that the Commission had the legal option not to notify subject sources.

(2) USEPA cited as a deficiency that a person who challenges the Commission's notification under Rule 336.1371(4) seems to have an indefinite time in which to submit a program. There is no validity to this claim, since a program must be submitted within 6 months, and only an affirmative action by the Commission on a petition could remove this requirement.

(3) USEPA cited as a deficiency that, if a person submits no program or an inadequate program, the Commission "may", but need not, establish an approvable program, under Rule 336.1371 (5) and (6). While it is true that the Commission is not obligated to establish a program if an acceptable one is lacking, it is also true that none of the Commission's rules contain such a requirement. Clearly the Commission intends to establish programs if they are necessary.

(4) USEPA cited as a deficiency that under Rule 336.1371(7), a person need implement a program only after it has been approved by the Commission, but the Commission is not required to approve or disapprove any program within a specified time period. Given that the Commission is charged with protecting the public health and welfare, it does not legally have the options of taking no action on an inadequate program or of approving it. Such abuses of discretion would be subject to judicial review.

Response: USEPA's responses paragraph by paragraph are as follows:

(1) USEPA must evaluate rules as written rather than how they might have been intended to be written. There is no requirement of the Commission in Rules 336.1371 and 336.1372 to issue a notification to anyone. In fact, it was only in response to indirect pressure from USEPA that the Commission took its first action in November 1983, to notify source owner/operators in the Wayne County primary TSP nonattainment area. That action came 2½ years after Rules 336.1371 and 336.1372 became effective at the State level.

(2) USEPA sees little basis in Rule 336.1371 for the commentor's position. The Agency continues to believe that Rule 336.1371 is, at best, unclear in this regard, and, at worst, provides an indefinite time period to submit a program for a source whose owner/operator has challenged the Commission's notification to submit.

(3) See Response to Comment A.1.

(4) Section 172(b)(2) of the Clean Air Act requires, for nonattainment areas, "implementation of all reasonably available control measures as expeditiously as practicable." In light of this requirement, USEPA believes that it should not approve a rule which depends on discretionary Commission action for effective implementation.

When the effective implementation of a rule may depend heavily on State judicial review to correct abuses of discretion, it cannot be considered to be "as expeditious as practicable."

B. *Comment:* Discretion cannot and should not be eliminated in the development and application of rules. Discretion is appropriate when it provides the regulatory flexibility necessary for sound program administration.

Response: USEPA fails to see how correction of the rule deficiencies which it cited would result in elimination of all discretion or unsound program administration. The deficiencies cited by USEPA grant excessive discretion to the Commission which conflicts with the requirements of Part D of the CAA, such as the discretion not to apply the rules to any fugitive dust sources. This point is underscored by the fact that the rules, which were clearly intended to result in RACT fugitive dust control in TSP nonattainment areas as expeditiously as practicable, have failed to directly produce any significant fugitive dust control programs or any control of major fugitive dust sources in Wayne County since their promulgation in 1981.

C. *Comment:* The commentor disagrees with the argument of the Natural Resources Defense Council (NRDC) that USEPA could not approve Rules 336.1371 and 336.1372 as meeting the requirement for RACT because Michigan failed to submit a technical or economic analysis showing that the measures required by Rule 336.1372 constitute RACT. The commentor states that this argument is contrary to law and fact, because the Courts have said that the USEPA may supply such analysis where it is missing, and USEPA claims to have done so.

Response: USEPA agrees with the commentor that the Courts have said that the USEPA may supply technical or

economic analysis, vis-a-vis RACT, where it is missing (U.S. Court of Appeals for the Sixth Circuit, *National Steel* vs *Gorsuch*, 1983). USEPA also agrees that, when it approves Rule 336.1371 and 336.1372 on November 15, 1982 (47 FR 51398), it did so "in part on the basis of EPA studies of fugitive dust control techniques generally" (48 FR 54378).

However, in reconsidering its approval of Rule 336.1371 and 336.1372, USEPA evaluated technical information acquired to date on fugitive dust control technologies. USEPA submits that, with its present knowledge, it would not propose to approve Rules 336.1371 and 336.1372 as meeting the RACT requirement. The primary reason for this failure is that the rules would allow the Commission to approve control measures of less-than-RACT control effectiveness. For example, a program could be approved which required an unpaved road to be controlled with water applied once per day. Emission control effectiveness might be less than 50 percent in this case. The Agency's operative definition of RACT [memorandum from Roger L. Strelow, December 9, 1976; published in 7 Environment Reporter, Current Developments (BNA) 1210 (1976) and referenced at 45 FR 59198 (September 8, 1980)] requires the "lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." A control program which calls for water to be applied once per day cannot be considered RACT (even if the road is lightly travelled). A rule that would allow such a result, or allow approval of programs with widely different emission reduction potentials for the same source category cannot be considered to ensure the implementation of RACT. In its comments on the subject rulemaking (i.e., proposal to withdraw approval) the Natural Resources Defense Council (NRDC) made essentially this point.

D. *Comment:* Industry stated that there should be no lower limit on the cost associated with RACT so long as the control objective is achieved.

Response: USEPA agrees; however, the control objective is the "lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." As long as more money will buy better technology and more emission control, the cost that is required by RACT is determined by "economic feasibility."

Comments on USEPA's Proposal Concerning New and Revised Rules 336.1371, 336.1372, and 336.1373 (May 30, 1985; 50 FR 23028)

E. *Comment:* USEPA must approve Rule 336.1373 for the purposes of Part D because it is enforceable and requires RACT. In particular:

(1) The applicability and enforceability defects of the former rules (i.e., deficiencies in former Rules 336.1371–336.1372 as cited by USEPA at 48 FR 54378) have been remedied.

(2) Rule 336.1373 is consistent with USEPA's criteria for RACT as contained in Region V's letter to Michigan DNR, dated July 9, 1984.

(3) USEPA cannot justifiably use the results of the Illinois fugitive dust rule to judge the acceptability of Michigan's Rule 336.1373. Michigan improved substantially on the Illinois model in an effort to ensure RACT.

Response: USEPA's responds to this three-part comment as follows:

(1) USEPA agrees that the four deficiencies cited by the Agency at 48 FR 54378 with regard to the existing Rules 336.1371–336.1372 have been remedied by the new proposed Rule 336.1373. Because USEPA determined that Rule 336.1373 provided an enforceable framework for obtaining control programs, it proposed to approve it, pursuant to Section 110 of the Clean Air Act, for application in nonattainment areas. However, USEPA does not agree that Rule 336.1373 represents RACT for sources of fugitive dust emissions as required by Part D. The primary problem is that the rule allows the Commission too much discretion in approving source-specific control programs.

The rule, like the existing Rules 336.1371, 336.1372, only describes in general terms what control measures are acceptable for inclusion into control programs, but does not provide any criteria for determining whether (and therefore does not assume that) a given control technology will achieve RACT-level control. For example, field test data on the effectiveness of different fugitive dust control techniques clearly indicates that the frequency and conditions of application of a dust suppressant have a direct impact on the control efficiencies achieved. Rule 336.1371 provides that suppressant be applied "on a regular basis, as needed, in accordance with the operating program" submitted by the source and approved by the Commission. The State has made no determination as to what range of application frequencies would ensure emission reductions equal to RACT.

Paragraph (2)(a)(vi) of Rule 336.1373 requires operating programs submitted by sources to include "estimated frequency of application of dust suppressant" and establishes the following standard by which the Commission shall determine the approvability of an operating program:

> Such operating program shall be designed to significantly reduce fugitive dust and shall reduce the fugitive emissions to a level that a particular source is capable of achieving by the application of control technology that is reasonably available, considering technological and economic feasibility.

This approach does not satisfy the CAA's requirement that Part D Plans ensure application of at least RACT in nonattainment areas. RACT is defined by USEPA as the "lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technology and economic feasibility" (emphasis added). The standard in the rule would allow Commission approval of less of the control efficiency achieved by the technology. Rule 336.1373 contains no emission limit or range of acceptable emission limits but merely creates a regulatory framework for establishing emissions limits through Commission approval of control programs.

(2) USEPA does not agree with this comment. In the July 9, 1984, letter, Region V indicated to Michigan that the best guide to determining RACT was the definition of RACT itself. The definition cited is the Agency's operative definition of RACT as set forth in the memorandum from Roger Strelow, dated December 9, 1976 (referenced at 45 FR 59198; September 8, 1980).

The July 9, 1984, letter did not state that a procedural rule like that submitted by Michigan would satisfy the RACT requirement.

(3) It is true that Rule 336.1373 is not identical to Illinois Rule 203(f) Working with Rule 203(f) as a model, Michigan revised it in several respects that generally had a clarifying and tightening effect. (This is not the case with regard to the property-line opacity limit which is zero percent in the Illinois rule, but five percent in Rule 336.1373. However, USEPA continues to view this property-line limit in both cases as essentially uneforceable.) Despite these revisions, USEPA continues to believe that Rule 336.1373, as submitted, will not ensure that RACT will be required as necessary for Part D purposes. USEPA's reasoning has already been presented above. In addition, USEPA continues to believe that the failure of the Illinois rule to obtain RACT-level permits and control

plans, as discussed in USEPA's technical support document of April 25, 1985, is relevant to Michigan's Rule 336.1373, since the latter rule continues to allow wide discretion by the Commission in determining acceptable control program content. In fact, 336.1373(2)(a)(vi)(A)–(G) which specify the items to be included in an operating program "at a minimum", were not revised from the Illinois rule model. Programs approved under the Illinois rule were characterized by vague and unenforceable requirements such as road sweeping, or dust suppressant application "as necessary."

F. *Comment:* Disapproval would be contrary to the Clean Air Act mandate (and case law) which gives the State the primary responsibility for determining and enforcing RACT. Lacking more detailed guidance from USEPA as to RACT, and recognizing the importance of source-specific factors, Michigan's rule is entirely reasonable and appropriate.

Response: USEPA agrees that the burden of determining RACT falls first upon the State. The Federal role is one of review and concurrence through the SIP process. Michigan cannot be said to have made a determination(s) of RACT for the fugitive dust sources in TSP nonattainment areas, by adopting basically a regulatory framework for the submittal and review of control programs, and a test not ensuring RACT (as discussed above) for the determination of RACT approvability of those programs. The Clean Air Act places the duty on the State to establish enforceable RACT-based emission limitations as part of the approved SIP.

USEPA agrees that source-specific factors are important in the determination of RACT. In fact, the Agency's definition of RACT emphasizes the case-by-case nature of this determination by the words, "that a particular source is capable of meeting . . ." (emphasis added). Nevertheless, USEPA cannot approve as RACT only a rule/plan to get control programs unless the required content of those programs is sufficiently well specified so as to insure RACT on each source.

G. *Comment:* Disapproval would be arbitrary and capricious because it would be a complete reversal, without adequate rationale, of USEPA's position in approving and defending the Illinois rule.

Response: USEPA addressed this comment in its testimony before the Commission on January 15, 1985. As stated above, USEPA does not believe that the revisions made to the Illinois rule model in the development of Rule 336.1373 are sufficient to ensure that the type of vague and less-than-RACT control programs that resulted in Illinois will not result in Michigan.

H. *Comment:* USEPA's disapproval would be arbitrary and capricious because insufficient technical data exist to develop a source-category-specific rule that sets forth detailed but generic RACT requirements.

Response: USEPA does not agree with this comment. While the Agency agrees that data on the effectiveness of control techniques for non-process fugitive dust sources is not abundant, it believes the existing data to be adequate to determine RACT. USEPA notes that the bibliography attached to MDNR's comment letter which the letter says (p. 2) was the result of "a literature search of all available documents and studies performed on fugitive dust control" conspicuously lacks a number of published reports that a comprehensive literature search would have included, such as the following:

Iron and Steel Plant Open Source Fugitive Emission Control Evaluation and Report. Midwest Research Institutes for U.S. Environmental Protection Agency, August 31, 1983.

Extended Evaluation of Unpaved Road Dust Suppressants in the Iron and Steel Industry, Final Report. Midwest Research institute for USEPA. October 7, 1983.

Cost Estimates for Selected Fugitive Dust Controls Applied to Unpaved and Paved Roods in Iron and Steel Plants. Final Report Midwest Research Institutes for USEPA, April 26, 1984.

Determination of the Decay in Control Efficiency of Chemical Dust Suppressants on Unpaved Roads. Cusino, Muleski, Cowherd. Paper given at Symposium on Iron and Steel Pollution Abatement Technology, Pittsburgh, PA. November 1982.

I. *Comment:* USEPA's requirement that all individual fugitive dust control programs be submitted as source-specific SIP revisions is redundant and demeaning of the State's errors.

Response: Given USEPA's responsibilities under the Clean Air Act and its determination, as stated previously, that Rule 336.1373 does not ensure RACT, the Agency has no choice but to disapprove the rule for not meeting the requirements of Part D. USEPA is not prescribing any particular approach for the State to meet Part D requirements. The State may want to submit all the individual control programs for sources in nonattainment areas as source-specific SIP revisions.

Alternatively, the State may want to develop a new regulation that does not call for the development of individual programs.

USEPA's review cannot be considered redundant since, as already pointed out, the "test" of acceptability in the State rule is not the same test that USEPA would use for review. USEPA would use its definition of RACT (Strelow memo).

J. *Comment:* According to MDNR, certain exemptions and other provisions of Rule 336.1371 about which USEPA expressed concern (in its TSD of April 25, 1985) are not problems of any substance:

(1) USEPA expressed concern that the requirements for a facility which submits an unacceptable program, or a program which is disapproved by the Commission, are not defined. This concern is unfounded because the owner/operator is required by 336.1373(2)(a)(vi) to submit within 90 days a program which contains all the necessary elements to fully comply with the rule. If he fails to do so, the source is in noncompliance and can be subject to enforcement action.

(2) USEPA's concern about the grain handling and grain drying exemption is unfounded because there is only one grain handling/drying source in the primary nonattainment area, and its operations which might generate fugitive dust emissions are fully enclosed.

(3) USEPA's concern about the exemption provided by 336.1373(2)(a)(ii) relating to storage piles is unfounded because, based on modeling results, MDNR believes that all storage piles in the primary nonattainment area have ambient impacts. For this reason, the exemption could not be utilized.

(4) USEPA's concern that the property-line opacity limit is unenforceable is irrelevant, because all fugitive dust sources subject to this limit will be subject to the specific requirements of a source control plan. The opacity limit is not a critical element in obtaining RACT level control.

(5) USEPA's concern about the 50 tpy applicability cut-off for storage piles is not appropriate because USEPA has already approved a less restrictive exemption in Illinois.

(6) USEPA's concern about certain language of the rule such as "on a regular basis" and "as needed" is unfounded because 336.1373(2)(a)(vi) requires the kind of specific information on dust suppressant application, etc., to be submitted as a part of the program submittal.

Response: USEPA's responses are as follows:

(1) USEPA continues to believe that the Rule 336.1373 is unclear in this respect. It is not clear if an owner/operator whose program is disapproved

by the Commission has an additional 90 days for submittal of a revised program, or has only the remainder of the first 90-day period.

(2) The information supplied by the commentor, MDNR, alleviates USEPA's concern but does not eliminate it, since legally enforceable requirements to ensure maintenance of this source-specific RACT-level control would still be missing.

(3) USEPA accepts MDNR's judgment regarding the ambient impact of fugitive emissions from storage piles and notes that it reinforces the justification for RACT control. Given MDNR's position on this exemption, USEPA questions why the exemption should be retained at all. USEPA continues to believe that, because the criteria necessary to determine its valid application in a specific case are lacking, the exemption is open to abuse.

(4) USEPA continues to believe that the property-line opacity limit is unenforceable for the reasons cited in the TSD of April 25, 1985. The commentor (MDNR) appears to be saying that the property-line opacity limit is not a feature of the rule that can be depended upon to obtain any control beyond that agreed to in the source-specific control program. USEPA would agree with this evaluation.

(5) In the Illinois case, the State made a demonstration that very few storage piles, when aggregated by material type, have potential emissions less than 50 tpy, USEPA realizes now that it erred in approving this exemption in the Illinois rule, because the analysis artifically aggregated piles that were, in fact, separate. Therefore, the analysis did not accurately reflect the real impact of the exemption.

The exemption in Rule 336.1373 is more restrictive due to the added language: and "where such piles are located within a facility with kpotential particulate emissions from all sources exceeding 100 tons per year . . .". USEPA continues to believe, however, that technical support justifying it should be provided.

(6) USEPA's determination that Rule 336.1373 would not necessarily ensure the implementation of RACT through the control (i.e., operating) programs it requires has been explained previously in this document.

L. *Comment:* Commentors claimed that the proposed action was inconsistent with Appendix B to 40 CFR Part 50.

Response: This is incorrect. Appendix B is simply a list of some available control techniques:

2.2 . . . Reasonable precautions can be taken to prevent particulate matter from becoming airborne. Some of these reasonable precautions include . . .

Appendix B does not show that the Michigan rules meet the RACT requirement in Section 172(b)(3).

L. *Comment:* Commentors argued that it would be unlawful for the Administrator to find that the Michigan rules do not constitute RACT, when he had found that similar rules in Illinois and Wisconsin did constitute RACT.

Response: This is incorrect. The Administrator should make this decision on its merits. The Administrator is not bound to follow the same approach he used in an earlier decision, if he finds that approach was inappropriate. "The Administrator is expected to treat experience not as a jailor, but as a teacher." *Shawmut Association* v. *SEC,* 146 F.2d 791, 796–97 (1st Cir. 1945). *See NRLB* v. *J. Weingarten, Inc.,* 420 U.S. 251, 264–68 (1975).

The Administrator is not singling out Michigan for special harsh treatment, as the commenters imply. He is currently applying his view of the law uniformly. On October 11, 1984, USEPA proposed to disapprove Indiana's industrial fugitive dust regulation, 325 IAC 6–5, because the regulation does not meet Part D requirements (see 49 FR 39869).

Similarly, in 1983 USEPA advised Ohio that its rule OAC 3745–17–08 could not be approved as meeting Part D requirements with respect to industrial fugitive dust sources without commitments to extensive changes in the implementation of the rule (letter to Ohio EPA from USEPA dated October 26, 1983.) Consequently, Ohio has proposed revisions to the rule aimed at satisfying the requirements of Part D.

M. *Comment:* Commentors objected that it would be unreasonable, or even impossible, for Michigan to adopt rules establishing RACT for broad categories of sources, and that the Administrator, therefore, must approve the Michigan rules.

Response: This is incorrect. The Administrator did not state that any Michigan rules establishing RACT must do so by categories, broad or otherwise. The Administrator simply proposed that the current rules cannot be said to constitute RACT.

N. *Comment:* Commentors objected that the Administrator improperly proposed to require Michigan to submit future control programs for sources in attainment areas as plan revisions.

Response: This is incorrect. The Administrator did not propose to require Michigan to submit such programs. He simply noted that such programs would not be part of the federally-approved plan unless Michigan submitted them, and the Administrator approved them as such. (50 FR 23030, col. 1).

O. *Comment:* Commentors objected that the Administrator's proposed action would be inconsistent with *Citizens for a Better Environment* v. *USEPA,* 649 F.2d 522 (7th Cir. 1983) ("*CBE*").

Response: This is incorrect. *CBE* did not consider whether rules like Michigan's meet the RACT requirement. Rather, it considered whether the Illinois rules were enforceable, and required control as expeditiously as practicable.

P. *Comment:* Commenters objected that the new source restrictions in section 110(a)(2)(I) of the Act should not be in effect immediately upon the Administrator's final action.

Response: This is incorrect. Section 110(a)(2)(I) provides that every plan must include certain restrictions on new sources "unless . . . such plan meets the requirements of Part D of this subchapter (relating to nonattainment)". This requirement is implemented by 40 CFR 52.24(a), a regulation inserted into the plans of all States, including Michigan. If USEPA has determined that the Michigan plan does not meet the Part D requirement for RACT in nonattainment areas, the new source restrictions of Section 110(a)(2)(I) will, therefore, apply as a matter of law.

Agency policy is not to the contrary. The commentors refer to the Agency's policy for States that do have plans meeting Part D (48 FR 50686, 50690 col. 3—50691 col. 1; November 2, 1983. ("Failure to Attain by December 31, 1982"); 50 FR 13130, 13134–13135; April 2, 1985.) Some such areas will receive notices of deficiency and will be required to revise their plans. But none of this affects the application of section 110(a)(2)(I) to plans that do not meet Part D.

Q. *Comment:* Commentors objected that the Administrator's proposed action would be inconsistent with *Bethlehem Steel Corporation* v. *Gorsuch,* 742 F.2d 1028 (7th cir. 1984).

Response: This is incorrect. The Administrator proposed to approve the Michigan rules in their entirety. The Administrator also proposed that inclusion of the rules in the plan will be insufficient to meet the RACT requirement. Section 110 does not forbid the Administrator to approve a State's revision of its plan simply because further revision is still needed. Bethlehem does not suggest otherwise.

R. *Comment:* Commentors objected that the Administrator had not complied with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Response. This is incorrect. The Act requires that the Administrator analyze certain issues. 5 U.S.C. 603(b), (c), 604(a). Section 605(a) provides that "any Federal Agency may perform the analyses required by Sections . . . 603 and 604 of this title in conjunction with or as a part of any other . . . analysis required by any other law. . . ." All of the analysis required by the Act was performed as part of the rulemaking and contained in either the rulemaking notices or the docket. It should be noted that the Administrator's proposed actions are limited to approving the Michigan rules, and finding that the plan does not meet the RACT requirement. Since these actions are limited, and are required by law, the analysis required by the Act is quite limited. For example, the Administrator proposes to impose no compliance requirements under section 603(b)(4); he is merely approving State requirements (See 46 FR 8709; (January 27, 1981). No alternatives under section 603(c) and 604(a)(3) are legally available.

S. Comment: Commenters objected that the Administrator was required to prepare and consider a regulatory impact analysis under Executive Order 12291, 46 FR 13493 (February 19, 1981).

Response: This is incorrect. Section 3 of that Order requires such an analysis only for major rules. This action is not a major rule. (See 50 FR 23030, col. 3). Commenters provided no evidence for their argument that the impacts of the action are so great as to make it a major rule. It should also be noted that to the extent the Administrator's action is required as a matter of law, any regulatory impact analysis would have no bearing on the outcome.

USEPA has reviewed all comments related to the Michigan fugitive dust regulations with respect to its December 2, 1983, and May 30, 1985, rulemaking actions. USEPA has concluded that the Michigan particulate regulations submitted on April 25, 1985, are inadequate to ensure that enforceable RACT-based fugitive emissions control requirements will be imposed on sources of fugitive emissions in Michigan's TSP nonattainment areas.

Today's Action

USEPA is today disapproving the Michigan TSP SIP because it lacks control requirements reflecting RACT Part D for TSP fugitive emissions sources in nonattainment areas, in violation of the requirements of section 172(b) of the Clean Air Act. The SIP is, therefore, deficient, pursuant to section 110(a)(2)(H) of the Clean Air Act. Today's action causes the new source restrictions in section 110(a)(2)(I) of the Clean Air Act to apply in the Michigan primary TSP nonattainment areas (see 40 CFR 52.24a.)

This action also withdraws USEPA's November 15, 1982, approval (47 FR 51398) and disapproves Michigan's Rules 336.1371–336.1372 as a revision to its TSP SIP, insofar as they apply to nonattainment areas.

This action incorporates into the Michigan SIP, the amended R336.1371 submitted by Michigan on April 25, 1985, to replace the existing R336.1371, on the basis that amended R336.1371 provides a framework for the development of fugitive dust control programs in attainment areas. Michigan's existing Rule 336.1372 remains incorporated into the State's TSP SIP, insofar as it applies to sources in TSP attainment areas.

USEPA incorporates into the Michigan SIP, new Rule 336.1373 because it provides a framework for the development of fugitive dust control programs in nonattainment areas that lacks control requirements, reflecting RACT for the TSP fugitive dust sources in nonattainment areas in violation or the requirements of section 172(b) of Part D of the CAA.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court or Appeals for the appropriate circuit by 60 days from the date this notice appears in the **Federal Register**. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2)].

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxide, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan of Michigan was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 1, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart X—Michigan

The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

1. Section 52.1170, is amended by adding paragraph (c)(79) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(79) On December 2, 1983, USEPA proposed to withdraw its approval of Michigan's fugitive dust regulations. On April 25, 1985, the State of Michigan submitted revised Rule 336.1371, existing Rule 336.1372, and new Rule 336.1373. However, they did not meet the requirements of Part D of section 172(b); and USEPA, therefore, withdrew its approval of these submittals, disapproved these submittals, and instituted new source restrictions for major sources in the Michigan primary Total Suspended Particulate (TSP) nonattainment areas on [insert date of publication]. USEPA incorporates revised Rule 336.1371 and newly submitted Rule 336.1373 into the Michigan State Implementation Plan because they provide a framework for the development of fugitive dust control programs at the State level in Michigan. USEPA retains Rule 336.1372, which is already incorporated into the Michigan SIP, insofar as it applies to sources in TSP attainment areas. This paragraph supercedes Paragraph (C)(61) of this section.

(i) Incorporation by reference.

(A) Michigan Department of Natural Resources Rules 336.1371 and 336.1373 (Fugitive Dust Regulations), as adopted on April 23, 1985.

2. Section 52.1173 is amended by revising paragraph (a) to read as follows:

§ 52.1173 Control strategy: Particulates.

(a) *Part D—Disapproval.* The following specific revisions to the Michigan Plan are disapproved:

(1) Rule 336.1331, Table 31, Item C: Emission limits for Open Hearth Furnaces, Basic Oxygen Furnaces, Electric Arc Furnaces, Sintering Plants, Blast Furnaces, Heating and Reheating Furnaces.

(2) Rules 336.1371 (Fugitive dust control programs other than areas listed in table 36.), 336.1372 (Fugitive dust control programs; required activities; typical control methods.) and 336.1373 (Fugitive dust control programs; areas listed in table 36.) for control of industrial fugitive particulate emissions sources.

[FR Doc. 85–19742 Filed 8–19–85 8:45 am]

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40 CFR Parts 261 and 266

[SWH-FRL-2883-8]

Hazardous Waste Management System; Definition of Solid Waste; Technical Corrections

AGENCY: Environmental Protection Agency.

ACTION: Technical Corrections to the Definition of Solid Waste Final Rulemaking.

SUMMARY: On January 4, 1985, EPA promulgated a final rule which dealt with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. This rule also provided general and specific standards for various types of hazardous waste recycling activities. EPA issued technical corrections to this rule on April 11, 1985. Since that time, EPA has identified several other provisions that require technical correction or clarification. This notice makes these changes and modifies the previous publication accordingly.

EFFECTIVE DATE: These corrections become effective on August 20, 1985.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424–9346 or at (202) 382–3000. For technical information contact Matthew A. Straus, Office of Solid Waste [WH–562B], U.S. Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, (202) 475–8551.

SUPPLEMENTARY INFORMATION:

I. Technical Corrections to Rule

A. Interim Exemption for Hazardous Waste-Derived Fuels Produced From Wastes From Petroleum Refining, Production, or Transportation

On January 4, 1985, EPA amended its existing definition of solid waste. 50 FR 614. This rulemaking defined which materials being recycled (or held for recycling) are solid wastes. EPA promulgated certain technical amendments to these rules on April 11, 1985. 50 FR 14216. One of these corrections concerned the regulatory status of hazardous waste-derived fuels produced from oil-bearing hazardous wastes from petroleum refining, production, and transportation. The technical amendment clarified that such fuels are presently exempt from regulation, pending a substantive decision as to whether regulation is necessary to protect human health and the environment. See 50 FR 14218; see also 50 FR 26389, June 26, 1985, likewise stating that such fuels are presently exempt from regulation.

There is a drafting error in the April 11 technical rule, however, in that the interim exemption was placed in § 266.30 of the regulations. This provision applies to hazardous waste fuels burned in boilers or industrial furnaces; thus, the interim exemption would appear to apply only when the hazardous waste-derived fuel from petroleum refining is to be burned in these types of devices. But fuels can be burned in other devices—in certain space heaters or engines not of integral design, for example—and the Agency intended that these hazardous waste-derived fuels be exempt without regard for the type of unit in which they are burned. We consequently are placing the interim exemption in § 261.6(a)(3), which provision exempts recyclable materials from regulation. These particular hazardous waste fuels thus are presently exempt from regulation without regard for the nature of the device in which they are burned.

This exemption is also applicable to oil reclaimed from petroleum refining hazardous wastes prior to insertion or reinsertion into the petroleum refining process (and, as already stated in the preceding paragraph, to fuels resulting from refining of the reclaimed oil). Such reclaimed oil, *i.e.*, oil reclaimed from petroleum refining hazardous waste, is not presently subject to regulation. This leaves in place the regulatory scheme of the May 19, 1980 rules, whereby such reclaimed oils are exempt from regulation. See 50 FR 647/3. The Agency is determining if and how to regulate such reclaimed oil as part of the rulemaking on hazardous waste fuels proposed on January 11, 1985. See 50 FR 1684.

There are two further points of clarification. As drafted in the April 11 notice, the interim exemption applied to all fuels exempt from the labeling requirements of RCRA section 3004(r). Section 3004(r) applies to hazardous waste-derived fuels produced from, or otherwise containing, oil-bearing hazardous wastes from petroleum refining, production, and transportation that are reintroduced into particular parts of the petroleum refining process. Questions have been raised about the precise scope of some of the terms in section 3004(r). On reflection, EPA does not believe it necessary to refer to section 3004(r) to express its intent to provide an interim exemption. Consequently, we are revising the interim exemption to refer to fuels from petroleum refining that include as ingredients (i.e., that are produced from or otherwise contain) oil-bearing hazardous wastes from normal petroleum refining, production, or transportation practices. We note that these hazardous wastes can be generated off-site, and the resulting fuels are covered by the interim exemption. (Cf. section 3004(r)(3) which also is not limited to wastes generated on-site.) We also note, as we did on April 11 (50 FR at 14218/2), that these wastes must be indigenous to the petroleum refining, production, or transportation process, and so would not include such wastes as spent pesticides.

Second, certain persons have raised the question of whether there is any regulatory distinction between fuels "produced from" hazardous waste and those "containing" hazardous waste, as these terms are used in amended 40 CFR 261.2(c)(2) (B) and (C). The Agency intends no such distinction. Nor did the Congress. See RCRA amended section 3004(q), noting that hazardous waste fuels are those produced from hazardous waste, or that "*otherwise* contai(n)" hazardous waste (emphasis added). Fuels produced from hazardous waste thus are a subset of the class of fuels containing hazardous waste. EPA's amended definition of secondary materials that are wastes when burned for energy recovery is coextensive with this statutory provision. 50 FR 630 (January 4, 1985). The Agency also stated repeatedly in the preamble to the amended definition of solid waste that it claimed authority over all hazardous waste-derived fuels, without regard for how they are generated. Thus, EPA indicated that any fuels that "include hazardous wastes as ingredients" are themselves wastes; that any fuels "derived from these [hazardous] wastes [are] defined as solid wastes"; and that when hazardous wastes are "incorporated into fuels . . . fuels containing these wastes . . . remain solid wastes." 50 FR at 625 n.12, 629/2, and 636/1. Consequently, when a person uses a hazardous waste as a component in the fuel process, the output of the process is defined as a waste (assuming listed wastes are involved, or that the waste-derived fuel exhibits a hazardous waste characteristic). (The question of if and how to regulate such wastes remains for future rulemakings.)

The Agency also notes that these same principles apply with respect to waste-derived products that are used in a manner constituting disposal—they are wastes when a hazardous waste is used as a component of the process that produces them. See, e.g., 50 FR 627–628 (rejecting a standard based on simple mixing) and amended § 266.20(b) (EPA has jurisdiction over hazardous waste-derived products even where incorporated wastes have been

chemically reacted and are not separable by physical means).

In order to eliminate any possible uncertainty on this point, however, the Agency has decided to revise the language of § 261.2(c)(1) (use constituting disposal) and (c)(2) (burning for energy recovery) to recite the language from the Hazardous and Solid Waste Amendments of 1984 (HSWA). Thus, (a) hazardous secondary materials used to produce a fuel or used to produce a material that is applied to the land are defined as wastes; and (b) hazardous secondary materials otherwise contained in such waste-derived products are defined as wastes. In both cases, the waste-derived product is defined as a waste (assuming it too is hazardous as provided in § 261.3) and is potentially subject to regulation under Subtitle C of RCRA.

B. Interim Exemption for Hazardous Waste-Derived Fuels From Iron and Steel Production

On April 11, 1985, EPA also clarified that hazardous waste-derived coke from the iron and steel industry is not subject to regulation when the only hazardous wastes used in the coke-making process and from iron and steel production. This interim exemption was also placed in § 266.30(b) and so is limited by the type of unit in which the waste-derived coke is burned. To avoid any unintended limitation on the scope of this interim exemption, we are now placing it in § 261.6(a)(3).

C. Regulation of the Process of Recycling

EPA stated in the preamble to the final rule that EPA does not presently regulate the actual process of recycling (with the exception of certain uses constituting disposal), only the storage, transport, and generation that precedes it. 50 FR 642/1. The Agency included this thought in §§ 261.6(c)(2) and 266.35 of the regulations, but forgot to include it in § 261.6(c)(1). We consequently are amending § 261.6(c)(1) to state that the enumerated requirements only apply to recyclable materials stored before they are recycled.

D. Correction to Subpart G of Part 266

Subpart G of Part 266 contains rules for spent lead-acid batteries being reclaimed. Due to a typographical error, this provision was misnumbered as "§ 266.30". The correct numbering is § 266.80. Today's notice corrects this error.

E. Clarification of Part A Permit Requirements

In the April 11, 1985 notice, EPA indicated that facilities located in States which do not have finally authorized or interim authorized permit programs need to submit new or amended Part A permit applications to EPA by July 5, 1985. 50 FR 14217/3. Although accurate for States without any EPA authorization, this statement was not correct with respect to Phase I interim authorized States. If a State has any form of authorization, its universe of wastes (as approved by EPA) defines the universe of RCRA regulated entities within the State. Program Implementation Guidance 82-1, November 20, 1981. Thus, a person managing a waste that is not yet part of such an authorized State's universe of hazardous waste is not presently required to submit a Part A application. The new or amended application would have to be submitted when the State's universe of wastes has been amended to reflect changes to Part 261 and has been authorized by EPA.

II. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Since this notice simply makes typographical and technical corrections and does not change the previously approved final rule, this rule is not a major rule, and, therefore no Regulatory Impact Analysis was conducted.

List of Subjects in 40 CFR Parts 261 and 266

Hazardous wastes, Recycling.

Dated: August 12, 1985.

Allyn M. Davis,

Acting Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority section for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6902, 6912(a), 6921, and 6922).

2. In § 261.2(c)(1)(i), paragraph (B) is revised to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

* * * * *

3. In § 261.2(c)(2)(i), paragraph (C) is removed and paragraph (B) is revised to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

* * * * *

4. In § 261.6(a)(3), paragraphs (v), (vi), and (vii) are added to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(a) * * *

(3) * * *

(v) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(vi) Oil reclaimed from hazardous waste resulting from normal pertoleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility; or

(vii) Coke from the iron and steel industry that contains hazardous waste from the iron and steel production process.

* * * * *

5. In § 261.6(c) paragraph (1) is amended to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(c)(1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts A through L of Parts 264 and 265 and Parts 270 and 124 of this Chapter and the notification requirement under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation.)

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

6. The authority citation for Part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

7. Section 266.30(b) is amended by deleting paragraphs (b)(3) and (b)(4).

8. FR Doc. 85–3 published in the **Federal Register** of January 4, 1985 (50 FR 614), is corrected by changing the section number "266.30" under Subpart G to "266.80" on page 667.

[FR Doc. 85–19708 Filed 8–19–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS–42012B; TSH–FRL 2815–5b]

Identification of Specific Chemical Substance and Mixture Testing Requirement; Diethylenetriamine

Correction

In FR Doc. 85–12422, beginning on page 21398, as Part III, in the issue of Thursday, May 23, 1985, make the following correction:

On page 21412, second column, § 799.1575(c)(2)(i)(C), the fifth line should have read: "section or in the *in vivo* cytogenetics test conducted pursuant to paragraph (c)(2)(i)(B) of this section produces a positive result."

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

Modification of Footnote US275 to the Table of Frequency Allocations

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Federal Communications Commission amends Parts 2 and 97 of its Rules to prohibit secondary amateur operations in the 902–928 MHz band in the White Sands Missile Range. This action will provide protection to essential primary radiolocation and control operations at White Sands Missile Range.

EFFECTIVE DATE: September 29, 1985.

ADDRESS: Federal Communications Commission, 2035 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Thomas, Office of Science and Technology, 1919 M Street NW., Washington, D.C. 20554, (202) 653–8162.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 97

Amateur radio.

Order

In the matter of amendment of parts 2 and 97 of the Commission's rules to prohibit amateur use of the 902–928 MHz band at White Sands Missile Range in southern New Mexico.

Adopted: August 5, 1985.

Released: August 15, 1985.

By the Commission.

1. This action restricts amateur operations in the 902–928 MHz band in the vicinity of White Sands Missile Range. In the Second Report and Order of General Docket 80–739, Implementation of the Final Acts of the 1979 WARC, the Commission allocated the 902–928 MHz band to the amateur service on a secondary basis; it allocated the band on a primary basis for Government radiolocation and for industrial, scientific and medical applications.[1] This band has recently been added by the Report and Order in PR Docket 84–960 to the frequencies listed in Part 97 as being available for amateur use.[2] However, the Department of the Army has informed the Commission that several critical radiolocation operations, including tracking and control operations of unmanned aircraft, require the use of frequencies in the 902–928 MHz band at the White Sands Missile Range in New Mexico and that amateur operations in this area could impair or seriously disrupt these operations. Therefore, the Army has requested that the Commission place restrictions on amateur operations in the 902–928 MHz band around the White Sands area.

2. In order to protect these critical military operations we are modifying footnote US275 to the Table of Frequency Allocations, § 2.106 of the Commission's Rules, and modifying § 97.7 of the Commission's Rules to restrict amateur operations in this band. The restrictions are as follows: In the band 902–928 MHz the amateur service is prohibited in the area of Texas and New Mexico bounded by latitude 31°41′ N. on the south, longitude 104°11′ W. on the east, latitude 34°30′ N. on the north and longitude 107°30′ W. on the west; in addition, outside this area but within 150 miles of these boundaries of White Sands Missile Range, New Mexico, the service is limited to a maximum peak envelope power output of 50 watts from the transmitter. The necessary amendments to Sections 2.106 and 97.7 of the Commission's Rules are contained in the Appendix.

3. In accordance with section 553 of the Administrative Procedures Act, which excludes matters involving military functions from the notice process (U.S.C. 553(a)(1)), no Notice of Proposed Rule Making will be issued in this matter.

4. Accordingly, it is ordered, that §§ 2.106 and 97.7 are amended as set forth in the Appendix. Authority for this action is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended. These amendments become effective September 29, 1985.

5. Point of contact on this matter is Fred Thomas, (202) 653–8162.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 2 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

The authority citations in Parts 2 and 97 continue to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Section 2.106 is amended by revising the text of footnote US275 as follows:

§ 2.106 Table of frequency allocations.

* * * * *

US275 The band 902–928 MHz is allocated on a secondary basis to the amateur service subject to not causing harmful interference to the operations of Government stations authorized in this band or to Automatic Vehicle Monitoring (AVM) systems. Stations in the amateur service must tolerate any interference from the operations of industrial, scientific and medical (ISM) devices, AVM systems and

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[1] See Second Report and Order in General Docket No. 80–739 FCC 83–511, 49 FR 2357 (adopted November 8, 1983).

[2] See Report and Order in PR Docket No. 84–960 FCC 85–460 (adopted August 9, 1985).

the operations of Government stations authorized in this band. Further, the Amateur Service is prohibited in those portions of Texas and New Mexico bounded on the south by latitude 31° 41' North, on the east by longitude 104° 11' West, on the north by latitude 34° 30' North, and on the west by longitude 107° 30' West; in addition, outside this area but within 150 miles of these boundaries of White Sands Missile Range the service is restricted to a maximum transmitter peak envelope power output of 50 watts.

* * * * *

PART 97—[AMENDED]

Section 97.7(a) is amended by adding limitation designator 13 to the 902–928 MHz band for the Technician, General, Advanced and Amateur Extra control operator license class, and paragraph (b) is amended by adding the text of (13).

§ 97.7 Control operator frequency privileges.

* * * * *

Control operator license class	Meter band	Terrestrial location of the amateur radio station			Limitations (see para. (b))
		ITU Region 1	ITU Region 2	ITU Region 3	
Technician			*Megahertz*		
* * *	*	*	*	*	*
	0.35	.....	902–928	.....	1, 3, 12, and 13.
* * *	*	*	*	*	*
General			*Megahertz*		
* * *	*	*	*	*	*
	0.35	.....	902–928	.....	1, 3, 12, and 13.
* * *	*	*	*	*	*
Advanced			Megahertz		
* * *	*	*	*	*	*
	0.35	.....	902–928	.....	1, 3, 12, and 13.
* * *	*	*	*	*	*
Amateur Extra			Megahertz		
* * *	*	*	*	*	*
	0.35	.....	902–928	.....	1, 3, 12, and 13.
* * *	*	*	*	*	*

(b) * * *

(13) The band 902–928 MHz is prohibited in those portions of Texas and New Mexico bounded on the south by latitude 31° 41'North, on the east by longitude 104° 11' West, on the north by latitude 34° 30' North, and on the west by longitude 107° 30' West; and in addition, outside this area but within 150 miles of these boundaries of White Sands Missile Range operation is restricted to a maximum transmitter peak envelope power output of 50 watts.

* * * * *

[FR Doc. 85–19794 Filed 8–19–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 22

[Docket No. 80–57]

Revision and Update; Public Mobile Radio Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rules, correction.

SUMMARY: The Federal Communications Commission recently reconsidered its revision of the Public Mobile Service Rules 47 CFR Part 22. The Order on Reconsideration was subsequently published in the **Federal Register** on August 9, 1985 (50 FR 32196). This document corrects certain errors in the Order on Reconsideration.

FOR FURTHER INFORMATION CONTACT: Carmen A. C. Borkowski (202) 632–6450.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of revision and update of Part 22 of the public mobile radio service rules; CC Docket No. 80–57.

Released: August 12, 1985.

The Commission's Order on Reconsideration, FCC 85–367, released July 31, 1985 (50 FR 32196), is corrected as follows:

PART 22—[CORRECTED]

1. On page 32197, Paragraph 7 is corrected to read as follows:

"7. *Permissive Changes or Minor Modifications of Authorization, § 22.9(d).* In response to the comments we are clarifying § 22.9(d) adding other categories of minor modifications or permissive changes (those not requiring prior authorization) which were inadvertently omitted from the rule: addition of transmitters pursuant to § 22.117(b) and the filing of Form 489 to return the license to its original specifications when a partial assignment is not completed.5 We are also amending § 22.9 to modify a section that has created the potential for interference and making engineering studies more difficult. Section 22.9(d)(5) permitted licensees to perform engineering changes by notification that would either decrease their service contours or increase them by no more than one mile. The increase of a licensee's service contours by even one mile, however, can affect the engineering of other co-channel licensees and applicants. We conclude that, while minor, any small increase in service contours of a station in the Public Land Mobile Service should be the subject of an application rather than a notification; the grant of such an application will be placed on public notice to inform others of the engineering change.6 *See § 22.23(c)(2).* However, we are treating as permissive changes modifications to base station facilities provided there are no increases to the reliable service area contour. Licensees are required to notify us of any minor modifications or permissive changes on a Form 489 no later than the date they start providing service on the modified facilities."

2. On page 32197, footnote 5 is corrected by the addition of the following sentence at the beginning:

"We are also amending § 22.9(b)(1) by adding language to the effect that Form 489 shall also be used for requests for extensions of time to complete construction and for reinstatements of authorizations submitted within 30 days after the expiration of the authorization. Reinstatements are requested when the licensee fails to request an extension of time to complete construction and the license expires or the licensee fails to timely file a renewal application."

3. On page 32198, footnote 17 is corrected to read as follows:

"The additional transmitters are considered "satellites" of the main station. If there are any changes to the main station which would change the status of the "satellite" (for instance, deletion of the main station or change in technical parameters, or deletion of the transmitters) such changes require the filing of a Form 489 to notify us of the changes."

4. On page 32198, footnote 18 is corrected to read as follows:

"Fill-in transmitters in the 43 MHz band will be permitted only on a developmental basis, subject to the conditions set forth in our Public Notice, *Developmental Common Carrier Paging*

Base Station Authorizations Assigned in the 43 MHz Spectrum, Mimeo 4591, released May 16, 1985."

5. On page 32200, the following sentence is removed from paragraph 40:

"Other more substantive comments have been submitted.21"

6. On page 32200, at the end of paragraph 41 the following sentence and footnote 21 are added:

"We are also clarifying our decision concerning experimental market trials.21"

7. On page 32201, in paragraph 42 insert, "§ 22.23(c)(4) and (g)" after "§ 22.15(b)(1)(ii)."

8. On page 32201, in Appendix B, § 22.9 is corrected by adding the following language at the end of paragraph (b)(1):

"Form 489 shall also be used for requests for reinstatements of authorizations if filed within 30 days after expiration (§ 22.44(a)(2))."

9. On page 32201, in Appendix B, § 22.9 is corrected by removing (d)(7); and revising (d)(6) to read as follows:

"(d)(6) Modifications to base station facilities provided there is no increase to the reliable service area contour."

10. On page 32201, in Appendix B, § 22.9 is corrected by redesignating present (d)(8) and (d)(7) and revising redesignated (d)(7)(ii) to read as follows:

"(d)(7)(ii) A change to or addition of a cell site as long as the composite 39 dBu contours remain totally within the cellular geographic service area."

11. On page 32201, in Appendix B, § 22.13(e) the cite to "§ 1.134" is corrected to read "§ 1.1311."

12. On page 32202, in Appendix B, § 22.43(b)(1), the fourth sentence is corrected to read as follows:

"No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment."

13. On page 32202, in Appendix B, § 22.45(a) is corrected by changing the language of the first sentence to read as follows:

"Licenses will be granted for up to ten years."

14. On page 32203, in Appendix B, § 22.117(b)(1) is corrected by adding the following language at the end of the paragraph:

"Additional transmitters in the 43MHz band will be permitted only on a developmental basis, subject to the conditions set forth in Public Notice, *Developmental Common Carrier Paging Base Station Authorizations Assigned in the 43 MHz Spectrum*, Mimeo 4591, released May 16, 1985.

15. On page 32203, in Appendix B, § 22.117(b)(4), is corrected to read as follows:

"(4) Commission action would not be a "major action" as defined by rule § 1.1305. If it is a major action, then prior approval is required, and the requirements of § 1.1311 apply."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-19519 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-688; RM-4718]

FM Broadcast Station in University, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 221A to University, Mississippi, in response to a petition filed by the University of Mississippi. The allotment could provide a first local service to the community.

EFFECTIVE DATE: September 19, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (University, Mississippi); MM Docket No. 84-688, RM-4718.

Adopted: August 1, 1985.
Released: August 13, 1985.
By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 29419, published July 20, 1984, in response to a petition filed by the University of Mississippi ("petitioner"). The *Notice* proposed the allotment of FM Channel 221A to University, Mississippi, as that community's first local FM channel. Petitioner filed supporting comments and restated its intention to apply for the channel. Opposition comments were filed by the Mississippi Authority for Educational Television ("MAET"). Reply comments were filed by the University of Mississippi.

2. MAET requested that Channel 263A be assigned to University, Mississippi, instead of Channel 221A. MAET is the official state agency which controls and supervises the use and development of public radio and public television within the State of Mississippi. On April 6, 1981, they filed a statewide noncommercial educational FM Radio Frequency Plan with the F.C.C. in accordance with § 73.502 of the Commission's Rules. MAET's plan proposes the use of Channel 218 at Oxford, Mississippi, alleging that no other noncommercial educational FM channel is available for use at Oxford. Allotment of Channel 221A at University, Mississippi, would conflict with the use of noncommercial educational Channel 218 at Oxford.

3. Thereafter, MAET filed reply comments in which it withdrew its opposition and alternative allotment proposal. MAET affirms that it consulted with various parties interested in this proceeding, including the University of Mississippi, and it no longer objects to the allotment of FM Channel 221A at University, Mississippi. The University contemplates using an on-campus site for its planned broadcast facility, which would not have been possible if Channel 263A were allotted instead. MAET notes that since two other noncommercial entities are or will be providing public FM service to the Oxford, Mississippi, area their concern that all citizens of Mississippi have access to public FM service is satisfied.

4. A staff study indicates that Channel 221A can be allotted to University, Mississippi, in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.[1]

5. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request, since it could provide for the first local service to University.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 19, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules is amended

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[1] However, this allotment would limit the 16 kilometer buffer zone of Station WYNU, Channel 222, Milan, Tennessee. Existing Class C stations operating with less than a 300 meter antenna height are now permitted the buffer zone. However, this requirement does not apply to petitions, such as this one, which were filed before March 1, 1984. See BC Docket 80-90, *recons.* 97 F.C.C. 2d 279 (1984). Nevertheless, applicants for Channel 221A at University should attempt to protect the buffer zone when selecting a transmitter site.

with respect to the community listed below.

City	Channel No.
University, MS	221A

7. The window period for filing applications will open on September 20, 1985, and close on October 16, 1985.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–19790 Filed 8–19–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83–950; RM–4479]

FM Broadcast Stations in Warren, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots FM Channel 241A to Warren, Vermont, in response to a petition filed by John L. Eddy as that community's first FM channel.

EFFECTIVE DATE: September 19, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Pat Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4, 306, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast stations (Warren, Vermont); MM Docket No. 83–950, RM–4479.

Adopted: August 1, 1985.
Released: August 13, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 48 FR 41464, published September 15, 1983, proposing the allotment of Channel 285A to Warren, Vermont as that community's first FM channel. The *Notice* was adopted in response to a petition filed by John L. Eddy ("petitioner"). Petitioner filed comments reaffirming his intention to apply for the channel.

2. In order to resolve a conflict raised in comments concerning Vergennes, Vermont in the *Further Notice of Proposed Rule Making*, in MM Docket No. 84–231, 50 FR 2835, published January 22, 1985, we find it necessary to consider an alternative channel to Warren. An engineering study reveals that Channel 241A can be allotted to Warren in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Since Warren is located within 320 kilometers (199 miles) of the U.S.-Canadian border, concurrence from the Canadian government has been received.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 19, 1985, the Table of FM Allotments, § 73.202(b) of the Rules, is amended with respect to the following:

City	Channel No.
Warren, VT	241A

4. The filing window for applications on this channel will open September 20, 1985 and close on October 16, 1985.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Pat Rawlings, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–19789 Filed 8–19–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–790; RM–4801]

Television Broadcast Station in Morehead City, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns VHF TV Channel 8 to Morehead City, North Carolina, as that community's first local television service, at the request of Contemporary Communications, Inc.

EFFECTIVE DATE: September 19, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Morehead City, North Carolina); MM Docket No. 84–790, RM–4801.

Adopted: August 1, 1985.
Released: August 13, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 33468, published August 23, 1984, proposing the assignment of VHF TV Channel 8 to Morehead City, North Carolina, as that community's first local service, at the request of Contemporary Communications, Inc. ("petitioner"). Comments in support were filed by the petitioner and jointly by Tommy J. Payne and Jesse Cowan. Comments in opposition were filed by WITN, Inc. ("WITN"), licensee of WITN–TV, Washington, North Carolina.

2. WITN opposes the assignment claiming that the use of Channel 8 at Morehead City would preclude assignments to more deserving communities. Specifically, he states that the Morehead City proposal conflicts with the Commission's proposal in Docket 80–499, the VHF drop-in proceeding, to assign Channel 8 to the much larger community of Norfolk, Virginia.[1]

3. Contrary to WITN's assertion, the Commission has no pending proposal to assign another television channel to Norfolk, Virginia. As to the claim that the use of Channel 8 at Morehead City would cause preclusion to other communities, neither WITN nor any other party filed an expression of interest in a television assignment at any conflicting location. Channel 8 can be assigned to Morehead City in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 miles southeast. This restriction will avoid a short-spacing to Stations WITN–

[1] *Notice of Proposed Rule Making*, 45 FR 72902, published November 3, 1980.

TV, Washington, North Carolina, and WNCT–TV, Greenville, North Carolina.

4. We believe the public interest would be served by assigning the channel, as it could provide Morehead City with its first local television service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 19, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Morehead City, NC	8+

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–19791 Filed 8–19–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

Oversight of the Radio, Television, and Cable Television Rules

Correction

In FR Doc. 85–18927 beginning on page 32414 in the issue of Monday, August 12, 1985, make the following corrections:

1. On page 32417, in the first column, in amendatory instruction number 24, in the sixth line, "(d)" should read "(c)".

§ 73.558 [Corrected]

2. On the same page, in the same column, in § 73.558, the paragraph designated as "(d)" should read "(c)".

BILLING CODE 1505–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[APD 2800.12 CHGE 15]

Identification of Provisions and Clauses

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 85–17222 on page 29403 in the issue of Friday, July 19, 1985, make the following correction:

552.252–6 [Corrected]

In the third column, paragraph (c) of this clause entitled "Authorized Deviation or Variations in Clauses" the word "provision" which appears in 3 places should read "clause".

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations VP, (202) 523–3782.

Dated: August 12, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85–19834 Filed 8–19–85; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol 50, No. 161
Tuesday, August 20, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 301

Overseas Limited Appointments

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to revise a restriction on agency use of overseas limited appointments. The current regulations contain a general restriction on agency use of this appointment authority when "there is an adequate and appropriate register resulting from an examination held in the locality where the vacancy exists."

OPM is proposing to remove this restriction and allow agencies to use overseas limited appointments except in cases where specific restrictions have been imposed by OPM examining offices which service overseas areas.

EFFECTIVE DATE: Comments will be considered if received no later than November 18, 1985.

ADDRESS: Send or deliver comments to Donald L. Holum, Chief, Staffing Policy Analysis Division, Staffing Group, Office of Personnel Management, Room 6504, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Donald L. Holum, (202) 632–6817.

SUPPLEMENTARY INFORMATION:

Background

OPM is authorized by Civil Service Rule VIII (5 CFR 8.1) to provide for recruitment and appointment of U.S. citizens to overseas positions in the competitive service without regard to competitive requirements. Under 5 CFR 301.201 agencies are authorized to make overseas limited appointments to U.S. citizens *recruited overseas* to fill overseas positions. However, these regulations prohibit the use of overseas limited appointments when there is an adequate and appropriate register resulting from an examination held in the location where the vacancy exists. This restriction was established to prevent the use of a noncompetitive hiring authority when there was a supply of competitors already available in an area.

In light of changes in examining practices since overseas limited appointments were first authorized in the 1950's, OPM is proposing to delete the general restriction in the regulation and instead provide for OPM examining offices to impose ad hoc restrictions as needed. For example, restrictions would be established in cases where OPM has set up competitive examining registers exclusively for a particular overseas agency or area. These proposed regulations would also clarify the definition of individuals eligible for overseas limited appointment to specifically include individuals who owe permanent allegiance to the United States (U.S. nationals). Native American Samoans are the only noncitizens, who, as a group, owe permanent allegiance to the United States.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect Federal employees.

List of Subjects in 5 CFR Part 301

Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend Part 301 of Title 5, Code of Federal Regulations, to read as follows:

PART 301—OVERSEAS EMPLOYMENT

1. The authority for Part 301 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, E.O. 10577, E.O. 11935, 3 CFR 1954–1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR, 1954–1958 Comp., p. 274.

2. Sections 301.201 and 301.202 are revised to read as follows:

Subpart B—Overseas Limited Appointment

§ 301.201 Appointment of individuals recruited overseas.

An agency may give an overseas limited appointment without competitive examination to an individual recruited overseas who is a citizen of or owes permanent allegiance to the United States except when specifically restricted by an Office of Personnel Management examining office with jurisdiction in the overseas area.

§ 301.202 Appointment of individuals recruited outside overseas areas.

When an agency determines that unusual or emergency conditions make it infeasible to appoint from a register, it may give an overseas limited appointment to an individual, who is a citizen of or owes allegiance to the United States, recruited in an area where an overseas limited appointment is not authorized.

[FR Doc. 85–19829 Filed 8–19–85; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 85–058]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the pseudorabies regulations by adding the Enzyme-Linked Immunosorbent Assay (ELISA) test to the list of official tests for pseudorabies. This action appears warranted in order to provide an additional official test for pseudorabies.

DATE: Written comments must be received on or before September 19, 1985.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in

response to Docket Number 85-058. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday except holidays

FOR FURTHER INFORMATION CONTACT: Dr. L. W. Schnurrenberger, Special Diseases Staff, VS APHIS, USDA, Room 822, Federal Building, 6505 Belcrest Road, Hyattsville, MD 29782, 301-436-8438.

SUPPLEMENTARY INFORMATION:

Background

Pseudorabies, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus and is primarily a disease of swine. The regulations in 9 CFR Part 85 (referred to below as the regulations) govern the interstate movement of swine and other livestock (cattle, sheep, goats) in order to help prevent the spead of pseudorabies.

The official pseudorabies tests are used under certain circumstances for determining the pseudorabies status of livestock. Also, the regulations provide for testing negative by an official pseudorabies test as a condition for allowing certain interstate movements of swine. Three tests—the Microtitration Serum-Virus Neutralization (SN) Test, the Virus Isolation and Identification (VI) Test, and the Fluorescent Antibody Tissue Section (FATS) Test—are currently listed in § 85.1(q) as official pseudorabies tests.

A new serologic test for pseudorabies, the Enzyme-Linked Immunosorbent Assay (ELISA) test, has been developed. This test, in field trials and other research, has been demonstrated to be at least as sensitive and specific a test for pseudorabies as the tests currently approved as official pseudorabies tests.[1] It is therefore proposed to amend the regulations by adding the ELISA test as an official pseudorabies test.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have an effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If adopted, this proposed amendment to the regulations would only provide for the use of an additional official pseudorabies test as an option for use in determining whether an animal is infected with the disease. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock and livestock products, Pseudorabies, Quarantine, Transportation.

PART 85—PSEUDORABIES

Accordingly, it is proposed to amend 9 CFR Part 85 as follows:

1. The authority citation for Part 85 would continue to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 85.1, paragraph (q) would be amended by changing "Test.[2]" to "Test; and 4. Enzyme-Linked Immunosorbent Assay (ELISA) Test.[2]"

Done at Washington, D.C., this 15th day of August 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-19872 Filed 8-19-85; 8:45 am]

BILLING CODE 3410-34-M

[1] Copies of the results of research and of the test protocol for the ELISA test are available upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20780.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-50-AD]

Airworthiness Directives; Boeing Model 757 and 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend an existing airworthiness directive (AD) which requires replacement of the Fuel Quantity Indicating System (FQIS) with specific part number processor units. This amendment would allow installation of later improved processor units as they are certificated.

DATES: Comments must be received on or before October 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-50-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM-140S; telephone (206) 431-2969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability Of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-50-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Amendment 39–4969 (48 FR 34731; August 1, 1983), Airworthiness Directive (AD) 83–15–05, was issued July 20, 1984, to require periodic testing of the Fuel Quantity Indication System (FQIS) on certain Boeing Model 757 and 767 airplanes. AD 83–15–05 was revised December 11, 1984, Amendment 39–4967 (49 FR 49434; December 20, 1984), to require replacement of the FQIS processor and terminate the requirement for repetitive inspections. Amendment 39–4967 inadvertently restricted the replacement of processor units to specific part numbers and does not allow for installation of improved processors. This proposed amendment will correct the earlier error by adding the note that, at the option of the operator, subsequent FAA-approved FQIS processor units may be installed.

Since this amendment merely relieves a restriction, it will not impose any regulatory or economic burden on any person.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposd rule, if promulgated, will not have a significant economic impact on a substantial number or small entities because few, if any, Model 757 and 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List Of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By further amending AD 83–15–05, Amendment 39–4696 (48 FR 34731: August 1, 1983) as revised by Amendment 39–4967 (49 FR 49434; December 20, 1984), by adding a new paragraph F, to read as follows:

"F. Subsequent-FAA approved FQIS processors may be installed in place of part numbers S345T002–42 and S345T002–350 required by paragraphs C or D.," above

All persons affected by this directive who have not already recived these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 13, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–19800 Filed 8–19–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–70–AD]

Airworthiness Directives; Short Brothers Ltd. Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the primary control cable guards to prevent foreign objects from interfering with the primary flight control cables on certain Model SD3–60 airplanes. This action was prompted by a report of a foreign object falling behind a furnishing panel and into the elevator control cables. The installation of additional guards is necessary to prevent objects dropped in the passenger cabin from jamming the control cables.

DATES: Comments must be received on or before October 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–70–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications recieved on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability Of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–70–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which exists on certain Short Brothers, Ltd. Model SD3–60 airplanes. An incident has been reported in which an object, dropped behind a furnishing panel in the passenger cabin, lodged adjacent to the spring pot in the elevator control circuit, and created a jam. To prevent this from recurring, the CAA has required that certain SD3–60 airplanes be modified in accordance with Short Brothers Service Bulletin SD360–27–04 to install extended cable guards and additional cable guards to protect the controls from jamming.

This airplane model is manufactured in the United Kingdom and type

certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification in accordance with the previously mentioned service bulletin.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $11,880.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brothers Model SD3–60 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subject 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11–89.

2. By adding the following new airworthiness directive:

Short Brother Ltd.: Applies to Short Brothers Ltd. Model SD3–60 airplanes serial numbers SH 3601 through SH 3665 inclusive, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished:

1. To prevent control system interference, install extended and additional guards in accordance with Short Brothers Ltd. Service Bulletin SD360–27–04, dated March 1985.

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 13, 1985.

Charles R. Foster,

Northwest Mountain Region.

[FR Doc. 85–19799 Filed 8–19–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–214–84]

Return Relating to Mortgage Interest Received in a Trade or Business From Individuals; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the requirements of reporting mortgage interest received in a trade or business from individuals. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by October 21, 1985. The regulations are proposed to be effective for mortgage interest received after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–214–84), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T, (202) 566–3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Parts 1 and 602 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations, which this document proposes to base on those temporary regulations, would amend Parts 1 and 602 of Title 26 of the Code of Federal Regulations.

The regulations provide guidance concerning information returns relating to mortgage interest received in a trade or business from individuals as required by section 6050H of the Internal Reveune Code of 1954. Section 6050H was added to the Code by section 145 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 685). The regulations are to be issued under the authority contained in sections 6050H and 7805 of the Intrernal Revenue Code of 1954 (98 Stat. 685, 26 U.S.C. 6050H; 68A Stat. 917, 26 U.S.C. 7805). For the text of the temporary regulations, see FR Doc. [T.D. 8047] published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are

submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirement of the Paperwork Reduction Act of 1980. Comments on those requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on those requirements to OMB also send copies to the Service.

Drafting Information

The principal author of these regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–19892 Filed 8–16–85; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[LR–151–83 and LR–179–84]

Registration Requirements With Respect to Certain Debt Obligations; Sanctions on Issuers of Registration-Required Obligations Not in Registered Form; and the Application of the Repeal of 30 Percent Withholding by the Tax Reform Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of notices of proposed rulemaking cross-reference to amendments to temporary regulations.

SUMMARY: This document provides an amended notice of proposed rulemaking relating to the definition of the term "registration-required obligation" with respect to certain types of obligations, relating to the imposition of sanctions on issuers issuing registration-required obligations in bearer form, and relating to the repeal of the 30 percent withholding tax on certain types of interest by the Tax Reform Act of 1984. This document amends notices of proposed rulemaking published in the **Federal Register** at 49 FR 33275, and 49 FR 33276. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing amendments to temporary income tax regulations relating to the definition of the term "registration-required obligation" with respect to certain obligations, the imposition of sanctions on issuers issuing registration-required obligations in bearer form, and the repeal of 30 percent withholding by the Tax Reform Act of 1984. The text of those amended temporary regulations serve as the comment document for this notice of proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed before October 21, 1985.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–151–83 and LR–179–84).

FOR FURTHER INFORMATION CONTACT: P. Ann Fisher of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T [LR–151–83 and LR–179–84], 202–566–3289.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend existing temporary regulations by adding paragraph (d) to § 1.163–5T, revising subdivisions (v) and (vi) of §§ 1.163–5T(c) (2), revising Q & As 10, 12, 14, and 15 of § 35a.9999–5 (b), and adding paragraph (d) to § 35a.9999–5 consisting of Q & A 20. For the text of the temporary regulations, see FR Doc. 85–19893 [T.D. 8046] published in the Rules and Regulations portion of this issue of the **Federal Register**.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is P. Ann Fisher of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR 1.16–1 Through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

Proposal of Regulations

The temporary regulations, FR Doc. 85–19893 [T.D. 8046] published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 163, 871, and 881 of the Internal Revenue Code of 1954.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–19894 Filed 8–16–85; 10:29 am]

BILLING CODE 4830–01–M

26 CFR Parts 1, 20, 25, and 53 and 602

[LR-165-84]

Below-Market Loans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the Federal tax treatment of both the lender and the borrower in certain below-market interest rate loan transactions. Changes to the applicable tax law were made by the Tax Reform Act of 1984. These regulations would affect taxpayers who enter into certain below-market loans and provide them with guidance needed to comply with the law.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 21, 1985. The regulations are generally proposed to be effective after June 6, 1984, for below-market term loans made after June 6, 1984, and below-market demand loans outstanding after June 6, 1984. Section 1.7872-1(c) provides special effective date rules for certain loan transactions.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-165-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3828 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1), the Estate Tax Regulations (26 CFR Part 20), the Gift Tax Regulations (26 CFR Part 25) and the Excise Tax Regulations (26 CFR Part 53) under section 7872 of the Internal Revenue Code of 1954. This document also amends the Table of OMB Control Numbers (26 CFR Part 602). These amendments are proposed to provide regulations under new section 7872, which was added to the Code by section 172 of the Tax Reform Act of 1984 (98 Stat. 699).

In General

Prior to the enactment of section 7872, some taxpayers used interest-free loans or loans with an interest rate below the current market rate (in each case, "below-market loans") which purported to circumvent well-established rules of taxation. Thus, in family or similar situations, below-market loans have been used which purported to have the effect of avoiding taxation under the grantor trust rules and deflecting income to others. Corporations have made below-market loans to shareholders with the effect of avoiding taxation of income at the corporate level which is the economic equivalent of receiving a deduction for dividends paid to those shareholders. Employers have made below-market loans to employees with the effect of providing compensation which has not been subject to employment taxes. Interest-free loans have also been used to convert non-deductible expenses into the equivalent of deductible expenses.

Section 7872 addresses these and similar practices, generally, by treating certain below-market loans described in one of the categories specified in section 7872(c) as economically equivalent to loan bearing interest at the applicable Federal rate coupled with a payment by the lender to the borrower sufficient to fund the payment of interest by the borrower. Thus, the lender is treated as making (i) a loan to the borrower in exchange for a note requiring the payment of interest at the applicable Federal rate, and (ii) a transfer of funds to the borrower in an amount generally equal to the amount of interest imputed under section 7872. In the case of term gift loans, however, the amount of money treated as transferred by the lender to the borrower, which is subject to gift tax, and the amount of the imputed interest payment by the borrower to the lender are unequal because they are computed differently under the statute.

Character and Timing of Transfers

The character of the imputed transfer by the lender to the borrower is determined in accordance with the substance of the transaction. For example, the transfer is treated as a gift if the transaction is in substance a gift within the meaning of the gift tax provisions of the Code, and it is treated as compensation if the purpose of the transaction is the payment of compensation. This imputed transfer is computed annually and in the case of demand loans is treated as made, generally, on December 31. In the case of term loans, however, the imputed transfer is treated as made at the time the loan is made.

The timing and amount of the imputed interest payments by the borrower to the lender depend on the character of the amount transferred by the lender to the borrower and on whether the loan is a term or a demand loan. The imputed interest payment in the case of gift and demand loans is computed annually and generally is treated as transferred on December 31. The imputed interest payment in the case of term loans other than gift loans is computed on the date the loan is made and is subject to the original issue discount rules of section 1272.

Definition of Loan

Because the purpose of section 7872 is to eliminate the use of below-market loans as a vehicle for tax avoidance, the term "loan" is interpreted broadly in the regulations. Accordingly, any extension of credit or any transaction under which the owner of money permits another person to use the money for a period of time after which the money is to be transferred back to the owner or applied according to an agreement with the owner, such as a refundable deposit, is a loan for purposes of section 7872. However, only those below-market loans that are gift loans, compensation-related loans, corporation-shareholder loans, tax avoidance loans or loans to be specified as significant-effect loans (see below), are subject to the provisions of section 7872. Proposed § 1.7872-4(g) provides a special rule for a below-market loan which is made between two persons and is attributable to the relationship of a third person to either the lender or the borrower (for example, a loan by an employer to the child of an employee). In this case, the loan is restructured as two successive "indirect" loans for purposes of section 7872. In addition, the regulations provide that if a lender and a borrower use another entity as an intermediary or middleman, such as in a "back-to-back" loan transaction, for the purpose of avoiding the application of section 7872, the intermediary will be ignored and the two loans will be restructured as one loan made directly between the lender and the borrower.

Section 7872(c)(1)(B)(ii) states that loans between an independent contractor and a person for whom the independent contractor provides services are subject to section 7872. In addition, the proposed regulations define a loan to include any transaction which would be treated as a refundable deposit under current law. Accordingly, if a taxpayer makes a refundable deposit to an independent contractor in connection with the performance of services, the deposit will be subject to the imputation rules of section 7872 (unless the *de minimis* rules are applicable). The Service is aware that cash amounts are frequently deposited with independent contractors in the

ordinary course of business and characterized by the parties as prepayments rather than refundable deposits. Consequently, if this characterization is appropriate, those amounts would not be subject to section 7872. The proper distinction between refundable deposits and prepayments is a factual determination, and, to assist the Service in developing guidelines for drawing this distinction, interested parties are invited to comment on this issue.

Partnerships and Partners

The Service is aware that some taxpayers have entered into below-market loans with partnerships and that other taxpayers have achieved the economic and tax result afforded a below-market loan transaction by utilizing partnerships and the tax laws under subchapter K. The proposed regulations provide that certain below-market loans made by a partnership to a partner that are made in consideration for services preformed by the partner other than in his capacity as a member of the partnership will be treated as compensation-related loans for purposes of section 7872.

The final regulations under section 7872 will further address the relationship of section 7872 to partnership transactions, such as certain purported distributions which, under the facts and circumstances, may properly be characterized as loans. The Service is considering several proposals regarding the application of section 7872 to transactions between partners and partnerships and requests interested taxpayers to submit written comments on this point.

Significant Effect Loan

In addition to the four enumerated categories of below-market loans, section 7872(c)(1)(E) provides regulatory authority for applying section 7872 to any other below-maket loan if "the interest arrangements of such loan have a significant effect on any Federal tax liability of the lender or the borrower." The Conference Report accompanying the Tax Reform Act of 1984 states, among other things, that any loan that results in the conversion of a nondeductible expense into the equivalent of a deductible expense has an effect on the tax liability of the borrower or lender. The Conference Report further provides that whether an effect is significant is determined in light of all the facts and circumstances including:

(1) Whether the items of income and deduction generated by the loan offset each other;

(2) The amount of such items;

(3) The cost to the taxpayer of complying with the provision; and

(4) Any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower.

The Service is aware of numerous situations in which below-market loans have the potential to convert nondeductible personal expenses into the equivalent of deductible expenses. This potential is particularly apparent where interest earned on the borrowed amount may be used to compensate (or provide additional compensation to) the borrower for services or property provided to the lender. Examples of these situations include:

(1) Loans to a membership organization in lieu of part or all of a membership fee;

(2) Loans to institutions providing meals, lodging, and/or medical services (*e.g.*, continuing care facilities) in lieu of fees for such services;

(3) Loans to colleges and secondary schools in lieu of part or all of the tuition, room, and board that would otherwise be changed; and

(4) Loans to an employee or independent contractor by an employer in lieu of payment for a service provided to such employer by the employee (*e.g.*, housing, life insurance coverage, health care).

Many of these transactions have a significant potential for distortion of tax liability, especially if the amounts loaned are relatively large. The Service has decided, however, not to propose regulations treating transactions as having a significant effect until further comment is received on how the facts and circumstances test should be applied, including the proper role of the factors cited by the Conference Report. The Service intends to hold a hearing after publication of these proposed regulations, if a public hearing is requested by any person who submits written comments. The Service urges taxpayers to submit written comments and to speak on this point at that hearing. No transaction will be treated under the regulations as a significant effect loan earlier than the date that future regulations under section 7872(c)(1)(E) are published in proposed form.

Exclusion From Section 7872

Proposed §§ 1.7872–7 and 1.7872–8 provide for the exclusion of certain below-market loans from the rules of section 7872. Generally, if the amount of loans between a lender and a borrower does not exceed $10,000, section 7872 does not apply. Furthermore, in the case of gift loans of less than $100,000, directly between natural persons, the imputed interest payment by the borrower to the lender each year generally is limited to the amount of the borrower's net investment income (as defined section 7872(d)(1)(E)) for the taxable year.

In addition, section 7872(g)(1)(C) provides regulatory authority for exempting from the application of section 7872 any class of transactions if the application of section 7872 would not have a significant effect on any Federal tax liability of the lender or the borrower. Accordingly, proposed § 1.7872–5 provides that certain below-market loans which are not structured as such for tax avoidance purposes are exempted from the provisions of section 7872. If, however, such a loan is structured as one of the exempted loans for tax avoidance purposes, the Service may recharacterize the transaction according to its economic substance and apply section 7872 in accordance with its terms. Interested taxpayers are invited to comment on whether other transactions should be exempted from section 7872, and on the proper tax treatment under section 7872 of private placements of convertible debt.

Section 7872(f)(8) provides that section 7872 does not apply to any loan to which section 483 or 1274 applies. The regulations clarify that generally section 7872 does not apply to any loan to which section 483 or 1274 could apply even though the rules of those sections do not apply because of exceptions or safe harbor provisions in one of those sections. The regulations further clarify that debt instruments issued for property and payable on demand, debt instruments described in section 1273(b)(3) and debt instruments described in section 1275(b) are not subject to sections 483 and 1274 and are subject to section 7872 if those instruments are described in section 7872(c)(1) (A), (B), or (C).

Certain loans subject to section 7872 are also described in section 482 of the Code (concerning the allocaton of income and deductions among related taxpayers). These regulations provide for one limited exception to section 7872 in the case of a loan which is also described in § 1.482–2(a)(3), concerning indebtedness arising in the ordinary course of business out of sales, leases, or the rendition of services by or between members of a group outstanding for six months or less (the "open accounts exception"). This limited

exception will expire on June 30, 1986, by which time the Service plans to have completed its review of the commercial need for an exception from section 7872 in the case of certain "open account" transactions between parties described in section 7872. The Service invites written comments on this issue.

Where an employer makes a below-market term loan to an employee in certain circumstances, the loan is treated for purposes of section 7872 as a demand loan under section 7872(f)(5). In the case where the employer disposes of his interest in the loan by sale to a third party, questions have arisen regarding the proper tax treatment of the employer, employee and third-party purchaser. The Service is considering alternative ways to resolve the issues raised in these circumstances, consistent with the following principles:

(1) The employee should remain subject to section 7872(a)(1), so long as that section would be applicable if the employer had not sold his interest in the loan; and

(2) The disposition of the loan should not present opportunities for tax avoidance that would not arise had the employer not disposed of its interest in the loan.

When promulgated, these rules may also apply to certain loans, such as employee relocation loans, which are generally exempted from the statute under § 1.7872–5. The Internal Revenue Service invites comments concerning this issue.

Foreign Currency Loans

The proposed regulations state that for purposes of applying the below-market loan rules to loans denominated in a foreign currency, a market rate of interest appropriate for that currency shall be used in lieu of the applicable Federal rate. However, the proposed regulations expressly leave open the question of how the imputed transfer from the borrower to the lender is to be treated for tax purposes. The Service is aware that high nominal rates of interest in currencies expected to depreciate with respect to the dollar may overstate the true cost of borrowing to a U.S. taxpayer if offsetting foreign currency gains are not taken into account. Conversely, low rates of interest in currencies expected to appreciate with respect to the dollar may understate true borrowing costs. The Service is studying this issue further, in the context of transactions governed by section 7872 as well as those governed by sections 1271 through 1275, and plans to address this issue in future regulations under these sections.

Request for Comments on Certain Transactions

The Service is aware that numerous transactions which occur in the ordinary course of business in many industries may be characterized under section 7872(c)(1)(B) as compensation-related loans. (One example is a transaction in which a cash margin deposit is made pursuant to requirements of an exchange to a futures commission merchant or to the exchange as a condition for trading futures contracts. See § 1.7872–5 for a special temporary rule pending comments.) In order to determine whether these transactions are subject to section 7872 and whether the interest arrangements of such transaction have a significant effect on the Federal tax liability of the lender or borrower, the Service requests that taxpayers submit written comments providing a full explanation of the transactions.

The Service is also aware that other persons subject to section 7872 may enter into numerous short-term demand loans for business-related or other purposes. (One example is short-term loans resulting from the extension of credit through the use of a credit card. See § 1.7872–10(a)(6) for a special rule relating to revolving credit loans.) Because of the volume and the short-term nature of the loans in these situations, the Service is also considering whether special rules of convenience can be formulated in some circumstances to reduce the cost of compliance without creating opportunities for manipulation or tax avoidance. The Service invites comments and suggestions with respect to such possible rules of convenience, the circumstances in which they would be applicable, and any exceptions that may be necessary if such rules are adopted.

Applicable Federal Rate

Under the proposed regulations, the applicable Federal rate in effect at any time depends upon the Federal statutory rates established for semiannual periods and the alternate Federal rates established by the Commissioner on a monthly basis (see § 1.1274–3T). The Federal statutory rates and the alternate Federal rates are published by the Commissioner along with equivalent rates which are based on different compounding periods. The choice of the appropriate Federal statutory rate or alternate Federal rate for any loan depends upon the payment intervals or compounding periods required under the loan agreement. The regulations provide special rules to permit use of the alternate Federal rate in the case of demand loans. In addition, the proposed regulations provide special rules for certain variable interest rate loans.

Unascertainable Term

The proposed regulations do not address the treatment of term loans in the case where the period for which the loan is outstanding is unascertainable. For example, a loan which must be repaid when the borrower marries is a term loan outstanding for an unascertainable period of time. In order to make the calculation required by section 7872(b), it is necessary to know the period of time that the term loan is outstanding. The Service invites comments on this issue.

Other Issues: Consistency; Estate and Gift Tax Rules; Private Foundations

Section 7872(g)(1)(B) provides regulatory authority for assuring that the positions of the lender and borrower are consistent as to the application or nonapplication of section 7872. Accordingly, proposed § 1.7872–11(f) provides that the lender and the borrower each must attach a statement to their income tax returns for any taxable year in which they either have imputed income or claim a deduction for an amount imputed under section 7872.

In addition, proposed § 20.7872–1 implements section 7872(g)(2) by prohibiting the discounting, at other than the applicable Federal rate, for estate tax purposes, of any term loan made by a decedent with donative intent after June 6, 1984. Proposed § 25.7872–1 implements section 7872(a) by providing that the amount transferred by the lender to the borrower and characterized as a gift is subject to the gift tax provisions. Finally, § 53.4941(d)–2 is amended to provide that the amount of interest on loans between a disqualified person and a private foundation is computed without regard to section 7872 for purposes of application of the excise tax imposed by that section.

Effective Dates

In general, the provisions of section 7872 apply after June 6, 1984, to term loans made after June 6, 1984, and to demand loans outstanding after June 6, 1984. If, however, a demand loan that was outstanding after June 6, 1984, is retired before September 17, 1984, the provisions of section 7872 will not apply to the demand loan for the period ending on the date on which the loan is retired. For this purpose, the demand loan is retired by repayment, cancellation, forgiveness, modification of the interest arrangement, or some other similar

action (see Internal Revenue Service News Release, IR–84–95, published August 28, 1984).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analysis

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accodringly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Howard A. Balikov of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.7872–1 to 1.7872–14

Income tax, Gift tax, Below-market loans.

26 CFR Part 20

Estate taxes.

26 CFR Part 25

Gift Taxes.

26 CFR Part 53

Excise taxes, Foundations, Investments, Trusts and trustees.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations.

The proposed amendments to 26 CFR Part 1, 26 CFR Part 20, 26 CFR Part 25, 26 CFR Part 53, and 26 CFR Part 602 are as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * §§ 1.7872–1 through 1.7872–14 also issued under 26 U.S.C. 7872.

Par. 2. New §§ 1.7872–1 through 1.7872–14 are added in the appropriate place. These new sections read as follows:

§ 1.7872–1 Introduction.

(a) *Statement of purpose.* Section 7872 generally treats certain loans in which the interest rate charged is less than the applicable Federal rate as economically equivalent to loans bearing interest at the applicable Federal rate, coupled with a payment by the lender to the borrower sufficient to fund all or part of the payment of interest by the borrower. Such loans are referred to as "below-market loans." See § 1.7872–3 for detailed definitions of below-market loans and the determination of the applicable Federal rate. Accordingly, section 7872 recharacterizes a below-market loan as two transactions:

(1) An arm's-length transaction in which the lender makes a loan to the borrower in exchange for a note requiring the payment of interest at the applicable Federal rate; and

(2) A transfer of funds by the lender to the borrower ("imputed transfer"). The timing and the characterization of the amount of the imputed transfer by the lender to the borrower are determined in accordance with the substance of the transaction. The timing and the amount of the imputed interest payment (the excess of the amount of interest required to be paid using the applicable Federal rate, *over* the amount of interest required to be paid according to the loan agreement) by the borrower to the lender depend on the character of the imputed transfer by the lender to the borrower and whether the loan is a term loan or a demand loan. If the imputed transfer by the lender is characterized as a gift, the provisions of chapter 12 of the Internal Revenue Code, relating to gift tax, also apply. All imputed transfers under section 7872 (*e.g.*, interest, compensation, gift) are characterized in accordance with the substance of the transaction, and, except as otherwise provided in the regulations under section 7872, are treated as so characterized for all purposes of the Code. For example, for purposes of section 170, an interest-free loan to a charity referred to in section 170 for which interest is imputed under section 7872, is treated as an interest bearing loan coupled with periodic gifts to the charity in the amount of the imputed transfer, for purposes of section 170. In addition, all applicable information and reporting requirements (*e.g.*, reporting on Form W–2 and Form 1099) must be satisfied.

(b) *Effective date*—(1) *In general.* The provisions of section 7872 generally apply, for periods after June 6, 1984, to demand loans outstanding after that date and to loans other than demand loans made after that date.

(2) *Demand loans repaid before September 17, 1984.* If a demand loan which was outstanding on June 6, 1984, is repaid before September 17, 1984, section 7872 does not apply to the loan. For purposes of this paragraph (b)(2) only, a loan is treated as repaid if it is repaid, cancelled, forgiven, modified, or otherwise retired. For example, if the loan agreement for an interest-free demand loan, which is outstanding on June 6, 1984, is modified on September 10, 1984, to require the borrower to pay a 5 percent simple rate of interest, then for purposes of this paragraph (b)(2) the original loan is treated as repaid on September 10, 1984, and section 7872 applies to the modified loan beginning on that date.

(3) *Change in loan agreement.* For purposes of section 7872, any loan which is renegotiated, extended, or revised after June 6, 1984, is treated as a loan made after June 6, 1984. Accordingly, for purposes of the effective date provisions of this paragraph (b) in the case of such a loan, the provisions of section 7872 apply as if the loan were a new loan

made on the day the lender and borrower enter into a binding agreement to change the provisions of the loan.

(4) *Other Federal tax consequences.* Section 7872 does not alter the law applicable to below-market loans for periods prior to the effective date of section 7872. Accordingly, below-market interest rate loans which are not subject to section 7872 by reason of the effective date provisions of this paragraph (b), including loans which are repaid under the rule described in paragraph (b)(2) of this section, may still have Federal tax consequences. *See, e.g., Dickman* v. *Commissioner,* 465 U.S. —— (1984), 104 S.Ct. 1086.

(c) *Key to Code provisions.* The following key is intended to facilitate research with respect to specific Code provisions. The key identifies the regulations section in which the principal discussion of a particular Code provision appears. As a result of the interrelationship among Code provisions, other regulation sections may also discuss the particular Code provision. Section 1.7872–2 deals with the definition of the term "loan" for purposes of section 7872. The following table identifies the provisions of section 7872 that are dealt with in §§ 1.7872–2 through 1.7872–14 and lists each provision of Code secion 7872 below the regulation section in which it is covered.

§ 1.7872–2
(f)(8)

§ 1.7872–3
(e)(1)
(f)(2)
(g)(1)(A)

§ 1.7872–4
(c)(1)
(f)(3)

§ 1.7872–5
(g)(1)(C)

§ 1.7872–6
(a)
(d)(2)

§ 1.7872–7
(a)
(d)(2)
(f)(1)
(f)(4)
(f)(10)

§ 1.7872–8
(c)(2)
(d)(1)

§ 1.7872–9
(c)(3)
(f)(10)

§ 1.7872–10
(f)(5)
(f)(6)

§ 1.7872–11
(f)(7)
(f)(9)
(g)(1)(A)
(g)(1)(B)

§ 1.7872–12
(e)(1)(A)

§ 1.7872–13
(e)(2)

§ 1.7872–14
(e)(1)(B)
(f)(1)

See § 20.7872–1 for regulations under section 7872(g)(2).

See § 25.7872–1 for gift tax regulations.

See § 53.4941(d)–2 for interest-free loans between private foundations and disqualified persons.

§ 1.7872–2 Definition of loan.

(a) *In general*—(1) *"Loan" interpreted broadly.* For purposes of section 7872, the term "loan" includes generally any extension of credit (including, for example, a purchase money mortgage) and any transaction under which the owner of money permits another person to use the money for a period of time after which the money is to be transferred to the owner or applied according to an express or implied agreement with the owner. The term "loan" is interpreted broadly to implement the anti-abuse intent of the statute. An integrated series of transactions which is the equivalent of a loan is treated as a loan. A payment for property, goods, or services under a contract, however, is not a loan merely because one of the payor's remedies for breach of the contract is recovery of the payment. Similarly, a bona fide prepayment made in a manner consistent with normal commercial practices for services, property, or the use of property, generally, is not a loan; see section 461 and the regulations thereunder for the treatment of certain prepaid expenses and for the special rules of sections 461 (h) and (i). However, a taxpayer's characterization of a transaction as a prepayment or as a loan is not conclusive. Transactions will be characterized for tax purposes according to their economic substance, rather than the terms used to describe them. Thus, for example, receipt by a partner from a partnership of money is treated as a loan if it is so characterized under § 1.731–1(c)(2).

(2) *Limitations on applicability of section 7872*—(i) *In general.* Section 7872 applies only to certain below-market loans (as defined in section 7872(e)(1)). Section 1.7872–4 lists the categories of below-market loans to which section 7872 generally applies. Certain below-market loans within these categories, however, are exempt from the provisions of section 7872. See § 1.7872–5 for specific exemptions from the rules.

(ii) *Loans to which section 483 or 1274 applies.* Generally, section 7872 does not apply to any loan which is given in consideration for the sale or exchange of property (within the meaning of section 1274(c)(1)) or paid on account of the sale or exchange of property (within the meaning of section 483(c)(1)), even if the rules of those sections do not apply by reason of exceptions or safe harbor provisions. Any transaction, however, which otherwise is described in section 7872(c)(1) (A), (B), or (C), and is—

(A) A debt instrument that is issued in exchange for property and that is payable on demand,

(B) A debt instrument described in section 1273(b)(3), or

(C) A debt instrument described in section 1275(b), unless the transaction is described in § 1.7872–5(b)(1).

is not subject to sections 483 and 1274 and is subject to section 7872.

(iii) *Relation to section 482.* If a below-market loan subject to section 7872 would also be subject to section 482 if the Commissioner chose to apply section 482 to the loan transaction, then section 7872 will be applied first. If the Commissioner chooses to apply section 482, then the loan transaction is subject to section 482 in addition to section 7872.

(3) *Loan proceeds transferred over time.* In general, each extension or credit or transfer of money by a lender to a borrower is treated as a separate loan. Accordingly, if the loan agreement provides that the lender will transfer the loan proceeds to the borrower in installments, each installment payment is treated as a separate loan. Similarly, in the case of a loan in which the transfer of the loan proceeds to the borrower is subject to a draw-down restriction, each draw-down of loan proceeds is treated as a separate loan.

(b) *Examples of transactions treated as loans*—(1) *Refundable Deposits*—(i) *In general.* If an amount is treated for Federal tax purposes as a deposit rather than as a prepayment or an advance payment, the amount is treated as a loan for purposes of section 7872.

(ii) *Partially refundable deposits.* If an amount is treated for Federal tax purposes as a deposit rather than as a prepayment or an advance payment and the amount is refundable only for a certain period of time or is only partially refundable, then the deposit is treated as a loan only to the extent that it is refundable and only for the period of time that it is refundable.

(iii) *Exception.* Paragraph (b)(1)(i) of this section does not apply if the deposit is custodial in nature or is held in trust for the benefit of the transferor. The deposit is treated as custodial in nature if the transferee is not entitled to the beneficial enjoyment of the amount deposited including interest thereon (except as security for an obligation of the transferor). Thus, if an amount is placed in escrow to secure a contractual obligation of the transferor, and the escrow agreement provides that all interest earned is paid to the transferor and that the transferee has no rights to or interest in the escrowed amount unless and until the transferor defaults on the obligation, then, in the absence of any facts which indicate that the transaction was entered into for tax avoidance purposes, the deposit is not a loan.

(2) *Permitting agent or intermediary to retain funds.* An agreement under which an agent or intermediary is permitted to retain possession of money for a period of time before transferring the money to his or her principal is treated as a loan for purposes of section 7872. For example, a taxpayer who enters into an agreement with a broker under which the broker may retain possession of the proceeds from the sale of the taxpayer's property (*e.g.*, securities issued by the taxpayer) for a period of time and uses or invests those funds (other than for the taxpayer's account) is treated as making a loan to the broker for the period of time that the broker retains possession of the proceeds.

(3) *Advances.* An advance of money to an employee, salesman, or other similar person to defray anticipated expenditures is not treated as a loan for purposes of section 7872 if the amount of money advanced is reasonably calculated not to exceed the anticipated expenditures and if the advance of money is made on a day within a reasonable period of time of the day that the anticipated expenditure will be incurred. An advance or draw of money against a partner's distributive share of income which is treated in the manner described in § 1.731–1(a)(1)(ii) is not a loan for purposes of section 7872.

§ 1.7872–3 Definition of below-market loans.

(a) *In general.* Section 7872 does not impute interest on loans which require the payment of interest at the applicable Federal rate. This section defines the applicable Federal rate and provides rules for determining whether an interest-bearing loan provides sufficient stated interest to avoid classification as a below-market loan. The term "below-market loan" means any loan if—

(1) In the case of a demand loan, interest is payable at a rate less than the applicable Federal rate; or

(2) In the case of a term loan, the amount loaned exceeds the present value of all payments due under the loan, determined as of the day the loan is made, using a discount rate equal to the applicable Federal rate in effect on the day the loan is made.

Sections 1.7872–13 and 1.7872–14 contain the computations necessary for determining the amount of imputed interest on a below-market loan which is subject to section 7872.

(b) *Applicable Federal rate*—(1) *In general.* The applicable Federal rate is an annual stated rate of interest based on semiannual compounding. In addition, the Commissioner may prescribe equivalent rates based on compounding periods other than semiannual compounding (for example, annual compounding, quarterly compounding, and monthly compounding), to facilitate application of this section to loans other than those involving semiannual payments or compounding. Thus, loans providing for annual payments or annual compounding of interest over the entire life of the loan will use the applicable Federal rates based on annual compounding; loans providing for quarterly payments or quarterly compounding over the entire life of the loan will use the applicable Federal rates based on quarterly compounding; and loans providing for monthly payments or monthly compounding over the entire life of the loan will use the applicable Federal rates based on monthly compounding. The shorter of the compounding period or the payment interval determines which rate is appropriate. Loans providing for payments or compounding of interest at other intervals (*e.g.*, daily, weekly, bi-monthly) may use the applicable Federal rates published by the Commissioner based on the shortest compounding period that is longer than the shorter of the compounding period or the payment interval provided for over the entire life of the loan. Thus, loans providing for daily or weekly payments or compounding of interest may use the applicable Federal rate based on monthly compounding; loans providing for bi-monthly payments or compounding of interest will use the applicable Federal rates based on quarterly compounding; etc. Alternatively, taxpayers may compute and use interest rates other than those published by the Commissioner for other interest payment or compounding periods if such rates are equivalent to the applicable Federal rates. Any reference to the applicable Federal rate in the regulations under section 7872 includes the equivalent rates based on different compounding or payment periods.

(2) *Determination of applicable Federal rate*—(i) *In general.* The applicable Federal rate for loans described in paragraphs (b)(3), (4), and (5) of this section is defined by reference to Federal statutory rates and alternate Federal rates.

(ii) *Definition of Federal statutory rate.* The Federal statutory rates are the short-, mid-, and long-term rates in effect under section 1274(d) and their equivalent rates based on different compounding assumptions. These rates are published by the Commissioner for each semiannual period January 1 through June 30 and July 1 through December 31.

(iii) *Definition of alternate Federal rate.* The alternate Federal rates are the short-, mid-, and long-term rates established by the Commissioner on a monthly basis, and their equivalent rates based on different compounding assumptions. These rates are published by the Commissioner on a monthly basis.

(iv) *Definition of semiannual period.* For purposes of section 7872 and the regulations thereunder, the first semiannual period means the period in any calendar year beginning on January 1 and ending on June 30, and the second semiannual period means the period in any calendar year beginning on July 1 and ending on December 31.

(3) *Demand loans*—(i) *In general.* In the case of a demand loan, the applicable Federal rate for a semiannual period (January 1 through June 30 or July 1 through December 31), is the lower of:

(A) The Federal statutory short-term rate in effect for the semiannual period; or

(B) The special rate for demand loans described in paragraph (b)(3)(ii) of this section.

(ii) *Special rate for demand loans.* The special rate for demand loans is—

(A) For the semiannual period in which the loan is made, the alternate Federal short-term rate which is in effect on the day the loan is made; and

(B) For each subsequent semiannual period in which the loan is outstanding, the alternate Federal short-term rate which is in effect for the first month of that semiannual period (*i.e.*, January or July).

For a special safe harbor rule for certain variable interest rate demand loans, see paragraph (c)(2) of this section.

(4) *Term loans.* In the case of a term loan, including a gift term loan or a term loan that is treated as a demand loan as provided in § 1.7872–10(a)(5), the applicable Federal rate is the lower of:

(i) The Federal statutory rate for loans of that term in effect on the day the loan is made; or

(ii) The alternate Federal rate for loans of that term in effect on the day the loan is made.

(5) *Loans conditioned on future services.* In the case of a term loan that is treated as a demand loan as provided in § 1.7872–10(a)(5), on the date the condition to preform substantial services is removed or lapses, the demand loan is treated as terminated and a new term loan is created. The applicable Federal rate for the new term loan is the lower of the following:

(i) The applicable Federal rate in effect on the day the original loan was made; or

(ii) The applicable Federal rate in effect on the day the condition lapses or is removed.

(6) *Periods before January 1, 1985.* For term loans made and demand loans outstanding after June 6, 1984, and before January 1, 1985, the applicable Federal rate under section 7872(f)(2) is as follows:

(i) 10.25 percent, compounded annually;

(ii) 10.00 percent, compounded semiannually;

(iii) 9.88 percent, compounded quarterly; and

(iv) 9.80 percent, compounded monthly.

(c) *Loans having sufficient stated interest.*—(1) *In general.* Section 7872 does not apply to any loan which has sufficient stated interest. A loan has sufficient stated interest if it provides for interest on the outstanding loan balance at a rate no lower than the applicable Federal rate based on a compounding period appropriate for that loan. See paragraph (b)(1) of this section for a description of appropriate compounding periods. See § 1.7872–11(a) for rules relating to waiver of interest.

(2) *Safe harbor for demand loans.* If the interest rate on a demand loan is changed, either under the terms of the original loan agreement, or subsequently, the loan will be treated as a new loan for purposes of determining the applicable Federal rate for that loan. Thus, the loan will have sufficient stated interest for the remainder of the semiannual period following such change of interest rate if the new interest rate is not less than the lower of the Federal statutory short-term rate in effect for the semiannual period or the alternate Federal short-term rate in effect on the day the new interest rate takes effect.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples.

Example (1). On December 1, 1984, A makes a $100,000 5-year gift term loan to B, requiring 10 interest payments of $5,000 each, payable on May 31 and November 30 of each year the loan is outstanding. Since the loan requires semiannual interest payments, the appropriate compounding assumption is semiannual compounding. For term loans made during 1984, the applicable Federal rate based on semiannual compounding is 10 percent. The loan is not a below-market loan because it provides for interest at a rate of 10 percent, payable semiannually.

Example (2). Assume the same facts as in Example (1), except that the loan requires 5 annual interest payments of $10,000 each, payable on November 30 of each year the loan is outstanding. Since the loan requires annual interest payments, the appropriate compounding assumption is annual compounding. The loan is a below-market loan because, although interest is stated at a rate of 10 percent, a rate that reflects semiannual compounding is not appropriate for a loan with annual payments.

Example (3). Assume the same facts as in Example (2), except that the loan requires 5 annual payments of $10,250 each, payable on November 30 of each year that the loan is outstanding. Since the loan requires annual interest payments, the appropriate compounding assumption is annual compounding. For term loans made during 1984, the applicable Federal rate based on annual compounding is 10.25 percent. The loan is not a below-market loan because it provides for interest at a rate of 10.25 percent, compounded annually.

Example (4). Assume the same facts as in Example (1), except that the loan requires 120 monthly interest payments of $816.67 each, payable on the last calendar day of each month that the loan is outstanding. Since the loan requires monthly interest payments, the appropriate compounding assumption is monthly compounding. The loan is not a below-market loan because it requires monthly payments of interest based on a rate of 9.80 percent, the applicable Federal rate of interest based on monthly compounding.

Example (5). (i) A makes a demand loan to her son, B, on April 1, 1985. The loan requires quarterly interest payments due at the end of each calendar quarter at a rate of 10 percent. Assume that on April 1, 1985, the Federal statutory short-term rate in effect is 12 percent, compounded quarterly, and that the alternate Federal short-term rate in effect for the month of April is 10 percent, compounded quarterly. The loan is not a below-market loan for the period April 1, 1985, through June 30, 1985.

(ii) Assume that on July 1, 1985, the Federal statutory short-term rate in effect is 11 percent, compounded quarterly, and the alternate Federal short-term rate in effect for the month of July is 10.20 percent, compounded quarterly. The loan no longer has sufficient stated interest. If A raises the interest rate to at least 10.20 percent, the loan will have sufficient stated interest and will not be a below-market loan for the period of July 1 through December 31, 1985.

(iii) Assume that on July 1, 1985, A increases the interest rate on the loan to 10.20 percent, a rate equal to the alternate Federal short-term rate in effect for July. Further assume that the alternate Federal short-term rate subsequently decreases so that such rate in effect for the month of August decreases to 10 percent. On August 1, 1985, A lowers the interest rate on this loan to 10 and does not change that rate for the remainder of the semiannual period. The loan has sufficient stated interest and will not be a below-market loan for the semiannual period beginning on July 1, 1985, even if the alternate Federal rate is greater than 10 percent for any or all of the four remaining months in the semiannual period ending on December 31, 1985.

(d) *Short periods.* The rules for determining whether a loan has sufficient stated interest also apply to short periods (*e.g.*, a period that is shorter than the interval between interest payments or interest compounding under the loan which may occur at the beginning or end of the loan). For special computational rules and examples relating to a short periods, see § 1.7872–12.

(e) *Variable rates of interest*—(1) *In general.* If a loan requires payments of interest calculated at a rate of interest based in whole or in part on an objective index or combination of indices of market interest rates (*e.g.*, a prime rate, the applicable Federal rate, the average yield on government securities as reflected in the weekly Treasury bill rate, the Treasury constant maturity series, or LIBOR (London interbank offered rate)), the loan will be treated as having sufficient stated interest if—

(i) In the case of a term loan, the rate fixed by the index or indices is no lower than the applicable Federal rate, as determined under paragraph (b)(4) of this section (as modified by paragraph (e)(2) of this section), on the date the loan in made; or

(ii) In the case of a demand loan, the interest rate fixed by the index or indices is no lower than the applicable Federal rate, as determined under paragraph (b)(3) of this section, for each semiannual period that the loan is outstanding. See paragraph (e)(2)(i) of this section for rules relating to variable interest rate demand loans the interest rates of which are tied to the applicable Federal rate.

(2) *Special rules*—(i) *Demand loans tied to the applicable Federal rate.* A variable rate demand loan will be

treated as having sufficient stated interest if, by the terms of the loan agreement, the interest rate cannot be less than the lower of the Federal statutory short-term rate or the alternate Federal short-term rate in effect at the beginning (or, if the agreement so provides, at the end) of the payment or compounding period (whichever is shorter).

(ii) *Applicable Federal rate for variable interest rate term loans.* For purposes of determining the applicable Federal rate, if a term loan requires payments or compounding of interest based on a variable rate (within the meaning of paragraph (e)(1) of this section), the term of the loan shall be treated as being equal to the longest period of time that exists between the dates that, under the loan agreement, the interest rate charged on the loan is required to be recomputed (whether or not the recomputation results in a rate different from the immediately preceding rate). Thus, for example, in the case of a 10 year term loan that charges interest at a variable rate equal to a rate 2 points above the prime rate, and that requires that the interest rate be adjusted every 18 months to reflect any changes in the prime rate, the applicable Federal rate is determined by treating the loan as having a term of 18 months rather than a term of 10 years. Accordingly, the applicable Federal short-term rate rather than the applicable Federal long-term rate shall apply.

(3) The provision of paragraph (e)(1) of this section may be illustrated by the following examples:

Example (1). On April 1, 1985, A loans $200,000 to B, repayable on demand. The note calls for interest to be paid semiannually on September 30 and March 31 of each year at a rate equal to the alternate Federal short-term rate (based on semiannual compounding) for the month in which the payment is made. The loan has sufficient stated interest.

Example (2). Assume the same facts as in *Example (1)* except that the note calls for interest at a rate equal to the lower of the alternate Federal short-term rate or the statutory Federal short-term rate (in each case, based on semiannual compounding) for the month in which the payment is made. The loan has sufficient stated interest.

Example (3). Assume the same facts as in *Example (1)* except that interest is computed and compounded at the end of each month at a rate equal to the lower of the alternate Federal short-term rate of the statutory Federal short-term rate (in each case, based on monthly compounding) in effect for that month. Accrued interest is payable semiannually on September 20 and March 31 of each year. The loan has sufficient stated interest.

Example (4). Assume the same facts as in *Example (1)* except that interest is payable at the prime rate of a major lending institution at the time each payment is made. The prime rate is not an index which by its terms cannot be less than the lower of the statutory Federal short-term rate of the alternate Federal short-term rate. Therefore, the loan will be tested for sufficient stated interest in each semiannual period under the rules of paragraph (b)(3) of this section.

(f) *Contingent interest.* [Reserved]

§ 1.7872–4 Types of below-market loans.

(a) *In general.* Section 7872 applies only to certain categories of below-market loans. These categories are gift loans, compensation-related loans, corporation-shareholder loans, tax avoidance loans, and certain other loans classified in the regulations under section 7872 as significant tax effect loans (*i.e.*, loans whose interest arrangements have a significant effect on any Federal tax liability of the lender or the borrower.)

(b) *Gift loans*—(1) *In general.* The term "gift loan" means any below-market loan in which the foregoing of interest is in the nature of a gift within the meaning of Chapter 12 of the Internal Revenue Code (whether or not the lender is a natural person).

(2) *Cross reference.* See § 1.7872–8 for special rules limiting the application of section 7872 to gift loans. See paragraph (g) of this section for rules with respect to below-market loans which are indirectly gift loans.

(c) *Compensation-related loans*—(1) *In general.* A compensation-related loan is a below-market loan that is made in connection with the performance of services, directly or indirectly, between—

(i) An employer and an employee,

(ii) An independent contractor and a person for whom such independent contractor provides services, or

(iii) A partnership and a partner if the loan is made in consideration for services performed by the partner acting other than in his capacity as a member of the partnership.

The imputed transfer (amount of money treated as transferred) by the lender to the borrower is compensation. For purposes of this section, the term "in connection with the performance of services" has the same meaning as the term has for purposes of section 83. A loan from a qualified pension, profit-sharing, or stock bonus plan to a participant of the plan is not, directly or indirectly, a compensation-related loan.

(2) *Loan in part in exchange for services.* Except as provided in paragraph (d)(2) of this section (relating to a loan from a corporation to an employee who is also a shareholder of the corporation), a loan which is made in part in exchange for services and in part for other reasons is treated as a compensation-related loan for purposes of section 7872(c)(3) only if more than 25 percent of the amount loaned is attributable to the performance of services. If 25 percent or less of the amount loaned is attributable to the performance of services, the loan is not subject to section 7872 by reason of being a compensation-related loan. The loan may, however, be subject to section 7872 by reason of being a below-market loan characterized other than as a compensation-related loan (*e.g.*, corporation-shareholder loan or tax avoidance loan). If—

(i) A loan is characterized as a "compensation-related" loan under this paragraph (c),

(ii) Less than 100 percent of the amount loaned is attributable to the performance of services, and

(iii) The portion of the amount loaned that is not attributable to the performance of services is not subject to section 7872, then the amounts of imputed transfer (as defined in § 1.7872–1(a)(2)) and imputed transfer (as defined in § 1.7872–1(a)) are determined only with respect to that part of the loan which is attributable to services. All of the facts and circumstances surrounding the loan agreement and the relationship between the lender and the borrower are taken into account in determining the portion of the loan made in exchange for services.

(3) *Third-party lender as agent.* A below-market loan by an unrelated third-party lender to an employee is treated as attributable to the performance of services if, taking into account all the facts and circumstances, the transaction is in substance a loan by the employer made with the aid of a third-party lender acting as an agent of the employer. Among the facts and circumstances which indicate whether such a loan has been made is whether the employer bears the risk of default at and immediately after the time the loan is made. The principles of this paragraph (c)(3) also apply with respect to a below-market loan by an unrelated third-party lender to an independent contractor.

(4) *Special rule for continuing care facilities.* Any loan to a continuing care facility will not be treated, in whole or in part, as a compensation-related loan.

(5) *Cross-references.* For a special rule in the case of a below-market loan that could be characterized as both a compensation-related loan and a corporation-shareholder loan, see paragraph (d)(2) of this section. See paragraph (g) of this section for rules with respect to below-market loans

which are indirectly compensation-related loans.

(d) *Corporation-shareholder loans*—(1) *In general.* A below-market loan is a corporation-shareholder loan if the loan is made directly or indirectly between a corporation and any shareholder of the corporation. The amount of money treated as transferred by the lender to the borrower is a distribution of money (characterized according to section 301 or in the case of an S corporation, section 1368) if the corporation is the lender, or a contribution to capital if the shareholder is the lender.

(2) *Special rule.* A below-market loan—

(i) From a publicly held corporation to an employee of the corporation who is also a shareholder owning directly or indirectly more than 0.5 percent of the total voting power of all classes of stock entitled to vote or more than 0.5 percent of the total value of shares of all other classes of stock or 0.5 percent of the total value of shares of all classes of stock (including voting stock) of the corporation; or

(ii) From a corporation that is not a publicly held corporation to an employee of the corporation who is also a shareholder owning directly or indirectly more than 5 percent of the total voting power of all classes of stock entitled to vote or more than 5 percent of the total number of shares of all other classes of stock or 5 percent of the total value of shares of all classes of stock (including voting stock) of the corporation; will be presumed to be a corporation-shareholder loan, in the absence of clear and convincing evidence that the loan is made solely in connection with the performance of services. For purposes of determining the percentage of direct and indirect stock ownership, the constructive ownership rules of section 267(c) apply.

(3) *Cross-reference.* See paragraph (g) of this section for rules with respect to below-market loans which are indirectly corporation-shareholder loans.

(e) *Tax avoidance loans.* A tax avoidance loan is any below-market loan one of the principal purposes for the interest arrangements of which is the avoidance of Federal tax with respect to either the borrower or the lender, or both. For purposes of this rule, tax avoidance is a principal purpose of the interest arrangements if a principal factor in the decision to structure the transaction as a below-market loan (rather than, for example, as a market interest rate loan and a payment by the lender to the borrower) is to reduce the Federal tax liability of the borrower or the lender or both. The purpose for entering into the transaction (for example, to a make a gift or to pay compensation) is irrelevant in determining whether a principal purpose of the interest arrangements of the loan is the avoidance of Federal tax.

(f) *Certain below-market loans with significant effect on tax liability ("significant-effect" loans)*—[Reserved].

(g) *Indirect loans*—(1) *In general.* If a below-market loan is made between two persons and, based on all the facts and circumstances, the effect of the loan is to make a gift or a capital contribution or a distribution of money (under section 301 or in the case of an S corporation, section 1368), or to pay compensation to a third person ("indirect participant"), or is otherwise attributable to the relationship of the lender or borrower to the indirect participant, the loan is restructured as two or more successive below-market loans ("deemed loans") for purposes of section 7872, as follows:

(i) A deemed below-market loan made by the named lender to the indirect participant; and

(ii) A deemed below-market loan made by the indirect participant to the borrower. Section 7872 is applied separately to each deemed loan, and each deemed loan is treated as having the same provisions as the original loan between the lender and the borrower. Thus, for example, if a father makes an interest-free loan to his daughter's corporation, the loan is restructured as a below-market loan from father to daughter (deemed gift loan) and a second below-market loan from daughter to corporation (deemed corporation-shareholder loan). Similarly, if a corporation makes an interest-free loan to another commonly controlled corporation, the loan is restructured as a below-market loan from the lending corporation to the common parent corporation and a second below-market loan from the parent corporation to the borrowing corporation.

(2) *Special rule for intermediaries.* If a lender and a borrower use another person, such as an individual, a trust, a partnership, or a corporation, as an intermediary or middleman in a loan transaction and a purpose for such use is to avoid the application of section 7872(c)(1) (A), (B), or (C), the intermediary will be ignored and the loan will be treated as made directly between the lender and the borrower. Thus, for example, if a father and a son arrange their below-market loan transaction by having the father make a below-market loan to the father's partnership, followed by a second below-market loan (with substantially identical terms and conditions as the first loan) made by the partnership to the son, the two below-market loans will be restructured as one below-market loan from the father to the son.

§ 1.7872-5 Exempted loans.

(a) *In general*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, notwithstanding any other provision of section 7872 and the regulations thereunder, section 7872 does not apply to the loans listed in paragraph (b) of this section because the interest arrangements do not have a significant effect on the Federal tax liability of the borrower or the lender.

(2) *No exemption for tax avoidance loans.* If a taxpayer structures a transaction to be a loan described in paragraph (b) of this section and one of the principal purposes of so structuring the transaction is the avoidance of Federal tax, then the transaction will be recharacterized as a tax avoidance loan as defined in section 7872(c)(1)(D).

(b) *List of exemptions.* Except as provided in paragraph (a) of this section, the following transactions are exempt from section 7872:

(1) Loans which are made available by the lender to the general public on the same terms and conditions and which are consistent with the lender's customary business practices;

(2) Accounts or withdrawable shares with a bank (as defined in section 581), or an institution to which section 591 applies, or a credit union, made in the ordinary course of its business;

(3) Acquisitions of publicly traded debt obligations for an amount equal to the public trading price at the time of acquisition;

(4) Loans made by a life insurance company (as defined in section 816(a)), in the ordinary course of its business, to an insured, under a loan right contained in a life insurance policy and in which the cash surrender values are used as collateral for the loans;

(5) Loans subsidized by the Federal, State (including the District of Columbia), or Municipal government (or any agency or instrumentality thereof), and which are made available under a program of general application to the public;

(6) Employee-relocation loans that meet the requirements of paragraph (c)(1) of this section;

(7) Obligations the interest on which is excluded from gross income under section 103;

(8) Obligations of the United States government;

(9) Loans to a charitable organization (described in section 170(c)), but only if at no time during the taxable year will the aggregate outstanding amount of

loans by the lender to all such organizations exceed $10,000;

(10) Loans made to or from a foreign person that meet the requirements of paragraph (c)(2) of this section;

(11) Loans made by a private foundation or other organization described in section 170(c), the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B);

(12) Loans made prior to July 1, 1986, to the extent excepted from the application of section 482 for the 6-month (or longer) period referred to in § 1.482–2(a)(3);

(13) For periods prior to July 1, 1986, all money, securities, and property received by a futures commission merchant or by a clearing organization (i) to margin, guarantee or secure contracts for future delivery on or subject to the rules of a qualified board or exchange (as defined in section 1256(g)(7)), or (ii) to purchase, margin, guarantee or secure options contracts traded on or subject to the rules of a qualified board or exchange, and all money accruing to account holders as the result of such futures and options contracts;

(14) Loans where the taxpayer can show that the below market interest arrangements have no significant effect on any Federal tax liability of the lender or the borrower, as described in paragraph (c)(3) of this section; and

(15) Loans, described in revenue rulings or revenue procedures issued under section 7872(g)(1)(C), if the Commissioner finds that the factors justifying an exemption for such loans are sufficiently similar to the factors justifying the exemptions contained in this section.

(c) *Special rules*—(1) *Employee-relocation loans*—(i) *Mortgage loans.* In the case of a compensation-related loan to an employee, where such loan is secured by a mortgage on the new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee, acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The loan is a demand loan or is a term loan the benefits of the interest arrangements of which are not transferable by the employee and are conditioned on the future performance of substantial services by the employee;

(B) The employee certifies to the employer that the employee reasonably expects to be entitled to and will itemize deductions for each year the loan is outstanding; and

(C) The loan agreement requires that the loan proceeds be used only to purchase the new principal residence of the employee.

(ii) *Bridge loans.* In the case of a compensation-related loan to an employee which is not described in paragraph (c)(1)(i) of this section, and which is used to purchase a new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The conditions contained in paragraphs (c)(1)(i)(A), (B), and (C) of this section;

(B) The loan agreement provides that the loan is payable in full within 15 days after the date of the sale of the employee's immediately former principal residence;

(C) The aggregate principal amount of all outstanding loans described in this paragraph (c)(1)(ii) to an employee is no greater than the employer's reasonable estimate of the amount of the equity of the employee and the employee's spouse in the employee's immediately former principal residence, and

(D) The employee's immediately former principal residence is not converted to business or investment use.

(2) *Below-market loans involving foreign persons*—(i) Section 7872 shall not apply to a below-market loan (other than a compensation-related loan or a corporation-shareholder loan where the borrower is a shareholder that is not a C corporation as defined in section 1361(a)(2)) if the lender is a foreign person and the borrower is a U.S. person, unless the interest income imputed to the foreign lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(ii) Section 7872 shall not apply to a below-market loan where both the lender and the borrower are foreign persons unless the interest income imputed to the lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(iii) For purposes of this section, the term "foreign person" means any person that is not a U.S. person.

(3) *Loans without significant tax effect.* Whether a loan will be considered to be a loan the interest arrangements of which have a significant effect on any Federal tax liability of the lander or the borrower will be determined according to all of the facts and circumstances. Among the factors to be considered are—

(i) Whether items of income and deduction generated by the loan offset each other;

(ii) The amount of such items;

(iii) The cost to the taxpayer of complying with the provisions of section 7872 if such section were applied, and

(iv) Any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower.

§ 1.7872–6 Timing and amount of transfers in connection with gift loans and demand loans.

(a) *In general.* Section 7872(a) and the provisions of this section govern the timing and the amount of the imputed transfer by the lender to the borrower and the imputed interest payment by the borrower to the lender in the case of a below-market demand loan. Section 7872(a) and this section also govern the timing and the amount of the imputed transfer by the lender to the borrower and the imputed interest payment by the borrower to the lender from income tax purposes in the case of term gift loans. (See section 7872(b), 7872(d)(2), and § 1.7872–7 for rules governing the timing and the amount of the imputed transfer by the lender to the borrower in the case of term gift loans for gift tax purposes.) Section 7872(d)(1) and § 1.7872–8 limit the amount of the imputed interest payment with respect to certain gift loans. See § 1.7872–10(a) for rules for distinguishing demand loans from term loans. See 1.7872–11(f) for special rules governing loans repayable in foreign currency, which apply notwithstanding any contrary rules set forth in this section.

(b) *Time of transfer*—(1) *In general.* Except as otherwise provided in paragraphs (b) (3), (4), and (5) of this section, the foregone interest (as defined in section 7872(e)(2) and paragraph (c) of this section) attributable to periods during any calendar year is treated as transferred by the lender to the borrower (and retransferred by the

borrower to the lender) on December 31 of that calendar year and shall be treated for tax purposes in a manner consistent with the taxpayer's method of accounting.

(2) *Example.* Paragraph (b)(1) of this section may be illustrated by the following example.

Example. On January 1, 1985, E makes a $200,000 interest-free demand loan to F, an employee of E. The loan remains outstanding for the entire 1985 calendar year. E has a taxable year ending September 30. F is a calendar year taxpayer. For 1985, the imputed compensation payment and the imputed interest payment (as computed under paragraph (c) of this section) are treated as made on December 31.

(3) *Gift loans between natural persons.* In the case of gift loans directly between natural persons within the meaning of § 1.7872–8(a)(2), any imputed transfer and any imputed interest payment to which this section applies during the borrower's taxable year is treated, for both the lender and the borrower, as occurring on the last day of the borrower's taxable year.

(4) *Death, liquidation or termination of borrower.* If the borrower dies (in the case of a borrower who is a natural person) or is liquidated or otherwise terminated (in the case of a borrower other than a natural person), any imputed transfer and any imputed interest payment arising during the borrower's final taxable year are treated, for both the lender and the borrower as occurring on the last day of the borrower's final taxable year.

(5) *Repayment of loan.* If a below-market loan is repaid, any imputed transfer and any imputed interest payment arising during the borrower's taxable year which includes the date of repayment is treated, for both the lender and the borrower, as occurring on the day the loan is repaid.

(c) *Amount of transfer.* In the case of a below-market loan to which section 7872 applies and which is a demand loan (including a term loan that is treated as a demand loan as provided in section § 1.7872–10(a)(5)) or a gift term loan, the foregone interest (as computed under the provisions of § 1.7872–13) with respect to the loan is treated as transferred by the lender to the borrower and retransferred as interest by the borrower to the lender. Generally, for any calendar year the term "foregone interest" means the excess of—

(1) The amount of interest that would have been payable in that year if interest had accrued at the applicable Federal rate (as determined in § 1.7872–13); over

(2) Any interest payable on the loan properly allocable to that year.

The amount of foregone interest is computed for each day during the period for which section 7872(a) applies to the loan and is treated as transferred and retransferred on the data specified in paragraph (b) of this section.

§ 1.7872–7 Timing and amount of transfers in connection with below-market term loans.

(a) *In General.* This section governs the Federal income tax consequences of below-market term loans, other than gift term loans or term loans treated as demand loans under the provisions of § 1.7872–10(a)(5), to which section 7872 applies. It also governs the Federal gift tax consequences of below-market gift term loans. See § 1.7872–11(f) for special rules which govern loans repayable in foreign currency and which apply notwithstanding any contrary rules set forth in this section.

(1) *Timing and amount of transfer from lender to borrower.* In the case of term loans to which this section applies, the amount of the imputed transfer by the lender to the borrower—

(i) Is treated as transferred at the time the loan is made and is treated for tax purposes in a manner consistent with the taxpayer's method of accounting; and

(ii) Is equal to the excess of—

(A) The amount loaned (as defined in paragraph (a)(4) of this section); over

(B) The present value (as determined in paragraph (a)(5) of this section and § 1.7872–14) of all payments which are required to be made under the terms of the loan agreement, whether express or implied.

(2) *Gift term loans.* In the case of a gift term loan, the rules of paragraph (a)(1) of this section apply for gift tax purposes only. For rules governing the income tax consequences of gift term loans, see § 1.7872–6.

(3) Treatment of amount equal to imputed transfer as original issue discount—(i) *In general.* Any below-market loan to which paragraph (a)(1) of this section applies shall be treated as having original issue discount in an amount equal to the amount of the imputed transfer determined under paragraph (a)(1) of this section. This imputed original issue discount is in addition to any other original issue discount on the loan (determined without regard to section 7872(b) or this paragraph). For purposes of applying section 1272 to a loan described in this paragraph, the issue price shall be treated as equal to the stated principal reduced by the amount of the imputed transfer and the yield to maturity is the applicable Federal rate.

(ii) *Example.* The provisions of this paragraph (a)(3) may be illustrated by the following example.

Example. (i) On June 10, 1984, L lends $45,000 to B, a corporation in which L is a shareholder, for five years in exchange for a $50,000 note bearing interest at a below-market rate. Assume that the present value of all payments that B must make to L is $42,000. This loan is a corporation-shareholder term loan under section 7872(c)(1)(C). Accordingly, the amount of the imputed transfer by L to B is determined under the provisions of section 7872(b).

(ii) On June 10, 1984, L is treated as transferring $3,000 (the excess of $45,000 (amount loaned) over $42,000 (present value of all payments)), in accordance with section 7872(b)(1). This imputed transfer is treated as a contribution to B's capital by L. An amount equal to the imputed transfer is treated as original issue discount. This original issue discount is in addition to the $5,000 ($50,000, the stated redemption price, less $45,000, the issue price) of original issue discount otherwise determined under section 1273. As a result, the loan is treated as having a total of $8,000 of original issue discount.

(4) *Amount loaned.* The term "amount loaned" means the amount received by the borrower (determined without regard to section 7872). See § 1.7872–2(a)(3) for the treatment of the transfer of the loan proceeds to the borrower in installments or subject to draw-down restrictions.

(5) *Present value.* The present value of all payments which are required to be made under the provisions of the loan agreement is computed as of the date the loan is made (or, if later, as of the day the loan first becomes subject to the provisions of section 7872). The discount rate for the present value computation is the applicable Federal rate as defined in § 1.7872–3(b) in effect on the day on which the loan is made. For rules governing the computation of present value, see § 1.7872–14. See also *Example (3)* in § 1.7872–8(b)(5).

(6) *Basis.* In the case of a term loan the lender's basis in the note received in exchange for lending money is equal to the present value of all payments which are required to be made under the terms of the loan agreement, whether express or implied, with adjustments as provided for in section 1272(d)(2).

(b) *Special rule for the de minimis provisions—*(1) *In general.* If as a result of the application of the *de minimis* provisions of section 7872(c) (2) or (3), a loan become subject to section 7872 and this section on a day after the day on which the loan is made, the provisions of this section generally apply to the loan as if the loan were made on that

later day. The applicable Federal rate applied to this loan (including for purposes of computing the present value of the loan), however, is the applicable Federal rate (as defined in § 1.7872–3(b)) in effect on the day on which the loan is first made. The present value computation described in paragraph (a)(1)(ii)(B) of this section is made as of the day on which section 7872 and this section first apply to the loan. For purposes of making this computation, the term of the loan is equal to the period beginning on the day that section 7872 first applies to the loan and ending on the day on which the loan is to be repaid according to the loan agreement. Any payments payable according to the loan agreement before the day on which section 7872 and this section first apply to the loans are disregarded.

(2) *Continuing application of section 7872.* Once section 7872 and this section apply to a term loan, they continue to apply to the loan regardless of whether the *de minimis* provisions of section 7872(c) (2) or (3) apply at some later date. In the case of a gift term loan, this paragraph applies only for gift tax purposes and does not apply for income tax purposes.

§ 1.7872–8 Special rules for gift loans directly between natural persons.

(a) *Special rules for gift loans directly between natural persons*—(1) *In general.* Section 7872 (c)(2) and (d) apply special rules to gift loans directly between natural persons if the aggregate outstanding amount of loans (as determined in pargraph (b)(2) of this section) between those natural persons does not exceed specified limitations.

(2) *Loans directly between natural persons*—(i) For purposes of this section, a loan is made directly between natural persons only if both the lender and borrower are natural persons. For this purpose, a loan by a natural person lender to the guardian (or custodian, in the case of a gift made pursuant to the Uniform Gift to Minors Act) of a natural person is treated as a loan directly between natural persons. If, however, a parent lends money to a trust of which the child is the sole beneficiary, the loan is not treated as directly between natural persons for purposes of this section.

(ii) A gift loan which results from restructuring an indirect loan as two or more loans (as described in § 1.7872–4(g)) and in which natural persons are deemed to be the lender and the borrower is treated as a loan directly between natural persons. Thus, for example, if an employer makes a below-market loan to an employee's child, the loan is restructured as one loan from the employer to the employee, and a second loan from the employee to his child. The deemed gift loan between the employee and the employee's child is treated as directly between natural persons.

(b) *De minimis exception*—(1) *In general.* Except as otherwise provided in paragraph (b)(3) of this section or in § 1.7872–7(a) (with respect to the gift tax consequences of a gift term loan to which the provisions of section 7872 have already been applied), in the case of any gift loan directly between natural persons, the provisions of section 7872 do not apply to any loan outstanding on any day on which the aggregate outstanding amount of loans between the lender and borrower does not exceed $10,000. The *de minimis* rule of this paragraph (b)(1) applies with respect to a gift loan even though that loan could also be characterized as a tax avoidance loan within the meaning of section 7872(c)(1)(D) and § 1.7872–4(e).

(2) *Aggregate outstanding amount of loans.* The aggregate outstanding amount of loans between natural persons is the sum of the principal amounts of outstanding loans directly between the individuals, regardless of the character of the loans, regardless of the interest rate charged on the loans, and regardless of the date on which the loans were made. For this purpose, the principal amount of a loan which is also subject to section 1272 (without applying the limitation of section 1273(a)(3)) is the "adjusted issue price" as that term is defined in section 1272(a)(4). See § 1.7872–7(a)(3)(i) for the determination of the issue price of a loan which is also subject to section 1272.

(3) *Loans attributable to acquisition or carrying of income-producing assets.* The *de minimis* exception described in paragraph (b)(1) of this section does not apply to any gift loan directly attributable to the purchase or carrying of income-producing assets. A gift loan is directly attributable to the purchase or carrying of income-producing assets, for example, if the loan proceeds are directly traceable to the purchase of the income-producing assets, the assets are used as collateral for the loan, or there is direct evidence that the loan was made to avoid disposition of the assets.

(4) *Income-producing assets.* For purposes of this paragraph (b), the term "income-producing asset" means (i) an asset of a type that generates ordinary income, or, (ii) a market discount bond issued before July 19, 1984. Accordingly, an income producing asset includes, but is not limited to, a business, a certificate of deposit, a savings account, stock (whether or not dividends are paid), bonds and rental property.

(5) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples.

Example (1). (i) As of January 1, 1985, the total aggregate outstanding amount of loans by Parent P, to child, C, is $6,000. None of these loans is a below-market loan. On February 1, 1985, P makes a $3,000 below-market demand loan to C. On March 1, 1985, P makes a $2,000 below-market demand loan to C. On November 1, 1985, C repays $1,500 of principal of the market-rate loans to P; all of the other loans remain outstanding as of December 31, 1985. The below-market loans are gift loans and are the only new loans between P and C for calendar year 1985.

(ii) For the periods January 1, 1985, through Febraury 28, 1985, and November 1, 1985, through December 31, 1985, section 7872 does not apply to the loans between P and C because the outstanding loan balance between P and C does not exceed $10,000 during these periods. For the period beginning on March 1, 1985, and ending on October 31, 1985, however, the aggregate outstanding amount of loans directly between P and C exceeds $10,000. Accordingly, the provisions of section 7872(a) apply to the $3,000 gift loan and $2,000 gift loan during that period.

Example (2). (i) Assume the same facts as in Example (1) except that the $2,000 gift loan made on March 1, 1985, is a term loan for a period of five years. The Federal gift tax and income tax consequences of the $3,000 gift demand loan made on February 1, 1985, are the same as in Example (1).

(ii) With respect to the $2,000 gift term loan, section 7872(b)(1) applies beginning on March 1, 1985, for purposes of computing the amount on the imputed gift by P to C. For the period beginning on March 1, 1985, and ending on October 31, 1985, section 7872(a) applies to the $2,000 gift term loan for purposes of determining the amount and the timing of the imputed interest payment by C to P. For the two-month period beginning on November 1, 1985, section 7872(a) does not apply to the $2,000 loan for Federal income tax purposes because the outstanding loan balance between P and C does not exceed $10,000 during this period.

Example (3). (i) Assume the same facts as in Example (1) except that the $3,000 gift loan made on February 1, 1985, is a term loan for a period of five years. The Federal gift tax and income tax consequences of the $2,000 demand gift loan made on March 1, 1985, are identical to those in Example (1).

(ii) On February 1, 1985, section 7872 does not apply to the $3,000 loan because the outstanding loan balance between P and C does not exceed $10,000. On March 1, 1985, however, the aggregate outstanding amount of loans between P and C exceeds $10,000. For Federal gift tax purposes, section 7872(b)(1) applies to the $3,000 loan beginning on March 1, 1985. Under § 1.7872–7(b), the provisions of section 7872 apply to the loan had been made on March 1, 1985. See § 1.7872–7(a)(5) for special rules for computing the present value of payments due on the loan. For the eight-month period beginning on March 1, 1985, section 7872(a) applies to the $3,000 loan for purposes of determining the imputed interest payment by

C to P. For the two-month period beginning on November 1, 1985, section 7872(a) does not apply to the $3,000 loan for Federal income tax purposes because of the application of the *de minimis* provisions.

Example (4). On June 10, 1984, parent, L, makes an $8,000 interest-free gift term loan to L's child, B. This is the only loan outstanding between L and B during 1984. On June 11, 1984, B invests the $8,000 in corporate stock. The $10,000 *de minimis* provision does not apply to the loan, because the loan proceeds are directly attributable to the purchase of corporate stock, an income-producing asset.

(c) *Limitation on amount of imputed interest payment*—(1) *In general.* In the case of a loan between a borrower and a lender both of whom are natural persons (within the meaning of paragraph (a)(2) of this section), for all days during the borrower's taxable year on which the aggregate outstanding amount of loans (within the meaning of paragraph (b)(2) of this section) between the borrower and the lender, is $100,000 or less, the amount of the imputed interest payment by the borrower to the lender with respect to any gift loan is limited to the borrower's net investment income (as determined under paragraph (c)(7) of this section) for the taxable year. This paragraph (c) does not affect the gift tax consequences of any loan under section 7872.

(2) *Tax avoidance loan.* Paragraph (c)(1) of this section does not apply to any loan which is a tax avoidance loan within the meaning of § 1.7872–4(e).

(3) *No limitation if investment income is manipulated.* Paragraph (c)(1) of this section does not apply if a borrower can control the timing of the receipt of investment income and actually does manipulate the timing to accelerate or defer the receipt of investment income. For example, if the borrower can, and actually does, control the timing of dividends paid by a closely held corporation, the limitation on the amount of the imputed interest payment does not apply.

(4) *Net investment income of $1,000 or less disregarded.* If paragraph (c)(1) of this section applies and if the borrower's net investment income (as determined under paragraph (c)(7) of this section) for a taxable year is $1,000 or less, the borrower's net investment income for that year is deemed to be zero for purposes of this paragraph (c).

(5) *No proration of net investment income.* The entire amount of the borrower's net investment income for a taxable year (as determined under paragraph (c)(7) of this section) is taken into account in determining the maximum imputed interest payment for those days during the year on which the net investment income limitation applies. Accordingly, the amount of net investment income is not allocated among the days of the borrower's taxable year. Further, for a taxable year of a borrower which ends after June 6, 1984, and includes any day or days before June 7, 1984, the entire amount of net investment income for the taxable year is taken into account in determining the maximum imputed interest payment for the days during that year on which the limitation applies.

(6) *Allocation among gift loans.* In the case of a borrower who has more than one gift loan outstanding during a taxable year, the borrower's net investment income for that year is allocated among the gift loans in proporation to the respective amounts which would be treated as imputed interest payments by the borrower to the lender or lenders with respect to those loans without regard to this paragraph (c). (See Example (2) of paragraph (c)(9) of this section.) No amount of the net investment income is allocable to any gift loan between the lender and the borrower for periods during which the aggregate outstanding amount of loans (within the meaning of paragraph (b)(2) of this section) between the borrower and that lender exceeds $100,000.

(7) *Amounts included in net investment income.* For purposes of section 7872, net investment income for a taxable year equals the sum of—

(i) Net investment income for that year as determined under section 163(d)(3), excluding any item of income on a deferred payment obligation which is treated under section 7872(d)(1)(E)(iii) and paragraph (c)(7)(ii) of this section as interest received in a prior taxable year ending after June 6, 1984, and

(ii) The amount that is treated under section 7872(d)(1)(E) (iii) as interest received for that year on a deferred payment obligation.

(8) *Deferred payment obligation.* The term "deffered payment obligation" means a market discount bond issued before July 18, 1984, or an obligation that, if held to maturity, would produce a predictable and regular flow of ordinary income which, under applicable tax rules, is not recognized until a subsequent period. Accordingly, deferred payment obligations include, but are not limited to, those obligations listed in section 7872(d)(1)(E)(iv).

(9) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples.

Example (1). On January 1, 1985, parent P makes a $50,000 below-market gift loan to C, P's child, who uses the calendar year as the taxable year. On March 1, 1985, P makes an additional $75,000 market-rate loan to C. On October 1, 1985, C repays $30,000 of the market rate loan. Assume that C's net investment income (as determined under paragraph (c)(7) of this section) for 1985 is $2,400. The limitation under section 7872(d)(1) on the amount of imputed interest payment applies to the $50,000 loans for the two-month period beginning on January 1, 1985, and the three-month period beginning on October 1, 1985. Accordingly, the imputed interest payment on the $50,000 loan for 1985 may not exceed $2,400.

Example (2). During 1985, natural person borrower B has three gift loans outstanding, each from a different lender. Each loan is eligible for the entire year for the special limitation on the amount of imputed interest payments under section 7872(d)(1) but none of the loans is eligible for the de minimis exception of pargraph (b) of this section. B's net investment income for 1985 is $6,000. The aggregate imputed interest payments on these loans (determmined without regard to section 7872(d)(1)) would be $9,000. The amount of imputed interest attributable to each loan after application of section 7872(d)(1) is computed as follows:

Loan	Imputed interest payments (before application of section 7872(d)(1))	Relative share of net [illegible] (imputed interest payment after application of section 7872(d)(1))	
1	$3,000	$2,000	($6,000 × $3,000/$9,000)
2	4,000	2,667	($6,000 × $4,000/$9,000)
3	2,000	1,333	($6,000 × $2,000/$9,000)
Total	9,000	6,000	

Consequently, the imputed interest payment to lander 1 cannot exceed $2,000; the imputed interest payment to lender 2 cannot exceed $2,667; and, the imputed interest payment to lender 3 cannot exceed $1,333.

§ 1.7872–9 De minimis exception for compensation-related or corporation-shareholder loans.

(a) *In general.* In the case of any demand loan described in section 7872(c)(1) (B) or (C), the provisions of section 7872 do not apply to any day on which the aggregate outstanding amount of loans between the lender and the borrower does not exceed $10,000. In the case of any term loan described in section 7872(c)(1) (B) or (C) (relating to the *de minimis* rules), the provisions of section 7872 apply to the loan as of the first day on which the aggregate outstanding amount of loans between the lender and the borrower exceeds $10.000. Once section 7872 applies to a term loan, section 7872 continues to apply to the loan regardless of whether the $10,000 limitation applies at some later date.

(b) *Aggregate outstanding amount of loans.* The aggregate outstanding amount of loans between the lender and the borrower is the sum of the principal

amounts of outstanding loans directly between the parties, regardless of the character of the loans, regardless of the interest rate charged on the loans, and regardless of the date on which the loans were made. For this purpose, the principal amount of a loan which is also subject to section 1272 (without applying the limitation of section 1273(a)(3)) is the " adjusted issue price" as that term is defined in section 1272(a)(4). See § 1.7872–7(a)(3)(i) for the determination of the issue price of a loan which is also subject to section 7872.

(c) *Tax avoidance loan.* This section does not apply to any loan which is a tax avoidance loan within the meaning of § 1.7872–4(e).

(d) *Example.* The provisions of this section may be illustrated by the following example:

Example. (i) On January 1, 1985, L made a $4,000 four-year term loan to B, a corporation in which L is a shareholder. On October 15, 1986, L made a $7,000 five-year term loan to B. Both loans are interest-free and are payable on the last day of the loan term. There are no other outstanding loan between L and B. Neither loan is a tax avoidance loan.

(ii) For the period beginning on January 1, 1985 and ending on October 14, 1986, the provisions of section 7872 do not apply to the $4,000 loan because the outstanding loan balance between L and B does not exceed $10,000. On October 15, 1986, however, the aggregate amount of loans between L and B exceeds $10,000. Accordingly, the provisions of section 7872(b) apply to both loans. See § 1.7872–4(d) for the proper Federal tax treatment of the imputed transfer by L to B. For purposes of computing the present value of all payments to be made under the loan agreements, the applicable Federal rate for the $4,000 loan is the applicable Federal rate in effect on January 1, 1985, for loans with a term of 4 years (even though less than three years remain before the loan ends). Under § 1.7872–7(b), the present value of the payment to be made under the $4,000 loan agreement is determined as of October 15, 1986 (the date on which section 7872 first applies to the $4,000 loan) for a loan with a term which begins on October 15, 1986, and ends on January 1, 1989.

§ 1.7872–10 Other definitions.

(a) *"Term" and "demand" loans distinguished.* For purposes of section 7872—

(1) *Demand loan.* Any loan which is payable in full at any time on the demand of the lender (or within a reasonable time after the lender's demand), is a "demand loan."

(2) *Term loan.* A loan is treated as a "term loan" if the loan agreement specifies an ascertainable period of time during which the loan is to be outstanding. For purposes of this rule, a period of time is treated as being ascertainable if the period may be determined actuarially. Thus, a loan agreement which provides that D loans E $16,000 for E's life, will be treated as a term loan because the life expectancy of E may be determined actuarilly.

(3) *Acceleration and extension clauses.* Acceleration clauses and similar provisions that would make a loan due before the time otherwise specified including provisions permitting prepayment of a loan or accelerating the maturity date on disposition of collateral ("due on sale" clauses) are disregarded for purposes of section 7872. Thus, a loan for a term of 15 years is a term loan for 15 years even if it is subject to acceleration upon some action of the borrower. If the loan agreement specifies an ascertainable period of time during which the loan is to be outstanding but contains an extension clause or similar provision that would make the loan due after the time otherwise specified, the loan is a term loan during the ascertainable period and a second demand or term loan thereafter; the classification of the second loan as term or demand depends upon the terms of the extension clause.

(4) *Loans for a period of time not ascertainable.* [Reserved]

(5) *Certain loans conditioned on future services.* For all purposes of section 7872 other than determining the applicable Federal rate (see, § 1.7872–3(b)), if the benefits of the interest arrangements of a term loan are not transferable by the individual borrower and are conditoned on the future performance of substantial services by the individual borrower (within the meaning of section 83), the loan is treated as a demand loan. All facts and circumstances must be examined to determine whether the future services to be performed are substantial.

(6) *Revolving credit loans.* For purposes of section 7872, an extension of credit by reason of the use of a credit card that is available to a borad segment of the general public is treated as a demand loan, and the provisions of section 7872 may apply if the loan is described in one of the categories set forth in § 1.7872–4. The period during which the loan is outstanding begins on the first day on which a finance charge would be assessed if payment of the outstading balance is not made. For rules governing the computation of foregone interest for demand loans with variable balances, see § 1.782–13(c).

(b) [Reserved for further definitions as needed]

§ 1.7872–11 Special rules.

(a) *Waiver, cancellation or forgiveness of interest payments.* If a loan is made requiring the payment of stated interest and the accrued but unpaid interest is subsequently waived, cancelled, or forgiven by the lender, such waiver, cancellation, or forgiveness is treated as if the interest had in fact been paid to the lender and then retransferred by the lender to the borrower but only if—

(1) The loan initially would have been subject to section 7872 had it been made without interest;

(2) The waiver, cancellation of forgiveness does not include in substantial part the loan principal; and

(3) A principal purpose of the waiver, cancellation, or forgiveness is to confer a benefit on the borrower, such as to pay compensation or make a gift, a capital contribution, a distribution of money uner section 301, or a similar payment to the borrower.

The retransferred amount is characterized for Federal tax purposes in accordance with the substance of the transaction. The requisite purpose described in paragraph (a)(iii) of this section is presumed in the case of loans between family members, corporations and shareholders, employers and employees, or an independent contractor and a person for whom such independent contractor provides services unless the taxpayer can show by clear and convincing evidence that the interest obligation was waived, cancelled, or forgiven for a legitimate business purpose of the lender who is acting in the capacity as a creditor seeking to maximize satisfaction of a claim, such as in the case of a borrower's insolvency.

(b) *Disposition of interest or obligation in loan.* [Reserved]

(c) *Husband and wife treated as 1 person.* Section 7872(f)(7) provides that a husband and wife shall be treated as 1 person. Accordingly, all loans to or from the husband will be combined with all loans to or from the wife for purposes of applying section 7872. All loans between a husband and a wife are disregarded for purposes of section 7872.

(d) *Withholding.* In the case of any loan (term or demand) subject to section 7872, no amount is required to be withheld under chapter 24, relating to the collection of income tax at the source on wages and back-up withholding, with respect to any amount treated as transferred or retransferred under section 7872 (a) or (b). Withholding is required where appropriate, however, for purposes of chapter 21, relating to the Federal Insurance Contributions Act, and chapter 22, relating to the Railroad Retirement Tax Act, on any amount of money treated as transferred and retransferred between the lender and borrower because of the application of section 7872.

(e) *Treatment of renegotiations.* [Reserved]

(f) *Loans denominated in foreign currencies*—(1) *Applicable rate.* If a loan is denominated in a currency other than the U.S. dollar, then for purposes of section 7872 and the regulations thereunder, a rate that constitutes a market interest rate in the currency in which the loan is denominated shall be substituted for the applicable Federal rate.

(2) *Treatment of imputed transfer as interest*—(i) *In general.* If a loan is denominated in a currency other than the U.S. dollar then, notwithstanding section 7872(a)(1)(B), § 1.7872–6, and § 1.7872–7, the amount of imputed interest treated as retransferred by the borrower to the lender shall only be treated as interest to the extent consistent with other principles of tax law regarding foreign currency lending transactions and to the extent provided in this paragraph (f)(2).

(ii) *Loans denominated in appreciating currencies.* [Reserved]

(iii) *Loans denominated in depreciating currencies.* [Reserved]

(3) *Example.* The provisions of this paragraph (f)(1) may be illustrated by the following example.

Example. A lends here daughter B the sum of 100,000 foreign currency units, repayable in 5 years with interest payable semiannually at a rate of 12 percent. Assume that the market rate of interest for loans denominated in that foreign currency at the time of the transaction is 30 percent, compounded semiannually, and that the current exchange rate is 5 foreign currency units to the dollar. A has made a below-market gift loan to B. The amount of A's gift to B is the excess of 100,000 foreign currency units (or $20,000) over the present value of all payments to be made under the loan, using a discount rate of 30 percent, which is 54,831 foreign units (or $10,966). Thus, the amount of A's gift is $9,034.

(g) *Reporting requirements*—(1) *Lender.* A lender must attach a statement to the lender's income tax return for any taxable year in which the lender either has interest imputed under section 7872 or claims a deduction for an amount deemed to be transferred to a borrower under section 7872. The statement must—

(i) Explain that it relates to an amount includible in income or deductible by reason of section 7872,

(ii) Provide the name, address, and taxpayer identification number of each borrower,

(iii) Specify the amount of imputed interest income and the amount and character of any item deductible by reason of section 7872 attributable to each borrower,

(iv) Specify the mathematical assumptions used (*e.g.*, 360 day calendar year, the exact method or the approximate method for computing interest for a short period (see, § 1.7872–13)) for computing the amounts imputed under section 7872, and

(v) Include any other information required by the return or the instructions thereto.

(2) *Borrower.* A borrower must attach a statement to the borrower's income tax return for any taxable year in which the borrower either has income from an imputed transfer under section 7872 or claims a deduction for an amount of interest expense imputed under section 7872. The statement must—

(i) Explain that it relates to an amount includible in income or deductible by reason of section 7872,

(ii) Provide the name, address, and taxpayer identification number of each lender,

(iii) Specify the amount of imputed interest expense and the amount and character of any income imputed under section 7872 attributable to each lender,

(iv) Specify the mathematical assumptions used (*e.g.*, 360 day calendar year, the exact method or the approximate method for computing interest for a short period (see, § 1.7872–13)), for computing the amounts imputed under section 7872, and

(v) Include any other information required by the return or the instructions thereto.

(3) *Special rule for gift loans.* In the case of a gift loan directly between natural persons, the lender must recognize the entire amount of interest income imputed under section 7872 (determined without regard to section 7872(d)(1)) unless the borrower notifies the lender, in a signed statement, of the amount of the borrower's net investment income properly allocable to the loan according to the provisions of section 7872(d)(1) and § 1.7872–8(c)(6).

(4) *Information and reporting.* All amounts imputed under section 7872 (*e.g.*, interest, compensation, gift) are characterized in accordance with the substance of the transaction and, except as otherwise provided in the regulations under section 7872, are treated as so characterized for all purposes of the Code. Accordingly, all applicable information and reporting requirements (*e.g.*, reporting on Form W–2 and Form 1099) must be satisfied.

§ 1.7872–12 Computational rules to determine sufficient stated interest for short periods.

(a) *Scope.* This section provides computational rules only for the purpose of determining whether the interest payable on a loan during a short period is sufficient to prevent characterization of the loan as a below-market loan under § 1.7872–3. For rules for the calculation of the amount of interest to be imputed on a below-market loan, including rules for short periods, see § 1.7872–13 and § 1.7872–14.

(b) *Short period defined*—(1) *In general.* A short period (as referred to in § 1.7872–3(d)) for a loan is any period shorter than the regular compounding period or regular payment interval required under the loan agreement. Generally, a short period will arise at the beginning or the end of a loan (or at the time the loan first become subject to section 7872 because of the application of the *de minimis* provisions). For example, a loan made on January 17, 1985, and calling for semiannual payments of interest on June 30 and December 31 of each year will have a short period beginning on January 17, 1985, and ending on June 30, 1985.

(2) *Special short periods in the case of demand loans.* In the case of a demand loan, in addition to any short periods described in paragraph (b)(1) of this section, additional short periods may also arise because of the need to adjust the applicable Federal rate on January 1 and July 1 of each year. These short periods arise in cases when the dates January 1 or July 1 fall within the compounding periods or payment intervals required under the loan agreement. For example, a below market demand loan made on April 1, 1985, that is outstanding throughout 1985 and that calls for semiannual interest payments on September 30 and March 31 of each year will have 3 short periods in 1985. The first short period begins on April 1, 1985, and ends on June 30, 1985. The second short period begins on July 1, 1985, and ends on September 30, 1985. The third short period begins on October 1, 1985, and ends on December 31, 1985.

(c) *Interest payable for a short period*—(1) *Exact method.* The smallest amount of interest that must be paid for a short period in order to prevent the loan from being a below-market loan is determined by the exact method. The exact method assumes daily compounding interest.

(2) *Approximate method.* The approximate method is also provided for the convenience of taxpayers who do not wish to use the exact method. The approximate method assumes simple interest within any compounding period and will always produce an amount of interest for the short period that is slightly higher than that produced under the exact method. Under this method, a sufficient amount of interest for any short period is determined by multiplying the amount that would

constitute sufficient stated interest for a full period by a fraction the numerator of which is equal to the length of the short period and the denominator of which is the length of a full period.

(3) *Counting convention.* In computing the length of a short period, any reasonable convention may be used. Common conventions are "30 days per month/360 days per year", "actual days per month/actual days per year", and "actual days per month/360 days per year". The examples in the regulations under section 7872 all use the "30 days per month/360 days per year" convention.

(d) *Examples.* This section may be illustrated by the following examples.

Example (1). On February 1, 1986, A makes a $100,000 loan to B for a term of 4 months. The loan is repaid on May 31, 1986. Assume that the applicable Federal rate on February 1, 1986, for a loan of this term is 10 percent, compounded semiannually. Using the exact method, the amount of interest that must be paid on May 31, 1986, if the loan is not to be a below-market loan is $3,306.16, calculated as follows:

$100,000 \times [(1+.10/2)^{4/6}-1]=\$3,306.16$

Example (2). Assume the same facts as in Example (1). Using the approximate method, a sufficient amount of interest is stated on the loan if $3,333.33 of interest is payable on May 31, 1986, calculated as follows:

$\$100.000 \times [(.10/2) \times (4/6)]=\$3,333.33$

§ 1.7872–13 Computation of foregone interest.

(a) *Demand loans outstanding for an entire calendar year*—(1) *In general.* In the case of a below-market demand loan of a fixed principal amount that remains outstanding for an entire calendar year, the amount of foregone interest (as referred to in § 1.7872–6(c)) shall be the excess of

(i) The result produced when the "blended annual rate" is miltiplied by the principal amount of the loan, over

(ii) The sum of all amounts payable as interest on the loan properly allocable to the calendar year (including all amounts of original issue discount allocated to that year under section 1272).

The "blended annual rate" will be published annually by the Commissioner and is determined generally by blending the applicable Federal rates for demand loans outstanding for the entire year.

(2) *Example.* Paragraph (a)(1) may be illustrated by the following example.

Example. On January 1, 1985, A makes a $100,000 demand loan to B with stated interest equal to 9 percent. Interest is payable semiannually on June 30, and December 31. The loan remains outstanding for the entire year. On both June 30, and December 31, 1985, B makes a $4,500 payment of interest to A. Assume that the blended annual rate for 1985 is 10.45 percent. The amount of foregone interest is $1,450, computed as follows:

$\$10,450=\$100,000 \times 10.45$ percent

$\$1,450=\$10,450-\$9,000$

(b) *Demand loans outstanding for less than an entire calendar year*—(1) *In general.* In the case of any below-market demand loan outstanding for less than the calendar year, the amount of foregone interest shall be the excess of—

(i) The amount of interest ("I") which would have been payable on the loan for the year if interest accrued on the loan at the applicable Federal rate and were payable on the date specified in section 7872(a)(2) and § 1.7872–6(b), over

(ii) The sum of all amounts payable as interest on the loan properly allocable to the calendar year (including all amounts of original issue discount allocated to that year under section 1272).

In general, "I" is determined by assuming daily compounding of interest. However, individual taxpayers who are parties to below-market loans in the aggregate of $250,000 or less may choose (see § 1.7872–11(g)) to compute and report foregone interest under the approximate method set forth in paragraph (b)(2) of this section. If the taxpayer chooses the approximate method but fails to properly compute the amount of foregone interest under that method, the correct amount of foregone interest will be recomputed under the approximate method.

(2) *Approximate method.* Under the approximate method, "I" is calculated as follows:

(i) *Loan outstanding during one semiannual period only.* If a loan is outstanding only during one semiannual period of a calendar year, to determine "I", multiply the principal amount of the loan by one-half the applicable Federal rate based on semiannual compounding in effect for that loan, then multiply the result by a fraction representing the portion of the semiannual period during which the loan was outstanding.

(ii) *Example.* Paragraph (b)(2)(i) of this section may be illustrated by the following example.

Example. A $200,000 interest-free demand loan is outstanding on January 1, 1986, and is repaid on March 31, 1986. Assume that the applicable Federal rate (based on semiannual compounding) for demand loans made in January 1986, is 10 percent. The amount of interest that would have been payable on the loan for the year if the loan provided for interest at the applicable Federal rate determined under the approximate method is $5,000, computed as follows:

$\$5,000=\$200,000 \times (.10/2) \times (3/6)$

Because no interest is payable on the loan, this amount is also the amount of foregone interest.

(iii) *Loans outstanding during both semiannual periods.* If a loan is outstanding for at least part of each semiannual period (but less than the full calendar year), then, under the approximate method, "I" must be calculated in two steps. First, calculate an amount of interest for the first semiannual period by treating the loan as if it were repaid on June 30, using the approach described in paragraph (b)(3)(i) of this section. Second, add this amount of interest to the principal of the loan, and then calculate an amount of interest for the second semiannual period as if the loan of this higher amount were made on July 1, again using the approach described in paragraph (b)(3)(i) of this section. The sum of these two interest amounts is the value for "I" calculated under the approximate method.

(3) *Examples.* Paragraph (b)(2) of this section may be illustrated by the following examples.

Example (1). On March 1, 1986, A makes a $100,000 interest-free demand loan to B. The loan remains outstanding on December 31, 1986. Assume that the applicable Federal rate for a demand loan made in March 1986, based on semiannual compounding, for the first semiannual period in 1986 is 9.89 percent and that the applicable Federal rate, based on semiannual compounding, for a demand loan outstanding in July 1986 is 10.50 percent. The amount of foregone interest under the exact method is $8,691.76, calculated as follows:

$\$100,000 \times [(1+.0989/2)^{4/6}(1+.1050/2)-1]=\$8,691.76$

Example (2). (i) Assume the same facts as in Example (1). The amount of foregone interest under the approximate method is $8,719.92, calculated as follows:

(ii) For the short period March 1 to June 30, 1986, the amount of foregone interest is $3,296.67, calculated as follows:

$\$3,296.67=\$100,000 \times (.0989/2) \times (4/6)$

(iii) For the second semiannual period in 1986, the amount of foregone interest is computed by first adding the interest for the first semiannual period ($3,296.67) to the original principal amount to obtain a new principal amount of $103,296.67. Foregone interest for the second semiannual period is then $5,423.08, computed as follows:

$\$5,423.08=\$103,296.67 \times (.1050/2)$

(iv) Using the approximate method, the amount of foregone interest for 1986 is $8,719.75 ($3,296.67 + $5,423.08).

(c) *Demand loans with fluctuating loan balances.* If a demand loan does not have a constant outstanding principal amount during a period, the amount of foregone interest shall be computed according to the principles set forth in paragraph (b) of this section, with each increase in the outstanding loan balance being treated as a new

loan and each decrease being treated as first a repayment of accrued but unpaid interest (if any), and then a repayment of principal.

(d) *Examples.* This provision of paragraph (c) of this section may be illustrated by the following examples.

Example (1). (i) On October 1, 1984, C makes a $50,000 interest-free demand loan to D. On October 1, 1985, C makes an additional interest-free demand loan of $25,000 to D. Assume that section 7872 applies to both loans, that the blended annual rate for 1985 is 10.45 percent, and that the applicable Federal rate based on semiannual compounding for demand loans made in October 1985, is 10.50 percent. The amount of foregone interest for 1985 is calculated as follows:

(ii) $50,000 is outstanding for the entire year. The foregone interest on this amount is ($5,000×.1045)=$5,225.00

(iii) $25,000 is outstanding for the last three months of 1985. Under the exact method, the amount of foregone interest on this portion of the loan is $647.86, computed as follows:

$25,000×[(1+.1050/2)$^{3/6}$−1]=$647.86

Under the approximate method, the amount of foregone interest is $656.25, computed as follows:

$25,000×(.1050/2)×(3/6)=$656.25

(iv) The total amount of foregone interest is $5,872.86 ($5,225.00+$647.86) under the exact method, and $5,881.25 ($5,225.00+$656.25) under the approximate method.

Example (2). (i) On September 1, 1985, E makes a $100,000 interest-free demand loan to F. The loan agreement requires F to repay $10,000 of the principal amount of the loan at the end of each month that the loan is outstanding. Assume that section 7872 applies to the loan and that the applicable Federal rate based on semiannual compounding for demand loans made in September 1985, is 10.50 percent. The amount of foregone interest for 1985 is calculated as follows:

(ii) $70,000 is outstanding for four months. Under the exact method, the amount of foregone interest on this portion of the loan is $2,429.05, computed as follows:

$70,000×[(1+.1050/2)$^{4/6}$−1]=$2,429.05

Under the approximate method, the amount of foregone interest on this portion of the loan is $2,450.00, computed as follows:

$70,000×(.1050/2)×(4/6)=$2,450.00

(iii) $10,000 is outstanding for 3 months. Under the exact method, the amount of foregone interest on this portion of the loan is $259.14, computed as follows:

$10,000×[(1+.1050/2)$^{3/6}$−1]=$259.14

Under the approximate method, the amount of foregone interest on this portion of the loan is $262.50, computed as follows:

$10,000×(.1050/2)×(3/6)=$262.50

(iv) An additional $10,000 is outstanding 2 months. Under the exact method, the amount of foregone interest on this portion of the loan is $172.02, computed as follows:

$10,000×[(1+.1050/2)$^{2/6}$−1]=$172.02

Under the approximate method, the amount of foregone interest on this portion of the loan is $175.00, computed as follows:

$10,000×(.1050/2×(2/6)=$175.00

(v) A final $10,000 is outstanding for 1 month. Under the exact method, the amount of foregone interest on this portion of the loan is $85.65, computed as follows:

$10,000×[(1+.1050/2)$^{1/6}$−1]=$85.65

Under the approximate method, the amount of foregone interest on this portion of the loan is $87.50, computed as follows:

$10,000×(.1050/2)×(1/6)=$87.50

(vi) The total amount of foregone interest is $2,945.86 under the exact method, and $2,975.00 under the approximate method.

(e) *Gift term loans and certain loans conditioned on future service*—(1) *In general.* In the case of any gift term loan or any term loan that is treated as a demand loan as provided in § 1.7872–10(a)(5), the amount of foregone interest for income tax purposes shall be computed as if the loan were a demand loan, except that:

(i) In applying paragraph (a)(1)(i) of this section, use the applicable Federal rate based on annual compounding in effect on the day the loan is made instead of the blended annual rate, and

(ii) In applying paragraph (b) of this section, use the applicable Federal rate based on semiannual compounding in effect on the day the load is made instead of the applicable Federal rate for demand loans in effect during the period for which foregone interest is being computed.

(2) *Example.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example (1). On January 1, 1986, parent P makes a $200,000 gift term loan to child C. The loan agreement provides that the term of the loan is four years and that 5 percent simple interest is payable annually. Both P and C are calendar year taxpayers, and both are still living on December 31, 1986. Assume that the Federal mid-term rate based on annual compounding in effect on January 1, 1986, is 11.83 percent. The loan is a below-market loan. The amount of foregone interest for each year is $13,600.00, computed as follows:

($200,000)×.1183=$23,660.00
$23,660.00−$10,000.00=$13,660.00

For gift tax purposes, an imputed gift is treated as made on January 1, 1986, and is equal to the excess of the amount loaned ($200,000) over the present value of all payments due under the loan, discounted at 11.83 percent compounded annually ($153,360.82), or $41,639.82. For rules for determining the computation of present value, see § 1.7872–14.

Example (2). Assume the same facts as in Example (1) except that C repays the loan on September 30, 1987, along with an interest payment of $7,500. For income tax purposes, the imputed payments are treated as transferred on December 31, 1986 and September 30, 1987. The amount of the imputed payments for 1986 are the same as in Example (1). For 1987, under the exact method the amount of foregone interest is $9,994.73, computed as follows:

$17,494.73=$200,000×[(1+.1183)$^{9/12}$−1]
$17,494.73−$7,500=$9,994.73

For gift tax purposes, the imputed gift is treated as made January 1, 1986, and is the same as in Example (1).

(f) *Allocation of stated interest.* If interest that is payable on a demand loan is properly allocable to a period which includes more than one calendar year, the amount of interest to be allocated to each calendar year is determined by using any reasonable method of allocation.

(g) *Counting conventions*—(1) *Whole periods.* All whole periods, whether expressed annually, semiannually, quarterly, or monthly, shall be treated as having equal length. For example, a leap year shall be treated as having the same number of days as a non-leap year; all months shall be treated as having the same number of days.

(2) *Short periods.* in computing the length of a short period, any reasonable convention may be used. See § 1.7872–12(c)(2) for a list of conventions commonly used.

§ 1.7872–14 Determination of present value.

(a) *In general.* This section provides rules for computing the present value of a payment (as referred to in § 1.7872–7(a)(1)) to be made in the future. In general, for purposes of section 7872, the present value of a loan payment to be made in the future is the amount of that payment discounted at the applicable Federal rate from the date in the future that the payment is due to the date on which the computation is made. For this purpose, the computation date is the date the loan first becomes subject to section 7872. To determine the present value of a payment, use the applicable Federal rate in effect on the day the loan is made the reflects the compounding assumption (*i.e.*, annual, semiannual, quarterly, or monthly) that is appropriate for the loan. See § 1.7872–3(b).

(b) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). (i) On July 1, 1984, corporation A makes a $200,000 interest-free three-year term loan to shareholder B. The applicable Federal rate is 10-percent, compounded semiannually.

(ii) The present value of this payment is $149,243.08, determined as follows:

$$\$149{,}243.08=\frac{\$200{,}000}{[1+(.10/2)]^{6}}$$

(iii) The excess of the amount loaned over the present value of all payments on the loan ($200,000−$149,243.08), or $50,756.92, is

treated as a distribution of property (characterized according to section 301) paid to B on July 1, 1984. The same amount, $50,758.92, is treated as original issue discount under sections 1272 and 163(e).

Example (2). (i) On July 1, 1984, Employer E makes a $3,000 interest-free three year compensation-related term loan to employee W. On December 1, 1984, E makes an $9,000 interest-free compensation-related demand loan to W. The demand loan remains outstanding throughout December 1984. The two loans are the only loans outstanding between E and W during 1984, and neither is characterized under section 7872(c)(1)(D) as a tax avoidance loan. The applicable Federal rate for all loans for periods before January 1, 1985, is 10 percent, compounded semiannually.

(ii) For the period beginning on July 1, 1984, and ending on November 30, 1984, the provisions of section 7872 do not apply to the $3,000 loan because of the application of the *de minimis* rules of section 7872(c)(3).

(iii) On December 1, 1984, however, the aggregate amount of loans outstanding between E and W exceeds $10,000. As a result, section 7872 applies to both loans for December 1984. Both the imputed transfer and the imputed interest payment with respect to the $9,000 demand loan are determined under section 7872(a). The amount of the imputed transfer by E to W with respect to the $3,000 term loan is determined under section 7872(b)(1). An amount equal to the amount of the imputed transfer with respect to the $3,000 term loan is treated as original issue discount.

(iv) With respect to the $3,000 term loan, the amount of the imputed transfer is equal to the excess of the amount loaned, over the present value of all payments which are required to be made under the $3,000 two-year term loan agreement, determined as of December 1, 1984 (the day section 7872 first applies to the $3,000 loan). The present value of $3,000 payable on June 30, 1987, determined as of December 1, 1984, is $2,331.54, computed as follows:

$$\$2,331.54 = \frac{\$3,000}{(1+.10/2)^{3 \text{ yr } 1/6}}$$

The imputed transfer on the $3,000 loan is $668.46 ($3,000.00−$2,331.54).

(v) The foregone interest on the $9,000 demand loan is determined as of December 31, 1984, with respect to the one month during 1984 to which section 7872 applies to the loan. The amount of foregone interest for 1984 under the exact method is $73.48, computed as follows:

$$\$73.48 = \$9,000 \times [(1+.10/2)^{1/6} - 1]$$

Example (3). (i) Assume the same facts as in Example (2) except that the provisions of the $3,000 three-year term loan require W to make annual payments of interest at a 5 percent simple rate and except that E makes W the $9,000 loan on November 27, 1985.

(ii) Under the agreement W pays $150 (5 percent of $3,000) on June 30, 1985, June 30, 1986, and June 30, 1987. Since the first of these payments is payable prior to November 27, 1985, only the second and third $150 payments are taken into account. W is treated as paying $150 on June 30, 1986 and $3,150 ($3,000 principal and $150 interest) on June 30, 1987.

(iii) The present value as of November 27 1984 of the $150 payable on June 30, 1986, is $128.39, computed as follows:

$$\$128.39 = \frac{\$150.00}{(1+.10/2)^{2 \text{ yr } 34/180}}$$

(iv) The present value as of November 27, 1984 of the $3,150 payable on June 30, 1987, is $2,445.47, computed as follows:

$$\$2,445.47 = \frac{\$3,150.00}{(1+.10/2)^{2 \text{ yr } 34/180}}$$

The sum of these two present values of $2,573.86 ($128.39+$2,445.47). Therefore, the amount of the imputed transfer with respect to the $3,000 loan is $426.14 ($3,000.00−$2,573.86).

(v) The foregone interest on the $9,000 demand loan under the exact method is $83.33 ($9,000×[(1+.10/2)$^{34/180}$−1]).

Gift Tax Regulations

PART 25—[AMENDED]

Par. 3. The authority for Part 25 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * § 25.2512–4 and 25.7872–1 also issued under 26 U.S.C. 7872.

Par. 4. Section 25.2512–4 is amended by adding a new sentence at the end to read as follows:

§ 25.2512–4 Valuation of notes.

* * * See § 25.7872–1 for special rules in the case of gift loans (within the meaning of § 1.7872–4(b)) made after June 6, 1984.

Par. 5. New § 25.7872–1 is added in the appropriate place to read as follows:

§ 25.7872–1 Certain below-market loans.

For purposes of chapter 12 of the Internal Revenue Code, relating to gift tax, if a taxpayer makes a gift loan (within the meaning of § 1.7872–4(b)) that is a term loan (within the meaning of § 1.7872–10(a)(2)) and that is made after June 6, 1984, the excess of the amount loaned over the present value of all payments which are required to be made under the terms of the loan agreement shall be treated as a gift from the lender to the borrower on the date the loan is made. If a taxpayer makes a gift loan that is a demand loan (within the meaning of § 1.7872–10(a)(1)) and that is outstanding during any calendar period after June 6, 1984, and not repaid before September 17, 1984, the amount of foregone interest (within the meaning of section 7872(e)(2)) attributable to that calendar period shall be treated as a gift from the lender to the borrower. The *de minimis* exception described in section 7872(c)(2) applies to the gift tax treatment of a gift loan. In the case of a term gift loan, however, once section 7872 applies to the loan, the *de minimis* exception will not apply to the loan at some later date regardless of whether the aggregate outstanding amount of loans does not continue to exceed the limitation amount. For a detailed analysis of section 7872, see the income tax regulations under section 7872, § 1.7872–1 through § 1.7872–14.

Estate Tax Regulations

PART 20—[AMENDED]

Par. 6. The authority for Part 20 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * § 20.2031–4 and 20.7872–1 also issued under 26 U.S.C. 7872.

Par. 7. Section 20.2031–4 is amended by adding a new sentence at the end to read as follows:

§ 20.2031–4 Valuation of notes.

* * * See § 20.7872–1 for special rules in the case of gift loans (within the meaning of § 1.7872–4(b)) made after June 6, 1984.

Par. 8. New § 20.7872–1 is added in the appropriate place to read as follows:

§ 20.7872–1 Certain below-market loans.

For purposes of chapter 11 of the Internal Revenue Code, relating to estate tax, a gift term loan (within the meaning of § 1.7872–4(b)) that is made after June 6, 1984, shall be valued at the lesser of:

(i) The unpaid stated principal, plus accrued interest; or

(ii) The sum of the present value of all payments due under the note (including accrual interest), using the applicable Federal rate for loans of a term equal to the remaining term of the loan in effect at the date of death.

No discount is allowed based on evidence that the loan is uncollectible unless the facts concerning collectibility of the loan have changed significantly since the time the loan was made. This section applies with respect to any term loan made with donative intent after June 6, 1984, regardless of the interest rate under the loan agreement, and regardless of whether that interest rate exceeds the applicable Federal rate in effect on the day on which the loan was made.

Foundation and Similar Excise Taxes

PART 53—[AMENDED]

Par. 9. The authority for Part 53 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * *
§ 53.4941(d)–2 also issued under 26 U.S.C. 7872.

Par. 10. Section 53.4941(d)–2 is amended by revising paragraph (c)(2) to read as follows:

§ 53.4941(d)–2 Specific acts of self-dealing.

* * * * *

(c) *Loans.* * * *

(2) *Loans without interest.* Subparagraph (1) of this paragraph shall not apply to the lending of money or other extension of credit by a disqualified person to a private foundation if the loan or other extension of credit is without interest (determined without regard to foregone interest described in section 7872) or other charge.

PART 602—[AMENDED]

OMB Control Numbers Under the Paperwork Reduction Act

Par. 11. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 12. Section 602.101(c) is amended by adding in the appropriate locations, "§ 1.7872–11 * * * 1545– ."

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 85–19785 Filed 8–15–85; 12:11 pm]
BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Metal and Nonmetal Mines; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Extension of Public Hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a supplemental public hearing on its proposal to revise the existing safety standards for loading, hauling, and dumping at metal and nonmetal mines.

DATE: The public hearing will be held on August 27, 1985, beginning at 9:00 a.m.

ADDRESS: The public hearing will be held in Room 622A, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: The purpose of the supplemental hearing is to provide interested persons with a further opportunity to comment on the proposed standard dealing with brakes on self-propelled equipment (56/57.9202) and to review video tapes made by MSHA during its field tests to evaluate vehicle braking performance.

MSHA held public hearings on its proposal to revise the loading, hauling, and dumping standards on August 5 in Minneapolis, Minnesota; August 7 in Phoenix, Arizona; and August 9 in Birmingham, Alabama (50 FR 27566, July 3, 1985). During each hearing a video tape was presented to demonstrate to the public how brake testing would be conducted in the field. However, some commenters understood that MSHA would have more extensive video tapes from the various test sites available for viewing. These commenters requested that an opportunity be provided to view and discuss specific tapes in their original context. For this reason, MSHA will make all of the brake test video tapes available for review and comment at the supplemental hearing on August 27, 1985.

As announced during the Birmingham public hearing, the record and opportunity for comment on the proposed rule to revise the loading, hauling, and dumping standards has been extended from August 23, 1985 to September 6, 1985.

Dated August 16, 1985.

David A. Zegeer,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 85–19981 Filed 8–19–85; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 50

National Capital Parks Regulations; Lafayette Park; Structure Prohibitions; Sign Limitations

AGENCY: National Parks Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the National Capital Parks regulations in § 50.19 of 36 Code of Federal Regulations to prohibit structures, with certain exceptions, and to place reasonable limitations on the size and number of signs placed or set down in Lafayette Park. The National Park Service has received numerous complaints from the general public concerning the presence in Lafayette Park of semi-permanent, billboard-type signs and large structures that interfere with the view of the White House, occupy an extensive amount of space and generally conflict with the historic and natural of the Park. Furthermore, concerns have been raised about damage to the Park and public safety. The proposed rule addresses the uses of Lafayette Park through a balancing of First Amendment freedoms of speech and expression against the rights of the park visitor to utilize this historic Park for traditional recreational and aesthetic purposes.

DATE: Written comments, suggestions, or objections regarding the proposed rule will be accepted until October 21, 1985.

ADDRESS: Written comments should be sent to Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, D.C. 20242.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, D.C. 20242, telephone (202) 426–6700; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240, telephone (202) 343–4338.

SUPPLEMENTARY INFORMATION:

Background

1. History of Lafayette Park

Lafayette Park, originally know as the President's Park, is a rectangular area of approximately seven acres of land situated directly north of the White House on Pennsylvania Avenue. It is bounded on the east by Madison Place, north by H Street, and west by Jackson Place. The property was one of the first parcels of land donated by the original patentees to the Distict Commissioners for the formation of the Federal City (later, Washington) in 1971. The site of what is now Lafayette Park (Park) was originally included in the area known as the President's House and the President's Park, according to the plans of Major Pierre L'Enfant. The entire area extended from 15th to 17th Streets, NW., and from H Street on the north and to the Potomac River on the south. In the early 1800's, President Thomas Jefferson

authorized the Park's separation from the President's House, intending its use for local residents and visitors to Washington. The boundaries of the Park have not been altered up to the present day.

In 1824, the grounds were improved and walks laid out in the square on the occasion of the visit of the Marquis de Lafayette, the French general and hero of the American Revolution.

The square was known as the "President's Park" until 1834, when the name "Lafayette Square" was adopted. Since 1933, when control of the National Capital Parks was returned to the Interior Department, the term "Lafayette Park" has been the preferred name and has been adhered to by the National Park Service.

2. Unique Features of the Park

Five memorial statues, specifically authorized by legislation of Congress, honoring General Andrew Jackson and four foreign heroes of the American Revolution, grace Lafayette Park. The equestrian statue of General Andrew Jackson, the second one of its type to be cast in the United States, stands in the center of the Park. It was dedicated by Senator Stephen A. Douglas in 1853. The heroic bronze statue of General Lafayette, which stands at the southeast corner of the Park, was dedicated in 1891. The second Frenchman honored in the Park is the Comte de Rochambeau, who led the French Expeditionary Force to America during the Revolution. President Theodore Roosevelt dedicated the Rochambeau statue, which stands at the southwest corner of the Park, in 1902. The statue of Thaddeus Kosciuszko, the Polish engineer who designed some of America's fortifications during the Revolutionary War, was dedicated in 1910 and stands at the northeast corner of the Park. The fifth statue, dedicated by President William Howard Taft in 1910, is that of Baron von Steuben, the Prussian disciplinarian and Inspector General of the Continental Army. It stands at the northwest corner of the Park.

In addition to honoring these five notable figures of America's past, Lafayette Park functions as a formal garden park of the meticulous landscaping with flowers, trees, fountains, walks and benches. This aesthetic aspect of the Park has a rich history, going back over 130 years. In 1851, President Millard Fillmore endorsed the appointment of A. J. Downing, one of the most celebrated landscape architects of the day, to prepare plans for the landscaping of Lafayette Square and other park areas of the Nation's Capital. Downing is credited with the landscape plan of Lafayette Park, which has generally been adhered to over the years with only slight revisions. The central theme then consisted of wide gravel paths leading to the statue of General Andrew Jackson as smaller meandering walks went past beds of roses and other flowers.

A second major change to take place in the landscaping of Lafayette Park was undertaken by the National Capital Parks in 1936 and 1937. The overall changes made during this period were the removal of the bronze urns to their present-day locations, the redesigning and widening of the walks, the relocation of trees and shrubbery, the closing of small gravel paths and the relocation of flower beds. The overall effect enhanced the beauty of the original Downing plan and made the Park more accessible to those people for whom the Park had originally been intended by President Jefferson—visitors and Washington residents.

Money was appropriated by Congress during the Presidency of John F. Kennedy for the purpose of installing decorative fountains in the Park. By 1969, a water sprinkler system for maintenance of the Park, as well as attractive interior brick walkways, were added to Lafayette Park. Improvements to the Park continue up to the present day. A new Park lighting system, historically accurate to the lamps used in the mid 1800's, was installed in 1985.

Lafayette Park is appreciated by Washington, D.C. residents and visitors alike as a unique natural and historic site. Residents and workers come to Lafayette Park each day to play chess, eat a picnic lunch, stroll through the landscaped setting, or to sit quietly on a bench and read a book. Visitors come to the Park for many of the same reasons in addtion to touring the gardens and the monuments. Lafayette Park provides an unequaled setting for viewing the north side of the White House. During the summer months, thousands of persons visit the Park each day.

The National Park Service has long recognized the unique environment and sensitive nature of Lafayette Park as a major component in the historic setting of the White House and the national significance of the five major memorials which it contains. The Park Service has neither sponsored nor permitted special events in Lafayette Park for almost ten years. Unlike Farragut Square, where the Park Servcie permits noontime concerts, or the Ellipse, where the Park Service co-sponsors the National Christmas Pageant of Peace, Lafayette Park has been kept free of all such Park Service-sponsored activities.

3. Current Situation in Lafayette Park

Being located across from the White House, Lafayette Park is a popular location for demonstrations of every sort. Under present regulations, individuals and groups numbering twenty-five participants or less need not apply for a permit for, or even notify the National Park Service of, a demonstration in the Park. Groups numbering over tweny-five participants must apply for a permit to demonstrate.

At present, the National Park Service has no specific regulations governing the number and size of signs that can be used by those demonstrators. Further, the Park Service has only limited regulations governing the use of structures.

Due to this lack of specific regulatory prohibitions, Lafayette Park, during the past two years, has become increasingly dominated by large, semi-permanent, billboard-type signs and massive structures which are often unattended by their owners. It has not been uncommon to have signs as large as twenty-five feet by twelve feet in the Park for months at a time. In addition, it has not been uncommon to have structures ten feet high, eight feet long and four feet wide in the Park for long periods of time.

Further, there has generally been a large number of such signs and structures in the Park at the same time. In August of 1984, for example, there were one hundred and forty signs in Lafayette Park on a continuing basis. Rather than a testament to differing opinions, the majority of these signs expressed the views of a handful of demonstrators. Amazingly, eighty of the signs present in the Park in August of 1984 belonged to one demonstrator. Over the past two years, two to six demonstrators have accounted for a vast majority of the hundred or so signs that continuously occupy a large portion of Lafayette Park.

In July of 1985, there were seventy-eight signs in Lafayett Park, ranging in size from two feet by three feet to a sign eight feet by twenty-four feet. There were three signs that measured twelve feet by fifteen feet and thirteen signs that were at least eight feet wide. One of these signs indicated that thirty-three of the total number of signs belonged to two persons who had been in the Park since June of 1981. In addition to signs, there were various structures in the Park, including pyramids, chairs, a grocery cart, and desks.

Having a large number of immense signs and structures in the Park has had a substantial impact on the enjoyment of

the Park by the visiting public. One demonstrator has had up to eight billboard-type signs, along with various smaller signs, lined up on the south sidewalk of the Park for long periods of time. This individual, along with one other demonstrator, has occupied almost half of the length of the south sidewalk of the Park, substantially interfering with the view of the White House from Lafayette Park. In addition, structures and signs belonging to two or three demonstrators have often occupied a quarter to a half of the interior space of the Park, thus preventing the thousands of visitors who come to Lafayette Park from utilizing that portion of the Park.

In addition to the problem of a few individuals continuously preempting the use of a large portion of the Park, visitors complain frequently that the countless large signs and structures amount to a visual blight in the Park and generally create an offensive and unsightly appearance in an otherwise pristine and historic park area. Over the past year, the National Park Service received at least sixteen written requests for some action against the visual blight in Lafayette Park. Almost every request acknowleges the importance of exercising First Amendment rights in the Park, but then pleads for some balance between the rights of demonstrators and those of visitors to enjoy the beautiful and historic park. Typical of these requests is the following from a Washington, D.C. woman:

> I am appalled that Lafayette Square is being permitted to become the eyesore of our Nation's Capitol [sic]. The construction of highway-size billboards and massing of large signs are obliterating the beautiful view and popular photographic site of the White House from the Square and destroying the vista of the park from Pennsylvania Avenue.
>
> I have no quarrel with people peacefully exercising their First Amendment right of free speech if they believe the current Administration is pursuing policies with which they do not agree. I do, however, feel it is exceedingly reasonable to require that any signs or posters be physically carried/worn by those espousing the views, and that such demonstrators be required to keep moving in an orderly fashion that does not interfere with pedestrian traffic rather than the present "camping-out" method.

Further, conversations with United States Park Police officers assigned to Lafayette Park during tourist seasons reveal that they generally receive at least one and sometimes as many as four of five oral complaints each day about the visual blight in Lafayette Park. Complaints noted by the officers include the fact that large signs interfere with the view of the White House, prevent picture taking and, together with the ever-present structures, generally ruin the aesthetic quality of Lafayette Park.

In addition to aesthetic concerns, some commentators have expressed concern about the safety of large billboard-type signs, a concern with merit. Large signs in the Park are generally constructed of plywood and are very often crudely supported. Many times, the signs are not attended by their owners. On several occasions, large signs have been blown down by heavy winds and, in one case, a sign struck a pedestrian resulting in a head wound requiring several stitches. In addition, structures, often crudely constructed and sometimes utilizing glass pieces and protruding nails, present other safety hazards.

The Park Service has attempted to work with individuals having large signs and structures in order to ensure that these items are safe and properly secured. However, it has been the experience of the Park Service that it is almost impossible to keep up with the varied signs and structures that sometimes appear overnight in the Park. Further, some demonstrators are uncooperative in making changes in their property. Even when demonstrators will cooperate in attempting to make their signs and structures safer, the methods for accomplishing that end sometimes result in damage to the Park. For example, it has been found that large signs are most safely secured only by placing numerous stakes in the ground, causing damage to the turf and the Park's inground sprinkler system.

In addition to the damage caused by methods necessary to secure large signs and structures, the signs and structures themselves have caused injury to park resources. Whether the result of being permanently anchored to the ground or because of sheer size, many of the signs and structures in the park can be moved only with considerable difficulty and only if the owner can be located. As long as large signs and structures are in the Park, it is impossible for the Park Service to perform routine maintenance of the Park such as watering, trimming and grass cutting. The placement of heavy signs and structures on the ground causes considerable damage to the turf, creating large patches of dried and dead grass wherever they have been. In addition, bricks making up the sidewalks through the Park have been crushed and damaged by large structures. In short, Lafayette Park has acquired a generally unkempt and unslightly appearance due to the activities of a handful of demonstrators who have added more and more signs, structures and property to their demonstrations.

The presence of structures has been of particular concern in Lafayette Park. Without limitations on the size and use of structures, individuals have acccumulated an odd assortment of buildings and rubbish in the Park, often unattended. Several two and three story structures have been built in Lafayette Park. Desks, chairs, bookcases, carts, doors and a porcelain toilet have all appeared in the Park. One individual filled a broken grocery cart with trash, claiming that it was a symbolic structure. All in all, the presence of these items has produced a dump-like atmosphere in this historical and finely landscaped national park.

Further, it appears that the "development" of Lafayette Park will only worsen in the future. Recently, an individual requested a permit to establish a library, complete with meeting rooms, in the Park. The same individual requested a permit to erect facilities necessary for an actual abortion and a Christmas day live birth. Another individual requested a permit for a spaceship and spaceship-landing facilities. This "building boom" in Lafayette Park threatens aesthetic interests, safety interests, and park resources.

Regulatory Changes

1. Signs

In order to meet substantial government interests in aesthetics, public safety, and preservation of park resources, the National Park Service is proposing a rule that would limit the size of signs permitted to be set down in Lafayette Park; limit the number of signs one individual may place down in the Park; and require that those stationary signs be attended. As noted above, there are no specific limitations on the number or size of stationary signs allowed in the Park at present. Further, enforcement of existing abandonded property regulations has been ineffective in curing the problem of absentee owners of signs and structures.

The National Park Service is not proposing to prohibit demonstrations in Lafayette Park. Nor is it proposing to place any limitation on signs that are hand-carried. The Park Service is merely proposing to place reasonable, content-neutral limitations on signs placed down in Lafayette Park so that visitors might be able to enjoy the history and beauty of the Park while demonstrators continue to have ample avenues of communication. In addition, the proposed rule would apply only to

Lafayette Park and not to the many other park areas in close proximity, for example, the Ellipse on the south side of the White House.

Specifically, the proposed rule would limit the size of signs permitted to be placed or set down in Lafayette Park to the dimensions of four feet in height, four feet in width and one-quarter inch in thickness. Such a size limitation would prohibit the immense billboard-type signs that now dominate Lafayette Park, which substantially impact the aesthetic values of the Park, while creating safety concerns and seriously damaging park resources.

In order to arrive at a permitted sign size that fully accommodates the needs of demonstrators, the *National Park Service Sign System Specification Manual* ("Manual") was consulted. The Manual is utilized by National Park Service personnel to determine the sign size and lettering necessary to be adequately seen by pedestrian traffic. Signs utilized by the Park Service contain directions, instructions, prohibitions and warnings.

Utilizing standards set forth in the Manual, it was calculated that a sign four feet by four feet could contain at least ten lines of writing in a letter size that could be seen up to one-hundred feet away from the sign. The letter size and distance from the sign indicated here is the maximum recommended for pedestrian traffic in the Manual.

On the basis of this research, it was determined that a four foot by four foot sign offered an effective means of communication for demonstrations. Further, the dimensions stated conform to a standard size of plywood commercially available. While there are no magic dimensions above which damage will certainly occur and below which government interests will certainly be satisfied, the Park Service has attempted to accommodate the needs of both visitors and demonstrators with this selection of permissible sign size.

In July of 1985, forty-four percent of the seventy-eight signs located in Lafayette Park had a message consisting of ten or less words; of these, fifty percent had messages of five words or less. For example, one eight foot by eight foot sign had four words written on it: "Wanted Wisdom and Honesty"; another sign, four foot by eight foot, simply had the initials "UFO" written on it, accompanied by what appeared to be symbols; a four foot by six foot sign read simply "Freedom of Religion"; and finally, a three foot by six foot sign read "Sue Your Government Now". The National Park Service does not believe that any serious impediment to free speech would result by requiring these varied messages to be placed on four foot by four foot signs.

To further accommodate individuals and groups who wish to have larger signs, the National Park Service has exempted all hand-carried signs from these size limitations. This allows demonstrators to have large signs, which includes banners, but assures that the signs will not cause damage to park resources because they will not be placed on the ground, will not create safety concerns because they will be held by demonstrators, and finally, will not create aesthetic problems because they can be easily moved and will not be permanent in nature.

To avoid circumvention of the size limitations on stationary signs, the proposed rule would also prohibit a conforming-size sign from being elevated to exceed a height of six feet above the ground. It would do little good to place limitations on the height of stationary signs only to have them again become billboard size by utilizing posts or other means of elevation. In addition, such elevation over six feet could result in additional safety problems.

Also to avoid circumvention of the size limitations, the proposed rule prohibits the arrangement or combination of stationary signs so as to exceed the permitted size limitations. Again, it would be useless to institute sign size limitations if those limitations could be easily circumvented by combining two or more signs so as to create a billboard effect.

To avoid the problem of one individual utilizing a great deal of space with unlimited numbers of signs, the National Park Service further proposes to limit the number of stationary signs that a single individual can have in Lafayette Park at one time. Present regulations do not prohibit a single individual from monopolizing any amount of this national park that attracts thousands of people each year by just adding sign after sign to his or her collection. The proposed rule would eliminate this unfair usurpation of park land by limiting each person to two stationary four foot by four foot signs at any one time in Lafayette Park. The Park Service believes that this is a reasonable accommodation of both visitors and demonstrators.

In addition to limiting the number of signs that an individual may have in Lafayette Park, the proposed rule requires that stationary signs in the Park be attended. The term "attended" is defined in the proposed rule as being within three feet of a sign. This requirement, along with the limitation on the number of signs an individual may have, would prevent the massive accumulation of signs by one or two individuals that is now occurring in Lafayette Park. Further, an attendance requirement assures that signs can be moved temporarily for routine park maintenance such as grass cutting, trimming and watering. Finally, the requirement that signs be attended enables park personnel to distinguish between actvie demonstrations and abandoned signs or property.

2. Structures

In addition to restrictions on the use of signs in Lafayette Park, the National Park Service proposes to prohibit the use of structures in the Park, with the exception of certain speaker's platforms.

Structures have substantially intruded upon visitors' enjoyment of Lafayette Park. The lack of specific restrictions in existing regulations has led to massive structures being placed in the Park. These structures substantially detract from the view of the Park and monopolize large areas of the seven-acre ground. Further, it has been the experience of the Park Service that some demonstrators have accumulated a large number of items in the Park, items including piles of rubbish, doors and desks, claiming that these are permitted structures. Rather than communicating a message, these items have generally evoked angry complaints from citizens. Finally, the presence of structures of any sort in the fragile enviornment of Lafeyette Park causes resource damage.

For these reasons, the Park Service initially considered a total ban on all structures in the Park. Consideration of less restrictive alternatives yielded no regulatory scheme that would allow structures to be placed in the Park while avoiding turf damage and the visual blight created by some demonstrators.

However, to avoid working a hardship on large demonstration groups that require a platform so that speakers can be heard and seen efffectively by demonstration participants, the Park Service in the proposed rule makes an exception for temporary speaker's platforms that are reasonably necessary when a demonstrating group numbers one-hundred or more persons. For a group numbering less than one-hundred persons, a small, temporary "soapbox" platform would be allowed. Although the Park Service realizes that some damage to park resources may be done by these structures, it believes that it has an obligation to balance the needs of demonstrators with the needs and rights of the general public. Further, any harm that may be caused by the large speaker's platforms will be minimized

by their short duration in the Park as large demonstrations generally do not remain in the Park as large demonstrations generally do not remain in the Park longer than one day.

3. Conclusion

The National Park Service believes that the proposed regulatory restrictions, taken as a whole, accomplish the purpose of restoring Lafayette Park as a historic site and formal garden while still allowing ample avenues of communication for those who wish to demonstrate in the Park or elsewhere in the vicinity of the White House. The Park Service believes that it has a responsibility to maintain a high level of aesthetic quality in the parks under its administration, consistent with its duty to allow citizens an opportunity to express their First Amendment rights. Further, the Park Service would be negligent in its responsibilities to all citizens if it did nothing to curb increasing resource damage or if it ignored safety concerns. Moreover, the National Park Service believes that there is clear legal authority for promulgation of these regulations as they are content-neutral, leave open ample alternative avenues of communication, and are narrowly tailored to meet substantial government interests. The substantial government interest in safety, resource protection and aesthetics has been affirmed repeatedly by the courts. In fact, the Supreme Court has recognized aesthetics as a substantial government interest in at least two cases decided within the past two years.

It is not easy to draw the lines established in the proposed rule. For this reason, the National Park Service especially invites comments from all segments of the public, visitors and demonstrators alike, on this proposal.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the address noted at the beginning of the rulemaking.

Drafting Information

The following persons participated in the writing of this rule: Richard G. Robbins, Patricia S. Bangert, and Steven A. Hemmat, Office of the Solicitor, U.S. Department of the Interior.

Paperwork Reduction Act

The information requirements contained in § 50.19 of Part 50 have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and assigned clearance number 1024–0021.

Compliance With Other Laws

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The National Park Service also has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, does not require a small entity flexibility analysis under 5 U.S.C. 601. The proposed rule would merely place reasonable limitations on the use of structures and signs in Lafayette Park. The rule will have no significant impact on any aspect of the economy.

The National Park Service has further determined that this proposed rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act, 42 U.S.C. 4332, *et seq.*

List of Subjects in 36 CFR Part 50

National parks, National Capital parks.

PART 50—NATIONAL CAPITAL PARKS REGULATIONS

In consideration of the foregoing, it is proposed to amend 36 CFR Part 50 as follows:

1. The authority citation for Part 50 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); D.C. Code section 8–137 (1981) and D.C. Code section 40–721 (1981).

2. Section 50.19 is amended by redesignating paragraphs (e) (11) and (14) as (e) (12) and (15) and adding a new paragraph (e)(11) to read as follows:

§ 50.19 Demonstrations and special events.

* * * * *

(e) * * *

(11) The following are prohibited in Lafayette Park:

(i) The erection or placement of structures of any kind except for the structures described in paragraphs (e)(11)(i) (A) and (B) of this section.

(A) When a demonstration involves one-hundred (100) or more persons, a temporary speaker's platform as is reasonably required to serve the demonstration participants is allowed *provided that* only one speaker's platform is allowed per demonstrating group and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (b) of this section.

(B) When a demonstration involves less than one-hundred (100) persons, a temporary "soapbox" speaker's platform is allowed *provided that* only one speaker's platform is allowed per demonstrating group and *provided further that* the speaker's platform is no larger than two (2) feet in length, two (2) feet in width, and two (2) feet in height.

(ii) The use of signs except for the following:

(A) Hand-carried signs are allowed regardless of size.

(B) Signs no larger than four (4) feet in height, four (4) feet in width and one-quarter (¼) inch in thickness may be placed or set down in Lafayette Park *provided that* no individual may have more than two (2) such signs in the Park at any one time and *provided further that* such signs must be attended at all times, the term "attended" being defined as an individual being within three (3) feet of his or her sign(s), and *provided further that* such signs may not be elevated in a manner so as to exceed a height of six (6) feet above the ground at the highest point.

(C) Signs placed or set down in the Park may not be arranged or combined in a manner so as to exceed the size limitations in paragraph (e)(11)(ii)(B) of this section (for example, two four foot by four foot signs may not be combined so as to create a sign eight feet tall and four feet wide and three such signs may not be arranged to create a sign four feet tall and twelve feet wide, etc.).

Dated: August 14, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–19901 Filed 8–19–85; 8:45 am]

BILLING CODE 4310–70–M

POSTAL SERVICE

39 CFR Part 111

Combined Mailings of Special Fourth-Class and Bound Printed Matter

AGENCY: Postal Service.

ACTION: Posposed rule.

SUMMARY: This proposal would allow mailers to combine special fourth-class and bound printed matter in one parcel and pay postage at the rate appropriate for each subclass. Currently, mailers are preparing separate parcels, although

they are mailed to the same addressee. For example, bound printed matter and special fourth-class rate articles are prepared and mailed separately even if they are sent to the same addressee.

DATE: Comments must be received on or before September 19, 1985.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Mail Classification, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza West SW., Washington, D.C. 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. George E. Thomas, (202) 245-4512.

SUPPLEMENTARY INFORMATION: The Postal Service is aware that mailers of materials eligible for special fourty-class rates (e.g., book publishers, record companies, etc.) also send material eligible for bound printed matter rates to the same recipients. The proposed change will eliminate the need for separate mailings to the same recipient in order to claim the two rates. The Postal Service will also benefit from these procedures in that one parcel will be processed and delivered instead of two.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 29 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973 cc–13, 1973 cc–14.

2. Revise the heading of Part 136 and the first sentence of 136.1 of the DMM to read as follows:

PART 136—MIXED CLASSES AND SUBCLASSES OF MAIL

136.1—General.

When mail of a higher class in enclosed with mail of a lower class, the rate of postage on the entire piece or package is that of the higher class except as provided in §§ 136.2, 136.3, 136.4, 136.7, and 136.8.

* * * * *

3. Add proposed new 136.8 to read as follows:

136.8 Combined Mailings of Special Fourth-Class and Bound Printed Matter.

.81 *Definition.* Mailers may combine separate and distinguishable units of special fourth-class and bound printed matter in one parcel for the same addressee.

.82 *Machinability.* All parcels containing combined special fourth-class and bound printed matter must meet the machinable (regular) parcel criteria stated in 128.41.

.83 *Payment of Postage.* Postage covering each separate unit of mail must be placed on the outside of the parcel. See 780, Domestic Mail Manual, for methods of postage payment.

.84 *Markings Required.* Sections 764.1 and 767.1 prescribe the marking requirements for mailings of special fourth-class and bound printed matter. In addition to those markings, the mailer must place on each parcel below the postage and above the address an endorsement denoting the enclosure and the amount of additional postage paid for it. For example, BOUND PRINTED MATTER ENCLOSED $1.46 or SPECIAL FOURTH-CLASS ENCLOSED $0.69. Parcels containing bound printed matter and special fourth-class are properly chargeable with postage at parcel post zone rates when they are not marked as prescribed, or when the contents do not consist of separate and distinguishable units of mail, or when they are not machinable.

.85 *Bulk or Presort Rate Mailings.* Bulk or presort rates may be claimed if the mail is prepared in accordance with the applicable provisions of sections 763, 764, or 767. Where bulk or presort rates are claimed on both subclasses, the mail must be sorted in accordance with the requirements which provide the finest degree of sortation of the two subclasses. For example, if a mailing consists of bulk bound printed matter and level A presorted special fourth-class rate mail, it must be sorted to 5-digit ZIP Code destinations meeting the provisions of sections 724.222 and 764.22. In this instance, sortation in accordance with the requirements prescribed in section 767 for bound printed matter would not suffice.

.86 *Forwarding and Return.* Combination parcels containing special fourth-class and bound printed matter will be charged postage at the applicable single piece rate for both the principal unit and the enclosure.

An appropriated amendment to 39 CFR 111.3 to reflect these changes will be published, if the proposal is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

Certified to be a true copy of the original.

Paul J. Kemp,

Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 85-19831 Filed 8-19-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EN-FRL 2857-6]

Regulation of Fuels and Fuel Additives; Applicability to Motorcycles and Alternate Labeling Language for All Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to exclude motorcycles from the requirement at 40 CFR 80.24(a)(1) concerning the location of "Unleaded Gasoline Only" labels on the instrument panels of vehicles required to use only unleaded gasoline. The EPA is also proposing to exclude motorcycles permanently from the requirement at 40 CFR 80.24(b)(1) concerning the design of the fuel tank filler inlet for vehicles required to use only unleaded gasoline. (At 48 FR 29692 (June 28, 1983), the EPA excluded 1984 model year motorcycles from the requirement at 40 CFR 80.24(b)(1) concerning the design of the fuel tank filler inlet. This "emergency" rule became effective July 28, 1983 and no comments were received in response to the rulemaking.) These changes are necessary because of requirements in the regulations that were probably never intended to apply to moforcycles. The EPA is also proposing to allow the labels on all motor vehicles to read "Unleaded Gasoline Only" or "Undeaded Fuel Only." Only the former version is explicitly included in the regulations at 40 CFR 80.24(a), although the latter was also approved for use by an EPA advisory circular.

DATES: Comments should be submitted on or before October 4, 1985. A public hearing will be held upon request. Requests for a hearing must be submitted by September 3, 1985. If a hearing is requested, an announcement will be published in the **Federal Register**

[and the comment period will be extended until 30 days after the date of the hearing].

ADDRESS: Send comments to Public Docket EN–85–04, Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should be identified with the docket number. Copies of information relevant to this proposed rule are available for public inspection at the Central Docket Section of the Environmental Protection Agency, West Tower, Gallery I, 401 M Street, SW., Washington, D.C. 20460, and are available for review between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, reasonable fee may be charged for copying services. To expedite review, it is also requested that a duplicate copy of comments be sent to James W. Caldwell at the address listed below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Chief, Fuels Section, Field Operations and Support Division (EN–397F), EPA, 401 M Street, SW., Washington, D.C. 20460, (202) 382–2635.

SUPPLEMENTARY INFORMATION: Federal rules at 40 CFR 80.24 place certain requirements on the manufacturer of any motor vehicle equipped with an emission control device (primarily the catalytic converter) which will be impaired by the use of leaded gasoline. As defined in the Clean Air Act, "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway. This definition includes motorcycles.

However, 40 CFR 80.24(a) places some labeling requirements on motor vehicles that were probably not intended to apply to motorcycles. It requires that two or more "Unleaded Gasoline Only" labels be affixed to any motor vehicle equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline. One label must be located on the instrument panel (40 CFR 80.24(a)(1)) and the other must be located immediately adjacent to each gasoline tank filler inlet (40 CFR 80.24(a)(2)). On a motorcycle, these two label locations are generally about a foot apart. Requiring labels to be affixed so closely together appears unnecessary. Accordingly, EPA is proposing that a motorcycle label should be required only adjacent to the filler inlet, provided it is readily visible when approached from either the left or right side of the motorcycle.

In addition, 40 CFR 80.24(b)(1) places a design requirement on the fuel tank filler inlet of motor vehicles that was never intended to apply to motorcycles. It requires that when a leaded gasoline nozzle is inserted into the inlet, and readily activated to a full-flow condition, no more than 700 cubic centimeters of gasoline pass into the tank before the nozzle shuts off. In order to meet this requirement, the nozzle vacuum port must be plugged by fuel backing up in the inlet, thus shutting off fuel delivery. Due to the inherent design of a motorcycle's fuel tank, which generally has a portion of the frame running closely under the filler inlet, it would be impractical to design an inlet with sufficient depth that it not only contains a restriction to prevent the insertion of a leaded gasoline nozzle, but also allows fuel to back up to a height that would plug the leaded gasoline nozzle vacuum port and shut off fuel delivery.

Those problems were originally called to EPA's attention by the American Honda Motor Company shortly before the commencement of production for the 1984 model year. In response, EPA issued an emergency final rule (48 FR 2969, June 28, 1983) excluding 1984 model year motorcycles from the requirement at 40 CFR 80.24(b)(1). This rule became effective on July 28, 1983 and no comments were received in response to the rulemaking. EPA is now proposing to make the exclusion permanent.

EPA is also proposing to allow the label(s) for all motor vehicles to read "Unleaded Gasoline Only" or "Unleaded Fuel Only." Existing 40 CFR 80.24(a) only refers explicitly to the former language. The latter version is also in use but has never been incorporated into the regulations, although it has been allowed under guidance provided in an EPA advisory circular.

Because the other requirements of 40 CFR 80.24 will remain in effect to deter the introduction of leaded gasoline into motorcycles requiring unleaded gasoline only (i.e., the inlet restrictor and adjacent "Unleaded Gasoline Only" label), EPA does not anticipate any significant risk from excluding motorcycles from the requirements at 40 CFR 80.24 (a)(1) and (b)(1).

Under Executive Order 12291, EPA must judge whether an action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effects of this action are to prevent motorcycles from being subject to requirements that were not intended for motorcycles, and to allow additional flexibility in labeling language. If anything, these changes would reduce costs to manufacturers.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB and any EPA responses to such comments have been placed in the docket.

Finally, under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a Regulatory Impact Analysis. These modifications should not have a significant adverse impact on any of the affected entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 80

Motorcycles, Gasoline.

Dated: August 9, 1985.

Lee M. Thomas,

Administrator.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

For the reasons set forth in the preamble, 40 CFR Part 80 is proposed to be amended as follows:

1. The authority citation for Part 80 continues to read as follows:

Authority: Sec. 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 and 7601, unless otherwise noted.

2. Paragraphs (a) and (b)(2) are revised to read as follows:

§ 80.24 Controls applicable to motor vehicle manufacturers.

* * * * *

(a) Affix two or more permanent legible labels reading "Unleaded Gasoline Only" or "Unleaded Fuel Only" to such vehicle at the time of its manufacture, as follows:

(1) One label shall be located on the instrument panel so as to be readily visible to the operator of the vehicle:

Provided, however, that the required statement may be incorporated into the design of the instrument panel rather than provided on a separate label, and that this paragraph shall not apply to motocycles as defined at 40 CFR 86.401–78; and

(2) One label shall be located immediately adjacent to each gasoline filler tank inlet, outside of any filler inlet compartment, and shall be located so as to be readily visible to any person introducing gasoline to such filler inlet, and for motorcycles, such label shall be readily visible from the left side and the right side of the vehicle: *Provided, however,* that the Administrator may, upon application from a motor vehicle manufacturer, approve other label locations that achieve the purpose of this paragraph.

(b) * * *

(2) Paragraph (b)(1) of this section shall not apply to motorcycles.

* * * * *

[FR Doc. 85–19586 Filed 8–19–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300135; FRL–2863–2]

Mineral Oil; Tolerance Exemption

Correction

In FR Doc. 85–16477 beginning on page 28956 in the issue of Wednesday, July 17, 1985, make the following correction: In the third column, in the Supplementary Information, in the seventh line, "use a" should read "use as a".

BILLING CODE 1505–01–M

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40 CFR Part 180

[OPP–300133; FRL–2864–8]

Octyl Epoxytallate, Stearic Acid, 4,4'-Isopropylidene-Diphenol Alkyl (C_{12}–C_{15}) Phosphites, Carbon Black, Chlorinated Polyethylene, and Epoxidized Soybean Oil; Tolerance Exemptions

Correction

In FR Doc. 85–16850, beginning on page 28957, in the issue of Wednesday, July 17, 1985, make the following corrections: On page 28958, first column:

1. In the third complete paragraph, fourth line, remove "C_{15})".

2. In the sixth complete paragraph, seventh line, "limoleic" should read "linoleic".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2910

Airport Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The proposed amendments would change the terms for annual rental; provide for an application recordation service fee which more accurately relfects current administrative costs for the processing of applications, and revise procedures to make them more streamlined and efficient. The proposed rulemaking also would amend existing regulations at 43 CFR Part 2911 to remove provisions relating to withdrawal of public lands for beacon lights and air navigation facilities which were repealed by the Federal Land Policy and Management Act of 1976.

DATE: Comments should be received by October 21, 1985. Comments postmarked or received after this date may not be considered in the decisionmaking process for the development of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mark D. Etchart, (202) 343–8693.

SUPPLEMENTARY INFORMATION: The proposed rulemaking would make a number of changes in existing regulations relating to airport leases on public lands. The changes include addition of definitions that clarify responsibilities for program management, revision of application processes to make them more efficient, and fee revision to help the Department of the Interior offset costs incurred in application processing. These changes are discussed below.

Changes Discussed

Section 2911.0–1 Purpose.

This section identifies the purpose of these regulations.

Section 2911.00–3 Authority.

This section is revised to delete redundant language concerning Secretarial authority to make public lands available for airport leases and beacon lights, other navigational aids, and other uses.

Section 2911.0–5 Definitions.

This new section would provide definitions of terms which are used in this subpart. The new definitions are primarily devoted to ensuring clarity regarding what is meants by such terms as "Authorized officer," "Applicant," "Public airport", and the like.

The terms defined in this section are used in other sections of the proposed rulemaking which have been changed to make them reflect current nomenclature for the administrative offices and authorized officers of the Federal Aviation Administration and the Bureau of Land Management.

Section 2911.1–1 Terms and conditions.

This section is revised to state more clearly that the authorized officer has the authority to cancel a lease for a variety of reasons, including failure on the part of the lessee to make use of the facility, failure to timely pay rentals due under the lease, or failure to maintain the premises in accordance with standards established by the Federal Aviation Administration.

This section is further revised by amending paragraph (e) to simplify the rental determination and collection process, as well as to reflect the policy of the Department of the Interior to receive fair market value for the use of the public lands. Provisions also is made for rental charges at 50 percent of the fair market value where the lessee is a unit of state government or political subdivision, including counties and municipalities.

Section 2911.1–3 Beacon lights.

This section would be eliminated by the proposed rulemaking. The Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.) repealeld a portion of the Airport Grants Act (49 U.S.C. 214) which provided the Secretary of the Interior with the authority to grant permission to establish beacon lights and other air navigation facilities upon the public lands.

Section 2911.2 Procedures.

This section would be revised by modifying the application process to add a new section which provides for persons seeking to lease public lands under this subpart to consult with the Bureau of Land Management authorized officer prior to initiation of the formal application process. The intent of this process is to familiarize potential

applicants with statutory and regulatory requirements, determine land availability, clarify respective responsibilities, assess conformity of proposed use with land use plans and minimize the time and expense of the formal application process.

This section would also be revised to include the requirement that a Notice of Realty Action be published in the **Federal Register**.

The proposed rulemaking would provide for a filing fee of $100 to be submitted with the application and also require applicants to pay the cost of publishing the required Notice of Realty Action in the **Federal Register** and in a local newspaper.

As proposed, the regulations would require a minimum period of 45 days following publication of the Notice of Realty Action for the authorized officer to consider public comments prior to determining whether to issue a lease.

The principal author of this proposed rulemaking is Mark D. Etchart, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

Based upon the environmental assessment and the finding of no significant impact, it is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of Interior has determined that this document is not a major rule under Executive order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this proposed rulemaking will not have a negative effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). There will be no significant effect on any user groups; any economic effects of the proposed regulation will be positive.

This proposed rulemaking contains no information collection requirements that must be submitted to the Office of Management and Budget for clearance under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2910

Airports, Alaska, Mines, Public lands, Recreation areas, Waste treatment and disposal.

Under authority of the Act of May 24, 1928, as amended and the Federal Land Policy and Management Act, it is proposed to amend Group 2900, Part 2910, Subpart 2911, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 2910—[AMENDED]

1. Part 2910 is amended by revising Subpart 2911 to read:

Subpart 2911—Airport

Sec.
2911.0–1 Purpose.
2911.0–3 Authority.
2911.0–5 Definitions.
2911.0–6 Lands available for leasing.
2911.1 Nature of interest and terms.
2911.1–1 Terms and conditions.
2911.2 Procedures.
2911.2–1 Proposal.
2911.2–2 Applications.
2911.2–3 Report by Administrator; Notice of Realty Action.
2911.2–4 Execution of lease.

Authority: 49 U.S.C. 211; 43 U.S.C. 1701 et seq.

Subpart 2911—Airport

§ 2911.0–1 Purpose.

This subpart sets forth procedures for issuance of airport leases on the public lands.

§ 2911.0–3 Authority.

The Act of May 24, 1982 (45 Stat. 728, as amended, 49 U.S.C. 211–213), authorizes the Secretary of the Interior to lease for use as a public airport, any contiguous unreserved and unappropriated public lands not to exceed 2,560 acres in area.

§ 2911.0–5 Definitions.

"As used in this subpart, the term:

(a) "Act" means the Act of May 24, 1928 (45 Stat 728, as amended, 49 U.S.C. 211–213).

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(d) "Administrator" means the Administrator of the Federal Aviation Administration.

(e) "Applicant" means a citizen of the United States; a group or association of citizens of the United States; a corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located; or a State or political subdivisions thereof, including counties and municipalities.

(f) "Public airport" means an airport open to use by all persons without prior permission of the airport lessee or operator, and without restrictions within the physical capacities of its available facilities.

§ 2911.0–6 Lands available for leasing.

Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the Act, subject to valid existing rights under the public land laws.

§ 2911.1 Nature of interest and terms.

§ 2911.1–1 Terms and conditions.

(a) The lessee shall, within 1 year from the date of issuance of the lease, equip the airport as required by the Administrator and file a report thereof in the Bureau of Land Management District office having jurisdiction over the lands under lease.

(b) At any time during the term of the lease, the Administrator may have an inspection made of the airport, and if the the airport does not comply with the ratings set by the Federal Aviation Administration, the Administrator shall submit a written statement describing the deficiencies to the Bureau of Land Management for appropriate action.

(c) The authorized officer may cancel, in whole or in part, a lease issued under the Act for any of the following reasons: Lessee failure to use the leased premises or any part thereof for a period of a least 6 months; use of the property or any part thereof for a purpose other than the authorized use; failure to pay the annual rental in full on the date due; failure to maintain the premises according to the ratings set by the Federal Aviation Administration; failure to comply with the regulations in this part or the terms of the lease.

(d) Leases under the Act shall be for a period not to exceed 20 years and may be renewed for like periods.

(e) State or political subdivisions thereof, including counties and municipalities, shall pay to the lessor an annual rental calculated at the appraised fair market value of the rental of the property less 50%, with a minimum annual rental payment of $100. Annual rental for leases to any citizen of the United States, any group or association of citizens or corporation of the United States shall be at appraised fair market value of the rental, with a minimum annual rental payment of $100. In fixing the rentals, consideration shall be given to all pertinent facts and circumstances, including use of the airport by government departments and agencies. Rental of each lease shall be reconsidered and revised at 5-year intervals to reflect current appraised fair market value. The first annual rental

payment shall be made prior to issuance of the lease. All subsequent payments shall be paid on or before the anniversary date of issuance of the lease.

(f) The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and, with the approval of the authorized officer, such departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable by the heads of such departments and agencies. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airport.

(g) The lessee shall submit to the Administrator for approval regulations governing operations of the airport.

§2911.2 Procedures.

§ 2911.2–1 Proposal.

(a) Persons seeking to lease public lands under this subpart shall first consult with the Bureau of Land Management authorized officer in the District or Resource Area Office in which the lands are located. Such consultation is necessary to determine land availability and conformity of proposed use with approved land use plans, explain associated statutory and regulatory requirements, familiarize the potential applicant with respective managment responsibilities, set forth the application processing procedures for the proposed action, and identify potential conflicts. Upon completion of the consultation, persons seeking an application shall submit development and use proposals to the authorized officer for consideration.

(b) Proposals need not follow a prescribed format, but shall include a description of the affected lands, a concise description of the intended development and use, the names of all persons involved with the proposal, and any other information which the authorized officer consider necessary to evaluate fully the proposal.

§ 2911.2–2 Applications.

(a) Upon determination by the authorized officer that a proposal submitted in accordance with § 2911.2–1(b) of this title appears consistent with State and Federal laws, programs, policies, and applicable land use plans, the proponent may file an application with the authorized officer. No specific format is required for the application.

(b) Each application shall clearly describe the lands applied for and contain a plan of development signed by the applicant or by duly authorized agent or officer of the applicant. When required by the authorized officer, the application shall include copies of the appropriate State, county, or municipal airport licenses or permits, as well as such additional States and local clearances as may be required.

(c) Each application shall be accompanied by a non-refundable recordation and service fee of $100. Each applicant shall also be required to pay the cost of publication of a Notice of Realty Action in the **Federal Register** and a newspaper of general circulation in the area in which the lands are located.

§ 2911.2–3 Report by Administrator; Notice of Realty Action.

Upon receipt of the application, the authorized officer shall send 1 copy to the Administrator for consideration concerning what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that agency. After receiving the report of the Adminstrator, and before making a determination to issue a lease, the authorized officer shall publish a Notice of Realty Action in the **Federal Register** and in a newspaper of general circulation in the area of the lands to be leased. The notice shall provide 45 days from the date of publication for comments by the public. Comments shall be sent to the office issuing the notice. The notice shall not be published until the authorized officer has received the recordation service fee from the applicant.

§ 2911.2–4 Execution of lease.

Upon receipt of the payments required by § 2911.2–2(c) of this title and not less than 45 days following the publications required by § 2911.2–4 of this title, the authorized officer shall make a decision on the application and, if the application is approved, issue the lease.

February 8, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–19830 Filed 8–19–85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 31, 33, 42, and 43

[CC Docket 78–196]

Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Order initiating discussions.

SUMMARY: The Commission has ordered the staff to initiate discussions with selected carriers who are participants in the rulemaking proceeding, CC Docket 78–196 (50 FR 1590, Jan. 11, 1985). In this proceeding, the Commission proposed to revise the uniform system of accounts for telephone companies. The discussions will focus on three areas of concern and are intended to resolve the problems pertaining to the respondents estimates of longer implementation times and higher implementation costs. The areas of concerns are: 1. the disaggregation of central office equipment plant accounts; 2. the expense matrix; and 3. the expensing versus capitalization of certain costs.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Chief, Accounting Systems Branch, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION:

Order

In the matter of revision of the Uniform System of Accounts and financial reporting requirements for class A and class B telephone companies (parts 31, 33, 42, and 43 of the FCC's Rules), CC Docket No. 78–196.

Adopted: August 7, 1985.
Released: August 13, 1985.

By the Chief, Common Carrier Bureau.

1. On January 3, 1985, the Commission released a Further Notice of Proposed Rulemaking (50 FR 1590, Jan. 11, 1985) in the above-captioned proceeding which proposed to rescind Part 31 of the Commission's Rules and Regulations (Uniform System of Accounts for Class A and Class B Telephone Companies) and Part 33 of the Commission's Rules and Regulations (Uniform System of Accounts for Class C Telephone Companies). The Commission proposed to replace these Parts with a single new Uniform System of Accounts for Telephone Companies.

2. The proposal was based on recommendations of the Telecommunications Industry Advisory Group (TIAG) which the Commission established to assist in the design and development of the proposed accounting system. The TIAG, which was comprised of representatives from eleven distinct constituencies,[1] was

[1] The eleven constituencies were the Federal Communications Commission, American Telephone and Telegraph Company, Bell Communications Research, large independents, United States Telephone Association, American Institute of Certified Public Accountants, Other Common

Continued

charged with designing the basic framework for the new system along with developing the necessary accounts, account definitions, items lists and accounting rules. While the ultimate responsibility for the revision of the USOA remained with the Commission, the TIAG provided the Commission with the invaluable experience and resources of hundreds of professionals. The proposed revisions of the USOA accounts, account text and general instructions are to a large extent taken from the TIAG recommendations; however, the Commission incorporated some changes to reflect regulatory needs.

3. In response to the Further Notice of Proposed Rulemaking, the Commission has received comments from 163 parties and reply comments from 34 parties which when combined total more than 2500 pages of comments. In reading the comments and reply comments two problems are apparent. These are that the carriers' estimates of the costs of implementation are larger and the estimates of time required for implementation are longer than the Commission had originally expected.

4. The comments indicate three areas of concern which drive the contentions of high implementation costs and the need for a long implementation schedule. These three areas are: a. The disaggregation of the plant accounts, specifically, central office equipment; b. the cost-type expense matrix; and c. the expensing versus capitalization of certain costs. The record is not clear as to why proposed changes in these three areas have such an unexpectedly high impact. Part of the reason for the problem may be due to independent expansion of the carriers' accounting systems beyond current Commission requirements which have taken place over the years because of internal management needs. However, as we have stated, the record is not clear.

5. The only way for the FCC staff to determine the reasons for the longer implementation time-frame and the higher implementation costs is to initiate direct discussions with the carriers. Therefore, the FCC staff will initiate limited discussions with carriers to explore resolutions to these problems.

6. Accordingly, it is ordered that the FCC staff will initiate limited discussions with selected carriers focused on the three topic areas discussed in the preceding paragraphs; and a record of each of the discussions will be entered into the Docket.

Carriers, National Association of Regulatory Utility Commissioners, consumers, equipment manufacturers, and large users.

7. It is further ordered that the Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85-19849 Filed 8-19-85; 8:45 am]

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47 CFR Part 64

[CC Docket No. 85-229]

Third Computer Inquiry

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC is proposing to amend its Computer II rules to establish a revised regulatory framework to address the increasingly competitive telecommunications industry, and to address specific problems that have arisen. The existing rules are impeding the development of efficient new telecommunications services, and the industry conditions that led to their adoption in 1980 have changed. In view of this, proposals are made to establish a regulatory framework that acknowledges these changes, and to establish rules that promote efficiency, rather than impeding it. The intended effect of the proposals is to promote the continued development of unregulated competition, while ensuring that the public can benefit from technological efficiencies that are available.

DATES: Comments must be received on or before October 30, 1985 and replies must be received on or before November 29, 1985.

ADDRESS: Federal Communication Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael S. Slomin, Legal Assistant to the Chief, Common Carrier Bureau, 202-632-6910.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 64

Civil defense, Claims, Communications common carrier, Computer technology, Credit, Foreign relations, Handicapped, Political candidate, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

A major focus of the proposals is on the effects of the Second Computer Inquiry. For reference, refer to 45 FR 31319 (May 13, 1980), 46 FR 5984 (Jan. 21, 1981), and 46 FR 59976 (Dec. 8, 1981).

Notice of Proposed Rulemaking

In the matters of: Amendment of § 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; and Communications Protocols under § 64.702 of the Commission's Rules and Regulations; CC Docket No. 85-229.

Adopted: July 25, 1985.

Released: August 16, 1985.

By the Commission: Commissioner Patrick concurring and issuing a statement at a later date.

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I. Overview: Introduction

1. In the post-World War II period, and increasingly over the past decade, there has been a near-revolutionary change in telecommunications and related fields in the United States. In the 1940's, telecommunications was virtually a complete monopoly by AT&T and the then-Bell System. Independent telephone compaines participated, but they were partners with the Bell System, not competitors. Some measure of competition was offered by the Western Union Telegraph Company, but it was limited in scope and effect, and overlaid by a series of contracts between AT&T and Western Union. Thereafter, new entry in communications was permitted and facilitated by decisions of this Commission, and new industries that were dependent on telecommunications arose free of the constraints of regulation, *i.e.*, data proceeding and customer premises equipment industries.

2. In the 1960's and earlier, regulated carriers did not participate to a great extent in data processing, but they did provide, on a regulated basis, customer premises equipment.[1] In the *First Computer Inquiry*, begun in the mid-1960's, this agency declared that "communications" offerings would continue to be treated under the Communications Act, that "data processing" offerings would continue to be unregulated, and that regulated carriers might provide data processing services on a structurally separated basis.[2] At the same time, we acknowledged that computer technology could and should be employed to automate and support conventional communications. A third category, the "hybrid" one, was identified where computer technology might support both data processing and communications. Computer I did not address provision of data processing by AT&T and the Bell System since it was thought that these companies were prohibited from providing such service under constraints imposed by the 1956 Consent Decree then in effect.[3]

3. In the *Second Computer Inquiry* (hereafter, "Computer II"),[4] we maintained the unregulated treatment of data processing, but we refined its definition using a new term, "enhanced services," and eliminated the uncertain "hybrid" category. We re-examined the structural separation approaches of the first inquiry, refined them, and applied them in modified form to various carriers: AT&T and the Bell Operating Companies were treated under the approach, and all others were treated under another. At the same time, we required that all customer premises equipment be provided on an unregulated basis.

4. A fundamental purpose in instituting Computer II was to avoid the ambi- guities and uncertainties that were becoming increasingly apparent in the application of the "date processing" and "hybrid" definitions of Computer I to services. Likewise, customer premises equipment was impossible to classify as traditional mere voice equipment or data processing equipment.[5] The "enhanced services" definition of Computer II, and the deregulation of customer premises equipment, were intended to establish a durable dichotomy between regulated and unregulated activities, to facilitate planning and decisionmaking by the public and by industry. While the treatment of customer premises equipment has served this purpose, the treatment of service offerings has not. At an ever-increasing pace since Computer II was adopted in 1980, we have been called upon to clarify, interpret and apply the "enhanced services" definition to offerings that carriers seek to make to the public on a regulated basis, and to offerings that others seek to make on an unregulated basis.

5. A pattern has emerged. Carriers have generally not sought to offer data or information "processing" of their subscriber's communications. Rather, they have sought to offer capabilities that seem to improve the ability of users to communicate. Yet, the specific definition of "enhanced service" adopted in Computer II brought into question whether such capabilities could be offered on a regulated basis.

6. Computer II also imposes structural separation on certain carriers, currently AT&T and the BOCs. Absent a waiver of the Computer II structural separation constraints, facilities that create or implement "enhanced services" are not permitted to be integrated with facilities for common carrier communications. In some cases, however, these capabilities cannot be efficiently created unless they are integrated with the underlying common carrier service. Thus, the result has been a denial to the public of efficient services that can be created through such integration and their benefits.

7. One area where such issues have arisen is protocol conversion, an element of the Computer II definition of enchanced service. In some cases, if protocol conversion is not integrated with communictions facilities it can be performed effectively elsewhere, but only at higher costs. In our *Protocols Decision*,[6] discussed *infra*, we established a framework under which such issues could be analyzed and the most significant inefficiencies of Computer II could be addressed through *ad hoc* waivers. But, while this approach established a framework under which undue inefficiency can be avoided, it has contributed to uncertainty in the capital-intensive telecommunications and related data processing industries where planning decisions often must be made years in advance.

8. A second area where such issues have arisen is voice storage. Shortly after Computer II was adopted, we were confronted with arguments that so-called "Custom Calling II" voice storage services should be subject to structural separation. AT&T contended that while such services could be offered on a separated basis, if offered outside the network they would be uneconomical. Its opponents argued that competition among others and AT&T's separate affiliate, if unperturbed by AT&T's proposed integration of Custom Calling II with its basic services, would create comparably desirable offerings. And, the resulting competition would promote efficiencies to offset the efficiencies fore-gone by preventing co-location in AT&T's (and the BOCs') central offices of the voice storage equipment to implement Custom Calling II. They argued that to accept Custom Calling II as basic would lead to a similar conclusion for other actual information service—library retrieval-type service involving subscriber interaction with stored information—and nullify this element of the enhanced service definition. We accepted these arguments.[7] In the five ensuing years, identical services have not emerged.[8] The principal loser has been the public.

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[1] Indeed, prior to the adoption of our Carterfone decisions, 13 FCC 2d 420, *recon, denied*, 14 FCC2d 571 (1968), customer premises equipment was almost always required to be furnished by the telephone companies (on a regulated, tariffed basis), and therefore was almost a complete monopoly. (Certain "special" entities were permitted to furnish their own equipment, but this was very limited. *See, Interstate and Foreign Message Toll Telephone Service, 56 FCC2d 593, 598 (1975).*

[2] Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities ("Computer I" or "First Computer Inquiry"), 28 FCC2d 291 (1970) (Tentative Decision), 28 FCC2d 267 (1971) (Final Decision), *aff'd in part sub nom., GTE Service Corp., v. FCC, 474 F.2d 724 (2d Cir. 1973), dec'n on remand*, 40 FCC2d 293(1973).

[3] United States v. Western Electric Co., 1956 Trade Cas. 71,134 (D.N.J. 1956).

[4] Second Computer Inquiry, 77 FCC2d 384 (1979) (Final Decision), *aff'd on reconsideration*, 84 FCC2d 50 (1980), 88 FCC2d 512 (1981), *aff'd sub nom.*, CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert, denied sub nom.* Louisiana P.S.C. v. United States, 461 U.S. 938 (1983).

[5] *See, e.g.*, Am. Tel. and Tel. Co. Dataspeed 40/4 Tariff Revisions, 62 FCC2d 21 (1977), *aff'd sub nom.* Intl. Business Machines Corp. v. FCC, 570 F.2d 452 (2d Cir. 1978).

[6] Communications Protocols under § 64.702 of the Commission's Rules, 95 FCC2d 584 (1983). Although that proceeding was terminated in the cited order, petitions for reconsideration are pending. We address the substance of those petitions in this notice, and therefore shall incorporate the record of Gen. Docket No. 80-756 herein. Accordingly, that proceeding remains closed.

[7] 84 FCC2d at 54–56 (deeming Custom Calling II services as "enhanced"); Am. Tel. and Tel. Co. Petition for Waiver ("Custom Calling II"), 86 FCC2d 1 (1981) (denying a waiver to permit Custom Calling II to be offered without structural separation).

[8] Of course, the type of interconnection that might have been used by others to configure services of this nature, at costs comparable to those inherent in AT&T's proposed custom calling services, was unavailable. *See* our discussion of the details of this in Sections IV and V *infra*. Had comparably efficient interconnection been available, others might be providing such services today. Absent such interconnection, the costs were far higher than the telephone companies' costs of providing such custom calling services on an integrated basis, and this may explain why alternatives have not arisen.

9. A third area where such issues have arisen is new routing and call setup capabilities proposed to be introduced in basic switched services. Virtually any new call routing feature that AT&T (or a BOC) might propose to introduce can be (and might be) challenged as violative of Computer II.[9] Most of these do not involve manipulation of information as such, or even protocol conversion. They involve use of stored data in the network by the network to set up users' calls, or delivery of information from the network concerning users' calls. While services of this nature ultimately *could* be used as alternatives to true information manipulation of retrieval services, the ones proposed have not risen to that level.[10] We are asked to bar the introduction of new network capabilities not because of the current proposed uses, but because they *might* at some time (if ever) become enhanced services. To the extent that we might accept arguments of this nature, the public would be the loser.[11]

10. Moreover, the definition of "enhanced service" itself has been ambiguous. The first principal clause of the definition addresses "computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information." Many experts on standardization of protocols, however, would probably include action on the "format" and "code" within processing of the "protocol." [12] A change in the speed of a subscriber's transmission might well be viewed as a change in protocol, yet because we ruled in Computer II that intermediate network storage not under the control of the subscriber does not invoke the definition of "enhanced service", we have treated a speed change as an element of basic service.[13]

11. And finally, the applicability of the definition of "enhanced service" has been somewhat unclear. The rule provides that, "Enhanced services are not regulated under Title II of the Act." Yet, the structure is essentially a resale one, and under the rule involves the use of underlying services that are "offered over common carrier transmission facilities used in interstate communications," implying that underlying facilities are obtained subject to common carrier regulation. A continuing ambiguity has related to what are the underlying facilities and services in this context, since many enhanced services involve a melange of options that do and do not invoke the "enhanced services" definition. Most significantly, this issues has arisen in the context of provision of packet-switched services that ordinarily use the X.25 interface. A data transmission using X.25 at each end does not invoke the "enhanced services" definition. A data transmission on the same network using an asynchronous interface at one end and the X.25 interface at the other does. Is the entire packet-switched service to be treated as "enhanced", with the private lines that ordinarily are used to configure such networks to be thought of as the underlying common carrier services? Is only the option of protocol-converted end-to-end transmission (asynchronous-to-X.25) to be treated as "enhanced"? Or, is the protocol conversion function (asynchronous-to-X.25) alone to be treated as "enhanced."

12. Various circumstances have raised these questions. For example, those entities that have historically formed enhanced services solely using others' transmission facilities have treated the entirety of their offerings as unregulated, including those options that do not invoke the "enhanced services" definition and those that do. Conversely, when AT&T sought to offer X.25/X.25 packet-switched service on a regulated basis, since no element of the proposed offering invoked the "enhanced services" definition we saw no impediment to its doing so.[14] And, in our recent order waiving the structural separation limitations governing provision of asynchronous/X.25 protocol conversion by certain petitioning Bell Operating companies, we concluded that while an entity not subject to structural separation ordinarily has the option of treating such "non-enhanced" and "enhanced" services alike as unregulated, this option would be denied these Bell Operating companies that would place protocol conversion capabilities within their central offices.[15]

13. The foregoing considerations, and others discussed herein, require that we re-examine the definitions. At minimum, those that do not involve manipulation or retrieval of subscribers' message information require new treatment. A change in a code, for example, is not a change in information. If the originator seeks to send forward the letter "A", and the letter "A" ultimately arrives at the destination, the information that the users intend to communicate is the same at both ends, even if the letter "A" is coded in one binary bit pattern at the soure end and another at the destination end. All that has changed in such a transmission are the details of the signal representing the character.

14. Similarly, if the letter "A" may be sent and accepted at any time at the origination end (asynchronously) but only received at a given time or with a special non-informational (overhead) pattern to facilitate synchronization at the destination end (synchronously), the information is unchanged. Different procedures at each end for determining and informing the terminals when transmission is to ensue do not change this. All that has changed in such a transmission is a primitive "protocol." The ability of a communications network to facilitate such transmission of the letter "A" by changing its coding or time of transmission (a code or protocol conversion) facilitates communication of the letter "A". It does not create, alter, or delete the content of the subscriber's communications information, and it does not involve subscriber interaction with stored information.

15. Both of these forms of processing, while not informational, can improve the efficiency of communicating information. In the absence of these forms of processing, the efficiency of communicating the electrical signals that they do alter is impaired. The current Computer II structural separation reaches this result. In this proceeding, we shall examine several alternative means that might be employed to minimize such inefficiency.

16. However, it may develop that proposals directed primarily to improving the treatment of functions in the first major clause of the enhanced service definition may be appropriately applied also to those in the remaining clauses, those that reflect true information processing. Or, it may prove inappropriate or unworkable to seek to

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[9] In North American Telephone Association,—— FCC2d ——,FCC 85–248 (released May 29, 1985), we addressed one group of such claims.

[10] *See, e.g.*, Am. Tel. and Tel Co. (Advanced 800 Service), —— FCC2d ——, FCC 84–562, released Nov. 30, 1984, at para. 5 and n. 10.

[11] While the Final Decision in Computer II established principles for treating these "adjuncts" to basic service, North American Telephone Ass'n, n. 9, *supra.*, at paras. 23–28, these principles are not reflected in the current rules, creating some degree of uncertainty.

[12] *See*, Zimmerman, "OIS Reference Model—the OSI Model of Architecture for Open Systems Interconnection," IEEE Trans'ns on Comm'ns, Vol. COM–28 No. 4, 425–32 (April, 1980) (cited in the Protocols Decision, 95 FCC2d at 597).

[13] *E.g.*, AT&T (BPSS), 91 FCC2d 1 (1982), 94 FCC2d 48 (1983). *See also*, Protocols Decision, 95 FCC2d at 601, N. 5

[14] BPSS. *Id.*

[15] This condition is expressly subject to the outcome of this proceeding.

differentiate the treatment of first-clause services from second- and third-clause services. Thus, we do not limit our proposals solely to "processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information," the first-clause services.

17. In this regard, it might be noted that the Modification of Final Judgment ("MFJ") governing AT&T and the now-divested Bell Operating Companies, *United States* v. *Am. Tel. and Tel. Co.*, 552 F.Supp 131, 226 (D.D.C. 1982), *aff'd sub nom., Maryland* v. *United States*, 460 U.S. 1001 (1983), would appear variously to restrict, for the present, AT&T and the BOCs from providing at least some true information services. AT&T is restricted from engaging in "electronic publishing" over its own facilities for seven years, and the BOCs are restricted from providing "information services" unless and until the decree is changed, or its restrictions are waived. In view of these external restrictions, a revised Computer II treatment of the services in the second and third clauses of the enhanced service definition might not affect the ability of these carriers to offer such services. However, revision of our rules governing all carriers (including those not subject to structural separation), while not immediately effective for AT&T and the BOCs because of these MFJ constraints, might be desirable for other carriers. For example, our present treatment of information processing as a competitive, unregulated offering may make sense in regions of the country where competitive vendors of such services are available. It may make less sense in those rural areas where, as a practical matter, if a telephone company does not provide such services they may remain unavailable. And, if provision of such services will be a monopoly in such areas, it seems fair to ask whether they might appropriately be treated as part and parcel of basic service, subject to regulation. Thus, while a number of our proposals are focused on the first-clause services, we intend to consider whether they might also be applied to services in the remaining clauses.

18. Wholly apart from the foreign considerations, the industry itself in 1985 is not the same industry that existed in the late 1960's and the late 1970's when the first and second computer inquiries were being considered. The monolithic Bell System is no more. It has been split into eight companies that increasingly seek to compete with one another, subject to the constraints of the new MFJ that replaces the 1956 Consent Decree. Also, the largest Independent telephone company, GTE, is now subject to contraints in an antitrust Final Decree.[16] It was reported recently that the IBM Corporation will seek to increase its already sizeable participation in telecommunications by increasing its ownership of SBS (a satellite carrier) to 100 percent, by selling SBS to MCI (the largest non-traditional interexchange carrier) in exchange for stock in MCI, and by retaining the right to increase its investment in MCI thereafter. (These transfers are subject to Commission approval and antitrust review, therefore it is not necessarily a foregone conclusion that they will be consummated.) IBM already provides telecommunications equipment through its ownership of Rolm Corporation (a large provider of PBXs and related "telephone"-type equipment) and its own manufacturing operation ("data"-type equipment), and it already owns 60 percent of SBS. By any measure, IBM is capable of competing effectively with the most entrenched participants in telecommunications. The competitiveness of telecommunications has improved and will continue to do so, in no small measure as a consequence of these marketplace and antitrust developments, and our Computer II and other pro-competitive decisions.

19. These significant changes in the industry warrant a fresh look at the policies and rules adopted previously. We should no longer subject either AT&T or the BOCs to structural separation based on the criteria we previously utilized. We tentatively find that the concerns that caused us to required structural separation of the provision of enhanced services by AT&T and the BOCs have lost their validity, to the point that the costs of requiring the Computer II subsidiary outweigh the public benefits. Also, AT&T lacks local "bottleneck" facilities, a basis for the Computer II imposition of structural separation on AT&T. And, we tentatively conclude that regulatory protections, short of structural separation, can adequately limit the BOCs, even if aggregated regionally, from using their exchange monopolies to obtain leverage in enhanced services. We encourage commentors herein to address these changes when formulating their views, and to indicate whether it would be appropriate to treat all carriers alike, or to differentiate our treatment of different groups or classes of carriers.

20. In this notice, we are instituting a comprehensive re-examination of the classification and treatment of provision of data processing and data communications services. We do not seek the result that any entity (except, perhaps, some or all dominant carriers) currently providing enhanced services on an unregulated basis be newly subject to state or federal regulation. We intend that their enhanced service offerings will continue to be in unregulated status. And we do not propose that carriers' fundamental obligation, unchanged by Computer II, to offer basic communications services generally, at reasonable terms and without unreasonable discrimination, be altered. What we do propose is that a more realistic line be drawn between those offerings that will continue to be treated under traditional regulatory approaches and those that are to be freed from them, without relying too heavily on artificial definitional approaches that technological advancement may make unworkable. This re-examination will include an examination of the structural separation conditions now governing AT&T and the BOCs. It will also include a re-examination of the bases upon which carriers not subject to structural separation will be permitted to offer services comparable to those now defined as "enhanced."

21. The most significant problems have arisen in the context of the relatively simple signal changes now included in the first principal clause of the enhanced service definition,[17] and perhaps the Custom Calling II-type of voice storage services. In Sections III–VI below, we make specific proposals to amend the Computer II rules to address these problems. However, we recognize that such proposals tend to follow the fundamental approach of Computer II. That is, they still would rely upon a definitional structure. The definition(s) would have varying effects on unregulated entities, entities subject to some regulatory constraints, and entities subject to more particularized regulatory

[16] *United States* v. *GTE*, 1983–2 Trade Cas. ¶50,833, *modified*, 603 F.Supp. 730 (D.D.C. 1984) (GTE's information services are required to be provided through structural separation.) Since the BOCs and GTE together serve about ninety percent of the telephone lines in the United States, it is clear that wholly apart from the treatment of true information services in our rules, the provision of such services by these firms is limited externally. We believe strongly that the MFJ and GTE Final Decree provisions are not an impediment to the provision of services now encompassed in the first major clause of the enhanced service definition.

[17] "[S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information," § 64.702(a) of our rules. We term these "protocols-type processing" in this notice.

constraints. Like the present Computer II policies, these proposals fail to address the reality that the previously monolithic telecommunications industry is rapidly moving towards an effectively competitive one, with participants diversifying into allied and unallied endeavors. Computer II addresses two end states: regulated communications, and unregulated provision of two communications-related offerings, CPE and enhanced services. It does not address other communications-related offerings that might be made.

22. In view of this, the centerpiece of this proceeding will be a broad reexamination of regulatory policies that have been developing over the past several years. Computer II has been one of them, but it is not the only one. In Section II of this notice, we invite comment on proposals to greatly reduce reliance upon the definitional approach that governs carriers under Computer II, and the structural separation approaches governing some carriers, and to substitute for them approaches that we tentatively view as better directed to the industry of the mid-1980's and beyond.

23. Finally, we shall seek comment on issues concerning a *limited* class of equipment that has been treated as customer-premises equipment, namely, the current requirement that network channel terminating equipment ("NCTE") be provided on an unregulated basis by carriers, and that it be provided through structural separation by AT&T and the Bell Operating Companies. As is discussed in Section VI of this notice, adverse effects of our current treatment of NCTE may only now becoming apparent, and we seek comment on these. We do not propose, however, to revisit our determination that customer provision of such equipment must be permitted by carriers. We propose re-examination only of the Computer II determination that such equipment, when provided by carriers must be treated no differently than customer-premises equipment.

24. In sum, the purpose of this proceeding will be to establish revised standards and procedures for treating carriers' telecommunication, telecommunications-related and non-communications activities, and to reexamine the Computer II treatment of NCTE. In the past, we have created two largely independent groups of policies for doing so. The Computer I/Computer II policies sought to classify non-communications offerings definitionally. The Competitive Common Carrier ones sought to apply traditional regulatory approaches only to those offerings that raised concerns about the use of market power. In this proceeding we seek to harmonize these appraoches in a framework that will serve the multiple statutory goals of the Communications Act. We seek still greater benefits from the unregulated provision of competitive offerings, and the full exploitation of technological innovation and service improvement.

II. Regulatory Framework

A. Introduction

25. In the introduction to this notice, we summarized some of the problems that have arisen in the course of implementation of our Computer II policies and rules during the recent past. As noted, our waiver policies have served as a vehicle for avoiding the most significant inefficiencies of the current requirements, but the waiver process itself has created uncertainty and delay, the very adverse consequences of Computer I that Computer II was instituted to cure. The most significant problems have arisen in the context of what we are terming "protocols-type" processing. These are detailed in Section III below, and specific proposals for modification of the existing Computer II rules and policies to address the "protocols" issues are made there. That discussion applies here also. But, the specific proposals made there would not resolve more fundamental problems that arise from a structure that depends upon specific technological and service attributes, and not on underlying economic and policy concepts.[18] By way of introduction, we first explain in summary form the general approach proposed in this section, and broad Computer II problems that would be addressed by this approach. In the remainder of this section, we develop the concepts and issues in greater detail.

26. The current method of distinguishing between regulated and unregulated activities is to define broad service categories ("basic" and "enhanced"), and then determine the regulatory treatment of individual offerings according to how they fit the category definitions. The first proposed change would be to use market power as the distinguishing characteristic for treatment of some or all products, and to use regulatory tools to prevent the abuse of market power in monopoly products, and to prevent the leveraging of legitimate market power in monopoly products into a position of market power in potentially competitive products. The second major change would be to rely on accounting controls to identify the costs of separate categories of products rather than separate subsidiaries.

27. Computer I and Computer II both sought to draw a line between the unregulated data processing industry and the regulated communications industry. The problems detailed in Section I of this notice and below indicate that the definitional demarcation used in those inquiries is becoming increasingly inconsistent with the technology of communications. There is now no fundamental difference between the technology of communications and that of data processing. Technology used in what is generally thought of as data processing often is used to transfer information among terminals and other peripheral devices in a manner analogous to the transfer of information among telephones. The computers used in a digital telephone switch are not significantly different from the computers used in data processing, and both can and do implement the same processing functions. It is not the type of equipment used or specific functions that distinguishes data processing from communications, but rather, the differences in market power. The proposals below would change the basis of determining regulation from the function performed to the degree of market power in the product possessed by the dominant carrier providing it. They thus would integrate the issues which motivated the Computer II framework into our more general concern with market power, and allow a unified treatment of these issues with other issues in the Competitive Common Carrier proceeding.

28. The use of the Computer II separate subsidiaries to distinguish competitive from monopoly products provides strong protection against cross-subsidization and other potential abuses of monopoly power, but it also imposes costs by limiting the flexibility of carriers to devise new products, and by restricting legitimate gains from the economies of producing products together rather than separately ("economies of scope"). The use of separate subsidiaries also makes it difficult to modify the regulatory treatment of products as competitive conditions change. This proposal seeks to improve the economic efficiency of the industry while maintaining protection against abuse of market

[18] Our proposals in this section may ultimately complement the adoption of one or more of those made in the remaining sections of this notice, or supplant them. After the record is complete in this proceeding, we intend to adopt appropriate rules and policies, and we have specifically given notice of this.

power, by using accounting distinctions among classes of products rather than separate subsidiaries.

29. The proposed framework seeks to guard against the use of monopoly power in basic communications services to monopolize competitive services. This is a generic problem, and does not depend on the type of functional definitions that have been employed in Computer II. Consequently, no regulatory controls are proposed for services related to communications offered by non-common carriers or for services offered by non-dominant carriers. We do seek to draw a regulatory line with accounting separations between monopoly services of dominant common carriers and competitive offerings of these carriers. If a dominant common carrier offers an ancillary product that has cost characteristics that make it unlikely to receive effective competition, we propose to regulate that product directly together with basic communications services. If a dominant carrier offers a non-communications product, we propose that accounting controls be used to ensure that the non-communications product is not a burden to ratepayers of monopoly or near-monopoly services. If a dominant carrier offers an ancillary product that is subject to competition, but which does not depend on the bottleneck facilities of the carrier, we propose to treat that ancillary product the same as a non-communications product. Finally, if a dominant carrier offers an ancillary product that is subject to competition, and which depends on the bottleneck facilities of the carrier, we propose a set of accounting and tariff controls to ensure that the ancillary product is not a burden to ratepayers of the basic service, and that the carrier does not gain improper competitive advantage from its control of bottleneck facilities.

30. We now discuss several of the underlying problems that have been created by the Computer II definitional framework. Again, as noted previously, there are more specific problems that have arisen that are discussed in Sections III–VI of this notice, and these too would be addressed under the broad proposals of this section. To avoid repetition, that discussion is incorporated by reference.

31. First, in cases where enhanced and basic offerings are to be combined, it remains unclear *what* offerings are, or are not, still the subject of regulation. The existing definitional policies do not distinguish among those service vendors and offerings that, as a matter of broad policy, should be the subject of regulation and those that should not. Second, firms without market power, for example resellers of underlying capacity, remain subject to regulation (to varying degrees) if their offerings do not specifically invoke the definition of enhanced services; depending upon the treatment accorded under the previous issue, they may be wholly free of regulation if their offerings do invoke this definition. Yet, the economic concepts and policy bases are the same for all firms without market power, and do not depend on whether or not the offerings have features that invoke the Computer II definition. And third, even offerings that might have monopoly characteristics—and which might properly be subjected to a regulatory surrogate for competition—could be unregulated if they are within, or are treated as within, the present definition of "enhanced service."

32. An example of the first and third points above arose during the course of our consideration of the asynchronous/X.25 protocol conversion waiver requests of various Bell Operating Companies. There was precedent for the proposition that a combination of enhanced and basic services could be treated in its entirety as a unitary unregulated enhanced service (although there was also precedent that such a "contamination" approach need not be followed). The petitioners were seeking to integrate, in a relatively minimal sense for the present, protocol conversion capabilities with those used to provide those conventional telephone services that are unquestionably basic, *i.e.*, conventional switched exchange services and private line. Over time, such integration could be expected to become more comprehensive. Were we to have followed the "contamination" theory, at some point it might be argued that conventional exchange telephone service also will be unregulated because it is contaminated with the enhanced service of protocol conversion. This would be an improper policy result if exchange service remains, as it is now, a near monopoly otherwise warranting regulation. We declined, in that decision, to embark upon this path.[19]

33. The circumstances surrounding our grant of the X.25/X.75 waiver requests of these companies demonstrate the related point that some services presently defined as "enhanced" themselves may have monopoly characteristics, and as a matter of policy should not be treated as unregulated. The X.75 internetworking interface for interconnecting packet-switched networks was developed because the overall efficiency of packet-switched data transport through interconnected networks will decline dramatically unless it is employed to interconnect them. This interface *cannot* be generated externally to a packet-switched network without defeating the very purpose of utilizing it; it must be generated in the packet switches themselves to perform its intended function. Thus, creation of this interface is a "monopoly" for each network involved. No vendor, other than the one operating a given network, can generate the interface outside the network if it is to perform its function. If the network itself is otherwise providing a regulated basic service, it makes little sense to treat this interface as unregulated (or non-communications), yet under the present *Computer II* policies it would be so treated since the protocol conversion involved, X.25/X.75 conversion, is defined as an enhanced service.

34. In Sections III–V below, we make proposals that address the specific problems in these sections. Several of these proposals are phrased in the alternative, and we conclude tentatively that individually or in combination they would ameliorate the most pressing problems of *Computer II.* However, in this section we describe a broader change of course. We do so because increasingly it appears that a regulatory policy that turns on service definitions and service attributes—the basic/enhanced and network/CPE dichotomies established in Computer II—is fundamentally flawed. The important policy question is whether a given offering does or does not have monopoly characteristics, not what its service attributes are. If the offering has such characteristics, regulation may be appropriate. If it does not, regulation should permit competition to flourish. This approach does not turn on the nature or definition of an offering; it turns on its economic characteristics.

35. At the same time, *Computer II* both articulated goals governing all carriers, and employed the structural separation technique to achieve these goals in the case of AT&T and the Bell Operating Companies. Their then-dominance of the competitive CPE market, and their potential dominance of the enhanced service one (through a potential leveraging of market power in communications in these markets) made more stringent regulation of these firms necessary. While these goals remain valid, structural separation is not the only means that can be employed to achieve them. Indeed, no such devices

[19] Petitions for Waiver, *supra*, paras. 77–79. The treatment accorded therein was specifically made subject to the outcome of this proceeding.

have been employed for carriers other than AT&T and the BOCs, and problems do not appear to have arisen.

36. Thus, we believe it desirable to reopen the issue of regulatory tools, if any, that may be needed at this time to govern AT&T, the BOCs and perhaps other dominant carriers. We do so particularly since the entities and the markets involved have changed significantly since 1980. AT&T and the BOCs individually and together are no longer the Bell System. As a consequence of the divestiture, The size, scope and incentives of these firms have changed.

37. With the increasing trend towards diversification by carriers,[20] our disparate treatment of competitive enterprises that are within the CPE or enhanced services treatment of *Computer II*, and those that are not, may create significant problems. Our regulatory concerns are more immediate in the context of the uregulated CPE and enhanced service offernings than others. CPE and enhanced services depend upon basic communications services, and a dominant carrier may leverage its market power over such communications services into the related markets, or deny its competitors the ability to compete effectively through control over the communications capabilities these competitors depend upon for access to their markets, but, no subscribers to regulated service should bear the costs of competitive ventures. This baseline regulatory concern does not depend upon whether such ventures are, or are not, related (as CPE and enchanced services are) to the offerings addressed under the Act.

38. For these and other reasons discussed below, we are inviting comment on the broader change of course outlined in this section of the notice. Proposals in the remaining sections of this notice address, in a focused manner, some of the most pressing problems of Computer II, and comment thereon may aid in establishing a practical anchor for commenting on the concepts of the broader framework to be addressed in this section.[21] Thus, we strongly encourage those who file comments to address the relationships of both groups of proposals.

B. Issues

39. In the following sub-sections, we describe communications and non-communications undertakings, and our proposals.

1. Types of Offerings

40. We start by observing that our *Computer II, Competitive Common Carrier*, tariff and accounting policies have addressed three categories of offerings that are relevant to the regulatory plan of the Communications Act. We are not proposing to change these categories, only the treatment of offerings within these categories.[22] We first set forth these categories and briefly describe the treatment presently accorded:

a. *Basic Communications.* These are offerings that are unquestionably basic communications under the present *schema*, i.e., transport of information and electrical signals from one subscriber to another unchanged (or as that category might be modified in accordance with the proposals in Sections III–VI below).[23]

b. *Ancillary to Communications.* These are offerings that are cognizable under the Act, but which are not directly regulated under Title II thereof.[24] Examples include the supply of customer premises equipment[25] and the offering of enhanced services as presently defined. The category itself is broader, but our Computer II decisions have addressed only customer premises equipment and enhanced service offerings.[26]

c. *Non-Communications.* Apart from the above, there are offerings that do not involve communications, but which if made by an entity otherwise regulated under the Act might have some effect on that entity's ability to discharge statutory obligations governing its regulated offerings.

2. Present Treatment

41. Basic communications offerings in the first category above are subject to Title II of the Act. Prior to the development of telecommunications competition, the various tariff and certification (Section 214) provisions of the Act that subject offerings to routine regulatory review were applied to all carriers, and generally to all their service offerings. Significant distinctions were not drawn among carriers that were and were not subject to competitive pressures that could make such routine regulatory review unnecessary.[27]

42. Over the past several years, we have refined this treatment in our Competitive Common Carrier proceedings.[28] While non-dominant

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[20] AT&T has has been freed of the diversification constraints of the 1956 Consent Decree, and is increasingly entering new unregulated businesses. The BOCs are being permitted to do so under the district court's policies permitting line-of-business waivers (subject to an overall capitalization constraint of ten percent). Other dominant carriers have long been diversified.

[21] For Example, we invite comment below on accounting approaches to cost separation issues. An issue in Section IV below is whether others' equipment should have, or be required to have, the ability to achieve interconnection efficiencies comparable to those achieveable by carriers that integrate capabilities in their central offices. If others were able to receive interconnection to loops and inter-office circuits comparably-efficient to that of the carriers, this could serve as a competitive constraint on unwarranted apportionment of the costs by the carriers, potentially making detailed regulation of cost separation less important than otherwise. The availability of comparably efficient interconnection would bear directly upon the nature and degree of regulatory constraints to govern ancillary-to-communications offerings of dominant carriers.

[22] However, the classification of particular offerings as communications or ancillary-to-communications ones might change if certain proposals in Sections III–VI of this notice were adopted together with the broader ones of this section. We specifically are holding open the possibility of combining some or all of the focused proposals with the broader ones here.

[23] *See*, Final Decision, 77 FCC2d at 420; Satellite Business Systems, 62 FCC2d 997, 1052 (1977), *aff'd sub nom.*, United States v. FCC, 652 F.2d 72 (D.C. Cir. 1979) (en banc) (discussion of transparency); Communications Protocols, 95 FCC2d 584, 585 (1983).

[24] *E.g.*, Final Decision, *id.*, 77 FCC2d at 432–35 and 450–57. In the Final Decision, we pre-empted all state regulation of enhanced services and customer premises equipment (other then certain transitional regulation of pre-existing customer premises equipment and enhanced services by entities then regulated), and resolved not to regulate such offerings federally under Title II of the Act. Since we have not otherwise employed our Title I ancillary jurisdiction over enhanced services and customer premises equipment, these offerings are currently unregulated at the state and federal level.

[25] We use customer premises equipment only as an example of this concept. Other than NCTE equipment addressed in section VI of this notice, customer-premises equipment is not at issue in this proceedings.

[26] An example of another "ancillary" offering that has variously been regulated is messenger delivery of a traditional telegram. Delivery of the telegram was not itself communication by wire or radio. It was encompassed under the Act under the broad definitions in sections 3(a) and 3(b) addressing "the receipt, forwarding, and delivery of communications" incidental to transmission by wire or radio. Although these provisions brought such delivery under the ambit of the Act if performed by an entity that already was subject to the Act, they did not establish jurisdiction over entities engaged solely in messenger delivery business.

[27] Our accounting rules, however, long distinguished among classes of carriers. For examples, refer to the following sections of the FCC's rules: Part 31 (accounting for large telephone companies), Part 33 (accounting for smaller telephone companies), Part 34 (accounting for radiotelegraph carriers), and Part 35 (accounting for wire-telegraph and ocean-cable carriers). Similarly, our periodic reporting requirements long distinguished among classes of carriers, see Part 43 of the rules.

[28] Notice of Inquiry and Proposed Rulemaking in Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor, 77 FCC2d 308 (1979), First Report and Order 85 FCC2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC2d 445 (1981), Second Report and Order, 91 FCC2d 59 (1982).

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carriers remain subject to the substantive common carrier duties of the Act and its complaint processes, we have resolved to regulate their offerings upon complaint, and not routinely. And, we have made clear that a very strong *prima facie* showing must be made before we will actively regulate a non-dominant entity. In contrast, dominant carriers and their offerings remain subject to the full panolpy of regulatory procedures of Title II of the Act.

43. Enhanced service offerings in the second category above are unregulated at the state and federal level.[29] Most such offerings are made by non-carriers who, as subscribers, obtain underlying transmission capacity from carriers under their tariffs, combine it with the functional enhancements included in the enhanced service definition, and offer the combination to others on an unregulated basis. This is essentially a "resale structure."

44. Three types of "resale" exist. First, carriers subject to structural separation (i.e., AT&T and the Bell Operating Companies) may engage in this type of "resale" through a separate corporate entity that itself is a non-carrier, and that obtains underlying transmission capacity (basic service) under tariff no differently than an unaffiliated subscriber. Second, other carriers may do so themselves, without such a separate corporate entity, provided that they too obtain underlying service under tariff,[30] and that they ensure that the costs of providing their enhanced service(s) do not enter regulatory accounts, so that the costs of providing these services are not improperly borne by subscribers to basic service.[31] And third, carriers may offer enhanced services through a separate corporate entity that is a non-carrier, although not required under our rules to do so.[32]

45. Enhanced service offerings that are made by a carrier's separate affiliate (whether the affiliate is employed by choice, or is required) are unregulated in their entirety. What remains subject to regulation is the underlying transmission offering of the carrier upon which the enhanced service is engrafted. Also, various safeguards have been employed to ensure that the underlying regulated service offering is not adversely affected by dealings between the affiliate and the organization providing basic service (e.g., the requirement that underlying service be received under tariff, the requirement that the costs of providing enhanced services not be sustained by subscribers to basic service, certain information disclosure requirements governing all carriers, and the structural separation and more focused information disclosure requirements that now govern AT&T and the Bell Operating Companies).

46. The regulation of enhanced service offerings made by a carrier that is not subject to structural separation, however, has been inconsistent. It is clear that an end-to-end enhanced service may not be tariffed, and that it is to be offered on an unregulated basis. By definition, however, an enhanced service involves the use of underlying basic service. We stated on reconsideration of the Final Decision that:

> This proceeding does not remove a carrier's obligation to provide basic services, nor does this proceeding alter existing policies and rules under which carriers are certificated, or transmission facilities are owned or constructed.
>
> 84 FCC 2d at 75, n. 19. Where the underlying service is basic, it was intended to be treated as basic under our non-Computer II general regulatory policies governing the regulation of communications offerings. However, we have permitted resellers who have engrafted a combination of end-to-end "basic" and end-to-end enhanced services on underlying facilities provided by others to treat the entirety of the resale offering as unregulated (the "contamination" approach adverted to earlier). In these cases, there may be two "basic" services involved, the underlying ones the resellers obtain from others and the "basic" sub-elements of their own services. On the other hand, in the context of the asynchronous/8.25 waivers, we denied this option to the petitioning BOCs. If there were functional integration of basic and enhanced services, which is permissible for carriers not subject to structural separation, it is not clear which approach would apply.[33] [34]

47. Offerings in the third category above, the non-communications one, are not themselves regulated. They are not within the subject matter jurisdiction conferred by the Communications Act. If an entity other than a communications common carrier engages in them, we have no jurisdiction to address such activity. If a common carrier otherwise subject to our jurisdiction engages in them, we still do not regulate such activity, but we may have an interest in how the regulated enterprise is affected by such activity [35] to the extent that we have a regulatory interest in the communications offerings of the entity.[36]

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recon. denied, 93 FCC2d 54 (1983); Further Notice of Proposed Rulemaking, 47 FR 17308 (1982), Third Report and Order, 48 FR 46791 (1983), Fourth Report and Order, 95 FCC2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, 49 FR 11566 (1984), Fifth Report and Order, 98 FCC2d 1191 (1984). The Sixth Report and Order in that proceeding, 57 P & F Rad.Reg.2d 1391 1985), which is not germane to this proceeding, was reversed and remanded to the Commission *sub nom.*, MCI Telecomm'ns Corp. v. FCC, — F.2d —, No. 85-1030 (D.C. Cir. July 9, 1985).

[29] *See*, Computer II Further Reconsideration Order, 86 FCC2d, 512, 541–42 and at n. 34 (1981), *aff'd sub nom., C.C.I.A., v. FCC supra*. n. 4, 693 F.2d at 205.

[30] We so required in the Final Decision in Computer II and upon reconsideration thereof. However, as is discussed in Section III.C below, there may be conceptual problems in actually applying this requirement.

[31] *See, e.g.*, C.C.I.A. v. FCC, *supra*. n. 4, 693 F.2d at 205; *see also*, Report and Order, 95 FCC2d 1117, 1126, ("We also recognized that, for some carriers [those not subject to structural separation], another way to protect ratepayers from overpricing was to require that competitive costs and revenues be placed in separate books of account from those associated with regulated services.")

[32] They may choose to do so for business reasons; state regulators may require them to do so; and, in the case of GTE, an antitrust decree has required structural separation of its enhanced services from exchange telephone operations.

[33] Alternatively, it could be argued that since these carriers may provide enhanced services only as presently defined, a definition that states that such services are "offered over common carrier transmission facilities," and since they must obtain the use of such facilities by tariff, 77 FCC2d at 475 and 84 FCC2d at 75, n. 19, such integration is impermissible unless basic service continues to be offered by tariff.

[34] These disparate policies (i.e., a "contamination" one for entities lacking market power and a non-"contamination" one for dominant carriers such as AT&T and the BOCs) have made sense as a policy matter, but since we have not articulated a basis for treating the two groups differently some confusion may have been created. Deregulation of entities that do not have underlying facilities and that obtain transmission capacity from others pursuant to their tariffs is sensible; no policy goal is served by regulating any aspect of these entities' offerings. Conversely, the offerings of dominant carriers are often monopoly or near-monopoly ones. Such offerings are needed and used by competitors and can be manipulated anticompetitively. Ensuring that such offerings continue to be made subject to the common carrier duties of reasonableness and avoidance of unreasonable discrimination serves important policy goals. We propose below to develop policies that apply such a dominant/non-dominant entity split.

[35] For example, we have an interest, in the case of dominant carriers, in ensuring that subscribers do not sustain the costs of a non-communications enterprise and thereby pay unjust or unreasonable rates for basic service. This interest has long been reflected in accounting procedures that seek to ensure that non-communications investments and expenses are accounted for "below the line", i.e., in accounts that are not utilized in the development of rates. Alternative structural approaches for addressing this problem were employed in Computer I and Computer II, but they were focused on the services within the second category above (those cognizable under the Act) and not generalized to other unregulated undertakings of carriers.

[36] Under our Competitive Common Carrier decisions, we have foreborne from actively regulating many non-dominant carriers. As a practical matters, therefore, if there is no rationale

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48. In the next sub-section, we propose to alter the treatment services in these three categories by dispensing with artificial structural separation constraints (for those new subject thereto), and by integrating our approaches to firms and markets that are partially competitive and partially not. Regulation was never intended to impede the development of competition. Rather, it is a surrogate for effective competition. Where effective competition is present, or where participants in a market actually act competitively because of the threat of entry, the regulatory surrogate for competition is unnecessary and often can be counter-productive. We first address our proposed treatment of each of the three service categories that we identified above, and then frame specific issues upon which we seek comment.

3. Proposed Regulatory Framework

49. *Basic Communications Services.* The first category above is that of traditional communications service. We propose no alteration of our current policies governing such services. They are offered subject to Title II of the Communications Act, and under developed policy our actual regulation thereof depends upon whether the carrier involved is dominant or non-dominant. If the vendor is non-dominant, we have foreborne from applying many of the routine regulatory requirements of the Act. If the vendor is dominant, we have sought to improve the application of traditional regulatory requirements to reflect the degree of competitive pressure that a given vendor and service is subject to.

50. *Service Ancillary to Communications.* We propose changes in the treatment of enhanced service offerings. We are seeking a result that properly acknowledges competitive pressures and the public interest goals of the statute. Although we are seeking comment elsewhere in this notice on whether the current definition of "enhanced services" should be changed, our discussion does not depend on the exact language of the rule. For purposes of this discussion it can be assumed that the existing definition remains largely unchanged, but that the language "Enhanced Services are not regulated under Title II of the Act" will be modified in accordance with the proposals that follow.

for actively regulating these entities' communications offerings, there is no logical reason to consider the impact on these offerings of other non-communications activities of such entities.

51. First, although we propose to subject non-competitive offerings of this nature directly to regulation, we propose that no entity be classified as a "carrier" solely because it is providing an ancillary service. It will be a "carrier" only if it provides *other* offerings that are basic communications. We have ancillary jurisdiction over such offerings only if there is a jurisdictional service to which such an offering is "ancillary." Thus, if a non-carrier provides an ancillary service, it will remain unregulated.[37]

52. Second, even if a service in this category is to be provided by a carrier, we would propose, as an exercise of the discretion exercised in Computer II,[38] and confirmed in the course of appellate review of our Computer II decisions,[39] not to subject it to regulation if the carrier is non-dominant.

53. And third, we propose that an ancillary offering by a dominant carrier be examined to determine whether the offering has economic characteristics that tend towards competition (i.e., limited economies of scale and/or scope) so that there can be expected to be multiple vendors of the service). If the answer to this question is "no," we would propose to regulate the offering directly under Title II if it is to be provided by a dominant common carrier (see the previous two paragraphs).[40]

54. Conversely, if the answer to this question is "yes", the treatment of the offering should depend upon whether the carrier has control over the "bottlenecks" needed by its competitors to compete. If it does not, regulation of its offering of enhanced services should be no different than regulation of its non-communications services, i.e., not to regulate the provision of enhanced services themselves, but only to protect subscribers to monopoly or near-monopoly services from adverse effects such as cost-shifting. This is discussed in connection with the "non-communications" services, below. If the dominant carrier has control over such "bottlenecks", protection may be required for three forms of potentially anticompetitive conduct, and we seek comment on the possible extent of such problems and on measures that may be effective in dealing with them:

a. There is the potential that bottleneck facilities and services may be made available in a preferred fashion by the dominant carrier for its own ancillary service offerings.[41] This could take the form of delays and other impediments to access, or could take the form of preferential pricing. We seek specific comment on the following issues:

(i) How should we determine when a facility constitutes a bottleneck and distinguish bottleneck facilities from cases where there are similar, but not necessarily identical, alternatives available in a given geographic area? What alternative means of communication should be considered in determining whether a facility is a bottleneck in this context?

(ii) What existing general and/or line of business accounting procedures can ensure that the terms on which apparent bottleneck facilities are offered are the same to all users?

(iii) Would a formula approach comparable to that contained in the Iowa State Commerce Commission's *Joint Plan for Deregulation,* Docket RPU–84–8, April 1, 1985, be useful in this and similar situations?[42]

b. There is also the potential that a dominant carrier could plan for the provision of ancillary services well in advance of others because of advance knowledge of improvements and modifications to the basic communications facilities and services.[43]

[37] We seek comment, however, on any difficulty that may be encountered in determining whether or not a firm is a "carrier" in this context.

[38] *E.g.,* 77 FCC2d 433, n. 44. Under our present Computer II rules and policies, we have exercised this discretion to conform to the general policy that enhanced services are not regulated under Title II of the Act. Yet, we have consistently viewed the alternative, of actually regulating an enhanced service offering by a common carrier, as permissible to achieve the public interest goals of the Act. *See, e.g.,* Reconsideration Order, 84 FCC2d at 92–96. We are proposing below to subject some non-competitive enhanced services to regulation; the purpose of this paragraph is to declare, before describing these, that only offerings by dominant carriers may be eligible for such treatment, and not those of non-dominant carriers.

[39] C.C.I.A. v. FCC, *supra.* n. 4, 693 F.2d at 210.

[40] Under our present Computer II policies, even if the answer were "no," absent waiver the offering would still be unregulated; the change we are proposing here would be to subject the offering to a regulatory surrogate for competition if there will be no competition.

[41] In the asynchronous/X.25 waiver petitions, for example, a number of the petitioners had proposed to take inter-office channels at net book prices that were significantly lower than the tariffed rates their competitors must pay. We precluded this extreme preference by specific condition. However, less extreme cases could occur. For example, service installation intervals could differ, as could circuit quality.

[42] A copy of this document has been associated with the docket file of this proceeding.

[43] We have addressed this through a requirement that such planning be disclosed publicly. Computer and Business Equipment Manufacturers Association, 93 FCC 2d 1226 (1983). It has also been an important component of the antitrust decrees governing the Bell Operating Companies and GTE. *See,* United States v. Am. Tel. and Tel. Co., 552 F. Supp. 131, 227 (Sections II.B.1–4 of the Modification of Final Judgment) and United States v. GTE Corp., 1983–2 Trade Cas. ¶65,833 at 56,812–13 (Sections

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c. There is the possibility that a dominant carrier could use its unique knowledge of the nature of its monopoly (or near-monopoly) customers' communications needs to enhance its ability to market competitive services to them.[44] (Comment is invited on issues b. and c. below.)

55. Our Computer II rules and policies have addressed each of these concerns. A carrier not subject to structural separation may not enter the costs of its enhanced services in regulatory accounts and is required to offer underlying basic services by tariff.[45] Our structural separation procedures have combined these general requirements with specific obligations not to discriminate in the provision of "bottleneck" services, requirements that certain costs be sustained separately, and restrictions on the flow of planning and customer information.

56. *Non-communications offerings.* The final category is the clearly unregulated one. These offerings are not communications, and are not within the subject matter jurisdiction of the Act. We do not regulate them, and do not propose to do so here.

57. Nonetheless, the Communications Act expresses a public interest in the availability of service and in the reasonableness of rates. Both of these interests could be adversely affected by non-communications enterprises of a common carrier. For example, a carrier might deplete all of its available capital pursuing non-communications ventures, and adversely affect its ability to raise capital for continued growth of the regulated service. Communications service could be adversely affected, or its price could rise unnecessarily. Or, costs associated with the non-communications ventures might be improperly borne by subscribers to regulated services (so-called "cost shifting").

58. Computer II required that transfers of capital to the separate affiliates of AT&T and the Bell Operating Companies be approved in advance. This technique was limited solely to these firms and it addressed transfer of capital solely to enhanced service and customer premises equipment ventures. AT&T and the Bell Operating Companies are pursuing a variety of non-communications ventures currently, and if approval of capitalization has validity for some unregarded ventures, it seemingly has validity for others.

59. We have no desire to embark upon a new frontier of regulation of the investments of common carriers in non-communications enterprises. Yet, at some point this type of concern could become important.[46]

60. The alternative concern, that of potential cost-shifting, is more immediately relevant to the regulatory plan of the Act. Carrier's rates are required to be just and reasonable. We have long interpreted this requirement as synonomous with their covering the relevant costs of providing communications service, and not other costs. It is in the cost area that some of the most difficult problems addressed in the first and second Computer Inquiries arose. While these concerns were narrowly addressed in the context of the unregulated "data processing" (Computer I) and "enhanced services" and "customer premises equipment" (Computer II) offerings of these inquiries, they are more general, and arise whenever a carrier engages in non-communications enterprise.

61. In the first Computer Inquiry, we imposed a requirement that unregulated "data processing" services by carriers be offered through a separate subsidiary dealing "at arm's length" with the parent/carrier.[47] This was a *device* that was intended to achieve the goal of ensuring that the costs of such activities would not enter revenue requirements underlying such carriers' rates for communications services. In the Second Computer Inquiry we maintained the *goal* that such costs not enter regulatory revenue requirements (for all carriers), and adopted structural devices for ensuring this only for AT&T and the Bell Operating Companies. These latter carriers are required to perform many functions in their competitive affiliates separately, with no commingling of costs of such functions with regulatory costs.

62. The most difficult cost issues have surrounded the treatment of joint and common costs (i.e., costs that can be incurred to support both a communications and non-communications service or product).[48] Structural separation responds to these issues by limiting the opportunities for incurring such costs. If personnel and equipment are required to be separate for communications and unregulated offerings, as they were both computer inquiries, these costs are incurred separately, not jointly or in common. While this has been a relatively "clean" regulatory result, it has not been an efficient one. The sum of separately incurred costs of this nature often (if not usually) is higher than the total cost that would result if they were incurred jointly or in common. The public pays the difference, a difference that might not be there absent structural separation.

63. We recognize that cost-shifting is possible. It is more of a concern in the case of the ancillary-to-communications services, that are intimately related to communications offerings, than true non-communications offerings where a strong commonality of plant and personnel may not be present.[49]

IV.A.3 and V.B.1–3), *entered*, 603 F. Supp. 730 (D.D.C. 1984).

[44] Non-carrier providers of ancillary services have argued, with validity, that a monopoly service provider knows a considerable amount about its customers because they must obtain service from it. Thus, a dominant telephone company can readily identify "hot prospects" for a competitive enhanced service (or customer premises equipment) from telephone billing records. Others cannot do so. Others normally cannot access such records and must identify, and sustain the costs of identifying, sales prospects themselves.

[45] *E.g.*, Final Decision, 77 FCC 2d at 475; Reconsideration Decision, 84 FCC 2d at 73–75 and at 75, n. 19.

[46] We invite comment below on whether a non-burdensome approach predicated upon some percentage of overall investment might be employed to trigger a reporting or approal requirement.

[47] This requirment was imposed on all common carriers other than AT&T and the Bell System. The latter were excluded since it was thought that the then-effective 1956 Consent Decree restricted AT&T and the Bell Operating Companies from providing "data processing" services.

[48] Examples of this might be personnel, who absent structural separation could perform tasks for both enterprises, equipment, and overhead associated with the foregoing. In our asynchronous/.25 waiver decision, we addressed apportionment of investment in packet assemblers and disassemblers that could be used both as switching devices (for basic X.25/X.25 service, and as protocol conversion devices (an enhanced service). By condition, we have required the petitioners to propose reasonable apportionment techniques that will be employed to achieve the goal of removing the relevant investment in the protocol conversion capabilities from revenue requirements for basic service, and we proposed two techniques that might be employed. Furthermore, we required that the regulated enterprise be reimbursed for the use of telephone company personnel to install and maintain the equipment.

[49] Moreover, this problem is not limited to provision of non-communications services by a communications common carrier. It arises whenever a carrier makes some offerings that are subject to effective competition and others that are not. Our Computer II policies have addressed it only in the context of provision of unregulated customer premises equipment and enhanced services. But, it also arises in the context of providing communications services themselves. Examples of this might include: provision of centrex services, which traditionally have been regulated no differently than monopoly or near-monopoly exchange services, but which are competitive with private branch exchanges (supplied competitively free of regulation); provision of mobile radio services by exchange carriers; and provision of competitive satellite communications services by a dominant interexchange carrier. In each of these examples, there is competition by other service providers with a communications offering by a dominant carrier, and the same cost-shifting opportunities and incentives that apply to the offerings addressed in Computer II would similarly apply. An important goal of this proceeding is to

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Nevertheless, we believe that the present approach should be reexamined broadly, in view of its obvious inefficiency. We propose generally that accounting approaches be substituted for structural separation ones, and in the next sub-section we solicit specific comment on how this might be achieved.[50]

4. Additional Issues

64. The preceding discussion has presented policies that have been evolving for some time. While we seek comment on certain changes we are proposing, we do not seek to reopen decisions already made. For example, our Competitive Common Carrier policies establishing forbearance for non-dominant providers of service are not at issue in this proceeding. Similarly, our existing Computer II waiver policies are not at issue herein; they will continue unabated during the pendency of this proceeding, and may well continue thereafter.

65. In a number of the following issues, we are seeking comment on the treatment to be accorded "dominant carriers" as that classification has evolved during the course of our Competitive Common Carrier proceedings. It may be unnecessary or undesirable to apply all of our proposals equally to all dominant carriers, a classification that now includes telephone companies ranging in size from the smallest Independent companies to the largest Bell and Independent companies and AT&T. Thus, we seek comment generally on whether distinctions should be drawn in the treatment of different carriers, or groups of carriers, that are within the dominant category.

66. We propose first to utilize our ancillary jurisdiction over the "ancillary to communications" services if such services are provided by a dominant carrier, and if such services are not subject to effective competition.[51] We would propose that offerings in this category be made on a regulated basis, pursuant to relevant regulatory policies then governing the offering carrier at the state and federal level. Since such offerings would be treated no differently than basic communications service, and since such offerings would not be competitive, no special conditions or constraints would apply to them. However, if competition later develops we would consider revising the treatment of the offering to conform to the treatment of competitive ones.

67. We invite comment on the following issues related to implementation of such an approach.

a. How is "competitive" to be defined in this context, and how is any such definition to be applied? We believe it desirable to establish the criteria that will govern such determinations by general rule. We invite comment on the nature and wording of such a rule.

b. What requirements, if any, should be established to ensure that the treatment of such offerings as part of the regulated offerings does not inhibit entry and effective competition thereafter?

c. If an offering is initially classified as non-competitive and treated as proposed, at what point should its classification and treatment be changed? What criteria should be established for transition toward treatment of a non-competitive offering to a competitive one? What transitional safeguards, if any, should be established to promote such transaction?

68. Our second proposal is to alter the treatment of competitive "ancillary to communications" offerings and non-communications enterprises engaged in by dominant carriers. We have a strong interest in ensuring that subscribers to their monopoly and near-monopoly services not bear costs of competitive enterprises, or suffer other adverse effects from their engaging in them. We also are concerned that their competition in these fields is effective, vigorous and fair.[52] In Computer II, we addressed these concerns through the goals (governing all carriers) and structural devices (governing AT&T and the BOCs) previously identified. Although we do not see any need to revisit the goals, we solicit comment herein on whether they should be altered. More to the point of this section, we are reopening the matter of the devices to be employed.

69. The following issues are currently addressed, in the case of AT&T and the BOCs, by our structural separation requirements. While we are proposing to dispense with structural separation, the goals of Computer II need to be addressed alternatively. In this regard, we request comment on the following:

a. *Capitalization issues.* What, if any, periodic or special reporting requirements should be established to govern some or all investments by dominant carriers in: (1) Competitive "ancillary to communications" activities; and (2) non-communications activities. Should levels of capital transfer be established beyond which approval should be required, to ensure that a dominant carrier's service does not, or will not, suffer adverse effects? Should the foregoing be applied to all dominant carriers, or only to some? What distinctions, if any, should be established?

b. *Cost separation issues.* What cost-shifting problems, if any, have arisen under Computer II in the context of the many carriers tht are *not* subject to structural separation, and that have been subject only to the requirement that the costs of providing enhanced services and customer premises equipment not enter regulatory accounts? What procedures have these carriers employed to discharge this obligation? Should similar procedures be employed by those carriers now subject to structural separation, in lieu of structural separation? What alternative special reporting or other procedures should be employed by some or all dominant carriers to ensure that the investments, expenses and revenues associated with the provision of "ancillary to communications" and non-communications services do not enter regulatory accounts (and are not borne by subscribers to monopoly and near-monopoly services)?[53, 54]

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develop tools for addressing the competitive cost-shifting problems regardless of whether the activity involved is communications, ancillary-to-communications, or non-communications.

[50] Application of such accounting approaches to non-communications activities in addition to ancillary-to-communications ones should create no additional burden. The cost separation issue is generic, and approaches addressing the one should address the other too.

[51] Although many offerings by carriers that would fall in this classification were regulated under Title II of the Act prior to the adoption of our Computer II rules and decisions, we have generally not exercised this jurisdiction since then. Rather, we have normally required enhanced service offerings to be removed from tariffs, and in two instances where we waived structural separatioin we nevertheless required the activity to be taken "below the line" (i.e., outside of regulatory accounts and revenue requirements): (1) Time and weather announcement services; and (2) asynchronous/X.25 protocol conversion. Conversely, in one circumstance, X.25/ X.75 protocol conversion, we recognized the otherwise-enhanced protocol conversion as properly part of basic service, and conditioned grant of authority to perform such conversion on an unseparated basis on the effectiveness of exchange access tariffs offering this capability (on a regulated basis).

[52] To be sure, given the subject matter jurisdiction of the Act, our concern is more direct in the context of the "Ancillary to communications" offerings over which we have jurisdiction than non-communications enterprises, over which we do not have jurisdiction, and we have taken careful note of this distinction in formulating our proposals herein.

[53] In the Fifth Report and Order in CC Docket No. 81-893, 49 FR 46378 (Nov. 26, 1984), the Commission revised Part 31 of the FCC's rules to establish provisions to account for carriers' nonregulated activities in separate books of accounts. However, the establishment of procedures for allocating joint and common costs between regulated and nonregulated activities was deferred to a future

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c. *Technical information issues.* In our Computer and Business Equipment Manufacturers Association order, 93 FCC2d 1226 (1983), we noted that all telephone companies are obliged to give advance public notice of changes in telephone network interface specifications under § 68.110(b) of our rules, and we clarified the special disclosure obligations of carriers subject to structural separation.[55] Since much of the information involved would be transferred to the structurally separated affiliates, we generally require public disclosure when the information was disclosed to these affiliates.[56] However, we also addressed three cases of information flow where information was not specifically disclosed to the affiliate: (1) Use by unseparated research, development and manufacturing operations on behalf of a future competitive offering (to be made by the affiliate then);[57] (2) use in connection with research and development jointly sponsored by separated and unseparated operations; and (3) development by the carriers of a new service or capability at the request of the separated operations (just as carriers do at the request of other customers). We believe the approaches of that order to these non-structurally separated cases could be applied if structural separation were minimized or dispensed with, and we invite comment on this. Since such information would only be relevant to the provisions of competitive "ancillary to communications" services, and not to non-communications ones, we would limit this proposal to the former.

d. *Customer information issues.* Dominant carriers providing monopoly and near-monopoly exchange, and in some cases interexchange, services have a great amount of information about their subscribers in their possession.[58] If such carriers vend "ancillary to communications" services to these subscribers, access to such information would give them a significant advantage over others that might not have access to such information. Transfer of such information to the structurally separated affiliates required of AT&T and the BOCs has been restricted in Computer II. If structural separation were dispensed with, what safeguards, if any, should be imposed on some or all dominant carriers?

e. *Limited structural separation issues.* While we are proposing generally to dispense with the requirement that provision of "ancillary to communications" services by AT&T and the BOCs be through the structurally-separated affiliate now required, we believe that the development of competition for these services, if they rely upon "bottleneck" facilities controlled by one competitor, requires our oversight. We invite comment on this generally, and in particular request that the costs and benefits of such separation be identified and quantified to the extent possible. As is developed in Sections III–V of this notice, the major "costs" have resulted from the requirement that facilities be separated. Are subsets of the present structural separation, perhaps limited to marketing (which would avoid the customer information issues above), feasible and desirable? Should a separate affiliate be required (but without specific limitations on joint facilities, joint research or joint development): (1) To channel all transfers of capital into "ancillary to communications" and non-communications ventures; and/or (2) to take underlying communications service from the common carrier (see Section III.B.2 below)?

f. *Common carrier obligation issues.* We propose to limit to ancillary-to-communications services of dominant carriers the Computer II policy that underlying offerings remain regulated. As noted, we have accepted the deregulated treatment of combinations of enhanced and basic service if offered by a non-dominant entity, but we have not done so when the BOCs (dominant carriers) sought similar treatment if structural separation were waived for their provision of asynchronous/X.25 conversion.[59] We tentatively conclude that this dual treatment of non-carriers and non-dominant carriers, on the one hand, and dominant carriers, on the other, is proper and that it should be made more explicit.

g. *Conditions.* In our Asynchronous/X.25 waiver decision, we established non-structural conditions to ensure continued achievement of the goals of Computer II. In brief, we required that: (1) Costs of equipment used both for basic service and asynchronous/X.25 protocol conversion be rationally apportioned so that the latter costs do not enter regulatory revenue requirements; (2) the impact on the basic service of its connection (or integration) with the ancillary-to-communications protocol conversion service be reflected in the pricing of such connection; (3) underlying transmission capabilities be unbundled and used by the carriers and others without discrimination; (4) integration efficiencies (i.e., avoidance of loop costs) be permitted to be made available, if identified; and (5) end users must have access through their loops to enhanced services of others on a basis comparably efficient to that to be made available to the petitioners' enhanced services. We tentatively conclude that such conditions might appropriately be applied by rule to dominant carriers offering ancillary-to-communications

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proceeding. We expect, before the end of this year, to issue a notice of proposed rulemaking proposing detailed accounting rules for such allocation. In this proceeding, we shall accept comment on the overall objectives of such allocation, not the detailed accounting treatment thereof. Comments related to the more specific issues of the upcoming proceeding will be included in the record thereof.

[54] As stated earlier, we also seek comment on: (i) What existing general and/or line of business accounting procedures can be employed to address the cost separation issues? (ii) What changes in the framework or principles of the Uniform System of Accounts would be necesary in this context? (iii) Would a formula approach comparable to that contained in the Iowa Commerce Commission's *Joint Plan for Deregulation*, Docket RPU–84–8, April 1, 1985, be useful in this and similar situations?

[55] In brief summary, to ensure that a carrier does not use its internal knowledge of network changes to produce (or have produced) products for use with the changed network in advance of other producers that do not have such knowledge, we required that information of this nature be made available to all producers timely, once the nature of such changes is sufficiently certain that planning can proceed. (Our shorthand summary of this complex order is not intended to modify the decisions therein made.)

[56] Id. at 1239 (the "relatively simple" case). Thus, this disclosure requirement was predicated upon the existence of structural separation.

[57] Although the BOCs are restricted, under the MFJ, from engaging in manufacturing, they are permitted to vent customer premises equipment manufactured by others. The decree does not appear to restrict them from providing such a supplier with advance information about network changes, unless that supplier is AT&T or an affiliate of AT&T. The decree does not phrase a general non-discrimination obligation.

[58] For example, by knowing the number and nature of lines used by a subscriber, a vendor can "target" sales of special customer premises equipment and relatively exotic enhanced services. In general, subscribers overwhelmingly obtain such lines from their local telephone company (a dominant carrier), which has this information and can use it to promote such sales. Also, since subscribers generally will order needed lines from the telephone company when procuring equipment and enhanced services, the desire for "one stop shopping" may, as a practical matter, limit competitive supply to some extent. Subscribers often place such line orders when negotiating an order with another vendor. The opportunities for telephone companies to seek to affect such negotiations are evident and have been the subject of complaints to this Commission and in antitrust proceedings.

[59] There, we adhered to the views expressed in the Protocols Decision that underlying service must be unbundled and made available indiscriminately to all users and service vendors. The purposes of the unbundling requirement were to ensure that basic services continue to be available generally; to ensure that others may evolve their own enhanced services differently than the underlying carriers might choose to; and to promote effective competition between such dominant carriers and others that depend upon their services to form their offerings and reach their customers.

services (not limited solely to protocol conversion services).

h. *Enforcement issues.* Finally, we seek comment on what procedures, if any, should be employed to ensure that dominant carriers continue to discharge their obligations (including any limitations or conditions that might be the result of this proceeding). The structural separation approaches of Computer II did not change any incentives of carriers to favor their own competitive offerings at the expense of those of others; it merely made them somewhat more detectable since a "paper trail" would often be required to reflect the dealings between the carriers and their separated affiliates. However, "paper trails" do not require structural separation; they can be created alternatively, or the patterns they disclose can be reported or audited directly. We invite comment herein on what reporting or other measures should be adopted to ensure that dominant carriers continue to discharge their common carrier obligations when offering "ancillary to communications" services. In addressing these issues, we must appropriately balance ensuring that appropriate detection measures are established, with avoiding unwarranted or unnecessary burden, and we invite comment on how best to attain both goals.

III. Evolutionary Changes to the Computer II Definitional Treatment

70. In this and the following sections of the notice, we make specific proposals for change in the existing Computer II rules. We emphasize that while the proposals of Section II above, if adopted, may make some of these unnecessary, others may well complement the resolution of the preceding issues.

A. Proposed Refinement of When the Enhanced Service Definition Applies

71. Our first proposal is to clarify the existing definition of enhanced service to make clear that the signal processing, subscriber interaction with stored information, and information processing, addressed in the definition apply only to the content of a subscriber's message information, and not to action by or interaction with the network to set up calls, to route calls, to end calls, to provide the user with information about calls, or to exchange billing or service ordering information with the subscriber. In two previous decisions we have clarified that such was the intent of the Final Decision in Computer II. We propose to amend the rules to reflect this.

72. First, in the Protocols Decision, n. 6 *supra.*, we explained that so-called network processing functions, i.e., network actions that set up, route and end calls, are not within the enhanced service definition, 95 FCC2d at 590–91. These functions are inherent in switched service, and any protocol processing or conversion necessary for their implementation may be associated either with basic or enhanced service without affecting the classification of such service under the Computer II rules, *id.* at 596. And second, in our recently-adopted *North American Telephone Association* decision, ——— FCC 2d ———, FCC 85–248 (released May 29, 1985), we reemphasized the conclusion in the Final Decision in Computer II that we were not foreclosing telephone companies from providing to consumers optional services to facilitate their use of traditional telephone service, the services we described as "adjuncts" to basic services. *See, id.* at paras. 23–27 citing the Final Decision, 77 FCC2d at 421.

73. We accordingly propose to change the existing rule to reflect this, as follows:

> For the purpose of this subpart, the term 'enhanced service' shall refer to services, offered over common carrier transmission facilities used in interstate communications, *during any end-to-end communications,* which employ computer processing applications that * * *
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> [language proposed to be added *italicized*].

This change would make clear that the tests embodied in the three principal clauses of the definition apply only to end-to-end communications between or among subscribers, and not to communications between a subscriber and the network itself for call setup, call routing, call cessation, calling or called party identification, billing, and accounting. It would not change the *status quo.*[60] However, such a change would make clear that we will not entertain claims in the future that services of this nature are, or should be treated as, enhanced.

B. Treatment of "Protocols-Type Processing"

74. Our second group of proposals relates to the future treatment of what, for want of a better term, we shall call "protocols-type" processing. These are functions included in the first major clause of the enhanced services definition in § 64.702(a) of our rules:

> services offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information;

47 CFR 64.702(a). As was noted in our Protocols Decision, the unparticularized "act on" language could be applied to two potential groups of actions by a network: (1) Action by the network itself in response to the subscriber's transmission (*e.g.*, setting up a call by responding to dialing-type transmission); and (2) action by the network to alter a subscriber's transmission to another subscriber (*e.g.*, alteration of the format, content, code or protocol of the subscriber's transmission).[61]

1. Reasons for Proposing Changes

75. As we noted in our Protocols Decision *supra*, 95 FCC2d at 585, when we adopted the definition of enhanced service in the Final Decision in Computer II, we included not only the type of information processing that is generally thought of as processing of data, but also more primitive signal processing.

76. But, even when we did so, we recognized that the structural separation imposed on AT&T (and the Bell System companies that it then owned) could foreclose communications efficiency if code and protocol processing were inflexibly treated. For that reason, institution of the proceeding that became the *Communications Protocols* proceeding was promised in the Final Decision in Computer II, and it was begun shortly after the definition was adopted. *See, Final Decision* (Computer II), 77 FCC2d 384, 422 n. 37 (1980); *Notice of Inquiry* (Protocols Proceeding), 83 FCC2d 319 (1980) (instituting the proceeding). Thus, even when we adopted the present definition, we knew that it could have potentially undesirable effects, and we sought to establish a framework for their mitigation.

77. The record in the Protocols Proceeding confirmed our expectation that undesirable inefficiencies would result from an inflexible application of the Computer II rules, *see,* 95 FCC2d at

[60] We make this proposal independently of additional ones made in Section II above and in the sections that follow. To the extent that one or more these latter ones is ultimately adopted, we wish to make clear that we would propose to utilize the proposals of this section in conjunction therewith in formulating any final rules that might be the outcome of this proceeding.

[61] In Section III.A above, we have proposed to clarify in the rules that the intent of Computer II was not to reach the first of these, communications between the subscriber and the network.

587–90. The Protocols Decision established a framework for addressing such matters. First, it clarified that processing of protocols for call initiation, cessation and routing was implicit in the notion that switched services are basic, and not within the intent or scope of the definition of "enhanced services."[62] Second, it indicated that network-implemented changes in protocols, to introduce new technology so that users of existing services can communicate with new-technology implementations of the same services, would be "favorably" and "expeditiously" treated by waivers. Third, it indicated that intermediate internetworking interfaces to carriers' basic services will be treated specially, and it highlighted that such treatment might particularly be required for international services. And fourth, it concluded that all other proposals to associate the facilities for protocols processing with those for basic service by carriers subject to structual separation would be treated *ad hoc* by waiver.

78. We recognized that such *ad hoc* treatment itself could create uncertainties. Two groups of protocols conversion waiver requests were thereafter filed by carriers subject to structural separation under Computer II. First, requests were filed seeking authority to create the X.75 intermediate internetworking interface on packet switched networks otherwise using the X.25 protocol user interface. And second, requests were filed to perform asynchronous to X.25 (and X.75) protocol conversion in such networks. Both of these involved proposals to integrate with basic facilities protocol conversion capabilities.[63]

79. We placed both groups of requests on public notice, invited public comment thereon, and sought additional information from the petitioners. Thereafter, we decided these requests. These procedures were time consuming. During the months-long pendency of the petitions, carriers, users and others remained in a period of uncertainty.

80. Having compiled a focused record on these waiver requests, and in view of the broader record compiled during the course of the Protocols Inquiry and the underlying Computer I and Computer II proceedings themselves, it behooves us to eliminate the uncertainties of this *ad hoc* waiver process. We are now in a position to make specific proposals for evolution of the Computer II framework. While the result may not be quite the clear dichotomy we sought to establish in Computer II, it will be less uncertain than an *ad hoc* decisional process.

81. In the proposals below, we propose generally to reach the result that carriers subject to structural separation be permitted to co-locate with or integrate in their facilities for basic service the relatively primitive signal processing now included in the first major clause of the enhanced service definition ("protocols-type" processing). We tentatively conclude that this result will serve the public interest in significant ways.

83. First, based on the experience we have gained in the five years that have elapsed during which the present definitions and structure have been effective, we tentatively conclude that our present treatment of protocols-type processing alike with the true information processing of the second and third clauses of the definition may be incorrect in overall principle, and increasingly will lead to undesirable results. It is now clear to us that inflexible treatment of such signal processing has denied the public valuable and efficient *communications* capabilities. Unlike true information services, which have value when not combined with communications capabilities,[64] and which, if not included with communications capabilities do not adversely affect the efficiency of the communications capabilities themselves, these "protocols-type" signal processing functions do not have such stand-alone value. Their value is that they facilitate and improve the efficiency of communications itself. Thus, there is a strong nexus between such signal processing and communications, and this makes questionable our present treatment of these as non-communications, and our present limitation on the deployment by carriers subject to structural separation of these capabilities in their communications facilities.

84. Second, because of the delays associated with a waiver process the public has been denied valuable services while requests have been pending, and will continue to suffer such delay if future requests are filed. Furthermore, this is only the delay that is manifested. Preparation of requests before we see them takes time, and this is an additional period of delay. Even more problematical is the fact that whole industries are uncertain as to what requests may be filed, how long it will take for the agency to act on them, and what will be the ultimate resolution.

83. Third, related to the foregoing is the baseline mission of this agency to promote the availability, "so far as possible, to all the people of the United States a rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable charges . . . ." Section 1 of the Communications Act. It is clear that protocols-type processing promotes communications efficiency, and that at least in those cases addressed heretofore in the waiver process (X.75/X.25 protocol conversion and asynchronous/X.25 protocol conversion), that provision of such processing in structurally separated facilities is materially less efficient than doing so in facilities integrated with those for basic service. Based on the record of the Protocols Proceeding, there is a strong indication that this may generally be the case.

84. And fourth, these proposals will remove the artificial constraints on the efficient use of currently available (and deployable) technology that our Computer II rules have created.

85. For example, packet switched technology has been sought to be introduced in various carriers' networks. In our asychronous/X.25 waiver decision and *AT&T (BPSS)* decisions, *supra.*, we noted that such technology can be used to provide unquestionably basic services, those that conform to the

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[62] As noted, in Section III. A above we propose to amend the rules to reflect this.

[63] In the X.25/X.75 conversion case, conversion performed outside of a carrier's packet switching facilities would defeat the purpose of using the special X.75 internetworking interface, and therefore, as a practical matter, such conversion cannot be performed elsewhere. X.25/X.75 conversion was authorized and treated as part of basic service in Petitions for Waiver (X.75/X.25), ——— FCC2d ———, FCC 84–581 (released Nov. 28, 1984). In the asynchronous/X.25 conversion case, such conversion can be performed outside of a carrier's network facilities, but at increased costs to users. In Petitions for Waiver (asynchronous/X.25), ——— FCC2d ———, FCC 85–101 (released Mar. 28, 1985), we granted the requests of several petitioning BOCs to perform asynchronous/X.25 protocol conversion, upon compliance with certain conditions.

[64] Two examples demonstrate this. First, an automated information retrieval computer need not be accessed remotely over communications circuits. It can be located in a library, be used by patrons there, and still have value and utility without communications facilities. Second, an information processing computer that performs numerical or text processing need not be accessed over communications circuits. It too can be used locally, as the use of literally millions of personal computers—without telephone connections—demonstrates. Both of these services would be treated as enhanced if offered remotely over communications circuits. The first would involve "subscriber interaction with stored information" (the third major clause of the enhanced service definition) and the second would involve provision to the subscriber of "additional, different or restructured information" (the second major clause thereof).

X.25 protocols at each end of a packet switched transmission. Clearly, carriers may use packet switched technology for such an X.25/X.25 basic service offering without invoking any of the definitions or requirements of Computer II. But, such technology may also be used for other forms of basic services. The packet assemblers and disassemblers ("PADs") available today that implement packet switched networks inherently can perform protocol conversion. Such conversion is not limited to creation of end-to-end communications involving asynchronous/X.25 conversion, the subject of the waiver order. Although the origination-end PAD may convert an incoming transmission to a packet network's X.25 or other internal network protocol for transmission, the PAD at the destination-end may reconvert back to the same code, format or protocol employed at the origin. Such a transmission also would involve no end-to-end conversion of the subscriber terminals' codes, formats or protocols, and carriers may offer it without invoking the definitions or requirements of Computer II.

86. The net effect of this is that carriers are free to deploy all of the elements of a packet switched network as part of basic service, and are free to use them to support communications involving all current or future terminal codes, formats and protocols, through the use of the protocol conversion capabilities inherent in the PADs, provided that the technology inherent in these facilities is artificially constrained to prevent an end-to-end cross-protocol, cross-format, or cross-code communication from being supported. We cannot rationally continue to pursue a policy of this nature. Carriers' investments in such technology would be the same, regardless of whether cross-protocol, cross-format or cross-code communications are or are not supported. The public would simply not be able to enjoy the full benefits of the technology that carriers are free, under th present rules, to deploy. The public's interest is not served by such a result, even assuming that restrictions on the deployment and efficient use of such technology for cross-protocol, cross-form or cross-code services, currently defined as "enhanced", are otherwise justified (or even possible).

87. In view of the foregoing, we are proposing herein to dispense with the requirement in our rules that protocols-type processing be provided only in structurally separate facilities. Our proposals in this regard are phrased in the alternative, and represent somewhat different paths for achieving this result, with potentially varying effects on carriers and enhanced service providers. We will examine whether the present treatment of protocols-type processing should be changed, and if so, we will adopt one or more of the approaches outlined below, or a variant thereon (unless adoption of the proposals of Section II above makes such action unnecessary).

88. One possibility for doing so might be to delete some or all of the first major clause of the enhanced service definition.[65] Under this approach, such functions could then be provided as part of a carrier's basic service or as part of an enhanced service vendor's unregulated offerings without affecting the classification of either service.[66] However, numerous vendors of enhanced service that are currently (and appropriately) unregulated at the federal and state level,[67] could be needlessly exposed to reregulation if their offerings are today unregulated solely because they include functions in the first major clause. We could avoid this result if we were to seek to preempt and deregulate federally the "resale" inherent in their enhanced services as presently defined, to retain the *staus quo*. But, such action is unnecessary to achieve the results of this section in view of the three alternatives phrased below. For this reason, we shall not pursue such an approach.

2. Alternative #1: Leave the Current Definition of Enhanced Service Essentially Unchanged; Remove the Present Requirement That Certain Carriers Offer Enhanced Services Solely Through Structural Separation; Replace This With a Requirement That All Dominant Carriers Do So Solely on a Computer II "Resale" Basis

89. Our first approach would be to remove the requirement that those carriers now subject to structural separation offer enhanced service solely through a structurally separated affiliate, and to replace it with a requirement that dominant carriers (as defined in our Competitive Common Carrier decisions) offer such service on a resale basis.[68] Structural separation would not be required for such resale. Presently unregulated enhanced service vendors would be unaffected as the enhanced service definition would not be materially changed under this proposal.

90. This approach would place all dominant carriers in the same regulatory status if they provide enhanced services, and, as discussed below, would provide us an opportunity to clarify certain ambiguities in the present treatment of carriers not subject to structural separation. Since § 64.702(b) already states that common carriers may be prohibited from providing enhanced services to others "except as provided for in paragraph (c) of this section, or as otherwise authorized by the Commission" a rule amendment might be unnecessary. However, to minimize uncertainty, we would propose to amend the rules to make such an alternative clear. Since some carriers already have structurally separated affiliates, and may wish, for business reasons, to continue to offer enhanced services through such affiliates, we would propose to phrase our new approach an option for those carriers now subject to structural separation, and leave them the option of continuing to comply with the present rules.

91. Computer II utilizes a "resale" structure for carriers subject to structural separation.[69] Such separation is not implicit in the notion of resale, and can be dispensed with while maintaining a resale structure for the provision of enhanced services. In principle, this is the result of the present Computer II requirements governing carriers not subject to structural separation, which seem to require that these other carriers also take service on this basis when providing enhanced services.

92. Specifically, in the Final Decision in Computer II we said:

> . . . an essential thrust of this proceeding has been to provide a mechanism whereby non-discriminatory access can be had to basic transmission services by all enhanced service providers. Because enhanced services are dependent upon the common carrier offering of a basic service, a basic service is the building block upon which enhanced services are offered. Thus, *those carriers that own common carrier transmission facilities and*

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[65] Proposals of this nature were considered in the Protocols Inquiry.

[66] Similar treatment has been accorded switching functions under the present definition. Since switching is not included in the enhanced service definition, carriers have been free to associate switching with regulated services and enhanced service vendors have been free to associate switching with unregulated ones. The classification of these offerings has been indifferent to whether or not switching has been included.

[67] *See*, Further Reconsideration Order, 88 FCC2d at 541, n. 34; C.C.I.A. v. FCC, 693 F.2d at 205.

[68] As is developed below, such a resale-type structure was implicit in the Computer II rules when they were adopted, and the additional requirements for structural separation in § 64.702(b)–(d) were merely added to this underlying requirement. Thus, this alternative might be viewed as a reduction in the details of such structural separation, and not as a wholly new approach.

[69] *E.g.*, Final Decision, 77 FCC 2d at 466 and 474.

provide enhanced services, but are not subject to the separate subsidiary requirement, must acquire transmission capacity pursuant to the same prices, terms and conditions reflected in their tariffs when their own facilities are utilized. Other offerors of enhanced services would likewise be able to use such a carrier's facilities under the same terms and conditions.

77 FCC 2d at 475, emphasis added. On reconsideration, we reemphasized the same point as follows:

> Those carriers not subject to the separate subsidiary requirement, when employing their own common carrier transmission facilities in the provision of enhanced services, *must obtain transmission capacity pursuant to the terms and conditions embodied in their tariff.*

84 FCC 2d at 75, n. 19, emphasis added.

93. Those who would resell a common carrier service take service under tariff, a species of contract, and enter a normal subscriber/carrier contractual relationship with the carrier providing the underlying service. Where the carrier and the "reseller" are separate entities, such a contract clearly can be entered.[70] However, since a contract normally requires two contracting parties, it is unclear just how this requirement might operate in practice. It is less than fully clear, therefore, how a carrier might "take" service from itself if utilizing a resale structure, unless it were to do so through a legal entity with separate personality (the result of structural separation). The present Computer II structure ensures that such personality exists for those carriers subject to structural separation.[71]

94. We do not raise this matter for abstract reasons. As we discussed at length in the asynchronous/X.25 waiver order, unregulated enhanced service vendors depend largely upon the use of services obtained from facilities-based dominant carriers to form their networks and to provide services to the public. A dominant carrier can engage in a classic price squeeze in this environment by charging those that are dependent upon its "wholesale" offerings more than the costs included in its own "retail" ones. Also, if dominant carriers are free, as they would be under alternative #1, to include code, format and protocols processing in basic services, these services may be configured technically to frustrate the ability of others to perform such processing alternatively, or may not support to particular codes, formats and protocols that a given user or enhanced service vendor (under the present definition) might wish to employ.

95. In the Protocols Decision and in the asynchronous/X.25 waiver order, we addressed these concerns directly. We required that certain underlying basic channel offerings be unbundled, and made available for the use of the carrier and others on the same basis and at the same price. And, we required that protocols-type processing be an *option* that a given user might avoid using, and that underlying communications offerings unencumbered by such processing remain generally available, so that others could perform such processing differently than the carriers if they chose to do so. These were general principles adopted in the Protocols Decision, and they were applied specifically in the asynchronous/X.25 waiver order in the form of conditions on the waivers that were granted. Such a result would appear to flow directly from the requirement that carriers "take" underlying basic service under tariff, if any uncertainty that may relate to that requirement is removed.[72]

96. In the asynchronous/X.25 waiver order, we addressed the possibility that the petitioning BOCs might be authorized to vend asynchronous/X.25 services directly, rather than through their separate affiliates. We noted that their affiliates—separate entities which can contract with the carrier—might no longer be involved, raising directly the potential uncertainty we seek to address here. At para. 116 of that order, we required those carriers that might seek to vend these services directly to demonstrate how the unbundling conditions, which would otherwise be implemented automatically if the separate affiliate were still involved and receiving underlying service by tariff, would be complied with in the absence of the affiliate.

97. One approach that we suggested at para. 128 of that order was for each carrier's affiliate to be technically considered as vending the service to the public (and receiving underlying service from the carrier pursuant to its tariffs), but that it contract back with the telephone company for the provision of marketing services. This arrangement would preserve the legal posture of two contracting parties, and could be generalized. Each dominant carrier could form a separate affiliate for the sole purpose of receiving underlying service pursuant to tariff. This would admittedly be a legal fiction, as there would be *no* requirement that this affiliate be structurally separated. We believe any burden created would be insignificant, involving only the preparation of appropriate corporate papers and maintenance of the corporate form. This legal fiction seems undesirable however, and we welcome the submission of alternatives by commenting parties.

98. We bring these concepts together in the following proposed change to § 64.702(b) and a new paragraph (f):

> (b) Communications common carriers subject, in whole or in part, to the Communications Act may provide enhanced services and customer premises equipment; *provided,* however, that the Commission may prohibit any such common carrier from engaging directly or indirectly in furnishing:
>
> (i) Customer-premises equipment to others exept as provided for in paragraph (c) of this section, and
>
> (ii) Enhanced services to others except as provided for in paragraph (c) or alternatively paragraph (f) of this section, or as otherwise authorized by the Commission.
>
> * * * * *
>
> (f) A dominant communications common carrier, as defined by the Commission and prohibited by the Commission pursuant to paragraph (b) of this section from engaging in the provision of enhanced services, may provide enhanced services involving computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information directly or indirectly, if it resells services obtained under the tariffs of the dominant communications common carrier, without regard to the requirements of paragraph (c) of this section.

Under these proposed changes, dominant carriers wishing to avoid any requirements for structural separation that may otherwise govern them would be required to provide enhanced services by reselling underlying services "obtained under the tariffs." Since the enhanced service definition would not be changed, enhanced services would remain unregulated under this alternative.

99. Comment on the meaning and application of the requirement that underlying service be received under tariff if a dominant carrier offers enhanced service would aid in resolution of the "contamination" issue in Section II of this notice, and in resolving issues in alternative #3 below.

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[70] There are two parties to a contract between a carrier and an unaffiliated reseller or enhanced service vendor, or a contract between a carrier subject to structural separation and its affiliate with separate legal personality.

[71] While we are discussing this in connection with our alternative #1 proposal, we hereby give notice that we may amend or clarify our rules on this point regardless of whether this alternative is ultimately adopted.

[72] In the asynchronous/X.25 waiver order, we adopted additional conditions to ensure that costs of the unregulated services addressed therein would not enter regulatory accounts (which implemented that general regulatory requirement that the costs of unregulated activities not be borne by subscribers to basic communications services) and to ensure that interconnection with conventional exchange services would continue to be tariffed and without unreasonable discrimination.

Under our proposal in alternative #3, protocols-type processing by dominant carriers would be permitted to be included with and treated as part of basic service. Standing alone, however, alternative #3 would not address the unbundling and unencumbered service availability objectives addressed heretofore in the Protocols Decision and asynchronous protocol conversion waiver decision. In contrast, clarification of the requirement that underlying service be received under tariff could clarify *what* underlying unencumbered services are to be unbundled and offered generally by tariff, *i.e.*, those that do not involve the protocols-type functions.

100. Finally, even if a "dummy corporation" approach were to be employed to implement this proposal, at least some transactions between this corporation and the carrier could be reduced to contract, which would facilitate any needed apportionment of costs between the carriers' basic services and those offered through the resale approach of this alternative. We invite comment on this.

3. Alternative #2: Maintain the Definition Unchanged (Except as Noted in Section III.A Above) and Modify Solely the Structural Separation Requirements of Subsections (c) and (d)

101. A second alternative could be to make general the approach utilized in connection with our grant of the asynchronus/X.25 waivers, namely, to maintain unchanged the present definitions and state, by rule, the conditions under which structural separation need not apply to integration of protocols-type processing with facilities for basic service. This would avoid the chief disadvantages of the present waiver approach, uncertainty and delay. The requirements would be published in a generally applicable rule and known at the outset. Carriers could formulate their plans based on such requirements, and the Commission would not need to become involved, as it is now, with their planning for new services.

102. In the asynchronous/X.25 waiver proceedings, we considered a comprehensive record on the effects of the present Computer II limitations on integrating protocols-type processing with facilities for basic service, the effects on competition of permitting such integration, and the broad public interest. *See, Petitions for Waiver* (asynchronous/X.25), *supra*, para. 4, notes 3 and 4. We reached a result that would permit such integration and its economic efficiencies to be realized and passed along to the public in the form of lower transport charges. But we carefully conditioned the waivers to ensure that only true efficiencies are realized, and that pricing disparities between facilities used identically by the petitioners and their competitors are avoided. As one of the alternatives to be considered in this proceeding, we propose that the approach of the asynchronous/X.25 waiver order be generalized by rule.

103. Specifically, we propose that § 64.702 (c) and (d) be modified and a new paragraph (f) be added as follows:

(c) A communications common carrier prohibited by the Commission pursuant to paragraph (b) of this section from engaging in the furnishing of enhanced services or customer-premises equipment may • • •

(1) • • •

(2) Each such separate corporation shall operate independently in the furnishing of enhanced services and customer premises equipment. It shall maintain its own books of account, have separate officers, utilize separate operating, marketing, installation and maintenance personnel, and utilize separate computer facilities in the provision of enhanced services, *provided* that, it may alternatively furnish enhanced services in accordance with paragraph (f) of this section.

* * * * *

(d) A carrier subject to the proscription set forth in paragraph (c) of this section:

(1) Shall not engage in the sale or promotion of enhanced services or customer—premises equipment on behalf of the separate corporation, or sell, lease or otherwise make available to the separate corporation any capacity or computer system component on its computer system or systems which are used in any way for the provision of its common carrier communications services (this does not apply to communications services offered the separate subsidiary pursuant to tariff), except in accordance with paragraph (f) of this section.

* * * * *

(f) Notwithstanding the proscriptions of paragraphs (c)(2) and (d)(1) of this section, facilities for the provision of enhanced services by the separate subsidiary may be co-located or integrated with the carrier's facilities for basic service, and installation, repair and maintenance of the facilities for the provision of enhanced services may be performed by the carrier, provided that the following conditions are met:

(1) The carrier shall identify and remove from "above the line" regulatory accounts the investment and expense associated with the facilities for the provision of enhanced services and their installation, repair and maintenance, and no less than 60 days notice of how this will be accomplished shall be given the Commission;

(2) All interconnection with basic services of the facilities for the provision of enhanced service shall be governed by tariff. Such tariff or tariffs shall apply without discrimination to the subsidiary and to others and state separately:

(i) Charges for any interoffice communications services forming part of the enhanced service or services to be furnished, and

(ii) Charges for any loss of efficiency, or impact on the operation of, any basic service with which facilities for the provision of enhanced services are integrated.

(3) Interconnection of facilities for the provision of enhanced service with intraoffice facilities used to achieve interconnection with exchange services may reflect any loop costs that are avoided through the substitution of intraoffice facilities for loops, provided that:

(i) these cost savings are identified and reflected in the tariffs that will govern such interconnection,

(ii) notice of such proposed tariffs is provided the Commission no less than 60 days before their effective date, and

(iii) the Commission does not notify the carrier of its disapproval of such proposed tariffs prior to the expiration of this 60 day period.

These notice and disapproval procedures shall not apply if general tariff offerings available to the subsidiary and to others without discrimination, will govern such interconnection.

(4) Access by end users of basic services to the facilities used to achieve interconnection with the facilities for the provision of enhanced service shall be governed by general tariffs that apply without discrimination to comparable access by end users to enhanced services of others.

104. The rationales for the foregoing proposed rule changes are contained in the Protocols Decision and in our asynchronous/X.25 order, and are incorporated herein by reference. In phrasing these proposed rule changes, we have not differentiated protocols-type processing from true information processing since, under the present constraints of the MFJ BOCs provision of the latter by AT&T and the BOCs may be limited, and there would appear to be no reason to duplicate in our rules any such limitations that may be applicable. The foregoing proposed amendment would apply, absent further order of the Commission, only to those carriers that are now subject to structural separation. However, it need not be so limited. It might make sense to apply these approaches to dominant carriers more broadly, and we invite comment on this. Also, since the provisions of § 64.702(a) are unchanged by these proposals, entities that currently are in unregulated status because they provide protocols-type processing would remain so.

4. Alternative #3: Create a New Category of "Network Processing" That is Treated as Part of Enhanced or Basic Service Depending Upon the Status of the Vendor

105. A third alternative might be to repeat the protocols-type processing clause of the current enhanced service definition in a separate definitional category that could be basic, if it included in the offerings of dominant carriers. Currently unregulated of vendors of enhanced service would remain unregulated since the enhanced service definition would remain unchanged. This approach would follow the overall principle of the Competitive Common Carrier proceeding of limiting regulation to those services and entities that merit it, and dispensing with regulation for those that do not.

106. Upon focused re-examination of the nature and effects of treating as non-communications relatively primitive processing in carrier's networks of protocols (and related formats and codes), what we are terming "protocols-type" processing, we believe that there is a potentially valid argument that these functions are sufficiently communications-related that carriers should be able to include them in their offerings. *See*, paras. 13–15 and 83, *supra*.

107. This proposal would promote a baseline policy of Computer II, namely, that technological improvements in telecommunications continue to be introduced in the basic services. Under our present Computer II rules, many improvements that in the final analysis can promote *communications* efficiency are treated as non-communications, and must undergo the waiver process if they are sought to be integrated with basic services by carriers subject to structural separation. Absent such a waiver efficiency can be seriously impaired by the requirement for separation. Our processes have become tantamount to a design review step that carriers must traverse before they can make many significant service improvements. Such a result was not intended in Computer II. Computer II was intended to promote innovation and efficiency, not to impair them.

108. More fundamentally, the thrust of our Computer I and Computer II proceedings was to define those offerings that are uses of communications and therefore unregulated, rather than the provision of communications itself. Data processing, in the Computer I definitional *schema* was such a use. Activities in the second and third major clauses of the present definition of "enhanced service" may be such uses. Action on protocols (or related codes and formats) of signals is not; it seemingly is in the nature of communications itself. A realistic philosophical framework for differentiating between uses of communications and communications itself might depend on the answer to the question: "Why did a given user make a telephone call? If the user did so merely to pass information to another user unchanged, the call could be thought of as communications employing a carrier's facilities, even if changes in electrical signals are involved. If the user did so to have the information manipulated or changed by the carrier's facilities, or to gain information from the carrier's facilities, other than information aiding in using these facilities (*e.g.*, speed dialing, billing information and other adjunct services that do not involve the content of the message), the call could be thought of as an information use of these facilities. Our proposed creation of a new definition of protocols-type processing functions as an includable subset of basic service could lead to a treatment that would follow philosophical framework, since uses by enhanced service vendors would remain unregulated. At the same time, this proposal would solve the internetworking and new-technology protocol conversion problems that remain under alternatives #1 and #2, and which we address separately below.

109. In some respects, this approach follows the treatment of the overlap category of "hybrid" services of the original computer inquiry (Computer I). We would not, however, permit the vice of the Computer I approach to intrude. Under Computer I, services in the "hybrid" category were required to pass a weighing test to determine whether they were primarily communications or primarily data processing. Since there was no guidance in the Computer I rules on how such a test was to be applied, we increasingly were forced to examine individual proposed services *ad hoc*. We propose to treat such offerings by general rule, to promote certainty.

110. The following proposed amendment of § 64.702(a) for treatment of what we would term "network processing" would appear to reach this result:

(a) For the purpose of this subpart:
(i) the term "enhanced service" shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subcriber's transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction; and
(ii) the term "network processing" shall refer to the employment of computer processing applications that act on the format, code, protocol or similar aspects of the subscriber's transmitted information in providing interstate communications.
Enhanced services are not regulated under Title II of the Act.

111. Were an amendment of this nature to be made, carriers could provide "network processing" (as defined above) in connection with basic service, since it would be in the new category that specifically recognizes these functions as includable in the provision of interstate communications.[73] This approach would directly recognize protocols-type processing as related to basic communications, but would preserve the deregulated status of enhanced service vendors under the existing definition.

5. Additional Problems Needing Resolution Under Alternatives #1 and #2

112. Under alternative #3, protocol conversion could be treated as part of dominant carriers' regulated basic service offerings. However, under alternatives #1 and #2, protocol conversion would remain an unregulated enhanced service. Although this might be appropriate generally, there are two circumstances addressed in previous decisions for which such treatment might be inappropriate. These are: protocol conversion in connection with the introduction of new technology to implement existing services, and conversion to create internetworking protocols used primarily between and among carriers (and their foreign correspondents). *See*, 95 FCC2d at 591–92 and 594.

113. In the Protocols Decision, we resolved to treat these specially and expeditiously by waiver, and indeed did so in the case of the X.75/X.25 internetworking waivers *supra*. However, such waivers still must be sought and approved, which introduces delay. No party has seriously challenged our conclusion that flexibility to engage in protocol conversion for these purposes is needed, nor our conclusion in the X.75/X.25 waiver order that an internetworking interface of this nature should be treated no differently than a

[73] Or, for even more clarity, the following phrase could be added to the end of § 64.702(b). "*provided* that no such prohibition shall apply to the furnishing of network processing services by such common carrier."

basic service offering (which seemingly should apply equally to the new technolgy circumstance). To do so could impair the introduction of new technology and the efficacy of interconnected through service, domestic and foreign. Thus, it seems pointless and counter-productive to require that such matters be treated by *ad hoc* waiver. A rule, appropriately bounded, seems most appropriate.

114. Although protocol conversion facilities would be permitted to be integrated with basic facilities under alternatives #1 and #2, even protocol conversion for these purposes would remain classified as an unregulated enhanced offering absent more. While it might make sense generally to continue to treat many forms of protocols-type processing as unregulated non-communications offerings, and such treatment would apply in most cases under alternatives #1 and #2, the internetworking and technology introduction circumstances do not merit such treatment. In these cases, the essential nature of the basic service is unchanged, and electrical signal conversion occurs only either to promote its technological evolution or to promote its interconnection, both of which are *statutory* and policy goals of this agency.[74] Because of this, while our proposals under alternatives #1 and #2 would generally leave the enhanced service definition unchanged and address only requirements for structural separation, we also propose to change this treatment in these cases to ensure that they are treated as part of basic service. Again, our approach would be to do this by rule and not *ad hoc* waiver, to minimize uncertainty and delay. Language comparable to the following might accomplish this:

(a) * * * Enhanced services are not regulated under Title II, other than conversion of protocols between those employed in a new implementation of an existing communications service and prior implementations thereof, and conversion of protocols for internetworking of services.

IV. Comparably Efficient Interconnection Issues; ISDN

115. It is clear that policy concerns are raised if a dominant carrier may place equipment within its central offices and connect it to basic service with intra-office wiring, while other providers of comparable services must achieve such connections using higher-price loops.[75] The lower cost of such wiring as compared with the loops that others must use is a true efficiency that properly can (and should) be passed on to the public. However, as a result of the fact that business firms, including the basic service providers in question here, do not normally allow competitors to locate on their premises, others cannot achieve the same efficiencies.[76] [77]

116. We believe strongly in the notion that free and unfettered competition will create a range and variety of services that will serve the public interest. If the carriers and their competitors could be similarly placed at reasonable cost, they would compete on the services they provide. But, if the carriers can realize an efficiency that others cannot—as appears to be the case here—this competition would be perturbed, and achievement of its benefits might to some degree be impaired. Our existing Computer II rules avoid this outcome by preventing the carriers subject to structural separation from achieving such efficiency. The major theme of this notice, however, is that sacrificing material efficiencies to achieve competitive parity is undesirable as a public policy, particularly if less inefficient alternatives are available. Indeed, the very purpose of our pro-competitive policies is to bring to the public the benefits of all available efficiencies.

117. In our asynchronous/X.25 waiver order, we acknowledged that the public's interest, as opposed to the interest of the petitioners' competitors, is in realizing whatever economies may be available. We explicitly declined to destroy this true efficiency by averaging techniques that might artificially raise the costs of the intra-office wiring to levels comparable to those sustained by others that must currently utilize loops for comparable purposes.[78] Such a result comports with our statutory mission to promote "rapid and efficient" services. However, the point still remains that the competition between such carriers and others is perturbed by this result.

118. A result that might serve the dual goals of promoting efficiency while not unduly perturbing competition would be for *both* groups to be able to realize these efficiencies to the maximum extent feasible. For this to occur, however, the carriers would have to be willing, or required, to allow others to achieve efficiencies comparable to those the carriers themselves received by using intra-office wiring rather than loops. By this, we do *not* mean that the carriers should artificially raise the costs of their offerings; rather, we mean that they might offer others comparably efficient interconnection.

119. There are two ways that this might be accomplished. First, new forms of interconnection to basic service could be developed that could be used by others, not located in the central office, to achieve interconnection on a minimal number of loops (loops that the carrier itself would not need). One such proposal that has been made is addressed below. And second, carriers could allow others' equipment to be co-located in their central offices, in which case it too would avoid using loops no differently than the carriers' equipment. As is discussed below, it has been claimed that this latter approach is problematical.

120. We seek comment on whether allowing some of all dominant carriers to integrate the innovative technology associated with enhanced services with their basic facilities, as is proposed variously in Sections II and III of this notice, should be keyed to their allowing others to achieve comparable efficiencies, through new forms of interconnection or allowing others' equipment to be located in their central offices.

121. Furthermore, the availability of such interconnection or co-location opportunities would appear to bear directly upon the treatment to be accorded dominant carriers' offerings under the framework proposed in Section II. For example, to the extent that others can utilize services priced on misallocated costs, marketplace incentives are created for the allocation procedures to be corrected. The nature and extent of regulatory protections that might be warranted for provision of ancillary-to-communications services by dominant carriers that can be competitive, under the Section II framework, should depend on this availability and we seek comment on this. We discuss the interconnection and co-locations concepts in detail below, and their seeming relationship to the development of integrated services digital network (ISDNs).

122. *Interconnection.* Comparably efficient interconnection opportunities would avoid the potential problems of co-location, discussed below, and for

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[74] *E.g.*, Section 1 of the Act ("rapid and efficient . . . service"); Section 218 (technical developments and improvements . . . to the end that the benefits of new inventions and developments may be made available to the people of the United States"); Section 201(a) ("establish physical connections with other carriers"); and section 303(g) ("provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest").

[75] For a more complete explanation of this, see the asynchronous/X.25 waiver order, paras. 66–67 and 74–75.

[76] *Id.*, para. 75, n. 58.

[77] We know of no industry where such location has successfully been made compulsory, but we do think that cooperative co-location of facilities is practical and feasible.

[78] *Id.*, para. 76.

that reason may be the preferred approach. In the asynchronous/X.25 waiver decision, we considered petitions seeking authority to locate separate equipment that creates enhanced services in the petitioners' central offices. Such equipment was to be connected to the exchange similarly to equipment located elsewhere. The only difference was that it would use intra-office wiring for such connections rather than loops. However, actual integration of protocols-type and other enhanced service functions in the computers used for provision of basic service is feasible and potentially efficient.

123. Actual integration would be permitted under our Section II and Section III proposals. If actual integration occurs, the carrier's "interconnection" may be within the innards of a computer or its software, and it may be infeasible to make identical "interconnection" available to separately-housed equipment of others. Thus, we use the term "comparably efficient" rather than "identical" because we would not wish to foreclose integration of the carriers' enhanced service capabilities with equipment used to provide basic service. In such case, rough comparability [that is, some measure of pricing and functional comparability) might suffice, and we invite comment on whether, and how, such "comparability" might be assessed. If interconnection is to adequately address this comparability concern, forms of loop multiplexing may be required to minimize the loops that others, but not the carrier itself, would continue to use, and we invite comment on how the costs of such multiplexing equipment may best be minimized. However, there may be intrinsic efficiencies associated with particular integrated services that warrant non-comparability [79] and the public benefits of these would be weighed in our treatment.

124. The notion that efficient new forms of interconnection can be developed is not theoretical. There have been of press reports that one regional Bell company, Ameritech, has been developing new interconnection options and functions to be implemented in its central office facilities that might address this matter.[80] We strongly urge this carrier to explain fully in its comments herein the nature of these developments, and others to comment on their ramifications.

125. *Co-location.* During the course of our consideration of the asynchronous/X.25 waiver petitions, our staff requested information from the petitioners on whether co-location of others' equipment might be feasible. In response, they strongly and uniformly opposed making co-location available to others, citing a number of administrative, operational and security problems that might arise. Although we expressed misgivings about the validity of these claims, we were not prepared in the context of the *ad hoc* waiver requests to address them comprehensively. We are, however, prepared to seek comment on these matters in this proceeding.

126. We note in this regard that this is not the first time claims of this nature have been made. They were made in the course of our *Carterfone* proceedings in the late 1960's;[81] they were made in our mid-1970's WATS rate investigation;[82] and they were made in the context of co-location of domestic satellite facilities at the international satellite earth stations. In the first two cases, we did not reach the co-location issues. In the third case, we ordered the involved carriers to reach agreements addressing the administrative, operational and security issues,[83] and they did so,[84] which indicates that such issues may be more theoretical than real once it is decided to address them. Also, one carrier that historically argued strongly against co-location,[85] AT&T, is now offering it in its traiffs, in the form of an offering central office-located interconnection with subscriber-provided communications facilities. *See,* Tariff F.C.C. No. 9, 1st Revised Page 57x, section 2.8 (effective April 27, 1985). We seek comment on: the experience gained in these instances of permitted co-location; the likely effectiveness of comparable industry cooperation in helping to foster an improved competitive envrionment for enhanced services competition; and the extent to which the circumstances of this proceeding are analogous to these.

127. As was noted in the asynchronous/X.25 waiver order, carriers themselves may well have incentives to change their long-held views against co-location. Space appears to be available in many central offices, most particularly the older ones where physically large electro-mechanical equipment has been replaced by smaller electronic equipment, and lease (or even sale) of unused space would represent a potential source of profits.[86]

128. And finally, some of the arguments raised against co-location relate to entry by non-carrier personnel in the carriers' central offices. A co-location opportunity does not necessarily imply such entry. Telephone company personnel could install, operate and maintain equipment owned by others, and appropriate contractual relationships could govern provision of such services. Under such an approach, the efficiencies would be achievable by others in a manner that would minimize the claimed administrative difficulties. We seek information or experience with such arrangements in this or other industries.

129. In sum, we conclude that these matters have not been explored in depth, and we propose to do so in this proceeding. We are especially seeking comment on whether the flexibility to be granted some or all dominant carriers under our proposals herein should be keyed to whether the carrier makes available under tariff comparably efficient interconnection or co-location opportunities to others providing comparable enhanced services, on a space-available basis in the same or nearby central office.

130. *ISDN.* We note that interconnection and internetworking

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[79] Applied Spectrum Technologies, ENF No. 85-6, Mimeo No. 5532 (June 27, 1985) at para. 31-2.

[80] *See, e.g.,* Communications Week (Feb. 25, 1985) at 29; Telecommunications Reports, vol. 51, no. 7 (Feb. 18, 1985) at

[81] Claims of this nature were made testimony in the proceedings. In Am. Tel. and Tel. Co. ("Foreign Attachment") Tariff Revisions, 15 FCC2d 605, 609 (1968) we noted that they were not germane to the interconnection tariffs then before us.

[82] The issue was raised in Am. Tel. and Tel. Co. (WATS), 46 FCC2d 81, 84-85 (1974) (designating interconnection issues in a pending complaint for hearing), and written submissions were made that included comparable claims. In the final decision, we deferred resolution of these issues to separate proceedings, 59 FCC2d 671, 703-04 (1976).

[83] International Record Carriers, 78 FCC2d 115, 147 (1980).

[84] International Record Carriers, mimeo no. 33141, released July 3, 1980 (order by the Chief, Common Carrier Bureau accepting the parties' negotiated arrangement). *See also,* Communications Satellite Corp. (Torus), 90 FCC2d 1205, 1214 (1982) (discussing the co-location opportunities required to made available if Torus antennas were to be authorized); August 9, 1983 letter of the Chief, Common Carrier Bureau to Communications Satellite Corporation (discussing the co-location arrangements made to satisfy the requirements of the Torus order).

[85] The arguments in the Carterfone and WATS proceeding, noted in the previous paragraph, were made by AT&T.

[86] Not only floor space has been freed up by the replacement of electro-mechanical equipment with electronic equipment. The predecessor relay racks were taller than current equipment, and relatively inexpensive "catwalks" conceivably could be deployed to utilize room space above current switching equipment.

among a wide variety of service providers, both basic and enhanced, is a subject being intensively considered in the context of planning for integrated services digital networks ("ISDNs").[87] The ISDN network functional principles recently adopted by the CCITT also clearly envision a broad range of "users" availing themselves of network services. Potential customers employing the user-network interfaces include "local area, private, existing telephone or dedicated networks, specialized storage and information processing centres, another ISDN, or service providers outside an ISDN." [88] In addition, the draft ISDN architecture functional model recognizes the ultimate need for many more reference points, interfaces and connection types to accommodate a matrix of configurations involving ISDNs, specialized networks internal and external to ISDNs, dedicated networks, and users.[89] This effort, occurring in CCITT Study Groups and in domestic preparatory bodies such as the ANSI-accredited T1.D committees, seems to complement our efforts to pursue comparatively efficient, cost-based opportunities for interconnection and interoperation among the facilities of carriers and enhanced service vendors.

131. The potential problems of "interconnection" when there is integration may rise to the fore when integrated services digital networks (ISDNs) are considered.[90] Briefly, international ISDN planning has encompassed integration of packet switching and some degree of protocol conversion with conventional telephony. Enhanced service vendors offering packet switched transport to the public utilize carriers' conventional telephone and private line services to configure their netowrks and for their customers' access to these networks. These vendors' customers have not utilized local telephone companies' packet switched services for access to their services, as such services do not currently exist. Indeed, a number of the petitioners requesting asynchronous/X.25 waivers stated that they would not consider deploying such services in the absence of the waivers.

132. Our asynchronous/X.25 waiver order allowed the petitioning carriers to offer services similar to those of the existing enhanced service vendors through the use of largely separate packet switched networks built on these carriers' underlying basic services. This was similar to the enhanced service vendors' offerings, except that the petitioners' packet assemblers and disassemblers, and similar equipments, could be located in telephone central offices, unlike those of the existing vendors. In both cases, conventional telephone services are used for users' access *to* the carriers' and enhanced service vendors' packet switched services. But, in ISDN this approach may be infeasible. ISDN ultimately may involve integration of packet switching *with* the conventional services, and not the creation of a separate packet switched networks accessed through them. As we noted in the asynchronous/X.25 waiver order, such integration is most direct in the case of "D" channel. The "D" channel is used not only to control "B" channels that can be used for competitive access to one or more vendors of data transport (be it basic or enhanced); it also can be used for end-to-end packet switched data transport. The only manner in which another vendor of packet switched service could be accessed on the "D" channel itself is through the carrier's "D" channel switching capabilities.

133. In sum, these switching capabilities appear to have bottleneck characteristics. Even if others' packet switching equipment were co-located at the central office, it is unclear whether comparably efficient "interconnection" to these switching capabilities could be gained, as compared with the internal "interconnection" through integration of the carriers' packet switches and channel derivation capabilities. In such circumstances, new interconnection opportunities, such as those being developed by Ameritech, may well determine the nature and effectiveness of competition, and we seek comment on this. More broadly, we solicit comments on the ISDN developments and on appropriate definitional and structural approaches that can best serve our dual goals of promoting communications efficiency and the benefits of competition. To the extent that these comments relate to the proposals in Sections II and III of this notice, we would hope that this relationship is fully explored and explained.

V. Voice Message Storage Services

134. We seek also to address the voice message storage services that were the subject of our *Custom Calling II* determinations.[91] As was noted in the introduction to this notice, when we were considering the nature and treatment of the voice storage services that were the subject of the *Custom Calling II* order, we were told that competitive alternatives were being developed and would be offered to the public. Five years have elapsed, and we are not aware of any that are available. It would appear, therefore, that our faith in the validity of these claims was misplaced, and that the public has truly been denied a desirable service. This seems to be a very unfortunate effect of the application of the Computer II rules and policies.

135. At the same time, interconnection of others' equipment to subscribers' loops that might have efficiently implemented services comparable to Custom Calling II was not available. Consider, for example, delayed message service. If a call were placed by caller A to caller B's telephone number and caller B did not answer, the call would be diverted to a central voice storage capability and caller A's message would be stored. Later, when caller B was prepared to receive calls, he or she would dial a code and the central storage would replay the message.[92] Service of this nature could be implemented in a central office, or in an answering machine at caller B's premises.

136. AT&T and the Bell Operating Companies were seeking to make such a service available not only to caller B, but also to other telephone subscribers on the exchange. Suppose there were twenty-four others on that exchange, C–Z, that did so. Now the central office-located and premises equipment implementations become different. On a statistical basis, the carrier might conclude that no more than three of these subscribers would actually be receiving an incoming voice message at the same time. Thus, only three channels would be required between the storage facility and the switch, and the switch would connect each of them to an actual

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[87] *See, e.g.*, Definition of Service Principles, Question 2/XVIII; ISDN Architecture Functional Model, Question 3/XVIII; Protocol Reference Model, Question 4/XVIII; Interworking of ISDNs and other networks, Quesiton 7/XVIII (questions allocated to Study Group XVIII for the 1985–88 Study Period, CCITT Doc. COM XVIII No. 1, Nov. 1984).

[88] ISDN Network Functional Principles, Rec. No. I.310, CCITT Red Book (1985).

[89] *See*, ISDN Architecture Functional Model, Draft Rec. I.32X, Annex to Question 3/XVIII, n. 87, *supra*, at 21.

[90] Asynchronous/X.25 waiver decision, paras. 56–61.

[91] Similar services are available in mobile radio services.

[92] On reconsideration of the Final Decision in Computer II, we concluded that the combination of storage by caller A and purposeful retrieval by caller B was the type of "subscriber interaction with stored inforamtion" addressed in the third major clause of Section 64.702(a), and therefore an enhanced service, 84 FCC2d 50, 54 (1980). Therefter, we declined to waive the Computer II treatment of this service. Custom Calling II, 86 FCC2d 1 (1984).

incoming call. Such a connection might be termed a "trunk side" connection. If storage equipment could not obtain such a connection to the switch, it would have to have connections with each of the lines that *might* receive a call, i.e., twenty-five connections in this example to the lines of subscribers B–Z. This latter connections would be termed a "line side" connection.

137. "Trunk-side"-type connections of this nature are not available. The price of line-side connections, which involve loops connected to each of the lines that might subscribe to a storage service of this nature, would be either at normal exchange rates or at rates governing comparable interconnection of answering service bureaus to their subscribers. Current call forwarding services can be used, if invoked manually, to route to a common storage facility incoming calls made to the lines of all subscribers. However, most existing call forwarding services do not send forward the number that was actually dialed, thus such a central storage facility would not necessarily know the identity of the subscriber to whom the message was directed. Furthermore, call forwarding must normally be invoked manually. A subscriber to call forwarding must dial a code each time he or she wishes calls to be forwarded, and must dial another code each time such forwarding is to be cancelled. And finally, forwarding does not operate quite the same as typical answering services, i.e., where the telephone will ring several times (during which it can be answered normally) and then the call will be diverted automatically to the answering device or bureau. All other things being equal (and they are not), such a manually-initiated and cancelled message service could well prove less desirable in the marketplace than an automatic one.

138. We are aware that concentrator/identifier equipment might be installed in central offices to give outsiders an interconnection opportunity somewhat comparable to that achievable in the form of the "trunk side"-type connections. However, since such equipment may be costly, it may limit the development of services of this nature. If such capabilities have been offered, their price has apparently been too high to make such services viable. Or, such capabilities may not have been offered, and the costs of loops between the central office and the central message facility may have been too high to make such services viable.[93]

139. These factors may well change, either as a consequence of this proceeding or in the marketplace. First, in Section IV above we are soliciting comment on interconnection (or co-location) opportunities that could facilitate efficient access by others to the exchange. As noted, Ameritech is actively pursuing the development of new interconnection options. Under these approaches, which may become available in the future, the interconnection disparities between telephone companies' voice storage equipment and that of others would be minimized. And second, new custom calling-type services could send forward the identity of the originally-dialed number in the case of call forwarding service (which could make it possible for subscribers' messages to be separately identified automatically, if call forwarding-type services were used to access central message storage facilities).[94] This latter option could be combined with a more automatic form of call forwarding than may presently be available. For example call forwarding could occur after a specified number of rings without manual initiation/cancellation. Or, it may develop that the present manual forwarding initiation/cancellation procedures are adequate. One or more of these changes might make it possible for services of this nature to be provided consistently with our Computer II policies. We invite comment on this, and specifically request that Ameritech address how, if at all, the new developments it is pursuing might affect these matters.

140. Of course, it may be that none of these changes is, or will be, significant. This would bring us back to the start of this discussion: there appear to be potentially valuable services that could be deployed with relative ease and fairly minimal additional investment. Alternatives now available are less efficient, more costly, or more difficult to employ; and the sole reason the public is not receiving these services is because our Computer II rules and decisions have prevented their implementation. Under our proposals in Sections II and III, services of this nature might be implementable, but such proposals may not be adopted. Also, the proposals in Section III are largely focused on protocols-type processing, which would not include these services. Given the five year history of denial of voice message services to the public, we believe it important that they be considered specifically and independently of proposals made elsewhere in this notice. Therefore, we invite comment on whether voice message services should be treated together with one or more of the alternatives for treatment of "protocols-type" processing in Section III of this notice, or alternatively, whether our Computer II rules should be waived to permit such services to the offered on an efficient basis, that is, co-located with or integrated in facilities for basic service. Finally, we invite comment on whether such services should be treated as an adjunct to basic service.

VI. Network Channel Terminating Equipment

141. The final area on which we seek comment concerns network channel terminating equipment ("NCTE"). Under long-standing FCC rules and policies, CPE generally may be connected to the telephone network if registered under Part 68 of the Commission's rules. In the pre-*Computer II* time period, although both groups of equipment were registered, carriers' CPE was supplied subject to economic regulation at the state and federal level while others' CPE was supplied free of any such regulation. In *Computer II* we freed the supply of all such equipment from regulation. However, *Computer II* did not answer the fundamental question: Where does the "network" end and the "premises equipment" begin? *Computer II* did not purport to deregulate digital and analog basic services and facilities, only CPE.

142. This matter became significant in the case of NCTE. NCTE is equipment that does not serve as the end of a communications channel. Rather, it is inserted in the stream of such a channel, and other equipment is connected to it to actually use the channel for communications. It is physically located at a subscriber's permises. The telephone companies argue that such

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[93] Comparable cost concepts govern the connections with their customers' lines by answering service bureaus. Although the prices of these bureaus' services (which reflect the cost of these connections) are almost invariably higher than would be the case if their customers simply purchased answering machines, their services are purchases. This often reflects a need for the judgment that can only be exercised by a live operator. A doctor's answering service bureau, for example, can judge when to get in touch with the doctor immediately in an emergency; a machine cannot.

[94] *See*, North American Telephone Assn., *op cit.*, at paras. 36–39, discussing "forwarded call information" as a feature to be offered in connection with centrex and central office-located automatic call distribution systems. If such services can also be offered to equipment of comparable function at customers' premises (e.g., centralized message storage or call answering equipment) they should be made available, just as a variety of other capabilities that also originated as centrex ones (denominated "Local Area Signalling Service" in that order at paras. 42–52) have been made available. Indeed, it could be argued that a failure to do so could constitute centrex customers an improperly preferred group.

equipment is part of the channel and that it should therefore be supplied by them when they install a channel (i.e., on a monopoly basis) since it serves only to make the channel usable. Those who wish to supply such equipment competitively argue that it is part of the CPE and should fall under the Part 68 registration program (which would permit subscriber-provided NCTE to be used) and under *Computer II* CPE treatment. The latter would require the telephone companies themselves to furnish such equipment on an unregulated basis, and require AT&T and the BOCs to furnish this equipment subject to structural separation. In our CC Docket No. 81-216 decisions, 94 FCC2d 5 (1983), *recon. denied,* 97 FCC2d 527 (1984), we accepted the latter group of arguments, and deemed such equipment CPE in the context of our *Computer II* policies. At the same time, we began developing appropriate Part 68 rules under which this equipment could be registered, and subscriber's ability to use it nationwide would be secured.

143. We see no reason to revisit the Part 68 determinations. Subscribers should be permitted to provide their own NCTE, ast least as an option. But, we now believe that the treatment of such equipment as CPE under *Computer II,* and particularly the application of structural separation to AT&T and BOCs, carries costs that may not have been apparent when we reached our decisions, and that this equipment may be somewhat different in kind than the vast range of CPE that has been treated generally under *Computer II.*

144. *Petitions for Waiver.* Several petitions seeking waiver of the requirement that AT&T and the BOCs supply this equipment on a structurally separated basis are pending. The claims made are two-fold. First, the type of operations involved in installing and maintaining this equipment are more akin to installation and maintenance of lines than premises equipment, and the wrong telephone company craftspeople—those trained and equipped to work on premises equipment—are required, under structural separation, to deal with the NCTE. NCTE has historically been treated as part of the channel, and those who install and maintain the channel are better equipped by training, experience and day-to-day work function to deal with NCTE.

145. Second, it is claimed that subscribers (and their equipment suppliers) have suffered delays and malfunctions in attempting to obtain and utilize NCTE.[96] The structurally-separated affiliates of AT&T and the BOCs do not always have such equipment in stock, nor do other equipment suppliers. But, the structural separation governing AT&T and the BOCs ensures that these companies may not supply the equipment. We did not intend such a "Catch 22" result in applying our Computer II rules.

146. And third, it has been claimed that while our decision about the particular NCTE that laid out the original policy may have been appropriate,[96] we unwisely generalized this decision to all current and future digital NCTE without adequately considering the impact of such a decision on innovation and network evolution. Viewed narrowly, it has been argued, the decision to deregulate NCTE promotes competition for NCTE. But, viewed more broadly, the ubiquitous supply of NCTE by the telephone companies can create standard interfaces for other terminal equipment. Such interfaces would be independent of the loop technology and characteristics to which the NCTE is connected, and competition among loop technologies and in terminal equipment would be promoted.[97] Stated another way, it has been argued that if telephone companies supply NCTE with the channels, they may implement the channels as they please, so long as the NCTE creates a standard interface to which premises equipment may be designed and connected. Thus, they are free to change channel characteristics and technologies at will, or to utilize multiple technologies in different regions of their service areas, without considering the effects on terminal equipment suppliers and users. Competitive terminal equipment can be utilized without concern for the channel characteristics under such an approach, and competition for the terminal equipment can be promoted since the standard interfaces created by the NCTE may be the same nationwide, or even worldwide, and relatively small producers of terminal equipment can serve very broad markets with the same equipment design.

147. These problems are only now surfacing because of the introduction of new services. They did not arise until recently for embedded NCTE. Both the disrtict court that implemented the MFJ and this Commission treated existing NCTE as *sui generis*, and not identically with other CPE, for some time. Under the MFJ, the embedded base of premises equipment was transferred to AT&T, and the BOC's were obliged not to discriminate in their treatment of AT&T and other equipment suppliers. Yet, under the Plan of Reorginization accepted by the court the BOC's and not AT&T, retained the embedded base of NCTE. Thus, the divestiture did not disrupt past practices in the supply, installation and maintenance of NCTE. Similarily, when this Commission considered issues surrounding deregulation of the embedded base of customer-premises equipment, treatment of embedded NCTE was deferred, and during the deferral period structural separation was similarly deferred. [98] In sum, while the determination that NCTE would be treated in the future as CPE under Computer II was made some time ago, the effects are only becoming apparent now.

148. *"Multiplexing" Exception.* In addition to these practical problems, there is a continuing uncertainty invovling "multiplexing" devices, created in the Computer II Final Decision, that may relate directly to the evolution of basic and enhanced services. Multiplexing is a technology that permits individual channels of communications to be combined ("multiplexed") into a single channel, and separated out again ("demultiplexed") a the other end . It can be used by subscribers to create sub-channels of the channels furnished by the carriers, or it can be used by carriers themselves to create the channels they offer to the public. Subscribers typically use multiplexing equipment that they supply as CPE to "break down" private lines leased from carriers into individual data channels. The equipment that performs this function has long been furnished by subscribers (or telephone companies) as customer-premises equipment. Carriers

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[96] *E.g.,* Letter filings of Bell South Corporation in ENF 84-33, dated June 13 and June 14, 1985, summarizing presentations made to Commissioners' offices and to the Common Carrier Bureau. Requests by Ameritech, Bell South and Southwestern Bell are pending seeking waiver of the requirement that digital DS-1 and/or DDS NCTE be provided through structural separation. The BOCs do not always have such equipment in stock, nor do other equipment suppliers. But, the structural separation governing. AT&T and the BOCs ensures that these companies may not supply the equipment. We did not intend such a "Catch 22" result in applying our Computer II rules.

[96] *I.e.,* NCTE used with the stable DDS technology and service.

[97] This argument really is one in favor of monopoly supply of the NCTE by the telephone companies, a possibility that we reject consistent with our decision to register such equipment under Part 68 of the rules.

[98] In July, 1984, the Common Carrier Bureau granted Ameritech, Bell Atlantic, Bell South, Northwestern Bell and NYNEX permisison to continue to provide and support, on an unseparated basis, digital NCTE placed in service during the transition period between January 1, 1984 and June 30, 1984, pending the outcome of proceedings in CC Docket No. 81-893 directed towards establishing procedures for deregulating such embedded NCTE. While equipment placed in service thereafter has been required to be supplied subject to structural separation, as a practical matter a pool was created of equipment not subject to such separation. It may be that only recently has this pool been depleted.

typically use multiplexing (as part of the network) where loop facilities are limited, to create multiple channels on the loops that are available. In the latter case, the subscriber is indifferent to whether the channels it has ordered are delivered on individual loops, or are created by multiplexing equipment from loops that carry other channels. Multiplexing is also used in digital or a system, where it is an intrinsic part of providing transport.

149. In the Final Decision, we stated that, "Excluded from CPE is * * * multiplexing equipment to deliver multiple channels to the customer." 77 FCC2d at 447, n. 57. We recently explained that this was intended to retain carriers' historic flexibility to deliver channels using multiplexing technology, and differentiated this from the type of multiplexing where the channels offered by carriers are subdivided by the subscribers. In the former case, the equipment, although located at subscribers' premises, is considered part of the network; in the latter case, it is treated as customer-premises equipment. We also emphasized that this treatment is limited to a multiplexing function alone, and that inclusion of multiplexing capabilities with others will not redefine the combined equipment as part of the network.[99] However, as networks increasingly become more digital, a different approach will be needed for a third case not heretofore explicitly considered.

150. Here, the carrier offers multiple channels to one subscriber, and delivers only one (or some) of them to another subscriber. For example, if a data channel were multiplexed on a conventional telephone loop, the end-user would receive two channels at its premises that would be created through multiplexing. At the central office end, however, only one of them, the data sub-channel, would be connected to a data transport service or to a data service vendor (the other subscriber involved). Only the carrier would perform the multiplexing function at the central office end (unless co-location, as discussed in Section IV of this notice, were available). We seek comment on whether the multiplexing equipment at the end-user's premises should be treated as akin to the case where subscribers performing multiplexing at each end of a connection (in their premises equipment), or akin to the case where the telephone company delivers multiple channels through multiplexing equipment that is deemed part of the network.

151. This also relates to the treatment to be accorded enhanced services. If the telephone company supplies the multiplexers at both ends of a channel, there is no protocol conversion between the ends. If it supplies the central office end multiplexer but not the one at the subscriber's end, is there a net protocol conversion involved, and if so, between what points? What is the significance of such conversion under the proposals made in other sections of this notice?

152. We believe the problems and "multiplexing" ambiguities identified above merit addressing in this proceeding. In view of the claims that have been made, and the problems that may now be surfacing for the first time, we shall carve out the NCTE issues as a special area for comment, and maintain the option of treating this equipment *sui generis*.[100] We specifically give notice of the following potential results that may be adopted individually or in combination:

a. That NCTE will continue to be treated as unregulated customer-premises equipment, but that structural separation will not apply to its supply, installation and maintenance;

b. That NCTE may be treated as part of carrier's network facilities on condition that service is offered to subscriber-provided NCTE with a price differential that reflects that the carrier will not be providing NCTE to subscribers that seek to provide their own;

c. That equipment implementing "multiplexing" (and not other functions) will continue to be eligible for treatment as part of the network, but that "multiplexing " will be more clearly defined than heretofore; and

d. That subsets of the circuit termination, signal conditioning, testing and multiplexing functions now included within the ambit of the term "NCTE" might be accorded special treatment.

We emphasize that we are not reopening the question of whether subscribers should have the ability to supply their own NCTE. That right is established.

VI. Summary and Ordering Clauses

153. In summary, we are broadly reopening the enhanced services issued addressed in Computer II, and certain limited NCTE issues. As discussed previously, we do so for three principle reasons. First, the industry has changed markedly in the five years since we reached our Computer II decisions, and policies and requirements adopted then may no longer be appropriate. Second, the result of the definitions and structural separation requirements governing AT&T and the BOCs have demonstrably impaired communications efficiency. Our waiver policies have ameliorated this to some extent, but at the expense of uncertainty and delay. And third, it is clear that the existing rules do not establish a clear dichotomy; the line that now exists has been interpreted and explained in *ad hoc* decisions virtually since the day the Final Decision was adopted. In the light of these factors, it is imperative that the 1980 rules and policies be reexamined.

154. In saying the foregoing, we do not wish to convey the impression that Computer II was misconceived. It has had some unfortunate consequences, but has also materially contributed to the evolution of the telecommunications industry towards a more effectively competitive structures. Computer premises equipment has been deregulated and competition in the supply of such equipment is flourishing, to the benefit of the public. Entities with little or no market power, for which regulation (and its costs) is unnecessary and counter-productive have been deregulated, even when offering substitutes for basic communications service. We confirmed the deregulated status of the information and data processing industry, and removed the uncertainty attendant to our treatment of the "hybrid" category in the Computer I rules. And, with all of their faults, our waiver approaches have blunted the most untoward and inefficient effects of rigidly applying to AT&T and the BOCs the definitional and structural separation requirements of Computer II.

155. However, as telecommunications continues to evolve domestically and worldwide, we can no longer blithely apply the approaches of Computer II without considering their effects. Structural separation has been employed in the First and Second Computer Inquiries to respond to the age-old problem in regulated industries of seeking to separate the joint and common costs of providing multiple services, some of which are regulated and others of which are not. The costs of unregulated undertakings should not be borne by subscribers to regulated services; the result would be that their rates for these services would be

[99] Int'l Business Machines Corp. (LADT),—— FCC2d——, FCC 85-292, released June 11, 1985.

[100] Our decision to reopen the Computer II aspects of the CC Docket No. 81-216 NCTE decisions generically is without prejudice to action on the various pending requests for waiver of that treatment. We specifically disclaim any intention to delay resolution of those requests pending the outcome of this proceeding.

excessive ("unjust and unreasonable" under the statute). At the same time, competition for the unregulated competitive services could be adversely affected. Structural separation solves this problem, fundamentally, by saying: "If you cannot separate joint and common costs, ensure that they cannot be incurred." Under structural separation, such costs are limited.

156. The result, however, can be to deny the public true efficiencies that can result from implementing services using joint and common plant, the efficiencies that can result from integration of functions that today are deemed part of enhanced service with the facilities used to provide basic services. And, in some cases, the result can be (and has been) to deny the public services that, at least in the past, could not be provided except through such integration. These problems, discussed throughout this notice, have occurred most significantly in the context of the protocols-type functions and the custom calling services. They will continue to occur at an ever-increasing pace as the technology continues to evolve and the rest of the world, operating without the artificial constraints of the current Computer II policies, demonstrates just how short-sighted our present policies are.

157. For example, integrated digital networks including ISDN will inherently involve the broad use of processing capabilities in carriers' central offices. The hardware that will be used will have capabilities beyond merely setting up and switching channels. Just as today's packet asembler and disassembler devices almost invariably contain protocol conversion capabilities, future equipments of this nature will also. If such capabilities will be present, and can be employed at little additional cost by the carriers that will be purchasing them, are we to continue to restrict their use under Computer II rules that dictate that the inherent technical capabilitis of the equipment cannot be used? That result of our current rules can and must be changed. The public interest is not served by artificially restricting the use of technology, or subjecting its designers to legalistic design review.

158. We continue to believe that the nation's telephone network, even in the post-divestiture environment, remains one of the nation's most valuable and most underutilized resources. The local loops that connect the nation into an increasingly sophisticated network have the special ability to bring diverse and exciting services and benefits to the American public. Conversely, artificial limitations on the capabilities of these loops can deny broad sectors of the public these services. We believe that the Communications Act requires us to encourage and stimulate an environment in which these potential benefits will realized.

159. *Regulatory Flexibility Act Certification.* Pursuant to section 605(b) of the Regulatory Flexibility Act, we hereby certify that this proceeding does not address a "proposed or final rule" that will have a "significant impact on a substantial number of small entities." The pertinent definition of "small entity" is a "small business, " which has the same meaning as "small business concern" under section 3 of the Small Business Act, *i.e.,* "one which is independently owned and operated and which is not dominant in its field of operation." Clearly, none of the entities which could be subjected to regulation as a result of this proceeding are small businesses. AT&T is the nation's largest provider of interexchange telecommunications service, and the other carriers that might be subjected to regulation have been classified as dominant by the Commission because of their monopolies or near-monopolies over service.

160. Accordingly, it is hereby ordered, that, pursuant to sections 1, 4(i), 4(j), 201–05, 218, 220, 303(g), 303(r) and 403 of the Communications Act of 1934 as amended, 47 U.S.C. 151, 154(i)–(j), 201–05, 218, 220, 303(g), and 303(r) and 403, and 5 U.S.C. 553 notice is hereby given of proposed amendments to § 64.702 of the Commission's Rules and Regulations, 47 CFR 64.702, in accordance with the proposals, discussion and delineation of issues in this Notice of Proposed Rulemaking. We hereby give notice that in reaching our decisions herein we will not necessarily be limited to the comments, replies and responses that may be filed, and that we may utilize other information, analyses and reports, provided that in each such case a copy of the material relied upon will be associated with the record of this proceeding.

161. It is further ordered, that, comments, responses and replies may be filed in accordance with § 1.48, 1.49 and 1.419 of the Commission's Rules and Regulations, 47 CFR 1.48, 1.49 and 1.419. Comments will be due on or before October 30, 1985 and replies will be due on or before November 29, 1985.

162. It is further ordered, that this proceeding will be conducted as a non-restricted informal rulemaking proceeding. The public is advised that *ex parte* presentations to the Commission and its staff in such a proceeding are governed by § 1.1231 of the Commission's Rules and Regulations, 47 CFR § 1.1231. Under these provisions, *ex parte* presentations[161] are permitted until a draft order proposing a substantive disposition of this proceeding is placed on the Commission's Sunshine Agenda and a final order is released (or the matter is returned to the staff for further consideration), *provided that* the substance of each presentation is summarized in a document to be associated with the public record of the proceeding, or is reflected in documents already made part of the record by the party making the presentation.[162] Those who might make such presentations are reminded of their obligation to prepare and file timely any summaries that may be required.

163. It is further ordered, that, pursuant to section 603 of the Regulatory Flexibility Act, 5 U.S.C 603, the Secretary shall send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration.

164. And, it is further ordered, that the Secretary shall cause a copy of this Notice of Proposed Rulemaking to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–19520 Filed 8–19–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85–239]

FM Broadcast Station in Reno, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Channel 269A for 272A at Reno, Nevada, in response to a petition filed by Emerald Broadcasting Company.

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[161] A "presentation" is any communication going to the merits of the proceeding. An *ex parte* presentation is any written presentation made to decision-making personnel that is not served on other parties to the proceeding, or any oral presentation made to decision-making personnel without advance notice to other parties to the proceeding and the opportunity to be present. *See,* § 1.1201 (f) and (g) of the Commission's Rules, 47 CFR 1.1201 (f)–(g).

[162] The provisions of our *ex parte* rules, §§ 1.1231–1.1249 are dispositive. Our shorthand summary of their requirements does not alter them.

DATES: Comments must be filed on or before October 7, 1985, and reply comments on or before October 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret on apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Reno, Nevada), MM Docket No. 85–239, RM–[illegible]

Adopted: August 1, 1985.
Released: August 15, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Emerald Broadcasting Company ("petitioner"), requesting the substitution of FM Channel 269A for Channel 272A at Reno, Nevada. The channel can be allocated in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

2. Petitioner is the licensee of FM Station KZFR, Channel 275, South Lake Tahoe, California. Station KZFR obtained Class B status approximately two years ago (*Report and Order* in BC Docket 80–522, BC–30688, released January 15, 1982) and has since been operating under special temporary authority from its existing site with reduced power. Petitioner states that it recently found the only suitable available site on Genoa Peak that would be free of multipath distortion, and provide line-of-coverage to South Lake Tahoe. However, the site is short spaced to the sites proposed by seven applicants for Channel 272A at Reno, Nevada. In order to permit Station KZFR to operate as full Class B facility, the Reno channel must be deleted and a substitute channel is available according to Emerald.

3. The current applicants for Channel 272A at Reno will be mailed a copy of this *Notice* in order to elicit their comments. In accordance with Commission policy, we would retain cut-off protection for the pending applicants when they amend their applications to the proposed Channel 269A, since the channels are equivalent. See *Phillipsburg, Kansas* (Docket 82–145) 48 FR 10844, published March 15, 1983.

4. In view of the foregoing, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Reno, Nevada	225, 238, 272A, 283, 289, and [illegible]	225, 238, 269A, 283, 289, and [illegible]

5. It is ordered, that the Secretary of the Commission shall send by certified mail, return receipt requested, a copy of this *Notice of Proposed Rule Making* to the following applicants for Channel 272A at Reno, Nevada:

Arthur Winburn Saunders, Jr., 1126 Pine Street, Santa Monica, CA 90405 (BPH831216CG)
James N. & Rita Lencionia, 921 Desert View Drive, Sparks, Nevada 89431 (BPH840404IB)
Reno Broadcasters, Inc., 1360 Manzanita, Reno, Nevada 89509 (BPH8404231S)
Joy Denise Hill, 2809 Camulos Way, Redding, CA 96002 (BPH8404231Q)
Carrillo Broadcasting Co., 1330 Sala Place, Sun Valley, CA 91352 (BPH840423IL)
Meryle Karloff Holmes, 1425 Calveras Avenue, San Jose, CA 95126 (BPH840423IR)
Bonnie Broadcasting Corp., 359 Wheeler No. A, Reno, Nevada 89502 (BPH840423IN)

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before October 7, 1985, and reply comments on or before October 22, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, on their counsel or consultant, as follows: Michael H. Bader, Melodie A. Virtue, Haley, Bader & Potts, 2000 M Street NW., Suite 600, Washington, D.C. 20006 (counsel for petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to the rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85-19786 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-14; RM-4601; RM-4720; RM-4826]

FM Broadcast Station in Cookeville, Livingston, Lebanon, Celina, and Goodlettsville, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes five options for the allocation of Channel 246 in response to five mutually exclusive proposals for the channel at Cookeville, Lebanon, Celina, Livingston and Goodlettsville, Tennessee. Due to the minimum mileage separation requirements, the channel can only be allocated to one community.

DATES: Comments must be filed on or before October 4, 1985, and reply comments on or before October 21, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Further Notice of Proposed Rule Making

In the matter of table of allotments, FM broadcast stations. (Cookeville, Livingston,[1] Lebanon,[1] Celina,[1] and Goodlettsville,[1] Tennessee (MM Docket No. 84-14, RM-4601, RM-4720, RM-4826).

Adopted: July 12, 1985.

Released: August 13, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 3220, published January 26, 1984, proposing the substitution of Channel 234 for Channel 232A and modification of the license of Station WGSQ, Cookeville, Tennessee, to specify operation on the Class C channel. The *Notice* was adopted in response to a petition filed by Gallaher and Huffines ("petitioner"), licensee of Station WGSQ, Cookeville, Tennessee. Comments in response to the *Notice* were filed by: Globe Fuel, Inc.; Gwen's Stout Shop; U.S. Energy, Inc., WHUB, Inc.; S. Roger York; Richard Gillespie; B&B Associates; Carl Story Company; and petitioner, all expressing an interest in the channel. A counterproposal [2] was filed by William O. Barry ("Barry") proposing Channel 229C2 in lieu of Channel 234 to Cookeville, to permit the allocation of Channel 233A to Lebanon, Tennessee.

2. In response, petitioner filed a *Motion* to hold the proceeding in abeyance pending the outcome of the proceedings in MM Docket No. 83-1148.[3] Subsequent pleadings filed by Barry and petitioner, and related Commission actions have raised matters which require additional comment and consideration in this *Further Notice*.

3. In June 1984, Barry filed a supplementary petition [4] amending his counterproposal and requesting the allocation of Channel 246A to Lebanon in lieu of Channel 233A. In support, Barry stated that the impact of the newly created ten mile "buffer zone" in BC Docket 80-90 [5] was not yet apparent and further engineering studies indicated that a suitable site for Channel 233A at Lebanon could not be found. Barry's new proposal resolved the conflict with the Cookeville proposal. However, Commission engineering studies indicated that the new proposal conflicted with a pending petition [6] to allocate Channel 246 to Livingston, Tennessee.

4. In September 1984, petitioner filed reply comments proposing the allocation of Channel 246 to Cookeville to satisfy the criteria newly adopted in § 1.420(g)[7]

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[1] These communities have been added to the caption.

[2] Barry's counterproposal for Lebanon was later amended to specify Channel 246A which would resolve the conflict with petitioner's proposal to allot Channel 234 to Cookeville. Barry subsequently filed pleadings requesting the substitution of various channels at Celina, Spring City and Calhoun, Tennessee, to maintain his proposal for Channel 229C2 at Cookeville. However, in view of Barry's current position seeking the allocation of Channel 246A to Lebanon, these requests are moot.

[3] *Report and Order*, MM Docket No. 83-1148, 98 F.C.C. 2d 916 (1984).

[4] *Motion for Leave to File Supplemental Statement* and *Supplemental Statement of William O. Barry*, filed June 14, 1984, and granted herein. Barry's petition also requested the allocation of Channel 255A to Celina, Tennessee. In view of our action taken herein that request is moot.

[5] See *Memorandum Opinion and Order*, BC Docket No. 80-90, 94 F.C.C. 2d 152 (1983); *recons.* 97 F.C.C. 2d 279 (1984).

[6] Cherokee National Standing Stone Broadcasting Company filed a petition for rule making (PM-4720) on December 15, 1983, proposing the allocation of Channel 246 to Livingston, Tennessee.

[7] See fn. 3, *supra*.

which would permit the direct modification of its license if another channel of equal class could be allotted to Cookeville for general application. In support, petitioner acknowledged the other expressions of interest in Channel 246 aruging that there is a greater need for a wide area coverage facility in a community the size of Cookeville. Petitioner pointed out that there are alternate Class A facilities available which would satisfy the need for an FM facility in the smaller communities. With respect to Barry's proposal for Channel 246A at Lebanon, petitioner stated that it would be a more efficient use of the channel as a Class C to provide broad coverage to an area with few FM services, such as Cookeville rather than a Class A at Lebanon which already has both regional and local FM services available.

5. After petitioner filed its Reply Comments in this proceeding, additional pleadings [8] were filed by Barry, petitioner and WHUB, Inc. accompanied by a request for their acceptance. We will not consider these additional pleadings in view of our determination to issue this *Further Notice* which will allow interested parties ample opportunity to state their views on the proposed allocation of Channel 246 in the area. Further, there is no provision in the Rules for the filing of responses to reply comments, and the information contained therein is not of decisional significance. See § 1.415(d) of the Commission's Rules. Accordingly, acceptance of the additional pleadings are denied.

6. In related actions during the pendency of this proceeding, the Commission had under consideration numerous counterproposals filed in response to the *Notice* in MM Docket 84–231,[9] the omnibus proceeding. Two counterproposals proposed alternate uses for Channel 246 in the Cookeville and Livingston, Tennessee, area. The first, filed on May 10, 1984, by John Heidelberg ("Heidelberg") proposed to allocate Channel 246C2 to Goodlettsville, Tennessee. We have incorporated Heidelberg's petition into this proceeding as a request for a new allocation at Goodlettsville on Channel 246C2. The second counterproposal, filed on May 14, 1984, by David E. Goff ("Goff"), proposed the allocation of Channel 246C1 to Celina, Tennessee. Goff argued that Channel 246C1 could provide first and second aural services to areas significantly greater than that which could be achieved by the Commission's proposal to allocate Channel 229A to Celina. Goff's proposal was, therefore, separated from Docket 84–231 and incorporated into this proceeding.

7. In view of the foregoing, it appears that there are numerous requests for the use of Channel 246 which preclude its use as an alternate channel allocation at Cookeville to satisfy the requirements of § 1.420(g) of the Rules. As noted below, Commission engineering studies have determined that the channel can be allotted to only one of the five communities. Petitioner's proposal advanced in reply comments has also raised pertinent issues to which the other proponents of Channel 246 have not had an opportunity to respond, i.e., the most efficient use of the channel, populations served, availability of other services, etc. Further, the petitions for Livingston and Lebanon were not previously noticed by the Commission in this proceeding since they were filed separately from this docket. The Commission is, therefore, unable to determine on the basis of the information before it, that the allocation of Channel 246 to Cookeville would best achieve the objectives of section 307(b) of the Communications Act of 1934, as amended. We have, therefore, decided to issue this *Further Notice* to allow interested parties to demonstrate which community should receive the allocation of Channel 246 and address the issues raised by petitioner in its reply comments.

We have also determined that no additional channel (other than Channel 246) is available for Cookeville to meet the criteria prescribed by § 1.420(g) which would enable us to make a direct modification of petitioner's license in view of the other expressions of interest in that channel.

Discussion

8. In order to comment on the comparative need for Channel 246 among the five communities, the following information is provided:

City	Population [1]	[illegible] service
Celina, Tennessee	1,580	Vacant Channel 268A.[2]
Cookeville, Tennessee	[illegible]	WHUB(AM), WPTN(AM) (daytime only), WQSQ(FM), (Channel 232A), WHUB(FM), (Channel 252A), WYHY(FM) (Channel [illegible]
Goodlettsville, Tennessee.	8,327	
Lebanon, Tennessee	11,872	WYHY(FM), (Channel [illegible]
Livingston, Tennessee	3,372	WLIV(AM), (daytime only), WXKG(FM), (Channel 240A).

[1] Population data is taken from the 1980 U.S. Census.
[2] Channel 268A appears on the random selection list for Dkt. 84–231 channel allotments as $35 for receipt of applications. (See *Public Notice* of May 8, 1985.)

9. Commenters are invited to address their remarks on the five options listed below, providing specific details on first or second aural service, populations served, other demographic information and issues raised in this *Further Notice*, as well as the priorities concerning mutually exclusive proposals enunciated in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

Options

10. A staff engineering study indicates that under *Option1*, Channel 246 can be allotted to Cookeville with a site restriction 31.4 km southeast [10] to avoid short spacing to the new transmitter site recently approved for Station WFOX, Channel 246, Gainesville, Georgia; Station WSEK, Channel 244A, Somerset, Kentucky; and Station WRSA, Channel 245, Decatur, Alabama. In addition, Channel 234 can be allotted to Cookeville with a site restriction 4.3 km southeast provided Station WSMT–FM relocates its transmitter site 11.3 km southeast of Sparta, Tennessee, in accordance with an agreement between the parties to eliminate short spacing due to the IF spacing requirements. Under this option, we also propose to modify the license of Station WGSQ(FM), Channel 232A, Cookeville, to specify operation on Channel 234 and in accordance with the criteria specified in § 1.420(g) of the Rules, Channel 246 could be available for general application. Alternate Class A channel allocations are available at Celina, Channel 229A; Livingston, Channel 255A, and Goodlettsville, Channel

[8] *Motion for Leave to File Statement* and *Statement of William O. Barry* filed by William O. Barry on October 19, 1984; *Motion to Accept Supplemental Comments* filed by WHUB, Inc. on November 26, 1984; *Motion for Leave to File Comments on Statement of William O. Barry* and *Comments of Gallaher & Huffine on Statement of William O. Barry*, filed by Gallaher and Huffines on December 20, 1984; *Opposition to Supplemental Comments of WHUB, Inc.* filed by Gallaher and Huffiness on December 20, 1984; *Motion for Leave to File Petition and Statement* and *Petition for Partial Reconsideration* filed by William O. Barry on February 12, 1985.

[9] 49 Fed. Reg. 11214, published March 26, 1984.

[10] It should be noted that under rules adopted in BC Docket 80–90, this site does not provide the 10 kilometer buffer zone permitted Station WRSA, Channel 245, Decatur, Alabama. However, as the petition was filed before March 1, 1984, this protection is not required. See *Memorandum Opinion and Order*, BC Docket 80–90, 97 F.C.C. 2d 279 (1984). Nevertheless potential applicants should attempt to avoid infringing upon the buffer zone when considering transmitter site locations.

294A. No alternate channel is available at Lebanon, Tennessee, under this plan.

11. Under *Option II* Channel 246A can be allocated to Lebanon. Alternate Class A allocations can be made to Celina, Channel 229A; Goodlettsville, Channel 294A; and Livingston, Channel 255A. Channel 234 is available for allocation to Cookeville, Tennessee, only if Station WGSQ, Channel 232A, elects to compete for the allocation.

12. Under *Option III* Channel 246 can be allocated to Livingston, with a site restriction 10 kilometers northeast [11] to avoid short spacing to the new transmitter site recently approved for Station WFOX, Channel 246, Gainesville, Georgia; and to Station WSEK, Channel 244A, Somerset, Kentucky. Alternate Class A allocations can be made to Celina, Channel 229A; and Goodlettsville, Channel 294A. Also Channel 234 is available for allocation to Cookeville, Tennessee, only if Station WGSQ Channel 232A, elects to compete for the allocation. No alternate channel is available for allocation to Lebanon.

13. Under *Option IV,* Channel 246C1 can be allocated to Celina. Alternate Class A allocations can be made to Goodlettsville—Channel 294A and Livingston, Channel 255A. Channel 234 is available for allocation to Cookeville only if Station WGSQ(FM) elects to compete for the allocation. No alternate channel is available for allocation to Lebanon.

14. Under *Option V,* Channel 246C2 can be allocated to Goodlettsville with a site restriction 15.1 km east to avoid short spacing to Station WDDJ, Channel 245, Paducah, Kentucky; and Station WRSA, Channel 245, Decatur, Alabama. Under this plan, Class A channel allotments can be made to Celina, Channel 229A, and to Livingston, Channel 255A. Channel 234 is available for allocation to Cookeville, Tennessee, only if Station WGSQ(FM), elects to compete for the allocation. No alternate channel is available for allocation to Lebanon.

15. In view of the foregoing, the Commission considers it appropriate to solicit comments on the alternative amendments to the Table of FM Allotments, § 73.202(b) of the Commission's Rules, for the following communities:

	Present	Proposed
Option I		
Celina, Tennessee	268A	229A, 268A.
Cookeville, Tennessee	232A, and 252A	234, 248, and 252A.
Goodlettsville, Tennessee		294A.
Livingston, Tennessee	240A	240A, 255A.
Option II		
Celina, Tennessee	268A	229A, 268A.
Goodlettsville, Tennessee		294A.
Lebanon, Tennessee	287	246A, 298.
Livingston, Tennessee	240A	240A, and 255A.
Option III		
Celina, Tennessee	268A	229A, 268A.
Goodlettsville, Tennessee		294A.
Livingston, Tennessee	240A	240A, 246A.
Option IV		
Celina, Tennessee	268A	246C1, 268A.
Goodlettsville, Tennessee		294A.
Livingston, Tennessee	240A	240A, 255A.
Option V		
Celina, Tennessee	268A	229A, 268A.
Goodlettsville, Tennessee		246C2.
Livingston, Tennessee	240A	240A, 255A.

16. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

17. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

18. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

19. Interested parties may file comments on or before October 14, 1985, and reply comments on or before October 21, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Michael H. Bader, Esq., Richard M. Riehl, Esq., Haley, Bader & Potts, 2000 M Street NW., Washington, D.C. 20036 (counsel for Gallaher and Huffines)

Rudolph L. Ennis, Esq., McCampbell & Young, 2021 Plaza Tower, Knoxville, Tennessee 37901–0550 (counsel for David E. Goff)

John L. Tierney, Esq., Tierney and Swift; 1925 K Street NW, Suite 300, Washington, D.C. 20006 (counsel for William O. Barry)

Cherokee Nation, Standing Stone Broadcasting Co., c/o Joseph Patrick Williams, Station WKWR–TV, P.O. Box 2848, Cookeville, Tennessee 38502,

Timothy K. Brady, Esq., One Tennessee Square, Box 3194, Oak Ridge, Tennessee 37830 (counsel for John Heidelberg)

Richard Gilliespie, 422 Woodland Avenue, Box 462, Livingston, Tennessee 38570

Lou Ann Smothers, Gwen's Stout Shop, P.O. Box 296, Herrin, Illinois 62948

H. G. Bone, P.O. Box 1194, Lebanon, Tennessee 38570

Earl R. Stanley, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue NW., Washington, D.C. 20006 (counsel for WHUB, Inc.)

S. Roger York, Esq., York & York, P.O. Box 423, 211 West Fifth Street, Crossville, Tennessee 38555

William F. Cheroweth, Globe Fuel, Inc., P.O. Box 171, Marion, Illinois 62959

J.C. Smothers, U.S. Energy, Inc., P.O. Box 247, Marion, Illinois 62959

James C. Glascock, Jr., Carl Storey Company, 222 4th Avenue North, Nashville, Tennessee 37219.

20. It is ordered, that the *Motion for Leave to File Supplemental Statement* and *Supplemental Statement of William*

[11] This site restriction does not provide the 16 kilometer buffer zone permitted to Station WRSA, Channel 245, Decatur, Alabama. However, as the petition was filed before March 1, 1984, this protection is not required. See *Memorandum Opinion and Order,* BC Docket No. 80–90, 97 F.C.C. 2d 279 (1984). Nevertheless, potential applicants should attempt to avoid infringing upon the buffer zone when considering transmitter site locations.

O. Barry, filed by William O. Barry, is granted.

21. It is ordered, that the *Motion to Accept Late Filed Reply Comments* and *Reply Comments of Gallaher and Huffines*, filed by Gallaher and Huffines, is granted.

Federal Communications Commission.

Charles G. Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(G) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.402(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflicts with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposal Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.402(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-19787 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-240; RM-5075]

FM Broadcast Stations in McKinnon, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of David R. Ross, proposes the allotment of Channel 268A to McKinnon, Tennessee, as that community's first FM service.

DATES: Comments must be filed on or before October 7, 1985, and reply comments on or before October 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of §73.202(b), table of allotments, FM Broadcast stations (McKinnon, Tennessee); MM Docket No. 85-240, RM-5075.

Adopted: August 5, 1985.
Released August 15, 1985.
By the Chief, Policy, and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by David R. Ross ("petitioner"), seeking the allotment of FM Channel 268A to McKinnon, Tennessee, as that community's first FM service. Petitioner has stated his intention to apply for the channel. The channel can be allotted in compliance with the Commission's minimum distance separation requirements.

2. In view of the fact that McKinnon, Tennessee, could receive its first local FM service, the Commission finds it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
McKinnon, Tennessee	.....	268A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note:—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before October 7, 1985, and reply comments on or before October 22, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: David R. Ross, Route One, Dover, Tennessee 37058 (Petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do No Apply to Rule Making to Amend*

§§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rule, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85–19788 Filed 8–19–85; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 50, No. 161
Tuesday, August 20, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Proposed Posting of Stockyards; M & R Livestock Co., Inc., et al.; Correction

On August 5, 1985, a notice was published in the **Federal Register** giving notice of the proposed posting for certain stockyards listing their facility number, name, and location of stockyards.

This notice is to correct the location assigned to the following market in that publication.

The notice should have read:

ND–132 Litchville Feeder Pig, Litchville, North Dakota

Done at Washington, D.C., this 13th day of August, 1985.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 85–19677 Filed 8–19–85; 8:45 am]

BILLING CODE 3410-02-M

Soil Conservation Service

Columbia Water Plant Critical Area Treatment RC&D Measure, Kentucky; Environmental Impact

AGENCY: Soil Conserevation Service, USADA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statement is not being prepared for the Columbia Water Plant Critical Area Treatment, RC&D, Measure, Adair County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606–233–2749.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concern a plan for reducing erosion and sedimentation along a 490 foot section of Russell Creek streambank adjacent to Columbia Water Treatment Plant. The planned works of improvement include: Riprapping the streambank and seeding the disturbed area.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Randall W. Giessler, State Conservationist, Soil Conservation Service, 33 Waller Avenue, Lexington, KY 40504.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regardiang State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 1, 1985.

Randall W. Giessler,

State Conservationist.

[FR Doc. 85–19643 Filed 8–19–85; 8:45 am]

BILLING CODE 3410-16-M

Coxton Flood Prevention RC&D Measure, Kentucky; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Coxton Flood Prevention RC&D Measure, Harlan County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606–233–2749.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for reducing first floor level flooding of four homes and foundation and lawn flooding of 14 homes. The planned works of improvement include: cleaning out culverts, constructing inlet boxes, "V" ditches, a gabion wall, and establishing vegetation.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding State and local

Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 1, 1985.

Randall W. Giesler,

State Conservationist.

[FR Doc. 85-19844 Filed 8-19-85; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Kentucky Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 8:45 a.m. and adjourn at 5:00 p.m. on September 19, 1985, at the University of Kentucky, College of Law, Court Room, South Limestone Street, Lexington, Kentucky. The purpose of the meeting is to conduct a community forum on desegregation in public housing in the city of Lexington.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Porter Peeples or Bobby Doctor, Director of the Southern Regional Office, at (404) 221-4391, (TDD 404/221-4391).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 15, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-19859 Filed 8-19-85; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Agenda of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on September 12, 1985, at the Westin Hotel, 400 E. Jefferson, Davinci Room, Detroit, Michigan. The purpose of the meeting is to hold an orientation for new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Tobias or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2186).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 15, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-19860 Filed 8-19-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In FR Doc. 85-19347 beginning on page 32755 in the issue of Wednesday, August 14, 1985, make the following correction: In the third column, in the second paragraph, in the last line "17374" should read "13734".

BILLING CODE 1505-01-M

[A-580-007]

Circular Welded Carbon Steel Pipes and Tubes From Korea; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on circular welded pipes and tubes from Korea. The review covers the period from October 1, 1984. The petitioner in this proceeding has notified the Department that it is no longer interested in the antidumping duty order. This affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all circular welded pipes and tubes exported on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 19369-70) an antidumping duty order on circular welded pipes and tubes from Korea.

In a letter dated July 16, 1985, the Committee on Pipe and Tube Imports, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support for revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of circular welded pipes and tubes, currently classifiable under items 610.3231, 610.3232, 610.3241, and 610.3244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioner's affirmative statement of no interest in continuation of the antidumping duty order on circular welded pipes and tubes from Korea provides a reasonable basis for revocation of the order. In light of the October 1, 1984, effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on circular welded pipes and tubes from Korea effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of

estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of circular welded pipes and tubes from Korea which were exported prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 2, 1985.

[FR Doc. 85-19852 Filed 8-19-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-010]

Rectangular Welded Carbon Steel Pipes and Tubes From Korea; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on rectangular welded carbon steel pipes and tubes from Korea. The review covers the period from October 1, 1984. The petitioner in this proceeding has notified the Department that it is no longer interested in the antidumping duty order. This affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all rectangular welded pipes and tubes exported on or after October 1, 1984. Interested parties ae invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 20045) an antidumping duty order on rectangular welded carbon steel pipes and tubes from Korea.

In a letter dated July 16, 1985, the Committee on Pipe and Tube Import, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support for revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of rectangular welded carbon steel pipes and tubes, currently classifiable under item 610.4975 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioner's affirmative statement of no interest in continuation of the antidumping duty order on rectangular welded carbon steel pipes and tubes from Korea provides a reasonable basis for revocation of the order. In light of the October 1, 1984, effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this reveiw at this time.

Therefore, we tentatively determine to revoke the order on rectangular welded carbon steel pipes and tubes from Korea effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of rectangular welded carbon steel pipes and tubes from Korea which were exported prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and sections 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

August 2, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19853 Filed 8-19-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-003]

Small Diameter Carbon Steel Pipes and Tubes From Korea; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act of 1930, as amended, of the countervailing duty order on small diameter carbon steel pipes and tubes from Korea. The review covers the period from October 1, 1984. The petitioner and the other domestic interested parties to this proceeding have notified the Department that they are no longer interested in the countervailing duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all small diameter carbon steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Richard C. Henderson or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 7241) a countervailing duty order on small diameter carbon steel pipes and tubes from Korea.

In a letter dated June 19, 1985, United States Steel Corporation, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support of revocation of the order. The Department received similar letters from the other domestic interested parties, the Committee on Pipe and Tube Imports, Republic Steel Corporation, Inland Steel Company, Jones & Laughlin Steel Incorporated, National Steel Corporation, Cyclops Corporation, and Laclede Steel Company. Under section 751 of the Tariff Act of 1930, as amended ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of Korean small diameter carbon steel pipes and tubes. Such merchandise is currently classifiable under items 610.3208, 610.3209, 610.3231, 610.3232, 610.3241, 610.3244, and 610.3247 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order on small diameter carbon steel pipes and tubes from Korea provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on this product effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of small diameter carbon steel pipes and tubes from Korea which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 9, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–19854 Filed 8–19–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting at the National Marine Fisheries Service, Southwest Fisheries Center in Tiburon, CA, August 27–29, 1985, to: (1) Review the status of the current groundfish fishery and project landings through the end of the year, (2) develop acceptable biological catches for 1986, (3) recommend additional items for amending the Groundfish FMP, (4) review management line changes and by-catch methodology, and (5) review other items as directed by the Council and develop appropriate reports to the Council. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201; telephone: (503) 221–6352.

Dated: August 15, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 85–19895 Filed 8–19–85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–423,402 (4,526,586)
Microemulsions from Vegetable Oil and Aqueous Alcohol with 1-Butanol Surfactant as Alternative Fuel for Diesel Engines
SN 6–474,996 (4,527,000)
Diolefin Pheromone Mimics as Disruptants of Sexual Communication in Insects
SN 6–749,905
Process to Impart Smooth-dry and Flame Retardant Properties to Synthetic-Cellulosic Blended Fabrics
SN 6–749,906
Preparation of Pellets Containing Fungi and Nutrient for Control of Soilborne Plant Pathogens

Department of Commerce

SN 6–436,124 (4,525,067)
Twin-Etalon Scanning Spectrometer

Department of Health and Human Services

SN 6–683,428
Metaphit, A Specific Acylating Agent for the (^{3}H) Phencyclidine
SN 6–749,442
Purification of Uromodulin

Department of the Army

SN 6–404,783 (4,524,675)
Detachably Connectable Sight Assembly for a Small Defense Weapon
SN 6–460,323 (4,524,674)
Military Vehicles
SN 6–465,851 (4,527,081)
Overshoot Predriven Semi-Asynchronous Driver
SN 6–544,764 (4,527,137)
Evanescent Resonator Frequency Multiplier
SN 6–544,770 (4,526,881)
Method of Pretreating Carbon Black Powder to Improve Cathode Performance and Lithium Sulfuryl Chloride Cell Including the Pretreated Carbon Black Powder
SN 6–571,301 (4,527,276)
Digital Pulse Position Modulation Communications System with Threshold Extension
SN 6–576,992 (4,527,063)
Solid State Nuclear Radiation Detector Circuit with Constant Sensitivity

[FR Doc. 85–19847 Filed 8–19–85; 8:45 am]
BILLING CODE 3510–04–M

CONSUMER PRODUCT SAFETY COMMISSION

Public Hearing Concerning Hazards Associated with All Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Consumer Product Safety Commission will hold a public hearing in Milwaukee, Wisconsin, on September 3, 1985, to obtain safety-related information on All Terrain Vehicles (ATVs). This will be the fourth of five hearings on the hazards associated with ATVs the Commission plans to hold across the United States. Hearings were held in Jackson, Mississippi, on May 30, 1985, in Dallas, Texas on June 17, 1985 and in Concord, New Hampshire on July 25, 1985. The Commission also plans to hold a hearing in Los Angeles, California on October 17, 1985.

The Commission is aware of at least 233 deaths associated with ATVs occurring between January, 1982 and July 3, 1985. Estimates on the number of hospital emergency room treated injuries associated with ATVs in 1984 were 66,956. This is almost two and one half times the number of injuries in 1983 and more than seven times the number in 1982. The Commission also estimates that 52,000 ATV related injuries were treated in hospital emergency rooms in the first six months of 1985. This is approximately 70 percent higher than the estimated injuries treated during the same time period in 1984.

The Commission is primarily concerned about accidents which result from: (1) Loss of control of the ATV; (2) the ATV overturning by flipping over backward, tipping over forward, or rolling over sideways; and (3) the rider being thrown from the vehicle.

The Commission requests members of the public to participate in this hearing. The Commission is particularly interested in participation from owners and users of ATVs; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials or organizations involved with ATV safety and training or state legislation or local ordinances; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs. The hearing will specifically focus on the hazards associated with ATVs and ways the industry, the Commission, state and local governments or voluntary standards organizations can address these hazards.

DATE AND ADDRESS: The hearing will be held on Tuesday, September 3, 1985, beginning at 9:00 a.m. at the Performing Arts Center, Bradley Pavilion Room, 929 North Water Street, Milwaukee, Wisconsin. Requests from persons who wish to make presentations must be received by the Office of the Secretary no later than August 26, 1985. Persons who wish to testify must submit a written copy or summary of their testimony to the Office of the Secretary not later than August 28, 1985. Presentations at the hearing should be limited to approximately 5 minutes.

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make a presentation at the hearing, contact Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; or call Mr. Butts on the Commission's toll free hotline number at 800–638–2772 or the Commission's commercial number at 301–492–6800.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission is holding a series of five public hearings across the United States to assist it in obtaining safety-related information on ATVs and in deciding what, if any, regulatory or voluntary action is warranted. The Consumer Product Safety Commission is concerned about whether the performance characteristics of ATVs, including dynamic stability and handling, are adequately safe. To address this concern, the Commission has issued an advance notice of proposed rulemaking (ANPR), which formally commences a rulemaking proceeding. 50 FR 23139 (May 31, 1985). In the ANPR, the Commission discusses methods by which any unreasonable risks of injury associated with ATVs could be adequately reduced or eliminated. These methods include the promulgation of a performance standard, a labeling or warning standard, a ban of ATVs, the development of a voluntary standard, an administrative recall proceeding under section 15 of the CPSA, an imminent hazard action under section 12 of the CPSA or the dissemination of safety related information.

An ATV is a motorized machine intended to be ridden by one person and designed for off-road use. The majority of ATVs have three wheels in a tricycle configuration, although there has been a large increase in the available number of ATVs with four wheels. (The Commission's inquiry at this time is focused only on three and four wheel ATVs.) ATVs typically have gasoline-

powered engines of between 50 and 250 cubic centimeters displacement. Currently, ATVs use large, soft, low pressure tires. Most ATVs have no rear axle differential and limited suspension systems.

Sales of all terrain vehicles have increased substantially since the mid-1970s. From 1980 to 1983 sales more than tripled with an average rate of growth over this period of 55% per year. While the number of sales increased sharply in 1984, the percentage rate of growth slowed somewhat to 24%.

The Commission staff estimates that by the end of 1985, 2,480,000 to 2,540,000 ATVs will be available for use, based on an average product life expectancy of 7 to 8 years and on a normally distributed rate of product survival.

The Commission's National Electronic Injury Surveillance System (NEISS) estimates that the number of hospital emergency room treated injuries associated with ATVs in 1984 was 66,956. This is almost two and one half times the number of injuries in the previous year and more than seven times the number in 1982. The Commission estimates that the number of ATV related injuries treated in hospital emergency rooms during the first six months of 1985 was 52,000. This approximately 70 percent higher than the estimated injuries treated during the same time period in 1984.

At least 233 ATV associated fatalities are known to the Commission to have occurred from January, 1982 to July 3, 1985. Reports of 233 reported deaths for 1983, 1984, and 1985 are still being received. The Commission staff review of these deaths revealed that 116 victims were under 16 years of age and 54 were under 12 years of age.

The Commission staff believes that the basic configuration of ATVs, and their unique performance characteristics including dynamic stability and handling, appear to play a major role in accidents involving ATVs. Many serious injuries and deaths reported in in-depth investigations conducted by the Commission staff resulted from loss of control of the ATV following an abrupt change in the equilibrium of the vehicle. A number of different factors, such as a change in terrain, or a sudden change in direction can contribute to the change in equilibrium. The subsequent loss of control follows a pattern in which the machine overturns or the rider is thrown off. In many of these accidents, other factors such as drinking, riding with passengers, or operating the vehicle illegally on paved roads, may obscure the pattern of loss of control as the critical element in the incident.

B. Request for Public Participation At Hearing

The Commission requests the public to provide it with information on ATVs and on what action, if any, it should take to adequately reduce or eliminate hazards associated with ATVs. The Commission is particularly interested in the views of persons who own or use ATVs in recreational and occupational applications and who have specific observations about ATV handling characteristics; persons who belong to ATV clubs and/or racing associations; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials such as police officers, health and safety officials and legislators who are involved with ATV safety, training or legislation concerning ATVs; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs.

The hearing will focus on the following areas:

(1) Information which identifies the degree, if any, to which the general design of ATVs as well as specific design and operational features of individual models of ATVs influence the performance characteristics of ATVs and contribute to the risk of injury;

(2) Information identifying any changes in general or specific design characteristics of ATVs, including the cost of these changes, that would reduce or eliminate the risks of injury;

(3) Information concerning the handling characteristics of ATVs and the ability of users at various ages and levels of experience to maintain control of ATVs under various conditions of terrain and speed;

(4) Information relating to techniques of evaluating and testing the performance of ATVs;

(5) Information on current activities to educate or train users of ATVs, including children, in the proper method of operation and ways these efforts could be improved;

(6) Information on any accidents involving ATVs, including information on specific injuries sustained in ATV accidents and the nature, degree, duration, treatment and outcome of such injuries. Copies of physicians' and hospital records are sought;

(7) Information identifying any voluntary standard applicable or adaptable to AVTs which could reduce or eliminate the risk of injury;

(8) Information concerning any state or local licensing requirement, restriction or legislation involving ATVs;

(9) Information concerning the development of the three and four wheel ATVs including information relating to design features which take into account the hazards of overturning, and loss of control and

(10) Information on the sale, marketing and distribution of ATVs, particularly for use by childern.

Presentations should be limited to approximately 5 minutes. The Commission reserves the right to impose further time limitations on all presentations and to impose further restrictions to avoid duplication of presentations.

Persons unable to attend the hearing may submit their comments in writing, for the record. Written comments for the record must be received in the Office of the Secretary no later than September 3, 1985. Also, persons who cannot attend the hearing or make a presentation should be aware that they can submit written comments in response to the ANPR until September 30, 1985.

Dated: August 15, 1985.

Sadye E. Dunn

Secretary, Office of the Secretary.

[FR Doc. 85-19670 Filed 8-19-85; 8:45 am]

BILLING CODE 6355-01-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket 84-1-83CD; Req. No. 5-10059]

Order Granting Motion for Distribution of 1983 Cable Royalty Fund Awarded to National Public Radio

On July 29, 1985, the Tribunal approved a settlement for National Public Radio (NPR) reached by all the parties to the 1983 Cable Distribution Proceeding. The settlement stipulated an award of 0.18 percent of the 1983 cable copyright royalty fund to National Public Radio. On August 6, 1985, NPR filed a motion for distribution of that portion of the fund to which it is entitled. By this Order, the Tribunal grants NPR's motion.

NPR's Request

NPR received from the Tribunal on June 27, 1985 a partial distribution from the 1983 cable fund of $99,454.16. NPR requests as full and complete settlement of its interest in the fund a distribution based on 0.18 percent of the total fund as of September 30, 1985 minus the partial distribution it received on June 27, 1985. The computation is as follows:

Total funds distributed on 6/27/85	$39,781,662.71

Total funds available on 9/30/85	40,494,916.84
	80,276,579.55
Multiplied by .0018	.0018
	144,497.85
Less amount received by NPR 6/27/85	99,454.16
Amount to be distributed	[1]45,043.69

[1] The Tribunal bases its calculation of $45,043.69 on the projection that $40,494,916.84 will be the funds available on September 30, 1985. However, this figure is subject to change. Should the figure be slightly higher or lower on September 30, NPR's distribution will be recalculated accordingly

Accordingly, NPR will receive on September 30, 1985, $45,043.69. The Tribunal accepts NPR's waiver of any interest in the growth of the 1983 Cable Royalty fund after September 30, 1985 and for any late payment paid into the fund after September 30, 1985. The Tribunal reiterates what it stated on the record on July 29, 1985, that approval of the settlement of NPR's claim is not intended to indicate the Tribunal's position on whether the 1983 cable royalty fund should be considered as one pool, two pools, or three pools. That decision will be rendered at a later date in this proceeding.

Edward W. Ray,

Chairman, Copyright Royalty Tribunal.

August 15, 1985.

[FR Doc. 85-19840 Filed 8-19-85; 8:45 am]

BILLING CODE 1410-15-M

DELAWARE RIVER BASIN COMMISSION

Commission Meetings and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Monday, August 26, 1985 beginning at 1:30 p.m. in Room B of the Holiday Inn at Route 100 and West King Street in Pottstown, Pennsylvania to consider the following application:

Philadelphia Electric Company D-69-210 CP (Final): Revision No. 3. An application by Philadelphia Electric Company and Reading Anthracite Company to temporarily, during 1985, revise portions of the Limerick Generating Station project as included in the Comprehensive Plan and to approve the temporary changes under Section 3.8 of the Compact. The proposed revision is for withdrawal of water from the Schuylkill River for consumptive use at Limerick Unit No. 1, when existing dissolved oxygen or flow constraints would otherwise prevent such withdrawal, in amounts not exceeding existing docket limits and not exceeding amounts released into the West Branch of the Schuylkill River from the Beechwood Pit, under a coordinated plan of release from Beechwood and withdrawal at Limerick, with existing dissolved oxygen and flow constraints to be inapplicable to such withdrawal.

* * * * *

The Commission will hold a public hearing on Wednesday, August 28, 1985, beginning at 1:30 p.m. in the Goddard Conference Room of the Commission offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

Applications for Approval of the Following Projects Under Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project—Town of Rockland-Livingston Manor Sewer District D-85-28 CP.* An application to eliminate the use of chlorination facilities at the existing sewage treatment plant in the Town of Rockland, Sullivan County, New York. The applicant has requested a waiver of the current DRBC disinfection requirement. The Livingston Manor wastewater discharge was approved with a design capacity of 1,050,000 gallons per day (gpd) to be discharged to Willowemoc Creek as described in Docket No. D-67-29 CP on April 26, 1967. The receiving waters are classified by the New York Department of Environmental Conservation as C(T) trout waters and as such do not require any disinfection. The New York State Health Department has stated that there is no demonstrated need for disinfection at this facility. This hearing continues that of May 29, 1985.

2. *Totten Farms D-80-5 RENEWAL.* Renewal of an approved ground water withdrawal which supplies water for irrigation of the applicant's farm crops in North Hanover Township, Burlington County, New Jersey. Commission approval was limited to five years and will expire unless renewed. The proposed 30-day withdrawal limit remains at 8.64 million gallons (mg)/30 days. The applicant's single well is located approximately 400 feet west of Ellisdale-Arneytown Road and approximately 1,000 feet south of Stewart Road in North Hanover Township. The well is drilled in the Englishtown Formation.

3. *Old Craigsville Television Association D-82-46 (Revised).* An application resubmitted by Old Craigsville Television Association for reconsideration of a previously denied cable crossing. The proposed cable would extend from Kilgour Road, Shohola Township, Pike County, Pennsylvania to the Town of Lumberland, Sullivan County, New York, crossing a section of the Delaware River designated "recreational" under the National Wild and Scenic Rivers program. The renewed application included a report by the New York State Cable Commission which acknowledges there are alternatives and includes more detailed cost estimates. The application has also forwarded a copy of a letter by James Coleman, Regional Director, indicating the National Park Service has reversed its position and now would not oppose the proposed river crossing.

4. *Crown Advanced Films (Formerly Crown Zellerbach) D-83-19 (RENEWAL).* The applicant seeks approval to continue withdrawing ground water from Well No. 7 or from standby Well No. 3 in accordance with Delaware River Basin Commission's temporary approval given November 30, 1983. That approved docket incorporated a phased water use reduction program in which the 30 day limit was to be reduced from 15.5 mg to 6.0 mg, and the yearly limit was to drop from 180 mg to 60 mg, prior to September 1985. The application is consistent with the phased schedule. Current ground water use is 6.9 mg/30 days and 63.4 mg/year. The wells withdraw from the Potomac Formation. The plant is located immediately east of the intersection of Route 9 (River Road) and Grantham Lane, in New Castle County, Delaware.

5. *Moyer Packing Company D-83-31.* A ground water withdrawal project to supply approximately 0.19 million gallons per day (mgd) of water to the applicant's meat packing plant in Franconia Township, Montgomery County, Pennsylvania. Well Nos. 1, 2, 3, 4 and 5, located in Franconia Township, were previously placed in service and have collectively withdrawn in excess of 100,000 gpd without approval of the Delaware River Basin Commission. Ground water from the wells is used in conjunction with water purchased from the North Penn Water Authority. The wells are located in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Bristol Township Authority D-85-12 CP.* Upgrading of the applicant's sewage treatment facility located in Bristol Township, Bucks County, Pennsylvania. The existing plant will be modified to provide for compliance with existing NPDES limits and design capacity will remain at 2.25 mgd. Treated effluent will continue to discharge to the Delaware River near Croydon, Pennsylvania.

7. *E.I. du Pont de Nemours and Company—Repauno Plant D–85–32.* Approval is sought for three operating wells, Nos. 3, 5, and 6, and for a ground water decontamination well, No. 46, to serve the du Pont Repauno Plant, Gibbstown, Gloucester County, New Jersey. Well No. 46 which is designed to yield 17.3 mg/30 days will be installed and operated to prevent ground water containing benzene, nitrobenzene and aniline from contaminating the public water supply of Greenwich Township. Water withdrawn from Well No. 46 will be treated by activated carbon filter prior to discharge. All four wells draw from the Raritan-Magothy geologic formation. The proposed maximum withdrawal from the four wells is 57.3 mg/30 days. The wells are located within the plant property; Well No. 3 is located southeast of Gate A; Well No. 5 is located north of Morse Street, between Patterson and Bacchus Avenue; Well No. 6 is located at the northeast corner of Morse Street and Repauno Avenue; and Well No. 46 is located on Repauno Avenue, northeast of the main gate.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at these hearings are requested to register with the Secretary prior to the hearings.

Susan M. Weisman,

Secretary.

August 13, 1985.

[FR Doc. 85–19807 Filed 8–19–85; 8:45 am]

BILLING CODE 6350–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 19, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public in an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 15, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Elementary and Secondary Education

Type of Review Requested: Extension
Title: Application for Civil Rights Technical Assistance and Training State Educational Agency Program
Agency Form Number: ED 296–1
Frequency: Annually
Affected Public: State educational agencies
Reporting Burden: Responses: 120; Burden Hours: 2,400
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The application is used by State educational agencies to apply for assistance under Title IV of the Civil Rights Act of 1964, as amended. The Department uses this information to evaluate the proposed projects and make awards in accordance with program regulations.

Type of Review Requested: Extension
Title: Application for Civil Rights Technical Assistance and Training Desegregation Assistance Center Program
Agency Form Number: ED 296–2
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 100; Burden Hours: 2,000
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The application is used by non-profit institutions to apply for desegregation assistance center awards under Title IV of the Civil Rights Act of 1964, as amended. The Department needs this information to evaluate these proposed projects and set the amount of each award in accordance with program regulations.

[FR Doc. 85–19863 Filed 8–19–85; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Special Services for Disadvantaged Students Program; Application for Noncompeting Continuation Awards for Fiscal Year 1986

Applications are invited for noncompeting continuation awards under the Special Services for Disadvantaged Students Program.

Authority for this program is contained in sections 417A and 417D of the Higher Education Act of 1965, as amended. (20 U.S.C. 1070d, 1070d–1b)

The Secretary awards grants under this program to institutions of higher education only. The purpose of the award is to allow applicants to carry out projects designed to provide supportive services to disadvantaged students who are pursuing programs of postsecondary education.

Closing date for transmittal of applications: To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered by October 15, 1985.

If an application for a noncompeting continuation award is late, the Department may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it. Grantees are strongly advised to respond by the closing date.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center,

Room 3633, ROB—3, Attention: 84.042 (Special Services for Disadvantaged Students), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Application delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Available funds: The Congress has not yet appropriated funds for fiscal year 1986 for the Special Programs for the Disadvantaged. The Senate Budget Resolution recommends fiscal year 1986 funding for these programs at the fiscal year 1985 level of $174,940,000. Should this amount be appropriated, approximately $70,323,000 would be available for noncompeting continuation grant awards under the Special Services program. The average grant award under the Special Services program in fiscal year 1985 was $105,900. Non-competing continuation applications are being requested at this time to allow for sufficient time to evaluate them and complete the grants process prior to the end of the fiscal year.

Application forms: Application forms for noncompeting continuation awards are expected to be ready for mailing no later than Sept. 3, 1985. They are mailed routinely to currently funded projects. If a grantee does not receive the forms by September 20, 1985 the grantee should telephone the Special Services Branch of the Division of Student Services at (202) 245–2165.

Applications must be prepared and submitted in accordance with the regulations, instructions and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. The Secretary strongly urges that applicants not submit information that is not requested. (Approved by the OMB under Control number 1840–0017.)

Applicable regulations: The following regulations are applicable to noncompeting continuation awards:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78. Applicants should note that the criteria for making Continuation awards are in 34 CFR 75.253; and

(b) Regulations for the Special Services for Disadvantaged Students Program in 34 CFR Part 646.

Further information: For further information contact the Special Services Branch, Division of Student Services, U.S. Department of Education, (L'Enfant Plaza Station, P.O. Box 23772, Washington, D.C. 20026–3772). Telephone: (202) 245–2165.

(20 U.S.C. 1070d, 1070d–1b)

(Catalog of Federal Domestic Assistance Number: 84.042—Special Services for Disadvantaged Students Program)

Dated: August 15, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85–19861 Filed 8–19–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Advisory Board International R&D Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: International R&D Panel of the Energy Research Advisory Board (ERAB).

Date and Time: September 19, 1985: 9:00 a.m.—5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW, Room 4A–110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–5767.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The purpose of the Panel is to report to the parent Board on international energy R&D and specifically on international collaboration on large scale scientific and technology programs involving long time horizons for energy research and development.

Tentative Agenda:

- Review of Draft Report
- Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 6, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 85–19863 Filed 8–19–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 9087–000 et al.]

Sunshine Hydroelectric Facility et al.; Availability of Environmental Assessment and Finding of No Significant Impact

August 9, 1985.

In the matter of City of Boulder, Colorado, Project No. 9087–000; Springville City, Utah, Project No. 1715–000; Independence County,

Arkansas, Project No. 4660–002; Androscoggin Water Power Company, Project No. 4784–008; International Falls Power Company, Project No. 5223–001; Niagara Mohawk Power Corporation, Project No. 7518–000; City of Rome, New York, Project No. 7610–000; Power Authority of New York, Project No. 8303–000; D. William Saulsberry, Project No. 5447–003; Blind Canyon Aquarach, Inc., Project No. 8375–001; Hydrodynamics, Inc., Project No. 8831–000; Levan Town Corporation, Project No. 9030–000; Red Bluff Water Power, Project No. 9075–000; Northeast Utilities Service Company, Project No. 2004–006; Georgia-Pacific Corporation, Project No. 2392–001; Owyhee Project Irrigation Districts, Project No. 4359–001; Dr. Daniel C. Merrill, Project No. 5776–001; Ronald and Arlene Ott, Project No. 7178–001; F&T Energy Corporation, 8201–001.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

EXEMPTIONS

Project No.	Project name	State	Water body	Nearest town	Applicant
9067–000	Sunshine hydroelectric facility	CO	City of Boulder distribution system	Boulder	City of Boulder.
5447–003	Little Boulder Creek	CA	Little Boulder Creek	Trinity Center	D. William Saulsberry.
8375–001	Blind Canyon aquarach project	ID	Snake River	Hagerman	Blind Canyon Aquarach, Inc.
8831–000	South Dry Creek	MT	Rock Creek-Clear Creek	Red Lodge	Hydrodynamics, Inc.
9030–000	Cobble Rock	UT	Cobble Rock Spring	Levan	Levan Town Corp.
9075–000	Red Bluff	TX/NM	Pecos River	Pecos	Red Bluff Water Power.

LICENSES

Project No	Project name	State	Water body	Nearest town	Applicant
1715–000	Spring Canyon	UT	Spring Creek	Springville City	Springville City.
4660–002	White River Lock & Dam No. 2	AR	White River	Batesville	Independence County.
4784–008	Pejepscot	ME	Androscoggin River	Topsham, Brunswick, Dunham, Lisbon.	Androscoggin Water Power Company.
5223–001	International Falls	MN	Rainy River	International Falls	International Falls Power Company.
7518–000	Hogansburg	NY	St. Regis River	Bombey Falls	Niagara Mohawk Power Corp.
7610–000, 8303–000	Delta Hydro	NY	Mohawk River	Rome	City of Rome, NY; and Power Authority of the State of New York.
2004–006	Hadley Falls	MA	Holyoke Canals/Connecticut River	Holyoke	Northeast Utilities Service Company.
2392–001	Gilman	VT/NH	Connecticut River	Gilman VT and Dalton NH	Georgia-Pacific Corp.
4359–001	Owyhee Tunnel No. 1	OR	Owyhee River/Lake Owyhee	Nyssa	Owyhee Project Irrigation Districts.
5776–001	Mawah Creek	CA	Mawah Creek	Weitchpec	Dr. Daniel D. Merrill.
7178–001	Arbuckle Mountain	CA	Middle Fork Cottonwood Creek	Platina	Ronald & Arlene Ott.
8201–001	Cypress Bayou-Caddo Lake Dam	LA	Cypress Bayou-Caddo Lake	Mooringsport	F&T Energy Corp.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–19887 Filed 8–19–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP85–737–000, et al.]

Texas Gas Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket No. CP85–737–000]

August 9, 1985.

Take notice that on July 26, 1985, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP85–737–000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas to the Town of Basile, Louisiana (Basile), for resale, and to construct and operate facilities therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell Basile up to 750 Mcf per day of natural gas from its general system supply, with an annual maximum of 78,500 Mcf, for residential, commercial and agricultural use. Such service would be rendered pursuant to Applicant's Rate Schedule SG–SL.

Applicant proposes to construct and operate a sales meter station and related facilities, in order to render service to Basile. The cost of such facilities is estimated at $47,140 and would be financed by Applicant from funds on hand.

Applicant states that Basile currently purchases natural gas on a day-to-day basis from the city of Eunice, Louisiana.

Comment date: August 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–738–000]

August 9, 1985.

Take notice that on July 26, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85–738–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to The Brooklyn Union Gas Company (BUGCo) and to construct and operate appurtenant facilities under the certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to add a delivery point to BUGCo on Staten Island, New York, where Transco's facilities intersect facilities owned by BUGCo. It is stated that this would be a standby delivery point which would be used in the event that BUGCo was unable to obtain contracted-for firm system supplies of natural gas from Texas Eastern Transmission Corporation (TETCO) through TETCO's Goethals station or for other emergencies. It is claimed that any delivery by Transco at this standby point would be offset by a corresponding reduction in Transco's deliveries to BUGCo at other existing delivery points.

It is indicated that the $45,140 estimated cost of the facilities would be reimbursed by BUGCo.

Comment date: September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP85-724-000]

August 13, 185.

Take notice that on July 18, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-724-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related facilities necessary to enable Arkla to deliver gas from one of its jurisdictional pipelines to one or more consumers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc. (ALG), under the authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Arkla states that the sales tap would be located on its Line K in Union Parish, Louisiana, and is expected to cost $8,757 to install. The initial customer, West Monroe Gas Gathering Systems, Inc., it is stated, would use the gas to operate its compressors and miscellaneous equipment. Peak day and annual deliveries are expected to be 13.2 Mcf and 4,818 Mcf, respectively. Arkla advises that the deliveries would be made under Priority 3 of its curtailment plan and that they would have a *de minimis* impact on its system supply. Arkla further advises that the gas would be billed at ALG's regular retail rates applicable from time to time to this type of customer.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Arkla Energy Resources, a divison of Arkla, Inc.

[Docket No. CP85-740-000]

August 13, 1985.

Take notice that on July 26, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-740-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authority to construct and operate a sales tap and related jurisdictional facilities necessary to enable Arkla to deliver gas from one of its jurisdictional pipelines to one or more consumers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkansas Louisiana), under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Arkla proposes to construct and operate a sales tap on its Line J in Pope County, Arkansas, to enable Arkla to deliver gas to GMC Farms, Inc., which it is estimated would use approximately 8,600 Mcf per year for commercial purposes.

Arkla states that this would be a routine delivery of gas to a customer served by Arkansas Louisiana and that the gas would be delivered from Arkla's general system supply, which it is stated is adequate to provide the service. Arkansas Louisiana, it is indicated, would charge GMC Farms, Inc., its regular approved retail rate for this class of customer as contained in its presently effective Rate Schedule No. 2 as filed with the Arkansas Public Service Commission.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP85-675-000]

August 13, 1985.

Take notice that on July 5, 1985, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP85-675-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon certain facilities and points of delivery, under the authorization issued in Docket No. CP83-76-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia requests permission and approval to abandon approximately 2.4 miles of 4-inch and 8-inch pipeline, related measuring and regulating facilities and five points of delivery to existing wholesale customers, as follows:

1. Abandon a delivery point and related facilities to Columbia Gas of Kentucky, Inc. (CKY), in Knott County, Kentucky, which were used to supply several residential customers of CKY and which are said no longer to be required due to said customers conversion to alternative fuels. The delivery point is said to have been inactive since May 1983.

2. Abandon a delivery point and related facilities to CKY in Floyd County, Kentucky, previously used by CKY to serve Smith Branch Stone Company which, it is said, has moved.

3. Abandon a delivery point to Columbia Gas of Ohio, Inc. (COH), 142 feet of 4-inch pipeline and related facilities in Jefferson County, Ohio, previously used by COH to serve Kaul Clay Company whose industrial plant, it is said, has closed.

4. Abandon a delivery point and related facilities to COH in Columbiana County, Ohio, previously used by COH to serve Cardinal Stone Company whose industrial plant, it is said, is no longer in operation.

5. Abandon a delivery point and related facilities to COH in Fairfield County, Ohio, previously used by COH to serve C.D.B. & T. Materials whose industrial plant, it is said, has closed.

6. Abandon approximately 2.3 miles of 8-inch pipeline in Washington County, Pennsylvania, originally installed in 1891, which is paralleled by Columbia's 10-inch pipeline, Line 23. Columbia states that no points of delivery are currently supplied directly from the 8-inch pipeline and that the market area previously supplied from this segment of pipeline is now being supplied from another pipeline.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP85-759-000]

August 13, 1985.

Take notice that on August 6, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company

(Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, hereinafter referred to jointly as Applicants, filed in Docket No. CP85–759–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Lukens Steel Company (Lukens) under their certificates issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in their request on file with the Commission and open to public inspection.

Applicants propose to transport up to 5 billion Btu equivalent of natural gas per day on behalf of Lukens through October 31, 1985. It is explained that Columbia Gulf would receive the quantities at existing points of receipt in Louisiana and redeliver to Columbia Transmission which would redeliver to Columbia Gas of Pennsylvania, Inc. (CPA), for ultimate delivery to Lukens. It is stated that the gas would be purchased by Lukens from Exxon Company, USA.

Applicants also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T–2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within the distributor customer's total daily entitlements (TDE). However, Columbia Transmission states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky; and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of the distributor customer's TDE's. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP85–744–000]

August 13, 1985.

Take notice that on July 30, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85–744–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales delivery point and to deliver natural gas for Peoples Natural Gas Company's (Peoples) account in Ford County, Kansas, under the certificate issued in Docket No. CP82–402–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Peoples has requested that Natural provide a new sales delivery point in Ford County, Kansas; and that peak daily flow at the proposed point is expected to be 100 Mcf of gas. It is explained that the proposed deliveries would enable Peoples to serve the commercial gas needs of a feed yard operated by the Ford County Feed Yard Inc. The delivery would not result in any increase in Peoples' total entitlements or contract quantity from Natural, it is asserted. Natural states it would be required to construct and operate a 2-inch tap connection and measuring station plus appurtenant facilities at an estimated cost of $33,000 which cost would be reimbursed by Peoples.

Natural states that the proposed action is not prohibited by its existing applicable tariff, Rate Schedule G–1, and that it has sufficient capacity to accomplish the proposed change in deliveries to Peoples without detriment or disadvantage to its other customers.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP85–745–000]

August 13, 1985.

Take notice that on July 31, 1985, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85–745–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of a qualified end-user under the certificate issued in Docket No. CP83–83–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Applicant requests authority to transport gas on behalf of Chrysler Corporation (Shipper) pursuant to a transportation agreement dated June 12, 1985, among Applicant, Shipper and Indiana Gas Company (Indiana Gas) (agreement). The agreement provides for Applicant to receive a transportation quantity of up to 1,200 Mcf of gas per day on an interruptible basis, at an existing point of interconnection between Applicant and EnTrade Corporation's designee in Weld County, Colorado. Applicant states that it would then transport and redeliver such gas, less a four percent reduction for fuel, to Indiana Gas in Grant County, Indiana, and that Indiana Gas in turn would make ultimate delivery to Shipper for its end use at its Newcastle, Indiana, facilities. Applicant states that the gas would be used for boiler fuel, process billet heating, metal heat treating, and comfort heating. It is explained that Indiana Gas is an existing jurisdictional customer of Applicant and that Shipper is an existing end-use customer of Indiana Gas.

Applicant states that it would be compensated in accordance with its Rate Schedule OST, presently 42.0 cents plus a 1.24-cent GRI surcharge per million Btu redelivered at the point of redelivery. It is explained that the term of the service is from the date automatic authorization expires (October 15, 1985) until the earlier of eighteen months from the effective date of the agreement, termination of authorization as provided by Subpart F of 18 CFR Part 157, or termination of the agreement by either of the parties.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipe Line Company, a Division of Tenneco Inc.

[Docket CP85–739–000]

August 13, 1985.

Take notice that on July 26, 1985, Tennessee Gas Pipe Line Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85–739–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon in place approximately 3,500 feet of gas supply line in Hidalgo County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that local developers are planning to develop the land on and around the lateral, and that abandoning the line would minimize interference with any construction that would take place in the area. Further, the one and only producer's well connected to the line has been plugged, and no other gas is anticipated to be available for connection, it is indicated.

Comment date: September 3, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. Texas Eastern Transmission Corporation

[Docket No. CP85–755–000]

August 13, 1985.

Take notice that on August 2, 1985, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP85–755–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for La Gloria Oil and Gas Company (La Gloria), under the certificate issued in Docket No. CP82–535–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern proposed to transport through October 31, 1985, an average daily volume of 7,000 dt equivalent of natural gas on an interruptible basis for La Gloria to replace gas lost due to processing at the Mobil Oil Corporation Iowa processing plant (Mobil plant) in Jefferson Davis Parish, Louisiana. Texas Eastern estimates the peak day and annual volumes to be 10,000 dt and 2,555,000 dt equivalent of natural gas, respectively.

Texas Eastern states that La Gloria is purchasing the gas from Texas Eastern Gas Trading Company. Texas Eastern further states that it would receive the gas at an existing interconnection with Valero Transmission Company in LaVaca County, Texas, and redeliver such quantities, less applicable shrinkage, to La Gloria at the discharge of the Mobil plant. Texas Eastern also requests flexible authority to add or delete receipt-delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Texas Eastern will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Texas Eastern proposes to charge La Gloria its currently effective TS–2 transportation rate of 13.26 cents per dt transported.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–749–000]

August 13, 1985.

Take notice that on August 1, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85–749–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under certificate issued in Docket No. CP82–426–000 pursuant to section 7(c) of the Natural Gas Act, on behalf of thirty-two end-users, all of whom Transco indicates are being represented by the PSNC Production Corporation (PSNC Production), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that it would receive the gas at (1) the interconnection with GHR Transmission Corporation (GHR) in the Agua Dulce Field, Nueces County, Texas, (2) the interconnection with Valero Transmission Company in La Salle County, Texas, (3) the interconnection with GHR at Miranda Prospect, Duval County, Texas, and (4) the tailgate of the Katy Exxon plant in Waller County, Texas. Transco states it would redeliver, on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up) to existing points of delivery between Transco and Public Service Company of North Carolina (Public Service) which in turn, would redeliver such gas to the end-user's plants as follows:

To American & Efird Mills, Inc., at its plant in Mount Holly, North Carolina—on a peak day 750 dt equivalent of gas, on an average day 500 dt equivalent, and on an annual basis 182,500 dt equivalent.

To Armtex, Inc., at its plant in Gastonia, North Carolina—on a peak day 525 dt equivalent of Gas, on an average day 350 dt equivalent, and on an annual basis 127,750 dt equivalent.

To Asheville Dyeing & Finishing at its plant in Asheville, North Carolina—on a peak day 825 dt equivalent of gas, on an average day 550 dt equivalent, and on an annual basis 200,750 dt equivalent.

To Berkeley Mills at its plant in Hendersonville, North Carolina—on a peak day 413 dt equivalent of gas, on an average day 275 dt equivalent, and on an annual basis 100,375 dt equivalent.

To Burlington Industries, Inc., at its plant in Statesville, North Carolina—on a peak dy 550 dt equivalent of gas, on an average day 185 dt equivalent, and on an annual basis 66,000 dt equivalent.

To Cannon Mills Company at its plant in Concord, North Carolina—on a peak day 150 dt equivalent of gas, on an average day 100 dt equivalent, and on an annual basis 36,500 dt equivalent.

To Carolina Yarns Processors, Inc., at its plant in Tryon, North Carolina—on a peak day 375 dt equivalent of gas, on an average day 250 dt equivalent, and on an annual basis 90,000 dt equivalent.

To Collins & Aikman Corporation at its plant in Roxboro, North Carolina—on a peak day 1,950 dt equivalent of gas, on an average day 1,300 dt equivalent, and on an annual basis 474,500 dt equivalent.

To Collins & Aikman Corporation at its plant in Spindale, North Carolina—on a peak day 600 dt equivalent of gas, on an average day 400 dt equivalent, and on an annual basis 146,000 dt equivalent.

To Cone Mills Corporation at its Cliffside Plant #1 in Cliffside, North Carolina—on a peak day 375 dt equivalent of gas, on an average day 250 dt equivalent, and on an annual basis 91,250 dt equivalent.

To Cone Mills Corporation at its Cliffside Plant #2 in Cliffside, North Carolina—on a peak day 600 dt equivalent of gas, on an average day 400 dt equivalent, and on an annual basis 146,000 dt equivalent.

To Foote Mineral Company at its plant in Cleveland County, North Carolina—on a peak day 800 dt equivalent of gas, on an average day 750 dt equivalent, and on an annual basis 126,000 dt equivalent.

To Gerber Products Company at its plant in Asheville, North Carolina—on a peak day 825 dt equivalent of gas, on an average day 550 dt equivalent, and on an annual basis 200,750 dt equivalent.

To Harriet & Henderson Yarns at its North Plant in Henderson, North Carolina—on a peak day 188 dt equivalent of gas, on an average day 122 dt equivalent, and on an annual basis 44,500 dt equivalent.

To Harriet & Henderson Yarns at its South Plant in Henderson, North Carolina—on a peak day 172 dt equivalent of gas, on an average day 110 dt equivalent, and on an annual basis 39,602 dt equivalent.

To Ithaca Industries, Inc., at its plant in Gastonia, North Carolina—on a peak day 650 dt equivalent of gas, on an average day 436 dt equivalent, and on an annual basis 159,073 dt equivalent.

To Mount Hope Finishing Company at its plant in Butner, North Carolina—on a peak day 1,275 dt equivalent of gas, on an average day 850 dt equivalent, and on an annual basis 310,250 dt equivalent.

To N.C. Dept. Mental Health at its hospital in Butner, North Carolina—on a peak day 390 dt equivalent of gas, on an average day 260 dt equivalent, and on an annual basis 94,900 dt equivalent.

To Pharr Yarns, Inc., at its Sterling Division Plant in Belmont, North Carolina—on a peak day 450 dt equivalent of gas, on an average day 300 dt equivalent, and on an annual basis 109,500 dt equivalent.

To Pharr Yarns, Inc., at its Main Street Plant in McAdenville, North Carolina—on a peak day 188 dt equivalent of gas, on an average day 125 dt equivalent, and on an annual basis 45,625 dt equivalent.

To Pharr Yarns, Inc., at its Plants, #4 and #5 in McAdenville, North Carolina—on a peak day 900 dt equivalent of gas, on an average day 600 dt equivalent, and on an annual basis 219,000 dt equivalent.

To Stowe Mills, Inc., at its plant in McAdenville, North Carolina—on a peak day 450 dt equivalent of gas, on an average day 300 dt equivalent, and on an annual basis 109,500 dt equivalent.

To Sandoz Chemicals Corporation at its plant in Mount Holly, North Carolina—on a peak day 1,500 dt equivalent of gas, on an average day 900 dt equivalent, and on an annual basis 328,500 dt equivalent.

To Threads USA at its plant in Gastonia, North Carolina—on a peak day 550 dt equivalent of gas, on an average day 500 dt equivalent, and on an annual basis 182,500 dt equivalent.

To Piedmont Processing at its plant in Belmont, North Carolina—on a peak day 200 dt equivalent of gas, on an average day 150 dt equivalent, and on an annual basis 54,750 dt equivalent.

To Amtex at its plant in Asheville, North Carolina—on a peak day 450 dt equivalent of gas, on an average day 400 dt equivalent, and on an annual basis 146,000 dt equivalent.

To J. C. Cowan at its plant in Forest City, North Carolina—on a peak day 875 dt equivalent of gas, on an average day 645 dt equivalent, and on an annual basis 235,200 dt equivalent.

To Durham Domestics at its plant in Durham, North Carolina—on a peak day 400 dt equivalent of gas, on an average day 375 dt equivalent, and on an annual basis 135,000 dt equivalent.

To W. G. Lord at its plant in Cramerton, North Carolina—on a peak day 1,000 dt equivalent of gas, on an average day 400 dt equivalent, and on an annual basis 147,000 dt equivalent.

To Mooresville Mill at its plant in Mooresville, North Carolina—on a peak day 650 dt equivalent of gas, on an average day 225 dt equivalent, and on an annual basis 82,000 dt equivalent.

To Beacon Manufacturing Company at its plant in Swannanoa, North Carolina—on a peak day 450 dt equivalent of gas, on an average day 300 dt equivalent, and on an annual basis 109,500 dt equivalent.

To Granite Finishing at its plant in Haw River, North Carolina—on a peak day 3,750 dt equivalent of gas, on an average day 2,500 dt equivalent, and on an annual basis 912,500 dt equivalent.

It is stated that the total volume of gas to be transported to the end-users' plants on a peak day is 23,226 dt equivalent, on an average day is 15,358 dt equivalent, and on an annual basis is 5,453,275 dt equivalent and represents all of the gas requirements of each plant. Transco states that the transportation for the end-users would continue through October 31, 1985. Transco would charge the rates provided by its Rate Schedule T–II which are currently 41.1 cents per dt equivalent of gas plus a 1.21-cent Gas Research Institute allowance and a 5.8 per cent fuel allowance.

Transco has submitted the following end-use profile:

End user and plant location	Amount[1] in dt	Proposed end-use	Percent
American & Efird, Mt. Holly, NC	500	[4]	2
		[5]	98
Armtex, Gastonia, NC	800	(2)	28
		[3]	72
Asheville Dyeing, Asheville, NC	550	(2)	27
		(3)	73
Berkely, Hendersonville	275	[3]	*
		(3)	96
Burlington, Statesville, NC	100	[3]	30
		(3)	70
Cannon Mills, Concord, NC	100	(3)	100
Carolina Yarn, Tryon, NC	250	(3)	100
Collins & Aikman, Roxboro, NC	1,300	[3]	28
		[3]	8
		(3)	64
Collins & Aikman, Spindale, NC	400	(3)	100
Cone Mills-Cliffside Plant No. 1, Cliffside, NC	200	(3)	100
Cone Mills-Cliffside Plant No. 2, Cliffside, NC	400	(3)	100
Foote, Cleveland County, NC	750	(3)	87
		[3]	13
Gerber, Asheville, NC	550	[3]	5
		[3]	95
Harriet & Henderson North Plant, Henderson, NC	122	(3)	100
Harriet & Henderson South Plant, Henderson, NC	110	[3]	100
Ithaca, Gastonia, NC	436	[3]	15
		[3]	85
Mt. Hope, Butner, NC	850	[3]	9
		(3)	91
N.C. Dept. Mental Health Hospital, Butner, NC	260	(3)	100
Pharr Yarns—Sterling Division, Belmont, NC	300	[3]	100
Pharr Yarns—Main Street Plant, McAdenville, NC	125	[3]	100
Pharr Yarns—Plants 4 & 5, McAdenville, NC	600	(3)	100
Stowe, McAdenville, NC	300	(3)	100
Sandoz, Mt. Holly	900	[3]	11
		(3)	89
Threads USA, Gastonia, NC	500	(3)	100
Piedmont, Belmont, NC	150	[3]	100
Amtex, Asheville, NC	400	[3]	31
		[3]	69
J. C. Cowan, Forest City, NC	645	[3]	100
Mooresville Mill, Mooresville, NC	225	(3)	53
		[3]	47
W.G. Lord, Cramerton, NC	400	(3)	49
		[3]	51
Durham, Durham, NC	375	(3)	82
		[3]	18
Beacon, Swannanoa, NC	300	[3]	90
		[3]	10
Granite, Haw River, NC	2,500	[3]	9
		(3)	91

[1] This figure is based on an average day end-use requirements.

[2] Industrial less than 50 Mcf of gas per day. Process, feedstock and plant protection with no alternative fuel capability. Large commercial requirements of 50 Mcf or more of gas per day except for large commercial boiler fuel requirements above 300 Mcf of gas per day.

[3] All other industrial requirements not greater than 300 Mcf of gas per day.

[4] Non-boiler use between 300 and 3,000 Mcf of gas per day.

[5] Boiler fuel requirements of more than 300 Mcf of gas per day but less than 1,500 Mcf of gas per day.

[6] Boiler fuel requirements between 1,500 and 3,000 Mcf of gas per day.

Transco also requests flexible authority to change supply sources or to add or delete receipt points if such altered service is on behalf of the same end-user at the same end user location within the maximum daily and annual

transportation volumes authorized in this docket. Transco indicates that following the addition or deletion of gas supplies or receipt points, it would file with the Commission certain information within 30 days following the implementation of the changes.

Transco has submitted statements from Public Service, GHR and Valero indicating that they have sufficient capacity to transport the gas without detriment to their other customers.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

12. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–754–000]

August 13, 1985.

Take notice that on August 2, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85–754–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for an end-user under the certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request, on file with the Commission and open to public inspection.

Transco proposes to transport up to 1,200 Mcf of natural gas per day, on an interruptible basis, for Wheaton Industries (Wheaton), an eligible end-user. It is stated that the gas to be transported would be purchased by Wheaton from reserves available to Transco Energy Marketing Company in various counties in Texas. It is explained that Transco would receive such gas at the existing point of interconnection between Transco and GHR Transmission Corporation (GHR) in the Agua Dulce Field, Nueces County, Texas; the existing point of interconnection between Transco and GHR at Miranda Prospect, Duval County, Texas; the existing point of interconnection between Transco and Valero Transmission Company (Valero) in LaSalle County, Texas; and the tailgate of the Katy Exxon gas plant in Waller County, Texas. Transco, it is stated, would then transport and redeliver equivalent quantities, less quantities retained for compressor fuel and line loss make-up, to existing points of delivery to South Jersey Gas Company (South Jersey) in New Jersey. In turn, South Jersey would redeliver such gas to Wheaton's Millville plant. It is stated that Wheaton is a manufacturer of glass containers and viles for the pharmaceutical industry. It is explained that the end-use of the gas would be for heating the vat utilized to manufacture the raw products into the glass.

Transco states that it would charge Wheaton in accordance with its currently effective Rate Schedule T–II, FERC Gas Tariff, Second Revised Volume No. 1, which is currently 44.81 cents per dt equivalent of gas, including a GRI funding charge of 1.21 cent per million Btu.

It is explained that the tranportation agreement would be for an initial period of 120 days from the date of commencement of transportation and would remain in full force and effect until October 31, 1985.

Transco also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Transco will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

13. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–761–000]

August 13, 1985.

Take notice that on August 6, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85–761–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Jersey Central Power and Light Company (Jersey Central) under the certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to transport up 60,000 dt equivalent of natural gas per day on an interruptible basis for Jersey Central for a term expiring October 31, 1985. Transco indicates that the gas to be transported would be purchased from Transco Energy Marketing Company and that it would receive said volumes at: (1) The existing interconnection with GHR Transmission Corporation (GHR) at Agua Dulce, Nueces County, Texas, (2) the existing point of interconnection with GHR at Miranda Prospect, Duval County, Texas, (3) the existing interconnection with Valero Transmission Company in LaSalle County, Texas, and (4) the tailgate of the Katy Exxon gas plant in Waller County, Texas. Transco stated that it would transport and deliver an equivalent quantity, less quantities retained for compressor fuel and line loss makeup to existing points of delivery with Elizabethtown Gas Company (Elizabethtown) for Jersey Central's account and that Elizabethtown would ultimately deliver said volumes to Jersey Central for its use in combustion turbines and steam boilers in its Gilbert gathering station in Milton, New Jersey. Transco states that it commenced this transportation service on June 4, 1985, under the automatic authorization of § 157.209 of the Regulations and that existing facilities were utilized.

Transco indicates that it would charge Jersey Central 44.81 cents for each dt equivalent of natural gas delivered to Elizabethtown for its account, which is in accordance with its Transportation Service Rate Schedule T–II. In addition, Jersey Central would pay a Gas Research Institute surchange, if applicable, it is stated.

Transco also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Transco would file a report providing certain information with regard to the additional or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of the notice.

14. Trunkline Gas Company

[Docket No. CP84–577–015]

August 13, 1985.

Take notice that on July 31, 1985, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84–577–015 a request pursuant to section 7 of the Natural Gas Act and § 157.205 of the Regulations under the Natural Gas Act for authorization to make an off-system sale of natural gas. It is explained that the request is pursuant to authorization

received in the Commission's order issued October 29, 1984, in Docket No. CP84–577–000, authorizing a sales for take-or-pay relief program (STOPR). The proposal is more fully set forth in the requests which is on file with the Commission and open for public inspection.

Applicant proposes to make an off-system sale of gas to Michigan Power Company (Michigan Power), a local distribution company. Pursuant to the terms of a service agreement dated July 23, 1985, between Applicant and Michigan Power, Applicant proposes to deliver up to 15,000 Mcf of gas per day, on an interruptible basis, to Consumers Power Company (Consumers), for the account of Michigan Power, at an existing point of interconnection between Applicant and Consumers in Elkhart County, Indiana, it is stated. It is indicated that Consumers would then transport the gas to Michigan Power.

Applicant indicates that Michigan Power would use the gas for system supply for resale within its service area. It is stated that the sales price which Michigan Power would pay Applicant is $2.6731 per dt equivalent of gas. It is further stated that the sales price consists of Applicant's average cost of gas, the GRI surcharge, and an added margin pursuant to the authorization in the STOPR order.

It is explained that the service is conditioned upon the availability of capacity sufficient to provide service without detriment to Applicant's existing customers. The term of the service under the authorization sought herein would be from the date of the first delivery, with termination to coincide with the expiration under the STOPR program, it is indicated.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP85–751–000]

August 13, 1985.

Take notice that on August 2, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–751–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a 1-inch sales tap to be located on United's Latex to Forth Worth pipeline in Kaufman County, Texas, for the delivery of natural gas to Entex, Inc. (Entex), its local area distributor, under the certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection. United estimates the cost of construction to be $900.00.

United states that the proposed sales tap would enable sale and delivery to Entex an estimated daily average of 20 Mcf of natural gas per day for resale for commercial use in Entex's longview, Texas, billing area, under United's Rate Schedule DG–N. United advises that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers. The proposed tap would not increase Entex's contractual maximum daily quantity, nor its entitlement under United's effective curtailment plan, it is explained.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

16. United Gas Pipe Line Company

[Docket No. CP85–752–000]

August 13, 1985.

Take notice that on August 2, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–752–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a 2-inch sales tap to be located on United's Letourneau 4-inch pipeline in Warren County, Mississippi, for the delivery of natural gas to The Union Gas Company (Union), it local area distributor, under the certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection. The cost of construction is estimated to be $2,500.00.

United states that the proposed sales tap would enable sale and delivery to Union of an estimated daily average of 37 Mcf of natural gas per day for resale to the Hondus Brothers in Port Gibson, Mississippi, for industrial use, under United's Rate Schedule G–N. United advises that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers. The proposed tap would not increase Union's contractual maximum daily quantity, nor its entitlement under United's effective curtailment plan, it is explained.

Comment date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

17. United Gas Pipe Line Company

[Docket No. CP85–753–000]

August 13, 1985.

Take notice that on August 2, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–753–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a 2-inch sales tap to be located on United's 8-inch pipeline in Rankin County, Mississippi, for the delivery of natural gas to Mississippi Valley Gas Company (Mississippi Valley), it local area distributor, under the certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection. The cost of construction is estimated to be $2,500.00.

United states that the proposed sales tap would enable sale and delivery to Mississippi Valley an estimated daily average of 3,088 Mcf of natural gas per day for resale to Pursue Gas Processing and Petrochemical Company in Jackson, Mississippi, for commercial use, under United's Rate Schedule DG–N. United advises that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers. The proposed tap would not increase Mississippi Valley's contractual maximum daily quantity, nor its entitlement under United's effective curtailment plan, it is explained.

Comment Date: September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held

without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19832 Filed 8-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-630-000 et al.]

David J. Lohman et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

August 13, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. David J. Lohman

[Docket No. QF85-630-000.]

On July 29, 1984, David J. Lohman (Applicant), of 29616 150th Avenue North Hillsdale, Illinois 61257 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10 kilowatt wind facility is located in Hillsdale, Illinois.

2. AES Thames, Inc.

[Docket No. QF85-638-000]

ON August 2, 1985, AES Thames, Inc., (Applicant) of 1925 N. Lynn Street, Suite 1200, Arlington, Virginia 22209, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located at Uncasville, Connecticut. It will consist of two circulating fluidized bed boilers and one extraction steam turbine generating unit. Extraction steam generated will be used in a Recycle Paper Mill. The net electric power production capacity of the facility will be 150 MW. The primary energy source will be coal. The installation of the facility will begin in August, 1986.

3. Frontier Energy Associates

[Docket No. QF85-640-000]

On August 5, 1985, Frontier Energy Associates, (Applicant), of P.O. Box 497, Olean, New York 14760 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined cycle cogeneration facility will be located at Jefferson County, Pennsylvania. It will consist of a combustion turbine generating unit with a waste heat recovery boiler, and condensing steam turbine generating unit. Thermal energy will be extracted from the steam turbine condenser for greenhouse operation. The electric power production capacity of the facility will be 14.5 MW. The primary energy source will be natural gas. The facility is scheduled to startup on March 1, 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19833 Filed 8-19-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59727; FRL-2883-6]

Certain Chemicals Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722), in the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMNs requirements for certain types of polymers. PMN for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seventeen such PMNs and provides a summary of each.

DATES: Closed of Review Period:

Y 85-115, 85-116, 85-117, 85-118, 85-119, 85-120, 85-121, 85-122, 85-123, 85-124, 85-125, 85-126, 85-127, 85-128—August 22, 1985.

Y 85-129—August 25, 1985.

Y 85-130—August 26, 1985.

Y 85-131—August 27, 1984.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above

address between 8:00 a.m. and 4:00 pm., Monday through Friday, excluding legal holidays.

Y 85–115

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range. 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y85–116

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y85–117

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y85–118

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–119

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–120

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–121

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–122

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–123

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–124

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–125

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–126

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–127

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–128

Manufacturer. Emery Chemicals.
Chemical. (G) Dimer acid polyamide.
Use/Production. (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–129

Importer. Confidential.
Chemical. (G) Aliphatic polyurethane aqueous dispersion.
Use/Import. (S) Industrial, commercial and consumer general purpose coating and modifier for coatings and inks. Import range: 50,000–300,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–130

Manufacturer. Confidential.
Chemical. (G) Acrylic Copolymer Latex.
Use/Production. (S) Industrial, commercial and consumer general purpose coating, modifier for inks, coatings and adhesives. Prod. range: 300,000–1,500,000 kg/yrs.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 2 hr/da, up to 35 da/yr.
Environmental Release/Disposal. No data submitted.

Y 85–131

Importer. Kay-Fries, Inc.
Chemical. (G) Polyester resin.
Use/Import. (S) Industrial metal coating. Import range: Confidential.

Toxicity Data. No data submitted.
Exposure. No data submitted.

Dated: August 12, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-19710 Filed 8-19-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51584; FRL-2883-5]

Certain Chemicals Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-one and provides a summary of each.

DATES: Closed of Review Period:

P 85-1297 and 85-1298—October 30, 1985.

P 85-1299, 85-1300 and 85-1301—November 2, 1985.

P 85-1302, 85-1303, 85-1304, 85-1305, 85-1306, 85-1307, 85-1308, 85-1309, 85-1310, 85-1311, 85-1312 and 85-1313—November 3, 1985.

P 85-1314, 85-1315, 85-1316, 85-1317, 85-1318, 85-1319, 85-1320, 85-1321, 85-1322, 85-1323, 85-1324, 85-1325 and 85-1326—November 4, 1985.

P 85-1327—November 5, 1985.

Written Comments by:

P 85-1297 and 85-1298—September 30, 1985.

P 85-1299, 85-1300 and 85-1301—October 3, 1985.

P 85-1302, 85-1303, 85-1304, 85-1305, 85-1306, 85-1307, 85-1308, 85-1309, 85-1310, 85-1311, 85-1312 and 85-1313—October 4, 1985.

P 85-1314, 85-1315, 85-1316, 85-1317, 85-1318, 85-1319, 85-1320, 85-1321, 85-1322, 85-1323, 85-1324, 85-1325 and 85-13—October 5, 1985.

P 85-1327—October 6, 1985.

ADDRESS: Written comments, identified by the documents number "[OPTS-51582]" and the specific PMN number should be sent to: Document Control Office (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Evironmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 85-1297

Importer. Confidential.

Chemical. (g) Poly-beta-fluoroalkylethyl acrylate and alkyl acrylate.

Use/Import. (S) Industrial water and oil repellent finishes for textiles. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames Test: No significant increases.

Exposure. Processing: dermal, a total of 500 workers, up to 8 hrs/day, 250 da/yr.

Environmental Release/Disposal. No release. Disposal by landfill.

P 85-1298

Manufacturer. Confidential.

Chemical. (G) Condensation product of an alkylphenol and alkylamine, and formaldehyde, calcuim salt.

Use/Production. (S) Lubricating oil additive for industrial, commercial and consumer use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5 g/kg; Irritation: Skin—Non-irritant, Eye—Mild; Ames test: Not mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. 1 to 200 kg/batch released. Disposal by incineration.

P 85-1299

Manufacturer. Confidential.

Chemical. (G) Polymer from coconut fatty acids with alkanedioic acids and an alkanediol.

Use/Production. (G) Polymer for industrially used coatings having an open use. Prod. range: 500,000-1,200,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 43 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 3 to 162 kg/batch released to land. Disposal by publicly owned treatment works (POTW), incineration and landfill.

P 85-1300

Importer. Springborn Laboratories, Inc.

Chemical. (G) Phenylene sulfide copolymer

Use/Import. (G) Film for electronic use. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >5,000 mg/kg; Ames test: No mutagenic.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85-1301

Manufacturer. E.I. du Pont de Nemours Company & Inc.

Chemical. (G) Esterified polyamic acid.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-1302

Manufacturer. Confidential.

Chemical. (G) Functional alkyl methacrylate.

Use/Production. (G) Industrial chemical mixture having a semi-contained use. Prod. range: 20,000-51,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: a total of 15 workers, up to 7 hr/da, up to 55 da/yr.

Environmental Release/Disposal. 4 to 50 kg/batch release to land. Disposal by incineration and landfill.

P 85-1303

Manufacturer. Rohm & Haas Company.

Chemical. (G) Modified acrylic polymer.

Use/Production. (g) Coating additive in an open non-dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Practically non-irritating, Eye—Slight.

Exposure. Manufacture: dermal, a total of 24 workers.

Environmental Release/Disposal. Release to water and land. Disposal by POTW and approved landfill.

P 85–1304

Manufacturer. Rohm and Haas Company.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Coatings additive in an open-dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Practically non-irritating, Eye—Practically non-irritating.

Exposure. Manufacture: dermal, a total of 24 workers.

Environmental Release/Disposal. Release to water and land. Disposal by POTW and approved landfill.

P 85–1305

Manufacturer. Rohm and Haas Company.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Coatings additive in an open non-dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Practically non-irritating, Eye—Inconsequential irritant.

Exposure. Manufacture: dermal, a total 24 workers.

Environmental Release/Disposal. Release to water and land. Disposal by POTW and landfill.

P 85–1306

Importer. Confidential.

Chemical. (G) Substituted isothiazolanthracene.

Use/Import. (G) A dyestuff for fibers. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1307

Importer. Confidential.

Chemical. (G) Alkenoic acid, trisubstituted-benzyl disubstituted phenyl ester.

Use/Import. (G) Assitive for plastics. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1308

Manufacturer. Confidential.

Chemical. (G) Amine salt of a carboxyl terminated polyester urethane polymer.

Use/Production. (S) Industrial fabric coating. Prod. range: 100,000–200,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, total of 4 workers, up to 2 hr/da, up to 100 da/yr.

Environmental Release/Disposal. 0.5 kg/batch released to air.

P 85–1309

Manufacturer. Confidential.

Chemical. (G) Amine salt of carboxyl terminated polyether urethane polymer.

Use/Production. (S) Industrial fabric coating. Prod. range: 100,000–200,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 2 hr/da, up to 100 hr/yr, 5 persons/shift.

Environmental Release/Disposal. 0.5 kg/batch released to air.

P 85–1310

Manufacturer. Confidential.

Chemical. (G) Polyether urethane polymer.

Use/Production. (S) Industrial fabric coating. Prod. range: 100,000–200,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 10 workers, up to 8 hr/da, up to 100 da/yr.

Environmental Release/Disposal. 0.5 kg/batch release to air.

P 85–1311

Manufacturer. American Hoechst Corporation.

Chemical. (S) Polymer of tall oil rosin, phenol-formaldehyde copolymer, calcium hydroxide, paraformaldehyde, acetic acid and p-tert-butylphenol-formaldehyde copolymer.

Use/Production. (S) Resin for printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 7 hr/da, up to 26 da/yr.

Environmental Release/Disposal. No release.

P 85–1312

Manufacturer. American Hoechst Corporation.

Chemical. (S) Isononanoic acid, sodium salt.

Use/Production. (G) Dispersive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hr/da, up to 10 da/yr.

Environmental Release/Disposal. No release.

P 85–1313

Manufacturer. American Hoechst Corporation.

Chemical. (S) Polymer of tall oil rosin, phenol-formaldehydecopolymer, calcium hydroxide, paraformaldehyde and acetic acid.

Use/Production. (S) Resin for printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 7 hr/da, up to 265 da/yr.

Environmental Release/Disposal. No release.

P 85–1314

Importer. Confidential.

Chemical. (G) Substituted copper phthalocyanine.

Use/Import. (S) Colorant for paper. Import range: Confidential.

Toxicity Data. Acute oral: >3,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. Use: dermal and ocular, a total of 3 workers, 1 hr/8 hr. shift.

Environmental Release/Disposal. Release to waste water treatment systems. Disposal by sanitary landfill.

P 85–1315

Importer. Confidential.

Chemical. (G) Nitrochlorophenylazo-N-ethyl-N-substituted aniline.

Use/Import. (S) Industrial textile dye for polyester and polyester/cotton blend fibers as granular product and paste. Import range. Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; LC_5O 96 hr. (Zebrafish): 500 mg/L; IC_5O (Bacteria): >1,000 mg/L.

Exposure. Processing: dermal, a total of 8 workers.

Environmental Release/Disposal. Confidential.

P 85–1316

Importer. Confidential.

Chemical. (G) 2-Naphthalenesulfonic acid, 6-acetamido-4-hydroxy-[substituted]azo, 1:2 metal complex, trisodium salt.

Use/Import. (S) Industrial dyeing of anodic treated aluminum. Import range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. Processing: dermal, a total of 750 workers, 8 hr. shift/worker.

Environmental Release/Disposal. Disposal by waste treatment and approved landfill.

P 85–1317

Manufacturer. Confidential.

Chemical. (S) Hydrolyzed animal proteins.

Use/Production. (S) Industrial retanning of leather. Prod. range: Confidential.

Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 2 workers.
Environmental Release/Disposal. 11 kg released to water. Disposal by navigable waterway.

P 85–1318

Manufacturer. Confidential.
Chemical. (G) Functional polyurethane from polyalkylene oxide, aliphatic diisocyanate and substituted alkanol.
Use/Production. (G) Polymer for industrial specialty coatings. Prod. range: 50,000–200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 19 workers, up to 8 hr/da, up to 20 da/yr.
Environmental Release/Disposal. 10 to 125 kg/batch released to land. Disposal by incineration and landfill.

P 85–1319

Manufacturer. Confidential.
Chemical. (G) Fatty acids, amides from alkanolamines.
Use/Production. (G) Lubricant additive. Prod. range: 14,600–44,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hr/da, up to 3 da/yr.
Environmental Release/Disposal. 292 kg/batch released to water. Disposal by POTW.

P 85–1320

Manufacturer. Confidential.
Chemical. (G) (Isocyanato oxazolidonyl) isocyanurate.
Use/Production. (G) Adhesives for open, non-disperive use. Production range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1321

Manufacturer. E.I. du Pont de Nemours & Company, Inc.
Chemical. (G) Aromatic polyester resin.
Use/Production. (G) Polymer for automotive parts. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1322

Manufacturer. Confidential.
Chemical. (G) MDI-polyol prepolymer.
Use/Production. (S) Polyurethane elastomers for industrial components. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and disposal: dermal and inhalation.
Environmental Release/Disposal. Less than 1 kg/batch released.

P 85–1323

Manufacturer. Confidential.
Chemical. (G) Nitrogen containing alkyl phenol.
Use/Production. (G) Fuel additive. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant. Ames test: Negative.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1324

Manufacturer. Confidential.
Chemical. (G) Sulfurized ester.
Use/Production. (G) Lube oil additive. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: Negative.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1325

Manufacturer. Confidential.
Chemical. (G) Alkyl Phenol.
Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: Negative.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1326

Manufacturer. Confidential.
Chemical. (G) Polysuccinimide amide.
Use/Production. (G) Fuel additive. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Slight; Ames test: Negative..
Exposure. Confidential.
Environmental Release/Disposal. Disposal by POTW.

P 85–1327

Manufacturer. E.I. du Pont Nemours & Company, Inc.
Chemical. (G) Aromatic polyester resin.
Use/Production. (G) Polymer for automotive parts. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: August 12, 1985.

Linda Travers,

Acting Director, Information Management Division.

[FR Doc. 85–19711 Filed 8–19–85; 8:45 am]
BILLING CODE 6560–50–M

[OPTS–59203; FRL–2883–4]

Saturated and Unsaturated Alkylcarboxylic Acid Diethanolamine/Triethanolamine Salt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: September 4, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–59203]" and the specific TME number should be sent to: Document Control Office (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Evironmental Protection Agency, Rm. E–201, 401 M Street, SW., Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential

version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 85-63

Close of Review Period. September 21, 1985.

Manufacturer. Air Products and Chemicals, Inc.

Chemical. (G) Saturated and unsaturated alkylcarboxylic acid diethanolamine/triethanolamine salt.

Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg; Irritation: Skin—Severe, Eye—Severe.

Exposure. Manufacture and processing: dermal, up to 8 hrs/da.

Environmental Release/Disposal. Greater than 10 kg released to water. Disposal by incineration and municipal waste treatment facility.

Dated: August 12, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-19712 Filed 8-19-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42068; TSH-FRL 2849-1]

Carbofuran Intermediates; Response to the Interagency Testing Committee

Correction

In FR Doc. 85-17343 beginning on page 29761 in the issue of Monday, July 22, 1985, make the following corrections:

1. On page 29761, in the third column, in the summary, in the third line, "methally-2-" should read "methallyl-2-".

2. On page 29763, in the first column, the second italicized heading should read "*C. Environmental Effects*".

3. On page 29763, in the first column, in the third line from the bottom, "affluent" should read "effluent".

BILLING CODE 1505-01-M

[OPP-100025; FRL-2873-7]

Transfer of Data to Forest Service, U.S. Department of Agriculture

Correction

In FR Doc. 85-18264, beginning on page 31025, in the issue of Wednesday, July 31, 1985, make the following correction:

On page 31025, third column, under **SUPPLEMENTARY INFORMATION,** the third entry in the list of subject chemicals, "Amilizine", should read "Anilizine."

BILLING CODE 1505-01-M

[OPTS-51581; FRC-2869-8]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc 85-17764 beginning on page 30513 in the issue of Friday, July 26, 1985, make the following corrections:

1. On page 30514, in the first column, under "P85-1189" in the second line, "O,O'-" should read "0,0'-".

2. On page 30515, in the second column, the fourth line under "P85-1207" should read "isobenzofuranone] [alkylimidazolyl)methylene]".

3. On page 30515, in the third column, the last line under "P85-1211" should read "Disposal by POTW."

4. On page 30516, in the first column, in the last line, "185,000" should read "1,185,000".

BILLING CODE 1505-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Reqest for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection request to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before October 4, 1985. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance, (S.F. 83), supporting statement, and other documents submitted to OMB for review may be otained from the Agency Liaison Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Liaison Officer: Margaret P. Ulmer, Financial and Resource Management Services, Room 386, 2401 E. Street, NW, Washington, DC, 20507; Telephone (202) 634-1932.

OMB Reviewer: James Mason, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC, 20503; Telephone (202) 395-6880.

Type of request: Revision of a currently approved collection
Title: Local Union Report EEO-3
Frequency of Report: Biennially
Type of Respondent: Business/other institutions Standard Industrial Classification (SIC) Code: 863
Description of Affected Public: Local referral unions with 100 or more members.
Responses: 3,000
Reporting Hours: 4,500
Federal Costs: $19,100
Applicable Under section 3504(h) of Pub. L. 95-511: Not applicable
Number of Forms: 1

Abstract-Needs/Uses: Data are used to investigate charges of employment discrimination against local unions and appprenticeship programs. Data are shared with 38 State and 102 local Fair Employment Practice Commission agencies, and other Federal agencies.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 85-19812 Filed 8-19-85; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Digital Paging Systems, Inc., et al.; Hearing Designation Orders

In re Applications of: CC Docket No. 85-241; Digital Paging Systems, Inc. (File No. 50081-CM-P-74); and KC Corp. (File No. 50015-CM-P-75); and Mobile Radio System of San Jose, Inc. (File No. 50037-CM-P-75). For construction permits in the Multipoint Distribution Service for a new station on Channel 2, at Palo Alto, California.

Memorandum Opinion and Order

Adopted July 30, 1985.
Released August 12, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Palo Alto, California. The

applications are therefore mutually exclusive and require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Digital Paging Systems, Inc., KC Corporation, Mobile Radio Systems of San Jose, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Digital Paging Systems, Inc. a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc. et al*, FCC 82–391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this order to be published in the **Federal Register**.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85–19795 Filed 8–19–85; 8:45 am]

BILLING CODE 6712–01–M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

Page-A-Call et al.; Hearing Designation Order

In re applications of: CC Docket No. 85–244; Gary G. Harvey d/b/a Page-A-Call (Assignee) (File No. 24763–CD–P/L–84; Poka-Lambro Rural Telephone Cooperative, Inc. (Assignor). For the partial assignment of the authorization for Station KNKB357 on frequency 158.10 MHz in the Public Land Mobile Service at Lubbock, Texas. Gary G. Harvey d/b/a Page-A-Call (File No. 20980–CD–P/L–8–85). For a Construction Permit for new two-way facilities to operate on frequencies 454.375 MHz, 454.425 MHz, 454.575 MHz and 454.600 MHz at Amarillo, Texas and on frequencies 454.400 MHz, 454.450 MHz, 454.625 MHz and 454.650 MHz at Lubbock, Texas in the Public Land Mobile Service; and Poka-Lambro Rural Telephone Cooperative, Inc. (File No. 22687–CD–MP–01–85). For extension of construction permit.

Order Designating Applications for Hearing

Adopted August 7, 1985.
Released August 16, 1985.
By the Common Carrier Bureau.

1. On August 16, 1984, Poka-Lambro Rural Telephone Cooperative, Inc. (Poka-Lambro) and Gary G. Harvey d/b/a Page-A-Call (Harvey) filed applications for the partial assignment of Station KNKB357 [1] from Poka-Lambro to Harvey. On October 12, 1984, Lubbock Radio Paging Service, Inc. (Lubbock) filed a Petition to Deny. Subsequent pleadings, including a request for an extension of the construction permit, were filed. In a separate action, Harvey filed an application on December 6, 1984 for new two-way facilities to serve Lubbock and Amarillo, Texas. Robert D. McLeod (McLeod), president of Lubbock, filed informal objections to Harvey's applications and responsive pleadings were filed. Due to the similarity and significance of the issues raised we will evaluate McLeod's objections at the same time we consider Lubbock's Petition to Deny.[2]

2. Lubbock argues that: Poka-Lambro does not have the authority to assign its construction permit since it is not actively seeking state certification; [3] a partial assignment of a wireline station to a non-wireline carrier is not in keeping with the Commission's rules or the interim policy established in 80–57; [4] there is a question as to the real party-in-interest in these applications; [5] this arrangement constitutes an anti-competitive action designed to discourage the entry of other competitors into the Lubbock market; and that this action is a *de facto* violation of state law. In his petition, McLeod again raises the questions concerning Harvey's status as a real party-in-interest, implies that Harvey's application to serve Lubbock and Amarillo contained duplicitous responses and asserts that Harvey's status as an employee of Poka-Lambro creates inherent conflicts of interest and will interfere with his ability to maintain the proposed service.

3. Harvey responds that Poka-Lambro has one year to obtain state certification and that state law should not be litigated before the Commission. Harvey also argues that since the Commission

[1] Specifically, the assignment requested is for the Construction Permit for Location 2, located at Lubbock, Texas (File No. 21187–CD–P/ML–84), on Frequency 158.10 MHz, an exclusive paging frequency.

[2] In an opposition to McLeod's objections Harvey asserts that the Commission no longer considers informal petitions under § 22.30 of the Commission's rules as amended by Public Mobile Service, 95 FCC 2d 769, 796–7 (1983) (Part 22 Rewrite). We have examined McLeod's petition and find that it satisfies the pleading requirements set out in § 22.30 of the rules, as amended, and shall be considered a formal petition entitled to full consideration in this proceeding.

[3] Lubbock further argues that the state law prohibiting Poka-Lambro from providing service to the Lubbock area is a bar to its application before the Commission and that the one-year period allowed for construction of the proposed station should be held irrelevant since Poka-Lambro has elected not to take steps to challenge the state's statutes. Lubbock asserts that the construction permit should be forfeited as the result of this election and, therefore, could not be assigned.

[4] In its Report and Order in CC Docket 80–57, the Commission established interim procedures for applications requesting waivers of the separate allocations for wireline and non-wireline carriers. Revision of Part 22, 95 FCC 2d 769, 825 (1983).

[5] Lubbock argues that Harvey is under the control of Poka-Lambo because of his full-time employment by Poka-Lambro—operating seven other PLMS stations as well as a Telephone Maintenance Radio Service facility for Poka-Lambro. Additionally, Lubbock cites the channel sharing agreement, attached to Harvey's application, in which it is stated that the service provided by Harvey will be secondary to that provided by Poka-Lambro.

has recently dropped the "fence" there is no violation of the Commission's rules or the interim procedures adopted in Docket 80–57. He further states that the two companies will be separate and distinct and that he will be fully capable of exercising his rights and responsibilities as an independent licensee and provides certification to that effect. Finally, Harvey argues that the proposed assignment is not anti-competitive because there is already a competitive environment in the Lubbock market and marketplace forces will determine the level of service and number of providers.

4. In its application for the extension of time to construct, Poka-Lambro raises the issue of administrative delay and argues that its application for partial assignment was filed eight months prior to the expiration date of the construction permit and that it was an undue delay in the processing of its application and not the application for assignment itself which necessitates the extension of time.

Discussion

5. *Violation of State Law.* Section 22.13(f)(1), which requires that licensees comply with all applicable requirements for state certification, allows a period of one year from the grant date for the licensee to gain compliance with state requirements. No violation of this rule has been demonstrated.

6. *Anti-competitive Action.* Lubbock offers no facts to substantiate its claim that assignment of the proposed paging facility to Harvey would be anti-competitive and prevent the entry of another licensee into the Lubbock market, whether or not that licensee has facilities serving adjacent markets. There is no evidence of anti-competitive action.

7. *Authority to Seek Assigment.* Section 22.39(a)(5) of the Commission's rules specifically allows for partial assignments and § 22.40(a) exempts exclusive paging frequencies from the review process normally required by § 22.40(b) for assignment of facilities which are not yet constructed. Since frequency 158.10 MHz is an exclusive paging frequency, Lubbock's argument that Poka-Lambro does not have authority to seek partial assignment of its construction permit is without merit.

8. *Violation of the Commission's Rules or Interim Policy.* The Interim Procedures set forth in CC Docket No. 80–57 [6] provided for the acceptance of applications by non-wireline carriers for wireline frequencies and vice versa, but also called for such applications to be held in abeyance until the Commission reached a final decision in this matter and amended its rules to reflect that decision. The *Report and Order* in CC Docket Nos. 83–1146 and 80–57 (FCC 84–485, released December 11, 1984) amends Part 22 of the Commission's rules, dropping the fence, effective January 17, 1985. The application filed by Poka-Lambro and Harvey is, therefore, in accordance with the Commission's rules and interim procedures.

9. *Real Party-In-Interest.* After carefully examining the pleadings, in these matters, as well as the respective applications, we conclude that a substantial question has been raised whether Poka-Lambro exercises *de facto* control over Harvey and, this, is the real party-in-interest behind Harvey.[7] In addition to the question raised by Lubbock[8] and McLeod is the fact that Harvey's service would be secondary to that of Poka-Lambro since the stations would be electrically mutually exclusive. It, therefore, needs to be determined whether Harvey will be able to exercise the independent judgement and control required of a Commission licensee.

10. *Extension of Time to Construct.* Section 22.43(b)(1) of the Commission's rules specifically prohibits the extension of time to complete construction for delays caused by the transfer of an authorization. While we are not persuaded by the arguments raised by Poka,[9] we are designating this issue for hearing since the grant or denial of this extension is integral to the question of partial assignment.

Conclusions

11. In view of the foregoing, we are designating the referenced applications for hearing, and we are making Lubbock and McLeod parties to the hearing. In the event that the findings and conclusions for Issue F are adverse to Harvey and Pola-Lambro, the applications of both parties will be denied without further proceedings.

12. Accordingly it is ordered that the applications of Gary G. Harvey d/b/a Page-A-Call and Poka-Lambro Rural Telephone Cooperative, Inc., for partial assignment (File No. 24763–CD–P/L–84) as well as the applications of Gary G. Harvey d/b/a Page-A-Call for construction permits to serve Lubbock and Amarillo, Texas (file No. 20980–CD–P/L–8–85) and Poka-Lambro Rural Telephone Cooperative, Inc., for an extension of construction permit (File No. 22687–CD–MP–01–85) are designated for hearing, under section 309(e) of the Communications Act of 1934, as amended, upon the following issues:[10]

A. To determine the relationship between Poka-Lambro and Harvey, including the facts and circumstances surrounding Harvey's employment;

B. To determine the facts and circumstances surrounding the conceptions, initiation, preparation, filing and prosecution of the referenced applications;

C. To determine the facts and circumstances surrounding the channel sharing agreement including its effect on the service proposed by Harvey;

D. To determine, in light of the evidence adduced above, whether Poka-Lambro is a real party-in-interest behind Harvey;

E. (1) To determine, in light of the evidence adduced above, whether Harvey is qualified to become a Commission licensee; and

(2) To determine, in light of the evidence adduced above, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

13. It is further ordered, that the applicants and the petitioners shall have a responsibility to adduce evidence on the fact-finding issues (A), (B), and (C), and that the order in which the parties will go forward with the presentation of evidence on the fact-finding issues shall be determined by the administrative Law Judge. The burden of proof in the ultimate issues (D) and (E), is placed on the applicant.[11]

(14) It is further ordered, That the petitions filed by Lubbock Radio Paging Service, Inc. and Robert D. McLeod, are granted in part to the extent indicated herein, and Denied in all other respects.

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[6] *See* note 4, *supra.*

[7] The test for detemining whether a party is a real party-in-interest is whether that party has a ownership interest in the applicant, or is or will be in a position to actually or potentially control the operation of the applied-for radio station. *See, e.g.,* Kathleen Ann Brown, Mimeo 3719, released April 8, 1985. *See also* Sumiton Broadcasting Company, Inc., et al., 15 FCC 2d 400 (1968); *WLOX Broadcasting Co.* V *FCC,* 260 F 2d 712 (1985).

[8] *See* note 5, *supra.*

[9] *See* note 4, *supra.*

[10] No lack of candor issue is being designated in this order. The judge, however, has the option of enlarging the issues during the course of the hearing based upon the facts of the case as presented.

[11] Where an applicant against whom; charges of misconduct have been raised, has within its peculiar knowledge the facts regarding the alleged misconduct, the applicant will have the burden of proof. *See* discussion and cases cited in Granbury Communications Co., 66 FCC 2d 966, 969 (1978) and Miami Broadcasting Corp., 11 FCC 2d 920, 923 (Rev. Bd. 1968).

15. It is further ordered, That the Chief, Common Carrier Bureau and the petitioners are made parties to this hearing which shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent order.

16. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date hereof, a written notice stating an intention to appear on that date for hearing and present evidence in the issues specified in the order.

17. This order is issued under § 0.291 of the Commission's rules and is effective on its release date. Applications for review under § 1.115(e)(3) of the rules may be filed within 30 days of the date of public notice of this order. *See* 1.4(b)(2). Petitions for reconsideration of designation orders may not be filed except insofar as they relate to an adverse ruling as to participation of a party in the hearing under § 1.106(a)(1).

18. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-19796 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Northeast Communications Corp. and Central New Hampshire Broadcasting

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No	MM Docket No
A. Northeast Communications Corporation; Franklin, NH	BPH-810205AB	85-243
B. Nancy C. Howard, et al., d/b/a/ Central New Hampshire Broadcasting; Franklin, NH.	BPH-811028AH	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A
2. (See Appendix), A
3. Comparative, A, B
4. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue(s)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8 [1], the applicant(s) is financially qualified: A (Northeast)

2. If a final environmental impact statement is issued with respect to A (Northeast) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the Northeast Environmental Policy Act, as implemented by §§1.301-1.319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 85-19797 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s)	Deficiency
A (Northeast)	Failure to provide corporate balance sheet per FCC Form 301, Section III, Item 2.

Telecommunications Systems, Inc. and Microband Corp. of America; Memorandum Opinion and Order

In re applications of: CC Docket No. 85-242; Telecommunications Systems, Inc., File No. 50111-CM-P-81; and Microband Corporation of America, File No. 50260-CM-P-81. For construction permits in the Multipoint Distribution Service for a new station at Emporia, Kansas.

Adopted July 30, 1985.
Released August 9, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Emporia, Kansas. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

4. It is further ordered, That Telecommunications Systems, Inc., Microband Corporation of America and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-19798 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Sierra Federal Savings and Loan Association, Denver, CO; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed Melvin Karthauser as conservator for Sierra Federal Savings and Loan Association, Denver, Colorado, effective August 9, 1985.

Dated: August 14, 1985.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-19815 Filed 8-19-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 221-010619-002.

Title: Oakland Terminal Agreement.

Parties:

City of Oakland by and through its Board of Port Commissioners (Port)

EAC Lines Trans Pacific Service, Ltd. (EAC)

Synopsis: Agreement No. 221-010619-002 modifies the basic agreement between the Port and EAC whereby the Port assigns certain marine terminal facilities in the Port's Charles P. Howard Terminal to EAC. The amendment provides that EAC shall make its compensation payments and all other applicable tariff payments to the Port through the Port's assigned terminal operator rather than directly to the Port.

Agreement No.: 224-010805.

Title: Los Angeles Terminal Agreement.

Parties:

Eagle Marine Services, Ltd. (Eagle)

American President Lines, Ltd. (APL)

d'Amico Societa Di Navigazione SpA (d'Amico Line)

Italia Di Navigazione SpA (Italian Line)

Synopsis: This agreement provides that APL and its wholly owned subsidiary Eagle will provide terminal facilities together with stevedoring and terminal services for the benefit of d'Amico and Italian Line vessels. The facilities are located at Berths 121/126 in the Port of Los Angeles. The term of the agreement is for five years. The parties have requested a shortened review period for the agreement.

Agreement No.: 224-010806.

Title: Portland Terminal Agreement.

Parties:

The Port of Portland (Port)

Brady Hamilton Stevedore Company, dba Stevedoring Services of America, Inc. (SSA)

Synopsis: Agreement No. 224-010806 provides that SSA will perform the marine terminal services the Port is presently performing at Terminal 2 in Portland. The initial term of the agreement is for five years, with provision for three five-year extensions. The term for their performing the marine terminal operations at an additional portion of Terminal 2 beyond that presently performed by the Port shall be for an initial period of one year with two additional two-year periods. The Port and SSA will share the Port's wharfage and dockage revenues as indicated in the agreement, (depending upon whether they were existing customers at Terminal 2, existing customers of the Port, or new customers at the Port.) The revenues for the marine services performed by SSA would accure 100 percent to SSA. SSA will provide the Port a minimum guarantee of $600,000 per year for the agreement, increasing by $50,000 per year for each additional year of the five-year term. Minimums are also provided during the renewal periods of the agreement. All marine terminal operating equipment, except for cranes, will be provided and maintained by SSA.

By Order of the Federal Maritime Commission.

Dated: August 15, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-19865 Filed 8-19-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated
(1) 85-0858—Fujisawa Pharmaceutical Company Limited's proposed acquisition of voting securities of LyphoMed, Inc.	July 29, 1985.
(2) 85-0861—BYCOM Systems, Inc.'s proposed acquisition of assets of Siecor Corporation, Cooper Cable and Wire Manufacturing Divisions, (Siemens Aktiengesellshaft, UPE).	Do.
(3) 85-0862—BYCOM Systems, Inc.'s proposed acquisition of assets of Corning Glass Works.	Do.
(4) 85-0868—Cyprus Minerals, Co.'s proposed acquisition of voting securities of The Getty Group which is composed of Getty Minerals Marketing, Twenty Mile Coal Co., Colorado Yampa Coal Co., Plateau Mining Co., Getty Australian Coal Co., Colorado Yampa Leasing Co., and Plateau Co., (Texaco, Inc., UPE).	Do.

Transaction	Waiting period terminated effective
(5) 85-0866—Cyprus Minerals, Co.'s proposed acquisition of voting securities of Getty Minerals Co. from Getty Mining Company, (Texaco, Inc., UPE).	Do.
(6) 85-0855—Westinghouse Electric Corporation's proposed acquisition of voting securities of TSC, Inc.	July 30, 1985.
(7) 85-0875—The Propesct Group, Inc.'s proposed acquisition of voting securities of Wood River Capital Corporation, (Louis Marx, Jr., UPE).	Do.
(8) 85-0922—Anheuser-Busch Companies, Inc.'s proposed acquisition of voting securities of Exploration Cruise Lines, Inc. a corporate joint venture.	Do.
(9) 85-0923—Anheuser-Busch Companies, Inc.'s proposed acquisition of assets of Alaska Tour and Marketing Services, Inc., (Robert and Lorraine Giersdorf, UPE's).	Do.
(10) 85-0901—Chrysler Corporation's proposed acquisition of voting securities of E.F. Hutton Credit Corporation, (The E.F. Hutton Group, Inc., UPE).	Do.
(11) 85-0358—Monsanto Company's proposed acquisition of assets of Wilco Chemical Corporation.	July 31, 1985.
(12) 85-0842—1984 Simmons Trust's proposed acquisition of voting securities of Sea-Land Corporation.	Do.
(13) 85-0854—Ciba-Geigy Ltd.'s proposed acquisition of assets and voting securities of Spectra-Physics, Inc.	Do.
(14) 85-0859—William I. Koch's proposed acquisition of voting securities of Sun Geothermal Company, (Sun Company, Inc., UPE).	Do.
(15) 85-0864—R.J. Reynolds Industries, Inc.'s proposed acquisition of voting securities of Boulevard Distillers and Importers, Inc., (Societe Pernod Ricard, UPE).	Do.
(16) 85-0880—Hudson County News Company's, (Robert B. Cohen, UPE), proposed acquisition of assets of McGrath Services Corporation.	Aug. 1, 1985.
(17) 85-0881—American Medical International, Inc.'s proposed acquisition of assets of North Ridge General Hospital, Inc.	Do.
(18) 85-0883—Cyprus Minerals Company's proposed acquisition of voting securities of Sandy Ridge Energy Corporation, (The LTV Corporation, UPE).	Do.
(19) 85-0884—Cyprus Minerals Company's proposed acquisition of voting securities of Sandy Ridge Energy Corporation, (The LTV Corporation, UPE).	Do.
(20) 85-0887—American Medical International's proposed acquisition of voting securities of FL Health Complex, Inc., (Fort Lauderdale Health Complex Limited, a partnership, UPE).	Do.
(21) 85-0888—Rykoff-Sexton, Inc.'s proposed acquisition of assets of Interstate Restaurant Supply Company, Inc.	Do.
(22) 85-0896—Heritage Communications, Inc.'s proposed acquisition of assets of Warner Amex Cable Holding Company.	Do.
(23) 85-0912—BTR, plc's proposed acquisition of voting securities of BAE Automated Systems, Inc., (M.L. Sharp, UPE).	Do.
(24) 85-0915—Heritage Communications, Inc.'s proposed acquisition of assets of Warner Amex Cable Communications Company of Dallas.	Do.
(25) 85-0916—Heritage Communications, Inc.'s proposed acquisition of assets of Warner Amex Cable Communications Company of Mesquite.	Do.
(26) 85-0947—Merrill Lynch & Co., Inc.'s proposed acquisition of voting securities of Palm Beach Incorporated.	Aug. 2, 1985.
(27) 85-0835—Libbey-Owens-Ford Company's proposed acquisition of voting securities of Sterling Plastics, Inc., (Lindsay and Haskins Trust, UPE).	Aug. 5, 1985.
(28) 85-0844—Gannett Co., Inc.'s proposed acquisition of voting securities of Cowles Media Company.	Do.
(29) 85-0902—Martin Marietta Corp.'s proposed acquisition of voting securities of Equatorial Communications, Co.	Do.
(30) 85-0940—Pergamon Holding Foundation's proposed acquisition of voting securities of The Excello Press, (Estate of Milton Feldmer, Dorothy and Gary Feldmer, executors).	Do.
(31) 85-0913—PacifiCorp's proposed acquisition of voting securities of Northwest Acceptance Corporation, (Orbanco Financial Services Corporation, UPE).	Aug. 6, 1985.
(32) 85-0925—O'Neal Steel, Inc.'s proposed acquisition of voting securities of Shelby Steel Investment Corp.	Do.
(33) 85-0927—Johnston Southern Company's, (S.K. Johnston, Jr., UPE) proposed acquisition of voting securities of The Coca-Cola Company, (Central States Coca-Cola Bottling Company, UPE).	Do.
(34) 85-0934—Nationwide Mutual Insurance Company's proposed acquisition of voting securities of Beaver Pacific Corporation.	Do.
(35) 85-0877—UNC Resources, Inc.'s proposed acquisition of voting securities of ICC Communications Corporation, (David H. Lubetzky, UPE).	Aug. 7, 1985.
(36) 85-0891—Dow Jones & Company, Inc.'s proposed acquisition of voting securities of Exco International Inc., (Exco International p.l.c., UPE).	Do.
(37) 85-0892—The Oklahoma Publishing Company's proposed acquisition of voting securities of Exco International, Inc., (Exco International, p.l.c., UPE).	Do.
(38) 85-0897—The Kroger Company's proposed acquisition of voting securities of Price Savers Wholesale, Inc., (TG Limited, UPE).	Do.
(39) 85-0939—Bunzl plc's proposed acquisition of voting securities of Monmouth Paper Company.	Do.
(40) 85-0885—ASEA AB's proposed acquisition of assets of Barry Wright Corporation.	Aug. 8, 1985.
(41) 85-0899—The Alonzo F. and Norris B. Herdon Foundation's proposed acquisition of voting securities of Mammoth Life and Accident Insurance Company.	Aug. 9, 1985.
(42) 85-0933—Allegheny International, Inc.'s proposed acquisition of assets of Gay Products, Inc.	Do.
(43) 85-0951—Masco Corporation's proposed acquisition of voting securities of Merillat Industries, Inc., (Orville and Ruth Merillat, UPE's).	Do.
(44) 85-0953—Trilogy Limited's proposed acquisition of voting securities of ELXSI.	Do.
(45) 85-0958—IC Industries, Inc.'s proposed acquisition of voting securities of Pearle Health Services, Inc.	Do.
(46) 85-0965—Munford, Inc.'s proposed acquisition of voting securities of Lee-Wards Creative Crafts, Inc., (General Mills, Inc., UPE).	Do.
(47) 85-0950—A. Jarrold Perenchio's proposed acquisition of voting securities of The Evening News Association.	Aug. 12, 1985.
(48) 85-0889—McDonnell Douglas Corporation's proposed acquisition of assets of S.E.C.C. Financial Services, Inc., (Sun Electric Corporation, UPE).	Aug. 13, 1985.
(49) 85-0911—Southmark Corporation's proposed acquisition of voting securities of Integon Corporation, (Ashland Oil, Inc., UPE).	Do.
(50) 85-0950—Tele-Communications, Inc.'s proposed acquisition of voting securities of United Cable Television Corporation.	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Benjamin Berman,

Acting Secretary.

[FR Doc. 85-19828 Filed 8-19-85; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to reinstate two previously approved information collections.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John Hansley, Office of Property Management (703-557-0814).

SUPPLEMENTARY INFORMATION:

1. Purpose

a. *Deposit Bond—Individual Invitation—Sale of Government Personal Property.* The data from this collection provides a guarantee to the Government that payment by the bidder will be accomplished either by the bidder or the surety. Respondents and responses 50, hours 25.

b. *Deposit Bond—Annual Sale of Government Personal Property.* This data meets the legal requirements for collection of bid deposits if bidders fail to provide full purchase price within the time frames specified in the invitation for bid. Respondents and responses 400, hours 100.

2. Copies of Proposal

Copies may be obtained from the Directives and Reports Management Branch (ATRAI), Room 3013, GS Building, Washington, DC 20405 (202-566-0666).

Dated: August 13, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85-19842 Filed 8-19-85; 8:45 am]

BILLING CODE 4160-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement To Assist the Department of Health, Commonwealth of Pennsylvania, With Developing a Surveillance System and Cohort Registry of Former Chemical Workers; Availability of Funds for Fiscal Year 1985

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, announces the availability of funds for Fiscal Year 1985 for a cooperative agreement with the Department of Health, Commonwealth of Pennsylvania, to provide assistance in developing a surveillance system and cohort registry for former employees of the Drake Chemical Company. Those workers who may have been occupationally exposed to known carcinogens will be indentified, medically evaluated, and peridocally monitored. This assistance is authorized under section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The former Drake Chemical Company site located in Lock Haven, Clinton County, Pennsylvania, has been designated by the U.S. Environmental Protection Agency as eligible for superfund intervention. Chemicals used, manufactured, and/or stored at the Drake site include the human carcinogens betanaphthlamine, benzidine, and benzene as well as the herbicide fenac (trichlorophenylacetic acid), dichlorobenzene, arsenic, and pentachlorophenol. Studies have described adverse health effects which are possibly associated with exposure to hazardous substances at the Drake site.

Assistance will be provided only to the Department of Health, Commonwealth of Pennsylvania, which has the responsibility to proetect the health of Pennsylvania residents. Since it has a vested interest in the health of former Drake plant workers who have possibly been exposed to known carcinogens, the Department of Health has requested financial and technical assistance with developing a surveillance system and cohort registry. This notice is for information only, and no other applications will be accepted.

The proposed project is of 20 years' duration. It is expected that approximately $200,000 will be available in Fiscal Year 1985. The cooperative agreement will have an initial 5-year project period with annual budget periods. Continuation awards will depend upon the availability of funds. This application is not subject to review under Executive Order 12372.

FOR FURTHER INFORMATION CONTACT:

For business information: Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 310, Atlanta, Georgia 30305, Telephone: (404) 262-6576 or FTS 236-6576.

For technical information: Paul Schulte, Ph.D., NIOSH, Centers for Disease Control, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: (513) 841-4386 or FTS 684-4386.

Dated: August 12, 1985.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 85-19855 Filed 8-19-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 80N-0012; DESI 8924]

Drugs for Human Use; Drug Efficacy Study Implementation; Certain Topical Anti-Infective Drug Products; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of pertinent parts of new drug applications (NDA's) for Neosporin Topical Powder, Neosporin Aerosol, and Neosporin-G Cream. FDA is withdrawing approval because these combination drug products lack substantial evidence of effectiveness in the treatment of various dermatological conditions.

EFFECTIVE DATE: September 19, 1985.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 8924 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Judy O'Neal, Center for Drugs and Biologics (HFN-336), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the **Federal Register** of September 25, 1981 (46 FR 47408), FDA proposed to withdraw approval of the NDA's for certain topical anti-infective drug products, including those described below. The basis of the proposal was that the products lack substantial evidence of effectiveness for their labeled indications. In response to the notice, Burroughs Wellcome Co., Inc., requested a hearing. Burroughs Wellcome has since withdrawn its hearing request for the products described below. Accordingly, FDA is now withdrawing approval of those parts of the new drug applications which pertain to the following prescription drug products:

1. Neosporin Topical Powder (NDA 50-166) containing neomycin sulfate EQ 3.5 milligram (mg) base/gram (gm), bacitracin zinc 400 units, and polymyxin B sulfate 5,000 units; Burroughs Wellcome Co., Inc., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.

2. Neosporin Aerosol (NDA 50-167) containing in each 90 gm aerosol spray neomycin sulfate EQ 70 mg base, bacitracin zinc 8,000 units, and polymyxin B sulfate 100,000 units; Burroughs Wellcome Co., Inc.

3. Neosporin-G Cream (NDA 50-176) containing neomycin sulfate EQ 3.5 mg base/gm, polymyxin B sulfate 10,000 units; and gramicidin .25 mg; Burroughs Wellcome Co., Inc.

Any drug product that is identical, related, or similar to the three products listed above and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of

substantial evidence that the combination products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 50–166 that provide for Neosporin Topical Powder containing neomycin sulfate, those parts of NDA 50–167 that provide for Neosporin Aerosol containing neomycin sulfate, and those parts of NDA 50–176 that provide for Neosporin-G Cream containing gramicidin, and all the amendments and supplements for those products, is withdrawn effective September 19, 1985. Shipment in interstate commerce of the products above, or any identical, related, or similar product that is not the subject of an approved new drug application, will then be unlawful.

Dated: August 14, 1985.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 85–19803 Filed 8–19–85; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Radiologic Devices Panel

Date, time, and place. September 30, 9 a.m., Rm. 416, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 4:30 p.m.; Robert Phillips, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7514.

General function of the committee. The committee reviews and evaluate available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 23, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for magnetic resonance imaging devices.

Closed committee deliberations. The committee may discuss trade secret or confidential commercial information relevant to premarket approval applications for magnetic resonance imaging devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separate portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. These procedures (21 CFR 10.206) are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Firday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include

the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marked drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: August 14, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85–19801 Filed 8–19–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83D–0282]

Freedom of Information Summaries for NADA's; Availability of Revised Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised Freedom of Information Summary Guidelines for NADA's prepared by the Center for Veterinary Medicine (CVM). The revised guidelines describe information required for public release upon approval of an NADA or supplemental NADA, and they reflect consideration of those comments received in response to publication of a notice of availability of the draft revised guidelines.

ADDRESS: The revised guidelines, the August 1983 draft of the revised guidelines, comments, and related materials are available for public examination at, and requests for single copies of the revised guidelines may be submitted to, the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frank G. Pugliese, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4500.

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act (the act) requires that a new animal drug be the subject of an approved new animal drug application (NADA) before it may be maketed in interstate commerce. Section 512(b)(1) of the act (21 U.S.C. 360b(b)(1)) requires that each NADA include full reports of investigations which show that the drug is safe and effective for use. Section 514.11 of the animal drug regulations (21 CFR 514.11) addresses the confidentiality of data and information in an NADA and provides for the availability for public disclosure of a summary of safety and effectiveness data and information after approval of an NADA and publication in the **Federal Register**. The guidelines advise NADA sponsors on the preparation of such a summary of safety and effectiveness data, generally known as a freedom of information (FOI) summary.

On May 26, 1976 (41 FR 21498), FDA published a notice announcing the availability of guidelines concerning the preparation of a freedom of information summary for NADA's. Based on a review of summaries prepared under the 1976 guidelines, FDA concluded that the 1976 guidelines were not sufficiently detailed to enable drug sponsors to prepare uniformly adequate summaries. Therefore, the agency revised the guidelines to provide more detail, and announced the availability of the draft revised guidelines for review and public comment in the **Federal Register** of August 19, 1983 (48 FR 37711). In response to the publication of the notice, several comments were received. CVM prepared the revised FOI guidelines after considering these comments. The revised guidelines, the comments, and a summary of CVM's review of the comments are available for public examination at, and requests for single copies of the guidelines may be sent to, the Dockets Management Branch (address above).

FOI summaries initially submitted to CVM after September 19, 1985 should be prepared in accordance with the revised guidelines; summaries submitted before September 19, 1985 for applications not yet approved will be reviewed individually. CVM will determine whether changes are necessary and, if so, whether the changes will be made by CVM or the sponsor. CVM will attempt to avoid any unnecessary delay in the approval of applications that might be caused by revision in the FOI summaries.

The introduction to the guidelines states that the guidelines are to be applied flexibly, to account for differences between applications in the kinds and amounts of data appropriately submitted. Moreover, as stated below, CVM will consider at any time additional comments on the content of the guidelines. Nevertheless, the revised guidelines represent the agency's interpretation of the information that is needed to comply with both the spirit of the Freedom of Information Act and the letter of the agency's regulation (§ 514.11). The revised guidelines specify a procedure for resolution of differences between CVM and a sponsor as to the content of individual summaries. Although § 514.11 places responsibility on sponsors for submission of an FOI summary, the agency has ultimate responsibility for the content of the summary.

Interested persons may, at any time, submit additional written comments on the revised guidelines to the Dockets Management Branch. Such comments will be considered in determining if further revisions are required. Respondents should submit two copies (except that individuals may submit single copies) identified with Docket No. 83D–0282. Comments and all related materials may be seen in the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

This notice and the revised guidelines are issued under 21 CFR 10.90 and 514.11.

Dated: August 14, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–19804 Filed 8–19–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[IN FEIS 85-27]

Lower Gila South Proposed Resource Management Plan/Final Environmental Impact Statement, Phoenix District, Arizona; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Proposed Resource Management Plan/ Final Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 202(f) of the Federal Land Policy and Management Act of 1976, a Proposed Resource Management Plan/Final Environmental Impact Statement (RMP/EIS) has been prepared for the Lower Gila South Planning Area.

The Proposed RMP/Final EIS addresses future management options for approximately 2,009,000 acres of public lands in southwestern Arizona. Of this total 621,931 acres in 12 Wilderness Study Areas (WSA's) are analyzed as suitable or non-suitable for wilderness designation. The Lower Gila South Planning Area includes portions of La Paz, Maricopa, Pima, Pinal and Yuma Counties, Arizona.

The document describes the proposed resource managment plan and contains written and oral comments received during the public review period and responses to those comments.

A thirty-day public review period will end September 23, 1985. During that period any portion of the plan, with the exception of the wilderness issue, may be protected. Protest statements shall contain the following information:

—The name, mailing address, telephone number and interest of the person filing the protest;
—A statement of the issue or issues being protested;
—A statement of the part or parts of the plan being protested;
—A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and
—A concise statement explaining why the State Director's; decision is believed to be wrong.

All protests should be sent to: Director (202), Bureau of Land Management, U.S. Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240.

Protests must be received no later than the close of the thirty-day public review period.

FOR FURTHER INFORMATION CONTACT: William Childress, Lower Gila Resource Area Manager, Bureau of Land Management, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. (602) 863-6711.

Copies of the document are available for review at the following locations:

Office of Public Affairs, Interior Building, Bureau of Land Management, 18th and C Streets, NW, Washington, D.C. 20240.

Bureau of Land Management, Arizona State Office, 3707 N. 7th Street, Phoenix, Arizona 85014.

Bureau of Land Management, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Dated: August 12, 1985

Marlyn V. Jones,

District Manager.

[FR Doc. 85-19810 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-32-M

[I-21547]

Realty Action; Exchange of Public Land in Jerome County for Private Land Within Blaine County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of public land in Jerome County for private land within Blaine County, Idaho, I-21547.

DATE: Comments should be submitted to the Shoshone District Office, Bureau of Land Management, P.O. Box 2B, Shoshone, Idaho, 83352 by September 23, 1985.

SUMMARY: The purpose of the exchange is to acquire the non-Federal grazing land to improve the manageability of the public lands for livestock and wildlife habitat. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with Blaine County and Jerome County Commissioners and Idaho Department of Fish & Game. The public interest will be well served by making the exchange.

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Jerome County, Idaho

T. 9 S., R. 17 E., B.M.,
Sec. 14, S½NW¼, S½;
Sec. 15, S½N½, S½;
Sec. 20, E½NE¼, N½SE¼;
Sec. 21, NE¼NE¼, W½E½, W½;
Sec. 22, E½NE¼NE¼, E½W½NE¼NE¼, E½SE¼NE¼, E½W½SE¼NE¼, E½W½W½SE¼NE¼, W½, E½SE¼, SW¼SE¼;
Sec. 28, N½NE¼, NE¼NW¼.

Containing 2,185.00 acres.

In exchange for these lands, the Federal Government will acquire non-Federal lands from George Arkoosh, described below:

Blaine County, Idaho

T. N., R. 18 E., B.M.
Sec. 2, E½SE¼, tax lot 3453, also the SW¼SE¼ except for a parcel of land described as follows:
Commencing at the Center South ⅛ Corner of said section 2, which point is also the NW Corner of SW¼SE¼, and also is the REAL POINT OF BEGINNING;
Thence South 740 feet ± along the West Boundary of said SW¼SE¼, to the foothills on the Southeast Edge of Quigley Canyon;
Thence North 48° East, 543.09 feet ±;
Thence North 10° East, 382.41 feet ±, to the North Boundary of said NW¼SE¼, and also to the foothills on the Southeast Edge of Quigley Canyon;
Thence West 470 feet ±, along the North Boundary of said SW¼SE¼, to the point of beginning, containing 5.46 acres more or less.
Sec. 10, SE¼SE¼, tax lot 3457;
Sec. 11, NE¼, SE¼NW¼, S½SW¼, NE¼SW¼, N½SE¼, tax lots 3451, 3455, 3456;
Sec. 17, lot 1, SE¼NE¼, SE¼SW¼, S½SE¼, NE¼SE¼;
Sec. 19, a parcel of land lying within Government lot 4 being more particularly described as follows:
Commencing at the Section Corner common to section 19, 24, 25, and 30, which is the REAL POINT OF BEGINNING;
Thence N 0°16'33" E, 1322.41 feet to a ⅝" bar marking the South ⅛ corner common to sections 19 and 24;
Thence S 89°45'57" E, 897.80 feet to a ⅝" bar on the westerly boundary of Croy Creek Road;
Thence S 30°04'43" W, 1524.41 feet along the westerly boundary of Croy Creek Road to a ⅝" bar;
Thence N 89°50'16" W, 140.15 feet to the point of beginning, containing 15.75 acres more or less.
Sec. 20, lot 1, NE¼, E½NW¼, SW¼NW¼;
Sec. 24, S½;
Sec. 25, NE¼, NE¼NW¼, tax lots 5900, 5901, 5902, 5903;
Sec. 36, tax lots 3862, 3863, 3866.

Blaine County, Idaho

T. 2 N., R. 19 E., B.M.,
Sec. 4, N½SW¼, W½SE¼, SE¼SE¼;
Sec. 5, SE¼;
Sec. 7, S½SE¼;
Sec. 8, W½NE¼, S½SW¼, SE¼;
Sec. 9, N½NE¼, SW¼NE¼, W½, NW¼SE¼;
Sec. 16, N½NE¼, NW¼, W½SW¼;
Sec. 17, W½E½, W½;

Sec. 18, E½E½, NW¼NE¼, SE¼SW¼; SW¼SE¼;
Sec. 19, lots 5 & 7, W½NE¼, SE¼NW¼, NE¼SW¼, tax lots 3883, 3884, 3886, 3887, 3889, 3891, 3892, 3894;
Sec. 20, W½NW¼, NW¼SW¼;
Sec. 30, tax lots 3868, 3870, 3871, 3873, 3875, 3876, 3878, 3880, 3881.

Blaine County, Idaho

T. 3 N., R. 18 E., B.M.,
Sec. 35, SW¼NE¼, N½SE¼, SW¼SE¼.

Blaine County, Idaho

T. 3 N., R. 19 E., B.M.,
Sec. 20, S½NE¼, SW¼SW¼, SE¼;
Sec. 21, W½NE¼, SE¼NE¼, NW¼NW¼, S½NW¼, SW¼;
Sec. 27, S½SW¼, W½SE¼;
Sec. 28, S½SE¼;
Sec. 34, NW¼NE¼, N½NW¼.

Containing 6,001.84 acres.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

There will be a reservation for geothermal and oil and gas to the Federal government on the public lands with no other mineral reservations on either the offered private land or selected public lands.

The patent when issued will contain the following reservations and conditions to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945;

2. All Geothermal and Oil & Gas shall be reserved to the United States, as required by section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights and reservations of record on the date of patenting.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the application.

ADDRESS: Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Shoshone District Office, 400 West F Street, Shoshone, Idaho, or by calling Ervin Cowley at (208) 886–2206.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

Dated: August 9, 1985.

Jon Ideo,

Acting District Manager.

[FR Doc. 85–19611 Filed 8–19–85; 8:45 am]

BILLING CODE 4310–GG–M

[CA 17125]

Exchange of Public and Private Lands in Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of Public and Private Land in Shasta County, California.

SUMMARY: The following described public land has been determined to be suitable for disposal by exchange under section 206 of the Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716):

T. 32 N., R. 5 W., Mount Diablo Meridian,
Sec. 31, Lots 24, 25, 26 and 28.
Containing 16.93 acres.

In exchange for these lands, the United States will acquire the following described lands from Bessie Drumm, P.O. Box 1778, Redding, California 96099:

T. 35 N., R. 5 W., Mount Diablo Meridian,
Sec. 20, NE1/4.
(Containing 160.0 acres)

The purpose of this exchange is to acquire the non-Federal land within the boundaries of the Shasta-Trinity National Forest which has high public value for watershed management of Shasta Lake. Acquisition is consistent with the Forest Land Adjustment Plan. The public interest will be served by completing the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be in accordance with regulations cited in § 2201.3 of Title 43, Code of Federal Regulations. Appraisal values will be available prior to consummation of exchange at the BLM Area Office, Redding, California.

Lands to be tranferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. In accordance with Executive Order 11988 of May 24, 1977, and Shasta County Zoning Ordinance Code Sections 4353 and 5354, the patentee and her successors and assigns shall undertake no construction activities within 100 feet of Middle Creek which are not in compliance with Shasta County Floodplain Zoning criteria in effect at the time such construction is undertaken.

Publication of this notice in the **Federal Register** segregates the public land from operation of the public land laws, including the mining laws. The segregative effect will end upon issuance of a patent or two years from the date of publication, whichever occurs first.

Detailed information concerning the exchange, including the Land Report, environmental assessment and the record of non-Federal participation, is available for review at the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002.

DATE: Comments may be submitted for a period of 45 days from the date of first publication of this notice in the **Federal Register**.Q02

ADDRESS: Comments should be sent to: Area Manager, Redding Resource Area, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FUTHER INFORMATION CONTACT: Robert J. Bainbridge, (916) 246–5325.

Dated: August 6, 1985.

Robert C. Korfhage,

Acting Redding Area Manager.

[FR Doc. 85–19835 Filed 8–19–85; 8:45 am]

BILLING CODE 4310–40–M

[OEPR Document No. FES 85–28]

Yuma District Fiscal Resource Management Plan and Environmental Impact Statement; Yuma District, AZ; Availability

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of final Resource Management Plan-

Environmental Impact Statement and announcement of protest period.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 202(f) of the Federal Land Policy and Management Act of 1976, a final Resource Management Plan-Environmental Impact Statement (RMP–EIS) has been prepared for the BLM Yuma District. The final RMP–EIS addresses future management options for approximately 1,192,000 acres of Federal lands along the lower Colorado River in southwestern Arizona and southeastern California. Counties within the planning area include Yuma, La Paz, and Mohave in Arizona, and Riverside, San Bernardino, and Imperial in California.

DATE: A 30-day public review period will end September 23, 1985. During that period, any portion of the plan may be protested as outlined in 43 CFR 1610.5–2. Protests should be sent to: Director, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The final RMP–EIS describes the proposed resource management plan and contains written and oral comments received during the 90-day public review period for the draft, BLM's responses to the comments, and changes which were made as a result of public comment. The document focuses primarily on resolving six public land management issues including: wildlife habitat management, special management areas for protection of important natural and cultural resources, grazing use of public lands, land ownership adjustments, location of rights-of-way for utility corridors and communication sites, and recreation use and management on public lands.

The wilderness issues, which appeared in the draft RMP–EIS, has been deleted as a planning issue in this final RMP–EIS and will be addressed in a separate environmental document to be prepared for the Yuma District wilderness study areas (WSAs) and a number of other BLM-administered WSAs in Arizona. The final RMP–EIS does not make any recommendations concerning the suitability of WSAs studied in the draft for wilderness designation.

Six alternatives are described and analyzed in the RMP–EIS, including the BLM's Preferred Alternative. Alternative A, the "No Action" alternative, represents a continuation of present management direction. The other four alternatives (Alternatives B through E) provide a full range of management options from emphasis on resource production to emphasis on resource protection. A description of the affected environment and an analysis of the environmental impacts of the alternatives are included in the final RMP–EIS.

At the end of the 30-day protest period, the RMP (excluding any portions under protest) will become final. Approval will be withheld on any portion of the plan under protest until final action has been completed on such protest. Approval of the RMP will be documented in a concise record of decision which will be made available to the public.

Public Participation: A copy of the final RMP–EIS will be sent to all individuals, agencies, and groups who have expressed interest in the Yuma District planning process. In addition, a limited number of copies of the final RMP–EIS are available upon request from the Yuma District Office, 3150 Winsor Avenue, P.O. Box 5680, Yuma, Arizona 85364. Public reading copies may be reviewed at public libraries in the Yuma District planning area and at the following locations:

BLM, Office of Public Affairs, Interior Building, 18th and C Streets, NW., Washington, DC 20240;

BLM, Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85019, (602) 241–5504;

BLM, Havasu Resource Area Office, 3819 Sweetwater Avenue, Lake Havasu City, Arizona 86403, (602) 855–8017.

FOR FURTHER INFORMATION CONTACT: A. Dennis Turowski, RMP–EIS Team Leader, BLM Yuma District Office, P.O. Box 5680, Yuma, Arizona 85364, (602) 726–6300.

Dated: August 14, 1985.

J. Darwin Snell,

District Manager.

[FR Doc. 85–19636 Filed 8–19–85; 8:45 am]

BILLING CODE 4310-32-M

Elko District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92–163 that a meeting of the Elko District Grazing Board will be held on September 20, 1985. The meeting will begin at 10:00 A.M. at the conference room of the Bureau of Land Management Office at 3900 East Idaho Street, Elko, Nevada.

The agenda for the meeting will include:

1. Range improvement Projects for FY 85.
2. Update of FY 85 Range Improvement Projects.
3. Review of Allotment Management Plans.
4. Update on Monitoring and Range Condition Inventory.
5. Update on the RMP–EIS Progress for Wells and Elko Resource Areas.
6. Update on other District Issues.
7. Public Comments—1:00 P.M.

The meeting in open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 East Idaho Street, Elko, Nevada 89801 by September 13, 1985. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Merle Good,

Acting District Manager.

[FR Doc. 85–19684 Filed 8–19–85; 8:45 am]

BILLING CODE 4310-HC-M

[OR 5435 (WA)]

Washington; Proposed Patent of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Washington State Parks and Recreation Commission has submitted application to patent the following described land on John's Island, San Juan County, Washington, for public recreation purposes compatible with retention of the land's scenery and natural characteristics:

Willamette Meridian, Washington

T. 37 N., R. 4 W.,
Sec. 25, Lot 1.
Encompassing 4.30 acres.

The land is primarily valuable for public recreational uses and retention of it's scenery and natural condition.

Patenting of land to Washington State will serve important public objectives by providing public recreation compatible with retention of the land in a natural condition.

DATES: For a period of thirty days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, East 4217 Main Avenue, Spokane, Washington 99202. Additional

information concerning this proposal is available for review at the above office.

Any adverse comments will be evaluated by the State Director, who may vacate or modify this action and issue a final determination. In the absence of any action by the State Director, this action will become the final decision of this Department.

Joseph K. Buesing,

District Manager.

[FR Doc. 85–19856 Filed 8–19–85; 8:45 am]

BILLING CODE 4310-33-M

Alaska Native Claims Selection; Sealaska Corp.

Correction

In FR Doc. 85–18965 beginning on page 32323 in the issue of Friday, August 9, 1985, make the following correction: In the third column, in Serial No. AA–10533, in the land description, "T. 253" should read "T. 25".

BILLING CODE 1505-01-M

[W–0304138, W–71414, W–71891, W–71889, W–71893, W–71894]

Proposed Continuation of Withdrawals; Wyoming

Correction

In FR Doc. 85–18907 beginning on page 32322 in the issue of Friday, August 9, 1985, make the following correction:

On page 32322, in the third column, in the fifth line under "T. 26 N., R. 84 W.," "E½S¼," should read "E½SW¼,".

BILLING CODE 1505-01-M

Minerals Management Service

Outer Continental Shelf; Certification Verification Agent; Cessation of 2-Year Certification Period

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Cessation of 2-Year Certification Period for Certified Verification Agent.

SUMMARY: Outer Continental Shelf (OCS) Order No. 8 requires the use of approved Certified Verification Agents (CVA) in design, fabrication, and installation of all new fixed or bottom-founded platforms or other structures on OCS leases subject to the Platform Verification Program. The receipt of applications from prospective CVA firms and individuals began in January 1980. However, after 5 years of operation, it is apparent that the services of only a small percentage of the numerously approved CVA's are being contracted for by lessees proposing new platforms.

Furthermore, the Minerals Management Service (MMS) has experienced a problem in the precertification of CVA's in that some firms have not been diligent in reporting personnel changes in their organizations. Monitoring of such changes by MMS is difficult when considering the large number of precertified CVA's and the present length of the certification period (2 years). Also, some firms elect to supplement their staffs with outside consultants on a job-by-job basis. This further complicates MMS's monitoring procedures.

In view of the above, MMS has concluded that as of September 19, 1985, certification of CVA's for periods of 2 years, as outlined in the "Operating Procedures For The OCS Platform Verification Program," will no longer be carried out. This change shall apply to all OCS Regions. Further, as of that date, all certifications presently in effect shall become null and void. The OCS Order No. 8 presently requires that a lessee submit design, fabrication, and installation verification plans and that such plans shall "include a short summary which nominates the CVA, states the qualifications of the CVA, describes how the lessee intends to use the CVA. . . ." Subsequent to September 19, 1985, CVA qualifications will be reviewed at the time of plan submittal by the lessee, and resulting CVA certification shall be valid only for the duration of that project. In submitting the CVA qualifications, the lessee shall include resumes of only those CVA personnel who will be assigned to the project in question. This change will eliminate the need for MMS to maintain voluminous files of unnecessary CVA documentation. Further, it will make possible easier and more effective MMS monitoring of pertinent CVA personnel changes from one project to another. Finally, it will ensure that all prospective CVA's have an equal opportunity to provide CVA-related services to lessees.

With the exception of this change, the provisions of the document entitled "Operating Procedures For The OCS Platform Verification Program," dated October 1979, shall remain in effect.

EFFECTIVE DATE: September 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Felix Dyhrkopp; Minerals Management Service; Gulf of Mexico OCS Region; P.O. Box 7944; Metairie, LA 70010; telephone (FTS) 680–9893 or (504) 838–0893.

Dated: August 7, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85–19813 Filed 8–19–85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Anadarko Production Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Anadarko Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4421, Block 78, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Intracoastal City and New Iberia, Louisiana.

DATE: The subject DOCD was deemed submitted on August 5, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS

Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 7, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-19809 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

History Committee, Statue of Liberty-Ellis Island Centennial Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a forthcoming meeting of the History Committee of the Statue of Liberty-Ellis Island Centennial Commission. The Committee will review its purpose in relation to the Statue of Liberty-Ellis Island restoration project, and will discuss the Committee's suggestions and initiatives that will commemorate the hundredth anniversaries of the Statue of Liberty (1986) and Ellis Island (1992).

DATE: September 6, 1985, 9 a.m. to 4:30 p.m.

ADDRESS: The Statue of Liberty-Ellis Island Foundation, Inc., 101 Park Avenue, Suite 1205, New York, New York 10178.

FOR FURTHER INFORMATION CONTACT: Herbert S. Cables, Jr., Regional Director, National Park Service, 15 State Street, Boston, MA 02109.

Dated: August 7, 1985.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 85-19881 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Arizona, et al.; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 10, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the signficance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 4, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Phoenix, *Pay'n Takit #25 (Phoenix Commercial MRA)*, 1753—1755 W. Van Buren

CALIFORNIA

Los Angeles County

Pasadena, *Fenyes Estate*, 470 W. Walnut St. & 160 N. Orange Grove Blvd.
Redondo Beach, *Sweetser Residence*, 417 E. Beryl St.

CONNECTICUT

New Haven County

Northford vicinity, *Sol's Path Historic District*, 1775—1801 Middletown Ave.

DELAWARE

New Castle County

Middletown vicinity, *Armstrong-Walker House (Rebuilding St. Georges Hundred 1850—1880 TR)*,, DE 71
Middletown vicinity, *Belleview (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 428
Middletown vicinity, *Choptank-Upon-The-Hill (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 435
Middletown vicinity, *Holton, S., Farm (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 435
Middletown vicinity, *Maple Grove Farm (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 299
Middletown vicinity, *Okolona (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 429
Middletown vicinity, *Rosedale (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 437
Middletown vicinity, *Weston (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Off DE 71
Middletown, *Choptank (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 435
Middletown, *Fields Heirs (Rebuilding St. Georges Hundred 1850—1880 TR)*, Off DE 71
Mt. Pleasant vicinity, *Eliason, A., House (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 896
Mt. Pleasant vicinity, *Idalia Manor (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 13
Mt. Pleasant vicinity, *Woodside (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 435
Odessa vicinity, *Elm Grange (Rebuilding St. Georges Hundred 1850—1880 TR)*, US 13
Odessa vicinity, *Fairview (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 412
Odessa vicinity, *Gordon, J. M., House (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 44
Odessa vicinity, *Higgins, S., Farm (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 423
Odessa vicinity, *McWhorter House (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 412
Odessa vicinity, *Misty Vale (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 423
Odessa vicinity, *Mondamon Farm (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 2
Odessa vicinity, *Old Ford Diary (Rebuilding St. Georges Hundred 1850—1880 TR)*, US 13
Odessa vicinity, *Retirement Farm (Rebuilding St. Georges Hundred 1850—1880 TR)*, US 13
Odessa vicinity, *Riverdale (Rebuilding St. Georges Hundred 1850—1880 TR)*, Off Bay View & Silver Run Rds.
Odessa vicinity, *Vandegrift, J., House (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 44
Odessa vicinity, *Williams, J.K., House (Rebuilding St. Georges Hundred 1850—1880 TR)*, DE 4
Odessa, *Vail, A.M., House (Rebuilding St. Georges Hundred 1850–1880 TR)*, Rt. 299
Port Penn vicinity, *Cleaver House (Rebuilding St. Georges Hundred 1850–1880 TR)*, Off Biddle's Corner Rd.

Sussex County

Georgetown, *Faucett, Peter S., House*, W. Laurel St.
Georgetown, *Georgetown Coal Gasification Plant*, N. Railroad Ave.
Georgetown, *Sipple, Thomas, House*, N. Bedford & New Sts.
Millsboro, *Perry-Shockley House*, 219 Washington St.

GEORGIA

Banks County

Homer, *Homer Historic District*, Along Main St. & Silver Shoals Rd..

Bartow County

Cartersville, *Jones, Sam, Memorial United Methodist Church*, 100 W. Church St.

Dawson County

Dawsonville, *Old Dawson County Jail (County Jails of the Georgia Mountains Area TR)*, HW 53

Floyd County

Rome, *Thankful Baptist Church*, 935 Spiderwebb Dr.

Franklin County

Royston, *Royston Commercial Historic District*, Along Church and Railroad Sts.

Fulton County

East Point, *East Point Industrial District*, Roughly bounded by Martin & Taylor Sts., Norman Berry Dr. & RR tracks

Greene County

Union Point vicinity, *Printup, Peter W., Plantation*, GA 44

Hall County

Clermont, *Clermont Residential Historic District*, Main, Harris, Martin, and Railroad Sts.

Gainesville, *Green Street-Brenau Historic District*, Roughly on Green, Candler, Park, Brenau, Boulevard & Prior Sts., Green St. Circle, City Park & Brenau College Campus

Gainesville, *Old Hall County Jail (County Jails of the Georgia Mountains Area TR)*, Bradford St.

Hart County

Bowersville, *Bowersville Historic District*, East & West Main Sts.

Hartwell, *Hart County Jail (County Jails of the Georgia Mountains Area TR)*, Johnson St.

Henry County

McDonough, *Globe Hotel*, 20 Jonesboro St.

Lumpkin County

Dahlonega, *Old Lumpkin County Jail (County Jails of the Georgia Mountains Area TR)*, Clarksville St.

Richmond County

Augusta, *Laney-Walker North Historic District*, Bounded by D'Antignac, 7th, Twiggs, Phillips & Harrison Sts., Walton Way & Laney-Walker Blvd.

Sumter County

Sumter, *Webb Family Farms*, US 19

Towns County

Hiawassee, *Old Towns County Jail (County Jails of the Georgia Mountains Area TR)*, Courthouse Square

Union County

Blairsville, *Old Union County Jail (County Jails of the Georgia Mountains Area TR)*, *Blue Ridge Rd.*

White County

Cleveland, *Old White County Jail (County Jails of the Georgia Mountains Area TR)*, Main St.

KANSAS

Brown County

Hiawatha, *Hiawatha Memorial Auditorium*, 611 Utah St.

Kingman County

Kingman, *Kingman County Courthouse*, 120 Spruce St.

Sedgwick County

Wichita, Fairmount Cottage, 1717 Fairmount Ave.

Sherman County

Goodland, *Goodland City Library*, 120 W. 12th St.

Wyandotte County

Kansas City, *Fire Station No. 9*, 2 S. 14th St.

Kansas City, *Scottish Rite Temple*, 803 N. 7th St.

Kansas City, *Soldiers and Sailors Memorial Building*, 600 N. 7th St.

MARYLAND

Anne Arundel County

Davidsonville vicinity, *OLIVER'S GIFT (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, 3473 Ranger Rd.

Baltimore (Independent City)

Bachrach, David, House, 2406–2408 Linden Ave.

Dorchester County

Cambridge, PATRICIA (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR), 903 Roslyn Ave.

Kent County

Chestertown vicinity, ISLAND IMAGE (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR), Walnut Point Rd.

Chestertown vicinity, *SILVER HILL (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Quaker Neck Landing

Chestertown, *BERNICE J. (Skipjack)*, Town Dock

Montgomery County

Rockville, *Montgomery County Courthouse Historic District*, Courthouse Sq. and S. Washington St.

Queen Anne's County

Kingstown vicinity, *MYSTERY (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Round Top Rd.

Talbot County

Oxford vicinity, *BILLIE P. HALL (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Evergreen Rd.

Oxford vicinity, S. C. DOBSON (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR), Peach Blossom Rd.

Sherwood, *SANDY (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Sherwood Rd.

St. Michaels vicinity, *ISLAND BIRD (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Miles River Yacht Club

St. Michaels vicinity, *ISLAND BLOSSOM (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Miles River Yacht Club

St. Michaels vicinity, *JAY DEE (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Miles River Yacht Club

St. Michaels vicinity, *NODDY (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Deepwater Point Rd.

St. Michaels, *EDMEE S. (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Mill St.

St. Michaels, *ISLAND LARK (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Carpenter St.

St. Michaels, *MAGIC (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, St. Michaels Marina

St. Michaels, *PERSISTENCE (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, St. Michaels Marina

St. Michaels, *ROVER (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, St. Michaels Marina

Witman vicinity, *FLYING CLOUD (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Magee Rd.

MASSACHUSETTS

Berkshire County

Adams, *Summer Street Historic District*, Crandall, Center, Eas, Liberty, Orchard and Summer Sts.

Bristol County

Dartmouth, *Padanaram Village Historic District*, Elm, Water, Middle, High, Pleasant, Prospect, Hill, School, Fremont, and Bridge Sts.

Dartmouth, *Russells Mills Village Historic District*, Russells Mills, Rock O' Dundee, Slades Corner, Horseneck and Fisher Rds.

Fall River, *Bernard's Folly (Fall River MRA)*, 535–537, 547–549, 553–555 N. Main St.

Essex County

Peabody, *Sutton Block*, 76–78 Main St.

Middlesex County

Chelmsford, *Hutchins, Oliver, House*, 79 Elm St.

Malden, *Converse Memorial Building*, 36 Salem St.

Suffolk County

Boston, *138–142 Portland Street*, 138–142 Portland St.

MINNESOTA

Grant County

Elbow Lake, *Grant County Courthouse*, Second St. and Central Ave.

Itasca County

Calumet vicinity, *Hill Annex Mine*, Off US 169

Morrison County

Little Falls, *Churchill, O. A., Store*, 55 Bay St.

Little Falls, *Northern Pacific Railway Depot*, 200 1st St. Northwest

Little Falls, *Pine Tree Lumber Company Office Building*, 735 1st St. Northeast

Little Falls, *Weyerhaeuser, Charles A., and Musser, Richard Drew, Houses*, Highland Ave.

Pierz, *St. Joseph's Church*, Main St.

Randall vicinity, *Clough Town Hall*, CR 10

Olmsted County

Rochester, *Pill Hill Residential Historic District*, Roughly 7th, 8th, 9th, & 10th Aves. SW between 3rd & 8th Sts. SW

Saint Louis County

Duluth, *DeWitt-Seitz Building*, 394 Lake Ave. South

Swift County

Benson vicinity, *Uytendale, Christian F., Farmstead*, Off CR 25

Todd County

Browerville, *Kahlert Mercantile Store*, Main St.

Browerville, *St. Joseph's Catholic Church, Rectory and School,* Main St. between 7th & 8th Sts.
Grey Eagle, *Grey Eagle Village Hall,* Spruce and Woodman St.
Long Prairie, *Bank of Long Prairie,* 262 Central Ave.
Long Prairie, *Hotel Reichert,* 20 Third St. North
Long Prairie, *Todd County Courthouse, Sheriff's House and Jail,* 215 1st Ave. South

MISSISSIPPI

Jackson County

Applestreet Site (22Ja530)

NEVADA

Carson City (Independent City)

Leport-Toupin House, 503 E. Telegraph St.

Washoe County

Reno, *McKinley Park School,* Riverside Dr. and Keystone Ave.
Washoe Valley, *Cliff, Walter, Ranch District,* 7635 Old HW 395

NEW JERSEY

Bergen County

Manwah, *Dutch Reformed Church at Romopock,* Island Rd. at W. Ramapo Ave.

Hudson County

Jersey City, *Pohlmann's Hall,* 154 Ogden Ave.

Middlesex County

Metuchen, *Ayers-Allen House,* 16 Durham Ave.

Monmouth County

West Long Branch, *MacGregor-Tallman House,* 407 Monmouth Rd.

Morris County

Ledgewood, *Cary Station,* 239 Emmans Rd.

Ocean County

Island Heights, *MARY ANN (catboat) (Barnegat Bay Class A racing catboats 1922–1925 TR),*
Ocean Gate, *SPY (catboat) (Barnegat Bay Class A racing catboats 1922–1925 TR),*
West Mantoloking, *LOTUS (catboat) (Barnegat Bay Class A racing catboats 1922–1925 TR),*

Somerset County

Blawenburg, *Reformed Dutch Church of Blawenburg,* 424 CR 518

NEW YORK

Genesee County

Village of Bergen, *Lake Street Historic District,* 10 & 12 S. Lake St. & 11–27 N. Lake St.

Monroe County

Adams Basin, *Adams-Ryan House,* 425 Washington St.

New York County

New York, *Saint Mark's Historic District (Boundary Increase),* E. 9th, 10th & N. Sts. & S. side of Stuyvesant Sts.

Westchester County

Somers, *Crane, Gerard, House,* Old Croton Falls Rd.

PENNSYLVANIA

Allegheny

Aspinwall, *Sauer Buildings Historic District,* 607–717 Center Ave.
Pittsburgh, *Fourth Avenue Historic District,* Fourth Ave. and Wood St.
Pittsburgh, *Osterling, Fredrick J., Office and Studio,* 228 Isabella St.

Beaver County

Beaver Falls, *Carnegie Falls-Beaver Falls,* 1301 7th Ave.

Berks County

Kutztown, *Deisher, H. K., Knitting Mill,* 56 Noble St.

Chester County

E. Bradford Twp., *Hance House and Barn (West Branch Brandywine Creek MRA),* Rt. 842
Londonderry Twp., *Ferron, John, House (West Branch Brandywine Creek MRA),* St. Malachi Rd.
Londonderry Twp., *Ross, Moses, House (West Branch Brandywine Creek MRA),* Doe Run Valley
Londonderry Twp., *St Malachi Church (West Branch Brandywine Creek MRA),* St. Malachi Rd.
Newlin & E. Marlborough Twps., *Green Valley Historic District (West Branch Brandywine Creek MRA),* Green Valley Rd.
Newlin Twp., *Embreeville Historic District (West Branch Brandywine Creek MRA),* Rt. 162
Newlin Twp., *Hayes Homestead (West Branch Brandywine Creek MRA),* Rt. 162 and Harvey's Bridge Rd.
Newlin Twp., *Hayes Mill House (West Branch Brandywine Creek MRA),* Star Gazer Rd.
Newlin Twp., *Hayes, Jacob, House (West Branch Brandywine Creek MRA),* Rt. 162
Newlin Twp., *House at Upper Laurel Iron Works (West Branch Brandywine Creek MRA),* McCorkel's Rock Rd.
Newlin Twp., *Indian Deep Farm (West Branch Brandywine Creek MRA),* Glenhall and Groundhog College Rds.
Newlin Twp., *Mountain Meadow Farm (West Branch Brandywine Creek MRA),* Harvey's Bridge Rd.
Newlin Twp., *Spruce Grove School House (West Branch Brandywine Creek MRA),* Brandywine Creek Rd.
Newlin Twp., *Worker's House at Lower Laurel Iron Works (West Branch Brandywine Creek MRA),* Creek Rd.
Newlin Twp., *Young, Joseph, House (West Branch Brandywine Creek MRA),* Creek Rd.
Newlin, Pocopson & W. Bradford Twps., *Northbrook Historic District (West Branch Brandywine Creek MRA),* Northbrook, Indian Hannah & Bragg Hill Rds.
Pocopson & West Bradford Twps. *Trimbleville Historic District (West Branch Brandywine Creek MRA),* Northbrook, Broad Run, and Camp Linden Rds.
Pocopson Twp., *Wilkinson House (West Branch Brandywine Creek MRA),* Rt. 842
W. Bradford Twp., *Baily Farm (West Branch Brandywine Creek MRA),* Strasburg and Broad Rds.
W. Bradford Twp., *Como Farm (West Branch Brandywine Creek MRA),* Broad Run Rd.
W. Marlborough Twp., *Doe Run Village Historic District (West Branch Brandywine Creek MRA),* Highland Dairy DuPont & Chapel Rds. and Rts. 82 & 841
W. Marlborough Twp., *Hoopes, Cyrus, House & Barn (West Branch Brandywine Creek MRA),* Springdell Rd.
W. Marlborough Twp., *House at Springdell (West Branch Brandywine Creek MRA),* Rt. 841

Clinton County

Woolrich vicinity, *Rich-McCormick Woolen Factory,* Little Plum Run Rd.

Columbia County

Berwick, *Jackson Mansion and Carriage House,* 344 Market St.

Delaware County

Media vicinity, *Old Rose Tree Tavern (Proposed Move),* Rose Tree and Providence Rds.

Lehigh County

Allentown, *Gauff-Roth House,* 427—443 Auburn St.

Luzerne County

Wilkes-Barre, *River Street Historic District,* Franklin, River, W. River, W. Jackson, W. Union, W.
Market, W. Northampton, W. South and W. Ross Sts. & Barnum Pl.

Montomery County

Pottstown, *Old Pottstown Historic District,* Roughly bounded by South, Race, Bailey, Adams, Lincoln, Beech, and Manatawny Sts.

Philadelphia County

Philadelphia, *Regent-Rennoc Court,* 5100 blk. Regent St. & 1311—1327 S. 52nd St.
Philadelphia, *Ruan, John, House,* 4278—4280 Griscom St.
Philadelphia, *St. Peter's Episcopal Church of Germantown,* 6000 Wayne Ave.
Philadelphia, *Suburban Station Building,* 1617 John F. Kennedy Blvd.

Washington County

Taylorstown, *Taylorstown Historic District,* Main St.

RHODE ISLAND

Washington County

South Kingstown, *Shadow Farm,* Kingstown Rd.
Westerly, *Watch Hill Historic District,* Roughly bounded by Breen, Watch Hill, & E. Hill Rds, Block Island Sound, Little Narragansett Bay & Pawtucket River

TENNESSEE

Giles County

Pulaski, *West Pulaski Historic District,* Roughly bounded by S. First, S. Third, Rose, Madison and Jefferson Sts.

WISCONSIN

Cippewa County

Cippewa Falls, *Sheely House,* 236 W. River St.

Grant County

Lancaster, *Arthur, L. J., House,* 210 N. Jefferson St.

Walworth County

Delavan, *Allyn, A. H., House,* 511 E. Walworth Ave.

[FR Doc. 85-19879 Filed 8-19-85; 8:45 am]
BILLING CODE 3410-75-M

Bureau of Reclamation

Westlands Water District Long-Term Drainage Disposal Project; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) and §1506.2 of the Council on Environmental Quality Regulations, the Bureau of Reclamation, Department of the Interior, in cooperation with the Westlands Water District (WWD), intends to prepare a joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) addressing the impacts of various alternatives to provide a long-term solution to dispose of approximately 6,500–10,000 acre-feet of subsurface agricultural drainage water originating within the WWD. This action is necessary because, on March 15, 1985, the Secretary of the Interior announced his decision to initiate the process of closing Kesterson Reservoir, Merced County, as a disposal facility for agricultural drainage. Subsequently, on April 3, 1985, the Department of the Interior and WWD entered into an agreement which requires the cessation of agricultural drainage water discharge into the San Luis Drain north of Bass Avenue and into the Kesterson Reservoir by June 30, 1986.

The Bureau's proposed action is to enter into an agreement, and to issue an entitlement, to allow WWD to use the San Luis Drain between Bass Avenue and its southern terminus in Fresno County, California. WWD proposes to use this portion of the drain to transport subsurface agricultural drainage water to a site in the northeastern portion of WWD approximately 10 miles south of the town of Mendota, California. WWD proposes to use the site for long-term storage of the drainage water and the evaporation/treatment of that drainage water. WWD also proposes to construct at this site approximately 3,500 acres of evaporation ponds. Blending, reverse osmosis, and other alternatives for drainage water management will also be evaluated in the EIR/EIS.

The joint EIR/EIS will address the potential impacts of the Bureau entering into an agreement to let WWD use the San Luis Drain south of Bass Avenue, and alternatives to this agreement. It will also address impacts of WWD's long-term alternatives for management and disposal of subsurface agricultural drainage water.

Other environmental review and consultation requirements will be met concurrently with the NEPA process. These include applicable requirements of the Clean Water Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Endangered Species Act, and Executive Orders 11988 and 11990 regarding floodplains and wetlands.

WWD has held two scoping meetings on the WWD long-term project to gather public and agency input on April 26, 1985, in Sacramento, California, and May 2, 1985, in Fresno, California. Participants at these meetings identified several concerns, including the possibility of adverse health effects on waterfowl, and groundwater and surface water contamination. The Bureau of Reclamation is inviting further public input at this time regarding significant issues, potential environmental effects, alternatives, and other information related to the proposed Bureau action. Those persons wishing to provide further input should do so in writing by August 30, 1985, to the Bureau of Reclamation at the address provided below.

Written comments should be directed to, and further information may be obtained from, the Office of Environmental Quality, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825–1898. The Bureau contacts for this joint EIR/EIS are Roderick Hall (916) 978–5130 and Susan Hoffman (916) 978–5063.

Dated: August 15, 1985.

Clifford I. Barrett,

Acting Commissioner.

[FR Doc. 85-19839 Filed 8-19-85; 8:45 am]
BILLING CODE 4310-9-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Meeting; Voluntary Foreign Aid Advisory Committee

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on *Promoting Longterm Development in Africa,* which will be held September 18–20, 1985, at the Hyatt Regency Hotel, 1001 Broadway, Oakland, CA 94607, Telephone: (415) 893–1234.

Wednesday, September 18, 1985: 3:00–7:00 p.m.—Conference Registration.

Thursday; September 19, 1985: 8:00 a.m.—Registration. 8:45 a.m.—Welcoming Remarks: E. Morgan Williams, Chairman, ACVFA. 9:00–12:00 noon *Session I: Strategic Planning.* How can AID and PVOs better coordinate their strategic planning for longterm development in Africa? 12:00 noon–1:30 p.m.—Lunch. 1:30–3:00 p.m.—*Session II: Development and Disaster Preparedness: A Strategy for the Future.* What lessons have AID and PVOs learned about emergency preparedness and management from the current crisis, and what is being done to prepare Africa for the next drought and famine? 3:30–5:00 p.m.—*Session III: Development Education.* How can we channel the outpouring of support for humanitarian aid to Africa into support for longterm development?

Friday, September 20, 1985: 9:00 a.m.—*Advisory Committee Business Session:* Review of September meeting; Discussion of December 5–6, 1985 meeting: *Population and Development* (Washington, DC); New Business. 12:00 noon—Meeting Adjournment.

The meeting is open to the public. Any interested person may attend, request to appear before, or file statements with the Advisory Committee. Written statements should be filed prior to the meeting and should be available in twenty five (25) copies. AID representatives will be at the meeting.

Participants are reponsible for making hotel reservations and payment directly to the Hyatt Regency Hotel, but *Pre-Registration for Meeting Through Advisory Committee Headquarters is Requested.* Pre-registration and hotel reservation forms are available at the ACVFA. Please call (703) 235–2708 or 3336, or write the Advisory Committee on Voluntary Foreign Aid, Room 227, SA–8, Agency for International Development, Washington, D.C. 20523.

Dated: August 7, 1985.

Julia Chang Bloch,

Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 85-19808 Filed 8-19-85; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree In Action To Enforce the Clean Air Act; Philadelphia

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on August 6, 1985, a proposed consent decree in *United States* v. *City of Philadelphia,* Civil Action No. 85-4566 was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed consent decree provides for compliance with the Clean Air Act. The decree prohibits any City automobile fleet operator or repair service operator from removing or tampering with emission control equipment. The City is required to pay a $20,000 penalty, to undertake a comprehensive training, inspection and maintenance program and to bring all tampered vehicles into compliance (the City completed this requirement in January 1984).

The Department of Justice will recieve for a period of thirty (30 days from the date of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Philadelphia,* D.J. No. 90-5-2-1-776.)

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 3310 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, Pennsylvania 19106; and the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General Land, and Natural Resources Division.

[FR Doc. 85-19857 Filed 8-19-85; 8:45 am]

BILLING CODE 4410-21-M

Lodging of Proposed Consent Decree Pursuant to the Clean Water Act; Regan, James L., et al.

In accordance with Department policy, 28 CFR 50.7, a notice is hereby given that on July 26, 1985, a proposed Consent Decree in *United States* v. *James L. Regan and John E. Regan,* Civil Action No. F84-0013 was lodged with the United States District Court for the District of Alaska.

The proposed Consent Decree requires the defendants to comply with section 301 of the Clean Water Act and refrain from all discharges of pollutants without the authorization of a National Pollutant Discharge Elimination System (NPDES) permit. The decree imposes stipulated penalties of $7,500.00 a day on the defendants for any failures on their part to either obtain appropriate NPDES permits or to remain in compliance with the provisions of those permits due to failure to install, operate, or maintain pollution control facilities. The decree also provides for the payment of a civil penalty by the defendants in the amount of $5,000.00, $2,000.00 of which to be paid within thirty days of the entry of the decree and the balance of $3,000.00 to be paid prior to August 25, 1985. With the exception of penalty obligations, the decree terminates two years after its entry date.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washngton, D.C. 20530, and should refer to *United States* v. *James L. Regan and John Regan,* D.J. No. 90-5-1-6-354.

The proposed Consent Decree may be examined at the office of the United States Attorney, Federal Building & U.S. Courthouse, 701 C Street, Room C-252, Mail Box 9, Anchorage, Alaska 99513; The Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the case and decree and enclose a check in the amount of $2.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-19858 Filed 8-19-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organization are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N 1301, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Collection of Information in Current Rules

Occupational Safety and Health Administration
Service Station Inventory Records for Flammable Liquids Tanks
OSHA 203
Recordkeeping
State or local governments; businesses or other for profit; federal agencies or employees; small businesses or organizations
11,133 respondents; 2,371,329 hours; 0 forms

Requires the maintenance and reconcilliation of inventory records for Class I liquid storage tanks to detect under ground leaks to avoid fires and explosions.

Occupational Safety and Health Administration
Records of Inspection of Critical Components on Cranes
OSHA 206,210
Recordkeeping
Businesses or other for profit; small businesses or organizations
660,000 responses; 330,000 hours; 0 forms
OSHA requires a record of periodic thorough inspection of overhead and gantry cranes and mobile cranes. The inspections are to determine the condition of hooks, hoist chains and brakes to prevent injury to employees due to component failure during use.

Occupational Safety and Health Administration
Records of Inspection of Idle Ropes on Cranes and Derricks
OSHA 208, 212A, 214
Recordkeeping
Businesses or other for profit; small businsses or organizations
6,800 responses; 3,400 hours; 0 forms
OSHA requires a record of periodic thorough inspection of idle ropes on overhead and gantry cranes, mobile cranes, and derricks. The inspections are to determine the condition of the wire ropes to prevent injury to employees due to rope failure during use.

Record of Inspection and Maintenance of Presses
OSHA 215, 216, 217, 218
Recordkeeping
State or local governments; businesses or other for profit; small businesses or organizations
1,517,240 hours, 0 forms
In order to ensure workplace safety it is the responsibility of the employer to establish and follow a program of regular inspections of power presses and forging machines. The parts, equipment and safeguards must be in a safe operating condition. The employer shall maintain records of these inspections and the maintenance work performed.

Signed at Washington, D.C. this 15th day of August, 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–19890 Filed 8–19–85; 8:45 am]

BILLING CODE 4210-26-M

Bureau of Labor Statistics

Business Research Advisory Council; Committee on Occupational Safety and Health Statistics; Meeting and Agenda

The fall meeting of the Occupational Safety and Health Statistics Committee of the Business Research Advisory Council will be held at 1 p.m., September 26, 1985, in Room N–3437 A and B of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The agenda for the meeting is as follows:

1. Recordkeeping Guidelines
2. Other Business

This meeting is open to the public. It is suggested that persons planning to attend as observers contact Janice D. Murphey, Liaison, BRAC, on Area Code (202) 523–1347.

Signed at Washington, D.C., this 9th day of August 1985.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 85–19888 Filed 8–19–85; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Northern Heel Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 5, 1985–August 9, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,947; Northern Heel Corp., Lewiston, ME
TA–W–15,836; Dorchester Refining Co., Mount Pleasant, TX
TA–W–15,931; D & F Shirt Co., Salisbury, MO

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–15,831; LTV Steel Co., Cleveland East, Cleveland, OH

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–15,812; Amerada Hess Corp., Purvis Refinery Accounting Dept., Purvis, MS

Separations from the subject firm were due to the transfer of functions to another domestic facility.

TA–W–15,937; United Merchants and Manufacturers, Inc., Bath Mill Div., Bath, SC

An integrated operation, none of the company's owned production facilities are certified for Trade Adjustment Assistance. Customer survey of plant's parent division found no imports of the relevant product line.

Affirmative Determinations

TA–W–15,854; Rob Roy, Inc., Cambridge, MD

A certification was issued covering all workers of the firm separated on or after February 15, 1984.

TA–W–15,820; Texaco, Inc., Lawrenceville, IL

A certification was issued covering all workers of the firm separated on or after March 11, 1984.

TA–W–15,821; Tultex, Inc., Marion, NC

A certification was issued covering all workers of the firm separated on or after September 15, 1984 and before December 30, 1984.

TA–W–15,835; American Accessories, Inc., Rutledge, TN

A certification was issued covering all workers of the firm separated on or after March 6, 1984.

I hereby certify that the aforementioned determinations were issued during the period August 5, 1985–August 9, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C., during normal business hours or will be mailed to persons who write to the above address.

Dated: August 13, 1985.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–19889 Filed 8–19–85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Senior Executive Service (SES) Performance Review Board; Members

AGENCY: National Archives and Records Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Archives and Records Administration.

FOR FURTHER INFORMATION CONTACT: Claudine J. Weiher, Assistant Archivist for Management and Administration, National Archives and Records Administration (NA), 8th and Pennsylvania Ave., NW., Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial performance ratings for Senior Executive Service members, and make recommendations to the appointing authority on senior executive performance.

The Members of the Performance Review Board for the National Archives and Records Administration are: James W. Moore, Assistant Archivist for Records Administration; David F. Peterson, Assistant Archivist for Federal Records Centers; John E. Byrne, Director, Office of the Federal Register.

Dated: August 13, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85–19806 Filed 8–19–85; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Notice of Meeting

August 15, 1985.

The National Commission on Agricultural Trade and Export Policy will hold its next meeting at 9 a.m. on September 13, 1985, at the Holiday Inn-Fresno Airport, Fresno, California.

The meeting is open to the public. Individuals or organizations interested in appearing before the Commission to discuss "Export Expansion of High Value Agricultural Products" should contact the Commission staff at (202) 488–1961.

Kenneth L. Bader,

Chairman.

[FR Doc. 85–19816 Filed 8–19–85; 8:45 am]

BILLING CODE 3410-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: September 5–6, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications in the field of History submitted to the Project Research category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.

Date: September 12–13, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications in the fields of Social Sciences submitted to the Project Reserach category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.

Date: September 13, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review applications submitted to the Office of Preservation for projects beginning after January 1986.

Date: September 19–20, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted to the Humanities, Science and Technology category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.

Date: September 26–27, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review literature and fine arts applications submitted to the Project Research category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1)

Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasioin of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85–19882 Filed 8–19–85; 8:45 am]

BILLING CODE 7536-01-M

Meeting; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music Presenters Section) of the National Council on the Arts will be held on September 4–5, from 9:00 a.m.–6:00 p.m. and on September 6, from 9:00 a.m.–5:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on September 6, from 2:00–4:00 p.m. to discuss guidelines and policy review.

The remaining sessions of this meeting on September 4 and 5, from 9:00 a.m.–6:00 p.m. and on September 6, from 9:00 a.m.–1:00 p.m. and from 4:00–5:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: August 14, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–19841 Filed 8–19–85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for First Quarter CY 1985; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents were determined to be abnormal occurrences using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG–0090, Vol. 8, No. 1 ("Report to Congress on Abnormal Occurrences: January–March, 1985"). This report will be available in the NRC's Public Document Room 1717 H Street NW., Washington, D.C. about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

Premature Criticality During Startup

Example I.D. 1 of the abnormal occurrence criteria notes that an accidental criticality can be considered an abnormal occurrence. (For a reactor, an "accidental criticality" can be defined as a criticality which is achieved when the approach to criticality is not being properly controlled by the plant operators.)

Date and Place.—On February 28, 1985, during a plant startup at about 1:30 p.m., the Virgil C. Summer Nuclear Station Unit 1 experienced an unanticipated transient which resulted in a high flux positive rate trip (automatic shutdown). The plant, which is operated by South Carolina Electric and Gas Company (the licensee), utilizes a Westinghouse-designed pressurized water reactor. The plant is located in Fairfield County, South Carolina.

Nature and Probable Consequences.—During a nuclear power plant startup, control rods are withdrawn in a predetermined sequence to achieve criticality. In order to avoid rapid increases in power, three barriers of defense are used, i.e., personnel performance, procedural control, and reactor instrumentation to automatically scram (trip) the reactor. For the February 28, 1985, event, the first two barriers failed. Consequently, attaining criticality was not recognized and rod withdrawal was continued until the startup rate approached, by later estimates, 16 to 17 decades per minute (dpm).

At about six percent power, a reactor trip occurred on the high flux positive rate trip. The plant responded as designed to the reactor protection system actuation. The positive rate trip is derived from an increase of five percent of rated thermal power (RTP) within a two-second period. The limiting safety system setting is 6.3 percent of rated thermal power increase in two seconds. To obtain a positive rate trip during startup requires a reactivity insertion rate much greater than usually encountered. Since this was an uncommon occurrence, NRC Region II management directed that a special inspection be conducted of the circumstances associated with the event.

Both the licensee's and the NRC's investigations concluded that the event was caused by both personnel error and procedure deficiencies as discussed below in the sequence leading up to the positive rate trip.

Prior to a startup, a critical control rod bank position is estimated. This is done by first calculating reference critical data (RCD) to determine samarium and xenon reactivity effects. This data is then used to calculate estimated critical conditions (ECC). Poison concentrations and reactivities are corrected for buildup and decay from shutdown to the estimated time of criticality. Changes in control rod positions, boron concentration, and temperature are also taken into consideration. The calculation is considered acceptable by the licensee if the actual critical rod position is within 50 steps of predicted, otherwise an investigation of the cause of the error is required.

The reactor startup on February 28, 1985, at about 1:30 p.m. was preceded by a startup that same day at 6:30 a.m. The reactor was critical for approximately three hours prior to shutdown. The RCD was based on data taken for the brief period of criticality rather than data for equilibrium conditions from the previous

power history. Therefore, when the ECC was calculated for the reactor startup at 1:30 p.m., the incorrect values of reactivity worth of poisons in the core were used. Additionally, the value used for control rod worth in the ECC calculation was based on middle of life (MOL) rod worth curves instead of beginning of life (BOL) rod worth curves. The station curve book provides rod worth curves for three times during core life: beginning, middle, and end of life. The reactor was between BOL and MOL in Cycle 2 at the time of the event, and the BOL curve would have more accurately reflected rod worth. These two factors contributed to the miscalculation of the estimated critical condition by 128 control rod steps. The ECC predicted criticality at 168 steps on the Bank D control rods, while the actual critical rod height was later determined to be at 40 steps on Bank D.

Under the direct supervision of the shift supervisor, the control rods were withdrawn by an operator trainee with no previous reactor or simulator experience at this facility in withdrawing rods. The shift supervisor, believing the reactor would go critical at about 168 steps on Bank D, instructed the trainee to withdraw the bank to 100 steps. This position, had the ECC been correctly calculated, would have left the reactor subcritical, even allowing for the 50 step margin of error discussed previously.

However, the trainee was not adequately instructed in the need to anticipate criticality any time rods were being withdrawn or to closely monitor the available instrumentation for indication of criticality. Neither did the shift supervisor provide the necessary attentiveness or monitoring himself. Consequently, attaining criticality at 40 steps on Bank D was not recognized and rod withdrawal was continued until the reactor scrammed on the high flux positive rate trip. This occurred when Bank D reached 76 steps.

Two other license operators were on duty in the control room at the time. The operator at the controls was engaged in other startup-related activities on another part of the control board. The control room supervisor, a licensed senior operator, was at his assigned station, which afforded a good overview of the control room; however, his view of instrumentation important to this event was blocked by the shift supervisor and the trainee.

The actual safety consequences of the event were minimal. It is estimated that even if the positive rate trip had not occurred (failure of instrumentation or failure of the rods to scram), power in the core for Bank D at 76 steps would have peaked at about 32% RTP due to the Doppler effect. In addition, if rod motion for Bank D had continued to 100 steps (the shift supervisor's instructions to the trainee), and a positive rate trip had not occurred, the power peak is estimated to be about 43% RTP (again due to the Doppler effect).

However, the event is significant because it represented an unnecessary challenge to the reactor protection system, and because the reactor was not being properly controlled during plant startup.

Cause or Causes.—The cause was primarily due to the failure of the shift supervisor (who was responsible for the trainee's actions) to be fully aware of plant status, to closely monitor instrumentation and to anticipate criticality whenever rods were being withdrawn as required by station procedures.

Contributing to, but not justifying the failure to monitor and anticipate criticality, was a calculated estimated critical position which was in error by more than 125 rod steps. The error in estimated critical position resulted, primarily, from procedural inadequacies.

Actions Taken To Prevent Recurrence

Licensee.—The shift supervisor was removed from duty until the licensee completed an evaluation of the event, its causes, and the supervisor's capability to continue licensed operator duties. The supervisor was given formal counseling for failure to maintain an awareness of plant conditions during reactor startup. The supervisor resumed licensed operator duties on March 13, 1985.

Since there were deficiencies in the methods of estimating critical rod position for reactor startups, procedures used for the calculation of ECCs were revised to provide improved guidance for data usage and limitations for determination of core conditions for reactor startups. The station control rod curve book was also revised to clearly label burnup dependent curves with the appropriate burnup windows. This will provide a more accurate means of selecting the appropriate curves for ECC calculations.

NRC.—As mentioned previously, an inspector from NRC Region II performed a special inspection from March 4–8, 1985, of the circumstances associated with the event. The inspection consisted of selected examinations of procedures and representative records, interviews with licensee personnel and observation of activities in progress.

As a result of the inspection, two violations of NRC requirements were identified: (1) Failure of the shift supervisor to closely monitor instrumentation and anticipate criticality whenever rods were being withdrawn, and (2) inadequate procedures to estimate critical rod position within reasonable limits when the reactor was operated on an intermittent schedule at varying power levels. A notice of these violations, together with the inspection report, were forwarded to the licensee on April 3, 1985.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

Diagnostic Medical Misadministration

The general abnormal occurrence criteria note that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place.—On January 7, 1985, a representative of St. Luke's Hospitals, Chesterfield, Missouri, reported to the NRC Region III that on December 19, 1984, a female patient received a radioactive material other than that prescribed for a scheduled diagnostic medical test. As a result, the patient's thyroid received a therapeutic dose in the range of 6,500 to 9,000 rads.

Nature and Probable Consequences.—The office of the patient's physician telephoned the hospital's Outpatient Radiology Department to schedule the patient for mammograms and a radioactive "iodine scan." What the physician intended, and for which he prepared a requisition, was a radioactive 'thyroid scan." In the licensee's normal terminology, a radioactive "iodine scan" is a whole body scan performed with 5 millicuries of iodine-131. A radioactive "thyroid scan," in the licensee's terminology, is routinely performed using radioactive technetium-99m pertechnetate.

The patient reported to the Outpatient Radiology Department on December 19, 1984, and received the mammographic examination. Then, even though the physician's written requisition had not yet arrived at the hospital, a technologist gave her an iodine-131 capsule. Dispensing the capsule without a requisition was contrary to the Department's rules. The patient was told to return the following day for the scanning procedure.

On December 20, 1984, a technologist, other than the one who dispensed the iodine-131 capsule, performed the scanning and the patient was discharged. Meanwhile, the physician's requisition arrived at the hospital.

Subsequently, the two technologists met to perform the necessary paperwork

functions. At the time, the technologist saw the physician's requisition and realized that the patient had received the wrong radioactive material. The technologist immediately reported the incident to the nuclear radiologist who informed the patient's physician, as required by NRC regulations.

The calculated radiation exposure to the thyroid from the 5 millicurie iodine-131 dosage would be in the range of 6,500 to 9,000 rads, compared to about a 200 millirad dose that would be expected from the normal technetium-99m pertechnetate diagnostic dosage of 100 microcuries.

The patient did not exhibit any apparent immediate injury. However, an NRC medical consultant, after considering the circumstances of the misadministration, has concluded that the patient has a perhaps 50% chance of developing hypothyroidism in the future. This possible decrease in thyroid function, however, is not life threatening. The patient's age (54 years) was to her advantage since the amount of iodine-131 absorbed by the thyroid during such testing generally decreases with age. The consequences of such an incident would likely have been more serious for a patient who was younger and/or pregnant.

Cause or Causes.—The licensee reported that the misadministration was caused by the technologist, contrary to the Department's rules, dispensing the iodine-131 capsule without a written requisition specifying the drug or the dosage.

Actions Taken To Prevent Recurrence

Licensee.—The licensee's Radiation Sefety Committee held a special meeting to discuss the incident and means of preventing recurrence. Based on this meeting, the licensee distributed a memorandum to all radiology physicians and technologists reiterating the existing rule that no medical study can be performed in the department, nor can any radioactive pharmaceutical be administered, without the proper written requisition signed by the physician.

NRC.—NRC Region III conducted a special inspection at the licensee's facility to review the circumstances surrounding the misadministration. No violations of NRC requirements were identified in the inspection, and the licensee's corrective action and retraining activities were considered satisfactory. In addition, as discussed previously, NRC Region III discussed the event with an NRC consultant.

Diagnostic Medical Misadministration

The general abnormal occurrence criteria note that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place.—On March 11, 1985, a representative of Tolfree Memorial Hospital of West Branch, Michigan, reported that a patient had received a diagnostic radiation exposure on March 7, 1985, that was approximately 10 times the intended exposure.

Nature and Probable Consequences.—On March 7, 1985, the patient who had a history of possible substernal thyroid received a diagnostic thyroid test using radioactive iodine-131, which is the standard radioactive substance used for such testing. Instead of the normal amount of 100 microcuries, however, the patient was administered 1,000 microcuries. A microcurie, which is one millionth of a curie, is a standard measure of radioactivity.

Although the radiation dose to the thyroid was significantly larger than the intended amount, the licensee reported that no biological harm would be expected because of the patient's age (70 years). (The percentage of iodine-131 uptake generally decreases with age.) An NRC medical consultant also considered the circumstances of the case, and concluded that the medical effects, if any, would be minimal. The patient's physician was informed of the misadministration, as required by NRC regulations.

Cause or Causes.—The licensee reported that the misadministration occurred because of the relatively low frequency that tests of this nature are administered by the hospital. In addition, there was some question about the proper iodine-131 dosage. The causes of the misadministration will be examined further in an upcoming NRC inspection.

Actions Taken To Prevent Recurrence

Licensee.—The licensee has revised its procedures to include a listing of the standard dosages for all types of thyroid examinations. The procedural changes will require that the dosages be checked against this standard before they are administered.

NRC.—Region III conducted a special inspection at the licensee's facility to review the circumstances surrounding the misadministration. The procedural changes adopted by the hospital were found to be satisfactory. No violations of NRC requirements were identified in the inspection. In addition, as discussed previously, NRC Region III discussed the event with an NRC medical consultant.

Unlawful Possession Of Radioactive Material

The general abnormal occurrence criteria note that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place.—On March 28, 1985, John C. Haynes, doing business as John C. Haynes Company ("the licensee"), Newark, Ohio, was arrested by agents of the Federal Bureau of Investigation on charges of illegal possession and use of radioactive material and for making false statements to the NRC.

On April 5, 1985, the NRC issued an Order to the licensee requiring him to provide access to his laboratory facility for cleanup and removal of radioactively contaminated equipment. Subsequent to the cleanup, the license is to be revoked.

Nature and Probable Consequences.—As stated in the April 5, 1985, Order, licensee is the holder of a by-product material license which currently authorizes the licensee to possess americium–241 for storage only. During the 1970's, the licensee's facility was used to irradiate diamonds and other gemstones using unsealed americium–241 for the purpose of inducing color changes. At one time the licensee possessed up to 25 curies of americium–241 and 2 curies of cerium–144. Subsequently, the licensee advised NRC that all radioactive material was properly disposed of at an authorized disposal facility with the exception of a small residual amount in the form of contamination of the licensee's laboratory facility. The laboratory occupied a portion of a residence in a rural area about 10 miles from Newark, Ohio. During 1981, the license was modified to limit activities to *storage* only of about 150 millicuries of americium–241 in the form of residual contamination.

During 1984, a Show Cause Order was issued to the licensee requiring him to submit a decontamination plan for his facility. He responded that he was financially unable to undertake the cleanup. During February of 1985, NRC Region III received an allegation that Mr. Haynes still had significant quantities of americium–241 in his possession and was continuing to use the americium to color gems in apparent violation of his license. On March 28, 1985, Mr. Haynes was arrested and a team of FBI and NRC personnel confiscated a quantity of americium in loose powder form—estimated to be 2 to 4 curies—at Mr. Haynes' laboratory facility. Teams of FBI and NRC personnel also visited four other

locations where additional quantities of americium might have been stored or where additional information might be obtained. A larger quantity of americium—perhaps 10 curies—was seized at one of these locations. The confiscated americium and four diamonds with some minor surface contamination were transported to Mound Laboratories, a Department of Energy facility in Miamisburg, Ohio. A Department of Energy radiological assistance team provided technical assistance at the laboratory site and in handling the confiscated americium.

Surveys of areas surrounding the laboratory, and analyses of soil and water samples, showed no evidence of any offsite contamination. Onsite surveys disclosed soil contamination in an area where waste incineration occurred in the past and also at several other locations, principally in the area of waste water tanks for the laboratory. The living quarters portion of the residence (outside the laboratory)—which was occupied until late March 1985—showed no evidence of contamination in the areas accessible to the residents. Radiation surveys of the laboratory area itself identified extensive contamination of the laboratory facility and equipment.

Americium–241 is hazardous in powder form if it becomes airborne and is inhaled by an individual. Lodged in the body, the americium may cause cancer over a long period of time. The principal hazard outside the laboratory would be the spread of americium through fire, vandalism, or other means. Such dispersion of americium could represent a significant health hazard outside the house, but the hazard would diminish substantially with distance.

A U.S. magistrate released Mr. Haynes from custody on his own recognizance, with the condition that he not go to the laboratory facility. On May 7, 1985, the U.S. District Court dismissed the charges against Mr. Haynes because a preliminary hearing was not conducted within 30 days as required by law. Dismissal of the charges also lifted the court's prohibition of Mr. Haynes from going to the facility. Since the facility was still extensively contaminated and remained a safety hazard, the NRC considered it necessary to prevent unauthorized individuals from entering the controlled areas; such unauthorized entry could result in interference with decontamination activities, spread of contamination, and unnecessary radiation exposures.

Therefore, on May 10, 1985, the NRC issued an immediately effective Order to the licensee which prohibited access to him, as well as other individuals, from the controlled areas unless the prior approval of the NRC Region III Regional Administrator or his designee is obtained.

Actions Taken To Prevent Recurrence

NRC.—The NRC and the U.S. Environmental Protection Agency (EPA) have initiated a cleanup of areas of significant contamination in the laboratory and contaminated areas outside the facility. The cleanup is being financed by up to $150,000 from the EPA's Superfund. The cleanup is being financed by up to $150,000 from the EPA's Superfund. The cleanup, which began in mid-April 1985, is being performed by personnel from Oak Ridge Associated Universities and Battelle Memorial Institute. NRC inspectors have been monitoring the cleanup effort. The State of Ohio Disaster Services Agency has been monitoring the unrestricted areas offsite.

Once the facility is decontaminated to levels suitable for unrestricted use, Mr. Haynes' NRC license is to be revoked under the April 5, 1985, Order.

Dated in Washington, D.C. this 13th day of August, 1985.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–19866 Filed 8–19–85; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FC 410–4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Guide for the Preparation of Applications for Nuclear Pharmacy Licenses" and is intended for Division 10, "General." It is being developed to provide guidance in conformance with the revised NRC Form 313 for preparing applications for nuclear pharmacy licenses.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, by October 31, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 13th day of August 1985.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Office of Nuclear Regulatory Research.

[FR Doc. 85–19869 Filed 8–19–85 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–409]

Dairyland Power Cooperative; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirement of 10 CFR 50.71(e)(3)(ii) to the Dairyland Power Cooperative (DPC) (the licensee) for the La Crosse Boiling Water Reactor

(LACBWR), located at the licensee's site in Vernon County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.71(e)(3)(ii) to submit an updated Final Safety Analysis Report (FSAR) for the La Crosse Boiling Water reactor within 24 months of receipt of a letter notifying the licensee that the systematic evaluation program has been completed. By letter dated July 20, 1983, the staff informed DPC that the systematic evaluation program had been completed for LACBWR and that, pursuant to 10 CFR 50.71(e)(3), the licensee was required to file an updated FSAR. By letter dated July 12, 1985, the licensee requested an exemption to defer submittal of the update FSAR for 60 days. The deferral of submittal of the updated FSAR is the proposed action being considered by the staff.

The Need for Proposed Action

The final report, "Integrated Plant Safety Assessment, Systematic Evaluation Program" for the LACBWR, NUREG-0827, had several open items that required further evaluation and plant modifications. The licensee's July 12, 1985 letter states that these changes required the full-time utilization of LACBWR's small engineering staff and that the majority of the design changes were completed during the refueling outage in March-April 1985. Since that time, the LACBWR staff has been engaged in conducting the engineering review of the updated FSAR. The licensee indicated that it needs an additional 60 days to complete the activities associated with submitting the updated FSAR.

Environmental Impacts of Proposed Actions

The proposed exemption affects only the required date for updating the FSAR and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commisison has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require an earlier date for submittal of the updated FSAR. Such an action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the La Crosse Boiling Water Reactor.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated July 12, 1985. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601

Dated at Bethesda, Maryland, this 14th day of August 1985.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Assistant Director for Safety Assessment, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR No. 85-19867 Filed 8-19-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee River Bend Station; Meeting

The ACRS Subcommittee on River Bend Station will hold a meeting on September 11, 1985, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 11, 1985—10:30 a.m. until the conclusion of business

The Subcommittee will continue its review of Gulf States Utilities Company's application for an operating license for River Bend.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Georgia Power Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 15, 1985.

Morton W. Liberkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-19868 Filed 8-19-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23794; 70-6273]

Blackhawk Coal Co. and Indiana & Michigan Electric Co.; Proposed Purchase and Sale of Coal by Coal Mining Subsidiary Subject to Market Price Cap

August 14, 1985.

Indiana & Michigan Electric Company ("I&M"), 2101 Spy Run Avenue, Fort

Wayne, Indiana 46801, an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, and Blackhawk Coal Company ("Blackhawk"), c/o American Electric Power Service Corporation, 161 West Main Street, Lancaster, Ohio 43130, a coal mining subsidiary of I&M, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to sections 12(b), 12(c), 12(f) and 13(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 42, 45, 86, 87, 90, 91, and 92 promulgated thereunder.

By order dated August 7, 1980 (HCAR No. 21672) as modified by order dated September 30, 1980 (HCAR No. 21672A), and by order dated October 19, 1981 (HCAR No. 22237), I&M was authorized to transfer to Blackhawk its interest in certain coal mines located in Carbon County, Utah and in reserves, leases, options, equipment and rights related thereto, and to make additional investments in Blackhawk (all such assets collectively referred to as the "Mines"), on terms and conditions set forth in said orders.

All of the coal produced by Blackhawk through its operator, Price River Coal Company ("Price"), a subsidiary of I&M, has been sold to I&M or to such affiliate or nonaffiliate of I&M as I&M has directed. In return for I&M's right to receive all of the coal produced by Blackhawk from the Mines, in Agreement between I&M and Blackhawk, dated January 1, 1982 ("Coal Supply Agreement"), I&M pays Blackhawk such amount as, when added to amounts received by Blackhawk from all other sources, is at least sufficient to enable Blackhawk to pay when due all of its operating and other expenses as specified in the Agreement.

Effective on April 1, 1979, the date of commercial operation of Mine Nos. 3 and 5 of the Mines, I&M began to impute investment carrying charges to the current commercial coal production on the "Plant in Service" assets, which at that time aggregated approximately $141,000,000. Since September 1, 1980, carrying charges on the Plant in Service assets, which as of December 31, 1984 aggregated approximately $157,000,000, have been included in the cost of coal sold to I&M. Depreciation of mining equipment in service and amortization have been associated directly with tonnages produced.

Since 1978, coal produced from the Mines has been burned in I&M's Tanners Creek Plant Units 1–3 ("TC 1–3"), and, since 1979, the energy produced by burning this coal has been sold almost exclusively in wholesale transactions subject to the jurisdiction of the FERC. It is stated that, during the past few years, the anticipated demand for energy from TC 1–3 has decreased for several reasons including (i) a nationwide reduction in the growth of the demand for energy and (ii) the increasingly competitive wholesale energy market.

It is stated that, as an outgrowth of a Federal Power Commission [predecessor of FERC] investigation commenced in 1975 concerning, among other things, the reasonableness and prudence of the coal purchasing policies and practices of the American Electric Power System companies ("AEP"), the FERC in June 1981 ordered a hearing relating to the procurement of coal from the Mines in light of the possible availability of coal from other sources ("FERC Litigation"). It is stated that the FERC Staff claimed (i) that after March 1979 I&M paid excessive prices for coal from the Mines; (ii) that I&M overstated its cost of coal by virture of its treatment of tax benefits related to certain mine development costs; and (iii) that the future charges for coal from the Mines should be limited to a "market price."

It is further stated that, on January 9, 1985, I&M and associate companies and the FERC Staff executed a Settlement Agreement ("Settlement Agreement") whereby, subject to certain conditions, the FERC Litigation was settled and dismissed on the bases of the terms and conditions set forth therein, the most salient of which are as follows: (i) $21,000,000 will be refunded to certain wholesale purchasers of energy from I&M and associate companies; (ii) Blackhawk may purchase from unaffiliated companies coal to be sold to I&M and burned in TC 1–3; (iii) I&M will record (in FERC Account 151) its cost of all coal purchased from Blackhawk in an amount not to exceed a market price cap imposed pursuant to the Settlement Agreement ("Market Price Cap"); and (iv) I&M and Blackhawk will, within certain limits use the amount by which the prise I&M pays Blockhawk for coal produced from the Mines or purchased from third parties (which amount may not be greater than the Market Price Cap) exceeds Blackhawk's cost of such coal, to amortize a portion of the investment in the Mines.

It is stated that the Settlement Agreement was approved by the FERC on May 20, 1985 and that it resolves all issues pertaining to the FERC Litigation. However, it is conditioned upon the approval by this Commission of those of the herein described transactions over which this Commission has jurisdiction. The Settlement Agreement is effective on the later of (i) 15 days after the order issued by the FERC approving the settlement becomes a final nonappealable order; or (ii) the issuance of an order of this Commission approving the transactions over which it has jurisdiction (the later of which is the "Effective Date"). The Settlement Agreement provides, however, that if a petition for review of the order of this Commission is filed, the Effective Date shall be suspended until the petition is resolved in a manner which permits implementation of all of the provisions of the Settlement Agreement; and further provides that, if final nonappealable orders of the FERC and of this Commission are not issued on or before December 31, 1985, American Electric Power Service Corporation ("Service Corp."), a service company subsidiary of American Electric Power Company, Inc., may, at its sole option, terminate the Settlement Agreement at any time after December 31, 1985.

The Market Price Cap, as of June 30, 1984, has been fixed in the Settlement Agreement at 246.464 cents per million Btu. The Market Price Cap is to be adjusted on a quarterly basis on the first day of January, April, July and October by multiplying the Market Price Cap as of June 30, 1984 by the applicable Adjustment Factor. The Adjustment Factor for each calendar quarter will equal the ratio of the Quarterly Index to the Base Index, provided, however, that the Adjustment Factor will not be less than .9. The Base Index has been determined in the Settlement Agreement to be 226.501 cents per million Btu. The Quarterly Index, with respect to the calendar quarter for which the Adjustment Factor is being determined, will be the weighted average cost in cents per million Btu of Compliance Bituminous Coal, as defined in the Settlement Agreement, during the second preceding calendar quarter.

It is further contemplated, pursuant to the Settlement Agreement, that Blackhawk will enter into contracts and other agreements for the purchase of low-sulfur bituminous coal from unaffiliated companies. In connection with these contracts or agreements, I&M may issue such guaranties of the performance of Blackhawk as are necessary and appropriate. While it is intended that substantially all of the coal purchased by Blackhawk will be sold to I&M to be burned in TC 1–3, it is recognized that it may be necessary, in order to obtain commercially acceptable coal supply arrangements, for Blackhawk to enter into contracts or agreements for the purchase of amounts of coal which may exceed the coal requirements of TC 1–3, in which case it

is contemplated that the rights to some or all of such coal will be assigned by Blackhawk, as directed by I&M, to other AEP plants.

It is further contemplated by the terms of the Settlement Agreement that I&M and Blackhawk will, to the extent feasible, amortize a portion of the investment in that part of the Mines which is located west of the Price River, together with existing surface facilities located east of the Price River for processing, handling and shipping coal (collectively referred to in the Settlement Agreement as the "Western Reserves"). The Settlement Agreement provides that the amount by which the price I&M pays Blackhawk for coal purchased from third parties (which may not be greater than the Market Price Cap) exceeds Blackhawk's cost of such coal F.O.B Tanners Creek ("Gross Margin") will be used to amortize part of the investment in the Western Reserves (which amortization program is hereafter referred to as the "Amortization"), subject to the following limits: (a) The right to collect the Gross Margin and the right to the Amortization will terminate (i) at the end of 12 years from the Effective Date of the Settlement Agreement, (ii) at such time as the total Gross Margin shall equal $75,000,000 or (iii) at such time as the sum of the total Gross Margin recorded, and the price at which all or a part of the Western Reserves have been sold, equals $208,500,000, whichever of (i), (ii) or (iii) shall first occur; and (b) the Amortization for any year shall not exceed the Gross Margin associated with the delivery to TC 1–3 of one million tons of coal per year.

To implement the Settlement Agreement, I&M and Blackhawk will amend the Coal Supply Agreement so as to give I&M, in addition to its right to receive all of the coal produced from the Mines, the right to receive all of the coal purchased by Blackhawk from unaffiliated companies. In return for these rights, I&M will pay Blackhawk such amount as, when added to amounts received by Blackhawk from all other sources, is at least sufficient to enable Blackhawk to pay when due all of its operating and other expenses. The Settlement Agreement contemplates that, for these purposes, Blackhawk's expenses will include the Gross Margin subject to the limits herein described. However, the amount which I&M will record in its FERC Account 151 relating to purchases by I&M of coal from Blackhawk will be limited to the Market Price Cap established in the Settlement Agreement. The Settlement Agreement provides that costs in excess of the Market Price Cap, and shutdown or standby costs, if any, of the Mines, will be recorded in FERC Account 426.5 (other Deductions).

The Settlement Agreement provides that any coal produced in the Mines and delivered to any generating unit owned by any subsidiary or associate company of AEP, including TC 1–3, shall be subject to the Market Price Cap, and that any Coal transferred from Blackhawk to any subsidiary or associate company of AEP, other than I&M for use at TC1–3, shall not include in its price any amount reflecting the Amortization established by the Settlement Agreement. The Settlement Agreement also provides that, in the event that all or a portion of the Mines is sold and any subsidiary or associate company of AEP thereafter purchases coal produced from such Mines, the cost of such coal recorded for wholesale ratemaking purposes will not exceed the Market Price Cap.

To the extent that Blackhawk recovers its investment in the manner specified above, it is proposed that Blackhawk will, subject to the applicable state regulations, redeem and retire its Common Stock issued to I&M and prepay notes issued to I&M so as to maintain a debt/equity ratio of I&M for the prior year. It is also contemplated that Blackhawk will prepay in order the notes issued to I&M with the highest interest costs per annum and at the same time provide for the payment when due of the notes issued to I&M. It is contemplated that such adjustments to Blackhawk's capitalization be made on a quarterly basis.

As a part of the Settlement Agreement, Service Corp. has agreed to file with the FERC annual reports which provide a description of the actions taken pursuant to the Settlement Agreement and to permit the FERC Staff to audit the financial records of Blackhawk or its successor, if any.

Interested persons wishing to comment or request a hearing should submit their views in writing by September 9, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19821 Filed 8–19–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23796; 70–7144]

The Connecticut Light and Power Co. and Western Massachusetts Electric Co.; Proposed Pollution Control Financing and Exception From Competitive Bidding

August 14, 1985.

The Connecticut Light and Power Company ("CL&P"), Seldon Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, electric utility subsidiaries (the "Companies") of Northeast Utilities, a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

The proposed transactions relate to the financing of each Company's portion of the cost of acquiring, constructing, and installing certain pollution control and/or sewage or solid waste disposal facilities (the "Facilities") at and/or adjacent to the Millstone 3 nuclear-electric generating station, located in the Town of Waterford, Connecticut. CL&P and WMECO own 52.6115 percent and 12.2385 percent, respectively, of that portion of the Facilities located at Millstone 3 and 81 percent and 19 percent, respectively, of that portion, if any, located adjacent to Millstone 3. The Connecticut Development Authority (the "Issuer") intends to issue pollution control revenue bonds (the "Bonds") in the principal amount of not more than $65,000,000 for CL&P and $15,000,000 for WMECO, $80,000,000 in total. The Bonds will be issued under separate CL&P and WMECO Indentures of Trust (the "Indentures") each between the Issuer and a trustee (the "Trustee"). Pursuant to Loan Agreements between each of CL&P and WMECO and the Issuer (the "Loan Agreement"), the Issuer will loan to CL&P and WMECO the proceeds of the Bonds. CL&P and WMECO will agree to make payments corresponding to the amount needed to pay the principal of, premium, if any, and interest on the Bonds as they become

due. The obligations of each of the Companies to repay its loan will be evidenced by a promissory note (the "Notes"). The proceeds of the Bonds will be deposited with the Trustee. From funds established under the Indentures, each of the Companies will draw the proceeds of the Bonds to pay, or to reimburse itself for, its portion of the cost of acquiring, constructing, and installing the Facilities.

The Bonds will be issued with variable interest rates as floating rate demand bonds and will mature in not more than thirty years from the date of issuance, subject to certain conditions. At the option of the Companies, the interest rates on the Bonds may be converted to a fixed interest rate upon 45 days' notice. The various interest rates on the Bonds, fees, and other charges are described in the declaration. The interest rate on the Bonds will, in no event, exceed 20% per annum. As of June 30, 1985, the interest rates on the floating rate demand bonds issued by the Issuer in August 1984 and March 1985 to provide financing for CL&P and WMECO for other pollution control projects at and adjacent to Millstone 3 were 4.5 percent and 4.5 percent, respectively, for CL&P and 4.5 percent and 4.625 percent, respectively, for WMECO.

Pursuant to the terms of each of the Indentures, each Bondholder will have the option of tendering any even multiple of $100,000 principal amount of the Bonds for purchase upon at least seven days' prior notice. The Remarketing Agent, upon receiving notice of a Bondholder's intention to present its Bonds for purchase, is obligated to use its best efforts to secure other purchasers of Bonds. If the Remarketing Agent is unsuccessful, the Trustee may draw upon an irrevocable letter of credit to be issued by Westpac Banking Corporation for the funds required to pay the tendering Bondholder. The interest rate with respect to the letter of credit will be the prime rate plus 1%. So long as the letters of credit remain outstanding, CL&P and WMECO would each be obligated to pay the Bank a letter of credit commission at a rate of .50 of one percent per annum for years one through five and .55 of one percent per annum for years six through ten. Following conversion to a fixed interest rate, Bondholders will no longer have the right to tender their Bonds for repurchase.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 9, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19822 Filed 8-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23795; 70-7145]

Louisiana Power & Light Co.; Proposal to Issue and Sell $200 Million Debentures

August 14, 1985.

Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, a subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, have filed a declaration pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

On May 17, 1985, LP&L filed requests with the Louisiana Public Service Commission ("LPSC") and the Council of the City of New Orleans (which regulates the Company's retail electric rates in the 15th Ward of the City of New Orleans) for retail rate increases to reflect the costs associated with the anticipated in-service status of Unit No. 3 of LP&L's nuclear Waterford Steam Electric Generating Station ("Waterford 3") and Unit No. 1 of Middle South Energy, Inc.'s ("MSE") Grand Gulf Nuclear Generating Station ("Grand Gulf 1"). Waterford 3 is scheduled for commercial operation in August 1985, and Grand Gulf 1 was placed in commercial operation on July 1, 1985. With respect to Grand Gulf 1, LP&L is obligated under the terms of a unit power sales agreement with MSE to purchase capacity and energy from that unit and to make payments to MSE for such capacity and energy. Payments to MSE under that agreement are required to be made for the period from and after July 1, 1985, with payments due in mid-August 1985 and continuing monthly thereafter. LP&L estimates that, based upon the estimated $3.3 billion installed cost of MSE's share of Grand Gulf 1 and the Federal Energy Regulatory Commission's ("FERC") allocation to LP&L of 14% of MSE's share of the capacity of Grand Gulf 1, its monthly payment obligation to MSE, during 1985, will approximate $12 million. However, the payment of such amount will be partially offset by the crediting to LP&L over the next 18 months of advance payments previously made by LP&L to MSE pursuant to a power purchase advance payment agreement.

On July 30, 1985, the LPSC rejected LP&L's aforesaid application for increased retail rates to cover the costs associated with the in-service status of Waterford 3 and Grand Gulf 1. On August 1, 1985, LP&L filed a complaint in the United States District Court for the Middle District of Louisiana ("Court") seeking preliminary and permanent injunctions against the Commissioners of the LPSC enjoining them from denying LP&L recovery as operating expenses of the costs associated with the capacity and energy from Grand Gulf 1 allocated to LP&L pursuant to the opinion and order of the FERC dated June 13, 1985 (Opinion No. 234; Docket Nos. ER82-616-000 and ER82-483-000). On August 12, 1985 the Court dismissed the complaint for lack of subject matter jurisdiction.

Pending the possible receipt of retail rate relief, LP&L will be required to marshall all available cash resources in order to continue to meet its current obligations and will be required, at this critical juncture, to raise from external sources, to the extent feasible, capital to meet its 1985 requirements for cash.

To this end, LP&L states it has undertaken a thorough reexamination of the balance of its 1985 construction program in order to reduce cash outlays for construction projects to the maximum extent possible, has instituted stringent internal cost control measures so as to reduce operating expenses wherever possible, and will be required, in light of its continuing current obligations (including those in relation to MSE), to consider reducing or eliminating, for a time, the future payment of cash dividends upon its common stock.

With respect to LP&L's efforts to raise capital from external sources, in May and June 1985 LP&L issued and sold to MSU an aggregate of 15,152,000 additional shares of its common stock for $100,000,000 (HCAR No. 23603,

February 14, 1985). In addition, LP&L has effected short-term borrowings during 1985 to provide a substantial portion of its cash requirements. At July 31, 1985, LP&L's short-term borrowings aggregated $229.7 million, leaving LP&L with only $45.3 million of additional unused borrowing capability (HCAR Nos. 23191, December 30, 1983 and 23632, March 15, 1985). Finally, LP&L had hoped to obtain the proceeds of $105,000,000 principal amount of pollution control revenue bonds issued and sold in December 1984, which proceeds are being retained in a cash collateral security account until certain conditions are satisfied, including certain conditions with respect to Waterford 3 (HCAR No. 23547, December 26, 1984). However, in light of the recent action of the LPSC, LP&L cannot be assured that such proceeds will be made available to LP&L.

Although LP&L believes that the courts will ultimately award LP&L the necessary amount of retail rate relief, LP&L must be able to obtain substantial additional funds from external sources by no later than October 1985 if it is to remain solvent. In view of its already extended short-term debt position and the previously consummated sales to Middle South of additional common stock, LP&L believes that it is imperative that it now be permitted to issue and sell some form of senior security.

LP&L's ability, however, to issue senior securities in the form of first mortgage bonds and preferred stock is limited by the terms of LP&L's corporate instruments. LP&L's Mortgage and Deed of Trust, dated as April 1, 1944, as supplemented ("Mortgage"), provides that additional first mortgage bonds may not be issued (except for the purpose of refunding maturing first mortgage bonds and certain other purposes) unless the adjusted net earnings of LP&L (as defined in the Mortgage) for 12 consecutive months out of the 15 months immediately preceding the issuance of the additional first mortgage bonds shall have been at least twice the amount of the annual interest requirements on all first mortgage bonds at the time outstanding, including the additional first mortgage bonds. At June 30, 1985, LP&L's Mortgage earnings coverage, calculated as above provided, was only 1.72, and (subject to the limited exceptions noted) LP&L is currently precluded by the Mortgage from issuing additional first mortgage bonds.

Under the terms of LP&L's Restated Articles of Incorporation, as amended ("Articles of Incorporation"), LP&L may not, without the consent of the holders of at least a majority of LP&L's preferred stock then outstanding, issue additional shares of preferred stock unless the gross income of LP&L (as defined in the Articles of Incorporation) for 12 consecutive months out of the 15 months immediately preceding the issuance of the additional shares shall have been at least one and one-half times the sum of the annual interest charges on all interest-bearing indebtedness of LP&L and the annual dividend requirements on all outstanding shares of preferred stock, including the additional shares being issued. At June 30, 1985, LP&L's Articles of Incorporation earnings coverage, calculated as provided above, was only 1.52, and LP&L is currently able to issue only a nominal amount of additional shares of preferred stock; however, issuance of additional debt as herein proposed will necessarily reduce the ratio. Moreover, in view of the July 30, 1985 decision by the LPSC denying LP&L any retail rate relief and the delay likely to be experienced in obtaining retail rate relief through the courts, LP&L does not anticipate that its earnings will increase such that it will be permitted, under the Mortgage and Articles of Incorporation, to issue during 1985 a significant amount of additional first mortgage bonds or preferred stock.

Accordingly, LP&L proposes to issue and sell in one or more issues from time to time through December 31, 1985 not to exceed $200,000,000 aggregate principal amount of debentures and/or notes ("Debentures"). The Debentures may be unsecured or secured by a second lien upon assets of LP&L, depending on market requirements. LP&L states that the issuance and sale of the Debentures is critical in order for LP&L to meet its requirements for funds from external sources for 1985.

The Debentures, which may be issued under an indenture or indentures, will be sold at such price(s), will bear interest at such rate(s), which may be adjustable, and mature on such date(s), which in certain cases may be in excess of ten years, as will be determined at the time of sale. Each issue of Debentures may include provisions for optional redemption prior to maturity, and may include certain restrictions on optional redemption for a given number of years. The Debentures of a particular issue may also include provisions for a sinking, purchase or other analogous fund designed to retire a certain percentage of the principal amount of such issue at stated intervals prior to maturity. Information with respect to the price(s) to be paid to LP&L, interest rate(s), maturity(ies), redemption provisions and restriction (if any) on redemption and sinking, purchase or analogous fund provisions (if any) with respect to each issue of Debentures will be supplied by amendment.

LP&L expects, based upon its assessment of the current market for Debentures, that Debentures would be sold to the public, in conjunction with any public offering thereof, in minimum denominations of $25,000. LP&L requests, pursuant to paragraph (a)(5) of Rule 50, that the Commission exempt the proposed issuance and sale of the Debentures from the competitive bidding requirements of Rule 50. Because of LP&L's earnings coverage problems, the lack of an existing market for debentures or notes issued by LP&L, and investor concern over the LP&L's regulatory environment and financial condition, LP&L believes that the Debentures will be difficult to market to the public. LP&L states that a public offering of Debentures would require an advance marketing effort on the part of underwriters (which would not be possible under competitive bidding procedures) and, even with such an advance marketing effort, a public offering of one or more issues of Debentures may not be as advantageous as a private placement of such Debentures. Consequently, the interests of LP&L, its investors and consumers require that LP&L have the flexibility to sell the Debentures by means of negotiated public offering and/or private placement with institutional investors in order to secure the advantages of an advance marketing effort and/or the best available terms. In light of these circumstances, the Commission authorizes LP&L to enter into negotiations with underwriters.

To make the findings under section 7(d) of the Act necessary to permit this declaration to become effective, the Commission must find, among other things, that LP&L will have, or is reasonably likely to have, sufficient earnings to service the debt sought to be issued. The Commission also must find that the securities to be issued are reasonably adapted to the financial structure of LP&L and the other companies in the Middle South system as well. The Commission further must find that the terms and conditions of such securities are not detrimental to the public interest or the interests of investors or consumers. Based on the record presently before it, the Commission has serious reservation about its ability to make such findings. The Commission therefore requests all interested persons, including state regulatory authorities with jurisdiction over the rates charged by operating companies in the Middle South system,

to address these issues in comments submitted on the instant declaration.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should sumbit their views in writing by September 9, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19823 Filed 8-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22325; SR-BSE-85-4]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Boston Stock Exchange, Inc. ("BSE") submitted on June 7, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Chapter II (Dealings on the Exchange—Execution Guarantee") to increase the execution guarantee applicable to agency orders from 1,299 shares to 2,500 shares, in the 100 most actively traded stocks ("MATS issues") as measured by share volume reported through the consolidated transaction reporting system.[1] In addition, a dealer specialist may voluntarily offer any stock in which he is registered to be designated a MATS issue. The BSE also has provided for the possibility that in certain markets for particular issues, the application of a 2,500 share guarantee may be harmful to the dealer-specialist. In these cases, the dealer-specialist may petition for exemption from the execution guarantee (not applicable to the 1,299 share guarantee), and such exemption will be granted by the Market Performance Committee only for good cause.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22135, June 11, 1985) and by publication in the **Federal Register** (50 FR 25505, June 19, 1985). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 13, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19824 Filed 7-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22327; File No. SR-NYSE-85-26]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Enhancement to Order Size Eligibility for SuperDOT System and Modification to Reference Price Assigned to SuperDOT Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizaiton. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of enhancements in the order size to the Exchange's SuperDOT System and a change in the reference price which is assigned to market orders entered through the SuperDOT System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discuss any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change regarding the increase in order size for orders eligible for transmission through the SuperDOT system is to enable larger-size orders to obtain efficient and timely executions. Additionally, the Exchange proposes to change the reference price which is assigned to each market order entered through SuperDOT to a price based on the New York Stock Exchange ("NYSE") quotation at the time the SuperDOT order is printed on the Floor.

The proposed rule change consists essentially of the following:

(i) Raising order size eligibility in the Designated Order Turnaround (DOT) System (hereinafter referred to as "SuperDOT") from 1,099 shares to 3,099 shares.

(ii) Providing that marketable limit orders up to 3,099 shares be treated as market orders for purposes of the SuperDOT System rules and procedures.

(iii) Extending the Exchange's policy on the specialist not charging a commission on SuperDOT market orders and marketable limit orders to such orders up to 3,099 shares. (The specialist may continue to charge a commission on SuperDOT market orders to sell short and marketable limit orders to sell short.)

(iv) Providing that system-generated reports for SuperDOT market orders and

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[1] The BSE has provided that designation of MATS issues will be made quarterly, based upon figures provided by the Consolidated Tape Association for the preceding quarter. Notice of the designation shall be given the BSE membership on a quarterly basis. In addition, the Exchange publishes a guide to all issues traded on the BSE and MATS issues will be designated as such in the guide. *See* letter from Michael R. Lindburg, Vice President and General Counsel, BSE to Michael Cavalier, Branch Chief, Exchange Regulation, dated August 7, 1985.

marketable limit orders whenever the specialist fails to report an execution within a predetermined time period shall be extended to all such orders up to 3,099 shares.

(v) Changing the reference price which is assigned to each market order entered through the SuperDOT system to a price based on the New York Stock Exchange ("NYSE") quotation at the time the SuperDOT order is printed on the Floor rather than basing the reference price on the NYSE last sale as at present.

(vi) Amending Rule 123A.47 to provide that the specialist's "½ point error guarantee" shall be applicable to SuperDOT market orders "of a size as the Exchange shall from time to time determine". At this time, the Exchange has determined that the "½ point error guarantee" shall be applicable to SuperDOT market orders and marketable limit orders up to 1,099 shares.

Increase in Order Size Eligibility. The exchange proposes that the size of orders eligible for transmission to the Floor via the SuperDOT system be increased from the present 1,099 shares to 3,099 shares. The Exchange is also proposing that marketable limit orders (i.e., limit orders that are immediately executable because the price (as reflected by the current bid or offer) of the subject security at the time the orders are received by the LMT System is equal to or better than the limit price specified on the order) up to 3,099 shares be handled in the same manner as SuperDOT market orders, and be subject to all SuperDOT trading rules and procedures. This proposed enhancement will accommodate the needs of member firms to obtain efficient executions of large-size orders in a timely and reliable fashion. The new order size parameter will be implemented in two stages, i.e. initially firms will be allowed to enter SuperDOT market orders up to 2,099 shares and over several months, the order size eligibility will be increased to 3,099 shares.

Ever since SuperDOT was first introduced, the Exchange has been concerned that order-size eligibility be gradually expanded in response to evolutionary trends toward larger-size orders. Thus, order-size eligibility has been raised in stages from 199 shares to 599 shares to its present 1,099 shares. The Exchange notes that the average trade size today is already in excess of the 1,099 share parameter presently in use; in 1984 the average trade size was 1,781 shares, and for the first quarter of 1985 the average trade size was 1,860. Thus, the Exchange believes that the proposed raising of order eligibility to 3,099 shares for SuperDOT market and marketable limit orders is an appropriate response that this time to current trends toward increasing order size.

Commissions on SuperDOT Market and Marketable Limit Orders. The Exchange proposes to extend the policy that the specialist not charge a commission for executing SuperDOT market orders and marketable limit orders up to 3,099 shares. The "no commission" policy promotes the purposes of section 11A(a)(1)(c)(i), which calls for "economically efficient execution of securities transactions." As noted in SR–NYSE–84–21, SuperDOT market orders to sell short and marketable limit orders to sell short require a degree of service by the specialist greater than that called for in executing simple buy or sell orders. Thus, the Exchange's "no commission" policy does not apply to SuperDOT market orders to sell short and marketable limit orders to sell short.

System-Generated Reports When Specialist Fails to Report Execution. The Exchange introduced the concept of system-generated reporting to the SuperDOT system in SR–NYSE–83–20, which provided that reports are generated whenever the specialist fails to report an execution or a "stop" once five minutes have elapsed after such order reaches the Floor. Subsequently, the time parameter for system-generated reports was reduced to a minimum of two minutes, although in actual practice the Exchange utilizes a "timer" of three minutes. The concept has also been extended to marketable limit orders.

The rule change proposed herein would extend the concept of system-generated reports when the specialist fails to report an execution within a predetermined time period to SuperDOT market orders and marketable limit orders up to 3,099 shares. System-generated reporting is designed to ensure that all SuperDOT market orders and marketable limit orders are responded to on a timely basis.

The Exchange notes that the so-called "SuperDOT turnaround time" has been steadily decreasing. According to Exchange statistics for 1984, 94.4% of all SuperDOT orders were responded to (i.e., they received an execution or "stop" report) within two minutes of the receipt of such orders on the Floor. The actual percentage of such orders affected by system-generating reporting is only 1–2% since, as noted above, the Exchange presently utilizes a "timer" of three minutes.

Change in Reference Price for SuperDOT Market Orders. Besides extending the concept of system-generated reports to all SuperDOT market orders up to 3,099 shares, the Exchange proposes to change the reference price which is used as the basis for system-generated reports of such orders if the specialist fails to report an execution within the predetermined times period. The Exchange proposes to change the basis for the reference price to the New York Stock Exchange ("NYSE") quotation in the security named in the order at the time the SuperDOT order is printed on the Floor. Presently, the reference price is based on the last NYSE sale just prior to the order being delivered to the Floor by the system. Under the proposed change, at the expiration of the "timer", SuperDOT market orders would be priced and reported by the system at the bid/offer, as appropriate, on the Exchange at the time the order is printed on the Floor.

The Exchange notes that presently, marketable limit orders up to 1,099 shares which are entered into the Limit Order ("LMT") System are assigned the prevailing NYSE quotation at the time the order is printed on the Floor as reference price. In addition, as to those stocks eligible for the Exchange's Immediate Reporting Service, the reference price for both market, and marketable limit orders is the NYSE bid/offer, as the case may be, at the time the order is printed on the Floor. Thus, the rule change proposed herein will provide that in any case where a report is generated through the SuperDOT and LMT Systems, the reference price assigned will be uniformly based on the prevailing NYSE quotation.

The Exchange believes that the use of the NYSE quotation as a reference price will more closely approximate execution prices normally received through the auction process. In addition, the proposal eliminates the disparity between reference prices used in Exchange systems, thereby providing that all orders in which the system-generating reporting feature is applicable will have a uniform-pricing algorithm.

Features Not Extended to New Order Size Parameter. Finally, it is significant to note that three other enhancements to the SuperDOT system presented in SR–NYSE–84–21 shall *not* be applicable to SuperDOT market or marketable limit orders over 1,099 shares: (1) single-price execution and (2) eligibility for the Exchange's "Immediate Reporting Service", and (3) the specialist's guarantee of execution prices he reports on SuperDOT market orders and

marketable limit orders, up to ½ point, or codified in Exchange Rule 123A.47, which currently provides that the "½ point error guarantee" will apply to SuperDOT market orders and to limit orders "of a size as the Exchange from time to time determines". At this time, the Exchange has determined that the "½ point guarantee" share be applicable to SuperDOT orders up to 1,099 shares only.

(2) Statutory Basis

The enhancements proposed herein are designed to facilitate transactions involving orders on the Exchange and to provide for efficient clearance and settlement of these transactions. Implementation of these enhancements will be consistent with those provisions of the Securities Exchange Act of 1934 (the "Act") which encourage use of new data processing and communications techniques, economically efficient execution of securities transactions, and more efficient market operations. It will also advance the prompt and accurate clearance and settlement of securities transactions. See sections 11A(a)(1) and 17A(a)(1).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposed enhancements will promote competition by enabling the Exchange to compete more effectively for order flow with other exchanges which utilize automated order delivery and execution systems.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange received a written comment on the proposed rule change from the Alliance of Floor Brokers (AFB). The AFB raised four objections to the proposal:

(i) It may result in possible market structure problems;

(ii) It may accelerate a shift toward dealer markets and an erosion of valued auction market protections;

(iii) It may result in a widening of quotas and a commensurate deterioration in the quality of markets; and

(iv) There may be a public perception of professional advantage and market manipulation.

The AFB also alluded to some differences of opinion on the merits of the proposed rule change by two Exchange committees that considered this matter. The Exchange notes that, to the extent any differences of opinion surfaced, they dealt largely with the appropriateness of the order-size eligibility criterion, as a number of order-size eligibility criteria in excess of 3,099 shares were considered and ultimately rejected.

As to the specific concerns raised by the AFB, the Exchange responds as follows:

Market Structure. The Exchange does not believe the proposed rule changes will have any adverse impact on market structure. If anything, they will strengthen the efficiency of the current market structure by responding to the interest expressed by members and member firms in timely, cost-effective executions of their orders.

Shift toward Dealer Markets/Erosion of Auction Market Protections. The Exchange notes that the proposed rule changes simply facilitate the automated routing of larger-size orders to the specialist's post. The specialists still must expose each order to the Trading Crowd, and afford each order the opportunity to interact with buying/selling interest present at that time in the marketplace. The specialist remains fully subject to the so-called "affirmative" and "negative" obligations, which strictly limit his trading as a dealer to the needs of the market. In addition, Exchange Rule 91 permits a customer who has traded with the specialist acting as both agent and prinicpal on a trade to reject the trade.

Thus, the Exchange does not believe that the proposed rule changes will accelerate any trend toward a dealer market, or undermine in any way the protections of the Exchange's traditional auction market.

Widening of Quotes/Deterioration in Market Quality. The Exchange does not believe that the automated routing to the specialist's post of orders up to 3,099 shares will necessarily result in any widening of quotas and deterioration in the quality of the Exchange's market in any of its listed stocks. The Exchange will, however, carefully monitor the impact of the proposed rule changes on market quality. As noted above, the Exchange intends to raise the SuperDOT order-size eligibility criterion to 2,099 shares initially. If, after several months experience with this criterion, there does not appear to be any adverse impact on market quality, the Exchange intends to raise the order-size eligibility criterion to 3,099 shares.

Professional Advantage/Market Manipulation. The Exchange does not believe that market professionals have any advantage over public customers in the use of the SuperDOT order routing facility, or that the SuperDOT facility lends itself in any way to market manipulation. The Exchange believes that SuperDOT efficiencies have well-served the needs of public customers, and that the proposed rule changes will further enhance the attractiveness of the SuperDOT system for such customers. In any event, the Exchange notes that its audit trial requirements mandate that member firms indicate when they are trading for their own accounts, so that the Exchange will be readily able to detect any unusual proprietary trading activity through the SuperDOT system.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The Exchange believes that the SuperDOT enhancements proposed herein will benefit member organizations by providing more rapid, efficient and cost-effective executions and reports through the Exchange's systems. The changes will also enhance the Exchange's ability to compete with automated order delivery and execution systems on other exchanges. Subject to the approval of the Commission, the Exchange is ready to begin the operation of the proposed changes during this summer. In view of the anticipated benefits of the changes as noted above, and the fact that all preliminary work necessary to implement them is completed, the Exchange requests the Commission find good cause to approve the proposed rule changes on an accelerated basis.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. In particular, the Commission requests comment on the proposed change in the reference price for SuperDOT market orders. The

NYSE proposed to change the reference price at which orders will be executed if not executed by the specialist within three minutes of receipt from the NYSE last sale prior to the order reaching the floor to the NYSE quotation in the security at the time the SuperDOT order is printed on the NYSE floor. The Commission notes that every other exchange system in which executions occur on a derivative or automated basis, including the NYSE's R4 [1] and "Immediate Reporting" Services,[2] the Pacific Stock Exchange's SCOREX system, the Midwest Stock Exchange's MAX system, and the Philadelphia Stock Exchange's PACE system, provide executions based on the best bid and offer of all market centers included in the Intermarket Trading System ("ITS/BBO").[3]

The Commission recognizes that at present executions would occur in the SuperDOT system only after the order has been held by the specialist for three minutes. The NYSE states that only 1–2% of SuperDOT orders are executed automatically after the expiration of three minutes. Nonetheless, the Commission notes that the NYSE is presently authorized to lower the time period before automatic execution to two minutes without further Commission approval 5.6% of all SuperDOT orders were executed after two minutes had expired. Accordingly, the Commission requests comment whether use by the NYSE of its own quote for this execution purpose is consistent with the standards of the Act, including protection of investors and the development of a national market system.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 10, 1985.

Dated: August 13, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19825 Filed 8–19–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–23797; 70–7146]

Georgia Power Co.; Proposed Acquisition of Coal Hopper Railroad Cars

August 15, 1985.

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

Georgia proposes to acquire, by lease or purchase, up to an aggregate of 600 aluminum coal hopper railroad cars during the period prior to December 31, 1986, for use in transporting coal by unit train to coalfired generating plants owned and/or operated by Georgia. Georgia's acquisition of these coal cars will be in such numbers, within the overall limit, at such times and by use of such means as Georgia shall then determine to be necessary or appropriate for proper and economic provision of coal to such plants. The proposal includes coal cars which may be acquired in the future for the replacement of damaged or otherwise retired coal cars for which approval has been requested in this application. Georgia contemplates that the cars which it acquires pursuant to this application will not be held for sublease; however, in the event any of such cars should be subleased, Georgia would account for the proceeds therefrom as a credit against recognized and related coal car expense.

The price per car is expected to be between $43,000 and $46,000, or between $25.8 million and $27.6 million in the aggregate, if the cars are purchased. Qualified proposals to manufacture the aluminum cars have been received from three vendors. Georgia will request bids from approximately 15 non-affiliated equipment leasing companies concerning the acquisition of these cars by leveraged operating lease, the term of which would be between 15 to 25 years with the lessor being entitled for tax purposes to claim depreciation and any available investment tax credit. Georgia would be responsible for maintenance, upkeep, and taxes (other than income taxes imposed on the lessor). Based on current market conditions and the current federal income tax code, Georgia anticipates the semi-annual lease rate (payable in arrears) to be between 4.75% and 5.5%. In addition, Georgia may own the cars for less than 90 days in the process of leasing them as allowed by Internal Revenue Code Section 48(b)(2). Georgia has not yet determined that leasing is the most advantageous method presently available to it for acquisition of these cars and may elect to purchase the cars.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 10, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19874 Filed 8–19–85; 8:45 am]

BILLING CODE 8015-01-M

[Release No. 40–14674; File No. 812–6077]

Prudential-Bache Global Fund, Inc., et al.; Application for Amended Order Relating to Waiver and Reduction of Contingent Deferred Sales Charge

August 15, 1985.

Notice is hereby given that Prudential-Bache Global Fund, Inc. and Prudential-Bache Government Plus Fund Inc., both open-end, diversified, management investment companies registered under the Investment Company Act of 1940 ("Act") and Prudential-Bache Securities

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[1] *See* Securities Exchange Act Release No. 20350 (November 4, 1983).

[2] *See* Securities Exchange Act Release No. 21197 (August 2, 1984).

[3] The NYSE's Immediate Reporting Service only provides automatic executions when the NYSE quotes equals the ITS best quote *and* the quote spread is ⅛.

Inc. ("Prudential-Bache", collectively, "Applicants"), each at One Seaport Plaza, New York, NY 10292, filed an application on July 16, 1985, pursuant to section 6(c) of the Act, for an order amending an existing exemptive order of the Commission, dated July 1, 1985 (Investment Company Act Release No. 14615). The existing order exempts the Funds, and any other existing or future registered mutual fund for which Prudential-Bache serves as manager or administrator, and distributor, and which is sold substantially on the same basis as the Funds (collectively, "Exempted Funds"), from the provisions of section 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the assessment (and waiver and reduction in certain cases) of a contingent deferred sales charge ("CDSL") on certain redemptions of their shares. The amended order would grant an additional exemption from section 22(d) of the Act to permit the waiver and reduction of such CDSL under the circumstances described below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the relevant statutory provisions.

According to the application, the existing exemptive order permits the Exempted Funds to: (i) Impose a CDSL redemptions of their shares, as described in the existing order, (ii) waive such CDSL on redemptions following the death or disability of a stockholder and on redemptions upon certain distributions by qualified retirement plans, and (iii) reduce the CDSL for redemptions by a stockholder who has purchased more than a stated minimum of shares of any one Exempted Fund. Applicants now seek to amend the existing order to permit stockholders of the Exempted Funds to aggregate purchases of shares of one or more specified Exempted Funds for purposes of determining the applicability of any such reduced CDSL. For example, if an Exempted Fund offers a reduced CDSL upon redemption of shares by a stockholder who has purchased more than one million dollars in shares of that Exempted Fund, purchases by that stockholder of shares of one or more additional specified Exempted Funds would be counted in determining whether the one million dollars threshold has been reached.

In addition, Applicants propose to consider the following affiliated stockholders of the Exempted Funds as one for purposes of determining the availability of the reduced CDSL: (i) An individual, his or her spouse, and his or her children under the age of 21, purchasing securities for his, her or their account; (ii) any organized group of persons which has been in existence for more than six months and has some purpose other than the purchase of redeemable securities of registered investment companies at a discount; (iii) a corporation, partnership or trust; other corporations, partnerships or trusts controlling, controlled by or under common control therewith; and any employee benefit plan or plans covering employees of one or more of such affiliated entities; (iv) a corporation, partnership or trust together with any natural persons controlling such corporation, partnership or trust; and (v) one or more trusts established by the same grantor. Finally, Applicants propose to waive the CDSL on redemptions of shares of an Exempted Fund which were purchased through reinvestment of dividends or distributions of other specified Exempted Funds.

Applicants assert that the proposed waiver and reduction of the CDSL based upon the aggregation and dividend reinvestment privileges described above are fair and equitable and in the best interests of the stockholdres of the Exempted Funds. Applicants represent that selling effort and expense is reduced for sales of Exempted Fund shares to purchasers who are already stockholdres of another Prudential-Bache Mutual Fund, and to purchasers who are affiliated with existing stockholdres. Applicants further represent that no selling effort or expense is involved in the case of Exempted Fund shares purchased through reinvestment of the dividends and distributions from other Exempted Funds.

Applicants submit that, notwithstanding that the CDSL is assessed upon redemption rather than purchase, it should nonetheless be construed as a sales load within the meaning of section 2(a)(35) of the Act. Applicants represent that the Exempted Funds' proposed waiver and reduction of the CDSL on the basis of such aggregation or dividend reinvestment privileges will comply with the provisions of Rule 22d–1 under the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 10, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19875 Filed 8–19–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–22329; SR–NYSE–85–23]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

August 14, 1985.

The New York Stock Exchange, Inc. ("NYSE") submitted on June 17, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to modify the NYSE's definition of the term "sales sheet" as applicable to the NYSE's rules governing its publication of transactions and corrections to transaction reports. That definition is set forth as Supplementary Material in paragraphs 2128A and 2128B of the NYSE rule book (the "Supplementary Material" originally referred to former NYSE Rule 125 which was rescinded in 1975). The proposed change would re-define the term "sales sheet" to mean "the list of transactions published by the New York Stock exchange or its authorized agents," and would substitute that definition for "the list of transactions published by Francis Emory Fitch, Inc.," which is the existing definition.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22186, June 26, 1985) and by publication in the **Federal Register** (50 FR 27880, July 8, 1985). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19876 Filed 8-19-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-5176]

Surrender of License; Edict Investment

Notice is hereby given that Edict Investment Corp. (Edict) has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Edict was licensed by the Small Business Administration on March 20, 1975.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on August 12, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: August 14, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-19845 Filed 8-19-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0407]

Equities Capital Co., Inc.; License Surrender

Notice is hereby given that Equities Capital Co., Inc., 890 West End Avenue, New York, New York 10025, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Equities Capital Co., Inc. was licensed by the Small Business Administration on October 22, 1980.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on July 31, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 12, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-19846 Filed 8-19-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Petition No. 85-2W; Notice 2]

Transportation of Natural and Other Gas by Pipeline: Grant of Waiver; Transcontinental Gas Pipe Line Corp.

Transcontinental Gas Pipe Line Corporation (Transco) has petitioned the Materials Transportation Bureau (MTB) for a waiver from compliance with the requirements of 49 CFR 192.553(d) to permit the maximum allowable operating pressure (MAOP) of seven pipeline segments located in Somerset and Morris Counties, New Jersey (totaling eight and seven-tenths (8.7) miles) to be increased to 800 psig from the current 722 psig. These segments, which are in location Class 3, are part of a pipeline designated by Transco as the 36-inch Caldwell Lateral which is approximately 22.83 miles in length (MP 1789.53 to 1812.36). There is a need to increase the operating pressure of this pipeline segment to 800 psig due to anticipated swings in Transco's customers' delivery volume requirements. Transco estimates that replacement of the 8.7 miles of 36-inch pipeline involved would cost $13,000,000 if the waiver is not granted.

In response to this petition, MTB issued a notice of a petition for waiver inviting interested persons to comment (50 FR 26652, June 27, 1985). In this notice MTB explained why it was considering granting Transco a waiver from § 192.553(d) to permit uprating to an MAOP of 800 psig. Transco could then qualify the pipeline in the 8.7 miles of Class 3 Locations for the desired 800 psig MAOP by confirming this MAOP for class 3 areas with a 90 percent SMYS hydrostatic test as permitted by § 192.611(c), assuring an equivalent level of pipeline safety. Transco stated in the petition that it will hydrostatically test the entire subject pipeline to over 90 percent SMYS.

Comments were received from three pipeline operators and one industry organization in response to the invitation to comment. All comments supported the granting of the waiver. The commenters indicated that, under the conditions faced by the petitioner, there would not be any reduction in public safety and a waiver is the most logical course of action.

In consideration of the foregoing, MTB by this order finds that compliance with § 192.553(d) is unnecessary for the reasons set forth in Notice 1, and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, effective immediately, Transcontinental Gas Pipe Corporation is granted a waiver from compliance with § 192.553(d) regarding the seven Class 3 segments described above for the purpose of uprating to 800 psig.

(49 U.S.C. 1672; 49 CFR Part 1.53(a); Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C., on August 15, 1985.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 85-19826 Filed 8-19-85; 8:45 am]

BILLING CODE 4910-60-M

National Hazardous Materials Transportation Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Hazardous Materials Transportation Advisory Committee (NHMTAC) on September 10 and 11, 1985, at 9:00 a.m. in Room 2230, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The purpose of the meeting is to receive and to discuss the reports on the findings and/or recommendations of the Committee's three working groups and to take action on these findings. The working groups are organized around the three areas of prevention, information exchange, and emergency response, which the Committee had previously determined to be issues of priority concern.

Attendance is open to the public but limited to the space available. Members of the public may present written statements to the Committee before or after any meeting of the Committee. Such statements should be sent to: National Hazardous Materials Transportation Advisory Committee, ATTN: Ms. Cecy Ivie, Materials Transportation Bureau (DMT-60), Room 8432, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Dated: August 19, 1985.

Sherwood C. Chu,

Associate Director for Regulatory Planning and Analysis, Materials Transportation Bureau.

[FR Doc. 85-19906 Filed 8-20-85; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that such a submission has been made. USIA is requesting approval of a form letter that will be used to collect data on the audience size and reactions to Radio Marti programming to Cuba.

DATE: Comments must be received by September 20, 1985.

Copies: Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485-8676. And OMB review: Michael Weinstein, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-4814.

SUPPLEMENTARY INFORMATION: Title: "Radio Marti Audience Response Mailer". This form letter will be circulated to Cuban exiles living in the Miami area to elicit information about the reception of Radio Marti in Cuba, and audience reaction to its programming style and content.

Dated: August 16, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85-19837 Filed 8-19-85; 8:45 am]

BILLING CODE 8230-01-M

Grants Program for Private Not-for-Profit organizations; in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a progam of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-075, entitled "A Grants Program for Private Organizatons," expiration date January 31, 1987.

The United States Information Agency is interested in working cooperatively with private sector organizations and is requesting proposals (deadline October 11, 1985) for the following program:

USIA Young Journalist Exchange with FRG

Summary

USIA plans to support an exchange program for young journalists from the United States and the Federal Republic of Germany. The program will involve a 21-day visit by 15 Americans to the FRG and a similar visit by 15 Germans to the U.S. Americans will have seminars and briefings in Bonn and Berlin, as well as individual "internships" at German newspapers or broadcasting organizatons. ("Internship" is used for lack of an adequate term to describe an arrangement whereby the American journalist will visit a German counterpart at the latter's news organization in the FRG and accompany him as he goes about his work.) Germans will have similar programs in Washington and another U.S. city, as well as internships at the same news organizations for which the Americans have been recruited. The programs, beginning with the American visit to the FRG, will take place early in 1986.

Background

USIA and its represenatives in Bonn worked with private sector organizations in the United States and the Federal Republic of Germany in the fall of 1984 on an exchange program involving young journalists from the U.S. and FRG. A key element in the exchange was its reciprocity: American and German news organizations were matched for the internship phase. The exchange was considered very successful in helping the young journalists gain a better understanding of each others' countries, including the policies of their respective governments and the workings of their respective news media.

Program Description

The 21-day programs should take place in early 1986, beginning with the American visit to the FRG. Prior to that time, the U.S. grantee organization will be responsible for recruiting 15 American young journalists (generally under 40 but with no absolute age restriction) from the print, radio and television media. Recruiting should include a reasonable element of competition, but considerable emphasis will be placed on the willingness of the journalist's employer to host a German in the second phase of the exchange. Thus, the task of recruiting American journalists will be closely tied to that of arranging for internships for the Germans. Fluency in German is not required but would be highly desirable. It is assumed that the grantee will contact the 15 news organizations involved in the 1984 exchange to see if they want to participate again. the grantee will work with USIA to arrange a Washington briefing for the American journalists prior to their departure for the FRG.

The progrm in the FRG will be the responsibility of the U.S. Information Service (USIS) Bonn and a German cosponsor, probably the Konrad Adenauer Foundation. The Americans will spend somewhat more than a week in Bonn, a week on individual internships at German news organizations, and somewhat less than a week in Berlin. During the interships the Americans will be paired as much as possible with the German journalists they will later host in the U.S. To the extent languge ability and other factors permit, they will work alongside their German counterparts in the daily operations of the news organizaton. The time in Bonn and Berlin will be spent on briefings by government and political figures (from all significant FRG parties) and meetings with prominent journalists, U.S. and other NATO officials, and others with specialized knowledge about the FRG and Europe generally. It will be the responsibility of the U.S grantee organization to collect brif written reports from the Americans on their FRG experiences and forward them to USIA. (Newspaper articles or broadcast tapes or transcripts, accompanied by an informative letter, could fulfill this requirement.)

The 15 German journalists will be chosen by the FRG cosponsor. They will be expected to speak English a well enough so that no interpreters are required. The U.S. grantee will arrange travel for the 15 Germans roundtrip from Frankfurt to the U.S. (APEX fare on an American carrier), as well as within the U.S. It will organize for the Germans a seminar on American political, social, cultural and other themes, and arrange attendance at cultural events and home hospitality in the city where the grantee organization is located. This should last somewhat less than a week. The National Council of International Visitors (NCIV) network can help with home hospitality.

The grantee will work with USIA to arrange a day or two of briefings with government officials, national journalists and others in Washington. (The U.S. program can begin with the Washington briefings if this is more feasible logistically.) Then the grantee will arrange for each German to travel to a news organization for a two-week internship, where he or she will work alongside the American counterpart from the first phase of the exchange. (The U.S. internships can no longer because the Germans will speak English and thus require less personal attention.) The grantee should arrange with the host news organization and the NCIV network, where feasible, for as much home hospitality as possible in each case. The grantee will arrange for the Germans to reassemble in Washington (or another city if more convenient) for a final debriefing session before their return to the FRG.

Finally, the grantee will follow up with the news organizations and German journalists to evaluate the success of the program and report the results to USIA.

Funding

USIA is most interested in working with organizations that show promise for innovation and cost-effective programming. Organizations also must demonstrate a potential for designing programs that will have a lasting impact on their participants.

Competition for USIA funding is keen. Final selection is based not only on cost-effectiveness, institutional in-kind contributions, and minimal overhead, but also on the substantive nature of the program and professional capability to carry it through to a successful conclusion.

Costs may include, but are not necessarily limited to, the following:

Roundtrip airfare from Frankfurt to the U.S. (American carrier) and U.S. travel for 15 Germans to include the city where the grantee organization is located, Washington, and the cities where the individual internships will take place. It should be assumed that participants will be selected early enough to take advantage of advance purchase savings.

Per diem for 15 Germans for 21 days at an average of $75 per day. (The maximum allowable per diem for international visitors is $100, but homestays during part of the visit should make it possible for the $75 average to be maintained.)

Transportation and per diem ($75 per day maximum) for project staff travel to Washington, honoraria and other costs associated with seminars, costs of cultural events for participants.

Adminstration, including project staff salaries and fringe benefits, telephone and postage, office supplies, and indirect costs as a percentage of direct administrative costs.

To be eligible for consideration, organizations *must* forward their proposals for receipt at USIA by COB October 11, 1985.

Because of the competitive nature of this solicitation, guidance in proposal development from the Office of Private Sector Programs (E/P) will be restricted to technical issues (202–485–7326).

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547

Dated: August 15, 1985.

Robert Francis Smith,

Director, Office of Private Sector Program.

[FR Doc. 85–19838 Filed 8–19–85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 161
Tuesday, August 20, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 26, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 16, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19985 Filed 8-16-85; 3:49 pm]

BILLING CODE 6210-01-M

2

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

AGENCY: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. The Council also will hold an executive session to discuss pending litigation.

TIME AND DATE: 10:00 a.m., August 28-29, 1985.

PLACE: North Shore Resort Hotel, North Shore Plaza, Coeur d'Alene, Idaho.

MATTERS TO BE CONSIDERED:

- Public Comment on Issue Paper on Salmon and Steelhead Productivity Analysis.
- Public Comment on Issue Paper on Strategies for Investments in Salmon and Steelhead Production.
- Public Comment on Issue Paper on Resident Fish Substitutions for Salmon and Steelhead losses.
- Status Report on the Columbia River Basin Fish and Wildlife Program Goals Process.
- Council Business.

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong, (503) 222-5161, or toll-free 1-800-222-3355 (Montana, Idaho or Washington) or 1-800-452-2324.

Edward Sheets,

Executive Director.

[FR Doc. 85-19902 Filed 8-16-85; 10:41 am]

BILLING CODE 0000-00-M

federal register

Tuesday
August 20, 1985

Part II

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for Surface Waters of the State of Idaho; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW-FRL-2764-6]

Water Quality Standards for Surface Waters of the State of Idaho

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On July 15, 1980, the Regional Administrator for Region X of the Environmental Protection Agency (EPA) approved water quality standards adopted by the State of Idaho except for four provisions. The disapproved sections included: (1) Dissolved oxygen concentrations immediately downstream from impoundments, (2) the ammonia concentrations generally applied to Idaho's coldwater Biota and Salmonid spawning waters, (3) the specific ammonia concentration for Indian Creek, and (4) the exemption of dams and hydroelectric generating facilities from the State's antidegradation statements. The Agency is today proposing rules to bring the Idaho water quality standards into compliance with the Clean Water Act.

DATES: All written comments received on or before November 18, 1985 will be considered in the preparation of the final rule. EPA will hold public hearings on September 24, 25, and 26. For times and locations please see **ADDRESSES**.

ADDRESSES: Written comments should be submitted to David Sabock, Criteria and Standards Division (WH-585), EPA, Washington, DC 20460. EPA will hold public hearings on September 24, 1985, 7:30 P.M., Boise State University, Big Four Room, 1910 Canyon Springs Inn, 1357 Blue Lakes Boulevard, North Twin Falls, Idaho; September 25, 1985, 7:30 P.M., Idaho State University, Salmon River Suite, Student Union Building, Pocatello, Idaho; and September 26, 1985, 7:30 P.M., Coeur d'Alene City Hall, Coeur d'Alene, Idaho.

FOR FURTHER INFORMATION CONTACT: David Sabock, (202) 245-3042.

SUPPLEMENTARY INFORMATION: Section 303(c) (33 U.S.C. 1313(c)) of the Clean Water Act, (86 Stat 816) (33 U.S.C. 1251 *et seq.*), (the Act) establishes the requirements for State water quality standards review and revision. This section provides that, at least once every three years, each State shall hold public hearings for the purpose of reviewing water quality standards and, as appropriate, modifying and adopting standards. Whenever a State revises its water quality standards or adopts new standards, such standards must be submitted to EPA. If EPA determines that a standard is not consistent with the applicable requirements of the Act, EPA must notify the State and specify changes necessary to meet the requirements of the Act. If such changes are not adopted by the State within 90 days after the date of notification, EPA is required to promulgate water quality standards for the State consistent with the Act. Section 303(c) also provides EPA the authority to promulgate water quality standards in any case where necessary to bring state water quality standards into compliance with the Clean Water Act. Such action can be taken outside of the approval-disapproval process described above. EPA's action today begins this promulgation process. All public comments and further information submitted by the State of Idaho will be considered in formulating final regulations. EPA encourages Idaho to revise its standards during this proceeding to make them consistent with the Act. EPA will withdraw any rules promulgated once Idaho makes its regulation consistent with the Clean Water Act.

EPA's Water Quality Standards Regulation provides opportunity for the State to develop site-specific criteria in lieu of adopting the Agency's National Recommendations. During the discussions on Idaho's Water Quality Standards it was suggested that a site-specific dissolved oxygen criterion analysis downstream from American Falls Dam may be appropriate. However, no study plan or other details have been transmitted to EPA for review. EPA's action today proposes a dissolved oxygen criterion consistent with its best information on the requirements of fish and other aquatic life. If during the comment period a study outline for American Falls Dam is placed into the record of this proposed rulemaking as a firm State commitment, and EPA agrees that the plan has a reasonable chance of demonstrating a criterion different from that proposed today, then EPA would defer the effective date of any final promulgation of federal dissolved oxygen criteria applicable downstream from American Falls Dam. However, the Agency would condition that deference on the Idaho Power Company maintaining dissolved oxygen concentrations substantially consistent with today's proposed rulemaking during the period of study. (A cursory review by EPA of monitoring data from 1982-84 at American Falls Dam indicates that Idaho Power Company maintained an average above 6 mg/l and never violated a 4 mg/l minimum dissolved oxygen concentrations.) EPA specifically seeks public comment on the scope of such a study.

A. Background

The Idaho Department of Health and Welfare (IDHW) held public hearings on October 4 and December 27, 1979, to receive comments on proposed revisions to the Idaho water quality standards. After extensive public involvement, revised standards were adopted by the Board of Health and Welfare on January 9, 1980.

EPA's concerns with the revised standards were provided to IDHW. Additional public involvement and debate occurred during the Legislature's consideration of the water quality standards. The Legislature subsequently adopted the revised standards and instructed IDHW staff to cease negotiations with EPA on the issues of concern. The revised standards were then submitted to EPA on May 19, 1980. A copy of the "Public Record of Adoption Process" was included in that submittal.

On July 15, 1980, the Regional Administrator, Region X, notified the Director of IDHW that all but four elements of the "Revised Water Quality Standards and Wastewater Treatment Requirements" were approved. The notification stated that judgment was being withheld on the following revisions:

(1) Section 1-2276: The general downgrading of the dissolved oxygen standard to a 5.0 mg/1, 4-hour arithmetic mean criterion for waters below dams and reservoirs.

(2) Section 1-2279: The assignment of a 1.0 mg/1 un-ionized ammonia criterion for lower Indian Creek (below Nampa).

(3) Sections 1-2250.04(e) and 1-2250.05(e): A criterion which permits up to 0.04 mg/1 un-ionized ammonia (30-day arithmetic mean) for coldwater biota and salmonid spawning waters.

(4) Section 1-2300.1: The exemption of dams from Idaho's antidegradation policy.

On August 18, 1980, the EPA Regional Administrator, Region X, notified the Director of IDHW that the above four standards were disapproved. The notification also contained a brief explanation for each of the four disapprovals. The Director of IDHW responded to this action on September 4, 1980, by giving notice to EPA that neither the IDHW nor the Board of Health and Welfare planned to propose any changes to the four provisions disapproved by EPA. Included in this response was an explanation of the

State's position on each of the four provisions.

B. Statutory Basis for Today's Proposal

Under the Clean Water Act a water quality standard for a particular water body consists of two parts: a designated "use" for which the water body is to be protected (such as "agriculture," "recreation," or "fish and wildlife") and numerical pollutant concentrations or narrative criteria which will support that use. A more detailed discussion of water quality standards is presented in the Water Quality Standards Regulation (40 CFR Part 131) and the EPA guidance document, "*Water Quality Standards Handbook*".

Establishing the "use" component of a water quality standard for a given water body involves judgment as to what use is attainable, given the goals of the Act and the water body's use and value for various purposes. The Act and EPA's regulations state that water quality standards shall be established taking into consideration the water's use and value for various purposes such as public water supply, propagation of fish and wildlife, recreation, industry, agriculture, and navigation (Section 303(c)(2); 40 CFR 131.10(a)).

The criteria describe the chemical, physical, and biological characteristics needed to attain and protect a designated use. The criteria are founded on scientific considerations only.

Section 303(c) of the Act requires that State water quality standards ". . . protect the public health and welfare, enhance the quality of water and serve the purposes of this Act." The purpose of water quality standards, as with other sections of the Act, is to achieve, wherever attainable, ". . . water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water . . ." (Section 101(a)(2)).

Relationship of Standards to Effluent Limitations

In order to ensure attainment of a water quality standard, it may be necessary to implement that standard (whether State adopted or Federally promulgated) through effluent limits that must be met by individual point source dischargers. The procedure followed by EPA to establish specific effluent limits for reissuance of National Pollutant Discharge Elimination System (NPDES) permits involves a number of steps. The first of these is completion of a water quality survey and determination of the allowable pollutant loading to a defined portion of a receiving water (e.g., a stream segment) by mathematical modeling. The load which will allow water quality standards criteria to be met is allocated among the dischargers (wasteload allocation (WLA)). These allocated loads will form the basis of specific NPDES permit discharge limitations if minimum technology-based limitations will not ensure compliance with the applicable criteria.

Revision of water quality standards during the term of a permit may cause the reevaluation of permit effluent limits prior to the permit reissuance. Evaluation of the adequacy of effluent limits may result in deciding that (1) the limits are adequate, (2) the effluent limits require change, or (3) there is a need for further detailed evaluation. Water quality modeling associated with WLAs is also used in determining the attainability of different water quality standards for specific stream segments.

C. Proposed Actions

EPA proposes to replace with more restrictive requirements each of the four areas of Idaho water quality standards which were disapproved on August 18, 1980. These proposed requirements include: (1) Replacing the State dissolved oxygen criterion downstream from dams with a dissolved oxygen criterion that will protect the designated uses of these waters, (2) partially replacing the State's ammonia criteria for warm water, cold water, and salmonid spawning uses with EPA's recommended un-ionized ammonia criterion, (3) replacing the State's ammonia criterion of 1.0 mg/l for Indian Creek with the EPA recommended ammonia criterion, and (4) deleting the categorical exemptions for dams from the antidegradation rule. EPA did not disapprove Idaho's warm water ammonia criterion in 1980. The Agency is none the less proposing to partially supersede that criterion in this action. The technical reasons for this action are explained in C.2. EPA has authority to take this action under section 303(c)(4) of the Clean Water Act (33 U.S.C. 1313(c)(4)). However, EPA's information indicates that no discharges would be immediately adversely impacted if this proposal were to become final. A more detailed discussion of these proposed actions follows:

1. Dissolved Oxygen (DO)

a. State Adopted Criterion

The Idaho State criterion which EPA has disapproved and is proposing to supersede is as follows:

Section 1–2276 DISSOLVED OXYGEN STANDARD FOR WATER DISCHARGED FROM DAMS, RESERVOIRS, AND HYDROELECTRIC FACILITIES

.01 *Waiver for Specific Time Period.* During the period beginning on May 15 and ending on October 15, annually, water discharged from dams, reservoirs, and hydroelectric facilities shall not be subject to the provisions of Manual § 1–2250.03(a), 1–2250.04(a), or 1–2250.05(a).[1]

.02 *Minimum Requirements.* During the time period specified in Manual § 1–2276.01, water discharged from dams, reservoirs, and hydroelectric facilities shall contain not less than 5.0 mg/l dissolved oxygen based on the average of at least four consecutive measurements taken within any sixty minute period. For compliance purposes, water containing less than 5.0 mg/l dissolved oxygen, (hourly average as defined herein) for four or more consecutive hours, shall be considered in violation of the provisions of this section.

.03 *Point of Measurement.* For the purpose of determining compliance with Manual § 1–2276.02, the dissolved oxygen shall be measured at a single location in the river downstream from the hydroelectric facilities. Such location shall be as close to the facilities as practical to obtain a representative measurement, but in all cases shall be sufficient distance downstream to allow thorough mixing of reaerated waters, spilled bypass waters, and other waters that have passed through the facility.

b. Basis of EPA Disapproval

EPA's disapproval of this dissolved oxygen criterion for waters downstream from dams is based on the conclusion that it does not protect the designated uses of the affected waters.

During the State hearings on the proposed amendments to the standards, conflicting technical arguments were presented. Testimony was strongly divergent, both for and against lowering the dissolved oxygen criterion for waters downstream from dams, reservoirs, and hydroelectric generating facilities. However, the State provided no explanation of how a less restrictive dissolved oxygen criterion would ensure adequate protection for the designated uses of the affected waters, which are cold water biota and salmonid spawning.

It is important to note that salmonid fishes inhabit water immediately downstream from impoundments throughout the State. Moreover, many of

[1] Sections 1–2250.03(a), 1–2250.04(a) and 1–2250.05(a) establish dissolved oxygen concentrations for warm water biota, cold water biota and salmonid spawning waters, respectively.

these waters are presently salmonid spawning areas. As a family, salmonids are recognized as being among the biota most sensitive to reductions of dissolved oxygen, with larvae development being the most oxygen-sensitive stage of life for salmonids. This fact is widely supported by published dissolved oxygen research on salmonids. Idaho recognized this fact for all salmonid spawning waters, except those immediately downstream from dams and reservoirs, by adopting a salmonid spawning dissolved oxygen criterion that is more restrictive than the dissolved oxygen criterion for any other water use classification in the State. Yet, Section 1–2276 allows dissolved oxygen concentrations in waters downstream from dams, reservoirs, and hydroelectric generating facilities from mid-May to mid-October, to be less stringent than that which the State recognizes as necessary for the general protection of more dissolved oxygen tolerant biota. The needs of salmonids in waters downstream from dams are no different than the needs of salmonids in any other waters. As explained below under justification for proposal, a 5.0 mg/l average concentration in the water column is inadequate to protect salmonid fish.

In addition to the actual criterion, EPA's analysis of Idaho's dissolved oxygen criterion in Section 1–2276 disclosed a number of unacceptable elements. These include (1) a reduction of dissolved oxygen requirements during the warmest months of the year when fish's oxygen needs are the greatest, (2) a single average number for a criterion that provides no minimum protective limit, and (3) complex and confusing sampling requirements.

Biologically, the period of May 15 to October 15 is a dangerous period to allow lower dissolved oxygen concentrations because warmer waters increase the dissolved oxygen needs for aquatic organisms. In addition, the greatest fish growth potential occurs during this time, and migration, spawning, and incubation of both salmonid and non-salmonid fish occur during this period. Sound biological reasons exist to maximize rather than minimize the dissolved oxygen supply during this period.

Because Idaho's criterion is a single number (5 mg/l) based on an average, EPA disapproved the dissolved oxygen requirement in 1–2276.02 as unacceptable for any body of water. Averages do not constitute adequate standards because they allow extreme excursions to lethal levels. For example, the Idaho standard would allow the dissolved oxygen concentrations to fall to 0 mg/l, killing or displacing most organisms, and yet still be in compliance with the standard. Additionally, at least 16 consecutive dissolved oxygen analyses would be required at approximately 15-minute intervals to comply with the monitoring procedure outlined in the standard. The monitoring scheme appears unnecessarily complex, even for a standard based upon an average concentration.

c. Contents of Proposed Rule

EPA proposes to supersede Idaho's dissolved oxygen requirements in 1–2276.02 for waters in Idaho that are discharged from dams, reservoirs, and hydroelectric facilities. The EPA proposed rule is from a draft dissolved oxygen criterion document. This document will be described more fully in the next section of this preamble.

d. Basis for Proposed Rule

EPA has recently proposed a revision to its dissolved oxygen criterion under authority of Section 304(a) of the Clean Water Act, a Notice of Availability of which was published in the **Federal Register** (50 FR 15634, April 19, 1985). It is anticipated that following incorportion of relevant public comments, a replacement for the existing dissolved oxygen criterion contained in *Quality Criteria for Water* (1976) will be adopted by EPA.

This revised criterion is being used in this proceeding by the Agency because of its incorporation of a substantial amount of new information on salmonid fish available since the 1976 criterion was published. Because the issue in Idaho involves salmonid fish, this information is necessary for making a decision based on the latest scientific information available. EPA solicits comments on all aspects of this proposed rulemaking but would specifically ask the public to comment particularly on the dissolved oxygen recommendation as to the degree of protection it allows for aquatic life in Idaho's waters.

EPA hereby incorporates into the administrative record of this proceeding this draft dissolved oxygen criterion document. Timely comments received on the draft criterion document will also be considered in the administrative record for Idaho. The criterion table in proposed § 131.34 is different from the one in the criterion document only in the minimum concentration allowed (i.e., absolute minimum of 4.0 mg/l) for both coldwater and warmwater aquatic life, and in the deletion of a 7-day mean minimum for warmwater aquatic life. These changes are justified by EPA on the basis that the locations where the Idaho proposal would apply are different from that assumed in the proposed national dissolved oxygen criterion document. The national criterion assumed a condition typical of streams approaching critical conditions by a slow recession in daily flows concomitant with increasing temperatures. This situation allows aquatic life to adjust to adverse water quality or to leave the area. Conversely, in areas downstream from impoundments, especially those used for peaking hydropower, water quality changes can occur very quickly. Aquatic life are unable to acclimate to such rapid changes which may result in acute and chronic effects at higher absolute concentrations than recommended in the proposed national criterion document.

An additional reason justifying the higher minimum dissolved oxygen concentration for warm water biota is the way Idaho defines coldwater and warmwater biota. Coldwater biota are defined as those species with optimum growth at less than 18 °C (§ 1–2100.3) and warmwater biota are those species with optimum growth at greater than 18 °C (§ 1–2100.04). EPA is concerned with protecting oxygen-sensitive "cool water" species like small mouth bass which are classified warmwater biota under the State's definition. These cool water species have oxygen requirements similar to salmonids. Therefore, EPA believes more stringent warmwater dissolved oxygen criteria are justified.

These criteria represent dissolved oxygen concentrations which EPA believes provide a reasonable and adequate degree of protection for freshwater aquatic life. The criteria document also contains guidance on compliance with these criteria, Of utmost importance is the achieving of the criteria for early life stages.

The dissolved oxygen needs of developing salmonid embryos and larvae in spawning gravel are of particular concern. First, these early stages of salmonid development are the most sensitive to reduced dissolved oxygen concentrations. Second, the dissolved oxygen concentration in the interstitial waters of spawning gravel is likely to be significantly lower than that in the water column above. Third, the embryo and larvae stages of salmonid fish live down in the gravel. Such dissolved oxygen reductions result from the oxygen demand of developing fish and other organisms present as well as organic material in the gravel. The difficulty of maintaining high dissolved oxygen concentrations in the spawning

gravel is compounded by siltation which slows the flow of water through the gravel.

EPA's criteria document concludes that dissolved oxygen in the intergravel environment is generally 3 mg/l less than in the overlying water. In order to provide embryos and larvae with sufficient oxygen, the overlying water should contain 3 mg/l more dissolved oxygen than necessary in the gravel.

2. Un-ionized Ammonia

a. State Adopted Standard

The Idaho criteria which EPA is proposing to supersede are as follows:

Section 1–2250 WATER QUALITY STANDARDS FOR USE CLASSIFICATIONS

.03 *Warm Water Biota.* Waters designated for warm water biota are to exhibit the following characteristics:

* * * (e) Mean concentration of un-ionized ammonia at a level of 0.05 mg/l or less as based on a minimum of five (5) samples taken over a thirty (30) day period.

.04 *Cold Water Biota.* Water designated for cold water biota are to exhibit the following characteristics:

* * * (e) Mean concentration of un-ionized ammonia at a level of 0.04 mg/l or less as based on a minimum of five (5) samples taken over a thirty (30) day period if water quality characteristics are near optimal for the protected use. In all other cases, the mean concentration of un-ionized ammonia is to be 0.02 mg/l or less as based on a minimum of five (5) samples taken over a thirty (30) day period.

.05 *Salmonid Spawning.* Waters designated for salmonid spawning are to exhibit the following characteristics during the spawning and incubation periods for the particular species inhabiting those waters:

* * * (e) Mean concentration of un-ionized ammonia at a level of 0.04 mg/l or less as based on a minimum of five (5) samples taken over a thirty (30) day period if water quality characteristics are near optimal for the protected use. In all other cases, the mean concentration of un-ionized ammonia is to be 0.02 mg/l or less as based on a minimum of five (5) samples to be taken over a thirty (30) day period.

Section 1–2279 INDIAN CREEK—BELOW SUGAR AVENUE, NAMPA—SWB 282—UN-IONIZED AMMONIA. Un-ionized ammonia shall not exceed 1.0 mg/l in that segment of Indian Creek from below Sugar Avenue to the Boise River.

b. Basis of EPA Disapproval

EPA's disapproval of the State's ammonia criteria for cold water biota, salmonid spawning, and Indian Creek is based on our conclusion that these criteria do not necessarily protect the designated uses of the affected waters. As background, it is important to note that, prior to January 1980, Idaho did not have an official water quality criterion for un-ionized ammonia. However, through a general toxic chemical regulation, a maximum ammonia level of 0.02 mg/l was recognized as appropriate. This action level was more restrictive than the criteria adopted by the State in 1980 which permits up to 0.04 mg/l un-ionized ammonia in receiving waters.

During the State-held public hearings, little testimony was received on adopting un-ionized ammonia criteria. However, the majority of the statements made regarding ammonia were in favor of retaining the 0.02 mg/l limitation.

In addition to the actual ammonia concentration, EPA's analysis of the State's ammonia criteria at Sections 1–2250.04(e) and .05(e) disclosed additional unacceptable aspects.

The proposal to allow higher ammonia concentrations in waters where "water quality characteristics are near optimal for the protected use" creates several problems.

The phrase "water quality characteristics" could include a multitude of parameters such as temperature, dissolved oxygen, pH, suspended solids, pesticides, metals, and organic chemicals. The State-adopted criterion does not specify what characteristics are intended to be included.

The term "optimal" is not defined. Presumably, the optimum concentration of pesticides and most organic chemicals is zero. However, the maximum concentrations that may still be considered near optimal are not discussed. Compounding this problem are the undefined optimal levels for other toxic constituents such as metals, some of which are essential micronutrients, or suspended solids, which can hinder insect respiration, erode fish gills, and yet bind otherwise toxic pollutants and remove them from solutions.

In an even simpler context, ranges of temperature, dissolved oxygen concentration, and pH values to be considered optimum are not defined.

In general, ammonia and other toxic materials are tolerated better by aquatic life under conditions where other stresses are absent. However, because it is impossible to prove that all other stresses are absent or that other water quality characteristics are near optimal, the lower ammonia criterion seemingly must always be used. Therefore, the more lenient ammonia criteria are inappropriate. However, because provision for its application was included in the criterion EPA must assume that the State intended the less restrictive criterion to be applicable to at least some waters.

Another problem with the disapproved criteria is its reliance on mean concentrations. Criteria based on mean concentrations are often deceptive and depend greatly upon the range of the various individual observations. For example, the EPA-disapproved criterion of 0.04 mg/l is based on a minimum of five samples taken over a 30-day period (the minimum sample spacing is not specified, but daily grab samples seem reasonable). At one extreme, four samples of 0.05 mg/l and one of 0.02 mg/l would violate the criterion (presumably the four samples of 0.05 mg/l could be only minutes apart). At the other extreme, six samples could be 0.00 mg/l and one 0.25 mg/l and not be in violation, even though 0.25 mg/l could be acutely lethal.

c. Contents of Proposed Rule

EPA proposes that its national criteria recommendations for un-ionized ammonia be promulgated to supersede Idaho's criteria for salmonid spawning (§ 2250.05(e)), cold water biota (§ 1–2250.04(e)) and warmwater biota (§ 2250.03(e)). Even though the warmwater biota criterion was not disapproved by EPA, the proposed rule includes warmwater biota because the Agency's criteria document shows that at temperatures less than 20°C there is no scientific basis for criteria artificially separated according to biota temperature preference. Thus, some warm water biota are as sensitive to ammonia as salmonids at temperatures less than 20°C. EPA is making this proposal in order to eliminate the artificial separation of warm water and cold water biota in Idaho's ammonia criteria and thereby bring the Idaho water quality standards into compliance with the Clean Water Act.

Because the levels of un-ionized ammonia consistent with protecting freshwater aquatic life vary depending on the temperature and pH of the water, the proposal does not establish a single number, but rather incorporates equations, from EPA's ammonia criteria document, from which appropriate criteria can be calculated.

These equations provide for a maximum one-hour average

concentration, and a 4-day average concentration. The national proposal further provides that these concentrations should not be exceeded more frequently than once every 3 years. For the convenience of the State and the public, we have also included tables which show the criteria calculated using the equations for a number of specific temperature /pH combinations. EPA's one hour criterion is to prevent against acute toxicity. It would apply under all conditions and would limit single sample values.

Because Idaho's criterion is a monthly average, it is comparable to EPA's 4-day criteria recommendations in that chronic toxicity is of concern. However, for certain conditions of temperature and pH, EPA's chronic criteria yield concentrations less stringent than Idaho's criteria. Under section 510 of the Clean Water Act, these more stringent criteria have precedence over Federal requirements. Therefore, any concentrations calculated from EPA's equations for 4-day toxicity (or taken from the tables for chronic toxicity) that are less stringent than the appropriate State criterion, do not supersede the State criterion.

Because Idaho does not have acute criteria for ammonia, the EPA proposal protecting against acute toxicity would apply under all conditions.

d. Basis for Proposed Rule

Since our disapproval letter to the State, EPA has finalized an updated criteria recommendation for ammonia pursuant to section 304(a)(1) of the Clean Water Act (50 FR 30784, July 29, 1985). EPA's ammonia criteria development document summarizes the available data on ammonia toxicity available at this time.

EPA's criteria document, is hereby incorporated into the administrative record of this proceeding. EPA evaluated Idaho's ammonia criteria in light of this new recommendation.

EPA's criteria document contains a two-tiered criterion applicable to fisheries with and without salmonid fish[2]. The chronic criteria are presented as a 4-day average. To protect against acute toxicity the document presents a value which is not to be exceeded by an average over a 1-hour period.

[2] The difference occurs at temperatures greater than 20°C for the 1-hour average criteria: The criteria for salmonids are capped at 20°C and do not increase at higher temperatures; non-salmonid fish waters are capped at 25°C. The available data indicate that non-salmonid fish are more tolerant of ammonia for short periods at temperatures greater than 20°C. Similarly, for the 4-day criteria, the salmonid fish waters are capped at 15°C and the non-salmonid fish waters are capped at 20°C.

Both the State and EPA's criteria are based on unionized ammonia, the most toxic form.

However, EPA's criterion recognizes that the toxicity of un-ionized ammonia changes with changes in pH.

The criterion also recognizes the counteracting effects of the increased toxicity of un-ionized ammonia as temperature decreases versus the reduction in the amount of un-ionized ammonia available chemically at low temperatures.

Therefore, because it takes into account pH and temperature effects and the Idaho criterion does not, EPA's criterion becomes more restrictive at low pH's when compared to Idaho's 0.02 mg/l criterion. Moreover, EPA's acute criterion recognizes that higher concentrations can be tolerated by aquatic life for short time periods without irreversible effects. However, the averaging period is short to avoid slug releases that will damage aquatic life.

EPA's criterion recommends that these criteria should not be exceeded more frequently than once every 3 years. However, because the criterion takes into account exceedances caused by flow variation and variations in waste discharge concentrations, it is not equivalent to applying the criterion at the 4-day average low flow with a recurrence frequency of once in 3 years (4Q3). EPA's interim estimate (without the use of real time simulation models) is that the at all flow rates equal to or greater than the average calculated concentrations from EPA's formulas apply 7-consecutive-day low flow with a recurrence frequency of once in 10 years. However, if the State can show in a particular situation, that only a single discharge is involved, that no other inputs of ammonia or toxic pollutants are present to exacerbate ammonia toxicity, and that a stable stream flow hydrology exists, then the State may use another less stringent low flow following the approval of the Regional Administrator.[3]

Also, in the final national criteria recommendation there are limitations with respect to the temperature and pH values for which the criteria apply. These limitations cover the normal range of temperature and pH contained in water quality standards. However, in cases where these limits are exceeded, these equations must be extrapolated or, at the State's option, it must perform a site-specific recalculation consistent with EPA methods.

[3] Technical Support Document for Water Quality-Based Toxics Control, U.S. EPA, Office of Water, July 1985.

In summary, EPA's ammonia criterion accounts for both chronic and acute toxicity, and it explicitly takes into account the effects of pH and temperature on toxicity on waters with and without salmonid fish. Idaho's criterion, as discussed previously, does not account for these variables.

3. Antidegradation

a. State Adopted Criterion

The Idaho State provision which EPA has disapproved and is proposing to make more stringent is as follows:

Section 1–2300 RESTRICTIONS ON DISCHARGES AND ON ACTIVITIES WHICH AFFECT WATER QUALITY

01. *Point Source Discharges to Special Resource Waters and Their Tributaries.* Except for dams and hydro-electric generation facilities, no new point source can discharge, and no existing point source can increase its discharge above the design capacity of the existing wastewater treatment facility to any water designated as special resource water or to the tributary of or the upstream segment of a special resource water, if pollutants significant to the designated uses contained in that discharge can or will result in a reduction of the ambient water quality of the receiving special resource water as measured immediately below the applicable mixing zone.

Idaho concurrently deleted Section III.D. (1973 Idaho Water Quality Standards) from its standards. These actions substantially weakened antidegradation provisions of the State's water quality standards.

b. Basis for EPA Disapproval

EPA originally disapproved the general exemption given to dams and hydroelectric generating facilities which allowed them to increase their discharges, and cause a reduction in water quality. This exemption violated EPA's Federal Regulations (40 CFR 35.1550 (1983 Edition)) which provided that:

(1) Existing stream uses must always be maintained and protected; (2) high quality water that exceeds the criteria for "fishable/swimmable" water may be degraded only after public participation and intergovernmental coordination demonstrate that the degradation is needed to accommodate necessary and justifiable economic or social development; and (3) no degradation will be allowed in Outstanding National Resource Waters. The regulation also

required the antidegradation policy to apply to all pollutant sources.

The new federal regulations (40 CFR 131.12) governing antidegradation require the same basic provisions described above. Some changes in wording corrected confusing or ambiguous statements in old regulations.

At the same time that the State of Idaho legislature adopted Section 1–2300.01 (1980), they also deleted Section III.D. from their water quality standards. Without this section, the Idaho standards do not include an antidegradation policy that protects all waters from all pollution sources. Even apart from the dams problem discussed above, Section 1–2300.01 is not equivalent of the required antidegradation policy. EPA is concerned about the defects in Idaho's antidegradation policy and has notified the State by letter of these deficiencies. The Agency is hopeful that in a reasonable period of time the state will amend its standards to comply with EPA's requirements.

c. Contents of Proposed Rule

EPA proposes to remove the exemption of dams from Section 1–230.01 by deleting the first clause of Section 1–2300.01.

D. Effect of Applying Proposed Standard Including Economic Impacts

As noted above, identification of criteria adequate to protect the designated use is based on scientific and technical considerations, not economic ones. However, if achieving particular criteria would cause substantial and widespread economic and social impact, such a consequence would provide a basis for Idaho to re-examine the attainability of the designated use itself for individual water bodies or segments. Therefore, EPA performed an economic assessment of the costs. The following section describes the assessment, including the necessary assumptions and data limitations. Based on this assessment, it appears to the Agency that the standards being proposed will not result in substantial and widespread economic and social impact. However, this does not foreclose the State from conducting a detailed study of its own. If based on such study, Idaho finds that the standards are not economically attainable in particular water bodies and segments, i.e., that they would cause substantial and widespread impact, it may follow the procedure set out in § 131.10 for removing the designated use for those water bodies.

1. Dissolved Oxygen

The key economic concern regarding attaining of dissolved oxygen standards for water below dams is with American Falls Dam. When the Federal Energy Regulatory Commission re-licensed Idaho Power Company's American Falls generating stations in 1975, it included a provision that State water quality standards be maintained in water downstream from the dam. The water quality standards then in effect required the company to maintain a minimum dissolved oxygen concentration of 6 mg/l. (In 1980, the Idaho legislature lowered the dissolved oxygen criterion to 5 mg/l average.) The present proposal would raise the water quality criterion to the cold water biota criterion. Thus, the cost of complying with the earlier criterion provides an indication of the cost of attaining the proposed criterion.

In particular, because of delays between the Legislature's action in February 1980, and revision of operating procedures at the dam, operations in the summers of 1979 and 1980 were aimed at meeting the 6 mg/l minimum dissolved oxygen criterion; the compliance cost in those years provides an outside estimate of what it would have cost to meet the *proposed* criterion. During the summer of 1979, water was spilled from the reservoir, bypassing the turbines, in order to maintain the required dissolved oxygen concentrations. EPA estimated revenue losses to Idaho Power Company as a result of spilling to be $100,000 to $150,000 of which about 28 percent was paid by residential customers. These losses resulted in increased service charges estimated to be 13 to 19 cents per residential customer for 1979.

In 1980, Idaho Power used recently installed aeration units, rather than spilling, to maintain the required minimum dissolved oxygen concentrations. Operating 43 days between July 14 and August 29, total costs were calculated to be about $55,000, or about 3½ cents per residential customer for this time period. Moreover, hydrology for the upper Snake River showed 1980 to be one of the lowest flow years of the last two decades, a condition which results in decreased dissolved oxygen concentrations. For purposes of assessing the possible economic consequences of this proposed action, EPA constructed a hypothetical situation which includes the need to aerate as well as the need to spill. We assumed low stream flows combined with high temperatures such that maintaining 6.5 mg/l concentrations of dissolved oxygen during the summer months would require twice the aeration costs needed in 1980 plus spilling to the extent needed in 1979. Even in this highly improbable case, costs would be less than about 45 cents (1980 dollars) per residential customer for the theoretical summer. EPA judged this economic impact to be minor. The economic analysis is in the administrative record.

In previous hearings on Idaho water quality standards, there was no indication of other sites where there would be difficulty in meeting the DO standard proposed here. Hence, EPA believes that the cost associated with meeting the standard will be exerted principally, if not exclusively, at the American Falls site. However, EPA solicits information on any other dam that would be affected by the proposed standard.

2. Un-ionized Ammonia

EPA review of records from 44 ambient monitoring stations in the State and the State 305(b) water quality assessment indicate that ammonia toxicity is not a major problem in the State. For example, approximately 100 out of 16,000 observations exceeded 0.02 mg/l un-ionized ammonia. Many of those exceedances are the result of nonpoint sources. It is estimated that the proposed standard would have little effect on point sources. However, it is possible that some point sources will have to treat ammonia as a result of this proposed action. EPA analyzed data from two facilities that have been the focus of economic controversy regarding the ammonia standards. These are the City of Nampa facility, whose effluent is released to Indian Creek, and the Lander Street sewage plant in Boise, which discharges to the Boise River. In both cases, instream data collected monthly below the plants over the last two years show that the streams have in fact been in compliance with EPA's proposed criterion on every sampling date and, hence, the plants are not expected to incur additional costs.

EPA is not aware of any other point sources which would be required to install technology beyond that required by categorical standards in order to meet the proposed ammonia criterion. The Agency solicits information on any stream segments in which the proposed standards are not being met and on any other dischargers or nonpoint sources that could be adversely affected by control requirements based on the standard.

3. Antidegradation

The antidegradation provision is required by the water quality standard

regulation (40 CFR 131.12). If a prospective new source or alteration of an existing discharge would lower the water quality downstream from impoundments, this provision requires the State to evaluate whether such a change violates its antidegradation requirements. Since this evaluation is required on a case-by-case basis, EPA has made no effort to forecast the outcome of individual cases that may arise, and the possible impacts.

E. Executive Order 12291

Executive order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million a year or more or have certain other economic impacts. This regulation is not a major rule because its annualized cost, as discussed above, is significantly less than $100 million and it meets none of the other criteria specified in section 1(b) of the Executive Order. Also, as required by Executive Order 12291, this proposed rule has been reviewed by the Office of Management and Budget.

F. Public Hearings

The Agency plans to hold 4 public hearings at the times, places, and locations listed above. Both oral and written comments will be accepted at the hearing. The hearing officer reserves the right to fix reasonable limits on the time allowed for oral presentations.

Registration to present oral statements will be accepted immediately prior to each hearing. The comment period on this proposed rulemaking will be kept open for at least 30 days after the public hearing. Moreover, the hearing record will be kept open at least 45 days after a Notice of Availability of the final ammonia criteria guidance is published in the **Federal Register.**

G. Availability of the Record

The entire administrative record concerning the Idaho water quality standards (including the criteria documents perpared by EPA and noted herein) described in this preamble is available for public inspection and copying at the Environmental Protection Agency, Region X Office, Water Division, 1200 Sixth Avenue, Seattle, Washington 98101, during normal business hours of 8:00 a.m. to 4:30 p.m. The proposed water quality standards for Idaho and supporting technical information are available for inspection and copying at the U.S. EPA Headquarters in the Criteria and Standards Division (WH–585), Room 2818, 401 M Street, Southwest, Washington, DC 20460, during normal business hours of 8:00 a.m. to 4:30 p.m., and at the Boise, Coeur d'Alene, and Pocatello public libraries.

H. Regulatory Flexibility Act Requirements

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. § 601 et. seq., the Administrator is required to certify that this regulation will not have a significant economic impact on a substantial number of small entities. I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 131

Water pollution control, Intergovernmental relations, Administrative practices and procedures, Reporting and record keeping.

Dated: July 31, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Part 131, Subpart D, of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for Part 131 continues to read as follows:

Authority: Section 303(c) of the Clean Water Act (33 U.S.C. 1313(c)).

2. By adding a new § 131.34 to read as follows:

§ 131.34 Idaho.

(a) Section 1–2276 of the Idaho Water Quality Standards adopted by the State on January 9, 1980, is null and void and the following will supersede it: Dissolved oxygen criterion for waters downstream from dams, reservoirs, and hydroelectric facilities.

(1) *Minimum requirements:* The dissolved oxygen criteria for Idaho's aquatic life uses are listed in the following table.

WATER QUALITY CRITERIA FOR AMBIENT DISSOLVED OXYGEN CONCENTRATION

	Coldwater criteria		Warmwater criteria	
	Early life stages [1, 2]	Other life stages	Early life stages [2]	Other life stages
30 day mean	NA	6.5	NA	5.5
7 day mean	9.5 (6.5)	NA	6.0	NA
7 day mean minimum	NA	5.0	NA	NA
1 day minimum [4]	8.0 (5.0)	[4]4.0	5.0	[4]4.0

[1] These are water column concentrations recommended to achieve the required *intergravel* dissolved oxygen concentrations shown in parentheses. The 3 mg/l differential is discussed in the criteria document. For species that have early life stages exposed directly to the water column, the figures in parentheses apply.

[2] Includes all embryonic and larval stages and all juvenile forms to 30 days following hatching.

[3] NA (not applicable).

[4] No measurements less than this concentration.

(2) *Applicability.* This criterion will apply to all waters downstream from dams, reservoirs, and hydroelectric facilities where warm water biota, cold water biota, and/or salmonid spawning uses, respectively are designated and/or existing uses. This criterion applies to the length of stream immediately downstream from dams, reservoirs, and hydroelectric facilities which is affected by the low dissolved oxygen concentration of waters passing through the facilities. Idaho water quality criteria (§ 1–2250) apply downstream of the point where natural reaeration would achieve the state standards in the absence of point or nonpoint source loading of oxygen-demanding materials, or where the reaeration of oxygen-depleted waters from hypolimnetic water releases would occur.

(b) Subsections 1–2250–03(e), 1–2250–04(e) and 1–2250–05(e) of the Idaho Water Quality Standards as adopted by the State on January 9, 1980, are partially superseded. The unionized ammonia criteria to prevent acute and chronic ammonia toxicity in waters designated for warm water biota, cold water biota, and/or salmonid spawning are from the following equations or tables for un-ionized ammonia or (total ammonia, if from the tables).

(1) To protect Idaho's warmwater biota, coldwater biota and salmonid spawning categories, the criteria for ammonia (in mg/liter un-ionized NH_3) are:

(i) The one-hour average concentration of un-ionized ammonia (in mg/1 NH_3) does not exceed the numerical value given by 0.52/FT/FPH/2, where:

$FT = 10^{0.03(20-TCAP)}$; TCAP<T<30° C
$FT = 10^{0.03(20-T)}$; 0°C<T<TCAP

FPH =; 8<pH<9
$FPH = 1 + 10^{7.4+pH}/1.25$; 6.5pH<8

TCAP=20° C; Salmonids or other sensitive coldwater species present
TCAP=25°C; Salmonids and other sensitive coldwater species absent

(ii) The 4-day average concentration of un-ionized ammonia (in mg/1 NH_3) does not exceed the numerical value given by 0.80/FT/FPH/RATIO, where FT and FPH are as above and:

Ratio=16; 7.7<pH<9
$Ratio = 24x10^{7.7-pH}/1 + 10^{7.4+pH}$; 6.5<pH<7.7
TCAP=15° C; Salmonids or other sensitive coldwater species present
TCAP=20° C; Salmonids and other sensitive coldwater species absent

(iii) Un-ionized ammonia concentrations for pH range from 6.5 to 9.0 and a temperature range from 0°C to 30°C are provided in the following tables. Total ammonia concentrations equivalent to each un-ionized ammonia concentrations are also provided in these tables. In the event that conditions at a site are outside the range shown for the formulas, then the State at its option, may perform a site-specific analysis to determine an appropriate ammonia criterion or calculate a value as one-half of the concentrations calculated by extrapolating the appropriate EPA formula to the site's pH and temperature condition.

(iv) The un-ionized ammonia concentrations shown on the tables do not have a consistent number of significant digits. Because EPA expected the tabular values to be interpolated to other conditions not explicitly shown on the table, the tabular values have variable significant digits so that such interpolations will yield accurate results. The final criteria value should be rounded to 2 significant digits.

(2) *Applicability.* (i) Because the formulas in paragraph b.1. are nonlinear in pH and temperature, the criterion should be the average of separate evaluations of the formula reflective of the fluctuations of flow, pH and temperature within the averaging period; it is not appropriate in general to simply apply the formula to average pH, temperature and flow.

(1) 1-Hour Average Concentrations for Ammonia*

pH	0 C	5 C	10 C	15 C	20 C	25 C	30 C
	Un-ionized Ammonia (mg/liter NH_3)						
A. Salmonids or other sensitive coldwater species present:							
6.50	0.0091	0.0129	0.0182	0.026	0.036	0.036	0.036
6.75	0.0149	0.021	0.030	0.042	0.059	0.059	0.059
7.00	0.023	0.033	0.046	0.066	0.093	0.093	0.093
7.25	0.034	0.048	0.068	0.095	0.135	0.135	0.135
7.50	0.045	0.064	0.091	0.128	0.181	0.181	0.181
7.75	0.056	0.080	0.113	0.159	0.22	0.22	0.22
8.00	0.065	0.092	0.130	0.184	0.26	0.26	0.26
8.25	0.065	0.092	0.130	0.184	0.26	0.26	0.26
8.50	0.065	0.092	0.130	0.184	0.26	0.26	0.26
8.75	0.065	0.092	0.130	0.184	0.26	0.26	0.26
9.00	0.065	0.092	0.130	0.184	0.26	0.26	0.26
	Total Ammonia (mg/liter NH_3)						
6.50	35	33	31	30	29	20	14.3
6.75	32	30	28	27	27	18.8	13.2
7.00	28	26	25	24	23	16.4	11.6
7.25	23	22	20	19.7	19.2	13.4	9.5
7.50	17.4	16.3	15.5	14.9	14.6	10.3	7.3
7.75	12.2	11.4	10.9	10.5	10.3	7.2	5.2
8.00	8.0	7.5	7.1	6.9	6.8	4.8	3.5
8.25	4.5	4.2	4.1	4.0	3.9	2.8	2.1
8.50	2.6	2.4	2.3	2.3	2.3	1.71	1.26
8.75	1.47	1.40	1.37	1.36	1.42	1.07	0.83
9.00	0.86	0.83	0.83	0.86	0.91	0.72	0.56
B. Salmonids and other sensitive coldwater species absent:							
	Un-ionized Ammonia (mg/liter NH_3)						
6.50	0.0091	0.0129	0.0182	0.026	0.036	0.051	0.051
6.75	0.0149	0.021	0.030	0.042	0.059	0.084	0.084
7.00	0.023	0.033	0.046	0.066	0.093	0.131	0.131
7.25	0.034	0.048	0.068	0.095	0.135	0.190	0.190
7.50	0.045	0.064	0.091	0.128	0.181	0.26	0.26
7.75	0.056	0.080	0.113	0.159	0.22	0.32	0.32
8.00	0.065	0.092	0.130	0.184	0.26	0.37	0.37
8.25	0.065	0.092	0.130	0.184	0.26	0.37	0.37
8.50	0.065	0.092	0.130	0.184	0.26	0.37	0.37
8.75	0.065	0.092	0.130	0.184	0.26	0.37	0.37
9.00	0.065	0.092	0.130	0.184	0.26	0.37	0.37
	Total Ammonia (mg/liter NH_3)						
6.50	35	33	31	30	29	29	20
6.75	32	30	28	27	27	26	18.8
7.00	28	26	25	24	23	23	16.4
7.25	23	22	20	19.7	19.2	18.8	13.5
7.50	17.4	16.3	15.5	14.9	14.6	14.5	10.3
7.75	12.2	11.4	10.9	10.5	10.3	10.2	7.3
8.00	8.0	7.5	7.1	6.9	6.8	6.8	4.9
8.25	4.5	4.2	4.1	4.0	3.9	4.0	2.9
8.50	2.6	2.4	2.3	2.3	2.3	2.4	1.81
8.75	1.47	1.40	1.37	1.36	1.42	1.52	1.18
9.00	0.86	0.83	0.83	0.86	0.91	1.01	0.82

*To convert these values to mg/liter N, multiply by 0.822.

(2) 4-Day Average Concentrations for Ammonia*

pH	0 C	5 C	10 C	15 C	20 C	25 C	30 C
A. Salmonids or other sensitive coldwater species present:							
	Un-ionized Ammonia (mg/liter NH_3)						
6.50	0.0007	0.0009	0.0013	0.0019	0.0019	0.0019	0.0019
6.75	0.0012	0.0017	0.0023	0.0033	0.0033	0.0033	0.0033
7.00	0.0021	0.0029	0.0042	0.0059	0.0059	0.0059	0.0059
7.25	0.0037	0.0052	0.0074	0.0105	0.0105	0.0105	0.0105
7.50	0.0066	0.0093	0.0132	0.0186	0.0186	0.0186	0.0186
7.75	0.0109	0.0153	0.022	0.031	0.031	0.031	0.031
8.00	0.0126	0.0177	0.025	0.035	0.035	0.035	0.035

(2) 4-Day Average Concentrations for Ammonia*—Continued

pH	0 C	5 C	10 C	15 C	20 C	25 C	30 C
8.25	0.0126	0.0177	0.025	0.035	0.035	0.035	0.035
8.50	0.0126	0.0177	0.025	0.035	0.035	0.035	0.035
8.75	0.0126	0.0177	0.025	0.035	0.035	0.035	0.035
9.00	0.0126	0.0177	0.025	0.035	0.035	0.035	0.035
	Total Ammonia (mg/liter NH_3)						
6.50	2.5	2.4	2.2	2.2	1.49	1.04	0.73
6.75	2.5	2.4	2.2	2.2	1.49	1.04	0.73
7.00	2.5	2.4	2.2	2.2	1.49	1.04	0.74
7.25	2.5	2.4	2.2	2.2	1.50	1.04	0.74
7.50	2.5	2.4	2.2	2.2	1.50	1.05	0.74
7.75	2.3	2.2	2.1	2.0	1.40	0.99	0.71
8.00	1.53	1.44	1.37	1.33	0.93	0.66	0.47
8.25	0.87	0.82	0.78	0.78	0.54	0.40	0.28
8.50	0.49	0.47	0.45	0.44	0.32	0.23	0.17
8.75	0.28	0.27	0.26	0.27	0.19	0.15	0.11
9.00	0.16	0.16	0.16	0.16	0.13	0.10	0.08
B. Salmonids or other sensitive coldwater species absent:							
	Un-ionized Ammonia (mg/liter NH_3)						
6.50	0.0007	0.0009	0.0013	0.0018	0.0026	0.0026	0.0026
6.75	0.0012	0.0017	0.0023	0.0033	0.0047	0.0047	0.0047
7.00	0.0021	0.0029	0.0042	0.0058	0.0083	0.0083	0.0083
7.25	0.0037	0.0052	0.0074	0.0105	0.0148	0.0148	0.0148
7.50	0.0066	0.0093	0.0132	0.0186	0.026	0.026	0.026
7.75	0.0109	0.0153	0.022	0.031	0.043	0.043	0.043
8.00	0.0126	0.0177	0.025	0.035	0.050	0.050	0.050
8.25	0.0126	0.0177	0.025	0.035	0.050	0.050	0.050
8.50	0.0126	0.0177	0.025	0.035	0.050	0.050	0.050
8.75	0.0126	0.0177	0.025	0.035	0.050	0.050	0.050
9.00	0.0126	0.0177	0.025	0.035	0.050	0.050	0.050
	Total Ammonia (mg/liter NH_3)						
6.50	2.5	2.4	2.2	2.2	2.1	1.46	1.03
6.75	2.5	2.4	2.2	2.2	2.1	1.47	1.04
7.00	2.5	2.4	2.2	2.2	2.1	1.47	1.04
7.25	2.5	2.4	2.2	2.2	2.1	1.48	1.05
7.50	2.5	2.4	2.2	2.2	2.1	1.49	1.06
7.75	2.3	2.2	2.1	2.0	1.96	1.39	1.00
8.00	1.53	1.44	1.37	1.33	1.31	0.93	0.67
8.25	0.87	0.82	0.78	0.78	0.78	0.54	0.40
8.50	0.49	0.47	0.45	0.44	0.45	0.33	0.25
8.75	0.28	0.27	0.26	0.27	0.27	0.21	0.16
9.00	0.16	0.16	0.16	0.16	0.17	0.14	0.11

*To convert these values to mg/liter N, multiply by by 0.822.

(ii) If the concentration calculated by this method for the 4-day average ammonia concentration yields a concentration less stringent than the applicable State criterion, then the State criterion applies.

(iii) The calculated concentration from the formulas in paragraph b.2 apply at all flow rates equal to or greater than the average 7-consecutive-day low flow with a recurrence frequency of once in 10 years, unless the State justifies using another less stringent low flow, and such justification is approved by the Regional Administrator.

(c) The exemption of dams and hydroelectric generating facilities from the Idaho antidegradation requirements is superseded. Therefore, the following from § 1–2300.01 of the Idaho Water Quality Standards adopted by the State on January 9, 1980, is null and void:

Except as noted in Manual Section 1–2300.07 and for dams and hydro-electric generating facilities,

(1) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless Idaho finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Idaho continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality Idaho shall assure water quality adequate to protect existing uses fully. Further, Idaho shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(2) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges, waters designated in Idaho's water quality standards as special resource waters of the State, and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(3) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Clean Water Act.

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 1000 and 1040
Laser Products; Amendments to Performance Standard; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1000 and 1040

[Docket No. 80N-0364]

Laser Products; Amendments to Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the performance standard for laser products to widen the wavelength range that defines laser radiation, to establish a new "Class IIIa" laser product, and to add new reporting and recordkeeping requirements for sales of original equipment manufacturer (OEM) components. The amendments relax the current performance requirements for safety interlocks, viewing optics, remote control connectors, emission delay, key controls, and beam attenuators. Also, the amendments simplify and make clear the protective housing requirements for any laser product, the definitions for "human access," and the existing laser product classes. Additionally, FDA is modifying the requirements for certain radiation measurement parameters, scanning failure safeguards, manual reset mechanisms, and emission indicators on certain laser products. FDA's experience in administering the laser product standard has shown the need to implement these changes.

DATES: Effective September 19, 1985. See "Effective Dates" under SUPPLEMENTARY INFORMATION for further discussion.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

Background

The performance standards for laser products (21 CFR Part 1040.10 and 1040.11) were established by FDA under the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b et seq.) (the RCHSA). The standards became effective on August 2, 1976. In the **Federal Register** of November 28, 1978 (43 FR 55387), FDA amended the standards to make clear several provisions. These changes solved major problems that had arisen in the implementation of the standards. As FDA gained further experience in administering the laser standards, however, the agency determined that further amendments would be appropriate. For this reason, on November 7, 1980 (45 FR 74374), FDA published in the **Federal Register** a notice of intent to propose additional amendments to the standards. In the **Federal Register** of November 30, 1983 (48 FR 54164), FDA issued a proposed rule that the agency believed responded to comments received on the 1980 notice of intent. The proposal described the amendments being considered, and provided 60 days, until January 30, 1984, for interested persons to submit written data, views, or arguments concerning the proposed amendments and any associated potential environmental and economic impact.

Comments on the Proposed Rule

In response to the 1983 proposal, FDA received written comments from several manufacturers of electronic products, trade associations representing manufacturers of electronic products, and a private consultant. The comments, nearly without exception, supported FDA's intent to amend the standards, and the majority of the comments suggested revisions to improve or to clarify the proposed amendments. The following is a summary of the substantive comments received on the proposal and the agency's responses to the comments.

General Comments

1. A comment urged FDA to exempt from both §§ 1040.10 and 1040.11 laser products that are classified in Class II or lower and that are used as positioning devices in medical equipment. The comment argued that laser positioning devices are used under carefully controlled conditions and that, based on the conditions of use, there is no potential for injury to humans from laser products classified in Class II or lower.

FDA disagrees with the comment. The level of laser radiation emitted from a laser product at which eye damage from chronic exposure is possible has served as the basis for classification of such an electronic product into Class II since FDA first proposed to establish the performance standard (see 38 FR 34084; December 10, 1973). (The classification system referred to in this rule is that established by FDA in the performance standard for laser products under the RCHSA, not the statutory classification scheme under the Medical Device Amendments (21 U.S.C. 360c).) The comment did not provide any data to show that FDA's definition of Class II is inappropriate or that eye damage from chronic exposure to a laser positioning device could not occur. Laser products are classified on the basis of the highest level of laser radiation to which human access is possible. Further, classification of a laser product is not dependent upon mechanisms of aversion to laser radiation that humans may have or upon use patterns for the product, except as these have an impact upon human access.

FDA notes that the amended standard imposes minimal requirements on Class II laser products, i.e., (1) a beam attenuator (shutter), (2) a laser radiation emission indicator (pilot light), (3) requirements for a listing on the caution warning logotype of the maximum output of laser radiation and of the emitted wavelength, (4) a noninterlocked protective-housing label (for service), and (5) an aperture label. FDA notes further that the agency has concluded that certain Class II laser products, i.e., those used for relative positioning of the human body in a clinical environment, may be excluded from the requirement for an aperture label (see paragraph 23 of this preamble). In addition, under § 1040.10(f)(6)(ii), FDA's Center for Devices and Radiological Health (CDRH) may, upon written application by the manufacturer, approve alternate means to accomplish the radiation protection provided by the beam attenuator that would otherwise be required to be incorporated into any Class II or higher laser product. The remaining requirements discussed above impose negligible costs or complexity to a laser product that is used for the purpose described in the comment and are appropriate to the hazard involved. Even fewer requirements apply to such a device classified in a class lower than Class II.

2. A comment stated that laser diodes should not be subject to the standard. The comment argued that laser diodes differ significantly from lasers in that the radiation emitted from laser diodes diffuses rapidly with distance and is typically differentiated from those laser devices with highly collimated beams.

FDA disagrees with the comment. The primary characteristic of lasers is that they behave as intense, virtual point-sources of optical radiation. Even if the radiation pattern diverges from the exit port of the laser, the radiation can be focused to a spot that is limited primarily by diffraction effects and imperfections in the optical path. Laser diodes exhibit these properties.

FDA notes that, in the preamble to the proposal (48 FR 54168), the agency

responded in detail to earlier comments that recommended that FDA reduce the requirements of the standard applicable to laser diodes. The present comment does not provide any new information or, indeed, any data on which to base a substantive change in the requirements.

3. A comment noted that, when a certified laser product is incorporated into another electronic product, e.g., the gantry for computed tomography (CT) x-ray equipment, FDA considers the combination to be a laser product and requires certification of the combination. The comment argued that this requirement is unnecessary, unduly burdensome, and without precedent with respect to other devices regulated by FDA. The comment claimed that a laser product that has been certified and includes the appropriate warnings and labels should not have to be certified again simply because it is included within another device.

FDA advises that, contrary to the comment's belief, the performance standard for laser products applies only to that portion of an electronic product that uses laser radiation.

A laser product with certain intended functions that has been certified needs to be reevaluated with regard to radiation safety when the product is incorporated into another product or when the intended functions are changed. A laser product is a product whose only intended function is to produce laser radiation. However, the laser product may be incorporated into equipment to perform a different function, e.g., to produce to light show, to align earth-moving equipment, to examine the retina of the human eye, to read bar codes in a grocery, or, as would be the case in the example mentioned by the comment, to align patients in a CT x-ray system. In any of these events, the change of function requires reconsideration of the radiation safety. Also, the incorporation of a laser product into another electronic product as a component may make required performance features and labels of the laser product inaccessible to the user or may otherwise adversely affect conformance of the product to the laser standard. Indeed, if, as in the example mentioned by the comment, the laser is incorporated into another electronic product, this may have an impact on the safety of the incorporating product and adversely affect conformance of that product to the standard to which it had been certified to comply.

For these reasons, FDA concludes that it is neither unnecessary nor unduly burdensome to require the combination to be certified. Further, FDA points out that the modification of a previously certified laser product can be construed as "manufacturing" under the RCHSA (see § 1040.10(i)). Other standards under the RCHSA require recertification of a product following modification (see e.g., 21 CFR 1020.40(d)). Accordingly, the requirement to which the comment objects has precedent.

Applicability

4. One comment urged FDA to regard sales records for manufacturers of OEM components subject to § 1040.10(a)(3)(ii) as company proprietary information protected from public disclosure.

FDA advises that records obtained by the agency are subject to the provisions of the Freedom of Information Act (5 U.S.C. 552) (FOIA) and to Part 20 of FDA's public information regulations (21 CFR Part 20). Certain information, including trade secrets and commercial or financial information, that is privileged or confidential is protected from disclosure under the FOIA and Part 20 (see § 20.61). FDA considers sales records generally to be exempt from disclosure.

Definitions

5. A comment suggested that the proposed definition of a Class IIIa laser product in § 1040.10(b)(8) specifically include the upper limit of 5 milliwatts (mW) radiant power by stating "from 1 mW through 5 mW."

FDA disagrees with the suggestion. The classification of a Class IIIa laser product is more complex than the comment implies because of human interaction with light. For example, over emission durations of less than or equal to 3.8×10^{-4} seconds, a Class IIIa laser product may exceed a power of 5 mW (see Table III–A) while a Class II laser product may exceed a power of 1 mW over emission durations less than 2.5×10^{-1} seconds (see Table II).

6. FDA proposed to revise the definition of "human access" in current § 1040.10(b)(12) (§ 1040.10(b)(15) in the final rule) to state: " 'Human access' means the capacity to intercept laser or collateral radiation by any part of the human body. For laser products that contain Class IIIb or IV levels of laser radiation, 'human access' also means access to laser radiation reflected by any single introduced flat surface from the interior of the product through any opening in the product."

Several comments objected to the proposed definition, arguing that the phrase "access to laser radiation reflected by any single introduced flat surface from the interior of the product through any opening in the product" is confusing and ambiguous. The comments noted particularly that the agency did not specify (1) the size or nature of the "introduced" flat surface, or (2) the method of introducing the "flat surface" into a laser product, or (3) whether windows or viewports would be considered an "opening."

FDA agrees that the proposed definition may have been unclear. FDA advises that the phrase "introduced flat surface" denotes a concept rather than a real object. The concept should be applied by calculating the quantity of radiation that could be reflected from a flat reflective surface through any real opening in the protective housing, e.g., wire grids, a single hole, or louvers. The reflective surface should be large enough to intercept the entire laser beam and reflect all of the laser radiation impinging on the surface. Factors which would have to be considered in making such calculations include the laser radiation level at the reflective surface, the laser beam divergence, the size of the opening in the protective housing, the distance between the flat surface and the opening, and the geometrical relationship between the flat surface and the opening.

The agency did not intend the word "opening" in the definition to apply to solid transparent material. Thus, a window or viewport would not be considered an "opening" for the purpose of determining human access to reflected laser radiation if the window or viewport consists of solid transparent material, e.g., a pane of glass, that cannot be removed during operation of the product to create a real opening.

To make clear its intent, FDA has further revised the second sentence of § 1040.10(b)(15) in the final rule to state: "For laser products that contain Class IIIb or IV levels of laser radiation, 'human access' also means access to laser radiation that can be reflected directly by any single introduced flat surface from the interior of the product through any opening in the protective housing of the product." (See also paragraph 9 of this preamble.)

7. Several comments argued that the proposed definition of "human access" in § 1040.10(b)(15) is unnecessarily restrictive. The comments alleged that the probability of an object getting into or being left inside a laser is remote and that, even if it were to happen, an "introduced" object would most likely not have a "flat surface" so that any reflections though openings would not be hazardous. Some comments suggested that FDA modify the proposed definition and limit the "introduced" object to one which would result from

mislocation or misalignment of a surface in the interior of the product.

FDA disagrees. The protective housing should be designed to minimize the possibility of unintended hazardous laser radiation being reflected through openings in the housing. Such reflections could occur as a result of (1) the accidental inserting of objects through protective housing openings, (2) the misalignment or mislocation of an internal part or portion of the laser product, or (3) the leaving of tools or other objects within a product by service or maintenance personnel. It is prudent to assume that such objects or conditions would result primarily in specular rather than diffuse reflection. Indeed, a flat surface would not represent a worst-case condition because it would not collect and focus the reflected radiation, as might, for example, an object with a concave surface.

8. Some comments on proposed § 1040.10(b)(15) suggested that the agency should quality the term "opening" in the definition of human access to specify that only those openings greater than 1 millimeter (mm) in diameter would be considered to allow human access and to specify that a straight object up to 10 centimeters (cm) long which could be introduced through such an opening in the product would be used as a surface for detecting reflected radiation.

The agency disagrees with the suggestions. Implementation of these suggestions would not provide any public health benefit. Indeed, as noted in the preamble to the 1978 final rule setting forth the current definition of "human access" (November 28, 1978; 43 FR 55387 at 55388), a test object of specified diameter was included in the performance standard for microwave ovens in § 1030.10 (21 CFR 1030.10) and was found unsatisfactory. Products could be designed to meet the literal requirements of this criterion, although many common household objects could be used to circumvent its intent. The same principle applies with respect to this final rule in that specifying a minimum size for the protective housing opening or a maximum length for a reflective surface would defeat the benefits of the revised definition of human access without any increase in protection of the public health.

9. Several comments on proposed § 1040.10(b)(15) questioned whether secondary reflections would need to be considered when determining access to "reflected" laser radiation. Other comments urged the agency to limit "reflected" radiation to primary or direct reflection.

FDA advises that it intended the proposed definition to apply only to single reflections through a physical opening in the protective housing of the product, not to multiple reflections or reflections through solid transparent material. As discussed in paragraph 6 of this preamble, the agency is revising the final rule to make clear its intent.

10. On its own initiative, FDA is modifying the definition of the term "laser" in final § 1040.10(b)(19) to provide for a 1 year effective date for extension of the wavelength range while maintaining the present wavelength range of the standard until the extension becomes effective.

Accessible Emission Limits

11. Two comments noted that the heading in proposed Table II–A (§ 1040.10(d)) which stated "Class IIa Accessible Emission Limits are Identical to Class I Accessible Emission Limits Except" is unclear. The comments proposed that FDA add to the heading the phrase "Under the Following Special Conditions."

FDA agrees that the proposed headings for new Tables II–A, II, and III–A may have been unclear. To make clear the content of these tables, the agency is revising each of them by adding to the proposed heading the phrase "within the following range of wavelengths and emission durations."

Tests for Determination of Compliance

12. Three comments on proposed § 1040.10(e)(4) noted that the use of a 50 mm diameter aperture stop to measure scanned laser radiation under the conditions stated in the provision is a new requirement. These comments point out that, in the preamble to the proposal, the agency stated that it intended to delay for 1 year the effective date of new requirements to provide manufacturers time to comply. Proposed § 1040.10(e)(4) was not included in the list of amendments to be delayed. The comments urged FDA to delay the effective date of § 1040.10(e)(4) to be consistent with the effective date for other "new" requirements.

FDA agrees and is amending the effective date provisions accordingly. Also, FDA has concluded that proposed § 1040.10(e)(4) is unnecessary and in the final rule has combined the requirements of proposed § 1040.10(e)(4) with paragraph (e)(3) and has eliminated paragraph (e)(4).

Performance Requirements

13. A comment on the proposed amendments to § 1040.10(f)(1) suggested that there should not be any constraints on the materials used as protective housing for a laser product provided the materials are appropriate and provided human access to laser radiation is prevented during operation.

Section 1040.10(f)(1) does not designate materials that are to be used for laser product housing. As FDA stated in the preamble to the proposal (see 48 FR 54165), the provisions of § 1040.10(f)(1) are intended to convey clearly a fundamental principle of the laser standard: protective housing is required to prevent human access to a level of laser radiation and to collateral radiation that exceed the radiation limits specified for Class I laser products when human access is not necessary for the laser product to perform its intended function. When human access to a level of laser radiation that exceeds the limits of Class I is necessary, the level of radiation may not, under the standard, exceed the limits of the lowest class necessary for the product to perform its intended functions. The suitability of materials used to meet the protective housing requirement of the standard is judged on the basis of the appropriateness of the materials in the context of product use and function. Such materials should be adequate to ensure that the housing will comply with the standard throughout the useful life of the product, taking into account foreseeable user abuse. The agency concludes that the comment does not warrant any change or revision in final § 1040.10(f)(1).

14. A comment requested clarification of proposed § 1040.10(f)(5)(iii) with respect to the laser radiation emission indicators required to be provided on each separately housed laser and operation control of a laser system. The comment asserted that the preamble suggested that the laser always should incorporate an emission indicator and the operation control should incorporate one if the distance between the two components is greater than 2 meters, whereas proposed § 1040.10(f)(5)(iii) appeared to provide that the indicator may be located on either the laser or the control when they are within the 2-meter limit.

FDA advises that § 1040.10(f)(5)(iii), in the final rule, requires manufacturers to include an emission indicator on each laser and on each operation control if the laser or the operation control can be operated at a distance of greater than 2 meters from any separately housed portion of the laser product incorporating an emission indicator.

Section 1040.10(f)(5) provides that any laser system that is classified as a Class II or higher laser product shall incorporate at least one emission

indicator that gives an appropriate visible or audible signal of laser radiation. Section 1040.10(f)(5)(iii) currently requires that, if the laser and its energy source, e.g., the power supply (where the operation controls usually are found), are capable of being separated by more than 2 meters, an emission indicator is to be provided on the laser and on the energy source; a laser system whose laser and energy source are not capable of being so separated is required to incorporate only one emission indicator. The agency has found, however, that the operation controls, e.g., a key control, manual reset mechanism, beam attenuator, variable intensity control, or speed control (see 48 FR 54167), may be housed separately from the energy source as well as from the laser, in which event, a single indicator may not provide adequate indication of emission both at the source of the radiation and at the means for controlling the radiation. For this reason, FDA has concluded that the energy source may not always be the appropriate location for an emission indicator. Accordingly, FDA has revised final § 1040.10(f)(5)(iii) to require that the indicator be included on the laser and on each operation control that is separated by a distance of more than 2 meters from any separately housed portion of the laser product incorporating an emission indicator. FDA is deferring for 1 year the effective date of this more restrictive requirement to allow manufacturers adequate time to comply with it.

15. A comment urged that FDA further revise § 1040.10(f)(5)(iii) to allow use of a cordless remote control device which does not have an emission indicator, provided the remote control device can function only where there is an unobstructed (visual) path between the remote control and the laser console. The comment contends that the emission indicator located on the laser console to comply with § 1040.10(f)(5)(i) or (ii) would always be visible to the operator by the requirement that there be a direct line of sight for the remote control to operate. The comment noted that it would be difficult to incorporate an emission indicator in the control.

FDA disagrees with the comment. The agency believes that it would not be possible to ensure that the remote control device could function only when the operator could see an emission indicator on the laser console. The agency also believes that it would be possible to design a remote control device in such a way that it would be a true remote control and comply with the standard. FDA advises, however, that, if a manufacturer can design a remote control system that will ensure that the operator can see the emission indicator on the laser console, the manufacturer may, upon request, be granted a variance from § 1040.10(f)(5)(iii) under the provisions of § 1010.4 of the regulations (21 CFR 1010.4).

16. A comment on the proposed revision of § 1040.10(f)(6) noted that there are now Class II and Class III helium-neon laser systems whose design does not preclude using the energy source switch as an alternate to the beam attenuator required by § 1040.10(f)(6). The switch is used as an effective means of limiting human access to laser and collateral radiation. The comment argued that it is unnecessarily burdensome on manufacturers of such laser systems to have to prepare and submit to CDRH applications requesting CDRH to approve alternate means to accomplish the radiation protection provided by the beam attenuator and that it also is an inefficient use of CDRH's time to have to review and approve such applications. The comment recommended that FDA revise proposed § 1040.10(f)(6)(i) to allow the use of electrical power switches to meet the beam attenuator requirement for Class II and Class III helium-neon laser systems and that the agency delete proposed § 1040.10(f)(6)(ii).

FDA declines to grant a general exemption from § 1040.10(f)(6) to allow Class II and Class III helium-neon laser systems to use electrical power switches in lieu of a beam attenuator. FDA recognizes that use of a beam attenuator may be unnecessary for some laser systems. FDA also is aware, however, that many types of laser systems, including Class II and Class III helium-neon laser systems, need to maintain a steady emission output and may require a long recovery time if the main electrical power to the laser product is interrupted. The operator may not turn off the laser product when it is not needed or while making intrabeam adjustments or corrections. When such a situation occurs, unsafe conditions may result if the product does not have a beam attenuator.

FDA points out that proposed § 1040.10(f)(6)(ii) was intended to give the agency the flexibility to exempt a manufacturer from the requirement to include a beam attenuator in the laser system when, through a simplified application process, the manufacturer shows that including a beam attenuator is unnecessary to maintain operator safety. FDA does not regard the review of and action on these applications to be an inefficient use of the agency's time.

17. Three comments on proposed § 1040.10(f)(9)(ii) objected to the phrase "the accessible emission limits of Class IIIa scanned laser radiation * * *" on the ground that the phrase implies that the laser product standard contains a table which specifies accessible emission limits for Class IIIa scanned laser radiation, whereas the standard does not include such a table.

As stated in the preamble to the proposal (see 48 FR 54168), FDA intended proposed § 1040.10(f)(9)(ii) to require multimode Class IIIb and Class IV laser products to be equipped with a scanning safeguard if the class of the scanned laser radiation would exceed the accessible emission limits for Class IIIa as a result of scan failure. The agency did not intend to suggest that the standard includes a table for Class IIIa scanned laser radiation. FDA has revised final § 1040.10(f)(9)(ii) to make clear its intent. (See also paragraph 18 of this preamble.)

18. Several comments complained that proposed § 1040.10(f)(9)(ii) would require that Class IIIb and IV laser products that emit scanned laser radiation incorporate a scanning safeguard even if the class of the scanned laser radiation is the same as the class of the product and does not exceed the class of the product upon scan failure. Other comments questioned the need for a scanning safeguard for Class IIIb and IV products which have both a scanning mode and a stationary mode of operation (dual-mode products) because the products would be classified while in the stationary mode of operation. Such products would have all the performance features, labels, and warnings appropriate for the class of the product, according to the comments. The comments also pointed out that the emission level of the scanned laser radiation might be in the same class as the emission level when the dual-mode product is not scanning. Another comment stated that a dual-mode product which has a maximum emission of 5 mW should not be required to have a scanning safeguard to be consistent with other proposed changes providing relief for products which emit visible laser radiation up to 5 mW.

The agency intended to require a scanning safeguard when, upon scan failure, the class of the product would be exceeded. There is also a need in some cases for a scanning safeguard for Class IIIb or Class IV laser products even when the product does not emit accessible laser radiation in excess of

the limits of the product's class upon scan failure. The final rule has been revised to require these safeguards. A laser product user would be expected to be aware that a dual-mode product is safer when used in the scanning mode of operation than during the stationary mode of operation if the class of scanned laser radiation is lower than the class of the product. Therefore, a user might be lulled into a false sense of security. A scanning safeguard is necessary to prevent potential injury from sudden unexpected exposure to Class IIIb or Class IV levels of laser radiation upon scan failure. The final rule, like the proposed amendment, does not require a scanning safeguard for Class I, IIa, II, or IIIa laser products which would not emit laser radiation in excess of the accessible emission limits of the class of the product as a result of scan failure.

19. A comment on proposed § 1040.10(f)(9) stated that a projector designed to operate in a scanning mode with an operator present should not be required to have a scanning safeguard if the emitted radiation is not directed to the audience or to other persons.

FDA does not agree that an operator of a scanning laser-light projector is an adequate substitute for a scanning safeguard because an operator may not be able to react to a scan failure quickly enough to prevent an injury. Further, it is not possible for the manufacturer of a laser-light projector to ensure that the projector will not be used without an operator or that scanning radiation will not be directed to an audience or other persons. Scanning laser-light projectors are in widespread use and generally are unique at each facility where installed. They present the greatest potential of any electronic product for unintended exposure of the public to hazardous levels of laser radiation. The agency advises, however, that, as provided by § 1010.4, a manufacturer may be granted, upon request, a variance from the requirements of § 1040.10(f)(9) if the manufacturer can show that the product utilizes alternate means for providing radiation safety or protection equal to or greater than that provided by a scanning safeguard.

20. Three comments on proposed § 1040.10(f)(10) noted that the new requirement provides that each "Class IV laser system" is to be equipped with a manual reset mechanism, whereas other pertinent provisions of the standard apply to each laser system classified as a "Class IV laser product." The comments suggested that, as worded, proposed § 1040.10(f)(10) could require a Class IV laser imbedded in a Class I laser product to be equipped with a manual reset mechanism. They urged that § 1040.10 should be revised to be consistent with other parts of the standard.

FDA accepts the proposed change. The agency notes that § 1040.10(c)(2) provides that the manner in which a laser system incorporated into a laser product is subject to the requirements of the standard depends on whether the system is removable from the product; if so, and if it is capable, without modification, of producing laser radiation when removed, the system itself is a laser product and is classified on the basis of accessible emission of laser radiation when so removed. Conversely, if the system is not removable, it is not separately subject to the standard.

21. One comment from a manufacturer objected to proposed § 1040.10(f)(10). The comment stated that all of its Class IV laser systems require a normal 10-second emission delay before restart following a 5-second power loss and argued that additional precautions, i.e., a manual reset mechanism, should not be necessary.

FDA disagrees with the comment. Class IV levels of laser radiation are an acute hazard to the skin and eyes from direct and scattered radiation. Indeed, as stated in the preamble to the proposal, laser radiation from Class IV laser products can cause permanent damage to the human eye over short emission durations. FDA believes that the laser product operator needs to be protected from the hazard associated with the unexpected resumption of radiation emission from such high-powered laser products following interruption of operation (see 48 FR 54167). The provisions of § 1040.10(f)(10) ensure that Class IV laser products will not automatically restart following a power outage. A purposeful action on the part of an operator should be required. Class IV laser products are too dangerous to rely solely on an emission delay to ensure safety of use in the event of product restart following a power outage. FDA is deferring for 1 year the effective date of this more restrictive requirement to allow manufacturers adequate time to comply with it.

Labeling requirements

22. Five comments noted that, on December 31, 1981, CDRH issued a policy statement allowing the use of the phrase "laser light" in lieu of the words "laser radiation" as variously required by § 1040.10(g) to be included in laser product warning labels, provided that all laser radiation in excess of the accessible emission limits of Class I is within the visible wavelength range of 400 to 710 nanometers. The comments requested that this alternate wording be incorporated into the final rule.

FDA agrees with the suggestion and has added new § 1040.10(g)(8)(iii) to the final rule to provide that, where the radiation emitted by a laser product is visible laser radiation only, the phrase "laser light" may replace the phrase "laser radiation" in any warning statement required by § 1040.10(g) to be included on the product.

23. A comment on the provisions of § 1040.10(g)(5) states that the warning labels FDA requires to be placed by the apertures of certain Class II laser products can cause significant anxiety for patients. The comment suggested that the standard explicitly provide for alternative wording on the aperture labels required by § 1040.10(g)(5) (i), (ii), and (iii) for Class II laser products that are not medical laser products but that are used in a clinical environment, e.g., a positioning device used with medical equipment. The comment noted that providing suitable alternate wording for aperture labels would obviate the need for a separate exemption for each such use of a Class II laser.

The comment, in the general sense, raised the important issue of laser products subject to the RCHSA used in conjunction with medical devices subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) (the act). Certain laser products are used together with medical devices during diagnostic, surgical, or therapeutic procedures involving humans, e.g., to align other laser radiation, or to align patients in x-ray or nuclear magnetic resonance devices. Laser products for such uses have been considered to be alignment laser products subject to § 1040.11(b) rather than medical laser products subject to the provisions of § 1040.11(a) because they do not conform to the current definition of a medical laser product in § 1040.10(b)(22) (§ 1040.10(b)(28) in the final rule). Accordingly, such products have been required to bear the applicable aperture warning label specified in § 1040.10(g)(5) (i), (ii), or (iii).

FDA has reevaluated the scope of the definition of "medical laser product" as well as the appropriateness of the aperture warning labels on laser products used in conjunction with medical devices. The agency recognizes that persons being prepared for laser irradiation, or x-ray or nuclear magnetic resonance devices, are likely under stress and that the aperture warning labels included on laser products used ...

for relative positioning of the human body may unduly add to these persons' anxiety.

For all these reasons, the agency concludes that laser products used in medical devices for the purpose of relative positioning of the human body should be considered medical laser products exempt from the requirements of § 1040.10(g)(5) (i), (ii), or (iii). FDA is revising the definition of "medical laser product" in the final rule accordingly.

FDA advises that, under the revised definition, a laser product that is intended for relative positioning of the human body for other than medical purposes, e.g., on an entertainment stage, would not be a medical device. Thus, it would be beyond the scope of the definition of "medical laser product" and would remain subject to the requirements of § 1040.10(g)(5). Similarly, a diagnostic device that is intended for use in a clinical laboratory and that achieves its principal intended purpose through laser irradiation, e.g., a blood cell counter, would not be intended for in vivo laser irradiation of the human body. Thus, it would be beyond the scope of the definition and would remain subject to § 1040.10(g)(5).

As discussed in paragraph 26 of this preamble, FDA, on its own initiative, is also revising § 1040.11(a)(1) to exempt, under certain conditions, medical laser products used for relative positioning applications from the requirement to incorporate a means for measurement of the level of laser radiation. Neither of the two amendments regarding positioning laser products will impose added burdens on laser product manufacturers.

24. A comment objected to § 1040.10(h)(2)(i), which requires that manufacturers include in catalogs, specification sheets, and descriptive brochures for each laser product that they manufacture, a reproduction of the class designation and warnings required by § 1040.10(g) to be included in the labeling for the product. The comment noted that certified laser products have labels attached directly to the product to warn operators and service people of potential hazards. The comment argued that redundant labeling on unattached printed materials in no way contributes to the safety of any laser product and is, therefore, inappropriate.

The agency disagrees with the comment. Section 1040.10(h)(2)(i) is intended to ensure that the potential purchaser of a laser product is fully informed of the characteristics of the product at the time the person considers purchasing it. A person who acquires a laser product should not be faced with any unknowns with regard to the radiation safety of the product. Because of the great variety of laser products marketed in the United States, the potential purchaser needs the information required by § 1040.10(h)(2)(i) to make informed decisions about the safety of the product and to establish a radiation safety program in preparation for the use of the laser product.

Specific Purpose Laser Products

25. Section 1040.11(a)(1) of the standard currently requires that each Class III or Class IV medical laser product incorporate a means to measure the level of laser radiation with a measurement error of no more than ±20 percent. One comment suggested that FDA provide relief from this requirement for Class IIIa medical lasers on the ground that the requirement is unnecessarily restrictive for such products.

FDA disagrees with the suggestion. The comment did not provide any information, data, or arguments to support its contention that the requirements of § 1040.11(a)(1) are unnecessarily restrictive. Indeed, it is not clear whether the comment objected to providing any means to measure emitted radiation from a Class IIIa medical laser product or to the tolerance on the accuracy of the measurement that FDA allows a manufacturer. Therefore, FDA cannot evaluate the rationale behind the comment.

As stated in footnote 4 to § 1040.10(b)(8), Class IIIa levels of laser radiation are, depending upon the irradiance, an acute intrabeam viewing hazard or a chronic viewing hazard. They are an acute viewing hazard if viewed directly with optical instruments. Medical laser products create a unique potential for human exposure to hazardous laser radiation. The intent of § 1040.11(a)(1) is to ensure accurate knowledge of the radiant power or energy which is intended for irradiation of the human body. Without such knowledge, day-to-day reproducibility in patient irradiations would not be possible (see the preamble to the reproposal to establish the laser products performance standard (39 FR 32094 at 32097; September 4, 1974)). At the time FDA issued the reproposed standard, the agency concluded that the measurement and the measurement accuracy required by § 1040.11(a)(1) for medical laser products were necessary to protect the public health and to assess adequately the radiation levels intentionally applied to humans (see 39 FR 32097). FDA has not seen any evidence that those conclusions were incorrect or that the requirements of § 1040.11(a)(1) are unnecessarily restrictive when applied to Class IIIa products as defined in the final rule.

The agency notes that, if the measurement requirement in § 1040.11(a)(1) is not appropriate for a medical laser product otherwise subject to the regulation, or if any of the other criteria under § 1010.4(a) for a variance are met, the manufacturer of the product may be granted, upon request, a variance from the requirement.

26. On January 19, 1984, CDRH issued a policy statement allowing use of a fixed-level laser aiming beam in nonophthalmic medical laser products that do not incorporate a means to measure the level of the aiming beam, provided the aiming beam does not exceed a power level of 5 mW. On its own initiative, FDA is revising § 1040.11(a)(1) of the final rule to incorporate this policy into the standard. FDA also has decided to extend this exemption to variable-level aiming beams for these products provided the aiming beams do not exceed 5 mW. The agency believes that users will adjust variable-level aiming beams to a level that allows adequate visibility independently of measured level. See paragraph 23 of this preamble for a related comment.

27. A comment on proposed § 1040.11(c) requested relief from the need for manufacturers and producers of laser light shows to obtain a variance from the special requirements for demonstration laser products when the light show uses lasers that do not exceed a power level of 5 mW. The comment argued that the safety requirements for these lasers are significantly different from those of high-powered lasers.

FDA has reevaluated the applicability of the § 1040.11(c) to laser light shows and the current requirement that demonstration laser products may not permit human access to laser radiation in excess of the accessible emission limits of Class II. The agency conludes that, because it is relaxing the requirements for other Class IIIa laser products which emit visible laser radiation, relaxation for demonstration laser products also is warranted. For this reason, FDA is revising § 1040.11(c) in the final rule to provide for Class IIIa demonstration laser products. The agency advises, however, that instructions for assembly, operation, and maintenance need to include warnings to avoid possible exposure to laser and collateral radiation in excess of the limits of Class I. Such warnings should be based on the laser safety

concepts contained in laser light show variances issued by FDA.

Effective Dates

The final rule will become effective in two steps. The requirements of the final rule that make the current performance standard for laser products more restrictive will become effective August 20, 1986 to allow manufacturers adequate time to comply. These portions of the final rule are: § 1040.10(a)(3) regarding OEM component sales; that portion of § 1040.10(b)(19) which extends the applicable wavelength range of a "laser"; that portion of § 1040.10(e)(3)(i) regarding use of a 50-mm aperture stop to determine compliance of laser products using scanned laser radiation; that portion of § 1040.10(f)(5)(iii) requiring that operation controls have a laser radiation emission indicator; and § 1040.10(f)(10) requiring Class IV laser products to be equipped with a manual reset mechanism. FDA finds that, for good cause shown, all other amendments to the final rule will take effect September 19, 1985. FDA has determined that an early effective date is justified because these amendments clarify the performance standard or remove unnecessarily restrictive requirements without endangering public health or safety. A majority of the persons submitting written comments on the proposal urged FDA to issue the amendments as soon as possible. The agency does not object to manufacturers complying with the entire amended standard on or after September 19, 1985, provided that the manufacturer specifies on the certification label that the product complies with the amended standard and provided that the manufacturer complies with recordkeeping and reporting requirements of 21 CFR Part 1002.

Economic Assessment

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. FDA has not received any new information or comments that would alter its previous determination.

In Accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency certified that there would not be a significant impact on a substantial number of small entities from this rule. FDA has not received any new information or comments that would alter its previous determination.

Paperwork Reduction Act of 1980

Section 1040.10(a)(3) of this final rule contains information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0176.

List of Subjects

21 CFR Part 1000

Electronic products, Radiation protection, Recommendations, X-rays.

21 CFR Part 1040

Electronic products, HID lamps, Lasers, Medical devices, Radiation protection, Standards, Sunlamps.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968, Parts 1000 and 1040 are amended as follows:

PART 1000—GENERAL

1. The authority citation for Part 1000 is revised to read as follows:

Authority: Secs. 354–360F, 82 Stat. 1173–1186 as amended (42 U.S.C. 263b–263n); 21 CFR 5.10.

2. Part 1000 is amended by adding new § 1000.1, to read as follows:

§ 1000.1 General.

References in this Subchapter J to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

PART 1040—PERFORMANCE STANDARDS FOR LIGHT-EMITTING PRODUCTS

3. The authority citation for Part 1040 is revised to read as follows:

Authority: Secs. 358, 360A, 82 Stat. 1177–1179, 1182 (42 U.S.C. 263f, 263i); 21 CFR 5.10.

4. Part 1040 is amended by revising §§ 1040.10 and 1040.11 to read as follows:

§ 1040.10 Laser products.

(a) *Applicability.* The provisions of this section and § 1040.11, as amended, are applicable as specified to all laser products manufactured or assembled after August 1, 1976, except when:

(1) Such a laser product is either sold to a manufacturer of an electronic product for use as a component (or replacement) in such electronic product, or

(2) Sold by or for a manufacturer of an electronic product for use as a component (or replacement) in such electronic product, provided that such laser product:

(i) Is accompanied by a general warning notice that adequate instructions for the safe installation of the laser product are provided in servicing information available from the complete laser product manufacturer under paragraph (h)(2)(ii) of this section, and should be followed,

(ii) Is labeled with a statement that it is designated for use solely as a component of such electronic product and therefore does not comply with the appropriate requirements of this section and § 1040.11 for complete laser products, and

(iii) Is not a removable laser system as described in paragraph (c)(2) of this section; and

(3) The manufacturer of such a laser product, if manufactured after August 20, 1986:

(i) Registers, and provides a listing by type of such laser products manufactured that includes the product name, model number and laser medium or emitted wavelength(s). The registration and listing shall include the name and address of the manufacturer and shall be submitted to the Director, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857.

(ii) Maintains and allows access to any sales, shipping, or distribution records that identify the purchaser of such a laser product by name and address, the product by type, the number of units sold, and the date of sale (shipment). These records shall be maintained and made available as specified in § 1002.31.

(Information collection requirements approved by the Office of Management and Budget under control number 0910–0176.)

(b) *Definitions.* As used in this section and § 1040.11, the following definitions apply:

(1) "Accessible emission level" means the magnitude of accessible laser or collateral radiation of a specific wavelength and emission duration at a particular point as measured according to paragraph (e) of this section. Accessible laser or collateral radiation is radiation to which human access is possible, as defined in paragraph (b)(12), (15), and (22) of this section.

(2) "Accessible emission limit" means the maximum accessible emission level permitted within a particular class as

set forth in paragraphs (c), (d), and (e) of this section.

(3) "Aperture" means any opening in the protective housing or other enclosure of a laser product through which laser or collateral radiation is emitted, thereby allowing human access to such radiation.

(4) "Aperture stop" means an opening serving to limit the size and to define the shape of the area over which radiation is measured.

(5) "Class I laser product" means any laser product that does not permit access during the operation to levels of laser radiation in excess of the accessible emission limits contained in Table I of paragraph (d) of this section.[1]

(6) "Class IIa laser product" means any laser product that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table I, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table II–A of paragraph (d) of this section.[2]

(7) "Class II laser product" means any laser product that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table II–A, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table II of paragraph (d) of this section.[3]

(8) "Class IIIa laser product" means any laser product that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table II, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table III–A of paragraph (d) of this section.[4]

(9) "Class IIIb laser product" means any laser product that permits human access during operation to levels of laser radiation in excess of the accessible emission limits of Table III–A, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table III–B of paragraph (d) of this section.[5]

(10) "Class III laser product" means any Class IIIa or Class IIIb laser product.

(11) "Class IV laser product" means any laser that permits human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table III–B of paragraph (d) of this section.[6]

(12) "Collateral radiation" means any electronic product radiation, except laser radiation, emitted by a laser product as a result of the operation of the laser(s) or any component of the laser product that is physically necessary for the operation of the laser(s).

(13) "Demonstration laser product" means any laser product manufactured, designed, intended, or promoted for purposes of demonstration, entertainment, advertising display, or artistic composition. The term "demonstration laser product" does not apply to laser products which are not manufactured, designed, intended, or promoted for such purposes, even though they may be used for those purposes or are intended to demonstrate other applications.

(14) "Emission duration" means the temporal duration of a pulse, a series of pulses, or continuous operation. expressed in seconds, during which human access to laser or collateral radiation could be permitted as a result of operation, maintenance, or service of a laser product.

(15) "Human access" means the capacity to intercept laser or collateral radiation by any part of the human body. For laser products that contain Class IIIb or IV levels of laser radiation, "human access" also means access to laser radiation that can be reflected directly by any single introduced flat surface from the interior of the product through any opening in the protective housing of the product.

(16) "Integrated radiance" means radiant energy per unit area of a radiating surface per unit solid angle of emission, expressed in joules per square centimeter per steradian ($Jcm^{-2}sr^{-1}$).

(17) "Invisible radiation" means laser or collateral radiation having wavelengths of equal to or greater than 180 nm but less than or equal to 400 nm or greater than 710 nm but less than or equal to 1.0×10^6 nm (1 millimeter).

(18) "Irradiance" means the time-averaged radiant power incident on an element of a surface divided by the area of that element, expressed in watts per square centimeter ($W\ cm^{-2}$).

(19) "Laser" means any device that can be made to produce or amplify electromagnetic radiation at wavelenghts greater than 250 nm but less than or equal to 13,000 nm or, after August 20, 1986, at wavelengths equal to or greater than 180 nm but less than or equal to $1.0X10^6$ nm primarily by the process of controlled stimulated emission.

(20) "Laser energy source" means any device intended for use in conjunction with a laser to supply energy for the operation of the laser. General energy sources such as electrical supply mains or batteries shall not be considered to constitute laser energy sources.

(21) "Laser product" means any manufactured product or assemblage of components which constitutes, incorporates, or is intended to incorporate a laser or laser system. A laser or laser system that is intended for use as a component of an electronic product shall itself be considered a laser product.

(22) "Laser radiation" means all electromagnetic radiation emitted by a laser product within the spectral range specified in paragraph (b)(19) of this section that is produced as a result of controlled stimulated emission or that is detectable with radiation so produced through the appropriate aperture stop and within the appropriate solid angle of acceptance, as specified in paragraph (e) of this section.

(23) "Laser system" means a laser in combination with an appropriate laser energy source with or without additional incorporated components. See paragraph (c)(2) of this section for an explanation of the term "removable laser system."

(24) "Maintenance" means performance of those adjustments or procedures specified in user information provided by the manufacturer with the laser product which are to be performed by the user for the purpose of assuring the intended performance of the product. It does not include operation or service as defined in paragraph (b) (27) and (38) of this section.

(25) "Maximum output" means the maximum radiant power and, where applicable, the maximum radiant energy per pulse of accessible laser radiation emitted by a laser product during operation, as determined under paragraph (e) of this section.

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[1] Class I levels of laser radiation are not considered to be hazardous.

[2] Class IIa levels of laser radiation are not considered to be hazardous if viewed for any period of time less than or equal to 1×10^3 seconds but are considered to be a chronic viewing hazard for any period of time greater than 1×10^3 seconds.

[3] Class II levels of laser radiation are considered to be a chronic viewing hazard.

[4] Class IIIa levels of laser radiation are considered to be, depending upon the irradiance, either an acute intrabeam viewing hazard or chronic viewing hazard, and an acute viewing hazard if viewed directly with optical instruments.

[5] Class IIIb levels of laser radiation are considered to be an acute hazard to the skin and eyes from direct radiation.

[6] Class IV levels of laser radiation are considered to be an acute hazard to the skin and eyes from direct and scattered radiation.

(26) "Medical laser product" means any laser product which is a medical device as defined in 21 U.S.C. 321(h) and is manufactured, designed, intended or promoted for in vivo laser irradiation of any part of the human body for the purpose of: (i) Diagnosis, surgery, or therapy; or (ii) relative positioning of the human body.

(27) "Operation" means the performance of the laser product over the full range of its functions. It does not include maintenance or service as defined in paragraph (b) (24) and (38) of this section.

(28) "Protective housing" means those portions of a laser product which are designed to prevent human access to laser or collateral radiation in excess of the prescribed accessible emission limits under conditions specified in this section and in § 1040.11.

(29) "Pulse duration" means the time increment measured between the half-peak-power points at the leading and trailing edges of a pulse.

(30) "Radiance" means time-averaged radiant power per unit area of a radiating surface per unit solid angle of emission, expressed in watts per square centimeter per steradian ($W\ cm^{-2}sr^{-1}$).

(31) "Radiant energy" means energy emitted, transferred or received in the form of radiation, expressed in joules (J).

(32) "Radiant exposure" means the radiant energy incident on an element of a surface divided by the area of the element, expressed in joules per square centimeter (Jcm^{-2})

(33) "Radiant power" means time-averaged power emitted, transferred or received in the form of radiation, expressed in watts (W).

(34) "Remote interlock connector" means an electrical connector which permits the connection of external remote interlocks.

(35) "Safety interlock" means a device associated with the protective housing of a laser product to prevent human access to excessive radiation in accordance with paragraph (f)(2) of this section.

(36) "Sampling interval" means the time interval during which the level of accessible laser or collateral radiation is sampled by a measurement process. The magnitude of the sampling interval in units of seconds is represented by the symbol (t).

(37) "Scanned laser radiation" means laser radiation having a time-varying direction, origin or pattern of propagation with respect to a stationary frame of reference.

(38) "Service" means the performance of those procedures or adjustments described in the manufacturer's service instructions which may affect any aspect of the product's performance for which this section and § 1040.11 have applicable requirements. It does not include maintenance or operation as defined in paragraph (b) (24) and (27) of this section.

(39) "Surveying, leveling, or alignment laser product" means a laser product manufactured, designed, intended or promoted for one or more of the following uses:

(i) Determining and delineating the form, extent, or position of a point, body, or area by taking angular measurement.

(ii) Positioning or adjusting parts in proper relation to one another.

(iii) Defining a plane, level, elevation, or straight line.

(40) "Visible radiation" means laser or collateral radiation having wavelengths of greater than 400 nm but less than or equal to 710 nm.

(41) "Warning logotype" means a logotype as illustrated in either Figure 1 or Figure 2 of paragraph (g) of this section.

(42) "Wavelength" means the propagation wavelength in air of electromagnetic radiation.

(c) *Classification of laser products*—(1) *All laser products.* Each laser product shall be classified in Class I, IIa, II, IIIa, IIIb, or IV in accordance with definitions set forth in paragraphs (b) (5) through (11) of this section. The product classification shall be based on the highest accessible emission level(s) of laser radiation to which human access is possible during operation in accordance with paragraphs (d), (e), and (f)(1) of this section.

(2) *Removable laser systems.* Any laser system that is incorporated into a laser product subject to the requirements of this section and that is capable, without modification, of producing laser radiation when removed from such laser product, shall itself be considered a laser product and shall be separately subject to the applicable requirements in this subchapter for laser products of its class. It shall be classified on the basis of accessible emission of laser radiation when so removed.

(d) *Accessible emission limits.* Accessible emission limits for laser radiation in each class are specified in Tables I, II–A, II, III–A, and III–B of this paragraph. The factors, k_1 and k_2 vary with wavelength and emission duration. These factors are given in Table IV of this paragraph, with selected numerical values in Table V of this paragraph. Accessible emission limits for collateral radiation are specified in Table VI of this paragraph.

Notes applicable to Tables I, II–A, II, III–A and III–B:

(1) The factors k_1 and k_2 are wavelength-dependent correction factors determined from Table IV.

(2) The variable t in the expressions of emission limits is the magnitude of the sampling interval in units of seconds.

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TABLE I

CLASS I ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

Wavelength (nanometers)	Emission duration (seconds)	Class I-Accessible emission limits (value)	(unit)	(quantity)**
≥180 but ≤400	≤3.0×10^{4}	$2.4 \times 10^{-5} k_1 k_2$*	Joules(J)*	radiant energy
	>3.0×10^{4}	$8.0 \times 10^{-10} k_1 k_2$*	Watts(W)*	radiant power
>400 but <1400	>1.0×10^{-9} to 2.0×10^{-5}	$2.0 \times 10^{-7} k_1 k_2$	J	radiant energy
	>2.0×10^{-5} to 1.0×10^{1}	$7.0 \times 10^{-4} k_1 k_2 t^{3/4}$	J	radiant energy
	>1.0×10^{1} to 1.0×10^{4}	$3.9 \times 10^{-3} k_1 k_2$	J	radiant energy
	>1.0×10^{4}	$3.9 \times 10^{-7} k_1 k_2$	W	radiant power
	and also (See paragraph (d)(4) of this section)			
	>1.0×10^{-9} to 1.0×10^{1}	$10 k_1 k_2 t^{1/3}$	$Jcm^{-2}sr^{-1}$	integrated radiance
	>1.0×10^{1} to 1.0×10^{4}	$20 k_1 k_2$	$Jcm^{-2}sr^{-1}$	integrated radiance
	>1.0×10^{4}	$2.0 \times 10^{-3} k_1 k_2$	$Wcm^{-2}sr^{-1}$	radiance
>1400 but ≤2500	>1.0×10^{-9} to 1.0×10^{-7}	$7.9 \times 10^{-5} k_1 k_2$	J	radiant energy
	>1.0×10^{-7} to 1.0×10^{1}	$4.4 \times 10^{-3} k_1 k_2 t^{1/4}$	J	radiant energy
	>1.0×10^{1}	$7.9 \times 10^{-4} k_1 k_2$	W	radiant power
>2500 but ≤1.0×10^{6}	>1.0×10^{-9} to 1.0×10^{-7}	$1.0 \times 10^{-2} k_1 k_2$	Jcm^{-2}	radiant exposure
	>1.0×10^{-7} to 1.0×10^{1}	$5.6 \times 10^{-1} k_1 k_2 t^{1/4}$	Jcm^{-2}	radiant exposure
	>1.0×10^{1}	$1.0 \times 10^{-1} k_1 k_2 t$	Jcm^{-2}	radiant exposure

*Class I accessible emission limits for wavelengths equal to or greater than 180 nm but less than or equal to 400 nm shall not exceed the Class I accessible emission limits for the wavelengths greater than 1400 nm but less than or equal to 1.0×10^{6} nm with a k_1 and k_2 of 1.0 for comparable sampling intervals.

**Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE II-A

CLASS IIa ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

CLASS IIa ACCESSIBLE EMISSION LIMITS ARE IDENTICAL TO CLASS I ACCESSIBLE EMISSION LIMITS EXCEPT WITHIN THE FOLLOWING RANGE OF WAVELENGTHS AND EMISSION DURATIONS:				
Wavelength (nanometers)	Emission duration (seconds)	Class IIa-Accessible emission limits		
		(value)	(unit)	(quantity)*
>400 but ≤710	$>1.0 \times 10^{3}$	3.9×10^{-6}	W	radiant power

*Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE II

CLASS II ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

CLASS II ACCESSIBLE EMISSION LIMITS ARE IDENTICAL TO CLASS I ACCESSIBLE EMISSION LIMITS EXCEPT WITHIN THE FOLLOWING RANGE OF WAVELENGTHS AND EMISSION DURATIONS:				
Wavelength (nanometers)	Emission duration (seconds)	Class II-Accessible emission limits		
		(value)	(unit)	(quantity)*
>400 but ≤710	$>2.5 \times 10^{-1}$	1.0×10^{-3}	W	radiant power

*Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE III-A

CLASS IIIa ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

CLASS IIIa ACCESSIBLE EMISSION LIMITS ARE IDENTICAL TO CLASS I ACCESSIBLE EMISSION LIMITS EXCEPT WITHIN THE FOLLOWING RANGE OF WAVELENGTHS AND EMISSION DURATIONS:				
Wavelength (nanometers)	Emission duration (seconds)	Class IIIa-Accessible emission limits		
		(value)	(unit)	(quantity)*
>400 but ≤710	$>3.8 \times 10^{-4}$	5.0×10^{-3}	W	radiant power

*Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE III-B

CLASS IIIb ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

Wavelength (nanometers)	Emission duration (seconds)	Class IIIb-Accessible emission limits		
		(value)	(unit)	(quantity)*
≥180 but ≤400	$\leq 2.5 \times 10^{-1}$	$3.8 \times 10^{-4} k_1 k_2$	J	radiant energy
	$>2.5 \times 10^{-1}$	$1.5 \times 10^{-3} k_1 k_2$	W	radiant power
>400 but ≤1400	$>1.0 \times 10^{-9}$ to 2.5×10^{-1}	$10 k_1 k_2 t^{1/3}$ to a maximum value of 10	Jcm^{-2}	radiant exposure
			Jcm^{-2}	radiant exposure
	$>2.5 \times 10^{-1}$	5.0×10^{-1}	W	radiant power
>1400 but $\leq 1.0 \times 10^{6}$	$>1.0 \times 10^{-9}$ to 1.0×10^{1}	10	Jcm^{-2}	radiant exposure
	$>1.0 \times 10^{1}$	5.0×10^{-1}	W	radiant power

*Measurement parameter and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE IV

VALUES OF WAVELENGTH DEPENDENT CORRECTION FACTORS k_1 AND k_2

Wavelength (nanometers)	k_1	k_2		
180 to 302.4	1.0	1.0		
> 302.4 to 315	$10^{\left[\frac{\lambda - 302.4}{5}\right]}$	1.0		
> 315 to 400	330.0	1.0		
> 400 to 700	1.0	1.0		
> 700 to 800	$10^{\left[\frac{\lambda - 700}{515}\right]}$	if: $t \leq \frac{10100}{\lambda - 699}$ then: $k_2 = 1.0$	if: $\frac{10100}{\lambda - 699} < t \leq 10^4$ then: $k_2 = \frac{t(\lambda - 699)}{10100}$	if: $t > 10^4$ then: $k_2 = \frac{\lambda - 699}{1.01}$
> 800 to 1060	$10^{\left[\frac{\lambda - 700}{515}\right]}$	if: $t \leq 100$ then: $k_2 = 1.0$	if: $100 < t \leq 10^4$ then: $k_2 = \frac{t}{100}$	if: $t > 10^4$ then: $k_2 = 100$
> 1060 to 1400	5.0			
> 1400 to 1535	1.0	1.0		
> 1535 to 1545	$t \leq 10^{-7}$ $k_1 = 100.0$	1.0		
	$t > 10^{-7}$ $k_1 = 1.0$			
> 1545 to 1.0×10^6	1.0	1.0		

Note: The variables in the expressions are the magnitudes of the sampling interval(t), in units of seconds, and the wavelength (λ), in units of nanometers.

TABLE V

SELECTED NUMERICAL SOLUTIONS FOR k_1 AND k_2

Wavelength (nanometers)	k_1	k_2				
		$t \leq 100$	$t=300$	$t=1000$	$t=3000$	$t \geq 10{,}000$
180	1.0					
300	1.0					
302	1.0					
303	1.32					
304	2.09					
305	3.31					
306	5.25					
307	8.32					
308	13.2					
309	20.9					
310	33.1			1.0		
311	52.5					
312	83.2					
313	132.0					
314	209.0					
315	330.0					
400	330.0					
401	1.0					
500	1.0					
600	1.0					
700	1.0					
710	1.05	1	1	1.1	3.3	11.0
720	1.09	1	1	2.1	6.3	21.0
730	1.14	1	1	3.1	9.3	31.0
740	1.20	1	1.2	4.1	12.0	41.0
750	1.25	1	1.5	5.0	15.0	50.0
760	1.31	1	1.8	6.0	18.0	60.0
770	1.37	1	2.1	7.0	21.0	70.0
780	1.43	1	2.4	8.0	24.0	80.0
790	1.50	1	2.7	9.0	27.0	90.0
800	1.56	1	3.0	10.0	30.0	100.0
850	1.95	1	3.0	10.0	30.0	100.0
900	2.44	1	3.0	10.0	30.0	100.0
950	3.05	1	3.0	10.0	30.0	100.0
1000	3.82	1	3.0	10.0	30.0	100.0
1050	4.78	1	3.0	10.0	30.0	100.0
1060	5.00	1	3.0	10.0	30.0	100.0
1100	5.00	1	3.0	10.0	30.0	100.0
1400	5.00	1	3.0	10.0	30.0	100.0
1500	1.0					
1540	100.0 *			1.0		
1600	1.0					
$1.0X10^6$	1.0					

* The factor $k_1 = 100.0$ when $t \leq 10^{-7}$, and $k_1 = 1.0$ when $t > 10^{-7}$

Note: The variable (t) is the magnitude of the sampling interval in units of seconds.

TABLE VI

ACCESSIBLE EMISSION LIMITS FOR COLLATERAL

RADIATION FROM LASER PRODUCTS

1. Accessible emission limits for collateral radiation having wavelengths greater than 180 nanometers but less than or equal to 1.0×10^{6} nanometers are identical to the accessible emission limits of Class I laser radiation, as determined from Tables I and IV in this paragraph.

i. In the wavelength range of less than or equal to 400 nanometers, for all emission durations;

ii. In the wavelength range of greater than 400 nanometers, for all emission durations less than or equal to 1×10^{3} seconds and, when applicable under paragraph (f)(8) of this section, for all emission durations.

2. Accessible emission limit for collateral radiation within the x-ray range of wavelengths is 0.5 milliroentgen in an hour, averaged over a cross-section parallel to the external surface of the product, having an area of 10 square centimeters with no dimension greater than 5 centimeters.

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(1) *Beam of a single wavelength.* Laser or collateral radiation of a single wavelength exceeds the accessible emission limits of a class if its accessible emission level is greater than the accessible emission limit of that class within any of the ranges of emission duration specified in Tables I, II–A, II, III–A, and III–B of this paragraph.

(2) *Beam of multiple wavelengths in same range.* Laser or collateral radiation having two or more wavelengths within any one of the wavelength ranges specified in Tables I, II–A, II, III–A, and III–B of this paragraph exceeds the accessible emission limits of a class if the sum of the ratios of the accessible emission level to the corresponding accessible emission limit at each such wavelength is greater than unity for that combination of emission duration and wavelength distribution which results in the maximum sum.

(3) *Beam with multiple wavelengths in different ranges.* Laser or collateral radiation having wavelengths within two or more of the wavelength ranges specified in Tables I, II–A, II, III–A, and III–B of this paragraph exceeds the accessible emission limits of a class if it exceeds the applicable limits within any one of those wavelength ranges. This determination is made for each wavelength range in accordance with paragraph (d) (1) or (2) of this section.

(4) *Class I dual limits.* Laser or collateral radiation in the wavelength range of greater than 400 nm but less than or equal to 1.400 nm exceeds the accessible emission limits of Class I if it exceeds both:

(i) The Class I accessible emission limits for radiant energy within any range of emission duration specified in Table I of this paragraph, and

(ii) The Class I accessible emission limits for integrated radiance within any range of emission duration specified in Table I of this paragraph.

(e) *Tests for determination of compliance*—(1) *Tests for certification.* Tests on which certification under § 1010.2 is based shall account for all errors and statistical uncertainties in the measurement process. Because compliance with the standard is required for the useful life of a product such tests shall also account for increases in emission and degradation in radiation safety with age.

(2) *Test conditions.* Except as provided in § 1010.13, tests for compliance with each of the applicable requirements of this section and § 1040.11 shall be made during operation, maintenance, or sevice as appropriate:

(i) Under those conditions and procedures which maximize the accessible emission levels, including start-up, stabilized emission, and shut-down of the laser product; and

(ii) With all controls and adjustments listed in the operation, maintenance, and service instructions adjusted in combination to result in the maximum accessible emission level of radiation; and

(iii) At points in space to which human access is possible in the product configuration which is necessary to determine compliance with each requirement, e.g., if operation may require removal of portions of the protective housing and defeat of safety interlocks, measurements shall be made at points accessible in that product configuration; and

(iv) With the measuring instrument detector so positioned and so oriented with respect to the laser product as to result in the maximum detection of radiation by the instrument; and

(v) For a laser product other than a laser system, with the laser coupled to that type of laser energy source which is specified as compatible by the laser product manufacturer and which produces the maximum emission level of accessible radiation from that product.

(3) *Measurement parameters.* Accessible emission levels of laser and collateral radiation shall be based upon the following measurements as appropriate, or their equivalent:

(i) For laser products intended to be used in a locale where the emitted laser radiation is unlikely to be viewed with optical instruments, the radiant power (W) or radiant energy (J) detectable through a circular aperture stop having a diameter of 7 millimeters and within a circular solid angle of acceptance of 1×10^{-3} steradian with collimating optics of 5 diopters or less. For scanned laser radiation, the direction of the solid angle of acceptance shall change as needed to maximize detectable radiation, with an angular speed of up to 5 radians/second. A 50 millimeter diameter aperture stop with the same collimating optics and acceptance angle stated above shall be used for all other laser products (except that a 7 millimeter diameter aperture stop shall be used in the measurement of scanned laser radiation emitted by laser products manufactured on or before August 20, 1986.

(ii) The irradiance (W cm^{-2}) or radiant exposure (J cm^{-2} equivalent to the radiant power (W) or radiant energy (J) detectable through a circular aperture stop having a diameter of 7 millimeters and, for irradiance, within a circular solid angle of acceptance of 1×10^{-3} steradian with collimating optics of 5 diopters or less, divided by the area of the aperture stop (cm^{-2}).

(iii) The radiance (W cm^{-2} sr^{-1}) or integrated radiance (J cm^{-2} sr^{-1}) equivalent to the radiant power (W) or radiant energy (J) detectable through a circular aperture stop having a diameter of 7 millimeters and within a circular solid angle of acceptance of 1×10^{-3} steradian with collimating optics of 5 diopters or less, divided by that solid angle (sr) and by the area of the aperture stop (cm^{-2}).

(f) *Performance requirements*—(1) *Protective housing.* Each laser product shall have a protective housing that prevents human access during operation to laser and collateral radiation that exceed the limits of Class I and Table VI, respectively, wherever and whenever such human access is not necessary for the product to perform its intended function. Wherever and whenever human access to laser radiation levels that exceed the limits of Class I is necessary, these levels shall not exceed the limits of the lowest class necessary to perform the intended function(s) of the product.

(2) *Safety interlocks.* (i) Each laser product, regardless of its class, shall be provided with at least one safety interlock for each portion of the protective housing which is designed to be removed or displaced during operation or maintenance, if removal or displacement of the protective housing could permit, in the absence of such interlock(s), human access to laser or collateral radiation in excess of the accessible emission limit applicable under paragraph (f)(1) of this section.

(ii) Each required safety interlock, unless defeated, shall prevent such human access to laser and collateral radiation upon removal or displacement of such portion of the protective housing

(iii) Either multiple safety interlocks or a means to preclude removal or displacement of the interlocked portion of the protective housing shall be provided, if failure of a single interlock would allow;

(*a*) Human access to a level of laser radiation in excess of the accessible emission limits of Class IIIa. or

(*b*) Laser radiation in excess of the accessible emission limits of Class II to be emitted directly through the opening created by removal or displacement of the interlocked portion of the protective housing.

(iv) Laser products that incorporate safety interlocks designed to allow safety interlock defeat shall incorporate a means of visual or aural indication of interlock defeat. During interlock defeat, such indication shall be visible or

audible whenever the laser product is energized, with and without the associated portion of the protective housing removed or displaced.

(v) Replacement of a removed or displaced portion of the protective housing shall not be possible while required safety interlocks are defeated.

(3) *Remote interlock connector.* Each laser system classified as a Class IIIb or IV laser product shall incorporate a readily available remote interlock connector having an electrical potential difference of no greater than 130 root-mean-square volts between terminals. When the terminals of the connector are not electrically joined, human access to all laser and collateral radiation from the laser product in excess of the accessible emission limits of Class I and Table VI shall be prevented.

(4) *Key control.* Each laser system classified as a Class IIIb or IV laser product shall incorporate a key-actuated master control. The key shall be removable and the laser shall not be operable when the key is removed.

(5) *Laser radiation emission indicator.* (i) Each laser system classified as a Class II or IIIa laser product shall incorporate an emission indicator that provides a visible or audible signal during emission of accessible laser radiation in excess of the accessible emission limits of Class I.

(ii) Each laser system classified as a Class IIIb or IV laser product shall incorporate an emission indicator which provides a visible or audible signal during emission of accessible laser radiation in excess of the accessible emission limits of Class I, and sufficiently prior to emission of such radiation to allow appropriate action to avoid exposure to the laser radiation.

(iii) For laser systems manufactured on or before August 20, 1986, if the laser and laser energy source are housed separately and can be operated at a separation distance of greater than 2 meters, both laser and laser energy source shall incorporate an emission indicator as required in accordance with paragraph (f)(5) (i) or (ii) of this section. For laser systems manufactured after August 26, 1986, each separately housed laser and operation control of a laser system that regulates the laser or collateral radiation emitted by a product during operation shall incorporate an emission indicator as required in accordance with paragraph (f)(5) (i) or (ii) of this section, if the laser or operation control can be operated at a separation distance greater than 2 meters from any other separately housed portion of the laser product incorporating an emission indicator.

(iv) Any visible signal required by paragraph (f)(5) (i) or (ii) of this section shall be clearly visible through protective eyewear designed specifically for the wavelength(s) of the emitted laser radiation.

(v) Emission indicators required by paragraph (f)(5) (i) or (ii) of this section shall be located so that viewing does not require human exposure to laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI.

(6) *Beam attenuator.* (i) Each laser system classified as a Class II, III, or IV laser product shall be provided with one or more permanently attached means, other than laser energy source switch(es), electrical supply main connectors, or the key-actuated master control, capable of preventing access by any part of the human body to all laser and collateral radiation in excess of the accessible emission limits of Class I and Table VI.

(ii) If the configuration, design, or function of the laser product would make unnecessary compliance with the requirement in paragraph (f)(6)(i) of this section, the Director, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, may, upon written application by the manufacturer, approve alternate means to accomplish the radiation protection provided by the beam attenuator.

(7) *Location of controls.* Each Class IIa, II, III, or IV laser product shall have operational and adjustment controls located so that human exposure to laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI is unnecessary for operation or adjustment of such controls.

(8) *Viewing optics.* All viewing optics, viewports, and display screens incorporated into a laser product, regardless of its class, shall limit the levels of laser and collateral radiation accessible to the human eye by means of such viewing optics, viewports, or display screens during operation or maintenance to less than the accessible emission limits of Class I and Table VI. For any shutter or variable attenuator incorporated into such viewing optics, viewports, or display screens, a means shall be provided:

(i) To prevent access by the human eye to laser and collateral radiation in excess of the accessible emission limits of Class I and Table VI whenever the shutter is opened or the attenuator varied.

(ii) To preclude, upon failure of such means as required in paragraph (f)(8)(i) of this section, opening the shutter or varying the attenuator when access by the human eye is possible to laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI.

(9) *Scanning safeguard.* Laser products that emit accessible scanned laser radiation shall not, as a result of any failure causing a change in either scan velocity or amplitude, permit human access to laser radiation in excess of:

(i) The accessible emission limits of the class of the product, or

(ii) The accessible emission limits of the class of the scanned laser radiation if the product is Class IIIb or IV and the accessible emission limits of Class IIIa would be exceeded solely as result of such failure.

(10) *Manual reset mechanism.* Each laser system manufactured after August 26, 1986, and classified as a Class IV laser product shall be provided with a manual reset to enable resumption of laser radiation emission after interruption of emission caused by the use of a remote interlock or after an interruption of emission in excess of 5 seconds duration due to the unexpected loss of main electrical power.

(g) *Labeling requirements.* In addition to the requirements of §§ 1010.2 and 1010.3, each laser product shall be subject to the applicable labeling requirements of this paragraph.

(1) *Class IIa and II designations and warnings.* (i) Each Class IIa laser product shall have affixed a label bearing the following wording: "Class IIa Laser Product—Avoid Long-Term Viewing of Direct Laser Radiation."

(ii) Each Class II laser product shall have affixed a label bearing the warning logotype A (Figure 1 in this paragraph) and including the following wording:

[Position I on the logotype]

"LASER RADIATION—DO NOT STARE INTO BEAM"; and

[Position 3 on the logotype]

"CLASS II LASER PRODUCT".

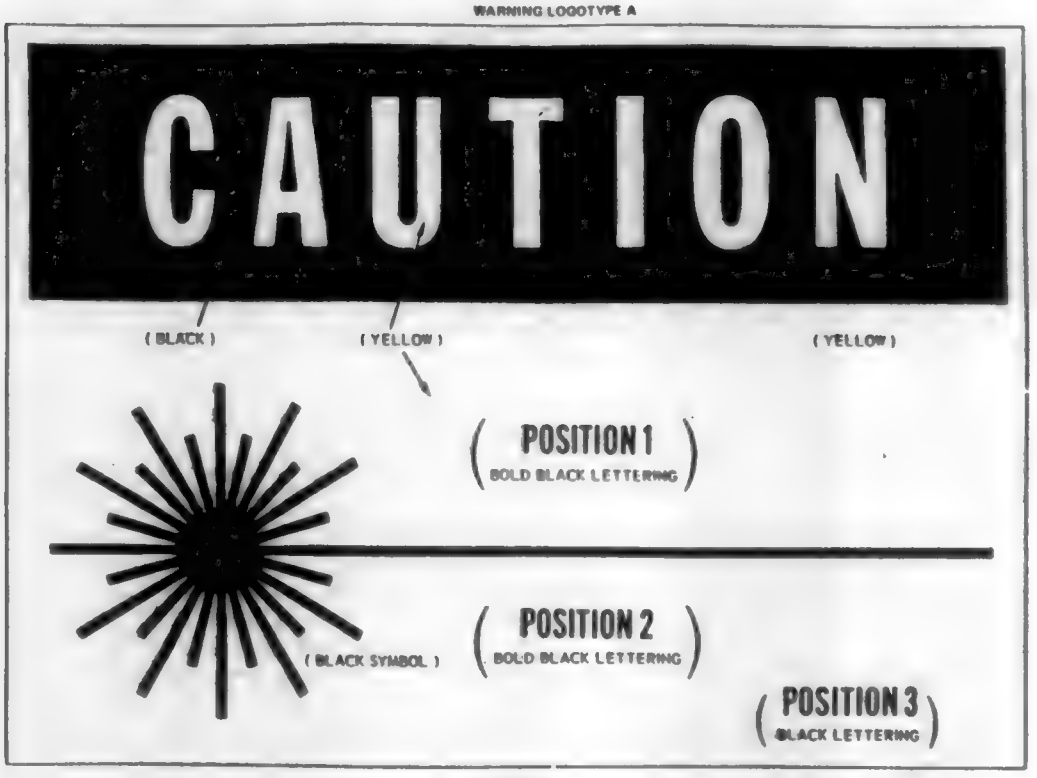


FIGURE 1

(2) *Class IIIa and IIIb designations and warnings.* (i) Each Class IIIa laser product with an irradiance less than or equal to 2.5×10^{-3} W cm^{-2} shall have affixed a label bearing the warning logotype A (Figure 1 of paragraph (g)(1)(ii) of this section) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS"; and,

[Position 3 on the logotype]

"CLASS IIIa LASER PRODUCT".

(ii) Each Class IIIa laser product with an irradiance greater than 2.5×10^{-3} W cm^{-2} shall have affixed a label bearing the warning logotype B (Figure 2 in this paragraph) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID DIRECT EYE EXPOSURE"; and,

[Position 3 on the logotype]

"CLASS IIIa LASER PRODUCT".

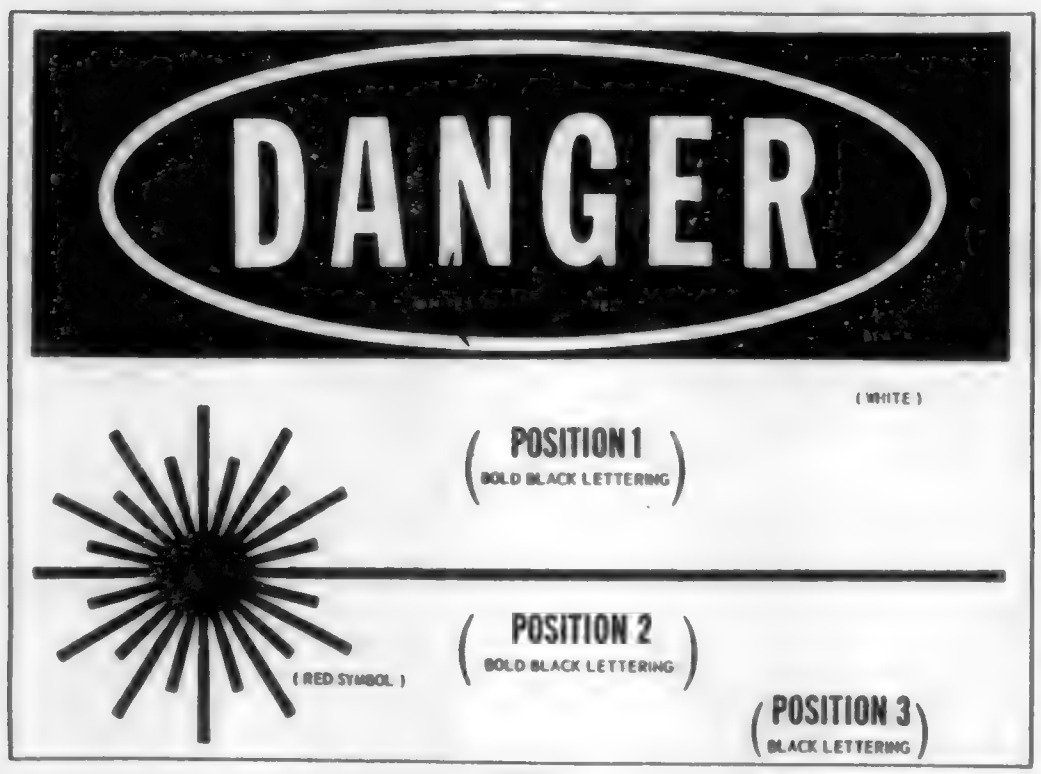


FIGURE 2

(iii) Each Class IIIb laser product shall have affixed a label bearing the warning logotype B (Figure 2 of paragraph (g)(2)(ii) of this section) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID DIRECT EXPOSURE TO BEAM"; and,

[Position 3 on the logotype]

"CLASS IIIb LASER PRODUCT".

(3) *Class IV designation and warning.* Each Class IV laser product shall have affixed a label bearing the warning logotype B (Figure 2 of paragrah (g)(2)(ii) of this section), and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION"; and,

[Position 3 on the logotype]

"CLASS IV LASER PRODUCT".

(4) *Radiation output information on warning logotype.* Each Class II, III, and IV laser product shall state in appropriate units, at position 2 on the required warning logotype, the maximum output of laser radiation, the pulse duration when appropriate, and the laser medium or emitted wavelength(s).

(5) *Aperture label.* Each laser product, except medical laser products and Class IIa laser products, shall have affixed, in close proximity to each aperture through which is emitted accessible laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI of paragraph (d) of this section, a label(s) bearing the following wording as applicable.

(i) "AVOID EXPOSURE—Laser radiation is emitted from this aperture," if the radiation emitted through such aperture is laser radiation.

(ii) "AVOID EXPOSURE—Hazardous electromagnetic radiation is emitted from this aperture," if the radiation emitted through such aperture is collateral radiation described in Table VI, item 1.

(iii) "AVOID EXPOSURE—Hazardous x-rays are emitted from this aperture," if the radiation emitted through such aperture is collateral radiation described in Table VI, item 2.

(6) *Labels for noninterlocked protective housings.* For each laser product, labels shall be provided for each portion of the protective housing which has no safety interlock and which is designed to be displaced or removed during operation, maintenance, or service, and thereby could permit human access to laser or collateral radiation in excess of the limits of Class I and Table VI. Such labels shall be visible on the protective housing prior to displacement or removal of such portion of the protective housing and visible on the product in close proximity to the opening created by removal or displacement of such portion of the protective housing, and shall include the wording:

(i) "CAUTION—Laser radiation when open. DO NOT STARE INTO BEAM." for Class II accessible laser radiation.

(ii) "CAUTION—Laser radiation when open. DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS." for Class IIIa accessible laser radiation with an irradiance less than or equal to 2.5×10^{-3} W cm^{-2}.

(iii) "DANGER—Laser radiation when open. AVOID DIRECT EYE EXPOSURE." for Class IIIa accessible laser radiation with an irradiance greater than 2.5×10^{-3} W cm^{-2}.

(iv) "DANGER—Laser radiation when open. AVOID DIRECT EXPOSURE TO BEAM." for Class IIIb accessible laser radiation.

(v) "DANGER—Laser radiation when open. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION." for Class IV accessible laser radiation.

(vi) "CAUTION—Hazardous electromagnetic radiation when open." for collateral radiation in excess of the accessible emission limits in Table VI, item 1 of paragraph (d) of this section.

(vii) "CAUTION—Hazardous x-rays when open." for collateral radiation in excess of the accessible emission limits in Table VI, item 2 of paragraph (d) of this section.

(7) *Labels for defeatably interlocked protective housings.* For each laser product, labels shall be provided for each defeatably interlocked (as described in paragraph (f)(2)(iv) of this section) portion of the protective housing which is designed to be displaced or removed during operation, maintenance, or service, and which upon interlock defeat could permit human access to laser or collateral radiation in excess of the limits of Class I or Table VI. Such labels shall be visible on the product prior to and during interlock defeat and in close proximity to the opening created by the removal or displacement of such portion of the protective housing, and shall include the wording:

(i) "CAUTION—Laser radiation when open and interlock defeated. DO NOT STARE INTO BEAM." for Class II accessible laser radiation.

(ii) "CAUTION—Laser radiation when open and interlock defeated. DO NOT STARE INTO BEAM OR VIEW

DIRECTLY WITH OPTICAL INSTRUMENTS." for Class IIIa accessible laser radiation with an irradiance less than or equal to 2.5×10^{-3} W cm^{-2}.

(iii) "DANGER—Laser radiation when open and interlock defeated. AVOID DIRECT EYE EXPOSURE." for Class IIIa accessible laser radiation when an irradiance greater than 2.5×10^{-3} W cm^{-2}.

(iv) "DANGER—Laser radiation when open and interlock defeated. AVOID DIRECT EXPOSURE TO BEAM." for Class IIIb accessible laser radiation.

(v) "DANGER—Laser radiation when open and interlock defeated. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION." for Clas IV accessible laser radiation.

(vi) "CAUTION—Hazardous electromagnetic radiation when open and interlock defeated." for collateral radiation in excess of the accessible emission limits in Table VI. item 1 of paragraph (d) of this section.

(vii) "CAUTION—Hazardous x-rays when open and interlock defeated." for collateral radiation in excess of the accesible emission limits in Table VI. item 2 of paragraph (d) of this section.

(8) *Warning for visible and/or invisible radiation.* On the labels specified in this paragraph, if the laser or collateral radiation referred to is:

(i) Invisible radiation, the word "invisible" shall appropriately precede the word "radiation"; or

(ii) Visible and invisible radiation, the words "visible and invisible" or "visible and/or invisible" shall appropriately precede the word "radiation."

(iii) Visible laser radiation only, the phrase "laser light" may replace the phrase "laser radiation."

(9) *Positioning of labels.* All labels affixed to a laser product shall be positioned so as to make unnecessary, during reading, human exposure to laser radiation in excess of the accessible emission limits of Class I radiation or the limits of collateral radiation established to Table VI of paragraph (d) of this section.

(10 *Label specifications.* Labels required by this section and § 1040.11 shall be permanently affixed to, or inscribed on, the laser product, legible, and clearly visible during operation, maintenance, or service, as appropriate. If the size configuration, design, or function of the laser product would preclude compliance with the requirements for any required label or would render the required wording of such label inappropriate or ineffective, the Director, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, on the Director's own initiative or upon written application by the manufacturer, may approve alternate means of providing such label(s) or alternate wording for such label(s) as applicable.

(h) *Informational requirements*—(1) *User information.* Manufacturers of laser products shall provide as an integral part of any user instruction or operation manual which is regularly supplied with the product, or, if not so supplied, shall cause to be provided with each laser product:

(i) Adequate instructions for assembly, operation, and maintenance, including clear warnings concerning precautions to avoid possible exposure to laser and collateral radiation in excess of the accessible emission limits in Tables I, II-A, III–A, III-B, and VI of paragraph (d) of this section, and a schedule of maintenance necessary to keep the product in compliance with this section and § 1040.11.

(ii) A statement of the magnitude, in appropriate units, of the pulse durations(s), maximum radiant power and, where applicable, the maximum radiant energy per pulse of the accessible laser radiation detectable in each direction in excess of the accessible emission limits in Table I of paragraph (d) of this section determined under paragraph (e) of this section.

(iii) Legible reproductions (color optional) of all labels and hazard warnings required by paragraph (g) of this section and § 1040.11 to be affixed to the laser product or provided with the laser product, including the information required for positions 1, 2, and 3 of the applicable logotype (Figure 1 of paragraph (g)(1)(ii) or Figure 2 or paragragh (g)(2)(ii) of this section). The corresponding position of each label affixed to the product shall be indicated or, if provided with the product, a statement that such labels could not be affixed to the product but were supplied with the product and a statement of the form and manner in which they were supplied shall be provided.

(iv) A listing of all controls, adjustments, and procedures for operation and maintenance, including the warning "Caution—use of controls or adjustments or performance of procedures other than those specified herein may result in hazardous radiation exposure."

(v) In the case of laser products other than laser systems, a statment of the compatibility requirements for a laser energy source that will assure compliance of the laser product with this section and § 1040.11.

(vi) In the case of laser products classified with a 7 millimeter diameter aperture stop as provided in paragraph (e)(3)(i) of this section, if the use of a 50 millimeter diameter aperture stop would result in a higher classification of the product, the following warning shall be included in the user information: "CAUTION—The use of optical instruments with this product will increase eye hazard."

(2) *Purchasing and servicing information.* Manufacturers of laser products shall provide or cause to be provided:

(i) In all catalogs, specification sheets, and descriptive brochures pertaining to each laser product, a legible reproduction (color optional) of the class designation and warning required by paragraph (g) of this section to be affixed to that product, including the information required for positions 1, 2, and 3 of the applicable logotype (Figure 1 of paragraph (g)(1)(ii) or Figure 2 of paragraph (g)(2)(ii) of this section).

(ii) To servicing dealers and distributors and to others upon request at a cost not to exceed the cost of preparation and distribution, adequate instructions for service adjustments and service procedures for each laser product model, including clear warnings and precautions to be taken to avoid possible exposure to laser and collateral radiation in excess of the accessible emission limits in Tables I, II–A, II, III–A, III–B, and VI of paragraph (d) of this section, and a schedule of maintenance necessary to keep the product in compliance with this section and § 1040.11; and in all such service instructions, a listing of those controls and procedures that could be utilized by persons other than the manufacturers or the manufacturer's agents to increase accessible emission levels of radiation and a clear description of the location of displaceable portions of the protective housing that could allow human access to laser or collateral radiation in excess of the accessible emission limits in Tables I, II–A, II, III–A, III–B, and VI of paragraph (d) of this section. The instructions shall include protective procedures for service personnel to avoid exposure to levels of laser and collateral radiation known to be hazardous for each procedure or sequence of procedures to be accomplished, and legible reproductions (color optional) of required labels and hazard warnings.

(i) *Modification of a certified product.* The modification of a laser product, previously certified under § 1010.2, by any person engaged in the business of manufacturing, assembling, or modifying laser products shall be construed as manufacturing under the act if the

modification affects any aspect of the product's performance or intended function(s) for which this section and § 1040.11 have an applicable requirement. The manufacturer who performs such modification shall recertify and reidentify the product in accordance with the provisions of §§ 1010.2. and 1010.3.

§ 1040.11 Specific purpose laser products.

(a) *Medical laser products.* Each medical laser product shall comply with all of the applicable requirements of § 1040.10 for laser products of its class. In addition, the manufacturer shall:

(1) Incorporate in each Class III or IV medical laser product a means for the measurement of the level of that laser radiation intended for irradiation of the human body. Such means may have an error in measurement of no more than 20 percent when calibrated in accordance with paragraph (a)(2) of this section. Indication of the measurement shall be in International System Units. The requirements of this paragraph do not apply to any laser radiation that is all of the following:

(i) Of a level less than the accessible limits of Class IIIa; and

(ii) Used for relative positioning of the human body; and

(iii) Not used for irradiation of the human eye for ophthalmic purposes.

(2) Supply with each Class III or IV medical laser product instructions specifying a procedure and schedule for calibration of the measurement system required by paragraph (a)(1) of this section.

(3) Affix to each medical laser product, in close proximity to each aperture through which is emitted accessible laser radiation in excess of the accessible emission limits of Class I, a label bearing the wording: "Laser aperture."

(b) *Surveying, leveling, and alignment laser products.* Each surveying, leveling, or alignment laser product shall comply with all of the applicable requirements of § 1040.10 for a Class, I, IIa, II or IIIa laser product and shall not permit human access to laser radiation in excess of the accessible emission limits of Class IIIa.

(c) *Demonstration laser products.* Each demonstration laser product shall comply with all of the applicable requirements of § 1040.10 for a Class I, IIa, II, or IIIa laser product and shall not permit human access to laser radiation in excess of the accessible emission limits of Class I and, if applicable, Class IIa, Class II, or Class IIIa.

Dated: July 12, 1985.

Joseph P. Hile,

Associate Commissoner for Regulatory Affairs.

[FR Doc. 85-19518 Filed 8-19-85; 8:45 am]

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Federal Register

Tuesday
August 20, 1985

Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 92

Importation of Birds; Withdrawal of Proposed Rule

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-089]

Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: A document published in the **Federal Register** on May 3, 1985, proposed to amend the regulations in 9 CFR Part 92 to establish provisions to allow birds originating in the United States and the offspring from such birds to be imported into the United States from an approved closed breeding facility, without quarantine in the United States, under specified conditions. This document withdraws the proposal. It appears that the adoption of the proposal would cause unacceptable risk of the introduction of communicable diseases of poultry into the United States.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel S. Richeson, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) contain provisions concerning the importation of birds into the United States. Section 92.11(e) of the regulations provides, with certain exceptions, that each lot of pet birds, commercial birds, zoological birds, or research birds imported from any part of the world shall be entered at certain ports and quarantined at a United States Department of Agriculture quarantine facility or at a privately-operated quarantine facility approved by the Deputy Administrator for Veterinary Services. The quarantine requirements were established to help ensure that birds imported into the United States are free from exotic Newcastle diseases, forms of avian influenza lethal to poultry, and other communicable diseases of poultry.

A document published in the **Federal Register** on May 3, 1985 (50 FR 18865-18869), proposed to amend the regulations by establishing provisions to allow birds originating in the United States and the offspring from such birds to be imported into the United States from an approved closed breeding facility, without quarantine in the United States, under specified conditions. This document withdraws the proposal.

The document of May 3, 1985, invited the submission of written comments on or before June 3, 1985. Also, a document published in the **Federal Register** on June 17, 1985, reopened the comment period until July 17, 1985.

Approximately 850 comments were received. Seven comments were in favor of the proposal. The remainder of the comments either opposed the proposal or expressed reservations concerning the proposal. The comments in opposition to the proposal raised many issues.

The comments included issues concerning supervision of a closed breeding facility. The proposed rule provided for a closed breeding facility to receive supervision from Veterinary Services personnel and a salaried veterinarian of the national veterinary services of the country in which the facility is located. In this regard, it was intended that Veterinary Services personnel would make periodic visits to the closed breeding facility. Further, the proposed rule provided for such salaried veterinarian to perform certain functions as needed, and otherwise to inspect the facility at least once each calendar week. Many of the commenters asserted that these provisions concerning supervision would not be adequate to ensure compliance with the proposed rule. Many of the commenters specifically asserted that such provisions would not be adequate to ensure that unauthorized birds would not be improperly entered into the facility.

Also, many of the commenters asserted that the proposed construction requirements for a closed breeding facility, such as allowing for open-air ventilation for buildings housing birds, would be inadequate to ensure that communicable diseases of poultry would not be spread to the facility through airborne transmission of disease producing organisms.

It has been determined that these comments have merit and provide a basis for withdrawing the proposal.

Authority: 21 U.S.C. 111, 134a, 134b, 134c, 134d, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 16th day of August 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-20047 Filed 8-19-85; 11:35 am]

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Part V

Department of Energy

Energy Information Administration

Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas; Notice

DEPARTMENT OF ENERGY

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to the industrial users in the form of a surcharge. The statue requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prics and the high cost gas incremental pricing threshold which are to be effective September 1, 1985. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, D.C. 20585, Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative rule price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceilings for the State or the alternative fuel price ceilings for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama	[illegible]
Arizona [1]	3.35
Arkansas [1]	3.13
California	[illegible]
Colorado [2]	3.32
Connecticut [1]	3.50
Delaware [1]	3.62
Florida	3.26
Georgia [1]	3.40
Idaho [2]	3.32
Illinois	[illegible]
Indiana [1]	3.53
Iowa [1]	3.42
Kansas	3.33
Kentucky [1]	3.53
Louisiana	[illegible]
Maine [1]	3.50
Maryland	3.52
Massachusetts	3.45
Michigan [1]	3.53
Minnesota [1]	3.42
Mississippi [1]	3.40
Missouri [1]	3.42
Montana [2]	3.32
Nebraska [1]	3.42
Nevada [1]	3.35
New Hampshire [1]	3.50
New Jersey	3.53
New Mexico	[illegible]
New York [1]	[illegible]
North Carolina [1]	3.40
North Dakota [1]	3.42
Ohio	3.35
Oklahoma [1]	3.13
Oregon [1]	3.35
Pennsylvania	3.57
Rhode Island [1]	3.50
South Carolina	3.37
South Dakota [1]	3.42
Tennessee [1]	3.40
Texas [1]	3.13
Utah [2]	3.32
Vermont [1]	3.50
Virginia [1]	[illegible]
Washington [1]	3.35
West Virginia [1]	[illegible]
Wisconsin [1]	3.53
Wyoming [2]	3.32

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II—Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during June 1985 was $29.11 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective September 1, 1985, is $6.52 per million BTU's.

Section III—Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of April 1985, May 1985, and June 1985.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective September 1, 1985, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, April 1985, May 1985, and June 1985. Reported prices for sales in April 1985 were adjusted by the percent change in the nationwide volume-weighted average price from April 1985 to June 1985. Prices for May 1985 were similarly adjusted by the percent change in the nationwide volume-weighted average price from May 1985 to June 1985. The volume-weighted 3-month average of the adjusted April 1985 and May 1985, and the reported June 1985 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State or Local), and the military are excluded.

by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of April 1985, May 1985, and June 1985. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United Stats. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending August 14, 1985, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of June 1985. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	
Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	
Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	
Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, D.C., August 16, 1985.

L.A. Pettis,

Acting Deputy Administrator, Energy Information Administration.

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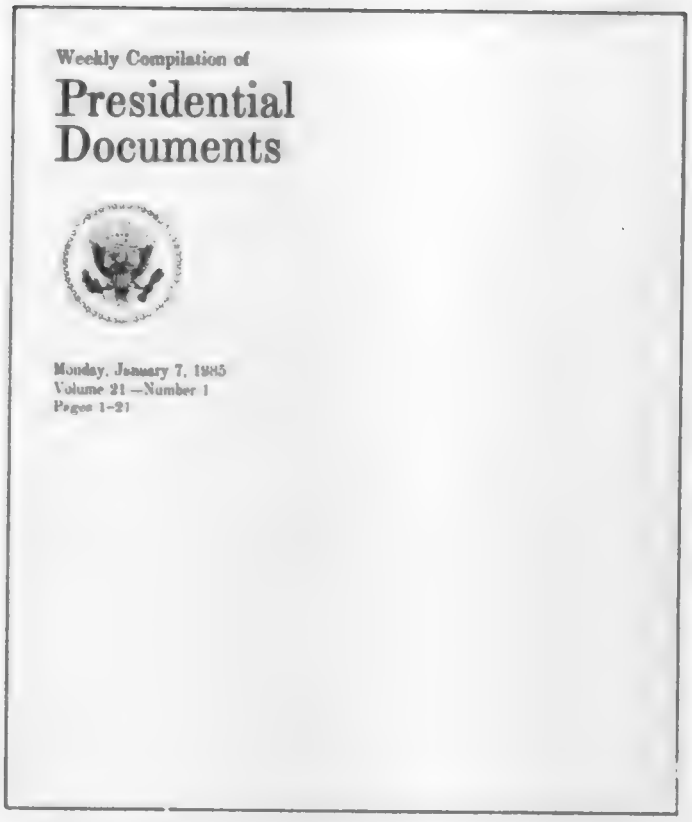
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Federal Register
Vol. 50, No. 162
Wednesday, August 21, 1985

Presidential Documents

Title 3—

The President

Proclamation 5363 of August 15, 1985

Modification of the Effective Date for Increased Rates of Duty for Certain Pasta Articles From the European Economic Community

By the President of the United States of America

A Proclamation

1. On June 20, 1985, I determined pursuant to section 301(a) of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2411(a)), that the preferential tariffs granted by the European Economic Community (EEC) on imports of lemons and oranges from certain Mediterranean countries deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pts. 5 and 6)), are unreasonable and discriminatory, and constitute a burden or restriction on U.S. commerce. I further determined, pursuant to section 301 (a) and (b) of the Act, that the appropriate course of action in response to such practices is to withdraw concessions with respect to certain imports from the EEC and to increase the U.S. import duties on the pasta articles provided for in items 182.35 and 182.36 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) that are the product of any member country of the EEC. Accordingly, in Proclamation 5354 of June 21, 1985 (50 F.R. 26143), the increased duties with respect to such pasta articles from the EEC were proclaimed to be effective on or after the date that was 15 days after the date on which that proclamation was signed.

2. In light of discussions currently being conducted between the United States and the EEC, I have decided that it is appropriate to delay the effective date of the increased rates of duty with respect to such pasta articles in order to encourage a mutually acceptable solution to the situation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to sections 301 (a) and (b) and section 604 of the Trade Act of 1974, do proclaim that:

1. Proclamation 5354 of June 21, 1985, is superseded to the extent inconsistent with this proclamation.

2. The increased duties imposed by Proclamation 5354 are suspended with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 6, 1985, and before November 1, 1985. Any articles entered, or withdrawn from warehouse for consumption, on or after the effective date of Proclamation 5354 and before November 1, 1985, shall be subject to duty and the entries thereof liquidated or reliquidated as if the increased duties imposed by that proclamation were not in effect.

3. The United States Trade Representative is hereby authorized to suspend, modify, or terminate the increase in U.S. import duties on pasta articles, which was imposed by Proclamation 5354, upon the publication in the **Federal Register** of his determination that such suspension, modification, or termination is justified by actions taken by the EEC toward a mutually acceptable resolution of this dispute.

4. This proclamation shall be effective on and after the date of its signing.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-20090
Filed 8-19-85; 2:21 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 162
Wednesday, August 21, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 2656S]

General Administrative Regulations—Standards for Approval; Agency Sales and Service Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts as final the interim rule which established a new subpart in Chapter IV of Title 7 of the Code of Federal Regulations, prescribing certain financial standards and financial information reporting requirements applicable to all Agency Sales and Service Agreements, to be known as 7 CFR Part 400, Subpart C, General Administrative Regulations—Standards for Approval; Agency Sales and Service Agreement.

The intended effect of this action is to make final the interim rule published on Monday, December 13, 1982, at 47 FR 55886, establishing financial standards and financial reporting requirements applicable to private entities entering into Agency Sales and Service Agreements with FCIC. This action is taken under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: September 20, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is September 17, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Monday, December 13, 1982, FCIC published an interim rule issuing the General Administrative Regulations—Standards for Approval; Agency Sales and Service Agreement (7 CFR Part 400, Subpart C) in the **Federal Register** at 47 FR 55886, providing financial standards and financial reporting requirements applicable to private entities entering into an Agency Sales and Service Agreement with FCIC.

Merritt W. Sprague, Manager, FCIC, determined that an emergency situation existed which warranted publication of the interim rule without providing a period of public comment prior to its publication because the Agency Sales and Service Agreement for Spring 1983, to which these standards for approval applied, were shortly to be signed by those entities entering into the agreement with FCIC. The companies executing these agreements had to know what standards they had to comply with before they could execute the agreement.

Public comment on this rule was solicited for 60 days after the publication of this rule in the **Federal Register**. The rule was scheduled for review following the 60-day comment period so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible, however, no comments were received. Therefore, the interim rule as published is hereby adopted.

List of Subjects in 7 CFR Part 400

Crop insurance, Administrative practice and procedure, Agency sales and service agreements, Application and plan of operation, Standards for approval.

Accordingly, the interim rule published at 47 FR 55886, December 13, 1982, which added Subpart C to Part 400 is adopted as a final rule without change.

1. The Authority citation for 7 CFR Part 400, Subpart C is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on August 5, 1985.

Michael A Bronson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–20008 Filed 8–20–85; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Parts 420, 421, 424, 432, 434, 435, 436, and 437

[Docket No. 2562S]

Crop Insurance Regulations; Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on

December 21, 1984 (49 FR 49585). The interim rule amended the Grain Sorghum, Cotton, Rice, Corn, Tobacco (Dollar Plan), Tobacco (Quota Plan), Tobacco (Guarantee Plan), and Canning and Freezing Sweet Corn Crop Insurance regulations, effective for the 1985 crop year only, by changing the date for filing contract changes as specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for acturial purposes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for customers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On December 21, 1984, FCIC published an interim rule, effective upon publication in the **Federal Register** at 49 FR 49585, amending the Grain Sorghum, Cotton, Rice, Corn, Tobacco (Dollar Plan), Tobacco (Quota Plan), Tobacco (Guarantee Plan), and Canning and Freezing Sweet Corn Crop Insurance Regulations (7 CFR Parts 420, 421, 424, 432, 434, 435, 436, and 437), effective for the 1985 crop year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Parts 420, 421, 424, 432, 434, 435, 436, and 437

Crop Insurance, Grain sorghum, Cotton, Rice, Corn, Tobacco (Dollar Plan), Tobacco (Quota Plan), Tobacco (Guarantee Plan), Canning and freezing sweet corn.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on December 21, 1985, at 49 FR 49585, is hereby adopted as final.

Authority: Secs. 508, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on July 1, 1985.

Michael Bronson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–20009 Filed 8–20–85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 358]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 358 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period August 23–29, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 358 (§ 908.658) is effective for the period August 23–29, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1984–85. The committee met publicly on August 13, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand for Valencia oranges is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 7 CFR Part 908 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 908.658 is added to read as follows:

§ 908.658 Valencia Orange Regulation 358.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period August 23, 1985, through August 29, 1985, are established as follows:

(a) District 1: 240,000 cartons;
(b) District 2: 410,000 cartons;
(c) District 3: Unlimited cartons.

Dated: August 15, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–19916 Filed 8–20–85; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 84–016F]

Imported Product; Withdrawal of Three Countries From the List of Those Eligible To Import Meat Products into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On May 6, 1985, the Food Safety and Inspection Service (FSIS) published a proposed rule to withdraw the countries of Bulgaria, Colombia and Luxembourg from the list of countries eligible to have their cattle, sheep, swine, and goat products imported into the United States under the Federal Meat Inspection Act (FMIA). To be eligible to have its meat products imported into the United States, the FMIA requires that the meat inspection system of the exporting country assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations thereunder as applied to official establishments in the United States. The countries of Bulgaria, Colombia, and Luxembourg have indicated in written responses, or lack of response, to two Food Safety and Inspection Service cables, that they do not wish to remain eligible to have their products imported into the United States. In addition, these countries have no certified plants, and have not exported meat products to the United States in several years. FSIS solicited comments on the proposed rule. No comments were received. Therefore, FSIS is withdrawing Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their meat products imported into the United States.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: William Havlik, Acting Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule would only formally delist three countries that have not exported meat products to the United States for several years.

Effect on Small Entities

The Administrator has determined that this final rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 because there are no domestic importers of meat products from these countries.

Background

On May 6, 1985, FSIS published in the **Federal Register** (50 FR 19029) a proposed rule to withdraw the countries of Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their cattle, sheep, swine, and goat products imported into the United States under the FMIA. Under the FMIA, the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Secretary has delegated to the Administrator of the Food Safety and Inspection Service the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported meat products are in 9 CFR Part 327. In these regulations, the Administrator has established procedures by which foreign countries desiring to import meat or meat food products into the United States may become eligible to do so.

Part 327 of the Federal meat inspection regulations requires that foreign countries maintain their meat inspection programs at a level "at least equal to" the requirements of the FMIA and regulations thereunder as applied to official establishments in the United States if they wish to obtain and/or retain their eligibility to import meat products into the United States. Maintenance of eligibility depends on results of periodic reviews of the foreign meat inspection system by an FSIS representative and submission of information and documentation so that the Administrator can determine their eligibility status.

The Administrator has authority to withdraw the eligibility of a foreign country to import meat products into the United States under § 327.2(a)(4) of the regulations (9 CFR 327.2(a)(4)).

> * * * Whenever it shall be determined by the Administrator that the system of meat inspection maintained by such foreign country does not assure compliance with requirements at least equal to all the inspection, building construction standards, and other requirements of the Act and the regulations in this subchapter as applied to the official establishments in the United States: * * *

Recent changes in domestic meat inspection requirements, including provisions contained in the 1981 Farm Bill, which amended section 20 of the FMIA (21 U.S.C. 620) dealing with imports, prompted FSIS to require demonstrated compliance in certain technical areas to maintain country eligibility. Special evaluations of country performance resulted in the February 1984 withdrawal of six countries actively exporting to the United States from the list of eligible countries because of their inability to comply with United States requirements. Since that time, four of the six countries have corrected their deficiencies and have regained their eligibility.

This eligibility evaluation was subsequently extended to eligible foreign countries that had not exported meat products to the United States in several years and had no certified plants. In March 1984, telegrams were sent to 11 such countries including Bulgaria, Colombia, and Luxembourg.

requesting that they inform FSIS of their interest in remaining on the list of eligible countries and of their plans for complying with all United States requirements. These countries would have to provide assurance and verification that all provisions contained in the 1981 Farm Bill, amending section 20 of the FMIA, including detailed technical procedures for residue testing, would be met. The telegrams stated that "a no response" would be considered a desire to be removed from the eligible list. Two of the 11 countries—Bulgaria and Colombia—failed to respond to that telegram. A third, Luxembourg, indicated its desire to remain on the list; the Agency then requested preparation of supporting documents and data necessary to remain eligible.

In June 1984, telegrams were sent to Bulgaria and Colombia notifying them that since FSIS had not received a reply, the Agency presumed no interest on their part in remaining on the list. On June 28, 1984, Colombia cabled its desire to be removed. On October 10, 1984, Luxembourg cabled its desire to be removed. Since no response has been received from Bulgaria, FSIS has determined that Bulgaria has no interest in remaining on the list.

Therefore, pursuant to § 327.2 of the regulations (9 CFR 327.2), the Administrator is withdrawing Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their cattle, sheep, swine, and goat products imported into the United States.

If, at a future date, Bulgaria, Colombia or Luxembourg desire to be placed on the list of eligible countries and the Administrator of FSIS is satisfied that the meat inspection officials of that country have provided verification that their system meets all the provisions of the FMIA and regulations thereunder, that country may again be added to the list of countries eligible to have their meat products imported into the United States.

Comments on the Proposed Rule

FSIS did not receive any comments in response to the proposed rule.

Final Rule

After careful consideration of all relevant information available to FSIS, the Administrator has determined that the proposed rule should be published as a permanent regulation as set forth below.

List of Subjects in 9 CFR Part 327

Imported products, Meat inspection.

PART 327—[AMENDED]

1. The authority citation for Part 327 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

§ 327.2 [Amended]

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) is amended by removing the following countries from the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States:

Bulgaria
Colombia
Luxembourg

Done at Washington, D.C., on August 8, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-19987 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 85-141]

Customs Regulations Amendment Concerning Privileges Extended by Egypt to Aircraft of U.S. Registry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by revising the listing for Egypt in the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. By a previous Treasury Decision, Egypt was added to this list, but with a nation limiting the privileges to withdrawal from Customs or internal revenue custody of aircraft fuels or lubricants. However, the Department of Commerce has now informed Customs that Egypt extends privileges to U.S. registered aircraft with respect to exemption from Customs duties and internal revenue taxes on importation of liquor, materials and equipment related to catering, and aircraft spare parts. Therefore, the U.S. will now extend reciprocal privileges to Egyptian registered aircraft and the notation limiting the privileges to withdrawals of aircraft fuels and lubricants is being removed.

EFFECTIVE DATE: This exemption became effective on May 14, 1985.

FOR FURTHER INFORMATION CONTACT: Joni Laura-Foulon, Entry Procedures & Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes, for use as supplies (including equipment), ground equipment, maintenance, or repair of the aircraft. This privilege is granted if the Secretary of Commerce finds, and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to U.S. registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce previously found, and advised the Secretary of the Treasury that, with respect to aircraft fuels and lubricants, Egypt allows privileges substantially reciprocal to those provided for in 19 U.S.C. 1309, 1317, to aircraft registered in the U.S. and engaged in foreign trade. Therefore, by T.D. 74-3, published in the **Federal Register** on December 21, 1973 (38 FR 34996), corresponding privileges were extended to aircraft registered in Egypt and engaged in foreign trade.

The Commerce Department has now determined, and conveyed such information to the Customs Service, that Egypt accords aircraft of U.S. registry privileges with respect to exemption from Customs duties and internal revenue taxes imposed by reason of importation of liquor, materials and equipment related to catering, and aircraft spare parts, substantially reciprocal to those provided by 19 U.S.C. 1309, 1317. This finding became effective on May 14, 1985. The privileges Egypt accords to aircraft of U.S. registry with respect to exemption from Customs duties and internal revenue taxes imposed by reason of importation of aircraft fuels and lubricants remains unchanged. This document does, however, require that the notation in

§ 10.59(f), Customs Regulations (19 CFR 10.59(f)), limiting the privileges accorded to Egyptian registered aircraft to exemptions for fuel and lubricants be removed.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), it is certified that the change set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis of other requirements of 5 U.S.C. 603 and 604.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the expansion of a previously granted exemption for which there is a statutory basis, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary, and pursuant to 5 U.S.C. 553(d)(1), a delayed effective date is not required.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1622, 1624.

Section 10.59 also issued under 19 U.S.C. 1309, 1317.

§ 10.59 [Amended]

2. Section 10.59(f) is amended by removing from the column headed "Exceptions if any-A noted-", the words "Applicable only as to aircraft fuels and lubricants," opposite the listing for Egypt.

3. Section 10.59(f) is further amended by adding, to the column headed "Treasury Decisions", opposite the listing for Egypt, the number 85–141.

Delegation of Signing Authority

By virtue of the authority vested in the President by section 5 of the Act of May 28, 1908, 35 Stat. 425, as amended (46 U.S.C. 104), the President has delegated the authority to issue this list of nations to the Secretary of the Treasury by E.O. 10289, September 17, 1951. By Treasury Department Order 165–25, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to § 10.59(f) and other sections of the Customs Regulations relating to lists of countries entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82–201), dated October 13, 1982, the Commissioner delegated authority to amend this section to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Director, Regulations Control and Disclosure Law Division.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

August 15, 1985.

[FR Doc. 85–19949 Filed 8–20–85; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C–0051]

Listing of Color Additives for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of June 17, 1985, for a regulation listing C.I. Vat Orange 1 (previously referred to by FDA as dibromodibenzo (*b,def*)chrysene-7,14-dione) as a color additive for coloring contact lenses. This action responds to a petition filed by Custom Tint Laboratories, Inc.

DATE: Effective date confirmed: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of May 16, 1985 (50 FR 20405), FDA amended the color additive regulations to provide for the safe use of C.I. Vat Orange 1 (previously referred to by FDA as dibromodibenzo (*b,def*) chrysene-7, 14-dione) as a color additive for coloring contact lenses. The latter name was used by FDA when it published the notice of filing for the color additive petition (CAP 3C0169). After careful consideration of the description of the substance, FDA concluded that the name of the color additive is more properly C.I. Vat Orange 1.

In the final rule, FDA gave interested persons until June 17, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of May 16, 1985, for C.I. Vat Orange 1 should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the May 16, 1985, final rule. Accordingly, the amendments promulgated thereby became effective June 17, 1985.

Dated: August 14, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–19935 Filed 8–20–85; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 74

[Docket No. 84C-0223]

[Phthalocyaninato(2-)] Copper; Listing as a Color Additive for Coloring Polybutester Nonabsorbable Sutures; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of May 29, 1985, for a regulation listing [Phthalocyaninato(2-)] copper as a color additive for coloring polybutester nonabsorbable sutures that are used in general and ophthalmic surgery. This action responds to a petition filed by Davis and Geck, American Cyanamid Co.

DATE: Effective date confirmed: May 29, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the Federal Register of April 25, 1985 (50 FR 16227), FDA amended the color additive regulations to provide for the safe use of [phthalocyaninato(2-)] copper as a color additive for coloring polybutester nonabsorbable sutures for general and ophthalmic surgery.

In the final rule, FDA gave interested persons until May 28, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the Federal Register of April 25, 1985, for [phthalocyaninato(2-)] copper should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 25, 1985, final rule. Accordingly, the amendments promulgated thereby became effective May 29, 1985.

Dated: August 14, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-19839 Filed 8-20-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 556 and 558

Tolerances for Residues of New Animal Drugs in Food; New Animal Drugs for Use in Animal Feeds; Halofuginone Hydrobromide

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Hoechst Corp. The NADA provides for the use of halofuginone hydrobromide for the prevention of coccidiosis in broiler chickens. The regulations are also amended to establish a tolerance and the safe concentrations for halofuginone in edible chicken tissues.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: American Hoechst Corp., Animal Health Division, Route 202-206 North, Somerville, NJ 08876, has filed NADA 130-951 for Stenorol® Premix (halofuginone hydrobromide). The premix is used in making complete feeds for broiler chickens for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.* The application is approved and the regulations amended accordingly. Additionally, the regulations are amended to establish a tolerance and the safe concentrations for halofuginone hydrobromide residues in edible chicken tissues. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm . 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

List of Subjects

21 CFR Part 556

Animal drugs, Foods, Residues.

21 CFR Part 558

Animal drugs, Animal Feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. By adding new § 556.308 to read as follows:

§ 556.308 Halofuginone hydrobromide.

The marker residue selected to monitor for total residues of halofuginone in broilers is parent halofuginone and the target tissue selected is liver. A tolerance is established in broilers of 0.1 part per million for parent halofuginone in liver. A marker residue concentration of 0.1 part per million in liver corresponds to a concentration for total residues of halofuginone of 0.3 part per million in liver. The safe concentrations for total residues of halofuginone in the uncooked edible tissues of broilers are 0.1 part per million in muscle, 0.3 part per million in liver, and 0.2 part per million in skin with adhering fat. As used in this section, "tolerance" refers to a concentration of a marker residue in the target tissue selected to monitor for total residues of the drug in the target animal, and "safe concentrations" refers

to the concentrations of total residues considered safe in edible tissues.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. By adding new § 558.265 to read as follows:

§ 558.265 Halofuginone hydrobromide.

(a) *Approvals.* Premix level of 6 grams per kilogram (2.72 grams per pound) to No. 012799 in § 510.600(c) of this chapter.

(b) *Assay limits.* Complete feed 75 to 125 percent of labeled amount.

(c) [Reserved]

(d) *Related tolerances.* See § 556.308 of this chapter.

(e) *Conditions of use.* It is used in feed for broiler chickens as follows:

(1) *Amount.* 2.72 grams per ton.

(2) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenellla, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(3) *Limitations.* Feed continuously as sole ration; withdraw 4 days before slaughter; do not feed to layers; avoid contact with skin, eyes, or clothing; keep out of lakes, ponds, or streams.

Dated: August 15, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–19938 Filed 8–20–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500, 515 and 520

Foreign Assets Control Regulations, Cuban Assets Control Regulations and Foreign Funds Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is making a number of technical and conforming amendments to the Foreign Assets, Cuban Assets and Foreign Funds Control Regulations. None of these amendments changes the effect of any regulation. Sections 500.701 and 515.701 are being amended to correct citations of the statutory penalty provision in the Trading With the Enemy Act, as amended by Pub. L. 95–223 (1977). Section 520.701 is being amended to correct the citation of the statutory penalty provision in the Trading With the Enemy Act, as amended, and to reflect the increase in the maximum penalty for violating the act.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, 202/376–0395.

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedures Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Similarly, because the amendments are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291, of February 19, 1981, dealing with federal regulations.

List of Subjects in 31 CFR Parts 500, 515 and 520

Foreign assets, Foreign trade, Penalties.

PART 500—[AMENDED]

31 CFR Part 500 is amended as follows:

1. The authority citation for Part 500 is revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

2. Section 500.701(a) is revised to read as follows:

§ 500.701 Penalties.

(a) Attention is directed to section 16 of the Trading With the Enemy Act, as amended, which provides:

Whoever shall willfully violate any of the provisions of the Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

* * * * *

PART 515—[AMENDED]

31 CFR Part 515 is amended as follows:

1. The authority citation for Part 515 is revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp.; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174, E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

2. Section 515.701(a) is revised to read as follows:

§ 515.701 Penalties.

(a) Attention is directed to section 16 of the Trading With the Enemy Act, as amended, which provides:

Whoever shall willfully violate any of the provisions of the Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

* * * * *

PART 520—[AMENDED]

31 CFR Part 520 is amended as follows:

1. The authority citation for Part 520 is revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 8389, 5 FR 1400, as amended by E.O. 8785, 6 FR 2897, E.O. 8832, 6 FR 3715, E.O. 8963, 6 FR 6348, E.O. 8998, 6 FR 6785, E.O. 9193, 7 FR 5205; 3 CFR, 1938–1943 Cum. Supp., p. 1174; E.O. 10348, 17 FR 3769, 3 CFR, 1949–1953 Comp., p. 871; E.O. 11281, 31 FR 7215, 3 CFR, 1966 Supp.

2. Section 520.701(a) is revised to read as follows:

§ 520.701 Penalties.

(a) Attention is directed to section 16 of the Trading With the Enemy Act, as amended, which provides:

Whoever shall willfully violate any of the provisions of the Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment,

concerned in such violation shall be forfeited to the United States.

* * * * *

Dated: August 14, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: August 16, 1985.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-20004 Filed 8-20-85; 8:45 am]

BILLING CODE 4810-35-M

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31 CFR Parts 500 and 515

Foreign Assets Control Regulations and Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Foreign and Cuban Assets Control Regulations by adding new §§ 500.567 and 515.567. The new sections provide for the issuance, in certain limited circumstances, of specific licenses unblocking the net pro rata shares of individuals who are permanent residents of the United States or the authorized trade territory (as that term is defined in these regulations) in the U.S.-located assets of corporations formed under the laws of countries designated in the Foreign or Cuban Assets Control Regulations. The treatment of such assets will now correspond to the treatment currently accorded to the U.S.-located assets of designated country partnerships.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: John D. McInerney, Attorney-Advisor, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, 202/376-0412.

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the amendments are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal Regulations. The information collection requirements in these regulations have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and assigned control number 1505-0075.

List of Subjects

31 CFR Part 500

Communist countries, North Korea, Vietnam, Cambodia (Kampuchea), Foreign assets control regulations.

31 CFR Part 515

Communist countries, Cuba, Cuban assets control regulations.

PART 500—[AMENDED]

31 CFR Part 500 is amended as follows:

1. The "Authority" citation for Part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748.

2. New § 500.567 is added to read as follows:

§ 500.567 U.S. Assets of Certain Designated Country Corporations.

(a) Specific licenses may be issued unblocking the net pro rata shares of individuals who are permanent residents of the United States or the authorized trade territory, and who are not specially designated nationals, in U.S.-located assets of corporations formed under the laws of countries designated in this part, after deducting the total debt due creditors for claims that accrued prior to the effectiveness date, in cases where all of the following conditions are met:

(1) The assets were owned by, or accrued to, the corporation before the effective date of the regulations;

(2) The corporation did not carry on substantial business in the designated country under the management or control of the applicant(s) after the effective date;

(3) In cases where the blocked assets purportedly have been nationalized by the designated country, compensation has not been paid to the applicant(s).

(b) Applications for specific licenses under this section must include all of the following information:

(1) A detailed description of the corporation, its by-laws, activities, distribution of shares, and its current status;

(2) Proof of the permanent residence of the applicant(s) in the United States or the authorized trade territory.

(3) A list of all officers, directors and shareholders of the corporation, giving the citizenship and the residence of each person as of the date of application;

(4) A detailed description of all of the assets of the corporation, wherever located, including a statement of all known encumbrances or claims against them; and

(5) Detailed information regarding the status of all debts and other obligations of the corporation, specifying the citizenship and residence of each creditor on the effective date and on the date of the application.

PART 515—[AMENDED]

31 CFR Part 515 is amended as follows:

1. The "Authority" citation for Part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Cum. Supp., p. 1174, E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748.

2. New § 515.567 is added to read as follows:

§ 515.567 U.S. Assets of Certain Cuban Corporations.

(a) Specific licenses may be issued unblocking the net pro rata shares of individuals who are permanent residents of the United States or the authorized trade territory, and who are not specially designated nationals, in U.S.-located assets of corporations formed under the laws of Cuba, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

(1) The assets were owned by, or accrued to, the corporation before the effective date of the regulations;

(2) The corporation did not carry on substantial business in Cuba under the management or control of the applicant(s) after the effective date;

(3) In cases where the blocked assets purportedly have been nationalized by Cuba, compensation has not been paid to the applicant(s).

(b) Applications for specific licenses under this section must include all of the following information:

(1) A detailed description of the corporation, its by-laws, activities, distribution of shares, and its current status;

(2) Proof of the permanent residence of the applicant(s) in the United States or the authorized trade territory;

(3) A list of all officers, directors and shareholders of the corporation, giving the citizenship and the residence of each person as of the date of the application;

(4) A detailed description of all of the assets of the corporation, wherever located, including a statement of all

known encumbrances or claims against them; and

(5) Detailed information regarding the status of all debts and other obligations of the corporation, specifying the citizenship and residence of each creditor on the effective date and on the date of the application.

Dated: August 15, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: August 16, 1985.

John M. Walker, Jr.

Assistant Secretary, Enforcement and Operations.

[FR Doc. 85-20005 Filed 8-20-85; 8:45 am]

BILLING CODE 4810-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 84-1311; RM-4764; FCC 85-285]

Amendment of Part 90 of the Commission's Rules and Regulations To Relax the Frequency Tolerance of Portable Seismic Telemetry Transmitters in the 72-76 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended 47 CFR 90.65(c)(11) to allow seismic telemetry transmitters type-accepted with a mobile equipment frequency tolerance to be operated as temporary fixed stations. This action simplifies the licensing of this equipment in the Petroleum Radio Service.

EFFECTIVE DATE: July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio service, Radio.

Report and Order (Proceeding Terminated)

In the matter of Amendment of Part 90 of the Commission's Rules and Regulations to Relax the Frequency Tolerance of Portable Seismic Telemetry Transmitters in the 72-76 MHz Band; PR Docket No. 84-1311, RM-4764, FCC 85-285.

Adopted: May 29, 1985.

Released: June 3, 1985.

By the Commission.

Background

1. On December 6, 1984, in response to a petition filed by Fairfield Industries, Inc. (Fairfield),[1] The Commission adopted a Notice of Proposed Rule Making which proposed to amend Part 90 of the Rules and Regulations.[2] The proposal would allow Petroleum Radio Service eligibles to utilize portable seismic telemetry transmitters that operate in the 72-76 MHz band and have a frequency tolerance of 0.005% for temporary fixed operation. Fixed and mobile operations are permitted in the 72-76 MHz band subject to protection of reception of TV Channels 4 and 5. Fixed stations must maintain a frequency tolerance of 0.0005% but mobile stations are allowed a less stringent tolerance of 0.005%.

2. In the NPRM, we noted that frequency tolerances tighter than 0.005% often required the use of crystal ovens, large batteries, and larger power supplies. Because these devices increase the weight, size, and expense of transmitters, we allow mobile units in this band to employ frequency oscillators which meet the less stringent 0.005% tolerance. Mobile transmitters normally emit less power than base stations and therefore have a reduced potential for interference with other operations. The less stringent mobile frequency tolerance has worked well in the 72-76 MHz band to date.

Discussion

3. Comments on the NPRM were received from Fairfield and the Central Committee on Telecommunications of the American Petroleum Institute. Reply comments were received from Fairfield. Both parties supported our proposal. Portable seismic telemetry transmitters are low powered, have a low duty cycle, and are used in remote areas. Therefore the likelihood of interference to other devices is small. After considering the comments in this proceeding, we conclude that the rule change proposed in the NPRM would provide the relief sought by Fairfield without any significant increase in the potential of interference to existing operations. We are therefore adopting our proposal to permit Petroleum Radio Service eligibles to operate, in a temporary fixed mode, seismic telemetry transmitters type-accepted at one watt or less power output with a ± 0.005% frequency tolerance.

4. As stated in the NPRM, the Commission certifies that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 do not apply to the rule change in this Report and Order because this change will not have a significant economic impact on a substantial number of small entities. The Secretary shall cause a copy of this Report and Order, including the above certification, to be published in the **Federal Register**, and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et. seq.* (1981).

5. Accordingly, it is ordered, that pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 90 of the Commission's Rules is amended, effective July 10, 1985, as set forth in the attached Appendix. It is further ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—[AMENDED]

Section 90.65(c)(11) is revised to read:

§ 90.65 Petroleum Radio Service.

* * * * *

(c) * * *

(11) The frequencies available for use at operational fixed stations in the band 72-76 MHz are listed in § 90.257(a)(1). These frequencies are shared with other services and are available only in accordance with the provisions of Section 90.257. Seismic telemetry transmitters type accepted with 1 watt or less power and a frequency tolerance not exceeding ±0.005% may be used as temporary operational fixed stations.

* * * * *

[FR Doc. 85-19897 Filed 8-20-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Petition for Rule Making, RM-4764, filed January 24, 1984.

[2] Notice of Proposed Rule Making, PR Docket No. 84-1311, 49 FR 48950, December 17, 1984.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 18]

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends Standard No. 213, *Child restraint systems*, with respect to the requirements applicable to buckles used in child restraints. The requirement regarding the force necessary to operate the buckle release mechanism in the pre-impact test is changed from the previous minimum level of 12 pounds to a range between 9 and 14 pounds. The maximum release force for the buckle release in the post-impact test is reduced from the previous level of 20 pounds to 16 pounds. Additionally, this rule adds buckle size and buckle latching requirements to the standard. The effect of this rule is to ensure that child restraint buckles are easier for adults to operate, while still ensuring that small children will not be able to open the buckles by themselves.

EFFECTIVE DATE: The changes made by this rule become effective February 18, 1986.

ADDRESS: Petitions for reconsideration may be submitted within 30 days after publication of this notice in the **Federal Register** to: Administrator, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Daniel, Office of Vehicle Safety Standards, NRM-12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-426-2242).

SUPPLEMENTARY INFORMATION: As an initial step toward ensuring that child restraint systems would offer adequate protection for their occupants, NHTSA issued Standard No. 213 in 1970. That version of the standard required, among other things, that the buckle release mechanism operate when a force of not more than 20 pounds was applied.

NHTSA issued a new Standard No. 213, *Child restraint systems* (49 CFR 571.213) at 44 FR 72131, December 13, 1979. This new standard substantially upgraded the performance requirements for child restraint systems. It also specified that the buckles must not release when a force of less than 12 pounds was applied to the buckle before conducting the dynamic systems test required by section S6.1 of Standard No. 213 and must release when a force of not more than 20 pounds was applied after conducting that dynamic systems test. The test for measuring the amount of force needed to release the buckle was to be conducted in accordance with the procedures set forth in section S6.2 of the standard. The purpose of the buckle force requirements is to prevent young children from unbuckling the restraint belt(s), while allowing adults to do so easily.

After the adoption of the standard, the agency received information indicating that the minimum force level needed to release the buckles was too high to permit many adults to easily release the buckles. Some of the buckles tested in the field required more than 20 pounds of pressure to release, according to a report done for the agency by K. Weber and N.P. Allen (Docket No. 74-09-GR-120). This same report concluded that even a force of 20 pounds is difficult for most women to generate with one hand. The agency has also been provided with consumer letters received by one child restraint manufacturer commenting on the difficulty of operating the child restraint harness buckles. The agency itself has received numerous telephone calls from consumers complaining about the size of the release buttons on child restraint belts and the high force levels required to operate them.

The agency's safety concerns over child restraint buckle force release and size stem from the need for convenient buckling and unbuckling of a child and, in emergencies, to quickly remove the child from the restraint. This latter situation can occur in instances of post-crash fires, immersions, etc. A restraint that is difficult to disengage, due to the need for excessive buckle pressure or difficulty in operating the release mechanism because of a very small release button, can unnecessarily endanger the child in the restraint and the adult attempting to release the child.

This amendment is also intended to reduce the everyday misuse rate of child restraint harness and shields. Several studies conducted by Goodell-Grives, Inc. under contract to NHTSA indicate that the harness and shield misuse rate for infant and toddler restraints is between 25 and 40 percent. According to this study and others, misused child restraints may not only fail to protect the child in a crash situation, but may increase injury severity. The December 1984 study asked parents why they were apparently misusing the harness and shields. The misuse did not result from the lack of knowledge about the proper use of the harness and shields, because 95 percent of those parents knew the child restraint was being used incorrectly. Although the buckles were not cited directly, the inconvenience of the harness and shield operation was the most frequent reason given for misuse. This amendment will improve the operational convenience of the harness and shield buckles and thus should increase the correct usage rate of child restraint systems.

Accordingly, NHTSA published a notice of proposed rulemaking (NPRM) at 48 FR 20259, May 5, 1983 which proposed several changes to the buckle release force measurement test procedures. Those changes were intended to facilitate the use of buckles which would require approximately 10½ pounds of force to release. The buckle force release test procedure specified that the buckle was to be tested both before and after the impact testing of the child restraint. In both the pre- and post-impact tests, tension was applied to the buckle prior to measuring the buckle release force. The purpose of applying tension was to simulate the force that would be applied to the buckle by a child hanging upside down in the child restraint.

The first proposed change was to eliminate the tension applied to the buckle in the pre-impact test. While it was considered appropriate for the post-impact test to simulate tension which would be present on the buckle in the event of a rollover crash, it was tentatively concluded that there were no forces whose presence ought to be simulated in the pre-impact test. Therefore, the notice proposed to measure the buckle release force in the pre-impact test with no load applied to the belt buckle, except the load exerted by properly adjusting the belt system around a child.

The second proposed change was to reduce the minimum buckle force permitted in the pre-impact test by three pounds, from 12 pounds to 9 pounds. According to the evidence available to the agency, a minimum buckle force level of 9 pounds is sufficient to prevent children up to the age of approximately 4 from opening the buckle by themselves. Further, the notice proposed to set a force of 12 pounds as the maximum force permitted in the pre-impact test. The NRPM specifically sought comments on whether this 3 pound range was sufficient to account for the amount of buckle force variation which inevitably arises from mass production manufacturing techniques.

The third change was proposed for the post-impact testing of the buckles. The tension previously specified in the standard would still be applied to the buckles before the release force was measured. However, the maximum force

needed to release the buckles was proposed to be reduced from 20 pounds to 16 pounds. A higher force level is specified in the post-impact test as compared to the pre-impact test allow for damage which would occur to the buckles during an actual crash and to allow for the additional belt loading which is possible from a child suspended upside down in the restraint system. The proposed lowering of the maximum force level was intended to permit a large portion of adults to more easily and quickly release the buckle in normal use (thus encouraging routine correct use of the restraints which would provide enhanced child safety) and in emergency post-crash situations.

The NPRM also proposed a change to Standard No. 213 in response to complaints about instances where a child restraint buckle was seemingly securely fastened by a parent, but subsequently popped open. This problem is commonly referred to as false latching. To address this problem, the NPRM proposed to require that child restraint buckles meet the latching requirements in section S4.3(g) of Standard No. 209, *Seat Belt Assemblies*. These requirements ensure that the design and construction of the buckle release mechanism are sufficiently durable to permit repeated latching and unlatching of the buckle and that the buckle releases when it is falsely latched and a minimum force (in this case, 5 pounds) is applied to it.

The final change proposed in the NPRM related to the size of the buckle release area. The agency believed that some of the problems experienced by parents in fastening and unfastening the child restraint buckles might be attributable to the size of the buckle release mechanism. For instance, the smaller the area of a push button release mechanism, the more difficult it would be to use more than one finger, and hence apply a greater force, to open the buckle. The release mechanisms on some buckles were too small to allow sufficient engagement area for easy release of the buckle, particularly for persons with large hands. Most child restraint buckles use push bottons to release the buckle, so the NPRM proposed that push bottons have a minimum area of 0.6 square inch. The minimum surface area requirements applicable to motor vehicle seat belts were specified for other types of release mechanisms used on child restraint buckles.

The NPRM also requested comments on regulatory and non-regulatory ways in which the issues of belt length and shell width could be addressed. This request was based on the Weber and Allen report referenced above which raised questions about the length of the harness webbing used in child restraints and the seating width of the shells. The researchers noted that use of winter clothing significantly increased the amount of harness webbing needed to accommodate a fully clothed child. They reported that a snowsuit can add six inches to the length necessary for a harness lap belt to accommodate a child. Further, researchers said that nearly all child restraints are too narrow for the size children they claim to accommodate.

The agency received 16 comments on the NPRM, and the commenters included private citizens, safety advocacy groups, child restraint manufacturers, and the National Transportation Safety Board. All these comments were considered in developing this final rule, and the most relevant ones were specifically addressed in the following discussion.

Pre-Impact Test Buckle Release Force Limit. In the NPRM, the agency specifically sought comments on the feasibility of manufacturing buckles within the 3 pound range. Many of the commenters objected to the proposed 9 to 12 pound force limits, primarily because the 3 pound range was said to be too narrow based on current manufacturing techniques, to ensure that all buckles would comply with the proposed requirement. Some of these commenters asserted that the proposed 3 pound range would cause the buckle manufacturers to increase buckle prices in order to recoup the costs of the changes in manufacturing techniques and quality control which would have to be implemented to satisfy the proposed requirement. One child restraint manufacturer offered a statistical analysis of buckle release force tests in an effort to demonstrate the difficulty of maintaining a 3 pound range with current buckle manufacturing techniques. The manufacturer indicated that buckle release forces can vary up to 3 times the standard deviation for a given sample. The standard deviation for current production buckles is sufficiently large that, given a mean of 10.5 pounds and a range of 3 pounds, some buckles would have release forces outside the range. A different manufacturer submitted data from tests of current buckle designs showing that the release force can vary by as much as 6 pounds for current buckles. Finally, several commenters objected to the proposed 9 pound minimum release force on the grounds that buckles manufactured in compliance with the Canadian child restraint standard, which specifies an 8 pound minimum release and 16 pound maximum release force, would not satisfy the proposed U.S. standard. These commenters further stated that NHTSA should use this opportunity to harmonize this requirement with the Canadian standard.

In response to these comments, NHTSA has reconsidered its proposed 9 to 12 pound range for the buckle release force permitted in the pre-impact testing. The agency has concluded that a 3 pound range in release force would not be feasible with current manufacturing techniques, and the benefits of narrowing the feasible range to 3 pounds do not warrant requiring a change in current manufacturing techniques.

The only research study of which the agency is aware examining the most apporpriate release force range for child restraint buckles is entitled "Child Restraint System", and was published in 1976 by Peter Arnberg of the National Swedish Road and Traffic Institute. This study, which is available in the General Reference section of Docket No. 74–09, presented the results of testing 80 children aged 2½ to 4½ years and 200 women. This study concluded that, child restraint buckles should have a release force of 40 to 60 Newtons (approximately 9 to 13½ pounds).

After analyzing the comments, NHTSA has determined that a 5 pound range in buckle release force is needed to allow for current buckle manufacturing techniques. Based on this determination and the recommendations of the Arnberg study, this requires child restraint buckles to have a release force of between 9 and 14 pounds before the buckles are subjected to dynamic testing.

The agency notes that this rule is not precisely harmonized with the Canadian standard for child restraint buckle release forces, which specifies a minimum release force of 8 pounds before dynamic testing and a maximum release force of 16 pounds after dynamic testing. NHTSA has adopted a 9 pound minimum release force because of its concern that 3½ to 4 year old children could open their child restraint buckles if the release force were 8 pounds, as shown in the Arnberg study. Further, the 14 pound maximum release force before dynamic testing was added in this rule because buckles with a release force of more than 14 pounds are difficult for many women to open in everyday use, as demonstrated in the Arnberg study. The result of these differing requirements on the United States and Canadian is that buckles which comply with the Canadian buckles force

requirements will not automatically comply with Standard No. 213. However, buckles which comply with Standard No. 213 will also comply with the buckle force requirements of the Canadian standard.

Pre-Impact Buckle Test Procedure. The NPRM proposed a new procedure for this test. The same procedures have been used for measuring the buckle release force in both the pre-impact and the post-impact testing. Briefly stated, the child restraint is installed on a standard seat assembly, the dummy is positioned in the child restraint, a sling is attached to each wrist and ankle of the dummy, and the sling is pulled by a designated force. As noted above, the presence of the dummy and the force applied to the sling simulate a rollover crash situation.

The NPRM proposed, and this final rule adopts, a new test procedure for the pre-impact testing, because there is no need to simulate a rollover crash situation before impact. The NPRM proposed placing the buckle on a hard, flat surface and loading each end of the buckle with a force of two pounds before measuring the force required to release the buckle. None of the commenters objected to this basic change in the test procedure, and it is adopted for the reasons stated in the NPRM.

Several commenters did object to the release force application device, which was proposed as a rigid, right circular cone with an enclosed angle of 90 degrees or less. This device would be used to transfer the release force to the push button release. Some commenters argued that this device would not adequately represent real world push button actuation. Specifically, they were concerned that the pointed device applies the release force over an area considerably smaller than that of a finger or thumb. Other commenters argued in favor of a different release force application device, contending that this device would permanently deface some of the tested buckles.

NHTSA had decided to adopt the proposed conical test device. Its small contact area allow accurate positioning on the release button, which will yield consistently repeatable test results. The buckle release force test procedures proposed in the NPRM, as modified for this final rule, were conducted by the Calspan Corporation in July 1984 during the annual FMVSS No. 213 compliance test procedures. On the basis of these tests, the agency concluded that the amended test procedures simulate real world actuation of push button release mechanisms because the release force is applied in a manner similar to hand operation and tests with several alternative devices indicated that conical devices produce release force values consistent with those generated by different probes. Manufactures choosing to test a large number of buckles to be used on their child restraints can place a protective surface between the button and the test device to prevent defacing of the buckles. Those manufacturers which want to use an alternative test device are free to do so, provided that they can correlate the results obtained with that alternative device with results obtained with the specified test device, which will be used by the agency in compliance tests.

The NPRM proposed that the force applied by the test device be "at the center line of the push button 0.125 inches from a movable edge and in the direction that produces maximum releasing effect." Many commenters argued that this procedure needed to be refined to take account of the different release mechanisms. One commenter stated that there are two different types of push button release mechanisms, hinged and floating. A hinged button has one fixed edge and release forces applied near the fixed edge may not activate the release mechanism. Instead, the hinged button is designed to release when force is applied near the center of the button or toward the edge opposite the fixed edge. On the other hand, the floating button has no fixed edges and is designed to release when force is applied near the center of the button. This commenter noted that, while the force application proposed on the NPRM may be suitable for hinged buttons, it would be inappropriate for floating buttons.

The agency agrees with the commenters that some further refinements should be made to the test procedures to account for the different types of push buttons. Accordingly, this rule specifies that, for hinged buttons, the force shall be applied according to the procedures proposed in the NPRM. For floating buttons, the force shall be applied at the geometric center of the button. These differing force application points will take into account the differing designs of push buttons, without favoring one or the other design.

Several commenters stated that the NPRM failed to specify any test procedures for buckles designed for the insertion of two or more buckle latch plates, even though a number of buckles on current models of child restraints are designed to secure more than one belt. Further, these commenters noted that, while the NPRM did specify a two pound pre-load force should be applied to buckles before conducting the pre-impact buckle release test, it failed to specify the direction in which the force should be applied. To remedy these perceived shortcomings, some of the commenters recommended that the final rule specify that the two pound pre-load force be applied along the direction of the latch plate insertion for single latch plate buckles and that the two pound force be divided by the number of latch plates and the resultant force applied to each latch plate in the direction of latch plate insertion for multiple latch plate buckles. This final rule adopts this recommendation. The NPRM's intent was that the force be applied along the direction of latch plate insertion, and it is appropriate to make this intent explicit in this final rule. Further, the one pound pre-load force for multiple latch plate buckles is sufficient force to simulate the tension which would be present in properly adjusted belts, yet small enough so as not to simulate other forces which would not be present in normal everyday use.

Along these lines, one commenter suggested that the pre-load force be increased from two to five pounds. This commenter stated that the proposed pre-load force of two pounds might not be sufficient to release the buckles, while the five pound load would assure that the buckles always release. Further, the commenter noted that Standard No. 209 allows a false latching load of five pounds maximum, and that this change would make the two Standards consistent.

NHTSA is not persuaded by these comments, and has not incorporated the suggested change in this final rule. For the pre-impact buckle release force test procedure, the 2 pound pre-load is designed to simulate the separation tension in the harness restraint system during normal use and approximate the buckle loading on a restraint system adjusted for the compliance impact test.

Section S5.2(g) of Standard No. 209, on the other hand, is not intended to approximate forces present during normal buckle operation. That section requires that the buckle latching mechanism be tested for durability and then the latch plate or hasp inserted in any position of "partial" engagement (false latching). When the buckle and latch plate are in this position of "induced" partial engagement, a force of 5 pounds force or less shall separate the latch plate from the buckle. The separation of the latch plate is affected without operating the release mechanism. Since this procedure is not intended to simulate normal buckle operation but to test the susceptability of the buckle to false latching, it would

not be appropriate to incorporate its loading into Standard No. 213.

Post-Impact Buckle Test Procedure. As noted above, the NPRM proposed to reduce the maximum force needed to release the buckle after it had been subjected to the impact test from the 20 pound level currently specified to 16 pounds. A higher release force is specified for the post-impact test to account for damage which might occur to the buckle during the impact test and to counter the forces which could be exerted on the buckle by a child hanging upside down in rollover crash conditions. The reason for proposing the lower force was that it was sufficient to account for damage which might occur to the buckle, and such force can be generated by almost all women using only one hand, according to the Arnberg study. The current 20 pound force requirement allows buckles which require two hand operation by many adults, and two hand operation is often awkward and may adversely affect safety in emergency situations. The agency notes that the Canadian standard also specifies a maximum post impact force of 16 pounds. No commenters objected to this proposed change, and it is adopted herein for the reasons explained above.

The preamble to the NPRM did not discuss any other changes to the post-impact testing procedure, because the agency did not intend to propose any changes other than reducing the maximum release force for the buckles. However, section S6.2.2 of Standard No. 213 as published in the NPRM indicated that the self-adjusting sling which is attached to the dummy to simulate a rollover crash situation should be attached only to the dummy's ankles. The Standard currently requires the sling to be attached to the dummy's *wrists* and ankles, and this requirement was inadvertently omitted from the NPRM language. This final rule corrects this omission, so no change is specified for the post-impact testing except the reduction in buckle release force.

Buckle latching. The NPRM proposed adding the latching performance requirements of sections S4.3(g) and S5.2(g) of Standard No. 209 to Standard No. 213. These procedures test the latching performance of seat belt buckles to ensure that the buckle materials and structure will operate properly after numerous cycles of latchings and unlatchings. As explained in the NPRM, this step should reduce or eliminate the false latching problems experienced by child restraint users. False latching occurs when buckles are apparently latched, but then subsequently pop open. NHTSA believes that most of the false latchings result from poorly designed or cycle degraded latching mechanisms, and that the Standard No. 209 requirements will eliminate latching mechanisms which are poorly designed or subject to cycle degradation.

Most of the commenters who addressed this proposal supported its adoption, although several commenters stated that additional requirements may be needed to ensure that false latching does not continue to be a significant problem. The National Transportation Safety Board stated that it had evidence that brand-new child restraint buckles, not yet subject to material wear, are prone to false latching, and that additional requirements, along the lines of the European requirement that latchplates be ejected by a spring located in the buckle when the buckle is not properly latched, may be necessary to prevent false latching. Other suggestions from the commenters included requiring the use of color-coded push buttons to show when the buckle was properly latched and requiring specific warnings in the manufacturer's instruction manuals urging parents to check for false latchings every time they fasten the buckles.

NHTSA has adopted the requirements proposed in the NPRM to reduce the false latching problems. The agency believes that the Standard No. 209 seat belt buckle tests will identify buckles which are subject to false latchings because of materials wear or poor design, because false latching complaints by consumers have been eliminated for motor vehicle seat belts and the agency expects that these tests will substantially reduce this problem for child restraint buckles as well. The agency will continue to monitor problems of false latchings, and will consider additional requirements to address that problem if necessary.

Buckle Size. The NPRM proposed to specify a minimum area for the buckle release mechanism, because some of the difficulties reported in opening child restraint buckles were believed to arise from the small size of the buckle release mechanism. As noted earlier, the smaller the area of the push button, the more difficulty there is in applying the forces which must be exerted to open the buckle. Those commenters which addressed this issue supported the proposed requirement that push buttons used on child restraints have a minimum release area of 0.6 square inch, and it is adopted in this final rule.

Belt Length/Shell Width. The NPRM solicited comments on steps which could be taken to address the issues of belt length and shell width. These issues arose after a research report noted that children clad in winter clothes need up to six additional inches of belt webbing, and that many current child restraints do not have this extra belt length. In addition, the report noted that nearly all child restraints are too narrow for the size children they claim to accommodate. The NPRM noted that a long-range solution was for the agency to use additional test dummies to simulate larger children. A possible short-term answer was to conduct the crash tests with the dummies clad in a typical snowsuit.

Several commenters stated that regulatory action was not needed in this area. Child restraint manufacturers generally believe that the industry will adjust belt length and shell width in response to consumer demand, and believe that any regulations at this time would only add costs and research burden without substantially benefiting child safety. The Physicians for Automotive Safety stated that the agency should approach those manufacturers with problems in these areas and request voluntary remedial action, instead of pursuing rulemaking. That group also stated that it knew of only one model of child restraint with problems along these lines. The National Transportation Safety Board stated that the agency should develop regulations in these areas.

Some of the commenters opposed the use of snowsuits on the test dummies because those snowsuits would absorb some of the crash energy. According to these commenters, the agency would, in effect, reduce the severity of the crash tests by so dressing the test dummies.

In view of the above comments rulemaking will be deferred in this area. The agency will continue to monitor the issues of seat shell size and harness webbing length associated with infant and toddler restraints (40 pounds and below) to determine if rulemaking in this area will be necessary in the future.

Editorial Correction. Several commenters noticed that there was a typographical error in section S5.4.3.5(a) of the NPRM. That section referred to testing in accordance with section S6.2.2, while the correct reference was to section S6.2.1. This error is corrected in this final rule.

Economic Effects. NHTSA has considered the effects of this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and

procedures. The reduction of the force levels needed to open the buckles, the incorporation of the latching requirements of Standard No. 209, the minimum release area requirements, and the slight changes to the pre-impact buckle testing procedure will have such minimal impacts on the industry and on the costs to consumers that a full regulatory evaluation is not needed.

The agency has also considered the impacts of this rule as required by the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not significantly increase the testing or design costs for child restraint manufacturers. Small organizations and governmental jurisdictions will be affected as purchasers of child restraints. However, the cost effect of these changes is minimal. Accordingly, a regulatory flexibility analysis has not been prepared.

Finally, the agency has analyzed this rule for the purposes of the National Environmental Policy Act, and determined that this rule will not have any significant effects on the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

§ 571.213 [Amended]

In consideration of the foregoing, § 571.213 of Title 49 of the Code of Federal regulations is amended as follows:

1. The authority citation for 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

2. Section S5.4.3.5 is revised to read as follows:

* * * * *

S5.4.3.5 *Buckle Release.* Any buckle in a child restraint system belt assembly designed to retrain a child using the system shall:

(a) When tested in accordance with S6.2.1 prior to the dynamic test of S6.1, not release when a force of less than 9 pounds is applied and shall release when a force of not more than 14 pounds is applied;

(b) After the dynamic test of S6.1, when tested in accordance with S6.2.3, release when a force of not more than 16 pounds is applied;

(c) Meet the requirements of S4.3(d)(2) of FMVSS No. 209 (§ 571.209), except that the minimum surface area for child restraint buckles designed for push button application shall be 0.6 square inch;

(d) Meet the requirements of S4.3(g) of FMVSS No. 209 (§ 571.209) when tested in accordance with S5.2(g) of FMVSS No. 209; and

(e) Not release during the testing specified in S6.1.

* * * * *

(3) Section S6.2 is revised to read as follows:

* * * * *

S6.2 *Buckle release test procedure.* The belt assembly buckles used in any child restraint system shall be tested in accordance with S6.2.1 through S6.2.4 inclusive.

* * * * *

4. Section S6.2.1 is revised to read as follows:

* * * * *

S6.2.1 Before conducting the testing specified in S6.1, place the locked buckle on a hard, flat, horizontal surface. Each belt end of the buckle shall be pre-loaded in the following manner. The anchor end of the buckle shall be loaded with a two pound force in the direction away from the buckle. In the case of buckles designed to secure a single latch plate, the belt latch plate end of the buckle shall be loaded with a two pound force in the direction away from the buckle. In the case of buckles designed to secure two or more latch plates, the belt latch plate ends of the buckle shall be loaded equally so that the total load is 2 pounds, in the direction away from the buckle. For pushbutton-release buckles the release force shall be applied by a conical surface (cone angle not exceeding 90 degrees). For pushbutton release mechanisms with a fixed edge (referred to in Figure 6 as "hinged button"), the release force shall be applied at the centerline of the button, 0.125 inches away from the movable edge directly opposite the fixed edge, and in the direction that produces maximum releasing effect. For pushbutton release mechanisms with no fixed edge (referred to in Figure 6 as "floating button"), the release force shall be applied at the center of the release mechanism in the direction that produces the maximum releasing effect. For all other buckle release mechanisms, the force shall be applied on the centerline of the buckle lever or finger tab in the direction that produces the maximum releasing effect. Measure the force required to release the buckle. Figure 6 illustrates the loading for the different buckles and the point where the release force should be applied, and Figure 7 illustrates the conical surface used to apply the release force to pushbutton-release buckles.

* * * * *

5. Section S6.2.2 is revised to read as follows:

* * * * *

S6.2.2 After completion of the testing specified in S6.1, and before the buckle is unlatched, tie a self-adjusting sling to each wrist and ankle of the test dummy in the manner illustrated in Figure 4.

* * * * *

6. Section S6.2.4 is revised to read as follows:

* * * * *

S6.2.4 While applying the force specified in S6.2.3, and using the device shown in Figure 7 for pushbutton-release buckles, apply the release force in the manner and location specified in S6.2.1 for the type of buckle. Measure the force required to release the buckle.

* * * * *

7. Section S6.2.5 is removed.

8. Two new drawings (Figures 6 and 7) are added at the end of § 571.213, appearing as follows:

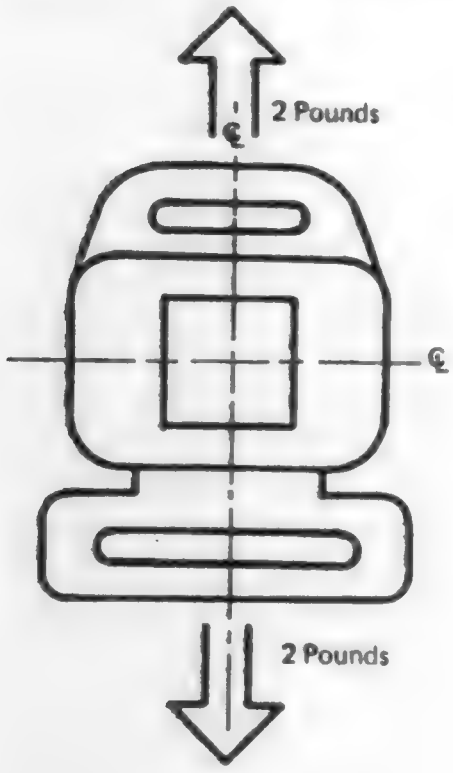
Issued on August 15, 1985.

Diane K. Steed,

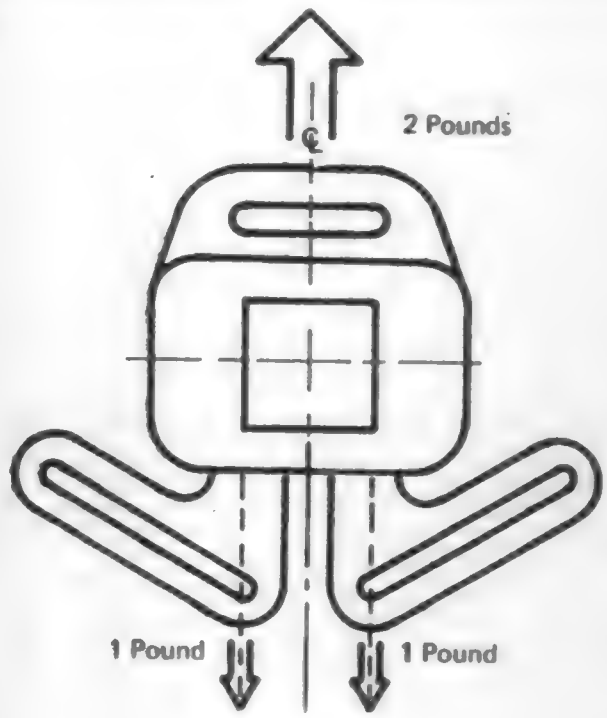
Administrator.

BILLING CODE 4910-57-M

Buckle Pre-load

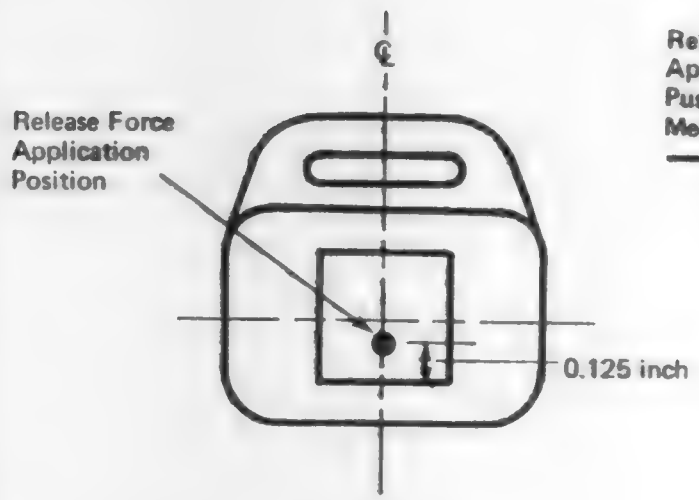


6a. Single Latch Plate Pre-load

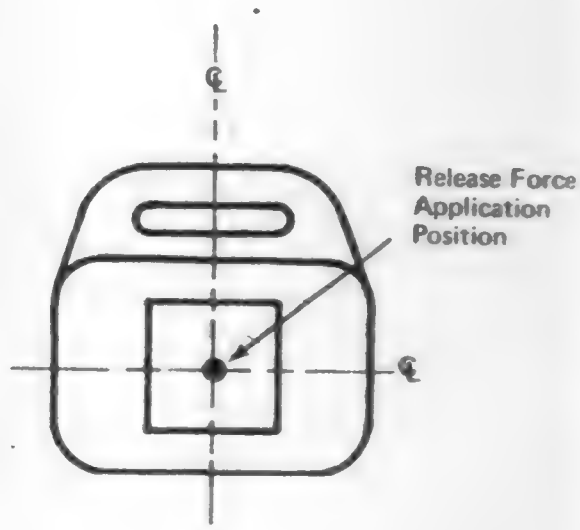


6b. Double Latch Plate Pre-load

Release Force Application Position-Push Button Mechanisms



6c. Hinged Button



6d. Floating Button

Figure 6. Pre-impact Buckle Release Force Test Set-up

BILLING CODE 4910-57-C

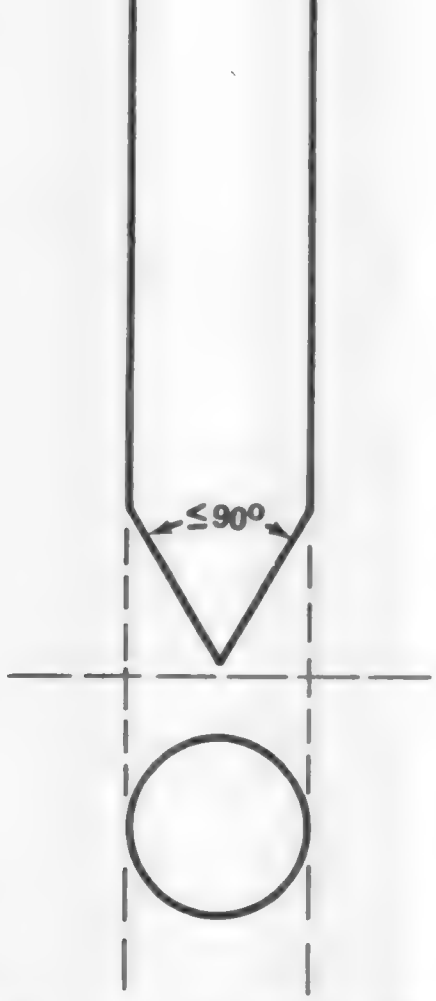


Figure 7. Release Force Application Device — Push Button Release Buckles

[FR Doc. 85–19907 Filed 8–20–85; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Gardenia Brighamii (Na'u or Hawaiian Gardenia) and Withdrawal of Proposed Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Gardenia brighamii* (na'u or Hawaiian gardenia) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. This plant occurs in the wild on Lanai (about 6 plants), Molokai (2 plants), and Oahu (a single plant), but is now believed to be extinct on Hawaii and Maui. This species is vulnerable to any substantial habitat alteration and faces the potential threats of grazing and browsing by domestic and feral animals, fire, soil erosion, introduced insect pests, rodent predation, competition from exotic plants, and potential development on and/or near the sites where it occurs. This determination that *Gardenia brighamii* is an endangered species implements the protection provided by the Endangered Species Act of 1973, as amended. The Service further withdraws its proposal to designate critical habitat for this species.

DATE: The effective date of this rule is September 20, 1985.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Past collections and field notes on *Gardenia brighamii* indicate that it once grew on the islands of Hawaii and Maui, where it is not known to be extant in the wild today. The species was first collected in 1864–65 by Horace Mann and William Brigham, and was formally described by Mann in 1867. It still occurs on Lanai (about 6 plants) and Molokai (2 plants), as well as on Oahu, where a single plant remains in the wild. The current habitat has been severely degraded and altered by grazing and browsing animals (e.g., domestic cattle and feral goats, respectively). The invasion of exotic plants such as *Lantana camara, Leucaena Leucocephala, Schinus terebinthifolius,* and various grass species crowds out the remaining dry forest and shades out any seedlings that may have survived rat predation on the fruits. The remaining habitats on Lanai and Molokai are found on marginal land used for grazing.

Gardenia brighamii was a distinctive element of the lowland dry forest. It is a tree growing 20 to 30 feet in height, with a smooth trunk 6 to 12 inches or more in diameter and a spreading canopy of shiny dark-green leaves. The white to cream-colored flowers are 1 to 2 inches long and very fragrant, and resemble the Tahitian gardenia (*G. taitensis*) in shape.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 CFR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Gardenia brighamii* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired (44 FR 70796); this notice of withdrawal included *Gardenia brighamii.* The Service published an updated notice of review on December 15, 1980 (45 FR 82480), which included *Gardenia brighamii.* A reproposal was published on October 12, 1984 (49 FR 40058), based on information available at the time of the 1976 proposal and information gathered after that time and summarized in a detailed status report prepared under contract by a University of Hawaii botanist (Gagne 1982). The Service now determines *Gardenia brighamii* to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the October 12, 1984, proposed rule (49 FR 40058) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, the county government, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Honolulu Advertiser* on December 7, 1984. Five comments were received and are summarized and discussed below.

The Hawaii State Department of Land and Natural Resources, Division of Forestry and Wildlife, supported the listing of *Gardenia brighamii* as an endangered species because of the low population numbers, the deterioration of its habitat, and the need for more protection of this species. The Division stated that its office is aware of three individuals on Lanai and two on Molakai, which have not been visited for several years and may no longer be alive; it had no information on the Oahu plant. The Division believes that the 685 acres proposed for critical habitat is too large an area to set aside for a single purpose, and may cause problems for the landowner. It recommended that alternate land uses, compatible with the survival of the tree, should be explored, as more than just the designation of critical habitat will be required to save this species.

A member of the Friends of the Maui Botanical Garden concurred that *Gardenia brighamii* should be listed as endangered. He also supported the designation of critical habitat. Because the trees need to be protected from exotic grasses and shrubs, and deer need to be fenced out, he commented that 685 acres would be too large an area to manage effectively. He suggested that a permanent botanical worker be hired to oversee and protect the endangered species in Hawaii.

Castle & Cooke, Inc. (C&C), owner of the land on Lanai that had been proposed as critical habitat, opposed the listing of *Gardenia brighamii* as an endangered species, although it stated that it is sensitive to the efforts to protect the species and will fully cooperate with conservation actions by Federal and State agencies should the species be listed. One of the main concerns of C&C is the impact that designating critical habitat would have upon its long-term land management plans. C&C noted that Betsy H. Gagne, in the status report she compiled on the gardenia, reported that Kenepu'u population occurs within an area of only about 275 acres. Since her report, other plants have been located in remote areas of Lanai that are not contiguous with the proposed critical habitat. C&C believes that the proposed critical habitat is excessive, and, as it does not enbrace all of the plants, questions the need for it. C&C continued, "* * * we feel that the designation of a critical habitat for *G. brighamii* will cause more harm to the species by calling attention to the species. We have observed that often a greater damage results from well-meaning parties collecting plants with the intention of protecting the species by cultivation and propagation * * *." Also, C&C questioned the accuracy of the species census and noted that the species is in cultivation in botanical gardens and has been offered for sale in plant sales.

The single individual plant known from Oahu occurs on land owned by the Campbell Estate and leased to the Tongg Ranch. Neither the owner nor the lessee provided recommendations or additional information in their letters.

In response to the comment on the accuracy of the census of the Lanai population, it appears that the original estimate of ten was high. Three plants are presently known from the Kanepu'u area and an additional three recently were discovered on the north and west slopes of Lana'ihale, making a total of six trees on that island. A re-estimate of the patchy remnants of dry forest at Kanepu'u also was undertaken. Two of the three trees of this area are in a 330-acre forested area; the other is in a 48-acre forested patch.

In response to the comment on cultivated plants and plants offered for sale, one of the purposes of the Act is to conserve the ecosystems which sustain endangered species. Cultivated plants do not aid in the conservation of native habitat, nor do they normally represent an adequate diverse sample of the gene pool of a species. Their value is as a backup resource for the wild population. The presence of the species in private gardens and the fact that it has been sold at plant sales in the past indicate that the species has potential ornamental value. This may be an added threat to its existence, as the collection of cuttings may damage the few remaining wild trees and the collection of seed may prevent reproduction in native populations.

In response to the question of critical habitat, the Service has considered the three that commented on critical habitat and has reconsidered its proposal to designate critical habitat for *Gardenia brighamii*. The proposed critical habitat consisted of 685 acres in the Kanepu'u area of Lanai. The proposed critical habitat comprises a remnant of native forest; eroded, laterized areas; and areas vegetated with introduced grasses, shrubs, and trees. Only two of the six known gardenia trees on Lanai are now known to be within the boundary of the proposed critical habitat; a third is in another patch of native dry forest about a half mile away, while the remaining three trees are on other parts of the island. To designate the proposed area as critical habitat would not reflect the habitat needs of the plant. The area proposed for designation exceeds that which could be justified as critical habitat for the two trees it contains. However, any more narrowly delimited designation for these or other individuals of the species would expose them to an increased threat of collection or vandalism. Given the negligible increment of protection for the species that would be provided by such designation, the Service no longer believes it prudent to designate critical habitat for this species. Because *Gardenia brighamii* is presently in cultivation, and young plants have been sold in the past, the Service believes there is an interest in and a market for the species. The fact that there are documented acts of vandalism against plants in Hawaii and other parts of the United States further supports the inappropriateness of designating critical habitat in this case (see "Critical Habitat" section below).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Gardenia brighamii* should be determined to be an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gardenia brighamii* Mann (na'u or Hawaiian gardenia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* This species once grew on five of the Hawaiian Islands, where, at least on the island of Molokai, it was a fairly common component of

the native dryland forests. Today it still occurs on the islands of Lanai (about 6 plants), Molokai (2 plants), and Oahu (1 plant). It is now believed extinct on Hawaii and Maui. Grazing and browsing by domestic and feral animals and the invasion of exotic shrubs, forbs, and grasses have caused severe degradation of its habitat. Urbanization, pineapple fields (on Lanai and Molokai), sugar cane fields (on Oahu and Maui), and pastures (on Oahu, Maui, and Hawaii) have replaced most of the dryland forests in Hawaii. The Molokai population grows at the edge of an erosion gully; several trees were lost recently when the gully walls collapsed during winter storms. Further grazing and browsing by domestic and feral animals, further invasion and spread of exotic plants, potential urbanization or development, and, as the plants grow in dry parts of the islands, the continual possibility of fires, are all existing threats to the future survival of the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species has apparently not been adversely affected by collecting in the past, it is potentially an attractive garden subject. Because of the extremely low number of remaining individuals, any further horticultural collecting could jeopardize the species.

C. *Disease or predation.* The introduced black twig borer, *Xylosandrus compactus* (Scolytidae), attacks terminal shoots and has severely affected the one wild tree on Oahu. Rats appear to gnaw the fruit while it is still on the tree, severely reducing the chances of successful regeneration. The full impact of grazing remains to be determined.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms exist at the present time. Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies.

E. *Other natural or man made factors affecting its continued existence.* The number of plants of this species has been greatly reduced due to factors enumerated above. Further reduction of the breeding population (gene pool) may have adverse effects of the reproductive capacity and survival of this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Gardenia brighamii* as endangered. Due to the low number of extant trees and the threats posed to the species, threatened status is not appropriate. The designation of critical habitat is discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat is not being designated for *Gardenia brighamii*, as it is believed to be neither prudent nor beneficial to the species to do so. Due to the additional information provided during the open comment period (see "Summary of Comments and Recommendations" section, above), the area proposed as critical habitat would not accurately reflect the habitat requirements of the species. Any reduction or further refinement of the area to be designated might threaten the plant with taking, an activity difficult to enforce against and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from areas under Federal jurisdiction. Publication of critical habitat descriptions would make this species more vulnerable and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for *Gardenia brighamii* at this time. The proposed designation of critical habitat for this species is therefore withdrawn.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species, or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Currently, no Federal involvement is known to exist with regard to *Gardenia brighamii.*

The only known potential action that may be affected by the listing is the casual use of the Kanepu'u area. Federal listing automatically results in similar listing by the State and, therefore, enforcement of the State's own regulations comes into effect. These regulations may limit casual use by prohibiting the taking of the plants. Take, in the State law, is defined as picking or otherwise damaging the plants. Voluntary or mandatory protection of this species and its habitat will require cooperation among the land owners, Castle & Cooke, Inc., the State of Hawaii, the County of Maui, and the U.S. Fish and Wildlife Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Gardenia brighamii,* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No interstate or foreign trade in this species is known, although it has been sold locally. It is anticipated that few trade permits involving *Gardenia brighamii* would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal

and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition is not expected to be significant for *Gardenia brighamii*, since all of the known plants are on private property. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Foote, D.E., E.L. Hill, S. Nakamura, and F. Stephens. 1972. Soil survey of the islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii. U.S. Dept. of Agriculture, Soil Conservation Service: Washington, D.C. 232 pp., 130 maps.

Gagne, B.H. 1982. Status report of *Gardenia brighamii*. Research Corporation of the University of Hawaii, under contract 14–16–0001–79096 to the U.S. Fish and Wildlife Service. 42 pp.

Spence, G., and S.L. Montgomery. 1976. Ecology of the dry land forest of Kanepu'u, island of Lanai. Newsletter, Hawaiian Bot. Soc. 15(⅔): 62–80.

Author

The primary author of this final rule is Dr. Derral Herbst, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546–7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened widlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following in alphabetical order under the family Rubiaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Rubiaceae—Coffee family: *Gardenia brighamii.*	Na'u (Hawaiian gardenia)	U.S.A. (HI)	E	195	NA	NA

Dated: August 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–19909 Filed 8–20–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Primula Maguirei (Maguire Primrose) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined *Primula maguirei* (Maguire primrose) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended. Critical habitat is not included in this final rule. There are nine known populations of *Primula maguirei*; all are located in Logan Canyon, Cache County, Utah, on U.S. Forest Service lands. The species is found only on ledges and in cracks of vertical cliffs and outcroppings of rock within the canyon. The plant is threatened by rock climbing, collecting, and potential campground and highway construction. The determination that *Primula maguirei* is a threatened species will provide it protection under the authority of the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is September 20, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Endangered Species Office, U.S. Fish and Wildlife Service, 134 Union Boulevard, Fourth Floor, Lakewood, Colorado, and at the Endangered Species Field Office, U.S. Fish and Wildlife Service, Room 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: Mr. John L. England, Botanist, Endangered Species Field Office at the Salt Lake City address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Primula maguirei was first collected by Aldous and Owen on May 10, 1911, and was later described by L.O. Williams (Williams 1936). The plant is a perennial herb, with conspicuous and showy lavender flowers. Stems are 1.5–4 inches (4–10 cm) tall and bear from one to three flowers. Leaves are broadly spatulate, rounded at the tip, and 1–2.5 inches (3–7 cm) long and 0.3–0.5 inch (0.9–1.3 cm) broad (Welsh and Thorne 1979).

This species is found only in Logan Canyon, Utah, and grows on damp ledges, crevices, and overhanging rocks of the canyon walls. It occurs within an area approximately 10 miles (16 km) by 0.5 mile (0.8 km) (L.M. Shultz, Utah State University, pers. comm. 1984). Montane shrubs, aspen, spruce, and fir are the dominant species of the plant community in this area. *Primula maguirei* is typically found on northerly exposures with a slope of 50 to 100 percent and at elevations of 4,800 to 5,500 feet (1,350–1,700 m). Geological formations of the canyon are composed mostly of carboniferous limestones and dolomites (Welsh 1979).

Primula maguirei was first observed in Logan Canyon in 1911, and was seen again in 1932, 1937, and periodically since then (A. Cronquist, New York Botantical Garden, pers. comm. 1984); however, there is no estimate of the number of plants found on these

occasions. At present, there are nine known populations, one of which contains approximately 100 plants, and the remainder of which contain fewer than 30 each. There appears to be good reproduction within populations and reestablishment of seedlings where habitat is unaltered and impacts minimal (L.M. Shultz, Utah State University, pers. comm. 1984). All populations are threatened by rock climbing and collecting. Some, including the largest and most vigorous extant populations, are threatened by potential highway construction.

Section 12 of the Endangered Species Act of 1973, directed the Secretary of the Smithsonian Institution to prepare a report on those plant species considered to be endangered, threatened, or extinct. This report was designated House Document No. 94–51 and was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the 1973 Act, (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. *Primula maguirei* was included in the report.

On December 15, 1980, the Service published a new notice of review for plants in the Federal Register (45 FR 82480), which included *Primula maguirei* as a Category 1 species. Category 1 comprises taxa for which the Service presently has substantial information on the biological vulnerability of and threats to the taxa to support the appropriateness of proposing to list the taxa as endangered or threatened species. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Primula maguirei*, was October 13, 1983.

On October 13, 1983, the petition finding was made that listing *Primula maguirei* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such petitions are recycled under section 4(b)(3)(C)(i). The Service published a proposed rule to list *Primula maguirei* as a threatened species on April 13, 1984 (49 FR 14771), constituting the next 1-year finding that would have been required on or before October 13, 1984.

Summary of Comments and Recommendations

In the April 13, 1984, proposed rule (49 FR 14771) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in *The Logan Herald Journal* on May 14, 1984, which invited general public comment. Six comments were received. Summaries of the comments and the Service's response are discussed below. No public hearing was requested prior to May 29, 1984. However, a meeting under the auspices of the Utah Governor's Office of Planning and Budget was held June 18, 1984. This meeting is also summarized below.

Five comments supported the listing of *Primula maguirei* as threatened without the designation of critical habitat and one comment opposed the listing of the species. The Forest Service expressed support for the proposal, and indicated that other activities such as the construction of trails, bike paths, and power transmission line corridors may be potential threats to *Primula maguirei*.

Utah Governor S.M. Matheson supported the proposal, and informed the Service that no populations of *Primula maguirei* have been identified on State lands. The final rule has been corrected to reflect this comment. The Governor's Office also indicated that the State has no plans for Highway 89 development at this time and the Utah Department of Transportation has no current plans for highway work in the vicinity of *Primula maguirei* that would affect the plant populations.

Dr. Arthur Cronquist of the New York Botanical Garden supported the proposal, and suggested the Service modify the collection dates to include several more, which he provided the Service. The final rule reflects this information. Two additional comments of general support for the proposal were received from G.E. Gordon, Utah Wildlife Federation, and L.M. Shultz, Utah State University.

The Utah Cattlemen's Association opposed the listing of *Primula maguirei* because of concern regarding the effect that a listed plant species would have on future U.S. Highway 89 improvement projects in Logan Canyon. Highway 89 is the primary route from the regional commercial and cultural center of Logan to summer cattle ranges in the Bear River Range and to agricultural areas of the Bear Lake region of northern Utah and southeastern Idaho. The Utah Cattlemen's Association believes that public safety will be enhanced by improvements on Highway 89, which passes through *Primula maguirei* habitat, and that this should outweigh any consideration for absolute preservation of the Maguire primrose. It suggests that adequate protection could be extended to the species through the National Forest Management Act (Title 2600, Chapter 2670.3(2)). The Service recognizes the concerns of this group and will work with the necessary State and Federal agencies through the section 7 interagency consultation process in an effort to resolve potential conflicts between road construction and the conservation of *Primula maguirei* in Logan Canyon.

A public meeting was held on June 18, 1984, in Ogden, Utah. Representatives from the Utah Governor's Office, Utah Department of Transportation, Utah Division of Wildlife Resources, Utah Division of State Lands and Forestry, Utah State University, U.S. Forest Service, and U.S. Fish and Wildlife Service participated. The effect of listing *Primula maguirei* on possible future improvements on Highway 89 through Logan Canyon as well as foot trail and campground development was discussed. It was pointed out by Utah State University and U.S. Forest Service biologists that *Primula maguirei* is essentially restricted to north facing, moss covered limestone cliffs at or near the bottom of Logan Canyon. Alteration of the microenvironment of Logan Canyon may adversely affect the Maguire primrose. Two factors were identified as being of special concern:

1. Cold air drainage down Logan Canyon may be a factor in the location of specific populations of the Maguire primrose. Any change in the geomorphology of the canyon may alter the cold air drainage patterns which may in turn adversely affect one or more populations of the species.

2. Canyon bottom vegetation may have a moderating effect on adjacent cliffs that provide habitat for the Maguire primrose, buffering the possibly adverse thermal effect of the existing paved highway through the canyon. Removal of canyon bottom tree groves for highway or campground construction may alter the microenvironment of the lower canyon cliffs, which in turn may adversely affect populations of the species.

The State Department of Transportation and the U.S. Forest Service both stated that there are no current plans for highway or

campground improvements other than routine maintenance, and that populations of *Primula maguirei* would be avoided when projects are within its range. No State lands are in the immediate vicinity of *Primula maguirei* populations.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Primula maguirei* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Primula maguirei* L.O. Williams (Maguire primrose) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Primula maguirei* is found only in Logan Canyon, Cache County, Utah (Welsh and Thorne 1979; Welsh 1979; Beedlow *et al.* 1980). A 1980 survey located two new populations in addition to the seven previously known, bringing the total known populations to nine (Beedlow *et al.* 1980). Increased human activities in Logan Canyon pose a threat to this species. Rock climbing activity is presently damaging some plants; climbers "clean" vegetation from cracks and ledges as they climb (Beedlow *et al.* 1980). Any transportation of utility construction along U.S. Highway 89 from the mouth of Logan Canyon to the Right Fork of Logan Canyon without consideration of *Primula maguirei* could impact the species. Development of campgrounds in the Logan Canyon area also may impact the species (Welsh 1979).

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Primula maguirei* is a beautiful flowering plant that could be used for ornamental purposes and because of this is subject to overcollection. Therefore, exploitation for commercial and amateur gardening is a potential threat (Welsh and Thorne 1979).

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms.* No State laws or regulations currently protect *Primula maguirei.* The U.S. Forest Service has established a national policy, based on the National Forest Management Act, of protecting species that it has designated as "sensitive" species (Title 2600, Chapter 2670.3(2)). *Primula maguirei* has received such a classification and hence it is the policy of the U.S. Forest Service to provide for its protection. Listing of this species under the Endangered Species Act will provide additional protection and the necessary regulations to aid the U.S. Forest Service in carrying out its national sensitive species policy on behalf of *Primula maguirei.*

E. *Other natural or manmade factors affecting its continued existence.* None known.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Primula maguirei* as threatened. While not in immediate danger of extinction *Primula maguirei* is rare, restricted, and highly vulnerable to modification of its habitat. The status of threatened most closely follows the intent of the Endangered Species Act for this species. A decision to take no action would exclude *Primula maguirei* from needed protection available under the Act. For the reasons discussed below, critical habitat is not being determined.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the species at this time. As discussed under factor B in the Summary of Factors Affecting the Species, *Primula maguirei* is potentially threatened by taking. Publication of critical habitat maps and descriptions would make this species even more vulnerable and increase enforcement problems. Because *Primula maguirei* occurs only on U.S. Forest Service land and the Act requires Federal agencies to carry out programs for the conservation of listed species, and because the Forest Service is aware of the localities of *Primula maguirei* and will need to protect its essential habitat once the species is listed, the determination of critical habitat would not provide any additional benefits for the species. Therefore, it would not be prudent to determine critical habitat for *Primula maguirei* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The U.S. Forest Service is aware of the existence of *Primula maguirei* on its lands and is presently managing for its protection.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Primula maguirei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under

certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Primula maguirei*, although a potentially desirable horticultural species, is not common in cultivation. Its rarity in the wild also precludes any significant trade.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This protection will apply to *Primula maguirei* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Primula maguirei* is known only from lands under the jurisdiction of the U.S. Forest Service. It is not known if a significant number of collecting permits will be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Beedlow, Peter A., John C. Carter, and Frank J. Smith. 1980. *Primula maguirei* L. Wms. (Primulaceae): A Preliminary Report on the Population Biology of an Endemic Plant. Bio-Resources, Inc., Logan, Utah. 2 pp.

Welsh, S.L. 1979. Status Report: *Primula maguirei*. U.S. Fish and Wildlife Service, Denver, Colorado. 6 pp.

Welsh, S.L., and K.H. Thorne. 1979. Illustrated Manual of Proposed Endangered and Threatened Plants of Utah. U.S. Fish and Wildlife Service, Bureau of Land Management, and U.S. Forest Service, Denver, Colorado. 318 pp.

Williams, Louis O. 1936. Revision of the Western Primulas. American Midland Naturalist 17:741–748.

Author

The primary author of this final rule is Mr. John L. England, Endangered Species Field Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Dr. James L. Miller of the Regional Endangered Species Division, U.S. Fish and Wildlife Service, Denver, Colorado, served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under Primulaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Primulaceae—Primrose family: *Primula maguirei*	Maguire primrose	U.S.A. (UT)	T	197	NA	NA

Dated: August 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–19906 Filed 8–20–85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Rule To Determine Townsendia Aprica (Last Chance Townsendia) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined *Townsendia aprica* (Last Chance townsendia) to be a threatened species under the authority of the Endangered Species Act, as amended. The Last Chance townsendia has three populations totaling approximately 2,000 individuals in Sevier, Emery, and Wayne Counties, Utah. Most of the plants are on public land managed by the Bureau of Land Management; a few are on private land. One small population is in Capitol Reef National Park. Trampling by cattle, highway construction, off-road vehicle activity, and coal and petroleum exploration are current threats, and coal mining and oil and gas recovery are potential threats to this species. This final rule implements protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is September 20, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Endangered Species Office at 134 Union Boulevard, fourth floor, Lakewood, Colorado 80228, and the Endangered Species Field Office at Room 2078, 1745 W. 1700 S., Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist, at the above Salt Lake City address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Townsendia aprica (Last Chance townsendia) was discovered in 1966 by Stanley L. Welsh and James L. Reveal, and was described as a new species by them in 1968. It is a herbaceous perennial, less than one inch tall and 1–2 inches wide. *Townsendia aprica* is a member of the aster or sunflower family

(Asteraceae). Stems grow from an underground base and branch to form a dense mat or tuft low to the ground. The flower heads are about one-inch wide with almost no stalk and have distinctive yellow to golden rays. The ray florets are densely glandular, the pappus is very short. The golden ray florets make the plant unusual in its genus; ray florets of the other known taxa are white, blue, or red with fresh (Welsh and Reveal 1968), except in *Townsendia jonesii* var. *lutea* (Welsh 1983) where the yellow is not so intense.

It appears that *Townsendia aprica* has never been abundant. At present, there are 12 individual sites clustered in three known populations in eastern Sevier, adjacent western Emery, and north central Wayne Counties, Utah. *Townsendia aprica* occurs on silty soils of the Mancos Formation, and is associated with the pinyon-juniper vegetative community. The species location on this formation makes it vulnerable to disturbance by coal mining and oil and gas drilling activity.

The first discovered population, with about 400 individual plants, is in the Last Chance Creek drainage about six miles south of Fremont Junction in eastern Sevier County (Welsh 1978, Welsh and Thorne 1979, Welsh and Reveal 1968, England 1984). A second population, with about 1,500 plants, is located about six miles northeast of the Last Chance Creek population in scattered stands between Ivie Creek and Willow Springs Wash in extreme western Emery County (Harris 1980, England 1984, Welsh 1978; N.D. Atwood and S.L. Welsh, pers. comm.). The third population, with about 100 plants, is about 15 miles south of the other two populations in the extreme northern portion of Capitol Reef National Park (England 1984). A botanical collection made in 1971 may represent a fourth population east of the second population near Rock Canyon. The locality information on the museum specimen is not definite and recent searches for this population have failed to locate it (England 1984; N.D. Atwood, pers. comm.). The populations are threatened by current and potential off-road vehicle use, coal mining, petroleum exploration and development, cattle grazing and trampling, and highway construction.

Section 12 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) of the 1973 Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1975 **Federal Register** notice. *Townsendia aprica* was included in the July 1975 notice (40 FR 27880) and the June 1976 proposal (41 FR 24527). General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act amendments of 1978 required that all proposals over two years old be withdrawn. On December 10, 1979, the Service published a notice of withdrawal (44 FR 70796) of the still applicable portions of the June 1976 proposal along with other proposals that had expired. The July 1975 notice was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82480) of a new notice of review for plants, which included *Townsendia aprica*. No comments on this species have been received in response to the 1980 notice. On February 15, 1983, the Service published a notice in the **Federal Register** (48 FR 6752) of its prior finding that the petitioned action on this species may be warranted, in accordance with section 4(b)(3)(A) of the Act, as amended in 1982.

On October 13, 1983, the petition finding was made that listing *Townsendia aprica* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of the finding was published in the January 20, 1984, **Federal Register** (49 FR 2485). Such a finding requires a reevaluation of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore a new finding was made that the petitioned action was warranted and the proposed rule to list the species as endangered in accordance with section 4(b)(3)(B)(ii) of the Act was published in the **Federal Register** (49 FR 22352) on May 29, 1984.

This endangered status was based upon the then current status information, which indicated that the species was found in only 3 disjunct populations with a total of about 215 individuals. During the 1984 field season and subsequent herbarium searches, the Service's Salt Lake City Field Office developed more accurate status information. *Townsendia aprica* is now known from at least 12 different locations, over an area about 30 miles across, and with a population in excess of 2,000 individuals. The Service, after evaluating the threats and the biological status of *Townsendia aprica*, has determined that the species should be listed as threatened rather than endangered as was proposed in the May 29, 1984, **Federal Register**.

Summary of Comments and Recommendations

In the May 29, 1984, proposed rule (49 FR 22352) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Richfield *Reaper* on June 18, 1984, which invited general public comment. One comment was received. Gerald E. Gordon of the Utah Wildlife Federation commented in favor of the proposed listing by agreeing with the information as contained within the **Federal Register** proposal. No public hearing was requested.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Townsendia aprica* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Townsendia aprica* (Last Chance townsendia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* At present, there are three known populations of *Townsendia aprica* within a ten-mile radius between Fremont Junction in extreme eastern Sevier County, Utah, and the northern portion of Capitol Reef

National Park in the extreme northwest corner of Wayne County, Utah (J. Anderson, pers. comm.). The two northern populations occupy habitat that corresponds with the geological strata (Blue Gate Shale) immediately above the coal-bearing seams (Ferron Sandstone) of the Mancos Formation. This area constitutes the bulk of the exposed coal seam area of the Emery Coal Field (Doelling and Smith 1983). Development of the Dog Valley Mine, located in the middle of Willow Springs Wash, has disturbed some potential habitat of *Townsendia aprica*. Coal mining development and production, especially strip mining along the exposed coal seams in the Emery coal field, has the potential of impacting and possibly eradicating 95 percent of the total population of *Townsendia aprica*. Most of the habitat of *Townsendia aprica* under Federal ownership (approximately 80 percent) is under lease either for coal or oil and gas. A cattle driveway and Utah Highway 72 traverse the habitat of the Last Chance Creek population of *Townsendia aprica*. Use of the livestock driveway is continually affecting this population by trampling. Proposed realignment and improvement of Highway 72 has the potential of also affecting this population. Unimproved roads provide access to all populations of *Townsendia aprica* exposing them to the possibility of vehicular disturbance (Harris 1980, MacBryde 1984, England 1984).

B. *Overutilization for commercial, recreational, scientific, or educational purpose.* None.

C. *Disease or predation.* None.

D. *The inadequacy of existing regulatory mechanisms. Townsendia aprica* is not specifically protected by any Federal or State laws or regulations. Known populations of *Townsendia aprica* are found on BLM, National Park Service, and private lands. Although the BLM is aware of this species, it cannot completely regulate activities affecting its survival. The small population in Capitol Reef National Park may be vulnerable to roadside disturbance unless actively protected.

E. *Other natural or manmade factors affecting its continued existence.* The small size and few populations of *Townsendia aprica* make it vulnerable to adverse changes in ecological factors associated with human activities.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Townsendia aprica* as a threatened species. With only about 2,000 individuals known, the damage occurring, and other damage possible to the species' three populations, threatened status seems an accurate assessment of the species; condition. It is not prudent to propose critical habitat, because doing so would increase risk for the species, as discussed below.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. *Townsendia aprica* is threatened by off-road vehicles damaging it and its habitat. Publication of critical habitat descriptions and maps would make this species even more vulnerable through possible wanton vandalism and would increase enforcement problems. Therefore, the Service finds that it would not be prudent to determine critical habitat for *Townsendia aprica*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service, as appropriate, following listing. The protection required by Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Possible effects of this rule on the BLM might include restricting traffic to some existing roads, fencing to control cattle and vehicles, and administering leases so that the species is accommodated in mineral exploration or development activity.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Townsendia aprica*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species, under certain circumstances. No such trade in *Townsendia aprica* is known. It is anticipated that few trade permits would ever be sought or issued since this species is not known in cultivation or common in the wild and is not of particular trade interest.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This new protection will apply to *Townsendia aprica* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and these will be made final following public comment. *Townsendia aprica* occurs primarily on public lands managed by the BLM. It is anticipated that few taking permits for the species would ever be requested, as this plant is not common in the wild and has not been of interest to collectors. Requests for copies of the regulations on plants and inquiries regarding them may

be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

Doelling, H.H., and M.R. Smith. 1983. Overview of Utah Coal Fields, 1982. Utah Geological and Mineral Survey, Bulletin 118.

England, [J.]L. 1984. Field report: Herbarium searches and field reconnaissance of *Townsendia aprica* populations. U.S. Fish and Wildlife Service, Salt Lake City, Utah. 4 pp.

Harris, J. 1980. Inventory of endangered and threatened plants on proposed coal lease lands in Emery County. Bureau of Land Management, Moab, Utah. 3 pp.

MacBryde, B. 1984. Supplemental status information, *Townsendia aprica*, January 1984. U.S. Fish and Wildlife Service, Washington, D.C. 1 p.

Welsh, S.L. 1978. Status report: *Townsendia aprica*. U.S. Fish and Wildlife Service, Denver, Colorado. 6 pp.

Welsh, S.L. 1983. Utah flora: Compositae (Asteraceae). Great Basin Naturalist 43(2):179–357.

Welsh, S.L., and J.L. Reveal. 1968. A new species of *Townsendia* (Compositae) from Utah. Brittonia 20:375–377.

Welsh, S.L., and K.H. Thorne. 1979. Illustrated manual of proposed endangered and threatened plants of Utah. U.S. Fish and Wildlife Service, Bureau of Land Management, and U.S. Forest Service; Denver, Colorado. 318 pp.

Author

The primary author of this rule is John L. England, Botanist, U.S. Fish and Wildlife Service, Salt Lake City Field Office, Salt Lake City, Utah. Dr. James L. Miller, of the Regional Endangered Species Division, U.S. Fish and Wildlife Service, Denver, Colorado, served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine Mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family:							
Townsendia aprica	Last Chance townsendia	U.S.A. (UT)	T	195	NA	NA

Dated: August 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–19911 Filed 8–20–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 20

Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States for the 1985–86 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e., the outer limits for dates and times when shooting may begin and end, hunting areas, and the numbers of birds which may be taken and possessed) for early season migratory bird hunting regulations from which States may select season dates and daily bag possession limits for the 1985–86 season. These seasons may open prior to October 1, 1985, and apply to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens and purple gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; and experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and special extended falconry seasons.

DATES: Effective on August 21, 1985. Selected season dates are to be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) for publication in the Federal Register as amendments to §§ 20.103 through 20.106 and 20.109 of 50 CFR Part 20.

ADDRESSES: Season selections from States are to be mailed to: Director (MBMO Room 3252), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received are available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Department of the Interior, Washington, DC 20240, telephone (202) 254–3207.

SUPPLEMENTARY INFORMATION: On March 14, 1985, the U.S. Fish and Wildlife Service published for public comment in the Federal Register (50 FR 10276) proposals to amend 50 CFR Part 20, with comment periods ending June 20, 1985, for Alaska, Hawaii, Puerto Rico and the Virgin Islands frameworks; July 15, 1985, for other early season frameworks; and August 19, 1985, for late season frameworks. That document dealt with establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. A supplemental proposed rulemaking for both the early and late hunting season frameworks appeared in the Federal Register dated June 4, 1985 (50 FR 23459).

On June 20, 1985, a public hearing was held in Washington, D.C., to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, sandhill cranes and other species. The meeting was announced in the **Federal Register** on March 14, 1985, (50 FR 10276) and June 4, 1985 (50 FR 23459). Proposed hunting regulations were discussed for these species and for common snipe; rails; common moorhens and purple gallinules; September teal seasons in the Mississippi and Central Flyways; experimental early duck seasons in Florida, Iowa, Kentucky and Tennessee; special sea duck seasons in the Atlantic Flyway; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; extended falconry seasons and hunting regulations for Alaska, Puerto Rico and the Virgin Islands. Public comments on these matters were received.

On July 5, 1985, the Service published in the **Federal Register** (50 FR 27638) a third document in the series of proposed and final rulemaking ⅓documents dealing specifically with proposed frameworks for the 1985–86 season from which, when finalized, wildlife conservation agency officials may select season dates for hunting certain migratory birds in their respective jurisdictions during the 1985–86 season. On July 26, 1985, the Service published in the **Federal Register** (50 FR 30424) a fourth document in the series which dealt specifically with final frameworks for Alaska, Puerto Rico and the Virgin Islands.

This rulemaking is the fifth in the series and deals specifically with final frameworks for other early season migratory game bird hunting regulations from which State wildlife conservation agency officials may select season dates and daily bag and possession limits for the 1985–86 season. These seasons may open prior to October 1, 1985, and apply to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens and purple gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; an experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and special extended falconry seasons.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Review of Public Comments

The Service has already responded to earlier comments on proposed regulations published in the **Federal Register** on March 14, 1985 (50 FR 10276) and June 4, 1985 (50 FR 23459), and discussed at the June 20, 1985, Public Hearing in Washington, DC. These responses appeared in the **Federal Register** on June 4, 1985 (50 FR 23459), July 5, 1985 (50 FR 27638), and July 26, 1985 (50 FR 30424). Two additional comments, relating to proposed early season frameworks, have been received and are discussed here. They are discussed in the same order as the items, to which they apply, were listed in previous 1985 **Federal Register** publications.

2. *Framework dates for ducks and geese in the continental United States.* In the June 4, 1985, **Federal Register** (at 50 FR 23463) the Service gave notice of the recommendations received from the Mississippi Flyway Council Upper Region Regulations Committee requesting that the September 26 framework opening date for goose hunting in the western portion of Michigan's Upper Peninsula (UP) be expanded to include the entire UP. The Service's response indicated that because the upcoming 1985–86 waterfowl season is the final year of the scheduled 3-year study, expansion of the early goose season option to other areas should be deferred until Michigan's ongoing goose season framework extension study has been completed and their final report has been submitted to and evaluated by the Service and Mississippi Flyway Council.

By letter dated July 12, 1985, Michigan requested that the Service reconsider its position on the Upper Region's recommendation because it would not affect the evaluation of their experimental season and would simplify goose hunting regulations across the UP.

The State also requested that, in an effort to reduce unintended harvest of Mississippi Valley Population Canada geese and/or Tennessee Valley Population Canada geese during their late extended hunting season in the Southern Michigan Goose Management Area (to control local giant Canada geese) they be given the option to conduct a hunt for local giant Canada geese in the Area on September 14–16, 1985. Michigan indicated that the timing of the season would precede the arrival of northern migrant Canada geese into the Area and the 3 days in September would be taken in lieu of any December hunting days for the late extended season.

Response. The Service continues to believe that until Michigan's experimental early goose season in the western UP has been completed and its effect on the waterfowl resource has been evaluated by the flyway council and the Service, expansion of the option for an early goose season should be deferred.

The Service noted that Michigan's request for a 3-day hunting season in September for the control of local giant Canada geese has not received Mississippi Flyway Council review and therefore defers action on it pending receipt of recommendation from the Council.

6. *September teal season.* Michigan, by letter dated July 12, 1985, requested that the Service include the State among those in the Central and Mississippi Flyways eligible for selection of a 1985 September teal season.

Response. States, such as Michigan, that have breeding populations of teal are classified as waterfowl production States and are not presently offered a September teal season because the Service believes that additional hunting pressure in September would be detrimental to local breeding populations. The Service favors continuing to limit the September teal season option to States in the Central and Mississippi Flyways not classified as waterfowl production States. It is noted that in lieu of the September teal season option, Michigan has the option to include additional teal in the daily bag limit during a portion of its regular duck hunting season.

21. *Woodcock.* One individual from Maine requested that the Service reconsider its proposed changes in woodcock hunting regulations in the Atlantic Flyway for 1985. He suggested that the restrictive changes were unwarranted in view of increased counts of woodcock at Moosehorn National Wildlife Refuge and general reports of above average brood rearing conditions.

Response. The Service believes that while increased counts of woodcock at Moosehorn Refuge are gratifying, such local conditions do not make the proposed changes unwarranted. More important considerations are that counts in Maine and in the Atlantic Flyway as a whole were up only 4.2 and 7.6 percent, respectively, from 1984 counts. Despite these modest increases over 1984 and a favorable outlook for production in 1985, woodcock populations in Maine and the Atlantic Flyway remain at low levels. The

Service views the proposed restrictive changes in hunting regulations as being necessary to adjust harvest opportunities to a level commensurate with the populations' status.

Comments received are available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act "[and]" . . . by taking such action necessary to insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical." The Service therefore initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 18, 1985, the Acting Chief, Office of Endangered Species, concluded that the proposed actions were not likely to jeopardize the continued existence of listed species.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 14, 1985 (50 FR 10276), the Service reported measures it had undertaken to comply with requirements for the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Memorandum of Law

The Service published its Memorandum of Law, as required by section 4 of Executive Order 12291, in the **Federal Register** dated July 26, 1985 (50 FR 30424).

Authorship

The primary author of this final rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rules were published March 14, June 4, and July 5, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the periods' close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that States would have insufficient time to select their season dates, shooting hours and limits; to communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended, (40 Stat. 755; 16 U.S.C. 701–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR Part 20 to reflect seasons, limits, and shooting hours for the contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands for the 1985–86 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Final Regulations Frameworks for 1985–86 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks which prescribe season lengths, limits, shooting hours and outside dates within which States may select seasons for mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens; purple gallinules; September teal seasons; experimental duck seasons opening in September in Iowa, Florida, Kentucky, and Tennessee; sea ducks (scoters, eider and oldsquaw) in certain defined areas of the Atlantic Flyway; sandhill cranes; sandhill cranes-Canada geese in southwestern Wyoming; experimental early goose framework in a portion of Michigan; and special extended falconry seasons. For the guidance of State conservation agencies, these frameworks are summarized below.

Notice

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens, purple gallinules, sandhill cranes or special extended falconry seasons to open in September must make its selection no later than July 26, 1985. States desiring these seasons to open after September 27 may make their selections at the time they select regular waterfowl seasons. Season selections for the 4 States offered experimental September duck

seasons must also be made by July 26, 1985.

Atlantic Flyway Coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than July 26, 1985. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1985 and January 15, 1986, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively, or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Shooting Hours: Between ½ hour before sunrise and sunset daily.

Zoning:—Alabama, Georgia, Illinois, Louisiana, and *Mississipi,* may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Excambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—The Northern Zone shall be that portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line.

Illinois—U.S. Highway 36.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1985.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming).

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively,

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning.—In addition to the basic framework and the alternative, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then southeast on U.S. Highway 87 to port Lavaca (*or,* as an option from San Antonio: then northeast on Interstate 10 to Orange).

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FR 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 2-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1985 and January 25, 1986; the South zone between September 20, 1985 and January 25, 1986.

C. Except during the special 2-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves, (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24 respectively, or

In all states except Arizona, not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

White-Winged Doves

Outside Dates:—Arizona, California, Nevada, New Mexico, and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1985. *Florida* may select hunting seasons between September 1, 1985 and January 15, 1986.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 2 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate including no more than two mourning doves and two white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggregate including no more than four mourning doves and four white-tipped doves in possession; and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1985, and January 25, 1986, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1985, and January 15, 1986, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, in either season, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-Tailed Pigeons

Pacific Coast States and Nevada—California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates—Between September 1, 1985, and January 15, 1986.

Hunting, Seasons, and Daily Bag and Possession Limits—Not more than 30 consecutive days, with a bag and possession limit of 5. Each band-tailed pigeon hunter in Nevada must have in possession while hunting a permit issued by the State for the purpose of collecting harvest and hunter participation data.

Zoning—California may select hunting seasons of 30 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners—Arizona, Colorado, New Mexico and Utah.

Outside Dates—Between September 1 and November 30, 1985.

Hunting Seasons, and Daily Bag and Possession Limits—Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas—These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning—New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1985, in the North Zone and October 1 and November 30, 1985, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates—States included herein may select seasons between September 1, 1985, and January 20, 1986, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons—The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits—In *Rhode Island, Connecticut, New Jersey, Delaware,* and *Maryland,* 10 and 20 respectively, singly or in the aggregate of these two species. In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina,* and *Virginia,* 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits—In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway,[2] 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside Dates—States in the Atlantic Flyway may select hunting seasons between October 1, 1985, and January 31, 1986. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1985, and February 28, 1986.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not

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[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dokota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning—New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates—Between September 1, 1985, and February 28, 1986. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits—Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens And Purple Gallinules

Outside Dates—September 1, 1985, through January 20, 1986, in the Atlantic and Mississippi Flyways and September 1, 1985, through January 19, 1986, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily and Possession Limits—Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons may be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except in the Pacific Flyway the daily bag and possession limits may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway—Seasons not to exceed 58 days between September 1, 1985, and February 28, 1986, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota;* and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1985 and February 28, 1986 may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I–35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

Bag and Possession Limits—3 and 6, respectively.

Permits—Each person participating in the regular sandhill cranes season must obtain and have in his possession while hunting, a valid Federal sandhill crane hunting permit.

Special Seasons in the Pacific Flyway—Arizona may select a sandhill crane season subject to the following conditions:

1. The season may not exceed 6 days in November 1985.

2. The hunting area is confined to Game Management Units 30A, 30B 31, and 32.

3. Each hunter must obtain and have in possession while hunting a special permit issued by the State. No more than 200 permits may be issued. Each permittee may take 2 sandhill cranes per season.

4. Emergency closures for all crane hunting may be invoked as necessary.

Special Sandhill Crane-Canada Goose Season

Wyoming may select a season(s) on sandhill cranes and Canada geese subject to the following conditions:

1. Outside dates for the season(s) are September 1–22, 1985.

2. Hunting will be by State permit, with 125 permits issued for the Bear River drainage and 125 permits issued for Star Valley, all in Lincoln County. Each permittee may take 2 sandhill cranes and 3 Canada geese per season.

3. Emergency closures for all crane hunting may be invoked as necessary.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates—Between September 15, 1985, and January 20, 1986.

Hunting Seasons, and Daily Bag and Possession Limits—Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season—In the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas—In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island* and *Connecticut;* in those coastal waters of the State of *New York* lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of *New York* lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina,* and *Georgia;* and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 years or open water from any shore, island and emergent vegetation in *Delaware, Maryland, North Carolina* and *Virginia;* and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

Deferred Selection—Any State desiring its sea duck season to open in September must make its selection no later than July 26, 1985. Any State desiring its sea duck season to open after September may make its selection at the time it selects the waterfowl season.

September Teal Season

Outside Dates—Between September 1 and September 30, 1985, an open season on all species of teal may be selected by *Alabama, Arkansas, Colorado* (Central Flyway portion only), *Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico,* (Central Flyway portion only), *Ohio, Oklahoma, Tennessee* and *Texas* in areas delineated by State regulations.

Hunting Seasons, and Bag and Possession Limits—Not to exceed 9 consecutive days, with bag and possession limits of 4 and 8, respectively.

Shooting Hours—From sunrise to sunset only.

Deadline—States must advise the Service of season dates and special provisions to protect non-target species by July 26, 1985.

Special September Duck Seasons

Iowa September Duck Season—Iowa may experimentally hold a portion of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. In 1985, the 5-day season segment may commence no earlier than September 21, with daily bag and possession limits being the same as those in effect during the 1985 regular duck season.

Tennessee, Kentucky and Florida September Duck Seasons—Experimental 5-consecutive-day duck seasons may be selected in September by *Tennessee, Kentucky,* and *Florida* subject to the following conditions:

1. In *Kentucky* and *Tennessee* the seasons will be in lieu of September teal seasons; in *Florida* the season will be in lieu of the extra teal option.

2. In all States, the daily bag limit will be 4 ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit.

Experimental September Goose Season

Michigan—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee and Ontonagon, the framework opening date for geese is September 28. Season length and limits for geese in this area will be established later with other regulations for the regular waterfowl season.

Special Falconry Regulations

Extended Seasons—Falconary is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates—Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits—Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication—Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons—General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note:—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: August 6, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-19873 Filed 8-20-85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 162
Wednesday, August 21, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 446

[Docket No. 2550S]

Walnut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Walnut Crop Insurance Regulations (7 CFR Part 446), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) change the method of computing indemnities when acreage, share, or practice is underreported; (3) limit the insured's share of an indemnity on crops sold before harvest; (4) shorten the length of time an insured has to give notice when claiming an indemnity; (5) add a definition for the term "Loss ratio;" and (6) redefine "Unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than September 20, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the walnut policy are:

1. Section 2.c.—Add a clause to change the method of calculating the insured's share of an indemnity on crops sold before harvest. This limits the insured's indemnity to his interest in the crop at the time of loss.

2. Section 5.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will therefore reflect the actual production history of the crop on the unit.

Remove the provisions for the transfers of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

3. Section 8.a.(4)—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This change will allow FCIC to determine indemnities in a more timely fashion.

4. Section 9.d.—When acres are underreported, the production from all acres will be applied against the report acres in calculating the indemnities. This change will reduce the complexity of calculations.

5. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

6. Section 17.—Add a definition for the term "Loss ratio" to clarify its use in section 5.

7. Section 17.—Amend the "Unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 446

Crop insurance, Walnut.

Proposed rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Walnut Crop Insurance Regulations (7 CFR Part 446), effective for the 1986

and succeeding crop years, to read as follows:

PART 446—WALNUT CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

446.1 Availability of walnut crop insurance.
446.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
446.3 OMB control numbers.
446.4 Creditors.
446.5 Good faith reliance on misrepresentation.
446.6 The contract.
446.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 446.1 Availability of walnut crop insurance.

Insurance shall be offered under the provisions of this subpart on walnuts in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 446.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for walnuts which will be included in the actuarial table on file in applicable service offices and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 446.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7, CFR.

§ 446.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 446.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the walnut insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 446.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance by the Corporation. The contract shall cover the walnut crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 446.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the walnut crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a walnut contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Walnut Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Walnut—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application, and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Wildlife;
(4) Earthquake;
(5) Volcanic eruption;
(6) Direct Mediterranean Fruit Fly damage; or
(7) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(3). Direct Mediterranean Fruit Fly damage will be actual physical damage to the walnuts which causes such walnuts to be considered unmarketable and will not include unmarketability of such walnuts as a direct result of a quarantine, boycott or refusal to accept the walnuts by any entity without regard to actual physical damge to such walnuts.

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good walnut farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project;

(4) The failure to carry out a good walnut irrigation practice;

(5) The failure or breakdown of irrigation equipment or facilities; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be English walnuts (excluding black walnuts) hereafter called "walnuts" which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be walnuts grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured walnuts at the time insurance attaches. However, for the purpose of determining the amount of indemnity, your share will not exceed you share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) On which the trees have not reached the ninth growing season after being set out, unless we agree, in writing, to insure such acreage; or

(2) Planted with a crop other than walnuts.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good walnut irrigation practice at the time insurance attaches.

f. Insurance may attach only by written agreement with us on any unit which consists of less than 5 acres of insurable walnut trees.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of walnuts in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any walnuts grown in the country. This report must be submitted annually on or before March 1. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by March 1, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (ninth growing season and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent for each percent reduction in excess of 10 percent.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1-½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches for each crop year on March 1 and ends at the earliest of:

a. Total destruction of the walnuts;

b. Harvest of the walnuts;

c. Final adjustment of a loss; or

d. November 15.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if, during the period before harvest, the walnuts on any unit are damaged and you decide not to further care for them.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined or if damage occurs during harvest, immediate notice must be given.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(a) Total destruction of the walnuts on the unit;

(b) Harvest of the unit; or

(c) November 15 of the crop year.

b. You must obtain written consent from us before you destroy any of the walnuts which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the walnuts on the unit;

(2) Harvest of the unit; or

(3) November 15 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of walnuts on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of walnuts to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good walnut farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our prior written consent; and

(c) Any appraised production on unharvested acreage.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Marketed; or

(b) Further damaged by an insured cause and reappraised by us.

(3) If you elect to exclude hail and fire as insured causes of loss and the walnuts are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net

indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** on or about January 1 and July 1 of each year. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all walnuts produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the applicable crop year, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish to us on or before the cancellation date satisfactory records of the previous year's production. If you show prior to the cancellation date to our satisfaction, that the records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agricutural will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are January 31.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of walnut crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding walnut insurance in the county.

b. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the walnuts are normally harvested.

e. "Harvest" means picking up the walnuts for the purpose of removal from the orchard.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who sumbitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Tenant" means a person who rents land from another person for a share of the walnuts or a share of the proceeds therefrom.

l. "Unit" means all insurable acreage of walnuts in the county located on contiguous land on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the walnuts on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on June 26, 1985.

Michael Bronson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-20007 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 978

[Docket No. TVR-PA-1]

Vegetables Grown in Texas; Recommended Decision and Opportunity To File Written Exceptions to Proposed Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes an agreement which would authorize a coordinated research and promotion type program for vegetables grown in Texas and provides interested persons an opportunity to file written exceptions concerning the recommendations.

The proposed agreement would establish commodity committees consisting of two to eight members and a Texas Vegetable Council consisting of the chairman of each commodity committee, who would handle the local administration of the research and promotion programs. Program costs would be financed by assessements collected only from shippers of vegetables grown for fresh market who voluntarily sign the agreement. There are no provisions for any inspection, grade, size, container or volume regulations. To become effective the proposal would require that the marketing agreement be signed by handlers representing at least 75 percent of a particular vegetable shipped to fresh market from a district.

DATE: Written exceptions to this recommended decision must be received by September 10, 1985.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, Room 1077-S, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written exceptions should be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Vegetable Branch, Fruit, and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone (202) 447-5432.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of section 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291. Prior documents in this proceeding: Pre-notice press release—Issued regionally on January 4, 1985; Notice of Hearing—Issued February 7, 1985, and published February 11, 1985 (50 FR 5593).

Small businesses. The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons were invited to present evidence on the probable regulatory and informational impact of the proposed rule on small business at the public hearing.

The record shows all of the witnesses testified that their firms were "small businesses." Also the executive vice president of the Texas Citrus and Vegetable Association testified that a very high proportion of the approximately 120 vegetable industry members of his association would come under the definition of small business. Record evidence deocuments that the total value of production of Texas vegetables for fresh market averaged approximately $385 million. Using the conservative number of handlers in the Association (which does not include all Texas vegetable handlers) would result in an average value of approximately $3.2 million. This amount is under the $3.5 million volume for small business considered appropriate now for this agricultural service category by officials of the Small Business Administration. It is important to consider that the typical method of doing business is for the terminal market or chain store buyers to remit the proceeds from the sale to the handlers, who in turn remit to the growers a net amount after deducting fees charged for the services of the handlers. Hence, the grower's shares merely pass through the handlers' hands and the handlers' gross receipts represent fees for performing specified services. Thus, very few Texas vegetable handlers would not be classed as small businesses.

The Agricultural Marketing Agreement Act requires the application of uniform rules to regulated handlers. Since signatory handlers that would voluntarily sign the proposed agreement are predominantly small businesses, the program itself is tailored to the size and nature of these small businesses. Other persons would not be bound by the agreement.

Further, while the proposal recommended herein would impose some requirements on the small businesses who sign the agreement and the potential number of such may be approximately 100, any added burden should not be significant, especially in light of the potential benefits that should be derived by such small businesses.

The testimony presented at the hearing on the proposal indicated that the burden of financing and implementing the agreement—should it be put into effect by the Secretary after the 75 percent volume has been signed up—would be no more than the burden of the current non-Federal voluntary promotion program. Rather than reporting and sending assessments to several industry organizations under the agreement signatory handlers might report and send assessments only to the Texas Vegetable Council which would operate under the agreement. This economy of operation would be equally advantageous to large and small businesses, with small business perhaps benefiting to a greater degree in that their operating margins may be smaller.

Additionally, the concept of the agreement itself is particularly beneficial to small businesses. It would authorize large numbers of small businesses to pool their resources to mount a research program or promotional campaign to benefit all such growers and handlers of Texas vegetables. Small businesses are the least likely to be in a position to initiate and maintain the magnitude of a marketing expansion program as forseen by the proponents of the agreement.

With respect to small businesses that are not Texas vegetable growers or handlers, the impact of the proposed agreement would be different. Some such businesses, including retail food stores, restaurants, and others that sell

Texas vegetables to the public in various forms, could experience increased costs due to the proposed amendment. However, the magnitude of such added costs is difficult to quantify and is speculative. Moreover, these hypothetical added costs would be counterbalanced by the benefits to Texas vegetable growers and handlers and other small businesses, due to increased public awareness and demand for vegetables as a result of promotion and paid advertising projects conducted by the commodity committees.

Preliminary statement. Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed vegetable research and promotion program covering Texas. The above notice of filing and opportunity to file exceptions to it are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.),* and in accordance with the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). Copies of this decision may be obtained from James B. Wendland whose address is listed above.

The proposed agreement was formulated on the record of a public hearing held at San Antonio, Texas, February 20–21, 1985. Notice of the hearing was published in the February 11, 1985, issue of the **Federal Register.** The notice set forth a proposed marketing agreement submitted by the Texas Vegetable Research and Promotion Steering Committee, listing handlers "representing over 75 percent of Texas acreage of vegetables for fresh market."

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of circumstances which would warrant exercise of Federal jurisdiction in this instance;

(2) The need for the proposed research and promotion type agreement to effectuate the declared policy of the Act;

(3) The definition of the commodities and determination of the area to be effected by the agreement;

(4) The identity of the persons and transactions to be assessed; and

(5) The specific terms and provisions of the proposed agreement including:

(a) Definitions of terms used in it which are necessary and incidential to attain the declared objectives of the Act;

(b) The establishment, maintenance, composition, powers, duties and operation of the commodity committees and the Texas Vegetable Council which shall be the local administrative agencies for this program;

(c) The authority to establish production research, marketing research, consumer education, advertising, market development, product development, and promotion programs, studies, or projects for Texas vegetables;

(d) The authority to incur expenses and to levy assessments on handlers who sign the agreement covering Texas vegetables grown for fresh market;

(e) The establishment of reporting and related recordkeeping requirements; and

(f) Additional terms and conditions as set forth in §§ 978.70–978.84 published in the **Federal Register** (50 FR 5593) on February 11, 1985, which are necessary to effectuate the provisions of the Act.

Findings and conclusions. The findings and conclusions on the material issues are based upon the evidence presented at the hearing:

(1) Vegetables for fresh market are or can be grown in each of the 254 counties in Texas. In recent years, Texas has consistently ranked third in the United States in fresh market vegetable acreage. From 1981–1983, the harvested acreage of all vegetables in Texas averaged close to 200,000 acres. From this came annual shipments of major fresh vegetables averaging 17.4 million hundredweight.

Each of the numerous fresh vegetables produced in Texas is marketed in the 23 major U.S. cities with Federal-State Market News Service offices. This data for 1983 shows that Texas vegetables are in interstate and foreign commerce by supplying the five reported Canada cities with 368,000 hundredweight and 23 U.S. ones with 6.9 million hundredweight of the vegetables included in the proposed agreement. Additionally, 1983 arrivals in two Texas cities showed 5.15 million hundredweight of out of State vegetables. This data is representative of the shipments to other nonreported cities in the United States. Such vegetables are prepared for shipment in essentially the same manner, whether intended as intrastate or interstate commerce. Also, generally no producer is the sole supplier to a particular market. Because of the market information on prices being paid in competing areas and those offered by competing producers, buyers seek to maximize their returns by buying the quality they are seeking at the lowest prices available anywhere. Conversely, producers seek to maximize their returns by selling their vegetables at the highest available prices. As a result, any shipment or sale of vegetables, whether intrastate, interstate or international, affects prices for all vegetables marketed. The evidence in the record is in accord with the findings in the Act that these products are either in the current of interstate or foreign commerce or directly burden, obstruct, or affect such commerce and except as otherwise provided all such vegetables should be subject to the authority of the Act and the proposed agreement.

(2) The record evidence shows that a program of production research, marketing research, consumer education, advertising, market development, product development and promotion could help the Texas vegetable industry increase its returns and that there is a need for a marketing agreement such as that recommended herein to effectuate the declared policy of the Act.

The maintenance and expansion of existing markets and the development of new markets or uses are vital to the welfare of Texas vegetable producers and shippers and others concerned with marketing and using these vegetables. Record evidence shows it has been difficult to bring about a coordinated program of research and promotion because the industry is composed mainly of small sized businesses spread geographically across the State. Without cooperative action to develop and fund such a program, the industry has been stifled. Record evidence documents several voluntary attempts to provide such projects which were not fully successful because of eventual decline of support and cooperation from the industry. The industry had previously pursued attempting this type activity under the Texas Commodity Referendum Act. However, the Texas Department of Agriculture required that a separate Board would need to be created for each individual vegetable and furthermore separate hearings and referenda would have to be held for each vegetable in each of the 254 counties. The industry deemed such an exceedingly expensive, time consuming and uncoordinated approach to be unworkable, thus a need for this Federal marketing agreement. The latter would provide a more effective self-help type approach where only those who sign the agreement would be assessed to pay program costs and submit needed reports. Record evidence shows all of the witnesses, who consider their firms "small businesses," stressed their support for the program and testimfied that the proposed reports would pose no additional burden. Most emphasized that, individually, they were not large enough to undertake the research or promotion needed. But through this program they could join together to accomplish the worthy objectives. Thus,

the proposal is designed basically by and for small businesses and in keeping with the Regulatory Flexibility Act could carry out the program with the least possible government regulatory involvement or burden on the industry.

Record evidence affirms that the market for fresh vegetables, including Texas vegetables, is fluid and sensitive to many changing factors. Buyers pursue numerous sources in many States to obtain the variety, quality and price of vegetables to satisfy their customers.

The more well known a source becomes and the better its reputation, the more likely buyers are to continue buying there. Conversely, poor reputations have the opposite effect. The record indicates Texas vegetable growers and shippers need this proposed agreement to build a desirable reputation and a national awareness based on improved varieties developed through effective and coordinated production research, marketing research and promotion activities, which should tend to result in increased returns to the growers and handlers.

The record was uncontested in documenting the urgent need for developing improved, disease resistant, high yielding varieties adapted to the respective districts, with characteristics desired by consumers.

Evidence shows that the once valuable South Texas tomato industry has declined from over 111,000 acres to now less than 1,000 due to failure to develop a suitable variety to compete in the marketplace against Florida and California. Similarly the Rio Grande Valley's Imperator 58 carrot, developed 27 years ago, only yields from one-half to one-fourth that of Texas' competition, resulting in a significant cost disadvantage. Expert witnesses documented other similar vegetable variety problems including broccoli, celery, cabbage, peppers, sweet corn, cucumbers, and potatoes.

In addition, research is needed on cultural, harvesting and handling practices for Texas vegetables. Record evidence indicates the development of mechanical harvesters for radishes in Florida captured the national radish market for it. Also, that Texas lost the sweet corn market to Florida when Texas failed to develop worm free sweet corn. These examples illustrate another need for the agreement to provide the funds and leadership necessary to maintain or increase market shares to the benefit of Texas, its vegetable industry and the consumers alike.

(3) The definition of the commodities and determination of the area to be covered by the proposed agreement.

The term "area" should be defined to include all of the State of Texas. Record evidence shows vegetables can be grown in every part of the area, and to omit any part of the State from the program would likely encourage production in that exempt part to obtain advantages from the program without assuming any share of the responsibility.

The term "vegetable" should mean any edible product of all varieties of plants known as *Angiospermae* or others designated by the Secretary which are grown in the area for fresh market. These plants are usually herbaceous and grown for an edible part. However, the term should not be restricted to only those botanically defined as vegetables or those varieties listed in § 978.5, but should include any variety viewed in practice as a commercial vegetable by the industry or the Secretary now or in the future.

(4) Handler. The term "handler" is synonymous with "shipper." It should be defined in the agreement to identify the persons who would be subject to the agreement. Therefore, the term should apply to all persons who perform any of the activities within the scope of the term "handle" as hereinafter defined and who have signed the marketing agreement. These persons are responsible for meeting requirements of the agreement and any rules or regulations issued thereunder, such as paying assessment, submitting reports and maintaining records.

Common or contract carriers of vegetables owned by another person should be exempt from the proposed agreement since such carriers are not the persons who cause the introduction of such vegetables into the normal channels of commerce. The only interest of common or contract carriers in such vegetables is to transport them for a service charge to destinations given by others. The person or persons delivering vegetables to a common or contract carrier, or causing such delivery, should be responsible for compliance under the proposed agreement.

A grower who handles the vegetables he/she had produced and who had signed the agreement should also be considered a "handler" when he/she performs the handling function on such fresh vegetables.

Growers who sell or otherwise market fresh vegetables directly from the field to a consumer, itinerant trucker or other buyer should also be "handlers" if they have signed the agreement. Any signatory person who purchases vegetables from growers and performs any other handling function such as packing such vegetables for market or grading or otherwise preparing them for market would be a "handler."

The term "handle" should be defined in the proposed agreement to establish the specific marketing functions which primarily place fresh vegetables in the current of commerce within the area or between the area and any point outside thereof. "Handle" and "ship" are used synonymously and the definition should so indicate.

(5) Certain terms and provisions of the proposed agreement should be defined and explained for the purpose of designating specifically their applicability and limitations whenever they are used.

(a) "Secretary" should be defined to include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for this agreement, but also, in recognition that it is physically impossible for him/her to perform personally all of the functions and duties imposed upon him/her by law, any other officer or employee of the U.S. Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

The definition of "Act" provides the correct legal citation for the statute authorizing this proposed marketing agreement and makes it unnecessary to refer to such citation thereafter.

The definition of "person" follows the definition of that term as set forth in the Act (Sec. 608a(9)) and will ensure that it will have the same meaning as it has in the Act.

"Grower" should be synonymous with producer and means any person engaged within the area in a proprietary capacity in the production of vegetables for fresh market. The term is used specifically to indicate those individuals who would be eligible to vote for termination pursuant to § 978.76(c) or who have this one of two necessary qualifications (the other of being a signatory handler) to be eligible to vote for or qualify as members or alternates on applicable commodity committees.

"Grower" should include any person who owns or shares in the ownership of a vegetable such as a landowner, landlord, tenant or sharecropper. The person who owns and farms land resulting in his ownership of vegetables produced on such land should clearly be considered a "grower". The same is true with respect to the person who rents and farms land resulting in his ownership of all or a part of the vegetables produced thereon.

Likewise, a person who owns land, which he does not farm, but as rental for such land obtains the ownership of a

portion of the vegetables produced thereon, should be regarded as a "grower." In each of the above situations the person involved in production, regardless of whether an individual, partnership, corporation, or other business unit should be considered as a "grower." The chief test of a grower is whether or not the individual or other business unit has title to and shares in the risk of loss of the vegetables that are produced.

In the situation where growers sell their vegetables shortly before harvesting to packing shed operations or others, while title may actually pass, contracts in most instances include additional requirements that the producer will care for the crop until it is harvested. In such cases even though title passes to the handler at the time of purchase, the buyer should not be classified or qualified as a producer since the buyer does not actually perform customary producer functions with regard to growing the crop.

In the case where a producer performs handling functions or owns or operates a packing shed, he/she should not be precluded from qualifying as a producer under the provisions of the proposed agreement.

The terms "promotion," "research," "consumer education," and "programs and projects" should be defined to indicate the types of activities authorized by the agreement.

"Promotion" should be defined as any action, including paid advertising, to advance the image or desirability of vegetables.

"Research" should mean any type of research to advance the image, desirability, marketability, production, or quality of vegetables.

"Consumer education" should mean any action to provide information that will assist consumers in making evaluations and decisions regarding the purchasing, storage, preparation or utilization of vegetables.

"Programs" and "projects" should be defined as those production research, marketing research, consumer education, advertising, market development, project development, or promotion programs, studies, or projects conducted pursuant to § 978.40.

"Fiscal period" should be defined as the calendar year or such other period recommended by the Council and approved by the Secretary. This would provide sufficient flexibility to authorize the Council and Secretary to set the beginning of the fiscal period close to the beginning of the shipping season. At the same time, it would permit subsequent changes in the dates in the event of changes in shipping seasons or when operational experience otherwise indicates such changes are needed.

"Part" should be defined as the marketing agreement authorizing research and promotion type activities, along with all other subparts such as the Rules and Regulations. The marketing agreement shall be a "subpart" of such "part." Such subparts will appear in the Code of Federal Regulations in which the agreement would be codified and published.

(b) Section 608c(7)(C) of the Act provides for an administrative agency or agencies for effective operation of this type program. The record evidence supports establishing a Commodity Committee consisting of two to eight members, and their respective alternates, for each commodity subject to the agreement. The number of members will be proportional to the number of districts participating. This number should provide adequate representation and assure reasonable judgment and deliberation with respect to recommendations to the Secretary and in the discharge of the committee duties yet keep the committee operation from being too unwieldy and costly. Such membership on the committee should be apportioned among the districts according to the number of signatory handlers of that commodity in each district but limiting membership so, that if more than one district, no one district has a majority representation to avoid domination. The agreement should require that each commodity committee person be both a signatory handler (or officer or employee thereof) and a grower to assure consideration of grower interest since the Act is designed primarily to benefit growers, even though the agreement is between signatory handlers and the Secretary.

Record evidence supports a three-year term of office with staggered terms as a necessary and reasonable approach to assure adequate time to become effective committee persons and yet set up a desirable rotation process which will assure continuity of operations and leadership by retaining experienced members yet allow some new persons with fresh ideas to become committee members. However, the terms of approximately one-third of the intital committee persons should be only one year and another one-third only two years to place into effect the staggered terms. It may be desirable for nominees receiving the lowest number of votes to have the shortest initial terms.

Nominations for initial members and alternates of each commodity committee should be submitted to the Secretary no later than 60 days after the effective date of this agreement. Such nominations should be made at a meeting or meetings of signatory handlers of that particular vegetable in each applicable district. At least one nominee should be designated for each position to be filled. If a greater number is submitted, the number of votes each received should be listed on the report to the Secretary, along with such other information as he/she may prescribe. This requirement of the industry, through the committee, providing the Secretary with background information on each nominee is necessary so the Secretary may be able to determine if each nominee is qualified before he/she appoints that commodity committee. To allow sufficient time for this purpose, nominations for successor members should be submitted by the Texas Vegetable Council not later than November 1 of each year, or by such other date or in such other manner as may be specified by the Secretary.

Only signatory handlers (or their duty authorized employees) of that particular vegetable in that particular district who are present at such nomination meeting are eligible to vote for nominees. To be eligible, nominees must meet these same qualifications above plus being a grower of that commodity in that district. Each such handler, including employees, shall be entitled to cast only one vote for each position in each balloting in which eligible to participate.

In order to assure the existence at all times of an administrative agency, the Secretary should be authorized to select commodity committee members and alternates without regard to nominations, if for any reason they are not submitted to the Secretary in conformance with the procedures prescribed in the agreement or supplementary rules and regulations. However, such selections must be on the basis of the representation provided for in § 978.20 of the agreement. Record evidence adequately supports every provision relating to commodity committees and the Texas Vegetable Council, which is essentially a needed unifying and administrative body that ties together the functions of the several Commodity Committees and hires the staff which services them, thus avoiding expensive duplication of each committee hiring separate staffs. These provisions should be adopted as prescribed in the proposed agreement which is a part of this recommended decision.

Record evidence supports the delineation of the "area," i.e. the State of Texas into districts as defined in § 978.28 in the Notice of Hearing. Such delineation generally recognizes the

topography and climatic characteristics of the State and existing vegetable producing districts.

However, if future events necessitate, authority should be provided (§ 978.29) for redistricting and reapportionment of members among districts by the various commodity committees. Before recommending any such changes to the Secretary, a commodity committee should consider significant shifts in vegetable acreage, importance of new production, equitable relationship of membership and district and economies to result in promoting efficient administration.

Witnesses, testified that a Committee member should be permitted to serve as long as that member was nominated and to do otherwise would be impractical due particularly to the small number of people that are involved in handling some of the commodities. However, the Department's guidelines for marketing orders covering such commodities specify the Secretary will require that all committee membership be limited in tenure. In general, the maximum tenure adopted by several marketing order committees is six consecutive years. But the Secretary will work with each committee to develop an appropriate time frame that takes into account the circumstances of the particular committee.

Since it may be possible that replacement member and alternate nominees may not be appointed immediately, the agreement should provide for existing committee persons to continue to serve until their successors are selected and have qualified. Such a provision is necessary to insure continuity of commodity committees and Texas Vegetable Council operations.

The committees and Council should be given those specific powers which are set forth in section 608c(7)(C) of the act because the record evidence supports the conclusion that they are necessary for such administrative agencies to carry out their proper functions.

The respective powers and duties for the Commodity Committees and Council as set forth in the proposed agreement are necessary for the discharge of their responsibilities. These powers and duties are generally similar to those specified for administrative agencies under other programs of this nature. They are reasonable and necessary if the committees are to function in the manner prescribed under the act and the proposed agreement. It should be recognized that the duties specified are not necessarily all inclusive; and it is likely that there are other duties which the committees may need to perform which are incidental to, and not inconsistent with, these specified duties.

(c) The record indicates that one of the important functions of the Commodity Committees would be to provide for production and marketing research, consumer education, advertising, market development, product development, and promotion programs, studies or projects designed to improve or promote the production and marketing of Texas vegetables. The Act, as amended permits such projects and such authorization should be included in the proposed agreement.

Record evidence indicates that there is a consumer trend to eat more fresh vegetables and fruits. While per capita vegetable consumption has increased by 20 percent over the past 20 years, Texas vegetable have not shared fully in these trends. During this same period size of the typical produce department increased more than three fold and the number of items increased from 65 to 216 in 1984. This increase makes it necessary for Texas to establish a more favorable reputation and develop increased national awareness of its vegetables to be able to effectively compete. This supports the need for the agreement as a self-help means of solving the problems through various research and promotion type programs for Texas vegetables. Evidence documents numerous cases of the need for research in developing locally adapted varities with resistence to various diseases, which possess physical attributes that meet the consumer's preferences, as indicated by marketing research and then promoting them in a variety of ways. Evidence also documents how research funds are decreasing due to budget cuts in numerous Federal, State and private organizations.

The record describes numerous promotion alternatives and techniques which have proven succesful for various commodites. It also outlines various research and promotion expertise that is available and interested in assisting the industry if the industry can provide consistent funding. Exhibit 6 documents the total funds spent in seven States under Federal fruit and vegetable marketing orders in FY 1984 for research as over $1.5 million and for promotion as nearly $13 million.

The committees should have the authority to determine the types of activities including research, promotion, education and market development, to be undertaken, and should be charged with the responsibility for initiating and recommending to the Secretary the establishment of such projects as are authorized.

For example, the record supports the use of a Texas vegetable logo or trademark on packages or other applications as one of the possible means under this agreement to develop more indentity for Texas vegetables with produce purchasers and consumers. Only signatory handlers should be authorized the use of such logo and only on vegetables grown in Texas.

The use of various promotional techniques, including paid advertising, merchandising and public relations would provide the committees with a means of stimulating sales and enhancing returns to producers. Therefore, the use of these promotional activities should be authorized.

The evidence indicates that marketing research could be a valuable tool in designing an effective promotional program. Studies of consumer buying habits or consumer preferences, could aid the producers and handlers in making decisions regarding the types of vegetables to grow and how they should be marketed.

It is not possible to anticipate all the promotion, research or market development type activities that may be required to meet the needs of the industry. As the industry and the committee become more aware of the value of and need for production and marketing research and market development type activities, projects will undoubtedly be initiated, the need for which cannot be foreseen. Therefore, committees should have the authority to recommend, subject to the approval of the Secretary, the establishment of appropriate projects. After project approval, committees should be empowered to engage in or contract for such projects, to spend funds for that purpose and to consult and cooperate with other agencies with regard to their establishment. All such projects should receive the prior approval of the Secretary.

(d) Each committee should be authorized to incur such expenses as the Secretary finds are reasonable and legitimate and are incidental to the proper administration of the proposed agreement. Authorized expenses should include such items as salaries for the council manager and staff, office equipment, supplies and maintenance, as well as travel expenses for the council staff, committee and council members and alternates incurred in connection with official program activities. However, the authority to

incur expenses should not be confined to a predetermined list.

Expenses incurred by a committee in operating the proposed agreement must, under the Act, be borne by signatory handlers. The fairest and most practical way of distributing the costs of the program among such handlers is to require each such handler who first handles a covered commodity to pay his pro rata share of such expenses on the basis of the ratio of his/her total fresh market shipments of that commodity to such total shipments by all signatory handlers during each fiscal period. Vegetables for canning and freezing are exempt from assessment, as are potatoes for those uses or for "other processing" including chipping and dehydration. The first handler is usually the one who starts the commodity on its way to market. The requirement that such first handlers pay assessments will preclude multiple assessments on commodities that are handled more than once.

Each commodity committee should be required to prepare a budget prior to or at the beginning of each fiscal period showing estimates of income and expenditures necessary for the administration of the agreement for such period. The budget should be presented to the Secretary with an analysis of its components and an explanation thereof in the form of a report. No increase should be made in the total budget without prior recommendations of the committee and approval of the Secretary.

Each committee should be authorized to recommend a rate of assessment to the Secretary which is designed to bring in during each fiscal period sufficient income to cover expenses incurred by it.

The rate of assessment should be established by the Secretary on that committee's recommendation, which should be based on estimated expenses and the volume of covered shipments during a fiscal period. Such rate should be applied on a fair and equitable unit basis, on a volume basis in terms of the predominate customary container such as so much per bag, carton, or hundredweight, or its equivalent.

Each affected signatory handler, therefore, who ships regulated vegetables as the first handler thereof, should promptly pay assessments to the applicable committees, which assessments shall be in payment of such handler's pro rata share of that program's expenses, so that each commodity may have adequate funds to carry out its operations on a current basis. Although the Department's general policy is that such committees should not be authorized deficit financing one exception is to authorize it for initial start up of their programs. Therefore there should be authority for the Council to accept advance payments of assessments, to be credited toward such handler's account for the upcoming fiscal period or allow the Council to borrow money for such start up or other expenses when assessment and reserve funds are not sufficient to cover them.

Authority should be included to require that if an affected signatory handler does not pay his/her assessment within the time prescribed by the committee, it may be subject to a late payment charge or an interest charge at rates set by the Secretary. The record indicates the committee or Council should be authorized to recommend to the Secretary a rate of interest on the unpaid balance approximating that which is being charged by commercial businesses within the area. An account should be considered to be due and payable when submitted to the handler for payment and delinquent after a period designated by the Secretary in rules and regulations.

Should developments indicate that assessments collected, or to be collected, during any fiscal period will not provide sufficient income to cover such committee's expenses, that committee should be authorized to recommend that the Secretary approve an amended budget and fix an increased rate of assessment. If such a revised budget is approved, together with an increased rate of assessment, such increased rate should be retroactive to the beginning of the fiscal period, so as to avoid inequities among signatory handlers.

Good business practice requires provision for contingencies. Each committee should be authorized with approval of the Secretary, to set aside excess funds in an operating financial reserve to be used for specific purposes. Such funds could be used to allow that committee to function at the beginning of a season prior to the time assessment income is available or to cover any deficits during a fiscal period in which assessment income is not sufficient to cover expenses. Since breeding research normally involves long term commitments to get improved varieties, a relatively larger reserve is reasonable. However, in order that such reserve funds not be accumulated beyond that, no more than an amount equivalent to three fiscal periods' budgeted expenses should be authorized.

If, at the close of a fiscal period a committee has a carryover of funds in excess of expenses, and such funds are not retained in a reserve, signatory handlers should be entitled to a proportionate refund. Such refund should be credited to each contributing handler against his/her operations for the following fiscal period, unless payment should be demanded, in which event proportionate refund should be paid.

Any balance remaining after liqudation should be prorated, to the extent practical, to the persons from whom such funds were collected.

All funds received by a committee may be used only for administration of the proposed agreement. Each committee should be required to maintain books and records clearly reflecting the operations of its affairs, so that its administration may be subject to inspection at any time by the Secretary. This is merely a sound business practice. Also, persons who deal with committee funds should be properly bonded as appropriate.

Each member and each alternate, as well as employees, agents, and other persons working for or on behalf of a committee or the Council should be required to account for all receipts and disbursements, funds, property, or records for which they are responsible and the Secretary should have the authority, at any time, to ask for such accounting.

Whenever any person ceases to be a member or alternate of a committee or the council he/she should be required to account for all receipts, disbursements, funds, property, books, records, and other program assets for which he/she is responsible. Such person would also be required to execute assignments or such other instruments as may be appropriate to vest in his/her successor, or any agency or person designated by the Secretary, the right to all such property and all claims vested in such person.

If a committee should recommend that the operations of the program should be suspended, or if no program should be in effect for a part or all of a marketing season, the committee should be authorized to recommend, as a practical measure, that one or more if its members, or such other person, should be designated by the Secretary to act as trustee(s) during such period. This would provide a practical method for taking care of a committee's business affairs during periods of inactivity and would permit resumption of operations with a minimum of delay.

(e) The committees and Council should have authority, with the approval of the Secretary, to require that each handler subject to the agreement submit such reports and information as may be needed for the performance of committee functions under the agreement. Record evidence shows signatory handlers already have such necessary information which they maintain for other routine business purposes such as income tax reporting and the requirement that they furnish such information to the manager of the Council in the form of reports would not constitute an undue burden. It is anticipated that the information needed will include vegetable shipments by days by each covered commodity and number and type of containers. If other information is needed by the committees, it may be prescribed through rules regulations issued by the Secretary, since it is difficult to anticipate every type of report or kind of information which they may need in administering the program. However, the right to approve, or to modify, change or rescind any requests by the committees for information is retained by the Secretary in order to protect signatory handlers from unreasonable requests for reports.

Since it is possible that a question may arise with respect to compliance with the agreement, each signatory handler should maintain complete records of his/her handling of vegetables for a period of not less than two years beyond the fiscal period of their applicability and make them available to employees of the Council or the Secretary during regular business hours.

(f) The proposed provisons of § 978.70–978.84 as published in the **Federal Register** of February 11, 1985 (50 FR 5593) and as hereinafter set forth, are generally common to marketing agreements and orders now operating. Each of these sections set forth certain rights, obligations, privileges or procedures which are necessary and appropriate for the effective operation of the proposed agreement. These provisons are incidental to, and not inconsistent with, subsections 608c(6) and (7) of the Act, and are necessary to effectuate the other provisons of the proposed agreement and to effectuate the declared policy of the act. The record evidence supports the inclusion of each such provision in the agreement including an amendment to the final paragraph, immediately ahead of the signature line, as follows: "with respect to the commodities and in the districts listed in Appendix A, which is made a part hereof." These provisons, therefore, should be included in the proposed agreement.

Rulings on briefs of interested parties. At the conclusion of the hearing the Administrative Law Judge fixed April 1, 1985, as the final date for interested parties to file proposed findings and conclusions and written arguments or briefs based upon the evidence received at the hearing.

One brief was filed on behalf of the proponents by Mr. Ernest J. Holcomb. Every point in the brief was carefully considered along with the record evidence in making the findings and conclusions contained herein. To the extent that any findings or conclusions proposed by him, such as placing no restriction on committee tenure, are inconsistent with the findings and conclusions set forth herein, the request to make such findings or to reach such conclusions is denied.

General findings. Upon the basis of the evidence introduced at such public hearing, and the record thereof, it is found that:

(1) The marketing agreement, and all terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said agreement regulates the signatory handlers of fresh vegetables grown in the area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement upon which a hearing has been held;

(3) The said agreement is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several agreements applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) All handling of fresh vegetables grown in the area, as defined in said agreement, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended marketing agreement. The following marketing agreement is recommended as the detailed means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 978

Marketing agreements and orders, Vegetables, Texas.

The marketing agreement proposed on behalf of Texas vegetables growers and handlers is as follows:

PART 978—TEXAS VEGETABLE RESEARCH AND PROMOTION AGREEMENT—NO. 978

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Authority: 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*

Definitions

§ 978.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 978.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat 31, as amended; 78 U.S.C. 601 et seq.).

§ 978.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 978.4 Area.

"Area" means the State of Texas.

§ 978.5 Vegetables.

"Vegetables" means the edible product of all varieties of plants known as *Angiospermae* or others designated by the Secretary grown in the area and includes but is not limited to the following: Broccoli, cabbage, carrots, celery, cantaloupes, honeydrew melons, cucumbers, onions, peppers, potatoes, and mixed greens.

§ 978.6 Grower.

"Grower" is synonymous with producer and means any person engaged within the area in a proprietary capacity in the production of vegetables for market.

§ 978.7 Handle.

"Handle" and "ship" are synonymous and mean to sell, consign, deliver, transport, or in any other way to place fresh vegetables, produced in the area, or cause such vegetables to be placed, in the current of commerce within the area or between the area and any point outside thereof. Such term shall not include the transportation, sale, or delivery within the area of field-run vegetables to a person for the purposed of having such vegetables prepared for market.

§ 978.8 Handler.

"Handler" is synonymous with "shipper" and means any signatory person (except a common or contract carrier of vegetables owned by another person) who handles vegetables or causes vegetables to be handled.

§ 978.9 Promotion.

"Promotion" means any action, including paid advertising, to advance the image or desirability of vegetables.

§ 978.10 Research.

"Research" means any type of research to advance the image, desirability, marketability, production, or quality of vegetables.

§ 978.11 Consumer education.

"Consumer education" means any action to provide information that will assist consumers in making evaluations and decisions regarding the purchasing, storage, preparation and utilization of vegetables.

§ 978.12 Programs and projects.

"Programs" and "projects" mean those production research, marketing research, consumer education, advertising, market development, product development, and promotion programs, studies, or projects pursuant to § 978.40.

§ 978.13 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the calendar year or such other period recommended by the Council and approved by the Secretary.

§ 978.14 Part and subpart.

"Part" means the Texas Vegetable Research and Promotion Agreement and all rules, regulations, and supplemental orders issued pursuant to the Act and the agreement. The aforesaid agreement shall be a "subpart" of such "Part."

§ 978.15 Commodity Committee.

"Commodity Committee" means a committee established pursuant to § 978.20.

§ 978.16 Council.

"Council" means the Texas Vegetable Council pursuant to § 978.24.

§ 978.17 District.

"District" means any of the geographic divisions of the area initially established pursuant to § 978.28 or as reestablished pursuant to § 978.29.

Administrative Bodies

Commodity Committees

§ 978.20 Establishment and membership.

(a) A Commodity Committee is hereby established for each commodity subject to this agreement. Whenever a commodity is added to this subpart, a Commodity Committee shall be formed fur such.

(b) Each Commodity Committee shall consist of not less than two or more than eight members, each of whom shall have an alternate. The members and alternates shall be selected in accordance with the provision of § 978.21. To the extent practical, the membership of each Commodity Committee shall be apportioned among signatory districts in accordance with the number of signatory handlers and respective volume in each district: Except that whenever two or more districts are represented on a Commodity Committee, no single district's representation shall constitute a majority of that committee.

§ 978.21 Eligibility.

Each Commodity Committee member and alternate member shall be at the time of selection and throughout the term of office a signatory handler or an officer or an employee of a signatory handler of the particular commodity, and a grower of such commodity in the district for which selected.

§ 978.22 Term of office.

(a) The term of office of the Commodity Committee members and their respective alternates shall be for three years beginning January 1 and ending December 31, or such other three-year period as the Committees and the Council may recommend and the Secretary approve. The term shall be so determined that approximately one-third of each committee shall terminate each year. Members and alternates shall serve in such capacity for the portion of the term for which they are selected and have qualified. However, no member shall serve more than two full consecutive terms without approval from the Secretary.

(b) The term of office of the initial members and alternates shall begin on the date determined by the Secretary. The initial members and alternates shall be selected for terms of one, two, or three years so that approximately one-third of each Commodity Committee may be replaced each year.

§ 978.23 Powers and duties.

Each Commodity Committee shall have, among others, the following

powers and duties with regard to the respective vegetable for which it was established:

(a) To meet and organize and to select from among its members a chairman, vice chairman, and such other officers as may be necessary, to select subcommittees from its membership, and such consultants as it deems advisable. To adopt such by-laws for the conduct of its business as it may deem advisable, and it may establish consultant committees of persons other than Commodity Committee members and alternates;

(b) To act as intermediary between the Secretary and any grower or shipper;

(c) To investigate, from time to time, and assemble data on the growing, shipping, anbd marketing conditions;

(d) To establish production research, marketing research, and marketing development projects authorized under § 978.40;

(e) To consult, cooperate, and exchange information with marketing agreement and order committees and other individuals or agencies in connection with all proper activities and objectives under this part;

(f) To establish and define the duties of additional committees or subcommittees to assist in the performance of any of the duties and functions of the Commodity Committee.

(g) To make and adopt, subject to approval of the Secretary, such rules and regulations with respect to the vegetable for which the committee was established as are necessary or incidental to the administration of the agreement as are consistent with its provisions, and as may be necessary to accomplish the purposes of the Act and the efficient administration of this part;

(h) To submit to the Secretary, for approval, as soon as practicable after the beginning of each fiscal period, a budget of its expenses for such fiscal period, including its proportional share of the expenses of the Council, the probable cost of each research, information, advertising, promotion, and development program or project, and an explanation of the items therein and a recommendation as to the rate of assessment for the respective vegetable for which the Commodity Committee was established;

(i) With the approval of the Secretary, to redefine the districts pursuant to § 978.29 or change the represenatation of any signatory district affecting the Commodity Committee;

(j) To develop programs and projects and, with the approval of the Secretary, to enter into contracts or agreements with appropriate contracting parties, including, but not limited to, industry groups, profit or nonprofit companies, private or State colleges and universities, and governmental groups, for the development and carrying out of the projects and programs of the Commodity Committee, and for the payment of the costs thereof with funds collected pursuant to this part, except that nothing in this subpart shall preclude a Commodity Committee from directly, without the use of contracts, conducting projects or activities pursuant to § 978.40. Any such contract or agreement shall provide (1) that such contracting parties shall develop and submit to the Commodity Committee a plan or project, together with a budget, which shows the estimated cost to be incurred for such plan or project; (2) any such plan or project shall not become effective until after approval by the Secretary; (3) any such contract or agreement shall also require the contracting parties to keep accurate records of all of their activities with respect to the contract or agreement; (4) to make periodic reports to the Commodity Committee of activities carried out; (5) to account for funds received and expended; and (6) such other reports as the Commodity Committee and/or the Secretary may require;

(k) To appoint and convene from time to time special panels drawn from, but not limited to, any one or more of the following: production, wholesale, retail, or consuming sectors of the vegetable industry or advertising, promotion, education, or consumer education persons, to assist in the development of research, information, education, advertising and promotion programs or projects and to disburse the necessary funds for such panel or panels; and

(l) To accumulate a reasonable monetary reserve not to exceed approximately three fiscal period's budgets to maintain the continuity of programs and fulfill other obligations and expenses.

Council

§ 978.24 Establishment and membership.

(a) A Texas Vegetable Council is hereby established consisting of the Chairmen of each Commodity Committee. Their alternates shall be the Vice Chairmen of each such Committee.

§ 978.25 Term of office.

(a) The term of office of the Texas Vegetable Council and their respective alternates shall be for one year beginning January 1 and ending December 31, or such other one-year period as the Council may recommend and the Secretary approve.

(b) The term of office of the initial members and alternates shall begin on the date they are appointed by the Secretary and end when their successors are selected and have qualified.

(c) Council members and alternates shall serve during the term of office for which they are selected and have qualified, or during that protion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and their successors are selected and have qualified.

§ 978.26 Powers.

The Council shall have the following powers:

(a) To supervise and coordinate the administration of this part in accordance with its terms and conditions;

(b) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(c) To recommend to the Secretary amendments to this part.

§ 978.27 Duties.

The Council shall have, among others, the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, and also to select committees and subcommittees from its membership, and consultants, to adopt such by-laws for the conduct of its business as it may deem advisable. It may make and adopt, subject to approval of the Secretary, such rules and regulations with respect to the agreement as are necessary or incidental to its administration and as may be necessary to accomplish the purposes of the Act. The Council may also establish consultant committees of persons other than Council members and alternates and reimburse their necessary and reasonable expenses;

(b) To appoint from its members an Executive Committee consisting of not less than four nor more than eight members, which shall, to the maximum extent practicable, reflect the membership composition of the Council, and whose commodity group representation shall be proportional to that of the Council. Also to delegate to said committee authority to administer the terms and conditions of their agreement under the direction of the Council and within the policies determined by the Council, and to appoint or employ such persons as it may deem necessary and to determine the composition, define the duties and fix the bonds of such employees.

Whenever three or less Commodity Committees are effective pursuant to § 978.70 or paragraph (b) of § 978.76, the Commodity Committee(s) may assume the responsibilities of the Council and appoint members from its membership to a temporary Executive Committee to serve in such capacity until more Commodity Committees become effective. When this occurs the Council will be established in accordance with § 978.24 and the Executive Committee will be appointed by such Council, replacing the temporary Executive Committee;

(c) To keep minutes, books, and records which clearly reflect all the acts and transactions of the Council, Commodity Committees, Executive Committee, and subcommittees. Such minutes, books, and records shall be subject at any time to examination by the Secretary or by such persons as may be designated by the Secretary. Minutes of each such meeting shall be promptly transmitted to the Secretary;

(d) To develop and provide the Commodity Committees data on shared expenses to facilitate equitable apportionment of such expenses in the development of budgets;

(e) To establish and define the duties of additional committees or subcommittees to assist in the performance of any of the duties and functions of the Council;

(f) To cause the books of the Council and Commodity Committees to be audited by a competent public accountant at least once each fiscal period and at such other time or times as the Council may deem necessary or as the Secretary may request. Such audit shall be submitted to the Secretary and shall indicate whether the funds have been received and expended in accordance with the provisions of this part;

(g) To give the Secretary the same notice of meetings of the Council, Commodity Committees, Executive Committee, and subcommittees as is given to their members in order that representatives of the Secretary may attend such meetings;

(h) To submit to the Secretary such available information pertaining to this subpart as may be requested;

(i) To prepare periodic statements of the financial operations of the Council and Commodity Committees and to make copies of such statements available to signatory handlers for examination at the Council office;

(j) To prepare and forward to the Secretary, as soon as is practicable after the close of each fiscal period, an annual report and make copies available to each signatory handler. This report shall contain at least a review and summary of all activities, programs, and projects conducted during the fiscal period; and

(k) To maintain books and records of the Council, Commodity Committees, Executive Committee, and subcommittees, and prepare and submit reports from time to time to the Secretary as may be prescribed and to make appropriate accounting with respect to the receipt and disbursements of funds entrusted thereto.

Administration

§ 978.28 Districts.

The area is hereby initially divided into the following districts:

District 1: (Rio Grande Valley) The Counties of Cameron, Hidalgo, Starr, and Willacy.

District 2: (South Texas) The Counties of Maverick, Kinney, Val Verde, Edwards, Real, Kerr, Bandera, Gillespie, Kendall, Blanco, Travis, Hays, Bastrop, Caldwell, Fayette, Gonzales, Colorado, Lavaca, Wharton, Jackson, Matagorda, Uvalde, Medina, Bexar, Comal, Guadalupe, Wilson, Karnes, Goliad, Refugio, Aransas, De Witt, Victoria, Calhoun, Zavala, Frio, Atascosa, Live Oak, Bee, San Patricio, Dimmit, La Salle, McMullen, Jim Wells, Nueces, Webb, Duval, Kleberg, Zapata, Jim Hogg, Brooks, and Kenedy.

District 3: (Plains) The Counties of Bailey, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Floyd, Gaines, Hale, Hartley, Hockley, Howard, Lamb, Lubbock, Lynn, Martin, Parmer, Potter, Swisher, Terry, Yoakum, Dallam, Sherman, Hansford, Andrews, Ochiltree, Mitchell, Cottle, Lipscomb, Nolan, Hardeman, Moore, Taylor, Foard, Hutchinson, Callahan, Wilbarger, Roberts, Dickens, Hemphill, King, Oldham, Knox, Carson, Baylor, Gray, Garza, Wheeler, Kent, Randall, Stonewall, Armstrong, Haskell, Donley, Throckmorton, Collingsworth, Borden, Hall, Scurry, Childress, Fisher, Motley, Jones, and Shackelford.

District 4: (Trans-Pecos) The Counties of Brewster, Crane, Culberson, Jeff Davis, Ector, El Paso, Hudspeth, Loving, Midland, Pecos, Presidio, Reeves, Terrell, Upton, Ward, and Winkler.

District 5: (Remainder of State) All of the countries not in Districts 1 through 4.

§ 978.29 Redistricting and reapportionment.

(a) The various Commodity Committees may recommend and the Secretary may approve, the reestablishment of districts for each commodity within the area and the reapportionment of members among districts. In recommending any such changes, the Committee shall give consideration to: (1) shifts in vegetable acreage: (2) the importance of new production; (3) the equitable relationship of membership and districts; (4) economies to result in promoting efficient administration; and (5) other relevant factors.

(b) No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendation for such redistricting or reapportionment may be made less than six months prior to such date.

§ 978.30 Nominations.

(a) *Initial members.* Nominations for initial members of each Commodity Committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the Committee responsible for promulgation of this subpart. Such nominations may be made by means of a meeting or meetings of the handlers of the particular commodity in each district. Such nominations, if made, shall be filed with the Secretary no later than 60 days after the effective date of this agreement. In the event nominations for initial members and alternate members of the Commodity Committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 978.20.

(b) *Successor members.* (1) The council shall hold or cause to be held and shall reasonably publicize a meeting or meetings of handlers for each applicable Commodity Committee in each district for the purpose of designating at least one nominee for each position on said Committee which either is or is about to become vacant. These meetings shall be supervised by the Council in accordance with procedure prescribed for each commodity.

(2) The names of nominees shall be supplied to the Secretary in such manner as may be prescribed not later than November 1 of each year, or by such other date as may be specified by the Secretary.

(3) Only signatory handlers from a given district who are present at such nomination meetings, or represented at such meetings by duly authorized employees, may participate in the election of nominees. Each such handler, including employees, shall be entitled to

cast but one vote in each balloting in which eligible to participate.

(4) Each handler, including employees of such handler, is entitled to cast one vote on behalf of itself, its agents, subsidiaries, affiliates, and representatives of each position in each district for each commodity the shipper handles in such district.

(5) Each Commodity Committee shall prescribe such additional clarifications, qualifications, administrative rules and procedures for nominations as it deems necessary and the Secretary approves.

§ 978.31 Selection.

The Secretary shall appoint the members and alternate members of each Commodity committee from nominations made in accordance with § 978.30

§ 978.32 Failure to nominate.

If nominations are not made within the time and manner prescribed in §§ 978.30 and 978.31, the Secretary may, without regard to nominations, select members and alternate members of the Council.

§ 978.33 Alternate members.

(a) There shall be an alternate member for each member of each Commodity Committee. Each such alternate shall possess the same qualifications, shall be nominated and selected in the same manner, and shall hold office for the same term as the member for whom he/she is an alternate.

(b) An alternate member of a Commodity Committee shall act in the place and stead of the member during such member's absence or when designated to do so. In the event both a member and that member's respective alternate are unable to attend a committee meeting, the member, alternate, or committee, in that order, may designate another alternate from the same commodity group to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified.

(c) The Commodity Committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 978.34 Vacancies.

To fill Commodity Committee vacancies, the Secretary may select members or alternates from nominees on the latest nomination reports or from nominations made in the manner specified in § 978.30, unless filling such vacancy is deemed unnecessary by the Secretary.

§ 978.35 Procedure.

(a) A majority of all of the members of the Council shall constitute a quorum, and any action of the Council shall require the concurrence of the majority of all members present at a meeting.

(b) A quorum of each Commodity Committee shall consist of the majority of the members and all actions shall require the concurrence of the majority of all members present at a meeting.

(c) The Council and each Commodity Committee shall give to the Secretary the same notice of each meeting that is given to the members of the respective committee.

(d) At assembled meetings, all votes shall be cast in person. However, the Council and Commodity Committees may vote by mail, telephone, telegraph, or other means of communication: Except that each proposition is explained accurately, fully, and identically to each member. All such votes shall be prompty confirmed in writing and recorded in the minutes of each meeting so as to reflect how each member voted.

§ 978.36 Reimbursement.

All Council and Commodity Committee members, alternates, and subcommittees, including any special subcommittees, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred in the performance of their duties under this subpart.

Research and Promotion

§ 978.40 Production research, market research, information, education, advertising, promotion, and market development.

(a) Each Commodity Committee shall in the manner prescribed in § 978.23 provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs or projects for, but not be limited to: advertising, promotion, consumer education, and trade information, with respect to any one or more of particular vegetables and products of such, and for the disbursement of necessary funds for such purposes;

(2) The establishment and conduct of research, market development projects and studies with respect to the production, sale, distribution, processing, marketing, or utilization, of one or more vegetables, and the creation of new products thereof, to the end that the production, marketing and distribution and utilization of a particular vegetable or vegetables and products thereof, may be encouraged, expanded, improved, or made more efficient and/or acceptable; and for the disbursement of necessary funds for such purposes; and

(3) The development and expansion of sales, both within the United States and in international markets, with respect to a particular vegetable or vegetables and products thereof.

(4) Each program or project authorized under paragraphs (a) (1) and (2) of this section shall be periodically reviewed or evaluated by the Council to insure that such program or project contributes to an effective and coordinated program of research, information, education, and promotion. If the Council finds that a program or project is not effective, then the Council shall terminate such program or project.

(5) No reference to a private brand or trade name shall be made. No advertising, consumer education, nor sales promotion program shall make use of false or misleading claims on behalf of a particular vegetable or vegetables or the products thereof; or no such programs or projects shall make use of false or misleading statements with respect to the quality, value, or use of any competing commodity or product.

Expenses and Assessments

§ 978.50 Expenses.

Each Commodity Committee is authorized to incur such expenses including provision for an operating reserve as the Secretary finds are reasonable and are likely to be incurred by the Commodity Committee during each fiscal period for the maintenance and functioning of such Committee, including its proportionate share of the expenses of the Council, to enable it to exercise its powers and perform its duties in accordance with this subpart. Such expenses shall be paid from assessments received pursuant to § 978.51 and other funds available to the Committee, including donations.

§ 978.51 Assessments.

(a) *Requirements for payment.* Each signatory handler who first handles vegetables shall pay to the Council that handler's pro rata share of the Commodity Committee's expenses and the Council's overhead expenses authorized by the Secretary for each fiscal period. The payment of assessments for the maintenance and functioning of the Committees may be required under this part throughout the period it is in effect irrespective of

whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the respective rate of assessment which handlers shall pay with respect to each vegetable during each fiscal period in an amount designed to secure sufficient funds to cover the respective expenses which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rates of assessment as necessary to cover authorized expenses. Such increases shall apply to all such vegetables handled during the fiscal period. In order to provide funds for the administration of this part, the Council may accept advance payments of assessments, which shall be credited toward assessments levied against such handler during the fiscal period. The Council may also borrow money for such purposes when assessment and reserve funds are not sufficient to cover them.

(c) There shall be a late payment charge imposed on any handler who fails to pay his/her assessment within the prescribed time. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, there shall be imposed an additional charge in the form of interest on the outstanding amount. The rate of such charges shall be recommended by the Commodity Committees, subject to the approval of the Secretary.

§ 978.52 Accounting.

(a) If, at the end of a fiscal period the assessments collected are in excess of expenses incurred, each Commodity Committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as an operating monetary reserve except that funds already in such reserve shall not exceed approximately three (3) fiscal periods' budgeted expenses or such lower limits as each Commodity Committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Commodity Committee for expenses authorized pursuant to § 978.50 and to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period, or be paid such refund upon demand.

(b) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be used, to the extent practicable, to continue one or more of the research projects, education or promotion programs hitherto authorized.

§ 978.53 Influencing governmental action.

No funds collected under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except as provided in this subpart.

Reports, Books and Records

§ 978.60 Reports.

(a) Each handler subject to this subpart shall be required to furnish to the manager of the Council, at such times and for such periods as the Council or Commodity Committee may designate, certified reports containing such information as is required by regulations and will effectuate the purposes of the Act. Such information may include but not be limited to the following:

(1) The name of the handler and the shipping point;

(2) The date of shipment;

(3) The number and type of containers in the shipment; and

(4) The quantities shipped shown separately by commodity.

(b) Upon request of the Council, with the approval of the Secretary, each handler shall furnish to the manager of the Council, in such manner and at such time as it may prescribe, such other information as may be necessary for the Council to perform its duties under this part.

§ 978.61 Books and records.

Each handler subject to this subpart shall maintain, and during normal business hours make available for inspection by employees of the Council and the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 978.62 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 978.60 and 978.61 shall be kept confidential by all persons, including employees of the Secretary, and all officers and employees of contracting parties, and shall not be available to Council or subcommittee members and alternates or any other handlers, producers, wholesalers, or retailers. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which any officer of the United States is a party, and involving this subpart: Except that nothing in the subpart shall be deemed to prohibit that such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous

§ 978.70 Effective time.

The provisions of this agreement, and of any amendment thereto, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 978.76: Except that the Secretary shall not execute this agreement in regard to a particular vegetable until the agreement has been executed by persons who handle not less than 75 percent of the total quantity of such vegetable handled in such district during the most recent completed calendar year.

§ 978.71 Right of the Secretary.

Members and alternates of the Council, Commodity Committees, Executive Committee, subcommittees, and any agents, employees or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every decision, determination, and other act of the Council and the Commodity Committees shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 978.72 Personal liability.

No member or alternate member of the Council, any Commodity Committee, any committee, or any subcommittee, nor any employee, representative or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, gross negligence or willful misconduct.

§ 978.73 Derogation.

Nothing contained in this agreement is, or shall be construed to be, in

derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 978.74 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this agreement shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 978.75 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the U.S. Department of Agriculture, to act as an agent or representative in connection with any of the provisions of this agreement.

§ 978.76 Suspension or termination.

(a) *Failure to effectuate policy of Act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever, the Secretary finds that such do not tend to effectuate the declared policy of the Act.

(b) The Secretary shall terminate the provisions of this part as it pertains to a particular vegetable whenever the Secretary finds that such is favored by a majority of the signatory handlers who during the most recent crop year handled more than 50 percent of such vegetable in any district. Such termination shall become effective on the first day of January subsequent to such announcement by the Secretary.

(c) *Producer referendum.* The Secretary shall terminate, in accordance with section 8c(16)(B) of the Act, the provisions of this agreement, as it pertains to any vegetable, at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of the producers in a district of that particular vegetable who during the fiscal year have been engaged in the production of that vegetable in that district for the fresh market: Except that such majority has during such period produced for fresh market more than 50 percent of the volume of such vegetable produced for the fresh market within that district, but such termination shall be effective only if announced on or before November 1 of the then current fiscal period.

(d) *Termination of Act.* The provisions of this agreement shall terminate, in any event, whenever the provisions of the Act authorizing them cease to be in effect.

§ 978.77 Proceedings after termination.

(a) Upon the termination of the provisions of this part pertaining to any vegetable or vegetables, the Council then functioning shall for the purpose of liquidating the affairs of the Council with respect to such vegetable continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of termination.

(b) The said trustees shall: (1) continue in such capacity until discharged by the Secretary; (2) carry out the obligations of Commodity Committees under any contracts or agreements entered into pursuant to §§ 978.23 and 978.40; (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and Commodity Committee, committees and subcommittees and also of the trustees to such persons as the Secretary may direct; and (4) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the Council and Commodity Committees or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same objections imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the research projects, information programs, or promotion programs hitherto authorized.

§ 978.78 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this agreement or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this agreement or any regulation issued thereunder, or (b) release or extinguish any violation of this agreement or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ 978.79 Patents, copyrights, trademarks, inventions, and publications.

(a) Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Council.

(b) Funds generated by such patents, copyright, trademarks, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council and Commodity Committees.

(c) Upon termination of the agreement, the Council shall transfer custody of all patents, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided for in § 978.77 of this subpart.

§ 978.80 Amendments.

Amendments to this subpart may be proposed from time to time by the Council, or by any interested person affected by its provisions, including the Secretary.

§ 978.81 Separability.

If any provision of this agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 978.82 Counterparts.

This agreement may be executed in multiple counterparts and, when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 978.83 Additional parties.

After the effective date of this agreement, any nonsignatory handler may become a party hereto if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary. The obligations, benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 978.84 Withdrawal.

(a) Any signatory handler may withdraw from this agreement during November 1990, and every fifth year thereafter by filing with the Council and the Secretary written notice of such withdrawal. If it is determined, after such withdrawal period, that less than 75 percent of the total volume of a particular vegetable in any one district is subject to this agreement, the Secretary shall suspend the provisions pertaining to that particular vegetable or vegetables for that district.

(b) At such time as sufficient persons become signatories, representing at least 75 percent of the total volume of a particular vegetable handled for fresh market in any one district during the most recent calendar year, the Secretary shall reinstate the provisions applying to such vegetable for that district.

Signed at Washington, DC., on August 16, 1985.

William T. Hanley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-19962 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098 and 1099

[Docket Nos. AO-366-A25 et al.]

Milk in the Georgia and Certain Other Marketing Areas; Proposed Termination of Proceeding on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Parts	Marketing area	Docket Nos.
1007	Georgia	AO-366-A25
1006	Upper Florida	AO-56-A23
1011	Tennessee Valley	AO-251-A28
1012	Tampa Bay	AO-347-A20
1013	Southeastern Florida	AO-356-A30
1046	Louisville-Lexington-Evansville	AO-123-A54
1093	Alabama-West Florida	AO-366-A4
1094	New Orleans-Mississippi	AO-103-A46
1096	Greater Louisiana	AO-257-A33
1097	Memphis, TN	AO-219-A41
1098	Nashville, TN	AO-184-A48
1099	Paducah, KY	AO-183-A40

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rulemaking proceeding.

SUMMARY: This action invites written comments from interested parties on a proposal by the Department to terminate the current rulemaking proceeding on proposals to increase Class I milk prices under 12 southeastern Federal milk marketing orders. At the request of Dairymen, Inc., a public hearing was held June 25–28, 1985, to consider the cooperative's proposals to increase Class I price differentials. The transcript of the hearing in its current state is missing approximately two-thirds of the 3rd day's testimony and one-third of the testimony on the 4th day of the hearing.

Under usual circumstances, the Department would reopen the hearing to retake testimony to obtain a transcript that could be certified as a complete record of the hearing testimony. In this case, however, milk production data that have become available since the close of the hearing indicate a very significant change in marketing conditions. Such change raises the question whether there is any point in reopening the hearing since the existing pricing and pooling provisions of the orders will probably assure an adequate supply of milk for the Southeast. From all indications, it appears that if the hearing were reopened, no valid basis could be developed for the pricing changes initially proposed. Thus, the Department is proposing that the hearing not be reopened and that the proceeding be terminated.

DATE: Comments are due on or before September 5, 1985.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6274.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued May 24, 1985; published May 30, 1985 (50 FR 23021).

Extensions of Time for Filing Briefs: Issued July 18, 1985; Issued August 1, 1985.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), termination of the proceeding as set forth in a notice of hearing on proposals to amend certain provisions of the Georgia and certain other milk orders is being considered. The aforesaid notice of hearing was issued May 24, 1985 (50 FR 23021) and the hearing was held on June 25–28, 1985.

All persons who desire to submit written data, views or arguments in connection with the proposed termination should file the same with the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, DC 20250, not later than 15 days after publication in the **Federal Register.** All documents filed should be in duplicate.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Statement of consideration

This proposed action would terminate the proceeding on proposals that would increase the Class I price differentials under 11 of the 12 orders listed above, increase the plant location adjustments rates under all 12 orders, and modify a pooling provision of the Louisville-Lexington-Evansville Federal order.

The public hearing on the proposals was held in Atlanta, Georgia, on June 25–28, 1985. The Department received on August 2, 1985, (28 days after the date when the transcript was due) the reporting contractor's transcript of the last day of the hearing. The 3rd and 4th days' transcript of the hearing do not contain a full account of the testimony given on those days. The record is therefore inadequate to complete the rulemaking proceeding. A reopening of the hearing appears to be the only means of obtaining a transcript that could be certified by the Administrative Law Judge who presided at the hearing as a true transcript of the testimony given at the hearing.

At this juncture, however, a very substantial increase in milk production under the 12 order that has become known since the close of the hearing raises the question of whether the hearing should be reopened. The market administrators for the 12 orders have published the volume of producer milk pooled under such orders and the Class I utilization of such milk for the months of June and July 1985. Producer milk pooled under the 12 orders exceeded the volume pooled one year ago by 16 percent in both June and July. In June, the volume of producer milk in Class I use was only about 2 percent more than last year. Similarly, July Class I volume was up only 3.6 percent.

Milk production in the southeastern United States is approaching a level comparable to that in 1982 and 1983 when temporary actions were taken under several orders in the region to facilitate the transportation of surplus milk supplies on the markets to distant outlets. Such increased production appears to be prompted in part by the termination of the milk diversion incentives under the price support program and by the favorable milk-feed price ratio. The ratio (pounds of 16 percent mixed dairy feed equal in value to 1 pound of whole milk) for July 1985 was 1.44, which may be compared to 1.35 in July 1984 and 1.45 in July 1983. It is expected that milk production for the remainder of 1985 will be substantially greater than milk production during 1984.

It is recognized that it was found necessary to provide temporary increases in Class I differentials and transportation credits in 11 of these markets for the September 1984–February 1985 period to facilitate the movement of supplemental milk supplies from other order areas. However, the recent increases in producer receipts on the markets far exceed the volume of supplemental Class I milk that was needed last year for these markets. Thus, it is apparent that the shortfall in milk supplies for the region last year was largely related to producer participation in the milk diversion program that ended in March 1985.

In view of these changed marketing conditions, it appears unlikely that a reopened hearing would provide a basis for concluding that Class I price differentials should be increased as proposed in light of the supply and demand pricing standard of the Act. A further consideration is that a reopened hearing would require a number of interested parties to incur the added costs involved in participating in such proceeding. For these reasons, the Department is proposing that the proceeding be terminated.

List of Subjects in 7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098 and 1099

Milk marketing orders, Milk, Dairy products.

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on: August 16, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–20019 Filed 8–20–85; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 302, 303, and 381

[Docket No. 84–030P]

Exemption of Certain Restaurant Central Kitchens; Retail Exemption Provisions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal meat and poultry products inspection regulations to implement Pub. L. 98–487. This law amended the Federal Meat Inspection Act and the Poultry Products Inspection Act to exempt restaruant central kitchens under certain conditions from Federal inspection requirements. Furthermore, this proposed rule would amend the regulations by defining the limits of the applicability of Federal inspection requirements to retail stores, restaurants, and similar retail-type establishments as interpreted by the Department in conjuction with an Attorney General's opinion.

DATE: Comments must be received on or before October 21, 1985.

ADDRESS: Written comments to Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act to: Mr. Robert Gonter, (202) 447–7745. (See also "Comments" under Supplmentary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gonter, Director, Compliance Division, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7745.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made a determination that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; or a major incease in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would benefit certain segments of the industry by exempting portions of their operations from Federal inspection requirements, thus reducing their costs and removing an obstacle to centralizing food preparation for restaurants. It also would result in Federal government savings since Federal inspection would no longer be required in certain central kitchens. It is estimated that approximately 40 restaurant central kitchens could be affected immediately by this proposed rule.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service (FSIS), has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). This proposed rule would reduce the regulatory burden on industry by exempting some small restaurant businesses from Federal inspection requirements. The costs associated with inspection may discourage small restaurant businesses from centralizing food preparation to become more efficient.

The proposed rule permits a more flexible regulatory approach with regard to small restaurant operations. See gen., Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601 *et seq.*).

Comments

Interested persons are invited to submit comments concerning this proposed rule. Written comments must be sent in duplicate to the Regulations Office and should bear reference to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views as provided under the Poultry Products Inspection Act must make such request from Mr. Gonter so that arrangements may be made for the presentation. A transcript will be made of all views orally presented. All comments submitted pursuant to this proposed rule will be made available for public inspection in the Regulations Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) require, among other things, inspection of a broad spectrum of operations and facilities involved in the preparation and processing of food derived from

livestock (i.e., cattle, sheep, swine, goats, horses, mules, or other equines) and poultry. The FMIA provides that meat and meat food products prepared for interstate or foreign commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment must be prepared under Federal inspection unless the operations of the establishment are exempted (21 U.S.C. 603, 604, 606, 608, 610, and 623). The PPIA includes comparable inspection requirements for the processing of poultry products (21 U.S.C. 454, 455, 456, 458, and 459). Establishments prepared or processing product solely for distribution within a State may instead be subject to State inspection if the State develops and effectively enforces requirements that are at least equal to those under the FMIA or PPIA. Section 301(c) (1) and (3) of the FMIA (21 U.S.C. 661(c)(1) and (3)) and section 5(c)(1) and (3) of the PPIA (21 U.S.C. 454(c)(1) and (3)) provide, in relevant part, that the Secretary of Agriculture shall designate any State for Federal inspection (including organized territories) which does not have, or is not effectively enforcing, such requirements; and if a State is so designated, wholly intrastate operations also are subject to Federal inspection and other requirements of the FMIA and PPIA.

The FMIA and PPIA each include exemption provisions for certain retail store and restaurant operations. Section 301(c)(2) of the FMIA (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)) provide, in part, that the statutory provisions requiring inspection do not apply to "operations of types traditionally and usually conducted at retail stores and restaurants when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal quantities or service of such articles to consumers at such establishments" if they are subject to such inspection provisions only because they are in designated States. Moreover, the Department has interpreted the FMIA and the PPIA, in conjunction with the Opinion of the Attorney General of August 17, 1972 (Vol. 42, Op. No. 44), as excluding from inspection requirements the operations of such retail establishments, including restaurants, operating in interstate commerce in any State.

The last 20 years have seen many changes in the food service industry. One significant trend has been the centralization of meal preparation systems. New technology and the increase in large restaurant chains and fast food operations have contributed to this trend. By centralizing preparation of products, a restaurant business can improve its efficiency. Unlike restaurants, which are exempt from inspection requirements under the FMIA and PPIA, these central kitchens, even though owned or operated by the same person or business unit as the restaurant in which their products are served, have been subject to the inspection requirements directed under the FMIA and PPIA. Since inspection under the FMIA and PPIA entails some costs, the imposition of inspection on central kitchens has probably discouraged such centralization. Congress has now addressed this issue.

On October 17, 1984, Pub. L. 98–487 was adopted (98 Stat. 2265). This law amended section 301(c)(2) of the FMIA (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)) to provide that for the purposes of that provision, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant, and thus be exempt from the inspection requirements of the FMIA and/or PPIA if certain conditions are met. The conditions are that the restaurant central kitchen prepares meat or meat food products and/or poultry products that (1) are ready to eat when they leave the faciltiy and (2) are served in meals or as entrees only to customers at restaurants owned or operated by the same person or business unit owning or operating the restaurant central kitchen. The amendments also provide that these restaurant central kitchen facilities reamin subject to the provisions of section 202 of the FMIA (21 U.S.C. 642; see Part 320 of the Federal meat inspection regulations) and section 11 of the PPIA (21 U.S.C. 460; see Part 381, Subpart 0, of the poultry products inspection regulations), and, therefore, records must be maintained and access to places of business and opportunity for examinations must be provided to representatives of the Secretary. Further, the amendments provide that any exempted restaurant central kitchen may be subject to the FMIA and PPIA inspection requirements for as long as the Secretary of Agriculture deems necessary if the Secretary determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any meat or meat food products and/or poultry products are rendered adulterated.

Congress noted that not all restaurant central kitchens are suitable for exemption from Federal inspection.

> [L]arge central kitchens that supply food products for sale to a variety of outlets, such as airlines or retail stores . . . should continue to operate under Federal inspection. (S. Rep. No. 98–610, 98th Cong., 2d Sess. 3 (1984)).

Congress intended limit the exemption to those facilities that:

> . . . are very similar to traditional restaurants, . . . those central kitchens that are essentially retail restaurant facilities, that is, establishments that prepare food products that are ready to eat and served, without an intervening sale, only to customers, at restaurants owned or operated by the same person owning or operating the central kitchen (*id.*).

Congress restricted the scope of the exemption to facilities that differ from the kitchens of restaurants only in that the products they prepare are moved to another site before being served. Thus, meat and meat food products and/or poultry products must be ready to eat when they emerge from the restaurant central kitchen, and they must be served to customers without an intervening sale. These conditions exclude many central kitchen facilities, including those preparring products that are frozen or otherwise preserved so that they may be transported over long distances or held for resale.

Congress' conclusion that only restaurant central kitchens meeting these conditions are suitable for exemption limited the effects of the legislative change to a small number of restaurant central kitchens. However, Congress anticipated a positive economic impact due to improved efficiency in the restaurant business. In Congress' view, compliance with Federal inspection requirements is particularly costly for small restaurant businesses. Therefore, this legislative change was regarded as removing a barrier that until now has discouraged such businesses from centralizing food preparation. (See, e.g., S. Rep. No. 98–610, 98th Cong., 2d Sess. 2, 9 (1984).)

The Proposal

FSIS is proposing amendments to the Federal meat inspection regulations and poultry products inspection regulations to implement Pub. L. 98–487. Section 303.1(d)(2)(iv) of the Federal meat inspection regulations (9 CFR 303.1(d)(2)(iv)) and § 381.10(d)(2)(iv) of the poultry products inspection regulations (9 CFR 303.1(d)(2)(iv)) would be amended by revising the definition of "restaurant" to provide that operations conducted at those restaurant central kitchens which qualify for exemption under the new law are considered to be conducted at a restaurant. The current

exemption from inspection requirements for restaurants would be extended to include the operations of restaurant central kitchens that prepare meat or meat food products and/or poultry products as they would have been prepared at the restaurant location. Thus, to qualify for the exemption, such food products must be ready to eat without further preparation such as thawing or cooking when they leave the restaurant central kitchen and must be maintained without preservation during transportation. In other words, during transportation between exempted restaurant central kitchens and the restaurants, products that are to be served cold shall be maintained cold, and products that are to be served hot shall be maintained hot; that is, in a ready-to-eat state. However, products may not be preserved. For example, products that are to be served hot may not be chilled or frozen for transportation. Furthermore, such products must be served in meals or as entrees only to customers at restaurants owned or operated by the same person owning or operating the restaurant central kitchen, without an intervening sale.

Under the proposed regulations, the recordkeeping and the access and examination requirements of Part 320 and/or 381 of the regulations (9 CFR parts 320 and 381) would continue to apply to such facilities. Any such facility would become subject to inspection requirements if the Administrator, Food Safety and Inspection Service, determines that sanitary conditions or practices of the facility or processing procedures or methods at the facility are such that any products are rendered adulterated.

The proposed rule would also reorganize §§ 303.1(d) and 381.10(d) of the regulations (9 CFR 303.1(d) and 381.10(d)) slightly and make certain other changes. FSIS is proposing to include in the restaurant central kitchen provision those establishments that prepare and distribute ready to eat products for service in meals or as entrees to individual consumers through vending machines owned or operated by the same person that owns or operates the establishment. It has been FSIS policy for some time to treat such operations the same as those of restaurant central kitchens, and the regulations should be clarified to avoid any confusion. Also, the Federal meat inspection regulations, but not the poultry products inspection regulations, presently provide that the definition of "restaurant" includes a caterer which delivers or serves product in meals or as entrees only to individual consumers and otherwise meets the requirements of the regulation. Since FSIS interprets the restaurant exemption in the PPIA as covering such caterers, it is proposing to amend the poultry products inspection regulations to include caterers of poultry products under the same conditions.

In addition, the proposed rule would revise section 303.1(d)(1) of the Federal meat inspection regulations (9 CFR 303.1(d)(1)) and § 381.10(d)(1) of the poultry products inspection regulations (9 CFR 381.10(d)(1) by deleting language limiting their scope to establishments to which FMIA and/or PPIA provisions requiring inspection apply only because they are in designated States (including organized territories). As indicated earlier, the exemptions are part of the statutory provisions that direct the Secretary to designate for Federal inspection establishments with wholly intrastate operations in States that do not have or are not effectively enforcing an inspection program which imposes requirements that are at least equal to those under the FMIA and/or PPIA. As also indicated, in keeping with the Opinion of the Attorney General of August 17, 1972 (Vol. 42, Op. No. 44), the Department has interpreted the FMIA and PPIA as excluding retail operations under specified conditions even when their products are not solely for distribution within a State. In other words, the FMIA and PPIA are construed as reflecting Congress' intent not to rest the applicability of inspection requirements on the interstate or intrastate character of an ordinary retail establishment's business. The regulations implement the statutory criteria for ordinary retail operations, including provisions to assure that the exemption applies only to operations of types traditionally and usually conducted at retail stores and restaurants. This change is intended simply to clarify the regulations by reflecting the Department's position that the applicability of inspection requirements is not affected by the geographical scope of retail stores and restaurants' business activities.

Finally, the proposal would revise § 302.2 of the Federal meat inspection regulations (9 CFR 302.2) by deleting paragraph (a), which refers to special provisions (which appear in Part 330 (9 CFR Part 330)) for certain retail stores and restaurants operating within the District of Columbia. Under the FMIA (21 U.S.C. 601(h)), the term "commerce" means "commerce between any State, any Territory, or the District of Columbia, and any place outside thereof; or within any Territory not organized with a legislative body, or the District of Columbia." Since, as this proposal makes clear, retail stores and restaurants are exempt from the inspection requirements of the FMIA regardless of wherever they are operating in "commerce", there is no need to make special provisions for such operations within the District of Columbia.

List of Subjects

9 CFR Part 302

Applications, Meat inspection.

9 CFR Part 303

Meat and meat food products, Meat inspection, Exemptions, Recordkeeping requirements.

9 CFR Part 381

Poultry products inspection, Exemptions, Reporting and Recordkeeping requirements.

1. The authority citation for Parts 302 and 303 would be revised to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 6001 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 6001 *et seq.*).

PART 302—[AMENDED]

§ 302.2 [Amended]

2. The title of § 302.2 (9 CFR 302.2) would be amended by removing the words "in the District of Columbia or".

3. Section 302.2 (9 CFR 302.2) would be amended by removing paragraph (a) and removing the paragraph designation "(b)".

PART 303—[AMENDED]

4. Section 303.1(d)(9 CFR 303.1(d)) would be amended by revising paragraphs (1) and (2)(iv) to read as follows:

§ 303.1 Exemptions.

* * * * *

(d)(1) The requirements of the Act and the regulations in this subchapter for inspection of the preparation of products do not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments.

(2) * * *

(iv) *Restaurants.* (*a*) A restaurant is any establishment where:

(*1*) Product is prepared only for sale or service in meals or as entrees directly to individual consumers at such establishment;

(*2*) Only federally or State inspected and passed product or such product prepared at a retail store exempted under paragraph (d)(2)(iii) of this section is handled or used in the preparation of any product;

(*3*) No sale of product is made in excess of a normal retail quantity as defined in paragraph (d)(2)(ii) of this section; and

(*4*) The preparation of product is limited to traditional and usual operations as defined in paragraph (d)(2)(i) of this section.

(*b*) This definition includes a caterer which delivers or serves product in meals, or as entrees, only to individual consumers and otherwise meets the requirements of this paragraph.

(*c*) For purposes of this paragraph, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares meat or meat food products that are ready to eat when they leave such facility (i.e., they shall be consumed without further preparation such as cooking or thawing), so maintained without freezing or other preservation during transportation, and served in meals or as entrees only to customers at restaurants or through vending machines, owned or operated by the same person that owns or operates such facility, and which otherwise meets the requirements of this paragraph: *Provided, That* the requirements of §§ 320.1 through 320.4 of this subchapter apply to such facility. *Provided further, That* the exempted facility may be subject to inspection requirements under the Act for as long as the Administrator deems necessary if the Administrator determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its meat or meat food products are rendered adulterated. When the Administrator has made a determination and subjected a restaurant central kitchen facility to such inspection requirements, the operator of such facility shall be afforded an opportunity to dispute the Administrator's determination in a hearing pursuant to rules of practice which will be adopted for the proceeding.

* * * * *

PART 381—[AMENDED]

5. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended (21 U.S.C. 451 *et seq.*); 76 Stat. 663 (7 U.S.C. 451 *et seq.*).

6. Section 381.10(d) of the poultry products inspection regulations (9 CFR 381.10(d)) would be amended by revising subparagraphs (1) and (2)(iv) to read as follows:

§ 381.10 Exemptions for specified operations.

* * * * *

(d)(1) The requirements of the Act and the regulations for inspection of the processing of poultry and poultry products do not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments.

(2) * * *

(iv) *Restaurants.* (*1*) A restaurant is any establishment where:

(*1*) Poultry products are processed only for sale or service in meals or as entrees directly to individual consumers at such establishment;

(*2*) Only federally inspected and passed, or exempted (or, as provided in § 381.223, State or local agency inspected and passed or exempted) poultry products are handled or used in the preparation of any poultry products;

(*3*) No sale of poultry products is made in excess of a normal retail quantity as defined in paragraph (d)(2)(ii) of this section; and

(*4*) The processing of poultry products is limited to traditional and usual operations as defined in paragraph (d)(2)(i) of this section.

(*b*) This definition includes a caterer which delivers or serves product in meals, or as entrees, only to individual consumers and otherwise meets the requirement of this paragaph; and

(*c*) For purposes of this paragraph, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares poultry products that are ready to eat when they leave such facility (i.e., they shall be consumed without further preparation such as cooking or thawing), so maintained without freezing or other preservation during transportation, and served in meals or as entrees only to customers at restaurants, or through vending machines, owned or operated by the same person that operates such facility, and which otherwise meets the requirements of this paragraph: *Provided, That* the requirements of §§ 381.175 through 381.178 of this subchapter apply to such facility. *Provided further, That* the exempted facility may be subject to inspection requirements under the Act for as long as the Administrator deems necessary if the Administrator determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its poultry products rendered adulterated. When the Administrator has made such determination and subjected a restaurant central kitchen facility to such inspection requirements, the operator of such facility shall be afforded an opportunity to dispute the Administrator's determination in a hearing pursuant to rules of practice which will be adopted for the proceeding.

Done at Washington, DC, on: April 29, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85–19986 Filed 8–20–85; 8:45 am]

BILLING CODE 3410-DM-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Incorporation of Service Organizations by Farm Credit System Banks

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), publishes for comment a proposed amendment to its regulation dealing with the incorporation of service organizations by Farm Credit System (System) banks. This proposed amendment will allow System banks to incorporate service organizations with limited liability.

DATES: Written comments must be received on or before September 19, 1985.

ADDRESS: Comments or suggestions should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Peoples, Office of General Counsel, (703) 883–4024.

or

Thomas J. Holland, Office of Examination and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4452.

SUPPLEMENTARY INFORMATION: FCA regulations 12 CFR 611.1150 provides procedures for the incorporation of service organizations by System banks for the purpose of performing any function or service that the bank can perform except the extension of credit and the sale of insurance. The present regulation requires that Articles of Incorporation include a requirement that stockholders pay all valid claims of creditors in the event of the service organization's insolvency. Such a restriction prevents System banks from making full use of their statutory authority to incorporate such subsidiaries..

Amendment of the current regulation will enable System banks to limit their liability in the event of a service organization's insolvency to the extent of their investment consistent with general corporate law.

The FCA may continue to restrict the ability of service organizations to incur indebtedness to nonrecourse obligations and obligations guaranteed by the banks who are their stockholders. The Federal Board believes that this approach is sufficient to accomplish the purpose of the regulatory restriction.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, it is proposed that Part 611 of Chapter VI, Title 12, of the Code of Federal Regulations, be revised as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: Secs. 1.13, 2.10, 4.12, 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2031, 2091, 2183, 2243, 2246, and 2252).

§ 611.1150 [Amended]

2. Section 611.1150 is amended by removing paragraph (b)(3)(xii).

Marvin Duncan,

Acting Governor.

[FR Doc. 85–19948 Filed 8–20–85; 8:45 am]

BILLING CODE 6705–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Revision 2]

Surety Bond Guarantee Regulations

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: On August 19, 1983 SBA published an Advance Notice of Proposed Rulemaking (48 FR 37658) which proposed new concepts for the relationship between SBA and commercial surety companies in their assistance to small concerns unable to obtain required bonds by themselves. Numerous and extensive comments were received, and this Notice adopts some and rejects some of those comments.

DATE: Comments must be received on or before October 21, 1985.

ADDRESS: Comments should be addressed to: Howard F. Huegel, Acting Director, Office of Special Guarantees, Small Business Administration, 4040 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Howard F. Huegel, (703) 235–2900.

SUPPLEMENTARY INFORMATION: One commenter questioned the wisdom and the purpose of varying SBA's share of premiums and losses among sureties [§ 115.3(b)]. The statutory authority for this variation was enacted by 111 of Pub. L. 95–507, approved October 24, 1978, and stated expressly that the variation shall be based on "the Administration's experiences with the particular surety." Accordingly, SBA will apply the criteria set forth in that paragraph. The same comment singled out the criterion of "performance as an integrated surety" as unclear. The meaning of this criterion is that SBA can share with sureties, either through a smaller premium share or a higher loss guarantee, program economies achieved through the sureties' efforts. For example, the claims expenses of a surety, and therefore SBA's share in these expenses, will tend to be lower where an integrated surety administers claims in-house, as distinguished from another surety which retains outside claims adjusters. In this connection, it should be borne in mind that Congress amended the surety bond guarantee statute to require its administration "on a prudent and economically justifiable basis" [Section 11(a) of Pub. L. 93–386, approved August 23, 1974]. Thus, SBA is mandated to review its administration continually to achieve greater program economy. In this same comment it was suggested that it would not be fair to compare the loss rate of an "active" participant with that of an "insignificant" participant. SBA recognizes the validity of this comment and proposes to compare sureties with each other on the basis of their participation "to a comparable degree."

Another comment would have preferred § 115.3(b) to speak of a division of "premiums and guaranteed percentages" instead of "premiums and losses." The original language is retained because SBA believes that the word "loss" is more widely understood.

Another comment pointed out correctly that a judgment on the surety's underwriting and credit analysis function should not be based on both accepted and rejected guarantee proposals submitted by the surety to SBA, as it would discourage the submission of meritorious but marginal proposals. The proposed § 115.3(b) therefore limits this criterion to "bonds guaranteed by SBA." Proposed § 115.3(b) also adopts Grace Commission Recommendation 06–1 by limiting SBA's guarantee of loss to 85% instead of the statutory 90% maximum. The Grace Commission's recommendation is proposed to effect a projected reduction of $9.9 million in SBA losses per annum.

A comment on § 115.3(c) has asked whether a surety has a further appeal from the result of a failed negotiation for admission to the program, which has been reviewed by SBA's Associate Administrator for Finance and Investment. As the proposed subsection states, the Associate Administrator's decision represents final Agency action and is not subject to further SBA reconsideration. This contrasts with § 115.16(a) where a sanction imposed by SBA's Associate Administrator on a participating surety is appealable to SBA's Office of Hearings and Appeals.

A comment on § 115.3(d) suggested that a non-premium charge should be permitted only if agreed to by the Principal. This change was made. Another comment suggested that the lifting of a cap on premiums would cause premiums to sky-rocket. In this regard, SBA anticipates that competition from "substandard risk" sureties will impose restraint. Yet another comment suggested that non-premium charges could include tie-in sales. For this reason, the words "or any other services" were added to the prohibition against sales of insurance.

Comments on § 115.3(e) suggested that the timeliness provisions were too strict. For this reason, substitute documentation has been added to replace the documentation required to

support an SBA exemption from the bar against bond guarantees after a job has begun, and the requirement for an architect's certificate has been dropped. The restriction on the authority of regional officers to grant exceptions has been omitted to afford SBA greater flexibility in such approvals. Other editorial changes were also made.

The greatest number and length of comments related to the definitions section.

One comment on "Amount of Contract" suggested that no ban should be placed on a contractor obtaining several contracts (within an integral project) aggregating in excess of the statutory amount, since legitimate (non-phased) multiple contracts, such as for excavation and painting, should not be barred. SBA believes that the statutory maximum of $1,000,000 is sufficiently in excess of the average SBA guaranteed contract ($70,000) to allow for smaller multiple contracts within its limits, and that multiple contracts in excess of the maximum represent an increased risk which is not warranted.

Another comment, to add the time as of which the contract amount would be established, was adopted; the date of SBA's guarantee was chosen for this purpose.

An explanation of "coterminous" as co-existing with the principal bond was added to the definitions of the words "ancillary and coterminous bond" which are taken from the statute.

A comment on the definition of "Contract" suggested that a prohibition against performance by the surety could be contained in the bond form as well as the contract, and should therefore be expanded. This suggestion was adopted, but SBA thought it more appropriate to add this prohibition to the definition of "performance bond" rather than to that of "Contract." Another comment, on the negative aspect of this definition, criticized that the limitation on warranty "which is not related to delivery" was unclear. It has therefore been expanded to make clear that a warranty of performance of efficiency must terminate with delivery and acceptance by the obligee unless SBA otherwise agrees as a special condition.

Several comments criticized the proposed deductions from bond amounts "by reason of" the Principal's defenses, or of sums "due" from indemnitors. This language has been changed to provide for the deduction of amounts when actually recovered, subject to reimbursement to, or credit in favor of, SBA in case of recoveries after SBA payment. See § 115.14.

A comment on the definition of "Loss" suggested that forfeiture bid bonds, proposed to be excluded by the definition of "Loss" on bid bonds, should be permitted because they are in wide use, and the Surety has little control over the bond form. Because of the large number of bid bonds guaranteed by SBA without charge, SBA has determined that forfeiture bid bonds should not be guaranteed by it; therefore, the definition excludes forfeiture of money. Several comments explained that the description of loss on a payment bond was unrealistic since it only considered direct contractual obligations, while most payment bonds cover.second and subsequent-tier suppliers also. The description was therefore changed to encompass "all just and timely claims against the principal." Another comment suggested replacing the term "complete" in the description of a performance bond, with "perform." The term "complete" was used because it is used in the statute; nevertheless, SBA has replaced it since the comment indicated that it was "outdated" and could increase penal exposure.

Subsection (d) of the loss definition attempted to exclude from "loss" that kind of expense which is inherent in the operations of a surety, viz claims administration. If an affiliated or other external organization undertakes claims administration for the Surety (other than the activities expressly included in the definition), SBA should not bear a share of such cost. Objections were raised to the proposed wording as overly broad. SBA has therefore omitted most of the criticized language, and limited the exclusion to external claims administration expenses; i.e., expenses that would be regarded as overhead if SBA were not involved.

Several comments pointed out that the requirement in paragraph (e) of the loss definition that SBA approve in advance legal cost exceeding one-third of anticipated recovery is impractical. Accordingly, this requirement has been dropped; however, SBA is proposing to eliminate from allowable expenses any expense incurred by a surety if it files suit against federal entities or employees without advance written concurrence by SBA that the suit may be brought. This is because in such suits the major share of such expenses might be borne by the Federal Government. Requiring SBA's approval would afford an opportunity for settlement.

Thr proposed definition of "loss ratio" has been omitted in response to the comment that the loss rate, not its ratio to fees, should be measured by SBA.

The definition of "obligee" was extended to include both the contract and the bond (in the alternative) as the required ties between the principal and the beneficiary of the bond, sufficient to support the naming of a co-obligee on the bond.

The definition of "surety" has been expanded in response to the comment that a surety does not always "fulfill" the terms of the bonded contract, but sometimes pays the panel sum of the bond. The definition now describes a performance bond as guaranteeing either a penal sum, or the cost of performance. It should be pointed out, however, that the statute speaks of "fulfiling the terms of the contract", see section 410(4)(B), not (as suggested) fulfilling the terms of the bond.

Section 115.5(b) has been amended to clarify that the owners of 10 or more percent of the equity of a Principal, and all officers, directors or partners, must be of good character. One comment suggest that the criterion (negating good character) of an adverse final civil judgment adjudicating breach of trust, etc., was too vague and ambiguous. SBA does not share this concern.

Section 115.5(f) has been amended to make clear SBA's intent not to guarantee bonds for brokers, packagers and others who do not themselves perform a significant part of the contract.

Section 115.9(a) has been rewritten in response to a comment pointing out that the proposed wording threatened to penalize a surety proposing to SBA a marginal contract and bond which SBA considers unacceptable. The wording now proposed makes clear that the underwriting standards of § 115.8 are a factor but not the entire rule of decision.

One comment questioned the meaning of "when a claim is filed" in § 115.10 relating to the suspension of a contractor from further bond guarantees until SBA is reimbursed. This meaning is explained in Articles VII of the National and Individual Agreements as a claim "which Surety in good faith believes it will be required to pay" and files within 30 days of SBA Form 994J. SBA therefore believes that the Surety's dilemma as to when to file a claim is minimized, and prior investigation is permitted. In response to another comment, the number of conditions for reinstatement has been reduced from six to three. The third condition is a new condition proposed by SBA to bring this program into alignment with other SBA programs which make bankruptcy or similar debt discharging state procedures a credit factor for consideration in the application process.

One comment on § 115.11 critized the requirement that the Surety collect, and remit to SBA, the contractor's fee of $5 per $1000 of contract amount.

Accordingly, the provision has been revised to give both Surety and Contractor the option of direct or indirect payment to SBA, but in either case the contractor's payment must accompany the application.

Section 115.12, relating to surety bonding lines, has been reworded to make definite the contractor's obligation to inform surety of all its contracts during the term of such line. It has also been amended to substitute "underwriting evaluation" for "experience" as a basis for SBA's decision to issue a bonding line commitment.

Section 115.13 has been rewritten to make clear that either secured or unsecured indemnity agreements, in the surety's and SBA's judgment, are acceptable. Another suggestion, to drop the word "standard" before "indemnity agreement" has also been followed.

Section 115.14, *Claims for losses,* has been amended so that all losses paid may be claimed, and shall be paid by SBA within 90 days, subject to adjustment at a later time for salvage.

Section 115.15 has been clarified, in response to a comment, to authorize denial by SBA of liability for any material misrepresentation, irrespective of its origin, if surety knew or should have known that such representation is false.

Section 115.16(a) has been amended, in response to a comment, to specify the sanctions SBA may impose for improper practice: either demanding a higher premium share or guaranteeing a lower percentage of loss. It has further been amended to incorporate the delegation by the Administrator of review authority relating to termination of program participation to the Office of Hearings and Appeals, 48 FR 29646 (June 27, 1983).

Section 115.16(b) has been revised, in response to comments, to specify that only the revocation or suspension of those licenses required to engage in the surety business will affect "business integrity". The proposed agreements, Appendices A and B, contain a representation of "business integrity" by Surety (Articles XIII and XI, respectively).

Section 115.16(b) has also been amended in accordance with 48 FR 29646, *supra.*

A new § 115.17(c) has been added, making clear that SBA will apply the cost principles of the Federal Acquisition Regulation, 48 CFR Part 31, in its audits of Surety Losses.

A new § 115.18, *Savings Clause,* has been added at the end, to conform to other parts of this chapter, and to clarify that these regulations, when promulgated, will apply prospectively, while transactions consummated before such promulgation will be governed by the prior (current) regulations.

For the purpose of Executive Order 12291, SBA hereby determines that this proposed rule would not constitute a major rule because it is not likely to result in an annual effect on the economy of $100 million or more. SBA expects the competitive factors prevalent in the surety industry to compensate for its removal of restrictions on participating sureties premiums; further, no economic impact is expected as a result of changing from a static division of premiums and losses to a negotiated division of premiums and losses because the basic premiums and anticipated losses are not expected to increase.

For the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* SBA has determined that this proposed rule will not have a significant economic impact on a substantial number of small businesses. Nothwithstanding SBA's determination concerning Executive Order 12291 and the Regulatory Flexibility Act, the following information is furnished:

(1) *Reason for Action.* SBA desires to induce more sureties into providing bonds for small businesses by creating greater flexibility in the formation of the financial terms of the Guaranty Agreements.

(2) *Objectives of Action.* The objectives are to provide more bonds to more small concerns which are unable to obtain bonds without SBA assistance; to have a larger number of participating sureties and to reflect several years of practical experience wherein SBA has solved numerous problems in day-to-day operations of this authorized bonding assistance.

(3) *Number of Businesses Involved.* SBA expects, based on past experience, that approximately 25.000 businesses, including sureties, will be involved with this action.

(4) *Additional Recordkeeping Requirements.* The proposal would not impose any recordkeeping requirement which is not already expected of both small businesses and sureties in the ordinary course of their operations.

(5) *Federal Rules Duplicated.* No federal rules duplicate, overlap or conflict with this action.

(6) *Alternatives to this Action.* There is no known alternative to this action consistent with the objectives of this action.

Paperwork Reduction Act

Some of the information collection requirements contained in this proposal have been approved by the Office of Management and Budget (OMB) and are identified by OMB number. Some of the information collection requirements contained in this proposal are subject to the Paperwork Reduction Act and have not been approved by OMB; these will be identified in the text and will be submitted to OMB for review and comment. The final rule will include all applicable OMB approval numbers.

List of Subjects in 13 CFR Part 115

Small businesses, Surety bonds.

Pursuant to the authority contained in section 411(d) of Title IV, Part B, Small Business Investment Act of 1958, as amended (15 U.S.C. 694b(d)), Part 115 would be revised as follows:

PART 115—SURETY BOND GUARANTEE

Section

115.1 Statutory provisions.
115.2 Captions.
115.3 Policy.
115.4 Definitions.
115.5 Eligibility of principal.
115.6 Procedure for surety bond guarantee assistance.
115.7 Approval or decline of Surety's application.
115.8 Underwriting standards.
115.9 SBA's review of Surety's underwriting.
115.10 Reinstatement for underwriting purposes.
115.11 Fees and premiums.
115.12 Surety bonding line.
115.13 Indemnification agreements and collateral.
115.14 Claims for losses.
115.15 Defenses of SBA.
115.16 Refusal to issue further guarantees.
115.17 Audit and investigation.
115.18 Savings clause.
Appendix A—National Surety Bond Guarantee Agreement
Appendix B—Individual Surety Bond Guarantee Agreement

Authority: Title IV—Part B of the Small Business Investment Act of 1958 (15 U.S.C. 694a, 694b), and the Inspector General Act of 1978 (5 U.S.C. App. 1).

§ 115.1 Statutory provisions.

The relevant statutory provisions will be found at 15 U.S.C. 694a, *et seq.*

§ 115.2 Headings.

Headings are inserted as required by the Office of the Federal Register and are not a part of the regulations.

§ 115.3 Policy.

(a) *Congressional intent.* It is the intent of Congress to strengthen the competitive free enterprise system by assisting qualified small business concerns to obtain on a prudent and economically justifiable basis Bid, Payment, or Performance Bonds which

are otherwise unobtainable without a Small Business Administration (SBA) guarantee. Consequently, Congress has authorized SBA to guarantee (upon such terms and conditions as SBA may prescribe) Sureties participating in the Surety Bond Guarantee Program up to 90 percent of the losses incurred as a result of a Principal's breach of the terms of a Bid Bond, Payment Bond, Performance Bond, or bonds which are ancillary and coterminous with such bonds, on any contract not exceeding one million dollars in face value.

(b) *Guarantee Agreement.* A Surety company participating in this program shall be listed by the U.S. Treasury as eligible to issue bonds in connection with Federal procurement contracts. The terms and conditions of SBA's bond guarantee agreements may vary from Surety to Surety, depending on SBA's experience with a particular Surety. The Surety Bond Guarantee Agreements (SBA Forms 1427 and 1428) [1] shall be generally standardized except for the division of premiums and Losses which shall be negotiated by the Surety with the Office of Special Guarantees in Washington, D.C. In determining the division of premiums and Losses, the Office of Special Guarantees will consider, among other things, the adequacy of the Surety's underwriting and credit analysis of applications for bonds which are guaranteed by SBA, the judgment of the Surety in exercising bond options upon Contract defaults, the accuracy and adequacy of the documentation of its claims and settlement practices, its minimization of Loss, the Surety's Loss rate in comparison with other sureties participating to a comparable degree, its ability to perform as an integrated Surety with its own employees, and the rating or ranking designation assigned to the Surety by recognized authorities or rating agencies. SBA shall not guarantee more than 85% of Losses as defined herein.

(c) *Appeal of surety.* Any Surety which deems itself adversely affected as a result of the Guarantee Agreement negotiation process outlined above to determine the division of premiums and Losses may file an appeal within 30 days of the determination pursuant to paragraph (b) of this section with SBA's Associated Administrator for Finance and Investment. That officer will review the division of premiums and Losses proposed by the Office of Special Guarantees and will render the final Agency decision.

[1] Subject to OMB approval. See Appendices A and B.

(d) *Premium and guarantee fee.* A Surety shall charge no premium in excess of the premium rate authorized by the appropriate State insurance department and shall make no other premium charge to a Principal. A surety shall make no requirement of a Principal that it purchase life or other insurance or any other services from the Surety or any Affiliate or Associate (as defined in § 120.1 of this Chapter) or agent of the Surety. A Surety shall not make non-premium charges to a Principal except where other services are performed and the additional charge or fee is permitted by the appropriate State law or regulation and agreed to by the Principal. The fee paid by a Surety for SBA's guarantee shall be the negotiated percentage of the premium as set forth in the Surety Bond Guarantee Agreement.

(e) *Timeliness.* A guarantee issued by SBA (or a written commitment to guarantee) will be honored only if either is issued prior to the date the work under the Contract is actually begun, unless SBA, in writing, consents to an exception from this policy. Such exception may be authorized only by the SBA surety bond guarantee officer upon receipt of the following from the Surety (subject to OMB approval):

(1) Evidence (certified copy of contract or sworn affidavit) from Contractor that the surety bond requirement was contained in the original job contract, or adequate documentation as to why a surety bond was not previously secured and is now being requred.

(2) A certification by the contractor listing all suppliers and indicating that they are paid to date, attaching a waiver of lien from each; that all labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each, or an explanation satisfactory to SBA why such certification cannot be produced.

(3) A certification by Obligee that all payments due under the contract to present status have been made and that the job has been satisfactorily completed to present status.

§ 115.4 Definitions.

This section incorporates terms defined at 15 U.S.C. § 694a and provides definitions of other terms. Defined terms are capitalized throughout this regulation.

"Affiliate" is defined in § 121.3(a) of this Chapter.

"Amount of Contract." The Amount of the Contract to be bonded shall be established as of the date of SBA's guarantee and shall not exceed one million dollars in face value, nor shall an integral project be phased to result in bonded Contracts of less than one million dollars but aggregating more than one million dollars for one Principal and its Affiliates, nor shall one Principal and its Affiliates be bonded for Contracts exceeding one million dollars within an integral project.

"Ancillary and Coterminous Bond" means a bond incidental and essential to performance of the bonded Contract and coexisting with the related principal bond.

"Bid Bond" means a bond conditioned upon the bidder on a Contract entering into the Contract, if bidder receives the award thereof, and furnishing the prescribed Payment Bond and Performance Bond.

"Contract" means an obligation of the Principal requiring the furnishing of services, supplies, labor, materials, machinery, equipment or construction (including maintenance thereof not to exceed one year) in exchange for money. The Contract shall not be a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee, warranty of performance or efficiency (which warranty does not terminate at the time of delivery to and acceptance by the obligee unless SBA agrees otherwise in writing as a special condition of its approval, see § 115.7(a)), warranty of fidelty or release of lien nor shall a Contract prohibit a Surety from performing a Contract upon default of the Principal.

"Contractor" means the person with whom the Obligee has contracted to perform the Contract.

"Loss" shall have the following meanings:

(a) In the case of a Bid Bond, the lesser of the penal sum or the sum which is the difference between the bonded bid and the next higher responsive bid, less any amounts recovered by reason of the Principal's defenses against the Obligee's demand for performance by the Principal and less any sums recovered from indemnitors and other salvage.

(b) In the case of a Payment Bond, at the Surety's option, the sums necessary to pay all just and timely claims against the Principal thereunder or the penal sum of the Payment Bond, less any amounts recovered by reason of the Principal's claims against laborers, materialmen, subcontractors or suppliers and less any sums recovered from indemnitors and other salvage.

(c) In the case of a Performance Bond, at the Surety's option, the sums necessary to perform that portion of the bonded Contract which is in default by the Principal; or the penal sum of the

bond, less amounts recovered (by offset or otherwise) by reason of the Principal's defenses or causes of action against the Obligee on the bonded Contract and less any sums recovered from indemnitors and other salvage.

(d) Expenses specifically allocable to the investigation, adjustment, negotiation, settlement of or resistance to be given claim (including court costs and reasonable attorney's fees) for Loss resulting from the breach of the terms of any guaranteed bond, but excluding all office expense, all employment costs pertaining to permanent employees, all other internal expenses of Surety, or external expenses for claims administration.

(e) Expenses shall also include court costs and reasonable attorney's fees incurred in suits to enforce mitigation of loss as defined in paragraphs (a) through (c) of this definition, including suits to obtain sums due from obligees, indemnitors, principals and others; *Provided, however,* That no such expense shall be paid for any such suits filed against the United States of America or any of its agencies, officers or employees unless the Surety has, prior to filing such suit, received written concurrence from SBA that such suit may be filed.

(f) "Loss" shall not include attorney's fees and court costs incurred by a Surety in a suit by or against SBA or its Administrator, and shall not include such costs or payments arising out of a suit by a Principal against such Surety.

"Obligee" means (a) in the case of a Bid Bond, the person requesting bids for the performance of a Contractor, or (b) in the case of a Payment Bond or Performance Bond, the person to whom the obligation of the Surety runs in the event of a breach by the Principal of the conditions of a Payment Bond or Performance Bond. No person (including financial institutions) shall be named co-Obligee on a bond unless such person is bound by the Contract or the bond to the Principal to the same extent as the Obligee.

"Payment Bond" means a bond conditioned upon the payment by the Principal of money to persons under contract with such Principal.

"Performance Bond" means a bond conditioned upon the completion by the Principal of a Contract in accordance with its terms. Such bond shall not prohibit a Surety from performing the Contract upon default of the Principal.

"Principal" means (a) in the case of a Bid Bond, a person bidding for the award of a Contract, or (b) the person primarily liable to complete a Contract for the Obligee, or to make payments to other persons in respect of such Contract, and for whose performance or payment the Surety is bound under the terms of a Payment or Performance Bond. A Principal may be a prime Contractor or a Subcontractor.

"Subcontractor" means a person who has contracted with a Contractor or with another Subcontractor to perform a Contract.

"Surety" means the person who is listed by the U.S. Treasury, see § 115.3(b), who has entered into a Surety Bond Guarantee Agreement with SBA and (a) under the terms of a Bid Bond, undertakes to pay a sum of money to the Obligee in the event the Principal breaches the conditions of the bond, (b) under the terms of a Performance Bond, undertakes to pay a sum of money or to incur the cost of fulfilling the terms of a Contract in the event the Principal breaches the conditions of the Contract, or (c) under the terms of a Payment Bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the Contract if the principal fails to make prompt payment, or (d) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

§ 115.5 Eligibility of principal.

In order to be eligible for a bond guaranteed by SBA, the Principal must:

(a) *Size.* Qualify as a small business under Part 121 of this Chapter;

(b) *Character.* Possess good character and reputation, as determined by SBA. A Principal will be deemed to meet this standard if each owner of 10% or more of its equity, and each of its officers, directors, or partners possesses good character and reputation. Good character and reputation shall be presumed absent when any such person (1) has been indicted (pending disposition of such indictment) for or convicted of a felony, or has suffered an adverse final civil judgment that he or she has committed a breach of trust or the violation of a law or regulation protecting the integrity of business transactions or business relationships, or (2) a regulatory authority has denied, revoked, cancelled or suspended the license of such person necessary to perform the contract;

(c) *Need for bond.* Certify that a bond is required in order to bid on a Contract or to serve as a prime Contractor or Subcontractor thereon;

(d) *Availability of bond.* Certify that a bond is not obtainable on reasonable terms and conditions without SBA's bond guarantee assistance; and

(e) *Partial subcontract.* Certify the percentage of the contract to be subcontracted. SBA will not guarantee bonds for contractors who are primarily brokers or packagers, see §§ 124.108(d) and 124.109(a) of this Chapter.

§ 115.6 Procedure for surety bond guarantee assistance.

(a) *Application.* Application for an SBA guarantee (including a bonding line application) is made by the Contractor and the Surety on the SBA Application for Surety Bond Assistance, SBA Forms 994 (OMB Approval No. 32450007), and the Schedule of Contractor's Uncompleted Work, SBA Form 994F or equivalent (subject to OMB approval). Except for premium charges, Surety shall itemize, and Contractor confirm, on a form provided by SBA, all payments made, or to be made, by Contractor to Surety (as defined in § 115.4 of this Part) for whatever purpose as a condition of, or in connection with, the issuance of the bonds(s) to be guaranteed by SBA. Surety and Contractor shall disclose, to the best of their knowledge, any business and close family relationship between them (for definition of "close relative", see § 120.2-2(d) of this Chapter). The Contractor shall be required to execute SBA Form 1261 (Statements required by Law or Executive Order) with the initial application and therewith. In addition, the Contractor shall complete and provide SBA Form 912, Statement of Personal History (OMB Approval No. 32450178), for each owner of 20% of its equity and each officer, director and partner, for submission with Contractor's initial application and on subsequent applications will either certify that the information provide in the initial SBA Forms 912 remains complete and accurate, or will submit updated SBA Forms 912. The complete application, together with the surety's report of underwriting review on SBA Form 994B (OMB Approval No. 32450007), shall be submitted to SBA only by a person empowered by the Surety in writing to issue a bond.

(b) *Fees.* SBA makes no charge for reviewing an application for a surety bond guarantee. The application for a final bond shall be accompanied by the Contractor's guarantee fee (see § 115.11 of this Part).

§ 115.7 Approval or decline of Surety's application.

(a) *Approval.* SBA's approval or decline action will be made in writing by the SBA officer having delegated authority to take final action (see Part 101 of this Chapter). This subsection does not prohibit advance telephone

notice by such office to a Surety of approval (pending receipt by Surety of written approval): *Provided however,* That the written approval with all its conditions, if any, shall be controlling.

(b) *Conditional approval.* Written conditions to approval may be made by the approving official. SBA shall not condition approval on the prior granting of other SBA assistance nor shall SBA require subcontracts to be entered into subsequent to approval. If the Surety disagrees with any condition to an approval, the Surety and SBA shall resolve the disagreement in writing before the issuance of the bond, failing which no SBA guarantee shall attach to the bond.

(c) *Reconsideration—Appeal.* A request by a Surety for reconsideration of a decline shall be directed to the Regional Administrator or District Director who made the decision. If the decision on reconsideration is negative, the Surety may make a further appeal to the Office of Special Guarantees for a final decision.

§ 115.8 Underwriting standards.

The Surety shall adhere to SBA's general principles and practices used in evaluating the credit, capacity, and character of a Contractor as set forth in SBA's Surety Bond Guarantee Program Standard Operating Procedure (SOP 50–45), as amended from time to time,[3] as well as generally accepted standards of the surety business, to assure that the Contract meets the requirements for feasibility of successful completion, reasonableness of cost and that the terms and conditions of the proposed bond are reasonable in light of the risks involved.

§ 115.9 SBA's review of Surety's underwriting.

The SBA office referred to in § 115.7 shall review the Surety's underwriting of a bond, taking into consideration the standards specified in § 115.8 for the purpose of making SBA's determination that the Principal will perform the covenants and conditions of the Contract under consideration, that the cost of the Contract is reasonable and that completion thereof by the small business is feasible.

§ 115.10 Reinstatement for underwriting purposes.

(a) *Conditions for Reinstatement.* When a claim is filed by a Surety on a guaranteed bond, or a Principal has failed to pay SBA the fee required by § 115.11(a) of this Part, the Principal's file is transferred to SBA's Office of Special Guarantees, Claims Section. The application file will be retained in that office and the Principal, including any Affiliates, will not be considered for guarantees of bonds until Principal pays the fee or Surety has repaid SBA in full for all payments due to Principal's default, as the case may be, or one of the following circumstances exists:

(1) Surety has settled its claim with Principal for a cash payment of not less than half the amount of Loss; Principal paid Surety amount as settled.

(2) Principal is presented with a claim which it contests and Principal provides collateral to Surety which has a liquidation value of not less than the amount of the claim.

(3) The Principal's indebtedness to the Surety is discharged by operation of law as in Bankruptcy or any State judicial or quasi judicial process.

(b) *Underwriting after reinstatement.* A guarantee application after default is subject to the most stringent underwriting review, taking into account the previous default, past work experience, present and future financial and work capability, and SBA's budgetary guidelines. While a settlement, as described above, permits reinstatement, prudent underwriting must take into consideration all past experience. Where, however, Surety with full knowledge of past experience is willing to bond the Principal again, and states its belief that the Principal can complete the proposed Contract successfully and without another Loss, SBA will give careful consideration to the Surety's representation.

§ 115.11 Fees and premiums.

(a) *SBA charge to Principal.* No application or bid bond guarantee fee will be charged to the small business by SBA. No bid bond guarantee fee will be charged to the Surety. If SBA guarantees a Payment and/or Performance Bond, the Principal shall pay to SBA a guarantee fee of $5 per thousand dollars of the Contract amount, to be remitted to SBA by Surety or Principal together with the guarantee application on SBA Form 994.

(b) *SBA charge to Surety.* The Surety shall pay SBA the guarantee fee expressed as a percentage of the bond premium, in accordance with the National or Individual Surety Bond Guarantee Agreement as negotiated between SBA and the Surety. SBA shall not receive any portion of a Surety's non-premium charges.

§ 115.12 Surety bonding line.

A surety bonding line is a written commitment to a Surety by SBA pursuant to a National Surety Bond Guarantee Agreement which allows the issuance of multiple bonds to a small business within preapproved terms, conditions and limitations. A bonding line shall not exceed one year's duration. In addition to the other limitations and provisions set forth in this Part 115, the following conditions apply to each surety bonding line (OMB Approval No. 32450007, and subject to OMB approval):

(a) *Underwriting.* A bonding line may be issued by SBA for a small business if SBA's underwriting evaluation is satisfactory and the Surety recommends the bonding line. The Surety shall require the Principal to keep it informed of all its Contracts during the time limit of the bonding line.

(b) *Application for bonding line.* Upon requesting a bonding line, the Surety shall provide SBA with:

(1) In addition to the forms required pursuant to § 115.6, information about the small business deemed necessary by SBA.

(2) A recommendation regarding the limit of the number of Contracts with SBA guaranteed bonds under the bonding line into which the small business may enter.

(3) A recommendation regarding the maximum dollar amount of any single bonded Contract the small business can reasonably be expected to perform.

(4) A recommendation concerning the limit of the total value of all outstanding bids plus uncompleted Contracts (bonded and unbonded) which the small business can reasonably be expected to perform simultaneously.

(5) A recommendation whether the small business' bonds should be restricted to a specific type or specialty of work or should be restricted to a geographical area.

(c) *Bonding line commitment conditions.* In the event a bonding line is approved, SBA's written commitment will be conditioned to limit (1) the time period of the bonding line not to exceed one year, (2) the total dollar volume of the small business' guaranteed bonded and unbonded Contracts during the period of the bonding line, (3) the number of such Contracts during the period of the bonding line, (4) the maximum dollar amount of any single guaranteed bonded Contract and (5) any other limitation related to type, specialty of work, geographical area or credit.

(d) *Excess bonding.* If, after a bonding line is committed, the Principal desires a bond and the Surety desires a guarantee exceeding a limitation of the bonding line, an application may be made under regular procedures.

[3] The SOP may be obtained from SBA's Office of Special Guarantees.

(e) *Submission of forms to SBA.* Within 45 calendar days of issuance of any final bonds under a bonding line, the Surety shall submit SBA Forms 994 to SBA showing that the bond or bonds have been issued. Failure of the Surety to submit such forms to SBA as required shall void SBA's guarantee of the bond from its inception.

(f) *Cancellation.* SBA or the Surety may cancel a bonding line commitment at any time upon written notice to the other party. In either event Surety shall promptly notify the small business in writing. Cancellation by SBA will be effective upon receipt of such notice by the Surety: *Provided, however,* That bonds issued before the effective date of cancellation shall remain guaranteed by SBA.

§ 115.13 Indemnification agreements and collateral.

A Surety shall secure from each bonded Principal a written indemnification agreement secured by such collateral as the Surety or SBA may deem appropriate. Other indemnity agreements from other persons or entities, secured by collateral or unsecured, may also be required by either the Surety or SBA. All SBA requirements concerning collateral and indemnity from parties other than the Principal shall be communicated to the Surety in the written commitments issued pursuant to §§ 115.7(b) and 115.12(c).

§ 115.14 Claims for losses.

Claims for Losses which Surety has paid shall be submitted to SBA's Washington Office of Special Guarantees on forms prescribed by SBA. SBA may request additional information before paying a claim. Claims are subject to review and/or audit in accordance with the cost principles set forth in § 115.17. Loss will be determined as of the date of filing of such claims or as of such later date as additional information requested by SBA is filed, and SBA shall pay its share of Loss within ninety (90) days of such filing, subject to reimbursement of or credit to SBA within ninety (90) days of any recovery or salvage by Surety.

§ 115.15 Defenses of SBA.

In addition to equitable and legal defenses and remedies afforded by the general law of contracts, SBA shall be relieved of all liability under any Surety Bond Guarantees Agreement if:

(a) *Excess Contract amount.* The total contract amount at the time of the execution of the guarantee of the bond or bonds exceeds $1,000,000 in face value, or

(b) *Misrepresentation.* The Surety obtained the guarantee or agreement or applied for reimbursement for Losses by fraud or material misrepresentation. Material misrepresentation includes (but is not limited to) both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not misleading in light of the circumstances in which it was made, and includes the adoption by the Surety of a misstatement made by others which Surety knew or in the exercise of due diligence should have known to be false or misleading. Failure by the Surety to disclose its ownership (or the ownership by any owner of 10% or more of its equity, or by any officer, director, or partner) of an interest in a Principal or an Obligee shall be deemed the omission of a statement of material fact.

§ 115.16 Refusal to issue further guarantees.

(a) *Improper Surety Bond Guarantee Practice.* SBA at its sole discretion may refuse to issue further guarantees to a Surety where SBA finds that the Surety, in its underwriting of surety bonds guaranteed by SBA, or in its efforts to minimize Loss, or in its claims practices, or its documentation related to such bonds, has failed to adhere to prudent underwriting standards or other practices, as compared to those of other sureties participating in the SBA Bond Guarantee Program, including any standards or practices established by SBA. Acts of wrongdoing such as fraud or material misrepresentation (as defined in § 115.15 above) shall constitute adequate grounds for refusal to issue further guarantees. SBA may also impose other sanctions (i.e., a larger premium share or lower percentage of loss guaranteed) against a Surety which experiences excessive losses on SBA-guaranteed bonds resulting from unacceptable underwriting and/or claims practices, relative to those of other sureties participating in the program to a comparable degree. Such refusals or sanctions will be issued by SBA's Associate Administrator for Finance and Investment. Any Surety that has been penalized may file a petition in accordance with § 134.11(a) of this Chapter. Proceedings concerning such petition shall be conducted in accordance with the provisions of Part 134. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.034.

(b) *Business Integrity.* Any person qualifying as a Surety or any agent, independent agent, underwriter or individual empowered to act on behalf of such person shall be presumed to have good character and reputation for business integrity and shall, until one of the following events occur, be entitled to present applications for guarantees of bonds:

(1) A state or other authority regulating insurance (including the surety industry) has denied, revoked, cancelled or suspended the license required of such person to engage in the surety business.

(2) Such person has been indicated or otherwise formally charged with, or convicted of, a misdemeanor or felony, or suffered an adverse final civil judgment that such person has committed a breach of trust or a violation of law or regulation protecting the integrity of business transactions or relationships.

(3) Such person has made a material misrepresentation or willful false statement within the meaning of 115.15(b) of this Part in the presentation of oral or written information to SBA in connection with applications for surety bond guarantees or the presentation of claims thereon.

(4) Upon an indictment or formal charge of a misdemeanor or felony against such person, SBA may suspend the privilege of such person to present applications for guarantees of bonds, in a proceeding pursuant to Part 134 of this Chapter. Upon the occurrence of any of the other events specified in this subsection, SBA may suspend or revoke the privilege of such person to present applications for guarantees of bonds, in a proceeding pursuant to Part 134 of this Chapter.

§ 115.17 Audit and investigation.

(a) *Audit.* At all reasonable times, SBA may audit in the office of either a Surety, its attorneys, or the Contractor or Subcontractor completing the Contract all documents, data and other materials or information relevant to SBA's surety bond guarantees and commitments. Such relevant records shall be maintained for a period of three years beyond the term of each bond, plus such additional time as may be required to settle claims for which the Surety may seek recovery from SBA or attempt salvage or other recovery and shall include the following records (subject to OMB approval):

(1) The bond agreement;

(2) All documentation submitted by the Principal in applying for the bond;

(3) All information gathered by the Surety in reviewing the Principal's application;

(4) All documentation of any breach by the Principal;

(5) All records of any transactions for which the Surety makes payment pursuant to the bond, including, but not limited to, copies of all claims, bills, judgments, settlement agreements and court or arbitration decisions, contracts and receipts;

(6) Attorney work products paid for by the Surety pursuant to the bond;

(7) All documentation relating to efforts to mitigate losses; and

(8) Records of any accounts into which fees and funds obtained in mitigation of Losses have been paid, and from which payments have been made pursuant to the bond.

Failure of a Surety to consent to such audit or maintain such records will be grounds for SBA to refuse to issue further surety bond guarantees or to honor claims until such time as the Surety consents to such audit.

(b) *Investigation.* SBA may conduct such investigations as it deems necessary to inquire into the possible violation by any person of the Small Business Investment Act of 1958, as amended, or of any rule or regulation under the Act, or of any order issued under that Act, or of any Federal law relating to programs and operations of the SBA.

(c) In auditing Losses by the Surety on which claims under SBA's bond guarantee are based, SBA shall apply the cost principles set forth in the Federal Acquisition Regulation, especially 48 CFR 31.105, with respect to completion costs and with respect to professional (including legal) fees.

(d) *Authority.* Authority for paragraphs (a) and (b) of this section is contained in sections 310(a) and 411(g) of the Small Business Investment Act of 1958, as amended, and in the Inspector General Act of 1978 (5 U.S.C., App. 1).

§ 115.18 Savings clause.

The legality of transactions, including the issuance by SBA of bond guarantees, pursuant to provisions of SBA regulations in effect before amendment, shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA enforcement with respect to any transaction consummated or bond guarantees issued in violation of provisions applicable at the time, but no longer in effect. If any section or part of a section of these regulations should be adjudged invalid, only that section or part shall be invalid, and no other part or section shall be affected thereby.

Appendix A—National Surety Bond Guarantee Agreement

The Small Business Administration, an Agency of the United States of America, hereinafter called SBA, is authorized by Part B of Title IV of the Small Business Investment Act of 1958 [15 U.S.C. 694a and b] to guarantee, upon such varying terms and conditions as it may prescribe, any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond or bonds ancillary and coterminous therewith, by a principal on any contract up to $1,000,000 in face value.

_____, hereinafter called Surety, is a commercial surety which has been determined by SBA to be eligible to participate in the Surety Bond Guarantee Program in accordance with 13 CFR Part 115 and desires to obtain SBA guarantees on bonds it would not issue without an SBA Guarantee.

In consideration of the mutual benefits and the benefits to the small business segment of the economy, to be derived from this Agreement, SBA and the Surety agree as follows:

Article I

Limitations

This agreement shall apply to bonds issued by Surety, only if, as determined by Surety and SBA, at the time of issuance of SBA's written approval (1) the principal of the bond is a small business concern as defined by 13 CFR Part 121; (2) the bond is required to bid on a contract, or to serve as prime contractor or subcontractor thereon; (3) the principal is not able to obtain such bond on reasonable terms and conditions without an SBA guarantee; (4) the Surety and SBA have determined that there is a reasonable expectation that such person will perform the contract with respect to which the bond is required; (5) the contract meets requirements for feasibility of successful completion and reasonableness of cost; (6) the terms and conditions of the bond are reasonable in light of the risks involved; and (7) the contract does not exceed $1,000,000 in face value.

Article II

Scope of This Agreement

This agreement shall attach only to a bond for which application for SBA's guarantee has been submitted to, and approved by, SBA in writing prior to Surety's issuance and delivery of the bond(s). Where a bonding line commitment by SBA is in effect [13 CFR 115.12(c)], this agreement shall attach to any bond issued thereunder: *Provided,* That the appropriate forms are submitted to SBA within 45 days of issuance as required by subsection (e) of the cited section. If a bond is not delivered to the designated obligee, this agreement does not apply to such bond. Surety shall decline to issue any SBA guaranteed bond, if SBA's conditions to such issuance are not met or if additional information comes to the attention of the Surety so as to change its underwriting determination. Surety shall promptly notify SBA of such disapproval. Until delivery of the bond to the obligee, while such delivery is within the control of the Surety, SBA may withdraw its commitment to guarantee a bond.

The Surety shall not, without SBA's prior written consent (a) agree to any material alteration in the terms, conditions or provisions of the contract or bond, excluding an increase in bond liability less than 20% of the original liability; (b) name as an obligee on the bond any party, including a lender to the principal, which is not bound by the contract to the principal to the same extent as the original obligee; (c) issue the bond after the date the work under the contract is actually begun.

The Surety shall not reduce its agreed percentage of loss on any guaranteed bond by any arrangement of co-surety, subsurety, or any other agreement, except existing reinsurance.

Article III

SBA's Statutory Defenses

SBA shall be relieved of all liability if—

(1) the Surety obtained written approval of the application for the guarantee or applied for reimbursement by fraud or material misrepresentation. Material misrepresentation includes both the making of an untrue statement of material fact and the omission of a statment of material fact necessary to make a statement not misleading in light of the circumstances in which it was made and includes the adoption of a misstatement made by others which Surety knew or in the exercise of reasonable diligence should have known to be false or misleading (failure by the surety to disclose its ownership of an interest in a Principal or an Obligee shall be deemed the omission of a statement of material fact); or

(2) the total contract amount at the time of SBA's approval of the application for the guarantee of the bond or bonds exceeds $1,000,000.

Article IV

Application, Approval or Decline

Surety's applications for guarantees (OMB Approval No. 32450007) of bonds shall be written upon forms prescribed by SBA and shall be submitted to SBA offices having delegated authority as published in 13 CFR Part 101. SBA will approve or decline an application by timely written notice to the Surety.

In submitting applications for guarantees the Surety will, on Forms prescribed by SBA, represent that the information furnished is accurate and complete and that it has used due diligence to ascertain its accuracy and completeness and that its recommendation for approval was formulated in accordance with such underwriting practices as may be established by SBA from time to time and furnished to the Surety.

The Surety's application shall represent that (a) it has determined that the contract price is reasonable; (b) the terms and conitions of the bond to be executed are in accordance with those generally used by the surety or construction industry; (c) the bond to be issued is appropriate to the contract requiring it and will conform to other bonds generally established and accepted in the surety industry as bid, payment or

performance bonds or bonds ancillary and coterminous with the payment and performance bonds and which are incidental to the contract and essential for its performance; (d) the bond or bonds are required by the invitation for bids or by the proposed contract and would not be provided by the Surety without an SBA Guarantee.

Article V

The Statute, the Surety and Authorized Representatives

By statutory definition (15 U.S.C. 694a) the term Surety includes an agent, independent agent, underwriter or any other company or individual empowered to act on behalf of the person (Surety) undertaking the obligations set forth in the definition. SBA shall accept applications for guarantees only from persons authorized by Surety in writing to act for Surety in issuing final bonds. The Surety agrees to furnish to SBA (Attention: Director, Office of Special Guarantees) annually, but not later than April 30th of each year hereafter, a list of all active representatives authorized to act for Surety with true copies of the written authorization including any limitations thereon (subject to OMB approval).

SBA, by dealing with an authorized representative, does not waive its right to communicate with the Surety concerning any matter deemed in need of Surety's attention; further, SBA may express to Surtey its dissatisfaction with the activity or performance of an authorized representative for willful or persistent non-compliance with SBA Regulations, this Agreement or lack of cooperation with SBA employees. If SBA's complaints, as expressed by the Director, Office of Special Guarantees, are not recognized by corrective measures of the authorized representative, SBA may impose such sanctions as are authorized by 13 CFR Part 115.

Article VI

The Guarantee, Loss and Mitigation

For each application approved pursuant to this Agreement SBA shall reimburse the Surety ———% of the loss defined herein which the Surety sustains and pays as a result of a breach by the principal of the terms of the approved bond.

1. "Loss" shall have the following meanings:

(a) In the case of a bid bond, the lesser of the penal sum or the sum which is the difference between the bonded bid and the next higher responsive bid, less any amounts recovered by reason of the principal's defenses against the obligee's demand for performance by the principal and less any sums received from indemnitors and other salvage.

(b) In the case of a payment bond, at the Surety's option the sums necessary to pay all just and timely claims against the principal under the bonded contract or the penal sum of the payment bond, less amounts recovered by reason of the principal's claims against laborers, materialmen, subcontractors or suppliers and less any sums recovered from indemnitors and other salvage.

(c) In the case of a performance bond, at the Surety's option, the sums necessary to perform that portion of the bonded contract which is in default by the Principal; or the penal sum of the bond less amounts recovered (by offset or otherwise) by reason of the principal's defenses or causes of actions against the obligee on the bonded contract and less any sums recovered from indemnitors and other salvage.

(d) Expenses specifically allocable to the investigation, adjustment, negotiation, settlement of or resistance to a given claim (including court costs and reasonable attorney's fees) for loss resulting from the breach of the terms of any guaranteed bond, but excluding all office expense, all employment costs pertaining to permanent employees, all other internal expenses of Surety, or external expenses for claims administration.

(e) Expenses shall also include court costs and reasonable attorney's fees incurred in suits to enforce mitigation of loss as defined in paragraphs (a) through (c) of this Article, including suits to obtain sums due from obligees, indemnitors, principals and others; *Provided,* however, That no such expense shall be paid for any such suits filed against the United States of America or any if its agencies, officers or employees unless the Surety has, prior to filing such suit, received written concurrence from SBA that such suit should be filed.

(f) "Loss," shall not inlcude attorney's fees and court costs incurred by a Surety in a suit by or against SBA or its Administrator, and shall not include such costs or payments arising out of a suit by a Principal against such Surety.

2. The Surety shall take all reasonable action to minimize loss including, but not limited to, obtaining indemnification agreements of the principal and third parties, secured by such collateral as is deemed necessary by the Surety or SBA. In the event of loss, the Surety will pursue all sources of recovery at law or equity and will discontinue such efforts only with the written consent of SBA. Surety shall own all suits, claims, defenses, rights, privileges and legal interests arising out of any guaranteed bond and shall be the real party in interest thereto; provided, however, any dispute between Surety and another Surety or Sureties whose losses are guaranteed by SBA shall be referred in writing to SBA for mediation and possible settlement before the Sureties engage in litigation concerning the bonded contracts.

Article VII

Claims, Salvage and Parties

If any suit or claim is filed against the Surety which Surety in good faith believes it will be required to pay, the Surety shall inform SBA on SBA Form 994] within 30 calendar days of receipt of notice of the suit or claim at its home office. The Surety shall manage the suit or claim and compromise, settle, or defend such suit or claim unless SBA notifies the Surety within 30 calendar days of the receipt from Surety of such notice to assign all of its right, title and interest in the suit or claims to SBA. In the event of such assignment the agreed percentages of loss shall not change. In the administration of such claim the Surety will follow, to the extent practical and possible, the guidelines set forth in the SBA Standard Operating Procedure, Surety Bond Guarantee Program (SOP 50–45) as furnished by SBA and as amended from time to time. Any proposed major departure from these guidelines will be promptly communicated to SBA for its prior written approval. Any salvage or other recovery by Surety or SBA will be shared in the same proportion as loss by the Surety and SBA: provided, however, that existing reinsurance shall not be considered as salvage or other recovery.

This Agreement is made exclusively for the benefit of the Surety and SBA, and does not confer any rights or benefits on any other party, including any right of action against SBA by any person claiming under SBA guaranteed bonds or otherwise.

Article VIII

Premium, Contractor's Fee and Guarantee Fee

The Surety warrants that it will charge and collect as its premium for each guaranteed bond no greater amount than set forth in its rate schedule as filed and approved by the applicable state or other regulatory authority, if any. The Surety shall pay to SBA as a fee for each approved application ——% of the premium for each guaranteed bond. The same percentage of premium will apply to increases or reductions due to contract changes. At Surety's option, SBA shall partially compensate Surety for its production by crediting Surety with ——% of said guarantee fee, adjusted for increases or reductions due to contract changes, at the time of Surety's payment to SBA. SBA shall charge no guarantee fee to the Surety or to the contractor on bid bond guarantees. Premium and surety guarantee fee adjustments based on a bond amount adjustment of $10,000 or less shall be disregarded. Surety shall make no charge to the contractor except as stated above, or where services are performed at the request of and for the benefit of the contractor, and the additional charge or fee is permitted by the applicable state or other regulatory authority, if any, such additional charge or fee to be promptly disclosed to SBA.

Article IX

Accounting Reports and Remittances

Surety shall mail to SBA, on forms prescribed by SBA, within forty–five calendar days after the last day of each month the following information for the reporting month (subject to OMB approval):

(a) Statement of Surety's and Contractor's Guarantee fees owed to SBA;

(b) Statement of Losses paid with expenses pertaining thereto segregated;

(c) Statement of salvage or other recovery;

(d) Statement of all claim reserves established or changed;

(e) An estimate of expected attorney fees with names of attorneys, hours of estimated work, title of suit or nature of work and guaranteed bond involved.

With these monthly statements Surety shall remit to SBA payment of the amount due SBA on account of premiums as shown on such statements, with any amounts in dispute to be remitted by Surety to SBA with the statement covering the month during which such dispute was settled. SBA shall pay undisputed claim amounts within ninety days after the end of each month during which such claim was received by SBA, with any amounts in dispute to be remitted by SBA to Surety within ninety days following the month during which such dispute was settled.

On each February 15 following the year of execution of this agreement the Surety shall submit to SBA a list of all its outstanding claims against SBA.

Article X

Cash Claims

Any item of loss chargeable to SBA that does not exceed $50,000 shall be reported in the monthly accounts as specified in Article IX. Any item of loss chargeable to SBA in excess of $50,000 may, at the option of the Surety, be reported (subject to OMB approval) separately to SBA as a special cash claim. SBA shall pay the special cash claim in a timely fashion subject to the right of SBA to offset such claim against any balance past due from Surety to SBA.

Article XI

Insolvency

In the event of the insolvency of the Surety the rights of the receiver, trustee in bankruptcy or other representative of the insolvent Surety shall be no greater than those of the Surety while solvent and no claim against SBA will be paid to a receiver, trustee in bankruptcy or other representative of the insolvent Surety until a creditor's claim has been paid by the receiver, trustee in bankruptcy or other representative. Surety and SBA agree that there is nor privity of contract between SBA and the principals or obligees on the guaranteed bonds and the Surety covenants that it will not represent that such privity exists or represent that it is the agent or representative of SBA in the issuance of its bonds.

Article XII

Suspension and Termination

Either Surety or SBA may, upon written notice to the other by certified mail, suspend this agreement, effective on the date of such notice, for a stated cause for a specified period. Either Surety or SBA may terminate this Agreement without a stated cause upon not less than 30 days written notice (excluding Saturdays, Sundays and National Holidays). Suspension or termination of this Agreement shall not invalidate approvals of applications by SBA for bonds issued and delivered prior to the date of suspension or termination in the notice as provided for. All conditions of this Agreement involving claims and SBA's regulations will remain in full force and effect after the termination date and during the period of suspension as to any guaranteed bonds outstanding prior to the date of termination or prior to the beginning date of suspension. Suspensions shall expire on the date ending the period of suspension and this Agreement, in the absence of termination, shall be automatically reinstated.

Article XIII

Surety represents that, to the best of its knowledge, its agents, officers, directors, individual partners or individuals holding ten or more percent of its voting securities, as the case may be, possess business integrity, as defined in 13 CFR 115.16(b), except as separately noted. Surety will notify SBA when any of these individuals subsequently ceases to qualify under said section. Surety agrees that SBA may require submission of SBA Form 912, Statement of Personal History (OMB Approval NO. 32450178) from any of these individuals.

Article XIV

Construction of Agreement; Other Laws

SBA's Surety Bond Guarantee Regulations, 13 CFR Part 115, as they may be amended from time to time, are incorporated herein as if full set forth here and if any Article, sentence, phrase or part of this Agreement is in conflict with the regulations as amended, the latter will prevail over the former in construing and applying this Agreement.

In Witness Whereof, SBA and Surety have caused this agreement to be executed in duplicate originals.

Small Business Administration

by _____ [SBA Seal]

Title

on _____

_____ [Corp. Seal]

Surety

by _____

President

Attest _____

on _____

Appendix B—Individual Surety Bond Guarantee Agreement

The Small Business Administration, an Agency of the United States of America, hereinafter called SBA, is authorized by Part B of Title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694 a and b) to guarantee, upon such varying terms and conditions as it may prescribe, any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond or bonds ancillary and coterminous therewith, by a principal on any contract up to $1,000,000 in face value.

_____, hereinafter called Surety, is a commercial surety which has been determined by SBA to be eligible to participate in the Surety Bond Guarantee Program in accordance with 13 CFR Part 115 and desires to obtain an SBA guarantee on a bond it would not issue without an SBA Guarantee.

In consideration of the mutual benefits and the benefits to the small business segment of the economy, to be derived from this Agreement, SBA and the Surety agree as follows:

Article I

Limitations

This agreement shall apply to the bond or bonds described in Article II hereof issued by Surety, only if, as determined by Surety and SBA at the time of issuance of SBA's written approval in the form of this guarantee (1) the principal of the bond is a small business concern as defined by 13 CFR Part 121; (2) the bond is required to bid on a contract, or to serve as prime contractor or subcontractor thereon; (3) the principal is not able to obtain such bond on reasonable terms and conditions without an SBA guarantee; (4) the Surety and SBA have determined that there is a reasonable expectation that such person will perform the contract with respect to which the bond is required; (5) the contract meets requirements for feasibility of successful completion and reasonableness of cost; (6) the terms and conditions of the bond are reasonable in light of the risks involved; and (7) the contract does not exceed $1,000,000 in face value.

Article II

Scope of This Agreement

SBA's guarantee shall attach only to the bid, payment or performance bonds described below:

Description of contract, location, amount, nature, and extent of work: _____

Name of principal: _____

Principal's address: _____

_____

_____

Name of obligee: _____

_____

Bid or award date: _____

Type or kind of bond or bonds: _____

If the bond is not delivered to the designated obligee this agreement does not apply to the bond. Surety shall decline to issue the bond, if SBA's conditions to such issuance are not met or if additional information comes to the attention of the Surety so as to change its underwriting determination. Surety shall promptly notify SBA of such disapproval. Until delivery of the bond to the obligee, while such delivery is within the control of the Surety, SBA may cancel this agreement by written notice to the Surety prior to such delivery.

The Surety shall not, without SBA's prior written consent, (a) agree to any material alteration in the terms, conditions or provisions of the contract or bond, excluding an increase in bond liability less than 20% of the original liability; (b) name as an obligee on the bond any party, including a lender to the principal, which is not bound by the contract to the principal to the same extent as the original obligee; (c) issue the bond after the date the work under the contract is actually begun.

The Surety shall not reduce its agreed percentage of loss on the guaranteed bond by any arrangement of co-surety, subsurety, or

any other agreement, except existing reinsurance.

Article III

SBA's Statutory Defenses

SBA shall be relieved of all liability if—

(1) the Surety obtained this guarantee or applied for reimbursement by fraud or material misrepresenatation. Material misrepresenation includes both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not misleading in light of the circumstances in which it was made and includes the adoption of a misstatement made by others which Surety knew or in the exercise of reasonable diligence should have know to be false or misleading (failure by the surety to dislose its ownership of an interest in a Principal or an Obligee shall be deemed the omission of a statement of material fact); or

(2) the total contract amount at the time of execution of this guarantee of the bond or bonds exceeds $1,000,000.

Article IV

Application, Approval or Decline

In submitting its application for guarantee (OMB Approval No. 32450007), the Surety represents that the information furnished was accurate and complete and that it used due diligence to ascertain its accuracy and completeness and that its recommendation for approval was formulated in accordance with such underwriting practices were be established by SBA and furnished to the Surety.

The Surety represents that (a) it has determined that the contract price is reasonable; (b) the terms and conditions of the bond to be executed are in accordance with those generally used by the surety or construction industry; (c) the bond to be issued is appropriate to the contract requiring it and will conform to other bonds generally established and accepted in the surety industry as bid, payment or performance bonds of bonds ancillary and coterminous with the payment and performance bonds and which are incidental to the contact and essential for its performance; (d) the bond or bonds are required by the invitation for bids or by the proposed contract and would not be provided by the Surety without an SBA Guarantee.

Article V

The Statute, the Surety and Authorized Representatives

By statuory definition (15 U.S.C. 694a) the term Surety includes an agent, independent agent, underwriter or any other company or individual empowered to act on behalf of the person (Surety) undertaking the obligations set forth in the defintion. The application for guarantee is submitted by a person authorized by Surety in writing to act for Surety in issuing final bonds.

'SBA, by dealing with the authorized representative, does not waive its right to communicate with the Surety concerning any matter deemed in need of Surety's attention; further, SBA may express to Surety its dissatisfaction with the activity or performance of the authorized representative for non-compliance with SBA Regulations, this Agreement or lack of cooperation with SBA employees.

Article VI

The Guarantee, Loss and Mitigation

SBA shall reimburse the Surety ——% of the loss defined herein which the Surety sustains and pays as a result of a breach by the principal of the terms of the bond(s) guaranteed hereunder.

1. "Loss" shall have the following meanings:

(a) In the case of a bid bond, the lesser of the penal sum or the sum which is the difference between the bonded bid and the next higher responsive bid, less any amounts recovered by reason of the principal's defenses against the obligee's demand for performance by the principal and less any sums received from indemnitors and other salvage.

(b) In the case of a payment bond, at the Surety's option, the sums necessary to pay all just and timely claims against the principal under the bonded contact or the penal sum of the payment bond, less amounts recovered by reason of the principal's claims against laborers, materialmen, subcontractors or suppliers and less any sums recovered from indemnitors and other salvage.

(c) In the case of a performance bound, at the Surety's option, the sums necessary to perform that portion of the bonded contract which is in default by the Principal; or the penal sum of the bond less amounts recovered (by offset or otherwise) by reason of the principal's defenses or causes of actions against the obligee on the bonded contract and less any sums recovered from indemnitors and other salvage.

(d) Expenses specifically allocable to the investigation, adjustment, negotiation, settlement of or resistance to a given claim (including court costs and reasonable attorney's fees) for loss resulting from the breach of the terms of the guaranteed bond, but excluding all office expense, all employment costs pertaining to permanent employees, all other internal expenses of Surety, or external expenses for claims handling or administration.

(e) Expenses shall also include court costs and reasonable attorney's fees incurred in suits to enforce mitigation of loss as defined in paragraphs (a) through (c) of this Article, including suits to obtain sums due from obligees, indemnitors, principals and others; *Provided, however,* That no such expense shall be paid for any such suits filed against the United States of America or any of its agencies, officers or employees unless the Surety has, prior to filing such suit, received written concurrence from SBA that such suit should be filed.

(f) "Loss" shall not include attorney's fees and court costs incurred by Surety in a suit by or against SBA or its Administrator, and shall not include such costs or payments arising out of a suit by a Principal against Surety.

2. The Surety shall take all reasonable action to minimize loss including, but not limited to, obtaining indemnification agreements of the principal and third parties, secured by such collateral as is deemed necessary by the Surety or SBA. In the event of loss, the Surety will pursue all sources of recovery at law or equity and will discontinue such efforts only with the written consent of SBA. Surety shall own all suits, claims, defenses, rights, privileges and legal interests arising out of the guaranteed bonds and shall be the real party in interest thereto; provided, however, any dispute between Surety and another Surety or Sureties whose losses are guaranteed by SBA shall be referred in writing to SBA for mediation and possible settlement before the Sureties engage in litigation concerning the guaranteed bond.

Article VII

Claims, Salvage and Parties

If any suit or claim is filed against the Surety which Surety in good faith believes it will be required to pay, the Surety shall inform SBA on Form 994J within 30 calendar days of receipt of notice of the suit or claim at its home office. The Surety shall manage the suit or claim and compromise, settle, or defend such suit or claim unless SBA notifies the Surety within 30 calendar days of the receipt from Surety of such notice to assign all of its right, title and interest in the suit or claim to SBA. In the event of such assignment the agreed percentage of loss shall not change. In the administration of such claim the Surety will follow, to the extent practical and possible, the guidelines set forth in the SBA Standard Operating Procedure, Surety Bond Guarantee Program (SOP 50–45) as furnished by SBA. Any proposed major departure from these guidelines will be promptly communicated to SBA for its prior written approval. Any salvage or other recovery by Surety of SBA will be shared in the same proportion as loss by the Surety and SBA: provided, however, that existing reinsurance shall not be considered as salvage or other recovery.

This Agreement is made exclusively for the benefit of the Surety and SBA, and does not confer any rights or benefits on any other party, including any right of action against SBA by any person claiming under the SBA guaranteed bonds or otherwise.

Article VIII

Premium, Contractor's Fee and Guarantee Fee

The Surety warrants that it will charge and collect as its premium for the guranteed bond no greater amount than set forth in its rate schedule as filed and approved by the applicable state or other regulatory authority, if any. The Surety shall pay to SBA as a fee for this guarantee —— % of the premiums for the guaranteed bonds. The same percentage of premiums will apply to increases or reductions due to contract changes. SBA shall charge no fee to the Surety or to the contractor on a bid bond guarantee. Premium and surety guarantee fee adjustments based on a bond amount adjustment of $10,000 or less shall be disregarded. Surety shall make no charge to the contractor except as stated above, or where services are performed at the request of and for the contractor and the additional charge or fee is permitted by the applicable state or other regulatory authority.

if any, such additional charge or fee to be promptly disclosed to SBA.

Article IX

Accounting Reports and Remittances

Surety shall mail to SBA, on a form prescribed by SBA, within forty-five calendar days of the issuance of the final bond, a statement of Surety's guarantee fee owed to SBA, and remit to SBA the amount due as shown on such statement.

In addition, Surety shall within forty-five calendar days from the end of each month give a statement of all claim reserves established or changed during such month, and the following information (subject to OMB approval):

(a) Statement of Losss paid, with expenses pertaining thereto segregated.

(b) Statement of salvage or other recovery (with payment of SBA's share).

(c) An estimate of expected attorney fees with names of attorneys, hours of estimated work, title of suit or nature of work.

Article X

Insolvency

In the event of the insolvency of the Surety the rights of the receiver, trustee in bankruptcy or other representative of the insolvent Surety shall be no greater than those of the Surety while solvent and no claim against SBA will be paid to a receiver, trustee in bankruptcy or other representative of the insolvent Surety until a creditor's claim has been paid by the receiver, trustee in bankruptcy or other representative. Surety and SBA agree that there is no privity of contract between SBA and the principals or obligees on the guaranteed bonds and the Surety covenants that it will not represent that such privity exists or represent that it is the agent or representative of SBA in the issuance of its bonds.

Article XI

Surety represents that, to the best of its knowledge, its agents, officers, directors, individual partners or individuals holding ten or more percent of its voting securities, as the case may be, possess business integrity, as defined in 13 CFR 115.16(b), except as separately noted. Surety will notify SBA when any of these individuals subsequently ceases to qualify under said section. Surety agrees that SBA may require submission of SBA Form 912, Statement of Personal History (OMB Approval No. 32450178) from any of these individuals.

Article XII

Construction of Agreement; Other Laws

SBA's Surety Bond Guarantee Regulations, 13 CFR Part 115, as they may be amended from time to time, are incorporated herein as if fully set forth here and if any Article, sentence, phrase or part of this Agreement is in conflict with the regulations as amended, the latter will prevail over the former in construing and applying this Agreement.

In Witness Whereof, SBA and Surety have caused this agreement to be executed in duplicate originals.

Small Business Administration

by _____ [SBA Seal]

Title

Bll _____

_____ [Corp. Seal]

Surety

by _____

President

Attest _____

on _____

[Catalog of Federal Domestic Assistance Program No. 59.016, Bond Guarantee Assistance for Surety Companies]

Dated: July 24, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-19677 Filed 8-20-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ASW-14]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 222B and 222U Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection and repair (if necessary) or modification of tailbooms on BHTI Model 222B and 222U helicopters. The AD is prompted by two reports of tailbooms with cracked skin. The proposed AD is needed to preclude operation of the helicopter with a crack in the tailboom skin. The crack may propagate and thus result in failure of the tailboom and probable loss of the helicopter.

DATES: Comments must be received on or before September 20, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, P.O. Box 1689, Forth Worth, TX 76101, or delivered in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Forth Worth, TX 76106. Comments delivered must be marked: Docket Number 85-ASW-14. Comments may be inspected in Room 158, Building 3B, Office of the Regional Counsel, Southwest Region, between 8 a.m. and 4 p.m. weekdays, except Federal holidays.

The applicable service instructions are BHTI Alert Service Bulletin Numbers 222-85-28 and 222U-85-3 for the BHTI Model 222B and 222U helicopters, respectively. The alert service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Forth Worth, TX 76101.

Copies of the alert bulletins are contained in the Rules Dockets, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Forth Worth, TX 76106.

FOR FURTHER INFORMATION CONTACT: Gary B. Roach, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101, telephone number (817) 877-2593.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Regional Counsel, 4400 Blue Mound Road, Forth Worth, TX, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must sumbit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 85-ASW-14." The postcard will be dated/time stamped and returned to the commenter.

There have been two reports of cracks in the tailboom of BHTI Model 222B and 222U helicopters. These cracks originated in the skin on top of the tailboom between the legs of the aft driveshaft cover support at Boom Station 341. In one report, the crack extended through the upper flange of one supporting longeron.

Since this condition is likely to exist or develop on other aircraft of this type, the proposed AD would require inspection and repair (if necessary), or

modification of tailboom Part Numbers (P/N) 222–035–150–103 and 222–035–150–107. The proposed rule will incorporate, by reference, manufacturer's service instructions.

The FAA has determined this proposed regulation involves 44 helicopters for an estimated total cost of $54,282.80 or approximately $1,233.70 per helicopter. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Auathority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Bell Helicopter Textron, Inc. (BHTI): Applies to BHTI Model 222B and 222U helicopters that have tail boom assembly, P/N 222–035–150–103 or –107, installed.

To prevent possible failure of the tail boom, accomplish the following:

(a) Within the next 25 hours' time in service and thereafter at intervals not to exceed 25 hours, inspect the tailboom in accordance with Part I of BHTI Alert Service Bulletin Number 222–85–28 for the Model 222B and Number 222U–85–3 for the Model 222U.

(b) If any crack is identified during the inspection required in paragraph (a) above, Part II (Repair) or Part III (Modification) of Alert Service Bulletin Number 222–85–28 for the Model 222B or Number 222U–85–3 for the Model 222U must be accomplished before further flight.

(c) Upon completition of Part II (Repair) or Part III (Modification) of Alert Service Bulletin Number 222–85–28 for the Model 222B or Number 222U–85–3 for the Model 222U, the inspection required by paragraph (a) of this AD are no longer necessary.

(d) This AD does not apply if Part II (Repair) or Part III (Modification) of Alert Service Bulletin Number 222–85–28 for the Model 222B or 222U–85–3 for the Model 222U has been previously accomplished.

(e) Any equivalent method of compliance with this AD must be approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76106.

(f) In accordance with §§ 21.197 and 21.199, flight is permitted to a base where the inspection required by this AD may be accomplished.

Issued in Fort Worth, Texas, on August 2, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85–19896 Filed 8–20–85; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9182]

Weider Health and Fitness, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Woodland Hills, Calif. manufacturer and distributor of nutrient supplements and three corporate officers, among other things, to make refunds to purchasers of "Anabolic Mega-Pak" or "Dynamic Life Essence." If the refunds total less than $400,000, respondents would be required to donate the difference to fund research on the relationship of nutrition to muscle development. Respondents would be required to publish notices of the refund offer in two bodybuilding magazines. Additionally, respondents would be prohibited from: (1) Making unsubstantiated claims that its products promote muscular development, produce human-growth hormone or that its products are unique; and (2) misrepresenting any scientific test, research article, survey or other scientific opinion or data as it applies to their products.

DATE: Comments must be received on or before October 21, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Sirota, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353–4423.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Nutrient supplements, Trade practices.

Before Federal Trade Commission

[Docket No. 9182]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Weider Health and Fitness, Inc., a corporation, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a corporation, and Ben Weider, individually and as a director of Weider Health and Fitness, Inc., and as an officer of M.L.E. Holding Co. Ltd.

The agreement herein, by and between Weider Health and Fitness, Inc., a corporation, by its duly authorized officer, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a corporation, by its duly authorized officer and Ben Weider, individually, as a former director of Weider Health and Fitness, Inc. and as an officer of M.L.E. Holding Co. Ltd., hereafter sometimes referred to as respondents, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Weider Health and Fitness, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business at 21100 Erwin Street, Woodland Hills, California 91367.

Respondent Joseph Weider is an officer of the corporate respondent Weider Health and Fitness, Inc. He has formulated, directed and controlled the acts and practices of that corporation.

His address is the same as that of Weider Health and Fitness, Inc.

Respondent M.L.E. Holding Co. Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the Province of Quebec, Canada, with its office and principal place of business at 2875 Bates Road, Montreal, Quebec, Canada H3S 1B3. M.L.E. Holding Co. Ltd. owns Weider Health and Fitness, Inc. It has the authority to formulate, direct and control the acts and practices of Weider Health and Fitness Inc. and derives significant financial benefits from the allegedly deceptive acts and practices of Weider Health and Fitness, Inc.

Respondent Ben Weider is the President of M.L.E. Holding Co. Ltd. and has voting control of all shares of that corporation. In addition, he was a member of the Board of Directors of Weider Health and Fitness, Inc. until June 1, 1983. He has the authority to control the acts and practices of Weider Health and Fitness, Inc. His address is the same as that of M.L.E. Holding Co. Ltd.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violation of section 5 and section 12 of the Federal Trade Commission Act and have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of the law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service to respondents Weider Health and Fitness, Inc. and Joseph Weider or by the Canadian postal service to respondents M.L.E. Holding Co. Ltd. and Ben Weider of the decision containing the agreed-to order to respondents' addresses as stated in this agreement, or to their counsel, shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

9. With respect to the deceptive acts or practices which are alleged in the complaint and which occurred prior to the date of service of this Order, the Commission's acceptance of this agreement will constitute a waiver of all claims the Commission may have against respondents for consumer redress under section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b.

Order

I

It is ordered that respondents Weider Health and Fitness, Inc., a corporation, its successors and assigns, and its officers, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a corporation, its successors and assigns, and its officers, Ben Weider, individually, as a former director of Weider Health and Fitness, Inc. and as an officer of M.L.E. Holding Co. Ltd., and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising the nutrient supplements known from 1983 to 1985 as "Anabolic Mega-Pak" and Dynamic Life Essence" or of any other food or substantially similar composition, or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. A typical user of any such food will achieve greater for faster muscular development than a non-user;

B. A typical user of any such food will achieve results similar to or superior to those results bodybuilders generally believe are achievable through use of anabolic steroids, e.g., rapid and substantial muscular development;

C. Any such food will stimulate greater production or release of human growth hormone, resulting in greater or faster muscular development in users than in non-users;

D. The nutrient supplement know from 1983 to 1985 as "Dynamic Life Essence" or any other food of substantially similar composition is unlike any other amino acid source in the world, e.g., it is unique; or

E. The nutrient supplement known from 1983 to 1985 as "Anabolic Mega-Pak" or any other food or substantially similar composition was developed by a team of the world's most renowned nutritional biochemists, exercise physiologists and trainers, unless it was so developed.

II

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, labeling packaging, offering for sale, selling, distribution or advertising any nutrient supplement or other food, in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do

forthwith cease and desist from representing, directly or by implication, that:

A. Typical user of any such nutrient supplement or other food will achieve greater or faster muscular development than a non-user;

B. A typical user of any such nutrient supplement or other food will achieve results similar to or superior to those results bodybuilders generally believe are achievable through use of anabolic steroids, e.g., rapid and substantial muscular deveopment;

C. Any such nutrient supplement or other food will stimulate production or release of human growth hormone or any other bodily substance that affects or is represented to affect muscular development;

D. Any such nutrient supplement or other food is unique; or

E. Any such nutrient supplement or other food was developed, approved, tested or endorsed by any person(s) having the particular qualifications, status, reputation or expertise claimed

Unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. "Competent and reliable scientific evidence" shall mean for purposes of this Order any test, analysis, research, study, survey or other evidence that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

III

It is further ordered that respondents, their successors and assigns, and their offices, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising any nutrient supplement or other food, in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, marketed to assist users in achieving greater or faster muscular growth or development than non-users, do forthwith cease and desist from misrepresentating in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research article, survey or any other scientific opinion or data.

IV

It is further ordered that respondents, within 30 days of service of this Order, send a Notice Letter, Refund Form and Notarized Statement by first class mail, in an envelope, as described below, in all material respects consistent with, but not necessarily identical to, the materials attached to this Order as Appendices A and B, and no other information, to all consumer mail order purchasers of the Anabolic Mega-Pak or Dynamic Life Essence, or both, whose orders Weider Health and Fitness, Inc. received on or before October 5, 1984, to all consumer telephone purchasers whose orders were received on or before September 30, 1984, to all consumers who answered respondents' Anabolic Mega-Pak questionnaire that appeared in the September 1984 issue of *Muscle and Fitness* magazine, to all current subscribers of *Muscle and Fitness* or *Flex* magazines, and to all consumers who call or write to respondents requesting information about this Order. In addition, respondents shall send a pre-paid self-addressed return envelope, as described below, to all consumers to whom notice shall be sent by first class mail, except those consumers who are current subscribers to *Muscle and Fitness* or *Flex* magazine. Respondents are not required to send duplicate notice materials if a consumer falls within more than one of the foregoing categories.

The envelope that contains the Notice Letter, Refund Form, Notarized Statement and return envelope mailed to consumers shall contain in the upper left hand corner the following return address: Federal Trade Commission/ Weider Refund Agreement, 21100 Erwin Street, Woodland Hills, CA 91367.

The envelope mailed to consumers shall also have the words "ADDRESS CORRECTION REQUESTED" and "RETURN POSTAGE GUARANTEED" in the upper left hand corner. For each Notice Letter for which respondents receive a corrected address, respondents shall within twenty-one (21) business days after respondents have received the corrected address send the Notice Letter, Refund Form, Notarized Statement and return envelope, addressed to the original addressee with the corrected address.

The pre-paid self-addressed return envelope shall contain the following words on the outside of the envelope under, on or below the envelope seal flap:

MAKE SURE YOU HAVE ENCLOSED YOUR REFUND FORM AND

(for those who didn't purchase by mail or telephone from Weider)

ONE OF THE THREE WAYS OF SHOWING PROOF OF PURCHASE

V

It is further ordered that respondents shall place, at least twice in the first four (4) months after the date of service of this Order, and cause to be disseminated in the national full-circulation editions of both *Muscle and Fitness* and *Flex* magazines:

(1) A prominently placed, conspicuously printed, black on white half page version of the Notice Letter attached to this Order as Appendix A, or a half page Notice Letter in all material respects consistent with the NOTICE LETTER attached to this Order as Appendix A; and

(2) a REFUND FORM and NOTARIZED STATEMENT form in all material respects consistent with those forms as they appear in Appendix B with the top half of the page containing the Notice Letter (Appendix A) separated the bottom half by a dotted line and the bottom half containing the Refund Form and Notarized Statement.

VI

It is further ordered that respondents shall in the manner described below offer reimbursement of the total purchase price paid for these products, (including costs of postage, handling and tax) to any mail order consumer purchaser of Anabolic Mega-Pak, Dynamic Life Essence, or both, whose orders Weider Health and Fitness, Inc. received on or before October 5, 1984, and to any consumer who purchased such product(s) on or before September 30, 1984.

Respondents shall mail refund checks, and no other information, within sixty (60) days of the closing date for receipt of both refund requests and proper evidence of purchase, for the total pruchase price (including costs of postage, handling and tax) to those purchasers eligible to receive reimbursement who make requests and provide proper evidence of purchase on or before the closing date. Respondents shall reimburse each customer who is eligible for a refund and who did not use a postage-paid return envelope furnished by respondents to request a refund, an additional twenty-two cents ($.22). The dollar amount of reimbursements shall be based on Weider Health and Fitness, Inc.'s suggested retail price for Anabolic Mega-Pak and Dynamic Life Essence if

records of actual purchase prices are not available. For purposes of this Order the "closing date" for receipt of refund requests shall be the last day of the month following the month in which magazines containing the second notice are offered for sale. For purposes of this Order, "proper evidence of purchase" shall mean:

(1) For mail order purchases from respondents, respondents' own sales records of purchase orders received on or before October 5, 1984;

(2) For telephone purchases from respondents, respondents' own sales records of purchase orders received on or before September 30, 1984;

(3) For purchases of Anabolic Mega-Pak or Dynamic Life Essence by any other means,

(a) The portion of the Anabolic Mega-Pak box, or Dynamic Life Essence bottle lable that contains the batch control numbers issued for those products on or before July 29, 1984; or

(b) Copies of a receipt, invoice, credit card record or both sides of a cancelled check, dated on or before September 30, 1984, that indicate the specific product(s) purchased; or

(c) The NOTARIZED STATEMENT form attached to this Order as part of Appendix B, or a form in all material respects consistent with the form attached as part of Appendix B. A Notarized Statement shall not be deemed "proper evidence of purchase" for more than two boxes of Anabolic Mega-Pak and two bottles of Dynamic Life Essence.

If respondents' own sales records do not confirm the amount a consumer claims to have purchased by mail order or telephone from respondents, respondents shall immediately notify the consumer of the consumers' right to verify the purchase with the same "proper evidence of purchase" available to other consumer purchasers, and shall, at the time all other refund checks are mailed, mail refund checks to sush consumers in the amount that sales records do confirm.

VII

It is further ordered that if the total of the amount of reimbursement respondents pay to purchasers of the Anabolic Mega-Pak or Dynamic Life Essence, or both, plus the amount respondents pay in postage for mailing of the Notice Letters, return envelopes and refund checks is less than Four Hundred Thousand Dollars ($400,000.00), then respondents shall in the manner described below donate an amount equal to the difference between the total of the amount paid in reimbursements and Four Hundred Thousand Dollars ($400,000.00), minus the amount paid for first class postage, to a university, foundation or research institute to which the National Science Foundation awarded program grants or contracts in Fiscal Year 1981 or any year thereafter for research in the fields of physiology, cell or molecular biology. The donation shall be payable in four equal installments over a four year period, the first payment to be made within one hundred and twenty (120) days of issuing the final reimbursement checks and each subsequent payment to be made no later than every twelve months thereafter. Such funds shall be designated "for the purpose of research on the relationship of nutrition to muscle development." Respondents may divide such funds between no more than two (2) recipients. Respondents' donation shall have no conditions attached thereto, including but not limited to retaining any proprietary interest in the results of the recipient's research or requiring the donation recipient to publish in any of respondents' magazines. No portion of these funds may be used to compensate any person, or his or her agent(s), who has been employed by, has consulted for, or has received remuneration from respondents at any time prior to the date of service of this Order. In the event of default in any payment, which default continues for ten (10) days beyond the due date of payment, the entire remaining amount shall immediately become due, and be placed in escrow under control of the Federal Trade Commission for the benefit of the university, foundation or research institute previously designated by respondents to receive the funds.

VIII

If is further ordered that whenever, in any publication that respondents own or control, respondents identify themselves as the funding source for the research referred to in Paragraph VII, they shall also state clearly and conspicuously that the funding was provided as part of a settlement agreement with the Federal Trade Commission resulting from a complaint issued by the Federal Trade Commission.

IX

It is further ordered that respondents shall, for at least two (2) years after the date of the last dissemination of the representation, maintain and upon request make available to the Federal Trade Commission at a place it designates for inspection and copying copies of:

1. All materials that respondents relied upon in disseminating any representation covered by this Order.

2. All test reports, studies, surveys, or demonstrations in their possession or control or of which they have knowledge that contradict any representation of respondents that is covered by this Order.

3. All materials evidencing respondents' compliance with Paragraph VII above.

X

It is further ordered that respondents shall for at least two (2) years after service of this Order, maintain and upon request make available to the Federal Trade Commission at a place it designates for inspection and copying copies of:

1. Records evidencing the number and cost of Notice Letters sent to the U.S. Postal Service for mailing and the actual cost for mailing the return envelopes referred to in Paragraph IV above and the refund checks referred to in Paragraph VI above.

2. All Notice Letters returned to the respondents as undeliverable.

3. The name and last known address of each purchaser of the Anabolic Mega-Pak and/or Dynamic Life Essence, or both, who was sent the Notice Letter and the address to which any subsequent Notice Letter to that purchaser was sent.

4. A copy of each Refund Form, returned to respondents.

5. The name and last known address of each purchaser of the Anabolic Mega-Pak or Dynamic Life Essence, or both, who received reimbursement and the amount of such reimbursement.

6. The name and last known address of each purchaser of the Anabolic Mega-Pak or Dynamic Life Essence, or both, who requested reimbursement, was refused and the reason for each refusal to reimburse.

XI

It is further ordered that the corporate respondents shall for ten (10) years following service of this Order, notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order, or of any change in the positions or responsibilities of Joseph Weider or Ben Weider in regard to any corporation or subsidiary of which they are an officer.

XII

It is further ordered that the individual respondents named herein shall promptly notify the Commission of their discontinuance of their present business or employment and of their affiliation with a new business or employment engaged in the manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising of any foods, physical fitness products or publications relating thereto, or the offering for sale, selling, distributing or advertising of any services relating to any foods or physical fitness, and, for a period of five (5) years from the date of service of this Order, shall promptly notify the Commission of each affiliation with any such new business or employment, each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

XIII

It is further ordered that respondents shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Appendix A.—Notice to Customers Who May have Bought Anabolic Mega-Pak or Dynamic Life Essence

Weider Health and Fitness, Inc. (Weider) has recently entered into a consent agreement with the Federal Trade Commission (FTC) regarding its advertising for the "Anabolic Mega-Pak" and "Dynamic Life Essence." Weider has entered into this agreement purposes only and does not admit that it has violated the law.

This agreement contains four main provisions:

(1) Weider's advertising will not claim that the Anabolic Mega-Pak or Dynamic Life Essence will cause greater or faster muscular development;

(2) Weider will support all advertising claims for its food supplements with competent and reliable scientific proof;

(3) Weider will offer refunds to eligible consumers who purchased Anabolic Mega-Pak or Dynamic Life Essence. To determine if you are eligible, complete and send in the attached form. You do *not* have to return unused portions of either product to qualify for a refund; and

(4) Weider will fund research on the relationship of nutrition to muscle development. The amount of funding will be based on the refunds made in connection with this offer.

If you bought any of these products by mail or telephone from Weider Health and Fitness, Inc., just fill out the enclosed REFUND FORM. We will check it against our records of your purchases and the total amount you paid for them and then determine your eligibility. *This refund offer expires on [to be inserted].*

If you bought any of these products at a store, health club, etc., you may prove that you purcahsed them in one of three ways. Just enclose in an envelope the REFUND FORM *and* one of the following:

1. An original or copy of the receipt, invoice or credit card record or both sides of a cancelled check that indicates the specific product(s) you bought, *OR*

2. The portion of the Anabolic Mega-Pak box or the label of the Dynamic Life Essence bottle, that contains the blue 4 or 7-digit batch number (not the 10-digit UPC number), *OR*

3. A completed NOTARIZED STATEMENT,

AND mail the REFUND FORM and one of the three types of proof or purchase to: Federal Trade Commission/Weider Refund Agreement, 21100 Erwin Street, Woodland Hills, California 91367.

Weider Health and Fitness, Inc. will refund your postage if you are eligible to receive a refund.

Weider looks forward to serving you in the future.

Yours truly,
WEIDER HEALTH AND FITNESS, INC.
By———————
Joe Weider

Appendix B.—Refund Form

Please determine my eligibility for a refund and if I am eligible send me a refund for my purchases of (number) box(es) of, Anabolic Mega-Pak and/or (number) bottle(s) of Dynamic Life Essence that I made on (date(s))

———————

Name

———————

Signature

———————

Address

If you bought the Anabolic Mega-Pak and/or Dynamic Life Essence by mail or telephone from Weider and if you want a refund from Weider STOP here. You don't have to fill out or mail in anything else unless you also want refunds for purchases made at a store, health club, etc.

This refund offer expires on [to be inserted].———————

If you bought the Anabolic Mega-Pak and/or Dynamic Life Essence at a store, health club, etc., fill out and mail to us the REFUND FORM above, *AND* enclose:

1. An original or copy of the receipt, invoice credit card record or both sides of the cancelled check, that indicates the specific product(s) you bought, *OR*

2. The portion of the Anabolic Mega-Pak box or the label of the Dynamic Life Essence bottle, that contains the blue 4 or 7-digit batch control number (not the 10-digit UPC number), *OR*

3. A completed NOTARIZED STATEMENT.

———————

NOTARIZED STATEMENT

State of ———————
County of ——————— *ss*

I, (Your Name—Printed or typed), being duly sworn on oath state as follows:

(1) That I bought (number) box(es) of Anabolic Mega-Pak at the following places on the following dates:

———————

———————

and (number) bottle(s) of Dynamic Life Essence at the following places on the following dates:

———————

———————

(2) That these facts are true and correct to the best of my knowledge.

———————

(Your Signature)

Sworn and subscribed before me this —— day of —— 198—.

———————

Notary Signature

Before the Federal Trade Commission

[Docket No. 9182]

Analysis of Proposed Consent Order To Aid Public Comment

In the Matter of Weider Health and Fitness, Inc., a corporation, Joseph Weider, individually, and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a corporation, and Ben Weider, individually, and as a director of Weider Health and Fitness, Inc., and as an officer of M.L.E. Holding Co. Ltd.

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Weider Health and Fitness, Inc., a California corporation, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a Canadian corporation, and Ben Weider, individually, as a former director of Weider Health and Fitness, Inc. and as an officer of M.L.E. Holding

Co. Ltd. (collectively referred to as "respondents"). Under this agreement respondents will cease and desist from making certain claims for products, give refunds to purchasers of two products, Anabolic Mega-Pak and Dynamic Life Essence, and fund research on nutrition and muscle development.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements for "Anabolic Mega-Pak" and "Dynamic Life Essence," two nutrient supplements. The Complaint accompanying the proposed consent order alleges that in connection with promoting these products the respondents engaged in deceptive acts and practices in violation of section 5 of the Federal Trade Commission Act and that they disseminated false advertisements in violation of Section 12 of the Federal Trade Commission Act. According to the Complaint the respondents alleged that the typical user of respondents' amino acid-based products, "Anabolic Mega-Pak" and "Dynamic Life Essence," would achieve greater and faster muscular development than a non-user of these products, and would achieve the results bodybuilders generally believe are achievable through use of anabolic steroids—rapid and substantial muscular development; that these products would stimulate greater than normal production of release of human growth hormone, resulting in greater or faster muscular development. The Complaint further alleges that respondents represented that Dynamic Life Essence was unique and that the Anabolic Mega-Pak was developed by a team of the world's most renowned nutritional biochemists, exercise physiologists and trainers.

The Complaint also alleges that the advertisements were deceptive because the respondents represented to consumers that they had a reasonable basis for the representations challenged in the Complaint when in fact they had no reasonable basis for these representations.

The consent order contains provisions designed to remedy the injury resulting from the advertising violations charged and to prevent respondents from engaging in similar allegedly illegal acts and practices in the future.

If the proposed consent order becomes final, it will prohibit respondents from:

1. Making the claims challenged in the complaint;

2. Making similar claims for any of respondents' nutrient supplements or other foods, unless respondents possess and rely upon competent and reliable scientific evidence that substantiates their claims; and

3. Misrepresenting the results of tests or surveys.

The proposed consent order also requires respondents to:

4. Offer refunds to prior purchasers of Anabolic Mega-Pak or Dynamic Life Essence by sending first class mail notice to identifiable purchsers and current subscribers of respondents' two magazines *Muscle and Fitness* and *Flex;* and

5. By placing a notice in these two magazines informing readers of the refund offer and other major provisions of the proposed consent order.

The proposed consent order further requires respondents

6. To fund research on the relationship of nutrition to muscle development up to $400,000, if the amount of redress paid to consumers is less than $400,000; and

7. Prohibit respondents from misrepresenting the reason they are funding this research.

Finally, the order contains provisions requiring respondents to:

8. Retain records that respondent contend support certain future advertising claims;

9. Retain records evidencing respondents' compliance with the terms of the consent order; and

10. Inform the Federal Trade Commission if they change or discontinue their present business affiliations or if they affiliate with certain types of new businesses.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–19912 Filed 8–20–85; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300/36; FRL–2870–9]

N-Butanol; Tolerance Exemptions

Correction

In FR Doc. 85–17882 beginning on page 30963 in the issue of Wednesday, July 31, 1985, make the following correction: On page 30964, in the second column, in the fourth line from the top, "180.100(e)" should read "180.1001(e)".

BILLING CODE 1505–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Disaster Assistance; Proposed Subpart I (Reimbursement of Other Federal Agencies)

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This subpart prescribes procedures for obtaining or authorizing the provision of services or use of resources of other Federal agencies in providing assistance under the authorities of the Disaster Relief Act of 1974, Pub. L. 93–288, as amended. The procedures include those relating to reimbursement expenditures and the submission of costs.

DATE: Comments must be received by October 21, 1985.

ADDRESS: Send comments to: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Bruce Baughman, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646–3689.

SUPPLEMENTARY INFORMATION: The proposed rule changes the existing rule: (1) To require the submission of reimbursement requests on a monthly basis for amounts in excess of $1,000, (2) to require other agencies to submit a billing schedule when they are unable to submit a final bill within 90 days after completion of mission assignment work, (3) to recommend the usage of a standardized cost summary form FEMA Form 76–41 entitled "Claim for

Reimbursement for Mission Assignment Expenditures." This form's use is optional and is intended to supplement the information shown on the Standard Form 1081.

This regulation is essentially administrative in nature and pertains solely to financial reimbursement of Federal agencies tasked with providing service or resources under Pub. L. 93–288. Thus, it will not have a substantial economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared. The rule is not a major rule within the terms of E.O. 12291, nor are there any information collection requirements subject to section 3504(h) of the Paperwork Reduction Act.

This proposed rule relates to administrative actions which are categorically excluded in accordance with 44 CFR 10.8(c). Therefore, an environmental assessment is not required.

List of Subjects in 44 CFR Part 205

Disaster assistance; Grant programs—housing and community development.

Accordingly, Chapter I of Title 44, Code of Federal Regulation is amended by revising Subpart I of Part 205 to read as follows:

PART 205—[AMENDED]

Subpart I—Reimbursement of Other Federal Agencies

Sec.
205.150 Purpose.
205.151 Assistance from other Federal agencies.
205.152 Expenditures eligible for reimbursement.
205.153 Procedure for reimbursement.

Authority: 42 U.S.C. 5201, Reorganization Plan No. 3 of 1978 Executive Order 12148.

Subpart I—Reimbursement of Other Federal Agencies

§ 205.150 Purpose.

This purpose of this part is to prescribe procedures for obtaining or authorizing the provision of services or use of resources of other Federal agencies in providing assistance under the authorities of the Act. Further details of direct Federal assistance other than reimbursement are covered in Subpart H, § 205.121.

§ 205.151 Assistance from other Federal agencies.

(a) The Associate Director or Regional Director, in determining the nature and extent of assistance required to implement authorities under the Act, shall consider the types of resources and assistance from other Federal agencies. The Associate Director or the Regional Director may request or direct other Federal agencies to provide available assistance as necessary.

(b) All requests or directives to other Federal agencies shall be confirmed in writing if made orally. Such requests shall specify the anticipated level of reimbursement.

§ 205.152 Expenditures eligible for reimbursement.

(a) Reimbursement for resources or assistance provided under an agency's own statutory authority will not be approved.

(b) Reimbursement of the following costs incurred in the provision of assistance may be approved.

(1) Overtime, travel and per diem of all permanent personnel assigned solely to perform the services requested of that agency.

(2) Regular time, overtime, travel and per diem of all temporary personnel assigned solely to perform the services requested of that agency.

(3) Travel and per diem of military personnel assigned solely to perform services requested of that agency.

(4) Cost of work, services, and materials procured under contract.

(5) Cost of materials, equipment and supplies (including transportation, repair, and maintenance) from regular stocks.

(6) All costs incurred which are paid from trust, revolving, or other funds whose reimbursement is required by law.

(7) Other costs agreed to in writing by the Associate Director or the Regional Director and the agency.

§ 205.153 Procedure for reimbursement.

(a) Federal agencies shall submit reimburement requests on a monthly basis for amounts in excess of $1,000. Request for lesser amounts shall be submitted quarterly. An agency must submit a final accounting of expenditures within 90 days after completion of the agency's work under each request or directive for assistance. In those instances, where a Federal agency is unable to comply with the 90-day limitation, that agency must submit to FEMA request for an extension of time. Such requests must provide an explanation as to the need for an extension of time and a proposed schedule for project closeout. Requests for reimbursement shall be made on a Standard Form 1081,Voucher and Schedule of Withdrawals and Credits.

(b) Agencies shall document requests for reimbursement with specific details on salary, per diem, transportation, administration, equipment and material costs. All expenses should be segregated by object class as specified in OMB Circular A–12 and by any subject class used in the agency's accounting system. Object class codes will be broken out into three categories: (1) Previously billed; (2) current billing; and (3) cumulative billed to date. Where contracts constitute a significant portion of the billings, the agency shall provide a listing of individual contracts and their associated costs. It is recommended that FEMA For 76–41 entitled "Claim For Reimbursement for Mission Assignment Expenditures" be utilized in summarizing costs claimed under each billing.

(c) Reimbursement requests shall cite the specific directive or request for assistance under which the work was performed, and the disaster identification number. Requests for reimbursement of costs incurred under more than one directive or request may not be combined for billing purposes.

(d) Unless otherwise agreed, an agency shall direct all requests for reimbursement to the Regional Director of the region in which the costs were incurred.

(e) A Federal agency requesting reimbursement shall retain all financial records, supporting documents, statistical records, and other records pertinent to the provision of services or use of resources by that agency. These materials shall be accessible to duly authorized representatives of FEMA and the U.S. Comptroller General, for the purpose of making audits, excerpts, and transcripts for a period of 3 years starting from the date of submission of the final billing.

Dated: July 30, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs, and Support.

[FR Doc. 85–19904 Filed 8–20–85; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 201

Aid To Families With Dependent Children; Grants to States for Public Assistance Programs; Reporting the Federal Share for Child Support Collections by States.

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation which implements section 407(c) of Pub. L. 96–265, the Social Security Disablity Amendments of 1980, requires the Department of Health and Human Services to reduce the quarterly grant award made to a State under title IV–A by the appropriate Federal share of child support collections made by a State. This proposed rule is a technical change to clarify that the amount of the quarterly grant award made to a State will be reduced by the Federal share of child support collections made, like any other pro rata share of recovered funds to which the Federal government is entitled.

DATE: We will consider your comments if we receive them on or before October 21, 1985.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore MD 21203, or delivered to the Office of Family Assistance, Social Security Administration, Room B–442, 2100 Second Street, SW., Washington, DC 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact persons shown below.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara M. Levering Director, Office of Intergovernmental Communications, Office of Family Assistance, Social Security Administration, 2100 Second Street, SW., Washington, DC 20201, telephone (202) 245–2637.

SUPPLEMENTARY INFORMATION:

Background

Section 403(b)(2)(B) of the Social Security Act requires the Department to reduce the amount of the quarterly grant award made to a State under title IV–A by a sum equivalent to the pro rata share to which the Federal government is equitably entitled from the net amount recovered during any prior quarter by a State or political subdivision within a State. In 1980, Congress clarified the Department's authority to reduce quarterly grant awards by child support collections when it passed Pub. L. 96–265. Section 407(c) of Pub. L. 96–265 amended the Social Security Act (the Act) by adding a new section 403(b)(2)(C) to title IV–A that specifically provided that the quarterly grant awards made to a State under the AFDC program are to be reduced by whatever amount is necessary to assure that the appropriate Federal share of child support collections made by a State are returned to the Federal government.

We are proposing to reflect section 407(c) in our regulations by amending 45 CFR 201.5(a)(3) to provide that States must report on their quarterly statement of expenditures the appropriate Federal share of child support collections that they make.

If States do not fully or properly report the Federal share of child support collections made on their quarterly statement of expenditures, the Federal government will adjust the Federal share reported accordingly. The adjustment will be made pursuant to 45 CFR 201.5(c). We saw no need to amend 45 CFR 201.5(c) since that section already requires quarterly grant awards to be reduced "because of over-or under-estimate for the prior quarter and for other adjustments." We would consider any recovery of child support payments to be an "other adjustment."

Regulatory Procedures

Executive Order 12291

This regulation does not meet the criteria specified in Executive Order 12291 for a major regulation and no regulatory impact analysis is required.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the Quarterly Statement of Expenditures (SSA–41) in its present format—which is used by State to report their expenditures and the Federal share of all collections made—has been approved by the Office of Management and Budget under existing OMB No. 9060–0294. There is no further or new collection of information request being imposed on State agencies by this technical regulatory change.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the transfer of funds between the Federal Government and States. Therefore, a regulatory flexibility analyses as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.808—Public Assistance Maintenance Assistance (State Aid))

List of Subjects in 45 CFR Part 201

Aid to families with dependent children, Family assistance, Grant programs—Social programs, Guam, Public assistance programs, Puerto Rico, Virgin Islands.

Dated: March 7, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: May 6, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 201—[AMENDED]

45 CFR Part 201 is amended as set forth below:

1. The authority citation for Part 201 is revised to read as follows:

Authority: Secs. 403 and 1102 of the Social Security Act, as amended; 49 Stat. 628, as amended; 49 Stat. 647, as amended; 42 U.S.C. 603, and 1302.

2. Section 201.5 is amended by revising the introductory text and paragraph (a)(3) to read as follows:

§ 201.5 Grants.

To States with approved plans, grants are made each quarter for expenditures under the plan for assistance, services, training and administration. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the State agency containing information required under the Act and such other pertinent facts, including for title IV–A the appropriate Federal share of child support collections made by the State, as may be found necessary.

Progressive reductions in Federal Medicaid payments to the States under sections 1903 (s) and (t) of the Act for fiscal years 1982–1984 are described in 42 CFR Part 433, Subpart E.

(a) *Form and manner of submittal.*

* * * * *

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, including for title IV–A the appropriate share of child support collections made by the State, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged

by the State agency or have been revealed in the course of an audit.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 84-800]

Return Interstate Services of AT&T Communications and Exchange Telephone Carriers

AGENCY: Federal Communications Commission.

ACTION: Supplemental Notice of Proposed rulemaking.

SUMMARY: This supplemental notice (see also 49 FR 32871; August 17, 1984) proposes to establish a methodology and procedures for prescribing authorized rates of return for the interstate service of AT&T Communications, and exchange telephone carriers. The intent of the methodology and proceduresis to promote just and reasonable rates, and to avoid costly hearings before administrative law judges. The supplemental notice has two phases. Phase I addresses enforcement issues and Phase II addresses proposed methodologies and procedures.

DATES: Phase I comments are due September 3, 1985, and reply comments are due September 13, 1985. Phase II comments are due September 25, 1985, and reply comments are due October 10, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Goodman, Common Carrier Bureau, (202) 632-0745.

SUPPLEMENTARY INFORMATION:

Supplemental Notice of Proposed Rulemaking

In the matter of authorized rates of return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers; CC Docket No. 84-800.

Adopted: August 7, 1985.
Released: August 14, 1985.

By the Commission.

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I. Introduction

1. This Commission established a prescribed rate of return for the interstate telecommunications services of the American Telephone and Telegraph Company ("AT&T") in Docket 16258.[1] That prescription was revised in 1972,[2] 1976,[3] and 1981.[4] The *1981 Represcription Order* established an overall target return of 12.75% that AT&T is required to use for purposes of computing rates, and a maximum return of 13% that is to be used for purposes of remedying violations of the rate of return prescription.

2. When we adopted the Access Charge Rules (47 CFR Part 69) we concluded that the 12.75% return that had been prescribed for AT&T should be used for purposes of computing access charges for all exchange carriers until this Commission has an opportunity to represcribe a rate of return for that purpose.[5]

3. We have not prescribed a return for interstate interexchange or non-access services of exchange carriers, such as the "corridor services" of some of the Bell Operating Companies ("BOCs") and we have no present plans to do so. Those services presently represent a relatively small portion of interstate interexchange services and a relatively small portion of the total revenues of the carriers that provide such services. We may examine the reasonableness of such returns on an *ad hoc* basis in future proceedings instituted pursuant to sections 204, 208 and 403 of the Communications Act, 47 U.S.C. 204, 208 and 403. We also do not plan to prescribe a rate of return for Alascom at this time. We will be examining all questions relating to the provision of telecommunications services in the Alaska market in another proceeding.[6]

4. Although some of the methodologies and procedures that we will establish for purposes of represcribing rates of return for interstate access services and post-divestiture AT&T services may be useful in any represcription of the Comsat rate of return, we do not propose to address that question in this phase of the proceeding.[7]

5. We instituted this proceeding because we concluded that the methodologies and procedures that have been used in the past to represcribe an AT&T interstate rate of return may not be appropriate for either the post-divestitute AT&T services or the interstate access services of the exchange carriers. We accordingly concluded that we should establish new represcription procedures in a non-restricted notice and comment rulemaking before we instituted proceedings to revise any existing rate of return prescripion. We adopted an *Initial Notice* [8] on August 8, 1984 that

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[1] AT&T, 9 FCC 2d 30 (1976). See also Nader v. FCC, 520 F. 2d 182 (D.C.Cir. 1975). The *Nader* opinion interpreted prior FCC decisions as prescribing a rate of return for AT&T and held that the Communications Act of 1934 empowers this Commission to prescribe a rate of return.

[2] AT&T (Phase I of Docket No. 19129), 38 FCC 2d 213 (1972), affirmed, *Nader v FCC, SUPRA.*

[3] AT&T (Docket 20376), 57 FCC 2d 960 (1976).

[4] AT&T (CC Docket No. 79-63), 86 FCC 2d 221 (1981) (*"1981 Represcription Order"*).

[5] MTS and WATS Market Structure, CC Docket No. 78-72 (Phase I), 93 FCC 2d 241 (1983) at paras. 252-54.

[6] MTS and WATS Market Structure, CC Docket No. 78-72 (Phase II).

[7] *See*, para. 38, *infra.*

[8] Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, FCC 84-395, 49 FR 32971 (August 17, 1984). Some 50 parties filed comments in response to the notice, and 32 parties filed reply comments. A complete list of commenting parties is set forth in Appendix A.

invited comment on a tentative plan for future represcriptions.

6. We have decided to issue a *Supplemental Notice* for two reasons. We have revised some of the tentative conclusions described in the *Initial Notice* and would like to have the benefit of comments on our revised tentative represcription plan before we adopt a final decision. We have also decided that the proceeding should be expanded to include procedures for detecting and remedying violations of a rate of return prescription. This subject was not expressly discussed in the *Initial Notice* and it is accordingly necessary to obtain comments before we adopt any decision to clarify or modify the existing enforcement procedures.

7. We intend to apply the enforcement procedures before we complete any proceedings to represcribe the target rates of return. We have accordingly decided to establish a shorter comment cycle for that phase of this proceeding. Comments, replies and other pleadings relating to the enforcement phase should be captioned "CC Docket 84–800, Phase I." The Phase I comments must be filed on or before September 3, 1985 and the Phase I replies must be filed on or before September 13, 1985.

8. The next round of comments with respect to procedures for represcribing the target rates of return for AT&T and for interstate access services should be captioned "CC Docket 84–800, Phase II." Phase II comments must be filed on or before September 25, 1985. Phase II reply comments must be filed on or before October 10, 1985.

9. It appears unlikely that the procedure we are considering for the represcription of a rate of return for interstate access services could be completed in sufficient time to be reflected in access charges that become effective on June 1, 1986. We expect that the represcription process will be completed by the fall of 1986. It would be undesirable to defer implementation of a represcribed rate of return until June of 1987. Therefore, we have tentatively decided to require the filing of new access charges with a January 1, 1987 effective date that can reflect the represcribed rate of return and any changes in Uniform System of Accounts that become effective at that time.

10. Excessive churning may result if access charges are revised in January and June of 1987. Therefore, it may be desirable to revise the Access Charge Rules to reinstate a calendar access year in 1987. Persons who wish to comment on the desirability of such a change should do so in their Phase I comments.

II. The Enforcement Phase

11. Our past decisions prescribing a rate of return for AT&T have usually established both an authorized or target rate of return that AT&T must use to compute new rates and a maximum return that is used to determine whether a rate of return prescription has been violated. Such a spread is necessary because variations in market conditions and measurements of achieved rates of return imply that the realized return will inevitably vary over time even if rates are correctly targeted for an initial period. We intend to continue that practice even though we expect to revise the target rate of return at two year intervals in the future.

12. We have tentatively concluded that it should not be necessary to revise the spread between the target and the maximum return every time we represcribe the target return. We intend to prescribe a formula in this proceeding that will automatically adjust the maximum return prescription whenever the target return prescription is revised.

13. Although the earlier prescription orders usually established a spread of ½ of 1% between the target and maximum returns, the *1981 Represcription Order* established a spread or interval of ¼ of 1% for the pre-divestitute AT&T and the Bell System Operating Companies. We believe that such a spread was reasonable at the time, but that it probably would not be reasonable to expect the post-divestiture AT&T to target its rates with the same degree of precision. The growth of interexchange competition, the reduction in the AT&T rate base and fluctuations in the access billings of the exchange carriers have made it more difficult for AT&T to target rates, and suggest that the risk that is associated with the provisions of interstate, interexchange services has increased. In view of these circumstances, we have tentatively concluded that we should increase the spread between the AT&T target return and the maximum return to one of two alternative differentials. As one alternative, we could increase the spread to ¾ of 1% and we could make the revised maximum return applicable to the next calendar year. In other words, AT&T would not be subject to a refund liability if its 1986 return for a relevant service category does not exceed 13.5%. As an alternative, we could utilize a ½ of 1% spread, but increase the period over which the return is average from one year to two years, and thus average the "peaks" with the "valleys." Parties are asked to address the merits of these alternative proposals. We also seek comments on methods to determine the appropriate spread between the target and maximum return for AT&T-Communications, on standards for selecting a time period for averaging the allowed earnings of AT&T-Communications, and upon the relationship between these two issues. We also seek comment on the relationship, if any, between the methods used to select a target rate-of-return and the appropriate spread between target and maximum.[9]

14. We do not have any reason to believe that exchange carriers have experienced the same variation in risk as AT&T, and therefore, propose to adopt and spread of ¼ of 1% for access services. Some factors that make it difficult for AT&T to target and achieve rates are not applicable to access services, and the respective cost of capital of each type of service provider. If we decide to change the access year, however, exchange carriers may experience somewhat greater difficulty (and risk) in targeting rates for a transitional period that is considerably less than 12 months. We would propose to use a spread of .35 rather than .25 to establish the maximum access returns for such a transitional period.

15. There are several reasons why we believe that 13% represents a reasonable interim ceiling for exchange carriers pending represcription. First, in our *Initial Notice* we sought information from the carriers to help us "in deciding on the reasonableness of the currently-effective prescription and whether the need for a new prescription is growing." *Initial Notice*, para. 17. Without prejudging the prescribed rates of return that will ultimately be adopted the current prescription does not appear to impose unreasonably low returns on exchange carriers. the lower end of the initial estimates filed by the RBOC's (after readjustment for flotation costs) [10] hover near the currently authorized rate of return.[11] Indeed, there is evidence in

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[9] Although money market and stock market conditions have changed since 1981, a variety of other (and in some cases, possibly offsetting) changes have occured in the specific risks that are associated with AT&T.

[10] See paras. *87–96, infra*.

[11] After readjustment for a flotation cost of only 10 basis points, the lower end of the RBOCs' initial requests ranged from approximately 12.7% (NYNEX) to 13.3% (Ameritech and Pacific), with the average being roughly 13.0%. In addition, we note that interest rates declined subsequent to the carriers' initial filings. *See generally*, Rochester Reply Comments.

the record to suggest that the current return may be excessive,[12] Second, as SBS notes, the market performance of the RBOC's stocks in 1984 belies a claim that their 1984 earnings (including interstate earnings below the authorized return) were inadequate.[13] Third, a review of the rates of return recently granted by the states indicates that the currently authorized return is not unreasonable. The overall returns granted by the states range from 9.03% (Alaska) to 12.81% (Oregon), with a median of 11.75%.[14] Taken together, the record provides strong support for use of 13% as the interim ceiling on exchange carrier rates of return pending represcription.

16. We have used a calendar year for purposes of determining whether AT&T has complied with the maximum rate of return prescription.[15] We do not propose to change that requirement for the post-divestiture AT&T. Inasmuch as the exchange carriers and the National Exchange Carriers Association (NECA) are required to target rates for an access year, the access year or other applicable period should be used for purposes of measuring compliance. Thus, a maximum return of 13% for the June 1985–May 1986 period would be applicable to NECA and each exchange carrier that files separately if we adopt the tentative conclusions described in this *Supplemental Notice*.

17. Our decision to adopt the *Interim Cost Allocation Manual* [16] effectively required AT&T to equalize the returns for the three service categories that are described in that *Manual*. Although AT&T filed tariff revisions that were designed to achieve that result, the realized returns for the three categories have diverged somewhat in subsequent years. We have tentatively concluded that we should continue to require that rates for the private line category as a whole be targeted to earn the same return as AT&T switched services and that the private line category should be treated separately for purposes of verifying compliance with the maximum rate of return prescription and remedying any violations.[17] We have also tentatively concluded that we should suspend any requirement that MTS and WATS services be targeted to yield the same return. A decision to enforce that requirement at this time might enhance rather than alleviate discrimination or preferences among services because neither the present access charge rule nor the present *ICAM* reflects a peak and off-peak cost differential. Inasmuch as WATS is heavily used by peak period users and MTS is heavily used by off-peak users, an effort to equalize MTS and WATS returns as measured by the present *ICAM* would probably confer an undue advantage upon WATS customers. Therefore, we propose to treat MTS–WATS as a single category for purposes of the target and maximum return prescriptions until the *ICAM* is revised to resolve that problem. This suspension of *ICAM* requirements would not, however, apply to the annual Fully Distributed Cost (FDC) reports that AT&T is required to file.

18. A decision to suspend the equalization requirement for MTS and WATS should not be interpreted as giving AT&T unfettered discretion to implement changes in existing rate relationships between those services. Any proposed change that might disadvantage MTS customers would warrant very close scrutiny.

19. The Access Charge Rules require that each access element be targeted separately. We do not propose to modify that requirement.[18] We propose to apply the maximum return prescription to each access element. Thus, carriers that earn an excessive return on a particular element would not be permitted to use a shortfall from another element to offset the excess earnings.

20. We also propose to review the earnings of the companies at the same level of aggregation as the tarriff rates. Thus, for example, if Bellsouth files tariffs for its two subsidiaries with the same rates for each state in the subsidiaries' service areas (but different rates for the two subsidiaries), then we would review the earnings separately for Southern Bell and South Central Bell. If only a single tariff with uniform rates were filed, then we would review the earnings at the holding company level. similarly, if different rates were filed for each study area, we would examine earnings on a study area by study area basis. Thus, excess earnings from one entity, *i.e.*, study area, operating company, or holding company, would not be offset by shortfalls from another entity if separate rates or tariffs were in effect for the entities.

21. The *1981 Represcription Order* could be interpreted as imposing a minimum as well as a maximum return requirement. We doubt that a useful purpose would be served by *prescribing* a minimum return for any service or rate element of any carrier. Such a requirement would be difficult or perhaps impossible to enforce if a recession or other market conditions prevents carriers from establishing any combination of rates that will earn the authorized return. We will of course, consider any comments from persons who believe that a minimum return *prescrition* is feasible and desirable.

22. We also believe that no useful purpose would be served by prohibiting AT&T, NECA or exchange carriers from targeting services below the prescribed target rate. As long as the same target rate is chosen by a carrier to apply to each rate element, we will permit the carriers and NECA to use a target return that is less than the prescribed target return.

23. In the *1978 Refund Order*, we decided that we should remedy that violation of the maximum rate of return prescription by deducting the amount of the excess earnings plus interest from the revenue requirement that would be used to compute future rates. That decision was not intended to establish a rule for all future proceedings, but we have tentatively concluded that this would be the best remedy for any future violations by AT&T by carrier participation in NECA pools, and by individual exchange carriers. We would propose to apply the revenue requirement deduction to the service category or rate element in question and would require that interest be computed from the end of the calendar or access year in which excess earnings were relized to the middle of the initial annual period in which rates are expected to be in effect that reflect the refund. The prescribed maximum return that was in effect in the period in which the violation occurred would be used to compute interest, although parties may wish to comment upon the use of some other interest rate measurement (e.g.,

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[12] According to Rochester, the RBOC's and medium risk independent exchange carriers require weighted average rates of return (WARRs) between 11.3% and 11.9%, while high-risk telephone companies require WARRs of 12.1% to 13%. Rochester Reply Comments, Table 1.

[13] SBS Reply Comments, pp. 6–7.

[14] NTIA, Summary of State Telephone Regulatory Data, Table C. Report 85–172 (March, 1985).

[15] AT&T Earnings on Interstate and Foreign Services During 1978, CC Docket No. 79–187, FCC 84–567 (December 11, 1984), 49 FR 49502 (December 20, 1984).

[16] American Telephone and Telegraph Co., 73 FCC 2d 629 (1979), 78 FCC 2d 1296 (1980), 84 FCC 2d 384 (1981), *recon.* 86 FCC 2d 667 (1981), *aff'd sub nom.* MCI Telecommunications Corp., v. FCC, 675 F. 2d 413 (D.C. Cir. 1982).

[17] Such a procedure differs somewhat from the remedy we devised for the 1978 violation of the maximum return prescription. The Interim Cost Allocation Manual ("ICAM") was not in effect in 1978.

[18] That requirement has, or course, been temporarily modified to the extent necessary to comply with requirment that certain OCC special access service be provided at discounted rates and the requirement that the BOC share of the 1978 refund be deducted from the Carrier Common Line revenue requirment.

the "prime rate", the US Treasury rate that is utilized by the Internal Revenue Service etc.) and compounding interval.

24. The exchange carriers may effect a refund in the next annual filing after the amount of excess earnings has been determined. This would normally result in a one year lag between the violation and the remedy. For example, if a carrier's realized return from the line termination element exceeded the prescribed maximum return in Access Year 2, that carrier's line termination charge in Access Year 4 would reflect a compensating deduction from the revenue requirement.

25. We have not imposed an automatic filing requirement upon AT&T because it appears possible that some future changes in access charges will not have sufficient impact to warrant changes in AT&T rates. Therefore, it will be necessary to specify a deadline for the filing of a tariff that includes a refund to remedy a rate of return violation. We have tentatively concluded that such a tariff should be filed within 60 days after the amount of excess earnings has been determined and that the tariff should be filed on 45 days notice. We solicit comments on how this should be implemented.

26. We would, however, expect that it will rarely, if ever, be necessary to invoke such refund remedies in the future. Carriers have a continuing obligation to monitor earnings in order to ensure that a rate of return prescription will not be violated. We expect them to make rate adjustments during the applicable period if it appears likely that earnings for the applicable period will be excessive.[19]

27. In any event, we believe that a monitoring program should be established that will enable us and the carriers to monitor actual results on a continuing basis. It will probably be necessary to require that AT&T, NECA, and each exchange carrier filing access tariffs certify to this Commission its earned interstate rate of return (and excess revenues, if any) for each service category or access element. We do not propose to adopt the monitoring and reporting requirements in the next order, but we do encourage interested persons to suggest reporting and monitoring requirements that might be desirable in their Phase I comments.

[19] NECA and the carriers are also free to propose upward adjustements if they discover that a NECA or carrier targeting error is likely to deprive investors of an adequate return. Although the Access Charge Rules require annual filings, those rules do not foreclose carrier-initiated revisions during the access year.

III. Carrier Grouping and Represcription Periods

28. Our effort to create a more streamlined procedure for represcription necessarily requires that we prescribe a methodology for future represcriptions or adopt a limited number of acceptable methodologies that we will premit carriers or other parties to use in order to support their claims. The choice of prescribed or acceptable methodologies depends to a considerable extent upon the carrier groupings and represcription periods we choose to establish. A methodology that might be appropriate for the prescription of a rate of return for a particular firm might be inappropriate for a group of carriers. The duration of the represcription period is also a relevant factor in selecting methodologies and procedures.

29. We have accordingly decided to discuss these questions first in the represcription portion of this *Supplemental Notice*. We encourage participants to follow the same course in their Phase II comments.

A. Carrier Groupings

30. The Initial Notice proposed that carriers by grouped for purposes of represcribing the target return and suggested that a possible grouping would consist of ATTCOM,[20] each BOC holding company, exchange carriers owned by GTE; and all other exchange carriers. The majority of carriers and other commenters either favored or did not challenge the reasonableness of this grouping of carriers, although several parties urged consolidation of all exchange carriers into a single group.[21]

31. Except for a few parties,[22] there was general agreement among commenters on the need for treating ATTCOM separately from exchange carriers. We agree that the risks confronting ATTCOM certainly are different in nature from those confronting exchange carriers. ATTCOM describes some of these differences when it notes that entry barriers in interexchange business are so low that competitors "already own intercity net plant equlling nearly one-half that of AT&T Commuications and they are adding substantially to their capacity."[23] Entry has been facilitated by the ability of carriers to lease and resell facilities and by the reduction in network costs due to technological advances.[24] Because exchange carriers are generally protected presently from intraLATA competition by state regulators,[25] the greatest risk confronting exchange carriers is the threat of bypass from large customers, not the threat of entry from other carriers. ATTCOM is further distinguished from exchange carriers by its high ratio of operating expenses to operating revenues, a ratio kept high by access charges.[26]

32. Some parties have raised the question of whether ATTCOM's rate of return should be prescribed over the long run. That question is being examined in another proceeding. For present purposes, we will assume that ATTCOM rate of return prescriptions will remain in effect at least through 1987 and that we will accordingly be obliged to represcribe a target return.[27] We reaffirm our tentative conclusion that an ATTCOM represcription warrants a proceeding that is separate from any proceeding or proceedings for exchange carriers.

33. While we initially proposed to subdivide the exchange carriers into several groups, our review of the record compels us to conclude now that a better approach, at least for the foreseeable future, would be to prescribe a single rate of return for all exchange carriers that provide interstate access service.

34. In addition, a unitary rate of return is warranted because all exchange carriers face the same risks in providing access.[28] All exchange carriers' interstate service is subject to the same regulator and is sold to the same interexchange carrier customers through a similar system of access charges.[29] For non-traffic sensitive interstate plant, there continues to be a pooling and sharing of risks among all exchange carriers through the NECA.[30] Moreover,

[20] At the time of the divestiture, AT&T placed its post-divestiture regulated interstate services in a new subsidiary known as AT&T Communications or ATTCOM.

[21] *E.G.*, AT&T Comments, pp. 29–31; Federal Executive Agencies Comments, pp. 7–9; Puerto Rico Comments, pp. 3–6.

[22] ATTCOM Comments, p. 19.

[23] ATTCOM Comments, p. 15. *Cf.*, ADAPSO Reply Comments (AT&T lacks competition for 800 Service and terrestrial private lines).

[24] ATTCOM Comments, p. 15.

[25] ATTCOM Comments, p. 19.

[26] AT&T Comments, pp. 26–27.

[27] The initiation of an ATTCOM represcription proceeding would not, of course, foreclose a decision to abolish ATTCOM rate of return prescriptions at some point. The development of represcription methods and procedures preserves the option to continue to enforce rate of return prescriptions for ATTCOM if we conclude that such a course is desirable.

[28] Texas Statewide Tel. Coop., Inc. Comments; Puerto Rico Comments; AT&T Comments. *Cf.* Bell Atlantic Comments (all RBOCs face similar risk).

[29] AT&T Comments.

[30] Western Rural Tel. Assn. Comments; Tel. Assn. of New England Comments.

interstate exchange access is not an independent service. Rather, it is useful only when provided as a necessary component of interstate toll service accomplished in conjunction with an interexchange carrier and another exchange carrier at the other end.[31]

35. The largest exchange carriers which together provide 80% of the nation's access lines, the RBOCs were purposely set up as seven companies that are quite similar. As Bell Atlantic points out, the RBOCs were divested with similar capital structures, have similar operating assets, and are all about the same size. Their credit ratings are similar. They share the same interstate regulatory environment, and their management shares a common heritage.[32] The comments of all of the RBOCs seem to agree that at present they all face similar risk and it would be reasonable to group them together, but the RBOCs other than Bell Atlantic believe the companies will diverge in the future.[33] Rather than speculating on future divergence, we find it better to focus on the current characteristics in determining groupings for rate of return prescriptions. We will, over time, review the situation and modify our methodologies and groupings to accommodate changed circumstances. At present, however, we believe that the similarities outweigh the differences and mandate a single group.

36. Risk is divided into two types; business risk and financial risk.[34] We recognize that for many exchange carriers, their composite risk is widely divergent. The differences among carriers in business risk for the company as a whole, however, are unrelated to interstate access, the service for which we will determine the appropriate rate of return.[35] Thus, for example, while GTE is preceived by investors to face a certain level of business risk that is different from the RBOCs', that perception is fueled largely by the diverse operations of GTE, which include not only interstate access, but also long distance operations (*e.g.*, GTE Sprint) and manufacturing operations (*e.g.* Sylvania Lamp). Similarly, the differences in business risk claimed by the RBOCs (differences due to state regulatory climate, future growth opportunities, management diversification strategies and intra-LATA toll competition) are irrelevant because they relate to services other than interstate access.[36] In light of the risk pooling and the interrelated nature of interstate access service, we believe that all exchange carriers face essentially identical business risks in their provision of interstate access.

37. While we recognize that the wide divergence in capital structures among the 1400 exchange carriers means they face differing financial risk, it is not clear that those differences are relevant. The mix of sources of capital selected by the company reflects the overall business risk of the company, not the level of risk of interstate access alone.[37] Moreover, the phone company's capital structure and financial risk are largely within management's control. Thus, there is "the possibility of a self-fulfilling regulatory process in which the carrier can directly influence its 'prescribed' rate of return by manipulating its capital structure to achieve a predetermined corporate objective."[38] Prescription of a single, overall rate of return for interstate access avoids the problems of accounting for business and financial risk differences of the companies unrelated to interstate access.[39]

38. An additional grouping might consist of international carriers or the international operations of common carriers with domestic and international regulated activities.[40] The record, unfortunately, is sparse with respect to the need for a separate group or sub-groups for international carriers. It would appear reasonable to apply the same six-month procedures to international carriers, although it is not clear that sufficient accounting information is available to segregate regulated international operations risk from other of the firms' activities in order to make use of firm-based methodologies for measuring equity cost (*e.g.*, DCF) practical. We thus intend in a *Second Supplemental Notice* to seek comment on use of firms with comparable risk as a primary determinant of cost of capital for regulated international carriers, or other appropriate approaches. We also seek comment upon the risks that are associated with international telecommunications common carriage, even though we do not propose to set at this time, separate rates of return for the international operations of AT&T and GTE, pending development of rules for allocation of costs and expenses between their domestic and international regulated interstate activities.

B. Waivers From Group Treatment

39. In the present regulatory environment, precription of individual carrier rates of return threatens a complete breakdown of the administrative process, and would be tantamount to denial of relief to the carriers or to customers. Wide discretion to prescribe multi-carrier rates of return for nationwide, regional or other logical carrier groups in such circumstances has been long recongnized.[41] No objection arises from imposition of group rates of return becase high cost operators may be more seriously affected than others. Regulation may "limit stringently the return recovered on investment, for investors' interests provide only one variable in the constitutional calculas of reasonableness" as long as the rates selected are within the broad zone of reasonableness. *Permian Basin Area Rate Case*, supra, 390 U.S. at 769–770.

40. The sheer magnitude of the task we face, the variety of difficult issues of first impression and the public interest in determining rates of return without undue delay require a workable degree of simplification in selecting carrier groups. The carrier groups we propose provide a reasonable and effective

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[31] Texas Statewide Tel. Coop., Inc. Comments, pp. 1–2.

[32] Bell Atlantic Comments, pp. 6–7

[33] Bell Atlantic Reply Comments, pp. 8–9; AT&T Reply Comments, pp. 21–22.

[34] "Financial risk" is used here to refer to the variation in subjective probability distributions of projected payments that arises from the adoption of a particular financial structure by a firm, while business risk" is used to refer to the non-financial risks that are associated with firm's operations.

[35] Puerto Rico Comments, pp. 6–7; AT&T Reply Comments, pp. 23–27.

[36] AT&T Reply Comments.

[37] AT&T Reply Comments, Appendix B, p. 23. In some instances, the capital structure of a telephone company may be driven not by overall company risk, but rather by corporate form or the availability of subsidized debt. A single, overall rate of return may result in some carriers earning excessive returns on equity or windfalls due to their capital structures. We intend in the future to issue a *Second Supplemental Notice* to seek further data on the number of such windfalls and to address, *inter alia*, whether different treatment is necessary for cooperatives, government owned telephone companies and REA-financed carriers.

[38] Puerto Rico Reply Comments, p. 6.

[39] *New England Division Case* supra, 261, U.S. at 199. Railroad Commission of Wisconsin v. Chicago Burlington and Quincy RR Co. 257 U.S. 563, 579, (1922). Washington Utilities and Transportation Commission v. FCC, 513, F. 2d 1142, 1164–1165 (9th Cir. 1975) Cert. den. 523 US 838 (1975). Rio Grande Family Radio Fellowship, Inc. v. FCC 406 F. 2d 664 (D.C. Cir. 1968).

[40] In a supplemental phase we may address whether AT&T or GTE should receive rates of return for their international operations that are separate from their domestic operations. In addition, we will seek comments on the need for a cost allocation manual to enable carriers to allocate their interstate costs between domestic and international operations.

[41] Permian Basin Area Rate Case, 390 U.S. 747, 769, 774–777 (1968). United States v. Louisiana, 290 U.S. 70, 75–77 (1933). New England Divisions Case, 261 U.S. 184, 197–199 (1923).

procedure to determine rates of return and thus are within the Commission's discretion even though significant economic consequences may result. *Permian Basin Area Rate Case*, supra 390 U.S. at 788–789. The proposed single exchange carrier group is based upon decisionally significant shared financial and risk characteristics in providing interstate access service. Absolute mathametical precision in ratemaking is not possible. A search for the best can become the enemy of the good. *MCI Telecommunications Corp. v. FCC*, 287 F. 2d 322, 340–342 (D.C. Cir. 1980). The totality of the circumstances determines whether the end result is just and reasonable, not that there may be undesirable side effects for some carriers.[42]

41. Serious injustice to any individual carrier can be prevented by requesting a waiver from group treatment, pleading with particularity the exceptional facts and circumstances in the provison of interstate access which justify individual treatment and/or exclusion from the carrier group.[43] The carrier has the burden of demonstrating that waiver is required. The showing shall include a demonstration that the circumstances are not of transitory effect. The exceptional circumstances must justify exclusion form the carrier group for a period of a least four years (*e.g.*, two represcription cycles). Additonally, petitioner shall file with its petition for waiver an individual rate of return submission conforming to the methods and procedures required herein. The petition and rate of return submission shall be filed on the date established for the carrier's group filing.

C. Represcription Period

42. In the *Initial Notice*, we proposed a regular two-year interval between prescriptions (NPRM at para. 16). We noted that under the current procedure, rate of return changes occur at irregular intervals while capital costs vary during the prescription period. However, we expressed our concern that frequent adjustments might lead to churning of the tariffed rates, accompanied by a disruption of planning and the imposition of costs on consumers, carriers and investors. *Ibid.* We proposed that the carriers file the data required for a new prescription five months before the prescription was to become effective. During this five-month period, the Commission would entertain pleadings and replies addressing the prescription data.

43. Many parties responded to our proposal in this regard. Some commentors favored our two-year prescription period.[44] However, these parties emphasized that if the two-year interval is prescribed, we should, as we proposed, allow a party to petition for a revision during that period based on changed circumstances. AT&T takes the position that the two-year interval is needed to provide "stability and certainty for carriers and customers." (AT&T at 72). It would allow for a represcription during the period only if a "material change" is shown. GTE also favors a two-year interval, but urges that only if we adopt a prospective capital structure (GTE at 30–31). Other parties suggested a one-year interval.[45] As Bell Atlantic observes, a one-year interval will not lead to an unnecessary chruning of rates because the charges for interstate access are already filed annually. It might also be argued that the rapidly changing telecommunications enviroment warrant a one-year period, so that rates accurately reflect the carrier's current earnings requirement.

44. Several parties recommended that we not establish any specific prescription interval.[46] Given the fact that we have acknowledged the possible need for a carrier to file a revision during the interval, it is thought unnecessary to have a specific period. This approach would, in essence, allow the current procedure to continue. Other parties state that the prescription interval depends upon the rate of return methodology which we select.[47] Finally, USTA suggests that the equity return be prescribed for two years, but that the overall rate of return be recalculated every year to reflect changes in capital structure and embedded debt costs.

45. We have carefully considered the comments in this regard, and we continue to prefer our original proposal that a rate of return be prescribed for a two-year period. We believe that it would not be in the public interest to continue a procedure that does not require the filing of relevant information at regular intervals. If no period is prescribed, there is no incentive for a carrier to seek a change until it has convincing evidence that the rate of return should be increased. In the meantime, it would presumably be incumbent upon the Commission to monitor earnings requirements and then to identify those carriers whose authorizations should be changed.[48] Given the potential number of carriers which might seek individualized rate of return authorization, this procedure could impose administrative burdens on the Commission of the type which we seek to avoid by conducting this rulemaking. It may be possible to use a one-year interval after we have begun this process and experienced the degree of staff effort required to ensure that the rate of return can be prescribed in a six-month period. For now, however, we believe that a one-year period would require such staff effort that our limited resources would be unduly consumed with the review of extensive financial data which might, in the end, reveal no compelling requirement that the rate of return established the previous year be changed. Moreover, we are willing to look at material changes in earnings requirements during the prescription period, so long as the carrier provides compelling evidence that the fluctuation (presumably upward) is not simply the result of short term swings or similar events. Finally, we acknowledge the attractiveness of the USTA proposal insofar as the exchange carrier group's rate of return will hinge in part on the return of individual "pure play" telephone companies,[49] and we urge the parties to comment further on that approach. While a two-year prescription of the required return on equity would lessen the burden on the Commission's staff and allow the annual changes to deal more with uncontroverted items, we question whether it is proper to isolate those elements and then represcribe an overall rate of return. The changes in one element may not properly be considered without analysis of the others. Nevertheless, the USTA proposal has the advantage of providing

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[42] FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 586 (1942). Telocator Network of America v. FCC, 691 F. 2d 525, 542 (D.C. Cir 1982).

[43] New England Division Cases supra, 261 U.S. at 199; Railroad Commission of Wisconsin v Chicago Burlington and Quincy RR Co. 257 U.S. 563, 579 (1922); Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142, 1164–1165 (9th Cir 1975), cert. denied 423 U.S. 836 (1975); Rio Grande Family Radio Fellowship, Inc. v FCC, 406 F. 2d 664 (D.C. Cir 1968).

[44] *E.g.*, Anchoage Telephone, Utility at 4; Contel at 20 (but allow for optional mid-period update); SNET at 31; AT&T at 72.

[45] United at 22; Bell Atlantic at 12; Rochester Telephone at 4; Kentucky PSC at 4; Illinois CC at pp. 1–1.

[46] NYNEX at 34; BellSouth at 37; Ameritech at 35; Rural Telephone Coalition at 12–14.

[47] *E.g.*, Southwestern Bell at 45; TANE at 23.

[48] Although money market and stock market conditions have changed since 1981, a variety of other (in some cases, possibly offsetting) changes have occurred in the specific risks that are associated with AT&T.

[49] By "pure play" phone companies, we are referring to telephone companies that obtain a substantial portion (e.g., 90% or more) of their revenues from regulated telephone activities. In contrast, several of the indepenoent phone companies engage in unregulated manufacturing or other activities.

a middle ground in this area in which the carriers have divergent positions.

IV. The Overall Return

46. In the past, we have determined and overall return for AT&T by weighting each of the components to reflect the actual capital structure. The embedded cost of debt has been used for the debt component and a cost of equity that has been determined in each proceeding has been used for common stock. The *1981 Represcriptions Order* also established costs for preferred stock and some miscellaneous sources of funds.

47. That method for determining an overall rate of return may not work very well if we prescribe a return for a group of carriers rather than a particular firm. This would be particularly true of an exchange carrier category that is composed of carriers with radically different capital structures.

48. It would, however, be possible to apply the traditional method to each RBOC separately and to compute a weighted average return for the seven RBOCs and other "pure play" telephone companies as one way of determining the authorized return for the exchange carrier group. We have tentatively concluded that we should rely in part upon the results of such an approach to determine a composite rate of return. We have concluded that we should also use one and possibly two methods for determining a composite overall return directly.

49. This Commission's prior AT&T prescription decisions, prior decisions of state commissions with respect to authorized returns, and the comments that have been filed in this proceeding appear to be based upon an unarticulated premise that a fair return for interstate services is analagous to, or is the same as, a fair return for intrastate services. The methodologies that have been used or advocated would at best identify a return for regulated services as a whole. That premise may not have been accurate in the past. Interstate service revenues and profits have tended to grow more rapidly than intrastate service revenues and profits. That pattern might have caused investors to accept a lower return for interstate services if they could have invested separately in the interstate service business of the pre-divestiture AT&T. The assumption that all regulated services should earn about the same return may, however, be valid for the exchange carriers at this time. Access services are more vulnerable to bypass then local exchange and shorthaul toll services. That factor could cause investors to conclude that there is a substantial change that exchange carriers' interestate services will not grow more rapidly than exchange carriers' intrastate services in the future. It may, therefore, not be inappropriate to base our choice of methodologies with respect to a composite overall return on the assumption that a fair return for interstate access is the same as a fair return for all regulated services.

50. Inasmuch as state commissions have generally attempted to determine a fair return for regulated services, their determinations are clearly relevant. The state commissions are endeavoring to resolve the same question that this Commission would determine in an exchange carrier represcription proceeding. Although we would be reluctant to adopt the conclusion of any particular state commission, it would be reasonable to afford considerable deference to the collective judgment of state commissions. Accordingly, we would propose to ascertain the authorized overall intrastate rate of return for each exchange carrier that is in effect at a particular time and to compute a weighted average of such authorized returns. The relative telephone plant investment in each such state and the District of Columbia would be used to determine the weighting.

51. Although we would not propose to give conclusive effect to such a weighted average, we have tentatively concluded that there should be a presumption that this is the correct return. Commenters may seek to rebut that presumption if they were to conclude that this weighted average return was too low or too high.

52. In this regard, a possible approach is to use the overall costs of capital of publicly traded firms (not limited to telephone companies) that exhibit risk that is comparable to interstate access service. Indicia of risk could include coefficients of variation [50] for revenues, expenses, earnings and/or cash flow; liquidity of asset structures; etc. Comments should specifically address relevant risk criteria. In addition, we encourage the submission of comments that address the use of a Discounted Cash Flow ("DCF") analysis, current debt costs and the financial structure of firms with risks comparable to that experienced in the provision of interstate access.[51] It may also be advisable to utilize returns of comparable firms to establish a range of reasonableness, and allow carriers to target a point within that range. Thus, while we may not be able to identify firm with precisely the same risk, we could, for example, conclude that the cost of capital range was bounded by costs of capital determined for low risk utilities and for off-shore oil exploration firms (or some other groupings of comparable risk firms).

53. We have tentatively decided to require the submission of at least one study for each RBOC based upon the capital structure and embedded cost of debt principles that were utilized in CC Docket No. 79-63 in addition to the submission of data to enable us to determine the weighted state average return.[52] We may, however, require or permit the submission of "comparable risk" studies of BOCs in addition to or in lieu of actual capital structure submissions.

54. It may be very difficult to adopt the traditional capital structure and total firm cost of equity approach to the post-divestiture AT&T because that company now derives a substantial portion of its revenues and profits from unregulated activities. See AT&T Co. (CC Docket 79-63), 86 FCC 2d 221, 226-29 (1981). It would probably be necessary to adjust each component to avoid distortions that would result from the existence of unregulated activities that present investors with risks and opportunities that are very different from the risk they would incur or the opportunities they would enjoy if they could invest directly in ATTCOM. It should theoretically be possible to make such adjustments, but there doe not yet appear to be any readily available methodology for making such adjustments.[53]

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[50] For this purpose, the coefficient or variation would consist of the square root of the variable's time series standard deviation, divided by the means value of the variable's time series values.

[51] A "Comparable firm" would be a firm that exhibited financial, business, and composite risk characteristics that approximated the risk that is associated with the provision of interstate, interexchange access services. From the set of firms thus determined, costs of captial for each of the firms within that set would be determined with the DCF approach being used for cost of common equity, the composite financial structure of the set being used for cost of capital weighting purposes, and the composite (or current), costs of each of the non-common stock source of financing being used for each non-common stock sources of funds. In this regard, a "source of funds" would be any value appearing on the "right hand" or "credit" side of the firm's position statement.

[52] We selected the ROBCs because they are widely held and traded, and because almost all of their activities are subject to reguiation. Parties may also submit cost of capital studies upon any other widely held and traded companies that receive over 90% of their revenues from reguiated telephone activities. With respect to the use of "zero cost" sources of funds in this context, see paras. *102-104, infra.*

[53] We intend in future phases to explore developing such methodologies. One approach is to use accounting data to measure the variances in revenue, costs and income for the company's

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55. A weighted state return approach probably should not be used for AT&T. Although AT&T does provide some intrastate services, it does not provide such services in numerous single LATA states. A state composite would accordingly be a less complete or representative sample. Moreover the growth prospects for interstate and intrastate interLATA services may be different.

56. In these circumstances it appears that the overall comparable risk approach (e.g., determining the cost of capital of those firms that have risks that are comparable to AT&T's interstate interexchange operations) probably be the best alternative for prescribing an AT&T return. It will, however, be necessary to specify additional details in order to make that methodology work. We hope that participants in Phase II will be able to provide useful insights to enable us to develop a more complete plan.

V. Estimating Costs of Capital for the RBOCs

57. At an earlier point, we discussed the possibility of considering the costs of capital of the RBOCs in the context of rebutting the presumption that the composite of state prescribed rates of return was correct. In order to create a streamlined represcription procedure, it will be necessary to prescribe methodologies for determining the component costs for an RBOC rate of return with some particularity. This section will describe our present assessment of the merits of alternative methodologies that might be used to determine an RBOC cost of equity, express our tentative conclusions with respect to a flotation adjustment, and address questions relating to the cost of debt, preferred stock and zero-cost sources of capital.

A. Estimating the Cost of Equity Capital

1. The Discounted Cash Flow Model (DCF)

58. The method most favored in the comments seems to have been the DCF approach. Commenters recommended the simplest formulation—dividend over share price, plus a single growth rate (*e.g.*, the Gordon model). The advantages to this proposed method appear to us to be significant. The derivation of the DCF model is relatively easy to explain and its applicability to the regulatory situation is straight forward. Adjustments for the frequency of dividend payments and issuance expenses are readily made. Of the three variables that must be estimated, the long term expected growth rate for dividends (G) requires the most judgment. An attractive approach suggested by commenters was to use investment analysts' estimate of the five year future earnings growth rate as a proxy.[54] The use of analysts' forecasts avoids the problems of relying totally on historical data and the experts of interested parties—problems that are particularly acute at this time given the short history of the Bell regional holding companies. There is evidence, cited in several comments, that analysts' forecasts of earnings are an improvement over most historic projections. Of the other two variables, the expected next dividend (D_1) would be estimated by applying the anticipated dividend growth rate to the most recent past dividend. The share price (P_0) can be readily obtained for all companies with actively traded common stock.

a. *The Anticipated Long-Term Dividend Growth Rate (G)*

59. The most straight forward way of estimating a growth rate is to extrapolate from accounting data, using either the historic trend growth rate in the dividend itself, or combining the trend in earnings per share with the historic earnings retention rate to calculate the maximum sustainable growth rate. If earnings per share is too volatile a data series, then the historic growth rate of book value per share could be used.

60. Historical data, while containing valuable information produces inefficient estimates in the sense that it does not incorporate all the information known about the future of the company.

61. The comments we have received in this proceeding have not, however, concluded that the only solution to the problem of estimating the long run expected growth rate of dividends is to continue the FCC's traditional approach of relying on the testimony of company experts who submit estimates that have been developed just for the occasion. A large number of comments recommended that we adopt an "consensus analyst" approach instead.[55]

62. This method relies on collecting the earnings and/or dividend growth estimates of a substantial number of security analysts. By a substantial number, Southwestern Bell's recommendation was at least 25 analysts. Candidate analysts would be those employed by the independent financing publishing services, such as Value Line and the Dow Jones News Retrieval Service, and by large and well known investment services. NYNEX listed eight prominent analysts who have made earnings-per-share (EPS) growth estimates on a regular basis for all the regional holding companies since direct trading in the regionals began. These analysts were Sanford Bernstein, Goldman Sachs, Value Line, Merrill Lynch, Prudential Bache, Salomon Brothers, Smith Barney and First Boston. They include six investment banking/brokerage firms, a manager of corporate pension fund assets, and an investment advisory service.

63. Several comments, including those of Bell Atlantic, AT&T, NYNEX, Centel, Pacific Bell and Nevada Bell, SNET, United BellSouth, and GTE, suggested the *Institutional Brokers Estimate System* (IBES) service, which publishes the earnings estimates of analysts from the research department of well-known Wall Street and regional brokerages. The comments point out that by using the growth estimates of established and widely read analysts, the derived "consensus" G will be more forward-looking and market-based than a historically derived G.

64. The single growth DCF model requires a long term estimate of G, and the comments recommended the use of analysts' five year growth estimates. The DCF method is silent, however, on how the consensus estimate should be calculated, and several comments

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different lines of business. It is possible that these variances, similar to Capital Asset Pricing Model ("CAPM") betas, would allow us to segregate overall company risk into the risk of regulated interstate operations and the risk in the company's other activities. In order to work effectively, the accounting data would have to be adjusted to reflect the "ture" underlying revenue and expense streams. Accounting volatility due to extraordinary events such as divestiture "true ups," 14 month old access bills or retroactive changes in depreciation rates should not be factored into a determination of the relative risk of the firm's operations. Parties may wish to address use of this methodology in conjunction with a traditional submission as a supplement to a comparable earnings methodology for its rate of return represcription.

[54] The use of analysts' estimates of growth in earnings, however does not resolve the obvious circularity of reasoning that arises from analysts basing their assessments upon what this Commission will do in light of their previous assessments. We seek comments that would assist us in avoiding the incongruity if we were to utilize such estimates.

[55] Comments using or recommending this approach included those submitted by: Southwestern Bell, NYNEX, Ameritech, Michigan PSC, AT&T, SNET, Illinois Commerce Commission, United Telephone, US West, Central Telephone, Bell Atlantic, Pacific Bell and Nevada Bell, BellSouth, and GTE.

warned against using a simple average of all the estimates submitted. Because the determination of G is so important to the DCF approach, we do not envision depending solely on IBES's or other services' estimates. We intended to have analysts' reports submitted to the Commission for our analysis. The list of acceptable analysts, if such an approach were to be used, would have to be carefully developed, [56] taking into account each analyst's professional position, the currency of the forecast, and the apparent reasonableness of the estimate compared to others.

65. Nor are we eliminating historic growth rates from consideration. Historic trend rates that are submitted will be examined to determine that the data series are appropriate, the time period is relevant, and the estimation technique if valid. Historic trends will be considered as an important check on the "analyst consensus" estimates.

66. We seek comment upon our tentative conclusions.

b. *The Expected Next Period Divided (D_1)*

67. The anticipated growth rate of dividends, once established, would be used to determine D_1, the anticipated next period dividend. The DCF model is sensitive to the assumed D_1, and the accuracy of the DCF estimate requires that D_1 be consistent with the anticipated long run growth rate in dividends, even if recent dividends have grown at significantly different rates.

68. We do not wish to suggest that we are inflexible in our approach to the formulation of the DCF model. Dividends are typically paid on a quarterly basis. In recognition of that we propose to follow the lead of various comments in putting our annual DCF model on a quarterly basis. There are special circumstances when the company's dividend policy or financial circumstances render a simple extrapolation unacceptably unrealistic. We recognize that under some extreme circumstances the two-growth DCF model (as proposed by NYNEX) may be required, but we believe that the single growth Gordon model, adjusted for quarterly dividend payments, will be an acceptable valuation approach in the cases envisioned in this proceeding.

c. *The Current Market Price of a Common Share (P_0)*

69. Although in theory P_0 should be the most recent trading price available at the time a cost of equity determination is made, most of the DCF comments aid not recommend the use of a "spot" price. [57] GTE suggested a thirty day average price in order to smooth out the effects of daily price fluctuations. Central used the average of the high and low prices for two months, as reported in the *S&P Stock Guide*. NYNEX suggested a ten day average of the daily high and low prices. Pacific and Nevada Bell recommend a three month average price because it relates the stock price to any lag in the growth forecasts by security analysts. Southwestern Bell also recommends a 90 day average, but of the closing price. AT&T suggests the spot price for the last trading day of the month of the most recently released IBES data base. Bell Atlantic believes that average data is best and recommends using a twelve month average if there are to be annual cost of capital reviews.

70. Our preliminary impression is that a ten day average of high and low prices would be sufficient, and that the days yielding the most reliable price data would seem to be the five preceding and following the release date of the IBES report filed with the FCC. This assessment is based upon the need to obtain a P_0 that is temporally consistent with the analysts' reports. On the other hand, while we are aware that there is a substantial lag between updates in the analysts' reports, it is not clear that it is necessary to average together prices taken over a period as long as 90 days. However, we seek further comment upon these preliminary conclusions.

2. The Capital Asset Pricing Model

71. Most of the comments recommending the DCF method indicated that some other method should be adopted as a check on the reasonableness of the DCF estimates. [58] The comments were not as helpful, though, in specifying the method that should be adopted. Ideally, we would choose an approach that would have the academic acceptability of the DCF, and would produce estimates with the same forward looking, market oriented properties as the "analyst consensus" DCF, but would be entirely independent.

72. The Capital Asset Pricing Model (CAPM) is relatively new to regulatory proceedings, but has been very influential in the academic community since its appearance in the late 1960's. It is our understanding that the CAPM is routinely employed in the financial community. We are inclined at this point to conclude that some version of the CAPM, perhaps the Sharpe-Lintner version, would provide a desirable independent measure for assessing the reasonableness of DCF measurements.

73. Compared to the DCF, the CAPM is, however, considerably more difficult to explain and the statistical procedures required are more complex and sophisticated. This Commission has never relied upon a CAPM estimate to set cost of equity capital, and the next round of comments will have to show a substantial improvement in CAPM estimation techniques before we could adopt it as an alternative estimate of equivalent weight.

74. The CAPM requires the estimation of three quantities: the beta of the firm, the current risk-free rate of return; and the market risk premium. We will discuss our preliminary impressions upon each of these in turn.

a. *Beta*

75. Given the wide acceptance the CAPM has won in the literature, it was surprising that the comments submitted in the first round of this proceeding did not recommend this approach more often. [59] One reason is the problem of developing estimates of the betas for the RBOCs.

76. Betas calculated on the basis of historical data must make a trade-off between the statistical strength of the estimate—the further back the data go, the greater the nominal statistical significance; and the current relevance of the estimate—the further back the data go the more the firm and the economy have changed. Normally a beta is based on several years of return data. Value Line's betas are computed on weekly returns over five years using the New York Stock Exchange Index. Merrill Lynch's betas are computed with monthly data over five years using the Standard and Poor's 500 Industrial Index. Since divestiture created the RBOCs much more recently, most comments resorted to ad hoc approaches, or used daily data to expand the number of data points in the estimate. As the reply comments made clear, none of these approaches are without problems. There are a number of commercial services which use elaborate analyses to develop "fundamental" estimates of beta. Four were mentioned in the comments: Barr

[56] It would obviously be inappropriate for any such analyst to be compensated, directly or indirectly, by any entity having a direct or indirect interest in outcom e of this proceeding.

[57] Michigan PUC, for one, did recommend the use of the current price.

[58] These included the comments of AT&T, Ameritech, BellSouth, Pacific Telesis, Pennsylvania, Central, Alltel, Michigan, and Florida. In addition, Bell Atlantic, NYNEX, Southwestern Bell, US West, GTE, Cincinnati, Rochester, SNET, NECA, USTA, Kentucky, and FEA also recommended multiple approaches be used.

[59] Only AT&T, Ameritech, Contel, Rochester, Minnesota, NYNEX, and US West supplied CAPM proposals.

Rosenberg Associates, Wells Fargo, Vestek, and Prudential Bache. While no one of these estimates is definitive, as a group those estimates would provide the Commission with a range of beta values reflecting historical and fundamental analyses, and would indicate what estimates are being presented to the investment community. Further comments from the parties are invited on these sources and on the advisability of using estimates that are derived therefrom.

b. *The Risk Free Rates*

77. From the standpoint of theory, the ideal risk-free rate of return would be the yield on a 90-day Treasury bill. The T-bill is the closest approximation of any financial asset to zero variance in return (i.e., it is devoid of both non-systematic and systematic risk.) The problem is that T-bill returns are quite volatile.

78. The comments that addressed this problem took the compromise position that a longer term government rate should be used as a proxy for the risk free rate. One suggestion was to use the one year rate, but there were also suggestions to use even longer term rates: two or three year yields. Our inclination is to use the one-year T-bill rate. This shouldn't be a difficult issue to resolve, but as part of any further comments on the implementation of the CAPM approach, commenters should discuss the selection of a maturity. Of course, whatever debt instrument is chosen, it would have to be recently issued, widely held, and selling to yield a return close to its face yield.

c. *The Market Risk Premium*

79. The Commission will have to rely on a mixture of historical and current data to estimate the extent to which common stocks may be expected to provide returns that are in excess of that provided by a riskless security. The Ibbotson and Sinquefield market risk studies[60] have achieved wide-spread circulation. Ameritech calculated Ibbotson and Sinquefield based market risk premiums using both 58 and 38 years of data. There can not be, of course, a definitive specification of a time period for empirical work, but it seems to us that the question of the appropriate time period requires further comment.

d. *Alternatives to the Sharpe-Lintner Model*

80. Two commenters offered, instead of the Sharpe-Lintner CAPM formulation, the zero-beta or empirical version of the CAPM.[61] Unfortunately the record does not allow us to evalulate the relative merits of these alternatives, or any advantages of using an empirical CAPM rather than the Sharpe-Lintner version. We hope the advocates of these alternative CAPM methodologies and other parties will supplement the record so that we can select the best CAPM approach.

e. *CAPM Conclusions*

81. We are inclined to conclude that the CAPM could provide a useful check upon results that are derived from the DCF approach. Although the CAPM does not have the history of successful use in a regulatory setting of the DCF, it is theoretically consistent with our current understanding of the way financial markets work, and its data requirements do not appear significantly greater than that of the DCF. We intend to utilize the Sharpe-Lintner CAPM over the empirical form because the empirical form does not appear mature enough to be adopted by a regulatory commission. Parties should address the relative merits of the various formulations, however.

3. Bond Yield Plus Risk Premium Approaches

82. In our *Initial Notice* we suggested that the cost of equity capital could be estimated by adding a risk premium to a current bond yield, and most of the comments we received offered advice on this approach. The CDF and CAPM approaches are associated with specific methodologies, but the risk premium approach is much less well-defined. The comments demonstrated that a wide variety of methods can be used to estimate a risk premium. GTE recommends an historic approach, proposing that the FCC use the most recent 20 to 40 years of bond and equity returns to calculate the bond premium. The practical results, according to GTE, would be a range of acceptable equity prescription rates running 300 to 750 basis points above the six month average of yields on long term utility bonds.

83. AT&T, adopting a DCF based risk premium methodology, suggested that a firm's risk premium be estimated by: (1) Calculating the firm's single-growth rate DCF cost of equity capital for each of the most recent six months; (2) substracting these estimates from the contemporaneous monthly yield-to-maturity of a 20-year constant maturity Treasury bond series (AT&T recommends the series published in the *Federal Reserve Bulletin*); (3) averaging the six monthly differences; and, (4) adding the average to the current 20-year Treasury bond yield.

84. AT&T's methodology has the appeal of being a balanced attempt to find a trade-off between the problems of historic and spot estimates. Historic risk premiums assume that the difference in the expected yields of equity and debt are not subject to significant and meaningful variations over the short run. The comments, however, have not provided support for that assumption. Ameritech cites a recent study by Brigham, Shome, and Vinson that concludes a DCF based risk premium does not full reflect investors' expectations, nor is the premium stable over time.

85. Several comments noted that spot estimates tend to be volatile and to promote filings aimed to catch peak rates. Comsat notes that the determination of a carrier's risk premium is a matter of judgment, requiring extensive knowledge of the carrier and industry. It argues that the judgmental nature of the determination of risk premium may make a "paper" proceding inadequate. Comsat also observes that the use of a carrier's debt, or an industrial bond index, complicates the analysis by introducing into the determination of bond-yield company and industry risk factors that are considered in determining the risk premium, and by reducing the carrier's incentive to seek the least expensive source of debt. The Pennsylvania PUC also stresses that the judgment that must be exercised in the use of the bond-risk premium approach. SBS's comments emphasized the judgmental nature of establishing the premium: it gave a page of risk considerations to be factored into the premium, and

[60] Ibbotson, R. and Sinquefield, *Stocks, Bonds, Bills and Inflation: The Past and the Future*, (1982, ed. Financial Analyst's Research Foundation.)

[61] Rochester's formulation simply assumes that a portfolio constructed to have a beta of zero will have an expected return (r_z) equal to the risk free rate plus half the market risk premium: $r_z = r_f + .5(r_m - r_f)$. The slope of the trade-off between risk and return is redefined as the differences between the expected market return (r_m) and the expected return on the zero beta portfolio (r_z). That equals one-half the differences between the market return minus the risk-free return: $(r_m - r_z) = .5(r_m - r_f)$. Rochester estimated the market risk primium ($r_m - r_f$) from a standard long base line historical study (Ibbotson, R. and Sinquefield, *Stocks, Bonds, Bills and Inflation: The Past and the Future*, 1982, ed., Financial Analyst's Research Foundation.) It used the one year Treasury bill rate as the current measure of the risk free rate (r_f). The full Rochester zero-beta CAPM formulation is: $K = r_f + .5(r_m - r_f) + .5(r_m - r_f)$ beta.

NYNEX, in its reply comments proposed a somewhat different formulation of the zero-beta CAPM: $K = r_f + .66(r_m - r_f) + .33(r_m - r_f)$ beta. This two thirds—one third form of NYNEX, according to US West's expert, Dr. R.H. Litzenberger, is based on the empirical study he submitted as part of US West's comments. Dr. Litzenberger's methodology seems acceptable but we do have reservations over the use of data dating from 1926.

recommended that the FCC adopt a "variable-rate" bond yield (based on one-year Treasury notes) to cope with the volatility of the bond market.

86. Volatility is a potential problem with every method of determining the cost of equity capital and we agree that we need to examine more than tjust the most recent month's spot estimate of the cost of equity. To that end we propose that the record for an equity determination should include sufficient data to allow estimates that are based upon the most recent six months' data. We do not believe that averaging the most recent estimates is necessarily the best methodology. Ultimately the Commission must apply its judgment and this seems to us to be the point for us to express the judgment of DCF approach is to be preferred as being a more reliable estimation than the risk premium approach.[63]

B. Flotation Costs

87. In our *Initial Notice*, we tentatively concluded that the "estimated cost of equity should take into account the cost of financing equity issues,"[64] citing the *1981 Represcription Order*. In the previous rate of return prescription, the Commission found the record to be insufficient to compute a flotation cost allowance with precision, but did find "a slight upward adjustment to AT&T's market cost of common stock" to be justified.[65] The record in this proceeding, too, falls short of establishing precisely whether, or how much of, an allowance for flotation costs should be awarded.

88. Equity flotation costs consist of two components—the out-of-pocket costs associated with issuing new stock, or underwriters spread;[66] and "market pressure" costs. To the extent a carrier is allowed to recover those flotation costs, there are several possible alternatives. Flotation costs can be expensed and recovered in the year incurred; flotation costs can be treated as an intangible asset and amortized over some period; or flotation costs can be recovered by making an upward adjustment to the return on equity component of the rate of return.[68] Most of the Commenting parties favored an adjustment to the return on equity.[67]

89. While the commenting parties agree that the Commission should reimburse the exchange carriers for flotation costs, they do not agree on the amount of that reimbursement or the bases for awarding flotation costs. Two different policies are asserted to provide the rationale for allowing recovery of flotation costs. First, some commenters claim that the Commission must award flotation costs so as to maintain the carrier's stock at a market value in excess of its book value [68] so that the carrier can issue additional shares without further dilution.[69] Second, some comments assert that the value of assets in the rate base is less than the amount the shareholder invested because of flotation costs, and that an upward adjustment to the "required return" is necessary to enable the investor to earn the required return on the full amount of his or her investment.[70]

90. The two grounds for flotation costs do not appear to be entirely consistent, however. If stocks are issued at a time when the market price is below the book value, then there would be a problem with "dilution" of the current shareholders' value, but at the same time the investors would be receiving more than the "required return" on the amount of their investment since it was less than the average amount per share in the rate base. Conversely, when the market value exceeds the book value, issuing new shares does not result in "dilution," but the investors' level of investment exceeds the average per share in the rate base.

91. The comments also suggested several different formulae and methodologies for calculating a flotation cost adjustment. OCCO's expert witness advocates a formula that allows recovery of the costs only during the year incurred.[71] Other carriers advocate methodologies to increase the return on equity regardless of new issues.[72] Ameritech's expert derived a flotation cost adjustment based on maintaining a market to book ratio of 1.1 to 1.[73] Most of the estimates of the fractional flotation costs, a critical figure in the various formulae, ranged between 5 and 7 percent, but the sources for the figures varied.[74] In light of the disagreement on determining the amount of flotation costs, the formula for recovery those costs, and even on why those costs should be awarded, we approach an allowance for flotation costs with some skepticism.

92. The arguments proffered in the comments do not support the level of flotation cost adjustments sought by the carriers. Several commenters analogize to the treatment accorded issuance expenses for debt and preferrer stock to support an award of flotation costs for common stock.[75] Commenters use the analogy and simplified examples of asset purchases and income streams to demonstrate the need for a flotation adjustment.[76] The analogy and simple examples break down in several respects, however. A major difference between debt and common stock is the contractual obligation to pay a specified amount of interest on the debt, which is absent in the case of equity. The simplified illustrations assume the stockholder has an unqualified right to a fixed percentage return—the "required return"—on the market value of his or her shares. However, there is no such right under either contract law or the Commission's obligation to allow a reasonable return.

93. More important, we believe that the "required return" as derived from a market based methodology, such as DCF, already accounts for flotation costs. Alltel argues that if the Commission does not make these flotation cost adjustments, the investors will adjust the price they are willing to

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[63] There were some comments in favor of the Commission's original risk premium proposal. Kerrville, for example, believes this methodology is not unduly complicated, would be subject to less argument and more readily estimated than any other method. On balance, however, we have concluded that while risk premium estimates can be useful, the estimate of the direct DCF approach we outlined previsiously are the most relevant evidence for the Commission's decision.

[64] *Initian Nouce* at fn. 18.

[65] 88 FCC 2d at 244–45.

[66] BellSouth identified twelve such out of pocket expenditures (as well as the opportunity cost of employees' time). Affidavit of Vanderweide and Carleton at pp. 70–71.

[67] See generally, BellSouth Affidavit of VanderWeide and Carleton at pp. 75–77. The IRS, however, does not allow such costs to be expensed or amortized, or even recovered upon dissolution of the company.

[68] SNETCO; Alltel; U.S. West; GTE; Pacific; NYNEX; Bell Atlantic; *cf.* BellSouth-Affidavit of VanderWeide and Carleton, pp. 88–90 (expensing or adding to rate base and amortizing are both superior to modifying the return on equity).

[69] The term "book value" is not used uniformly or precisely by the parties. At times, the term is used to refer to rate base assets or to accounting entries, as distinguished from the price the stock sells at the marketplace. We will assume the parties are referring to regulatory accounting books, since different sets of accounting books may legitimately be maintained for the FCC, SEC and IRS.

[70] *E.g.*, Alltel; Ameritech; Southwestern Bell; Bell Atlantic.

[71] *E.g.*, SNETCO; U.S. West; Pacific; NYNEX.

[72] OCCO, Affidavit of M. Marcus.

[73] SNET ($r = K/(1-f+fb)$, where r is the adjusted return on equity, K is the cost of equity, f is the fractional flotation cost and b is the retention ratio); U.S. West, Bell Atlantic and NYNEX ($K = D_1/Po(1-f)+g$, where K is the adjusted cost of equity, D_1 is the anticipated dividend, Po is the market price, f is the fractional flotation cost and g is anticipated growth); *cf.*, BellSouth (reviews the literature and sets forth three different formula).

[74] Sefton Affid., p. D–17.

[75] *E.g.*, GTE (5% based on academic studies); Pacific (5%, but no source); Southwestern (5% based on discount for dividend reinvestment program); NYNEX (7% based on review of 1983 issues in excess of $25 million; 5% based on review of 10 years of utility issues).

[76] GTE; U.S. West; NYNEX; Bell Atlantic.

[77] *E.g.*, Bell Atlantic.

pay for the stock.[77] The Commission did not explicitly allow recovery of flotation costs in its last rate of return proceeding, however, and thus the market price (as well as the sophisticated analysts' estimate of dividend growth) should already reflect the absence of a 50 to 90 basis point flotation cost adjustment.

94. The simple illustrations of asset purchases and income streams also fail to reflect the fact that the market price of the company's stock will diverge from the rate base or book value by varying amounts for differing reasons. The assumption that market value will precisely reflect initial investment less flotation costs plus retained earnings is not a very solid foundation for "proof" of the need for an adjustment for flotation costs. The market value of the stock will reflect, *inter alia*, non-jurisdictional activities, estimates of risk, evaluations of management and beliefs about future economic conditions. Indeed, this Commission explicitly recognized the effects of outside factors in rejecting the claim that it has an obligation to set a rate of return that will ensure a carrier's market to book ratio in excess of one.[78]

95. We are also troubled by requests for reimbursement of "market pressure" costs, which comprise half of the flotation costs the carriers seek to recover. It is not at all clear why the shareholders must be reimbursed for what is at most a temporary decline in the market price of the stock. Apparently market pressure is intended to reflect the difference between the "real market value" of the stock and the depressed value that comes with announcement of a new offering due to the anticipated earnings dilution. Various studies purport to calculate the market pressure effect, and the results range from less than one percent to over 11 percent.[79] The record does not support the need for, or level of, an adjustment to the return on equity component to compensate for market pressure.

96. The carriers seek a flotation cost adjustment in the range of 50 to 90 basis points.[80] We do not believe the record supports such an award. As we noted previously, we believe the market determined DCF methodology already takes into account flotation costs.[81] This Commission did make a slight upward adjustment to the return on equity component in its most recent rate of return prescription. We therefore assume that the market determined required return on equity anticipates a similar adjustment from this Commission. To account for that expectation, we propose to adjust the return on equity upward 10 basis points for the initial prescription. Thereafter, we will provide no adjustment, as assume that the market price and analysts' forecasts will take into account the Commission's policy of not making flotation cost adjustments.

C. Debt

97. We received comments both agreeing with our initial proposal for computing the cost of long term debt based on the most recently available test period, and arguing for a projected debt cost. We proposed to follow the procedure adopted in the *1981 Represcription Order* and divide the total of actual interest payments plus the booked amortization of issuance and premium or discount expenses by the weighted average outstanding net proceeds amount of debt. The amortization of issue expenses and premium or discount was done on a straight line basis in the *1981 Represcription Order*.[82]

98. Proposals for using projected debt cost generally involved the Commission adopting projections of the debt, interest and amortization expenses and the amount of debt that will be outstanding during the prescription period. None of the commenters elaborated upon how the Commission should make such projections, nor did any propose a refund or surcharge procedure for the inevitable discrepancies between the projected and realized debt figures.

99. We are uncomfortable with the need, under the projected debt proposals, to make interest rate forecasts, to make predictions about the timing of the refinancing of callable debt, and to make companies disclose their future financing schedules. It is our intention to make the cost of capital determinations on a frequent basis (two years, with the possibility of annual updates for changes in debt-equity ratios and costs of embedded debt) so that the potential for difference between prescription and actual debt costs will be much less than it has been in the past. These reasons are sufficient to make us conclude that our original proposal, to use actual debt cost as the basis of our prescription, was sound and should be adopted.

D. Treatment of Preferred Stock

100. In the *Initial Notice*, we sought comment on the treatment to be accorded preferred stock, after noting that our prior finding that the costs of common and convertible preferred were the same was based on the relatively small amount of preferred stock and the occurrence of conversion. *Initial Notice*, para. 14. Very little comment was received with regard to this issue, probably because the largest companies apparently do not have much, if any, convertible preferred stock outstanding. All parties agreed that the cost of non-convertible preferred should be treated similarly to debt. The cost should be calculated by dividing the interest or dividend expense by the book value of the preferred stock.[83] With regard to the treatment of convertible preferred, some parties assert all convertible preferred should be treated as equity;[84] some parties argue it should be treated differently depending on the likelihood of conversion;[85] while at least one party advocated it simply be treated like debt.[86]

101. It is our intention to treat both convertible and non-convertible preferred in the same manner as debt. The costs will be calculated by dividing the dividend amount by the book value. We believe this approach will most accurately determine the costs, particularly in light of the relatively short prescription period of two years (with the possibility of allowing annual updates on capital structure and embedded debt costs).

E. Zero-Cost Sources of Financing

102. In our *Initial Notice*, we sought comment on the appropriate categories and treatment of zero-cost sources of capital. In the *1981 Represcription Order* AT&T's capital structure included several items with zero-cost—capital stock subscribed and related premium and capitalized stock installments, unmatured interest, unmatured

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[77] Alltel, pp. 22–24.

[78] 86 FCC 2d 221, 245 at fn. 44.

[79] NYNEX; BellSouth. It is not clear whether market pressure exists to the same extent under the new SEC shelf registration program. Presumably the ability of companies to take advantage quickly of favorable windows would eliminate or mitigate market pressure effects.

[80] *E.g.*, Ameritech, 90 basic points; U.S. West, 70 basis points; NYNEX, 50–70 basis points; Pacific, 50 basis points; SNET, 60 basis points; Southwestern, 46 basis points; BellSouth, 20–50 basis points.

[81] See paragraph *93, supra*.

[82] Parties should address, however, utilization of the GAAP method of amortizing on a different basis.

[83] *Cf.* Ameritech Comments, which argues that current rather than embedded costs should be used.

[84] *E.g.*, Ameritech Comments; AT&T Comments; Contel Comments.

[85] *E.g.*, Cincinnati Comments (treat as equity unless conversion unlikely); Contel Comments (treat like equity if any appreciable conversion is occurring).

[86] Rochester Comments.

dividends, and matured interest and dividends.[87] We proposed to employ the most recent twelve-month average amounts of these sources from balance sheet entries and treat them as part of the capital structure at zero cost. *Initial Notice* at para. 12. We also recognized, however, that it would penalize the carriers by "double counting" if the zero-cost sources of financing were both deducted from the rate base and counted as part of the capital structure. *Ibid.*

103. While some parties argued that there are no zero cost sources of capital because the funds have economic or opportunity costs associated with them,[88] the majority of comments focused on the Commission's desire to avoid "double counting."[89] Attempts to use zero-cost sources of financing in calculating the rate of return complicate the represcription proceeding and some comments suggest that they may not be effective.[90]

104. After reviewing the comments, we are inclined to conclude, with the exception of those firms that are used for comparable risk measurements, that it would be better in this instance (given the constraints and objectives of this rulemaking) to treat these zero-cost sources of financing as deductions from the rate base rather than as part of the capital structure.[91] Because the effect on the ratepayer is similar, treatment as a ratebase issue avoids complicating, and thus potentially delaying, the prescription of rates of return. If we adopt that approach, we will delegate to the Chief, Common Carrier Bureau authority to prescribe the classification and treatment to be accorded "zero-cost" sources of financing to ensure such items are properly excluded from the rate base. Interested parties are encouraged to comment on that alternatve.

VI. Hearing Procedures

105. We would propose to initiate the actual represcription proceedings for AT&T and the exchange carriers as soon as possible after we adopt a final decision in Phase II of this rulemaking. If our effort to establiah prescribed or acceptable methodologies is successful, it should be possible to implement the methodology in a subsequent represcription proceeding in about six months. The tentative plan for such a proceeding that we describe in this section is based upon the assumption that such methodology will have been established.

A. Introduction

106. Review of the Comments and Reply Comments regarding written procedures has prompted us to request further comment upon specific written procedures with streamlined oral evidentiary hearings upon an appropriate showing. The commenters' contentions are varied. Some argue that in order to apply a rate of return or cost of equity method to carrier groups or to individual carriers, oral evidentiary proceedings are required by sections 553(c), 556, and 557 of the Administrative Procedure Act,[92] by section 205 of the Communications Act,[93] by due process,[94] or generally.[95] Others contend that certain issues, such as investor perception of risk, the risk premium in the risk premium cost of equity method, the Discount Cash Flow method, elements of growth and stock flotation costs, or cost of equity inherently require oral evidentiary procedures.[96] Other commenters claim that oral hearings are not legally required or not useful,[97] or that they are too expensive.[98] Some find written procedures acceptable.[99] Others contend that at least oral cross-examination, or formal discovery, or oral argument is legally required in rate of return proceedings.[100] One commenter proposed on oral evidentiary proceeding if all exchange access carriers are treated as one group.[101] Others contend that oral hearings would be useful to the Commission,[102] or that oral hearings cannot be entirely precluded.[103] A few commenters suggest that discovery and limited oral evidentiary procedures be permitted on limited issues after an appropriate showing.[104]

B. Expedited Hearing Procedures

107. It is neither fruitful nor necessary to resolve here whether section 205 of the Communication's Act requires application of notice and comment procedures or formal rulemaking procedures under the Administrative Procedure Act to prescribe rates of return, whether rate of return issues are legislative or adjudicative facts, or whether rate prescriptions under section 205 are "required by statute to be made on the record after opportunity for an agency hearing." Oral evidentiary procedures could be required in a section 553 notice and comment rulemaking, even though this is a hypothetical and remote possibility.[105] In section 556 formal rulemakings oral evidentiary procedures are neither a matter of right nor automatically required. All that section 556 or due process requires is that oral procedures be employed if a party would be prejudiced by the use of written

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[87] 86 FCC 2d at 228–32.

[88] *E.g.*, Ameritech Comments; AT&T Comments.

[89] *E.g.*, Centel Comments; NYNEX Comments.

[90] *E.g.*, NYNEX Comments, Southwestern Comments.

[91] In the case of a cost of capital that was derived through the use of firms of comparable risk (including the financial structures of the firms thus chosen), it would, of course, be necessary to make offsetting rate base adjustment that were equitable.

[92] Southwestern Bell Telephone Company Comments, pp. 40–42. American Bar Association Administrative Law Section Reply Comments, pp. 2–7. The ABA filed a "Motion to Accept Late-Filed Comments", dated March 12, 1985, with its Reply Comments. In view of the lack of opposition to the ABA Motion, the significance of the issue, and the lack of prejudice to other commenters, the motion is granted. For the same reasons, we are granting US West's and Arkansas' request for acceptance of late-filed comments.

[93] NARUC Comments, pp. 2–4. Rural Telephone Coalation Comments, pp. 14–16. Office of Consumer Counsel, State of Ohio Comments, pp. 1–2,. GTE Reply Comments, pp. 8–9. Reply Comments of Citizens of State of Florida and National Association of State Utility Consumer Advocates, pp. 1–2.

[94] Ameritech Operating Companies Comments, pp. 24–26. GTE Reply Comments, pp. 8–9.

[95] U.S. West reserves comment on paper procedures until the Commission selects a rate of return formula, without waiving any rights to an oral hearing. U.S. West Comments, p. 7, n.8.

[96] AT&T Comments, pp. 63–64. Bell Atlantic Comments, pp. 3–6 and Reply Comments, pp. 9–11. Communications Satellite Corporation Comments, pp. 5–7. Florida Public Service Commission Comments, pp. 8–9. Pennsylvania PUC Comments, p. 5. Southwestern Bell Reply Comments, p. 31. NYNEX Comments, pp. 25–27. United Telephone System alleges that the dividend growth element of the DCF method will be contended. Comments, pp. 19–30.

[97] Federal Executive Agencies (DOD/GSA) Comments, pp. 9–10. Rochester Telephone Company Reply Comments, p. 6 (if a nonpredjudicial rate of return formula is adopted). Satellite Business System Comments, p. 15, and Reply Comments, pp. 7–8. Southern New England Telephone Company Comments, p. 34, and Reply Comments, pp. 26–27 (although not averse to oral hearings on cost of equity). United Telephone System Comments, p. 20.

[98] Interior Telephone Co., Inc. and Bristol Telephone Company, Inc. Comments, pp. 3–4.

[99] Continental Telecom Inc. Comments, pp. 17–18. Southwestern Bell Comments, pp. 40–43, and Reply Comments, pp. 30–31. However, Southwestern Bell questions whether written procedures are legally sustainable.

[100] Ameritech Operating Companies Comments, pp. 24–26. AT&T Comments, pp. 65–67, and Reply Comments, p. 36. GTE Comments, pp. 8–9. Office of Consumer Counsel, State of Ohio Reply Comments, pp. 1–2. BellSouth Comments, p. 11.

[101] Western Rural Telephone Association Comments, p. 15.

[102] Central Telephone Company Comments, p. 12, Pacific Bell and Nevada Bell Comments, pp. 38–39.

[103] American Bar Association Administrative Law Section Reply Comments, pp. 2–7. Pacific Bell and Nevada Bell Reply Comments, pp. 57–58.

[104] American Bar Association Administrative Law Section Reply Comments, pp. 7–8. BellSouth Comments, pp. 10–11. Continental Telecom Comments, p. 18, and Reply Comments, p. 38.

[105] Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 523–524, 548 (1978).

procedures.[106] Whether and what kind of oral procedures are required depends upon the facts at issue, the context of the particular case, and the demonstrated necessity for oral procedures in the particular proceeding.[107]

108. The streamlined hearing procedures we now propose will not only satisfy the most stringent statutory and constitutional requirements that are arguably applicable, but will also provide the flexibility necessary to timely execution of the Commission's duties. Carriers and the public will be accorded full and fair opportunity for hearing, and the Commission will be supplied with substantial, complete records permitting sound and reasoned decisions. Our proposal will permit limited oral evidentiary proceedings upon an appropriate showing, while allowing the Commission to render rate of return decisions within six months.

C. Discovery

109. Much of the discovery which formerly took place in the traditional oral evidentiary ratemaking proceedings will be eliminated if we adopt defined rate of return methodologies and prescribe carrier-submitted data to support rate of return requests. The former wide-ranging searches for underlyling assumptions and supporting data would no longer be necessary, making focused requests possible. We propose to continue the use of informal discovery or information requests in ratemaking.[108]

110. We intend to limit the exercise of our discretion to provide for discovery [109] to grant of those requests which demonstrably will lead to the production of material, relevant, decisionally significant evidence. Information requests shall be filed with the Commission, and acted upon by the Common Carrier Bureau under delegated authority. Requests shall be filed and also served upon the carrier or participant questioned within 14 calendar days after the carrier's or participant's submission. Responses to any request shall be provided within 14 calendar days after release of the Bureau's decision granting the request. These procedures do not preclude the Commission or the Common Carrier Bureau, of course, from initiating inquiries when called for by the circumstances.

D. Cross-Examination

111. Much of the cross-examination which took place in the traditional oral evidentiary ratemaking proceeding was directed toward explanation of the methodology used to estimate rate of return, assumptions underlying application of the methodology, and the data used to estimate rate of return. Our adoption of a defined methodology and our prescription of carrier-submitted data eliminate the need for most if not all of this type of cross-examination. We anticipate that the instances in which oral procedures shall be fruitful or necessary shall be infrequent. However, we shall entertain requests for cross-examination upon an appropriate showing.

112. A person requesting cross-examination would be required to make a substantial showing that the use of written procedures would result in prejudice to a party, and that cross-examination is necessary to achieve a full and fail record. It must be demonstrated that written information requests are inadequate to, and that only cross-examination can, decisively resolve [110] genuine, substantial, material questions of fact.[111] Additionally, requests for cross-examination must be specific as to the witness and the facts that are expected to developed. Requests must be supported by an appropriate proffer of the evidence expected to be adduced and a demonstration of the lines of examination which require exploration.[112]

113. If the requisite showing has been made, specific factual issues and witnesses would be designated for hearing before an Administrative Law Judge.[113] Requests for cross-examination would be acted upon by the Common Carrier Bureau purusant to delegated authority. Each request would be filed with the Commission and served upon all participants within 14 calendar days after filing of the carrier's or other participants submission to which the request is directed. Hearings would be limited to specified issues and witnesses for cross-examination, which shall be completed within a maximum of five hearing days absent extraordinary circumstances, and no later than the date specified in the designation order, in the absence of extraordinary circumstances. The participants would be encouraged to combine resources and representation in order to achieve efficiency and expendition during oral hearings.[114] Scheduling of the witnesses and allocation of the time allowed to each cross-examination are matters within the discretion of the Administrative Law Judge.

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[106] 5 U.S.C. 556(d). United States v. Florida East Coast Railway, 410 U.S. 224, 241 (1973); Shell Oil Co. v. FPC, 520 F. 2d 1061, 1074–78 (5th Cir. 1975); American Public Gas Assn. v. FPC, 498 F.2d 718, 723 (D.C. Cir. 1974). Nathaniel Nathanson, "Probing the Mind of the Administrator: Hearing Variations and Standards of Judicial Review under the Administrative Procedure Act and Other Federal Statutes", 75 Columbia Law Review 721, 727–728 (1975).

[107] RCA Global Communications, Inc. v. FCC, 559 F.2d 881, 885–87 (2d Cir. 1977), *Rehearing*, 563 F.2d 1 (2d Cir. 1977); American Public Gas Association, *supra*, 498 F.2d at 722–723; Mobil Oil Corporation v. FPC, 483 F.2d 1238, 1257 (D.C. Cir. 1973); National Air Carriers Association v. CAB, 436 F.2d 185, 191–194 (D.C. Cir. 1970); Long Island Railroad Co. v. United States, 318 F. Supp. 490, 497–500 (E.D.N.Y. 1970). Lionel Kestenbaum, "Rulemaking Beyond APA: Criteria for Trial Type Procedures and the FTC Improvement Act", 44 George Washington University Law Review 679, 692, 708–709 (1976). Nathanson, supra at 727–728, 734–746.

[108] Report and Order, Amendment of Part I of the Rules of Practice and Procedure to Provide for Discovery Procedures, 11 FCC 2d 185, 186 (1968); AT&T, 73 FCC 2d 688, 694 (1979); Multischedule Private Line-MPL, 62 FCC 2d 35, 37 (1976). Formal discovery was advocated by Office of Consumers Counsel, State of Ohio Reply Comments, pp. 1–2. Informal discovery was suggested by NYNEX Comments, pp. 27–28. Most parties did not specify formal or informal discovery. Bell South Corp. Comments, p. 11. Bell Atlantic Companies Comments, p. 5. Southwestern Bell Telephone Reply Comments, pp. 30–31. No reason to revise our rules or our usual practice of informal discovery in ratemaking has been advanced, nor would formal discovery be reasonable in view of the necessity for expedition.

[109] See generally, Kenneth Culp Davis, Administrative Law Treatise (2d Ed. 1980), § 14.8.

[110] AT&T v. FCC, 572 F. 2d 17, 22–23 (2d Cir. 1978), *cert. denied* 439 U.S. 875 (1975); Mobil Oil Corporation v. EPC, supra, 483 F. 2d at 1262–1263; Virgin Islands Hotel Association (US), Inc. v. Virgin Islands Water and Power Authority, 476 F 2d 1263, 1268–1269 (3d Cir. 1973); *cert. denied* 414 U.S. 1067 (1963). Nathanson, supra, at 737–738.

[111] American Bancrop, Inc. v. Board of Governors of Federal Reserve System, 509 F. 2d 29, 38–39 (8th Cir. 1974); Bell Telephone Co. of Pennsylvania v FCC, 503 F. 2d 1250, 1267–1268, n. 25 (3d Cir. 1974); *cert. denied*, 422 U.S. 1026 (1975); *rehearing denied* 423 U.S. 886 (1975); Cooper Laboratories, Inc. v. FDA 501 F. 2d 772, 785–786 (D.C. Cir. 1974); Henderson Trumbull Supply Corp. v. NLRB, 501 F. 2d 1224, 1228–1229 (2d Cir. 1974); Upjohn Co. v. Finch, 472 F. 2d 944, 955 (6th Cir. 1970); Long Island Railroad Co. v. United States, *supra*, 318 F. Supp. at 498–500. One commenter notes that cross-examination is not required in the absence of material questions of fact. Continental Telecom Reply Comments, p. 36. Ameritech proposes cross-examinatuon where material questions of fact arise. Comments, pp. 27–28.

[112] American Public Gas Association v. FPC, *supra*, 498 F. 2d at 723; Virgin Islands Hotel Association (US), Inc. v. Virgin Islands Water and Power Authority, *supra*, 476 F. 2d at 1268–1269; American Airlines, Inc. v. CAB, 359 F. 2d 624, 623–633 and n. 24 (D.C. Cir. 19660 *cert. denied* 385 U.S. 843 (1966).

[113] Requests for cross-examination which are denied will be processed as requests for discovery. These procedures do not preclude the Commission from designating issues for cross-examination on its own motion where called for by the circumstances.

[114] See AT&T Communications Comments, p. 69. NYNEX Reply Comments, p. 47.

E. Proposed Findings of Fact, Conclusions, and Replies

114. The proposed procedures would accord participants the opportunity to submit proposed findings of fact and conclusions after the submission of the evidence and before issuance of the Commission's decision. Proposed findings and conclusions shall be limited to 70 pages and reply findings and conclusions to 35 pages. Many of the former matters of controversy regarding rate of return would be eliminated by our specification of methodologies and by our prescription of carrier-submitted data, and thus also the need for extensive and intricate proposed findings. Additionally, the participants will provide the greatest assistance to reasoned and expeditious decision making by submitting focused, concise findings and conclusions.

F. Oral Argument

115. Oral argument will be granted upon showing that it is necessary for a full and fair record and that the use of written argument is prejudicial to a party. The Commission in each case exercises its discretion to determine whether the due and full consideration of all matters of fact and law require oral argument. *FCC v. WJR, the Goodwill Station*, 337 U.S. 265, 275–277 (1949). Any participant who requests oral argument must persuasively demonstrate benefits from oral argument which could not obtained from written procedures. *CATV Syndicated Program Exclusively Rules*, 79 FCC 2d 652, 661 (1980). Requests for oral argument shall be filed within 7 calendar days after the filing of reply findings and conclusions.

G. Procedure for Decision

116. We conclude that due and timely execution of our functions imperatively and unavoidably require that the Common Carrier Bureau prepare a draft decision for the Commission in rate of return proceedings. If cross-examination has been conducted an Administrative Law Judge, the record shall be certified to the Commission at the close of hearing and no Initial Decision shall be issued. An Initial Decision and resolution of exceptions would impose unjustifiable delay and burden upon carriers and the public without concomitant benefit. Neither the Communications Act nor the Administrative Procedure Act requires an Initial Decision under such circumstances.[115]

117. Contrary to the contentions of several commenters, the Commission is not required to issue for public comment staff proposals or a recommended decision, in effect a tentative decision.[116] Inapposite authority is relied upon by AT&T Communications.[117] For the Commission to give a preview of, or to publish for comment its rate of return conclusions in a tentative decision "would result in an absurd and endless process." *Independent U.S. Tanker Owners Committee v. Lewis*, 790 F. 2d 908, 925–926 (D.C. Cir. 1982). In view of our provision for proposed findings and conclusions after the participants will have had full opportunity to submit evidence and to test the evidence, and in view of our practice of reaching rate of return decisions upon the record, participants will have been accorded all rights to make an effective presentation.

H. Schedule for Use of Procedures

118. Several commenters have proposed a six months or an unspecified expedited schedule.[118] We have tentatively concluded that a six month schedule will supply ample time to permit direct and rebuttal evidentiary submissions by the carriers, a responsive evidentiary submission by interested members of the public, informal discovery, limited oral procedures, proposed findings and conclusions, and adequate time to reach a sound and reasoned decision. The proposed schedule of procedures is set forth in Appendix B.

I. Other Procedural Matters

119. Traditional rate of return evidentiary proceedings have generated massive records exceeding 10,000 and sometimes 20,000 pages of evidentiary exhibits and transcript.[119] The enormous records have been one major source of delay in concluding rate of return proceedings. The adoption of rules defining and prescribing one or more acceptable rate of return methodologies, and the prescription of carrier-submitted data to support rate filings would eliminate some of the disputed matters responsible for such vast records. However, because of the greater number of carriers which we must examine, and because we are likely to provide for consideration of rate of return methodologies such as discounted cash flow and alternative methodologies which involve a certain amount of subjectivity and judgment, there is no guarantee that the best-intentioned participants will not generate records of unmanageable size. Accordingly, we propose to adopt page limitations on the carriers' and other participants' rate of return submissions. While the carriers and other participants must be permitted to make an effective presentation, neither can we continue the practice of admitting all testimony and evidence of however little value. The proposed limitations will provide ample opportunity to submit evidence that is material to the participants' cases:

(1) Carrier rate of return filings: A carrier's submission for the acceptable methodologies filing will be limited to 70 pages, inclusive of all argument, testimony, data, documents, attachments appendices and supplements.[120]

(2) Response by any interested person to a carrier rate of return filing shall be limited to 50 pages total, including all argument, testimony, data, documents, attachments, appendices, and supplements.

(3) Each carrier rebuttal to all responsive rate of return submissions filed shall be limited to 35 pages total, inclusive of all arguments, testimony, data documents, attachments, appendices and supplements.

(4) If we prescribe rate of return methodologies, requests for waiver of and/or consideration of alternatives to the prescribed rate of return methodologies shall be limited to 75 pages, total, inclusive of the petition, the alternative methodology and all supporting materials such as testimony, data, documents, attachments,

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[115] This is so whether rate of return proceedings are characterized as notice and comment or as restricted rulemaking. 5 U.S.C. 553(c), 557(b). 47 U.S.C. 409(a). Communications Satellite Corporation v. FCC, 611 F. 2d 883, 886–888 (D.C. Cir. 1977). *Settlement approved*, 68 FCC 2d 941 (1978).

[116] BellSouth Corp. Comments, pp. 11–12. AT&T Communications Comments, pp. 63–64, 69, and Reply Comments, pp. 36–37.

[117] See Comments, p. 64. NARUC V FCC, 737 F. 2d 1095, 1121 (D.C. Cir. 1984), quoting Independent U.S. Tanker Owners Committee v. Lewis, 690 F. 2d 908, 925–926 (D.C. Cir. 1982); United States Lines, Inc. v. Federal Maritime Commission, 584 F. 2d 519, 534 (D.C. Cir. 1978); Home Box Office, Inc. v. FCC, 567 F. 2d 9, 34–35 (D.C. Cir. 1977). Those cases concern an agency's obligation to make information relied upon in reaching a decision publicly available, or to disclose the thinking and the data upon which a rule is based, but do not address publication for comment of a recommended or tentative decision.

[118] NYNEX COMMENTS, pp. 29–30. Southwestern Bell Reply Comments, pp. 30–31. AT&T Communications Reply Comments, pp. 37–38.

[119] See, for example, the records of Communications Satellite Corporation (FCC Docket 16070), American Telephone and Telegraph Company (FCC Docket 19129, Phase I), American Telephone and Telegraph Company (FCC Docket 20376), and American Telephone and Telegraph Company (CC Docket 79–63).

[120] Any data submissions to establish a weighted average state authorized return will, of course, be quite short.

appendices and supplements. Oppositions shall be limited to 50 pages total.

J. Ex Parte Communications and the Role of Separated Staff

120. We do intend to designate a separated trial staff in any proceeding that is designated for oral cross-examination. Such a separated staff would not participate in the preparation of a draft Commission opinion and would be subject to the same restraints as other parties with respect to communications with an Administrative Law Judge, the Commissioners, their assistants and unseparated staff that participates in the preparation of a draft opinion. The separated staff would not, of course, be subject to any restrictions in communications with the carrier or other parties in the proceeding.[121]

121. The proceedings to represcribe a rate of return appear to have a sufficiently adjudicatory character to warrant classifying such proceedings as restricted for purposes of our *ex parte* rules even though the present proceeding to establish procedures, adopt prescribed or acceptable methodologies and to modify or clarify procedures to enforce rate of return prescriptions is a "non-restricted" rulemaking proceeding. We propose to preclude *ex parte* communications in the represcription proceedings. We would also expect that untimely written submissions will not be accepted even if such submissions are served upon all parties.

122. The role of separated trial staff may be expanded in at least some proceedings to include serving interrogatories, preparing proposed findings and conclusions, and possibly submitting responses. Such decisions will have to be made upon a case by case basis in light of the nature of the proceeding and the resources that are available to us.

K. Legal Authority for Procedures

123. The emergence of competition, the imposition of access charges, and the consequences of the AT&T divestiture require less costly and more expeditious rate of return proceedings. We have not before faced ratemaking responsibilities involving such large numbers of carriers or serious consequences of delay, in addition to other heavy demands upon our resources. Delay can deprive regulated entities, their competitors and the public of rights and economic opportunity without the due process the Constitution requires. *MCI Telecommunications Corp. v FCC*, 627 F.2d 322, 340–342 (D.C. Cir. 1980). The Commission has wide discretion to develop more expeditious administrative procedures if the ultimate achievement of the Commission's regulatory purposes demands such innovation. *Permian Basin Area Rate Case*, 390 U.S. 747, 776–777 (1968). Our proposal for expedited hearings permits timely execution of our duties and yet preserves all procedural rights of the participants. The carrier groups we have selected would in most, if not all, cases permit the exclusive use of written procedures. *United States v Florida East Coast Railway*, 410 U.S. 224 (1973). However, we have proposed written hearing procedures with oral evidentiary procedures upon an appropriate showing in order to ensure full consideration of all pertinent evidence.

124. Several commenters contend that our previous use of formal oral evidentiary ratemaking procedures requires their continued use [122] or that the difficulty and complexity or great importance and controversial nature of rate of return issues precludes written procedures.[123] The use of oral evidentiary procedures in the past to determine rate of return issues does not obligate us to continue doing so. *United States* v *Florida East Coast Railway*, supra, 410 U.S. at 236, n. 6. Nor does a break with past procedures invalidate the new procedures. *Bell Telephone Co. of Pa.* v *FCC*, 503 F.2d 1250, 1265 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975), *reh'g. denied* 423 U.S. 886 (1975); *Phillips Petroleum Co.* v *FPC*, 475 F.2d 842, 852 (10th Cir. 1973), *cert. denied*, 414 U.S. 1146 (1974). Oral procedures are not required by either the difficulty and complexity of the issues, *Bell Telephone Co. of Pa.* v *FCC, supra*, 503 F.2d at 1267, or the importance and controversial nature of the issues. *Vermont Yankee Nuclear Power Corp.* v *Natural Resources Defense Council*, 435 U.S. 519, 545–547 (1978).

125. The proposed procedures are a further step in our continuing efforts to develop efficient hearing procedures. When we were faced with less extensive and infrequent ratemaking obligations, lengthy full-scale oral evidentiary proceedings were conducted. *AT&T*, 2 FCC 2d 142 (1965); *AT&T*, & FCC 2d 151 (1971). However, we have for many years increasingly experimented with written and/or expedited procedures. *AT&T*, 45 FCC 2d 88 (1974); AT&T 50 FCC 2d 501, 515–517 (1974); 62 FCC 2d 774, 776, n. 4. (1977); *AT&T*, 73 FCC 2d 689, 694–695 (1979). *Cellular Communications Systems,*, 86 FCC 2d 469, 499–501 (1981), *reconsideration*, 89 FCC 2d 58, 92–94 (1982). Our proposed procedures are not a drastic deviation from longstanding, well-established practice which could raise meritorious questions of validity. *Vermont Yankee Nuclear Power Corp.* v *Natural Resources Defense Council, supra*, U.S. at 542, n. 17.

126. The hearing procedures we propose represent the type of pragmatic adjustments to procedural practices which regulatory agencies are permitted and obligated to adopt in order to meet the administrative constraints and changing industry conditions we now confront. *Permian Basin Area Rate Case, supra*, 390 U.S. at 776–777, 784; *RCA Global Communications, Inc.* v *FCC, supra*, 559 F.2d at 885, 887.

VII. Conclusion

127. The proposed rate of return methodologies, carrier groupings, and hearing procedures represent the type of pragmatic adjustments required by significantly changed conditions. We believe the beneftis will outweigh any disadvantages. Our proposals balance the carriers' financial requirements, the public interest in just and reasonable rates, and the administrative exigencies. Congress gave the Commission authority adequate to satisfy and permit ultimate achievement of the regulatory purposes for which the Commission was created. *FPC* v *Natural Gas Pipeline Co.*, 315 U.S. at 586; *Permian Basin Area Rate Case*, supra, 390 U.S. at 776–777, 784; *NARUC* v *FCC*, 737 F. 2d 1095, 1140–1141 (D.C. Cir. 1984), appeal filed, D.C. Cir. Dk. DC 83–1984. Our proposals are subject to reexamination and adjustment in light of experience and to the public's general right to petition for change, amendment, or repeal of rules adopted by this Commission. 5 U.S.C. 553(e). Accordingly, these proposals constitute a reasonable exercise of our discretion. *Permian Basin Area Rate Case, supra*, 390 U.S. at 771–773, 789; *NBC* v *United States*, 319 U.S. 190, 225 (1943); *Washington Utilities and Transportation Commission* v. FCC, 513 F 2d at 1164–1165 (9th Cir. 1975); *WAIT Radio* v *FCC*, 418 F. 2d 1153, 1157 (D.C. Cir 1969), *aff'd on remand*, 459 F. 2d 1203 (D.C. Cir. 1972), cert. denied, 409 U.S. 1027 (1972), *WBEN* v *United States*, 396 F. 2d 601, 618 (2d cir. 1968), *cert. denied*, 393 U.S. 914 (1968).

VIII. Ordering Clauses

128. Pursuant to our authority under sections 4 (i) and (j), 205, and 403 of the

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[121] See § 1.209(d) of the Commission's Rules, 47 CFR 1.209(d) (1984).

[122] Communications Satellite Company Comments, pp. 5–6. AT&T Comments, pp. 65–67.

[123] Pennsylvania PUC Comments, p. 5. AT&T Comments pp. 63–64, and Reply Comments, p. 36.

Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 205 and 403, it is ordered that comments on factors for our examination of authorized rates of return for AT&T and exchange telephone carriers shall be due for the Phase I issues on September 3, 1985, with reply comments due on September 13, 1985, and for the Phase II issues comments are due on September 25, 1985, with reply comments due on October 10, 1985. Where comments are based on the analyses of experts, those analyses should be submitted under oath for the record. The Common Carrier Bureau is delegated authority to convene meetings or use other procedures for gathering information for this proceeding.

129. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* Section 1.1231 of the Commission's Rules 47 CFR 1.1231. All relevant and timely comments and reply comments will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

130. In accordance with the provisions of 47 CFR 1.419(b), an original and six copies of all comments, replies, pleading, briefs and other documents filed in this proceeding shall be furnished to the Commission. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments, without regard to form (as long as the docket number is clearly stated in the heading). Copies of all filings will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239) at its headquarters in Washington, DC, 1919 M Street, NW.

131. Pursuant to the Regulatory Flexibility Act of 1980, it is certified that the rules proposed in this proceeding are exempt from application of the statute because they will not have a significant economic impact on a substantial number of small entities. Although some local exchange carriers are small, local telephone companies do not appear to fall within the Regulatory Flexibility Act's definition of a "small entity," which incorporates the definition of a "small business" in section 3 of the Small Business Act. The latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even small ones, enjoy a dominant monopoly position in their local service area. This Commission has found all exchange carriers to be dominant in the *Competitive Carriers Rulemaking*, 85 FCC 2d 1, 23–24 (1980). This certification shall be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605.

132. It is further ordered, that the Secretary shall transmit a copy of this Supplemental Notice of Proposed Rulemaking to each state regulatory Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Initial Comments

1. Alltel Corporation (Alltel)
2. Ameritech Operating Companies (Ameritech)
3. Anchorage Telephone Utility (Anchorage)
4. Arkansas Public Service Commission (Arkansas PSC)
5. American Telephone and Telegraph Company (AT&T)
6. Bell Atlantic Companies (Bell Atlantic)
7. BellSouth Companies (BellSouth)
8. C P National Corporation (C P National)
9. Central Telephone Company (Centel)
10. Cincinnati Bell Telephone Company (Cincinnati)
11. Citizens of the State of Florida and the National Association of State Utility Consumer Advocates (Citizens/NASUCA)
12. Communications Satellite Corporation (Comsat)
13. Continental Telecom Inc. (Contel)
14. Crown Zellerbach
15. Federal Executive Agencies (FEA)
16. Fidelity Telephone Company and Elkhart Telephone Company (Fidelity and Elkhart)
17. Florida Public Service Commission (Florida PSC)
18. GTE Sprint
19. GTE Telephone Companies (GTE)
20. State of Hawaii (Hawaii)
21. Illinois Commerce Commission (Illinois)
22. Independent Telephone Task Force (ITTF)
23. Interior Telephone Company and Bristol Bay Telegraph Cooperative (Interior and Bristol Bay)
24. International Communications Association (ICA)
25. Kentucky Public Service Commission (Kentucky PSC)
26. Kerrville Telephone Company (Kerrville)
27. MCI Telecommunications Corporation (MCI)
28. Michigan Public Service Commission (Michigan PSC)
29. Minnesota Department of Public Service (Minnesota DPS)
30. Mountain States Telephone and Telephone Company, Northwestern Bell Telephone Co. and Pacific Northwest Bell Telephone Co. (US West)
31. National Association of Regulatory Utility Commission (NARUC)
32. National Exchange Carrier Association, Inc. (NECA)
33. National Telecommunications and Information Administration (NTIA)
34. NYNEX Telephone Companies (NYNEX)
35. Office of the Consumers' Counsel, State of Ohio (OCCO)
36. Pacific Bell and Nevada Bell (Pacific)
37. Pennsylvania Public Utility Commission (Pennsylvania PUC)
38. Pine Tree Telephone and Telegraph Company (Pine Tree)

39. Puerto Rico Telephone Company (Puerto Rico)
40. Rochester Telephone Corporation (Rochester)
41. Rural Telephone Coalition (RTC)
42. Satellite Business Systems (SBS)
43. Southern New England Telephone Company (SNET)
44. Southwestern Bell Telephone Company (Southwestern)
45. State Independent Telephone Association of Kansas (SITA)
46. Telephone Association of New England (TANE)
47. Texas Statewide Telephone Cooperative, Inc. (Texas Statewide)
48. United States Telephone Association (USTA)
49. United Telephone Systems, Inc. (United)
50. Western Rural Telephone Association (Western RTA)

Reply Comments

1. American Bar Association (ABA) *
2. American Telephone and Telegraph Company
3. Ameritech Operating Companies
4. Anchorage Telephone Utility
5. Arkansas Public Service Commission *
6. Association of Data Processing Service Organizations, Inc. (ADAPSO)
7. Bell Atlantic Companies
8. BellSouth Companies
9. Cincinnatti Bell Telephone Company
10. Continental Telecom, Inc.
11. Florida Public Service Commission
12. Citizens of the State of Florida and the National Association of State Utility Consumer Advocates
13. Federal Executive Agencies
14. Fidelity Telephone Company and Elkhart Telephone Company
15. GTE Sprint
16. GTE Telephone Companies
17. State of Hawaii
18. International Communications Association
19. Kentucky Public Service Commission
20. MCI Telecommunications Corporation
21. Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Co. and Pacific Northwest Bell Telephone Co.*
22. NYNEX Companies
23. Office of the Consumer Counsel, State of Ohio
24. Pacific Bell and Nevada Bell
25. Puerto Rico Telephone Company
26. Rochester Telephone Corporation
27. Rural Telephone Coalition
28. Satellite Business Systems
29. Southern New England Telephone Company
30. Southwestern Bell Telephone Company
31. Tele-Communications Association (TCA)
32. United States Telephone Association

* The comments of ABA, Arkansas PSC and US West were late filed, accompanied by motions for acceptance. In light of the importance of this proceeding and the lack of prejudice, we are accepting these three sets of reply comments.

Appendix B. Schedule for Procedures

Event	Day
Carrier submission filed	1
Requests for discovery and cross	15
Decision on discovery request issued	29
Responsive cases filed	36
Requests for discovery and cross	50
Decision on discovery request issued	64
Rebuttal case of carrier filed	57
Requests for discovery and cross	71
Decision on discovery requests issued	85
Decision on all requests for cross and hearing order issued	85
Maximum 5 days of hearing end	113
Proposed findings and conclusions	134
Reply findings and conclusions	148
Oral argument	155
Commission decision issued	180

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Bruneau Hot Spring Snail

AGENCY: Fish and Wildlife Serivce, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine endangered status for the Bruneau hot spring snail (family Hydrobiidae). This species occurs only in two small hot springs and their immediate outflows in Owyhee County, Idaho. The major threat to this species is the drastic and continuing reduction in spring flows. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for this species. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by October 21, 1985. Public hearing requests must be received by October 7, 1985.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The first known collections of this species were made in 1952 and 1953. Dr. Dwight W. Taylor of Tiburon, California, has studied the anatomy of the species and determined that it represents a previously unknown genus and species of the snail family Hydrobiidae. Dr. Taylor has prepared a diagnosis of the species' anatomy and suggested the common name of Bruneau hot spring snail, but has not yet published a formal scientific name and description for the species.

The adults of this species reach only about 5 millimeters in length of the shell. The species occurs in only two small thermal springs or seep areas and their immediate outflows. The snails have been found in these habitats on rocks, gravel, mud, and algal film. The springs and proximal outflows, which constitute the most important habitat, are on land administered by the Bureau of Land Management (BLM). Downstream habitat is on private land.

The major threat to this species is the reduction of its habitat by reduced spring flows caused by drawdown of the water table by ground water pumping for agricultural and other uses. The extent of seepage at spring sources has been greatly reduced in recent years, as has the rate of flow from the remaining sources.

Dr. Dwight W. Taylor carried out a field survey of the status of the Bruneau Hot Spring snail in 1981 and 1982. His final report was received by the Service's Boise Endangered Species Field Office on November 3, 1982, and was the basis for the placement of this species in category 1 (data on hand support the appropriateness of a proposal of endangered or theatened status) on the Services's comprehensive notice of review on invertebrate candidate species published in the **Federal Register** (49 FR 21664-21675) on May 22, 1984. Dr. Taylor's findings are the sources of the data summarized in the present document and are the major bases of the Service's decision to

propose endangered status for the species. This report, which includes a biological characterization of the species, is available for inspection as described in the **ADDRESSES** section of this proposed rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424 set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Bruneau Hot Spring snail are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* An essential portion of this species' habitat is spring flow from a vertical rock face. This face provided habitat for most of the species at the times of Dr. Taylor's visits to the site in 1959, 1963, and 1975. In 1981 and 1982, Dr. Taylor found the sources of water flow to be greatly reduced so that relatively more snails were found in stream outflows, where they are more vulnerable to flash floods (see E below). Makeshift dams are sometimes constructed by bathers to form a pool and improve conditions for bathing. If a pool were created that raised the water level even with the level at which the spring emerges from the rock face, the algal habitat of the snail would then be under water and could be destroyed. The likelihood of this event occurring increases as the water table drops.

Flows at these springs are now less than 10 percent of 1954 levels (Littleton and Crosthwaite, 1957; Young *et al.*, 1979) and at times are much lower than these reduced levels. Further lowering of the water table could eliminate these flows altogether and cause the extinction of the species. The outlows occupied by this species constitute 400 feet of stream for one source of spring flow and 1,000 feet for the second source.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There are no commercial uses for this species. Recreational use of the springs and outflows, except as described in A above, for bathing is not a threat at present snail population levels, which are also large enough that collection for scientific or educational purposes would not be a significant threat. The habitat, however, is limited in size to an extent that vandalism is a significant potential threat to the species and its habitat (see section or critical habitat).

C. *Disease or predation.* Not known to be applicable.

D. *The inadequacy of existing regulatory mechanisms.* Although removing ground water at a greater rate than it is naturally replaced is illegal in Idaho, the water table continues to fall. There are no other official protections for this species or its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Flash floods are a serious threat to this species. Snails on the vertical rock face are probably in the only habitat that is safe from the scouring effect of flash floods that would eliminate snails from the outflows below.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Bruneau hot spring snail as endangered. The extremely precarious position of this species requires that this species receive the fullest possible protection provided by the Endangered Species Act. Threatened status would not provide that maximum protection. The decision to not propose critical habitat for this species is explained in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The habitat of this species consists of no more than 1,500 feet of aquatic habitat. A single episode of vandalism could irrevocably alter the entire habitat or otherwise result in the species' extinction. Publication of critical habitat descriptions would make this species even more vulnerable to such acts and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for the Bruneau hot spring snail at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such action are inititated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990: June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likey to jeopardize the continued existence of such a species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Issuance of permits to drill wells by BLM may be the subject of consultation. At this time, however, BLM is not issuing or receiving applications to issue such permits.

The BLM is the Federal agency that is most likely to be affected by any final action that might be taken on this proposal. Present BLM management of the habitat is consistent with the conservation of this species. Changes in BLM management of this habitat would be subject to consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally.

Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving

endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Bruneau hot spring snail.

(2) The location of any additional populations of the Bruneau hot spring snail and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on the Bruneau hot spring snail.

Final promulgation of the regulation on the Bruneau hot spring snail will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director at the address given under **ADDRESSES.**

National Environmental Policy Act

The U.S. Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Littleton, R.T., and E.G. Crosthwaite. 1957. Ground-water geology of the Bruneau-Grandview area, Owyhee County, Idaho. U.S. Geological Survey Water-Supply Paper 1460–D:147–198.

Taylor, D.W. 1982. Status review on Bruneau hot spring snail. Unpublished report submitted to the U.S. Fish and Wildlife Service's Boise Endangered Species Field Office.

Young, H.W., R.E. Lewis, and R.L. Backsen. 1979. Thermal ground-water discharge and associated convective heat flux, Bruneau-Grand View area, southwest Idaho. U.S. Geological Survey Water-Resources Investigations 79–62, Open File Report.

Author

The primary author of this proposed rule is Dr. Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (703/235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend Section 17.11(h) by adding the following, in alphabetical order, under SNAILS to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
* * * * * * *							
Snail, Brauneau hot spring	Family Hydrobiidae, genus and species undescribed.	Idaho	NA	E		NA	NA
* * * * * * *							

Dated: August 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–19910 Filed 8–20–85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 162
Wednesday, August 21, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 85-015N]

National Advisory Committee on Meat and Poultry Inspection; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held from 9:00 a.m. to 5:00 p.m. on Thursday, September 5, 1985, and Friday, September 6, 1985, in the Departmental Auditorium, Conference Room B, Constitution Avenue, Washington, DC.

The purpose of the Committee is to advise the Secretary of Agriculture regarding certain issues pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, and 301(a)(4) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, and 661(a)(4)) and sections 5(a)(4), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(4), 457(b), an 460(e)). The meeting will include a discussion of the following topics:

1. National Academy of Science Study;
2. Budget;
3. Food Technologists;
4. Legislation;
5. Thelarche;
6. Nitrite Docket;
7. Sulfa in Swine;
8. Trichinae Control;
9. Salmonella; and
10. Import Realignment.

The meeting is open to the public on a space available basis. Comments of interested persons may be filed with the Committee before or after the meeting, and should be sent to Catherine DeRoever, Director, Executive Secretariat, Room 335-E, Administration Building, U S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202) 447-3002.

Done at Washington, DC, on: August 19, 1985.

L.L. Gast,
Acting Vice Chairman.

[FR Doc. 85-20151 Filed 8-20-85; 9:15 am]
BILLING CODE 3410-DM-M

Forms Under Review by Office of Management and Budget

August 16, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, ATTN: Desk Office for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Reinstatement

Rural Electrification Administration
Electric Loan Applicant Packet
Forms 740a, c, and g; Bulletin 60-2.
On occasion
Small businesses or organizations; 3,605 responses; 9,090 hours; not applicable under 3504(h)
Charles R. Weaver (202) 382-1900.

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 95-19995 Filed 8-20-85; 8:45 am]
BILLING CODE 3410-01-M

Cooperative State Research Service

Animal Health Science Research Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92-463, Cooperative State Research Service announces the following meeting:

Name: Animal Health Science Research Advisory Board.

Date: September 18, 1985.

Time: 8:30 a.m.

Place: Room 024 J. S. Morrill (West Auditors) Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, DC 20251.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will consult with and advise the Secretary of Agriculture on implementing animal health and disease research programs. Recommendations will be made also on priorities of research in these programs.

Board Names and Agenda: Available from contact person below.

Contact Person: Earl J. Splitter, Executive Secretary, Animal Health Science Research Advisory Board, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20251, telephone (202) 447-5007.

Done at Washington, D.C. this 15th day of August, 1985.

John Patrick Jordan,
Administrator.

[FR Doc. 85-19995 Filed 8-20-85; 8:45 am]
BILLING CODE 3410-22-M

Agricultural Stabilization and Conservation Service

Determination Regarding Producer Referendum for 1986 Wheat Marketing Quota program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination regarding the conduct of a producer referendum with respect to the 1986 Wheat Marketing Quota Program.

SUMMARY: The purpose of this notice is to announce that the producer referendum originally proposed to be conducted during the week of July 19–26, 1985, will be postponed until a later period between October 1, 1985, and thrity-one days after adjournment sine die of the first session of the Ninety-ninth Congress. This determination is made in accordance with the provisions of Pub. L. 99–63 effective July 11, 1985.

EFFECTIVE DATE: August 20, 1985.

ADDRESS: Everett Rank, Administrator, Agricultural Stabilization and Conservation Service (ASCS), USDA, Room 3086 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Marketing Specialist, USDA–ASCS, Room 3738 South Building, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–4146.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that program provisions relating to the producer referendum will result in an annual effect on the economy of $100 millon or more.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title-Wheat Production Stabilization; Number–10.058, and Title-Commodity Loans and Purchases; Number–10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act would be applicable to the provisions of the 1986 Wheat Marketing Quota Program. An initial Regulatory Flexibility Analysis has been completed and is available upon request.

It has been determined by an environmenatal evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 336 of the Agricultural Adjustment Act of 1938 (the "1938 Act") provides that, whenever a national marketing quota is proclaimed for wheat, the Secretary shall, not later than August 1 of the calendar year in which such quota is proclaimed, conduct a referendum of farmers to determine whether they favor or oppose marketing quotas. A notice of proposed determination was published in the **Federal Register** (50 FR 23744) on June 5, 1985, in which the Secretary proposed that a producer referendum for the marketing year beginning June 1, 1986, would be conducted during the week of July 19–26, 1985.

Section 336 of the 1938 Act was amended by Pub. L. 99–63, effective July 11, 1985, to provide that the referendum with respect to the national marketing quota for wheat for the marketing year beginning June 1, 1986, may be conducted not later than thirty-one days after adjournment sine die of the first session of the Ninety-ninth Congress. Since there has been recent progress by Congress in the consideration of omnibus farm legislation which may lead to the enactment of a new wheat program thereby making a referendum unnecessary, it has been determined that the marketing quota referendum for wheat for the 1986 Wheat Marketing Quota Program should be deferred.

Determination

Accordingly, notice is hereby given that the producer referendum to determine whether farmers favor or oppose marketing quotas for wheat for the marketing year beginning June 1, 1986, will be postponed until a later period between October 1, 1985, and thirty-one days after adjournment sine die of the Ninety-ninth Congress.

Signed at Washington, DC on August 13, 1985.

John R. Block,

Secretary.

[FR Doc. 85–19968 Filed 8–20–85; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Apache National Forest Grazing Advisory Board; Meeting

The Apache National Forest Grazing Advisory Board will meet at 10:30 a.m., September 13, 1985 at the Hannagan Administrative Site at Hannagan Meadows, 23 miles south of Alpine, Arizona. There will be discussion concerning election of members for a new board. There will also be a field trip following the meeting to review the McKibbens Sale and effects of logging on grazing.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 640, Springerville, Arizona 85938, (602)–333–4301. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rules for public participation: Any interested persons besides the Advisory Board Members are welcome to attend and will be afforded the opportunity to speak after being duly recognized by the Chairman of the Board.

Dated: August 9, 1985.

Nick W. McDonough,

Forest Supervisor.

[FR Doc. 85–19978 Filed 8–20–85; 8:45 am]

BILLING CODE 3410–11–M

Revised Notice of Intent To Prepare an Environmental Impact Statement for the Stevens Gulch Road Extension; Hubbard Creek, Dyke Creek, and Elk Creek Timber Sales; Grand Mesa, Uncompahgre, and Gunnison National Forests, Delta and Mesa Counties, CO

A Notice of Intent to prepare an environmental statement for the Stevens Gulch Road Extension and the Hubbard Creek, Dyke Creek and Elk Creek Timber Sales was published in the **Federal Register** on June 4, 1984 (Vol. 108, No. 49, Page 23092). In that Notice the estimated date for filing the draft Environmental Impact Statement was September 15, 1984.

On August 14, 1985, the Stevens Gulch Road and Related Timber Sales Draft Environmental Impact Statement was released for public review and filed with the Environmental Protection Agency. The comment period will close on October 28, 1985.

The date estimated for filing the final Environmental Impact Statement is changed to February 1986.

For further information or to request a copy of the draft Environmental Impact

Statement please contact: Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50 South, Delta, Colorado 81416.

Dated: August 14, 1985.

Raymond J. Evans,

Forest Supervisor.

[FR Doc. 85-20022 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-11-M

Sitgreaves National Forest Grazing Advisory Board; Meeting

The Sitgreaves National Forest Grazing Advisory Board will meet at 10:30 a.m., September 16, 1985 at the Maxwell House in Show Low, Arizona. There will be a field trip following the meeting. There will also be discussion concerning election of members for a new board.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 640, Springerville, Arizona 85938, (602)-333-4301. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rules for public participation: Any interested persons besides the Advisory Board Members are welcome to attend and will be afforded the opportunity to speak after being duly recognized by the Chairman of the Board.

Dated: August 9, 1985.

Nick W. McDonough,

Forest Supervisor.

[FR Doc. 85-20027 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-11-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: September 5 and 6, 1985.

Time: 9:00 a.m.

Place: State Department Building, Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. Charles M. Kupperman, Executive Director of the General Advisory Committee, Room 5927, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, telephone (202) 632-5176.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmanent, and world peace.

Agenda

Will include the following discussions and presentations:

September 5

A.M. and P.M.—Discuss status of the arms control negotiations

September 6

A.M.—Executive Session

Reason for closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to close meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated July 24, 1985, made pursuant to the provisions of section 10(*d*) of the Federal Advisory Committee Act as amended.

John E. Grassle,

Committee Management Officer.

[FR Doc. 85-18575 Filed 8-20-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 28-85]

Foreign-Trade Zone 30, Salt Lake City, UT; Application for Subzone; Hercules Graphite Materials Plant, Magna, UT

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Salt Lake City Corporation, grantee of Foreign-Trade Zone 30, requesting special-purpose subzone status for the graphite materials manufacturing plant of Hercules Aerospace Company in Magna, Utah, adjacent to the Salt Lake City Cusotms port of entry. The application was submitted prusuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 2, 1985.

Hercules Aeorspace is a division of Hercules, Inc., a producer of natural and synthetic materials used in the electronics, aerospace, and packaging industries. The company has 40 domestic plants and 40 plants abroad with annual sales of over $2.5 billion.

The proposed subzone would be at Hercules' Bacchus Works, Plant No. 3, covering 18 acres in Magna, some 5 miles south of Salt Lake City. The facility employs 700 persons and is used to produce carbon fiber (graphite) materials for aerospace uses, such as aircraft structural members and rocket motor housings. A special grade of polyacrylonitrile (PAN) fiber is imported and processed. Some products are exported.

Zone procedures will allow Hercules to avoid duties on foreign materials used in its reexports. On its domestic sales, the company would be able to take advantage of the same duty rate available to importers of carbon fiber materials, which is 5.6 percent compared with 10.2 percent for PAN fibers. It would also be able to avoid duty payments on wastage. The savings would improve the firm's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald W. Myhra, District Director, U.S. Customs Service, North Central Region, 600 Central Ave., Great Falls, MT 59401; and Colonel Arthur E. Williams, District Engineer, U.S. Army Engineer District Sacramento, 650 Capitol Mall, Sacramento, CA 95814.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 23, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 350 S. Main Street, Salt Lake City, UT 84101.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, DC 20230.

Dated: August 14, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-19979 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-351-011]

Carbon Steel Wire Rod From Brazil; Final Results of Changed Circumstances Administrative Review and Termination of Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances administrative review and termination of suspended countervailing duty investigation.

SUMMARY: On June 28, 1985, the Department of Commerce published the preliminary results of its administrative review of the suspended countervailing duty investigation on carbon steel wire rod from Brazil and announced its tentative determination to terminate the suspended investigation. The review covers the period from September 27, 1982.

We gave interested parties an opportunity to comment. We received no comments. We therefore determined that domestic interested parties are no longer interested in continuation of the suspended investigation, and we are terminating the suspended investigation. In accordance with petitioners' notification, the termination will apply to all carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after September 27, 1982.

EFFECTIVE DATE: September 27, 1982.

FOR FURTHER INFORMATION CONTACT: Richard C. Henderson or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 26816) the preliminary results of its changed circumstances administrative review of the suspended countervailing duty investigation on carbon steel wire rod from Brazil (47 FR 42399, September 27, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian carbon steel wire rod. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated. The review covers the period form September 27, 1982.

Final Results of the Review and Termination

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to terminate. We received no comments.

As a result of our review, we determine that the domestic interested parties are no longer interested in continuation of the suspended countervailing duty investigation on carbon steel wire rod from Brazil and that the suspended investigation should be terminated on this basis. Therefore, we are terminating the suspended investigation on carbon steel wire rod from Brazil effective September 27, 1982.

This administrative review, termination, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 15, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–19871 Filed 8–20–85; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-006]

Certain Steel Products from Spain; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances administrative review and revocation of countervailing duty order.

SUMMARY: On June 4, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain steel products from Spain and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. After considering all of the comments received, we determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the petitioners' notifications, the revocation will apply to all certain steel products entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 23488) the preliminary results of its changed circumstances administrative review of the countervailing duty order on certain steel products from Spain (49 FR 280, January 3, 1983). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Spanish carbon steel structural shapes, hot-rolled carbon steel plate, cold-rolled carbon steel sheet, galvanized carbon steel sheet, hot-rolled carbon steel bars, and cold-formed carbon steel bars. The products are fully described in the appendix to this notice. The review covers the period from October 1, 1984.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a written comment from Hansa-World Cargo Service, Inc., an importer.

Comment: Hansa argues that the revocation should be effective August 30, 1982, the publication date of the preliminary affirmative countervailing duty determination (47 FR 38161) and the date on which liquidation was suspended, rather than October 1, 1984. Hansa states its belief that the Arrangement Concerning Trade in Steel Products between Spain and the United States ("the Arrangement") was negotiated with the understanding that ". . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position: The Arrangement contains no provision requiring that revocation cover all suspended entries. Further, since the petitioners' lack of interest in

continuation of the countervailing duty order is the basis of the revocation, and since the petitioners have stated their interest in revoking the order effective October 1, 1984, we are revoking this order with respect to shipments of Spanish certain steel products entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Final Results of Review and Revocation

After review of the comment received, we determine that the domestic interested parties are no longer interested in continuation of the countervailing duty order on certain steel products from Spain and that the order should be revoked on this basis.

Therefore, we are revoking the order on certain steel products from Spain effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of certain steel products from Spain which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption before October 1, 1984 in a separate review, if one is requested.

The administrative review, revocation, and notice are in accordance with section 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 15, 1985.

Gilbert P. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

Appendix—Description of Products

For purposes of this review:

1. The term *"carbon steel structural shapes"* covers hot-rolled, forged, extruded or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2 of the Tariff Schedules of the United States Annotated ("TSUSA"), for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the TSUSA. Such products are generally referred to as structural shapes.

2. *The term "hot-rolled carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620, 607.6625, or 607.9400 of the TSUSA; and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc, including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710 or 608.1100 of the TSUSA. Semifinished products of solid rectangular cross section with a width at least four times the thickness in the "as cast" condition or processed only through primary mill hot rolling are not included.

3. The term *"cold-rolled carbon steel sheet"* covers the following old-rolled carbon steel products. Cold-rolled carbon steel sheet is a cold-rolled carbon steel product, whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width and in coils or, if not in coils, under 0.1875 inch in thickness; as currently provided for in items 607.8320 or 607.8350 through 607.8360 of the TSUSA. *PLEASE NOTE THAT THE DEFINITION OF COLD-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE"IN THE TSUSA (ITEM 607.8320).*

4. The term *"galvanized carbon steel sheet"* covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710, 608.0730, 608.1100, 608.1310, 608.1320, or 608.1330 of the TSUSA. *NOTE THAT THE DEFINITION OF GALVANIZED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 608.0710 and 608.1100).* Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

5. The term *"hot-rolled carbon steel bars"* covers hot-rolled carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed, and not coated or plated with metal, as currently provided for in items 606.8310, 606.8330, or 606.8350 of the TSUSA.

6. The term *"cold-formed carbon steel bars"* covers cold-formed carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, as currently provided for in items 606.8805 or 606.8815 of the TSUSA.

[FR Doc. 85-19973 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

Computer Systems Technical Advisory Committee

A meeting of the Computer Systems Technical Advisory Committee will be held September 9, 1985, 9:30 a.m. the Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC. The Committee will continue September 11, in Room 3407 in the Herbert C. Hoover building, 1:00 p.m. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

The will be the first meeting of the CSTAC since the enactment of the Export Administration Amendments Act of 1985. The Act provides for annual review of the list and prompt revisions as may be necessary after each review. Before beginning each annual Review, notice shall be made in the **Federal Register**, with opportunity during the review for comment and the submission of data by interested parties. This data is to include the availability from sources outside the United States of goods and technology comparable to those subject to export controls. This meeting will receive such comments, especially with a view to developing an annual plan by October, 1985. The controls affected will be for multilateral, unilateral, and for special (bulk) licensing.

September 9, 1985—Open CSTAC Meeting—9:30 a.m.

Presentation of papers or comments by the public regarding controls for computers, software, and technology therefore. Remarks are solicited from individuals, companies, representatives, or industry association representatives concerning recommended changes to the

current computer related controls or restructuring (simplification) of the control. Recommendations concerning technical content or control philosophy are desired rather than format changes. Suggested topics of comment are the following:

(1) Improvements to the descriptions of hardware, software, or technology.

(2) Improvements to the categorizing of hardware, software, or technology.

(3) Availability (and competition) for products/technology from sources not subject to U.S. reexport laws.

(4) Changes in the control parameters.

(5) Changes in the control levels.

CSTAC will work with the Industry Coalition on Technology Transfer to summarize inputs from public comments for presentation to the Director of the Office of Export Administration by December 1, 1985. Recommendations will be used for COCOM discussions scheduled for the fall of 1986. In providing comments, presenters should be aware that the United States is currently developing proposals for controls which will be discussed throughout 1986 and 1987 for implementation of a new computer control list which might be in effect until 1990. Comments therefore should consider present need for clarification and future trends.

Sept. 11—Executive Session:—1:00 p.m.

Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: August 15, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–19975 Filed 8–20–85; 8:45 am]

BILLING CODE 3510–DT–M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held September 10, 1985, 1:00 p.m., the Herbert C. Hoover Building, Room 1851, 14th Street and Constitution Avenue NW., Washington, DC. The Hardware Subcommittee was formed to focus on manufacturing and performance characteristics of main frames and other computer hardware.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Comments and recommendations on changes to the data processing rate.
4. Proposed break-up of CCL 1565.
5. Discussion of ITA 6031P Form.
6. Discussion on raising the PDR limits for the Distribution License.
7. Action items underway.
8. Action items due at next meeting.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, purusant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: August 15, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–19976 Filed 8–20–85; 8:45 am]

BILLING CODE 3510–DT–M

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held September 9, 1985, 3:30 p.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. OEA report on the new Distribution License regulations.
4. Subcommittee report on their GLV recommendations to OEA.
5. Subcommittee report on spare and replacement parts policy and recommendations.
6. New Business: Consideration of task to simplify OEA regulations.
7. Action items underway.
8. Action items due at next meeting.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377–2583.

Dated August 15, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–19974 Filed 8–20–85; 8:45 am]

BILLING CODE 3510-DT-M

[C–351–403]

Oil Country Tubular Goods From Brazil; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On June 19, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on oil country tubular goods from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. After considering the comment received, we determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the petitioners' notifications, the revocation will apply to all oil country tubular goods entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 25438) the preliminary results of its changed circumstances administrative review of the countervailing duty order on oil country tubular goods from Brazil (50 FR 5286, February 7, 1985). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian oil country tubular goods. Such merchandise is currently classifiable under items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comment

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a written comment from Cicatrade USA, an importer.

Comment: Cicatrade argues that the revocation should be effective September 12, 1984, the publication date of the preliminary affirmative countervailing duty determination (49 FR 35827) and the date on which liquidation was suspended, not October 1, 1984. Cicatrade states that, given the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order, the revocative should apply to all entries affected by the order. Failing that, the Department should conduct an administrative review of the prior period.

Department's Position: The basis of the affirmative statements of no interest by domestic interested parties was an import limitation agreement between the Governments of the United States and Brazil. Since the agreement was not in force prior to October 1, 1984, the no interest statements are limited to the period beginning on that date. Therefore, we made October 1, 1984 the effective date of the revocation. If requested at the proper time, we will review entries for the period before October 1, 1984.

Final Results of the Review and Revocation

After review of the comment received, we determine that the domestic interested parties are no longer interested in continuation of the countervailing duty order on oil country tubular goods from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on oil country tubular goods from Barzil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of oil country tubular goods from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption before October 1, 1984 in a separate review, if one is requested.

This administrative review, revocation, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 15, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–19972 Filed 8–20–85; 8:45 am]

BILLING CODE 3510-DS-M

[C–351–003]

Small Diameter Welded Carbon Steel Pipes and Tubes From Brazil; Final Results of Changed Circumstances, Administrative Review and Termination of Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances, Administrative Review and Termination of Suspended Countervailing Duty Investigation.

SUMMARY: On June 25, 1985, the Department of Commerce published the preliminary results of its administrative review of the suspended countervailing duty investigation on small diameter welded carbon steel pipes and tubes from Brazil and announced its tentative determination to terminate the suspended investigation. The review covers the period from December 27, 1982.

We gave interested parties an opportunity to comment. We received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the suspended investigation, and we are terminating the suspended investigation. In accordance with the petitioner's notification, the termination will apply to all small diameter welded carbon steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after December 27, 1982.

EFFECTIVE DATE: December 27, 1982.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Al Jemott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 26235) the preliminary results of its changed circumstances and administrative review of the suspended countervailing duty investigation on small diameter welded carbon steel pipes and tubes from Brazil (47 FR 57581, December 27, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian small diameter welded carbon steel pipes and tubes. The term "small diameter welded carbon steel pipes and tubes" covers welded carbon steel pipes and tubes with walls not thinner than 0.065 of an inch, of circular cross section and 0.375 of an inch or more in outside diameter but not more than 16 inches. Such merchandise is currently classifiable under items 610.3208, 610.3209, 610.3231, 610.3241, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, and 610.3258 of the Tariff Schedules of the United States Annotated. Pipes and tubes suitable for use in boilers, superheaters, heat exchangers, condensers, and feed water heaters, or conforming to A.P.I. specifications for oil well tubing with or without couplings, cold drawn pipes and tubes with wall thickness not exceeding 0.1 inch are not included. This review covers the period from December 27, 1982.

Final Results of the Review and Termination

We gave interested parties an opportunity to comment on the preliminary results and tentative determinations to terminate. We received no comments.

As a result of our review, we determine that the domestic interested parties are no longer interested in continuation of the suspended countervailing duty investigation on small diameter welded carbon steel pipes and tubes from Brazil and that the suspension of investigation should be terminated on this basis. Therefore, we are terminating the suspended investigation on small diameter welded carbon steel pipes and tubes from Brazil effective December 27, 1982.

This administrative review, termination, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 335.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 15, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–19970 Filed 8–20–85; 8:45 am]

BILLING CODE 3510–DS–M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held September 11, 1985, 9:00 a.m., the Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC. The Software Subcommittee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

1. Introduction of members and quests.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Brief summary of San Francisco meeting.
5. Discussion of software areas:
   a. Software development systems;
   b. Cross compilers;
   c. Network software;
   d. Expert systems and artificial intelligence;
   e. Other topics including results of action items assigned at San Francisco and new assignments.
6. Discussion of software control under 15 CFR Part 379 to allow uniform treatment of all software.
7. Continued development of work plan.
8. Action items underway.
9. Action items due at next meeting.

Executive Session

10. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minuted contact Margaret A. Cornejo 202–377–2583.

Dated: August 16, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–19977 Filed 8–20–85; 8:45 am]

BILLING CODE 3510–DT–M

[A-351-502]

Fuel Ethanol From Brazil; Postponement of Preliminary Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping duty determination involving fuel ethanol from Brazil is being further postponed until not later the September 18, 1985.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro or David Johnston, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377–5332 or 377–2239.

SUPPLEMENTARY INFORMATION: On March 18, 1985, we announced the initiation of an antidumping duty investigation to determine whether fuel ethanol from Brazil is being, or is likely to be, sold in the United States at less than fair value (50 FR 11748). The notice stated that we would issue a preliminary determination by August 5, 1985.

As detailed in that notice, the petition alleged that imports from Brazil of fuel ethanol are being, or are likely to be, sold in the United States at less than fair value.

On July 3, 1985, counsel for petitioners, the Ad Hoc Committee of Domestic Fuel Ethanol Producers and the Oil Chemical and Atomic Workers International Union, requested that the Department extend the period for the preliminary determination until September 4, 1985. The request was granted and on July 12, 1985, the preliminary determination was postponed until not later than September 4, 1985 (50 FR 29494).

On August 9, 1985, counsel for petitioners requested a further extension to September 18, 1985. Accordingly, the period for the determination is hereby extended; we will issue a preliminary determination not later than September 18, 1985.

This notice is published pursuant to section 733(c)(2) of the Tariff Act of 1939, as amended.

August 14, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–19990 Filed 8–20–85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-025]

Hot Rolled Carbon Steel Sheet From Brazil; Final Result of Changed Circumstances, Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances, Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On June 7, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on hot rolled carbon steel sheet from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment from Hansa World Cargo Service, Inc., an importer, on merchandise entered prior to this review period. After our analysis of that comment, we determine that domestic interested parties are no longer interested in continuation of the order and we are revoking the order. In accordance with the petitioner's notification, the revocation will apply to all hot rolled carbon steel sheet entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 24006) the preliminary results of its changed circumstances administrative review of the antidumping duty order on hot rolled carbon steel sheet from Brazil (49 FR 35536–37, September 10, 1984). The Department has now completed that administrative review, in accordance with section 751 of the Tariff of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of hot rolled carbon steel sheet. Such merchandise is currently classifiable under items 607.6710, 607.6720, 607.6730, 607.6740, 607.8320, and 607.8342 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment on merchandise entered prior to October 1, 1984 from Hansa World Cargo Service, Inc., an importer.

Comment: Hansa argues that the revocation should include merchandise entered prior to October 1, 1984. Hansa states its belief that the Arrangement Concerning Trade in Steel Products between Brazil and the United States ("the Arrangement") was negotiated with the understanding that ". . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position: The Arrangement contains no provision requiring that revocation cover all suspended entries.

Final Results of the Review and Revocation

As a result of this review, we determine that the domestic interested parties are no longer interested in continuation of the antidumping duty order on hot rolled carbon steel from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on hot rolled carbon steel sheet from Brazil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This notice does not cover unliquidated entries of hot rolled carbon steel sheet from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries

not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54.).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 15, 1985.

[FR Doc. 85-19992 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-012]

Hot Rolled Carbon Steel Plate Cut to Length From Brazil; Final Results of Changed Circumstances, Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On June 7, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on hot rolled carbon steel plate cut to length from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment from Hansa World Cargo Service, Inc., an importer, on merchandise entered prior to this review period. After our analysis of that comment we determine that domestic interested parties are no longer interested in continuation of the order and we are revoking the order. In accordance with the petitioner's notification, the revocation will apply to all hot rolled carbon steel plate cut to length entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 24007-08) the preliminary results of its changed circumstances administrative review of the antidumping duty order on hot rolled carbon steel plate cut to length from Brazil (49 FR 10692-93, March 22, 1984). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of hot rolled carbon steel plate cut to length. Such merchandise is currently classifiable under items 607.6615, 607.9400, 608.0710, 608.1100 and 609.6610 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment on merchandise entered prior to October 1, 1984 from Hansa World Cargo Service, Inc., an importer.

Comment: Hansa augues that the revocation should include merchandise entered prior to October 1, 1984. Hansa states its belief that the Arrangement Concerning Trade in Steel Products between Brazil and the United States ("the Arrangement") was negotiated with the understanding that " . . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position: The Arrangement contains no provision requiring that revocation cover all suspended entries.

Final Results of the Review and Revocation

As a result of this review, we determine that the domestic interested parties are no longer interested in continuation of the antidumping duty order on hot rolled carbon steel plate cut to length from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on hot rolled carbon steel plate cut to length from Brazil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries on this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This notice does not cover unliquidated entries of hot rolled carbon steel plate cut to length from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 15, 1985.

[FR Doc. 85-19993 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-014]

Hot Rolled Carbon Steel Plate in Coil From Brazil; Final Results of Changed Circumstances, Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On June 7, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on hot rolled carbon steel plate in coil from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment from Hansa World Cargo Service, Inc., an importer, on merchandise entered prior to this review period. After our analysis of that comment, we determine that domestic interested parties are no longer interested in continuation of the order and we are revoking the order. In accordance with the petitioner's notification, the revocation will apply to all hot rolled carbon steel plate in coil entered, or withdrawn from warehouse,

for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 24005) the preliminary results of its changed circumstances administrative review of the antidumping duty order on hot rolled carbon steel plate in coil from Brazil (49 CFR 10692–93, March 22, 1984). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of hot rolled carbon steel plate in coil. Such merchandise is currently classifiable under items 607.6615, 607.9400, 608.0710, 608.1100 and 609.6610 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment on merchandise entered prior to October 1, 1984 from Hansa World Cargo Service, Inc., an importer.

Comment: Hansa argues that the revocation should include merchandise entered prior to October 1, 1984. Hansa states its belief that the Arrangement Concerning Trade in Steel Products between Brazil and the United States ("the Arrangement") was negotiated with the understanding that ". . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position: The Arrangement contains no provision requiring that revocation cover all suspended entries.

Final Results of the Review and Revocation

As a result of this review, we determine that the domestic interested parties are no longer interested in continuation of the antidumping duty order on hot rolled carbon steel plate in coil from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on hot rolled carbon steel plate in coil from Bazil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This notice does not cover unliquidated entries of hot rolled carbon steel plate in coil from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation and notice are in accordance with section 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: August 15, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–19991 Filed 8–20–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; NMFS, Southeast Fisheries Center

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: NMFS, Southeast Fisheries Center (P77 #15), Mississippi Laboratories, Pascagoula Facility.

b. Address: P.O. Drawer 1207, Pascagoula, Mississippi 39567–1207.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus)* and other unspecified cetaceans:

4. Type of Take: Cetaceans taken incidentally to scientific sampling with bottom or midwater trawls.

5. Location of Activity: Gulf of Mexico in US waters from Key West, Florida to Brownsville, Texas.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Regional Director, Southeast Region, National Marine Fisheries Service, 4950 Koger Blvd., St. Petersburg, Florida 33702.

Dated: August 15, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–19984 Filed 8–20–85; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meetings

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that closed meetings of a panel of the DIA Scientific Advisory Committee have been scheduled as follows:

DATES: September 10–11, 1985, 9:00 a.m. to 5:00 p.m.; September 25–26, 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Washington, DC (both meetings).

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the

discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on nuclear test yield determination.

Dated: August 16, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-20016 Filed 8-20-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 14, 1985.

The USAF Scientific Advisory Board Aeronautical Systems Division Advisory Group meeting scheduled for August 28-29, 1985, at Wright-Patterson Air Force Base, Ohio (Notice published in the **Federal Register** on August 9, 1985 (50 FR 32254)), will be held at a later date to be announced.

For further information contact the Scientific Advisory Board Secretariat at 202-697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-19922 Filed 8-20-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Proposed Flood Control Project for the Calumet, Des Plaines, and Mainstem System of the Chicagoland Underflow Plan in Will and Cook Counties, IL

AGENCY: Army Corps of Engineers, Chicago District, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

1. The study involves the potential construction of one or more of the following:

(a) Flood damage reduction reservoirs in existing quarries at McCook and Thornton,

(b) Improvements to the Sanitary & Ship Canal and Cal-Sag Channel,

(c) Diversion channels connecting the Sanitary & Ship Canal to the Des Plaines River, and

(d) Sewer system upgrades within the Calumet, Des Plaines, and Mainstem Systems of the Chicagoland Underflow Plan.

The reservoirs would be below ground level and could be wet or dry during non-flood periods. Each reservoir would include works for dewatering, operation, and maintenance of the reservoir in conjunction with an existing deep tunnel system for treatment and abatement of combined sewer overflow. The purpose of the proposed project is to reduce flood damages caused by combined sewer system backflow into basements, ponding of surface runoff, and overbank flooding.

2. Alternatives to be studied in detail are:

(a) No action.

(b) Reservoir alternatives consisting of a system of two reservoirs connected to deep tunnels by drop shafts, connecting structures, and pumping stations. The Thornton quarry reservoir would serve the Calumet system; the McCook quarry reservoir would serve the Mainstem and Des Plaines systems.

(c) Waterways improvement alternative, involving channel improvements to the Sanitary and Ship Canal between Chicago and the Dresden Island lock, and channel improvements to the Cal-Sag Channel between the Junction and the O'Brien lock.

(d) Watercourse diversion alternative, involving deepening the Des Plaines River in the vicinity of the Sanitary & Ship Canal, and excavation of two diversion channels connecting the Des Plaines with the Sanitary & Ship Canal.

(e) Other measures to be considered in combination with the reservoirs alternative may include combined sewer upgrading (separation, increased capacities, or bypass sewers), separation of sanitary and storm sewers small local detention reservoirs with pump stations, sewer inlet restrictors, downspout disconnection, floodproofing basements, evacuation, or flood warning systems.

3. The reservoir plans considered in this study are essentially similar to the Tunnel and Reservoir Plan (TARP) designs developed in 1972 by the Metropolitan Sanitary District of Greater Chicago (MSDGC). The Tunnel and Reservoir Plan has been divided into Phases 1 and 2. Phase I involves water quality enhancement; Phase 2 concerns flood damage reduction. The Corps of Engineers began a feasibility study of this plan (Chicagoland Underflow Plan or CUP) in 1979. The CUP evolved during the Corps' 1976 study to determine Federal interest in TARP. Public participation has included meetings and coordination with the State of Illinois, MSDGC, and interested Federal, State, and local agencies. Additional coordination has also been undertaken with the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and Northeastern Illinois Planning Commission.

4. Significant issues to be analyzed include destruction or disruption of terrestrial and aquatic habitat; mitigation for habitat losses; effects on water quality; disposal of excavated material; and aesthetic effects.

5. No formal scoping meeting will be held. A public meeting is tentatively scheduled for the comment period following release of the DEIS. No date has been set. Notice of the specific time and location will be issued to the appropriate media, and to parties expressing interest.

6. The DEIS is expected to be available in January 1986.

7. Questions about the proposed action and DEIS may be directed to: Keith Ryder, U.S. Army Corps of Engineers, NCCPD-S, 219 S. Dearborn St., Chicago, IL 60604 (312/353-7795).

Dated: August 12, 1985.

Frank R. Finch,

LTC, Corps of Engineers, District Engineer.

[FR Doc. 85-19945 Filed 8-20-85; 8:45 am]

BILLING CODE 3710-KN-M

Department of the Army

Meeting; Army Science Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 17-19 September 1985

Time: 0900-1700 hours (Open)

Place: The Pentagon, Washington, DC.

Agenda: The Chairperson and Subpanel Chairpersons of the 1985 Army Science Board Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts will meet to review Summer Study recommendations and implementation plan. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-19980 Filed 8-20-85; 8:45 am]

BILLING CODE 3710-08-M

Defense Communications Agency

Membership of the Defense Communications Agency SES Performance Review Board

AGENCY: Defense Communications Agency, DOD.

ACTION: Notice of Membership of the Defense Communications Agency SES Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the SES Performance Review Board (PRB) of the Defense Communications Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding the performance and performance awards to the Director, Defense Communications Agency.

EFFECTIVE DATE: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Pittman, Personnel Management Services Branch, Civilian Personnel Division, Personnel and Administration Directorate, Defense Communications Agency (202) 692–3794.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the SES Performance Review Board. They will serve a one-year renewable term, effective August 1, 1985.

PAULSON, A.G., Rear Admiral USN, Vice Director, Defense Communications Agency
SCHOTT, Joseph D., Brigadier General, USA, Director Defense Communication Systems Organization
HELMS, Robert W., Director, Resource Management
ISRAEL, David., Chief Engineer
MORRISS, Benham E., Deputy Manager, National Communications System
SIGNORI, David T., Jr., Director, Center for C³ Systems
STEVENER, Glenwood, M., Director, Systems Support Center

A.G. Paulson,

Rear Admiral, USN, Vice Director.

[FR Doc. 85–19953 Filed 8–20–85; 8:45 am]

BILLING CODE 3610–05–M

DEPARTMENT OF EDUCATION

National Advisory Council on Continuing Education; Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an Executive Committee meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 18–19, 1985.

ADDRESS: The Sheraton Grand Hotel, 525 New Jersey Ave., NW., Washington, DC. 20001–1527.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 500, Washington, DC 20036, Telephone: (202) 634–6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) the preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The Executive Committee will meet from 9:00 a.m. to 5:00 p.m. on September 18 and from 9:00 a.m. to 12:00 p.m. on September 19.

The proposed agenda includes:

—OECD Conference Plans
—Annual Report
—Council staff plans
—Other business

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 500, Washington, DC.

Signed at Washington, DC on August 16, 1985.

William G. Shannon,

Executive Director.

[FR Doc. 85–2000 Filed 8–20–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Establishment of Performance Review Board; Name of Board Members

Section 4314(c) of title 5, United States Code (as amended by the Civil Service Reform Act of 1978), requires that the Department of Energy establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s) to review and evaluate the initial rating and make a final written recommendation on performance appraisals assigned to the Departmental members of the Senior Executive Service. The Performance Review Board established for the Department of Energy also makes written recommendations to the Executive Personnel Board or the Chairman, Federal Energy Regulatory Commission, regarding Senior Executive Service performance bonuses, awards and performance-related actions.

Section 4314(c) of title 5, United States Code requires that notice of appointment of Performance Review Board members be published in the **Federal Register.** The following persons have been appointed to serve on the performance review board standing register for the Department of Energy: William S. Heffelfinger, Harry L. Peebles, J. Merle Schulman, Geraldine P. Flowers, Helene S. Markoff, Dean Helms, Charles R. Tierney, Andrew D. Eppelmann, Howard A. Raiken, John R. Franklin, Robert R. Kemps, Cleo N. Mitchell, Gene K. Fleming, Tony C. Upchurch, Robert E. Greeves, John W. Polk, James R. O'Gwin, Nathaniel H. Pierson, William V. Vitale, Gail Young.

Elizabeth E. Smedley, Arthur E. Guyer, Lynwood H. Henderson, McKinley E. Bryant, Carl W. Guidance, Thomas J. Davin, Berton Roth, Jr., Edwin R. Itnyre, John W. Shepard, Sr., George R. Haymond, David G. Newman, Vincent E. Mason, II, Eric J. Fygi, William H. Mellor, III, Henry K. Garson, Robert G. Rabben, James K. White, Melinda L. Carmen, Craig S. Bamberger, Ralph D. Goldenberg.

Catherine C. Cook, Matthew T. Abruzzo, Wayne I. Tucker, James W. Swafford, William R. Partridge, James U. DeFrancis, Wolfgang C. Repke, Richard T. Tedrow, Thomas L. Wieker, George

Breznay, Thomas O. Mann, George J. Bradley, Jr., Richard H. Williamson, Harold Jaffe, Barton R. House, Edward J. Hanrahan, James S. Herod, Howard F. Perry, William J. Silvey, Glen E. Sweetnam.

Robert W. Barber, Robert W. Davies, Edward R. Williams, Donna Fitzpatrick, Frank M. Stewart, Jr., Allan J. Streb, Melvin H. Chiogioji, William B. Williams, Robert L. San Martin, Howard S. Coleman, Frederick Morse, Beverly Berger, John Mock, Robert H. Annan, Louis V. Divone, James F. Decker, Delmar D. Mayhew, James R. Young, Antoinette G. Joseph, George Y. Jordy.

Donald K. Stevens, Ryszard Gajewski, James S. Coleman, Louis C. Ianniello, Bernard Hildebrand, William Wallenmeyer, John F. Clarke, Nelia H. Davies, Jacob W. Thiessen, Martin L. Minthorn, Jr., Robert W. Wood, James W. Culpepper, Francis Gilbert, John L. Gilbert, Richard D. Hahn, Maurice J. Katz, Richard L. Schriever, Ronald W. Cochran, David B. Leclaire, Robert A. O'Brien, Jr.

Martin Dowd, Jill Ellman Lytle, George Withers, Franklin E. Coffman, James W. Vaughn, Jr., Neal Goldenberg, Kermit O. Laughon, Donald K. Gestson John R. Longenecker, Donald Bauer, Jeremiah E. Walsh, Richard E. Harrington, Augustine A. Pitrolo, Sien W. Chun, Carl A. Corrallo, James W. Workman, Milton C. Lorenz, Avrom Landesman, Albert H. Linden, Jr., Kenneth A. Vagts.

Jimmie L. Peterson, John C. Geidl, Yvonne M. Bishop, Frank E. Lalley, Charles C. Heath, William D. Montgomery, Raymond G. Romatowski, Jack R. Roeder, William R. Cooper, Charles E. Troell, Hilary J. Rauch, Donald L. Bray, Edward G. Cumesty, John P. Kennedy, Andrew E. Mravca, Troy E. Wade, II, Nick C. Aquilina, Jon P. Hamric, Joe B. Lagrone, John T. Milloway, Jr.

James C. Hall, William P. Snyder, Richard A. DuVal, Vito A. Magliano, Donald W. Pearman, Jr., Peter J. Johnson, James J. Jura, Robert E. Ratcliffe, Marvin Klinger, Edward W. Sienkiewicz, William H. Claggett, IV, Joe D. Hall, Michael J. Lawrence, Robert H. Bauer, Edward S. Goldberg, Melvin J. Sires, III, Robert L. Morgan, Barry M. Erickson, Richard C. Anick, Dorner T. Schueller, Jr.

Thomas R. Clark, Ray D. Duncan, Robert M. Nelson, Jr., Harry C. Geisinger, Joseph W. Lagler, Robert J. Cross, Scott P. Anger, Andrew W. Battese, Ernest Baynard, Raymond A. Beirne, Charles E. Bullock, Robert W. Cackowski, Bernard B. Chew, Lynne H. Church, William Connelly, Marilyn L. Doria, Quentin A. Edson, Philip L. Essley, Jr., Russell E. Faudree, Jr., Jerome M. Feit.

Morris R. Fitzgerald, Lynn H. Hargis, Howard Kilchrist, Randolph E. Mathura, William G. McDonald, Louis W. Mendonsa, Gordon E. Murdock, Kristina K. Nygaard, Kenneth M. Pusateri, William Satterfield, Michael Schope, Leon J. Slavin, Joseph J. Softers, Robert J. Szekely, Anthony F. Toronto, Charles Teclaw, Maynard Ugol, Barbara J. Weller, Bernard Wexler, Kenneth A. Williams.

Issued in Washington, D.C. on August 12, 1985.

William S. Heffelfinger,

Director, Directorate of Administration.

[FR Doc. 85-19956 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate Restriction of Eligibility for Grant Award

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b), it intends to award, on a restricted eligibility basis, grants to higher education institutions from among Historically Black Colleges and Universities (HBCU's) in support of research associated with storage and disposal of commercial high level radioactive waste and spent nuclear fuel. The grants will be awarded to a limited number of proposals selected on the basis of scientific merit. Each grant will be for a 12-month period and will range from $20,000 to $50,000. Renewals will depend on the availability of funds and satisfactory performance of the first year of research.

Procurement Request No. 05-850R21581.000.

Project Scope

The Radioactive Waste Management Research Program was created to fulfill the following two primary objectives: (1) Assist in carrying out the provisions of the Nuclear Waste Policy Act (P.L. 97-425) of 1982, and (2) serve as a response to the President's Executive Order Number 12320 of September 15, 1981, which directs federal agencies to increase the participation of HBCU's in federally-funded research and to strengthen their capabilities to provide quality education. To achieve these objectives, the program supports relevant, mission-oriented R&D supportive of DOE's Office of Civilian Radioactive Waste Management mission goals.

Full-time faculty members working at Historically Black Colleges and Universities are eligible for participation as the principal investigator. Students, adjunct or part-time faculty, staff, and other qualified researchers (including consultants) may provide assistance to the research proposed.

All research must relate to problems associated with commercial high level waste or spent nuclear fuel. Typical areas of interest include:

Packaging and transportation of spent fuel;

Shielding and burial of waste packages for spent fuel and high level waste;

Repository siting activities, including geochemical, geohydrological and geophysical studies;

Monitored retrievable storage systems;

Advanced concepts in disposal and isolation systems, including sub-seabed disposal; and

Socioeconomic aspects of waste management.

Eligibility for participation in this research program is, therefore, restricted to Historically Black Colleges and Universities.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Burleson, Contracting Officer, Procurement and Contracts Division, U.S. Department of Energy, Oak Ridge Operations Office, Post Office Box E, Oak Ridge, Tennessee 37831, Telephone Number: (615) 576-0794.

Issued in Oak Ridge, Tennessee, August 8, 1985.

Peter D. Dayton,

Director, Procurement & Contracts Division.

[FR Doc. 85-20026 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

ENSTAR Corp.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order for $3,000,000 with ENSTAR Corporation and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATED: Comments by September 20, 1985.

ADDRESS: Send comments to: ENSTAR Consent Order Comments, Office of Special Counsel, Economic Regulatory

Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Edward P. Levy, Office of Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office (202/252–8900).

SUPPLEMENTARY INFORMATION: On July 10, 1985, the ERA executed a proposed Consent Order with ENSTAR Corporation. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed.

I. Background

In January 1983, ENSTAR Petroleum, Inc. was merged into McAlester Fuel Company (McAlester) and the name McAlester Fuel Company was changed to ENSTAR Petroleum, Inc. In December 1983, ENSTAR Petroleum, Inc. was merged into ENSTAR Corporation (ENSTAR) and became a division of ENSTAR.

On February 8, 1985, ERA issued a Proposed Remedial Order (PRO) to McAlester and ENSTAR Petroleum Company. The PRO alleged that during the period January 1978, through December 1980 (audit period), McAlester was engaged in the production and sale of crude oil as the operator of the Louviere ±1 lease, Brand ±1 lease and Bonin ±1 lease all in Louisiana, the Vice Shivers ±2 lease in Texas, the C.M. Wesson "B" lease in Arkansas, and the Karman 7–2 lease in Montana, and that McAlester had sold crude oil in excess of the price allowed by the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart D. Specifically, the PRO alleged that McAlester improperly classified and sold the oil from each of these leases as exempt "newly discovered crude oil," 10 CFR 212.79, when the oil should have been price controlled. In the PRO, ERA determined that during the audit period, McAlester had overcharged its customers by $2,012,677.05 exclusive of interest. The PRO contemplated that McAlester refund the overcharges, plus interest.

II. The Consent Order

The proposed Consent Order has been entered into in order to resolve all civil and administrative disputes, claims, and causes of action by DOE relating to McAlester's compliance with the federal petroleum price and allocation regulations during the period June 1979 through December 1980. Although ENSTAR contends that in all respects McAlester correctly construed and applied the applicable regulations, ENSTAR has entered into this proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes the proposed Consent Order is in the public interest and provides a satisfactory resolution of the issue raised by the audit.

III. Refunds

Under the terms of the proposed Consent Order, ENSTAR shall pay to DOE the sum of $3,000,000. The refund will be deposited in a suitable account for appropriate distribution by DOE.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C. on the 6th day of August 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85–19941 Filed 8–20–85; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 82–07–NG]

Natural Gas Imports; Texas Eastern Transmission Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Amendment to Application to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 15, 1985, of a second amendment to the application filed by the Texas Eastern Transmission Corporation (Texas Eastern) for authorization to import Canadian natural gas from TransCanada PipeLines Limited (TransCanada). Under this amendment, Texas Eastern seeks to import up to 50,000 Mcf per day of Canadian natural gas over a 15-year term term beginning on November 1, 1987, or the date of first delivery and ending on October 31, 2002. The initial delivered price of the gas would be $3.97 (U.S.) per MMBtu, which is subject to monthly adjustment and annual renegotiation.

The gas would be delivered via the proposed Niagara Interstate Pipeline System (NIPS).

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed not later than 4:30 p.m., September 20, 1985.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9492

Diana J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: On July 16, 1982, Texas Eastern filed an application with the ERA for authorization to import up to 100,000 Mcf per day of Canadian natural gas and additional daily volumes on a best efforts basis not to exceed ten percent of the maximum daily volumes. As more fully described in the notice issued by the ERA of Texas Eastern's original application (47 FR 39715, September 9, 1982), the imported volumes were to be purchased from TransCanada beginning on November 1, 1985, or as soon thereafter as possible, over a 14-year term from the date of first delivery pursuant to a proposed gas purchase contract between Texas Eastern and TransCanada. Under the gas purchase contract, Texas Eastern was required to take or pay for 75 percent of the daily contract quantity which TransCanada was obligated to deliver to Texas Eastern. In support of its application, Texas Eastern asserted that the proposed import of natural gas would be used to maintain its capability to meet system supply requirements at its

current level and to offset declining supplies of gas from existing sources. The price was proposed to be the Canadian border price then in effect, $4.94 (U.S.) per MMBtu.

On May 17, 1983, Texas Eastern filed an amendment to its application reducing the proposed term and volumes of the authorization to 12 years at a daily rate of up to 50,000 Mcf per day for nine years with declining volumes over the remaining three years. As more fully described in the notice of the amendment issued by the ERA (48 FR 26525, June 8, 1983), the primary term of the amended authorization requested was to begin November 1, 1985, or on the date of first delivery, and run in accordance with the following schedule which corresponds to the volumes which the Canadian National Energy Board (NEB) on January 27, 1983, authorized TransCanada to export to Texas Eastern:

	Daily[1] (Mcf)	Annual[1] (Mmcf)
Nov. 1, 1985 to Oct. 31, 1994	[illegible],000	18,300
Nov. 1, 1994 to Oct. 31, 1995	37,500	13,725
Nov. 1, 1995 to Oct. 31, 1996	[illegible],000	9,150
Nov. 1, 1996 to Oct. 31, 1997	12,500	4,575

[1] Approximate equivalent volumes. The actual volumes which TransCanada is authorized to export are stated in metaric standards.

Further, under the amendment, Texas Eastern asserted that the reduced volumes of imported gas would be transported from the import point near Niagara Falls, Ontario, to its pipeline facilities near Tamarack, Pennsylvania, via NIPS instead of through the proposed Trans-Niagara Pipeline as stated in its original application.[1] The price for the imported gas was to be the reduced border price of $4.40 (U.S.) per MMBtu.

On July 15, 1985, Texas Eastern filed a second amendment to its application requesting authorization to import up to 50,000 Mcf per day of Canadian natural gas commencing November 1, 1987, or the date of first delivery, with no decline in volumes and to extend the term of 15 years ending October 21, 2002. In addition, Texas Eastern seeks authorization to continue to import up to 50,000 Mcf per day during a one-year make-up period ending Ocober 31, 2003, to receive gas paid for but not taken during the primary term of the authorization.

The natural gas would be imported pursuant to a proposed gas purchase contract between TransCanada and Texas Eastern, which will establish a two-part demand/commodity price struture and an initial base border price for the gas of $3.50 (U.S.) per MMBtu. The initial base commodity price will be $2.55 per MMBtu and the initial base demand charge will be $.95 per MMBtu. Under the price determination formula in the proposed gas purchase contract, the initial delivered price of the natural gas in east coast markets will be $3.97 (U.S.) per MMBtu at a 100 percent load factor, which will be adjusted monthly to take into account changes in the average price of No. 2 heating oil and No. 6 fuel oil (New York Harbor) and several specific city gas prices for natural gas. The demand charge will change with changes in the fixed transportation and processing costs. However, when the demand charge is adjusted, an offsetting adjustment will be made in the commodity charge so that the 100 percent load factor price does not change.

The new contract will reduce Texas Eastern's take-or-pay obligation from 75 to 60 percent of daily contract quantity. Further, under the new arrangement, Texas Eastern will agree to purchase natural gas from TransCanada on an equitable basis with other long-term sources of natural gas. The price structure, take-or-pay obligations, and equitable purchase requirements may be renegotiated annually to take into account the price of competing fuels in fuels in Texas Eastern's markets.

Texas Eastern asserts that its import projects as amended provides adequate flexibility to permit pricing and volume adjustments so that the imported gas will remain competitive in Texas Eastern's markets over the life of the gas purchase contract. Based upon the historical reliability of Canadian import supplies. Texas Eastern also asserts that the gas supplies to be imported will be a secure, reliable source of gas supply. Texas Eastern therefore maintains that the importation will be in the public interest and urges expeditious issuance of the requested authorization.

The decision on this application will be made consistent with the Department of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should addess in their comments the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determinig the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–033–B, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., September 20, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

[1] Use of the NIPS system as modified to transport the reduced volumes of natural gas is the subject of an amended application which Texas Eastern filed with the Federal Energy Regulatory Commission (FERC), Docket No. CP83–170–000, on January 25, 1983. The proceedings at the FERC on Texas Eastern's application have been consolidated into an overall northeast market facilities proceeding entitled *Boundary, et al.*, Docket No. CP81–107–000, *et al.*

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Texas Eastern's application and amendments is available for inspection and copying in the Natural Gas Division Docket Room GA–033–B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 13, 1985.

Paula A. Daigneault,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–19958 Filed 8–20–85; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 82–05–NG]

Natural Gas Imports; Texas Eastern Transmission Corp.; Application To import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Amendment to Application to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 15, 1985, of a second amendment to the application filed by the Texas Eastern Transmission Corporation (Texas Eastern) for authorization to import Canadian natural gas from ProGas Limited (ProGas). Under this amendment, Texas Eastern seeks to import up to 50,000 Mcf per day of Canadian natural gas over a 15-year term beginning November 1, 1987, or the date of first delivery and ending on October 31, 2002. The initial delivered price of the gas would be $3.97 (U.S.) per MMBtu, which is subject to quarterly adjustment, renegotiation annually, and renegotiation whenever Texas Eastern makes a new purchased gas adjustment (PGA) filing with the Federal Energy Regulatory Commission (FERC) whereby its average gas purchase cost varies upward or downward by more than five percent. The gas would be delivered via the proposed Niagara Interstate Pipeline System (NIPS)

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., September 20, 1985.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9482

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667

SUPPLEMENTARY INFORMATION: On May 14, 1982, Texas Eastern filed an application with the ERA to import up to 100,000 Mcf per day of Canadian natural gas from ProGas, and additional unspecified volumes to be delivered, upon request, on a best efforts basis. As more fully described in the notice issued by the ERA of Texas Eastern's original application (47 FR 30279, July 13, 1982), the natural gas was to be purchased from ProGas beginning November 1, 1982, or as soon thereafter as possible, over a 20-year period ending on October 31, 2002. Under the terms of the gas sales agreement between Texas Eastern and ProGas, Texas Eastern was required to take or pay for 75 percent of the daily contract quantity which ProGas is obligated to deliver to Texas Eastern. The price was proposed to be the Canadian border price then in effect, $4.94 (U.S.) per MMBtu. Texas Eastern stated that the additional natural gas would be used to supplement its existing sources of gas supplies in order to continue to meet system requirements at current levels.

On May 17, 1983, Texas Eastern filed an amendment to its application reflecting a shorter term of 12 years, a later starting date of November 1, 1984, or such later date as deliveries commence, and a reduction in the volumes of Canadian natural gas applied for to 50,126 Mcf per day for nine years with declining volumes over the remaining three years of the authorization requested. The quantities of natural gas to be purchased from ProGas conformed to the volumes which the Canadian National Energy Board (NEB) on January 27, 1983, authorized ProGas to export to Texas Eastern. As more fully described in the notice of the amendment issued by the ERA (48 FR 28534, June 22, 1983), the NEB decision authorized ProGas to export to Texas Eastern a total quantity of 192,112 MMcf in accordance with the following schedule:

	Daily [1] (Mcf)	Annual [1] (Mmcf)
Nov. 1, 1984 to Oct. 31, 1993	50,126	18,297
Nov. 1, 1993 to Oct. 31, 1994	37,596	13,721
Nov. 1, 1994 to Oct. 31, 1995	25,064	9,146
Nov. 1, 1995 to Oct. 31, 1996	12,532	4,575

[1] Approximate equivalent volumes. The actual volumes which ProGas is authorized to export are states in metric standards.

Texas Eastern asserted that the reduced volumes of natural gas would be transported from the import point near Niagara Falls, Ontario, to its pipeline facilities near Tamarack, Pennsylvania, via NIPS.[1] The price of imported natural gas was to be the reduced border price of $4.40 (U.S.) per MMBtu.

On July 15, 1985, Texas Eastern filed a second amendment to its application requesting authorization to import up to 50,000 Mcf per day of Canadian natural gas with no decline in volumes over a term extended to 15 years commencing on November 1, 1987, or the date of first delivery and ending October 31, 2002. In addition, Texas Eastern seeks authorization to continue to import up to 50,000 Mcf per day of natural gas during a one-year make-up period ending October 31, 2003, to receive gas paid for but not taken during the primary term of the authorization.

The natural gas is proposed to be imported pursuant to an amended gas sales agreement between ProGas and Texas Eastern which establishes a two-part demand/commodity price structure and an initial base price at the border of $3.50 (U.S.) MMBtu. The initial base commodity charge will be $2.55 per MMBtu and the initial base demand charge will be $.95 per MMBtu. The price of the gas will be adjusted quarterly to reflect changes in the average price of No. 2 heating oil, No. 6 fuel oil, and several specific field prices for natural gas pursuant to a price determination formula in the amended gas sales agreement. The demand charge will charge with changes in the fixed transportation and processing costs. However, when the demand charge is adjusted, the commodity charge is adjusted in an equivalent amount in the opposite direction. The initial delivered price for the imported

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[1] Use of the NIPS system as modified to transport the reduced volumes of natural gas is the subject of an amended application which Texas Easten filed with the FERC, Docket No. CP83–170–001 on March 25, 1983. The proceedings at FERC on Texas Eastern's application have been consolidated into an overall northeast market facilities proceeding entitield *Boundary, et al,* Docket No. CP81–107–000, *et al.*

gas in east coast markets will be $3.97 (U.S.) per MMBtu, at a 100 percent load factor.

The new agreement reduces Texas Eastern's take-or-pay obligation from 75 percent to 60 percent of daily contract quantity. Further, Texas Eastern is required to purchase gas from ProGas on an equitable basis with comparably priced gas from other long-term sources. The price and the pricing provisions in the amended gas sales agreement may be renegotiated annually or whenever Texas Eastern makes a new purchased gas adjustment (PGA) filing with the FERC whereby its average gas purchase cost varies by more than five percent from the PGA filing in effect as of February 1, 1985, or the PGA filing in effect at the time of the last contract renegotiation. Under the amended agreement, the redetermined price must be comparable to the price of competing energy sources in Texas Eastern's markets.

Texas Eastern asserts that its import project as amended provides adequate flexibility to permit pricing and volume adjustments so that the imported gas will remain competitive in Texas Eastern's markets over the life of the amended gas sales agreement. Based upon the historical reliability of Canadian import supplies, Texas Eastern also asserts that the gas supplies to be imported will be a secure, reliable source of gas supply. Texas Eastern therefore maintains that the importation will be in the public interest and urges expeditious issuance of the authorization requested.

The decision on this application will be made consistent with the Department of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should address in their comments the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-23, Forrestal Building, 10000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., September 20, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

In an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Texas Eastern's application and amendments is available for inspection and copying in the Natural Gas Division Docket Room GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 13, 1985.

Paula A. Daigneault,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-19950 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-018; OFP Case No. 55034-9279-01, 02-33]

Acceptance of Petition for Exemption and Availability of Certification; Boise Cascade Corp.

AGENCY: Economic Regulatory Admininstration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Boise Cascade Corporation for its DeRidder, Louisiana Facility.

SUMMARY: On June 28, 1985, Boise Cascade Corporation compeleted filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent emergency purposes exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for two proposed standby gas-fired package steam boilers to be located at its DeRidder paper mill plant in DeRidder, Louisiana. Title II of FUA prohibits both the use of petroleum and natural gas as primary energy source in any new major fuel burning installation (MFBI) consisting of a boiler. Final rules setting forth Criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the emergency purposes exemption are found at 10 CFR 503.39.

The project for which the exemption is requsted consists of two proposed gas-fired boilers that would be operated only as standby units on an emergency basis when one of the paper mill waste wood boilers or the recovery boiler would have to be shut down and the remaining boilers wuld be incapable of producing the required process steam to mainain process heating needed for mill production. The proposed boilers, with a combined rate capacity of 330,000 1b/hr would operate a potential 409 hours per year.

ERA has determined that the petition is sufficient to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3 and 501.63. ERA retains the right, however, to request additional relevant

information from Boise Cascade Corporation at any time during the proceeding, a circumstances may require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and amy interested person may submit a written request that ERA convene a public hearing. The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the peatition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before October 7, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-FC-85-018 should be printed on the outside of the envolope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202)252-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202)252-6947

SUPPLEMENTARY INFORMATION: Title II of FUA prohibits the use of natural gas or petroleum in new MFBI's that consist of a boiler unless an exemption for such use has been granted by ERA. Boise Cascade Corporation has filed a petition with ERA requesting a permanent emergency purposes exemption to permit the use of two proposed standby gas-fired package steam boilers to be located at its DeRidder paper mill plant in DeRidder, Louisiana.

The proposed gas-fired units are rated at 165,000 pounds per hour (lb/hr) of steam each at 900 psig. Because the heat input into each unit, about 228 million Btu's per hour (MMBtu/hr), would exceed 100 MMBtu/hr each proposed boiler would be a major MFBI subject to FUA regulation. The proposed boilers are to be operated only as standby units on an emergency basis when one of the paper mill waste wood boilers or the recovery boiler would have to be shut down. The proposed boilers would operate a potential 409 hours per year. Their required fuel would be natural gas. It is economically nonfeasible to install coal or other mixtures boilers for standby emergency purposes.

Section 212(e) of the Act and 10 CFR 503.39 provide for a permanent emergency purposes exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.39(a), Boise Cascade Corporation has certified to ERA that:

1. It will operate and maintain the proposed unit for emergency purposes only; and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed boiler for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of 503.39(c) (and in addition to the certifications discussed above), Boise Cascade Corporation has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. Environmental certifications, as required under 10 CFR 503.13(b).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for emergency purposes, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Boise Cascade Corporation has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption. ERA will review the completed environmental checklist submitted by Boise Cascade Corporation pursuant to 10 CFR 503.13(b), together with other relevant information.

Unless it appears during the proceeding on Boise Cascade Corporation's exemption request that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that Boise Cascade Corporation is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on August 14, 1985

Robert L. Davies,

Director, Cool and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-19960 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-013; OFP Case No. 67042-9269-20-24]

Powerplant and Industrial Fuel Use; United Cogen, Inc. (UCI); Exemption

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting to United Cogen, Inc. (UCI), Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to United Cogen, Inc. (UCI). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a proposed electric powerplant to be located at the United Airlines Maintenance Operations Center (UALMOC), San Francisco International Airport in San Francisco, California. The final exemption order and detailed information on the proceeding are provided in the

SUPPLEMENTARY INFORMATION section, below.

DATES: The order shall take effect on October 20, 1985.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–045, Washington, DC 20585, Telephone (202) 252–4708

Steven E. Ferguson, Esq., Office of the General Counsel, Department of Energy, Forrestal Building—Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252–6947

SUPPLEMENTARY INFORMATION: On March 21, 1985, UCI petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a cogeneration facility consisting of a combustion turbine generator system, a supplementary-fired waste heat recovery boiler and a steam turbine generator system. The proposed powerplant is to be located at the UALMOC, San Francisco International Airport in San Francisco, California.

The UALMOC maintains an existing steam boiler plant to service its present steam demand. All current plant electrical requirements (approximately 9 MW) are presently supplied through Pacific Gas and Electric Company (PG&E) power grid. The cogeneration facility would eliminate the need for the UALMOC steam powerplant and the power from the new plant would be sold to PG&E.

The proposed facility would be fired primarily on natural gas, but would also be designed to burn a Jet A fuel for emergency standby in the event of a natural gas supply disruption. The supplementary-fired system (duct burner) will be exclusively fired on natural gas.

The project will exceed the heat input threshold and is expected to sell more than 50 percent of the net annual electrical power to PG&E causing the new cogeneration facility to be classified as a powerplant under FUA.

Basis For Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including UCI's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility, will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of certification in the **Federal Register** on May 8, 1985 (50 FR 16124), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on June 24, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that United Cogen, Inc., of San Francisco, California, has satisified the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to United Cogen, Inc., of San Francisco, California, to permit the use of natural gas as the primary energy source for its cogeneration facility at the United Airlines Maintenance Operations Center, San Francisco, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC on August 14, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–19961 Filed 8–20–85; 8:45 am]

BILLING CODE 6450–01–M

[Docket PP–76EA]

Order Authorizing the Exportation of Electric Energy to Canada; New England Power Pool

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Insurance of an Order in docket PP–76EA authorizing new exports of electricity to Canada by the New England Power Pool.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) is authorizing the New England Power Pool (NEPOOL) to export electric energy to Canada at the maximum rate of 725 megawatts (MW). The transmission facilities to be used to export this energy consist of a proposed ± 450 kV direct current (DC) transmission line extending from a converter terminal in Monroe, New Hampshire, through Vermont, to the U.S. international border near the town of Norton, Vermont. The construction and operation of these facilities have been authorized by Presidential permit PP–76.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Economic Regulatory Administration (RG–22), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–5935

Lise Courtney M. Howe, Office of General Counsel (GC), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202)252–2900

SUPPLEMENTARY INFORMATION:

Order Authorizing the Export of Electric Energy to Canada

On September 11, 1984, the New England Power Pool filed an application with the Economic Regulatory Administration in Docket PP–76 EA, pursuant to section 202(e) of the Federal Power Act, to transmit electric energy from the United States to Canada. In its application, NEPOOL requested authorization to export electric energy at the maximum rate of 725 MW. Electricity exports will be made in accordance with the terms and at the

rates set forth in the Interconnection Agreement and the Energy Banking Agreement between NEPOOL and Hydro-Quebec, both dated March 21, 1983. Copies of the agreements were filed with the application.

Under the Interconnection Agreement, NEPOOL may be called upon to supply emergency assistance and economy emergy to Hydro-Quebec on an "as available" basis. Under the Energy Banking Agreement, NEPOOL may (at its option) export low-cost nuclear and coal-fired energy to Hydro-Quebec during light load periods on the NEPOOL system. This energy would be stored in Hydro-Quebec reservoirs and returned to NEPOOL during peak load periods on the NEPOOL system, thereby displacing some of NEPOOL's high-cost oil-fired generation which is used to meet peak load requirements.

Notice of this application was given on October 29, 1984 (49 FR 43494) stating that any person desiring to be heard or to make any protest with reference to this application should on or before November 15, 1984, file with ERA a Petition to Intervene or protests in accordance with the Rules of Practice and Procedure (18 CFR 1.8 and 1.10).

On November 15, 1984, the Pennsylvania-New Jersey-Maryland Interconnection (PJM) filed a Petition to Intevene in this proceeding. PJM cited concern over the reliability impact of the proposed export. PJM and NEPOOL spent several months discussing PJM's concerns and on April 9, 1985, jointly filed with ERA a Stipulation which stated the terms under which PJM would withdraw its Petition to Intervene. These terms have been included as conditions of the authorization.

Finding

The Administrator finds that the proposed transmission of electric energy from the United States to Canada as limited herein and as hereinafter authorized will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Department of Energy. A staff analysis and recommendation in support of this finding have been made a part of the docket and are available upon request.

Order

(A) NEPOOL hereby is authorized to transmit electric energy from the United States to Canada in accordance with the terms and conditions set forth in the Interconnection Agreement and the Energy Banking Agreement between NEPOOL and Hydro-Quebec, both dated March 21, 1983.

(B) The electric energy which NEPOOL hereby is authorized to transmit from the United States to Canada shall be transmitted over facilities specified in the Presidential permit in ERA Docket PP–76, issued by the Administrator on April 6, 1984.

(C) The authorization herein granted may be modified from time to tme or terminated by further order of the Administrator, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential permit referred to in Paragraph (B) above.

(D) NEPOOL shall conduct all operations pursuant to the authorization herein granted in aecordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders adopted or issued by the Department of Energy.

(E) NEPOOL shall make and preserve full and complete records with respect to the sale of electrical energy to Canada. NEPOOL shall furnish a report to the ERA annually, on or before February 15, showing the gross amount of electricity delivered and the consideration received during each month of the calendar year.

(F) The following conditions apply to the export of electricity by NEPOOL utilizing the facilities authorized by Presidential permit PP–76:

(1) The export of electricity from NEPOOL to Canada shall not cause the spinning reserve on the NEPOOL system to fall below the Northeast Power Coordinating Council's spinning reserve criteria that is applicable at the time of the export.

(2) If all or part of NEPOOL's spinning reserve is being provided by other utilities, sufficient transmission tie line capability must be maintained so that NEPOOL may avail itself of those reserves if needed.

(3) NEPOOL shall interrupt or curtail the export of energy whenever and to whatever extent such energy is necessary to supply load to a requesting U.S. utility with which NEPOOL has an existing interconnection agreement and which is unable to obtain adequate supply elsewhere.

(4) The export of electric energy to Canada over the facilities permitted in Docket PP–76 nominally shall be limited to a rate of 650 MW during summer heavy load periods, 660 MW during winter heavy loand periods, and 690 MW during both summer and winter light load periods, unless higher limits are indicated by system operating conditions. However, at no time shall the export of electric energy to Canadá exceed a rate of 725 MW.

(5) NEPOOL shall cárry out its expressed commitment to the members of PJM to:

(a) Cooperate with the New York Power Pool (NYPP) and PJM in conducting joint studies to analyze the operation of their combined electrical system during the late 1980's under both normal and outage conditions with a view toward coordinated operation between pools. A major consideration should be the impact of deliveries from Hydro-Quebec at the five Northeast Power Coordinating Council locations scheduled to be in service at that time.

(b) Work with NYPP and PJM to develop operating procedures which will assure reliable operation of the interconnection and be equitable to all parties.

(c) Establish monitoring and communication facilities to implement the procedures in Subparagraph (b) above.

(d) Interrupt energy banking exports when necessary for reliability purposes on the northeast interconnected system.

Issued in Washington, DC, August 9, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85–20010 Filed 8–20–85; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Changes to DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are no longer included in these notices.

The listing that follows this notice indicates changes made during the quarter from April 1, 1985, through June 30, 1985, to the October 1, 1984, inventory of DOE information

collections originally published in the **Federal Register**, 49 FR 48792 (December 14, 1984). Previous updates were published in the **Federal Register**, see 50 FR 7104 (February 20, 1985), 50 FR 21927 (May 29, 1985) and 50 FR 24814 (June 13, 1985).

The listing includes new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Joyce Beattie, EI–73, Energy Information Administration, Mail Stop 1H–023, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–2313.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI–22, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, (202) 252–8800.

Issued in Washington, DC August 15, 1985.

Dr. H. A. Merklein,

Administrator, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Energy Information Administration			
EIA–714	Annual Electric Power System Report	19050161	Dec. 31, 1987	
EIA–758A	Natural Gas Well Producer/Purchaser Contract Report	19050164	Sept. 30, 1986	
EIA–758B	Natural Gas Purchaser Contract Report	19050169	do	
EIA–825	Petroleum Facility Operator Identification Survey	19050121	July 31, 1985	
	Federal Energy Regulatory Commission			
EIA–714(1)	Annual Electric Power System Report	19020140	Dec. 31, 1987	
FERC–16AT *	Federal Energy Regulatory Commission Natural Gas Monitoring Program	19020139	Nov. 30 1987	

*Indicates that no structured form is used in this collection.

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Conservation and Renewable Energy			
CE–189C	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Corporate REporting Form.	19040044	Apr. 30, 1986	10 CFR 445.21,.22,.26
CE–189P	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Plant Reporting Form.	19040044		10 CFR 445.21,.22,.26
CE–189S	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Sponsor Reporting Form.	19040044		10 CFR 445.21,.22,.26
	Energy Information Administration			
EIA–142	International Energy Agency Imports/Stocks-at-Sea Report	19050067	Sept. 30, 1985	10 CFR 209.34
EIA–182	Domestic Crude Oil First Purchase Report	19050143	do	
EIA–412	Annual Report of Public Electric Utilities	19050136	July 31, 1985	
EIA–739	Crude Watch Weekly Telephone Report	19050132	Aug. 31, 1985	
	Federal Energy Regulatory Commission			
EIA–194	Monthly Alternate Fuel/Incremental Price Monitoring Report	[illegible]	Apr. 30, 1986	
FERC–500*	Applications For License For Water Power Projects With More Than 5MW Capacity	19020058	Mar. 31, 1986	18 CFR 4.40–4.41, 4.50, [illegible]
FERC–510*	Application for Surrender of License	19020068	May 31, 1986	18 CFR 6.1, 6.3
FERC–537*	Gas Pipeline Certificates	19020060	Apr. 30, 1986	18 CFR 2.79; 157.1, 157.5–157.22, 157.100, 157.201–157.218; 159.1, 284.107, [illegible] 127
FERC–537*	Gas Pipeline Certificates	[illegible]	do	18 CFR 2.79; 157.1, 157.5–157.22, 157.100, 157.201–157.218; 159.1, 284.107, [illegible] 127
FERC–539*	Gas Pipeline Certificate: Import/Export Related	19020062	do	18 CFR 153.2–153.4, 153.11–153.12
FERC–576*	Report By Certain Natural Gas Companies On Service Interruptions	19020004	Mar. 31, 1986	[illegible] CFR 260.9
[illegible]	General Interrogatory Fuel Purchase Practices	19020137	Sept. 30, 1985	

*Indicates that no structured form is used in this collection.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No	Title	OMB control No	Expiration date	CFR citation
None				

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No	Title	OMB control No	Discontinued date	CFR citation
	Energy Information Administration			
EIA-788C	Nonresidential Building Energy Consumption Survey-Energy Supplier Forms	19050145	Apr. 30, 1985	

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE Nos. as previously listed	Changes
EIA-23P	New OMB #1905-0067 and expiration date of 12/31/85
EIA-64A	New OMB #1905-0067 and expiration date of 12/31/85
EIA--254	New OMB #1905-0160
EIA851	New OMB #1905-0160 and new expiration date of 12/31/87
FERC-1	Revisions to form and now cleared through 9/30/85
FERC-541 *	Revision to rule and new expiration date of 3/31/88
FERC-542I *	Combined into FERC-542 clearance
FERC-542-PGA *	
FERC-542-RC *	
FERC-549 *	Revision to rule and new expiration date of 5/31/88
FERC-556 *	Revision to rule and new expiration date of 5/31/88

* Indicates that no structured form is used in this collec tion

[FR Doc 85-19955 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of July 1 Through July 5, 1985

During the week of July 1 through July 5, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Government Sales Consultants, Inc., 07/01/85, HFA-0296

Government Sales Consultants, Inc. filed an Appeal from a denial by the Bonneville Power Administration of a Request for Information which the firm had submitted under the Freedom of Information Act. The firm sought information concerning a request for contract proposals. In considering the Appeal, the DOE found that the initial determination was inadequate because it did not explain the basis for withholding the documents pursuant to Exemption 4. Accordingly, the case was remanded to the Bonneville office for a new determination.

David Rodriquez Soler, 07/01/85, HFA-0294

David Rodriquez Soler filed an Appeal from a partial denial by the Area Manager of the Princeton Area Office (PAO) of a Request for Information which Mr. Soler had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that documents generated by a DOE contractor were not agency records and, therefore, were not subject to disclosure under the FOIA. The DOE further determined that the search conducted by the PAO for responsive documents was adequate. Accordingly, the Appeal was denied.

Remedial Orders

Hudson Oil Company, Hudson Refining Company, Inc., 07/01/85, HRO-0141

Hudson Oil Company objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on May 23, 1983. In the PRO, the ERA found that Hudson had miscertified crude oil in order to avoid entitlements purchase obligations under the Entitlements Program.

On August 15, 1984, in response to a motion by the ERA, the Office of Hearings and Appeals joined Hudson Refining Company, Inc., a subsidiary of Hudson, as a respondent to the PRO. Hudson Refining adopted the Statement of Objections filed by Hudson. Hudson Refining also individually objected to its joinder in the proceeding, contending that as a bankrupt entity it could not be held liable for violations committed prior to its filing for bankruptcy.

In considering the firms' Statements of Objections, the DOE found that the firms' unsupported objections to the PRO did not satisfy the firms' burden of proof pursuant to 10 CFR § 205.192A. As a result, the DOE found that neither firm had presented sufficient evidence to successfully rebut the prima facie case of a violation presented by the ERA in the PRO. With respect to the liability issue, the DOE found that both firms had demonstrated involvement in the matters that were the subject of the PRO and that a firm is not relieved of liability for violations committed prior to its filing for bankruptcy. Accordingly, the DOE found that Hudson Refining was properly joined in the proceeding. The DOE therefore concluded that the PRO, as amended, should be issued as a final order.

P & R Trading Company, 07/01/85, HRO-0091

P & R Trading Company objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on September 9, 1982. In the PRO, the ERA found that P & R's crude oil reselling activities had violated the layering rule, 10 CFR 212.186, which prohibited crude oil resellers from applying a markup in any crude oil sales transaction in which they did not perform any service or function that was historically and traditionally performed by crude oil resellers. The DOE found no merit to P & R's arguments that the layering regulation was not validly promulgated and that DOE enforcement actions against crude oil resellers were discriminatory. In addition, the DOE found that the layering rule required crude oil resellers to provide some tangible service which facilitated the movement of crude oil from the producer to the refiner or which provided some other function of economic benefit to the crude oil market, and that P & R had not provided such a service or function. Accordingly, the DOE found that P & R's crude oil reselling activities had violated the layering rule. The DOE, however, reduced the amount of P & R's resulting refund obligation to the amount of P & R's net markup on all of its transactions because the ERA had not convincingly traced each transaction from the seller of the crude oil to

P & R to its purchaser. As so modified, the PRO was issued as a final Order.

Interlocutory Order

Texaco Inc./Economic Regulatory Administration, 07/02/85, HRD–0282, HRH–0035, HRZ–0256

Texaco Inc. and the Economic Regulatory Administration filed several motions in connection with an enforcement proceeding concerning a Proposed Remedial Order issued to Texaco on May 1, 1979. First, Texaco filed a motion seeking an evidentiary hearing on 16 specified issues. Texaco also requested an evidentiary hearing regarding its historic and consistent accounting for its regulatory properties in the event that the DOE grants a pending ERA motion to accord no weight to affidavits submitted by Texaco to support its historic and consistent accounting practices. The DOE granted a hearing regarding certain of the 16 specified issues and denied a hearing regarding the remainder of those issues. The DOE held that it would not decide ERA's pending motion regarding Texaco's affidavits until it reached the merits of this proceeding, and determined to hold Texaco's request for an evidentiary hearing regarding its accounting practices in abeyance to permit Texaco to conform that request to the DOE procedural regulations. In addition, the DOE denied a motion in which ERA sought to strike from the record seven documents that Texaco submitted with its motion for evidentiary hearing. The DOE also denied a motion for discovery filed by Texaco that sought information from ERA and OHA regarding the extent to which Texaco had proven its historic and consistent accounting practices for purposes of this enforcement proceeding.

Implementation of Special Refund Procedures

Good Hope Refineries, 07/03/85, HEF–0211

The DOE issued a final Decision and Order setting forth procedures to be used in filing applications for refund from settlement funds obtained under a consent order with Good Hope Refineries, and its subsidiary, Gasland, Inc. The funds will be available to customers who purchased covered petroleum products from Good Hope during the period August 1973 through July 1976. As of May 31, 1985, the funds plus interest equalled $2,281,788. The specific information required in applications for refund, which may now be filed, are set forth in the Decision and Order.

Red Triangle Oil Co., 07/05/85, HEF–0162

The DOE issued a Decision and Order Implementing a plan for the distribution of $45,354.76 ultimately to be received as a result of a consent order entered into by Red Triangle Oil Co. and the DOE on February 24, 1981. The DOE determined that the Red Triangle settlement funds should be distributed to injured customers who purchased motor gasoline from Red Triangle during the November 1, 1973, through December 31, 1978 consent order period. The DOE audit identified 46 customers who purchased motor gasoline during that period. Those purchasers may file applications for refund. In addition, firms not identified by the DOE audit may submit claims. If Red Triangle has not paid the full amount due when refund applications are approved, successful claimants will receive a pro rata share of the refunds due them and will receive the remainder when additional funds are received by the DOE. More specific information about applications for refund, which may now be filed, is provided in the Decision and Order.

Refund Applications

Union Texas Petroleum Corporation/ Enterprise Products Company, et al., 07/03/85, RF140–1, et. al.

The DOE issued a Decision and Order approving 17 Applications for Refund filed by purchasers of Union Texas Petroleum Corporation (UTP) petroleum products in a special refund proceeding (Case No. HEF–0009) established pursuant to 10 CFR Part 205, Subpart V, in connection with a 1982 consent order entered into by UTP and the DOE. All of the applications in the proceeding were resellers of UTP products and elected to apply under both the volumetric and threshold presumptions set forth in the Decision and Order establishing the UTP special refund proceeding, *Union Texas Petroleum Corp.*, 12 DOE ¶ 85,166 (1985). In considering the applications, the DOE concluded that the applicants should receive refunds based upon the total volume of their eligible UTP purchases. The refunds granted in this proceeding total $35,993.

Warren Holding Company/Johnson's Garage, 07/01/85, RF169–1

The DOE issued a Decision and Order approving an Application for Refund filed by Johnson's Garage in connection with settlement funds obtained as a result of the consent order entered into by Warren Holding Company and DOE. After analyzing the Johnson's Garage claim, the DOE found that the firm qualified for a refund under the procedures for small claims set forth in *Warren Holding Co.*, 13 DOE ¶ 85,061 (1985). The refund granted was $1,667.

Dismissals

The following submissions were dismissed:

Name and Case No.

Atlantic Richfield Company, HRO–0027, HRD–0082, BRO–1322, HRO–0217, HRO–0219, HRD–0258, HRD–0259, HRO–0223, HRD–0264, HRZ–0049, BRO–1243, BRD–1322, HRD–0252, HRD–0266, HRO–0220, HRO–0221, HRO–0224, HRH–0264, HRD–0085, BRH–1243, BRH–1322, HRO–0218, HRH–0219, HRD–0240, HRO–0222, HRO–0225, HRX–0104, HRD–0223, HRH–0223, HRD–0233
Gary V. Burrows, Inc., HEE–0148
I–65 Gulf, RF40–2274
James Lee Gulf Service, RF40–2442
Jerry's Biltmore Gulf, RF40–2406
Joubert's Gulf, RF40–2403
Kenny Larson Oil Company, HEF–0104
Maxwell Oil Company, HEF–0125
Northern Oil/Bray Company, HEF–0140
Ozone Oil Company, RF40–2785
Ranchers Oil Company, HEF–0160

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 12, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85–20011 Filed 8–20–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding an $83,646.27 consent order fund to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Hicks Oil and Hicks Gas Company, Inc. of Roberts, Illinois (Case No. HEF–0091).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to Hicks Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case No. HEF–0091.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 100 Independence Avenue, SW., Washington, DC 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Hicks Oil and Hicks Gas Company, Inc. (Hicks) of Roberts, Illinois and the DOE which settled possible regulatory violations in the firm's sales of propane during the consent order period, November 1, 1973 through December 31, 1975.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute

the escrow account funded by Hicks pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Hicks propane during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: August 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 13, 1985.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Hicks Oil and Hicks Gas Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0091.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983 requesting that the OHA implement a proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Hicks Oil and Hicks Gas Company, Inc. (Hicks) of Roberts, Illinois.

I. Background

Hicks is a "reseller-retailer" of refined petroleum products, as this term was defined in 10 CFR 212.31, and was therefore subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of Rocket Supply Company (Rocket), a wholly owned subsidiary of Hicks, was conducted for the period November 1, 1973 through December 31, 1975 (the audit period). Subsequently, the ERA issued a Notice of Probable Violation (NOPV) to Hicks on February 8, 1980. In the NOPV, the ERA alleged that, during the audit period, Rocket overcharged its wholesale customers by $369,029.40 in sales of propane. On October 16, 1981, Hicks entered into a Consent Order with the DOE in order to settle all disputes and claims between Hicks and the DOE regarding Rocket's compliance with the DOE price regulations in sales of propane during the audit period (hereinafter known as the consent order period). In the Consent Order, Hicks agreed to remit $69,028.58 to the DOE for deposit in an interest bearing escrow account. The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. Additionally, the Consent Order states that Hicks does not admit that it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Hicks consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

Insofar as possible, the consent order fund should be distributed to those customers of Hicks who were injured by the alleged price violations.[1] In this case, the ERA audit file identifies twenty wholesale customers who were allegedly overcharged by Rocket in sales of propane and also lists the alleged overcharge amounts.[2] In our view, these identified customers are most likely the parties who were adversely affected, at least initially, by any overcharges by Hicks.[3] These firms are listed in the Appendix to this Decision and Order.

The Rocket customers identified in the ERA records fall into one of two categories: End-user or reseller, i.e., retailer or wholesaler. As in prior proceedings, we propose that resellers be required to demonstrate that they did not pass on to their customers the price increases implemented by Rocket. In order to qualify for a refund, resellers must show that, during the consent order period, they would have maintained their prices for propane at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that, at the time it purchased propane from Rocket, market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we propose to adopt a presumption of injury with respect to small claims by resellers. The use of presumptions in refund cases is specifically authorized

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[1] In past Decisions, this Office has made a finding that affiliates of a consent order firm, even though they may have made "purchases" from the firm during the consent order period, are not eligible for refunds because the refund would effectively inure to the consent order firm. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 at 88,359 n.2 (1984). We propose to adopt that finding in this Decision as well.

[2] Although the Hicks Consent Order does not mention Rocket by name, it expressly states that it is intended to settle the DOE's claims against Hicks with respect to the "specified transactions which allegedly resulted in the overcharges. Consent Order ¶¶ 4 and 5. On the basis of the language in the Consent Order and the allegations set forth in the NOPV, we have determined that the Consent Order is limited to settling the claims and disputes regarding Rocket's alleged overcharges to wholesale customers. Accordingly, this proposed refund proceeding will establish procedures for the disbursement of funds to this defined group only.

[3] Rocket's sales to another firm, Bumps LP Gas (Bumps), are documented in the ERA audit file. However, according to these records, Bumps was not overcharged. We therefore propose that Bumps not be eligible for a refund in this proceeding.

by applicable DOE procedural regulations. 10 CFR 205.282(e).

We propose to adopt a presumption in this case that reseller claimants seeking smaller refunds were injured by the Rocket pricing practices settled in the Hicks Consent Order. This presumption is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions for small claims is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and use its limited resources more efficiently. Finally, we know that these smaller claimants did purchase propane from Rocket and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claim presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the small claims presumption we are adopting, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[4] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case where the proposed maximum refund amounts are fairly low, and the time period of the Consent Order is quite distant, we believe that the establishment of a presumption for injury for all claims of $5,000 or less is reasonable.[5] *See id; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

IN addition to the presumption for small claims, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office Of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Rocket propane need only document their purchase volumes from Rocket to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased propane to be consumed as fuel will not be considered as consumers for purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985).

IV. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. We propose that the maximum refund for the firms listed in the Appendix be based on the amounts they were allegedly overcharged, as indicated in the Hicks NOPV. Although we recognize that the NOPV and ERA audit files do not provide conclusive evidence as to the identity of all allegedly overcharged parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this information in the present case. Specifically, we note that the ERA audit was very narrow in scope, that an NOPV had been issued, that the Consent Order was limited to "specified transactions" which occurred during the same time period as the audit, and that Rocket had a relatively small number of customers. Because of these factors, the information contained in the NOPV can be used to fashion a refund plan which will correspond closely to the injuries experienced. *See, e.g., Marion.* To calculate the size of each applicant's potential refund, we propose to multiply the alleged overcharge amount for each eligible claimant by 0.22666, a pro rata factor representing the portion of the total alleged overcharges that Hicks has remitted to the DOE ($83,646.27 divided by $369,029.40).[6] The potential refunds for those customers listed in the Hicks NOPV are set forth in the Appendix to this Decision.[7] In addition, successful refund applicants will receive a pro rate share of the interest which has accrued since the deposit of the funds into the escrow account.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed

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[4] Resellers that made spot purchases from Rocket will be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, spot purchasers would not have made spot market purchases of a firm's product at increased prices unless they were able to pass through to their customers the full amount of the firm's selling price. *See Vickers*, 8 DOE at 85,396–97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser must show that it absorbed the alleged overcharges and should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

[5] In the present case, only five of the twenty Rocket customers listed in the Appendix are eligible to apply for refunds over $5,000. If these claimants choose to apply for a refund based on the threshold level, they will not be required to make a showing of injury beyond volumes purchased.

[6] Hicks remitted the consent order amount to the DOE in installment payments beginning April 14, 1982 and ending December 3, 1984. The total amount that Hicks remitted to the DOE ($83,646.27) reflects the interest paid on these installment payments.

[7] The amounts set forth in Appendix A provide only an approximation of the refund each claimant would receive, exclusive of interest.

procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the **Federal Register**, copies will be provided to the Rocket customers whose names and addresses we have obtained from the ERA audit files.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage of this refund proceeding is completed.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Hicks Oil and Hicks Gas Company pursuant to the Consent Order executed on October 16, 1981 will be distributed in accordance with the foregoing Decision.

APPENDIX

Customer	Potential Refund
Allerton Supply co	$8,384.00
Bloomfield LP Gas	51.00
Boerne Bros. Propane	20,051.00
Bryant & Son LP Gas Co	1,971.00
Cender Gas Co	20,309.00
Flessner & Dutsman	405.00
Hicks Grain Terminal	336.00
Hi Lo Gas Co	2,769.00
Hook Bros. LP Gas Co	36.00
Lake Fork Grain Co	53.00
Mt. Pulaski Products	359.00
Mainline Petroleum	569.00
Patterson Bros. Propane	16,667.00
C.T. Rees & Son	557.00
Scranton Industries	[illegible]
Southern States Co-op	1,849.00
W.E. Stoll Coal & Gas Co	8,685.00
Tate's Blue Flame Gas	27.00
Wescove School	[illegible]
Zinale Farms	322.00
Total	83,644.00

[FR Doc. 85–20012 Filed 8–20–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE

ACTION: Notice Implementation of Special Refund Procedures.

SUMMARY: The office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $82,500 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with Appalachian Flying Service, Inc. of Blountville, Tennessee. The funds will be available to customers who purchased aviation gasoline or aviation jet fuel from Appalachian during the period November 1, 1973 through April 30, 1977.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Appalachian Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case Number HEF–0028.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Appalachian Flying Service, Inc. of Blountville, Tennessee. This Consent Order settled possible pricing violations with respect to Appalachian's sales of aviation gasoline and aviation jet fuel during the period November 1, 1973 through April 30, 1977. The consent order fund is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order fund was issued on May 10, 1985. 50 FR 20838 (May 20, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from customers who purchased avitation gasoline or aviation jet fuel from Appalachian during the period November 1, 1973 through April 30, 1977. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: August 13, 1985.

George B. Brezany,

Director, Office of Hearings and Appeals.

August 13, 1985.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Appalachian Flying Service, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0028.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Appalachian Flying Service, Inc. (Appalachian) of Blountville, Tennessee.

I. Background

Appalachian is a "retailer" of "aviation gasoline" and "aviation jet fuel," as these terms were defined in 10 CFR § 212.31. An ERA audit of Appalachian's operations during the period November 1, 1973 through April 30, 1977 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations. In a Proposed Remedial Order (PRO) issued to Appalachian on March 1, 1982, the ERA alleged that during the audit period Appalachian overcharged its customers by $153,569.79 in sales of aviation gasoline and aviation jet fuel. In order to settle all claims and disputes between Appalachian and the DOE regarding Appalachian's compliance with the DOE price regulations in sales of aviation gasoline and aviation jet fuel during the audit period, Appalachian entered into a Consent Order with the DOE on July 6, 1983.[1]

Under the terms of the Consent Order, Appalachian agreed to remit $82,500 to the DOE for deposit in an interest-bearing escrow account pending

[1] Although the Consent Order states that the audit period ended on April 20, 1977, the ERA audit files and the PRO cover the period November 1, 1973 through April 30, 1977. It therefore apprears that the date stated in the Consent Order (April 20, 1977) is a typographical error. Accordingly, we will treat the consent order period as cotermious with the audit period set forth in the ERA audit files and the PRO.

distribution by the DOE.[2] The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. In addition, the Consent Order states that Appalachian does not admit that it committed any such violations.

On May 10, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 50 FR 20838 (May 20, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of any alleged overcharges made by Appalachian during the consent order period.

A copy of the PD&O was published in the **Federal Register**, and comments were solicited regarding the proposed refund procedures. While none of Appalachian's customers filed comments on the proposed procedures, comments were filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These comments, however, discuss the distribution of any residual funds in a subsequent stage of the proceeding. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the refund proceeding. This Decision sets forth the information that a purchaser of aviation gasoline or aviation jet fuel from Appalachian should submit in an Application for Refund in order to establish eligibility for a portion of the consent order fund. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address at this time the issues raised by the States' comments concerning the disposition of any funds remaining after all the meritorious first stage claims have been paid. Since we have received no other comments regarding the issues raised in the PD&O, we will adopt the proposed refund procedures set forth below.

[2] As of June 30, 1985, Appalachian had paid $24,958.32 to the DOE escrow account.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan for distribution of funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who were injured by alleged or adjudicated violations, or is unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in the PD&O, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Appalachian consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

As in many prior special refund cases, we will adopt a volumetric refund presumption. As we stated in the PD&O, presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR § 205.282(e). The volumetric refund presumption is designed to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. In the present case, the audit records do not identify any purchasers of petroleum products from Appalachian or list any alleged overcharge amounts by customer. The information available is therefore insufficient to base refunds on the amount each individual applicant was allegedly overcharged. As proposed in the PD&O, we will therefore use the volumetric method to allocate the consent order fund.[3] To determine the volumetric factor, the consent order fund ($82,500) will be divided by the total volume of aviation gasoline and aviation jet fuel sold by Appalachian during the consent order period (2,257,275 gallons), resulting in a per gallon refund amount of $0.03655.[4] The interest which has accrued on the money since the deposit of the funds into the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

In addition to the volumetric refund presumption, we are making a finding that Appalachian's customers, all of whom were end-users or ultimate consumers of aviation gasoline or aviation jet fuel, were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group, including businesses that are unrelated to the petroleum industry, generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88.209 (1984), and cases cited therein. We have therefore concluded that purchasers of aviation

[3] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate injury as a result of Appalachian's pricing practices during the consent order period. A refund application for an amount greater than the amount calculated using the volumetric presumption must document the disproportionate impact of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88.233–34 (1984); *Richardson Carbon and Gasoline Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88.184 (1984).

[4] In the event that insufficient funds are in the escrow account to pay all successful claimants, we will reduce the volumetric refund amount accordingly.

gasoline and aviation jet fuel from Appalachian need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

We will also adopt our proposal to establish a minimum amount of $15 for refund claims.[5] We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Appalachian consent order fund. Accordingly, we shall now accept applications for refunds from customers who purchased aviation gasoline or aviation jet fuel from Appalachian during the consent order period.

In order to receive a refund, each applicant will be required to report the monthly volume of aviation gasoline or aviation jet fuel purchased from Appalachian for which it is claiming a refund. In addition, each applicant must state whether there has been a change in ownership of the firm since the audit period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. Each application must be in writing, signed by the applicant, and specify that it pertains to the Appalachian Consent Order Fund, Case No. HEF-0028. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. § 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It is therefore ordered that:

(1) Applications for refunds from the consent order fund remitted to the Department of Energy by Appalachian Flying Service, Inc. pursuant to a Consent Order executed on July 6, 1983 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: August 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-20013 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

[5] Under the volumetric refund level set forth in this Decision, an applicant must have purchased at least 410 gallons of aviation gasoline and/or aviation jet fuel during the consent order period in order to be eligible for a refund above the minimum amount of $15.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00211; FRL-2884-6]

Administrator's Pesticide Advisory Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: The Administrator's Pesticide Advisory Committee (APAC) will hold a meeting to discuss the recommendations of the EPA State FIFRA Issues Research and Evaluation Group (SFIREG) Applicators Certification and Training Task Force and the Labeling Subcommittee of the APAC. General activities of the Office of Pesticide Programs (OPP) may also be discussed. The meeting will be open to the public.

DATE: The meeting will take place on Wednesday, September 18, 1985, at 9:00 a.m. and will adjourn by 4:30 p.m.

ADDRESS: The meeting will be held in: Rm. M-3906-08, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Betty Winter, Executive Secretary, Administrator's Pesticide Advisory Committee (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-639A, 401 M St., SW., Washington, DC 20460 (202-382-2916).

SUPPLEMENTARY INFORMATION: The APAC will begin with opening remarks by Dr. Dale L. Stansbury, the Chairperson for the APAC, and Dr. John A. Moore, Assistant Administrator for Pesticides and Toxic Substances. The Agency will seek the APAC's comments on a report developed by the EPA SFIREG Applicator's Certification and Training Task Force. The report contains recommendations for improving the certification and training programs for applicators/users of restricted use pesticides. Dr. Moore established this task force in response to APAC recommendations and concerns about current certification and training programs. The task force was made up of representatives from EPA headquarters and regions, state lead agencies, state cooperative extension services, and the U.S. Department of Agriculture.

The APAC Subcommittee on Labeling will also present to the full Committee a report it prepared for the Agency on pesticide communication networks and recommendations for improving the effectiveness of existing networks.

Copies of the reports and an agenda will be available at the meeting.

The meeting will be open to the public, and time will be set aside for public comments on issues relevant to topics of discussion. Any member of the public wishing to present an oral or written statement relating to the Committee's topics of discussion for this meeting should contact the APAC Executive Secretary at the address or telephone number listed above.

Dated: August 9, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-19743 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[PF-416; FRL-2861-2]

Certain Companies; Pesticide Tolerance Petitions

Correction

In FR Doc. 85-17880 appearing on page 31026 in the issue of Wednesday, July 31, 1985, make the following correction: In the third column, in the second paragraph, in the third line, "016 ppm" should read "0.16 ppm".

BILLING CODE 1505-01-M

[OPP-30000/8D FRL 2873-3]

Intent To Cancel Registration of Certain Pesticide Products Containing Sodium Fluoroacetate ("1080"); Availability of Position Document 4

Correction

In FR Doc. 85-18136 beginning on page 31012 in the issue of Wednesday, July 31, 1985, make the following corrections:

1. On page 31013, in the first column, in the sixth line, "40935" should read "50935".

2. On page 31017, in the second column, in paragraph 2, in the last line, "statement" should read "statements".

BILLING CODE 1505-01-M

[FRL-2885-5]

Proposed Determination To Prohibit or Restrict the Specification of an Area for Use as a Disposal Site; Notice of Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 404(c) of the Clean Water Act authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites in the waters of the United States (including wetlands) if it determines, after notice and opportunity for hearing, that use of the site for disposal would have an unacceptable adverse impact on various resources, including wildlife. EPA's Regional Administrator, Region I, has concluded that he has reason to believe that a proposal by The Pyramid Companies ("Pyramid") to fill portions of Sweedens Swamp in Attleboro, Massachusetts, for the purpose of building a shopping mall, may have unacceptable adverse impacts on wildlife and possibly other resources. Accordingly, EPA is announcing the Regional Administrator's proposed determination to prohibit or restrict the filling of Sweedens Swamp and is seeking public comment on his proposal.

Purpose of Public Notice

EPA would like to obtain comments on this proposed determination to prohibit or restrict the disposal of dredged or fill material into Sweedens Swamp, and on whether of not the impacts of such disposal would represent an unaccepable adverse effect as described in section 404(c) of the Clean Water Act.

DATES: All comments should be submitted by 60 days from publication of this notice to the person listed under **ADDRESSES.** A public hearing will be held on September 26, 1985, from 7:00 to 11:00 p.m.

Public Hearing

A public hearing will be conducted on September 26, 1985, from 7:00 to 11:00 p.m., in the Attleboro High School Auditorium, located on Rathbun Willard Drive, in Attleboro, Massachusetts.

Written comments may be submitted prior to the hearing. Both written and oral comments may be presented during the hearing. The hearing record will remain open for the submittal of written comments until the close of the sixtieth day after publication of this notice, or possibly a later date announced at the hearing.

The Regional Administrator's designee will be the Presiding Officer at the hearing. Any person may appear at th hearing and present oral or written statements, and may be represented by counsel or other authorized representative. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentations. No cross examination of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant.

ADDRESSES: Comments should be sent to Linda M. Connolly, U.S. Environmental Protection Agency, WOB-2103, J.F.K. Federal Building, Boston, MA 02203. Copies of comments submitted to EPA may be reviewed at the same address. EPA regulations provide that a reasonable charge may be made for copying.

The public hearing will be held in the Attleboro High School Auditorium, located on Rathbun Willard Drive, in Attleboro, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Douglas Thompson, U.S. EPA, Region I, J.F. Kennedy Federal Building, Boston MA 02203; (617) 223-5600.

SUPPLEMENTAL INFORMATION:

I. Description of the Section 404(c) Process

The Clean Water Act, 33 USC 1251 *et seq.*, prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, section 404. Section 404 authorizes the Secretary of the Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites, through the application of environmental guidelines developed by EPA in conjunction with the Secretary [1] or where warranted by the economics of anchorage and navigation, except as provided in section 404(c). Section 404(c) authorizes the Administrator of EPA, after notice and opportunity for hearing, to prohibit or restrict the use of a defined site for disposal of dredged or fill material, where he determines that such use would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

Regulations published at 40 CFR Part 231 establish the procedures to be followed by EPA in exercising its section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have an unacceptable adverse effect on the pertinent resorces, he may begin the process by notifying the Corps of Engineers and the applicant, if any, that he intends to issue a proposed determination under section 404(c). Unless the applicant or the Corps persuades the Regional Administrator that there will not be unacceptable adverse impacts or identifies corrective measures satisfactory to the Regional Administrator within 15 days, he then publishes a notice in the **Federal Register** of his proposed determination soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator decides whether to withdraw his proposed determination or prepare a recommended determination. If he prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for External Affairs at EPA's headquarters for a final decision affirming, modifying, or rescinding the recommended determination. The Corps of Engineers and the applicant are provided with another opportunity for consultation before this final decision is made.

II. Description of the Site

The 80 acre project site involved in this action includes a 50 acre wetland, known as Sweedens Swamp, located near the intersection of Routes 95 and 1A in Attleboro, Massachusetts. Largely a red maple wetland adjacent to a

[1] The pertinent regulations are set forth at 40 CFR Part 230 and are often referred to as the section 404(b)(1) guidelines.

headwater tributary of the Seven Mile River in southeastern Massachusetts. Sweedens Swamp is located roughly one-quarter mile from the Rhode Island border. The predominant habitat type is deciduous forested wetland (45 acreas) although pockets of emergent and shrub wetlands exist on-site. Several shallow streams wind through the wetland and there is some seasonal ponding of water on the southern portion of the wetland. Upland habitat types include oak dominated forest and disturbed field. Human disturbance is evidenced by sporadic dumping of refuse and debris, primarily at the wetland's perimeter, and by the existence of several foot trails (with occasional use by dirtbikes) through the site.

Wetlands, to varying degrees, have hydrologic, biological, and social values. Sweedens Swamp provides flood storage but its role in this regard may be limited since it is located high in a small watershed (625 acres). The wetland also may function to improve or maintain water quality in the Seven Mile River by the adsorption and uptake of contaiminants. Pyramid states that most of the water entering the site does not contact the vegetation and that the wetland therefore functions "inefficiently" for water quality renovation. It is not clear, however, whether Sweedens Swamp is less functional for water quality renovation than other wooded swamps in New England. Sweedens Swamp, which overlies a large regional aquifer, functions primarily as a groundwater discharge (rather than recharge) area.

EPA, the U.S. Fish and Wildlife Service, and the New England Division of the Army Corps of Engineers have concluded that the site provides excellent habitat for small mammals, songbirds, reptiles, and amphibians. This view is based on the diversity, density, and structural heterogeneity of the vegetation in the swamp. Waterfowl, including black ducks and mallards, are known to utilize the site; red shouldered hawks, a predatory bird species, have been observed in the wetland. In addition to these wildlife values, the wetland may have social value as open space and provide some opportunities for passive recreation (such as bird watching).

The proposed shopping mall would alter all but 4 acres of the site. Pyramid proposes to place 885,000 cubic yards in 32 acres of the wetland to construct the buildings, parking areas, and roads assocociated with the development. The company also proposes to excavate 9.0 acres of upland to create wetland onsite and alter 13.3 acres of the existing swamp in an attempt to increase its value for fisheries, wildlife, and water quality maintenance. In addition, Pyramid proposes to mitigate the impacts by attempting to build another wetland, consisting of marsh, open water, and shrub swamp at an off-site location.

III. Proceedings to Date

In 1982, the DeBartolo Corporation, Pyramid's predecessor, failed in its attempt to obtain a state permit to fill the wetlands for the purpose of building a shopping mall. Pyramid, however, in March 1985 received a permit from the State for its proposed development. The issuance of the state permit is currently being challenged in Massachusetts Superior Court.

Pyramid applied for a section 404 permit from the Corps of Engineers in July 1984. In October 1984, February 1985, and April 1985, EPA objected to issuance of the permit on various grounds. In particular, EPA expressed concern that this non-water dependent project did not comply with the section 404(b)(1) guidelines because there were other practicable, less environmentally damaging alternatives available to accomplish the basic project purpose. Attention has primarily focused on an alternate site in North Attleboro which contains few wetlands and which the Corps and EPA believe is a feasible location to develop a shopping mall. The U.S. Fish and Wildlife Service also objected to permit issuance for the same reasons.

New England Division of the Corps of Engineers initially agreed that the permit should be denied, but was instructed by the then Deputy Director of Civil Works, General Wall, to forward its files and recommended decision to him for review. In May 1985, General Wall concluded that the project did comply with the section 404 f(b)(1) guidelines because there was no practicable, less environmentally damaging alternative. His conclusion was based on a finding that (1) the North Attleboro site is not available to Pyramid because it is now controlled by another developer and that from Pyramid's point of view the site would not fulfill the purposes of its proposed project; and (2) from the public interest perspective, Pyramid's proposed mitigation (i.e., on-site and off-site wetland enhancement and creation) would reduce the adverse impacts of the discharge to a point where no other site could offer a less environmentally damaging practicable alternative. In his view, such mitigation can be used to satisfy the guidelines even when there may be a practicable upland site available. General Wall therefore directed the Division to revise its decision documents and issue the permit with appropriate conditions. Accordingly, on June 28, 1985, the Division sent EPA its Notice of Intent to Issue the permit.

On July 23, 1985, the Regional Administrator of EPA notified the Division and Pyramid of his intention to issue a proposed determination to prohibit or restrict the use of Sweedens Swamp as a disposal site, based on the belief that the proposed project may have unacceptable adverse effects—specifically, the avoidable loss of wildlife habitat. A 15 day consultation period ended on August 8, 1985. Following another review of Pyramid's proposal, the Regional Administrator was not persuaded that there would be no unacceptable adverse effects from the proposed discharge.

IV. Basis for Proposed Determination

A. Section 404(c) Criteria

As mentioned above, the Act requires that exercise of final section 404(c) authority be based on a determiniation of "unacceptable adverse effect" on municipal water supplies, shellfish beds, fisheries, wildlife, or recreational areas. The regulations define this term at 40 CFR 231.2(e) as:

> Impact on an aquatic or wetland ecosystem, which is likely to result in significant degradation of municipal water supplies (including surface or ground water) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) guidelines (40 CFR Part 230).

The preamble explains that since one of the basic functions of section 404(c) is to police the application of the section 404(b)(1) guidelines, those portions of the guidelines relating to alternative sites may be considered in evaluating the unacceptability of environmental impacts. 44 F.R. 58078 (Oct. 9, 1979). Thus, it is appropriate under section 404(c) to take into account whether the loss of the resource is avoidable.

B. Impacts of Filling Sweedens Swamp

Construction of the shopping mall would result in the initial, direct loss of 32 acres of wetland habitat. If the on-site wetland creation plan were successful, there would be a net loss of 23 acres of wetland at the site. Approximately 9 acres of upland would be converted to wetland; The remaining 20 acres of upland habitat would be replaced by the mall. This proposal, if permitted, would be the largest single loss of wetland authorized in

Massachusetts in the past five years, and one of the largest fill projects in New England during the last few years.

The hydrologic regime of the site would be altered by the project. On one hand, the remaining wetlands would, according to the developer, function better to maintain water quality. Since the mall, however, would be a source of various contaminants to surface waters it is unclear what the net effect upon water quality would be. Flood storage capacity would be reduced by the project but the developer intends to provide adequate compensatory storage.

Adverse impacts to wildlife will result from the reduction of wetland acreage. The native vegetation and the less mobile animal species will perish under the fill. Other species (e.g., birds) may escape from the site and attempt to relocate to other nearby habitats; relocation may not be successful, however, for highly territorial species or if the adjacent areas are already at carrying capacity.

If the on-site and off-site created and enhanced wetlands function as described by Pyramid, they would provide wildlife habitat. The replacement wetlands, however, would not be of the same type as these destroyed and would be utilized by different wildlife species. The developer has stated that the replacement wetlands, although different from Sweedens Swamp, represent less common habitat types and should be more attractive to waterfowl. Neither the on-site nor off-site replacement wetlands would be immediately available for wildlife use and the extent of utilization would depend upon the ultimate success of the wetland creation effort.

Construction of the shopping mall and the replacement wetlands will involve considerable dredging, filling and earthmoving which will result in a temporary increase in sedimentation and turbidity or surface water in the vicinity.

C. Avoidability of the Impacts on Sweedens Swamp

As mentioned above, whether an impact is avoidable can affect its acceptability under section 404(c). This is consistent with 40 CFR 230.10(a) of the guidelines, which requires that (except for the navigation override), "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." The preamble to the guidelines explains that the particular alternatives approach adopted by EPA reflects the view that the waters of the United States "from a priceless mosaic. Thus, if destruction of an area of waters of the United States may reasonably be avoided, it should be avoided." 45 F.R. 85340 (Dec. 24, 1980).[2] To reinforce this point, the guidelines establish a rebuttable presumption that practicable, environmentally preferable alternatives exist for "non-water dependent activities," such as shopping centers, proposed to take place in "special aquatic sites," such as wetlands. 40 CFR 230.10(a)(3).

Pyramid states that the alternative sites identified during the permit process are not "practicable" sites for shopping centers, citing factors such as access from major highways, visibility, size, lack of parking, distance from its preferred market area, and other matters. However, this contention has been disputed. A consultant hired by the Corps concluded that at least one other site three miles away in North Attleboro (at the intersection of Routes 1 and I-295) was also suitable for a shopping mall of the general type proposed by Pyramid. Moreover, another shopping center developer has concluded that the North Attleboro site is suitable and is in the process of obtaining the necessary permits to build. It also appears that this site was available to Pyramid at the time it made its site selection. This site is an upland one (less than an acre of wetlands), the use of which would apparently have significantly less impact on the environment than the use of Sweedens Swamp, although some similar questions have been raised about both sites (e.g., questions about impacts to water supplies).

Therefore, based on the present record, it does not appear to EPA Region I that Pyramid has clearly demonstrated that there is no practicable, environmentally preferable site for a shopping center. We are particularly interested in comments and information from the public on all aspects of this issue.

D. Off-Side Mitigation

As described above, Pyramid has proposed to create a new wetland at another location in order to compensate for values which would be lost at Sweedens Swamp. While the off-site mitigation was not part of its original permit application, Pyramid now suggests that this proposal means that there could be no alternative site which is "environmentally preferable."

The specific location and details of the to-be-created wetland have not yet been determined. The current leading candidate is an abandoned gravel pit located near Tiffany Street in Attleboro, near the Ten Mile River. However, questions remain about its availability, its suitability for creation of a self-sustaining, functioning wetland, and the extent to which it could replicate the values to be lost at Sweedens Swamp. In addition, the art of creating wetlands is not yet fully understood, especially in fresh water environments and particularly on the scale involved here. EPA is interested in any comments and information on wetlands creation in general; on the substitution of one kind of wetland for another; and on what would be required to establish a suitable wetland at the Tiffany Street site, the likelihood of its long-term success, and the performance measures necessary to determine long-term success, including the length of time it would take to be confident of such success.

EPA has traditionally not considered wetlands creation to be an appropriate factor to consider in weighing the environmental comparability of two practicable project sites under § 230.10(a) of the Guidelines. In other words EPA normally does not evaluate or accept mitigation (in the sense of wetland creation or enhancement) plans until after the alternatives test is satisfied. Therefore, even if the factual problems with the mitigation proposal described above are resolved, there still remain the questions (1) whether the proposed mitigation plan can be found to satisfy the practicable alternatives test in § 230.10(a); and (2) if the mitigation proposal does not strictly satisfy the guidelines, is that noncompliance sufficient to render the adverse impacts at Sweedens Swamp unacceptable within the meaning of section 404(c).

IV. Solicitation of Comments

EPA solicits comments on all issues raised by its proposed determination in this case, including, in particular, whether there is a practicable alternative to locating a shopping center in Sweedens Swamp, the relative environmental impacts (to wildlife, water supply and/or recreation) at the various potential sites, the proposal for off-site mitigation, and the acceptability or unacceptability of the impacts likely to occur if Sweedens Swamp is filled as proposed. Comments should be sent by

[2] The preamble goes on to note that where a category of discharges is so minimal in impact that it has been placed under a general permit, a case-by-case analysis of alternatives is not necessary. The current proposal was removed from coverage from the general permit at 33 CFR 330.5(a)(26) because its impacts were not minimal.

60 days from the date of publication of this Federal Register notice to the person listed above under ADDRESSES and may also be provided at the public hearing announced above.

All comments received, as well as the hearing record will be fully considered by the Regional Administrator in making his decision to prepare a recommended determination to prohibit or restrict filling Sweedens Swamp or to withdraw today's proposed determination.

Dated: August 13, 1985.

Michael R. Deland,

Regional Administrator.

[FR Doc. 85-19934 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2885-2]

Science Advisory Board, Subcommittee on Dioxins; Open Meeting—September 4-6, 1985

Under Pub. L. 92-463, notice is hereby given that a meeting of the Science Advisory Board's Dioxins Subcommittee will meet September 4-6, 1985, at the main auditorium of the Environmental Protection Agency's Environmental Monitoring Systems Laboratory, 944 East Harmon Avenue, Las Vegas, Nevada. The meeting will begin at 8:00 a.m. on September 4 and adjourn at approximately 4:00 p.m. on September 6.

The purpose of the meeting is to provide the Subcommittee with the opporutnity to review the quality, relevance an direction of the Agency's dioxins' research program. The program has four major research components including (1) engineering, (2) monitoring, (3) environmental effects, and (4) health effects and assessment. The program is discussed in a document prepared by EPA's Office of Research and Development entitled: Status of Dioxin Research in the U.S. Environmental Protection Agency. Individual copies of the document may be obtained by writing or calling Dr. Rizwanul Haque, Office of Environmental Processes and Effects Research, Office of Research and Development (RD-682), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382-5967.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments to the Subcommittee should notify Dr. Terry F. Yosie, Director, Science Advisory Board at (202) 382-4126 or Ms. Patti Howard, Staff Secretary (A-101F), 401 M Street SW., Washington, D.C. 20460 or call (202) 382-2552 by close of business August 29, 1985.

Dated: August 15, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-19929 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30253; FRL-2883-3]

Idacon, Inc.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by September 20, 1985.

ADDRESS: By mail submit comments identified by the document control number [OPP-30253] and the file number (10413-RU) to:

Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 16, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM # 2, Attn: PM 16, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be clained confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: William Miller, PM 16, (703-557-2600).

SUPPLEMENTARY INFORMATION: Idacon, Inc., 10611 Harwin Drive, Suite 400, Houston, TX 77036, has submitted an application to EPA to register the woodpecker repellent, ST-138(R), EPA File Symbol 10413-RU, containing the active ingredient 3,5,5-trimethyl-2-cyclohexene-1-one at 50 percent. The application proposes that the product be classified for general use in wood treatment facilities, utility poles, and crossarms. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: August 7, 1985.

Douglas D. Campt,

Office of Pesticide Programs.

[FR Doc. 85-19714 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50640; PH-FRL 2885-8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each

experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471–EUP–82. Renewal. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 3,800 pounds of the herbicide alpha-(1-methylethyl)-alpha-[4-trifluoromethoxy)phenyl]-5-pyrimidinemethanol on turfgrasses to evaluate the control of various weeds. A total of 4,999 acres are involved; the program is authorized in all 50 States except the States of Alaska and Hawaii. The experimental use permit is effective from May 10, 1985 to October 10, 1987. (Robert Taylor, PM 25, Rm. 245, CM # 2, (703–557–1800))

53219–EUP–1. Issuance. Mycogen Corporation, 5451 Oberlin Drive, San Diego, CA 92121. This experimental use permit allows the use of 1,960 pounds of the fungicide alternaria cassiae on cotton, peanuts, and soybeans to evaluate the control of various weeds. A total of 1,960 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, and Tennessee. The experimental use permit is effective from May 10, 1985 to May 10, 1986. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on cotton, peanuts, and soybeans has been established. (Richard Mountfort, PM 23, Rm. 253, CM # 2, (703–557–1830))

45639–EUP–22. Extension. Nor-Am Chemical Company, 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 962.5 pounds of the insecticide bendiocarb on non-cropland to evaluate the control of adult mosquitoes. A total of 11,000 acres are involved; the program is authorized only in the States of California and Louisiana. The experimental use permit is effective from May 13, 1985 to May 13, 1986. (Jay Ellenberger, PM 12, Rm. 202, CM # 2, (703–557–2386))

201–EUP–77. Issuance. Shell Oil Company, Suite 200, 1025 Connecticut Ave., NW., Washington, D.C. 20036. This experimental use permit allows the use of 763 pounds of the herbicide 1-methyl-4-(1-methylethyl)-2-Exo[(2-methylphenyl)-methoxy]-7-oxabicyclo[2.2.1] heptane on soybeans to evaluate the control of annual grasses, broadleaved weeds, and perennial weeds. A total of 763 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, and Virginia. The experimental use permit is effective from May 15, 1985 to May 15, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM # 2, (703–557–1800))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: August 9, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–19926 Filed 8–20–85; 8:45 am]

BILLING CODE 6560–50–M

[PF–418; PH–FRI 2885–7]

Pesticide Tolerance Petitions

AGENCY: Environment Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a pesticide petition relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–418] and the petition number, attention Product Manager (PM–25), at the following address:

Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS–757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, (PM–25), Registration Division Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP), from Rhone-Poulenc Inc., P.O. Box 125, Monmouth Junction, NJ 08852, relating to the establishment of tolerances for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) in or on certain agricultural commodities.

Initial Filing

PP 5F3228. Proposes amending 40 CFR 180.324 by establishing tolerances for residues of the herbicide in or on the commodities as follows:

Commodities	Parts per million (ppm)
Barley, grain	0.1
Barley, green forage and straw	1
Cattle (meat, fat, meat by-products (mbyp)	.1
Corn, fodder, dry	.1
Corn, forage, green	.1
Corn, grain	.1
Flaxseed	.1
Flax straw	1
Garlic	.1
Goats (meat, fat, and mbyp)	1
Grass, canary, annual, seed	1
Grass, canary, annual, straw	1
Hogs (meat, fat, and mbyp)	.1
Horses (meat, fat, and mbyp)	.1
Mint hay	1
Oats, grain	1
Oats, green forage and straw	1
Rye, grain	.1
Rye, green forage and straw	1
Sheep (meat, fat and mbyp)	1
Sorghum, fodder and forage	1
Sorghum, grain	1
Wheat, grain	1
Wheat, green forage and straw	1

The proposed analytical method for determining residues is gas chromatography.

Authority: 21 U.S.C. 346a.

Dated: August 12, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-19927 Filed 8-20-85; 8:45 am]

BILLING CODE [illegible]

[PF-417; PH-FRI 2885-9]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-417] and the petition number, attention Product Manager, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone No.	Address
PM-15 George LaRocca	Rm 204, CM#2 ... (703-557-2400)	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202
PM-25 Robert Taylor	Rm 245, CM#2 ... (703-557-1800)	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 5F3271.* FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR 180.378 by establishing tolerances for residues of the insecticide permethrin (3-phenoxyphenyl)methyl (±) *cis-trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate, and its metabolites, dichlorovinyl acid and *m*-phenoxybenzyl alcohol in or on the commodities cherries at 3.0 parts per million (ppm) and plums at 1.0 ppm. The proposed analytical method for determining residues is gas chromatography. PM-15

2. *PP 5F3252.* E.I. Du Pont de Nemours Co., Inc., Agricultural Chemicals Department, Burley Mill Plaza, Wilmington, DE 19898. Proposes amending 40 CFR Part 180 by establishing tolerances for the residues of the herbicide ethyl 2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy] propanoate and its acid metabolite, 2-[4-(6-chloroquinoxalin-2-yl oxy) phenoxy] propanoic acid in or on the commodities cotton and soybeans at 0.05 ppm. The proposed analytical method for determining residues is high pressure liquid chromatography (HPLC) using either an ultra violet (UV) or fluorescence detector. PM-25

3. *PP 5F3239.* Union Carbide Agricultural Products Co., P.O. Box 12014, TW Alexander Dr., Research Triangle Park, NC 27709. Proposes amending 40 CFR 180.300 by establishing a tolerance for the plant growth regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the commodity popcorn at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with a flame photometric detector in the phosphorus mode. PM-25

4. *PP 5F3253.* Union Carbide Agricultural Products Co. Proposes amendment 40 CFR 180.324 by establishing tolerances for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic acid ester and/or butyric acid ester in or on the commodities corn fodder and forage and sweet corn at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with Ni electron capture detector. PM-25

5. *PP 5F3272.* Monsanto Co., 1101 17th St., NW., Washington, D.C. 20036. Proposes amendment 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for the residues of the inert ingredient 4-(dichloroacetyl)-1-oxa-4-azaspiro [4.5] decane when used in formulations of the herbicide, 2-chloro-*N*-ethoxymethyl-*N*-(2-ethyl-6-methylphenyl) acetamide applied to corn fields either before the corn plants emerge from the soil or until the corn reaches 5 inches in height with a maximum of 0.4 pound of inert ingredient per acre.

The proposed analytical methods for determining residues are HPLC with radioactivity detector and gas chromatogrpahy with a flame ionization detector. PM-25

6. *PP 5F3273.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinolinecarboxylic acid in or on the commodity soybeans at .05 ppm. The proposed analytical method for determining residues is gas chromatography using a nitrogen-sensitive detector. PM-25

7. *PP 5F3265.* American Cyanamid Co. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide methyl 2-(4-isoprophyl-4-methyl-5-oxo-2-imidazoline-2-yl)-*p*-toluate and methyl 6-(4-isoprophy-4-methyl-5-oxo-2-imidazolin-2-yl)-*m*-toluate) in or on the commodities as follows:

Commodities	Parts per million (ppm)
Barley grain	0.10
Barley straw	1.50
Sunflower seeds	0.05
Wheat grain	0.10
Wheat straw	1.50

The proposed analytical method for determining residues is gas chromatograph nitrogen-phosphorus detector. PM-25

Authority: (21 U.S.C. 346a.)

Dated: August 9, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–19928 Filed 8–20–85; 8:45 am]

BILLING CODE 6560-50-M

[OPP–50645; PH–FRI 2885–6]

Receipt of Applications for Experimental Use Permits; Genetically Engineered Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications from Advanced Genetic Sciences, Inc., for EPA Experimental Use Permits (EUPs) for two genetically engineered microbial pesticides. These are the first genetically engineered biological agents to be proposed for EUPs under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136c. The Agency has determined that these applications may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on these applications.

DATES: Written comments must be received on or before September 20, 1985.

ADDRESS: Comments, in triplicate, should bear the docket control number OPP–50645 and be submitted to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By Mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1900).

SUPPLEMENTARY INFORMATION: Two applications have been received from Advanced Genetic Sciences, Inc. of 6701 San Pablo Ave., Oakland, CA 94608. One of the applications was assigned EPA File Symbol 54306–EUP–R and proposed the application of the genetically engineered product AGS 3001.1 (*Pseudomonas syringae*, Strain RGP36 N1 in an aqueous solution) to strawberry blossoms for the control of frost damage by replacement of naturally occurring ice nucleating bacteria. A total of 4×10^{12} colony forming units (CFU) will be applied. The second application was assigned EPA File Symbol 54306–EUP–E and proposed the application of the genetically engineered product AGS 3001.2 (*Pseudomonas fluorescens*, Strain GJP17B R2 in an aqueous solution) also to strawberry blossoms for the control of frost damage by replacement of naturally occurring ice nucleating bacteria. A total of 4×10^{12} CFU will be applied. The field testing will take place at a single test site in the central coast area of California. The tested areas for both EUPs will not exceed 0.2 acres and the fruit and treated plants will be destroyed or used for research purposes during or following the field trial. Applications will begin in late December 1985 and early January 1986. The applications propose that the permits be issued for 1 year, beginning December 1, 1985 and ending November 30, 1986.

The labeling proposed by AGS states:

> Toxicological properties not fully investigated, applicators should wear full protective clothing including goggles and respirator, apply only during calm weather to avoid drift, do not enter treated areas unprotected for 12 hours after application, dispose of unused material and rinse water by autoclaving, and for use only in accordance with the terms and conditions of the Experimental Use Permit.

The proposed EUP programs include collection of data on the dissemination and survival of the bacteria in the environment and monitoring of bacterial populations on plants, in the soil and in or on bees and other insects associated with the treated strawberry blossoms during the proposed field trails.

Following review of the AGS applications and any comments received in response to this notice, EPA will decide whether to issue or deny the EUPs and, if issued, under what conditions the experiments are to be conducted. Any issuance of an EUP by the Agency will be announced in the Federal Register.

Dated: August 13, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–19925 Filed 8–20–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 85–342]

Common Carrier Services; Prescription of Revised Depreciation Rates for AT&T Communications—Interstate Division

AGENCY: Federal Communications Commission.

ACTION: Depreciation Rate Prescription Order.

SUMMARY: Pursuant to section 4(i) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 220(b), Federal Communications Commission has ordered the American Telephone and Telegraph Communications' Interstate Division (AT&T–ISD) to apply the percentages of depreciation and amortization amounts which are set forth in the Appendix to the Order. AT&T–ISD filed for revised depreciation rates for various accounts and submitted studies and data to substantiate its requests. The intended effect of this action is to charge, as accurately as circumstances will allow, the cost of consumption of depreciable assets to the periods in which the assets are useful in the production of revenues.

EFFECTIVE DATE: AT&T–ISD is to apply the depreciation rates as of January 1, 1985.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Moran, Chief, Depreciation Rates and Cost Accounting Branch, (202 632–7500.

Memorandum Opinion and Order

In the matter of The prescription of revised depreciation rates for T&T Communications-Interstate Division.

Adopted: July 1, 1985.

Released: July 9, 1985.

By the Commission.

Introduction

1. The American Telephone and Telegraph Company (AT&T) filed a petition on May 11, 1984, requesting that the Commission prescribe revised depreciation percentages for all depreciable accounts of AT&T Communication-Interstate Division (ISD) and for each of its twenty-two interexchange subsidiaries (IXCs)[1] effective January 1, 1985. AT&T proposes depreciation rates based upon revisions in the life and salvage estimates and the methods used to compute its currently prescribed rates. In this order we consider only the rates proposed for the ISD. The rates proposed for the IXCs will be considered in a subsequent order.

II. Discussion of Issues

2. The Common Carrier Bureau issued a public notice on September 28, 1984, which outlined AT&T's petition and invited comments thereon by November 27, 1984, and reply comments by January 11, 1985. Comments were submitted by AT&T and all seven of the Regional Bell Operating Companies (RBOCs), GTE, United States Telephone Association (USTA), MCI, fourteen state regulatory commissions, and two state consumer counsel agencies. Reply comments were submitted by AT&T, three of the RBOCs, GTE, USTA, the International Communications Association, the Ad Hoc Telecommunications Users Committee, and three state commissions. In general the telephone carriers support the depreciation methods proposed in AT&T's petition and request that the use of these methods be authorized for all telecommunications common carriers. In general, the state commissions, consumer counsel agencies, and telecommunications user committees oppose the adoption of the methods proposed by AT&T.[2]

3. The commenting parties raised many issues. In this order, however, we deal only with the following issues which specifically relate to the prescription of ISD's depreciation rates: (1) Do current methods used to compute the ISD's depreciation rates provide it a reasonable opportunity to recover its reserve deficiencies? (2) If current methods are inadequate, what alternative methods should be adopted? (3) What life and net salvage factors should be used to compute the depreciation rates at issue? (4) What should be the effective date of any revised depreciation rates?

A. AT&T's Proposed Methods

4. In our final decision in *Property Depreciation*, Docket No. 20188, 83 FCC 2d 267 (1980), *reconsideration*, 87 FCC 2d 916 (1981), we approved the use of equal life group (ELG) depreciation methods for plant placed in service after January 1, 1981. We did not approve the use of ELG for embedded (i.e., pre-1981 vintage) plant because of the increased complexity and cost that would result and the unavailability of vintage records necessary to implement the method for embedded plant. Furthermore, we believed that the use of the remaining-life method (which was also approved in the decision) would permit 100% depreciation and, thus, make the use of ELG unnecessary for embedded plant.

5. In 1983 and 1984 many of the BOCs proposed a new set of depreciation procedures which they called the straight-line-age-life (SLAL) method. These procedures differ from those which the Commission uses to prescribe depreciation rates in the following ways:

(1) The ELG procedures is used for embedded plant as well as new additions, in contrast with the current policy of applying ELG to new plant additions only.

(2) Net plant weighting procedures are used with vintage reserves which are based upon allocations derived from current theoretical reserve studies. This is in contrast with the current Commission policy of using gross plant weighting procedures. In addition, in our *Supplemental Opinion and Order* in Docket No. 20188, 87 FCC 2d 1112 (1981), we found that it is inappropriate to allocate book reserves using theoretical reserve studies. In that order we stated that such an allocation must be based upon the actual debits and credits that have occurred over time.

After thorough consideration of an abundance of comments provided primarily by the carriers and the state commissions, we rejected the use of the SLAL method in our 1983 depreciation prescription orders.[3] We rejected the SLAL method for the same reasons we rejected ELG for embedded plant (See paragraph 4), and because we believed that the use of the SLAL method would result in too much volatility in the telephone carriers' revenue requirement patterns. As we stated in that order:

> . . . The use of the SLAL method would immediately raise depreciation rates for most of the BOCs by from two to three percent of their original costs. Nationwide, this amounts to approximately four billion dollars a year in increased depreciation expense. This large increase using the SLAL method would be followed by a rapid decrease in depreciation expense to less than that which would result from the existing methods by 1990.[4]

6. In its petition AT&T states that it has substantial depreciation reserve deficiencies and that if it is not allowed to use more liberal depreciation methods than those which the Commission has authorized in the past, it will not have a reasonable opportunity to fully recover its capital. AT&T proposes the following changes in the Commission's depreciation methods which it claims will enhance its chances recovering its reserve deficiencies:

(1) The use of the ELG procedure for embedded plant.

(2) The use of net plant weighting procedures using vintage reserves which were developed in conjunction with the divestiture.[5]

7. AT&T argues that its method is not SLAL because it applies the net plant weighting concept based on vintage reserves developed in conjunction with divestiture instead of vintage reserves developed from current theoretical reserve studies. However, the vintage reserves developed in conjunction with divestiture were, in fact, based upon allocations derived from the BOCs current theoretical reserve studies.[6] As a result AT&T's proposed changes, when taken together, are the same SLAL method which the Commission has already considered and rejected.

8. Neither AT&T nor the other carriers that responded to the public notice have

[1] The twenty-two interexchange carriers are as follows: AT&T Communications of California, Inc., AT&T Communications of Delaware, Inc., AT&T Communications of Illinois, Inc., AT&T Communications of Indiana, Inc., AT&T Communications of Maryland, Inc., AT&T Communications of Michigan, Inc., AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc., AT&T Communications of Nevada, Inc., AT&T Communications of New England, Inc., AT&T Communications of New Jersey, Inc., AT&T Communications of New York, Inc., AT&T Communications of Ohio, Inc., AT&T Communications of the Pacific Northwest, Inc., AT&T Communications of Pennsylvania, Inc., AT&T Communications of the South Central States, Inc., AT&T Communications of the Southern States, Inc., AT&T Communications of the Southwest, Inc., AT&T Communications of Virginia, Inc., AT&T Communications of Washington, D.C., Inc., AT&T Communications of West Virginia, Inc., and AT&T Communications of Wisconsin, Inc.

[2] Copies of these comments and reply comments are available for inspection in the Commission's Common Carrier Bureau offices.

[3] *See, e.g.*, Depreciation Rates, 96 FCC 2d 257 (1983), *reconsideration*, FCC Order 84-505, released October 31, 1984.

[4] *Id.* at 266.

[5] Modification of Final Judgment in United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[6] AT&T Plan of Reorganization, pp. 143-161, approved in United States v. Western Electric, 569 F. Supp 1057 (D.D.C. 1983).

provided new or convincing arguments or new information that would justify a reversal of our prior orders and acceptance of the SLAL method. As a result, we reject AT&T's proposed method change. Nevertheless, because there is merit in AT&T's argument for relief, we adopt the depreciation changes described below.

B. Alternative Methods

9. We agree with several of AT&T's contentions, among them: (1) That there is a substantial shortfall in the ISD reserve;[7] (2) that competition in AT&T's interstate telecommunications markets is substantial and is increasing; and (3) that the use of current depreciation methods may not be adequate to allow AT&T a reasonable opportunity for 100% capital recovery.

10. In recent years this Commission has consistently pursued policies designed to open interstate, interexchange markets to competition.[8] The *Modification of Final Judgment (MJF), supra* note 5, was also designed to enhance competition in the interexchange service market, most particularly by the requirement that BOCs provide equal access to their local exchanges to all interexchange carriers.[9] There is evidence that AT&T is indeed experiencing growing competition. For example, in 1983, the other common carriers (OCCs) had an estimated net plant investment of some $5–6 billion as compared to AT&T's inter-city net plant Envestment of $11 billion, and in 1984, the OCC's projected construction budgets were expected to account for three-fourths of the industry's total additions for new capacity.[10] Implementation of equal access should intensify the competition faced by AT&T. The full impact of increased competition in interstate, interexchange services is likely to become evident within the next few years.

11. The continued application of the remaining-life method would not fully resolve the ISD's reserve deficiencies for from 10 to 20 years in certain accounts.[11] We anticipate that, well before that time, competition will have created an environment in which prices are largely market-driven rather than cost-driven. We cannot assume that, under such competitive conditions, AT&T could charge a market price for its services and still recover the costs represented by its deficiencies. Therefore, in order to allow AT&T a reasonable opportunity to recover its reserve deficiencies, we depart from current depreciation methods, at least for those accounts with relatively long remaining lives.

12. As an alternative to the current methods, we oppose to use an amortization procedure similar to that which we recently approved for Illinois Bell [12] to resolve the ISD's reserve deficiencies for accounts that have estimated remaining lives in excess of four years. For accounts with remaining lives of four years or less, the use of existing methods (i.e., remaining-life) should be adequate. Our selection of a four year amortization period for the reserve deficiency, rather than a longer period, is based upon our assumption that within a few years after equal access has been fully accomplished, competition in the interstate market will have developed to the point where the recovery of today's reserve deficiencies will be extremely unlikely. On the other hand, a period of less than four years would have an unjustifiable impact on rates for consumers given the current competitive environment.[13] We direct AT&T to provide the data necessary for our staff to closely monitor ISD's reserves and we direct our staff to recommend any changes in the amortization period that may be warranted by changing conditions.[14]

13. Most of the local exchange carriers (LECs) which submitted comments in this proceeding propose that they be allowed to use the same methods as AT&T. In this order, however, we have addressed only ISD. Our conclusion that ISD requires a revision in the methods used to resolve its reserve deficiencies is based on considerations peculiar to ISD and is without prejudice to any determinations we might make in the future regarding depreciation methods to be used by individual LECs and AT&T's 22 IXCs.[15]

C. Life and Salvage Factors

14. After reviewing AT&T's equipment life and net salvage proposals, the underlying data, and the comments in response to the public notice, our staff developed a set of life and salvage factors for the ISD plant. Accordingly, we concur in the life and salvage recommendations of our staff as reflected in the depreciation rates shown in the Appendix.

D. Effective Date

15. AT&T requested an effective date of January 1, 1985 in its petition. As AT&T's request is in accordance with our rules,[16] and there were no comments in opposition to the proposed effective date, we grant AT&T's effective date as proposed.

III. Ordering Clause

16. Accordingly, it is ordered, pursuant to sections 4(i) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 220(b), That the revised depreciation percentages and amortization periods set forth in the Appendix to this Order are prescribed effective January 1, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

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[7] Our staff's studies show that the ISD's depreciation reserve has a shortfall of approximately 7% of its plant investment, or approximately $700 million. This is substantial by any measure.

[8] *See, e.g.*, Resale and Shared Use of Common Carrier Services, 60 FCC 2d 261 (1976), *reconsideration*, 62 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC 572 F2d 17 (2d Cir.); *cert. denied*, 439 US 875 (1978).

[9] 552 F. Supp. at 188.

[10] Inquiry on Long-Run Regulation of AT&T's Basic Domestic Interstate Service, CC Docket No. 83–1147, 48 FR 51340 (November 8, 1983), Comments of AT&T at pg. 31.

[11] For example, our staff has estimated that the depreciation reserve deficiency for the COE-Electronic Account is approximately $110 million, and its estimated remaining life is 13 years.

[12] *See, e.g.*, Order FCC 84–620, released December 19, 1984.

[13] As we stated in *Depreciation Rates*, 96 FCC 2d at 273, our objective in establishing an amortization schedule is "to write off the investment in a timely manner while not overly distorting the income statement of any given period." For example, if a 2 year amortization period were used, the carrier's annual revenue requirement would increase by nearly $200 million.

[14] Competitive conditions in the interstate transmission market are, of course, among the matters in issue in our ongoing Long-Run Regulation proceeding, CC Docket No. 83–1147, *supra* note 9.

[15] We wish to make clear that our rationale for granting AT&T this relief does not necessarily apply to the exchange carriers. We recognize that the LECs also have reserve deficiency problems as indicated in their comments in this proceeding. While we have nothing before us to address this at this time, we have previously indicated that, on a case-by-case basis and with the concurrence of the appropriate state commission, we will entertain requests from the LECs for permission to use the amortization approach for the elimination of the LEC reserve deficits in embedded plant. *See* Order FCC 84–620, released December 19, 1984. Such an approach would take into account the regional differences in operating environment, plant modernization, and rate impact which exist for each LEC and in each state jurisdiction.

[16] See § 43.43(e) of our Rules.

APPENDIX.—SCHEDULE OF ANNUAL PERCENTAGES OF DEPRECIATION AND AMORTIZATION AMOUNTS FOR AT&T COMMUNICATIONS—INTERSTATE DIVISION

Account No.	Class or subclass of plant	Remaining life (years)	Percent			Annual [illegible]	First [illegible] year
			Future net salvage	[illegible]	Remaining life rate		
A	B	C	D	E	F	G	H
212	Buildings	22.0	4	32.00	2.9	$2,278	1983
221.1	Manual	6.4	-11	62.11	7.6	2,717	.....
221.4	Crossbar	2.6	0	47.19	20.3	14,845	.....
221.5	Circuit other	7.8	-1	31.11	9.0	10,804	1983
221.51	DDS circuit	8.6	-4	31.89	8.4	.....	[illegible]
221.67	Radio	9.3	-10	39.93	7.5	48,751	1983
221.79	Electronic	13.1	1	23.65	5.8	28,351	1983
221.867	SAT radio	8.9	0	11.00	10.0	1,135	1983
234	Large PBX	6.2	-2	45.01	9.2	101	.....
241	Pole lines	7.9	-29	[illegible]	5.2	.....	1982
242.1	Aerial cable	4.4	[illegible]	80.21	2.7	249	1985
242.2	UG cable	16.2	-2	47.25	3.4	5,134	1982
242.3	Buried cable	11.2	-4	62.40	3.7	36,243	1982
242.4	Submarine cable	14.7	-2	39.52	4.3	[illegible]	1982
243	Aerial wire	9.8	-73	92.22	[illegible]	189	.....
244	Conduit	36.0	-6	[illegible]	1.9	995	1985
[illegible]	Furniture and office equipment	16.2	4	16.05	4.9	.....	[illegible]
261.3	Computers	5.8	10	29.21	10.5	.....	1983
[illegible]	Other communication equipment	7.1	0	11.84	12.4	756	.....
264.1	Motor vehicles	4.2	14	46.81	9.3	.....	1983
264.3-5	Tools and OWE	10.2	3	39.07	5.7	.....	[illegible]

For accounts in which annual amortization expense figures are shown in Column (G), Column (E) contains the theoretical reserve percentage, for all other accounts, Column (E) contains the book reserve percentage.

[FR Doc. 95-19898 Filed 8-20-85: 8:45 am]
BILLING CODE 6712-01-M

[Gen. Docket No. 84-467; FCC 85-430]

Radio Broadcasting; Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band

AGENCY: Federal Communications Commission.

ACTION: First Report.

SUMMARY: This action sets forth the FCC's recommendations for United States proposals to be advanced at an upcoming Region 2 international conference on the expansion of the AM band to include the frequencies from 1605 kHz to 1705 kHz. Establishment of United States positions is a key aspect of preparations for the conference.

FOR FURTHER INFORMATION CONTACT:
Jonathan David, Mass Media Bureau, (202) 632-7792
or
Wilson La Follette, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

First Report

In the matter of: Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the planning of broadcasting in the 1605-1705 kHz Band (Gen. Docket No. 84-467).

Adopted: July 29, 1985.
Released: August 12, 1985.

By the Commission.

Introduction

1. The subject proceeding was instituted in order to develop a record to assist the Commission in its preparations for the international Conference on the use of the expanded AM band from 1605 kHz to 1705 kHz.[1] The *First Notice of Inquiry* ("*First NOI*") in this proceeding, adopted on May 10, 1984, and the *Second Notice of Inquiry* ("*Second NOI*") adopted December 20, 1984, invited comment on the various issues that were to be explored as part of the preparations for the Expanded Band Conference which is to plan the broadcast use of the band from 1605 to 1705 kHz.[2] The Conference itself is to be held in two sessions. The First Session is scheduled for three weeks in Geneva, beginning on April 14, 1986. During this session the necessary technical criteria and planning methods are to be developed for submission to the Second Session, which is scheduled for the third calendar quarter of 1988.

2. The *First NOI* pointed out the other preparatory efforts that would be pursued in anticipation of the Expanded Band Conference. These included the continuing efforts of Study Group 6 of the CCIR [3] and in particular IWP 6/4, (an Interim Working Party of Study Group 6) which is charged with the task of considering methods for calculating skywave field strength in the expanded band as well as the Joint Interim Working Party ("JIWP") of CCIR study groups 3, 8 & 10 that is examining several questions relating to the technical standards to be employed in the expanded band. Likewise, the Organization of American States' Inter-American Telecommunicatins Conference ("CITEL") was expected to deal with Conference preparatory matters through its Permanent Technical Committee II ("PTC II"). PTC II focuses on radio broadcasting and it was expected to meet periodically to consider matters related to the Conference. Also, meetings with other Administrations were anticipated, either on a bilateral or multilateral basis. Finally, comment was sought on the possible use of the Radio Advisory

[1] For simplicity, we shall refer to this Regional Administrative Radio Conference ("RARC") as the Expanded Band Conference.

[2] The Expanded Band Conference is an outgrowth of the 1979 World Administrative Radio Conference ("WARC") which was held to revise portions of the International Radio Regulations and to review the allocation of frequency bands to the various radio services within the three International Telecommunication Union ("ITU") regions. In Region 2 (the Western Hemisphere), the band 1605-1705 kHz was reallocated to radio broadcasting and the Expanded Band Conference was scheduled to plan the broadcasting use of this band. In particular, reference should be made to Recommendation No. 504 of the WARC Final Acts (Geneva 1979), Resolution No. 1, Nairobi, 1982 and to Resolution 913 of the 39th Session of the ITU Administrative Council meeting of April 2-19, 1984, which took the steps necessary to convene the Conference and to set forth its agenda. Pertinent portions of these documents, including the Conference agenda, are attached as Appendix 2.

[3] The International Radio Consultative Committee.

Committee to help develop material to assist the Conference preparations.[4]

3. During this same period, preparatory work for the conference was pursued by the Technical and Allocation Subgroups of the Radio Advisory Committee. Both Subgroups held a series of meetings during which all interested parties were able to participate in the development of data on the technical issues posed by the use of the expanded band and the requirements for its use. Both Subgroups made a vital contribution to the work of the Commission. Particularly, the Technical Subgroup has aided the Commission by helping to develop technical criteria which have been informally presented at CITEL meetings. The recent report of the Allocations Subgroup is expected to provide similar benefit as the Commission considers how best to respond to requirements for use of this band. This includes a number of important domestic issues such as the appropriate way to deal with Travelers Information Stations ("TIS") and Federal Governments agency requests for the use of a portion of the expanded band by these stations.

4. In addition, the *First NOI* raised a series of issues on which comments were invited. these included how best to use the new spectrum which is to become available for broadcasting as well as how to deal with current users of this band, including the TIS now conducted on 1610 kHz. In addition, comments were invited on how best to deal with inter-regional sharing in view of the fact that in both Regions 1 (Europe and Africa) and Region 3 (Asia and the Pacific) this band is used for other types of services. In putting these subjects forward for comment the Commission did not indicate any predisposition as to their resolution. Rather, each was accompanied by a narrative setting forth the context in which the questions arose so that the commenting parties would have a better basis for formulating their responses. There were many questions to consider, particularly in the area of how best to use the expanded band. These included the broadcasting requirements to be considered and the technical standards to be employed in conducting operations in the expanded band. Because of their importance, several of these subjects were highlighted, notably power limits, interference protection standards and signal propagation.

5. After review of the record developed in response to the *First NOI* and taking into account the information gained through its participation in other ongoing activities in this area, the Commission was able to further refine its views and it set them forth in the *Second NOI*. There was general agreement that the additional spectrum should be treated as an extension of the existing AM band rather than as a separate band with its own set of technical standards. As a result, in the Preliminary Views set forth in the *Second NOI*, we proposed that the protection ratios, class of emission and bandwidth of emission should remain the same. This was designed to facilitate prompt effectuation of the expanded band by enhancing the yearly availability of receivers capable of receiving the newly available frequencies. This in turn was seen as providing an important stimulus to early commencement of broadcasting in this band. No dispute as to these points was raised in the responses to the *Second NOI*.[5] In addition to responses to the Commission's specific proposals, further information was sought on several unresolved areas, notably planning methods for use of the band. Further comment was welcomed as a means for refining the recomendations the Commission would adopt for submission to the Department of State for forwarding to the First Session of the Conference.[6]

6. Based on the record which has been developed in this matter it has been possible for the Commission to develop recommended U.S. proposals on many of the issues included in the Conference Agenda for submission to the Department of State.[7] The one notable exception is the planning method to be used, on which the Commission has been benefitted by a wide range of submissions. The Commission is in the process of doing its own studies to determine whether assignment or allotment planning is preferable. Because of the interrelationship of planning to the issue of maximum power, the Commission also has reserved a final judgment in that regard. Both matters will be dealt with by the Commission in a future report when these studies have been completed.

Procedural Matters

7. Accordingly, pursuant to sections 4(i), 303 and 403 of the Communications Act of 1934, as amended, it is ordered, that the FCC Recommended Proposals are adopted for submission to the Department of State.

8. Further information on the matters discussed in this Report may be obtained from Wilson A. La Follette (202) 632–5414 or Jonathan David at (202) 632–7792, both of the Mass Media Bureau.

Federal Communications Commission.

William Tricarico,

Secretary.

Appendix 1.—Discussion of Proposals Recommended by the Federal Communications Commission for the Region 2 Administrative Radio Conference To Establish a Plan for the Broadcasting Service in the Band 1605–1705 KHZ in Region 2

FCC Recommendations

I. Introduction

The following summarizes the FCC recommendations for U.S. proposals to the Expanded Band Conference. It offers a brief overview of the basic principles embodied in these proposals and provides elaboration on some of the major technical areas to be considered at the Conference. We have followed the format and Agenda numbering scheme contained in the Administrative Council Resolution No. 913 wherever possible.[1] As appropriate, new subdivisions have been added under the various agenda items. The specific technical proposals themselves are contained in Appendix 2.

To meet the requirements for the most effective use of this band, the Commission has:

- Developed technical, operational, and planning principles, permitting the most expeditious implementation of the

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[4] In fact, the Radio Advisory Committee's charter was specifically revised and extended so that it could play a role in developing material for use by the Commission in its preparations for the Conference.

[5] However, a question in this regard was raised before the Allocation Subgroup. Specifically, the National Black Media Coalition ("NBMC") raised the possibility of 9 kHz channel specing in lieu of the 10 kHz spacing used in the current AM band. However, it was noted that such an arrangement would introduce serious impediments to the prompt effectuation of service in the expanded band. Instead of the relatively simple and inexpensive redesign of receivers to include the new band, they would have to be more extensively redesigned resulting in significantly greater cost to accommodate two different sets of specifications. Thus, adopting NBMC's proposal could seriously delay inauguration of service in the new band and thereby run counter to the needs of all groups, including NBMC, in this regard.

[6] The Commission also pointed out that these Preliminary Views would play a part in upcoming international meetings.

[7] A summary of these recommended proposals is contained in Appendix 1. The proposals themselves are contained in Appendix 2.

[1] Resolution 913 as well as excerpts from the text of other documents pertinent to the convening of the Conference are contained in Appendix 2.

expanded band, while satisfying the requirements of all countries on an equitable basis.

• Developed proposals involving a minimum of regulatory constraints with a maximum of flexibility, both in the development and implementation of any planning method, and the adoption of procedures permitting the growth of the AM broadcasting service in this expanded band in our Hemisphere.

Specifically, we believe that to achieve these objectives the technical criteria contained in the Regional Agreement for the Medium Frequency Broadcasting Service in Region 2 (Rio Final Acts) for the existing AM band (535–1605 kHz) generally should be applied to the expanded band at 1605–1705 kHz to the maximum extent possible in recognition of the fact that the new frequency band is best considered as an extension of the existing band. Such an approach would promote the earlier availability of receivers capable of receiving the extended band, which in turn would foster the early commencement of service on these frequencies in Region 2. Moreover, it would be possible to use many of the existing planning tools and computer techniques that already have been successfully applied to AM planning activities in the Region.

II. FCC Proposals

2.1.1.1 *Definitions:*

2.1.1.1 The Commission recommends the use of definitions adopted in the Rio Final Acts wherever possible. However, these definitions include Class A stations, equivalent to clear channel stations, in that they are designed to provide secondary (skywave) as well as primary (groundwave) service. The Commission does not believe that establishment of Class A stations in the expanded band is appropriate, and as a result, the definition of such a station or of secondary service would not be required.

2.1.2 *Propagation Data:*

2.1.2.1 *Groundwave.* At the first session of the Region 2 AM Broadcasting Conference held in Buenos Aires in 1980, a set of groundwave field strength curves were tentatively adopted for use in Region 2. These curves were formally adopted at the second session of the conference in Rio de Janeiro in 1981. These curves were based on a computer program developed by the FCC Office of the Chief Engineer (now the Office of Science and Technology) and described in FCC/OCE Report No. RS79–01. "Investigation of Methods for Converting the FCC Ground Wave Field Intensity Curves to the Metric System," January 1979.

Since then, the Commission has amended its rules by adopting curves equivalent to the curves in the Rio Final Acts so that the same curves could be used for both domestic and international applications. The Commission was concluded that the model developed for this purpose can be used for calculating the curves for the expanded band and that one curve, based on the frequency of 1655 kHz, is apropriate.

2.1.2.2 *Skywave.* The importance of skywave propagation at these frequencies is two-fold. Because of the disadvantageous groundwave propagation characteristics of the expanded band, the distance to a given groundwave signal contour is reduced substantially. As a result, unrealistic nighttime limits imposed by skywave interference can inappropriately restrict a station's ability to provide adequate nighttime coverage. In addition, the skywave interference can extend beyond Region 2, an issue which needs to be considered when determining permissible power limits. It is important to recognize that this band is to be shared by different services in different regions of the ITU and that inter-regional sharing between different services requires an accurate skywave prediction method. Recognizing these points, the CCIR established in 1983 an interim working party—IWP 6/4. CITEL has also invited administrations to conduct necessary studies and to coordinate their views with IWP 6/4. As a result of these efforts, improved skywave curves have been developed by the Office of Science and Technology that take into account the effects of latitude. Reference to these curves (see Chapter 3 of the Technical Criteria) reveals how important latitude is in skywave propagation.

In addition to the selection of a field strength prediction method, two other issues are presented. They are:

(a) *Diurnal variation of skywave field strengths:* The Commission does not propose the inclusion of curves to depict the diurnal variation of skywave field strengths.

(b) *Calculations over short paths:* Occasionally there is a need to calculate skywave field strengths for a short path having a great circle distance of less than 100 km. Great circle distance is used for Region 2, but the current field strength curve for Region 2 stops at 100 km. On the other hand, the actual "slant" distance, earth-to-sky-to-earth, is being used in Region 1. This situation has been recognized and an appropriate methodology has been included in the curves which have been developed.

2.1.3 *Modulation Standards.* The Commission is of the view that the modulation standards to be applied to the band, 1605 kHz to 1705 kHz, should be consistent with those in the Rio Final Acts applied to the existing FM broadcasting band, 535 kHz to 1605 kHz. This view is predicted upon the belief that such consistency will facilitate the design of receiving equipment for use in the expanded band and expedite its availability to the public. Additionally, the location of the added broadcasting spectrum adjacent to the existing band provides the opportunity to treat both broadcasting segments in a similar manner, thereby expediting consolidation of the two bands into one. With this in mind, the Commission believes that the following standards should apply for international purposes:

2.1.3.1 *Class of Emission.* The standard class of emission should be A3E, double sideband amplitude modulation with full carrier. Classes of emission other than A3E should also be permitted on condition that the spectral distribution does not exceed that typical of an A3E emission and that there is no appreciable degradation of co-channel and adjacent channel protection. This latter provision is needed in order to provide for AM stereo in the expanded band as is now provided for in the existing 535–1605 kHz band.

2.1.3.2 *Channel Spacing.* The channel spacing in the expanded band should be maintained at 10 kHz. Use of the same 10 kHz channel spacing as is now used in the existing band, will ensure that new broadcasting services established in the expanded band will have the same opportunities for audio quality and stereophonic sound. Use of the same channel spacing will facilitiate the early commencement of service in the expanded band.

2.1.3.3 *Frequency Tolerance.* As indicated in the Radio Regulations, the frequency tolerance should be 20 parts of 10^6 for powers of 10 kW or less, and 10 Hz for powers greater than 10 kW. In the case of the existing band, we note, however, that countries covered by the North American Regional Broadcasting Agreement (NARBA) are permitted to operate with a frequency tolerance of 20 Hz. However, as this exception does not apply to the expanded band, any transmitting equipment which might be authorized in excess of 10 kW will have to meet the 10 Hz tolerance.

2.1.4 *The Effect of Receiver Characteristics Upon AM Broadcast Standards.* The addition of frequencies from 1605 to 1705 kHz will increase the AM broadcasting bank by approximately 10%. This small incremental increase should not require significant changes in the design in the

design of AM receivers of a nature that would affect broadcast standards. Thus, it is believed that the characteristics of receivers currently available for the existing band can be considered as representative of those that will ultimately be produced for the expanded band as well.

2.1.5 *Protection Ratios. Required Values for the Usable Field Strength and for the Nominal Usable Field Strength.* We are continuing to assess atmospheric noise information relating to the usable field strength and the nominal usable field strength. Preliminarily, we have concluded that the values of contours to be protected for planning purposes should be the same as those contained in the Rio Final Acts. The Commission also believes that the current boundaries of Noise Zones 1 and 2 can be used for this band as well.

2.1.5.1 *Co-channel Protection Ratio.* Co-channel protection ratios for stations not in a synchronized network should be 26 dB. The ratio has been successfully applied in the United States for many decades and also has been applied in various international agreements such as NARBA. It also was included in the Rio Final Acts. Such practical experience is also supported by subjective tests that have been performed within the United States in previous years to determine the optimum co-channel protection ratio. During the mid-1940's, such tests were performed using many types of programs and various combinations of music and speech. They revealed that, in the average, approximately 67% of the people tested considered a protection ratio of 26 dB to be satisfactory.

2.1.5.2 *Adjacent Channel Protection Ratios.* Predicated on the assumption that characteristics of receivers, produced to cover the expanded bank will not change significantly, the 1st and 2nd adjacent channel protection ratios should be 0 dB and −29.5 dB respectively. These are the ratios that were adopted Regionally in the Rio Final Acts, and their use will permit consistent application of protection criteria throughout both the existing as well as the added segment of the AM broadcasting band.

2.1.6 *Transmitting Antenna Characteristics and Transmitter Powers:*

2.1.6.1 *Transmitting Antenna Characteristics.* The same transmitting antenna characteristics that are applied to the existing band should also be applied to the expanded band.

2.1.6.2 *Transmitting Powers.* Most parties have urged the Commission to recommend maximum powers in the range of 1 kW to 10 kW, noting that powers in excess of 10 kW may introduce inefficient use of the spectrum in view of the poor groundwave propagational characteristics of this bank combined with the high potential for skywave interference. They also note that higher power could cause problems in inter-regional sharing and that lower powers of less than 1 kW are unlikely to provide effective overall service because of the poor groundwave propagation in the expanded band frequencies. The Commission will address its recommendations in this matter in a future Second Report.

2.1.7 *Planning Methods and Guidelines for the Agreement:* The Commission is continuing to explore this subject and within the next few months expects to offer specific proposals in this regard. As described in the *Second NOI*, the choice is between assignment and allotment planning, or a combination of the two. Rreference to that document should be made for a discussion of the characteristics of these two methods for planning use. However, in this regard, the Commission does consider it important that particular attention should be given to maintaining the maximum degree of flexibility in any broadcasting plan to be developed for the 1605–1705 kHz band. This would have to be consistent with the general need to satisfy demand and obtain adequate protection for future broadcasting services. The Commission will address its recommendations in this matter in the future Second Report.

2.1.7.5 *Guidelines for the Agreement:*

2.1.7.5.1 The decision on the form of the plan will determine the appropriate nature of the associated regulatory procedures (the agreement).

2.2 *To establish the Technical Criteria, As Appropriate, for the Sharing of the Band 1625–1705 kHz Between the Broadcasting Service and Other Services in Region 2 Taking into Account Nos. 419 and 481 of the Radio Regulations:*

2.2.1 After reviewing the CCIR and CITEL Reports that address sharing between the Region 2 primary service and permitted services allocated within the 1625–1705 kHz band, it is our view that sharing is not possible without putting excessive restrictions on the primary broadcasting service. Therefore, we are making no suggestion at this time on how the permitted services may share this band with the broadcasting service, as we believe that any proposal would too severely restrict that primary use.

2.3 *If Necessary, to Establish and Identify Specific Guidelines for Preparatory Work, Including Computer Software Development, to be Carried Out before the Second Session of the Conference and to Set Dates for the Completion of this work:*

2.3.1 Work is continuing in an effort to anticipate and identify the needs in this area, and specific proposals in these regards will be offered at an appropriate time prior to the 1986–RARC.

2.4 *To Specify the Manner in which Broadcasting Requirements for Inclusion in the Plan should be Submitted to the IFRB and to Fix the Date by which they should be Submitted.*

2.4.1 We are examining the issue of the manner of notification. It is not yet possible to recommend a date for such submissions.

2.5 *To Establish a Draft Agenda for the Second Session of the Conference, Relating to the Establishment of an Agreement and an Associated Plan, to be Submitted to the Administrative Council:*

2.5.1 Establishment of such a draft agenda must await further Regional consideration and coordination.

3. *That Administrations are Encouraged to Begin Considering their Broadcasting Requirements for the use of the 1605–1705 kHz Band in Order that they may be Prepared to Submit their Requirements to the IFRB by the Date Established by the First Session of the Conference:*

3.1 The Commission has been engaged in extensive efforts to identify broadcasting requirements for this band and expects to be in a position to provide these requirements in a timely fashion.

[FR Doc. 85–19899 Filed 8–20–85; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket Nos.: FEMA–REP–5–MN–3]

The Minnesota Radiological Emergency Response Plan Site-Specific for the LaCrosse Nuclear Power Plant, Certification of Findings

ACTION: Certification of FEMA findings and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Minnesota submitted its plans relating to the LaCrosse Nuclear Power Plant to the Director of FEMA Region V on June 14, 1984, for FEMA review and approval. On March 14, 1985, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and support in

accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the LaCrosse facility, and evaluations of the joint exercises conducted on October 21, 1981, August 3, 1982, and June 19, 1984, in accordance with § 350.9 of the FEMA rule, and a report of the public meeting held on October 22, 1981, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans and preparedness for the LaCrosse Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. The offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. However, while there is a public alerting and notification (A&N) system in place and operational, this approval is conditional on FEMA's verification to the A&N system in accordance with the joint Nuclear Regulatory Commission (NRC)/FEMA criteria in NUREG–0654/FEMA–REP–1, Rev. 1, Appendix 3 and FEMA–43, "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants".

FEMA will continue to review the status of offsite plans and preparedness associated with the LaCrosse Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–5–MN–3 maintained by the Regional Director, FEMA Region V, Federal Center, Battle Creek, Michigan 49016.

Dated: August 13, 1985.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director.

[FR Doc. 85–19921 Filed 8–20–85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Allied Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 12, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Allied Bankshares, Inc.*, Thomson, Georgia; to acquire 88.75 percent of the voting shares of Bank of Millen, Millen, Georgia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Croesus Partners I, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of LaGrange Bank & Trust Company, LaGrange, Illinois, and First Burlington Bank, Willowbrook, Willowbrook, Illinois.

2. *First Channahon Bancorp, Inc.*, Channahon, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Channahon, Channahon, Illinois.

3. *1st Source Corporation*, South Bend, Indiana; to acquire 100 percent of the voting shares of Marco Capital Corporation, Plymouth, Indiana, thereby indirectly acquiring 1st Source Bank of Marshall County, Plymouth, Indiana.

4. *Hi-Bancorp, Inc.*, Highwood, Illinois; to acquire 9 percent of the voting shares of New Century Bank, Mundelein, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kansas Bank Corporation*, Liberal, Kansas; to acquire 100 percent of the voting shares of Citizens Bank Services, Inc., Abilene, Kansas, thereby indirectly acquiring Citizens Bank and Trust Co., Abilene, Kansas.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Anderson Bancshares, Inc.*, Anderson, Texas; to acquire 100 percent of the voting shares of First State Bank, Cypress, Texas, thereby indirectly acquiring First State Bank of Magnolia, Magnolia, Texas.

2. *Rockdale Bancshares, Inc.*, Rockdale, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank and Trust, Rockdale, Texas.

Board of Governors of the Federal Reserve System, August 15, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–19919 Filed 8–20–85; 8:45 am]

BILLING CODE 6210-01-M

First Citizens Bankshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organization listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 12, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Citizens Bankshares, Inc.*, Glennville, Georgia; to acquire Sunbelt Finance Company, Inc., Glennville, Georgia, thereby engaging in making small loans in accordance with § 225.25(b)(1)(i) of Regulation Y. These activities would be performed in the city of Glennville and other surrounding communities.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Golden Bancorporation*, Golden, Colorado; to acquire First Golden Service Corp., Golden, Colorado, thereby engaging in acting as agent with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

Board of Governors of the Federal Reserve System, August 15, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–19923 Filed 8–20–85; 8:45 am]

BILLING CODE 6210–01–M

PNC Financial Corp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, PNC Trust Company of New York, New York, New York, in performing the fiduciary functions and activities that may be performed by trust companies generally as contemplated by § 225.25(b)(3) of Regulation Y and by applicable New York law. It will not have banking powers and will not make loans or investments or accept deposits except to the extent expressly permitted under 12 CFR 225.23(b)(3) as further limited by New York law.

Board of Governors of the Federal Reserve System, August 15, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–19924 Filed 8:20–85; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Office of Federal Supply and Services; Proposed Requirements for Future Metal Office Furniture Contracts; Metal Office Furniture Vendors Conference

ACTION: Notice.

SUMMARY: The Office of Federal Supply and Services is considering four proposed contract requirements for metal office furniture intended to reduce the number of damaged shipments received by customer agencies as well as the timeframe allowed for replacement/repair. These proposed contract requirements will be discussed at the GSA Metal Office Furniture Vendors Conference.

DATES: The GSA Metal Office Furniture Vendors Conference will be held Thursday, September 5, 1985, 10:00 a.m. until noon, GSA National Capitol Region Auditorium, 7th and D Streets, SW., Washington, DC 20407. Comments on the proposed changes should be submitted in writing by Friday, September 20, 1985.

ADDRESS: Written comments should be directed to: General Services Administration, Office of Federal Supply and Services, Office of Contract Management (FQ), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Charles Hulick, Director, Office of Contract Management, (703) 557–8675.

SUPPLEMENTARY INFORMATION: The proposed requirements in brief are:

I. Furniture pack test certifications. In addition to compliance with the Uniform Freight Classification and National Motor Freight Classification Codes all packed units will have to meet ASTM D4169 conditions or be certified acceptable by the National Safe Transit Association (NSTA).

II. Package performance specifications. (Alternative to Proposal I) In addition to compliance with accepted commercial practice suitable to the mode of transportation used, packages will be subjected to the vibration, drop or superimposed load tests described in Federal Test Method Standard No. 101 and be certified acceptable by NSTA.

III. Package markings. All shipping containers will be marked on four sides with specific information for use by customer agencies on the handling of concealed and visible damages.

IV. Replacement clause changes. Vendors will be required to replace/repair damaged furniture within 30 days after notification.

Dated: August 13, 1985.

Charles Hulick,

Director, Office of Contract Management

[FR Doc. 85–19954 Filed 8–20–85; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA).

Notice is given that Chapter S, as published in the **Federal Register** on March 21, 1979 (44 FR 17218) and last amended on January 4, 1983 (48 FR 338) is amended to add the Office of Legislative and Regulatory Policy (OLRP). Notice is also given that Chapter SR, as published in the **Federal Register** on June 1, 1983 (48 FR 24465), is amended to delete all reference to the Office of Legislative and Regulatory Policy missions, organization and functions. A new Chapter (SY) Office of Legislative and Regulatory Policy is being established. The revisions and new material are as follows:

1. Chapter S, *Sec. S.10 The Social Security Administration—(Organization)*:

Add Subsection (v), The Office of Legislative and Regulatory Policy (SY).

2. Chapter SR, *Sec. SR.00 The Office of Policy—(Mission)*:

A. Delete—It directs legislative planning, analysis and formulation in SSA, and conducts the broad research and statistical program of the Agency.

Add—It conducts the broad research and statistical program of the Agency.

B. Delete—Its activities with the Congress are carried out in close consultation and coordination with the Office of the Assistant Secretary for Legislation.

3. Chapter SR, *Sec. SR.10 The Office of Policy—(Organization)*:

Delete—"D. The Office of Legislative and Regulatory Policy (SRP), which includes:

1. The Legislative Reference Staff (SRP1).

2. The Division of Disability, Coverage and Interprogram Relationships (SRP3).

3. The Division of Retirement and Survivors Benefits (SRP5).

4. The Division of Supplemental Security Studies (SRP7).

4. Chapter SR, Sec. SR.20.

Delete—All existing material under D. The Office of Legislative and Regulatory Policy (SRP):

5. Add the following new material:

Sec. SY.00—*The Office of Legislative and Regulatory Policy—(Mission)*:

The Office of Legislative and Regulatory Policy (OLRP) develops and conducts the legislative planning program of SSA and serves as the focal point for all legislative activity in SSA; analyzes legislative and regulatory initiatives and develops specific requirements and decisions. The Office evaluates the effectiveness of programs administered by SSA in terms of legislative needs and analyzes and develops recommendations on related income maintenance, social service and rehabilitation program proposals, particularly those which may involve coordination with SSA-administered programs, and on other methods of providing economic security. It provides advisory service to SSA and HHS officials on legislation of interest to SSA pending in Congress. It also provides legislative specification drafting service to officials within the Executive Branch, congressional committees, individual members of Congress and private organizations interested in Social Security legislation. Its activities with the Congress are carried out in close consultation and coordination with the Office of the Assistant Secretary for Legislation.

Sec. SY.10 Office of Legislative and Regulatory Policy—(Organization)

The Office of Legislative and Regulatory Policy under the leadership of the Director, Legislative and Regulatory Policy includes:

A. The Director, Legislative and Regulatory Policy (SY).

B. The Deputy Director, Legislative and Regulatory Policy (SY).

C. The Immediate Office of the Director, Legislative and Regulatory Policy (SY)

D. The Legislative Reference Staff ( )

E. The Division of Disability, Coverage and Interprogram Relation ( )

F. The Division of Retirement and Survivors Benefits ( )

G. The Division of Supplemental Security Income ( )

Sec. SY.20 The Office of Legislative and Regulatory Policy—(Functions)

A. The Director, Office of Legislative and Regulatory Policy (SY) is directly responsible to the Commissioner for carrying out the OLRP mission and providing general supervision to the major components of OLRP.

B. The Deputy Director, Office of Legislative and Regulatory Policy (SY) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Legislative and Regulatory Policy (SY) provides the Director and Deputy Director with staff assistance on the full range of their responsibilities.

D. The Legislative Reference Staff ( ):

1. Tracks legislative bills, highlight items of interest from the Congressional Record, and other publications for OLRP and SSA's Executive Staff and provides support for other OLRP and SSA components at Congressional hearings.

2. Assists individual members of Congress and their staffs and Congressional committee staffs by responding for information on pending and proposed Social Security legislation, related legislative proposals and the legislative history of the Social Security program.

3. Reviews legislative proposals for consistency with existing program goals, philosophy and program requirements.

E. The Division of Disability Coverage and Interprogram Relationships ( ):

1. Studies and makes recommendations on proposals for providing economic security for the disabled and their dependents through the Social Security system.

2. Develops and evaluates legislative proposals for extending Social Security protection to groups not yet covered.

3. Evaluates proposals for program changes in light of their effect on special coverage groups.

4. Recommends methods for coordinating the protection afforded under Social Security with that afforded disability programs.

5. Reviews proposed regulations dealing with the disability insurance (DI) program, Social Security coverage, interprogram relationships and various other issues, including the Social Security retirement test, insured status and the definitions of employment and wages, to assure cross-program consistency with policy requirements and decisions.

6. Provides technical and advisory services to other agencies within the Executive Branch, Congressional committees and individual members of Congress, State officials and private organizations having an interest in the disability program, Social Security coverage or interprogram relationships.

F. The Division of Retirement and Survivors Benefits ( ):

1. Develops and explains program principles and philosophy.

2. Prepares and evaluates proposals for Social Security program legislative changes in the area of retirement and survivors benefits.

3. Conducts studies of broad programmatic issues, including the philosophy, tax rates, alternative methods of financing trust fund

operations, and management and eligibility requirements for dependents and survivors' benefits, the level of Social Security benefits, value of benefits in relation to contributions, benefit computation methods, which dependents should receive benefits and the establishment of priority among these dependents.

4. Review proposed regulations for the Retirement and Survivors Insurance (RSI) program to assure cross-program consistency and consistency with policy requirements and decisions.

5. Provides technical and advisory services to other agencies within the Executive Branch, Congressional committees, individual members of Congress, State officials and private organizations having an interest in retirement and survivors benefits.

G. The Division of Supplemental Security Income ( ):

1. Develops and evaluates legislative proposals for changes in the program of Supplemental Security Income (SSI) program for the aged, blind and disabled.

2. Reviews proposed SSI program regulations for consistency with policy requirements and decisions.

3. Studies SSI program interrelationships with social security income maintenance, child support enforcement, food stamps, employment and other Federal, State and local programs and recommends methods for coordinating these programs.

4. Provides technical and advisory services to other agencies within the Executive Branch, Congressional committees, individual members of Congress, State officials and private organizations having an interest in the SSI program.

Dated: August 14, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85-19983 Filed 8-20-85; 8:45 am]

BILLING CODE 4110-07-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Small Grants and Special Emphasis Research Career Award Grants Relating to Occupational Safety and Health; Submission Deadlines for Grant Applications

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces a change in the submission deadlines for Small Grant (R03) and Special Emphasis Research Career Award Grant (K01) applications. Effective immediately, applicants to NIOSH for R03 and K01 grants may submit by March 1, July 1, and November 1, which are the regular submission deadlines for other research grant applications. In addition, an expedited secondary review will be made for R03 and K01 grants so that awards can be made within 7 months of submission. The program requirements remain as follows:

Small Grants

A small grant application is intended to provide financial support to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze data previously collected. This small grant program is intended for predoctoral graduate students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion of residency or public health training), and junior faculty members (no higher than assistant professor). If university policy requires that a more senior person be listed as principal investigator, the application should specify that the funds are for the use of a particular student or junior-level person and should include appropriate justification for this arrangement. Although biographical sketches are required only for the person actually doing the work, the application should indicate who would be supervising the research. Small grant applications should be identified as such on the application form.

The total small grant award may comprise direct costs of up to $15,000 per year and additional indirect costs, as appropriate. The grants may be awarded for up to 2 years and are thereafter continuable by competitive renewal as a regular research grant. Salary of the principal investigator as well as that of the junior investigator, if university policy requires a senior person to be listed as the principal investigator, will not be allowed on a small grant, although salaries can be requested for necessary support staff such as laboratory technicians, interviewers, etc.

Special Emphasis Research Career Award (SERCA) Grants

The SERCA is designed to enhance the research capability of individuals in the formative stages of their careers who have demonstrated outstanding potential for contributing as independent investigators to health-related research. Candidates must have had 2 or more years of relevant postdoctoral experience prior to the submission date. The application must document accomplishments in this period that demonstrate research potential; it must also present a plan for additional experience in a productive scientific environment at domestic institutions that will foster development of a career of independent research in the area of occupational safety and health. The SERCA is not intended for untried investigators, or for productive, independent investigators with significant numbers of publications of high quality, or for persons of senior academic rank (above associate professor or tenured). Moreover, the award is not intended to substitute one source of salary support for another for an individual who is already conducting full-time research, nor is it intended to be a mechanism for providing institutional support. The application must demonstrate that the award will make a difference in and enhance the candidate's development as an independent investigator.

Candidates must indicate a commitment of at least 60 percent time (not necessarily 60 percent salary) devoted to research under the SERCA grant, although full-time is desirable. Other work in the area of occupational safety and health will enhance the candidate's qualifications but is not a substitute for this requirement. While working closely with one or more advisers, the awardee is expected to develop capabilities in fundamental, applied, and/or clinical research in one of the areas listed under **"Programmatic Interest."** At the end of the award period, evidence of independent investigative capability should be present such that the individual is better able to compete in traditional NIOSH research grant activities.

The total grant award may comprise direct costs of up to $30,000 per year and up to 8 percent additional indirect costs. Direct costs may include salary plus fringe benefits, technical assistance, equipment, supplies, consultant costs, domestic travel, publication, and other costs. If the awardee already holds a small grant on the same research topic, the amount of the SERCA may be reduced up to the amount of the small grant. Awards may be up to 3 years and will not be renewable.

Progammatic Interest

Areas of work-related programmmatic interest to NIOSH are listed below. The examples given under each area are not comprehensive definitions of the area. It should be noted, therefore, that investigators may apply in any areas related to occupational safety and health.

1. Occupational lung disease: asbestosis, byssinosis, silicosis, coal workers' pneumoconiosis, lung cancer, and occupational asthma.

2. Musculoskeletal injuries: disorders of the back, trunk, upper extemity, neck, and lower extremity; and traumatically induced Raynaud's phenomenon.

3. Occupational cancers (other than lung): leukemia; mesothelioma; and cancers of the bladder, nose, and liver.

4. Amputations, fractures: eye loss, lacerations, and traumatic deaths.

5. Cardiovascular diseases: hypertension, coronary artery disease, and acute myocardial infarction.

6. Disorders of reproduction: infertility, spontaneous abortion, and teratogenesis.

7. Neurotoxic disorders: peripheral neuropathy, toxic encephalitis, psychoses and extreme personality changes (exposure-related).

8. Noise-induced loss of hearing.

9. Dermatologic conditions: dermatoses, burns (scalding), chemical burns, and contusions (abrasions).

10. Psychologic disorders: neuroses, personality disorders, alcoholism, drug dependency.

11. Control technology research: application of scientific principles to control strategies, preconstruction review, technology forcing/new source performance concepts, technology transfer, substitution, unit operations approaches.

12. Respirator research: new and innovative respiratory protective devices; techniques to predict performance; effectiveness of respirator programs; physiologic and ergonomic factors; medical surveillance strategies; psychological and motivational aspects; and physical properties.

FOR FURTHER INFORMATION CONTACT:

For technical information: Roy M. Fleming, Sc.D., Associate Director for Grants, NIOSH, Building 1, Room 3053, Centers for Disease Control, Atlanta, GA 30333, Telephone: 404/329-3343 or FTS 236-3343

For business information: Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road, NE. Room 321, Atlanta, Georgia 30305, Telephone: (404) 262-6575 or FTS 236-6572.

(This program is described in the Catalog of Federal Domestic Assistance Program No. 13.262, Occupational Safety and Health Research Grants)

Dated: August 13, 1985.

Elliott S. Harris,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 85-19946 Filed 8-20-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Advisory Committee Meeting; Filing of Annual Reports

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESS: Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1751.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period July 1, 1984, through June 30, 1985:

Center for Drugs and Biologics:
- Anesthetic and Life Support Drugs Advisory Committee,
- Anti-Infective Drugs Advisory Committee,
- Blood Product Advisory Committee
- Vaccines and Related Biological Products Advisory Committee.

Center For Devices and Radiological Health:
- Circulatory System Devices Panel,
- Immunology Devices Panel,
- Ophthalmic Devices Panel.

Annual reports are available for public inspection at (1) the Library of Congress, Newspaper and Current Periodical Reading Room, Rm. 1026, Thomas Jefferson Bldg., 2d and Independence Ave. SE., Washington, DC, (2) the Department of Health and Human Services Library, Rm. 1436, 330 Independence Avenue SW., Washington, DC, on weekdays between 9 a.m. and 4:30 p.m., and (3) the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4:30 p.m., Monday through Friday.

Dated: August 14, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-19937 Filed 8-20-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84D-0263]

Meningococcal Polysaccharide Vaccines; Availability of Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guideline for the manufacture and release of Meningococcal Polysaccharide Vaccine and the bulk powders of each polysaccharide used for the manufacture of the vaccines.

ADDRESS: Written requests for a copy of the guideline or comments concerning the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl E. Frasch, Center for Drugs and Biologics (HFN-858), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-1920.

SUPPLEMENTARY INFORMATION: Meningococcal Polysaccharide Vaccine are biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262).

FDA issued the first license for Meningococcal Polysaccharide Vaccine in 1974. FDA regulates production of these vaccines not only through standards in the license applications but also through requirements in the regulations on establishment and product licensing in 21 CFR Parts 600 and 601, the general biological standards in 21 CFR Part 610, the labeling requirements in 21 CFR Parts 201 and 202, and the current good manufacturing practice (CGMP) regulations in 21 CFR Part 211. FDA has not issued specific regulations for Meningococcal Polysaccharide Vaccines.

The Office of Biological Research and Review in FDA's Center for Drugs and Biologics has developed a guideline concerning the manufacture and release of Meningococcal Polysaccharide Vaccines and the polysaccharide bulk powders from which the individual polysaccharides used for making the

vaccines are derived. FDA is making the guideline available to provide guidance to the two currently licensed manufacturers and any possible new manufacturers concerning the production of safe and effective vaccines.

FDA is making the guideline available under 21 CFR 10.90(b). That regulation provides for FDA's use of guidelines to outline procedures or standards of general applicability that are acceptable to FDA for a subject matter that falls within the laws administered by FDA. Although guidelines are not legal requirements, a person may be assured that in following an agency guideline the procedures followed and standards used will be acceptable to FDA. A person may also choose to use alternative procedures or standards for which there is scientific rationale even though they are not provided for in a guideline. A person who chooses to use procedures or standards different from procedures or standards in a guideline may discuss the matter further with the agency to prevent an expenditure of resources for work that FDA may later determine to be unacceptable.

Interested persons may submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider the comments when determining whether amendments or revisions to the guideline are warranted. The comments will assist the agency in developing additional standards for Meningococcal Polysaccharide Vaccines. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 14, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-19936 Filed 8-20-85; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services; Public Health Service.

ACTION: Notification of a new system of records: 09-25-0156: "Records of Participants in Programs and Respondents in Surveys used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD."

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is published notice of a proposal to establish a new system of records, 09-25-0156, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD." We are also proposing routine uses for this system.

The National Institutes of Health (NIH) will use the proposed system of records to support evaluation of the methods, materials, activities and services used by NIH in fulfilling its legislated mandate to conduct and support biomedical research into the causes, prevention and cure of diseases, to support training of research investigators, and to support communication of biomedical information.

PHS invites interested persons to submit comments on the proposed routine uses on or before September 20, 1985.

DATES: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on August 12, 1985. The system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESS: Comments should be addressed to the NIH Privacy Act Coordinator at the address listed below. Comments received will be available for inspection weekdays between 9 a.m. and 3 p.m. in Room 3B11, Building 31, at that address.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Thibodeau, NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20205, or call 301-496-2832. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: NIH was established to improve the health of the American people by conducting biomedical research, by funding such research through grants, contracts and other awards, and by promoting communication and dissemination of biomedical knowledge. NIH conducts reviews to determine how well these programs and projects achieve their goals.

The proposed system of records will cover cases where (1) NIH collects opinions, suggestions or other personal information concerning programs which do not use any system of records, or (2) program evaluation requires several categories of information which are not contained in any existing system.

Evaluation studies may take the form of surveys in which individuals who have or could participate in, contribute to, or benefit from NIH programs, provide opinions, suggestions or other information useful in evaluating the programs. For example, surveys of how much the public knows about certain methods for reducing the risk of disease may be used to evaluate dissemination of information about disease prevention. Other studies may use information from existing sources. For example, to evaluate research training programs, NIH may assemble information about publications by individuals who have received research training support, or from NIH grants files about research grants subsequently awarded to such individuals.

Evaluation studies may be conducted either by NIH staff or by other organizations under contract. Such contracts might be awarded when NIH staff is not available, when other organizations have better access to targeted populations, or when they can obtain or provide the desired information at lower cost or with less instrusion upon individuals.

The routine uses proposed for these systems are compatible with the purpose of evaluating NIH programs. The first two proposed routine uses are needed to accomplish the purpose of the system; that is, information would be disclosed under these routine uses to conduct, review, analyze or follow-up evaluation studies. The third proposed routine use for disclosure to a congressional office acting on behalf of an individual would not violate the privacy of an individual because such disclosure would be made only pursuant to a request initiated by the individual.

The proposed system will cover evaluation studies throughout NIH. Records in this system will be organized and maintained according to the particular evaluation study of which they are a part. NIH will not enter records into a general or comprehensive data base, nor create any overall index to the separate sets of records used in different evaluation projects; however, NIH is treating the separate sets of records as a single system under the Privacy Act (1) because all of the sets of records serve the same purpose, (2) in order to apply consistent policies and practices in the maintenance of such records, and (3) to make it easier for subject individuals to obtain notification of or access to their records.

When it becomes effective, the proposed system will subsume records currently covered by three existing systems: 09-25-0147, "Records of

Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Heart, Lung, and Blood Institute, HHS/NIH/NHLBI," 09–25–0149, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institute of General Medical Sciences, HHS/NIH/NIGMS," and 09–25–0150, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institute of Environmental Health Sciences, HHS/NIH/NIEHS." Each of these three systems covers activities within a single institute; the proposed system will cover the entire NIH; however, there are no substantial differences between the proposed system and the current systems in implementing requirements of the Privacy Act. The three existing systems will be deleted when the proposed system becomes effective.

The proposed system of records will not become effective until 60 days after the date it was reported to OMB, as discussed above. However, the following notice is written in the present tense, rather than futher tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: August 14, 1985.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, PHS.

09-25-0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD.

Security classification:

None.

System location:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate System Manager below for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the NIH, other persons who may participate in or benefit from NIH programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include (1) participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of advisory committees; (5) other researchers, health care professionals, or individuals who have or are at risk of developing disease or conditions studied by NIH; or (6) persons who provide feedback about the value or usefulness of information they receive about NIH programs, activities or research results.

CATEGORIES OF RECORDS IN THE SYSTEM:

This umbrella system of records covers a varying number of separate sets of records used in different evaluation studies. The categories of records in each set depend on the type of program being evaluated and the specific purpose of the evaluation. In general, the records contain two types of information: (1) Information identifying subject individuals, and (2) information which enables NIH to evaluate its programs and services.

(1) Identifying information usually consists of a name and address, but it might also include a patient indentification number, grant number, Social Security Number, or other identifying number as appropriate to the particular group included in an evaluation study.

(2) Information used for evaluation varies according to the program evaluated. Categories of evaluative information include personal and medical data on participants in clinical and research programs; publications, professional achievements and career history of researchers; and opinions and other information received directly from individuals in evaluation surveys and studies of NIH programs.

The system does not include any master list, index or other central means of identifying all individuals whose records are included in the various sets of records covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the following general authorities regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions (42 U.S.C. 203, 241, 289*l*–1 and 44 U.S.C. 3101).

PURPOSE(S):

This system supports evaluation of the policies, programs, organization, methods, materials, activities or services used by NIH in fulfilling its legislated mandate for

(1) Conduct and support of biomedical research into the causes, prevention and cure of disease;

(2) Support for training of research investigators;

(3) Communication of biomedical information.

This system is not used to make any determination affecting the rights, benefits or privileges of any individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to HHS contractors and collaborating researchers, organizations, and State and local officials for the purpose of conducting evaluation studies or collecting, aggregating, processing or analyzing records used in evaluation studies. The recipients are required to protect the confidentiality of such records.

(2) Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, bound notebooks, or computer-accessible media (e.g., magnetic tapes or discs).

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number within each evaluation study. There is no central collection of records in this system, and no central means of identifying individuals whose records are included in the separate sets of records that are maintained for particular evaluation studies.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records in this system according to the sensitivity of the data each set contains.

Information already in the public domain, such as titles and dates of publications, is not restricted. However, sensitive information, such as personal or medical history or individually identified opinions, is protected according to its level of sensitivity. Records derived from other systems of records will be safeguarded at a level at least as stringent as that required in the original systems. Minimal safeguards for the protection of information which is not available to the general public include the following:

Authorized Users: Regular access to information in a given set of records is limited to NIH or to contractor employees who are conducting, reviewing or contributing to a specific evaluation study. Other access is granted only on a case-by-case basis, consistent with the restrictions required by the Privacy Act (e.g., when disclosure is required by the Freedom of Information Act), as authorized by the system manager or designated responsible official.

Physical Safeguards: Records Records are stored in closed or locked containers, in areas which are not accessible to unauthorized users, and in facilities which are locked when not in use. Records collected in each evaluation project are maintained separately from those of other projects. Sensitive records are not left exposed to unauthorized persons at any time. Sensitive data in machine-readable form may be encrypted.

Procedural Safeguards: Access to records is controlled by responsible employees and is granted only to authorized individuals whose identities are properly verified. Data stored in computers is accessed only through the use of keywords known only to authorized personnel. Contracts for operation of this system of records require protection of the records in accordance with these safeguards; NIH project and contracting officers monitor contractor compliance.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, Systems Security, or the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Studies, analyses, reports, and statistical compilations created or collected in evaluation of NIH mission-related activities are scheduled for permanent retention by the National Archives as part of the historical record of the NIH, as provided by the NIH Records Control Schedule, section 1100–C. Working papers, extra copies, or records not used in evaluations of major programs of the NIH or any of its Bureaus, Institutes or Divisions are destroyed no later than 5 years after completion of the evaluation study (NIH Records Control Schedule, items 1100–C–12d, 1100–C–14b, 1100–C–15b, 1900–A–4). Disposal methods include burning or shredding of hard copy and erasing magnetic media.

Policy Coordination for this system is provided by: Associate Director for Program Planning and Evaluation, National Institutes of Health, Building 1, Room 137, 9000 Rockville Pike, Bethesda, MD 20205.

SYSTEM MANAGERS AND ADDRESSES:

See Appendix 1.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the official of the organization responsible for the evaluation, as listed in Appendix 2. if you are not certain which component of NIH was responsible for the evaluation study, or if you believe there are records about you in several components of NIH, write to

NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20205

Requesters must provide the following information:

1. Full name;
2. Name and location of the evaluation study or other NIH program in which the requester participated;
3. Approximate dates of participation.

The requester must also verify his or her identity by providing either a notorization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's dicretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants; from systems of records 09–25–0036, "Grants: IMPACT (Grants' Contract Information), HHS/NIH/DRG," 09–25–0112, "Grants: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD"; other records maintained by the operating programs of NIH; the National Academy of Sciences and other contractors; grantees or collaborating researchers; or publicly available sources such as bibliographies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1: System Managers

NIH, Office of the Director: Chief, Program Evaluation Branch, OPPE, NIH, Building 1, Room 234, 9000 Rockville Pike, Bethesda, MD 20205

National Heart, Lung and Blood Institute (NHLBI): Director, Office of Program Planning & Evaluation, NHLBI, NIH, Building 31, Room 5A03, Bethesda, MD 20205

National Library of Medicine (NLM): Special Assistant for Operations Research, Office of the Director, NLM, NIH, Building 38, Room 2S18, Bethesda, MD 20205

National Eye Institute (NEI): Associate Director for Program Planning Analysis and Evaluation, NEI, NIH, Building 31, Room 6A25, Bethesda, MD 20205

National Institute on Aging (NIA): Evaluation Officer, NIA, NIH, Building 31, Room 5C11, Bethesda, MD 20205

National Institute of Allergy and Infectious Diseases (NIAID): Chief, Evaluation Section, Office of Program Planning and Evaluation, NIAID, NIH, Building 31, Room 7A19, Bethesda, MD 20205

National Institute of Child Health and Human Development (NICHD): Chief, Office of Planning and Evaluation, NICHD, NIH,

Building 31, Room 2A10, Bethesda, MD 20205
National Institute of Dental Research (NIDR): Chief, Office of Planning, Evaluation and Communications, NIDR, NIH, Building 31, Room 2C36, Bethesda, MD 20205
National Institute of Environmental Health Sciences (NIEHS): Program Analyst, Office of Program Planning and Evaluation, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, N.C. 27709
National Institute of General Medical Sciences (NIGMS): Associate Director for Evaluation, NIGMS, Westwood Building Room 9A18, 5333 Westbard Avenue, Bethesda, MD 20205
Fogarty International Center (FIC): Assistant Director for Planning and Evaluation, FIC, NIH, Building 38A, Room 607, Bethesda, MD 20205
Division of Research Grants (DRG): Assistant Director for Special Projects, DRG Westwood Building, Room 457, National Institutes of Health, Bethesda, MD 20205
Division of Research Resources (DRR): Program Analyst, Office of Program Planning and Evaluation, DRR, NIH, Building 31, Room 5B54, Bethesda, MD 20205

Appendix 2: Notification and Access Officials

NIH, Office of the Director: Chief, Program Evaluation Branch, OPPE, NIH, Building 1, Room 234, 9000 Rockville Pike, Bethesda, MD 20205
National Heart, Lung and Blood Institute (NHLBI): Privacy Act Coordinator, NHLBI, NIH, Building 31, Room 5A29, Bethesda, MD 20205
National Library of Medicine (NLM): Special Assistance for Operations Research, Office of the Director, NLM, NIH, Building 38, Room 2S18, Bethesda, MD 20205
National Eye Institute (NEI): Executive Officer, NEI, NIH, Building 31, Room 6A25, Bethesda, MD 20205
National Institute on Aging (NIA): Evaluation Officer, NIA, NIH, Building 31, Room 5C11, Bethesda, MD 20205
National Institute of Allergy and Infectious Diseases (NIAID): Chief, Evaluation Section, Office of Program Planning and Evaluation, NIAID, NIH, Building 31, Room 7A19, Bethesda, MD 20205
National Institute of Child Health and Human Development (NICHD): Chief, Office of Planning and Evaluation, NICHD, NIH, Building 31, Room 2A10, Bethesda, MD 20205
National Institute of Dental Research (NIDR): Chief, Office of Planning, Evaluation and Communications, NIDR, NIH, Building 31, Room 2C36, Bethesda, MD 20205
National Institute of Environmental Health Sciences (NIEHS): Program Analyst, Office of Program Planning and Evaluation, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, N.C. 27709
National Institute of General Medical Sciences (NIGMS): Privacy Act Coordinator, NIGMS, NIH, Building 31, Room 4A52, Bethesda, MD 20205
Fogarty International Center (FIC): Assistant Director for Planning and Evaluation, FIC, NIH, Building 38A, Room 607, Bethesda, MD 20205
Division of Research Grants (DRG): Assistant Director for Special Projects, DRG, Westwood Building, Room 457, National Institutes of Health, Bethesda, MD 20205
Division of Research Resources (DRR): Program Analyst, Office of Program Planning and Evaluation, DRR, NIH, Building 31, Room 5B54, Bethesda, MD 20205

[FR Doc. 85-19900 Filed 8-20-85; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Group 781]

California; Filing of Plat of Survey

August 7, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Humboldt Meridian, Humboldt County

T. 7 N., R. 5 E.

2. This plat, representing the survey of the subdivision of sections 8, 9, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 33, 34, and 35, Township 7 North, Range 5 East, Humboldt Meridian, under Group No. 781, California, was accepted July 22, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat as executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Celia Anderson,

Acting Chief, Records & Information Section.

[FR Doc. 85-19885 Filed 8-20-85; 8:45 am]
BILLING CODE 4310-40-M

[Group 507]

California; Filing of Plat of Survey

August 7, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Tehama County

T. 24 N., R. 9 W.

2. This plat, representing the corrective dependent resurvey of the north one-half mile between sections 19 and 20, the west one-half mile between sections 17 and 20 the line between sections 18 and 19, and the south one-half mile between sections 17 and 18, to correct the erroneously established section corner of sections 17, 18, 19, and 20, Township 24 North, Range, 9 West, Mount Diablo Meridian, under Group No. 507, California, was accepted July 17, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Celia Anderson,

Acting Chief, Records & Information Section.

[FR. Doc. 85-19886 Filed 8-20-85; 8:45 am]
BILLING CODE 4310-40-M

Off-Road Vehicle Designation Decisions; Ridgecrest Resource Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Off-road vehicle route designation decisions to open, close, or limit use of routes of travel on public lands in the Ridgecrest Resource Area.

SUMMARY: Final off-road vehicle designation decisions have been made to protect the resources of the area, to promote safe use of the lands, and to minimize conflicts among users. The designations were prepared following the criteria defined in 43 CFR 8342.1 and with the authority of 43 CFR 8000.0-6, 8340, 8341, 8342 and 8364. Public comment for off-road vehicle route designations in the Ridgecrest Resource Area was received in November, 1984 and in April, 1985. The California Desert Conservation Area had been mapped using a series of 21 map called the Motorized Vehicle Interim Access Guides. These guides provided the interim vehicle designations made by the California Desert Conservation Area

Plan until such a time as vehicle routes in each map area could be more carefully inventoried.

This notice serves to inform the public that designation decisions have been completed for the five remaining maps of the Ridgecrest Area. This area encompasses approximately 2 million acres of BLM administered public land in the desert portions of Kern, Inyo, and San Bernardino Counties and includes such well known locations as the Rand Mountains, El Paso Mountains, Panamint Mountains, Panamint Valley, Inyo Mountains, Saline Valley, and Eureka Valley.

DATE: These designations are effective upon publication of this notice and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these routes will be implemented as routes are signed or as maps are printed and become available to the public.

ADDRESSES: Send inquiries to District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507 or the Area Manager, Ridgecrest Resource Area, 112 East Dolphin Street, Ridgecrest, California 93555. Route designation decision records and maps showing vehicle designations are available for public review at the Ridgecrest Resource Area Office from 7:30 am to 4:00 pm on Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dave Mensing, District Outdoor Recreation Planner at (714) 351–6402, or Steve Smith, Ridgecrest Resource Area Chief of Resource Protection and Visitor Management at (619) 375–7125.

SUPPLEMENTARY INFORMATION: These vehicle route designations are enforceable under the authority provided in the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), the Endangered Species Act (16 U.S.C. 1701 et seq.), EO 11644 (Use of Off-Road Vehicle on the Public Lands), and 3 CFR 74.332 as amended by EO 11989, 42 FR 26959 (May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR Part 8341 is subject to arrest, conviction and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000.00 and/or imprisonment for not longer than twelve months.

Dated: August 9, 1985.

Wes Chambers,

Acting District Manager.

[FR Doc. 85–19947 Filed 8–20–85; 8:45 am]

BILLING CODE 4310–40–M

[W–86701]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–86701 for lands in Campbell County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–86701 effective April 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85–19950 Filed 8–20–85; 8:45 am]

BILLING CODE 4310–22–M

[W–0248350]

Wyoming; Proposed Continuation of Reclamation Withdrawal

Correction

In FR Doc. 85–17637, appearing on page 30302 in the issue of Thursday, July 25, 1985, make the following correction: In the middle column, in the land description, the specifications for Section 22 should read:

Sec. 22, E½E½ of lot 1, E½NE¼, E½E½ NE¼SE¼.

BILLING CODE 1505–01–M

Albuquerque District Advisory Council; Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Advisory Council meeting and tour.

SUMMARY: The BLM Albuquerque District Advisory Council will meet on September 18, 1985, at 8:00 a.m., in the conference room of the BLM's Rio Puerco Resource Area Office located at 3550 Pan American Highway in Albuquerque, New Mexico. The Council will receive information from the BLM on the Off-Road Vehicle designation decisions proposed by the BLM's Draft Rio Puerco Resource Management Plan (RMP) and public comments received in response to that draft document.

Public comments to the Council will be received at 9:00 a.m., prior to the Council leaving for a field trip to the affected areas. The public is invited to participate in the field trip, but transportation by the BLM will not be provided.

The District Advisory Council is managed in accordance with the Federal Advisory Committee Act of 1972, The Federal Land Policy and Management Act of 1976, and the Rangeland Improvement Act of 1978. Minutes of the meeting will be made available for review within 30 days following the meeting.

For additional information, contact R. Alan Hoffmeister, Public Affairs Specialist, P.O. Box 6770, Albuquerque, New Mexico 87197–6770.

L. Paul Applegate,

District Manager.

[FR Doc. 85–20023 Filed 8–20–85; 8:45 am]

BILLING CODE 4310–FB–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–181]

Certain Meat Deboning Machines; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation on the basis of a finding of no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

SUMMARY: The U.S. International Trade Commission hereby gives notice of its decision to terminate the above-captioned investigation. Termination was requested by the complainants by motion without opposition from any other party. The motion is granted on the basis of a Commission finding that the complainants failed to demonstrate a commitment to establish a domestic industry in the United States. The Commission did not address the other domestic industry issues presented in this investigation as they are unnecessary for the final disposition of this case.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of

General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0421.

SUPPLEMENTARY INFORMATION: On February 28, 1985, the Commission conducted a hearing to review the domestic industry issues raised in this investigation. Following the hearing, the Commission remanded the investigation to the ALJ for the purpose of obtaining additional findings of fact and conclusions of law regarding the complainants' commitment to establish a domestic industry, one of three domestic industry isues raised in this case. During the remand proceedings, the complainants filed a motion to terminate the investigation. This motion was certified to the Commission by the ALJ with a recommendation that it be granted and that the investigation be terminated with a finding of no violation of section 337 on the basis of the complainants' lack of a commitment to establish a domestic industry.

Copies of the Commission's Action and Order and all the nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Issued: August 16, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–20020 Filed 8–20–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–214, 216, and 226 (Final)]

Certain Carbon Steel Products From the German Democratic Republic and Poland

AGENCY: United States International Trade Commission.

ACTION: Termination of investigations.

SUMMARY: On August 6, 1985, the Commission received letters from petitioner in the subject investigations (United States Steel Corp.) which stated, with respect to each of the cited investigations, that" . . . U.S. Steel hereby withdraws its antidumping petition and requests termination of the proceeding. It is understood that withdrawal of the petition is without prejudice." Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the following investigations are terminated:

Carbon Steel Plates Whether or not in Coils From—
- The German Democratic Republic (investigation No. 731–TA–214 (Final)); and
- Poland (investigation No. 731–TA–216 (Final)); and

Cold-Rolled Carbon Steel Plates and Sheets From the German Democratic Republic (investigation No. 731–TA–226 (Final)).

EFFECTIVE DATE: August 12, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–523–1369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

Authority: These investigations are being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: August 14, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–19963 Filed 8–20–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–236 and 237 (Final)]

Certain Castor Oil Products From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–236 and 237 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of hydrogenated castor oil (investigation No. 731–TA–236 (Final)) and/or 12-hydroxystearic acid (investigation No. 731–TA–236 (Final)), provided for in items 178.20 and 490.26, respectively, of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LFTFV determinations on or before October 8, 1985, and the Commission will make its final injury determinations by November 26, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: July 30, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202–523–0242), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that there is a reasonable basis to believe or suspect that imports of hydrogenated castor oil and 12–hydroxystearic acid from Brazil are being sold in the United States at LTFV within the meaning of section 731 of th act (19 U.S.C. 1673). The investigations were requested in petitions filed on December 27, 1984, by Union Camp Corp., Wayne, NJ. In response to those petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that industries in the United States were materially injured by reason of imports of the subject products (50 FR 7236, Feb. 21, 1985).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will

determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in these investigations will be placed in the public record on October 4, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on October 21, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 1, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on October 3, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 15, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on October 28, 1985. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 28, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: August 16, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19964 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-246 (Final)]

Low-Fuming Brazing Cooper Wire and Rod From New Zealand

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-246 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from new Zealand of low-fuming brazing copper wire and rod, provided for in items 612.6205 (rod), 612.7220 (wire), and 653.1500 (flux-coated wire or rod) of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before October 15, 1985 and the Commission will make its final injury determination November 29, 1985 (see sections 735(a) and 735(b) of the act (19 US.C.. 1673d(a) and 1673(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 13, 1985.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-523-0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202'724-0002.

SUPPLEMENTARY INFORMATION:

Background.

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of low-fuming brazing copper wire and rod from New Zealand are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 19, 1985 by American Brass Co., Rolling Meadows, IL; Century Brass Products, Inc., Waterbury, CT; and Cerro Metal Products, Inc., Bellefonte. PA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason

of imports of the subject merchandise (50 FR 14174, April 10, 1985).

Participation in the Investigation—

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list—

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report—

A public version of the prehearing staff report in this investigation will be placed in the public record on October 4, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing—

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on October 17, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 15, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on October 11, 1985 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 15, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions—

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR § 207.22) Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on October 24, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before october 24, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the commission in accordance with § 201.8 of the Commission's rules (19 CFR § 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: August 13, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19965 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-226]

Certain Mass Spectrometers and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of Investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 16, 1985, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Finnigan Corporation, 355 River Oaks Parkway, San Jose, California 95134. The complaint alleges unfair methods of competition and unfair acts in the importation into the United States of certain mass spectrometers and components thereof, or in their sale, by reason of alleged direct, contributory and induced infringement of the claims of U.S. Letters Patent 4,423,324. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Gary Rinkerman, Esq., or Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1273 or 202-523-0419, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 14, 1985, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain mass spectrometers and components thereof, or in their sale, by reason of alleged direct, contributory and induced infringement of the claims of U.S. Letters Patent 4,423,324, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby

named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Finnigan Corporation, 355 River Oaks Parkway, San Jose, California 95134.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nermag/Delsi, 49, Quai du Halage, 92500 Rueil-Malmaison, Paris, France
Delsi/Nermag, 10 Kingsbridge Road, Fairfield, New Jersey 07006
VG Analytical, Ltd., Floats Road, Wythenshawe, Manchester, M 23 9LE, England
VG Instruments Inc., 300 Broad Street, Stamford, Connecticut 06901

(c) Gary Rinkerman, Esq., and Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128 and Room 124, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471.

Issued: August 15, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–19966 Filed 8–20–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–227]

Certain One Piece Cold Forged Bicycle Cranks; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and 19 U.S.C. 1337a.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on July 19, 1985, pursuant to section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and under 19 U.S.C. 1337a, on behalf of Thun, Inc., One Alfred Thun Road, Clarksville, Tennessee 37040. The complaint, as supplemented by staff exhibits, alleges unfair methods of competition and unfair acts in the importation of certain one piece cold forged bicycle cranks into the United States, or in their sale, by reason of alleged infringement of the claims of U.S. Letters Patent 3,608,184. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., or Steven H. Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1272 or 202–523–4877, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 14, 1985, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain one piece cold forged bicycle cranks into the United States, or in their sale, by reason of alleged infringement of the claims of U.S. Letters Patent 3,608,184, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) Pursuant to § 210.24(e) of the Commission's rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed on July 19, 1985, shall be forwarded to the presiding administrative law judge for an initial determination pursuant to § 210.53(b) of the rules.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Thun, Inc., One Alfred Thun Road, Clarksville, Tennessee 37040.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sugino Cycle Industries Ltd., 10–7 Oimazato, 1–Chome Higashinari-Ku, Osaka 537, Japan
Sugino Cycle, Inc., 550 Commerce Street, Franklin Lakes, New Jersey 07417
Sakae-Ringyo Co., Ltd., 2–16 Aoi, Adachi-Ku, Tokyo 120, Japan
Sakae-Ringyo Co., Ltd., 303 East Ohio Street, Suite 2800, Chicago, Illinois 60611

(c) Juan Cockburn, Esq., and Steven H. Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128 and Room 122, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge. Pursuant to § 210.24(e) of the Commission's Rules of Practice and Procedure, the presiding administrative law judge shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

Responses must be submitted by the named respondents in accordance with §210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of

the rules (19 CFR 210.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202/523-0471.

Issued: August 15, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19967 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

Investigation No. 337-TA-219

Certain Porch, Patio, and Lawn Gliders; Commission Decision Not To Review Initial Determination Terminating Investigation as to One Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to respondent Sa'Di Brothers Company (Sa'Di).

SUMMARY: Notice is hereby given that the Commission has determined not to review an initial determination (ID) of the presiding administrative law judge (ALJ) terminating the investigation as to Sa'Di on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493.

SUPPLEMENTARY INFORMATION: On July 16, 1985, the ALJ granted a joint motion by complainant Jack-Post Corp. and Sa'Di to terminate the investigation on the basis of a settlement agreement. The settlement agreement provides that Sa'Di shall cease and desist from importation of the accused lawn gliders and shall cease and desist from the use of the term "Glider-Lawn" in connection with the imported gliders. Respondent is permitted to liquidate its inventory. The ALJ found that there was nothing in the settlement agreement inconsistent with the public interest. No petition for review was filed, nor were comments on the ID received from the public or any government agency.

Issued: August 15, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19968 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-185]

Certain Rotary Wheel Printing Systems; Termination of Investigation Based on a Finding of No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation upon a finding of no violation of section 337 of the Tariff Act of 1930.

SUMMARY: Notice is given that the U.S. International Trade Commission has determined that there is no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-1626.

SUPPLEMENTARY INFORMATION: On February 27, 1984, the Commission instituted the investigation in response to a complaint filed on behalf of Qume Corporation, San Jose, California. The Commission published a notice in the Federal Register of April 18, 1984 (49 FR 8502), which instituted an investigation to determine whether there is a violation of section 337 in the unauthorized importation or sale of certain rotary wheel printing systems, by reason of the alleged (1) coverage of such devices by claims 1 or 8 of U.S. Letters Patent 4,118,129, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. On July 19, 1985, the Commission determined that there was no violation of section 337 in the investigation in the importation or sale of the rotary wheel printing systems in question.

Copies of the Commission's Action and Order, the opinions issued in connection therewith, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202-523-0161.

Issued: August 12, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19969 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30638]

Illinois & Rock River Railroad Co.; Exemption From 49 U.S.C. 10901 and 11301

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission grants the Illinois and Rock River Railroad Company exemption (1) from 49 U.S.C. 10901 for its acquisition and operation of 121.18 miles of rail line between Freeport and El Paso, IL, and (2) from 49 U.S.C. 11301 for issuance of stock and securities to finance the transaction.

DATES: This exemption will be effective on August 22, 1985. Petitions to stay must be filed by September 3, 1985. Petitions to reopen must be filed by September 10, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30638 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Robert A. Burka, Suite 1000, 1155 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additonal information is contained in

the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 9, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Simmons concurred in the result with a separate expression. Commissioner Lamboley dissented with a separate expression. Commissioner Sterrett did not participate. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85–19918 Filed 8–20–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–10; Sub-34X]

Norfolk & Western Railway Co.; Abandonment in Suffolk, VA; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 5.20-mile line of railroad between milepost V–28.1 at Kenyon and milepost V–33.3 at Boaz, in the City of Suffolk, VA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 20, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by September 2, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 9, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Angelica D. Lloyd, 204 S. Jefferson St., Roanoke, VA 24042–0080.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 16, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–19917 Filed 8–20–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of 1985 Amended Stipulation and Consent Decree Pursuant to the Clean Water Act, City of Twin Falls, ID and the State of Idaho

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 1, 1985 a proposed 1985 Amended Stipulation and Consent Decree in *United States* v. *City of Twin Falls and the State of Idaho*, Civil Action No. 1–76–181 was lodged with the United States District Court for the District of Idaho. The proposed 1985 Amended Consent Decree modifies the Stipulation and Consent Decree entered on October 21, 1980, as modified by an Amended Stipulation and Consent Decree entered on April 11, 1984. The proposed 1985 Amended Consent Decree extends the expiration date of the original Decree, as amended, to July 1, 1986, provides for more flexible staffing requirements and more specific maintenance requirements, requires full compliance with all effluent limitations and monitoring requirements and provides for payment to the United States of stipulated penalties of $50,000 for failure by the City to comply with provisions of the Decree, as amended.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed 1985 Amended Stipulation and Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Divison, Department of Justice, Washington, D.C. 20530 and should refer to *United States City of Twin Falls, et al.*, D.J. Ref. 90–5–1–1–629A.

The proposed 1985 Amended Stipulation and Consent Decree may be examined at the office of the United States Attorney, Federal Building, 550 West Fort Street, Boise, Idaho and at the Region X, Office of U.S. Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington. Copies of the proposed 1985 Amended Stipluation and Consent Decree may be examined at the Environmental Enforcement Section, Land Natural Resources Division of the Department of Justice, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed 1985 Amended Stipulation and Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 85–19952 Filed 8–20–85; 8:45 am]

BILLING CODE 4410–01–M

AAG/A Order No. 16–85

Privacy Act of 1974; Modified Systems of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Civil Rights Division (CRT), proposed to modify certain CRT systems of records to add a new routine use, to clarify the descriptions of the systems as is necessary to reflect the internal reorganizations of CRT, and to make editorial corrections.

Specifically, the Civil Rights Division will modify certain systems by adding a routine use that will permit access to records by student volunteers working under 5 U.S.C. 3111, and by students working under a work-study program pursuant to 42 U.S.C. 2751, *et seq.*, in the Civil Rights Division. The routine use will be added to the following systems:

"Central Civil Rights Division Index File and Associated Records, JUSTICE/CRT–001;" "Civil Rights Case Load Evaluation System—Time Reporting System, JUSTICE/CRT–003;" "Registry of Names of Interested Persons Desiring Notification of Submissions under Section 5 of the Voting Rights Act, JUSTICE/CRT–004;" "Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission, JUSTICE/CRT–007;" "Files on Correspondence Relating to Civil Rights Matters from Persons Outside the Department of Justice, JUSTICE/CRT–008;" "Civil

Rights Division Travel Reports, JUSTICE/CRT–009;" and "Freedom of Information; Privacy Act Records, JUSTICE/CRT–010."

In addition, the Division is amending the "Central Civil Rights Division Index File and Associated Records" system by revising a portion of the description of the "Categories of Records * * * " to clarify the types of records maintained by the respective Civil Rights Division sections. Finally, various editorial changes are being made to the system entitled "Files of Applications for the Position of Attorney with the Civil Rights Division, JUSTICE/CRT–002," and to all the above-named systems to achieve greater clarity and accuracy. The record systems are reprinted below.* Changes are italicized for public convenience.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment. Please address any comments to Thomas F. O'Leary, Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 6314, 10th and Constitution Avenue, N.W., Washington, DC 20530.

Since the new routine use is compatible with the purposes for which the systems are maintained, no report to the Office of Management and Budget and the Congress is required.

Dated: August 8, 1985.

W. Lawrence Wallace,

Acting Assistant Attorney General for Administration.

JUSTICE/CRT–001

SYSTEM NAME:

Central Civil Rights Division Index File and Associated Records.

SYSTEM LOCATION:

United States Department of Justice, Civil Rights Division (CRT), 10th and Constitution Avenue, NW., Washington, D.C. 20530; HOLC Building, 320 First Street, NW., Washington, D.C. 20534; and Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include: Subjects of investigation, victims, potential witnesses, correspondents on subjects directed or referred to CRT or other persons or organizations referred to in potential or actual cases and matters of concern to CRT, and CRT employees who handle complaints, cases or matters of concern to CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing the names of those individuals identified above and the associated record to which the indices relate containing the general and particular records of all CRT correspondence, cases, matters, and memoranda, including but not limited to investigative reports, correspondence to and from the Division, memoranda, legal papers, evidence, and exhibits. The names of some individuals, e.g., witnesses, may not yet be on the central indices. Records relating to such individuals may be obtained by direct access to the file jackets. Such file jackets are located within the respective sections of CRT according to the legal subject matter assigned to each CRT section. The delegated legal duties and responsibilities of each section are described as follows:

The records related to the duties of the Appellate Section of CRT include records generated by all Civil Rights Division cases that have entered the U.S. Supreme Court and the Courts of Appeal. Other records include those generated in the course of Appellate Section duties such as advising Members of Congress on legislative matters, providing legal counsel on civil rights issues to Federal agencies and providing counsel to the various components of the Department of Justice, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Coordination and Review Section include letters, studies, and reports concerning the implementation of Executive Orders 12250 and 12236. Under E.O. 12250, the Attorney General coordinates and monitors the enforcement of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, and the civil rights provisions of any Federal assistance grant which forbids discrimination in federally assisted programs on the basis of race, color, national origin, sex, handicap or religion. The Coordination and Review Section also works with Federal agencies under E.O. 12336 to monitor review of their enabling legislation on the basis of sex. Other records relate to litigation involving the civil rights statutes coordinated by the Department of Justice, and such other matters as may be required to fulfill the duties mandated by the President and Congress.

The records related to the duties of the Criminal Section of CRT include cases or matters arising under 18 U.S.C. 241 and 242 which prohibit persons acting under color of law or in conspiracy with others to interfere with or deny the exercise of Federal constitutional rights, cases involving criminal violations of the Voting Rights Act of 1965 (42 U.S.C. 1971 through 1974), cases or matters involving criminal interference with housing rights as is prohibited by 42 U.S.C. 3631 and criminal interference with other federally protected rights as is prohibited by 18 U.S.C. 245. Other Criminal Section records include cases or matters involving 18 U.S.C. 1581 through 1588 which prohibit involuntary servitude, some case involving maritime law, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Educational Opportunities Section of CRT include cases or matters arising under Federal laws requiring nondiscrimination in public education such as Titles IV and IX of the Civil Rights Act of 1964 (42 U.S.C. 2000c, 42 U.S.C. 2000h–2) which prohibit discrimination on the basis of race, color, religion, sex, or national origin; Title IX of the 1972 Education Amendments (20 U.S.C. 1681) which prohibits discrimination on the basis of sex in educational programs or activities receiving federal financial assistance; and Section 504 of the Rehabilitation Act of 1973 which grants rights to handicapped persons participating in educational programs receiving federal financial assistance. In addition, the records related to the duties of the Educational Opportunities Section include cases or matters arising under the Equal Educational Opportunities Act of 1974 (20 U.S.C. 1701), and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Employment Litigation Section include cases or matters arising under Federal laws prohibiting discriminatory employment practices by State and local governments such as the equal employment opportunity provisions contained within the Revenue Sharing Act of 1972, as amended. Other records include cases or matters arising under Title VII of the Civil Rights Act of 1964 and its amendment which is the Pregnancy Discrimination Act of 1978 (42 U.S.C. 2000e(k)). In addition, the

*While the systems are reprinted below in their entirety, the following information is provided for continuity purposes. JUSTICE/CRT–001 was last published on May 31, 1984 (49 FR 22726); JUSTICE/CRT–003, 007, and 009 were last published on September 2, 1983 (48 FR 40011–50015); JUSTICE/CRT–004 and 010 were last published on February 4, 1983 (48 FR 5334–5335); JUSTICE/CRT–008 was last published on November 17, 1980 (45 FR 75910); and JUSTICE/CRT–002 was last published on September 30, 1977 (42 FR 53327).

records related to the duties of the Employment Litigation Section include cases or matters arising under Executive Order No. 11246 involving equal opportunity laws applicable to public employers, Federal contractors and subcontractors involved in federally financed projects, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Housing and Civil Enforcement Section of CRT include cases or matters involving the fair housing laws such as Title VIII of the Fair Housing Act of 1968 (42 U.S.C. 3601 through 3619), and cases or matters involving fair credit laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691 through 1691g) as well as its implementing regulations, Regulation B (12 CFR Part 202). Other records include cases or matters arising under Title II and Title III of the Civil Rights Act of 1964 which prohibit discrimination in public facilities (except those Title III matters that involve prison facilities) and cases or matters arising under the nondiscrimination provisions of the Revenue Sharing Act and the Housing and Community Development Act of 1974, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Special Litigation Section of CRT include cases or matters arising under Title III of the Civil Rights Act of 1964 as it applies to prison facilities, cases or matters arising under the Civil Rights of Institutionalized Persons Act of 1980 (42 U.S.C. 1997), cases or matters involving the constitutional rights of institutionalized juveniles, and the constitutional rights of mentally and physically handicapped persons of all ages, cases arising under section 504 of the Rehabilitation Act of 1973, as amended, and such other matters as may be required to fulfill the duties mandated by Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in the system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to the Civil Rights Division under the provisions of 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

A. Information in the system may be used by employees and officials of the Department to make decisions in the course of investigations and legal proceedings; to assist in preparing responses to correspondence from persons outside the Department to prepare budget requests, and various reports on the work product of the Civil Rights Divisions; and to carry out other authorized internal functions of the Department.

B. A record maintained in this system of records may be disseminated as a routine use of such records as follows: (1) A record relating to a possible or potential violation of law, whether civil, criminal, or regulatory in nature may be disseminated to the appropriate federal, state or local agency charged with the responsibility of enforcing or implementing such law; (2) in the course of investigation or litigation of a case or matter, a record may be disseminated to a federal, state or local agency, or to an individual or ogranization, if there is reason to believe that such agency, individual or organization possesses information or has the expertise in an official or technical capacity to analyze information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or expert analysis or to obtain the cooperation of a prospective witness or informant: (3) a record relating to a case or matter may be disseminated to an appropriate court, grand jury or administrative or regulatory proceeding in accordance with applicable law or practice; (4) a record relating to a case or matter may be disseminated to an actual or potential party to litigation or his attorney (a) for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or (b) in formal or informal discovery proceedings; (5) a record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any determination that has been made; (6) a record relating to a person held in custody or probation during a criminal proceeding or after conviction, may be disseminated to any agency or individual having responsibility for the maintenance, supervision or release of such person; (7) a record may be disseminated to the United States Commission on Civil Rights in response to its request and pursuant to 42 U.S.C. 1975d.; (8) a record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subject of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on index cards, in file jackets, and on computer disks or tape.

RETRIEVABILITY:

Information is retrieved through either use of an index card system or logical queries to the computer-based system. Entries are arranged alphabetically by the names of individuals or organizations that have been involved in possible civil rights violations either as the subject of investigations by the Department or as victims or complainants, or by the name of the Division personnel handling the complaint. (Complaints received from individuals which have not been investigated by the Department have not been systematically indexed and information pertaining to such individuals may or may not be retrievable.) Information on such individuals may be retrievable from the file jackets by a number assigned and appearing on the index cards.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer or to access the stored information.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When no longer needed on an active basis, the paper files are transferred to the Federal Records Center, Suitland, Maryland and some records are transferred to computer tape and stored in accordance with Departmental security regulations for systems of records. Final disposition is in accordance with records retirement of destruction as scheduled by NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Management Section Chief Civil Rights Division, United States Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (k)(2). Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), the subject of the case or matter as described under "Categories of records in the system," and any other information which is known and may be of assistance in locating the record, such as the name of the civil rights related case or matter involved, where and when it occurred and the name of the judicial district involved. The requester will also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information retrievable in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system may be any agency or person who has or offers information related to the law enforcement responsibilities of the Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted parts of this system from subsections (c)(3), (d), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (c) and (e) and have been published in the **Federal Register.**

JUSTICE/CRT-002

SYSTEM NAME:

Files of Applications for the Position of Attorney with the Civil Rights Division.

SYSTEM LOCATION:

U.S. Department of Justice; Civil Rights Division (CRT), 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for a position as an attorney with CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain SF 171 forms, resumes, referral letters, letters of recommendation, writing samples, interview notes, internal notes or memoranda, and other correspondence and documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used by employees and officials of the Department in making employment decisions. If an individual is hired, the records may become part of his or her Official Personnel Folder.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are primarily original papers or reproductions or copies thereof. The system consists of files pertaining to individual applicants.

RETRIEVABILITY:

Information is retrieved by using an applicant's name.

SAFEGUARDS:

Information in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures governing access, production and disclosure of any materials contained in its official files.

RETENTION AND DISPOSAL:

Information is retained in the system until a final employment decision is made or until such time as CRT is notified by the applicant that he or she is no longer interested in or available for the position. If an individual is hired, some or all of the records may become part of his or her Official Personnel Folder.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Attorney General; Civil Rights Division; U.S. Department of Justice; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Civil Rights Division; U.S. Department of Justice; Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request.' The request should include the name of the applicant and the position applied for. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system generally are the applicants, persons referring or recommending the applicant, and employees and officials of the Department.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-003

SYSTEM NAME:

Civil Rights Case Load Evaluation System—Time Reporting System.

SYSTEM LOCATION:

United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and paralegals of the Civil Rights Division of the United States Department of Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the names of Division attorneys and paralegals and their assignments and allocation of work time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Civil Rights Division personnel use this system of records to keep track of resources, i.e., to determine Civil Rights Division allocations of resources and professional time to individual assignments of cases and broad categories of cases (e.g., voting, criminal, enforcement), and to assist in preparing budget requests and other reports which may be submitted to the Attorney General or the Congress.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to Members of Congress: Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration. A record from the system of records may be disclosed to the National Archives and Records Administration for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks.

RETRIEVABILITY:

Information is retrieved by the names of attorneys or paralegals.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental security regulations for systems of records. Access to the records is limited to those employees whose official duties require such access.

RETENTION AND DISPOSAL:

Information contained in the record system remains on the computer disks indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Management Section Chief, Civil Rights Division, United States Department of Justice, 10th and Constitution Avenue, NW., Washington D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager listed above.

RECORDS ACCESS PROCEDURE:

A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual involved, his or her current address, date and place of birth, and notarized signature (28 CFR 16.42(b)), and any other information which is known and may be of assistance in locating the record. The requester should also provide a return address for transmitting the information. Access to requests should be directed to the system manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend their records should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information on time allocation is provided by Civil Rights Division attorneys and paralegals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-004

SYSTEM NAME:

Registry of Names of Interested Persons Desiring Notification of Submissions under Section 5 of the Voting Rights Act.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division (CRT), *320 First Street,* NW., Washington, D.C. 20530 *and U.S. Department of Justice, 10th & Constitution, NW., Washington, DC 20530*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have requested that the Attorney General send them notice of submissions under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Registry contains the name, address and the telephone numbers of interested parties and, where appropriate, the area or areas with respect to which notification was requested by such persons.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 FR 877 (1981) codified in 28 CFR 51.30, 42 U.S.C. 1973c, 5 U.S.C. 301 and 28 U.S.C. 509.510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Registry is used to identify persons interested in receiving notice of Section 5 submissions and to comply with their requests. The Registry may be used to notify the persons listed therein of any proposed changes in the "Procedures for the Administration of Section 5 of the Voting Rights Act of 1965," *46 FR 870 (1981) codified in 28 CFR Part 1*, and to solicit their comments with respect to any such proposed changes.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Names are stored in a card file system, *and an automated addresser.*

RETRIEVABILITY:

Records in this system are retrievable by the names of interested persons or organizaitons.

SAFEGUARDS:

Information in the system is safeguarded in accordance with Departmental rules and procedures governing access, production and disclosure of any materials contained in its official files.

RETENTION AND DISPOSAL:

An individual or organizational name is retained in the Registry until such time as that person or organization request that the name be deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to: Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

This system contains no information about any individual other than as described in Category of Record above. Persons whose names appear on the Registry may have access thereto or have their names and other information pertaining to them deleted or modified upon a request of the same nature as indicated in *46 FR 877 (1981) codified in 28 CFR 51.30.*

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Sources of information in the Registry are those persons or organizations whose names appear therein by virtue of their having requested inclusion in the Registry pursuant to *46 FR 877 (1981) codified in 28 CFR 51.30.*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-007

SYSTEM NAME:

Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission.

SYSTEM LOCATION:

U.S. Department of Justice: Civil Rights Division, 10th and Constitution Avenue NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons seeking employment or employed by a state or a political subdivision of a state who have filed charges alleging discrimination in employment with the Equal Employment Opportunity Commission (hereinafter EEOC) which have resulted in a determination by EEOC that there is probable cause to believe that such discrimination has occurred, and attempts by EEOC at conciliation have failed.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain copies of charges filed with EEOC; copies of EEOC's "determination" letters, letters of transmittal from and to EEOC, analyses or evaluations summarizing the charge and other materials in the EEOC file, internal memoranda, attorney notes, and copies of "right to sue" letters issued by the Civil Rights Division (CRT). Charges relate to allegations of employment discrimination by public employers filed by individual complainants which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e-5(f)(1) or 5(f)(2), or to allegations of a pattern or practice of violations of the Equal Employment Opportunity Act by a public employer which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e-6.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under authority of 44 U.S.C. 3101 and in the ordinary course fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used by employees and officials of the Department to make decisions regarding prosecution of alleged instances of employment discrimination, to issue right to sue letters on behalf of individuals; to make policy and planning determinations; to prepare annual budget requests and justifications; to prepare statistical reports on the work product of the Employment Litigation Section and to carry out other authorized internal functions of the Department. If the Department has determined to initiate an investigation or litigate a matter referred by EEOC the records pertaining to that matter are not contained in the system. Such records and their routine uses are described under the notice for the system named: Central Civil Rights Division Index File and Associated Records.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of

the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the systems is stored on index cards, in file jackets, and in computer disks which are maintained by the Employment Litigation Section, Civil Rights Division. If the charge related to a public educational agency or institution and was filed before September 1977, such information may be maintained by the Educational Opportunities Section, Civil Rights Division.

RETRIEVABILITY:

Information is retrieved primarily by using the appropriate Department of Justice file number, or the name of the charging party, or the state in which the alleged discrimination occurred or through other logical queries to the computer based system.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer or to access the stored information.

RETENTION AND DISPOSAL:

If the Department determines not to prosecute a matter referred by the EEOC, the records transmitted with the referral are returned to the EEOC. Other records in the system are kept for routine use by the Department and when no longer needed are sent to the Federal Records Center or are destroyed in accordance with records retention and disposal schedules as established by the National Archives and Records Service.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." The request should indicate the state where the alleged employment discrimination took place and the employer to which the charge was related. The requester should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Disclosure of part of the materials in this system may be prohibited by *42 U.S.C. 2000e–5(b)*, 42 U.S.C. 2000e–8(e) and 44 U.S.C. 3510(b). Part of this system is exempted from access and contest under 5 U.S.C. 552a(k)(2).

RECORD SOURCE CATEGORIES:

Sources of information in this system are charging parties, information compiled and maintained by EEOC, and employees and officials of the Department of Justice responsible for the disposition of the referral request.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THIS ACT:

The Attorney General has exempted the system from subsection 9d) of the Privacy Act pursuant to 5 U.S.C. 552(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/CRT-008

Files on Correspondence Relating to Civil Rights Matters from Persons Outside the Department of Justice.

SYSTEM LOCATION:

U.S. Department of Justice; Civil Rights Division (CRT); 10th and Constitution Avenue NW.; Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons communicating in written form in person or by telephone, including complaints, requests for information or action, or expressions of opinion regarding civil rights matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains original correspondence regarding civil rights matters from persons, cover letters or notes from persons referring original correspondence to the Department attorney or other employees notes regarding the correspondence, and copies of CRT responses to the original correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is maintained pursuant to 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to CRT under the provisions of 28 CFR 0.50.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. The system is used by employees and officials of the Department to respond to incoming correspondence, to compile statistics for use in preparation budget requests, to insure proper disposition of incoming mail, to determine the status and content of responses to correspondence, to respond to inquiries from Division personnel, Office of Legislative Affairs and Congressional offices regarding the status of correspondence, and to carry out other authorized functions of the Department.

B. Information in the system regarding individual pieces of correspondence may be provided to Members of Congress upon request in instances where the Members making the request referred the correspondence in question to the Department.

C. A record may be accessed by volunteer student workers and students working under a workstudy program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an

unwarranted invasion of personal privacy.

Release of information to Member of Congress. Information in the system may may be disclosed as is necessary to respond to inquiries by Members of inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are primarily index cards and original letters or copies thereof. They are stored manually *and by automated office equipment.*

RETRIEVABILITY:

Information may be retrieved through use of card index file system *and/or automated office equipment* which is subdivided into indexes (1) arranged according to the name of citizens that corresponded with the Department and (2) arranged according to the name of members of Congress or White House staff Members who have referred correspondence to the Department.

SAFEGUARDS:

Information in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures.

RETENTION AND DISPOSAL:

Citizen correspondence unrelated to matters within the jurisdiction of the Civil Rights Division is destroyed ninety days from the date of correspondence. There are no provisions for disposal of the *other* records in this system although such procedures are currently under active consideration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General: Civil Rights Division; U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." The request should include the name of the correspondent, his address or the name of the Member of Congress or White House staff member who referred the correspondence to the Department, if known, the Department of Justice file number, if known, and the date of the correspondence. The requester will also provide a return address for transmitting the information. Access requests will be directly to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and consisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the original correspondents, persons referring original correspondence to the Department, and employees and officials of the Department responsible for the disposition of the correspondence.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-009

SYSTEM NAME:

Civil Rights Division Travel Reports.

SYSTEM LOCATION:

United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have filed travel authorization forms or travel voucher forms for official travel on behalf of the Civil Rights Division (CRT).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning travel expenditures which were recorded on travel authorization forms (Form OBD–1) and travel voucher forms (Forms OBD–157 and SF–1012) by CRT employees or other persons authorized to travel for CRT and submitted to the Budget and Finance Branch of CRT from Fiscal Year 1972 to the present. The computerized data covers fiscal years 1972 through 1981.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used to make periodic and special reports to the Administrative Management Section, Civil Rights Division, and to the Budget and Finance Branch, Civil Rights Division, for use in controlling and reviewing CRT expenditures. Copies of individual's reports may be disclosed to the individual when appropriate forms are not submitted following a return from travel status.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are stored on magnetic tape and on computer punch cards, on monthly and periodic and special reports printed on computer. Individual vouchers and travel authorization forms are stored in file jackets.

RETRIEVABILITY:

Records in this system are retrieved by the names of those individuals identified under the caption "Categories of individuals covered by the system."

SAFEGUARDS:

Information in the system is unclassified. However, the records are protected in accordance with applicable Department security regulations for systems of records. Records are stored in locked cabinets and access to the computer is limited to those personnel who have a need for access to perform their official duties.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When not longer needed on an active basis, the records are transferred to computer tape and stored in accordance with Departmental security regulations for systems of records. Final disposition will be in accordance with records retirement or destruction as scheduled by NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Management Section Chief Civil Rights Division, United States Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

Requests by former employees for access to records in this system may be made in writing with the envelope and letter clearly marked "Privacy Act Request". The request should clearly state the dates on which official travel was taken. The requestor should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager. Present employees may request access by contacting the System Manager directly.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are the Civil Rights Division employees and other authorized persons who file travel authorization and travel voucher forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-010

SYSTEM NAME:

Freedom of Information; Privacy Act Records.

SYSTEM LOCATION:

U.S. Department of Justice. Civil Rights Division, 10th & Constitution Avenue, N.W., Washington, DC. 20530 *and Federal Record Center, Suitland, Maryland 20409.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request disclosure of records pursuant to the Freedom of Information Act; persons who request access to or correction of records pertaining to themselves contained in Civil Rights Division systems of records pursuant to the Privacy Act; and where applicable, persons about whom records have been requested or about whom information is contained in requested records.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains copies of all Freedom of Information/Privacy Act requests received by the Civil Rights Division since January 1, 1975, copies of CRT responses to the requesters, internal memoranda and correspondence related to the requests, copies of the documents responsive to the requests, and records of appeals or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101 and is maintained to implement the provisions of 5 U.S.C. 552 and 552a and the provisions of 28 CFR 16.1 et seq. and 28 CFR 16.40 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system may be disseminated as a routine use of such record as follows: (1) A record may be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that agency, or for the purpose of consulting with that agency as to the propriety of access or correction; (2) a record may be disseminated to any appropriate Federal, State, local, or foreign agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records contained in systems of records maintained by the *Civil Rights* Division, and (3) A record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS SERVICE:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A record contained in this system is stored manually in alphabetical order in file cabinets, *in chronological, cumulative notebooks,* and on disks in automated office equipment.

RETRIEVABILITY:

A record is retrieved by the name of the individual or person making a request for access or correction of records.

SAFEGUARDS:

Access to records is limited to personnel of the FOI/PA Branch of the Civil Rights Division and known Department of Justice personnel who have a need for the record in the performance of their duties. The records are safeguarded and protected in accordance with applicable Departmental rules.

RETENTION AND DISPOSAL:

Currently there are not provisions for disposal of records contained in this system.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 10th and Constitution Avenue. N.W., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Parts of this system are exempted from this requirement under 5 U.S.C. 552a (j)(2) or (k)(2). Address inquires to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Parts of this system are exempted from this requirement under 5 U.S.C. 552a (j)(2), or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record contained in this system shall be made in writing, with the envelope and letter clearly marked 'Privacy Access Request'. Include in the request the name of the individual involved, his birth date and place, or any other information which is known and may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the individuals and persons making requests, the systems of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records originating in the Civil Rights Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records secured from other *Civil Rights Division* systems of records have been exempted from the provisions of the Privacy Act to the same extent as the systems of records from which they were obtained. The Attorney General has also exempted certain categories of records in the system *pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3), (d), and (g) of 5 U.S.C. 552a; in addition, certain categories of records are exempted pursuant to the provisions of 5 U.S.C. 552a (k)(2) from subsections (c)(3), and (d) of 5 U.S.C. 552a.* These exemptions apply to the extent the records contained in the system reflect investigatory law enforcement information. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(c), and (e) and have been published in the **Federal Register.**

[FR Doc. 85-19930 Filed 8-20-85; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted 30 days from date of this notice.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 202/786-0233 or Mr. Joseph Lackey, Office of Managment and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20506 202/395-7316.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 202/786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: Guidelines and applications Forms for Directors in the Summer Seminars for College Teachers Programs.
Form Number: OMB 3136-0093
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines.
Respondents: College teachers/professors who are recognized scholars in their fields and are also well qualified by virtue of their interest and ability in undergraduate teaching or the pertinence of their work to the interests of undergraduate teachers.
Use: Application, evaluation, and award process for NEH Summer Seminars for College Teachers.
Estimated Number of Respondents: 240.
Estimated Hours for Respondents to Provide Information: 2.3.

Title: Guidelines and applications Forms for Directors in the Summer Seminars for Secondary School Teachers Program.
Form Number: OMB 3136-0095.
Frequency of Collection: Collection occur once yearly, according to individual program application deadlines.
Respondents: College professors.
Use: Application, evaluation, and award process for Directors in the Summer Seminars for Secondary School Teachers program.
Estimated Number of Respondents: 240.
Estimated Hours for Respondents to Provide Information: 2.3.

Title: Guidelines and Applications Forms for Participants in the Summer Seminars for Secondary School Teachers Program.
Form Number: OMB 3136-0097.
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines.
Respondents: Secondary School Teachers of grades 7 through 12.
Use: Application, evaluation, and award process for participants in the Summer Seminars for Secondary School Teachers program.
Estimated Number of Respondents: 4,500.
Estimated Hours for Respondents to Provide Information: 3.

Title: Guidelines and Applications Forms for Participants in the Summer

Stipends for College Teachers Program.
Form Number: OMB 3136–0096.
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines.
Respondents: Teachers in two-year, four-year, and five year colleges.
Use: Application, evaluation, and award process for participants in NEH Summer Seminars for College Teachers.
Estimated Number of Respondents: 3,000.
Estimated Hours for Respondents to Provide Information: 2.9.
Title: Guidelines and instructions, Younger Scholars Program.
Form Number: OMB 3136–1190.
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines.
Respondents: High school and college students.
Use: Application, evaluation, and award process for participants in the NEH Younger Scholars Program.
Estimated Number of Respondents: 1,680.
Estimated Hours for Respondents to Provide Information: 4.6.
Title: Payment Request for Individuals.
Form Number, if applicable: N/A
Frequency of Collection: Quarterly
Respondents: All individual (not institutional) NEH grantees.
Use: Required as payment request form individual grant recipients.
Estimated Number of Respondents: 100
Estimated Hours for Respondents to Provide Information: ½
Title: Financial Status Report and Instructions for Individuals.
Form Number, if applicable: N/A
Frequency of Collection: Quarterly and at end of grant.
Respondents: All individual (not institutional) NEH grantees.
Use: Required as quarterly and final report for expenditures of grant funds.
Estimated Number of Respondents: 100
Estimated Hours for Respondents to Provide Information: ½

Susan Metts,

Acting Director of Administration.

[FR Doc. 85–19978 Filed 8–20–85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published July 23, 1985 (50 FR 30036) Those meeting which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the September 1985 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634/3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Metings

Joint ECCS and Fluid Dynamics, August 27, 1985, Washington, DC. The Subcommittees will: (1) Review the status of hydrodynamic loads issue for plants with Mark I–III containments; (2) review AEOD report on Interfacing LOCAs; (3) review the USI A–13, "Containment Emergency Sump Performance" resolution proposal; (4) review the results of calculations of the Davis-Besse feed-and-bleed capability; and (5) review ECCS-related issues of ongoing concern to NRR.

State of Nuclear Power Safety, August 29, 1985, Los Angeles, CA, Cancelled.

Metal Components, September 4 and 5, 1985, Washington, DC. The subcommittee will Review Regulatory Guide 1.99, Revision 2 and other related concerns, and discuss the status of the NDT of piping program and the HSST program. The Subcommittee will also review steam generator girth weld cracks and the use of weld overlay repair as possible long-term resoluton of IGSCC concerns.

Reactor Operations, September 9, 1985, Washington, DC (1:00 P.M.). The Subcommittee will discuss recent operating experiences. *Long Range Plan for NRC,* September 11, 1985, Cancelled.

River Bend, September 11, 1985, Washington, DC (10:30 A.M.). The Subcommittee will continue its review of Gulf States Utilities Company's application for a full power operating license.

General Electric Standard Safety Analysis Report (Gessar II), September 11, 1985, Washington, DC. The Subcommittee will continue its review of GESSAR II for a final design approval applicable to future plants.

Joint Structural Engineering and Seismic Design of Piping, September 23 and 24, 1985, Washington, DC. The Subcommittees will review the status of research programs on containment integrity , seismic margins, piping reliability, and other related matters.

Advanced Reactors, September 25, 1985, Washington, DC. The Subcommittee will discuss the proposed policy for regulation of advanced nuclear power plants.

Waste Management, September 26, 1985, Washington, DC. The Subcommittee will review: (1) SECY–85–147A, Regulatory-Exempt Radiation Levels (de minimis values); (2) the proposed DOE position paper on Retrievability and Retrieval for Geologic Repository; and (3) the ACRS role in the High-Level Radioactive Waste Management Program.

Class 9 Accidents, September 27, 1985, Washington, DC. The Subcommittee will continue its discussion of draft NUREG-0956, "Source Term Reassessment," with the NRC Staff.

Millstone Nuclear Power Station Units 1–3, October 3 & 4, 1985, Waterford, CN. The Subcommittee will review the Northeast Nuclear Energy Company's application for conversion of the provisional Operating License (POL) for Millstone Unit 1 to a Full Term Operating License (FTOL).

Reliability Assurance (Valves), October 8, 1985, Washington, DC. The Subcommittee will continue discussions on valve reliability. A risk perspective on valve performance will be sought. Also to be studied is the importance of valves from a safety standpoint.

Regulatory Activities, October 8, 1985, Washington, DC. The Subcommittee will review: (1) Regulatory Guide 1.23, Revision 1, "Meteorological Measurement Programs for Nuclear Power Plants," (2) proposed Regulatory Guide (Task No. IC 609–5), "Criteria for Power, Instrumentation, and Control Portions of Safety Systems," and (3) Regulatory Guide 1.105, Revision 2, "Instrument Setpoints for Safety-Related Systems".

Joint Site Evaluation and Extreme External Phenomena, October 9, 1985,

Washington, DC. The Subcommittees will: (1) Evaluate, from a probabilistic approach, the relative importance of the full range of natural phenomena in terms of their potential impacts on Emergency Planning, (2) provide comments on the numerical values proposed in a July 5, 1985 memo from the EDO to the Commissioners on the subject, Consideration of Potential Complicating Effects of Earthquakes on Emergency Planning, and (3) develop an ACRS consensus view on this rulemaking, Final Amendments to 10 CFR Part 50, Paragraph 50.47 and Appendix E; Consideration of Earthquakes in Emergency Preparedness. The preceding were requested by Commissioners Bernthal, Asselstine, and Zech at the ACRS meeting with the Commissioners, July 11, 1985.

Safety Philosophy, Technology, and Criteria, October 9, 1985, Washington DC (1:00 P.M.). The Subcommittee will continue its review of the two-year trial use of proposed Safety Goal Policy and the future use of safety goals.

Nuclear Plant Chemistry, October 15, 1985, Washington, DC. The Subcommittee will discuss aerosol behavior in a radiation field.

Joint Reactor Radiological Effects and Fire Protection, October 18, Washington, DC. The Subcommittees will review the increased N–16 radioactivity and fire protection problems in using hydrogen addition to BWRs to reduce IGSCC.

Beaver Valley Power Station Unit 2, November 1, 1985, Pittsburgh, PA. The Subcommittee will review the application of the Duquesene Light Company for an operating license.

Qualification Program for Safety-Related Equipment, November 6, 1985 (tentative), Washington DC. The Subcommittee will discuss resolution and implementation of USI A–46.

Human Factors, Date to be determined (September/October), Washington DC. The Subcommittee will explore methods for deciding what actions should be automated in nuclear power plant operation.

Long Range Plan for NRC, Date to be determined (week of October 20, 1985), Washington DC. The Subcommittee will continue discussions on developing comments on a long range plan for the NRC. Topics to be discussed are primarily technical issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years.

Scram Systems Reliability (formerly ATWS), Date to be determined (October), Washington DC. The Subcommittee will continue the review of the status of ATWS Rule implementation effort and related issues.

Quality and Quality Assurance in Design and Construction, Date to be determined (October, tentative), Washington DC. The Subcommittee will: (1) Review the final Rule on the "Important to Safety Issue", and (2) be briefed on the "NRC Quality Assurance Program Implementation Plan."

Standard Plant Design, Date to be determined (October), Washington DC. The Subcommittee will be briefed by the NRC Staff on the status of standard plant design.

Decay Heat Removal Systems, Date to be determined (early November, tentative), Washington DC. The Subcommittee will continue the review of the NRR resolution position for USI A–45.

ECCS, Date to be determined (November), Palo Alto, CA. The Subcommittee will continue the review of the joint NRC/B&WOG/EPRI/B&W joint IST Program. A visit is planned to the EPRI Stanford Research Institute facilities supporting this Program.

Fort St. Vrain, Date to be determined (November/December), (near Longmont, CO). The Subcommittee will tour the facility, explore technical problems addressed during the recent extended outage, and discuss management changes made as a result of the licensee's independent assessment of management controls.

South Texas Units 1 and 2, Date to be determined (November/December), Washington DC. The Subcommittee will review Houston Lighting and Power Company's application for an operating license.

Reliability and Probabilistic Assessment, Date to be determined (Fall, tentative), Washington DC. The Subcommittee will review probabilistic risk assessment for Millstone 3.

ACRS Full Committee Meeting

September 12–14, 1985: Items are *tentatively* scheduled.

*A. *Emergency Core Cooling Systems*—hear and discuss reports from representatives of the NRC Staff regarding proposed changes in ECCS evaluation models and related systems.

*B. *Application of PRAs to Nuclear Power Plants*—discuss proposed ACRS comments regarding application of probabilistic risk assessments to nuclear power plants.

*C. *General Design Criteria*—hear and discuss reports from its subcommittee and representatives of the regulatory staff on proposed changes in GDC–4 regarding criteria for piping failures in nuclear power plants.

*D. *General Electric Company Standard Safety Analysis Report (GESSAR II)*—hear and discuss reports of the ACRS Subcommittee, the NRC Staff, and the Applicant regarding the request for an FDA for thia type facility.

*E. *Testing and Certification of Reactor Operators*—hear presentations and discuss the use of natural ability evaluation in the selection of nuclear power plant personnel.

*F. *Regulatory Guide 1.99, Rev. 2, Effect of Residual Elements on Predicted Radiation Damage to Reactor Pressure Vessels*—hear a report on and discuss proposed changes in this regulatory guide.

*G. *State of Nuclear Industry*—hear a report of its Subcommittee on the most important safety issues applicable to the nuclear industry.

*H. *River Bend Station*—consider the proposal of the Applicant regarding hydrogen control following a serious accident. Members of the NRC Staff and representatives of the licensee will participate, as appropriate.

*I. *Meeting with NRC Commissioners*—meet with the NRC Commissioners to discuss the proposed ACRS role in DOE handling and disposal of highlevel radioactive waste from the civilian nuclear power program, implementation of the NRC Severe Accident Policy Statement, and research needs in the human factors area.

*J. *NRC Regulatory Guides*—will hear and discuss reports regarding proposed changes in NRC Regulatory Guides. Representatives of the NRC Staff will participate, as appropriate.

*K. *Physical Protection of High-Enrichment Uranium at NonpowerReactors*—hear and discuss the report of its Subcommittee Chairman on Safeguards and Security regarding a proposed NRC rule on security measures at nonpower reactors.

*L. *Recent Events at Operating Nuclear Plants*—hear and discuss reports from its Subcommittee on Reactor Operations and representatives of the NRC Staff.

*M. *NRC Reorganization*—brifing regarding proposed reorganizationa of the Office of Nuclear Reactor Regulation.

*N. *Future Activities*—discuss anticipated ACRS subcommittee activities and proposed items for consideration by the full Committee.

*O. *ACRS Subcommittee Activities*—hear reports of designated subcommittees regarding the status of current assignments and related activities, including proposed changes in ACRS procedures and practices.

including the scope of the ACRS annual report to the U.S. Congress on the NRC Safety Research program and budget.

*P. *ACRS Effectiveness*—hear and discuss the report of its panel on ACRS effectiveness.

October 10–12, 1985—Agenda to be announced.

November 7–9, 1985—Agenda to be announced.

Dated: August 15, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 20015 Filed 8–20–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on State of Nuclear Power Safety; Cancellation

The ACRS Subcommittee on State of Nuclear Power Safety scheduled for August 29, 1985, at the Best Western Airport Park Hotel, 600 South Prairie Street, Inglewood, CA, has been cancelled. Notice of this meeting was published August 9, 1985 (50 FR 32336).

Dated: August 15, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–20021 Filed 8–20–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 373]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–11, issued to Commonwealth Edison Company (the licensee), for operation of the La Salle County Station, Unit 1 located in La Salle County, Illinois.

The amendment would revise the Technical Specifications (TS) to allow a one-time-only extension of time to satisfy a limited number of Technical Specification testing requirements which must be performed every 18 months and require shutdown. Under the amendment, the surveillances would be performed during the first refueling outage, which will occur a maximum of 36 days beyond the time otherwise designated by TS. The purpose of this amendment is to allow more use of the core since the reactor has been shutdown for various reasons over the past months. The Technical Specification requirements for testing every 18 months which are requested to be extended are as follows:

1. Logic/Functional Testing

Specification 4.3.1.2 (Reactor Protection System), Table 4.3.3.1–1 and 4.3.3.2 (Low Pressure Coolant Inspection), 4.3.4.1.2 (ATWS–RPT), Table 4.3.7.11–1 (Off-gas Post Treatment Monitor), 4.3.8.2 (Feedwater/Main Turbine High Level Trip), 4.6.1.4C (MSIV Leakage Control), and 4.8.3.3.1 Thermal Overload Bypass-RHR).

All of the above systems have had functional tests and/or calibrations within their TS surveillance frequency. These functional or calibration tests verify operability of the instrumentation and/or components of which this logic system is a part. In many cases these tests cover the majority of the logic system. (For example, all channels of the reactor protection system are half scram tested monthly except the mode switch in shutdown position scram). The testing performed to meet the above specifications generally entails verification that all portions work together. The result of this testing, however, requires actuation of systems in a mode which is not possible during normal power operation. Since the parts of the systems which are more likely to fail (valves, instruments, etc.) are verified to be operable by current surveillances during the extension period, no impact on plant safety will occur.

2. Pressure Isolation Valves

Specification 4.4.3.2-Table 3.4.3.2–1 (Valve Number 1E12–F042B, 1E12–F042C, 1E12–F053B, 1E21–F005).

A redundant valve in each line listed above will remain within the Tech Spec surveillance interval. No valves listed are check valves. Gate and globe valves have had a good history of meeting the leakage rate requirements. Alarms monitor the low pressure piping to ensure that any leakage is detected (the alarm function is tested every 31 days). All valves were last left with zero leakage. These valves cannot be tested with the reactor vessel at normal operating pressure. The test also requires access to the drywell which is inerted.

3. Calibrations

Specifications (a) Table 4.3.1.1–1–10 (Turbine Control Valve Pressure Switches) and (b) 4.4.3.1.b (Primary Containment Floor Drain Sump Flow Monitoring).

The items listed above receive periodic functional testing to ensure the ability of the system to operate if required. All devices were found within acceptable limits at the last surveillance. Item (a) requires that the turbine control oil system be shutdown and requires access to the main turbine control valves. The turbine control oil system cannot be secured if the turbine is operating or if the bypass valves are passing steam. Therefore, the unit would have to be shutdown with the Main Steam Isolation Valves shut to perform this test. To perform Item (b) calibration would require access to the drywell.

4. Electric Power Source

Specifications (a) 4.8.1.1.2.d (Diesel Tests) and (b) 4.8.2.3.2.d.2.c (Division III Battery Tests).

The testing required by item (a) is normally done during refueling. These diesel tests are included in the testing program to periodically ensure that certain functions have not degraded. These tests include logic testing and preventive maintenance. The diesel generators are verified to be operable while in operations by performing several surveillances required by specifications 4.8.1.1.2.a, b and c. This ensures that the diesel will start, will accept load and has available such auxiliaries as necessary. This applies to Divisions II and III only. All Division I testing will remain within the required interval.

The testing required by item (b) is for the Division III battery, and this test only verifies that the battery still has sufficient capacity by actual testing. However, verification that battery specific gravities and voltages are proper assures that the battery will be available if required. This slight delay does not affect battery availability. The Technical Specifications require the plant to shutdown to perform this surveillance.

5. Others

Specification Table 3.6.3–1 note (j) (Valves 1B33–F013A, B and 1B33–F017A, B).

The testing for this Specification is a water leak test to verify that these check valves are able to close. These lines are small (¾ in.) and provide seal injection water to the recirculation pumps from the Control Rod Drive System.

.The leak test of the 1B33–F013A/B and 1B33–F017A/B valves cannot be performed during normal operation for the following reasons: (1) The line must be isolated inside the drywell which is inerted, (2) The line normally has flow from the CRD system to the reactor recirculation pump seal.

The ¾ inch recirculation pump seal water line extends from the

recirculation pump seal through the drywell and connects to the CRD supply line outside the drywell. The consequences of leakage through this small line are minimal since the line is always full of water. It has been evaluated that even if failure did occur, it would be bounded by the analysis for a failure of an instrument line. These four valves all had zero leakage during the last test.

The 18 months surveillance interval was selected to be consistent with the maximum anticipated interval between refueling outages. However, the Technical Specifications allow an extension of 25% to this 18 month frequency to accommodate operations scheduling. Therefore, the end of the most limiting surveillance interval, including the allowable 25% extension, for La Salle Unit 1 is September 22, 1985. The refueling is currently expected to start on or before October 27, 1985. This is a consequence of La Salle Unit 1 having gone through an extended startup program and having been shutdown several times because of equipment failures, feedwater check valve problems, and environmental qualification upgrades. The period of plant operation during the requested extensions, therefore, is a maximum of 36 days. This amendment is in accordance with the licensee's application for amendment dated July 15, 1985, as supplemented by letters dated August 9, 1985 and August 12, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its letter of July 15, 1985, has determined and the NRC staff agrees that the proposed amendment will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the operability of the equipment is tested and maintained by other TS requirements and based on the type of surveillances extended, no significant increase in the probability of equipment failure is postulated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated because this amendment neither removes nor adds any equipment nor does it eliminate tests required at refueling outage; and (3) involve a significant reduction in the margin of safety because the increased surveillance interval (36 days) does not significantly increase the possibility that an undetected failure will occur in any of the related equipment covered by these Technical Specifications. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

By September 23, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set for the reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no

significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Isham, Lincoln, and Burke, Suite 840, 1120 Connecticut Avenue, N.W., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent as a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Dated at Bethesda, Maryland, this 19th day of August 1985.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 85–20143 Filed 8–20–85; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Order No. 621; Docket No. A85–22]

Louvale, Georgia 31814 (Thelma R. Wilder, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule

Issued: August 14, 1985.

Before Commissioners: Janet Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket Number: A85–22.

Name of affected Post Office: Louvale, Georgia 31814.

Name(s) of petitioner(s): Thelma R. Wilder.

Type of determination: Closing.

Date of filing of appeal papers: August 8, 1985.

Categories of issues apparently raised:

1. Procedural requirements [39 U.S.C. 404(b)(5)(B)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].
3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or , conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before August 23, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

August 8, 1985—Filing of Petition.
August 14, 1985—Notice and Order of Filing of Appeal.
September 3, 1985—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
September 12, 1985—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].
October 2, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
October 17, 1985—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
October 24, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
December 6, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85–19903 Filed 8–20–85; 8:45 am]

BILLING CODE 7715–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY:

Summary of Proposal(s):

(1) Collection title: Railroad Verification of Claimed Unemployment or Sickness.
(2) Form(s) submitted: ID–4K, ID–4L.
(3) Type of request: New collection.
(4) Frequency of use: On occasion.
(5) Respondents: Businesses or other for-profit, Small businesses or organizations.
(6) Annual responses: 825.
(7) Annual reporting hours: 137.
(8) Collection description: The notices provide the means whereby employers can advise the Board if there are conflicts as to whether an employee who applies for benefits is, in fact, off work because of unemployment or sickness.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692).

Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85–19951 Filed 8–20–85; 8:45 am]

BILLING CODE 7905–01–M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1985, shall be at the rate of 20 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1985, 27.0 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 73.0 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.
Dated: August 13, 1985.

Beatrice Ezerski

Secretary to the Board.

[FR Doc. 85–19944 Filed 8–20–85; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14677; File No. 812–6094]

Christiania Capital Corp.; Application and Opportunity for Hearing

August 15, 1985.

Notice is hereby given that Christiania Capital Corporation ("Applicant"), c/o Andrew C. Quale, Jr., Esq., Sidley & Austin, 520 Madison Avenue, New York, NY 10022, filed an application on April 17, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the text of the relevant provisions thereof.

Applicant, a Delaware corporation, states that it is a wholly-owned subsidiary of Christiania Bank og Kreditkasse ("CBK"), a bank organized and existing under the laws of Norway. Commercial paper issued by CBK is currently sold in the United States under an order granted to CBK by the Commission pursuant to section 6(c) of the Act exempting it from all provisions of the Act, *In the Matter of Christiania Bank og Kreditkasse,* Investment Company Act Release No. 12828 (November 18, 1982). CBK now proposes to convert its commercial paper program to one in which CBK would guarantee commercial paper to be issued by the Applicant.

Applicant states that CBK was established in 1848 and is one of the two largest commercial banks in Norway. applicant states that at December 31, 1983, CBK had total assets of $4,184,157,162 and total deposits (excluding deposits from banks) of $2,979,863,864. As of such date, Applicant further states that CBK's total loans amounted to $2,468,517,107, representing 58% of total assets and CBK's investment securities (including bearer bonds and securities but excluding shares in subsidiaries) amounted to $1,189,052,348 or 28% of its assets. Applicant also states that for the year ended December 31, 1983, net interest income and credit accounted for 70% of total operating income and securities underwriting brokering and trading activities have been 5% or less of total operating income.

Applicant represents that CBK is regulated by the Norwegian government, which includes supervision by the Inspectorate of Banks, the official body supervising Norwegian banks. Applicant states that CBK must regularly submit a number of statistical reports to the Inspectorate of Banks which also makes local inspections of each individual bank. In addition, Applicant states that Norwegian banking legislation contains certain liquidity and capital requirements and lending limits. Pursuant to Norwegian law, commercial banks must have a common security fund representing 1.5% of the bank's aggregate deposits from other than banks as of December 31, 1982. The contributions to the fund are proportionate to the total assets of the banks and are to be increased until the fund reaches 2% of such deposit base. The purpose of the fund is to support the activities of the member banks if they experience difficulties. Applicant states that the Bank Act of 1961 provides that insolvency proceedings cannot be commenced in respect of commercial banks. In addition, Applicant represents that in a report to the Norwegian Parliament, the Governor of the Norwegian Central Bank (Norges Bank) stated that under no circumstances would the Norges Bank allow a Norwegian commercial bank to default on its obligations.

According to the application, the Applicant proposes to issue and sell in the United States unsecured prime quality negotiable promissory notes of the type generally referred to as commercial paper. CBK shall unconditionally guarantee the payment of the principal, interest and premium, if any, on the notes. The Applicant also states that by reason of the notes being unconditionally guaranteed by CBK, holders of the notes will hold obligations of CBK. The guarantee by CBK will rank *pari passu* with all other unsecured and unsubordinated indebtedness of CBK (including its deposit liabilities) and prior to CBK's subordinated indebtedness and to the claims of holders of CBK's share capital. The Applicant states that the proceeds from sales of the notes will be made to CBK and other subsidiaries of CBK in the form of short-term loans or deposits. The funds received by CBK and its other subsidiaries shall be used to repay maturing CBK commercial paper and as a source of supply of U.S. dollars for use in funding their current transactions in currencies other than Norwegian Kroner, particularly short-term U.S. dollar-denominated credits.

The Applicant states that the notes will be issued and sold by the Applicant to a commercial paper dealer in the United States which, as principal, will reoffer them to investors in the United States. The Applicant undertakes to ensure that the notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold to institutional investors and other entities and individuals who normally participate in the commercial paper market. The Applicant further undertakes to ensure that the commercial paper dealer will provide to each offeree, prior to any sale of notes to such offeree, an Offering

Memorandum which will be at least as comprehensive as those customarily used in commercial paper offerings in the United States. The Applicant states that the Offering Memorandum will briefly describe the business of both the Applicant and CBK and will contain the most recent publicly available fiscal year-end audited balance sheet and income statement of CBK, which shall have been audited in such manner as is customarily done for CBK by its Norwegian auditors. Applicant also states that the Offering Memorandum will describe the material differences, if any, between the accounting principles applied by CBK in the preparation of such financial statements and "generally accepted accounting principles" as employed by commercial banks in the United States. The Offering Memorandum and financial statements will be updated periodically to reflect material changes in the financial condition of CBK and its subsidiaries.

According to the application, the terms of the notes, including their negotiability, maturity and minimum denomination, the amount outstanding at any given time and their manner of offering to investors, will be such as to qualify the notes for exemption from registration under the Securities Act of 1933 ("Securities Act"), as amended, pursuant to section 3(a)(3) thereof. Applicant further represents that it will not issue and sell the notes until it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, the notes would be entitled to exemption under section 3(a)(3). The Applicant does not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under section 3(a)(3) of the Securities Act, and the Commission expresses no opinion as to the availability of such exemption.

The Applicant represents that the presently proposed issue of notes and all future issues of notes will have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that its United States counsel will have certified that such rating has been received. The Applicant states that it will appoint a bank in the United States as its authorized agent to issue notes from time to time. Applicant further states that CBK will appoint CT Corporation System as agent in the United States to accept service of process in any action based on CBK's guarantees of the notes instituted in any state or federal court by a holder of any of the notes. CBK will expressly accept the jurisdiction of any state or federal court located in the city and state of New York in respect of any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the notes have been paid.

Applicant represents that it does not presently intend to issue any securities other than the notes, but in the event that the Applicant does in the future offer other securities (other than shares of its capital stock) for sale in the United States, such offerings will be made only pursuant to a registration statement under the Securities Act or pursuant to an applicable exemption from registration under the Securities Act, the availability of which will be confirmed by an opinion of special United States counsel. The Applicant undertakes that any such offering will be made on the basis of disclosure documents appropriate for such registration or exemption, as the case may be, and at least as comprehensive as those customarily used by United States issuers in offering of this type of similar offerings. The Applicant also undertakes to ensure that each offeree of such securities will be provided with such disclosure documents, except that where an offering is made pursuant to a registration statement under the Securities Act, such disclosure documents will be provided to such persons and in such manner as may be required by the Securitites Act and the rules and regulations thereunder. Applicant states that any such future offerings will be made with due regard to the provisions of Rule 146 and the "integration" rules of the Commission. The Applicant consents to any order granting this application being expressly conditioned on the Applicant's compliance with the undertakings set forth above.

In support of its request, Applicant represents that it will conduct the normal business of a financing subsidiary of a foreign commercial bank and, consequently, does not believe that it should be considered an "investment company" within the meaning of the Act. Applicant states that the approval of an exemption under section 6(c) for the Applicant would be consistent with the 1982 Order granted by the Commission to CBK by virtue of the same reasoning as was set forth in CBK's application for the 1982 Order. Applicant further states that such reasoning is equally applicable here because the purchase of the notes would be the equivalent of the purchase of obligations of CBK, due to CBK's unconditional guarantee of the notes. Applicant concludes that granting an exemptive order pursuant to section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 9, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19913 Filed 8-20-85; 8:45]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension

File No. 270-132—Rule 20a-1
File No. 270-133—Rule 20a-2
File No. 270-134—Rule 20a-3
File No. 270-174—Rule 31a-2

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following investment Company act of 1940 rules: Rule 20a-1, relating to solicitation of proxies, consents, and authorizations, Rule 20a-

2, requiring information in proxy statements pertaining to investment advisory contracts, Rule 20a–3, requiring information in proxy statements as to certain transactions, and Rule 31a–2, regarding records to be preserved by registered investment companies and certain majority-owned subsidiaries thereof.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

For the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19999 Filed 8–20–85; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–8545]

Issuer Delisting; Application To Withdraw From Listing and Registration; Scott Cable Communications, Inc.

August 16, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Pacific Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Scott Cable Communications, Inc. no longer desires to be listed on the Pacific Stock Exchange, and that said delisting is necessary because of its desire to be listed on the National Market with NASDAQ.

Any interested person may, on or before September 6, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19996 Filed 8–20–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22330; File No. SR–CSE–85–4]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to Small Order Execution Guarantee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 2, 1985, The Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Effective August 2, 1985, the Board of Trustees of The Cincinnati Stock Exchange adopted certain stated policies, practices and interpretations pertaining to Exchange Rule 11.9 and amended Exchange Rule 11.9, which now reads in pertinent part as follows (new language italicized and deleted language bracketed):

Rule 11.9. National Securities Trading System

(a) When used in Rule 11.9, unless the context otherwise requires—

(1)[(7)] The term "System" means *the National Securities Trading System,* an electronic *securities* communication *and execution* facility designated by the Exchange's Board *of Trustees* through which bids and offers of competing dealers, as well as public *orders* [bids and offers], are consolidated for review and execution by Users. *The System combines the display of both the limit order file and current quotation/last sale information to Users with the matching and execution of like-priced orders, bids and offers according to programmed price/time and agency/principal priorities in order to give Users the ability to perform the brokerage and market-making functions performed on other exchanges. In addition, the System provides for the automatic execution of orders under predetermined conditions.*

(2)[(1)] The term "Approved Dealer" means * * *

(3) * * *

(4)[(2)] The term "Contributing Dealer" means * * *

(5)[(8)] The term "User" means a Member of the Exchange or an Approved Dealer. *Access Participant Members are considered to be Users in their limited capacity of executing transactions through the facilities of a Proprietary Member.*

(6)[(4)] The term "Designated Issue" means * * *

(7)[(6)] The term "public agency order" means * * *

(8) *The term "professional agency order" means an order entered by a User as agent for the account of a broker-dealer.*

(9) *The term "Floor" means the electronically integrated System marketplace consisting of the premises on which System terminals are located and the System supervisory center.*

(10)[(5)] The term "limit order guarantee" means * * *

(11) *The term "ITS BBO" means the best bid/ask quote among the Intermarket Trading System ("ITS") participants in those issues that are traded on ITS.*

(b) Any class of securities listed or admitted to unlisted trading privileges on the Exchange shall be eligible to become a Designated Issue. *All Designated Issues are eligible for odd-lot, round-lot and partial round-lot executions.*

(c) * * *

(i) * * *

(ii) * * *

(iii) * * *

(iv) Guarantee the execution of up to 1099 shares of public agency market orders in Designated Issues for which he is Designated Dealer. *If there exist two or more Designated Dealers in a Designated Issue, then the guarantee obligation shall rotate among such Designated Dealers on a daily basis. For the purposes of this subsection, market order shall include marketable limit order, which is a limit order that is immediately executable because the ITS BBO at the time the order is entered is equal to or better than the limit price on the order.*

(v) *Guarantee the execution at the opening price of opening public agency market orders and limit orders which are priced better than such opening price.*

(d) * * *

(e) * * *

(f) * * *

(g)[(j)] It shall be the responsibility of all Users when trading on the

Exchange for the account of another person to effect such transactions through the System. *Users may enter agency orders to buy and sell in Designated Issues through System terminals, which may have computer interfaces that have communications capability with the System and are directly linked to the System.*

(h) *The System shall display all current principal interest and agency orders of Users in Designated Issues, as well as the best bid/ask quotations of each ITS participant in, and the last sale price for, Designated Issues, to each User for purposes of trading.*

(i)[(k)] *The System shall automatically match and execute like-priced orders, bids and offers in accordance with the price-time and agency/principal priorities set forth in Rule 11.9(l) and (m).* [Any Approved Dealer or Proprietary Member in effecting an execution in a Designated Issue on the Exchange for his own account through the System, and any User effecting an execution in a Designated Issue on the Exchange for the account of another person through the System, shall do so by accepting bids and offers in the System in accordance with the priorities for bids and offers set forth in paragraph (i) of this Rule].

(j) *Limit orders to buy (sell) at a price inferior to the ITS BBO will be executed other than at the opening only after a regular way transaction in the Designated Issue is executed in another ITS participant market at a price which is equal to or less than (greater than) the limit price of the order.*

(k)[(g) A public agency order to buy or sell a specified amount of any Designated Issue at a specified price may be entered in the System by any User of the Exchange. Except as provided below, public agency orders in Designated Issues may not be executed on the Exchange otherwise than by entry in and execution through the System.] Public agency orders entered in the System which have not been executed may be removed * * *

(l)[(h)] Public agency orders to buy or sell * * *

(m)[(i)] It shall be the responsibility of [every] *each* Approved Dealer [and] *or other* Proprietary Member when trading on the Exchange for his own account *or as agent for professional agency orders* in round lots of Designated Issues to effect such transactions through the System and, in so doing, to yield priority to

(1) all public agency orders in the System at prices equal to, or better than, his [own] *order*, bid or offer; and

(2) all *orders*, bids and offers of Approved Dealers and *other* Proprietary Members for their own accounts *and as agents for professional agency orders* in the System at prices better than his [own] *order*, bid or offer or at the same price in the event any such *orders*, bids, or offers [was] *were* entered in the System at an earlier time than his [own], *order*, bid or offer.

(n) *Public Agency Guarantee.*

(1) *Public agency opening market orders and limit orders better than the opening price which are entered prior to the opening shall be executed at the opening price.*

(2) *Public agency market and marketable limit orders from 1 share up to and including 1099 shares in all Designated Issues which are entered after the opening are guaranteed execution pursuant to the following requirements.*

(3) *The Designated Dealer of the day must accept and guarantee execution on all public agency market and marketable limit orders from 1 share up to and including 1099 shares in accordance with this subparagraph (n).*

(4) *Subject to the requirements of the short sale rule, orders must be filled on the basis of the ITS BBO bid on a sell order or the ITS BBO offer on a buy order.*

(5) *The number of shares which the Designated Dealer of the day is obligated to execute is reduced by the number of shares executed in the System against any agency or principal interest, including interest of the Designated Dealer of the Day, priced at the ITS BBO when the order enters the System.*

(6) *In unusual trading situations, a Designated Dealer may seek relief from the requirements of 2 through 5 above from a CSE Floor Official or a member of the Exchange staff who would have authority to set execution prices.*

(o) *Prior to formatting any order, bid or offer into an ITS commitment to trade and issuing such a commitment to another ITS participant market, the System shall process such order, bid or offer as follows:*

(1) *if a principal bid or offer, the System shall first exhaust all interest at or better than such bid or offer which is resident in the System;*

(2) *if a public agency market or marketable limit order, the System shall first process the order pursuant to CSE Rule 11.9(i) and (n) and then expose for thirty seconds any remaining balance to all Approved Dealers, whether or not registered in the Designated Issue involved;*

(3) *if a professional agency order, the System shall exhaust all interest at or better than such order which is resident in the System and then, if the Board of Trustees has authorized the System generation of ITS commitments to trade, and such a procedure is in effect, shall expose the order for thirty seconds to all Approved Dealers, whether or not registered in the Designated Issue involved.*

(p) [(l)] * * *

(q) [(m)] * * *

(r) [(n)] * * *

(s) [(o)] * * *

General Description of the Services Provided to Member Organizations Though the System

The System is the electronic securities communcation and execution system designated by the Exchange's Board of Trustees which is avialable to all CSE members and through which bids and offers of competing dealers as well as public orders are consolidated for review and execution. The System combines a limit order file capable of being viewed by all Users, the display of current Exchange and naitonal quotation and last sale information, and the electronic matching and execution of like-priced System interest according to programmed price/time and agency/principal priorities in order to give Users the ability to perform electronically traditional brokerage and market-making functions. In addition, the System provides automatic, guaranteed executions for public agency market and marketable limit orders up to 1099 shares at the best available price represented by all Intermarket Trading System participants (the "ITS BBO").

System Operations

Only Designated Issues are eligible for trading in the System. Designated Issues consist of securities listed or admitted to unlisted trading privileges on the Exchange for which one or more Designated Dealers have been approved to provide continuous bids and offers through the System during Exchange trading hours.

Orders, bids and offers may be entered by Users through System terminals, which may have computer interfaces that have communications compatibility with the System and are directly linked to the System. Orders in Designated Issues are eligible for odd-lot, round-lot, and partial round-lot executions.

Orders, bids and offers entered into the System are exposed to Users through system terminals. The System aggregates, prioritizes and continually updates all agency and principal trading interest in each Designated Issue for

display to Users. The information displayed includes stock symbol, time of entry, price, and aggregate size by price; the name of the member firm entering an order is available only on the CSE supervisory terminal.

Users are given the opportunity to interact with System trading interest and to elicit additional trading interest via their ability to see current System trading interest and to enter, modify, and withdraw orders, bids and offers through their terminals. When like-priced orders or bids and offers meet, the System automatically causes an execution based on programmed agency/principal and price-time priorities consistent with the Rules of the Exchange. Execution reports are transmitted directly to the member firms involved, to CSE and to the consolidated tape; the interest held for display in the System is automatically adjusted to reflect the activity, and the System automatically records the information necessary to produce a tape for the national clearance and settlement organizations.

Approved Dealers, who are Designated Dealers, Contributing Dealers, or specialists or market makers registered as such with another exchange with respect to any Designated Issue, may trade either on a principal or an agency basis. Trading on an agency basis is conducted as described below for other Proprietary Members. An Approved Dealer typically trades on a principal basis by entering price and size quotations into his System terminal for Designated Issues in which the Approved Dealer is so registered. An Approved Dealer may also trade on a principal basis in Designated Issues for which he is not registered as long as he complies with section 11(a) of the Securities Exchange Act of 1934 (the Act) and the rules and regulations thereunder. In either event, the quotations entered by the Approved Dealer are automatically ranked according to the price-time and agency/principal priorities contained in Exchange Rule 11.9 and are either immediately matched with and fully or partially executed against contra System trading interest or are held for display to other System participants. Thus, for example, if an Approved Dealer wishes to trade against a bid currently being displayed by another System User, the Approved Dealer simply enters a like-priced offer into his System terminal. The System matches and executes the offer against the bid up to the size bid or offered, whichever is less, and automatically transmits reports to both the buyer and seller.

Proprietary members other than Approved Dealers may trade in the System either for their own account or in an agency capacity. Principal trading is conducted in the manner above prescribed for Approved Dealers and must comply with Section 11(a) of the Act and the rules and regulations thereunder. A Proprietary Member who wishes to enter an agency order for a particular Designated Issue typically inputs price, size and any special condition information into the System terminal. (The System presently accepts the follwing special condition types: market, limit, immediate or cancel, fill or kill, day, good 'til cancelled, do not reduce, and opening only.) The order is ranked according to price/time and agency/principal algorithms and is either immediately matched with an executed against contra System trading interest or is placed in the limit order file for display to other System participants.

If a Proprietary Member enters a public agency market or marketable limit order, then the System processes the order according to the procedures described below under "Public Agency Guarantee". A professional agency order, however, does not receive the benefit of a guaranteed execution, and such an order is not granted the special priority accorded to public agency orders under CSE Rule 11.9(m). For the purpose of priority in execution, a professional agency order will be treated as though it was a principal bid/offer.

Pre-Opening Activity

A User may enter pre-opening orders directly into the System. Orders designated as opening market orders which are received in any Designated Issue before trading in that security begins are displayed on all System terminals and are executed at the opening at a price which is equivalent to the opening price. In addition, opening limit orders received prior to the opening and limit orders entered previously into the System will receive executions at the opening price if such orders are priced better than the opening price on the primary market. In both instances, the contra side to the opening orders is the Designated Dealer of the day, i.e., the Designated Dealer obligated on the particular day to act pursuant to the guarantee obligation of CSE Rule 11.9(c)(iv) in the particular Designated Issue involved.

Access Participant Members

The CSE By-Laws permit Access Participant Members to execute transactions in the System "only through the facilities of a Proprietary Member". A Proprietary Member enters orders into the System for Access Participants and obtains executions in the same manner as other agency orders.

Public Agency Guarantee

Users who enter public agency market and marketable limit orders Designated Issue are guaranteed an execution of up to 1099 shares at the ITS BBO. For each Designated Issue, there is a Designated Dealer obligated to execute such orders. Where there are multiple Designated Dealers in a particular issue, the duty to provide a guaranteed execution is rotated daily among such Dealers.

The Designated Dealer of the day is required by CSE Rule 11.9(c)(iv) to provide an execution of up to an aggregate of 1099 shares of a eligible order to the ITS BBO. The number of shares which the Designated Dealer of the day is obligated to execute is reduced by the number of shares executed in the System against any agency or principal interest, including that of the Designated Dealer of the day, residing in the System which is priced at the ITS BBO. Thus, upon entry into the System by a User, a public agency market or marketable limit order is priced at the ITS BBO and is first matched against any existing contra agency interest at the ITS BBO, then against any similar principal interest. If any size remains after this matching process, up to 1,099 shares of the total order is automatically executed against the guaranteeing Dealer at the ITS BBO.

Any portion of a public agency market or marketable limit order still remaining unexecuted after the guarantee is flashed on the System terminals of all Approved Dealers for thirty seconds in order to give each Approved Dealer an opportunity to fill all of the balance of the order at the ITS BBO.

ITS Interface

An ITS commitment to trade may be formatted and entered into ITS on a manual basis or, if the Board of Trustees should choose to substitute new hardware for present ITS stations, on a more efficient basis in which the System would format and enter commitments to trade into ITS. The following is an example of the manner in which the System will process ITS activity if the hardware substitution is implemented.

Assume that a member firm of the NYSE receives from a customer an order to purchase 100 shares of a given NYSE listed stock that is also traded on the PSE and the CSE and sends that order to the NYSE for execution. There a NYSE member, acting as agent for the

customer, will receive the order and attempt to execute it. He may find that the best bid on the NYSE floor is 39⅞ and that the best offer is 40¼.

Assume that the stock in question is one of the stocks as to which continuous two-sided quotations are required to be furnished by the CSE. Assume also that the continuously updated quotation display at the appropriate NYSE trading post shows that the best offer from other Participant Markets is one of 40⅛ on the CSE. Having learned this formation, the NYSE member may decide to attempt to buy the 100 shares for his customer from the 40⅛ offer on the CSE. By using an ITS station located on the NYSE trading floor, the broker would send, or cause to be sent, the CSE a commitment to buy 100 shares of the stock at 40⅛.

When the commitment to buy is entered into ITS, ITS will send the commitment to CSE where it will enter the System. If the 40⅛ offer is still available when the commitment to buy reaches the System, or if a better offer is available in the System, and if the rules of the CSE permit an execution at that price, then the System would generate an acceptance of the commitment on behalf of the User responsible for the 40⅛ offer (or the better offer) and send it to ITS. The execution would occur at 40⅛ (or at the better price) if the applicable time period had not expired. The System would report the trade to the CTA Plan Processor for dissemination under the CTA Plan at 40⅛ (or at the better price) with the identifier assigned to the CSE.

If the example is reversed and a User seeks to purchase 2000 shares as agent, then the User would enter his buy interest into the System as either a limited priced order or a market order. The entry would be made through a System terminal. If the buy interest has a limit less than the ITS BBO offer, the System will place the buy interest in the System limit order file. If the limit of the buy interest equals or exceeds the ITS BBO offer, or if the buy interest is a market order, the System will append to the buy interest a price equal to the ITS BBO offer and will seek an execution with existing sell interest by searching the System limit order file. If there is sell interest within the System that equals the ITS BBO offer, the System will execute the buy interest up to the size of the sell interest.

If any portion of the buy interest remains (or if there is no sell interest within the System that equals the ITS BBO offer), the System will execute the remainder of the buy interest against the Designated Dealer of the day in minimum amount equal to 1099 shares minus the amount, if any, already executed against the existing sell interest in the System limit order file. If any of the buy interest still remains, the System will display the remainder on the System terminals of all Approved Dealers for thirty seconds to afford them an opportunity to supply all the stock.

If the Approved Dealer does not take all the remaining priced buy interest during the thirty seconds, the next step in processing depends on the price of the ITS BBO offer at that point.

The first possibility is that the price of the remaining buy interest equals or exceeds the ITS BBO offer. In that case, the System will format the balance of the buy interest into a commitment to buy at that price and, acting on behalf of the User who entered the buy interest into the System, send the commitment to the Participant Market then furnishing the ITS BBO offer. If such Participant Market does not execute the commitment in full, the System will route the priced buy interest that still remains to the System terminal in the System supervisory center. A CSE employee, acting on behalf of the User who entered the buy interest into the System, will then manually enter the buy interest into the ITS station as a commitment to buy (and reprice it as necessary) and send the commitment to the Participant Market then furnishing the ITS BBO offer. However, if the buy interest has a limit less than the ITS BBO offer, the employee will instead place the buy interest in the System limit order file or return it to the entering User, as specified by the entering User.

The second possibility is that the price of the remaining buy interest is less than the ITS BBO offer. In that case, the System will send the priced buy interest to the System terminal in the System supervisory center. The CSE employee thereupon handles the priced buy interest in the same way as he or she handles buy interest upon the cancellation, expiration or partial execution of System-generated commitments to trade.

If an Approved Dealer, whether or not registered in a particular System security, or other User entered the buy interest for his own account or for the account of another broker-dealer, the processing is the same except that the System does not provide the interest an execution pursuant to the guarantee obligation or the thirty-second display. The System, however, if and only if the Board of Trustees has authorized the System generation of commitments to trade and the necessary steps have been taken to implement such a procedure, prior to formatting a professional agency market or marketable limit order as an ITS commitment to trade, will display such an order on the System terminals of all Approved Dealers for thirty seconds.

The System presently operates in the manner described above except that commitments and acceptances are generated and sent manually and professional agency orders are not displayed on System terminals for thirty seconds after clearing the limit order file.

If the lines linking the System directly to ITS are not operating, the commitment to trade or response thereto destined for or being sent on behalf of Users will leave and enter ITS from the System supervisory center. Thus, in the example of the commitment sent to the CSE, ITS will route the commitment to the ITS station located in the System supervisory center. There a CSE employee will determine whether the 40⅛ offer is still the best offer then being furnished by Users. If the 40⅛ offer is still available, or if a better offer is available, and if the rules of the CSE permit an execution at that price, then the CSE employee shall enter appropriate acceptances in both the System and ITS during the applicable time peirod. Upon ITS's acceptance of the entry, an execution at 40⅛ (or at the better price) would take place. The CSE would then report the trade to the CTA Plan Processor for dissemination under the CTA Plan at 40⅛ (or at the better price) with the identifier assigned to the CSE. Similarly, a commitment generated by the System would be routed to the System terminal in the System supervisory center. The CSE employee would enter the commitment into the ITS station at the System supervisory center.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The purpose of the Proposed Rule Change is for the Exchange to clarify and more fully set forth in its Rules the operation and basic characteristics of the System.

Statutory Basis

Section 6 and Section 11A of the Act provide the principal statutory basis for the Proposed Rule Change. The Proposed Rule Change codifies a more detailed description of the National Securities Trading System, a trading

system which is designated to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system, as called for by section 6(b)(5).

Certain enhancements to the current manner of linkage between the National Securities Trading System and the Intermarket Trading System will further the intentions of Congress as set forth in Section 11A with its statement that "[t]he linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition . . . and contribute to the best execution of such orders." In addition, a more efficient linkage will, consistent with Section 11A, promote the public interest and the protection of investors by assuring economically efficient executions of securities transactions and fair competition among exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change will impose any burden on competition.

C. Self-Regulatory organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited not received comments on the Proposed Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Act

Within 35 days of the date of publication of this notice in the **FEDERAL REGISTER** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 11, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 15, 1985.

[FR Doc. 85-19998 Filed 8-20-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Findings and Order Granting Applications for Unlisted Trading Privileges; Midwest Stock Exchange, Inc.

August 15, 1985.

The Midwest Stock Exchange, Incorporated ("MSE") has filed an application with the Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange:[1]

Monarch Capital Corporation
Common Stock, $1.00 Par Value (File No. 7-8517)
Intelogic Trace, Inc.
Common Stock, No Par Value (File No. 7-8518)
Castle Industries, Inc.
Common Stock, $0.10 Par Value (File No. 7-8519)
Direct Action Marketing
Common Stock, $0.01 Par Value (File No. 7-8520)
Superior Surgical Manufacturing Company
Common Stock $1.00 Par Value (File No. 7-8521)

The Commission finds that approval of the MSE application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act (17 CFR 240.11Aa3-1). The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally, the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

Accordingly, it is ordered, pursuant to section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges of the Midwest Stock Exchange in the above named securities is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19914 Filed 8-20-85; 8:45 am]

BILLING CODE 8010-01-M

[1] Notice of this application was given by publication in the **Federal Register** (50 FR 30775, July 29, 1985). The Commission has received no comments with respect to this application.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 15, 1985.

The above named national security exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Interstate Securities, Inc.
Common Stock, $0.20 Par Value (File

No. 7–8546)
ML Convertible Securities, Inc.
Capital Shares, $0.10 Par Value (File No. 7–8547)
Union Exploration Partners, Ltd.
Depositary Units (Representing Limited Partners Interests) (File No. 7–8548)
LAC Minerals Ltd.
Common Stock, $0.10 Par Value (File No. 7–8549)
UDC-Universal Development
Depositary Receipt (Evidencing Depository Units) (File No. 7–8550)
Sunshine Mining Compnay
new Cumulative Redeemable Preferred Stock, $11.94 Stated Value (File No. 7–8551)
Brown Forman, Inc.
Class B, $0.30 Par Value (File No. 7–8553)
Russell Corporation
Common Stock, $0.01 Par Value (File No. 7–8553)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 6, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19915 Filed 8–20–85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 38978]

Braniff International Airways Employee Protection Program Investigation; Second Prehearing Conference

Notice is hereby given that a second prehearing conference in the above-entitled matter is assigned to be held on September 18, 1985, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC 20590, before the undersigned administrative law judge.

Dated at Washington, DC, August 13, 1985.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 85–19920 Filed 8–20–85; 8:45 am]

BILLING CODE 4910-62-M

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 85–6–55 established the currently effective two-month SFFL applicable through July 31, 1985.

In establishing the SFFL for the two-month period starting August 1, 1985, we have projected nonfuel costs based on the year ended March 31, 1985 data, and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Department.

By Order 85–8–46 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic—1.2094
Latin America—1.3462
Pacific—1.2628
Canada—1.1865

For further information contact: John D. Coakley, (202) 472–5492.

By the Department of Transportation: August 15, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–20002 Filed 8–20–85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43006]

Pan Aviation Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on September 4, 1985, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC 20590, before the undersigned administrative law judge.

Dated at Washington, DC, August 14, 1985.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 85–20001 Filed 8–20–85; 8:45 am]

BILLING CODE 4910-62-M

Urban Mass Transportation Administration

Section 15 Reporting System Advisory Committee; Meeting

AGENCY: Urban Mass Transportation, DOT.

ACTION: Notice of Section 15 Reporting System Advisory Committee Meeting.

SUMMARY: In this Notice, the Urban Mass Transportation Administration (UMTA) announces a meeting of the Section 15 Reporting System Advisory Committee. The Committee provides advice concerning the quality and usefulness of the Section 15 Reporting System.

DATE: September 5–6, 1985.

FOR FURTHER INFORMATION CONTACT: Ronald J. Fisher, Office of Information Services, Room 6419, 400 Seventh Street, SW., Washington, DC 20590, (202) 426–9157.

SUPPLEMENTARY INFORMATION:

Background

Section 15 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611), requires the development of a national reporting system for public mass transportation financial and operating data. On August 27, 1981, UMTA issued a Notice in the **Federal Register** (46 FR 43352) announcing the establishment of the Section 15 Reporting System Advisory Committee. The Committee enhances the quality and usefulness of the Section 15 Reporting System to assure that it provides meaningful information for the analysis of the transit industry.

All Committee meetings are open to the public. With the Chairman's approval, members of the public may speak at meetings in accordance with procedures established by the Committee. A written statement may be filed with the Committee at any time.

Meeting Information

Dates: Thursday, September 5, 1985; Friday, September 6, 1985
Time: 9:00 p.m.–5:00 p.m.
Place: Department of Transportation, 400 Seventh Street, SW., Room 4234, Washington, D.C. 20590

Issued on: August 14, 1985.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 85–20024 Filed 8–20–85; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 29–85]

Treasury Notes of August 31, 1987, Series Y–1987

August 15, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of August 31, 1987, Series Y–1987 (CUSIP No. 912827 SQ 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reseve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 3, 1985, and will accrue interest from that date, payable on a semiannual basis on February 28, 1986, and each subsequent 6 months on August 31 and February 28 through the date that the principal becomes payable. They will mature August 31, 1987, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by an State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, August 21, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 20, 1985, and received no later than Tuesday, September 3, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commecial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expresed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, September 3, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 29, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, September 3, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying nunber)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Goverment is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-20034 Filed 8-20-85; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 162
Wednesday, August 21, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 15, 1985.

TIME AND DATE: 10:00 a.m., Thursday, August 22, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, MSHA on behalf of Robert Ribel v. Eastern Associated Coal Corp., Docket No. WEVA 84-33-D. (Issues include whether the administrative law judge erred in concluding that the miner had been discharged in violation of the Mine Act and properly denied attorney's fees to the miner's private counsel.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-20006 Filed 8-16-85; 4:35pm]

BILLING CODE 6735-01-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-35]

TIME AND DATE: 9:30 a.m., Tuesday, August 27, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Investigation 701-TA-254 [Preliminary] (Certain red raspberries from Canada)—briefing and vote.
2. Investigations Nos. 731-TA-275, 276 and 277 [Preliminary] and 701-TA-255 and 256 [Preliminary] (Oil country tubular goods from Canada and Taiwan)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20017 Filed 8-19-85; 9:16 am]

BILLING CODE 7020-02-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-36]

TIME AND DATE: 10:00 a.m., Tuesday, September 3, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigation No. 22-49 (Sugar)—briefing and vote.
6. Investigation No. 104-TAA-28 (Sugar content of certain articles from Australia)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20018 Filed 8-19-85; 9:16 am]

BILLING CODE 7020-02-M

4

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9 a.m., Tuesday, August 27, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC., 20594.

STATUS: This item will be open.

MATTER TO BE CONSIDERED:

1. *Aircraft accident Report:* Wings West Airlines, Inc., Beech C-99, N6399U, and Aesthetec, Inc., Rockwell Commander 112TC, N1125M, near San Luis Obispo, California, August 24, 1984.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382-6525.

Dated: August 16, 1985.

Catherine T. Kaputa,

Federal Register Liaison Officer.

[FR Doc. 85-20028 Filed 8-19-85; 10:11 am]

BILLING CODE 7535-01-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 19, 26, September 2, and 9, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 19

No Commission Meetings

Week of August 26—Tentative

No Commission Meetings

Week of September 2—Tentative

Tuesday, September 3

2:00 p.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

Wednesday, September 4

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Continuation of 7/23 Discussion on Threat Level and Physical Security (Closed—Ex. 1)

Thursday, September 5

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 6

10:00 a.m.
Status of Interpretation of Appendix R—Fire Protection (Public Meeting)

Week of September 9—Tentative

Tuesday, September 10

10:00 a.m.
Discussion and Oral Presentations on
- Uranium Mill Tailings Regulations (Public Meeting) (tentative)

2:00 p.m.
Discussion of Proposed Station Blackout Rule (Public Meeting)

Wednesday, September 11

1:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:00 p.m.
Discussion of Plant Issues with Regional Administrators (Public Meeting)

Thursday, September 12

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for River Bend (Public Meeting) (tentative)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 13

10:30 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,
Office of the Secretary.
August 15, 1985.

[FR Doc. 85–20014 Filed 8–19–85; 8:45 am]
BILLING CODE 7590-01-M

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federal register

Wednesday
August 21, 1985

Part II

Department of Energy

Western Area Power Administration

Announcement of Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs; Final Amended Guidelines and Acceptance Criteria

DEPARTMENT OF ENERGY

Western Area Power Administration

Announcement of Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs

AGENCY: Western Area Power Administration, DOE.

ACTION: Final amended guidelines and acceptance criteria.

SUMMARY: The Western Area Power Administration (Western) must amend its existing Guidelines and Acceptance Criteria for customer conservation and renewable energy programs issued November 13, 1981 (46 FR 56140) in accordance with the requirements of the Hoover Power Plant Act of 1984 (Pub. L. 98–381, Title II, signed August 17, 1984). Western's overall program objectives are increased energy production from renewable resources, reduced dependence on foreign energy, and improved efficiency in energy utilization.

The basic program approach recognizes individual customer needs and capabilities and acknowledges past and present accomplishments in the areas of conservation and renewable energy. Customers are given primary responsibility for developing and implementing programs for efficient energy production and conservation goals. The Guidelines and Acceptance Criteria are implemented through contract articles or other formal agreements between Western and its customers. Customers are required to submit their conservation programs within 1 year after a long-term firm power contract or letter agreement is signed. Customers may elect to submit their programs to Western prior to signing such contracts or agreements.

A customer's program submission includes a description of its specific program content. Western's Guidelines and Acceptance Criteria include a list of suggested activities for customer consideration. Western gives full or partial credit for programs required by other entities that meet the requirements of this program.

Acceptance criteria for customer programs are based on the customer's classification (i.e., cooperative, public utility district, etc.) and the level of effort proposed. A customer's program is evaluated as a whole, but it is required to contain a minimum number of annual on-going or planned program activities. Customers may offer substitutes for listed activities. Western also provides technical assistance to resolve programmatic problems.

The major amendments required to the present Guidelines and Acceptance Criteria under the Hoover Power Plant Act of 1984 may be summarized as follows: (1) Increased emphasis on customer program goals definition; (2) A revision in acceptable program elements (activities); (3) Amendments to Western's evaluation and acceptance criteria; and (4) Identification of penalties associated with program noncompliance.

Western's review process for customer submission will now consist of the following:

1. Publishing these final amended Guidelines and Acceptance Criteria.
2. Providing technical assistance to customers, as appropriate.
3. Reviewing customer submissions against defined criteria.
4. Answering customer questions and providing necessary assistance.
5. Reviewing accepted programs every 2 years.
6. Imposing penalties as appropriate, if a customer is found in violation of its contractual obligations.

These final amended Guidelines and Acceptance Criteria also include the option for customers to appeal program acceptability.

DATE: The effective date of these final amended Guidelines and Acceptance Criteria will be 30 days after publication of this notice in the **Federal Register.**

ADDRESS: For further information concerning these final amended Guidelines and Acceptance Criteria, contact either the appropriate Western Area Office or:

Mr. Warren L. Jamison, Assistant to the Administrator for Conservation and Environment, Western Area Power Administration, U.S. Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231–7945.

SUPPLEMENTARY INFORMATION:

Authority

The original Guidelines and Acceptance Criteria were developed pursuant to Western's authority granted under the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*) and under Reclamation Law, Act of Congress approved June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, in particular section 9(c) of the Reclamation Project Act of 1939 [43 U.S.C. 485h(c)]. These final amendments are developed pursuant to the Hoover Power Plant Act of 1984 (Pub. L. 98–381, Title II).

Determination Under E.O. 12291

Pursuant to E.O. 12291 of February 17, 1981 (46 FR 13193, February 19, 1981), each agency is to determine whether a rule it intends to issue is a major rule. Western has determined that for purposes of E.O. 12291, the final amendments to the Guidelines and Acceptance Criteria for customer conservation and renewable energy programs do not alter the original sufficiently to make it a major rule because:

1. It will not have an annual effect on the economy of $100 million or more;
2. It will not result in a major increase in cost or prices for consumers; individual industries; Federal, State, or local Government agencies; or geographic regions; or
3. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

In addition, Western has received an exemption from sections 3, 4, and 7 of E.O. 12291. However, these Guidelines and Acceptance Criteria will be resubmitted to the Office of Management and Budget prior to publication in the **Federal Register.**

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. to publish a rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western originally determined that: (1) A substantial number of small entities will not be affected as Western's customers represent a relatively small number of entities in the United States; and (2) The impacts of this program will not cause an adverse economic impact on the participating customers or small entities located within their service areas. The requirements of the Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. For the reasons cited above, the Administrator of Western certifies through his signature of this **Federal Register** notice, that the final amendments to the original Guidelines and Acceptance Criteria will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

Pursuant to the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), all agencies of the Federal Government shall include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment a detailed statement by the responsible official.

Western has determined that the Guidelines and Acceptance Criteria would not, of themselves, significantly affect the quality of the human environment or have adverse direct environmental impacts. Therefore, no environmental impact statement is required. This determination is supported after examining the program impacts from actual implementation over a 3-year period. The final amendments will not significantly alter the current program status.

Discussion of Public Comments

Western received three comments from customers during the March 21, 1985, public information and comment forums held in Denver, Colorado. Subsequent to these forums and prior to the April 1 comment deadline, Western received 21 written comments pertaining to the proposed amended Guidelines and Acceptance Criteria. These written comments represented 53 organizations (15 utility customers and 38 environmental groups). All comments have been carefully considered by Western for the final Guidelines and Acceptance Criteria. The comments are herein addressed individually except where multiple comments on like issues have been combined for expediency. Where changes have been made as a result of these comments, they have been so noted. Not all comments submitted to Western pertained to the Guidelines and Acceptance Criteria document itself; however, where appropriate, most have also been addressed for public information. The comments are individually stated followed by Western's response.

Comment: The proposed customer Guidelines and Acceptance Criteria do not comply with the language or the intent of the Hoover Power Plant Act of 1984 and will not result in the degree of implementation desired by Congress. The proposed guidelines lack substance and require extensive revisions before adoption as final rules. The regulations must contain specific program evaluation criteria and penalties for noncompliance. The penalties should consist of reductions or eliminations in power allotments to Western's customers.

Answer: The Guidelines and Acceptance Criteria must be examined along with the conservation and renewable energy contract article in order to provide a complete set of customer requirements. The contract article contains the time schedules and penalties associated with the program and incorporates by reference the Guidelines and Acceptance Criteria. A typical conservation and renewable energy contract article reads as follows:

To effect a conservation and renewable energy program, the parties to the contract agree as follows:

The Contracting Officer will provide guidance and, if requested, will assist the Contractor (or its members) in development of a conservation and renewable energy program, as the Contracting Officer deems appropriate. The Contractor's (and its members') program will be developed and implemented in accordance with the terms of the final Guidelines and Acceptance Criteria for customer conservation and renewable energy programs published in the **Federal Register** (46 FR 56140) on November 13, 1981.

The Contractor (and its members) will develop a conservation and renewable energy program suitable for its own geographic area and type of utility operation and will submit said program to the Contracting Officer for review and approval within 12 months after the date of execution of the contract. The program should include a description of what the Contractor (and its members) has done in the past and the plans for future implementation. Credit will be given for past accomplishments. Approval of the Contractor's (and its members') program shall be in accordance with the published Guidelines and Acceptance Criteria. The approved conservation and renewable energy program will be subject to review by the Contracting Officer not less often than every 24 months.

If the Contractor does not obtain the Contracting Officer's approval of its program within 24 months after the date of execution of the contract or approval of the Contractor's program has been revoked, the Contractor's firm power commitment, as set forth in the contract, may be reduced by 10 percent (10%) of the contract rate(s) of delivery for firm power; provided that no such reduction shall be made until 12 months after the Contracting Officer provides comments to the Contractor outlining deficiencies of the Contractor's program based on the Guidelines and Acceptance Criteria, and unless the Contractor fails to obtain approval by appropriate revision of its program.

As applicable, if one or more of the Contractor's members does not obtain the Contracting Officer's approval of its program within 24 months after the date of execution of the contract or approval of the member's program has been revoked, the member's pro rata share of the Contractor's firm power commitment, as set forth in the contract, may be reduced by 10 percent of said pro rata share of the contract rate(s) of delivery for firm power; provided that no such reduction shall be made until 12 months after the Contracting Officer provides comments to the Contractor and the member outlining deficiencies of the member's program based on the Guidelines and Acceptance Criteria and unless the member fails to obtain an approval by appropriate revisions of its program.

The program evaluation criteria are found in the Guidelines and Acceptance Criteria, and the penalties are set forth in the contract article. All basic contract principles apply and remain viable with the issuance of these amended documents.

Comment: Do Western's verification criteria apply to a customer's conservation and renewable energy program efforts, such as budget or staff, or do they apply to actual results of the program, such as a member of customers (retail) enrolled or number of megawatts involved?

Answer: In effect, the criteria apply to both (see the revised Acceptance Criteria section). Western, in approving a set of ongoing customer defined activities, will evaluate performance based upon the achievements made toward the schedules and targeted goals defined. Such goals may have been amended or modified by the customer through the formal approval process with Western. Program activities which involve research and development with associated technical risk would be evaluated accordingly on a case-by-case basis.

Comment: If a utility develops rates based on cost of service or eliminates declining block rates, and then maintains these changes in its rate design, do these qualify as one-time activities or ongoing activities?

Answer: Rate structures which achieve energy savings or beneficially shift energy consumption have been approved as ongoing activities. However, such programs must include an annual commitment of resources to be considered ongoing activities and are evaluated on a case-by-case basis.

Comment: Will a currently approved voluntary customer conservation and renewable energy program require resubmittal upon publication of the final Guidelines and Acceptance Criteria?

Answer: The acceptance criteria stipulate that an approved voluntary program is also "valid for future contractual purposes at the time of contractual arrangements." A paragraph has been added to the Responsibilities section to address this requirement along with that for mandatory resubmittals.

Comment: What criteria would be applied by Western in reviewing program policy goals and implementation methods and schedules?

Answer: See the revised Acceptance Criteria section.

Comment: What period of time does Western allow for resubmittal of a program if a customer has received a Notice of Unacceptability or a Notice of Rejection?

Answer: Under the terms of the contract article, a customer must have submitted a program within 1 year of contract execution. If the program is unsatisfactory during this 1-year period and a Notice of Unacceptability is issued, the customer should submit corrective materials as soon as possible to obtain approval. Should a Notice of Rejection be issued, the customer has 12 months to obtain approval before the penalty is invoked, not to exceed 24 months from contract execution in accordance with the contract article. Should an approved program be revoked, a Notice of Rejection would be issued, and the 12-month period for correcting any noted deficiencies would apply.

Comment: Does Western expect to revise the current conservation and renewable energy contract article or its General Administrative Procedures?

Answer: The contract article will not be changed at this time, but the General Administrative Procedures may be revised this fall.

Comment: Will the penalty for noncompliance remain unchanged?

Answer: The penalty for noncompliance will remain as stipulated in the contract article. (Since program inception, this has been 10 percent of the contract rate of delivery).

Comment: The verification periods defined by Western between customer submittals and program review should be longer.

Answer: Western finds the 2-year verification period appropriate for program monitoring, communication, and progress evaluation.

Comment: The Guidelines and Acceptance Criteria must include numerical targets and schedules for the conservation and renewable energy program activities; i.e., kilowatthours (kWh). The final regulations must require customer programs to achieve a quantifiable reduction in energy consumption.

Answer: The Hoover Power Plant Act of 1984 stipulates that Western shall require the "development and implementation by the purchaser thereunder of an energy conservation program." Western has elected to use specific approved activities as the targets for goal achievements of such programs. It is more accurate and meaningful to measure activity completions than it is to attempt to numerically define and later quantify an approved activity. The development of a renewable energy resource is easily quantifiable, and these types of activities are numerically defined. Conservation measures, on the other hand, are not so readily measured. Variables such as local economy, weather conditions, societal changes, and even national/international events compound the problem of quantifying a specific conservation activity. Therefore, for some conservation activities, it may be highly impractical or even impossible to quantify goals or measure end results. Nonetheless, where goals or results can be identified in measurable quantities, such data will be encouraged under the new acceptance criteria.

Comment: The elements list allows too much latitude for serious accomplishments.

Answer: The listing could potentially be abused if it were not for the fact that Western must review and approve all customer elements or activities. However, a note has been added to the text of the Acceptance Criteria section which will preclude customers from assuming that submitted programs might only contain the lesser activities.

Comment: Western should complete an environmental assessment or an environmental impact statement before promulgating final regulations.

Answer: Western has determined that the Guidelines and Acceptance Criteria would not, of themselves, result in a major Federal action significantly affecting the quality of the human environment.

Comment: Western should promulgate enforceable regulations (not guidelines).

Answer: The Hoover Power Plant Act of 1984 stipulates that Western shall amend its "existing regulations (46 FR 56140)" to incorporate the requirements of Title II. In as much as the Guidelines and Acceptance Criteria are an integral legally binding portion of existing and future contract articles governing the conservation and renewable energy program for the sale of Federal power to long-term firm power customers, it is enforceable. It is also deemed appropriate to retain the currently accepted nomenclature since all Western customers are accustomed to it.

Comment: Western should allow members of the public (the ultimate consumer) to petition for review of the Guidelines and Acceptance Criteria, and should not restrict the period to 3 years. The 3- to 5-year review period should be eliminated.

Answer: Within the structure of Western's public involvement process, a public petition for review would be considered based upon its merit. Any decision to act upon such a request rests solely with Western. Western has determined that the 3-year minimum period for review fits within the conditions stipulated by the Hoover Power Plant Act of 1984 and provides the continuity needed by the customers for funds and program commitment.

Comment: The acceptance criteria are woefully inadequate.

Answer: The acceptance criteria have been revised to reflect the comments which Western finds will enhance the effectiveness of the program while assuring compliance with the mandates of the Hoover Power Plant Act of 1984.

Comment: The conservation and renewable energy program is mandatory, and a customer must have an approved program before entering into any contract.

Answer: The Hoover Power Plant Act of 1984, Title II, stipulates that the contract article shall contain time schedules for meeting program goals. Western agrees that the program becomes mandatory at the time of contract signing, and that the contract article must include a time schedule for goals definition and implementation of the customer program, but does not find a basis for making the conservation and renewable energy program a precondition of the power sales contract.

Comment: Acceptance should be based upon the likelihood of achieving a high degree of energy conservation; simply having a number of activities is meaningless.

Answer: Western does in fact base its acceptance of customer program activities upon the likelihood of achieving quality quality results. To be specific, Western will evaluate each activity for (1) likelihood of successful completion and (2) expected program benefits. These criteria have been expanded to further clarify the acceptance process.

Comment: The ultimate customers affected by a program activity should be afforded the opportunity to appeal a Western decision of a customer's program acceptability.

Answer: The appeals process addressed by the Guidelines and Acceptance Criteria involves a contractual matter between the Federal Government (Western) and its customer.

Comment: Western must by law provide ongoing assistance to its customers to do the program.

Answer: The Hoover Power Plant Act of 1984 states that Western must "Encourage customer consumption efficiency improvements and demand management practices which ensure that the available supply of hydroelectric power is used in an economically efficient and environmentally sound manner." Western has in place an active customer assistance program which is available to encourage all customers in their implementation of a sound program.

Comment: Western must design the conservation and renewable energy program to "acquire" conservation and renewable resources before it acquires any other resources.

Answer: It is Western's objective to promote the most cost-effective strategy for meeting future demand. To the extent that conservation and renewable energy programs are found to be the best choice, they will be encouraged. However, the Hoover Power Plant Act of 1984 places no such requirement upon Western.

Comment: The criteria for Western approval of a customer program progress should be at least 80 to 90 percent of the program's targeted energy savings (in kWhs).

Answer: The percentage set for activities completion has been reconsidered, and the completion requirement for goal achievement is now 70 percent as a basis for potential program noncompliance. The kWh question has been addressed above. A more adequate definition for activities completion has been added to the Review and Acceptance Process section.

Comment: Do not require a program from any customer who gets less than 50 percent of its power from Western.

Answer: The Hoover Power Plant Act of 1984 expressly requires customer participation in the program. Western has, however, decided to adopt a new matrix of required number of program elements which is graduated in accordance with customer size. This is included in the Acceptance Criteria section.

Comment: Customers should provide some types of cost-effectiveness test to their program activities.

Answer: Western has placed the burden of cost for implementation of this program on its customers. Likewise, it is deemed appropriate that the judgment as to the cost-effectiveness of how their moneys are spent be the sole responsibility of the customers.

Comment: A customer should be allowed to recover its forfeited capacity by subsequent improved and sustained effort. Any reduction in power to a member should go to the parent-entity. Power services withdrawn from customers which Western determines have failed to comply with the program should only be allocated to customers which comply with Western's program.

Answer: The original Guidelines and Acceptance Criteria addressed this issue under the Discussion of Public Comments, Category B. Basically, any reallocation of Federal power will be determined on a case-by-case basis in accordance with Western's authority. Such reallocations will be consistent with Western's marketing policies at that time.

Comment: The 1-year program submittal period should be extendable for any extenuating circumstances.

Answer: A 1-year period is reasonable.

Comment: When a customer has achieved all the goals it can reasonably do, it should be relieved from further program obligations.

Answer: Given the activities available, it is highly unlikely that good management practices would not produce at least one practical program activity. Furthermore, the Hoover Power Plant Act of 1984 requires the program; therefore, a customer must have some type of reasonable activity(ies).

Comment: "Irrigation Districts" should include water delivery districts for one activity annually.

Answer: Agreed, it has been added to the definition.

Comment: Customers should be allowed to change their programs.

Answer: See the Acceptance Criteria section for this provision in the Guidelines and Acceptance Criteria.

Comment: The appeal process should provide for a notice, a hearing or hearings, and a record.

Answer: The Guidelines and Acceptance Criteria should not stipulate these types of details since each appeal process would be considered on a case-by-case basis. In general, a contractual dispute would not be a public process. Western has modified the Appeals section to include some general time frames for response to a customer.

Comment: Program credit should be given even if the results are unsuccessful in an experimental venture.

Answer: See the category G addition to appendix A.

Comment: Add to appendix A, "Improve operating procedures to maximize efficiency."

Answer: Agreed, see addition to appendix A.

Comment: Acceptable activities should include externally mandated conservation standards.

Answer: See the Responsibilities section for externally mandated activities consideration.

Comment: The term "good faith effort" should be more clearly defined.

Answer: A much more detailed definition has been included to provide a better understanding of what is expected of a customer to be in contract compliance.

Comment: The conservation and renewable energy program should be voluntary, not obligatory.

Answer: The Hoover Power Plant Act of 1984 makes it obligatory, but it is voluntary for those customers without current contractual requirements.

Comment: The minimum number of activities should be one for irrigation districts and two for all other customer classes.

Answer: Please see the revised table of required activities. While Western has considered this comment, the table graduates the number of activities required in proportion to the scope of utility operation.

Final Amended Guidelines and Acceptance Criteria—Customer Conservation and Renewable Energy Programs

Goals

These Guidelines and Acceptance Criteria are provided by Western to set forth the approach, responsibilities, program content, and review and acceptance process for customer development and implementation of conservation and renewable energy programs. These requirements apply to long-term firm power contracts.

A long-term firm power service contract is any contract for the sale by Western of firm capacity, with or without energy, which is to be delivered over a period of more than 1 year. The term "purchaser" includes parent-type entities and their distribution or user members. If more than one such contract exists with a purchaser, only one customer program will be required for that purchaser.

Such customer programs, coupled with Western's own conservation and renewable energy efforts, are intended to help achieve one or more of the following goals:

1. Increase energy production from renewable resources.

2. Reduce United State's dependence on imported energy.

3. Improve efficiency in energy utilization.

Approach

Western's overall program approach recognizes the different needs and abilities of each of its customers, acknowledges past and present accomplishments in the areas of conservation and renewable energy development, and involves a cooperative effort in developing and implementing individual customer programs. It is Western's intent that these program requirements do not cause undue hardship or bureaucratic red tape for its customers. To accomplish this, Western is using the approach of having each customer select and implement its own program activities that will support the above-stated goals.

Note.—The Hoover Power Plant Act of 1984 refers to the conservation and renewable energy activities as elements. For the Guidelines and Acceptance Criteria, the term "activities" shall be used in the context of program elements.

Responsibilities

Western's customers have primary responsibility for developing and implementing programs to directly encourage consumers to conserve energy and to increase energy production via renewable resources. An important step in meeting this responsibility is the preparation of a program document that describes the initiatives and activities that the customer organization is already doing or will undertake.

For purposes of these guidelines, a customer conservation and renewable energy program shall:

1. Apply to all uses of energy and capacity which are provided from any Federal project by customers who have long-term power contracts with Western.
2. Contain definite goals and schedules.
3. Encourage customer consumption efficiency improvements and demand management practices which ensure that the available supply of hydroelectric power is used in an economically efficient and environmentally sound manner.
4. Support and promote the increased utilization of renewable resources to meet future needs.

Western's basic requirement is that each customer which benefits from a long-term allocation of Federal power must have an ongoing conservation and renewable energy program. If such a program is already developed, includes the specified minimum number of annual ongoing activities from the listing in appendix A, and contains the required program content as indicated in these Guidelines and Acceptance Criteria, Western will review the customer's program for acceptance. If not, a program should be developed for submission to Western that meets the needs of the particular customer organization. Western will provide technical assistance as appropriate for such program development within its capabilities.

Western also recognizes that some of its customers are already responding to a variety of Federal, State, and other programs that apply to conservation and renewable energy development. In order to avoid duplication of effort, customers may receive full or partial program credit(s) for previously initiated activities; provided that such activities are still ongoing as defined under the Acceptance criteria section.

Western will review and may modify its Guidelines and Acceptance Criteria at intervals of not less than 3 years nor more than 5 years. Such modifications would be fully coordinated with Western's customers and through public participation procedures.

With regard to the amendments to these Guidelines and Acceptance Criteria as a result of the Hoover Power Plant Act of 1984 the responsibility for examining each customer conservation and renewable energy program for current compliance lies both with the customers and with Western. Customers with existing contractual requirements or who have approved voluntary programs should submit any corrections or modifications needed at the time of their next program verification period.

Program Content

The most important element of a customer's program document submission is the description of specific program content. Such content is essentially a detailed description of each ongoing or proposed activity, and their associated goals and schedules that, as a set, describe the customer's program submittal for Western approval. The customer's program submittal must include the following items as part of this description:

1. Designated contact person(s) within the customer's organization who is responsible for program development and implementation, identification of customer's total system sales or total annual system consumption if a nonutility (kWhs/year), and identification of customer type (i.e. cooperative, municipality, etc.).
2. Statements adopted by the customer's governing body regarding formal conservation and renewable energy policies and objectives.
3. A brief narrative description of each ongoing or proposed customer program activity directed at increasing the use of renewable energy resources, increasing the efficient utilization of energy, or reducing U.S. dependence on foreign energy imports. Customers are to use table A and the listing in appendix A for activities selection.

Where energy savings or added energy/capacity supply goals may be numerically quantified for each ongoing customer program activity officially presented to Western for approval, such data should accompany each program submittal.

4. Identification of customer goals, plans, schedules and location(s) for each required activity.
5. Customer methods for determining successful program accomplishment.
6. Other documents prepared for other Federal, State, or local agencies that could be submitted in lieu of or supplemental to Western's requested information.
7. Specific areas where a customer feels that assistance is needed from Western.
8. Identification of potential adverse environmental impacts and issues of customer proposed C&RE activities.
9. Additional data/information that a customer desires to be included as part of its program description.

Suggested Program Reporting Format

The example reporting format provided in appendix B is suggested for customer use in describing programs. This format is intended to allow customers to briefly describe the general nature and direction of their program, as well as their specific program content. Western recognizes that some customers are already submitting reports to other governmental agencies pertaining to their ongoing conservation and renewable energy activities. If a customer's existing reporting format already includes the desired information describing its program, such format may be substituted for that suggested in appendix B.

Customers are expected to notify Western of continuation and progress regarding previously accepted program activities and to report significant changes in their program content either as they occur or at the time of their 2-year verification period. Such notification is to be by letter. Significant proposed changes in program content must be submitted to Western for review and acceptance.

Acceptance Criteria

Customer program acceptance criteria are defined as a set of minimum program activities, schedules, and goals. That criteria will be reviewed by Western in its acceptance process of a customer's conservation and renewable energy program, submitted in accordance with applicable Western contractual articles or other formal agreements. Program development and implementation prior to execution of formal contracts is encouraged, but is not mandatory.

Voluntary participation requires a formal program submission that will be reviewed by Western for acceptability and applicability to future firm power contracts.

The acceptance criteria defined in this section shall apply to the customer programs for both the initial approval and at each 2-year customer verification period thereafter. The verification periods should be used by both the customers and Western as opportunities to communicate any issues and to coordinate warranted technical assistance.

A customer's program will be reviewed as a whole, based on a demonstrated good faith effort. A good faith effort shall be defined as a customer having committed annual resources and made reasonable organizational attempts at achieving its defined and approved program goals and schedules. It is also construed as having kept Western appropriately informed of program changes or problems which may impact the attainment of those goals. In numerical terms, Western is anticipating at least a 70 percent completion of approved customer goals, schedules, and activities when examining program progress (during a detailed review which will occur every 3 to 4 years or during every other verification period).

In order to provide an objective basis for consistency, Western requires that a customer's program include a minimum number of ongoing/planned program activities selected from the listing in appendix A as shown in table A.

TABLE A.—REQUIRED CONSERVATION AND RENEWABLE ENERGY ONGOING ACTIVITIES FOR A CUSTOMER PROGRAM

Customer type	Total customer system sales (or annual consumption if a nonutility) in gigawatthours per year—		
	<50	50-100	>100
Cooperatives	3	4	5
Municipalities	3	4	5
Pub. util. dist.	3	4	5
Fed./State Agen.	3	4	5
Inv. owned util.	3	4	5

TABLE A.—REQUIRED CONSERVATION AND RENEWABLE ENERGY ONGOING ACTIVITIES FOR A CUSTOMER PROGRAM—Continued

Customer type	Total customer system sales (or annual consumption if a nonutility) in gigawatthours per year—		
	<50	50-100	>100
Parent entity & members	3	4	5
Pub. power dist.	3	4	5
Irrigation dist. w/util funct.	3	4	5
Irrigation dist. w/o util funct.	1	1	1

Note (1): Customers may petition Western for special consideration for programs which contain less than the above-stated minimum number of annual ongoing activities. Such petitions must be accompanied by detailed information regarding the anticipated energy savings or added renewable energy capacity, the resource expenditures, and the percentage of the total annual electrical supply or demand expected to be increased or reduced. If a petition identifies a program which significantly contributes to a load reduction or places a sizable renewable resource on line within 3 years, it will be given favorable consideration.

Note (2): Western may not approve a customer program which only contains low-yield energy savings benefits. This will be dependent upon the size and nature of the customer.

Note (3): An acceptable customer program will contain the minimum number of activities as indicated. However, a customer program may have considerably more than this required number. Those activities which are to formally constitute the Western-approved elements must be clearly identified as such. Any activities submitted in excess of the minimum required acceptable ongoing number may be of any mix or size desired by the customer. Such additional activities identification is encouraged by Western, but is at the customer's discretion.

Note (4): The term "customer" refers to an entity that has a firm power contract and its member systems, if any, that receive the benefits of Federal power.

Note (5): The term "irrigation districts" also includes agricultural types of districts such as electrical districts, water delivery districts, and water conservation districts.

Note (6): An irrigation district only performs an irrigation function. If an irrigation district performs electrical functions as well (i.e., residential service, other utility responsibilities, etc.), it is considered to have utility functions. Such a determination will be made by Western on a case-by-case basis.

Note (7): The cost effectiveness of specific activities should normally be at the discretion of the customer. However, if, in the judgment of Western, a proposed program element appears economically inappropriate, it may be challenged for validity.

Each customer must submit an individual conservation and renewable energy program, although the activities identified in a customer's program may be undetaken by a group of entities. Such customer programs must identify the specific contribution being made to the group activity.

Ongoing/planned program activities must involve an annual commitment of resources in either staff or funds. A one-time activity (i.e., one that sees no further yearly expenditures such as building insulation), which will not be repeated, will only be credited once for the year the effort or funds are expended (i.e., it will not be credited in subsequent program submittals).

Western shall use the following acceptance criteria for evaluating and approving a customer program:

1. Central to Western's acceptance of a submitted customer conservation and renewable energy program are the ongoing/planned program activities. These must meet the minimum required number of such activities by customer type as defined in table A.

2. While Western has given considerable latitude to its customers in defining and executing their programs, an acceptable program must target the realistic achievement of energy conservation or renewable resource development. Therefore, the customer program shall include a cost-effective strategy for the attainment of measurable load reductions from the application of sound conservation technologies or quantifiable additions of energy and/or capacity from renewable energy sources. The strategy must also be capable of being evaluated over time and contain clearly defined expected results. A customer's program policies, goals, implementation methods, and schedules shall be reviewed for (1) the likelihood of successful completion and (2) the expected program benefits. An acceptable program will reflect a positive response in both of these areas.

If customers believe that they have sufficient justification (i.e., economic, technical, net benefits, cost effectiveness, etc.) to warrant special consideration by Western, they may offer substitutions to the activities listed in appendix A, request deferred activity implementation, or request program credit(s). Western will provide technical assistance to resolve individual customer problems.

Program activities accepted by Western will be implemented and remain in effect until customer initiated changes are requested and subsequently accepted by Western. Program activities accepted by Western as a result of voluntary customer participation via formal program submission shall be considered valid for future contractual purposes at the time of contractual

arrangements. Such prior Western acceptance of a customer's voluntary program does not preclude the requirement for a future customer conservation and renewable energy program contract article.

Western's Review and Acceptance Process

The process for publication, submittal, review, and reapproval of draft, final, and revised customer conservation and renewable energy programs is as follows:

1. Western's publication of these final amended customer Guidelines and Acceptance Criteria.

2. Within its capabilities, Western will provide technical assistance to help customers prepare their programs, develop activities, and implement their programs in accordance with these published final amended Guidelines and Acceptance Criteria.

3. Customers will submit their programs to the appropriate Western Area Office within 1 year after a contract or formal agreement is signed (in accordance with the contract article or formal agreement).

4. Western's Area Offices will review customer program submissions in accordance with these published final amended Guidelines and Acceptance Criteria within 3 months of receipt and decide on overall program acceptability. This process may include oral or written communications and possible visits to a customer's headquarters or other program activity locations.

5. During the entire customer program development, submission, and acceptance cycle, Western will be available to answer customer questions and provide assistance to expedite program development, acceptance, and implementation.

6. Western will work cooperatively on a continuing basis as customers implement their accepted programs to reduce the need for reports and paperwork. Accepted programs are subject to onsite reviews upon reasonable notice by Western (i.e., 2 weeks or more).

7. In order for a customer to obtain reapproval of their program, the required number of activities must be of an ongoing nature or new activities.

8. Customers must submit verfication letters to Western at 2-year intervals from the date of the original customer program acceptance. Such letters shall indicate the following: (1) Continuation of the previously accepted activities; (2) modifications to ongoing activities; (3) deletions and additions to their activities; (4) progress made to date; and (5) identification of any problems, concerns, or issues which may warrant discussion. These verification submittals are subject to Western review and acceptance.

9. Western's customers are subject to the conduct of a detailed review of their achievements against their original or amended goals and schedules approximately every 3 to 4 years or every other verification period. If a customer is proceeding reasonably well in meeting its goals and schedules, based on a demonstrated good faith effort as previously defined, verification acceptance will be favorable considered.

10. Should an examination of a customer's achievements disclose that less than 70 percent of the approved customer program activities or goals has been completed in accordance with the defined schedules during the detailed review, it may be concluded that the customer has not proceeded with a good faith effort. A Notice of Rejection would then be issued by Western. If the customer's contract were to remain in noncompliance, it will be subject to the penalty set forth in the contract article in the event that program approval is revoked.

Note.—The examination of a customer's program progress during the detailed review will involve a more extensive discussion of the activities and their respective results. Prior to any determination that a good faith effort has not been made, Western would make an onsite review as defined in item 6 above and would closely examine all of the facts associated with the activities. In applying a completion factor of 70 percent to the goals, Western will consider both resource expenditures and actual achieved results as related to the defined activities.

11. Any reduction in a customer contract rate of delivery shall not be made prior to 12 months after the customer receives written comments and a Notice of Rejection from Western, denoting specific deficiencies in the customer submitted plan.

Administrative Appeal Procedures

If a customer disagrees with Western's determination of the acceptability of its submitted program progress reports, requested program changes, or other items, the customer may request reconsideration by filing a written appeal with the appropriate Western Area Office. Appeals may be submitted any time that such a disagreement should occur. They should be specific as to the nature of the disagreement, the reasons why the customer disagrees, and any other pertinent facts which the customer feels should be brought to Western's attention. Appeals made to an Area Office will be responded to within 45 days. If a customer's disagreement cannot be resolved at the Western Area Office level, the appeal may then be made to the Administrator of Western who will act upon such an appeal within 30 days.

Appendix A—Customer Conservation and Renewable Energy Activity List

The following list of program activities is provided for customer consideration as Western-accepted program activities. Various numbers of these activities must be included as part of a customer's program based on classification as a particular type of customer as previously stated in the Acceptance Criteria section. Selected activities may come from a single category or a combination of the categories listed below:

Category A—Energy Consumption Efficiency Improvements:

- Building energy conservation programs which may include such activities as:

—Boiler, furnace, air condition retrofitting
—Weatherization/insulation (home or utility)
—Storm windows/doors
—Insulation of air ducts, boilers, pipes, etc.
—Heat reflective/absorbing window or floor materials, waterheaters, etc.
—Clock thermostats and equipment/system timers
—Electrical or mechanical ignition systems
—Heat pumps

- Energy audits.
- Installation of energy storage equipment.
- Information dissemination programs.
- Economic assessment studies for conservation activities.
- Development of energy efficiency awards programs.
- Building plan review/service programs.
- Loan arrangements or assistance.
- Conservation demonstration projects.
- Installation arrangements/assistance.
- Attendance at conservation and/or renewable energy training.
- Technical assistance to customers.
- Listing services for suppliers/lenders.
- Customer in-house program activities.
- Use of infrared heat detection equipment.

- Home energy rating systems development.
- Computer program developments for conservation/energy efficiencies.
- Energy efficient lighting conversions.
- Equipment inspection programs.
- Improve operating procedures to maximize efficiencies.

Category B—Use of Renewable Energy Resources in Addition to Large-scale Hydroelectric Power

- Solar thermal/photovoltaics projects.
- Solar pond projects.
- Daylighting technologies.
- Active solar installations.
- Ocean thermal gradients/tidal power.
- Passive solar installations.
- Small/large-scale wind turbine installations.
- Biomass/Refuse-Derived Fuels (RDF) projects.
- Geothermal projects.
- Wind measurement/recording equipment.
- Economic assessment studies for renewable resources.
- Interconnection services to renewable resource facilities.
- Cooperative renewable resource development projects.
- Fuel cells projects.
- Small-scale hydro projects.

Category C—Load Management Techniques

- Load management devices/systems.
- Rephasing operations to reduce energy consumption.
- Demand control techniques and equipment.
- Consumer education.
- Cable television metering systems.
- "Smart" meters or automated equipment.
- Data management analyses or interpretation.
- Time-of-use meters.
- Energy usage patterns analyses.

Category D—Cogeneration

- Cogeneration projects.
- Scrap and waste reclamation.
- Waste heat recovery.
- District heating.
- Greenhouse applications.
- Utility/industrial interfaces as related to cogeneration technologies.

Category E—Rate Design Improvements

- Cost of service pricing.
- Elimination of declining block rates.
- Time-of-day rates.
- Seasonal rates.
- Interruptible rates.
- Purchase of customer-generated renewable energy.
- Sale and purchase of surplus power to displace petroleum fuels (resource coordination).
- Rate restructuring/adjustments.

Category F—Production Efficiency Improvements

- Improved generation equipment efficiency.
- Lighting redesign and management (street, building, etc.).
- Upgrading of transmission lines and/or substation equipment.
- Improved boiler and equipment maintenance.
- Better sizing of boilers and/or equipment.
- Electric motor replacement.
- Area-wide resource assessments.
- Agricultural improvements which conserve energy such as:

—Irrigation pump utilization/scheduling
—Irrigation pump testing or efficiency improvements
—Ditch lining and piping
—Laser land-leveling
—Pumpback systems
—Alternate energy saving water sources
—Field irrigation system improvements

- Any other generation or transmission efficiency improvements.
- Power factor corrections.

Category G

Other energy conservation activities such as activities initiated under DOE's Residential Conservation Service (RCS) Program, Commercial and Apartment Conservation Service (CACS) Program, or other Federal/State/local programs (i.e., REA, State PUC, etc.).

Note.—Conservation and renewable energy activities may be experimental in nature. In such cases, Western will make reasonable allowances for the uncertainty of the end results.

Appendix B—Suggested Reporting Format

Western Area Power Administration Customer Conservation and Renewable Energy Programs, Program Content, and Description:

1. Customer Name(s) and Address(es):

—Contact Person(s):
—Phone Number(s):
—Total customer system sales or total annual energy consumption if a nonutility (kWh/yr):
—Type of Customer: (i.e. cooperative, municipality, etc.)

2. A brief, clearly defined narrative description of the customer's overall program. Include a policy statement if appropriate.

3. Using the activity list in appendix A of Western's Guidelines and Acceptance Criteria, identify each conservation and renewable energy program activity that the customer includes in its program submission for specific review and acceptance by Western. Each identified customer activity submitted to Western for approval must include a brief narrative description, its locations(s), an implementation schedule, and targeted goals. Where energy savings or added energy/capacity supply goals may be numerically quantified for each ongoing customer program activity officially presented to Western for approval, such data should accompany each program submittal. If applicable, customers should identify any potential adverse environmental issues or impacts associated with their proposed activities.

A listing of other conservation and renewable energy program activities is encouraged by Western, but inclusion is at customer discretion.

4. A brief narrative statement of the method(s) used to sucessfully accomplish the customer's conservation and renewable energy program.

5. Inclusion of any other documents or materials the customer may wish considered for Western's review and acceptance of the program such as:

—Program document submittals to other Federal, State, or local agencies if appropriate
—Request for Western assistance
—Request for special consideration or other conditions
—Customer profile: Pertinent information that provides a general description of the customer's organization (i.e., annual report, FPC Form 1, load factors, types of service etc.)
—Other data

In consideration of the foregoing, Western's final amended Guidelines and Acceptance Criteria for its customer conservation and renewable energy programs are as set forth above.

Issued at Washington, DC on August 14, 1985.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaison.

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Part III

Environmental Protection Agency

40 CFR Parts 264 and 265

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities: Liability Coverage; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRL 2865-7]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities: Liability Coverage

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency), considering whether to revise the financial responsibility requirements in 40 CFR Sections 264.147 and 265.147, 265.151 (i) and (j), is today requesting comments on the availability of insurance to satisfy the existing liability coverage requirements for owners and operators of hazardous waste facilities and on methods for the Agency to address potential restrictions in the availability of coverage. Owners and operators reportedly have encountered difficulties in obtaining insurance necessary to comply with these requirements.

EPA is considering whether any revisions to 40 CFR Sections 264.147 and 265.147 are necessary in light of the current state of the insurance market. This rule sets forth several regulatory options under consideration by the Agency, and also requests comments on a range of subjects related to the availability of insurance policies that may be used to comply with the liability coverage requirements. [Other alternatives considered by EPA would require new legislation and are not considered in this proposal.]

DATE: Comments must be submitted on or before September 20, 1985.

ADDRESSES: Comments may be mailed to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments received by EPA may be inspected in Room S-212, U.S. EPA, 401 M Street, SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact Susan Hughes Office of Solid Waste [WH-562], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202) 382-4761.

SUPPLEMENTARY INFORMATION: The contents of today's rule are listed in the following outline:

I. Background

A. Current Liability Coverage Requirements

B. Liability Insurance for RCRA Facilities

1. Policy Types
   a. CGL Policies
   b. EIL Policies
2. Reasons for Market Conditions

II. Request for Comments

A. Current Market Situation and Reasons for Its Decline

B. What Will Improve the Market

C. "Insurability"

III. Possible Regulatory Approaches to Potential Problems

A. Maintain the Existing Requirements

B. Clarify the Required Scope of Coverage and/or Lower the Limits

C. Authorize Other Financial Responsibility Mechanisms

D. Authorize Waivers

E. Suspend or Withdraw the Liability Coverage Requirements

IV. Executive Order 12291

V. Paperwork Reduction Act

VI. Regulatory Flexibility Act

I. Background

A. Current Liability Coverage Requirements

Section 3004(a)(6) of the Resource Conservation and Recovery Act (RCRA), as amended, requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment.

EPA promulgated the financial responsibility standards for both liability coverage and financial assurance for closure and post-closure care on January 12, 1981. On October 1, 1981, EPA deferred the effective date of the regulations governing liability coverage and announced its intent to publish a proposal to eliminate the liability requirements (46 FR 48197). The Agency at that time questioned whether those requirements were necessary or desirable to meet the requirements of RCRA. In response to that announcement EPA received considerable comment from the public, regulated industries, insurance companies, members of Congress, and State agencies. These comments indicated widespread support for a Federal liability coverage requirement for hazardous waste management facilities; there was virtually no opposition to such a requirement.

On April 16, 1982, EPA promulgated regulations requiring owners and operators to demonstrate liability coverage during the operating life of the facility for bodily injury and property damage to third parties resulting from facility operations (47 FR 16554). Under the liability coverage regulations (40 CFR 264.147 and 265.147), owners and operators of all types of TSDFs are required to demonstrate, on a per firm basis, liability coverage for sudden and accidental occurrences in the amount of $1 million per occurrence and $2 million annual aggregate, exclusive of legal defense costs. Owners and operators of surface impoundments, landfills, and land treatment facilities are also required to demonstrate, on a per firm basis, liability coverage for nonsudden accidental occurrences in the amount of $3 million per occurrence and $6 million annual aggregate, exclusive of legal defense costs. "First-dollar" coverage is required; the amount of any deductible must be covered by the insurer, with right of reimbursement from the insured. Financial responsibility can be demonstrated through a financial test, liability insurance, or a combination of the two.

The requirements for coverage of sudden accidental occurrences became effective on July 15, 1982. The requirements for nonsudden accidental occurrences were phased in gradually. Firms with annual sales or revenue of $10 million or more were required to submit evidence of this coverage by January 16, 1983. Firms with annual sales or revenue of $5 million to $10 million were required to submit evidence of coverage by January 16, 1984. All other firms were required to demonstrate such coverage by January 16, 1985.

The requirements assure that funds will be available for third parties seeking compensation for bodily injury and property damage arising from facility operations. Furthermore, insurance is a vital part of the Agency's regulatory program for improving environmental management practices of insured parties. It is also less Federally-intrusive than other approaches such as provision of insurance by the Federal Government. In addition, by offsetting a degree of activity-related risk, insurance fosters broad participation in hazardous waste management. The requirements may also instill public confidence in hazardous waste management activities and help to gain public support for the siting of new and improved facilities.

Congress has also expressed its support for financial responsibility requirements. Section 213 of the Hazardous and Solid Waste Amendments of 1984 (RCRA section 3005(e)) provides for the termination of interim status for all land disposal facilities by November 8, 1985, unless: (1) The owner or operator applies for a final determination regarding the issuance of a permit by that date and (2) certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements for liability coverage, closure, and post-closure care.

Failure to comply with the liability requirements can have other significant ramifications. First, § 270.14(b)(17) requires that an owner or operator demonstrate compliance with the RCRA liability requirements in the Part B permit application. The Agency may experience extreme difficulties in issuing RCRA permits without a demonstration of compliance in accordance with the requirements in § 264.147. Second, most authorized States have liability requirements in effect that are equivalent to the existing Federal requirements. Therefore, in the absence of any action by the Agency, owners and operators are still subject to RCRA requirements in authorized States. Consequently, until the States amend their regulations, owners and operators would still be unable to certify compliance with RCRA liability requirements and they will lose interim status. Third, the owner or operator may be subject to citizen suits under RCRA section 7002 or Agency or State enforcement efforts. In addition, publicly-held firms unable to comply might be required to disclose information about their noncompliance on their Securities and Exchange Commission (SEC) 10–K and 10–Q filings. (See 17 CFR Part 229.) If the inability to comply with the RCRA liability coverage requirements might force a firm to close down a facility or plant and that fact is deemed "material" (i.e., important to a reasonable investor in securities issued by that firm), then that fact might need to be disclosed.

Also, if a firm believes that a legal proceeding might be instituted against it because of a failure to comply with the liability coverage requirements, the firm may be required to disclose that fact. Some Agency action may be desirable to forestall serious difficulties arising from a widespread failure to comply with the liability coverage requirements due to a general lack of available insurance coverage. The Agency intends to promulgate one of the options in this notice by November 8, 1985.

B. Liability Insurance for RCRA Facilities

1. Policy Types

Two basic types of liability coverage are available to cover third party bodily injury and property damage caused by RCRA facility operations: comprehensive general liability (or CGL policies) and environmental impairment liability (or EIL policies). The terms and availability of these two types of policies vary significantly. Both types of insurance are sold to a wide variety of firms in addition to owners and operators of RCRA facilities.

There are two basic distinctions in policy types: claims-made and occurence based. Under a claims-made insurance policy, coverage is triggered only when claims are made during the policy period. Insurers use the claims-made format to relieve themselves of the burden of claims brought long after the original occurrence and to reduce the difficulty of predicting the number of claims that will be made and the amount of damages that may be awarded. An occurrence based policy covers claims arising from the events that occur during the policy period, regardless of when the claim is filed.

The period of coverage under claims-made policies may be further expanded or restricted by incorporation of "discovery period" or "retroactive period" provisions. The discovery period provision in a claims-made policy provides that an insured, for the payment of an additional premium, may obtain an extension of coverage following expiration of the policy, for losses occurring during the policy period but which are not brought until after the policy's expiration. It is sometimes referred to as an extended reporting period. The retroactive date in a claims-made policy limits coverage to damages caused by occurrences that occurred subsequent to that date.

a. *CGL Policies.* CGL policies have been widely available for decades. They cover all types of third party damages, except those specifically excluded, and therefore cover many types of damages in addition to injuries caused by releases of hazardous wastes. CGL policies are generally issued on an occurrence basis. As a result of this policy feature and of uncertainty about what circumstances in the chain of events leading to third party damages constitute an "occurrence," insurers may be required to defend and/or indemnify parties they insured many years in the past. Most standard CGL policies issued since the early 1970's have excluded from coverage those damages caused by the release of a pollutant that is not "sudden and accidental." A standard version of the exclusion states that the insurance does not apply "to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental."

Recently, some courts have found pollution exclusion clauses ambiguous and, in accordance with accepted principles of contract law, have interpreted the ambiguity in favor of the insured. *Keene Corp.* v. *INA*, 667 F. 2d 1034 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 1007 (1982); *Farm Family Mutual Insurance Co.* v. *Bagley*, 64 A.D. 2d 1014, 409 N.Y.S. 2d 294 (4th Dept. 1978); *Jackson Township Municipal Utilities Authority* v. *Hartford Accident and Indemnity Co.*, 186 N.J. Super. 156, 451 A.2d 990 (1982). As a result, insurers claim they are being forced to defend and/or indemnify their insureds for risks they did not knowingly assume when the policies were issued. On the other hand, some courts have interpreted the policies narrowly and accepted the exclusion. *Barmet of Indiana* v. *Security Insurance Group*, 425 N.E. 2d 201 (Ind. App. 1981); *National Standard Insurance Co.* v. *Continental Insurance Co.*, CA–3–81–1015–1 (N.D. Tex. October 4, 1983); *Great Lakes Container Corp.* v. *National Union Fire Insurance Co.*, 727 F. 2d 30 (1st Cir. 1984); and *American States Insurance Co.* v. *Maryland Casualty Co.*, Civ. No. 82–70353 (E.D. Mich. July 3, 1984).

The insurance industry has responded to these interpretations in several ways. First, standard CGL policy forms are being rewritten to exclude all damages causd by pollution. A new CGL form developed by the Insurance Services Office (ISO) will exclude all pollution liabilities. This form has been filed for approval with many State insurance commissions. "Buy-backs" of coverage for damages caused by sudden and accident releases are expected to be available under these policies. Buy back is a type of coverage excluded under the basic terms of the policy which can be included for the payment of an additional premium. Second, pending the approval of a revised CGL form, many insurance companies are issuing some CGL policies with a restrictive

endorsement excluding all coverage of damages caused by pollution. Third, the insurance industry has also considered issuing CGL policies on a claims-made basis, rather than an occurrence basis. This change will generally require amending the standard CGL policy forms and approval by State insurance commissions. Fourth, insurers are responding by reducing the availability of coverage. The CGL policies that cover sudden and accidental releases have reportedly been difficult to obtain and costly for firms that manage hazardous wastes or toxic substances.

b. *EIL Policies.* Environmental impairment liability (EIL) policies are designed specifically to cover third party damages caused by pollution, and therefore are narrower in scope than CGL policies. Virtually all EIL policies are issued on a claims-made basis. EIL policies can be purchased to cover third party damages caused by either nonsudden incidents only or both sudden and nonsudden incidents

EIL policies are a relatively recent phenomenon. Between the early 1970's and 1981, coverage was generally unavailable for nonsudden releases. Only a few excess and surplus lines insurers offered such coverage. Excess and surplus lines are a designation that a State gives to insurance companies that provide insurance that is not readily available from companies licensed or "admitted" to transact busines in that State. Because such companies are not regulated directly, States often control their ability to transact businesss by regulating brokers and agents. By 1981, a market for nonsudden pollution liability coverage developed because of increasing pubiic awareness of injuries caused by toxic substances and the Agency's proposed RCRA liability coverage requirements.

Many insurance companies entered the initial pollution liability market. The Pollution Liability Insurance Association (PLIA), a reinsurance pool, was established in October 1981 with 37 member companies. The PLIA now has 42 members. At least a dozen other U.S. insurance companies and several London-based insurers also marketed EIL policies.

The market for EIL policies reportedly has changed dramatically in the last year or two. The number of insurers offering coverage has apparently declined significantly. Some of the largest EIL insurers such as Shand, Morahan and Co. Inc., and Stewart Smith Mid-America, Inc. withdrew from the market. Based on anecdotal evidence, the cost of coverage has apparently increased singificantly while policy limits have declined. For example, a company reported to EPA that it recently purchased a policy with limits of $3 million per occurrence and $6 million annual aggregate, the minimum acceptable limits for nonsudden accidental occurrences under the RCRA requirements, for $99,000. A year earlier they purchased a policy with limits of $20 million per occurrence and $20 million annual aggregate for about the same price.

2. Reasons for Market Conditions

A wide variety of explanations have been given for the apparent reduced availabililty and increased cost of EIL coverage for RCRA facilities and other installations. These reasons include: losses due to low premiums and large claims (reducing the availability and increasing the price of reinsurance); difficulty of setting premiums based on risk; judicial interpretation of policies favoring insureds; lack of compliance with liability requirements; and the tragedy in Bhopal, India. Also, some insurers have suggested that another possible factor bearing on the availability of EIL coverage is the apparent lack of demand for such coverage because of the lack of compliance with RCRA liability coverage requirements.

In addition, over the past four years, both the primary insurance and reinsurance industries have incurred large underwriting losses throughout the property and casualty market sector. In 1984, property and casualty insureres suffered a net loss of $3.55 billion, the first net loss for the insurance industry since 1906, the year of the San Francisco earthquake.

One reason for the insurance industry losses is declining interest rates. When interest rates were high in recent years, the insurance industry was willing to write policies at a "loss" in order to obtain money that could then be invested for a net profit. Consequently, a highly competitive insurance industry often accepted premiums that apparently did not adequately reflect accepted policy risks. However, declining interest rates have reduced investment income and insurers are no longer able to offset policy "losses."

It is important to note that insurance industry profits, like the stock market, are subject to changing economic conditions that are often cyclical. During periods when economic conditions result in large insurance industry losses, the insurance industry may respond by curtailing their riskiest policies. This response is due in part to the insurance industry's need to maintain a sufficient ratio of premiums to reserves. In this case, RCRA insurance is among the curtailed policies.

Reinsurance is a mechanism which spreads losses and risks by broad participation. Reinsurers provide coverage to insurance companies for excess losses sustained in a certain line or lines of coverage. Reinsurance acts as an incentive for insurance companies to continue writing policies in "tight" markets. Therefore, conditions in the reinsurance marketplace significantly affect the price, amount and type of primary insurance available to potential insureds. The abundance of inexpensive reinsurance in recent years was a major factor fueling competition among primary and excess insurers. Reinsurers have decided to raise rates and restructure major factor fueling competition among primary and excess the risks they will underwrite because the primary insurers have not adequately screened the risks they underwrite. The result of tighter control by reinsurers is a decrease in the availability of policies written by primary insurers in the affected lines of coverage. For example, the Hartford Steam and Boiler Inspection and Insurance Company and Environmental Risk Assessement Service (International) Ltd., a major London-based pool of 15 EIL insurers, stopped writing pollution coverage last year when they could not find reinsurance.

As we understand it, the insurance industry contends that RCRA insurance is a high risk proposition for several reasons. First, there is a lack of actuarial data to establish realistic premiums that adequately reflect risk. Second, there is a lack of acceptable and universally applied risk analysis methods. Third, there is a social perception that hazardous waste has not been and cannot be adequately managed. The insurance industry contends that this perception will ultimately lead to several costly effects: third party claims for virtually all policies that they underwrite; a subsequent duty to defend against these claims; resultant high litigation costs; and policy losses due to court rulings in favor of the insured for coverage that the insurer did not intend to provide.

Litigation costs and court rulings on coverage of hazardous waste related claims, at present, appear to be two factors of great concern to the insurance industry. As noted above, some recent court rulings have narrowly interpreted the standard "pollution exclusion" in the standard CGL form, following the judicial tradition of interpreting ambiguities in insurance contracts against the insurer. In several rulings,

coverage was held to apply to third party off-site bodily injury and property damage claims. The courts have also frequently ruled that the statute of limitations does not begin in a hazardous waste tort case until a victim knew or reasonably should have known of his or her injury. Therefore, where CGL policies allows occurrence made claims, coverage may be provided long after the policy has expired.

While the narrow judicial interpretations of policy *exclusions* for nonsudden pollution do not explain the insurance industry's reluctance to issue nonsudden policies, the industry is concerned that such rulings, in effect, force insurers to assume liability for obligations they allegedly never knowingly agreed, by contract, to assume, and for which they collected no premium. Thus, insurers claim they cannot rely on the terms and conditions of their policy contracts to estblish the scope of coverage from which insurers ultimately estimate potential liability risks and establish policy premiums.

The insurance industry places a large portion of the responsibility for insurance industry losses on a legal system that encourages suits against "deep pockets" and Federal and State liability provisions. However, this problem may also be attributed to ambiguous insurance contracts that created high potential exposure to insurers. In fact, when the pollution exclusion was inserted into the CGL policy in the 1970's, some insurers argued that the pollution exclusion language did not clarify coverage, but rather only confused the definition of an occurrence warranting coverage. In addition, hazardous waste management was not a high profile public issue during the early 1970's. Therefore, it is possible that the insurance industry inserted the pollution exclusion clause into the CGL policy aware of its potential ambiguity but unaware of the magnitude of its potential implication.

This explanation finds further corroboration in current insurance industry efforts to eliminate policy ambiguities. More restrictive CGL policies are now being drafted. Pollution coverage for both sudden and nonsudden events will be offered through EIL policies on a claims-made basis. However, it may be some time before the insurance industry has recovered from its current economic condition and is willing to provide sufficient EIL coverage.

Finally, the recent tragedy in Bhopal, India, has further heightened insurers' concerns about the riskiness of toxic substances. Insurers are concerned about being required to pay for cleanup costs under the strict, joint and several liability standard of the Comprehensive Environmental Reponse, Compensation, and Liability Act of 1980 (CERCLA). The insurers' concerns regard future liabilities at CERCLA sites for which they had written liability coverage policies when the facilities were managed under RCRA.

Despite the recent publicity about the lack of insurance for owners and operators of hazardous waste management facilities and other firms that handle toxic substances, the Pollution Liability Insurance Association (PLIA) has reported to the Agency a recent increase in its sales of EIL policies. During the first quarter of 1985, PLIA sold more EIL policies and collected more premiums than in the previous year. In addition, American Home/National Union Insurance Companies in the American International Group, and The Travelers Insurance Company are still writing RCRA liability coverage. However, Travelers and PLIA apparently only write coverage for firms which carry other insurance with their company.

II. Request for Comments

This section of the notice requests comments in four areas: (1) The current market for insurance policies that may satisfy RCRA liability coverage obligations and reasons for the present state of the insurance market, particularly with regard to availability and rates; (2) what actions or events might improve the market; (3) what types of firms, facilities, and risks are not insurable; and (4) alternative regulatory approaches that the Agency may adopt in addressing possible problems. In answering the questions that follow, commenters are requested to distinguish, where possible, the different types of insurance policies: CGL policies that cover sudden and accidental releases, EIL coverage for sudden and accidental releases, and EIL coverage for nonsudden and accidental releases. Although the primary focus of the Agency is on coverage for operating RCRA facilities, relevant comments on the insurance market for other types of firms and facilities will also be appreciated.

A. Market Situation

To determine if need exists for modification of federal requirements due to limitations in the availability of third party liability insurance covering the operation of RCRA facilities, the Agency needs a clear and detailed understanding of the current availability of insurance. Among the questions that must be addressed are the following:

What insurance companies are currently offering EIL and/or CGL coverage for RCRA facilities? How many insurance companies that previously offered EIL coverage have withdrawn from the market either completely or selectively? Why did they withdraw? What amounts of coverage (per occurrence and annual aggregate) are available and what amounts are commonly sought for RCRA facilities? Are the current liability limits adequate? How do the amounts of coverage purchased vary by the number of facilities covered, process types, wastes managed, and other factors? Is first-dollar coverage available? Is coverage exclusive of legal defense costs available?

What has been the experience of insurers and insureds under these policies? How many policies have been canceled by the insurer? Why have these policies been canceled? How many claims based on events at RCRA facilities have been paid? What amount has been paid out in these claims? How does this amount compare to the premiums collected? Do the policies and premiums create an effective incentive for facility owners to reduce the risks they present?

How much are the premiums? How have they changed in the last three years? What is the cost for the minimum acceptable amount of first-dollar coverage? What are the costs of higher levels of coverage? What are the most important factors influencing the cost of coverage (e.g., facility age, design, process types, safety record, wastes handled)?

What limitations are there in the availability of reinsurance? What companies offer reinsurance in this line of insurance? Why have the reinsurers withdrawn from the market? Are any captive insurance companies providing coverage for RCRA facilities? A captive insurance company is an insurance company set up by a company or group of companies to insure their own risks, or risks common to the group. Are any efforts underway to establish new captive insurance companies? What limits the establishment of such captives?

What are the major effects of any limitations in the availability of coverage for RCRA facilities? Have any facilities closed solely because of the lack of insurance at an affordable price? How will the availability and cost of insurance influence decisions of owners and operators of interim status facilities about whether to seek Part B permits? Are generators seeking greater liability coverage because of a lack of coverage

by the commercial facilities that handle their wastes?

If sudden accidental occurrence coverage and/or nonsudden accidental occurrence coverage is difficult or excessively expensive to obtain, why? What are the most important causes of the limited availability of coverage? How important are the following factors: lack of demand for coverage; court decisions that broadly interpret policies in favor of the insured; the difficulty of predicting the likelihood of claims, the cost of defense, and the cost of judgments against the insured; the fear of being liable for cleanup costs under CERCLA or other laws; the capacity shortage in the property and casualty insurance market; the lack of reinsurance for environmental risks; and recent concern aroused by the tragedy in Bhopal, India.

B. What Will Improve the Market

The Agency recognizes that it has a limited ability to influence the availability of insurance for RCRA facilities. In this regard, the Agency solicits comments addressing what events or actions will increase the availability of coverage for owners and operators of RCRA facilities. What actions by the Agency, if any, would increase the availability of coverage that would satisfy the intent of the liability coverage requirements? For example, what would be the impact of: increased Agency and State enforcement efforts to ensure compliance with the rules, which might stimulate demand for coverage; and/or clarification by EPA of the term "sudden accidental occurrences," so that it is expressly narrower than the interpretation some courts have applied to that phrase in the CGL pollution exclusion?

C. "Insurability"

One of the purposes of the liability coverage requirements is to encourage owners and operators of RCRA facilities to manage hazardous waste in an environmentally sound manner. Thus, the regulations may be judged successful if poorly designed or improperly managed facilities are forced to close because the risk of accidents they present prevents them from obtaining insurance coverage at an affordable price. However, if low risk facilities that comply with all RCRA statutory and regulatory requirements are unable to obtain insurance coverage at a reasonable price, the liability coverage regulations may merit reconsideration.

To better understand the relationship between risks presented by RCRA facilities and the availability of insurance, the Agency requests comments on the following issues:

What types of firms and facilities can obtain CGL and EIL coverage? Who cannot obtain coverage at any price? What types of firms, facilities, or risks are reinsurers most hesitant to cover? Does it matter whether a facility has interim status or a permit? On what basis do insurers decide whether a facility or firm will be offered coverage and the cost of coverage? What is a "reasonable" range for premiums? How do these premiums compare to those set for parallel risks (e.g., product liability coverage)? How do these factors differ for different types of policy coverage? What risk assessments are required before a CGL or EIL policy will be issued for a RCRA facility? How does the market distinguish between disposal and nondisposal facilities for sudden and accidental coverage? Does the market distinguish among land treatment facilities, surface impoundments, and landfills for nonsudden coverage? How does the market distinguish among on-site facilities serving only the owner or operator? How does the market distinguish among off-site commercial facilities?

III. Possible Regulatory Approaches to Potential Problems

The Agency believes that requiring insurance or other liability coverage is desirable to protect human health and the environment. However, in light of the present and potential difficulties encountered by some TSDF owners and operators in obtaining insurance coverage, the Agency is considering taking one or a combination of the following five regulatory actions in response to the problem of possible limited insurance availability. These five responses are neither exhaustive nor mutually exclusive, and the Agency is soliciting both comments on these approaches and suggestions for alternative responses. The Agency will find especially useful comments that specify which alternative or combination of alternatives is preferred and why, the predicted benefits and costs of each alternative, and the extent to which each alternative will assist the regulated community in obtaining liability coverage.

A. Maintain the Existing Requirements

If the Agency does not take any action designed to address the problem of possible insurance availability, then the liability requirements contained in 40 CFR 264.147 and 265.147 remain in full effect. Owners and operators of disposal facilities who are unable to procure insurance or satisfy the financial test, will, under the new amendments, lose interim status.

Of course, not all firms that are unable to procure insurance will fail to meet the RCRA financial responsibility requirements; many firms will instead demonstrate financial responsibility by passing the financial test specified in 40 CFR 264.147 or 265.147. Some owners and operators who are owned by corporations that satisfy the financial test may wish to transfer ownership or operation to the parent corporation. If the parent corporation can pass the financial test for the facility's financial responsibility requirements, the facility would then be in compliance with the liability requirement. (A transfer of ownership or operational control should be accompanied by a revised Part A). However, it is possible that some facilities that follow environmentally sound operating procedures and are, in some sense, "insurable," may nonetheless be unable to retain interim status or obtain a RCRA permit, because the owners and operators can neither pass the financial test nor obtain insurance.

The Agency has adopted a short term enforcement policy in response to the depressed state of the insurance market. The Agency will consider placing an owner or operator on a schedule of compliance to get insurance if: (1) The Agency finds that providing for such a schedule is consistent with the facility's compliance with other RCRA requirements, and (2) the facility can substantiate good faith attempts at securing insurance. Failure to exercise the obligation to obtain insurance or unsubstantiated good faith claims will result in appropriate enforcement actions; compliance orders will be issued and penalties will be assessed when the owner or operator fails to make a good faith effort in accordance with specified criteria.

Several factors are used to define good faith including: submittal of a complete application to insurance companies in a timely fashion, allowing for the insurance companies to process and issue the policy; submittal of an application to "known" suppliers of EIL insurance; submittal of evidence of attempts to acquire insurance with known insurers by documenting the contracts made and the reasons given by the insurance companies for denying or delaying the applications

This enforcement approach was established as an interim measure, pending a more detailed analysis of the issue. The policy does not apply after

November 8, 1985, and will not (as presently stated) affect the requirement that interim status facilities certify compliance with the financial responsibility requirements as of that date.

B. Clarify the Required Scope of Coverage and/or Lower the Required Levels of Coverage

Limited insurance availability may be caused by the unwillingness of the insurance industry to issue policies with the scope of coverage specified by the regulations. If this is the case, the Agency could address these concerns by clarifying the scope of coverage, and/or revising the regulations to lower the minimum amounts of liability coverage required both per occurrence and on an annual aggregate basis, and/or allow modest deductibles.

The meaning of the terms "sudden and accidental occurrences" and "nonsudden and accidental occurrences" could be specified in a manner that is still conducive to protecting human health and the environment but also clarifies what type of liabilities must be covered. For example, the term "sudden and accidental occurrences" could be defined to be narrower than some recent judicial interpretations of the phrase "sudden and accidental" in CGL policies. However, a clarification of terms by the Agency may not preclude continued judicial interpretation of policy coverage.

The Agency could also address the acceptability of claims-made policies, retroactive dates in claims-made policies, and certain exclusions (e.g., cleanup costs, legal defense costs) in policies used to demonstrate liability coverage. The Insurance Services Office (ISO) announced that it is considering rewriting its new CGL form to include legal defense costs within the policy limits. ISO is considering the change because of concern among both direct insurers and reinsurers over growing defense costs associated with CGL policies. ISO indicated that defense costs often exceed 30% of the cost of a claim paid under a CGL policy. A summary of a study conducted by the Rand Corporation Institute for Civil Justice states that plaintiffs received an average of 37% of the total payout by defendants after deducting plantiffs' and defendants' litigation expenses.

EPA requires owners or operators to obtain liability coverage exclusive of legal defense costs. This was done because allowing defense costs to be included within the policy limits might defense costs to be included within the policy limits might severely restrict the amount of insurance coverage available to compensate third parties. Unusually large legal defense costs could result in a significant erosion in the compensation available. This is a special problem for liability suits arising out of the operation of hazardous waste management facilities, as this is an area of expanding liability involving potentially complex issues related to causation and damage. However, insurers could place limits on defense costs as long as the policies specify that the levels of coverage required by EPA are guaranteed before defense costs are absorbed.

In addition, premiums could more accurately reflect potential liability by providing mechanisms for apportioning costs based on risks. For RCRA facilities, the most effective mechanism could involve conducting insured-specific environmental audits based on existing scientific, engineering, and medical data. EPA could facilitate this approach by providing insurers with comprehensive technical data compiled over the past decade. This data may serve as an actuarial basis from which to calculate premiums related to policy coverage. EPA could also provide technical assistance as appropriate.

This approach would provide several benefits. First, the insurance industry could enter the market having determined limits of liability to their satisfaction. Second, a source of defined compensation to pollution victims would be available through the private sector, minimizing Federal intrusion. Third, such insurance would provide an effective market force mechanism to help regulate and reduce the risk of environmental damage by an insured facility or organization by demanding responsible environmental management as a condition and cost or insurance. Improved operations could result from the incentive of lower premiums and insurer oversight. Fourth, this approach would consider environmental risk as a condition of financial responsibility. This consideration should lead, for example, to RCRA permitting of environmentally sound and financially responsible facilities of varying size.

Lowering the minimum level of coverage or narrowing the scope of coverage may lessen the protection of human health and the environment. However, since there are insurance companies currently writing policies below the required limits for RCRA, this option would allow some additional owners and operators to comply with the liability requirements. The Agency solicits comments on the appropriate levels of coverage, how the scope of coverage should be defined, and the potential effects of these changes, including the effects on the availability of liability coverage.

C. Authorize Other Financial Responsibility Mechanisms

To enable more firms to meet the liability coverage required during a facility's operating life, the Agency could revise 40 CFR 264.147 and 265.147 to authorize, in addition to insurance and financial tests, the use of the corporate guarantee. The EPA regulations requiring financial assurance for closure and post-closure care allow the use of a corporate guarantee by the owner or operator's parent corporation. (See 40 CFR 264.143, 264.145, 265.143, and 265.145.) In addition, the Agency could authorize indemnity contracts as an alternative mechanism.

The corporate guarantee is a promise to answer for the debt or default of another. It is a collateral undertaking and presupposes another contract or transaction, which is identified in the guarantee. There is ordinarily a contract or other agreement between the principal and a third party creating the primary obligation and a contract between the principal and the guarantor creating the guarantee, which supports the primary obligation. If the principal defaults on the primary obligation, then the gaurantor is liable to the third party on the obligation created by the guarantee. An indemnity contract is not a collateral undertaking, but rather a two-party agreement that provides that one party, the indemnitor, will reimburse the other party for losses that he may incur because of the occurrence of a specified event.

In the past, the Agency has not approved the use of the corporate guarantee as an alternative mechanism for liability coverage because of concern about the validity and enforceability of the guarantee under State insurance laws. However, if a parent (or unrelated firm) were allowed to provide a subsidiary (or unrelated firm) with a corporate guarantee or an indemnity contract that would assure coverage for third-party damages, a larger number of firms and facilities may be able to comply with the financial responsibility requirements for liability coverage.

In most States, insurance is controlled under State law, with limitations on who may engage in the business of insurance and detailed regulation of business practices. Carrying on the business of insurance without appropriate licenses or certificates of authority can subject companies to fines or other penalties. In addition, corporate guarantees, such as

those for liability coverage could be found void under State laws.

Precisely what constitutes the "business of insurance" varies from State to State. Many States, however, either by statute or common law, exempt from their insurance regulations actions by a firm that might otherwise be covered by the insurance laws, if those actions are incidental to or connected with other business activities of the firm. Thus, a corporate guarantee or indemnity by a corporate parent to its subsidiary that is considered to be incidental to the ownership of the subsidiary by the parent might, in at least some states, be exempt on that basis.

Another question is whether a guarantee provided by one firm to another firm that is not a corporate subsidiary of the guarantor would be considered incidental to the business activities of the guarantor. A single guarantee contract for liability coverage, undertaken exclusively for profit, would probably be subject to most State insurance requirements. If, however, the guarantee was given to ensure that hazardous waste management would continue to be provided to the guarantor, the guarantee might be viewed as incidental to the guarantor's business activities, and thus exempt from some State insurance laws.

The Agency requests comments on the relative merits and disadvantages of allowing either the corporate guarantee or the indemnity contract to be used as a liability coverage mechanism and on their respective likelihood of creating a valid and enforceable obligation under State laws. The Agency will consider amending its regulations to allow use of this mechanism in States where the State Attorney General certifies that the corporate guarantee would be valid and enforceable. In addition, the Agency requests information on the extent to which these alternative mechanisms have been used to demonstrate financial responsibility under other, non RCRA programs.

D. Authorize Waivers.

The Agency could amend its regulations to authorize case-specific waivers of the liability coverage requirements if the owner or operator can demonstrate that it failed to obtain coverage despite a "good faith effort." "Good faith effort" is described in option A. The waiver would be given on a case-by-case basis and would operate for a limited time, to be specified by the Agency (e.g. November 8, 1986). The waiver might be subject to other conditions; for example, a waiver might not be granted to a facility that is owned or operated by a subsidiary of a corporation that passes the financial test.

This approach would promote environmental protection by maintaining the general liability coverage requirements, allowing the insurance industry additional time to develop needed insurance policies, and allowing regulated facilities that genuinely attempt to comply with the regulations to continue operation. On the other hand, this approach may have the disadvantage of giving firms that obtain a waiver an unfair economic advantage over those that purchase insurance, and of allowing the continued operation of facilities that may be unable to obtain coverage because of the great health and environmental risks they pose. In addition, by decreasing the demand for insurance, widespread use of waivers may actually suppress the development of the needed insurance policies. Finally, the Agency would face a potentially heavy administrative burden of reviewing waiver requests and determining whether a "good faith effort" was made.

One possible way to avoid the problem of allowing uninsured, "high-risk" facilities to continue to operate is to grant waivers only if the owner or operator demonstrates not only a "good faith effort," but also that the facility is "insurable." This approach, however, entails the additional difficulty of determining which facilities are "insurable." An assessment of "insurability" may impose significant administrative burdens on the Agency by requiring it to perform risk analyses on the facilities of each firm that applies for a waiver. The Agency solicits comments on appropriate standards for "good faith effort" and "insurable."

E. Suspend or Withdraw the Liability Coverage Requirements

To the extent that any limited availability of insurance is cause by a temporary depression in the insurance industry, it may be desirable to suspend by regulation the liability coverage requirements for all firms in the regulated community. This approach would avoid the possibility of enforcing requirements which currently may not be attainable. Owners and operators of RCRA facilities would not face potential citizen suits for noncompliance with regulations. Also, a suspension would give the Agency, the regulated community, the insurance industry more time to develope appropriate methods of financial responsibility for liability coverage at RCRA facilities.

However, the approach has several disadvantages. Until the liability coverage requirements are reactivated, adequate protection may not be provided to human health and the environment. Currently insured firms may terminate their coverage as a result of the suspension. Furthermore, the likelihood that the required environmental insurance would become more available at some point in the future remains unclear. To date, the insurance industry and the regulated community have had several years to develop the required liability insurance. In addition, suspending the requirements for liability coverage would also suspend much of the demand for such insurance, reducing incentives for carriers to provide insurance policies for RCRA facilities. If the insurance market for RCRA facilities is presently depressed, some measure would be needed to determine when the market has recovered sufficiently to reinstate the liability coverage requirements. The Agency requests comments on the present state of the insurance market and on whether insurers will be better able to offer the required liability coverage at some point in the near future.

Finally, the Agency may consider rescinding the liability coverage requirements permanently. The Agency solicits comments on whether human health and the environment would be sufficiently protected in the absence of these requirements.

One obstacle to realizing practical benefits from this approach is that State regulations requiring financial responsibility assurances analogous to the Federal program will remain in effect unless and until a State revises its regulations to parallel EPA's newly amended regulations. Absent some action by EPA, it could be argued that such State regulations would still be regarded as EPA-authorized Subtitle C requirements even though there is no longer a corresponding EPA Subtitle C requirement. Thus, under this theory, facilities in authorized States would obtain no relief from this rulemaking.

EPA's current view is that such a result is inconsistent with the purposes of State authorization under the statute. The general objective of section 3006 is to allow EPA to suspend its implementation of the RCRA program in those States where the State's program (including its substantive standards) satisfies the statutory and regulatory objectives of the RCRA program. Where EPA removes a particular regulatory requirement from the RCRA program, it no longer makes sense for EPA to view the State analog to that requirement as

part of the "RCRA authorized" State program.

Accordingly, if EPA suspends the financial responsibility requirements, EPA would also modify its regulations to indicate that the State's analog to those requirements would no longer be RCRA requirements. It is important to note, however, that the State regulations remain valid requirements enforceable by the State even though they would no longer be Subtitle C requirements. Under section 3009 and 40 CFR 271.1(i) and 271.1(ii), authorized States are allowed to impose more stringent requirements than EPA. Consequently, while EPA would no longer have the authority to enforce the state regulations, the State would remain free to enforce its own law.

Such a modification of the scope of the RCRA State program, would have a direct impact on the responsibilities of owners and operators under section 3005(e)(2)(B) to certify compliance with the "applicable financial responsibility requirements." If State law analogous to the Federal insurance requirements have been removed from the RCRA State program, then they are no longer the *applicable* requirements for purposes of the certification responsibilities.

IV. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being considered today to the liability requirements are not "major rules". The options under consideration are not likely to result in a signficant increase in costs and thus are not a major rule, no Regulatory Impact Analysis has been prepared.

V. Paperwork Reduction Act

There are no information collection requirements associated with this rule.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). The options under consideration either maintain the existing regulations and thereby impose no additional costs, or relax the existing insurance requirements and thus reduce costs associated with compliance.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

Accordingly, I certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

Dated: August 16, 1985.

Lee M. Thomas,

Administrator.

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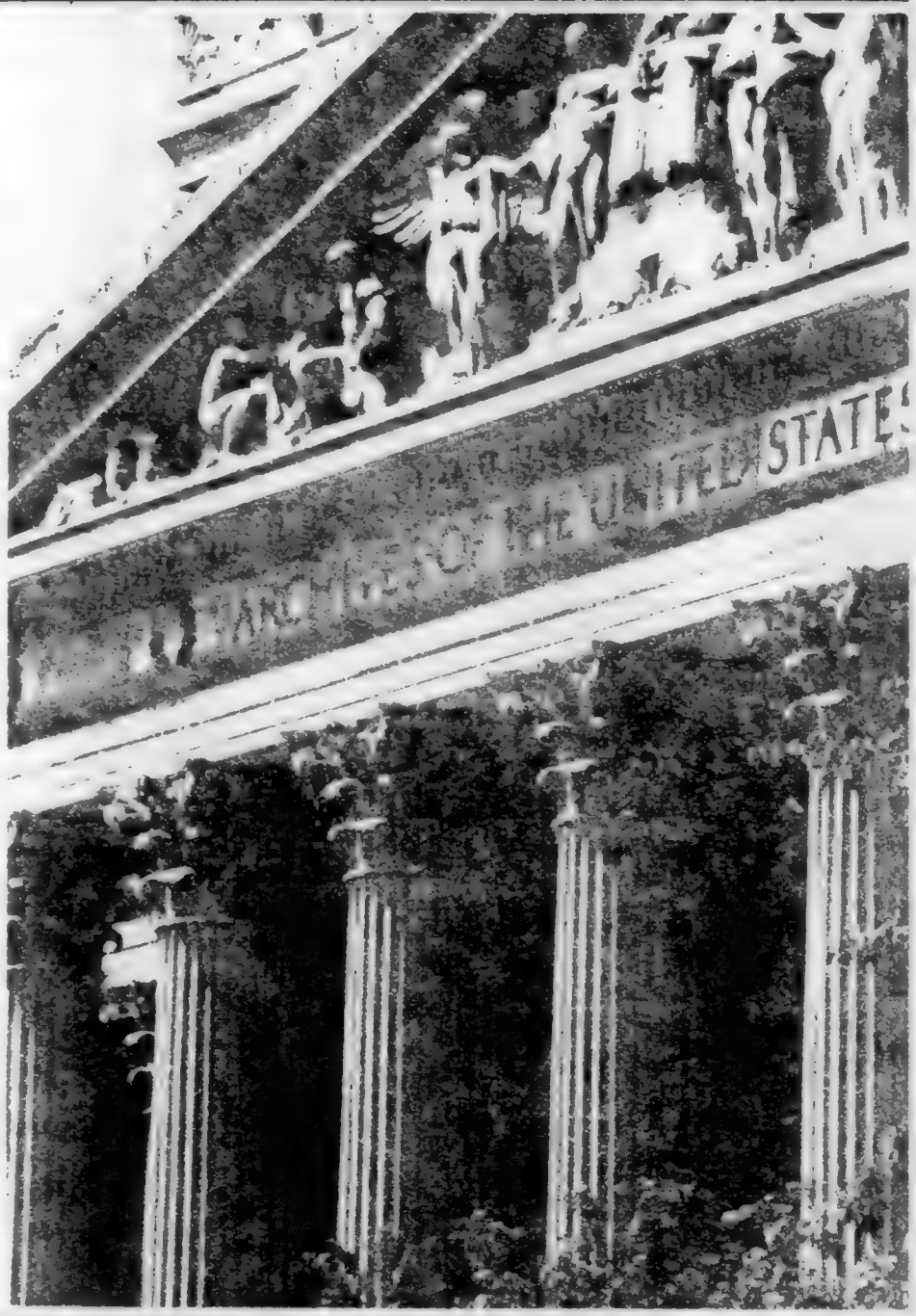
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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 713

[Amdt. 3]

Feed Grain, Rice, Cotton, and Wheat Programs for the 1985 Crop Year

Correction

In FR Doc. 85–15020, beginning on page 25691, in the issue of Friday, June 21, 1985, make the following correction:

On page 25695, first column, § 713.104(d)(2), the eleventh line should read "computed from the date of issuance of the payment to the date such payment is".

BILLING CODE 1505-01-M

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Modification of the Procedural and Operational Details of the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim final rules.

SUMMARY: The Department of Agriculture (USDA) has decided to leave in effect two interim final rules which modify the procedural and operational details of the Raisin Diversion Program (RDP). The first rule establishes procedures to give raisin producers a chance to submit diversion applications after the December 20 deadline date, but only if the producers agree to remove vines. This additional period would be available only in those years when the tonnage of approved applications is less than the total tonnage declared eligible for diversion by the Raisin Administrative Committee (Committee). The second rule would add a final date of June 1 for diversion to give the Committee adequate time to verify diverted acreage; allow the Committee to collect liquidated damages from producers who fail to divert and deny them the opportunity to participate in future diversion programs to encourage successful applicants to follow through with their commitments to divert; and allow producers 10 days to agree with any program changes or withdraw from the RDP. These refinements were recommended by the Committee, which works with the USDA in administering the marketing order for California raisins.

EFFECTIVE DATE: August 22, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) This action finalizes modifications in the raisin diversion program procedures issued by the Department on April 23, and June 3, 1985; (2) final approval of these changes is necessary to maintain 1985 program continuity; and (3) delaying the effective date would serve no useful purpose.

This action finalizes two interim final rules which amended § 989.156 of Subpart—Administrative Rules and Regulations (7 CFR 989.102—989.176; 50 FR 3879) to improve efficency of the RDP in the areas of administration, program flexibility, and program compliance. This subpart is operative pursuant to the marketing agreement and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The first interim final rule was issued on April 23, 1985, and published in the **Federal Register** on April 29, 1985 (50 FR 16693). Interested persons were given until May 29, 1985, to submit comments. One comment was received. The rule added a new paragraph(s) to § 989.156 establishing procedures to give raisin producers an additional period, beyond the December 20 deadline, to submit diversion applications. The tonnage available during the reoffer period is limited to the difference between the tonnage on approved applications submitted by the December 20 deadline and the total tonnage declared eligible for diversion. Producers have until an announced date not later than May 1 to submit such applications and these are approved on a first-come, first-served basis.

Moreover, less than a total production unit may be approved for diversion during the reoffer period. This will provide an incentive for more producers to participate in the program and promote the use of vine removal which is the most direct and most effective way of accomplishing the diversion program objectives. The determination of the tonnage allowed for acreage removed for less than the total production unit is computed by multiplying the tonnage produced and verified on the entire unit by the radio of the acreage removed divided by the acreage contained in the total production unit. After verification of the tonnage on the production unit has been completed and the application approved, the producer would notify the Committee when vine removal is to occur so the Committee can observe the removal. If the removal is not observed, no diversion certificate would be issued by the Committee.

The second interim final rule was issued on June 3, 1985, and published in the **Federal Register** on June 7, 1985 (50 FR 23895). Comments were invited until July 8, 1985. No comments were received. That rule revised § 989.156 in three areas. One change establishes June 1 as the final date that approved applicants can divert their acreage, thus qualifying for a diversion certificate.

This change is included in § 989.156(h) and is necessary to give the Committee adequate time to verify diverted acreage.

A second change is in § 989.156(q) and would allow the Committee to collect liquidated damages from producers who fail to divert and deny them the opportunity to participate in future diversion programs. The intent of this refinement is to encourage successful applicants to take the necessary measures to preclude grapes from being produced and harvested. Failure by large numbers of raisin producers to carry out their commitment to divert would cause serious and substantial damage to the diversion program, and impair the achievement of program goals in 1985 and future years. Hence, measures to foster compliance as necessary and incidental to effectively carry out the diversion program. Moreover, without such measures producers who intended to participate may be denied that opportunity in years when a lottery is held.

By applying to participate in a raisin diversion program, an applicant executes an agreement with the Committee acknowledging that the failure of the approved applicant to timely remove the vines or grapes will cause serious and substantial damage to the program and the raisin industry and that, in consideration of the approval of the application, such applicant will agree to pay liquidated damages and interest to the Committee, in the event of such failure to remove vines or grapes. Because it would be difficult, if not impossible, to determine a fair measure of damages not considered a penalty, the amount of such liquidated damages would be computed by multiplying the tonnage on the approved diversion application by a harvest cost determined by the Committee. Interest would be applied to liquidated damages not paid by July 1, and would be equal to the prime rate of the bank where the Committee has its reserve pool funds deposited, plus two percent. The interest charge is warranted because producers' income would be affected by producers failing to comply with the program.

There is ample precedent for a provision specifying liquidated damages in the event producers fail to follow through on their agreements with the Committee. Section 989.159(g)(2) of the administrative rules and regulations provides for liquidated damages in the event of improper disposition of offgrade raisins, other failing raisins, and raisin residual material. Moreover, liquidated damages are included in other provisions to assure compliance with other programs administered by the Secretary.

A third refinement is in § 989.156(r) and allows applicants 10 days to withdraw from the program if any change is made in the terms and conditions of the program. If the producer fails to take action to withdraw from the program, the producer would automatically agree to the changes under this action.

The comment received on the first interim final rule was from a raisin producer who requested that USDA review and consider his diversion application for vine removal. The commenter also requested that the requirements of § 989.156(s)(2) be waived for the 1985 diversion program, if the vines had not been destroyed and can be verified by Committee representatives after the fact. Paragraph (s)(2) requires producers to notify the Committee in advance of the date when the vines will be removed to allow a representative of the Committee to observe and verify the vine removal.

The producer in question requested and received a hearing before an appeals subcommittee established by the Committee pursuant to § 989.156(m) to review such matters. The producer's application was turned down on the basis that the producer had not complied with the terms and conditions of the diversion program because the Committee was unable to observe and verify the vine removal as required under § 989.156(s). The appeals procedure prescribed in § 989.156(m) provides that if a producer does not agree with the appeals subcommittee's decision, that producer may request the Committee to review the subcommittee's decision. Subsequent to the comment being submitted, the diversion application review was conducted by the Committee.

The verification of diversion is an enormous task for the Committee to perform in a short period with limited resources. Direct observation of vine removal is the most certain and efficient method particularly with these later applications. Therefore, the Department believes it would be counterproductive to waive the requirements in § 989.156(s)(2) for the 1985 diversion program.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee, the comment received, and other available information, it is further found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders; Grapes, Raisins, California

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Subpart—Administrative Rules and Regulations

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. In § 989.156, paragraphs (h), (q), (r), and (s) are revised to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(h) *Methods of diversion.* An approved applicant shall be required to take the necessary measures to preclude grapes from being produced and harvested on the production unit involved in the program. These measures may include spur pruning the vines, chemically removing the crop before maturity, hand removing and destroying the bunches of grapes before maturity, removing the vines, or any other method which prevents the grapes from maturing and being harvested. An approved applicant must remove the grapes within the production unit designated in their application not later than June 1 of the crop year when a raisin diversion program is implemented. Grafting vines to another varietal type does not constitute removal of the vines under the program. Any raisin producer who does not take the necessary measures to remove the vines or grapes on an approved production unit by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the act, and may be denied the opportunity to participate in future diversion programs.

* * * * *

(q) *Liquidated damages and interest charges.* By applying to participate in a raisin diversion program, an applicant agrees that the failure of the approved applicant to timely remove the vines or grapes will cause serious and substantial damage to the program and the raisin industry and that, in consideration of the approval of the application, such applicant will pay liquidated damages and interest to the Committee, in the event of such failure to timely remove vines or grapes. Since it would be difficult, if not impossible, to

determine the amount of such liquidated damages, the following amount, which is a fair measure of damages and not a penalty, shall apply:

(1) The amount of the liquidated damages shall be computed by multiplying the tonnage on the approved diversion application (Form RAC–1000) by the harvest cost determined and announced by the Committee.

(2) Each approved applicant shall, with the respect to liquidated damages not paid by July 1, pay to the Committee interest on such unpaid liquidated damages at the rate of the prime rate of the bank in which the Committee has its reserve pool funds deposited, on the day the liquidated damages become delinquent, plus 2 percent, and further such rate of interest shall be added to the unpaid amount, monthly, until the liquidated damages plus applicable interest are paid.

(3) Liquidated damages and interest collected by the Committee pursuant to this subparagraph shall be deposited in the reserve pool fund of the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool.

(r) *Notification.* If any changes are made in the terms and conditions of the diversion program after a producer's application has been approved, the Committee will notify the producer of such changes and the producer will be given 10 calendar days to agree to the revised terms, or to withdraw from the program. Failure of the producer to notify the Committee in writing of its intention to withdraw from the program within 10 calendar days from the date of the Committee's notice will constitute agreement to the revised terms and conditions.

(s) *Additional opportunity for vine removal.* (1) The Committee may announce a date later than that provided in § 989.156(b), by which producers, who agree to remove the vines on a production unit, or portion thereof may file an application to participate in a raisin diversion program. The announced date shall be not later than May 1, except this date may be extended 30 days for the 1985 calendar year. The diversion certificates will be issued only for the production units or portions thereof from which the vines are removed. The total tonnage available to such applicants shall not exceed the tonnage determined by deducting the tonnage approved for applications received on or before December 20 from the total tonnage announced as eligible by the Committee for diversion. Applications shall be considered and approved on a first-come, first-served, basis and shall not be given preference over the tonnage approved for applications received on or before December 20. The vines shall be removed from the production units or portion thereof for which such applications are approved not later than June 1, except this date may be extended 30 days for the 1985 calendar year.

(2) Producers who agree to remove the vines pursuant to this paragraph shall notify the Committee in advance of the date when such vines will be removed in order to allow a representative of the Committee to observe and verify such vine removal.

(3) The determination of the tonnage allowed for acreage removed for less than a total production unit would be computed by multiplying the previous year's tonnage produced and verified on the entire unit by the ratio of the acreage removed divided by the acreage contained in the total production unit.

Dated: August 16, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 20128 Filed 8–21–85; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y, Docket No. R–0549]

Bank Holding Companies and Change in Bank Control; Application Required for Relocation of Subsidiary Bank to Another State

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: This interpretation sets forth the Board's view that a bank holding company may not, without the Board's prior approval under section 3 of the Bank Holding Company Act and compliance with the interstate banking restrictions of the Act, relocate a subsidiary bank from the holding company's home state to another state.

EFFECTIVE DATE: July 24, 1985.

FOR FURTHER INFORMATION CONTACT: James V. Mattingly, Deputy General Counsel (202/452–3430), Pamela G. Nardolilli, Attorney (202/452–3289), Legal Division, or Joy W. O'Connell, Telecommunication Device for the Deaf (TDD) (202/452–3244), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements.

For the reasons stated above, the Board amends 12 CFR Part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority for Part 225 remains as follows:

Authority: 12 U.S.C. 1841 *et seq.* and 12 U.S.C. 1817(j).

2. Section 225.114 to read as follows:

§ 225.144 Application Required for the Relocation of a Subsidiary Bank to Another State.

(a) The Board has recently considered whether a bank holding company may relocate one of its subsidiary banks, pursuant to the approval of the Comptroller of the Currency under 12 U.S.C. 30, from the holding company's home state [1] to another state without the approval of the Board under section 3 of the Bank Holding Company Act ("BHC Act") and without compliance with the interstate banking provisions of the Douglas Amendment to the BHC Act. (12 U.S.C. 1842 (a) and (d)). After a review of the terms and purposes of the BHC Act, the Board concludes that the relocation of a subsidiary bank of a bank holding company from the holding company's home state to another state requires the Board's prior approval under the BHC Act and is subject to the interstate banking provisions of the Douglas Amendment to the BHC Act. The retention by a bank holding company of control of a bank after its relocation outside of the holding company's home state, while simultaneously controlling a bank in its home state, creates a multi-state bank holding company, and, in the Board's view, is inconsistent with, and constitutes an evasion of, the terms and intent of the BHC Act that a bank holding company not expand its banking operations outside its home state without the express approval of the other state.

(b) The BCH Act establishes a comprehensive federal framework governing the operations and acquisitions of bank holding companies. Section 3(a) of the BHC Act provides that a bank holding company must obtain the approval of the Board, under specified competitive, financial, managerial and convenience and need factors before acquiring control of a

bank. 12 U.S.C. 1842(a). The Douglas Amendment provides that the Board may not approve any application under section 3 that would allow a bank holding company to acquire control of or any interest in a bank located outside of the holding company's home state, unless the acquisition is specifically authorized by the state in which the bank to be acquired is located.

(c) The Douglas Amendment was adopted to prevent the creation or expansion of interstate banking networks through acquisition by a bank holding company of control of a bank located outside of the holding company's home state, without the explicit approval of the state in which the bank is located. (*See Florida Dep't of Banking* v. *Board of Governors*, 760 F.2d 1135, 1141 (11th Cir. 1985); *Credit and Commerce American Holdings, N.V.*, 65 Federal Reserve Bulletin 254, 255–56 (1979)). Under the terms of the BHC Act, the Board's authority to grant approval to a bank holding company to control a bank is limited to banks located within the holding company's home state or in states that have specifically authorized the acquisition. The Board has no authority to grant approval to a bank holding company to control a bank outside of the holding company's home state, without appropriate state statutory authorization. Thus, a bank holding company's authority to control a bank, which derives from the Board's approval under the BHC Act for the acquisition of the bank, must necessarily be limited by, and cannot be broader than, the Board's authority to grant approval for the acquisition in the first place. In other words, a bank holding company's authority to continue to control a bank acquired pursuant to the terms of the BHC Act is subject to the limitation of the BHC Act that the bank remain located in the state specified in its application to the Board to acquire the bank. A change in the location of the bank to a place outside of the holding company's home state constitutes a material change in an essential predicate for the Board's approval for the acquisition of the bank, transforming the proposal from one that the Board could approve to one that the Board did not and could not have lawfully approved.

(d) Accordingly, the Board believes that a bank holding company's authority to continue to control a bank is limited by the requirements of the Douglas Amendment such that the bank must remain in the state in which it was located at the time the Board granted approval for its acquisition and that a bank holding company may not, without the Board's prior approval under the BHC Act and compliance with the state authorization provisions of the Douglas Amendment, take action that would cause it to control a bank outside of its home state.

(e) The Board believes that this interpretation of the Act is not only consistent with the terms of the BHC Act, but is necessary in order to give effect to the Congressional intent underlying the Douglas Amendment to maintain state control over the acquisition of banks within their borders. As the legislative history of the Douglas Amendment indicates, prior to the enactment of the BHC Act, the acquisition and control of banks by bank holding companies was not regulated, and thus bank holding companies could establish networks of subsidiary banks in numerous states, while their subsidiary banks were limited by the McFadden Act and state law to branching in a single state. (102 Cong. Rec. 6858 (1956); H.R. No. 609, 84th Cong., 1st Sess. 3–4 (1955)). The United States Supreme Court has stated that the Douglas Amendment was enacted for the express purpose of eliminating this "loophole" in order to maintain "local, community-based control over banking. (*Northeast Bancorp, Inc.* v. *Board of Governors*, 105 S. Ct. 2545, 2553 (1985)).

(f) In the debate surrounding the enactment of the amendment, Senator Douglas described the amendment as intended "to prevent bank holding companies from expanding across State lines, unless the States give them explicit permission to do so," and that the "immediate practical effect [of the Amendment] would be to bar the expansion of bank holding companies across State lines." [2] The Senator stated that his proposal was "a logical continuation of the McFadden Act, which tried to prevent the Federal power from being used to permit national banks to expand across State lines in a way contrary to State policy . . . ." *Id.* and that it would "carry over into the field of holding companies the same provisions which already apply for branch banking under the McFadden Act . . . ." (102 *Cong. Rec.* 6858 (1956)).

(g) The principle of the McFadden Act, as applied to bank holding companies, requires that a bank holding company may not establish a subsidiary bank outside of its home state, unless authorized by the host state. While Congress has phrased the Douglas Amendment in terms of the application requirements of the BHC Act, it is clear that Congress was concerned with the substance of preventing further interstate expansion through the bank holding company device without express state authorization.

(h) In the Board's view, an interpretation of the BHC Act that would allow a bank holding company to acquire a bank in its home state and, without further approval under the BHC Act, relocate that bank to another state would nullify the stated purpose of the Douglas Amendment to ensure that the holding company form is not used to evade state restrictions against interstate banking. (*Northeast Bancorp*, 105 S. Ct. at 2550–52). Using the relocation device, a multi-bank holding company could expand into the adjoining state by relocating the main office of a subsidiary national bank located within thirty miles of a state border, while retaining control of its other subsidiary banks in its home state, regardless of whether the adjoining state has consented to entry by out-of-state bank holding companies.

(i) The Board has found no evidence that Congress intended section 30, which governs the relocation of the main office of a national bank, to create an exception to the provisions of the Douglas Amendment. Section 30 was enacted in 1886, and provided that a national bank may change its place of operations to any other place within the same state, not more than thirty miles distant, with the approval of the Comptroller of the Currency and shareholders. 24 Stat. 18. The Comptroller had interpreted this provision as not requiring the Comptroller's approval if the bank's place of operations was only moved within the city in which it was located. (S. Rep. No. 121, 85th Cong., 1st Sess. 17 (1957)). In 1959, Congress overturned this interpretation by amending section 30 to subject all changes of location by a national bank to the Comptroller's approval. *Id.*

(j) The amended section 30 does not contain the language in the previous version limiting changes in office location to within the state where the bank is located. The omission of this provision is not explained in the legislative history. There is, however, no indication in the relevant history that Congress affirmatively intended that the amendment to section 30, which was part of a package of technical amendments to the federal banking laws, create a specific exception to the

[2] 102 Cong. Rec. 6859–60 (1956). *Accord*, (Remarks of Senator Bennett) (the Douglas Amendment constitutes "a flat, unequivocal prohibition against bank holding companies crossing State lines . . . a blanket prohibition which can only be lifted by specific affirmative action by the States. . . .")

provisions or general policy of the Douglas Amendment—adopted three years earlier—against the establishment of new interstate bank holding companies without the consent of the states involved. The Board cannot attribute to a technical amendment, in the absence of compelling legislative history, any intention to abandon one of the central policies behind the enactment of the BHC Act in 1956.

(k) Finally, the Board believes that the relocation by a bank holding company of a subsidiary bank from the holding company's home state to another state, while continuing to retain a bank in its home state, would constitute an evasion of the Douglas Amendment that would warrant, if not require, the exercise by the Board of its authority under section 5(b) of the BHC Act to take necessary action to carry out the purposes and prevent evasions of the Act. 12 U.S.C. 1844(b).

Board of Governors of the Federal Reserve System, August 16, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-20030 Filed 8-21-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-4; Amdt. 39-5122]

Airworthiness Directives; Marvel-Schebler Products Division

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revocation of Airworthiness Directive.

SUMMARY: Airworthiness Directive (AD) 66-05-04 required replacing metal floats in Marvel-Schebler carburetors with composite floats. The FAA has determined that the AD does not adequately correct the condition for which it was intended. Therefore, AD 66-05-04 is being revoked.

EFFECTIVE DATE: October 2, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Robinette, Atlanta Aircraft Certification Office, ACE-140A, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to revoke AD 66-05-04 was published in the **Federal Register** on April 15, 1985 (50 FR 14717). The proposal resulted from a determination that the AD is no longer applicable. This determination was based upon the finding that composite floats are not compatible with certain low lead fuels. The floats become saturated by the fuel and sink in the carburetor float bowl. Facet Aerospace Products Company (current manufacturer of Marvel-Schebler Products) has discontinued the manufacture of the composite floats in favor of a redesigned metal float. The redesigned metal floats are the only replacement floats now available. Facet Aerospace Products Company Service Bulletin No. A1-84A refers to this subject.

Interested persons have been afforded an opportunity to participate in the making of this amendment. The comment period closed June 12, 1985. Three comments were received.

All three commenters concurred with the proposal; however, one was concerned with the possibility of someone using the original metal floats or the replacement composite ones and suggested a new AD to require frequent periodic inspections of original metal floats and replacement composite floats until the installation of the new redesigned metal floats. The problems associated with the original metal floats and the composite floats are such that a catastrophic failure is highly unlikely. A pilot will be able to detect impaired performance before a float problem of this nature reaches a dangerous level; therefore, safety would not be jeopardized. In addition, the expense involved in frequent inspections would have a significant adverse economic impact on owners/operators and would not appreciably affect safety. Based on the preceding, it is felt that a new AD is not justified. Therefore, in accordance with the agency's policy of eliminating unnecessary regulations when possible, AD 66-05-04 will be revoked.

Conclusion

The FAA has determined that this revocation is an action which will have no cost for any aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034: February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revoking the following AD:

AD 66-05-04 Amdt. 39-189 effective.

Issued in Burlington, Massachusetts, on August 9, 1985.

Robert E. Whittington,

Director, New England.

[FR Doc. 85-20025 Filed 8-21-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 810

Mass Transit and Special Use Highway Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on mass transit and special use highway projects to incorporate statutory changes mandated by the Federal-Aid Highway Act of 1981 and the Surface Transportation Assistance Act of 1982. Revisions are also made to update references to other regulations or statutes and to reflect administrative changes. The revisions provide the basic criteria for determining whether mass transit and special use highway projects are eligible for Federal-aid funding under 23 U.S.C. 137, 142, and 149.

DATE: These final amendments are effective on September 23, 1985.

For additional information, see "**SUPPLEMENTARY INFORMATION.**"

FOR FURTHER INFORMATION CONTACT: James Carney, Office of Engineering, 202-426-0450 or Hugh T. O'Reilly, Office of the Chief Counsel, 202-426-0781, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: On April 26, 1984, FHWA published an NPRM (49 FR 17968) proposing to amend the regulations on mass transit and special use highway projects. The amendments were to incorporate statutory changes and minor administrative provisions.

There were 51 comments in response to the NPRM. Of these, 45 were from individual motorcyclists or motorcycle associations presenting views on § 810.104(e). The rest of the comments were from State Departments of Transportation, city governments and a public transit authority. All these comments and concerns were considered in the development of the final rule as set forth below.

Discussion of Comments

Section 810.6 Prerequisites for Projects Authorized by 23 U.S.C. 137, 142 or 149.

One commenter questioned the proposed change to Section 810.6(a) which added the phrase "or serving" to projects which are required to be based on the planning process described in 23 CFR Part 450. As the commenter noted, this change would require that a project financed with secondary funds would have to be based on the urban transportation planning process because the project was found to serve the urbanized area. A project such as a fringe parking lot outside the urbanized area boundary would have to go through the urban planning process. The FHWA agrees that this requirement extends beyond the intent of applicable legislation and regulations and has removed this provision. However, projects under this final rule are for the primary purpose of improving urban transportation and, therefore, except as otherwise provided by 23 CFR 450.202(a) they should be coordinated with local urbanized area authorities which may be affected, to the extent necessary, to insure compatibility with the Urban Transportation Plan. A requirement to this effect has been added to the language of § 810.6(b).

Section 810.102 Eligible projects.

Two other commenters expressed desires for more guidance and discussion regarding eligible projects in § 810.102. The guidance would explain in more detail both eligibility of specific work and the types of projects which would be eligible. The purpose of this regulation is to describe in rather general terms the types of projects eligible for Federal-aid highway funding under sections 137, 142, and 149 of Title 23, U.S.C. It would be inappropriate to discuss at length the specific parameters of work eligibility considering the number and diverse types of projects which could be subject to this regulation.

In order to explain more fully how to determine what class of funds might be used for projects eligible under this section, paragraph (c) of § 810.106 has been modified. The modification provides that there is flexibility in the class of funds used (primary, secondary, and urban system funds) depending on the system on which the project is located or the system that substantially benefits from the project. For Interstate funds to be used, the Interstate System must be the system that substantially benefits from the project.

In order to meet the test of "system that substantially benefits," the project must be reasonably related to and in the proximity of roads and streets on that system. In this regard urban system funds may be used for such a project which is physically located outside an urbanized area provided the project is located on or in close proximity to a Federal-aid system route and can be shown to substantially benefit the urban system inside the urbanized area.

Section 810.104 Applicability of other provisions.

Of the 51 comments responding to the NPRM, 45 were from motorcyclists or motorcycle organizations presenting an almost singular view regarding § 810.104(e). Their view is that all carpool/HOV lanes should be made available to motorcycles. They support this view with statements that motorcycles are very fuel efficient, are safer vehicles, and would be safer if allowed to use carpool lanes. Many of their views do not pertain to the language of § 810.104(e), but rather that FHWA has not taken the action intended by the legislation. Some questioned the validity of the State's certification that motorcycle use of carpool lanes would create a safety hazard. They cited as an example the fact that the State of Washington had opened HOV lanes to motorcycles and there were no resulting safety problems. In response to these comments, FHWA has reviewed its position regarding the implementation of section 163 of the 1982 STAA. The provisions are viewed as prospective only and they apply to approval by FHWA of new projects to construct, reconstruct or resurface carpool lanes or sections of a highway which have carpool lanes within the project terminal. The provisions would not apply to engineering or study projects as some of the commenters suggested. Based on this review, FHWA proposes no change in the language of § 810.104(e) as proposed

In reference to comments on the validity of the State's certification, FHWA expects that the States would base such certifications on valid assumptions and evaluations of the safety issues involved as necessary to support the certification. The FHWA does not have authority to go behind a State's certification or to argue the validity of the evaluations used to support it.

The FHWA appreciates the desires of motorcyclists to use carpool lanes for their own safety. The introduction of motorcycles to existing HOV facilities is a matter for determination by each State Highway Agency subject to the State's finding that such use will be safe and will not adversely affect the integrity of the HOV facility.

Section 810.106 Approval of fringe and transportation corridor parking facilities.

One commenter raised a question about the use of the word "proximate" in § 810.106(a)(2). As it relates to fringe parking facilities, proximate is intended to mean "close". The land for the parking facility need not abut the Federal-aid highway, but would have to be close enough to be obviously related and provide reasonably direct access to the highway.

One commenter suggested lifting the requirement in § 810.106(a)(4) that fees at parking facilities be limited to the cost of maintenance and operation (including cost of shuttle service). Lifting this requirement would permit facility operators to price the parking at market rates for some users and give preferential rates to parkers who transfer to mass transportation. The FHWA has little flexibility in this area because the law is specific in this regard. Fees may not exceed the cost of operation and maintenance. This language stems from the basic tenent of Federal-aid highway laws which provides that projects financed with Federal-aid funds must be free of tolls.

Section 810.212 Use to be without charge.

One other commenter presented a conflict between the provisions of § 810.212 and State statutes in that use of lands for publicly-owned transit facilities shall be without charge. The State statutes have been interpreted to require the State to receive payment for the use of land purchased for highway purposes. The effect of the conflict between the State statutes and § 810.212 is to preclude the State from entertaining any use of highway right-of-way by public mass transit.

The FHWA does not have much latitude because 23 U.S.C. 142(g) provides for the use to be without charge. The problem in one State would not seem to warrant extending the regulation beyond the law.

Section 810.304 Submission of projects.

Section 105(d) of the 1982 STAA requires that each State use 40 percent of its apportionment of Federal-aid urban system funds for work to reconstruct, rehabilitate, resurface and restore existing highway facilities (4R). The requirement is applicable to funds apportioned for FY 1984, 1985 and 1986 unless the State certifies to the Secretary of the Department of Transportation that the percentage is in excess of the 4R needs, in which case those funds also may be used for eligible FAUS purposes, including nonhighway public mass transit projects.

These requirements are monitored on a statewide basis which will afford some flexibility in meeting the minimum 40 percent and are not a direct burden on any particular urban area. For example an individual urbanized area could use less than 40 percent of its urban system funds for 4R work if the other areas and the State obligated sufficient funds to accomplish the minimum percentage.

The intent of the provision in § 810.304(b) is to have the State assess the effect of the proposed use of urban system funds for a nonhighway public mass transit project on the ability of the State to meet the 40 percent requirement before the transfer is made.

The FHWA has determined that this document is neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory procedures. The FHWA has also determined that the change reflected in this action will have only minimal economic impact. The proposed revisions are more in the nature of technical and terminology amendments and are generally incorporating statutory requirements. Accordingly, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 810

Grant Program—transportation, Highways and roads, Mass transportation, Parking.

In consideration of the foregoing, the FHWA hereby amends Title 23, Code of Federal Regulations, by revising Part 810 to read as set forth below.

Issued on: August 14, 1985.

Lester P. Lamm,

Deputy Administrator.

PART 810—MASS TRANSIT AND SPECIAL USE HIGHWAY PROJECTS

Subpart A—General

Sec.

810.2 Purpose.
810.4 Definitions.
810.6 Prerequisites for project authorized by 23 U.S.C. 137, 142, or 149.
810.8 Coordination.

Subpart B—Highway Public Transportation Projects and Special Use Highway Facilities

810.100 Purpose.
810.102 Eligible projects.
810.104 Applicability of other provisions.
810.106 Approval of fringe and transportation corridor parking facilities.
810.108 Designation of existing facilities.

Subpart C—Making Highway Rights-of-Way Available for Mass Transit Projects

810.200 Purpose.
810.202 Applicability.
810.204 Application by mass transit authority.
810.206 Review by the State Highway Agency.
810.208 Action by the Federal Highway Administrator.
810.210 Authorization for use and occupancy by mass transit.
810.212 Use to be without charge.

Subpart D—Federal-Aid Urban System Nonhighway Public Mass Transit Projects

810.300 Purpose.
810.302 Eligible projects.
810.304 Submission of projects.
810.306 Reservation of funds.
810.308 Approval of urban system nonhighway public mass transit projects.
810.310 Applicability of other provisions.

Authority: 23 U.S.C. 137, 142, 149 and 315; sec. 4 of Pub. L. 97–134, 95 Stat. 1699; secs. 118, 120, and 163 of Pub. L. 97–424, 96 Stat. 2097; 49 CFR 1.48(b) and 1.51(f).

Subpart A—General

§ 810.2 Purpose.

The purpose of this regulation is to implement sections 137, 142, and 149 of title 23, U.S.C.

§ 810.4 Definitions.

(a) Except as otherwise provided terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) The following terms, where used in the regulations in this subpart have the following meanings:

(1) Exclusive or preferential high occupancy vehicle, truck, or emergency vehicle lanes-one or more lanes of a highway facility or an entire highway facility where high occupancy vehicles, trucks or emergency vehicles or any combination thereof, are given, at all times or at any regularly scheduled times, a priority or preference over some or all other vehicles moving in the general stream of mixed highway traffic. Carpool lane(s)—is any high occupancy vehicle lane which allows use by carpools.

(2) Fringe and transportation corridor parking facilities—those facilities which are intended to be used for the temporary storage of vehicles and which are located and designed so as to facilitate the safe and convenient transfer of persons traveling in such vehicles to and from high occupancy vehicles and/or public mass transportation systems including rail. The term "parking facilities" includes but is not limited to access roads, buildings, structures, equipment, improvements and interests in land.

(3) High occupancy vehicle—a bus or other motorized passenger vehicle such as a carpool or vanpool vehicle used for ridesharing purposes and occupied by a specified minimum number of persons.

(4) Highway traffic control devices—traffic control devices as defined by the currently approved "Manual on Uniform Traffic Control Devices for Streets and Highways." [1]

(5) Metropolitan Planning Organization—that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 104(f)(3), and capable of meeting the requirements of sections 3(e)(1), 5(1), 8 (a) and (c) and 9(e)(3)(G) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1602(e)(1), 1604(1), 1607 (a) and (c) and 1607a(e)(3)(G). This organization shall be the forum for cooperative transportation decisionmaking.

(6) Nonhighway public mass transit project—a project to develop or improve public mass transit facilities or equipment. A project need not be physically located or operated on a route designated as part of the Federal-aid urban system, but must be included in and related to a program for the development or improvement of an urban public mass transit system which includes the purchase and rehabilitation of passenger buses and rolling stock for fixed rail facilities, and the purchase, construction, reconstruction or improvement of fixed rail passenger operating facilities. Such projects may also include the construction, reconstruction or rehabilitation of

[1] The MUTCD is incorporated by reference at 23 CFR 625.3.

passenger loading and unloading facilities for either bus or rail passengers.

(7) Passenger loading areas and facilities (including shelters)—areas and facilities located at or near passenger loading points for safety, protection, comfort, or convenience of high occupancy vehicle passengers. The term "areas and facilities" includes but is not limited to access roads, buildings, structures, equipment, improvements, and interest in land.

(8) Responsible local officials—(i) In areas under 50,000 population, the principal elected officials of general purpose local governments; or (ii) In urbanized areas, the principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization.

§ 810.6 Prerequisites for projects authorized by 23 U.S.C. 137, 142, or 149.

(a) Projects in an urbanized area must be based on a continuing comprehensive transportation planning process, carried on in accordance with 23 U.S.C. 134 as prescribed in 23 CFR Part 450, Subpart A and included in the transportation improvement program required by 23 CFR Part 450, Subpart B.

(b) Except as otherwise provided by 23 CFR 450.202, projects under this subpart located outside the urbanized area boundaries should be coordinated with the appropriate local officials of the urbanized area as necessary to insure compatibility with the area's urban transportation plan.

(c) All proposed projects must be included in a program of projects approved pursuant to 23 CFR Part 630, Subart A (Federal-Aid Program Approval and Authorization).

§ 810.8 Coordination.

The Federal Highway Administrator and the Urban Mass Transportation Administrator shall coordinate with each other on any projects involving public mass transit to facilitate project selection, approval and completion.

Subpart B—Highway Public Transportation Projects and Special Use Highway Facilities

§ 810.100 Purpose.

The purpose of the regulations in this subpart is to implement 23 U.S.C. 137, 142(a)(1), 142(b), and 149, which authorize various highway public mass transportation improvements and special use highway facilities as Federal-aid highway projects.

§ 810.102 Eligible projects.

Under this subpart the Federal Highway Administrator may approve on any Federal-aid system projects which facilitate the use of high occupancy vehicles and public mass transportation systems so as to increase the traffic capacity of the Federal-aid system for the movement of persons. Eligible projects include:

(a) Construction of exclusive or preferential high occupancy vehicle, truck, or emergency vehicle lanes, except the construction of exclusive or preferential lanes limited to use by emergency vehicles can be approved only on the Federal-aid Interstate System;

(b) Highway traffic control devices;

(c) Passenger loading areas and facilities (including shelters) that are on or serve a Federal-aid system; and

(d) Construction or designation of fringe and transportation corridor parking facilities. For parking facilities located in the central business district the Federal-aid project must be limited to space reserved exclusively for the parking of high occupancy vehicles used for carpools or vanpools.

§ 810.104 Applicability of other provisions.

(a) Projects authorized under § 810.102 shall be deemed to be highway projects for all purposes of Title 23, U.S.C., and shall be subject to all regulations of Title 23, CFR.

(b) Projects approved under this subpart on the Federal-aid Interstate System for exclusive or preferential high occupancy vehicle, truck, and emergency vehicle lanes are excepted from the minimum four-lane requirement of 23 U.S.C. 109(b).

(c) Exclusive or preferential lanes on the Interstate System, including approaches and directly related facilities, can be constructed with Interstate construction funds only if they were approved in the 1981 Interstate Cost Estimate.

(d) The Federal proportional share of a project approved under this subpart shall be as provided in 23 U.S.C. 120 for the class of funds involved. The Federal share for Interstate substitution projects is 85 percent except for signalization projects which may be 100 percent as provided by 23 U.S.C. 120(d). The provisions of section 120(d) Title 23 U.S.C. may also be applied to regularly funded projects under Section 810.102 of this subpart as follows:

(1) Signalization projects.

(2) Passenger loading area and facilities which principally serve carpools and vanpools.

(3) Fringe and transportation corridor parking facilities or portions thereof which are reserved exclusively for use by carpool and vanpool passengers and vehicles.

(e) As required by section 163 of the Surface Transportation Assistance Act of 1982, approval of Federal-aid highway funding for a physical construction or resurfacing project having a carpool lane(s) within the project limits may not be granted unless the project allows the use of the carpool lane(s) by motorcycles or it is certified by the State that such use will create a safety hazard. This requirement does not apply to high occupancy vehicle lanes which exclude carpools or to carpool lanes constructed by the State without the use of Federal-aid Highway funds. The issue of the extent of utilization of these facilities including those constructed prior to January 6, 1982 with Federal-aid Highway funds is a matter for individual determination by the State Highway Agency.

§ 810.106 Approval of fringe and transportation corridor parking facilities.

(a) In approving fringe and transportation corridor parking facilities, the Federal Highway Administrator:

(1) Shall make a determination that the proposed parking facility will benefit the Federal-aid systems by improving its traffic capacity for the movement of persons;

(2) May approve acquisition of land proximate to the right-of-way of a Federal-aid highway;

(3) May approve construction of publicly-owned parking facilities on land within the right-of-way of any Federal-aid highway, including the use of the airspace above and below the established gradeline of the highway pavement, and on land, acquired with or without Federal-aid funds which is not within the right-of-way of any Federal-aid highway but which was acquired in accordance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (84 Stat. 1894, 42 U.S.C. 4601 *et seq.*);

(4) May permit the charging of fees for the use of the facility, except that the rate of the fee shall not be in excess of that required for maintenance and operation and the cost of providing shuttle service to and from the facility (including compensation to any person for operating such facility and for providing such shuttle service);

(5) Shall determine that the State, or the political subdivision thereof, where the project is to be located, or any agency or instrumentality of such State or political subdivision, has the authority and capability of constructing, maintaining, and operating the facility.

(6) Shall receive assurance from the State that the facility will remain in

public ownershp as long as the facility is needed and that any change in ownership shall have prior FHWA approval;

(7) Shall enter into an agreement with the State, political subdivision, agency, or instrumentality governing the financing, maintenance, and operation of the parking facility; and

(8) Shall approve design standards for constructing the facility as developed in cooperation with the State highway agency.

(b) A State political subdivision, agency, or instrumentality thereof may contract with any person to operate any parking facility constructed under this section.

(c) In authorizing projects involving fringe and transportation corridor parking facilities, the class of Federal-aid funds (primary, secondary, or urban system) used for projects under this subpart may be either funds designated for the Federal-aid system on which the facility is located or the Federal-aid system substantially benefited. For Interstate funds to be used for such eligible projects the Federal-aid Interstate system must be the system which substantially benefits. The benefiting system is that system which would have otherwise carried the high occupancy vehicle or rail passengers to their destination. Interstate construction funds may be used only where the parking facility was approved in the 1981 Interstate Cost Estimate and is constructed in conjunction with a high occupancy vehicle lane approved in the 1981 Interstate Cost Estimate.

§ 810.108 Designation of existing facilities.

(a) In accordance with the provisions of 23 CFR 810.102, the Federal Highway Administrator may approve on any Federal-aid system the work necessary to designate existing parking facilities (such as at shopping centers or other public or private locations) for fringe and transportation corridor parking.

(1) Eligible activities include the acquisition of or the initial and renewal costs for leasing existing parking space, signing of and modifications to existing facilities, trail blazer signs, and passenger loading areas and facilities.

(2) The approval criteria in 23 CFR 810.106 (a)(1), (4), (5), (7) and (8) apply to these parking facilities.

(b) In accordance with the provisions of 23 CFR 810.102, the Federal Highway Administrator may approve on any Federal-aid system the work necessary to designate existing highway lanes as high occupancy vehicle lanes.

(1) Eligible activities include preliminary engineering, signing, pavement marking, traffic control devices, minor physical modifications and initial inspection or monitoring of use.

(2) Such improvements may be approved on any public road if they facilitate more efficient use of any Federal-aid highway.

(c) Interstate construction funds may be used only where the proposed projects were approved in the 1981 Interstate Cost Estimate.

Subpart C—Making Highway Rights-of-Way Available for Mass Transit Projects

§ 810.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 142(g), which permits the Federal Highway Administrator to authorize a State to make available to a publicly-owned mass transit authority existing highway rights-of-way for rail or other non-highway public mass transit facilities.

§ 810.202 Applicability.

(a) The provisions of this subpart are applicable to the rights-of-way of all Federal-aid highways in which Federal-aid highway funds have participated or will participate in any part of the cost of the highway.

(b) The provisions of this subpart do not preclude acquisition of rights-of-way for use involving mass transit facilities under the provisions of Subparts B and D of this part. Rights-of-way made available under this subpart may be used in combination with rights-of-way acquired under Subparts B and D of this part.

§ 810.204 Application by mass transit authority.

A publicly-owned mass transit authority desiring to utilize land existing within the publicly acquired right-of-way of any Federal-aid highway for a rail or other nonhighway public mass transit facility may submit an application therefor to the State highway agency.

§ 810.206 Review by the State Highway Agency.

The State highway agency, after reviewing the application, may request the Federal Highway Administrator to authorize the State to make available to the publicly-owned mass transit authority the land needed for the proposed facility. A request shall be accompanied by evidence that utilization of the land for the proposed purposes will not impair future highway improvements or the safety of highway users.

§ 810.208 Action by the Federal Highway Administrator.

The Federal Highway Administrator may authorize the State to make available to the publicly-owned mass transit authority the land needed for the proposed facility, if it is determined that:

(a) The evidence submitted by the State highway agency under Section 810.206 is satisfactory;

(b) The public interest will be served thereby; and

(c) The proposed action in urbanized areas is based on a continuing, comprehensive transportation planning process carried on in accordance with 23 U.S.C. 134 as described under 23 CFR Part 450, Subpart A.

§ 810.210 Authorization for use and occupancy by mass transit.

(a) Upon being authorized by the Federal Highway Administrator, the State shall enter into a written agreement with the publicly-owned mass transit authority relating to the use and occupancy of highway right-of-way subject to the following conditions:

(1) That any significant revision in the design, construction, or use of the facility for which the land was made available shall receive prior review and approval by the State highway agency.

(2) The use of the lands made available to the publicly-owned mass transit authority shall not be transferred to another party without the prior approval of the State highway agency.

(3) That, if the publicly-owned mass transit authority fails within a reasonable or agreed time to use the land for the purpose for which it was made available, or if it abandons the land or the facility developed, such use shall terminate. Any abandoned facility developed or under development by the publicly-owned mass transit authority which was financed all or in part with Federal funds shall be disposed of in a manner prescribed by OMB Circular A-102, Attachment N. The land shall revert to the State for its original intended highway purpose.

(b) A copy of the use and occupancy agreement and any modification under paragraphs (a) (1), (2), and (3) of this section shall be forwarded to the Federal Highway Administrator.

§ 810.212 Use to be without charge.

The use and occupancy of the lands made available by the State to the publicly-owned transit authority shall be without charge. Costs incidental to making the lands available for mass transit shall be borne by the publicly-owned mass transit authority.

Subpart D—Federal-Aid Urban System Nonhighway Public Mass Transit Projects

§ 810.300 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 142(a)(2), which allows the Urban Mass Transportation Administrator, by delegation of the Secretary, to approve nonhighway public mass transit projects as Federal-aid urban system projects.

§ 810.302 Eligible projects.

(a) Eligible projects are those defined as nonhighway public mass transit projects in Section 810.4 of this part subject to the limitations in paragraph (b) of this section.

(b) All projects under this subpart for the construction, reconstruction, or improvement of fixed rail facilities shall be located within the urban boundaries established under 23 U.S.C. 101(a).

§ 810.304 Submission of projects.

(a) An application for an urban system nonhighway public mass transit project shall be developed by a public body as defined under the UMTA Discretionary Capital Assistance Program and shall be prepared in accordance with procedures for the same Discretionary Capital Assistance program.

(b) The application shall be submitted concurrently to the State highway agency and to the UMTA Administrator. The State highway agency, if it concurs, shall submit a request to the FHWA Administrator for a reservation of apportioned Federal-aid urban system funds. The State shall include in its submission advice that such reservation of funds will not impair its ability to comply with the provisions of section 105(d) of Pub. L. 97–424 (if a State certifies it does not need forty percent of its Federal-aid urban system funds for 4R work, and the Secretary accepts such certification, the State may spend that unneeded amount for other eligible FAUS purpose, including nonhighway public mass transit projects).

§ 810.306 Reservation of funds.

(a) The FHWA Administrator shall review the State request, determine whether sufficient Federal-aid urban system funds are available, and notify the State highway agency and the UMTA Administrator of the reservation of funds.

(b) The apportioned funds reserved for the proposed project under paragraph (a) of this section shall remain available for obligation unless the FHWA Administrator is notified that the application has been disapproved by the UMTA Administrator, or unless the responsible local officials in whose jurisdiction the project is to be located and the State highway agency jointly request the withdrawal of the project application.

§ 810.308 Approval of urban system nonhighway public mass transit projects.

(a) An urban system public mass transit project may be approved by the UMTA Administrator when it is determined that:

(1) The application and project are in accordance with the current UMTA procedures relating to discretionary capital assistance grants; and

(2) Notification has been received from the FHWA Administrator that sufficient apportioned Federal-aid urban system funds are available to finance the Federal share of the cost of the proposed project.

(b) Approval of the plans, specifications, and estimates of a nonhighway public mass transit project shall be deemed to occur on the date the UMTA Administrator approves the project application. This approval which is subject to the availability of obligation authority at the time of approval, will obligate the United States to pay its proportional share of the cost of the project.

(c) Upon approval of an urban system nonhighway public mass transit project, the UMTA Administrator will execute a grant contract covering implementation of the project.

§ 810.310 Applicability of other provisions.

The Federal proportional share of the cost of an urban system nonhighway public mass transit project approved under this subpart shall be equal to the Federal share which would have been paid if the project were a highway project as determined under 23 U.S.C. 120(a).

[FR Doc. 85–20078 Filed 8–21–85; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 3

[CGD 85–052]

Mobile Marine Inspection Zone and Captain of the Port Zone Boundary Realignment

AGENCY: Coast Guard, DOT.

ACTION: final rule.

SUMMARY: This rule adds a 5-mile section of the Tennessee-Tombigbee Waterway, south of the Bay Springs Lock and Dam, to the Mobile, Alabama Marine Inspection Zone and Captain of the Port Zone. This section is located within the Eighth Coast Guard District boundary, but is not currently included in any Marine Inspection Zone or Captain of the Port Zone. This rule corrects the discrepancy by adding this section to the adjacent Marine Inspection Zone and Captain of the Port Zone in the Eighth Coast Guard District.

EFFECTIVE DATE: August 22, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael V. Franchini, Project Manager, Office of Marine Environment and Systems, telephone 202–426–9578. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Since these amendments are matters relating to agency organization, they are exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 553(b)(3)(A), and since these amendments are not substantive, they may be made effective in less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d)(3).

Drafting Information

The principal persons involved in drafting this proposed rulemaking are Lieutenant Michael V. Franchini, Project Manager, of the Office of Marine Environment and Systems, and Lieutenant David M. Shippert, Project Counsel, of the Office of Chief Counsel.

Discussion

When 33 CFR 3.40–10 was promulgated on September 5, 1974 (39 FR 32131) the Tennessee-Tombigbee Waterway did not exist. In a final rule on January 16, 1978 (43 FR 2372) the Eighth Coast Guard District boundary was revised to include the proposed canal section of the waterway, which begins, going south, at the Bay Springs Lock and Dam. However, the revision did not include the northernmost 5 miles of the canal section in a Marine Inspection Zone or Captain of the Port Zone. The discrepancy was discovered by personnel at the Mobile Marine Inspection and Captain of the Port Office in November 1984 before the waterway opened.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided in section 1(a)(3) of the Order. However, it is noted that this final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT

regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. Coast Guard marine safety activities in the area do not change. This 5-mile section of the waterway is assigned to a Marine Inspection and Captain of the Port Office, so that personnel from that office can respond and can plan to respond if any marine casualties occur there. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 3

Marine safety, Organization and functions (government agencies).

PART 3—[AMENDED]

In consideration of the preceding, Subchapter A, Chapter I, Title 33 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 3 is revised to read as set forth below and the authority citations following individual sections within the Part are removed.

Authority: 5 U.S.C. 552; 14 U.S.C. 92, 93, 632, 633; 49 U.S.C. 108; 49 CFR 1.45, 1.46.

2. By revising § 3.40–10(b) to read as follows:

§ 3.40–10 Mobile Marine Inspection Zone and Captain of the Port Zone

* * * * *

(b) The boundary of the Mobile Marine Inspection Zone and Captain of the Port Zone starts at the Florida coast 83°50′ W. longitude; thence due north to 30°15′ N. latitude, 83°50′ W. longitude; thence due west to 30°15′ N. latitude, 84°45′ W. longitude; thence due north to the southern bank of the Jim Woodruff Reservoir at 84°45′ W. longitude; thence northeasterly along the eastern bank of the Jim Woodruff Reservoir and northerly along the eastern bank of the Flint River to 32°20′ N. latitude, 84°02′ W. longitude; thence northwesterly to the intersection of the Georgia-Alabama boundary at 32°53′ N. latitude; thence northerly along the Georgia-Alabama boundary to 34° N. latitude; thence due west to the Alabama-Mississippi boundary at 34°N. latitude; thence northerly along the Alabama-Mississippi boundary to the southern boundary of Tishomingo County, Mississippi; thence westerly along the southern boundaries of Tishomingo and Prentiss Counties, Mississippi, including that area of the Tennessee-Tombigbee Waterway south of the Bay Springs Lock and Dam; thence southerly and westerly along the eastern and southern boundaries of Lee and Chickasaw Counties, Mississippi to 89° W. longitude; thence due south to the southeastern bank of the Pearl River at 89° W. longitude; thence southwesterly along the southeastern bank of the Pearl River; thence southwesterly along the eastern bank of the Ross Barnett Reservoir; thence southerly along the eastern bank of the Pearl River to the sea.

Dated: August 14, 1985.

Peter J. Rots,

Commodore, U.S. Coast Guard, Chief, Office of Marine Environment and System.

[FR Doc. 85–20099 Filed 8–21–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD2 85–38]

Special Local Regulations; Gallipolis 2nd Annual Regatta

August 19, 1985.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Mile 269.0 to 270.0, OHIO RIVER. The "GALLIPOLIS 2nd ANNUAL REGATTA", an approved marine event, will be held on August 24 and 25, 1985, at GALLIPOLIS, OHIO. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 9:00 a.m. on August 24, and terminate at 6:00 p.m. on August 25, 1985.

FOR FURTHER INFORMATION CONTACT: Lcdr. B.J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Ohio River between miles 269.0 and 270.0 during the "GALLIPOLIS 2nd ANNUAL REGATTA", August 24 and 25, 1985. This event will consist of outboard hydroplane and runabout boat races, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was not received until July 15, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, project officer, Boating Technical Branch, and Lt. R.E. Kilroy, USCG, project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In Part 100, a new temporary § 100.35–0238 is added, to read as follows:

§ 100.35–0238 Ohio River, mile 269.0 through 270.0.

(a) *Regulated Area:* The area between Mile 269.0 and 270.0 Ohio River is designated the regatta area, and may be closed to commercial and recreational navigation or mooring between the hours of 9:00 a.m. on August 24, and 6:00 p.m. on August 25, 1985. All times listed are local time. These times represent a

guideline for possible intermittent river closures not to exceed THREE (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations:* The Coast Guard will maintain a Patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0238 will be effective from 9:00 a.m. on August 24, and terminate at 6:00 p.m. on August 25, 1985. (local time).

Dated: August 12, 1985.

R.J. Collins,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 85–20101 Filed 8–21–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD3 85–54]

Special Local Regulations; Scorpion 100 Powerboat Race, Long Island, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Scorpion 100 power boat race. This event is sponsored by the South Bay Performance Association of East Patchogue, New York. The event will be held on September 7, 1985 off the south shore of Long Island between Fire Island Inlet and Jones Inlet, New York. This regulation is needed to provide for the safety of participants and spectators on navigable waters during this event.

EFFECTIVE DATE: This regulation becomes effective on September 7, 1985 from 10:00 a.m. to 2:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolsky, (212) 668–7974.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. A determination was not made until July 26, 1985 that this marine event required a special local regulation and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Mr. Lucas A. Dlhopolsky, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Scorpion 100 is a powerboat race sponsored by the South Bay Performance Association in conjunction with Race Headquarters of Freeport, New York. The race is to be held on a rectangular course 8.5 nautical miles long by .5 nautical miles wide, whose northern-most boundary runs parallel to, and three quarters of a nautical mile south of the south shore of Long Island, New York between Fire Island Inlet and Jones Inlet. This regatta will be held on September 7, 1985. Arpoximately 40 offshore racing vessels ranging in size from 20 feet to 40 feet are expected to participate in the event. The sponsor is providing 20 vessels in conjunction with Coast Guard and local authorities to patrol this event. Spectator craft which may number up to 200 will be required to remain south of a line formed by the patrol vessels which will be in position just south of the race course. In order to provide for the safety of life and property of both participants and spectators, the Coast Guard will restrict vessel movement in the regulated area.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35–319 to read as follows:

§ 100.35–319 Scopion 100, New York.

(a) *Regulated area.* Atlantic Ocean, between Fire Island Inlet and Jones Inlet in the area bounded by the following points: Starting at Latitude 40 degrees 36.5 minutes North; Longitude 73 degrees 21.5 minutes West (1.3 nautical miles south of Cedar Island Beach and 1.5 nautical miles west of Fire Island Inlet). Thence west 8.5 nautical miles remaining three quarters of a nautical mile south of Tobay and Jones Beaches to Latitude 40 degrees 34.3 minutes North; Longitude 73 degrees 32.4 minutes West. Thence south southeast 167 degrees True to Latitude 40 degrees 33.75 minutes North; Longitude 73 degrees 32.3 minutes West. Thence east northeast 075 degrees True to Latitude 40 degrees 36.0 minutes North; Longitude 73 degrees 21.3 minutes West. Thence to the starting point.

(b) *Effective period.* This regulation will be effective from 10:00 a.m. to 2:00 p.m. on September 7, 1985.

(c) *Special local regulations.* (1) The regulated area will be closed to all vessel traffic during the effective period. No person or vessel shall enter or remain in the regulated area when it is closed unless participating in the event or authorized by the sponsor or the Coast Guard Patrol Commander.

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must remain in the area south of a line formed by the patrol vessels which will be in position south

of the southern boundary of the race course.

(3) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(4) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: August 12, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-20100 Filed 8-21-85; 8:45 am]

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46 CFR Part 160

[CGD 78-174]

Hybrid PFD's; Establishment of Approval Requirements

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes approval requirements for hybrid inflatable personal flotation devices (hybrid PFD's). Use of approved hybrid devices will be optional but, if carried, certain limitations will apply. Hybrid PFD's have reduced inherent buoyancy making them less bulky and more comfortable to wear. This comfort feature should result in increased wear rates and lead to a corresponding reduction in the number of drownings in boating accidents. Publication of this rule has been expedited to allow approval of individual devices in sufficient time to allow their purchase and use in the 1986 boating season. After an interim period of manufacturing and use, revisions to the rule may be made based upon experience gained.

The notice of proposed rulemaking for this rule also included carriage and operational requirements for hybrid PFD's and requirements for inflatable life jackets. These additional requirements will be finalized and published in separate rulemaking documents.

DATES:

1. *Effective date.* This interim rule becomes effective on September 1, 1985, except for §§ 160.077-25(a) and 160.077-25(e). The effective date for these sections will be published separately.

ADDRESS: A final regulatory evaluation has been included in the public docket for this rulemaking and may be inspected and copied at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard, 2100 Second Street SW., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Wehr, Office of Merchant Marine Safety, Attn: G-MVI-3/14, 2100 Second Street SW., Washington, D.C. 20593, (202)-426-1444.

SUPPLEMENTARY INFORMATION:

1. *Notice of Proposed Rulemaking.* A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** of May 29, 1985 (50 FR 21862 and 21878). Several corrections to this NPRM were published in the **Federal Register** of June 18, 1985 (50 FR 25274). The comment period on the proposal ended on July 15, 1985. Comments were received from a total of 19 parties.

2. *Expedited Publication.* Publication of approval requirements for hybrid devices has been expedited in order to provide manufacturers with an opportunity to obtain early approval of designs, and thus allow an opportunity for making them available to the public in the 1986 boating season. Several manufacturers have expressed an interest in obtaining early approval to take advantage of the opportunity to interest in obtaining early approval to take advantage of the opportunity to display their products in various trade shows as early as September 1985. If this final rule had not been expedited, it is probable that hybrid would not be available to the public in any significant numbers until the 1987 boating season, thus preventing early realization of the expected lifesaving benefits to be afforded by using hybrid devices.

3. *Potential for Significant Benefits.* A principal benefit in using hybrid PFD's results from having reduced bulk and a corresponding increase in wearability and comfort. Coast Guard accident statistics show that most drownings in recreational boating accidents could possibly have been prevented if the victims had been wearing a PFD instead of just having one available for use. As explained in the NPRM, because hybrid PFD's have reduced inherent buoyancy, they are less bulky, which can make significantly more comfortable to wear than other types of PFD's. Because of this comfort feature, the Coast Guard anticipates that there will be appreciable boater interest in purchasing the devices. If enough boaters do begin to wear them, a sizeable reduction in the total number of drownings in boating accidents can be expected.

In addition to the above benefit, hybrid PFD's that meet the requirements in this rule have another significant benefit that distinguishes them from other types of currently approved PFD. These devices, when inflated, float the wearer better than most other PFD's. Specifically, they can provide more buoyancy and better flotation attitude than other PFD's.

To maximize these expected benefits the Coast Guard will be initiating a public education program to inform the public of the benefits of these devices and to encourage their use.

4. *Inflatable Life Jacket Requirements.* The NPRM also proposed approval requirements for inflatable life jackets. These requirements, and the comments that address specific concerns with respect to them, are currently being analyzed and, upon completion of the analysis, a final rule will be published in separate rulemaking document. The planned publication date of the final rule for inflatable life jackets is early 1986.

5. *Carriage and Operational Requirements for Hybrid PFD's.* The NPRM also proposed carriage requirements for hybrid PFD's used on recreational boats and uninspected commercial vessels, as well as various operational requirements for their use on inspected vessels as work vests. These requirements will likewise be published in a separate rulemaking document.

The carriage requirements for hybrids, as proposed in the NPRM, provided that in order to be counted toward Coast Guard carriage requirements on recreational boats and uninspected commercial vessels, they are REQUIRED TO BE WORN when the intended wearer is not within an enclosed space and the vessel is underway. Two commenters expressed general support for the REQUIRED TO BE WORN concept, as proposed in the carriage requirements and in § 160.077-5, and two others expressed concern that the concept would make hybrids difficult to sell.

As explained in the NPRM and in the discussion of comments below the REQUIRED TO BE WORN concept has important lifesaving purposes which are

emphasized in the consumer information pamphlet required by § 160.077–29. This information should make hybrids sufficiently attractive to prospective purchasers who are concerned about the lifesaving potential afforded by various PFD's. Accordingly, the REQUIRED TO BE WORN concept has been retained in § 160.077–5, and will be included in the upcoming document for the remaining hybrid PFD requirements. The remaining requirements will be published as soon as possible so that they will be in place prior to any widespread sale and use of approved hybrid devices.

6. *Need for Interim Rule.* The approval requirements for hybrid PFD's have been labeled as an "interim" final rule. During the interim period the Coast Guard will be encouraging consumers and manufacturers of individual products to provide feedback concerning the suitability of the devices for their intended use and concerning the practicality of production and approval test requirements associated with them. Consumers and manufacturers should feel free to send comments and recommendations concerning their experiences in making and using hybrid PFD's directly to the contact person listed above.

Based upon the information obtained, this final rule may be further revised. Production experience may indicate a need for additional flexibility in production tests and inspections or a need to revise or delete individual requirements found to be unnecessarily costly when compared to the safety benefits obtained.

The Coast Guard anticipates that this final rule will retain its interim status until publication of final rules in a related rulemaking project (Docket CGD 84–068). In CGD 84–068, proposed regulations are currently being prepared to upgrade the materials requirements for all PFD's. Notice of this related rulemaking was published in the **Federal Register** of April 29, 1985, at page 17530. As a result, the materials requirements in § 160.077–11 of this final rule may be further revised to be consistent with requirements proposed and adopted in CGD 84–068. To the extent possible, however, the requirements in § 160.077–11 already include the upgraded requirements planned for CGD 84–068.

The interim period planned for this final rule will also provide the Coast Guard with an opportunity to evaluate recommendations of commenters on the NPRM concerning potential improvements that were not adopted in this rule. As explained more fully below, some commenters made various suggestions which could not be properly analyzed within the expedited time frame for publishing this rule. However, they will be considered along with the information obtained concerning the initial period of use and manufacture of hybrid devices.

7. *Request for Public Hearing.* Two requests for a public hearing were received at the end of the comment period. These requests have been denied. The written comments received during the comment period provided ample information with detailed recommendations such that providing commenters with an opportunity to followup with supplemental oral presentations at a public hearing would, in all probability, not provide any new information apart from a restatement of comments already submitted. Also, the concerns discussed by the commenters submitting the requests have already been discussed in various public meetings of the National Boating Safety Advisory Council (NBSAC). These considerations, when weighed against the benefits expected to be derived from early publication of this rule, did not demonstrate a sufficient need for having a public hearing.

8. *Request for Extension of Comment Period.* One commentator, a PFD buckle manufacturer, requested that the comment period be extended on the basis that test data is not yet available to determine whether individual materials comply with the requirements in § 160.077–11(a) (3), (5), (6), and (g)(1). These requirements deal with operating temperature range, weathering resistance, fungus resistance, and strength, respectively. These requirements essentially provide upgraded standards which describe state-of-the-art components, and with few exceptions, PFD buckles currently accepted by the Coast Guard for use in approved PFD's are known to meet these requirements. As explained below, plastic buckles will require some modification to meet the strength requirements but the strength requirements, as well as the weathering resistance requirements, have future effective dates which provide over a year to do any necessary testing or to obtain certifications of compliance with the requirements. Also, as explained below, the temperature range and fungus resistance requirements can be met by most existing components accepted by the Coast Guard for use in currently approved PFD's. Accordingly, an extension of the comment period was not considered to be necessary.

9. *Minor Revisions.* Minor revisions have been made in the final rule for the purposes of clarification and to correct clerical errors involved in publishing the NPRM.

Drafting Information

The principal persons involved in drafting this rule were: Mr. Samuel Wehr, Office of Merchant Marine Safety, and Mr. William Register, Office of the Chief Counsel.

Discussion of Comments and Revisions Made

General

Six commenters stated their general and, in some cases, specific support of the rule. Four of these commenters wrote for the sole purpose of stating their support and two commenters provided general support for the REQUIRED TO BE WORN concept proposed in § 160.077–5 and the corresponding carriage requirements. One commenter stated support for UL standard 1517 which is referenced in the rule and the provisions in the UL standard which allow for the consideration of alternative concepts. Provisions for approving alternative concepts are also included in § 160.077–33(c). Several other commenters provided detailed recommendations for modification and improvement, as discussed in more detail below.

Section 160.077–3(j), Reference Vest

One commenter suggested that the definition of "reference vest" be revised to allow construction in accordance with UL 1517, section 2.19, in lieu of the vest prescribed in § 160.077–33(j). He stated that although the UL vest has less buoyancy, it has many of the same performance characteristics as the reference vest described in § 160.077–3(j), and that front inserts in that vest cannot be constructed as prescribed in the NPRM. The UL reference vest does display certain performance characteristics that are equivalent to those displayed by the vest prescribed in this final rule but it does not display other equivalent characteristics which are critical such as those relating to turning time and percent of subjects turned. The specification has been revised to allow larger front insert envelopes.

Section 160.077–5 and § 160.077–11, REQUIRED TO BE WORN and Materials

Two commenters stated that the materials requirements are unnecessarily strict and will make hybrid PFD's much more expensive than other PFD's. One of the commenters emphasized that the materials requirements in § 160.077–11 in combination with the "REQUIRED TO BE WORN" provisions in § 160.077–5

will make the devices difficult to sell thus resulting in fewer lives saved in boating accidents.

As stated in the NPRM, the materials requirements are purposely extensive to minimize any malfunction potential. Hybrid PFD's designed without the materials required in § 160.077–11 would be slightly less expensive to produce but not significantly easier to market and could result in increased lives lost due to outright structural failures of the devices.

If devices were not "REQUIRED TO BE WORN", the number of lives lost would be increased due to resulting improper care and use of the devices. As explained in the NPRM, the REQUIRED TO BE WORN concept is intended to accomplish several basic purposes such as, (1) providing the wearer with a constant opportunity to check for continued serviceability of the device, and (2) minimizing the possibility that the device will be stowed and neglected for extended periods thus lessening wearer familiarity with use of the device and materially affecting its serviceability.

Section 160.077–11(a)(3), Temperature

This paragraph provides that, with certain exceptions, all materials used in recreational hybrid PFD's must be designed for use in all weather conditions throughout a temperature range of −22°F to +150°F (−30°C to +65°C). One commenter recommended that the lower end of this temperature range be changed from −22°F to 0°F because most currently used PFD components have only been tested to this temperature. The commenter also noted that the temperature cycling test in § 160.077–19(b)(8) already provides a check for PFD performance at −22°F and thus alleviates the need for requiring each PFD component to be designed to withstand −22°F. The proposed temperature range has been retained in the final rules. It can be expected that hybrid devices will be stowed on board vessels layed up during the winter season, or used on vessels that operate during this period, and temperatures as low as −22°F are not uncommon in the United States. Components commonly used in other currently approved PFD's have not experienced failures in use at −22°F. Also, the temperature cycling test only checks for performance of PFD inflation mechanisms. This temperature range will also be included in the upgraded requirements to be proposed for other PFD's in rulemaking docket CGD 84–068.

Section 160.077–11(a)(5) and § 160.077–11(d)(3), Weathering Resistance

The proposed rules required that each nonmetallic component be designed to retain at least 45% of its strength after being subjected to 300 hours of sunshine carbon arc weathering.

Three commenters recommended that the weathering resistance requirement apply only to external components. § 160.077–11(a)(5) has been revised to impose this requirement only on materials that are not suitably shielded from ultraviolet exposure.

Two commenters also recommended that the weathering resistance requirement be made less stringent because available materials may not be able to meet the requirement. Two commenters also recommended that compliance with this requirement be postponed until September 1988 or 1989 to provide sufficient time to make any modifications, if needed, for materials to pass the tests.

The purpose for the weathering resistance requirement in § 160.077–11(a)(5) is to provide increased materials service life. Coast Guard experience in approving PFD's has been that fabrics that only meet the 100 hour requirement in current regulations typically deteriorate more rapidly than fabrics designed to meet the more rigorous 300 hour requirement. Because of this rapid deterioration, PFD cover fabrics have been found to fail, *i.e.* tear, when using the PFD even though the fabric appears to be still serviceable. Accordingly, the 300 hour requirement has been retained in the final rule. This requirement will also be included in the rulemaking project (docket number CGD 84–068) which has been initiated to incorporate these needed improvements in the other PFD regulations.

Two additional revisions have been made to § 160.077–11(a)(5) in the final rule. First, the requirement has been revised by reducing to 40% the amount of retained strength required after testing. This revision will accommodate materials that are currently available and that are known to provide an acceptable service life. Second, a provision has been included to allow materials other than inflation chamber material to meet the current 100 hour requirement in UL Standard 1517 until that requirement is replaced with a 300 hour requirement. UL Standard 1517, Section 4.3, makes compliance with the 300 hour requirement effective for materials tested after September 1, 1989. However, the 300 hour requirement is especially important for fabric used in uncovered inflation chambers and, as provided in § 160.077–11(d)(3), this material must meet the 300 hour requirement in Method 5304.1 of Federal Test Method Standard Number 191, which does not include a postponed compliance date. There are inflation chamber materials currently available that will meet the 300 hour requirement and manufacturers also have the option of using inflation chamber material not meeting this requirement as long as it is suitably covered to shield against ultraviolet exposure.

Section 160.077–11(a)(6) and –11(a)(4). Fungus Resistance

The proposed rules, in part, required nonmetallic components to be designed to retain at least 90% of their strength after being subjected to the mildew resistance test specified by Method 5762 of Federal Test Method Standard 191. One commenter recommended that nonmetallic PFD components be required to meet the fungus resistance requirements in MIL–STD–810C "Fungus" in lieu of the proposal. A second commenter suggested that, if a material is covered when incorporated in the finished PFD, then it should be allowed to be covered in a similar manner during the testing. A third commenter noted the expense involved with Method 5762 and suggested that the fungus resistance of hybrids could be handled in the same manner as with kapok PFD's in that deterioration of components from fungus exposure is something that the user could readily detect and take appropriate action to replace the device. For the reasons stated below, Method 5762 has been retained in the final rule, but provision has been made to allow testing with the material covered if it is covered in the finished product. However, to minimize or eliminate testing costs, a manufacturer could, as provided in § 160.077–11(a)(4), obtain a material certification from the supplier or an independent laboratory.

In MIL–STD 810C, fungus resistance is determined by applying fungi directly to materials and then observing their effect on the materials over the course of time (28 days). In Method 5762, materials are buried in fungi laden soil for an extended period (12 weeks). The soil burial method typically provides more reliable testing data upon which to make a determination as to fungus resistance of material. Also, the failures of synthetic inflatable bladders due to fungus deterioration, which occurred during the study reported in CG–M–5–81 and referenced in the NPRM, had little or no mildew odor and none of the other characteristics which are present in an unserviceable kapok PFD. As a result,

observations of the user cannot be relied on to warn of an unsafe condition.

Section 160.077–11(a)(7)(ii), Corrosion Resistance

Two commenters recommended that bronze and brass PFD components be allowed in addition to 410 stainless steel and equivalent materials. Another commenter suggested that UL 1517, sections 4.4 and 4.5 be referenced to allow the use of expendable components such as gas cylinders and that, as an alternative method of determining corrosion resistance, a salt spray test be added. Section 160.077–11(a)(7)(ii) has been revised in the final rule to allow the use of expendable inflation medium cartridges and to allow the use of metal components that are able to perform their intended function, and have no visible pitting or other damage on any surface, after 720 hours of testing according to ASTM B 117. Brass and bronze of a grade suitable for use in marine applications are equivalent to at least Type 410 stainless steel as are materials that can pass the ASTM B 117 salt spray test. Cartridges do not need to have the corrosion resistance properties required by § 160.077–11(a)(7) since they are replaced periodically.

Section 160.077–11(b)(1)(iii), Flotation Material

One commenter suggested that this provision be revised to allow the use of plastic foam having a V Factor of 85 which in turn would permit use of thinner material than would be required for foam having a V Factor of 89. The commenter apparently misunderstood this provision and it has been clarified in the final rule to emphasize that foam with a lower V factor may also be used if compensated to provide equivalent buoyancy over the life of the PFD. In other words, foam with a V Factor of 85 may be used in compliance with § 160.077–11(b)(1)(iii) as long as the buoyancy of the complete PFD after a normal service life will not be less than that of a PFD made with 7.5 lb. of buoyancy using material having a V factor of 89.

Section 160.077–11(c), Fabric

Two commenters suggested that the requirements for inner liner fabric be made less stringent because these materials are not subject to the same stresses as outer envelope fabric. One of these com.nenters requested that allowance be made for neoprene foam/fabric laminates for use in thermal protective PFD's. The requirements for Type II PFD fabric in Subpart 160.047 provide for such materials and they have been incorporated into § 160.077–11(c).

Section 160.077–11(d)(2)(i), Inflation Chamber Materials

One Commenter questioned the need for a matte finish and clear or transparent film as required in MIL–L–24611(SH) and incorporated by reference in § 160.077–11(d)(2)(i). This paragraph has been revised to allow any finish and any color or transparency of film type bladder materials. However, care will be needed in selecting the finish and color to use since these may have an affect on other performance characteristics required by this final rule such as over-pressure and seam strength.

Sections 160.077–11, 160.077–15(b)(12), and 160.077–19, Materials, Construction, and Testing

These paragraphs include various materials, construction, and testing requirements for hybrid PFD's. One commenter suggested that corresponding provisions in UL 1517 be incorporated by reference in these paragraphs. The UL provisions contain equivalent requirements that would be accepted as such under § 160.077–33. However, they have not been incorporated at this time because there may be other acceptable equivalents which are less costly. As explained above, the Coast Guard will be considering revisions to this final rule during the next year and the UL provisions that have not been included in this rule will be analyzed as a part of that effort.

Section 160.077–13(c), Retroreflective Material

This paragraph requires each commercial hybrid PFD to have a prescribed amount of retroreflective material on its front side, back side, and each reversible side, if any. One commenter suggested that retroreflective material not be required on the back of a hybrid PFD that provides Type II performance since it may not be visible on some designs when the wearer is floating in the water. This comment has not been adopted. The Coast Guard does not expect many, if any, designs to be able to comply with the performance requirements in this final rule unless they also have an in-water visible location for the required retroreflective material. However, if a design is developed that does meet the in-water performance requirements, but without providing a visible location on the back for retroreflective material, it could be approved under the equivalency provisions of § 160.077–33(c).

Section 160.077–13(d), PFD Light

One commenter recommended that the requirement to attach a PFD light on the front shoulder area of commercial hybrid PFD's be modified to allow attachment in any conspicuous location on the PFD that would be observable at a distance when the user is floating in the water. The front shoulder area is the only realistic conspicuous location for known PFD designs but if other locations are possible they could be approved under the equivalency provisions of § 160.077–33(c)(2).

Section 160.077–15(a)(2)(iii)–15(a)(2)(v), Performance, Comfort

Two commenters recommended that the provisions concerning the comfort features of a PFD be deleted on the basis that the presence or absence of these features in a device are considerations appropriately left to individual manufacturers in determining how to market the device effectively. This comment has been adopted in part. Proposed § 160.077–15(a)(2)(iv), which required an uninflated hybrid PFD to be comfortable to wear, has been deleted from the final rule. The REQUIRED TO BE WORN provisions in § 160.077–5 essentially make this requirement redundant. However, the other two requirements, being capable of being worn without significant discomfort when partially inflated to 13 lb. of buoyancy and not causing significant discomfort during and after inflation, relate to important safety concerns not addressed by the REQUIRED TO BE WORN concept. The 13 lb. buoyancy requirement is needed to accommodate users that require more than 7.5 pounds of temporary flotation in order to fully inflate the device after sudden immersion. Approximately 30% of the population need some partial inflation for adequate temporary flotation. The requirement dealing with during and after inflation comfort is needed to lessen the incidence of panic, which could occur due to inflation pressure when using the device in a emergency situation, and thus to increase the wearer's chances of survival.

Section 160.077–15(c)(3)(ii), Performance, Ready-to-use Condition

In the NPRM, this paragraph required each automatic and manual inflation mechanism to be provided in a "ready-to-use" condition. Three commenters recommended that the inflation cartridge of the mechanism be packaged separately rather than in a ready-to-use

condition in order to prevent premature actuation of the device prior to sale. Section 160.077–15(c)(3)(ii) has been revised in accordance with these comments to provide that an inflation mechanism need not be provided in a ready-to-use condition as long as it is conspicuously marked to indicate that the inflation mechanism must be assembled or loaded prior to use. Also, § 160.077–30 has been revised to allow the use of covers or restraints to inhibit tampering with a ready-to-use mechanism provided the cover or restraint is conspicuously marked "REMOVE IMMEDIATELY AFTER PURCHASE".

Section 160.077–19(b)(6) and Section 160.077–21(b)(3), Buoyancy

These paragraphs require testing according to UL Standards which require all hybrid PFD's to have a total buoyancy of 22 pounds when inflated and an inherent buoyancy of 7.5 pounds for recreational hybrids and 10 pounds for commercial hybrids. One commenter recommended that the inherent buoyancy requirement for recreational hybrid PFD's be reduced to five pounds to provide better wearability. A second commenter, who is also a member of National Boating Safety Advisory Council (NBSAC) which has provided significant input concerning these requirements, supported the Coast Guard's rationale expressed in the NPRM for proposing 7.5 pounds. As explained in the NPRM, the value of 7.5 pounds was selected as a careful compromise between wearability and flotation and, accordingly, this requirement has been retained in the final rule.

One commenter suggested that commercial and recreational hybrid PFD's should have the same amount of inherent flotation to facilitate startup and introduction to the market. This comment has not been adopted. Workers on commercial vessels need the increased inherent buoyancy (10 lbs.) to take into account (1) tools and safety devices such as steel toed shoes that workers on commercial vessels typically wear and use, and (2) the increased probability of commercial activities taking place on open waters or under severe operating conditions. As stated in the NPRM, requirements for recreational hybrid PFD's are set lower for reasons of comfort and because recreational PFD's are normally worn under less severe operating conditions. Also, by maintaining the different requirements, the relatively small percentage of recreational users that operate in open waters or under severe conditions will have the option of buying a higher buoyancy device if they so desire.

Section 160.077–19(b)(9), Solvent Exposure

One commenter stated that the gasoline submersion test in UL 1517, section 24, was extreme in that it simulates an adverse condition the occurrence of which is not probable or realistic. The commenter recommended that a sprinkle test be substituted for the UL test. This comment has not been adopted. There is no sprinkle test available and it is doubtful that one could be developed on short notice which would be repeatable. Short term immersion of a PFD in gasoline or other fuel while stowed on board, although not a commonplace occurrence, is not unheard of. Also, the UL test is intended to provide a measure of the PFD's capability to withstand long term exposure to fuel vapors when stowed on board.

Section 160.077–19(b)(10)(ii), Rain Exposure

Two commenters asked whether the rain exposure test in UL Standard 1517, section 31.2 and 31.3, involves testing an entire PFD or just the inflation mechanism. As indicated in the UL standard, the complete PFD is used in this test.

Section 160.077–19(b)(13), Tensile Test

Two commenters questioned the need for increased strength requirements for body strap assemblies on hybrid PFD's, as compared to the lesser strength requirements for Type III PFD's. This paragraph requires a PFD to pass a 225 pound strength test as prescribed in UL 1517, section 22. Current requirements for other PFD's call for a 150 pound strength test. Most body strap assemblies in currently approved PFD's utilize synthetic webbing and either plastic or metal buckles. Some plastic buckles in use have been found to fail in random usage and they present a risk to the user if the failure were to occur in recovery operation. Likewise, some current body strap assemblies, because of the manner in which they are assembled, allow excessive slippage to occur in PFD use. Buckles, both plastic and metal, that are designed to pass a 225 pound strength test should substantially minimize the risk of failure, and will allow the assembly, as a whole, to be designed with, and tested for, reduced slippage.

Upgraded strength requirements will also be proposed in docket CGD 84–068 for other PFD's. These upgraded requirements are considered to be modest when taking into account that synthetic webbing typically has a factor of safety of 4; whereas, plastic buckles meeting the upgraded requirements will only have a factor of safety of 2. As provided in UL 1517, the increased strength requirements have an effective date of September 1, 1989, in order to provide sufficient time for manufacturers to make any modifications needed to meet the upgraded requirements. It should be noted that manufacturers were queried by UL when their standard was being drafted, and, according to the replies received, no significant adverse impact was anticipated in manufacturing body strap assemblies according to the upgraded requirements.

Sections 160.077–27 and 160.077–29, PFD Pamphlet and Manuals

One commenter suggested that additional information be included in the pamphlet and manual which is required by §§ 160.077–27 and 160.077–29 to be provided with each PFD. The suggestion was that the limitations and cautionary information in Commandant Notice 10470 and chapter 5 of the Coast Guard Rescue and Survival Systems Manual be provided with hybrid PFD's having Type III performance and that the information in chapter 7, paragraph C3 of that manual be provided with all other hybrids. UL 1517, which is incorporated by reference in §§ 160.077–27 and 160.077–29, requires that substantially the same information recommended by the commenter be provided in the required pamphlet and manuals.

Sections 160.077–31 (c) and (d), Markings

The same commenter who recommended that additional cautionary information be provided in the PFD manuals and pamphlet also recommended that this information be summarized on the PFD label. A lengthy paragraph on the label, such as the one suggested, would diminish the effectiveness of the other cautionary information already required for the label which includes, among other things, the marking "YOU MAY HAVE TO INFLATE THIS PFD TO FLOAT".

This commenter also stated that, for persons other than good swimmers, cautionary information should be provided prior to purchase concerning the need for automatic inflation devices. This comment has not been adopted. Hybrid PFD's are not recommended for poor swimmers and non-swimmers. The PFD label states very clearly that the devices should be tried out in the water in advance of any use on a vessel. This

up-front information should be adequate to alert poor swimmers and non-swimmers as to the desirability of the product for their use. Also, the pamphlet required by § 160.077–27 contains cautionary information concerning use by non-swimmers.

Section 160.077–31(e), Markings

One commenter suggested that provision be made for the user of a hybrid PFD to permanently mark his or her name on the device. A new § 160.077–31(f) has been added to require that space be provided on the PFD for the user's name or other identification. The required manual text as set out in UL 1517 and required by § 160.077–29 includes an advisory statement for users to mark their names on their devices.

Sections 160.077–33(a), –11(a)(4), and –23(a)(1), Approval Procedures

One commenter suggested that the independent laboratories section, § 160.077–35, be modified to include a reference to Subpart 159.010 for the acceptance of laboratories to perform the required tests and inspections, and to make the required certifications of materials. Section 160.077–33(a) incorporates Subpart 159.005 which in turn specifies that a laboratory meeting Subpart 159.010 must be used for approval testing. Section 160.077–23(a)(1) specifies the same requirement concerning use of independent laboratories for production tests and inspections, and § 160.077–11(a)(4) has been revised in the final rule to emphasize that an independent laboratory making a certification required by that paragraph must be accepted in accordance with 46 CFR Subpart 159.010.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). A regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed above under **ADDRESS.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The evaluation provides a detailed explanation of the estimated costs of these regulations. The total approval costs per design are expected to be approximately $3000 for hybrid PFD's. Costs to approve other types of PFD's are approximately $2000. The additional cost to approve hybrid PFD's can easily be absorbed in the cost of PFD's produced. The cost increase will be small when considering the thousands of PFD's to be produced under authorization of each approval certificate. The Coast Guard anticipates that within the first year after issuing the final rules, approximately 10 hybrid PFD designs will be approved.

Production inspection costs imposed by these regulations will be approximately $600 per lot of hybrid PFD's. These costs are similar to those incurred for other types of approved PFD's.

The retail cost, per hybrid device, is expected to be between $40–$200, with an average cost of about $55.00. These costs will be optional since, as noted in the **SUMMARY,** carriage will be optional. Currently approved PFD's range in price from $7–$200 with an average cost of about $12.00 for Type II devices and $30.00 for Type III devices that could be replaced by hybrid PFD's.

The benefits of these regulations are summarized in paragraph 4 under **SUPPLEMENTARY INFORMATION** and are explained in detail in the regulatory evaluation. The Coast Guard estimates that as many as 200 lives per year can be saved.

These regulations will have little or no effect on federal, state, or local governments except in their capacities as consumers of PFD's. Coast Guard steps to implement these rules will be done within the scope of ongoing marine safety activities, and there will be no need for additional federal budget commitments.

Based upon the information in the evaluation, as discussed above, the Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains information collection requirements that are similar to the recordkeeping requirements for other PFD's. These requirements are in the following sections:

Paperwork requirements	OMB approval Nos.
a. § 160.077–11	2115–0141
b. § 160.077–25, except –25(a), –25(d)(4), –25(d)(5), and –25(e)	2115–0090
c. § 160.077–25(d)(4) and –25(d)(5)	2115–0141
d. § 160.077–29	2115–0121
e. § 160.077–31	2115–0121
f. § 160.077–33	2115–0121
g. § 160.077–35	2115–0121

The paperwork requirements in § 160.077–25 (a) and (e) of this rule have been submitted to OMB for approval. These requirements will become effective after OMB approval numbers have been assigned. When approval numbers are assigned 46 CFR 159.001–9(b) will be amended to add each of the OMB approved requirements in Subpart 160.077 to the list of approved requirements in § 159.001–9(b).

List of Subjects in 46 CFR Part 160

Marine safety.

Regulations

PART 160—[AMENDED]

In consideration of the foregoing, Part 160 of Title 46 of the Code of Federal Regulations is amended by adding a new Subpart 160.077 to read as follows:

Subpart 160.077—Hybrid Inflatable Personal Flotation Devices

Sec.

160.077–1 Scope.
160.077–3 Definitions.
160.077–5 REQUIRED TO BE WORN.
160.077–7 Type.
160.077–9 Incorporation by reference.
160.077–11 Materials—Recreational Hybrid PFD's.
160.077–13 Materials—Commercial Hybrid PFD's.
160.077–15 Construction and Performance—Recreational Hybrid PFD's.
160.077–17 Construction and Performance—Commercial Hybrid PFD's.
160.077–19 Approval Testing—Recreational Hybrid PFD's.
160.077–21 Approval Testing—Commercial Hybrid PFD's.
160.077–23 Production tests and inspections.
160.077–25 Manufacturer records.
160.077–27 Pamphlet.
160.077–29 PFD Manuals.
160.077–30 Spare operating components and temporary marking.
160.077–31 PFD Marking.
160.077–33 Approval procedures.
160.077–35 Procedure for approval of design or material revision.
160.077–37 Independent laboratories.

Authority: 46 U.S.C. 3306, 3703, 4104, and 4302; 49 CFR 1.46.

Subpart 160.077—Hybrid Inflatable Personal Flotation Devices

§ 160.077–1 Scope.

(a) This specification contains requirements for approving hybrid inflatable personal flotation devices (hybrid PFDs).

(b) Other regulations in this chapter and in 33 CFR Part 175 allow recreational boats and uninspected commercial vessels to carry hybrid PFD's as substitutes for other required PFD's if they are worn under conditions prescribed in the manual required by § 160.077–29, and on the marking prescribed in § 160.077–31. For recreational boats involved in a special

activity, hybrid PFD approval may also be limited to that activity.

(c) On an inspected commercial vessel, a hybrid PFD will be approved only—

(1) As work vest; or

(2) For the special purpose stated on the approval certificate and PFD marking.

(d) A hybrid PFD will be approved only for adults.

(e) This specification also contains requirements for—

(1) Manufacturers and sellers of recreational hybrid PFD's to provide an information pamphlet and owner's manual with each PFD; and

(2) Manufacturers of commercial hybrid PFD's to provide a user's manual.

§ 160.077-3 Definitions.

(a) "Commandant (G-MVI-3)" means the Chief of the Survival Systems Branch, Office of Merchant Marine Safety, U.S. Coast Guard. Address: Commandant (G-MVI-3/24), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593. Telephone: 202-426-1444.

(b) "Commercial hybrid PFD" means a hybrid PFD approved for use on commercial vessels identified on the PFD label.

(c) "First quality workmanship" means construction which is free from any defect materially affecting appearance or serviceability.

(d) "Hybrid PFD" means a personal flotation device that has at least one inflation chamber in combination with inherently buoyant material.

(e) "Inflation medium" means any solid, liquid, or gas, that, when activated, provides inflation for buoyancy.

(f) "Inspector" means an independent laboratory representative assigned to perform duties described in § 160.077-23.

(g) "PFD" means a personal flotation device of a type approved under this subpart.

(h) "Recreational hybrid PFD" means a hybrid PFD approved for use on a recreational boat as defined in 33 CFR 175.3(b).

(i) [Reserved]

(j) "Reference vest" means a model AK-1 PFD meeting Subpart 160.047 of this chapter, except that, in lieu of the weight and displacement values prescribed in Tables 160.047-4(c)(2) and § 160.047-(4)(c)(4), each front insert must have a weight of kapok of at least 8.25 oz. and a volume displacement of 9.0±0.25 lb., and the back insert must have a weight of kapok of at least 5.5 oz. and a volume displacement of 6.0±0.25 lb. To achieve the specified volume displacement, front insert envelopes may be larger than the dimension prescribed by § 160.047-1(b).

(k) "Second stage donning" means adjustments or steps necessary to make a PFD provide its intended flotation characteristics after the device has been properly donned and then inflated.

§ 160.077-5 Required to be worn.

(a) As provided in Subpart 25.25 of this chapter, and in 33 CFR Part 175, a hybrid PFD that is marked "REQUIRED TO BE WORN" may be used to meet the Coast Guard PFD carriage requirements in those regulations only if it is worn whenever the vessel is underway and the intended wearer is not within an enclosed space.

(b) If hybrid PFD's with the marking "REQUIRED TO BE WORN" are not worn under the conditions stated in paragraph (a) of this section, other approved PFD's will have to be provided to comply with the applicable carriage requirements in 33 CFR Part 175 and Subpart 25.25 of this chapter.

(c) The following PFD's must be marked "REQUIRED TO BE WORN" as specified in § 160.077-31:

(1) Each recreational hybrid PFD.

(2) Each commercial hybrid PFD that is approved for use on an uninspected commercial vessel.

§ 160.077-7 Type.

(a) A hybrid PFD will be approved only as a Type V PFD. A Type V PFD is a PFD that, unlike other PFD Types, has limitations on its approval.

(b) The approval tests in this subpart require each hybrid PFD to have at least Type II or Type III PFD performance.

§ 160.077-9 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found the date of the edition approved, citations to the particular sections of this part where the material is incorporated, addresses where the material is available, and the date of approval by the Director of the Federal Register. To enforce any edition other than the one listed in the table, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Survival Systems Branch (G-MVI-3), Washington, DC 20593.

(b) The materials approved for incorporation by reference in this subpart are:

American Society for Testing and Materials (ASTM)

ASTM B 117, Standard Method of Salt Spray (Fog) Testing.

ASTM D 471, Rubber Property—Effect of Liquids.

ASTM D 751, Standard Methods of Testing Coated Fabrics.

ASTM D 1434, Gas Transmission Rate of Plastic Film and Sheeting.

Federal Aviation Administration Technical Standard Order

TSO-C13, Federal Aviation Administration Standard for Life Preservers.

Federal Standards

In Federal Test Method Standard No. 191 the following test methods:

(1) Method 5100, Strength and Elongation, Breaking of Woven Cloth; Grab Method.

(2) Method 5132, Strength of Cloth, Tearing: Falling-Pendulum Method.

(3) Method 5134, Strength of Cloth, Tearing: Tongue Method.

(4) Method 5804.1, Weathering Resistance of Cloth; Accelerated Weathering Method.

(5) Method 5762, Mildew Resistance of Textile Materials; Soil Burial Method.

Federal Standard No. 751, Stitches, Seams, and Stitching.

Military Specifications

MIL-L-24611(SH)—Life Preserver Support Package For Life Preserver, MK 4.

National Bureau of Standards (NBS)

"The Universal Color Language" and "The Color Names Dictionary" in *Color: Universal Language and Dictionary of Names*, National Bureau of Standards Special Publication 440.

Underwriters Laboratories (UL)

UL 1191, "Components for Personal Flotation Devices."

UL 1517, "Hybrid Personal Flotation Devices."

§ 160.077-11 Materials—Recreational Hybrid PFD's.

(a) *General.*—(1) *Application.* This section contains requirements for materials used in recreational hybrid PFD's.

(2) *Condition of Materials.* All materials must be new.

(3) *Material Selection.* Unless otherwise specified in standards incorporated by reference in this section, all materials must be designed for use in all weather conditions throughout a temperature range of −30 °C to +65 °C (−22 °F to +150 °F).

(4) *Certification.* Each lot of material used in manufacturing PFD's must have a certification of compliance with the requirements in this section. The certification must be made by the PFD manufacturer, the material supplier, or

an independent laboratory accepted by the Commandant in accordance with Subpart 159.010 to make the certification. Each certification by a supplier must be notarized. Each certification by a PFD manufacturer must be accompanied by test results that show compliance with this section.

(5) *Weathering Resistance.* Each non-metallic component which is not suitably covered to shield against ultraviolet exposure must be designed to—

(i) Retain at least 40% of its strength after being subjected to 300 hours of sunshine carbon arc weathering as specified by Method 5804.1 of Federal Test Method Standard Number 191; or

(ii) Meet UL 1517, section 4.3.

(6) *Fungus Resistance.* Each non-metallic component must be designed to retain at least 90% of its strength after being subjected to the mildew resistance test specified by Method 5762 of Federal Test Method Standard 191 when untreated cotton is used as the control specimen. Also, the gas transmission rate of inflation chamber materials must not be increased by more than 10% after being subjected to this test. Materials that are covered when used in the PFD may be tested with that covering.

(7) *Corrosion resistance.* Each metal component must be—

(i) Galvanically compatible with each other metal part in contact with it; and

(ii) Unless it is expendable (such as an inflation medium cartridge), 410 stainless steel or have salt water and salt air corrosion characteristics equal or superior to 410 stainless steel or perform its intended function, and have no visible pitting or other damage on any surface, after 720 hours of salt spray testing according to ASTM B 117.

(8) *Materials not covered.* Materials not covered in this section must be of good quality and suitable for the purpose intended.

(b) *Flotation material.* Inherent buoyancy must be provided by—

(1) Plastic foam meeting—

(i) Subpart 164.013 of this chapter;

(ii) Subpart 164.015 of this chapter; or

(iii) UL 1191 and having a V factor of 89 except that, foam with a lower V factor may be used if compensated to provide equivalent buoyancy which, after a normal service life, is not less than that of a PFD made with 7.5 lb. of buoyancy using a material having a V factor of 89; or

(2) Kapok meeting Subpart 164.003 of this chapter.

(c) *Fabric.*—(1) *All fabric.* All fabric, except inner envelope fabric, must—

(i) Be of a type accepted for use on Type I PFD's approved under Subpart 160.002 of this chapter; or

(ii) Meet the Type V requirements for "Fabrics for Wearable Devices" in UL 1191, except that its breaking strength must be at least 400 N (90 lb.) in both the directions of greater and lesser thread count.

(2) *Rubber coated fabric.* Rubber coated fabric must be of a copper-inhibiting type.

(3) *Inner envelope fabric.* Inner envelope fabric must—

(i) Meet the requirements in paragraph (c)(i) of this section; or

(ii) Be of a type accepted for use on Type II PFD's approved under Subpart 160.047 of this chapter.

(d) *Inflation chamber materials.*—(1) *All materials.* The average permeability of inflation chamber material must not be more than 110% of the permeability of materials determined in approval testing prescribed in § 160.077–19(d). The average grab breaking strength and tear strength of the material must be at least 90% of the grab breaking strength and tear strength determined from testing prescribed in § 160.077–19(d). No individual sample result for breaking strength or tear strength may be more than 20% below the results obtained in approval testing.

(2) *Fabric covered chambers.* Each material used in the construction of inflation chambers that are covered with fabric must meet the requirements specified for—

(i) Bladder materials in section 3.2.6 of MIL–L–24611(SH) if the material is an unsupported film, except that any color or finish may be used; or

(ii) Coated fabric in section 3.1.1 of TSO–C13 if the material is a coated fabric.

(3) *Uncovered chambers.* Each material used in the construction of inflation chambers that are not covered with fabric must meet the requirements specified in paragraph (d)(2)(ii) and (a)(5)(i) of this section.

(e) *Thread.* All thread used in structural seams must meet § 160.001–2(j) of this chapter. Thread and fabric combinations must have similar elongation and durability characteristics.

(f) *Webbing.* Webbing used as a body strap, tie tape or drawstring, or reinforcing tape must meet § 160.002–3(e), § 160.002–3(f), and § 160.002–3(h) of this chapter respectively. Webbing used for tie tape or drawstring must be capable of easily holding a knot and being easily tied and untied. Webbing used as reinforcing tape must be smooth enough to prevent chafing the wearer.

(g) *Closures.*—(1) *Strength.* Each closure such as a buckle, snap hook and dee ring, or other type of fastening must comply with UL 1517, section 4.1. The width of each closure opening through which body strap webbing passes must be the same as the width of that webbing.

(2) *Means of Locking.* Each closure used to secure a PFD to the body, except a zipper, must have a quick and positive means of locking, such as a snap hook and dee ring.

(3) *Zipper.* If a zipper is used to secure a PFD to the wearer it must be—

(i) Easily initiated;

(ii) Non-jamming;

(iii) Right handed; and

(iv) Of a locking type.

(h) *Inflation medium.* If a hybrid PFD has an automatic or manual inflation mechanism—

(1) The inflation medium must not contain or produce compounds more toxic than CO_2 in sufficient quantity to cause an adverse reaction if inhaled through any of its oral inflation mechanisms; and

(2) Any chemical reaction during inflation must not leave a toxic residue.

(i) [*Reserved*]

(J) *Kapok pad covering.* If kapok flotation material is used, pad covering that meets § 160.047–3(e) of this chapter must be provided to enclose the material in at least three separate pads.

§ 160.077–13 Materials—Commercial Hybrid PFD's.

(a) *General.* All commercial hybrid PFD materials must meet § 160.077–11 and this section.

(b) *Closures.* Each closure other than a zipper must have a minimum breaking strength of 1000 N (225 lbs). If a zipper is used to secure the PFD to the body, it must be used in combination with another closure that has a quick and positive means of locking.

(c) *Retroreflective Material.* Each PFD must have at least 200 sq. cm. (31 sq. in.) of retroreflective material on its front side, at least 200 sq. cm. on its back side and at least 200 sq. cm. of material on each reversible side, if any. The material must be Type I material that is approved under Subpart 164.018 of this chapter. The material attached on each side must be divided equally between the upper quadrants of the side. The material, as attached, must not impair PFD performance.

(d) *PFD Light.* Each PFD must have a PFD light that is approved under Subpart 161.012 of this chapter. The light must be securely attached to the front shoulder area of the PFD. The light, as attached, must not impair PFD performance or damage the life jacket.

§ 160.077–15 Construction and Performance—Recreational Hybrid PFD's.

(a) *Performance.* (1) Each recreational hybrid PFD must be able to pass the tests in § 160.077–19.

(2) Each recreational hybrid PFD must—

(i) If second stage donning is required, have an obvious method for doing it;

(ii) If it is to be marked as providing Type II performance, not require second stage donning to achieve that performance;

(iii) Be capable of being worn while inflated at 60 N (13 lb.) of buoyancy without significantly changing its appearance from, or making it significantly less comfortable than, the uninflated condition;

(iv) Not cause significant discomfort to the wearer during and after inflation; and

(v) If it has a manual or automatic inflation mechanism and can be put on inside out, not restrict breathing when donned inside out, adjusted to fit, and inflated.

(b) *Construction; General.* Each recreational hybrid PFD must—

(1) Have one or more inflation chambers;

(2) Have at least one oral means of inflation on each inflation chamber;

(3) Have at least one automatic inflation mechanism that inflates at least one chamber, if marked as providing Type II performance;

(4) Be constructed so that the intended method of donning is obvious to an untrained wearer;

(5) Not have a channel that can direct water to the wearer's face to any greater extent than that of the reference vest defined in § 160.077–3(j).

(6) Have a retainer for each adjustable closure to prevent any part of the closure from being easily removed from the PFD;

(7) If marked as universally sized for wearers weighing over 40 kg (90 pounds), have a chest size range of at least 76 to 120 cm (30 to 52 in.);

(8) Not have means of access to any inherently buoyant inserts;

(9) Not have edges, projections, or corners, either external or internal, that are sufficiently sharp to damage the PFD or cause injury to anyone using or maintaining the PFD;

(10) Be of first quality workmanship;

(11) Unless otherwise allowed by the approval certificate—

(i) Not incorporate means obviously intended for attaching the PFD to the vessel; and

(ii) Not have any instructions indicating that attachment is intended;

(12) Except as otherwise required by this section, meet UL Standard 1517, sections 6.14, 6.20, 7.1, 7.3, 7.8, 8.4, and 9; and

(13) Meet any additional requirements that the Commandant (G–MVI–3) may prescribe, if necessary, to approve unique or novel designs.

(c) *Inflation mechanism.* (1) Each inflation mechanism on a recreational hybrid PFD must—

(i) Not require tools to activate it or replace its inflation medium cartridge or water sensitive element;

(ii) Have an intended method of operation that is obvious to an untrained wearer; and

(iii) Be located outside of its inflation chamber.

(2) Each oral inflation mechanism must—

(i) Be designed to operate without pulling on the mechanism;

(ii) Not be able to be locked in the open or closed position; and

(iii) Have a non-toxic mouthpiece.

(3) Each automatic and manual inflation mechanism must—

(i) Have a simple method for replacing the inflation medium cartridge; and

(ii) Be in a ready-to-use condition or be conspicuously marked to indicate that the inflation mechanism is not in a ready-to-use condition and that the purchaser must assemble it.

(4) Each manual inflation mechanism must—

(i) Provide an easy means of inflation that requires only one deliberate action on the part of the wearer to actuate it; and

(ii) Be operated by pulling on an inflation handle that is marked "Jerk to Inflate" at two visible locations.

(5) Each automatic inflation mechanism must—

(i) Have an obvious method for indicating whether the mechanism has been activated; and

(ii) Be incapable of assembly without its water sensitive element.

(6) The marking required for the inflation handle of a manual inflation mechanism must be waterproof, permanent, and readable from a distance of 2.5 m (8 ft.).

(d) *Deflation mechanism.* (1) Each inflation chamber must have its own deflation mechanism.

(2) Each deflation mechanism must—

(i) Be readily accessible to either hand when the PFD is worn while inflated;

(ii) Not require tools to operate it;

(iii) Have an intended method of operation that is obvious to an untrained wearer, and

(iv) Not be able to be locked in the open or closed position.

(3) The deflation mechanism can be the oral inflation mechanism.

(e) *Sewn seams.* Stitching used in each structural seam of a PFD must provide performance equal to or better than a Class 300 Lockstitch meeting Federal Standard No. 751.

§ 160.077–17 Construction and Performance—Commercial Hybrid PFD's.

(a) *General.* Each commercial hybrid PFD must meet—

(1) Paragraph (b) of this section; and

(2) Section 160.077–15, except § 160.077–15(a)(2)(iii) and § 160.077–15(c)(1)(i).

(b) *Additional requirements.* Each commercial hybrid PFD must—

(1) Be able to pass the tests in § 160.077–21;

(2) Not present a snag hazard when properly worn;

(3) When worn inflated, have a visible external surface area of at least 1300 sq. cm (200 sq. in.) in front and 450 sq. cm (70 sq. in.) in back that are primarily vivid reddish orange as defined by sections 13 and 14 of the "Color Names Dictionary";

(4) Have at least two separate inflation chambers;

(5) Have at least one manual inflation mechanism.

(6) Have at least one automatic inflation mechanism that inflates at least one chamber; and

(7) Not require second stage donning after inflation.

§160.077–19 Approval Testing—Recreational Hybrid PFD's.

(a) *General.* (1) This section contains approval tests and examinations for recreational hybrid PFD's. Each test and examination must be conducted or supervised by an independent laboratory. The tests must be done using PFD's that have been constructed in accordance with the plans and specifications in the application for approval. In each test only one PFD is required to be tested unless otherwise specified or needed to complete the tests in paragraph (d) of this section.

(2) All data relating to buoyancy and pressure must be taken at, or corrected to, standard atmospheric pressure of 760 mm (29.92 inches) of mercury and temperature of 20 °C (68 °F).

(3) The tests in paragraph (b) of this section must be completed before doing the tests in paragraph (d) of this section.

(4) In each test that specifies inflation by an automatic inflation mechanism and either or both of the other mechanisms, the automatic inflation mechanism must be tested first.

(5) Some tests in this section require PFD's to be tested while being worn. The number and characteristics of the

test subjects must be as prescribed in section 11 of UL 1517.

(b) *Tests.* Each PFD design must be tested according to the procedures in the following tests and meet the requirements in those tests:

(1) *Donning and Operability,* UL 1517, section 12.

(2) *Jump Test,* UL 1517, section 13.

(3) *Flotation Stability and Inflation.*

(i) *Uninflated Flotation Stability,* UL 1517, section 14.

Note: If the freeboard of a test subject is close to zero, caution must be taken to prevent the subject from inhaling water. The subject may use lightweight breathing aids to avoid inhaling water.

(ii) *Inflation,* UL 1517, section 14.3 through 14.5 using a PFD with each automatic inflation mechanism disabled.

(iii) *Inflated Flotation Stability,* UL 1517, section 15, for either Type II or Type III performance.

(4) *Water Emergence,* UL 1517, section 16.

(5) *Operation Force Test,* UL 1517, section 17.

(6) *Buoyancy, Buoyancy Distribution, and Inflation Medium Retention Test,* UL 1517, sections 18 and 19, except that the buoyancy and volume displacement of kapok buoyant inserts must be tested in accordance with the procedures prescribed in § 160.047–4(c)(4) and § 160.047–5(e)(1) in lieu of the procedures in UL 1517, section 18 and 19.

(7) *Inflation Chamber Tests.*

(i) *Over-pressure Test,* UL 1517, section 28.

(ii) *Air Retention Test,* UL 1517, section 29.

(8) *Temperature Cycling Tests,* UL 1517, section 23.

(9) *Solvent Exposure Test,* UL 1517, section 24.

(10) *Environmental Tests,* UL 1517, section 31.1.

(i) *Humidity Exposure,* UL 1517, section 31.4.

(ii) *Rain Exposure,* UL 1517, section 31.2 and 31.3.

(11) *Abrasion/Compression Test,* UL 1517, section 26.

(12) *Water Entrapment Test,* UL 1517, section 20.

(13) *Tensile Tests,* UL 1517, section 22.

(14) *Strength of Attachment of Inflation Mechanism,* UL 1517, section 30.

(15) *Flame Exposure Test,* UL 1517, section 25.

(16) *Impact Test,* UL 1517, section 21.

(17) *Seam Strength Test,* UL 1517, section 33.

(18) *Puncture Test,* UL 1517, section 27.

(c) *Visual Examination.* One complete PFD must be visually examined for compliance with the requirements of § 160.077–15.

(d) *Inflation Chamber Properties.*—(1) *General.* The tests in this paragraph must be run if the tests in paragraph (b) of this section are successfully completed. The results of these tests will be used to check the quality of incoming PFD components and the production process. Test samples must come from one of more PFD's that were each used in all of the tests in paragraphs (b)(2), (b)(6), (b)(7), (b)(16), and (b)(18) of this section.

(2) *Grab breaking strength.* Grab breaking strength of chamber materials must be determined according to Method No. 5100 of Federal Test Method Standard 191, or ASTM D 751.

(3) *Tear strength.* Tear strength of chamber materials must be determined according to Method No. 5132 or 5134 of Federal Test Method Standard 191, or ASTM D 751.

(4) *Permeability.* The permeability of chamber materials must be determined according to ASTM D 1434 using CO_2 as the test gas.

(5) *Seam strength.* The seam strength of the seams in each inflation chamber of at least one PFD must be determined according to ASTM D 751, except that 25 mm by 200 mm (1 in. by 8 in.) samples may be used where insufficient length of straight seam is available.

(e) *Additional Tests.* The Commandant (G–MVI–3), may prescribe additional tests, if necessary, to approve unique or novel designs.

§ 160.077–21 Approval Testing—Commercial Hybrid PFD's.

(a) *General.* This section contains commercial hybrid PFD approval tests. The provisions of § 160.077–19(a) apply to each test in this section.

(b) *Tests.* Each test prescribed in § 160.077–19(b), except the tests in paragraphs (b)(2), (b)(3)(i), (b)(3)(ii), and (b)(6), must be conducted and passed.

(c) *Additional tests.* Each PFD design must also be tested according to the procedures in the following tests and meet the requirements in these tests:

(1) *Jump Test,* UL 1517, section S6.

(2) *In-water Removal Test,* UL 1517, section S9.

(3) *Buoyancy and Inflation Medium Retention Test,* UL 1517, Section S10.

(4) *Flotation Stability.*

(i) *Uninflated Flotation Stability,* UL 1517, section S7.

Note.—If the freeboard of a test subject is close to zero, caution must be taken to prevent the subject from inhaling water. The subject may use lightweight breathing aids to avoid inhaling water.

(ii) *Righting Action Test,* UL 1517, section S8. In addition to criteria stated in section S8, the requirements in paragraph (d) of this section must be met after each test with one of the chambers deflated.

(d) *Flotation Stability Criteria.* At the end of the righting action test—

(1) At least 75% of the PFD's retroreflective material on the outside of the PFD, and the PFD light, must be above the water when the subject is floating in the stable flotation attitude; and

(2) The subject when floating in the stable flotation position and looking to the side, must be able to see—

(i) The water no more than 3 m (10 ft.) away; or

(ii) A mark on a vertical scale no higher than the lowest mark which can be viewed when floating in the same position in the reference vest defined in § 160.077–3(j).

(e) *Visual Examination.* One complete PFD must be visually examined for compliance with the requirements of § 160.077–15 and § 160.077–17.

(f) *Inflation Chamber Properties.* If the tests in paragraphs (b) and (c) of this section are completed successfully, the tests in § 160.077–19(d) must be run.

(g) *Additional Tests.* The Commandant (G–MVI–3), may prescribe additional tests, if necessary, to approve unique or novel designs.

§ 160.077–23 Production tests and inspections.

(a) *General.* (1) Production tests and inspections must be conducted in accordance with this section and subpart 159.007 of this chapter.

(2) The Commandant (G–MVI–3) may prescribe additional production tests and inspections if needed to maintain quality control and check for compliance with the requirements in this subpart.

(b) *Test and Inspection Responsibilities.* In addition to responsibilities set out in Part 159 of this chapter, each manufacturer of a hybrid PFD and each independent laboratory inspector must comply with the following, as applicable:

(1) *Manufacturer.* Each manufacturer must—

(i) Perform all required tests and examinations on each PFD lot before the independent laboratory inspector tests and inspects the lot;

(ii) Perform required testing of each incoming lot of inflation chamber material before using that lot in production;

(iii) Have procedures for maintaining quality control of the materials used, manufacturing operations, and the finished product;

(iv) Have a continuing program of employee training and a program for maintaining production and test equipment;

(v) Have an inspector from the independent laboratory observe the production methods used in producing the first PFD lot produced and observe any revisions made thereafter in production methods;

(vi) Admit the inspector and any Coast Guard representative to any place in the factory where work is done on hybrid PFD's or component materials, and where completed PFD's are stored; and

(vii) Allow the inspector and any Coast Guard representative to take samples of completed PFD's or of component materials for tests prescribed in this subpart.

(2) *Independent Laboratory.*

(i) An inspector may not perform or supervise any production test or inspection unless—

(A) The manufacturer has a current approval certificate; and

(B) The inspector has first observed the manufacturer's production methods and any revisions to those methods.

(ii) An inspector must perform or supervise testing and inspection of at least one PFD lot in each five lots produced, except that if less than five lots are produced during any calendar quarter, at least one lot must be tested and inspected during that quarter. Each lot tested and inspected must be within seven lots of the previous lot inspected.

(iii) During each inspection, the inspector must check for noncompliance with the manufacturer's quality control procedures.

(iv) At least once each calendar quarter, the inspector must, as a check on manufacturer compliance with this section, examine the manufacturer's records required by § 160.077–25 and observe the manufacturer in performing each of the tests required by paragraph (h) of this section.

(c) *PFD Lots.* A lot number must be assigned to each group of PFD's produced. No lot may exceed 1000 PFD's. A new lot must be started whenever any change in materials or a production method is made, or whenever any substantial discontinuity in the production process occurs. Changes in lots of component materials must be treated as changes in materials. Lots must be numbered serially. The lot number assigned, along with the approval number, must enable the PFD manufacturer, by referring to the records required by this subpart, to determine who produced the components used in the PFD.

(d) *Samples.* (1) Samples used in testing and inspections must be selected at random. Sampling must be done only when all PFD's or materials in the lot are available for selection.

(2) Each sample PFD selected must be complete, unless otherwise specified in paragraph (h) of this section.

(3) The inspector may not select the same samples tested by the manufacturer.

(4) The number of samples selected per lot must be at least the applicable number listed in Table 160.077–23A or Table 160.077–23B, as applicable.

TABLE 160.077–23A.—MANUFACTURER'S SAMPLING

	Number of samples per lot					
	Lot size					
	1–100	101–200	201–300	301–500	501–750	751–1000
Tests:						
Inflation chamber materials	See note 1					
Seam strength	1	1	2	2	[illegible]	4
Over-pressure(2), (3)	1	[illegible]	3	4	[illegible]	8
Air retention	Every device in the lot					
Buoyancy and inflation media retention	1	2	3	4	[illegible]	8
Tensile strength(4)	1	1	1	1	[illegible]	1
Detailed product examination	2	[illegible]	3	4	6	[illegible]
Retest sample size(2)			13	13	[illegible]	[illegible]
Final lot examination	Every device in the lot					

Notes to Table:

(1) Samples must be selected from each lot of incoming material. The tests referenced in § 160.077–19(d)(2) through § 160.077–19(d)(4) prescribe the number of samples to select.

(2) Samples selected for this test may not be the same samples selected for other tests.

(3) If any sample fails this test, the number of samples to be tested in the next lot produced must be at least 2% of the total number of PFD's in the lot or 10 PFD's, whichever is greater.

(4) This test is required only when a new lot of materials is used and when a revised production process is used. However, the test must be run at least once every calendar quarter regardless of whether a new lot of materials or revised process is started in that quarter.

TABLE 160.077–23B.—INSPECTOR'S SAMPLING

	Number of samples per lot					
	Lot size					
	1–100	101–200	201–300	301–500	501–750	751–1000
Tests:						
Over-pressure 1	1	[illegible]	2	2	[illegible]	[illegible]
Air retention	1	[illegible]	2	2	3	4
Buoyancy and inflation media retention	1	1	2	2	3	[illegible]
Tensile strength 2	1	1	1	1	1	[illegible]
Waterproof marking	See note 3 for sampling					
Detailed product examination	1	[illegible]	1	2	2	3
Retest sample size 1	10	10	13	13	[illegible]	[illegible]
Final Lot Inspection	10	15	20	25	27	[illegible]

Notes to Table:

(1) Samples selected for this test may not be the same PFD's selected for other tests.

(2) This test may be omitted if the manufacturer has previously conducted it and the inspector has conducted the test on a previous lot during the same calendar quarter.

(3) One sample of each means of marking on each type of fabric or finish used in PFD construction must be tested. This test is only required when a new lot of materials is used. However, the test must be run at least once every calendar quarter regardless of whether a new lot of materials is started in that quarter.

(e) *Accept/Reject Criteria: Manufacturer Testing.* (1) A PFD lot passes production testing if each sample passes each test.

(2) In lots of 200 or less PFD's the lot must be rejected if any sample fails one or more tests.

(3) In lots of more than 200 PFD's, the lost must be rejected if—

(i) One sample fails more than one test;

(ii) More than one sample fails; or

(iii) One sample fails one test and in redoing that test with the number of samples specified for retesting in Table 160.077–23A, one or more samples fail the test.

(4) A rejected PFD lot may be retested only if allowed under paragraph (k) of this section.

(5) In testing inflation chamber materials, a lot is accepted only if the average of the results of testing the

minimum number of samples prescribed in the reference tests in § 160.077–19(d) is within the tolerances specified in § 160.077–11(d)(1). Any lot that is rejected may not be used in production.

(f) *Accept/Reject Criteria: Independent Laboratory Testing.* (1) A lot passes production testing if each sample passes each test.

(2) A lot must be rejected if—

(i) One sample fails more than one test;

(ii) More than one sample fails; or

(iii) One sample fails one test and in redoing that test with the number of samples specified for retesting in Table 160.077–23B, one or more samples fail the test.

(3) A rejected lot may be retested only if allowed under paragraph (k) of this section.

(g) *Facilities and Equipment.*—(1) *General.* The manufacturer must provide the test equipment and facilities described in this section for performing production tests, examinations, and inspections.

(2) *Calibration.* The manufacturer must have the calibration of all test equipment checked at least every six months by a weights and measures agency or the equipment manufacturer, distributor, or dealer.

(3) *Equipment.* The following equipment is required:

(i) *A Sample Basket* for buoyancy tests. It must be made of wire mesh and be of sufficient size and durability to hold a complete inflated PFD. The basket must be heavy enough or be sufficiently weighted to become submerged when holding a test sample.

(ii) *A Tank Filled with Fresh Water* for buoyancy tests. The height of the tank must be sufficient to allow a water depth of at least 5 cm (2 inches) from the water surface to the top of the basket when the basket is not touching the bottom. The length and width of the tank must be sufficient to prevent each submerged basket from contacting another basket or the tank sides and bottom. Means for locking or sealing the tank must be provided to prevent disturbance of any samples or a change in water level during testing.

(iii) *A Scale* that has sufficient capacity to weigh a submerged sample basket. The scale must be sensitive to 13 g (0.5 oz.) and must not have an error exceeding ±13 g (0.5 oz.).

(iv) *Tensile Test Equipment* that is suitable for applying pulling force in conducting body strap assembly strength subtests. The equipment assembly may be (A) a known weight and winch, (B) a scale, winch, and fixed anchor, or (C) a tensile test machine that is capable of holding a given tension. The assembly must provide accuracy to maintain a pulling force within ±2 percent of specified force. Additionally, if the closed loop test method is used, two cylinders of the type described in that method must be provided.

(v) *A Thermometer* that is sensitive to 0.5 °C (1 °F) and does not have an error exceeding ±0.25 °C (0.5 °F).

(vi) *A Barometer* that is capable of reading mm (inches) of mercury with a sensitivity of 1 mm (0.05 in.) Hg and an error not exceeding ±0.05 mm (0.02 in.) Hg.

(vii) *A Regulated Air Supply* that is capable of supplying the air necessary to conduct the tests specified in paragraphs (h)(4) and (h)(5) of this section.

(viii) *A Pressure Gauge* that is capable of measuring air pressure with a sensitivity of 1 kPa (0.1 psig) and an error not exceeding ±0.5 kPa (0.05 psig).

(ix) *A Torque Wrench* if any screw fasteners are used. The wrench must be sensitive to, and have an error of less than, one-half the specified tolerance for the torque values of the fasteners.

(4) *Facilities:* The manufacturer must provide a suitable place and the necessary apparatus for the inspector to use in conducting or supervising tests. For the final lot inspection, the manufacturer must provide a suitable working environment and a smooth-top table for the inspector's use.

(h) *Production Tests and Examinations.*—(1) *General.* (i) Samples used in testing must be selected according to paragraph (d) of this section.

(ii) On the sample selected for testing—

(A) The manufacturer must conduct the tests in paragraph (h)(2) through (h)(8) of this section; and

(B) The independent laboratory inspector must conduct or supervise the tests in paragraph (h)(4) through (h)(9) of this section.

(iii) Each individual test result must, in addition to meeting the requirements in this paragraph, comply with the requirements, if any, set out in the approved plans and specifications.

(2) *Inflation Chamber Materials.* Each sample must be tested according to § 160.077–19(d)(1) through § 160.077–19(d)(4). The average and individual results of testing the minimum number of samples prescribed in § 160.077–19(d) must comply with the requirements in § 160.077–11(d)(1).

(3) *Seam Strength.* The seams in each inflation chamber of each sample must be tested according to §§ 160.077–19(d)(1) and 160.077–19(d)(5). The results for each inflation chamber must be at least 90% of the results obtained in approval testing.

(4) *Over-pressure.* Each sample must be tested according to and meet UL 1517, section 28.

(5) *Air Retention.* Each sample must be tested according to and meet UL 1517, section 36.

(6) *Buoyancy and Inflation Medium Retention.* Each sample must be tested according to and meet § 160.077–19(b)(6), except that the UL 1517 section 19 test is not required unless specified on the approved plans and specifications. In addition to meeting the minimum values required by § 160.077–19(b)(6), each buoyancy value must fall within the tolerances specified in the approved plans and specifications.

(7) *Tensile Strength.* Each sample must be tested according to and meet UL 1517, section 22.

(8) *Detailed Product Examination.* Each sample must be disassembled to the extent necessary to determine compliance with the following:

(i) All dimensions and seam allowances must be within tolerances prescribed in the approved plans and specifications.

(ii) The torque of each screw type mechanical fastener must be within its tolerance as prescribed in the approved plans and specifications.

(iii) The arrangement, markings, and workmanship must be as specified on the approved plans and specifications and this subpart.

(iv) The PFD must not otherwise be defective.

(9) *Waterproof Marking Test.* Each sample is completely submerged in fresh water for at least 30 min. and then removed and immediately placed on a hard surface. The markings are vigorously rubbed with the fingers for 15 seconds. If the printing becomes illegible, the sample is rejected.

(i) [*Reserved*]

(j) *Final Lot Examination and Inspection.* (1) *General.* On each PFD lot that passes production testing, the manufacturer must perform a final lot examination and an independent laboratory inspector must perform a final lot inspection. Samples must be selected according to paragraph (d) of this section. Each final lot examination and inspection must show—

(i) First quality workmanship;

(ii) That the general arrangement and attachment of all components such as body straps, closures, inflation mechanisms, tie tapes, drawstrings, etc. are as specified in the approved plans and specifications; and

(iii) Compliance with the marking requirements in § 160.077–31.

(2) *Accept/Reject Criteria.* Each nonconforming PFD must be rejected. If three or more nonconforming PFD's are rejected for the same kind of defect, lot examination or inspection must be discontinued and the lot rejected.

(3) *Manufacturer Examination.* This examination must be done by a manufacturer's representative who is familiar with the approved plans and specifications, the functioning of the PFD and its components, and the production testing procedures. This person must not be responsible for meeting production schedules or be supervised by someone who is. This person must prepare and sign the inspection record required by § 159.077–13 of this chapter and § 160.077–25(b).

(4) *Independent Laboratory Inspection.*

(i) The inspector must discontinue lot inspection and reject the lot if observation of the records for the lot or of individual PFD's shows noncompliance with this section or the manufacturer's quality control procedures.

(ii) An inspector may not perform a final lot inspection unless the manufacturer has a current approval certificate.

(iii) If the inspector rejects a lot, the Commandant (G–MVI–3) must be advised immediately.

(iv) The inspector must prepare and sign the record required by § 159.077–13 of this chapter and § 160.077–25(b). If the lot passes, the record must also include the inspector's certification to that effect and a certification that no evidence of noncompliance with this section was observed.

(k) *Disposition of PFD's Rejected in Testing or Inspections.* (1) A rejected PFD lot may be resubmitted for testing, examination, or inspection if the manufacturer first removes and destroys each PFD having the same type of defect or, if authorized by the Commandant (G–MVI–3), reworks the lot to correct the defect.

(2) Any PFD rejected in a final lot examination or inspection may be resubmitted for examination or inspection if all defects have been corrected and reexamination or reinspection is authorized by the Commandant (G–MVI–3).

(3) A rejected lot or rejected PFD may not be sold or offered for sale with the representation that it meets this subpart or that it is Coast Guard approved.

§ 160.077–25 Manufacturer records.

(a) Each manufacturer of hybrid PFD's must keep the records required by § 159.007–13 of this chapter, except that they must be retained at least 120 months after the month in which the inspection or test was conducted.

(b) Each record required by § 159.007–13 of this chapter must also include the following information:

(1) For each test, the serial number of the test instrument used if there is more than one available.

(2) For each test and inspection, the identification of the samples used, the lot number, the approval number, and the number of PFD's in the lot.

(3) For each lot rejected, the cause for rejection, any corrective action taken, and the final disposition of the lot.

(c) The description or photographs of procedures and apparatus used in testing is not required for the records prescribed in § 159.077–13 of this chapter as long as the manufacturer's procedures and apparatus meet the requirements of this subpart.

(d) Each manufacturer of hybrid PFD's must also keep the following records:

(1) Records for all materials used in production including the following:

(i) Name and address of the supplier.

(ii) Date of purchase and receipt.

(iii) Lot number.

(iv) Certification meeting § 160.077–11(a)(4).

(2) A copy of this subpart.

(3) Each document incorporated by reference in § 160.077–9.

(4) A copy of the approved plans and specifications.

(5) The approval certificate.

(6) Calibration of test equipment, including the identity of the agency performing the calibration, date of calibration, and results.

(e) The records required by paragraph (d)(1) of this section must be kept for at least 120 months after preparation. All other records required by paragraph (d) of this section must be kept for at least 60 months.

§ 160.077–27 Pamphlet.

(a) Each recreational hybrid PFD sold or offered for sale must be provided with a pamphlet that a prospective purchaser can read prior to purchase. The pamphlet must meet the requirements of UL 1517, section 39.

(b) Each pamphlet must be prominently marked "Seller, do not remove pamphlet."

(c) No person may sell or offer for sale any recreational hybrid PFD unless the pamphlet required by this section is provided with it.

§ 160.077–29 PFD Manuals.

(a) *Approval.* The text of each manual required by this section is reviewed with the application for approval. Changes may be required if needed to comply with this section.

(b) *Recreational Hybrid PFD's.* Each recreational hybrid PFD sold or offered for sale must be provided with an owner's manual.

(1) Each manual must contain at least the following in the order presented below:

(i) The information in UL 1517, section 40 under the heading "Approval Restrictions and Carriage Requirements."

(ii) Instructions on use including instructions on donning, inflation, replenishing inflation mechanisms, and recommended practice operation.

(iii) Instructions on how to properly inspect and maintain the PFD, and recommendations concerning frequency of inspection.

(iv) Instructions on how to get the PFD repaired.

(v) The information in UL 1517, section 40, that is not included under paragraph (b)(1)(i) of this section.

(2) No person may sell or offer for sale a recreational hybrid PFD unless the manual required by this paragraph is provided with it.

(c) *Commercial Hybrid PFD.* (1) Each commercial hybrid PFD that is REQUIRED TO BE WORN must be provided with a manual that contains the information in paragraph (b)(1) of this section.

(2) Each commercial hybrid PFD that is approved only as a work vest must have a manual that contains the information in this paragraph or in paragraph (b)(1) of this section.

(3) Each commercial hybrid PFD approved with a special purpose limitation must have a user's manual that—

(i) Explains in detail the proper care, maintenance, stowage and use of the PFD; and

(ii) Includes any other safety information as prescribed by the approval certificate.

(4) If the manual required by paragraph (c)(3) of this section calls for inspection or service by vessel personnel, the manual must—

(i) Specify personnel training or qualifications needed;

(ii) Explain how to identify the PFD's that need to be inspected; and

(iii) Have an inspection and service log, unless the information is otherwise recorded.

§ 160.077–30 Spare operating components and temporary marking.

(a) *Spare Operating Components.* Each recreational and commercial hybrid PFD which is marked REQUIRED TO BE WORN must—

(i) If it has a manual or automatic inflation mechanism, be packaged and sold with at least three spare inflation medium cartridges; and

(ii) If it has an automatic inflation mechanism, be packaged and sold with at least three spare water sensitive elements.

(b) *Temporary Marking.* Each hybrid PFD which is provided in a ready-to-use condition but has covers or restraints to inhibit tampering with the inflation mechanism prior to sale must have any such covers or restraints conspicuously marked "REMOVE IMMEDIATELY AFTER PURCHASE".

§ 160.077–31 PFD Marking.

(a) *General.* Each hybrid PFD must be marked with the applicable information required by this section. Each marking must be waterproof, clear, permanent, and readable from a distance of three feet.

(b) *Prominence.* Each marking, other than the text in paragraphs (c) and (d) of this section, must be significantly less prominent and in smaller print than paragraph (c) and (d) text.

(c) *Recreational Hybrid PFD's.* Each recreational hybrid PFD must be marked with the following text using capital letters where shown and be presented in the exact order shown:

ADULT—For a person weighing more than 90 lb.

Type V PFD: Recreational Hybrid Inflatable—Approved for use only on recreational boats. REQUIRED TO BE WORN to meet Coast Guard carriage requirements (except for persons in enclosed spaces as explained in owner's manual).

YOU MAY HAVE TO INFLATE THIS PFD TO FLOAT.

This PFD requires maintenance.

Try this PFD in the water to see if you will float without inflation.

When inflated this PFD provides performance equivalent to a (*See paragraph (h) of this section for exact text to be used here*).

When new, this PFD provides a minimum buoyant force of 7.5 lb. uninflated and 22 lb. inflated.

A pamphlet and owner's manual must be provided with this PFD.

(d) *Commercial Hybrid PFD's.* Each commercial hybrid PFD must be marked with the following text using capital letters where shown and be presented in the exact order shown:

ADULT—For a person weighing more than 90 lb.

Type V PFD: Commercial Hybrid Inflatable—Approved for use on (*See paragraph (j) of this section for exact text to be used here*).

YOU MAY HAVE TO INFLATE THIS PFD TO FLOAT.

This PFD must be maintained, stowed, and used only in accordance with the manufacturer's manual.

Try this PFD in the water to see if you will float without inflation.

When new, this PFD provides a minimum buoyant force of 10 lb. uninflated and 22 lb. inflated.

(e) *All PFD's.* Each hybrid PFD must also be marked with the following information below the text required by paragraph (c) or (d) of this section:

(1) U.S. Coast Guard Approval Number (insert assigned approval number).

(2) Manufacturer's or private labeler's name and address.

(3) Lot Number.

(4) Date, or year and calendar quarter, of manufacture.

(5) Generic identification of the inherently buoyant material.

(6) Necessary vital care or use instructions, if any, such as the following:

(i) Warning against dry cleaning.

(ii) Size and type of inflation medium cartridges required.

(iii) Specific donning instructions.

(f) *Identification of User.* Each hybrid PFD must have adequate space within which to mark the name or other identification of the intended user.

(g) *Flotation Material Buoyancy Loss.*—(1) *Foam.* When flotation foam having a V factor of less than 94 is used, the buoyancy loss statement in UL 1517 section 37.5, item E, must follow the minimum bouyant force statement in paragraph (c) or (d) of this section.

(2) *Kapok.* When kapok flotation material is used, the following must be provided after the minimum buoyant force statement in paragraph (c) or (d) of this section: "If pads become stiff or waterlogged, replace the device."

(h) *Type Equivalence.* The exact text to be inserted will be one of the following type equivalents as noted on the approval certificate:

(1) Donned Type I PFD.

(2) Type II PFD.

(3) Type III PFD.

(4) Type V PFD—*(insert exact text of additional description noted on approval certificate).*

(i) [*Reserved*]

(j) *Approved Use.* The exact text to be inserted will be one or more of the following statements as noted on the approval certificate:

(1) "uninspected commercial vessels. REQUIRED TO BE WORN to meet Coast Guard carriage requirements (except for persons in enclosed spaces as explained in owner's manual)."

(2) "inspected commercial vessels as a WORK VEST only."

(3) "*(Insert exact text of special purpose or limitation, and vessel(s) or vessel type(s), noted on approval certificate).*"

§ 160.077–33 Approval procedures.

(a) *General.* Subpart 159.005 of this chapter contains the approval procedures. Those procedures must be followed, excepted as modified in this paragraph.

(1) Preapproval review under §§ 159.005–5 and 159.005–7 may be omitted if a similar design has already been approved.

(2) The information required in all three subparagraphs of § 159.005–5(a)(2) must be included in the application.

(3) The application must also include the following:

(i) The type of performance (i.e. Donned Type I, Type II or Type III) that the PFD is designed to provide.

(ii) Any special purpose(s) for which the PFD is designed and the vessel(s) or type(s) of vessel on which its use is planned.

(iii) Buoyancy and torque tolerances to be allowed in production.

(iv) The text of any optional marking to be provided in addition to required text.

(v) The manual required by § 160.077–29 (UL 1517 test may be omitted in this submission).

(4) The description of quality control procedures required by § 159.005–9 to be submitted with the text report may be omitted as long as the manufacturer's planned quality control procedures comply with § 160.077–23.

(b) *Waiver of tests.* If a manufacturer requests that any test in this subpart be waived, one of the following must be provided to the Commandant (G–MVI–3), as justification for the waiver:

(1) Acceptable test results on a PFD of sufficiently similar design.

(2) Engineering analysis showing that the test is not applicable to the particular design or that by design or construction the PFD cannot fail the test.

(c) *Alternative Requirements.* A PFD that does not meet requirements in this subpart may still be approved if the device—

(1) Meets other requirements prescribed by the Commandant (G–MVI–3) in place of or in addition to requirements in this subpart; and

(2) Provides at least the same degree of safety provided by other PFD's that do comply with this subpart.

§ 160.077–35 Procedure for approval of design or material revision.

(a) Each change in design, material, or construction of an approved PFD must

be approved by the Commandant (G–MVI–3) before being used in any production PFD's.

(b) Determinations of equivalence of design, construction, and materials may be made only by the Commandant (G–MVI–3).

§ 160.077–37 Independent laboratories.

A list of independent laboratories which have been accepted by the Commandant for conducting or supervising the tests and inspections required by this subpart, and for making material certifications required by § 160.077–11, may be obtained from Commandant (G–MVI–3).

Dated: August 19, 1985.

J. W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85–20098 Filed 8–21–85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

[PR Docket No. 84–960; RM–4781; RM–4784]

Allocation of Additional Frequencies for the Amateur Radio Service, the Radio Amateur Civil Emergency Service and the Amateur-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This document amends the Amateur Radio Service rules to add the 902–928 MHz band and to remove the 420–430 MHz band north of Line A. These changes are being made in order to implement the Final Acts of the 1979 World Administrative Radio Conference and an April 7, 1982 Arrangement between Canada and the United States.

DATE: These rules become effective 0001 UTC September 28, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Allocations.

47 CFR Part 97

Amateur radio, Radio, Repeaters, Treaties.

Second Report and Order

In the matter of amendment of Parts 2 and 97 of the Commission's rules to implement allocation of additional frequencies for the Amateur Radio Service, the Radio Amateur Civil Emergency Service and the Amateur-Satellite Service; PR Docket No. 84–960, RM–4781, RM–4784, FCC 85–460.

Adopted: August 9, 1985.
Released: August 15, 1985.

By the Commission.

1. In the *Notice of Proposed Rule Making*, 49 FR 40611, October 17, 1984, in this proceeding, we proposed to implement certain frequency band allocations to the Amateur Radio Service pursuant to our *Second Report and Order* in General Docket 80–739, 49 FR 2357, January 19, 1984. Specifically, we proposed: (1) To add the 10.100–10.150 MHz frequency band to the Amateur Radio Service and to the Radio Amateur Civil Emergency Service; (2) to add the 24.890–24.990 MHz frequency band to the Amateur Radio Service and to the Amateur-Satellite Service; and (3) to add the frequency band 902–928 MHz to the Amateur Radio Service. We also proposed to remove the 420–430 MHz band from the Amateur Radio Service north of Line A. (Line A is defined in § 97.185(c)(5) of the Commission's rules).

2. The proposals relating to the twelve and thirty meter bands were addressed in this proceeding's *Firt Report and Order*, 50 FR 18662, May 2, 1985.[1] This document addresses the remaining issues.

3. *420–430 MHz.* We proposed to remove this spectrum from the Part 97 Amateur Radio Service north of Line A to implement action we had already taken in General Docket No. 80–739. In that proceeding we amended the Part 2 Table of Allocations (47 CFR 2.106) to add a new footnote (NG 135) to indicate that the amateur service is not allocated north of Line A. We took this action pursuant to the Arrangement between the Department of Communications of Canada and the National Telecommunications and Information Administration and the Federal Communications Commission of the United States concerning the use of the 406.1 MHz to 430 MHz band in Canada-United States border areas effected by exchange of notes at Washington, D.C., February 26 and April 7, 1982, and entered into force April 7, 1982. We also proposed, consistent with paragraph 32 of the *Second Report and Order* in General Docket No. 80–739, *supra*, to grant amateur radio operators waivers on a case-by-case basis to operate in this band, subject to successful prior coordination by the FCC with the Canadian administration.

4. The Northern Illinois DX Association, Bruce O. Jordan and Joseph J. Schweda, Jr., filled comments objecting to the proposed removal of this band from the amateur service north of Line A. However, the relative merits of this action are not at issue. We are required to honor the terms and conditions of the Arrangement which specifically states at paragraph 2.2: "The Amateur Service is excluded from the band 420–430 MHz in the Coordination Zone . . ." In the U.S., that zone is the area north of Line A.

5. The Southern California Repeater and Remote Base Association (SCRRBA) argued that the proposed rules language for this band was confusing. SCRRBA claimed that from the proposed language one could not determine whether the spectrum was withdrawn from the amateur service or merely available subject to conditions. SCRRBA recommended alternative language reflecting the latter interpretation. However, the former interpretation is correct. Any rules authorizing amateur operation north of Line A in this band would be in derogation of the Arrangement. Therefore, we are adopting rules which prohibit any amateur operation in this band north of Line A. Waiver of these rules would require successful prior coordination with Canada.

6. Both the American Radio Relay League, Incorporated (ARRL), and SCRRBA requested more specificity about the standards for grant of a waiver in this band and the technical and other showings which must be made for such a waiver. Any application for waiver of the rules to operate in the 420–430 MHz band north of Line A would, of course, need to make a technical showing that the operation would cause no harmful interference to Canadian radio operations. Any such application in all other respects would be required to meet the standard threshhold tests for grant of a waiver. Since the waiver process is "a safety valve procedure for consideration of an application for exemption based on special circumstances," *WAIT Radio* v. *FCC.*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), it is not possible to predict in advance what "special circumstances" might arise warranting waiver of the new rule in any particular matter or individualized situation. In any event, we have already specified that grant of such a waiver

[1] The frequencies between 10.100 and 10.150 MHz are commonly referred to in the amateur community as the thirty meter band. The frequencies between 24.890 Mhz and 24.990 MHz are commonly referred to in the amateur community as the twelve meter band.

would be subject to successful prior coordination with the Canadian administration.

7. To date, we have not been able to arrange prior coordination of formal waiver requests to operate north of Line A at 420–430 MHz with the Canadian administration. However, through informal notification procedures we may be able to arrange certain FCC-licensed amateur operation on a secondary non-interference basis at the sufferance of the Canadian administration on a case-by-case basis. Specific requests to make such an arrangement should be directed to the Private Radio Bureau Licensing Division in Gettysburg, Pennsylvania.

8. *902–928 MHz.* We also proposed to implement allocation of the 902–928 MHz frequency band to the Amateur Radio Service in all of the United States and its possessions except for Colorado, Wyoming and U.S. possessions in Region 3.[2] [3] We proposed to make amateur operation in this band secondary to operation of Government stations, Automatic Vehicle Monitoring (AVM) systems, and industrial, scientific and medical (ISM) devices.[4] Additionally, the proposal required FCC-licensed amateurs to avoid harmful interference to authorized fixed, mobile and broadcasting operations in Regions 1 and 3. We proposed to make this band available for the use of all amateur operators above Novice class, and to allow a wide range of emission types in the band.

9. The ARRL, SCRRBA, Sherwood Libit, Robert J. Roehrig, and Joseph J. Schroeder, Jr., commented in favor of the 902–928 MHz proposal.[5] The Personal Radio Steering Group, Inc., (PRSG), Sensormatic Electronics Corporation (Sensormatic), Suncom, Inc. (Suncom), X-cyte Inc. (XCI), Ray Newhall, and Michael C. Trahos commented against the proposal.[6]

PRSG, Newhall, and Trahos cite our recent decisions to decline to adopt a Private Radio Communications Service (PRCS) and to dismiss a Petition for Rule Making by MURA Corporation to create a new 900 MHz personal communication service. *Report and Order*, In the Matter of Creation of an Additional Private Radio Service, General Docket No. 83–26, 50 FR 865, January 7, 1985. They contend that because these proposals were rejected primarily due to an inadequate amount of spectrum in the land mobile reserve, the amateur service should be required to make a showing of need for the 902–928 MHz frequency band. They urge us to consider whether this spectrum is more suitable for a personal communication service. Sensormatic and Suncom also commented that there is an insufficient showing of need for this spectrum for the Amateur Radio Service.

10. We initiated this proceeding to implement certain spectrum allocation decisions we made regarding the Amateur Radio Service in the *Second Report and Order* in General Docket No. 80–739, In the Matter of Amendment of Part 2 of the Commission's Rules Regarding Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979, 49 FR 2357, January 19, 1984. The amateur community faces no additional burden of proof to retain the 902–928 MHz domestic secondary allocation we made at that time.

11. Moreover, we addressed the issue of whether a domestic mobile allocation should be made in the 902–928 MHz band and concluded that the record did not justify such an allocation. See *Second Report and Order*, General Docket No. 80–739, *supra* at para. 45. While we indicated we would consider appropriate action if an adequate showing was made in the future, the record before us does not make a *prima facie* case for a personal communications service in this band. It appears that a secondary personal communications service could receive considerable harmful interference from and cause harmful interference to current primary government military radio location uses.[7] We therefore decline to consider a personal radio service allocation in the 902–928 MHz band in this proceeding.

12. In two other ongoing proceedings (General Docket Nos. 84–1231 and 84–1233) we have solicited comments on the feasibility of geographically sharing proposed spectrum allocations for private land mobile and cellular services to implement a personal communications service outside major population centers. Additionally, Petitions for Reconsideration of our action in the *Report and Order* in General Docket No. 83–26, *supra*, are still pending. We do not by our action in this proceeding intend to prejudge those dockets.

13. Sensormatic, Suncom and XCI also opposed inclusion of the 902–928 MHz band in the Amateur Radio Service on the basis that it may cause destructive interference to field disturbance sensors. Part 15 field disturbance sensors may be operated in the entire 902–928 MHz band (at a nominal operating frequency of 915±13 MHz). However, pursuant to 47 CFR 15.311, operation of field disturbance sensors is subject to the general conditions of operation in 47 CFR 15.3. These conditions include a specific statement that there is no vested or recognizable right to continued use of any given frequency by virtue of prior registration or certification of equipment. Additionally, Part 15 devices like field disturbance sensors are secondary to all other operations—they must cause no harmful interference to other operations and must suffer interference from them. Thus, the fact that they may suffer such interference as a result of this action is not a compelling argument against the proposal.[8]

14. Joseph Schroeder recommended that rather than prohibiting all amateur operations in this band in Colorado and Wyoming, we need only require amateurs to operate with reduced power. The treatment of the Colorado-Wyoming areas is pursuant to footnote US 267 in the Table of Allocations (47 CFR 2.106). We concluded that this footnote was necessary to protect existing Government operations in these areas. See *Notice of Proposed Rule Making*, General Docket No. 80–739, 48 FR 3790, January 27, 1983, at para. 74. However, we also noted that reaccommodation of these operations was under study and if accomplished, US 267 may be deleted. *Id.* We expect that reaccommodation of these services will be accomplished within a year. If it is, US 267 will then be deleted. Until such time, the prohibition of amateur operation in the 902–928 MHz band in Colorado and Wyoming must remain to protect Government operations.

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[2] Footnote US 267 to the Table of Allocations (47 CFR 2.106) prohibits amateur radio station operation in the 902–928 MHz band in Colorado or Wyoming.

[3] The 902–928 MHz band is not allocated for the amateur service outside of Region 2 in the International Table of Allocations.

[4] See footnotes US 218 and US 275 to the Table of Allocations (47 CFR 2.106).

[5] The Society for the Promotion of Amplitude Modulation, Larry E. Jones, Bruce O. Jordan, Jan A. Tarsala, and Joseph Anthony Wolos also generally favored all of the proposals to implement allocation of additional frequencies to the Amateur Radio Service.

[6] The comments of Sensormatic were filed on May 7, 1985. The Comments of XCI were filed on May 16, 1985. While these comments are both late-filed, they provide relevant information about Part 15 devices in the 902–928 MHzband submitted by principals with a direct interest in these devices. We therefore find it is in the public interest to accept these comments and to include them as part of the record. 47 U.S.C. 154(j).

[7] See *Order*, FCC 85–444, August 5, 1985.

[8] Sensormatic implies in its Comments, at page 3, that amateur secondary usage and Part 15 field disturbance sensor usage would be of equal status. This is not the case. Part 15 devices, including field disturbance sensors, must tolerate interference from operation in any radio service, whether it is listed as primary or secondary in the Table of Allocations.

15. SCRRBA suggested addition of frequency modulated composite emissions in the 902—928 MHz band to permit suitably equipped amateur stations to transmit communications consisting of multiplexed channels. We agree with SCRRBA that such emissions would serve the dual purpose of permitting amateur operators to experiment with a new transmission mode and to efficiently utilize the spectrum when several different channels of information must be transmitted simultaneously from one location to another. We are therefore including this type of emission in our final rules for the 902–928 MHz band.

16. Jan Tarsala urged to authorize a maximum of 1500 watts peak envelope power for amateur stations in repeater operation in this band, and to permit wideband digital transmissions. We agree that the initially sparse occupancy of this band recommends it as excellent spectrum for experimentation with wideband modulation formats, and that a greater authorized maximum power for repeater operation would enhance amateur communication in this band by overcoming propagation losses. We are therefore including both changes in the final rules.

17. *Miscellaneous.* The rules we are adopting conform to the new frequency and emission tables we recently adopted to achieve more usable formats, see *Order,* 50 FR 13792, April 8, 1985, and to the new emission designators we adopted in the *Third Report and Order* in General Docket No. 80–739, 49 FR 48964, December 14, 1984. We are also correcting a typographical error in the *First Report and Order* in this proceeding, 50 FR 18662, May 2, 1985, in footnote 1 to 47 CFR 97.415.

18. This action has been analyzed with respect to the Paperwork information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

19. The Commission has certified in accordance with section 605 of the Regulatory Flexibility Act that these rules do not have a significant economic impact on a substantial number of small entities, because these entities may not use the Amateur Radio Service for commercial radiocommunication (see 47 CFR 97.3(b)).

20. In view of the foregoing, it is ordered, That Parts 2 and 97 are amended as set forth in the attached Appendix. This action is taken pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303(r)).

21. It is further ordered, That these rule amendments are effective 0001 UTC, September 28, 1985.

22. It is further ordered, That this proceeding is terminated.

23. For information concerning this proceeding contact John J. Borkowski, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554 (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 2 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 2.106 [Amended]

2. The second sentence is removed from footnote NG 135 to the Table of Frequency Allocation in § 2.106.

PART 97—[AMENDED]

3. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609

4. Paragraph (i) of § 97.3 is added to read:

§ 97.3 Definitions

* * * * *

(i) *Line A.*

Line A begins at Aberdeen, Washington, running by great circle arc to the intersection of 48° N., 120° W., thence along parallel 48° N., to the intersection of 95° W., thence by great circle arc through the southernmost point of Duluth, Minn., thence by great circle arc to 45° N., 85° W., thence southward along meridian 85° W., to its intersection with parallel 41° N., thence along parallel 41° N., to its intersection with meridian 82° W., thence by great circle arc through the southernmost point of Bangor, Maine, thence by great circle arc through the southernmost point of Searsport, Maine at which point it terminates.

* * * * *

5. In § 97.7, the Megahertz entries for the Technician, General, Advanced and Amateur Extra classes in paragraph (a) are amended by adding limitation 13 to each of the 0.70 meter entries and by adding a new 0.35 meter entry between each of the 0.70 and 0.23 meter entries, and in paragraph (b), paragraphs (13) and (14) are added to read as follows:

§ 97.7 Control operator frequency privileges.

* * * * *

Control operator license class	Meter band	Terrestrial location of the amateur radio station			Limitations (see paragraph (b))
		ITU region 1	ITU region 2	ITU region 3	
•	•	•	•	•	•
	Megahertz				
Technician					
•	•	•	•	•	•
	0.70	430–440	420–450	420–450	3, 4, 13
	0.35	.....	902–928	.....	1, 3, 14
•	•	•	•	•	•
	Megahertz				
General					
•	•	•	•	•	•
	0.70	430–440	420–450	420–450	3, 4, 13
	0.35	.....	902–928	.....	1, 3, 14
•	•	•	•	•	•
	Megahertz				
Advanced					
•	•	•	•	•	•
	0.70	430–440	420–450	420–450	3, 4, 13
	0.35	.....	902–928	.....	1, 3, 14
•	•	•	•	•	•
	Megahertz				
Amateur Extra					
•	•	•	•	•	•
	0.70	420–440	420–450	420–450	3, 4, 13
	0.35	.....	902–928	.....	1, 3, 14
•	•	•	•	•	•

(b) Limitations:

* * * * *

(13) No station shall operate north of Line A (see § 97.3(i)) in the 420–430 MHz band.

(14) In the 902–928 MHz band, amateur radio stations shall not operate within the States of Colorado and Wyoming, bounded by the area of: latitude 39° to 42° N, and longitude 103° W to 108° W. The band is allocated on a secondary basis to the amateur service subject to not causing harmful interference to the operations of Government stations authorized in this band or to Automatic Vehicle Monitoring (AVM) systems. Stations in the amateur service must tolerate any interference from the operations of industrial, scientific and medical (ISM) devices, AVM systems and the operations of Government stations authorized in this band.

6. Paragraph (a) of § 97.61 is amended by adding an entry to the Table therein under Megahertz, between the 420–450 MHz and 1215–1300 MHz entries, to read as follows:

§ 97.61 Authorized emissions.

* * * * *

Frequency band	Emissions	Limitations (see paragraph (b))
* * * * *		
Mhz:		
* * * * *		
902–928	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, F8E, P0N.	
* * * * *		

7. Paragraph (c) of § 97.67 is amended by revising the heading of the third column of the Table therein to read "902 MHz" instead of "1215 MHz," as follows:

§ 97.67 Maximum authorized transmitting power.

* * * * *

Antenna height above average terrain in meters	Maximum effective radiated power for frequency bands above—		
	51.5 MHz	421 MHz	902 MHz
* * * * *			

8. Paragraphs (c)(2)(ii) and (c)(2)(iii) of § 97.69 and revised to read:

§ 97.69 Digital communications.

* * * * *

(c) * * *

(2) * * *

(ii) 100 kHz on frequencies between 220 and 902 MHz.

(iii) On frequencies above 902 MHz any bandwidth may be used provided that the emission is in accordance with § 97.63(b) and § 97.73(c).

* * * * *

9. Subparagraph (5) of paragraph (c) of § 97.185 is revised to read:

§ 97.185 Frequencies available.

* * * * *

(c) * * *

(5) No station shall operate north of Line A (see § 97.3(i)) in the 420–430 MHz band.

* * * * *

10. Footnote 1 to § 97.415 is revised to read:

§ 97.415 Frequencies available.

* * * * *

[1] Unless otherwise specified in this Subpart the rules regarding authorized emission modes (§§ 97.61 and 97.65) and authorized transmitting power (§ 97.67) are applicable for each of the listed frequency bands.

[FR Doc. 85–19793 Filed 8–21–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[Docket 83–513; RM–4399; RM–4421; RM–4491]

FM Broadcast Station in Cross City and Trenton, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 292A to Cross City, Florida, in response to a petition from Seashore Broadcast Corp. Additionally, Channel 269A is allotted to Trenton, Florida, in response to a counterproposal submitted by Myrtle C. Burckhalter. The request of Cross City Broadcasting to allot Channel 269A to Cross City is denied. The allotted channels could provide a first FM service to each community.

EFFECTIVE DATE: September 26, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of: amendment of § 73.202(b), table of allotments, FM broadcast stations (Cross City and Trenton,[1] Florida), Docket 83–513, RM–4399, RM–4421, RM–4491.

Adopted: August 13, 1985.

Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the *Notice of Proposed Rule Making*, 48 FR 28491, published June 22, 1983, in response to two separate petitions for Class A channels at Cross City, Florida. The first proposal was submitted by Seashore Broadcasting Corporation ("Seashore") for Channel 292A, and the second by Cross City Broadcasting ("Cross") requesting Channel 269A. Myrtle C. Burckhalter submitted a timely counterproposal requesting the allotment of Channel 269A to Trenton, Florida. Because the spacing requirements of § 73.207 of the Rules [2] preclude the allotment of Channel 269A to Cross City and Trenton, the proposals will be considered together, herein. All petitioners in this proceeding have stated their intention to apply for the channel, if allotted to their respective community.

2. On October 14, 1983, Jim Johnson Enterprises, Inc. filed a petition to accept a late filed counterproposal for Channel 292A at Mayo, Florida. The

[1] This community has been added to the caption.

[2] Section 73.207 requires a mileage separation of 105 kilometers (65 miles) between Class A channels, whereas Cross City and Trenton are separated by a distance of approximately 29 kilometers (18 miles).

date for filing comments and conflicting proposals ended July 25, 1983. In § 1.420(d) of the Rules and paragraph 3 and 4 of the Appendix to the *Notice*, we have set deadlines or cut-off dates for filing conflicting proposals. Here, there has been no explanation given for the untimely filing. Thus, we find the counterproposal of Jim Johnson Enterprises, Inc. unacceptable for consideration in this proceeding.

3. In an effort to satisfy the desire of interested parties for allotments at Cross City and Trenton, the staff conducted a channel search, but found no other channel available for use at either community. Therefore, we will consider the proposals on a comparative basis to determine which community meets our allotment priorities consistent with the mandate of section 307(b) of the Communications Act of 1934, as amended, to provide a fair, efficient and equitable distribution of radio services among the communities.

4. The Commission's criteria for evaluating conflicting proposals was set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Our priorities favor a first local FM service to each community. We note that Cross City (population 2,154) is somewhat larger than Trenton (population 1,131). We believe we should prefer Trenton for the allotment of Channel 269A and allot Channel 292A to Cross City. To do otherwise would mean Trenton would be foreclosed from any local service while Cross City would be allotted two FM channels.

5. Channel 269A can be allotted to Trenton in conformity with the minimum distance separation requirements. However, Channel 292A at Cross City requires a site restriction of 1.2 kilometers (0.8 miles) southwest of the city to avoid short spacing to co-channel 292A, Station WPXE–FM, Starke, Florida.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 204(b), and 0.239 of the Commission's Rules, it is ordered, that effective September 26, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the communities listed below:

City	Channel No.
Cross City, Florida	292A
Trenton, Florida	269A

7. The filing window for applications on Channels 292A and 269A will open on September 27, 1985, and close on October 28, 1985.

8. It is further ordered, That the petition of Cross City Broadcasting to allot Channel 276A to Cross City is denied.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20038 Filed 8–21–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR PART 73

[MM Docket No. 83–270; RM–4274]

FM Broadcast Station in Pana, Ramsey, and Taylorville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allots a first FM channel to Ramsey, Illinois, in response to a petition filed by Daniel Voss.

EFFECTIVE DATE: September 26, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Pana, Ramsey, and Taylorville, Illinois), MM Docket 83–270 RM–4274.

Adopted: August 13, 1985.

Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the *Further Notice of Proposed Rule Making and Order to Show Cause*, 48 FR 45430, published October 5, 1983, which proposed two alternate options for allotting a first FM channel to Ramsey, Illinois. Option I proposed to substitute Channel 232A for Channel 265A at Pana, Illinois, and allot Channel 265A to Ramsey: Option II proposed to substitute Channel 232A for Channel 224A at Taylorville, Illinois, and allot Channel 224A to Ramsey, with a site restriction. The proposed substitutions would require a modification of license for the Pana and Taylorville stations operating on the affected channels. Comments in response to the *Further Notice* were filed by Voss,[1] by PBC and by Sky Communications, Ltd.[2] to whom the *Order to Show Cause* was directed.

2. This proceeding was instituted at the request of Daniel Voss ("petitioner") proposing the Pana substitution. In response to the *Notice*, Pana Broadcasting Corporation ("PBC") [3] submitted a counterproposal suggesting the Taylorville substitution instead.

3. A staff study indicates that under the rules adopted as a result of BC Docket 80–90, 94 F.C.C. 2d 152 (1983) recon., 97 F.C.C. 2d 279 (1984), Channel 287A can be allotted to Ramsey without the need for a substitution of channels at any other community. In view of the interest expressed in operating an FM service at Ramsey, we believe that the public interest would benefit from the allotment of Channel 287A to Ramsey.

4. Accordingly, it is ordered, that effective September 26, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the city of Ramsey, Illinois, as follows:

City	Channel No.
Ramsey, Illinois	287A

5. The filing window for applications on these channels will open on September 27, 1985 and close on October 28, 1985.

6. It is further ordered, that the counterproposal of Pana Braodcasting Corporation, is denied.

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning the above, contact Montrose Tyree, (202) 634–6530.

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[1] Voss' comments were filed November 14, 1983, after the deadline period ended. A request was made for acceptance of those comments. To the extent the comments merely state an interest in the allotment, we shall accept Voss' late filed comments.

[2] Sky Communications, Ltd. is the licensee of FM Station WTJY (Channel 224A), Taylorville, Illinois.

[3] Pana Broadcasting Corporation is the licensee of FM Station WKXK (Channel 265A), Pana, Illinois.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-20039 Filed 8-21-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-408; RM-4388; RM-4492]

FM Broadcast Station in Clintonville, Manitowoc, New Holstein and Mishicot, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 258A to New Holstein, Wisconsin, and Channel 298A to Mishicot, Wisconsin, at the request of WMBE, Incorporated and Mishicot Community Broadcasting, respectively. The allotments could provide each community with its first FM service.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Clintonville, Manitowoc, New Holstein and Mishicot,[1] Wisconsin), MM Docket No. 83-408, RM-4388, RM-4492.

Adopted: August 13, 1985.

Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 48 FR 20954, published May 10, 1983, proposing the allotment of FM Channel 221A to New Holstein, Wisconsin, as that community's first FM channel with a related substitution of Channel 275A for Channel 221A at Manitowoc, Wisconsin, at the request of WMBE, Incorporated ("petitioner"). In response to the *Notice*, Mishicot Community Broadcasting ("MCB") filed a counterproposal seeking the allotment of Channel 257A to Mishicot, Wisconsin, in lieu of Manitowoc, Wisconsin.[2] Petitioner submitted supporting comments reaffirming its intention to apply for the channel at New Holstein. Oppositions were filed by Cub Radio, Inc. ("WKKB"), licensee of Station WKKB (FM), Channel 221A, at Clintonville, Wisconsin, for which a site restriction was proposed.[3] Petitioner and WKKB filed reply comments. Additional comments were filed late by the petitioner.[4]

2. Both oppositions raised technical arguments against the proposed New Holstein allotment. WKKB argues that it will be difficult for a station on Channel 221A to provide city grade service to New Holstein from the restricted site. Further, WKKB asserts that by yielding its channel to another station in the same market, confusion to listeners may result with a consequent loss of audience to WKKB. Finally, WKKB states that second harmonic interference may be caused to the viewers of Station WLUK, Channel 11, Green Bay, Wisconsin, by using Channel 257A at Manitowoc. In view of the above, WKKB requests a hearing.

3. Petitioner submitted comments suggesting that Channel 258A could be allotted to New Holstein, thus eliminating the need to substitute channels in Manitowoc or to site restrict the allotment in Clintonville. Petitioner also suggests that Channel 298A could alternately be allotted to Mishicot.

4. A staff engineering study confirms that Channel 258A at New Holstein and Channel 298A at Mishicot can be allotted in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Channel 258A at New Holstein requires a site restriction of 5.1 km (3.2 miles) northeast of the community to avoid short spacing to the recently allotted Channel 259A, Mayville, Wisconsin. See *First Report and Order* in MM Docket No. 84-231, 50 FR 3514, published January 25, 1985.

5. In view of the fact that all conflicts have been resolved, we believe the public interest would be served by the allotments of Channel 258A to New Holstein and Channel 298A to Mishicot, in order to provide each community with a first FM channel. Accordingly, pursuant to the authority contained in section 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered that effective September 26, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended for the following communities:

City	Channel No.
Mishicot, Wisconsin	298A
New Holstein, Wisconsin	258A

6. It is further ordered, that this proceeding is terminated.

7. The window period for filing applications will open September 27, 1985, and close October 28, 1985.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-20040 Filed 8-21-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 74

[Gen. Docket No. 83-45; RM-3910; RM-3924; FCC 84-509]

Frequency Allocation to the Offshore Radio Service

Correction

In FR Doc. 85-7046 beginning on page 12021 in the issue of Wednesday, March 27, 1985, make the following corrections: On page 12027, in the second column, in § 74.709(e)(1), in the first line, "922°00'" should read "92°00'".

BILLING CODE 1505-01-M

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47 CFR Parts 81, 83 and 87

[PR Docket No. 83-431; RM-2946; FCC 85-441]

Digital Selective Calling in the Maritime Mobile Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order amends the rules to provide the parameters under which the Digital

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[1] This community has been added to the caption.

[2] Public Notice of the filing of the counterproposal was given on June 13, 1983, Report No. 1411.

[3] A construction permit has been issued to M&M Broadcasting, Inc. for Station WFCL-FM, Channel 221A at Clintonville.

[4] Petitioner's late-filed comments will be accepted for consideration herein as they provided information which was not previously available to the Commission.

Selective Calling (DSC) system may be implemented by ships and coast stations operating within the Maritime Mobile Service. DSC is a system used to establish contact with a station or group of stations by radio. The primary reason for implementing DSC is to provide a standard method for establishing radio contact in the marine environment and to promote more efficient use of the radio spectrum. DSC will be an integral part of the Future Global Maritime Distress and Safety System developed by the International Maritime Organization and planned for final implementation in the next decade. The intended effect is to make DSC available to the maritime community on an optional basis at an early date.

EFFECTIVE DATE: September 23, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Private Radio Bureau, Special Services Division, Washington, D.C. 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast stations, Communications equipment, Radio.

47 CFR Part 83

Communications equipment, Marine Safety, Radio, Ship Stations.

47 CFR Part 87

Aeronautical Stations, Radio.

Report and Order (Proceeding Terminated)

In the matter of digital selective calling system in the maritime mobile service; PR docket no: 83-431, RM-2946, FCC 85-441.

Adopted: August 5, 1985.
Released: August 15, 1985.

By the Commission.

1. This Report and Order gives the parameters for implementation of Digital Selective Calling (DSC) in the Maritime Mobile Service.

2. In the Notice of Proposed Rule Making and Order (NPRM&O) in this proceeding adopted on April 27, 1983 (48 FR 23673), the Commission proposed to amend Parts 81 and 83 of its rules to implement the DSC system of the International Radio Consultative Committee (CCIR) in the Maritime Mobile Service. Subsequent to adoption of the NPRM&O the Final Acts of the World Administrative Radio Conference for the Mobile Services (MWARC '83) were published. These Final Acts contained a number of provisions pertinent to the DSC system. In view of these provisions and public comments, a further Notice of Proposed Rule Making (FNPRM) was adopted October 18, 1984 (49 FR 43718).

Background

3. The development of improved calling procedures has long been regarded as essential to any major improvement of maritime mobile communications. Selective calling systems were described as early as the International Telecommunication Union's (ITU's) Ninth Plenary Assembly of CCIR in 1959. In 1967, the ITU Radio Regulations were amended to provide for a sequential single frequency code (SSFC) system of selective calling to meet immediate maritime needs. When the SSFC system was introduced, the ITU called for the development of a system with greater capability for future maritime use.

4. The CCIR in 1974 recommended a digital selective calling system. The 1974 World Maritime Administrative Radio Conference established dedicated digital selective calling frequencies and adopted the digital technique subject to final definition of the technical characteristics by the CCIR. The ITU's Fifteenth Plenary Assembly in the CCIR (CCIR, Geneva, 1982) adopted the DSC operational and technical characteristics which are contained in CCIR Recommendation 493-2 and the DSC operational procedures which are contained in CCIR Recommendation 541-1. These CCIR recommendations, in conjunction with Article 62 of the ITU Radio Regulations, form the background for implementation of DSC.

5. The Inter-Governmental Maritime Consultative Organization (now International Maritime Organization), through its Subcommittee on Radiocommunications, commenced development of the Future Global Maritime Distress and Safety System (FGMDSS) in 1979. The FGMDSS is expected to become fully operational in the next decade. It will replace the present system which relies primarily on ship-to-ship distress alerting using Morse Code. The future system will rely mainly on ship-to-shore distress alerting using satellites and a terrestrial system employing digital selective calling.

6. The FGMDSS is now being developed internationally. The MWARC '83 provided frequencies for implementation of the FGMDSS. When the FGMDSS is implemented in the United States, DSC as specified in CCIR Recommendation 493 will be mandatory for certain classes of cargo and passenger ships. Other classes of ships will also be required to install compatible DSC equipment in order to contact Rescue Coordination Centers operated by the U.S. Coast Guard since the Coast Guard is planning to discontinue its manual distress watches once DSC is fully operational.

7. There is growing user demand for a universal, automated, radiotelephone system. The matter has been the subject of considerable study. The Radio Technical Commission for Marine Services, a Federal Advisory Committee, completed a study in 1981 on the subject of a "VHF Automated Radiotelephone System." The work of this advisory committee was the basis for United States recommendations to CCIR Interim Working Party 8/5. The Radio Technical Commission for Maritime Services (RTCM) is studying DSC with a view toward encouraging more efficient use of the spectrum.

8. U.S. coast stations today employ various systems of selective calling other than the DSC system. These systems range from simple to complex depending upon the type of service and number of features provided. The most prominent existing domestic example of selective calling is the Great Lakes VHF Radiotelephone System operated by Lorain Telecom Corporation. Lorain's 14 stations provide an automated service to vessels whose voyages are confined to the Great Lakes. Special equipment is furnished by Lorain to its subscribers for this service. Other coast station operators provide a local automated service on one or more stations but, once outside their service area, calls must be made manually.

FNPRM Response and Discussion

9. Comments were filed in response to the FNPRM by the following:

—Rockwell International Corporation (ROCKWELL)
—Radio Technical Commission For Maritime Services (RTCM)
—National Marine Electronics Association (NMEA)
—Bell South Corporation, on behalf of South Central Bell Company and Southern Bell Telephone and Telegraph Company (THE TELEPHONE COMPANIES)
—WJG Telephone Company, Inc. (WJG)
—Coastal Marine Telephone, Inc. (COASTAL MARINE)
—United States Coast Guard (USCG)

Reply comments were filed by Waterway Communications System, Inc. (WATERCOM).

10. The Commission's initial proposal was to authorize the use of working frequencies in accordance with the ITU Radio Regulations which do not authorize the use of DSC techniques in

certain radiotelephony bands. ROCKWELL, RTCM, NMEA and WJG all expressed a preference to use DSC on coast and ship station working frequencies. Existing § 81.132(b) of the rules currently authorizes signalling devices without distinction as to type of frequency or frequency band. Because use of working frequencies for selective signalling in the past has not caused any known interference, we will authorize the use of DSC on all coast and ship station working frequencies so long as harmful interference is not caused.[1] Sections 81.132(b) and 83.132(b) of the rules have been modified to make this clear and the rules have been amended to include reference to these paragraphs when authorizing DSC general purpose calling on working frequencies.

11. RTCM recommended that DSC be permitted to establish narrow-band direct-printing communications. We concur and the rules have been changed to reflect this operational technique.

12. RTCM and WJG recommended that the frequency tolerance for ship station transmitters using DSC emissions should be ±20 Hertz until January 1, 2000, for all ships. They reasoned that the slight technical improvement achievable through use of a ±10 Hertz frequency tolerance does not warrant early replacement of transmitters. We agree that immediate replacement is not required and are revising the rules to reflect a January 1, 1995 implementation date to allow adequate amortization of equipment.

13. NMEA was concerned about the use of R.F. scanning synthesized receivers in conjunction with DSC and the FGMDSS. Most of their concerns are under consideration by special committees of the ITU and the International Maritime Organization (IMO). The resolution of these questions will be promulgated to the public as soon as practicable. However, it is settled that DSC use in the VHF band will require a continous watch on Channel 70, among other things, in order to preclude the requirement for a Channel 16 watch. We are implementing rules which preclude use of the dot pattern on VHF frequencies.

14. NMEA expressed a concern about the partial recommended MF/HF receiver bandwidth specification which was proposed for use with DSC. NMEA recommended that either a complete specification be adopted or that the proposed partial specification be deleted. Since Commission precedent has left this matter to the equipment manufacturer in order to permit flexibility of design and since CCIR Recommendation 493 contains receiver bandwidth guidance, we are not adopting receiver bandwidth rules.

15. THE TELEPHONE COMPANIES asked the Commission to include more definitive recommendations in this proceeding regarding the automation of VHF. Article 62 of the Radio Regulations prescribes full conformity with the relevant CCIR Recommendations when using Digital Selective Calling. CCIR Recommendation 493–2 is currently undergoing a revision which is expected to result in a new CCIR Recommendation 493–3 being adopted at the 1986 CCIR Plenary Meeting. It is envisioned that the revised CCIR Recommendation will include a format specifier symbol for semi-automatic/automatic VHF service and other changes to facilitate automation in the VHF band. In view of these circumstances, we will not add the requested recommendations to this proceeding.

16. THE TELEPHONE COMPANIES also requested clarification regarding the status of DSC after date BRAVO-the date when the Commission plans to require that all selective calling equipment operating on designated maritime mobile bands must meet DSC operational and technical requirements. While date BRAVO may be one specific date, it is possible that date BRAVO could be implemented on a geographical basis using more than one date. We consider that date BRAVO should either coincide with or closely follow the date when that U.S. Coast Guard establishes its VHF DSC guard for marine areas now serviced by the U.S. Coast Guard aural guard on Channel 16. It is envisioned that distress and safety DSC calls on Channel 70 will be intended for Coast Guard facilities and that general purpose DSC calls on Channel 70 will be intended for public coast stations. Although public coast stations may equip for DSC on a voluntary basis, they will be required to continue providing conventional VHF service after date BRAVO. The post date BRAVO situation for marine areas not covered by a U.S. Coast Guard VHF DSC guard, i.e., inland waters excluding the Great Lakes, is not possible to accurately predict at this time. The Commission will seek an appropriate solution to this problem based upon safety considerations, equipment in use by public coast and ship stations and minimum public burden.

17. WJG took exception to the Commission's tentative decision to exclude communications in the 216–220 MHz band from the scope of this proceeding. In reply comments, WATERCOM pointed out that there is no common signalling channel in the 216–220 MHz band and that systems operating in this band require a signalling protocol which integrates with the call processing function. We affirm our tentative decision to exclude communications in the 216–220 MHz band from the scope of this proceeding because there is no substantive need for compatible DSC signalling techniques in the 216–220 MHz band.

18. COASTAL MARINE wanted to know whether the use of DSC for the initial signalling would preclude the use of other control signalling to dial or control the switched network once the signalling is complete. During the optional implementation phase of DSC, digital selective calling and other signalling techniques will be permitted on working frequencies. Only digital selective calling techniques will be permitted on frequencies made available specifically for distress and safety DSC and general purpose DSC. The use of signalling techniques has been clarified in Section 81.132 and 83.132 of the rules. Whether the use of signalling techniques, other than digital selective calling, will be permitted on working frequencies subsequent to date BRAVO is a matter which will be addressed when date BRAVO is established.

19. COASTAL MARINE was concernd that the rules as proposed would in effect adopt existing CCIR Recommendations 493–2 and 541–1 as well as future changes without being subject to public comments normally associated with the rule making process. COASTAL MARINE recommended that CCIR Recommendations 493–2 and 541–1 be included as Subparts to the Commission's rules. Article 62 of the ITU Radio Regulations states in part that, "A digital selective calling system may be used if it is in full conformity with the relevant CCIR Recommendations in which all operational, technical and competibility aspects which might be involved have been taken into account". In view of the general acceptance of CCIR Recommendations as reflected in the ITU Radio Regulations, the fact that the public is invited through notices in the **Federal Register** to participate in U.S. CCIR study group meetings leading to possible changes in these documents, and the availability of amendment procedure in the rules, the Commission considers that adequate administrative protection is being provided to the public and the general acceptance of

[1] Section 4 of Article 6 of the Radio Regulations permits derogation of Radio Regulations provisions under the conditions specified.

approved CCIR Recommendations would be in the public interest when the use of existing equipment is not prevented. For this reason we are adopting rules which generally refer to CCIR Recommendations with the understanding that reference is being made to the most recent version which has been approved by the CCIR and which does not prevent the use of existing equipment. In those cases when a CCIR Recommendation would prevent use of existing equipment, specific Commission action would be required.

20. The USCG comments essentially made three recommendations: That operators of vessels fitted for DSC operations on VHF Channel 70 should be cautioned to maintain a guard on Channel 16 when sailing in areas not covered by a coastal DSC guard; that DSC functional capabilities should be activated when the coastal area is serviced by a DSC Guard rather than when FGMDSS becomes operational; and that a trial period be established for dual distress and safety/general purpose use of VHF Channel 70 which would allow time for a thorough examination of the traffic loading problem. The Commission generally concurs with the USCG recommendations: Information provided vessel operators concerning the need to guard Channel 16 should be by public notices and educational efforts. We do not believe it is appropriate to incorporate the caution suggested by the USCG into the rules. The service of United States coastal areas by a DSC guard should have more significance to the implementation of DSC rather than when the FGDMSS becomes operational. Paragraph 16 of this Report and Order emphasizes the significance of the USCG VHF DSC guard. A trial period to evaluate the traffic load of DSC calls on Channel 70 alludes to beginning and ending dates which would be difficult to establish at this time. Rather, we are adopting rules permitting DSC dual purpose calling on Channel 70 on the condition that if the volume of general purpose calling becomes such that harmful interference may be caused to the use of DSC for distress and safety purposes, general purpose calling will be removed to a second calling frequency which will be made available for that purpose.

21. Commenters provided other constructive comments and recommendations related to the implementation of DSC. Some of these recommendations were minor in nature and were incorporated into the rules. Other recommendations such as those relating to billing and charges were considered to be beyond the scope of this proceeding.

Implementation

22. The following paragraphs summarize the DSC implementation concepts contained in the Appendix. The adopted rules reflect the provisions applicable to DSC provided for by the MWARC '83 and many of the recommendations made by commenters in response to this proceeding. While the rules pertinent to DSC are necessarily based upon the effective version of CCIR Recommendation 493, in this case 493–2, we reiterate that planning on an international basis has been underway for several months which is expected to result in a new version of CCIR Recommendation 493.

23. Implementation of the DSC system is proposed on the basis of two open-ended dates:

Date ALPHA—A date in the future to be established by FCC Order. After date ALPHA, new installations of selective calling equipment operating on designated maritime mobile bands must meet DSC operational and technical characteristics.

Date BRAVO—A date in the future to be established by FCC Order which will be a minimum of three years subsequent to date ALPHA. After date BRAVO, all selective calling equipment operating on designated maritime mobile bands must meet DSC operational and technical characteristics.

All coast and ship stations are authorized to install and use DSC equipment on the effective date of this Report and Order. Such equipment must contain, as a minimum, the operational characteristics delineated in the Appendix. Tone or synthesized selective calling equipment in use on date ALPHA will be authorized for continued use at the same installation until date BRAVO.

24. The operational and technical characteristics of CCIR Recommendation 493, with indicated expections, will be used as the standards for Digital Selective Calling requirement. For ships, the radio frequency tolerance of transmitters used with digital selective calling equipment in the MF and HF bands must be ±10 Hertz after January 1, 1995. For coast stations after January 1, 1990, the radio frequency tolerance of transmitters used for digital selective calling equipment in the MF and HF bands must be ±10 Hertz. The operational provisions of CCIR Recommendation 541 will be the basis for DSC operations.

25. The system of Maritime Identification Digits (MID's) as contained in the ITU Radio Regulations (Resolution 313 and Appendix 43) and modified by the MWARC '83 will be used in conjunction with the implementation of the DSC system. MID's are three numbers contained within a nine digit maritime mobile service identity to be used by automatic systems for identification of ship and coast stations, and for automatic interconnection between ships and land based networks.

26. Rule amendments in the Appendix designate certain frequencies in the 2–25 MHz and VHF maritime bands for DSC techniques. Current ship radio stations authorized to use these bands may also use appropriate DSC frequencies in these bands without modifying the ship radio station license.

27. Notwithstanding the fact that the frequency 156.525 MHz (Channel 70) was designated exclusively for simplex CCIR DSC distress and safety purposes by the Final Acts of the MWARC '83, the Commission will make Channel 70 available to ships and coast stations for DSC distress and safety purposes and for DSC general purpose calling. Section 4 of Article 6 of the Radio Regulations allows assignments to be made in derogation of provisions of the Radio Regulations under the express condition that harmful interference shall not be caused to services carried on by stations operating in accordance with the Radio Regulations. The Commission invokes this prerogative because a single multipurpose calling frequency should be adequate to meet the volume of VHF DSC calling for the foreseeable future. If the volume of general purpose calling becomes such that harmful interference may be caused to the use of DSC for distress and safety purposes, general purpose calling will be removed to a second calling frequency which will be made available for that purpose. In the case, Channel 70 will be exclusively used for DSC Distress and Safety purposes. This approach will preclude the need for a second watch receiver on ship stations to be retrofitted with CCIR DSC equipment. Moreover, our experience is that most ships which are voluntarily equipped will maintain a watch on a multipurpose calling frequency and thereby be available to receive distress/safety communications and provide needed emergency assistance to ships in distress.

28. Section 81.203 of the current rules authorizes the use of DSC frequencies for calls by NB–DP purposes until such time as a digital selective calling system and associated procedures have been agreed upon and adopted into the ITU Radio Regulations. We believe there is

little use of these frequencies for Domestic NB-DP. Therefore, we are rescinding the use of those frequencies for calling with NB-DP protocols and are making them available exlusively for DSC general purpose calling which may also be used to establish NB-DP communications.

29. Cost and ship stations may use general purpose DSC calling procedures on authorized MF and HF working frequencies. General purpose DSC calling procedures in the VHF band are limited to those frequencies listed in the State Control, Commercial, Noncommercial, Public Correspondence and Digital Selective Calling categories. The Port Operations category is not included because these frequencies are shared between Government and Non-Government, use is limited to the safe movement of ships and the frequencies are normally not guarded.

30. As proposed, use of the frequency 156.525 MHz (Channel 70) for communications between aircraft and ship stations is being eliminated to preclude interference on Channel 70 which will be used as a VHF multipurpose calling frequency.

Conclusion

31. In view of the foregoing, we conclude that it is in the public interest to implement the digital selective calling provisions of the Radio Regulations and relevant CCIR Recommendations into the maritime rules. Accordingly, we are adopting rules which will provide for early optional implementation of DSC in the Maritime Mobile Radio Service.

32. In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that these rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. These rules provide for the optional use of DSC and will not require any segment of the maritime community to purchase DSC equipment.

33. The rules being adopted in this proceeding have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

34. Accordingly, it is ordered, That under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 145(i) and 303(r), Parts 81, 83 and 87 of the Commission's rules are amended as set forth in the attached Appendix, effective September 23, 1985.

35. It is further ordered, That a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

36. It is further ordered, That this proceeding is terminated.

37. Regarding questions on matters covered by this document, contract Robert E. Mickley (202) 632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 81, 83 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA FIXED SERVICE

1. The authority citation for Part 81 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 81.8 is amended by adding the term "Digital Selective Calling" and its definition, in alphabetical order, to the existing list of terms and definitions, as follows:

§ 81.8 Technical definitions.

* * * * *

Digital Selective Calling (DSC)—A system used to establish contact with a station or group of stations automatically by means of radio. It is a synchronous ten bit digital code consisting of seven information bits and an associated three bits binary code for error detection. (The operational and technical characteristics of this system are contained in International Radio Consultative Committee (CCIR) Recommendation 493.)

* * * * *

3. Section 81.131 is amended by revising the introductory text of paragraph (b) and by adding a new paragraph (f) to read as follows:

§ 81.131 Authorized frequency tolerance.

* * * * *

(b) Authorized frequency tolerances for coast stations, including marine utility stations, operating on frequencies below 30 MHz must be in accordance with paragraph (f) of this section for digital selecting calling emissions and with the following table for other emissions:

* * * * *

(f) Until January 1, 1990, the radio frequency tolerance for coast station transmitters using F1B and J2B emissions for digital selective calling in the MF and HF bands is ±15 Hz. Thereafter, the radio frequency tolerance for coast station transmitters using F1B and J2B emissions for digital selective calling in the MF and HF bands is ±10 Hz.

* * * * *

4. In § 81.132, paragraph (b) is revised to read as follows:

§ 81.132 Authorized classes of emissions.

* * * * *

(b) Authorization to use radiotelephone and radiotelegraph emissions is construed to include use of telegraphy (including keying only the modulating audio frequency), tone signals, digital selective calling, and other signalling devices for the sole purpose of establishing or maintaining communications provided:

(1) That these signalling techniques, other than digital selective calling, are not used on frequencies made available specifically for distress and safety DSC calling and general purpose DSC calling as identified by §§ 81.304(b)(21) and 81.304(b)(22);

(2) The authorized bandwidth for the class of emission is not exceeded; and

(3) That harmful interference is not caused to service carried on by stations operating in accordance with the Radio Regulations.

* * * * *

5. Section 81.144 is added to read as follows:

§ 81.144 Selective calling equipment.

This section specifies the operational and technical characteristics of DSC equipment, the applicability of such equipment and an implementation plan.

(a) Selective calling equipment installed in coast radio stations subsequent to a date to be established by FCC Order must be compatible with CCIR Recommendation 493 except that:

(1) Station identification need only be numerical;

(2) the order of entry and readout for coordinates must be—first latitude and then longitude;

(3) calls from coast stations in the MF/HF bands are to be preceded by a dot pattern;

(4) the dot pattern is not to be used on frequencies in the VHF band; and

(5) more restrictive technical provisions in these rules take precedence.

(b) Unless otherwise stated, reference to any CCIR Recommendation appearing in this part means the most recent

version of the CCIR Recommendation which has been approved by the CCIR and which does not prevent use of existing equipment.

(c) The requirement for use of DSC equipment, as contained in paragraph (a) to this section, is not applicable to the following:

(1) Equipment used in conjunction with the Automated Maritime Telecommunications System (AMTS) in the band 216–220 MHz.

(2) Equipment which performs a selective calling function as a part of the Narrow-Band Direct-Printing (NB–DP) system in accordance with CCIR Recommendation 476.

(d) The operational format of a DSC call sequence is:

format specifier
address
category
self-identification
message 1
message 2
.
.
end of sequence

DSC equipment must have the following operational characteristics as a minimum:

(1) Minimum operational characteristics of the call sequence in order to receive a DSC call:

(i) Format specifier—

(A) distress call; a separate and distinct aural alarm is required,

(B) all ships call,

(C) selective call.

(ii) address—

(A) distress call,

(B) all ships call; the address information for "distress calls" and "all ships calls" is contained in the format specifier,

(C) selective call; recognize the called coast station numerical identification.

(iii) Category—

(A) distress call; the category information is contained in the format specifier,

(B) priorities,

(*1*) distress; the same separate and distinct aural alarm is required as listed for distress calls in paragraph (d)(1)(i)(A) of this section

(*2*) urgency,

(*3*) vital safety,

(*4*) important safety,

(*5*) ship business priority,

(*6*) routine,

Note.—The same aural or visual indicator may be used for urgency, vital safety, important safety, ship business priority and routine priorities.

(iv) self-identification; not applicable to the receiving mode—

(v) messages; display a two digit channel number when used on VHF; otherwise, display a four digit channel number—

(vi) end of sequence; recognize the "end of sequence"—

(2) Minimum operational characteristics of the call sequence in order to transmit a DSC call:

(i) format specifier;

(A) all ships call,

(B) selective call,

(C) selective call for a group of ships in a particular geographical area; except for limited coast stations.

(ii) Address—

(A) all ships call; the address information for "all calls" is contained in the format specifier,

(B) selective call; transmit the called ship numerical identification,

(C) identification of a particular geographical area; except for limited coast stations.

(iii) Category (priority)—

(A) distress,

(B) routine,

(iv) self-identification; automatically transmit coast station identity—

(v) Messages; transmit a two digit number on VHF channels; otherwise, transmit a four digit channel number—

(vi) end of sequence; automatically transmit "end of sequence"—

(e) The technical format of the DSC call sequence is comprised of the following:

dot pattern
phasing sequence
format specifier
address
category
self-identification
message 1
separator (if required)
message 2
separator (if required)
.
.
end of sequence
error check character

(f) When all of the following conditions are met, one or synthesized selective calling equipment not in conformance with the technical characteristics of CCIR Recommendation 493 may be operated until a date to be established by FCC Order. The date will be a minimum of three years from the date subsequent to which DSC equipment is required for new selective calling installations. The conditions are:

(1) The equipment must have been installed and operational by the date to be established in accordance with paragraph (a) of this section.

(2) The equipment must be used only at the same radio station where located and operational on the date to be established in accordance with paragraph (a) of this section.

6. Section 81.203 is revised to read as follows:

§ 81.203 Digital selective calling frequencies.

(a) The carrier frequencies in the following table are available for use by coast stations for general purpose calls to ship stations using digital selective calling (DSC) techniques. The associated reply frequencies are also shown.

Coast station transmit to ships (kHz)	Coast station receive from ships (kHz)
4357.0	4187.5
8506.0	[illegible]81.5
8716.0	[illegible]75.5
13100.0	12562.0
13100.5	12982.5
17232.0	16750.5
17232.5	16751.5
22595.0	[illegible]
22595.5	[illegible]

(b) Coast station working frequencies are authorized for DSC General Purpose Calling under the provisions of § 81.132(b).

(c) When calling ship stations by DSC, the coast station must use the ship station identity and its assigned identity. Both the ship station identity and the coast station identity are nine digit numbers which will be assigned by the Commission. The numerals are compatible with international operations.

(d) Operating procedures for the use of digital selective calling (DSC) equipment in the Maritime Mobile Service are as contained in CCIR Recommendation 541 as modified by § 81.363(c).

(e) Frequencies available to ship stations for DSC distress and calling are also available to coast stations under the conditions contained in CCIR Recommendation 541. These DSC frequencies are identified by § 81.304(b)(22).

7. Section 81.204 is amended by revising paragraph (b)(6) to read as follows:

§ 81.204 Assignable frequencies—Narrow-band direct-printing radiotelegraph and transmission systems.

* * * * *

(b) * * *

(6) Calls to ship stations by NB–DP must be made by radioteleprinter on the NB–DP frequencies assigned to the coast station. However, when the above alternatives are unsuccessful, coast stations may call ship stations by A1 Morse radiotelegraphy, shift to A1 radiotelegraphy working frequencies,

and complete arrangements for setting up a NB–DP circuit, or DSC procedures may be employed on frequencies authorized for DSC calling.

* * * * *

8. Section 81.205 is amended by adding paragraph (f).

§ 81.205 Narrow-band direct-printing (NB–DP) operating procedure.

* * * * *

(f) In calling ship stations by narrow-band direct-printing, the coast station must use the ship station selective calling number (5 digits) and its assigned coast station identification number (4 digits). Calls to ships station must employ the following format: Ship station selective call number, repeated twice, "DE", sent once; and coast station identification number, repeated twice. When the ship station does not reply to a call sent three times at intervals of two minutes, the calling must cease and must not be renewed until after an interval of fifteen minutes.

9. In § 81.304, paragraph (a) is amended by adding and revising entries in frequency numerical order to the "Garrier frequency" and "Conditions of use" columns of the frequency table, and paragraphs (b)(20), (b)(21) and (b)(22) are added to read as follows:

§ 81.304 Frequencies available.

(a) * * *

• • • • •		
Paralleled		
2182.0 kHz	81.191, 81.305	1,14,15,20
• • • • •		
Added		
2187.5 kHz	81.203, 81.305	22
• • • • •		
4188.0 kHz	81.203, 81.305	22
4357.0 kHz	81.203, 81.305	21
• • • • •		
6282.0 kHz	81.203, 81.305	22
6506.0 kHz	81.203, 81.305	21
• • • • •		
8375.0 kHz	81.203, 81.305	22
8718.5 kHz	81.203, 81.305	21
• • • • •		
12563.0 kHz	81.203, 81.305	22
13100.0 kHz	81.203, 81.305	21
13100.5 kHz	81.203, 81.305	21
• • • • •		
16750.0 kHz	81.203, 81.305	22
17232.0 kHz	81.203, 81.305	21
17232.5 kHz	81.203, 81.305	21
• • • • •		
22595.0 kHz	81.203, 81.305	21
22595.5 kHz	81.203, 81.305	21
• • • • •		
Paralleled		
156.525 MHz	81.203, 81.305	21,22
• • • • •		

(b) * * *

(20) Use of this frequency is not authorized for digital selective calling techniques.

(21) This frequency is available to coast stations for general purpose calling using digital selective calling techniques.

(22) This frequency is available to coast stations for distress and safety calling, acknowledgement, and distress relay purposes using digital selective calling techniques under the conditions contained in CCIR Recommendation 541.

* * * * *

10. Section 81.305 is amended by adding paragraph (c) to read as follows:

§ 81.305 Frequencies for calling and distress.

* * * * *

(c) *Digital Selective Calling Frequencies:* Digital selective calling (DSC) frequencies are available for use as indicated:

(1) *Distress and Safety.* Section 81.304(b)(22) identifies frequencies available for distress and safety purposes using DSC techniques.

(2) *General Purpose Calling.* In addition to DSC general purpose calling frequencies identified by § 81.304(b)(21), working frequencies assigned to coast stations are authorized for DSC general purpose calling under the provisions of § 81.132(b).

11. Section 81.315 is added to read as follows:

§ 81.315 Digital selective calling operating procedures.

(a) Operating procedures for DSC equipment in the Maritime Mobile Service are contained in CCIR Recommendation 541.

(b) When calling ship stations by means of digital selective calling, the coast station must use the ship station identity and effect self-identification by use of a coast station identity. Both the ship station identity and the coast station identity are nine digit numbers which will be assigned by the Commission based upon a system of Maritime Identification Digits (MID's) designed to be compatible with international operations.

12. In Section 81.356, paragraph (a) is amended by adding the symbol "4" to the "Conditions of use" column of the frequency table opposite all frequency entries to the State Control, Commercial and Noncommercial categories. A new category, "Digital Selective Calling", is added to the frequency table below the Noncommercial category, paragraphs (b)(4) and (b)(5) are added to read as follows, and paragraph (b)(12) is removed.

(a) * * *

DIGITAL SELECTIVE CALLING

70	156.525	156.525	Coast to ship	4,5

(b) * * *

(4) Authorized for general purpose calls to ships by means of digital selective calling.

(5) Authorized for alerting purpose related to distress and safety using digital selective calling techniques.

* * * * *

13. In § 81.360, paragraph (f) is added to read as follows:

§ 81.360 Frequencies available below 27.5 MHz.

* * * * *

(f) The coast station frequencies identified by § 81.304(b)(21) are available for use by limited coast stations for general purpose calling using digital selective calling techniques. Working frequencies assigned to limited coast stations are authorized for DSC general purpose calling under the provisions of § 81.132(b).

14. Section 81.363 is added to read as follows:

§ 81.363 Digital selective calling operating procedures.

(a) Operating procedures for the use of DSC equipment in the maritime mobile service are contained in CCIR Recommendation 541.

(b) When calling ship stations by means of DSC the coast station must use the ship station identity and its assigned identity. Both the ship station identity and the coast station identity are nine digit numbers which will be assigned by the Commission. The numerals are compatible with international operations.

(c) DSC acknowledgement of DSC distress and safety calls are to be made by designated coast stations and such acknowledgement must be in accordance with procedures contained in CCIR Recommendation 541. Non-designated public and limited coast stations are to follow the guidance provided for ship stations in CCIR Recommendation 541 with respect to DSC "Acknowledgement of distress calls" and "Distress relays".

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

15. The authority citation for Part 83 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless

otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

16. Section 83.7 is amended by adding paragraphs (m) and (n) to read as follows:

§ 83.7 Technical.

* * * * *

(m) Selective Calling—A means of calling in which signals are transmitted in accordance with a prearranged code for the purpose of operating a particular automatic attention device at the selected station.

(n) Digital Selective Calling (DSC)—A system used to establish contact with a station or group of stations automatically by means of radio. It uses a synchronous ten bit digital code consisting of seven information bits and an associated three binary code for error detection. [The operational and technical characteristics of this system are contained in international Radio Consultative Committee (CCIR) Recommendation 493.]

17. Section 83.131 is amended by revising paragraph (a) and by adding a new paragraph (h) to read as follows:

§ 83.131 Authorized frequency tolerance

(a) Unless the particular instrument of authorization specifically provides otherwise, the frequency tolerance authorized for stations on board ships subject to this part must be as prescribed in paragraphs (b) through (h) of this section.

* * * * *

(h) Until January 1, 1995, the radio frequency tolerance for ship station transmitters using F1B and J2B emissions for Digital selective calling in the MF and HF bands is ±20 Hz. Thereafter, the radio frequency tolerance for ship station transmitters using F1B and J2B emissions for digital selective calling in the MF and HF bands is ±10 Hz.

18. In § 83.132, paragraph (b) is revised to read as follows:

§ 83.132 Authorized classes of emission.

* * * * *

(b) Authorization to use radiotelephone and radiotelegraph emissions is construed to include use of telegraphy (including keying only the modulating audio frequency), tone signals, digital selective calling, and other signalling devices for the sole purpose of establishing or maintaining communications provided:

(1) that these signalling techniques, other than digital selective calling, are not used on frequencies made available specifically for distress and safety DSC calling and general purpose DSC calling as identified by §§ 83.351(a)(53) and 83.351(a)(54),

(2) the authorized bandwidth for the class of emission is not exceeded; and

(3) harmful interference is not caused to services carried on by stations operating in accordance with the Radio Regulations.

* * * * *

19. Section 83.147 is added to read as follows:

§ 83.147 Selective calling equipment.

This section provides for the operational and technical characteristics of DSC equipment, the applicability of such equipment and an implementation plan.

(a) Selective calling equipment installed in ship radio stations subsequent to a date to be established by FCC order must be compatible with operational and technical specifications contained in CCIR Recommendation 493 except that:

(1) Station identification need only be numerical,

(2) The order of entry and readout for coordinates must be—first latitude and then longitude,

(3) In the MF/HF bands, dot patterns are to be included in calls from ship stations only in the case of distress calls or ship-to-ship calls,

(4) The dot pattern is not to be used on frequencies in the VHF band, and

(5) More restrictive technical provisions in these rules take precedence.

(b) Unless otherwise stated, reference to any CCIR Recommendation appearing in this Part means the most recent version of the CCIR Recommendation which has been approved by the CCIR and which does not prevent use of existing equipment.

(c) The requirement for use of DSC equipment, as contained in paragraph (a) to this Section, is not applicable to the following:

(1) Equipment used in conjunction with the Automated Maritime Telecommunications System (AMTS) in the band 216–220 MHz.

(2) Equipment which performs a selective calling function as a part of the Narrow Band-Direct Printing (NB–DP) system in accordance with CCIR Recommendation 476.

(d) The operational format of a DSC call sequence is:

Format specifier
Address
Category
Self-identification
Message 1
Message 2
.
.
End of sequence

DSC equipment shall have the following operational characteristics as a minimum:

(1) Minimum operational characteristics of the call sequence in order to receive a DSC call:

(i) Format specifier—

(A) Distress call; a separate and distinct aural alarm is required,

(B) All ships call,

(C) Selective call.

(ii) Address—

(A) Distress call,

(B) All ships call; the address information for "distress calls" and "All ships calls" is contained in the format specifier,

(C) Selective call; recognize the called ship numerical identification,

(D) Identification of a particular geographical area; except for VHF use.

(iii) Category—

(A) Distress call; the category information is contained in the format specifier,

(B) Priorities,

(*1*) Distress; the same separate and distinct aural alarm is required as set forth for distress calls in paragraph (d)(1)(i)(A),

(*2*) Urgency,

(*3*) Vital safety,

(*4*) Important safety,

(*5*) Ship business priority,

(*6*) Routine.

(**Note.**—The same aural or visual indicator may be used for urgency, vital safety, important safety, ship business priority and routine priorities.)

(iv) Self-identification; not applicable to the receiving mode—

(v) Messages; display a two digit channel number on VHF; otherwise, display a four digit channel number—

(vi) End of sequence; recognize the "end of sequence"—

(2) Minimum operational characteristics of the call sequence in order to transmit a DSC call:

(i) Format specifier,

(A) Distress call,

(B) All ship call,

(C) Selective call.

(ii) Address—

(A) Distress call,

(B) All ships call; the address information for "distress calls" and "all ships calls" is contained in the format specifier,

(C) Selective call transmit the called ship or coast identification.

(iii) Category—

(A) Distress call; the category information is contained in the format specifier.

(B) Priorities.

(1) Distress.

(2) Routine.

(iv) Self-identification; automatically transmit the ship station identity—

(v) Messages; transmit a two digit channel number on VHF; otherwise, transmit a four digit channel number—

(e) The technical format of the DSC call sequence is comprised of the following:

Dot pattern
Phasing sequence
Format specifier
Address
Category
Self-identification
Message 1
Separator (if required)
Message 2
Separator (if required)
.
.
End of sequence
Error check character

(f) When the following conditions are met, tone or synthesized selective calling equipment not in conformance with the technical characteristics of CCIR Recommendation 493 may be operated until a date to be established by FCC Order. The date will be a minimum of three

(1) The equipment must have been installed and operational by the date to be established in accordance with paragraph (a) of this section.

(2) The equipment must be used only at the same radio station where located and operational on the date to be established in accordance with paragraph (a) of this section.

20. In § 83.224, paragraph (c) is added to read as follows:

§ 83.224 Watch on 156.8 MHz.

* * * * *

(c) For a station on board a voluntarily equipped vessel fitted with digital selective calling (DSC) equipment, maintaining a continuous DSC watch on 156.525 MHz whenever such station is not being used for exchanging communications, and while such station is within the VHF service area of a U.S. Coast Guard radio facility which is DSC equipped to operate on 156.525 MHz.

21. In §83.315, paragraph (a) is revised to read as follows:

§ 83.315 Authorized frequencies.

(a) The tables in §§ 83.316, 83.317, 83.319, 83.320 and 83.321 set forth the carrier frequencies, which when authorized by a station license may be used by ship stations employing A1A Morse or narrow-band direct-printing radiotelegraphy for communications with ship or coast stations.

* * * * *

22. Section 83.318 is revised to read as follows:

§83.318 Digital selective calling frequencies.

(a) *Distress and safety calling.* The following frequencies are available for use by ship stations for distress and safety calls using digital selective calling techniques:

2187.5 kHz
4188.0 kHz
6282.0 kHz
8375.0 kHz
12563.0 kHz
16750.0 kHz
156.525 kHz

(b) *General purpose calling.* The frequencies in the following table are available for use by ship stations for general purpose calls to coast stations using digital selective calling techniques. The associated reply frequencies are also shown.

SHIP STATION

Transmit to coast—kHz (unless otherwise indicated)	Receive from coast—kHz (unless otherwise indicated)
4187.5	4357.0
6281.5	6506.0
8375.5	8718.5
12562.0	13100.0
12562.5	13100.5
16750.5	17232.0
16751.0	17235.5
22248.0	22595.0
22248.5	22595.5
156.525 MHz	156.525 MHz

(c) *Working frequencies.* Ship station working frequencies are authorized for DSC general purpose calling under the provisions of § 83.132(b).

23. Section 83.329 is revised to read as follows:

§ 83.329 Digital selective calling operating procedures.

(a) Operating procedures for DSC in the maritime mobile service are contained in CCIR Recommendation 541.

(b) When calling ship or coast stations by DSC, the ship station must use the appropriate nine digit ship or coast station identity and its assigned identity.

24. In § 83.330, paragraph (d) is revised to read as follows:

§ 83.330 Narrow-band direct-printing operating procedure.

* * * * *

(d) In calling the coast station by NB–DP, the ship station shall use the coast station identification number (4 digits) and effect self-identification by the use of the ship station selective calling number (5 digits). Calls to a coast station or other ship station must employ the following format: Coast station identification number, repeated twice; "DE", sent once; and ship station selective call number, repeated twice. When the coast station does not reply to a call sent three times at intervals of two minutes, the calling shall cease and shall not be renewed until after an interval of fifteen minutes. When it is known that the coast station maintains a watch on other frequencies for ship station calls by NB–DP, the ship station should make its initial NB–DP call on these frequencies.

* * * * *

25. In Section 83.351 the frequency table in paragraph (a) is amended by adding and revising "Frequencies" and "Conditions of use" in frequency numerical order, by revising paragraph (b)(1) and by adding paragraphs (b)(53) and (b)(54) to read as follows:

§ 83.351 Frequencies available.

(a) * * *

Added:

2187.5 kHz	83.352(d)	19, 20, 54
* * * * *		
4187.5 kHz	83.353(b)	19, 20, 53
4188.0 kHz	83.352(d)	19, 20, 54
* * * * *		
6281.5 kHz	83.353(b)	19, 20, 53
6282.0 kHz	83.352(d)	19, 20, 54
* * * * *		
8375.0 kHz	83.352(d)	19, 20, 54
8375.5 kHz	83.353(b)	19, 20, 53
* * * * *		
12562.0 kHz	83.353(b)	19, 20, 53
12562.5 kHz	83.353(b)	19, 20, 53
12563.0 kHz	83.352(d)	19, 20, 54
* * * * *		
16750.0 kHz	83.352(d)	19, 20, 54
16750.5 kHz	83.353(b)	19, 20, 53
16751.0 kHz	83.353(b)	19, 20, 53
* * * * *		
22248.0 kHz	83.353(b)	19, 20, 53
22248.5 kHz	83.353(b)	19, 20, 53
* * * * *		

Revised:

156.525 MHz	83.352(d), 83.353(b), 83.359	19, 20, 53, 54
* * * * *		

(b) * * *

(1) The frequency 2182 kHz is authorized for use on a shared basis primarily by ship stations and secondarily by coast stations. Digital selective calling techniques are not authorized on 2182 kHz.

* * * * *

(53) This frequency is available for general purpose calling using digital selective calling techniques.

(54) This frequency is available for distress and safety alerting purposes using digital selective calling techniques.

* * * * *

26. In Section 83.352 paragraph (d) is added to read as follows:

§ 83.352 Frequencies for use in distress and search and rescue operations.

* * * * *

(d) The frequencies identified in § 83.351(b)(54) are available for use by ship stations for distress and safety calls using DSC.

27. Section 83.353 is revised to read as follows:

§ 83.353 Frequencies for calling.

(a) The frequency 2182 kHz is the international general calling frequency for radiotelephony; it may be used for this purpose by ship and aircraft stations operating in the maritime mobile service in the bands between 1605 and 4000 kHz. The frequency 156.8 MHz is the international distress, safety and calling frequency for maritime radiotelephony stations when using frequencies in the 156 and 174 MHz bands. In addition, these frequencies may be used for transmission of:

(1) The international urgency signal and very urgent message preceded by this signal concerning the safety of a ship, aircraft, or other vehicle, or the safety of some person on board or within sight of the ship, aircraft, or vehicle.

(2) The international safety signal and messages preceded by this signal concerning the safety of navigation or giving important meteorological warnings; however, safety messages must be transmitted on a working frequency after a preliminary announcement on 2182 kHz.

(3) Brief radio operating signals.

(b) Digital selective calling identified in Section 83.351(b)(53) may be used to establish radiotelephony communications. The frequencies are available for use by ship stations for general purpose calls to public coast stations using digital selective calling techniques.

28. Section 83.354 is amended by revising the section title, designating existing material as paragraph (a) and adding a new paragraph (b) as follows:

§ 83.354 Frequencies available for communication with public coast stations on frequencies between 4000 and 27,500 kHz.

* * * * *

(b) Ship station frequencies identified by § 83.351(b)(53) are available for general purpose calling using digital selective calling (DSC) techniques. Ship station working frequencies in the band 4000 to 27,500 kHz are authorized for DSC general purpose calling under the provisions of § 83.132(b).

29. Section 83.355 is revised by adding paragraph (c) as follows:

§ 83.355 Frequencies available for communications with public coast stations operating in the band between 1605 and 4000 kHz.

* * * * *

(c) Ship station working frequencies in the band 1605 to 4000 kHz are available for DSC general purpose calling under the provisions of § 83.132(b).

30. In § 83.359, paragraph (a) is amended by removing Channel 70 and all horizontal entries in the Noncommercial category of the frequency table; and by adding a new category, "Digital Selective Calling", to the frequency table below the Public Correspondence category, by revising the introductory text of paragraph (b) and by adding new paragraphs (c) and (d) to read as follows:

§ 83.359 Frequencies in the band 156–162 MHz available for assignment.

(a) * * *

DIGITAL SELECTIVE CALLING

70	156.525	156.525	Intership and ship to coast
	.....	.....	
	.....	.....	
	.....	.....	

(b) In addition to the limitations contained in § 83.351(b)(15), (b) (33) and (b)(44), aircraft may use the frequencies 156.3, 156.375, 156.4, 156.425, 156.450, 156.625, 156.8, 156.9 and 157.425 MHz under the following circumstances and subject to the following limitations:

* * * * *

(c) Working frequencies listed in the State Control, Commercial, Noncommercial and Public Correpondence categories are available for general purpose calling using digital selective calling techniques.

(d) Channel 70 (156.525 MHz) is available for both general purpose calls and for calls related to distress and safety using digital selective calling techniques.

31. Section 83.360 is amended by adding paragraph (b)(3) and revising (b)(6) to read as follows:

§ 83.360 Frequencies for business and operational purposes.

* * * * *

(b) * * *

(3) These frequencies are available for general purpose calling using digital selective calling (DSC) techniques under the provisions of § 83.132(b).

* * * * *

(6) The emission designator must be 2K80J3E. When digital selective calling techniques are being used the class of emission must be F1B or J2B.

32. Section 83.366 is amended by adding paragraph (k) to read as follows:

§ 83.366 General radiotelephone operating procedure.

* * * * *

(k) Digital selective calling. Operating procedures for the use of digital selective calling (DSC) equipment in the maritime mobile service are as contained in CCIR Recommendation 541. When calling ship or coast stations by means of digital selective calling, the ship station shall use the appropriate nine digit ship or coast station identity and effect self-identification by use of a nine digit ship station identity.

PART 87—AVIATION SERVICES

33. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

34. Section 87.183 is amended by revising the introductory text of paragraph (j)(3) to read as follows:

§ 87.183 Frequencies available.

* * * * *

(j) * * *

(3) The frequencies 156.300, 156.375, 156.400, 156.425, 156.450, 156.625, 156.800 and 156.900 MHz may be used by aircraft stations to communicate with ship stations under these conditions:

* * * * *

[FR Doc. 85–19379 Filed 8–21–85; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Hutton Tui Chub and Foskett Speckled Dace

Correction

In FR Doc. 85–7358 beginning on page 12302 in the issue of Thursday, March 28, 1985, make the following corrections:

1. On page 12305, in the table in § 17.11(h), in the column headed "Special rules", both entries which now read "17.44(f)" should read "17.44(j)".

2. On page 12306, in the first column, in the first line, "paragraph (f)" should read "paragraph (j)".

3. On the same page, in the same column, in § 17.44 the paragraph now

designated as paragraph (f) is correctly designated as paragraph (j).

4. On the same page, in the same column, in correctly designated § 17.44(j)(4), in the fourth line, "(f)" should read "(j)".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 630

[Docket No. 50581-5127]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement the Fishery Management Plan for the Atlantic Swordfish Fishery (FMP). This rule provides for (1) the framework for closing areas for specific times, and (2) the establishment of a data collection program in the Caribbean. The intended effect of the final rule is to maintain high landings in the form of larger fish that are preferred in the market, prevent growth overfishing, provide a buffer against possible recruitment overfishing, and obtain the information necessary to monitor the fishery and refine the management regime.

EFFECTIVE DATE: This rule is effective September 18, 1985 (except for § 630.4 which becomes effective January 1, 1986) through December 31, 1987. This rule is being issued prior to approval by the Office of Management and Budget (OMB) of the information collection requirements in § 630.5. When OMB approval is received, a notice will be published in the **Federal Register** making this section effective on September 18, 1985.

ADDRESS: A copy of the combined final regulatory impact review/regulatory flexibility analysis (RIR/RFA) may be obtained from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Regional Director, Southeast Region, NMFS, initially approved the fishery management plan for the Atlantic Swordfish Fishery on July 19, 1985, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Proposed regulations to implement the FMP, prepared by the South Atlantic Fishery Management Council in cooperation with the Caribbean, Gulf of Mexico, Mid Atlantic, and New England Councils (Councils) were published on May 31, 1985 (50 FR 23159). Comments on the FMP and proposed rule were invited through July 12, 1985. The preamble to the proposed rulemaking contained a description of the swordfish fishery, the condition of the stocks, and fishing practices within the commercial and recreational sectors. Also discussed were problems in the fishery (i.e. increasing number of small fish in the landings and possible growth overfishing). These discussions are not repeated here.

Comments and Responses

Eighteen written comments were received addressing 45 issues. The sources of the comments were State natural resource agencies, the Department of State, a sports fishing organization, a foreign fishing association, Fishery Management Councils, a commercial fisherman's organization, law firms, a fishing tackle company, two members of Congress, and seven individuals.

Fishery Permits for Rod and Reel Fishermen

One state marine resource agency recommended that the requirement for rod and reel fishermen to possess fishing permits and report their catch in the Mid-Atlantic area (§ 630.4(a)(2) in the proposed rule) be extended to apply to rod and reel fishermen in all areas. Application of these requirements to rod and reel fishermen in only one area was considered inequitable, and because the Councils are considering implementing a comprehensive data gathering program, these requirements are unnecessary and NOAA has omitted them in the final rule. The same state agency suggested that these rod and reel permits remain valid until the permit owner requests otherwise or the vessel is sold. It was also recommended these permits be added to the bluefin tuna permit. Since the requirements for rod and reel permits and reporting by recreational fishermen have been deleted, these suggestions also are not applicable.

Prohibition of Imports

A law firm cited the need for import restrictions. The FMP provided for import restrictions during the variable season closure (VSC); however, that measure was disapproved, because it was not in compliance with Executive Order 12291, i.e. benefits and costs were not evaluated adequately. This measure may be readdressed and submitted for approval in the future.

A State marine resource agency recommended that the time period for the prohibition of imports after a variable season closure be the same (10 days) for all areas instead of varying from seven to 11 days. Because NOAA has deleted this measure, the agency's comments are not applicable.

Entanglement Nets

One recreational fishermen's organization questioned the authorization of the use of entanglement nets in the fishery. They expressed the opinion that the use of this gear would give a select few fishermen an excessive part of the resource and the non-selectivity of the gear would be harmful to other species such as marlin and sailfish. NOAA is gathering information on the effect of this gear. However, because of the lack of scientific information at this time regarding entanglement nets, no further restrictions on the use of this gear are proposed at this time.

Regional Director Authority

The same sportsmen's organization objected to the Regional Director's (RD), Southeast Region, authority to review and approve or disapprove recommendations made by the Councils under § 630.21(c). In their opinion, this allows the RD to disapprove the Councils' recommendations at his discretion, thereby denying the Secretary of Commerce (Secretary) the opportunity to review them. The RD has been delegated the authority to approve or disapprove FMPs by the Secretary and as such acts as the Secretary's designee. In addition, the RD may not arbitrarily disapprove a recommendation submitted by the Councils. To disapprove a recommendation, the RD must find that the recommendation is inconsistent with the objectives of the FMP, the Magnuson Act or other applicable law. Therefore, this measure is implemented as proposed.

Time Restrictions for Longliners

Restricting the fishing of longlines to the period 1800 hours to 0500 hours throughout the year was recommended by a recreational fishermen's group to mitigate the bycatch of billfish. However, to do so for other pelagic fisheries during the variable season closures would defeat the purpose of the measure because most swordfish are caught during these hours and to do so during the remainder of the year would

cause an unjustifiable restriction on the swordfish fishery.

Foreign Fishing Restrictions

The Department of State and one foreign tuna fishing association objected to the restriction for foreign tuna longline vessels in the proposed regulations. The Department of State and the association recommended deletion of the prohibition of nighttime pelagic longline fishing by foreign vessels, the cap on the foreign longline incidental catch of swordfish and the closure of the south Atlantic portion of the FCZ. They considered the prohibition of nighttime longline fishing furing the VSC by foreign fishermen to be excessively burdensome for the Japanese fishing fleet which operates far from its home base and to operate efficiently must fish 24 hours a day. In addition, they pointed out that only 20 swordfish were caught by the Japanese during 1984 in the area north of Cape Hatteras that was scheduled to be closed for 24 days under the VSC. With regard to the cap on the incidental take of swordfish, the State Department noted that the FMP does not provide statistical or other justification to illustrate how this measure will contribute directly to the objective of controlling the harvest of small swordfish. Also, the bycatch of swordfish by the Japanese longline fleet has dropped from 8,074 swordfish in 1980 to 402 swordfish in 1984. It was also indicated that in its opinion the closure of the southern portion of the FCZ was unnecessary because of the reduced effort by the Japanese fleet in the area in recent years and the corresponding decline in conflicts. NOAA concurs with the Department of State and the tuna association and the measures in the amendment to the Foreign Fishing Regulations at 50 CFR 611.60 and 611.61 disapproved by NOAA are omitted in this final rule.

Definition of Rod and Reel

A representative of one State agency recommended that the definition of rod and reel fishermen be modified to read "means any individual using a hand-held fishing rod with a manually operated reel attached." This would exclude the option of using rods with electrically operated reels. The commenter suggested that electric reels are not currently used but could be used to violate the proposed regulations. NOAA believes that this additional restriction would not be consistent with the intent of the Councils to exempt all legitimate rod and reel fishing from the closure.

Advance Notification

Representatives of two state agencies and one commercial fisherman commented that the requirement of a 10-day advance notification of departure for vessels selected to carry an onboard technician was impractical and unnecessary. They suggested that the notice period be reduced substantially. NOAA has disapproved the mandatory observer program for swordfish and § 630.5 as published in the proposed rule is modified in the final rule to reflect this disapproval. Therefore, these comments are no longer appropriate.

Fishing Outside Western North Atlantic Stocks

A representative of one State agency indicated that U.S. vessels occasionally fish for swordfish "outside the area identified as the Western North Atlantic Swordfish stock (zone)" and asked if fish from those areas could be possessed or landed during a closure. In a closed area (shoreward of the seaward boundary of the FCZ) swordfish could not be possessed at sea or landed during a closure. This same commenter asked if it was the intent of the FMP to force U.S. fishermen to land their catch in another country. This is not the intent of the FMP. The FMP is designed to reduce the harvest of swordfish less than 50 pounds dressed weight by closing areas at times when these small fish are predominate. These closures in the FCZ are also intended to encourage compliance among any fishermen fishing on the Western North Atlantic stock of swordfish. Any fishing effort applied during a closure to the same stock of swordfish would diminish the effectiveness of the FMP closures and, therefore, the benefits to the fishermen.

This commenter also asked how swordfish from the Western North Atlantic stock will be distinguished from the Eastern North Atlantic stock. There is no mechanism for differentiating these fish at this time. It is, in fact, this inability that underscores the necessity of prohibiting the possession at sea or landing of all swordfish in a closed area. An exception for swordfish harvested from other than the Western North Atlantic could easily preclude effective enforcement of a closure. NOAA believes that the need for effective enforcement of the closures outweighs the potential burden on the relatively few fishermen who occasionally fish beyond the boundary of the Western North Atlantic. Therefore, this regulation is implemented as proposed.

Fishery Management Councils' Comments

The New England Council requested that the Secretary implement the Swordfish FMP without the harpoon cap provision. The Council noted that this measure: (1) Does not contribute to any of the FMP's objectives; (2) is not necessary to enhance enforcement as implied; and (3) would result in unnecessary and excessive costs and burdens associated with recordkeeping. Further, the harpoon fishery selectively harvests large fish and is, therefore, consistent with the primary objective of the plan. NOAA concurs with these comments and has disapproved the measure on the basis that it is inconsistent with section 303(a)(1)(A) of the Magnuson Act and Executive Order 12291.

This Council also stated that in southern New England many recreational boats regularly use harpoons to take swordfish, billfish, and tuna and under § 630.5(a) could be required to accommodate an onboard technician. NOAA has disapproved the mandatory observer program. Therefore, these comments are no longer applicable.

The South Atlantic Council suggested a number of technical corrections to the proposed rule. The Council stated that the numerical expression of optimum yield, i.e. number of swordfish under 50 pounds dressed weight that can be harvested, should be changed from 33,750 to 30,250. The published number was incorrect because of an error in the original calculation. NOAA agrees that the revised number, 30,250, is accurate and reflects the Councils' intent of using the number of swordfish less than 50 pounds harvested in 1980 and has made the appropriate corrections in the final rule. A slight modification in the definition of "gangion" was also recommended, i.e. changing "ground line" to "main line." This change has been incorporated in the final rule. The Council suggested that under § 630.4(b)(9) wording can be added to require anyone indicating that he/she could not accommodate a technician to provide an explanation. This comment is no longer applicable because of NOAA's disapproval of the mandatory observer program.

The South Atlantic Council also questioned the wording added by NOAA to § 630.21(c)(6) that provided a 15-day public comment period after publication of the **Federal Register** notice implementing modifications to the VSC. In addition to the Council recommended that the wording of

§ 630.21(c)(5) be changed to read "Changes in the starting date and resulting lengths of closures as determined by the most recent year's data, and any other changes to the FMP must be approved by all five Councils'. In § 630.21, paragraph (c) *Adjustments* has been reserved to comply with disapproval of the provision requiring concurrence of all five Councils to establish or adjust the closures under the VSC. NOAA has designated the South Atlantic Council as the responsible Council for the management and Amendment of the FMP. The management measures to implement the closures under paragraph (c) as well as other necessary procedures will be implemented when the FMP has been amended to reflect this change in management responsibility. Therefore, the South Atlantic Council's comments are not appropriate.

The Council also requested that the wording in the first sentence of § 630.4(a)(1) be changed from commercial fishing vessel to . . . commercial longline fishing vessel and that corresponding language in the preamble be changed also. These changes are in the final rule. The Council further recommended that language be added to the preamble to indicate that existing data collection for the bycatch of swordfish by the foreign squid trawl fishery be continued as the U.S.-squid fishery shifts from joint ventures to ultimately a domestic fishery. Finally, the Council suggested minor modifications to the wording in sections of the proposed rule relating to foreign fishing measures and import restrictions. These comments are not applicable because these measures were disapproved and are deleted from the final rule.

Observer Requirements

A legal firm representing two commercial fishermen, a representative of a commercial fishermen's organization, and two members of Congress have expressed concerns about requiring observers aboard domestic vessels. All three commenters raised the issue of the vessel captain's liability regarding observers and stated that the government should bear the cost of necessary insurance and other associated costs. These commenters also noted that in some cases vessels lack sufficient space to accommodate observers and might be forced to reduce their customary crew size. This would reduce efficiency and could jeopardize safe working conditions. NOAA believes that there are legitimate reasons for concern about space, safety, liability, and crew size. Until these problems are resolved NOAA has disapproved implementation of the mandatory observer program.

The legal firm and the commercial fishermen's organization suggested that the observer program for entanglement nets is inconsistent with Executive Order 12291 and National Standard 7. The commenters also suggested that less costly alternatives for data collection, i.e. use of data collection forms, should be adopted. These comments are no longer appropriate since NOAA has disapproved implementation of the mandatory observer program and deleted it from the final rule.

Variable Season Closure

Comments on the VSC were received from nine sources including seven commercial fishermen, one law firm, and a representative of a fishng tackle company. The law firm suggested that the FMP and the variable season closure were based on insufficient data. The VSC was based on a combination of NMFS swordfish landings data and size frequency data provided by fishermen and dealers. The size frequency data were available for 1962–1984, with most emphasis on the period from 1980–1984. More than 8,400 trip sheets and 270,000 individual carcass weights from all areas of the fishery were analyzed. NOAA has concluded that the VSC and the FMP are based on the best scientific information available. The firm also recommended closing different areas at different times as opposed to the overlapping closures proposed in the FMP. The best available information indicates that the fall months are when most of the small fish are caught. Further, the fall closures would achieve the necessary reduction of small fish while minimizing the loss (delay) of total landings, and fall is the season of lowest value per pound. Staggered closures would encourage shifts in fishing effort to avoid closures and thereby reduce effectiveness of the closure and complicate enforcement. This same commenter suggested that fishermen know where and when small fish are concentrated and that an economic disincentive would deter the take of small fish. The VSC is an economic disincentive. To the extent that fishermen can voluntarily avoid small fish, the closure would be reduced and could be eliminated if the take of small fish did not exceed the 1980 level.

Five commercial fishermen stated that the proposed closure, based on 1984 data, would create an economic hardship for them, and four fishermen suggested that the shorter closure, based on 1983 data, be implemented. Implementation of the 1983 based closure would not result in achievement of optimum yield and would not be based on the best scientific information available and would, thus, violate national standards 1 and 2. Setting the closure during the fall months would minimize, to the extent possible, the reduction (delay) in total landings. The FMP also allows daytime longlining for tuna during the VSC to mitigate the short-term impacts of the closure.

One fisherman suggested that exempting harpoon fishermen from the VSC was unfair. The harpoon sector was exempted because it can and does selectively harvest large swordfish and, therefore, does not contribute to the problem of increasing harvest of small fish which necessitated the closure.

The representative of the fishing tackle company recommended that a minimum size be imposed instead of a seasonal closure. The Councils considered a minimum size limit but concluded, on the basis of a preliminary analysis by the Southeast Fisheries Center, that until mortality of small fish can be reduced significantly there would be no substantial benefit. Benefits would accrue only if fishermen would forgo trips where significant numbers of small fish would be encountered or if survival rates of small fish hooked and released were sufficiently high. Neither of these conditions currently would be met. The analysis indicated that too few trips would be avoided to reduce mortality. This commenter also stated that long closures in areas with primarily large fish defeats the economic objective of the plan. Such closures are less efficient than closures of areas with a higher ratio of small to large fish; however, the delay in harvest will produces overall gains.

The fisherman suggested that basing the closure on where small fish were landed rather than where they were caught is inappropriate. NOAA agrees, in principle, with this comment, but believes that the potential for error is minimal. The defined areas are very large thus minimizing the likelihood that vessels would fish in more than one area on a given trip. Further, much of the data supplied indicated area fished, e.g. logbooks, and area fished was determined by interviews with fishermen or dealers when possible.

Another fisherman stated that it was unfair to impose a closure in an area where the percentage of small fish landed had declined. NOAA disagrees. The effectiveness of the plan depends on reducing the total number of small fish landed. In the case cited by the commenter, the percentage of small fish landed declined slightly, but the total

number of small fish landed increased significantly. The swordfish stock is affected by the number of small fish killed, not by their percentage relative to total landings.

Two fishermen claimed that the proposed closures were in the wrong place at the wrong time. The Councils analyzed a substantial amount of landings and size frequency data from all areas of the fishery to determine the most appropriate closure dates. These data indicated that relatively more small fish were caught during the fall months in all areas. Also, the fall closures would minimize the length of the closure needed to achieve a given reduction in catch of small fish. Although some variation in individual's catch patterns would be expected, NOAA believes the available data support the Councils' decision for fall closures. Landings data will be updated and reevaluated annually.

Three fishermen and a representative of a tackle company suggested that closures should be increased in the southern areas or that some southern areas should be closed completely because of the preponderance of small fish. Even though the percentage of small fish was higher in the southern areas, large numbers of small fish were landed in all areas. As previously indicated, the stock is affected by the numbers of small fish landed, not necessarily the percentages. Closures in the southern areas were shorter because the landings of small fish were more concentrated within a discrete time period. The Councils are, however, considering options that would place more emphasis on closures in areas with higher ratios of small to large fish, i.e. the southern areas. The concept of total closures in some areas was rejected by the Councils. Since all areas landed substantial numbers of small fish, it was determined that all areas should contribute to the necessary reduction. Total closures would also have severe impacts on shore-based facilities and smaller, less mobile boats. Based on the available information, NOAA concurs with the Councils' determinations.

Comments relative to the proposed VSC closure dates are not applicable since no closure dates are implemented in the final rule. Any future closure dates will be implemented by publication of a notice in the **Federal Register**. A 15-day public comment period will be provided prior to implementation.

Changes From the Proposed Rule

The final rule differs from the proposed rule in the following respects, for the reasons discussed above and to clarify other minor aspects of the regulations:

Part 611

The amendment to Part 611 has been deleted to eliminate the additional requirements for the foreign fleet fishing for tuna and squid in the FCZ.

Part 630

Table of Contents is modified by omitting §§ 630.24 and 630.25 and numbering "§ 630.26 Specifically authorized activities" as § 630.24.

Section 630.2

The definition for rod and reel fishermen is clarified by including the phrase "(includes rod-holder)."

The definition for gangion is revised for clarification.

Definition of technician is deleted as the result of NOAA's disapproval of the mandatory observer program.

Section 630.4

In paragraph (a), the word "longline" is inserted between the words "commercial" and "vessel" to clarify the specific requirements for having a permit aboard a vessel.

Paragraph (a)(2) requiring permits for rod and reel fishermen in the Mid-Atlantic area is deleted.

Paragraph (b)(9) is deleted to conform with the disapproval of mandatory observer program.

Section 630.5

Paragraph (a) has been deleted as a result of NOAA's disapproval of the mandatory observer program.

Paragraph (c) requiring twenty percent of all swordfish fishermen (including commercial and recreational) to provide additional data by questionnaire is deleted. This corresponds with the deletion of the requirement of permits for rod and reel fishermen in the Mid-Atlantic area.

Paragraph (d) requiring dealers to make available records for harpoon harvested swordfish is deleted. This corresponds with the deletion of the harpoon quota § 630.24.

Section 630.7

Paragraph (a)(1) is modified to conform with the revision of § 630.4 regarding the deletion of the requirement of permits for rod and reel fishermen in the Mid-Atlantic area.

Paragraph (a)(3) is deleted to conform with NOAA's disapproval of the mandatory observer program.

Paragraph (a)(10) is deleted to correspond with the deletion of §630.25 Quotas.

Paragraph (a)(11) is deleted to reflect the deletion of § 630.25 Import restrictions. Paragraphs (a)(4) through (a)(20) are renumbered as (a)(3) through (a)(17).

Section 630.21

Paragraph (a) of this section has been revised to delete reference to the dates of variable seasonal closures until they are implemented by notice action under paragraph (c). This modification is necessary due to a lack of agreement among Councils for initially establishing closure dates based on available data.

In paragraph (b)(1) the wording "if the closure occurs between June and October" was deleted to conform with the deletion of § 630.24 Quota (harpoon quota).

Paragraph (c) is reserved pending amendment to the FMP described under "Fishery Management Councils' comments".

Classification

The Regional Director determined that the approved portions of the FMP are necessary for the conservation and management of the Atlantic swordfish fishery and that they are consistent with the Magnuson Act and other applicable law.

The Councils prepared a final environmental impact statement for this FMP; a notice of availability was published on August 9, 1985; 50 FR 32306.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary was published at 50 FR 23161, May 31, 1985.

The Councils prepared a final regulatory flexibility analysis which describes the effects this rule will have on small entities. You may obtain a copy of this analysis at the address listed above.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0149. The collection of information requirements subject to the PRA at § 630.5 has been submitted for approval by OMB.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of all the affected States. This determination was submitted for review by the responsible State agencies under section 307 of the

Coastal Zone Management Act. The State agencies agreed with this determination.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 19, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble Chapter VI of 50 CFR is amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 611.60 is amended by adding a new paragraph (a)(3) to read as follows:

§ 611.60 General provisions.

(a) * * *

(3) Regulations governing fishing for swordfish in the same geographical area by vessels of the United States are published as Part 630 of this chapter.

* * * * *

3. Section 611.61 is amended by adding a new paragraph (b)(3) to read as follows:

§ 611.61 Atlantic billfish and shark fishery.

* * * * *

(b) * * *

(3) *Gulf of Mexico.* [Reserved]

* * * * *

4. Part 630 is revised to read as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

Subpart A—General Provisions

Sec.

630.1 Purpose and scope.
630.2 Definitions.
630.3 Relation to other laws.
630.4 Vessel permits.
630.5 Reporting requirements.
630.6 Vessel identification.
630.7 Prohibitions.
630.8 Facilitation of enforcement.
630.9 Penalties.

Subpart B—Management Measures

630.20 Fishing year.
630.21 Seasonal closures.
630.22 Harvest limitations.
630.23 Gear limitations.
630.24 Specifically authorized activities.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 630.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Atlantic Swordfish Fishery prepared by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils under the Magnuson Act.

(b) This part regulates fishing for swordfish by persons fishing on vessels of the United States shoreward of the seaward boundary of the fishery conservation zone (FCZ) in the Atlantic, Gulf of Mexico, and Caribbean.

(c) Regulations governing fishing by vessels other than vessels of the United States are published at 50 CFR Part 611, Subpart A and §§ 611.60 and 611.61.

§ 630.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Carcass means a fish that has been gutted and the head and fins have been removed (dressed).

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149; Telephone 305–361–5761, or a designee.

Commercial fisherman means a person who sells, trades, or barters any part of his or her catch of fish.

Councils means the following Regional Fishery Management Councils:

(a) South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407–4699, telephone, 803–571–4366;

(b) New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01906;

(c) Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, North and New Streets, Dover, Delaware 19901;

(d) Caribbean Fishery Management Council, Suite 1108 Banco de Ponce Building, Hato Rey, Puerto Rico 00918; and

(e) Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

Dressed weight (carcass weight) means the weight of a carcass after the fish is gutted and the head and fins are removed.

Fish in these regulations refers to the swordfish, *Xiphias gladius.*

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Gangion means one of the lines that bear hooks and which is attached at intervals along the main line of a longline. (Synonymous with leader.)

Gill net or *drift entanglement net* means a flat net suspended vertically in the water having meshes that entangle the head or other body parts of fish that attempt to pass through the net.

Handline gear means a fishing line set and pulled by hand that remains attached to the boat during fishing.

High flyer means a vertical pole that projects above the water attached to a longline that serves to mark its location.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

NMFS means the National Marine Fisheries Service.

Official number means the official documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any character of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Pelagic longline means a type of fishing gear consisting of a length of line suspended horizontally in the water column above the bottom from lines attached to surface floats and to which gangions and hooks are attached.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Radio buoy means a buoy attached to a longline which transmits a radio signal for purposes of marking its location.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone, 813–893–3141, or a designee.

Rod and reel fisherman means any individual using a hand-held (includes rod-holder) fishing rod with a manually or electrically operated reel attached.

Secretary means the Secretary of Commerce or a designee.

Swordfish means a fish of the species *Xiphias gladius*.

U.S. fish processors means facilities located within the United States for, and vessels of the United States, used for or equipped for, the processing or distribution of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Magnuson Act.

Variable season closure (VSC) means the annual periods of closure for swordfish fishing in the five management areas as defined at § 630.21(a).

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than five net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

Western North Atlantic swordfish stock means those swordfish in Food and Agricultural Organization statistical reporting areas 21 and 31. This area is bounded on the west by the North, Central, and South American land masses and on the east by a line running from the eastern coast of South America at 5°00′ N. latitude out to 40°00′ W. longitude, north to 36°00′ N. latitude, west to 42°00′ W. longitude, north to 59°00′ N. latitude, west to 44°00′ W. longitude, and continuing north to Greenland.

Whole fish means a fish that is not gutted and the head and fins are intact.

§ 630.3 Relation to other laws.

Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities. Certain responsibilities relating to enforcement and data collection may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 630.4 Vessel permits.

(a) *General.* Effective January 1, 1986, a vessel of the United States fishing for, possessing, retaining, or landing swordfish for sale, trade, or barter, or any commercial longline fishing vessel of the United States with a bycatch of swordfish, whether or not retained for sale, trade, or barter, operating in the Atlantic, Gulf of Mexico, or Caribbean FCZ must have onboard at all times the permit required by this part. Vessels fishing handline gear in the Caribbean and any vessels fishing rod and reel gear in the FCZ are exempt.

(b) *Application.* An application for a fishing vessel permit under this section must be submitted by the vessel owner or operator on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director and must contain the following information:

(1) Owner's name, mailing address, and telephone number;

(2) Vessel name, net tons, and length;

(3) Home port;

(4) State registration or Coast Guard documentation number;

(5) Target species;

(6) Gear type(s);

(7) Average trip length (in days); and

(8) Monthly distribution of fishing by area (e.g., Gulf of Mexico).

(c) *Issuance.* (1) Upon receipt of a properly completed application, the Regional Director will issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following date of notification, the application will be considered abandoned.

(d) *Expiration.* A permit expires on December 31 of each year.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and vessel owner for which it is issued.

(i) *Display.* Any permit issued under this part must be carried aboard the fishing vessel at all times. The permit must be prominently displayed in the pilot house or offered for inspection upon request of any authorized officer.

(j) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. As specified in Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this part; or if a civil penalty or criminal penalty imposed under the Magnuson Act has not been paid.

(k) *Fees.* No fee is required for any permit under this part.

(l) *Change in application information.* Any change in the information specified in paragraph (b) of this section, such as the vessel owner or gear type, must be reported to the Regional Director within

15 days of the change. If there is a change in vessel owner, the vessel may not fish for swordfish until a new permit has been issued.

(Approved by the Office of Management and Budget under OMB control number 0648–0149.)

§ 630.5 Reporting requirements.

Owners or operators of vessels of the United States who have been issued a permit under § 630.4 to fish for swordfish in the Caribbean and land swordfish in Puerto Rico or the U.S. Virgin Islands must report their catch to the Center Director by individual carcass weight by providing copies of their weigh-out sheets for all swordfish landed.

§ 630.6 Vessel identification.

(a) *Official number.* A vessel of the United States engaged in the commercial swordfish fishery shoreward of the seaward boundary of the FCZ in the Atlantic Ocean, Gulf of Mexico or Caribbean Sea must—

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels, or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, its fishing gear, or anything carried aboard obstructs the view of the official number from any enforcement vessel or aircraft.

§ 630.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fish for, possess, retain, or land swordfish without a valid permit required under § 630.4 aboard the vessel;

(2) Purchase, sell, barter, or trade any swordfish taken by a vessel that does not have a valid permit required under § 630.4;

(3) Falsify or fail to report information required to be submitted or reported as specified in § 630.5;

(4) Falsify or fail to affix and maintain vessel markings as required by § 630.6;

(5) Fish for, possess at sea shoreward of the outer boundary of the FCZ, or land swordfish in closed areas specified in § 630.21(a), except as provided in § 630.21(b);

(6) Land swordfish harvested in the commercial fishery except as specified under § 630.22;

(7) Fish in closed areas with pelagic longlines at times other than as specified in § 630.23(a);

(8) Possess swordfish in a closed area during a seasonal closure specified in § 630.21(a) aboard a vessel having gear other than harpoons, rod and reel, or (in the Caribbean area only) handlines capable of taking swordfish;

(9) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any fish taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(10) Fail to comply immediately with enforcement and boarding procedures specified in § 630.8;

(11) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(12) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(13) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken swordfish or the disposition of such swordfish through the sale of the swordfish;

(14) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (a)(11) of this section;

(15) Resist a lawful arrest for any act prohibited by this part;

(16) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part; or

(17) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested swordfish to any foreign fishing vessel, while such vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested swordfish.

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 630.8 Facilitation of enforcement.

(a) *General.* The operators or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signs, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessels signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop instantly.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF–FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer provide a manrope or safety line, and illumination for the ladder, and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" (. —, . —) [1] repeated is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (. — ., ——.— — —, — .— ., — . — —) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (. . ., — — . —, . . . — —) means "you should stop or heave to; I am going to board you."

(4) "L" (. — . .) means "you should stop your vessel instantly."

§ 630.9 Penalties.

Any person or fishing vessel found to be in violation of this part, the Magnuson Act, or any other regulation issued under the Magnuson Act is subject to the civil and criminal penalty provisions of the Magnuson Act, and to 15 CFR Part 904 (Civil Procedures), and other applicable law.

[1] (.) means a short flash of light; (—) means a long flash of light.

Subpart B—Management Measures

§ 630.20 Fishing year.

The fishing year is January 1 through December 31.

§ 630.21 Seasonal closures.

(a) *General.* Except as allowed by paragraph (b) of this section, no person may fish for, possess at sea, or land swordfish in the following areas during the variable seasonal closures (VSC) implemented by notice in the **Federal Register** under paragraph (c) of this section.

(1) New England and Mid-Atlantic area from the United States-Canada border to Cape Hatteras, North Carolina (35°15′ N. latitude);

(2) South Atlantic area from Cape Hatteras, North Carolina (35°15′ N. latitude) south to the Georgia-Florida border (30°42′ N. latitude);

(3) Florida East Coast area from the Georgia-Florida border (30°42′ N. latitude) south and then west to a line that begins at the intersection of the outer boundary of the FCZ and 83°00′ W. longitude, proceeds north to 24°35′N. latitude, east to Marquesas Key, then through the Florida Keys and ends at the mainland;

(4) Gulf of Mexico area from a line that begins at the intersection of the outer boundary of the FCZ and 83°00′ W. longitude, proceeds north to 24°35′ N. latitude, east to Marquesas Key, then through the Florida Keys and ends at the mainland west to the Texas-Mexico border; and

(5) Caribbean area shoreward of the outer boundary of the FCZ adjacent to Puerto Rico and the U.S. Virgin Islands.

(b) *Exceptions.* Paragraph (a) of this section does not apply to the following:

(1) Swordfish greater than 125 pounds dressed weight that were harvested by harpoon. Fish must remain whole or as carcasses until landed;

(2) Swordfish harvested by rod and reel that are not traded, bartered, or sold; or

(3) Swordfish harvested with handline gear in the Caribbean area. A maximum of one swordfish per trip is allowed and may be sold in the Caribbean.

(c) *Adjustments.* [Reserved]

§ 630.22 Harvest limitations.

Swordfish harvested from the Western North Atlantic swordfish stocks in the commercial fishery must be landed in whole or dressed form.

§ 630.23 Gear limitations.

The following gear limitations apply within closed areas specified in § 630.21:

(a) Fishing with pelagic longlines and drift entanglement nets may be conducted only between 0500 and 1800 hours local time. Possession of swordfish is prohibited. Swordfish caught with longlines must not be removed from the water.

(b) All swordfish caught incidental to a directed fishery for other species must be released in such a manner as to ensure maximum probability of survival.

(c) Vessels landing or possessing swordfish cannot have aboard gear other than harpoons, rod and reel, or (in the Caribbean area only) handlines capable of harvesting swordfish. Such prohibited gear would include, but not be limited to, nets and longline gear including gangions, high flyers, and radio buoys. Longline reels are allowed aboard provided there are no gangions, high flyers, or radio buoys aboard.

§ 630.24 Specifically authorized activities.

The Secretary may authorize for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

[FR Doc. 85–20142 Filed 8–19–85; 5:02 pm]

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Proposed Rules

Federal Register
Vol. 50, No. 163
Thursday, August 22, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing revised regulations governing solicitation of Federal civilian and uniformed services personnel for contributions to private voluntary organizations under the authority of Executive Order No. 12353 (March 23, 1982), Charitable Fund-Raising, 47 FR 12785 (March 23, 1982), and No. 12404 (February 10, 1983), Charitable Fund-Raising, 48 FR 6685 (February 15, 1983).

These regulations provide a system for administering the annual charitable solicitation campaigns conducted by federal personnel in their Government workplaces and set forth ground rules under which charitable organizations may receive contributions from federal personnel through the Combined Federal Campaign.

DATE: Comments on this notice must be received by OPM no later than September 23, 1985.

ADDRESS: Comments should be submitted to: Joseph A. Morris, General Counsel, Office of Personnel Management, Room 5H30, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Joseph A. Morris, General Counsel of the Office of Personnel Management, (202) 632–4632, as to matters in litigation; and Ronald E. Brooks, Assistant to the Deputy Director for Regional Operations, (202) 632–5544, as to the Combined Federal Campaign in general.

SUPPLEMENTARY INFORMATION: On July 2, 1985, the United States Supreme Court handed down its decision in *Cornelius* v. *NAACP Legal Defense and Educational Fund, Inc.*, No. 84–312 (U.S. July 2, 1985). This long-awaited decision vindicates President Reagan's Executive Order No. 12404 (February 10, 1983), Charitable Fund-Raising, 48 FR 6685 (February 15, 1983, declared unconstitutional below in *NAACP Legal Defense and Educational Fund, Inc.* v. *Devine*, 567 F. Supp. 401 (D.D.C. 1983), aff'd on other grounds, 727 F.2d 1247 (D.C. Cir. 1984). Speaking for the court, Justice O'Connor reaffirmed the Government's right to limit participation in the CFC to traditional charities: "We conclude that the Government does not violate the First Amendment when it limits participation in the CFC in order to minimize disruption to the Federal workplace, to ensure the success of the fund-raising effort, or to avoid the appearance of political favoritism without regard to the viewpoint of the excluded groups. Accordingly, we reverse the judgment of the Court of Appeals that the exclusion of respondents was unreasonable . . . ." *Cornelius*, slip op. at 23–24.

Concluding that solicitation through the CFR is constitutionally protected speech, that the CFC (not the Federal workplace) is the relevant forum, that the CFC is a nonpublic forum, and the Government thus need only show that its decision to restrict access is reasonable, the Court found that there was ample evidence in the record to permit the Court to determine that the Government's decision was facially reasonable. The court agreed with OPM that the CFC "would be administratively unmanageable if access could not be curtailed in a reasonable manner . . . . The First Amendment does not demand unrestricted access to a nonpublic forum merely because use of that forum may be the most efficient means of delivering the speaker's message." *Id.* at 19–20.

Potential For Further Litigation

The Court observed that although the Government's posted reasons appear to be reasonable, the "existence of reasonable grounds for limiting access to a nonpublic forum, however, will not save a regulation that is in reality a facade for viewpoint-based discrimination." *Id.* at 22. As neither the District Court nor the Court of Appeals made a finding on this issue, the Supreme Court remanded the case so that the groups that challenged the Government's action will be free to pursue the issue whether their exclusion "was impermissible motivated by a desire to suppress a particular point of view." *Id.* at 23.

It was and is the Government's position there there is no such content-based discrimination. Justice O'Connor accurately restated the Government's position that "a decision to exclude all advocacy groups, regardless of political or philosophical orientation, is by definition viewpoint neutral . . . . Exclusion of groups advocating the use of litigation is not viewpoint based, [OPM] assets, because litigation is a means of promoting a viewpoint not a viewpoint in itself." *Id.* at 22. Further scrutiny of the Government's conduct of the CFC will, we are confident, clearly show that it has been the Government's intention to exclude all entities not directly rendering human health and welfare services, irrespective of their widely differing political views, and that there was not intention to exclude those of just one allegedly disfavored part of the political spectrum.

Proposed New Regulations

In light of the Supreme Court's ruling that upholds the constitutionality of President Reagan's Executive Order governing the CFC, OPM has a legal duty to issue implementing regulations. The rules governing the 1984–85 Campaign were promulgated pursuant to lower court decisions adverse to Executive Order No. 12404 and were issued expressly "without prejudice to its right or duty further to modify the rules in the event of a supervening direction from a court, the Congress, or the President." 49 FR 32735 (August 16, 1985). Accordingly, today we propose for public comment a new set of regulations substantially the same as those we published in 1983. Because of the familiarity of the CFC community with the 1983 regulations, our approach should be a familiar one to most interested parties.

Executive Order No. 12404

Executive Order No. 12404 makes clear that the Campaign's objectives are: "to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to

provide a convenient channel through which Federal public servants may contribute to these efforts; to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail; and to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly serve needs of human health and welfare."

In furtherance of these objectives, the President has provided precise criteria of admission to the Campaign. The Campaign is to be open to ". . . voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals or their families. Such direct health and welfare services must be available to Federal employees in the local campaign solicitation area, unless they are rendered to needy persons overseas. Such services must directly benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. Such services must consist of care, research, or education in the fields of human health or social adjustment and rehabilitation; relief of victims of natural disasters and other emergencies; or assistance to those who are impoverished and therefore in need of food, shelter, clothing, education, and basic human welfare services."

To make as clear and as emphatic as possible that his intent is to focus the CFC on support for human health and welfare needs, the President has provided expressly that "(a)gencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves shall not be deemed charitable health and welfare agencies and shall not be eligible to participate in the Combined Federal Campaign." This is by no means a declaration that private support of advocacy, political activities or non-health-and-welfare philanthropies is in any way discouraged by the Federal Government. It is, rather, a decision by the President to apply scarce Federal resources, and to limit impositions on Federal employees, to those objects that the President has determined warrant the Government's most urgent attention. In the President's judgment, highest priority should go to the health and welfare needs of poor, needy, ill, and infirm human beings.

Following is a summary description of key elements of the proposed rulemaking.

Eligibility. Applicants for solicitation privileges would have to meet prescribed standards with respect to program objectives, eligibility, administrative integrity, and financial responsibility. Voluntary charitable agencies that wish to participate in local Campaigns would be required to demonstrate local presence in the community in which they plan to solicit funds through the CFC. (See discussion *infra.*) Eligible organizations that provide predominantly international services would be relieved of the burden to demonstrate local presence. The substantive eligibility requirements here proposed, at 5 CFR 950.303, are virtually identical to those promulgated at 48 FR 34915–34916 (August 1, 1983) and codified at 5 CFR 950.101 (1984) in OPM's initial effort at implementing Executive Order no. 12404.

Local presence rule. The local presence rule would again be applicable in local campaigns. There is a limit, of course, to how precisely the local eligibility criteria can be drawn. For this reason, we propose that local Federal Coordinating Committees should be guided, in their interpretation of "direct and substantial presence," by "the totality of the circumstances in each case, including, but not necessarily limited to," the factors listed in § 950.303(d). We would proceed with a local appeals process that purposely places a substantial degree of responsibility for control of the campaign in the hands of the local Federal Coordinating Committee. This provision is included in response to the concerns of local Federal officials and local charities that they be able to control their local campaigns. At the same time, the new appeals mechanism would contain time frames providing for expeditious action and ensures that all relevant parties have notice of appeals and of decisions thereon. This responds directly to criticisms of past campaigns in which appeals were taken without the knowledge of some parties and were decided on grounds of which some parties were unaware.

List of participating charities. Each local CFC would be required to publish a single list containing all of the names of the voluntary charitable agencies approved by the appropriate Federal officials for participation in the CFC.

Write-in designations. The system of write-in designations that applied during the 1984–85 CFC would be eliminated. The system proved costly to administer and is unnecessary in light of the eligibility procedures.

Scope

This Part governs all fund-raising by private voluntary charitable agencies among Federal employees and members of the uniformed services of the United States at their places of work or duty. Thus it is applicable to civilian and uniformed personnel in all Executive departments and agencies throughout the world.

E.O. 12291, Federal Regulation

After a careful review of the proposed rulemaking, including the analysis set forth below, for purposes of the Regulatory Flexibility Act, OPM has determined that this is not a major rule for purposes of Executive Order No. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

(1) Reasons Why Action by Agency is Being Considered

OPM proposes these new rules because President Reagan's Executive Order No. 12404 has been held constitutional by the Supreme Court of the United States, thereby reversing an adverse decision in the Circuit Court of Appeals. OPM is now required to promulgate rules for charitable solicitation in the Federal workplace that conform to that Order and that, therefore, among other things, limit the privilege of solicitation to charities that help to lessen the burdens of government, lessen the disruption of the Federal workplace, and avoid the appearance of political favoritism by the Government without regard to the viewpoint of any excluded groups or agencies. The changes proposed in this new regulation will permit the Government once again to conduct the CFC in accordance with its traditional goals.

(2) Objectives of and Legal Basis for Rule

These regulations are issued under Executive Orders 12353 and 12404. The objective of these regulations is to

provide for a system of administering the annual charitable solicitation drives among Federal civilian and military employees in a single Combined Federal Campaign, and to set forth ground rules under which charitable organizations receive gifts through the CFC.

(3) Number of Small Entities Covered Under Rule

The rule would apply to all human health and welfare organizations that apply to participate in the Combined Federal Campaign.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The new rules revive, for the most part, the reporting, recordkeeping, and other requirements that were issued as final rules in 1983. The paperwork burden is kept to the minimum necessary to be consistent with the governing Executive Orders.

Although the new rules require local Federal Coordinating Committees to publish official lists of qualified charities, the size of the lists will be manageable, insofar as the new regulations limit participation in the CFC to traditional human health and welfare charities. The information that must be supplied by the participating agencies is minimal and requires no additional collection of data.

The rules assure the free choice of the employee to contribute to those agencies authorized to participate in the CFC. Certainly, the Government has no obligation to subsidize charities that do not meet the human health and welfare standards set forth in the relevant Executive Order. These regulations in no way inhibit solicitations by any organization that may wish to conduct a fund-raising drive other than in the Federal workplace. Thus, there is no regulatory burden placed upon ineligible agencies and the burden imposed on participating organizations is minimal, especially in light of the extremely cost-efficient system provided for the solicitation of Federal personnel.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There are no duplicating, overlapping or conflicting Federal rules that apply to the CFC.

(6) Differing Compliance or Reporting Requirements

The campaign arrangements that were used in 1984 are fundamentally inconsistent with Executive Order No. 12404. In addition, the 1984 rules, which permitted nearly all tax-exempt charities to solicit funds through the CFC, proved unduly controversial, disruptive to the Federal workplace, and costly to administer.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As has been noted, the new rules would revive the compliance and reporting requirements for small entities that were contained in the 1983 rules.

(8) Use of Other Standards

Appropriate alternative standards are not available that would impose less burdensome regulations.

(9) Exemption of Small Entities From Coverage

Exemptions from coverage for small entities is not practical because many of the eligible voluntary agencies are small entities, and exception for those groups would frustrate the major purposes of Executive Order No. 12404: To limit participation to human health and welfare agencies and to require that eligible organizations meet reasonable standards of financial integrity and public accountability. As a result of the above Regulatory Flexibility Analysis, I have determined that the rule will not have any significant detrimental economic impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 950

Government employees, Charitable contributions.

Accordingly, OPM amends 5 CFR Part 950 by revising it to read, in its entirety, as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICES PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—General Provisions

Sec.

950.101 Definitions.
950.103 Establishment and objectives of the campaign.
950.105 General principles.
950.107 Federal policy on civic activity.

Subpart B—Organization of the Campaign

950.201 The Director.
950.203 Heads of Federal agencies.
950.205 Local Federal coordinating committees.
950.207 Principle combined fund organization.
950.209 Special provisions for overseas and military campaigns.
950.211 National coordination and reporting.
950.213 Appeals from decisions of local Federal coordinating committees.

Subpart C—Conduct of the Campaign

Sec.

950.301 Campaign periods.
950.303 Admission of eligible voluntary agencies.
950.305 Application procedures.
950.307 Special rules applicable to the American Red Cross.
950.309 Prohibition of misleading identification.

Subpart D—Solicitation and Campaign Materials

950.401 Contributor's information leaflet.
950.403 Order of listing of voluntary agencies.
950.405 Other campaign publicity materials.
950.407 Coincident non-campaign activities.

Subpart E—Contributions, Distributions, and Accounting

950.501 Designation of contributions.
950.503 Privacy of contributions.
950.505 Election as to means of giving.
950.507 Contribution card.
950.509 Central receipt and accounting for contributions.
950.511 Payroll withholding.

Authority: E.O. No. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982), 3 CFR, 1982 Comp., p. 139, and E.O. No. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983).

Subpart A—General Provisions

§ 590.101 Definitions.

(a) "Combined Federal Campaign" or "Campaign" or "CFC" shall mean the fund-raising program established and administered by the Director pursuant to Executive Order No. 12353, as amended by Executive Order No. 12404, and all subsidiary units of such program;

(b) "Community" shall mean a community that is defined either by generally recognized geographic bounds or by its relationship to an isolated government installation;

(c) "Direct Contributions" shall mean gifts, in cash or in donated in-kind material, given by individuals and/or other non-governmental sources directly to the spending health and welfare organization.

(d) "Director" shall mean the Director of the United States Office of Personnel Management, or his delegate;

(e) "Domestic Area" shall mean the several United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(f) "Employee" shall mean any person employed by the Government of the United States or any branch, unit, or instrumentality thereof, including persons in the civil service and in the uniformed services;

(g) "Federation" or "Federated Group" shall mean a voluntary charitable health and welfare agency consisting of two or more other voluntary charitable health and welfare agencies and organized for

purposes of supplying common fund-raising services to its constituent members.

(h) "Indirect Contributions" shall mean gifts, in cash or in donated in-kind material, given to the spending health and welfare organizations by another health and welfare organization, but not transfers, dues, or other funds from affiliated organizations or local, State, or Federal governments.

(i) "Local Federal Coordinating Committee or "LFCC" shall mean the group of Federal officials designated by the Director to conduct the CFC in a particular community.

(j) "Overseas Area" shall mean areas other than the domestic area.

(k) "Overseas Service Organization" shall mean a voluntary charitable health and welfare agency whose services are rendered exclusively or in substantial preponderance either in the overseas area or in direct support of the rescue, relocation, and lawful resettlement of persons recognized by the United States Government as refugees or as grantees of political asylum.

(l) "Principal Combined Fund Organization" shall mean the federated group in a local Combined Federal Campaign that has been selected to manage and administer the local Combined Federal Campaign, subject to the direction and control of the local Federal Coordinating Committee and the Director.

(m) "Voluntary Charitable Health and Welfare Agency" or "Voluntary Charitable Agency" or "Voluntary Agency" shall mean a private, non-profit, philanthropic organization, support for which is consistent with the objectives of the Combined Federal Campaign as set forth in Executive Order No. 12404 and § 950.103(b) of these rules, and which meets all eligibility requirements under this Part.

§ 950.103 Establishment and objectives of the campaign.

(a) *Establishment.* The Combined Federal Campaign shall be the single, comprehensive, annual charitable fund-raising appeal conducted in Federal workplaces, both civilian and military, around the world. It shall be conducted each year under the leadership of the President and the supervision of the Director. In communities where there are 200 or more Federal personnel, there shall be conducted a local Combined Federal Campaign, and no other solicitations for the benefit of philanthropy shall be permitted in Federal workplaces. In communities where there are fewer then 200 Federal personnel, a Combined Federal Campaign may be conducted at the discretion of the Federal managers and commanders in charge. Each local CFC shall be overseen by the Director, conducted by the local Federal Coordinating Committee, and managed by an organization designated as the Principal Combined Fund Organization. The local Federal Coordinating Committee for each local CFC shall establish administrative arrangements providing for the individual recognition of each participating voluntary charitable agency, the description of each voluntary charitable agency's services, and the allocation of contributions in accordance with the epxress instructions of donors. Solicitions shall be conducted exclusively by Federal personnel and only Federal personnel shall be solicited.

(b) *Objectives.* The objectives of the Combined Federal Campaign shall be to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to provide a convenient channel through which Federal public servants may contribute to these efforts; to encourage maximum participation and generous giving; to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail; and to avoid the reality and the appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly serve needs of human health and welfare.

§ 950.105 General principles.

(a) *On-the-Job Solicitation.* In order to have only one on-the-job solicitation by Federal personnel and of Federal personnel in the Federal workplace each year, individual appeals shall be combined into a single Combined Federal Campaign on behalf of charitable purposes in conformance with the policies and procedures prescribed in this Part.

(b) *Campaign Arrangements Established Nationally.* Basic campaign arrangements shall be established by the Director. Local Federal agency heads and local Federal Coordinating Committees shall not vary from the arrangements established by the Director except to the extent that local variations are expressely provided for in this Part.

(c) *Number of Solicitations.* Not more than one on-the-job solicitation of Federal personnel on behalf of charitable purposes shall be made in any year at any Federal location, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Solicitation Methods.* Employee solicitations shall be conducted during duty hours using methods that permit true voluntary giving and reserve to the individual the option of disclosing any gift or keeping it confidential.

(e) *Off-the-Job Solicitation.* Many worthy voluntary agencies do not participate in the on-the-job program because they do not wish to join in its coordinated arrangements or because they cannot meet the requirements for eligibility established by Executive Order No. 12404. Such volunatry agencies may solicit Federal employees at their homes and elsewhere outside the Federal workplace as they do other citizens of the community, including through union, veteran, civic, professional, political, legal defense, philanthropic, and other private organizations, in addition, limited arrangements may be made for off-the-job solicitations on military installations and at entrances to Federal buildings, as follows:

(1) *Family Quarters on Military Installations.* Voluntary agencies may be permitted to solicit at private residences or at family quarters in unrestricted areas of military installations at the discretion of the local commander. Such solicitation shall not, however, be conducted by military or civilian personnel in their official capacities, whether during duty or non-duty hours, nor may such solicitation be conducted as a project officially sponsored by the command. This restriction is not intended to prohibit or to discourage military and civilian personnel from participating as private citizens in the activities of voluntary agencies during their off-duty hours.

(2) *Public Entrances of Federal Buildings and Installations.* Voluntary agenices that engage in limited or specialized methods of solicitation, including, but not limited to, the sale of poppies and similar tokens by veterans' organizations, may be permitted to solicit at public entrances or in public concourses of Federal buildings or installations that are normally open to the general public. Solicitation privileges in such cases shall be governed by rules and policies of the General Services Administration pursuant to the Public Buildings Cooperative Use Act of 1976, Pub. L. 94–541, 40 U.S.C. 490(a)(17), as amended; 41 CFR Subpart 101–20.3—Conduct on Federal Property; 41 CFR Subpart 101–20.7—Occasional Use of Public Areas in Public Buildings; or other applicable legal authorities.

(f) *Prohibited Discrimination.* The Campaign is a means for promoting true voluntary charity among members of the Federal community. Because of the participation of the Government in organizing and carrying out the Campaign, all kinds of discrimination prohibited by law to the Government must be proscribed in the Campaign. Accordingly, discrimination for or against any individual or group on account of race, color, religion, sex, national origin of citizens, age, handicap, or political affiliation is prohibited in all aspects of the management and execution of the Campaign. Nothing herein shall deny eligibility to any voluntary agency, which is otherwise eligible under this Part to participate in the Campaign, merely because such voluntary agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

(g) *Prohibited Coercion.* True voluntary giving is of the essence of Federal fund-raising activities. Actions that do not allow free choices or create the appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fund-raising policy. The following activities, in particular, offend Federal fund-raising policy and are not permitted in the Combined Federal Campaign:

(1) Solicitation by supervisors of employees supervised;

(2) Setting 100% participation goals;

(3) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and installment pledges;

(4) Establishing personal dollar goals and quotas; and

(5) Developing and using lists of noncontributors.

(h) *Responsible Conduct.* In the event that a voluntary agency fails to adhere to the requirements or to the policies and procedures established in and under this Part, upon reasonable notice and an opportunity to be heard, its privilege to receive gifts through a local Combined Federal Campaign may be withdrawn by a local Federal Coordinating Committee, and its privileges with respect to one, several, or all local Campaigns may be curtailed or withdrawn by the Director.

§ 950.107 Federal policy on civic activity.

Federal personnel shall be encouraged to participate actively in the work of voluntary agencies—as members of policy boards or committees, heads of local campaign units, or volunteer workers—to the extent consistent with law, Federal agency policy, and prudent use of official time. They shall also be encouraged to devote private time to such volunteer work.

Subpart B—Organization of the Campaign

§ 950.201 The Director.

(a) *Policy-making.* Under Executive Orders No. 12353 (March 23, 1982), Charitable Fund-Raising, and No. 12404 (February 10, 1983), Charitable Fund-Raising, the Director shall establish charitable fund-raising policies and procedures in the Executive Branch and may, in consultation with designated leaders from the Legislative and Judicial Branches, coordinate the activities of the Executive Branch with the charitable fund-raising programs conducted in the other Branches. The Director may, from time to time, seek the advice of Executive Branch departments and agencies and of appropriate and interested persons and organizations. The Director may authorize the conduct of demonstration CFC projects in one or more communities to test arrangements differing from those specified in this Part for the conduct of fund-raising activities in Federal agencies.

(b) *Operations.* In accordance with applicable law and these regulations, the Director shall:

(1) Establish general policy governing the Combined Federal Campaign;

(2) Determine the annual general Campaign period and fix the times when all applications and other submissions permitted and required by the Part shall be filed;

(3) Establish local Combined Federal Campaigns and establish or recognize local Federal Coordinating Committees;

(4) Certify the eligibility of applicant federated groups and overseas service organizations;

(5) Decide timely, perfected appeals taken from decisions of local Federal Coordinating Committees;

(6) Report periodically to the President and to the men and women of the armed and civilian services on the accomplishments of the Combined Federal Campaign; and

(7) Exercise general supervision over all operations of the Combined Federal Campaign, and take all steps that may be necessary and proper to ensure the achievement of its objectives.

§ 950.203 Heads of Federal agencies.

(a) *National Level.* In accordance with applicable law and these regulations, and in consultation with, and under the guidance of, the Director, the head of each Federal Executive department and agency shall:

(1) Ensure that voluntary fund-raising within the Federal agency is conducted in accordance with the policies and procedures prescribed by this Part;

(2) Designate a top-level representive as Fund-Raising Program Coordinator to work with the Director as necessary in the administration of the fund-raising program within the Federal agency;

(3) Ensure full participation and cooperation in local fund-raising campaigns by all installations of the Federal agency;

(4) Ensure that the policy of voluntary giving and clear employee choice is upheld during the fund-raising campaign; and

(5) Provide a mechanism to hear and adjust employee complaints of undue pressure and coercion in Federal fund-raising. Federal agencies shall establish procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper organization channels for pursuing such complaints.

(b) *Local Level.* In accordance with applicable law and these regulations, and under the guidance of the Director, heads of local Federal offices and installation shall:

(1) Cooperate with the Director and with representatives of the local Federal Coordinating Committee, the Principal Combined Fund Organization, and local Federal officials in organizing local Federal campaigns;

(2) Undertake official campaigns within their offices or installations and provide active and vigorous support with equal emphasis for each authorized campaign;

(3) Ensure that personal solicitations on the job are organized and conducted in accordance with these regulations; and

(4) Ensure that authorized campaigns are kept within reasonable administrative limits of official time and expense.

§ 950.205 Local Federal coordinating committees.

(a) *Establishment.* The Director shall, from time to time, designate local Federal communities for purposes of the Combined Federal Campaign, and shall establish for each such local community a local Federal Coordinating Committee. The Director may designate a Federal Executive Board, a Federal Executive Association, a Federal Business Association, a Fund-Raising Program Coordinating Committee, or a similar body as a local Federal Coordinating

Committee. There shall be only one local Federal Coordinating Committee for each local Combined Federal Campaign; subject to the approval of the Director, two or more local Federal Coordinating Committees may enter into agreements respecting the coordination of their respective campaigns and the sharing of administrative resources. No person shall serve on a local Federal Coordinating Committee who is not an officer or employee of the United States, nor shall any person holding any position of leadership, trust, or profit in the Principal Combined Fund Organization serve on a local Federal Coordinating Committee.

(b) *Representation of Management and Employee Organizations.* Because the Combined Federal Campaign represents the philanthropic undertaking of the Federal community as a whole, it is appropriate for the local Federal Coordinating Committee to include among its members the heads and commanders of major Federal officers and installations within the local CFC community and the leaders of major Federal unions and other employee organizations, or their respective delegates. In cases where a body designated by the Director to serve as the local Federal Coordinating Committee does not include such representation, it is appropriate for that body to invite such leaders to serve with it as the local Federal Coordinating Committee.

(c) *Powers and Duties.* In accordance with applicable law and these regulations, and under the guidance of the Director, local Federal Coordinating Committees shall:

(1) Be known for purposes of the CFC as the "Federal Coordinating Committee for the Combined Federal Campaign of ————," where the name of the local community is set out in lieu of the blank space;

(2) Elect such officers, form such committees, and keep such books and records as shall be necessary and proper;

(3) Designate and supervise the Principal Combined Fund Organization, and determine or approve the amount, or the formula for determining the amount, of the defrayal of its administrative expenses provided that said amount shall not be determined as a percentage of contributions;

(4) Fix the specific period, with the general period fixed by the Director, for the conduct of the local CFC;

(5) Accept the certifications of the Director of the eligiblity of federated groups and overseas service organizations;

(6) Grant the applications for admission of eligible voluntary charitable agencies;

(7) Publish a Contributor's Information Leaflet containing a list of all eligible voluntary charitable agencies;

(8) Publish a Contribution Card;

(9) Organize networks of solicitors;

(10) Disseminate information about the Campaign;

(11) Arrange for the proper receipt, distribution, and accounting of gifts and pledges;

(12) Police the local Campaign to ensure its freedom from coercive, unfair, or misleading conduct and its compliance with these regulations;

(13) Report the results promptly and accurately to the Director and to the men and women of the armed and civilian services in the local Federal community;

(14) Adhere to the decisions and instructions of the Director; and

(15) Exercise general supervision over all operations of the local Combined Federal Campaign, and take all steps that may be necessary and proper to ensure the achievement of the objectives thereof.

§ 950.207 Principal combined fund organization.

(a) *Designation of PCFO.* (1) The local Federal Coordinating Committee each year shall designate as the Principal Combined Fund Organization whichever applicant organization that it finds to be, at the time of application, the federated group present in the local CFC community that—

(i) Provides through one specific, annual public solicitation of funds in that community the greatest support for voluntary charitable agencies that depend upon public subscriptions for support; and

(ii) In the judgment of the local Federal Coordinating Committee, will provide most effectively and least expensively such campaign services and administrative support as may be necessary for the achievement of the objectives of the Combined Federal Campaign.

(2) In making its findings, the local Federal Coordinating Committee shall consider the following factors—

(i) The information required to be furnished in the application for designation as Principal Combined Fund Organization; and

(ii) Such other information as the local Federal Coordinating Committee shall deem appropriate.

(3) No local Federal Coordinating Committee shall serve as a Principal Combined Fund Organization.

(4) The Principal Combined Fund Organization shall be known as the "Principal Combined Fund Organization for the Combined Federal Campaign of ————," where the name of the local community is set out in lieu of the blank space.

(b) *Contents of PCFO Application.* Applications for designation as Principal Combined Fund Organization shall include the following:

(1) The names of the voluntary agencies in the community that rely on the applicant organization for financial support and that meet the eligibility criteria set forth in this Part;

(2) The boundaries of the area covered by the public donation solicitation of the applicant organization;

(3) The number of dollars raised in the local CFC community by the applicant during its last completed annual public solicitation for funds;

(4) The percentage of such dollars disbursed to the voluntary agencies;

(5) A statement of its agreement to transmit contributions, as designated by Federal employees, to all voluntary agencies admitted to the local Campaign, less only the sums approved for the defrayal of administrative costs;

(6) A certification that it and its participating member organizations are in compliance with all applicable requirements specified in this Part;

(7) A statement or description of the amount, or formula for determining the amount, if any, proposed to be charged by the applicant organization for defrayal of its administrative costs; and

(8) A statement that the applicant is organized, able, and willing to provide all necessary services and support to the local Federal Coordinating Committee for the successful conduct of the local Combined Federal Campaign in conformance with the requirements of this Part and the policies and procedures prescribed hereunder.

(c) *Functions.* In accordance with applicable law and with these regulations, and under the guidance and control of the Director and the local Federal Coordinating Committee, the Principal Combined Fund Organization shall:

(1) Print and distribute the local Campaign literature and contribution card;

(2) Receive and account for contributions from donors;

(3) Transmit donations to beneficiaries;

(4) Defray proper administrative expenses from Campaign proceeds, in accordance with agreements with, and

the instruction of, the local Federal Coordinating Committee;

(5) Report completely and promptly to the local Federal Coordinating Committee on all activities;

(6) Manage the Campaign fairly and equitably, consider advice from other voluntary charitable agencies, respond to reasonable requests for information from other voluntary agencies and the general public, and consult periodically, without favoritism, with other voluntary charitable agencies;

(7) Keep its own organizational funds, accounts, and activities strictly separate from its funds, accounts, and activities as Principal Combined Fund Organization;

(8) Receive all gifts not otherwise designated for other recipients and distribute such gifts in accordance with its internal policies and the needs of the local CFC community; and

(9) Perform such other tasks as the Director and the local Federal Coordinating Committee may, from time to time, direct.

(d) *Audits.* The records and accounts of the Principal Combined Fund Organization shall be audited annually for the benefit of the local Federal Coordinating Committee. The costs of such audit shall be deemed a proper Campaign expense and defrayed by Campaign proceeds. The audit may be performed by an accountant retained generally by the Principal Combined Fund Organization provided that such accountant be a certified public accountant; otherwise the audit shall be performed by an independent auditor selected by the local Federal Coordinating Committee.

(e) *Revocation of designation.* In the event that the Principal Combined Fund Organization fails to discharge its functions lawfully or properly, or fails to manage the Campaign fairly and equitably, then the local Federal Coordinating Committee or the Director may revoke its designation as the Principal Combined Fund Organization.

§ 950.209 Special provisions for overseas and military campaigns.

(a) *Overseas Campaign.* A Combined Federal Campaign shall be authorized for all activities and installations of the Department of Defense in the overseas area.

(1) The local Federal Coordinating Committee for the DOD Overseas CFC shall designate the Principal Combined Fund Organization for the DOD Overseas CFC, which may be the National Voluntary Organizations Campaign Committee or any voluntary agency that the local Federal Coordinating Committee for the DOD Overseas CFC deems, in its discretion, mostly likely to meet the standards set forth herein for the designation of a Principal Combined Fund Organization.

(2) A voluntary charitable agency that meets all eligibility criteria applicable under this Part, other than those criteria pertaining to local eligibility, and that is also a member of a national federated group certified under § 950.303(e)(1) may, upon application, be admitted to the DOD Overseas CFC.

(3) For good cause, and upon application by the Secretary of Defense or the local Federal Coordinating Committee for the DOD Overseas CFC, the Director may waive the applicability to the DOD Overseas CFC of a regulation prescribed in this Part.

(b) *Overseas Campaigns Among Civilian Personnel.* Federal agencies, other than the Department of Defense, that have heretofore deemed their overseas personnel to be located in the National Capital Area for purposes of the Combined Federal Campaign may continue to do so. Agencies, other than the Department of Defense, that have not heretofore done this, may also do so.

(c) *On-Base or On-Post Health and Welfare Activities.* On-base or on-post morale, health, welfare, and recreational activities confined to a military installation may be supported through the CFC.

§ 950.211 National coordination and reporting.

(a) The Office of the Assistant to the Deputy Director for Regional Operations (*hereinafter,* "Office of Regional Operations"), of the United States Office of Personnel Management, shall be responsible, under the Director, for CFC arrangements.

(b) Each local Federal Coordinating Committee is required to notify the Office of Regional Operations of its campaign area, its chariman's name and address, and the name and address of the organization centrally receiving and accounting for contributions.

(c) All chairmen of local Federal Coordinating Committees shall furnish, in the form prescribed by the Director, reports of campaign results to the Office of Regional Operations by January 15 of each year.

(d) All local activities shall be coordinated with the national campaign under policies and procedures issued by the Director through the Federal Personnel Manual system, a handbook of instructions, and other appropriate instruments.

§ 950.213 Appeals from decisions of local Federal coordinating committees.

(a) Any decision of a local Federal Coordinating Committee that is appealed to the Director by any charitable agency or charitable federated group, or by any applicant for solicitation privileges in a local campaign, shall be given due weight by the Director.

(1) any such appeal shall be looked upon with disfavor unless it raises a sustantial question of fairness, construction of these regulations, or application of the policies, procedures, directives, and guidance of the Director.

(2) Unless the Director orders otherwise, all burdens of proof, of persuasion, and of going forward shall be borne by the appellant.

(3) an appeal may be dismissed as untimely unless it is received by the Director within ten (10) days after the date of which the appellant has received actual or constructive notice of the decision from which the appeal is taken.

(4) Every appeal shall be submitted in writing and shall set forth: (i) A concise statement of the decision from which the appeal is taken; (ii) the grounds for the appeal; and (iii) the relief sought by the appellant.

(5) Every appeal shall be accompanied by written certification that copies thereof have been served upon the local Federal Coordinating Committee and any other proper party in interest whose participation in the appeal may be appropriate for the just disposition thereof.

(b) The local Federal Coordinating Committee and any other proper party in interest may respond to the appeal.

(1) Every response, to the timely, shall be received by the Director within five days after the date of which the respondent has received actual or constructive notice of the appeal.

(2) Every response shall be submitted in writing and shall set forth a concise statement of the facts and arguments that the respondent believes are material.

(3) Every response shall be accompanied by written certification that copies thereof have been served upon the appellant and any other proper party in interest.

(c) A decision of a local Federal Coordinating Committee appealed to the Director shall be considered affirmed if the Director does not reverse or modify that decision within 10 days of OPM's receipt of the appeal or of the timely response of the local Federal Coordinating Committee, whichever occurs later.

(d) The Director may, for good cause, extend or shorten the time limits set forth in this section and waive requirements for written submissions and proofs of service.

(e) The Director may, in his sole discretion, review any decision of a local Federal Coordinating Committee and stay any decision of a local Federal Coordinating Committee pending his review thereof. All decisions of the Director shall be final, and shall be executed forthwith by the local Federal Coordinating Committee, or by such other person or entity as the Director may direct to do so.

(f) In computing any period of time prescribed or allowed under this Part, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Subpart C—Conduct of the Campaign

§ 950.301 Campaign periods.

The general period during which local Combined Federal Campaigns shall be conducted shall commence on September 1 of each year and shall end on November 30 thereof, unless the Director shall, in a particular year, fix other dates for the general period and publish notice thereof in the **Federal Register**. Each local CFC shall be conducted for a specific period of six weeks, fixed by the local Federal Coordinating Committee, during the general period. No local CFC shall commence before the beginning date of the general period, nor shall any local CFC conclude after the ending date of the general period. The Director may, for good cause, extend the general period during which any or all local CFCs shall be conducted; notice thereof shall be published in the **Federal Register** as soon as is practicable after the Director has determined to extend such general period. A local Federal Coordinating Committee may, for good cause, extend beyond the time of six weeks the specific period within the general period during which the local Campaign is conducted.

§ 950.303 Admission of eligible voluntary agencies.

(a) *General Provisions.* All eligible voluntary charitable agencies that apply for admission to the Combined Federal Campaign shall be admitted. Admission shall entail the privileges, in accordance with these regulations, of being listed and described in CFC literature and of receiving all gifts, less amounts necessary to the defrayal of administrative expenses, designated by donors for the recipient.

(b) *Substantive Eligibility Requirements.* (1) To be eligible for admission to the Combined Federal Campaign in any community, an organization shall, in addition to satisfying any other applicable eligibility criteria:

(i) Be organized and operated for the purpose of rendering, or of materially or financially supporting the rendering of, one or more of the following services directly to, and for the direct benefit of, human beings:

(A) Delivery of health care to ill or infirm individuals;

(B) Education and training of personnel for the delivery of health care to ill or infirm individuals;

(C) Health research for the benefit of ill or infirm individuals;

(D) Delivery of education, training, and care to physically and mentally handicapped individuals;

(E) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are victims of intra-family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(F) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes and emergencies;

(G) Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, the preparation and delivery of meals, educational opportunities, and job training;

(H) Legal aid services that are provided to needy, poor, and indigent individuals solely because of their inability to afford legal counsel and without a policy or practice of discrimination for or against the kind of cause, claim, or defense of the individual;

(I) Protection of families that, on account of need, poverty, indigence, or emergency, are in long-term or short-term need of family, child-care, and maternity services, child and marriage counseling, foster care, and guidance or assistance in the management and maintenance of the home and household;

(J) Relief of needy, poor, and indigent infants and children, and of orphans, including the provision of adoption services;

(K) Relief of needy, poor, and indigent adults and of the elderly;

(L) Assistance, consistent with the mission of the Department of Defense, to members of the armed forces and their families;

(M) Assistance, consistent with the mission of the Federal agency or facility involved, to members of its staff or service who, by reason of geographic isolation, emergency conditions, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs; or

(N) Lessening of the burdens of government with respect to the provision of any of the foregoing services;

(ii) Meet all eligibility requirements established in this Part; and be able to show that it met all such requirements for the full fiscal year of the organization for the period immediately preceding the closing date established by the Director for the submission of its application for admission to the Combined Federal Campaign for a particular year;

(iii) Be organized under the laws of the United States or of a State; be subject to the jurisdiction and laws of the United States; be an organization described in, and qualifying under, 26 U.S.C. 501(c)(3); not be an "action organization" with the meaning of 26 CFR 1.501(c)(3)–1(3); and be organizations to which contributions may be tax deductible to the donor under 26 U.S.C. 170;

(iv) Not participate in, or intervene directly or indirectly in any political campaign of behalf of or in opposition to any candidate for public office, or on behalf of any side or position in a public referendum, initiative, or similar procedure; and

(v) Except as provided in 5 CFR 950.303(b)(4), have articles of organization that do not expressly empower the organization to, and the organization does not, expend more than the proportions set forth in 5 CFR 950.303(b)(2) of its total expenditures on any or all of the following activities:

(A) Activities that are not in furtherance of the purposes set forth in 5 CFR 950.303(b)(1)(i);

(B) Activities (other than activities directly related to the organization's participation in the Combined Federal Campaign) for purposes of influencing legislation or rulemaking at any level of Federal, State, or local government; and

(C) Activities for purposes of litigation (including contributing to the expenses thereof), other than litigation undertaken as a necessary part of the provision of legal aid services as set forth in 5 CFR 950.303(b)(1)(i)(H); provided that the activities described in this subsection (5

CFR 950.303(b)(1)(v)(C)) shall not include activities to protect the existence of the organization, its tax exempt status, its participation in the Combined Federal Campaign, or its own direct and private interests, as opposed to the interests of the causes or policy goals that it supports.

(2) The maximum level of expenditures permitted without disqualifying an organization from participation in the Combined Federal Campaign shall be 15% of the organization's total annual expenditures; provided that the level of expenditures thus made in the aggregate, or any and all activities identified in 5 CFR 950.303(b)(1)(v) may not, in any one year, exceed the sum of $1,000,000; and *provided further that* no more than one-fourth of the maximum level of expenditures thus made may be expended in any one year as grass roots expenditures.

(3) For purposes of the preceding paragraph (5 CFR 950.303(b)(2)), the following definitions shall apply:

(i) The term "influencing legislation" shall have the same meaning that it has in 26 U.S.C. 4911(d);

(ii) The term "influencing rulemaking" shall have the same meaning that the term "influencing legislation" in 26 U.S.C. 4911(d) would have if the term "rulemaking" were substituted therein for the term "legislation", and the term "government agency" were substituted therein for the term "legislative body";

(iii) The term "rulemaking" shall have the same meaning that the term "rule making" has in 5 U.S.C. 551(5);

(iv) The term "expenditures" shall mean all money expended or debts incurred by the organization;

(v) The term "total annual expenditures" shall mean all expenditures made by the organization in its fiscal year; and

(vi) The term "grass roots expenditures" shall mean all expenditures made by the organization for the purposes described in 26 U.S.C. 4911(d)(1)(A) and for the purposes that would be described in 26 U.S.C. 4911(d)(1)(A) if the term "rulemaking" were substituted therein for the term "legislation."

(4) An organization that has been notified by the Director or the local Federal Coordinating Committee, as the case may be, that it does not satisfy the requirements of 5 CFR 950.303(b)(1)(v) may nonetheless petition the Director or the local Federal Coordinating Committee, whichever was the decision-maker in the first instance, for inclusion in the Combined Federal Campaign. The Director shall, from time to time, announce through the Federal Personnel Manual System or other appropriate instruments the time, place, and manner in which such a petition may be filed with him; the local Federal Coordinating Committee shall similarly make known such arrangements to applicants and participants in the local Campaign. The petition shall set forth specific facts and circumstances in support thereof. The Director or the local Federal Coordinating Committee, as the case may be, shall grant the petition if the decision-maker determines that the organization's activities described in subparagraphs (A), (B), and (C) of 5 CFR 950.303(b)(1)(v), taken as a whole:

(i) do not significantly exceed the limits described in 5 CFR 950.303(b)(2), taking into account other indices of activity not adequately accounted for by the measurement of expenditures (such as the use of volunteer services or in-kind contributions); and

(ii) are in direct furtherance of the organization's activities described in 5 CFR 950.303(b)(1)(i). Any such favorable determination by the Director or the local Federal Coordinating Committee shall be in writing, shall succinctly state the basis for the determination, and shall be available to the public.

(c) *Operational eligibility requirements.* To be eligible for admission to the Combined Federal Campaign in a local community, an organization shall, in addition to satisfying any other applicable eligibility criteria:

(1) Demonstrate that it is a non-profit, tax-exempt charitable organization, supported by voluntary contributions from the general public, and providing direct and substantial health and welfare services all of which shall be consistent with the laws and policies of the United States Government;

(2) Demonstrate that, except in the case of a voluntary agency whose revenues are affected by unusual or emergency circumstances, it has received at least 50 percent of its revenues from sources other than the Federal Government, or at least 20 percent of its revenues from direct and/or indirect voluntary public contributions, in the year immediately preceding any year in which it applies for admission to the Combined Federal Campaign;

(3) Show that it is directed by an active board of directors, a majority of whose members serve without compensation;

(4) Show that it adopts and employs the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and was, in the year immediately preceding any year in which it applies for admission to the Combined Federal Campaign, audited by a certified public accountant;

(5) Demonstrate, if its fund-raising and administrative expenses in the year immediately preceding any year in which it applies for admission to the Combined Federal Campaign exceeded 25 percent of its total public support, that its expenses for such purposes were reasonable in light of all the circumstances;

(6) Affirm that its publicity and promotional activities are based upon its actual program and operations, are truthful, and include all material facts;

(7) Affirm that its operations guard against the unauthorized use of contributor lists, permit no payments of commissions, kickbacks, finders fees, percentages, bonuses, overrides, or bribes for fund-raising, and allow no general telephone solicitation of the public;

(8) Show that it publishes an annual report to the general public that includes a full description of its activities and finances and that identifies its directors and its principal administrative personnel; and

(9) Demonstrate, in the case of a voluntary agency that represents or comprises more than one subunit, that its annual report includes all operational and financial reporting for all of its components, including, in the case of national federations and overseas service organizations, any and all international, national, and subnational units and affiliates, and that the same, in its entirety, was prepared in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations.*

(d) *Local Eligibility Requirements.* To be eligible for admission to the Combined Federal Campaign in a particular community, an organization shall, in addition to satisfying any other applicable eligibility criteria, have a direct and substantial presence in the local Campaign community, meaning that Federal employees and their families are able to receive, within a reasonable distance from their duty stations or homes, services that are directly provided by the voluntary agency or that demonstrably depend upon, or derive from, the specific research, educational, support, or similar activities of the particular voluntary agency. Demonstration of direct and substantial presence in the local campaign community, including adequate documentation thereof, shall at all times, and for all purposes, be the burden of the voluntary agency. Such direct and substantial presence shall be

determined in the light of the totality of the circumstances in each case, including, but not necessarily limited to, consideration of the following factors:

(1) The availability of services, such as examinations, treatments, inoculations, preventative care, counseling, training, scholarship assistance, transportation, feeding, institutionalization, shelter, and clothing, to persons working or residing in the local campaign community;

(2) The presence within the local campaign community, or within reasonable commuting distance thereof, of a facility at which services are rendered or through which they may be obtained, such as an office, clinic, mobile unit, field agency, or direct provider; or specific demonstrable effects of research, such as personnel or facilities engaged therein or specific local applications thereof;

(3) The availability to persons working or residing in the local campaign community of communication with the voluntary charitable agency by means of home visits, transportation, or telephone calls, provided by the voluntary agency at no charge to the recipient or beneficiary of the service; and

(4) Awareness within the local Federal community of the existence, activities, and services of the voluntary charitable agency; *provided* that voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and that meet all the criteria set forth in this Part except for the requirement of direct and substantial presence in the local campaign community, shall be eligible for admission to each local Campaign of the Combined Federal Campaign.

(e) *Admission standards.*—(1) *National Federated Groups.* To be admitted to the Combined Federal Campaign in a local community, a national federated group shall first be certified by the Director. Such certification as a national federated group shall be conclusive for purposes of every local Combined Federal Campaign and shall entitle the national federated group to be admitted, in its own corporate name, to every local Campaign upon a showing that, with respect to that local Campaign, it meets the local eligibility criteria set forth at 5 CFR 950.303(d); and further, it shall entitle the national federated group, in turn, to certify to any local Federal Coordination Committee that a member of the national federated group meets the substantive eligibility criteria set forth at 5 CFR 950.303(b) and the operational eligibility criteria set forth at 5 CFR 950.303(c). Such certification may be obtained by submitting an application in the form, and within the time, prescribed from time to time by the Director, demonstrating that the applicant meets all substantive eligibility critiera set forth at 5 CFR 950.303(b) and all operational eligibility criteria set forth at 5 CFR 950.303(c), and showing that it represents or federates at least 10 individual voluntary charitable agencies in at least 300 local combined philanthropic campaigns in the United States.

(2) *Overseas Service Organizations.* To be admitted to the Combined Federal Campaign in a local community, an overseas service organization shall first be certified by the Director. Such certification as an overseas service organization shall be conclusive for purposes of every local Combined Federal Campaign and shall entitle the overseas service organization to be admitted, in its own corporate name, to every local Campaign. Such certification may be obtained by submitting an application in the form, and within the time, prescribed from time to time by the Director, demonstrating that the applicant is an overseas service organization as defined at 5 CFR 950.101(k) and meets all substantive eligibility criteria set forth at 5 CFR 950.303(b) and all operational eligibility criteria set forth at 5 CFR 950.303(c). No showing of satisfaction of the local eligibility criteria set forth at 5 CFR 950.303(d) shall be required of an overseas service organization.

(3) *Other Organizations.* To be admitted to the Combined Federal Campaign in a local community, a voluntary agency other than a national federated group or an overseas service organization shall apply in the form, and within the time, prescribed from time to time by the Director, to the local Federal Coordinating Committee for the CFC of the local community, demonstrating that the applicant meets all substantive eligibility criteria set forth at 5 CFR 950.303(b), all operational eligibility criteria set forth at 5 CFR 950.303(c), and, with particular respect to that local community, all local eligibility criteria set forth at 5 CFR 950.303(d). If the applicant is a member of a federated group, then the federated group may certify as to the applicant's satisfaction of the substantive eligibility criteria set forth at 5 CFR 950.303(b) and the operational eligibility criteria set forth at 5 CFR 950.303(c); but the applicant shall, in all cases, particularly demonstrate to the local Federal Coordinating Committee that it satisfies the local eligibility criteria set forth at 5 CFR 950.303(d).

§ 950.305 Application procedures.

(a) *Application Form.* Applications shall include the following information and documents:

(1) The corporate name and fiscal year;

(2) Statement of origin, purpose, and structure of organization, including information to show clearly that the voluntary agency meets each of the applicable eligibility requirements of this Part;

(3) A list of chapters, affiliates, or representatives in alphabetical order by State; and under the State, a list of cities with chapter, affiliate, or representative by names and addresses;

(4) For national federated groups, acceptability of the organization throughout the United States;

(5) An outline of the applicant's program or programs, particularly the nature of the direct services provided by the applicant voluntary agency and under what provisions of 5 CFR 950.303(b)(1)(i) the applicant claims to provide human health and welfare services;

(6) A description of the activity of the board of directors over the preceding year, accompanied by a list of the names, addresses, and businesses or occupations of the current members of the board of directors;

(7) A certification by a certified public accountant that the applicant uses an acceptable financial system and that it adopts the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations;*

(8) A copy of its latest annual report;

(9) A copy of its latest external audit by an independent certified public accountant; and

(10) A special report, consistent with the reporting requirements of the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations,* including the applicant's sources of funds, expenditures by program service and supporting services with fund-raising and other expenditures listed separately. The report shall cover the most recent fiscal year and present a consolidated statement of national and affiliate income and expenditures. The amount of contributions received from private sector federated groups and federated campaigns, from the Combined Federal Campaign, and the total from all other sources, including transfers, dues, or other funds from affiliated organizations, shall be separately identified and shown. All entries shall be reported both in dollars and in percentage of total contribution. The report shall be furnished in

accordance with the format shown in the appendix to this Section.

(b) *Place of obtaining information and forms and place of filing with the Director.* Information about general eligibility requirements; copies of application forms; lists of addresses of local Federal Coordinating Committees; and other facts about the Combined Federal Campaign may be obtained from; and all documents required by these regulations to be filed with or served upon the Director shall be mailed or delivered to:

National CFC Headquarters, Office of the Assistant to the Deputy Director for Regional Operations, United States Office of Personnel Management, Room 5532, 1900 E Street, NW., Washington, DC 20415.

All documents required by these regulations to be filed with or served upon the local Federal Coordinating Committee shall be delivered to the appropriate local Federal Coordinating Committee, and service upon the Director shall not substitute therefor.

(c) *Applications and Submissions as Public Records.* All applications and related documents submitted to the Director and the local Federal Coordinating Committees in connection with the Combined Federal Campaign shall be available, at reasonable times and places, and in accordance with other rules generally applicable to public records, for public inspection and copying.

(d) *Proceedings Before the Director.* Proceedings before the Director shall be conducted on the basis of the written record furnished by the applicant and by opponents of the application, if any. The applicant shall be given a reasonable opportunity to reply in writing to any submissions in opposition to its application. In his discretion, the Director may give public notice and request public comment upon an application or convene a public hearing thereon.

(e) *Proceedings before local Federal Coordinating Committees.* All proceedings of local Federal Coordinating Committees on consideration of applications for admission to the local Campaign shall be public, with reasonable notice given thereof, and, subject to such fair and uniform rules of procedure as the local Federal Coordinating Committee may adopt, proponents and opponents of every application shall be given an opportunity to be heard thereon.

(f) *Investigations Authorized.* The Director shall be authorized to investigate facts and circumstances relating to questions of eligibility under this Part.

(g) *Forms Prescribed.* The Director may prescribe and publish, through the Federal Personnel Manual System and such other instruments as may be appropriate, such forms and documents as may be necessary and proper.

Appendix A to 5 CFR 950.305—Source of Funds and Cost Report (for the year ending____)

Organization: _____

Public support (dollars)	
Received Directly:	_____
Contributions	
Special Event (net of direct benefit costs of $_____)	
Legacies and bequests	_____
Subtotal	_____
Received Indirectly:	_____
Federated campaigns (e.g., United Way)	_____
Federal service campaigns	_____
Other Contributions	_____
Subtotal	_____
Total Support from the Public	_____
Revenue:	
Grants from Federal government agencies (including grants in-kind)	_____
Grants from state or local government agencies (including Medicaid)	_____
Memberships	_____
Program service fees (including Medicare)	_____
Sales of materials and services to member units (net of direct expenses)	_____
Sales of materials and services to the public (net of direct expenses)	_____
Transfers, dues, etc. from affiliated organizations, etc.	_____
Investment transactions	_____
Gains on investment transactions	_____
Other Income	_____
Total revenue	_____
Total public support and revenue	_____
Expenses	
Program services	
(program)	_____
(program)	_____
(program)	_____
(program)	_____
Subtotal	_____
Supporting services	
Management and general	_____
Fund raising	_____
Subtotal	_____
Total expenses	_____
Excess (deficiency) of public support and revenue over expenses	_____

Appendix B to 5 CFR 950.305—Certificate

Name of Organization _____

I certify that the above-named organization has adopted, and has prepared its financial statements in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* (1974 Edition) prepared and published by the National Health Council, Inc., the National Assembly of National Voluntary Health and Social Welfare Organizations, Inc. and the United Way of America.

Signature: _____
Address: _____
Telephone: _____

§ 950.307 Special rules applicable to the American Red Cross.

In recognition of the unique status conferred by Act of Congress upon the American Red Cross, the American Red Cross shall be, and hereby is, certified as a national federated group. In local communities where the American Red Cross is not a participating member of another federated group, it shall be deemed a separate federated group in the local Campaign. As with all other organizations, in the event that a local American Red Cross chapter chooses not to participate in the CFC, it shall not be authorized to have a separate campaign in local Federal offices or installations during the fiscal year involved, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

§ 950.309 Prohibition of misleading identification.

Solicitation on behalf of a cause, such as "mental health" or "heart disease," shall be prohibited. All solicitation shall be undertaken on behalf of specifically identified organizations. No two organizations with the same name shall be admitted to the same local Campaign; if the parties involved cannot reach agreement on the names that they shall use, respectively, then the local Federal Coordinating Committee may, in its discretion, decide the matter. No organization shall be admitted to the Campaign with a name that is deceptive as to the true nature and activities thereof.

Subpart D—Solicitation and Campaign Materials

§ 950.401 Contributor's information leaflet.

The local Federal Coordinating Committee in each local Campaign shall publish a Contributor's Information Leaflet that shall be fair in its presentation respecting all admitted voluntary agencies; shall be designed to contain or be disseminated as a single package with the Contribution Card; shall be as clear and as readable as

possible; and shall set forth the following information:

(a) A notice as required by the Privacy Act;

(b) A statement that all gifts made through the Combined Federal Campaign must be specifically designated to a particular recipient; that all gifts not otherwise specifically designated to a particular recipient shall be deemed designated to the Principal Combined Fund Organization for the local Campaign, which shall be expressly identified; and that any gift designated to an organization not admitted to the local Campaign shall be returned to the donor;

(c) A statement that the Principal Combined Fund Organization shall remit all designated gifts to their particular recipients, with an approved amount deducted to defray administrative costs and shrinkage, if applicable;

(d) A statement that the Contributor's Information Leaflet is accompanied by a Contribution Card (or "pledge" card), and that gifts can be made through the Combined Federal Campaign only by using an official Contribution Card;

(e) A statement that the donor has the right to make his gift confidentially in a sealed envelope that will be delivered unopened to the headquarters of the Principal Combined Fund Organization and will not be seen by a Federal official;

(f) A statement that a Federal employee may make a gift of a single payment of cash, a gift of periodic payments through the payroll deduction system, or no gift at all; and

(g) A list of the names of all voluntary agencies, including federated groups, admitted to the local Campaign, arrayed as set forth in 5 CFR 950.403, and each accompanied by a description, written by the local Federal Coordinating Committee on the basis of information received from each voluntary agency and not exceeding 30 words in length, of the nature and activities of the voluntary agency and of the uses to which it puts the funds obtained through the Combined Federal Campaign.

§ 950.403 Order of listing of voluntary agencies.

The Contributor's Information Leaflet shall list, in an order to be determined each year by lot by the local Federal Coordinating Committee, the following approved categories of charitable services: Acquisition of knowledge and skills; basic needs and economic opportunity; children and family services; community coordination and referral services; health services/services to handicapped persons; international services; local Federal personnel services; neighborhood services; youth and delinquency prevention services; and specialized and miscellaneous services. Under these rubrics shall be listed, in accordance with their programs and in orders determined each year by lot by the local Federal Coordinating Committee, the names of the voluntary agencies admitted to the local Campaign, accompanied by descriptions, as provided in 5 CFR 950.401, and by unique numbers, all of the same number of digits. The name of each voluntary agency may be followed, at its election, by the initials, set off in parentheses, of the federated group admitted to the local Campaign, if any, with which it is affiliated. These lists shall be followed by a list, under the heading of "Campaign Organizations," of all federated groups admitted to the local Campaign, set out in an order determined each year by lot by the local Federal Coordinating Committee. The names of the federated groups shall also be accompanied by descriptions and numbers, and the numbers assigned to federated groups shall be keyed in some recognizable way, such as by the first digit of a three-digit number, to the numbers assigned to all the individual voluntary agencies admitted to the local Campaign that are affiliated with the federated group.

§ 950.405 Other campaign publicity materials.

In accordance with the provisions of this Part, and under the guidance issued from time to time by the Director, local Federal Coordinating Committees may prepare, for use in their respective local Campaigns, other Campaign publicity materials. No such materials shall unfairly advantage or disadvantage any voluntary agency or category of voluntary agencies admitted to the Campaign. All such materials should be produced in consultation with the leaders of interested federated groups and voluntary agencies. No such materials may be used in connection with a local Campaign without the prior approval of the local Federal Coordinating Committee. All materials prepared for national distribution and use in connection with the Combined Federal Campaign shall be subject to review and approval by the Director, and no such material shall be used without the prior approval of the Director.

§ 950.407 Coincident non-campaign activities.

During the time when the local Campaign is underway, voluntary agencies should not make unusual or unfair displays of activity in the Federal workplace. Customary, bona fide, health and welfare services rendered by voluntary agencies in the Federal workplace may certainly continue, but they should not be enhanced or emphasized for purposes of gaining an advantage in the Campaign. All such activities should be coordinated with occupational health officials or similar such officials, and should not, in any way, be conducted by or with keyworkers, solicitors, and similar functionaries of the Combined Fedeal Campaign.

Subpart E—Contributions, Distributions, and Accounting

§ 950.501 Designation of contributions.

All contributions made through the Combined Federal Campaign shall be specifically designated to a particular recipient. Any gift not otherwise specifically designated to a particular recipient shall be deemed designated to the Principal Combined Fund Organization for the local Campaign. Any contribution designated to an organization not admitted to the local Campaign shall be returned to the donor.

§ 950.503 Privacy of contributions.

A donor shall not be required to disclose to coworkers the amount or the recipients of his contributions. If a donor so desires, his contribution, including his Contribution Card, shall be placed in a sealed envelope and transmitted unopened to the Principal Combined Fund Organization, which shall open and process the gift without disclosing the same to any Federal officials, save a payroll office if such disclosure is required by the donor's election of a gift by means of payroll deduction.

§ 950.505 Election as to means of giving.

Each donor shall have a choice among giving by means of a one-time payment by check or with cash, giving through the payroll deduction system, or not giving at all.

§ 950.507 Contribution card.

(a) *Purpose and prescription of form.* Each local Federal Coordinating Committee shall publish a Contribution Card for the local Campaign, using such form as the Director may, from time to time, prescribe. The Contribution Card shall be the sole valid means of conveying the donor's instructions to the Central Receipt and Accounting Point, the Principal Combined Fund Organization, and the relevant payroll office. The Contribution Card shall be designated to furnish an automatic copy

of the record of the transaction to the employee, and shall further be designed to foil attempts at fraudulent alteration of the donor's actions or at frustrating his intentions.

(b) *Contents.* The Contribution Card shall contain, at a minimum, three boxes on which a donor may record designated gifts, and shall state on its face, and on every copy thereof, in a typeface and a color of ink that are both distinctive, that all gifts not otherwise specifically designated to a particular recipient shall be deemed designated to the Principal Combined Fund Organization for the local Campaign. It shall set forth the name and mailing address of the organizations centrally receiving and accounting for local Campaign contributions. It shall clearly identify the year of the Campaign and the community in which it is conducted (*e.g.*, "1985 Chicago Combined Federal Campaign"). It may contain a box for notation of the donor's social security number, employee number, or other similar identification number.

(c) *Copies.* The Contribution Card shall be designed to provide an original and two duplicate copies. In the event that the donor effects a pledge for payment through payroll deduction, the original card shall be transmitted to the donor's payroll office. In all cases the first duplicate copy shall be transmitted to the organization centrally receiving and accounting for contributions and the second duplicate copy shall be retained by the donor and shall constitute a receipt for the donor's gift.

§ 950.509 Central receipt and accounting for contributions.

(a) The Principal Combined Fund Organization shall receive and account for all contributions. It may arrange for an appropriate financial institution to provide such service on its behalf, under the direction of the local Federal Coordinating Committee. Any fees charged by such institution for its services shall be the responsibility of the Principal Combined Fund Organization and shall be included in the latter organization's administrative costs.

(b) The Principal Combined Fund Organization shall tabulate all contributions designated to specified agencies on the contribution cards and then tabulate the contributions designated to the Principal Combined Fund Organization. The amounts payable to the specified voluntary agencies are subject to deductions for (1) shrinkage (*i.e.*, contributions pledged but not received) and (2) the approved fee, if any, for *pro rata* reimbursement of administrative costs to the Principal Combined Fund Organization.

(c) The Principal Combined Fund Organization shall provide for an audit by a certified public accountant of the local Campaign in the event that its receipts exceed the sum of $100,000. Copies of the audit report shall be submitted to the members of the local Federal Coordinating Committee, transmitted to the Director, and made available at reasonable times and places for inspection by the public.

(d) In addition to the usual method of cash contribution and direct payment of pledges, the use of voluntary payroll withholding shall be authorized for members of the uniformed services and civilian personnel at CFC locations. Any other form of collection of pledges, including the collection of installment pledges by keyworkers, shall be prohibited.

§ 950.511 Payroll withholding.

The provisions of this section are intended to be consistent, and shall be read in conjunction, with the regulations prescribed by the Office of Personnel Management governing Pay Administration, codified at 5 CFR Part 550.

(a) *Applicability.* Federal departments and agencies shall authorize voluntary payroll allotments for payment of charitable contributions to local Combined Federal Campaigns.

(b) *Allotters.* The allotment privilege shall be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment shall be eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a Combined Federal Campaign when an appropriate official of the employing Federal agency determines that the employee will continue his employment for a period sufficient to justify an allotment. (This includes part-time and intermittent employees who are regularly employed.)

(2) Members of the uniformed services shall be eligible, excluding those on only short-term assignment (less than 3 months).

(c) *Authorization.* (1) Allotments shall be wholly voluntary and shall based upon contributors' individual written authorizations.

(2) Authorization forms in standard format shall be printed by the Principal Combined Fund Organization at each location. The forms and other campaign materials shall be distributed to employees when contributions are solicited.

(3) Completed authorization forms should be transmitted to the contributors' servicing payroll offices as promptly as possible, preferably by December 15 of each year. Forms received thereafter shall nonetheless be accepted and processed by payroll offices.

(d) *Duration.* Authorizations shall be in the form of a term allotment for one full year, starting with the first pay period beginning in January and ending with the last pay period that begins in December. The fact that an employee or military member will not be on duty for the full year should not preclude acceptance of a payroll allotment if he has sufficient time in service remaining to make administration of the allotment practicable.

(e) *Amount.* (1) Allotters shall make a single allotment, which shall be apportioned into equal amounts for deductions during each pay period in the year.

(2) The minimum amount for allotment shall be determined by the local Federal Coordinating Committee, but shall be not less than $1.00 bi-weekly or $2.00 monthly.

(3) No change of allotment shall be authorized during the term of an allotment.

(4) No deduction shall be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustment shall be made in subsequent periods to make up for deductions missed.

(f) *Remittance.* (1) One check shall be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the organization centrally receiving and accounting for contributions to the local CFC.

(2) Each check shall be accompanied by a statement identifying the agency and the number of employee deductions, but no individual allotter, including an allotter discontinuing an allotment, shall be identified.

(g) *Discontinuance.* (1) Allotments shall be discontinued automatically:

(i) On expiration of the one-year withholding period; or

(ii) On death, retirement, or separation of the allotter from the Federal service.

(2) The allotter may revoke his authorization at any time by requesting it in writing from the payroll office. Discontinuance shall be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment shall not be reinstated.

(h) *Transfer.* (1) When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different department or agency, his allotment authorization shall be transferred to the new payroll office.

(2) When there is a delay in receiving the transferred authorizaton in the new payroll office, or when the allotter moves to a location covered by another CFC, the allotter shall be permitted to complete a new authorization for the remainder of the one-year withholding period, which will supersede and revoke his previous authorization.

(3) When the allotter moves to a duty station not included in a CFC, the allotment shall automatically be terminated unless expressly continued by the individual.

(i) *Accounting.* (1) Federal payroll offices shall oversee establishment of individual allotment accounts, deductions each pay period, and reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office shall be responsible for the accurancy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The Principal Combined Fund Organization shall be responsible for the accuracy of transmittal of contributions.

(i) It shall transmit at least monthly for campaigns of $100,000 or more, or quarterly if less than that amount, less only the shrinkage factor and approved fee for defrayal of administrative costs.

(ii) It shall remit contributions, less approved administrative costs and shrinkage, to each agency or to the federated group, if any, of which the agency is a member, if all member agencies of that federated group that participate in the local Campaign agree.

(iii) It shall notify the federated groups, as soon as practicable after the completion of the campaign (but in no case more than 60 days thereafter), of the amounts, if any, designated to them and their member agencies and of the amounts of deemed-designated contributions, if any, allocated to them and their member agencies.

(3) Federated and national voluntary agencies, or their designated agents, shall be responsible for:

(i) The accuracy of distribution among the voluntary agencies of remittances from the Principal Combined Fund Organization; and

(ii) Arrangements for independent audit agreed upon by the participating voluntary agencies.

U.S. Office of Personnel Management.
Constance Horner,
Director.
[FR Doc. 85–20054 Filed 8–21–85; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

Spearmint Oil Produced in the Far West; Suspension of Prescribed Date for Producers To Apply for Additional Allotment Bases

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking invites comments on suspending § 985.53(d)(2) of the marketing order for spearmint oil produced in the Far West. These provisions require producers to file applications for additional allotment base with the Spearmint Oil Administrative Committee on or before December 1 of the marketing year preceding the marketing year for which the additional allotment bases will be made available. The Committee has found it necessary to issue additional allotment bases earlier than December 1 to give producers receiving the allotment bases sufficient time to plan their cultural practices. The intent of the proposed suspension is to allow the Committee to administer the order in a more effective manner by completing the application and allotment base issuance process earlier than December 1 of each year. This action was recommended by the Committee, which works with USDA in administering the marketing order. This proposed suspension also necessitates conforming changes in § 985.153(b) of the Subpart—Administrative Rules and Regulations.

DATE: Comments must be received by September 13, 1985.

ADDRESSES: Send two copies of comments to the Office of the Docket Clerk, Room 2069, South Building, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250. Comments should reference the date and page of this issue of the **Federal Register** and will be available for public inspection in the office of the docket clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This proposed action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and § 985.72 of the Order. It would suspend § 985.53(d)(2) of Marketing Order No. 985 (7 CFR Part 985) regulating the handling of spearmint oil produced in the Farm West. Section 985.53(d)(2) requires new and existing producers desiring additional allotment base to file applications with the Spearmint Oil Administrative Committee on or before December 1 of the marketing year preceding the year for which the base could be used. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Also proposed in this action are changes in § 985.153 of Subpart—Administrative Rules and Regulations (7 CFR Part 985.104–985.156). Section 985.153 is effective pursuant to § 985.53 of the order and contains procedures used in determining the distribution of additional allotment bases. The proposed changes are necessary to reflect the suspension of § 985.53(d)(2) and to remove obsolete provisions in that section.

As provided in the order, since 1982–83, the Committee has been making additional allotment bases available to new and existing growers in an amount not to exceed one percent of the total of all allotment bases for each class of oil (Class 1–Scotch Spearmint Oil; Class 3–Native Spearmint Oil). Fifty percent must be made available to new growers and the remaining 50 percent must be made available to existing growers.

Spearmint roots are normally planted in early spring. However, in some areas, the crop performs better if planted in the fall. Both fall and spring planted crops are harvested the following summer. In recognition of the fact that some growers plant spearmint roots in the fall of each year, and to give other growers enough time to make planting decisions, the Committee, since 1982, has been accepting applications, and issuing

additional allotment bases, as early as September even though the order provides for the receipt of applications as late as December 1.

However, if a producer filed an application by December 1 it would have to be considered under the current provisions even though the base had already been issued. Because the amount of base available for distribution is limited by the order, the Committee would have to repeat the additional allotment base distribution procedures. That would result in wasted time and expense but more importantly it would be inequitable to those producers who planted spearmint roots in the fall based on the earlier issuance because they would not be assured of receiving additional base when the procedures were repeated.

The proposed suspension of § 985.53(d)(2) would allow the committee to administer the order more effectively and would allow completion of the application and allotment issuance process earlier than December. Thus, the administrative problems that accompany the existing application deadline of December 1 would be avoided.

As mentioned earlier, several changes are necessary in § 985.153 in recognition of the suspension of § 985.53(d)(2), and because several provisions in § 985.153 are now obsolete. Consistent with § 985.53(d)(2), § 985.153(b) requires that requests for additional allotment base be made to the Committee by December 1 prior to the marketing year for which such base will be made available. Because a date earlier than December 1 is more desirable as far as spearmint oil producers are concerned and § 985.53(d)(2) is to be suspended, that date should be removed from paragraph (b) and the phrase "by a date specified by the Committee" should be inserted in its place. In addition, this change will recognize current industry practices and give the Committee more flexibility to handle changes which may occur in the future. Paragraph (b) also includes an obsolete proviso dealing with 1982–83 marketing year additional allotment base applications, and that proviso is proposed to be removed.

In additional, § 985.153(c)(2)(i) includes provisions for bringing the allotment bases of existing producers which were less than economic enterprises when the order was established in 1980 up to economic levels during the 1982–83, 1983–84, and 1984–85, marketing years. These provisions are obsolete and are proposed to be deleted.

List of Subjects in 7 CFR Part 985

Marketing agreements and orders; and Spearmint oil.

The proposal is as follows:

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C 601–674

§ 985.53 [Amended]

2. Section 985.53(d)(2) of Part 985 is suspended.

3. Section 985.153 of Subpart—Administrative Rules and Regulations (7 CFT Part 985.156) is amended by revising paragraph (b), removing paragraph (c)(2)(i), and redesignating paragraph (c)(2)(ii) as paragraph (c)(2) to read as follows:

§ 985.153 Issuance of additional allotment base to new and existing producers.

* * * * *

(b) *Requests.* Any new or existing producer desiring additional allotment base for any class of oil made available by the Committee pursuant to § 985.53(d)(1) shall request such base by a date specificed by the Committee prior to the marketing year for which such base will be made available.

(c) * * *

(1) * * *

(2) *Existing producers.* Each existing producer of a class of spearmint oil who requests additional allotment base and has the ability to produce additional quantities of that class of spearmint oil shall be elibible to receive a share of the additional allotment base for that class of oil. Additional allotment base to be issued by the Committee for a class of oil shall be distributed equally among the eligible producers for the class. The Committee shall immediately notify each producer who is to receive additional allotment base by issuing that producer an allotment base in the appropriate.

* * * * *

Dated: August 16, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–20050 Filed 8–21–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Proposed Suspension of a Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of a rule.

SUMMARY: This notice invites written comments on a proposal to continue a suspension of certain standards for regulating plants that are operated by cooperative associations under the Southwest Plains order. The proposed action for September 1985 through February 1986 would continue a prior suspension that removed the requirement that certain plants operated by cooperative associations need to be located in the marketing area or a county adjacent to the marketing area to be eligible for regulation under the order. The continuing action was requested by Mid-America Dairymen, Inc. (Mid-Am) a cooperative association that operates supply plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri that became regulated under the Southwest Plains order when the adjacent St. Louis-Ozarks order was terminated on April 1, 1985. The cooperative association contends that without the suspension costly and inefficient movements of milk would have to be made solely for the purpose of assuring that dairy farmers, who supply the fluid milk needs of southwest Missouri plants, will have their milk priced and pooled under the order.

DATE: Comments are due not later than August 29, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of September 1985 through February 1986.

In § 1106.7(c) the words "located in the marketing area or in a county adjacent to the marketing area".

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the Federal Register. The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures to include the month of September 1985 in the suspension period.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The order provides for the pooling of cooperative association plants that are located in the marketing area or a county adjacent to the marketing area if 50 percent or more of the cooperative's producer milk is physically received at distributing plants. The proposed suspension, for September 1985–February 1986, would continue a current suspension that removed the location requirement as a basis for pooling eligibility for plants operated by a cooperative association during the months of April-August 1985.

Continuation of the suspension was requested by Mid-America Dairymen, Inc. (Mid.Am), a cooperative association that operates plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri. The distributing plants in this area, and the supplies of producer milk associated with such plants, became associated with the Southwest Plains order when the adjacent St. Louis-Ozarks order was terminated on April 1, 1985. Mid-Am states that supplemental milk has historically been furnished to these distributing plants from Mid-Am's supply plants located in southwest Missouri.

Mid-Am contends that during the upcoming fall and winter months there will be a sufficient supply of milk available to furnish the fluid milk needs of the distributing plants on a direct-shipped basis. Since most of southwest Missouri is outside the Southwest Plains marketing area, Mid-Am contends that it would not be able to utilize the provisions for pooling a cooperative association plant under the order on the basis of direct farm to distributing plant shipments of milk. Thus, Mid-Am contends that absent a continuation of the suspension, costly and inefficient movements of milk would have to be made solely for the purpose of assuring that dairy farmers, who constitute the source of supply for distributing plants in southwest Missouri, will continue to have their milk pooled and priced under the order.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674).

Signed at Washington, D.C. on: August 16, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–20130 Filed 8–21–85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Proposed Temporary Revision of a Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of a rule.

SUMMARY: This notice invites written comments on a proposal to continue a reduction of a pooling standard in the Southwest Plains Federal milk order. The proposed action would reduce through February 1986 the percentage of milk marketed by cooperative associations that must be physically received at pool distributing plants during each month in order for plants operated by cooperative associations to qualify for pool status. The action was requested by Mid-America Dairymen, Inc., a cooperative association that operates plants and represents producers who supply milk to the market, in order to prevent uneconomic movements of milk.

DATE: Comments are due not later than August 28, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1106.7(d) of the order, the revision of a certain pooling provision of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for extension through February 1986.

All persons who desire to submit written data, views or arguments in connection with the proposed revision should send two copies of such material to Dairy Division, AMS, Room 2968, South Building, United States Department of Agriculture, Washington, DC 20250, not later than 7 days after publication of this notice in the Federal Register. The period for filing views is limited because a longer period would not provide the time needed to complete the required procedures and include September 1985 is the revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hour (7 CFR 1.27(b)).

Statement of Consideration

The pooling provision proposed to be revised during September 1985 through February 1986 is the delivery percentage applicable to milk marketed by cooperative associations that is set forth in § 1106.7(c). The revision would reduce the percentage of milk marketed by a cooperative association that must be physically received at pool distributing plants during the month by 10 percentage points, from the present 50 percent to 40 percent, for plants operated by cooperative associations to qualify for pool status under the order. Section 1106.7(d) of the Southwest Plains milk order provides that the Director of the Dairy Division may increase or decrease the delivery percentage by up to 10 percentage points to obtain needed shipments or to prevent uneconomic shipments of milk. Due to significant changes in the market environment as a result of the termination of the St. Louis-Ozarks

order, the delivery percentage was reduced by 10 percentage points, from 50 to 40 percent, during the months of May through August 1985.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association which represents producers supplying the Southwest Plains market, has requested that the lower 40 percent pooling standard be continue during the months of September 1985 through February 1986, Mid-Am contends that a continuing application of the lower delivery percentage is needed to accommodate the efficient pooling of milk supplies associated with the market. Because of recent changes in the market's structure, Mid-Am contends that a return to the higher 50 percent standard on September 1 would require a greater amount of milk to be physically received at distributing plants than is necessary to meet the fluid milk needs of the market. Thus, Mid-Am contends that without the lower delivery percentage during the upcoming months of September 1985 through February 1986, costly and inefficient movements of milk would have to be made solely for the purpose of pooling the milk of dairy farmers who supply the market.

Therefore, it may be appropriate to reduce the aforementioned provision of § 1106.7(c) by 10 percentage points for the months of September 1985 through February 1986 to prevent uneconomic shipment of milk.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

PART 1106—[AMENDED]

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

Signed at Washington, DC, on: August 16, 1985.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 85–19869 Filed 8–21–85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Notice of Proposed Suspension of Certain Provisons of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Eastern Colorado Federal Milk order for the months of September through December 1985. Provisions proposed to be suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also proposed to be suspended for the same period is the limit on the period of automatic pool plant status for a supply plan which met pool shipping standards during the previous September through February. A third provison that is proposed to be suspended is the "touch-base" requirement that each producers' milk be received at least three times each month at a pool distributing plant. Suspension of the provisons was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due no later than August 29, 1985.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Room 2968, South Building: U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC. 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is herby given that, pursuant to the provions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisons of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered for September through December 1985:

1. In the second sentence of $1137.7(b), the words "of March through August".

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

3. In the second sentence of § 1137.12(a)(1), the words "20 percent", "of", and "distributing".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1985 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. The suspension would relax for September through December 1985 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and remove the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month. The suspension would also remove the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through Febraury.

The order now provides that a cooperative may divert a quantity of milk not in excess of 20 percent of the cooperative association's member milk received at pool distributing plants. Suspension of the requested language would allow up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

Mid-Am states that 1985 producer receipts pooled under the Eastern Colorado order increased 12.2 percent, 20.5 percent and 15.5 percent in April, May and June, respectively, over the same months of the previous year. At the same time, the cooperative states, producer milk in Class I has risen only slightly. Mid-Am estimates that approximately 100 loads of producer milk per month will have to be shipped from the Denver area to surplus outlets in Eastern Kansas and Nebraska during the September through December period. For the same period, the cooperative estimates that it would have to make approximately 40 shipments of milk per month from farms in Kansas and Nebraska to Eastern Colorado pool

distributing plants in order to qualify Mid-Am producers for continued pool status. The cooperative states that these shipments would displace Denver area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested suspension the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, D.C., on August 19, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–20129 Filed 8–21–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[LR–119–83]

Excise Taxes on Gasohol and Other Alcohol Mixture Fuels, Tires, Tread Rubber, and Inner Tubes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the excise tax on gasohol and other alcohol mixture fuels. This document also contains proposed regulations relating to the rate of excise tax on tires, tread rubber, and inner tubes. Changes to the applicable regulations relating to gasohol and other alcohol mixture fuels and tires are necessary due to amendments made by the Highway Revenue Act of 1982 and the Tax Reform Act of 1984. These regulations would provide necessary guidance to Internal Revenue Service personnel who administer the Code and members of the public who are subject to these laws.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 21, 1985. The regulations relating to alcohol fuels are proposed to be effective generally for sales or uses made on and after April 1, 1983. The regulations relating to tires are proposed to be effective for sales or uses on and after January 1, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–119–83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Margaret M. O'Connor of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Excise Tax Regulations (26 CFR Part 48) under sections 4041, 4071, 4081, 6420 and 6427 of the Internal Revenue Code of 1954 (Code) and are issued under the authority contained in sections 511(d)(1)(A) and 511(d)(2) of the Highway Revenue Act of 1982 (1982 Act) (Pub. L. 97–424, 96 Stat. 2171) and sections 732(a)(1), 912(a) and 912(b) of the Tax Reform Act of 1984 (1984 Act) (Pub. L. 98–369, 98 Stat. 976 and 1007). The amendments are proposed to conform the regulations to sections 511 (b), (d), (e), (f) and 514 of the 1982 Act and sections 732(a), 912(a), 912(b), 912(d), 912(f) and 913 of the 1984 Act.

Taxation of Qualifying Alcohol Mixture Fuels

In General

Prior to the passage of the 1982 Act, certain qualifying alcohol mixture fuels under section 4041(k) and section 4081(c) were entirely exempt from the tax imposed by sections 4041(a), relating to special fuels, and 4081(a), relating to gasoline. Sales of gasoline in order to produce a qualifying alcohol mixture fuel were also exempt from tax under section 4081(c). To qualify for the exemptions under either section 4041(k) or 4081(c), the alcohol mixture fuel was required to contain at least 10% alcohol by volume.

Under the 1982 Act, the tax on diesel fuel, special fuel and gasoline was increased from 4 cents per gallon to 9 cents per gallon. In addition, the 1982 Act eliminated the complete exemption for sales and uses of qualifying alcohol mixture fuels so that gasohol and alcohol mixture fuels sold or used after March 31, 1983, are taxed at a reduced rate. The 1984 Act, effective for sales or uses after December 31, 1984, amended the reduced rate of tax on gasohol and alcohol mixture fuels produced from special fuels to 3 cents per gallon and changed the rate of tax on alcohol mixture fuels produced from diesel fuels to 9 cents per gallon. These amendments increased the differential in tax rate between the qualifying alcohol mixture fuels and the fuels not containing the required mixture of alcohol to six cents per gallon. The proposed regulations clarify that the tax on qualifying alcohol mixture fuels is assessed upon the total volume of the mixture and not merely upon the nonalcohol content of mixture.

Under technical amendments made by the 1984 Act (effective as if included in the 1982 Act), section 4081(c) also provides that gasoline sold for blending into gasohol is subject to a tax of 4⅘ cents per gallon of gasoline. By applying this rate of tax, the total tax upon the sale of gasoline to be blended into gasohol is equivalent to the total tax of 4 cents per gallon which otherwise would be imposed upon the sale of the gasohol ultimately produced, assuming the gasohol contains 10% alcohol by volume. In this way, if tax has been paid upon the gasoline sold for blending into gasohol, no further tax will be imposed upon the subsequent sale or use of the gasohol produced. The 1984 Act decreased the tax upon gasoline sold for blending into gasohol to 3⅕ cents per gallon for sales after December 31, 1984, to conform this tax rate with the reduction in the rate of tax on gasohol.

Under the proposed regulations a producer of gasohol qualifies as a producer as defined in section 4082 of the Code and may register as such. If the producer is registered, the sale of gasoline to such producer of gasohol may be tax free under the rules of section 4083. If the sale of gasoline is tax free due to the application of section 4083, the tax will be imposed at the applicable rate upon the gasohol produced.

The proposed regulations specify that in order to determine whether the alcohol mixture contains at least 10% alcohol, the volume of each component in the fuel will be adjusted to its volume at a standard temperature of 60° Fahrenheit. This uniform temperature is necessary in order to take into account changes in volume and density of motor fuels and alcohol which occur with changes in temperatures. Such changes occur at different rates and at different temperatures for different fuels. Consequently, if temperature is not standardized, variations can occur in the percentage physical makeup of alcohol mixtures with identical mixture ratios, due to differences in the temperatures of the components.

Separation of or Failure to Blend Qualifying Alcohol Mixture Fuel

The 1982 Act and the 1984 Act also amended provisions regarding the tax consequences of separating the non-alcohol components of a qualifying alcohol mixture fuel or failing to blend gasoline into alcohol. Under prior law, if the sale of a qualifying alcohol mixture was tax free under section 4041, separation of the liquid fuel would be treated as a sale subject to the 4 cents per gallon tax imposed on fuels not containing the required alcohol mixture. In addition if the sale of a qualifying mixture of alcohol and gasoline or the sale of gasoline for use in producing a qualifying mixture had been tax free under section 4081(c), the person who separated the gasoline from the gasohol or failed to blend the gasoline into gasohol would be considered the producer of such gasoline and would be subject to a tax of 4 cents per gallon upon its sale. In order to conform these provisions with the changes in the taxation of alcohol mixture fuels, the 1982 Act provides that the separation of the special fuel or diesel fuel from a qualifying mixture is treated as a sale subject to the applicable tax imposed upon the type of fuel which has been separated, reduced by any tax previously paid on the fuel. Thus, if special fuel has been separated from an alcohol mixture, it is subject to a 9 cents per gallon tax reduced by the tax paid on the mixture. If diesel fuel has been separated from an alcohol mixture before August 1, 1984, it is subject to a 9 cents per gallon tax reduced by the tax previously paid. If diesel fuel has been separated after July 31, 1984, it is subject to a 15 cents per gallon tax, reduced by the tax previously paid.

The proposed regulations also provide that a person who separates or fails to blend gasoline into a qualifying mixture will be considered a producer subject to, upon the sale of the gasoline, a tax of 9 cents per gallon if the mixture or gasoline had been purchased tax-free, 4⅝ cents per gallon if the mixture or gasoline had been purchased at the reduced rate of tax in effect before January 1, 1985, or 5⅔ cents per gallon if the mixture had been purchased at the reduced rate of tax in effect after December 31, 1984.

Credits and Refunds

The 1982 Act and the 1984 Act also revised section 6427(f), which relates to refunds or credits available to gasohol producers where the gasoline used to produce gasohol had been previously taxed at the higher rates imposed by section 4081(a). Under prior law, the gasohol producer was entitled to a full refund or credit. Under both the 1982 Act and the 1984 Act and the proposed regulations, the refund or credit is equal to the excess of the tax paid upon the sale of gasoline over the tax which would have been paid on gasoline sold in order to produce gasohol. Thus, under the 1982 Act, if a blender purchases tax-paid gasoline subject to tax at a rate of 9 cents per gallon and uses it to blend qualifying gasohol, then the blender will be entitled to a credit of 4⅝ cents per gallon of gasoline so used upon the sale of the gasohol or its use in the trade or business of the blender before January 1, 1985. Under the 1984 Act, if the mixture produced from gasoline taxed at a rate of 9 cents per gallon is sold or used in the blender's trade or business after December 31, 1984, the blender is entitled to a credit of 5⅔ cents per gallon of gasoline so used.

Exemptions From Fuel Tax

The 1982 Act also extended the refund provisions previously available to the ultimate purchaser for fuel used by aerial applicators for farming purposes under sections 6420 and 6427 to other applicators as well. Thus, under the proposed regulations, the ultimate purchaser of fuel who uses such fuel in the aerial application or other application of fertilizers, herbicides, pesticides, and other farm processes is entitled to a refund of the tax paid on the motor fuels.

A new exemption from all the fuel taxes was also created by the 1982 Act under section 4041(b)(2) for sales and uses of fuels consisting of at least 85% methanol, ethanol or other alcohols derived from sources other than petroleum or natural gas. The exemption is effective for sales and uses after March 31, 1984. The proposed regulations explain this new exemption and provide standards for qualification for this exemption.

A partial exemption from fuel tax was added by section 913(a) of the 1984 Act. Under section 4041(m) sales and uses of fuels consisting of at least 85% methanol, ethanol or other alcohols produced from natural gas will be taxed at a reduced rate of 4½ cents per gallon. This partial exemption is effective for sales and uses after July 31, 1984. Because these fuels are produced from natural gas, they do not qualify for the full exemption under section 4041(b)(2). Prior to the amendment made by the 1984 Act, such fuels were taxed at the rates imposed by section 4041(a) relating to diesel and special motor fuels or 4081(a) relating to gasoline.

Manufacturer's Tax on Tires

These proposed regulations update the tax rate tables applicable to tires sold after December 31, 1983, and conform the regulations to section 514(a) of the 1982 Act which repealed the tax on nonhighway tires, laminated tires, inner tubes and tread rubber, effective January 1, 1984. The proposed regulations also provide that the determination of the weight of tires for purposes of the excise tax may be based upon averages computed by any method approved by the Commissioner rather than solely by averages published by the tire industry. See existing § 48.4071-2(b).

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20303. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Margaret M. O'Connor of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR Part 48

Agriculture, Arms and Ammunitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods and tires.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 48 are as follows:

PART 48—[AMENDED]

Paragraph 1. The authority for Part 48 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 48.4041–18 also issued under 26 U.S.C. 4041(k)(1); § 48.4041–2 also issued under 26 U.S.C. 4081(c)(1). * * *

Par. 2. Section 48.4041–14 is redesignated as § 48.4041–18 and revised to read as set forth below.

§ 48.4041–18 Fuels containing alcohol.

(a) *In general*—(1) *Sale or use after December 31, 1984 and before January 1, 1993.* Under section 4041(k) the rate of tax applicable to the sale or use after December 31, 1984 and before January 1, 1993, of any liquid fuel described in section 4041(a) (1) or (2) which consists of at least 10% alcohol by volume is:

(i) 9 cents for each gallon of alcohol mixture sold or used in the case of mixtures described in section 4041(a)(1); or

(ii) 3 cents for each gallon of alcohol mixture sold or used in the case of mixtures described in section 4041(a)(2).

The amount of tax is based upon the total volume of fuel and not merely upon the volume of the nonalcohol components of such fuel. However, see section 4041(b)(2) and § 48.4041–19 for rules relating to the complete exemption from taxes imposed by section 4041(a) where at least 85% of the fuel consists of alcohol produced from certain sources.

(2) *Sale or use after March 31, 1983, and before January 1, 1984.* For rules relating to the rate of tax imposed on the sale or use after March 31, 1983, and before January 1, 1984 of any liquid fuel described in section 4041(a) (1) or (2) which consists of at least 10% alcohol by volume, see section 4041(k) prior to the enactment of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 1007).

(3) *Sale or use before April 1, 1983.* No tax is imposed upon the sale or use of any liquid fuel described in section 4041 (a)(1) or (a)(2) which consists of at least 10% alcohol if the sale or use occurs after December 31, 1978 and before April 1, 1983.

(b) *Alcohol mixture fuels qualifying for special tax treatment.* In order to qualify for the reduced rates of tax described in paragraphs (a)(1) and (a)(2) of this section or the exemption from tax described in paragraph (a)(3) of this section, at least 10% of an alcohol mixture fuel must consist of alcohol as defined in section 4081(c) and § 48.4081–2(a)(3) of the regulations. To determine the percentage of alcohol present in a fuel, the actual gallonage of each chemical component will be adjusted to equivalent gallonage at 60° Fahrenheit.

(c) *Later separation.* If a person separates out the alcohol from a mixture which has been taxed under the rates of section 4041(k), such separation will be treated as a sale of the liquid on the date separated and is subject to tax at the rates set forth under section 4041(a) (1) or (2). The tax liability incurred upon the separation is reduced by the amount of any tax previously imposed under section 4041. Thus, if Y buys 1000 gallons of alcohol mixture fuel taxed at the rate of 3 cents per gallon under section 4041(k) and later separates the fuel into 900 gallons of special motor fuel and 100 gallons of alcohol, the separation is treated as a sale of 900 gallons of special motor fuel, taxed at the rate of 9 cents per gallon under section 4041(a), and a sale of 100 gallons of alcohol, exempt from tax under section 4041(b)(2). The tax of $81 on the deemed sale of special motor fuel is reduced by the tax of $30 previously paid on the sale of the alcohol mixture fuel.

(d) *Exemption from tax for alcohol mixture fuels sold or used in an aircraft in noncommercial aviation*—(1) *In general.* No tax is imposed upon the sale or use of any liquid fuel described in section 4041 (a)(1) or (a)(2) which consists of at least 10% alcohol if such fuel is sold to or used by an owner, lessee or other operator of an aircraft as fuel in such aircraft in noncommercial aviation. See section 4041(c)(4) and the regulations thereunder for the definition of noncommercial aviation.

(2) *Failure to use alcohol mixture fuel in an aircraft in noncommercial aviation.* If fuel which is exempt from tax under paragraph (d)(1) of this section is not used as fuel in an aircraft in noncommercial aviation, any other use or sale of such fuel will be considered the use or sale of an alcohol mixture fuel subject to tax according to the rules of this section.

(e) *Refunds relating to diesel, special motor and noncommercial aviation fuels.* See section 6427 for rules which relate to the allowance of a refund or credit to a person who uses tax-paid diesel, special motor or noncommercial aviation fuels to produce an alcohol mixture fuel.

(f) *Alcohol mixture fuel within the tank of a vehicle*—(1) *Mixtures within the tank of a vehicle before April 1, 1983.* If an alcohol mixture fuel is put into the tank of a vehicle prior to April 1, 1983, the fuel is considered used prior to that date. Thus, such fuel will not be subject to the tax described in paragraph (a)(2) of this section and will be exempt from tax according to the provision of paragraph (a)(3) of this section.

(2) *Mixture within the tank of a vehicle before January 1, 1985.* If an alcohol mixture is put into the tank of a vehicle prior to January 1, 1985, the fuel is considered used prior to that date. Thus, such fuel is subject to the tax described in paragraph (a)(2) of this section.

Par. 3. A new § 48.4041–19 is added to read as set forth below.

§ 48.4041–19 Exemption for qualified methanol and ethanol fuel.

(a) *In general.* Under section 4041(b)(2), the tax imposed upon the sale or use of motor fuels under section 4041(a) does not apply to the sale or use of qualified methanol or ethanol fuel.

(b) *Qualified methanol or ethanol fuel defined.* For purposes of section 4041(b)(2) and this section, qualified methanol or ethanol fuel is liquid motor fuel, 85% of the volume of which consists of alcohol, as defined in section 4081(c) and § 48.4081–2(a)(3) of the regulations as modified by the following sentence. For purposes of section 4041(b)(2) and this section, the alcohol contained in a qualified methanol or ethanol fuel may be produced from coal. In determining whether the 85 percent alcohol requirement has been met with respect to a mixture, the actual gallonage of each chemical component will be adjusted to equivalent gallonage at 60° Fahrenheit.

(c) *Refunds relating to fuels used to produce qualified fuels.* See section 6427 for rule which relate to the allowance of a refund or credit to a person who uses tax-paid diesel, special motor or noncommercial aviation fuels to produce a qualified methanol or ethanol fuel and section 6416 for rules which relate to the allowance of a refund or credit to a

person who uses tax-paid gasoline to produce a qualified methanol or ethanol fuel.

(d) *Later blending.* If a qualified methanol or ethanol fuel is blended with other motor fuel in a mixture less than 85 percent of which consists of alcohol, the subsequent sale or use of such alcohol mixture fuel is taxable under the provisions of section 4041 or section 4081 subject to the requirements, limitations and exemptions of those sections. Thus, if the alcohol mixture fuel is at least 10% alcohol by volume, sale or use of the fuel is taxed at the rates provided in section 4041(k) or section 4081(c), but if the fuel is less than 10% alcohol, sale or use of the fuel is taxed at the rates provided in section 4041(a) or section 4081(a).

(e) *Effective date.* Section 4041(b)(2) applies to sales or uses after March 31, 1983, and before October 1, 1988.

Par. 4. A new § 48.4041–20 is added to read as set forth below.

§ 48.4041–20 Partially exempt methanol and ethanol fuel.

(a) *In general.* Under section 4041(m), the sale or use of partially exempt methanol or ethanol fuel is taxed at the rate of 4½ cents per gallon of fuel sold or used. The amount of tax is based upon the total volume of fuel and not merely upon the nonalcohol portion of the fuel.

(b) *Partially exempt methanol or ethanol fuel defined.* For purposes of section 4041(m) and this section, partially exempt methanol or ethanol fuel is liquid motor fuel, 85% of which by volume consists of alcohol, as defined in section 4081 and § 48.4081–2(a)(3) of the regulations, as modified by the following sentence. For purposes of section 4041(m) and this section, the alcohol contained in partially exempt methanol or ethanol fuel must be produced from natural gas. In determining whether the 85 percent alcohol requirement has been met with respect to a mixture, the actual gallonage of each chemical component will be adjusted to equivalent gallonage at 60° Fahrenheit.

(c) *Refunds relating to fuels.* See section 6427 for rules which relate to the allowance of a refund or credit to a person who uses tax-paid diesel, special motor or noncommercial aviation fuel to produce a partially exempt methanol or ethanol fuel and section 6416 for rules which relate to the allowance of a refund or credit to a person who uses tax-paid gasoline to produce a partially exempt methanol or ethanol fuel.

(d) *Later blending.* If a partially exempt methanol or ethanol fuel is blended with other motor fuel in a mixture less than 85 percent of which consists of alcohol, the subsequent sale or use of such blended motor fuel is taxable under the provisions of section 4041(a) or section 4081(a), subject to the requirements, limitations and exemptions of those sections.

(e) *Effective date.* Section 4041(m) applies to sales and uses after July 31, 1984. If methanol or ethanol fuel meeting the requirements of paragraph (b) of this section was put into the tank of a vehicle prior to August 1, 1984, the fuel is considered used prior to that date and is subject to the tax described in paragraph (a) of section 4041.

Par. 5. Section 48.4071–1 is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (b)(1) is revised to read as set forth below.

(c) Paragraph (b)(2) is redesignated paragraph (b)(3).

(d) A new paragraph (b)(2) is added to read as set forth below.

§ 48.4071–1 Imposition and rate of tax.

(a) *Imposition of tax*—(1) *Imposition of tax before January 1, 1984.* Section 4071 imposes a tax at the rates set forth in paragraph (b)(1) of this section on tires made wholly or in part of rubber, inner tubes (for tires) made wholly or in part of rubber and tread rubber which are sold by the manufacturer thereof before January 1, 1984.

(2) *Imposition of tax after December 31, 1983.* Section 4071 imposes a tax at the rates set forth in paragraph (b)(2) of this section on tires of the type used on highway vehicles and made wholly or in part of rubber which are sold by the manufacturer thereof after December 31, 1983.

(3) *Definitions.* For definitions of the terms "tires," "inner tubes," "tread rubber," "rubber" and "manufacturer," see § 48.4072–1 of the regulations.

(b) *Rates and computation of tax*—(1) *Rates of tax before January 1, 1984.*

(i) *Tires:*

(A) Of the type used on highway vehicles:

(*1*) For the period July 1, 1965 to December 31, 1980, inclusive—10 cents per pound

(*2*) For the period January 1, 1981 to December 31, 1983, inclusive—9.75 cents per pound.

(B) Of the type used on other than highway vehicles:

(*1*) For the period July 1, 1965, to December 31, 1980, inclusive—5 cents per pound.

(*2*) For the period January 1, 1981 to December 31, 1983, inclusive—4.875 cents per pound.

(C) Laminated tires for the period July 1, 1965 to December 31, 1983, inclusive—1 cent per pound.

(ii) *Inner tubes:*

For the period July 1, 1965 to December 31, 1983, inclusive—10 cents per pound.

(iii) *Tread Rubber:*

For the period July 1, 1965 to December 31, 1983, inclusive—5 cents per pound.

(2) *Rates of tax on or after January 1, 1984.* Tires of the type used on highway vehicles:

(i) Tires weighing not more than 40 pounds—0 cents.

(ii) Tires weighing more than 40 pounds but not more than 70 pounds—15 cents for each pound in excess of 40 pounds.

(iii) Tires weighing more than 70 pounds but not more than 90 pounds—$4.50 plus 30 cents for each pound in excess of 70 pounds.

(iv) Tires weighing more than 90 pounds—$10.50 plus 50 cents for each pound in excess of 90 pounds.

* * * * *

§ 48.4071–2 [Amended]

Par. 6. Paragraph (b) of § 48.4071–2 is retitled "*Alternative method of determining the weight of tires after December 31, 1983*" and is amended by removing "and inner tubes" wherever it appears and by removing in the first sentence the phrase "shown in schedules published by the tire industry".

Par. 7. Section 48. 4081–2 is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (b) is revised to read as set forth below.

(c) The heading of paragraph (c) is revised to read as set forth below.

(d) Paragraph (c)(1) is amended by removing the first sentence of the paragraph and inserting in lieu thereof the sentence set forth below and by removing the word "exempt" in the fifth sentence.

(e) Paragraph (c)(2) is amended by removing "tax free" wherever it appears and inserting in lieu thereof "at the reduced rate (or tax free for sales before April 1, 1983)".

(f) Paragraph (e)(1) is revised to read as set forth below.

(g) Paragraph (e)(2) is retitled to read as set forth below and is amended by removing the last sentence of the paragraph and inserting in lieu thereof the two sentences set forth below.

(h) A new paragraph (e)(3) is added to read as set forth below.

(i) Paragraph (f)(1) is retitled and is revised to read as set forth below.

(j) The heading and text of paragraph (f)(2) are amended by inserting "and less than 85 percent alcohol" after "40 percent alcohol" wherever it appears.

(l) A new paragraph (f)(3) is added to read as set forth below.

(m) Paragraph (g) is revised to read as set forth below.

(n) Paragraph (h) is amended by removing "tax free" wherever it appears and inserting in lieu thereof "at the reduced rate (or tax free for sales before April 1, 1983)".

(o) Paragraph (i) is removed.

§ 48.4081-2 Gasoline mixed with alcohol.

(a) *In general*—(1) *Sale after March 31, 1983, and before October 1, 1988.* Under section 4081(c), the rate of tax applicable to the sale of qualifying gasohol (as defined in paragraph (a)(4) of this section) and on the sale of gasoline for the purpose of producing qualifying gasohol is:

(i) For sales occurring after December 31, 1984, and before October 1, 1988, 3 cents per gallon of fuel in the case of the sale of qualifying gasohol and 3⅓ cents per gallon of fuel in the case of the sale of gasoline purchased for the purpose of producing qualifying gasohol.

(ii) For sales occurring after March 31, 1983, and before January 1, 1985, 4 cents per gallon of fuel in the case of the sale of qualifying gasohol and 4⅔ cents per gallon of fuel in the case of the sale of gasoline purchased for the purpose of producing qualifying gasohol.

(2) *Sale before April 1, 1983.* For sales before April 1, 1983 no tax is imposed upon the sale of qualifying gasohol or on the sale of gasoline to produce qualifying gasohol.

(3) *Alcohol defined.* For purposes of this section and section 4081(c), the term "alcohol" generally includes methanol, ethanol, and any other alcohol, whether produced domestically or imported, which is not produced from petroleum, natural gas, or coal. In the case of alcohol mixture fuels sold after December 31, 1984, alcohol produced from peat is considered alcohol produced from coal. The term alcohol, for purposes of this section and section 4081(c), does not include alcohol with a proof of less than 190° of proof (determined without regard to added denaturants). Thus, in determining what percentage of any mixture consists of alcohol, the volume of alcohol includes the volume of any impurities that reduce the purity of the alcohol to not less than 95% (190 degrees of proof), determined without regard to denaturants, unless such impurities consist of gasoline or the other non-alcohol fuel with which the alcohol is mixed. In addition, the volume of alcohol includes the volume of any denaturants (including gasoline or other non-alcohol fuel denaturants) which are added under any formula approved by the Secretary to the extent that the volume of such denaturants does not exceed 5% of the volume of the alcohol (including the denaturants). If the volume of such denaturants exceeds 5% of the volume of the alcohol, the excess over 5% is considered part of the non-alcohol content of the fuel. For certain requirements imposed on producers of alcohol (ethanol) under chapter 51 of the Code relating to distilled spirits, see 27 CFR Part 201. For certain requirements imposed on purchasers of specially denatured alcohol (ethanol), see 27 CFR Part 211.

(4) *Qualifying gasohol.* Qualifying gasohol (hereinafter referred to as gasohol) is a blend of gasoline and alcohol in a mixture at least 10 percent of which is alcohol. The actual gallonage of each component of the gasohol is adjusted to its equivalent gallonage at 60° Fahrenheit in order to determine whether the 10% alcohol requirement has been met.

(b) *Sale of gasoline to produce gasohol.* The sale of gasoline for use in producing gasohol is subject to the provisions of section 4081(c) rather than section 4081(a) only if the sale is in bulk quantities for delivery into a bulk storage tank of a gasohol producer as defined in this paragraph (b). For purposes of this section, the term "gasohol producer" means any person who, in the ordinary course of his or her trade or business, regularly buys gasoline and alcohol in bulk quantities for blending into gasohol for the use in the trade or business or for resale. Thus, an isolated purchase of gasoline for blending into gasohol does not qualify the seller of such gasoline for taxation under section 4081(c) and this section. A person who qualifies as a gasohol producer for purposes of this section, will also qualify as a "producer" for purposes of section 4082. Accordingly, the sale of gasoline to a gasohol producer, whether or not for use in producing gasohol, may be exempt from tax under section 4083 (relating to certain exempt sales to producers). If the sale of gasoline for use in producing gasohol is taxed at the rate provided in section 4081(c), no tax will be imposed upon the sale of the gasohol produced with such gasoline. In addition, if the sale of gasoline for use in producing gasohol is taxed at the rate provided in section 4081(c) applicable to sales before January 1, 1985, and such gasoline is blended into gasohol after December 31, 1984, no refund or credit is allowed for the difference between the tax imposed and the lower tax which would have been imposed if such gasoline had been taxed at the rate applicable to sales after December 31, 1984.

(c) *Requirements for gasohol producers purchasing at lower rates or tax free*—(1) *Certificate of Registry.* A person qualifying as a gasohol producer under paragraph (b) of this section who wishes to purchase gasoline taxed at a reduced rate (or exempt from tax in the case of sales prior to April 1, 1983) under section 4081(c)(1)(B) must be registered with the district director for the district in which his principal place of business is located, unless the person is exempt from registration requirements under section 4222(b). * * *

* * * * *

(e) *Special rules*—(1) *Limitation on sales taxed at lower rates.* The reduced rate of tax (or the exemption from tax in the case of sales prior to April 1, 1983) under section 4081(c)(1)(B) only applies to the sale of gasoline for use in producing gasohol. Therefore, unless the sale is exempt from tax or is taxed at a reduced rate under another provision of the Code, the producer of the gasoline may sell at the reduced rate of tax provided in section 4081(c), only that portion of the gasoline that is intended for use in producing gasohol.

(2) *Sales to exempt users.* * * * Therefore, where the ultimate vendor sells both tax-paid gasoline and tax-paid gasohol and the sales of the two types of fuel are not clearly distinguished, the producer of the gasoline and gasohol will not be entitled to a full credit or refund with respect to these fuels, if the amounts of each type sold by the ultimate vendor to tax-exempt users cannot be established. If the producer cannot distinguish the amount of each type sold, the credit allowed will be equal to the credit that would have been allowed if all the fuel sold had been tax-paid gasohol.

(3) *Later blending.* If gasohol is blended with other motor fuel, the subsequent sale or use of such blended motor fuel is taxable under the provisions of section 4041(a) or 4081(a) if the resulting blend is less than 10% alcohol by volume.

(f) *Refunds and credits*—(1) *Tax-paid gasoline under section 4081(a) used to produce gasohol.* See section 6427(f) for rules which relate to the allowance of a refund or credit to a blender of gasohol where the blender uses tax-paid gasoline to produce the gasohol.

* * * * *

(3) *Mixture of gasoline and alcohol containing at least 85% alcohol.* If a person uses tax-paid gasoline in blending a mixture of gasoline and alcohol containing at least 85% alcohol by volume that qualifies for the exemption from tax under section 4041(b)(2) for qualified methanol or ethanol fuels, the refund provisions under section 6416 apply.

(g) *Later separation and failure to blend*—(1) *In general.* Any person who fails to use gasoline which was taxed at a reduced rate (or was exempt from tax in the case of sales prior to April 1, 1983) under section 4081(c) to make gasohol or who separates gasoline from gasohol which was taxed, if at all, under section 4081(c), is treated as a producer of gasoline (as defined under section 4082), and is subject to tax upon the subsequent sale of such gasoline. If gasoline is purchased under section 4081(c) for use in producing gasohol, and the amount purchased is in excess of the amount of gasoline that the purchaser is able to establish has actually been used to produce gasohol by the records required under paragraph (h)(3) of this section, then the purchaser is treated as having failed to use the excess gasoline to produce gasohol. In such a case, any of the excess gasoline that is not in the purchaser's possession is treated as having been disposed of by sale or by a use considered a sale. See section 7201 for criminal penalties relating to a willful attempt to evade or defeat tax, and section 6651 for additions to tax for failure to file a return or pay tax.

(2) *Rates of tax.* If gasoline or gasohol described in the preceding paragraph was purchased tax free prior to April 1, 1983, the person who is treated as separating the gasohol or failing to use the gasoline to produce gasohol is taxed as a producer at the applicable rate of tax in effect under section 4081(a) at the time of the sale of the gasoline by such person. If the gasoline or gasohol was purchased at the rate of tax applicable to sales after March 31, 1983, and before January 1, 1985, the rate of tax imposed upon the person treated as separating the gasohol or failing to use the gasoline to produce gasohol is 4⅝ cents per gallon. If the gasoline or gasohol was purchased at the reduced rate of tax applicable to sales after December 31, 1984, the rate of tax imposed upon the person treated as separating the gasohol or failing to use the gasoline to produce gasohol is 5⅝ cents per gallon.

(3) *Examples.* The requirements of this paragraph are illustrated by the following examples.

Example (1). A gasohol blender *X* produces 10,000 gallons of gasohol using 9,000 gallons of gasoline and 1,000 gallons of alcohol. Because of a lack of demand for the gasohol, *X* separates the gasoline and sells it. *X* will be treated as the producer of the gasoline.

(i) If the gasoline was previously subject to a 9 cents per gallon tax under section 4081(a), or $810, the sale of the separated gasoline is not subject to any additional tax.

(ii) If the gasoline was previously subject to a 4⅝ cents per gallon tax under section 4081(c), or $400, *X* will be subject to a 4⅝ cents per gallon tax upon the sale or gasoline, or $410.

(iii) If the gasoline was previously subject to a 3⅛ cents per gallon tax under section 4081(c), or $300, *X* will be subject to a 5⅝ cents per gallon tax upon the sale of gasoline, or $510.

(iv) Assume that *X* never blended the 9,000 gallons into gasohol but instead sold the gasoline. *X* will be treated as the producer of the gasoline. If the gasoline had been subject to a 9 cents per gallon tax, *X* will not be subject to any additional tax. If the gasoline had been taxed at a rate of 4⅝ cents per gallon, or $400, *X* will be subject to a 4⅝ cents per gallon tax upon the sale of the gasoline, or $410. If the gasoline had been taxed at a rate of 3⅛ cents per gallon, or $300, *X* will be subject to a 5⅝ cents per gallon tax upon the sale of the gasoline, or $510.

* * * * *

§ 48.6420–4 [Amended]

Par. 8. Section 48.6420–4(l) is amended by inserting "or other applicator" after "an aerial applicator" wherever if appears.

§ 48.6427–1 [Amended]

Par. 9. Section 48.6427–1(a)(2)(iv) is amended by inserting "or other applicator" after "an aerial applicator" wherever it appears.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–20149 Filed 8–21–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

Permanent State Regulatory Program of Mississippi

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for public comment on its proposed action to postpone a review of the Mississippi program provisions in light of revisions to the Federal regulations.

OSM has initiated a review of all State permanent regulatory programs, approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act 1977 (SMCRA), in light of extensive revisions to the Federal regulations. Such a review results from the requirements of the Federal regulations at 30 CFR 732.17(d), which provide that OSM notify the State regulatory authority of all changes in SMCRA and the Federal regulations thereunder, which will require an amendment to the approved State program to conform the State's program to the Federal standards; and consistency of the State and Federal standards is required by SMCRA.

Since its permanent regulatory program was approved by the Secretary, Mississippi has not had any surface coal mining activities in the State, nor does the State anticipate any coal mining to occur before 2000 A.D. Further, Mississippi has indicated in writing that when coal mining is anticipated or develops, it will amend its State program provisions to be consistent with the Federal regulations in existence at the time. This notice sets forth the public comment period during which time interested persons may submit written comments on OSM's proposed action to postpone at this time its review of the State program provisions and the State's subsequent revision of its surface coal mining regulations.

DATE: Comments not received by September 23, 1985 at the address below, no later than 4:00 will not necessarily be considered in this proposed action.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. John T. Davis, Field Office Director, Birmingham Field Office, Office of surface Mining, 228 West Valley Avenue, 3rd Floor, Room 302, Homewood, Alabama 35209.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Davis, Field Office Director, Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Room 302, Homewood, Alabama 35209; Telephone: (205)254–0809.

SUPPLEMENTARY INFORMATION: On August 2, 1979, the State of Mississippi submitted to the Department of the Interior its proposed permanent regulatory program under SMCRA. On May 27, 1980, Mississippi resubmitted its program. On September 4, 1980, following a review of the program resubmission, the Secretary of the Interior approved the Mississippi program (45 FR 58520–58526). Background information on the State program and the Secretary's findings

can be found in the September 4, 1980 Federal Register notice.

In the latter part of 1983, OSM completed the last in a series of final rules, thus completing its regulatory reform effort for the Federal regulations at 30 CFR Chapter VII. On November 10, 1983, the Director, OSM, provided all States, with approved permanent regulatory programs, with a preliminary list of revised Federal rules which may necessitate changes in the approved State programs. Thus, OSM initiated the procedures required by the Federal regulations at 30 CFR 732.17(d), which provide that OSM notify the State regulatory authority of all changes in SCRA and the Federal regulations which will require an amendment to the State's program to conform state program provisions to the Federal standards. Consistency of the State and Federal standards is required by section 503(a) of SMCRA and the Federal regulations at 30 CFR 732.15(a). To date eight States have been notified formally by the Director under 30 CFR 732.17 that specific provisions of the respective State programs are now inconsistent with the Federal regulations and must be revised by the States.

With regard to the Mississippi program, the Director is considering an indefinite postponement of the review of the State program in light of the revised Federal regulations. This action is proposed for several reasons. On July 23, 1985, Mississippi responded to an inquiry from OSM concerning the status of coal mining in the State. Mississippi said that there is no coal mining in the State. Further, no coal (lignite) mining is anticipated in the near future, probably not before the year 2000 A.D. Also, the letter stated that in the event mining is anticipated or if mining does develop, the rules and regulations of the Mississippi program will at that time be amended to be consistent with the Federal regulations in existence at such time.

This action is also proposed in part because of the plain reading of section 503(a) of SMCRA in conjunction with the Federal regulations at 30 CFR 736.11(a). Under these provisions it would not have been necessary for Mississippi to have a State program or for the Director to promulgate a Federal program in the State inasmuch as he does not reasonably expect coal exploration or surface coal mining operations to exist on non-Federal and non-Indian land within the State at any time in the near future.

Therefore, the Director invites public comment on the proposed action to postpone the regulatory reform review of the Mississippi program and the resulting requirement of State revisions to its program until such time as mining is anticipated or mining does develop in the State. If, after considering public comments on this proposed action, the Director makes a final decision to postpone the review, he would revise the Federal rules at 30 CFR Part 924 codifying decisions concerning the Mississippi program to implement the action. Specifically, a new § 924.16 would be added to codify the requirement that Mississippi, in the event mining is anticipated or does develop, will amend its program prior to any mining to be consistent with the Federal regulations in existence at the time.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirement; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 924

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 14, 1985

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 924—MISSISSIPPI

30 CFR Part 924 is proposed to be amended as follows:

1. The authority citation for Part 924 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 503).

2. 30 CFR Part 924 is proposed to be amended by adding a new § 924.16 as follows:

§ 924.16 Required program amendments.

Pursuant to 30 CFR 732.17, Mississippi, prior to allowing coal exploration or surface mining operations in the event such activities should develop, shall submit and have approved by the Office of Surface Mining, amendments to its permanent regulatory program to be in accordance with SMCRA and consistent with the Federal regulations at 30 CFR Chapter VII in existence at the time.

[FR Doc. 85–19932 Filed 8–21–85; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–83; RM–4884]

FM Broadcast Station in Kodiak, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of petition.

SUMMARY: Action taken herein dismisses the request of Kodiak Broadcasting Company, Inc. to allocate Channel 272A to Kodiak, Alaska, as that community's second local commercial FM service. The petitioner failed to state a continuing interest in the channel.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

Report and Order; Proceeding Terminated

In the Matter of Amendment of §73.202(b), Table of Allotments, FM Broadcast Stations. (Kodiak, Alaska) MM Docket No. 85–83, RM–4884.

Adopted: August 12, 1985.
Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 12584, published March 29, 1985, proposing the allocation of Channel 272A to Kodiak, Alaska, as that community's second local commercial FM service, at the request of Kodiak Broadcasting Company, Inc. ("petitioner"). Comments were filed by Peninsula Communications, Inc.

("Peninsula"), requesting that a different frequency be allocated to avoid interference to its proposed translator station on Channel 272A at Kodiak. No Comments were received by the petitioenr and no other party filed comments stating an intention to apply for the channel, if allocated.

2. Absent an expression of interest in the use of a proposed channel, it is the Commission's general policy to refrain from making a new allocation to a community. See, *e.g., Williams, Arizona,* 47 FR 20827, published May 14, 1982, and paragraph 2 of the Appendix to the *Notice.* Therefore, since there has been no such interest here, we will dismiss petitioner's proposal.

3. In view of the foregoing, it is ordered, that the petition of Kodiak Broadcasting Company, Inc., requesting the allocation of Channel 272A to Kodiak, Alaska, is hereby dismissed. It is further ordered, that this proceeding is terminated.

4. For further information concerning this proceeding, contract Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20041 Filed 8–21–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 87

[PR Docket No. 85–112; FCC 85–189]

Portable Aircraft Station Licenses, Aeronautical Utility Mobile Station Frequencies and Frequencies Used for Activation of Airport Lights

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to make three unrelated amendments to the Aviation Services rules. The first proposal specifically provides for the licensing of portable aircraft radio stations which can be temporarily installed on board an aircraft. The second proposal would permit the frequency 122.9 MHz to be used by aeronautical utility mobile stations at airports without towers, flight service stations or aeronautical advisory stations (unicoms). The final proposal would permit the frequency 122.9 MHz to be used to activate airport runway lights. This action was initiated as a result of inquiries from members of the aviation community and is intended to improve aviation communications services.

DATES: Comments must be submitted on or before September 19, 1985, and reply comments on or before October 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Loretta J. Garcia, Private Radio Bureau, Aviation and Marine Branch, Washington, D.C. 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 87

General Aviation, Airborne Stations Aeronautical Utility Mobile Stations.

This document was released by the Commission on April 19, 1985. Due to oversight, it was never published in the **Federal Register.** However, the comment/reply comment period has been extended to allow **Federal Register** readers sufficient time in which to file comments.

In the matter of amendment of part 87 of the rules concerning portable aircraft licenses, aeronautical utility mobile station frequencies and frequencies used for activation of airport lights; PR Docket No. 85–112, FCC 85–189.

Adopted: April 15, 1985.
Released April 19, 1985.

By the Commission.

1. This notice proposes to make three unrelated changes in Part 87 (Aviation Services) of the rules. These changes concern new portable aircraft station licenses, frequencies available for use by aeronautical utility mobile stations and frequencies available for activation of airport runway lights.

Portable Aircraft License

2. Currently there is no provision in Part 87 which permits the licensing of portable aircraft radio stations. When an applicant requests to temporarily operate portable radio equipment in different U.S. registered aircraft, the request is reviewed on a case-by-case basis. In the past such requests for portable aircraft stations were rare and this was a suitable approach. However, with the introduction of relatively inexpensive portable aircraft radio equipment in the marketplace, the number of applicants seeking to license this equipment is increasing.

3. We believe that specifically providing for portable aircraft stations in the rules will be more convenient for the aviation community and prevent a lengthening of processing time as such applications become more common. A similar type of portable station license is available in the maritime services and has proven to be useful for vessel operators. Accordingly, we propose to amend § 87.29 to specifically provide for the licensing of portable aircraft stations.

Aeronautical Utility Mobile Stations

4. In order to improve safety at airports which do not have an operating control tower, the Federal Aviation Administration (FAA) has recommended that aircraft flying into or out of these uncontrolled airports transmit/receive on a common traffic advisory frequency (CTAF). The assigned CTAF depends on the facilities located at a particular airport. The CTAF is usually the part-time control tower frequency, the flight service station frequency, the aeronautical advisory station frequency or, where none of the above facilities exists, 122.9 MHz.[1] Vehicles which operate at an airport are usually equipped with aeronautical utility mobile stations for safety communications related to the movement of ground traffic on the airport. For example, maintenance vehicles, snowplows and crash equipment used aeronautical utility mobile radio stations. The frequencies assigned to these utility stations at uncontrolled airports correspond to the CTAF except that 122.9 MHz is not currently included in the list of available frequencies.

5. We have received a number of rule waiver requests to permit utility stations which operate at airports without any control tower, flight service station or aeronautical advisory stations to use the airport CTAF 122.9 MHz. State and local aeronautical agencies which inspect and help maintain many of these uncontrolled airports most often make such requests. We feel that making 122.9 MHz routinely available to utility stations operating at these airports will enhance safety and improve communications capabilities. Accordingly, we propose to amend § § 87.431 and 87.433 of the rules to make 122.9 MHz assignable to aeronautical utility mobile stations operating at airports without a control tower, flight service station or aeronautical advisory station for communications related to safety such as runway conditions and hazards on the airport.

Activation of Airport Runway lights

6. Section 87.183 (cc) of the rules permits aircraft stations to transmit brief

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[1] The frequency 122.9 MHz is also assignable to aeronautical multicom stations for communications pertaining to activities of a temporary, seasonal or emergency nature which depend on aircraft for the successful or safe conduct of the activity.

keyed RF signals [2] to activate airport lights. Frequencies assigned to aeronautical stations at the airports are available for this purpose provided no harmful interference is caused to voice communications. The frequency 122.9 MHz was not made available for the activation of airport lights because it would not normally be assigned to a station located at an airport. However, with the increasing use of 122.9 MHz as the CTAF at airports without an aeronautical radio station, we have received a number of inquiries concerning use of 122.9 MHz to activate airport lights. This would allow the pilot to remain on the recommended CTAF frequency when approaching these airports at night, rather than having to switch to another frequency to activate the airport lights. We believe that at many airports the use of 122.9 MHz for this purpose would be more convenient for the flying public without causing any negative effect. Accordingly, we propose to amend § 87.183(cc) to make the frequency 122.9 MHz available for the activation of airport lights at airports where no aeronautical station utilizing any of the other available frequencies is located.

7. Additionally we propose to remove language in § 87.183(j) which became obsolete after January 1, 1985.

8. The proposed amendments to the Commission's rules, as set forth in the attached Appendix, are issued under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

9. Under procedures set out in § 1.415 of the rules and regulations, 47 CFR 1.415, interested persons may file comments on or before September 19, 1985 and reply comments on or before October 4, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

10. In accordance with the provisions of § 1.419 of the rules and regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comment should file an original and 11 copies. Members of the general public who wish to express their comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

11. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any writtten or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation to the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepared a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

12. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public.

13. We have determined that section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) does not apply to this rule making proceeding because if promulgated, it will not have a significant economic impact on a substantial number of small entities. The changes proposed herein will have a minor beneficial effect on the aviation community. These changes allow greater flexibility and will not cause a significant economic impact on any entity.

14. It is ordered, That a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

15. Regarding questions on matters covered in this document, contact Loretta J. Garcia, 202–632–7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for Part 87 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. Section 87.29 is amended by adding new paragraph (a)(7) to read as follows:

§ 87.29 Application for aircraft radio station license.

(a) * * *

(7) An applicant may apply for a portable aircraft radio station license to operate a portable transmitter when temporarily installed in different U.S. aircraft. The applicant must show a need to operate the same equipment on more than one aircraft.

* * * * *

3. Section 87.183 paragraph (j) is amended by removing the last sentence of subparagraph (3)(ii), and § 87.183 paragraph (cc) is amended by removing the last sentence in subparagraph (3), and by adding new subparagraph (4) to read as follows:

§ 87.183 Frequencies available.

(cc) * * *

(3) Any aviation instructional frequency (121.95, 123.3 and 123.5 MHz) listed in § 87.341.

(4) The frequency 122.9 MHz when no station utilizing any of the available

[2] The transmitter is keyed by momentarily depressing the microphone "push-to-talk" button without voice or audio tone transmissions.

frequencies is located at the concerned airport.

4. In § 87.431, paragraph (d) is redesignated as (e) and a new paragraph (d) is added to read as follows:

§ 87.431 Frequencies available.

* * * * *

(d) At landing areas which have *no* airdrome control tower, flight service station or aeronautical advisory station, the frequency 122.9 MHz is assignable to aeronautical utility mobile stations.

* * * * *

§ 87.433 [Amended]

5. In § 87.433(b) the words "or the frequency 122.9 MHz" are added after the words "aeronautical advisory station frequency".

[FR Doc. 85-19931 Filed 8-21-85; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 163
Thursday, August 22, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1985 Crop Soybean Preliminary Loan and Purchase Rate

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of determination of 1985 crop soybean preliminary level of price support.

SUMMARY: The purpose of this notice is to announce that the preliminary level of price support for the 1985 soybean crop is $5.02 per bushel. This determination is required to be made by section 201(g)(1) of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: August 22, 1985.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Analysis Division, ASCS–USDA, P.O. Box 2415, Washington, D.C. 20013, Telephone (202) 447–4417. Since this is a preliminary determination calculated in accordance with a statutory formula, it has been determined that an Impact Analysis is not necessary.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated "not major." It was designated "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibilty Act is not applicable to this notice since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 201(g)(1) of the Agricultural Act of 1949, as amended, provides that the price of soybeans for each of the 1982 through 1985 marketing years shall be supported through loans and purchases at a level equal to 75 percent of the simple average price received by farmers for soybeans for each of the preceding five marketing years, excluding the high and low valued years, except that the support price may not be less than $5.02 per bushel. However, if the Secretary of Agriculture determines that the average price received by producers for soybeans in any marketing year is not more than 105 percent of the level of loans and purchases for such marketing year, the support level may be reduced for the next marketing year by the amount which is determined to be necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 10 percent in any year nor below $4.50 per bushel.

Section 201(g)(1) also provides that the Secretary must make a preliminary announcement of the level of price support not earlier than 30 days prior to September 1, the beginning of the marketing year, based upon the latest information and statistics then available. The Secretary must make a final announcement of such level as soon as full information and statistics are available on prices for the five years perceding the beginning of the marketing year for which the level of support is determined. The final level of price support must be announced no later than October 1, of the marketing year to which the announcement applies. The final level of support cannot be less than that of the preliminary announcement.

Determination

The simple average price received by farmers for soybeans for each of the preceding five years, excluding the high and low valued years, is $6.47 per bushel. This determination is based on the following data:

(1)

Simple-Average Soybean Prices ($/Bu.)

1980	7.50
1981	6.05
1982	5.83
1983	7.67
1984	5.85 (projected)

(2) Average of the five years, excluding the low valued year (1982) and the high valued year (1983): ($7.50+$6.05+$5.85)/3=$6.47 per bushel.

(3) The preliminary price support level calculation is $6.47×.75=$4.85. The calculated preliminary price support level of $4.85 per bushel is less than the statutory minimum level of $5.02 per bushel. The average price of soybeans received by producers during the marketing year 1984 ($5.85) exceeded 105 percent of the 1984 price support level for soybeans ($5.02×1.05=$5.27). There is, therefore, no basis for reducing the preliminary price support level for soybeans below the statutory minimum level of $5.02 per bushel. Accordingly, the preliminary 1985-crop soybean price support level is $5.02 per bushel.

(Sec. 201(g)(1) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446 (g)(1))

Signed at Washington, D.C. on August 19, 1985.

John R. Block,

Secretary.

[FR Doc. 85–20081 Filed 8–21–85; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

Cotton Storage Agreement; Annual Contract Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determination of 1985–86 contract fees.

SUMMARY: The purpose of this notice is to propose a schedule of contract fees to be charged non-federally licensed warehousemen requesting renewal of an existing Cotton Storage Agreement (CSA) or requesting initial approval of a

CSA. The fees would partially defray the costs of warehouse examinations which are conducted by Commodity Credit Corporation (CCC).

DATE: Comments must be received on or before—September 23, 1985—in order to be assured of consideration.

ADDRESS: Send comments to Paul W. King, Director, Warehouse Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–4018.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, ASCS, USDA, Room 5962–South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 382–8053.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." This action has been classified "not major" since implementation of these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29915 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is required.

The Commodity Credit Corporation (CCC) Charter Act (15 U.S.C. 714) provides authority for CCC to conduct a number of operations to stabilize, support, and protect farm income and prices.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce. Pursuant to these provisions, CCC enters into Cotton Storage Agreements (CSA) with private warehousemen which provide for the storage of commodities owned by CCC or pledged to CCC as security for a price support loan.

CCC examines all warehouses which are subject to a CSA, or for which a warehouseman has requested approval for a new CSA, to determine whether quantities of CCC-owned cotton, CCC loan-cotton and other depositor cotton are totally accounted for and whether the warehouse will provide adequate protection for all cotton in storage and all cotton to be placed in storage.

CCC now pays all examination costs for those warehouses for which a CSA has been approved or for which a warehouseman is seeking approval of a new CSA, but which are not licensed under the United States Warehouse Act. If the warehouse examination disclosures that—(1) All cotton is accounted for, (2) the facility provides, or will provide, adequate protection for all cotton, and (3) the warehouseman and warehouse meet the financial and other requirements of the Standards of Approval—an existing CSA may be renewed for the warehouse or a new CSA may be approved for he warehouse. Since the warehouseman also derives a direct benefit from the warehouse examination, it has been determined that the warehouseman and CCC should each pay approximately 50 percent of the examination costs.

Accordingly, a proposed amendment to the Standards for Approval of Warehouses for Cotton or Cotton Linters (7 CFR Part 1427) has been published which provides that each warehouseman who has a non-federally licensed warehouse must pay a contract fee to CCC to partially offset the warehouse examination costs for each warehouse for which there is a request for a renewal of a GSA or for which there is a request for approval of a new CSA. The proposed amendment to 7 CFR Part 1427 provides that a Schedule of Fees to be charged cotton warehousemen by CCC will be published annually in the **Federal Register**. The purpose of this notice is to request comments from interested persons with respect to the schedule of fees proposed for the 1985–1986 contract year.

The proposed fee is designed to partially offset the total cost incurred by CCC in conducting an examination of a non-federally licensed warehouse for which the warehouseman has requested renewal of an existing CSA or approval of a new CSA.

For those warehouses for which the warehouseman has requested approval of a new CSA and for those warehouses for which the warehouseman has requested renewal of an existing CSA, the fee will be calculated to take into account the amount of storage activity at each warehouse. The proposed contract fee will equal the total of the following:

(1) A fee of $100 for each warehouse examined to help offset certain fixed costs associated with examinations which do not tend to vary according to storage activity, such as travel and staff hours devoted to discussions with warehouse personnel concerning general warehouse procedures;

(2) A charge of 1¢ for each bale handled at the warehouse during the twelve months of the calendar year preceding assessment of the fee in order to partially defray the costs associated with tracking and accounting for each bale handled at the warehouse; and

(3) A charge of 1.5¢ times the average number of bales in storage in the warehouse at the end of each month during the 12 months of the calendar year preceding assessment of the fee to partially offset the cost of the counting of bales that actually are in the warehouse at the time of the examination.

The proposed determination also specifies that a tag check fee of 10¢ per bale will be charged a warehouseman whenever CCC conducts a tag check of the warehouse. The tag check is not a part of the standard warehouse examination. Tag checks are conducted by CCC whenever the examiner's bale count is not within ½ of one percent of the total number of bales which should be in the warehouse as determined by outstanding warehouse receipts and all other storage and non-storage obligations.

Proposed Determinations

Accordingly, comments are requested on the following determinations with respect to contract fees and the method

used to determine the fee which the Commodity Credit Corporation (CCC) proposes to charge during the 1985–86 contract year for non-federally licensed cotton warehouses for which a warehouseman requests the renewal of an existing Cotton Storage Agreement (CSA) or approval of a new CSA:

A. There shall be charged and collected from the warehouseman for each warehouse for which the warehouseman requests the renewal of an existing CSA or approval of a new CSA, a contract fee, equal to the total of:

1. A charge of $100;

2. A charge of 1¢ a bale for each bale handled at the warehouse during the 12 months of the calendar year preceding assessment of the fee; and

3. A charge of 1.5¢ times the average number of bales in storage in the warehouse at the end of each month during the 12 months of the calendar year preceding assessment of the fee.

B. If CCC determines that tag check of the bales stored in an approved warehouse is warranted, CCC will charge the warehouseman an additional tag check fee of 10¢ per bale checked. A tag check shall be deemed to be warranted whenever the examiner's bale count is not within ½ of one percent of the total number of bales which should be in the warehouse as determined by outstanding warehouse receipts and all other storage and non-storage obligations.

Signed at Washington, D.C., on August 16, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85–20131 Filed 8–21–85; 8:45 am]

BILLING CODE 3410–05–M

1985-Crop Sugar Beets and Sugarcane Loan Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determination.

SUMMARY: The Secretary of Agriculture proposes to determine and announce the price support loan rates with respect to the 1985 crop of sugar beets and sugarcane. The determination of these loan rates is required to be made in accordance with provisions of section 201(h) of the Agricultural Act of 1949.

DATE: Comments must be received on or before September 23, 1985 to be assured of consideration.

ADDRESS: Interested persons may send comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447–8480. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing the selected option is available from Thomas W. Fink, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with the provisions of Departmental Regulations 1512–1 and Executive Order 12291 and has been classified as "major" since this action may have an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determination since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

An Environmental Evaluation with respect to the price support loan program has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Accordingly, neither an Environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

Section 201(h) of the Agricultural Act of 1949 provides that the Secretary of Agriculture is required to support the price of the 1982 through 1985 crops of sugarcane and sugar beets through nonrecourse loans. Section 201(h) further provides that the price of the 1985 crop of sugarcane shall be supported at such level as the Secretary determines to be appropriate but not less than 18 cents per pound for raw cane sugar. The price of the 1985 crop of sugar beets shall be supported at such level as the Secretary determines to be fair and reasonable in relation to the level of loans for sugarcane.

This notice proposes a national average loan rate for the 1985 crop of sugarcane of 18 cents per pound, which is the minimum statutory loan rate.

It is further proposed that the loan rate for the 1985 crop of refined beet sugar be determined generally using the same methodology which was used in determining the loan rate for the 1983 and 1984 crops. This was set forth in the supplementary information to the regulations for the Price Support Loan Program for the 1983 through 1985 Crops of Sugar Beets and Sugarcane, published on October 5, 1983, at 48 FR 45374. Under that methodology, the loan rate for refined beet sugar is calculated by multiplying the raw cane sugar loan rate times a determined factor and then adding the fixed marketing expenses (which are incurred by beet processors regardless of the disposition of the sugar). The factor referred to in the formula is determined by comparing the weighted average net returns for beet sugar (i.e., gross returns less all marketing expenses) to the weighted average New York spot price (#12 contract) for raw cane sugar for a specified number of years. In determining the loan rate for the 1984 crop, the weighted average New York spot price for the years 1975 through 1982 was utilized. For the 1985 crop, the weighted average New York spot price for the years 1975 through 1983 will be used.

In addition, the national average loan rate for both raw cane sugar and refined beet sugar will be further adjusted to reflent location differentials by region. The application of location differentials to loan rates are common to most price support programs administered by CCC.

Under the provisions of the regulations governing the Price Support Loan Program for the 1983 through 1985 Crops Sugar Beets and Sugarcane, the 1985 crop sugar loan rates must be announced on or before October 1, 1985. The 1985 crop is defined as the sugar processed from domestically-produced sugar beets and sugarcane during the 1985 crop year, which is the period from July 1, 1985, through June 30, 1986.

It has been determined that the 1985 crop sugar loan rates should be announced as early as possible to permit sugar processors to make adequate plans with respect to the 1985 crop. Accordingly, comments with respect to this notice must be received within 30 days from the date of publication of this notice in the **Federal Register** in order to be assured of consideration. This will allow sufficient time to properly evaluate and consider the comments received before announcing the final 1985 crop loan rates for sugar beets and sugarcane.

Accordingly, it is proposed that the following determination will be made with respect to the 1985 crop of sugarcane and sugar beets:

Proposed Determination

A national average loan rate of 18 cents per pound, which is the statutory minimum loan rate, will be applicable to the 1985 crop of sugarcane.

The loan rate for refined beet sugar will be calculated by multiplying the raw cane sugar loan rate times a determined factor and then adding the fixed marketing expenses (which are incurred by beet processors regardless of the disposition of the sugar). The factor referred to in the formula will be determined by comparing the weighted average net returns for beet sugar (i.e., gross returns less all marketing expenses) to the weighted average New York spot price (#12 contract) for raw cane sugar for the years 1975 through 1983.

The loan rates which are determined for both raw cane sugar and refined beet sugar will be further adjusted to reflect the processing location of the sugar offered as collateral for a price support loan. These adjustments (i.e., location differentials) will be calculated in the same manner as they have been for the three previous crop years. The loan rates for sugar processed in specific regions will be based upon the transportation costs associated with moving that sugar to the markets that are normal for those regions.

Comments with respect to the national average loan rate for the 1985 crop of sugarcane and the methodology used for determining the national average loan rate for the 1985 crop of sugar beets are invited.

Signed at Washington, D.C., on August 19, 1985.

John R. Block,

Secretary.

[FR Doc. 85-20080 Filed 8-21-85; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Environmental Statements; Doyle Township Park Shore Erosion Control RC&D Measure, Michigan

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Doyle Township Park Shore Erosion Control RC&D Measure, Schoolcraft County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: barrier posts, adapted grasses and trees, rock riprap, and topsoil. Total construction cost is estimated to be $120,000, of which RC&D funds will pay $72,500 and local funds $47,500.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will be not to initiated until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: August 9, 1985.

Homer R. Hilner,

State Conservationist.

[FR Doc. 85-20068 Filed 8-21-85; 8:45 am]

BILLING CODE 3410-16-M

Environmental Statements; Lower Des Plaines Tributaries Watershed, Illinois

AGENCY: Soil Conservation Service; USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: John J. Eckes, responsible Federal official for projects administered under the provision of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Illinois, is hereby providing notification that a record of decision to proceed with the installation of the Lower Des Plaines Tributaries Watershed project is available. Single copies of this record of decision may be obtained from John J. Eckes at the address shown below.

FOR FURTHER INFORMATION CONTACT: John J. Eckes, State Conservationalist, Soil Conservation Service, 301 North Randolph, Champaign, Illinois 61820, telephone 217-398-5271.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: August 14, 1985.

John J. Eckes,

State Conservationist.

[FR Doc. 85-20067 Filed 8-21-85; 8:45 am]

BILLING CODE 3410-16-M

Environmental Statements; Marquette Area District Schools Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmenal Policy act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Marquette Area District Schools RC&D Measure, Marquette County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: critical area seeding on 7.5 acres with seeding, fertilizing, mulching, sod and wood chips being developed. Total conctruction cost is estimated to be $40,500, of which RC&D funds will pay $26,500 and local funds $14,000.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: August 9, 1985.

Homer R. Hilner,

State Conservationist.

[FR Doc. 85–20071 Filed 8–21–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Statements; Shamrock Park Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, US. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Shamrock Park RC&D Measure, Berrien County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigna 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: two acres of critical area planting (seed, fertilizer and mulch), 3,900 tons of rock riprap, 6,500 cu. yd. of excavation and one sign. Total construction cost is estimated to be $194,000, of which RC&D funds will pay $126,000 and $68,000 local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: August 9, 1985.

Homer R. Hilner,

State Conservationist.

[FR Doc. 85–20069 Filed 8–21–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Statements; Van Cleve Park Erosion Control Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Van Cleve Park Erosion Control RC&D Measure, Delta County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation

Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Office and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: six acres of critical area seeding, 160 trees (seedlings), 60 trees (3'), 370 barrier posts, 1,465 ft. of rustic fence and one sign. Total construction cost is estimated to be $50,000, of which RC&D funds will pay $30,000 and local funds $20,000.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: August 9, 1985.

Homer R. Hilner,

State Conservationist.

[FR Doc. 85–20070 Filed 8–21–85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of Maryland at Baltimore et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 83–212. Applicant: University of Maryland at Baltimore, Dental School, 666 W. Baltimore Street, Baltimore, MD 21201. Instrument: Components—Dental Education/Dental Equipment and Materials/Dental Care delivery Research Complex. Manufacturer: J. Morita Corporation, Japan. Intended use: The instrument is intended to be used for: (1) Research of promising new concept of dental care delivery—Performance Logic—in order to assess the concept's potential for contribution to efficiency and effectiveness in patient care delivery; and (2) research of Performance Logic in order to assess the concept's potential for enhancement of pre-clinical and clinical educational process applied to undergraduate and dental students, graduate dental students, and postgraduate dentists. Application received by Commissioner of Customs: July 26, 1985.

Docket No.: 85–245. Applicant: University of Virginia, Department of Physics, Charlottesville, VA 22901. Instrument: X-ray Generator with Accessories. Manufacturer: Rigaku, Japan. Intended use: Studies of proteins and nucleic acids to obtain data which is to be used in determining molecular structure of sample materials. Application received by Commissioner of Customs: July 26, 1985.

Docket No.: 85–246. Applicant: University of Washington, Department of Bioengineering, WD–12, Seattle, WA 98195. Instrument: Electron Microscope, Model JEM–1200EX. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument is intended to be used for the study of salivary glands, skeletal and cardiac muscle tissue, neutrophils and bone. In addition, the instrument will be used for continued development and assessment of Electron Energy Loss Spectrometry as a sensitive and quantitative analytical technique for use as a complement to Energy Dispersive X-ray Spectrometry in the elemental microanalysis of biological systems. Application received by Commissioner of Customs: July 26, 1985.

Docket No.: 85–247. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. Instrument: Electrolyzer, D.E.M. Type. Manufacturer: Steetley Engineering, Ltd., United Kingdom. Intended use: The article is intended to be used for research and development on a process for the preparation of dinitrogen pentoxide in nitric acid. This in turn will be used to synthesize another compound. The materials used are dinitrogen tetroxide in nitric acid, and the method of its electrolytic oxidation to dinitrogen pentoxide will be studied. Electrolyses with the DEM Cell will be carried out, and measurements will be made of the characteristics of the process. Application received by Commissioner of Customs: July 26, 1985.

Docket No.: 85–248. Applicant: Oakland University, Institute of Biological Sciences, Rochester, MI 48063. Instrument: Electron Microscope, Model LEM–2000 with Accessories. Manufacturer: Akashi-Seisakusho, Ltd., Japan. Intended use: The instrument will be used to study the structure and morphology of various ocular tissues both in normal and disease states. Prime research endeavors are ultra structural studies of: (a) Cataract development and reversal, (b) the involvement of certain enzymes in tissue repair and re-establishment of transparency of the lens, (c) the effects of intracellular ions on membrane permeability, (d) cell to cell communication, (e) transport characteristics in the lens, the pigment epithelium of the retina and the ciliary epithelial cells, (f) endothelial cell structure and corneal swelling, (g) the role of oxidative insult in the pathology of lens, cornea and retina and (h) morphology and structure of trabecular meshwork in normal glaucomatous eyes. The overall objective of these studies is to increase the understanding of the structure-function relationship in a variety of ocular tissues and to assess how their abnormalities lead to pathogenesis of cataract, glaucoma, corneal opacities and perforation and the retinal disorders such as macular

degeneration and retrolental fibroplasia. Application received by Commissioner of Customs: July 26, 1985.

Docket No.: 85–249. Applicant: Georgia Baptist Medical Center, 300 Boulevard, NE., Atlanta, GA 30312. Instrument: Lithotripter. Manufacturer: Dornier System, GmbH, West Germany. Intended use: The instrument is intended to be used for kidney stone research in an attempt to determine the causative factors involved in the formation of kidney and gall stones. Application received by Commissioner of Customs: July 26, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–20057 Filed 8–21–85; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Michigan, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 85–250. Applicant: The University of Michigan, Museum of Paleontology, 1109 Geddes Avenue, Ann Arbor, MI 48109. Instrument: Reflex Microscope with Accessories. Manufacturer: Reflex Measurement Ltd., United Kingdom. Intended use: The instrument is intended to be used for studies of the external teeth form, shape, and morphology of the teeth of living and fossil mammals in skulls or partial skulls. The article will also be used for training of students pursuing M.Sc. and Ph.D. degrees in paleontology, geology and biology. Application received by Commissioner of Customs: July 26, 1985.

Docket No.: 85–251. Applicant: University of Alaska, Institute of Marine Science, Fairbanks, AK 99701. Instrument: Liquid Nitrogen Plant, Model PLN 1065. Manufacturer: N.V. Philips Gloeilampenfabrieken, The Netherlands. Intended use: The instrument will be used to produce liquid nitrogen for use in various research facilities at the University. Specific uses of the liquid nitrogen include the following uses:

(1) Coolant for x-ray microanalysis detector on the scanning electron microscope.

(2) Coolant in high vacuum system of mass spectrometer.

(3) Launch preparation and infrared detector coolant.

(4) Vacuum system coolant in mass spectrometer and nitrogen–15 analyzer.

(5) Preparation of stable isotope specimens and as a coolant for the mass spectrometer vacuum systems.

(6) Specimen preparation and preservation of frozen samples.

(7) Preservation of frozen tissue culture and biopsy samples.

Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85–253. Applicant: Medical College of Pennsylvania, Department of Anatomy, EPPI Division, 3200 Henry Avenue, Philadelphia, PA 19129. Insturment: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: Studies of the ultrastructure of cells and tissues from a variety of biomedical experiments in order to learn how normal and abnormal cells function. In addition, the instrument will be used for graduate student and postdoctoral fellows instruction and for their use in learning to do research. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85–254. Applicant: Northwestern University, 619 Clark Street, Evanston, IL 60201. Instrument: Electron Microscope, Model JEM–1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument will be used to study the cells and extracellular matrix of connective tissues, including skin and bone. Studies of cells grown in culture will be carried out to study the surface properties and characteristics of cells. Studies of the structure of isolated molecules from connective tissues will also be carried out. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85–255. Applicant: Medical College of Georgia, School of Dentistry, 1120 Fifteenth Street, Augusta, GA 30912. Instrument: Electron Microscope, Model JEM–100CX11 with Accessories. Manufacturer: JEOL Company, Limited, Japan. Intended use: The instrument is intended to be used for the examination of the following tissues and organs:

(1) Cell to cell contacts of normal epithelial cells and epithelial cells transformed by herpes simplex viruses and grown in tissue culture.

(2) the interaction of bone cells with titanium implantable materials.

(3) Connective cell attachment to periodontally diseased and normal tooth root surfaces.

(4) Adaption of the oral epithelium around dental implant materials.

(5) The inner and outer epithelial cells of animal corneas in response to various drugs and chemicals.

(6) The effects of drugs and chemicals on subcellular components of iris cells.

(7) The reproduction of herpes simplex virus in nerve cells and corneal cells of the eye.

Appllication received by Commissioner of Customs: August 2, 1985.

Docket No.: 85–256. Applicant: Bowman Gray School of Medicine, Wake Forest University, 300 South Hathorne Road, Winston-Salem, NC 27103. Instrument: Electron Microscope, Model H–600 CR/CR with Accessories. Manufacturer: Hitachi, Japan. Intended use: The instrument is intended to be used to examine the virulence factor of *Mycobacterium tuberculosis* that is responsible for breaking up the phagosomal membrane of macrophages. The effect of chrysotile on the migration and morphologic profiles of alveolar marcrophages will also be examined. Application received by Commissioner of Customs: August 2, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–20058 Filed 8–21–85; 8:45 am]

BILLING CODE 3510-DS-M

Nonrubber Footwear Industry, Prospects for Adjustment Assistance to Firms

The U.S. Department of Commerce, pursuant to section 264 of the Trade Act of 1974, has conducted a study of firms in the nonrubber footwear industry. Such a study is required whenever the United States International Trade Commission (USITC) undertakes an investigation under section 201 of the Trade Act.

Under section 251 of the Trade Act of 1974, a firm may petition the U.S. Department of Commerce to be certified as eligible to apply for trade adjustment assistance. The Department's Office of

Trade Adjustment Assistance (TAA) may provide either financial assistance or technical assistance, or both. Companies previously certified can be expected to apply for re-certification. However, prospects for assistance are limited. Other government programs for firm assistance are also reviewed.

Copies of the report, "Prospects for Adjustment Assistance for Firms in the Nonrubber Footwear Industry," are available from Harry Bodansky, Automotive Affairs and Consumer Goods, Room 4324, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202/377–5783.

Robert E. Watkins,

Deputy Assistant Secretary for Automotive Affairs and Consumer Goods.

[FR Doc. 85–20062 Filed 8–21–85; 8:45 am]

BILLING CODE 3510-DR-M

Foreign Availability Subcommittee of The Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held September 10, 1985, 9:30 a.m., The Herbert C. Hoover Building, Room 1851, 14th Street and Constitution Ave., NW., Washington, D.C. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

Agenda

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Status of the Foreign Availability Assessment Division.
5. Discussion of potential TAC foreign availability submissions.
6. Old business.
7. New Business.
8. Action items underway.
9. Action items due at next meeting.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes contact Margaret A. Cornejo, 202–377–2583.

Dated: August 15, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

FR Doc. 85–20083 Filed 8–21–85; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations on Certain, Wool and Man-Made Fiber Apparel Products in Categories 440, 442, 443 and 651 Produced or Manufactured in Taiwan

August 16, 1985.

On August 7, 1985, the American Institute in Taiwan 652 (AIT), under the agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products for Taiwan, requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of wool shirts and blouses in Category 440, wool skirts in Category 442, men's and boys' wool suits in Category 443 and pajamas of man-made fibers in Category 651, produced or manufactured in Taiwan.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool and man-made fiber apparel products in Categories 440, 442, 443 and 651, produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of these categories is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–20060 Filed 8–21–85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Civilian Radioactive Waste Draft Transportation Business Plan; Availability for Comment

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of availability for comment on the draft transportation business plan.

SUMMARY: The Office of Civilian Radioactive Waste Management (OCRWM), U.S. Department of Energy, is developing a Transportation Business Plan related to responsibilities assigned by the Nuclear Waste Policy Act of 1982. The document will provide information on the plans and strategies for the development and operation of the projected system to transport spent fuel or high-level waste as authorized by the Act.

A preliminary document entitled Transportation Business Plan: Strategy Options Document was issued in October 1984 for public review. Comments received have been incorporated in the Draft Transportation Business Plan which is being provided at this time to all interested parties for further comment.

This interim document is specifically intended to be an instrument for interaction between industry, State, local and tribal governments and the public to help OCRWM ensure consensus planning. The Department seeks: (1) To identify industry interests in participating with the Department to establish and operate the waste transportation system, (2) to identify and address State, local and tribal concerns in development of specific strategies and action plans and (3) to understand the address State, local and

tribal concerns in development of specific strategies and action plans and (3) to understand the public's concerns. This is in accord with the principle of consultation and cooperation among affected parties as established by the Nuclear Waste Policy Act. The Department expects to prepare a Final Transportation Business Plan by the Fall of 1985.

Copies of the Draft Transportation Business Plan may be obtained after August 20, 1985, by telephoning (202) 252–5568 and by direct pickup from or requesting in writing the Draft Transportation Business Plan (OCRWM), from the Office of Public Affairs, Independence Avenue, SW., Washington, DC 20585.

Additional copies of the document will also be available by writing: Office of Scientific and Technical Information, Technical Information Center, P.O. Box 62, Oak Ridge, TN 37831.

To enable timely consideration, all comments on the Draft Transportation Business Plan should be submitted in writing no later than September 30, 1985, to Mr. Robert Philpott, Chief, Transportation Branch, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, RW–33, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, August 16, 1985.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 85–20148 Filed 8–21–85; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; U.S. Petroleum Refining; Coordinating Subcommittee on U.S. Petroleum Refining; Date Change for Meeting

The date of the July 18, 1985, seventh meeting of the Coordinating Subcommittee on U.S. Petroleum Refining has been rescheduled (reference Meeting Cancellation, 50 FR 29251, Thursday, July 18, 1985, FR Doc. 85–17143 filed July 17, 1985). The new date should read: Thursday, September 12, 1985, starting at 9:00 a.m. in the Livingston Room of the Four Seasons Hotel, 1300 Lamar Street, Houston, Texas. Notice of this meeting first appeared in 50 FR 27652, Friday, July 5, 1985 (FR Doc. 85–16092 filed July 3, 1985).

Issued at Washington, D.C., August 13, 1985.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 85–20147 Filed 8–21–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP85–149–006]

East Tennessee Natural Gas Co.; Compliance Filing

August 14, 1985.

Take notice that on July 29, 1985, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Second Substitute Twelfth Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 8, 1985. East Tennessee states that the revised tariff sheet is filed in compliance with Ordering Paragraph (E) of the Commission's order of June 28, 1985 in this proceeding, which directed East Tennessee to reflect the use of the three-day peak to allocate East Tennessee's purchased gas demand costs.

East Tennessee states that copies of its filing have been mailed to all participants to this proceeding and on all persons who were previously served with the original filing initiating this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20103 Filed 8–21–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–20–004

Panhandle Eastern Pipe Line Co.; Change in Tariff

August 14, 1985.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 9, 1985 tendered for filing Third Revised Sheet Nos. 3–E and 32–U to its FERC Gas Tariff Original Volume No. 1.

Panhandle states that this change is being made to cancel Rate Schedule AIC as approved by Commission Order dated May 20, 1985 in Docket No. RP84–20, *et al.* Panhandle proposes an effective date of January 31, 1985.

A copy of this filing has been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, In accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 21, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20104 Filed 8–21–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP83–35–037]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 14, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 7, 1985 tendered for filing as part of its FERC Gas Tariff, the following sheets:

Effective August 1, 1985

Second Substitute Seventy-fourth Revised Sheet No. 14 (3 pages)
Second Substitute Seventy-fourth Revised Sheet No. 14A
Second Substitute Seventy-fourth Revised Sheet No. 14B
Second Substitute Seventy-fourth Revised Sheet No. 14C
Second Substitute Seventy-fourth Revised Sheet No. 14D

On July 31, 1985 Texas Eastern filed tariff sheets in compliance with the

Commission's Order on Rehearing issued July 12, 1985 in Docket RP83–35 *et al.* to be effective August 1, 1985.

Within the affected tariff sheets of the aforementioned filing the cumulative purchased gas adjustment for the E rate and the I rate were misstated.

Such tariff sheets filed July 31, 1985 contained inadvertent errors in the cumulative PGA Adjustment column for Rate Schedules E and I as well as in the Rate Schedule E and I rate in Zone C. The above substitute tariff sheets are issued for the sole purpose of correcting these inadvertent errors.

The proposed effective date for the above tariff sheets is August 1, 1985.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 21, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20105 Filed 8–21–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–5–17–002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 14, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 7, 1985 tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies each of the following tariff sheets:

Third Substitute Seventy-fourth Revised Sheet No. 14 (3 pages)
Third Substitute Seventy-fourth Revised Sheet No. 14A
Third Substitute Seventy-fourth Revised Sheet No. 14B
Third Substitute Seventy-fourth Revised Sheet No. 14C
Third Substitute Seventy-fourth Revised Sheet No. 14D
Alternate Third Substitute Seventy-fourth Revised Sheet No. 14 (3 pages)
Alternate Third Substitute Seventy-fourth Revised Sheet No. 14A
Alternate Third Substitute Seventy-fourth Revised Sheet No. 14B
Alternate Third Substitute Seventy-fourth Revised Sheet No. 14C
Alternate Third Substitute Seventy-fourth Revised Sheet No. 14D

The above tariff sheets are filed in substitution for corresponding primary revised tariff sheets and alternate tariff sheets filed on August 2, 1985 consisting of a PGA reduction in rates to give effect to Texas Eastern's latest exercise of the market-out provisions in certain of its gas purchase contracts effective August 1, 1985. Such tariff sheets filed on August 2, 1985 contained inadvertant errors in the Cumulative PGA Adjustment column for Rate Schedules E and I, as well as in the Rate Schedule E and I rates in Zone C. The above substitute tariff sheets are issued for the sole purpose of correcting these inadvertent errors.

The proposed effective date of the above tariff sheets is August 1, 1985.

Texas Eastern respectfully requests waiver of the provisions of its tariff, and any Regulations that the Commission may deem necessary to accept the above tariff sheets to be effective August 1, 1985, in substitution for those corresponding primary revised tariff sheets or alternate tariff sheets filed August 2, 1985.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before Aug. 21, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kennth F. Plumb,

Secretary.

[FR Doc. 85–20106 Filed 8–21–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP83–14–007]

Williston Basin Interstate Pipeline Co.; Tariff Change

August 14, 1985.

Take notice that on July 31, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, submitted the following tariff sheets for filing as part of its FERC Gas Tariff, Original Volume No. 1 and Orginal Volume No. 2:

Original Volume No. 1

First Revised Sheet No. 58
First Original Sheet No. 58A
First Revised Sheet No. 60
First Revised Sheet No. 70
Original Sheet No. 70A
First Revised Sheet No. 73
First Revised Sheet No. 269
First Revised Sheet No. 271
First Revised Sheet No. 288
Original Sheet No. 288A

Original Volume No. 2

Second Revised Sheet No. 42
First Revised Sheet No. 42A

These tariff sheets were submitted in compliance with the Commission's Order in *Montana-Dakota Utilities Co.*, 27 FERC ¶ 61,312, *rehearing denied and settlement modified*, 29 FERC ¶ 61,012, *stay denied*, 29 FERC ¶ 16,127 (1984) *rehearing denied and order clarified*, FERC ¶ 61,018 (1985). Due to an oversight, these Commission approved changes were not previously filed. Williston Basin requests that these tariff sheets be made effective as of January 1, 1985, the date approved by the Commission in *Williston Basin Interstate Pipeline Company*, 30 FERC § 61,143 (1985), for Williston Basin to acquire and operate the interstate pipeline facilities previously owned by MDU Resources Group, Inc. (MDU), its parent company, as well as to provide the certificated services previously provided by MDU.

Williston Basin also submitted the following tariff sheets:

Original Volume No. 1

First Revised Sheet No. 227
First Revised Sheet No. 242
First Revised Sheet No. 256
First Revised Sheet No. 425
First Revised Sheet No. 426

The proposed effective date for these tariff sheets is January 1, 1985, except for First Revised Sheet No. 425 and First Revised Sheet No. 426, *Index of Purchasers*, for which an effective date of July 30, 1985, is requested.

The First Revised Sheet Nos. 227, 242, and 256 changed the designation in the

attestation clause from "Assistant Secretary" to "Secretary" on Rate Schedules G–1, PR–1, and I–1. First Revised Sheet Nos. 425 and 426 are being updated to include additional customers on the "Index of Purchasers."

Any person desiring to be heard or to make any protest with reference to said filing should, on or before August 21, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rule 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20107 Filed 8–21–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF85–610–000]

Altech Energy III; Application for Commission Certification of Qualifying Status of a Small Power Production Facility; Correction

August 15, 1985.

On August 2, 1985, a Notice of Application was issued in error and appeared in the **Federal Register** issue of August 6, 1985, 50 FR 31762. Altech Energy III filed a Notice of Qualification of a Small Power Production Facility and did not request application for Commission certification. Notice of the application is hereby withdrawn.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20109 Filed 8–21–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–677–000]

Boston Edison Co.; Filing

August 15, 1985.

The filing Company submits the following:

Take notice that on August 6, 1985, Boston Edison Company (Edison) tendered for filing an executed service agreement between Massachusetts Municipal Wholesale Electric Company (MMWEC) and Edison for the provision of firm transmission service for hydro-power produced by the Niagara and St. Lawrence Projects in the State of New York and purchased by the Massachusetts Department of Public Utilities, which has designated MMWEC as its agent in this matter, under Edison's Firm Transmission Tariff, Original Volume No. 4. Since MMWEC will require the firm transmission service of July 1, 1985, Edison requests that date to be the effective date of the rate schedule change.

Copies of this filing have been served upon MMWEC and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20136 Filed 8–21–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–649–000]

Central Hudson Gas & Electric Corp; Rate Filing

August 15, 1985.

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson), on July 29, 1985, tendered for filing as a rate schedule an executed agreement dated June 27, 1985 between Central Hudson and the New York Power Authority (NYPA). The proposed rate schedule provides for Electric Transmission of NYPA hydropower and related energy to Orange and Rockland Utilities, Inc. (O&R) for transmission to New Jersey Board of Public Utilities agents in New Jersey.

The rate schedule provides for a monthly transmission charge of $0.37 per kilowatt of firm power delivered to O&R's point of interconnection.

Central Hudson states that a copy of its filing was served on NYPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 30, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20137 Filed 8–21–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–7161–000, et al.]

Chevron U.S.A. Inc. and Gulf Oil Corp.; Application by Chevron U.S.A. Inc. To Amend Certificates of Public Convenience and Necessity Issued to Gulf Oil Corporation, To Amend Existing Chevron U.S.A. Inc. Certificates, and To Redesignate Rate Schedules

August 14, 1985.

Take notice that on August 2, 1985, Chevron U.S.A. Inc. (Applicant) of P.O. Box 7643, San Francisco, California 94120, filed an Application pursuant to provisions of the Natural Gas Act and Commission Regulations thereunder, to amend Certificates of Public Convenience and Necessity issued to Gulf Oil Corporation (Gulf) to reflect the fact that on July 1, 1985, Chevron U.S.A. Inc., a California corporation, was merged with and into Gulf, a Pennsylvania corporation. The resultant corporate entity became Chevron U.S.A. Inc., a Pennsylvania corporation. The Gulf certificate dockets and Rate Schedules to be amended are listed in Exhibit A, attached hereto.

Applicant requests that certificates issued to Chevron U.S.A. Inc., a California corporation, listed in the attached Exhibit B, be amended to reflect the Corporation's changed state of incorporation. Applicant also requests that the Gulf Rate Schedules listed on Exhibit A attached hereto be redesignated as Chevron U.S.A. Inc. Rate Schedules.

Any person desiring to be heard or to make any protest with reference to said Application should on or before August 28, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC

20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

For-merly [1]	Now [2]	Certificate Docket No.	Purchaser
8	201	G-7161	El Paso Natural Gas Co.
9	[illegible]	G-7153	Do.
12	203	G-7157	Do.
15	[illegible]	G-7160	Permian Basin Pipeline Co.
16	[illegible]	G-7151, C175-271	El Paso Natural Gas Co.
18	[illegible]	G-4140	Delhi Gasoline Plant
21	207	G-4139	
22	208	G-7137, G-4148	Mississippi River Fuel Corp.
23	[illegible]	G-7144	United Gas Pipe Line Co.
24	210	G-7145	Tennessee Gas Transmission Co.
[illegible]	211	G-7143, G-4142	Do.
30	212	G-6843, G-4101	Lone Star Gas Company.
[illegible]	213	G-6842, G-10625	Phillips Petroleum Co.
[illegible]	214	[illegible]	El Paso Natural Gas Co.
[illegible]	215	G-7154, [illegible]	Texas Eastern Transmission Co.
43	216	G-7156, [illegible]	Natural Gas Pipeline Company of America.
[illegible]	217	G-7158, [illegible]	Michigan Wisconsin Pipe Line Co.
[illegible]	[illegible]	G-10148	Cities Service Gas Co.
[illegible]	[illegible]	G-10300	Natural Gas Pipeline Company of America.
47	220	G-10295	El Paso Natural Gas Co.
48	221	G-10631	Permian Basin Pipe Line Co.
49	222	G-10629	Northern Natural Gas Co.
50	[illegible]	G-10880	Cities Service Gas Co.
51	224	G-10788, G-16030	Panhandle Eastern Pipe Line Co.
52	225	[illegible]	Do.
55	[illegible]	G-6204, G-11173	El Paso Natural Gas Co.
56	[illegible]	G-17203, G-11632	Do.
57	228	CI69-756, G-11589	Pacific Northwest Pipeline Corp.
58	[illegible]	CI71-341, G-11634	El Paso Natural Gas Co.
59	[illegible]	CI71-294, G-11636	Do.
60	231	CI72-502, G-11633	Do.
61	[illegible]	CI72-755	
62	[illegible]	CI72-757, G-11637	Do.
64	[illegible]	CI72-758, G-11635	Do.
65	235	CI72-759, G-11631	Do.
66	[illegible]	CI72-760, G-11784	Natural Gas Pipeline Company of America.
67	[illegible]	CI79-247	Texas Eastern Transmission Corp.
68	238	CI79-531	

For-merly [1]	Now [2]	Certificate Docket No.	Purchaser
69	[illegible]	[illegible] G-12154	Southern Natural Gas Co.
70	240	G-12246	Michigan Wisconsin Pipe Line Co.
71	241	G-12475	Natural Gas Pipeline Company of America.
74	242	G-7177	United Gas Pipe Line Co.
76	243	G-7174	Arkansas Louisiana Gas Co.
77	244	G-7168	United Gas Pipe Line Co.
78	245	G-7171	Louisiana Natural Gas Corp.
80	246	G-7169	Tennessee Gas Transmission Co.
84	247	G-7172	Louisiana Natural Gas Corp.
87	248	G-10165	Tennessee Gas Transmission Co.
88	249	G-10164	Do.
89	[illegible]	[illegible]	Do.
90	251	CI61-716	American Louisiana Pipe Line Co.
91	252	G-10400	
92	253	G-10827	United Gas Pipe Line Co.
93	254	[illegible]	Texas Gas Transmission Corp.
94	255	G-12782	Champlin Oil & Refining Co.
95	256	G-12964	Kansas Nebraska Natural Gas Co.
96	257	G-13004	Colorado Interstate Gas Co.
97	258	G-13047	Trunkline Gas Co.
98	259	G-11174	Colorado Interstate Gas Co.
100	[illegible]	[illegible]	Panhandle Eastern Pipe Line Co.
102	261	G-4163	Mississippi River Fuel Corp.
104	262	[illegible]	Arkansas Louisiana Gas Co.
107	263	G-4157	Tennessee Gas Transmission Co.
108	264	[illegible]	Texas Eastern Transmission Co.
110	265	G-4151	Texas Gas Transmission Corp.
117	266	G-4143	Northern Natural Gas Co.
118	267	G-4174	El Paso Natural Gas Co.
119	268	G-4146	Permain Basin Pipeline Co.
120	269	[illegible]	El Paso Natural Gas Co.
123	270	[illegible]	Northern Natural Gas Co.
128	271	G-11898	Phillips Petroleum Co.
130	272	G-4282	Natural Gas Pipeline Company of America.
133	273	G-14485	Northern Natural Gas Co.
136	274	G-12215	United Gas Pipe Line Co.
137	275	G-15002	Cities Service Gas Co.
138	276	G-14837	West Texas Gathering Co.
139	277	G-13447	Southern Natural Gas Co.
141	278	G-15344	Northern Natural Gas Co.
142	279	G-15466	Do.
143	280	G-16221	El Paso Natural Gas Co.
144	281	G-16454	Do.
146	282	G-16524	Do.
147	283	G-16745	United Gas Pipe Line Co.
148	284	G-16761	Natural Gas Pipeline Company of America.
149	285	G-16849	El Paso Natural Gas Co.
150	286	G-17019	Do.
153	287	G-17857	Texas Gas Transmission Corp.
156	288	G-18019	Texas Eastern Transmission Corp.
157	289	G-10126	Coastal Transmission Corp.
158	290	G-10127	Coastal Transmission Corp.
160	291	G-10129	Do.
161	292	G-7146	United Gas Pipe Line Co.
161	293	G-7166	Do.
164	294	G-18478	Texas Eastern Transmission Corp.
166	295	G-18643	Champlin Oil & Refining Co.
167	296	G-18976	Panhandle Eastern Pipe Line Co.
170	297	G-19062	Tennessee Gas Transmission Co.
171	298	G-19162	Panhandle Eastern Pipe Line Co.
173	299	G-19332	Central Gas Gathering Corp.
175	300	G-19467	Tennessee Gas Transmission Co.
177	301	[illegible]	Lone Star Gas Co.

For-merly [1]	Now [2]	Certificate Docket No.	Purchaser
178	302	G-20130	Transcontinental Gas Pipe Line Corp.
186	303	C160-361	Panhandle Eastern Pipeline Co.
188	304	[illegible]	Southern Natural Gas Co.
189	305	[illegible]	Colorado Interstate Gas Co.
190	306	C160-492	El Paso Natural Gas Co.
191	307	C160-556	Cities Service Gas Co.
192	308	G-14940	Transwestern Pipeline Co.
193	309	G-14950	Do.
194	310	G-14925	Do.
195	311	G-16139	Do.
196	312	G-16218	Do.
197	313	G-16141	Do.
198	314	C160-[illegible]	El Paso Natural Gas Co.
200	315	C161-12	Panhandle Eastern Pipe Line Co.
201	316	G-7167	United Gas Pipe Line Co.
202	317	C161-197	El Paso Natural Gas Co.
203	318	C161-310	Texas Gas Transmission Corp.
204	319	C161-449	Kansas Nebraska Natural Gas Co.
205	320	C161-480	Phillips Petroleum Co.
207	321	[illegible]	Transwestern Pipeline Co.
208	322	C161-716	American Louisiana Pipe Line Co.
211	323	[illegible]	Montana Dakota Utilities Co.
213	324	C161-1213	Transwestern Pipe Line Co.
214	325	C160-45	United Gas Pipe Line Co.
215	326	C161-820	Transwestern Pipe Line Co.
216	327	C161-1441	Lone Star Gas Co.
217	328	C161-1544	Do.
218	329	C161-1555	Cities Service Gas Co.
219	330	C161-1562	Trunkline Gas Co.
220	331	C161-1630	Transcontinental Gas Pipe Line Corp.
222	332	C161-1711	Oklahoma Natural Gas Gathering Corp.
223	333	C162-47	Colorado Interstate Gas Co.
225	334	C162-166	Hunt Oil Co. and El Paso Natural Gas Co.
226	335	C162-322	Cities Service Gas Co.
228	336	C162-412	United Gas Pipe Line Co.
229	337	C162-411	Trunkline Gas Co.
230	338	C162-459	Arkansas Louisiana Gas Co.
231	339	C162-566	El Paso Natural Gas Co.
232	340	C162-603	Do.
233	341	C162-659	Texas Gas Transmission Co.
234	342	C160-412	Coastal Transmission Corp.
235	343	C162-965	United Gas Pipe Line Co.
237	344	C162-1203	Panhandle Eastern Pipe Line Co.
239	345	C162-1501	Lone Star Gas Co.
240	346	[illegible]	El Paso Natural Gas Co.
241	347	[illegible]	Natural Gas Pipeline Company of America
242	348	C163-770	Panhandle Eastern Pipe Line Co.
243	349	C163-459	Michigan Wisconsin Pipe Line Co.
244	350	C163-911	El Paso Natural Gas Co.
245	351	C163-1055	Panhandle Eastern Pipe Line Co.
246	352	C163-1119	Southern Natural Gas Co.
248	353	G-13873	Do.
250	354	C163-1341	Northern Natural Gas Co.
251	355	C163-1572	Panhandle Eastern Pipe Line Co.
252	356	C163-1149	Arkansas Louisiana Gas Co.
253	357	C164-47	Cities Service Gas Co.
254	358	C163-1125	Arkansas Louisiana Gas Co.
257	359	C164-208	Panhandle Eastern Pipe Line Co.
258	360	C164-1477	Southern Union Gas Co.
259	361	[illegible]	El Paso Natural Gas Co.
261	362	[illegible]	Northern Natural Gas Co.
262	363	C164-415	Natural Gas Pipeline Company of America.
263	364	C164-464	Tennessee Gas Transmission Co.
264	365	[illegible]	Panhandle Eastern Pipe Line Corp.
265	366	C164-544	Natural Gas Pipeline Company of America.
267	367	[illegible]	Northern Natural Gas Co.

Formerly [1]	Now [2]	Certificate Docket No.	Purchaser
268	368	CI64-883	Natural Gas Pipeline Company of America.
269	369	CI64-1069	Arkansas Louisiana Gas Co.
270	370	CI64-1117	United Gas Pipe Line Co.
271	371	CI64-1224	Michigan Wisconsin Pipe Line Co.
273	372	CI64-1454	Tennessee Gas Transmission Co.
274	373	CI64-1122	Texas Eastern Transmission Corp.
277	374	CI63-125	Southern Natural Gas Co.
278	375	CI64-36	Texas Eastern Transmission Corp.
280	376	CI65-406	Cities Service Gas Co.
281	377	CI64-1279	Colorado Interstate Gas Co.
282	378	CI65-405	Valley Gas Transmission, Inc.
283	379	CI60-158	Cities Service Gas Co.
284	380	CI65-702	Northern Natural Gas Co.
286	381	CI65-738	Do.
287	382	CI65-791	Lone Star Gas Co.
288	383	CI65-799	Natural Gas Pipeline Company of America.
292	384	CI65-896	Panhandle Eastern Pipe Line Co.
293	385	CI65-1000	Do.
296	386	CI65-983	Transwestern Pipeline Co.
297	387	CI65-1169	Panhandle Eastern Pipe Line Co.
298	388	CI65-1166	Northern Natural Gas Co.
301	389	CI66-294	Panhandle Eastern Pipe Line Co.
302	390	CI66-307	Cities Service Gas Co.
304	391	CI66-310	Tennessee Gas Transmission Co.
305	392	CI66-332	Do.
307	393	CI66-628	Cities Service Gas Co.
308	394	CI65-609	Natural Gas Pipeline Company of America.
309	395	CI66-861	Panhandle Eastern Pipe Line Co.
310	396	CI66-916	Northern Natural Gas Co.
311	397	CI66-1065	Texas Gas Transmission Corp.
312	398	G-17617	El Paso Natural Gas Co.
314	399	CI66-1258	Michigan Wisconsin Pipe Line Co.
315	400	CI67-148	Transwestern Pipeline Co.
316	401	CI66-453	Michigan Wisconsin Pipe Line Co.
317	402	CI64-1153	El Paso Natural Gas Co.
318	403	CI67-270	Michigan Wisconsin Pipe Line Co.
320	404	CI67-286	Transwestern Pipeline Co.
321	405	CI67-324	Michigan Wisconsin Pipe Line Co.
322	406	CI67-326	Panhandle Eastern Pipe Line Co.
323	407	G-6202	United Gas Pipe Line Co.
324	408	G-6204	El Paso Natural Gas Co.
325	409	G-6205	El Paso Natural Gas Co.
326	410	G-6206	Do.
327	411	G-6207	Mississippi River Fuel Corp.
328	412	G-6208	Tennessee Gas Transmission Co. and Iroquois Gas Corp.
329	413	G-6196	Kansas Nebraska Natural Gas Co.
330	414	G-6199	Long Star Gas Co.
331	415	G-6200	Cities Service Gas Co.
332	416	G-6567	El Paso Natural Gas Co.
333	417	G-6764	Panhandle Eastern Pipe Line Co.
334	418	G-6813	American Louisiana Pipe Line Co.
338	419	G-14515	Texas Gas Transmission Corp.
341	420	G-17966	Lone Star Gas Co.
342	421	G-16103A	Transwestern Pipeline Co.
344	422	G-18445	Coastal Transmission Corp.
346	423	G-19106	El Paso Transmission Co.
349	424	CI60-322	Tennessee Gas Transmission Co.
351	425	CI61-607	El Paso Natural Gas Co.
352	426	CI61-649	Texas Gas Transmission Corp.
354	427	CI62-864	Lone Star Gas Co.
355	428	CI62-1015	Texas Gas Transmission Co.
357	429	CI63-253	Arkansas Louisiana Gas Co.
358	430	G-6196	Kansas Nebraska Natural Gas Co., Inc.
359	431	CI63-816	Cities Service Gas Co.
360	432	CI63-1156	Southern Natural Gas Co.
361	433	CI63-1470	Michigan Wisconsin Pipe Line Co.
362	434	CI63-1434	United Gas Pipe Line Co.
363	435	CI64-573	United Fuel Gas Co.
366	436	G-16091	Transwestern Pipeline Co.
367	437	CI65-823	El Paso Natural Gas Co.
368	438	CI65-1244	Montana-Dakota Utilities Co.
369	439	CI66-72	Transcontinental Gas Pipe Line Corp.
370	440	G-16093	Transwestern Pipeline Co.
371	441	CI63-374	Panhandle Eastern Pipe Line Co.
372	442	CI67-800	United Gas Pipe Line Co.
373	443	CI64-705	Transwestern Pipeline Co.
374	444	CI65-484	Do.
376	445	CI65-488	Do.
376	446	CI65-497	Do.
377	447	CI65-493	Do.
378	449	CI67-787	Panhandle Eastern Pipe Line Co.
379	448	CI67-742	El Paso Natural Gas Co.
381	450	CI63-846	Do.
383	451	CI67-890	Northern Natural Gas Co.
384	452	CI67-1053	Natural Gas Pipeline Company of America.
385	453	CI67-1174	Northern Natural Gas Co.
387	454	CI67-1154	Transwestern Pipeline Co.
388	455	CI67-1269	United Gas Pipe Line Co.
390	456	CI67-1715	Lone Star Gas Co.
391	457	CI68-85	Texas Eastern Transmission Corp.
392	458	CI68-844	El Paso Natural Gas Co.
393	459	CI67-218	Transwestern Pipeline Co.
394	460	CI68-820	United Gas Pipe Line Co.
395	461	CI68-678	Natural Gas Pipeline Company of America.
396	462	CI68-872	Northern Natural Gas Co.
397	463	CI68-1316	Panhandle Eastern Pipe Line Co.
398	464	CI68-1425	Tennessee Gas Pipeline Co.
400	465	CI68-241	Pacific Lighting Service Supply Co.
401	466	CI68-236	Transwestern Pipeline Co.
402	467	CI68-445	Do.
404	468	CI69-961	Tennessee Gas Pipe Line Co.
405	469	G-10571	Union Texas Petroleum.
406	470	CI68-102	Kansas Nebraska Gas Co., Inc.
407	471	CI68-1165	Tennessee Gas Pipeline Co.
408	472	CI68-1164	Texas Gas Transmission Corp.
409	473	CI70-40	Panhandle Eastern Pipe Line Co.
410	474	CI70-41	Transcontinental Gas Pipe Line Corp.
411	475	CI68-1175	Texas Gas Transmission Corp.
412	476	CI70-342	Transwestern Pipeline Co.
413	477	G-6195	Kansas-Nebraska Natural Gas Co.
414	478	CI65-154	Natural Gas Pipeline Company of America.
416	479	CI70-488	Kansas-Nebraska Natural Gas Company, Inc.
417	480	CI70-550	Tennessee Gas Pipeline Co.
418	481	G-18451	Transwestern Pipeline Co.
420	482	CI70-904	Wheeler Gas Co.
421	483	CI71-398	United Gas Pipe Line Co.
423	484	CI71-512	Do.
424	485	G-17454	Phillips Petroleum Co.
425	486	CI71-865	Texas Eastern Transmission Corp.
426	487	CI72-108	Texas Gas Transmission Corp.
427	488	CI72-111	Transcontinental Gas Pipe Line Corp.
428	489	CI71-108	Tennessee Gas Pipe Line Corp.
430	490	CI73-146	Sea Robin Pipeline Co.
431	491	CI63-1410	Michigan Wisconsin Pipe Line Co.
432	492	CI72-447	Southern Natural Gas Co.
433	493	CI72-252	Grand Gas Corp.
434	494	CI72-822	El Paso Natural Gas Co.
435	495	CI72-731	Do.
436	496	CI72-764	Transwestern Pipeline Co.
437	497	CI73-16	Florida Gas Transmission Co.
439	498	CI73-496	Northern Natural Gas Co.
440	499	CI73-445	Transwestern Pipeline Co.
441	500	CI73-587	Cities Serviced Gas Co.
442	501	CI73-656	Transwestern Pipeline Co.
444	502	CI73-770	El Paso Natural Gas Co.
445	503	CI73-894	Do.
446	504	CI74-150	Do.
447	505	CI74-259	Cities Service Gas Co.
448	506	CI74-145	El Paso Natural Gas Co.
450	507	CI74-257	Do.
451	508	CI73-695	Transwestern Pipeline Co.
452	509	CI74-456	Northern Natural Gas Co.
453	510	CI75-36	El Paso Natural Gas Co.
455	511	CI75-622	Texas Gas Transmission Co.
456	512	CI75-731	Cities Service Gas Co.
457	513	CI75-743	Michigan Wisconsin Pipe Line Co.
459	514	CI76-55	United Gas Pipe Line Co.
460	515	CI76-57	Transcontinental Gas Pipe Line Corp.
461	516	CI76-61	El Paso Natural Gas Co.
462	517	CI76-62	Do
463	518	CI76-66	Do
465	519	CI76-76	Do
466	520	CI76-84	Texas Gas Transmission Corp.
467	521	CI76-83	El Paso Natural Gas Co.
468	522	CI76-85	Do
469	523	CI76-86	Do
470	524	CI76-150	Do
471	525	CI76-196	Colorado Interstate Gas Co.
473	526	CI76-222	Northern Natural Gas Co.
474	527	CI76-240	Natural Gas Pipeline Company of America.
475	528	CI76-241	Do
476	529	CI76-242	Do
477	530	CI76-264	Do
478	531	CI76-224	Transwestern Pipeline Co.
479	532	CI76-409	Northern Natural Gas Co.
480	533	CI76-435	Colorado Interstate Gas Co.
481	534	CI76-433	Kansas-Nebraska Natural Gas Co., Inc.
482	535	CI76-436	Cities Service Gas Co.
483	536	CI76-450	El Paso Natural Gas Co.
484	537	CI76-451	Northern Natural Gas Co.
485	538	CI76-498	Colorado Interstate Gas Co.
486	539	CI76-505	Northern Natural Gas Co.
487	540	CI76-506	Do
488	541	CI76-517	Do
489	542	CI67-562	Tennessee Gas Pipe Line Co.
490	543	CI76-520	Northern Natural Gas Co.
491	544	CI76-527	Do
492	545	CI76-528	Do
493	546	CI76-526	El Paso Natural Gas Co.
495	547	CI76-532	Northern Natural Gas Co.
496	548	CI76-533	Panhandle Eastern Pipe Line Co.
497	549	CI76-622	Arkansas Louisiana Gas Co.
498	550	CI76-595	Tennessee Gas Pipeline Co.
499	551	CI76-643	Natural Gas Pipeline Company of America.
500	552	CI76-674	Arkansas Louisiana Gas Co.
501	553	CI76-650	Natural Gas Pipeline Company of America.
502	554	CI76-694	El Paso Natural Gas Co.
503	555	CI77-192	Cities Service Gas Co.
504	556	CI76-792	Transwestern Pipeline Co.
505	557	CI77-121	El Paso Natural Gas Co.
506	558	CI77-123	Do
507	559	CI77-292	Michigan Wisconsin Pipe Line Co.
508	560	CI77-397	Cities Service Gas Co.
509	561	CI77-396	Arkansas Louisiana Gas Co.
510	562	CI76-197	Transcontinental Gas Pipe Line Corp.
511	563	CI77-556	Panhandle Eastern Pipe Line Co.
512	564	CI77-557	Kansas Nebraska Natural Gas Co.

Formerly [1]	Now [2]	Certificate Docket No.	Purchaser
513	[illegible]	CI77-558	Panhandle Eastern Pipe Line Co.
514	[illegible]	CI77-573	Kansas Nebraska Natural Gas Co., Inc.
515	[illegible]	CI77-613	Northern Natural Gas Co.
[illegible]	[illegible]	CI77-615	El Paso Natural Gas Co.
517	[illegible]	CI77-618	Robert G. Hall.
[illegible]	[illegible]	CI77-696	Michigan Wisconsin Pipe Line Co.
[illegible]	[illegible]	CI77-797	Mountain Fuel Supply Co.
[illegible]	[illegible]	CI77-823	Do.
521	[illegible]	CI77-831	El Paso Natural Gas Co.
522	574	CI77-832	Do.
523	575	CI77-836	Panhandle Eastern Pipe Line Co.
524	576	CI78-143	Pioneer Gas Products Co.
[illegible]	[illegible]	CI78-271	El Paso Natural Gas Co.
[illegible]	[illegible]	CI78-285	Do.
[illegible]	[illegible]	CI78-451	Panhandle Eastern Pipe Line Co.
[illegible]	[illegible]	CI78-537	Cities Service Gas Co.
[illegible]	[illegible]	CI78-550	South Texas Natural Gas Gathering Co.
[illegible]	[illegible]	CI78-740	Transwestern Pipeline Co.
[illegible]	583	CI78-519	El Paso Natural Gas Co.
[illegible]	[illegible]	CI78-804	Do.
[illegible]	585	CI78-813	Panhandle Eastern Pipe Line Co.
536	[illegible]	CI78-1052	Equitable Gas Co.
537	[illegible]	CI78-1091	Texas Eastern Transmission Corp.
[illegible]	588	CI78-1149	United Gas Pipe Line Co.
[illegible]	[illegible]	CI78-1173	Montana-Dakota Utilities Co.
[illegible]	[illegible]	CI75-74	El Paso Natural Gas Co.
[illegible]	[illegible]	CI75-22	Michigan Wisconsin Pipe Line Co.
542	[illegible]	CI75-572	Kansas Nebraska Natural Gas Company, Inc.
[illegible]	[illegible]	CI75-736	El Paso Natural Gas Co.
544	594	CI76-215	Northern Natural Gas Co., Inc.
545	595	CI75-238	Kansas-Nebraska Natural Gas Co., Inc.
[illegible]	[illegible]	CI76-296	Do.
[illegible]	[illegible]	CI77-104	Northern Natural Gas Co., Inc.
[illegible]	[illegible]	CI75-69	Trunkline Gas Co.
550	[illegible]	CI77-393	Michigan Wisconsin Pipe Line Co.
[illegible]	[illegible]	CI77-821	United Gas Pipe Line Co.
553	[illegible]	CI77-841	Cities Service Gas Co.
[illegible]	602	CI76-159	Natural Gas Pipeline Company of America.
555	[illegible]	CI76-306	Columbia Gas Transmission Corp.
557	604	CI76-406	Kansas Nebraska Natural Gas Company, Inc.
558	605	CI76-309	Consolidated Gas Supply Corp.
[illegible]	[illegible]	CI76-399	Cities Service Gas Co.
[illegible]	607	CI78-1270	Consolidated Gas Supply Corp.
[illegible]	608	CI78-1261	Do.
[illegible]	[illegible]	CI78-1266	Do.
[illegible]	610	CI78-1252	Do.
[illegible]	611	CI78-1274	Do.
[illegible]	612	CI78-1269	Do.
[illegible]	613	CI78-1267	Do.
[illegible]	614	CI78-1248	Do.
[illegible]	615	CI78-1273	Do.
[illegible]	616	CI79-15	Do.
570	617	CI79-18	Do.
571	618	CI79-14	Do.
572	619	CI79-25	Do.
[illegible]	[illegible]	CI79-26	Do.
[illegible]	621	CI79-19	Do.
[illegible]	[illegible]	CI79-46	Do.
576	623	CI79-50	Equitable Gas Company.
577	624	CI79-64	Southern Natural Gas Co
578	[illegible]	CI79-48	Equitable Natural Gas Co
579	[illegible]	CI79-49	Do.
580	627	CI79-45	Consolidated Gas Supply Corp.
581	628	CI79-61	Equitable Gas Co.
582	629	CI79-60	Do.
583	[illegible]	CI79-64	Do.
584	[illegible]	CI79-62	Do.
[illegible]	[illegible]	CI79-63	Do.
[illegible]	[illegible]	CI79-59	Arkansas Louisiana Gas Co.
[illegible]	[illegible]	CI79-57	Cities Service Gas Co.
[illegible]	636	CI79-70	Do.

Formerly [1]	Now [2]	Certificate Docket No.	Purchaser
[illegible]	[illegible]	CI79-71	Arkansas Louisiana Gas Co.
590	[illegible]	CI79-58	Colorado Interstate Gas Co.
591	638	CI78-1253	Michigan Wisconsin Pipe Line Co.
[illegible]	639	CI79-72	Cabot Corp.
[illegible]	[illegible]	CI79-88	Equitable Gas Co.
594	641	CI78-1232	Texas Gas Transmission Corp.
[illegible]	642	CI79-82	Columbia Gas Transmission Corp.
596	643	CI79-89	Michigan Wisconsin Pipe Line Co.
597	.....	CI79-113	Southern Natural Gas Co.
598	644	CI79-111	Zenith Natural Gas Co.
600	645	CI78-1237	Michigan Wisconsin Pipe Line Co.
601	[illegible]	CI78-1238	Do.
[illegible]	[illegible]	CI79-166	Cities Service Gas Co.
[illegible]	[illegible]	CI79-168	Northern Natural Gas Co.
604	[illegible]	CI79-167	Panhandle Eastern Pipe Line Co.
[illegible]	[illegible]	CI79-152	Transwestern Pipeline Co.
606	651	CI79-154	Do.
[illegible]	[illegible]	CI79-182	United Gas Pipe Line Co.
[illegible]	[illegible]	CI79-151	Equitable Gas Company.
[illegible]	654	CI79-158	Do.
[illegible]	[illegible]	CI79-126	Southern Natural Gas Co.
611	656	CI79-153	Northern Natural Gas Co.
612	657	CI79-234	Transcontinental Gas Pipe Line Corp.
615	658	CI79-233	Consolidated Gas Supply Corp.
[illegible]	[illegible]	CI79-237	Gas Gathering Corp.
617	[illegible]	CI79-243	Consolidated Gas Supply Corp.
[illegible]	[illegible]	CI79-232	Do.
[illegible]	662	CI79-249	Southern Natural Gas Co.
[illegible]	[illegible]	CI79-306	Natural Gas Pipe Line Company of America.
623	[illegible]	CI79-291	Texas Eastern Transmission Corp.
[illegible]	665	CI79-333	Michigan Wisconsin Pipe Line Co.
626	[illegible]	CI79-347	Natural Gas Pipe Line Company of America.
[illegible]	[illegible]	CI79-674	Northern Natural Gas Co.
[illegible]	668	CI79-1282	Consolidated Gas Transmission Co.
[illegible]	[illegible]	CI79-439	Texas Gas Transmission Corp.
[illegible]	[illegible]	CI79-440	Northern Natural Gas Co.
[illegible]	[illegible]	CI79-631	Do.
632	672	CI79-461	National Fuel Gas Supply Corp.
633	[illegible]	CI79-485	Michigan Wisconsin Pipe Line Co.
634	674	CI79-497	Gas Transport, Inc.
[illegible]	[illegible]	CI79-527	Trunkline Gas Co.
[illegible]	676	CI80-7	United Gas Pipe Line Co.
638	[illegible]	CI80-35	Do.
[illegible]	678	CI80-880	Do.
[illegible]	[illegible]	CI80-5	Phillips Petroleum Co.
641	[illegible]	CI80-10	El Paso Natural Gas Co.
642	681	CI80-54	Pennzoil Co.
[illegible]	682	CI80-169	El Paso Natural Gas Co.
[illegible]	[illegible]	CI80-325	Panhandle Eastern Pipe Line Co.
646	684	CI83-101	United Gas Pipe Line Co.
[illegible]	685	CI83-403	Texas Gas Transmission Corp.

[1] Gulf Oil Corp. FERC gas rate schedule No.
[2] Chevron U.S.A. Inc. FERC gas rate schedule No.

Formerly [1]	Now [2]	Certificate Docket No.	Purchaser
1	1	CI82-267, CI80-325	Northwest Pipeline Corp.

[1] The Pittsburgh and Midway Coal Mining Co., a Division of Gulf Oil Corp. FERC Gas Rate Schedule No.
[2] Pittsburgh and Midway Coal Mining Co. FERC Gas Rate Schedule No.

Formerly [1]	Now [2]	Certificate Docket No.	Purchaser
21	21	G-20478	Oklahoma Natural Gas Co.
22	22	G-4101	El Paso Natural Gas Co.

Formerly [1]	Now [2]	Certificate Docket No.	Purchaser
[illegible]	[illegible]	G-4142	Do.
[illegible]	30	G-4101	Do.
[illegible]	[illegible]		Cities Service Gas Co.
[illegible]	42	G-7154	El Paso Natural Gas Co.
43	[illegible]	G-7156, G-13445	Do.
[illegible]	[illegible]	G-7158	Do.
[illegible]	[illegible]	G-7155	Do.
[illegible]	46	G-7170	Texas Eastern Transmission Co.
47	47	G-14140	Do.
[illegible]	[illegible]	G-2585	Montana Dakota Utilities Co.
[illegible]	[illegible]	G-13954	Tennessee Gas Transmission Co.
[illegible]	[illegible]	G-16030	Transwestern Pipeline Co.
52	52	[illegible]	Northwestern Natural Gas Co.
[illegible]	55	G-4304	El Paso Natural Gas Co.
[illegible]	[illegible]	G-17203	Do.
57	57	C169-756	Natural Gas Pipeline Co. of America.
[illegible]	[illegible]	C171-341	Do.
[illegible]	[illegible]	C171-294	United Gas Pipe Line Co.
[illegible]	[illegible]	C172-502	El Paso Natural Gas Co.
[illegible]	[illegible]	C172-755	Do.
[illegible]	63	C172-757	Do.
[illegible]	[illegible]	C172-758	Do.
[illegible]	[illegible]	C172-759	Do.
[illegible]	[illegible]	C172-760	Do.
[illegible]	[illegible]	C179-247	Do.
[illegible]	66	C179-531	Do.
[illegible]	[illegible]	C150-462	Do.

[1] Warren Petroleum Corp., a Division of Gulf Oil Corp. FERC Gas Rate Schedule No.
[2] Warren Petroleum Corp., a Division of Chevron U.S.A. Inc. FERC Gas Rate Schedule No.

Exhibit B

Schedule No. [1]	Certificate Docket No.	Purchaser
2	G-5719	Southern Natural Gas Co.
3	[illegible]	United Gas Pipeline Co.
4	G-8817	Tennessee Gas Pipeline Co.
5	[illegible]	Texas Gas Transmission Corp.
6	G-13078	Do.
7	G-13222	Southern Natural Gas Co.
8	G-19647	Do.
9	[illegible]	Do.
10		Mountain Fuel Supply Co.
11	[illegible]	United Gas Pipeline Co.
12	[illegible]	Transco Gas Pipeline Corp.
13	G-16167	Southern Natural Gas Co.
14	G-17339	Texas Gas Transmission Corp.
15	[illegible]	United Gas Pipeline Co.
16	[illegible]	Southern Natural Gas Co.
17	G-20147	Do.
18	[illegible]	Do.
19	CI61-348	Do.
20		Transcontinental Gas Pipeline Corp.
21	[illegible]	Texas Gas Transmission Corp.
22	[illegible]	Trunkline Gas Company.
23	[illegible]	United Fuel Gas Company.
24	[illegible]	Texas Gas Transmission Corp.
25	[illegible]	Do.
27	[illegible]	United Gas Pipeline Co.
28	[illegible]	Texas Gas Transmission Corp.
29	[illegible]	Texas Eastern Transmission Corp.
30	[illegible]	Southern Natural Gas Co.
31	CI63-1224	Texas Gas Transmission Corp.
35	[illegible]	Transcontinental Gas Pipeline Corp.
36	[illegible]	Natural Gas Pipeline Company of America.
38	[illegible]	Texas Eastern Transmission Corp.
39	[illegible]	Texas Gas Transmission Corp.
40	[illegible]	Do.
41	CI67-1816	Do.
42	[illegible]	Texas Eastern Transmission Corp.
43	CI67-1792	Transcontinental Gas Pipeline Corp.
44	CI68-1241	Trunkline Gas Co.
45	[illegible]	Michigan Wisconsin Pipeline Co.
47	[illegible]	Texas Eastern Transmission Corp.
48	[illegible]	Texas Gas Transmission Corp.

EXHIBIT B —Continued

Schedule No.[1]	Certificate Docket No.	Purchaser
49	CI70-50	United Gas Pipeline Co.
50	CI70-93	Southern Natural Gas Co.
51	CI70-78	Sea Robin Pipeline Co.
52	CI70-680	Trunkline Gas Co.
53	G-4269	Tennessee Gas Pipeline Co.
54	G-7214 and G-13962	Texas Eastern Gas Transmission Corp.
56	G-10413	Do.
57	G-12563	Transcontinental Gas Pipeline Corp.
58	CI61-1377	Southern Texas Natural Gas Gathering Co.
60	CI62-1140	Natural Gas Pipeline Company of America.
61	CI64-607	Do.
62	CI65-1013	Do.
63	CI65-264	Transcontinental Gas Pipeline Corp.
64	CI71-474	Texas Eastern Transmission Corp.
65	CI71-463	Tennessee Gas Pipeline Co.
67	CI71-660	Southern Natural Gas Co.
68	CI71-593	Texas Gas Transmission Corp.
69	CI71-885	Tennessee Gas Pipeline Co.
70	CI71-861	Southern Natural Gas Co.
71	CI71-869	Do.
72	CI72-277	Tennessee Gas Pipeline Co.
73	CI72-620	Natural Gas Pipeline Company of America.
74	CI72-850	Texas Gas Transmission Corp.
75	CI73-53	Florida Gas Transmission Co.
76	CI73-761	Southern Natural Gas Co.
77	CI68-1352	Transcontinental Gas Pipeline Corp.
78	CI74-73	Natural Gas Pipeline Company of America.
79	CI74-52	Do.
80	CI74-81	Do.
81	CI74-333	Do.
82	CI74-334	Southern Natural Gas Co.
83	CI74-421	Transcontinental Gas Pipeline Corp.
84	CI74-567	Natural Gas Pipeline Company of America.
86	CI74-425	Do.
88	CI75-475	Do.
89	CI75-508	Southern Natural Gas Co.
90	CI76-122	Tennessee Gas Pipeline Co.
91	CI76-183	Natural Gas Pipeline Company of America.
92	CI76-177	Do.
93	CI76-201	Do.
94	CI76-475	Do.
95	CI76-425	Trunkline Gas Company.
96	CI76-671	Natural Gas Pipeline Company of America.
97	CI77-53	Trunkline Gas Company.
98	G-18730	El Paso Natural Gas Co.
99	CI60-333	Northwest Pipeline Corp.
100	G-15906	Mountain Fuel Supply Co.
102	CI64-1532	Montana-Dakota Utilities Co.
103	CI64-1498	Kansas-Nebraska Natural Gas Co., Inc.
104	G-13830	El Paso Natural Gas Co.
105	G-18721	Do.
106	G-20317	Do.
107	CI62-78	Do.
108	CI68-557	Do.
109	CI69-931	Kansas-Nebraska Energy, Inc.
110	G-7223	El Paso Natural Gas Co.
111	G-7217	Do.
112	G-7215	Lone Star Gas Co.
113	G-7212	El Paso Natural Gas Co.
114	G-9274	Do.
115	G-13661	Do.
116	G-13861	Do.
117	G-18241	Westlake Natural Gas Co. & Atlantic Richfield Co.
118	G-7211	El Paso Natural Gas Co.
119	G-7207	Do.
120	CI61-35	Transwestern Pipeline Co.
121	CI60-87	Do.
122	G-18023	Do.
123	G-18024	Do.
124	G-18025	Do.
125	CI62-765	Cimarron Transmission Co.
126	CI62-552	Do.
127	CI62-433	Lone Star Gas Co.
128	CI62-1264	El Paso Natural Gas Co.
129	CI62-1238	Northern Natural Gas Co.
130	CI63-280	El Paso Natural Gas Co.

EXHIBIT B —Continued

Schedule No.[1]	Certificate Docket No.	Purchaser
131	CI64-1326	Cimarron Transmission Co.
132	CI65-709	Natural Gas Pipeline Company of America.
133	CI65-564	Do.
134	CI65-564	Do.
135	CI67-42	El Paso Natural Gas Co.
136	CI67-564	Natural Gas Pipeline Company of America.
138	CI65-842	Do.
139	CI71-571	Northern Natural Gas Co.
140	CI73-750	El Paso Natural Gas Co.
141	CI74-187	Mississippi River Transmission Corp.
142	CI75-165	Do.
143	CI75-612	Mountain Fuel Supply Co.
144	CI76-125	Colorado Interstate Gas Co.
145	CI76-275	El Paso Natural Gas Co.
146	CI76-727	Mississippi River Transmission Corp.
147	CI75-420	United Gas Pipeline Co.
148	CI77-158	Tennessee Gas Pipeline Co.
149	CI77-355	Natural Gas Pipeline Company of America.
150	CI77-411	Do.
151	CI77-694	Mississippi River Transmission Corp.
152	CI77-717	Natural Gas Pipeline Company of America.
153	CI77-754	Kansas-Nebraska Natural Gas Co.
154	CI77-786	Natural Gas Pipeline Company of America.
155	CI78-206	Southern Natural Gas Company.
156	CI78-255	United Pipeline Co.
157	CI78-852	Natural Gas Pipeline Company of America.
158	CI78-853	Do.
159	CI78-851-000	Southern Natural Gas Co.
160	CI78-945	Northwest Pipeline Corp.
161	CI78-1042	Natural Gas Pipeline Company of America.
162	CI78-1043	Do.
163	CI78-1130	Mississippi River Transportation Corp.
164	CI78-1250	Transcontinental Gas Pipeline Corp.
165	CI79-4	Do.
166	CI79-129-001	Natural Gas Pipeline Company of America.
167	CI79-310	Pacific Lighting Service Company.
168	CI79-479	Southern Natural Gas Co., United Gas Pipeline Co.
169	CI79-626	Sea Robin Pipeline Co.
170	CI79-636	Transcontinental Gas Pipeline Corp.
171	CI80-19	Natural Gas Pipeline Company of America.
172	CI80-53	Columbia Gas Transmission Corp.
173	CI80-16	Texas Gas Transmission Corp.
174	CI80-181	Natural Gas Pipeline Company of America.
175	CI80-209	Columbia Gas Transmission Corp.
176	CI77-809	Pacific Alaska LNG Associates.
177	CI77-814	Do.
178	CI80-377	Tennessee Gas Pipeline Co.
179	CI80-474	Natural Gas Pipeline Company of America.
180	CI81-28-000	Do.
181	CI81-127-000	Tennessee Gas Pipeline Company. Columbia Gas Transmission Corp.
182	CI81-325-000	Natural Gas Pipeline Company of America.
183	CI81-362-000	Do.
184	CI81-396-000	Columbia Gas Transmission Corp.
185	CI81-476-000	Trunkline Gas Company.
186	CI81-482-000	Natural Gas Pipeline Company of America.
187	CI82-22-000	Do.
188	CI82-126-000	Do.
189	CI81-444-000	Southern Natural Gas Co.
190	CI82-206-000	Natural Gas Pipeline Company of America.
191	CI82-423-000	Tennessee Gas Pipeline Co.
192	CI83-160-000	Amoco USA Inc.
193	CI83-409-000	Natural Gas Pipeline Company of America.

EXHIBIT B —Continued

Schedule No.[1]	Certificate Docket No.	Purchaser
194	CI84-147-000	Do.
195	CI84-159-000	Do.
196	CI84-455-000	Do.
197	CI84-514-000	Do.
198	CI84-515-000	Do.
199	CI85-161-000	Do.
200	CI85-421-000	Do.

[1] Chevron U.S.A. Inc. FERC Gas Rate.

[FR Doc. 85-20102 Filed 8-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-643-000]

Crown Zellerbach Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

August 16, 1985.

On August 6, 1985, Crown Zellerbach Corporation (Applicant), of One Bush Street, San Francisco, California 93104 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at St. Francisville, Louisiana. The facility will contain a combustion turbine generator, a suplementary natural gas-fired heat recovery boiler (HRB) and an existing extraction steam turbine generator. The steam from the HRB will be integrated with the high pressure header of the steam plant. The extracted steam from the steam turbine and the HRB integrated steam is used in the pulp and papermaking process. The primary energy source will be natural gas. The electrical power production capacity of the facility will be 59.2 MW. The facility is expected to begin commercial operation in January 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20110 Filed 8-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-678-000]

Florida Power & Light Co.; Filing

August 15, 1985.

The filing Company submits the following:

Take notice that on August 6, 1985, Florida Power & Light Company (FPL) tendered for filing as an initial rate schedule a Special Short Term Agreement To Provide Capacity And Scheduled Incremental Energy by Florida Power & Light Company to Seminole Electric Cooperative, Inc. During Forced Outage of Seminole Unit Nos. 1 and 2. FPL states that service under the agreement commenced on August 6, 1985. FPL states further that the agreement was negotiated under special circumstances relating to the unanticipated outage of both Seminole units.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20139 Filed 8-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-671-000]

Gulf Power Co.; Supplements

August 15, 1985.

The filing Company submits the following:

Take notice that on August 5, 1985, Gulf Power Company (Gulf) filed herein Supplements to its FERC Electric Tariffs providing for changes in loads for service by Gulf to Choctawhatchee Electric Cooperative, Inc. and West Florida Electric Cooperative Association. These tariff supplements are proposed to be effective for service commencing on June 1, 1985, and Gulf therefore requests waiver of the Commission's notice requirements to allow such effective dates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 385.214). All such motions or protests should be filed on or before August 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20138 Filed 8-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-612-000]

Hydro Valley Development, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility; Correction

August 15, 1985.

On August 2, 1985, a Notice of Application was issued in error and appeared in the Federal Register issue of August 6, 1985, 50 FR 31763. Hydro Valley Development, Inc. filed a Notice of Qualification of a Small Power Production Facility and did not request application for Commission certification. Notice of the application is hereby withdrawn.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20111 Filed 8-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8482-001]

Independence Electric Corp., Surrender of Preliminary Permit

August 16, 1985.

Take notice that Independence Electric Corporation, Permittee for the proposed Kentucky River Lock and Dam No. 11, Project No. 8482, requested by letter dated July 31, 1985, that its preliminary permit be terminated. The preliminary permit was issued on February 19, 1985, and would have expired on January 31, 1987. The project would have been located on the Kentucky River in Madison and Estill Counties, Kentucky.

The Permittee filed the request on August 2, 1985, and the preliminary permit for Project No. 8482 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20112 Filed 8-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-141-001]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

August 16, 1985.

Take notice that on 8/9/85, Midwestern Gas Transmission Company (Midwestern) filed First Revised Sheets Nos. 32, 33, 34, 100, 101 and 102 to Original Volume No. 1 of its FERC Gas Tariff, to be effective October 1, 1984.

Midwestern states that the purpose of the revised tariff sheets is to implement the Settlement Agreement (May 8, 1985) which was approved by the Commission letter order issued July 22, 1985, in the referenced proceeding. Pursuant to the Commission order, the effective date of these tariff sheets is October 1, 1984.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 23, 1985. Protests will be considered by the Commission in determining the appropriate proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on filè with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20113 Filed 8–21–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85–2–27–000,001]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

August 16, 1985.

Take notice that North Penn Gas Company (North Penn) on August 9, 1985, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause for rates to be effective September 1, 1985.

Specifically, North Penn has included in its semiannual PGA, to be effective September 1, 1985, the following:

1. A decrease of 53.678¢ per Mcf (Appendix A) to reflect changes in the cost of gas purchased.

2. A surcharge credit of 31.682¢ per Mcf (Appendix B) resulting from amounts accumulated in the Unrecovered Purchased Gas Cost Account for the period January 1, 1985 through June 30, 1985; the jurisdictional portion of supplier refunds received by North Penn for the same six-month period; carrying charges computed in accordance with the Federal Energy Regulatory Commission's (Commission) Regulations; and a carry-over balance from the surcharge credit effective for the period September 1, 1984 through February 28, 1985.

Included in the surcharge credit of 31.682¢ per Mcf is a separately stated surcharge of 13.666¢ per Mcf (Appendix C) to recover North Penn's funding of take-or-pay payments made by Tennessee Gas Pipeline Company (Tennessee) under procedures approved by the Commission in Docket No. RP83–8 et al. issued April 16, 1985.

As part of this filing, North Penn has also included Twelfth Revised Sheet No. 15H which reflects no incremental pricing surcharges under Section 15 of the General Terms and Conditions of its tariff.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective September 1, 1985 as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20114 Filed 8–21–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85–603–000]

South Carolina Generating Co., Inc. Order Accepting for Filing and Suspending Rates, Denying Motions To Reject, Ordering Summary Disposition, Noting Interventions, Denying Waiver, Establishing Hearing Procedures, and Consolidating Dockets

Issued: August 15, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

On June 27, 1985, South Carolina Generating Company, Inc. (GENCO) submitted for filing a revision to its cost of service formula to include several additional expense accounts in its unit power sale agreement with South Carolina Electric & Gas Company (SCE&G).[1] GENCO requests waiver of the notice requirements to permit a January 1, 1985, effective date. The revisions would increase revenues for the months of January through April 1985 by $338,250.

The unit power sale agreement was filed on December 28, 1984, in Docket No. ER85–204–000. It provides for the sale of the entire output of the company's Williams Generating Station to its affiliate, SCE&G. Billing under the agreement is based on a cost of service formula rate as detailed on a billing format (Schedule 8). The format specifies the cost items to be included in the charges by FERC account number and codifies how the foumula rate operates.

By order issued February 21, 1985, the Commission accepted GENCO's unit power sales agreement and the accompanying billing format for filing to become effective January 1, 1985, subject to refund, and set them for hearing. The Commission's order specifically noted:

> . . . pages 3 and 4 of GENCO's supporting Schedule 8 contain a provision that would allow the company to add any expense, plant, or other account that may become applicable in the future. We here inform GENCO that any changes pursuant to this provision, any modification of the formula methodology, or any change in return on equity or depreciation rates will require timely filing pursuant to Part 35 of the Commission's regulations.
>
> 30 FERC ¶ 61,163, p. 61,339

On May 15, 1985, during the ongoing proceedings in Docket No. ER85–204–000, the Commission's trial staff filed a motion for summary disposition (Docketed as No. ER85–204–003) of certain administrative and general, system control, and load dispatching expenses which were not specified in the billing format accepted by the Commission, but which were being billed to SCE&G. On July 2, 1985, an initial decision was issued by the presiding judge finding that GENCO violated the terms of its cost of service tariff on file with the Commission, the Commission's filed rate doctrine, the Commission's order of February 21, 1985, and Part 35 of the Commission's Regulations under the Federal Power Act as a result of billing SCE&G through FERC accounts not specified in its filed cost of service tariff. 32 FERC ¶ 63,008. The presiding judge granted trial staff's motion for summary disposition and ordered GENCO to make refunds with interest to SCE&G for all amounts improperly billed to SCE&G.

Notice of the company's filing was published in the **Federal Register**,[2] with comments due on or before July 23, 1985. Timely motions to intervene were filed by the Consumer Advocate for the State of South Carolina (CASC) and the Central Electric Power Cooperative, Inc. (CEPC). In addition, the Public Service Commission of South Carolina (SCPSC) filed an untimely motion to intervene.

The CASC and CEPC each request that the Commission reject GENCO's filing as inappropriate in light of presiding judge's decision in Docket No. ER85–204–003. In the event the Commission does not reject the filing, CEPC asks that the Commission set GENCO's filing for hearing.

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[1] *See* Attachment for rates schedule designations.

[2] 50 FR 29473 (1985).

On August 5, 1985, GENCO filed an answer to the pleadings of the CASC and CEPC. While not opposing their intervention, the company does oppose their motions to reject. GENCO argues that it has properly collected from SCE&G the costs reflected in the present filing; in any event, any procedural infirmities which may exist as to the collection of those costs are cured, the company states, by its submittal in this docket.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make the CASC and CEPC parties to this proceeding. Furthermore, we find that good cause exists to grant the SCPSC's untimely intervention, given the interests of the constituency which it represents, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

As noted, both the CASC and CEPC request that we reject GENCO's filing in light of the events in Docket No. ER85–204–000. The legality of GENCO's conduct at issue there is not, however, valid grounds for rejecting the company's filing in this docket. The Federal Power Act mandates that all rates charged by an electric utility be just and reasonable. Absent contractual obligations to the contrary, GENCO has a right to file for and collect such rates. Any remedies which should be imposed upon GENCO for collecting charges not specified in its tariff will be determined in Docket No. ER85–204–003 following the submission of briefs on and opposing exceptions to the initial decision of July 2, 1985. Accordingly, we shall deny the motions to reject GENCO's filing.

Our analysis reveals that the company has included Account No. 407 of the Commission's Uniform System of Accounts (Amortization of Property Losses) in its revised formula. The expenses reflected in this account are for extraordinary property losses, which are generally non-recurring. The Commission has not allowed electric utilities to recover these types of losses from customers without prior Commission review. *E.g. Wisconsin Power & Light Co.*, Opinion No. 141, 19 FERC ¶ 61,288 (1982). Therefore, such losses are particularly inappropriate for inclusion in an automatically adjusting formula rate prior to Commission approval. Accordingly, we shall order summary disposition with respect to this issue, and require GENCO to file, within thirty days, a revised formula deleting Account No. 407. Our action is without prejudice to GENCO's making an appropriate filing when it actually seeks to recover such expenses from SCE&G.

Our review of GENCO's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing, as modified by summary disposition, and we shall suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the revised formula rates may not yield substantially excessive revenues. Therefore, we shall suspend those rates for a nominal period.

As mentioned, GENCO requests waiver of notice requirements to permit an effective date of January 1, 1985, to enable it to retain those revenues collected from SCE&G on the basis of expense accounts which were not specified in GENCO's filed rate, but which GENCO claims are properly chargeable to SCE&G. We do not find that GENCO has presented good cause for waiver. The Commission specificially advised GENCO that changes to its formula rate would require a timely filing. Nonetheless, the utility filed it request to collect the revised rates six months after it began collecting the charges. Further, the intervenors do not concur in the company's request. In the circumstances, we shall deny GENCO's request for waiver of the notice requirements. Accordingly, we shall suspend GENCO's rates for one day to become effective, as modified, on August 28, 1985, subject to refund.

Finally, we find that common questions of law and fact may be presented in Docket No. ER85–603–000 and Docket No. ER85–204–000. As a result, we shall consolidate the proceedings for purposes of hearing and decision.

The Commission orders:

(A) The SCPSC's untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The motions to reject GENCO's filing are hereby denied.

(C) Summary disposition is hereby ordered, as noted in the body of this order, will respect to the inclusion of Account No. 407 in the revised cost of service formula. Within thirty (30) days of the date of this order, GENCO shall refile its cost of service formula to reflect this determination.

(D) GENCO's request for waiver of the notice requirements is hereby denied.

(E) GENCO's proposed cost of service formula, as modified by summary disposition, is accepted for filing and suspended for one day, to become effective, subject to refund on August 28, 1985.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of GENCO's proposed rate schedule changes.

(G) Subdocket No. –000 of Docket No. ER85–603–000 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER85–603–001.

(H) Docket No. ER85–603–001 is hereby consolidated with Docket No. ER85–204–000 for purposes of hearing and decision.

(I) The administrative law judge designated to preside in Docket No. ER85–204–000 shall determine procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(J) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment

SOUTH CAROLINA GENERATING COMPANY, INC., DOCKET NO. ER85-603-000; RATE SCHEDULE DESIGNATION

Designation	Description
(1) Supplement No. 3 to Rate Schedule FERC No. 1 (Supersedes Supplement No. 1).	Revised Schedule 8 Cost of Service Billing Format.
(2) Supplement No. 4 to Rate Schedule FERC No. 1 (Supersedes Supplement No. 1 to Supplement No. 1)	Redesignation of Schedule 2—Calculation of Proposed Billing.
(3) Supplement No. 5 to Rate Schedule FERC No. 1.	Revised Schedule 3—Forecasted O&M expenses, Generation by Fuel Inventory Cost and Other Taxes.
(4) Supplement No. 6 to Rate Schedule FERC No. 1.	Revised Schedule 4—Net Investment Billing Forecast.

SOUTH CAROLINA GENERATING COMPANY, INC., DOCKET NO. ER85-603-000; RATE SCHEDULE DESIGNATION—Continued

Designation	Description
(5) Supplement No. 7 to Rate Schedule FERC No. 1.	Redesignation of Schedule 5—Accumulated Deferred Income Taxes.
(6) Supplement No. 8 to Rate Schedule FERC No. 1.	Redesignation of Schedule 6—Calculation of Composit State and Federal Income Taxes.
(7) Supplement No. 9 to Rate Schedule FERC No. 1.	Redesignation of Schedule 7—Computation of Capital Cost.

[FR Doc. 85-20115 Filed 8-21-85; 8:45 am]
BILLING CODE 6717-01

[Docket No. ER84-604-007]

Southwestern Public Service Co.; Refund Report

August 15, 1985.

Take notice that on August 5, 1985, Southwestern Public Service Company tendered for filing, pursuant to Commission order dated July 19, 1985, six copies of the interim refund report. On August 2, 1985, Southwestern tendered for filing an amendment to the interim refund report subsequently filed on August 5.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before August 26, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-20140 Filed 8-21-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-181-000]

Texas Gas Transmission Corp.; Petition for Authority To Implement a Direct Billing Mechanism To Recover Retroactive Order No. 94 Production-Related Costs

August 16, 1985.

Take notice that on August 7, 1985, Texas Gas Transmission Corporation (Texas Gas) filed a Petition For Authority To Implement A Direct Billing Mechanism To Recover Retroactive Order No. 94 Production-Related Costs. Texas Gas states that it seeks authorization to bill customers directly for retroactive Order No. 94 costs because of what it states are inequities and undesirable market distortions inherent in recovering such costs through purchased gas adjustment (PGA) filings. As is more fully explained in the filing, Texas Gas proposes to allocate retroactive Order No. 94 costs based upon each customer's share of the company's total sales for the production period over which the Order No. 94 obligation arose, and to directly bill the resulting amounts. Texas Gas proposes to coordinate this direct billing mechanism with the refunding to its customers of the Btu refunds received by Texas Gas under Order Nos. 399 and 399B. Texas Gas states that its direct billing proposal will most closely approximate the cost assignment that would have occurred had the payments been made at the same time as the gas purchases to which they relate. The company requests expedited treatment of its petition in order to eliminate or minimize the interest it might incur on its Btu refunds received from producers as a result of any delay in the implementation of its proposed billing mechanism.

Texas Gas requests waiver of the Commission's regulations to permit the direct billing procedure.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-20116 Filed 8-21-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-5-29-000 and TA85-5-29-001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

August 16, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on August 9, 1985, tendered for filing Revised Thirty-Fifth Revised Sheet No. 12 and Substitute Thirty-Sixth Revised Sheet No. 12 to its FERC Gas Tariff Second Revised volume No. 1. The proposed effective dates are August 1, 1985 and September 1, 1985, respectively. The revised tariff sheets reflect a storage "tracking" rate increased effective August 1, 1985 and a storage "tracking" rate decrease effective September 1, 1985 in accordance with Section 26 of Transco's General Terms and Conditions. Section 26 provides for, among other things, changes in rates for storage service rendered under Transco's Rate Schedule S-2 to reflect changes in charges by Texas Eastern Transmission Corportion (Texas Eastern) under Texas Eastern's Rate Schedule X-28.

As a result of Texas Eastern's compliance filing in Docket No. RP83-35, proposed to be effective August 1, 1985 and its filing in Docket No. RP85-177 proposed to be effective September 1, 1985, Transco will revised its demand charge and demand charge adjustment in Rate Schedule S-2 in order to flow through to Transco's customers the increase in Texas Eastern's X-28 demand charge of approximately $540,000 annually, effective August 1, 1985 and the decrease of approximately $2.2 million annually proposed to be effective September 1, 1985.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and § 385.214). All such motions or protests should be filed on or before August 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85 20117 filed 8-21-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP71-29-037 (Phase III)]

United Gas Pipe Line Co.; Filing of Revised Sheets in FERC Gas Tariff

August 19, 1985.

Take notice that on July 19, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, tendered for filing in Docket No. RP71-29-037 Revised Seventh Revised Sheet No. 71 and Revised Twelfth Revised Sheet No. 72 to its FERC Gas Tariff, First Revised Volume No. 1. These sheets are on file with the Commission and open to public inspection.

United states that these sheets are submitted pursuant to ordering paragraph (C) of Opinion No. 237 issued June 19, 1985, in Docket Nos. RP71-29-003 and RP71-102-000 (Phase III). United states that it submits the sheets under protest and with full reservation of its specifications of error in the Commission's opinion as set out in United's request for rehearing of that opinion. United also states that these sheets are not intended to effect any substantive change but rather to clarify and make explicit the basis on which United would be liable for curtailments of deliveries under the exculpatory language of its tariff sheets. United proposes that the tariff sheets be made effective July 19, 1985, with the understanding that the language clarifies the intent of the affected provisions of United's tariff dating back to November 14, 1971. United requests waiver of § 154.22 of the Commission's Regulations (18 CFR 154.22) to permit these tariff sheets to be effective July 19, 1985.

Any person desiring to be heard or to protest said filing should file on or before August 27, 1985, a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20118 Filed 8-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-679-000]

Vermont Electric Power Co., Inc.; Filing

August 15, 1984.

The filing Company submits the following:

Take notice that on August 7, 1985, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a Supplement No. 1 to the rate schedule filed by VELCO on July 31, 1985 in Docket No. ER85-657-000. That rate schedule provides for the transmission of power and associated energy recently acquired by Vermont from the New York Power Authority. Supplement No. 1 noticed herein extends the rate schedule to the transmission of power purchased by Vermont from Ontario Hydro under a contract dated October 5, 1982.

VELCO proposes that the Supplement No. 1 become effective on October 1, 1985, which is the requested effective date for the underlying rate schedule filed in Docket No. ER85-657-000. VELCO requests waiver of the Commission's regulations to allow the supplement to become effective as of that date. If waiver is not granted, VELCO asks that the filing be permitted to become effective on October 6, 1985, which is 60 days after the date of submission.

VELCO states that it has served the filing upon the Vermont Public Service Board and the Vermont Department of Public Service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20141 Filed 8-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-102]

Owens River Basin, CA; Resource Sort Workshop for Cluster Impact Assessment Procedure

August 16, 1985.

As part of the Resource Sort Phase (Phase 2) of the Cluster Impact Assessement Procedure (CIAP) for the Owens River Basin, the Staff of the Federal Energy Regulatory Commission (Staff) will convene a Resource Sort Workshop on September 18, 1985, at 9 a.m., in the Inyo National Forest Conference Room at 873 North Main Street in Bishop, California.

The Staff is now compiling information on the target resources for inclusion in a Resource Sort Workshop Document that will be sent to Phase 1 CIAP participants on or about September 6, 1985, for review.

In the Resource Sort Workshop, the Staff will verify the technical data in the Document with the CIAP participants and discuss analytical techniques that will be used in the Multiple Project Assessment Phase (Phase 3) of the CIAP.

The Staff intends to encourage open dialogue and discussion among all participants with respect to the technical analysis of target resources.

For further information please contact Ron McKitrick, FERC Project Manager, at (202) 376-9065.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20036 Filed 8-21-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-101]

Snohomish River Basin, WA; Resource Sort Workshop for Cluster Impact Assessment Procedure

August 16, 1985.

As part of the Resource Sort Phase (Phase 2) of the Cluster Impact Assessment Procedure (CIAP) for the Snohomish River Basin, the Staff of the Federal Energy Regulatory Commission (Staff) will convene a Resource Sort Workshop on September 16-18, 1985, at The Evergreen State College (Room 1612—Liberty Building) near Olympia, Washington. The purpose of the Resource Sort Phase of the CIAP is to further define the scope of the study by taking a more detailed look at the interaction of projects with target resources. The resource information from Phase 2 will be utilized as baseline data for the remainder of the CIAP analysis.

The Staff is now compiling information on the target resources for inclusion in a Resource Sort Workshop Document (Document) that will be sent to Phase 1 CIAP participants for review on or about August 30, 1985. Others wishing to receive the Document and participate in the Workshop must contact the FERC Project Manager, Mr. Frank Karwoski at (202) 376–1761 by September 9, 1985.

In the Resource Sort Workshop, the Staff will verify the technical data in the Document with the CIAP participants and discuss analytical techniques that will be used in the Multiple Project Assessment Phase (Phase 3) of the CIAP. After a brief overview, Workshop participants will divide into smaller groups for consideration of the specific target resource categories. These groups will be chaired by the Staff individuals responsible for specific target resources and will entail open and informal discussions of the technical issues related to the Staff's analysis of the specific target resources. The Workshop will be concluded with a general meeting at which a brief summary of all the Workshop activities will be presented by the Staff, and the upcoming Phase 3 CIAP activities will be discussed.

In order to ensure the success of the Workshop, the Staff encourages all participating agencies and organizations to designate no more than two representatives to participate in the meetings. The Staff intends to encourage open dialogue and discussion among all participants with respect to the technical analysis and of target resources.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20037 Filed 8–21–85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59164C; TSH–FRL 2886–2]

Certain Chemical; Extension of Test Marketing Exemption Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the test marketing period for an additional twelve months for test marketing exemption (TME) TME–84–65 under the authority of section 5(h)(1) of the Toxic Substances Control Act (TSCA). The test marketing exemption was granted for a twelve month period commencing on August 17, 1984. A Notice of Approval was published in the Federal Register of August 27, 1984 (49 FR 33935).

EFFECTIVE DATE: August 14, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, D.C. 20460, (202–382–3395).

SUPPLEMENTARY INFORMATION: Under Section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA 90 days before manufacture or import begins. Section 5(h)(1) authorizes EPA, upon receipt of an application, to exempt any person from the notice requirements of section 5 and to permit them to manufacture a new chemical substance for test marketing purposes. EPA may impose restrictions on the test marketing activity, including a limit on the time period during which it may take place.

On August 17, 1984, EPA granted test marketing exemption (TME 84–65) for sulfur-containing polyalkylene oxide (generic description). The applicant claimed the specific chemical identity, specific use and process information as confidential business information. Notice of approval of the TME was published in the Federal Register of August 27, 1984 (49 FR 33935). Approval was based on an Agency finding that, under the conditions set out in the application, the test market substance did not present an unreasonable risk of injury to health or to the environment. The test marketing activity was limited to twelve months. On July 3, 1984, EPA received a request from the submitter to extend the test marketing period for an additional twelve months. The applicant states that only small amounts of the anticipated test market material have been sampled because of the economic considerations of product acceptance. The applicant further states that an additional year is needed in order to complete field trials.

EPA has decided to extend the exemption period by an additional twelve months, provided that all other restrictions specified in the notice of approval of the test marketing exemption remain unchanged. These include recordkeeping requirements, and limits on the production volume and the disposal method. This decision is based on a finding that the additional time will not affect the Agency's original conclusion that test marketing of this substance will not present an unreasonable risk of injury to human health or the environment. The Agency reserves the right to rescind its decision to grant this extension should any new information come to its attention which casts significant doubt on this conclusion.

Dated: August 14, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–20065 Filed 8–21–85; 8:45 am]

BILLING CODE 6560-50-M

[OPP–100028 PH–FRL 2888–3]

Transfer of Data To American Management Systems and Temple, Barker & Sloane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under sections 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to American Management Systems (AMS) and its subcontractor Temple, Barker & Sloane under EPA Contract No. 68–01–7002. These contractors shall perform services for the Office of Policy, Planning, and Evaluation of EPA. Some of the information that will be made available to the contractor has been claimed to be confidential business information (CBI). Information will be made available to the contractors consistent with the requirements of 40 CFT 2.301(h). This action will enable the contractors to fulfill the obligations of the contract, and this notice serves to notify affected persons.

DATE: American Management Systems and Temple, Barker & Sloane will be given access to these documents no sooner than Auguest 27, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: William C. Grosse, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington D.C. 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703–557–2613).

SUPPLEMENTARY INFORMATION: Under this contract which supports the OPPE regulatory efforts, AMS and Temple, Barker & Sloane, will analyze toxicological data which may include formulation information for a number of herbicides and insecticides used on corn, and soybeans, including CBI, submitted to EPA under FIFRA.

Section 10(e) of FIFRA provides that information that is considered by the submitter to be trade secret or commercial or financial as described by FIFRA section 10(d) may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such information as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA sections 3, 6, and 7.

Contractors are authorized to receive such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made concerning the contracts with American Management Systems and Temple, Barker & Sloane.

FIFRA section 10(f) provides a criminal penalty for wrongful disclosure of confidential business information, whether such disclosure is made by an EPA employee or an EPA contractor.

The contracts with American Management Systems and Temple, Barker & Sloane, specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and personnel of these contractors will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: August 13, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-20086 Filed 8-21-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59725; FRL-2874-7]

Premanufacture Notices; Chain-Stopped Alkyd Resin

Correction

In FR Doc. 85-18490 beginning on page 31656 in the issue of Monday, August 5, 1985, make the following connection:

1. On page 31656, in the third column, in the summary, in the eighteenth line in both places, "ploymers" should read "polymers".

2. On page 31657, in the first column, the FR Doc. number should read "85-18490".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

Request for Waiver of Amateur Rules To Allow Use of Amateur Frequencies for News Gathering for Broadcasting Purposes; Pleading Cycle Established

August 20, 1985.

On August 13, 1985, Lee Shoblom, President and General Manager of London Bridge Broadcasting, Inc., 2001 Industrial Boulevard, Lake Havasu City, Arizona 86403, filed a request for waiver of the amateur rules to permit him to use amateur radio for news gathering for broadcast purposes. Specifically, Mr. Shoblom requests that he be permitted to use amateur frequency 434 MHz for gathering news on matters of community interest and broadcast such news on his low power television station.

The Private Radio Bureau seeks comments on this filing. Parties wishing to file formal comments on the issues raised therein should do so by filing an original and four copies with the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, on or before October 10, 1985. Reply comments may be filed on or before October 28, 1985. Comments and reply comments should refer to the following number: PRB-2.

Copies of the request for waiver and any subsequently filed documents in this matter may be obtained from International Transcription Services, Inc., 1270 Fairfield Road (Route 116 West), Gettysburg, Pennsylvania 17325, (717) 337-1433 or 4006 University Drive, Fairfax, Virginia 22030, (703) 352-2400/ (202) 857-3800. Any documents related to this matter will also be available for inspection and copying in the Private Radio Bureau Public Reference Room, 1270 Fairfield Road (Route 116 West), Gettysburg, Pennsylvania 17325.

For further information contact Maurice J. DePont at (202) 632-4964.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-19940 Filed 8-21-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Montana Federal Savings Bank, Kalispell, MT; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Montana Federal Savings Bank, Kalispell, Montana on August 14, 1985.

Dated: August 19, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85-20122 Filed 8-21-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Amoskeag Bank Shares, Inc., et. al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 13, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Amoskeag Bank Shares, Inc.*, Manchester, New Hampshire; to acquire 100 percent of the voting shares of Portsmouth Savings Bank, Portsmouth, New Hampshire.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Ohio Bancorp*, Youngstown, Ohio; to acquire 100 percent of the voting shares of The Minerva Banking Company, Minerva, Ohio.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The First Bankers Corp. of Florida,* Pompano Beach, Florida; to acquire 90 percent of the voting shares of The Island Bank, Homes Beach, Florida.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Elkhorn Bankshares Corporation,* Elkhorn, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Elkhorn, Elkhorn, Wisconsin.

Board of Governors of the Federal Reserve System, August 16, 1985.

William W. Wiles

Secretary of the Board.

[FR Doc. 85–20032 Filed 8–21–85; 8:45 am]

BILLING CODE 6210–01–M

First Bank System, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 1985.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.,* Minneapolis, Minnesota; to retain the transfer of 40 general insurance agencies from 30 of its subsidiary banks located in Minnesota, North Dakota, and South Dakota, to First System Agencies, Inc., Minneapolis, Minnesota. First System Agencies, Inc., will engage in general insurance activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act of 1956, as amended. The insurance activities will be conducted in the states of Minnesota, North Dakota, and South Dakota.

Board of Governors of the Federal Reserve System, August 16, 1985.

William W. Wiles,

Secretay of the Board.

[FR Doc. 85–20031 Filed 8–21–85; 8:45 am]

BILLING CODE 6210–01–M

Applications To Engage deNovo in Permissible Nonbanking Activities; U.S. Bancorp; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85–19379), published at page 32768 of the issue for Wednesday, August 14, 1985. The correct name of the subsidiary is U.S. Bancorp Financial, Inc., Los Angeles, California. Comments on this application must be received not later than September 3, 1985.

Board of Governors of the Federal Reserve System, August 16, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–20029 Filed 8–21–85; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF THE INTERIOR

Notice of OMB Circular A–76 Productivity Improvement Reviews

AGENCY: Department of the Interior.

ACTION: Notice of OMB Circular A–76 Productivity Improvement Reviews.

SUMMARY: The Department of the Interior is conducting OMB Circular A–76 productivity improvement reviews of many of its various activities nationwide. The reviews are for the purpose of improving efficiency. Many of the reviews listed below are currently underway. Those not yet underway are scheduled to be initiated by September 30, 1985.

ADDRESS: Department of the Interior, Office of Information Resources Management, Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Bishop at (202) 343–7544.

SUPPLEMENTARY INFORMATION: The productivity improvement review process is very detailed and labor intensive. The time required to complete a review depends on the organizational and geographical location, size, and complexity of the activity under review. Specific invitations for bid or requests for proposal will be announced in the Commerce Business Daily as applicable reviews reach the solicitation stage. No consolidated bidders lists will be maintained by the contracting offices of the six major Department of the Interior organizational components in which productivity improvement reviews are scheduled. The review schedule is as follows:

Location, Activity Name and Review Start Date

Bureau of Land Management

—Oregon, Road Maintenance, review start, 5/15/84

National Park Service

—Grand Teton NP (WY), Road Maintenance, review start, 3/1/85
—Yellowstone NP (WY), Road Maintenance, review start, 1/4/85
—Yellowstone NP (WY), Ground Maintenance, review start, 6/21/85
—Yellowstone NP (WY), Road Maintenance, review start, 6/2/85
—Acadia NP (ME), General Maintenance, review start, 9/3/85
—Fire Island NS (NY), General Maintenance, review start, 4/12/85
—Statute of Liberty NM (NY), General Maintenance, review start, 9/3/85
—Denver Service Center (CO), Architectural & Engineering Services, review start, 9/3/85
—Baltimore-Washington Pkwy (MD), General Maintenance, review start, 7/1/85
—George Washington Memorial Pkwy (VA), Building/Ground Maintenance, review start, 7/1/85
—Rock Creek Park (DC), Ground Maintenance, review start, 7/1/85
—Harpers Ferry NHP (WV), Custodial Services, Building Maintenance, review start, 9/3/85
—President's Park (DC), Ground Maintenance, review start, 9/13/85
—Colonial NHP (VA), Ground Maintenance, review start, 5/11/85
—Blue Ridge Pkwy (NC), Road Maintenance, review start, 9/3/85

—Blue Ridge Pkwy (NC), Custodial Services, review start, 3/1/85
—Great Smoky Mtn NP (TN), Road Maintenance, review start, 9/3/85
—Great Smoky Mtn NP (TN), Custodial Services, review start, 3/1/85
—Natchez Trace Pkwy (MS), Ground Maintenance, review start, 3/1/85
—Cuyahoga Valley NRA (OH), General Maintenance, review start, 2/18/85
—Indiana Dunes NL (IN), General Maintenance, review start, 9/3/85
—Ozark NSR (MO), General Maintenance, review start, 9/3/85
—Ozark NSR (MO), Campground Services, review start, 2/18/85
—Amistad NRA (TX), General Maintenance, review start, 3/18/85
—Carlsbad Caverns NP (NM), General Maintenance, review start, 9/3/85
—Lyndon B. Johnson NHP (TX, General Maintenance, review start, 9/3/85
—Padre Island NS (TX), General Maintenance, review start, 3/18/85
—Chickasaw NRA (OK), General Maintenance, review start, 3/18/85
—Death Valley NM (CA), General Maintenance, review start, 9/3/85
—Grand Canyon NP (AZ), Road-Building Maintenance, review start, 4/15/85
—Sequoia NP (CA), Road Maintenance, review start, 4/15/85
—Yosemite NP (CA), Road Maintenance, review start, 4/15/85
—Yosemite NP (CA), Utility Maintenance, review start, 9/3/85

Abbreviations:

NP—National Park
NS—National Seashore
NM—National Monument
NHP—National Historic Park
NRA—National Recreation Area
NL—National Lakeshore
NSR—National Scenic Riverway

Fish and Wildlife Service

—Patuxent Wildlife Research Center (MD), Buildings and Ground, review start, 4/1/85

Bureau of Reclamation

—Uinta Basin Construction Office (UT), Camp Maintenance, review start, 1/15/84
—Division of Information Resources (CO), Data Processing, review start, 11/15/84
—Regional Office Grand Coolee (WA), ADP & Data Transcription & Keypunch review start, 8/1/85

Geological Survey

—National Mapping Division (VA), Photography Lab, review start, 1/1/85

Bureau of Indian Affairs

—Navajo Area (AZ and NM), Facilities Management, review start, 3/8/85
—Central Office (NM), Quarters, Facilities Improvement, Repair, Operation & Maintenance, review start, 3/8/85
—Central Office (NM), Investments; Payroll Processing; Voucher Examination, review start, 8/15/85
—Haskell Indian Jr. College (KS), Facilities Management, review start, 6/1/85
—Central Office (DC), Construction Management, review start, 8/15/84
—Central Office (DC), ADP, review start, 5/1/85
—Central Office (DC), Appraisals, review start, 9/1/84
—Navajo Area (NM), Soils Laboratory, review start, 6/15/84

Dated: August 14, 1985.

Oscar W. Mueller,

Director, Office of Information Resources Management.

[FR Doc. 85-20074 Filed 8-21-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[ES-035233, Group 57]

Filing of Plats of the Jean Lafitte National Historical Park, Barataria Unit, Louisiana

August 15, 1985.

1. The two plats of the survey of a portion of the boundaries of the Barataria Unit of the Jean Lafitte National Historical Park and the survey of an Exxon Oil and Gas Lease, Township 15 South, Range 23 East, Louisiana Meridian, Louisiana, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 30, 1985.

2. The survey was made at the request of the Southwest Region, National Park Service.

3. All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 30, 1985.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85-20075 Filed 8-21-85; 8:45 am]

BILLING CODE 4310-GJ-M

[F-14880-X]

Alaska Native Claims Selection; Kikiktagruk Inupiat Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Kikiktagruk Inupiat Corporation for approximately 1,160 acres. The lands involved are in the vicinity of Kotzebue.

Kateel River Meridian

T. 19 N., R. 16 W. (Unsurveyed)

A notice of the decision will be published once a week for four (4) consecutive weeks, in the *Tundra Times*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. [(907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 23, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Barbara L. Lange,

Section Chief, Branch of ANCSA Adjudiciation.

[FR Doc. 85-20092 Filed 8-21-85; 8:45 am]

BILLING CODE 4310-JA-M

[F-14824-A]

Alaska Native Claims Selection; Kokarmuit Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to Kokarmuit Corporation for approximately .887 acre. The lands involved are in the vicinity of Akiak and located within Lot 8, Block 8, Tract A, U.S. Survey No. 5068, Alaska.

A notice of the decision will be published once a week for four (4)

consecutive weeks, in The Tundra Drums. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 23, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–20093 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–JA–M

[F–14879–A]

Alaska Native Claims Selection; Kotlik Yupik Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sections 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), 1621(j), will be issued to Kotlik Yupik Corporation for approximately 175 acres. The lands involved are in the vicinity of Kotlik, Alaska.

Kateel River Meridian, Alaska

T. 28 S., R. 24 W. (Unsurveyed)
Secs. 28 and 29.

Containing approximately 175 acres.

A notice of the decision will be published once a week for four (4) consecutive weeks in The Tundra Drums. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 23, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–20094 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–JA–M

[F–14948–A]

Alaska Native Claims Selection; Nunakauiak Yupik Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sections 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), 1621(j), will be issued to Nunakauiak Yupik Corporation for approximately 1.207 acres. The lands involved are within Block 3, U.S. Survey No. 5024, in the vicinity of Toksook Bay.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Tundra Drums. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until September 23, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–20095 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–JA–M

[AA–6983–A]

Alaska Native Claims Selection; Kavilco, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(b), will be issued to Kavilco, Incorporated for approximately 1 acre. The lands involved are within the vicinity of Kasaan, Alaska.

Copper River Meridian, Alaska

T. 73 S., R. 86 E. (Surveyed),
Sec. 18, lot 7, those lands within Sec. 3(e) application AA–28432.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Juneau Empire. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 23, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–20096 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–JA–M

[AA–6703–A2]

Alaska Native Claims Selection; Tatitlek Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to The Tatitlek Corporation for approximately 15,549 acres. The lands involved are in the vicinity of Tatitlek, Alaska.

Copper River Meridian, Alaska

T. 9 S., R. 1 W. (Unsurveyed)
T. 9 S., R. 2 W. (Unsurveyed)
T. 12 S., R. 6 W. (Partially Surveyed)
T. 13 S., R. 7 W. (Partially Surveyed)

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Bureau of

Land Mangement, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until September 23, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–20097 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–JA–M

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on July 23, 1985.

Willamette Meridian

OR T. 8 S., R. 6 W.;
OR T. 22 S., R. 6 W.;
WA T. 11 N., R. 13 E.;
WA T. 11 N., R. 14 E.

All of the above-listed plats represent dependent resurveys, subdivisions, and a corrective dependent resurvey.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N. E. Multnomah Street, P.O. Box 2965 Portland, Oregon 97208.

Dated: August 16, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands, and Minerals Operations.

[FR Doc. 85–20123 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–33–M

[Decision Order NV–010–8501]

Nevada Off-Road Vehicle Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision.

SUMMARY: All public lands administered by BLM in the 4,143,588 acre Wells Resource Area of the Elko District are hereby designated open, limited, or closed to off-road motorized vehicle use in accordance with executive orders and as a result of the Bureau's Planning System.

DATE: September 30, 1985.

Decision: Notice is given concerning use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. The following described lands under administration of the Bureau of Land Management are designated as open, limited, or closed to off-road motorized vehicle use.

The 4,143,588 acre area affected by the designations is known as the Wells Resource Area, which includes lands in Elko County, Nevada. These designations are a result of resource management decisions made in the 1985 Record of Decision (ROD) for the Final Wells Resource Management Plan (RMP). Comments received from two public meetings, two public hearings, and numerous written reponses on the Draft FMP influenced the designation decisions.

These designations are final as published September 30, 1985. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals. The designations will remain in effect until rescinded or modified by the Elko District Manager.

A. Open Designation. Areas which are designated open comprise approximately 4,143,428 acres or 99 percent of the public land in the resource area. An open designation was determined to be appropriate for these lands since off-road motorized vehicle use is an important recreational activity and is essential to the conduct of other authorized uses.

B. Limited Designations. One area, comprising 160 acres, or less than one percent of the public lands in the Wells Resource Area, is designated limited.

1. Use Limited to Designate Routes—

a. Ruby Marsh Campground—160 acres. Located 50 miles south of Elko, Nevada. Use is limited to enhance the use of developed recreation facilities and maintain the natural resources surrounding the campground.

C. Closed Designations. None.

ADDRESS: For further information contact the Wells Resource Area Manager, John Phillips, at the following address: Bureau of Land Management, Elko District Office, P.O. Box 831, 3900 East Idaho Street, Elko, Nevada 89801, Telephone (702) 738–4071.

Rodney Harris,

District Manager.

[FR Doc. 85–20121 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–84–M

Arizona Strip District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting and field tour of the District Advisory Council will be held on Wednesday and Thursday, September 25–26, 1985. Council members will tour wilderness areas and archaelolgical sites in the District's Vermillion Resource Area and discuss wilderness management planning, vandalism of cultural resources, and endangered plants.

DATE: September 25–26, 1985.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 196 E. Tabernacle, St. George, Utah 84770 (801) 673–3545.

SUPPLEMENTARY INFORMATION: The tour will be open to the public and will begin at 8:00 a.m. from the Marble Canyon Lodge, Marble Canyon, Arizona. Visitors must provide their own lunch and transportation. Written statements from the public may be filed for the Council's consideration. Statements must arrive at the district office by September 20, 1985.

G. Willian Lamb,

Arizona Strip District Manager.

August 14, 1985.

[FR Doc. 85–20061 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–84–M

[A–20346–H]

Realty Action: Exchange of Public Lands, Maricopa County, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions of public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 1 E.,
Secs. 3, 13 and 23.

T. 5 N., R. 1 E.,
Secs. 23, 24, 27, 28, 29, 30, 33 and 34.
T. 4 N., R. 1 W.,
Secs. 1, 12, 13 and 24.
T. 5 N., R. 1 W.,
Secs. 12, 13, 14, 15 and 22.
Containing 5,215 acres, more or less.

Copies of the complete legal descriptions may be obtained from the Phoenix District Office, address shown below.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1 (b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the minerals leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: August 14, 1985.

Deane H. Zeller,

Acting District Manager.

[FR Doc. 85-20072 Filed 8-21-85; 8:45 am]

BILLING CODE 4310-32

California; Public Review Period for USGS/USBM "Mineral Survey Reports"; Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The California, Bureau of Land Management (BLM), is requesting the public to review combined Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" which have been or will be completed for preliminarily suitable Wilderness Study Areas (WSAs). If the public identifies significant differences in interpretation of the data presented in the reports or submits significant new minerals data for consideration, the Bureau of Land Management will request USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations.

Copies of the WSA reports can be reviewed in BLM offices in Sacramento, Ukiah, Susanville, Bakersfield, Riverside, Barstow, Ridgecrest, Needles, and El Centro. The Chemise Mtn./King Range report will also be available in Eureka.

DATE: New information will be accepted on the reports enumerated in this notice until December 20, 1985.

ADDRESS: Send information on reports prepared for California Desert (CDCA) WSAs (see enclosed list of available reports) to: District Manager, California Desert District Office, 1695 Spruce Street, Riverside, CA 92507.

*New information on the Chemise Mtn./King Range report should be sent to: District Manager, Ukiah District Office, 555 Leslie Street, Ukiah, CA 95482.

FOR FURTHER INFORMATION CONTACT: Reginald E. Reid or Robert M. Anderson, BLM, California State Office, Division of Mineral Resources, Federal Office Building, 2800 Cottage Way, Room E-2727, Sacramento, California 95825 (916) 978-4735.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Managment Act of 1976, 90 Stat. 2785, directed the Secretary of Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM is charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system, to determine the mineral values, if any, that may be present in such areas.

There are 185 Wilderness Areas identified by BLM California of which 60 have been preliminarily recommended suitable by the Bureau of Land Management. To date, 18 combined mineral survey reports have been completed by the U.S. Geological Survey and U.S. Bureau of Mines. Approximately 11 reports will be completed in calendar year 1985 and 13 reports in calendar year 1986.

To ensure that all available minerals data are considered by the Bureau of Land Management prior to making it final wilderness suitability recommendations to the Secretary of Interior, the State Director, California is providing this public review and comment period. Usually there is a one to two year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time or the public may have a new interpretation of the data presented in the mineral survey reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the Bureau of Land Management. Significant new minerals data or new interpretations of the minerals data will be forwarded to the U.S. Geological Survey and U.S. Bureau of Mines for further consideration. Evaluations received by the Bureau of Land Management from the U.S. Geological Survey and U.S. Bureau of Mines will be considered by the State Director in the final wilderness suitability recommendations.

Information requested from the public via this invitation are not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and Mineral Survey Report.

2. Mineral(s) of interest.

3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject Wildereness Study Area.

4. Information and documents that depict the new data or reinterpretation of data.

5. The name, address, and phone number of the person who may be contacted by technical personnel of the Bureau of Land Management, U.S. Geological Survey or U.S. Bureau of Mines assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc. should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked *confidential* will be treated as proprietary data and will not be released to the Public without consent.

The following is a list of available Mineral Survey Reports by Wilderness Study Area (WSA) on which new information will be accepted.

WSA No.	Name	Report No.	Paper copy	Fiche copy
*CA-050-111/112.	Chemise Mtn./King Range.	MF-1196-C	1.50	NA
CDCA-117/CDCA-117A.	Saline Valley/Lower Saline Valley.	OF-84-560	13.25	8.00
CDCA-119	Little Sand Spring.	OF-84-557	4.75	4.00
CDCA-123	Hunter Mountain.	OF-84-638	3.00	3.50
CDCA-127	Panamint Dunes.	OF-84-676	8.50	8.00
CDCA-134	Wildcat Canyon.	OF-84-665	2.25	4.00
CDCA-142	Slate Range	OF-84-754	8.25	4.00
CDCA-158	Owlshead Mountain.	OF-84-755	4.75	4.00
CDCA-217	Bighorn Mountain.	MF-1483-A	1.50	NA
CDCA-218A	Whitewater	MF-1478-A	1.50	NA
CDCA-250	Kelso Dunes.	OF-84-647	3.25	3.50
CDCA-252	South Providence Mountain.	OF-84-678	7.50	4.00
CDCA-310	Chemehuevi Mountain.	MF-1584-A	1.50	NA
CDCA-312	Whipple Mountain.	OF-82-956	8.00	3.50
CDCA-328	Corcomb Mountain.	MF-1603-A	1.50	NA
CDCA-334	Eagle Mountain.	OF-84-631	7.00	4.00
CDCA-348	Chuckwalla Mountains.	OF-84-674	7.00	4.00
CDCA-360	North Algodones Dunes.	OF-84-630	1.75	8.00

Reports available for review in BLM offices will not be available for sale or removal from the office. The following is a list of addresses where copies of these reports may be purchased:

For copies of Open-File (OF) "Mineral Survey Reports" contact: Open-File Services Section (OFSS), Western Distribution Branch, U.S. Geological Survey, Box 25425, Federal Center, Denver, CO 80225, (303) 236-7476.

For copies of MF-series maps and reports contact: Western Distribution Branch, U.S. Geological Survey, Box 25286, Federal Center, Denver, CO 80225, (303) 236-7477.

Ed Hastey,

State Director.

[FR Doc. 85-20064 filed -85; 8:45 am]

BILLING CODE 4310-40-M

[Serial Nos. I-15338, I-15340]

Idaho; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Corps of Engineers proposes that the withdrawals for the Twin Falls and Idaho Falls National Guard rifle ranges, which encompass 320 acres and 1,085.93 acres, respectively, be continued for an additional 25 years. This is the estimated time the lands will continue to be used as rifle ranges. The lands would remain closed to surface entry and mining but have been and would continue to be open to mineral leasing.

DATE: Comments should be received within 90 days of the date of publication of this notice.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208-334-1597.

SUPPLEMENTARY INFORMATION: The Corps of Engineers proposes that the existing land withdrawals made by Executive Orders 4149 and 5504 of February 6, 1925, and December 4, 1930, respectively, be continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Boise Meridian, Idaho

T. 11 S., R. 17 E.,
Sec. 29, E½.
T. 2 N., R. 36 E.,
Sec. 11, all;
Sec. 12, lot 4, W½, W½SE¼.

The area involved totals 1,405.93 acres in Twin Falls and Bonneville Counties.

The purpose of the withdrawals is to provide protection of the lands for use by the Idaho National Guard as rifle target ranges. The withdrawals presently segregate the land from all forms of appropriation under the public land laws, including the mining but not the leasing laws. No change is proposed in the purpose of the withdrawals for their segregative effect.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: August 13, 1985.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 85-20063 Filed 8-21-85; 8:45 am]

BILLING CODE 4310-GG-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Multiple Use Mining, Mining Claims Under the General Mining Laws.

Abstract: Several statutes affecting the location of operations on, patenting of, and contesting of mining claims or sites on the public lands require certain information to be filed with the Bureau of Land Management if the owners of the mining claims or sites wish to exercise their rights under the mining laws. The Acts of August 11, 1955 and April 8, 1948 (30 U.S.C. 621) require that a notice or certificate of location and annual assessment work be filed with the Bureau. Section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)) requires an operator to file a plan of operations with the Bureau prior to operating in a Wilderness Study Area. The Stockraising Homestead Act of 1916 (43 U.S.C. 299) requires that an operator on the reserved mineral interest of the United States on these lands provide the Bureau with either:

(1) An agreement for compensation and damages between him and the surface owner.

(2) A waiver from the surface owner.

(3) A bond, not less than $1,000 as surety against damages to the property.

The Act of May 10, 1872 (30 U.S.C. 22 *et seq.*) provides for the patenting of a mining claim or site and for adverse claims against such before the Bureau. Information specified in the act must be provided to the Bureau if the owner wishes to patent or adverse another claimant.

Bureau Form Number: 3814–1.

Frequency: Respondents only file once to claim the benefits of the various statutes.

Description of Respondents:

CFR

3730	250
3802	30
3814	25
3821	400
3860	75
3872	150

Annual Burden Hours:

CFR

3730	21
3802	240
3814	13
3821	33
3860	3000
3872	2400

Bureau Clearance Officer: Rebecca Daugherty 202–653–8853.

August 12, 1985.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

[FR Doc. 85–20076 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–85–M

Fish and Wildlife Service

[NOI No. 1]

Foreign Law Notifications Under the Endangered Species Convention; Publications Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information.

This notice announces the policy of the U.S. Fish and Wildlife Service (Service) to issue Notices of Information (NOI) concerning foreign laws and regulations related to prohibitions and requirements for wildlife imports into and exports for the United States. The Service enforces requirements of foreign law concerning import and export to wildlife pursuant to the Lacey Act Amendments of 1981. The Service intends to inform the public concerning actions which the Service may take involving import or export of wildlife.

The NOI are merely informational and advisory in nature, and are undertaken as a public service to assist the public in complying with the law. These NOI do not constitute rulemakings by the Service which would require an opportunity for public comment under 5 U.S.C. 553. These NOI may not be relied upon to create a substantive or procedural right or benefit enforceable by any person. An importer legally bears the risk that wildlife has an illegal origin and thus is subject to seizure and subsequent forfeiture on a "strict liability" basis and that the importer may be subject to find or civil penalty. The publication of a NOI does not alter this burden. The Service hopes that publication of a current assessment of foreign law and of data upon which the assessments are based will aid the public in compliance with foreign law.

The Service receives information from various sources on the status of laws or regulations in foreign countries. The reliability of that information varies, ranging from general information received from private or quasi-public sources to certified examplers of law provided by governments or received through diplomatic channels. The Service recognizes that methods of information acquisition may cause reliability of the information to vary. The Service, therefore, advises the public that it adjusts official action with regard to detention, seizure and forfeiture of wildlife based upon available information. NOI published by the Service as characterized to advise the public concerning the status of the source of the information provided to the Service in accordance with the following criteria:

Schedule I: Information in the form of certified copies of laws or regulations, officially published digests of foreign law or regulations, or copies of laws or regulations officially transmitted for official action submitted through diplomatic channels.

Schedule II: Information based upon official government agency sources; copies of the laws or regulations, but not certified or otherwise attested or officially published; or advice given to the Service by the Department of State concerning internal laws, regulations, or status of officials in a foreign country.

Schedule III: Information from international wildlife enforcement organizations, based upon usually reliable private or quasi-public sources such as individuals or groups, including conservation organizations or trade associations, which have previously furnished reliable information to the Service concerning wildlife enforcement matters.

Accordingly, the Service advises the public that, in addition to action against the importers/exporters, it may take action with regard to wildlife imported into or exported from the United States, or from a country whose laws are the subject of, NOI in the following manner:

Schedule I wildlife will be seized and forfeiture sought.

Schedule II wildlife will be detained. The public is advised that it is at risk in dealing in any wildlife, or wildlife from a country whose laws are, subject of a Schedule II Notice of Information. Additional showing of legality and compliance with foreign law will be required. Wildlife shipments that fail to comply will be refused clearance and may be seized and forfeiture sought.

Schedule II wildlife may be detained, refused clearance or seized and forfeiture sought. The public is advised that it is at risk in dealing in any wildlife, or wildlife from a country whose laws are, subject of a Schedule III Notice of Information and may be required to show additional evidence or proof of the legality and compliance with foreign law prior to import into or export from the United States.

Hereafter, all NOI shall be in the form as follows:

Notice of Information No.:

This is a Schedule —— Notice: Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States. Violators may also be subjected to criminal or civil prosecution.

Subject:

Source of Foreign Law Information:

Action by Fish and Wildlife Service:

Effective Date:

Expiration Date:

For Further Information Contact: (Name), Division of Law Enforcement, U.S. Fish and Wildlife Service, Post Office Box 28006, Washington, DC 20005, Tel (202) 343–9242.

The Service advises the public that NOI will advise only concerning general intentions of the Service, and that, based upon individual facts in a particular case, subsequent or additional information, or reevaluation of policy, the Service may take action at variance with general policies and procedures contained in this notice. The public is provided with information in an attempt to achieve more informed compliance with the law. The fact that a Notice of Information has not yet been published does not constitute a certification that reliance may be placed

upon an absence of Notice of Information with regard to any situation.

For Further Information Contact: Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, Post Office Box 28006, Washington, D.C. 20005, Tel (202) 343–9242.

Dated: August 13, 1985.

Robert A. Jantzen,

Director.

[FR Doc. 85–20042, Filed 8–21–85; 8:45 am]

BILLING CODE 4310–55–M

[NOI NO.2]

Foreign Law Notifications Under the Endangered Species convention; Ecuador

AGENCY: Fish and Wildlife Service.

ACTION: Notice of Information.

This is a Schedule II Notice: Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States. Violators may also be subject to criminal or civil prosecution.

Subject: Ecuador—Arts. 42, 43, 44, 47 and 48, Ley Forestal y de Conservation de Areas Naturales y Vida Silvestre imposes a ban on export of wild flora and fauna including products except for exports made for scientific, educational or international exchanges for scientific purposes. No exports are permitted for commercial uses, souvenirs, or as pets.

Source of Foreign Law Information: Office of the Secretariat, Convention on International Trade in Endangered Species of Wild Fuana and Flora (CITES) citing letter dated May 21, 1984, from Executive Director, Administrator, CITES, Ecuador, advising CITES secretariat of the foreign law and ban.

Action by Fish and Wildlife Service: The Service will detain wildlife imported from Eduador and may refuse clearance or seize with potential forfeiture without showing by importer of legality of export and compliance with foreign law.

Effective Date: August 22, 1985.

Expiration Date: Until Revoked.

For Further Information Contact: Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20006, Telephone: 202/343–9242.

Dated: August 13, 1985.

Robert A. Jantzen,

Director.

[FR Doc. 85–20042 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–55–M

[NOI No. 3]

Foreign Law Notifications Under the Endangered Species Convention; Bolivia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information.

This is a Schedule I Notice: Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States. Violators may also be subject to criminal and civil prosecution.

Subject: Bolivia—Ban on line wildlife exports from May 1, 1984, through August 1, 1985. Any wildlife shipment exported from Bolivia between those dates is in violation of Ministerial Resolution No. 85/84.

Source of Foreign Law Information: Office of the Secretariat, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) transmission of notarized copy of Resolution Ministerial No. 85/84 of April 2, 1984, and confirmed by State Department advisory dated May 21, 1984, and announcement by the Bolivian Management Authority, 5 Conference of the Parties, Convention on International Trade is Endangered Species of Wild Fauna and Flora, April 22–May 3, 1985, Buenos Aires, Argentina.

Action by Fish and Wildlife Service: The Service will seize all shipments and with potential forfeiture of wildlife.

Effective Date: August 22, 1985.

Expiration Date: August 28, 1985.

For Further Information Contact: Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, Telephone: 202/343–9242.

Dated: August 13, 1985.

Robert A. Jantzen,

Director.

[FR Doc. 85–20042 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–55–M

[NOI No. 4]

Foreign Law Notifications Under the Endangered Species Convention; Caiman and Caiman Products

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information.

This is a Schedule II Notice: Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States. Violators may also be subject to criminal or civil prosecution.

Subject: Importations of caiman and caiman products—status and country of origin for caiman subspecies. Permits and other documents authorizing export from foreign countries and import into the United States will be recognized as valid only when they reflect the following recognized scientific names and countries of origins for the species which have the listed status under Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and/or the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA).

Recognized Scientific Name, CITES/ESA Status, Only Countries Where Occur in Wild

Caiman crocodilus crocodilus—Appendix II
Brazil, Colombia, Ecuador, French Guyana, Guyana, Peru, Surinam, Tobago, Trinidad, and Venezuela
Caiman crocodilus apaporiensis—Appendix I, Endangered
Colombia
Caiman crocodilus fuscus—Appendix II
Mexico through Central America, Colombia, Ecuador, and Venezuela
Caiman crocodilus yacare—Appendix II, Endangered
Argentina, Bolivia, Brazil, and Paraguay

Source of Foreign Law Information: Office of Endangered Species, Fish and Wildlife Service and requests from representatives, CITES.

Action by Fish and Wildlife Service: Detention of wildlife imported not correctly identified by species and subspecies and country of origin with possible refusal of clearance or seizure and potential forfeiture of wildlife shipments.

Effective Date: August 22, 1985.

Expiration Date: Until Revoked

For Further Information Contact: Kethleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, Telephone: 202/343–9242.

Dated: August 13, 1985.

Robert A. Jantzen,

Director.

[FR Doc. 85–20042 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–55–M

[NOI No. 5]

Foreign Law Notification; Under the Endangered Species Convention; Paraguay

AGENCY: Fish and Wildlife Service; Interior.

ACTION: Notice of Information.

This is a Schedule II Notice: Wildlife subject to this notice is subject to detention, refusal of clearance or

seizure, and forfeiture if imported into the United States. Violators may also be subject to criminal and civil prosecution.

Subject: Ban on Wildlife from Paraguay—Issuance of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) re-export certificates. The Service has been advised by Paraguay that it suspended the export of all wildlife on November 9, 1981, and that it has implemented as a matter of policy use of the CITES uniform permit.

Action by Fish and Wildlife Service: Re-export certificates will be issued only for wildlife exported from Paraguay prior to November 9, 1981; exporters are advised that due to information provided to other countries concerning an earlier ban on wildlife, some countries may not accept as valid the re-export certificates. No certificates will be issued and shipments will be detained, and may be refused clearance or seized and forfeiture sought for any wildlife exported from Paraguay after November 9, 1981.

Effective date: August 22, 1985.

Expiration date: Until Revoked

For Further Information Contact: Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, Telephone: 202/343–9242.

Dated: August 13, 1985.

Robert A. Jantzen,

Director.

[FR Doc. 85–20046 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 4009 and 4010, Blocks 128 and 129, respectively, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on August 9, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 13, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–20065 Filed 8–21–85; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Texaco USA

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0310, Blocks 238 and 239, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa, Morgan City, and Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on August 14, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Lousiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805..

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals

Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 15, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-20053 Filed 8-21-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Registry of Natural Landmarks; Public Notice and Request for Comment

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

SUMMARY: The areas listed below appear to qualify for designation as national natural landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to § 62.4(d)(1) of 36 CFR Part 62, written comments concerning the potential designations of these areas as national natural landmarks may be forwarded to the Director, National Park Service (413), U.S. Department of the Interior, Washington, D.C. 20240. Written comments should be received no later than 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney, Natural Areas Survey Branch, Interagency Resources Division, (202) 343-9525.

Dated: August 13, 1985.

William Penn Mott,

Director.

ILLINOIS

Monroe County

Fults Hill Prairie Nature Preserve—This 498-acre site is located approximately 35 miles south of St. Louis, Missouri, and contains the largest complex (33 acres, or 34%) of the highest quality, essentially undisturbed loess hill prairies along the Mississippi River in Illinois, including the largest single prairie opening (11 acres).

INDIANA

Wabash County

Hanging Rock and Wabash Reef—This area consists of two one-acre sites located along the south bank of the Wabash River. Both contain natural exposures of limestone reef deposits characteristic of Silurian rocks of the midwestern U.S., most of which are exposed only in quarries. Hanging Rock, located about 6 miles northeast of Wabash, is an impressive natural exposure of an exhumed reef that rises 75 feet above the Wabash River. The Wabash Reef, a smaller exposure along the Wabash Railroad in the northeastern portion of Wabash, is one of the best known fossil reefs in the world, because it has been the subject of numerous studies responsible for the development of modern reef theory.

MISSOURI

Mississippi County

Big Oak Tree—This 80-acre site, located within Big Oak Tree State Park approximately 12 miles southeast of East Prairie, is the only sizeable known tract of essentially virgin wet-mesic bottomland hardwood forest remaining in the northern part of the Mississippi Alluvial Plain section of the Gulf Coastal Plain natural region.

SOUTH CAROLINA

Beauford County

St. Phillips Island—This 4,951-acre barrier island is approximately four miles in length and two miles wide. It is unique among the barrier islands of Georgia, South Carolina and northern Florida, because it exists in a nearly undisturbed state with minimal development and past consumptive use; it is also unique to the entire Atlantic Coast for the pronounced multiple vegetated beach dune ridges found there.

WASHINGTON

Adams and Grant Counties

Drumheller Channels—This 44,906-acre site, located 12 miles south of Moses Lake, is the most spectacular tract in the Columbia Plateau Natural Region of "butte-and-basin" scabland, an erosional landscape characterized by hundreds of isolated, steep-sided hills surrounded by a braided network of underfit channels. It represents and illustrates the dramatic modification of the Columbia Plateau volcanic terrain by late Pleistocene catastrophic glacial outburst floods that occurred at a scale remaining unparalleled on earth, either in the geologic record or in historical account.

Douglas County

Boulder Park and McNeil Canyon Haystack Rocks—This 4,368-acre area is composed of two adjacent sites located about 19 miles and 8.5 miles, respectively, from Chelan. Both sites together contain the greatest concentration and most illustrative examples of glacial erratics (large glacier-transported boulders) in the Columbia Plateau natural region. As the visible products of dynamic glacier processes, they provide important evidence for the direction of movement and location of glacier ice on the Columbia Plateau during the last glaciation. Due to the lack of vegetation in this area, these sites are also probably the most illustrative examples of glacial erratics in the U.S.

Sims Corner Esker and Kame Complex—This 31,120-acre site, located 17 miles north of Coulee City, contains the best examples in the Columbia Plateau natural region of landforms resulting from stagnation and rapid retreat of the ice sheet during the last blaciation. The ice stagnation features at the site, including eskers and kame deposits, are highly visible and well preserved owing to the arid climate and lack of vegetation, and so are perhaps the most illustrative such featues in the U.S.

The Great Gravel Bar of Moses Coulee—This 3,952-acre site, located 19 miles west of Coulee City, contains the largest and best example of a pendant river bar formed by catastrophic glacial outburst floods that swept across the Columbia Plateau prior to the last Pleistocene glaciation. The impressive scale of this feature, deposited in Moses Coulee, provides dramatic evidence for the violent flood waters that formed and once filled the coulee. As a constructional landform, it thus serves to complement Drumheller Channels which was eroded during the same flood events further downstream.

Withrow Moraine and Jameson Lake Drumlin Field—This 67,840-acre site, located immediately adjacent to Withrow, contains the best examples of drumlins and the most illustrative segment of the only Pleistocene terminal moraine in the Columbia Plateau natural region. Both features together provide readily observable evidence for the large-scale depositional and erosional processes that accompany continental glaciation; they are also the only such glacial features in the world to show a clear geological relationship to catastrophic flooding, which occurred prior to the last advance of the ice sheet.

Okanogan County

Davis Canyon—This 415-acre site, located 12 miles southwest of Okanogan, contains one of the largest and least disturbed examples of antelope bitterbrush/Idaho fescue shrub steppe remaining in the Columbia Plateau natural region.

[FR Doc. 85-20084 Filed 8-21-85; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Intent To Withdraw Environmental Impact Statement; Meeker Area Mines, Rio Blanco County, CO

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Intent to withdraw environmental impact statement (OSM-EIS-7) entitled "Proposed Mining and Reclamation Plan, Meeker Area Mines, Rio Blanco County, Colorado."

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is withdrawing an environmental impact statement (OSM-EIL-7), entitled "Proposed Mining and Reclamation Plan, Meeker Area Mines, Rio Blanco County, Colorado." This action is being taken because the applicant, Northern Coal Company (NCC), has modified its original plan resulting in a substantially

scaled down proposal. The environmental analysis of the scaled-down proposal has resulted in a finding of no significant impact, thus eliminating the necessity for the preparation of a final environmental impact statement (EIS).

DATE: Effective upon the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION, CONTACT: Charles M. Albrecht, OSM, Western Technical Center, Second Floor, Brooks, Towers, 1020–13th Street, Denver, Colorado 80202 (telephone (303) 844–5656 or FTS 564–5656).

SUPPLEMENTARY INFORMATION: On June 13, 1980, NCC submitted a mining and reclamation plan (MRF) to OSM and the Colorado Mined Land Reclamation Division. In this MRP, NCC proposed to underground mine approximately 83,270,000 tons of coal over a 29-year period at the Meeker area mines in Rio Blanco County, Colorado. Specifically, NCC proposed the mining of Federal coal from an existing underground mine, the mining of additional Federal and private (fee) coal from another existing underground mine, the creation of two additional underground mines for mining Federal and private (fee) coal, and construction of ancillary surface facilities, haul roads, and one rail loadout. The Meeker area mines study area encompassed about 4,750 acres of land discussed in the MRP, consisting of five Federal coal leases, one private (fee) coal lease, and one preference right lease application (PRLA). NCC also proposed to underground mine coal from two additional areas not discussed in the MRP if it were successful in obtaining the leases; however, for purposes of impact anlyses, these lands were considered in the draft EIS to be part of the Meeker area mines study area. The two additional areas included one PRLA, of about 3,567 acres of land, and approximately 600 acres of unleased land, both located west of the MRP boundary. This added area would have increased recoverable coal by an estimated 106,338,000 tons and would have extended the mine life by approximately 30 years. A draft EIS was prepared in October 1982 indicating that significant impacts would occur on socioeconomic conditions and wildlife if the proposed action were approved and implemented.

Subsequent to the public hearing on the draft EIS, which was held in Meeker, Colorado, on November 16, 1982, NCC submitted a series of modifications to their original proposal. The final scaled-downed proposal calls for the company to mine 10,000 tons of coal a year, not to create any new surface disturbance, and to cease all mining operations around the year 1989. OSM determined in its environmental assessment of the final proposal that impacts from the Meeker area mines would not be significant, making it unnecessary to prepare a final EIS.

Dated: August 16, 1985.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 85–20035 Filed 8–21–85; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

ICC Senior Executive Service; Performance Review Board

July 23, 1985.

Effective immediately, the membership of the SES Performance Review Board is revised. The three principal members are: Neil Llewellyn, Director, Bureau of Traffic, Ronald S. Young, Director, Bureau of Accounts, and Bernard Gaillard, Director, Office of Compliance and Consumer Assistance. The two alternate members are: William R. Southard, Director, Office of Transportation Analysis, and Howell L. Sporn, Deputy Director, Office of Proceedings.

Reese H. Taylor, Jr.,

Chairman.

[FR Doc. 85–20048 Filed 8–21–85; 8:45 am]

BILLING CODE 7035-01-M

[Decision No. 2; Finance Docket No. 30800]

Union Pacific Corp. and Missouri Pacific Railroad Co.—Control—Missouri-Kansas-Texas Railroad Co.; Intent

Decided: August 6, 1985.

Pursuant to 49 CFR 1180.4(b), the Union Pacific Corporation (UPC), Missouri Pacific Railroad Company (MP), and Missouri-Kansas-Texas Railroad Company (MKT) have notified the Commission of their intent to file an application seeking Commission approval and authorization, under 49 U.S.C. 11343, for UPC and MP to acquire control of MKT.

Under an agreement dated May 22, 1985, UPC and its subsidiary MP agreed with Katy Industries, Inc. (Katy), and its subsidiary MKT to acquire control of MKT. MKT also owns rail carrier subsidiaries and a motor carrier.

Consummation of the purchase agreement is contingent on MKT acquiring, through a tender offer, at least 60 percent of MKT Certificates Representing a Charge on Income (Certificates) dated as of Janaury 1, 1985, that are outstanding. Katy presently holds 18 percent of the Certificates. The tender offer was initiated on June 26, 1985. When the tender offer is accepted by holders of 60 percent of the Certificates, MKT will enter into a Subsidiary Merger Agreement with a new MP subsidiary. Subject to approval of MKT shareholders and the Commission, the new MP subsidiary will be merged into MKT. MP would then purchase MKT's stock in exchange for cash and an installment note issued by MP and guaranteed by UPC.

The applicants will use the calendar year 1984 for the impact analysis to be filed with the application. The intend to file the application on or about December 20, 1985.

Because the application involves the control of two Class I railroads, it is a major transaction under 49 CFR 1180.2(a) and is subject to the requirements in 49 CFR Part 1180 for major transactions. Modification of the requirements may be ordered in response to appropriate requests or on our own motion. The Commission intends to issue shortly a decision requesting additional information that must be filed in order to complete the application. *See* 49 CFR 1180.4(b)(2)(v). We intend to issue an expedited procedural schedule after the application has been filed and accepted as complete.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–20049 Filed 8–21–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Allied Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a complaint, proposed final judgment, stipulation, and competitive impact statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Allied Corporation.*

The complaint of the United States in this case alleges that the merger of

Allied Corporation ("Allied") and The Signal Companies, Inc. ("Signal") may substantially lessen competition in the United States in the manufacture and sale of air turbine starters in violation of section 7 of the Clayton Act (15 U.S.C. 18).

Air turbine starters are pneumatic motors used to start the large gas turbine engines on all large commercial aircraft as well as on many military airplanes and helicopters. Allied manufactures air turbine starters at its Bendix Fluid Power Division in Utica, New York. Signal manufactures air turbine starters at its Garrett Pneumatic Systems Division in Phoenix, Arizona. Signal and Allied are the two largest producers of air turbine starters sold in noncommunist countries. In 1984, the two firms together accounted for more than 70 percent of all air turbine starter sales in noncommunist countries.

The proposed Final Judgment would require Allied to divest its air turbine starter business by the end of 1985. If Allied does not sell its air turbine starter business by then, it must sell its entire Bendix Fluid Power Division. If Allied has not divested the Bendix Fluid Power Division by March 31, 1986, a trustee will be appointed to conduct the divestiture.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the court. Comments should be directed to P. Terry Lubeck, Chief, Intellectual Property Section, Antitrust Division, Room 700, Safeway Building, U.S. Department of Justice, Washington, D.C. 20530 (202/724–7974).

Joseph H. Widmar,

Director of Operations.

United States of America, Plaintiff, v. *Allied Corporation,* Defendant.

[Civ. No. 85–2475]

Filed: August 2, 1985.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorney, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

(2) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment;

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: August 2, 1985.

For the plaintiff, United States of America.
Charles F. Rule, *Acting Assistant Attorney General;* Mark Leddy, P. Terry Lubeck, Mark C. Schechter, *Attorneys, U.S. Department of Justice;* Kent Brown, Kenneth M. Frankel, Steven Brodsky, Stephen M. Koslow, Kathleen M. Eyre, Jeffrey B. Aaronson, Rosemary T. Rakas, *Attorneys, U.S. Department of Justice, Antitrust Division, Washington, D.C. 20530, (202) 724–6974;* Kent Brown, *Attorney, Antitrust Division, Department of Justice.*

For the defendant, Allied Corporation;
Brian D. Forrow, *Senior Vice President and General Counsel, Allied Corporation;* Heather H. Mullett, *Senior Counsel, Allied Corporation;* C. Benjamin Crisman, Jr., *Skadeen, Arps, Slate, Meagher & Flom, Counsel for Allied Corporation;* Peter E. Greene, *Skadden, Arps, Slate, Meagher & Flom, Counsel for Allied Corporation,*

Stipulation approved for filing.
Done this 2 day of August, 1985.

United States District Judge.

U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *Allied Corporation,* Defendant;

[File No. 60–228–037–46; Civ. No. 85–2475]

Filed: August 2, 1985.

Final Judgment

Whereas, plaintiff, United States, of America, having filed its Complaint herein on August —, 1985, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas, the defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

And Whereas, prompt and certain divestiture is the essence of this agreement and the defendant has represented to the plaintiff that the divestiture required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact of law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendant under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "Allied" means the defendant Allied Corporation; each division, subsidiary or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Signal" means The Signal Companies, Inc.; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them. After the merger of Allied and Signal, Signal will continue to comprise all assets used in connection with any of the businesses in which it currently engages as well as each person acting for or on behalf of any of the businesses.

C. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

D. "Air turbine starter" means a pneumatic motor used to start as gas turbine aircraft engine.

E. "Air turbine starter business" means all tangible and intangible assets (including, but not limited to, exclusive rights to all proprietary technology and other proprietary business information) solely dedicated to Allied's existing business operation of researching, developing, engineering, testing, qualifying, manufacturing, selling, or servicing air turbine starters, which is based at its Fluid Power Division.

F. "Fluid Power Division" means Allied's Fluid Power Division based in Utica, New York.

III

A. The provisions of the Final Judgment shall apply to Allied, its sucessors and assigns, and to all other

persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personnel service or otherwise.

B. Except for Paragraphs IV.C. and V.C. of this Final Judgment, nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

C. Allied shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

A. Allied having committed itself to acquire 22,000,000 shares of Signal pursuant to Allied's tender offer dated May 17, 1985, Allied is hereby ordered and directed, no later than December 31, 1985, to divest to a purchaser all of its direct and indirect ownership or control of its air turbine starter business. The obligation to divest shall be satisfied if, by December 31, 1985 Allied enters into a binding contract for sale of its air turbine starter business to a purchaser and according to terms approved by plaintiff that is contingent only upon compliance with the terms of this Final Judgment and that specifies a prompt and reasonable closing date, and if sale is completed pursuant to the contract.

B. Divestiture of Allied's air turbine starter business shall be accomplished in such a way as to ensure that, as of the time of divestiture, it reasonably can be anticipated that its air turbine starter business can and will be operated by the purchaser as a viable, ongoing business engaged in the production and sale of air turbine starters. Divestiture shall be made to a purchaser for whom it is demonstrated to the plaintiff that (i) the purchase is for the purpose of competing effectively in the production and sale of air turbine starters and (ii) the purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of air turbine starters.

C. In accomplishing the divestiture of its air turbine starter business ordered by this Final Judgment, Allied shall make known in the United States, by usual and customary means, the availability of its air turbine starter business for sale. Allied shall notify any person making an inquiry regarding the possible purchase of its air turbine starter business that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Allied also shall furnish, to all bona fide prospective purchasers who so request, and subject to customary confidentiality assurances, all pertinent information regarding its air turbine starter business, including separate lists of (i) all assets solely dedicated to, and (ii) all assets used by Allied but not solely dedicated to, Allied's existing business operation of researching, developing, engineering, testing, qualifying, manufacturing, selling, or servicing air turbine starters. Allied shall provide such information to the plaintiff at the time it furnishes such information to any other person, but no later than September 30, 1985. Allied also shall permit all bona fide prospective purchasers to have access to personnel at Allied's Fluid Power Division who have responsibilities for Allied's air turbine starter business and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of its air turbine starter business.

D. Until the divestiture of its air turbine starter business is completed, Allied shall continue to operate its air turbine starter business as a going business, use all reasonable efforts to maintain its air turbine starter business as a competitive entity, and continue to compete actively against Signal in the market for air turbine starters.

E. Until the divestiture of its air turbine starter business is completed, and at all times thereafter, Allied shall take all steps necessary to assure that none of its proprietary technology and other proprietary business information specific to air turbine starters is transferred, or otherwise becomes known or available, to Signal, or used by Allied or Signal to compete with the business to be divested.

V

In the event the divestiture of Allied's air turbine starter business required by section IV is not completed within the time period provided for therein, then and in that event:

A. Allied is hereby ordered and directed, no later than three (3) months after December 31, 1985, to divest to a purchaser all of its direct and indirect ownership or control over its Fluid Power Division. The obligation to divest shall be satisfied if, by March 31, 1986, Allied enters into a binding contract for sale of its Fluid Power Division that is contingent only upon compliance with the terms of this Final Judgment ant that specifies a prompt and reasonable closing data, and if the sale is completed pursuant to the contract.

B. Divestiture of Allied's Fluid Power Division shall be accomplished in such a way as to ensure that, as of the time of divestiture, it reasonably can be anticipated that its Fluid Power Division can and will be operated by the purchaser as a viable, ongoing business engaged in the production and sale of air turbine starters. Divestiture shall be made to a purchaser for whom it is demonstrated to the plaintiff or, if plaintiff objects, to the Court that: (i) The purchase is for the purpose of competing effectively in the production and sale of air turbine starters and (ii) the purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of air turbine starters.

C. In accomplishing the divestiture of its Fluid Power Division ordered by this Final Judgment, Allied shall make known in the United States, by usual and customary means, the availability of its Fluid Power Division for sale as an ongoing business. Allied shall notify any person making an inquiry regarding the possible purchase of its Fluid Power Division that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Allied also shall furnish, to all bona fide prospective purchasers who so request, and subject to customary confidentiality assurances, all pertinent information regarding its Fluid Power Division and shall permit them to have access to Fluid Power Division personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the air turbine starter business.

D. Until the divestiture of its Fluid Power Division is completed, Allied shall continue to operate its Fluid Power Division as a going business, use all reasonable efforts to maintain its Fluid Power Division as a competitive entity, and continue to compete actively against Signal in the market for air turbine starters.

E. Until the divestiture of its Fluid Power Division is completed, and at all times thereafter, Allied shall take all steps necessary to assure that none of Fluid Power Division's proprietary technology and other proprietary business information specific to products manufactured at Fluid Power Division is transferred, or otherwise becomes known or available, to Signal, or used by Allied or Signal to compete with the business to be divested.

VI

A. If Allied has not accomplished the divestiture required by section V of this Final Judgment by March 31, 1986, the Court shall, upon application of plaintiff, appoint a trustee to effect the divestiture. Such appointment shall become effective on March 31, 1986 or as soon thereafter as the Court appoints the trustee. After the trustee appointment becomes effective, only the trustee, and not Allied, shall have the right to sell Fluid Power Division. The trustee shall be a nationally recognized member of the investment banking community with experience and expertise in acquisitions and divestitures. The trustee shall have the power and authority to accomplish the divestiture at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Paragraph VII of this Final Judgment, and shall have such other powers as the Court deems appropriate. Allied shall use all reasonable efforts to assist the trustee in accomplishing the required divestiture. Allied shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by Allied must be conveyed in writing to the plaintiff and the trustee within fifteen (15) days after the trustee has notified Allied of the proposed sale.

B. If Allied has not divested its ownership interest in its Fluid Power Division by January 31, 1986, Allied shall notify plaintiff of that fact. If Allied still has not divested all of its ownership interest in its Fluid Power Division within ten (10) days thereafter, the plaintiff shall provide Allied with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Allied will notify plaintiff within eighteen (18) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to Allied, plaintiff shall notify the Court of the person or persons upon whom the parties have agreed and the Court shall appoint one of the nominees as the trustee. If neither of such nominees is acceptable to Allied, it shall furnish to the plaintiff, within eighteen (18) days after the plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Plaintiff shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by Allied. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of Allied, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from a sale of Allied's Fluid Power Division and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to Allied and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. The trustee shall have full and complete access to the personnel, books, records and facilities of the Fluid Power Division, and Allied shall develop such financial or other information relevant to the business or assets to be divested as the trustee may request. Allied shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth: (i) The trustee's efforts to accomplish the required divestiture, (ii) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (iii) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the term of the trust and the term of the trustee's appointment.

F. Until the trustee's divestiture of Fluid Power Division is completed, Allied shall continue to operate its Fluid Power Division as a going business, use all reasonable efforts to maintain its Fluid Power Division as a competitive entity, and continue to compete actively against Signal in the market for air turbine starters.

G. Until the trustee's divestiture of Fluid Power Division is completed, and at all times thereafter, Allied shall take all steps necessary to assure that none of Fluid Power Division's proprietary technology and other proprietary business information specific to products manufactured at Fluid Power Division is transferred, or otherwise becomes known or available, to Signal, or used by Allied or Signal to compete with the business to be divested.

VII

At least thirty (30) days prior to the scheduled closing date of the proposed divestiture prusuant to section IV, V, or VI of this Final Judgment, Allied or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of the proposed divestiture. If a trustee is responsible, it shall similarly notify Allied. The notice shall set forth the details of the proposed transaction and for each person not previously indentified who offered or expressed an interest or desire to acquire any ownership interest in Allied's air turbine starter business or in its Fluid Power Division, as the case may be, the name, address and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed divestiture, the plaintiff may request additional information concerning the proposed divestiture. Allied shall furnish the additional information within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the plaintiff shall notify in writing Allied and the trustee, if there is one, if it objects to the proposed divestiture. If the plaintiff fails to object within the period specified, or if the plaintiff notifies in writing Allied and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Allied's right to object to the sale under the proviso in section VI.A. Upon objection by the plaintiff, a divestiture proposed under section IV shall not be accomplished, and a divestiture proposed under section V or section VI shall not be accomplished unless approved by the Court. Upon objection by Allied under section VI.A., the proposed divestiture shall not be accomplished unless approved by the Court.

VIII

Forty-five (45) days from the date of filing of the complaint in this civil action

and every forty-five (45) days thereafter until the divestiture required by section IV, V, or VI has been completed, Allied shall submit in writing to the plaintiff a verified written report setting forth in detail the fact and manner of compliance with section IV, V, or VI, as the case may be, of this Final Judgment. Each such report of compliance with section IV or V shall include, for each person who, during the preceding forty-five (45) days, made an offer to acquire, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the air turbine starter business or the Fluid Power Division, as the case may be, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Allied shall maintain full records of all efforts made to divest the air turbine starter business or the Fluid Power Division. With respect to sections IV.D., IV.E., V.D., V.E., VI.F., and VI.G., such report of compliance also shall describe the status of Fluid Power Division's efforts during the preceding forty-five (45) days to qualify air turbine starters for use on aircraft and to bid upon, submit unsolicited proposals or quotations for, or otherwise obtain contracts to supply air turbine starters. Allied shall maintain full records for all such efforts.

IX

Allied shall abide by the following hold-separate provisions:

A. In the event that Allied is unable to complete the divestiture required by section IV within the time period provided for therein and is therefore required to divest Fluid Power Division pursuant to section V, for January 1, 1986, Allied shall take all steps necessary to assure that none of Fluid Power Division's proprietary technology and other proprietary business information specific to products manufactured at Fluid Power Division is transferred, or otherwise becomes known or available, to Signal, or used by Allied or Signal to compete with the business to be divested. Notwithstanding the foregoing, and notwithstanding sections V.E. and VI. G., Allied may designate up to five (5) senior Allied executives to provide managment assistance and professional guidance to the Fluid Power Division until the divestiture ordered in this Final Judgment occurs, and only these persons can receive such technology and other information as is reasonably necessary to carry out those functions, but they may not disclose any of it to any person other than those persons in the Fluid Power Division, except as provided in section V.C. of this Final Judgment. Nothing in this paragraph shall prohibit Allied from acquiring technology or other business information from the successor to Fluid Power Division as a result of arm's-length bargaining conducted after the divestiture required by this Final Judgment has been accomplished.

B. From January 1, 1986 until the divestiture required by this Final Judgment has been accomplished, Allied shall:

(1) Take all steps necessary to assure that Fluid Power Division will be maintained as a separate entity with its assets and operations separate, distinct, and apart from those of Allied or Signal;

(2) Take no steps with respect to the operation of the Fluid Power Division that negatively would impact its ability to maximize its profits, regardless of any actual or possible negative impact on Signal's or Allied's profits;

(3) Refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management, engineering, or other technical personnel of Fluid Power Division, except in the ordinary course of business, without prior approval of plaintiff;

(4) Maintain normal repair and maintenance schedules at Fluid Power Division and at least preserve such schedules as they currently exist;

(5) Preserve Fluid Power Division as an active competitor against Signal in the market for air turbine starters;

(6) Refrain from altering or selling any assets of Fluid Power Division, other than in the ordinary course of business, or from taking any action that would have the effect of reducing the scope of Fluid Power Division's manufacturing or sales operations or reducing the scope or restricting the rate of development of its product line from that existing at the time of the filing of the Complaint in this civil action, without the prior approval of the plaintiff;

(7) Refrain from taking any action that would jeopardize the sale of Fluid Power Division as a viable competitor in any market in which it participated at the time of the filing of the Complaint in this civil action;

(8) Refrain from reducing any funding of Fluid Power Division existing at the time of the filing of the Complaint in this civil action, without prior approval of the plaintiff; and

(9) Grant any reasonable request from Fluid Power Division for additional funding and provide written notice to plaintiff within five (5) days of the denial of any such request for additional funding, including a statement of the request and Allied's reasons for its denial.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written requests of the attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Allied made to its principal office, be permitted:

(1) Access during office hours of Allied to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Allied, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Allied and without restraint or interference from it, to interview officers, employees and agents of Allied, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Allied's principal office, Allied shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Allied to plaintiff, Allied represents and identifies in writing the material in any such information of documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Allied marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to Allied prior to divulging such material in

any legal proceeding (other than a grand jury proceeding).

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII

This Final Judgment will expire on the third anniversary of the completion of the divestitute required herein.

XIII

Entry of this Final Judgment is in the public interest.

United States District Judge.

Dated: ———

U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *Allied Corporation*, Defendant.

[Civ. No. 85-2475]

Filed: August 2, 1985.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Allied Corporation in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

This civil action began on August 2, 1985, when the United States filed a complaint alleging that the proposed merger of Allied Corporation (hereinafter "Allied") and The Signal Companies, Inc. (hereinafter "Signal") violated section 7 of the Clayton Act (15 U.S.C. 18). The complaint alleges that the effect of the merger of Allied and Signal may be substantially to lessen competition in the United States in the manufacture and sale of air turbine starters for gas turbine aircraft engines. The complaint requests that Allied be required to divest its Bendix Fluid Power Division or its air turbine starter business and to continue until divestiture occurs to operate the latter business in active competition with Signal's air turbine starter business.

The United States and Allied have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Judgment, and to punish violations of the Judgment.

II. Events Giving Rise to the Alleged Violation

On May 15, 1985, Allied and Signal entered into an Agreement and Plan of Reorganization in which they agreed to accomplish the merger of Allied and Signal in several steps. First, pursuant to a cash tender offer, Allied would purchase up to 20 percent of the outstanding common stock of Signal. Second, in an exchange of common stock, each firm would acquire about 15 percent of the other firm's common stock. Finally, Allied and Signal would be merged into a new company, and all outstanding shares of Allied and Signal would be exchanged for shares in the new company on a one-for-one basis. The merger of Allied and Signal is now scheduled to be fully consummated in mid-September.

Allied and Signal are both large, diversified companies. Allied reported 1984 sales of about $10.7 billion. Signal reported 1984 sales of about $6 billion. Both firms currently manufacture and sell air turbine starters. Signal produces air turbine starters at its Garrett Pneumatic Systems Division based in Phoenix, Arizona. It is the world's largest producer of air turbine starters, having accounted for more than 50 percent of all air turbine starter sales in 1984 in noncommunist countries. Allied produces air turbine starters at its Bendix Fluid Power Division based in Utica, New York. Allied is the world's second largest producer of air turbine starters, with sales in 1984 of about $10 million. Together, Allied and Signal accounted for more than 70 percent of all air turbine starter sales in noncommunist countries in 1984. In that year, total air turbine starter sales were about $52 million in noncommunist countries, of which about $40 million were in the United States.

The complaint alleges that the manufacture and sale of air turbine starters comprises a relevant product market for antitrust purposes and that the combination of the air turbine starter businesses of Allied and Signal pursuant to the proposed merger may be substantially to lessen competition in the United States in that market in violation of section 7 of the Clayton Act.

Air turbine starters are used to start the large gas turbine engines on all large commercial aircraft as well as many military airplanes and helicopters. An air turbine starter is mounted to each of the aircraft's engines. The air turbine starter starts the engine by rotating the engine's compressor fans and accelerating them to a self-sustaining speed. A fuel-air mixture in the engine is then ignited, allowing the engine to operate on its own. The energy source for an air turbine starter is high pressure air from another operating engine located either on the aircraft or on a gound cart. Other types of starting mechanisms are not competitive substitutes for the air turbine starters used to start large commercial and many military aircraft due to size, weight, cost, safety, and reliability factors.

An air turbine starter must be approved before it can be used on a particular engine on a particular commercial or military aircraft. In the case of a particular commercial aircraft and engine combination, the starter must meet certain performance criteria established by the aircraft manufacturer and certain criteria established by the Federal Aviation Administration of the United States Department of Transportation. Similarly, an air turbine starter may be used on a specific military aircraft by the aircraft manufacturer and by the military branch that will use the aircraft.

In almost all situations, only one or two air turbine starters are approved for use on a specific aircraft and engine combination. When two competing makers of air turbine starters are approved to supply an air turbine starter on a specific aircraft, a purchaser of starters for that aircraft may select the approved starter of either supplier.

The complaint alleges that Allied and Signal are the only approved suppliers of air turbine starters on a number of the same commercial and military aircraft and engine combinations. The complaint also alleges that Allied is in a preferred position to obtain approval to supply its air turbine starters for certain aircraft and engine combinations for which Signal is currently the only approved air turbine starter supplier and that Signal is in a preferred position to obtain approval to supply its air turbine starters for certain aircraft and engine combinations for which Allied is currently the only approved air turbine starter supplier.

The primary purchasers of air turbine starters are the military, aircraft manufacturers, airline companies, and gas turbine engine manufacturers. Only one firm in addition to Signal and Allied currently supplies air turbine starters to the United States military, Sundstrand Corporation (hereinafter "Sundstrand"),

and only one firm in addition to Signal and Allied currently supplies air turbine starters for commercial aircraft manufactured in the United States, the Hamilton-Standard Division of United Technologies Corporation (hereinafter "Hamilton-Standard").

The complaint alleges that the production and sale of air turbine starters is highly concentrated. In 1984, the four largest air turbine starter manufacturers—Signal, Allied, Hamilton-Standard, and Sundstrand—accounted for about 90 percent of total air turbine starter sales in noncommunist countries, and the Herfindahl-Hirschman Index ("HHI"), a measure of market concentration, in the market for air turbine starters was about 3335. The merger of Allied and Signal would increase the combined market share of the four largest air turbine starter suppliers to about 96 percent and increase the HHI by about 1975 to 5310.

III. Explanation of the Proposed Final Judgment and its Anticipated Effects on Competition

The United States brought this action because the effect of the merger between Allied and Signal may be substantially to lessen competition in violation of section 7 of the Clayton Act in the manufacture and sale of air turbine starters. The only anticompetitive effects associated with the merger would be eliminated if Allied's air turbine starter business could be sold to a purchaser that would operate the business as an active and independent competitor in the manufacture and sale of air turbine starters.

To this end, section IV of the proposed Final Judgment would require Allied to sell its air turbine starter business by the end of 1985 to a purchaser that has the intent and capability to compete effectively in the manufacture and sale of such starters. Any purchaser of the business must be approved by the United States.

If Allied is unable to divest its air turbine starter business by the end of 1985, section V of the proposed Final Judgment would require Allied to sell its entire Bendix Fluid Power Division (hereinafter "FPD") by March 31, 1986. Allied's air turbine starter business is a part of FPD, which had total sales of about $50 million in 1984. The possibility that Allied may be required to divest the entire FPD should provide a powerful inducement for Allied to locate a buyer for its air turbine starter business that is acceptable to the United States. If FPD is divested, the purchaser must have the intent and capability to compete effectively in the manufacture and sale of air turbine starters.

In addition, section IX of the proposed Final Judgment would require Allied, until its FPD is divested, to hold FPD separate from its other business operations and to take all steps necessary to assure that none of FPD's proprietary technology or other proprietary business information becomes known or available to Signal or used by Allied or Signal to compete with any business to be divested.

If Allied is unable to divest FPD by March 31, 1986, under section VI of the proposed Final Judgment, the Court would, at the request of the United States, appoint a trustee to sell FPD. Section VI would provide a mechanism that should permit a trustee to be selected and appointed by March 31, 1986. Once a trustee has been appointed, only the trustee, and not Allied, would have the right to sell FPD. Further, if a trustee is appointed, Allied would be required to pay all of the trustee's expenses in selling FPD, and the trustee's commission would be structured to provide an incentive for it to complete the sale promptly.

Until the divestiture required by the proposed Final Judgment is completed, Allied would be required to continue to operate its air turbine starter business in active competition with Signal. Moreover, Allied would be required to take all steps necessary to assure that proprietary technology and other proprietary business information relating to Allied's air turbine starter business or FPD's other business operations is not transferred to Signal or used by Allied or Signal to compete with any of FPD's businesses.

Section VII of the proposed Final Judgment would provide the United States with an opportunity to review any proposed divestiture before it occurs. Under section VII, if the United States were to request information to assess a proposed divestiture, Allied could not consummate the divestiture until 15 days after it supplied the information. If the United States were to object to a divestiture of Allied's air turbine starter business proposed under section IV of the proposed Final Judgment, the divestiture could not be completed. If the United States were to object to a divestiture of FPD proposed under sections V or VI, the divestiture could not be completed unless approved by the Court.

Section VIII of the proposed Final Judgment would require Allied to provide the United States with periodic reports concerning the fact and manner of its compliance with the proposed Final Judgment, and section X would allow the United States to obtain additional information and documents relating to Allied's compliance with the proposed Final Judgment.

Finally, section XII would provide that the Final Judgment would expire on the third anniversary of Allied's completion of the required divestiture.

IV. Remedies Available to Potential Private Litigants

Secton 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal corut to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendant Allied have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be subitted to: P. Terry Lubeck, Chief, Intellectual Property Section, Antitrust Division (700 Safeway), U.S. Department of Justice, Washington, D.C. 20530.

Under Section XI of the proposed Final Judgment the Court would retain jurisdiction over this matter for the purpose of enabling the United States or Allied to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

Alternatives to the Proposed Final Judgement

The proposed Final Judgment would provide all of the relief requested by the United States in its complaint in this civil action. The proposed Final Judgment would require Allied to divest its air turbine starter business by the end of 1985 or, failing that, its FPD by March 31, 1986. It also would assure that Allied's air turbine starter business would remain a viable business separate from Signal and an active competitor to Signal in the air turbine starter market.

Compliance by allied with the proposed Final Judgment and the completion of the divestiture required by the Judgment would resolve fully all of the competitive concerns raised by the proposed merger of Allied and Signal. The United States could have obtained no better relief after a full trial on the merits. The only alternative considered to settling this action pursuant to the proposed Final Judgement was for the United States to file suit and seek a preliminary injunction to enjoin Allied's merger with Signal until Allied had completely divested itself of its air turbine starter business. The United States rejected this alternative because substantial risk existed that a court might be reluctant to halt the entire merger because of a competitive problem posed by a very small part of the entire business operations of the two companies. the court's reluctance to grant a preliminary injunction likely would have been substantially increased because of Allied's willingness to divest its air turbine starter business and its entire FPD if necessary.

Under the circumstances, while the government believes that sound responses to these arguments exist, it determined that the public interest in preserving competition in the air turbine starter market would be served best by obtaining Allied's consent to an enforceable decree requiring it to divest its air turbine starter business and by filing the decree with the Court prior to the consummation of any part of the proposed merger. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because Allied has stipulated to comply with the terms of the Judgment pending its entry by the Court. The United States believes that the overriding public interest in having these enforceable safeguards in effect prior to consummation of any part of the proposed merger required that it not attempt to seek a preliminary injunction, and thereby avoid the risk that the merger might be permitted to go forward without any enforceable safeguards in effect.

VII. Determinative Documents

There were no documents determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: August 2, 1985.

Respectfully submitted,

Kent Brown,

Attorney, U.S. Department of Justice, Antitrust Division (700 Safeway), Washington, D.C. 20530, (202) 724–7924.

[FR Doc. 85–20132 Filed 8–21–85; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 15, 1985, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	[illegible]
Raw Opium (9600)	II
Opium Plant Form (9650)	II
Concentrate of Poppy Straw (9670)	II

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW, Washington DC 20537, Attention, DEA Federal Register Representative (Room 1112), and must be filed no later than September 23, 1985.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 14, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85–20087 Filed 8–21–85; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly

of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before October 21, 1985.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. U.S. Department of Agriculture, Forest Service, Office of Information. (NC1–95–83–11). Routine, administrative and duplicate audio-visual records including photographs, graphics, films and video tapes, recording, illustrating or publicizing the work of the agency.

2. U.S. Department of Agriculture, Commodity Credit Corporation (NC1–161–85–1). Records relating to warehouse examination responsibilities, including leases, licenses, insurance policies, warehouse rules, financial statements, examiners' weekly schedules and examination reports.

3. Department of Air Force (NC1–AFU–85–32). Military Personnel Action Forms relating to assignments, classification, on-the-job training, duty status changes, and similar personnel actions.

4. Department of the Army, Office of the Adjutant General (NC1–AU–85–19). Individual project maps and index map files pertaining to civil works projects. Related records of this group with reference and research value will be accessioned by the National Archives.

5. Central Intelligence Agency (Job No. NC1–263–84–4). The CIA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

6. National Archives and Records Administration, Office of the National Archives, Civil Archives Division. (NC2–101–84–1). Records relating to the receivership of the First National Bank of Detroit, 1933–46, among the records of the Division of Insolvent National Banks, Office of the Comptroller of the Currency.

7. National Archives and Records Administration, Office of the National Archives, Military Archives Division. Records accessioned from the Department of the Navy, Bureau of Ships (NC2–19–85–2). Routine housekeeping records not related to the primary mission of the Bureau of Ships, 1940–1945.

8. Department of the Navy, Bureau of Medicine and Surgery, Hospital Corps Division (NC1–NU–83–1). Incomplete series of case files for hospital personnel, 1884–1910, containing duplicate copies of documents normally found in the official personnel files.

9. Department of the Navy, Chief of Naval Operations, Naval Records and Information Management Division (NC1–NU–84–3). Comprehensive schedule for financial management records accumulated by the Department of the Navy.

10. Department of the Navy, Chief of Naval Operations, Naval Records and Information Management Division (NC1–NU–85–5). Results recorded on magnetic tape of torpedo exercise runs at sea.

11. Department of the Navy, Naval Operating Forces, Atlantic Fleet, Commander Carrier Division 6 (NC1–313–85–2). Administrative files (1935–55) consisting of copies of correspondence usually forwarded to higher levels of command.

12. Department of the Navy, Naval Operating Forces, Atlantic Fleet, Commander Service Force (NC1–313–85–3) Administrative files (1955) consisting of memorandums, printed orders and directives, routine pay and personnel actions, and related documents.

13. Department of the Navy, Naval Operating Forces, Atlantic Fleet, Atlantic Reserve Fleet Units located at Green Cove Springs, Florida; Orange, Texas; and Charleston, South Carolina (NC1–313–85–4). Admininstrative Files (1947–57) consisting of records of routine training assignments and personnel transfers, reports of recreational activities, minor disciplinary actions, and other documents related to routine operations.

14. Office of the Special Counsel, Merit Systems Protection Board (NC1–146–85–1). Case files and other records, in paper and machine-readable format, of the Special Counsel relating to investigations of actions prohibited by civil service laws and regulations.

15. Tennessee Valley Authority, Office of Engineering (NC1–142–85–1), audiovisual and textual records documenting the results of tests of tornado-resistant barriers and pipe supports for nuclear generating plants.

Dated: August 16, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85–20073 Filed 8–21–85; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Ad Hoc Panel on Oceanographic Facilities; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Ad Hoc Panel on Oceanographic Facilities.

Date and time: September 5 and 6, 1985; 9:00 a.m. to 5:00 p.m. each day.

Place: The National Science Foundation, Room 1242B, 1800 G Street, NW, Washington, DC 20550.

Type of meeting: Open: 9/5—9:00 a.m. to 1:00 p.m. Closed: Remainder of scheduled time.

Contact person: Ms. Sandra D. Toye, Head, Oceanographic Centers and Facilities Section (OCFS), Division of Ocean Sciences, Room 613, National Science Foundation, Washington, DC 20550, Telephone: 202/357–7837.

Summary minutes: May be obtained from the contact person listed above.

Purpose of advisory group: To provide advice to the Head, OCFS, on the disposition of proposals and recommendation affecting the composition and distribution of the academic rsearch fleet.

Agenda: Open: Presentations on the benefits and consequences of alternative actions. Closed: To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: August 19, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–20077 Filed 8–21–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on General Electric Standard Safety Analysis Report (GESSAR II); Meeting

The ACRS Subcommittee on General Electric Standard Safety Analysis Report (GESSAR II) will hold a meeting on September 11, 1985, Room 1167, 1717 H Street, NW, Washington, DC.

To the extent practical, the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary information relating to the GESSAR probabilistic risk assessment and plant security.

The agenda for the subject meeting shall be as follows:

Wednesday, September 11, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of GESSAR II for a final design approval applicable to future plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the General Electric Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 19, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–20145 Filed 8–21–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–352]

Philadelphia Electric Co. (Limerick Generating Station, Unit 1); Order Suspending Operation Above 5 Percent Power

In its Memorandum and Order of August 8, 1985, the Commission declined to stay the effectiveness of the Atomic Safety and Licensing Board's Fourth Partial Initial Decision in the Limerick operating license proceeding and authorized the Director of the Office of Nuclear Reactor Regulation to issue the Philadelphia Electric Company (Licensee) a full-power operating license for Unit 1 of the Limerick Generating Station. Accordingly, the Director issued Facility Operating License No. NPF–39 which, among other things, authorized the Licensee to operate the facility at reactor core power levels not in excess of 3,293 megawatts thermal (100% rated power). License No. NPF–39 superseded Facility Operating License No. NPF–27, which was issued on October 26, 1984, and which authorized the Licensee to operate the facility at levels not to exceed 5% of rated power.

Limerick Ecology Action and Thomas Martin appealed the Commission's decision and sought a stay of the Commission's Order from the United States Court of Appeals for the Third Circuit. On August 15, 1985, the court stayed the Commission's Order pending further order of the court. The effect of the court's order is to suspend operation above 5% of rated power, pending further order of the court. The Licensee has informed the NRC Staff that it is proceeding to reduce the power level of the facility to 5% or less of rated power. The purpose of this Order is solely to effectuate the court's order and confirm the Licensee's actions. This Order will be rescinded upon action of the court to lift its stay.

Accordingly, pursuant to sections 103, 161, and 186 of the Atomic Energy Act of 1954, as amended, and the Court of Appeals' order of August 15, 1985, it is hereby ordered that the Licensee shall reduce the operating power level of the facility to 5% or less of rated power by 6:00 p.m., August 16, 1985, and shall not thereafter operate Limerick Unit 1 above 5% of rated power until such restriction is rescinded by the Director of the Office of Nuclear Reactor Regulation.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 16th day of August, 1985.

For The Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–20144 Filed 8–21–85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Establishment of Mainstem Passage Advisory Committee

AGENCY: Pacific Northwest Electric Power and Conservation Planning

Council (Northwest Power Planning Council).

ACTION: Notice of establishment of Mainstem Passage Advisory Committee.

SUMMARY: On August 7, 1985 in Portland, Oregon, the Northwest Power Planning Council established the Mainstem Passage Advisory Committee as an advisory committee to the Council. This notice describes the Committee, provides information on how to obtain notices of Committee meetings, and explains how to request copies of the Committee's charter.

ADDRESS: Individuals and entities wishing to receive notices of Committee meetings or copies of the Committee's advisory committee charter should contact Dulcy Mahar, Director of Public Information and Involvement, by writing her at the Council's central office, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205, or by calling her at (toll-free) 1–800–222–3355, from Montana, Idaho, Washington and California; (toll-free) 1–800–452–2324 in Oregon; or (503) 222–5161. The charter is also available for inspection and copying in the public reading room of the Council's central office at the above address on weekdays between 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: James Ruff, Hydrologist, at (toll-free) 1–800–222–3355 from Montana, Idaho, and Washington; toll-free 1–800–452–2342 in Oregon; or (503) 222–5161 from other states.

SUPPLEMENTARY INFORMATION: The Council recently established the Mainstem Passage Advisory Committee to assist the Council and its staff with technical issues related to the development of appropriate downstream fish passage objectives for hydropower dams on the mainstem of the Columbia and Snake Rivers. The Council's Fish and Wildlife Program (Program) calls for specific actions at mainstem dams to improve fish passage.

The Council expects the Mainstem Passage Advisory Committee to focus on alternative systemwide and/or project-specific fish passage objectives by:

- Assisting the Council staff in examining the proposal(s) of the fish and wildlife agencies and tribes to modify the Program's present 90 percent interim survival objective at mainstem dams operated by the U.S. Army Corps of Engineers;
- Assisting the Council staff in identifying alternative long-term mainstem fish passage objectives, standards, or strategies which are technically feasible and achievable, and which provide varying levels of fish protection at different levels of impact to the regional electric power system, for integration into development of Program objectives;
- Assisting the Council staff by providing input on the operative parameters governing the mainstem passage portion of Program section 201's system modeling effort; and
- Otherwise advising the Council staff, upon request, by identifying significant gaps in data and scientific knowledge related to mainstem fish passage.

The Council established the Committee, adopted the Committee's charter and selected the Committee chairman and vice-chairman during a public meeting on August 7, 1985 in Portland, Oregon. The charter describes the objectives and activities of the Committee, its authority, and related matters. It also contains rules for Committee procedures, meeting notices, public participation, minutes, records, conflict of interest, and reimbursement of certain Committee member expenses.

According to the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 *et seq.*), the terms of the Federal Advisory Committee Act (5 U.S.C. App. I, 1–14) apply "to the extent appropriate" to the Council's advisory committees.

Edward Sheets,

Executive Director.

[FR Doc. 85–20056 Filed 8–21–85; 8:45 am]

BILLING CODE 0000–00–M

POSTAL RATE COMMISSION

Privacy Act of 1974; Revisions in Routine Uses

August 16, 1985.

AGENCY: Postal Rate Commission.

ACTION: Notice of revisions in routine uses.

SUMMARY: Citing *Krohn* v. *Department of Justice,* Civil No. 78–1536 (D.D.C., March 19, 1984), The Office of Management and Budget expressed concern about agencies' routine uses for disclosures in support of litigation. Upon reviewing the Commission's language on the subject, we are following OMB's guidelines and adopting the language set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine Use for Disclosure to the Department of Justice for Use in Litigation:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when

(a) The Commission; or

(b) Any employee of the Commission in his or her official capacity; or

(c) Any employee of the Commission in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the Commission determine that litigation is likely to affect the Commission, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Commission to be relevant and necessary to the litigation, provided, however, that in each case, the Commission determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

Routine Use for Agency Disclosure in Litigation:

It shall be a routine use of records maintained by the Commission to disclose them in a proceeding before a court or adjudicative body before which the Commission is authorized to appear, when

(a) The Commission; or

(b) Any employee of the Commission in his or her official capacity; or

(c) Any employee of the Commission in his or her individual capacity where the Commission has agreed to represent the employee; or

(d) The United States, where the Commission determines that litigation is likely to affect the Commission, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the Commission determines that disclosure of the records in the court or other proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

In the routine uses of record systems maintained by the Commission and established pursuant to notice in the **Federal Register**, the paragraph beginning with: "In the event that information in this record system is needed in the course of presenting evidence * * *;" and ending with: "* * *.

to the appropriate person to use as evidence." is therefore deleted and replaced by the above language.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 85-20150 Filed 8-21-85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14676; 811-3182]

Application and Opportunity for Hearing; Separate Account II of Equitable Variable Life Insurance Co.

August 15, 1985.

Notice is hereby given that Separate Account II of Equitable Variable Life Insurance Company ("Applicant"), 1285 Avenue of the Americas, New York, NY 10019, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on July 15, 1985, for an order of the Commission pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the applicable provisions.

According to the application, prior to March 22, 1985, Equitable Variable Life Insurance Company ("EVLICO"), depositor of Applicant and a wholly-owned subsidiary of The Equitable Life Assurance Society of the United States, maintained life insurance separate accounts, Separate Accounts I and II, as separate open-end management investment companies, funding variable life insurance contracts issued by EVLICO. Separate Account I invested primarily in common stocks, and Separate Account II invested primarily in money market instruments. Applicant states that the Hudson River Fund, Inc. (the "Fund") was organized on November 9, 1984, as a registered management investment company of the series type, to offer its shares exclusively to separate accounts of EVLICO and, conditioned upon obtaining relief from the Act and rules thereunder, to other affiliated or unaffiliated insurance companies. The Fund initially has two portfolios: a Common Stock Portfolio and a Money Market Portoflio, which have the same investment policies, restrictions and objectives as Separate Accounts I and II, respectively, as amended.

Applicant further states that the Fund commenced operation on March 22, 1985, when, as part of a reorganization, EVLICO transferrd all of the assets and liabilities of Separate Accounts I and II to the Common Stock and Money Market Portfolios of the Fund, respectively, in return for shares of those Portfolios having an equivalent net asset value. Simultaneously, Separate Account II, Applicant herein, was combined with and into Separate Account I, which was converted recently into a unit investment trust.

Applicant represents that immediately preceding the reorganization, at the close of business on March 21, 1985, it had a net asset value equal to $76,253,364. Applicant further represents that the interests of existing contractowners in the divisions of Separate Account I are the same as their interests, respectively, in Separate Account I and II immediately prior to the reorganization. Applicant states that EVLICO assumed all expenses incurred in effecting the reorganization, and that the recoganization did not affect the death benefits, account value or cash surrender value under any variable life insurance contract outstanding, or future issuances of contract designs being offered, on that date.

According to the application, the plan of reorganization was authorized by the Applicant's Committee on November 7, 1984, authorized by the Committee of Separate Account I and the Board of Directors of the Fund on November 7, 1984 and November 19, 1984, respectively, and approved by the owners of contracts issued with respect to Applicant and with respect to Separate Account I at special meetings on February 14, 1985. An order of the Commission permitting the reorganization was granted on February 22, 1985 (Investment Company Act Release No. 14391).

Applicant represents that it no longer supports any contracts or exists as a separate investment account under the Insurance Law of New York State, and that it is not now engaged in, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs. Applicant further represents that it has retained no assets, no debts or other liabilities, and is not a party to any litigation or administrative proceeding. Applicant states that, within the past 18 months and in connection with the reorganization described above, its assets and liabilities were transferred to the Money Market Portfolio of the Fund.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 10, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service [by affidavit or, in the case of an attorney-at-law, by certificate] shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20086 Filed 8-21-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 944]

Certain Nonimmigrant Visas; Validity

Public Notice 913 of August 22, 1984 authorized consular officers to issue, in their discretion, nonimmigrant visas under section 101(a)(15)(B) of the Immigration and Nationality Act valid for an indefinite period of time to otherwise eligible nationals of the countries listed in that Notice which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class.

This Notice adds Commonwealth of Dominica to the list contained in Public Notice 913 in order to conform with present reciprocal or more liberal treatment accorded United States nationals in a similar class.

This Notice amends Public Notice 913 of August 22, 1984 (49 FR 33392).

Dated: August 12, 1985.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 85-20052 Filed 8-21-85; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 43309; Order 85-8-49]

Love Field Amendment Proceeding; Extension of Comment Period

Issued by the Department of Transportation on the 16th day of August, 1985.

In this proceeding, the Department asked for comment on the proper interpretation of the Love Field amendment (Sec. 29, Pub. L. 96-192). That amendment limits air carrier service at Love Field, Texas.

The order asking for comment (Order 85-7-65, dated July 26, 1985) set 15 days for comment, making them due August 16. At the request of several parties, this order extends that comment period until August 23 and allows a 7-day period for reply comments, making them due August 30.

On August 7, counsel for Southwest Airlines asked for a 2-week extension of the comment period, plus a 2-week reply comment period. Southwest argued that: (1) This matter is extremely complex and should be treated like the Japan route proceeding with respect to the amount of time for comments, (2) DOT has been considering the matter since May 30 (when the City of Dallas wrote the Secretary to ask her to stop Continental's proposed service), (3) Continental does not appear to urgently want to begin service, and (4) counsel will be unavailable during the 2-week comment period.

On August 9, counsel for the Dallas-Ft. Worth Parties wrote to support Southwest's request for the same reasons stated by Southwest, adding that the DFW Parties have been preoccupied by the Delta crash.

Also on August 9, Continental wrote to oppose a 2-week extension for comments and a 2-week reply comment period. It agreed, however, to a 1-week reply comment period. Continental argued that: (1) The Dallas parties have frustrated efforts to begin service at Love Field, (2) Southwest now has a monopoly there, and DOT did not address this issue at the time of the *Southwest-Muse Acquisition Proceeding*, and (3) Continental wants to begin service, but will need to start construction before operations can begin and Love Field will need to end certain 30-day leases.

We agree that some extra time may be needed by the public to complete and update their arguments, and that a short period for reply comments would be beneficial. Although arguments and comments on this amendment have been presented previously to the Civil Aeronautics Board and in briefs to the U.S. Court of Appeals (D.C. Cir.), we want to ensure a thorough record at the Department and a full opportunity for all to present their positions adequately and to counter arguments of their opponents.

Since this issue has been aired previously and because of the need to clarify these restrictions on entry at a large and important market, we believe that 1 extra week plus a week for reply comments should be sufficient to achieve these purposes.

Accordingly:

1. The date for filing of initial comments is extended until August 23; and

2. The date for filing reply comments is set on August 30.

Jeffrey N. Shane,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-20088 Filed 8-21-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

National Motor Carrier Advisory Committee;

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on September 24, 1985, beginning at 9:00 a.m., in Washington, D.C., at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, DC, Room 2230. The meeting is open to the public.

The agenda includes the following topics: the National Association of Regulatory Utility Commissioners' State/Industry Task Force Centralization Proposal, the National Governors' Association's Working Group on State Motor Carrier Procedures, status reports on several truck-related congressionally mandated studies, a status report on Surface Transportation Assistance Act truck issues, and various pending motor carrier safety issues.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Stapleton, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HCC-20, Room 4224, 400 Seventh Street, SW., Washington, DC 20590, (202) 426-0834. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: August 14, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85-20069 Filed 8-21-85; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Lansing, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed reconstruction of I-96BL (Ceder Street) between Cloverland Drive and Mt. Hope Road in Ingham County Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Fort, Jr., District Engineer, Federal Highway Administration, P.O. Box 10147, Lansing, Michigan 48901, Telephone (FTS) 374-1879 or (Commerical) (517) 377-1879 or Mr. Ross E. Lowes, Manager, Social and Economic Studies Section, Bureau of Transportation Planning, Michigan Department of Transportation P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 373-2226.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of transportation, (MDOT), is preparing an Environmental Impact Statement (EIS) for the proposed reconstruction of I-96BL (Cedar Street) between Cloverland Drive and Mt. Hope Road, Ingham County, Michigan. The proposed project is approximately 2 miles in length and is needed to accommodate current and future traffic volumes and to improve operating conditions and the safety of the traveling public. The present facility is four lanes, has poor surface conditions, and is deficient in capacity. The roadway is experiencing an increasing number of accidents throughout its length.

Alternatives under consideration include: (1) No Action; and (2) Reconstruction to five lanes. The proposed five-land alternative would be constructed to five, 11-foot lanes and require the acquisitions of additional right-of-way and displacements.

Early coordination with a number of Federal, State and local agencies has identified the more significant issues to be addressed in the EIS. Accordingly, no agency scoping meeting is planned at this time. A scoping document has been prepared identifying the alternative and the social, economic and environmental

issues involved. This document is available to all interested agencies, organizations, and individuals on request. A pre-study meeting was held on June 5, 1985 to provide the public an opportunity to discuss the proposed action. Comments on the scoping document and issues identified are invited from all interested parties. Request for a copy of the scoping document or any comments submitted should be addressed to the above contact persons. The closing date for comments in November 15, 1985.

The Draft EIS is scheduled for completion in early 1986 and will be made available for public and agency review and comment.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local inter-governmental review of Federal and federally assisted programs and projects apply to this program)

Issued on: August 16, 1985.

Thomas A. Fort, Jr.,

District Engineer.

[FR Doc. 85-20124 Filed 8-21-85; 8:45 am]

BILLING CODE [illegible]

Environmental Impact Statement; Cook and Dupage Counties, IL

Correction

In FR Doc. 85-17115, beginning on page 29293, in the issue of Thursday, July 18, 1985, make the following correction:

On page 29293, third column, in the **FOR FURTHER INFORMATION CONTACT** paragraph, last line, the telephone number should read "(312) 884-4393".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 14, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0090
Form Number: IRS Forms 1040SS, 1040SS (NMI), and 1040-PR
Type of Review: Revision
Title: U.S. Self-Employment Tax Return, Self-Employment Tax Return Northern Mariana Islands, and Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Propia-Puerto Rico

OMB Number: 1545-0099
Form Number: IRS Form 1065 and Schedules D, K, and D-1
Type of Review: Revision
Title: U.S. Partnership Return of Income, Capital Gains and Losses, Partners Shares of Income, Credits, Deductions, etc., Partner's Share of Income, Credits, Deductions, etc.

OMB Number: 1545-0238
Form Number: IRS Form W-2G
Type of Review: Revision
Title: Statement for Recipients of Certain Gambling Winnings

OMB Number: 1545-0087
Form Number: IRS Forms 1040-ES, 1040-ES(NR), 1040-ES(ESpanol), and 1040-ES(NMI)
Type of Review: Extension
Title: Estimated Tax for Individuals (4 forms) (1) U.S. Citizens and Residents, (2) For Nonresident Aliens, (3) For Use in Puerto Rico (in Spanish), and For Use in Northern Mariana Islands

OMB Number: 1545-0703
Form Number: IRS Form 8007
Type of Review: Revision
Title: Credit for Employee Stock Ownership Plan

Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0021
Form Number: ATF F 4587 (5330.4)
Type of Review: Extension
Title: Application to Register As an Importer of U.S. Munitions Import List Articles

Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Comptroller of the Currency

OMB Number: 1557-0014
Form Number: OCC Forms 7029-09 7029-16, 7028-31, 7026-01 and 7020-01
Type of Review: Revision
Title: Application to Organize a National Bank, Confidential Biographical and Financial Report, List of Interim Directors, Bankers' Banks

Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-20033 Filed 8-21-85; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 163
Thursday, August 22, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Monday, August 26, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii), of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 – 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4426.

Dated: August 19, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–20133 Filed 8–19–85; 4:05 pm]

BILLING CODE 6714–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:47 p.m. on Thursday, August 15, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt: (1) A resolution (a) making funds available for the payment of insured deposits in Park West Bank, National Association, Farmers Branch, Texas, which had been closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, August 15, 1985; (b) accepting the bid of Park West State Bank, Farmers Branch, Texas, a newly-chartered State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank; (c) designating Park West State Bank, Farmers Branch, Texas, as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank; and (d) making funds available for an advance payment to uninsured depositors and other general creditors of Park West Bank, National Association equal to 50 percent of their uninsured claims; and (2) an Order approving the applications of Park West State Bank, Farmers Branch, Texas, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay certain deposits made in Park West Bank, National Association, Farmers Branch, Texas.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 19, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–20134 Filed 8–19–85; 4:05 pm]

BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Monday, August 26, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 48,295
Public Bank, Detroit, Michigan

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions, involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:
No matters scheduled.

The Meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: August 19, 1985.
Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–20135 Filed 8–19–85; 4:06 pm]

BILLING CODE 6714–01–M

4

FEDERAL MARITIME COMMISSION

TIME AND DATE: 11:00 a.m.—August 27, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Portions closed to the public:

1. Agreements Nos. 202–010789 and 202–010790: the proposed Israel Westbound Conference and Israel Eastbound Conference, respectively.
2. Agreement No. 207–010791: the proposed Wallenius/Transroll Joint Service Agreement.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523–5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20185 Filed 8–20–85; 11:21 am]

BILLING CODE 6730–01–M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 28, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–20232 Filed 8–20–85; 3:50 pm]

BILLING CODE 6210–01–M

6

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, September 4, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the months of July and August, 1985.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523–5920.

Date of notice: August 19, 1985.

Mr. Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 85–20200 Filed 8–20–85; 12:52 pm]

BILLING CODE 7550–01–M

7

PAROLE COMMISSION

Pursuant to the Government in the Sunshine Act Pub. L. 94–409 (5 U.S.C. Section 552b)

TIME AND DATE: Thursday, August 29, 1984—1:00 p.m. to 2:00 p.m.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, and via a conference telephone circuit.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed revisions in the Parole Commission's rules concerning guidelines. The following were published in the **Federal Register** of June 10, 1985 and public comment has been received thereon:

Elimination of separate Youth/NARA guidelines, reduction of guideline ranges for certain lower severity-better risk offenders, changes in offense severity examples, clarification of present policy and improvement in the organization of offense behavior examples, changes in time actually served in certain instances, a change in handling of administrative parole violations resulting in revocation, a change in rescission guidelines involving escape, and other related modifications and improvements in the guideline system.

In addition to the above, revisions, additions, or deletions will be proposed concerning sexual conduct with minors, insider trading, transportation or marking of explosives, gambling, transportation of gambling equipment, drug abuse, state offenses, weapons in institutions, and Indian tribal court convictions. Certain instructions for guideline usage, transfers from procedures to rules, and revisions in examples or wording will also be proposed to improve consistency and clarity in guideline application.

CONTACT PERSON FOR MORE INFORMATION: Peter B. Hoffman, Director of Research, United States Parole Commission (301) 492–5936.

Dated: August 20, 1985.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85–20229 Filed 8–20–85; 3:45 pm]

BILLING CODE 4410–01–M

federal register

Thursday
August 22, 1985

Part II

Environmental Protection Agency

Draft General NPDES Permit for Offshore Oil and Gas Exploration, Development, and Production Activities Off Southern California; Notices

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2885-3]

Draft General NPDES Permit for Offshore Oil and Gas Exploration Activities Off Southern California

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice of Draft General NPDES Permit.

SUMMARY: The Regional Administrator of Region 9 is proposing to issue a general NPDES permit (NPDES permit No. CAG280605) which would authorize discharges from facilities engaging in exploratory activities for oil and gas in specified Federal waters off Southern California. This permit would be applicable to facilities included in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category with the exception of development and production platforms (fixed or mobile). A general NPDES permit covering both mobil exploratory operations and production platforms was issued by Region 9 on February 18, 1982 (NPDES No. CA0110516—47 FR 7312). This permit was reissued on December 8, 1983, for the six month period ending June 30, 1984 (48 FR 55029).

Rather than reissuing this permit again, however, Region 9 is proposing to issue two general permits, one covering mobile exploratory operations (dicussed in this notice) and another general permit covering development and production platforms (published elsewhere today). Studies funded by EPA pursuant to section 403 of the Clean Water Act (CWA) revealed a significant difference in the state of knowledge concerning the potential environmental effects of exploratory operations and production platforms.

As discussed in section VI.D, Region 9 concluded that unreasonable degradation of the marine environment (as defined in 40 CFR Part 125 Subpart M) would not be expected from the level of exploratory activity anticipated during the life of the permit. However, as discussed in the **Federal Register** notice for production platforms, Region 9 concluded that such a determination could not be made for production platforms based on existing data. As a result, different permit requirements are appropriate for exploratory operations and production platforms and Region 9 believes two general permits should be issued which reflect these differences.

General NPDES permit No. CAG280605 would become effective on publication following the Region's consideration of public comments and expire 5 years from the effective date. The area to be covered by the proposed permit consists of those offshore tracts currently considered active by the Minerals Management Service (MMS) and leased by MMS from Lease Sale Nos. 35, 48, 53, 68, 73, 80 and the 1966 and 1968 Federal lease sales.

The draft general permit contains effluent limitations requiring Best Available Technology Economically Achievable (BAT) for toxic and nonconventional pollutants and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants as required by sections 301(b)(2) (A), (C), (D), (E), and (F) of the CWA. Since the Agency has not promulgated BAT/BCT effluent limitations guidelines for the Oil and Gas Extraction Point Source Category, the effluent limits in the permit were developed by Region 9 using best professional judgment (BPJ) as authorized by section 402(a)(1) of the CWA and 40 CFR 125.3. The requirements of section 403 of the CWA (Ocean Discharge Criteria) and regulations promulgated by EPA pursuant to section 403(c) (40 CFR Part 125, Subpart M) were also included in the development of the permit effluent limitations and other conditions. See section VI.D below. This proposed permit does not authorize discharges from facilities located in the territorial seas of the State of California or any body of water landward of the inner boundary of the territorial seas or any wetlands adjacent to such waters (facilities in the "Onshore" and "Coastal" subcategories defined in 40 CFR Part 435).

As required by section 307(c)(3)(A) of the Coastal Zone Management Act, Region 9 has certified the proposed permit to the California Coastal Commission as consistent with the State Coastal Zone Management Plan (CZMP).

As required by the Endangered Species Act (ESA), Region 9 has reviewed the effects of the proposed discharges on endangered or threatened species found in the general permit area. Region 9 has concluded that the proposed discharges would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their critical habitats. Pursuant to section 7 of the ESA, Region 9 has provided copies of the proposed permit and fact sheet to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service and requested a formal evaluation of this conclusion.

The permit does not authorize discharges from facilities defined in 40 CFR 122.2 as "new sources". However, when new source performance standards (NSPS) become effective, Region 9 will issue new permits.

Copies of the fact sheet and draft permit may be obtained from the address below. The administrative record for this permit is available for public review at Region 9 at the address listed below.

DATES: *Comment Period*—Interested persons may submit comments on the draft general permit to the Regional Administrator at the address below no later than October 7, 1985.

Public Hearing: A public hearing to consider proposed general NPDES permit No. CAG280605 covering exploratory activities and also the proposed general permit covering development and production activities (NPDES No. CAG280622) will be held as follows:

Date: September 26, 1985.

Time: 10 a.m.; 2 p.m.; 7:30 p.m.

Place: Sheraton Santa Barbara Hotel, El Cabrillo Room, 2nd Floor, 1111 East Cabrillo Blvd., Santa Barbara, CA 93101.

The public hearing will be conducted pursuant to 40 CFR 124.12 and is for the purpose of receiving comments from the public on the proposed issuance of the two general permits. All interested persons are invited to submit their views.

Oral statements at the hearing will be received and considered, but for accuracy of the record all important testimony should be submitted in writing so that there will be time for all interested persons to be heard. A record of the proceedings will be made for consideration by Region 9 before final action is taken. It will contain all written and oral comments and be available for public inspection. Under NPDES regulations (40 CFR Part 124) any evidence or comment that any person wishes to rely upon to contest any determination that Region 9 may make must be submitted at the public hearing or during the comment period unless good cause is shown for not doing so.

ADDRESS: Comments should be sent to the Regional Administrator, Region 9, U.S. Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94105, (Telephone Number (415) 974–8330).

FOR FURTHER INFORMATION AND COPIES OF DRAFT PERMITS CONTACT: Eugene Bramley, Region 9, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA

94105, (Telephone Number (415) 974–8330).

Supplementary Information and Fact Sheet

I. General Permits and Requests for Individual NPDES Permits

Section 301(a) of the CWA provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. Under EPA's regulations (40 CFR 122.28), EPA may issue a single general permit to a category of point sources located within the same geographic area if the regulated point sources:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require similar monitoring requirements; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

In addition, under EPA regulations (40 CFR 122.28(c)) the Regional Administrator is required to issue general permits covering discharges from offshore oil and gas facilities within the Region's jurisdiction. Where the offshore area includes areas, such as areas of biological concern, for which separate permit conditions are required, a separate individual or general permit may be required by the Regional Administrator.

Any owner and/or operator authorized to discharge under a general permit may request to be excluded from coverage under the general permit by applying for an individual permit as provided by 40 CFR 122.28(b). The operator shall submit an application together with the reasons supporting the request to the Director, Water Management Division, EPA, Region 9. A source located within a general permit area, excluded from coverage under the permit solely because it already has an individual permit (other than a permit that has been continued under the Administrative Procedure Act), may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply. Procedures for modification, revocation and termination of general permits are provided by 40 CFR 122.62–122.64. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the CWA that is enforceable under section 309 of the CWA.

II. Geographic Area of the General Permit

As noted earlier, the exploratory facilities general permit authorizes discharges on lease parcels in Federal waters off Southern California currently considered active by the MMS. Included are tracts from Lease Sale Nos. 35, 48, 53, 68, 73, 80 and the 1966 and 1968 Federal lease sales.

The proposed general permit area differs from the existing general permit area in two respects: (1) 36 new parcels would be added as authorized discharge sites to reflect recent leasing activity by the MMS and (2) 44 parcels would be deleted due to expiration of the leases.

Eight new tracts in the Santa Maria Basin were awarded by the MMS as a result of Lease Sale No. 73. The lease numbers of these parcels are P–0503 through P–0510, inclusive. Twenty-three new tracts were awarded as a result of Lease Sale No. 80. The lease numbers of these parcels are P–0511 through P–0517, P–0519 through P–0525 and P–0527 through P–0535.

Also, as a result of a recent Supreme Court decision (*Secretary of the Interior* v. *California*, 104 S. Ct. 656 (January 11, 1984)) 5 tracts from Lease Sale No. 53 which had been under litigation were also awarded by MMS. The lease numbers of these parcels are P–0373 through P–0377.

The new parcels are in the same general area as the parcels on which discharges were previously authorized. The effects of the proposed discharges throughout the entire area (new and old parcels) were analyzed in the Ocean Discharge Criteria Evaluation (see section VI.D) and in the environmental impact statements accompanying the lease sales. Based on a review of these documents, and the criteria for the issuance of a general permit, Region 9 believes that facilities operating in the area covered by this proposed permit are more appropriately regulated by a general permit than by individual permits.

The lease numbers of the parcels which would be deleted are P–0186, P–0295, P–0325, P–0327, P–0328, P–0330 through P–0345, P–0347, P–0350 through P–0364, P–0366, P–0367, P–0369, P–0404, P–0405, P–0410 and P–0411.

III. Covered Facilities and Nature of Discharges

The proposed permit would apply to all exploratory facilities currently operating in the general permit area complying with the notification requirements of Part I including all exploratory facilities except new sources entering the permit area after the effective date of the permit. Exploratory operations are defined as those operations involving drilling to determine the nature of potential hydrocarbon reserves and do not include drilling of wells once a hydrocarbon reserve has been defined.

The following twelve discharges may result from these sources:

Discharge 001—Drilling Muds and Cuttings and Washwater

Drilling mud is defined as any fluid sent down the hole including gelling compounds, weighting agents, and any specialty products, from the time a well is begun until final cessation of drilling in that hole. There are two basic types of muds, water-based and oil-based. Water-based muds are usually mixtures of fresh water or sea water with clays. Oil-based muds (includes invert emulsion muds) are mixtures of diesel or mineral oil and clays with water or brine emulsified in the oil.

Drilling muds are used in both exploration and development drilling to maintain hydrostatic pressure control in the well, lubricate the drilling bit, and remove drill cuttings from the well. Oil-based muds are used for special drilling requirements such as tightly consolidated subsurface formations, water sensitive clays, and shales. Specific needs of a drilling program may require other additives in the drilling muds.

Drill cuttings are mineral particles generated by drilling into subsurface geologic formations. Drill cuttings are carried to the surface of the well with the circulation of the drilling muds and separated from the fluids on the drilling vessel by solids separation equipment (screens and shakers). The washwater is used to clean the drill cuttings prior to discharge. Drilling mud, and oil and additives if used, remain with the drill cuttings after the solids separation equipment. These materials are removed from the cuttings to ensure compliance with discharge limitations.

Discharge 002—Well Completion and Treatment Fluids

Well completion fluids are low solids drilling fluids used to drill into the hydrocarbon producing zone and complete the well. The solids content of normal drilling muds may damage the porous rock of the production zone. Well treatment fluids are used to increase the rate of flow of hydrocarbons from a well already in production.

Discharge 003—Deck Drainage

This discharge includes water resulting from platform washings, deck

washing, tank cleaning operations, and runoff from curbs, gutters, and drains including drip pans and work areas.

Discharge 004—Sanitary Wastes

Sanitary wastes include human body waste discharged from toilets and urinals.

Discharge 005—Domestic Wastes

Domestic wastes include materials discharged from sinks, showers, laundries, and galleys. All galley wastes are macerated before flushing.

Discharge 006—Desalinization Unit Discharge

Desalinization unit discharge means any wastewater associated with the process of creating fresh water (for various purposes on the drillship) from seawater.

Discharge 007—Cooling water

Cooling water means once-through, non-contact cooling water.

Discharge 008—Uncontaminated Bilge Water

Uncontaminated bilge water is water that enters the lower holds of the vessel and accumulates in the bilge areas.

Discharge 009—Uncontaminated Ballast Water

Ballast water is water used by a drilling vessel to maintain proper stability.

Discharge 010—Excess Cement

Excess cement is unused cement discharged after a well cementing operation. Cement is used to bond the casing (large diameter steel pipe) to the wall of the hole. The casing prevents the caving in of the hole.

Discharge 011—Blow-Out Preventer (BOP) Control Fluid

Blow-out preventer fluid is a mixture of water and 1–2% hydraulic fluid (generally ethylene glycol and water) vented at the ocean floor during periodic testing of the blow-out preventer system as required by the Minerals Management Service.

Discharge 012—Fire Control System Test Water

Fire control system test water is sea water discharged during periodic testing of the fire control system.

IV. Notification Requirements for Commencement and Termination of Operations

Written notification of commencement of operations must be provided to, and received by, the Regional Administrator at least fourteen (14) days prior to initiation of discharges (Part I). This notification must be provided for each drill site and must identify the permittee (either the owner of the exploratory drillship or the leaseholder) assuming responsibility for compliance with the permit. Modifications of the notification may be made (such as a change in drilling location or drillship to be used) provided the revised notification is received by the Regional Administrator at least forty-eight (48 hours) prior to initiation of discharge. Permittees shall also notify the Regional Administrator within twenty-eight (28) days upon termination of discharges at each location.

For operations on parcels for which a biological survey is required by Minerals Management Service (MMS) lease stipulation, the biological survey report and the plan of exploration must be provided to Region 9 prior to initiation of discharges. Initiation of discharge under the permit may not begin until Region 9 has reviewed the survey report and the proposed operations, and has determined that this general permit is appropriate for the proposed discharges, and has notified the permittee in writing of this determination.

V. Statutory Basis for Permit Conditions

Sections 301(b), 304, 308, 401, 402, and 403 of the CWA provide the basis for the permit conditions contained in the draft permit. The general requirements of these sections fall into three categories, which are described below. A discussion of the basis for specific permit conditions follows in Part VI.

A. Technology-Based Effluent Limitations

1. PBT Effluent Limitations. The CWA requires particular classes of industrial dischargers to meet effluent limitations established by EPA. EPA promulgated effluent limitations guidelines requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart A) on April 13, 1979 (44 FR 22069).

BPT effluent limitations guidelines require "no discharge of free oil" for discharges of deck drainage, drilling muds, drill cuttings, and well treatment fluids. This limitation requires that a discharge shall not cause a film or sheen upon or discoloration on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR 435.11(d)). The BPT effluent limitations guideline for sanitary waste requires that the concentration of chlorine be maintained as close to 1 mg/l as possible in discharges from facilities housing ten or more persons. For facilities continuously manned by nine or fewer persons or only intermittently manned by any number of persons, the BPT effluent limitations guideline requires no discharge of floating solids.

2. BAT and BCT Effluent Limitations. All permits issued after July 1, 1984, are required by Section 301(b)(2) of the CWA to contain effluent limitations for all categories and classes of point sources which: (1) Control toxic pollutants (40 CFR 401.15) through the use of Best Available Technology Economically Achievable (BAT) and (2) represent Best Conventional Pollutant Control Technology (BCT). BCT effluent limitations apply to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliform). BAT and BCT effluent limitations must be at least as stringent as BPT limitations since they are intended by the CWA to represent a higher level of treatment. Permits in effect after July 1, 1987, must impose effluent limitations which control nonconventional pollutants by means of BAT.

BAT and BCT effluent limitations guidelines and New Source Performance Standards (NSPS) are currently under development by the EPA Industrial Technology Division and will be proposed in the near future for the Offshore Subcategory. In the absence of effluent limitations guidelines for the Offshore Subcategory, permit conditions must be established using best professional judgment (BPJ) procedures (40 CFR 122.43, 122.44, and 125.3). This proposed permit incorporates BAT and BCT effluent limitations based on Region 9's best professional judgment.

As required by section 304(b)(2)(B) of the CWA, in developing the BPJ/BAT permit conditions, Region 9 considered: The age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Regional Administrator deems appropriate.

The type of equipment and processes employed in exploratory drilling operations are well known to Region 9. Region 9 has previously issued general and numerous individual permits for such operations. The administrative records for this permit and the earlier permits thoroughly discuss the types of

equipment, facilities and processes employed in exploratory drilling operations. Any costs of achieving the effluent limitations and any non-water quality environmental impacts were also evaluated and a discussion of such evaluations in presented below with respect to any limitation where applicable.

As required by section 304(b)(4)(B) of the CWA, Region 9 considered the same factors in determining BPJ/BCT permit conditions, but with one exception. Rather than considering "the cost of achieving such effluent reduction," any BCT determination includes "consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources." BCT effluent limitations cannot be less stringent than BPT; therefore, if the candidate BCT technologies fail the BCT "cost test," BCT effluent limitations are set equal to BPT.

Region 9's evaluation of the BAT factors, as discussed above is also applicable to BCT, as well as Region 9's best professional judgment determinations of BPT in instances where there is no BPT effluent limitation guideline for a particular waste stream. With respect to the BCT "cost test," all BCT limitations for this proposed permit are equal to the BPT effluent limitations guidelines or to Region 9's best professional judgment determinations of BPT. Therefore, no incremental cost would be incurred.

B. Ocean Discharge Criteria

Section 403 of the CWA requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas be issued in accordance with guidelines for determining the degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Criteria (40 CFR Part 125, Subpart M), and section 403 are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980).

If EPA determines that the discharge will cause unreasonable degradation, an NPDES permit will not be issued. If a determination of unreasonable degradation cannot be made because of a lack of sufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternatives to on-site disposal. To assess the probability of irreparble harm, EPA is required to make a determination that the discharges, operating under appropriate permit conditions, will not cause permanent and significant harm to the environment during a monitoring period in which additional information is gathered. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge must be halted or additional permit limitations established.

The determination of unreasonable degradation must be based on the following factors: Quantities, composition, and potential for bioaccumulation or persistence of the pollutants discharged; potential transport of such pollutants; the composition and vulnerability of biological communities exposed to such pollutants; the importance of the receiving water area to the surrounding biological community; the existence of special aquatic sites; potential impacts on human health; impacts on recreational and commercial fishing; applicable requirements of approved Coastal Zone Management Plans; marine water quality criteria developed pursuant to section 304(a)(1) of the CWA; and other relevant factors.

C. Section 308 of the Clean Water Act

Under Section 308 of the CWA and 40 CFR 122.44(i) the Administrator must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. Region 9 has proposed several monitoring requirements for the effluent limitations proposed in this permit, as listed in section VI.

VI. Specific Permit Conditions

A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

(1) Consideration of technology-based effluent limitations to control conventional pollutants under BCT;

(2) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT; and

(3) Evaluation of the Ocean Discharge Criteria assuming conditions in parts (1) and (2) were in place.

Discussions of the specific effluent limitations and monitoring requirements derived from (1) through (3) appear below in Parts B. through D. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in the following table:

Discharge and permit condition	Statutory
Drilling Muds and Cuttings:	
No free oil	BCT.
No floating solids	BCT.
No oil-based muds and associated cuttings.	BCT.
Mud toxicity limit	BAT.
No chrome lignosulfonate	BAT.
No diesel except in spotting operations.	BAT.
Removal of 50 bbls on each side of diesel pill.	Section 304 (BMP).
Hg/Cd limits in barite	BAT.
Monitoring for metals and toxicity	Section 308.
Monitoring of volume discharged	Section 308.
Inventory of added substances	Section 308.
LPC requirements in vicinity of Channel Islands Marine Sanctuary.	Section 303(c).
Notification prior to final discharge upon completion of well.	Section 308.
Reopener clause	Section 402(a).
Well Completion & Treatment Fluids:	
No free oil	BCT.
Monitoring of discharge rate	Section 308.
Inventory of added substances	Section 308.
Deck Drainage:	
No free oil	BCT.
Monitoring of discharge rate	Section 308.
Limits on dispersants, surfactants and detergents.	Section 304 (BMP).
Sanitary Wastes:	
No floating solids	BCT.
Chlorine 1.0 mg/1 (facilities with more than 10 people) to control fecal coliform.	BCT.
Monitoring of discharge rate	Section 308.
Maximum chlorine concentration of 10 mg/1.	BAT.
Domestic Wastes:	
No floating solids	BCT.
Monitoring of discharge rate	Section 308.
Miscellaneous Discharges:	
No free oil	BCT.
Monitoring of discharge rate	Section 308.
All Discharges:	
No halogenated phenols	BAT.
No floating solids	BCT.

B. BCT Requirements

1. Free Oil and Oil-Based Muds and Cuttings. No discharge of free oil is permitted from discharges authorized by the permit. Region 9 has determined that the BPT effluent limitations guideline of no discharge of free oil from the discharge of deck drainage, drilling muds, drill cuttings, and well treatment fluids should apply to other discharges, including uncontaminated bilge water, uncontaminated ballast water, desalinization unit discharge, non-contact cooling water, excess cement slurry, blowout preventer fluid, and fire control system test water. Thus, the no free oil limitation is Region 9's best professional judgment determination of BPT controls for these discharges. They have been subject to a no free oil limitation in previous permits issued by Region 9, and past practices have not resulted in violations of this limitation.

No technology performance data available to Region 9 indicate that a more stringent standard is appropriate at this time. Region 9 has proposed BCT effluent limitations equal to the BPT level of control and, as such, these proposed limitations impose no incremental costs.

As discussed above, the BCT effluent limitation on free for drilling muds is equal to the BPT limitation. The discharge of oil-based drilling muds (with oil as the continuous phase and water as the dispersed phase) is therefore prohibited since oil-based muds would violate the BCT effluent limitation of no discharge of free oil. The discharge of drill cuttings associated with oil-base mud is also prohibited due to the likelihood of violation of this same limit.

The monitoring requirement for determining compliance with the effluent limitation on free oil is in most instances a visual observation of the receiving water. However, the static sheen test is required for monitoring free oil in mud and cuttings discharges (which are the discharges with the greatest likelihood of oil contamination) and also for discharges 002–004 if they occur at night. The static sheen test involves mixing effluent with ambient seawater in a test container and subsequently observing whether or not a sheen appears on the surface. The specific procedure is found in "Static Sheen Test" (U.S. Environmental Protection Agency, 1985b). The sheen test requirement is being proposed for the following reasons: (1) Region 9 believes that the test is reliable, (2) the test is an improvement over the alternate method of simply making visual observations in the receiving water and (3) the test can be conducted prior to discharge.

2. Floating solids. The BCT prohibition on floating solids is equal to the BPT level of control for sanitary wastes. As with the free oil limitations, Region 9 has determined that the BPT effluent limitations guideline of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. Thus, the no floating solids limitation is Region 9's best professional judgment determination of BPT limitations for these discharges. They have been subject to this limitation in previous permits issued by Region 9, and past practices have not resulted in violations of this limitation. No technology performance data available to Region 9 indicate that a more stringent standard is appropriate at this time. Therefore, Region 9 has determined that the BCT effluent limitation on floating solids from these discharges is equal to the BPT level of control. As such, the extension of this limitation to all discharges will involve no incremental cost.

3. Chlorine. The requirement of maintaining residual chlorine levels as close as possible to, but no less than 1 mg/1 in sanitary waste discharges for facilities manned by 10 or more people is a BCT determination equal to BPT. There is therefore no incremental cost to the industry. The chlorine residual is limited as a BCT pollutant to control the conventional pollutant fecal coliform.

The proposed permit also provides that any facility using a marine sanitation device that complies with pollution control standards and regulations under Section 312 of the CWA shall be deemed to be in compliance with permit limitations for sanitary waste discharges, until such time as the device is replaced or is found not to comply with such standards and regulations.

C. BAT Requirements

1. Mud Toxicity Limit. a. Determination of Mud Toxicity Limit. For compliance with the BAT requirements of section 301(b) of the CWA, Region 9, based on best professional judgment, is proposing an overall toxicity limit for discharged drilling muds. This limit is a minimum single (i.e., no sample to be less than) 96 hour LC_{50} of 30,000 ppm for the suspended particulate phase (SPP). Discharge of muds with 96 hour LC_{50} concentrations less than 30,000 ppm would constitute noncompliance with the permit and could lead to enforcement action by EPA. A toxicity limit was selected for compliance with BAT requirements, rather than separate limits on individual mud constitutents, because of the complexity of drilling mud formulations. The bioassay procedure to be used to determine compliance with the limit is "Drilling Fluids Toxicity Test" (U.S. Environmental Protection Agency, 1985a). The test organism specified in this bioassay procedure is *Mydisopsis bahia.*

In developing the proposed toxicity limit, Region 9 reviewed the basic formulations of muds, and the specialty additives, including lubricants, which are commonly used in offshore drilling activities. The toxicity of these components, and the factors relating to technology and cost which were evaluated pursuant to section 304(b)(2)(B) of the CWA, are discussed below.

An extensive review of offshore drilling practices has demonstrated that there are eight basic formulations of water-based drilling muds in use. These muds have been termed "generic drilling muds." The lower 95% confidence limit LC_{50} (worst-case bioassay result) for the generic muds, as determined by recent testing at EPA's Gulf Breeze Laboratory, occurred at 30,000 ppm (Duke and Parrish, 1984). Therefore, the proposed toxicity limit represents the most stringent 96 hour LC_{50} which would allow each generic mud to be discharged.

Region 9 has also reviewed the types of specialty mud additives which have been used in waters offshore California in the last two years and the degree to which these additives affect overall mud toxicity. The review showed that additives are available which can be combined with generic muds to meet the proposed toxicity limit and which can still perform nearly all specialty functions needed by operators. Moreover, Region 9 has, from inspections and Discharge Monitoring Reports (DMR's), reviewed whole muds actually used in offshore operations and the results demonstrated that 9 out of 10 would meet the proposed toxicity limit. Therefore, Region 9 has concluded that mud formulations with LC_{50}'s greater than 30,000 ppm are adequate to perform drilling functions in the vast majority of cases.

Of the specialty additives occasionally needed in drilling operations, lubricating additives are generally believed to have the greatest potential for increasing mud toxicity. Duke and Parrish (1984) found a strong correlation between diesel oil content in drilling muds and overall mud toxicity. These authors further determined that mineral oil, while also increasing mud toxicity, is substantially less toxic than diesel oil.

Drilling mud lubricants are used for two purposes, torque-reduction and spotting. For torque-reduction, lubricants are added to the entire mud system to reduce friction between the drillstring and the wall of the hole. If a portion of the drillstring becomes stuck against the wall of the hole, a spotting operation is usually needed.

At a national meeting sponsored by EPA in Denver, Colorado (June 11–12, 1984), industry representatives indicated that mineral oil is an adequate substitute for diesel for torque-reduction purposes. (Technical Resources, 1984a). Therefore, because substitute products are acknowledged by industry to be available, the proposed permit prohibits the discharge of drilling muds in which diesel oil is added as a torque-reducing lubricity agent (Condition II.A.1(h)). This

prohibition on the discharge of diesel oil is discussed further in Section VI.C.2.

In a spotting operation, diesel or mineral oil is normally added to only a small fraction of the mud system. The mud containing the oil is then pumped to the stuck portion of the drillstring where the additional lubricity of the mud frees the pipe. Under the proposed permit, upon completion of the spotting operation, the diesel oil-contaminated mud or "pill," and a buffer zone around the pill, is removed from the mud system for onshore disposal. However, some amount of residual diesel may remain in the mud system due to diffusion of the pill.

Diesel oil has been the product of choice for use in a pill due to its ready availability at the facility although use of mineral oil is becoming more common as a substitute for diesel in spotting operations. Pruett II (1984) provides some examples of the successful use of mineral oil for spotting off Southern California. In view of the limited operational data in Region 9 offshore waters, however, the proposed permit authorizes the discharge of muds containing residual diesel from spotting operations provided the followng conditions are met: (1) The diesel pill and a minimum of 50 barrels of mud on each side of the diesel pill and associated cuttings are removed from the mud system and not discharged, *and* (2) the overall mud toxicity limit is not violated by the remaining mud. The requirement for mud removal is established pursuant to NPDES permit regulations at 40 CFR 122.44(k) (best management practices). Compliance with the toxicity limit must be demonstrated by bioassay data from mud samples taken from the mud system immediately prior to and subsequent to pill removal.

In addition to the technology-related factors discussed above, in developing the proposed mud toxicity limit, Region 9 considered the costs associated with achieving effluent reduction. In this context, Region 9 evaluated the costs of land disposal of all drilling muds. In a study of alternatives to on-site disposal, Sobotka & Company (1984) estimated that such costs could exceed 7.5% of the total cost of an exploratory drilling operation (assuming $100,000/day for such operation). Region 9 has determined from this study that to require land dispoal of all drilling muds would be economically burdensome, and would be accompanied by adverse impacts such as port congestion, truck and workboat emissions, and strain on the available capacity of land disposal sites. Therefore, Region 9 has concluded that land disposal of all drilling muds would not be an appropriate BAT requirement.

Region 9 believes, however, that the proposed toxicity-based limit, minimum 96 hour LC_{50} of 30,000 ppm (SPP), is economically achievable where the cost of barging muds to shore would be only infrequently incurred. As discussed previously, data from Region 9 inspections and DMR's indicate that 90% of the tested whole muds which had actually been used in drilling operations would meet the proposed toxicity limit. Therefore, even if 10% of all drilling muds had to be barged to shore for disposal, the aggregate cost to the industry would amount to only .75% (assuming a linear relationship between cost and barging frequency). In addition, Region 9 believes that through product substitution and more operator experience with new additives, the number of mud systems requiring land disposal can be further reduced, thereby resulting in still lower costs.

When Region 9 originally solicited comments for proposals being considered for a toxicity limit for discharged drilling muds in July, 1984, industry representatives claimed that a limit of 30,000 ppm was too stringent in that it would not allow the discharge of muds containing mineral oil in needed concentrations. Region 9 has reviewed the use of mud lubricants off Southern California in the last two years and believes that this claim is exaggerated.

In 1984, Duke and Parrish conducted a study in which mineral oil in concentrations of 1, 5, and 10% was added to generic muds #2 and #8. Toxicity tests revealed that at a concentration of 1%, the 96 hour LC_{50}'s (SPP) for muds #2 and #8 were 134,000 ppm and 71,000 ppm respectively, well above the toxicity limit in the proposed permit. At a concentration of 5%, the LC_{50}'s for these muds were 18,000 ppm and 9,000 ppm respectively, slightly below the proposed limit. However, Region 9's records of mud usage on the California OCS show that mineral oil, or additives containing mineral oil, are seldom needed at concentrations greater than approximately 1%. Therefore, compliance with the proposed toxicity limit should be attainable for the vast majority of drilling operations, including those for which lubricity additives are needed.

THUMS Long Beach Co. (operated by a consortium of major oil companies), in a recent request for modification of Ocean Dumping Permit OD 82–01 (ocean disposal of drilling muds and cuttings), conducted bioassays on typical and "worst case" muds needed for the company's extensive drilling program in Long Beach Harbor. The "worst case" mud contained constituents, including lubricants and other additives, at concentrations which the company itself estimated would be adequate for all foreseeable drilling requirements. Nevertheless, the 96 hour LC_{50} for even the "worst case" mud was 35,000 ppm, in compliance with the toxicity-based limit proposed in this permit. These results support the Region's conclusion that muds more toxic than authorized for discharge by this proposed permit should rarely be needed in drilling operations.

As noted above, Region 9 considers the proposed toxicity limit to be economically achievable even if a small number of operations must barge muds to shore for disposal. Therefore, Region 9, using best professional judgment, has determined that the proposed minimum 96 hour LC_{50} of 30,000 ppm is an appropriate toxicity limit for drilling muds which takes into consideration the need for lubricity and other additives.

b. Compliance with Mud Toxicity Limit. Under the existing BPT general permit, Region 9 has approved numerous speciality additives based on bioassay data and informed offshore operators of these determinations. This regulatory approach has allowed operators to use these approved additives in drilling operations without conducting additional bioassays. One drawback to this approach, however, is that operators might combine several moderately toxic additives (individually approvable) in one mud and thereby exceed the permit's overall toxicity limit. In order to limit the possibility of such occurrences, Region 9 is proposing two levels of approval for specialty additives, general and conditional:

(1) Additives with $LC_{50} > 100{,}000$ ppm (SPP) when tested in a reference mud at the maximum usage rate would be listed as acceptable for general use and discharge. The reference mud to be used for these tests is the lightly treated lignosulfonate mud (generic mud #7) which has been the most commonly used reference mud to date.

(2) Additives where the LC_{50} is greater than 30,000 ppm and less than 100,000 ppm would be conditionally listed as acceptable, contingent upon the additive's not being used in conjunction with other additives which in combination could result in violation of the permit's overall toxicity limit.

It should be noted that the above provisions pertaining to specialty additives would apply only to generic muds #2–8. The overall mud toxicity limit in the permit is based on the

toxicity of mud #1 with no specialty additives included. However, this does not preclude the use of specialty additives in mud #1. Such additives could be included in mud #1 if the additives did not increase the toxicity of the mud (i.e. the toxicity of the additive is lower than the toxicity of the mud which would be replaced), or if the basic components of mud #1 were used at concentrations lower than the maximum allowed concentration to offset the effects of specialty additives.

In all instances, regardless of whether an additive is listed as acceptable for general use or is conditionally accepted, the discharger will be responsible for demonstrating compliance with the whole mud toxicity limit. Estimates of joint toxicity for muds containing conditionally accepted additives may be made using Equation (1) from Sprague and Logan (1979):

$$\frac{10^6}{LC_t} = \frac{C_g}{LC_g} + \sum_{i=1}^{N} \frac{C_i}{LC_i} \quad (1)$$

Where

LC_t is the 96 hour LC_{50} of the generic mud including mud additives in ppm

C_i is the concentration of the ith additive in ppm

LC_i is the 96 hour LC_{50} of the ith additive in ppm

C_g is the concentration of the generic mud in ppm

LC_g is the 96 hour LC_{50} of the generic mud in ppm

The above regulatory approach to mud additive regulation offers the following advantages:

(1) Since the LC_{50} of most specialty additives is greater than 100,000 ppm, general listing of acceptability for discharge, following an initial bioassay, could be given for most additives to be discharged, thus providing desirable flexibility for operators.

(2) It is unlikely that violations of the permit's whole mud toxicity limit (minimum of 30,000 ppm) would result from the combination of additives acceptable for general use and discharge. For example, if it is assumed that (a) LC_{50} of the reference mud=500,000 ppm, (b) mud constituent toxicity is additive according to the above equation, and (c) additive usage by weight is small relative to the basic mud constituents, four specialty additives with LC_{50}=100,000 ppm each used at its maximum concentration would be necessary to produce a mud with an overall LC_{50} approximating the permit limit of 30,000 ppm. This calculation proceeds by first determining LC_i for each additive using the Sprague and Logan formula. In the above example assuming additive usage of 2 lbs/bbl in a 10 lbs/gal mud, LC_i would be 594 ppm. Four such additives included in a generic mud (LC_g=500,000 ppm) would produce a mud with an LC_{50} of 29,400 ppm.

Greater assurance that the permit's whole mud toxicity limit would not be violated could be obtained by increasing the minimum LC_{50} for listing additives as acceptable for general use. However, Region 9 believes that 100,000 ppm is a reasonable minimum which would allow general acceptance of most additives and also provide a high degree of assurance that the permit's overall toxicity limit would not be exceeded by muds in actual use. Listing and toxicity information for mud additives may be obtained from Region 9 at the above address.

The proposed permit requires a demonstration of compliance with the overall toxicity limit for each mud system which is used and discharged. The term "mud system" refers to the major types of drilling muds which are used during the drilling of a single well. For example, drilling would probably commence with a spud mud for the first several hundred feet. Then a seawater gel mud might be used to a depth of about 1,000 feet. Subsequently a lightly treated lignosulfonate mud might be used to a depth of around 5,000 feet. Finally, a freshwater lignosulfonate system might be used for the remainder of the drilling operation to a depth of about 15,000 feet. Typically a bulk discharge of 1,000 to 2,000 barrels of mud occurs when the mud system is changed. It is at these times that compliance with the permit's toxicity limit must be demonstrated. The bulk discharges are the highest volume mud discharges and will include all specialty mud components added to each mud system. As such, Region 9 believes that the bulk discharges are the most appropriate discharges for which to require a demonstration of compliance with the toxicity limit. In the above example four such demonstrations would be required for the drilling of the well.

Except for the final mud system used at the time maximum well depth is reached, this demonstration may consist of toxicity calculations as discussed above, exclusive use of generic muds and additives listed as acceptable for general use or an acutal mud bioassay. A bioassay is required for the final mud discharge irrespective of mud composition. This is the time when the maximum mud toxicity is likely to be reached due to the increased need for specialty additives at greater depths. Given the uncertainties of the methods for estimating mud toxicity, Region 9 believes that at least one actual bioassay per well should be required. The bioassay procedure to be used is "Drilling Fluids Toxicity Test" (U.S. Environmental Protection Agency, 1985a).

2. Diesel oil. As discussed above, the proposed permit prohibits the discharge of diesel oil as a torque-reducing lubricity additive. Diesel, which is sometimes added to a water-based mud system, is a complex mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. While this limitation thereby controls the toxic as well as nonconventional pollutants present in diesel, the Agency's primary concern is to control the toxic pollutants. The pollutant "diesel oil ' is being used as an "indicator" of the listed toxic pollutants present in diesel oil which are controlled through compliance with the effluent limitation. The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

The Agency selected "diesel" as an "indicator" as an alternative to establishing limitations on each of the specific toxic and nonconventional pollutants present in the diesel-contaminated waste streams. The listed toxic pollutants found in various diesel oils include naphthanlene, benzene, ethylbenzene, phenanthrene, toluene, fluorene, and phenol. Diesel oil may contain from 20 to 60 percent by volume aromatic hydrocarbons. The light aromatic hydrocarbons, such as benzenes, naphthalenes, and phenanthrenes, constitute the most toxic major components of petroleum products. Mineral oils, with their lower aromatic hydrocarbon content and lower toxicity, contain lower concentrations of toxic pollutants than do diesel oils. Diesel oil also contains a number of nonconventional pollutants, including polynuclear aromatic hydrocarbons such as methylnapthalene, dimethylnaphthalene, methylphenanthrene, and other alkylated forms of each of the listed toxic pollutants.

Region 9 believes that the limitations achieved by product substitution or land disposal of contaminated muds and cuttings represent the technically feasible and economically achievable BAT-level of control for the various toxic pollutants to be controlled. Establishing limitations on these

pollutant parameters as indicator pollutants, avoids the costly and technically complex requirement of complying with specific limitations on each of the toxic pollutants. Monitoring and analyzing all waste streams to confirm compliance with specific effluent limitations for each of the toxic pollutants is not considered by Region 9 to be economically justified at this time.

3. Mercury and Cadmium Contamination of Barite. The proposed permit limits mercury and cadmium as trace contaminants in barite to 1 mg/kg and 2 mg/kg, respectively (Condition II.A.1(g)). Barite is mined from either bedded or vein deposits. The bedded deposits are characterized by substantially lower concentrations of heavy metal contaminants such as mercury and cadmium (Nelson, Lui, and Sommers, 1980; Kramer, Grundy and Hammer, 1980). By limiting the mercury and cadmium in barite, the proposed permit also serves to limit the concentrations of the other contaminants as well. The numerical values for the limits were based on data in the above references and in Technical Resources, Inc. (1984d) while allowing for a reasonable variability in the quality of bedded deposits. Compliance with this limit is achievable through product substitution, i.e. the utilization of uncontaminated sources of barite for offshore purposes in place of contaminated sources.

According to data collected by the EPA Industrial Technology Division, nearly half of the barite consumed in the United States is produced in the Battle Mountain, NV area which is a source of bedded or uncontaminated barite. Since offshore usage of barite constitutes only 25% of total domestic barite usage, an adequate supply of uncontaminated barite would be available for offshore usage nationwide if only ⅛ of the Nevada source were dedicated to offshore uses. It is preferable from an environmental point of view to use the uncontaminated barite for offshore operations where the mud is discharged and to use the contaminated barite onshore where the mud is land disposed.

At a workshop sponsored by EPA in Santa Barbara, CA (July 27–29, 1984), an industry representative indicated that all Southern California offshore operators are already using the Nevada barite for their drilling mud (Technical Resources, Inc., 1984b). This is apparently due to the proximity of the Nevada source to Southern California. In view of this fact, Region 9 believes that the proposed limitation should be economically achievable and not disruptive to the barite market. It should also be noted that the Nevada barite is high density barite and need not be blended with other barite to achieve specifications.

4. Prohibition of Chrome Lignosulfonate. The proposed permit prohibits the discharge of chrome lignosulfonate (Condition II.A.l(j)) in order to prevent the discharge of the toxic pollutant chromium. Substitutes for chrome lignosulfonate are available (such as iron or calcium lignosulfonate) which, according to Region 9's mud usage records, are already in use by approximately two-thirds of California OCS operators. Region 9 recognizes that chrome lignosulfonate may have advantages over other legnosulfonates such as stability over a greater temperature range. However, given the widespread use of substitutes for chrome lignosulfonate, Region 9 believes that this prohibition has been demonstrated to be technologically and economically achievable.

5. Other toxic and nonconventional compounds. The discharge of halogenated phenol compounds (a class of compounds which includes several toxic pollutants) is prohibited in accordance with a Minerals Management Service Operations Order.

As noted previously, the existing BPT guidelines require a residual chlorine concentration in the sanitary discharge of at least 1 mg/l which is to be maintained as close to 1 mg/l as possible. This requirement is being proposed as a BCT limit for this draft permit also (for control of the conventional pollutant, fecal coliform). JRB Associates (1984) concludes that the impacts from the chlorine in the sanitary discharge should be small due to rapid dilution and the low volume of the discharge. Nevertheless, to minimize the potential effects of chlorine in this discharge, Region 9 is also proposing a maximum chlorine residual of 10 mg/l as a BAT limit. Past DMR's in Region 9 show that the vast majority of offshore operators consistently comply with the proposed maximum chlorine limit. Compliance by all operators should be easily achievable through better operation and housekeeping of existing facilities.

D. Requirements Based on the Ocean Discharge Criteria Evaluation

As noted previously, the general NPDES permit authorizing discharges from offshore oil and gas exploration, development and production facilities off Southern California was originally issued on February 18, 1982 (47 FR 7312). The term of the permit was two years with an expiration date of December 31, 1983. On December 8, 1983, Region 9 reissued the permit for an additional 6 month period ending on June 30, 1984 (48 *FR* 55029). Region 9 concluded in both permit issuances that the authorized discharges would not cause unreasonable degradation of the marine environment. The conclusions were based on the limited duration of the permits, the limited extent of offshore activity anticipated during the terms of permits and the fact that the permitted facilities would be subject to effluent limitations, monitoring requirements and other conditions contained in the permit. Short-term permits were issued because Region 9 believed that additional information was necessary concerning longer-term, cumulative effects of the discharges prior to issuance of a normal 5 year permit. The issuance of the short-term permits also provided additional time for ongoing and new studies to be completed which would assess the longer-term and cumulative effects of permitted discharges.

Many of these studies have not been completed. Since the reissuance of the last Region 9 OCS general permit, the National Research Council (NRC) completed a major assessment of the fate and effects of drilling muds and cuttings discharges into the marine environment, including long term cumulative effects (NRC, 1983). The NRC sfudy draws from the many laboratory and field studies which have been conducted in recent years. The report concludes that the risks to the marine environment are small from individual operations such as a single exploratory drilling operation. However, the study failed to conclude that "massive development" of an offshore oil field would not cause significant degradation of the marine environment.

Considerable drilling activity is projected for offshore California in the coming years particularly in the western Santa Barbara Channel and Santa Maria Basin. MMS has estimated that a total of 74 exploratory wells and 751 development wells would be drilled in the proposed general permit area during the term of the permit.

EPA has funded two additional studies in an effort to determine whether this expected level of offshore activity would or would not cause unreasonable degradation of the marine environment. An Ocean Discharge Critereia Evaluation (ODCE) was performed bv JRB Associates of Seattle, WA (JRB Associates, 1984). This study was supplemented by a hazard assessmen' prepared by Dr. Gary Petrazzuolo in which the long-term cumulative effects

of mud and cuttings discharges are evaluated (Technical Resources, Inc., 1984c). These studies concluded that discharges accompanying production platforms could cause unreasonable degradation unless additional controls are imposed in the permits. However, the analyses did conclude that unreasonable degradation would not be expected from exploratory operations projected during the term of the permit. As noted previously, the NRC reached a similar conclusion regarding exploratory operations in its extensive review of the effects of mud and cuttings discharges in the marine environment. In view of the results of these studies and after reviewing other information, studies and documents in the administrative record for general NPDES permit No. CA0110516, Region 9 has concluded that the proposed mud and cuttings discharges from exploratory operations would not cause unreasonable degradation of the marine environment, with the exception of discharges within 1,000 m of the Channel Islands Marine Sanctuary. In this area, Region 9 is proposing a special requirement for mud discharges. See section VI. D.1.

Many of the other discharges (discharges 002–012) which would be authorized by the proposed permit are discharges associated with the normal operation of a ship. The low volumes and pollutants loadings of these discharges should not cause unreasonable degradation of the marine environment.

The Ocean Discharge Criteria at 40 CFR 125.123(a) provide for the application of any conditions specified in 40 CFR 125.123(d) which are necessary to ensure that unreasonable degradation of the marine environment does not occur as a result of the permitted discharges. The proposed permit contains two special conditions which were included pursuant to the Ocean Discharge Criteria. These conditions are discussed below.

1. *Mud discharges in the Vicinity of the Channel Islands Marine Sanctuary.* Region 9 is proposing a special discharge limitation applicable to drilling mud discharges on tracts within 1,000 m of the Channel Islands Marine Sanctuary which were leased subsequent to the effective date of the sanctuary regulations. See section VIII.C. The proposed permit would prohibit mud discharges on such tracts which would result in exceedences of a limiting permissible concentration (LPC) inside the boundaries of the marine sanctuary (Condition II.A.1(i)). The LPC is 1 percent of the 96 hour LC_{50} for a given drilling mud. Region 9 believes that the proposed condition will provide appropriate additional protection for the sanctuary and equitable treatment for lessees.

2. *Reopener Clause.* The Ocean Discharge Criteria regulations require that the reopener clause found in 40 CFR 125.123(d)(4) be included in permits issued pursuant to 40 CFR 125.123(c) (no irreparable harm). Since Region 9 concluded that no unreasonable degradation would occur from the proposed discharges, the reopener clause is optional. Permits issued pursuant to 40 CFR 125.123(a) (no unreasonable degradation) may include any necessary conditions specified in 40 CFR 125.123(d). Given the scope of the proposed permitting action, Region 9 believes inclusion of the reopener clause is prudent. This condition is included as Condition II.A.5 in the draft permit.

E. Best Management Practices for Dispersants, Surfactants, and Detergents

The facility operator is required to minimize the discharge of dispersants, surfactants and detergents except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration and the Minerals Management Service. This restriction applies to tank cleaning and other operations which do not directly involve the safety of workers. This restriction is imposed because detergents disperse and emulsify oil, therby increasing toxicity and making the detection of a discharge of oil more difficult. These limitations have been established pursuant to NPDES permit regulations at 40 CFR 122.44(k) (best management practices).

VII. Monitoring and Enforcement

Monthly volume estimates are required for drilling muds, drill cuttings, deck drainage, and well treatment fluids. Discharge Monitoring Reports must be submitted within 28 days following completion of each well. A chemical inventory of all materials actually added down the well must be maintained and all records retained for three years. Composition data for drilling muds which are used and discharged must be provided to Region 9 upon completion of each well.

Condition II.A.1(e) requires bioassay testing of muds to demonstrate compliance with permit toxicity limitations if an operator discharges other than generic muds or uses additives for which adequate data are not provided to determine compliance with permit limits. A bioassay is required for the final mud system when the well reaches its maximum depth, regardless of mud composition.

Condition II.A.1(k) requires that the permittee notify Region 9 (or other designated agency) 48 hours prior to the final mud discharge so that Region 9 may have an opportunity to sample the final mud. This provision will aid in ensuring compliance with permit conditions. Also, the permittee is required to keep a record of days of discharge of each mud system and the volume of discharge. (Condition II.A.1(a)).

EPA has recently signed a Memorandum of Understanding (MOU) with MMS covering a broad range of OCS activities, including post lease monitoring, inspection and enforcement. Under the MOU, MMS agrees upon written request from an EPA Regional Administrator to sample discharges (such as drilling mud) and forward all samples to EPA for analysis. Region 9 intends to work with the Pacific OCS Office of the MMS through a regional Memorandum of Agreement (currently under development) to establish a program of periodic sampling of drilling muds discharged into Southern California Waters. Region 9 will test the muds for toxicity and for the presence of prohibited subtances. Region 9 believes that such an inspection program will ensure compliance with permit limits. Under the MOU, Region 9 retains the right to conduct its own inspections. Region 9 has in the past conducted such inspections and retains all enforcement responsibilities under the CWA.

VIII. Other Legal Requirements

A. Consistency With California Coastal Zone Management Program

The Coastal Zone Management Act (CZMA) and its implementing regulations (15 CFR Part 930) require that any Federally licensed activity directly affecting the coastal zone of a state with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. The proposed general permit would not authorize discharges into the territorial seas of the State of California, nor into any body of water landward of the inner boundary of the territorial seas or any wetland adjacent to such waters. However, discharges would be authorized in waters adjacent to the territorial seas of the State of California and as such could affect the coastal zone.

Region 9 has reviewed the requirements of the CZMP and determined that the proposed permit is consistent with the CZMP. Since there are no applicants for general permits, EPA in effect becomes the applicant and

must provide the necessary consistency certification. Region 9 has certified the proposed permit to the California Coastal Commission as consistent with the CZMP.

Since Region 9 has formally certified the permit to the Commission for concurrence, Condition II.B.8 in the previous permit requiring concurrence by the Commission with plans of exploration/development prior to operation under the permit has been deleted.

B. Endangered Species Consultations

The Endangered Species Act (ESA) requires that each Federal agency ensure that any of their actions, such as permit issuance, do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their habitats. Region 9 has concluded that the discharges authorized by the general permit would neither jeopardize the continued existence of any endangered or threatened species nor adversely affect its critical habitat.

In accordance with Section 7 of the ESA, Region 9 has provided a copy of the proposed permit and fact sheet to the National Marine Fisheries Service and the U.S. Fish and Wildlife Service for an evaluation of this conclusion. Copies of all opinions will be included in the administrative record for the final permit.

C. The Marine Protection, Research, and Sanctuaries Act

The Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA) regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program implemented by the National Oceanic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values.

Section 302(f) of the MPRSA requires that the Secretary of Commerce, after designation of a marine sanctuary, consult with other Federal agencies, and issue necessary regulations to control any activities permitted within the boundaries of the marine sanctuary. It also provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purpose of the marine sanctuaries program and can be carried out within its promulgated regulations.

One marine sanctuary exists in the general permit area, the Channel Islands Marine Sanctuary, designated a sanctuary in September 1980. The sanctuary consists of the Channel Islands from Anacapa Island to Richardson Rock and a six nautical mile buffer zone surrounding the islands. Regulations implementing the designation of this area as a marine sanctuary are found at 15 CFR Part 935. These regulations prohibit discharges from hydrocarbon activities on tracts leased after the effective date of the regulations (April 30, 1982).

Discharges on other tracts are not affected by the regulations. Portions of six (6) tracts leased prior to April 30, 1982, and included in the proposed permit, are within the sanctuary boundaries. However, the general permit does not authorize discharges within any tract leased subsequent to the effective date of sanctuary regulations and located wihin sanctuary boundaries. Accordingly, Region 9 believes that the permit is consistent with the requirements of the sanctuary regulations and the MPRSA.

Region 9 is, however, proposing a special discharge limitation applicable to drilling mud discharges on tracts which (1) were leased subsequent to the effective date of the sanctuary regulations and (2) have a portion of the tract lying within 1,000 m of the boundary of the Channel Islands Marine Sanctuary. The proposed permit would prohibit mud discharges on such tracts which would result in exceedences of a limiting permissible concentration (LPC) inside the boundaries of the marine sanctuary (Condition II.A.1(i)). The LPC is 1 percent of the 96 hour LC_{50} for a given drilling mud. For mud discharges within 1,000 m of the boundary of the marine sanctuary, the proposed permit requires a demonstration of compliance with this condition by the permittee based on the toxicity of the mud and an analysis of the mud dilution. For mud discharges occurring at distances greater than 1,000 m from the sanctuary boundary it is assumed, based on the dilution analysis of Petrazzuolo (1983), that the discharge would comply with this requirement. This condition is proposed pursuant to the requirements of Section 403 of the CWA. Region 9 believes that the proposed condition will provide appropriate additional protection for the sanctuary and equitable treatment for lessees.

D. Oil Spill Requirements

Section 311 of the CWA prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permit are excluded from the provisions of Section 311. However, these permits do not preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties for other unauthorized discharges of toxic pollutants which are covered by Section 311 of the CWA.

E. State Water Quality Standards and State Certification

Since State waters are not included in the general permit area, the provisions of Section 401 of the CWA do not apply.

F. Economic Impact: E.O. 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

G. Paperwork Reduction Act

Region 9 has reviewed the requirements imposed on regulated facilities by the final permit reissuance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements in the final permit have already been approved by the Office of Management and Budget (OMB) under submissions made for the NPDES permit program under the provisions of the Clean Water Act. The final general permit will explain how its information collection requirements respond to any OMB or public comments.

H. Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that the final permit reissuance will not have a significant impact on a substantial number of small entities.

This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations at 49 *FR* 5024 et. seq. (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: August 5, 1985.

Charles W. Murray, Jr.,

Acting Regional Administrator.

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[Permit No. CAG280605]

General Permit Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.;* the "Act"), the following discharges are authorized:

Drilling Muds, Drill Cuttings, and Washwater (discharge 001),
Well Completion and Treatment Fluids (discharge 002),
Deck Drainage (discharge 003),
Sanitary Wastes (discharge 004),
Domestic Wastes (discharge 005),
Desalinization Unit Discharge (discharge 006),
Cooling Water (discharge 007),
Uncontaminated Bilge Water (discharge 008),
Uncontaminated Ballast Water (discharge 009),
Excess Cement Slurry (discharge 010),
BOP Control Fluid (discharge 011), and
Fire Control System Test Water (discharge 012),
from offshore oil and gas facilities (defined in 40 CFR Part 435, Subpart A) engaged in exploration activities, to receiving waters named the Pacific Ocean, in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II, III and IV thereof.

Offshore permittees who fail to notify the Regional Administrator of their intent to be covered by this general permit are not authorized to discharge to the specified receiving waters unless an individual permit has been issued to the facility by EPA, Region 9.

The authorized discharge sites are (by OCS lease parcel number): in waters west and northwest of Point Buchon,
P–0373 P–0374 P–0375 P–0376 P–0377;

in waters west and northwest of Point Arguello,

P–0393 P–0394 P–0395 P–0396 P–0397 P–0400
P–0401 P–0402 P–0403 P–0406 P–0407 P–0408
P–0409 P–0412 P–0413 P–0414 P–0415 P–0416
P–0418 P–0419 P–0420 P–0421 P–0422 P–0424
P–0425 P–0426 P–0427 P–0429 P–0430 P–0431
P–0432 P–0433 P–0434 P–0435 P–0436 P–0437
P–0438 P–0439 P–0440 P–0441 P–0443 P–0444
P–0445 P–0446 P–0447 P–0448 P–0449 P–0450
P–0451 P–0452 P–0453 P–0491 P–0492 P–0493
P–0494 P–0495 P–0496 P–0497 P–0498 P–0499
P–0500 P–0503 P–0504 P–0505 P–0506 P–0507
P–0508 P–0509 P–0510;

in waters south and west of Pt. Conception,

P–0315 P–0316 P–0317 P–0318 P–0319 P–0320
P–0321 P–0322 P–0323 P–0324 P–0456 P–0457
P–0511;

in the Santa Barbara Channel from Pt. Conception to Goleta Point,

P–0180 P–0181 P–0182 P–0183 P–0184 P–0185
P–0187 P–0188 P–0189 P–0190 P–0191 P–0192
P–0193 P–0194 P–0195 P–0196 P–0197 P–0326
P–0329 P–0459 P–0460 P–0461 P–0462 P–0463
P–0464 P–0465 P–0467 P–0469 P–0475 P–0512
P–0513 P–0514 P–0515 P–0516 P–0517 P–0519;

in the Santa Barbara Channel from Santa Barbara to Ventura,

P–0166 P–0202 P–0203 P–0204 P–0205 P–0208
P–0209 P–0210 P–0215 P–0216 P–0217 P–0231
P–0232 P–0233 P–0234 P–0238 P–0240 P–0241
P–0346 P–0348 P–0349 P–0468 P–0472 P–0473
P–0474 P–0478 P–0479 P–0520 P–0521 P–0522
P–0523 P–0524 P–0525 P–0527

in the waters south of Santa Rosa and Santa Cruz Islands,

P–0480 P–0481 P–0482 P–0483 P–0484 P–0485
P–0486 P–0487 P–0531 P–0532;

in water southwest of Point Dume;

P–0528 P–0529 P–0530

in the San Pedro Channel between San Pedro and Laguna,

P–0296 P–0300 P–0301 P–0306 P–0408

and in waters south and southwest of San Clemente Island

P–0489 P–0490 P–0533 P–0534 P–0535

This permit does not authorize discharge from "new sources" as defined in 40 CFR 122.3.

This permit shall become effective on ————.

This permit and the authorization to discharge shall expire at midnight, ———— (5 years from date of issuance).

Signed this ——— day of ———.

JUDITH E. AYRES,
Regional Administrator, Region 9.

Part I

Commencement and Termination of Operations—Notification Requirements

Written notification of commencement of operations shall be provided to, and received by, the Regional Administrator at least fourteen (14) days prior to initiation of discharges. Modifications of the notification shall be provided to, and received by, the Regional Administrator at least forty-eight (48) hours prior to initiation of discharges. Notification shall be provided for each drillsite. The notification shall identify the permittee (either the owner of the exploratory drillship or offshore platform or the leaseholder), include the statement "We assume full responsibility for compliance with NPDES General Permit No. CAG280605 for the operations listed below" and shall be signed by an authorized representative.

The notification of operations and designation of permittee letter shall contain the following information.

a. Name and address of permittee.

b. Description and location of operation, including parcel number and exact coordinates.

c. Date discharges are proposed to commence.

d. Expected duration of activities.

e. Name of leaseholder, if different from permittee.

f. Names of drilling company and drillship (if applicable).

Permittees shall also notify the Regional Administrator within twenty-eight (28) days upon permanent termination of discharges at these locations. The termination notification letter shall contain the date of the last day of any discharges at the site and the projected next location for the particular drillship if known. The termination notification may be submitted with the discharge monitoring report required by Condition II.C.4.

For operations on parcels for which a biological survey is required by Minerals Management Service (MMS) lease stipulation, the biological survey report and the plan of exploration shall be provided to EPA prior to initiation of discharges. Initiation of discharge under the permit may not begin until EPA has reviewed the survey report and the proposed operations and determined that this general permit is appropriate for the proposed discharges and notified the permittee in writing of this determination.

Part II

A. Effluent Limitations and Monitoring Requirements

1. During the period beginning the date this permit becomes effective for the permittee's facility and lasting through the expiration date of this permit, the permittee is authorized to discharge from outfall serial number 001 (drilling muds, drill cuttings and washwater).

a. The permittee shall individually estimate and report the total monthly discharge volume for drilling muds, drill cuttings and washwater. The permittee shall also report the number of days of discharge of drilling muds for each drilling mud system used.

b. There shall be no discharge of free oil as a result of the discharge of drilling muds, drill cuttings or washwater. Compliance with this limit shall be determined in accordance with the procedure in "Static Sheen Test" (U.S. Environmental Protection Agency, 1985b). The test shall be conducted on each day of discharge of drill cuttings or drilling mud. The permittee shall report the number of times free oil was observed.

c. The discharge of drilling fluids which contain waste engine oil, cooling oil, gear oil, lubricant which has been previously used for purposes other than borehole lubrication, is prohibited.

d. The discharge of oil-based drilling muds is prohibited. The discharge of drill cuttings associated with oil-based muds is also prohibited.

e. Drilling mud toxicity. The minimum 96 hour LC_{50} value for drilling muds discharged in compliance with this permit is 30,000 ppm (suspended particulate phase). The permittee shall demonstrate compliance with this limit by conducting and reporting the results of a drilling mud bioassay for each mud system which is used and discharged. Mud samples for the bioassay shall be taken at the time that maximum well depth is reached for each generic mud type and just prior to the intended discharge of the mud.

The bioassay procedure to be used is "Drilling Fluids Toxicity Test" (U.S. Environmental Protection Agency, 1985a). Bioassay results shall be submitted within 28 days following completion of each well (Condition II.C.4.).

With the exception of the drilling mud system used and discharged when the well reaches its maximum depth, the bioassay requirement shall be deemed satisfied upon a demonstration by the permittee that a discharged mud complies with the requirements of (1), (2) or (3) below.

(1) The mud is generic as defined in Condition IV.C.16.

(2) The mud is generic as defined in Condition IV.C.16. (excluding generic mud #1) and all specialty additives included in the mud satisfy either of the following conditions:

(A) When each additive is included at its maximum concentration in generic mud #7 (lightly treated lignosulfonate mud), the 96 hour LC_{50} value of the resulting mud exceeds 100,000 ppm for the suspended particulate phase. The bioassay procedure shall be that in "Drilling Fluids Toxicity Test" identified above.

(B) Other toxicity data is available for the additive upon which EPA may reasonably conclude that (A) above would be satisfied.

(3) The mud is generic as defined in Condition IV.C.16 and contains additives used in quantities such that the resulting whole mud may, based on bioassay data for similar whole muds or bioassay or toxicity data for the additives, be shown to comply with the overall toxicity limit (30,000 ppm). The permittee shall be responsible for providing the demonstration of compliance. The method in "Separate and Joint Toxicity to Rainbow Trout of Substances Used in Drilling Fluids for Oil Exploration" (Sprague and Logan, 1979) may be used to estimate joint toxicity.

f. Drilling muds Inventory and Reporting Requirements. The permittee shall maintain a precise inventory of all mud constituents added downhole for each well. The composition of each mud system used and dischaged by the permittee shall be reported to EPA. Mud composition data shall be submitted to EPA within 28 days following completion of each well.

g. There shall be no discharge of drilling mud formulated with barite in which the mercury concentration in the barite exceeds 1 ppm or the cadmium concentration in the barite exceeds 2 ppm. An analysis for mercury and cadmium contamination shall be conducted for the barite used by the permittee for each mud system, and the results of the analysis submitted to EPA along with the mud composition data required by (f) above.

h. There shall be no discharge of drilling mud in which diesel fuel oil was added as a lubricity agent. The discharge of drilling muds containing residual diesel from spotting operations is prohibited except in compliance with the following conditions:

(1) The diesel pill and fifty (50) barrels of mud on each side of the diesel pill shall be removed from the mud system and shall not be discharged. The collection period shall begin when the 50 barrel lead buffer surfaces or at the time of first visual evidence of diesel, whichever occurs first. The collection period ends at the time that the 50 barrel trailing buffer is recovered or when no visual evidence of diesel exists, whichever occurs last. Drill cuttings which contact the removed mud shall also not be discharged.

(2) Mud which is discharged shall not exceed the toxicity limitation specified in Condition II.A.1(e). To demonstrate compliance with this requirement the analyses of (A), (B), an (C) below shall be conducted on two (2) mud samples collected as follows: Sample #1 shall be collected from the circulating mud system immediately prior to pumping the diesel oil downhole. Sample #2 shall be collected immediately after 2 complete circulations of the active mud system following recovery of the pill and contaminated mud. Sample #1 and sample #2 shall be taken from the return flow line under the screen and not from the mud pit. If washwater is used on the

screen, then it shall be turned off before these samples are collected.

(A) Bioassay conducted in accordance with the method in "Drilling Fluids Toxicity Test" identified above,

(B) Analysis to determine the concentration of diesel oil in the mud conducted in accordance with the procedure in "Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings" (US EPA, August 1985), and

(C) Sheen test conducted in accordance with the method in "Static Sheen Test" identified above.

(3) The following information is also required:

(A) Composition of basic mud plus specialty additives,

(B) Quantity of contaminated mud removed from mud system,

(C) Disposal site for contaminated mud, and

(D) Time at which the discharge of drilling mud ceased for the purpose of collecting the diesel pill for onshore disposal and the time at which drilling mud discharges recommended subsequent to collection of the diesel pill.

i. Drilling mud discharges on parcels which (1) were leased subsequent to the effective date of the regulations implementing the Channel Islands Marine Sanctuary (April 30, 1982—15 CFR Part 935) and (2) have a portion of the tract lying within 1,000 m of the boundary of the Channel Islands Marine Sanctuary, shall not cause exceedences of the limiting permissible concentration (see Condition IV.C.15) inside the boundary of this marine sanctuary. For such discharges the permittee shall provide a demonstration of compliance with this condition based on the toxicity of the mud and analysis of the mud dilution.

j. There shall be no discharge of chrome lignosulfonate.

k. Reporting the Final Mud Dump. The permittee shall provide verbal notice to EPA (or other Federal agency designated by EPA at a later date) 48 hours prior to the final mud dump upon completion of each well. Notification shall be provided to the Compliance Section, Water Management Division at: Telephone: (415) 974–8275.

l. Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location: discharge 001, subsequent to all treatment processes and prior to entry into the waters of the Pacific Ocean.

2. During the period beginning the date this permit becomes effective for the permittee's facility and lasting through the expiration date of this permit, the permittee is authorized to discharge from outfall serial numbers 002–005.

a. Such discharges shall be limited and monitored by the permittee as specified below:

Serial No./ outfalls	Effluent characteristic	Discharge limitations	Monitoring requirements	
			Measurement frequency	Sample type
002—Well completion and treatment fluids [1].	Volume		Once per month	Estimate.
	Free oil	No visible sheen	Once per day	Visual observations [4]
003—Deck drainage	Volume		Once per month	Estimate.
	Free oil	No visible sheen	Once per day	Visual observations [4]
004—Sanitary waste	Flow rate (MGD)		Once per month	Estimate.
	Residual chlorine 1.0 mg/l [2].		Once per week	Discrete.
005—Domestic waste		No floating solids	Once per day	Visual observations [4]

[1] The permittee shall make visual observations during daylight hours for the presence of free oil in the receiving water on each day of discharge, and shall report the number of days a sheen was observed. For discharges occurring at night compliance shall be determined using the static sheen test (see Condition II.A.1(b)).

[2] Minimum of 1 mg/l and maintained as close to this concentration as possible (maximum concentration is 10 mg/l). This requirement is not applicable to facilities intermittently manned or to facilities permanently manned by nine (9) or fewer persons. There shall be no visible floating solids in the receiving waters from this discharge for facilities intermittently manned or permanently manned by nine (9) or fewer persons. For such facilities visible observations for floating solids are required daily and the permittee shall report the number of times floating solids we observed.

[3] The precise chemical composition of these fluids shall be reported to EPA as a supplement to the monitoring report required by Condition II.C.4. of this permit.

[4] The permittee shall make visual observations during daylight hours for the presence of floating solids in the receiving water on each day of discharge, and shall report the number of days floating solids were observed.

b. Samples taken in compliance with monitoring requirements specified above shall be taken at a sampling point prior to commingling with any other waste stream or entering Pacific waters. In cases where sanitary and domestic wastes are mixed prior to discharge, and sampling of the sanitary waste component stream is infeasible, the discharge may sampled after mixing. In such cases, the discharge limitation shown above for sanitary waste shall apply to the mixed waste stream.

3. During the period beginning the date this permit becomes effective for the permittee's facility and lasting through the expiration date of this permit the permittee is authorized to discharge from outfall(s) serial number(s) 006–012 (miscellaneous discharges).

Discharge 006—Desalinization Unit Discharge:

007—Cooling water
008—Uncontaminated Bilge Water
009—Uncontaminated Ballast Water
010—Excess Cement Slurry
011—Control Fluid From Blow-Out Preventer
012—Fire Control System Test Water

b. There shall be no free oil in the receiving waters as a result of these discharges. The permittee shall make visual observations during daylight hours for the presence of free oil in the receiving water on each day of discharge, and shall report the number of days a sheen was observed.

4. *Reopener Clause.* In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Regional Administrator determines that continued discharges may cause unreasonable degradation of the marine environment.

5. *Effective Date for Monitoring Requirements.* The monitoring requirements shall take effect upon commencement of discharge.

B. Other Discharge Limitations

1. Floating Solids or Visible Foam

There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. Halogenated Phenol Compounds

There shall be no discharge of halogenated phenol compounds.

3. Surfactants, Dispersants, and Detergents

The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service.

4. Sanitary Wastes

Any facility using a marine sanitation device that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations until such time as the device is replaced or is found not to comply with such standards and regulations.

C. Monitoring and Records

1. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the volume and nature of the monitored activity.

2. Reporting Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

3. Penalties for Tampering

The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

4. Reporting of Monitoring Results

Monitoring results obtained during the term of drilling of each exploratory well shall be summarized and reported on a Discharge Monitoring Report Form, EPA No. 3320–1 (DMR). The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration.

If any category of waste (outfall) is not discharged no reporting is required for that particular outfall. Only DMR's representative of the activities occurring need to be submitted. A notification indicating the type of operation should be provided with the DMR's. If no discharges whatsoever occurred from the permittee's facility a report to that effect shall be submitted. The first report is due on the 28th day following completion of each exploratory well. Signed and certified copies of these and other reports required herein, shall be submitted to the Regional Administrator at the following address:

Director, Water Management Division,
Attn: W–3–2, Region 9, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

7. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit for a period of at least three (3) years from the date of the sample, measurement, or report. This period may be extended by request of the Regional Administrator at any time. These records shall be stored on the permittee's offshore facility and shall include drilling mud composition data and well completion fluid composition data.

8. Record Contents

Records of monitoring information shall include:

a. The date, place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

9. Inspection and Entry

The permittee shall allow the Regional Administrator, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

10. Rubbish, Trash and Other Refuse

The discharge of any solid material not in compliance with other parts of this permit is prohibited. Incineration residue from paper and plastic only is exempt from this prohibition.

D. Reporting Requirements

1. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

2. Monitoring Reports

Monitoring results shall be reported at the intervals specified in Part II.C.4 of this permit. The monitoring report shall include:

a. Drilling muds composition data (in lbs/bbl), bioassays results and/or demonstration of compliance with toxicity limits for muds;

b. Static sheen test results for drilling muds, drill cuttings and washwater;

c. Concentration of mercury and cadmium in barite used in drilling muds;

d. Estimates of the volume of discharge of drilling muds, drill cuttings, produced sand, well completion and treatment fluids, deck drainage and sanitary waste; also for drilling muds, the number of days of discharge for each drilling mud system used;

e. Information pertaining to diesel pill disposal, as appropriate;

f. Number of observations of free oil in the receiving water from discharges 002–004 and discharges 007–013; also laboratory sheen test results for discharges 002-004 which occur at night.

g. Residual chlorine measurements for the sanitary wastes discharge or as apppropriate the number of observations of floating solids;

h. Number of observations of floating solids in the receiving water resulting from domestic wastes discharges; and

i. Demonstration of compliance with Condition II.A.1(i) (as appropriate) for mud discharges in the vicinity of the Channel Islands Marine Sanctuary.

3. Twenty-Four Hour Reporting of Noncompliance

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to

reduce, eliminate, and prevent reoccurrence of the noncompliance.

The following shall be included as information which must be reported within 24 hours:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit;

b. Any upset which exceeds any effluent limitations in the permit; and

c. Violation of a maximum daily discharge limitation for any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance, listed as such by the Regional Administrator in the permit to be reported within 24 hours.

Reports during normal business hours (8 a.m.–4:30 p.m.) should be made to the Compliance Section, Water Management Division at telephone #415–974–8275. Twenty-four hour reporting may be made at telephone #415–974–8131. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

4. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Part II.D.3. at the time monitoring reports are submitted. The reports shall contain the information listed in Part II.D.3.

5. Signatory Requirements

All reports or information submitted to the Regional Administrator shall be signed and certified in accordance with 40 CFR 122.22.

6. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Regional Administrator. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

7. Penalties for Falsification of Reports

The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

Part III

A. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Bypass of Treatment Facilities

a. Definitions:

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which are reasonably expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs c. and d. of this section.

c. Notice.

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall submit prior notice, if possible, at least 10 days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II.D.3. (24-hour notice).

d. Prohibition of bypass.

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against the permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph c. of this section.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if he determines that it will meet the three conditions listed above in paragraph d(1) of this section.

4. Upset Conditions

a. Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination, made during administrative review of claims that noncompliance was caused by an upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in Part II.D.3. (24-hour notice); and

(4) The permittee complied with any remedial measures required under Part III.B.4 (duty to mitigate).

d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

B. General Conditions

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply for and obtain an individual NPDES permit.

2. Duty to Comply with Toxic Effluent Standards

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

3. Penalties for Violation of Permit Conditions

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 303, 306, 307, or 308 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

4. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause, as provided in 40 CFR 122.41 and in 122.62, 122.63 and 122.64. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Civil and Criminal Liability

Except as provided in permit conditions on "Bypasses" (Part III.A.3.) and "Upsets" (Part III.A.4.), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

9. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

10. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Part IV—Other Requirements

A. When the Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

a. The discharge(s) is a significant contributor of pollution;

b. The discharger is not in compliance with the conditions of this permit;

c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

d. Effluent limitation guidelines are promulgated for point sources covered by this permit;

e. A Water Quality Management Plan containing requirements applicable to such point source is approved; or

f. The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Regional Administrator are more appropriately controlled under a general permit than under individual NPDES permits.

The Regional Administrator may require any permittee authorized by this permit to apply for an individual NPDES permit only if the permittee has been notified in writing that a permit application is required.

B. When an Individual NPDES Permit May be Requested

a. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The permittee shall submit an application together with the reasons supporting the request to the Regional Administrator.

b. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the applicability of this permit to that owner or permittee is automatically terminated on the effective date of the individual permit.

c. A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

C. Definitions

1. "Cooling water" means once through non-contact cooling water.

2. "Daily maximum" means the average concentration of the parameter specified during any 24-hour period that reasonably represents the 24-hour period for the purposes of sampling.

3. "Deck drainage" means all waste resulting from platform washing, deck washings, and run-off from curbs,

gutters, and drains including drip pans and wash areas.

4. "Desalinization unit discharge" means wastewater associated with the process of creating fresh water from seawater.

5. "Domestic waste" includes discharges from galleys, sinks, showers, and laundries.

6. "No discharge of free oil" means a discharge that does not cause a film or sheen upon or a discoloration on the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

7. "Drill cuttings" means particles generated by drilling into subsurface geological formations.

8. "Drilling muds" means any fluid sent down the well hole, including any specialty products, from the time a well is begun until the final cessation of drilling in that hole. The term "mud system" refers to the major types of drilling muds used during the drilling of one well. A change in mud system is considered to occur after bulk discharges when one basic type of generic mud is exchanged for another type. A change in mud system is not considered to have occurred when small amounts of specialty mud additives are added to a mud.

9. "Produced sands" means sands and other solids removed from the produced waters.

10. "Sanitary waste" means human body waste discharged from toilets and urinals.

11. The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

12. "Well completion and treatment fluids" means any fluids sent down the drill hole to improve the flow of hydrocarbons into or out of geological formations which have been drilled.

13. A "discrete sample" means any individual sample collected in less than fifteen minutes.

14. For flow rate measurements, a "composite sample" means the arithmetic mean of no fewer than eight individual measurements taken at equal intervals for twenty-four hours or for the duration of the discharge, whichever is shorter.

For oil and grease measurements, a "composite sample" means four samples taken over a twenty-four hour period analyzed separately and the four samples averaged. The daily maximum limitation for oil and grease is based on this definition of a composite sample. For measurements other than flow rate or oil and grease, a composite sample means a combination of no fewer than eight individual samples obtained at equal time intervals for twenty-four hours or for the duration of the discharge, whichever is shorter.

15. Limiting Permissible Concentration—that concentration which will not exceed .01 of a concentration shown to be acutely toxic (96 hour LC_{50}) to appropriate sensitive marine organisms in a bioassay carried out in accordance with the method in "Drilling Fluids Toxicity Test" identified in Condition II.A.1(e).

16. Generic Drilling Muds.

	Maximum allowable concentration (Pounds per barrel)
1. Seawater/potassium/polymer mud:	
KCl	[illegible]
Starch	12
Cellulose polymer	5
Xanthan gum polymer	[illegible]
Drilled solids	100
Caustic	3
Barite	[illegible]
Seawater	(1)
2. Seawater/lignosulfonate mud:	
Components	
Attapulgite or bentonite	[illegible]
Lignosulfonate	15
Lignite	10
Caustic	[illegible]
Barite	[illegible]
Drilled solids	100
Soda ash/sodium bicarbonate	[illegible]
Cellulose polymer	[illegible]
Seawater	(1)
3. Lime mud:	
Components	
Lime	[illegible]
Bentonite	[illegible]
Lignosulfonate	15
Lignite	10
Barite	[illegible]
Caustic	5
Drilled solids	[illegible]
Soda ash/sodium bicarbonate	[illegible]
Freshwater	(1)
4. Nondispersed mud:	
Components	
Bentonite	15
Acrylic polymer	[illegible]
Barite	[illegible]
Drilled solids	70
Freshwater	(1)
5. Spud mud (slugged intermittently with seawater):	
Components	
Attapulgite or Bentonite	50
Caustic	[illegible]
Drilled solids	[illegible]
Barite	50
Soda ash/sodium bicarbonate	[illegible]
Lime	1
Seawater	(1)
6. Seawater gel mud.	
Components	
Attapulgite or bentonite	[illegible]
Caustic	[illegible]
Cellulose polymer	[illegible]
Drilled solids	100
Barite	[illegible]
Soda ash/sodium bicarbonate	[illegible]
Lime	2
Seawater or freshwater	(1)
7. Lightly treated lignosulfonate freshwater/seawater mud:	
Components	
Bentonite	50
Barite	180
Caustic	3
Lignosulfonate	[illegible]
Lignite	[illegible]
Cellulose polymer	2
Drilling solids	[illegible]
Soda ash/sodium bicarbonate	2
Lime	2
Seawater to freshwater ratio 1:1 approx.	(1)
8. Lignosulfonate freshwater mud:	
Components	
Bentonite	[illegible]
Barite	[illegible]
Caustic	5
Lignosulfonate	15
Lignite	10
Cellulose polymer	2
Drilling solids	100
Soda ash/sodium bicarbonate	2
Lime	2
Seawater to freshwater ratio	(1)

(1) As needed.

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[FRL-2885-4]

Draft General NPDES Permit for Offshore Oil and Gas Development and Production Activities off Southern California

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice of Draft General NPDES Permit.

SUMMARY: The Regional Administrator of Region 9 is proposing to issue a general NPDES permit (NPDES permit No. CAG280622) which would authorize discharges from facilities engaging in development and production activities for oil and gas in specified Federal waters off Southern California. This permit would be applicable to facilities included in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category with the exception of mobile exploratory operations. A general NPDES permit covering both mobile exploratory operations and production platforms was issued by Region 9 on February 18, 1982 (NPDES No. CA0110516–47 FR 7312). This permit was reissued on December 8, 1983, for the six month period ending June 30, 1984 (48 FR 55029).

Rather than reissuing this permit again, however, Region 9 is proposing to issue two general permits, one covering development and production operations (discussed in this notice) and another

general permit covering exploratory operations (published elsewhere today). Studies funded by EPA pursuant to Section 403 of the Clean Water Act (CWA) revealed a significant difference in the state of knowledge concerning the potential environmental effects of exploratory operations and production platforms. As discussed in the **Federal Register** notice for the general permit covering exploratory operations, Region 9 concluded that unreasonable degradation of the marine environment (as defined in 40 CFR Part 125, Subpart M) would not be expected from the exploratory activity anticipated off Southern California in the next 5 years. However, due to the larger quantities of material, the localized concentrations of that material, and the persistence of the material discharged from production platforms, Region 9 concluded that such a determination could not be made for production platforms based on existing data. As a result, different permit requirements are appropriate for exploratory operations and production platforms and Region 9 believes two general permits should be issued which reflect these differences.

General NPDES permit No. CAG280622 would become effective on publication following the Region's consideration of public comments and expire 5 years from the effective date. The area to be covered by the proposed permit consists of those offshore tracts currently considered active by the Minerals Management Service (MMS) and leased by MMS from Lease Sale Nos. 35, 48, 53, 68, 73, 80 and the 1966 and 1968 Federal lease sales.

The draft general permit contains effluent limitations requiring Best Available Technology Economically Achievable (BAT) for toxic and nonconventional pollutants and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants as required by sections 301(b)(2) (A), (C), (D), (E), and (F) of the CWA.

Since the Agency has not promulgated BAT/BCT effluent limitations guidelines for the Oil and Gas Extraction Point Source Category, the effluent limits in the permit were developed by Region 9 using best professional judgment (BPJ) as authorized by section 402(a)(1) of the CWA and 40 CFR 125.3. The requirements of section 403 of the CWA (Ocean Discharge Criteria) and regulations promulgated by EPA pursuant to section 403(c) (40 CFR Part 125, Subpart M) were also included in the development of the permit effluent limitations and other conditions. See Section VI.D below.

This proposed permit does not authorize discharges from facilities located in the territorial seas of the State of California or any body of water landward of the inner boundary of the territorial seas or any wetlands adjacent to such waters (facilities in the "Onshore" and "Coastal" subcategories defined in 40 CFR Part 435).

As required by section 307(c)(3)(A) of the Coastal Zone Management Act, Region 9 has certified the proposed permit to the California Coastal Commission as consistent with the State Coastal Zone Management Plan (CZMP).

As required by the Endangered Species Act (ESA), Region 9 has reviewed the effects of the proposed discharges on endangered or threatened species found in the general permit area. Region 9 has concluded that the proposed discharges would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their critical habitats. Pursuant to section 7 of the ESA, Region 9 has provided copies of the proposed permit and fact sheet to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service and requested a formal evaluation of this conclusion.

The permit does not authorize discharges from facilities defined in 40 CFR 122.2 as "new sources". However, when new source performance standards (NSPS) become effective, Region 9 will issue new permits.

Copies of the fact sheet and draft permit may be obtained from the address below. The administrative record for this permit is available for public review at Region 9 at this address listed below.

DATES: *Comment Period*—Interested persons may submit comments on the draft general permit to the Regional Administrator at the address below no later than October 7, 1985.

Public Hearing: A public hearing to consider proposed general NPDES permit No. CAG280622 covering development and production activities and also the proposed general permit covering exploratory activities (NPDES No. CAG280605) will be held as follows:

Date: September 26, 1985.

Times: 10 a.m.; 2 p.m.; 7:30 p.m.

Place: Sheraton Santa Barbara Hotel, El Cabrillo Room, 2nd Floor, 1111 East Cabrillo Blvd., Santa Barbara, CA 93103.

The public hearing will be conducted pursuant to 40 CFR 124.12 and is for the purpose of receiving comments from the public on the proposed issuance of the two general permits. All interested persons are invited to submit their views.

Oral statements at the hearing will be received and considered, but for accuracy of the record all important testimony should be submitted in writing so that there will be time for all interested persons to be heard. A record of the proceedings will be made for consideration by Region 9 before final action is taken. It will contain all written and oral comments and be available for public inspection. Under the NPDES regulations (40 CFR Part 124) any evidence or comment that any person wishes to rely upon to contest any determination that Region 9 may make must be submitted at the public hearing or during the comment period unless good cause is shown for not doing so.

ADDRESS: Comments should be sent to the Regional Administrator, Region 9, U.S. Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94105, (Telephone Number (415) 974–8330).

FOR FURTHER INFORMATION AND COPIES OF DRAFT PERMITS CONTACT: Eugene Bromley, Region 9, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, (Telephone Number (415) 974–8330).

SUPPLEMENTARY INFORMATION AND FACT SHEET

I. General Permits and Requests for Individual NPDES Permits

Section 301(a) of the CWA provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. Under EPA's regulations (40 CFR 122.28), EPA may issue a single general permit to a category of point sources located within the same geographic area if the regulated point sources:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require similar monitoring requirements; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

In addition, under EPA regulations (40 CFR 122.28(c)) the Regional Administrator is required to issue general permits covering discharges from offshore oil and gas facilities within the Region's jurisdiction. Where the offshore area includes areas, such as areas of biological concern, for which separate permit conditions are required,

a separate individual or general permit may be required by the Regional Administrator.

Any owner and/or operator authorized to discharge under a general permit may request to be excluded from coverage under the general permit by applying for individual permit as provided by 40 CFR 122.28(b). The operator shall submit an application together with the reasons supporting the request to the Director, Water Management Division, EPA, Region 9. A source located within a general permit area, excluded from coverage under the permit solely because it already has an individual permit (other than a permit that has been continued under the Administrative Procedure Act), may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply. Procedures for modification, revocation and termination of general permits are provided by 40 CFR 122.62–122.64. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the CWA that is enforceable under section 309 of the CWA.

II. Geographic Area of the General Permit

As noted earlier, the general permit for development and production facilities authorizes discharges on lease parcels in Federal waters off Southern California currently considered active by the MMS. Included are tracts from Lease Sale Nos. 35, 48, 53, 68, 73, 80 and the 1966 and 1968 Federal release sales.

The proposed general permit area differs from the existing general permit area in two respects: (1) 36 new parcels would be added as authorized discharge sites to reflect recent leasing activity by the MMS and (2) 44 parcels would be deleted due to expiration of the leases. Eight new tracts in the Santa Maria Basin were awarded by the MMS as a result of Lease Sale No. 73. The lease numbers of these parcels are P–0503 through P–0510, inclusive. Twenty-three new tracts were awarded as a result of Lease Sale No. 80. The lease numbers of these parcels are P–0511 through P–0517, P–0519 through P–0525 and P–0527 through P–0535.

Also, as a result of a recent Supreme Court decision (*Secretary of the Interior* v. *California*, 104 S. Ct. 656 (January 11, 1984)) 5 tracts from Lease Sale No. 53 which had been under litigation were also awarded by MMS. The lease numbers of these parcels are P–0373 through P–0377.

The new parcels are in the same general area as the parcels on which discharges were previously authorized. The effects of the proposed discharges throughout the entire area (new and old parcels) were analyzed in the Ocean Discharge Criteria Evaluation (see Section VI.D) and in the environmental impact statements accompanying the lease sales. Based on a review of these documents, and the criteria for the issuance of a general permit, Region 9 believes that facilities operating in the area covered by this proposed permit are more appropriately regulated by a general permit than by individual permits.

The lease numbers of the parcels which would be deleted are P–0186, P–0295, P–0325, P–0327, P–0328, P–00330 through P–0345, P–0347, P–0350 through P–0364, P–0366, P–0367, P–0369, P–0404, P–0405, P–0410 and P–0411.

III. Covered Facilities and Nature of Discharges

The proposed permit would apply to the following types of facilities:

1. *Existing sources*—all development and production facilities currently operating in the general permit area complying with the notification requirements of Part I of the permit.

2. *New discharges*—all development and production facilities commencing operations after the effective date of the permit complying with the notification requirements of Part I of the permit.

The following fifteen discharges may result from the proposed operations:

Discharge 001—Drilling Muds and Cuttings and Washwater

Drilling mud is defined as any fluid sent down the hole including gelling compounds, weighting agents, and any specialty products, from the time a well is begun until final cessation of drilling in that hole. There are two basic types of muds, water-based and oil-based. Water-based muds are usually mixtures of fresh water or sea water with clays. Oil-based muds (includes invert emulsion muds) are mixtures of diesel or mineral oil and clays with water or brine emulsified in the oil.

Drilling muds are used in both exploration and production drilling to maintain hydrostatic pressure control in the well, lubricate the drilling bit, and remove drill cuttings from the well. Oil-based muds are used for special drilling requirements such as tightly consolidated subsurface formations, water sensitive clays, and shales. Specific needs of a drilling program may require other additives in the drilling muds. Drill cuttings are mineral particles generated by drilling into subsurface geologic formations. Drill cuttings are carried to the surface of the well with the circulation of the drilling muds and separated from the fluids on the platform by solids separation equipment (screens and shakers).

The washwater is used to clean the drill cuttings prior to discharge. Drilling mud, and oil, and additives if used, remain with the drill cuttings after the solid separation equipment. These materials are removed from the cuttings to ensure compliance with discharge limitations.

Discharge 002—Produced Water

Produced water includes water and suspended particulate matter, brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations.

Producted water is primarily generated during the production phase of oil and gas operations with the amount generated dependent upon the method of recovery and the nature of the formation. Geologic formations contain different oil-water or gas-water mixtures which are produced at different times:

1. In some formations, water is produced with the oil and gas in the early stages of production;

2. In others, water is not produced until the formation has been significantly depleted; and

3. In still others, water is never produced.

Discharge 003—Produced Sand

Produced sand includes sands and other solids removed from the produced water.

Discharge 004—Well Completion and Treatment Fluids

Well completion fluids are low solids drilling fluids used to drill into the hydrocarbon producing zone and complete the well. The solids content of normal drilling muds may damage the porous rock of the production zone. Well treatment fluids are used to increase the rate of flow of hydrocarbons from a well already on production.

Discharge 005—Diatomaceous Earth Filter Media

Diatomaceous earth is used on some production platforms to filter seawater which is subequently used to make completion fluid. The completion fluid itself may also be filtered to remove suspended contaminants picked up in the well. Discharge 005 would include diatomaceous earth, contaminants removed from seawater and other material removed from completion fluid.

Only diatomaceous earth used in making completion fluid or in filtering

completion fluid would be authorized for discharge. The estimated volume of the discharge is 1,500 lbs of diatomaceous earth per well.

Discharge 006—Deck Drainage

This discharge includes water resulting from platform washings, deck washing, tank cleaning operations, and runoff from curbs, gutters, and drains including drip pans and work areas.

Discharge 007—Sanitary Wastes

Sanitary wastes include human body waste discharged from toilets and urinals.

Discharge 008—Domestic Wastes

Domestic wastes include materials discharged from sinks, showers, laundries, and galleys. All galley wastes are macerated before flushing.

Discharge 009—Desalinization Unit Discharge

Desalinization unit discharge means and wastewater associated with the process of creating fresh water (for various purposes on the platform) from seawater.

Discharge 010—Cooling Water

Cooling water means once-through, non-contact cooling water.

Discharge 011—Uncontaminated Bilge Water

Uncontaminated bilge water is water that enters the lower holds of the facility and accumulates in the bilge areas.

Discharge 012—Uncontaminated Ballast Water

Ballast water is water used by a facility to maintain proper stability.

Discharge 013—Excess Cement

Excess cement is unused cement discharged after a well cementing operation. Cement is used to bond the casing (large diameter steel pipe) to the wall of the hole. The casing prevents the caving in of the hole.

Discharge 014—Blow-out Preventer (BOP) Control Fluid

Blow-out preventer fluid is a mixture of water and 1–2% hydraulic fluid (generally ethylene glycol and water) vented at the ocean floor during periodic testing of the blow-out preventer system as required by the Minerals Management Service.

Discharge 015—Fire Control System Test Water

Fire control system test water is sea water discharged during periodic testing of the fire control system.

IV. Notification Requirements for Commencement and Termination of Operations

Written notification of commencement of operations must be provided to, and received by, the Regional Administrator at least fourteen (14) days prior to initiation of discharges (Part I). This notification must be provided for each drillsite and must identify the permittee assuming responsibility for compliance with the permit. Permittees shall also notify the Regional Administrator within twenty-eight (28) days upon termination of discharges at each location.

For operations on parcels for which a biological survey is required by Minerals Management Service (MMS) lease stipulation, the biological survey report and the plan of development must be provided to Region 9 prior to initiation of discharges. Initiation of discharge under the permit may not begin until Region 9 has reviewed the survey report and the proposed operations, and has determined that this general permit is appropriate for the proposed discharges, and has notified the permittee in writing of this determination.

V. Statutory Basis for Permit Conditions

Sections 301(b), 304, 308, 401, 402 and 403 of the CWA provide the basis for the permit conditions contained in the draft permit. The general requirements of these sections fall into three categories, which are described below. A discussion of the basis for specific permit conditions follows in Part VI.

A. Technology-Based Effluent Limitations

1. BPT Effluent Limitations:

The CWA requires particular classes of industrial dischargers to meet effluent limitations established by EPA. EPA promulgated effluent limitations guidelines requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart A) on April 13, 1979 (44 FR 22069).

BPT effluent limitations guidelines require "no discharge of free oil" for discharges of deck drainage, drilling muds, drill cuttings, and well treatment fluids. This limitation requires that a discharge shall not cause a film or sheen upon or discoloration on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines [40 CFR 435.11(d)]. The BPT effluent limitations guideline for sanitary waste requires that the concentration of chlorine be maintained as close to 1 mg/l as possible in discharges from facilities housing ten or more persons. For facilities continuously manned by nine or fewer persons or only intermittently manned by any number of persons, the BPT effluent limitations guideline requires no discharge of floating solids. BPT limitations on oil and grease in produced water allow a daily maximum of 72 mg/l and a monthly average of 48 mg/l.

2. BAT and BCT Effluent Limitations

All permits issued after July 1, 1984, are required by section 301(b)(2) of the CWA to contain effluent limitations for all categories and classes of point sources which: (1) Control toxic pollutants (40 CFR 401.15) through the use of Best Available Technology Economically Achievable (BAT) and (2) represent Best Conventional Pollutant Control Technology (BCT). BCT effluent limitations apply to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliform). BAT and BCT effluent limitations must be at least as stringent as BPT limitations since they are intended by the CWA to represent a higher level of treatment. Permits in effect after July 1, 1987, must impose effluent limitations which control nonconventional pollutants by means of BAT.

BAT and BCT effluent limitations guidelines and New Source Performance Standards (NSPS) are currently under development by the EPA Industrial Technology Division and will be proposed in the near future for the Offshore Subcategory. In the absence of effluent limitations guidelines for the Offshore Subcategory, permit conditions must be established using best professional judgment (BPJ) procedures (40 CFR 122.43, 122.44, and 125.3). This proposed permit incorporates BAT and BCT effluent limitations based on Region 9's best professional judgment.

As required by section 304(b)(2)(B) of the CWA, in developing the BPJ/BAT permit conditions, Region 9 considered: the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Regional Administrator deems appropriate.

The type of equipment and processes employed in development and production operations are well known to Region 9. Region 9 has previously issued

general and numerous individual permits for such operations. The administrative records for this permit and the earlier permits thoroughly discuss the types of equipment, facilities and processes employed in developmental and production operations. Any costs of achieving the effluent limitations and any non-water quality environmental impacts were also evaluated and a discussion of such evaluations is presented below with respect to any limitation where applicable.

As required by section 304(b)(4)(B) of the CWA, Region 9 considered the same factors in determining BPJ/BCT permit conditions, but with one exception. Rather than considering "the cost of achieving such effluent reduction," any BCT determination includes "consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources." BCT effluent limitations cannot be less stringent than BPT: therefore, if the candidate BCT technologies fail the BCT "cost test", BCT effluent limitations are set equal to BPT.

Region 9's evaluation of the BAT factors, as discussed above, is also applicable to BCT, as well as to Region 9's best professional judgment determinations of BPT in instances where there is no BPT effluent limitation guideline for a particular waste stream. With respect to the BCT "cost test," all BCT limitations for this proposed permit are equal to the BPT effluent limitations guidelines or to Region 9's best professional judgment determinations of BPT. Therefore, no incremental cost would be incurred.

B. Ocean Discharge Criteria

Section 403 of the CWA requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas be issued in accordance with guidelines for determining the degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Criteria (40 CFR Part 125, Subpart M), and section 403 are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980).

If EPA determines that the discharge will cause unreasonable degradation, an NPDES permit will not be issued. If a determination of unreasonable degradation cannot be made because of a lack of sufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternatives to on-site disposal. To assess the probability of irreparable harm, EPA is required to make a determination that the discharger, operating under appropriate permit conditions, will not cause permanent and significant harm to the environment during a monitoring period in which additional information is gathered. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge must be halted or additional permit limitations established.

The determination of unreasonable degradation must be based on the following factors: Quantities, composition, and potential for bioaccumulation or persistence of the pollutants discharged; potential transport of such pollutants; the composition and vulnerability of biological communities exposed to such pollutants; the importance of the receiving water area to the surrounding biological community; the existence of special aquatic sites; potential impacts on human health; impacts on recreational and commercial fishing; applicable requirements of approved Coastal Zone Management Plans; marine water quality critera developed pursuant to section 304(a)(1) of the CWA; and other relevant factors.

C. Section 308 of the Clean Water Act

Under Section 308 of the CWA and 40 CFR 122.44(i) the Administrator must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. Region 9 has proposed several monitoring requirements for the effluent limitations proposed in this permit, as listed in Section VI.

VI. Specific Permit Conditions

A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

(1) Consideration of technology-based effluent limitations to control conventional pollutants under BCT;

(2) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT; and

(3) Evaluation of the Ocean Discharge Criteria assuming conditions in parts (1) and (2) were in place.

Discussions of the specific effluent limitations and monitoring requirements derived from (1) through (3) appear below in Parts B. through D. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in the following table:

Discharge and permit condition	Statutory
Drilling Muds and Cuttings:	
No free oil	BCT.
No floating solids	BCT.
No oil-based muds and associated cuttings.	BCT
Mud toxicity limit	BAT.
No chrome lignosulfonate	BAT.
No diesel except in spotting operations.	BAT
Removal of 50 bbls on each side of diesel pill	Section 304 (BMP)
Hg/Cd limits in barite	BAT.
Monitoring for metals and toxicity	Section 308.
Monitoring of volume discharged	Section 308.
Inventory of added substances	Section 308.
LPC requirements in vicinity of Channel Islands Marine Sanctuary.	Section 403(c).
Notification prior to final discharge upon completion of well.	Section 308.
Reopener clause	Section 403(c).
Field monitoring study	Section 403(c).
Bioassays with northern anchovy	Section 403(c).
Produced Water:	
Oil/grease limits of 48/72 mg/l	BCT.
Metals/toxic organics limits	Section 403(c).
Inventory of added substances	Section 308.
Monitoring of discharge rate	Section 308.
Produced Sand:	
No free oil	BCT.
Monitoring of volume discharged	Section 308.
Well Completion & Treatment Fluids:	
No free oil	BCT.
Monitoring of discharge rate	Section 308.
Inventory of added substances	Section 308.
Deck Drainage:	
No free oil	BCT.
Monitoring of discharge rate	Section 308.
Limits on dispersant, surfactants and detergents.	Section 304 (BMP).
Sanitary Wastes:	
No floating solids	BCT.
Chlorine 1.0 mg/l (facilities with more than 10 people) to control fecal coliform.	BCT.
Monitoring of discharge rate	Section 308.
Maximum chlorine concentration of 10 mg/l.	BAT.
Domestic Wastes:	
No floating solids	BCT.
Monitoring of discharge rate	Section 308.
Miscellaneous Discharges:	
No free oil	BCT.
Monitoring of discharge rate	Section 308.
All Discharges:	
No halogenated phenols	BAT.
No floating solids	BCT.

B. BCT Requirements

1. Free Oil and Oil-Based Muds and Cuttings

No discharge of free oil is permitted from discharges authorized by this permit. Region 9 has determined that the BPT effluent limitations guideline of no discharge of free oil from the discharge

of deck drainage, drilling muds, drill cuttings, and well completion and treatment fluids should apply to other discharges, including diatomaceous earth filter media, uncontaminated bilge water, uncontaminated ballast water, desalinization unit discharge, cooling water, excess cement slurry, blowout preventer fluid, and fire control system test water. Thus, the no free oil limitation is Region 9's best professional judgment determination of BPT controls for these discharges. They have been subject to a no free oil limitation in previous permits issued by Region 9, and past practices have not resulted in violations of this limitation. No technology performance data available to Region 9 indicate that a more stringent standard is appropriate at this time. Region 9 has proposed BCT effluent limitations equal to the BPT level of control and, as such, these proposed limitations impose no incremental costs.

As discussed above, the BCT effluent limitation on free oil for drilling muds is equal to the BPT limitation. The discharge of oil-based drilling muds (with oil as the continuous phase and water as the dispersed phase) is therefore prohibited since oil-based muds would violate the BCT effluent limitation of no discharge of free oil. The discharge of drill cuttings associated with oil-based muds is also prohibited due to the likelihood of violation of this same limit.

The monitoring requirement for determining compliance with the effluent limitation on free oil is in most instances a visual observation of the receiving water. However, the static sheen test is required for monitoring free oil in mud and cuttings discharges (which are the discharges with the greatest likelihood of oil contamination) and also for discharges 003–006 if they occur at night. The static sheen test involves mixing effluent with ambient seawater in a test container and subsequently observing whether or not a sheen appears on the surface. The specific procedure is found in "Static Sheen Test" (U.S. Environmental Protection Agency, 1985b). The sheen test requirement is being proposed for the following reasons: (1) Region 9 believes that the test is reliable, (2) the test is an improvement over the alternate method of simply making visual observations in the receiving water and (3) the test can be conducted prior to discharge.

2. Floating solids

The BCT prohibition on floating solids is equal to the BPT level of control for sanitary wastes. As with the free oil limitations, Region 9 has determined that the BPT effluent limitations guideline of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. Thus, the no floating solids limitation is Region 9's best professional judgment determination of BPT limitations for these discharges. They have been subject to this limitation in previous permits issued by Region 9, and past practices have not resulted in violations of this limitation. No technology performance data available to Region 9 indicate that a more stringent standard is appropriate at this time. Therefore, Region 9 has determined that the BCT effluent limitation on floating solids from these discharges is equal to the BPT level of control. As such, the extension of this limitation to all discharges will involve no incremental cost.

3. Chlorine

The requirement of maintaining residual chlorine levels as close as possible to, but no less than 1 mg/1 in sanitary waste discharges for facilities manned by 10 or more people is a BCT determination equal to BPT. There is therefore no incremental cost to the industry. The chlorine residual is limited as a BCT pollutant to control the conventional pollutant, fecal coliform.

The proposed permit also provides that any facility using a marine sanitation device that complies with pollution control standards and regulations under Section 312 of the CWA shall be deemed to be in compliance with permit limitations for sanitary waste discharges, until such time as the device is replaced or is found not to comply with such standards and regulations.

4. Oil and Grease in Produced Water

For produced water discharges, the BPT effluent limitations prescribe a monthly average oil and grease concentration not to exceed 48 mg/1 and a daily maximum oil and grease concentration of 72 mg/1. The daily maximum limitation is present in the existing general permit. A more stringent BCT limit of 59 mg/1 for oil and grease was considered by the EPA Industrial Technology Division. Although it was determined to be economically achievable through better operation and maintenance of existing treatment facilities, this BCT effluent limitation for oil and grease fails the BCT cost tests. As such, the draft general permit retains only the previously promulgated BPT limits and therefore there is no incremental cost to industry. The monitoring frequency has been increased from monthly to weekly and the monthly average BCT limit of 48 mg/1 has been included in the proposed permit.

C. BAT Requirements

1. Mud Toxicity Limit

a. *Determination of Mud Toxicity Limit.* For compliance with the BAT requirements of section 301(b) of the CWA, Region 9, based on best professional judgment, is proposing an overall toxicity limit for discharged drilling muds. This limit is a minimum single (i.e. no sample to be less than) 96 hour LC_{50} of 30,000 ppm for the suspended particulate phase (SPP). Discharge of muds with 96 hour LC_{50} concentrations less than 30,000 ppm would constitute noncompliance with the permit and could lead to enforcement action by EPA. A toxicity limit was selected for compliance with BAT requirements, rather than separate limits on individual mud constitutents, because of the complexity of drilling mud formulations. The bioassay procedure to be used to determine compliance with the limit is "Drilling Fluids Toxicity Test" (U.S. Environmental Protection Agency, 1985a). The test organism specified in this bioassay procedure is *Mysidopsis bahia*.

In developing the proposed toxicity limit, Region 9 reviewed the basic formulations of muds, and the specialty additives, including lubricants, which are commonly used in offshore drilling activities. The toxicity of these components, and the factors relating to technology and cost which were evaluated pursuant to section 304(B)(2)(b) of the CWA, are discussed below.

An extensive review of offshore drilling practices has demonstrated that there are eight basic formulations of water-based drilling muds in use. These muds have been termed "generic drilling muds." The lower 95% confidence limit LC_{50} (worst-case bioassay result) for the generic muds, as determined by recent testing at EPA's Gulf Breeze laboratory, occurred at 30,000 ppm (Duke and Parrish, 1984). Therefore, the proposed toxicity limit represents the most stringent 96 hour LC_{50} which would allow each generic mud to be discharged.

Region 9 has also reviewed the types of specialty mud additives which have been used in waters offshore California in the last two years and the degree to which these additives affect overall mud toxicity. The review showed that additives are available which can be

combined with generic muds to meet the proposed toxicity limit and which can still perform nearly all specialty functions needed by operators. Moreover, Region 9 has, from inspections and Discharge Monitoring Reports (DMR's), reviewed whole muds actually used in offshore operations and the results demonstrated that 9 out of 10 would meet the proposed toxicity limit. Therefore, Region 9 has concluded that mud formulations with LC_{50}'s greater than 30,000 ppm are adequate to perform drilling functions in the vast majority of cases.

Of the specialty additives occasionally needed in drilling operations, lubricating additives are generally believed to have the greatest potential for increasing mud toxicity. Duke and Parrish (1984) found a strong correlation between diesel oil content in drilling muds and overall mud toxicity. These authors further determined that mineral oil, while also increasing mud toxicity, is substantially less toxic than diesel oil.

Drilling mud lubricants are used for two purposes, torque-reduction and spotting. For torque-reduction, lubricants are added to the entire mud system to reduce friction between the drillstring and the wall of the hole. If a portion of the drillstring becomes stuck against the wall of the hole, a spotting operation is usually needed.

At a national meeting sponsored by EPA in Denver, Colorado (June 11–12, 1984), industry representatives indicated that mineral oil is an adequate substitute for diesel for torque-reduction purposes. (Technical Resources, 1984a). Therefore, because substitute products are acknowledged by industry to be available, the proposed permit prohibits the discharge of drilling muds in which diesel oil is added as a torque-reducing lubricity agent (Condition II.A.1(h)). This prohibition on the discharge of diesel oil is discussed further in Section VI.C.2.

In a spotting operation, diesel or mineral oil is normally added to only a small fraction of the mud system. The mud containing the oil is then pumped to the stuck portion of the drillstring where the additional lubricity of the mud frees the pipe. Under the proposed permit, upon completion of the spotting operation, the diesel oil-contaminated mud or "pill," and a buffer zone around the pill, is removed from the mud system for onshore disposal. However, some amount of residual diesel may remain in the mud system due to diffusion of the pill.

Diesel oil has been the product of choice for use in a pill due to its ready availability at the facility although use of mineral oil is becoming more common as a substitute for diesel in spotting operations. Pruett II (1984) provides some examples of the successful use of mineral oil for spotting off Southern California. In view of the limited operational data in Region 9 offshore waters, however, the proposed permit authorizes the discharge of muds containing residual diesel from spotting operations provided the following conditions are met: (1) The diesel pill and a minimum of 50 barrels of mud on each side of the diesel pill and associated cuttings are removed from the mud system and not discharged, and (2) the overall mud toxicity limit is not violated by the remaining mud. The requirement for mud removal is established pursuant to NPDES permit regulations at 40 CFR 122.44(k) (best management practices). Compliance with the toxicity limit must be demonstrated by bioassay data from mud samples taken from the mud system immediately prior to and subsequent to pill removal.

In addition to the technology-related factors discussed above, in developing the proposed mud toxicity limit, Region 9 considered the costs associated with achieving effluent reduction. In this context, Region 9 evaluated the costs of land disposal of all drilling muds. In a study of alternatives to on-site disposal, Sobotka & Company (1984) estimated that such costs could exceed 7.5% of the total cost of an exploratory drilling operation (assuming $100,000/day for such operation). Region 9 has determined from this study that to require land disposal of all drilling muds would be economically burdensome, and would be accompanied by adverse impacts such as port congestion, truck and workboat emissions, and strain on the available capacity of land disposal sites. See Appendix B. Therefore, Region 9 has concluded that land disposal of all drilling muds would not be an appropriate BAT requirement.

Region 9 believes, however, that the proposed toxicity-based limit, minimum 96 hour LC_{50} of 30,000 ppm (SPP), is economically achievable where the cost of barging muds to shore would be only infrequently incurred. As discussed previously, data from Region 9 inspections and DMR's indicate that 90% of the tested whole muds which had actually been used in drilling operations would meet the proposed toxicity limit. Therefore, even if 10% of all drilling muds had to be barged to shore for disposal, the aggregate cost to the industry would amount to only .75% (assuming a linear relationship between cost and barging frequency). In addition, Region 9 believes that through product substitution and more operator experience with new additives, the number of mud systems requiring land disposal can be further reduced, thereby resulting in still lower costs.

When Region 9 originally solicited comments for proposals being considered for a toxicity limit for discharged drilling muds in July, 1984, industry representatives claimed that a limit of 30,000 ppm was too stringent in that it would not allow the discharge of muds containing mineral oil in needed concentrations. Region 9 has reviewed the use of mud lubricants off Southern California in the last two years and believes that this claim is exaggerated.

In 1984, Duke and Parrish conducted a study in which mineral oil in concentrations of 1, 5, and 10% was added to generic muds #2 and #8. Toxicity tests revealed that at a concentration of 1%, the 96 hour LC_{50}'s (SPP) for muds #2 and #8 were 134,000 ppm and 71,000 ppm respectively, well above the toxicity limit in the proposed permit. At a concentration of 5%, the LC_{50}'s for these muds were 18,000 ppm and 9,000 ppm respectively, slightly below the proposed limit. However, Region 9's records of mud usage on the California OCS show that mineral oil, or additives containing mineral oil, are seldom needed at concentrations greater than approximately 1%. Therefore, compliance with the proposed toxicity limit should be attainable for the vast majority of drilling operations, including those for which lubricity additives are needed.

THUMS Long Beach Co. (operated by a consortium of major oil companies), in a recent request for modification of Ocean Dumping permit OD 82–01 (ocean disposal of drilling muds and cuttings), conducted bioassays on typical and "worst case" muds needed for the company's extensive drilling program in Long Beach Harbor. The "worst case" mud contained constituents, including lubricants and other additives, at concentrations which the company itself estimated would be adequate for all foreseeable drilling requirements. Nevertheless, the 96 hour LC_{50} for even the "worst case" mud was 35,000 ppm, in compliance with the toxicity-based limit proposed in this permit. These results support the Region's conclusion that muds more toxic than authorized for discharge by this proposed permit should rarely be needed in drilling operations.

As noted above, Region 9 considers the proposed toxicity limit to be economically achievable even if a small number of operations must barge muds to shore for disposal. Therefore, Region 9, using best professional judgment, has

determined that the proposed minimum 96 hour LC_{50} of 30,000 ppm is an appropriate toxicity limit for drilling muds which takes into consideration the need for lubricity and other additives.

b. *Compliance with Mud Toxicity Limit.* Under the existing BPT general permit, Region 9 has approved numerous specialty additives based on bioassay data and informed offshore operators of these determinations. This regulatory approach has allowed operators to use these approved additives in drilling operations without conducting additional bioassays. One drawback to this approach, however, is that operators might combine several moderately toxic additives (individually approvable) in one mud and thereby exceed the permit's overall toxicity limit. In order to limit the possibility of such occurrences, Region 9 is proposing two levels of approval for specialty additives, general and conditional:

(1) Additives with LC_{50}100,000 ppm (SPP) when tested in a reference mud at the maximum usage rate would be listed as acceptable for general use and discharge. The reference mud to be used for these tests is the lightly treated lignosulfonate mud (generic mud #7) which has been the most commonly used reference mud to date.

(2) Additives where the LC_{50} is greater than 30,000 ppm and less than 100,000 ppm would be conditionally listed as acceptable, contingent upon the additive's not being used in conjunction with other additives which in combination could result in violation of the permit's overall toxicity limit.

It should be noted that the above provisions pertaining to specialty additives would apply only to generic muds #2–8. The overall mud toxicity limit in the permit is based on the toxicity of mud #1 with no specialty additives included. However, this does not preclude the use of specialty additives in mud #1. Such additives could be included in mud #1 if the additives did not increase the toxicity of the mud (i.e. the toxicity of the additive is lower than the toxicity of the mud which would be replaced), or if the basic components of mud #1 were used at concentrations lower than the maximum allowed concentrations to offset the effects of specialty additives.

In all instances, regardless of whether an additive is listed as acceptable for general use and discharge or is conditionally accepted, the discharger will be responsible for demonstrating compliance with the whole mud toxicity limit. Estimates of joint toxicity for muds containing conditionally accepted additives may be made using Equation (1) from Sprague and Logan (1979):

$$\frac{10^6}{LC_t} = \frac{C_s}{LC_s} + \sum_{i=1}^{N} \frac{C_i}{LC_i} \quad (1)$$

Where

LC_t is the 96 hour LC_{50} of the generic mud including mud additives in ppm

C_i is the concentration of the ith additive in ppm

LC_i is the 96 hour LC_{50} of the ith additive in ppm

C_s is the concentration of the generic mud in ppm

LC_s is the 96 hour LC_{50} of the generic mud in ppm

The above regulatory approach to mud additive regulation offers the following advantages:

(1) Since the LC_{50} of most specialty additives is greater than 100,000 ppm, general listing of acceptability for discharge, following an initial bioassay, could be given for most additives to be discharged, thus providing desirable flexibility for operators.

(2) It is unlikely that violations of the permit's whole mud toxicity limit (minimum of 30,000 ppm) would result from the combination of additives acceptable for general use and discharge. For example, if it is assumed that (a) LC_{50} of the reference mud=500,000 ppm, (b) mud constituent toxicity is additive according to the above equation, and (c) additive usage by weight is small relative to the basic mud constituents, four specialty additives with LC_{50}=100,000 ppm each used at its maximum concentration would be necessary to produce a mud with an overall LC_{50} approximating the permit limit of 30,000 ppm. This calculation proceeds by first determining LC_i for each additive using the Sprague and Logan formula. In the above example assuming additive usage of 2 lbs/bbl in a 10 lbs/gal mud, LC_i would be 594 ppm. Four such additives included in a generic mud (LC_s=500,000 ppm) would produce a mud with an LC_{50} of 29,400 ppm.

Greater assurance that the permit's whole mud toxicity limit would not be violated could be obtained by increasing the minimum LC_{50} for listing additives as acceptable for general use. However, Region 9 believes that 100,000 ppm is a reasonable minimum which would allow general acceptance of most additives and also provide a high degree of assurance that the permit's overall toxicity limit would not be exceeded by muds in actual use. Listing and toxicity information for mud additives may be obtained from Region 9 at the above address.

The proposed permit requires a demonstration of compliance with the overall toxicity limit for each mud system which is used and discharged. The term "mud system" refers to the major types of drilling muds which are used during the drilling of a single well. For example, drilling would probably commence with a spud mud for the first several hundred feet. Then a seawater gel mud might be used to a depth about 1,000 feet. Subsequently a lightly treated lignosulfonate mud might be used to a depth of around 5,000 feet. Finally, a freshwater lignosulfonate system might be used for the remainder of the drilling operation to a depth of about 15,000 feet. Typically a bulk discharge of 1,000 to 2,000 barrels of mud occurs when the mud system is changed. It is at these times that compliance with the permit's toxicity limit must be demonstrated. The bulk discharges are the highest volume mud discharges and will include all specialty mud components added to each mud system. As such, Region 9 believes that the bulk discharges are the most appropriate discharges for which to require a demonstration of compliance with the toxicity limit. In the above example four such demonstrations would be required for the drilling of the well.

Except for the final mud system used at the time maximum well depth is reached, this demonstration may consist of toxicity calculations as discussed above, exclusive use of generic muds and additives listed as acceptable for general use or an actual mud bioassay. A bioassay is required for the final mud discharge irrespective of mud composition. This is the time when the maximum mud toxicity is likely to be reached due to the increased need for specialty additives at greater depths. Given the uncertainties of the methods for estimating mud toxicity, Region 9 believes that at least one actual bioassay per well should be required. The bioassay procedure to be used is "Drilling Fluids Toxicity Test" (U.S. Environmental Protection Agency, 1985a).

2. Diesel Oil

As discussed above, the proposed permit prohibits the discharge of diesel oil as a torque-reducing lubricity additive. Diesel, which is sometimes added to a water-based mud system, is a complex mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. While this limitation thereby controls the toxic as well as nonconventional pollutants present in

diesel, the Agency's primary concern is to control the toxic pollutants. The pollutant "diesel oil" is being used as an "indicator" of the listed toxic pollutants present in diesel oil which are controlled through compliance with the effluent limitation. The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

The Agency selected "diesel" as an "indicator" as an alternative to establishing limitations on each of the specific toxic and nonconventional pollutants present in the diesel-contaminated waste streams. The listed toxic pollutants found in various diesel oils include naphthalene, benzene, ethylbenzene, phenanthrene, toluene, fluorene, and phenol. Diesel oil may contain from 20 to 60 percent by volume aromatic hydrocarbons. The light aromatic hydrocarbons, such as benzenes, naphthalenes, and phenanthrenes, constitute the most toxic major components of petroleum products. Mineral oils, with their lower aromatic hydrocarbon content and lower toxicity, contain lower concentrations of toxic pollutants than do diesel oils. Diesel oil also contains a number of nonconventional pollutants, including polynuclear aromatic hydrocarbons such as methylnaphthalene, dimethylnaphthalene, methylphenanthrene, and other alkylated forms of each of the listed toxic pollutants.

Region 9 believes that the limitations achieved by product substitution or land disposal of contaminated muds and cuttings represent the technically feasible and economically achievable BAT-level of controls for the various toxic pollutants to be controlled. Establishing limitations on these pollutant parameters as indicator pollutants, avoids the costly and technically complex requirement of complying with specific limitations on each of the toxic pollutants. Monitoring and analyzing all waste streams to confirm compliance with specific effluent limitations for each of the toxic pollutants is not considered by Region 9 to be economically justified at this time.

3. Mercury and Cadmium Contamination of Barite

The proposed permit also limits mercury and cadmium as trace contaminants in barite to 1 mg/kg and 2 mg/kg, respectively (Condition II.A.1(g)). Barite is mined from either bedded or vein deposits. The bedded deposits are characterized by substantially lower concentrations of heavy metal contaminants such as mercury and cadmium (Nelson, Lui, and Sommers, 1980; Kramer, Crundy and Hammer, 1980). By limiting the mercury and cadmium in barite, the proposed permit also serves to limit the concentrations of the other contaminants as well. The numerical values for the limits were based on data in the above references and in Technical Resources Inc. (1984d) while allowing for a reasonable variability in the quality of bedded deposits. Compliance with this limit is achievable through product substitution, i.e. the utilization of uncontaminated sources of barite for offshore purposes in place of contaminated sources.

According to data collected by the EPA Industrial Technology Division, nearly half of the barite consumed in the United States is produced in the Battle Mountain, NV area which is a source of bedded or uncontaminated barite. Since offshore usage of barite constitutes only 25% of total domestic barite usage, an adequate supply of uncontaminated barite would be available for offshore usage nationwide if only 1/2 of the Nevada source were dedicated to offshore uses. It is preferable from an environmental point of the view to use the uncontaminated barite for offshore operations where the mud is discharged and to use the contaminated barite onshore where the mud is land disposed.

At a workshop sponsored by EPA in Santa Barbara, CA (July 27–29, 1984), an industry representative indicated that all Southern California offshore operators are already using the Nevada barite for their drilling mud (Technical Resources, Inc., 1984b). This is apparently due to the proximity of the Nevada source to Southern California. In view of this fact, Region 9 believes that the proposed limitation should be economically achievable and not disruptive to the barite market. It should also be noted that the Nevada barite is high density barite and need not be blended with other barite to achieve density specifications.

4. Prohibition of Chrome Lignosulfonate

The proposed permit prohibits the discharge of chrome lignosulfonate (Condition II.A.1(j)) in order to prevent the discharge of the toxic pollutant chromium. Substitutes for chrome lignosulfonate are available (such as iron or calcium lignosulfonate) which, according to Region 9's mud usage records, are already in use by approximately two-thirds of California OCS operators. Region 9 recognizes that chrome lignosulfonate may have advantages over other lignosulfonates such as stability over a greater temperature range. However, given the widespread use of substitutes for chrome lignosulfonate, Region 9 believes that this prohibition has been demonstrated to be technologically and economically achievable.

5. Other Toxic Nonconventional Compounds

The discharge of halogenated phenol compounds (a class of compounds which includes several toxic pollutants) is prohibited in accordance with a Minerals Management Service Operations Order.

As noted previously, the existing BPT guidelines require a residual chlorine concentration in the sanitary discharge of at least 1 mg/l which is to be maintained as close to 1 mg/l as possible. This requirement is being proposed as a BCT limit for this draft permit also (for control of the conventional pollutant, fecal coliform). JRB Associates (1984) concludes that the impacts from the chlorine in the sanitary discharge should be small due to rapid dilution and the low volume of the discharge. Nevertheless, to minimize the potential effects of chlorine in this discharge, Region 9 is also proposing a maximum chlorine residual of 10 mg/l as a BAT limit. Past DMR's in Region 9 show that the vast majority of offshore operators consistently comply with the proposed maximum chlorine limit. Compliance by all operators should be easily achievable through better operation and housekeeping of existing facilities.

6. Toxic Organics and Metals in Produced Water

The existing general permit limits heavy metals in produced water discharges. The limitations are based on the 1983 California Ocean Plan rather than existing BPT effluent guidelines which do not limit toxic pollutants.

The EPA Industrial Technology Division has recently sampled produced water discharges in the Gulf of Mexico, Alaska, and California. In addition to heavy metals, small concentrations of several priority toxic organic compounds were identified including naphthalene, phenol, 2, 4 dimethylphenol, benzene, toluene and ethylbenzene. In addition, benzo(a) pyrene was reported by Middleditch (1983). The EPA Industrial Technology Division has been reviewing treatment options for produced water in its current BAT/BCT guidelines development efforts. The treatment options considered as add-on technologies to existing BPT facilities include filtration, precipitation, carbon adsorption and biological treatment. For various reasons, these add-on technologies were

either found to be technologically infeasible to implement in this industry segment or do not appear to be effective in reducing priority pollutant levels in produced water discharges. The Agency is still evaluating reinjection technology for the effluent limitations guidelines for produced water discharges from existing source facilities.

The implementation of any treatment method for produced water is complicated by the space constraints on an offshore platform. The Industrial Technology Division in its upcoming guidelines proposal will be soliciting retrofit cost data for reinjection of produced water from existing platforms. Adequate data to accurately assess the economic achievability of this option are not available at the present time. Therefore, additional technology-based effluent limitations are not being proposed for toxic organic pollutants in produced waters at this time. However, the proposed permit does retain the heavy metals limits which are in the existing general permit and which were derived from the California Ocean Plan. Also, additional limits are proposed for several of the toxic organic pollutants based on the Ocean Discharge Criteria regulations. See section VI.D.3. Should the EPA Industrial Technology Division ultimately promulgate BAT effluent limitations for produced water which are more stringent than the limits in the proposed permit, Region 9 in accordance with 40 CFR 122.28(b)(2)(D), may require an individual permit for platforms discharging produced water and include the newly promulgated effluent limitations.

The use of specialty additives (which may contain toxic pollutants) in produced water is also under review by the Industrial Technology Division and is a subject for which data are limited. The proposed permit requires that the composition and concentration of all substances added to produced waters (such as but not limited to biocides, corrosion and scale inhibitors) be reported to Region 9 (Condition II.A.2(b)).

D. Requirements Based on the Ocean Discharge Criteria Evaluation

As noted previously, the general NPDES permit authorizing discharges from offshore oil and gas exploration, development and production facilities off Southern California was originally issued on February 18, 1982 (47 FR 7312). The term of the permit was two years with an expiration date of December 31, 1983. On December 8, 1983, Region 9 reissued the permit for an additional 6 month period ending on June 30, 1984 (48 FR 55029). Region 9 concluded in both permit issuances that the authorized discharges would not cause unreasonable degradation of the marine environment. These conclusions were based on the limited duration of the permits, the limited extent of offshore activity anticipated during the terms of permits and the fact that the permitted facilities would be subject to effluent limitations, monitoring requirements and other conditions contained in the permit. Short-term permits were issued because Region 9 believed that additional information was necessary concerning longer-term, cumulative effects of the discharges prior to issuance of a normal 5 year permit. The issuance of the short-term permits also provided additional time for ongoing and new studies to be completed which would assess the longer-term and cumulative effects of permitted discharges.

Many of these studies have now been completed. Since the reissuance of the last Region 9 OCS general permit, the National Reserach Council (NRC) completed a major assessment of the fate and effects of drilling muds and cuttings discharges in the marine environment, including long term cumulative effects (NRC, 1983). The NRC study draws from the many laboratory and field studies which have been conducted in recent years. The report concludes that the risks to the marine environment are small from individual operations such as a single exploratory drilling operation. However, insufficient information was available to conclude that "massive development" of an offshore oil field would not cause unreasonable degradation of the marine environment.

Considerable drilling activity is projected for offshore California in the coming years particularly in the western Santa Barbara Channel and Santa Maria Basin. MMS has estimated that a total of 74 exploratory wells and 751 development wells would be drilled in the proposed general permit area during the term of the permit.

EPA has funded two additional studies in an effort to determine whether this expected level of offshore activity would or would not cause unreasonable degradation of the marine environment. An Ocean Discharge Criteria Evaluation (ODCE) was performed by JRB Associates of Seattle, WA (JRB Associates, 1984). This study was supplemented by a hazard assessment prepared by Dr. Gary Petrazzuolo in which the long-term cumulative effects of mud and cuttings discharges are evaluated (Technical Resources, Inc., 1984c). These studies concluded that discharges from development and production platforms would cause unreasonable degradation unless additional controls are imposed in the permit. However, the analyses did conclude that irreparable harm (as defined by 40 CFR Part 125, Subpart M) would not be expected. See Appendix A for a more detailed discussion.

In determining whether the discharges resulting from the projected offshore activities will cause unreasonable degradation of the marine environment, Region 9 considered the studies discussed above, other studies and documents in the administrative record for general NPDES permit No. CA0110516, the application of additional permit conditions pursuant to 40 CFR 125.123(d), and the application of technology-based limitations to the discharges. After evaluating these factors, Region 9 has concluded that there is insufficient information to make a determination of no unreasonable degradation. Therefore, a permit for the discharges may only be issued if the requirements of 40 CFR 125.123(c) are met.

Region 9 has concluded that the dischargers, operating under permit conditions established in 40 CFR 125.123(d), will not cause irreparable harm to the marine environment. These additional permit conditions include limiting permissible concentration (LPC) requirements for pollutants in effluent streams and a monitoring program to assess the impact of the discharges.

Pursuant to 40 CFR 125.123(c), Region 9 has also determined that there are no reasonable alternatives to on-site disposal. A special study of disposal alternatives has been conducted by Sobotka & Co. in which drilling mud disposal alternatives were analyzed for mud generated on the Pacific OCS. See Appendix B. The study analyzed alternatives such as onshore disposal, disposal at special ocean dumping sites, and treatment prior to discharge. After reviewing the study Region 9 concluded that, after taking costs into consideration, no reasonable alternatives presently exist to onsite disposal.

Specific permit requirements included for compliance with the requirements of the Ocean Discharge Criteria are discussed below:

1. Mud Discharges in the Vicinity of the Channel Islands Marine Sanctuary

Region 9 is proposing a special discharge limitation applicable to drilling mud discharges on tracts within 1,000 m of the Channel Islands Marine Sanctuary which were leased subsequent to the effective date of the

sanctuary regulations. See section VIII.C. The proposed permit would prohibit mud discharges on such tracts which would result in exceedences of a limiting permissible concentration (LPC) inside the boundaries of the marine sanctuary (Condition II.A.1(i)). The LPC is 1 percent of the 96 hour LC_{50} for a given drilling mud. Region 9 believes that the proposed condition will provide appropriate additional protection for the sanctuary and equitable treatment for lessees.

2. Limiting Permissible Concentration Requirements for Produced Water

The draft general permit contains conditions designed to ensure compliance with the regulations pertaining to limiting permissible concentrations (40 CFR 125.123(d)). For produced water discharges, Condition II.A.2(a) requires compliance with the heavy metals limitations of the California Ocean Plan. After initial dilution, heavy metals concentrations must be reduced below the limits set by the Ocean Plan. Condition II.A.2(a) also contains limits for several toxic organic pollutants which have been identified in produced water and for marine water quality criteria are provided in EPA's latest update of water quality criteria (45 FR 79318). The permit limits, again to be achieved after initial dilution, are 1% of the concentration for acute toxicity for salt water organisms. Initial dilution is estimated using a plume model such as PLUME (Teeter and Baumgartner, 1979) or other method approved by Region 9.

3. Field Monitoring Study

For permits issued pursuant to 40 CFR 125.123(c) the Ocean Discharge Criteria regulations require a monitoring program to assess the impacts of the discharges (40 CFR 125.123(d)(2)). Condition IV.D of the draft permit requires permittees to jointly conduct the production platform monitoring program found in "Monitoring Program Requirements for Assessing Impacts from Offshore Oil and Gas Discharges" (Technical Resources, Inc., 1985). This monitoring program consists of an existing platform study and a new platform study. Both studies would involve the sampling and analysis of bottom sediments and benthic organisms at reference sites and in the vicinity of offshore platforms. Analyses of samples would be conducted for parameters such as grain size and for contaminants such as barium and EPA priority pollutants. Comparison of the results for the reference sites and the sites near the platforms would allow EPA to evaluate the effects of the discharges on the marine environment, and the need for additional permit limitations or requirements.

The existing platform study would focus on the eastern Santa Barbara Channel where development activity has been the greatest. This study would produce information pertaining to the environmental impacts from platform discharges relatively quickly. The existing platform program would commence within six months of the effective date of the general permit and be completed within one year.

The new platform study would be coordinated with the installation dates for new platforms on the OCS. The MMS is currently conducting a monitoring program similar to the new platform study entitled "Monitoring: Assessment of Long-Term Changes in Biological Communities: Phase II—Quantitative Benthic Surveys Near Production Platforms in the Santa Maria Basin and Western Santa Barbara Channel—Year I". This study is part of a board range of California OCS studies administered by the Pacific OCS office of the MMS in support of the OCS leasing program (U.S. MMS, 1983). Region 9 recognizes that there may be some overlap between the work to be conducted by the MMS and the requirements of the new platform study. As such Condition IV.D provides that permittees may, upon approval of Region 9, substitute the study program of the MMS for the requirements of the new platform study to the extent that MMS studies meet the requirements described in the new platform study.

4. Reopener Clause

The Ocean Discharge Criteria regulation require that all permits issued pursuant to 40 CFR 125.123(c) include the reopener clause found in 40 CFR 125.123(d)(4). This reopener clause is included in the draft permit as Condition II.A.5. This condition provides that the permit may be modified or revoked if, based on new data, EPA determines that continued discharges may cause unreasonable degradation of the marine environment.

5. Bioassay Tests for Generic Muds Using Northern Anchovy

As discussed in Appendix A, the northern anchovy was identified as a critical species in the marine ecosystem off Southern California. In view of the significance of this species, Region 9 is requiring additional bioassays to determine the sensitivity of this species to drilling muds. This condition is included in the permit pursuant to 40 CFR 125.123(d)(3) since insufficient information is available concerning this particular species.

E. Best Management Practices for Dispersants, Surfactants, and Detergents

The facility operator is required to minimize the discharge of dispersants, surfactants, and detergents except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration and the Minerals Management Service. This restriction applies to tank cleaning and other operations which do not directly involve the safety of workers. This restriction is imposed because detergents disperse and emulsify oil, thereby increasing toxicity and making the detection of a discharge of oil more difficult. These limitations have been established pursuant to NPDES permit regulations at 40 CFR 122.44(k) (best management practices).

VII. Monitoring and Enforcement

This general permit requires dischargers to monitor weekly the concentrations of oil and grease in produced water discharges and monthly the chlorine in sanitary waste discharges. In addition, weekly monitoring or estimates of the produced water flow rate is required, as well as quarterly sampling to demonstrate compliance with the numeric limits placed on heavy metals and toxic organic compounds in produced water discharges. Monthly volume estimates are required for drilling muds, drill cuttings, deck drainage, produced sand, and well treatment fluids. Discharge Monitoring Reports must be submitted quarterly. A chemical inventory of all materials actually added down the well must be maintained and all records retained for three years. Composition data for drilling muds which are used and discharged must be provided to Region 9 upon completion of each well.

Condition II.A.1(e) requires bioassay testing of muds to demonstrate compliance with permit toxicity limitations if an operator discharges other than generic muds or uses additives for which adequate data are not provided to determine compliance with permit limits. A bioassay is required for the final mud system when the well reaches its maximum depth, regardless of mud composition.

Condition II.A.1(k) requires that the permittee notify Region 9 (or other designated agency) 48 hours prior to the final mud discharge so that Region 9 may have an opportunity to sample the final mud. This provision will aid in ensuring compliance with permit

conditions. Also, the permittee is required to keep a record of days of discharge of each mud system and the volume of discharge. (Condition II.A.1(a).)

EPA has recently signed a Memorandum of Understanding (MOU) with MMS covering a broad range of OCS activities, including post lease monitoring, inspection and enforcement. Under the MOU, MMS agrees upon written request from an EPA Regional Administrator to sample waste streams (such as drilling mud) and forward all samples to EPA for analysis. Region 9 intends to work with the Pacific OCS Office of the MMS through a regional Memorandum of Agreement (currently under development) to establish a program of periodic sampling of drilling muds discharged into Southern California waters. Region 9 will test the muds for toxicity and for the presence of prohibited substances. Region 9 believes that such an inspection program will ensure compliance with permit limits. Under the MOU, Region 9 retains the right to conduct its own inspections. Region 9 has in the past conducted such inspections and retains all enforcement responsibilities under the CWA.

VIII. Other Legal Requirements

A. Consistency With California Coastal Zone Management Program

The Coastal Zone Management Act (CZMA) and its implementing regulations (15 CFR Part 930) require that any Federally licensed activity directly affecting the coastal zone of a state with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. The proposed general permit would not authorize discharges into the territorial seas of the State of California, nor into any body of water landward of the inner boundary of the territorial seas or any wetland adjacent to such waters. However, discharges would be authorized in waters adjacent to the territorial seas of the State of California and as such could affect the coastal zone.

Region 9 has reviewed the requirements of the CZMP and determined that the proposed permit is consistent with the CZMP. Since there are no applicants for general permits, EPA in effect becomes the applicant and must provide the necessary consistency certification. Region 9 has certified the proposed permit to the California Coastal Commission as consistent with the CZMP.

Since Region 9 has formally certified the permit to the Commission for concurrence, Condition II.B.8 in the previous permit requiring concurrence by the Commission with plans of exploration/development prior to operation under the permit has been deleted.

B. Endangered Species Consultations

The Endangered Species Act (ESA) requires that each Federal agency ensure that any of their actions, such as permit issuance, do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their habitats. Region 9 has concluded that the discharges authorized by the general permit would neither jeopardize the continued existence of any endangered or threatened species nor adversely affect its critical habitat.

In accordance with section 7 of the ESA, Region 9 has provided a copy of the proposed permit and fact sheet to the National Marine Fisheries Service and the U.S. Fish and Wildlife Service for an evaluation of this conclusion. Copies of all opinions will be included in the administrative record for the final permit.

C. The Marine Protection, Research, and Sanctuaries Act

The Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA) regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program implemented by the National Oceanic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values.

Section 302(f) of the MPRSA requires that the Secretary of Commerce, after designation of a marine sanctuary, consult with other Federal agencies, and issue necessary regulations to control any activities permitted within the boundaries of the marine sanctuary. It also provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purpose of the marine sanctuaries program and can be carried out within its promulgated regulations.

One marine sanctuary exists in the general permit area, the Channel Islands Marine Sanctuary, designated a sanctuary in September, 1980. The sanctuary consists of the Channel Islands from Anacapa Island to Richardson Rock and a six nautical mile buffer zone surrounding the islands. Regulations implementing the designation of this area as a marine sanctuary are found at 15 CFR Part 935. These regulations prohibit discharges from hydrocarbon activities on tracts leased after the effective date of the regulations (April 30, 1982).

Discharges on other tracts are not affected by the regulations. Portions of six (6) tracts leased prior to April 30, 1982, and included in the proposed permit, are within the sanctuary boundaries. However, the general permit does not authorize discharges within any tract leased subsequent to the effective date of sanctuary regulations and located within sanctuary boundaries. Accordingly, Region 9 believes that the permit is consistent with the requirements of the sanctuary regulations and the MPRSA.

Region 9 is, however, proposing a special discharge limitation applicable to drilling mud discharges on tracts which (1) were leased subsequent to the effective date of the sanctuary regulations and (2) have a portion of the tract lying within 1,000 m of the boundary of the Channel Islands Marine Sanctuary. The proposed permit would prohibit mud discharges on such tracts which would result in exceedences of a limiting permissible concentration (LPC) inside the boundaries of the marine sanctuary (Condition II.A.1(i)). The LPC is 1 percent of the 96 hour LC_{50} for a given drilling mud. For mud discharges within 1,000 m of the boundary of the marine sanctuary, the proposed permit requires a demonstration of compliance with this condition by the permittee based on the toxicity of the mud and an analysis of the mud dilution. For mud discharges occurring at distances greater than 1000 m from the sanctuary boundary it is assumed, based on the dilution analysis of Petrazzuolo (1983), that the discharge would comply with this requirement. This condition is proposed pursuant to the requirements of Section 403 of the CWA. Region 9 believes that the proposed condition will provide appropriate additional protection for the sanctuary and equitable treatment for lessees.

D. Oil Spill Requirements

Section 311 of the CWA prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permit are excluded from the provisions of Section 311. However, these permits do not preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties for other unauthorized discharges of

toxic pollutants which are covered by Section 311 of the CWA.

E. State Water Quality Standards and State Certification

Since State waters are not included in the general permit area, the provisions of section 401 of the CWA do not apply.

F. Economic Impact: E.O. 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that order.

C. Paperwork Reduction Act

Region 9 has reviewed the requirements imposed on regulated facilities by the final permit reissuance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements in the final permit have already been approved by the Office of Management and Budget (OMB) under submissions made for the NPDES permit program under the provisions of the Clean Water Act. The final general permit will explain how its information collection requirements respond to any OMB or public comments.

H. Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that the final permit reissuance will not have a significant impact on a substantial number of small entities.

This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations at 49 FR 5024 et seq. (February 9, 1984). These facilities are classified as Major Group 13-Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: August 5, 1985.

Charles W. Murray, Jr.

Acting Regional Administrator.

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Appendix A—Review of Ocean Discharge Criteria Evaluation (ODCE) and Hazard Assessment for Mud/Cuttings Discharges

These studies were funded by EPA pursuant to the Ocean Discharge Criteria regulations (40 CFR Part 125, Subpart M) which establish guidelines for the issuance of NPDES permits into the territorial seas; contiguous zone or the ocean. The following ten factors are to be considered in evaluating the degradation of marine waters as a result of permitted discharges § 125.122).

(1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;

(2) The potential transport of such pollutants by biological, physical or chemical processes;

(3) The composition and vulnerability of the biological communities which may be exposed to such pollutants, including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure of function of the ecosystem, such as those important for the food chain;

(4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursey/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism.

(5) The existence of special aquatic sites including, but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

(6) The potential impacts on human health through direct and indirect pathways;

(7) Existing or potential recreational and commercial fishing, including finfish and shellfish;

(8) Any applicable requirements of an approved Coastal Zone Management plan;

(9) Such other factors relating to the effects of the discharge as may be appropriate;

(10) Marine water quality criteria developed pursuant to section 304(a)(1).

The ODCE provides basic information on the proposed discharges, the affected environment and probable effects of the discharges. Each of the above factors is considered. The document concludes that only localized effects on water quality and resident marine species would be expected from discharges from offshore operations. However, uncertainties and factors meriting additional attention such as bioaccumulation of heavy metals from sediment contamination were identified in the study.

The cumulative impact of proposed drilling mud and cuttings discharges is evaluated in the hazard assessment prepared by Dr. Gary Petrazzuolo. Water column and benthic impacts are analyzed with respect to the likelihood of causing irreparable harm or unreasonable degradation as defined in the Ocean Discharge Criteria regulations. The results of the analysis are summarized in Table A-1 below.

TABLE A-1.—SUMMARY OF ESTIMATED IMPACTS OF PROPOSED DRILLING MUD DISCHARGES ON THE CALIFORNIA OCS

	Unreasonable degradation	Irreparable harm
Exploratory Operation:		
Water Column	No	No.
Benthic	No	No.
Production Platform		
Water Column	No	No.
Benthic	Insufficient information.	No.

Drilling mud discharges are not expected to cause unreasonable degradation of the water column from either production platforms or exploratory operations. The basis for this conclusion is the fact that mud discharges are intermittent and the toxic effects in the water column are short-term. Drilling muds authorized for discharge by the permit have been shown to be of low toxicity to a wide variety of marine organisms and the time of exposure of the toxicity tests (generally 96 hour bioassays) is comparable to or greater than the time of exposure in the marine environment. Also the total volume of mud expected to be discharged from all operations was shown to be very small relative to the flux of water passing through the general permit area. The analysis did suggest, however, that the northern anchovy (*Engraulis mordax*), a key species in the food web, should be tested for its sensitivity to drilling muds. Although the range of species already tested for sensitivity to drilling muds is very likely to be broad enough to include the anchovy, EPA believes that additional testing on this species is worthwhile due to its key role in the ecosystem. As such, Condition IV.E was added to the permit requiring bioassays on the anchovy using each of the eight generic muds listed in Condition IV.C.16. Test results to be provided jointly by permittees, are required within twelve months of the effective date of the permit.

With respect to benthic impacts, Dr. Petrazzuolo's analysis showed that while irreparable harm would not be expected from exploratory operations or production platforms, unreasonable degradation could not be ruled out for production platforms. Numerous field studies have been conducted around exploratory operations and have shown only moderate impacts which are restricted to the immediate vicinity of the operation (within 300–500 m). However, adequate studies have not been conducted in the vicinity of production platforms, which may discharge substantially larger quantities of mud.

Although predictions can be made regarding the expected impacts from such discharges, field studies are needed to verify the predictions. The hazard assessment concludes that given the uncertainty concerning the effects of platform discharges, existing data are insufficient to support a determination of unreasonable degradation for the levels of development anticipated during the life of the permit. However, since existing laboratory data and field surveys do indicate that impacts are not permanent and that recovery does occur, irreparable harm would not be expected even from the level of discharge activity expected during the term of the permit.

Appendix B—Review of Results of Alternatives Study of Mud and Cuttings Disposal

This study was funded by EPA pursuant to the Ocean Discharge Criteria regulations (40 CFR 125.123(c)(1)) which require a review of the alternatives to onsite disposal for permits issued pursuant to 40 CFR 125.123(c). The costs, advantages and disadvantages of various alternatives to onsite disposal of drilling muds and cuttings were analyzed. The study estimated that the costs of barging muds and cuttings to shore for disposal could range from $175,000 to $1,450,000/well depending on the volume of wastes and the length of the drilling operation. EPA believes that in light of this substantial cost and other adverse factors identified in the study such as port congestion, truck and workboat emissions and pressure on the availability of land disposal sites, that barging to shore is not a satisfactory alternative for disposal of muds and cuttings which comply with permit discharge limits. The alternative of disposal at special ocean dumping sites was also considered in this study. The analysis of the costs of onshore disposal showed, however, that the cost of the barge represented 80% or more of the total costs. This cost would also be present for the alternative of dumping at special ocean dumping sites. As such, EPA believes that this is also an unsatisfactory alternative for the general disposal of mud and cuttings. Additional alternatives including recycling/reuse, piping wastes to shore and underground injection were reviewed in the study, but for various reasons, appeared relatively unattractive.

The advantages, disadvantages and costs of shunting muds to various depths were also reviewed in the study. Shunting tends to reduct the dispersion of muds and is frequently mentioned as a mitigating measure to be required for operations near special biological popultations. The costs of shunting were shown to be modest and would not represent an excessive burden on regulated facilities. However, for operations not in the vicinity of special biological populations shunting does not appear to offer any particularly attractive advantages. As such, shunting is regarded by the Region 9 as a potential mitigating measure to be required on a case-by-case basis.

Another alternative receiving increasing attention and mentioned briefly in the study involves processes for solidifying or detoxifying mud prior to discharge. EPA, Region 9 reviewed the status of these processes prior to reissuance of the general permit on December 8, 1983. We concluded that since these technologies were still in development stages, it would not be appropriate to base pemit limits on such processes. We have reviewed the progress in the development of these technologies since the previous permit was issued and determined that meaningful progress has occurred (Earthrite Technology, Inc. (1984), for example). A drilling muds disposal and

operating techniques study is currently underway funded by Chevron Corporation which will include an assessment of the practical application of such technology on the Pacific OCS.

[Permit No. CAG280822]

General Permit—Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*; the "Act"), the following discharges are authorized:

Drilling Muds, Drill Cuttings and Washwater (discharge 001),
Produced Water (discharge 002),
Produced Sand (discharge 003),
Well Completion and Treatment Fluids (discharge 004),
Diatomaceous Earth Filter Media (discharge 005),
Deck Drainage (discharge 006),
Sanitary Wastes (discharge 007),
Domestic Wastes (discharge 008),
Desalinization Unit Discharge (discharge 009),
Cooling Water (discharge 010),
Uncontaminated Bilge Water (discharge 011),
Uncontaminated Ballast Water (discharge 012),
Excess Cement Slurry (discharge 013),
BOP Control Fluid (discharge 014), and
Fire Control System Test Water (discharge 015).

from offshore oil and gas facilities (defined in 40 CFR Part 435, Subpart A) engaged in development or production activities, to receiving waters named the Pacific Ocean, in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II, III and IV thereof.

Offshore permittees who fail to notify the Regional Administrator of their intent to be covered by this general permit are not authorized to discharge to the specified receiving waters unless an individual permit has been issued to the facility by EPA, Region 9.

The authorized discharge sites are (by OCS lease parcel number): in waters west and northwest of Point Buchon,

P-0373 P-0374 P-0375 P-0376 P-0377;

in waters west and northwest of Point Arguello,

P-0393 P-0394 P-0395 P-0396 P-0397 P-0400 P-0401 P-0402 P-0403 P-0406 P-0407 P-0408 P-0409 P-0412 P-0413 P-0414 P-0415 P-0416 P-0418 P-0419 P-0420 P-0421 P-0422 P-0424 P-0425 P-0426 P-0427 P-0429 P-0430 P-0431 P-0432 P-0433 P-0434 P-0435 P-0436 P-0437 P-0438 P-0439 P-0440 P-0441 P-0443 P-0444 P-0445 P-0446 P-0447 P-0448 P-0449 P-0450 P-0451 P-0452 P-0453 P-0491 P-0492 P-0493 P-0494 P-0495 P-0496 P-0497 P-0498 P-0499 P-0500 P-0503 P-0504 P-0505 P-0506 P-0507 P-0508 P-0509 P-0510;

in waters south and west of Pt. Conception,

P-0315 P-0316 P-0317 P-0318 P-0319 P-0320 P-0321 P-0322 P-0323 P-0324 P-0456 P-0457 P-0511;

in the Santa Barbara Channel from Pt. Conception to Goleta Point,

P-0180 P-0181 P-0182 P-0183 P-0184 P-0185 P-0187 P-0188 P-0189 P-0190 P-0191 P-0192 P-0193 P-0194 P-0195 P-0196 P-0197 P-0326 P-0329 P-0459 P-0460 P-0461 P-0462 P-0463 P-0464 P-0465 P-0467 P-0469 P-0475 P-0512 P-0513 P-0514 P-0515 P-0516 P-0517 P-0519;

in the Santa Barbara Channel from Santa Barbara to Ventura,

P-0166 P-0202 P-0203 P-0204 P-0205 P-0208 P-0209 P-0210 P-0215 P-0216 P-0217 P-0231 P-0232 P-0233 P-0234 P-0238 P-0240 P-0241 P-0346 P-0348 P-0349 P-0468 P-0472 P-0473 P-0474 P-0478 P-0479 P-0520 P-0521 P-0522 P-0523 P-0524 P-0525 P-0527

in the waters south of Santa Rosa and Santa Cruz Islands,

P-0480 P-0481 P-0482 P-0483 P-0484 P-0485 P-0486 P-0487 P-0531 P-0532;

in water southwest of Point Dume,

P-0528 P-0529 P-0530

in the San Pedro Channel between San Pedro and Laguna,

P-0296 P-0300 P-0301 P-0306 P-0488;

and in waters south and southwest of San Clemente Island,

P-0489 P-0490 P-0533 P-0534 P-0535

This permit does not authorize discharges from "new sources" as defined in 40 CFR 122.3.

This permit shall become effective on ————.

This permit and the authorization to discharge shall expire at midnight, ———— (5 years from date of issuance).

Signed this —— day of ————.

Judith E. Ayres,

Regional Administrator, Region 9.

Part I—Commencement and Termination of Operations—Notification Requirements

Written notification of commencement of operations shall be provided to, and received by, the Regional Administrator at least fourteen (14) days prior to initiation of discharges. Notification shall be provided for each facility. The notification shall identify the permittee and include the statement "We assume full responsibility for compliance with NPDES General Permit No. CAG280622 for the operations listed below" and shall be signed by an authorized representative.

The notification of operations and designation of permittee letter shall contain the following information.

a. Name and address of permittee.

b. Description and location of operation, including parcel number and exact coordinates.

c. Date discharges are proposed to commence.

d. Expected duration of activities.

e. Name of leaseholder, if different from permittee.

Permittees shall also notify the Regional Administrator within twenty-eight (28) days upon permanent termination of discharges at these locations. The termination notification letter shall contain the date of the last day of any discharges at the site.

For operations on parcels for which a biological survey is required by Minerals Management Service (MMS) lease stipulation, the biological survey report and the plan of exploration shall be provided to EPA prior to initiation of discharges. Initiation of discharge under the permit may not begin until EPA has reviewed the survey report and the proposed operations and determined that this general permit is appropriate for the proposed discharges and notified the permittee in writing of this determination.

Part II

A. Effluent Limitations and Monitoring Requirements

1. During the period beginning the date this permit becomes effective for the permittee's facility and lasting through the expiration date of this permit, the permittee is authorized to discharge from outfall serial number 001 (drilling muds, drill cuttings and washwater).

a. The permittee shall individually estimate and report the total monthly discharge volume for drilling muds, drill cuttings and washwater. The permittee shall also report the number of days of discharge of drilling muds for each drilling mud system used.

b. There shall be no discharge of free oil as a result of the discharge of drilling muds, drill cuttings or washwater. Compliance with this limit shall be determined in accordance with the procedure in "Static Sheen Test" (U.S. Environmental Protection Agency, 1985b). The test shall be conducted on each day of discharge of drill cuttings or drilling mud. The permittee shall report the number of times free oil was observed.

c. The discharge of drilling fluids which contain waste engine oil, cooling oil, gear oil, lubricant which has been previously used for purposes other then borehole lubrication, is prohibited.

d. The discharge of oil-based drilling muds is prohibited. The discharge of drill cuttings associated with oil-based muds is also prohibited.

e. Drilling mud toxicity. The minimum 96 hour LC_{50} value for drilling muds discharged in compliance with this permit is 30,000 ppm (suspended particulate phase). The permittee shall demonstrate compliance with this limit by conducting and reporting the results of a drilling mud bioassay for each mud system which is used and discharged. Mud samples for the bioassays shall be taken at the time that maximum well depth is reached for each generic mud type and just prior to the intended discharge of the mud.

The bioassay procedure to be used is "Drilling Fluids Toxicity Test" (U.S. Environmental Protection Agency, 1985a). Bioassay results shall be submitted within 28 days following completion of each well (Condition II.C.4.).

With the exception of the drilling mud system used and discharged when the well reaches its maximum depth, the bioassay requirement shall be deemed satisfied upon a demonstration by the permittee that a discharged mud complies with the requirements of (1), (2) or (3) below.

(1) The mud is generic as defined in Condition IV.C.16.

(2) The mud is generic as defined in Condition IV.C.16. (excluding generic mud #1) and all specialty additives included in the mud satisfy either of the following conditions:

(A) When each additive is included at its maximum concentration in generic mud #7 (lightly treated lignosulfonate mud), the 96 hour LC_{50} value of the resulting mud exceeds 100,000 ppm for the suspended particulate phase. The bioassay procedure shall be that in "Drilling Fluids Toxicity Test" identified above.

(B) Other toxicity data is available for the additive upon which EPA may reasonably conclude that (A) above would be satisfied.

(3) The mud is generic as defined in Condition IV.C.16 and contains additives used in quantities such that the resulting whole mud may, based on bioassay data for similar whole muds or bioassay or toxicity data for the additives, be shown to comply with the overall mud toxicity limit (30,000 ppm). The permittee shall be responsible for providing the demonstration of compliance. The method in "Separate and Joint Toxicity to Rainbow Trout of Substances Used in Drilling Fluids for Oil Exploration" (Sprague and Logan, 1979) may be used to estimate joint toxicity.

f. Drilling Muds Inventory and Reporting Requirements. The permittee shall maintain a precise inventory of all mud constitutents added downhole for each well. The composition of each mud system used and discharged by the permittee shall be reported to EPA. Mud composition data shall be submitted to EPA within 28 days following completion of each well.

g. There shall be no discharge of drilling mud formulated with barite in which the mercury concentration in the barite exceeds 1 ppm or the cadmium concentration in the barite exceeds 2 ppm. An analysis for mercury and cadmium contamination shall be conducted for the barite used by the permittee for each mud system, and the results of the analysis submitted to EPA along with the mud composition data required by (f) above.

h. There shall be no discharge of drilling mud in which diesel fuel oil was added as a lubricity agent. The discharge of drilling muds containing residual diesel from spotting operations is prohibited except in compliance with the following conditions:

(1) The diesel pill and fifty (50) barrels of mud on each side of the diesel pill shall be removed from the mud system and shall not be discharged. The collection period shall begin when the 50 barrel lead buffer surfaces or at the time of first visual evidence of diesel, whichever occurs first. The collection period ends at the time that the 50 barrel trailing buffer is recovered or when no visual evidence of diesel exists, whichever occurs last. Drill cuttings which contact the removed mud shall also not be discharged.

(2) Mud which is discharged shall not exceed the toxicity limitation specified in Condition II.A.1(e). To demonstrate compliance with this requirement the analyses of (A), (B) and (C) below shall be conducted on two (2) mud samples collected as follows: Sample #1 shall be collected from the circulating mud system immediately prior to pumping the diesel oil downhole. Sample #2 shall be collected immediately after 2 complete circulations of the active mud system following recovery of the pill and contaminated mud. Sample #1 and sample #2 shall be taken from the return flow line under the screen and not from the mud pit. If washwater is used on the screen, then it shall be turned off before these samples are collected.

(A) Bioassay conducted in accordance with the method in "Drilling Fluids Toxicity Test" identified above,

(B) Analysis to determine the concentration of diesel oil in the mud conducted in accordance with the procedure in "Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings" (US EPA August 1985), and

(C) Sheen test conducted in accordance with the method in "Static Sheen Test" identified above.

(3) The following information is also required:

(A) Composition of basic must plus specialty additives,

(B) Quantity of contaminated mud removed from mud system,

(C) Disposal site for contaminated mud, and

(D) Time at which the discharge of drilling mud ceased for the purpose of collecting the diesel pill for onshore disposal and the time at which drilling mud discharges recommenced subsequent to collection of the diesel pill.

i. Drilling mud discharges on parcels which (1) were leased subsequent to the effective date of the regulations implementing the Channel Islands Marine Sanctuary (April 30, 1982–15 CFR Part 935) and (2) have a portion of the tract lying within 1,000 m of the boundary of the Channel Islands Marine Sanctuary, shall not cause exceedences of the limiting permissible concentration (see Condition IV.C.15) inside the boundary of this marine sanctuary. For such discharges the permittee shall provide a demonstration of compliance with this condition based on the toxicity of the mud and an analysis of the mud dilution.

j. There shall be no discharge of chrome lignosulfonate.

k. Reporting of Final Mud Dump. The permittee shall provide verbal notice to EPA (or other Federal agency designated by EPA at a later date) 48 hours prior to the final mud dump upon completion of each well. Notification shall be provided to the Compliance Section, Water Management Division at: Telephone: (415) 974–8275.

l. Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location: discharge 001, subsequent to all treatment processes and prior to entry into the waters of the Pacific Ocean.

2. During the period beginning the date this permit becomes effective for the permittee's facility and lasting through the expiration date of this permit, the permittee is authorized to discharge from outfall serial number 002 (produced water).

a. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Monthly average (mg/l)	Daily maximum (mg/l)	Measurement frequency	Sample type
Flow (MGD)			Once/week	Estimate.
Oil and grease	45.0	72.0	do	Composite.
Arsenic		[1].052	Once/3 months	Discrete.
Cadmium		[1].012	do	Do.
Total chromium		[1].006	do	Do.
Copper		[1].020	do	Do.
Cyanides		.020	do	Do.
Lead		.022	do	Do.
Mercury		[1].00056	do	Do.
Nickel		[1].056	do	Do.
Silver		[1].0018	do	Do.
Zinc		[1].080	do	Do.
Phenol		[1].120	do	Do.
Naphthalene		[1].0235	do	Do.
2, 4 dimethylphenol			do	Do.
Benzene		[1].051	do	Do.
Toluene		[1].050	do	Do.
Ethylbenzene		[1].0043	do	Do.
Benzo (a) pyrene		[1].003	do	Do.

[1] This limit is applicable after initial dilution within a mixing zone defined in Condition IV.C.17. Compliance with these limits, shall be determined through the use of the following equation:

$Ce = Co + Dm\ (Co - Cs)$

where

Ce = the maximum allowable concentration,
Co = the concentration in Part II.A.2(a) which is to be met at the completion of initial dilution,
Cs = background seawater concentration (See Part IV.C.18),
Dm = minimum probable initial dilution expressed as parts seawater per part wastewater.

b. Use of chemical additives in produced water. The permittee shall maintain a record of all substances added to produced waters including but not limited to biocides, corrosion inhibitors and scale inhibitors. The quantity, concentration and chemical composition of these substances shall be reported annually to EPA as a supplement to the annual monitoring report required by Condition II.C.4. of this permit.

c. Samples taken in compliance with the monitoring requirements specified in Condition II.A.2(a), above, shall be taken at the following location: at a point in discharge 002 prior to entry into the waters of the Pacific Ocean.

3. During the period beginning the date this permit becomes effective for the permittee's facility and lasting through the expiration date of this permit, the permittee is authorized to discharge from outfall serial numbers 003–007.

a. Such discharges shall be limited and monitored by the permittee as specified on the following page:

Serial Nos. outfalls	Effluent characteristic	Discharge limitations	Monitoring requirements	
			Measurement frequency	Sample type
003—Produced sand	Quantity	(Barrels per mo)	Once per month	Estimate.
	Free oil	No visible sheen	Once per day	Visual observations.
004—Well completion and treatment fluids.[3]	Volume		Once per month	Estimate.
	Free oil	No visible sheen	Once per day	Visual observations.[4]
005—Diatomaceous earth filter media.	Volume		Once per month	Estimate.
	Free oil	No visible sheen	Once per day	Visual observations.[4]
006—Deck drainage	Volume		Once per month	Estimate.
	Free oil	No visible sheen	Once per day	Visual observations.[4]
007—Sanitary waste	Flow rate (MGD)		Once per month	Estimate.
	Residual chlorine 1.0 mg/L[2].		Once per week	Discrete.
008—Domestic waste		No floating solids	Once per day	Visual observations.[4]

[1] The permittee shall make visual observations during daylight hours for the presence of free oil in the receiving water on each day of discharge, and shall report the number of days a sheen was observed. For discharges occurring at night, compliance shall be determined using the static sheen test (see Condition II.A.1(b)).

[2] Minimum of 1 mg/l and maintained as close to this concentration as possible (maximum concentration is 10 mg/l). This requirement is not applicable to facilities intermittently manned or to facilities permanently manned by nine (9) or fewer persons. There shall be no visible floating solids in the receiving waters from this discharge for facilities intermittently manned or permanently manned by nine (9) or fewer persons. For such facilities visible observations for floating solids are required daily and the permittee shall report the number of times floating solids were observed.

[3] The chemical composition of these fluids shall be reported quarterly to EPA as a supplement to the quarterly monitoring report required by Condition II.C.4. of this permit.

[4] The permittee shall make visual observations during daylight hours for the presence of floating solids in the receiving water on each day of discharge, and shall report the number of days floating solids were observed.

b. Samples taken in compliance with monitoring requirements specified above shall be taken at a sampling point prior to commingling with any other waste stream or entering Pacific waters. In cases where sanitary and domestic wastes are mixed prior to discharge, and sampling of the sanitary waste component stream is infeasible, the discharge may be sampled after mixing. In such cases, the discharge limitation shown above for sanitary waste shall apply to the mixed waste stream.

4. a. During the period beginning the date this permit becomes effective for the permittee's facility and lasting through the expiration date of this permit the permittee is authorized to discharge from outfall(s) serial number(s) 008–014 (miscellaneous discharges).

Discharge 009—Desalinization Unit Discharge:
010—Cooling water
011—Uncontaminated Bilge Water
012—Uncontaminated Ballast Water
013—Excess Cement Slurry
014—Control Fluid From Blow-Out Preventer
015—Fire Control System Test Water

b. There shall be no free oil in the receiving waters as a result of these discharges. The permittee shall make visual observations during daylight hours for the presence of free oil in the receiving water on each day of discharge, and shall report the number of days a sheen was observed.

5. Reopener Clause

In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Regional Administrator determines that continued discharges may cause unreasonable degradation of the marine environment.

6. Effective Date for Monitoring Requirements

The monitoring requirements shall take effect upon commencement of discharge.

B. Other Discharge Limitations

1. Floating Solids or Visible Foam

There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. Halogenated Phenol Compounds

There shall be no discharge of halogenated phenol compounds.

3. Surfactants, Dispersants, and Detergents

The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety

Administration and the Minerals Management Service.

4. Sanitary Wastes

Any facility using a marine sanitation device that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with permit limitations until such time as the device is replaced or is found not to comply with such standards and regulations.

C. Monitoring And Records

1. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the volume and nature of the monitored activity.

2. Reporting Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

3. Penalties for Tampering

The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

4. Reporting of Monitoring Results

Monitoring results obtained for discharges 002–015 during the previous 3 months shall be summarized and reported on a Discharge Monitoring Report Form, EPA No. 3320–1 (DMR). For discharge 001 (drilling muds and cuttings), monitoring results obtained during the drilling of each well shall be summarized and reported on the DMR form. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration.

If any category of waste (outfall) is not discharged no reporting is required for that particular outfall. Only DMR's representative of the activities occurring need to be submitted. A notification indicating the type of operation should be provided with the DMR's. If no discharges whatsoever occurred from the permittee's facility a report to that effect shall be submitted.

The first report for discharges 002–015 is due on the 28th day of the fourth month from the day this permit becomes applicable to a permittee. Drilling mud and cuttings monitoring results (discharge 001) are due on the 28th day following completion of each well.

Signed and certified copies of these and other reports required herein, shall be submitted to the Regional Administrator at the following address: Director, Water Management Division, Attn: W–3–2, Region 9, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

7. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit for a period of at least three (3) years from the date of the sample, measurement, or report. This period may be extended by request of the Regional Administrator at any time.

These records shall be stored on the permittee's offshore facility and shall include drilling mud composition data, well completion fluid composition data and records of all materials added to produced water.

8. Record Contents

Records of monitoring information shall include:

a. The date, place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

9. Inspection and Entry

The permittee shall allow the Regional Administrator, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

10. Rubbish, Trash and Other Refuse

The discharge of any solid material not in compliance with other parts of this permit is prohibited. Incineration residue from paper and plastic only is exempt from this prohibition.

D. Reporting Requirements

1. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

2. Monitoring Reports

Monitoring results shall be reported at the intervals specified in Part II.C.4 of this permit. The monitoring report shall include:

a. Drilling muds composition data (in lbs/bbl), bioassays results and/or demonstration of compliance with toxicity limits for muds;

b. Static sheen test results for drilling muds and drill cuttings and washwater;

c. Concentrations of mercury and cadmium in barite used in drilling muds;

d. Estimates of the volume of discharge of drilling muds, drill cuttings, produced water, produced sand, well completion and treatment fluids, deck drainage and sanitary waste; also, for drilling muds, the number of days of discharge for each drilling system used.

e. Information pertaining to diesel pill disposal, as appropriate;

f. Number of observations of free oil in the receiving water from discharges 003–006 and discharges 009–015; also static sheen test results for discharges 003–006 which occur at night;

g. Residual chlorine measurements for the sanitary wastes discharge or as appropriate, the number of observations of floating solids;

h. Produced water, oil, and grease analyses, heavy metals and toxic organics analyses and an analysis of the discharge dilution;

i. Number of observations of floating solids in the receiving water resulting from domestic wastes discharges; and

j. Demonstration of compliance with Condition II.-A.1(i) (as appropriate) for mud discharges in the vicinity of the Channel Island Marine Sanctuary.

3. Twenty-Four Hour Reporting of Noncompliance

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. The written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned or reduce, eliminate, and prevent reoccurrence of the noncompliance.

The following shall be included as information which must be reported within 24 hours:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit;

b. Any upset which exceeds any effluent limitations in the permit; and

c. Violation of a maximum daily discharge limitation for any toxic pollutant or hazardous sustance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance, listed as such by the Regional Administrator in the permit to be reported within 24 hours.

Reports during normal business hours (8 a.m.– 4:30 p.m.) should be made to the Compliance Section, Water Management Division at telephone #415–974–8275. Twenty-four hour reporting may be made at telephone #415–974–8131. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

4. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Part II.D.3. at the time monitoring reports are submitted. The reports shall contain the information listed in Part II.D.3.

5. Signatory Requirements

All reports or information submitted to the Regional Administrator shall be signed and certified in accordance with 40 CFR 122.22.

6. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Regional Administrator. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

7. Penalties for Falsification of Reports

The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

Part III

A. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need To Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitteed activity in order to maintain compliance with the conditions of this permit.

3. Bypass of Treatment Facilities

a. *Definitions.* (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which are reasonably expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs c. and d. of this section.

c. *Notice.* (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall submit prior notice, if possible, at least 10 days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II.D.3. (24–hour notice).

d. *Prohibition of bypass.* (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against the permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph c. of this section.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if he determines that it will meet the three conditions listed above in paragraph d(1) of this section.

4. Upset Conditions

a. *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination, made during administrative review of claims that noncompliance was caused by an upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in Part II.D.3 (24-hour notice); and

(4) The permittee complied with any remedial measures required under Part III.B.4 (duty to mitigate).

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

B. General Conditions

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply for and obtain an individual NPDES permit.

2. Duty to Comply with Toxic Effluent Standards

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

3. Penalties for Violation of Permit Conditions

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 303, 306, 307, or 308 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

4. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause, as provided in 40 CFR 122.41 and in 122.62, 122.63 and 122.64. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Civil and Criminal Liability

Except as provided in permit conditions on "Bypasses" (Part III.A.3) and "Upsets" (Part III.A.4.), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

8. State laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

9. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

10. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Part IV—Other Requirements

A. When the Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

1. The discharge(s) is a significant contributor of pollution;

2. The discharger is not in compliance with the conditions of this permit;

3. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

4. Effluent limitation guidelines are promulgated for point sources covered by this permit;

5. A Water Quality Management Plan containing requirements applicable to such point source is approved; or

6. The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Regional Administrator are more appropriately controlled under a general permit than under individual NPDES permits.

The Regional Administrator may require any permittee authorized by this permit to apply for an individual NPDES permit only if the permittee has been notified in writing that a permit application is required.

B. When an Individual NPDES Permit May Be Requested

1. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The permittee shall submit an application together with the reasons supporting the request to the Regional Administrator.

2. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the applicability of this permit to that owner or permittee is automatically terminated on the effective date of the individual permit.

3. A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

C. Definitions

1. "Cooling water" means once through non-contact cooling water.

2. "Daily maximum" means the average concentration of the parameter specified during any 24-hour period that reasonably represents the 24-hour period for the purposes of sampling.

3. "Deck drainage" means all waste resulting from platform washing, deck washings, and run-off from curbs, gutters, and drains including drip pans and wash areas.

4. "Desalinization unit discharge" means wastewater associated with the process of creating fresh water from seawater.

5. "Domestic waste" includes discharges from galleys, sinks, showers, and laundries.

6. "No discharge of free oil" means a discharge that does not cause a film or sheen upon or a discoloration on the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

7. "Drill cuttings" means particles generated by drilling into subsurface geological formations.

8. "Drilling muds" means any fluid sent down the well hole, including any specialty products, from the time a well is begun until final cessation of drilling in that hole. The term "mud system" refers to the major types of drilling muds used during the drilling of one well. A change in mud system is considered to occur after bulk discharges when one basic type of generic mud is exchanged for another type. A change in mud system is not considered to have occurred when small amounts of specialty mud additives are added to a mud.

9. "Produced sands" means sands and other solids removed from the produced waters.

10. "Sanitary waste" means human body waste discharged from toilets and urinals.

11. The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

12. "Well completion and treatment fluids" means any fluids sent down the drill hole to improve the flow of hydrocarbons into or out of geological formations which have been drilled.

13. A "discrete sample" means any individual sample collected in less than fifteen minutes.

14. For flow rate measurements, a "composite sample" means the arithmetic mean of no fewer than eight individual measurements taken at equal intervals for twenty-four hours or for the duration of the discharge, whichever is shorter.

For oil and grease measurements, a "composite sample" means four sample taken over a twenty-four hour period analyzed separately and the four samples averaged. The daily maximum limitation for oil and grease is based on this definition of a composite sample. For measurements other than flow rate or oil and grease, a composite samples means a combination of no fewer than eight individual samples obtained at equal time intervals for twenty-four hours or for the duration of the discharge, whichever is shorter.

15. Limiting Permissible Concentration—that concentration which will not exceed .01 of a concentration shown to be acutely toxic (96 hour LC_{50}) to appropriate sensitive marine organisms in a bioassay carried out in accordance with the method in "Drilling Fluids Toxicity Test" identified in Condition II.A.1(e).

16. Generic Drilling Muds.

	Maximum Allowable Concentration (pounds per barrel)
1. Seawater/potassium/polymer mud:	
KCl	50
Starch	12
Cellulose polymer	5
Xanthan gum polymer	2
Drilled solids	100
Caustic	[illegible]
Barite	[illegible]
Seawater	(1)
2. Seawater/lignosulfonate mud:	
Components	
Attapulgite or bentonite	50
Lignosulfonate	[illegible]
Lignite	10
Caustic	5
[illegible]	450
[illegible] solids	100
Soda ash/sodium bicarbonate	[illegible]
Cellulose polymer	[illegible]
Seawater	(1)
3. Lime mud:	
Components	
Lime	20
Bentonite	50
Lignosulfonate	15
Lignite	10
Barite	180
Caustic	[illegible]
Drilled solids	150
Soda ash/sodium bicarbonate	[illegible]
Freshwater	(1)
4. Nondispersed mud:	
Components	
Bentonite	15
Acrylic polymer	[illegible]
Barite	180
Drilled solids	70
Freshwater	(1)
5. Spud mud (slugged intermittently with seawater):	
Components	
Attapulgite or bentonite	50
Caustic	[illegible]
Drilled solids	100
Barite	50
Soda ash/sodium bicarbonate	[illegible]
Lime	1
Seawater	(1)
6. Seawater gel mud:	
Components	
Attapulgite or bentonite	50
Caustic	3
Cellulose polymer	2
Drilled solids	100
Barite	50
Soda ash/sodium bicarbonate	2
Lime	[illegible]
Seawater or freshwater	(1)
7. Lightly treated lignosulfonate freshwater/seawater mud:	
Components	
Bentonite	50
Barite	180
Caustic	[illegible]
Lignosulfonate	[illegible]
Lignite	4
Cellulose polymer	2
Drilling solids	100
Soda ash/sodium bicarbonate	2
Lime	[illegible]
Seawater to freshwater ratio 1:1 approx.	(1)
8. Lignosulfonate freshwater mud:	
Components	
Bentonite	50
Barite	460
Caustic	[illegible]
Lignosulfonate	15
Lignite	10
Cellulose polymer	2
Drilling solids	100
Soda ash/sodium bicarbonate	2
Lime	[illegible]
Seawater to freshwater ratio	(1)

17. Mixing Zone—the zone extending from the sea's surface to seabed and extending laterally to a distance of 100 meters in all directions from the discharge point or to the boundary of the zone of initial dilution as calculated by a plume model or other method approved by the Regional Administrator.

18. Background seawater concentration:

Waste constituent	Cs (mg/l)
Arsenic	[illegible]
Cadmium	[illegible]
Total chromium	0.000
Copper	0.002
Lead	0.000
Mercury	[illegible]
Nickel	0.00
Silver	0.00016
Zinc	[illegible]
Cyanide	[illegible]
Phenolic compounds	0.0

D. Field Monitoring Study

Within six (6) months of the effective date of this permit, permittees shall jointly commence the implementation of the monitoring program described in "Monitoring Program Requirements for Assessing Impacts from Offshore Oil and Gas Discharges" (Technical Resources, Inc., 1985). The existing platform monitoring program (Section 3.1) shall be completed within eighteen (18) months of the effective date of this permit. A final report of the results of the study shall be submitted to EPA, Region 9 within two (2) months of completion of the monitoring program. Quarterly progress reports shall be submitted to EPA, Region 9 during the course of the study. The first progress report is due three (3) months after commencement of the study.

Permittees shall also jointly conduct the new platform study described in section 3.2 of the above document. The schedule for this study shall be coordinated with the installment dates for new platforms to be studied and the sampling schedule specified on page 32 of the study document. Quarterly progress reports shall be submitted to EPA Region 9 during the course of the study. The first progress report is due three (3) months after the commencement of the study. Should a monitoring program similar to the new platform study be undertaken by the Minerals Management Service, permittees may substitute such work for the requirements of this condition to the extent that the alternate study satisfies the requirements of the new platform study.

E. Toxicity Tests for Northern Anchovy

Within twelve (12) months of the effective date of this permit, permittees shall provide to the Regional Administrator, EPA, Region 9, the results of bioassays conducted with the northern anchovy as the test organism, using samples of each of the eight (8) generic muds listed in Condition III.C.16. The bioassays shall be conducted in accordance with a procedure developed by permittees (adapted from other bioassay procedures using drilling mud) and approved by the Regional Administrator, Region 9, in writing prior to use.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2577/Pub. L. 99-88
Supplemental Appropriations Act, 1985. (Aug. 15, 1985; 99 Stat. 293) Price: $2.00

H.R. 2908/Pub. L. 99-89
Indian Education Technical Amendments Act of 1985. (Aug. 15, 1985; 99 Stat. 379) Price: $1.00

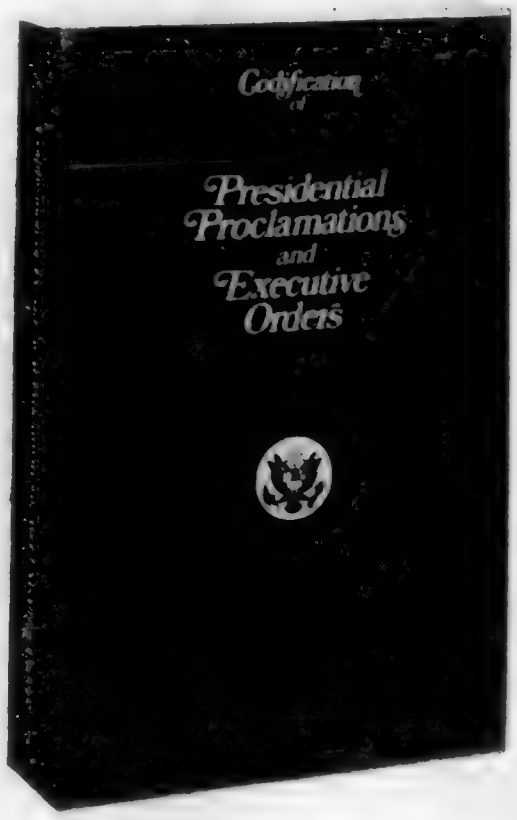
S.J. Res. 98/Pub. L. 99-90
Condemning the passage of Resolution 3379, in the United Nations General Assembly on November 10, 1975, and urging the United States Ambassador and United States delegation to take all appropriate actions necessary to erase this shameful resolution from the record of the United Nations. (Aug. 15, 1985; 99 Stat. 385) Price: $1.00

S. 1147/Pub. L. 99-91
Orphan Drug Amendments of 1985. (Aug. 15, 1985; 99 Stat. 387) Price: $1.00

H.R. 2370/Pub. L. 99-92
Nurse Education Amendments of 1985. (Aug. 16, 1985; 99 Stat. 393) Price: $1.00

H.R. 2068/Pub. L. 99-93
Foreign Relations Authorization Act, Fiscal Years 1986 and 1987. (Aug. 16, 1985; 99 Stat. 405) Price: $1.25

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National Oceanic and Atmospheric Administration
Loan Programs—Health
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Marketing Agreements
Agricultural Marketing Service
Meat Inspection
Food Safety and Inspection Service

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 736

[Amdt. No. 1]

Grain Warehouses; Inspection Fees

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations for federally licensed grain warehouses (7 CFR 736).

The effect of this rule is to: (1) Allow for examination of a warehouse upon the request of the license holder and provide a fee for that examination; (2) provide for an examination after license suspension and provide a fee therefor; and (3) adjust fees charged for examinations to provide for an additional fee when a warehouseman has multiple warehouse locations under a single license. This rule is promulgated under the authority of the United States Warehouse Act as amended.

DATE: Effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Harry J. Wishmire, 202–475–4028. Warehouse Division, U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 17, 1986.

Merrill D. Marxman, Deputy Administrator for Commodity Operations, ASCS, has determined that this action (1) is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State or local government, or a geographic region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

In compliance with 5 CFR Part 1320 Controlling Paperwork Burdens on the Public, which implements the Paperwork Reduction Act of 1980, Pub. L. 96–511, the information collection requirements, if any, resulting from these revisions—specifically reporting requirements—have been submitted to the Office of Management and Budget for review. Comments concerning the information collection requirements contained in these rules may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer, ASCS/USDA, Washington, D.C. 20503, Telephone (202) 395–7340.

Merrill D. Marxman, Deputy Administrator for Commodity Operations, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities and imposes no additional economic costs on small entities. Therefore, no regulatory flexibility analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. In addition, it will not adversely affect environmental factors such as wildlife habitat, water quality, or land use and appearance. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required and none was prepared.

This action will not have a significant impact specifically upon area and community development, therefore review as established by Executive Order 12372 was not used to assure that units of local government are informed of this action

Background: The U.S. Warehouse Act (Act) (7 U.S.C. 241 *et seq.*) provides for the licensing of warehousemen who apply to the Secretary of Agriculture and meet statutory and regulatory standards. The primary objectives of the Act are to: (1) Protect producers and others who store their property in public warehouses; (2) assure the integrity of warehouse receipts as documents of title thereby facilitating trading in interstate commerce of agricultural commodities; and (3) set and maintain a standard for sound warehouse operations.

Changes in the economy, governmental administrative policy, the grain warehousing industry and needs of grain warehousemen have necessitated the Department to review on a continuous basis operations and requirements under the Act. Accordingly, rules and regulations have been promulgated by the Department from time to time, under authority of section 28 of the Act for the efficient execution of provisions of the Act.

Accordingly, a notice of proposed rulemaking was published by the Department in the **Federal Register** on Friday, June 28, 1985, requesting comments with respect to several proposals regarding changes in the regulations for grain warehouses. The comment period was for thirty days and ended on July 29, 1985.

Amendments to the regulations were proposed which would (1) allow for examination of a warehouse upon the request of the license holder and provide a fee for that examination; (2) provide for an examination after license suspension and provide a fee therefor; and (3) adjust fees charged for examinations to provide for an additional fee when a warehouseman has multiple warehouse locations under a single license.

One comment was received. This was from a grain warehouseman/dealer who operates a number of warehouses licensed under the Act and located in several States. Some of these licenses cover more than one warehouse and consequently the annual fees payable by the company will be affected. The company questioned if the new fees, which are based on capacity and number of locations, were reasonably indicative of the actual examination cost. The commenter pointed out that the record for multiple locations under one license are consolidated and that the proposed fee schedule does not take into consideration savings in time needed for examination of such records

as compared with number of single location warehouses.

Many cost factors were considered in establishing the fee such as number of and distance between locations, capacity, number and type of storage containers at each location, access to individual containers, and volume and availability of records. While all of these factors impact on the cost of an examination, many of them cannot be measured accurately or easily enough to be used in a fee schedule. Further, savings in one factor such as consolidation of records is often offset by increased costs because of distance between locations. Therefore, only the number of locations and capacity, which can be definitively measured, were included in the fee. Accordingly, it has been determined that all provisions of the proposed rule should be adopted as a final rule.

List of Subjects in 7 CFR 736

Administrative practice and procedure, Grain, License fees, Warehouses.

Final Rule

PART 736—GRAIN WAREHOUSE

Accordingly, the regulations for grain warehouses (7 CFR Part 736) are amended as follows:

1. The Authority Citation for 7 CFR Part 736 will continue to read as follows:

Authority: Sec. 28, 39 Stat. 490 (7 U.S.C. 268).

2. Section 736.58 is revised to read as follows:

§ 736.58 Warehouse inspection fees

(a) A fee shall be charged and collected:

(1) For each original examination or inspection, or reexamination or reinspection for modification of an existing license, of a warehouse under the Act computed at the rate of $10 for each 10,000 bushels of storage capacity or fraction thereof but not less than $100 nor more than $1,000;

(2) For each examination of a licensed warehouse, requested in writing by the warehouseman, computed at the rate of 75 percent of the annual fee under paragraph (b) of this section applicable to warehouses not having a Uniform Grain Storage Agreement (The request must state the purposes of the examination and contain an agreement to pay all required costs. The Secretary may refuse any such request if performing the examination would affect the Department's performance of regular program responsibilities.); and

(3) For each examination of a warehouse whose license has been suspended, the suspension is determined to be justified, and reinstatement is requested by the warehouseman, computed at the rate of 100 percent of the annual fee under paragraph (b) of this section applicable to warehouses not having a Uniform Grain Storage Agreement.

(b) Each warehouseman shall pay an annual fee computed in accordance with this subsection using the table set forth below. The fee will be assessed and payable when bond is first furnished for acceptance by the Secretary and annually thereafter on the bond renewal date. The fee will be determined by computing the amount due for each identifiable location under the license and adding those amounts together to determine the total amount due for the license. The warehouse capacity at each location will be determined by the Secretary. The total capacity of all warehouses at all locations shall not exceed the capacity stated in the current warehouse license. An identifiable location is a fully functional facility operated as a public warehouse as determined by the Secretary. An outlying unit which is not a fully functional operating facility is included under the nearest fully functional operating facility.

ANNUAL FEE TABLE

Location grain capacity (bushels)	Annual fee (dollars) for each warehouse location with uniform grain storage agreement	Annual fee (dollars) for each warehouse location without uniform grain storage agreement
1 to 150,000	100	200
150,001 to 250,000	200	400
250,001 to 500,000	300	600
500,001 to 750,000	400	800
750,001 to 1,000,000	500	1,000
1,000,001 to 1,200,000	600	1,200
1,200,001 to 1,500,000	700	1,400
1,500,001 to 2,000,000	800	1,600
2,000,001 to 2,500,000	900	1,800
2,500,001 to 5,000,000	1,000	2,000
5,000,001 to 7,500,000	1,100	2,200
7,500,001 to 10,000,000	1,200	2,400
100,000,001+	[1] 1,200	[2] 2,400

[1] Plus $30 per million bushels of capacity above 10 million or fraction thereof.
[2] Plus $60 per million bushels of capacity above 10 million or fraction thereof.

* * * * *

Signed at Washington, D.C. on August 19, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-20235 Filed 8-22-85; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 907

Navel Oranges Grown in Arizona and Designated Part of California; Independent Member Nomination Procedure

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule established procedures for the nomination of independent grower and handler members, alternate members, and additional alternate members to the Navel Orange Administrative Committee. This action is designed to encourage greater voter participation in the nomination process.

EFFECTIVE DATE: August 23, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order 907, as amended (7 CFR Part 907, 50 FR 1429, 4957) regulating the handling of navel oranges grown in Arizona and a designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (U.S.C. 601-674) ("the act"). It is hereby found that this final rule will tend to effectuate the declared policy of the act.

A proposed rule was published in the **Federal Register** (50 FR 7605) on February 25, 1985, to establish procedures for nominating independent grower and handler members, alternates and additional alternates to the Navel Orange Administrative Committee (NOAC), which operates under the order. As provided in § 907.22, such nominees shall be nominated by growers who are not affiliated with a cooperative marketing organization. NOAC recommended the changes in the nomination procedures in accordance with an amendment to the marketing order which became effective January 11, 1985.

The notice provided that interested persons could file views and comments on the proposal until March 27, 1985.

Comments were filed by NOAC, LoBue Bros., Sequoia Orange Company, Inc., Capital Legal Foundation on behalf of the Sequoia Orange Company, Inc., Nash-DeCamp Co., Sunny Cove Citrus, The Rayo Co., Riverbend Farms Inc., Sun World International, Cecelia Orchards Packing Corp., and Kings River Packing Co.

NOAC commented that the present practice of holding five meetings is inefficient. Specifically, NOAC cited the relatively light attendance at previous nomination meetings. Consequently, NOAC concluded that a minimum of two meetings will sufficiently fulfill the needs of the growers. Practically all of the navel orange producing acreage is located in Districts 1 and 2 and holding meetings in such locations would accommodate the greatest number of growers. None of the other comments received concerned these issues. Thus, the final rule provides that a minimum of two meetings, one each in District 1 and 2, should be held.

A petition form approved by the committee should be used for the purpose of obtaining evidence of industry support of any potential nominee. In the proposed rule comments were requested with respect to the required number of producer signatures for petitions submitted in person and by mail. NOAC recommended a minimum of twenty signatures if obtained by mail, and a minimum of five if obtained at a meeting. NOAC asserted that such a difference would provide an incentive to attend the meetings. The Capital Legal Foundation argued against such differing requirements and pointed out that the primary purpose of mail balloting is to encourage greater participation and not necessarily to promote greater attendance at meetings. For that reason it is concluded that the same number of signatures for a petition collected by mail or at meetings should be established. Also, in order to provide sufficient evidence of industry support, the final rule establishes a minimum of 10 eligible signatures on such petitions.

The comment submitted by NOAC suggested a modification of the proposal to provide that the name of the person receiving the highest number of votes for each of the handler positions shall be submitted to the Secretary as the nominee for such position. The names of the persons receiving the highest and second highest total number of votes for each of the grower positions shall be submitted to the Secretary as the nominees for such positions. This suggested modification is appropriate and consistent with provisions of the order which specify that independent marketing organizations should be represented on the committee by one handler member, an alternate member and an additional alternate member and two grower members, two alternate grower members, and two additional alternate grower members. Therefore, this modification is incorporated in the final rule. The comment submitted by NOAC suggested that a candidate for an independent grower position should only declare whether he or she is running for the member, alternate member or additional alternate member position. The final rule requires that persons submitting their names for candidacy specify the position for which they wish to be nominated (i.e. member, alternate, or additional alternate).

The comment submitted by Capital Legal Foundation indicated that mail balloting procedures should be sufficiently flexible to permit alignment of positions to allow candidates to run on a slate. The final rule does not preclude alignment of positions to afford candidates the opportunity to run on a slate if they desire to do so.

The Capital Legal Foundation commented that the ballots sent to growers should provide information beyond the names of the candidates, especially since one of the primary objectives of mail balloting is to increase grower participation. It said the ballot should therefore contain the mailing address and phone number for each candidate, a brief resume of each candidate's background qualifications, and a statement of reasonable length prepared by each candidate setting forth his or her views on matters of concern to the voters. The committee is authorized to include with the ballot such information about the candidates as it considers appropriate to inform growers voting in the nominations. This information should be obtained from the candidates on the petition form previously discussed.

Several comments were filed suggesting that in tabulating ballots producer votes should be weighted by the volume of production or the acreage under control of the producer as of January 1 of the year in which nominations are made. It was suggested that weighting votes on such basis (e.g. one vote for each acre) would allow for grower representation in committee decision making to be based on the quantity of oranges produced by each grower. It was also suggested that weighted votes would eliminate the incentive to proliferate grower entities as a method of obtaining unwarranted influence in the decision making process. The comment filed by NOAC opposed weighting of votes according to production (or acreage). The view was expressed that the interests of the greatest number of growers could best be served by allowing each grower an equal voice in choosing committee members.

The merits of the opposing views on the weighing of votes cast in nominations were carefully considered. The view was expressed that the current method of allowing each grower entity one vote provides an incentive to divide large grower entities into smaller grower entities each having a vote in the election. However, there is no evidence to indicate that there has been an increase in the number of grower entities for such purpose. In fact, available information indicates that the total number of growers of California-Arizona navel oranges is declining.

Section 907.22(e) provides that when voting for nominees, each grower shall be entitled to cast one vote. It also provides that the votes of cooperative marketing organizations voting in the "other cooperative" category shall be weighted in accordance with the volume of oranges handled during the year in which such nomination was made. There is no provision for weighting votes cast for independent members.

The California-Arizona navel orange industry consists essentially of small entities. Weighting of votes of growers in nominations could subordinate the interests of smaller growers to those of larger growers in committee decision making. Under current procedures each grower has an equal vote in elections irrespective of the volume of production or number of acres. As a consequence, nominees for positions on the committee tend to represent the consensus of growers in that category. This method of choosing nominees has been the custom under the order and has proved to be satisfactory and no change in such method is adapted in this rule.

Each person who produces navel oranges for market as an individual is considered a legal entity and each partnership, family enterprise, corporation, estate or trust is considered one legal entity. Thus, each legal entity is considered to be one producer for purposes of nominating committee members.

NOAC and several independent growers and handlers submitted comments concerning producer eligibility to nominate (i.e. vote for) independent members, alternate members, and additional alternate members to the NOAC. These comments generally indicated that producers who deliver any portion of their navel

oranges to handlers which are not cooperative marketing organizations (independent handlers) should be eligible to vote for nominees for independent positions. The comments suggested that unless voting is conducted in this manner producers who deliver any portion of their fruit to cooperative marketing organizations but are not members of such organizations would be disenfranchised in the elections for representatives from the independent sector. The comments suggested that only a small number of growers deliver to both independent and cooperative handlers and no significant problems are anticipated in handling nominations in this manner. Thus, this final rule so provides. The notice also contained a proposal concerning producer eligibility to serve on NOAC in any of these positions. In addition, one comment filed by LoBue Bros. Inc., proposed a definition of the term cooperative marketing organization.

While such a definition is related to the nomination procedure, it is more directly related to the criteria the Secretary uses in selecting nominees as is to serve on the committee. Since these issues are applicable to both the NOAC and Valencia Orange Administrative Committee membership, it is appropriate that such eligibility requirements be treated in a separate rulemaking proceeding. Thus, the comment proposing a definition of a cooperative marketing organization is denied.

It is found that it is impracticable and contrary to the public interest to postpone the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making this rule effective as specified in that: (1) The January 11, 1985, amendment of § 907.22 authorizes mail balloting for nominating independent members to the committee; (2) nominations for those positions on the committee have been delayed since last fall and preparations will take some time to complete; and (3) no useful purpose would be served by delaying the effective date of this rule.

In accordance with the Paperwork Reduction Act of 1980 (4 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this final rule are not effective until they are approved by the Office of Management and Budget (OMB).

List of Subjects in 7 CFR Part 907

Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

i. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Paragraphs (a)(3), (4), and (5) of § 907.102 are removed and a new paragraph (a)(3) is added to read as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.102 Nomination procedure.

(a)* * *

(3) Candidates for the member, alternate member and additional alternate member positions referred to in § 907.22(d) shall be nominated in accordance with the following procedures: (i) Any producer who in the current fiscal year is not affiliated with a cooperative marketing organization and delivered navel oranges to handlers which are not cooperative marketing organizations shall be eligible to vote for nominees. (ii) For the purpose of selecting candidates for nominations, the committee shall hold meetings in two or more districts, including one meeting each in Districts 1 and 2, prior to August 1 of each even-numbered year, or at other times as necessary to fill vacancies. Timely notice of such meetings shall be given by the committee to each eligible producer of record. (iii) Candidates shall be selected at the meetings by submitting their names on a form approved by the committee and signed by at least 10 eligible individuals (growers). Such form shall be used for the purpose of determining the qualifications of a candidate and may provide the opportunity to submit additional background material (such as resumes) as the committee may request. (iv) A person may also become a candidate without attending a candate selection meeting by submitting his or her name on a form approved by the committee, as specified in paragraph (a)(3)(iii) of this section, to the headquarters office of the committee and signed by at least 10 eligible individuals (growers). Such submittal, if mailed, must be postmarked at least 10 days prior to the date of the first of the district meetings held pursuant to paragraph (a)(3)(ii) of this section, and if hand delivered, must be received at least 5 days prior to such date. (v) Persons submitting their names for candidacy shall specify the position (i.e. grower or handler member, alternate, or additional alternate) for which they wish to be nominated. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the committee prior to the date on which the ballots are prepared for mailing to eligible producers. (vi) Following the candidate selection meetings, the committee shall mail to all eligible producers of record a ballot containing the names of the candidates for each available position. At the discretion of the committee, the ballot may include such other information about such candidates as was included on the candidate form specified in paragraph (a)(3)(iii) of this section and as the committee deems appropriate. Separate ballot forms shall be used in voting for handler nominees and producer nominees. A vote may be cast only for those candidates who have been selected according to the procedures set forth herein. (vii) In order to be valid, ballots must be executed in accordance with the instructions set forth on the ballot, and returned to the Secretary's agent at the location and within the time period prescribed. The validity of ballots shall be determined by the Secretary's agent, with such assistance from the committee as may be requested by the agent. (viii) The name of the person receiving the highest total number of votes for a particular handler position shall be submitted to the Secretary as the nominee for such position. The names of the persons receiving the highest and second-highest total number of votes for each of the grower positions shall be submitted to the Secretary as the nominee for such positions.

Dated: August 20, 1985.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 85–20234 Filed 8–22–85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1076

Milk in the Eastern South Dakota Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: The action suspends for the months of August 1985 through February 1986 provisions of the Eastern South Dakota milk order relating to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market. The suspension is needed to prevent uneconomic movements of milk.

EFFECTIVE DATE: August 23, 1985.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 1, 1985; published August 5, 1985 (50 FR 31605).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern South Dakota marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 5, 1985 (50 FR 31605) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1985 through February 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1076.13, paragraphs (c) (2) and (3)

Statement of Consideration

This action removes for the months of August 1985 through February 1986 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The suspension was requested by Land O'Lakes, Inc. (LOL), an association of producers that supplies most of the market's reserve milk supplies.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

The suspension is necessary because the amount of milk pooled under the order by LOL in the first six months of 1985 has increased 8.8 percent over the amount pooled during the same period of 1984 while deliveries to pool distributing plants have decreased from 1984 levels by about 2.5 percent. Increases in producer milk deliveries are expected to continue.

Operation of the 35-percent diversion limit during August through February would require LOL to deliver 65 percent of its milk to pool plants. According to the cooperative's estimates, only 35 to 40 percent of its milk will be needed at distributing plants. Without suspension of the diversion limit the balance of LOL's members' milk would have to be delivered to a supply plant, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL and its member producers, with no offsetting benefits to other market participants.

In comments filed in response to the proposed suspension, LOL estimated that for the month of August 1985 only 33 percent of its member milk pooled under the Eastern South Dakota order would be required by pool distributing plants. According to LOL, most of the remaining 67 percent would have to be received first at the LOL supply plant and then transferred to manufacturing facilities in order to qualify for participation in the marketwide pool. LOL characterized such unnecessary handling and hauling as expensive and serving no useful purpose.

In view of these circumstances, it is concluded that the diversion limits in the Eastern South Dakota milk order should be suspended for the months of August 1985 through February 1986 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1076

Milk marketing orders, Milk, Dairy products.

PART 1076—[AMENDED]

The authority citation for Part 1076 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

It is therefore ordered, that in § 1076.13, paragraphs (c) (2) and (3) are hereby suspended for the months of August 1985 through February 1986.

Effective Date. August 23, 1985.

Signed at Washington, D.C., on August 19, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 85-20191 Filed 8-22-85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1472

Loans, Purchases, and Other Operations; Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1985)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This interim rule amends the regulations at 7 CFR Part 1472 governing the Commodity Credit Corporation's (CCC) price support program for shorn wool and unshorn lambs (pulled wool) with respect to: (1) Marketings of shorn wool eligible for price support payments; (2) definitions which are applicable to the program; (3) producer eligibility for price support payments; (4) contents of sales documents which are submitted in support of price support payment applications; and (5) the deletion of certain obsolete references.

EFFECTIVE DATES: This interim rule shall become effective on August 23, 1985. Comments must be received on or before October 22, 1985 in order to be assured of consideration.

ADDRESS: Send comments on the interim rule to: Director, Emergency Operations and Livestock Programs Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to this rule will be made available for public inspection in Room 4095 South Building, USDA, between the hours of 8:15 AM and 4:45 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Telephone (202) 447–5621.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1472) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560–0023 has been assigned.

This interim rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with the State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Since the marketing of 1985 crop wool has begun, it has been determined that the provisions of this interim rule must be effective August 23, 1985. However, comments on this interim rule are requested and must be received not later than 60 days from the date of publication in the **Federal Register** in order to be assured of consideration. A final rule will be published discussing any amendments which are determined to be necessary.

Section 708 of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall determine the amounts, terms, and conditions of the wool price support program. This interim rule amends the regulations which relate to program operations and the price support program for shorn wool and unshorn lambs (pulled wool) for the 1985 marketing year, particularly with regard to the conditions under which price support payments will be made. The wool price support program is designed to encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner which will assure a viable domestic wool industry. A review by the Office of the Deputy Administrator, State and County Operations (DASCO) of the Agricultural Stabilization and Conservation Service (ASCS) of a select number of 1983 shorn wool applications for payment and supporting documentation has revealed marketing practices which defeat the purposes of the program. This interim rule amends the regulations set forth at 7 CFR Part 1472 to prevent these practices.

Definitions

The regulations at 7 CFR 1472.1504 currently set forth the definitions of certain terms which are applicable to this subpart. This interim rule amends this section by redesignating the current definitions in § 1472.1504 in alphabetical order and adding the definitions of the following terms: (1) "Deputy Administrator"; (2) "family member"; (3) "grease wool"; (4) "shorn wool"; (5) "wool"; and (6) "wool incentive payment rate".

The definition of "shorn wool" has been added to ensure that there is no doubt or opportunity for the misinterpretation of the phrase. "Shorn wool" is defined as grease wool that has been sheared from live sheep or lambs, including black wool, tags crutchings, and murrain or other wool removed from dead animals. The definition of "shorn wool" would not include pelts or wool sheared from pelts, scoured, carbonized, or dyed wool or yarn, skeins or other terms which identify the wool as being other than in its natural grease weight state.

It has also been determined that the phrase "family member" needs to be defined in the regulations. This is necessary since § 1472.1507(c) has been amended to provide that a sale of wool to a family member is not considered to be a bona fide marketing. Therefore, the definition of "family member" has been added to the regulations at § 1472.1504 and means a person who is (a) a parent or grandparent of the producer; (b) the spouse of the producer; (c) a lineal descendant of the producer or the producer's spouse; (d) the spouse of any lineal descendant of the producer or the producer's spouse; (e) a brother or sister of the producer or the producer's spouse, or (f) a spouse of a brother or sister of the producer or the producer's spouse.

In addition, the definition of "sales document" has been amended to ensure that a producer does not receive a price for wool that would be inflated beyond the price for quality, type, and grade of the wool which the producer is marketing. This change in definition will result in marketing practices which encourage the sale of wool at fair prices by assuring that a producer does not sell wool to persons or businesses in a manner which would enable the producer to receive inflated prices for such marketings.

Price Support Payments

The regulations at 7 CFR § 1472.1505(a) provide that price support payments will be made on the basis of shorn wool marketed in a specified marketing year. Since the definition of shorn wool has been added at 7 CFR § 1472.1504, § 1472.1505(a) has been amended by deleting the reference to those marketings of wool which are not eligible for price support payments. Only shorn wool, as defined in § 1472.1504, would be eligible for such payments made in accordance with § 1472.1505(a).

The regulations at 7 CFR § 1472.1505(b) are amended to provide that the price support payment rate for shorn wool shall be determined and

announced by the Executive Vice President, CCC, or his designee, at the end of each specified marketing year.

Eligibility for Payment

The regulations at 7 CFR § 1472.1506 set forth the eligibility requirements for price support payments for shorn wool. This interim rule amends § 1472.1506 by designating the introductory paragraph as paragraph (a) and redesignating the remaining paragraphs accordingly. Redesignated § 1472.1506(a) has been revised to clarify that no payment will be made unless a producer has complied with all of the requirements of § 1472.1506. Redesignated § 1472.1506(b) is revised to provide that, with respect to joint applications for payment, only those marketings which are bona fide sales, as defined in § 1472.1507(c), will be eligible for price support payments. Newly redesignated § 1472.1506(c) is amended to incorporate the definition of shorn wool as set forth in § 1472.1504.

Previously, redesignated § 1472.1506(g) provided that only bona fide marketings of shorn wool would be eligible for price support payments. This interim rule amends § 1472.1506(g) to provide that shorn wool which has been processed in any manner into a wool product, as determined by the Deputy Administrator, shall not be eligible for price support payments. The purpose of this change is to ensure that only grease basis wool will be eligible for a wool price support payment. For example, processing the wool into wool products, such as yarn, wool yarn, skeins, novelty items made from wool or other products of this nature, will make the wool ineligible for price support payments.

The regulations at 7 CFR § 1472.1509(b) are similarly amended to provide that wool products shall not be eligible for price support payments.

Bona Fide Marketings.

In the review of the program which was conducted by DASCO, it was determined that in the number of instances producers sold wool to, or exchanged wool with, purchasers and received compensation in the form of wool or a wool product with no price established for the wool. This practice, it was found, often occurred with respect to the sale of wool among family members. These kinds of transactions are not considered bona fide marketings because they fail to establish a fair price for wool if indeed an actual sale does occur. Accordingly, the regulations at 7 CFR § 1472.1507(c) have been amended to provide that the sale of wool by a producer to a family member is not considered a bona fide marketing.

Furthermore, in order to make certain that producers do not receive inflated prices for their wool, the regulations at § 1472.1507(c) have been amended to provide that wool sold by a producer to a business in which the producer has more than a 20 percent interest shall not be considered to be a bona fide marketing.

The review of the program also disclosed the occurrence of sales of wool by producers to persons not previously engaged in the business of buying wool. These transactions are not bona fide marketings unless evidence is submitted, to the satisfaction of CCC, that such marketings have occurred. The review further revealed attempts to submit to CCC documents representing sales, transfers, or other arrangements with respect to wool which were fictitious or not legally binding. An example of such schemes are sales of wool where a part or all of the purchase price or product is returned to the purchaser in the form of money or merchandise, either directly from the seller or through other persons. These practices defeat the purpose of the wool price support program which is designed to encourage the domestic production of wool at prices fair to both producers and consumers. It was therefore, determined that the regulations, at § 1472.1507(c) should be revised to clearly set forth the requirements in addition to the prohibitions against a producer selling wool to a family member or to a business in which the producer has more than a 20 percent interest, which producers must meet in order to become eligible to receive price support payments for their marketings of shorn wool. These requirements provide that, in order to be considered as a bona fide marketing, the wool must be sold to a person or business engaged in the business of buying and selling grease basis wool and must be based upon a reasonably appraised price for wool.

In addition, the regulations at § 1472.1507(d) are amended to explain the basis for the exchange of wool for merchandise or service and to explain the relationship of such an exchange with the bona fide marketing of wool.

Sales Documents

The regulations at 7 CFR § 1472.1510 enumerate the information which must be listed on a sales document which is submitted to CCC for the purpose of verifying a price support payment application. In order to ensure that proper documentation is presented to the CCC, this interim rule amends § 1472.1510(a) to provide that any sales documents which are prepared by the purchaser of wool must have the original signature of the purchaser of the signature of an authorized representative of the purchaser. In order to obtain adequate information with respect to the quantity of wool which is sold by a producer, this interim rule amends § 1472.1510 to provide that all sales documents must contain the net weight of the wool sold on a grease basis. This change in the regulations is made to ensure that no price support payment is made for shorn wool which has been sold but which does not clearly meet the definition of shorn wool as defined in § 1472.1504. Accordingly, §§ 1472.1510 (a)(3) and (8) and (b)(3) are amended to require that sales documents reflect the quantity of wool marketed on a grease basis.

List of Subjects in 7 CFR Part 1472

Price support programs, Wool.

Interim Rule

PART 1472—WOOL

Accordingly, the regulations at 7 CFR Part 1472 are amended as follows:

1. The authority citation for 7 CFR Part 1472 (Subpart—Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1982–1985) continues to read:

Authority: Secs. 4 and 5, 62 Stat. 1070 as amended (15 U.S.C. 714B and 714C); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

2. In Part 1472, the Subpart—Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1974–1977) is removed.

3. In Part 1472, the Table of Contents is amended by revising the entry for § 1472.1507 and adding an entry for § 1472.1556 as follows:

* * * * *

1472.1507 Bona Fide Marketing Within a Specified Marketing Year

* * * * *

1472.1556 OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act.

* * * * *

4. Section 1472.1504 is amended by removing paragraph designations (a) through (n), rearranging the definitions in alphabetical order, revising the introductory paragraph and the term "sales document", and adding new definitions to read as follows:

§ 1472.1504 Definitions.

In determining the meaning of the provisions of this subpart, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular,

words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

"Family member" means a person who is (a) a parent or grandparent of the producer; (b) the spouse of the producer; (c) a lineal descendant of the producer or the producer's spouse; (d) the spouse of any lineal descendant of the producer or the producer's spouse; (e) a brother or sister of the producer or the producer's spouse or (f) a spouse of a brother or sister of the producer or the producer's spouse.

* * * * *

"Grease wool" means wool as it comes from the sheep or lambs before applying any process to remove the natural oils or fats.

* * * * *

"Sales document" means the account of sale, invoice, bill of sale, or other related document prepared by the purchaser evidencing the sale by the producer of shorn wool or unshorn lambs to the purchaser.

"Shorn wool" means grease wool sheared from live sheep or lambs, including black wool, tags, crutchings, and murrain or other wool removed from dead animals. Shorn wool does not include pelts or wool sheared from pelts, scoured, carbonized, or dyed wool or yarn, skeins or other terms which identify the wool as being other than in its natural greasy state.

* * * * *

"Wool" means, unless otherwise indicated, shorn wool.

"Wool price support payment rate" means the percentage required to bring the national average price received by all producers for the sale of shorn wool up to the support price.

5. Section 1472.1505 is revised to read as follows:

§ 1472.1505 Price support payments.

(a) *General.* With respect to each specified marketing year, price support payments on shorn wool marketed in each marketing year will be made available to producers in accordance with the provisions of this subpart.

(b) *Announcement of wool price support payment rate.* The wool price support payment rate shall be determined and announced by the Executive Vice President, CCC, or the Executive Vice President's designee at the end of each specified marketing year.

6. Section 1472.1506 is amended by designating the introductory paragraph as paragraph (a), redesignating paragraphs (a) through (g) as paragraphs (b) through (h), respectively, and revising newly redesignated paragraphs (a), (b), (c), and (h) as follows:

§ 1472.1506 Eligibility for payments.

(a) To be eligible for a payment with respect to shorn wool under this subpart, all requirements of this section must be fulfilled.

(b) Except as provided in § 1472.1544, the applicant must be the producer of shorn wool. In the case of a joint application for payment, each applicant must be a producer of shorn wool which is marketed in accordance with the provisions of § 1472.1507(c).

(c) The wool must have been shorn in the United States. If wool is shorn from imported sheep or lambs while they are held in quarantine in connection with their importation into the United States, such wool shall not be considered to have been shorn in the United States.

* * * * *

(h) Payments made in accordance with this subpart shall only be made with respect to bona fide marketings of shorn wool. The sale of shorn wool which has been altered in any manner through processing, other than scouring or carbonizing as provided in § 1472.1510(a)(3), or any other process or act that results in a wool product, as determined by the Deputy Administrator, is not eligible for payment under this subpart.

7. Section 1472.1507 is amended by revising the section heading and paragraphs (b), (c), (d), and (e) to read as follows:

§ 1472.1507 Bona fide marketing within a specified marketing year.

* * * * *

(b) A promissory note or other promise to pay, as well as a check not honored for any reason, shall not be considered as a payment to the producer unless the Deputy Administrator makes a determination that: (1) The producer acted in good faith in marketing the wool; (2) a bona fide marketing occurred; (3) the wool was not returned to the producer; (4) the producer was not aware and had no reason to suspect that the document tendered in payment for the wool was not worth its face value at the time of acceptance of the document, and (5) the producer made a diligent effort to obtain payment for the wool from the purchaser. Notwithstanding the foregoing provisions of this paragraph, the price utilized for the purpose of computing the net sales proceeds under the provisions of § 1472.1508 shall not exceed the fair market value of the wool as determined by the Deputy Administrator.

(c) For the purpose of determining the amount of a price support payment, a bona fide marketing shall be deemed to occur when a producer relinquishes title to the shorn wool in exchange for a specific amount of money for each pound of wool tendered, or for services or merchandise of a specific monetary value as provided in paragraph (d) of this section. A sale of wool by a producer shall constitute a bona fide marketing if: (1) The wool is sold to a person or business which normally buys wool; (2) the producer selling the wool does not sell the wool to a family member or to any business in which the producer has more than a 20 percent interest; (3) the sale is based on a reasonably appraised price for wool; and (4) the person or business buying the wool is also engaged in the business of buying and selling grease basis wool and buys the wool in the course of that business.

(d) The exchange of wool for merchandise or services of a nature other than wool or wool product will be considered as a bona fide marketing if a definite price for the wool is established by the parties prior to the exchange. Such price, or whatever other price the Deputy Administrator determines is the fair market value for such wool, whichever is lower, shall be used for the purpose of computing the net sales proceeds under the provisions of § 1472.1508.

(e) The delivery of wool on consignment to a marketing agency to be sold for the producer's account does not constitute a marketing whether or not a minimum sales price is guaranteed or an advance against the prospective sales price is given by the consignee. Notwithstanding the foregoing, wool delivered to a marketing agency on consignment is deemed to have been marketed if the marketing agency: (1) has guaranteed a minimum sales price; (2) is unable to sell the wool for more than the minimum sales price, and (3) takes possession of the wool at the minimum sales price with the producer's consent. The producer shall be deemed to have consigned the wool when the wool has been transferred to a marketing agency and the producer provides that such agency shall market the wool and that the producer shall be entitled to the proceeds of such marketing.

8. Section 1472.1509 is amended by revising paragraph (b) to read as follows:

§ 1472.1509 Preparation of application.

* * * * *

(b) *Supporting documents.* The application shall be supported by the original sales document evidencing the sale of wool. The processing of shorn wool by a process or act which, as determined by the Deputy Administrator, produces a wool product, shall make the wool ineligible for a price support payment. Payment shall not be made on marketings of wool products, including items identified as yarn, wool yarn, skeins, or novelty items. Trimming, skirting and cleaning by scouring or carbonizing, provided the grease basis weight is established, does not make the wool ineligible for a price support payment.

* * * * *

9. Section 1472.1510 is amended by revising the introductory text of paragraph (a), (a)(3), (a)(8), the introductory text of (b), and (b)(3) to read as follows:

§ 1472.1510 Contents of sales documents.

* * * * *

(a) *Sales other than at farm, ranch, or local shipping point.* Each sales document, except a document which involves a direct sale of wool at the producer's farm, ranch, or local shipping point, must be prepared by either: The purchaser, in which case the original signature of the purchaser or the signature of an authorized representative of the purchaser must be entered on the sales document, or the applicant's marketing agency. Each sales document must include at least the following:

* * * * *

(3) The net weight of wool sold on a grease basis. If the wool was sold as scoured or carbonized wool, the original grease weight must be shown as well as the scoured or carbonized weight.

* * * * *

(8) The amount paid to the seller of the wool on a grease basis.

* * * * *

(b) *Sales at farm, ranch, or local shipping point.* Each sales document involving a sale of wool at the producer's farm, ranch or local shipping point which is attached to an application for a price support payment shall be prepared by the purchaser with the original signature of the purchaser and must contain at least the following:

* * * * *

(3) The net weight of wool sold on a grease basis. If the wool was sold as scoured or carbonized wool, the original grease weight must be shown as well as the scoured or carbonized weight.

* * * * *

10. Section 1472.1556 is added to read as follows:

§ 1472.1556 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1472) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0023.

Signed at Washington, D.C. on August 16, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85–20051 Filed 8–22–85; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

Proceedings To Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule.

SUMMARY: This rule establishes a three-month test program to improve the processing of detained aliens by extending the authority to issue or cancel an order to show cause or warrant of arrest, to determine amount and conditions of bond or conditions of release, and to determine applications for release or amelioration of conditions of release to include the chief patrol agent, deputy chief patrol agent, and assistant chief patrol agent at El Centro, California; Marfa, Texas; and Spokane, Washington; the assistant district director for deportation at Newark, New Jersey, and San Diego, California; and the assistant district director for examinations at San Francisco, California. These changes are intended to expedite the processing of aliens in deportation proceedings. If the test program is found to be effective, then a final rule with a request for comments will be promulgated.

EFFECTIVE DATE: August 23, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633–3048.

For Specific Information: Gregory S. Bednarz, Senior Special Agent, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633–2997

SUPPLEMENTARY INFORMATION: In order to improve the processing of detained aliens in deportation proceedings, the Service is establishing a three-month test program to extend the authority to issue or cancel an order to show cause or warrant of arrest, to determine amount and conditions of bond or conditions of release, and to determine applications for release or amelioration of conditions of release to include the following Service officers: chief patrol agent, deputy chief patrol agent, and assistant chief patrol agent at El Centro, California; Marfa, Texas; and Spokane, Washington; the assistant district director for deportation at Newark, New Jersey, and San Diego, CA; and the assistant district director for examinations at San Francisco, CA.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is unnecessary because this rule relates to agency organization and delegations of exercise of authority which are in the public interest.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This is not rule within the meaning of section 1(a) of E.O. 12291 as it relates to agency organization and management.

As this is a limited period test program, comments are not being requested. If the changes established under the test program are determined to promote the efficiency of the Immigration and Naturalization Service by expediting the processing of aliens in deportation proceedings, then a final rule allowing for public comments will be promulgated.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Authority delegation, Detention, Order to show cause, Cancellation proceeding.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for Part 242 of Title 8 continues to read as follows:

Authority: Secs. 103 and 242 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1252).

2. In § 242.1, paragraph (a) is revised to read as follows:

§ 242.1 Order to show cause and notice of hearing.

(a) *Commencement.* Every proceeding to determine the deportability of an alien in the United States is commenced by the issuance and service of an order to show cause by the Service. In the proceeding the alien shall be known as the respondent. Orders to show cause may be issued by:

(1) all district directors, acting district directors, deputy district directors, assistant district directors for investigations;

(2) the chief patrol agent, deputy patrol agent, and assistant chief patrol agent at El Centro, CA; Marfa, TX; and Spokane, WA; the assistant district director for deportation at Newark, New Jersey, and San Diego, CA; the assistant district director for examinations at San Francisco, CA; and

(3) officers in charge at Agana, GU; Albany, NY; Charlotte Amalie, VI; Cincinnati, OH; Hammond, IN; Memphis, TN; Milwaukee, WI; Norfolk, VA; Oklahoma City, OK; Pittsburgh, PA; Providence, RI; Salt Lake City, UT; St. Louis, MO; Spokane, WA.

* * * * *

3. In § 242.2, paragraph (a) is revised to read as follows:

§ 242.2 Apprehension, custody, and detention.

(a) *Warrant of arrest.* At the commencement of any proceeding under this part, or at any time thereafter and up to the time the respondent becomes subject to supervision under the authority contained in section 242(d) of the Act, the respondent may be arrested and taken into custody under the authority of a warrant of arrest. However, such warrant may be issued by no one other than:

(1) A district director, acting district director, deputy district director, assistant district director for investigations;

(2) The chief patrol agent, deputy chief patrol agent, and assistant chief patrol agent at El Centro, CA; Marfa, TX; and Spokane, WA; the assistant district director for deportation at Newark, New Jersey, and San Diego, CA; the assistant district director for examinations at San Francisco, CA; or

(3) Officer in charge of an office enumerated in § 242.1(a), and then only whenever, in his/her discretion, it appears that the arrest of the respondent is necessary or desirable. If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation. When a warrant of arrest is served under this part, the contents of the order to show cause shall be explained to the respondent, the reason for the arrest and his/her right to be represented by counsel of his/her own choice at no expense to the Government. He/she shall also be advised of the availability of free legal services programs qualified under Part 292a of this chapter, located in the district where the deportation hearing will be held. The respondent shall be furnished with a list of such programs, and a copy of Form I–618, Written Notice of Appeal Rights. Service of these documents shall be noted on Form I–213. He/she shall be advised that any statement made may be used against him/her. The respondent shall also be informed whether he/she is to be continued in custody or, if release from custody has been authorized, of the amount and conditions of the bonds or the conditions under which he/she may be released. A respondent on whom a warrant of arrest has been served may apply to any officer authorized by this section to issue such a warrant for release or for amelioration of the conditions under which he/she may be released. When serving the warrant of arrest and when determining any application pertaining thereto, the officers authorized by this section to issue warrants shall furnish the respondent with a notice of decision, which may be on Form I–286, indicating whether custody will be continued or terminated, specifying the conditions, if any, under which release is permitted, and advising the respondent appropriately whether he/she may apply to an immigration judge pursuant to paragraph (b) of this section for release of modification of the conditions of release or whether he/she may appeal to the Board. A direct appeal to the Board from a determination by an officer authorized by this section to issue warrants shall not be allowed except as authorized by paragraph (b) of this section.

* * * * *

4. In § 242.7, paragraph (a) is revised to read as follows:

§ 242.7 Cancellation proceedings.

(a) *Cancellation of an order to show cause.* Any officer authorized by § 242.1(a) of this part to issue an order to show cause may cancel an order to show cause or terminate proceedings prior to the actual commencement of the hearing under a served order to show cause provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States; or

(5) The proceedings were improvidently begun.

* * * * *

Dated: August 17, 1985.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 85–20163 Filed 8–22–85; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 83–041C]

Authorization to Manufacture Brands or Other Marking Devices Containing Inspection Legend; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects an illustration in a final rule published in the **Federal Register** on May 24, 1985, to require manufacturers of brands or other marking devices containing specified official inspection legends to obtain a certificate issued by FSIS that would authorize manufacture of these brands and other devices.

FOR FURTHER INFORMATION CONTACT: Irwin Dubinsky, Acting Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6735.

SUPPLEMENTARY INFORMATION: On May 24, 1985, the Food Safety and Inspection Service published a final rule in the **Federal Register** (50 FR 21420) amending certain sections under Parts 317 and 381 of the Federal meat and poultry inspection regulations.

§ 381.102 [Corrected]

This document corrects an error appearing on page 21423 of the May 24, 1985, **Federal Register** under Part 381. Punctuation marks in the illustration in figure 5 were incorrect; therefore, § 381.102 should be corrected to show the following as the new Figure 5:



All other information contained in the final rule remains unchanged.

Done at Washington, DC on: August 19, 1985.

L.L. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 85-20243 Filed 8-22-85; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 20, and 50

Minor Clarifying Amendment; Definitions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the domestic licensing of production and utilization facilities in order to rearrange the definitions section, which is currently arranged by alphabetical designators, into an undesignated alphabetical listing. This rearrangement will be easier to read and amend. In addition, cross references to specific paragraphs in § 50.2 are being revised in Parts 1, 20, and 50 to reflect the removal of designated paragraphs. This amendment is necessary to inform the public of this arrangement and clarifying change to NRC regulations.

EFFECTIVE DATE: August 23, 1985.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-7086.

SUPPLEMENTARY INFORMATION: When the original § 50.2, Definitions was published on January 19, 1956 [21 FR 355], it was the intent of the rulemaking authors to arrange the definitions in alphabetical order. In the intervening years, the need to amend Part 50, a key part of the NRC's regulations, has been frequent. Occasionally, amendments have been prepared to remedy unanticipated emergency situations. As a result, there has been a deviation from the original intent. These amendments will correct this, and the alphabetized list of definitions will be easier for readers to use.

Because these are amendments dealing with agency practice and procedures, the notice provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing solely with the format of definitions in agency regulations. These amendments do not alter the contents of any definition.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

10 CFR Part 1

Organization and functions.

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment, to 10 CFR Parts 1, 20, and 50.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5841).

2. In § 1.60, paragraph (a) is revised to read as follows:

§ 1.60 Office of Nuclear Material Safety and Safeguards.

* * * * * *

(a) The Division of Fuel Cycle and Material Safety performs those licensing and regulatory activities specified by the Atomic Energy Act of 1954, as amended, which pertain to the processing, transport, and handling of nuclear materials off the reactor site. These include: Performing safety and environmental reviews for protection facilities other than those defined in 10 CFR 50.2, licensing radioisotopes, certifying container designs for transportation of radioactive materials, developing and implementing a waste management program, assessing and improving the fuel studies on the nuclear fuel cycle, evaluating new technologies for improving safety and environmental protection, and identifying and coordinating related standards and research requirements.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for Part 20 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5841).

4. In § 20.408, paragraph (a)(1) is revised to read as follows:

§ 20.408 Reports of personnel monitoring on termination of employment or work.

(a) * * *

(1) Operate a nuclear reactor designed to produce electrical or heat energy pursuant to § 50.21(b) or § 50.22 of this chapter or a testing facility as defined in § 50.2 of this chapter.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5841).

§ 50.2 [Amended]

6. Section 50.2 is amended by removing the alphabetical designators and placing all definitions in alphabetical sequence.

7. In § 50.55a, paragraph (c)(2) introductory text is revised to read as follows:

§ 50.55a Codes and Standards.

* * * * *

(c) *Reactor coolant pressure boundary.* * * *

(2) Components which are connected to the reactor coolant system and are part of the reactor coolant pressure boundary as defined in § 50.2 need not meet the requirements of paragraph (c)(1) of this section, Provided:

* * * * *

Dated at Bethesda, Maryland, this 16th day of August 1985.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Executive Director of Operations.

[FR Doc. 85-20252 Filed 8-22-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM84-15-001, et al.]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued: August 20, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order No. 420-A: Order Denying Rehearing.

SUMMARY: By this order, the Commission denies rehearing of Order No. 420.

In Order No. 420, the Commission determined a benchmark rate of return on common equity applicable to rate filings made during July of 1985 and a procedure for updating that benchmark quarterly through January of 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426, (202) 357-8015.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon. Generic Determination of Rate of Return on Common Equity for Public Utilities. Docket Nos. RM84-15-001, RM84-15-002, RM84-15-003, and RM84-15-004; Order No. 420-A.

I. Introduction

The Federal Energy Regulatory Commission (Commission) has received four requests for rehearing [1] of Order No. 420.[2] This order denies rehearing on all issues raised by petitioners.[3]

II. Background

On May 20, 1985, the Commission issued a final rule in its first annual generic rate of return proceeding. By that rule, the Commission set the first benchmark rate of return on common equity applicable to rate filings made by public utilities in July of 1985. It also determined a procedure for updating the benchmark through January of 1986.

The benchmark rates of return established in this and the second annual proceeding, however, are advisory only. They are intended to guide companies and intervenors in rate cases and serve as a reference point for the Commission in making its decisions. The weight to be accorded these rates will depend on the record in each case.

The benchmark rates established in the third annual proceeding and thereafter will be given the status of a rebuttable presumption. That is, they will be presumed binding in all cases except where (1) there is a showing of significantly different risk, (2) there is a settlement among the parties to the proceeding, or (3) there is a finding of undue discrimination warranting a different rate of return.

In Order No. 420, the Commission determined that the average cost of common equity for the jurisdictional operations of electric utilities during the year ending June 30, 1984 (the "base year") was 15.31 percent. The Commission also decided on a quarterly indexing procedure to update this cost estimate and produce benchmark rates of return. The procedure adopted is based on fixed adjustment factors (determined in the annual proceedings) and changes in the median dividend yield for a broad-based sample of approximately 100 electric utilities. Applying this indexing procedure to data for the first quarter of 1985, the Commission determined that the first benchmark rate of return, applicable to rate filings in July 1985, should be set at 14.46 percent.[4]

In Order No. 420, the Commission stated that the cost of common equity consists of two components: (1) The market required rate of return, and (2) flotation costs. In determining the base year required rate of return, the Commission placed primary reliance on the discounted cash flow (DCF) method. In particular, the Commission relied on the following form of the DCF model to estimate the base year market required rate of return:

$$k = \frac{D_0}{P_0}(1+.5g)+g$$

where k = market required rate of return

$\frac{D_0}{P_0}$ = current dividend yield (current annual dividend rate divided by current market price)

g = expected dividend growth rate

With regard to the second component of the cost of common equity, the Commission determined that it should be based on the industry average annual flotation costs for the near term future.

Four petitions for rehearing of Order No. 420 have been filed with the Commission. Five issues were raised. First, three parties take issue with the particular form of DCF model the Commission adopted. Two parties allege that the Commission provided inadequate justification for the particular growth rate it adopted. Third, the method of estimating the adjustment for flotation costs is alleged to be deficient. Fourth, it is requested that the Commission specifically state that the benchmark would not be applicable to rate schedules for certain types of services which are alleged to be of low risk. Finally, one party requests that the Commission reconsider the procedural aspects of its rules and, for example,

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[1] The pleadings were filed by: (1) The Southern Company, (Docket No. RM84-15-001) (Southern); (2) Edison Electric Institute (Docket No. RM84-15-002) (EEI); (3) Wholesale Customer Group (Docket No. RM84-15-003) (WCG); and (4) Public Systems (Docket No. RM84-15-004).

[2] Order No. 420, 50 FR 21802 (May 29, 1985).

[3] On July 19, 1985, the Commission issued an "Order Granting Rehearing for Purpose of Further Consideration" which tolled the period for consideration of the issues raised on rehearing. 50 FR 30141 (July 24, 1985).

[4] On July 17, 1985, the Commission issued its first update in this proceeding and found the benchmark rate of return applicable for the period August 1 through October 31, 1985 to be 13.96 percent. 50 FR 29655 (July 22, 1985).

provide for a public hearing prior to the promulgation of the final benchmark rates of return.

III. Issues on Rehearing

Except as discussed below, the Commission believes it has adequately dealt with the issues raised by parties on rehearing.

A. Discounted Cash Flow (DCF) Model

Southern and EEI argue that the adjustment to the dividend yield component of the DCF model adopted by the Commission in Order No. 420 to reflect the implications of the quarterly payment of dividends results in underestimates of the true cost of common equity. Essentially, EEI and Southern propose adjustments that would incorporate some return on the dividends paid out to investors. Southern states that the adjustment is intended to reflect that it is more expensive for utilities to pay quarterly rather than annual dividends, while EEI states that the adjustment is necessary to make the annual dividend rate equivalent, to the investor, to four quarterly payments.

WCG, on the other hand, argues that the adjustment overestimates the cost of common equity. WCG recommends that the continuous compounding form of the DCF model, with no adjustment to the dividend rate, be adopted. It asserts that no adjustment is necessary to account for quarterly dividend payments. It argues that the frequency of dividend payout is irrelevant since earnings not paid out are growing at the same rate within the firm as they would if they were paid out to investors. WCG contends that the model adopted by the Commission inappropriately assumes that earnings not paid out are not earning a return.

On review of the petitions of EEI and Southern, it appears that they are attempting to justify some form of DCF model that incorporates the effects of reinvestment of dividends by investors. They appear to be recommending that the allowed rate of return should be akin to an "effective" rate of return whereas the Commission set the benchmark as a "nominal" rate. The Commission rejected this notion in the final rule. The Commission believes that if the allowed rate of return is based on the "nominal" required rate of return (like a simple interest rate), investors are given the opportunity of earning the higher "effective" rate through their reinvestment of dividends (like a compound interest rate). The Commission is not persuaded that it should set the allowed rate at the higher effective rate.

The Commission also disagrees with WCG. The model adopted by the Commission adjusts the current dividend rate to obtain an estimate of the total cash flow expected to be received by investors over the course of the initial year. This cash flow incorporates some growth in dividends due to retention of some earnings. Rather, it is the continuous compounding DCF model advocated by WCG that seems to assume that earnings retained earn a zero return. Further, since the DCF analysis is intended to estimate the return expected by investors, it seems imperative that the cash flows used in the analysis reflect the perspective of what investors can expect to receive and not what the company may earn internally, as WCG seems to argue.

B. Flotation Costs

Southern contends that the Commission understated the required adjustment for flotation costs. First, it argues that the adjustment should reflect the permanent nature of flotation costs and that its method of adjusting the market price in the DCF model properly provides a return on the stockholder's full investment which includes flotation costs. Southern also argues that flotation costs incurred on past stock issues reduce the equity investment on which a return is allowed. Because of this, the only way a return can be earned on all issuance costs is if the adjustment to the allowed return is applied to all common equity not just new common stock issues.

The Commission is not persuaded by Southern's arguments in this proceeding that the benchmark includes an inadequate allowance for flotation costs. The method of compensation that the Commission chose is to allow sufficient additional revenues in each year to compensate for average annual (or "normalized") flotation costs. By allowing a current return *of* these costs, the Commission sees no need to provide a return *on* them. Further, with respect to recovery of past flotation costs, the Commission reiterates that to the extent that such costs were included in rate requests, companies were given adequate opportunity to obtain rates that recouped those expenses.

C. Applicability of the Benchmark to Special Wholesale Services

In their petition for rehearing, Public Systems argues that the Commission failed to address its concern that the benchmark should not be applicable in setting rates for wholesale services with special contract provisions which reduce the risk below the industry-average level. As examples, Public Systems cites life-of-unit contracts and other take-or-pay agreements which it alleges eliminate virtually all risks of owning utility common shares. Specifically, Public Systems asks that the rates for services such as these be exempted from the benchmark rate of return and be the subject of individual cases.

In response, the Commission notes that § 37.6 of its regulations states that the benchmark rate of return will not be binding if "the risk of the public utility operations under the rate schedule . . . is significantly different from the average risk for the jurisdictional operations of public utilities."[6] The Commission believes the language of this section is broad enough to address the concern raised by this petitioner. The benchmark rate of return approach adopted in Order No. 389, particularly during its advisory period, permits parties to raise a variety of risk-related issues for the Commission to evaluate in individual cases.

D. Commission Involvement in Annual Proceedings

EEI requests that the Commission reconsider the procedural aspects of the generic rule. EEI reiterates its view that it is important for the Commission to be directly involved in the annual proceedings. According to EEI, a public hearing prior to promulgation of the final rule might provide the forum it believes is necessary to involve the Commission more directly in a review of the financial and operating circumstances of the electric utility industry. In EEI's view, a public hearing would enable consideration of the financial implications of adopting a particular benchmark rate of return before it is used in individual rate proceedings.

The Commission appreciates the concern raised by EEI, but does not believe it necessary or desirable, at this time, to prescribe in its rules more specific procedures, such as, public hearings. To make such procedures a part of the rules may interfere with the intent of the Commission to streamline the ratemaking process. The Commission can, on its own or any interested party's motion, institute public hearings if circumstances arise which appear to warrant such. Moreover, the Commission does not believe that it is desirable to change the procedural aspects of its rules during the initial two year advisory period. Based on the Commission's evaluation of the results obtained during this period, the Commission will decide whether

[6] 18 CFR 37.6 (1985).

modifications in the rule appear desirable.

For the above reasons, the Commission denies rehearing.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20208 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Parts 154, 270, and 273

[Docket No. RM83-53-001; Order No. 423-A]

Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

Issued: August 22, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: On May 30, 1985, the Federal Energy Regulatory Commission issued a final rule which, among other things, permits the use of billing adjustments to recover interim collection refunds under 18 CFR 273.302 (1984). In this order, the Commission denies rehearing of that final rule.

EFFECTIVE DATE: August 22, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8308.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying an application for rehearing of its final rule in Order No. 423.[1] That order, among other things, permits the use of billing adjustments to recover interim collection refunds under 18 CFR 273.302 (1984). The Commission received a timely application for rehearing from Tennessee Gas Pipeline Company (Tennessee). For the reasons stated below, this order denies rehearing.

II. Background

Producers and other sellers of first-sale natural gas must refund any amounts charged in excess of the applicable maximum lawful prices (MLP) under Title I of the Natural Gas Policy Act (NGPA).[2] Those refund obligations are of two types. The first is refunds of collections of NGPA incentive prices after denial or withdrawal of an application for a determination of eligibility to charge the incentive price.[3] The second type is all refunds other than interim collection refunds. These refunds are required by the general obligation in the Commission's regulations to refund amounts charged in excess of the applicable MLP.[4] Before Order No. 423, the Commission's regulations prohibited billing adjustments by purchasers to recover interim collection refunds [5] but allowed billing adjustment to collect general refund obligations.[6] In order to expedite the refund process, Order No. 423 eliminated the prohibition on billing adjustments to recover interim collection refunds. It did, however, require that the purchaser obtain the agreement of the seller before making a billing adjustment prior to the seller's 60-day deadline for making interim collection refunds. It also required that, before making any billing adjustment to recover interim collection refunds, the purchaser give the producer notice of the amount of the adjustment and the time period during which it will be made.[7]

III. Discussion

In its request for rehearing, Tennessee supports Order No. 423's elimination of the prohibition on billing adjustments to collect interim collection refunds. However, Tennessee states that its use of billing adjustments has been hampered by the failure of producers to provide sufficient information to calculate overcharges, specifically information concerning the volumes of gas sold from each well, the NGPA price category of the gas, and the delivery dates. The Commission's regulations do not now expressly require producers to provide such information to purchasers. Accordingly, Tennessee requests that, in order to increase the effectiveness of billing adjustments as a means to collect refunds, the Commission require that the producers include such information in their invoices to purchasers.

The Commission does not believe that it is necessary to set out in its regulations specific requirements detailing how first sellers of natural gas provide information to their purchasers in invoices for that gas. Rather, first sellers and purchasers must have the flexibility to determine what information a first seller must supply in order for the purchaser to ensure accurate billings for all gas purchased and sold. The Commission believes that, in the normal course of business, purchasers know the volume, NGPA category, and price of the gas they purchase. Based on the record in this proceeding and the Commission's general experience, the Commission does not believe that obtaining the necessary information is a widespread problem.

In the few cases where it is a problem, purchasers have the means to obtain the information without reliance upon a burdensome Commission regulation requiring first sellers in all cases to supply certain specific information with their invoices. For example, purchasers may withhold payment until the first seller supplies all the information necessary to ascertain that the price charged does not exceed the maximum lawful price. Such an action would be consistent with the purchaser's duty not to pay more than the NGPA allows.[8] Accordingly, the Commission will not modify the final rule adopted by Order No. 423 to specify the information sellers must include in their invoices. Tennessee's request for rehearing is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20207 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

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[1] Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Act of 1978, 50 FR 23,669 (June 5, 1985).

[2] 15 U.S.C. 3301-3432 (1982).

[3] The categories of gas for which the NGPA provides incentive prices higher than those applicable to any other category are (1) new natural gas (section 102(c)); (2) certain gas produced from the Outer Continental Shelf (section 102(d)); (3) new onshore production wells (section 103(c)); (4) high-cost natural gas (section 107(c)); and (5) stripper well natural gas (section 108(b)).

[4] 18 CFR 270.101(c) (1984).

[5] 18 CFR 273.302(e) (1984).

[6] 18 CFR 270.101(e) (1984).

[7] Order No. 423 also amended the Commission's regulations to require interstate pipeline companies to file reports on any billing adjustments with their Purchased Gas Adjustment filings (18 CFR 270.101(f) and 273.302(f) (1984)) and to clarify that the Commission's regulations require pipeline companies to pay to their customers, and report to the Commission, all refunds recovered through billing adjustments (18 CFR 154.38(d)(4)(vii) (1984)).

[8] *See* Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Policy Act of 1978, 49 FR 34233, 34237 (Aug. 29, 1984) (Notice of Proposed Rulemaking and Statement of Policy).

18 CFR Part 271

[Docket No. RM79-76-088; Texas-15 Amdt.; Order No. 427]

High-Cost Gas Produced From Tight Formations, Texas; Final Rule

Issued August 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Federal Energy Regulatory Commission adopts the recommendation, as amended, of the Railroad Commission of Texas that a portion of the Deep Vicksburg Formation located in Starr County, Texas, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, (202) 357-9115; or Walter W. Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

Based on an amended recommendation made by the Railroad Commission of Texas (Texas), the Commission amends its regulations [1] to include a portion of the Deep Vicksburg Formation in Starr County, Texas, as a designated tight formation eligible for incentive pricing. The Director of the Office of Pipeline and Producer Regulation (Director) issued a notice proposing the amendment on July 5, 1985.[2]

Background

On September 21, 1981, the Federal Energy Regulatory Commission (Commission) received a recommendation pursuant to § 271.703(d) of the Commissison's regulations [3] from Texas that a specified area of the Deep Vicksburg Formation, located in eastern Starr County, Texas, be designated as a tight formation. The Director issued a notice proposing the designation on October 27, 1981.[4] The Deep Vicksburg Formation, as originally described, consisted of an area approximately 6.5 miles long and 4.5 miles wide. The top of the formation, as originally described, was the top of the "hard" geopressure marker. The base was the top of the Jackson Shale.

Analysis of the data supporting the original recommendation revealed that the formation's average stabilized flow rate prior to stimulation, and calculated using the average depth to the top of the formation, exceeded the allowable flow rate set out in the Commission's regulations.[5]

On December 14, 1984, the Commission received an amended Deep Vicksburg recommendation from Texas. The amended recommendation consists of a rectangular area, approximately 2.8 miles long and 1.7 miles wide, centrally located within the area originally recommended, covering portions of the Ygnacio Flores A-725 and the Nicolasa Salinas A-411 surveys in eastern Starr County. The new vertical interval is that portion of the Deep Vicksburg sediments occurring between the top of the 9,250 foot sand, or the unconformity where the 9,250 foot sand has been eroded, and the base of the V-23 sand. Three existing wells within the area are specifically excluded from the tight formation description.[6]

Discussion

Analysis of data derived from a five-well sample (out of seven wells completed in the amended area) reveals that the average in-situ gas permeability throughout the pay section is less than the maximum of 0.1 millidarcy allowed under the regulations; the average pre-stimulation, stabilized flow rate against atmospheric pressure is not expected to exceed the maximum allowable production rate; and no well within the recommended area is expected to produce any crude oil. Accordingly, the Texas recommendation for the Deep Vicksburg Formation, as amended, meets the Commission guidelines set forth in § 271.703(c)(2)(i).[7]

The Commission orders:

Based on the discussion herein, the Commission adopts the recommendation of the Railroad Commission of Texas that a portion of the Deep Vicksburg Formation, as amended, be designated as a tight formation under § 271.703(d).

This amendment shall become effective September 23, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

PART 271—[AMENDED]

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(171) to read as follows:

§ 271.703 Tight formations.

* * * * * * *

(d) *Designated tight formations.* * * *

(171) *Vicksburg Formation in Texas.* RM79-76-088 (Texas 15).

(i) *The Deep Vicksburg Formation in Starr County, Texas.*

(A) *Delineation of formation.* The Deep Vicksburg Formation covers an area of approximately 4.8 square miles in portions of the Ygnacio Flores A-725 and Nicolasa Salinas A-411 surveys located in eastern Starr County, Texas, Railroad Commission District 4.

(B) *Depth.* The top of the Deep Vicksburg Formation is defined as the top of the 9250' sand, or the unconformity where the 9250' sand has been eroded. The base of the formation is the base of the V-23 sand.

(ii) *The Lower Vicksburg Formation in Starr County, Texas.*

(A) *Delineation of formation.* The Vicksburg Formation is located in

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[1] 18 CFR 271.703(d) (1983).

[2] 50 FR 28221 (July 11, 1985). Champlin Petroleum Company filed comments in support of the recommendation on July 19, 1985. No party requested a public hearing, and no hearing was held.

[3] 18 CFR 271.703(d) (1983).

[4] 46 FR 54384 (November 2, 1981). The original recommendation also included a portion of the Lower Vicksburg Formation in Starr County, Texas. In Order No. 387, Docket No. RM 79-76-088 (Texas-15), 28 FERC § 61,039 (1984), 49 Fed. Reg. 27,935 (July 9, 1984), the Commission adopted the recommendation of the Railroad Commission of Texas that a portion of the Lower Vicksburg Formation be designated as a tight formation under § 271.703(d).

[5] 18 CFR 271.703(c)(2)(i)(B) (1983).

[6] Well numbers 66, 67, and 71.

[7] 18 CFR 271.703(c)(2)(i) (1983). (The Commission may approve a recommendation that a natural gas formation be designated as a tight formation if each of the enumerated guidelines contained in this section is met.)

Railroad Commission District 4 in the eastern half of Starr County, Texas.

(B) *Depth.* The top of the Vicksburg Formation is defined as the top of the Rincon Sand and the base as the top of the Yegua sand. Specifically, it is defined as that interval on the log of the Corpus Christi Oil and Gas Company, Heard #1 Well that occurs between a measured depth of 8,280 feet to 10,836 feet, which yields a gross thickness of 2,217 feet.

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[FR Doc. 85-20209 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-241 (Kentucky-4); Order No. 429]

High-Cost Gas Produced From Tight Formations, Kentucky; Final Rule

Issued August 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1984)). This rule established procedures for jurisdiction agencies to submit recommendations of areas for designation as tight formations. This order adopts the recommendations of the Commonwealth of Kentucky's Public Service Commission that the "Corniferous Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group be designated as tight formations under § 271.703(d) of the Commission's Regulations.

EFFECTIVE DATE: This rule is effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, (202) 357-9114 or C. W. Gray, Jr., (202) 357-8731.

Based on a recommendation made by the Public Service Commission of the Commonwealth of Kentucky, the Commission amends § 271.703(d) of its regulations [1] to include the "Corniferous Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group located in Lawrence and Johnson Counties, Kentucky, as designated tight formations eligible for incentive pricing under § 271.703. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on March 20, 1985.[2]

Evidence submitted by Kentucky supports the assertion that the "Corniferous Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group located in Lawrence and Johnson Counties, Kentucky meet the guidelines contained in § 271.703(c)(2). The Commission adopts Kentucky's recommendations.

This amendment shall become effective September 23, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7171 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(211) to read as follows:

§ 271.703 Tight Formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(211) *"Corniferous-Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group in Kentucky.* RM79-76-241 (Kentucky-4)

(i) *Delineation of formations.* The "Corniferous-Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group is found in Lawrence and Johnson Counties, Kentucky. Several areas in these counties are excluded from the designation and are shown on maps on file with the Commission.

(ii) *Depth.* The average depth to the top of the "Corniferous-Big Six" Formation ranges from 2,900 feet in the east to 1,750 feet in the west and has a thickness ranging from 500 feet to 775 feet. It is overlain by the Devonian Ohio Shale and underlain by the Silurian Rose Hill Shale. The average depth to the top of the "Clinton" Formation ranges from 2,460 feet in the west to 4,050 feet in the east and has thickness ranging from 0 to 35 feet. It is overlain by the Rose Hill Shale and underlain by the Brassfield Dolomite.

[FR Doc. 85-20211 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM 79-76-152; (Texas-8); Order No. 428]

High-Cost Gas Produced From Tight Formations; Texas; Final Rule

Issued: August 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated many receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Federal Energy Regulatory Commission rejects the recommendation of the Railroad Commission of Texas that additional areas of the Geopressured Wilcox Lobo Formation located in Zapata County, Texas, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, (202) 357-9115; or Walter W. Lawson, (202) 357-8556.

On January 24, 1983, the Federal Energy Regulatory Commission (Commission) received an amended recommendation pursuant to § 271.703(d) of the Commission's regulations [1] from the Railroad

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[1] 18 CFR 271.703(d) (1984).

[2] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held. 50 F.R. 11,901, March 26, 1985.

[1] 18 CFR 271.703(d) (1983).

Commission of Texas (Texas) that two proration units in the Geopressured Wilcox Lobo formation, located in Zapata County, Texas, be designated as a tight formation. The units are on acreage previously excluded from tight formation designation under § 271.703(c)(2)(i).[2] The Director of the Office of Pipeline and Producer Regulation (Director) issued a notice proposing the amendment on April 1, 1983.[3]

Background

On December 13, 1983, Commission staff and Texas staff met to discuss the problems inherent in the proposed amended recommendation. Further work on the recommendation was suspended pending a response from Texas. No response from Texas has been received.[4]

Discussion

Under § 271.703(e)(2) of the Commission's regulations, the Commission may approve a recommendation by a jurisdictional agency that a natural gas formation be designated as a tight formation if certain geological criteria are met.[5] Although the individual wells satisfy the guidelines set forth in the regulations, the area surrounding the wells does not. Both wells are located in a block which contains three other wells which do not satisfy the guidelines.[6]

Texas originally excluded the subject block from tight formation designation because it was determined to be a "sweet spot" within an otherwise "tight" formation. Texas explicitly carved out this area from the acreage described in the applicant's proposal. Having reached that determination, the Commission will not now permit individual wells within the "sweet spot" to be eligible for tight formation designation.

The Commission Orders

Based on the discussion herein, the Commission rejects the recommendation of the Railroad Commission of Texas that two proration units be included within the previously approved Geopressured Wilcox Lobo Formation.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20210 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[2] 18 CFR 271.703(c)(2)(i) (1983). In Order No. 153, Docket No. RM79-76 (Texas-8), 46 FR 31,255 (June 15, 1981), the Commission adopted Texas' recommendation that the Geopressured Wilcox Lobo formation underlying Webb and Zapata Counties, Texas, be designated as a tight formation. The area designated as a tight formation by Order No. 153 consists of all of Webb and Zapata Counties, with the exception of approximately 130 square miles identified by Texas in its original recommendation as an area that did not meet the Commission's requirements.

[3] 48 FR 14,974 (April 6, 1983). No comments were received, no party requested a hearing, and no hearing was held.

[4] In a November 16, 1984 letter to the Railroad Commission of Texas, Commission staff noted, "The permeability and flow rate data for each of the wells meets the standards . . . [h]owever, both wells are located in an area which Texas has termed substantially developed conventional production acreage . . . [a]verage reservoir characteristics for this area did not meet the . . . standards . . . [b]ecause of the current well spacing regulations . . . there would be little or no opportunity for further developmental drilling on the acreage recommended . . .".

[5] Section 271.703(c)(2)(i)(A)-(c) (1984). Incentive pricing under section 107(c)(5) is provided to encourage the exploration for and development of unconventional gas supplies.

[6] The average data for the block shows an average flow rate of 544 Mcf per well per day; the regulations require a flow rate not in excess of 336 Mcf per well per day.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 635, 710, 712, 713, 720, 740, 750 and 751

Relocation Assistance and Real Property Acquisition

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescission of regulations; technical amendments.

SUMMARY: This document rescinds FHWA's regulations relating to relocation assistance and the acquisition of real property, that are based on the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.)* (Uniform Act). This action is being taken because those regulations have been superseded by a Department of Transportation (DOT) regulation, 49 CFR Part 25 (50 FR 8955, March 5, 1985). The DOT regulation prescribes uniform departmental procedures for compliance with the Uniform Act, and replaces the FHWA regulations that implement the Uniform Act. It is intended to serve as a model for all other Federal agencies operating under the Uniform Act.

EFFECTIVE DATE: July 3, 1985, or on such earlier date as the State elects to begin operating under 49 CFR Part 25.

FOR FURTHER INFORMATION CONTACT: Barbara Reichart, Chief, Relocation Division (202) 426-0116, Gerald Saunders, Chief, Real Estate Division (202) 426-0142, or Reid Alsop, Office of the Chief Counsel (202) 426-0800, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: In May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to review existing Federal agency regulations which implement the Uniform Act and to develop recommendations for uniform regulations to be adopted by each covered agency to implement the Uniform Act. This was done in response to concerns expressed by State and local governments through the President's Task Force on Regulatory Relief.

In addition to the Working Group, OMB also established a policy-level Interagency Regulatory Review Steering Group. The Steering Group and the Working Group, both chaired by OMB, included representatives of the Department of Housing and Urban Development, Department of Transportation (DOT), Department of Interior, Department of the Army (Corps of Engineers), and the Environmental Protection Agency. The Working Group developed a proposed regulation that was approved by the Steering Group. The DOT at the request of OMB, published the proposed regulation in the **Federal Register** on April 14, 1983, as a notice of proposed rulemaking (48 FR 16197).

Following the review of comments by the Working Group, a final rule was developed. On March 5, 1985, the Department of Transportation published the final rule in the **Federal Register** (50 FR 8955), as 49 CFR Part 25. This final rule was accompanied by a Presidential Memorandum (50 FR 8953) designating the DOT as the lead agency to coordinate administration and implementation of the Uniform Act. The Presidential Memorandum directed all affected executive departments and agencies to issue common regulations under the Uniform Act that would be consistent with the model rule promulgated by DOT.

The new DOT Uniform Act regulation replaced the prior DOT Uniform Act regulation of Part 25. The prior regulation, in 49 CFR 25.9, permitted the FHWA and other operating administrations in DOT to promulgate their own additional Uniform Act implementing regulations. No such authority is provided by FHWA in the new DOT regulations. Moreover, any such FHWA regulations would be

contrary to the overall policy objectives of the new DOT regulation; that is to provide a single Federal regulation to be used by all agencies operating under the Uniform Act. Accordingly, FHWA regulations that implement the Uniform Act ceased to have effect on the date that a State begins operating under the new DOT regulation. Therefore, FHWA is herewith rescinding those provisions of Parts 710, 712, 713, 720, and 740 which implement the Uniform Act. Only procedural provisions that relate solely to program administration and funding, and other provisions that do not directly implement the Uniform Act are being retained. Several provisions have been moved or renumbered for clarity, and provisions providing a cross reference to the new DOT regulation have been added. This rescission will become effective on the date that the new DOT regulation becomes effective. (July 3, 1985, or earlier at the option of the State).

In order that these changes will be easier to follow, the following status table is provided.

Former Part/Section	Present status
§ 710, Subpart A	Removed.
§ 710.201 (b) and (d)	Removed.
§ 710.203(f)	Added.
§ 710.204	Removed.
§ 710.304(p)(1)(i)	Removed.
712, Subpart A	Removed.
§ 712.204(c)(3)(i)	Removed.
§ 712.304(a)	§ 710.203(e).
§ 712.304(f)(1)	§ 710.203(e)(4).
§ 712.404	Revised.
§ 713.102	Revised.
§ 713.103(b)	Removed.
§ 720.201(d)(1) and (2)	Revised as § 710.304(r).
§ 720.202(e)(5)(i) and (v)	§712.203(d)(1) and (2).
§ 720.200 through 720.203	Removed.
§ 720.204(e)(16)	Revised.
Appendix 1 of Part 720	Removed.
§ 720.201	Added.
§ 720.204	720.202.
§§ 740.1 through 740.6	Removed.
§§ 740.10 through 740.15	Removed.
§ 740, Subparts B through F	Removed.
§ 740.7	Revised as §740.2.
§ 740.8	Revised as § 740.3.
§ 740.9	Revised as § 740.4.
§ 740.1	Added.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. Since this is a technical amendment that merely rescinds FHWA provisions which have been superseded by DOT provisions which are more uniform, public comment is unnecessary. For this reason, the FHWA finds good cause to make the rescission final without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reason, notice, and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information. Again, for the reasons stated above, the preparation of an economic evaluation is unnecessary, since the economic impact is minimal. Also, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing the FHWA hereby amends Parts 710, 712, 713, 720, and 740 of Title 23, Code of Federal Regulations as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Parts 710, 712, 713, 720, and 740

Grant programs—Transportation, Highways and roads, Real property acquisition, Relocation assistance, Rights-of-way.

Issued on: August 13, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator.

PART 710—RIGHT-OF-WAY—GENERAL

1. The authority citation for Part 710 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 25; 23 CFR 1.4 and 1.32; 42 U.S.C. 2000d *et seq.*; Executive Orders 11246, 11247, and 11375; 49 CFR 21.

Subpart A—[Removed and Reserved]

2. Subpart A of Part 710 (§§ 710.101–710.104) is removed and reserved.

Subpart B—State Highway Department Responsibilities

§ 710.201 [Amended]

3. Section 710.201 is amended by removing and reserving paragraphs (b) and (d).

4. Section 710.203 is amended by adding paragraph (f) to read as follows:

§ 710.203 General responsibilities.

* * * * *

(f) *Additional requirements.* Additional requirements governing federally assisted real property acquisition, based upon the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR Part 25, Subpart B.

§ 710.204 [Removed and reserved]

5. Section 710.204 is removed and reserved.

Subpart C—Reimbursement Provisions

§ 710.304 [Amended]

6. Section 710.304 is amended by removing and reserving paragraph (p)(1)(i).

PART 712—THE ACQUISITION FUNCTION

7. The authority citation for Part 712 is revised to read as follows:

Authority: 42 U.S.C. 2000d–1; 49 CFR 25; 23 U.S.C. 315 and 323; 49 CFR 1.48(b); 23 CFR 1.32.

Subpart A—[Removed and Reserved]

8. Subpart A of Part 712 (§§ 712.101 through 712.103) is removed and reserved.

Subpart B—General Provisions and Project Procedures

§ 712.204 [Amended]

9. Section 712.204 is amended by removing and reserving paragraph (c)(3)(i).

Subpart C—Negotiations

10. Subpart C of Part 712 (§§ 712.301 through 712.304) is removed and reserved with the exceptions of § 712.304(a) and (f)(1).

Paragraph (a) of § 712.304 is redesignated as § 710.203(e) and paragraph (f)(1) of § 712.304 is redesignated as § 710.203(e)(4).

Subpart D—Administrative Settlements, Legal Settlements, and Court Awards

11. Section 712.404 is revised to read as follows:

§ 712.404 Administrative settlements.

Administrative settlements on Federal and federally assisted highway projects are governed by the provisions of 49 CFR 25.102(i).

PART 713—RIGHT-OF-WAY—THE PROPERTY MANAGEMENT FUNCTION

12. The authority citation for Part 713 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 25; 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart A—Property Management

13. Section 713.102 is revised to read as follows:

§ 713.102 Applicability.

The policies in § 713.103 are applicable to all State and political subdivisions thereof that manage real property acquired for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. States are encouraged to adopt these procedures for all projects in which Federal funds will participate in any part of the project.

§ 713.103 [Amended]

14. Section 713.103 is amended by removing and reserving paragraph (b).

PART 720—APPRAISAL

15. The authority citation for Part 720 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 25; 23 CFR 1.32; 49 CFR 1.48(b).

16. Paragraphs (d)(1) and (2) of § 720.201 are revised and redesignated as § 710.304(r) with a revised paragraph heading, as follows:

§ 710.304 Reimbursement policy.

* * * * *

(r) *Appraisal costs and minimum payment.* (1) If otherwise eligible, Federal funds may participate in the cost of appraisal and specialty reports obtained by the State in accordance with its accepted plan of operation.

(2) Where the State prescribes a minimum payment, not to exceed $500, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration, Federal participation shall be allowed if such payment is otherwise eligible.

17. Paragraphs (e)(5)(i) and (v) of § 720.202 are redesignated as § 712.203(d) and given the heading "Reviewing appraiser" as follows:

§ 712.203 General provisions.

* * * * *

(d) *Reviewing appraiser.* The reviewing appraiser shall place in the parcel file a signed and dated statement setting forth:

(1) The estimate of just compensation including, where appropriate, the allocation of compensation for the real property acquired and for damages to remaining real property, and an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which he considered to be a part of the real property to be acquired if such allocation or listing differs from that of the appraisal(s).

(2) The value estimate of items compensable under State law but not eligible for Federal reimbursement, if any.

18. Part 720 is amended by removing § 720.200 through 720.203; removing the last sentence of § 720.204(e)(18); removing Appendix 1 at the end of § 720.204; adding a new § 720.201; and redesignating § 720.204 as § 720.202 as follows:

§ 720.201 Appraisal requirements.

Additional policies and requirements governing the appraisal of property for Federal and federally assisted projects, based upon the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR Part 25, Subpart B.

PART 740—RELOCATION ASSISTANCE

19. The authority citation for Part 740 is revised to read as follows:

Authority: 49 CFR 25; 23 U.S.C. 315; 49 CFR 1.48(b); 23 CFR 1.32.

20. Part 740, Subparts A, B, C, D, E, and F, (§§ 740.1–740.6, 740.10–740.15, 740.31–740.38, 740.51–740.59, 740.71–740.81, 740.91–740.97 and 740.111–740.121) are removed with the exceptions of §§ 740.7, 740.8, and 740.9.

21. Section 740.7 is redesignated as § 740.2 and is amended by removing paragraphs (c), (d), (g), (h), and (i); and by redesignating the paragraphs (e) and (f) as (c) and (d), respectively, and by revising new paragraph (c)(2) to read as follows:

§ 740.2 Eligibility for participation of Federal-aid funds.

* * * * *

(c) *Federal share.* * * *

(2) Federal funds may not participate in any costs of a project, including preliminary engineering, right-of-way, relocation and construction, costs, unless prior to their displacement from their home, comparable replacement dwellings were available or provided for displaced individuals and families.

* * * * *

§ 740.8 [Redesignated as § 740.3 and amended]

22. Section 740.8 is redesignated as § 740.3 and is amended by removing paragraph (b) in its entirety and by removing the designation to paragraph (a).

§ 740.9 [Redesignated as § 740.4 and amended]

23. Section 740.9 is redesignated as § 740.4 and is amended by removing paragraph (b); removing everything after the words "Executive Order 11246." in the introductory text of paragraph (c); removing the words "required by this part" and adding in lieu thereof "required by 49 CFR Part 25" in paragraph (e)(2)(ii); removing the words "to ascertain compliance with the provisions of this part" and adding a period after the word "necessary" in paragraph (f); and redesignating paragraphs (c), (d), (e), and (f) as (b), (c), (d), and (e), respectively.

24. Part 740 is amended by adding a new § 740.1 to read as follows:

§ 740.1 Relocation requirements.

Substantive requirements governing the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs and projects, prescribed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR Part 25.

Technical Amendments

Due to the removal of a large portion of 23 CFR Part 740, and other changes the following technical amendments are necessary to correct references found in other parts of Title 23, CFR, and are set forth below.

PART 635—[AMENDED]

§ 635.309 [Amended]

25. In § 635.309, paragraph (c)(3) is amended by removing the reference "23 CFR 740.12" and inserting in lieu thereof "49 CFR 25.204".

PART 710—[AMENDED]

§ 710.304 [Amended]

26. In § 710.304, paragraph (o)(3)(iii) is amended by removing the phrase § 740.9(d) of this subchapter" and inserting in lieu thereof "49 CFR 25.6".

PART 712—[AMENDED]

§ 712.204 [Amended]

27. In § 712.204, paragraph (d)(5) is amended by removing the reference "23 CFR Part 740" and inserting in lieu thereof "49 CFR Part 25".

PART 750—[AMENDED]

§ 750.304 [Amended]

28. In § 750.304, paragraph (c)(4) is amended by removing the reference "23 CFR 710.204" and inserting in lieu thereof "23 CFR 710.304(h)".

PART 751—[AMENDED]

§ 751.21 [Amended]

29. In § 751.21, remove the reference "Part 740, 23 CFR" and insert in lieu thereof "49 CFR 25".

[FR Doc. 85–20079 Filed 8–22–85; 8:45 am]
BILLING CODE 4910-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 45

Special Education; Establishment of Standards

AGENCY: Bureau of Indian Affairs.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing a final rule which establishes standards for the provision of special education and related services under the Education for All Handicapped Children Act of 1975, as amended, to Indian schools operated by or under the authority of the Bureau of Indian Affairs (BIA).

EFFECTIVE DATE: October 7, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Cordova, Chief, Branch of Exceptional Education, Office of Indian Education Programs, Bureau of Indian Affairs, 1951 Constitution Ave,. N.W., Room 4651, Washington, D.C. 20245, telephone number: (202) 343–6675.

SUPPLEMENTARY INFORMATION: The authority for issuing this rule is contained in 5 U.S.C. 301; 25 U.S.C. 2 and 9. This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

This final rule establishes criteria for governing the operation of special education programs for handicapped Indian children enrolled or eligible for enrollment in BIA operated and/or funded schools. The regulations establish a single comprehensive set of standards for ensuring all handicapped children enrolled in BIA operated and/or funded schools are provided a free appropriate education in the least restrictive educational environment appropriate to their needs, consistent with their rights and related procedural safeguards.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.* The information collections identified in §§ 45.19(d) and 45.33 are required by the Department of Education in 34 CFR 300.

The primary author of this document is Charles G. Cordova, Bureau of Indian Affairs, telephone number: (202) 343–6675.

The Department of Interior has determined that this document pertains only to schools operated or funded by the BIA; and therefore, is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The Bureau of Indian Affairs published a proposed rule 25 CFR Part 31k (renumbered throughout this document as Part 45) on September 29, 1980. Public comments were invited until November 27, 1981. In response to this invitation, individuals, groups, schools and interested persons submitted comments. In addition, the Bureau of Indian Affairs, Office of Indian Education Programs, conducted public hearings throughout the Country where large percentages of Indian people are located. During these public hearings, commenters were given an opportunity to write or record their comments for transcript. Copies of the proposed regulations were made available for their convenience. A task force of Bureau of Indian Affairs' (BIA) educators was selected from various locations to review and respond to the comments from the field. The Bureau of Indian Affairs, Office of Indian Education Programs, has carefully considered the views of the public as reflected in the written comments and testimonies at public hearings. The following is a description of these views and BIA responses to them.

Subpart A—General

During the comment period, recommendations of numerous changes were received to improve the clarity of the rule and make it consistent with previous regulations relative to Indian children. Several editorial changes were incorporated into the final rule which include the following items:

General responsibility (§ 45.1)

Comment: Several commenters recommended the term "public" be deleted as it relates to public education since Bureau schools are Federally funded education facilities.

Response: We agree that the schools are not public in the strictest sense of the word and the term "public" has been deleted.

Enrollment in early childhood education programs (§ 45.2)

The title of this section has been changed to "Provisions of Early Childhood Special Education Programs and Services."

Comments: One commenter suggested that the title of this section read: "Provisions of Early Childhood Special Education Programs and Services."

Several commenters suggested that a definition of Early Childhood Special Education be included in the regulations.

Several commenters recommended that this section be charged to include children from birth to five (5) years of age and that the BIA provide special education services to these children.

Response: This section has been changed to agree with the requirements of the Indian School Equalization Program (25 CFR Part 39). The ISEP program provides funding for children enrolled in BIA operated or funded schools. At this time, there are no provisions to enroll children in pre-kindergarten programs. Because of the supplemental nature of the funds received through Pub. L. 94–142, it has been determined that funding can only be provided toward the education of children enrolled in BIA operated or funded schools. To require schools to serve zero to five (0–5) year olds would be inconsistent with BIA regulations and practice. Since BIA is not eligible to receive pre-school incentive funds from the Department of Education, a limited number of model programs for handicapped Indian children from birth to age five (5) may be approved for funding. The number will be based on need and funding limitations. Although funding will be limited for children from birth to age five (5), every effort will be made by the BIA to locate and identify handicapped children and to refer them to appropriate service providers.

Children of ages eighteen through twenty-one (§ 45.3)

Comment: Several comments were received regarding the age range of three (3) to twenty-one (21) years. The commenter felt the age limit of twenty-one (21) should be raised.

Response: No change has been made. Pub. L. 94–142 as well as Pub. L. 95–561 provide for services to students only through the age of 21 years.

Equal education opportunity (§ 45.4)

The title of this section has been changed to read "Full Educational Opportunity."

Comment: Several comments were received regarding lowering the age of provision of Full Educational Opportunity as well as the time line given. One commenter requested a clarification of "all handicapped children."

Response: As explained in the response in § 45.2, the BIA only requires the schools to serve handicapped children who are enrolled or eligible to be enrolled; therefore, the age requirement was changed from ages three (3) through twenty-one (21) to ages five (5) through twenty-one (21). The time line was dropped since the date has now passed. These schools not in compliance will be monitored and assistance will be provided to help bring them into compliance.

Every effort will be made to locate, identify and refer handicapped children from birth to five (5) years of age.

Definition (§ 45.5)

Comment: A comment was received concerning paragraph (a) "Agency" and the Agency's role in reference to contract schools.

Response: No changes have been made. The Director has designated specific agency or area offices as being responsible for tribally operated contract schools. The term area/agency is used interchangeably as far as organizational responsibilities are concerned.

Comment: A comment was received regarding paragraph (b) "Agency Superintendent for Education", concerning the definition of Agency Superintendent for Education in relation to off-reservation boarding schools.

Response: No change was made. Pub. L. 95–561 specifically defines the responsibilities of the Agency Superintendent for Education and the Area Education Program Administrator toward off-reservation boarding schools.

Comment: One comment was received regarding paragraph (c) "Approved public or non-public school," and the State of New Mexico's non-participation in Part B of the Education of the Handicapped Act Programs and suggested that a provision be added to allow the BIA schools in this State to make placements, where appropriate, based on a determination of the Office of Indian Education Programs.

Response: No change was made. The state of New Mexico has established special education rules which are consistent with Federal regulations. The state is in compliance with the requirements and placement should not present a problem.

Comment: One comment was received in reference to paragraph (f) "Boarding school" as one offering "residential care."

Response: The definition of boarding school has been changed to read "Boarding school" which means a Bureau school offering a residential center and support services as well as an academic program.

Comment: One comment was received pertaining to paragraph (i) "Cooperative agreements" which asked if "cooperative agreements" must be formal agreements.

Response: No change was made. It was felt that some type of formal agreement should be in effect for audit and monitoring purposes. Such an agreement should help to delineate the responsibilities of the Bureau school and the public school district for providing Special Education services.

Comment: Several comments were received concerning the definition of "Counseling services" in paragraph (j).

Response: No change was made. The definition of counseling services was taken directly from the Pub. L. 94–142 regulations with the addition of counselor training for social workers. It is the intent of these regulations to insure that all individuals providing counseling services to handicapped children have high qualifications and meet the standards set forth by the state licensing office.

Comment: Several comments were received regarding the inconsistency between the definitions in paragraph (o) of "Handicapped Child" in these regulations and Pub. L. 94–142 regulations.

Response: The definition of handicapped child has been made consistent with Pub. L. 94–142 regulations by adding "seriously" to emotionally disturbed; "specific" to the definition of learning disabled and removing the term "severe language disorder" from the definition. The definition of each handicapping condition has been listed alphabetically under the definition "Handicapped Child."

Comment: Several comments were made concerning the exclusion of the term "gifted and talented" from the definitions.

Response: No change was made. No provisions were made for this category under Pub. L. 94–142, The Education of the Handicapped Act. Appropriate guidelines, standards or regulations will be published if a program for gifted and talented is included in the Indian School Equalization Formula. (24 CFR 39.10–39.23)

Comment: Several comments were received concerning paragraph (q) "Individualized Education Program", stating that it was not the Pub. L. 94–142 definition.

Response: A change has been made. The definition is now consistent with the requirement of this Part and Pub. L. 94–142.

Comment: Two commenters were concerned with parts of the paragraph on "Individual Intelligence Quotient" (IQ) test. The commenters stated furture mental abilities could not be measured and the word retarded should be deleted.

Response: A change has been made. It was determined that the words in question were unnecessary and they were deleted from the definition.

Comment: Many comments were received regarding paragraph (v) pertaining to the inconsistency between the definition of "least restrictive environment" (LRE) contained in these regulations and the Pub. L. 94–142 regulations.

Response: A change has been made. The definition is more specific and is consistent with the Pub. L. 94–142 regulations.

Comment: One commenter requested inserting other words instead of those in the definition of "Native language" in paragraph (w).

Response: A change has been made. The definition of native language has been changed to insure understanding of special education proceedings by the parents.

Comment: Several comments were received pertaining to paragraph (x) which referred to the lack of specificity in the definition of "parent."

Response: A change has been made. The definition is now specific and includes persons acting in place of the parent.

Comment: Several comments were made regarding the terseness of the definition of "parental consent" in paragraph (y).

Response: A change has been made. The definition is now more specific and consistent with the Pub. L. 94–142 regulations.

Comment: Several comments were received concerning paragraph (cc), "School" which objected to the inclusion of "private schools/facilities/institutions" in the definition.

Response: No change has been made. The term "school" as used in various sections of this regulation includes private schools/facilities/institutions and they should be included in the

definition. The Bureau supports the education activities of several private schools for handicapped Indian children.

Comment: A few comments were received regarding the definition of "Special Education Coordinator" in paragraph (ff) in relation to the role of the Area/Agency and schools.

Response: No change has been made. The term Special Education Coordinator refers to the individual at the Agency or Area level who has the responsibility for coordinating the provisions of special education services for one or more schools under the general supervision of the Agency Superintendent for Education or Area Education Program Administrator. The term does not include the local school personnel.

General Comment: Many general comments were received regarding definitions of handicapping conditions requesting they be made more specific. It was also suggested various words be added or deleted, additional definitions be added and/or existing definitions be reworded.

Response: No change has been made. The definitions of handicapping conditions are consistent with Pub. L. 94–142 regulations and the ISEP regulations.

Subpart B—Identification and Evaluation of Handicapped Children

Child find (§ 45.11)

Comment: Several commenters referred to identifying and locating handicapped children under the age of three years. Some of these comments indicated that funding was available to serve these children.

Response: No change has been made. In cooperation with other programs, the BIA will continue to locate and identify these children; however, funding for pre-school programs can not be assured at this time.

Comment: Several comments were received which indicated the child find section of the regulations was unclear.

Response: A change has been made. The requirements are now more specific. The reference to off-reservation boarding schools was deleted. This section now requires that all schools must conduct in-school identification.

Child find elements (§ 45.12)

Comment: Many comments indicated the major responsibility for child find elements should not rest with the Agency or schools since they do not have appropriate funding, personnel or time to do an effective job in their area.

Response: A change has been made. This section was rewritten to allow more options for the Agency. The Agency has the responsibility to establish child find procedures. The intent of these procedures is to identify all children who may be in need of Special Education Services.

Register of children (§ 45.13)

Comment: Several comments were received regarding the register of children to be maintained at the school. These comments questioned the legality of maintaining such a register and necessity of the list.

Response: A change has been made. The requirement to keep a register of all children was dropped. The section now includes a requirement that all information collected and maintained must be in accordance with the confidentiality requirements of Pub. L. 94–142 and the Privacy Act.

General entry screening (§ 45.14)

Comment: Due the stringent requirements in the general entry screening sections, many comments were received regarding the burden placed on the local school to obtain the required information.

Response: A change has been made. Only the minimum requirements are now included. A school may choose whatever screening instrument they desire. The intent is that every child enrolled in school be properly screened to identify those children who may need further evaluation.

Waiver of general entry screening (§ 45.15)

The title of this section has been changed to read: "Periodic school screening."

Comment: Several comments were received questioning the right to regulate parents through this part.

Response: A change has been made. The section on waivers has been combined with the section on General entry screening. The intent is to give parents an option and to minimize the number of times a child would be screened. Parents still have the right to waive the screening.

Screening personnel (§ 45.16)

Comment: Several comments were received asking for clarification of the term "certified, licensed or qualified" in regard to the screening personnel.

Response: A change has been made. It was the intent of this section to require that school personnel doing the screening should be trained in these duties. Classroom teachers, special education teachers and in the case of some specific screening, technician aides may be trained to perform the screening. This section has been changed and directs the school to utilize personnel who are trained to do the specific screening which is being performed.

Report of general screening (§ 45.17)

The title of this section has been changed to read "Screening results and referrals."

Comment: Several commenters expressed confusion regarding the implications of a general entry screening. Many also recommended changing the time lines.

Response: A change has been made. This section was rewritten and the time lines were adjusted to accommodate the needs of the schools with limited staff. The school now has 30 days to complete their reports and confer with the parents.

Individual evaluations (§ 45.18)

Comment: Several comments expressed concern that the requirements as written might be against a parent's wishes.

Response: A change has been made. This section now states specifically when a child should be evaluated. Parent consent is always required for the initial evaluation (see § 45.52).

Evaluation procedures (§ 45.19)

Comment: Many comments were received regarding this section. These comments covered a wide range of concerns including: (1) comments stating this section did not outline evaluation procedures and (2) possible violation of parent's rights.

Response: A change has been made. This section has been rewritten and it outlines the evaluation procedures step by step. The reference to parent was deleted and may now be found in Subpart D.

Individual evaluation objectives (§ 45.20)

Comment: Several comments were received requesting that assessment team members recommend intervention strategies.

Response: A change has been made. The section lists intervention strategies as one of the objectives.

Formation of multi-disciplinary evaluation teams (§ 45.21)

Comment: Several comments were received regarding the responsibility for selecting the multi-disciplinary evaluation teams.

Response: A change has been made. This section was rewritten to eliminate the contradiction of responsibilities. The

school supervisor has overall responsibility for the individual evaluation; however, the Special Education Coordinators, because of their specialized training and experience, will coordinate the effort.

Composition of multi-disciplinary evaluation teams (§ 45.22)

Comment: Several comments were received concerning the term "certified."

Response: A change has been made. The term certified has been deleted and "qualified" has been inserted.

Content of individual evaluations (§ 45.23)

Comment: Many commenters were concerned about the cost and the limited number of personnel in their schools. Some commenters stated that the requirement was unrealistic, particularly the one requiring vocational assessments when most schools do not have a vocational education program.

Response: A change has been made. The regulation now only requires an educational assessment, a health assessment and a psychological assessment for children referred for reasons other than a speech impairment. The portion on vocational education has been deleted.

Test administration (§ 45.24)

Comment: Several comments were received which requested definitions for racial, cultural, and sex bias.

Response: No change was made. It is the responsibility of the multidisciplinary team to ensure appropriateness of tests.

Location of evaluation (§ 45.25)

Comment: Several comments were received requesting clarification of the term geographical proximity.

Response: A change has been made. The term geographical proximity has been deleted. Testing may occur at a site compatible with the child's condition upon agreement between the school official and the parents.

Multi-disciplinary evaluation team procedures (§ 45.26)

Comment: Several commenters questioned whether the school supervisor or the Special Education Coordinator should be the designated responsible official. There was much concern with the time lines and lack of adequate resources.

Response: No change has been made. The time lines have not changed. The intent of this requirement is to complete the evaluations as soon as possible and to provide a comprehensive assessment of each child. The Special Education Coordinator has been designated to ensure appropriate procedures are followed. The members of the evaluation team have a right and the responsibility to determine the appropriate material to be used and any additional information which would assist them in the comprehensive assessment of each child to determine if he/she is indeed handicapped and in need of exceptional education.

Emergency evaluation and placement (§ 45.27)

Comment: Several commenters requested that time lines and procedures be further clarified.

Response: A change was made to emphasize that emergency placement is temporary and specific time lines have been incorporated.

Independent educational evaluations (§ 45.28)

Comment: Several commenters questioned the independent evaluation at public expense.

Response: No changes were made. The outlined procedures comply with the requirements of the regulations implementing Pub. L. 94–142.

Additional procedures for evaluating specific learning disabilities (§ 45.29)

Comments: Many comments were received regarding the length and extensiveness of the Specific Learning Disability regulations.

Response: No change has been made. The requirements reflect those set forth in 34 CFR 300.540. Pertaining to evaluation of learning disabled children.

Subpart C—Provision of Special Education and Related Services

Free, appropriate public education (§ 45.30)

Comment: Several commenters made reference to the absence of the terms "Each BIA funded or operated school. . . ."

Response: A change was made. These regulations apply to all schools funded or operated by the BIA.

Individualized education program (IEP) (§ 45.31)

Comment: One commenter questioned the development of an IEP based on the "results of an individual evaluation" and requested a change to "as a result of the determination of a multi-disciplinary team."

Response: A change was made. The recommendation was adopted.

Content of individualized education program (§ 45.32)

Comment: Several commenters wanted to know who would determine whether the objectives were being met.

Response: No change has been made. The individuals providing the direct services are the logical persons to determine when objectives are being met. The annual review of the IEP would also help determine whether objectives were being met.

IEP development (§ 45.33)

Comment: Several commenters objected to the described process of obtaining permission from the Central Office Director because it would delay the writing of the IEP if diagnosis was made near the end of the school year.

Response: A change was made. "Agency Superintendent for Education" has been substituted for the "Director" to allow for localization of policy and procedures.

Comment: Two commenters objected to mandated progress reporting for elementary and secondary handicapped students.

Response: No change has been made. Progress reports should be made on handicapped students on a regular basis just as for the regular student population.

Comment: Several commenters requested that a sixth listing of specific related service personnel be included in the IEP Committee.

Response: No change has been made. To do so might serve to limit related service personnel participation, whereas the term "other individuals" as referred to in paragraph (b)(5) allows more extended participation.

Placement recommendation in the IEP (§ 45.34)

Comment: One commenter requested clarification on the definition of continuum of services for placement in regard to the least restrictive environment.

Response: No change has been made. This continuum is self-explanatory and needs no further clarification.

Comment: Several commenters responded regarding the boarding school as being the least restrictive environment.

Response: No change has been made. The intent is to differentiate between Bureau operated boarding schools and other non-Bureau residential facilities. It would not be unusual to place a handicapped Indian student in a Bureau funded boarding school; whereas in the private sector, placement in a residential facility would probably

indicate an inability of the school system to provide services due to the severity of the handicapping condition.

Comment: Several comments were received concerning the schools' ability to contract for services to the handicapped.

Response: No change has been made. Should a school find that it is impossible to offer the full continuum of services, due to isolation or non-availability of personnel, then alternate means for providing an appropriate education in the least restrictive environment should be considered. This might include contractural cooperative arrangements.

Comment: Several comments were received regarding paragraph (j) "respite care."

Response: A change was made. The paragraph was deleted because this option was not relevant to Bureau education programs.

Comment: Several concerns were expressed over the teacher-pupil ratio in paragraph (g) guidelines since they have not been published.

Response: A change has been made. Reference to teacher-pupil ratio has been deleted. The complexity of the BIA education program demands that teacher-pupil ratio have enough flexibility to meet the needs of the students and to be cost effective in each given situation.

Approval of IEP and placement recommendation (§ 45.35)

Comment: One commenter felt the need to require official minutes of each meeting be kept in the child's folder.

Response: No change has been made. The documentation required in the development of an IEP should be sufficient documentation of the IEP meeting.

Comment: Several commenters wanted the term "School Supervisor" defined further in paragraph (c)(3).

Response: A change was made. The word coordinator was inadvertently left in the draft and has been deleted.

Comment: One commenter advanced the idea that while the parent is encouraged to attend IEP meetings, they are not encouraged to participate.

Response: No change has been made. The actions recommended in paragraph (b) of § 45.35 encourage the attendance and participation of the parents.

Comment: One commenter reported an inaccurate reference in § 45.35(b)(5).

Response: A change was made. The reference was changed to § 45.58.

Comment: Several comments requested the term "Evaluation Coordinator" be changed to "Special Education Coordinator" in paragraph (b)(1).

Response: A change was made adopting the comment.

Comment: One commenter suggested that an interpreter fluent in English and the Native languages be made available to parents who are deficient in English where appropriate.

Response: No change was made. § 45.35(d) specifies "The School Supervisor should take whatever action is necessary to insure that the parents understand the IEP and the proposed placement . . ." and § 45.36(e) requires that an interpreter be provided.

Comment: Several comments were received which encouraged the term "or his designee" be included along with the school supervisor.

Response: A change was made to adopt the comment.

Parent participation (§ 45.36)

Comment: Several commenters responded regarding the necessity of encouraging parental participation in both the placement and IEP meetings.

Response: No change has been made. This section outlines the procedures a school must use to involve parents in the IEP meeting; however, in some instances parents may be unresponsive even after repeated efforts to involve them. In these cases a school must have documentation of their efforts to prove they were not out of compliance with the parent participation requirement.

IEP implementation and placement (§ 45.37)

Comment: One commenter made reference to the Indian Child Welfare Reform Act in placement involvement.

Response: No change was made. § 45.33(b)(1) outlines individuals who must be involved in the IEP development meeting, including "other individuals at the discretion of the parent, agency or school."

Comment: Clarification was requested on § 45.37(c) regarding the IEP.

Response: A change has been made. The IEP must be reviewed at least annually. Emphasis is made on having a valid IEP for students who were in the special education program during the previous school term.

Comment: One reader commented that the language in § 45.37(a)(2) is not clear.

Response: A change has been made. The paragraph was not clear. It has been rewritten to clarify the requirement.

Comment: One commenter suggested that placement within 30 days of written parental approval may not be possible.

Response: No change has been made. The intent is to provide special education to the child as soon as possible. It is the Agency Superintendent's responsibility to make appropriate decisions regarding all children within his/her area of supervision.

IEP revision, review of placement (§ 45.38)

Comment: One commenter asked if a child should have an IEP update if the child is to move from one grade or one school to another.

Response: No change has been made. An annual update is required. There is nothing to prevent more frequent updates or revisions. This concern is addressed in § 45.38(a).

Comment: One commenter suggested that the term "long-term" be removed and "short-term" educational needs be inserted in § 45.38(a)(5).

Response: A change has been made. The statement was corrected.

Comment: One commenter wanted to know if all participants involved in the original assessment of the student should be involved in the annual review.

Response: No change has been made. The annual review is in reference to the IEP. Persons involved must be consistent with the requirement of this part. Involvement of the multi-disciplinary team is based on the needs of the student, the parent and the school.

Re-evaluation (§ 45.39)

Comment: Several commenters suggested that the school, rather than the agency, has the responsibility for re-evaluation of a child.

Response: A change has been made. The schools are now responsible.

Comment: A commenter expressed a concern that requests for re-evaluation might become redundant or unreasonable and the school authority should have the right to deny a request.

Response: A change has been made. This section was rewritten to include a "reasonable request."

Comment: Several commenters responded that parental consent should be required should the school seek to re-evaluate the student before the three year period expires.

Response: A change has been made. This section was rewritten to clarify the intent: however, the requirement is only that parents must be notified of the re-evaluation. This is consistent with the requirements of 34 CFR 300.504.

Comment: One commenter noted that a re-evaluation, at least every three years, is required.

Response: A change has been made. A final phrase was added which states: "a re-evaluation at least once every

three years" to re-emphasize this legal requirement.

Extended school year services (§ 45.40)

Comment: Commenters were concerned about the availability of funds.

Response: No change has been made. If a student's IEP calls for more than 180 days, it is the school's responsibility to provide such services. (See Crawford v. Pittman 708 F. 2nd 1028 (5th Cir. 1983).

Outcome goals (§ 45.41)

Comment: Several commenters expressed the concern that this section would result in "tracking" handicapped children, i.e., putting children in a program over which they and their parents have no control and forcing him/her to remain in that "track."

Response: A change has been made. This section now allows optional vocational education opportunities for handicapped students.

Comment: One commenter requested clarification of "regular" high school diploma.

Response: No change has been made. The term "regular" when used in special education refers to that program or service available to non-handicapped students within the school.

Related services (§ 45.42)

Comment: Several commenters requested more specificity as to the definition of related services.

Response: A change has been made. This section has been changed to insure the provision of services from any source. To be more specific could limit the services provided to a child. Services provided should meet the needs of the individual child in order to provide him/her with an appropriate education.

Non-academic and extra-curricular services (§ 45.43)

Comment: One commenter wanted to know if funding was available for non-academic extra-curricular services.

Response: No change has been made. The purpose of this section is to assure the inclusion of handicapped children in all programs available to non-handicapped children.

Physical education and athletics (§ 45.44)

Comment: Several commenters were concerned whether the specially designed physical education required by the child should be indicated on the IEP.

Response: No change has been made. The IEP must contain the specialized physical education program required by the child as well as any other services which are necessary for an appropriate education.

Discipline (§ 45.45)

The title of this section has been changed to "Expulsion/Suspension."

Comment: One commenter expressed concern that this section prohibits temporary removal of a disruptive handicapped student from the regular or alternative program.

Response: No change has been made. The removal of a disruptive student from a class for a brief cooling-off period is still a viable option for a school. The intent of this section was to simply prohibit the use of expulsion and suspension as replacements for appropriate programming and to emphasize that alternative action must be considered.

Comment: One commenter was concerned about the lack of residential programs available.

Response: No change has been made. It is the LEA's responsibility to provide the handicapped child with a free appropriate education. If the multi-disciplinary team determines that residential placement is necessary, placement in a state or private facility is considered. Such placements are coordinated with Social Services and the responsible Education Specialist for institutional placement.

Comment: Several commenters expressed concern that this section is too broad and all inclusive as written.

Response: A change has been made. This section has been rewritten. The issue is not that handicapped students cannot be disciplined but rather that expulsion or suspension is not a viable alternative to be used in lieu of appropriate programming. It was not the intent to prohibit any and all disciplinary actions regarding handicapped students.

Geographic accessibility (§ 45.46)

Comment: Several commenters expressed concern regarding placement of children in off-reservation boarding schools.

Response: No change has been made. This section only reiterates that attendance in an off-reservation boarding school is not a restrictive placement and may be considered as a school nearest the child's home if it is a school that he/she would normally attend if he/she were not handicapped.

Architectural barriers and program accessibility (§ 45.47)

Comment: Several commenters referred to the lack of administrative control to assure compliance when dealing with constructual arrangements for facilities.

Response: A change has been made to reflect the concerns stated. The American National Standards and Institute accessibility standards must be followed. The wording of the regulation was changed to be more specific in terms of administrative responsibility.

Comment: A commenter suggested that the regulation as written was a standard and as such belonged under standards for special education, in proposed 25 CFR Part 36.

Response: No change has been made. Reference was made to the fact that standards for facilities and programs accessibility are contained in Part 45 because of the need for administrative awareness to comply with these standards. It was decided to clarify several sections and that they would keep them under Part 45.

Handicapped children in private schools placed or referred by agencies (§ 45.48)

Comment: Several commenters requested clarification of this section.

Response: No change has been made. This section meets the requirements of 34 CFR 300.347 and assures that children placed in private or state schools have the same rights and receive equitable treatment with children attending BIA funded or operated schools.

Handicapped children in private schools placed by parents (§ 45.49)

Comment: Several commenters requested clarification of the funding source for private schools.

Response: No change has been made. § 45.48 and § 45.49 differentiate the funding source depending on who places a child in a facility other than a BIA funded or operated school.

Subpart D—Procedural Safeguards

Full and effective notice (§ 45.51)

The title of this section has been changed to read: "Notice to parents."

Comment: One commenter was concerned that a full explanation of due process and Family Educational Rights and Privacy Act rights had to be given with each note sent home.

Response: No change has been made. This Subpart carefully outlines procedural safeguard. This does not prohibit sending a notice to parents. It outlines the minimum requirements that a school must meet in order to comply with the law.

Comment: Two commenters suggested that a specific number of days be specified regarding written notification to parents.

Response: No change has been made. The intent is to assure that parents are notified of any action involving their child and that they are aware of their rights in regard to the special education programs.

Parental consent (§ 45.52)

Comment: One commenter stated that there appeared to be a conflict between this section and the Privacy and Freedom of Information Acts.

Response: A change has been made to indicate that all disclosures made under this section will be consistant with the disclosure provisions of the Privacy Act.

Comment: One commenter mentioned that § 45.52 allowed all agencies listed in § 45.12(d) to gather identifiable data without parental consent.

Response: No change has been made. The intent of §45.12(d) was to establish a procedure to regularly collect data. All agencies listed are still required to secure appropriate consent prior to actual collection of any information.

Rights of handicapped children (§ 45.53)

Comment: Several commenters questioned the appointment of surrogate parents.

Response: A change has been made. The regulations concerning appointment of surrogate parents are now clearly stated in § 45.56.

Access rights (§ 45.54)

Comment: One commenter suggested the addition of a section regarding the parents' right to insert material into the student's record.

Response: A change has been made. Paragraph (b)(4) was added to § 45.54 detailing the parents' rights to add information and/or comments to their child's record.

Confidentiality of information (§ 45.55)

Comment: A few commenters expressed concern for the handling of personally identifiable records when they are no longer needed to provide educational services to the child.

Response: No change has been made. The specific policy for complying with this section is to be addressed by the local school boards.

Surrogate parents (§ 45.56)

Comment: Many commenters were concerned with the legality of appointing a surrogate parent.

Response: A change has been made. A child's rights must be protected in instances of educational decision making, identification, evaluation and placement. An alternate process for selecting surrogate parents has been added.

Hearing officers (§ 45.59)

Comment: A few commenters questioned the appropriateness of the Agency Superintendent for Education selecting the hearing officer.

Response: No change has been made. The Agency Superintendent for Education is the educational authority at the Agency level. The decision is subject to challenge as outlined in paragraph (c) of this section.

Impartial hearing officer (§ 45.60)

Comment: One commenter requested information regarding the qualifications of the hearing officer.

Response: No change has been made. It is believed that the regulations sufficiently address the process for the selection of the hearing officer. Qualifications may be adopted by the local school boards. Additionally, all hearing officers must be properly trained in the procedures.

Hearing rights (§ 45.61)

The title of this section has been changed to "Hearing reports."

Comment: One commenter suggested changing "accompanied and advised by counsel" to "represented by counsel."

Response: No change has been made. This hearing is not intended to replace a court. The intent is for all parties to have expert advice during the proceedings.

Comment: One commenter suggested including a regulation on paying attorney fees.

Response: No change has been made. The purpose of a hearing is to ensure that handicapped children are provided a free appropriate education. No provision has been made relating to hearing costs.

Administrative appeal (§ 45.63)

Comment: Some comments were received concerning legal actions and the legal aspects of appealing to the Director following due process hearing.

Response: A change has been made. When a parent or the school disagrees and cannot informally come to terms, then a third party is brought in to have a hearing. If that does not provide resolution to the matter, either party may appeal to the Assistant Secretary—Indian Affairs.

Appointment of a special education coordinator (§ 45.64)

Comment: Commenters disagreed on this section. Some wanted more precise requirements, and some requested deleting the entire section.

Response: A change has been made. This section was deleted. The regulation as written would have infringed on the rights of the Agency and Agency School Board to structure their organization to meet local needs. Deletion of this section, however, does not guarantee that funds will be available to all agencies desiring a Special Education Coordinator.

In-Service training (§ 45.65)

Comment: Two commenters requested a definition of the term "LEA."

Response: A change has been made. Training sources have been clearly specified, references to "LEA" have been deleted.

Comment: One commenter recommended that this section be expanded to insure that each Agency and/or school develop and implement an in-service training plan regardless of the funding source.

Response: A change has been made. The section was rewritten to clarify the necessary assurances for in-service training and insure coordination between agencies and schools.

Qualifications of staff (§ 45.66)

Comment: A number of commenters expressed concern regarding staff qualifications in non-BIA operated schools.

Response: No change has been made. BIA personnel regulation, 25 CFR 38.4, require certification of school personnel. It is assumed that the tribes operating non-BIA schools will, in the interest of a sound education for their children, establish certification standards for the staff. Additionally, a child receiving services from a non-certified teacher can not be counted to receive ISEP funds.

Self-evaluation (§ 45.71)

The title of this section has been changed to "Annual evaluation."

Comment: One commenter requested that the Director be required to measure and evaluate the effectiveness of the Bureau's efforts to provide a free appropriate education to all handicapped Indian children.

Response: No change has been made. Internal evaluations should be directed by the governing body of the school with input from parents and advocates for the students.

Comment: Several commenters recommended a clarification of self-evaluation responsibilities and evaluation procedures.

Response: A change has been made. Annual evaluation rules have been added to this section in accordance with the requirements of 34 CFR 300.146.

Comment: One commenter felt that keeping self-evaluation records for three years did not seem necessary.

Response: A change has been made. The requirement has been deleted. After submitting the annual evaluation report to the Central Office the Agency/school should retain the results only as long as they are useful to improve the special education program.

Non-Discrimination (§ 45.73)

Comment: Several commenters recommended including the word "Indian" between "handicapped" and "child."

Response: A change has been made. The word "Indian" has been included to identify the children to be served.

The Division (§ 45.74)

Comment: Several commenters questioned the Director's role and responsibility for educational programs for handicapped children.

Response: No change has been made. The Director has the responsibility to insure an appropriate education for all Indian children attending BIA operated or funded schools.

Monitoring (§ 45.75)

Comment: One commenter recommended that § 45.75(a)(3) be revised to allow for a review of the exceptional child component of the ISEP regulations in addition to Federal fund utilization.

Response: A change has been made. The monitoring of special education programs includes a review of all funds utilized in the program regardless of source. § 45.75(a)(3) has been clarified.

Comment: One commenter recommended that the monitoring include consideration of small agencies, rural areas, cultural values and tribal traditions.

Response: No change has been made. The purpose of monitoring is to determine compliance with Pub. L. 94–142. The consideration for and incorporation of cultural values and tribal traditions into the special education programs rests with the local school boards.

Comment: One commenter recommended parental involvement in the monitoring process.

Response: No change has been made. Parental involvement at the local level is highly encouraged, particularly as the program affects and meets their own child's needs. The parents should have access to the monitoring findings and recommendations; however, the purpose of monitoring is to determine the degree of compliance with Pub. L. 94–142 in providing special education to handicapped children.

Comment: One commenter recommended that the regulations include a provision that the Division of Exceptional Education provide a written monitoring report to the Agency.

Response: A change has been made. The Division of Exceptional Education does provide a written report to the Agency; however, this was not addressed in this section. A new paragraph (f) has been added to § 45.75 to address this concern.

Use of available funds (§ 45.77)

Comment: One commenter recommended that this section be expanded to include funding received through the exceptional education component of ISEP.

Response: A change has been made. The intent of this section was to include all funding specifically appropriated for the special education program of the Bureau. All special education funds must be used for the identification, evaluation and the provision of an appropriate education to handicapped Indian children. This section has been re-written to clarify this requirement.

Children for whom the Division of Social Services has accepted financial responsibility (§ 45.78)

Comment: Several commenters requested that a clearer statement be made concerning the Division of Exceptional Education and the Division of Social Services.

Response: This section was rewritten to include suggestions from the commenters. The regulations as stated here are compatible with Social Services regulations (25 CFR Part 20).

Cooperative agreements (§ 45.79)

Comment: Several commenters recommended the inclusion of cooperative agreements with other Federal agencies such as Indian Health Services.

Response: No change was made. The BIA can not regulate other agencies. Indian Health Service has a responsibility to provide medical services to Indian people.

Comment: One commenter recommended that the section be deleted suggesting that the contents were covered in § 45.34.

Response: No change has been made. Section 45.34 does not refer to cooperative agreements. This also does not negate the authority of schools or agencies from entering into cooperative agreements for the provision of special education and related services to handicapped Indian children.

Vocational education coordinator (§ 45.80)

Comment: Several commenters expressed confusion over the intent of this section.

Response: A change has been made. This section has been deleted. This was a policy statement, not a regulation.

Bureau of Indian Affairs' Advisory Committee for Exceptional Children (§ 45.81)

Comment: One commenter recommended several modifications be made, suggesting the inclusion of "within the BIA" after "handicapped children".

Response: A change has been made. The term "Indian" was added to § 45.81(a) and now reads: "the education of handicapped Indian children". § 45.81(b) has been changed to "children attending BIA operated or funded schools".

Comment: One commenter requested that paragraph (a)(4) of § 45.81 "State and local educational offices" be changed to read: "BLA Agency and school officials.

Response: A change has been made. The proposed wording was adopted.

Comment: One commenter recommended that § 45.81(b)(1) be expanded to include the Assistant Secretary of Indian Affairs.

Response: No change was made on paragraph (b)(1) of § 45.81. However, paragraph (b)(2) was changed by deleting "Director" and inserting the words "Assistant Secretary—Indian Affairs."

Comment: One commenter recommended that paragraph (b)(1) of § 45.81 be changed to read: "Unmet special education needs of Indian children."

Response: A change has been made. The proposed wording was adopted.

Comment: One commenter recommended that the Bureau place limits on the number of meetings held during the fiscal year.

Response: No change has been made. The Advisory Council activities are coordinated with the Division of Exceptional Education and meetings are called only when necessary to conduct its business.

Comment: One commenter recommended that "reasonable and necessary expenses" should be more explicitly defined.

Response: A change has been made. Paragraph (h) of § 45.81 now reads: "will be reimbursed for travel and expenses in compliance with Federal travel regulations" issued by the General

Service Administration. § 45.81 is hereby redesignated as § 45.80 to assure continuity of section numbers.

Further guidelines and directives (§ 45.82)

Comment: Several commenters recommended that this section was unnecessary and should be deleted from the regulations.

Response: A change has been made. This recommendation was adopted and this section was deleted.

List of Subjects in 25 CFR Part 45

Education of handicapped, elementary and secondary education, Equal education opportunity, Indian education and students.

A new Part 45 to Subchapter E, Chapter I of Title 25 of the Code of Federal Regulations is added to read as follows:

PART 45—SPECIAL EDUCATION

Subpart A—General

Sec.
45.1 General responsibility.
45.2 Provisions of early childhood special education programs and services.
45.3 Children of ages eighteen through twenty-one.
45.4 Full educational opportunity.
45.5 Definitions.

Subpart B—Identification and Evaluation of Handicapped Children

45.11 Child find.
45.12 Child find—elements.
45.13 Register of children.
45.14 General entry screening.
45.15 Periodic school screening.
45.16 Screening personnel.
45.17 Screening results and referral.
45.18 Individual evaluations.
45.19 Evaluation procedures.
45.20 Individual evaluation objectives.
45.21 Formation of multi-desciplinary evaluation teams.
45.22 Composition of multi-disciplinary evaluation teams.
45.23 Content of individual evaluations.
45.24 Test administration.
45.25 Location of evaluation.
45.26 Multi-disciplinary evaluation team procedures.
45.27 Emergency evaluation and placement.
45.28 Independent educational evaluation.
45.29 Additional procedures for evaluating specific learning disabilities.

Subpart C—Provision of Special Education and Related Services

45.30 Free appropriate public education.
45.31 Individualized education program (IEP).
45.32 Content of individualized education program (IEP).
45.33 Individualized education program development.
45.34 Placement recommendation in the IEP.
45.35 Approval of IEP and placement recommendation.
45.36 Parent participation
45.37 IEP implementation and placement.
45.38 IEP revision, review of placement.
45.39 Re-evaluation.
45.40 Extended school year services.
45.41 Outcome goals.
45.42 Related services.
45.43 Non-academic and extracurricular services.
45.44 Physical education and athletics.
45.45 Expulsion/suspension.
45.46 Geographic accessibility.
45.47 Architectural barriers and program accessibility.
45.48 Handicapped children in private schools placed or referred by agencies.
45.49 Handicapped children in private schools placed by parents.

Subpart D—Procedural Safeguards

45.51 Notice to parents.
45.52 Parental consent.
45.53 Rights of handicapped children.
45.54 Access rights.
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45.57 Conciliation/mediation.
45.58 Initiation of hearings.
45.59 Hearing officers.
45.60 Impartial hearing officer.
45.61 Hearing reports.
45.62 Timeliness and convenience of hearings and reviews.
45.63 Administrative appeal: impartial review.

Subpart E—Personnel

45.65 In-service training.
45.66 Qualifications of staff.

Subpart F—School Administration

45.70 Assurance of compliance.
45.71 Annual evaluation.
45.72 Comparability of facilities.
45.73 Non-discrimination.

Subpart G—Responsibilities of the Division

45.74 The Division.
45.75 Monitoring.
45.76 Complaint procedures.
45.77 Use of available funds.
45.78 Children for whom the Division of Social Services has accepted financial responsibility.
45.79 Cooperative agreements.
45.80 Bureau of Indian Affairs Advisory Committee for Exceptional Children.

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 20 U.S.C. 1411–1420.

Subpart A—General

§ 45.1 General responsibility

(a) Schools are responsible for providing a free appropriate education to all handicapped Indian children enrolled in a school operated or funded by the Bureau of Indian Affairs (BIA) who are between the ages of five (5) and twenty-one (21). Children whose fifth birthday occurs on or before December 31 or whose twenty-second birthday occurs during the course of the regular school year shall be regarded as eligible children for the entire school year.

(b) The BIA has the responsibility to ensure the provision of a free appropriate education until a handicapped child successfully completes a secondary school program, voluntarily withdraws or attains the age of twenty-two (22) years, regardless of whether the handicapped child is provided special education and related services:

(1) By a school directly;

(2) Through a contract entered into by the school with a public or private agency;

(3) By an educational cooperative of which the school is a member; or

(4) By an approved public or non-public school program (following placement or referral).

§ 45.2 Provision of early childhood special education programs and services.

(a) Children from birth to four (4) years of age, who are not enrolled in BIA funded or operated schools, may receive special education services through coordination with Head Start and other existing Early Childhood Special Education programs (ECSE).

(b) Early Childhood Special Education (ECSE) means specially designed special education and related services, to meet the unique needs of a child under the age of five (5) years whose handicap or impairment adversely affects the child's educational performance or learning abilities.

§ 45.3 Children of ages eighteen through twenty-one.

A child of ages eighteen (18) through twenty-one (21) shall be entitled to all of the rights given to children and parents by this part.

§ 45.4 Full educational opportunity.

A full educational opportunity must be provided to all handicapped children, ages five (5) through twenty-one (21) who are enrolled in schools operated or funded by the BIA.

§ 45.5 Definitions.

(a) "Agency" means an organizational unit of the Bureau which provides direct services to the governing body or bodies of one or more specified Indian tribes. The term includes Bureau Area Education offices only with respect to off-reservation boarding schools, cooperative schools, and tribally operated contract schools located in the Area for which the Director has not designated an Agency.

(b) "Agency Superintendent for Education" means the Bureau official in charge of Bureau education programs and functions in an Agency, and who

reports to the Director, Office of Indian Education Programs (OIEP).

(c) "Approved public or non-public school" means:

(1) either a public school operated by an intermediate educational unit, a local education agency or other public agency (as those terms are defined in 34 CFR 300.7, 8, 11) of a State which receives funds under Part B of the Education of the Handicapped Act, as amended (20 U.S.C. 1411–1420) pursuant to a current annual program plan approved by the Secretary of Education; or

(2) a non-public school located in a State determined by the State educational agency to be in full compliance with all applicable State and Federal special education requirements.

(d) "Area Education Program Administrator" means the Bureau official in charge of Bureau Education programs and functions in a Bureau Area office and who reports to the Director.

(e) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, Department of the Interior, or his/her designee.

(f) "Boarding school" means a Bureau school offering a residential center and support services as well as an academic program.

(g) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(h) "Child identification" means the identification, location, and individual evaluation of handicapped children.

(i) "Cooperative agreements" means an agreement between schools operated or funded by the BIA and state and local education agencies for the provision of special education and related services to handicapped children enrolled or eligible to be enrolled in the BIA school.

(j) "Counseling services" means services provided by qualified social workers (with training as counselors), psychologists, guidance counselors, or other qualified personnel.

(k) "Days" mean consecutive calendar days.

(l) "Director" means the Director, Office of Indian Education Programs.

(m) "The Division" means the Branch of Exceptional Education, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior.

(n) "EHA" means Part B of the Education of the Handicapped Act as amended by the Education for All Handicapped Children Act of 1975 (Pub. L. 94–142), 20 U.S.C. 1411–1420, and the regulations issued by the U.S. Department of Education, 34 CFR 300.1.

(o) "Handicapped child" means a child evaluated in accordance with the requirements of this Part who is determined to be mentally retarded, hard of hearing, deaf, deaf-blind, speech impaired, visually handicapped, seriously emotionally disturbed, multi-handicapped, orthopedically impaired, other health impaired or as having specific learning disabilities and who because of these impairments needs special education and related services. The terms used in this definition are defined as follows:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Deaf-Blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(4) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) "Multi-handicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc., but not including speech impaired), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (*e.g.*, clubfoot, absence of member, etc.), impairments caused by disease (*e.g.*, poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) "Other health impaired" means (i) having an autistic condition which is manifested by severe communication and other developmental and educational problems; or (ii) having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) "Seriously emotionally disturbed" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance including:

(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, or mental retardation, or emotional disturbance, or of environmental, cultural, or economic disadvantage.

(10) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(11) "Visually handicapped" means a visual impairment which even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(p) "Independent education evaluation" means an evaluation conducted by a qualified examiner who

is not employed by the Agency responsible for the education of the child in question.

(q) "Individualized Education Program" (IEP) means the written individualized education for a handicapped child which is consistent with all the requirements of § 45.31–38 of this part.

(r) "Indian" means a person who is a member of an Indian tribe.

(s) "Indian Tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized by the Secretary as eligible for the special programs and services provided through the Bureau to Indians because of their status as Indians.

(t) "Individual Intelligent Quotient (IQ) test" means any individual test, device, or measure which purports to assess a child's current mental abilities, capacity, intellectual functioning, intellectual development or aptitude, but does not include achievement test or adaptive behavior scales.

(u) "In-service training" means training other than that received by an individual in a full-time program which leads to a degree.

(v) "Least Restrictive Environment" (LRE) means that to the maximum extent appropriate, handicapped children in public or private institutions or other care facilities, are educated with children who are not handicapped; and that special classes, separate schooling or other removal of handicapped children from the regular environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(w) "Native language" when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child. In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(x) "Parent" means a parent, a guardian, or person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 45.56. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or step-parent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

(y) "Parental Consent" means: (1) that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (2) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (3) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(z) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(aa) "Physical education" means the development of physical and motor fitness; fundamental motor skills and patterns; skills in aquatics, dance, individual, and group games and sports. The term includes special physical education, adaptive physical education, movement education and motor development.

(bb) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(cc) "School" means educational or residential centers operated by or under contract with the Bureau of Indian Affairs offering services to Indian students under the authority of a local school board and the direction of the school supervisor. A school may be located on more than one physical site. The term "school", unless otherwise specified, is meant to encompass day schools, boarding schools, cooperative schools, and contract schools as those terms are commonly used. The term "school" shall also encompass private schools, facilities, and institutions, with which the Bureau of Indian Affairs may contract for services to handicapped Indian children.

(dd) "Section 504" means section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(ee) "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(ff) "Special education coordinator" means the qualified employee of an Area/Agency responsible for ensuring that all requirements of this part are complied with by the schools within the jurisdiction of the Area/Agency.

(gg) "Supervisor" or "school supervisor" means the individual in the position of authority at any school.

(hh) "Tribally operated contract school" means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(ii) "Vocational education" means organized educational programs which are directly related to the preparations of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

Subpart B—Identification and Evaluation of Handicapped Children

§ 45.11 Child find.

Each Agency must insure that every child within its jurisdiction between the ages of birth and twenty-two years who is suspected of being handicapped and in need of special education and related services is identified and located. A formal child find effort must be conducted at least once each school year and must include procedures to identify children:

(a) Enrolled in a regular education program operated by the schools of the Agency;

(b) Enrolled in a pre-school or day-care program on or near the reservation; or

(c) Currently out-of-school, including dropouts but excluding children who have graduated or otherwise successfully completed programs. Schools shall conduct child find activities for in-school identification as described in § 45.12.

§ 45.12 Child find—elements.

Each Agency shall:

(a) Conduct a *formal community* survey through any effective method to identify children of all ages who may be in need of special education and related services.

(b) Regularly present or distribute child find information at tribal

government or agency meetings, tribal fairs, chapter/district meetings, etc.

(c) Establish a system of in-school identification by which each local school supervisor or designee refers children whose academic performance, attendance, or other behavior indicates the possibility of a handicapping condition for an individual evaluation.

(d) Establish a procedure by which child identification data is regularly collected from the Indian Health Service, local Headstart programs, day care facilities, group homes, local public and non-public schools, the state education agency (of the state in which the Agency is located), tribal agencies and/or organizations and any other appropriate education, health, welfare or social service organization in the community served by the Agency. A formal procedure for the exchange of information between the State Organizational Unit conducting the "Early Periodic Screening, Diagnosis and Treatment Program" (mandated by Title XIX of the Social Security Act) for the state in which the school is located and the Agency in which the school is located shall be established within 180 days from the effective date of this part.

(e) Publish public information articles and programs in local media, including announcements of times, dates, and places of free orientation workshops and free screening.

(f) Initiate annual community-wide communication to all parents of school age children which describes the special education program. Such communication shall emphasize the availability of programs and services for school age children.

§ 45.13 Register of children.

Each school shall maintain information on each handicapped child enrolled in the program. All information collected and maintained must be kept in accordance with the confidentiality requirements of Pub. L. 94–142 and the Privacy Act.

§ 45.14 General entry screening.

Each school shall participate in a screening program for all *newly* enrolled children and children who have not previously been screened in the school. Such screening shall be conducted by the school in order to identify those children who should be referred for a full individual evaluation. The general entry screening shall consist of the following elements, appropriately adapted for use with children of his/her particular age. This screening must be completed within thirty (30) days of the child's enrollment and include at a minimum:

(a) An appropriate vision screening;

(b) An appropriate hearing screening;

(c) A screening of the child's primary language skills;

(d) The administration by a classroom teacher of a general screening instrument (i.e., rating scale) to provide information regarding:

(1) Current academic performances,

(2) Social and emotional behavior,

(3) Gross motor skills,

(4) Fine motor skills,

(5) Any observable health problems, and

(6) The teachers impression of the need for additional assessment.

§ 45.15 Periodic school screening

(a) At a minimum, schools must annually screen all students enrolled in odd numbered grades (i.e., first, third, fifth, seventh, ninth and eleventh grades) within the first thirty (30) days of enrollment.

(b) For schools using a non-graded system, the screening must occur every other year, beginning with the first level of enrollment at the school. The periodic school screening must meet the requirements set forth in § 45.14. Nothing in this part exempts newly enrolled students in even numbered grades, kindergarten, or pre-school from being screened as required in § 45.14.

§ 45.16 Screening personnel.

The school shall utilize personnel who are trained to do the specific screening which is being performed.

§ 45.17 Screening results and referrals.

The school supervisor or designee shall review all results obtained through the screening procedures indicated in § 45.14–15 with the classroom teacher as a team within ten (10) days of completion of this screening and determine if an individual evaluation is warranted.

(a) Upon the determination that an individual evaluation is needed, the school supervisor or designee shall within twenty (20) days complete the following:

(1) Inform the parents of the screening results and the recommendations of the team.

(2) Explain parental rights as required in § 45.51 to the parents.

(3) Obtain parental consent to perform an individual evaluation.

(4) When parental consent for an individual evaluation is obtained a formal referral must be prepared according to procedures established by the Agency Special Education Coordinator in consultation with the school supervisor. The referral shall be fowarded to the appropriate personnel for action.

(b) Should parental consent be denied, possible alternatives to formal evaluation such as modifications to the regular classroom program must be considered and discussed with the parent and classroom teacher prior to implementing due process procedures as provided in § 45.58. The discussion required in this part must be held within five (5) days of formal denial of consent and any modifications agreed upon must be implemented within thirty (30) days. If no agreement can be reached through these "conciliation" measures the due process procedures in § 45.58 should be considered.

(c) Nothing in this part is to be interpreted as prohibiting the child's parent, teacher or school administrator from referring a child for an individual evaluation should they feel that an evaluation is needed regardless of the screening cycle.

(d) Screening scales completed on children must be kept in the child's cumulative file until the succeeding scale is completed. If a child is placed in a Special Education Program, the screening results will then become a part of the child's handling file. The child, once placed, will become exempt from the screening procedures conducted thereafter.

§ 45.18 Individual evaluations.

(a) An individual evaluation must be conducted after receiving parental consent when:

(1) The child is referred based on the screening results, or

(2) Requested by the parent, teacher or administrator in writing.

(b) A student must be re-evaluated when:

(1) A disagreement occurs between the school and parent regarding a change of placement from one program to another (i.e., full-time special education to regular classroom, part-time special education to regular classroom, etc.),

(2) A change is proposed for the identification of a student's handicapping condition to a different condition (i.e., seriously emotionally disturbed to specific learning disabled, mentally retarded to specific learning disability, etc.),

(3) A child is currently enrolled in a special education program and the last evaluation was administered three years ago, or

(4) Requested by the parent.

§ 45.19 Evaluation procedures.

Procedures for selecting testing and evaluation materials and procedures developed for the purpose of evaluation and placement of handicapped children will not be racially or culturally discriminatory. Materials or procedures shall be provided and administered in the child's native (primary) language or mode of communication unless it is clearly not feasible to do so. No single procedure shall be the sole criterion for determining an appropriate educational program for a child. Assessment instruments should be selected on a child-by-child basis. Assessments must be reported in such a manner as to indicate present levels of the child's performance, to determine the need for special education and related services. Based on the individual needs of the child, additional specialized assessments may be required.

Assessment reports should contain a summary of the diagnosis and specific educational recommendations for remediation. Assessment of a handicapped child will be multi-disciplinary, in order to provide a comprehensive view of the child from the perspective of the school, home, and community.

(a) For the purposes of non-discriminatory testing and evaluation practices, the following shall apply:

(1) Assessment instruments shall be appropriately adapted when used with children of impaired sensory, physical, or speaking skills and such adaptation shall consider each child's age and socio-economic and cultural background.

(2) Specialists implementing evaluation procedures must be familiar with local, cultural, language, and social patterns and practices.

(3) Interpretors, in the native language and/or sign language may be used throughout all phases of the evaluation.

(4) Communication with parents and the child shall be in the native language of the home (through the use of an interpretor) unless the English language is well understood by the parents, guardians, or child.

(5) Local community norms shall be considered when norm referenced tests are used.

(6) Criterion referenced instruments should be used.

(7) Developmental checklist(s) should be used where appropriate.

(8) Instruments shall be administered only by trained personnel and according to the producer's instructions.

(9) Instruments shall assess specific abilities, not merely produce a single IQ score.

(10) No one result shall determine placement.

(b) Assessment instruments should be adapted in accordance with the producers instructions to meet the individual needs of the child being evaluated. This requires that:

(1) Instruments be adapted according to age, socioeconomic, and cultural background of each child before or during a child's evaluation.

(2) Instruments be adapted for children with perceptual problems either before or during an evaluation.

(c) Evaluation shall be conducted in educationally related areas to verify a child's suspected need for special education. Evaluations shall be accomplished through coordination with the school supervisor and the Agency Special Education Coordinator when appropriate.

(d) An assessment by a psychologist shall be provided when appropriate to the child's needs. Such assessment may include:

(1) An individually appropriate psychological examination culminating in specific recommendations, based upon the child's developmental and social history.

(2) Observation of the child in familiar surroundings, such as a classroom or home.

(3) Inventory of sensory, motor, language, perceptual, attentional, cognitive, affective, attitudinal, self-image, interpersonal, behavioral, interest and vocational factors, in regard to the child's maturity, integrity and interaction with the educational and/or home context.

(e) An assessment by a nurse, social worker, or a counselor shall be provided when appropriate for the child. Such assessment of pertinent family history and home situation factors shall include:

(1) A description of pertinent family history and individual developmental history and estimates of adaptive behavior at home in the neighborhood and in local peer groups.

(2) Estimates of adaptive behavior shall be based to the greatest possible degree on information obtained by direct observation or interview of the child and/or parent in the neighborhood setting.

(f) Each qualified specialist providing an assessment component shall give the child a professionally sound, complete and suitable individualized examination or assessment in the context of the child's physical, developmental, social and educational history and current circumstances.

(g) Individual evaluations shall be conducted on a child unless there are written and documented reasons determined on an individual basis, for waiving evaluations. Acceptable reasons may include but are not limited to circumstances where:

(1) The parents refuse to permit an evaluation.

(2) The parents arrange for an equivalent evaluation of their child by a qualified professional.

(3) An equivalent evaluation has been completed within the past three (3) years.

§ 45.20 Individual evaluation objectives.

The objectives of an individual evaluation are to:

(a) Determine where a child is handicapped;

(b) Diagnose and evaluate the nature and extent of the effect of such impairment or condition on the educational performance of the child; and

(c) Assess the need for special education and related services and to recommend intervention strategies.

§ 45.21 Formation of multi-disciplinary evaluation teams.

(a) The school supervisor will be responsible for the overall conduct of the individual evaluation and shall collect and review all pertinent information regarding the child to be evaluated.

(b) The Special Education Coordinator shall coordinate through the school supervisor, the selection of a multi-disciplinary evaluation team for the conduct of the evaluation.

§ 45.22 Composition of Multi-disciplinary evaluation teams.

The multi-disciplinary evaluation team shall be composed of qualified persons appropriate to complete an assessment of the suspected disability. In all cases the classroom teacher (or other instructional staff member) familiar with the child and a person knowledgeable with respect to the suspected disability must be included on the team.

§ 45.23 Content of individual evaluations.

Each individual evaluation must include:

(a) An assessment of the child's educational status which includes:

(1) A history of the child's prior evaluations.

(2) A statement of the child's attendance pattern to include schools attended and average daily attendance in prior years.

(3) An educational history including:

(i) The child's academic grades.

(ii) The child's achievement and aptitude test scores and a statement of

the child's current academic standing or school readiness.

(iii) Previous educational strategies used to remediate the child's educational need.

(iv) A statement of the child's social relations with groups, peers, and adults based on classroom and teacher observations.

(v) A description of the child's academic strengths that promote learning.

(vi) A description of the child's physical limitations and behavior that inhibit learning.

(vii) A statement of the child's attentional capacity and communication skills.

(b) A health assessment which includes:

(1) Present and past medical review.

(2) Physical examination.

(3) Current existing medical conditions and prescribed treatment(s).

(c) An assessment by a psychologist, including an individual psychological examination culminating in specific recommendations, as contained in § 45.19.

(d) Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist will:

(1) Evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and

(2) Where necessary, make referrals for additional assessments needed to make an appropriate placement decision. For example, if a child is suspected of being seriously emotionally disturbed, the child should be evaluated by either a clinical psychologist or a psychiatrist.

§ 45.24 Test administration.

Agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child;

(e) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(f) Tests, to the greatest extent possible, are free from racial, cultural and sexual bias; and

(g) Determinations of mental retardation are based on an assessment of a variety of factors including adaptive behavior and past and current development activities (e.g., indices or manifestations of social, intellectual, adaptive, verbal, motor, language, emotional and self-care development for age).

§ 45.25 Location of evaluation.

(a) The evaluation shall take place in the school or at another facility which is jointly approved by the child's parents and school officials.

(b) When a child has been referred for an evaluation and, at the time of such referral, such child is in a hospital or is otherwise living away from home, the Agency shall make appropriate arrangements for the provision of the evaluation.

§ 45.26 Multi-disciplinary evaluation team procedures.

(a) Each individual evaluation must be completed, with full attention to its comprehensiveness and thoroughness, within thirty days from the date of written parental consent. An extension of time of thirty additional days may be approved in writing by the Agency Superintendent for Education after written documentation by the school that unusual circumstances exist preventing completion of the individual evaluation in the specified time. No more than one extension may be approved in connection with a single individual evaluation unless approved in writing by the Director, or designee.

(b) The comprehensive assessment must reflect a compilation of information drawn from different assessment sources. The depth of the assessment in each area will vary based on the initial review of screening information conducted by the school supervisor.

(c) The Special Education Coordinator is responsible for ensuring that full and complete records of information collected or generated in connection with an individual evaluation are maintained. A report setting forth a full written explanation of the findings and the recommendations made by the multi-disciplinary evaluation team must be prepared. The report must include:

(1) A description of the child's present level of functioning;

(2) A description of the needs of the child in rank order of importance;

(3) A recommendation of the types of services which should be provided for each listed need;

(4) A written summary of the procedures employed, the results, and the diagnostic impression;

(5) A proposed date for the review of the child's progress prior to the review required in § 45.38, if such assessment so indicates; and

(6) Criteria by which at that time, the effectiveness of the child's program may be determined.

(d) Each member of the multi-disciplinary evaluation team shall certify in writing whether the report prepared by the team reflects his or her conclusions, and if not, shall submit a separate statement presenting his or her conclusions. The report must be prepared no later than fifteen (15) days after completion of the evaluation.

(e) Members of the multi-disciplinary evaluation teams must be responsible for all aspects of the individual evaluation including: the selection; administration and interpretation of evaluation materials; the collection of all appropriate social and cultural background and adaptive behavior information related to each evaluation; and the confidentiality of information collected during the individual evaluation.

§ 45.27 Emergency evaluation and placement.

(a) Where a child demonstrates documented instances of dangerously assaultive or self-abusive behavior, the school supervisor may approve a temporary change in placement (i.e., to a special education setting other than the regular classroom) on an emergency

basis. The school supervisor shall immediately notify the Special Education Coordinator of the placement. The Agency shall no later than the following day determine the appropriateness of the placement and initiate the evaluation process.

(b) The parent shall be informed immediately of the child's behavior and shall participate (if possible within the constraints of time) in the emergency placement decision and consent for evaluation will be obtained.

(c) An individual evaluation must be completed within fifteen days of the emergency placement. Procedures as outlined in § 45.23 must be followed. A final placement determination, made by the IEP committee, must be made within five (5) days following completion of the individual evaluation.

§ 45.28 Independent educational evaluation.

(a) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. Each school/Agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(b) A parent has the right to an independent education evaluation at public expense if the parent disagrees with an evaluation obtained by the school or Agency. However, the school or Agency may initiate a hearing in accordance with the procedures of this part to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at school expense.

(c) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the school in any decision made with respect to the provision of a free appropriate public education to the child; and

(2) May be presented as evidence at a hearing regarding that child.

(d) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at school or Agency expense.

(e) Whenever an independent evaluation is at school or Agency expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the school or Agency uses when it initiates an evaluation.

§ 45.29 Additional procedures for evaluating specific learning disabilities.

(a) In evaluating a child suspected of having a specific learning disability, in addition to the requirements of § 45.22, each Agency shall include on the multi-disciplinary evaluation team:

(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified to teach a child of his or her age; and

(4) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(b) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting. (In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.)

(c) The team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (c)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skill;

(v) Reading comprehension;

(vi) Mathematics calculation; or

(vii) Mathematics reasoning.

(d) The multi-disciplinary team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(1) A visual, hearing, or motor handicap;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(e) The multi-disciplinary team shall prepare a written report of the results of the evaluation. The report must include a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(f) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions. The report must be prepared no later than fifteen (15) days after completion of the evalution.

Subpart C—Provision of Special Education and Related Services

§ 45.30 Free appropriate public education.

(a) Each BIA funded or operated school must ensure that a free appropriate public education is provided to every handicapped Indian child enrolled in the school between the ages of five (5) and twenty-one (21) years.

(b) An appropriate education is one which meets the needs of a handicapped child as set forth in the individual education program in the least restrictive educational setting. An appropriate education involves the provision of regular education, special education and related aids or services and may include pre-school, elementary school, or secondary school education.

(c) The provision of a free education is the provision of educational and related services without cost to the child (or parents), *except* for those fees that are imposed on a non-handicapped child, and may consist of the provision of free services or the payment of the costs of the program. Transportation must be provided in order to assure access of persons to services.

§ 45.31 Individualized education program (IEP).

If, as a result of the determination of a multi-disciplinary team, a child is diagnosed as being handicapped and in need of special education and related services, schools are required to develop an IEP within thirty (30) days from the date of receipt of the written individual evaluation report. The IEP shall set forth the approach which will be taken to

ensure that the child will be provided a free, appropriate education.

§ 45.32 Content of individualized education program (IEP).

At a minimum, the IEP must contain:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular education progams;

(d) The projected dates for initiation of services and the anticipated duration of the services;

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved;

(f) A description of the nature and duration of physical education services to be provided to the child; and

(g) A statement that all services recommended by the multi-disciplinary team are being provided, or if all recommended services are not provided, a justification for the exclusion of the services.

§ 45.33 Individualized education program (IEP) development.

(a) Overall responsibility for the development of each IEP rests with the school supervisor.

(b) The IEP shall be developed by a committee which shall hold at least one meeting and includes among its members the following:

(1) The School Supervisor, or designee (who shall chair the committee) other than the child's teacher, who is qualified to provide or supervise the provision of special education;

(2) The child's teacher and/or other relevant instructional staff;

(3) One or both of the child's parents;

(4) The child, where appropriate; and

(5) Other individuals at the discretion of the parent, Agency, or school.

(c) For a handicapped child who has been evaluated for the first time, the Agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the school, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(d) Upon receiving written application from the school, the Agency Superintendent for Education may allow the school to postpone the development of an initial IEP to the beginning of a new school year, if the written evaluation report is completed within fifteen (15) days of the end of the current school year and, if the Agency Superintendent for Education determines that an IEP need not be implemented during the summer.

(e) Schools must prepare a progress report related to the instructional objectives specified in the IEP for each handicapped child and must include it with, or in lieu of the grading report prepared by the school for all elementary and secondary students.

§ 45.34 Placement recommendation in the IEP.

(a) Placement recommendations shall be made by the School Supervisor or designee in concert with the IEP committee and shall be incorporated in the IEP.

(b) The appropriate placement must be selected from the following:

(1) The regular classroom;

(2) The regular classroom with consultation;

(3) The regular classroom with resource teacher;

(4) The regular classroom with itinerant resource teacher;

(5) The regular classroom in conjunction with a resource room;

(6) A self-contained special classroom with part-time instruction in regular class;

(7) A self-contained special class (regular campus);

(8) A self-contained special class in a special day facility;

(9) Homebound instruction; and

(10) Instruction in hospitals and residential facilities.

(c) Schools may not decline to propose placement for a child or recommend to parents that a child be enrolled "voluntarily" in a non-BIA operated/funded school program. In selecting from the continuum of alternative settings, no handicapped child may be proposed for placement in any alternative settings unless it can be demonstrated that the nature or severity of the child's disability is such that education in regular class (in the school the child attends if not handicapped) with the use of supplementary aids and services cannot be achieved satisfactorily. Each school must insure that a continuum of alternative placements which meets the particular needs of each enrolled handicapped child is available.

(d) Placement of a handicapped child in a boarding school operated by the Bureau which concurrently enrolls non-handicapped children of the same age and grade shall be considered a placement in a regular school campus.

(e) Alternative placements may be provided directly by the school, or through cooperative arrangements with local and state education agencies or, except as provided in paragraph (h) of this section, through contractual arrangements with approved non-public schools, agencies or institutions.

(f) Alternative (9), homebound instruction may be selected only when the handicapped child:

(1) Currently possesses a physical impairment or illness which directly (or because of treatment required) precludes the movement of the child from a hospital or home environment to the general education environment; or

(2) Has been determined (after an individual evaluation) to require a program of continuous mental health care and treatment which would be seriously disrupted by movement to the general educational environment. The proposed homebound instruction should permit the return of the child to the general education environment at a specified date. The Agency Superintendent for Education must be immediately notified in writing of each homebound placement made by the school.

(g) Alternative placement (10) may be selected only when the health or safety of the child precludes the child's attendance at a nearby school for special education services.

(h) Alternative placements (1)–(8) may not be provided through contractual arrangements with approved non-BIA operated/funded schools, Agencies or institutions if there are a sufficient number of handicapped children with similar educational needs who live within the attendance area served by the school to justify the allocation of one teacher.

(i) Handicapped individuals who do not meet the age requirements of the Bureau may be served by the local school, provided they are not counted for ISEP formula funding, with the approval of the local school board and the Agency Superintendent for Education, and so long as such placement does not dilute the quality and/or quantity of services provided to eligible handicapped students.

(j) If the multi-disciplinary team determines that a residential placement for a child is appropriate they should notify the Agency Special Education Coordinator in writing. Upon receipt of such notice, the Special Education Coordinator, with the approval of the Agency Superintendent for Education,

will consult with the Education Specialist for institutional placement to determine that the placement is in compliance with Federal laws regarding the education of handicapped children.

§ 45.35 Approval of IEP and placement recommendation.

(a) The school must attempt to schedule a meeting which includes the school supervisor or designee, the child's parent(s), and the receiving teacher and others as identified in § 45.33.

(b) The parent(s) of the child must be provided full and effective written notice of the meeting and all reasonable efforts must be made by the school supervisor to ensure parental participation. The written notice to parents shall also contain the following information:

(1) A statement that the evaluation has been completed and that the parents have the right to meet with the School Supervisor, the Special Education Coordinator or any member of the IEP committee to discuss and plan the IEP.

(2) A statement that all papers relevant to the evaluation, including the actual written assessments, are available for inspection by the parents or a designated representative of the parents;

(3) A statement that the parent has a right to an independent evaluation as provided in § 45.28;

(4) A statement of the parent's options under paragraph (c) of this section and a form for indicating the option selected by the parent; and

(5) A statement explaining the consequences of the parent's rejection of the proposed IEP under the due process procedures established by § 45.58.

(c) The parent of a child, upon receipt of full and effective notice, may exercise any of the following options (by giving written notice to the school):

(1) To accept or reject a written evaluation finding that the child does not need special education;

(2) To accept or reject the IEP. A parent may accept an IEP in whole or in part and the school shall immediately implement the mutually accepted elements of the IEP;

(3) To accept a modified IEP that has been mutually agreed upon with the School Supervisor or designee following the meeting described in paragraph (a) of this section; or

(4) To postpone a decision on the IEP until the completion of an independent evaluation; and

(5) To obtain an independent evaluation of their child.

(d) This meeting may be the first and only full meeting of the IEP committee. The meeting must include a thorough discussion of the results of the child's individual evaluation, the child's proposed IEP and the child's proposed educational placement. The school supervisor or designee should take whatever action is necessary to insure that the parents understand the proposed IEP and the proposed educational placement before requesting consent for placement. At the close of the final meeting, each member of the committee shall sign the completed IEP to signify their participation and agreement with the educational plan.

§ 45.36 Parent participation.

(a) Each school shall take steps to encourage that one or both of the parents of the handicapped child are present at each meeting including:

(1) Try to schedule the meeting at a mutually agreed upon time and place.

(2) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend.

(b) The notice under paragraph (a)(2) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the school shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the school is unable to convince the parents that they should attend. In this case the school must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The school shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The school shall give the parent a copy of the IEP.

§ 45.37 IEP implementation and placement.

(a) For newly identified children, the IEP must be implemented and educational placement must be made:

(1) Within thirty (30) days after the written parental approval of the placement has been received; or

(2) In cases involving due process, placement will be made within thirty (30) days of the final written decision of the hearing officer, unless an appeal is filed by the aggrieved party.

(b) If the school cannot, within thirty (30) days, provide any or all of the services called for in the IEP the School Supervisor must consult the Agency Superintendent for Education on alternate means of providing the services to fully implement the IEP. The Agency Superintendent for Education must make provision for the service within fourteen (14) days of the consultation.

§ 45.38 IEP revision, review of placement.

Consistent with the requirements of § 45.37, the IEP must be reviewed and updated annually. The review and revision of the IEP must be completed no later than the first day of school of the next full term. Whenever possible, the review shall be scheduled near the time that there may be a change in the personnel providing the major services to the child under the IEP, as when the child is to move from one grade or school to another. The review shall be conducted as follows:

(a) The school supervisor, the parents, and the person(s) providing the major services to the child under the IEP shall meet and make a careful review of the child's progress based upon the progress reports submitted by the school during the grading period, and the observations of those working with the child.

(b) The School Supervisor shall invite (in writing) the child's parents and, where appropriate, the child, to attend and participate in the review meeting. The School Supervisor or the parents may, at their discretion, invite other person(s) who have worked with, are working with, or will be working with the child to attend the review meeting.

(c) The participants in the review meeting shall determine:

(1) Whether the child has achieved the goals set forth in the IEP;

(2) Whether the child has met the criteria which indicate readiness to enter a less restrictive program;

(3) Whether the program the child is in should be specifically modified to make it more suitable to the child's needs; and

(4) Whether it is desirable to refer the child for an individual re-evaluation.

(d) The participants in the review meeting shall review the current IEP and revise it as appropriate in accordance with § 45.34. If a re-evaluation of the child is scheduled in accordance with § 45.39, the revision of the new IEP shall be deferred until completion of the re-evaluation. If the parent is unable to

attend the review meeting, the school shall provide the parent with copies of all relevant documents within five (5) days after the review meeting has been completed.

(e) During the annual review, the description of current educational performance in the IEP must be updated and the overall educational needs, long-term educational goals, short-term objectives, and related services modifications made. Schools are required to rewrite sections of the IEP only to the extent necessary to update or modify the plan.

§ 45.39 Re-evaluation.

Parental approval is not required for the conduct of a re-evaluation if the child has been initially placed and his/her individualized education program has been reviewed following the requirements of this part. Notice of the conduct of the re-evaluation must be provided to the parent prior to re-evaluation. A written summary of the re-evaluation must be provided to the parents within five (5) days of the scheduled review meeting. A child *must* be re-evaluated at least every three (3) years.

§ 45.40 Extended school year services.

(a) The IEP may provide for continuous instruction (uninterrupted by the regular summer recess) whenever:

(1) Continuous instruction is likely to be necessary in order to sustain, with only minor regression, current important educational skills and information retention; or

(2) The child lives in a residential facility or institution.

(b) The extension of an IEP for a ten (10) to twelve (12) month instructional program shall not result in a more restrictive change in placement on the continuum of alternative placements nor shall it constitute a basis for any deviation from any other educational placement requirement of § 45.34 of this part. However, the increased isolation of handicapped children which could result from the operation of an instructional program for handicapped children during a period of time when non-handicapped children are not attending school would not violate any requirements of this part.

§ 45.41 Outcome goals.

IEP's for children over the age of fifteen (15) years may contain, as appropriate, either a description of regular and/or special education instructional services leading to the attainment of a regular high school diploma before the age of twenty-two *or* a program of regular or special vocational education leading to participation in a work-experience (or sheltered employment) program and the attainment of an appropriate level of vocational proficiency to permit, whenever possible, the child's entry into competitive employment upon or before reaching the age of twenty-two.

§ 45.42 Related services.

The school must ensure that each handicapped child has developmental, corrective and other supportive services (to the maximum extent feasible) to benefit from special education.

§ 45.43 Non-academic and extracurricular services.

(a) Non-academic and extracurricular services and activities must be offered in a way which allows equal opportunity for handicapped children to participate in services and activities.

(b) Non-academic and extracurricular services, meals and recess periods must be provided in the most integrated setting appropriate to the needs of the child.

§ 45.44 Physical education and athletics.

(a) Handicapped children must be provided an equal opportunity for participation in physical education courses and inter-scholastic, club or intramural athletics sponsored by the school.

(b) Physical education services must be provided to handicapped children in the regular physical education program and may not be different from those provided other children, unless:

(1) The child is enrolled full time in a separate facility or needs specially designed physical education; and

(2) A separate physical education setting is the least restrictive environment.

§ 45.45 Expulsion/suspension.

A handicapped child may not be expelled or suspended from school if the behavior for which action is being taken is related to the child's disability. If the child's behavior is so disruptive that the education of others is impaired, a review of the child's IEP and placement as described in § 45.38 of this Part must be undertaken in order to meet the needs of the child.

§ 45.46 Geographic accessibility.

Consistent with the requirements of the IEP, the educational placement of a child must be as close to the child's home as possible. The placement of a handicapped child in an off-reservation boarding school operated by the Bureau *shall not* be regarded as inconsistent with this requirement to the extent that similarly situated non-handicapped students are also placed in such a school.

§ 45.47 Architectural barriers and program accessibility.

(a) Facilities used by schools, directly, or through contractual arrangement, must be accessible to and usable by handicapped children. The accessibility standards of the American National Standards Institute (ANSI A117.1–1961 (R 1971)) shall be followed. Schools located in isolated locations may make application to the Director for an annual waiver of any standard. Such a request must be based on documented inability to meet the standards. In no event may architectural barriers prevent a handicapped child from being educated in the least restrictive educational environment as defined in § 45.34.

(b) Program accessibility (*i.e.*, where each program or activity, when viewed in its entirety, is readily accessible to handicapped children) must be ensured in all existing facilities.

(c) Program accessibility may be accomplished through the following methods:

(1) Redesign of equipment;

(2) Reassignment of classes or other services to accessible building;

(3) Assignment of aides to children;

(4) Home visits;

(5) Alteration of existing facilities; or

(6) Other methods.

(d) The method for accomplishing program accessibility which offers programs and activities to children in the least restrictive environment.

§ 45.48 Handicapped children in private schools placed or referred by Agencies.

Requirements of this section apply to handicapped children who are or have been placed in or referred to a private school or facility by an Agency as a means of providing special education and related services.

(a) Each Agency shall insure that a handicapped child who is placed in or referred to a private school or facility is:

(1) Provided special education and related services in conformance with an IEP which meets the requirements under § 45.30–§ 45.38 at no cost to the parents; and

(2) At a school or facility which meets the standards that apply to the Agencies (including the requirements in this part).

(b) In implementing the requirements of this part the Agency shall:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to each private school and

facility to which an Agency has referred or placed a handicapped child;

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of BIA standards which apply to them; and

(c) Assure that handicapped children have all of the rights of a non-handicapped child.

§ 45.49 Handicapped children in private schools placed by parents.

(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the Agency is not required by this part to pay for the child's education at the private school or facility.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under § 45.57–§ 45.63.

Subpart D—Procedural Safeguards

§ 45.51 Notice to parents.

(a) Written notice must be given to the parents of a handicapped child a reasonable time before the school:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) The notice described under paragraph (a) of this section must include:

(1) A full explanation of all the procedural safeguards available to the parents including confidentiality requirements;

(2) A description of the proposed (or refused) action, explaining the reasons for such action and describing any options which were considered and rejected;

(3) A description of each evaluation procedure, test, record or report used as a basis for the action and any other relevant factors;

(4) The name(s) of the employee(s) of the school who may be contacted for further information;

(5) Language understandable to the general public, provided in the language of the parent or other mode of communication used by the parent(s) unless clearly not feasible.

(c) The notice must be communicated orally (where necessary) in the primary language or other mode of communication to insure that the parent understands the content.

(d) If an interpreter is used as part of the procedure for providing full and effective notice, the school must maintain a written statement, signed by the interpreter, to the effect that the parent understood the content of the matter presented.

§ 45.52 Parental consent.

(a) Parental consent must be obtained before:

(1) Conducting a preplacement evaluation; and

(2) Initial placement of a handicapped child in a program providing special education and related services.

(b) Parental consent must also be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information consistant with the dislosure provisions of the Privacy Act of 1974, as amended;

(2) Used for any purpose other than meeting a requirement under this part; or

(3) Used for purposes other than those previously specified to the parent.

§ 45.53 Rights of handicapped children.

Handicapped children shall have the right to:

(a) Non-discrimination on the basis of being handicapped;

(b) A free appropriate education;

(c) An independent educational evaluation as provided in this part, and careful consideration of the results of an independent evaluation with respect to the provision of a free appropriate education;

(d) Be accompanied and represented by persons of his/her choice at any meeting or conference required or permitted by this part;

(e) Inspect and review all relevant records with respect to the identification, evaluation and placement of the child and the provisions of a free appropriate education;

(f) A hearing on any action for which notice is required with opportunity for direct participation, representation by counsel, and other procedural rights;

(g) Appeal to the Agency Superintendent for Education, or the Area Education Program Administrator, as appropriate, and to the Director relating to identification, evaluation or placement or to the provision of a free, appropriate education;

(h) A surrogate parent, when appropriate;

(i) A copy of the full written explanation and findings of the individual evaluation as soon as it is completed together with a full oral explanation (effectively communicated) of both the findings and the recommendations;

(j) A personal consultation with the members of the multi-disciplinary team;

(k) Full and effective notice of proposed actions as provided in this part;

(l) Parental approval or disapproval as provided in this part; and

(m) Information concerning any free or low-cost legal and other relevant services available upon request or if a hearing is initiated.

§ 45.54 Access rights.

(a) Each school and Agency must permit parents to inspect and review any records directly relating to their children which are collected and maintained by them or by a party acting for the school.

(b) A parental request to inspect and review records must be honored without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the child, and in no case more than fourteen (14) days after the request has been made. The right to inspect and review educational records under this section includes:

(1) The right to a response to reasonable requests for explanations and interpretations of the records;

(2) The right to request that copies of the records containing the information be provided at no cost to the parents;

(3) The right to have a representative of the parent (authorized in writing) inspect and review the records.

(4) The right to place a statement in the records a school maintains on a child. Such statement may comment on any information or set forth any reason for disagreeing with the decisions of the Agency. Any explanation placed in the records must be maintained by the Agency. If the contested portion of the record is disclosed to any party, the parent's explanation must also be disclosed.

(c) The parent shall be presumed to have authority to inspect and review records relating to his or her child *unless* the school has been advised, in writing, that the parent does not have the authority under applicable tribal or state law governing such matters as guardianship, separation, and divorce.

(d) A record of parties obtaining access to education records (except access by parents and authorized employees of the school) must be kept and must include the name of the party, and the date access took place.

(e) Parents, upon request, shall be provided with a list of the types and the purpose of the authorized use of education records of their child.

(f) If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(g) A parent who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the child, may request that the information be amended. The school or Agency must decide whether to amend the information as requested within fourteen (14) days of receipt of request. If the school or Agency decides to refuse to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing.

§ 45.55 Confidentiality of information.

(a) The confidentiality of personally identifiable information must be protected at collection, storage, disclosure, and destruction stages.

(b) *One person* designated by the school must assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the policies and procedures set forth in this subpart.

(d) Schools must maintain, for public inspection, a current listing of the names and positions of the employees who may have access to personally identifiable information.

(e) Schools must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

§ 45.56 Surrogate parents.

(a) After documented, repeated and reasonable efforts to identify and locate a parent of a handicapped child, or of a child suspected of being a handicapped child, or whenever a child is a ward of a court, the School Supervisor must institute a proceeding before an appropriate tribunal to determine the need for a surrogate parent and, if need is found, for the appointment of a surrogate parent.

(b) The person appointed as a surrogate parent shall:

(1) Have no interest that conflicts with the interests of the child and shall not be a present employee of the school involved in the education or care of the child or a present employee of Office of Indian Education Programs;

(2) Have knowledge and skills that insure adequate representation of the child; and

(3) Wherever possible, be a member of the child's extended family, or if that is not possible, a member of the same tribe as the child.

(c) The surrogate parent shall represent the child in all matters relating to the identification, individual evaluation and educational placement of the child and the provision of a free appropriate public education.

(d) Surrogate parents may not be appointed for the sale purpose of representing parents at the IEP conference.

(e) Payment of fees for service as a surrogate parent does not, in and of itself, render a person an employee of the BIA.

§ 45.57 Conciliation/mediation.

(a) The school must make all reasonable efforts consistent with its obligations under this part, to resolve informally any ongoing disputes between the parent and the school.

(b) Prior to the initiation of a due process hearing, the Bureau shall attempt to intervene with the mediation process. The following is a statement which describes this technique.

(1) Mediation is a dispute resolution process which is non-adversarial in nature. It seeks not to declare winners or losers, but to find reconciliation between disputing parties. This process is conducted through the skills of a trained mediator. Its focus is the mutually satisfactory resolution of disputes. No third party acts as judge or jury. The parties themselves arrive at an assessment through the process. Mediation can be initiated by either a parent or the Bureau in order to resolve informally a disagreement with respect to the identification, evaluation, or educational placement of, or the free appropriate education provided to an Indian child. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the appropriate school officials may attend mediation sessions between the parties in an effort to resolve those differences.

(2) Mediation must be conducted, attempted, or refused in writing by concerned parties of the handicapped child whose education is at issue before a request for, or initiation of, a hearing authorized by this part. Any request by the Bureau for a hearing shall state in writing how this requirement has been satisfied. No stigma may be attached to the refusal of the concerned parties to mediate or to an unsuccessful attempt to mediate. Mediation may not be used to deny or delay a parent's right to impartial due process hearing.

§ 45.58 Initiation of hearings.

(a) If the parent disagrees with any action taken by a school for which full and effective notice to parents is required by this part, a hearing may be initiated by the parent of a handicapped child or a child suspected of being a handicapped child, by sending a written request for hearing to the Agency Superintendent for Education. The Agency Superintendent for Education must acknowledge receipt of the written request within five (5) days of actual receipt.

(b) Hearings may be initiated by a school by providing full and effective notice to parents in any instance where, after reasonable efforts at conciliation, a parent either fails to provide written approval of a proposed action, or provides a formal disapproval.

(c) Whenever a hearing is initiated, full and effective notice of the initiation of the hearing must be provided by the hearing officer to all persons concerned.

(d) The written notice of hearing shall include:

(1) A statement of the date, time, place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes or regulations involved; and

(4) A short and plain statement of matters asserted.

§ 45.59 Hearing officers.

(a) A proposed hearing officer must be selected by the Agency Superintendent for Education within one (1) day of receipt of a request for a hearing, from a list established and maintained by the Agency.

(b) After selecting a proposed hearing officer, the Agency Superintendent for Education must, within three (3) days, give the parent(s) and the school full and effective notice of the name of the proposed hearing officer.

(c) The parent and school, each upon notice of the selection of proposed hearing officer, may request that the Agency/Area determine that the person so proposed is not impartial and may

exercise one automatic disqualification during the appointment process. The Director shall resolve all challenges for cause (i.e., partiality).

(d) If the proposed hearing officer is automatically disqualified or found to be not impartial by the Director, the Agency Superintendent for Education must within three (3) days designate another person.

(e) Final appointment of a hearing officer occurs whenever a proposed hearing officer is selected by the Agency Superintendent for Education and the parent or the school fails to notify the Agency Superintendent for Education of a decision to challenge the impartiality of the proposed hearing officer or of a decision to automatically disqualify the proposed hearing officer (available only once for each party), or when the Director determines that no doubt exists as to the impartiality of a proposed hearing officer.

§ 45.60 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a school, or of the BIA, who is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the Agency solely because he or she is paid by the Agency to serve as a hearing officer.

§ 45.61 Hearing reports.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children. The cost for such counsel or expert representatives shall be borne by the party employing them:

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing; and

(5) Obtain written findings of fact and decisions.

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

§ 45.62 Timelines and convenience of hearings and reviews.

(a) The Agency shall ensure that a final decision is reached by the hearing officer and a copy of the decision is mailed to each of the parties within 45 days after receipt of a request for a hearing.

(b) A copy of the decision made in a review conducted by the Assistant Secretary—Indian Affairs must be mailed to each of the parties within 30 days of the request for a review.

(c) The hearing or reviewing officer may grant specific extensions of time at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

§ 45.63 Administrative appeal: Impartial review.

(a) A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the hearing decision.

(b) A party aggrieved by the findings and decision in the hearing may, within ten (10) days of the decision, appeal to the Assistant Secretary—Indian Affairs who may designate an official to conduct the review.

(c) The Official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing more consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 45.62 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Provide written findings and the decision to the parties.

(d) The Department of the Interior considers the decision made by the reviewing official as final.

Subpart E—Personnel

§ 45.65 In-service training.

(a) Each Agency must provide a written plan which insures that ongoing in-service training programs are made available to all personnel who are engaged in the education of handicapped children. To avoid duplication, Agencies and schools must jointly determine training needs.

(b) Each plan must:

(1) Describe the process used in determining the in-service training needs of personnel engaged in the education of handicapped children;

(2) Identify the areas in which training is needed (i.e. individualized education programs, non-discriminatory assessment, least restrictive environment, procedural safeguards, and surrogate parents);

(3) Specify the groups requiring training (i.e. special education teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents);

(4) Describe the content and nature of training for each area under paragraph (b)(2) of this section;

(5) Describe how the training will be provided in terms of:

(i) Location and scope; and

(ii) Staff training source (i.e. college and university staff, state, school, Agency personnel, and non-Agency personnel);

(6) Specify:

(i) The funding sources to be used;

(ii) The timeframe for providing staff training; and

(iii) Procedures for effective evaluation of the extent to which program objectives are met.

§ 45.66 Qualifications of staff.

Job qualifications requirements shall be in conformance with 25 CFR 38.4 of the BIA Education Personnel Regulations.

Subpart F—School Administration

§ 45.70 Assurance of compliance.

In connection with each annual application for assistance under this part, each School Supervisor must sign a written assurance that the special education elementary and secondary program operated by the school is currently in compliance with and will, in the future, be operated in compliance with this part and any other applicable Federal law.

§ 45.71 Annual evaluation.

Each Agency must insure that an annual evaluation of the effectiveness of programs in meeting the educational needs of handicapped children is completed. The annual evaluation will be performed in accordance with the following:

(a) The evaluation will be based on the projections made in each agency/school funding application and must include an evaluation of the individual education programs.

(b) Local School Boards and parents must be given the opportunity to be involved in the evaluation.

(c) The Agency Special Education Coordinator will, through a review and comparison of the report with monitoring findings, certify the validity for the annual report.

(d) The Agency Special Education Coordinator will compile the reports and submit the compilation to the Division of Exceptional Education.

(e) The Division will consolidate the evaluation data into a single report on the BIA special education programs.

§ 45.72 Comparability of facilities.

Facilities which are identifiable as being for handicapped children and the services and activities provided therein, must meet the same standards and level of quality as do facilities, services and activities provided to non-handicapped children.

§ 45.73 Non-discrimination.

(a) No Bureau of Indian Affairs operated and/or funded school shall deny admission to any qualified Indian handicapped child on the basis of handicap.

(b) Each school must provide each handicapped Indian child enrolled therein whatever educational support services (including tutoring, access to instructional equipment, auxiliary aids) are necessary to permit the child to fully benefit from the program of special education and related services.

Subpart G—Responsibilities of the Division

§ 45.74 The Division.

(a) The Division of Exceptional Education shall provide staff assistance to the Director, Office of Indian Education Programs to insure conformance with the requirements of this part. The Division shall prepare and submit the annual program plan required by the Education of the Handicapped Act. The Division shall be under the supervision of a Division Chief who reports to the Director.

(b) The Director is responsible for educational programs for handicapped children and has overall responsibility for insuring that every handicapped Indian child enrolled in a Bureau operated or funded school is provided a free appropriate education, and that all requirements of this part are fully complied with by schools, Agencies, and Areas.

§ 45.75 Monitoring.

(a) The Division of Exceptional Education shall monitor and evaluate the compliance of schools, Agencies, Areas and other affected public and non-public agencies with the requirements of this part consistent with written procedures. This monitoring will include:

(1) Data collection;

(2) On-site visits;

(3) Review of special education Federal fund utilization;

(4) Review of IEP implementation; and

(5) Review of the continued need for residential placements.

(b) Schools, Agencies, Areas, non-public school programs and other affected Agencies shall keep timely, complete and accurate compliance reports. These reports shall contain information to enable the Division to ascertain compliance with the requirements of this part.

(c) Schools, Agencies, Areas, non-public school programs and other affected Agencies must permit the staff of the Division of Exceptional Education access to books, records, accounts, and other pertinent information necessary to ascertain compliance.

(d) The Division of Exceptional Education may conduct inquiries on behalf of an individual child or group of children, regarding failure to comply with any provision of this part.

(e) The Division of Exceptional Education shall monitor implementation of the procedural safeguard requirements of this part.

(f) The Division will provide a written report on the findings and will recommend actions for compliance to the responsible Agency. The Agency has the responsibility of providing this information to the individual school boards and appropriate school officials.

§ 45.76 Complaint Procedures.

(a) The Director shall receive, review, and resolve complaints and act on any allegations of substance on actions taken by a school or Agency that are contrary to the requirements of this part.

(b) In carrying out the requirements of paragraph (a) of this section the Division will assist Agencies to achieve compliance through:

(1) Technical assistance;

(2) Negotiation; and/or

(3) Third party mediation.

(c) Failure to comply with the requirements of this part (after appropriate action as described in paragraph (b) of this section) shall result in sanctions under existing BIA procedures including the withholding of Pub. L. 94–142 Subpart B funds until the Agency or school achieves compliance with the requirements of this part.

§ 45.77 Use of available funds.

The Director shall insure that all funds to which schools become entitled because of the enrollment of handicapped children, be used for the identification, evaluation, and the provision of a free, appropriate education to handicapped Indian children.

§ 45.78 Children for whom the Division of Social Services has accepted financial responsibility.

(a) After the effective date of this part, no handicapped Indian child in the care of the Division of Social Services may be placed in, or referred to any public or private residential facility until the Director is consulted and the education component has been approved.

(b) The Director shall insure that no later than one (1) year from the effective date of this part, every handicapped child currently the responsibility of the Division of Social Services in a public or private residential facility has been evaluated and provided an IEP in full conformance with the requirements of this part. The need of the children for continued residentially-based education services will be carefully accessed during this process.

(c) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped child.

§ 45.79 Cooperative agreements.

(a) The Director, or designee, is authorized to enter into cooperative agreements with state and local education agencies for the provision of special education and related services to handicapped children enrolled in schools, operated and/or funded by the Bureau.

(b) The Director may not enter into any cooperative agreement for the provision of special education and related services with state or local education agencies which, with respect to any aspect of the cooperative special education program, discriminates or has the effect of discriminating, against any child on the basis of race, creed, national origin, tribal affiliation, religion, sex, handicap or eligibility for services provided by the Bureau.

(c) The Director is responsible for ensuring that every eligible Indian handicapped child participating in a cooperative special education program is provided a free, appropriate education in the least restrictive environment consistent with the procedural safeguards required by § 45.34.

§ 45.80 Bureau of Indian Affairs Advisory Committee for Exceptional Children.

(a) The BIA Advisory Committee for Exceptional Children has been chartered under and is subject to the provisions of the Federal Advisory Committee Act, Pub. L. 92–463. The membership of the BIA Advisory Committee for Exceptional Children must be composed of persons involved in or concerned with the education of handicapped Indian children. The membership shall include, but not be limited to:

(1) Handicapped individuals.

(2) Teachers of handicapped children.

(3) Parents of handicapped children.

(4) Agency and school officials.

(5) Special education program administrators.

(b) The advisory committee shall:

(1) Advise the Secretary of Interior, through the Assistant Secretary—Indian Affairs, of unmet special education needs of Indian children;

(2) Comment publicly on the annual program plan and rules or regulations proposed for issuance by the Assistant Secretary—Indian Affairs regarding the education of handicapped Indian children attending BIA operated or funded schools and the procedures for distribution of funds under this part; and

(3) Assist the Assistant Secretary—Indian Affairs in developing and reporting such information and evaluation.

(c) The advisory committee shall meet as often as necessary to conduct its business.

(d) By July 1 of each year, the advisory committee shall submit an annual report of panel activities and suggestions to the Director and the Assistant Secretary—Indian Affairs. This report must be made available to the public.

(e) Official minutes must be kept on all panel meetings and shall be made available to the public upon request.

(f) All advisory committee meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(g) Interpreters and other necessary services must be provided at committee meetings for committee members or participants.

(h) The advisory panel shall serve without compensation but will be reimbursed for travel and expenses, in compliance with current Federal travel regulations, as published by GSA, for attending meetings and performing duties.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 85–20059 Filed 8–22–85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 170 and 252

[T.D. ATF–212]

Distilled Spirits; Increase in Rate of Tax and Floor Stocks Tax

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This document implements section 27 of the Deficit Reduction Act of 1984 by (1) amending ATF distilled spirits regulations to conform to the increase in the distilled spirits tax rate, and (2) adding new regulations for the collection of floor stocks tax on certain taxpaid distilled spirits and imported perfumes which are held for sale on October 1, 1985.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Robert G. Hardt or J. R. Whitley, Distilled Spirits and Tobacco Branch, (202) 566–7531. Mailing address: Bureau of Alcohol, Tobacco and Firearms, Distilled Spirits and Tobacco Branch, P.O. Box 385, Washington, DC 20044–0385.

SUPPLEMENTARY INFORMATION: Public Law 98–369, entitled "Deficit Reduction Act of 1984", was enacted on July 18, 1984. Section 27 of this Act increases the rate of tax on distilled spirits from $10.50 to $12.50 per proof gallon. The rate of tax on imported perfumes is increased from $10.50 to $12.50 per wine gallon. All distilled spirits and imported perfumes removed from bonded premises on or after October 1, 1985, will be subject to the higher tax rates.

Floor Stocks Tax

The distilled spirits floor stocks tax is a one-time tax, equal to the difference between the old and new tax rates. It is imposed on all Federally taxpaid or tax-determined distilled spirits that are held for sale on the first moment of October 1, 1985, by any person, with the exception of spirits held by wholesale or retail liquor dealers who have 500 wine gallons or less of distilled spirits on hand on that date. However, dealers with more than 500 wine gallons on hand are allowed as a credit against the floor stocks tax an amount equal to $800 or the amount of tax liability, whichever is smaller. (The credit may not exceed the amount for which the dealer is liable.) The term "dealer" means any wholesale or retail dealer in liquors, as defined by sections 5112(b) and 5122(a) of the Internal Revenue Code of 1954 respectively, and would include importers and taxpaid storage rooms operated by distilled spirits plants.

Manufacturers, importers, wholesalers, and retailers are liable for floor stocks tax irrespective of the location where their distilled spirits are held. The floor stocks tax applies only to distilled spirits held for sale that were taxpaid or tax-determined before October 1, 1985. Distilled spirits that are taxpaid or tax-determined on or after that date are subject to the increased tax rate, but are not subject to the floor stocks tax.

Distilled spirits subject to floor stocks tax are regarded as held by the one who owns them at the first moment of October 1, 1985. Distilled spirits in transit, or in a storeroom or warehouse, must be included in the tax return and inventory of the owner. If ownership does not pass to the consignee until delivery, distilled spirits in transit at the first moment of October 1, 1985, must be regarded as owned or held by the consignor at that time.

A floor stocks tax is also imposed on all Federally taxpaid or tax-determined imported perfumes containing distilled spirits (ethyl alcohol) held for sale by any person. However, all imported perfumes held at retail establishments and any imported perfumes held by other persons who have 500 wine gallons or less on hand as of October 1, 1985, are exempted from this tax. The $800 credit provision also applies to holders of imported perfume.

The exemption for retail establishments applies only to imported perfumes held at the place where they are intended to be sold at retail. This exemption is broad enough to include imported perfumes in storage facilities that are within or form an integral part of the retail premises at the same physical location. However, the exemption does not apply to imported perfumes held by retail establishments in warehouses or other similar storage facilities located away from the retail premises where retail customers do not have regular access to them. Imported perfumes held by retail establishments in these separate storage facilities are subject to the floor stocks tax in the same manner as imported perfumes held for sale by other industry members.

Liability for the floor stocks tax must be established by a physical inventory, except that a source record inventory may be used by persons holding distilled spirits for sale if the source records from which the inventory is derived conform to certain regulatory standards. The physical or source record inventory will be the basis for

establishing the quantity of distilled spirits and imported perfumes held subject to the floor stocks tax, as of the first moment of October 1, 1985. If the taxpayer prefers not to take a physical inventory on October 1, 1985, it may be taken any time between September 23, 1985, and October 6, 1985. (Or, if the business is closed before September 23, and will remain closed through October 1, 1985, the inventory may be taken on the last business day before closing.) If the physical inventory is not taken between the end of the last business day of September 1985, and the beginning of the first business day of October 1985, it must be reconciled to October 1, 1985, and supported by records which substantiate all receipts and dispositions between October 1, and the date of the inventory.

The intent of Congress was to impose a minimal burden on persons who hold distilled spirits or imported perfumes subject to floor stocks tax, particularly proprietors of retail establishments, without jeopardizing the revenue. Therefore, certain allowances relating to inventory procedures have been provided for retailers of distilled spirits. In calculating the physical inventory for open stock, retail dealers may: round fractional label proofs to the nearest whole proof (for example, 86.6 proof would be rounded to 87 proof); record only the proof and size of bottles in stock; and use a shortened factor of 0.26 instead of the standard factor of 0.264172 for converting quantities in liters to wine gallons. As used here, "open stock" refers to both opened bottles and to full, unopened bottles of various sizes, proofs, and brands. In addition, all opened bottles of the same proof, regardless of size, may be totalled and computed as a single entry.

Every person subject to the distilled spirits floor stocks tax must take either a physical inventory or use a source record (book) inventory supported by the appropriate source records, and must prepare and file a floor stocks tax return. This includes wholesale or retail liquor dealers with an inventory of 500 wine gallons or less, although those dealers will not be required to convert their wine gallon inventory to a proof gallon inventory since no tax will be due. Every person holding taxpaid or tax-determined imported perfumes subject to the floor stocks tax must take a physical inventory; however, a floor stocks tax return must be filed only if tax is actually due. Tax returns will be available by September 1, 1985, and may be obtained from any ATF regional office or from the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226; telephone (202) 566–7531.

The tax return must be filed, accompanied by full payment, on or before April 1, 1986, except that small and medium-sized retail or wholesale dealers may elect to pay the tax in three equal installments due on or before April 1, July 1, and October 1, 1986. The term "small or medium-sized dealer" refers to any dealer whose aggregate gross sales receipts for all products (not just distilled spirits or other alcoholic beverages) for the most recent taxable year ending before October 1, 1985, does not exceed $500,000. The Internal Revenue Service will bill these dealers for the installment payments due on or before July 1, and October 1, 1986. These dealers will be responsible for filing the tax return with the first payment on or before April 1, 1986.

A 5% per month failure to file penalty, up to a maximum of 25%, may be assessed for late filing of the tax return. If a return is filed with no payment or with partial payment (other than an installment payment), a 0.5% per month failure to pay penalty may be assessed on the unpaid balance, again up to a maximum of 25%. In addition, 26 U.S.C. 5684 imposes, for failure to pay any alcohol excise tax, a penalty of 5% of the tax due but unpaid. Interest must also be paid on any delinquent tax due at the rate established by IRS, compounded daily from April 1, 1986, until the tax is paid.

If any underpayment of floor stocks tax is due to fraud, there is a penalty of 50% of the amount of underpayment, plus 50% of the interest payable on the portion of the underpayment attributable to fraud, per 26 U.S.C. 6653. The Internal Revenue Code also provides for criminal penalties, including fines and/or imprisonment, which are applicable to this floor stocks tax.

Effective Date

The changes made by the Deficit Reduction Act of 1984 relating to a distilled spirits tax rate increase and a floor stocks tax take effect on October 1, 1985, and require immediate planning by dealers not now required to file returns and pay tax. Consequently, it is found that it would be impracticable within the meaning of 5 U.S.C. 553(b) to provide a notice of proposed rulemaking prior to issuance of any regulations. Accordingly, the amendments made by this document shall be effective on September 23, 1985.

Executive Order 12291

It has been determined that this final rule is not a major rule within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because the economic effects flow directly from the underlying statute, the Deficit Reduction Act of 1984, and not from this final rule. Therefore, it is found that this final rule will not cause:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this document, because it was not required to be preceded by a general notice of proposed rulemaking under 5 U.S.C. 553, and because the revenue effects of the rulemaking on small businesses flow directly from the underlying statute. These regulations will not cause any adverse secondary or incidental effects, or any significant new reporting, recordkeeping, or other compliance burdens.

Paperwork Reduction Act

The requirements to collect information imposed by this final rule have been approved by the Office of Management and Budget under sec. 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35.

Drafting Information

The principal drafter of this document is Robert Hardt of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms. However, other people from ATF and from other offices in the Department of the Treasury participated in the development of these regulations.

List of Subjects

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Floor stocks taxes, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Paragraph 1. The authority citation for 27 CFR Part 170 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. The Table of Contents of Part 170 is amended to add the subpart and section titles of Subpart D. As amended, the Table of Contents reads as follows:

* * * * *

Subpart D—Floor Stocks Tax on Distilled Spirits and Imported Perfumes Held for Sale on October 1, 1985

Sec.

170.60 OMB control number.
170.61 Scope of subpart.
170.62 Meaning of terms.
170.63 Alternate methods or procedures.

Distilled Spirits

170.64 Scope of tax.
170.65 Rate of tax.
170.66 Payment of tax.
170.67 Return.
170.68 Inventory procedures for other than retail establishments.
170.69 Inventory procedures for retail establishments.
170.70 Computation of wine and proof gallons.

Imported Perfumes

170.71 Scope of tax.
170.72 Rate of tax.
170.73 Payment of tax.
170.74 Return.
170.75 Inventory.

General

170.76 Retention of records.
170.77 Refunds of floor stocks tax.
170.78 Penalties and interest.
170.79 Authority of ATF officers.

Par. 2. A new Subpart D is added to Part 170 to read as follows:

Subpart D—Floor Stocks Tax on Distilled Spirits and Imported Perfumes Held for Sale on October 1, 1985

Authority: Section 27, Pub. L. 98-369, 98 Stat. 507, unless otherwise noted.

§ 170.60 OMB control number.

The recordkeeping and reporting requirements of this subpart have been approved by the Office of Management and Budget under control number 1512-0473.

§ 170.61 Scope of subpart.

The regulations in this subpart relate to the floor stocks tax imposed by Pub. L. 98-369 on all taxpaid or tax-determined distilled spirts held for sale on October 1, 1985, including imported perfumes containing distilled spirits.

§ 170.62 Meaning of terms.

When used in this subpart, terms shall have the meaning ascribed below:

(a) *Bulk distilled spirits.* The term "bulk distilled spirits" means distilled spirits in a container having a capacity in excess of one gallon.

(b) *Controlled group.* A related group of dealers under common control. Controlled groups include:

(1) *Controlled group of corporations.* The term "controlled group of corporations" has the meaning given to that term by 26 U.S.C. 1563(a), except that the phrase "more than 50% percent" shall be substituted for the phrase "at least 80 percent" each time it appears in that subsection. Controlled groups of corporations include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2).

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3).

(iii) Combined groups as defined in 26 CFR 1.1563-(a)(4).

(2) *Nonincorporated dealers under common control.* Dealers are considered to be part of a controlled group when the group would qualify as a controlled group of corporations under the definition in paragraph (b)(1) of this section except that one or more of the dealers is not incorporated.

(3) *"Control" States or political subdivisions.* Each State or political subdivision of a State that operates as a dealer in distilled spirits, whether as a retailer, wholesaler, or both, shall be regarded as a controlled group.

(c) *Dealer.* Any person who sells, or offers for sale, any distilled spirits.

(d) *Gallon or Wine gallon.* The liquid measure equivalent to the volume of 231 cubic inches.

(e) *Industry Member.* For purposes of the floor stocks tax on imported perfumes, this term shall include importers, wholesale dealers or other persons holding for sale imported perfumes containing distilled spirits. This term shall not include retail establishments.

(f) *Person.* This term shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation. It also includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(g) *Proof gallon.* A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

(h) *Retail dealer.* Any dealer who sells, or offers for sale, distilled spirits to any person other than a dealer.

(i) *Wholesale dealer.* Any dealer who sells, or offers for sale, distilled spirits to another dealer.

§ 170.63 Alternate methods or procedures.

The proprietor, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this subpart. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure;

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this subpart. No alternate method or procedure relating to the assessment, payment, or collection of tax, shall be authorized under this paragraph. Where the proprietor desires to employ an alternate method or procedure, he shall submit a written application to the regional director (compliance), for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The proprietor shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be

withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this subpart is hindered by the continuation of such authorization.

Distilled Spirits

§ 170.64 Scope of tax.

(a) *General.* The floor stocks tax is imposed on all Federally taxpaid or tax-determined distilled spirits, not exempt under paragraph (b) of this section, which at the first moment of October 1, 1985, are held by any person for sale. The floor stocks tax does not apply to distilled spirits which are not removed from bonded premises or Customs bonded as of the first moment of October 1, 1985.

(b) *Exempt dealer stocks.* Distilled spirits held by wholesale or retail dealers are exempt from floor stocks tax if, on October 1, 1985, the aggregate liquid volume of distilled spirits held by such dealer does not exceed 500 wine gallons. Dealers claiming this exemption from the floor stocks tax shall comply with the inventory requirements of §§ 170.68 and 170.69, and file a tax return as required by § 170.67.

(c) *Controlled groups.* Dealers who are component members of a controlled group as described in § 170.62 must apportion the 500 wine gallon exemption allowed under the provisions of paragraph (b) among the members of that group in proportion to the amount each member has in inventory. A controlled group may only claim the exemption if the aggregate liquid volume of distilled spirits held by all members of the controlled group does not exceed 500 wine gallons.

§ 170.65 Rate of tax.

(a) *General.* The rate of floor stocks tax on distilled spirits is $2.00 per proof gallon, and a proportionate tax at the like rate on all fractional parts of a proof gallon.

(b) *Credit against tax.* Wholesale and retail dealers in distilled spirits are allowed as a credit against the floor stocks tax an amount equal to $800 or the amount of tax liability, whichever is smaller. Dealers who do not owe floor stocks tax as a result of this credit shall comply with the inventory requirements of §§ 170.68 and 170.69, and file a tax return as required by § 170.67.

(c) *Controlled group.* Dealers who are component members of a controlled group as described in § 170.62 must apportion the $800 credit allowed under paragraph (b) of this section among the members of that group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members. An attachment shall be made to the tax returns required by § 170.67 for the members of the controlled group showing the name, address, and amount of credit taken by each member of the controlled group.

§ 170.66 Payment of tax.

(a) *General.* The floor stocks tax shall be paid by every person who holds for sale, at the first moment of October 1, 1985, Federally taxpaid or tax-determined distilled spirits except those distilled spirits held by dealers that are exempt under § 170.64(b). The floor stocks tax return shall be filed on or before April 1, 1986. Except as provided in paragraph (b) of this section, payment of the tax in full, minus the credit allowed under § 170.65(b), if any, shall accompany the floor stocks tax return. Checks and money orders shall be made payable to the Internal Revenue Service, and shall show the taxpayer's name and employer identification number or social security number if the taxpayer does not have an employer identification number.

(b) *Payment by small or middle-sized dealer.* Small and middle-sized dealers in distilled spirits may elect to pay the distilled spirits floor stocks tax in three equal installments. The first installment shall accompany the return due on or before April 1, 1986. The second and third installments shall be paid no later than July 1, 1986, and October 1, 1986, respectively. For the purposes of this section the term "small and middle-sized dealer" refers to any dealer if the aggregate gross sales receipts of that dealer from all products (not just distilled spirits or other alcoholic beverages) did not exceed $500,000 for the most recent tax year ending before October 1, 1985. If the taxpayer does not pay any installment on or before the date prescribed for payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary. In addition, penalties and interest will be assessed in accordance with § 170.78.

(c) *Controlled group.* Dealers who are component members of a controlled group as described in §170.62 may not elect to pay the applicable floor stocks tax in installments as allowed by paragraph (b) of this section unless the combined aggregate gross sales receipts for all products (not just distilled spirits or other alcoholic beverages) for all members of the controlled group did not exceed $500,000 for the most recent taxable year ending before October 1, 1985.

§ 170.67 Return.

(a) *General.* Each person who holds for sale, on the first moment of October 1, 1985, Federally taxpaid or tax-determined distilled spirits shall make and file a return for the distilled spirits so held. The return shall be made on IRS Form 11, Special Tax Return and Application for Registry. When distilled spirits subject to the floor stocks tax are held at more than one location, a consolidated return representing the total liability may be filed if each location shares a common employer identification number. If a consolidated return is filed, the name and address of each place of business where distilled spirits are held for sale, and the quantity of distilled spirits held at each such place, shall be shown on the form or an attachment. Distilled spirits which are warehoused at one or more locations shall be reported on a tax return representing the location from which the warehoused distilled spirits will be offered for sale. If distilled spirits held in a warehouse are offered for sale at several locations, the distilled spirits so held shall either be reported on the tax return filed by any one of those locations, or shall be apportioned among the several locations in any manner and reported on the tax returns filed at those locations. The return shall be prepared in duplicate in accordance with the instructions on the form. The original shall be filed no later than April 1, 1986, with the Internal Revenue Service at the appropriate Internal Revenue Service Center address indicated on the form. The copy shall be retained by the taxpayer as prescribed in § 170.76.

(b) *Controlled groups.* When distilled spirits subject to floor stocks tax are held at more than one location or place of business by members of a controlled group, a consolidated return representing the total liability may be filed if the members share a common employer identification number. A separate return is required to be filed by each member having an individual employer identification number. If a consolidated return is filed, the controlled group shall show, on the form or an attachment, the name and address of each place of business where distilled spirits are held subject to floor stocks tax, and the quantity of distilled spirits held at each such place.

§ 170.68 Inventory procedures for other than retail establishments.

(a) *General.* The distilled spirits floor stocks tax liability required to be shown on the floor stocks tax return shall be established by a physical inventory, except as provided in paragraph (b) of this section. All persons holding distilled spirits for sale including those holding distilled spirits exempt from floor stocks

tax under the provisions of § 170.64(b) shall take a complete inventory in wine gallons at each location where distilled spirits are held. Persons holding spirits not exempt under § 170.64(b) shall convert this wine gallon inventory into proof gallons. The conversion from metric sizes to wine gallons, and from wine gallons to proof gallons, shall be made using the procedures in § 170.70. Distilled spirits in transit on the first moment of October 1, 1985, shall be included in the inventory of the owner of the distilled spirits at that moment.

(b) *Source record inventory.* In lieu of a physical inventory, a book or record inventory may be used if supported by source records which indicate the receipt and disposition of distilled spirits. The source record inventory must reflect the actual quantity of distilled spirits on hand as if a physical inventory had been taken as of the first moment of October 1, 1985. Records of receipt and disposition shall include (1) the name and address of the consignor and consignee, (2) date of receipt and disposition, (3) brand name, (4) kind of spirits, and (5) quantity of spirits involved (wine gallons or liters and proof).

(c) *Record of inventory.* Physical inventories shall be recorded in writing as they are being taken by the taxpayer. The record of the physical or source record inventory shall be retained as prescribed in § 170.76. Quantities in transit shall be recorded separately from quantities actually on hand. The record of the physical or source record inventory shall show the taxpayer's name and address of the place of business where the distilled spirits are held. The record of the physical inventory shall include complete and accurate information showing the details of the inventory, when, and by whom the inventory was taken. If the inventory was verified by anyone other than the person taking it, the name and title of that other person shall also be shown. No specific format is required; however, the physical or source record inventory shall identify all products by brand name, proof, and size of container. For each product, full cases, full unopened bottles, and opened bottles may be listed in separate sections of the inventory or shown in the same section. Persons holding taxpaid or tax-determined spirits in bulk shall list the kind of spirits, the wine gallons, proof, and proof gallons, the name of the distiller, and the serial number of each container (tank truck, tank car, barrel, drum, etc.) of distilled spirits.

(d) *Time of taking physical inventory.* The physical inventory shall be taken no later than October 6, 1985, and no earlier than September 23, 1985. However, if any place of business is closed prior to September 23, 1985, and remains closed through October 1, 1985, then the physical inventory for that place of business may be taken following the close of business on the last business day before such closing. If the physical inventory is not taken between the close of business on the last business day of September 1985, and the beginning of business on the first business day of October 1985, the record of inventory shall be reconciled to reflect the actual on-hand quantity as of the first moment of October 1, 1985, and shall be supported by commercial records of receipt and disposition as prescribed in 27 CFR Part 194.

§ 170.69 Inventory procedures for retail establishments.

(a) *General.* The distilled spirits floor stocks tax liability required to be shown on the floor stocks tax return shall be established either by a physical inventory or by a source record inventory conforming to the standards stated in § 170.68(b). All persons holding distilled spirits for sale including those holding distilled spirits exempt from floor stocks tax under the provisions of § 170.64(b) shall take a complete inventory in wine gallons at each location where distilled spirits are held. Persons holding spirits not exempt under § 170.64(b) shall convert this wine gallon inventory into proof gallons. Distilled spirits in transit on the first moment of October 1,1985, shall be included in the inventory of the owner of the distilled spirits at that moment.

(b) *Special conversion provisions.* In taking the physical inventory of full unopened bottles and opened bottles in stock, retailers may use a shortened factor of 0.26 for converting quantities in liters to wine gallons in lieu of the factor stated in § 170.70. In converting wine gallons to proof gallons, retailers may round fractional label proofs to the nearest whole proof. These provisions do not apply to distilled spirits in full cases, and if used, shall be used consistently.

(c) *Record of inventory.* Physical inventories shall be recorded in writing as they are being taken by the taxpayer. The record of the physical or source record inventory shall be retained as prescribed in § 170.76. Quantities in transit shall be recorded separately from quantities actually on hand. The record of the physical or source record inventory shall show the taxpayer's name and the address of the place of business where the distilled spirits are held. The record of the physical inventory shall include complete and accurate information showing the details of the inventory, when, and by whom the inventory was taken. If the physical inventory was verified by anyone other than the person taking it, the name and title of that other person shall also be shown. No specific format is required. However, the record of inventory for full cases shall identify all products by brand name, proof, and size of container. The record of inventory for full unopened bottles and opened bottles shall identify all products by proof and size of container. For each product, full cases, full unopened bottles, and opened bottles may be listed in separate sections of the inventory or shown in the same section. The contents of all open bottles of the same proof, regardless of size, may be totalled and listed as a single entry designated "miscellaneous open bottles ——— proof".

(d) *Time of taking physical inventory.* The physical inventory shall be taken no later than October 6, 1985, and no earlier than September 23, 1985. However, if any place of business is closed prior to September 23, 1985, and remains closed through October 1, 1985, then the physical inventory for that place of business may be taken following the close of business on the last business day before such closing. If the physical inventory is not taken between the close of business on the last business day of September 1985, and the beginning of business on the first business day of October 1985, the record of inventory shall be reconciled to reflect the actual on-hand quantity as of the first moment of October 1, 1985. The reconciliation shall be supported by commercial records which show all receipts and dispositions between the first moment of October 1, 1985, and the date of the inventory. The records of receipt shall be maintained in the form prescribed in 27 CFR Part 194. The records of disposition shall identify the distilled spirits removed in accordance with the requirements of paragraph (c) of this section. For example, for full cases the record of disposition must show the brand, size, and proof of the distilled spirits, while only the proof and size are required to be shown for open stock.

§ 170.70 Computation of wine and proof gallons.

(a) *Conversion between liters and wine gallons.* Whenever quantities in liters are converted to wine gallons, the quantity in liters shall be multiplied by the standard conversion factor 0.264172 to determine the equivalent quantity in wine gallons. Retail establishments may use the factor 0.26 for all bottles in stock

not in full cases, as provided in § 170.69(b). Conversions from liters to wine gallons made before multiplying by the total number of cases and/or bottles of a specific item in inventory shall be first rounded to the nearest sixth decimal place. This shall then be rounded to the nearest hundredth decimal place when multiplied by the total quantity of each specific item in inventory. If the conversion from liters to wine gallons is made after multiplying by the total number of cases and/or bottles of a specific item in inventory, the quantity shall be rounded off to the nearest hundredth.

(b) *Computation of proof gallons.* In computing proof gallons (wine gallons times proof divided by 100), the actual proof, including fractional parts of proof, of the spirits as shown on the bottle label or case markings shall be shown in the inventory and used in all calculations, except as provided in § 170.69(b) for retail establishments. Decimals shall be rounded to the nearest tenth place after the last computation is made. For example, 3 wine gallons times 86.8 proof divided by 100 equals 2.604 proof gallons, which shall be rounded to 2.6 proof gallons.

(c) *Examples.* The following examples illustrate how conversions from metric to U.S. units are to be rounded off. In both examples the taxpayer has on hand 4,567 cases of 1.75 liter bottles of a specific item at 80 proof.

(1) 1.75 liters×6 bottles=10.5 liters per case; 10.5×0.264172=2.773806 wine gallons per case; 2.773806×4,567 cases=12,667.97 wine gallons; 12,667.97×0.8 (proof dividend by 100)=10.134.4 proof gallons.

(2) 1.75 liters×6 bottles=10.5 liters per case; 10.5×4,567 cases=47,953.50 liters; 47,953.50×0.264172=12.667.97 wine gallons; 12,667.97×0.8=10,134.4 proof gallons.

(d) *Case markings.* Full cases that are marked on a side (government panel) of the case with the wine gallon and/or proof gallon contents may be inventoried by using these case markings to establish the quantity of wine gallons and/or proof gallons contained in the case.

Imported Perfumes

§ 170.71 Scope of tax.

(a) *General.* A floor stocks tax is imposed on all Federally taxpaid or tax-determined imported perfumes containing distilled spirits (ethyl alcohol), not exempt under paragraph (b) or (c) of this section, which at the first moment of October 1, 1985, are held by any person for sale. The floor stocks tax does not apply to imported perfumes containing distilled spirits which are not removed from Customs bond as of the first moment of October 1, 1985. Imported perfumes which do not contain distilled spirits are not subject to the floor stocks tax.

(b) *Exempt stocks held at retail establishments.* The floor stocks tax is not imposed on imported perfumes held at the premises of a retail establishment. Establishments qualifying under this exemption are not required to take the inventory prescribed by § 170.75 or file a return under § 170.74. However, this exemption does not apply to imported perfumes held in storage facilities that are not within or do not form an integral part of the retail premises. The quantity of imported perfumes so held must be inventoried under the provisions of § 170.75, and a tax return must be filed unless the imported perfumes are exempt under the provisions of paragraph (c) of this section.

(c) *Exempt stocks held by industry members.* Imported perfumes held by industry members, including imported perfumes held in storage facilities that are not within or do not form an integral part of a retail establishment, are exempt from floor stocks tax if, on October 1, 1985, the aggregate liquid volume of imported perfumes held by such an industry member does not exceed 500 wine gallons. Industry members claiming this exemption from the floor stocks tax shall comply with the inventory requirements of § 170.75, but are not subject to the filing requirements of § 170.74.

(d) *Controlled groups.* Industry members who are component members of a controlled group as described in § 170.62 must apportion the 500 wine gallon exemption allowed under the provisions of paragraph (c) of this section among the members of that group in proportion to the amount each member has in inventory. A controlled group may only claim the exemption if the aggregate liquid volume of distilled spirits held by all members of the controlled group does not exceed 500 wine gallons.

§ 170.72 Rate of tax.

(a) *General.* The rate of floor stocks tax on imported perfumes containing distilled spirits is $2.00 per wine gallon, and a proportionate tax at the like rate on all fractional parts of a wine gallon.

(b) *Credit against tax.* Industry members who deal in imported perfumes are allowed as a credit against the floor stocks tax an amount equal to $800 or the amount of tax liability, whichever is less. Industry members who do not owe floor stocks tax as a result of this credit shall comply with the inventory requirements of § 170.75.

(c) *Controlled group.* Industry members who are component members of a controlled group as described in § 170.62 must apportion the $800 credit allowed under paragraph (b) of this section among the members of that group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members. An attachment shall be made to the tax returns required by § 170.74 for the members of the controlled group showing the name, address, and amount of credit taken by each member of the controlled group.

§ 170.73 Payment of tax.

(a) *General.* The floor stocks tax shall be paid by every person who holds for sale, at the first moment of October 1, 1985, Federally taxpaid or tax-determined imported perfumes except those imported perfumes held by retail establishments or industry members exempt under § 170.71 (b) or (c). The floor stocks tax return shall be filed on or before April 1, 1986. Except as provided in paragraph (b), payment of the tax in full, minus a credit allowed under § 170.72(b), if any, shall accompany the floor stocks tax return. Checks and money orders shall be made payable to the Internal Revenue Service, and shall show the taxpayer's name and employer identification number or social security number if the taxpayer does not have an employer identification number.

(b) *Payment by small or middle-sized industry member.* Small and middle-sized industry members who are liable for the floor stocks tax on imported perfumes may elect to pay the floor stocks tax in three equal installments. The first installment shall accompany the return, due on or before April 1, 1986. The second and third installments shall be paid no later than July 1, 1986, and October 1, 1986 respectively. For the purposes of this section the term small and middle-sized industry member refers to any person if the aggregate gross sales receipts for all products (not just imported perfumes containing distilled spirits) of that person did not exceed $500,000 for the most recent tax year ending before October 1, 1985. If the taxpayer does not pay any installment on or before the date prescribed for payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary. In addition, penalties and interest will be assessed in accordance with § 170.78.

(c) *Controlled group.* Industry members who are component members

of a controlled group as described in § 170.62 may not elect to pay the applicable floor stocks tax in installments as allowed by paragraph (b) of this section unless the combined aggregate gross sales receipts for all products (not just imported perfumes) for all members of the controlled group did not exceed $500,000 for the most recent taxable year ending before October 1, 1985.

§ 170.74 Return.

(a) *General.* Each person who holds for sale, at the first moment of October 1, 1985, Federally taxpaid or tax-determined imported perfumes containing distilled spirits, and who is liable for tax on the imported perfumes so held, shall make and file a return. The return shall be made on IRS Form 11, Special Tax Return and Application for Registry. When imported perfumes subject to the floor stocks tax are held at more than one location, a consolidated return representing the total liability may be filed if each location shares a common employer identification number. If a consolidated return is filed, the name and address of each place of business where imported perfumes are held for sale, and the quantity of imported perfumes held at each such place, shall be shown on the form or an attachment. Imported perfumes which are warehoused at one or more locations shall be reported on a tax return representing the location from which the warehoused imported perfumes will be offered for sale. If imported perfumes held in a warehouse are offered for sale at several locations, the imported perfumes so held shall either be reported on the tax return filed by any one of those locations, or shall be apportioned among the several locations in any manner and reported on the tax returns filed at those locations. The return shall be prepared in duplicate in accordance with the instructions of the form. The original shall be filed no later than April 1, 1986, with the Internal Revenue Service at the address indicated on the form. The copy shall be retained by the taxpayer as prescribed in § 170.76.

(b) *Controlled group.* When imported perfumes subject to floor stocks tax are held at more than one location or place of business by members of a controlled group, a consolidated return representing the total liability may be filed if the members share a common employer identification number. A separate return is required to be filed by each member having an individual employer identification number. If a consolidated return is filed, the controlled group shall show, on the form or an attachment, the name and address of each place of business where imported perfumes are held subject to floor stocks tax, and the quantity of imported perfumes held at each such place.

§ 170.75 Inventory.

(a) *General.* The floor stocks tax liability required to be shown on the floor stocks tax return shall be established by a physical inventory. All persons, except retail establishments, holding imported perfumes for sale, including those industry members who have less than 500 wine gallons on hand, shall take a complete physical inventory in wine gallons. Imported perfumes in transit on the first moment of October 1, 1985, shall be included in the inventory of the owner of the imported perfumes at that moment.

(b) *Record of established inventory.* Physical inventories shall be recorded in writing as they are being taken by the taxpayer and retained as prescribed in § 170.76. Quantities in transit shall be recorded separately from quantities actually on hand. The record of inventory shall show the taxpayer's name and the address of the place of business where the imported perfumes are held. The record of inventory shall include complete and accurate information showing the details of the inventory, when, and by whom the inventory was taken. If the inventory was verified by anyone other than the person taking it, the name and title of that other person shall also be shown. No specific format is required, however, the inventory must identify the quantity of all products held by brand name and size of container.

(c) *Time of taking inventory.* The physical inventory shall be taken no later than October 6, 1985, and no earlier than September 23, 1985. However, if any place of business is closed prior to September 23, 1985, and remains closed through October 1, 1985, then the physical inventory for that place of business may be taken following the close of business on the last business day before such closing. If the physical inventory is not taken between the close of business on the last business day of September 1985, and the beginning of business on the first business day of October 1985, the record of inventory shall be reconciled to the first moment of October 1, 1985, and shall include complete supporting records of receipt and disposition.

General

§ 170.60 OMB control number.

Each person liable for floor stocks tax shall keep a copy of his floor stocks tax return and inventory record at the place of business covered thereby. In the case of a consolidated return, the return shall be kept at the taxpayer's principal place of business with a copy of each inventory record supporting the tax return, and a copy of the inventory record shall also be kept at the specific place of business to which the inventory pertains. These documents and records shall be retained for at least 3 years after the date of filing of the floor stocks tax return, and shall be available for inspection by ATF officers. The regional director (compliance) may also require these documents and records to be retained for an additional period of not more than 3 years in any case where he deems such retention to be necessary or advisable for the protection of the revenue.

§170.77 Refunds of floor stocks tax.

(a) A claim for refund may be filed by any person who has paid a floor stocks tax on distilled spirits or imported perfumes and who claims that an overpayment of tax was made or who returns distilled spirits to bond under the provisions of 27 CFR Part 19. Such a claim shall be filed on IRS Form 843, contain the information required by the form, and be supported by a statement of the facts and evidence upon which the claim is based.

(b) The claim shall be filed either with the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, for the region in which the business is located, or with the Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. Claims filed under this section shall comply with the provisions of Subpart E of this part.

§ 170.78 Penalties and Interest.

(a) *Penalties.* All civil and Criminal penalties and forfeiture provisions of the Internal Revenue Code (Title 26 U.S.C.), which are applicable to excise taxes on distilled spirits are applicable also to distilled spirits floor stocks tax.

(b) *Interest.* Interest shall accrue at the rate established by IRS, compounded daily, on all floor stocks tax that is not paid on or before April 1,

1986, except for that tax paid in installments under the provisions of § 170.66 or § 170.73. If any installment payment is not timely made, interest and penalties shall accrue from that time on the entire unpaid balance. (See 26 U.S.C. 6601)

(68A Stat. 817, as amended (26 U.S.C. 6601); sec. 7, Pub. L. 93–625, 88 Stat. 2114, as amended (26 U.S.C. 6621; sec. 344, Pub. L. 97–248, 96 Stat. 635 (26 U.S.C. 6622))

§ 170.79 Authority of ATF officers.

(a) *Entry of premises; penalties for interference.* Any officer of the Bureau may, in the performance of his duty, enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects and also enter at night any such building or place, while open, for a similar purpose. See 26 U.S.C. 7212 relating to penalties for attempts to interfere with the administration of Internal Revenue laws.

(b) *Examination.* With respect to ATF examination of books and witnesses done in connection with ascertaining, determining, or collecting floor stocks tax, see 27 CFR 70.22.

(68A Stat. 855, 872, 901, as amended, 903, as amended (26 U.S.C. 7212, 7342, 7602, 7606); sec. 204, Pub. L. 85–859, 72 Stat. 1429, as amended (26 U.S.C. 7608))

PART 252—EXPORTATION OF LIQUORS

Paragraph 1. The authority citation for Part 252 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

§ 252.195b [Amended]

Par. 2. Section 252.195b is amended to remove in the second sentence of paragraph (b) the words "$10.50 per proof gallon" and insert in their place the words "the rate of tax imposed by 26 U.S.C. 5001 or 7652 on each proof gallon or part thereof of distilled spirits produced in or imported into the United States".

Signed: May 17, 1985.

W.T. Drake,

Acting Director.

Approved: August 12, 1985.

Edward T. Stevenson,

Acting Assistant Secretary, (Enforcement and Operations).

[FR Doc. 85–20120 Filed 8–22–85; 8:45 am]

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PANAMA CANAL COMMISSION

35 CFR Part 256

Collection by Salary Offset From Federal Employees Indebted to the United States

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Administrator of the Panama Canal Commission issues final regulations establishing rules for the offset of a debt against the Federal pay of a current or former Federal employee who is indebted to the United States. These regulations implement debt collection procedures provided for under the Debt Collection Act of 1982.

EFFECTIVE DATE: These regulations shall take effect August 23, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, 2000 L Street NW, Suite 550, Washington, D.C. 20036 (Tel. No. (202) 634–6441) or Mr. Jess K. Trotten, Acting General Counsel, Panama Canal Commission 34011 (Tel. No. in Balboa Heights, Republic of Panama, 011–507–52–7511).

SUPPLEMENTARY INFORMATION: On May 9, 1985, the Administrator published in the **Federal Register**, 50 FR 19539, a notice of proposed rulemaking setting forth proposed rules for offsetting the Federal pay of current and former Federal employees who are indebted to the United States. The preamble to the notice of proposed rulemaking set forth, in detail, the basis and purpose of the proposed rule. The Administrator is adopting the proposed rule as a final rule with only minor technical changes and accordingly, is incorporating by reference into this preamble the preamble to the proposed rule (50 FR 19539–19541, May 9, 1985).

Comments and Responses

Interested persons were invited to submit comments and recommendations regarding the proposed regulations within a 30-day period following publication. No comments or recommendations were received.

Paperwork Reduction Act of 1980

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(c), the information collection provisions contained in these regulations are not subject to the Office of Management and Budget review and approval.

Executive Order 12291

The Panama Canal Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, upon implementation, will not have an effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs of process of consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulation Flexibility Act Certification

The Administrator certifies pursuant to 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. These regulations will not affect small entities, but only individuals employed by the United States.

List of Subjects in 35 CFR Part 256

Claims, Debt collection, Government employees.

Dated: June 28, 1985.

Fernando Manfredo, Jr.,

Acting Administrator.

Accordingly, the Title 35 of the Code of Federal Regulations is amended by adding a new part, Part 256, to read as follows:

PART 256—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES

Sec.

256.1 Collection of debts by offset; scope of regulations.
256.2 Definitions.
256.3 Pay subject to offset.
256.4 Advance notice of debt; request for records; submission of information.
256.5 Formal notice to employee.
256.6 Request for a hearing; prehearing submissions.
256.7 Hearings; time, date, and location.
256.8 Consequence of employee's failure to meet deadline dates.
256.9 Hearing procedures.
256.10 Representation.
256.11 Applicable legal principles.
256.12 Standards for determining extreme financial hardship.
256.13 Collection of debts on behalf of other agencies by offsetting the pay of a Commission employee.

Authority: 5 U.S.C. 5514, as amended by section 5 of Public Law 97–365, 96 Stat. 1751–1752.

§ 256.1 Collection of debts by offset; scope of regulations.

(a) If it is determined that an employee of the United States is indebted to the Panama Canal Commission, the employee's pay may be offset to satisfy that indebtedeness under the procedures set forth in this part.

(b) Debts owed by Commission employees to other agencies of the United States may be recovered by offset against the employee's pay in accordance with § 256.13. Similar provision in the regulations of other agencies permit the Commission to recover by offset debts owed to the Commission by the employee of another agency, if the Commission first complies with the provisions of §§ 256.1 through 256.12 of this part.

(c) An offset against pay shall be carried out in accordance with the standards established under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*).

(d) The regulations in this part do not apply to, and do not impair the United States' authority with regard to, the collection of a debt, by offset or by other means, if the debt is owed to the United States by a Federal employee and the debt arose under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), or in any other circumstances in which collection of a debt by salary offset is explicitly provided by Federal statute, such as the collection authority granted the Commission pursuant to 22 U.S.C. 3645.

(e) These regulations do not preclude an employee from questioning the amount or validity of a debt by submitting a claim to the General Accounting Office, but the Commission need not suspend the collection of the debt because of the filing of such a claim.

(f) These regulations do not preclude the compromise, suspension or termination of collection actions where appropriate under the standards set forth at 4 CFR 101.1 *et seq.*

(g) An employee's involuntary payment of all or any portion of an alleged debt being collected pursuant to this part shall not be construed as a waiver of any rights which the employee may have under this subpart or any other provision of law, except as otherwise provided by law.

(h) Amounts paid or deducted pursuant to this subpart shall be promptly refunded to an employee if the debt is waived or otherwise found not owing to the United States or if the Commission is directed by a competent judicial or administrative authority to refund amounts deducted from an employee's current pay.

(i) The procedures in this part and the collection of debts by the Panama Canal Commission shall be carried out by the Chief Financial Officer.

(j) The Commission will not initiate salary offset to collect a debt under this subpart more than ten years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who are charged with discovering and collecting the debt in question.

§ 256.2 Definitions.

As used in this part:

"Agency" shall have the same meaning as prescribed in 5 CFR 550.1103.

"Creditor agency" means the Federal agency to which the debt is owed.

"Day," unless specified otherwise, means a calendar day, and time limits are to be computed by counting calendar days, rather than only those days on which Commission offices are open for business.

"Debt" means an amount owed to the United States from any source, except as provided in this part. Such debts include, but are not limited to, those arising from loans insured or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines penalties, damages, interest forfeitures, etc. Interest, penalties, and administrative costs may be assessed on debts collected pursuant to this part. These charges shall be assessed or waived in accordance with the provisions of 4 CFR 102.13.

"Delinquent debt" means (a) a debt which has not been paid, or for which arrangements for payment have not been agreed to by the creditor agency and the employee, by the date specified in the creditor agency's initial written notification or (b) a debt for which the employee fails to comply with the terms of payment arrangements agreed to with the creditor agency.

"Disposable pay" shall have the same meaning as prescribed in 5 CFR 550.1103.

"Employee" means a current—

(a) Civilian employee, as defined in 5 U.S.C. 2105;

(b) Member of the Armed Forces or Reserves of the United States;

(c) Employee of the United States Postal Service; or

(d) Employee of the Postal Rate Commission.

"Pay" means basic pay, premium pay, special pay, incentive pay, retired pay, retainer pay, or, in case of an employee not entitled to basic pay, other authorized pay.

"Paying agency" means the Federal agency or branch of the Armed Forces or Reserves employing the individual or disbursing his or her current pay.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction at one or more officially established pay intervals from the current pay of an employee without his consent.

"Waiver" means the cancellation, remission, forgiveness or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, or 32 U.S.C. 716, or any other law.

§ 256.3 Pay subject to offset.

(a) An offset from an employee's pay from the Commission may not exceed 15 percent of the employee's disposable pay, unless the employee agree in writing to a larger offset.

(b) If collection in one lump-sum payment would exceed 15 percent of the employee's disposable pay, an offset shall be made biweekly or at officially established pay intervals from the employee's current pay account. Whenever possible, the installment payments shall be sufficient in size to liquidate the debt during a period not greater than the anticipated period of active duty or employment of the debtor employee.

(c) If an employee retires, resigns, or is discharged, or if his employment period or period of active duty otherwise ends before collection of the debt is completed, an offset may be made from subsequent payments of any nature (*e.g.*, final salary payment, lump-sum leave, etc.) due the individual from the employing agency, to the extent necessary to liquidate the debt. If the final payment due the employee is insufficient to satisfy the debt, the creditor agency shall take steps necessary to provide for payment of the debt by administrative offset from payments of any kind due the former employee from the United States pursuant to 31 U.S.C. 3716. (See 4 CFR 102.4)

§ 256.4 Advance notice of debt, request for records submission of information.

(a) Before initiating an offset proceeding, the Chief Financial Officer of the Panama Canal Commission will establish an individual administrative case file for each employee to be

covered by the offset proceeding and notify the employee—

(1) That he has determined that the employee is indebted to the United States in a specific amount as the result of a debt due and owing to the Panama Canal Commission;

(2) That he intends to satisfy that indebtedness by offsetting 15 percent of the employee's disposable pay unless the employee can demonstrate that he is not indebted to the United States or that the proposed offset schedule would produce an extreme financial hardship, as defined in § 256.12 of this part;

(3) If the applicable law includes a provision requiring waiver of debts in certain circumstances, notice of the waiver provision, including a description of the conditions under which a waiver must be granted, notice that the employee has an opportunity to request such a waiver, and instructions on how to apply for a waiver; and

(4) The options available to him and time limits within which submission of additional information or documents must be made.

(b)(1) An employee who has been notified of the Chief Financial Officer's determination of the existence and amount of the debt and the proposed offset schedule, may submit to him a request—

(i) Not later than 10 days from the date the employee receives the notice, for a copy of the records in the possession of the agency relating to the debt,

(ii) Within the time specified in paragraph (c) of this section, that he reconsider his determination of the existence or amount of the debt,

(iii) Within the time set forth in paragraph (c) fo this section, that he reconsider the proposed offset schedule, on the basis that it would produce an extreme financial hardship for the employee, and

(iv) Within the time set forth in paragraph (c) of this section, that he consider a request for waiver of the debt, if a waiver provision is applicable to the debt.

(2) If the employee requests a reconsideration of the determination of the existence or amount of the debt, the employee shall submit a statement, with supporting documents, indicating why the employee believes he is not so indebted.

(3) If the employee requests a reconsideration of the proposed offset schedule, the employee shall file an alternative proposed offset schedule and a statement, with supporting documents, showing why the schedule proposed by the agency would produce an extreme financial hardship for the employee. The supporting documents must show, for the employee and his spouse and legal dependents, for the one-year period preceding the receipt of the notice and for the repayment period proposed by the employee in his or her offset schedule, the—

(i) Income from all sources,

(ii) Assets,

(iii) Liabilities,

(iv) Number of legal dependents,

(v) Expenses for food, housing, clothing, and transportation,

(vi) Medical expenses, and

(vii) Exceptional expenses, if any.

(c) An employee who requests a reconsideration of the existence or amount of the debt, or the proposed offset schedule, shall submit his statement, with supporting documents, to the Chief Financial Officer no later than—

(1) Forty-five days from the date the employee receives the notice of the debt, if he does not make a timely request for records under paragraph (b)(1)(i); or

(2) Forty-five days from the date the employee receives the records, if a timely request for records was made.

(d) If the employee submits a timely request for reconsideration under paragraph (b), together with the required documents, the Chief Financial Officer will reconsider whether the employee is indebted to the United States, the amount that the employee owes, or whether the proposed offset schedule is appropriate.

(e) If the employee files a timely request for waiver of the debt, the Chief Financial Officer will consider that request. If the employee files a request for waiver that is not timely, the request will be considered if he establishes that his failure to file within the time prescribed was because of circumstances beyond his control or because he did not receive the notice of the time limit and was not otherwise aware of it.

(f) The Chief Financial Officer's decision on the employee's request for reconsideration will be based on agency records and the material submitted by the employee. He shall promptly notify the employee of his decision concerning the existence and amount of the debt and the appropriateness of the employee's proposed alternative offset schedule.

(g) If the Chief Financial Officer determines that the employee is indebted to the United States, he will include in the notice to the employee the following matters:

(1) A statement of the reasons for the decision regarding the indebtedness, including, if applicable, the reasons for any reduction of the amount of the indebtedness; and

(2) The notice described in § 256.5.

(h) If the Chief Financial Officer determines that his original offset schedule, or a modified schedule (other than the one proposed by the employee) will not impose an extreme financial hardship on the employee, he will include in the notice to the employee—

(1) A statement of the reasons for his conclusion that his original or modified offset schedule will not impose an extreme financial hardship, and

(2) The notice described in § 256.6.

§ 256.5 Formal notice to employee.

(a) At least 30 days before requesting an agency to offset the pay of an employee or commencing the offset of the pay of an employee of the Commission, the Chief Financial Officer will send the employee a notice stating—

(1) The nature and amount of the debt he has determined that the employee owes the United States;

(2) His intention to collect the debt by offset;

(3) The amount that the agency determines will be offset from the employee's disposable pay, including the proposed schedule for the deductions;

(4) Unless such payments are excused in accordance with 4 CFR 102.13, an explanation of the creditor agency's requirements concerning interest, penalties, and administrative costs;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the Commission) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Commission, and documented in the Commission's files (4 CFR 102.2(e));

(7) If the applicable law includes a provision requiring waiver of debts in certain circumstances, notice of the waiver provision, including notice of the period within which such a waiver must be requested and an explanation of the conditions under which waiver may be granted;

(8) That amounts paid or deducted for the alleged debt which are later waived or found not owed to the United States

will be promptly refunded to the employee;

(9) The employee's right to a hearing on the Chief Financial Officer's determination concerning the existence and amount of the debt and the proposed offset schedule. This notice shall include a description of the applicable hearing procedures and requirements;

(10) That the timely filing of a petition for hearing on the existence or amount of a debt or the offset schedule will stay the commencement of collection proceedings; but that a request for a waiver or a hearing on the employee's credibility of veracity in connection with a request for a permissive waiver will not stay the collection proceedings;

(11) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(12) The method and time period for requesting a hearing; and

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary or adverse action;

(ii) Penalties under the False Claims Act, sections 3729–3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(b) The formal notice prescribed by paragraph (a) is not applicable to any pay adjustment arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 256.6 Request for a hearing; prehearing submissions.

(a) An employee's request for a hearing or waiver under section 256.5 must be filed not later than 15 days from the date of receipt of the formal notice.

(b) Not later than three days prior to a scheduled hearing date, the employee may notify the Chief Financial Officer of his election to have the matter determined by the hearing official solely on the basis of written submissions. If no such election is filed by the employee, the hearing shall be conducted as an oral proceeding.

(c) If an employee files a timely petition for a hearing, the Chief Financial Officer will—

(1) Notify the employee of the time, date, and location of the hearing, if a determination solely on the basis of written submissions has not been requested; and

(2) Provide copies of the records in the possession of the agency relating to the employee's debt to the hearing official and, if he has not previously received the records, to the employee.

(d) If the employee files a request for a hearing that is not timely, he will be granted a hearing if he establishes that his failure to file within the time prescribed was because of circumstances beyond his control or because he did not receive the notice of the time limit and was not otherwise aware of it.

(e) If the employee contests the Commission determination of the existence or amount of the debt, he shall, not later than 10 days prior to the scheduled hearing date, file the following documents:

(1) A statement of the reasons why the employee believes that the Commission determination of the existence or amount of the debt was clearly erroneous. The statement shall include a recitation of the facts on which the employee relies to support his belief and any legal arguments supporting his position;

(2) A list of witnesses the employee intends to call at the hearing and a statement of why their testimony is desired; and

(3) A copy of the records that the employee intends to introduce at the hearing, if they differ from those provided by the Commission.

(f) If the employee contests the Commission's proposed offset schedule, he shall, not later than 10 days prior to the scheduled hearing date, file the following:

(1) A proposed alternative offset schedule;

(2) A statement of the reasons why the proposed offset against disposable pay will produce an extreme financial hardship;

(3) The information required in § 256.4(b)(3) of this part;

(4) A list of witnesses the employee intends to call at the hearing and a statement of why their testimony is desired; and

(5) A copy of the records that the employee intends to introduce at the hearing, if they differ from those provided by the Commission.

(g) The Chief Financial Officer shall file, not later than 10 days prior to the scheduled hearing date, a list of witnesses that the Commission intends to call at the hearing.

(h) Material submitted by an employee in connection with a request for reconsideration or for a waiver under section 256.4 need not be resubmitted in connection with the proceeding under this section.

(i) Material required to be filed under paragraphs (e), (f), and (g) of this section shall be filed with the hearing official and copies shall be provided to the opposing party.

§ 256.7 Hearings, time, date, and location.

(a) If an employee files a timely request for a hearing under § 256.6, the Commission will select the time, date, and location for the hearing. A hearing will be granted on a request for a waiver only if such waiver is provided for by law and if the request, in the judgment of the Chief Financial Officer, raises issues of veracity or credibility of the employee. To the extent feasible, the Commission will select a date and location that is convenient for the employee.

(b) For an employee who resides on the Isthmus of Panama, the hearing will be held in Panama. Hearings may be scheduled in New Orleans or Washington, D.C. for persons not residing in Panama.

§ 256.8 Consequence of employee's failure to meet deadline dates.

(a) An employee shall be considered to have waived his right to a hearing, and will have his disposable pay offset in accordance with the offset schedule proposed by the Commission, if the employee fails to appear at the time fixed for a hearing, or fails to file the required submissions under § 256.6 within five days after the filing date established under that section.

(b) The hearing official may excuse the employee's failure to meet any of the foregoing requirements if the employee shows that he exercised due diligence and that there is good cause for his failure to meet the requirements.

§ 256.9 Hearing procedures.

(a) The hearing will be conducted by a hearing official who is not an employee of the Commission or otherwise under its supervision or control, except that hearings on waivers may be conducted by an employee of the Commission.

(b) The hearing official shall prepare a summary record of the hearing, which will be maintained by the Commission as a part of the record of the offset procedures; however, no transcript of the hearing shall be made.

(c) The hearing shall not be conducted in accordance with formal rules of evidence with regard to the

admissibility or use of evidence, except that the hearing official shall limit the evidence to testimony and documents which are relevant to the issues being considered.

(d) At the hearing, the employee and the Commission may introduce evidence and may call witnesses, consistent with the provisions of paragraph (c) of this section. Witnesses shall testify under oath and are subject to cross-examination.

(e) If the matter being contested is the existence or amount of a debt, the hearing official shall issue a decision upholding the Commission determination, unless the hearing official finds that the Commission determination was clearly erroneous.

(f) If the hearing official finds that the Commission's determination of the amount of the debt was clearly erroneous, he shall determine the amount owed by the employee, if any.

(g) If the matter being contested is the Commission's proposed offset schedule, the hearing official shall uphold that schedule unless the employee has demonstrated by clear and convincing evidence that the payments called for under that schedule would result in an extreme financial hardship for the employee.

(h) If the matter being contested is the credibility or veracity of the employee in connection with his request for a waiver, the hearing official shall make a determination as to the employee's credibility or veracity.

(i) If the hearing official finds that the payments called for under the Chief Financial Officer's proposed offset schedule will produce an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time which will not result in an extreme financial hardship for the employee.

(j) The hearing official shall issue a written opinion setting forth his decision and a statement of the reasons supporting it as soon as practicable, but not more than 60 days after the filing of the petition requesting the hearing, unless the hearing official has granted a delay in the proceedings at the request of the employee. The opinion shall contain his determinations as to the existence and amount of the debt, the origin of the debt, and, if a request for a waiver has been made, the employee's veracity or credibility.

(k) If the employee files a petition for a hearing in connection with a request for a waiver under a statute requiring a waiver and meets the time limits for filing material prior to the hearing, no deductions to effect the offset will be made until the employee has been provided a hearing and a final written decision has been issued.

§ 256.10 Representation.

An employee may represent himself or may be represented by another person, including an attorney, during any proceedings under this part.

§ 256.11 Applicable legal principles.

(a) The hearing official may not find that the Commission's determination of the existence or amount of the employee's debt was erroneous—

(1) On the basis of State or local statutes of limitations;

(2) On the basis that the employee is owed monies by the United States (other than regular salary) and that payment of that debt by the United States would eliminate or reduce the debt, unless the employee has, not later than 45 days after receipt of advance notice of the debt under section 256.4, submitted written confirmation by the agency which is indebted to the employee that such money is owed and has assigned the payment of that money to the Commission; or

(3) On the basis of any factual or legal argument that was decided on the merits adversely to the employee in a court of competent jurisdiction.

(b) In determining whether the Chief Financial Officer's decision concerning the existence or amount of the employee's debt is clearly erroneous, the hearing official shall be bound by the relevant Federal statutes and regulations governing the program which gave rise to the debt, and general principles of the law of the United States, if relevant.

§ 256.12 Standards for determining extreme financial hardship.

(a) An offset will be considered to produce an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his spouse and dependents. Essential subsistence expenses consist of the costs incurred for medical care, food, housing, clothing, and transportation only.

(b) In determining whether an offset would prevent the employee from meeting the essential subsistence costs described in paragraph (a) of this section, the following matters shall be considered—

(1) The income from all sources of the employee and his spouse and dependents;

(2) The extent to which the assets of the employee and his spouse and dependents are available to pay the debt or the essential subsistence expenses;

(3) Whether the essential subsistence costs have been minimized to the greatest extent possible;

(4) The extent to which the employee and his spouse and dependents can borrow money to pay the debt or the essential subsistence expenses; and

(5) The extent to which the employee and his spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

§ 256.13 Collection of debts on behalf of other agencies by offsetting the pay of a commission employee.

(a) Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency shall forward to the Commission a certified statement of the existence of the debt. This document shall include a statement that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date on which the claim against the debtor accrued, if different from the payment due date, and a statement that agency regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(b) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency must also indicate the actions taken under section 5514(b) and give the dates the actions were taken.

(c) If, after the debt claim has been submitted by the creditor agency, the employee transfers to a position in another agency, the Commission will certify the total amount of the collection made on the debt. One copy of the certification will be furnished to the employee, and one copy will be furnished to the creditor agency, together with notice of the employee's transfer. The original of the debt claim form shall be inserted in the employee's official personnel folder, together with the certification of the amount which has been collected. Upon receiving the official personnel folder, it will be the responsibility of the new paying agency to resume the collection from the individual's current pay and notify the employee and the creditor agency of the resumption. In cases in which an employee transfers to the Commission while a debt is being collected from him

by another Federal agency by offset, the Commission will resume the collection and notify the employee that it is doing so.

(d) For collections of debts by offset under this section, the Commission will not repeat the procedures prescribed by 5 U.S.C. 5514 and agency regulations under section 5514.

(e) If the Commission receives an incomplete or improperly certified debt claim, it will return the claim to the creditor agency with a notice that procedures under 5 U.S.C. 5514 must be complied with and a complete debt claim must be submitted before any action will be taken to collect the debt by offset from the employee's current pay.

(f) If the Commission receives a complete debt claim, deductions shall be scheduled to begin on the next officially established pay interval, if possible. A copy of the debt claim form shall be given to the debtor, together with notice of the date deductions will commence.

(g) The Commission will not review the merits of the creditor agency's determination with respect to the amount or validity of the debt.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises fees charged to commercial vehicles operated on U.S. Highway 209 within Delaware Water Gap National Recreation Area, Pennsylvania. Public Law 98-63 provided for the establishment of a fee schedule for commercial vehicles exempted from the prohibition found in National Park Service general regulations. The Service published a Proposed Rule in the **Federal Register** on January 8, 1985 (50 FR 973), to increase the interim one-way fee schedule that ranges from $.50 to $5.00 to a schedule ranging from $1.00 to $10.00. The Service, after considering public comment, is now implementing a revised commercial fee schedule ranging from $1.00 for two-axle cars, vans or pickups to $7.00 for vehicles with five or more axles. This increase will provide an estimated $195,550 in additional revenue to be used to offset partially the costs of management, operation, construction and maintenance of U.S. Highway 209 within the boundary of the recreation area.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Albert A. Hawkins, Superintendent, Delaware Water Gap National Recreation Area, Telephone (717) 588-6637.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 1983, Pub. L. 98-63 was enacted restricting commercial vehicle use on U.S. Highway 209 and mitigating the conditions of 36 CFR 5.6, which otherwise would be applicable. Pub. L. 98-63 authorized certain commercial vehicles to use the highway and directed that fees be established, not to exceed $10.00 per trip, for certain commercial vehicle operations on U.S. Highway 209. On October 14, 1983, the National Park Service published in the **Federal Register**, special regulations codified at 36 CFR 7.71 (d) and (e) to implement Pub. L. 98-63.

The commercial vehicles authorized to operate within the boundaries by the 1983 special regulations, are those vehicles: (i) Operated by businesses based within the recreation area; (ii) operated by businesses that, as of July 30, 1983, operated a commercial vehicular facility in Monroe, Pike or Northampton Counties, Pennsylvania, and the vehicular operation originates or terminates at such facility; or (iii) operated in order to provide services to businesses and persons located in or contiguous to the boundaries of the recreation area.

In accordance with Pub. L. 98-63, the National Park Service also published, as part of § 7.71 (e) (i), a fee schedule based on the number of axles of lightweight, and heavy commercial vehicles. By law, the fees collected are for the management, operation, construction, and maintenance of U.S. Highway 209 within the boundary of the recreation area.

The interim fees were based on the probable impact of vehicles on road structure. Rates were calculated for four-wheel vehicles and four-wheel vehicles with trailers at $.25 per axle and for vehicles with more than four wheels at $1.00 per axle. The interim fees were determined as follows:

$.50..... Two axle car, van or pickup.
$1.00..... Two axle—four wheel vehicle with trailer.
$2.00..... Two axle—six wheel vehicle.
$3.00..... Three axle vehicle.
$4.00..... Four axle vehicle.
$5.00..... Five or more axle vehicle.

The closure and exceptions provisions of Pub. L. 98-63, absent any additional Congressional action, were to terminate on December 31, 1983. Congress directed in Pub. L. 98-63, that in the interim, a commission be established to make recommendations to Congress by October 30, 1983, regarding a permanent transportation improvement program in the affected area. The 209 Commission was directed, among other things, to evaluate the statutory closure and exceptions. Their report was transmitted to Congress on October 30, 1983.

The statutory closure of U.S. Highway 209 was amended and extended until December 31, 1985 by passage of Pub. L. 98-151 on November 14, 1983. In addition to the exemptions established by Pub. L. 98-63, Pub. L. 98-151 also provided exemptions for up to 150 northbound and 150 southbound commercial vehicles per day serving businesses or persons in Orange County, New York.

The Service published a Proposed Rule with Request for Comments in the **Federal Register** of Tuesday, January 8, 1985 (50 FR 973), to increase the interim one-way fee schedule (ranging from $.50 for two axle car/vans or pickups to $5.00 for a five or more axle vehicle) to a fee schedule ranging from $1.00 for nonexempt commercial cars/vans or pickups to $10.00 for a five or more axle vehicle. This proposed rule was based upon the recommendations of the Congressionally mandated 209 Commission Report and revised estimates of costs for management, operation, construction and maintenance of U.S. Highway 209 within Delaware Water Gap National Recreation Area. This proposed rule was open to public comment until February 7, 1985. The Service has now analyzed the written comments received regarding the proposed rule, and has determined that a revised fee schedule ranging from $1.00 for two axle cars/vans or pickups to $7.00 for a five or more axle vehicle is a compromise which will accommodate the needs of the public, the local businesses, and the Service.

Summary of Comments

During the public comment period, January 8, 1985 to February 7, 1985, the National Park Service received 198 timely written comments regarding the regulation. Comments were received from 188 individuals, 1 member of the

legal profession representing a trucking company, 1 trucking company, 4 local businesses, 2 local governments and 2 state representatives.

Analysis of Comments

The National Park Service received 51 letters opposing the proposed increase in commercial vehicle fees. Of these, at least 28 letters were written by employees of the largest trucking company which would be affected by this increase. This company currently employs over 800 local people. Forty comments expressed concern that higher fees would have a negative economic impact on business in the four county area. This impact would result if trucking companies were to relocate. Commentors believed the higher shipping costs could not be competitively passed on to the consumer. According to some commentors unemployment in the three counties would increase as trucking companies relocate. The National Park Service estimates that the proposed fee increase would have had an immediate economic impact on the four county commercial vehicle industry of $486,000 maximum. The increase would have cost the largest commercial vehicle operation approximately $190,000 more than they are currently paying for the use of the highway (based upon figures supplied by the company). This cost constitutes an increase in shipping costs of approximately $0.25 per ton of goods for 5 axle vehicles ($5.00 fee increase for 5 axle vehicles divided by 20 tons per load). The revised fee schedule ($2.00 fee increase for 5 axle vehicles) will reduce the immediate economic impact on the four county commercial vehicle industry to $195,550 maximum. This increase is expected to cost the largest commercial vehicle operation approximately $76,000 more than they are currently paying. The comparable increase in shipping costs will be approximately $0.10 per ton of goods for 5 axle vehicles. As visitation to the Recreation Area increases, business income from tourists in the Pocono region is expected to increase as it did in Pike County in 1983 (U.S. 209 Commission Report). This increase is expected to partially offset the negative economic impact that might occur in the region.

Twenty-five comments contend that U.S. Highway 209 is currently the highest cost per mile toll road in the United States while four other comments stated that doubling the fees would make the toll exorbitant. Currently the $5.00 fee for five axle trucks for 21 miles of highway constitutes a cost of $0.24 per mile. Increasing the fee to $7.00 would make the charge $0.33 per mile. A fee schedule ranging from $9.00 for a 2 axle, 4-wheel vehicle up to $25.00 for a five axle vehicle is currently in effect on the 20 mile Chesapeake Bay Bridge-Tunnel in Virginia, a charge of $1.25 per mile.

The cost of a 5 axle vehicle to travel on the shortest alternate route currently available at the $1.115 per mile operating cost estimated in September 1982 (Final Environmental Impact Statement, National Park Service) is $16.73. U.S. Highway 209 is not intended to be a turnpike-toll road comparable to the Pennsylvania or Ohio Turnpike. It is a park road upon which only specific commercial vehicles are authorized to travel until such time as a reasonable alternative route is established (Pub. L. 98–63). Congress mandated, in Pub. L. 98–63, that a fee not to exceed $10.00 per trip be charged for this use.

Seventeen comments stated that it was not the intent of Congress in Pub. L. 98–63 that the fees should cover all of the costs of maintenance and operation of U.S. Highway 209. In Pub. L. 98–63 Congress explicitly stated that the fees collected were to be available for management, operation, construction and maintenance of U.S. Highway 209. Congress did not state whether fees were intended to cover all costs incurred in operating the highway. January 1985 cost projections for annual management, operation, construction and maintenance are $2,117,760. Of this cost, $1,145,450 is currently funded from National Park Service funds. Another $972,310 will be required to meet this projected need. Of these additional funds required, only $681,700 will be derived from U.S. Highway 209 fees. The Service will seek alternative funding to obtain the remaining $290,600 necessary to manage the highway.

Twelve commentors felt that the commercial vehicle fees discriminate against the trucking industry, and fifteen commentors recommended that tolls should be extended to all users. Two additional commentors stated that maintenance and operational costs would occur irrespective of the type of user. The National Park Service has no legislative authority to charge non-commercial vehicles for use of U.S. Highway 209. Pub. L. 98–63 mandates that a fee, not to exceed $10.00, be charged for all commercial vehicles from the ban, except for those commercial vehicles servicing the Recreation Area or servicing businesses or persons located contiguous to the boundaries of the Recreation Area. The commercial vehicle fees apply not only to five axle trucks, but also to all passenger cars, vans, pickups and other vehicles which are used for commercial purposes.

Ten commenters emphasized that no feasible alternative routes currently exist. The Final Environmental Impact Statement on U.S. Highway 209, September 1982, and the U.S. 209 Commission Report identified the interstate highways (I–80, I–81, I–380, I–84) as alternate routes to U.S. Highway 209. The U.S. 209 Commission is currently studying alternatives for development and construction of another alternate route in the area.

One hundred and forty-seven letters were received which supported the proposal to increase commercial vehicles fees. One hundred and forty-six commentors stated that the increased fees were necessary to help produce a useful Recreation Area. One commentor stated that the privilege and beauty of the Recreation Area are for all, not for a special purpose commercial concern unrelated to the Recreation Area.

Section-by-Section Analysis

Public Law 98–63 was enacted July 30, 1983, closing U.S. Highway 209 in accordance with § 5.6 of Title 36 of the Code of Federal Regulations, prohibiting commercial vehicles from Delaware Water Gap National Recreation Area, authorizing the exemption of some commercial vehicles, and directing that fees not to exceed $10.00, be established for certain commercial vehicle operations on Highway 209. The fees collected are for the management, operation, construction and maintenance of Highway 209 within the boundary of the Recreation Area.

The interim fees which were effective on October 14, 1983 were based on the probable impact of vehicles on road structure. Rates were calculated for four-wheel vehicles and four-wheel vehicles with trailers at $.25 per axle and for vehicles with more than four wheels at $1.00 per axle.

A further analysis of information concerning the permitted commercial use of U.S. Highway 209 has indicated that the interim fees as published on October 14, 1983, were too low. Consequently, the decision was made to increase these fees based on the following:

The recommendation of the Congressionally mandated 209 Commission (U.S. 209 Congressional Commission Report, October, 1983), to continue collecting a toll not to exceed $10.00 per trip; and

Revised estimates of costs for the management, operation, construction and maintenance of U.S. Highway 209.

The Service published a Proposed Rule with Request for Comments in the **Federal Register** of Tuesday, January 8, 1985 (50 FR 973). This proposed rule would have doubled the interim fees. The Service has subsequently analyzed the public comments received regarding the proposed rule, and has developed a revised fee schedule. The potential economic impacts of the proposed rule were weighed against the needs for funds to manage, operate, and maintain U.S. Highway 209 as a safe road for public use and the comments supporting the proposed fee increase. The Service believes that the revised fee schedule (ranging from $1.00 for two axle cars/vans or pickups to $7.00 for five or more axle vehicles) is a compromise which will accommodate the needs of the public, the local businesses, and the Service.

The following table compares the interim fees, the fees proposed in the proposed rulemaking, and the revised fees which represent the Service's final fee schedule determination.

	Interim fees	Proposed fees	Revised (final) fees
Two axle cars/vans/pickups	$.50	$1	$1
Two axle 4 wheel vehicle with trailer	1.00	2	2
Two axle 6 wheel vehicle	2.00	4	3
Three axle vehicle	3.00	6	4
Four axle vehicle	4.00	8	5
Five or more axle vehicle	5.00	10	7

This regulation will be effective 30 days after publication in the **Federal Register.**

Drafting Information

The principal author of this rulemaking is Paul R. Anderson, Delaware Water Gap National Recreation Area, National Park Service, Bushkill, Pennsylvania 18324.

Paperwork Reduction Act

The rulemaking contains no provision that would entail the collection of information or require compliance with 44 U.S.C. § 3501 *et seq.*

Compliance With Other Laws

An Environmental Assessment and Finding of No Significant Impact has been prepared on the imposition of the fee schedule. The revision of the fee schedule is within the range of alternatives initially discussed, and does not constitute a significant deviation from the original proposed action. The final EIS on the management of U.S. Highway 209 (September 1982) addresses the impacts of commercial vehicular traffic on U.S. Highway 209 and the diversion of that traffic. Copies of these documents are available at the address noted at the beginning of this notice. The Department has determined that it is not necessary to prepare any additional documents concerning this regulation in order to comply with the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*).

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291, and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule will affect about 200 small businesses. The maximum economic impact is projected to be $195,550 in additional user fees.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By revising section 7.71(e)(1) to read as follows:

§ 7.71 Delaware Water Gap National Recreation Area

* * * * *

(e) *Commercial vehicle fees.*—(1) *Fee Schedule:* Fees are charged for those commercial vehicular uses described in paragraphs (d)(1)(i), (ii) and (iii) of this section based on the number of axles and wheels on a vehicle, regardless of load or weight, as follows:

(i) Two-axle car, van or pickup	$1
(ii) Two-axle 4-wheel vehicle with trailer	2
(iii) Two-axle 6-wheel vehicle	3
(iv) Three-axle vehicle	4
(v) Four-axle vehicle	6
(vi) Five or more-axle vehicle	7

The fees charged are for one trip, one way.

* * * * *

Dated: August 2, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–20231 Filed 8–22–85; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 17

Amount of Aid Payable; Rates

AGENCY: Veterans Administration.

ACTION: Notice of Per Diem Rates.

SUMMARY: The Veterans Administration hereby gives notice that the amount of aid payable to a recognized State home under 38 CFR 17.166c shall be at the following per diem rates:

Type of care	Rate
Domiciliary care	$7.30
Nursing home care	17.05
Hospital care	15.25

EFFECTIVE DATE: These rates are payable pursuant to 38 U.S.C. 641(a) effective on date of enactment of Pub. L. 98–160, sec. 105(a), November 21, 1983.

FOR FURTHER INFORMATION CONTACT: F. Brent Baker (202) 389–3854.

Dated: August 14, 1985.

By direction of the Administrator.

John A. Gronvall,

Deputy Chief Medical Director.

[FR Doc. 85–20091 Filed 8–22–85; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 18

Nondiscrimination on the Basis of Age

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) issues these final regulations to carry out its responsibilities under the "Age Discrimination Act of 1975" and the governmentwide regulations published in the **Federal Register** on June 12, 1979, codified at 45 CFR Part 90. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age.

These regulations are designed to guide the actions of recipients of financial assistance from the VA. The regulations incorporate the basic standards for determining what is age discrimination that were set forth in the governmentwide regulations. They discuss the circumstances under which a statutory exception may be invoked; the responsibilities of the VA and recipients

of Federal financial assistance from the VA; and the investigation, conciliation and enforcement procedures the VA will use to ensure compliance with the Act and these regulations.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Ana Matilde del Toro (006B5), Equal Opportunity Specialist, Office of Equal Opportunity, 810 Vermont Avenue, NW, Washington, DC 20450. Telephone number (202) 389–2150).

SUPPLEMENTARY INFORMATION:

Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101, et seq.) as part of the amendments to the Older Americans Act (Pub. L. 94–135). At that time, the express purpose of the Act was to prohibit unreasonable discrimination based on age in programs and activities receiving Federal financial assistance. The Act also permitted federally assisted programs and activities, and recipients of Federal funds, to continue to use: (1) Some age distinctions, and (2) "reasonable factors other then age." The Act applies to persons of all ages.

Prior to the promulgation of any regulations, the Act required the Commission on Civil Rights to conduct a study of age discrimination in federally funded programs and activities. The Commission transmitted its study to the President and the Congress on January 10, 1978. The Commission published the second part of its study in January 1979. The Act also required each affected Federal agency to respond to the Commission's findings and recommendations.

After the receipt of the report of the Commission on Civil Rights and the Federal agency responses to the report, Congress considered amendments to the Age Discrimination Act of 1975. In October 1978, Congress amended the Act (Pub. L. 95–478). Among other changes, Congress struck the word "unreasonable" from the statement of purpose clause, so that the purpose of the Act is to prohibit discrimination based on age in programs or activities receiving Federal financial assistance. However, Congress retained the exceptions to the prohibition against age discrimination. Thus, the Act still permits the use of: (1) Some age distinctions, and (2) "reasonable factors other than age." The ACT continues to apply to persons of all ages.

The Act required HHS (Department of Health and Human Services), formerly HEW (Department of Health, Education and Welfare) to develop and issue governmentwide regulations to guide the development of specific regulations by each Federal agency that administers programs of Federal financial assistance. HHS's final governmentwide regulations were published in the **Federal Register** on June 12, 1979 (45 CFR Part 90).

The Act requires each department or agency that operates programs of Federal financial assistance to issue proposed and then final regulations which must be consistent with the governmentwide regulations. On November 18, 1983, the VA published in the **Federal Register** proposed regulations to implement the Act (48 FR 52485–52491). Interested persons were given 30 days to submit their comments. No public comments were received. However, comments suggested by the VA Department of Veterans Benefits have been considered in the final rules hereby adopted.

Overview of the Regulations

The following paragraphs summarize the provisions contained in these regulations and explain any changes that have been made as a result of the comments received from the VA Department of Veterans Benefits.

This subpart is divided into four major sections: General; Standards for Determining Age Discrimination; Responsibilities of Recipients; and Investigation, Conciliation and Enforcement Procedures. It also contains two appendices. Appendix A provides a listing of the statutory provisions to which this subpart applies. Appendix B contains a listing of age distinctions found in statutes and regulations governing VA assisted programs.

The "General" section explains the purpose of VA's age discrimination regulations and defines terms used in this subpart. These regulations apply to any program or activity receiving Federal financial assistance provided by the VA directly or through another recipient (§ 18.502). It should be noted that these regulations do not apply to assistance programs administered by the Federal government directly to beneficiaries, e.g., individual payment of veterans' benefits (compensation). However, the regulations may apply whenever direct aid is provided to an individual on condition that the aid be spent in providing services or benefits to others.

Although the Act generally covers all programs and activities that receive Federal financial assistance, it does not apply to any age distinction "established under authority of any law" which provides benefits for establishes criteria for participation on the basis of age or in age related terms. Thus, age distinctions that are "established under authority of any law" may continue in use. These regulations adopt, without change, the definition of "any law" established in the governmentwide regulations (45 CFR 90.3(b)(1)). Therefore, these regulations do not apply to age distinctions contained in Federal statutes, State statutes, or local statutes or ordinances adopted by elected, general purpose legislative bodies (§ 18.502(b)(1)).

The Act also excludes from its coverage employment practices, except in programs funded for public service employment under the Job Training Partnership Act (§ 18.502(b)(2)).

The general and specific prohibitions against discrimination on the basis of age (§ 18.511), as well as the exceptions to those prohibitions (§ 18.513 and § 18.514), are set forth in the sections under "Standards for Determining Age Discrimination." As a general rule, under these regulations, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the VA.

The Act contains several exceptions which limit the general prohibitions against age discriminaiton. Section 304(b)(1) of the Act permits the use of age distinctions which are based on reasonable factors other than age. These regulations provide definitions for two terms which are essential to an understanding of those exceptions: "normal operation" and "statutory objective" (§ 18.512). "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives. "Statutory objective" is defined to mean any purpose which is explicitly stated in a Federal statute, State statute or local statute or ordinance.

The regulations establish a four-part test, all parts of which must be met for an explicit age distinction to satisfy one of the statutory exceptions and to continue in use in a federally assisted program (§ 18.513). This four-part test will be used to scrutinize age distinctions which are imposed in the administration of VA's assisted programs, but which are not explicitly authorized by Federal, State or local statute.

Recipients of VA funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." In that event, the action may be

taken even though it has a disproportionate effect on persons of different ages. However, according to the regulations (§ 18.514), the factors other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

Sections under "Responsibilities of Recipients" explain the duties of VA recipients. VA recipients are responsible for ensuring that their programs and activities are in compliance with the Act and these regulations (§ 18.531).

Where a VA recipient initially receiving funds makes those funds available to a subrecipient, the recipient must notify subrecipients of their obligations under the Act and these regulations (§ 18.532).

Each recipient of Federal financial assistance must sign an assurance that it will comply with the Act and these regulations. The VA may require recipients employing the equivalent of 15 or more full-time employees to examine their use of age distinctions under the Act as part of a compliance review or a complaint investigation conducted by the VA (§ 18.533).

Each VA recipient must make available, upon request, information that the VA determines is necessary to establish whether the recipient is in compliance with the Act and these regulations. Recipients must allow the VA reasonable access to books, records, other recipient facilities and sources of information to the extent necessary to determine compliance with the Act and these regulations (§ 18.534(b)).

The sections under "Investigation, Conciliation and Enforcement Procedures" establish the procedures the VA will use for investigation, conciliation and enforcement of the Act. These procedures reflect the procedural requirements of the governmentwide regulations (45 CFR Part 90).

The VA may conduct compliance or preaward reviews or other similar procedures to ensure compliance with the Act and these regulations. These procedures may be used even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation has occurred (§ 18.541).

Complaints of age discrimination may be filed with the VA by an individual or a class or by a third party. The complainant must allege discrimination occurring on or after July 1, 1979. A complainant must file a complaint within 180 days from the date the complainant first knew of the alleged act of discrimination, although the VA may extend this time for good cause (§ 18.542(a)).

A complainant must identify the parties involved and the date the complainant first had knowledge of the alleged violation, describe generally the practice complained of, and the complaint must be signed by the complainant (§ 18.542(b)(2)). The complainant and recipient will be notified of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure. The VA will acknowledge in writing the receipt and acceptance of a complaint. The VA will permit a complainant to add information to a complaint where necessary to meet the requirements of a sufficient complaint (§ 18.542(b)(3)).

The VA will refer to another appropriate Federal agency a complaint that does not fall within the jurisdiction of the VA. The complainant will be notified in writing of the referral, the reasons why the complaint is not within the jurisdiction of the VA, and the name, agency, and address of the official to whom the complaint was referred (§ 18.542(c)).

Section 18.543 introduces mediation into the complaint process for age discrimination. The VA will refer all complaints that fall within the coverage of the Act and these regulations to the Federal Mediation and Conciliation Service, which was designated by the Secretary of the Department of Health and Human Services to manage the mediation process. Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint. Mediation may last no more than 60 days from the date the responsible agency official receives a complaint. No further action will be taken by the VA in connection with a successfully mediated complaint. However, the VA will investigate complaints which are unresolved after mediation or are reopened because the mediation agreement is violated.

A recipient may not intimidate or retaliate against any person who attempts to exercise a right protected by the Act or who participates in any aspect of the proceedings used to resolve allegations of age discrimination (§ 18.545).

The procedures for securing compliance with the Act and these regulations are taken from the governmentwide regulations. The procedures include termination of funds after an opportunity for a hearing on the record, referral to the Department of Justice, or the use of the services of any Federal, State or local government agency to correct a violation (§ 18.546). These regulations include a provision for the Deferral of new Federal financial assistance from the VA when termination proceedings are initiated (§ 18.546(d)).

The VA will use the procedural provisions contained in the regulations implementing Title VI of the Civil Rights Act of 1964 to enforce these regulations (38 CFR 18.9–18.11 and Part 18b).

Where the VA finds that a recipient has discriminated on the basis of age, the VA may require the recipient to take necessary remedial action to overcome the effects of the discrimination (§ 18.548).

When the VA withholds funds from a recipient, the Administrator may disburse those funds to an alternate recipient. The alternate recipient must demonstrate the ability to comply with these regulations and to achieve the goals of the Federal statute which authorizes the financial assistance (§ 18.549).

Complainants may file civil actions when administrative remedies are exhausted. Administrative remedies are exhausted if either 180 days have elapsed since the complainant filed the complaint and the VA has made no finding, or if the VA issues a finding in favor of the recipient. The complainant may then file a suit in a U.S. district court for the district where the recipient is found or transacts business. The complainant must indicate, at the time the suit is filed, if attorney's fees will be demanded in the event that the complainant is successful. No action can be brought if the same alleged violation by the same recipient is the subject of a pending action in any U.S. court. Complainants who wish to file an action must give 30 days notice to the Attorney General, the Administrator, and the recipient (§ 18.550).

Finally, these regulations incorporate two changes recommended by the VA Department of Veterans Benefits. A provision was added to § 18.542 for the VA to acknowledge receipt and acceptance of a complaint in writing (§ 18.542(b)(1)). Also, paragraph (c) of this section has been revised to provide more assistance to the complainant when a complaint is not within the jurisdiction of the VA. Under paragraph (c), the VA will refer a complaint outside of its jurisdiction to an appropriate Federal agency and provide to the complainant the name, address, and agency of the official to which the complaint was referred.

Regulatory Requirements

Regulatory Flexibility Act

The Administrator of Veterans Affairs hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604.

Executive Order 12291

The VA has determined that these regulations are nonmajor in accordance with Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. They will not result in any major increases in costs or prices for anyone. They will have no significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

Paperwork Reduction Act

The information collection requirements contained in §§ 18.532 and 18.542 of these regulations have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, and have been assigned OMB Control Numbers 2900–0400 and 2900–0401.

List of Subjects in 38 CFR Part 18

Administrative practice and procedures, Age discrimination, Authority delegations (Government agencies), Civil rights, Handicapped.

Approved: August 7, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 18—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE VETERANS ADMINISTRATION

38 CFR Part 18 is amended by adding a new Subpart E to read as follows:

Subpart E—Nondiscrimination on the Basis of Age

General

Sec.

18.501 Purpose.
18.502 Application.
18.503 Definitions.

Standards for Determining Age Discrimination

18.511 Rules against age discrimination.
18.512 Definitions of "normal operation" and "statutory objective."
18.513 Exceptions to the rules against age discrimination; normal operation or statutory objective of any program or activity.
18.514 Exceptions to the rules against age discrimination; reasonable factors other then age.
18.515 Burden of proof.
18.516 Affirmative action by recipients.

Responsibilities of Veterans Administration Recipients

18.531 General responsibilities.
18.532 Notice to subrecipients.
18.533 Assurance of compliance and recipient assessment of age distinctions.
18.534 Information requirements.

Investigation, Conciliation, and Enforcement Procedures

18.541 Compliance reviews.
18.542 Complaints.
18.543 Mediation.
18.544 Investigation.
18.545 Prohibition against intimidation or retaliation.
18.546 Compliance procedure.
18.547 Hearings, decisions, post-termination proceedings.
18.548 Remedial action by recipient.
18.549 Alternate funds disbursal procedure.
18.550 Exhaustion of administrative remedies.

Appendix A—Statutory Provisions to Which This Subpart Applies
Appendix B—List of Age Distinctions Contained in Statutes and Regulations Governing Federal Financial Assistance Programs of the Veterans Administration

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, et seq.; 45 CFR Part 90 (1979).

Subpart E—Nondiscrimination on the Basis of Age

General

§ 18.501 Purpose.

The purpose of these regulations is to set out VA (Veterans Administration) policies and procedures under the Age Discrimination Act of 1975 and the governmentwide age discrimination regulations at 45 CFR Part 90. The Act and the governmentwide regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the governmentwide regulations permit federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

(42 U.S.C. 6101–6107)

§ 18.502 Application.

(a) These regulations apply to any program or activity receiving Federal financial assistance provided by the VA directly or through another recipient.

(b) These regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act, 29 U.S.C. 1501, et seq.

(42 U.S.C. 6101–6107)

§ 18.503 Definitions.

As used in these regulations:

(a) "Act" means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94–135, 42 U.S.C. 6101–6107.)

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Administrator" means the Administrator of Veterans Affairs or designees.

(d) "Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

(e) "Age discrimination" means unlawful treatment based on age.

(f) "Age distinction" means any action using age or an age-related term.

(g) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(h) "Day" means calendar day.

(i) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which a Federal agency or department provides or otherwise makes available assistance in the form of:

(1) Funds; or

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its market value is not returned to the Federal Government.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(k) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(l) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, the Trust Territories of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

(42 U.S.C. 6101–6107)

Standards for Determining Age Discrimination

§ 18.511 Rules against age discrimination.

The rules in this section are limited by the exceptions contained in §§ 18.513 and 18.514 of these regulations.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

(42 U.S.C. 6101–6107)

§ 18.512 Definitions of "normal operation" and "statutory objective."

For the purpose of these regulations, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

(42 U.S.C. 6101–6107)

§ 18.513 Exceptions to the rules against age discrimination; normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 18.511, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

(42 U.S.C. 6101–6107)

§ 18.514 Exceptions to the rules against age discrimination; reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 18.511 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

(42 U.S.C. 6101–6107)

§ 18.515 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 18.513 and 18.514 is on the recipient of Federal financial assistance.

(42 U.S.C. 6101–6107)

§ 18.516 Affirmative action by recipients.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(42 U.S.C. 6101–6107)

Responsibilities of Veterans Administration Recipients

§ 18.531 General responsibilities.

Each VA recipient must ensure that its programs and activities are in compliance with the Act and these regulations.

(42 U.S.C. 6101–6107)

§ 18.532 Notice of subrecipients.

Where a recipient passes on Federal financial assistance from the VA to programs and activities of subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations with respect to such programs and activities.

(Approved by the Office of Management and Budget under control number 2900–0400.)

(42 U.S.C. 6101–6107)

§ 18.533 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from the VA shall sign a written assurance as specified by the Administrator that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 18.541 or complaint investigation under § 18.544, the Administrator may require a recipient employing the equivalent of 15 of more employees to complete a written self-evaluation, in a manner specified by the responsible agency official, of any age distinction imposed in its programs or activities receiving Federal financial assistance from the VA to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act or these regulations, the recipient shall take corrective action.

(42 U.S.C. 6101–6107)

§ 18.534 Information requirements.

Each recipient shall:

(a) Make available upon request to the VA information necessary to determine whether the recipient is

complying with the Act and these regulations.

(b) Permit reasonable access by the VA to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether the recipient is in compliance with the Act and these regulations.

(42 U.S.C. 6101–6107)

Investigation, Conciliation and Enforcement Procedures

§ 18.541 Compliance reviews.

(a) The VA may conduct compliance reviews and preaward reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. The VA may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

(b) If a compliance review or preaward review indicates a violation of the Act or these regulations, the VA will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, the VA may institute enforcement proceedings as described in § 18.546.

(42 U.S.C. 6101–6107)

§ 18.542 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with the VA alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, the VA may extend this time limit. Complaints may be submitted to the Director, Office of Equal Opportunity (006B), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420.

(b) The VA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Acknowledging receipt and acceptance of a complaint in writing.

(2) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(3) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(4) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(5) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(6) Notifying the complainant and the recipient (or their representatives) of their right to contact the VA for information and assistance regarding the complaint resolution process.

(c) The VA will refer a complaint of discrimination based on age to another appropriate Federal agency when the complaint is outside the jurisdiction of the VA. The VA will notify the complainant in writing that the complaint has been referred; explain the reason why the complaint is not within the jurisdiction of the VA; and give the complainant the name, agency, and address of the official to whom the complaint was referred.

(Approved by the Office of Management and Budget under control number 2900–0401).
(42 U.S.C. 6101–6107)

§ 18.543 Mediation.

(a) Referral of complaints for mediation. The VA will refer to the Federal Mediation and Conciliation Service all complaints that:

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to the VA. The VA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjunctive proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The VA will use the mediation process for a maximum of 60 days after the responsible agency official receives a complaint.

(f) Mediation ends if:

(1) 60 days elapse from the time the responsible agency official receives the complaint; or

(2) Prior to the end of that 60-day period, an agreement is reached; or

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(g) The mediator shall return unresolved complaints to the VA.

(42 U.S.C. 6101–6107)

§ 18.544 Investigation.

(a) *Informal investigation.* (1) The VA will investigate complaints that are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation the VA will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. The VA may seek the assistance of any involved State program agency.

(3) The VA will put any agreement in writing and have it signed by the parties and an authorized official from the VA.

(4) The settlement shall not affect the operation of any other enforcement effort of the VA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) A settlement need not contain an admission of discrimination or other wrongdoing by the recipient nor should it be considered a finding of discrimination against the recipient.

(b) *Formal investigation.* If the VA cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, the VA will attempt to obtain voluntary compliance. If voluntary compliance cannot be achieved, the VA may institute enforcement proceedings as described in § 18.546.

(42 U.S.C. 6101–6107)

§ 18.545 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the VA's investigation, conciliation, and enforcement process.

(42 U.S.C. 6101–6107)

§ 18.548 Compliance procedure.

(a) The VA may enforce the Act and these regulations through:

(1) Termination of Federal financial assistance from the VA with respect to a recipient's program or activity that has violated, the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from the VA.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) The VA will limit any termination under paragraph (a)(1) of this section to the particular program or activity or part of such program and activity of a recipient that the VA finds to be in violation of the Act or these regulations. The VA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from the VA.

(c) The VA will take no action under paragraph (a) of this section until:

(1) The Administrator has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Administrator has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Administrator will file a report whenever any action is taken under paragraph (a) of this section.

(d) The VA also may defer granting new Federal financial assistance from the VA to a recipient when a hearing under paragraph (a)(1) of this section is initiated.

(1) New Federal financial assistance from the VA includes all assistance for which the VA requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities during the deferral period. New Federal financial assistance from the VA does not include increases in funding resulting solely from a change in the formula or method of computing awards, nor does it include assistance approved prior to the beginning of a hearing under paragraph (a)(1) of this section.

(2) The VA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under paragraph (a)(1) of this section. The VA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Administrator. The VA will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(42 U.S.C. 6101–6107)

§ 18.547 Hearings, decisions, post-termination proceedings.

Certain VA procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to the VA enforcement of these regulations. They are found at §§ 18.9 through 18.11 and Part 18b of this title.

(42 U.S.C. 6101–1607)

§ 18.5481 Remedial action by recipient.

Where the VA finds that a recipient has discriminated on the basis of age, the recipient shall take any remedial action that the VA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, the VA may require both recipients to take remedial action.

(42 U.S.C. 6101–1607)

§ 18.549 Alternate funds disbursal procedure.

(a) When the VA withholds funds from a recipient under these regulations, the Administrator may disburse the withheld funds directly to an alternate recipient: any public or non-profit private organization or agency, or State or political subdivision of the State.

(b) The Administrator will require any alternate recipient to demonstrate;

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

(42 U.S.C. 6101–1607)

§ 18.550 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the VA has made no finding with regard to the complaint; or

(2) The VA issues any finding in favor of the recipient.

(b) If the VA fails to make a finding within 180 days or issues a finding in favor of the recipient, the VA will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant that:

(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but the complainant must demand these costs in the complaint;

(iii) Before commencing the action, the complainant shall give 30 days notice by registered mail to the Administrator, the Attorney General of the United States, and the recipient;

(iv) The notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring action if the same alleged violations of the Act by the same recipient is the subject of a pending action in any court of the United States.

(42 U.S.C. 6101–6107)

Appendix A to Subpart E—Statutory Provisions to Which This Subpart Applies

1. Approval of educational institutions (38 U.S.C. 104).

2. Space and office facilities for representatives of State employment services (38 U.S.C. 244(1)).

3. Medical care for survivors and dependents of certain veterans (38 U.S.C. 613).

4. Transfers for nursing home care; adult day health care (38 U.S.C. 620).

5. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities (38 U.S.C. 620A).

6. Payments to State Homes (38 U.S.C. 641–643).

7. Aid to States for establishment, expansion, and improvement of veterans' cemeteries (38 U.S.C. 1006).

8. Vocational Rehabilitation; Post-Vietnam Era Veterans' Educational Assistance; Survivors' and Dependents' Educational Assistance; and Administration of Educational Benefits (38 U.S.C. Chapters 31, 32, 34, 35 and 36 respectively).

9. Space and office facilities for representatives of recognized national organizations (38 U.S.C. 3402(a)(2)).

10. Veterans' Administration Health Professional Scholarship Program (38 U.S.C. 4141–4146).

11. State Home Facilities for Furnishing Domiciliary, Nursing Home and Hospital Care (38 U.S.C. 5031–5037).

12. Sharing of Medical Facilities, Equipment and Information (38 U.S.C. 5051–5057).

13. Assistance in Establishing New State Medical Schools; Grants to Affiliated Medical Schools; Assistance to Health Manpower Training Institutions (38 U.S.C. Chapter 82).

14 Emergency Veterans' Job Training (Pub. L. 98–77, 97 Stat. 443–452).

Appendix B to Subpart E—List of Age Distinctions Contained in Statutes and Regulations Governing Federal Financial Assistance Programs of the Veterans Administration

Section 90.31(f) of the governmentwide regulations (45 CFR Part 90) requires each Federal agency to publish an appendix to its final regulations containing a list of age distinctions in Federal statutes and regulations affecting financial assistance administered by the agency. This appendix is VA's list of age distinctions contained in Federal statutes and VA regulations which:

(1) Provide benefits or assistance to persons based upon age; or

(2) Establish criteria for participation in age-related terms; or

(3) Describe intended beneficiaries or target groups in age-related terms.

Appendix B deals only with VA's programs of financial assistance covered by the Age Discrimination Act. It does not list age distinctions used by the VA in its direct assistance programs, such as veterans' compensation. Also, this appendix contains only age distinctions in Federal statutes and VA regulations in effect on January 1, 1985.

This appendix has two sections: A list of age distinctions in Federal statutes, and a list of age distinctions in VA regulations. The first column contains the name of the program; the second column has the statute name and U.S. Code citation for statutes, or the regulation name and Code of Federal Regulations citation for regulations; the third column contains the section number of the statute or regulation and the description of the age distinction; and the fourth column cites the Catalog of Federal Domestic Assistance number for the program(s) affected where it is available.

AGE DISTINCTIONS IN STATUTES GOVERNING FEDERAL FINANCIAL ASSISTANCE PROGRAMS OF THE VETERANS ADMINISTRATION

Program	Statute	Section and Age Distinction	CFDA
Veterans' Benefits	Section 101 of the Veterans' Benefits Act of 1957, as amended; 38 U.S.C. 101.	Section 101(4)(A) defines the term "child" for the purposes of title 38, U.S.C. (except for chapter 19 and section 5202(b) of title 38) as "a person who is unmarried and—(i) who is under the age of eighteen years; (ii) who, before attaining the age of eighteen years, became permanently incapable of self-support; or (iii) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution; and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Administrator to be the father or such child. . . .". Section 101(4)(B) provides that for the purposes of section 101(4)(A) of title 38, in the case of an adoption under the laws of any jurisdiction other than a State, a person residing outside any of the States shall not be considered a legally adopted child of a veteran during the lifetime of that veteran, unless, among other things, such a person was less than eighteen years of age at the time of the adoption.	
Approval of Educational Institutions	Section 104 of the Veterans' Benefits Act of 1957, as amended, 38 U.S.C. 104.	Section 104(a) authorizes the Administrator to approve or disapprove an educational institution for the purpose of determining whether or not benefits are payable under title 38, U.S.C. (except chapter 15 of title 38) for a child over the age of eighteen years and under the age of twenty-three years who is attending a school, college, academy, seminary, technical institution, university, or other educational institution. Section 104(b) provides that the Administrator may not approve an educational institution under section 104 of title 38, unless the institution has agreed to report the termination of attendance of any child. If the educational institution fails to report any such termination promptly, the approval of the Administrator shall be withdrawn.	
Civilian Health and Medical Program of the Veterans Administration (CHAMPA).	Section 103(b) of the Veterans Health Care Expansion Act of 1973, as amended; 38 U.S.C. 613.	Section 613(a) authorizes the Administrator to provide medical care to: "(1) the spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability, (2) the surviving spouse or child of a veteran who (A) died as a result of a service-connected disability, or (B) at the time of death had a total disability permanent in nature, resulting from a service-connected disability, and (3) the surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct, who are not otherwise eligible for medical care under chapter 55 of title 10, U.S.C. (CHAMPUS). Section 613(c) provides that for the purposes of this program, "a child between the ages of eighteen and twenty-three (1) who is eligible for benefits under subsection (a) of this section, (2) who is pursuing a full-time course of instruction at an educational institution, approved under chapter 36 of this title, and (3) who while pursuing such course of instruction, incurs a disabling illness or injury . . . which results in such child's inability to continue or resume such child's chosen program of education . . . shall remain eligible for benefits under this section until the end of the six-month period beginning on the date the disability is removed, the end of the two-year period beginning on the date of the onset of the disability, or the twenty-third birthday of the child, whichever occurs first".	[illegible]
VA Hospital, Domiciliary or Nursing Home Care	Section 610 of the Veterans' Benefits Act of 1957, amended; 38 U.S.C. 610.	Section 610 authorizes the Administrator, within the limits of VA facilities, to furnish hospital care or nursing home care. Among the persons eligible for such care are veterans with a nonservice-connected disability if they are sixty-five years of age or older.	64.009 [illegible] 64.015 [illegible]
Post-Vietnam Era Veterans' Educational Assistance.	Post Vietnam Era Veterans' Educational Act of 1977, as amended; U.S.C. Chapter 32.	Section 1601 states that the purpose of chapter 32 of title 38, U.S.C. is: "(1) to provide educational assistance to those men and women who enter the Armed Forces after December 31, 1976, (2) to assist young men and women in obtaining an education they might not otherwise [illegible] afford, and (3) to promote and assist the all volunteer military program of the United States by attracting qualified men and women to serve in the Armed Forces".	64.120

AGE DISTINCTIONS IN STATUTES GOVERNING FEDERAL FINANCIAL ASSISTANCE PROGRAMS OF THE VETERANS ADMINISTRATION—Continued

Program	Statute	Section and Age Distinction	CFDA
Veterans' Educational Assistance	Section 2 of the Veterans' Readjustment Benefits Act of 1966, amended; 38 U.S.C. Chapter 34.	Section 1651 states that the education program created by this chapter is for the purpose of: " . . . (1) enhancing and making more attractive service in the Armed Forces of the United States, (2) extending the benefits of higher education to qualified and deserving young persons who might not otherwise be able to afford such an education, (3) providing vocational readjustment and restoring lost educational opportunities to those service men and women whose careers have been interrupted or impeded by reason of active duty after January 31, 1955, and (4) aiding such persons in attaining the vocational and educational status which they might normally have aspired to and obtained had they not served their country". Section 1692(b) authorizes the Administrator to pay to an eligible veteran receiving tutorial assistance pursuant to section 1692(a) of this chapter, the cost of such tutorial assistance, subject to certain limits, upon certification by the educational institution that " . . . (2) the tutor chosen to perform such assistance is qualified and is not the eligible veteran's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and (3) the charges for such assistance do not exceed the customary charges for such tutorial assistance".	64.111
Survivors' and Dependents' Educational Assistance.	War Orphans' Educational Assistance Act of 1956, as amended; 38 U.S.C. Chapter 35.	Section 1700 states that "the educational program established by this chapter is for the purpose of providing opportunities for education to children whose education would otherwise be impeded or interrupted by reason of the disability or death of a parent from a disease or injury incurred or aggravated in the Armed Forces after the beginning of the Spanish-American War, and for the purpose of aiding such children in attaining the educational status which they might have aspired to and attained but for the disability or death of such parent. The Congress further declares that the educational program extended to the surviving spouses of veterans who died of service-connected total disabilities and to spouses of veterans with a service-connected total disability permanent in nature is for the purpose of assisting them in preparing to support themselves and their families at a standard of living level which the veteran, but for the veteran's death or service disability, could have expected to provide for the veteran's family". Section 1701 defines the term "eligible person" as: "(A) a child of a person who—(i) died of a service-connected disability, (ii) has a total disability permanent in nature resulting from a service-connected disability, or who died while a disability so evaluated was in existence or (iii) at the time of application for benefits under this chapter is a member of the Armed Forces serving on active duty listed, pursuant to section 556 of title 37 [U.S.C.] and regulations issued thereunder, by the Secretary concerned in one or more of the following categories . . . for a total of ninety days: (A) missing in action, (B) captured in line of duty by a hostile force, or (C) forcibly detained or interned in line of duty by a foreign government or power, . . ." Subparagraph (a)(2) of this section provides that the term "child" includes individuals who are married and individuals who are above the age of twenty-three years. Section 1712 establishes periods of eligibility. Provides that the educational program to which an eligible child within the meaning of this chapter is entitled to may be afforded, ". . . during the period beginning on the person's eighteenth birthday, or on the successful completion of the person's secondary schooling, whichever first occurs, and ending on the person's twenty-sixth birthday, except that—(1) if the person is above the age of compulsory school attendance under applicable State law, and the Administrator determines that the person's best interests will be served thereby, such period may begin before the person's eighteenth birthday; (2) if the person has a mental or physical handicap, and . . . the person's best interests will be served by pursuing a program of special restorative training or a specialized course of vocational training approved under section 1736 of the title, such period may begin before the person's fourteenth birthday; (3) if the Administrator finds that the parent from whom eligibility is derived has a service-connected total disability permanent in nature, or if the death of the parent from whom eligibility is derived occurs, after the eligible person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless paragraph (4) applies) such period shall end 8 years after, whichever date last occurs: (A) the date on which the Administrator first finds that the parent from whom eligibility is derived has a service-connected total disability permanent in nature, or (B) the date of death of the parent from whom eligibility is derived; (4) if the person serves on duty with the Armed Forces as an eligible person after the person's eighteenth birthday but before the person's twenty-sixth birthday, then such period shall end 8 years after the person's first discharge or release from such duty with the Armed Forces . . . in no event shall such period be extended beyond the person's thirty-first birthday by reason of this paragraph; and (5)(A) if the person becomes eligible by reason of the the provisions of section 1701(a)(1)(A)(ii) of this title after the person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless clause (4) of this section applies) such period shall end eight years after the date on which the person becomes eligible by reason of such provisions, but in no event shall such period be extended beyond the person's thirty-first birthday by reason of this clause. . . .". Section 1713 provides that the parent or guardian of a person or the eligible person (if such person has attained legal majority) for whom the educational assistance is sought under chapter 35 shall submit an application to the Administrator, which shall be in such form and contain such information as the Administrator shall prescribe. Section 1762 provides that the commencement of a program of education or special restorative training under chapter 35 shall be a bar, "(1) to subsequent payments of compensation, dependency and indemnity compensation, or pension based on a death of a parent to an eligible person over the age of eighteen by reason of pursuing a course in an educational institution, or (2) to increased rates, or additional amounts of compensation, dependency and indemnity compensation, or pension because of such a person whether eligibility is based upon the death or upon the total permanent disability of the parent". Section 1763 states that "The Administrator shall notify the parent or guardian of each eligible person as defined in section 1701(a)(1)(A) of this title of the educational assistance available to such person under chapter 35. Such notification shall be provided not later than the month in which such eligible person attains such person's thirteenth birthday or as soon thereafter as feasible".	64.117

AGE DISTINCTIONS IN REGULATIONS GOVERNING FEDERAL FINANCIAL ASSISTANCE PROGRAMS OF THE VETERANS ADMINISTRATION

Program	Regulation	Section and Age Distinction	CFDA
Veterans' Benefits	Adjudication (38 CFR Part 3)	Section 3.57 defines the term "child" of a veteran as, ". . . an unmarried person who is a legitimate child, a child legally adopted before the age of 18 years, a stepchild who acquired that status before the age of 18 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death, or an illegitimate child; and (i) Who is under the age of 18 years; or (ii) Who, before reaching the age of 18 years, became permanently incapable of self-support; or (iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an approved educational institution. (2) For the purposes of determining entitlement of benefits based on a child's school attendance, the term "child" of the veteran also includes the following unmarried persons: (i) A person who was adopted by the veteran between the ages of 18 or 23 years. (ii) A person who became a stepchild of a veteran between the ages of 18 or 23 years and who is a member of the veteran's household at the time of the veteran's death. . . ."	
Survivors' and Dependents' Educational Assistance.	Adjudication (38 CFR Part 3)	Section 3.807(d) sets forth basic eligibility criteria for the program of educational assistance under 38 U.S.C. Chapter 35. Defines the term "child" as the son or daughter of a veteran who meets the requirements of 38 CFR 3.57, except as to age or marital status.	64.117
	Survivors' and Dependent's Educational Assistant Under 38 U.S.C. Chapter 35 (38 CFR Part 21, Subpart C).	Section 21.3021 describes beneficiaries of the program. Paragraph (a) defines the term "eligible person" as, "(1) A child of a: (i) Veteran who died of a service-connected disability. . . ." Paragraph (b) defines the term "child" as a son or daughter of a veteran as defined in 38 CFR 3.807(d). Section 21.3023 states that: "(a) Child; age 18. A child who is eligible for educational assistance and who is also eligible for pension, compensation dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation. (1) An election of education assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of a child based on school attendance on or after the age of 18 years. . . . (2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance. . . . (b) Child; under 18 or helpless. Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the death of more than one parent in the same parental line, concurrent payments in two or more cases may not be authorized if the death of one such parent occurred on or after June 9, 1960. In the latter cases, an election of educational assistance and pension, compensation or dependency and indemnity compensation in one case does not preclude a reelection of benefits before attaining age 18 or while helpless based on the service of another parent in the same parental line. . . ." Section 21.3040 sets forth criteria for the commencement and termination of the program of education or special restorative training for an eligible child under 38 U.S.C. Chapter 35. Paragraph (a) of this section provides that a program of education or special restorative training may not be afforded prior to the eligible persons' 18th birthday or the completion of secondary schooling, whichever is earlier, unless it is determined through counseling that the best interests of the eligible person will be served by entering training at an earlier date and the eligible person has passed: (1) Compulsory school attendance age under State law; or (2) his or her 14th birthday and due to physical or mental handicap may benefit by special restorative or specialized vocational training. Paragraph (c) of this section provides that no person is eligible for educational assistance who reached his or her 26th birthday on or before the effective date of a finding of permanent total service-connected disability, or on or before the date the veteran's death occurred, or on or before the 91st day of listing by the Secretary concerned of the member of the Armed Forces or whose service eligibility is claimed as being is one of the missing categories identified in 38 CFR 21.3021(a) (1)(iii) and (3)(ii). Paragraph (d) provides that no person is eligible for educational assistance beyond his or her 31st birthday, except in certain exceptional cases. Section 21.3041 sets forth periods of eligibility for an eligible child. Paragraph (a) of this section provides the basic beginning date for the educational assistance as the person's 18th birthday or successful completion of secondary schooling, whichever occurs first. Paragraph (b) authorizes certain exceptions to the basic beginning date, if: (1) A person has passed compulsory school attendance under applicable State law, or (2) has passed his or her 14th birthday and has a physical or mental handicap. Paragraph (c) provides the basic ending date as the person's 26th birthday. Paragraphs (d) and (e) set forth criteria for modifying or extending the ending date.	
	Administration of Educational Benefits; 38 U.S.C. Chapter 34, 35, and 36 (38 CFR Part 21, Subpart D).	Section 21.3300 provides that the VA may prescribe special restorative training for the purpose of enabling an eligible child to pursue a program of education, special vocational program, or other appropriate goal, where needed to overcome or lessen the effects of a physical or mental disability. Section 21.4102(a) requires the VA to provide counseling for the purpose set forth in 38 CFR 21.4100 to an eligible child when: (1) the eligible child may require specialized vocational or special restorative training, or (2) the eligible child has reached compulsory school attendance age under State law, but has neither reached his or her 18th birthday nor completed secondary schooling, or (3) if requested by the eligible child or his or her parent or guardian for the purpose of preparing an educational plan. Section 21.4139(b) provides that the VA will make payment of educational assistance under 38 U.S.C. Chapter 35 to the eligible person if: (1) He or she has attained majority and has no known legal disability or (2) is in the eligible person's best interests, and there is no reason not to designate the eligible person as payee. The VA may pay minors under this provision. Section 21.4141 provides that payment of educational assistance allowance under 38 U.S.C. Chapter 35 will be subject to offsets of amounts of pension, compensation, or dependency and indemnity compensation paid over the same period on behalf of a child based on school attendance.	
VA Hospital, Domiciliary or Nursing Home Care.	Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service (38 CFR 17.47).	Section 17.47(e) provides that within the limits of VA facilities, hospital or nursing home care may be provided to any veteran with a nonservice-connected disability if such a veteran is 65 years of age or older.	[illegible] 64.016

AGE DISTINCTIONS IN REGULATIONS GOVERNING FEDERAL FINANCIAL ASSISTANCE PROGRAMS OF THE VETERANS ADMINISTRATION—Continued

Program	Regulation	Section and Age Distinction	CFDA
Civilian Health and Medical Program of the Veterans Administration (CHAMPA).	Medical Care for Survivors and Dependents of Certain Veterans (38 CFR 17.54).	Section 17.54 states that medical care may be provided for: "(1) the spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability, and (2) the surviving spouse or child of a veteran who—(a) died as a result of a service-connected disability, or (b) at the time of death had a total disability, permanent in nature resulting from a service-connected disability and—(3) the surviving spouse or child of a person who died in the active military, naval or air service . . . Who are not otherwise eligible for medical care as beneficiaries of the Armed Forces under the provisions of chapter 55 of title 10, United States Code (CHAMPUS) . . . and (4) An eligible child who is pursuing a full-time course of instruction approved under 38 U.S.C. ch. 36, and who incurs a disabling illness or injury while pursuing such course; . . . shall remain eligible for medical care until: (a) the end of the 6-month period beginning on the date the disability is removed, or (b) the end of the 2-year period beginning on the date of the onset of the disability; or (c) the 23d birthday of the child, whichever occurs first. . . ."	64.009
Veterans' Educational Assistance	Administration of Educational Benefits; 38 U.S.C. Chapters 34, 36, and 36 (38 CFR Part 21, Subpart B).	Section 21.4135(d) sets forth the following dates for the discontinuance of the educational assistance allowance provided for a dependent child, under chapter 34 of title 38: ". . . (1) Last day of the in calender year in which marriage occurred unless discontinuance is required at an earlier date under other provisions. (2) Age 18. Day preceding 18th birthday. (3) School attendance. Last day of month in which 23rd birthday, whichever is earlier. (4) Helplessness ceased. Last day of month school attendance ceased or day preceding following 60 days after notice to payee that helplessness has ceased." Section 21.4136 sets forth monthly rates for the payment of educational assistance allowance under 38 U.S.C. Chapter 34. Paragraph (f) defines the term "dependent" as a spouse, child or dependent parent who meets the definitions of relationship specified in 38 CFR §§ 3.50, 3.51, 3.57 and 3.59.	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[Docket Nos. AM702MD et al.; A-3-FRL-2879-5]

New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Maryland, the Commonwealth of Pennsylvania and the City of Philadelphia

AGENCY: Environmental Protection Agency.

ACTION: Delegation of Authority.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the States authority to implement and enforce the standards set out in 40 CFR Part 60, New Source Performance Standards (NSPS) and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP). The State of Maryland, the Commonwealth of Pennsylvania and the City of Philadelphia have been delegated this authority and have requested delegation of any future NSPS or NESHAP standards immediately upon promulgation in the **Federal Register**. The present delegations for these areas require that they request delegation each time a new standard is promulgated. Automatic delegation would remove this requirement.

EFFECTIVE DATES:

Maryland—May 10, 1985
Pennsylvania—May 7, 1985
Philadelphia—May 8, 1985

ADDRESSES: All material relevant to these delegations may be examined during normal business hours at the following locations:

All Delegations

U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Patricia Gaughan (3AM11)

Specific State and Local Delegations

Department of Public Health, Air Management Services, 500 South Broad Street, Philadelphia, PA 19146, Attn: William Reilly

Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources, P.O. Box 2063, Third and Locust Street, Harrisburg, Pennsylvania 17120, Attn: James K. Hambright

Air Management Administration, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201, Attn: George P. Ferreri

FOR FURTHER INFORMATION CONTACT: Michael C. Giuranna at the EPA, Region III address above, telephone (215) 597-9189.

SUPPLEMENTARY INFORMATION: On April 9, 1985, the Director of the Maryland Air Management Administration submitted a letter to EPA, Region III, requesting automatic delegation of NSPS and NESHAP. Maryland was delegated authority for NSPS on September 15, 1978 (44 FR 69362) and for NESHAP on October 9, 1979 (45 FR 13193). These original delegations require that Maryland make separate requests in writing in order to implement and enforce any NSPS and NESHAP source categories not covered in their original delegation. Maryland will now receive delegation of future NSPS and NESHAP source categories upon EPA promulgation and State adoption. The following letter was sent to Maryland on May 10, 1985, giving them automatic delegation. Notices of earlier delegations and amendments were published on December 3, 1979 (44 FR 69362), February 28, 1980 (45 FR 13193), December 29, 1983 (48 FR 57275) and March 1, 1985 (50 FR 8324).

Mr. George P. Ferreri,
Director, Air Management Administration, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201

Dear Mr. Ferreri: In response to your April 9, 1985 letter, we are amending the delegation of authority agreement for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) under Sections 111 and 112 of the Clean Air Act, 42 U.S.C. 7411, 7412. Since the original delegations on December 3, 1979, and February 28, 1981, a number of additional NSPS and NESHAP categories have been promulgated and changes in delegation policy have been made. Therefore, this letter replaces the original delegation.

We have reviewed the pertinent laws and regulations of the State of Maryland and the Maryland Air Management Administration's (AMA) history of implementing the programs and have determined that the AMA has the resources to implement and enforce the NSPS and NESHAP programs in the manner which was requested in your April 9, 1985 letter. Therefore, subject to the specific conditions and exceptions set forth below, the U.S. Environmental Protection Agency (U.S. EPA) hereby grants delegation of authority to the AMA to implement and enforce the NSPS and NESHAP as follows:

Authority for all sources located or to be located in the State of Maryland subject to

the NSPS promulgated in 40 CFR Part 60 and NESHAP promulgated in 40 CFR Part 61. This delegated authority includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards.

This delegation is based upon the following conditions and exceptions.

1. This delegation replaces the previous NSPS and NESHAP delegations.

2. Certain provisions of the NSPS and NESHAP regulations allow only the Administrator to take further standard setting actions. Such provisions cannot be delegated and are as follows:

For NSPS:

a. Alternative means of emission limitations in the Clean Air Act Section 111(h)(3) which is codified in 40 CFR 60.11a and 60.484.

b. Innovative technology waivers in the Clean Air Act Section 111(j).

c. Alternative testing times for Primary Aluminum Reduction Plants in 40 CFR 60.195(b).

d. Approval of equivalent and alternate test methods in 40 CFR 60.8(b) (2) and (3).

e. Establishment of alternate opacity standards in 40 CFR 60.11(e).

f. Issuance of commercial demonstration permits under 40 CFR 60.45a.

g. The portions of the Stationary Gas Turbine Standards dealing with nitrogen fuel allowance in 40 CFR 60.332(a)(3) and the ambient condition correction factors in 40 CFR 60.335(a)(ii).

h. The authority to make applicability determinations pertaining to sources subject to the NSPS and NESHAP. The AMA may refer to the Compendium of Applicability determinations issued by U.S. EPA annually, and updated quarterly. Any applicability determinations not explicitly treated in the U.S. EPA Compendium must be referred to EPA for determination. Also, any correspondence from the AMA based on the Compendium must be sent to U.S. EPA to maintain National consistency.

For NESHAP:

a. Determinations of whether actions taken or intended to be taken constitute construction or modification or the commencement thereof under 40 CFR 61.06, unless previously addressed in the NESHAP applicability compendium.

b. Determinations of public availability of information provided to or otherwise obtained by U.S. EPA under 40 CFR 61.15 unless you have legal authority similar to section 114 of the Clean Air Act.

c. Authority to approve alternate and equivalent test and analytical methods per 40 CFR 61.14.

d. The list of approved design, maintenance, and housekeeping practices under 40 CFR 61.53(c) (4) is only available from the Administrator of U.S. EPA.

e. Approval of alternative means of emission limitation to any design, equipment, work practice, or operational standard under section 112(e) (3) of the Clean Air Act.

3. The following provisions are included in this delegation and can only be exercised on a case-by-case basis. When any of these authorities are exercised, the AMA must notify U.S. EPA, Region III in accordance with the reporting procedures referred to in item 7 of the conditions and exceptions:

a. Waiver of a preformance test in accordance with 40 CFR 60.8(b)(4) or make minor modifications in accordance with 40 CFR 60.8(b)(1).

b. Determination of representative conditions for the purpose of conducting a performance test as allowed by 40 CFR 60.8(c).

c. Approval of shorter sampling times or smaller sampling volumes under 40 CFR 60.46 (b) or (d).

d. Authorization of both the use of wet collectors in accordance with 40 CFR 61.154(b)(1) and also the use of filtering equipment as explained in 40 CFR 61.154(b)(2).

e. Approval of sampling techniques as specified in 40 CFR 61.43(a).

4. Enforcement of the NSPS and NESHAP regulations in the State of Maryland will be the primary responsibility of the AMA. Pursuant to sections 111(c)(2) and 112(d)(2) of the Clean Air Act, 42 U.S.C. 7411(c)(2) and 7412(d)(2), U.S. EPA retains authority to enforce any NSPS or NESHAP standard whenever such enforcement is deemed by the U.S. EPA to be necessary to carry out the purposes of the Clean Air Act. Where the Department determines that such enforcement is not feasible and so notifies EPA, or where the AMA acts in a manner inconsistent with the term of this delegation, U.S. EPA will exercise its concurrent enforcement authority, pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within the State of Maryland subject to NSPS and NESHAP regulations.

5. The AMA may only grant waivers of compliance within 90 days of promulgation of a NESHAP regulation.

6. The AMA will not grant a variance for compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards (40 CFR Part 60). Should the AMA grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The granting of such variances by the AMA shall also constitute grounds for revocation of delegation by U.S. EPA.

7. The AMA and U.S. EPA, Region III will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between an AMA interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the AMA. This system of communication will insure that both agencies are informed on (a) the current compliance status of subject sources in State of Maryland; (b) the interpretation of applicable regulations; (c) the description of sources and source inventory data; and, (d) compliance test waivers and approvals listed in item 3 of the conditions and exceptions. The reporting provisions in 40 CFR §§ 60.4 and 61.04 requiring sources to make submissions to the U.S. EPA are met by sending such submission to the AMA, in addition to U.S. EPA, Region III.

8. If at any time there is a conflict between an AMA regulation and a Federal regulation, 40 CFR Part 60 or 61, the Federal regulation must be applied if it is more stringent than that of the AMA. If the AMA does not have the authority to enforce the more stringent Federal regulation they shall notify U.S. EPA in writing as soon as possible, so that this portion of the delegation may be revoked.

9. The AMA will utilize the methods in 40 CFR Parts 60 and 61 in performing source tests pursuant to these regulations.

10. From time to time when appropriate, the AMA will revise its NSPS and NESHAP regulations to include the provisions of Federal amendments and newly promulgated regulations for NSPS and NESHAP pollutant source categories.

11. If the Director of the Air Management Division, or equivalent, determines that an AMA program of enforcing or implementing the NSPS or NESHAP regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the AMA.

A notice announcing this delegation will be published in the Federal Register in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to the above-referenced NSPS or NESHAP regulations by sources located in Maryland should be submitted to the AMA in addition to U.S. EPA, Region III. Any original reports which have been or may be received by EPA, Region III will be promptly transmitted to the AMA.

Since this delegation is effective immediately, there is no requirement that the AMA notify U.S. EPA of its acceptance. Unless U.S. EPA receives from the AMA written notice of objections within ten (10) days of receipt of this letter, the AMA will be deemed to have accepted all of the terms of the delegation.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

On December 11, 1984, the Secretary of the Pennsylvania Department of Environmental Resources (DER) submitted a letter to EPA, Region III, requesting delegation of authority for two categories of NESHAP and two categories of NSPS. These categories were delegated to Pennsylvania on January 7, 1985. This letter also requested that EPA give Pennsylvania automatic delegation for all future NSPS and NESHAP standards. Pennsylvania received delegation of authority for NSPS on December 7, 1979 (45 FR 3109) and for NESHAP on September 30, 1976 (42 FR 6887). These delegations required that Pennsylvania submit to EPA, separate requests to receive authority

for any standards not included in their original delegation. Automatic delegation removes this requirement. Pennsylvania can now implement and enforce all future NSPS and NESHAP source categories upon EPA promulgation.

The following letter was sent to Pennsylvania on May 7, 1985, giving them automatic delegation. It should be noted that NSPS and NESHAP sources in Philadelphia and Allegheny County, Pennsylvania are not covered under this delegation. Additionally, on May 31, 1985, EPA received a letter from the DER which stated that Condition 10 of the May 7, 1985 letter did not apply in Pennsylvania. This Condition requires the DER to revise their regulations from time to time to incorporate any amendments or newly promulgated regulations into the State NSPS or NESHAP regulations. Pennsylvania's regulations allow them to do this automatically. Thus, EPA agrees that Condition 10 of the following letter is not applicable in Pennsylvania.

Notices of earlier delegations were published on February 4, 1977 (42 FR 6887), January 16, 1980 (45 FR 3109), July 13, 1984 (49 FR 28555), February 28, 1985 (50 FR 8111).

Mr. Nicholas DeBenedictis,
Secretary, Pennsylvania Department of Environmental Resources, P.O. Box 2063, Harrisburg, PA 17120

Dear Mr. DeBenedictis: In response to your December 11, 1984 letter, we are amending the delegation of authority agreement for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) under sections 111 and 112 of the Clean Air Act, 42 U.S.C. 7411, 7412. Since the original delegations on January 16, 1980 and February 4, 1977, a number of additional NSPS and NESHAP categories have been promulgated and changes in delegation policy have been made. Therefore, this letter replaces the original delegation.

We have reviewed the pertinent laws and regulations of the Commonwealth of Pennsylvania and the Pennsylvania Department of Environmental Resources' (DER) history of implementing the programs and we have determined that the DER has the resources to implement and enforce the NSPS and NESHAP programs in the manner which was requested in your December 11, 1984 letter. Therefore, subject to the specific conditions and exceptions set forth below, the U.S. Environmental Protection Agency (U.S. EPA) hereby grants delegation of authority to the DER to implement and enforce the NSPS and NESHAP as follows:

Authority for all sources located or to be located in Pennsylvania subject to the NSPS promulgated in 40 CFR Part 60 and the NESHAP promulgated in 40 CFR Part 61. This delegated authority includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards.

This delegation is based upon the following conditions and exceptions:

1. This delegation replaces the previous NSPS and NESHAP delegations.

2. Certain provisions of the NSPS and NESHAP regulations allow only the Administrator to take further standard setting actions. Such provisions cannot be delegated and are as follows:

For NSPS:

a. Alternative means of emission limitations in the Clean Air Act section 111(h)(3) which is codified in 40 CFR 60.11a and 60.484.

b. Innovative technology waivers in the Clean Air Act section 111(j).

c. Alternative testing times for Primary Aluminum Reduction Plants in 40 CFR 60.195(b).

d. Approval of equivalent and alternate test methods in 40 CFR 60.8(b)(2) and (3).

e. Establishment of alternate opacity standards in 40 CFR 60.11(e).

f. Issuance of commerical demonstration permits under 40 CFR 60.45a.

g. The portions of the Stationary Gas Turbine Standards dealing with nitrogen fuel allowance in 40 CFR 60.332(a)(3) and the ambient condition correction factors in 40 CFR 60.335(a)(ii).

h. The authority to make applicability determinations pertaining to sources subject to the NSPS and NESHAP. The DER may refer to the Compendium of Applicability determinations issued by U.S. EPA annually, and updated quarterly. Any applicability determinations not explicitly treated in the U.S. EPA Compendium must be referred to EPA for determination. Also, any correspondence from the DER based on the Compendium must be sent to U.S. EPA to maintain National consistency.

For NESHAP:

a. Determinations of whether actions taken or intended to be taken constitute construction or modification or the commencement thereof under 40 CFR 61.06, unless previously addressed in the NESHAP applicability compendium.

b. Determinations of public availability of information provided to or otherwise obtained by U.S. EPA under 40 CFR 61.15 unless you have legal authority similar to section 114 of the Clean Air Act.

c. Authority to approve alternate and equivalent test and analytical methods per 40 CFR 61.14.

d. The list of approved design, maintenance, and housekeeping practices under 40 CFR 61.53(c)(4) is only available from the Administrator of U.S. EPA.

e. Approval of alternative means of emission limitation to any design, equipment, work practice, or operational standard under section 112(e)(3) of the Clean Air Act.

3. The following provisions are included in this delegation and can only be exercised on a case-by-case basis. When any of these authorities are exercised, the DER must notify U.S. EPA, Region III in accordance with the reporting procedures referred to in item 7 of the conditions and exceptions:

a. Waiver of a performance test in accordance with 40 CFR 60.8(b)(4) or make minor modifications in accordance with 40 CFR 60.8(b)(1).

b. Determination of representative conditions for the purpose of conducting a performance test as allowed by 40 CFR 60.8(c).

c. Approval of shorter sampling times or smaller sampling volumes under 40 CFR 60.46 (b) or (d).

d. Authorization of both the use of wet collectors in accordance with 40 CFR 61.154(b)(1) and also the use of filtering equipment as explained in 40 CFR 61.154(b)(2).

e. Approval of sampling techniques as specified in 40 CFR 61.43(a).

4. Enforcement of the NSPS and NESHAP regulations in the Commonwealth of Pennsylvania will be the primary responsibility of the DER. Pursuant to Sections 111(c)(2) and 112(d)(2) of the Clean Air Act, 42 U.S.C. 7411(c)(2) and 7412(d)(2), U.S. EPA retains authority to enforce any NSPS or NESHAP standard whenever such enforcement is deemed by the U.S. EPA to be necessary to carry out the purposes of the Clean Air Act.

Where the DER determines that such enforcement is not feasible and so notifies EPA, or where the DER acts in a manner inconsistent with the terms of this delegation, U.S. EPA will exercise its concurrent enforcement authority, pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within Pennsylvania subject to NSPS and NESHAP regulations.

5. The DER may only grant waivers of compliance within 90 days of promulgation of a NESHAP regulation.

6. The DER will not grant a variance for compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards (40 CFR Part 60). Should the DER grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The granting of such variances by the DER shall also constitute grounds for revocation of delegation by U.S. EPA.

7. The DER and U.S. EPA, Region III will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a DER interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the DER. This system of communication will insure that both agencies are informed on (a) the current compliance status of subject sources in Pennsylvania; (b) the interpretation of applicable regulations; (c) the description of sources and source inventory data; and, (d) compliance test waivers and approvals listed in item 3 of the conditions and exceptions. The reporting provisions in 40 CFR 60.4 and 61.04 requiring sources to make submissions to the U.S. EPA are met by sending such submission to the DER, in addition to U.S. EPA, Region III.

8. If at any time there is a conflict between a DER regulation and a Federal regulation, 40 CFR Part 60 or 61, the Federal regulation must be applied if it is more stringent than that of the DER. If the DER does not have the authority to enforce the more stringent Federal regulation they shall notify U.S. EPA in writing as soon as possible, so that this portion of the delegation may be revoked.

9. The DER will utilize the methods in 40 CFR Parts 60 and 61 in performing source tests pursuant to these regulations.

10. From time to time when appropriate, the DER will revise its NSPS and NESHAP regulations to include the provisions of Federal amendments and newly promulgated regulations for NSPS and NESHAP pollutant source categories.

11. If the Director of the Air Management Division, or equivalent, determines that a DER program for enforcing or implementing the NSPS or NESHAP regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the DER.

A notice announcing this delegation will be published in the **Federal Register** in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to the above-referenced NSPS or NESHAP regulations by sources located in Pennsylvania should be submitted to the DER in addition to U.S. EPA, Region III. Any original reports which have been or may be received by U.S. EPA, Region III will be promptly transmitted to the DER.

Since this delegation is effective immediately, there is no requirement that the DER notify EPA of its acceptance. Unless EPA receives from the DER written notice of objections within ten (10) days of receipt of this letter, the DER will be deemed to have accepted all of the terms of the delegation.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

On February 11, 1985, the Commissioner of the Philadelphia Department of Public Health submitted a letter to EPA, Region III requesting automatic delegation of all future NSPS and NESHAP source categories. Philadelphia had originally received delegation of authority for NSPS and NESHAP on September 30, 1976 (42 FR 6886). This delegation required Philadelphia to submit separate requests to EPA to receive authority for any standards not included in their original delegation. Automatic delegation removes this requirement. Philadelphia can now implement and enforce all future NSPS and NESHAP standards upon EPA promulgation. The following letter was sent to Philadelphia on May 8, 1985 giving them automatic delegation. Notices of earlier delegations were published on February 4, 1977 (42 FR 6886), July 13, 1984 (49 FR 28556), and February 28, 1985 (50 FR 8620).

Dr. Stuart H. Shapiro,

Commissioner, City of Philadelphia, Department of Public Health, Municipal Services Building, Room 540, Philadelphia, PA 19107

Dear Dr. Shapiro: In response to your February 11, 1985 letter, we are amending the delegation of authority agreement for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) under sections 111 and 112 of the Clean Air Act, 42 U.S.C. 7411, 7412. Since the original delegation on September 30, 1976, a number of additional NSPS and NESHAP categories have been promulgated and changes in delegation policy have been made. Therefore, this letter replaces the original delegation.

We have reviewed the pertinent laws and regulations of the City of Philadelphia and the Philadelphia Department of Public Health's (Department) history of implementing the programs and we have determined that the Department has the resources to implement and enforce the NSPS and NESHAP programs in the manner which was requested in your February 11, 1985 letter. Therefore, subject to the specific conditions and exceptions set forth below, the U.S. Environmental Protection Agency (U.S. EPA) hereby grants delegation of authority to the Department to implement and enforce the NSPS and NESHAP as follows:

Authority for all sources located or to be located in Philadelphia subject to the NSPS promulgated in 40 CFR Part 60 and the NESHAP promulgated in 40 CFR Part 61. This delegated authority includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards.

This delegation is based upon the following conditions and exceptions:

1. This delegation replaces the previous NSPS and NESHAP delegations.

2. Certain provisions of the NSPS and NESHAP regulations allow only the Administrator to take further standard setting actions. Such provisions cannot be delegated and are as follows:

For NSPS:

a. Alternative means of emission limitations in the Clean Air Act section 111(h)(3) which is codified in 40 CFR 60.11a and 60.484.

b. Innovative technology waivers in the Clean Air Act section 111(j).

c. Alternative testing times for Primary Aluminum Reduction Plants in 40 CFR 60.195(b).

d. Approval of equivalent and alternate test methods in 40 CFR 60.8(b) (2) and (3).

e. Establishment of alternate opacity standards in 40 CFR 60.11(e).

f. Issuance of commercial demonstration permits under 40 CFR 60.45a.

g. The portions of the Stationary Gas Turbine Standards dealing with nitrogen fuel allowance in 40 CFR 60.332(a)(3) and the ambient condition correction factors in 40 CFR 60.335(a)(ii).

h. The authority to make applicability determinations pertaining to sources subject to the NSPS and NESHAP. The Department may refer to the Compendium of Applicability determinations issued by U.S. EPA annually, and updated quarterly. Any applicability determinations not explicitly treated in the U.S. EPA Compendium must be referred to EPA for determination. Also, any correspondence from the Department based on the Compendium must be sent to U.S. EPA to maintain National consistency.

For NESHAP:

a. Determinations of whether actions taken or intended to be taken constitute construction or modification or the commencement thereof under 40 CFR 61.06, unless previously addressed in the NESHAP applicability compendium.

b. Determinations of Public availability of information provided to or otherwise obtained by U.S. EPA, under 40 CFR 61.15 unless you have legal authority similar to section 114 of the Clean Air Act.

c. Authority to approve alternate and equivalent test and analytical methods per 40 CFR 61.14.

d. The list of approved design, maintenance, and housekeeping practices under 40 CFR 61.53(c)(4) is only available from the Administrator of U.S. EPA.

e. Approval of alternative means of emission limitation to any design, equipment, work practice, or operational standard under section 112(e)(3) of the Clean Air Act.

3. The following provisions are included in this delegation and can only be exercised on a case-by-case basis. When any of these authorities are exercised, the Department must notify U.S. EPA, Region III in accordance with the reporting procedures referred to in item 7 of the conditions and exceptions:

a. Waiver of a performance test in accordance with 40 CFR 60.8(b)(4) or make minor modifications in accordance with 40 CFR 60.8(b)(1).

b. Determination of representative conditions for the purpose of conducting a performance test as allowed by 40 CFR 60.8(c).

c. Approval of shorter sampling times or smaller sampling volumes under 40 CFR 60.46 (b) or (d).

d. Authorization of both the use of wet collectors in accordance with 40 CFR 61.154(b)(1) and also the use of filtering equipment as explained in 40 CFR 61.154(b)(2).

e. Approval of sampling techniques as specified in 40 CFR 61.43(a).

4. Enforcement of the NSPS and NESHAP regulations in Philadelphia will be the primary responsibility of the Department. Pursuant to Sections 111(c)(2) and 112(d)(2) of the Clean Air Act 42 U.S.C. 7411(c)(2) and 7412(d)(2), U.S. EPA retains authority to enforce any NSPS or NESHAP standard whenever such enforcement is deemed by the U.S. EPA to be necessary to carry out the purposes of the Clean Air Act.

Where the Department determines that such enforcement is not feasible and so notifies EPA, or where the Department acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority, pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within Philadelphia subject to NSPS and NESHAP regulations.

5. The Department may only grant waivers of compliance within 90 days of promulgation of a NESHAP regulation.

6. The Department will not grant a variance for compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards (40 CFR Part 60). Should the Department grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The granting of such variances by the Department shall also constitute grounds for revocation of delegation by U.S. EPA.

7. The Department and U.S. EPA, Region III will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a Department interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the Department. This system of communication will insure that both agencies are informed on (a) the current compliance status of subject sources in Philadelphia (b) the interpretation of applicable regulations; (c) the description of sources and source inventory data; and, (d) compliance test waivers and approvals listed in item 3 of the conditions and exceptions. The reporting provisions in 40 CFR 60.4 and 61.04 requiring sources to make submissions to the U.S. EPA are met by sending such submissions to the Department, in addition to U.S. EPA, Region III.

8. If at any time there is a conflict between a Department regulation and a Federal regulation, 40 CFR Part 60 or 61, the Federal regulation must be applied if it is more stringent than that of the Department. If the Department does not have the authority to enforce the more stringent Federal regulation they shall notify U.S. EPA in writing as soon as possible, so that this portion of the delegation may be revoked.

9. The Department will utilize the methods in 40 CFR Parts 60 and 61 in performing source tests pursuant to these regulations.

10. From time to time when appropriate, the Department will revise its NSPS and NESHAP regulations to include the provisions of Federal amendments and newly promulgated regulations for NSPS and NESHAP pollutant source categories.

11. If the Director of the Air Management Division, or equivalent, determines that a Department program for enforcing or implementing the NSPS or NESHAP regulations in inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Department.

A notice announcing this delegation will be published in the **Federal Register** in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to the above-referenced NSPS or NESHAP regulations by sources located in Philadelphia should be submitted to the Department in addition to U.S. EPA, Region III. Any original reports which have been or may be received by U.S. EPA, Region III will be promptly transmitted to the Department.

Since this delegation is effective immediately, there is no requirement that the Department notify EPA of its acceptance. Unless EPA receives from the Department written notice of objections within ten (10) days of receipt of this letter, the Department will be deemed to have accepted all of the terms of the delegation.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: (Sec. 111(c), and 112(d) Clean Air Act (42 U.S.C. 7411(c) and 7412(d)).

Dated: August 16, 1985.

James M. Seif,

Regional Administrator.

[FR Doc. 85-20215 Filed 8-22-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 61

[AD-FRL-2885-1]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, and Benzene Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition for reconsideration.

SUMMARY: The Natural Resources Defense Council (NRDC) has petitioned EPA to reconsider final decisions published June 6, 1984, to withdraw proposed benzene standards for maleic anhydride process vents, ethylbenzene/styrene (EB/S) process vents, and benzene storage vessels (49 FR 23558), and to reconsider promulgated standards for benzene equipment leaks (49 FR 23498). The petitioner contended that EPA's June benzene decisions were not based on analysis of the most current scientific evidence of the health effects associated with benzene exposure. The petitioner concluded that if all relevant benzene health data were considered, EPA would reverse its decision not to regulate the three source categories and would set more stringent standards for benzene equipment leaks. The petitioner also raised several technical issues specific to EB/S flares and the benzene equipment leaks standards.

The Administrator finds that the objections raised do not provide substantial support for revising these decisions. Also, many of the objections could have been raised during the original rulemakings.

The petition for reconsideration is therefore denied.

DATES: The denial of the petition to reconsider is a final action under sections 307(d)(7)(B) and 307(b)(1) of the Clean Air Act. Review of the denial is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication, as provided in section 307(b)(1).

ADDRESSES: The dockets, No. OAQPS 79-3 (Part I and II), A-79-49, A-80-14, and A-79-27, containing supporting information are available for public inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday, at Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the benzene unit risk factor, contact Mr. Robert Kellam, Pollutant Assessment Branch, Strategies and Air Standard Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5645. For further information on the regulatory aspects addressed in this notice, contact Mr. Gilbert Wood, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1984 the NRDC petitioned the Administrator of the EPA, pursuant to section 307(d)(7)(B) of the Clean Air Act, to reconsider four final decisions regarding emissions of the hazardous air pollutant benzene as published in a **Federal Register** notice June 6, 1984 (49 FR 23478, 23498, and 23558). Section 307(d)(7)(B) provides that EPA shall convene a proceeding to reconsider the rule in question if a person raising an objection can demonstrate that: (1) It was impracticable to raise such objection during the comment period or that the grounds for such objection arose after the comment period but within the time specified for judicial review under section 307 (b)(1); and (2) such objection

is of central relevance to the outcome of the rule. Such objections are of central relevance only if they provide substantial support for the argument that the standards should be revised. See Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653, 81654 (Dec. 11, 1980) and decisions cited therein.

Specifically the NRDC requested reconsideration of:

- The standard promulgated for benzene emissions from equipment leaks, termed fugitive benzene emissions.
- The withdrawal of the proposed standard for benzene emissions from maleic anhydride process vents.
- The withdrawal of the proposed standard for benzene emissions from EB/S.
- The withdrawal of the proposed standard for benzene emissions from benzene storage vessels.

In the petition, the NRDC raised objections to the June 6, 1984, EPA decisions on the grounds that health data relevant to the health risks of benzene were not available to the petitioner during the prescribed public comment period corresponding to a notice proposing withdrawal of proposed benzene standards (49 FR 8380). The petitioner contended that EPA's June benzene decisions were not based on analysis of the most current and up-to-date scientific evidence of the health effects associated with benzene exposure. Moreover, the NRDC argued that the EPA's latest assessment of the carcinogenicity of benzene occurred in 1981. Thus, the Agency did not include current studies that may have a substantial impact on risk analyses. Specifically, the NRDC contended that two major epidemiological studies and one animal bioassay related to benzene exposure were not considered by the EPA in evaluating the carcinogenic potency of benzene. These studies are:

- An epidemiological study of Ohio rubber hydrochloride workers as reported by Rinsky *et al.*, 1981, in which a study by Infante, *et al.*, 1977, was updated.
- An epidemiological study of chemical workers submitted to EPA by the Chemical Manufacturers Association and reported by Wong *et al.*, 1983.
- An animal bioassay conducted by the National Toxicological Program (NTP, 1983).

In addition to consideration of these studies, the petitioners also requested that the EPA consider an unpublished update through 1983 of the Rinsky *et al.*, study, and a document on the health effects of benzene published by the California Department of Health Services (DHS, November 1984).

While NRDC submitted that the unit risk estimate derived from Human studies would increase EPA's unit risk factor used in the recent decisions, NRDC contended that the unit risk estimate used in making regulatory decisions on benzene should be based solely on the NTP (1983) animal bioassay and not the human studies. Moreover, the NRDC submitted that the unit risk estimate based on the NTP bioassay should be derived from the dose-response curve of the incidence of preputial gland tumors of male B6C3F mice because this assessment results in the highest unit risk estimate and thus would be a more "conservative" estimate. The NRDC alleged that the appropriate unit risk estimate is 0.340 per ppm and not the 0.0223 per ppm unit risk estimate used by EPA in the June, 1984 decisions.

The NRDC contended that the 15-fold increase in the unit risk estimate used in the June 1984 decisions would show a high cancer risk to the exposed population, and would warrant an reversal of the decision not to regulate benzene emissions from maleic anhydride process vents, EB/S process vents, and benzene storage vessels. Moreover, while the NRDC agreed with the decision to regulate fugitive benzene emissions from petroleum refinery and chemical manufacturing facilities, NRDC did not agree with the risk analysis supporting the decision. The NRDC contended that the EPA failed to correct for an admitted 2 to 3-fold underestimate of benzene exposure around fugitive sources, and that such an adjustment coupled with a revised unit risk estimate would raise the post-regulation estimate of the lifetime risk of cancer for the most exposed individuals by as much as 46-fold. Finally, NRDC requested reconsideration of several technical aspects associated with controlling flares at EB/S plants and equipment leaks.

Updating the Health Risk Assessment for Benzene

Of central relevance to NRDC's reconsideration request is the contention that the health risk assessment relied upon in June was outdated, and that the risk estimate for benzene should be revised to reflect the most current literature on benzene carcinogenesis. In this regard, the NRDC stated that "the petition for reconsideration raises centrally relevant objections based on data and analyses which have become available only since the close of the comment period for these decisions."

On March 6, 1984, EPA proposed withdrawal of proposed standards for benzene emissions from the various source categories (49 FR 9396). The comment period for that notice ended April 5, 1984. During that time the EPA received written comments from the NRDC regarding the risk assessment used in those decisions (Docket No. OAQPS 79-3(II), VI-D-4). In those comments, the NRDC stated that the unit risk estimate for benzene did not reflect consideration of all available and most recent studies. They were critical of the fact that the EPA had not evaluated the leukemia response observed in a 1983 epidemiologic study of chemical workers exposed to benzene (Wong, *et al.* 1983) in the derivation of the unit risk estimate. Also, the NRDC stated that the EPA had not included the cancer response seen in a 1983 chronic animal bioassay (NTP, 1983), and that "the inclusion of these studies may affect the unit risk estimate." Thus, the NRDC has previously made comment on the same health issues as addressed in the petition.

The petitioner also suggested inclusion of a further update through 1983 of the epidemiologic study of Ohio rubber hydrochloride workers by Rinsky *et al.*, and to consider a review of the health effects literature and a quantitative risk assessment published by the California Department of Health Services (DHS, 1984).

The Benzene Unit Risk Factor. Since a specific environmental carcinogen is likely to be responsible for at most a small fraction of a community's overall cancer incidence, and since the general population is exposed to a complex mixture of potentially toxic agents, it is currently not possible to directly link actual human cancers with ambient air exposure to chemicals such as benzene. Today's epidemiologic techniques are not sensitive enough to measure the association. Therefore, EPA must rely upon mathematical modeling techniques to estimate human health risks. These techniques, termed "quantitative risk assessment," are means whereby the risk of adverse health effects from exposure to benzene in the ambient environment can be estimated mathematically by extrapolating effects found at higher occupational exposure levels to lower concentrations characteristic of human exposure in the vicinity of industrial sources of benzene. The analysis estimates the risk of cancer at various levels of exposure. A unit risk factor for benzene is derived from the dose-response relationship observed in

the occupational studies and is a measure of carcinogenic potency. For benzene, the unit risk represents the probability of contracting leukemia as a result of a lifetime of exposure to a unit air concentration, one part benzene per million parts air (PPM).

Incorporation of More Recent Health Data. The NRDC contended in the petition, as they did during the response period for the June decisions, that the EPA's unit risk estimate for benzene is at least 3 years out of date. They argued that EPA derived the risk estimate in 1981; and, therefore, the computations did not include the scientific literature published since that time. The EPA acknowledges that the June 1984 decisions did not include quantitative consideration of the NTP (1983) animal bioassay, the Wong et al. (1983) epidemiologic study, and the Rinsky *et al.* (1981) epidemiologic study. However, EPA does not agree with the petitioner that these studies became available only after the close of the public comment periods on the relevant benzene rulemakings.

In response to the concerns of the petitioner, the EPA evaluated the risk implications of the epidemiological findings of the Rinsky et al. (1981) study and the Wong et al. (1983) study. In addition, the Ott et al. (1977) chemical worker mortality study was included in the analysis. The following section is a synopsis of this analysis.

The latest Rinsky (unpublished) study of a follow-up of the same rubber hydrochloride workers as reported in the 1981 study cannot be used at this time because the results of this particular study are currently undergoing internal scientific review within the National Institute of Occupational Safety and Health (NIOSH), and has not been released by that Agency. Until the most recent Rinsky et al. study has been released by NIOSH for publication, the EPA cannot include this study in a computation of a benzene risk estimate. It is not EPA's policy to include data that have not been reviewed by the scientific community. Upon completion of formal review and approval by NIOSH of the most recent Rinsky update, the Agency will review the data, and take action as appropriate.

The EPA does agree with the petitioner that the carcinogenic potency of benzene should be reevaluated to reflect the recent updates to the benzene scientific literature. The EPA evaluation, described below, includes consideration of recent publications as well as the *Report to* the *Scientific Review Panel On Benzene* (1984) published by the California Department of Health Services (DHS).

Methodology for Risk Factor Determinations. The petitioner alleged that basing a risk analysis on these studies would result in a "dramatic" increase in the unit carcinogenic risk estimate for benzene. Relying on the DHS report, NRDC alleged that the potency estimate for leukemia derived from the Rinsky et al. 1981 study of rubber hydrochloride workers would be more than two times the estimates used by EPA in the June 1984 decisions. Using the NTP (1983) animal bioassay showing elevated incidence of leukemia and lymphoma increases the estimate more than 10 times; and if the carcinomas of the preputial glands found to be significantly increased in male mice are included, the unit risk estimate is increased 15 times over the value used by EPA in the June 1984 decisions. While NRDC submitted that the risk estimate derived from human studies will increase EPA's unit risk factor used in the recent decisions, NRDC contended that the unit risk estimate used in making regulatory decisions on benzene should be based solely on the NTP (1983) animal bioassay and not the human studies. Moreover, the NRDC submitted that the unit risk estimate based on the NTP bioassay should be derived from the dose-response curve of the incidence of preputial gland tumors of male B6C3F mice because this assessment results in the highest unit risk estimate and, thus, would be a more "conservative" estimate. The NRDC argued that such an increase in the unit estimate would increase the computed risk of leukemia to people residing in the vicinity of industrial sources of benzene; and, therefore, the June 1984 decisions not to regulate certain source categories should be reversed. Furthermore, the petitioner was critical of EPA's methodology of calculating a unit risk estimate from the epidemiologic studies. As stated in the DHS document (1984), the focus of the criticism is the exclusion of the Rinsky *et al.* (1981) and Wong *et al.* (1983) studies in the analysis.

In the March 6, 1984 **Federal Register** notice (49 FR 8386), the EPA explained the health basis for withdrawing proposed benzene standards. The quantitative unit risk estimate used in the risk assessment had been revised to take into consideration comments received after the maleic anhydride proposal (45 FR 26660) concerning the appropriateness of the various epidemiologic studies. The EPA reexamined and reevaluated the scientific literature on benzene carcinogenisis (49 FR 8388) and revised the estimate from a probability of leukemia of 0.024/ppm to a probability of leukemia of 0.022/ppm (a reduction of about 7 percent).

The NRDC commented on EPA's methodology in deriving the revised risk estimate during the prescribed comment period. The petition reiterated those comments. The principal comment by NRDC was that EPA developed its estimate of risk by pooling or aggregating the dose-response curve of three epidemiological studies; and, therefore, did not yield the most conservative unit risk estimate. The NRDC stated during the comment period that, "a truly conservative assessment would have given principal weight to the study yielding the higher risk estimate" (Docket No. OAQPS 79-3(II), VI-D-4).

The EPA disagrees that the estimates of cancer risk for benzene should be appropriately based on the single study that yields the highest possible risk estimate. Where several quality data sets are available, the measure of carcinogenic potency gains certainly from their combined use. The EPA methodology for the evaluation of the unit risk estimate for benzene is described in a document entitled *Interim Quantitative Cancer Risk Estimates Due to Inhalation of Benzene* (OAQPS 79-3 (I), VIII-A-4). Although the animal bioassays were considered, the EPA believes that the unit risk estimate for inhalation of benzene is appropriately based upon the principal epidemiologic studies since these studies are of recognized quality and have the greatest relevance in the estimation of health risks for the general population. In the revaluation of the unit risk estimate, the EPA pooled the leukemia responses observed in the Rinsky *et al.* (1981) and Ott *et al.* (1977) cohorts, and computed a geometric mean risk estimate. The results of Wong *et al.* (1983) were then pooled together with the results of Rinsky *et al.* (1981) and Ott *et al.* (1977) and compared with the results obtained from pooling the results of Rinsky and Ott only. The resulting ratio between these two pooled sets of data was used to adjust the computed geometric means estimate. Based on these calculations, the unit risk factor was revised upward from 0.022/ppm to 0.026/ppm. The revised estimate represents a 17 percent increase in the estimate used in the June 1984 decisions.

Use of Animal Data to Calculate a Unit Risk Estimate. The NRDC alleged that the cancer incidence observed in a 2-year rodent bioassay conducted by the National Toxicological Program (NTP, 1983) should be used by the EPA to develop a unit cancer risk estimate for

exposure to benzene instead of epidemiological studies. The NRDC argued that the NTP animal study has several technical advantages in comparison to the human studies.

- First, in the NTP study, the animals were subjected to detailed physical examination, whereas the human studies examined death certificates alone. Death certificate studies are known to suffer from uncertainty due to lack of quality control in characterizations of causes of death recorded.
- Second, in the NTP study, both sexes were exposed and the animals were examined for all types of cancer. All of the human studies have focused only male populations; none of the studies examined breast cancer in women, for example. Most of the human studies focused solely on detecting leukemia; in only the Wong study and the in-progress Rinsky study were other lung cancers examined.
- Third, in most of the human studies, many subjects have not been followed to the end of their life expectancy, whereas in the NTP study, the animals were studied to the end of their normal lifespans.

The EPA does not accept NRDC's contention that animal data should supersede epidemiological studies in determining risk of exposure to airborne benzene. Well-designed analytical epidemiological studies are a means of observing directly the elevated cancer risk associated with human exposure to a chemical agent. Low-dose risk estimate derived from laboratory animal data extrapolated to humans are complicated by a varity of factors that differ among species and potentially affect the observed response of carcinoma. Included among these factors are differences between humans and experimental test animals with respect to life span, body size, genetic variability, population homogeneity, existence of concurrent diseases, pharmacokinetic effects such as metabolism and excretion patterns, and the exposure regimen. Therefore, when making interspecies comparisons between the cancer response in laboratory animals to a predicted response in humans, it is necessary to extrapolate using standardized scaling factors. Commonly employed dosage scales include mg per kg body weight per day, ppm in the diet or water, mg per m^2 body surface area per day, and mg per kg body weight per lifetime. The accuracy of these scaling factors as predictors of the human responses is highly uncertain.

On the other hand, well-conducted epidemiological studies provide direct evidence of a causal link between the chronic exposure in humans and adverse health effects. This direct evidence of human carcinogenesis avoids the biological uncertainties inherent in extrapolating animal cancers to humans.

Although a clear dose-response association between carcinoma and benzene exposure was demonstrated in rodent bioassays, the EPA believes that human data, when available, should be the principal factor in the derivation of a unit cancer risk estimate. There is strong evidence of benzene carcinogenicity resulting from well-conducted analytical epidemiologic studies of people chronically exposed to airborne benzene in the work place.

The reliability of the epidemiological studies is given additional strength by the fact that leukemia mortality rates were observed among independent cohorts in different occupational settings by independent investigators. In addition, individuals exposed to benzene were followed over a time period that spanned the latency of leukemia. Given the wide range of levels of benzene exposures and durations of exposure, the epidemiologic studies showed a 3-fold to 20-fold increase in risk of leukemia above individuals not exposed to benzene.

Withdrawal of Proposed Benzene Standards

The petitioner felt that the withdrawal of proposed standards for maleic anhydride, EB/S, and benzene storage should be reconsidered in light of an increased unit risk factor. The petitioner believed that higher health risk estimates would lead the Agency to conclude that the source categories pose significant risk to the public and that regulation is warranted.

The EPA applied the revised benzene unit risk factor to the source categories for which the proposed standards were withdrawn. In addition to the adjustment made to the benzene unit risk factor, EPA also adjusted exposures (benzene concentration times population) in the maleic anhydride industry because of the significant changes in emissions that have occurred. This consisted of eliminating the United States Steel, Neville Island, and Pfizer, Terre Haute, plants from the health risk calculations, because neither plant now produces maleic anhydride from benzene. The United States Steel plant producers maleic anhydride entirely from butane, and Pfizer no longer produces but purchases all the maleic acid it needs for fumaric acid production.

The Monsanto, St. Louis, plant is now the only in the U.S. that produces maleic anhydride from benzene. The Monsanto emissions are sent to an incinerator when necessary to generate steam for heating in the colder months and to meet current State Implementation Plan (SIP) volatile organic compound (VOC) control requirements. Because it is more expensive to produce maleic anhydride from benzene than butane, the benzene units are used as "swing" capacity, i.e., to meet variations in maleic anhydride demand, and do not operate at full production capacity. Based on confidential information submitted by Monsanto [OAQPS 79-3(II), VIII-A-6], the benzene units are expected to be operated only part of 1985, with most emissions being incinerated. In addition, the State of Missouri is expected to incorporate into its SIP stringent VOC reduction requirements for air oxidation processes (maleic anhydride production is an air oxidation process) later this year. The revised health risk estimates (OAQPS 79-3(II), VIII-A-6) reflect this combination of anticipated events as well as the increased unit risk factor. The EPA also notes that the Chemical Manufacturers Association supplied information (A-79-49, IV-D-2) indicating that benzene emissions from EB/S process vents declined to 155 Mg/yr from 210 Mg/yr due to additional controls and process modifications.

In recalculating the health risk estimates, the annual incidence for maleic anhydride process vents decreases to 0.005 from 0.029, and the maximum lifetime risk to 1.4×10^{-5} from 7.6×10^{-5}. For EB/S process vents, the annual incidence increases to 0.0067 from 0.0057, and the maximum lifetime risk to 1.6×10^{-4} from 1.4×10^{-4}.

For benzene storage vessels, the annual incidence was previously estimated to fall within a range from 0.043 to a maximum of 0.09; this would increase to a range of 0.05 to 0.11. For maximum lifetime risk, the corresponding ranges are 3.6×10^{-3} to 3.6×10^{-4}, with the increase to 4.2×10^{-3} to 4.2×10^{-4}. However, EPA's best judgment is that the correct values are in the middle or upper portion of these ranges.

As stated in the final withdrawal (49 FR 23563; June 6, 1984), these numbers reflect an "* * * extremely conservative emission estimate to tanks equipped with shingle seals." These estimates are characterized as conservative because the existing test data results reflect higher emisssions due to testing irregularities, as well as the type of seal alone. However, because the portion of emission increase due to testing

irregularities cannot be quantified, the estimate reflecting the total uncertainty must be used, explicitly recognizing that these estimates reflect the upper bound of total uncertainty in emissions, and a lower bound based on continuous seals.

Although two of these source categories, EB/S process vents and benzene storages vessels, show increases, the health risks are still considered small by the Administrator (and impacts for EB/S plants would be even smaller, if recalculated based on 155 Mg/yr). Likewise, potential reductions are also considered small. For EB/S, annual incidence could be reduced to about 0.0012 and maximum lifetime risk to about 1.1×10^{-5}. For benzene storage annual incidence could be reduced to about 0.042 and maximum lifetime risk to about 3.4×10^{-5}. Also, no significant reductions would be achieved at maleic anhydride plants because all remaining benzene emissions would be controlled by incineration. As a result, the Administrator considers the impacts of the reanalysis as still too small to warrant Federal regulatory action under Section 112. The petitioner's objection does not give substantial support for the argument that the withdrawals should be reversed and is, therefore, not of central relevance to the outcome of the rule.

Flares at Ethylbenzene/Styrene Plants

The petitioner questioned the Agency's assumption that every flare within the EB/S industry achieves 98 percent reduction of benzene. In making this argument, the petitioner points to: (1) Data indicating that some flare efficiencies are less than 98 percent, and (2) the absence of requirements for EB/S flare operation that the Agency promulgated in the benzene fugitive rulemaking to ensure 98 percent reduction.

The petitioner cited data contained in "Flare Efficiency Study," EPA–600/2–83–052 (Docket No. A–79–49, IV–A–4) and "Evaluation of the Efficiency of Industrial Flares: Test Results" (Docket No. A–79–49, VI–A–1), as evidence that flares do not achieve 98 percent reduction under certain operating conditions. The documents indicate that such operating conditions are not typical of industry operating practices. Indeed, as the petitioner points out, the documents conclude that when flares are operated under conditions representative of industrial practices, greater than 98 percent reduction can be expected.

In the notice to withdraw the proposed EB/S standards (49 FR 23563; June 6, 1984), in the response to the same comment made by the petitioner at that time, EPA also noted that operators at EB/S plants are unlikely to allow their flares to operate under conditions resulting in less than 98 percent reduction, for safety and economic considerations. Therefore, EPA felt it reasonable to assume a 98 percent average flare efficiency at EB/S plants for estimating impacts. For calculating plant-by-plant emissions and exposures, EPA necessarily had to extend this 98 percent average assumption to each flare, because actual flare efficiency data for each flare are not available. It should be emphasized that the Agency did not and does not assume that every flare, in fact, achieves at least 98 percent reduction.

In addition, EPA does not feel that the exact percent is a critical factor in estimating baseline impacts. A simplified but conservative (would tend to overestimate exposures) sensitivity analysis that assumes an average flare efficiency at EB/S plants as low as 80 percent results in only about a 15 percent increase in annual incidence and no increase in maximum lifetime risk for the source category (A–79–49, VIII–A–5).

In the benzene fugitive rulemaking, by contrast, EPA set standards that ensure that every flare used to control equipment leak emissions achieves 98 percent reduction. The important distinction is that in this case the Agency is not deciding what source category to regulate, but rather is deciding the appropriate control level for sources that it has previously concluded warrant regulation.

The petitioner further questioned the Agency's assumed flare efficiency by citing EPA's conclusions on the need for further research on flare efficiencies to better quantify flare performance in "Evaluation of the Efficiency of Industrial Flares: Background—Experimental Design—Facility," EPA–600/2–83–070 (Docket No. A–79–49, IV–A–5). The petitioner apparently is implying that because the Agency recommends additional research on flares in quantifying reduction efficiencies, it is inappropriate to assign any numerical efficiency to flare performance at all. However, EPA feels it desirable, if not necessary, to try to quantify impacts to identify appropriate regulatory actions. The Agency does not agree that exact estimates are needed, and believes that the information on flare efficiency and typical industry practices is adequate to assume an average efficiency value for flares.

In summary, after review of the petitioner's objection regarding EB/S flare efficiency, EPA has concluded two points. First, the objection was raised in the previous comment period and, therefore, is not "new." Second, the objection is not of central relevance to the outcome of the withdrawal action. Thus, EPA has decided that reconsideration of this objection is not warranted.

Benzene Equipment Leaks

The NRDC requested reconsideration of the national emission standard for equipment leaks of benzene by raising five basic objections:

1. The NRDC requested that more stringent control requirements be established based on alleged underestimates of risk and exposure. The maximum lifetime risk, according to NRDC, is underestimated by a factor of approximately 31- to 46.5-fold.

2. The NRDC requested that EPA reconsider the use of sealed bellows valves and dual mechanical seals for pumps, which were not required, and that EPA reconsider the 2 percent level for the alternative standards for valves.

3. The NRDC questioned EPA's technical judgment in selecting 10,000 ppmv as the definition of an equipment leak and requested that it be changed to 1,000 ppmv. In addition, NRDC requested that EPA reduce the 5-day first-attempt-at-repair period to 24 hours and the 15-day period for completing repairs to 5 days when feasible. The NRDC also requested that EPA require the use of a directed preventive maintenance program to reduce emissions.

4. The NRDC questioned the use of cost effectiveness as the basis for the exemption from monitoring for difficult-to-monitor valves and the exemption for equipment at plant sites that process less than 1,000 megagrams (Mg) of benzene annually.

5. The NRDC questioned the reasonableness of keeping repair records for only 2 years and requested that records be kept for at least 5 years. In addition, NRDC requested that each piece of leaking equipment be specifically identified and tagged.

The EPA reviewed each of NRDC's five basic objections. After reviewing these objections, EPA concluded that none of NRDC's objections provides a substantial basis for revising the standards. They are therefore not of central relevance to these standard; and, therefore, EPA is not reconsidering any of these aspects. In addition, NRDC's objections were either considered before promulgation of the standards or could have been raised by NRDC (but were not) during their development. This section summarizes EPA's responses to

NRDC's petition for reconsideration. In Docket Item A–79–27 VI–B–1, EPA presents in detail the results of this review.

The EPA reviewed NRDC's concerns about correcting the alleged bias contained in the exposure assessment used in evaluating the standard. As one aspect of this review (see section entitled "Updating the Health Risk Assessment for Benzene"), EPA decided that the unit risk number should be about 17 percent larger than used in the risk assessment. The EPA also reviewed NRDC's concerns about estimating exposure to benzene around plants using or producing benzene. In order to test the sensitivity of the regulatory decisions to changes in the exposure assessment, EPA recalculated the exposure assessment by increasing the ambient concentrations and, therefore, exposure by 300 percent. A factor of 300 percent was used because it seems to be the upper limit on the alleged underestimation based on the analysis presented in Appendix C of the Benzene Fugitive Emissions Background Information for Promulgated Standards and detailed in Docket Item A–79–27, IV–B–18. After doing so, EPA concluded that the standard would not change based on the new exposure assessment and; therefore, this objection is not of central relevance to the standard. Thus, EPA is not reconsidering this objection.

The EPA reviewed NRDC's concerns about sealed bellows valves, dual mechanical seals for pumps, and the alternative standards for valves. Based on recalculated estimates of annual leukemia incidence and maximum risk, EPA determined that, because of the relatively small health benefits to be gained with the additional costs of requiring the additional control of sealed bellows valves and dual mechanical seals instead of the controls required by the standard for valves and pumps, EPA considers the risks remaining after application of the technologies selected for equipment covered by the standard not to be unreasonable. Based on these considerations, the Administrator has not changed the decisions about the levels of control associated with these aspects of the standard.

Concerning NRDC's request to revise the level for the alternative standard for valves from 2 to 1 percent, this standard is set at a level that is achievable, not at a level that is achievable only half the time, as would be the case with NRDC's suggestion. In addition, there is no practical difference between limits of 1 and 2 percent of valves leaking; that is, an owner or operator of a process unit would implement the same control measures to comply with the alternative valve standards whether the limit is set at 1 or 2 percent.

The EPA reviewed NRDC's concerns about EPA's technical judgment on the definition of a leak, the repair intervals, and the effectiveness of preventive maintenance programs. With respect to the definition of a leak, the EPA does not disagree with NRDC that additional emission reductions could be achieved by reducing the leak definition from 10,000 to 1,000 ppmv. However, while EPA has concluded that 10,000 ppmv is a reasonable leak definition (i.e., there are large enough emissions that repair can be accomplished with reasonable costs), EPA has not concluded that 1,000 ppmv is a reasonable leak definition. Therefore, until EPA has adequate data to support the repair potential associated with leak definitions like 1,000 ppmv, EPA is selecting a reasonable leak definition (i.e., 10,000 ppmv). With respect to the repair intervals, EPA previously explained its justification for the 5-day first-attempt-at-repair interval and the 15-day repair interval for valves, pumps, and pressure relief devices. Basically, the repair intervals were based on EPA's understanding of modern industry maintenance practices and leak detection and repair programs, which included technical judgments on the practicality of control techniques and work practices. During development of the proposed standard, EPA personnel made a concerted effort to investigate and gain knowledge about industry maintenance practices. After considering all of the comments during the rulemaking, EPA concluded that NRDC's suggestions of a 24-hour first attempt period and a 5-day period for completing repairs should not be adopted.

In response to NRDC's request to mandate a directed preventive maintenance program, EPA does not believe that a directed preventive maintenance program would necessarily improve the standard's leak detection and repair program. Directed preventive maintenance does not entirely eliminate leaks. While adding a directed preventive maintenance program to the standard can possibly reduce emissions, it can increase emissions also. The EPA continues to believe that, in some instances, attempting repair of a nonleaking valve can result in creating a leaking source. The additional cost of such a program (e.g., routine replacement of valve packing) could be unreasonable; it would not reduce emissions by more than the standard's leak detection and repair program but it would include considerable additional costs.

The EPA reviewed NRDC's concerns with the provisions for difficult-to-monitor valves and the basis for the small plant cutoff. Even though EPA expects few difficult-to-monitor valves at a typical plant, these provisions are needed to reduce unreasonable costs that would otherwise be incurred. The use of a probe on a boom for monitoring leaks, as NRDC suggests, is neither practical nor precise; and the labor cost of monitoring a small number of valves using a "cherry picker" would not be justified considering the small emissions reduction achieved. In response to NRDC's concern about the effects of inflation on the basis for the size cutoff, EPA based the smaller plant exemption on May 1979 dollars. The fact that the cost-effectiveness criterion developed in 1978 had inflated to 1982 dollars is not relevant because the cost of the standard would also increase proportionally. In fact, most plant sites have production rates much greater than 1,000 Mg/yr; and, therefore, few, if any, plants would be exempted from the standard on the basis of the size cutoff. The accuracy of the cost-effectiveness number used in this decision, consequently, is not important.

The EPA reviewed NRDC's concerns with the recordkeeping and reporting requirements of the standard. The EPA believes that these requirements provide for effective enforcement. Concerning NRDC's request for a longer period than 2 years for keeping records, EPA believes that 2 years is long enough to review and determine compliance for most owners or operators affected by the standards; therefore, it would not be necessary for a plant to keep records longer than 2 years. In response to NRDC's requests to tag and report the identity of each individual piece of leaking equipment, EPA does not specifically require tagging because it is unnecessarily restrictive. Any form of identification is acceptable as long as it is weatherproof and readily visible (e.g., a detailed diagram locating valves). The EPA believes that it is unnecessary to require reporting of individual leaking equipment and that reporting the number of leaking equipment is sufficient in helping to determine compliance. This system of reporting leaks will effectively reduce the number of inspections without reducing the effectiveness of compliance efforts.

In summary, EPA reviewed each of NRDC's five basic objections to the promulgated benzene equipment leaks standard. After reviewing these

objections, EPA concluded that none of NRDC's objections are of central relevance to the standard and therefore, EPA is not reconsidering any of these objections.

Dated: August 16, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-20212 Filed 8-22-85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 74, and 78

[Gen. Docket 82-334 et al.]

Establishment of a Spectrum Utilization Policy and Amendment of the Rules With Respect to Digital Termination Systems, Point-to-Point Microwave Systems, the World Administrative Radio Conference, and Expansion of Certain Available Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rules; correction.

SUMMARY: This document corrects several errors in various final rule documents. This action is taken to clarify the amendments in each of the documents and to ensure the accuracy of each amendment as it will appear in the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Donald Campbell, (202) 653-8177.

Erratum

In the matter of establishment of a spectrum utilization policy for the fixed and mobile services' use of certain bands between 947 MHz and 40 GHz, (Gen. Doc. 82-334); amendment of Parts 2, 21, 74 and 94 of the Commission's Rules to allocate spectrum at 18 GHz for, and to establish other rules and policies pertaining to the use of radio in Digital Termination Systems and in point-to-point microwave radio systems for the provision of Digital Electronic Message Services, and for other common carrier, private radio and broadcast auxiliary services; and to establish rules and policies for the private radio use of Digital Termination Systems at 10.6 GHz, (Gen. Doc. 79-188); amendment of Part 2 of the Commission's Rules Regarding Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979, (Gen. Doc. 80-739); and amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations to Expand the Frequencies Available for use by Aural Broadcast STL and Intercity Relay stations, (Gen. Doc. 82-335).

Released: August 16, 1985.

1. Several inadvertent omissions and typographical errors have been detected in the Orders issued by the Commission in the above captioned proceedings. Those omissions and errors are addressed in the following paragraphs by rule section affected.

Section 21.703

2. On August 17, 1984 the Commission issued a *Memorandum Opinion and Order (MO&O)* in Gen. Doc. 82-334 and 79-188, 49 FR 37760 (September 26, 1984) which amended § 21.703 by: (1) removing paragraphs (a), (b), (c), (d), (e) and (f); (2) redesignating paragraph (g) as new paragraph (a) and paragraph (h) as new paragraph (b); and (3) revising all the entries between 6,425 MHz and 19,700 MHz in the Table in new paragraph (a). Two errors were made in this table. First, the bandwidth for 19,160 to 19,260 MHz band should have been listed as 10 MHz, not 220 MHz. Second, there should have been an entry for the 19,260 to 19,700 MHz band indicating a maximum bandwidth of 220 MHz.

3. On November 27, 1984, the Commission issued a *Third Report and Order* in Gen. Doc. 80-739, 49 FR 48694 (December 14, 1984) which amended § 21.703 by revising the table in paragraph (e). Paragraph (e) was removed by the *MO&O*; therefore, these changes are moot.

4. On February 8, 1985, the Commission issued a *Second Report and Order (2nd R&O)* in Gen. Doc. 82-334, 50 FR 7338 (February 22, 1985) which amended § 21.703 by revising all entries between 29,500 and 38,600 MHz in the Table in paragraph (g). The *MO&O* previously redesignated paragraph (g) as new paragraph (a); therefore, the revisions should have been made to paragraph (a).

Section 74.502

5. On January 18, 1985, the Commission issued a *Report and Order (R&O)* in Gen. Doc. 82-335, 50 FR 4655 (February 1, 1985) which amended § 74.502 by deleting paragraph (d). The *2nd R&O* in Gen. Doc. 82-334 also amended this section by redesignating paragraphs (c) and (d) as paragraphs (d) and (e); and by adding a new paragraph (c). Since paragraph (d) was previously deleted by the *R&O*, the *2nd R&O* should have only redesignated paragraph (c) as paragraph (d) and added new paragraph (c).

Section 74.637

6. The *2nd R&O* in Gen. Doc. 82-334 amended § 74.637 by replacing the phrase "17,700-19,700 MHz band" with the phrase "17,700-19,700 MHz and 31,000-31,300 HMz bands". The frequency unit for the latter band is incorrectly stated; it should read "MHz", not "HMz".

Section 78.18

7. The *2nd R&O* amended § 78.18 by adding a new subparagraph (a)(5) which contained two further subparagraphs (1) and (2). Those two designations should have been (i) and (ii) respectively.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-19933 Filed 8-22-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 81 and 83

[PR Docket No. 85-7]

Implementation of Maritime Distress and Safety Frequencies in the 2-18 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC is amending Parts 81 and 83 of its rules (concerning the maritime radio services) to implement distress and safety frequencies allocated by the 1983 World Administrative Radio Conference for the Mobile Services. This proceeding was initiated because of actions in the international community to implement a new distress and safety system. The intended effect is to aid the transition to an improved maritime distress and safety system.

DATE: Effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast stations, Radio.

47 CFR Part 83

Marine safety, Radio, Ship stations.

Report and Order (Proceeding Terminated)

In the matter of amendment of Parts 81 and 83 of the Commission's rules to implement frequencies for the Future Global Maritime Distress and Safety System; PR Docket No. 85-7.

Adopted: August 5, 1985.
Released: August 15, 1985.

By the Commission.

1. On January 7, 1985, the Commission adopted a *Notice of Proposed Rule Making* (FCC 85-5, 50 FR 3574) in the above captioned proceeding. The *Notice*

was in response to actions taken by the 1983 World Administrative Radio Conference for the Mobile Services (MOB–83) which allocated distress and safety frequencies between 2 MHz and 18 MHz for the Future Global Maritime Distress and Safety System. By this action, we are implementing the new frequencies in Parts 81 and 83 of the Commission's rules. Early availability is intended to permit voluntary participation in the evaluation and testing of the new distress and safety system.

Background

2. The International Telecommunications Union (ITU) held a World Administrative Radio Conference for the Mobile Services in Geneva, Switzerland, in 1983. Referred to as "MOB–83", it dealt almost entirely with distress and safety issues. The International Maritime Organization (IMO) provided MOB–83 with a design for a Future Global Maritime Distress and Safety System (FGMDSS).[1] This design featured automatic distress alerting followed by automatic transmission of additional information concerning a distress incident. On the basis of the IMO design, MOB–83 revised the international Radio Regulations to identify frequencies for the new distress and safety system.[2] Those revisions to the 2–18 MHz maritime bands are the subject to this proceeding.

Discussion

3. Two parties filed comments in this proceeding: the United States Coast Guard (USCG) and the American Institute of Merchant Shipping (AIMS). Both parties voiced strong support for our proposal. The USCG states that the ultimate success of the FGMDSS depends upon gaining operational experience now with each of the subsystems making up the FGMDSS. The USCG feels that this action is consistent with its efforts toward full FGMDSS readiness by about 1990. AIMS agrees that this action will facilitate the implementation of the FGMDSS. AIMS states that FGMDSS will allow communications in an emergency with equipment that is commensurate with today's technology.

[1] The phasing in of this system is expected to begin in 1990. It will replace the present maritime distress and safety system which relies on ship-to-ship distress alerting using manual international Morse Code. The future system will rely primarily on ship-to-shore distress alerting using satellites and high frequency terrestrial systems employing digital selective calling techniques.

[2] The Final Acts of MOB–83 are currently before the U.S. Senate pending ratification.

4. The *Notice* proposed to incorporate the FGMDSS frequencies adopted at MOB–83 into the Commission's maritime rules (Parts 81 and 83). There are five radiotelephony frequencies, six NB-DP frequencies and six DSC frequencies for distress and safety purposes. These frequencies are specified as follows.

5. The telephony carrier frequencies 4125.0 kHz, 6215.5 kHz, 8257.0 kHz, 12392.0 kHz, and 16522.0 kHz are available for simplex distress and safety communications. In the United States, the frequency 4125.0 kHz in currently available for business and operational communications between ships, and between ships and limited coast stations. Since MOB–83 did not dedicate this telephony frequency exclusively for distress and safety purposes, we are allowing the current uses of 4125.0 kHz to continue.

6. MOB–83 set aside the frequencies 2187.5 kHz, 4188.0 kHz, 6282.0 kHz, 8375.0 kHz, 12563.0 kHz and 16750.0 kHz exclusively for distress and safety communication using digital selective calling (DSC) techniques. These frequencies are the subject of the *Further Notice of Proposed Rule Making* in PR Docket 83–431 [3] and their implementation in the maritime rules will be treated in that proceeding.

7. MOB–83 also provided for the frequencies 2174.5 kHz, 4177.5 kHz, 6268.0 kHz, 8357.5 kHz, 12520.0 kHz and 16695.0 kHz to be used exclusively for distress and safety communications by means of narrow-band direct-printing telegraphy (NB–DP). Five of the NB–DP distress and safety frequencies are currently NB–DP working frequencies. To conform with MOB–83, we are making these frequencies available exclusively for distress and safety communications and deleting them from the table of NB–DP working frequencies in Part 83 of the rules.

8. Although the formal transition to the FGMDSS has not yet begun, we are making these frequencies available now for the testing and introduction of ship radio installations which will eventually comprise part of the FGMDSS. The operation of such installations will be complementary to and not adversely affect existing distress and safety services. These amendments do not require any equipment to be installed on ships or in coast stations.

9. Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that the new rules will not significantly impact a substantial number of small entities. This action makes available frequencies dedicated for maritime distress and safety purposes by the 1983 World Administrative Radio Conference for the Mobile Services. Since frequency use will be voluntary, no new equipment is mandated and no existing equipment is made obsolete by the action.

[3] In the Matter of Digital Selective Calling System in the Maritime Mobile Service, released October 26, 1984, FCC 84–499, 49 FR 43718.

10. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

11. Accordingly, it is ordered, That under the authority contained in sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c) and (r), the Commission's rules ARE AMENDED as set forth in the attached Appendix, effective September 23, 1985.

12. It is further ordered, That a copy of the Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

13. It is further ordered, That this proceeding is terminated.

14. Regarding questions on matters covered in this document contact Maureen Cesaitis (202) 632–7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA FIXED SERVICE.

1. The authority citation for Part 81 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; unless otherwise noted.

2. Section 81.204 is amended by adding new paragraph (e) to read as follows:

§ 81.204 Assignable frequencies—Narrow-band direct-printing radiotelegraph and data transmission systems.

* * * * *

(e) The following frequencies are available exclusively for distress and safety communications by narrow-band direct-printing telegraphy:

NB–DP Distress Frequencies (kHz)		
2174.5	6268.0	12520.0
4177.5	8357.5	16695.0

3. In § 81.304, the frequency table in paragraph (a) is amended by adding the following frequencies and conditions of use in frequency order, and by adding subparagraph (b)(23).

§ 81.304 Frequencies available.

(a) * * *

Carrier frequency	Conditions of use	
	Section	Limitations
Kilohertz:		
4125.0	81.305	23
6215.5	81.305	23
8257.0	81.305	23
12392.0	81.305	23
16522.0	81.305	23

(b) * * *

(23) Use of this frequency by coast stations is authorized for distress and safety communications by radiotelephony.

* * * * *

4. Section 81.305 is amended by adding new paragraph (d) to read as follows:

§ 81.305 Frequencies for calling and distress.

* * * * *

(d) The frequencies 4125.0 kHz, 6215.5 kHz 8257.0 kHz, 12392.0 kHz and 16522.0 kHz may be used by coast stations on a simplex basis for distress and safety communications. The frequency 4125.0 kHz may also be used for communications between aircraft stations and maritime mobile stations for distress and safety purposes.

5. Section 81.361 is amended by adding the footnote "1" after the frequency 4125.0 in the table in paragraph (a) and adding the text of the footnote after the table to read as follows:

§ 81.361 Frequencies available.

(a) * * *

[1] The frequency 4125.0 kHz is available domestically for distress, and safety and internationally for calling purposes.

* * * * *

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

6. The authority citation for Part 83 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 4726, 12 UST 2377, unless otherwise noted.

§ 83.321 [Amended]

7. In § 83.321, the frequency table in paragraph (b) is amended by removing the frequencies 4177.5, 6268.0, 8357.5, 12520.0 and 16695.0 kHz.

8. Section 83.322 is amended by adding new paragraph (e) to read as follows:

§ 83.322 Frequencies for use in distress.

* * * * *

(e) The following frequencies are available exclusively for distress and safety communications using narrow-band direct-printing telegraphy:

NB–DP Distress Frequencies (kHz)		
2174.5	6268.0	12520.0
4177.5	8357.5	16695.0

9. In § 83.351, the frequency table in paragraph (a) is amended by revising the rule sections listed opposite the frequency 4125.0 kHz and adding the frequencies 6215.5, 8257.0, 12392.0 and 16522.0 kHz in frequency order to read as follows:

§ 83.351 Frequencies available.

(a) * * *

Carrier frequency	Conditions of use	
	Section	Limitations
Kilohertz:		
4125.0	83.352, 83.360	
6215.5	83.352	
8257.0	83.352	
12392.0	83.352	
16522.0	83.352	

10. Section 83.352 is amended by adding new text at the end of paragraph (a) to read as follows:

§ 83.352 Frequencies for use in distress and search and rescue operations.

(a) * * *

Additionally the frequencies 4125.0 kHz, 6215.0 kHz, 8257.0 kHz, 12392.0 kHz and 16522.0 kHz are available for use by coast and ship stations on a simplex basis for distress and safety communications. The frequency 4125.0 kHz may also be used for communications between aircraft stations and maritime mobile stations for distress and safety purposes.

* * * * *

11. Section 83.360 is amended by placing the footnote "1" after the frequency 4125.0 kHz in the table in paragraph (a) and adding the text of the footnote after the table to read as follows:

§ 83.360 Frequencies for business and operational purposes

(a) * * *

[1] The frequency 4125.0 kHz is also available domestically for distress and safety and internationally for calling purposes.

* * * * *

[FR Doc. 85–19792 Filed 8–22–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 40]

Federal Motor Vehicle Safety Standards for Occupant Crash Protection; Improvement of Seat Belt Assemblies

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice adopts a one-year delay, from September 1, 1985, to September 1, 1986, in the effective date for the safety belt comfort and convenience requirements issued by NHTSA in January 1981. The agency proposed a one-year delay in a notice issued in April of this year. The April notice also proposed several minor modifications to the comfort and convenience requirements, which will be addressed in a subsequent notice.

This notice also denies the petitions submitted by American Motors Corporation and the Motor Vehicle Manufacturers Association for an indefinite delay in the proposed effective date of these amendments. The denial is based on the agency's belief that the substantive issues in the proposal will be quickly resolved in a separate final rule and that delaying the effective date for one year will give the motor vehicle industry sufficient time to meet the modified comfort and convenience requirements.

DATE: Any petitions for reconsideration of this rule must be received within 30 days after the date of publication of this notice. The new effective date for the seat belt comfort and convenience requirements is September 1, 1986.

ADDRESS: Any petitions for reconsideration should refer to the docket number and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400

Seventh Street, SW., Washington, D.C. 20590. Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Nelson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–426–2264).

SUPPLEMENTARY INFORMATION: On January 8, 1981, NHTSA amended Standard No. 208, *Occupant Crash Protection,* to specify additional performance requirements to promote the comfort and convenience of both manual and automatic safety belt systems installed in motor vehicles with a GVWR of 10,000 pounds or less (46 FR 2064). The requirements have not yet become effective. In partial response to seven petitions for reconsideration, the agency extended the effective date of the comfort and convenience requirements for one year, from September 1, 1982, to September 1, 1983 (47 FR 7254). Subsequently, the agency adopted (48 FR 24717) a further extension of the effective date for the requirements to September 1, 1985.

On April 12, 1985, the agency proposed to change the effective date of the comfort and convenience requirements to September 1, 1986, to coincide with the effective date of the Department's July 11, 1984 rule requiring the installation of automatic restraints. This notice also proposed modifications to certain aspects of the comfort and convenience performance requirements in order to clarify the agency's intent and to address the concerns raised in the petitions for reconsideration (50 FR 14580).

After the April 12, 1985 notice of proposed rulemaking was issued, American Motors Corporation and the Motor Vehicle Manufacturers Association petitioned NHTSA to postpone the effective date immediately and indefinitely, until all issues concerning the comfort and convenience requirements are resolved. They stated their belief that a final rule on the former effective date is unlikely to be issued before production of 1986 model year vehicles begins in July 1985; that manufacturers will be uncertain of the standard's applicable requirements; and that it is unreasonable to have this critical timing issue tied to the rulemaking process. Chrysler Corporation, General Motors Corporation and Volkswagen of America, Inc. supported this request in submissions to the docket. General Motors stated that deferral is essential to provide time to resolve the many interrelated issues of Notices 37, 38, and 39, as well as to provide time to meet the final requirements flowing from these rulemaking actions. The agency disagrees. Although each of these proposals concerns Standard No. 208, the agency maintains that the issues are separable, as are the notices proposing them.

The agency realizes that September 1, 1985, is an inappropriate effective date for the comfort and convenience requirements because there is insufficient lead time before the beginning of the new model year to comply with the requirements either in the currently adopted version or in the version proposed in April 1985. The agency believes that an effective date of September 1, 1986, provides sufficient time for industry to meet either version of the comfort and convenient requirements. This conclusion is based on NHTSA's own analysis and on the absence of indication in the comments of the other domestic and foreign motor vehicle manufacturers, seat belt manufacturers, and a technical representative that a September 1, 1986 effective date would pose any problems in complying with the proposed requirements. Since its range of choices regarding the substantive differences in the two versions is not large, the agency does not foresee that there will be any changes to the comfort and convenience requirements which would necessitate additional lead time beyond September 1, 1986. Therefore, the agency is adopting that date as the new effective date for all requirements except the one discussed immediately below. However, if the final rule on the substantive issues does include changes for which the industry might need additional lead time, the agency will consider these circumstances and, if necessary, take appropriate steps to adjust the effective date.

In a separate final rule to be issued in the very near future, the agency will respond to the substantive issues raised in the notice of proposed rulemaking and the comments thereon.

Regulatory Impacts

The Department has considered the economic and other impacts of this final rule and determined that the rule is not a major rule within the meaning of Executive Order No. 12291. The agency has further determined that the rule is not significant within the meaning of the Department of Transportation's regulatory policies and procedures. In issuing the final rule on January 8, 1981, NHTSA released a final regulatory evaluation which contains the agency's assessment of the societal benefits and economic consequences of that rule. Copies of the evaluation can be obtained by writing to NHTSA's Docket Section at the address given at the beginning of this notice.

A supplement to that evaluation, concerning the proposed modifications to the comfort and convenience requirements, was placed in the public docket on April 12, 1985. The agency has determined that a full regulatory evaluation is not needed for this notice since the economic and other impacts of a one-year delay in the effective date are minimal. Since the one-year delay will provide manufacturers and consumers with more leadtime to comply with the requirements, costs to manufacturers and consumers should be slightly reduced. The safety impact of this delay should be minimal; however, the agency cannot quantify the magnitude of that impact. Any adverse impacts should be minimized as manufacturers begin to implement voluntarily the comfort and convenience requirements before the mandatory effective date of September 1, 1985.

The agency has also analyzed this proposal for purposes of the National Environmental Policy Act and has determined that it will not have a significant effect on the human environment.

Furthermore, the agency has reviewed the effects of this rule on small entities under the Regulatory Flexibility Act. Based on this evaluation, I certify that the rule will not have a significant economic impact on a substantial number of small entities. Due to the minimal effect on testing costs, the final rule will not significantly affect the manufacturing costs of any seat belt manufacturers who are small entities or the retail price of vehicles purchased by any small organizations or governmental units. In accordance with this evaluation, no regulatory flexibility analysis has been prepared.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR 571.208 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1391, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S71.1.1.3 is revised to read as follows:

S7.1.3. A lap belt installed at any front outboard designated seating position in a vehicle manufactured on or after September 1, 1986, shall meet the requirements of this section by means of

an emergency-locking retractor that conforms to Standard No. 209 (571.209) of this chapter.

3. S7.4 is reviewed to read as follows:

S7.4 *Seat belt comfort and convenience.*

(a) Automatic seat belts installed in any vehicle with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1986, shall meet the requirements of S7.4.1, S7.4.2, and S7.4.3.

(b) Manual seat belts, other than manual Type 2 belts in front seating positions in passenger cars, installed in any vehicle with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1986, shall meet the requirements of S7.4.3, S7.4.4, S7.4.5, and S7.4.6.

Issued on August 19, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-20159 Filed 8-20-85; 10:41 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 50575-5075]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule, extension of effective date.

SUMMARY: An emergency rule amending the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) is in effect until August 21, 1985. The Secretary of Commerce (Secretary) extends this rule for an additional 90 days, through November 18, 1985, because the conditions requiring the emergency measures still exist. This extension continues the revised management system for the New England Area.

EFFECTIVE DATES: August 21, 1985, through November 18, 1985.

FOR FURTHER INFORMATION CONTACT: Monique Rutledge, 617-281-3600, extension 351.

SUPPLEMENTARY INFORMATION: Under section 305(e)(2) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency rule amending the FMP effective May 24, 1985 (50 FR 23014, May 30, 1985). This rule extends the Amendment 8 management measures for an additional 90 days. A detailed discussion of the background, the issues and regulations, and the classification of the rulemaking is set forth in the preamble to the original emergency rule.

The Mid-Atlantic Fishery Management Council has voted to extend this emergency rule for an additional 90 days, since the conditions within the fishery requiring the original emergency rule still exist. This action is authorized by section 305(e)(3)(B) of the Magnuson Act.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided for in section (8)(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: August 20, 1985.

[FR Doc. 85-20233 Filed 8-20-85; 4:09 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 164
Friday, August 23, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 1; Docket No. 2688S]

General Administrative Regulations—Standards for Approval; Agency Sales and Service Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Standards for Approval; Agency Sales and Service Agreement as contained in 7 CFR Part 400—Subpart C. The intended effect of this rule is to: (1) Require licensing, certification, and errors and omissions insurance coverage under an Agency Sales and Service Contract; (2) change "agreement" to "contract" in the title and throughout this subpart; and (3) provide for codification of OMB information collection control numbers. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comment, data, and opinions on this proposed rule must be submitted not later than September 23, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of those regulations under those procedures. The sunset review date established for these regulations is September 17, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the Standards of Approval-Agency Sales and Service Agreement, as published in the Federal Register on Monday, December 13, 1982, at 47 FR 55886, to require that contractor representatives hold a current State license authorizing the sales of specific types of insurance in all states where the representative will be selling FCIC crop insurance and that the contractor be authorized to act as an insurer or to conduct business as an insurance agency in the State in which the contractor is domiciled. Further, this rule requires that the contractor have and maintain an errors and omissions insurance policy.

Contractor representatives will be required to be certified by FCIC for the crop or crops they will be selling and to hold a current insurance license issued by each State in which they will be selling FCIC crop insurance in at least one or more of the following lines (a) multi-peril crop insurance; (b) crop hail insurance; (c) casualty insurance; (d) property insurance; or (e) liability insurance.

Representatives who are not licensed but who are presently active representatives and permitted by FCIC to solicit or conduct business will be allowed until July 1, 1986, to secure the required license. Contractors who held an Agency Sales and Service Agreement for 1985 will be allowed until July 1, 1986, to become authorized to act as an insurer or to conduct business as an insurance agency in the State of domicile.

Under the proposed rule, FCIC will require errors and omissions liability insurance coverage as part of the contractor's responsibilities in order to provide indemnification to FCIC in the event an error by the contractor, or its representatives, causes a loss to FCIC under the contract.

In addition, FCIC proposes to require that the errors and omissions liability insurance, if issued on a claims base basis, be maintained for at least two years beyond the termination of the Agency Sales and Service Contract.

Errors and Omissions Liability Insurance Coverage is presently a factor to be considered by FCIC when determining whether a waiver may be granted when a Certified Public Accountant (CPA) has issued an adverse or qualified opinion on the contractor's financial statement. It is proposed that that reference to errors and omissions liability insurance be removed in this context since errors and omissions liability insurance will not be required of all contractors.

FCIC proposes to require that all sales and service contractors and their representatives be licensed or otherwise authorized to sell and service in the States where they are domiciled (contractor) or doing business for FCIC (representative). This proposal has been under consideration by FCIC for a number of years for the purposes of increasing the professionalism of those who sell and service FCIC's policies and of upgrading the program image. The

present Agency Sales and Service Agreement requires that representatives be trained in an FCIC approved training program and be approved by FCIC for sales and service of crop insurance policies. The representative agreement also requires that representatives be licensed where required by applicable law.

Subsection 507(c)(3) of the Federal Crop Insurance Act, as amended, requires that FCIC:

> . . . to the maximum extent possible . . . encourage the sale of Federal crop insurance through licensed private insurance agents and brokers and give the insured the right to renew such insurance for successive terms through such agents and brokers . . . .

Many of the contractors and representatives presently certified and selling Federal Crop Insurance also sell and service other types of insurance and are therefore now State licensed.

Through July 31, 1985, 587 claims in the total amount of $3,234,493.06 have been filed against FCIC under the provisions of the "Good Faith Reliance on Misrepresentation" section contained in each crop insurance regulation. The amount of $860,448.03 was paid under this provision in FY 1984. Although some of these claims are the result of FCIC error, the majority of these claims are the direct result of errors by the contractor or the representative. Some way must be found to reduce this outlay of funds and still maintain program credibility with the insured.

Although FCIC cannot now determine which losses under this clause are caused by licensed as opposed to unlicensed representatives, we believe that the additional professionalism and knowledge which may be required by State licensing authorities and the additional supervision which may attend such licensing, including dispute resolution available in some states between the insured and the licensed agent, should reduce the number of claims under this clause.

Although FCIC itself will not be licensed and the State will have no authority over policy language or interpretation, the State through its licensing authority will provide another safeguard against those few agents whose lack of integrity and professionalism cast a shadow on all connected with the Federal crop insurance program.

This requirement should also reduce the conflict which has, in the past, occured between the State licensing authorities and FCIC because of the sale of Federal crop insurance by unlicensed agents.

The proposed regulation does allow those representatives and contractors who presently are not licensed or authorized to operate by States but who are active in the sale of Federal crop insurance, until July 1, 1986, to obtain the necessary State license or authority to operate.

Finally, FCIC proposes to change the references to Agency Sales and Service Agreement in the title and throughout Subpart C to "Agency Sales and Service Contract" to conform with the title of the document entered into between the contractor and FCIC.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

Crop Insurance, Administrative practice and procedure, Agency Sales and Service contract, Standards of approval.

Proposed Rule

PART 400—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR Part 400, Subpart C, the General Administrative Regulations; Standards for Approval—Agency Sales and Service Agreement, effective for the 1986 and succeeding contract years, in the following instances:

1. The authority citation for 7 CFR Part 400, Subpart C, continues to read as follows:

> **Authority:** Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 400.27—400.34 (Subpart C) [Amended]

2. In Subpart C all references to "Agency Sales and Service Agreement" in the title and throughout Subpart C (§§ 400.27—400.34) are changed to read "Agency Sales and Service Contract" and references to "agency" are changed to "contractor."

3. Definitions for "certification", "claims made errors and omissions liability insurance", "contractor", and "representative" are added to § 400.28, and the section is revised in its entirety, to read as follows:

§ 400.28 Definitions.

For the purposes of these financial standards:

(a) "Adverse opinion" means an opinion by a CPA which states that the financial statements do not present fairly the financial position or changes in financial position of the reporting entity in conformity with generally accepted accounting principles.

(b) "Agency Sales and Service Contract" also known as "Master Marketing Contract", means the contract between the Federal Crop Insurance Corporation (FCIC or the Corporation) and the contractor for the purpose of selling and servicing FCIC crop insurance contracts.

(c) "Certification" means successful completion of formal training and testing administered by the Corporation in:

(1) New crop programs and policy changes;

(2) Corporation procedures;

(3) Sales and servicing techniques; and

(4). Other related areas prescribed by the Corporation.

(d) "Claims made errors and omissions liability insurance" means an error and omission liability insurance policy under which indemnification is payable by the insurance carrier for an act which is made known to the insured party during the period the liability insurance is in force, whether or not the act itself occurred during the period the liability insurance was in force.

(e) "Contractor" means a private insurance company which has entered into an Agency Sales and Service Contract with FCIC to sell and service FCIC crop insurance contracts.

(f) "CPA" means a Certified Public Accountant who is licensed as such by the State in which he/she practices.

(g) "CPA Audit" means a professional examination meeting certain standards on the basis of which the auditor expresses an independent professional opinion respecting the fairness of presentation of the financial statements.

(h) "CPA review" means that, under the standards of the American Institute of Certified Public Accountants, a limited assurance is given stating that the auditor is not aware of any material modification that should be made to the financial statement in order for it to be in compliance with generally accepted accounting principles.

(i) "Current assets" means assets, including cash, that are reasonably expected to be realized in cash or consumed during the normal operating cycle of the business or within one year if the operation cycle is shorter than one year.

(j) "Current liabilities" means current liabilities included in those expected to be satisfied by either the use of assets

classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time, usually one year.

(k) "Disclaimer of opinion" means the opinion by a CPA which states clearly that the auditor does not express an opinion on the financial statements.

(l) "Financial statements" means the document(s) submitted to FCIC by a contractor applying for an Agency Sales and Service Contract which have been audited or reviewed by a CPA for the most recent fiscal year and which most accurately reflects the financial position, result of operations, and change in financial position of the applicant.

(m) "Qualified opinion" means an opinion by a CPA which states that "except for" or "subject to" the effects of the matter to which the qualification relates, the financial statement presents fairly the financial position, result of operations, and changes in financial position in conformity with generally accepted accounting principles.

(n) "Representative(s)" means individuals licensed in the State in which they conduct or solicit business for a contractor and who are certified by FCIC for each crop upon which they sell or service insurance.

(o) "Unqualified opinion" means the opinion of a CPA which states that the financial statements present fairly the financial position, result of operations, and change in financial position in conformity with generally accepted accounting principles.

(p) "Waiver" means the approval given by FCIC to waive the requirements of the Financial Standards when the contractor submits a plan to eliminate the deficiency in the contractor's financial position.

4. New §§ 400.35, 400.36, and 400.37 are added to read as follows:

§ 400.35 Representative licensing and certification and contractor authorization.

(a) Except as provided in paragraph (b) of this section, the contractor and its representatives who sell and service policies or represent the contractor in sales or service of policies must:

(1) In the case of representatives, hold a current license as issued by each State in which they sell FCIC policies authorizing the sale of insurance in at least one of the following lines: (i) Multiple peril crop insurance; (ii) crop hail insurance; (iii) casualty insurance.

(2) In the case of representatives, be certified by FCIC for each crop for which they sell or service insurance.

(3) In the case of the contractor, be authorized by the State in which the contractor is domiciled to act as an insurer or to conduct business as an insurance agency in any line of property or casualty insurance pursuant to the laws or regulations of such State; and

(4) In the case of the contractor, submit evidence, satisfactory to the Corporation, verifying the type of State authority held and the date of expiration of such authority.

(b) Any representative shall have until July 1, 1986, to submit verification of State licensing if such representative has earned compensation for the sale or service of Federal Crop Insurance policies for 1984 or subsequent crop year.

(c) Any contractor who held an Agency Sales and Service Agreement for 1985 shall be exempt from the requirements of paragraph (a)(3) and (4) of this section until July 1, 1986.

§ 400.36 Errors and omissions liability insurance coverage.

The contractor must:

(a) Have an errors and omissions liability insurance policy having limits of not less than $1,000,000.00 and a deductible of not more than $5,000.00 at the time of application for the Agency Sales and Service Contract.

(b) Maintain such coverage for the same period of time as the period of contractor's performance under the Agency Sales and Service Contract; and

(c) If said policy is written on a claims made basis, maintain such coverage for at least two years beyond the termination of the Agency Sales and Service Contract.

§ 400.37 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400 in Title 7 CFR.

Done in Washington, D.C. on August 16, 1985.

Peter F. Cole,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-20288 Filed 8-22-85; 8:45 am]

BILLING CODE 3410-08-M

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 83-026N]

Requirements for Partially Defatted Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of intent to initiate proposed rulemaking.

SUMMARY: This notice announces the intent of the Food Safety and Inspection Service (FSIS) to propose compositional and processing requirements for various low temperature rendered meat food products. The need for these requirements is based on considerations of regulatory compliance, nutritional value of the products, processing safety and product labeling. This notice describes these considerations as well as several processing and labeling options and requests comments from interested persons as to how the Agency should proceed.

DATE: Comments on this notice of intent must be received on or before November 21, 1985.

ADDRESS: Written comments to: Policy Office Att: Annie Johnson, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 3803, South Agriculture Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this notice. Written comments must be sent in duplicate to the Regulations Office and should refer to the docket number that appears in the heading of this document. All comments submitted in response to this notice will be made available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

"Partially defatted products", as a general term used in this notice, is intended to encompass low temperature rendered products such as partially defatted beef fatty tissue (PDBFT), partially defatted chopped beef (PDCB), partially defatted pork fatty tissue (PDPFT), partially defatted chopped pork (PDCP), and similar products. These products are also referred to generically as partially defatted (species) fatty tissue (PD)[S]FT) and partially defatted chopped [species] (PDC(S)) and they have been used as ingredients in various processed meat food products for a number of years.

The widespread use of these products has resulted in certain conditions which suggest a need for public rulemaking. For example, the definitions of PDBFT and PDCB have not been precise enough to assure distinct products. This has resulted in compliance determination

difficulties for the Agency and the potential for commercial misrepresentation of some partially defatted products. Additionally, the list of meat food products in which partially defatted products is permitted has grown in a rather *ad hoc* fashion which leaves the Agency without a clearly defined basis for future regulation of these defatted products. Finally, various individual processors have requested labeling relief from partially defatted ingredient names which they regard as onerous. This suggests that some kind of reform of partially defatted product names is in order. Furthermore, the receipt and consideration of such individual requests by the Agency raises questions of labeling equity which can best be addressed in a public notice-and-comment proceeding.

Regulatory Compliance

Partially defatted (species) fatty tissue (PD(S)FT) is produced from fresh beef or pork fatty trimmings by low temperature rendering, (not exceeding 120 °F.) (48.9 °C). PD(S)FT is considered to be a meat byproduct by regulation and it has been used in processed meat food products since the 1950's. Currently the only specifications for this product are that it have a pinkish color and a fresh odor and appearance (9 CFR 319.15(e) and 319.29). The use level of this product as an ingredient of other meat food products may vary for different products. For example, the cooked sausage standard (9 CFR 319.180(b)) allows PD(S)FT to be used in an amount not to exceed 15 percent of the meat and meat byproduct portion of the meat, meat byproduct and poultry portion of frankfurters, hotdogs, weiners, bologna, knockwurst and similar cooked products. There is currently no limit on the amount of PD(S)FT that may be used in some other products such as non-specific loaves. (9 CFR 319.280 and 319.281).

In contrast, partially defatted chopped (species) (PDC(S)) is considered to be a meat product under current Agency policy. There is no standard for this ingredient in the meat inspection regulations with regard to definition, sources, and uses in other products. The Meat and Poultry Inspection Manual (Part 18.55) indicates that the source trimmings must contain at least 12 percent lean meat as determined by knife cutting separation and that leaner cuts of meat may not be added to lots of raw material which fail these requirements to bring them into compliance. PDC(S) is classified as a meat product, but the federal meat inspection regulations do not provide for its use in any standardized meat food products. Agency policy permits the use of PDC(S) in a number of products including some standardized products at levels up to a maximum of 25 percent of the meat content.

In summary, PD(S)FT is described in the federal meat inspection regulations (9 CFR 319.15(e) and 319.29), but PDC(S) is not. The current policy for distinguishing the two is that product can be labeled as PDC(S) if the source trimmings contain at least 12 percent lean meat and as PD(S)FT if the source trimmings contain less than 12 percent lean. After freezing, PDC(S) and PD(S)FT have the same physical appearance and are not readily distinguishable from each other. The market price of PDC(S) is significantly higher than that of PD(S)FT. The similarity in physical appearance of the two products makes it extremely difficult for the Agency to perform compliance and monitoring activities designed to assure truthful labeling and to prevent commercial misrepresentation of the less costly product.

Nutritional Considerations

An additional concern about partially defatted products is their nutritional value relative to the expected nutritional value of most meat food products. The Agency acknowledges that the existing data on the comparative nutritional value of partially defatted products is somewhat limited. But what data there are have led to public expressions of concern at both the State and Federal levels about partially defatted products. For example, in 1972 the Food and Nutrition Service (FNS) of USDA advised school districts that partially defatted tissues are considered as byproducts and are not acceptable for meeting the meat requirements of Type A school lunches. That notice pointed out that the only meat present in PD(S)FT is that which adheres to the fat in the starting material and that it would constitute at best somewhat less than 12 percent of the product and more likely amount to only 3 to 4 percent.

The limited available analytical data suggest that the calculated protein values of PDBFT or PDPFT are in the range of 16 to 19 percent. These high values are due in part to the presence of a high free nonprotein nitrogen fraction of the product that was included in the calculations. The PER (Protein Efficiency Ratio) values of PDBFT and PDCB are around 1.13 and 1.75 relative to casein which is 2.5. These low PER values are due primarily to the presence of cell walls and connective tissue which are the main constituents of these products and which are low in essential amino acids. These limited data indicate that the nutritional values of these products may vary widely and are generally much lower than those expected of meat.

Processing and Handling

A third concern about partially defatted products is the temperature used during processing. Currently these products are partially rendered at temperatures not exceeding 120 °F. (48.9 °C). The original rationale for the specification of this temperature was that a product processed above this temperature may change the appearance and the product might be regarded as cooked. The Agency is concerned that rendering temperatures not exceeding 120 °F. may be suitable for the growth of some pathogenic microorganisms, particularly when the raw material is not handled properly. For example, laboratory analyses of partially defatted products in 1967 confirmed high levels of spoilage bacteria such as *Escherichia coli, Clostridium perfringens* and various *Salmonellae*. As a result of that study, the Agency issued a notice in 1974 directing rigid enforcement of regulations for inspection of raw materials, general sanitation, equipment, and processing methods. A question that the Agency poses at this time is whether enforcement of general sanitation is adequate to assure the microbiological safety of partially defatted products or whether elevation of the rendering temperature would more directly curb the growth of microorganisms in partially defatted products. The Agency requests comments on this issue.

Product Labeling and Use Levels in Processed Products

A final concern of the Agency is the labeling of partially defatted products especially when they are used as ingredients of other meat food products. PD(S)FT are described in the meat inspection regulations (9 CFR 319.15(e) and 319.29, respectively), so the name of these products is the name prescribed in Part 319 (9 CFR Part 319). For PDC(S) however, the proper name of the product is more uncertain. Under current Agency policy, the ingredient may be declared as "beef" or "pork" in some products at certain use levels, but it must be declared as PDCB or PDCP at other use levels even in the same product. In the case of other products, a request to use PDC(S) as an ingredient, regardless of how it might be declared, may be denied simply because the use of PDC(S) in that product is not listed in the Agency's policy issuances or regulations. Thus the expanded use of the ingredient in some

products becomes increasingly difficult. The Agency believes that the industry, consumers, and the Agency itself may benefit from a more precise definition of partially defatted products and a more rational and orderly system for determining their use as ingredients of meat food products.

Options Under Consideration

The preceding paragraphs describe several concerns about the use and control of partially defatted products as ingredients of meat food products. The Agency believes that certain regulatory or policy reforms could be taken to ameliorate all or most of these concerns. For example, the definition of partially defatted products as a single class of product rather than two classes could alleviate some of the compliance enforcement difficulties and discourage potential commercial misrepresentation of partially defatted products. Second, the prescription of limits or ranges for protein content, fat content and protein efficiency ratio (PER) or essential amino acid content could alleviate much of the concern about the nutritional value of partially defatted products relative to other meat food products. Third, elevation of the rendering temperature for partially defatted products combined with subthermal handling requirements could effectively prevent the growth of pathogenic microorganisms in partially defatted products. Finally, adoption of suitable names for product that meets the specifications and for product that does not, would alleviate many of the labeling concerns about partially defatted products. An added benefit of partially defatted product name reform would be a more rational and uniform use pattern for this ingredient in a wider variety of meat food products. The Agency believes that a revised approach to the processing, composition and naming of partially defatted products would allow processors to utilize a full range of processed products, diversify the food supply, and maintain public confidence in meat food products as a good source of high quality protein.

The specific policy and/or regulatory options that the Agency is considering for partially defatted products include the following:

1. The definition of a single class of product to replace the current product categories PD(S)FT and PDC(S).

2. Removing the current lean requirements of raw material as determined by knife cutting separation and replacing it with compositional requirements for partially rendered products.

3. Prescription of limits or ranges for protein content, fat content, and PER or essential amino acid content. The Agency is considering values of these parameters that are comparable to those values which are expected for meat food products. The Agency invites the submittal of specific values of these parameters supported by data which indicate that processed products in which partially rendered products are used retain the nutritional characteristics expected of meat food products.

4. Elevation of the rendering temperature to not less than 125 °F not more than 135°F. Rendering temperatures within this range would prevent further microbial growth without imparting a cooked appearance.

5. Special temperature handling requirements including short-term holding at refrigeration temperatures and long-term storage at 0° F or less.

6. The establishment of a descriptive name for product that meets the specifications in item 3 above. Names that are under consideration include:

Partially Rendered (Species)
Partially Defatted (Species)
Partially Extracted (Species)
Partially Separated (Species)
Thermally Separated (Species)
Thermally Extracted (Species)
Thermally Defatted (Species)
Low Temperature Rendered (Species)
Low Temperature Defatted (Species)
Low Temperature Extracted (Species)
Low Temperature Separated (Species)

7. For partially rendered product that does not meet the requirements of item 3 above, the Agency is considering names such as those in item 6 followed by a word such as "Tissue" or "Product".

8. Permitting the use of product that meets the requirements of item 3 above at higher levels than currently permitted in a wider variety of products as long as nutritional characteristics of the products are not affected. This would also simplify the determination of the use and labeling requirements of partially defatted products in finished meat food products.

9. The Agency is considering permitting the use of product that does not meet the requirements of item 3 above only in meat food products in which byproducts are permitted. The meat food product name would be qualified by a phrase such as "with byproducts" or "with variety meats" and the common or usual name of ingredient would appear in the ingredient statement.

The Agency believes that there may be other views on the definitions, standards and policy for partially defatted products. Therefore, before the Agency decides whether to propose any changes in the present standards and policy on partially defatted products, the Administrator requests that interested persons submit their views and other relevant information as comments on this notice. These comments may help the Agency to fashion a policy on partially defatted products that will meet the needs of both industry and the consumers.

Done at Washington, D.C. on August 20, 1985.

L.I. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 85-20245 Filed 8-22-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 17

[Docket No. 85-13]

Required Notification To Nominate Bank Directors

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (Office) proposes to remove Part 17. Part 17 provides that a national bank may require shareholders, other than the bank's present management, who desire to nominate a candidate for election to the board of directors, to notify the bank and the Office at least 14 but no more than 50 days in advance of the shareholder meeting called for the election of directors. This action is needed to remove an unnecessary regulation and one that may encourage adoption of bank articles or by-laws which are unfair to minority shareholders.

DATE: Written comments must be received on or before October 22, 1985.

ADDRESSES: Comments should be directed to: [Docket No. [85-13], Communications Division, Fifth Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington D.C. 20219, Attention: Lynnette Carter. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: James T. Pitts, Assistant Director, Securities and Corporate Practices Division, Office of the Comptroller of the Currency, (202) 447-1954.

SUPPLEMENTARY INFORMATION:

Background

This action involves a regulation which provides that a national bank may adopt an article of association or by-law requiring shareholders other than present management to notify the bank and the Comptroller of an intention to nominate candidates to the bank's Board of Directors.

On April 14, 1980, the Office published for comment a similar NPRM in the Federal Register (45 FR 25078). In response to that proposal, 51 letters were received from the private sector (primarily banks). Thirty-five commentors favored retention or revision, 14 favored rescinding the regulation, and two letters expressed no opinion.

Issues Involved

Two issues are involved in this proposal. The first is whether any significant regulatory purpose is served by retention of 12 CFR Part 17. Historically, the Office has not maintained logs of notices filed under the regulation, in part because filings have been so infrequent. The Part, by its terms, is permissive; there is no requirement that a bank adopt an article of association or bylaw, requiring notice from nonmanagement nominees. Part 17 thus appears unnecessary because, even in its absence, a bank may, under prevailing law, adopt an article of association or bylaw requiring advance notice at least to the bank of nonmanagement nominees.

The second issue is whether retention of Part 17 is unfair to minority shareholders. By its terms, an article or by-law which is consistent with 12 CFR 17, would impose notification requirements only on nonmangement nominees. Management nominees would not be required to submit the information listed in § 17.1 (a)–(e) or to comply with its other provisions.

Alternatives Available

There are alternatives to removing 12 CFR Part 17. One alternative would be to retain the Part, but require management nominees to submit the same information as nonmanagement nominees. Another alternative would be to remove the requirement that the Office be notified. A third alternative would be to retain 12 CFR Part 17 in its present form.

Comments Requested

The Office is once again publishing the proposal for comment. The Office is unsure of whether commentors on the previous proposal understood that even if the regulation were removed, a bank could still provide for prior bank notification in its articles of association or bylaws, or both. The Office requests specific comment on the following issues:

(1) The regulatory purpose to be served by this regulation and the legal ability of a national bank to adopt similar requirements in the absence of regulation;

(2) The treatment of nonmanagement nominees since similar notice is not required for management nominees;

(3) The application of 12 CFR Part 17 as a method to restrict the exercise of cumulative voting rights provided by statute (12 U.S.C. 61);

(4) Whether any useful purpose is served by the current provision stating that "any nomination for director not made in accordance therewith, may be disregarded and the votes cast for such nominee may be disregarded by the vote teller." Under this language, management could refuse to accept the nominees of a minority shareholder, and the votes intended therefore, on the basis that 12 CFR 17 was not precisely followed; and

(5) The alternatives available.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–602), it is certified that this proposal, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. This proposal would remove the burden of the existing regulation. The effect of the proposal is beneficial rather than adverse, and small entities are generally expected to share the benefits equally with larger institutions.

Executive Order 12291

The Office has determined that this proposal does not constitute a "major rule" and, therefore, does not require a regulatory impact analysis. This proposal would ease burdens imposed by regulations and would have no adverse effect on the operations of national banks.

List of Subjects in 12 CFR Part 17

National banks, Nomination of directors.

Authority and Issuance

Under the Comptroller of the Currency's authority in 12 U.S.C. 93a and for the reasons set out in the preamble, 12 CFR Chapter I is proposed to be amended as follows:

PART 17—[REMOVED]

1. By removing Part 17.

Dated: July 12, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85–20199 Filed 8–22–85; 8:45 am]

BILLING CODE 4810–33–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–86–AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the prestall warning electrical system on certain Fokker Model F27 series airplanes. One case of a shorted flap down limit switch caused flap extension, when not selected, through the prestall warning circuits. Unselected flap extension could result in structural failure. This condition may be corrected by isolating the prestall warning circuits from the flap down limit switch circuits.

DATES: Comments must be received on or before October 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–86–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM–113; telephone (206) 431–2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–86–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer en Waterstaat, Rijkluchvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain Fokker Model F27 airplanes. One case of a short circuit in the flap down limit switch, located in the right hand nacelle, was reported, which caused the flaps to extend in flight without having been selected. To preclude this, the prestall warning circuits must be deleted from the flap down limit switch. Fokker issued Service Bulletin F27/34–52 to prescribe these modifications. The RLD issued an airworthiness directive on March 28, 1983, to make Service Bulletin F27/34–52 modifications mandatory. Unselected flap extension could result in structural failure.

This airplane model is manufactured in The Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this type design registered in the United States, an AD is proposed that would require modification of Fokker Model F27 series airplanes that may be operated in the U.S. registry.

It is estimated that there are 40 Fokker Model F27 airplanes on the U.S. register. An investigation in August 1984 disclosed that all of those airplanes had been modified in accordance with Fokker Service Bulletin F27/34–52. However, other Fokker Model F27 series airplanes are eligible for import onto the U.S. register. This NPRM proposes an AD to ensure that unsafe conditions are corrected in the event affected airplanes are imported. The labor costs are estimated at 2 manhours per airplane and $40 per manhour, for a total cost impact of $80 for each affected airplane.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Fokker Model F27 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes, certificated in any category, serial numbers 10102 to 10642 inclusive and 10644. Compliance required within 60 days after the effective date of this AD unless already accomplished:

A. To prevent unselected flap extension, isolate the prestall warning power supply wires from the flap down limit switch in accordance with Fokker Service Bulletin F27/34–52 dated March 23, 1983.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have already received these documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 16, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–20157 Filed 8–22–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–87–AD]

Airworthiness Directives; Fokker B.V. Model F28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection of the pilots' restraint harnesses and the emergency lighting system on certain Fokker Model F28 series airplanes and replacement, modification, or repair as necessary, to correct certain unsafe conditions which may exist. This action is necessary to ensure that the flight crew is properly restrained and that the emergency lighting system properly illuminates door operating instructions.

DATES: Comments must be received on or before October 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–87–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Product

Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (202) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-87-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer en Waterstaat, Rijksluchvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of two unsafe conditions that may exist on certain Fokker Model F28 airplanes. One condition concerns the inertia reels used with some Fokker Model F28 pilot and copilot seats manufactured in the United Kingdom Civil Aviation Authority has made mandatory a service bulletin issued by the manufacturer of the inertia reels. Fokker followed this action with a Fokker service bulletin specifically applicable to F28 airplanes. The other condition concerns the emergency lighting system for one type of interior. Fokker issued a service bulletin calling for modifications to the system, which the RLD classified as mandatory on September 10, 1984. The unsafe conditions and corrective actions are described as follows:

A. Cases of spring failure have occurred in the inertia reel assemblies used with the pilot and copilot seats, which have caused loss of safety harness rewind function and crew restraint during turbulence. Replacement of the spring and a mounting collar with parts of a new design is necessary to ensure proper functioning of the pilots' harnesses. (Reference Fokker Service Bulletin F28/25-93 and Teleflex Morse Limited Service Bulletin 25-00-185429, Issue 2.)

B. For one type of interior arrangement, the instruction placards for operation of the service/emergency door are not legible when emergency lighting is in operation. Modification of the emergency lighting system is necessary to ensure an acceptable level of crashworthiness. (Ref. Fokker Service Bulletin F28/33-32.)

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions may exist or develop on airplanes of this type design registered in the United States, an AD is proposed that would require inspections, modifications, and repairs, as necessary, of the affected Fokker Model F28 series airplanes that may be operated on the U.S. registry.

It is estimated that there are 30 Fokker F28 airplanes on the U.S. register which are currently active. None of these airplanes are affected by these service bulletins. However, airplanes that are affected may be imported and placed onto the U.S. register. This NPRM proposes an AD to ensure that unsafe conditions are corrected in that event. It would require a total of 25 manhours at $40 per manhour to accomplish the requirements of the proposed AD. Parts are estimated to be $431 per airplane. Based on these figures, the total cost per airplane would be $1,431.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Fokker Model F28 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F28 airplanes as indicated in the applicability statement of each service bulletin listed below. Compliance is requested within the next 120 days after the effective date of this airworthiness directive, unless already accomplished.

A. To prevent loss of the pilot and copilot restraint function of the safety harnesses, replace the inertia reel springs and mounting collars in accordance with Fokker Service Bulletin F28/25-93 dated June 4, 1984, and Teleflex Morse Limited Service Bulletin 25-00-185429, Issue 2, dated September 1983.

B. To ensure that instruction placards on the service/emergency door in emergency lighting conditions are legible, modify the emergency lighting system in accordance with Fokker Service Bulletin F28/33-32, dated September 17, 1984.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol

Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 16, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-20156 Filed 8-22-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-75-AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the inboard hinge bolt installation on certain Fokker Model F27 series airplanes. One case has been reported of restricted aileron movement due to a loose bolt/bush connection at the aileron inboard hinge point, which permitted the spring tab balance lever to interfere with the wing cutout. Restricted aileron movement or a jammed aileron could result in loss of roll control.

DATES: Comments must be received on or before October 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-75-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Project Support, P.O. 7600, 1117ZJ Schiphol Oost, The Netherlands. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch ANM-13; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Moutain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-75-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer en Waterstaat, Rijkluchvaartdeinst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain Fokker Model F27 airplanes. One case has been reported of restricted aileron movement which was attributed to a loose bolt/bush connection at the inboard aileron hinge point at wing station 10030. Fokker issued Service Bulletin F27/57-58 to establish a means to modify the hinge bolt installation and preclude the interference. The RLD issued an airworthiness directive on June 30, 1983, to make the service bulletin modifications mandatory.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this type design registered in the United States, an AD is proposed that would require modification of the aileron inboard hinge bolt installations.

It is estimated that 32 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $44 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,248.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Fokker Model F27 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes, serial numbers 10105 to 10635 inclusive, certificated in any category. Compliance required within 180 days after the effective date of this AD, unless already accomplished:

A. To prevent restricted aileron movement or jamming, modify the aileron inboard hinge bolt installations in accordance with Fokker Service Bulletin F27/57-58 dated May 16, 1983.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Project Support, P.O. Box 11172J Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 16, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-20155 Filed 8-22-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-76-AD]

Airworthiness Directives; Fokker B.V. Model F28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection, and modification, if necessary, of certain cabin fire extinguishers installed in Fokker Model F28 series airplanes. Several fire extinguishers have been found which have out-of-tolerance cartridge holders which could prevent activation of the extinguisher in the event of a cabin fire. Correction of out-of-tolerance cartridge holders is necessary to ensure proper operation of the fire extinguisher.

DATES: Comments must be received on or before October 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-76-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands, or Walter Kidde, S.E. Service Center, 3994 N.W. 27th Street, Miami, Florida 33142. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-76-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer en Waterstaat, Rijksluchtvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain Fokker F28 airplanes. Several cartridge holders on certain Walter Kidde portable fire extinguishers were reported to have out-of-tolerance internal dimensions which could cause the extinguishers to malfunction. Walter Kidde Service Bulletin 26-20-240 was issued to correct the problem. Fokker Service Bulletin F28/26-12 was issued September 28, 1981, to provide the means for corrective action specifically for Model F28 airplanes. On October 23, 1981, the RLD made the Fokker Service Bulletin mandatory by the issuance of an airworthiness directive.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist on airplanes of this type design registered in the United States, an AD is proposed that would require inspection of certain Walter Kidde fire extinguishers, located in the cabin of Model F28 airplanes, and modification if out-of-tolerance cartridge holders are found.

It is estimated that 16 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $640.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model F28 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Fokker Model F28 airplanes, S/N's 11003 to 11171 inclusive, 11991 and 11992, certificated in any category, equipped with Walter Kidde fore extinguishers P/N 8900317, 892480, or 893948. Unless already accomplished, as indicated with an "x" punch stamped or "SB26.20.240" ink-stamped on the cartridge holder, accomplish the following within 60 days after the effective date of this AD:

A. To preclude the malfunctioning of these fire extinguishers, inspect the cartridge holders for proper internal dimension tolerances, and replace, if necessary, in accordance with Fokker Service Bulletin F28/26–12 dated September 28, 1981.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands, or Walter Kidde, S.E. Service Center, 3994 N.W. 27th Street, Miami, Florida 33142. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 16, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–20154 Filed 8–22–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Proposed Change of Practice Regarding Country of Origin (Substantial Transformation) Determinations of Threading of Certain Pipe Fittings

AGENCY: Customs Service, Treasury.

ACTION: Proposed change of practice and request for comments.

SUMMARY: Customs is reviewing its practice in which pipe fittings, produced in one country, are considered to have been substantially transformed by threading operations performed in a second country so as to be considered products of the second country. The current practice is based upon a published Customs ruling in which it was found that pipe fittings were transformed into products of the country in which such threading operations occurred and, as a result, the fittings were denied duty-free entry under the Generalized System of Preferences (GSP). The proposed change, however, is not limited to importations involving GSP issues since the question could just as easily arise in a non-GSP context. Comments are invited on the proposed change before any determination is made with regard to the issue.

DATES: Written comments must be received on or before October 22, 1985.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8237).

FOR FURTHER INFORMATION CONTACT: John L. Valentine, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its practice of considering pipe fittings which are produced in one country and threaded in a second country, to have been substantially transformed by the threading operation. As a result of the substantial transformation, the country of origin for the threaded pipe fittings has been considered to be the second country. The country of origin of imported products is determinative of a number of issues for Customs purposes, including the amount of duty owed, qualification for duty-free entry under the statutory Generalized System of Preferences (GSP), and the application of certain quota restrictions.

The current practice is based upon a published Customs Service ruling of November 9, 1978 (C.S.D. 79–437, 13 Cust. Bul. 1666 (1979)). Pursuant to § 177.10(b), Customs Regulations (19 CFR 177.10(b)), the publication of a ruling in the Customs Bulletin which affects a rate of duty or charge, will establish a practice. Further, pursuant to section 315, Tariff Act of 1930, as amended (19 U.S.C. 1315), and § 177.10(c), Customs Regulations (19 CFR 177.10(c)), prior to publication of a ruling which changes an established practice, Customs is required to publish the fact that the practice is under review and to afford interested parties an opportunity to comment on the contemplated change.

The practice is under review in light of several judicial decisions on whether specific processing operations are sufficient to affect the country of origin of an imported article for Customs tariff purposes. One example is the decision in the case of *Uniroyal, Inc.* v. *United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982), in which pre-shaped soles were attached to substantially complete shoes from Indonesia, after the shoes had entered the U.S. The court found that the shoes were not substantially transformed as a result of the domestic application of soles, and thus remained products of Indonesia for marking purposes. Although the long-standing criteria which examine whether the name, character, or use of an article have been altered by post-manufacture processing are still valid, the court in *Uniroyal, supra.*, again reviewed and discussed the criteria which may be considered in determining whether such processing has led to a substantial transformation of a product. Among these are the nature of the processing in the second country and whether this processing has left the identity and fundamental character of the first country product intact. Although the case focused primarily on the issue of country of origin marking, the findings and reasoning of the court can have application to other Customs considerations.

Accordingly, Customs is seeking comments on the proposal to consider the threading of pipe fittings in a second country to be insufficient to affect the country of origin of the imported merchandise.

Authority

Because the proposed change, if adopted, could change the amount of duties assessed on the merchandise or involve quota restrictions, and could be of significant interest to both importers and the domestic industry, Customs is giving this notice and opportunity to comment as provided by section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Comments

Before making a determination on this matter, Customs will consider any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31

CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 85-20206 Filed 8-22-1985; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket Nos. 84P-0231 and 84P-0268]

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Proposed Essential Uses; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that proposed to add to the list of products containing chlorofluorocarbon for an essential use metered-dose nitroglycerin human drugs and metered-dose cromolyn sodium human drugs. The correct route of administration of metered-dose nitroglycerin human drugs is "to the oral cavity" rather than "for oral inhalation." This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Ed Farha, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-17530 appearing on page 30210 in the issue for Wednesday, July 24, 1985, the following corrections are made:

1. On page 30210, second column, the first sentence under "Summary" should have read "The Food and Drug Administration (FDA) is proposing to add to the list of products containing a chlorofluorocarbon for an essential use metered-dose nitroglycerin human drugs administered to the oral cavity and metered-dose cromolyn sodium human drugs administered by oral inhalation."

2. On page 30210, third column, second paragraph under "II. Petitions Received by FDA," the second sentence should have read "It requests that § 2.125(e) be amended to include metered-dose glyceryl trinitrate human drugs administered to the oral cavity as an essential use of chlorofluorocarbon."

3. On page 30211, third column, § 2.125(e)(10) should have read "Metered-dose nitroglycerin human drugs administered to the oral cavity."

Dated: August 19, 1985.

Mervin H. Shumate,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-20162 Filed 8-22-85; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 568; Ref: Notice No. 566]

Disclosure of Sulfiting Agents in the Labeling of Wine, Distilled Spirits and Malt Beverages; Extension of Comment Period

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the 60-day comment period for Notice No. 566 (50 FR 26001, June 24, 1985). In Notice no. 566, ATF proposes the disclosure of the presence of sulfur dioxide or sulfiting agent on the label of a beverage alcohol product where the level of sulfur dioxide or sulfiting agent, expressed as total sulfur dioxide, equals or exceeds the level of measurable detection established by the U.S. Food and Drug Administration (FDA) for sulfiting agents added to foods and beverages. In the **Federal Register** of April 3, 1985, FDA proposed 10 parts per million as the level of measurable detection.

DATE: Comments must be received by December 23, 1985.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, (Ref: Notice No. 566).

Copies of this proposal and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4406, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, Coordinator, or James P. Ficaretta, Coordinator, FAA, Wine and Beer Branch, Room 6237, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, telephone: (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of June 24, 1985, ATF published Notice No. 566 wherein ATF proposed the disclosure of the presence of sulfur dioxide or of a sulfiting agent on the label of a beverage alcohol product in which sulfur dioxide or a sulfiting agent is present at a measurable level of detection, namely, 10 parts per million expressed as total sulfur dioxide.

ATF has received numerous verbal inquiries and written requests for an extension of the comment period. Among the requests is that of the Wine Institute of San Francisco, California, for sufficient time to conclude ongoing medical and scientific testing which has the potential to develop new information relative to the proposal. The wine industry has funded research in order to determine whether the use of sulfiting agents in the processing of wine presents the health risks found in some sulfited foods. ATF believes that the granting of additional time is warranted in order to complete the public record and, accordingly, is extending the comment period to December 23, 1985.

Drafting Information

The authors of this document are Coordinators Michael J. Breen and James P. Ficaretta of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

This notice is issued under the authority contained in Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Approved: August 19, 1985.

Stephen E. Higgins,
Director.

[FR Doc. 85-20175 Filed 8-22-85; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 772, 773, 774, 779, 780, 783, and 784

Permit Application and Coal Exploration, Historic Preservation Requirements; Availability of Petition To Initiate Rulemaking

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of a petition to initiate rulemaking and request for comments.

SUMMARY: The Office of Surface Mining (OSM) seeks comments in relation to rule changes suggested in a petition, submitted pursuant to the Surface Mining Control and Reclamation Act (the Act), to amend OSM's existing regulations on permit application and coal exploration requirements.

The suggested changes in the rules would (1) Require applicants for permits for surface coal mining operations to review State Historic Preservation Office files for information on historic resources in the region of the permit area and to conduct such field inspections as the State Historic Preservation Officer recommends, consistent with applicable Department of the Interior and Advisory Council on Historic Preservation standards, (2) cause applicants for permits to explore for coal or to develop surface mines to develop a program, in consultation with the appropriate State Historic Preservation Officer and the Advisory Council on Historic Preservation, to ensure that historic resources in the permit area are not adversely affected during coal exploration, and are physically preserved or recorded, and (3) ensure that the Advisory Council is afforded a reasonable opportunity to consult with State regulatory authorities and permit applicants on applicants' proposed programs.

The comments on the rule changes suggested in the petition will assist the Director of OSM in making the decision whether to grant or deny the petition.

DATE: OSM will accept written comments on the petition until 5:00 p.m. Eastern Daylight time on October 7, 1985.

ADDRESS: Written comments must be mailed to the Office of Surface Mining, U.S. Department of the Interior, Division of Permit and Environmental Analysis, 1951 Constitution Ave., NW., Washington, D.C. 20240, or hand-delivered to Office of Surface Mining, U.S. Department of the Interior, Division of Permit and Environmental Analysis, Room 5111, 1100 L St., NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mark Boster at the Washington, D.C. address listed above (telephone: 202–343–1480).

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures

Written Comments

Written comments submitted on the suggested rule changes should be specific, should be confined to issues pertinent to the petition, and should explain the reasons for the comment. Comments received after the close of the comment period (see **"DATES"**) may not necessarily be considered or included in the administrative record on the petition. OSM cannot ensure that written comments received or delivered during the comment period to any location other than that specified under **"ADDRESS"** above will be considered and included in the administrative record on this petition.

Availability of Copies

Additional copies of the petition and copies of appropriate sections of 30 CFR Chapter VII may be obtained at the location listed under **"ADDRESS."**

Public Meetings

No public hearing is being set. However, the Headquarters staff of OSM will be available to meet with the public during business hours, 8:00 a.m. to 4:00 p.m., during the comment period. In order to arrange such a meeting, call or write to the person listed above under **"FOR FURTHER INFORMATION CONTACT."**

II. Background and Substance of Petition

OSM received a letter dated September 15, 1983, from the Society of Professional Archeologists (SOPA), presenting a petition for revision of the historic preservation requirements found throughout various sections of 30 CFR Chapter VII by amending 30 CFR 772, 773, 774 (formerly 788), 779, 780, and 784. Part 783 for underground mines would be subject to the same changes as Part 779 for surface mines. Pursuant to Section 201(g) of the Act, any person may petition for a change in OSM's permanent program rules. The Act allows for a period of 90 days within which to decide to grant or deny a petition (Section 201(g)(4); 30 U.S.C. 1211(g)(4)). Under the applicable regulations for rulemaking petitions, 30 CFR 700.12(c), the Director may first determine whether the petition may have a reasonable basis.

On January 13, 1984, the Director notified SOPA that the petition was being rejected. Subsequently, SOPA appealed this determination and requested that the petition be reconsidered. Since several of the issues addressed by the petition were at that time before the District Court of the District of Columbia, OSM postponed further consideration of the petition, pending a decision in the litigation. On July 15, 1985, the District Court issued its decision. *In Re: Permanent Surface Mining Regulations Litigation, (11),* No. 79–1144 (D.D.C. 1985).

The Director has determined that the petition for amendment of the regulations has a sufficient basis to seek comments on the proposed rule changes. Accordingly, OSM seeks public comments on the amendments suggested by SOPA. The substance of the petition was included in four attachments to the petition and appears as an appendix to this notice; briefly, the petition seeks changes in the regulations which would (1) require applicants for permits for surface coal mining operations to review State Historic Preservation Office files for information on historic resources in the region of the permit area and to conduct such field inspections as the State Historic Preservation Officer recommends, consistent with applicable Department of the Interior and Advisory Council on Historic Preservation standards, (2) cause applicants for permits to explore for coal or to develop surface mines to develop a program, in consultation with the appropriate State Historic Preservation Officer and the Advisory Council on Historic Preservation, to ensure that historic resources in the permit area are not adversely affected during coal exploration, and are physically preserved or recorded, and (3) ensure that the Advisory Council is afforded a reasonable opportunity to consult with State regulatory authorities and permit applicants on applicants' proposed programs.

At the close of the comment period, a decision will be made whether to grant or deny the petition. If the decision is made to grant the petition, either in part or whole, rulemaking proceedings will be initiated in which public comment will again be sought before any final rulemaking notice appears. if the decision is made to deny the entire petition, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision is made to grant the petition, a formal rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage nor is a regulatory impact analysis necessary under Executive Order 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4322(2)(C), is needed.

List of Subjects

30 CFR 772, 774

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR 773

Coal mining, Surface mining, Underground mining.

30 CFR 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

Dated: August 19, 1985.

Brent Wahlquist,

Acting Director.

Appendix

Attachment #1: Statement of Petitioner's Interest

The Society of Professional Archeologists (SOPA) is a national archeological organization among whose central purposes it is to represent the professional practitioners of the discipline of archeology. Among the preeminent responsibilities of every professional archeologist is the responsibility to "actively support conservation of the archeological resource base" (SOPA Code of Ethics 1.1(b).). Whenever an archeological or historic property or site is lost to surface coal mining without prior professional-quality study, the American people as a whole lose a little of their heritage. Without archeological sites to study, archeologists cannot answer the multitude of questions about past human behavior, changing natural and social systems, and culture-history that are fundamental to our knowledge of past human cultures and their relationship to the present.

Many of SOPA's members live and work in states having substantial coal resources in non-federal ownership, and have first-hand experience with the variety of ways in which State Regulatory Authorities approach (or ignore) the problems of archeological site identification when considering permits to mine coal. Accordingly, SOPA is aware of the impacts that coal mining is having on archeological and historic properties today in the absence of effective federal regulation.

Since 1978, SOPA has had a standing committee on surface mining which has reviewed and commented on regulations and agreements dealing with historic preservation and surface mining.

Attachment #2: Facts, Technical Justification, and Law Supporting Need For Rulemaking

30 CFR 772.12(b)(8) (ii) and (iii) of OSM's proposed amended regulations require applicants for permits to explore for coal to describe "cultural or historical resources known to be eligible for listing in the National Register of Historic Places and . . . . known archaeological resources located within the proposed exploration area." 30 CFR 776.12(a)(5) of the existing regulations requires that "historic . . . features" be mapped by applicants for exploration permits.

30 CFR 779.12(b) and 779.24(i) require that properties eligible for inclusion in the National Register of Historic Places be identified and located on maps, "based on all available information" (30 CFR 779.12(b)). 30 CFR 783.12(b) and 783.24(i) impose the same requirements upon applicants for permits for underground mining.

Both the existing and proposed regulations are silent, however, as to:

(a) How properties eligible for but not yet listed in the National Register of Historic Places are to be identified by applicants, and

(b) What a State Regulatory Authority is to do when mining will impact such a property.

Absent guidance from the regulations on these matters, some states have reached the logical conclusion that they should establish procedures parallel with those used by the Department of the Interior and the Advisory Council on Historic Preservation to implement sections 106 and 110 of the National Historic Preservation Act and Executive Order 11593 (36 CFR Parts 63 and 800).

Such states (e.g., Maryland) require applicants to consult with the State Historic Preservation Officer (SHPO) and carry out field surveys as necessary to identify eligible properties; they then require that provision be made in mining plans for the preservation of such properties or for their thorough scientific study before their destruction. A few states (notably Maryland) have undertaken the development of "predictive models" to guide applicants and regulatory authorities in decision making, along the lines espoused by the OSM in its proposed Programmatic Memorandum of Agreement covering coal mining on Federal lands.

Other states (e.g., Indiana, Kentucky), however, have not reached the same conclusion, and surface mines are permitted in areas which: (1) contain recorded historic properties that have not yet been evaluated for National Register Listing; and (2) have not been surveyed for historic properties but can be predicted to contain properties which may be eligible for such listing. Effectively, these states require consideration only of those properties that, for one reason or another, have already been entered in the National Register. For all practical purposes this excludes from any consideration in coal mine planning all historic properties except those that meet the OSM's strict standards for designation as "unsuitable for mining"—that is, those properties that are publicly owned and included in the National Register (30 CFR 761.11(c) proposed).

The privately owned historic properties that are excluded from consideration by some State Regulatory Authorities represent a variety of site types (small camps, settlements, villages, cemeteries, burial mounds, etc.) and some 12,000 years of our nations' cultural heritage. There are many thousands of these properties, but only a small proportion are likely to meet OSM's unsuitable for mining criteria as significant to our nation's history and prehistory. The significant properties that are being and will be lost to surface mining are finite and non-renewable historic and scientific resources. The loss is clearly a national concern. Because both Euro-American and prehistoric and historic American Indian settlements were located *without respect* to state boundaries, the state's unequal consideration of historic

properties has resulted in an unsatisfactory patch-work attempt to conserve and research the important aspects of our nation's heritage. When unmitigated destruction by surface mining removes from the scientific record particular types of properties or portions of settlement patterns, then there is no further opportunity to study those types or patterns.

Although we disagree with the OSM's interpretation of the requirement of law pertinent to designation of lands unsuitable, it is not the intent of this petition to challenge this interpretation. Rather, we are concerned about the large numbers of properties which have not yet been physically identified and registered with authorities, or which have been found but have not yet passed through the administrative processes for listing in the National Register. Any one of these properties may or may not, on its own merits, be worthy of preservation or data recovery in advance of its sacrifice to coal mining, but each certainly deserves to be identified and considered during decision making on a mining permit application. OSM apparently agrees, since it requires that information on such properties be placed by the applicant before the State Regulatory Authority. In the absence of clear Federal guidance as to how such properties are to be (a) identified and (b) considered in decision making, however, such properties are not being identified and considered in many states, and hence will continue to be lost without prior scientific study.

Attachment #3: Previous Consideration in Rulemaking

30 CFR Section 700.12(c) says that "facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis" for new rulemaking. A broad reading of this statement could be taken to bar from consideration anything that a rule maker had thought about during the drafting process; we assume that a much narrower reading is in order, if Section 700.12 is to serve any purpose.

Although discussions of "cultural resources" in the Final Environmental Statement (FES) on OSM's proposed regulation changes (See especially pages III–10 through 12, Volume 1) suggest that the subject of our concern has been considered in rulemaking, we contend that it has not. In fact, OSM's consideration of cultural resources has been dominated by its concern for narrowing the application of the criteria for designating lands unsuitable for mining, which is *not* the subject of this petition. Nowhere in OSM's proposed revisions to the permanent program regulations do we find effective treatment of how State Regulatory Authorities are to ensure that submissions pursuant to Sections 772.12(b)(8)(ii) and (iii), 776.12(a)(5), 779(12)(b), 779.24(i), 783.12(b) and 783.24(i) contain meaningful data on historic properties, or that such data are meaningfully used in permit decisionmaking; nor do we see in the FES any evidence that providing such treatment was seriously considered. The FES essentially circumvents the issue by alluding to a Programmatic Memorandum of Agreement entered into by the OSM and Advisory Council on Historic Preservation, which, if it had been implemented, would have required rule changes to ensure that historic properties were effectively identified and considered. The FES goes on to say, however, that "the PMOA, which has not been fully implemented, is being renegotiated" (FES Vol. 1, p. III–12). We contacted the Advisory Council on Historic Preservation regarding this renegotiation, and were advised that no negotiations have occurred. To quote Dr. Thomas F. King, Director of the Council's Office of Cultural Resource Preservation:

Both we and OSM have been concentrating on the Federal coal PMOA (note: pertaining only to Federal lands; not pertinent to this discussion); we've suggested starting serious talks about non-Federal lands in the wake of the Niquette petition (note: a lands unsuitable petition in Kentucky), but nothing has moved as yet.

In other words, OSM in its rulemaking has merely deferred indefinitely any consideration of the concerns that stimulate this petition. The purpose of this petition is to request that this deferral be ended and the matter be dealt with at once.

Attachment #4: Suggested Regulatory Language

(1) We suggest that language similar to the following be inserted in 30 CFR Sections 772.12(b)(8)(ii), 779.12(b), and 788.12(b):

"To identify resources eligible for listing on the National Register of Historic Places, the applicant shall review files and publications made available by the State Historic Preservation Officer and other authorities on the history, prehistory, architectural history, and archaeology of the region in which the permit area lies, and conduct such field inspections as the State Historic Preservation Officer recommends in a manner consistent with applicable Department of the Interior and Advisory Council on Historic Preservation standards and guidelines."

(3) We suggest that language similar to the following be inserted in 30 CFR Section 772.12(b)(8):

"(iv) A program, developed in consultation with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the relevant State Historic Preservation Officer, to ensure that cultural, historical, and archaeological resources are not adversely affected during the proposed exploration or, if adverse effect is unavoidable, that the effect is appropriately mitigated."

(3) We suggest that language similar to the following be inserted in 30 CFR Sections 780.11 and 784.11:

"(c) A program, developed in consultation with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the relevant State Historic Preservation Officer, to ensure that properties included in and eligible for the National Register of Historic Places and known archaeological sites are physically preserved or subjected to such recordation and data recovery as is necessary to preserve their research and other values in the public interest."

(4) We suggest that language similar to the following be inserted in 30 CFR Section 773.12:

"Pursuant to Section 106 of the National Historic Preservation Act, the Advisory Council on Historic Preservation and the State Historic Preservation Officer will be afforded the opportunity to consult with the regulatory authority and the applicant regarding the applicant's program for preserving historic properties under Section 772.12(b)(8), Section 780.11, or Section 784.11, whichever is applicable."

[FR Doc. 85–20173 Filed 8–22–85; 8:45 am]
BILLING CODE 4310-05-M

Notices

Federal Register
Vol. 50, No. 164
Friday, August 23, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submittted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Travel and Tourism Administration
Title: In-Flight Survey of Internationnal Air Travelers
Form Number: Agency—N/A; OMB—[illegible]
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 165,600 respondents; 27,600 reporting hours
Needs and uses: The information is used to provide consumer marketing data on international travelers
Affected Public: Individuals
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 15, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–20192 Filed 8–22–85; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, September 18–19, 1985, at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215–521–9600), to discuss the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan, the surf clam and ocean quahog fishery, a task force project, as well as other fishery management matters. For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: August 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–20167 Filed 8–22–85; 8:45 am]

BILLING CODE 3510-22-M

Announcement of Public Hearings on the Draft Environmental Impact Statement Prepared on the Proposed Virginia Coastal Resources Managment Program

Notice is hereby given that the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration U.S. Department of Commerce, will hold public hearings for the purpose of receiving comments on the Draft Environmental Impact Statement (DEIS) prepared on the proposed Virginia Coastal Resources Management Program (VCRMP).

Hearings will be held at the following locations:

September 30, 1985: Fairfax, Virginia, George Mason University, Student Union Building No. II, Rooms 3 & 4, 7:30 p.m.
October 1, 1985: Norfolk, Virginia, Old Dominion University, Webb Center, Room 148–150, 7:30 p.m.
October 2, 1985: Richmond, Virginia, State Capitol Building, House Room 4, 2:00 p.m.
October 3, 1985: Melfa, Virginia, Eastern Shore Community College, Lecture Hall, 7:30 p.m.

The views of interested persons and organizations on the adequacy of the DEIS and the proposed VCRMP are solicited, and may be expressed orally or in written statements. Presentations will be scheduled on a first-come, first-heard basis and may be limited to a maximum of 10 minutes. This time allotment may be extended before the hearing when the number of speakers can be determined. No verbatim transcript of the hearing will be prepared; but staff present will record the general thrust of the remarks. The comment period for this draft environmental impact statement will end on October 7, 1985.

As part of the procedures leading toward approval of the Virginia Coastal Resources Management Program, a Final Environmental Impact Statement (FEIS), reflecting consideration of these comments, will be prepared pursuant to the National Environmental Policy Act of 1969 and its implementing guidelines. All written comments received by OCRM prior to the deadline will be included in the FEIS. Any questions concerning the hearings, please contact Joseph A. Uravitch, Great Lakes and South Atlantic Regional Manager (202) 634–4124.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: August 14, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–20194 Filed 8–22–85; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Proposed Permit Modification; Donald B. Siniff

Notice is hereby given that Donald B. Siniff, Department of Ecology and Behavioral Biology, 109 Zoology, 318 Church Street, S.E. Minneapolis, Minnesota 55455 has requested a modification to Permit No. 479 issued on July 26, 1984 (49 FR 30770), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to take, in McMurdo Sound, Antarctica, twenty(20) of one hundred (100) authorized adult female and pup Weddell seals (*Leptonychotes weddelli*) to assess energy flux via collection of milk samples (adult females), and via tritiated water turnover and blood samples (pups).

Concurrent with the publication of this notice the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data reviews, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235 within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: August 16, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-20239 Filed 8-22-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Rescission of Notice of Intent To Grant Exclusive Patent License

This rescinds the notice of intent to grant an exclusive patent license, FR Document 85-16047, published in the **Federal Register** on July 5, 1985 at pages 27648 and 27649.

The notice of a prospective licensee, published pursuant to 37 CFR 404.7 (a)(1)(i), and the requirement to submit written objections within 60 days are hereby cancelled.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-20241 Filed 8-22-85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Restraint Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Romania

August 20, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 20, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of September 3 and November 3, 1980, as amended, between the Governments of the United States and the Socialist Republic of Romania, a special, agreed increase was applied to the import restraint limit established for man-made fiber sweaters in Category 645/646, produced or manufactured in Romania and exported during 1984. This amount was not fully utilized in 1984; accordingly, the unused amount is being restored to the 1985 limit for this category, increasing it from 182,091 dozen to 195,914 dozen. In addition, the Government of the Socialist Republic of Romania, under the terms of the new Bilateral Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated November 7 and 16, 1984, has requested the application of available carryforward for 1985 in the amount of 11,755 dozen, further increasing the limit to 207,669 dozen. To the extent this carryforward is utilized in 1985, it will be deducted from the 1986 limit for the category. The letter to the Commissioner of Customs which follows this notice makes the aforementioned adjustment.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 20, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry of certain wool and man-made fiber textile products, produced or manufactured in Romania and exported during 1985. The letter further advised you that the limits are subject to adjustment.[1]

Effective August 20, 1985, paragraph 1 of the directive of December 21, 1984 is hereby amended to increase the limit established for Category 645/646 to 207,669 dozen.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-20193 Filed 8-22-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the

[1] The term "adjustment" refers to those provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984 which provide, in part, that: (1) Specific limits may be increased for carryover and carryforward; (2) consultations may be held to adjust levels for categories not subject to specific limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to reflect any imports exported after December 21, 1984.

Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained. .

New

Post Card Registration and Absentee Ballot Request; Standard Form 76

This notice of intent is to revise the Federal Post Card Application form to be used for absentee voting in accordance with the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975, as amended. Individuals covered by these Acts are as follows: (a) a member of the armed forces or merchant marine in active service; (b) a spouse or dependent of (a) above; (c) a U.S. citizen temporarily residing outside the U.S.; (d) a spouse or dependent residing with (c) above; (e) U.S. citizen overseas by virtue of employment; (f) a spouse or dependent residing with (e) above; and (g) other U.S. citizen residing outside the United States, 42 U.S.C. 1973cc & dd requires the Presidential designee, currently the Secretary of Defense, to design a single form of postcard application for registration to vote for an absentee ballot request. The same law recommends that each State accept any official postcard which is duly executed by citizens covered by the Acts as a simultaneous application for registration and for absentee ballot. This proposed change incorporates the information submitted by the States to meet the requirement set forth by 42 U.S.C.

Individuals
Responses 3,000,000
Burden hours 250,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Henry Valentino, Director, Federal Voting Assistance Program, Washington, DC 20301, telephone 202/697–6125.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 19, 1985.

[FR Doc. 85–20184 Filed 8–22–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection

Wage Rates and Fringe Benefits

Section 4(c) of the Service Contract Act provides that where negotiated wages and fringes appear to be substantially at variance with those that prevail in the locality of performance, the affected party(s) may request a hearing to establish prevailing rates. It is necessary to conduct a survey of similar operations utilizing the job classifications in question within the locality for this purpose.

Businesses, large or small, nonprofit institutions.
Responses 150
Burden hours 150

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr W. Doyle Williams, HQ USAF/RDC-LA, Washington, DC 20330, commercial phone (202) 697–1879.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 19, 1985.

[FR Doc. 85–20182 Filed 8–22–85; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection in Use Without an OMB Number

Air Force ROTC Scholarship Nomination (AFROTC Form 36)

The information provided on the form by the applicant is used by the Air Force Reserve Officer Training Corps (AFROTC) Scholarship Central Selection Board in evaluating an applicant's qualifications for a scholarship award. The form reflects information on academic aptitude and performance and includes an evaluation by the applicant's Professor of Aerospace Studies.

Individuals
Responses 2,000
Burden hours 2,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204,

Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Capt Mark W. Rader, AFROTC/RRUC, Maxwell AFB, AL 36112–6663, telephone number (205) 293–6588.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 19, 1985.

[FR Doc. 85–20183 Filed 8–22–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement of Previously Approved Collection

Army ROTC 4-Year Scholarship Application, TRADOC Draft Form

ROTC Scholarships provide the Army with highly qualified men/women who desire to pursue a commission in the U.S. Army. The application and information provided with it forms the basis for a scholarship award.

ROTC Scholarship Applications
Responses: 10,400
Burden Hours: 7,800

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Herbert F. Ewert, DAIM–ADI–M, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 19, 1985.

[FR Doc. 85–20179 Filed 8–22–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisons of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Dispersed Use Recreation Survey

Recreation use figures are needed to supplement research efforts directed toward program evaluation and increasing cost efficient planning, design and management of Corps projects. Standardized survey procedures previously developed for controlled access areas need to be modified to determine the use of undeveloped disbursed use areas.

Individuals or households
Responses: 2,000
Burden Hours: 200

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Herbert F. Ewert, DAIM-ADI-M, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 922–0754.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 19, 1985.

[FR Doc. 85–20180 Filed 8–22–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

U.S. Army New Manning System Facility Health Study

As part of the assessment of the Army's New Manning system, Army personnel managers need to examine the impact of these operational strategies on the health and general well being of Army family members. Army desires to assess the development and outcome of enhanced banding among unit families. The information collected will be maintained in the Army System of records "Health Care and Medical Treatment Records (AO197.01DASG)."

Spouses of Army members
Responses: 2,480
Burden Hours: 3,720

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr.

Herbert F. Ewert, DAIM–ADI–M, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 19, 1985.

[FR Doc. 85–20181, Filed 8–22–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Intent To Prepare a Supplement to the Environmental Impact Statement for a Fleet Ballistic Missile Naval Submarine Support Base, Kings Bay, GA

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) (Title 40 CFR) and the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs, the Officer in Charge of Construction (OICC), TRIDENT, announces the Navy's intent to prepare a Supplement to the Final Environmental Impact Statement for Preferred Alternative Location for a Fleet Ballistic Missile Submarine Support Base, Kings Bay, Georgia.

Completed in August 1977, Draft and Final Environmental Impact Statements (EIS's) described the environmental impacts of locating one tender-based submarine squadron at Kings Bay.

Soon thereafter, Kings Bay was selected by the Navy as the eastcoast base for one TRIDENT submarine squadron. This proposal covered ashore-based facilities development including strategic and defensive weapons storage and transfer, refit industrial support, crew training, waterfront support, administrative and personnel support, on-base housing, and waterfront facilities renovation. The OICC TRIDENT prepared a supplement to the EIS in August 1980 to address the development of ashore-based facilities. Construction dredging plans and configuration for the TRIDENT development were addressed at that time.

The *Ohio* Class submarine is currently undergoing sea trials in the Atlantic Ocean. Recent results of the sea trials have indicated the need for additional water depths in the less-protected coastal waters such as the St. Mary's Entrance. Construction dredging to accommodate this requirement will therefore be required. Depending upon the final decision, the proposed action could include up to 500 acres of additional dredging and 6.7 million cubic yards of additional material disposal. The Navy intends to document its evaluation of environmental impacts associated with the proposed action by the preparation of a Supplemental EIS. This document will update the first Supplemental EIS to incorporate the expanded scope of additional dredging.

Environmental protection during dredging is regulated by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act and Selection 10 of the River and Harbors Act. Maintenance of environmental quality is specifically addressed by legal permit requirements placed upon the Navy.

The OICC TRIDENT has retained an unaffiliated consulting firm to prepare the supplemental environmental statement. During preparation, characteristics of the existing environment will be documented. The potential environmental effects of each of several alternatives and the No-Action Alternative will be addressed. In addition, potential cumulative effects resulting from the proposed action will be evaluated. Comments regarding this evaluation will be sought during the EIS process from interested local, state, and federal governmental agencies during preparation. Written comment is requested before 5 September 1985.

Questions and comments regarding this notice may be addressed to: Officer in Charge of Construction, TRIDENT, Attention: Code 09XE3, 293 Point Peter Road, St. Marys, Georgia 31558, (912) 673–2304.

Dated: August 16, 1985.

William F. Roos, Jr.,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85–20172 Filed 8–22–85; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Inventory of Commercial Activities

AGENCY: Department of Energy (DOE).

ACTION: Notice of DOE commercial activities scheduled for review in accordance with the OMB Circular A–76.

SUMMARY: Pursuant to the requirements of the revised OMB Circular A–76 (dated August 1983), the DOE developed and published an inventory of its commercial activities in 50 FR 20260, dated May 15, 1985, of the **Federal Register**. The information contained in this Notice modifies the Department's inventory by adding additional components to a commercial activity previously listed.

Organization and commercial activity	Geographic location	Date of review
Assistant Secretary, Management and Administration ADP operations, systems programming,* message services, and SACNET operations*.	MD: Germantown....	Sept. 1985.

*New components.

FOR FURTHER INFORMATION CONTACT: Douglas G. Stinchcum, Acting Chief, Management Systems Development and Evaluation Branch, Department of Energy (MA–213.2), Room 4B–194, Forrestal Building, 1000 Independence Avenue SW., Washington D.C. 20585.

Issued in Washington, D.C.: August 19, 1985.

William S. Heffelfinger,

Director of Administration.

[FR Doc. 85–20198 Filed 8–22–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP85–437–000, CP85–552–000]

Mojave Pipeline Co., and Kern River Gas Transmission Co.; Pipeline Projects to Supply Natural Gas for Enhanced Oil Recovery in California; Intent To Prepare a Draft Environmental Impact Statement and Request for Comments on its Scope

August 23, 1985.

Introduction

Applications for approval of the above projects have been filed with the Federal Energy Regulatory Commission (FERC) pursuant to section 7(c) of the Natural Gas Act. The projects would transport natural gas from various sources outside of California to the Bakersfield, California, area for use in enhanced oil recovery (EOR) and related cogeneration projects. In each case, producers of crude oil in the San Joaquin Valley would use the natural gas as boiler fuel to create steam which would be injected into the oil fields to produce crude oil not recoverable by primary recovery methods. Some of the steam would also be used to generate electricity. The producers currently use crude oil and a limited amount of natural gas for steam generation; these projects would allow substitution of natural gas for the crude oil now used, and may allow entry in the market of producers which presently cannot get authority to burn oil due to air pollution restrictions.

The applicants, Mojave Pipeline Company and Kern River Gas Transmission Company, would transport natural gas purchased by the producers. Neither applicant would own the gas transported through their respective pipelines.

In addition to the above projects, the El Dorado Pipeline Project may be filed in the near future. Facilities for this project would be very similar to those proposed for the Mojave Pipeline Project. The scope of the study will include an analysis of all filed projects.

Notice of Intent

Notice is hereby given that the staff of the FERC has determined that approval of these projects would be a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 2.82(b) of the Commission's Rules of Practice and Procedure (18 CFR 2.82(b)), a draft environmental impact statement (DEIS) will be prepared. The FERC will be the lead Federal agency and, with the California State Lands Commission (SLC), will produce a joint environmental impact statement/ environmental impact report (EIS/EIR) satisfying the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), respectively. The EIS/EIR will be prepared by an environmental consultant under contract to the SLC and the joint supervision of both the FERC and the SLC.

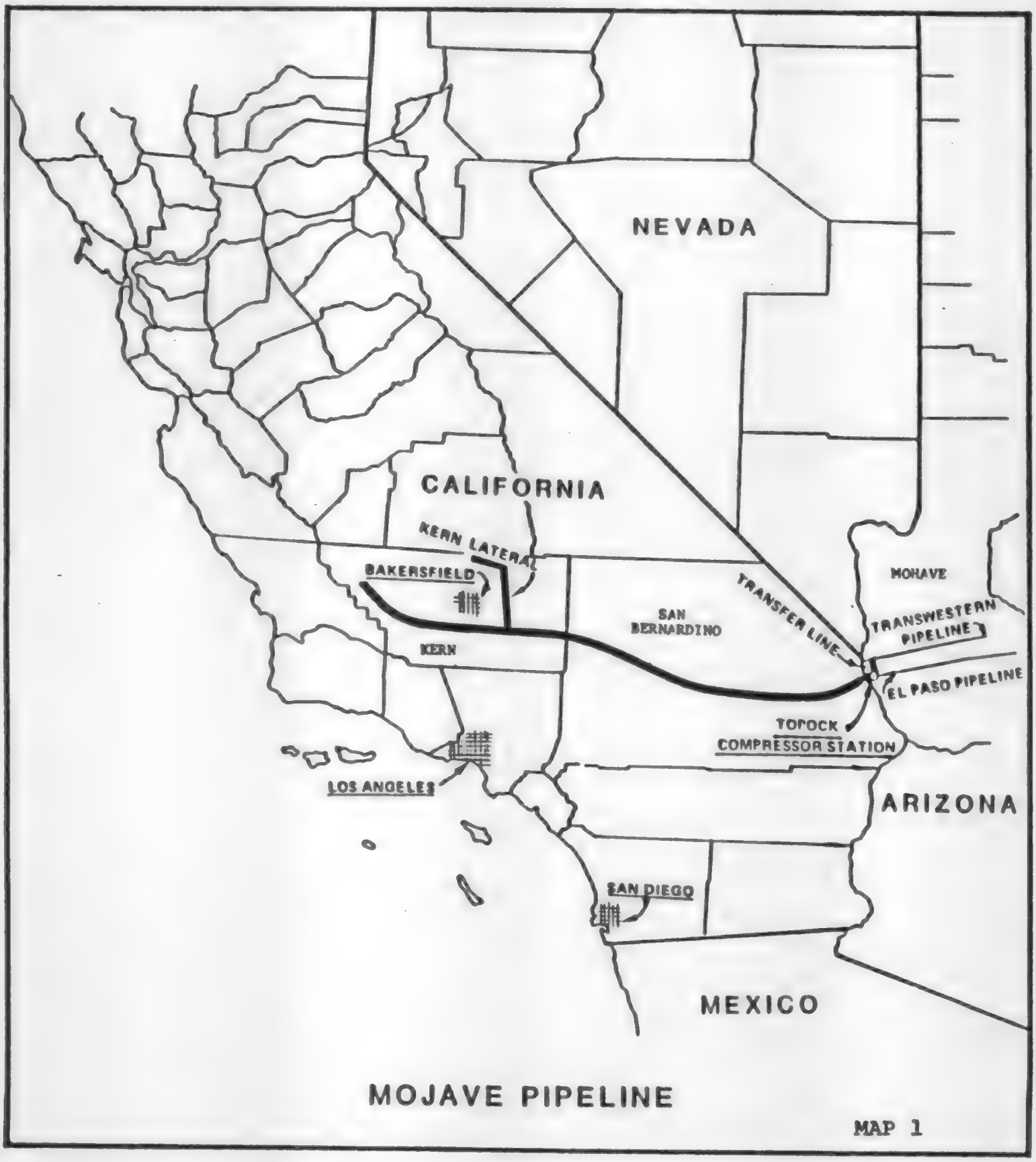
Proposed Action and Alternatives

The proposed action is the issuance of a Federal certificate of public convenience and necessity authorizing the construction and operation of one of these projects. The EIS/EIR will discuss the "no action" alternative, which for the FERC involves disapproving all of the competing proposals, and the alternative of approving one or all of the projects. Choice of the "no action" alternative might not neam that natural gas would not be available for EOR projects in the volumes herein contemplated because natural gas distributors within California might supply such gas. This "no action" may have one of two results: a continuation of the status quo in oil and natural gas usage for EOR in Southern California or an increase in use comparable to what is proposed but provided via existing or expanded intrastate facilities not under the FERC's jurisdiction.

Mojave Pipeline Project

Map 1 shows the location of the proposed Mojave Pipeline Project, including the 24-inch-diameter Mojave Transfer Line, the 36-inch-diameter Mojave Mainline, the 20-inch-diameter Kern Lateral, and the new compressor station in Arizona. The total project is approximatley 389 miles long, and would directly affect approximately 4700 acres of Federal, state, private, and Indian lands during construction, and 2400 acres during operation. It would be located in Mohave County, Arizona, and Kern and San Bernardino Counties, California.

BILLING CODE 6717-01-M



MOJAVE PIPELINE

MAP 1

BILLING CODE 6717-01-C

The proposed Mojave Transfer line traverses the Fort Mohave Indian Reservation and the Havasu National Wildlife Refuge (NWR) in Mohave County, Arizona. This route parallels an existing EL Paso Natural gas (EPNG) pipeline right-of-way (ROW) for 14.0 miles (85 percent of its overall length). EPNG has second line rights for its existing line and this right might be exercised for the Mojave Transfer Line. The northern end of the proposed Mojave Transfer Line parallels a newly installed EPNG line.

The proposed Mojave Mainline traverses the Havasu NWR; the Colorado River; the northernmost portion of Edwards Air Force Base in Kern County, California; the western boundaries of the Elk Hills Naval Petroleum Reserve; and the California and Los Angeles aqueducts in Kern County, California. The majority of the mainline in California is either within Bureau of Land Management (BLM) designated utility corrodors in the California Desert Conservation Area or parallels other existing and proposed pipeline ROW's (Pacific Gas and Electric, Pacific Lighting, and All American). The mainline would follow BLM utility corridor H from near Topock at the Arizona/California border (milepost [HP] 1.25) to near Siberia (MP 90) in San Bernardino County, California.[1] Two existing Pacific Gas and Electric (PG&E) 34-inch-diameter natural gas lines also are within corridor H up to this point. The proposed route deviates from BLM corridors between Siberia (MP 90) and Boron (MP 191) in Kern county, California, in order to avoid the various towns and subdivisions traversed by corridor G in this area (e.g., Daggett, Barstow, and Boron). The proposed route does follow the aforementioned PG&E pipelines west from Siberia to Pisgah (MP 115) outside corridor H. The All American Pipeline would also follow the aforementioned PG&E pipelines in this area. At MP 115 the route leads west-northwest across the Cady Mountains and the north end of Troy Lake to a crossing of the Mojave River and Interstate 15 just east of Toomey. It then heads west around the southern end of the Calico Mountains, north of Lead Mountain, and through the Mitchel Range 2 miles north of Barstow to a point one mile south of Mt. General. From here it heads generally west-northwest to MP 191 north of Boron. The proposed Mojave Mainline generally follows BLM corridor G/proposed All American Pipeline [2] route from near Boron (MP 191) to the area south of Tehachapi in Kern County, California (MP 230); and the proposed All American Pipeline route to the area south of Bakersfield (MP 287). In this general area, the proposed mainline turns in a northwest direction, intermittently paralleling existing Pacific Lighting pipelines over short distances in western Kern County for the final 40 miles.

The 46-mile-long Kern Lateral would begin about 7 miles east of Mettler. It would extend north parallel and about 1/4-mile east of the powerline east of Rancho Road and Rancho Drive, curve east around Comanche Point in the Tejon Hills, leave the powerline, and then head north parallel and about 1/10-mile east of Rock Pile Road. After crossing Highway 58 at Caliente Creek and the AT & SF tracks to the north, it would curve west around the base of the hills and head northwest, crossing Highway 178 due west of the Ant Hill Oil Field, Kern River 2½ miles northwest of Ant Hill, and reach Pasco Creek at the mouth of Mon Canyon. It would head west four miles along the floodplain of Pasco Creek before heading about one mile southwest to its terminus adjacent to the Premier Oil Field.

The new compressor station required for this project would have 22,500 horsepower of compression. It would be located at the junction of the Mojave Transfer Line and the Mojave Mainline. Facilities and equipment at the compressor station would include compressors and a building to house them, buildings for storage, instrumentation and control, a communications tower, gas coolers and dehydrators, water supply, watewater system, and electrical supply.

Kern River Project

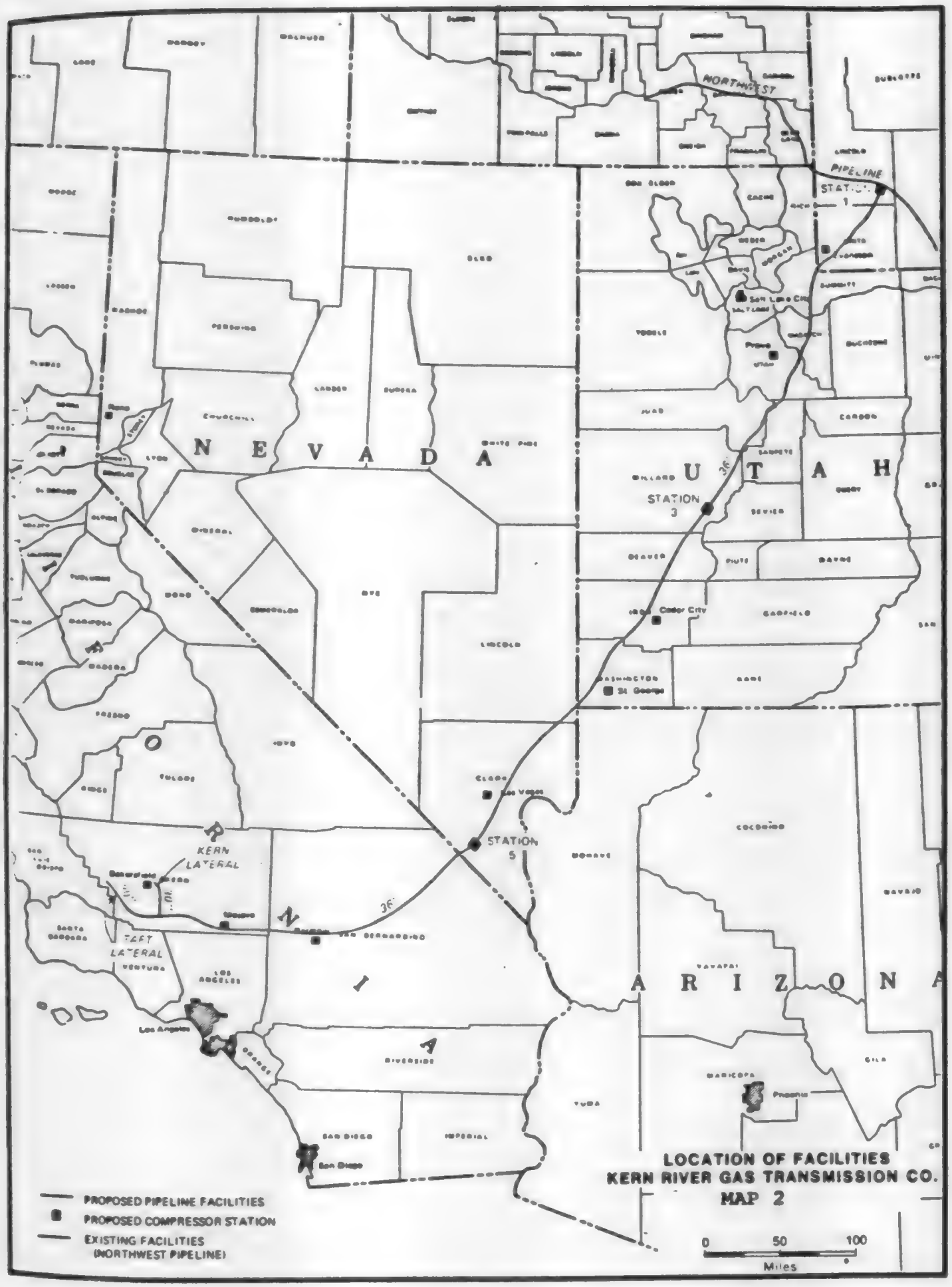
Map 2 shows the location of the proposed Kern River Project including the 36-inch-diameter Kern River mainline, the 30-inch-diameter Taft and Kern River Laterals, and the proposed new compressor stations.[3] The project would cross 15 counties in 4 states, extending between an existing interstate natural gas transmission facility near Opal, Wyoming, and the Bakersfield, California area. Total length of the mainline and two laterals would be approximately 837 miles, distributed as shown in table 1; new compression would total 36,200 horsepower. The proposal would directly affect about 7,600 acres of Federal, state, private and Indian lands during construction and 5,100 acres during operation.

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[1] All MP's are approximate.

[2] The All American Pipeline project, presently under construction, entails a 1,200 mile buried pipline to transport heated crude oil from the Santa Barbara and Santa Maria Basins through Emidio Station, California, to McCamey, Texas. A final EIS for this project was circulated to the public by the SLC and the U.S. Department of the Interior, Bureau of Land Management in January'1985.

[3] Both applicants use the term " Kern Lateral." For clarity, the term "Kern River Lateral" shall be used when referring to the appropriate portion of the Kern River Project.



BILLING CODE 6717-01-C

TABLE 1.—KERN RIVER PROJECT GEOGRAPHICAL DISTRIBUTION OF FACILITIES

State and county	Miles of pipe proposed (approximate)	Compressor station number and horsepower (site-rated)
Wyoming:		
Lincoln	17	#1—17,200 hp
Uinta	36	
Utah:		
Summit	45	
Wasatch	26	
Utah	37	
Sanpete	4	
Juab	42	
Millard	69	#3–9,100 hp
Beaver	37	
Iron	50	
Washington	48	
Nevada:		
Lincoln	23	#5–9,900 hp
Clark	168	
California:		
San Bernardino	144	
Kern	61 (mainline) 75 (lateral)[5]	

The proposed Kern River Mainline commences about 6 miles southwest of Opal, Wyoming at an interconnection with the mainline facilities of Northwest Pipeline Corporation and proceeds southwesterly passing east of Evanston to the Wyoming-Utah border (MP 57). The route continues diagonally across Utah to the southwest corner of the state (MP 409), traversing about 55 miles of land in the Uinta and Dixie National Forests (MP 116 to 183 and 360 to 380, respectively). Minor portions of Manti-La Sal and Fishlake National Forests would also be crossed (MP 170 and 227, respectively). The route would cross the southern tip of Nevada, including a small section of the Moapa River Indian Reservation (MP 464) and the Jean Offroad Recreational Vehicle Use Area (MP 525 to 548), and would pass about 5 miles to the east of Las Vegas (MP 488). From the Nevada/California border (MP 536), approximately 2 miles southwest of Roach, Nevada, the route would follow BLM utility corridor D through a portion of the California Desert Conservation Area to a point in the northern Mojave Valley. Here the route would bend westward, exit corridor D and pass to the north of the Calico mountains.[4] The final segment of the mainline would pass about 7 miles to the north of Barstow and cross the northernmost portion of Edwards Air Force Base (MP 681 through 696), the Los Angeles Aqueduct (MP 714), the Pacific Crest National Scenic Trail (MP 732), and the Arvin Edison Canal (MP 761) before terminating at the bifurcation point (MP 762) about 19 miles south of Bakersfield, California.

[4] Although designated by the BLM for utility routing, corridor D traverses land under study for inclusion in the National Wilderness Preservation System.

From the bifurcation point, the Kern River Lateral would extend northward 28 miles to the Kern River Oilfield 2 miles north of Bakersfield on the east side of Oildale. The lateral would cross the Arvin Edison Canal (MP 16KR), the East Side Canal (MP 17KR) and the Kern River (MP 25KR).[5] The Taft Lateral would extend about 47 miles to the west of the bifurcation point, crossing the Elk Hills Naval Petroleum Reserve and the California Aqueduct (MP 25T) before passing east of and terminating on the north side of McKittrick.

Overall, the Kern River Project (including the mainline and both laterals) would follow existing transportation and utility corridors for approximately 54 percent (450 miles) of its length.

The Kern River Project would require three new compressor stations at MP 0 (6 miles southwest of Opal, Wyoming), MP 267 (25 miles southwest of Fillmore, Utah) and MP 518 (20 miles south of Las Vegas, Nevada). Facilities and equipment at each new station would include compressors and a building to house them, a separate building for storage, instrumentation and control, a communications tower, gas coolers, water supply, wastewater system, and electrical supply.

Pipeline Safety Standards

Both the proposed pipelines would conform to the minimum pipeline safety standards set by the U.S. Department of Transportation. These standards specify minimum pipe wall thickness, strength, and depth of burial for different population densities encountered along the route. Thicker walled pipe is normally used at road crossings and major creek and river crossings. All such crossings, would follow the requirements of all applicable codes and permits. Pipe would be installed by boring beneath railroad tracks and major highways to avoid disrupting their use. Most county roads would be crossed during construction by an open trench.

Land Requirements

The Mojave Pipeline Project, as proposed, would involve a 100-foot-wide construction ROW, disturbing about 4,700 acres. The Kern River Project, as proposed, would require a minimum width of 75 feet, disrupting about 7,600 acres during construction. Both projects would require additional land at watercourse, railroad and highway crossings, as well as for metering stations, communications facilities, maintenance bases, and pipe storage and staging areas to the extent that such are necessary. Additional acreage requirements would range from about 0.5 acre at a new communications site up to 4 acres at a major river crossing; requirements for maintenance bases have not yet been determined.

Permanent ROW's, about 50 feet wide, would be maintained. Except at aboveground facilities, access roads, and where the ROW crosses formerly wooded areas, the ROW could be used as it was before construction as long as structures were not built.

The Compressor station for the Mojave Pipeline Project would require 20 of the 40 acres currently owned by EPNG at its existing Topock Compressor Station. Sites for the Kern River Project's compressor stations would be 20 to 50 acres each.

Construction Procedures

In general, either project is proposed to be constructed within a period of 10–12 months. Construction at any one place along the pipelines would take 6 to 8 weeks between the initial land disturbance and the end of restoration; however, the trench would be open only a few days.

Construction would begin with ROW clearing and grading. The trench, nomally dug by tracked, rotary-wheeled trenching machines, would be deep enough to provide a minimum cover of 30 inches in normal soils and about 18 inches in rock. Trenching in rock generally requires that a tractor-mounted ripper or blasting and backhoe be used.

The pipe would be strung along the ROW and bent as required to conform to the bottom of the trench. Pipe sections would be welded and radiographically inspected in compliance with the Department of Transportation's minimum Federal Safety Standards. Before being placed in the trench, the pipe would be coated to inhibit corrosion. After the pipe was placed in the trench, the trench would be backfilled with the spoil excavated from the ditch. Select backfill would be used where the trench was excavated in rock. The backfill would be compacted, and a 2–8 inch crown would generally be left over the ditch to compensate for settlement.

Land would be returned to near-original contours, and generally restored in accord with landowner requirements, where possible. Detailed of the companies' erosion control and revegetation plans are not yet available.

[5] MP numbers along the Kern River Lateral are followed by "KR', while those along the Taft Lateral are followed by 'T'.

The method of trench excavation across streams would vary with the characteristics of the stream. Normal trenching methods would be used to traverse dry washes, intermittent or small streams. Conventional bucket-type dredges operating from the banks would generally be used for medium-sized streams. In-stream methods employing barges or partial diversion of the streamflow would be used for larger streams and rivers except where the Mojave Mainline crosses the Colorado River. Here the proposed pipeline would be placed on an existing bridge which previously was part of U.S. Highway 66.

After construction, the pipeline would be hydrostatically tested in lengths dictated by elevation differentials and availability of water. This would require approximately 81,900 to 268,000 gallons of water per test mile segment for 20- and 36-inch-diameter pipe, respectively. Test water would be obtained from rivers, creeks, or existing wells and would be reused as many times as practical. The water would be returned to its source or to another suitable point of discharge in accordance with applicable state and Federal regulations.

Construction of each compressor station would be contemporaneous with pipeline construction and would take 6 to 10 months. After site preparation and foundation excavation, the foundations for the engines and building would be poured. Construction would be scheduled so that the compressor engines could be installed before any significant work began on the building to house it. Following engine installation, the building and the rest of the station would be completed.

Construction of the Mojave Pipeline Project would be within or near:

Fort Mohave Indian Reservation (AR)
Havasu National Wildlife Refuge (AR)
Edwards Air Force Base (CA)
California Desert Conservation Area (CA)
Pacific Crest National Scenic Trail (CA)
Elk Hills Naval Petroleum Reserve (CA)

Construction of the Kern River Project would be within or near:

Uinta National Forest (UT)
Manti-La Sal National Forest (UT)
Fishlake National Forest (UT)
Dixie National Forest (UT)
Moapa River Indian Reservation (NV)
Jean Off-Road-Vehicle Recreation Area (NV)
Sunrise Mountain Natural Area (NV)
Rainbow Gardens Natural Area (NV)
California Desert Conservation Area (CA)
East Mojave National Scenic Area (CA)
Edwards Air Force Base (CA)
Pacific Crest National Scenic Trail (CA)
Elk Hills Naval Petroleum Reserve (CA)

Cooperating Agencies

The following Federal agencies are being formally requested under separate cover to indicate whether they wish to be cooperating agencies in production of the EIS:

Advisory Council on Historic Preservation
Department of Agriculture:
Soil Conservation Service
U.S. Forest Service
Department of Commerce:
National Oceanic and Atmospheric Administration
Department of Defense:
Department of the Air Force
Department of the Army
Department of the Navy
U.S. Marine Corps
Corps of Engineers
Department of Energy
Department of the Interior:
U.S. Fish and Wildlife Service
U.S. Geological Survey
Bureau of Indian Affairs
National Park Service
Bureau of Reclamation
Bureau of Land Management[6]
Department of Transportation:
Federal Highway Administration
Federal Railroad Administration
Environmental Protection Agency
Interstate Commerce Commission.

Any other agencies desiring cooperating agency status should send a request describing how they would like to be involved to:

Kenneth F. Plumb, Secretary,
Federal Energy Regulatory Commission,
825 North Capitol Street, NE.,
Washington, DC. 20426

The request should reference the above dockets and should be received by October 11, 1985. Additional information, including maps of limited areas of the proposed routes, about these projects and FERC's involvement in the EIS/EIR may be obtained from Mr. Robert K. Arvedlund, Environmental Evaluation Branch, OPPR, at the address on the previous page or by telephone: (202) 357–9043. Mr. Arvedlund should be sent a copy of any request for cooperating agency status.

Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agencies. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the EIS; however, the lead agencies will decide what modifications will be adopted in light of production constraints.

Information concerning the involvement of the SLC in the EIS/EIR may be obtained from Ms. Mary Griggs, 1807 13th Street, Sacramento, California 95814, telephone (916) 322–0354. As of this notice the FERC is aware that the BLM will be a cooperating agency. The BLM contact for the environmental analysis of these projects is Mr. Bill Haigh, California Desert District, 1695 Spruce Street, Riverside, California 92507, telephone (714) 351–6428.

Comment and Scoping Procedure

The FERC and the SLC intend to prepare an EIS/EIR for these projects under the overall title: *Natural Gas for EOR In Southern California.* The scope and geographic diversity of the competing proposals would make a single volume EIS unwieldy. It is currently anticipated that separate volumes will be prepared for the Mojave and El Dorado [7] Pipeline Projects, and the Kern River Project. A comparative analysis and discussion for the environmental considerations of the three proposals will also be prepared in a separate volume.

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, and parties to the FERC and any SLC proceedings. Interested readers of this notice are encouraged to comment on anticipated environmental concerns associated with the projects. Comments will be used by the FERC and the SLC to identify the issues which require in-depth environmental analysis.

Comments (on the scope of the EIS/EIR) should also be addressed to the Secretary, Federal Energy Regulatory Commission. Recommendations that the EIS address specific issues should be supported with a detailed explanation of the need to consider such issues. Written comments should be submitted by October 11, 1985, and referenced to Docket Nos. CP85–437–000, and CP85–552–000.

Joint scoping meetings will be conducted by the FERC and the SLC. At present, joint scoping meetings are planned for Heber City, Utah; Las Vegas, Nevada; and Barstow and Bakersfield, California. The dates, locations, and format of the meetings will be identified in a subsequent **Federal Register** notice. Commenters are encouraged to nominate potential scoping meeting locations.

[6] BLM has agreed to be a cooperating agency.

[7] This assumes that the El Dorado Pipeline Project is filed in a timely manner.

Mailing Lists

Organizations and individuals receiving this Federal notice of intent to prepare an EIS have been selected to ensure public awareness of these projects and public involvment in the review process under both NEPA and CEQA. The EIS will be sent automatically to addressees on the Federal Energy Regulatory Commission's official service list for these projects, the California State Lands Commission's mailing list, and to the appropriate Federal agencies, and state clearing houses in states where each project is located. However, to reduce printing and mailing costs and related logistical problems, the EIS's will only be distributed to those other organizations, local agencies and individuals who specifically make a request, preferably within 90 days of the date of this notice. These requests should indicate whether you wish to receive (1) Kern River EIS Volume, (2) Mojave/El Dorado EIS Volume, (3) Comparative Analysis Volume, or (4) All of the above. These requests should be sent, along with your mailing address to: ATTN: Robert K. Arvedlund, Room 7102, Office of Pipeline and Producer Regulation, Environmental Evaluation Branch, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20119 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7004-001, 8841-000, 8848-000, 9032-000, 9071-000]

City of Rock Falls, et al.; Availability of Environmental Assessment and Finding of No Significant Impact

August 19, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for exemption from licensing listed below and has assessed the environmental impacts of the proposed developments.

EXEMPTIONS

Project No.	Project name	State	Water body	Nearest town	Applicant
7004-001	Upper Sterling Dam	IL	Rock River	Rock Falls	City of Rock Falls.
8841-000	Otter Creek	NY	Otter Creek	Glenfield	W. Kruger & M Preston.
8848-000	Sawyer Mills Dam	NH	Bellamy River	Dover	Sawyer-Bellamy Mill Associates.
9032-000	Bell	CA	Fiddler Green Canal	Auburn	Swiss-American Company.
9071-000	Santa Rosa Valley	CA	Calleguas Municipal Water District.	Thousand Oaks	Calleguas Municipal Water District.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commissioner's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environment impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20216 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS85-63-000 et al.]

Craig, Ltd., a Texas Limited Partnership; Applications for "Small Producer" Certificates [1]

August 16, 1985.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before September 3, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS85-63-000	[1] 7/16/85	Craig, Ltd., a Texas Limited Partnership, P.O. Box 1364, Midland, Texas 79702.
CS85-73-000	8/3/85	American International Energy Corporation, 5701 Woodway, Suite 338, Houston, Texas 77057.
CS85-87-000	8/24/85	Domain Exploration Company, 2414 Fourth Natl. Bank Bldg., Tulsa, Okla. 74119.
CS85-91-000	7/11/85	Silvermdge Corporation, 302 Pointer Trail West, Van Buren, Arkansas 72956.
CS85-92-000	7/16/85	Thomas C. Mueller, P.O. Box 3736, Fort Smith, Arkansas 72913.
CS85-93-000	8/1/85	Byrom Oil Company, Inc., et al., 525 Western United Life Bldg., Midland, Texas 79701.
CS85-94-000	8/7/85	M.O. Rife, III Trust A and M.O. Rife, Jr., P.O. Box 9457, Forth Worth, Texas 76107.
CS77-76-001	[2] 7/29/85	The Elizabeth H. White Family Trust, Linda Payne, Trustee, and beneficiaries of that Trust, Linda Payne, Janet Rader, Kenyon Girard Rader & Darcy Lee Rader (Mrs. Elizabeth H. White) 3600 Davis Street, Dallas, Texas 75220.
CS85-77-000	8/7/85	Meadowbrook Oil Corporation of Oklahoma, Inc., 3812 South Epperly Drive, Del City, Okla. 73115.
CS85-88-000	7/5/85	Tolex Energies, Inc., 1010 Mid America Tower, 20 North Broadway, Oklahoma City, Okla. 73102.
CS85-89-000	7/8/85	Challenger Minerals Inc., 12727 W. Freeway, Suite 500, Houston, Texas 77060.
CS85-90-000	7/11/85	Russell T. Lund Oil Trust, 1450 West Lake Street, Minneapolis, Minn. 55408.

[1] Letter dated 7-19-85, requesting that Applicant's small producer certificate issued in Docket No. CS85-63-000 be redesignated under the name of Craig, Ltd.

[2] Amending small producer certificate in Docket No. CS77-76, by *deleting* Mrs. Elizabeth H. White *and adding* The Elizabeth H. White Family Trust, Linda Payne, Janet Rader, Kenyon Girard Rader and Darcy Lee Rader.

[FR Doc. 85-20222 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. G-20213-000 et al.]

Fina Oil & Chemical Co.; Motion To Amend Certificates, Temporary Authorization and Redesignated on Rate Schedules

August 19, 1985.

Take notice that on August 5, 1985, Fina Oil and Chemical Company of P.O. Box 2159, Dallas, Texas 75221, pursuant to the provisions of the Natural Gas Act as amended and the Rules and Regulations of the Commission, moved the Commission to amend the proceedings under the docket numbers shown in Exhibit "A" attached hereto, the applications for and certificates of public convenience and necessity as they or any of them have been supplemented or amended, and such temporary authorizations as may have been issued under the said docketed proceedings, by deleting therefrom the name American Petrofina Company of Texas (APCOT) and by substituting therefor the name Fina Oil and Chemical Company (Fina), as provided hereinafter so that the latter shall succeed to and be possessed of those rights, privileges, obligations and responsibilities heretofore had in said proceedings by APCOT, just as if Fina had been the original parties to said proceedings and had appeared throughout these proceedings wherever and whenever the name APCOT appears therein.

By action of the Board of Directors of American Petrofina Company of Texas taken on June 4, 1985 Article First of the certificate of incorporation of the Company was amended by changing the name of the company to Fina Oil and Chemical Company. Such Amendment was to be effective July 1, 1985. As a result of such name change Fina succeeded to APCOT's position and its rights and obligations under the certificates in the docket proceeding shown on Exhibit "A" attached hereto.

Fina further respectfully requests as a result of the above corporate action that the respective rate schedules of American Petrofina Company of Texas as shown in Exhibit "A" attached hereto, be redesignated as rate schedules of Fina, who adopts same in all respects.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 3, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Rate schedule No.	Docket No.	Purchaser
6	G-20213	Tennessee Gas Pipe Line.
7	G-10312	Texas Eastern Transmission.
8	2945	Columbia Gas Co.
11	7296	United Gas Pipe Line Co.
16	G-11506	El Paso Natural Gas Co.
17	G-14614	Northwest Pipeline.
18	G-14548	El Paso Natural Gas Co.
19	G-14548	Do.
20	G-11506	Do.
21	C62-771	Do.
22	G-11506	Do.
23	G-11506	Do.
24	G-11506	Do.
25	G-11506	Do.
26	C69-359	Do.
27	G-18628	Valero Interstate Transmission.
28	C60-134	Do.
30	C61-872	Trunkline Gas Co.
32	C62-605	El Paso Natural Gas Co.
33	C60-80	Texas Eastern Transmission.
34	G-8003	El Paso Natural Gas Co.
35	C69-249	Do.
36	C60-51	Do.
39	C62-175	Do.
40	C63-1143	Texas Eastern Transmission.
41	C64-861	Northwest Pipeline.
42	C65-36	Do.
43	C65-177	Transwestern.
44	G-14611	Texas Eastern Transmission.
46	C66-357	Northwest Pipeline.
47	G-19248	Texas Gas Transmission Corp.
48	C62-489	Transcontinental Gas Pipe Line Co.
51	C60-484	Texas Gas Transmission Corp.
52	C61-519	Tennessee Gas Pipe Line.
53	C61-1106	Northwest Central Pipe Line Corp.
54	C61-1107	Zenith Natural Gas Co.
56	C61-1109	Northwest Central Pipe Line Corp.
57	C61-1110	Do.
59	C61-1586	United Gas Pipe Line Co.
60	C63-389	Tennessee Gas Pipe Line.
63	G2947	Texas Eastern Transmission.
66	C66-1097	Arkansas-Louisiana Pipeline.
67	G-19191	Columbia Gas Co.
68	C65-38	Do.
69	C66-285	El Paso Natural Gas Co.
70	C64-1351	Phillips Petroleum Co.
72	C66-1169	Tennessee Gas Pipe Line.
73	C66-1307	Northern Natural Gas Co.
74	C66-1393	El Paso Natural Gas Co.
77	C72-585	Tennessee Gas Pipe Line.
78	C72-239	El Paso Natural Gas Co.
79	C72-615	ANR Pipeline.
80	C72-619	El Paso Natural Gas Co.
81	C72-800	Do.
83	C66-1059	Southern Natural Gas Co.
84	C66-1068	Texas Gas Transmission Corp.
85	C66-1070	Do.
86	C66-1068	Do.
87	C66-1060	Southern Natural Gas Co.
88	C66-1058	Texas Eastern Transmission.
89	C66-1057	Tennessee Gas Pipe Line.
90	C66-1058	Do.
91	C70-249	Panhandle Eastern.
92	C70-225	Do.
93	C75-39	Transcontinental Gas Pipe Line Co.
94	C75-29	Tennessee Gas Pipe Line.
95	C75-51	Do.
96	C75-58	United Gas Pipe Line Co.
97	C75-60	Do.
100	C75-216	Northern Natural Gas Co.
101	C74-634	Panhandle Eastern.
102	C75-384	El Paso Natural Gas Co.
103	C75-330	Transcontinental Gas Pipe Line Co.
104	C75-154	ANR Pipeline.
105	C74-220	Natural Gas Co.
106	C76-625	United Gas Pipe Line Co.
107	C76-748	El Paso Natural Gas Co.
108	C77-176	Tennessee Gas Transmission Corp.
109	C77-548	Northern Natural Gas Co.
110	C77-572	Do.
111	C77-648	Do.
112	C77-687	Do.
113	C77-808	Do.
114	C76-169	Do.
115	C76-581	Natural Gas Co.
116	C76-615	United Gas Pipe Line Co.
117	C76-781	Northern Natural Gas Co.
118	C76-778	Transco Gas Supply Co.
119	C76-807	Valero Interstate Transmission Co.
121	C80-161	El Paso Natural Gas Co.
122	C81-111	United Gas Pipe Line Co.
123	C81-334	Kansas-Nebraska Gas Co.
124	C83-3400	Valero Interstate Transmission.

[FR Doc. 85-20217 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-582-000]

Gulf States Utilities Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Granting Waiver, and Establishing Hearing Procedures

Issued: August 16, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

On June 19, 1985, Gulf States Utilities Company (GSU) submitted a petition for waiver of § 35.14 of the Commission's regulations (18 CFR 35.14), together with a proposed modification of the fuel cost and purchased economic power adjustment clause (FAC) contained in its firm power rates to fourteen wholesale customers.[1] Specifically, GSU requests that the FAC charges collected from its wholesale customers be determined as though energy provided by facilities undergoing test operations is not available to GSU for supply to such customers. GSU notes that it is presently preparing for test operations of the 940 MW River Bend Nuclear Unit No. 1 (River Bend).[2] River Bend is expected to

[1] *See* Attachment for rate schedule designations.

[2] GSU has a 70% ownership interest in River Bend.

begin an estimated four month testing period prior to its anticipated commercial service date in December 1985. Gulf States estimates that during the testing period its ownership share in the station will provide output of about 922 milion kWh.

Since the output of River Bend would become part of the energy supply to GSU's system, the fuel consumption of GSU's other generating units and purchased power costs would be reduced substantially.[3] GSU contends that the savings due to test energy should not automatically flow through the FAC to wholesale customers since only a small portion of River Bend's carrying costs have been collected from its customers to date.[4] Additionally, GSU asserts that using the fair value of test energy to offset the cost of construction of River Bend will achieve rate continuity and is consistent with the Uniform System of Accounts, Electric Plant Instructions, section 3, Paragraph 18 (18 CFR 101).

Under the proposed FAC, GSU proposes to value the test energy at an amount equal to the displacement cost of fuel, *i.e.*, fuel costs related to energy generated or economic power costs which would be incurred to replace the test energy if that test energy had not been available to serve its load.[5] The reconstruction of costs will be performed for each hour during the month, and pro forma system generation and purchases will be determined to reflect the situation that would have existed without the test energy. GSU states that the method for calculating fair value will be easy to audit and verify. The company proposes an effective date of August 19, 1985.

Notice of the company's filing was published in the **Federal Register**,[6] with comments due on or before July 11, 1985.

On July 11, 1985, a timely motion to intervene was filed jointly by Sam Rayurn Municipal Power Agency (SRMPA), Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC), and the City of College Station, Texas (College Station). While requesting intervenor status, they do not raise any substantive issues in their pleading. In addition, a timely motion to intervene was filed by Sam Rayburn G&T, Inc. (Sam Rayburn). Sam Rayburn requests that the Commission reject the proposed modification of GSU's fuel clause. In support, it states that, over the past twelve months, Sam Rayburn has experienced a 55.6% increase in rates due to GSU's rate increase in Docket No. ER84–568–000 and the expiration of the company's low cost natural gas contract with Exxon. Sam Rayburn contends that rejection would provide ratepayers some relief from the enormous rate shock being experienced, and that such a denial would be a proper exercise of the Commission's discretion of balancing equitable considerations.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make Sam Rayburn, SRMPA, SRDEC, and College Station parties to this proceeding.

With respect to GSU's proposed treatment of test energy in its fuel adjustment clauses, we have previously accepted several similar applications. In *Pennsylvania Power and Light Co.*, (*PP&L*) Opinion No. 176, 23 FERC ¶ 61,395 (1983), we granted the company's request for waiver and approved the modifications to its fuel adjustment clauses. In that case, we found that, absent waiver of the fuel clause regulations, current ratepayers would receive the benefits of the test energy in the form of decreased fuel costs. Future ratepayers would, however, incur all the costs associated with the test energy through higher rates which result from inclusion of such cost in the CWIP account and ultimately in rate base. We concluded that, by allowing waiver of the regulations and crediting the fair value of test energy to the plant account, future ratepayers who ultimately bear the costs associated with the facility undergoing testing will receive benefits through lower rates. This ratemaking treatment would, the Commission determined, avoid problems of intergenerational inequity.

In this proceeding, since GSU's wholesale customers have not been paying for the total carrying costs associated with the River Bend Unit 1 CWIP, some retention of test energy savings by GSU is appropriate. Unlike *PP&L*, however, retention of all the benefits by GSU is, we believe, inappropriate. The company's present rates became effective September 30, 1984 and include CWIP associated with River Bend. Thus, GSU's wholesale customers have been paying rates to compensate the company for some of its carrying costs associated with River Bend. In *PP&L*, however, the customers had not contributed to any of the fixed costs of the facility undergoing testing. GSU's wholesale customers should receive credit for a portion of the test energy generated by the plant. Accordingly, we shall grant waiver of § 35.14 of the regulations, accept GSU's proposed modification to its FAC's for filing, and set for hearing the question of what portion of the savings should be passed on to the wholesale customers.

Our review of the company's filing indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a minimal suspension. Here our examination suggests that the proposed rates may not yield substantially excessive revenues. Further, since maximum suspension would extend the effectiveness of the fuel adjustments beyond the testing stage and result in the company retaining more of the benefits of test energy, we find that minimal suspension is appropriate. Accordingly, we shall accept GSU's proposed fuel adjustment clauses for filing and suspend them for one day, to become effective on August 20, 1985, subject to refund.[7]

Finally, we note that the rate schedules submitted by GSU reflect the settlement rates submitted in Docket No. ER84–568–000. Because the Commission has not yet acted upon the settlement, we shall accept GSU's proposed fuel clauses subject to the outcome of our determination in Docket No. ER84–568–000.

The Commission Orders

(A) GSU's request for waiver of § 35.14 of the Commission's regulations is hereby granted.

(B) GSU is hereby ordered to file within thirty (30) days of the date of this order or the end of testing of River Bend, whichever is later, the accounting entries made to effect its treatment of test power, including a detailed explanation of the derivation of all figures.

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[3] GSU estimates that the reduction in energy costs during the testing of River Bend will be approximately $8.4 million.

[4] GSU asserts that its present rates being collected subject to refund (in Docket No. ER84–568–000) since September 30, 1984, included only about sixteen percent of construction work in progress (CWIP) related to River Bend.

[5] The determined fair value of test energy is to be credited to the investment in River Bend.

[6] 50 FR 27337 (1985).

[7] *Accord, Kansas Gas and Electric Co.*, 32 FERC ¶ 61,083 (1985).

(C) GSU's proposed fuel clauses are hereby accepted for filing and suspended for one day, to become effective on August 20, 1985, subject to refund, and further, subject to the outcome of the Commission's action in Docket No. ER84–568–000.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of GSU's proposed fuel clauses.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Subdocket –000 of Docket No. ER85–582–000 is hereby terminated. The evidentiary proceeding established herein is designated as Docket No. ER85–582–001.

(G) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,
Secretary.

ATTACHMENT.—GULF STATES UTILITIES COMPANY, RATE SCHEDULE DESIGNATIONS, DOCKET NO. ER85–582–000

Designation	Description
(1) Supplement No. 18 to Rate Schedule FERC No. 110 (Supersedes Supplement No. 17).	WSD Rates with test energy clause to Kirbyville Light and Power Company.
(2) Supplement No. 12 to Rate Schedule FERC No. 112 (Supersedes Supplement No. 11).	WSD Rates with test energy clause to the City of Caldwell.
(3) Supplement No. 13 to Rate Schedule FERC No. 115 (Supersedes Supplement No. 12).	WSD Rates with test energy clause to the City of Rayne.
(4) Supplement No. 19 to Rate Schedule FERC No. 126 (Supersedes Supplement No. 17).	WSD Rates with test energy clause to Brazos Electric Power Coop.

ATTACHMENT.—GULF STATES UTILITIES COMPANY, RATE SCHEDULE DESIGNATIONS, DOCKET NO. ER85–582–000—Continued

Designation	Description
(5) Supplement No. 22 to Rate Schedule FERC No. 128 (Supersedes Supplement No. 21).	WSD Rates with test energy clause to Cajun Electric Power Coop.
(6) Supplement No. 12 to Rate Schedule FERC No. 129 (Supersedes Supplement No. 11).	WSD Rates with test energy clause to Sam Rayburn Dam Electric Coop.
(7) Supplement No. 18 to Rate Schedule FERC No. 114 (Supersedes Supplement No. 17).	WST Rates with test energy clause to the Town of Welsh.
(8) Supplement No. 10 to Rate Schedule FERC No. 123 (Supersedes Supplement No. 9).	WST Rates with test energy clause to the City of College Station.
(9) Supplement No. 20 to Rate Schedule FERC No. 126 (Supersedes Supplement No. 18).	WST Rates with test energy clause to Brazos Electric Power Coop.
(10) Supplement No. 12 to Rate Schedule FERC No. 127 (Supersedes Supplement No. 11).	WST Rates with test energy clause to the Town of Rayne.
(11) Supplement No. 7 to Supplement No. 4 to Rate Schedule FERC No. 129 (Supersedes Supplement No. 6 to Supplement No. 4).	WST Rates with test energy clause to Sam Rayburn Dam Electric Power Coop.
(12) Supplement No. 7 to Rate Schedule FERC No.139 (Supersedes Supplement No. 6).	WST Rates with test energy clause to the Town of Abbeville.
(13) Supplement No. 19 to Rate Schedule FERC No. 118 (Supersedes Supplement No. 17).	WST Rates with test energy clause to the Town of St. Martinville.
(14) Supplement No. 7 to Rate Schedule FERC No. 142 (Supersedes Supplement No. 6).	WST Rates with test energy clause to the City of Gueydan.
(15) Supplement No. 7 to Rate Schedule FERC No. 143 (Supersedes Supplement No. 6).	WST Rates with test energy clause to the Town of Kaplan.
(16) Supplement No. 7 to Rate Schedule FERC No. 144 (Supersedes Supplement No. 6).	WST Rate with test energy clause to the City of Erath.

[FR Doc. 85–20218 Filed 8–22–85; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 3083–005]

KAMO Electric Cooperative Inc. and Oklahoma Municipal Power Authority; Application for Partial Transfer of License (Major)

August 20, 1985.

Take notice that KAMO Electric Cooperative Inc., Licensee for the unconstructed Kaw Dam Project No. 3083, and Oklahoma Municipal Power Authority have requested that the project license be partially transferred to Oklahoma Municipal Power Authority. KAMO Electric Cooperative Inc. proposes to sell part of its ownership in the project to Oklahoma Municipal Power Authority so that the two entities would become co-owners of the project. The Kaw Dam project would be located at the U.S. Army Corps of Engineers' Kaw Dam on the Arkansas River in Kay County, Oklahoma. The licensed installed capacity of the project is 37 MW.

Comments, Protests, or Motion to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before September 30, 1985.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", of "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85–20219 Filed 8–22–85; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. G–15791–002 et al.]

Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates; [1] Sun Exploration & Production Co., et al.

August 19, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 9, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-15791-002, D, July 18, 1985	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas, 75221-2880.		[1]Transwestern Pipeline Company, Hugoton-Anadarko Area Field, Various Counties in Texas and Oklahoma.	
G-17554-000, D, Aug. 5, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Texas Gas Transmission Corporation Bayou Pigeon Field, Iberia Parish, Louisiana.	[2]	
G-18236-000, D, Aug. 8, 1985	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Transwestern Pipeline Company Walton Gas Unit No. 1 well, N½ NE¼ Sec. 31-1-25E, Beaver County, Oklahoma.	[3]	
CI60-691-002, D, July 24, 1985	Conoco Inc	Panhandle Eastern Pipe Line Company, Northwest Avard & Various other Fields, Alfalfa, Dewey, Major and Woods Counties, Oklahoma.	[4]	
CI61-1425-000, D, Aug. 9, 1985	Sun Exploration & Production Co	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	[5]	
CI65-1355-002, D, July 29, 1985	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	El Paso Natural Gas Company, Coyanosa, Waha, Worsham-Bayer Fields, Pecos and Reeves Counties, Texas.	[6]	
CI67-152-004, D, July 22, 1985	Sun Exploration & Production Co	Panhandle Eastern Pipe Line Company, South Peek Field, Ellis County, Oklahoma.	[7]	
CI75-543-000, F, Aug. 8, 1985	Monsanto Oil Company (Succ. in Interest to Partnership Properties Company), 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056.	K-N Energy, Inc., Certain acreage located in Fremont County, Wyoming.	[8]	14.73
CI83-179-001, C, July 26, 1985	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Amoco Gas Company, Matagorda Island Block 623, Offshore Texas.	[9]	14.73
CI84-396-002, July 25, 1985	Sohio Petroleum Company, P.O. Box 4567, Houston, Texas 77210.	Texas Eastern Transmission Corporation, Eugene Island 330, Offshore Louisiana.	[10]	14.73
CI85-597-000, E, July 26, 1985	Empire Exploration, Inc. (Succ. to National Fuel Gas Supply Corp.), 10 Lafayette Square, Buffalo, N.Y. 14203.	National Fuel Gas Supply Corp., Various field locations in New York and Pennsylvania.	[11]	14.73
CI85-599-000 (CI71-799), B, July 29, 1985.	The Superior Oil Company, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	United Gas Pipe Line Company, Lake Tom Field, Iberia Parish, Louisiana.	[12]	
CI85-604-000 (CI60-163), B, Aug. 5, 1985.	Geo. Oil and Gas Company of Houston, P.O. Box 2511, Houston, Texas 77001.	Northwest Pipeline Corporation, South Canyon Field, Garfield County, Colorado.	[13]	
CI85-605-000, B, Aug. 6, 1985	Bogert Oil Company, 2601 N.W. Expressway, 1000W Oklahoma City, Okla, 73112.	Arkansas Louisiana Gas Company, Southwest Lacy Field J.O. Brown #1, SW NE of Sec. 29-18N-10W, Blaine County, Oklahoma.	[14]	
CI85-609-000, A, Aug. 8, 1985	CNG Producing Company, Suite 3100, Canal Place One, New Orleans, La. 70130.	Consolidated Gas Transmission Corporation Eugene Island Block 314, Offshore, Louisiana.	[15]	14.73
CI85-610-000, B, Aug. 8, 1985	Union Texas Petroleum Company, P.O. Box 2120, Houston, Texas 77252.	Transwestern Pipeline Company, North Avalon Field, Eddy County, New Mexico.	[16]	
CI85-611-000, F, Aug. 8, 1985	Monsanto Oil Company (Succ. in Interest to Petro-Lewis Funds, Inc.) 1300 Post Oak Tower, 5052 Westheimer, Houston, Texas 77056.	K-N Energy, Inc., Acreage located within the Madden Unit Lower Fort Union Participating Area, Fremont County, Wyoming.	[17]	14.73
CI85-612-000, B, Aug. 9, 1985	Tonkawa Gas Processing Company, First City Center, LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Panhandle Eastern Pipe Line Company, Speakman #1, Sec. 8, Twp. 5N, Range 9ECM, Cimarron County, Oklahoma.	[18]	
CI85-613-000, B, Aug. 13, 1985	TXO Production Corp., First City Center LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Northern Natural Gas Company, Berby No. 1 Well, Sec. 26-T4N-R26, Beaver County, Oklahoma.	[18]	
CI85-614-000, B, Aug. 12, 1985	.....do	Northern Natural Gas Company, Menager #1 well, Sec. 27-T6N-R27 ECM, Beaver County, Oklahoma.	[18]	
CI85-615-000, B, Aug. 12, 1985	.....do	Northwest Central Pipeline Corporation, McQuigg A No. 1 well. Sec. 12-T17N-R26W, Ellis County, Oklahoma.	[18]	
CI85-616-000, B, Aug. 12, 1985	.....do	Northwest Central Pipeline Corporation, Haight No. 1 well, Sec. 35-T5N-R22 ECM, Beaver County, Oklahoma.	[18]	

[1] Partial Assignment and Bill of Sale of Kirk Gas Unit No. 1 to Vernon E. Faulconer.
[2] Lease expired 8-14-77.
[3] Compression facilities are required for the subject well to deliver gas into the purchaser's line, and since neither Buyer nor Seller desires to compress the gas, such well has been released from the subject contract.
[4] Part of the acreage subject to R.S. No. 202 has expired or been assigned.
[5] Assignment of E.E. Jack lease No. T20212 to Doyle Hartman.
[6] Gas to be used for injection into a cycling project.
[7] Partial Assignment and Bill of Sale of J.W. Berryman Unit to Oilsearch Corp.
[8] By Assignment dated 12-26-84, but effective 10-1-84, PPCo., *et al.*, assigned their undivided interest in said acreage to Monsanto.
[9] Applicant is filing to add dedication by Contract Amendment dated 5-1-85.
[10] Applicant is filing for an additional delivery point.
[11] Effective date of transfer of ownership: 12-1-84. Proposed effective date of assignment: 12-1-84. Empire Exploration, Inc. requests that the certificate issued to it be made effective 10-1-85.
[12] The 2 wells committed have been plugged and abandoned.
[13] Sale of dedicated properties to Quinoco Petroleum, Inc. on 1-1-84.
[14] Uneconomical.
[15] Applicant is filing under Gas Purchase Contract dated 7-22-85.
[16] No gas has been delivered from the leases dedicated to this contract since November 1983.
[17] By Assignment effective 10-1-84, Petro-Lewis Funds, Inc., *et al.*, assigned their undivided interest in said acreage to Monsanto.
[18] Depleted.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-20220 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-606-000]

Application for Blanket Limited Term Certificate and Limited Partial Abandonment Authorization; Texas Eastern Gas Trading Co.

August 16, 1985.

Take notice that on August 8, 1985, Texas Eastern Gas Trading Company, ("GTC"), P.O. Box 2521, One Houston Center, Houston, Texas 77252, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717f, and the provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity authorizing GTC to conduct a short-term spot sales marketing program, hereinafter referred to as TEEM, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of natural gas for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in the TEEM Program; and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. GTC also requests the Commission to declare that, with respect to GTC and its activities, the Commission will only assert Natural Gas Act ("NGA") jurisdiction over sales for resale and transportation not otherwise exempt from the NGA.

Under the TEEM Program, GTC proposes to sell natural gas qualifying for the sections 102, 103, 107, and 108 rates under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432. Only contractually committed gas will be sold. GTC and participating producers will seek temporary releases of gas from the purchasers in order to meet market demand for natural gas sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for transporting the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 3, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20221 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Refrigerator and Refrigerator-Freezer Test Procedure to Whirlpool Corp. [Case No. RF-001]

AGENCY: Conservation and Renewable Energy Office; Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order [Case No. RF-001] granting Whirlpool Corporation a waiver for its refrigerator-freezer models equipped with electronic adaptive defrost controls from the existing U.S. Department of Energy refrigerator and refrigerator-freezer test procedure.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-112.1, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, Whirlpool Corporation has been granted a waiver for its refrigerator-freezer models equipped with electronic adaptive defrost controls, permitting the company to use an alternate test method.

Issued in Washington, DC, August 8, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

Decision and Order of the Department of Energy, Office of Conservation and Renewable Energy

In the matter of: Whirlpool Corporation; Case No.RF-001.

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations, by adding 430.27, to allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedure or when the prescribed test procedure may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 45 FR 64108 (Sept. 26, 1980).

Pursuant to 430.27(g), the Assistant Secretary shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

On November 14, 1984, Whirlpool Corporation (Whirlpool) filed a "Petition for Waiver" with the Office of Conservation and Renewable Energy of DOE in accordance with 10 CFR 430.27. At the same time Whirlpool filed an "Application for Temporary Exception" with the Office of Hearings and Appeals (OHA) of DOE in accordance with 10 CFR 205.125. On November 30, 1984, OHA issued a Decision and Order granting Whirlpool a temporary exception from the DOE refrigerator and

refrigerator-freezer test procedure for the two models of refrigerator-freezers which use an electronic adaptive defrost control system and which are manufactured by the firm. OHA stipulated in its Decision and Order that the temporary exception relief granted shall remain in effect until the Office of Conservation and Renewable Energy of DOE issues a final Decision and Order with respect to Whirlpool's Petition for Waiver under the authority of 10 CFR 430.27 or until the close of business on August 31, 1985, whichever occurs first.

With regard to Whirlpool's Petition for Waiver, the Office of Conservation and Renewable Energy published the petition in the **Federal Register** and solicited comments, data, and information respecting the petition in conformance with the requirements of 10 CFR 430.27. 50 FR 1628 (January 11, 1985). Comments were received from two parties, both manufacturers of refrigerators and refrigerator-freezers. These comments are discussed later in this notice.

On June 10, 1985, Whirlpool submitted field test data regarding the mean time between defrosts for refrigerator-freezer units equipped with electronic adaptive defrost controls.

The Office of Conservation and Renewable Energy consulted with the Federal Trade Commission on June 28, 1985, concerning the Whirlpool petition.

Assertions and Determinations

Whirlpool is a manufacturer of home appliances, including refrigerator-freezers. Whirlpool has developed what it terms an "electronic adaptive defrost control" (herein "ADC") for refrigerator-freezers that initiates defrost cycles in response to operating conditions and usage patterns. Whirlpool's petition requested DOE to grant Whirlpool relief from the DOE test procedure for refrigerators and refrigerator-freezers for its ADC-equipped refrigerator-freezer models on the basis that the existing test procedure yields materially inaccurate estimate of the energy consumption of such units.

Whirlpool stated that its ADC-equipped refrigerator-freezers initiate defrost on the basis of compressor run time, refrigerator and freezer door openings, and the length of the preceding defrost period. The petition cited three faults with using the current DOE test procedure for refrigerators and refrigerator-freezers to evaluate the energy consumption of ADC-equipped refrigerator-freezers.

First, the current test procedure has no provision for determining the interval between defrost cycles for ADC-equipped refrigerator-freezers which would be comparable to normal usage patterns. Second, the current test procedure would likely underestimate the actual energy consumption of such products because the low humidity conditions normally encountered within the product during the test and the lack of refrigerator and freezer compartment door openings during the test lengthens the period between defrost cycles beyond that which would be expected under normal usage conditions. Third, this lengthening of the period between defrost cycles lengthens the duration of the test to the point that is unduly burdensome to conduct.

Further, Whirlpool evaluated the applicability of two alternate test methods for ADC-equipped refrigerator-freezers and determined that neither was appropriate for use in testing units equipped with electronic adaptive defrost controls. Whirlpool contended that no acceptable alternate test procedure exists and that the development of such an alternate test procedure should await field data which reflects the actual performance of such products under varying conditions of use and operation.

Comments were received from two manufacturers of refrigerators and refrigerator-freezers, Greenville Products Company (Greenville), a Division of White Consolidated Industries, Inc., and General Electric Company (GE), in response to the publication of Whirlpool's waiver request in the **Federal Register**. Whirlpool submitted a rebuttal statement to DOE responding to the GE comments as provided by DOE's test procedure waiver regulations. The comments received and Whirlpool's rebuttal to the comments are summarized below.

Greenville commented that it supports waiving testing requirements for Whirlpool's ADC-equippped refrigerator-freezers models on the basis that the existing DOE test procedure does not provide a satisfactory means of testing units so equipped.

GE questioned whether it is possible for Whirlpool to state with confidence that the existing test procedure would mislead the public and be unfair to Whirlpool without any acceptable alternate test procedure suggested by Whirlpool. GE commented that it believes that Whirlpool has the responsibility to provide an alternate test procedure, based on current knowledge, which provides the most reasonable results of energy consumption for a representative average use cycle. GE observes that the determination of the time between defrost cycles seems to be the most significant problem with the existing DOE test procedure in Whirlpool's case. Since Whirlpool developed the algorithm that is built into the electronic adaptive defrost control to control the time between defrost cycles, GE suggests that Whirlpool could insert into the algorithm typical values of door openings and compressor run time to determine the typical time between defrost cycles. Once this value is known, GE suggests that the provisions for testing "long-time" automatic defrost refrigerator-freezers found in the existing DOE test procedure, i.e., a two part procedure which reduces test time substantially when the time between defrost cycles is long and known, can be applied to the Whirlpool ADC-equipped units to determine energy consumption.

Whirlpool resonded that it, too, believes that the provisions for testing long-time automatic defrost refrigerator-freezers can be adapted for testing its ADC-equipped units if an appropriate value for the typical time between defrost cycles can be determined. However, Whirlpool stated that GE's suggested approach of inserting "typical" values for the parameters that factor into the ADC algorithm to determine the time between defrost cycles is unworkable. Whirlpool said that sufficient field usage information is not yet available to determine typical values for all of the parameters. Whirlpool claimed that the algorithm used to determine defrost intervals is a complex function of the parameters, and includes, for example, door opening duration as well as frequency. Whirlpool submitted a copy of its patent on the ADC device to substantiate its claim regarding the complexity of the algorithm.

Whirlpool stated that it strongly believes that the only way to obtain a meaningful value for the typical time between defrost periods for its ADC-equipped refrigerator-freezers is to monitor the performance of such units in actual usage under various operating conditions in the field. Whirlpool said that it had placed a number of ADC-equipped units in the field with metering devices to measure the actual interval between defrost cycles in order to generate a data base on which to base an appropriate value for the typical time between defrost cycles. (Whirlpool provided some preliminary data on defrost cycle intervals from this field test program to DOE by letter dated June 10, 1985.)

DOE agrees with Whirlpool that the existing DOE test procedure for refrigerators and refrigerator-freezers (Appendix A1) is not appropriate for

testing ADC-equipped refrigerator-freezers since it would not yield results reflective of the expected energy consumption of such units in actual usage and would be burdensome to conduct because of the extremely long length of each test period. Information contained in Whirlpool's patent for its ADC device show that door opening frequency and duration are heavily weighted factors in determining the time between defrost periods. Whirlpool's claim appears reasonable that the time between defrost cycles of ADC-equipped units could be as long as nine days under the closed door conditions of the current DOE test procedure.

DOE agrees with Whirlpool and GE that the provisions for testing "long-time" automatic defrost refrigerator-freezers found in the existing DOE test procedure can be adapted for testing Whirlpool's ADC-equipped refrigerator-freezer models. The primary issue, as pointed out by Whirlpool and GE, is the determination of the typical time between defrost cycles. DOE consulted the National Bureau of Standards (NBS) regarding Whirlpool's waiver request since NBS performed all of the laboratory work associated with the development of the DOE test procedure for refrigerators and refrigerator-freezers. Based on its review of Whirlpool's petition, the comments received on the petition, and Whirlpool's rebuttal to these comments, NBS recommended that, should DOE act to order an alternate test procedure for Whirlpool's ADC-equipped refrigerator-freezer models, the alternate test should be the "long-time" automatic defrost test and the value for the typical time between defrost cycles for use in the alternate test should be three days (72 hours) which equates to 0.33 cycles per day. NBS arrived at its recommended value on the basis that it credits the ADC-equipped units with 80 to 90 percent of the maximum energy reduction possible. (For this estimate the maximum energy reduction possible, i.e., 100 percent energy reduction, is defined to be the condition where a defrost operation never occurs.) NBS evaluated GE's recommendation that "typical" values be substituted for the parameters that factor into the algorithm to determine a "typical" time between defrost cycles. NBS found that this approach would be workable, although complicated, if such typical values for the parameters were known but that sufficient field data is not available upon which such values can be confidently based. With regard to the approach of using estimated values for the parameters, NBS is of the opinion that the complexity of the application of the estimated parameters in the algorithm and the uncertainty associated with the outcome is such that this approach offers no advantages over directly estimating the time between defrost cycles.

DOE notes that there is a practical limit on the energy savings that can be achieved by even the most sophisticated automatic defrost control system that could be devised for a refrigerator-freezer. Based on the patent information supplied by Whirlpool, its ADC device is intended to achieve the optimal condition of initiating defrosting operations at a frequency and duration matched to the rate and amount of frost build-up while keeping the contribution of defrosting operation energy consumption to total consumption at a minimum. The Whirlpool ADC device does not respond to frost build-up directly however. Rather, it responds to indicators of frost build-up and removal. Therefore, it can trigger a defrosting operation under less than optimal conditions. Weighing these considerations, DOE finds that the NBS recommended alternate test procedure for Whirlpool's ADC device would fairly evaluate the energy consumption of Whirlpool's ADC-equipped refrigerator-freezer models.[1]

GE commented that Whirlpool failed to mention that the two models of side-by-side regfrigerator-freezers that Whirlpool has equipped with its ADC device have other features that impact energy consumption. GE identified two newly introduced consumer-actuated features that appear on the ADC-equipped models as "MAX COOL" and MAX FREEZE/ICE". GE stated that these features are part of the "SYSTEMS SENTINEL™ 11" control that is built into these units. GE remarked that the availability of these two features, which give the consumer the means to cause the unit to operate in a maximum cooling mode for fast chilling and freezing, may result in increased energy consumption for refrigerator-freezer models so equipped as a result of consumer usage of the freatures. GE contended that the Whirlpool petition should have addressed these features as well since they have a bearing on the energy consumption of the ADC-equipped units.

Whirlpool responded to GE's comment by saying that it did not identify the MAX COOL and MAX FREEZE/ICE features on the ADC-equipped units in its petition because they are specifically addressed by the existing DOE test procedure and properly excluded from the determination of the estimated annual energy consumption of refrigerator-freezers.

The existing DOE test procedure requires that the operational conditions of the refrigerator or refrigerator-freezer undergoing testing shall be maintained in accordance with the Association of Home Appliance Manufacturers Standard HRF–1–1979 (Section 2.2, Apendix A1, 10 CFR Part 430). This standard stipulates that features which are electrically powered, manually initiated and automatically terminated (such as customer operated dispensers, fast chill compartments, electric door openers, etc.) are to be operated at their lowest energy usage position. DOE agrees with Whirlpool that these features are properly excluded.

GE commented that Whirlpool had not provided proper identification of the models of refrigerator-freezers that it wished to be covered by the test procedure waiver. Subsequently, Whirlpool identified Whirlpool model ED26SSXM and Sears model 106.85569 as the two ADC-equipped refrigerator-freezer models which it wished to be covered by the waiver. DOE uses the model numbers provided by Whirlpool in today's Decision and Order to specifically identify the ADC-equipped refrigerator-freezer to which it applies. DOE considers the use of model numbers to be appropriate in this case since there is no reason why the presence or absence of the ADC device on any particular refrigerator-Freezer model would be self evident to even an informed observer.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Whirlpool Corporation (Case No. RF–001), is hereby granted as set forth in paragraph (2) below, subject to the provision of paragraph (3) and (4).

[1] DOE notes that NBS made its recommendation regarding an alternate test procedure for Whirlpool's ADC-equipped refrigerator-freezers prior to Whirlpool's June 10, 1985, submission of field usage data for such units. The Whirlpool field test involves 23 ADC-equipped units in three parts of the country. The June 10 submission presents data covering the operation of 13 units over a 3 to 5 month period. (Whirlpool stated that instrumentation and communication problems resulted in valid data being available for only the 13 products covered by the June 10 submission.) DOE reviewed the data only to determine whether they disputed the NBS recommended value for the typical time between defrost cycles. They did not. Since the data covered only a wintertime period of operation of the ADC-equipped units, DOE did not consider it appropriate to assign very much weight to the data. DOE believes, as Whirlpool stated, that data covering one complete year of operation of several units at several geographical locations are what is needed for the derivation of a representative value for the typical time between defrost cycles.

(2) Notwithstanding any contrary provisions of Appendix A1 of 10 CFR, Part 430, Subpart B, Whirlpool Corporation shall be permitted to test Whirlpool ED26SSXM and Sears 106.85569 refrigerator-freezer models equipped with electronic adaptive defrost controls on the basis of the test procedure specified in 10 CFR, Part 430, with the modifications set forth below:

(i) Section 4.1.2 is modified by adding the following sentence at the end of the section:

If the model being tested has an electronic adaptive defrost control, the provisions of section 4.1.2.2 shall apply.

(ii) Section 4.1.2.2 is added to read:

4.1.2.2 Electronic Adaptive Defrost Control. If the model being tested has an electronic adaptive defrost control system, the test time period shall consist of two parts. The first part shall be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part shall start when a defrost period is deliberately initiated during a compressor "on" cycle and shall terminate at the third turn "on" of the compressor motor after initiating the defrost period or after four hours, whichever comes first.

(iii) Section 5.1.2 is modified by adding the following sentence at the end of the section:

For models equipped with electronic adaptive defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.1.2.2.

(iv) Section 5.2.1.3 is added to read:

5.2.1.3 Electronic Adaptive Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = (1440 \times EP1/T1) + [(EP2 - (EP1 \times T2/T1)) \times 0.33]$

where:

ET and 1440 are defined in 5.2.1.1.

EP1 = energy expended in kilowatt-hours during the first part of the test

EP2 = energy expended in kilowatt-hours during the second part of the test

T1 = length of time in minutes of the first part of the test

T2 = length of time in minutes of the second part of the test

0.33 = predicted number of defrost cycles per day expressed in units of day $^{-1}$

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes final test procedures appropriate to Whirlpool ED26SSXM and Sears 106.85569 refrigerator-freezers models equipped with electronic adaptive defrost controls manufactured by Whirlpool Corporation.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, August 8, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 85-20196 Filed 8-22-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51585; FRL-2867-4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty PMNs and provides a summary of each.

DATES: Close of Review Period.

P 85-1328, 85-1329 and 85-1330, November 6, 1985

P 85-1331, 85-1332, 85-1333 and 85-1334, November 9, 1985

P 85-1335, 85-1336 and 85-1337, November 10, 1985

P 85-1338, 85-1339, 85-1340, 85-1341, 85-1342, 85-1343, 85-1344 and 85-1345, November 11, 1985

P 85-1346, 85-1347, 85-1348, 85-1349, 85-1350, 85-1351, 85-1352, 85-1353, 85-1354, 85-1355, 85-1356 and 85-1357, November 12, 1985

Written comments by:

P 85-1328, 85-1329 and 85-1330, October 7, 1985

P 85-1331, 85-1332, 85-1333 and 85-1334, October 10, 1985

P 85-1335, 85-1336 and 85-1337, October 11, 1985

P 85-1338, 85-1339, 85-1340, 85-1341, 85-1342, 85-1343, 85-1344 and 85-1345, October 12, 1985

P 85-1346, 85-1347, 85-1348, 85-1349, 85-1350, 85-1351, 85-1352, 85-1353, 85-1354, 85-1355, 85-1356 and 85-1357, October 13, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51585]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Mangement Division, Office of Toxic Substances, Environment Protection Agency, Rm. E-201, 401 M Street SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-1328

Importer. Diamond Shamrock Chemicals Company.

Chemical. (G) Urethane polymer.

Use/Import. (G) Rheology modifiers for latex paint production for industrial, commercial and consumer use. Import range: Confidential.

Toxicity Data. No data submitted

Exposure. Processing and use: dermal, a total of 2 workers.

Environmental Release/Disposal. Release primarily through transportation incidents. Disposal by incineration or landfill.

P 85-1329

Importer. Marubeni America Corporation.

Chemical. (S) Chromate(5-), bis[3-carboxy-1-[4-[[6-[(2-carboxyphenyl)azo]-5-hydroxy-7-sulfo-2-naphthalenyl]amino]-6-[[4-[(4-sulfophenyl)azo]phenyl]amino]-1,3,5-triazin-2-yl]pyridiniumato (5-)]-, pentasodium, dihydrate.

Use/Import. (S) Commercial dye for leather. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; TLm 48 hr (Orange medaka); >1,000 parts per million (ppm); Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85-1330

Importer. Marubeni America Corporation.

Chemical. (S) Copper, [29H,31H-phthalocyaninato (2-)-N29,N30,

N31,N32]-aminosulfonyl[[2-[[4-(3-Carboxypyridinio)-6-methoxy-1,3,5,-triazin-2-yl]amino]ethyl]amino]sulfonyl sulfo derivs., hydroxides, sodium salts.

Use/Import. (S) Commercial dye for cellulosic fibres. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; TLm 48 hr (Orange medaka): >1,000 ppm; Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85–1331

Importer. Confidential.

Chemical. (S) Naphthalene-1,2,3,4-tetrahydro (1-phenylethyl).

Use/Import. (S) Solvent for carbonless copy paper, electrical insulating and heat transfer fluid. Import range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: <3.16 g/kg; Irritation: Skin—Mild, Eye—Slight to moderate; LC_{50} 96 hr (Fathead minnow): 20 parts per billion (ppb); LC_{50} initial (Fathead minnow): 482 ppb; LC_{50} 48 hr (Fathead minnow): 230 ppb; EC_{50} 48 hr (Daphnia magna): 53.9; EC_{50} (Daphnia magna): 22.5; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizing; 28 day repeat dermal test: Low potential; Invitro cytogenetic test: Non-cytogenetic; Ultimate biodegradability test: Not readily biodegraded.

Exposure. Import and use: dermal and inhalation, up to 8 hrs/da, with less than 0.2 ppm for a 40 hr/work week.

Environmental Release/Disposal. Released to air water and land. Disposal by navigable waterway, incineration and landfill.

P 85–1332

Importer. Confidential.

Chemical. (S) Mixture of: diphenyl methane diisocyanate 2,4, diphenyl methane diisocyanate 4,4 trimethylol propane.

Use/Import. (G) The substance will be used in a closed system. Import range: 454–3,200 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85–1133

Manufacturer. Confidential.

Chemical. (G) Polymer of acrylic acid esters and methacrylic acid esters with an aliphatic acid monomer and an aromatic vinyl monomer.

Use/Production. (G) Gloss coating for paper stock. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 4 hrs/da, up to 49 da/yr.

Environmental Release/Disposal. 1 kg to 10 kg release to water. Disposal by publicly owned treatment works (POTW).

P 85–1334

Manufacturer. Confidential.

Chemical. (G) Polymer of acrylic acid esters and methacrylic acid esters with an aliphatic acid monomer and an aromatic vinyl monomer.

Use/Production. (G) Gloss coating for paper stock. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 4 hrs/da, up to 49 da/yr.

Environmental Release/Disposal. 1 kg to 10 kg release to water. Disposal by POTW.

P 85–1335

Manufacturer. Confidential.

Chemical. (G) Functional acrylate type polymer.

Use/Production. (G) Industrial paint ingredient. Prod. range: 125,000–163,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 20 workers, up to 8 hrs/da, up to 55 da/yr.

Environmental Release/Disposal. 2 to 48 kg/batch release to land. Disposal by incineration and landfill.

P 85–1336

Manufacturer. Confidential.

Chemical. (G) Oil modified polyester of aromatic and dibasic acids.

Use/Production. (S) Commercial protective coating. Prod. range: 72,666–145,333 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 4 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 lb/batch released to land. Disposal by landfill.

P 85–1337

Manufacturer. Boehme Filatex Inc.

Chemical. (G) Omega,omega'-dialkyl polyglycol ethers.

Use/Production. (S) Industrial fiber finish. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. 80 to 8,000 kg approximately released to water. Disposal by POTW and biological water treatment plant.

P 85–1338

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Oligomer. Prod. range: 1,000–3,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 4 da/yr, the first year.

Environmental Release/Disposal. Minor waste released to land.

P 85–1339

Manufacturer. H. B. Fuller Company.

Chemical. (G) Bisphenol A, epichlorohydrin, diethanolamine, polysubstituted alkane adduct polymer.

Use/Production. (G) Adhesive. Prod. range: 100,000–1,200,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal, a total of 40 workers, up to 2 hrs/da, up to 40 da/yr.

Environmental Release/Disposal. 50 kg/batch released to land. Disposal by licensed landfill.

P 85–1340

Importer. KAY-FRIES, INC.

Chemical. (G) Polyester resin.

Use/Import. (S) Industrial metal coating. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing and use: dermal, up to 3 sites.

Environmental Release/Disposal. No data submitted.

P 85–1341

Manufacturer. Confidential.

Chemical. (G) Sulfonates of ethoxylated alcohols.

Use/Production. (S) Emulsion polymerization, cosmetics and toiletries, enhanced oil recovery and agricultural chemical emulsifiers. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1342

Importer. Confidential.

Chemical. (G) Substituted diazo compound.

Use/Import. (G) Dispersant. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Use: Six customers.

Environmental Release/Disposal. No release.

P 85–1343

Manufacturer. Confidential.

Chemical. (S) Silicon substituted organic amine.

Use/Production. (S) Intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male—200 mg/kg, female—191 mg/kg, Conbined—196 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe; Bacterial reverse mutation assay: Non-genetic.

Exposure. Manufacture: dermal, a total of 6 workers, up to 4 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 5 to less than 20 kg released. Disposal by incineration and landfill.

P 85–1344

Manufacturer. Confidential.

Chemical. (G) Alkali metal salt of substituted sulfo-aryl transition metal complex.

Use/Production. (S) Dye. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; LC_{50} 24–72 hr (Rainbow trout): >560 mg/L; LC_{50} 96 hr (Rainbow trout): 474.4 mg/1; Ames test: Negative; Skin sensitization: Non-sensitizer; EC_{50} 24 hr (Daphina magna): >1,000 mg/L; $E(_{50}$ 48 hr (Daphnia magna): 560 mg/L; Green algae test: No observed effect concentration: 32 mg/L; Lowest effect concentration: 56 mg/L; Median effect concentration: (E_bC_{50})—102 mg/L.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 85–1345

Manufacturer. Confidential.

Chemical. (G) Polysubstituted sulfo-aryl transition metal complex.

Use/Production. (G) Intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; LC_{50} 24 hr (Rainbow trout)—101.1 mg/L, LC_{50} 48–96 hr (Rainbow trout)—67.7 mg/L; Ames test:—Negative; EC_{50} 24 hr (Daphnia magna): >320 mg/L; EC_{50} 48 hr (Daphnia magna): 100 mg/L; Green algae test: No observed effect concentration—5.6 mg/L; Lowest significant effect concentration: 10 mg/L; Median effect concentration, growth rate (E_rC_{50}): 42 mg/L.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 85–1346

Manufacturer. FRP Company.

Chemical. (G) Rosin maleated, fumerated ester with pentaerythritol, polypropylene glycol and glycerine.

Use/Production. (S) Printing ink and coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers.

Environmental Release/Disposal. 2 kg/batch released to land. Disposal by evaporation lagoons.

P 85–1347

Manufacturer. FRP Company.

Chemical. (G) Rosin maleated, fumerated ester with pentaerythritol and diethylene glycol.

Use/Production. (S) Printing ink and coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers.

Environmental Release/Disposal. 2 kg/batch released to land. Disposal by evaporation lagoons.

P 85–1348

Manufacturer. FRP Company.

Chemical. (G) Rosin maleated, fumerated ester with pentaerythritol, diethylene glycol glycerine, ethylene glycol and caster oil.

Use/Production. (S) Printing ink and coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers.

Environmental Release/Disposal. 2 kg/batch released to land. Disposal by evaporation lagoons.

P 85–1349

Manufacturer. FRP Company.

Chemical. (G) Polyamide vehicle.

Use/Production. (S) Industrial printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 16 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 22 kg/batch released. Disposal by evaporation lagoons.

P 85–1350

Manufacturer. FRP Company.

Chemical. (G) Polyamide.

Use/Production. (S) Industrial printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 12 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 2 kg/batch released to land. Disposal by evaporation lagoons.

P 85–1351

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) Polymer of poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-1,1' biphenyl, 4,4' diisocyanato-3,3' dimethyl, water, silicone, surfactant, 1,4-diazabicyclo[2.2.2] octane.

Use/Production. (S) To be molded on site into mechanical goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 85–1352

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) Polymer of poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-,1,1' biphenyl, 4,4' diisocayanato-3,3' dimethyl, 1,4-butanediol, 1,3-propanediol, 2-(hydroxymethyl)-2-methyl, 1,4-diazabicyclo[2.2.2] octane.

Use/Production. (S) To be molded on site into mechanical goods i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 85–1353

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) 1,3-benzenedicarboxylic acid, polymer with 1,6 hexanediol and nonanedioic acid, naphthalene, 1,5 diisocyanato-,phenol, 4,4'-(methanetetrayldinitrilo)bis(3,5-bis(1-methylethyl)hexamethylene 1,6-distearyldiurethane, ethanol, 2,2'-(1,4-phenylenebis(oxy)bis-1,4 butanediol.

Use/Production. (S) To be molded on site into mechanical goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Releases/Disposal. No release.

P 85–1354

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) Polymer of poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-,1,1' biphenyl, 4,4'-diisocyanato-3,3' dimethyl,1,4 butanediol, 1,3-propanediol, 2-(hydroxymethyl)-2-methyl, 1,4-diazabicyclo[2.2.2] octane.

Use/Production. (S) To be molded on site into mechancial goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 85–1355

Manufacturer. Disograin Industries Corporation.

Chemical. (S) Polymer of poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-,1,1' biphenyl, 4,4'-diisocyanato-3,3' dimethyl, 1,4 butanediol, 1,3-propanediol, 2-(hydroxymethyl)-2 methyl, 1,4-diazabicyclo[2.2.2] octane.

Use/Production. (S) To be molded on site into mechanical goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 85–1356

Manufacture. Disogrin Industries Corporation.

Chemical (S) Polyer of Hexanedioic acid, polymer with 1,2-ethanediol, naphthalene,1,5, diisocyanato-, castor oil, phenol, 4,4'-(methanetetrayldinitrilo), bis(3,5-bis(1,-methylethyl)-, castor oil, sulfonated, castor oil, sulfonated, sodium salt, water, silicone additive, triethylene diamine catalyst.

Use/Production. (S) To be molded on site into mechanical goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 85–1357

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) Polymer of epsilon-caprolactone and trimethylol propane, castor oil, 1,1' biphenyl,4,4'-diisocyanato-3,3' dimethyl, phenol, 4,4'-(methanetetrayldinotrilo)bis(3,5-bis(1-methylethyl)-,1,4 butanediol, 1,3-propanediol, 2-(hydroxymethyl)-2-methyl, 1,4-diazabicyclo[2.2.2] octane.

Use/Production. (S) To be molded on site into mechancial goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

Dated August 19, 1985.

Linda A. Travers,

Acting Director, Information management Division.

[FR Doc. 85–20213 Filed 8–22–85; 8:45 am]

BILLING CODE 3560-50-M

[OPTS–59728; FRL 2887–3]

Certain Chemicals Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of two such PMNs and provides a summary of each.

DATES: Close of Review Period:
Y 85–132—September 3, 1985.
Y 85–133—September 4, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85–132

Manufacturer. Rilsan Corporation

Chemical. (G) Copolyetheresteramide

Use/Production. (G) Molding, extrusion resin, non-dispersive use. Prod. range: Confidential

Toxicity Data. No data submitted

Exposure. No data submitted

Environmental Release/Disposal. No data submitted

Y 85–133

Manufacturer. Confidential

Chemical. (G) Alkali metal salt of ester of polyfunctional alkylene oxide polymer

Use/Production. (G) Component of cellular and elastomeric plastic compositions. Prod. range: Confidential

Toxicity Data. No data submitted on the PMN substance

Exposure. Confidential

Environmental Release/Disposal. Confidential

Dated: August 19, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–20214 Filed 8–22–85; 8:45 am]

BILLING CODE 6560-50-M

[ER–FRL–2888–8]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed August 12, 1985 through August 16, 1985 Pursuant to 40 CFR 1506.9

EIS No. 850345, Final, FHW, AK, Fairbanks Urban Reconnaissance/ Geist Road Extension, Connection, Steese Expessway to Downtown Fairbanks, *Due:* September 23, 1985, *Contact:* Thomas Neunaber (907) 586–7427.

EIS No. 850346, Final, GSA CA, Los Angeles Federal Center Master Plan, Development, Construction, Los Angeles County, *Due:* September 23, 1985, *Contact:* Veronica Holland (415) 974–7624.

EIS No. 850347, Final, BLM, AZ, Lower Gila South Resource Management Plan, *Due:* September 23, 1985, *Contact:* Bill Carter (602) 863–4464.

EIS No. 850348, Draft, USA, LA, Fort Polk Multipurpose Range Complex, Cosntruction, 5th Infantry Division, Vernon Parish, *Due:* October 7, 1985, *Contact:* Stephen Parris (318) 535–7008.

EIS No. 850349, Draft, FWS, CA, Coachella Valley Fringe-Toed Lizard Incidental Take Section 10(a) Permit, Habitat Conservation Plan, Adoption/Implementation, Riverside County, *Due:* October 15, 1985, *Contact:* Merle Richmond (503) 231–6131.

EIS NO. 850350, Draft, NOA, VA, Commonwealth of Virginia Coastal Resources Management Program, Approval, *Due:* October 7, 1985, *Contact: Joseph Uravitch (202) 634–4124.*

EIS N. 850351, Draft, BOP, FL, Marianna Federal Correctional Institution and Federal Prison Camp, Construction and Operation, Jackson County, *Due:* October 11, 1985, *Contact:* Loy Hayes (202) 275–6535.

EIS No. 850352, Final, IBR, AZ, Tucson Aqueduct Phase B, Construction, Operation and Maintenance, Feature of Central Arizona Project, Pima and Pinal Counties, *Due:* September 23, 1985, *Contact:* Cecil Oeullette (702) 293–8560.

EIS No. 850353, Final, FHW, IN, US–27 Improvement, County Road 50 South to County Road 850 North, and a Connector from US 33 to US 27, Widening and Alignment, Adams County, *Due:* September 23, 1985, *Contact:* James Threlkeld (317) 269–7481.

EIS 850354, Draft, AFS, IL, Shawnee National Forest, Land and Resource Management Plan, *Due: November 27, 1985, Contact:* Kenneth Henderson (618) 253–7114.

EIS No. 850355, Draft, AFS, CO, Stevens Gulch Road Extension and Hubbard, Dyke and Elk Creeks Timber Sale Offerings, Delta and Mesa Counties, *Due:* October 28, 1985, *Contact:* Raymond Evans (303) 874–7691.

EIS No. 850356, Draft COE, IL, Lake Calumet Area Wetland Sanitary Landfill Development. Section 10 and 404 Permit, Cook County, *Due:* October 7, 1985, *Contact:* Thomas Slowinski (312) 353–6428.

EIS No. 850357, Final, ICC, MT, Tongue River Railroad Construction, Operation, Miles City to Ashland, Certificate, Custer, Rosebud, and Powder River Counties, *Due:* September 23, 1985, *Contact:* Carl Bausch (202) 275–0800.

EIS No. 850358, Final, BLM, AZ, CA, Yuma District Resource Management Plan, *Due:* September 23, 1985, *Contact:* Dennis Turowski (602) 726–6300.

EIS No. 850359, Draft, AFS, UT, CO, MantiLaSal National Forest, Land and Resource Managment Plan, *Due:* November 29, 1985, *Contact:* Lee Foster (801) 637–2817.

EIS NO. 850360, DSuppl, FHW, MD, National Freeway/US–48 Gap Completion, Wolfe Mill to M.V. Smith Road, Construction, Alleghany County, *Due:* October 16, 1985, *Contact:* Edward Terry (301) 952–4010.

Amended Notice

EIS No. 850234, Draft, FWS, AK, Togiak National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, *Due:* September 30, 1985, Published FR 6–14–85—Review extended.

Dated: August 20, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–20259 Filed 8–22–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2886–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 5, 1985 through August 9, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–AFS–G60005–NM, Rating LO, Alvarado Realty Land Exchange, Cibola Nat'l Forest, Acquisition, NM. **SUMMARY:** EPA expressed no objections to the proposed action as described in the DEIS.

ERP No. DS–COE–C36005–NY, Rating EC2, Saw Mill River Basin Flood Protection Project, Elmsford and Greenburgh Areas, NY. **SUMMARY:** EPA's review identified potential environmental impacts and requested that additional information regarding wetland impacts, dredged material disposal, sediment toxicity, and appropriate mitigation measures be detailed in the supplemental FEIS.

ERP No. D–FHW–E40684–KY, Rating EC2, US 31E/150 (Bardstown—Louisville Rd.) Reconstruction, Brentlinger Rd. to US 31E/150, KY. **SUMMARY:** EPA's review revealed two primary environmental concerns: 1) the proposed project would include a 3,400-foot stream channel change, and 2) traffic-generated noise elevations as high as +19dBA above ambient if the preferred alternative were implemented. EPA recommended these impacts be mitigated and requested additional information be included in the FEIS, including a Corps jurisdictional wetland determination.

ERP No. D–FHW–G40115–AR, Rating EO2, US 65 Bypass Construction, US 65/US 270 Interchange and Bryant St. Intersection to US 65/US65B Interchange, AR. **SUMMARY:** EPA expressed environmental objections to the selection of the preferred highway alignment, Alt. A. EPA requested that the FEIS include additional information to establish the project need, and to identify secondary impacts. EPA prefers Alt. B; however, EPA would not object to Alt. C with the inclusion of appropriate mitigation measures as discussed in the DEIS. EPA would likely recommend denial of a Sect. 404 permit for the filling and deterioration of wetlands proposed by Alt. A.

ERP No. D–FHW–K40119–HI, Rating LO, Moanalua Rd. Improvement, Pali Momi St. to AIEA Interchange, HI. **SUMMARY:** EPA expressed a lack of objection to the project and recommended the FEIS discuss water quality impacts and erosion control measures in more detail. EPA noted that if a Clean Water Act section 404 permit is needed for the project, EPA would further review the project for compliance with Specification of Disposal Sites for Dredged or Fill Material (40 CFR 230).

Final EISs

ERP No. F–AFS–G65039–00, Cibola Nat's Forest and Kiowa Rita Blanca, Black Kettle and McClellan Creek Nat'l Grasslands, Land and Resource Mgmt. Plan, NM. **SUMMARY:** The FEIS adequately responded to EPA comments issued on the DEIS.

ERP. No. F–BLM–K65065–NV, Walker Resource Area, Mina and Walker United, Land and Resource Mgmt. NV. **SUMMARY:** EPA commended the Bureau of Land Management (BLM) on their measures to protect riparian zones. However, EPA recommended that an inventory be conducted of all riparian acreage, including a water quality monitoring program and baseline air quality data for the area. EPA expressed concerns regarding BLM's decision not to recommend certain areas as wilderness.

ERP No. F–COE–E32061–MS, Pascagoula Harbor and Bayou Cassote Navigation Channels Improvement, Deepening, MS. **SUMMARY:** The bulk of EPA's initial reservations to this proposal have been lessened with the elimination of the Tenneco spoil disposal site. EPA continues to be

concerned about the disposal of maintenance material within the Mississippi Sound and believes that there are compelling environmental reasons to eliminate long term practices which shallow and/or alter the near shore circulation of this water body.

EPA No. F-COE-F32131-OH, Lorain Small Boat Harbor Construction, Recreational Navigation Improvements, Lake Erie, OH. **SUMMARY:** EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

Dated: August 20, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-20260 Filed 8-22-85; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before October 7, 1985. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance, (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Liaison Officer Margaret P. Ulmer, Financial and Resource Management Services, Room 386, 2401 E. Street, NW, Washington, DC, 20507; Telephone (202) 634-1932.

OMB REVIEWER: James Mason, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC, 20503; Telephone (202) 395-6880.

Type of Request: Revision of a currently approved collection
Title: Higher Education Staff Information Report EEO-6
Frequency of Report: Biennially
Type of Respondent: Business/other institutions/State or local governments
Standard Industrial Classification (SIC) Code: 822,824,829
Description of Affected Public: Institutions of higher education with 15 or more full-time employees.
Responses: 3,000
Reporting Hours: 12,000
Federal Costs: $48,000.00
Applicable Under section 3504(h) of Pub. L. 95-511: Not applicable
Number of Forms: 1

Data are used by EEOC in its compliance, litigation, and conciliation and voluntary programs activities. Data are shared with other Federal agencies, and 25 State and 77 local Fair Employment Practices Commissions (FEPC's) in support of their EEO programs after pledging to abide by EEO-6 confidentiality restrictions.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 85-20242 Filed 8-22-85; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-739-DR]

Amendment to Notice of a Major Disaster Declaration; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-739-DR), dated July 18, 1985, and related determinations.

DATE: August 14, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of California, dated July 18, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 18, 1985:

Those portions of Los Angeles County that were not previously designated eligible for assistance are hereby designated as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-20174 Filed 8-22-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-010643-001.

Title: Farrell/SITRAM Space Charter Agreement.

Parties:

Farrell Lines Incorporated (Farrell)
Societe Ivoirienne de Transport Maritime (SITRAM)

Synopsis: The proposed amendment would expand the scope of the agreement to include all West African ports and all U.S. ports and would permit the parties to charter space on each other's vessels moving in both directions in the agreement trade. The original agreement restricted this chartering to cargo moving under SITRAM bills of lading on Farrell's westbound sailings only. It would also make certain changes of an administrative nature to the terms of the agreement. The parties have requested a shortened review period.

Dated: August 19, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-20169 Filed 8-22-85; 8:45 am]

BILLING CODE 6730-01-M

Issuance of Casualty and Nonperformance Certificates; Sky Cruises Ltd.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Sky Cruises Limited and SeaEscape Limited, c/o SeaEscape Limited, 1080 Port Blvd., Miami, Florida 33132.

Dated: August 19, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20170 Filed 8–22–85; 8:45 am]

BILLING CODE 6730–01–M

Issuance of Casualty and Nonperformance Certificates; Sky Cruises Ltd.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Sky Cruises Limited and SeaEscape Limited, c/o SeaEscape Limited, 1080 Port Blvd., Miami, Florida 33132.

Dated: August 19, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20171 Filed 8–22–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Middlebury Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 13, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Middlebury Corporation,* Middlebury, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Middlebury, Middlebury, Vermont.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Toledo Trustcorp, Inc.,* Toledo, Ohio; to acquire 99 percent of the voting shares of Society National Bank of Mid-Ohio, Bucyrus, Ohio. Comments on this application must be received not later than September 16, 1985.

2. *Toledo Trustcorp, Inc.,* Toledo, Ohio; to acquire 100 percent of the voting shares of Society National Bank of Northwest Ohio, Fostoria, Ohio. Comments on this application must be received not later than September 16, 1985.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The First Bankers Corp. of Florida,* Pompano Beach, Florida; to acquire 90 percent of the voting shares of The Island Bank, Holmes Beach, Florida.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American Fletcher Corporation,* Indianapolis, Indiana; to acquire 100 percent of the voting shares of Union Bank and Trust Company, Franklin, Indiana.

E. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Slayton Bancshares, Inc.,* Slayton, Minnesota; to become a bank holding company by acquiring 80.58 percent of the voting shares of Peoples State Bank of Slayton, Slayton, Minnesota.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Summit Bancorporation, Inc.,* Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Summit County Bank, Frisco, Colorado.

G. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *American National Bancshares, Inc.,* Ruston, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of American Bank of Ruston, N.A., Ruston, Louisiana. Comments on this application must be received not later than September 16, 1985.

Board of Governors of the Federal Reserve System, August 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–20176 Filed 8–22–85; 8:45 am]

BILLING CODE 6210–01–M

Hub Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed in application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Hub Bancshares, Inc.*, Lafayette, Louisiana; to engage *de novo* through its subsidiary, Hub Services, Inc., Lafayette, Louisiana, in real estate appraising as permitted by § 225.25(b)(13) of Regulation Y. This activity will be conducted in the south central Louisiana area.

2. *The First Bankers Corp. of Florida*, Pompano Beach, Florida; to engage *de novo* through its subsidiary, The First Bankers Management Group, Inc., Pompano Beach, Florida, in management and consulting advice to bank and nonbank depository institutions. These activities would be conducted in the central and southern Florida area.

Board of Governors of the Federal Reserve System, August 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20177 Filed 8-22-85; 8:45 am]

BILLING CODE 6210-01-M

Southwest First Community, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 1985.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Southwest First Community, Inc.*, Beeville, Texas; to engage *de novo* through its subsidiary, Southwest First Community Data, Inc., Beeville, Texas, in providing data processing and data transmission services; facilities and data bases (including data processing and data transmission hardware; software or operating personal) or access to such services, facilities or data bases.

Board of Governors of the Federal Reserve System, August 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20178 Filed 8-22-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Commission on the Evaluation of Pain; Meeting

AGENCY: Department of Health and Human Services.

ACTION: Notice of Meeting.

SUMMARY: This notice announces the schedule and proposed agenda of the forthcoming meeting of the Commission on the Evaluation of Pain (the Commission). This notice also describes the purpose, structure, and termination date of the Commission.

DATES:

General session—September 5, 1985, 8:30 a.m. to 5:00 p.m.

General session—September 6, 1985, 8:30 a.m. to 5:00 p.m.

ADDRESS: National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Nancy Dapper, Executive Director, Commission on the Evaluation of Pain, Room 118, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597-1597.

SUPPLEMENTARY INFORMATION: The Commission is established and governed by the provisions of section 3(b) (1) through (6) of the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98-460). The purpose of the Commission is to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. The study is to be conducted in consultation with the National Academy of Sciences.

The study will consist of expert testimony and a review of research data regarding how pain should be considered in making disability determinations under titles II and XVI. The Commission may engage technical assistance in order to carry out its function.

The Commission is to submit a report, consisting of the findings of the study and any recommendations, to the Secretary of Health and Human Services (the Secretary) who in turn is to submit the report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

The statute provides that the Commission terminate on December 31, 1985. This is also the deadline for the Secretary to submit the report.

The Secretary has appointed the members of the Commission in accordance with the provisions of the statute. This notice announces the third working meeting of the Commission. The Commission is chaired by Kathleen M. Foley, M.D.

This meeting is open to the public. Anyone wishing to submit his or her views for consideration by the Commission should send them to the Executive Director of the Commission at her address shown above.

A transcript of the Commission meeting will be made available to the public on an at-cost-of-duplication basis. The transcript can be ordered from the Executive Director of the Commission.

Agenda

September 5, 1985

8:30 a.m.—General session of expert testimony and research data presentations.

5:00 p.m.—Adjourn general session.

September 6, 1985

8:30 a.m.—General session of (1) continued expert testimony and research data presentations, (2) discussion on the agenda, priorities, and date of the next meeting, and (3) writing assignments.

5:00 p.m.—Adjourn the meeting.

Dated: August 19, 1985.

Nancy J. Dapper,

Executive Director, Commission on the Evaluation of Pain.

[FR Doc. 85-20227 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-11-M

Food and Drug Administration

Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents

Date, time, and place. September 12 and 13, 9 a.m., Auditorium, 330 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open committee discussion, September 12, 9 a.m. to 12 m.; open public hearing, 1:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 to 4 p.m., September 13, 9 a.m. to 12 m.; Mary C. Custer, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

General function of the committee. The committee will review and evalaute available information relevant to adverse reactions in humans associated with the use of food constituents.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will hear presentations on the terminology associated with adverse reactions to foods, a clinical approach to adverse reactions to foods, and patient strategy for coping with adverse reaction to foods.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: August 19, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-20166 Filed 8-20-85; 10:07 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0346]

Foodways National, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Foodways National, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame in frozen cheesecake, fruit, and fruit toppings.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3874) has been filed by Foodways National, Inc., P.O. Box 44, Boise, ID 83707, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame to sweeten frozen cheesecake, fruit, and fruit toppings.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's

finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: August 14, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-20161 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0345]

Pfizer, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame in frozen desserts.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5467.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3861) has been filed by Pfizer Central Research, Pfizer, Inc., 235 East 42nd Street, New York, NY 10017, proposing that § 172.804(c) (21 CFR 172.804(c)) be amended to provide for the safe use of aspartame to sweeten frozen desserts, where standards of identity do not preclude this use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: August 15, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-20160 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement for Grants for Predoctoral Training in Family Medicine

The Bureau of of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1986 Grants for Predoctoral Training in Family Medicine are being accepted under the authority of section 786(a) of the Public Health Service Act, as amended.

Applicants should be advised that this application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. The Administration's budget request for Fiscal Year 1986 does not include funding for this program. This notice regarding applications does not reflect any change in this policy.

In addition, programmatic changes may result from currently ending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Section 786(a) of the Public Health Service Act authorizes the award of grant to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q. Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine. In accordance with § 57.1605(b)(2), a funding preference will be accorded approved applications for projects in which:

1. Substantial training experience is in settings which exemplify interdependent utilization of physicians and physician assistants or nurse practitioners; and/or

2. Substantial portions of the training program are conducted in a primary medical care manpower shortage area which is a part of a health manpower shortage area(s) designated under Section 332 of the PHS Act, or, in an Area Health Education Center funded, at least in part, under Section 781 of the Act.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-16, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Should additional programmatic information be required, please contact: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-3614.

The deadline date for receipt of applications is September 30, 1985. Applications shall be considered as meeting the deadline date if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.966 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: August 19, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85-20168 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Recovery of Funds in Transactions Affecting Ownership of Federally Assisted Health Professions and Nurse Teaching Facilities

AGENCY: Health Resources and Services Administration (HRSA); Public Health Service, HHS.

ACTION: Statement of General Policy.

SUMMARY: HRSA announces its recovery policy regarding purported leases and sales of (1) health professions teaching facilities or affiliated hospitals constructed with grant funds under Part B of Title VII of the Public Health Service Act, and (2) nurse teaching facilities constructed with grant funds under Title VIII of the Act.

FOR FURTHER INFORMATION CONTACT: Richard Ashbaugh, Associate Director for Health Facilities, (301) 443–6560.

SUPPLEMENTARY INFORMATION: Sections 723(a)(1) and 723(b)(1) of the Public Health Service Act (42 U.S.C. 293c(a)(1), 293c(b)(1)) provide that if ownership of a teaching facility for which construction grant funds were awarded under Part B of Title VII of the Act passes to an entity that would not have been qualified to receive such a grant within 20 years after completion of construction, the Secretary of the Department of Health and Human Services has a statutory duty to recover funds pursuant to a formula set out in the statute.

Similarly, section 804(1) of the Act (42 U.S.C. 296c(1)) states that if ownership of a nurse teaching facility for which construction grant funds were awarded under Title VIII of the Act passes to a non-qualified entity within 20 years, the Secretary has a statutory duty to effect a recovery.

On the other hand, recovery is not required under any of the recovery provisions where the facility is *leased* to such an entity, since a lease, which is a transfer of an interest in and possession of property for a prescribed period of time in exchange for an agreed consideration called "rent," does not involve a change of ownership. Recently, an agreement was entered into between a nonprofit owner of a Title VII-assisted affiliated hospital and an organization that would not have been qualified for a grant (in this case, a proprietary entity). The agreement was denominated a "lease" by the parties. Under the agreement, the proprietary entity was to pay millions of dollars for a 14-year lease and at the end of the lease period have the option to purchase the facility for a nominal sum. Under these facts, the Department determined that the transaction was in fact a sale, and that the statute required that the Government seek recovery under section 723 of the Act. In anticipation that similar transactions may occur, a statement of the general policy of the Department is desirable.

It is the policy of the Department in such cases to look to the substance of the transaction, not the form of the agreement or the label placed on it by the parties. Thus, if the money paid is a payment for the use of property and the agreement contemplates return of the rented property at the termination of the agreement, we would conclude that no change of ownership has occurred, and no recovery would be required on the basis of section 723(a)(1), 723(b)(1), or 804(1). However, if payments are required to be made in amounts that actually cover the full economic value of the property and ownership will ultimately be transferred, the payments are a payment for ownership and the Government's recovery will be pursued. More specifically, in determining whether a transaction is a sale or lease, the policy of the Department is to follow the guidelines established by the Internal Revenue Service for making such a determination. A transaction is to be treated as a sale rather than a lease, in the absence of compelling persuasive factors of contrary implication, if one or more of the following is found:

1. Portions of the periodic payments are made specifically applicable to an equity to be acquired by the lessee.

2. The lessee will acquire title upon the payment of a stated amount of "rentals" which under the contract the lessee is required to make.

3. The total amount which the lessee is required to pay for a relatively short period of use constitutes an inordinately large proportion of the total sum required to be paid to secure the transfer of the title.

4. The agreed "rental" payments materially exceed the current fair rental value. This may be indicative that the payments include an element other than compensation for the use of the property.

5. The property may be acquired under a purchase option at a price which is nominal in relation to the value of the property at the time when the option may be exercised, as determined at the time of entering into the original agreement, or which is a relatively small amount when compared with the total payments which are required to be made.

6. Some portion of the periodic payments is specifically designated as interest or is otherwise readily recognizable as the equivalent of interest.

Dated: August 19, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85–20228 Filed 8–22–85; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 85–1546]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street S.W., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposals; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Civil Rights Tenant Characteristics/Occupancy Report—Insured Unsubsidized Housing Programs
Office: Fair Housing and Equal Opportunity
Form number: HUD-949
Frequency of submission: Annually

Affected public: Businesses or Other For-Profit
Estimated burden hours: 1,353
Status: Extension
Contact: Mary T. George, HUD, (202) 755–2288, Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 1, 1985.
Proposal: Single Audit Act of 1984—OMB Circular No. A–128, Audits of State and Local Governments
Office: Administration
Form number: None
Frequency of submission: Annually
Affected public: State or Local Governments
Estimated burden hours: 20,750
Status: New
Contact: Lawrence S. Traynham, HUD, (202) 755–9083, Robert Fishman, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 2, 1985.
Proposal: Mortgagor's Certificate of Actual Cost
Office: Housing
Form number: FHA–2330
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 6,160
Status: Extension
Contact: Richard S. Fitzgerald, HUD, (202) 426–0283, Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 7, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85–20246 Filed 8–22–85; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice

August 12, 1985.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The regulations implementing the Indian Child Welfare Act provide that Indian tribes may designate an agency other than the tribal chairman for service of notice of proceedings under the Act, 25 CFR 23.12. The Secretary of the Interior shall publish in the **Federal Register** on an annual basis the names and addresses of the designated agents.

This is the fourth list of Designated Tribal Agents for service of notice, and includes the listings of designated tribal agents received by the Secretary of the Interior prior to the date of this publication. Those groups noted with an asterisk are not federally recognized tribes.

Ak-Chin Indian Community, Rt. 2, Box 27, Maricopa, Arizona 85239, Theodore Enos, Chief of Police, (602) 568–2281, (602) 568–2415 (Home), or Delores Machado, Court Clerk-Dispatcher, (602) 568–2507
Akhiok Village, P.O. Box 172, Kodiak, Alaska 99615, (907) 486–5725, KANA, President, Director of Social Services and Director of Health
Ambler Traditional Council, Ambler, Alaska 99786, President, (907) 445–2125
Angoon Community Association, Carolyn Nease, Executive Director, P.O. Box 138, Angoon, Alaska 99820, (907) 788–3411
Blackfeet Tribe, Marlene Salway, Director, Blackfeet Child Abuse, Neglect and Treatment Program, P.O. Box 850, Browning, Montana 59417, (406) 338–7733
Buckland IRA Council, Buckland, Alaska 99727, President, (907) 494–2121
Caddo Tribe of Oklahoma, Caddo Tribal Enrollment Clerk, P.O. Box 487, Binger, Oklahoma 73009, (405) 656–2344/5
Central Council of the Tlingit and Haida Indians of Alaska, 320 West Willoughby Avenue, Suite 300, Juneau, Alaska 99801, Art Holmberg, Director Human Services, (907) 586–1432
Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, Oklahoma 74465, Ross O. Swimmer, Principal Chief, (918) 456–0671
Cheyenne-Arapaho Tribes of Oklahoma, P.O. Box 38, Concho, Oklahoma 73022, Mr. Winnifred E. White Tail
Cheyenne River Sioux Tribal Court, Eagle Butte, South Dakota 57625, James Chasing Hawk, Juvenile Judge, (605) 964–6601
Chickasaw Nation of Oklahoma, P.O. Box 1548, Ada, Oklahoma 74820, Overton James, Governor, (405) 436–[illegible]
Chilkat Indian Village, Klukwan IRA, P.O. Box 220, Haines, Alaska 99827, James Stevens, President, (907) 766–2805/2556
Chilkoot Indian Association IRA, P.O. Box 419, Haines, Alaska 99827, Roy Clayton, President, (907) 766–2310
Chippewa Cree Tribe, Rocky Boy Route, Box 544, Box Elder, Montana 59521, Suzanne Billy, ICW Worker, (406) 395–4700
Choctaw Nation of Oklahoma, P.O. Drawer 1210, Durant, Oklahoma 74701, Hollis E. Roberts, Chief, (405) 924–8280
Citizen Band Potawatomi Indians of Oklahoma, Route 5, Box 151, Shawnee, Oklahoma 74801, Mozella Larney, ICW Coordinator, (405) 275–3121
Cocopah Tribe of Arizona, P.O. Box G, Somerton, Arizona 85350, Gregory D. Yuma, Tribal Court Coordinator
Confederated Tribes of the Colville Reservation of Washington, P.O. Box 150, Nespelem, Washington 99155, Al Aubertin, Chairman
Confederated Tribes of the Siletz Reservation, Siletz Tribal Council, P.O. Box 670, Siletz, Oregon 97380, Arthur S. Bensell, Tribal Chairman
Confederated Tribes of the Warm Springs Reservation of Oregon, Warm Springs, Oregon 97761, Merritt E. Youngdeer, Superintendent
Crow Tribe, P.O. Box 159, Crow Agency, Montana 59022, Tyron Ten Bear, Staff Coordinator, (406) 638–2601
Crow Creek Sioux Tribe of South Dakota, Crow Creek Agency, Box 616, Fort Thompson, South Dakota 57339, Superintendent, (605) 245–2311, or Clerk of Courts, Crow Creek Sioux Tribal Court, Box 551, Fort Thompson, South Dakota 57339, (605) 245–2325
Craig Community Association IRA Council, P.O. Box 25, Craig, Alaska 99921, Gordon James, President, (907) 826–3316
Creek Nation of Oklahoma, P.O. Box 580, Okmulgee, Oklahoma 74447, Claude A. Cox, Principal Chief, (918) 756–8700
Deering IRA Council, Deering, Alaska 99736, President, (907) 363–2138
Delaware Tribe of Western Oklahoma, Delaware Indian Child Welfare, P.O. Box 825, Anadarko, Oklahoma 73005, Linda S. Poolaw, Coordinator, Office (405) 247–9393, Home (405) 247–5263
Devils Lake Sioux Tribe of North Dakota, Ft. Totten, North Dakota 58335, Elmer White, Chairman, (701) 766–4221
Douglas Indian Association, P.O. Box 472, Douglas, Alaska 99824, Frank A. Wilson, Chairman, (907) 586–4985
Duckwater Shoshone Tribe, Box 68, Duckwater, Nevada 89314, Social Worker, (702) 863–0227

Ely Colony Council, 16 Shoshone Circle, Ely, Nevada 89301, Marylee Delucia, (702) 289–3013
English Bay Village Council,* English Bay VIA, Homer, Alaska, Vincent Kvasnifoff, President, (907) 235–8292, or The North Pacific Rim, 903 West Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503, (907) 276–2121
Eyak Village Council, Eyak Native Village, P.O. Box 878, Cordova, Alaska 99578, Agnes Nichols, Eyak Village President, (907) 424–3619
Flandreau Santee Sioux Tribe of South Dakota, P.O. Box 283, Flandreau, South Dakota 57028, Judith Hanssen Miller, Social Worker Coordinator, (605) 997–3844
Fort Belknap Tribes, P.O. Box 249, Harlem, Montana 59526, Franklin R. Perez, President, Tribal Council, (406) 353–2205
Fort Peck Tribes, Fort Peck Agency, Poplar, Montana 59255, Norman Hollow, Chairman, Fort Peck Tribal Executive Board, (406) 768–5311 ext. 300
Fort Sill Apache Tribe, Route 2, Box 121, Apache, Oklahoma 73006, Bob Cannon, (405) 588–2296
Gila River Pima-Maricopa Indian Community of the Indian Reservation of Arizona, P.O. Box 427, Sacaton, Arizona 85247, Lewis Lane, (602) 899–3855
Goshute Business Council, Confederated Tribes of the Goshute Reservation of Nevada and Utah, Ibapah, Utah 84034, Dan Murphy, Chairman
Hoonah Indian Association, P.O. Box 144, Hoonah, Alaska 99829, Millie Hack, Child Welfare Associate I, (907) 945–3600
Hopi Tribe of Arizona, P.O. Box 156, Keams Canyon, Arizona 86034, Hopi Tribal Court, Richard Parsons, Children's Court Counselor, (602) 738–2288/9
Hydaburg Cooperative Association, P.O. Box 57, Hydaburg, Alaska 99922, Adrain LeCornu, President, (907) 285–3666
Iowa Tribe of Kansas and Nebraska, P.O. Box 206, Horton, Kansas 66439, Director, Four Tribes Social Services, (913) 486–2837
Jicarilla Apache Tribe of New Mexico, P.O. Box 221, Dulce, New Mexico 87528, Jicarilla Apache Tribal Court, Chief Tribal Judge, (505) 759–3366
Kaibab-Paiute Tribe, Tribal Affairs Building, Fredonia, Arizona 86022, Vivienne C. Jake, Social Services Representative, (602) 643–7214
Kake Council, Organized Village of Kake, P.O. Box 121, Kake, Alaska 99830, (907) 785–6434
Kasaan Council, Organized Village of Kasaan, General Delivery, Kasaan, Alaska 99924, Louis Thompson, President, (907) 542–8001
Kawerak, Inc.,* P.O. Box 948, Nome, Alaska 99762, Mary Miller, Director, (907) 443–5231
Ketchikan Indian Corporation, 429 Deermount, Ketchikan, Alaska 99901, Julian O. Arge, Director of Social Services, (907) 225–5158
Kiana Traditional Council, Kiana, Alaska 99749, President, (907) 475–2109
Kickapoo Tribe of Kansas, R.R. 1, Box 157–A, Horton, Kansas 66439, Fredrick R. Thomas, Chairman, (913) 486–2131
Kickapoo Tribe of Oklahoma, P.O. Box 70, McLoud, Oklahoma 74851, Tribal Administrator, (405) 964–2075
Kiowa Tribe of Oklahoma, P.O. Box 361, Carnegie, Oklahoma 73015, Bess Yeahquo, Director of Social Services, Julia Roubideaux, Child Welfare Specialist, (405) 654–2300
Kivalina IRA Council, Kivalina, Alaska 99750, President, (907) 645–2138
Klawock Cooperative Association, Klawock IRA, P.O. Box 112, Klawock, Alaska 99925, James Martinez, President, (907) 755–2265
Kobuk Traditional Council, Kobuk, Alaska 99751, President, (907) 948–8001 (Earth Station)
Kodiak Alaska—Natives of Kodiak, Inc.,* P.O. Box 172, Kodiak, Alaska 99615, KANA, President, Director of Health, (907) 486–5725
Kotzebue IRA Council, P.O. Box 296, Kotzebue, Alaska 99752, President, (907) 442–3467
Lower Brule Sioux Tribe, Lower Brule, South Dakota 57548, Rose McCauley, Juvenile Probation Officer, (605) 473–5528
Maniilag Association,* P.O. Box 256, Kotzebue, Alaska 99752, Maureen Pie', Tribal Operations Coordinator, (907) 442–3311
Mescalero Apache Tribe of New Mexico, Mescalero Apache Agency, Mescalero, New Mexico 88340, Wendell Chino, President
Metlakatla Indian Community, P.O. Box 8, Metlakatla, Alaska 99926, Frieda Haldane, Juvenile Probation Officer, (907) 886–4021
Miami Tribe of Oklahoma P.O. Box 636, Miami, Oklahoma 74355, Bill Dickey Allen, Chief (918) 542–2445
Minnesota Chippewa Tribes (Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, Nett Lake (Bois Forte), White Earth), P.O. Box 217, Cass Lake, Minnesota 56633, Director of Human Services, (218) 335–2252
Modoc Tribe of Oklahoma P.O. Box 939, Miami, Oklahoma 74355, Bill G. Follis, Chief, (918) 542–1190
Mr. Marathon Native Association* P.O. Box 1457, Seward, Alaska 99664, (907) 224–3666, or North Pacific Rim, 903 West Northern Lights Blvd, Suite 203, Anchorage, Alaska 99503 (907) 276–2121
Native Village of Ouzinkie, P.O. Box 172, Kodiak, Alaska 99615, KANA, President, Director of Health, (907) 486–5725
The Navajo Nation, Division of Social Welfare, P.O. Drawer "JJ", Window Rock, Arizona 86515, Mrs. Ella Shirley, Social Worker III, (602) 871–6807
Noatak IRA Council, Noatak, Alaska 99761, President, (907) 485–2173
Noorvik IRA Council, Noorvik, Alaska 99763, President, (907) 636–2144
Northern Cheyenne Tribe, Lame Deer, Montana 59043, Patsy Tallbull, Director of Social Services, (406) 477–6321
Northern Idaho Agency, c/o Nez Perce Tribal Executive Committee, P.O. Box 305, Lapwai, Idaho 83540, Bernice Moffett
Oglala Sioux Tribe of the Pine Ridge Reservation, Oglala Sioux Tribal Council, Pine Ridge, South Dakota 57770, Newton Cummings, Chairman (605) 867–5821
Omaha Tribal Council, Omaha Tribe of Nebraska, P.O. Box 143, Macy, Nebraska 68039, Jessiline Anderson, Director, (402)837–5391
Osage Tribe of Oklahoma, Tribal Administration Building, Pawhuska, Oklahoma 74056, George R. Tallchief, Principal Chief, (918) 287–4622
Ottawa Tribe of Oklahoma, P.O. Box 110, Miami, Oklahoma 74355, Lewis H. Barlow, Chief, (918) 540–1536
Paiute Indian Tribe of Utah, 600 North 100 East, Cedar City, Utah 84720, Lewis Kunz, Director of Social Services
Papago Tribe of Arizona, Papago Human Service Department, P.O. Box 837, Sells, Arizona 85634, Human Service Director, (602) 383–7206
Pascua Yaqui Tribe, 7474 South Camino De Oeste, Tucson, Arizona 85746, David Ramirez, Chairman (602) 883–2838
Pawnee Indian Tribe of Oklahoma, Pawnee Business Council, P.O. box 470, Pawnee, Oklahoma 74058, Delbert Horsechief, President, (918) 762–3624
Pelican Tlingit & Haida Community Council,* P.O. Box 7272, Pelican, Alaska 99832, James E. Phillips, President, (907) 735–4471/2242
Peoria Indian Tribe of Oklahoma, P.O. Box 1527, Miami, Oklahoma 74355, Rodney F. Arnette, Chief, (918) 540–2535
Petersburg Indian Association, P.O. box 1128, Petersburg, Alaska 99883, Richard Kito, President

Petersburg Native Association,* P.O. Box 588, Petersburg, Alaska 99833, Gertrude Lyons, Social Services Associate II, (907) 772–3074

Ponca Tribe of Oklahoma, P.O. Box 2, White Eagle, Ponca City, Oklahoma 74601, Ms. Janie Braden, (405) 762–8104

Port Graham Village Council, Homer, Alaska 99603, Walter Maganack, Sr., Village President, (907) 433–8001, or North Pacific Rim, 903 West Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503, (907) 276–2121

Port Lions Tribal Council, Native Village of Port Lions, P.O. Box 172, Kodiak, Alaska 99615, (907) 486–5725

Potawatomi Indians of Oklahoma, Route 5, Box 151, Shawnee, Oklahoma 74801, John Barrett, Tribal Administrator, (405) 275–3121

Prairie Band of Potawatomi Indians, P.O. Box 97, Mayetta, Kansas 66509, (913) 966–2255

Pueblo of Acoma of New Mexico, P.O. Box 347, Acoma, New Mexico 87034, Bonnie Martinez, Tribal Court Clerk, (505) 552–6632

Pueblo of Isleta of New Mexico, P.O. Box 317, Isleta, New Mexico 87022, John L. Jojola, Lt. Governor

Pueblo of Nambe of New Mexico, Route 1, Santa Fe, New Mexico 87501, Ms. Karen Quintana, (505) 455–7692

Pueblo of Picuris of New Mexico, P.O. Box 228, Penasco, New Mexico 87553, Mary Louise Keesing, Pueblo Tribal Secretary, (505) 587–2519

Pueblo of Pojoague of New Mexico, Route 1, Box 71, Santa Fe, New Mexico 87501, Arthur F. Garcia, Tribal Agent, (505) 455–2271

Pueblo of San Felipe of New Mexico, P.O. Box "A", San Felipe, New Mexico 87001, Ms. Gail Aguilar, (505) 867–3381

Pueblo of San Ildefonso of New Mexico, Route 5, Box 315–A, Santa Fe, New Mexico 87501, P. Bert Naranjo, Tribal Judge, (505) 455–2273

Pueblo of San Juan of New Mexico, P.O. Box 1099, San Juan Pueblo, New Mexico 87566, Mr. Johnny Abeyta, (505) 852–4400

Pueblo of Santa Clara of New Mexico, P.O. Box 580, Espanola, New Mexico 87532, Frankie V. Gutierrez, Tribal Judge, Pasqualita Frenier, Director, Joseph Abeyta, Sr., (505) 753–7326

Pueblo of Tesuque of New Mexico, Route 1, Box 1, Santa Fe, New Mexico 87501, Mr. Louis Hena, (505) 983–2667

Pueblo of Zuni of New Mexico, P.O. Box 339, Zuni, New Mexico 87327, Mark J. Romancito, Director, (505) 782–4481, ext. 111

Puyallup Nation Health Authority, Puyallup Tribe of Washington, 2209 East 32nd Street, Tacoma, Washington 98404, Rod Smith, Executive Director, (206) 597–6380

Quapaw Tribe of Oklahoma, Quapaw Tribal Business Committee, Route 1, Quapaw, Oklahoma 74363, Jesse McKibben, Chairman, (918) 542–1853

Quechan Tribe of the Fort Yuma Reservation of California, P.O. Box 1352, Yuma, Arizona 85364, Isadore Quahlupe, Vice-President, (714) 572–0213

Ramah Navajo School Board, Inc., Ramah Navajo Family Service Center,* P.O. Box Drawer 1—Pine Hill CPO, Pine Hill, New Mexico 87321, Beverly J. Coho, Director of Social Services, Vivian Hailstorm, NSW, Social Worker, Ceceilia S. Ensrude, Child Legal Advocate, (505) 783–5011

Red Lake Tribe of Minnesota, Red Lake Court of Indian Offenses, Red Lake, Minnesota 56671, Gary Graves, Prosector, (218) 679–3303

Reno-Sparks Indian Colony, Reno-Sparks Tribal Court, 98 Colony Road, Reno, Nevada 89502, (702) 329–2936 or Director, Social Services, 34 Reservation Road, Reno, Nevada 89502, (702) 329–2936

Rosebud Sioux Tribe of South Dakota, Rosebud, South Dakota 57570, Elizabeth Garriott, Tribal Social Services, (605) 747–2258

Sac and Fox Tribe of Missouri, Tribal Administrator, Rural Route 1, Reserve, Kansas 66434, Ms. Margie Parsons, Tribal Secretary, (913) 742–7471

Salt River Pima-Maricopa Indian Community, Route 1, Box 216, Scottsdale, Arizona 85256, Ms. Alberta Mercado, Juvenile Judge, Community Court, (602) 941–7212, Mr. Robert Lewis, Social Services Director, (602) 941–7201

Santee Sioux Tribe of Nebraska, Santee Sioux Tribal Council, Niobrara, Nebraska 68706, Richard Kitto, Chairman, Donald LaPointe, Vice-Chairman, Roger Crudell, Business Manager, Patty Frazer, Secretary, (402) 857–3302

Sauk-Suiattle Indian Tribe of Washington, 4229 76th Street NE., Marysville, Washington 98270, Jean Fish, Chairman

Sault Ste. Marie Tribe of Chippewa Indians of Michigan, 206 Greenough Street, Sault Ste. Marie, Michigan 49783, Ms. Kathy Fike, Mr. Joseph K. Lumsden, Tribal Chairman, or Martha Snyder, Social Worker, P.O. Box 432, Manistique, Michigan 49854

Saxman IRA Council, Organized Village of Saxman, P.O. Box 6138, Ketchikan, Alaska 99901, Nora DeWitt, Acting President, (907) 225–4166

Selawik IRA Council, Selawik, Alaska 99770, President, (907) 484–2225

Seminole Nation of Oklahoma, P.O. Box 745, Wewoka, Oklahoma 74884, James N. Milam, Principal Chief, (405) 382–7913

Seneca-Cayuga Tribe of Oklahoma, P.O. Box 1283, Miami, Oklahoma 74355, James H. Allen, Chief, (918) 542–6609

Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho, P.O. Box 306, Fort Hall, Idaho 83203, Fort Hall Tribal Court, John Taylor, Court Administrator, (208) 238–3904

Shoshone-Paiute Tribes, Shoshone-Paiute Social Services Program, P.O. Box 219, Owyhee, Nevada 89832, (702) 757–3211

Shungnak IRA Council, Shungnak, Alaska 99773, President, (907) 437–2161

Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation of South Dakota, Sisseton-Wahpeton Sioux Tribal Court, Sisseton, South Dakota 57262, Lorraine Rousseau, Chief Judge, (605) 698–3911

Sitka Community Association, Sitka Community Association Tribal Court, Box 1450, Sitka, Alaska 99835, Judge William Brady, (907) 747–3207

Skagua Traditional Village Council,* P.O. Box 848, Haines, Alaska 99827, Gene P. Strong, President, (907) 766–2727

Skokomish Indian Tribe of Washington, Route 5, Box 432, Shelton, Washington 98584, James Byrd, Sr., Chairman, (206) 877–5113

Southern Ute Indian Tribe, Department of Social Services, P.O. Box 737, Ignacio, Colorado 81137

Standing Rock Sioux Tribe of the Standing Rock Reservation of North and South Dakota, Fort Yates, North Dakota 58538, Chief Judge, (701) 854–7244

Tatitlek Village Council, Native Village of Tatitlek, General Delivery, Tatitlek, Alaska 99677, Gary Kompkoff, President, (907) 257–8001, or North Pacific Rim, 903 West Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503, (907) 276–2121

Te-Moak Band of Western Shoshone Indians of Nevada, Western Shoshone Social Services Program, 1545 Silver Eagle Road, Elko, Nevada 89801, Robert Yablunsky, Program Director, (702) 738–9251, or Elko Band Council, P.O. Box 748, Elko, Nevada 89801, Ursula Eaglestaff, Social Worker

Three Affiliated Tribes, of the Fort Berthold Reservation of North Dakota P.O. Box 699, New Town, North Dakota 58763, Alyce Spotted Bear, Chairperson, (701) 627–4781

Toiyabe Indian Health Project, Inc.,* P.O. Box 1296, Bishop, California 93514, Mr. Art Martinez, (619) 873–6394, Mr. Larry Stidham, (619) 873–3581

Turtle Mountain Band of Chippewa Indians, Belcourt, North Dakota 58316,

Richard LaFromboise, Chairman, (701) 477–6121
Ute Mountain Ute Tribe General Delivery Towaoc, Colorado 81334, Melinda Bronson, Director, (303) 565–3751, ext. 265
Valdez Native Association,* P.O. Box 1108, Valdez, Alaska 99686, Helen Dunlap, President, (907) 835–4951, or North Pacific Rim, 903 West Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503, (907) 276–2121
White Mountain Apache Tribe, Tribal Court Center, P.O. Box 1570, Whiteriver, Arizona 85941, Juvenile Probation Officer
Wichita Indian Tribe of Oklahoma, P.O. Box 729, Anadarko, Oklahoma 73005, Newton Lamar, President, (405) 247–2425
Wind River Tribes, Arapahoe Business Council P.O. Box 396, Fort Washakie Wyoming 82514 Burnett White Pume, Chairman, (307) 255–8259, or Shoshone Tribal Administration Complex, P.O. Box 538, Fort Washakie, Wyoming 82514, Joyce A. Posey, Tribal Secretary, (307) 255–8257
Winnebago Tribe of Nebraska, Box 626, Winnebago, Nebraska 68071, Norma Stealer, Director, (402) 878–2570
Wrangell Cooperative Association, Tribal Governing Body, P.O. Box 868, Wrangell, Alaska, 99929, President, (907) 874–3335, or Central Council of Tlingit & Haida Indians of Alaska, 320 West Willoughby Avenue, Suite 300, Juneau, Alaska 99801, President, (907) 586–1432
Wyandotte Tribe of Oklahoma, P.O. Box 470, Miami, Oklahoma 74355, Leaford, Bearskin, Chief, (918) 540–1541
Yakutat, Inc.,* Yakutat, Alaska 99689, Henry Porter, President
Yankton Sioux Tribe of South Dakota, Box 28, Marty, South Dakota 57361, Alvin R. Zephier, Chairman, (605) 384–3804/5687

James S. Bregman,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–20152 Filed 8–22–85; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[Group 760]

California; Filing of Plat of Survey

August 16, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Amador County

T. 7 N., R. 12 E.

2. This plat, representing the dependent resurvey of a portion of the east and north boundaries, a portion of the subdivisional lines and certain mineral surveys, and the survey of the subdivision of sections 1, 2, 7, 12, 13, 14, 19, and 20, Township 7 North, Range 12 East, Mount Diablo Meridian, under Group No. 760, California, was accepted July 30, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room, E-2841, Sacramento, California 95825.

Celia Anderson,

Acting Chief, Records and Information Section.

[FR Doc. 85–20254 Filed 8–22–85; 8:45 am]

BILLING CODE 4310–90–M

Recreation Management; Long-Term Visitor Permit Program, Designation and Revision of Long-Term Visitor Areas, and Establishment of Supplementary Rules; Yuma District, AZ, and California Desert District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Continued implementation of the long-term visitor permit program, designation and revision of long-term visitor areas, and establishment of supplementary rules in the Yuma District, Arizona, and the California Desert District, California.

SUMMARY: The Bureau of Land Management's (BLM) Yuma District and California Desert District are continuing implementation of the "Long-Term Visitor Program" which was instituted in 1983. The program established an annual long-term use season from October 1 to May 31. During this time, visitors who wish to camp on public lands in one location for extended periods must stay in designated Long-Term Visitor Areas (LTVAs) and purchase a $25 Long-Term Visitor Permit.

Beginning with the 85–86 use season, the following modifications are being made to the Long-Term Visitor Program:

1. Between October 1 and May 31, visitors who wish to camp in an LTVA for less than 14 days are required to register when entering the area. There is no fee for stays of less than 14 days.

2. The California Desert District is designating one additional LTVA and the Yuma District is revising the boundaries of the La Posa LTVA and the Yuma District portion of the Imperial Dam LTVA. (See Table 1).

TABLE 1.—LONG-TERM VISITOR AREAS

District	Area	Approximate size (acres)	Location
California Desert	Dunes Vista LTVA (Addition).	50	T. 16 S., R. 20 E. [illegible] Secs. 14, 23.
Yuma	Imperial Dam LTVA (Revision of Yuma Desert Portion).	3,350	T. 14 S., R. 24 E. [illegible] Secs. 31, 32. T. 15 S., R. 24 E. [illegible] Secs. 5, 6, 7, 8, 17, 18, 19.
Yuma	La Posa LTVA (Revision).	11,820	T. 3 N., R. 19 W. [illegible] Secs. 1, 2, 3, 4, 9, 10, 11, 12, 14, 15, 16, 17, 21, 22, 23. T. 4 N., R. 19 W., [illegible] Secs. 25, 27, 28, 33, 34, 35, 36.

3. In addition to rules of conduct set forth in CFR Title 43, Chapter II, § 8365.1–5, the following supplementary rules apply to designated Long-Term Visitor Areas:

a. The speed limit is 15 MPH. Motorized vehicle free play is prohibited, and motorized vehicles will be used for access to and from campsites only.

b. Pets must be kept on a leash or under some other form of physical control at all times.

c. A 15–foot space must be maintained between campfires, vehicles, and dwelling units.

d. Quiet hours are from 10 p.m. to 6 a.m. Operation of audio devices or motorized equipment in a manner that makes unreasonable noise that disturbs other visitors is prohibited.

e. Dumping of gray water is prohibited unless otherwise posted.

f. Discharge of firearms, weapons, or fireworks is prohibited within one-half mile of LTVAs.

g. Landing or taking off of aircraft, including ultra-lites, is prohibited within the Mule Mountain LTVA.

h. Boarding of livestock (horses, cattle, sheep, goats, etc.) within the boundaries of LTVAs is permitted only through authorization by the local Area Manager.

i. Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. No permanent structures or

alterations to the natural landscape are allowed.

j. No wood collecting is permitted within the boundaries of Imperial Dam and La Posa LTVAs.

k. Within the Imperial Dam and La Posa LTVAs overnight occupancy is prohibited in desert washes.

l. Overnight occupancy is prohibited between Old Highway 80 and Interstate 8 in Hot Spring LTVA.

m. Food or beverages are prohibited within 50 feet of the hot spring facilities in Hot Spring LTVA.

n. Camping is restricted to self-contained camping units only in the La Posa, Pilot Knob, Dunes Vista, Tamarisk, and Hot Spring LTVAs. The Imperial Dam LTVA is also restricted to self-contained camping units only except for the vicinity of Senator Wash Reservoir and Squaw Lake Campground.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: David Mensing, Outdoor Recreation Planner, California Desert District, Riverside, California 92507, (714) 351-6402, or Hal Hallett, Outdoor Recreation Planner, Yuma District, Yuma, Arizona 85364, (602) 726-6300.

SUPPLEMENTARY INFORMATION: The purpose of the Long-Term Visitor Program is to provide areas for long-term winter camping use. The sites designated as Long-Term Visitors Area are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the management planning process and environmental assessments were completed for each site location.

The program was established to property accomodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of Long-Term Visitor Areas will assure that specific locations are available for long-term use year after year, and assure that inappropriate areas are not used for extended periods.

Visitors may camp without a Long-Term Visitor Permit in LTVAs or on public lands not otherwise closed to camping for up to 14 days in any 28-day period unless posted otherwise.

Authority for the designation of Long-Term Visitor Areas contained in CFR Title 43, Chapter II, § 8372.0-5(g). Authority for the establishment of a long-term visitor permit program is contained in CFR Title 43, Chapter II, § 8372.1 and payment of fees in CFR Title 36, Chapter I, Part 71.

The authority for establishing supplementary rules is contained in CFR Title 43, Chapter II, § 8365.1-6. These rules have been developed to meet the goals of individual resource management plans. Rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected and posted near and/or within the lands, sites or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Maps showing the location of all Long-Term Visitor Areas are available at both the Desert District and Yuma District Offices.

D. Dean Bibles,

State Director, Arizona.

Ed Hastey,

State Director, California.

[FR Doc. 85-20255 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-84-M

Prioritization of Processing of Record Title and Operating Rights Assignments of Oil and Gas Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of prioritization for processing of record title and operating rights assignments of oil and gas leases.

SUMMARY: As part of the Bureau of Land Management's (BLM) continuing commitment to eliminating delays in casework processing and in the interest of providing the best possible service to the public, notice is hereby given that applications for approval of record title and operating rights assignments of oil and gas leases, filed in accordance with 43 CFR 3106, will be prioritized for processing. All assignments will be processed. However, to enable the BLM office to focus on those assignments which are either required to track record title in Federal leases or are necessary for development to occur, a priority ranking system will be used. Assignments will be prioritized as follows:

Category 1. (a) All assignments of record title and (b) assignments of operating rights, accompanied by a certificate of title described below, which are for producing or unitized leases or accompanied by or necessary for approval of an Application for Permit to Drill (APD) or an agreement under 43 CFR 3105 or 3181.3.

Category 2. Assignments of operating rights for producing or unitized leases or accompanied by or necessary for approval of an APD or an agreement under 43 CFR 3105 or 3181.3 which are not accompanied by a certificate of title.

Category 3. Assignment of operating rights accompanied by a certificate of title.

Category 4. All other assignment of operating rights.

Certificates of title must contain full disclosure of all interests in the lands involved, prepared by a person, association or corporation authorized by the law of the State in which the lands are located to execute such a certificate. The certificate of title must state that the certificate is accurate and fully complete as to all instruments of conveyance of record affecting title to the subject lands as reflected by the records of the BLM and/or the appropriate recording office of the State where the lands are located. It must bring the chain of title forward for all record title interests and must give land description, percentage of interest held, the full name and address of the lessee or assignee, as appropriate, and his/her Bureau identification number. Where operating rights are segregated from the record title, the chain of title for all operating rights must be brought forward separately and must also give the land description, percentage of interest held, the full name and address of the lessee or assignee, as appropriate, and his/her Bureau identification number. The listing of operating rights must set forth each specific horizontal zone segregated from all lands included in the assignment.

It is important to note that the public must continue to timely file assignments of record title, as well as, assignments of operating rights for leases in production or covered by unit or communitization agreements. However, the public is advised that assignments of operating rights for nonproducing or nonunitized leases need not be filed with the BLM until such time as approval of the assignment is necessary for approval of an APD or an agreement under 43 CFR 3105 or 3181.3. Assignees of operating rights who do not file shall assume any risk arising from the fact that any subsequent purchaser of operating rights will not be on notice of their interest. Some assignments should accompany the APD or application for approval of an agreement, and should include as exhibits a certificate of title as described above and an originally executed copy, or copy certified by the legal custodian of the records in the appropriate State recorder's office, of each assignment of operating rights not yet filed with or approved by the BLM. Compliance with these requests will ensure timely processing by the BLM since the operating rights assignment will be processed in conjunction with the APD or agreement (see priority

Category 1 above) based on the certificate of title and the supporting documentation. The certificate of title will suffice as the statement to the BLM that any assignment not filed within 90 days from the date of execution is still in force as required by 43 CFR 3106.1(a), and the approval by BLM of the operating rights assignment will incorporate approval of any interim assignments, copies of which should be included as exhibits.

It is expected that these measures will better enable BLM State Offices to approve promptly those assignments affecting record title to Federal leases and those assignments of operating rights pertinent to post lease oil and gas operations. These steps are being taken as interim measures until such time as rules modifying the requirements for assignments of operating rights may be promulgated.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 343–2190.

James M. Parker,

Acting Director.

July 26, 1985.

[FR Doc. 85–20003 Filed 8–22–85; 8:45 am]

BILLING CODE 4310-84-M

Shoshone District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management (BLM); Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Thursday, September 26, 1985 at 10:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, ADM for Resources, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208) 886–2206 or FTS 554–6576.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items:

Recommendations on Utilization of Range-Betterment Funds
Future Composition of the Board
Review the Transfer of Certain Lands From the Shoshone District to the Burley District

The Shoshone District Grazing Advisory Board is established under Section 403 of the Federal Land Policy and Management Act, as amended Operation and Administration of the Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463,; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement between 1:00 p.m. and 2:00 p.m., or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Manager by September 25, 1985. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Jon Idso,

Acting District Manager.

[FR Doc. 85–20253 Filed 8–22–85; 8:45 am]

BILLING CODE 4310-GG-M

Realty Action, Exchange of Public Lands in Boundary, Bonner, Kootenai Counties, ID

Correction

In FR Doc. 85–17113, appearing on page 29277, in the issue of Thursday, July 18, 1985, make the following corrections:

In the second column:

1. In T. 6 S., R. 28 E., B.M., Sec. 36, the fifth and sixth lines of legal description should read:

NE¼NW¼SE¼SW¼, W½W½SE¼ SW¼, NW¼NW¼SE¼.

2.a. The thirteenth line from the top of the page should read "T. 7 S., R. 27 E., B.M.".

b. Under the above-mentioned township and range, the legal description for Sec. 16 should read "N½, E½SW¼SW¼, SE¼SW¼, N½SW¼".

BILLING CODE 1505-01-M

Fish and Wildlife Service

Honeoye Creek Wetlands Project; Draft Environmental Impact Statement Comment Period Extended

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the comment period on the DEIS on the Honeoye Creek Wetland Project has been extended to September 15, 1985. At the public hearing on the project held on July 2, 1985, Fish and Wildlife Service and New York State Department of Environmental Conservation representatives annunced an extension of the comment period. Originally comments were due to Fish and Wildlife Service by August 15, 1985.

ADDRESS: Comments should be addressed to: Howard N. Larsen Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph W. Abele, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, (617) 965–5100 X382.

Individuals wishing copies of this DEIS for review should immediately contact the above individual. Copies have been sent to all agencies, organizations and individuals who participated in the scoping process and in the review process to date.

William C. Ashe,

Acting Regional Director.

[FR Doc. 85–20228 Filed 8–22–85; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Gateway National Recreation Area; Gateway Advisory Commission Meeting

AGENCY: National Park Service—Gateway Advisory Commission, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Gateway Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 11, 1985, commencing at 3 p.m.

ADDRESS: Theodore Roosevelt Birthplace National Historic Site, 28 East 20th Street, New York, New York.

FOR FURTHER INFORMATION CONTACT: Robert W. McIntosh, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building No. 69, Floyd Bennett Field, Brooklyn, New York 11234, (718) 338–3575).

SUPPLEMENTARY INFORMATION:

The Advisory Commission was established by Pub. L. 92–592, to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area. The agenda for the meeting will include: (1) Riis Park Development; (2) Status of Advisory Commission; (3) New business as may come before the board.

The meeting will be open to the public. The facility at which the meeting will be held is considered physically accessible. If interpretive services for the deaf or hearing impaired will be needed, they should be requested within five working days before the meeting. Facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis.

Any member of the public may file with the Commission a written statement concerning agenda items to be discussed. The statement should be addressed to the Commission, c/o Gateway National Recreation Area, Building No. 69, Headquarters, Floyd Bennett Field, Brooklyn, New York 11234. Minutes of the meeting will be available for inspection four weeks after the meeting at Gateway National Recreation Area Headquarters Building in Brooklyn, New York.

Dated: August 15, 1985.

Robert W. McIntosh, Jr.

Superintendent, Gateway National Recreation Area.

[FR Doc. 85-20165 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-70-M

Land Protection Plan; Cape Cod National Seashore; Availability

AGENCY: National Park Service, Cape Cod National Seashore, Interior

ACTION: Notice of availability of land protection plan.

SUMMARY: This notice announces that a Land Protection Plan for Cape Cod National Seashore is available at the Cape Cod National Seashore headquarters building, Marconi Station, South Wellfleet, Massachusetts 02663.

DATE: The Land Protection Plan was approved by Steven H. Lewis, Acting Regional Director, North Atlantic Region on August 8, 1985.

This Plan can be obtained from Jim Killian at the above address or telephone (517) 349-3785.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

August 15, 1985.

[FR Doc. 85-20164 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-70-M

Availability of Development Concept Plan and Public Meeting; Fort Washington Marina, Piscataway Park, MD

The State of Maryland, in cooperation with the National Park Service, has prepared a Development Concept Plan for Fort Washington Marina, Piscataway Park, that identifies the state's proposal for future development and operation of the marina.

A public meeting will be held to solicit comments on this proposal. The time and location of the meeting is as follows: September 11, 1985 at 7:30 p.m. in the All Purpose Room of the Potomac Landing Elementary School, 12500 Ft. Washington Boulevard, Fort Washington, Maryland. Please contact the Superintendent, National Capital Parks-East at 202-433-1186, 5 days prior to the meeting if an interpreter is needed for the hearing impaired.

Written comments on this Development Concept Plan are invited and will be accepted until October 11, 1985. Written comments should be sent to: Superintendent, National Capital Parks-East, 1900 Anacostia Drive SE., Washington, D.C. 20020.

Copies of the Development Concept Plan are available by writing to the above address.

Dated: August 19, 1985.

Manus J. Fish,

Regional Director, National Capital Region.

[FR Doc. 85-20230 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Mauritius; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for Mauritius as part of A.I.D's development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in Mauritius. The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Mauritius

Project: 642-HG-001—$6,000,000

Attention: Mr. M. Baquant, Financial Secretary, Ministry of Finance, New Government Center, Port Louis, Mauritius, Telex No. 4249, Extern IW

Interested investors should telegran their bids to the Borrower's representative on September 5, 1985 but no later than 12:00 midnight New York time. Bids should be open for at least 48 hours. Copies of all bids should be simultaneously sent to the following addresses:

American Embassy, Rogers House (via commercial cable), Port Louis, Mauritius, Attn: Fredrik Hansen

Agency for International Development, Michael G. Kitay, PRE/H, Room 625, SA-12, Washington, D.C. 20523, Telex No. 892703

For the $6,000,000 loan (642-HG-001) the Borrower is requesting either fixed rate or variable rate bids (with an option to convert to fixed rate) for the full amount, to be disbursed in 3 tranches as follows: $2.0 million on or about November 1, 1985, $2.0 million on or about November 1, 1986 and $2.0 million on or about May 1, 1988. Fees will be allowed up front.

Bids should specify a grace period on repayment of principal of ten (10) years and a grace period on interest of eighteen (18) months from the date of first disbursement. Borrower reserves the right to consider alternate bids.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrowers and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loan must be repayable in full no latet than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rate may be higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Director, Office of Housing and Urban Programs, Agency for International Development, Room

625, SA/12, Washington, D.C. 20523, Telephone: (202) 632–3544.

Pamela B. Hussey,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 85–20250 Filed 8–22–85; 8:45 am]

BILLING CODE 4710-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30701]

Consolidated Rail Corp. Trackage Rights; the Milwaukee Road, Inc.; Exemption

The Milwaukee Road, Inc. has agreed to grant trackage rights to Consolidated Rail Corporation over a line of track between Chase (milepost 176.8) and Elnora, IN. (milepost 223.9). The trackage rights were effective on August 12, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 15, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–20202 Filed 8–22–85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30706]

Exploration Cruise Lines, Inc.; Purchase of Alaska Tour and Marketing Services, Inc.

ACTION: Notice of proposed acquisition of water carrier operating authority and other assets under 49 U.S.C. 11343.

SUMMARY: By application under 49 U.S.C. 11343, Exploration Cruise Lines, Inc. (Exploration), proposes to acquire the water carrier operating authority and other assets of Alaska Tour and Marketing Services, Inc. (ATMS), a regulated water carrier operating under certificate No. W–1328. Exploration is a noncarrier subsidiary of Anheuser-Busch Companies, Inc. (ABC), which controls, pursuant to prior Commission approval in FD. No. 30096, Manufacturers Railway Company, a rail carrier subject to the jurisdistion of this Commission, and Williamsburg Transport, Inc. (MC–165498) and Busch Industrial Products, Inc. (MC–165507), both interstate motor contract carriers.

DATES: Comments are due by September 13, 1985.

ADDRESSES: Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioners' representatives: Edward G. Lowry III, Bogle & Gates, 2100 Bank of California Ctr., Seattle, WA 98164

and

Leroy F. Fuller, Bogle & Gates, Suite 900, One Thomas Circle NW., Washington, DC 20005.

Comments should refer to Finance Docket No. 30706.

FOR FURTHER INFORMATION CONTACT: Harold Johnson, (202) 275–7971.

SUPPLEMENTARY INFORMATION: The transaction embraces the transfer to Exploration of all of ATMS's interstate operating authority in certificate No. W–1328 which authorizes transportation as a water common carrier of passengers and their baggage, (1) between ports and points in Washington, Oregon, and Idaho on the Columbia, Willamette, and Snake Rivers; and (2) between ports and points in California, Oregon, Washington, and Alaska. Exploration is 80 percent owned by Busch Entertainment Corp., a wholly-owned subsidiary of ABC, and 20 percent owned by ATMS. Exploration will also acquire ATMS's charter interests in the two vessels now being used to conduct ATMS's service, as well as certain land, personal property, fixtures, and other business assets.

By decision entered July 25, 1985, the Commission's Motor Carrier Board granted the parties' temporary authority application under 49 U.S.C. 11349, authorizing Exploration to manage and control ATMS pending the Commission's consideration of the permanent application under 49 U.S.C. 11343–11344.

By the Commission, Heber P. Hardy, Director Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–20205 Filed 8–22–85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30690]

Pigeon River Railroad Co.; Petition for Exemption

AGENCY: Interstate Commence Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Pigeon River Railroad Company from the requirements of (1) 49 U.S.C. 10901 to operate an abandoned 14.27-mile rail line in Steuben, LaGrange, and Noble Counties, IN; and (2) 49 U.S.C. 11301 to issue up to $250,000 in debt and equity securities.

DATES: This exemption is effective on August 23, 1985. Petitions to reopen must be filed by September 12, 1985.

ADDRESSES: Send comments referring to Finance Docket No. 30690 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Carl M. Miller, Miller & Miller, P.O. Box 246, New Haven, IN 46774.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 2, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred in the result.

James H. Bayne,

Secretary.

[FR Doc. 85–20203 Filed 8–22–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–26 (Sub-31X)]

Southern Railway Co. Southern Railway—Carolina Division; Discontinuance of Operations and Abandonment Exemption in Rutherford and McDowell Counties, NC; Exemption

Applicants have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to discontinue operations and abandon approximately 16.66 miles of rail line between milepost SB–183.34 at Gilkey, NC, and milepost SB–205.0, near Marion, NC in Rutherford and McDowell Counties, NC.

Applicants have certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year

period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 28, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by September 6, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 16, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Nancy S. Fleischman, 1050 Connecticut Avenue NW., Suite 740, Washington, DC 20036.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 13, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-20204 Filed 8-22-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment

Notice is hereby given that ASARCO Incorporated ("ASARCO") has filed with the United States District Court for the Southern District of New York a motion to terminate the Final Judgment in *United States* v. American Smelting and Refining Company, Civil No. 88-249; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on October 9, 1953) alleged American Smelting and Refining Company ("ASR") and St. Joseph Lead Company ("St. Joe"), the two largest U.S. producers of primary lead, had combined and conspired in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. § 1 and 2, to restrain and monopolize, and had attempted to monopolize, the mining, smelting, refining and sale of primary lead in the United States. ASR and St. Joe allegedly agreed to, and did fix prices and limit production of primary lead and took joint action to fix and stabilize world prices and limit U.S. imports of lead.

The Final Judgment entered upon consent on October 11, 1957 settled the case as to ASR. The Judgment enjoins any agreement, plan or program to fix prices, price differentials, price discounts or others terms and conditions for the sale of primary lead in the United States. ASR is specifically enjoined from exchanging information or consulting with St. Joseph Lead Company with respect to any future change in the price for primary lead by either company. ASR is prohibited from agreeing to limit, reduce or restrict the mining, smelting, refining or selling of primary lead in the United States. The Judgment enjoins ASR from agreeing, except with a foreign government, to restrict U.S. imports or exports of lead ore, lead concentrate, lead bullion or primary lead. ASR is prohibited from agreeing to fix prices for primary lead in the foreign or domestic commerce of the United States provided that the provision does not apply to any act in a foreign country required by the government thereof.

The Judgment required termination of a tolling contract with St. Joe and regulates the terms and condition of any future contract with St. Joe.

The Judgment prohibits ASR from acquiring any lead smelter or lead refinery existing as of the date of the Judgment. ASR is enjoined from entering into any tolling contract that would tend substantially to lead to the permanent cessation of production by a smelter or refinery that previously handled the business.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the Judgment would serve the public interest. Copies of the complaint and Final Judgment, ASARCO's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, Federal Courthouse, Foley Square, New York, New York. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to Anthony V. Nanni, Chief, Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone: 202-633-2541).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-20201 Filed 8-22-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 85-8]

Avner Kauffman, M.D.; Revocation of Registration and Denial of Application

On January 22, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an order to show cause to Avener Kauffman, MD (Respondent) 4440 West Lincoln Highway, Matteson, Illinois 60443 seeking to revoke DEA Certificate of Registration AK2002664, and to deny any pending applications for registration under 21 U.S.C. 823(f). The statutory predicate under 21 U.S.C. 824(a)(3) for the order to show cause was the summary suspension by the Illinois Department of Registration and Education on March 23, 1984, of the controlled substances license previously issued to Respondent by the Department. Respondent, through counsel, requested a hearing on the issues raised by the order to show cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young.

The Matter was continued for 60 days, until May, 1985, pending possible action by the Illinois authorities. The Illinois authorities took no further action, leaving Respondent without authority to possess, prescribe, dispense or otherwise handle controlled substances in Illinois. On May 29, 1985, Government counsel moved for summary disposition of the Matter based on Respondent's lack of state authority to handle controlled substances. Counsel for Respondent replied to the motion for summary disposition by stating that he and the Illinois authorities had negotiated an order providing for partial

reinstatement of Dr. Kauffman's controlled substances privileges.

Judge Young entered an opinion and recommended decision on June 17, 1985. He stated that this agency has consistently held that if a registrant or applicant is without authority to handle controlled substances under the laws of the state in which he practices, or proposes to practice, DEA is without statutory authority to issue or maintain a registration. In such cases, a motion for summary disposition is properly entertained and granted. See *David Sachs, M.D.*, Dk. 77–2, 42 FR 29112 (1977); *James Waymon Mitchell, M.D.*, DK. 79–16, 44 FR 11873 (1978); *Floyd A. Santner, M.D.*, Dk. 79–23, 47 FR 51831 (1982). The Administrative Law Judge also noted that there is no issue of fact presented, and that no evidentiary hearing is necessary in the Matter, citing *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

The Administrator agrees with this interpretation of section 824(a)(3). DEA has consistently maintained that lack of state authority to handle controlled substances precludes DEA from registering a practitioner. Respondent lacks authority under state law to handle controlled substances in Illinois, the state in which he wishes to remain registered. Therefore, DEA cannot register Respondent in Illinois. The Administrator also agrees that there is no material issue of fact, and therefore there is no need for a plenary hearing.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824(a) and redelegated by 28 CFR 0.100, the Administrator hereby revokes Certificate of Registration AK2002664, and denies any pending application, for reason that Avner Kauffman, M.D. is without authority to possess, prescribe, dispense, administer or otherwise handle controlled substances in Illinois. The revocation and denial will be effective September 23, 1985.

Dated: August 19, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85–20236 Filed 8–22–85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84–39]

Paul H. Norton, D.P.M.; Revocation of Registration and Denial of Application

On August 24, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an order to show cause to Paul H. Norton, D.P.M., the Respondent in this Matter. The order sought to revoke DEA Certificate of Registration AN2010217 and to deny any pending applications for registration under 21 U.S.C. 823(f). The statutory predicate for the order under 21 U.S.C. 824(a)(2) was the conviction of Dr. Norton on November 28, 1983, in the Court of Common Pleas, Cuyahoga County, Ohio of 11 counts of making, uttering and selling false prescriptions for Percodan, a Schedule II drug, and Valium, a Schedule IV drug, in violation of Ohio Drug Law R.C. 2925.23. These are felonies relating to controlled substances.

A previous order to show cause was sent by registered mail on June 22, 1984, to 16102 Chagrin Boulevard, Shaker Heights, Ohio, the last address at which Dr. Norton was registered. The order was returned as unclaimed. The August 24, 1984 order was sent registered mail to Respondent at the Correctional Pre-Release Center in Orient, Ohio, where Respondent was incarcerated. Respondent, proceeding *pro se*, replied to the order and requested that the Matter be continued until his release date of March 11, 1985. The Matter was placed on the docket of Administrative Law Judge Francis L. Young, who continued the Matter until his release date of March 11, 1985. The Matter was placed on the docket of Administrative Law Judge Francis L. Young, who continued the Matter until March 11, 1985, as requested by Respondent. Judge Young required Respondent to inform the office of the Administrative Law Judge within 10 days of his release.

On April 25, 1985, Judge Young ordered the parties to file prehearing statements stating issues and identifying evidence for presentation at a hearing. The Government complied with the order but Respondent filed nothing in response even after the Administrative Law Judge extended the date for filing until July 1, 1985. Respondent did not inform the office of the Administrative Law Judge of his release date or of his new address, which the DEA Cleveland Resident Office learned was 10526 Glenville, Cleveland, Ohio.

Government counsel filed a motion for termination of proceedings on July 19, 1985. Judge Young granted the motion and terminated the proceedings before him on August 1, 1985. In his memorandum and order terminating proceedings, the Administrative Law Judge noted that since Respondent has failed to file a prehearing statement it appears that he does not intend to raise any issues or to present any evidence at a hearing if one were to be held. Judge Young found, as does the Administrator, that Respondent has waived his opportunity for a hearing. Accordingly, the Administrator bases this final order on the investigative record as it appears. 21 CFR 1301.54(d); *Marshall D. Nickerson, M.D.*, Dk. 80–19, 45 FR 72310 (1980); *Elvin Edward Walker, D.O.*, Dk. 84–47, 50 FR 3848 (1985) citing *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198 (1980); *National Independent Coal Operators' Assoc.* v. *Kleppe*, 423 U.S. 388 (1976); *United States* v. *Consolidation Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

Upon examination of the investigative record, the Administrator finds that Respondent was a podiatrist practicing in Cleveland, Ohio. In 1983, Medical Mutual of Cleveland, Inc. (Blue Cross/Blue Shield) began an investigation of Respondent's excessive billing for medical procedures and controlled substances. A Medical Mutual investigator went to Respondent's office on March 17, 1983, and obtained a prescription for Percodan without showing any foot ailment that would require a potent Schedule II narcotic. Six times during the spring and early summer of 1983 the investigator went to Respondent's office and obtained prescriptions for controlled substances. The investigator manifested no podiatric complaint yet Respondent billed Medical Mutual each time for "bone surgery" or "ingrown toenail" in amounts from $150 to $300. Several times the investigator told Respondent that his "friends" wanted to "party" with the drugs they obtained via Respondent's prescriptions. Respondent once told the investigator that the drugs would make his "feet feel happy." Whenever the investigator brought in a new "patient," Respondent would "reward" him with another prescription.

Respondent's transactions with the Medical Mutual investigator were not unique. The Cuyahoga County Sheriff's Department noticed that Respondent's prescriptions were on the street in Cleveland in early 1983. Prescriptions written by Respondent were found in pharmacies throughout metropolitan Cleveland. Most of these prescriptions were for Percodan. They were apparently facially valid, being written for 15 to 20 dosage units. However, they were usually written in one name and were found in batches totalling about 250 dosage units.

It is clear to the Administrator that Dr. Norton is unable to meet the obligations of responsibly handling controlled substances. A practitioner who writes a prescription for Percodan, telling an investigator that Percodan will make his feet feel happy, and then fraudulently bills for this "service," is unfit to possess DEA registration. Respondent

has submitted no evidence in explanation or mitigation. Given the facts in this case, the Administrator has no choice but to revoke the registration previously issued to Dr. Norton.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824(a), and redelegated by 28 CFR 0.100, the Administrator hereby revokes Certificate of Registration AN2010217, and denies any pending applications for registration, for reason that Paul H. Norton, D.P.M., was convicted of felonies relating to controlled substances, such revocation and denial to be effective September 23, 1985.

Dated: August 19, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-20223 Filed 8-22-85; 8:45 am]

BILLING CODE 4410-09-M

Roger Lee Palmer, D.M.D.; Denial of Application

On June 17, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an order to show cause to Roger Lee Palmer, D.M.D., (Respondent) 1871 High Street, Lakeport, California 95453. The order to show cause sought to deny the application for registration Respondent executed on February 15, 1985. The statutory predicate under 21 U.S.C. 824(a)(3) for the order to show cause was Respondent's conviction on December 4, 1981, in the United States District Court for the Northern District of California of obtaining a controlled substance by misrepresentation, in violation of 21 U.S.C. 843(a)(1), a felony relating to controlled substances.

Respondent explicitly waived his opportunity for a hearing in a letter dated July 15, 1985. He submitted various letters and petitions in support of his application, which the Administrator has considered in reaching his determination in this matter. Pursuant to 21 CFR 1301.54(e), the Administrator finds that Respondent has waived his opportunity for a hearing.

This is not the first time that an Administrator of DEA has considered the registration status of Respondent. In *Roger Lee Palmer, D.M.D.*, Dk. 83-1, 49 FR 950 (January 6, 1984), a prior Administrator denied an application for registration executed by Dr. Palmer. That denial of application followed a hearing presided over by Administrative Law Judge Francis L. Young, who recommended that the Administrator deny the application. Based on Judge Young's findings, the Administrator found that Respondent diverted a huge quantity of cocaine into illicit channels. Respondent was sentenced to participate in a drug counseling program but nothing in Dr. Palmer's testimony at the hearing indicated that his meetings with the drug counselors constituted a meaningful and effective drug counseling program. The Administrator found that Respondent ingested pharmaceutical cocaine up to 20 times a day.

Turning to the current application, the Administrator notes that one Mylan Hopkins, M.D., who testified for Dr. Palmer at the hearing, submitted a letter in support of Dr. Palmer's current application. In the earlier proceeding, the Administrator found that Dr. Hopkins received or used cocaine from Respondent in the presence of the Government's chief witness at the criminal trial of Respondent. Dr. Hopkins signed a stipulation with the California authorities in which he admitted that he had "prescribed, furnished, given away and administered narcotics and dangerous drugs to addicts and habitues" as detailed in a 36-page list of prescriptions written from November 1973 to early 1979. Certainly the recommendation of Dr. Hopkins is of no weight to the Administrator in deciding whether to register Respondent.

Most of the remainder of Respondent's submission consists of petitions from his patients "to the United States Congress and the President of the United States" as well as the DEA to "reinstate the narcotics license" of Respondent. The petitions state that Respondent is the only doctor in Lake County, California who has taken care of emergency patients for oral surgery and facial trauma. Respondent raised this contention at his hearing in 1983. The Administrator found that there was sufficient testimony in the record, including expert testimony from a prominent local dentist, to conclude that alternative dental services are available to the members of the Lakeport community.

The Administrator can find nothing new in support of this application that was not present, in some form, in Dr. Palmer's prior case. Respondent is still unable to responsibly handle controlled substances. The crimes of which he was convicted was serious. Having examined the record, the Administrator cannot in good conscience register Respondent.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824(a) and redelegated by 28 CFR 0.100, the Administrator hereby denies the application executed by Roger Lee Palmer, D.M.D. on February 15, 1985, and any other pending applications for registration, for reason that Roger Lee Palmer, D.M.D. was convicted of felonies relating to controlled substances. The denial will be effective September 23, 1985.

Dated: August 20, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-20224 Filed 8-22-85; 8:45 am]

BILLING CODE 4410-09-M

Donald Patsy Rocco, D.D.S.; Revocation of Registration

On May 30, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Donald Patsy Rocco, D.D.S., (Respondent), 2029 North Main Street, P.O. Box 3677, Salinas, California 93912, proposing to revoke his DEA Certificate of Registration AR2533710 as a practitioner. The statutory basis for the proposed action, under 21 U.S.C. 824(a)(2) was Respondent's conviction in the Superior Court of Los Angeles, State of California of illegal sale of cocaine in violation of California Health and Safety Code Section 11352, a felony relating to controlled substances. An additional statutory ground pursuant to 21 U.S.C. 824(a)(1) was the fact that Dr. Rocco indicated on an application for DEA registration, and on an application for renewal of that registration, that he had not been convicted of a felony relating to controlled substances, constituting a material falsification of an application for registration. Dr. Rocco received the Order to Show Cause by registered mail, return receipt requested on June 10, 1985. He was advised in the Order to Show Cause that he had 30 days to respond or request a hearing. On July 29, 1985, a letter from Dr. Rocco dated July 12, 1985, was received in the office of the Deputy Assistant Administrator, Office of Diversion Control. Dr. Rocco did not request a hearing. In addition, his response came well beyond the 30-day period. The Administrator therefore finds that Respondent has waived his opportunity for a hearing. 21 CFR 1301.54(d). Even though not timely filed, the Administrator will consider Dr. Rocco's letter and include it in the record. Accordingly, the Administrator hereby issues his final order in this matter on the record as it appears. 21 CFR 1301.54(e).

The Administrator finds that on January 12, 1976, Dr. Donald Patsy

Rocco attempted to sell two ounces of pharmaceutical cocaine bearing lot number 72515 to undercover Los Angeles Police Department officers and DEA Agents. At this time Dr. Rocco was registered with the Drug Enforcement Administration as a dentist in Livermore, California, and assigned DEA number AR1401102. Two days after the attempted sale, a DEA Diversion Investigator went to Dr. Rocco's registered location in Livermore, California, and attempted to speak to Dr. Rocco and review his records pertaining to controlled substances. After being identified to the receptionist and waiting several minutes, the Investigator was informed that Dr. Rocco had left the office. Subsequent investigation revealed that Dr. Rocco had reported a theft of cocaine bearing lot number 72515 from the safe in his office to the Livermore, California Police Department on January 15, 1976. The doctor's receptionist later told police that when the Investigator arrived, she went back and told Dr. Rocco and he left by the rear door leaving his safe open and empty. On June 4, 1976, Dr. Rocco met with the DEA Diversion Investigator and explained his records and office use of cocaine. Dr. Rocco had ordered 19.25 ounces of pharmaceutical cocaine in the 20 months from March, 1974 to November, 1975. The doctor's dispensing records did not indicate quantities dispensed and he had several unverified destructions of cocaine, including a broken one ounce bottle of cocaine which he said he destroyed. He also told the investigator that 9.5 ounces of cocaine were stolen from his office on January 14 or 15, 1976. He did not report this theft as he is required to do, until June 14, 1976.

On June 28, 1976, Dr. Rocco pled guilty to illegal sale of cocaine, a violation of California Health and Safety Code section 11352(a). This is a felony relating to controlled substances. Dr. Rocco was sentenced to one year in the Los Angeles County Jail. After an Order to Show Cause was issued, Dr. Rocco's DEA Certificate of Registration was revoked on June 28, 1977. Subsequently, Dr. Rocco's dental license was placed on five years probation pursuant to a stipulated order of the California Board of Dental Examiners. One of the terms of the probation was that Dr. Rocco not maintain a DEA registration during the five year term of his probation.

The Administrator further finds that on September 12, 1983, Dr. Donald Patsy Rocco signed a DEA application for registration. On this application Dr. Rocco indicated that he had not been convicted of a felony in connection with controlled substances under state or federal law, and that he had not had a previous Controlled Substances Act registration revoked. On March 25, 1985, Dr. Rocco submitted a renewal for that registration on which he indicated that he had not been convicted of a felony relating to controlled substances, nor had a previous CSA registration been revoked. The fact that Dr. Rocco materially falsified two application forms for DEA registration provides yet another ground for revocation of a registration pursuant to 21 U.S.C. 824(a)(1).

Dr. Rocco submitted a letter dated July 12, 1985, to the Deputy Assistant Administrator, Office of Diversion Control, in which he responded to the Order to Show Cause. In Dr. Rocco's brief letter he states that he applied for a DEA Certificate of Registration after the State of California, "dismissed the charges of December 21, 1976." Dr. Rocco also indicated in his letter that his statement that a previous registration had not been revoked was not false because he never renewed the registration.

Dr. Rocco's felony conviction of December 21, 1976, was set aside or dismissed pursuant to section 1203.4 of the California Penal Code on May 15, 1979. The Administrator finds, however, that the California court's action under California statute does not "erase" the conviction for purposes of 21 U.S.C. 824. This finding is based upon decisions of federal courts interpreting the relationship of California Penal Code section 1203.4 to actions by federal agencies predicated upon dismissed felony convictions, the language of the Penal Code Section itself, and agency precedent affording the term "conviction" with the broadest possible meaning.

The United States Court of Appeals for the Ninth Circuit has upheld the use of felony convictions which have been dismissed or set aside pursuant to California Penal Code section 1203.4 as a predicate to federal actions under federal statutes. *United States* v. *Andrino*, 497 F.2d 1103 (9th Cir. 1974) [gun control]; *Cruz-Martinez* v. *Immigration and Naturalization Service*, 404 F.2d 1198 (9th Cir. 1968) [deportation]. In the *Cruz-Martinez* decision, which involved deportation based upon a violation of California State narcotics law, the Ninth Circuit Court of Appeals stated at page 1200, "It would defeat the purpose . . . (of federal law) if provisions of local law, dealing with rehabilitation of a convicted person, could remove them from the ambit of (federal penal enactments) . . . We do not think Congress intended such result. *Reyes* v. *United States*, 258 F.2d 774 (9th Cir. 1958)." There have been no judicial decisions regarding California Penal Code section 1203.4 as it relates to the term "conviction" used in 21 U.S.C. 824. It was surely not the intent of Congress to predicate the revocation of a practitioner's DEA Certificate of Registration upon a conviction and then have federal actions vary depending upon the state in which the conviction arose and the nature of a state's post conviction remedies.

Respondent was found guilty of a felony relating to controlled substances, he served a jail sentence, paid a fine, and was on supervised probation. The setting aside of the conviction was not a finding of innocence. Its purpose was to facilitate the rehabilitation of the convicted person. Even in the language of the statute itself, the California legislature chose to include the following provision, ". . . the probationer shall be informed that the order does not relieve him of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency." Ca P.C. 1203.4.

In other revocation actions by the Administrator of the Drug Enforcement Administration pursuant to 21 U.S.C. 823 and 824, the Administrator has determined that the term "conviction" should be afforded its broadest possible meaning. See *In Re Faunce Drug Store*, Docket No. 82-3, 47 FR 30122 (1982). The Administrator continues to find that Congress intended the word "convicted" as used in 21 U.S.C. 823 and 824 to be interpreted in its broadest sense.

Respondent may believe that the dismissal or setting aside of his felony conviction by the California court precludes its disclosure to the Drug Enforcement Administration on an application for registration. However, where it was clearly the intent of the California legislature that a conviction dismissed or set aside under California Penal Code section 1203.4 be disclosed to state and local licensing agencies, and upon finding that Respondent's conviction is a conviction of a felony relating to controlled substances pursuant to 21 U.S.C. 824(a)(2), the Administrator finds that the Respondent should have disclosed such information on his DEA application for registration, and that failure to do so was material falsification of an application for registration purusant to 21 U.S.C. 824(a)(1).

Dr. Rocco's previous DEA Certificate of Registration was revoked in June, 1977. Dr. Rocco and his attorney of record were advised of that fact via registered letter dated June 28, 1977. This revocation was based upon the Respondent's conviction in December of 1976 of attempted sale of two ounces of pharmaceutical cocaine, cocaine which came into his possession through his DEA Certificate of Registration. The Respondent indicated in his letter dated July 12, 1985, that he cooperated with DEA through his attorney. Counsel represented Respondent in the previous Show Cause proceeding that resulted in the June, 1977 revocation of Dr. Rocco's previous DEA Certificate of Registration. Counsel also arranged a meeting between a DEA Investigator and Respondent in June, 1976, for a review of Respondent's controlled substance records. There is no record of any assistance provided by Dr. Rocco to DEA.

The Respondent has provided the Administrator with no information which would serve in mitigation of his past actions. Respondent is only registered with DEA at the present time due to his failure to disclose the prior felony conviction, and revocation action.

In consideration of the foregoing, and having a lawful basis for such action, 21 U.S.C. 824 (a)(1) and (a)(2), it is the decision of the Administrator that Dr. Rocco's DEA Certificate of Registration should be revoked.

Accordingly, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), the Administrator hereby revokes Certificate of Registration AR2533710 previously issued to Donald Patsy Rocco, D.D.S. and denies any pending applications for renewal, effective September 23, 1985.

Dated: August 19, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-20225 Filed 8-22-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

United States Employment Service; Labor Certification Process for the Temporary Employment of Aliens in Agriculture; 1985 Adverse Effect Wage Rates and Plans for 1986

Correction

In FR Doc. 85-19623 beginning on page 33121 in the issue of Friday, August 16, 1985, make the following correction on page 33122: In the first column, in the table, in the entry for Texas, in the second column under the heading "1984 rates", "497" should read "3.97".

BILLING CODE 1505-01-M

Office of Pension and Welfare Benefit Programs

[Application No. D-4918 et al.]

Proposed Exemptions; K's Merchandise Mart, Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type of requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

K's Merchandise Mart, Inc. Profit Sharing Plan and Trust (the Plan) Located in Decatur, Illinois

[Application No. D-4918]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of a 3.28 acre parcel of unimproved real property (the Property) by the Plan to K's Merchandise Mart, Inc. (the Employer), provided that the price paid for the Property is not less than its fair market value at the time of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan, established by the Employer on December 15, 1971. As of December 31, 1982, the Plan had 450 participants and net assets of $1,993,870.27, of which 92% consisted of parcels of real property including the Property. The trustees of the Plan (the Trustees) are David Kay Eldridge and Ray Eldridge, Jr., each of whom owns 50% of the stock of the Employer.

2. On August 20, 1975, the Employer purchased a 10 acre parcel of real property, which includes the Property, from Pownall and Clara Carder, unrelated parties with respect to the Plan, for $169,981 in cash, for the purpose of constructing the Employer's headquarters. In March, 1976, the Employer contributed eight acres of said parcel to the Plan, valuing the contribution at 80% of the purchase price of the entire 10 acre parcel.[1] On April 26, 1977, the Plan sold 4.72 acres of the contributed parcel for $94,750 in cash to Karl Thacker, an unrelated third party, leaving the Plan with the 3.28 acre Property. The Plan has paid $7,784.18 in property taxes and has incurred no other holding costs with respect to the Property.

3. The applicant represents that the Employer has made use of portions of the Property from time to time, including driving semi-tractor and trailer units over that portion of the Property located behind the Employer's headquarters, parking tractor-trailer equipment in that area, and storing construction material and parking trailers on that portion of the Property located to the north of the Employer's headquarters. The Employer has paid no rent in connection with its use of the Property. Accordingly, the applicant represents that the Employer will pay the Plan the fair market value rent for its use of the Property plus the fair market rate of interest on these overdue rental payments. The applicant further represents that the Employer will pay all applicable excise taxes for all prior prohibited transactions within 60 days of the date of a grant of an exemption for the proposed sale of the Property.

4. The applicant seeks an exemption to permit the cash sale of the Property by the Plan to the Employer. On August 22, 1983, Louis J. Kienzler, MAI appraised the Property and determined that it had a fair market value of $70,000 as of that date. In a letter dated November 2, 1983, Mr. Kienzler stated that the value of the Property received no enhancement by virtue of the Employer's ownership of adjacent properties. The Plan will not incur any real estate commissions or fees in connection with the sale. The Trustees represent that the sale of the Property is in the best interests of the Plan because it allows the Plan to divest itself of a portion of its real estate investments, providing the Plan with greater diversification and liquidity.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price of the Property is based on an independent appraisal; (c) the Plan will incur no real estate commissions or fees in connection with the sale; (d) the sale will enable the assets of the Plan to be more diversified and more liquid; and (e) the Trustees have determined that the proposed transaction is in the best interests of the Plan.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Rex Stanley Feed Yard, Inc. Employees Pension Trust (the Plan) Located in Dodge City, Kansas

[Application No. D-5928]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, for a period of 5 years, to the proposed loans by the Plan of up to 25% of its assets to Rex Stanley Feed Yard, Inc. (the Employer), provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party at the time of consummation of each transaction.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted will expire five years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plan may hold loans originated during this five year period until the loans are repaid. Should the applicant wish to continue entering into loan transactions beyond the five year period, the applicant may submit another application for exemption.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with 6 participants and net assets of approximately $178,824 as of June 30, 1983. The trustee of the Plan, Mr. Rex Stanley (Mr. Stanley), is also the president and principal stockholder of the Employer. The Employer is a corporation engaged in the operation of a cattle feed lot.

2. The Plan proposes to make a series of loans to the Employer over a period of 5 years involving up to 25% of the Plan's assets. The loans will be used by the Employer to purchase cattle and equipment as well as to help finance its ongoing business operations.

3. The applicant represents that each loan will be evidenced by a promissory note and collateralized by a filed and perfected security agreement on one or more pieces of existing machinery of the Employer. Further, each loan will at all times be collateralized in an amount at least equal to 200% of the outstanding balance of such loan. The Employer's existing machinery has an approximate fair market value of $90,000 as determined by an appraisal performed on June 18, 1985 by Mr. Phil Ochs, of Ochs Farm Equipment.

4. The applicant represents that the maximum length of any loan will be 60 months with the principal and interest payable in substantially equal annual installments and each loan would have a maturity date not to exceed 5 years beyond the exemption period. The interest rate on the loans will be fixed at the time each loan is made at 3% above the current prime lending rate as quoted in the Wall Street Journal with a guaranteed minimum rate of 11%. At the time of making any loan, no more than 25% of the market value of the assets of the Plan will be used for loans, measured by the aggregate of the then outstanding loan balances. The Employer will adequately insure the machinery and all other collateral against named beneficiary of such insurance. Each loan will be guaranteed by the Employer and Mr. Stanley. The Employer as of December 31, 1983, had a net worth of approximately $879,500.00 and Mr. Stanley's net worth, as of that same date was approximately $1,775,500.00.

5. Mr. John E. Cross, CPA (Mr. Cross), a partner in the accounting firm of Miller & Cross, Great Bend, Kansas, has agreed to serve as an independent fiduciary for the proposed loans. Mr. Cross represents that prior to becoming a partner in his accounting firm, he was employed by Compensation Planning, Inc., a pension consulting firm, where he worked directly with pension and profit sharing plan administration. Mr. Cross represents that he has been advised by legal counsel of his responsibilities and potential liabilities in serving as an

[1] This proposed exemption is limited to the sale of the Property to the Employer. This proposed exemption does not exempt any contribution of real property by the Employer to the Plan to the extent such contribution constitutes a prohibited transaction.

independent fiduciary. Mr. Cross states that he is totally independent from all parties involved in this transaction. Mr. Cross represents that after examining the terms of the proposed loans and the history of the Employer and the Plan, he has determined that such loans would be appropriate and suitable for the Plan and that the terms of the loan are at least equal to those which the Plan could receive in a similar transaction with an unrelated party. Mr. Cross represents that he will make the same determination immediately prior to the consummation of each loan transaction taking into account the facts and circumstances at the time of such proposed loan transaction. In arriving at these conclusions, he was reviewed the proposed loans with respect to: (a) The Plan's overall investment portfolio, (b) the cash flow needs of the Plan, (c) the necessity of the sale of any of the Plan's assets, (d) the diversification of the Plan's assets, both before and after such loans and (e) the terms of the loans as such terms conform with the Plan's investment policy. Mr. Cross represents that the proposed interest rate of 3% above the current prime rate as quoted in the Wall Street Journal with a guaranteed minimum rate of 11% is sufficient considering the amount of collateral securing the loans. Mr. Cross has agreed to accept the responsibility to enforce the terms of the loan agreement between the Employer and the Plan, including making demand for timely payment, bringing suit or other appropriate process against the Employer in the event of default and keeping accurate records on the performance of the loans. Mr. Cross will take whatever steps are necessary during the year to ensure that the value of the collateral remains at least equal to 200% of the outstanding balance of the loans during the duration of the loans.

6. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The loans will be approved and monitored by an independent fiduciary;

(b) The loans will be secured by collateral which at all times will be at all times will be at least equal to 200% of the outstanding balances of the loans;

(c) The exemption will be for a 5 year period with a repayment date not to exceed 10 years from the date of granting of the exemption; and

(d) The Plan's independent fiduciary has determined that the transactions are in the best interests of the Plan's participants and beneficiaries and protective of their rights.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

The Birr, Wilson & Co., Inc. Employee's Profit Sharing Plan (the Profit Sharing Plan) and The Birr, Wilson & Co., Inc. Financial Security Plan for Account Executives (the Security Plan Collectively, the Plans) Located in San Francisco, CA

[Application Nos. D–5927 and D–5928]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 406(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed exercise of stock options (the Options) by the Plans to purchase from Birr, Wilson & Co., Inc. (the Employer) stock in unrelated companies; or 2) the potential repurchase of the Options from the Plans by the Employer, provided that the terms and conditions of the transactions are at least as favorable to the Plans as those obtainable in similar transactions with an unrelated party.

Summary of Facts and Representations

1. The Employer is a closely held regional stock brokerage firm with its principal place of business in San Francisco, California. It also has offices in other cities in California and in New York, Idaho, Oregon, Nevada and Washington. It has seats on the New York and Pacific Stock Exchanges and is a member of the National Association of Securities Dealers, Inc. The Employer is also subject to the Securities Act of 1933, the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, and is a registered investment adviser under the Investment Advisers Act of 1940. The Employer has no obligation to pay dividends and the last cash dividend paid was $.06 per share paid in March, 1977.

2. The Profit Sharing Plan is a profit sharing plan covering employees of the Employer who are not account executives or account executive trainees. As of November 30, 1984, it had 221 participants and assets of $1,604,711.74.

3. The Security Plan is a profit sharing plan covering account executives of the Employer who are compensated primarily on a commission basis. As of November 30, 1984, it had 135 participants and assets of $4,522,837.29.

4. The trustee of both Plans is Security Pacific National Bank (the Trustee).

5. As an underwriter, the Employer frequently purchases and will continue to purchase warrants to acquire shares of stock in issuers for whom it is performing underwriting services. The Employer acquires these warrants for a cash purchase price equal to what it believes to be the fair market value of the warrants. The Employer has acquired a warrant to purchase 53,000 shares of the common stock of All Seasons Resorts, Inc. (Seasons) and a warrant to purchase 24,036 shares of the common stock of Transtector Systems, Inc. (Transtector).

6. As of March 20, 1984, the Profit Sharing Plan held 80,501 shares of common and Class B (non-voting) common stock of the Employer (Employer Stock). On the same date, the Security Plan held 24,046 shares of Employer Stock.

7. On March 20, 1984 the Employer declared a dividend, payable to all holders of record on March 20, 1984 of Employer Stock. The dividend is an option to purchase .062608 shares of common stock of Seasons per share of Employer Stock held on March 20, 1984. The Trustee has an option to purchase on behalf of the Plans 6,545.48 shares of the common stock of Seasons (the Seasons Option) at a price of $8.10 per share, the total purchase price being $53,018.38. The Profit Sharing Plan would pay $40,824.07 for 5040.01 shares and the Security Plan would pay $12,194.31 for 1505.47 shares.

8. On July 19, 1984, the Employer declared another dividend payable to all holders of record on July 19, 1984 of Employer Stock. As of July 19, 1984, the Profit Sharing Plan held 80,085 shares of Employer Stock; the Security Plan held 23,921 shares of Employer Stock. The dividend is an option to purchase .032894 shares of common stock of Transtector per share of Employer Stock held on July 19, 1984. The Trustee has an option to purchase on behalf of the Plans 3,421.19 shares of Transtector common stock (the Transtector Option) at a price of $6.60 per share, the total purchase price being $22,579.85. The Profit Sharing Plan would pay $17,386.58 for 2,634.33 shares and the Security Plan would pay $5,193.27 for 786.86 shares.

9. The Options become exercisable on the dates on which the Option holder receives notification from the Employer

that the Options are exercisable. The Options will remain exercisable for a period of thirty days following the dates of the original exercise notices. The Options may be exercised only by purchasing all of the stock which the Option holder has a right to purchase. The exercise notice for the Seasons Option may not be given prior to February 18, 1985, or subsequent to February 18, 1989; provided, however, that the Employer may, in its absolute discretion, give the Seasons Option holder the exercise notice at any time during the exercise notice period. If the Employer has not given the exercise notice to a Seasons Option holder, it is required pursuant to the terms of the Seasons Option agreement to give the exercise notice to the Seasons Option holder not later than February 18, 1989.

10. The exercise notice for the Transtector Option may not be given prior to June 19, 1985, or subsequent to June 19, 1987; provided, however, that the Employer may, in its absolute discretion, give the Transtector Option holder the exercise notice at any time during the exercise notice period. If the Employer has not given the exercise notice to a Transtector Option holder, it is required pursuant to the terms of the Transtector Option agreement to give the exercise notice to the Transtector Option holder not later than June 19, 1987.

11. The applicant represents that the decision of when to give the exercise notice to Option holders will be based on the Employer's evaluation of factors which will include, but not be limited to, the current market price of the shares which could be acquired pursuant to the Options, the time remaining on the Options and the expectation of market performance in relation to the time remaining on the Options.

12. The applicant represents the Employer may exercise the warrants it has acquired from Seasons and Transtector at a price equal to 120% of the initial offering price for shares of stock. This is represented to be an accepted practice in the investment banking industry.

13. The Options may be exercised by the Trustee at a price equal to the price at which the Employer may acquire shares of Seasons and Transtector pursuant to its warrant.

14. No commissions will be paid by the Plans in connection with their acquisition of Seasons and Transtector shares pursuant to the Options.

15. The purchase price under each Option is subject to adjustment if Seasons or Transtector pays a dividend in shares of its common stock, subdivides (split) its outstanding shares of common stock, combines (reverse split) its outstanding shares of common stock or issues by reclassification of its shares of common stock any shares or other securities of Seasons or Transtector, or distributes to holders of its common stock any securities of Seasons or Transtector or of any other entity. If any of the foregoing events were to occur, and in fact such an event has already occurred, the number of shares of common stock of Seasons or Transtector or other securities which the Trustee is entitled to purchase pursuant to the Option immediately prior to the occurrence of any of the foregoing events shall be adjusted so that the Trustee will be entitled to receive upon exercise the number of shares of common stock or other securities which it would have owned or would have been entitled to receive after the occurrence of any of the events described above had the Option been exercised immediately prior to the happening of such event, and the exercise price per share shall be correspondingly adjusted. No adjustment in the number of shares and/or the exercise price shall take place unless such adjustment would require an increase or decrease of at least 1% in the exercise price or the number of shares which could otherwise be acquired pursuant to the Option. Notwithstanding the foregoing, any adjustment which is not required pursuant to the terms of the Option agreements shall be carried forward and taken into account in the event of any subsequent adjustment.

An adjustment made pursuant to the Option agreements shall become effective immediately after the record date in the case of a stock dividend, or other distribution, subdivision, combination or reclassification of the shares of Seasons or Transtector. If Seasons or Transtector is consolidated or merged with or into another corporation or if all or substantially all of its assets are conveyed to another corporation, each Option holder will be permitted to purchase the kind and number of shares of stock or other securities receivable upon such consolidation, merger or conveyance based on the number of shares of common stock of Seasons or Transtector which could have been purchased under the Option immediately prior to such consolidation, merger or conveyance.

16. The Employer, at any time prior to the exercise of the Options, may repurchase the Options from the Trustee in the event the Employer sells or otherwise disposes of its warrants to acquire shares of Seasons or Transtector or the Employer exercises the warrants and sells or otherwise disposes of all of the Seasons or Transtector shares acquired pursuant to the warrants. In the event the Employer exercises its repurchase rights as described above, it will pay each Seasons or Transtector Option holder cash in an amount determined in accordance with a formula contained in the Option agreements, which assures that the Plans receive their proportionate share of the proceeds of the sale or other disposition of either the warrants or the shares. The Plan will bear no expenses with respect to such a repurchase.

17. The decision of whether or not the Plans will exercise the Options will be made by the investment advisor(s) appointed by the Employee Plan Committee. The Employer currently anticipates that the investment advisor will be Roger E. Engemann & Associates, Inc. (Engemann) of Pasadena, California. Engemann is a registered investment advisor under the Investment Advisors Act of 1940 and is not related to the Company in any respect other than in its capacity as investment advisor to the Plan. The applicant represents however, that Engemann may, in certain cases, choose to have the Employer execute brokerage transactions on behalf of its clients. In determining whether the Options should be exercised, Engemann will give appropriate consideration to those facts and circumstances which Engemann knows or should know are relevant to the exercise of the Options in question. This consideration will include, but will not necessarily be limited to, a determination that the exercise of the Options is reasonably designed, as part of the portfolio of the Plans, to further the purposes of the Plans, taking into consideration the risk of loss and the opportunity for gain or other return associated with the exercise of the Options and the effect that the exercise of the Options will have on the portfolio with regard to diversification; the liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the Plans; and the projected return of the portfolio relative to the funding objectives of the Plans.

18. The applicant represents that the value of the Options is less than .1% of the value of the aggregate assets of the Plans as of November 30, 1984, and if both Options are exercised and the exercise price equals the fair market value of the stock purchased, that the value of such stock would equal to more than 3.5% of the value of the assets of the Profit Sharing Plan and .5% of the value of the assets of the Security Plan.

19. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the subject transaction because: (a) The terms of the Options granted to the Plans are the same as those granted to all shareholders of the Employer; (b) the Plans will be able to exercise the Options at the same price at which the Employer exercises its warrants; (c) an independent fiduciary, Engemann, will decide whether it is in the Plans interests to exercise the Options; (d) in the event the Employer repurchases either Option, the Plans will receive their full share of the proceeds and bear no expense with respect to such resale; and (e) failure to grant the exemption will prevent the Plans from benefiting from these dividends issued to stock holders of the Employer or from the repurchase of the Options by the Employer.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

Radiology Associates, P.A. Pension Plan (the Plan) Located in Little Rock, Arkansas

[Application No. D–5987]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the code shall not apply to the loan by the Plan of $328,600 to Medical Equipment Leasing Company (the Partnership), a party in interest with respect to the Plan, provided that the terms of the loan are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with approximately 47 participants. As of January 31, 1985, the Plan had assets of approximately $2,531,153. The trustees of the Plan (the Trustees) are Drs. David H. Newbern and James R. Morrison, each of whom is a partner in the Partnership and a stockholder of the Employer. The Employer is an Arkansas professional association which provides radiology services, and had total assets of approximately $2,395,591 on January 31, 1985. Most of the stockholders of the Employer are also partners in the Partnership. The primary business of the Partnership is purchasing radiology equipment to be leased to the Employer. As of December 31, 1984, the Partnership had assets of approximately $3,392,853.

2. The Partnership requests an exemption to permit the Plan to make a loan to the Partnership (the Loan) in the amount of $328,600. The proceeds of the Loan will be used to provide permanent financing for the Partnership's recent purchase and improvement of certain condominium space, and land adjacent thereto, for use as a facility for a magnetic resonance imaging system. Magnetic resonance imaging uses magnetic fields to produce radio waves which create an image similar to that obtained by computerized axial tomography (CAT) scanning. On November 8, 1983, the Partnership purchased 807 square feet of condominium space in the Freeway Medical Towers located in Little Rock, Arkansas for $106,600 and approximately 2,900 usable square feet of unimporved real property immediately adjacent thereto for the construction of an attached "imaging" unit for $135,000 (together, the Property). The Property was purchased from Southern Medical Realty Associates Limited Partnership and Medical Corridor Associates Limited Partnership, which are unrelated to the Employer or the Plan. The Partnership also paid $87,000 to Keene Corporation, an unrelated party, for the installation of special radio frequency shielding in the "imaging" unit. Temporary financing for the Property and shielding was provided by First Commercial Bank of Little Rock, Arkansas. The Partnership also incurred substantial additional expenses for capital improvements, which were financed with an unsecured loan from First South Federal Savings & Loan Association of Pine Bluff, Arkansas, in the amount of $625,000.

3. The Loan will be evidenced by a promissory note and will be secured by a first mortgage on the Property and the improvements made thereon. On July 23, 1984, Mr. George Fox, Jr. of Appraisal Consultants, Inc., and M.A.I. appraiser who has no other relationship to the Employer or the Partnership, determined that the Property as improved had a fair market value of $1,107,000. In addition, the Partnership will give the Plan a second secured lien on all the equipment (the Equipment) currently owned by the Partnership. The balance currently outstanding on the first lien on the Equipment is approximately $331,400. The Equipment was appraised by Valuation Counselors Southwestern, Inc., an unrelated party, on December 31, 1983, at which time it was determined that the Equipment had a fair market value of $576,060. At all times the collateral will have an unencumbered fair market value equal to at least 150% of the outstanding balance of the Loan. If the value of the collateral falls below 150% of the outstanding Loan balance, the Partnership will offer any additional collateral that may be required to assure that the collateralization remains at least 150% of the outstanding Loan balance. The collateral will be insured by a qualified, licensed insurance company which the plan designated as the loss payee.

4. The Loan will be repaid over a period of twenty (20) years in monthly installments of principal and interest. The interest rate for the initial year of the Loan will be fixed at a rate equal to one percent over the prime rate prevailing in Little Rock, Arkansas on the date the Loan agreement is consummated. For each subsequent year, the Loan will be adjusted on the anniversary of the Loan agreement and will be fixed for the following year at the Little Rock prime rate on the anniversary date plus one percent. However, the interest rate will never be lower than ten percent per annum.

5. Union National Bank of Little Rock, Arkansas, will serve as the independent fiduciary (the Independent Fiduciary). The applicant represents that the Employer and the partners in the Partnership have no banking or other relationships with the Independent Fiduciary. The applicant further represents that the Independent Fiduciary's duties will include monitoring and enforcing the performance of the Partnership's obligation under the Loan, determining the need for additional collateral to ensure that the total value of the collateral securing the Loan is equal to at least 150% of the outstanding Loan balance, determining whether adequate insurance is being maintained on the collateral to protect the Plan against loss, executing and filing a valid mortgage in favor of the Plan, and verifying the annual adjustments of the interest rate.

6. The Independent Fiduciary has made the following representations:

(a) That it understands the general fiduciary duties and responsibilities it has agreed to perform in accordance with section 404 of the Act;

(b) That the value of the collateral for the Loan will be determined by

independent appraisals to assure that at all times the collateral represents 150% of the outstanding balance of the Loan;

(c) That it will have the authority to monitor the collateral to assure that it remains 150% of the outstanding balance of the Loan and will act on behalf of the Plan to require additional collateral should the existing collateral decrease in value below the 150% limit, and will take whatever steps are necessary to protect the Plan assets invested in the Loan, including any actions involving foreclosure;

(d) That the interest rate on the Loan will be a similar rate to that charged by outside lending institutions on similar loans to similar companies;

(e) That the Loan fits into the overall asset investment scheme of the Plan and that no Plan assets other than liquid assets will be sold to fund the Loan; and

(f) That it has determined that the Loan is in the interest of and protective of the Plan and its participants and beneficiaries.

7. In summary, the applicant represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The Loan will be adequately secured at all times by a promissory note and a recorded first lien on the Property and a recorded second lien on the Equipment which will have an aggregate appraised fair market value of at least 150% of the outstanding balance of the Loan;

(b) The Loan will be monitored by an independent fiduciary; and

(c) The Independent Fiduciary has determined that the Loan is in the interest of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Dan-Ric, Inc. Pension Plan (the Pension Plan) and Dan-Ric, Inc. Profit Sharing Plan (the Profit Sharing Plan; Together, the Plans), Located in LaGrange, Georgia

[Application Nos. D–6018 & D–6019]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plans of a one-half interest in certain unimproved real property (the Property) to Dan-Ric, Inc. (the Employer), the sponsor of the Plans, provided that all terms and conditions of such sale are at least equivalent to those which the Plans could obtain in dealing at arm's length with an unrelated party.

Summary of Facts and Representations

1. The Pension Plan is a defined benefit plan with two participants and total net assets of $26,640 as of December 31, 1983. The Profit Sharing Plan is a defined contribution pension plan with two participants and total net assets of $54,616 as of December 31, 1983. The assets of the Plans are consolidated under one trust for administrative and accounting purposes. The Employer is a closely-held Georgia corporation engaged in real estate brokerage, development, and construction. The trustee of both Plans is Harry Durand (the Trustee), who is also the sole stockholder and president of the Employer.

2. Among the assets of the Plans is a one-half interest in the Property, the remaining one-half interest of which is owned by West Georgia Estates, Inc. (WGE), a Georgia corporation which is unrelated to the Plans and Employer. The Property is a 52.38 acre parcel of unimproved land located in an area near LaGrange, Georgia which is in transition from rural farm land to suburban residential development. The Plans obtained their interest in the Property under the following circumstances: During 1981, while the Employer was engaged in the development of certain real property which lies south of the Property, the Trustee determined that the Property was attractive as a long-term investment for the Plans, due to developments in the vicinity of the Property's location. The owner of the Property at that time, Harry Borger (Borger), who is not related to the Plans or the Employer, was offering the Property for sale but was not willing to partition the 52.38 acres or to sell divided interests in the Property. After determining that the Plans had insufficient cash to purchase the entire Property and that it would be imprudent for the Plans to invest to such extent in unimproved real property, the Trustee learned that WGE was developing land nearby and was interested in investing in the Property. Pursuing mutual interests in the Property, the Plans and WGE purchased the Property from Borger on July 9, 1981, with WGE obtaining an undivided one-half interest in the Property and the Plans obtaining the remaining undivided one-half interest in the Property. For their one-half interest in the 52.38 acre Property, the Plans paid Borger a purchase price of $18,333, with the Pension Plan contributing $10,983 and the Profit Sharing Plan contributing $7,350. This undivided ownership of one-half of the Property is allocated between the Plans in the same proportion which each Plan contributed toward the purchase price. Accordingly, the Pension Plan is credited with ownership of the equivalent of 15.69 acres while the Profit Sharing Plan is credited with ownership of the equivalent of 10.50 acres. After the Plans' purchase of their one-half interest in the Property, development of sites nearby and changes in market conditions caused a rapid increase in the Property's value. With the Property's value increasing, WGE desired to develop the Property with the construction of single-family residences in the $100,000 range. Since WGE's one-half interest in the Property was also undivided, any development of the Property required the participation of WGE and the Plans. However, the Plans did not have sufficient cash available to participate in the development of the Property as proposed by WGE. Failing to obtain the Plans' participation in arrangements for the Property's development, WGE filed a lawsuit against the Plans in March of 1984 seeking specific performance of an alleged oral contract between the Plans and WGE for development of the Property. Counsel for the Plans represents that as of October 24, 1984, such lawsuit has been settled in all respects. The lawsuit was settled with the agreement that the Property be developed with each party bearing its own costs. Thus, the Plans are obligated generally to facilitate the development of the Property. The Plans' costs in the aforementioned suit have been paid by the Employer. The Property remains undeveloped and WGE maintains its desire to develop the Property. Pursuant to the agreement in settlement of WGE's lawsuit and in order for the Plans to benefit from the substantial increase in the value of the Property since its purchase by the Plans and WGE, the Trustee proposes that the Plans sell their one-half interest in the Property to the Employer, which is more suitably situated financially to cooperate with WGE in the development of the Property. Therefore, the Trustee is requesting an exemption to permit the Employer's purchase of the Plans' one-half interest in the Property under the terms and conditions described herein.

3. The Property was appraised on January 10, 1985 by Rudolph T. Quillian (Quillian), a professional real estate

appraiser with Valuation Services of LaGrange, Inc. of LaGrange, Georgia, who found that as of that date the Property had a fair market value of $445,500. The Employer proposes to pay the Plans cash in an amount no less than $222,750, which is one-half of the fair market value of the Property by Quillian's appraisal. In addition, the Plans will not incure any real estate fees or commisions in connection with the sale.

4. The Trustee has appointed Dan C. Newton (Newton), an insurance broker residing in Columbus, Georgia, as an independent fiduciary to represent the interests of the Plans with respect to the proposed transaction. Newton represents that he is independent of and unrelated to the Employer and the Trustee and that he had never met any of the individuals concerned in this transaction prior to being approached to serve in this capacity. Newton represents that his familiarity with the fiduciary responsibility provisions of the Act and his experience in real estate brokerage and appraisal work qualify him to act in this capacity on behalf of the Plans. Newton has undertaken a review and analysis of all the surrounding circumstances and the terms of the transaction proposed herein, including examination of relevant documents, plats, appraisal reports and other pertinent correspondence and data, an interveiw of the Trustee, and an on-site inspection of the subject Property and its locale. Based on his review, Newton has determined that the failure to proceed with the proposed transaction at this time would be detrimental to the Plans' interests. Newton has determined that any postponement of development of the Property could result in a lowering of the Property's value, due to potential market saturation caused by developments of other sites nearby, while he has verified that the Plans cannot participate in development of the Property due to lack of sufficient free capital. Newton represents that the Plans can best realize the gain from the increased value of the Property by the proposed sale to the Employer because (1) it will allow the agreed resolution of WGE's suit for specific performance without requiring the Plans to produce cash which is not currently available, (2) it will prevent the Plans' expenditures on advertising costs, sales expenses and other costs which the Plans could expect in a sale transaction with an unrelated party, and (3) it will allow the Plans to realize an immediate gain made available by recent market developments and will prevent any risk of loss on that gain through delayed development of the Property. Newton will oversee all aspects of the proposed sale transaction to ensure that it proceeds under the terms and conditions described herein. Newton's duties include the ordering of an update of Quillians' appraisal as of the date of the proposed sale, and the final purchase price will be increased commensurate with any increase in the Property's value over Quillian's appraisal, but in no event will the Employer pay the Plans less than $222,750 for their one-half interest in the Property.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plans will realize a substantial gain on an asset which is currently producing no income; (2) The Plans will not incur any expenses of locating a buyer or any of the sales costs to be expected in an arm's-length sale to an unrelated party; (3) The Plans will receive a purchase price for their one-half interest in the Property which reflects the fair market value of the Property as of the date of the proposed sale to the Employer; and (4) The interests of the Plans with respect to the proposed transaction are represented by an independent fiduciary, Newton, who has determined that the transaction will be in the Plans' best interests and will be based on fair market terms which are at least equivalent to an arm's-length transaction between unrelated parties.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Michigan Valve & Fitting Company Employees Profit-Sharing Plan and Trust (the Plan) Located in Detroit, Michigan

[Application No. D–6035]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If an exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of a certain office building (the Building) located in Detroit, Michigan by the Plan to Michigan Valve & Fitting Company (the Plan Sponsor), a party in interest with respect to the Plan, provided that the Plan receives not less than the appraised fair market value for the Building as of the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 10 participants and assets of $843,246 as of August 31, 1984. The trustee of the Plan (the Trustee) is Manufacturers National Bank of Detroit.

2. The Building is located at 17236 East Warren Avenue, in Detroit, Michigan. The Plan acquired the Building from Bernice J. Van Ostaeyen in June of 1969 for $31,500 and has leased it to the Plan Sponsor since that time. The current rent is $800 per months on a net, net basis, with the Plan Sponsor paying the property taxes, insurance, water and maintenance expenses. An appraisal of the fair market rental value of the Building was conducted on April 3, 1985 by Edward Henkel, M.A.I., S.R.P.A., A.S.A., a party independent of the Plan Sponsor. Mr. Henkel represents that the net rental is equal to a gross rent of $800 per month. He appraised the gross fair market rental value of the Building as $665 per month, and concluded that the Plan is receiving more than fair market rent for the Building. Mr. Henkel appraised the fair market value of the Property as $30,000 as of January 1, 1985.

3. The applicant represents that it was unaware that the lease of the Building was a prohibited transaction until an audit of the Plan was done by the Internal Revenue Service in November of 1984. The applicant also represents that the lease of the Building was exempted from the prohibited transaction rules until July 1, 1984 by reason of sectoin 414(c)(2) of the Act.[3] The applicant has paid the applicable excise tax for the period of July 1, 1984, to August 31, 1984 (the end of its last tax year), and represents that it will pay the excise tax for a period commencing September 1, 1984 to the date of a grant of this proposed exemption within 60 days of the date of such a grant.

4. The applicant proposes to purchase the Building for the price the Plan originally paid for it, $31,500, in cash. This amount is $1,500 above its curent fair market value. The applicant represents that the Plan has borne no costs with respect to holding the Building; the Plan Sponsor has paid the taxes, insurance, water, and maintenance on the Building. The Plan

[3] The Department expresses no opinion herein as to whether the lease of the Building by the Plan satisfied the conditions of section 414(c)(2) of the Act.

will bear no costs with respect to the transaction.

5. The Trustee represents that it is extremely doubtful that the Plan could receive the same rent for the Building in any future leases with the Plan Sponsor or a third party. In addition, the real estate market in the area of the Building is very poor, and while most local real estate markets have shown increased property values recently, the property in the Building's area has continued to fall in value, including the Building. The apparent high rate of return the Plan is receiving is therefore offset by the loss of value in the underlying asset. The Trustee also represents that the Building is an inflexible investment that limits its ability to respond to changing economic and financial conditions.

6. The applicant represents the proceeds of the sale will be invested in the Trustee's equity and fixed income portfolios, which will diversify the investments of the Plan.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive the price it paid for the Building, which is greater than its current fair market value; (c) the Plan Sponsor will pay all applicable excise taxes with respect to the leasing of the Building beyond July 1, 1984; and (d) the Plan will not incur any expenses with respect to the sale of the Building.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

The Colorado National Bank of Denver (the Bank) Located in Denver, Colorado

[Application No. D–6059]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the sale on December 23, 1983 of certain securities by the Amax Inc. Commingled Fund (the Fund), for which the Bank was a fiduciary, to three of the Bank's collective investment accounts, provided that the sales price for each security was the fair market value of such security on the date of the sale.

Effective Date: If the proposed exemption is granted, the exemption will be effective December 23, 1983.

Summary of Facts and Representations

1. The Fund is a master trust arrangement which serves as a funding medium for twenty separate plans of Amax, Inc. (Amax), the sponsoring employer. All participating plans maintain a beneficial interest in all assets of the Fund. There are approximately 4,000 participants in the plans that participate in the Fund. As of December 31, 1983, the Fund has total assets of $408,119,959.

2. The United States Trust Company of New York (U.S. Trust) acted as trustee of the Fund and the Bank acted as one of the investment managers. There is no affiliation between U.S. Trust and the Bank. The Bank also acted as a fiduciary for three collective investment accounts, namely the Common Stock Fund, the Pooled Equity Fund, and the Pooled Self-Employed Equity Fund (the Accounts). The applicant states that two of the three Accounts, the Pooled Equity Fund and the Pooled Self-Employed Equity Fund, contain funds from employee benefit plans. The applicant states further that no portion of the Fund was invested in the Accounts and there was no party in interest relationship between the Accounts and the Fund. The value of the Fund which the Bank managed was $19,514,000 and the value of the Accounts was $82,926,000 at the time of the transaction.

3. On December 23, 1983, Amax directed the Bank to liquidate all assets of the Fund's portfolio which the Bank managed. The proceeds of the liquidation were needed to purchase annuities for the Amax Inc. Salaried Retirement Plan, which was terminating. In addition, the Bank and certain other investment managers were terminated as investment managers for the Fund in 1983. The Bank sold some of the Fund's assets, namely publicly traded common stocks in Norstar, Great Lakes International and Cooper Tire and Rubber (collectively, the Securities), directly to the Accounts (the Transaction). The Banks liquidated 97.9% of the assets of the Fund which it managed through traditional brokerage executions on the open market. Only 2.1% of the Fund's assets managed by the Bank were involved in the Transaction.

4. The applicant states that the price of the Securities was determined by averaging the high and low for the trades on the date of sale, December 23, 1983, at the close of the market. The total amount paid for the Securities was $418,700, which represented approximately 2.1% of the value of the Fund which the Bank managed and .5% of the value of the Accounts. Further, the Bank managed only 4.78% of the entire Fund and the value of the Securities represented approximately .1% of the entire Fund. The applicant states that no brokerage commissions were charged on the Transaction.

5. The applicant represents that U.S. Trust, as trustee of the Fund, was consulted prior to settlement and determined that the sales price for the Transaction should be the market price for the Securities on December 23, 1983 as indicated by the average of the high and low for the trades based upon published quotations for that date. Both the applicant and U.S. Trust represent that they were unaware at the time of the Transaction that the Transaction was a violation of the Act.

6. The applicant represents that the Trust Committee of the Bank in its usual course of business had recommended the purchase of the Securities for the Accounts as well as for individually managed portfolios and had purchased the Securities actively for the Accounts prior to the Transaction. The Bank represents that it determined, as a fiduciary for the Accounts, that it was appropriate to buy the Securities on December 23, 1983 from the Fund on behalf of the Accounts at a purchase price which was the quoted market price for the Securities on such date at an average between the high and low for the trades based upon published quotations. The Bank represents further that the Transaction was in the best interest of the participants of both the Fund and of the Accounts since the price was determined by the market but the market itself was not impacted and brokerage commissions were avoided.

7. In summary, the applicant represents that the Transaction satisfied the statutory criteria of section 408(a) of the Act because: (a) The Transaction was a one-time cash transaction; (b) the price set for the Securities represented their fair market value on the date of sale as evidenced by published quotations; (c) no brokerage commissions were charged upon the sale or purchase; and (d) the Bank determined that it was in the best interest of the Accounts to purchase the Securities and U.S. Trust approved of the Transaction on behalf of the Fund.

For Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8195. (This is not a toll-free number.)

Harden, Napheys, Schmidt & Hass, P.C. Restated Profit Sharing Plan (the Plan)

[Application No. D-6164]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the proposed cash sale by the Plan of a certain parcel of real property (the Property) to the United Bank of Fort Collins (the Bank), a party in interest with respect to the plan, provided that the price paid is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with seven participants and total assets of $372,894.20 as of May 10, 1985. The Plan is sponsored by the Harden, Schmidt & Hass, P.C. (the Employer), a Colorado professional corporation engaged in the practice of law in Fort Collins, Colorado. The Bank is the trustee of the Plan with limited discretionary authority over plan investments. The applicant represents that the Employer and the Plan's Advisory Committee are the decision-makers with regard to most plan investments, including the proposed transaction for which an exemption is requested.

2. The Property is a parcel of three lots and three frame houses located at 1343, 1345, and 1349 South College Avenue, Fort Collins, Larimer County, Colorado. The applicant states that the Employer and Advisory Committee directed the Bank to acquire each of the three lots. The Property was purchased on April 1, 1977 for $35,000, $42,000, and $37,500, respectively.

3. The applicant represents that the Plan desires to sell the Property to the Bank for the sum of $218,190. The Bank owns some real estate abutting two sides of the Property. The applicant states that the Bank is offering to purchase the Property at an above-market price in order to enhance the saleability of its adjoining real estate. The contract of sale and purchase requires the Bank to pay the entire purchase price in cash at closing. The Property is occupied by three old houses which, the applicant states, are expensive to maintain and difficult to rent. The applicant concludes that the Plan will achieve greater returns by selling the Property and using the proceeds in other investments offering a higher rate of return.

4. The applicant represents that the Bank acquired the real estate adjoining the Property on August 23, 1984 through an exchange of seven foreclosure properties which were difficult to manage. The exchange was precipitated by Mr. Harold H. Miller, a long-time client of the Bank who had an interest in all seven parcels the Bank was holding. The applicant states taht the Bank proceeded with the exchange in order to acquire one large parcel which was less expensive to manage and more marketable. The applicant states further that the Bank contemplated using the real estate to construct a drive/up facility for the Bank.

5. The Property was appraised on June 3, 1985 by Donald J. Shannon, M.A.I., an independent real estate appraiser in Fort Collins, as having a fair market value of $200,000. The appraisal makes particular reference to the potential special value of the Property to the Bank since it owns the adjoining real estate.

6. The applicant states that the Plan will not be responsible for any commissions or other charges in connection with the sale or purchase.

7. The applicant represents that the contract for the sale and purchase of the Property was the result of arm's length negotiations between the Employer, acting on behalf of the Plan as seller, and the Bank, as purchaser. All of the terms of the proposed sale including the price were negotiated between the Employer and the Advisory Committee on behalf of the Plan and the Bank as purchaser. The applicant states that the Bank, as trustee, did not in fact participate in the negotiations leading up to the execution of the contract of sale and did not exercise any discretion with respect to this sale. The applicant represents further that the Bank, as the plan trustee, did not render advice to the Employer or the Advisory Committee regarding this sale, and that the Employer and the Advisory Committee made the decision to sell the Property according to the terms of the subject contract.

8. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act because: (a) The transaction will be a one-time transaction for cash; (b) the Plan will receive an amount equal to or greater than the fair market value for the Property as determined by an independent qualified appraiser; (c) the Plan will not be required to pay any real estate fees or commissions in connection with the sale; and (d) the transaction will allow the Plan to divest itself of the Property and acquire investment yielding a higher rate of return.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

Gerald G. Olson, M.D., Profit Sharing Plan and Money Purchase Pension Plan (Collectively, the Plans) Located in Redwood City, California

[Application No. D-6221]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plans of certain real property (the Property) to Gerald G. Olson, M.D. (Dr. Olson), a party in interest with respect to the Plans, for cash in the amount of $150,000, provided that such amount is not less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plans are comprised by a profit sharing plan and a money purchase pension plan, each of which had three participants on September 30, 1984. The assets of the Plans are commingled for investment purposes. On September 30, 1984, the Plans had assets, in the aggregate, of approximately $364,182. Dr. Olson is the trustee and administrator of the Plans and is solely responsible for investment decisions regarding the assets of the Plans.

2. The Property consists of approximately 10.3 acres of unimproved land with water service in the upper Carmel Valley of California and is accessed by a paved private road. The Property is not adjacent to any property owned by parties in interest with respect to the Plans. The Plans purchased the Property in January, 1981, from an unrelated party for cash in the amount of $125,000. The applicant states that the Plans purchased the Property with the expectation of substantial appreciation in its value.

3. The Property was appraised as of June 14, 1985 by Haskell Berry, Jr.,

M.A.I., an appraiser with Urban Property Research Company, Monterey, California. Mr. Berry, who is independent of Dr. Olson, stated that the fair market value of the Property on the date was $150,000. Mr. Berry stated also that the highest and best use of the Property is for a single family dwelling.

4. Since its purchase, the Property has been vacant and has not been used in any way, or produced any income for the Plans. The Plans have incurred expenses with respect to the Property of approximately $1,300 for each year of ownership, in addition to a one-time payment of $1,283 for water service. Dr. Olson states that it would be in the best interest of the Plans to dispose of the Property because it constitutes over 40% of the Plans' portfolio, resulting in insufficient liquidity, and because it has appreciated at a rate of only 4.7% per .

5. Dr. Olson proposes to purchase the Property from the Plans for cash in the amount of $150,000. An updated appraisal of the Property by a qualified, independent appraiser may be made prior to the Plans' sale of the Property. However, the purchase price will not be less than $150,000 in any event. If a subsequent appraisal shows a higher fair market value for the Property, Dr. Olson will pay the higher amount. No fees or commissions will be paid by the Plans with respect to the sale.

6. Dr. Olson represents that the proposed sale is protective of and in the best interest of the Plans and their participants and beneficiaries because the purchase price was determined by a qualified and independent M.A.I. appraiser; because the Plans will substantially increase their liquidity by disposing of an illiquid investment constituting over 40% of their proceeds of the sale in more profitable and liquid investments; and because the Plans will not have to pay any sales commissions or fees with respect to the sale.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The sale will be a one-time transaction for cash;

(b) The sale will increase the Plans' liquidity;

(c) The sale price was determined by a qualified and independent M.A.I. appraiser; and

(d) No fees or commissions will be paid by the Plans with respect to the sale.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 20th day of August, 1985.

Robert J. Doyle,

Deputy Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–20251 Filed 8–22–85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted 30 days from the date of this notice.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, 202/786–0233 or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building 726 Jackson Place NW., Room 3208, Washington, D.C. 20503, 202/395–7316.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, 202/786–0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions, Each entry is issued by NEH and contains the following information: (1) The title of the form, (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: Classification of the Amount of Request for Payment on Letter of Credit
Form Number: OMB 3136–0056
Frequency of Collection: On Occasion
Respondents: State and Local Governments, Non-Profit Institutions
Use: To Request Payment Through Letter of Credit (LOC–TFCS)
Estimated Number of Respondents: 61
Estimated Hours for Respondents to Provide Information: 229

Title: Process of application, Evaluation. Award and Report of NEH Fellowships for Independent Study and Research and Fellowships for College Teachers Programs.
Form Number: OMB 3136–0083
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines
Respondents: Academic scholars-teachers and independent scholars
Use: Application, evaluation, and award process for individuals in the Fellowships for Independent Study and Research and Fellowships for College Teachers program
Estimated Number of Respondents: 15,530
Estimated Hours for Respondents to Provide Information: 1.5

Susan Metts,

Acting Director of Administration.

[FR Doc. 85–20195 Filed 8–22–85; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 11—Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material.

3. The form number if applicable.

NRC Form 1—Personnel Security Questionnaire
NRC Form 237—Request for Access Authorization

4. How often the collection is required: New applications may be submitted at any time. Renewal applications must be submitted every five years.

5. Who will be required or asked to report: Employees (including applicants for employment), contractors, and consultants of NRC licensees and contractors whose activities involve dealing with special nuclear material at either fixed sites or in transportation activities.

6. An estimate of the number of responses:

NRC Form 1—525
NRC Form 237—6
10 CFR Section 11.16—5

7. An estimate of the total number of hours needed to complete the requirement or request:

NRC Form 1—788
NRC Form 237—1
10 CFR Section 11.16—1

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: This amendment to 10 CFR Part 11 would allow conversion of current comparable personnel security clearance information from another Federal agency for use in NRC's special nuclear material access authorization program without reinvestigation and with a reduced administrative burden. The amendment would also permit use of some of the Department of Energy (DOE) documentation for individuals subject to comparable DOE programs.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 13th day of August 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–20256 Filed 8–22–85; 8:45 am]

BILLING CODE 7590–01–M

[NUREG/CR–2815]

Draft Probabilistic Safety Analysis Procedures Guide; Availability and Inquiry

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of the draft probabilistic safety analysis procedures guide (NUREG/CR–2815) for public comments.

SUMMARY: The Nuclear Regulatory Commission has issued for public comments a draft of the Probabilistic Safety Analysis Procedures Guide (NUREG/CR–2815). The NUREG's intent is to provide guidance to the performance of probabilistic safety analysis studies which involve probabilistic predictive models that can be used, extended,and modified and reused by the utilities and by NRC to sharpen the focus of inquiries into a range of issues affecting reactor safety.

The procedures guide has two volumes. The first volume describes the evaluation of core-damage frequency resulting from accident initiators internal to the plant (i.e., intrinsic to plant operations) and from loss of offsite electric power. The scope includes human reliability analysis, treatment of common cause failures and systems interactions, determination of the importance of various accident scenarios, and an explicit treatment and display of uncertainties for key accident sequences. The second volume of the procedures guide deals with estimation of core-damage frequency associated with the so-called external events, which include earthquakes, fires, floods, and high wind.

NUREG/CR–2815 provides the structure of a probabilistic safety study to be performed, and indicates the level as well as the products of the study that would be valuable in regulatory decision making. Due to the relative maturity of techniques used for internal events, procedures in volume one are treated only to the extent necessary to indicate the range of methods which are acceptable; ample references are given to alternative methodologies which may be utilized in performance of the study. In the case of external event methods, which are less mature compared to internal events, more specific and explicit guidance is provided.

The enclosed draft NUREG was developed by the Reliability and Risk Assessment Branch (RRAB) of DST, with technical support from Brookhaven National Laboratory and its consultants. This draft was preceded by the January 1984 issue of the NUREG which did not include the treatment of external events and did not reflect the 1983–1985 advancements in the state-of-the-art in internal events probabilistic analyses.

Public comments are being solicited on the draft guide and should be sent to Adel El-Bassioni, Reliability and Risk Assessment Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 no later than 45 days following the date of issuance of this notice.

Copies of the NUREG/CR–2815 are available for inspection, and copying for a fee, in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555. For further information contact Adel El-Bassioni, Reliability and Risk Assessment Branch, U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555. Telephone (301) 492–7646.

Dated at Bethesda, Maryland this 16th day of August, 1985.

Ashok Thadani, Chief,

Reliability and Risk Assessment Brnach, Division of Safety Technology, Office of Nuclear Reactor Regulation.

[FR Doc. 85–20258 Filed 8–22–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Panel for the Decontamination of Three Mile Island Unit 2; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI–2) will be meeting on September 11, 1985 from 6:00 PM to 9:00 PM at the Environmental Matters Committee Room, Room 180, House Office Building, College Avenue, Annapolis, Maryland 21401. The meeting will be open to the public.

At this meeting the Panel will receive a status report on the progress of the cleanup from General Public Utilities Nuclear Corporation. The Panel will also receive presentations by the various State and Federal agencies involved in the cleanup effort. The licensee will brief the Panel on the status of the processed water that resulted from the 1979 accident. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–7466.

Dated: August 19, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–20257 Filed 8–22–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–13935]

Application and Opportunity for Hearing; American Express Credit Corporation

August 19, 1985.

Notice is hereby given that American Express Credit Corporation has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of Manufacturers Hanover Trust Company ("MHTC") under an indenture which was qualified and an offering thereunder and an indenture which was not qualified under the Act are not so likely to involve a material conflict of interest as to make it necessary in the public interst or for the protection of investors to disqualify MHTC from acting as trustee under either or the two indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest defined in the section, it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for a hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. On December 15, 1984, American Express Credit Corporation (the "Applicant") filed a registration statement (Registration No. 2–94851), covering up to $900,000,000 principal amount of Securities.

2. Applicant and Security Pacific National Bank entered into an Indenture, dated as of December 15, 1984, as supplemented by the First Supplemental Indenture dated as of April 1, 1985 (the Indenture and the First Supplemental Indenture hereinafter referred to as the "Previous Indenture"), authorizing the amount of debentures, notes or other evidences of indebtedness (the "Securities"), as authorized from time to time by one or more resolutions of the Board of Directors of the Applicant.

3. The Applicant and MHTC entered into a Second Supplemental Indenture, dated as of April 15, 1985, to the Indenture, which enables MHTC to act as Trustee for a series of Securities as designated by a company order of the Applicant, from time to time (the "MHTC Indenture") (the Previous Indenture and the MHTC Indenture hereinafter sometimes collectively referred to as the "Shelf Indenture").

4. The Company has issued $100,000,000 aggregate principal amount of 11⅛% Senior Notes due March 15, 1989 under the Previous Indenture for which Security Pacific National Bank is the Trustee; the Applicant is not in default under the Shelf Indenture.

5. Applicant and MHTC entered into an Indenture, dated as of May 15, 1985, (the "May Indenture") pursuant to which $100,000,000 in aggregate principal amount of 10⅞% Senior Notes due 1990 were issued (the "EuroNotes"). Inasmuch as the EuroNotes were offered and sold outside the United States, its territories and possessions to persons who are not nationals or residents thereof, the EuroNotes were not registered under the Securities Act of 1933 and the May Indenture was not qualified under the Act.

6. The Applicant, pursuant to Registration No. 2–94851, issued on June 10, 1985, $100,000,000 in aggregate principal amount of 10¼% Senior Notes due June 15, 1985 (the "Notes").

7. The Notes were issued pursuant to the Shelf Indenture and the Applicant appointed to appoint MHTC, by resolution of the Board of Directors, as indenture trustee for the Notes under the MHTC Indenture.

8. The Shelf Indenture and the May Indenture are both wholly unsecured. The notes and the EuroNotes are senior debt and will be of equal rank. Accordingly, in the opinion of the Applicant, the trusteeships of MHTC under the Shelf Indenture and the May Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors that MHTC be disqualified from acting as trustee under one of such Indentures.

The Applicant waives notice of hearing and waives hearing and waives any and all rights to specific procedures under the rules of practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22–13935, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, Washington, D.C.

Notice is further given that any interested person may, not later than September 10, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: John Wheeler, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20186 Filed 8-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14679; File No. 811-4270]

Frank Russell Capital Company; Notice of Application for an Order Declaring that Applicant Has Ceased To Be an Investment Company

August 16, 1985

Notice is hereby given that Frank Russell Capital Company ("Applicant"), 1050 First Interstate Plaza, Tacoma, WA 98402, a Massachusetts business trust, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company of the "series" type with seven series ("Funds"), filed an application on July 29, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it filed a notification of registration and registation statement pursuant to section 8(b) of the Act on March 26, 1985, has never made a public offering of its Funds' securities, has fewer than 100 security holders for purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. Applicant further states that each Fund has issued one subscription-share for $10 per share. According to the application, other than the holder of those subscription-shares, Applicant does not have any security holders, has no more than $70 in assets, is not a party to any litigation or administrative proceeding, and does not intend to engage in any business activities other than those necessary for the winding up of its affairs. Applicant represents that it will maintain its legal existence as a Massachusetts business trust.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 10, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20187 Filed 8-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23798; 70-7136]

Gulf Power Co.; Proposal To Issue and Sell First Mortgage Bonds

August 19, 1985.

Gulf Power Company ("Gulf"), 75 North Pace Boulevard, P.O. Box 1151, Pensacola, Florida 32520, a wholly owned subsidiary of The Southern Company, a registered holding company, has filed a declaration with this Commission subject to sections 6(a), 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 thereunder.

Gulf proposes, on or prior to September 1, 1986, to issue and sell up to $50 million aggregate principal amount of first mortgage bonds ("Bonds") in one or more series, having a maturity of not less than five nor more than 30 years. The Bonds will be issued under the indenture dated as of September 1, 1941, between Gulf and the Chase Manhattan Bank and The Citizens & Peoples National Bank of Pensacola, as Trustees, as supplemented ("Indenture").

Gulf may provide that the Bonds will not be redeemed for up to five years at a regular redemption price if such redemption is for the purpose or in anticipation of refunding such through the use, directly or indirectly, of funds borrowed by Gulf at an effective interest cost to Gulf of less than the effective interest cost to Gulf of the Bonds. Such limitation will not apply to redemptions at a special redemption price by operation of the improvement fund or the maintenance and replacement provisions of the Indenture or by the use of proceeds of released property.

In addition, Gulf may make provisions for a madatory cash sinking fund for the benefit of the Bonds. Gulf may have the non-cumulative option in any year of making an optional sinking fund payment in an amount not exceeding such mandatory sinking fund payment.

In order to enhance the marketability of the Bonds, it may be desirable to provide for an adjustable interest rate which will be adjusted on a periodic basis. Gulf proposes to use the proceeds to pay a portion of its cash requirements to carry on its electric utility business. Gulf may use such proceeds to redeem outstanding first mortgage bonds.

Gulf may request by amendment hereto that such proposed sale of the Bonds be excepted from the competitive bidding requirement of Rule 50 under the Act should circumstances develop which, in the opinion of Gulf's management, make such exception in the best interests of Gulf and its investors and consumers. Unless previously so excepted, Gulf proposes to comply with the requirements of Rule 50.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 12, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20188 Filed 8-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14680; File No. 812-6168]

Morgan Guaranty Trust Company of New York; Notice of Application for Order Permitting Foreign Custodian Arrangements

August 16, 1985.

Notice is hereby given that Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, NY 10015 ("Morgan"), filed an application on February 13, 1985, and an amendment

thereto on August 14, 1985, requesting an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Morgan, any investment company registered under the Act (other than an investment company registered under section 7(d) of the Act) and Morgan Bank Nederland ("MBN"), from the provisions of section 17(f) of the Act so as to permit Morgan, as the custodian of the securities and other assets of a company ("Securities") or as subcustodian of the Securities as to which any other entity is acting as custodian, and such other entity for which Morgan so acts, to deposit, or to cause or permit the deposit of, such Securities in MBN in The Netherlands, subject to certain conditions. As used herein the term "Securities" shall not include securities issued by the Government of the United States or by any State or any political subdivision thereof or by any agency thereof or any securities issued by any entity organized under the laws of the United States or any State thereof (other than certificates of deposit, evidences of indebtedness and other securities, issued or guaranteed by an entity so organized which have been issued and sold outside the United States). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

According to the application, at December 31, 1984, Morgan was the fourth largest bank in the United States based on shareholders' equity, and the fifth largest based on deposits. According to the application, responding to customer requirements by adopting services to meet its customers' needs is an important objective of Morgan. To provide its investment company clients a safe, efficient and economical system for maintaining custody of foreign investments, Morgan proposes to provide foreign custody services to such clients by using a network of subcustodians which will include foreign banks and trust companies and foreign securities depositories.

According to the application, MBN was founded as a limited liability company in 1930, has been affiliated with Morgan since 1976, and became an indirect wholly-owned subsidiary of Morgan in March 1984. As of December 31, 1984, MBN ranked approximately fifteenth in size by total assets among commercial banks in The Netherlands. Morgan represents further that MBN has been providing custody services for over 55 years, and that Morgan's New York and European branches have utilized MBN's custody services (which do not involve investment company assets) since 1977. MBN currently maintains custody of securities and other assets having a value in excess of approximately U.S. $365,074,528 at exchange rates on June 21, 1985. In addition, Morgan states that MBN is regulated as a banking institution by the Central Bank of The Netherlands. A copy of MBN's 1984 Annual Report in the English language is included as Exhibit A to the application.

The Commission has designated September 1, 1985, as the date by which investment companies must conform their foreign custody arrangements to the requirements of Rule 17f–5, or obtain additional exemptive relief to continue such arrangements.[2] Morgan states that, MBN currently has shareholders' equity of less than U.S. $100 million, and thus, does not satisfy the minimum requirement to qualify as an "eligible foreign custodian" under Rule 17f–5. Accordingly, Morgan requests an exemptive order permitting Morgan to deposit Securities (i) in The Netherlands with MBN so long as such deposit is made in accordance with an agreement, which agreement would be required to remain in effect at all times during when MBN would not meet the requirements of Rule 17f–5 relating to shareholders' equity, among (a) the company or a custodian of the Securities of the company for which Morgan acts as subcustodian, (b) Morgan and (c) MBN pursuant to the terms of which Morgan would act as the custodian or subcustodian, as the case may be, of the Securities of the company and MBN would be delegated such duties and obligations of Morgan thereunder as would be necessary to permit MBN to hold in custody the Securities in the company in The Netherlands, provided that such delegation would not relieve Morgan of any responsibility to the company for any loss due to such delegation, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and other risk of loss (excluding bankruptcy or insolvency of MBN) for which neither Morgan nor MBN would be liable under Rule 17f–5 (*e.g.*, despite the exercise of reasonable care, loss due to Acts of God, nuclear incident and the like).

In support of the exemptive relief requested, Morgan represents that the proposed foreign custody arrangement with MBN will comply with all the remaining terms of Rule 17f–5, except those relating to shareholders' equity. Morgan further represents that it will provide its investment company clients with information regarding foreign custody arrangements in order to permit investment company directors to conduct their annual reviews of such arrangements as required by Rule 17f–5. Information provided at that time will include, among other things, each foreign banking institution's most recent publicly available financial information.

According to Morgan, it believes that the procedures it proposes would provide its investment company clients with adequate protection. Additionally, Morgan believes such procedures are within the policy underlying Rule 17f–5. In view of the above, Morgan states that its application for exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 10, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address states above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–20189 Filed 8–22–85; 8:45 am]

BILLING CODE 8010-01-M

[2] *See* Investment Company Act Release No. 14132 (September 7, 1984) (49 FR 36060), which adopted Rule 17f–5 and notified investment companies that they had until March 1, 1985, to conform their foreign custody arrangements to the rule. That compliance date was extended until June 1, 1985, in Investment Company Act release No. 14347 (February 4, 1985) (50 FR 52341) and then until September 1, 1985 in Investment Company Act Release No. 14538 (May 30, 1985) (50 FR 24540).

[Release No. IC-14682; File No. 811-3002]

World Resources Fund, Ltd.; Notice of Application

August 19, 1985.

Notice is hereby given that World Resources Fund, Ltd. ("Applicant"), Box 491143, Los Angeles, California 90049, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 19, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

The application states that Applicant, which filed a registration statement pursuant to section 8(b) of the Act on March 5, 1980, never made a public offering of its securities, has fewer than 100 securityholders for purposes of 3(c)(1) of the Act and the rules thereunder, and does not propose to make another public offering or engage in business of any kind. Applicant represents that it is not a party to any litigation or administrative proceeding and it does not intend to engage in any business activities other than those necessary for the winding up of its affairs. Finally, the application represents that Applicant's legal existence under state law has been suspended.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20190 Filed 8-22-85; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management And Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549.

Revision

Form SE, File No. 270-289
Form ET, File No. 270-290
Form ID, File No. 270-291

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance revised forms for use by the registrants voluntary participating in the EDGAR Pilot Project. Form SE is used by new registrants to file paper copies of exhibit documents that cannot be transmitted electronically; Form ET, Transmittal Form for Electronic Format Documents, will accompany tapes and diskettes submitted to the Commission; and Form ID is the Uniform Application for Identification Numbers and Passwords. The revision allows for use of these forms under the Investment Company Act of 1940.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Offices of Information and Regulation Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Assistant Secretary.

August 16, 1985.

[FR Doc. 85-20237 Filed 8-22-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/875]

Advisory Committee on International Investment, Technology and Development; Meeting

The Department of State will hold a meeting of the Subcommittee on Transborder Data Flows of the Advisory Committee on International Investment, Technology, and Development on September 18, 1985 from 10 a.m. to noon. The meeting will be held in the Loy Henderson Conference Room of the Department of State, 2201 C Street, NW., Washington, DC, 20520.

The purpose of the meeting will be to discuss the results of the June meeting of the Working Party on Transborder Data Flows of the OECD's Committee on Information, Computers, and Communications Policy (ICCP Committee), the meeting of the full ICCP Committee scheduled for October 1, and preparation for the ICCP's Special Session on Telecommunications Policy scheduled for November 18.

Access to the State Department is controlled. Therefore, members of the public wishing to attend the meeting must contact the Office of Investment Affairs, (202) 632-2728, in order to arrange admittance. Please use the C street entrance.

The Chairman of the Subcommittee will, as time permits, entertain comments from members of the public at the meeting.

Dated: August 15, 1985.

Walter B. Lockwood, Jr.

Deputy Director, Office of Investment Affairs.

[FR Doc. 85-20240 Filed 8-22-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended August 16, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Aug. 12, 1985.....	43201	Tropical Airways, Inc., c/o Courtney A.B. Hamilton, Courtney A.B. Hamilton & Associates, 182-38 Hillside Avenue, Jamaica, New York 11432. . Supplement to the Application of Tropical Airways, Inc. for interstate and overseas scheduled air transportation of persons, property and mail. Answers may be filed by September 9, 1985.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 85-20247 Filed 8-22-85; 8:45 am]
BILLING CODE 4910-62-M

[Docket No. 39883]

Pan American World Airways Employee Protection Program Investigation; Notice of Prehearing Conference

By Order 85-8-27, the Department of Transportation vacated the stay of all procedural steps imposed by the Civil Aeronautics Board in this proceeding. In view of the elapsed time and events which have occurred since the Board stayed all further procedural steps in this proceeding, it is deemed advisable to hold a prehearing conference to determine what procedural steps need to be taken and what timetable needs to be imposed. Accordingly, a prehearing conference will be held on September 25, 1985, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC.

In order to facilitate the conduct of the conference, parties are directed to submit one copy to each party and two copies to the Judge of: (1) Any proposed revision or addition to the statement of issues; (2) proposed stipulations; (3) proposed additional requests for information or evidence; (4) supplemental statements of position; and (5) proposed procedural dates. The Aviation Enforcement and Proceedings Office (AEP) will circulate its material on or before September 11, 1985, and the other parties on or before September 18, 1985. The submissions of the other parties shall be limited to points on which they differ with AEP, and shall follow the numbering and lettering used by AEP to facilitate cross-referencing.

Dated at Washington, D.C., August 19, 1985.

John M. Vittone,
Administrative Law Judge.
[FR Doc. 85-20248 Filed 8-22-85; 8:45 am]
BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

National Driver Register Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Driver Register Advisory Committee to be held on September 10, 1985, in Washington, DC. The meeting will be held at the DOT Headquarters Building from 8:00 a.m. to 4:00 p.m. in room 6200. Issues to be discussed are: the Federal Register Notice on the NDR Final Rule; an update on the recent activities of the NDR; and old/new business.

The meeting is open to the interested public, but may be limited in attendance to the space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the NHTSA Executive Secretariat, Room 5221, 400 Seventh Street SW., Washington, DC 20590, telephone 202-426-2870.

Issued in Washington, DC on: August 20, 1985.

Carole Guzzetta,
Director, Executive Secretariat.
[FR Doc. 85-20249 Filed 8-22-85; 8:45 am]
BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 164
Friday, August 23, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 20, 1985.

TIME AND DATE: 10:00 a.m., Thursday, August 29, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, MSHA on behalf of Rober Ribel v. Eastern Associated Coal Corp., Docket No. WEVA 84-33-D. (Issues include whether the administrative law judge erred in concluding that the miner had been discharged in violation of the Mine Act and properly denied attorney's fees to the miner's private counsel.)

This matter was previously scheduled for August 22, 1985. It was determined by a unanimous vote of Commissioners that this meeting be postponed and that no earlier announcement of the meeting was possible.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-20238 Filed 8-21-85; 9:42 am]

BILLING CODE 6735-01-M

federal register

Friday
August 23, 1985

Part II

Environmental Protection Agency

40 CFR Parts 468 and 471

Nonferrous Metals Forming and Metal Powders Point Source Category; Copper Forming Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 468 and 471

[OW-FRL-2854-9]

Nonferrous Metals Forming and Metal Powders Point Source Category; Copper Forming Point Source Category; Effluent Limitations Guidelines; Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: This regulation establishes effluent limitations guidelines and standards under the Clean Water Act to limit the discharge of pollutants into navigable waters of the United States and into publicly owned treatment works (POTW) by existing and new sources that conduct nonferrous metals forming and metal powders ("nonferrous metals forming") operations. The Clean Water Act and a consent decree require EPA to issue this regulation. This regulation establishes effluent limitations guidelines based on "best practicable technology" (BPT) and "best available technology" (BAT), new source performance standards (NSPS) based on "best demonstrated technology," and pretreatment standards for existing and new indirect dischargers (PSES and PSNS, respectively). This rulemaking also makes a minor adjustment to the applicability of the limitations and standards for the copper forming point source category, 40 CFR Part 468.

DATES: In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for the purposes of judicial review at 1:00 p.m. Eastern time on September 6, 1985. This regulation shall become effective October 7, 1985.

The compliance date for pretreatment standards for existing sources (PSES) is August 23, 1988. The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSNS) is the date the new source begins operations.

Under Section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be obtained only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The record for the final rule will be available for public review not later than October 28, 1985.

ADDRESSES: Address questions on the final rule to Ms. Janet K. Goodwin, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; Attention: Nonferrous Metals Forming Rules (WH-552). The basis for this regulation is detailed in four major documents. See Supplementary Information (under "XIV. Availability of Technical Information") for a description of each document. Copies of technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703-487-4600).

Technical information may be obtained by writing Ms. Janet K. Goodwin at the above address or by calling (202) 382-7126. Copies of the economic impact report and additional economic information may be obtained by writing Mr. Joseph Yance, Economic Analysis Staff (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 or by calling (202) 382-5379.

The record for the final rule will be available for public review not later than October 28, 1985 in EPA's Public Information Reference Unit, Room 2904 (Rear) (EPA Library), 401 M Street, SW., Washington, D.C. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Ernst P. Hall, Chief, Metals Industries Branch, (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority
II. Scope of This Rulemaking
III. Summary of Legal Background
IV. Methodology and Data Gathering Efforts
V. Control and Treatment Technology Options and Basis for Final Regulation
  A. Summary of the Category
  B. Control and Treatment Technology Options Considered
  C. Technology Basis for Final Regulation
VI. Economic Considerations
  A. Analysis and Reports
  B. Costs and Economic Impacts
  C. Executive Order 12291
  D. Regulatory Flexibility Analysis
  E. SBA Loans
VII. Nonwater Quality Aspects of Pollution Control
  A. Air Pollution
  B. Solid Waste
  C. Consumptive Water Loss
  D. Energy Requirements
VIII. Pollutants and Subcategories Not Regulated
  A. Exclusion of Pollutants
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IX. Public Participation and Response to Major Comments
X. Best Management Practices (BMP)
XI. Upset and Bypass Provisions
XII. Variances and Modifications
XIII. Implementation of Limitations and Standards
  A. Relationship to NPDES Permits
  B. Indirect Dischargers
XIV. Availability of Technical Information
XV. List of Subjects
XVI. Appendices:
  A. Abbreviations, Acronyms, and Other Terms Used in this Notice
  B. Toxic Pollutants Not Detected in Nonferrous Metals Forming Wastewater
  C. Toxic Pollutants Detected Below the Analytical Quantification Limit
  D. Toxic Pollutants Detected in the Effluent From Only a Small Number of Sources
  E. Toxic Pollutants Detected in Amounts Too Small to be Effectively Treated
  F. Toxic Metal Pollutants Effectively Controlled by BAT, PSES, and PSNS Even Though They Are Not Specifically Regulated
  G. Subcategories Not Regulated

I. Legal Authority

EPA is promulgating this regulation under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Pollution Control Act Amendments of 1972, 33 USC 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217) ("the Act"). This regulation is also issued pursuant to the Court Order in *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), *modified* by orders of October 26, 1982, August 2, 1983, January 6, 1984, July 5, 1984, and January 7, 1985.

II. Scope of This Rulemaking

This regulation, which was proposed on March 5, 1984 (49 FR 8112), establishes effluent limitations guidelines and standards for existing and new nonferrous metals forming facilities. Because of the diversity of the nonferrous metals industry, EPA has divided it into different segments for regulation. This regulation only covers nonferrous metals forming operations; nonferrous metals manufacturing operations are covered under separate regulations at 40 CFR Part 421 (nonferrous metals manufacturing phase I, promulgated at 49 FR 8742 on March 8, 1984 and nonferrous metals manufacturing phase II, proposed at 49 FR 26352 on June 27, 1984).

The nonferrous metals forming category is generally included within SIC 3356, 3357, 3463, and 3497 of the Standard Industrial Classification

Manual, prepared in 1972 and supplemented in 1977 by the Office of Management and Budget, Executive Office of the President. The category includes establishments engaged in the forming of 30 nonferrous metals and their alloys. As explained below, the nonferrous metals forming category employs an estimated 40,000 people with a total production estimated at 430,000 kkg (470,000 tons) per year. The Agency did not identify any other nonferrous metals (except for beryllium, aluminum, and copper, the latter two of which are already covered by other regulations, see 40 CFR Parts 467 and 468) that are subjected to forming operations.

Alloys are considered as only one metal type: the metal type of any particular alloy is defined to be the metal that is the major constituent by weight, except in the case of beryllium and precious metal alloys, as explained below. Some beryllium alloys (as well as pure beryllium) were included in the proposed regulation for nonferrous metals forming. However, EPA has decided to regulate pure beryllium and these alloys at a later date with beryllium copper alloys which were originally covered by the copper forming regulation, 40 CFR Part 468 (48 FR 36942, August 15, 1983)). In this way, forming of pure beryllium and all beryllium alloys (defined as any nonferrous metal alloy in which beryllium is present at 0.1 or greater percent by weight) will be regulated in the same category.

Forming of copper alloys is already covered by the copper forming regulation, cited above. A copper alloy is any alloy which contains copper as the major constituent by weight, except when alloyed with precious metals, where the precious metal is present at 30 or greater percent by weight. These alloys are considered precious metal alloys. This rulemaking amends the copper forming regulation to reflect this change. Likewise, the nonferrous metals forming regulation states that any alloy of a precious metal, and any other nonferrous metal, where the precious metal is present at 30 or greater percent by weight, is covered by the precious metals subcategory of this regulation. These changes were made in response to comments on the proposed nonferrous metals forming regulation indicating that plants perform similar forming operations on various copper-precious metals alloys which range up to 70 percent by weight copper in composition.

An aluminum alloy is any alloy which contains aluminum as the major constituent by weight. Forming of aluminum alloys is covered by the aluminum forming regulation, 40 CFR Part 467 (48 FR 49126, October 24, 1983). An iron and steel alloy is any alloy which contains iron as the major constituent by weight. Forming of iron and steel is covered by the iron and steel regulation, 40 CFR Part 420.

EPA studied 334 nonferrous metals forming plants distributed throughout the United States, with the majority located east of the Mississippi River. Of these plants, 158 discharge process wastewater, 37 directly to surface water (direct dischargers), and 121 to Publicly Owned Treatment Works (POTWs) (indirect dischargers). The remaining 176 plants do not discharge process wastewater. As a result of the study of nonferrous metals forming plants, EPA excluded nine of the 30 metal types in the category from national regulation under Paragraph 8 of the Settlement Agreement in *NRDC* v. *Ruckelshaus, supra*. EPA is excluding these metal types from national regulation because the forming operations performed on these metals do not use process water and therefore, do not discharge process wastewater. In addition to the pure metals, alloys of these nine metals are also excluded from regulation, when one of these metals is the largest constituent by weight.

Forming is the deformation of a metal or metal alloy into specific shapes by hot or cold working. Forming operations include rolling (both hot and cold), extruding, forging, drawing, cladding, and tube reducing. Ancillary operations performed as an integral part of the forming process are also included in the nonferrous metals forming category. These operations are casting for subsequent forming, heat treatment, surface treatment, alkaline cleaning, solvent degreasing, sawing, grinding, tumbling, burnishing, product testing, and surface coating. Wastewater streams associated with air pollution controls on nonferrous metals forming and related operations are also included in this point source category.

The nonferrous metals forming category also includes metal powder production operations which generate metal powder through mechanical means, such as milling, abrading, and atomizing; and associated ancillary operations listed above. This category includes the production of metal powders of iron, copper, and aluminum and other metals, the forming of which is covered by this regulation. This category does not include the production of metal powders by chemical means such as precipitation. The production of metal powder as the final step in refining metal is regulated under the nonferrous metals manufacturing regulation, 40 CFR Part 421.

Casting of a nonferrous metal is regulated in this category when performed as an integral part of a nonferrous metals forming process and located at the same plant site at which that metal is formed. Such casting will not be regulated under the provisions of the metal molding and casting regulation, 40 CFR Part 464.

Surface treatment of nonferrous metals is any chemical or electrochemical treatment applied to the surface of a nonferrous metal. For the purposes of this regulation, surface treatment of nonferrous metal is considered to be an integral part of nonferrous metal forming whenever it is performed at the same plant site at which nonferrous metal is formed. Surface treatment operations are not subject to regulation under the provisions of the electroplating regulation, 40 CFR Part 413, or the metal finishing regulation, 40 CFR Part 433.

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Section 101(a). To implement the Act, EPA was to issue effluent limitations guidelines, pretreatment standards, and new source performance standards for industrial dischargers.

The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the court. This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations guidelines, new source performance standards, and pretreatment standards for 65 "priority" pollutants and classes of pollutants for 21 major industries. See *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), modified by Orders dated October 26, 1982, August 2, 1983, January 6, 1984, July 5, 1984, and January 7, 1985.

Many of the basic elements of the Settlement Agreement were incorporated into the Clean Water Act of 1977. Like the Agreement, the Act stressed control of toxic pollutants, including the 65 "priority" pollutants and classes of pollutants. In addition, to strengthen the toxic control program,

Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs) to prevent the release of toxic and hazardous pollutants in plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

Under the Act, EPA is to set a number of different kinds of effluent limitations. These are discussed in detail in the preamble to the proposed regulation and in the Development Document. They are summarized briefly below:

1. Best Practicable Control Technology (BPT)

BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the category or subcategory.

In establishing BPT limitations, EPA considers the total cost in relation to the age of equipment and facilities involved, the processes employed, process changes required, engineering aspects of the control technologies, and nonwater, quality enviromental impacts (including energy requirements). We balance the total cost of applying the technology against the effluent reduction.

2. Best Available Technology (BAT)

BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters.

In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction, and nonwater quality environmental impacts. The Agency retains considerable discretion in assigning the weight to be accorded these factors.

3. Best Conventional Pollutant Control Technology (BCT)

The 1977 Amendments to the Clean Water Act added Section 301(b)(2)(E), establishing "best conventional pollutant control technology" (BCT) for discharge of conventional pollutants from existing industrial point sources. Section 304(a)(4) designated the following as conventional pollutants: biochemical oxygen demand (BOD), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease "conventional" on July 30, 1979 (44 FR 44501).

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in Section 304(b)(4)(b), the Act requires that BCT limitations be assessed in light of a two-part "cost-reasonableness" test. *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

A revised methodology for the general development of BCT effluent limitations guidelines was proposed on October 29, 1982 (47 FR 49176). In addition, EPA published a notice of availability of new data for comment on September 20, 1984, (49 FR 37046). However, no final methodology has been promulgated. BCT effluent limitations guidelines for this industry are accordingly deferred until promulgation of the final methodology for development of BCT limitations.

4. New Source Performance Standards (NSPS)

NSPS are based on the best available demonstrated technology (BDT). New Plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.

5. Pretreatment Standards for Existing Sources (PSES)

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. They must be achieved within three years of promulgation. The Clean Water Act of 1977 requires pretreatment for toxic pollutants that pass through the POTW in amounts that would exceed direct discharger effluent limitations or interfere with the POTW's treatment process or chosen sludge disposal method. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. EPA has generally determined that pollutants pass through POTW if the nationwide average percentage of pollutants removed by a well-operated POTW achieving secondary treatment is less than the percent removed by the BAT model treatment system. The General Pretreatment Regulations, which serve as the framework for the pretreatment regulations, are found at 40 CFR Part 403.

6. Pretreatment Standards for New Sources (PSNS)

Like PSES, PSNS are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operations of a POTW. PSNS are to be issued at the same time as NSPS. New indirect discharges, like new direct discharges, have the opportunity to incorporate in their plant the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating PSES.

IV. Methodology and Data Gathering Efforts

The methodology and data gathering efforts used in developing the proposed regulation were summarized in the Preamble to the "Proposed Nonferrous Metals Forming and Iron and Steel/Copper/Aluminum Metal Powder Production and Powder Metallurgy Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards" (49 FR 8112, March 5, 1984), and described in detail in the *Proposed Development Document for Effluent Limitations Guidelines and Standards for the Nonferrous Metals Forming and Iron and Steel/Copper/Aluminum Metal Powder Production and Powder Metallurgy Point Source Category.*

After proposal, the Agency gathered additional data to clarify the basis for response to comments on the proposal and to provide further support for the regulation. The Agency also performed additional analysis of both new and existing data. These additional data and activities were described in the "Notice of Data Availability and Request for Comment" (50 FR 4872, February 4, 1985) and are discussed briefly below. They are also described in substantial detail

in the appropriate sections of the development document. The supporting information and additional data are in the record supporting this final rule.

Since proposal, the Agency has collected a considerable amount of additional data from nonferrous metals forming plants. EPA visited and sampled nine additional nonferrous metals forming plants to characterize raw wastewaters and treatment effectiveness. Treatment effectiveness data for nonconventional metal pollutants collected from these sampled plants were evaluated to form the basis for revised treatment effectiveness values for these pollutants. These treatment effectiveness values were published in the **Federal Register** notice of new data (50 FR 4872, February 4, 1985).

Since proposal, under the authority of Section 308 of the Clean Water Act, the Agency also requested 49 plants to submit analytical data on specific raw waste streams. Twenty-four plants provided these data directly and 19 plants provided samples to be analyzed. Three plants responded that they were no longer forming the metal for which information was requested, or that their production schedule did not include plans to form the metal specified within the time frame of the request. Three plants reported that they did not generate the waste stream for which information was requested.

In all, the Agency received analytical data for 52 waste streams for which we previously did not have any wastewater characteristics data. (At proposal, the Agency had assumed these wastewater streams would have characteristics similar to other waste streams in the nonferrous metals forming category.) Most of these wastewater streams were relatively small volume streams, such as forming lubricants.

The Agency also requested data to support comments on the proposed regulation and notice of availability from 10 companies. In addition, we received data collection portfolios from 43 plants that either had not responded before proposal or that were identified after proposal.

Based on information and data provided after proposal and reevaluation of existing data, the Agency revised many process wastewater regulatory flow allowances. A regulatory flow is a production normalized flow that is used in conjunction with the treatment effectiveness concentration to derive mass discharge allowances. The revised flows were noticed in the February 4, 1985 notice of new data. After that date, we received updated information revising data collection portfolios from certain companies. Based on this information, we have changed the regulatory flow allowance for 11 waste streams, including the forging contact cooling water streams in the magnesium, nickel-cobalt, refractory metals, and titanum subcategories; molten salt rinse and sawing or grinding rinse in the nickel-cobalt subcategory; electrocoating rinse in the nickel-cobalt and zinc subcategories; and forging equipment cleaning water in the magnesium, nickel-cobalt, and titanium subcategories.

To supplement existing data regarding treatment-in-place and the long-term performance of that treatment, the Agency collected discharge monitoring report (DMR) data from state and EPA Regional offices for direct dischargers. DMR data are self-monitoring data supplied by permit holders to meet state or EPA permit requirements. These data were available from 16 nonferrous forming plants; however, the data vary widely in character and nature due to the dissimilar nature of the monitoring and reporting requirements placed on different nonferrous metals forming plants by the various NPDES permit issuing authorities. Therefore, these data were not used in the actual development of the final limitations. However, DMR data from eight plants that have lime and settle treatment were used to verify the achievability of the treatment effectiveness values used to establish limitations and standards for certain pollutants. The results show that the final treatment effectiveness values are being achieved consistently at these eight plants. A discussion of these DMR data and a comparison of them to the treatment effectiveness values used in this regulation are found in the administrative record for this rulemaking.

In response to comments on the proposed regulation, the Agency also extensively revised the compliance costs and the economic impact analysis. The Agency has estimated costs on a plant-by-plant basis instead of on a representative plant basis as it did in the proposal. The costing methodology used to estimate plant compliance costs is discussed in Section VIII of the Development Document. The methodology used to estimate economic impacts is discussed in Section VI of this preamble in the *Economic Impact Analysis of Effluent Limitations and Standards for the Nonferrous Metals Forming amd Metal Powders Industry.*

V. Control and Treatment Technology Options and technology Basis for Final Regulations

A. Summary of Category

The various metals and forming operations covered by this regulation are described above. Nonferrous metals forming operations generate a variety of different waste streams. Lubricants consisting of neat oils, water, oil-water emulsions, or soap solutions are used for lubrication and cooling in rolling and drawing operations as well as sawing and grinding. Contact cooling water is commonly used to quench nonferrous metals products after casting, forming, or heat treatment operations. Wastewater is also generated by the discharges of baths and rinses used for cleaning or surface treating nonferrous metals products. Nonferrous metals forming plants also use wet air pollution control scrubbers to control fumes or particulates generated by nonferrous metals forming operations such as chemical surface treatment processes and metal powder production.

The most significant pollutants or pollutant parameters found in wastewater generated by nonferrous metals forming vary somewhat, depending on the metal type formed, but in general consist of:

(1) Priority pollutants—antimony, cadmium, chromium, copper, cyanide, lead, nickel, silver and zinc;

(2) Conventional pollutants—oil and grease, suspended solids, and pH; and

(3) Nonconventional pollutants—aluminum, ammonia, columbium, cobalt, fluoride, hafnium, iron, gold, magnesium, manganese, molybdenum, phosphorus, platinum, palladium, rhenium, tantalum, tin, titanium, tungsten, uranium, vanadium, and zirconium.

Toxic organics were not found in significant concentrations in nonferrous metals forming wastewater, except for tube reducing spent lubricant which was found to contain significant concentrations of N-nitrosodiphenylamine and a solvent degreasing water rinse that was found to contain significant concentrations of methylene chloride and toluene.

In developing this regulation, it was necessary to determine whether different effluent limitations guidelines and standards were appropriate for different segments (subcategories) of the industry. The major factors considered in assessing the need for subcategorization and in identifying subcategories included: Waste characteristics, raw materials, manufacturing processes, products manufactured, water use, water

pollution control technology, treatment costs, solid waste generation, size of plant, age of plant, number of employees, total energy requirements, nonwater quality characteristics, and unique plant characteristics. Section IV of the Development Document contains a detailed discussion of these factors and the rationale for subcategorization.

The one factor which has the greatest influence over the wastewater characteristics in the nonferrous metals forming category is the metal type that is formed. Therefore, EPA has subcategorized the nonferrous metals forming category based primarily on the metal type that is formed. In some subcategories, more than one metal type has been grouped together because the metals have the same metallurgical properties or tend to be formed using the same processes at the same facilities. The nonferrous metals forming subcategories are: lead-tin-bismuth, magnesium, nickel-cobalt, precious metals, refractory metals, titanium, uranium, zinc, zirconium-hafnium, and metal powders. The precious metals subcategory includes silver, gold, platinum, and palladium; the refractory metals subcategory includes columbium, molybdenum, rhenium, tantalum, tungsten, and vanadium. The metal powders subcategory includes the manufacturing and forming of iron, copper, and aluminum powders. Powder metal operations involving other types of metal are covered by the subcategory for that metal type.

Each subcategory consists of several "building blocks." There is one building block for each production process that generates wastewater. The building block approach provides a convenient basis for normalizing limitations and standards from one plant to another based on the mass of metal processed. The production normalizing parameter selected for nonferrous metals forming is the off-kilogram (off-pound) of metal removed from an operation at the end of the process cycle. This parameter was selected because the Agency found that the generation of pollutants is most closely related to the off-kilograms of metal processed. In addition, production records at nonferrous metals forming plants are usually maintained in terms of mass of metal produced, thus, this production normalizing parameter is most appropriate for industry's perspective.

Current wastewater treatment practices in the nonferrous metals forming category range from no treatment at all to treatment with chemical precipitation and sedimentation. Many plants in the nonferrous metals forming category do not discharge any process wastewater because they only use dry processes that do not generate wastewater. EPA is not promulgating allowable discharge limitations or standards for these dry processes. However, other processes used in the nonferrous metals forming industry do generate wastewater. EPA is today promulgating effluent limitations and standards for these processes. Of the 158 discharging plants, 38 use chemical precipitation and sedimentation to remove metals and suspended solids. One of the 38 plants also has equipment for multimedia filtration.

B. Control and Treatment Technology Options Considered

Prior to proposal of the nonferrous metals forming regulation, EPA considered a wide range of control and treatment technology options including both in-process changes and end-of-pipe treatment. These options are discussed in detail in the preamble to the proposed regulation. The control and treatment technologies used as the basis for the final limitations and standards are described below.

In-process controls include a variety of flow reduction techniques and process changes such as recycle and countercurrent cascade rinsing. End-of-pipe treatment technology options include chemical reduction of chromium, cyanide precipitation, and chemical emulsion breaking, where applicable; oil skimming, pH control, chemical precipitation of metal ions using hydroxides or carbonates and removal of precipitated metals by settling ("lime and settle"); and filtration. These treatment technologies are described in detail in Section VII of the Development Document.

EPA considered the following combinations of treatment and control technology options as the basis for BPT, BAT, NSPS, PSES, and PSNS for facilities within the nonferrous metals forming category.

Option 1—End-of-pipe treatment consisting of oil skimming, pH control, hydroxide precipitation (usually accomplished by adding lime) and sedimentation (lime and settle); and preliminary treatment, where necessary, consisting of cyanide precipitation, chromium reduction, ammonia steam stripping, and chemical emulsion breaking. This combination of technology reduces metal priority pollutants and conventional and nonconventional pollutants. Iron coprecipitation is included in this model treatment technology for removal of the pollutant molybdenum from wastewaters in the refractory metals and uranium subcategories. Option 1 includes flow normalization which means that the Agency has based the BPT limitations on the average production normalized flow for each building block. Aberrant flows were excluded from the mean calculations. Since the BPT limitations are based on the average water discharge, plants with greater than average discharge flows may have to reduce their flows to achieve the BPT effluent limitations.

Option 2—Option 2 is equal to Option 1 preceded by flow reduction of process wastewater through the use of countercurrent cascade rinsing, recycle through cooling towers for contact cooling water, and recycle through holding tanks for all other process wastewater subject to recycle.

Option 3—Option 3 is equal to Option 2 plus end-of-pipe polishing filtration for further reduction of metals and TSS, plus ion exchange in the precious metals subcategory to remove the pollutant gold.

The methods of determining achievable concentrations and variability factors used to compute monthly average and daily maximum concentrations for the various treatment and control technologies which comprise Options 1, 2 and 3 are discussed below.

1. *Lime and Settle Treatment Technology—a. The Combined Metals Data Base (CMDB).* In considering the performance achievable using lime and settle treatment of metals with and without polishing filtration, EPA evaluated data from nonferrous metals forming plants and plants in other categories with similar wastewater. The data base selected as the basis for lime and settle treatment without filtration is the combined metals data base (CMDB). This data base is a composite of influent and effluent concentration data for nine pollutants from wastewaters treated by lime and settle technology drawn from EPA sampling and analysis of wastewaters from the copper forming, aluminum forming, battery manufacturing, porcelain enameling, and coil coating point source categories. These wastewaters have been found to be statistically similar to nonferrous metals forming wastewater in all material respects because they contain the same dissolved metals at comparable concentrations that can be removed uniformly by precipitation and solids removal.

We regard the combined metals data base as the best available measure for establishing the concentrations for these nine pollutants which are attainable

with lime and settle treatment for the nonferrous metals forming industry. Our determination is based on an analysis which found that the untreated pollutant concentrations are generally homogeneous across subcategories within the nonferrous metals forming category and that the nonferrous metals forming untreated pollutant concentrations are generally homogeneous with the CMDB untreated pollutant concentrations pooled across categories. This homogeneity analysis appears in the record. EPA also believes the CMDB is the best available data base because of the larger number of plants in the CMDB (18 plants versus 7 nonferrous metals forming plants with available data). The larger quantity of data in the CMDB enhances the Agency's ability to estimate long-term performance and variability through statistical analysis. In addition, the CMDB has undergone extensive engineering and statistically-based evaluation in response to comments and issues raised in various other rulemakings for related metals industries where the Agency has relied on the CMDB.

We view the use of the combined metals data base as appropriate for nonferrous metals forming plants because properly operated lime and settle treatment will result in effluent concentrations that are directly related to pollutant solubilities. These effluent concentrations are referred to as the treatment effectiveness of lime and settle technology. Since the nonferrous metals forming raw wastewater matrix contains the same toxic pollutants at concentrations of the same order of magnitude as the CMDB raw wastewater and the technology is solubility-based, we believe the mean treatment process effluent and variability for nonferrous metals forming wastewater will be the same as the CMDB. We also do not believe any interfering properties (such as chelating agents) exist in nonferrous metals forming wastewater such that they would interfere with metal precipitation and so prevent attaining concentrations calculated from the combined metals data base. It is important to note that the treatment effectiveness values derived from the CMDB are only achievable when lime and settle treatment is preceded by any necessary preliminary treatment (e.g., chromium reduction, chemical emulsion breaking) which is part of the model technology as appropriate.

b. *Antimony and Silver.* We also are promulgating limits based on lime and settle technology for certain pollutants not included in the combined metals data base. Treatment effectiveness for silver and antimony were calculated from nonferrous metals manufacturing data. Since many nonferrous metals forming plants also manufacture nonferrous metals and combine the wastewater from both processes for common treatment, it is reasonable for the Agency to assume that nonferrous metals forming plants with lime and settle treatment will achieve the same effluent concentrations that are achieved for those two pollutants at nonferrous metals manufacturing plants.

c. *Fluoride.* The model treatment technology for removing fluoride is also lime and settle. The effectiveness of lime and settle treatment is derived from the electrical and electronic components (E&EC) category Phase 2. The Agency believes the E&EC Phase 2 data base closely reflects the treatability of fluoride in nonferrous metals forming wastewaters because of the source of the fluoride and the type of fluoride present. The presence of fluoride in both categories is from the use of hydrofluoric acid as a cleaning or etching agent which dissociates in water to fluoride ion, which can be readily removed from solution by lime as calcium fluoride.

2. *Filtration Technology.* The pollutant concentrations achievable with lime precipitation, sedimentation, and polishing filtration (lime, settle, and filter) are based on data from three plants with that technology in place: one nonferrous metals manufacturing plant and two porcelain enameling plants. EPA has extensive long-term data from these plants. We believe that the use of polishing filtration data from porcelain enameling plants is justified because the pollutants and pollutant concentrations in porcelain enameling and in nonferrous metals forming wastewaters are similar. We conclude this because data from porcelain enameling was included in the combined metals data base, which we have determined to be homogeneous with data from nonferrous metals forming. We also believe that use of polishing filtration data from the nonferrous metals forming manufacturing plant is justified because many plants which have nonferrous metals forming operations also have nonferrous metals manufacturing operations and combine wastewater for treatment. Therefore, it is reasonable for the Agency to assume that polishing filters treating nonferrous metals forming wastewater from lime and settle treatment and nonferrous metals manufacturing wastewaters from lime and settle treatment will achieve the same effluent concentrations.

3. *Iron Coprecipitation Technology.* Iron coprecipitation is part of the model technology for removing the pollutant molybdenum in the refractory metals forming and uranium forming subcategories. In the February 4 notice of availability, the Agency published a treatment effectiveness value for molybdenum based on data obtained from a molybdenum manufacturing plant. This value was based on the average of three days of sampling the effluent from a lime and settle treatment system. Also, in the Agency's post-proposal sampling effort, we sampled a uranium forming plant that had treatable concentrations of molybdenum in the raw wastewater. This plant treats its wastewater through iron addition, lime, and settle; the iron coprecipitates molybdenum. This plant achieved treated effluent concentrations for molybdenum which were consistent with the concentration published in the notice of new data. The data were included in the record for the notice. Therefore, EPA is basing the molybdenum limitations and standards on the basis of the data collected from this uranium forming facility which includes iron coprecipitation in its treatment system. The long-term average concentration for molybdenum from the uranium forming facility is 1.83 mg/l for lime and settle treatment.

Iron coprecipitation is a widely used treatment technology and frequently occurs unintentionally in industrial wastewater treatment situations. Whenever iron is present at a high concentration in raw wastewater, it will act as a coprecipitant in a lime and settle treatment system and aid in the removal of other metal pollutants present in the wastewater. Iron coprecipitation is demonstrated at a uranium forming plant, as described above, and is equally applicable to the refractory metals forming subcategory because the process wastewaters have similar characteristics. Further, the addition of iron for coprecipitation to aid in metals removal is considered a routine part of state-of-the-art lime and settle technology which should be implemented as required to achieve optimum removal of metals. Iron coprecipitation is discussed in more detail in Section VII of the Development Document.

4. *Ammonia Steam Stripping Technology.* Ammonia steam stripping is part of the model technology for removing ammonia from the magnesium forming, titanium forming, and zirconium-hafnium forming

subcategories. This technology is used routinely to reduce ammonia levels. To determine treatment effectiveness, EPA collected chemical analysis data of raw waste (treatment influent) and treated waste (treatment effluent) from one plant in the iron and steel category using ammonia steam stripping. These data are contained in the administrative record supporting this regulation. We believe this treatment performance can be transferred to nonferrous metals forming subcategories because the technology is solubility-related and these nonferrous metals forming subcategories do not contain interfering agents that would reduce ammonia removals.

The Agency has verified the proposed steam stripping values using steam stripping data collected at a nonferrous metals manufacturing and forming plant that has a combined wastewater treatment system. These data also appear in the record for this rulemaking. Data collected by the plant represent almost two years of daily operations, and support the long-term mean used to establish treatment effectiveness.

5. *Cyanide Precipitation.* The model technology for removing cyanide from process wastewaters in the precious metals, titanium, zinc, zirconium-hafnium, and metal powders subcategories is cyanide precipitation. This technology is frequently used in industrial applications, although no nonferrous metals forming plant reported its use. The treatment performance for cyanide precipitation technology is transferred from the coil coating category. The Agency believes that cyanide precipitation should be equally effective at removing cyanide from nonferrous metals forming wastewaters because the analysis of homogeneity has demonstrated similarity between the nonferrous metals forming data base and the CMDB, which includes data on coil coating wastewaters.

C. Technology Basis for Final Regulation

A brief summary of the technology basis for the regulation is presented below. A more detailed discussion is presented in the *Development Document for Effluent Limitations Guidelines and Standards for the Nonferrous Metals Forming and Metal Powders Point Source Category.*

BPT: EPA is promulgating BPT mass limitations based on end-of-pipe treatment, which consists of flow normalization and lime and settle with preliminary treatment of ammonia steam stripping, cyanide removal, chromium reduction, and chemical emulsion breaking where appropriate, for all subcategories except the refractory metals, and uranium forming subcategories. The end-of-pipe treatment technology basis for the promulgated BPT limitations is the same as that for the proposed BPT limitations. The model end-of-pipe technology for the refractory metals forming and uranium forming subcategories is the same technology as the other subcategories, plus iron coprecipitation to remove the pollutant molybdenum. The BPT model technology of lime and settle is demonstrated at 46 nonferrous metals forming plants. The effectiveness of lime and settle treatment, plus any necessary preliminary treatment (e.g., chromium reduction, chemical emulsion breaking), is based on the combined metals data base which the Agency has determined to be applicable to wastewaters generated by the nonferrous metals forming category.

In developing BPT limitations, the Agency considered the amount of water used per unit of production (liters per kkg or metric ton) for each wastewater stream in each subcategory. In general, the regulatory flows for BPT were based on the average of the reported water use or discharge values. The Agency has used BPT regulatory flows based on flow reduction only in those unusual cases where water flow reduction is commonly practiced throughout the building block. Based on its reevaluation of existing data and additional data it collected since proposal, the Agency has revised most of the proposed regulatory flow allowances for the category. In the notice of data availability (50 FR 4872, February 4, 1985), EPA explained the basis for revising the regulatory flow allowances and made them available for public comment. Since then, EPA has made additional changes to 11 process wastewater flows. These additional changes are the result of clarification of information provided in one company's dcp, and the discovery of an error in one entry for a nickel-cobalt waste stream. In addition, we have received additional data from two companies regarding electrocoating of nonferrous metals performed in conjunction with forming these metals. One company applies a copper or nickel coating to a nickel-based material. The coating acts as a drawing lubricant; after drawing the coating is pickled off the base material. We have added a building block to cover this process since it is clearly an integral part of the nickel-cobalt forming process. We have also added a building block to the zinc forming subcategory to cover a similar process in which copper is electrocoated onto zinc penny blanks. Making these blanks is an integral part of this plant's zinc forming operations.

The pollutants selected for regulation at BPT vary by subcategory. They are tabulated below.

Nonferrous Metals Forming Regulated Pollutants

Subcategory	AT BPT / AT BAT Sb	Cd	Cr	Cu	Pb	Ni	Ag	Zn	CN	NH_3	F	Mo	O&G	TSS	pH
Lead-Tin-Bismuth	X				X								X	X	X
Magnesium			X					X		X	X		X	X	X
Nickel-Cobalt			X			X					X		X	X	X
Precious Metals		X		X	X		X		X				X	X	X
Refractory Metals				X		X					X	X	X	X	X
Titanium					X			X	X	X	X		X	X	X
Uranium		X	X	X	X	X					X	X	X	X	X
Zinc			X	X				X	X				X	X	X
Zirconium-Hafnium			X			X			X	X	X		X	X	X
Metal Powders				X	X				X				X	X	X

Thirty-seven nonferrous metals forming plants are direct dischargers. The Agency estimates that BPT will result in the removal of an estimated 1580 kg (3480 pounds) of priority pollutants and 173,000 kg (381,000 pounds) of total pollutants per year from estimated current discharge levels. The estimated capital investment cost of BPT is $4.4 million and the estimated annual cost is $3.7 million, in 1982 dollars. These are the costs for wastewater treatment equipment not currently in place. We do not project any plant closures or unemployment as a result of meeting the BPT limitations. The Agency has determined that the pollutant reduction benefits associated with compliance justify the costs. More stringent technology options were not selected since they would require in-process changes or end-of-pipe technologies which are not widely practiced by plants in the category and, therefore, are more appropriately considered under BAT.

BAT: The Agency examined the technology basis for BAT on a subcategory-by-subcategory basis. The technology basis includes the BPT model technology plus in-process flow reduction and, in some subcategories, filtration as a final polishing step. In the case of the metal powders subcategory no additional flow reduction has been required. In developing BAT limitations, the Agency considered the amount of water used per unit of production (liters per metric ton or gallons per ton) for each wastewater stream. Flow reduction is based on recycle of heat treatment contact cooling water through cooling towers, recycle of air pollution control scrubber liquor, countercurrent cascade rinsing of alkaline cleaning and surface treatment rinsewater, and use of holding tanks for all other process water subject to recycle. Approximately 15 percent of the direct dischargers which have operations where flow reduction technology was considered to be technically feasible have already achieved the reduced flow that forms the basis of Options 2 and 3. As explained in Section VI below, we have concluded that the costs of achieving limitations based on the model technologies for each subcategory are reasonable and the limitations are economically achievable for each subcategory.

Lead-Tin-Bismuth. The Agency is promulgating BAT limitations for the lead-tin-bismuth subcategory on the basis of lime and settle end-of-pipe treatment technology and in-process controls to reduce wastewater flows (Option 2). This is the same technology basis as was proposed. The Agency did not receive any comments on the proposed limitations for the lead-tin-bismuth subcategory. This BAT model technology is demonstrated, technically feasible, and economically achievable. The selected BAT model technology is estimated to remove 850 kg/yr (1860 lb/yr) of pollutants from current discharge, including 81 kg/yr (180 lb/yr) of priority pollutants. (The capital and annual costs associated with this subcategory are not

provided in order to protect information claimed confidential.) These costs are included in the confidential record supporting this regulation. EPA did not promulgate BAT based on the addition of a filter because several lead-tin-bismuth forming plants also have operations which are covered by the battery manufacturing or copper forming regulations, both of which have limitations established on the model treatment technology of flow reduction, lime, and settle. By promulgating BAT limitations for the lead-tin-bismuth subcategory based on lime and settle technology without the addition of a filter, plants with both types of operations will not need to segregate these wastewaters for treatment. Further, the addition of a filter would only remove an additional 1 kg/yr (2 lb/yr) of priority pollutants for the whole subcategory. Therefore, EPA is promulgating BAT on the basis of flow reduction, lime, and settle model technology.

Magnesium. The Agency is promulgating BAT limitations for the magnesium subcategory on the basis of lime and settle end-of-pipe treatment technology and in-process controls to reduce wastewater flow (Option 2). Although the Agency proposed limitations and standards based on flow reduction, lime, settle, and filter for this subcategory, we stated in the proposal that we would give equal consideration to flow reduction, lime, and settle as the model technology. This model technology is demonstrated, technically feasible, and economically achievable. We have concluded that flow reduction, lime, and settle is the appropriate BAT technology for the following reasons. The one existing direct discharge plant in the magnesium subcategory also forms aluminum, and the BAT limitations in the aluminum forming regulation are based on the same model technology, i.e., flow reduction, lime, and settle. By promulgating BAT limitations for the magnesium subcategory based on this technology, this plant will not need to segregate its wastewaters for treatment. EPA estimates that 14,795 kg/yr (32,550 lb/yr) of priority pollutants will be removed after the installation of this BAT treatment technology. The captal and annual costs associated with this subcategory are not provided in order to protect information claimed confidential. These costs are included in the confidential record supporting this regulation. Furthermore, the addition of a filter to the lime and settle treatment would only remove 1 kg (2 lbs) of toxic pollutants annually. Therefore, EPA is promulgating BAT on the basis of flow reduction, lime, and settle model technology.

Nickel-Cobalt. The Agency is promulgating BAT limitations for the nickel-cobalt subcategory on the basis of lime, settle, and filter end-of-pipe treatment technology and in-process controls to reduce wastewater flows (Option 3). This is the same technology basis which was also the basis for the proposed BAT limitations. This technology is demonstrated, and technically feasible and economically achievable. One nickel-cobalt forming plant currently has a polishing filter in place, although it is not currently using the filter because it can meet its permit requirements without doing so. EPA has included filters in the model technology because filters will remove significant amounts of additional pollutants, and the costs of this removal are reasonable. The selected BAT model technology is estimated to remove 19,000 kg/yr (41,000 lb/yr) of pollutants from current discharge, including 1160 kg/yr (2550 lb/yr) of priority pollutants. The installation of the model BAT technology is estimated to cost $493,400 in capital investment and $242,000 annually above equipment in place (1982 dollars). EPA recognizes that some plants cotreat process wastewaters from nickel-cobalt forming operations with wastewater from operations regulated under other nonferrous metals forming subcategories and point source categories whose effluent limitations guidelines are not based on the addition of a filter to the lime and settle treatment system. As part of this rulemaking, EPA has considered the cost for these plants to cotreat their combined wastewater flows and achieve the applicable effluent limitations.

Precious Metals. The Agency is promulgating BAT limitations for the precious metals subcategory on the basis of lime and settle end-of-pipe treatment technology and in-process controls to reduce wastewater flows (Option 2). Although the Agency proposed limitations and standards based on flow reduction, lime, settle, and filter for this subcategory, we stated in the proposal that we would give equal consideration to flow reduction, lime, and settle as the model technology. In the February 4 notice of availability, we stated that we were also considering adding ion exchange to the model technology for this subcategory. This technology is demonstrated, technically feasible, and economically achievable. The selected BAT model technology is estimated to remove 1770 kg/yr (390 lb/yr) of pollutants from current discharges, including 33 kg/yr (73 lb/yr) of pollutants. The installation of the model BAT technology is estimated to cost $314,600 in capital investment and $127,900 annually above equipment in place (1982 dollars). The addition of a filter to the lime and settle treatment would cost $37,000 in capital investment and $22,900 annually but would only remove 2 kg (4 lb) of toxic pollutants annually. The Agency believes that given all these factors, the costs involved do not warrant selection of filtration as part of the BAT model technology. In addition, precious metals are frequently alloyed with copper, in alloys which contain mostly copper; yet these alloys are considered to be precious metals alloys by the companies that form them. Therefore, the Agency is defining a precious metal alloy as any alloy which contains precious metal at 30 percent or greater by weight. This will simplify compliance with permit requirements for companies that form precious metals, since their process wastewater will be regulated by one regulation instead of two.

Refractory Metals. The Agency is promulgating BAT limitations for the refractory metals subcategory on the basis of flow reduction, lime, settle, and filter, plus iron coprecipitation for molybdenum removal (Option 3). The Agency proposed BAT on the basis of flow reduction, lime, settle, and filter. As explained above, since proposal we have obtained additional data on the treatment effectiveness of iron addition to coprecipitate molybdenum. This technology is currently demonstrated at one nonferrous metals forming plant which has treatable concentrations of molybdenum in its raw wastewater. These data were noticed in the **Federal Register** notice of data availability. The Agency estimates that BPT technology will remove 24,200 kg/yr (53,200 lb/yr) of total pollutants from refractory metals wastewaters. Application of BAT technology should achieve an additional removal of 5100 kg/yr (11,200 lb/yr) which includes 80 kg/yr (180 lb/yr) of toxic pollutants. The BAT technology requires $135,400 in capital costs and $68,000 in annual costs (1982 dollars) above treatment already in place. Because of the particular processes used by existing direct dischargers, they can remove more pollutants at significantly less cost than indirect discharging plants can. (See discussion of PSES for this subcategory below.) EPA recognizes that some plants cotreat process wastewaters from refractory metals forming operations with wastewater from operations regulated under other

nonferrous metals forming subcategories and point source categories whose effluent limitations guidelines and standards are not based on the addition of a filter to the lime and settle treatment system. As part of this rulemaking, EPA has considered the cost for these plants to cotreat their combined wastewater flows and achieve the applicable effluent limitations. As discussed below, EPA has concluded that these promulgated BAT effluent limitations are economically achievable.

Titanium. The Agency is promulgating BAT limitations on the basis of lime and settle end-of-pipe treatment and in-process controls to reduce wastewater flow (Option 2). Although the Agency proposed flow reduction, lime, settle, and filter as the BAT model technology basis for this subcategory, we stated in the preamble to the proposed regulation that we were also considering flow reduction, lime, and settle as the model technology. This model technology is demonstrated, technically feasible, and economically achievable. EPA estimates that 260 kg/yr (570 lb/yr) of priority pollutants will be removed by the BAT treatment technology at a cost of $2,130,000 in capital investment and $2,192,000 annually above equipment in place (1982 dollars). The addition of a filter to the lime and settle treatment system would cost $211,000 in capital investment and $121,300 annually (1982 dollars) and would remove only 18 kg (40 lbs) of priority pollutants annually, which is approximately 1.4 kg (3 lbs) of such pollutants per plant. The Agency believes that, given all these factors, the costs involved do not warrant selection of filtration as part of the model BAT treatment technology. EPA recognizes that some plants cotreat process wastewaters from titanium forming operations with wastewater from operations regulated under other nonferrous metals forming subcategories and point source categories whose effluent limitations guidelines are based on the addition of a filter to the lime and settle treatment system. As part of this rulemaking, EPA has considered the cost for these plants to cotreat their combined wastewater flows and achieve the applicable effluent limitations.

Uranium. The Agency is promulgating BAT on the basis of lime, settle, and filter end-of-pipe technology with in-process controls to reduce wastewater flows (Option 3), which was also the model technology basis for the proposed effluent limitations guidelines, plus iron coprecipitation to remove the pollutant molybdenum. This technology is demonstrated, technically feasible, and economically achievable. The selected BAT model technology is estimated to remove 13,800 kg/yr (30,300 lb/yr) of pollutants from current discharge, including 38 kg/yr (84 lb/yr) of priority pollutants. The capital and annual costs associated with this subcategory are not provided in order to protect information claimed confidential. These costs are included in the confidential record supporting this regulation. The Agency has determined that BAT limitations for the uranium subcategory based on flow reduction, lime, settle and filter technology are technically feasible and economically achievable.

Zinc. The Agency is promulgating BAT limitations for the zinc subcategory on the basis of lime, settle, and filter end-of-pipe treatment technology and in-process controls to reduce wastewater flow (Option 3). This same technology was the basis for the proposed effluent limitations guidelines. No comments were received on this choice of model technology. This technology is technically feasible and economically achievable. The selected BAT model technology is estimated to remove 2,525 kg/yr (5,555 lb/yr) of pollutants currently discharged, including 133 kg/yr (300 lb/yr) of priority pollutants. The capital and annual costs associated with this subcategory are not provided in order to protect information claimed confidential. These costs are included in the confidential record supporting this regulation. In addition, the application of a filter achieves an incremental removal of 50 kg/yr (110 lb/yr) of toxic pollutants.

Since proposal, EPA has obtained data and information on a process in which a copper coating is applied to zinc penny blanks. We have added a building block to the zinc forming subcategory that covers the electrocoating rinsewater generated by this process. The Agency believes this action will simplify compliance with BAT requirements for the zinc forming subcategory since all the process wastewater generated by this direct discharge zinc forming plant is covered under one regulation with the same end-of-pipe treatment requirements.

Zirconium-Hafnium. The Agency is promulgating BAT on the basis of lime and settle end-of-pipe technology with in-process controls to reduce wastewater flows (Option 2). This model technology is demonstrated, technically feasible, and economically achievable. Although the Agency proposed BAT effluent limitations based on flow reduction, lime, settle, and filter model technology, we stated in the preamble to the proposed regulation that we were also considering flow reduction, lime, and settle model technology. The Agency has decided not to include filtration as part of the model BAT treatment technology. EPA estimates the 645 kg/yr (1420 lb/yr) of priority pollutants will be removed after installation of the BAT treatment technology which is estimated to cost $567,700 in capital investment and $400,400 annually above equipment in place (1982 dollars). The addition of filters would only remove 0.2 kg/yr (0.4 lb/yr) of priority pollutants which is approximately 0.01 kg/yr (0.02 lb/yr) per plant. The incremental costs for this effluent reduction would be $117,300 in capital investment and $60,000 in annual costs (1982 dollars). The Agency believes that given all these factors, the costs involved do not warrant inclusion of filtration as part of the BAT model technology. EPA recognizes that some plants cotreat process wastewaters from zirconium-hafnium forming with operations with wastewaters from operations regulated under other nonferrous metals forming subcategories and point source categories whose effluent limitations guidelines are based on the addition of a filter to the lime and settle treatment system. As part of this rulemaking, EPA has considered the cost for these plants to cotreat their combined wastewater flows and achieve the applicable effluent limitations. As discussed below, EPA has concluded that these promulgated BAT effluent limitations are economically achievable.

Metal Powders. The Agency is promulgating BAT limitations for the metal powders subcategory on the basis of lime and settle end-of-pipe treatment technology (Option 1). Although the Agency proposed BAT limitations on the basis of lime and settle with additional in-process controls to reduce wastewater flows, the direct dischargers do not currently have any of the processes for which additional flow reduction is applicable and therefore, there is no additional pollutant removal with the application of additional flow reduction technologies to direct dischargers. EPA has decided to promulgate BAT limitations that are equal to BPT limitations for this subcategory. EPA recognizes that some plants cotreat process wastewaters from metal powders operations with wastewaters from operations regulated under other nonferrous metals forming subcategories and point source categories whose effluent limitations guidelines are based on the addition of flow reduction or a filter to the lime and

settle treatment system. As part of this rulemaking, EPA has considered the cost for these plants to cotreat their applicable effluent limitations. As discussed below, EPA has concluded that these promulgated BAT effluent limitations are economically achievable.

The pollutants specifically limited under BAT in each subcategory are tabulated above. In general, in each subcategory we have selected for regulation the two or three metal priority pollutants present at the highest concentrations in the raw waste, because in removing these two or three metals, the model lime and settle treatment system should also provide adequate removal of the other metals present at lower concentrations.

In each subcategory, the metal present at the highest concentration is the metal being subjected to the forming operations. In some subcategories, that metal is a priority pollutant (nickel in the nickel-cobalt forming subcategory, for example). In the other subcategories, that metal is a nonconventional pollutant (titanium in the titanium forming subcategory, for example). In general, EPA is not establishing effluent limitations guidelines and standards for nonconventional metal pollutants, even when they are the metal being formed (such as titanium in titanium forming), because in these cases, the Agency has concluded that regulation of just the metal priority pollutants will ensure that the nonconventional metal pollutants are removed. Further, establishing national regulations for only the metal priority pollutants allows plants greater flexibility in the treatment of wastewater streams which are covered by more than one point source category or subcategory, because the regulated pollutants controlled are more likely to be the same. However, for the nonconventional metal pollutants EPA is not regulating, the Agency has provided guidance to permit writers on the mass discharge attainable using the BAT model technology for each such pollutant. This guidance appears in Section VII, IX, and X of the Development Document.

EPA is regulating one nonconventional metal pollutant: molybdenum in the refractory metals and uranium subcategories. End-of-pipe technology in addition to lime and settle, or lime, settle, and filter treatment is necessary to ensure adequate removal of molybdenum from process wastewater. EPA has added iron coprecipitation to the model technology for the refractory metals and uranium subcategories to remove the pollutant molybdenum. Molybdenum is present in significant concentrations at refractory metals plants because it is one of the refractory metals being formed. It is also present in significant concentrations at uranium forming plants because it is used as a major alloying agent in depleted uranium alloys. EPA is also establishing limitations for the nonconventional pollutants fluoride and ammonia. Fluoride was found in significant concentrations in the magnesium, nickel-cobalt, refractory metals, titanium, uranium, and zirconium-hafnium subcategories. The model technology for removal of fluoride is lime and settle. Fluoride is precipitated from solution as a calcium salt. Therefore, lime is the alkali most commonly used to remove fluoride, whereas the precipitation of most metal pollutants can be accomplished with any alkali salt. Ammonia was found in significant concentrations at plants in the magnesium, titanium, and zirconium-hafnium subcategories. The model technology for removing ammonia is steam stripping.

Toxic organic pollutants were found in two nonferrous metals forming waste streams. N-nitrosodiphenylamine was found in a significant amount in a sample of tube reducing lubricant. In addition, methylene chloride and toluene were found in the rinsewater which followed a solvent cleaning bath composed of these compounds. The Agency is requiring zero discharge from these wastewater streams. Tube reducing lubricants are currently hauled, rather than discharged, by the majority of plants that generate this waste. Since they tend to be small in volume and highly concentrated, the Agency has concluded this is the most practical disposal alternative. These waste streams can be most economically handled by intercepting each such waste stream before mixing it with other process wastewaters and disposing of it as a solid waste. Treatment of the wastes with activated carbon after mixing either waste stream with other process wastewaters would be much more expensive.

Solvents are commonly used by nonferrous metals forming companies to clean oils from the surface of the metal; these processes are almost always dry. However, at one plant sampled after proposal, the Agency observed and sampled an organic solvent cleaning process that involves the generation of contaminated rinsewater. EPA is establishing a zero discharge allowance for this waste stream. Other plants perform the same process without generating any wastewater by using solvents which need not be followed by a water rinse. EPA has based the zero discharge requirement on a process change which should achieve the same product quality as a water rinse at very little expense. Instead of operating a solvent bath followed by a water rinse, this plant can convert the water rinse into a second solvent cleaning step.

The Agency found 1,1,1-trichloroethane in small amounts in the nickel-cobalt, refractory metals, zirconium-hafnium and metal powders subcategories. The Agency also found chlorodibromomethane, bis(2-ethylhexyl)phthalate and di-n-butyl phthalate in small amounts in zinc forming process wastewater. From the available data, the Agency believes these pollutants are unique to those sources and are not present as an integral part of the nonferrous forming process. Therefore, EPA is not regulating these pollutants. However, the permit writer should consider the possible presence of toxic organic pollutants in nonferrous metals forming wastewater and if found should control them under this regulation on the basis of best professional judgment.

Implementation of BAT by all the direct dischargers in the 10 subcategories will remove an additional 940 kg (2070 pounds) per year of total priority pollutants beyond BPT at an additional capital cost of $603,000 and additional annualized costs of $202,000 in 1982 dollars. The Agency estimates that implementation of BAT will remove a total of 230,000 kg/year (503,000 lbs/year) of pollutants at a total annualized cost of $3.9 million from current levels. No potential plant closures as a result of meeting these requirements are expected, based on our economic impact analysis. The Agency has therefore concluded that this level of BAT control is economically achievable.

NSPS: The Agency is promulgating NSPS for the nonferrous metals forming category based on the same technology basis as was proposed, except in the precious metals, titanium, and zirconium-hafnium subcategories. For these three subcategories, the technology basis is the same as the model BAT technology. Accordingly, the model technology basis for new sources is lime, settle, and filter with in-process controls to reduce wastewater flows for all subcategories except lead-tin-bismuth, precious metals, titanium, zirconium-hafnium, and metal powders. EPA is promulgating NSPS for these five subcategories on the basis of lime and settle with in-process controls to reduce wastewater flows. For each subcategory, these model technologies represent the best demonstrated

technology. The subcategories which have more stringent requirements for new sources than for existing sources are magnesium and metal powders.

In developing NSPS, the Agency considered the amount of water used per unit of production for each wastewater stream. Most of the new source regulatory flow allowances are equivalent to BAT allowances. The only exception is in the metal powders subcategory. As discussed above, the BAT requirements for existing sources in the metal powders subcategory do not include additional in-process controls above BPT requirements. However, opportunities to achieve further flow reduction of process wastewater do currently exist for some process waste streams that are not employed at existing direct discharge facilities and the Agency believes these processes could be used at new sources. Therefore, the new source standards for this subcategory are based on the application of additional flow reduction technologies on a number of process wastewater streams. New sources would not incur expenses associated with retrofitting these additional flow reduction technologies and would have the opportunity to install a treatment system which is designed to handle the reduced flow. The Agency therefore concludes that the metal powders subcategory new source standards will not pose a barrier to entry.

NSPS model technology for magnesium forming is based on flow reduction, lime, settle, and filter. The addition of a filter would increase the annual cost of wastewater pollution control for existing sources by about 10 percent. However, a new source is able to design a treatment system to handle the new source flow without the expense of retrofitting flow reduction and treatment equipment into the facility. The cost of a filter for new sources is expected to be only 0.05 percent of estimated revenues for a new source. Therefore, the Agency does not expect NSPS to pose a barrier to entry for new sources.

EPA is promulgating NSPS in the precious metals, titanium, and zirconium-hafnium subcategories based on lime, settle, and in-process controls to reduce wastewater flow (Option 2). These NSPS are equivalent to the BAT limitations for these subcategories. The Agency has decided not to include filters as part of the NSPS model technology (as had been proposed) for the same reasons discussed above for rejecting filters as part of the BAT model technology for these subcategories.

Since NSPS for these subcategories are equivalent to the BAT requirements, the Agency has concluded that there will be no barrier to entry for new sources in those subcategories. In fact, the new sources can design for efficient process water use and maximize wastewater reduction, thereby reducing the size (and in turn the cost) of pollution control equipment. Therefore, such equipment may actually be less costly to install and operate in comparison to retrofit at existing plants.

The NSPS model technology basis for the nickel-cobalt, refractory metals, uranium, and zinc subcategories is flow reduction, lime, settle, and filter, which is the same as the NSPS technology basis for the proposed regulation. The NSPS model technology basis for the lead-tin-bismuth subcategory is flow reduction, lime and settle, which is the same as the NSPS model technology basis in the proposed regulation. EPA's reasons for selecting these technology bases is explained under BAT, above. The pollutants selected for regulation are the same as have been selected for regulation at BAT plus oil and grease, TSS, and pH for all subcategories.

PSES. The Agency is promulgating PSES for the nonferrous forming category on the same technology basis as BAT for each subcategory except for the refactory metals, uranium, and zinc subcategories. In the nonferrous metals forming category, the Agency has concluded that the metal priority pollutants, ammonia, fluoride, and molybdenum pass through the POTW. A study of 40 well-operated POTW with biological treatment that are meeting secondary treatment criteria showed that regulated metals are typically removed at rates varying from 20 to 70 percent. Section XII of the Development Document compares the percent of pollutant remaining after treatment by a well-operated POTW with the percent removed by BAT level treatment for each pollutant regulated in this category. POTW with only primary treatment have even lower rates of removal. In contrast, BAT level treatment by nonferrous metals forming industrial facilities can achieve removals of these pollutants of approximately 90 percent. Thus it is evident that metals from this category do pass through POTWs. Many of the pollutants present in nonferrous metals forming waste streams, at sufficiently high concentrations, can also inhibit biodegradation in POTW operations. In addition, a high concentration of toxic pollutants in the sludge can limit POTW use of sludge management alternatives, including the beneficial use of sludges on agricultural lands.

EPA is excluding the uranium forming subcategory from PSES under the provisions of Paragraph 8(b) of the Settlement Agreement because there are no existing indirect dischargers in the uranium forming subcategory. In addition, EPA is not promulgating any categorical PSES for zinc forming. EPA proposed this exclusion because, on the basis of available information, it appeared that the economic impact of pretreatment standards based on any available technology option would be disproportionate for this subcategory. Since proposal, EPA has re-estimated compliance costs on a plant-by-plant basis for the entire category, and our conclusions about the economic impact for the indirect discharging zinc forming plants has not changed. Therefore, the Agency has not established categorical PSES for the zinc subcategory. Of course, these plants are still subject to the general pretreatment requirements.

The PSES promulgated today are equivalent to the BAT effluent limitations guidelines in all subcategories except the refractory metals subcategory. PSES for the refractory metals subcategory is promulgated based on the model end-of-pipe treatment technology of iron coprecipitation, lime, and settle with in-process controls to reduce wastewater flows (Option 2). As discussed above, BAT effluent limitations guidelines are based on Option 3. The Agency has decided not to include a filter in the model PSES technology for this subcategory because, based on the processes at existing refractory metal indirect dischargers, EPA estimates that 169,000 kg/yr (371,000 lb/yr) of pollutants, including 250 kg/yr (550 lb/yr) of toxic pollutants, will be removed after the installation of Option 2 technology at a cost of $1.54 million in capital investment and $0.6 million annually above equipment in place (1982 dollars). The addition of filtration would only remove an additional 9 kg/yr (20 lb/yr) of toxic pollutants (approximately 0.4 kg/yr (0.9 lb/yr) of toxic pollutants per plant), while the incremental cost of filters for refractory metal indirect dischargers is $97,500 in capital investment and $57,200 in annual cost (1982 dollars). These costs are significantly greater than the cost that will be incurred by existing direct dischargers. The Agency believes that, given these factors, the costs involved do not warrant selection of filtration as part of the PSES model technology. As discussed above, the Agency costed co-treatment for plants which treat process wastewater from refractory metals forming operations with wastewater from operations regulated under other nonferrous metals forming subcategories

and point source categories whose pretreatment standards are based on the addition of a filter to lime and settle treatment and concluded that these PSES are economically achievable.

PSES is promulgated on the basis of less stringent model technology than proposed in the magnesium, titanium, zirconium-hafnium, and metal powders subcategories. Under the Clean Water Act, PSES is to be generally analogous to BAT. These decisions are discussed in more detail below.

The metal powders BAT limitations are based on Option 1 (rather than Option 2 as proposed) because, as discussed above, the direct dischargers generally do not use any of the processes for which additional flow reduction is available. PSES for the metal powders subcategory is established based on Option 1 to be analogous to the BAT limitations. In addition, EPA estimates that 980 kg/yr (2,100 lb/yr) of toxic pollutants will be removed after installation of Option 1 technology at a cost of $512,000 in capital investment and $334,000 annually above equipment in place (1982 dollars). The addition of flow reduction to PSES would remove 88 kg/yr (190 lbs/yr) additional toxic pollutants which is approximately 3.3 kg/yr (7 lbs/yr) per plant. Although EPA estimates that capital investment costs for wastewater pollution control equipment will actually be less with the installation of flow reduction technology, the incremental annual costs for this removal is $101,000 (1982 dollars). For all these reasons, EPA believes that the costs involved do not warrant selection of flow reduction as part of the PSES model technology. As discussed above, the Agency estimated compliance costs for plants which cotreat process wastewater from metal powder operations with wastewater from operations regulated under other nonferrous metals forming subcategories and point source categories whose pretreatment standards are based on the addition of a filter to lime and settle treatment and concluded that these PSES are economically achievable.

The PSES for the magnesium subcategory is based on model technology of flow reduction, lime, and settle treatment (Option 2) rather than flow reduction, lime, settle, and filter (Option 3) as proposed, because as discussed above, the additional cost of filtration does not warrant its inclusion. EPA estimates that 2,100 kg/yr (4600 lb/yr) of toxic pollutants will be removed by Option 2 technology. (The capital and annual costs associated with this subcategory are not provided in order to protect information claimed confidential. These costs are included in the confidential record supporting this regulation.) This PSES is economically achievable. The addition of a filter to PSES would remove only an incremental 0.5 kg/yr (1 lb/yr) of toxic pollutants. Further, both existing indirect dischargers also form aluminum in addition to forming magnesium. Since these plants already have to comply with PSES for aluminum forming which are based on flow reduction, lime and settle treatment by promulgating PSES requirements on the same model technology basis for magnesium forming, these plants will not need to segregate process wastewaters for treatment.

The PSES for the precious metals subcategory is based on model technology of flow reduction, lime, and settle (Option 2), rather than flow reduction, lime, settle, and filter (Option 3) as proposed, because as discussed above, the additional cost of filtration does not warrant its selection. EPA estimates that application of Option 2 technology to existing precious metals forming plants will remove 150 kg/yr (330 lb/yr) of priority pollutants at a cost of $749,000 in capital investment and $324,000 annually above equipment in place (1982 dollars). The costs are economically achievable. The addition of a filter to PSES would remove only 8 kg/yr (18 lb/yr) of priority pollutants (approximately equivalent to 0.3 kg/yr (0.7 lb/yr) per plant). The incremental cost of filters is estimated to be $74,600 in capital investment and $49,200 in annual costs (1982 dollars). As discussed above, the Agency has substantially reduced the degree to which precious metals forming plants will also be regulated by other nonferrous metals forming subcategories or categories (whose pretreatment standards might be based on a different technology basis), by defining a precious metal alloy to be any alloy containing 30 percent or greater by weight of precious metal.

The PSES for the titanium subcategory is based on model technology of flow reduction, lime, and settle (Option 2), rather than flow reduction, lime, settle, and filter (Option 3) as proposed, because as discussed above, the additional cost of filtration does not warrant its selection. EPA estimates that application of Option 2 technology to existing titanium forming plants will remove 282 kg/yr (580 lb/yr) of priority pollutants at a cost of $757,000 in capital investment and $348,000 annually, above equipment in place (1982 dollars). The addition of a filter to PSES would remove only an incremental 0 kg/yr (18 lb/yr) of priority pollutants which is approximately equivalent to 0.4 kg/yr (0.9 lb/yr) per plant. The incremental costs of filters is estimated to be $54, 400 in capital investment, and $33,400 in annual costs (1982 dollars). As discussed above, the Agency costed treatment for plants which cotreat process wastewaters from titanium forming operations with wastewater from operations regulated under other nonferrous metals forming subcategories and point source categories whose pretreatment standards are based on the addition of a filter to lime and settle treatment and concluded that these PSES are economically achievable.

The PSES for the zirconium-hafnium subcategory is based on model technology of flow reduction, lime and settle (Option 2), rather than flow reduction, lime, settle, and filter (Option 3) as proposed, because as discussed above, the additional cost of filtration does not warrant its selection. EPA estimate that application of Option 2 technology to existing zirconium-hafnium forming indirect dischargers will remove 1,090 kg/yr (2400 lb/yr) of total pollutants including 1.3 kg/yr (3 lb/yr) of priority pollutants at a cost of $11,300 in capital investment and $4,000 annually, above equipment in place 1982 dollars). The addition of a filter to PSES would remove only an incremental 2 kg/yr (4.5 lb/yr) of total pollutants and 0.08 kg (0.18 lb/yr) of priority pollutants. The incremental cost of filters is estimated to be $700 in capital investment, and $300 in annual costs (1982 dollars). As discussed above, the Agency costed treatment for plants which cotreat process wastewater from zirconium-hafnium forming operations with wastewater from other nonferrous metals forming subcategories and point source categories whose pretreatment standards are based on the addition of a filter to lime and settle treatment and concluded that these PSES are economically achievable.

The Agency is promulgating PSES for the nickel-cobalt subcategory on the basis of Option 3 for the reasons discussed above under BAT. The Agency is promulgating PSES for the lead-tin-bismuth subcategory on the basis of Option 2 for the reasons discussed above under BAT. The PSES for these subcategories, which are economically achievable, are based on the same model technology as proposed.

In developing these standards, the amount of water used per unit of production was considered for each waste stream. The flow allowances established for PSES are the same as those established for BAT based on the

same flow reduction technologies. The pollutants selected for regulation are the same as those regulated at BAT.

The PSES set forth in this final rule are expressed in terms of mass per unit of production rather than concentration standards in all subcategories. Regulation on the basis of concentration is not appropriate because flow reduction is a significant part of the model pretreatment technology. Mass-based standards are necessary because flow reduction technology which is included in the model technology would not be implemented by concentration based standards.

Implementation of PSES will remove annually an estimated 24,800 kg/yr (54,600 lb/yr) of metal priority pollutants (from estimated current discharges) at a capital cost above equipment in place of $7.5 million and an annual cost of $4 million in 1982 dollars. The Agency has concluded that PSES is economically achievable.

The Agency has considered the time for compliance for PSES. Few of the indirect discharge nonferrous metals forming plants have installed and are properly operating the treatment technology for PSES. Many plants in this and other industries will be installing the treatment equipment suggested as model technologies for this regulation and this may result in delays in engineering, ordering, installing, and operating this equipment. For these reasons, the Agency has decided to establish the PSES compliance date for all facilities at three years after promulgation of this regulation.

PSNS. The Agency is promulgating PSNS for all subcategories to assure that the identified flow reduction and end-of-pipe technologies are considered in new plant designs. We are also issuing PSNS for the zinc forming and uranium forming subcategories for which BAT and NSPS, but not PSES, are established.

The technology basis for the PSNS is identical to NSPS. The flow allowances are the same as NSPS and the pollutants regulated for PSNS are the same as those for PSES. As discussed under PSES, pass through of the regulated pollutants will occur without adequate pretreatment and, therefore, pretreatment standards are required. We know of no economically feasible, demonstrated technology that removes significantly more pollutants than the technologies selected. The subcategories which have more stringent requirements for new sources than for existing sources are magnesium, refractory metals, zinc, and metal powders. We have evaluated the cost associated with PSNS for the magnesium and metal powders subcategories as discussed above, and find that these costs will not pose a barrier to entry by new sources in either of these subcategories. PSNS for the refractory metals subcategory is based on the model technology of flow reduction, lime, settle, and filter. The addition of a filter increases the annual cost of wastewater pollution control for existing sources by 15 percent. However, a new source will be able to design the treatment system to handle the new source flow without the expense of retrofitting flow reduction and treatment equipment into the facility. The cost of a filter for new sources is expected to be only 0.05 percent of estimated revenues for a new source. Therefore, the Agency does not expect PSNS to pose a barrier to entry for new sources. For the remaining seven subcategories, the limitations and standards for existing and new sources, respectively, are based on the same model technology. Therefore, we do not expect PSNS to pose a barrier to entry for new sources in these subcategories.

BCT. The Agency is not promulgating BCT effluent limitations guidelines at this time although BCT limitations were proposed. EPA will issue BCT effluent limitations guidelines after the BCT methodology has been finalized. In the interim, permit writers should establish BCT discharge allowances for the conventional pollutants on the basis of best professional judgment.

VI. Economic Considerations

A. Analysis and Reports

EPA's economic impact assessment is set forth in *Economic Impact Analysis of Effluent Limitations and Standards for the Nonferrous Metals Forming and Metal Powders Industry.* This report presents the required investment and annual compliance costs for the industry as a whole and for each subcategory covered by the regulation unless confidential. The report also assesses the probable economic impact of these compliance costs in terms of price changes, production changes, profitability changes, plant closures, employment effects, local community impacts, balance of trade effects, and industry structure changes.

EPA has also conducted an analysis of the incremental removal cost per pound-equivalent for each of the technology-based options for each subcategory. Pound-equivalents are calculated by multiplying the number of pounds of pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper), divided by the water quality criterion for the pollutant being evaluated. The use of pound-equivalents gives relatively more weight to removal of more toxic pollutants. Thus, for a given expenditure, the cost per pound-equivalent removed would be lower when a highly toxic pollutant is removed. This analysis is included in the record of this rulemaking, and is entitled *Cost-Effectiveness Analysis of Effluent Limitations and Standards for the Nonferrous Metals Forming and Metal Powders Industry.*

B. Costs and Economic Impacts

EPA has identified 334 plants that perform nonferrous metals forming operations. Of these 334 plants, 176 do not discharge process wastewater, 37 are direct dischargers, and 121 are indirect dischargers. Total investment cost to achieve BAT and PSES is estimated to be $14.3 million and annual cost is estimated to be $8.9 million beyond current costs of waste treatment. These costs are expressed in first quarter 1985 dollars. The annualized costs include depreciation and interest.

The costs of implementing the regulation were estimated on a plant-by-plant basis for 149 discharging plants, based on information on processes carried out in the plant, production rates, treatment-in-place, and model treatment technology. For the purposes of the economic impact analysis, the Agency estimated costs for cotreatment of nonferrous metals forming process wastewater flow. There are 71 discharging plants in the nonferrous metals forming category which also discharge process wastewater which is covered by another point source category regulation. The Agency first estimated the cost for a treatment system large enough to handle the entire process wastewater flow of each such plant. Then, the cost attributable to the treatment of nonferrous metals forming wastewater was apportioned on the basis of the fraction of the total flow generated by nonferrous forming operations. These costs for the 149 nonferrous metals forming plants were then extrapolated to estimate the compliance costs for an additional nine plants for which detailed information was not available.

The industry is subcategorized by the type of metal produced. The economic impact assessment began with a microeconomic model which projects the price and output behavior of each industry subcategory. The model was used, in conjunction with plant compliance cost estimates, to determine after-compliance price and production

levels for each industry subcategory and for each regulatory option.

A financial profile was developed for each of the plants based on average financial ratios for the industry subcategories in which the plant competes. The primary variables of interest in estimating the potential economic impacts of the regulation on individual plants were profitability, as measured by the after-compliance net present value (NPV); and the ability of individual plants to raise capital, as measured by the after-compliance fixed charge coverage ratio. The plant NPV represents the excess of the discounted value (i.e., present value) of the projected cash flows from operating the plant over the present value of the cash flows generated by liquidating the plant and investing the proceeds in an alternative investment. The fixed charge coverage ratio is defined as earnings before interest and taxes over interest payments.

Given the plant-specific compliance cost estimates, the subcategory-specific financial ratios, and other factors, the potential effect on industrial plants in terms of closures was projected. If a plant generates process wastewater which is regulated by more than one nonferrous metals forming subcategory with different model end-of-pipe treatment requirements, the Agency considered the potential economic impact onto the plant as a whole for each model technology option considered. The Agency recognizes that these plants may be able to comply with their permit requirements using a less costly treatment system than treatment system which will treat all process wastewater to meet the most stringent limitations, however, we have evaluated the economic impacts on the basis of using the more costly technology for all wastewaters.

Price increases resulting from the regulation are expected to be small, ranging from 0.1 percent for the lead-tin-bismuth forming subcategory to 1.9 percent for the uranium forming subcategory, and averaging 0.2 percent over the category. Two potential plant closures (both indirect dischargers) are projected as a result of the regulations EPA is promulgating; these plants form nickel, titanium, and zirconium products. The total production loss for these two plants would be in the range of 700 thousand pounds per year. The closure of these two nonferrous metals forming facilities would affect about 56 jobs. The Agency does not expect any disproportionate impact on any specific group of plants covered by this regulation. Community, industry structure, and balance of trade effects would be insignificant.

BPT: Thirty-seven plants are direct dischargers. For the purpose of estimating the cost of the regulation and evaluating the economic impacts, it was assumed that plants will install the least expensive treatment to meet the requirements of BPT. For many plants, the cost of in-process controls to reduce flows, plus the cost of end-of-pipe treatment for this reduced flow, is less than the cost of treating the larger BPT regulatory flow. Where this is the case, it was assumed that the lower costs would be incurred to meet the BPT limits and no incremental cost would be incurred in meeting the option employing flow reduction. Because of this assumption, the costs presented here are different than those shown in the technical sections of the preamble.

The BPT regulation is projected to cost $4.7 million in investment costs and $3.9 million in annual costs for these plants, including depreciation and interest (first quarter 1985 dollars). No plant closures or job losses are anticipated as a result of the BPT regulation. Price increases over current prices would range from less than 0.1 percent to 1.8 percent, averaging 0.16 percent over the category.

BAT: The BAT regulation will also affect the 37 direct dischargers in the nonferrous metals forming industry. Total investment costs above current treatment in-place are estimated to be $5.5 million, with annual costs including depreciation and interest of $4.3 million in first quarter 1985 dollars. The incremental costs over BPT are estimated to be $0.8 million in investment costs and $0.4 million in annual costs. There are no plant closures or job losses projected as a result of the BAT regulation. Price increases over current prices would range from 0.1 percent to 1.9 percent, averaging 0.2 percent over the category, about the same as the BPT increases. Thus, EPA has determined that the BAT regulation is economically achievable.

PSES: EPA identified 121 plants as indirect dischargers. The pollution control technology for the pretreatment standards is the same as the BAT treatment technology for all subcategories, with three exceptions. In the uranium forming subcategory, no PSES is being promulgated because there are no existing indirect dischargers. In the refractory metals subcategory, filters are not included in the PSES model technology, as they were for BAT, for the reasons stated in Section V above. In the case of zinc, the Agency is excluding the indirect dischargers from national PSES because the larger one of two indirect dischargers in this subcategory, which does not form any other metal covered by this regulation, is expected to close at each of the technology options considered. As explained in Section V above, EPA has determined that imposing any categorical standards on the zinc forming subcategory would result in a disproportionate impact on this segment of the industry. Therefore, PSES for the zinc forming subcategory is not economically achievable.

Two potential closures were identified in other subcategories. The major metal formed by each of these is titanium; in addition, one has some production in the zirconium-hafnium forming subcategory and the other has some production in the nickel-cobalt forming subcategory. In these cases, exclusions similar to those in zinc forming are not appropriate because smaller plants in these subcategories will be able to achieve the promulgated PSES with no significant economic impact. Size cutoffs adequate to exclude the plants projected as possible closures would leave many plants unregulated. This is unacceptable where costs are economically achievable for the subcategories as a whole.

With the PSES exclusion for the zinc forming subcategory, investment costs for the remaining 120 indirect dischargers are estimated to be $8.8 million, and annualized costs including depreciation and interests are expected to be $4.6 million, in first quarter 1985 dollars. Price increases in the various subcategories would range from 0.1 to 0.3 percent. In terms of unemployment, the two potential closures associated with PSES would affect approximately 56 employees. Total production loss in the titanium subcategory production would be less than one percent. Since the production and employment of these plants represent a very small part of the subcategory or category totals, the Agency has determined that PSES is economically-achievable.

NSPS-PSNS: The model technologies for the effluent standards for new sources are Option 2 (flow reduction, lime, and settle) for direct and indirect dischargers in the lead-tin-bismuth, precious metals, titanium, zirconium-hafnium, and metal powders subcategories and Option 3 (flow reduction, lime, settle, and filter) for the remaining five subcategories. In some cases, the new source standards are more stringent than those for existing sources. However, new sources might incur lower costs than existing sources because they would not incur expenses

associated with retrofitting flow reduction technology and would have the opportunity to install a treatment system which is designed to handle the reduced flows. In general, the incremental costs of treatment for new sources over those for existing sources are sufficiently small that they are not expected to constitute a barrier to entry.

C. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million a year or more or meet certain other economic impact criteria. This regulation is not a major rule because its annualized cost, as discussed above, is significantly less than $100 million and it meets none of the other criteria specified in Section 1(b) of the Executive Order. Therefore, a formal Regulatory Impact Analysis is not required.

D. Regulatory Flexibility Analysis

Public Law 96–354 requires EPA to prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities.

EPA has examined the impacts of this regulation on small business. For this purpose, small plants were defined as those forming less than 1.0 million pounds/year of nonferrous metals. According to this criterion, 55 percent of the dischargers (66 out of 119 dischargers who supplied sufficient data for this analysis) were classified as small. The economic impact analysis cited above evaluates potential impacts on small business from the standpoint of projected closures and annual compliance costs compared to revenues. The analysis concludes that this regulation will not result in a significant adverse impact on a substantial number of small businesses, and I hereby certify to this effect for the purpose of 50 U.S.C. 605(b). While this conclusion obviates the need for a formal Regulatory Flexibility Analysis, the small business analysis is included in the economic impact analysis report and supports the conclusion that the regulation is economically achievable.

E. SBA Loans

The Agency is continuing to encourage small plants to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) The Pollution Control Bond Program, (2) the Section 503 Program, and (3) the Regular Business Loan Program. Eligibility for SBA programs varies by industry. For applicants covered by this regulation, the programs require that a company be independently owned and operated and not dominant in its field and, depending on the subcategory, have a maximum workforce ranging from 500 to 1,000 employees, and maximum annual sales revenue ranging from $275,000 to $22 million.

For further information and specifics on the Pollution Control Bond Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, (703) 235–2902.

The section 503 program, as amended in July 1980, allows long-term loans to small and medium sized businesses. These loans are made by SBA-approved local development companies. These companies are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Business Loan Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Business Loan and Section 503 Programs, persons should contact their district or local SBA office. The coordinator at EPA Headquarters is Ms. Frances Desselle who may be reached at (202) 382–5373.

VII. Nonwater Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. The various EPA offices responsible for these programs have reviewed this regulation and concur with its provisions and the assessment of anticipated effects, described below. While it is difficult to balance pollution problems against each other and against energy use, EPA believes this regulation will best serve often competing national goals.

The following are the anticipated nonwater quality environmental impacts (including energy requirements) associated with the regulation. The Administrator has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution

Imposition of BPT, BAT, NSPS, PSES, and PSNS will not create any substantial air pollution problems, because the wastewater treatment technologies required to meet these limitations and standards do not cause air pollution.

B. Solid Waste

EPA estimates that nonferrous metals forming facilities generated 3623 kkg (3985 tons) of solid wastes (wet basis) in 1981 as a result of wastewater treatment-in-place. These wastes were composed of treatment system sludges containing toxic metals, including antimony, cadmium, chromium, copper, lead, nickel, and zinc.

EPA estimates that the BPT requirements will generate an additional 1022 kkg (1124 tons) per year of solid wastes over that which is currently being generated by the nonferrous metals forming category. The BAT requirements will increase these wastes by approximately 288 kkg (317 tons) per year beyond BPT levels. In addition, PSES will increase these wastes by approximately 3886 kkg (4275 tons) per year beyond current levels. New nonferrous metals forming plants subject to PSNS or NSPS will also generate treatment system sludges. These sludges will necessarily contain additional quantities (and concentrations) of toxic metal pollutants.

If these wastes are hazardous, as defined by RCRA, they will come within the scope of RCRA's "cradle to grave" hazardous waste management program, requiring regulation from the point of generation to the point of final disposition. EPA's generator standards require generators of hazardous wastes to meet containerization, labeling, recordkeeping, and reporting requirements. In addition, if plants dispose of hazardous wastes off-site, they must prepare a manifest which tracks the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. See 40 CFR 262.20. The transporter regulations require transporters of hazardous wastes to comply with the manifest system to assure that the wastes are delivered to a permitted facility. See 40 CFR 263.20. Finally, RCRA regulations establish standards for hazardous waste treatment, storage, and disposal facilities allowed to receive such wastes. See 40 CFR Parts 264 and 265.

Even if these wastes are not identified as hazardous, they still must be disposed of in a manner that will not violate the open dumping prohibition in Section 4005 of RCRA. The Agency has calculated as part of the costs for wastewater treatment the cost of hauling and disposing of additional waste generated as a result of these requirements. For more details, see Section VIII of the Development Document.

Wastes generated by nonferrous metal formers are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) if they are hazardous. However, the Agency examined solid wastes similar to those that would be generated at nonferrous metals forming plants by the suggested treatment technologies (that is, the sludges from lime and settle treatment) and believes that in most instances they will not be hazardous wastes under Section 3001 of RCRA. Only wastewater treatment sludge generated by cyanide precipitation technology is likely to be hazardous under the regulations implementing Subtitle C of RCRA; such wastes may exhibit extraction procedure (EP) toxicity. If so, these wastes must be disposed of as a hazardous waste. Wastewater treatment sludge from cyanide precipitation of a process waste stream is generated separately from lime and settle sludge and may be disposed of separately. We estimate that nonferrous metals forming plants may generate an estimated 230 kkg of potentially hazardous sludge. The total annual disposal cost for this sludge is estimated to be $77,000.

None of the other wastewater treatment sludges are specifically listed as hazardous, nor are they likely to exhibit one of the four characteristics of hazardous waste, (see 40 CFR Part 261), based on the recommended technology of lime and settle receded where necessary by hexavalent chromium reduction, chemical emulsion breaking, and ammonia stripping. By the addition of a small excess of lime during treatment, similar sludges, specifically toxic metal-bearing sludges generated by other industries such as the iron and steel industry, passed the extraction procedure (EP) toxicity test by a substantial margin and have been delisted (i.e., they are no longer specifically listed as hazardous) as a result. See, e.g., 45 FR 78544 (November 25, 1980); 46 FR 40154 (August 6, 1981); and 47 FR 52668 (November 22, 1982); and 40 CFR 261.24. See 40 CFR 261.24. Thus, the Agency believes that treatment sludges from nonferrous metals forming wastewaters will similarly not be EP toxic if the recommended technology is applied.

Although it is the Agency's view that solid wastes generated by the treatment technologies which serve as the basis for these guidelines will not be hazardous, generators of these wastes must test the waste to determine if the wastes meet any of the characteristics of hazardous waste (see 40 CFR 262.10). The Agency also may list these wastes as hazardous under 40 CFR 261.11.

The Agency is not providing any allowance for discharge of spent solvents from the solvent degreasing operations at nonferrous metals forming plants because these wastes are not wastewaters. Disposal of the spent solvent may be subject to regulation under RCRA. However, no plant is the nonferrous metals forming industry is known to currently discharge the spent solvents. Therefore, the cost of disposal of the spent solvents has not been included in estimating the incremental cost of this regulation; all plants which use solvent degreasing are already incurring those costs.

The Agency is establishing a no discharge requirement for tube-reducing spent lubricant because, based on analytical data for that wastestream at the one plant sampled, that wastestream contains treatable levels of N-nitrosodiphenylamine. Therefore, this waste stream must be disposed of as a solid waste and may be hazardous. The Agency has estimated the volume of this sludge to be 80 kkg/yr and the cost of disposal as a hazardous waste to be $20,300 per year (1982 dollars).

C. Consumptive Water Loss

Treatment and control technologies that require extensive recycling and reuse of water may require cooling mechanisms. Evaporative cooling mechanisms can cause water loss and contribute to water scarcity problems—a primary concern in arid and semi-arid regions. While this regulation assumes water reuse, the overall amount of reuse through evaporative cooling mechanisms is low and the quantity of water involved is not significant. In addition, most nonferrous metals forming plants are located east of the Mississippi where water scarcity is not a problem. We conclude that the consumptive water loss is insignificant and that the pollution reduction benefits of recycle technologies outweigh their impact on consumptive water loss.

D. Energy Requirements

EPA estimates that the achievement of proposed BPT effluent limitations will result in a net increase in electrical energy consumption of approximately 4.0 million kilowatt-hours per year. The BAT technology should not substantially increase the energy requirements over the requirements of BPT because the reduced pumping requirements, the agitation requirement for mixing wastewater, and other volume-related energy requirements associated with reducing process wastewater discharge to treatment will offset the additional pumping requirements for filtration. Therefore, the BAT limitations are assumed to require an equivalent energy consumption to that of the BPT limitations. To achieve the BPT and BAT effluent limitations, a typical direct discharger will increase total energy consumption by 110,000 kilowatt-hours per year.

The Agency estimates that PSES will result in a net increase in electrical energy consumption of approximately 6.4 million kilowatt-hours per year. To achieve PSES, a typical existing indirect discharger will increase energy consumption by 50,000 kilowatt-hours per year.

New source performance standards for direct and indirect dischargers in the nonferrous metals forming category will not significantly add to the total energy consumption of the category. This observation is based on the fact that BAT and PSES will increase energy consumption by 4.0 million and 6.4 million kilowatt-hours, respectively, and new source standards are generally equivalent to BAT and PSES.

VIII. Pollutants and Subcategories Not Regulated

The Settlement Agreement in *NRDC v. Ruckelshaus, supra,* contains provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been rewritten in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979. See *NRDC v. Costle,* 12 ERC 1833 (D.D.C. 1979).

A. Exclusion of Pollutants

The Agency has deleted the following three pollutants from the toxic pollutant list: (49) trichlorofluoromethane and (50) dichlorofluoromethane, 46 FR 79692 (January 8, 1981); and (17) bis(chloromethyl)ether, 46 FR 10723 (February 4, 1981).

Paragraph 8(a)(iii) of the Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not

detected and therefore excluded from regulation are listed in Appendix B to this notice.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detected in amounts too small to be effectively reduced by technologies known to the Administrator. Appendix C to this notice lists the toxic pollutants in each subcategory which were detected in the effluent in amounts at or below the nominal limit of analytical quantification, which are too small to be effectively reduced by technologies known to the Administrator and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detectable in the effluent from only a small number of sources within the subcategory because they are uniquely related to those sources. Appendix D to this notice lists for each subcategory the toxic pollutants which were detected in the effluents of only a small number of plants, are uniquely related to those plants, and are not related to the manufacturing processes under study.

As noted above, Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants present in amounts too small to be effectively reduced by technologies known to the Administrator. Appendix E lists those toxic pollutants which are above the level of analytical quantification but not treatable using technologies considered applicable to the category.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants which will be effectively controlled by the technologies upon which are based other effluent limitations guidelines or pretreatment standards. Appendix F lists those toxic pollutants which will be effectively controlled by other regulated pollutants in BAT and NSPS, PSES, and PSNS, even though they are not specifically regulated.

B. Exclusion of Subcategories

Additionally, Paragraph 8(a)(iv) of the Settlement Agreement authorizes the exclusion of subcategories in which the amount and toxicity of each pollutant in the discharge do not justify developing national regulations. Certain nonferrous metals forming subcategories have no discharging plants and therefore, meet the requirement of Paragraph 8(a)(iv). Appendix G lists the subcategories which were not regulated for this reason.

IX. Public Participation and Response to Major Comments

Industry and government have participated during development of these effluent limitation guidelines and standards. Following the publication of the proposed rule on March 5, 1984 in the **Federal Register**, we provided the development document and the economic impact analysis supporting the proposed regulation to industry, government agencies, and the public on March 7, 1984. The public record supporting this regulation was available for public use on March 5, 1984. The comment period ended on May 4, 1984. A permit writers' workshop open to the public was held on the nonferrous metals forming proposal in Chicago, Illinois on April 10, 1984. On April 24, 1984 in Washington, D.C., a public hearing was held on the proposed pretreatment standards. A notice of data availability and a request for comment was published in the **Federal Register** on February 4, 1985 with the comment period ending on March 6, 1985.

Since proposal, 21 companies have submitted 41 comment letters on the proposed regulation. Comments were received from Inco Alloys International, Inc., Cabot Corporation, Teledyne Allvac, Carpenter Technology Corporation, Piper Industries, Inc., Special Metals Corporation, Englehard Industries Division, Reynolds Aluminum, General Electric Company, Brush Wellman, Inc., Amax, Inc., Dow Chemical, U.S.A., Keystone Carbon Company, Nuclear Metals, Inc., NRC, Inc., Timet, Aerojet Heavy Metals Company, Climax Molybdenum, Division of Amax, Inc., Teledyne Wah Chang, GTE, and the North Shore Sanitary District.

We considered all comments carefully and made appropriate changes in the regulation whenever data and information supported those changes. Six of the major issues raised by the comments are addressed in this section of the preamble. All comments and our detailed response to them are included in a document entitled *Response to Public Comments on Proposed Nonferrous Metals Forming and Metal Powders Effluent Limitations and Standards* which has been placed in the public record for this regulation. The following is a discussion of the Agency's responses to the principal comments.

1. BAT–PSES Model Technology

Comment: In the proposed regulation, the Agency specifically requested comments on the model technology for BAT–PSES. We received comments from two companies that dealt with this issue. A metal powder manufacturer commented in favor of the proposed technology of lime and settle with in-process controls for the metal powders subcategory and against promulgation of BAT–PSES on the basis of flow reduction, lime, settle, and filter. A nickel-cobalt former commented against the proposed BAT–PSES model technology, of flow reduction, lime, settle, and filter and in favor of promulgating BAT–PSES on the basis of flow reduction, lime, and settle for the nickel-cobalt subcategory.

Response: The Agency has reevaluated each of the technology options considered for BAT in terms of cost, economic impact, mass of pollutants removed. This reevaluation has led the Agency to promulgate BAT–PSES limitations on a different model technology than was proposed for six subcategories. The Agency is promulgating BAT–PSES based on the same model technology as was proposed for the remaining four subcategories. The reasons for selecting these technologies are explained in Section V, above.

2. Inadequate Data

Comment: Numerous comments were received on the proposed nonferrous metals forming data base. Several commenters noted that treatment effectiveness data for several nonconventional metal pollutants for which limitations and standards were proposed were inadequate or absent. Other commenters objected to the use of the combined metals data base (CMDB) to establish limitations and standards for certain toxic metal pollutants. Specifically, several nickel-cobalt forming companies commented that the nickel concentration in nickel-cobalt forming wastewater is dissimilar to the concentration of nickel in wastewaters included in the CMDB. Other commenters objected to using the CMDB at all, arguing instead that EPA should base limitations and standards on a subcategory-by-subcategory basis using data derived from waste streams in the nonferrous metals forming category only.

Response: The Agency proposed limitations and standards for several of the nonconventional metal pollutants based on an engineering estimate of the effectiveness of treatment. However, as discussed earlier, this final rule only regulates one nonconventional pollutant: molybdenum. None of the other nonconventional pollutants for which we proposed effluent limitations guidelines and standards are regulated under this final rule. The treatment

effectiveness of molybdenum is derived from data collected at a uranium forming plant. This plant treats its wastewater through iron coprecipitation, lime, and settle treatment.

EPA is promulgating limitations and standards for the priority metal pollutants based on the CMDB treatment effectiveness values. The Agency has evaluated the nonferrous metals forming data in terms of its similarity with the CMDB. Statistical methods were used to compare nonferrous metals forming raw wastewater and treated wastewater values with the raw and treated wastewater values in the CMDB. Overall, the results show that the data from the five categories that make up the CMDB and the data from the nonferrous metals forming category are statistically homogeneous. A comparison of the nonferrous metals forming data with data from each of the categories in the CMDB shows little significant difference among the categories. The few statistical differences that were observed are not substantial and are not an indication that the nonferrous metals forming plants will have difficulty in complying with the CMDB treatment effectiveness concentrations. This comparison is discussed in more detail in Section V of the preamble and Section VII of the Development Document.

Since proposal, the Agency has reevaluated the similarity of nickel-cobalt data with the CMDB. As part of this reevaluation, we have sampled two additional nickel-cobalt forming plants. The results of this revised comparison shows that the concentration of nickel-cobalt forming plants is not significantly different from the nickel value derived from the CMDB. Therefore, the Agency is basing limitations and standards for the pollutant nickel in the nickel-cobalt subcategory based on the CMDB.

3. Selection of Regulated Pollutants

Comment: The Agency received many comments regarding the pollutants selected for regulation at proposal.

(a) *Priority metals and cyanide.* Two commenters questioned the presence of some of the priority pollutants in process wastewater: a powder metal manufacturer questioned the presence of cyanide in process wastewater collected from its facility, and a titanium former argued that wastewaters pollutants.

(b) *Nonconventional metal pollutants.* Several commenters disagreed with the Agency's proposal to regulate various nonconventional metal pollutants. Commenters objected to the indicator pollutant approach; specifically, they objected to regulation of the refractory metals subcategory in which each of the metals formed (columbium, tantalum, tungsten, rhenium, molybdenum, and vanadium) was proposed to be regulated to ensure the removal of other metal pollutants. This commenter also argued that the pollutant molybdenum cannot be removed with lime and settle treatment, and therefore, is a poor indicator of treatment system performance.

One company commented that they form several different metals and are covered by three different nonferrous metals forming subcategories, as well as two other point source categories. This company argued that the regulation of one significant metal (e.g., a nonconventional metal pollutant) rather than only "environmentally significant" metals (e.g., chromium, lead, nickel and zinc) would result in final regulations that would be difficult to meet.

Response: (a) Priority metals and cyanide. The Agency is promulgating BAT–PSES requirements for the priority metal pollutants for which requirements were proposed. In post-proposal sampling, the Agency has confirmed the presence of priority metal pollutants (lead and zinc) in titanium forming wastewater. We are also promulgating limits for cyanide in the metal powders subcategory, since EPA has no reason to question the analytical results that indicate the presence of cyanide in treatable quantities. The Agency has found cyanide in other unexpected sources, and has confirmed its presence in these sources on more than one occasion.

(b) *Nonconventional metal pollutants.* The Agency is not promulgating requirements for most of the nonconventional metal pollutants for which it proposed limits, to alleviate problems that could arise from plants that cotreat wastewaters from different categories or subcategories. However, the Agency is providing guidance and information on the treatment effectiveness and mass allowances for these nonconventional metal pollutants in the technical Development Document.

The Agency is establishing limitations and standards for one nonconventional metal pollutant, molybdenum, because removal of this pollutant requires more extensive treatment than lime and settle. As explained earlier, molybdenum is removed by coprecipitation with iron and is being regulated in the refractory metals and uranium forming subcategories. The pollutant molybdenum is one of the metals formed in the refractory metals subcategory, and without specific controls for this pollutant, our data indicated that it will not be adequately removed. Uranium is frequently alloyed with molybdenum, thus, molybdenum is present at treatable concentrations in raw wastewater generated by uranium forming. Therefore, Agency is also controlling molybdenum in uranium forming.

4. Uranium

Comment: One uranium forming company commented on the proposed effluent requirements for the pollutant uranium. In addition, the Department of Energy (DOE) submitted a comment on the proposed regulation for nonferrous metals manufacturing Phase II questioning the Agency's authority to regulate the pollutant uranium.

Response: The Agency has considered DOE's comments and the fact that the Nuclear Regulatory Commission presently classifies uranium in any form, including depleted uranium, as a "source material" under the Atomic Energy Act. In light of the Supreme Court's holding in *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1 (1976) that "source," "special nuclear," and "by-product" materials are not pollutants within the meaning of the Clean Water Act, EPA has decided not to finalize effluent limitations guidelines for uranium under the Clean Water Act at this time. Since proposal, EPA has sampled a uranium forming plant and collected additional data on the raw wastewater characteristics of uranium forming waste streams and the effectiveness of lime and settle treatment for removal of the pollutant uranium. Revised treatment effectiveness concentrations for the pollutant uranium were published in the **Federal Register** notice of new data (50 FR 4872, February 4, 1985). Discharge allowances for uranium based on these data are included in Development Document as guidance.

5. Beryllium Forming

Comment: EPA received comments from one company, Brush Wellman, on the proposed regulation for beryllium forming. The commenter manufactures and forms pure beryllium and casts and forms beryllium copper alloys and other beryllium alloys at one facility. Brush objected to the number of regulations with which this facility would have to comply (it would be covered by four point source category regulations: Nonferrous metals manufacturing, metal molding and casting (foundries), nonferrous metals forming, and copper forming), because each regulation could establish effluent limitations based on different model technologies or regulate different pollutants which would

severely limit this facility's flexibility regarding wastewater treatment.

Response: In settlement of litigation with Brush Wellman over the copper forming regulation, the Agency agreed to propose to amend the copper forming regulation to create a new subcategory that would apply to the forming of beryllium copper alloys. The proposed amendment was published in the **Federal Register** on June 24, 1985 (50 FR 26128). Brush Wellman presented data and information indicating that beryllium imparts unique properties to the beryllium copper alloy which therefore requires different processing than other copper alloys. These unique properties are also characteristic of formed pure beryllium and other formed beryllium alloys, for which EPA had proposed to regulate as part of the nonferrous metals forming category. Furthermore, most beryllium copper forming plants also form pure beryllium and other beryllium alloys. Since pure beryllium and beryllium alloys (including beryllium copper) have similar characteristics, are subject to the same type of forming processess, and tend to be formed in the same plants, EPA has decided that the forming operations should all be combined under one regulation.

Therefore, the Agency is not promulgating limits and standards for beryllium forming or any beryllium alloy forming (defined as any alloy containing 0.1 percent or greater beryllium by weight) as part of this nonferrous metals forming regulation. Instead we will issue limitations and standards for the forming of beryllium and all beryllium alloys, including beryllium copper at the same time.

6. Estimates of Compliance Costs

Comment: Several comments were received concerning the estimated compliance cost estimates for the proposed regulation. Several commenters argued that the Agency substantially underestimated the cost of compliance with the proposed regulation. One company submitted a detailed estimate of the cost required to install a treatment system for one of their nickel forming plants which was prepared for them by an engineering firm.

Response: Since proposal, the Agency has reevaluated the estimate of compliance costs for the nonferrous metals forming category on a plant-by-plant basis. These revised costs were made publicly available in the **Federal Register** notice of new data (50 FR 4872, February 4, 1985).

The Agency re-estimated costs for nonferrous metals forming plants by looking at the entire plant flow, not just the nonferrous metals forming portion of the wastewater flow. There are 71 discharging plants in the nonferrous metals forming category which also discharge process wastewater which is covered by another point source category regulation. The Agency estimated the cost for a treatment system which is adequate to handle the plant's entire process wastewater flow, and to meet each regulation that applies. Then the cost attributable to the nonferrous metals forming wastewater was apportioned on the basis of flow. If a plant generates process wastewater which is regulated by more than one nonferrous metals forming subcategory with different model end-of-pipe treatment requirements, the Agency considered the potential economic impact to the plant as a whole for each model technology option considered. The Agency recognizes that these plants may be able to comply with their permit requirements using a less costly treatment system than treatment system which will treat all process wastewater to meet the most stringent limitations, and standards; however, we have evaluated the economic impacts on the basis of using the most costly technology for all wastewaters.

The Agency has made a thorough evaluation of the cost estimate of a treatment system for the commenter's nickel forming facility. The Agency's estimate of compliance costs for this facility is substantially less than the estimate provided by this company's consultant. This consultant's treatment system design includes extensive back-up equipment in the event of a equipment failure, and a large retention pond to hold water in the event that there is a malfunction in the treatment system or the manufacturing process. In addition, the consultant designed and costed a treatment system to treat the entire wastewater flow currently discharged from this plant, including nonprocess wastewater (with the exception of sanitary water).

EPA's estimate of compliance costs for the nonferrous metals forming category is derived by using a model treatment system applied to the process wastewater flow at a rate which corresponds to the BPT or BAT-PSES regulatory flow for the plant. The cost model estimates costs for the complete model treatment system, then subtracts the cost for equipment already in place at the plant. Unlike the consultant's approach, the Agency's cost model does not include such extensive back-up equipment should there be a treatment system or process malfunction, nor is non-process wastewater, such as noncontact cooling water, included in the wastewater flow to be treated. However, an estimate of the cost for pipes and pumps needed to segregate this nonprocess water is included in the model. We did estimate costs on a total plant basis including costs to treat process wastewater from other categories when appropriate; the nonferrous metals forming costs were then estimated by apportioning the costs on the basis of flow. A detailed evaluation of the consultant's costing methodology appears in the response to comments document.

X. Best Management Practices (BMP)

Section 304(e) of the Clean Water Act gives the Administrator discretionary authority to prescribe "best management practices" (BMP). EPA is not proposing specific BMPs for the nonferrous met forming category at this time.

XI. Upset and Bypass Provisions

A recurring issue of concern has been whether industry limitations and standards should include provisions that authorize noncompliance during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur, even if the control equipment is properly operated. Because technology-based limitations can require only what technology can achieve, many claim that liability for upsets is improper. When confronted with this issue, courts have been divided on whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, supra* and *Corn Refiners Association, et al.* v. *Costle*, No. 78–1069 (8th Cir. April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976); and *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; a bypass, however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. EPA has, in the past, included bypass provisions in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has promulgated permit regulations that include upset and bypass permit provisions. See 40 CFR 122.41. The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the nonferrous metals forming industry will be entitled to upset and bypass provisions in NPDES permits, this regulation does not address these issues. Upset provisions are also contained in the General Pretreatment regulation, 40 CFR Parts 125 and 403.

XII. Variances and Modifications

Upon the promulgation of this final regulation, the appropriate effluent limitations must be applied in all Federal and State NPDES permits thereafter issued to nonferrous metals forming direct dischargers. In addition, upon promulgation, the pretreatment standards are directly applicable to indirect dischargers.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle, supra*. This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. However, the economic ability of the individual operator to meet the compliance cost for BPT standards is not a consideration for granting a variance. See *National Crushed Stone Association* v. *EPA*, 449 U.S. 64 (1980). Although this variance clause was originally set forth in EPA's 1973–1976 industry regulations, it is now included in the general NPDES regulations and is cross-referenced in this regulation, as well as the other specific industry regulations. See the general NPDES regulations at 40 CFR Part 125, Subpart D.

The BAT limitations in this regulation also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for nonconventional pollutants are subject to modification under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 40 CFR 122.21(1)(2).

The economic modification section of the Act (Section 301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants for dischargers who file a permit application after July 1, 1978, upon a showing that such modified requirements will: (1) Represent the maximum use of technology within the economic capability of the owner or operator, and (2) result in reasonable further progress toward the elimination of the discharge of pollutants. The environmental modification (Section 301(g)) allows the Administrator, with the concurrence of the State, to modify BAT limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards;

(b) Such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(c) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water, and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistence in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergist propensities.

Section 301(j)(1)(B) of the Act requires that applications for modifications under Section 301 (c) or (g) be filed within 270 days after the promulgation of an applicable effluent limitations guideline regulation. Initial applications must be filed with the Regional Administrator and, in States with approved NPDES programs, a copy must be sent to the Director of the State program. Initial applications to comply with Section 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent limitations guideline regulation, and whether the permittee is applying for a 301(c) or 301(g) modification or both.

Indirect dischargers subject to PSES and PSNS are eligible for credits for pollutants removed by a POTW. See 40 CFR 403.7.

New sources subject to NSPS and PSNS are not eligible for any other statutory or regulatory modifications. See *E. I. duPont de Nemours & Co.* v. *Train, supra*.

Indirect dischargers subject to PSES are eligible for the "fundamentally different factors" variance. See 40 CFR 403.13. On September 20, 1983, the United States Court of Appeals for the Third Circuit held that "FDF variances for toxic pollutants are forbidden by the Act," and remanded Section 403.13 to EPA. *NAMF et al.* v. *EPA*, 719 F.2d 624 (3rd Cir. 1983). In response to this decision, EPA amended Section 403.13(b)(2) to suspend the availability of FDF variances for toxic pollutants covered by categorical pretreatment standards. See 49 FR 5131 (February 10, 1984). In addition, EPA sought review of this portion of the Third Circuit's decision. On February 27, 1985, the Supreme Court reversed the Third Court of Appeals and held that FDF variances for toxic pollutants are not prohibited by the Clean Water Act. *Chemical Manufacturers Assoc.* v. *Natural Resources Defense Council, 105.* S Ct. 1102 (1985). Accordingly, indirect dischargers covered by categorical pretreatment standards for existing sources may be eligible for an FDF variance. Any interested person should refer to 40 CFR 403.13 for the procedures and deadline for applying for this variance.

XIII. Implementation of Limitations and Standards

A. Relationship to NPDES Permits

The BPT and BAT limitations and NSPS in this regulation will be applied to individual nonferrous metals forming plants through NPDES permits issued by EPA or approved State agencies under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. EPA has developed the limitations and standards in this regulation to cover the typical facility in each subcategory of this point source category. However, the promulgation of

this regulation will not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit the pollutant on a case-by-case basis when such actions are necessary to carry out the purposes of the Act. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), the permit-issuing authority must apply those limitations.

A second topic that warrants discussion is the operation of EPA's NDPES enforcement program, many aspects of which were considered in developing this regulation. The Agency emphasizes that although the Clean Water Act is a strict liability statute, the Agency may elect to use any of the enforcement response available under the CWA. *Sierra Club* v. *Train*, 557 F.2d 485 (5th Cir. 1977). EPA has exercised and intends to exercise its authority in a manner that recognizes and promotes good-faith compliance efforts.

B. Indirect Dischargers

For indirect dischargers, PSES and PSNS are implemented under National Pretreatment Program procedures outlined in 40 CFR 403. The table below may be of assistance in resolving questions about the operation of that program. A brief explanation of some of the submissions indicated on the table follows:

TABLE 2.—INDIRECT DISCHARGERS SCHEDULE FOR SUBMITTAL AND COMPLIANCE

Item	Applicable sources	Date or time period	Measured	Submitted to—
Request for category determination	Existing	60 days	From effective date of standard	Director.[1]
		60 days	From Federal Register development document availability.	
	New	Prior to commencement of discharge to POTW		
Request for fundamentally different factors variance	Existing	180 days	From effective date of standard	Director.[1]
		Or 30 days	From final decision on category determination	
Baseline monitoring	All	180 days	From effective date of standard or final decision on category determination.	Control Authority.[2]
Report on compliance	Existing	90 days	From date for final compliance	Control Authority.[2]
Periodic compliance reports	New	90 days	From commencement of discharge to POTW	Control Authority.[2]
	All	June and December		Control Authority.[2]

[1] Director = a) Chief Administrative Officer of a state water pollution control agency with an approved pretreatment program, or b) EPA Regional Water Division Director, if state does not have an approved pretreatment program.
[2] Control Authority = a) POTW if its pretreatment program has been approved, or b) Director of state water pollution control agency with an approved pretreatment program, or c) EPA Regional Administrator, if state does not have an approved pretreatment program.

A "request for category determination" is a written request, submitted by an indirect discharger or its POTW, for a determination of which categorical pretreatment standard applies to the indirect discharger. This assists the indirect discharger in knowing which PSES or PSNS limits it will be required to meet. See 40 CFR 403.6(a).

A "request for fundamentally different factors variance" is a mechanism by which a categorical pretreatment standard may be adjusted, making it more or less stringent, on a case-by-case basis. If an indirect discharger, a POTW, or any interested person believes that factors relating to a specific indirect discharger are fundamentally different from those factors considered during development of the relevant categorical pretreatment standard and that the existence of those factors justifies a different discharge limit from that specified in the categorical standard, then it may submit a request to EPA for such a variance approved. See 40 CFR 403.13.

A "baseline monitoring report" is the first report an indirect discharger must file following promulgation of an applicable standard. The baseline report includes: an identification of the indirect discharger, a description of its operations, a report on the flows of regulated streams and the results of sampling analyses to determine levels of regulated pollutants in those streams, a statement of the discharger's compliance or noncompliance with the standard, and a description of any additional steps required to achieve compliance. See 40 CFR 403.12(b).

A "report on compliance" is required of each indirect discharger within 90 days following the date for compliance with an applicable categorical pretreatment standard. The report must indicate the concentration of all regulated pollutants in the facility's regulated process waste streams; the average and maximum daily flows of the regulated streams; and a statement of whether compliance is consistently being achieved, and if not, what additional operation and maintenance or pretreatment is necessary to achieve compliance. See 40 CFR 403.12(d).

A "periodic compliance report" is a report on continuing compliance with all applicable categorical pretreatment standards. It is submitted twice per year (June and December) by indirect dischargers subject to the standards. The report must provide the concentrations of the regulated pollutants in its discharge to the POTW; the average and maximum daily flow rates of the facility; the methods used by the indirect discharger to sample and analyze the data; and a certification that these methods conform to the methods outlined in the regulations. See 40 CFR 403.12(e).

XIV. Availability of Technical Information

The basis for this regulation is detailed in four major documents. Analytical methods are discussed in "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants." EPA's technical conclusions are detailed in the "Development Document for Effluent Guidelines, New Source Performance Standards, and Pretreatment Standards for the Nonferrous Metals Forming and Metal Powders Point Source Category." The Agency's economic analysis is presented in "Economic Impact Analysis of Effluent Limitations and Standards for the Nonferrous Metals Forming and Metal Powders Industry." A detailed response to the public comments received on the proposed regulation is presented in a report "Responses to Public Comments on the Proposed Nonferrous Metals Forming and Metal Powders Effluent Limitations Guidelines and Standards," which is a part of the public record for this regulation. Copies

of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161, (703) 487–4600. Additional information concerning the economic impact analysis may be obtained from Mr. Joseph Yance, Economic Analysis Staff (WH–586), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 or by calling (202) 382–5379. Technical information may be obtained from Ms. Janet Goodwin, Industrial Technology Division (WH–552), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 or by calling (202) 382–7126.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. This rule does not contain any information collection requirements. There are information collection requirements associated with the general pretreatment requirements and permit requirements. These information collection requirements have been cleared through OMB.

XV. List of Subjects

40 CFR Part 468

Copper forming, Waste treatment and disposal, Water pollution control.

40 CFR Part 471

Nonferrous metals forming, Water pollution control, Water treatment and disposal.

Dated: July 19, 1985.

Lee M. Thomas,

Administrator.

XVI. Appendices

A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology under Section 304(b)(4) of the Act.

BMP—Best management practices under Section 304(e) of the Act.

BPT—The best practicable control technology currently available under Section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95–217).

Direct Discharger—A facility which discharges or may discharge pollutants into waters of the United States.

Indirect Discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New source performance standards under Section 306 of the Act.

POTW—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges under Section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect dischargers under Sections 307 (b) and (c) of the Act.

RCRA—Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580), as amended (42 U.S.C. 6901 *et seq.*).

B—Toxic Pollutants Not Detected in Nonferrous Metals Forming Wastewater

Lead-Tin-Bismuth Forming Subcategory (Subpart A)

001	acenaphthene
002	acrolein
003	acrylonitrile
005	benzidine
007	chlorobenzene
008	1,2,4-trichlorobenzene
009	hexachlorobenzene
010	1,2-dichloroethane
012	hexachloroethane
013	1,1-dichloroethane
014	1,1,2-trichloroethane
016	chloroethane
017	deleted
018	bis(2-chloroethyl)ether
019	2-chloroethyl vinyl ether
020	2-chloronaphthalene
021	2,4,6-trichlorophenol
024	2-chlorophenol
025	1,2-dichlorobenzene
026	1,3-dichlorobenzene
027	1,4-dichlorobenzene
028	3,3'-dichlorobenzidine
029	1,1-dichloroethylene
030	1,2-*trans*-dichloroethylene
031	2,4-dichlorophenol
032	1,2-dichloropropane
033	1,2-dichloropropylene
034	2,4-dimethylphenol
035	2,4-dinitrotoluene
036	2,6-dinitrotoluene
037	1,2-diphenylhydrazine
039	fluoranthene
040	4-chlorophenyl phenyl ether
041	4-bromophenyl phenyl ether
042	bis(2-chloroisopropyl)ether
043	bis(2-chloroethoxy)methane
044	methylene chloride
045	methyl chloride
046	methyl bromide
047	bromoform
048	dichlorobromomethane
049	deleted
050	deleted
051	chlorodibromomethane
052	hexachlorobutadiene
053	hexachlorocyclopentadiene
054	isophorone
055	naphthalene
056	nitrobenzene
057	2-nitrophenol
058	4-nitrophenol
059	2,4-dinitrophenol
060	4,6-dinitro-o-cresol
061	N-nitrosodimethylamine
062	N-nitrosodiphenylamine
063	N-nitrosodi-n-propylamine
064	pentachlorophenol
067	butyl benzyl phthalate
068	d-n-butyl phthalate
069	di-n-octyl phthalate
070	diethylphthalate
071	dimethylphthalate
072	benzo(a)anthracene
073	benzo(a)pyrene
074	3,4-benzofluoranthene
075	benzo(k)fluoranthene
076	chrysene
077	acenaphthylene
078	anthracene
079	benzo(ghi)perylene
080	fluorene
082	dibenzo(a,h)anthracene
083	indeno(1,2,3-cd)pyrene
084	pyrene
085	tetrachloroethylene
086	toluene
087	trichloroethylene
088	vinyl chloride
089	aldrin
090	dieldrin
091	chlordane
092	4,4'-DDT
093	4,4'-DDE
094	4,4'-DDD
095	alpha-endosulfan
096	beta-endosulfan
097	endosulfan sulfate
098	endrin
100	heptachlor
101	heptachlor epoxide
102	alpha-BHC
103	beta-BHC
105	delta-BHC
106	PCB-1242
107	PCB-1254
108	PCB-1221
109	PCB-1232
110	PCB-1248
111	PCB-1260
112	PCB-1016
113	toxaphene
116	asbestos
125	selenium
126	silver
127	thallium
129	2,3,7,8-tetrachlorodilbenzo-p-dioxin (TCDD)

Magnesium Forming Subcategory (Subpart B)

001	acenaphthene
002	acrolein
003	acrylonitrile
004	benzene
005	benzidine
006	carbon tetrachloride
007	chlorobenzene
008	1,2,4-trichlorobenzene
009	hexachlorobenzene
010	1,2-dichloroethane
012	hexachloroethane
013	1,1-dichloroethane
014	1,1,2-trichloroethane
015	1,1,2,2-tetrachloroethane
016	chloroethane

017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
023 chloroform
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
055 naphthalene
056 nitrobenzene
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
066 bis(2-ethylhexyl)phthalate
067 butyl benzyl phthalate
068 d-n-butyl phthalate
069 di-n-octyl phthalate
070 diethylphthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
078 anthracene
079 benzo(ghi)perylene
080 fluorene
081 phenanthrene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
085 tetrachloroethylene
086 toluene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
115 arsenic
116 asbestos
118 cadmium
120 copper
124 nickel
125 selenium
127 thallium
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Nickel-Cobalt Forming Subcategory (Subpart C)

002 acrolein
003 acrylonitrile
006 carbon tetrachloride
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
035 2,4-dinitrotoluene
038 ethylbenzene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
056 nitrobenzene
059 2,4-dinitrophenol
074 3,4-benzofluoranthene
079 benzo(ghi)perylene
082 dibenzo(a,h)anthracene
085 tetrachloroethylene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Precious Metals Forming Subcategory (Subpart D)

001 acenaphthene
002 acrolein
003 acrylonitrile
005 benzidine
006 carbon tetrachloride
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
012 hexachloroethane
013 1,1-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
023 chloroform
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene

054 isophorone
055 naphthalene
056 nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
066 bis(2-ethylhexyl)phthalate
067 butyl benzyl phthalate
068 d-n-butyl phthalate
069 di-n-octyl phthalate
070 diethlyphthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
078 anthracene
079 benzo(ghi)perylene
080 fluorene
081 phenanthrene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
085 tetrachloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
117 beryllium
125 selenium
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Refractory Metals Forming Subcategory (Subpart E)

001 acenaphthene
002 acrolein
003 acrylonitrile
004 benzene
005 benzidine
006 carbontetrachloride
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
012 hexachloroethane
014 1,1,2-trichloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
058 4-nitrophenol
059 2,4-dinitrophenol
061 N-nitrosodimethylamine
064 pentachlorophenol
071 dimethylphthalate
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
079 benzo(ghi)perylene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Titanium Forming Subcategory (Subpart F)

001 acenaphthene
002 acrolein
003 acrylonitrile
004 benzene
005 benzidine
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
011 1,1,1-trichloroethane
012 hexachloroethane
013 1,1-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
023 chloroform
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
055 naphthalene
056 nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
066 bis(2-ethylhexyl)phthalate
067 butyl benzyl phthalate
068 d-n-butyl phthalate
069 di-n-octyl phthalate
070 diethylphthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
078 anthracene
079 benzo(ghi)perylene
080 fluorene
081 phenanthrene

082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
085 tetrachloroethylene
086 toluene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Uranium Forming Subcategory (Subpart G)

001 acenaphthene
002 acrolein
003 acrylonitrile
004 benzene
005 benzidine
006 carbon tetrachloride
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
011 1,1,1-trichloroethane
012 hexachloroethane
013 1,1-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
023 chloroform
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
044 methylene chloride
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
055 naphthalene
056 nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosdimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
067 butyl benzyl phthalate
068 d-n-butyl phthalate
069 di-n-octyl phthalate
070 diethylphthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
078 anthracene
079 benzo(ghi)perylene
080 fluorene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
085 tetrachloroethylene
086 toluene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Zinc Forming Subcategory (Subpart H)

002 acrolein
005 benzidine
006 carbon tetrachloride
009 hexachlorobenzene
011 1,1,1-trichloroethane
012 hexachloroethane
016 chloroethane
017 deleted
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzene
031 2,4-dichlorophenol
035 2,4-dinitrotoluene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
045 methyl chloride
049 deleted
050 deleted
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
056 nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
069 di-n-octyl phthalate
071 dimethylphthalate
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
077 acenapthaylene
079 benzo(ghi)perylene
080 fluorene
082 dibenzo(a,h)anthracene
084 pyrene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 hepthachor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
114 antimony
115 arsenic
116 asbestos
117 beryllium
118 cadmium
120 copper

122 lead
123 mercury
125 selenium
126 silver
127 thallium
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Zirconium-Hafnium Forming Subcategory (Subpart I)

001 acenaphthene
003 acrylonitrile
005 benzidine
006 carbon tetrachloride
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
012 hexachloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
055 naphthalene
056 nitrobenzene
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
067 butyl benzyl phthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
079 benzo(ghi)perylene
080 fluorene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
099 endrin aldehyde
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
104 gamma-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
129 2,3,7,8-tetrachlordibenzo-p-dioxin (TCDD)

Metal Powders (Subpart J)

001 acenaphthene
002 acrolein
003 acrylonitrile
005 benzidine
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
012 hexachloroethane
013 1,1-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
023 chloroform
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
055 naphthalene
056 nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
066 bis(2-ethylhexyl)phthalate
067 butyl benzyl phthalate
068 di-n-butyl phthalate
069 di-n-octyl phthalate
070 diethylphthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
078 anthracene
079 benzo(ghi)perylene
080 fluorene
081 phenanthrene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
085 tetrachloroethylene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor expoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
117 beryllium
118 cadmium
123 mercury
125 selenium
126 silver
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

C—Toxic Pollutants Detected Below the Analytical Quantification Limit

Lead-Tin-Bismuth Forming (Subpart A)

004 benzene

Refractory Metals Forming (Subpart E)

013 1,1-dichloroethane
015 1,1,2,2-tetrachloroethane
024 2-chlorophenol
029 1,1-dichloroethylene
084 pyrene
104 gamma-BHC

Zinc Forming (Subpart H)

001 acenaphthene
006 1,2,4-trichlorobenzene
010 1,2-dichloroethane
037 1,2-diphenylhydrazine
046 methyl bromide

Zirconium-Hafnium (Subpart I)

004 benzene
007 chlorobenzene
013 1,1-dichloroethane
057 2-nitrophenol
068 di-n-butyl phthalate
070 diethyl phthalate
078 anthracene
081 phenanthrene
085 tetrachloroethylene
087 trichloroethylene

D—Toxic Pollutants Detected in the Effluent From Only a Small Number of Sources

Lead-Tin-Bismuth Forming (Subpart A)

065 phenol
066 bis(2-ethylhexyl)phthalate
081 phenanthrene
119 chromium
120 copper
121 cyanide
128 zinc

Magnesium Forming (Subpart B)

117 beryllium
121 cyanide
122 lead

Nickel-Cobalt Forming (Subpart C)

001 acenaphthene
005 benzidene
011 1,1,1-trichloroethane
013 1,1-dichloroethane
022 parachlorometacresol
028 3,3'-dichlorobenzidine
034 2,4-dimethylphenol
036 2,6-dinitrotoluene
039 fluoranthene
044 methylene chloride
055 naphthalene
057 2-nitrophenol
058 4-nitrophenol
060 4,6-dinitro-o-cresol
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
066 bis(2-ethylhexyl)phthalate
068 di-n-butyl phthalate
073 benzo(a)pyrene
080 fluorene
081 phenanthrene
084 pyrene
114 antimony
115 arsenic
121 cyanide
125 selenium
126 silver

Precious Metals Forming (Subpart D)

004 benzene
011 1,1,1-trichloroethane
044 methylene chloride
045 methyl chloride
086 toluene
087 trichloroethylene

Refractory Metals Forming (Subpart E)

011 1,1,1-trichloroethane
035 2,4-dinitrotoluene
039 fluoranthene
044 methylene chloride
055 naphthalene
057 2-nitrophenol
060 4,6-dinitro-o-cresol
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
065 phenol
066 bis(2-ethylhexyl)phthalate
067 butyl benzyl phthalate
068 di-n-butyl phthalate
069 di-n-octyl phthalate
070 diethyl phthalate
072 benzo(a)anthracene
076 chrysene
077 acenaphthylene
078 anthracene
080 fluorene
081 phenanthrene
085 tetrachloroethylene
086 toluene
118 cadmium
121 cyanide

Titanium Forming (Subpart F)

115 arsenic
118 cadmium
125 selenium

Uranium Forming (Subpart G)

022 parachlorometacresol
066 bis(2-ethylhexyl)phthalate
081 phenanthrene
117 beryllium
121 cyanide

Zinc Forming (Subpart H)

051 chlorodibromomethane
066 bis(2-ethylhexyl)phthalate
068 d-n-butyl phthalate

Zirconium-Hafnium Forming (Subpart I)

011 1,1,1-trichloroethane
022 parachlorometacresol
038 ethylbenzene
066 bis(2-ethylhexyl)phthalate
069 di-n-octyl phthalate
114 antimony
115 arsenic
118 cadmium
127 thallium

Metal Powders (Subpart J)

011 1,1,1-trichloroethane

E—Toxic Pollutants Detected in Amounts Too Small To Be Effectively Treated

Lead-Tin-Bismuth Forming (Subpart A)

006 carbon tetrachloride
011 1,1,1-trichloroethane
015 1,1,2,2-tetrachloroethane
022 parachlorometacresol
023 chloroform
038 ethylbenzene
115 arsenic
117 beryllium
118 cadmium
123 mercury
124 nickel

Magnesium Forming (Subpart B)

011 1,1,1-trichloroethane
044 methylene chloride
057 nitrophenol
065 phenol
114 antimony
123 mercury
126 silver

Nickel-Cobalt Forming (Subpart C)

004 benzene
012 hexachloroethane
023 chloroform
029 1,1-dichloroethylene
037 1,2-diphenyl hydrazine
043 bis(2-chloroethoxy)methane
061 N-nitrosodimethylamine
067 butyl benzyl phthalate
069 di-n-octyl phthalate
070 diethyl phthalate
071 dimethyl phthalate
072 benzo(a)anthracene
077 acenaphthylene
078 anthracene
083 indeno(1,2,3-cd)pyrene
086 toluene
117 beryllium
123 mercury
127 thallium

Precious Metals Forming (Subpart D)

016 chloroethane
114 antimony
115 arsenic
123 mercury
127 thallium

Refractory Metals Forming (Subpart E)

023 chloroform
034 2,4-dimethylphenol
056 nitrobenzene
114 antimony
115 arsenic
117 beryllium
123 mercury
125 selenium
127 thallium

Titanium Forming (Subpart F)

006 carbon tetrachloride
044 methylene chloride
114 antimony
117 beryllium
123 mercury
126 silver
127 thallium

Uranium Forming (Subpart G)

114 antimony
115 arsenic
123 mercury
125 selenium
126 silver
127 thallium

Zinc Forming (Subpart H)

003 acrylonitrile
004 benzene
007 chlorobenzene
013 1,1-dichloroethane
015 1,1,2,2-tetrachloroethane
018 bis(2-chloroethyl)ether
023 chloroform
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethyl phenol
036 2,6-dinitrotoluene
038 ethylbenzene
043 bis(2-chloroethoxy)methane
044 methylene chloride
047 bromoform
048 dichlorobromomethane
055 naphthalene
067 butyl benzyl phthalate
072 chrysene
078 anthracene
081 phenanthrene
085 tetrachloroethylene
086 toluene
087 trichloroethylene

Zirconium-Hafnium Forming (Subpart I)

002 acrolein
[illegible] chloroform
117 beryllium
123 mercury
125 selenium
126 silver

Metal Powders (Subpart J)

004 benzene
006 carbon tetrachloride
043 methylene chloride
086 toluene
114 antimony
115 arsenic
127 thallium

F—Toxic Pollutants Effectively Controlled by BAT, NSPS, PSES and PSNS Even Though They Are Not Specifically Regulated

Nickel-Cobalt Forming (Subpart C)

118 cadmium
120 copper
122 lead
128 zinc
062 N-nitrosodiphenylamine

Precious Metals Forming (Subpart D)

119 chromium
124 nickel
128 zinc

Refractory Metals Forming (Subpart E)

119 chromium
122 lead
126 silver
128 zinc

Titanium Forming (Subpart F)

062 N-nitrosodiphenylamine
119 chromium
120 copper
124 nickel

Uranium Forming (Subpart G)

128 zinc

Zinc Forming

124 nickel

Zirconium-Hafnium Forming (Subpart I)

044 methylene chloride
062 N-nitrosodiphenylamine
086 toluene
120 copper
122 lead
128 zinc

Metal Powders (Subpart J)

119 chromium
124 nickel
128 zinc

G—Subcategories Excluded

Paragraph 8(a)(iv) of the Settlement Agreement authorizes the Administrator to exclude from regulation subcategories in which the amount and toxicity of each pollutant in the discharge does not justify developing national regulations. Paragraph 8(b) of the Settlement Agreement authorizes the Administrator to exclude from pretreatment standards a subcategory if (i) 95 percent or more of all point sources in the subcategory introduce into POTWs only pollutants which are susceptible to treatment by the POTW and which do not interfere with, do not pass through, or are not otherwise incompatible with such treatment works; or (ii) the toxicity and amount of the incompatible pollutants introduced by such point sources into POTWs is so insignificant that developing a pretreatment regulation is not justified.

1. The following subcategories are excluded because there are no dischargers from the subcategory (Paragraph 8(a)(iv)):

Cadmium forming
Chromium forming
Gallium forming
Germanium forming
Indium forming
Lithium forming
Manganese forming
Neodymium forming
Praseodymium forming

2. The following subcategory is excluded from further national PSES regulation development under Paragraph 8(b) of the Settlement Agreement because there are no existing indirect dischargers in the subcategory:

Uranium forming

A new Part 471 is added to 40 CFR to read as follows:

PART 471—NONFERROUS METALS FORMING AND METAL POWDERS POINT SOURCE CATEGORY

General Provisions

Sec.
471.01 Applicability.
471.02 General definitions.
471.03 Compliance date for PSES.

Subpart A—Lead-Tin-Bismuth Forming Subcategory

471.10 Applicability; description of the lead-tin-bismuth forming subcategory.
471.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.13 New source performance standards (NSPS).
471.14 Pretreatment standards for existing sources (PSES).
471.15 Pretreatment standards for new sources (PSNS).
471.16 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart B—Magnesium Forming Subcategory

471.20 Applicability; description of the magnesium forming subcategory.
471.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.23 New source performance standards (NSPS).
471.24 Pretreatment standards for existing sources (PSES).
471.25 Pretreatment standards for new sources (PSNS).
471.26 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart C—Nickel-Cobalt Forming Subcategory

471.30 Applicability; description of the nickel-cobalt forming subcategory.
471.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

471.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.33 New source performance standards (NSPS).
471.34 Pretreatment standards for existing sources (PSES).
471.35 Pretreatment standards for new sources (PSNS).
471.36 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart D–Precious Metals Forming Subcategory

471.40 Applicability: description of the precious metals forming subcategory.
471.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.43 New source performance standards (NSPS).
471.4 Pretreatment standards for existing sources (PSES).
471.45 Pretreatment standards for new sources (PSNS).
471.46 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart E—Refractory Metals Forming Subcategory

471.50 Applicability; description of the refractory metals forming subcategory.
471.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.53 New source performance standards (NSPS).
471.54 Pretreatment standards for existing sources (PSES).
471.55 Pretreatment standards for new sources (PSNS).
471.56 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart F—Titanium Forming Subcategory

471.60 Applicability; description of the titanium forming subcategory.
471.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.63 New source performance standards (NSPS).
471.64 Pretreatment standards for existing sources (PSES).
471.65 Pretreatment standards for new sources (PSNS).
471.66 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart G—Uranium Forming Subcategory

471.70 Applicability; description of the uranium forming subcategory.
471.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.73 New source performance standards (NSPS).
471.74 Pretreatment standards for existing sources (PSES) [Reserved].
471.75 Pretreatment standards for new sources (PSNS).
471.76 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart H—Zinc Forming Subcategory

471.80 Applicability; description of the zinc forming subcategory.
471.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.83 New source performance standards (NSPS).
471.84 Pretreatment standards for existing sources (PSES) [Reserved].
471.85 Pretreatment standards for new sources (PSNS).
471.86 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart I—Zirconium-Hafnium Forming Subcategory

471.90 Applicability; description of the zirconium-hafnium forming subcategory.
471.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.93 New source performance standards (NSPS).
471.94 Pretreatment standards for existing sources (PSES).
471.95 Pretreatment standards for new sources (PSNS).
471.96 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart J—Metal Powders Subcategory

471.100 Applicability; description of the metal powders subcategory.
471.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.103 New source performance standards (NSPS).
471.104 Pretreatment standards for existing sources (PSES).
471.105 Pretreatment standards for new sources (PSNS).
471.106 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

General Provisions

§ 471.01 Applicability.

(a) This part applies to discharges of pollutants to waters of the United States and introduction of pollutants into a publicly owned treatment works from the forming of nonferrous metals (including nonferrous metal alloys), except beryllium, copper, and aluminum and their alloys. Aluminum alloys are defined as any alloy in which aluminum is the major constituent in percent by weight. Copper alloys are defined as any alloy in which copper is the major constituent in percent by weight except when copper is alloyed with precious metals. Any copper-precious metal alloy containing 30 percent or greater precious

metal is considered a precious metal alloy for the purposes of this part. Beryllium alloys are any alloy in which beryllium is present at 0.1 percent or greater. This part applies to:

(1) Forming operations, including rolling (both hot and cold), extruding, forging, drawing, swaging, cladding, and tube reducing, and

(2) Ancillary operations performed as an integral part of the forming of these metals, including casting for subsequent forming, heat treatment, surface treatment, alkaline cleaning, solvent degreasing, product testing, surface coating, sawing, grinding, tumbling, burnishing, and wet air pollution control.

(b) This part also applies to discharges of pollutants to waters of the United States and introduction of pollutants into a publicly owned treatment works from mechanical metal powder production operations, forming of parts from metal powders, and associated ancillary operations (listed in paragraph (a)(2) of this section) of:

(1) Iron, copper, and aluminum, and their alloys; and

(2) The nonferrous metals and their alloys described in paragraph (a) of this section. This part does not regulate the production of metal powders by chemical means such as precipitation. The production of metal powder as the final step in refining metal is regulated under the Nonferrous Metals Manufacturing Point Source Category regulation, 40 CFR Part 421.

(c) Surface treatment includes any chemical or electrochemical treatment applied to the surface of the metal. For the purposes of this regulation, surface treatment of metals is considered to be an integral part of the forming of metals whenever it is performed at the same plant site at which the metals are formed. Such surface treatment operations are not regulated under the Electroplating or Metal Finishing Point Source Category regulations, 40 CFR Part 413 or 433, respectively.

(d) Casting is covered by this part when it is performed as an integral part of the metal forming process and takes place at the same plant site at which metals are formed. Such casting will not be regulated under the provisions of Metal Molding and Casting Point Source Category regulations, 40 CFR Part 464.

(e) This part does not apply to the forming of the metals cadmium, chromium, gallium, germanium, indium, lithium, manganese, neodymium, or praseodymium.

§ 471.02 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) "Nonferrous metal" is any pure metal other than iron or any metal alloy for which a metal other than iron is its major constituent in percent by weight.

(b) "Forming" is a set of manufacturing operations in which metals and alloys are made into semifinished products by hot or cold working.

(c) "Alkaline cleaning" uses a solution (bath), usually detergent, to remove lard, oil, and other such compounds from a metal surface. Alkaline cleaning is usually followed by a water rinse. The rinse may consist of single or multiple stage rinsing. For the purposes of this part, an alkaline cleaning operation is defined as a bath followed by a rinse, regardless of the number of rinse stages. Each alkaline cleaning bath and rinse combination is entitled to a discharge allowance.

(d) "Atomization" is the process in which a stream of water or gas impinges upon a molten metal stream, breaking it into droplets which solidify as powder particles.

(e) "Burnishing" is a surface finishing process in which minute surface irregularities are displaced rather than removed.

(f) "Casting" is pouring molten metal into a mold to produce an object of desired shape.

(g) "Cladding" or "metal cladding" is the art of producing a composite metal containing two or more layers that have been metallurgically bonded together by roll bonding (co-rolling), solder application (or brazing), or explosion bonding.

(h) "Contact cooling water" is any wastewater which contacts the metal workpiece or the raw materials used in forming metals for the purpose of removing heat from the metal.

(i) "Continuous casting" is the production of sheet, rod, or other long shapes by solidifying the metal while it is being poured through an open-ended mold.

(j) "Degreasing" is the removal of oils and greases from the surface of the metal workpiece. This process can be accomplished with detergents as in alkaline cleaning or by the use of solvents.

(k) "Direct chill casting" is the pouring of molten nonferrous metal into a water-cooled mold. Contact cooling water is sprayed onto the metal as it is dropped into the mold, and the metal ingot falls into a water bath at the end of the casting process.

(l) "Drawing" is the process of pulling a metal through a die or succession of dies to reduce the metal's diameter or alter its cross-sectional shape.

(m) "Dye penetrant testing" is a nondestructive method for finding discontinuities that are open to the surface of the metal. A dye is applied to the surface of metal and the excess is rinsed off. Dye that penetrates surface discontinuities will not be rinsed away thus marking these discontinuities.

(n) "Emulsions" are stable dispersions of two immiscible liquids. In the Nonferrous Metals Forming and Metal Powders Point Source category, this is usually an oil and water mixture.

(o) "Electrocoating" is the electrodeposition of a metallic or nonmetallic coating onto the surface of a workpiece.

(p) "Extrusion" is the application of pressure to a billet of metal, forcing the metal to flow through a die orifice.

(q) "Forging" is deforming metal, usually hot, with compressive force into desired shapes, with or without dies. Where dies are used, the metal is forced to take the shape of the die.

(r) "Grinding" is the process of removing stock from a workpiece by the use of a tool consisting of abrasive grains held by a rigid or semi-rigid grinder. Grinding includes surface finishing, sanding, and slicing.

(s) "Heat treatment" is the application of heat of specified temperature and duration to change the physical properties of the metal.

(t) "Hot pressing" is forming a powder metallurgy compact at a temperature high enough to effect concurrent sintering.

(u) "Hydrotesting" is the testing of piping or tubing by filling with water and pressurizing to test for integrity.

(v) "Impregnation" is the process of filling pores of a formed powder part, usually with a liquid such as a lubricant, or mixing particles of a nonmetallic substance in a matrix of metal powder.

(w) "In-process control technology" is the conservation of chemicals and water throughout the production operations to reduce the amount of wastewater to be discharged.

(x) "Metal powder production" operations are mechanical process operations which convert metal to a finely divided form.

(y) "Milling" is the mechanical treatment of a nonferrous metal to produce powder, or to coat one component of a powder mixture with another.

(z) "Neat oil" is a pure oil with no or few impurities added. In nonferrous

metals forming, its use is mostly as a lubricant.

(aa) "Powder forming" includes forming and compressing powder into a fully dense finished shape, and is usually done within closed dies.

(bb) "Precious metals" include gold, platinum, palladium, and silver and their alloys. Any alloy containing 30 or greater percent by weight of precious metals is considered a precious metal alloy.

(cc) "Product testing" includes operations such as dye penetrant testing, hydrotesting, and ultrasonic testing.

(dd) "Refractory metals" includes the metals of columbium, tantalum, molybdenum, rhenium, tungsten and vanadium and their alloys.

(ee) "Rolling" is the reduction in thickness or diameter of a workpiece by passing it between lubricated steel rollers.

(ff) "Roll bonding" is the process by which a permanent bond is created between two metals by rolling under high pressure in a bonding mill (co-rolling).

(gg) "Sawing" is cutting a workpiece with a band, blade, or circular disc having teeth.

(hh) "Shot casting" is the production of shot by pouring molten metal in finely divided streams to form spherical particles.

(ii) "Stationary casting" is the pouring of molten metal into molds and allowing the metal to cool.

(jj) "Surface treatment" is a chemical or electrochemical treatment applied to the surface of a metal. Such treatments include pickling, etching, conversion coating, phosphating, and chromating. Surface treatment baths are usually followed by a water rinse. The rinse may consist of single or multiple stage rinsing. For the purposes of this part, a surface treatment operation is defined as a bath followed by a rinse, regardless of the number of stages. Each surface treatment bath, rinse combination is entitled to discharge allowance.

(kk) "Swaging" is a process in which a solid point is formed at the end of a tube, rod, or bar by the repeated blows of one or more pairs of opposing dies.

(ll) "Tube reducing" is an operation which reduces the diameter and wall thickness of tubing with a mandrel and a pair of rolls with tapered grooves.

(mm) "Tumbling" or "barrel finishing" is an operation in which castings, forgings, or parts pressed from metal powder are rotated in a barrel with ceramic or metal slugs or abrasives to remove scale, fins, or burrs. It may be done dry or with an aqueous solution.

(nn) "Ultrasonic testing" is a nondestructive test which applies sound, at a frequency above about 20 HJz, to metal, which has been immersed in liquid (usually water) to locate inhomogeneities or structural discontinuities.

(oo) "Wet air pollution control scrubbers" are air pollution control devices used to remove particulates and fumes from air by entraining the pollutants in a water spray.

(pp) "Grab sample" is a single sample which is collected at a time and place most representative of total discharge.

(qq) "Composite sample" is a sample composed of no less than eight grab samples taken over the compositing period.

(rr) A "flow proportional composite sample" is composed of grab samples collected continuously or discretely in proportion to the total flow at time of collection or to the total flow since collection of the previous grab sample. The grab volume or frequency of grab collection may be varied in proportion to flow.

(ss) The term "control authority" is defined as the POTW if it has an approved pretreatment program; in the absence of such a program, the NPDES State if it has an approved pretreatment program or EPA if the State does not have an approved program.

(tt) "Continuous operations" means that the industrial user introduces regulated wastewaters to the POTW throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(uu) "Intermittent operations" means the industrial users does not have a continuous operation.

(vv) The term "off-kg (off-lb)" means the mass of metal or metal alloy removed from a forming operation at the end of a process cycle for transfer to a different machine or process.

§ 471.03 Compliance date for PSES.

The compliance date for PSES under this regulation is August 23, 1988.

Subpart A—Lead-Tin-Bismuth Forming Subcategory

§ 471.10 Applicability; description of the lead-tin-bismuth forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the lead-tin-bismuth forming subcategory.

§ 471.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent emulsions.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with emulsions	
Antimony	0.058	0.030
Lead	0.010	0.005
Oil and grease	0.458	0.281
TSS	0.980	0.457
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) *Rolling spent soap solutions.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pound) of lead-tin-bismuth rolled with soap solutions	
Antimony	0.125	0.055
Lead	0.019	0.009
Oil and grease	0.960	0.520
TSS	1.80	0.840
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) *Drawing spent neat oils—Subpart A—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with emulsions	
Antimony	0.074	0.034
Lead	0.011	0.005
Oil and grease	0.708	0.316
TSS	1.08	0.513
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

(e) *Drawing spent soap solutions.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with [illegible] solutions	
Antimony	0.022	0.010
Lead	0.005	0.002
Oil and grease	0.149	0.060
TSS	0.306	0.146
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Extrusion press and solution heat treatment contact cooling water.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds of lead-tin-bismuth [illegible] treated	
Antimony	4.14	1.850
Lead	0.605	0.268
Oil and grease	39.80	17.30
TSS	89.10	38.10
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Extrusion press hydraulic fluid leakage.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth extruded	
Antimony	0.158	0.071
Lead	0.023	0.011
Oil and grease	1.10	0.500
TSS	2.26	1.07
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Continuous strip casting contact cooling water.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.003	0.001
Lead	0.0014	0.0002
Oil and grease	0.020	0.012
TSS	0.041	0.020
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Semi-continuous ingot casting contact cooling water.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth ingot cast by the semi-continuous method	
Antimony	0.065	0.028
Lead	0.013	0.006
Oil and grease	0.584	0.353
TSS	1.21	0.574
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Shot casting contact cooling water.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot cast	
Antimony	0.017	0.008
Lead	0.016	0.008
Oil and grease	0.745	0.448
TSS	1.53	0.726
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Shot-forming wet air pollution control scrubber blowdown.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot formed	
Antimony	1.68	0.753
Lead	0.247	0.116
Oil and grease	11.8	7.06
TSS	24.1	11.5
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Alkaline cleaning spent baths.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.345	0.154
Lead	0.051	0.024
Oil and grease	2.40	1.44
TSS	4.92	2.34
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Alkaline cleaning rinse.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	6.78	3.02
Lead	0.961	0.472
Oil and grease	47.2	18.4
TSS	97.5	46.0
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Swaging spent emulsions.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth swaged with emulsion	
Antimony	0.005	0.002
Lead	0.0007	0.0004
Oil and grease	0.056	0.022
TSS	0.073	0.034
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Degreasing spent solvents—Subpart A—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent emulsions.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with emulsion	
Antimony	0.067	0.010
Lead	0.010	0.005

(b) *Rolling spent soap solutions.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with soap solutions	
Antimony	0.120	0.055
Lead	0.018	0.009

(c) *Drawing spent neat oils—Subpart A—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with emulsions	
Antimony	0.060	0.024
Lead	0.011	0.005

(e) *Drawing spent soap solutions.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with soap solutions	
Antimony	0.022	0.010
Lead	0.003	0.002

(f) *Extrusion press and solution heat treatment contact colling water.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth heat treated	
Antimony	0.414	0.185
Lead	0.061	0.030

(g) *Extrusion press hydraulic fluid leakage.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth extruded	
Antimony	0.158	0.071
Lead	0.023	0.011

(h) *Continuous strip casting contact cooling water.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.023	0.001
Lead	0.0034	0.0002

(i) *Semi-continuous ingot casting contact cooling water.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.009	0.004
Lead	0.001	0.0006

(j) *Shot casting contact cooling water.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot cast	
Antimony	0.107	0.049
Lead	0.016	0.008

(k) *Shot-forming wet air pollution control scrubber blowdown.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot formed	
Antimony	0.169	0.076
Lead	0.025	0.102

(l) *Alkaline cleaning spent baths.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.345	0.154
Lead	0.051	0.024

(m) *Alkaline cleaning rinse.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.678	0.302
Lead	0.099	0.047

(n) *Swaging spent emulsions.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth swaged with emulsion	
Antimony	0.026	0.012
Lead	0.0038	0.0018

(o) *Degreasing spent solvents—Subpart A—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.13 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards. The mass of pollutants in the lead-tin-bismuth forming operations' process wastewater shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with emulsions	
Antimony	0.067	0.030
Lead	0.010	0.005
Oil and grease	0.468	0.281
TSS	0.960	0.457
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) *Rolling spent soap solutions.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with soap solutions	
Antimony	0.120	0.055
Lead	0.018	0.009
Oil and grease	0.860	0.520
TSS	1.80	0.840
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart A—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with emulsions	
Antimony	[illegible]	0.054
Lead	0.011	0.005
Oil and grease	0.526	0.316
TSS	1.087	0.513
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Drawing spent soap solutions.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with soap solutions	
Antimony	0.022	0.010
Lead	[illegible]	0.002
Oil and grease	0.139	0.090
TSS	0.306	[illegible]
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Extrusion press and solution heat treatment contact cooling water.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth heat treated	
Antimony	0.414	[illegible]
Lead	0.061	0.030
Oil and grease	[illegible]	1.72
TSS	5.91	[illegible]
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Extrusion press hydraulic fluid leakage.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth extruded	
Antimony	[illegible]	0.071
Lead	0.023	0.011
Oil and grease	1.10	[illegible]
TSS	[illegible]	1.07
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Continuous strip casting contact cooling water.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.003	0.001
Lead	0.0004	0.0002
Oil and grease	0.020	0.012
TSS	0.041	0.020
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Semi-continuous ingot casting contact cooling water.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth ingot cast by the semi-continuous method	
Antimony	[illegible]	[illegible]
Lead	[illegible]	0.0006
Oil and grease	[illegible]	[illegible]
TSS	0.121	0.058
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Shot casting contact cooling water.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot cast	
Antimony	0.107	[illegible]
Lead	0.016	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	1.53	[illegible]
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Shot-forming wet air pollution control scrubber blowdown.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot formed	
Antimony	0.109	0.076
Lead	0.025	0.012
Oil and grease	1.18	0.706
TSS	2.41	1.15
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Alkaline cleaning spent baths.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cleaned alkaline	
Antimony	[illegible]	[illegible]
Lead	0.051	[illegible]
Oil and grease	2.40	1.44
TSS	4.92	2.34
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Alkaline cleaning rinse.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	[illegible]	[illegible]
Lead	[illegible]	0.047
Oil and grease	4.72	2.64
TSS	[illegible]	4.60
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Swaging spent emulsions.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth swaged with emulsion	
Antimony	0.005	0.002
Lead	0.0006	0.0004
Oil and grease	0.036	0.022
TSS	0.073	0.035
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Degreasing spent solvents—Subpart A—NSPS.* There shall be no discharge of process wastewater pollutants.

§ 471.14 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988, achieve the pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in lead-tin-bismuth forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with emulsions	
Antimony	0.087	0.030
Lead	0.010	0.005

(b) *Rolling spent soap solutions.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with soap solutions	
Antimony	0.120	0.055
Lead	0.018	0.009

(c) *Drawing spent neat oils—Subpart A—PSES.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with emulsions	
Antimony	0.076	0.034
Lead	0.011	0.005

(e) *Drawing spent soaps solutions.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with soap olutions	
Antimony	0.022	0.010
Lead	0.003	0.002

(f) *Extrusion press and solution heat treatment contact cooling water.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth heat treated	
Antimony	0.414	0.186
Lead	0.061	0.029

(g) *Extrusion press hydraulic fluid leakage.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth extruded	
Antimony	0.158	0.071
Lead	0.023	0.011

(h) *Continuous strip casting contact cooling water.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.003	0.001
Lead	0.0004	0.00

(i) *Semi-continuous ingot casting contact cooling water.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the semi-continuous strip method	
Antimony	0.008	0.004
Lead	0.001	0.0006

(j) *Shot casting contact cooling water.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot cast	
Antimony	0.107	0.048
Lead	0.016	0.008

(k) *Shot-forming wet air pollution control scrubber blowdown.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot formed	
Antimony	0.192	0.076
Lead	0.028	0.012

(l) *Alkaline Cleaning Spent Baths.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.345	0.154
Lead	0.051	0.024

(m) *Alkaline cleaning rinse.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.678	0.302
Lead	0.099	0.047

(n) *Swaging spent emulsions.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth swaged with emulsion	
Antimony	0.008	0.002
Lead	0.0008	0.0004

(o) *Degreasing spent solvents—Subpart A—PSES.* There shall be no discharge of process wastewater pollutants.

§ 471.15 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new sources subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in lead-tin-bismuth forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with emulsions	
Antimony	0.087	0.030
Lead	0.010	0.005

(b) *Rolling spent soap solutions.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with soap solutions	
Antimony	0.126	0.056
Lead	0.018	0.007

(c) *Drawing spent neat oils—Subpart A—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with emulsions	
Antimony	0.076	0.034
Lead	0.011	0.005

(e) *Drawing spent soap solutions.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with soap solutions	
Antimony	0.022	0.010
Lead	0.003	0.001

(f) *Extrusion press and solution heat treatment contact cooling water.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth heat treated	
Antimony	0.414	0.185
Lead	0.061	0.029

(g) *Extrusion press hydraulic fluid leakage.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth extruded	
Antimony	0.158	0.071
Lead	0.023	0.011

(h) *Continuous strip casting contact cooling water.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.003	0.001
Lead	0.0004	0.0002

(i) *Semi-continuous ingot casting contact cooling water.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth ingot cast by the semi-continuous method	
Antimony	0.009	0.004
Lead	0.013	0.006

(j) *Shot casting contact cooling water.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot cast	
Antimony	0.107	0.048
Lead	0.016	0.008

(k) *Shot-forming wet air pollution control scrubber blowdown.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot formed	
Antimony	0.138	0.076
Lead	0.025	0.012

(l) *Alkaline cleaning spent baths.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.345	0.154
Lead	0.051	0.024

(m) *Alkaline cleaning rinse.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.676	0.300
Lead	0.099	0.047

(n) *Swaging spent emulsions.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth swaged with emulsion	
Antimony	0.005	0.001
Lead	0.0008	0.0004

(o) *Degreasing spent solvents—Subpart A—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.16 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart B—Magnesium Forming Subcategory

§ 471.20 Applicability; description of the magnesium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the magnesium forming subcategory.

§ 471.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent emulsions.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of magnesium rolled with emulsions	
Chromium	0.033	0.014
Zinc	0.109	[illegible]
Ammonia	9.95	4.37
Fluoride	4.440	1.97
Oil and grease	1.49	0.885
TSS	3.06	1.46
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Forging spent lubricants*—Subpart B—BPT. There shall be no discharge of process wastewater pollutants.

(c) *Forging contact cooling water.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of forged magnesium cooled with [illegible]	
Chromium	1.27	0.520
Zinc	4.22	1.77
Ammonia	385	170
Fluoride	172	76.3
Oil and grease	57.8	34.7
TSS	119	56.4
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) *Forging equipment cleaning wastewater.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	0.018	0.007
Zinc	0.059	0.025
Ammonia	5.32	2.34
Fluoride	2.38	1.06
Oil and grease	0.798	0.479
TSS	1.64	0.778
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

(e) *Direct chill casting contact cooling water.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cast with direct chill methods	
Chromium	1.74	0.711
Zinc	5.77	2.41
Ammonia	527	232
Fluoride	235	105
Oil and grease	79.0	47.4
TSS	162	77.1

SUBPART B—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

(f) *Surface treatment spent baths.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.205	0.084
Zinc	0.681	0.285
Ammonia	62.1	27.3
Fluoride	27.8	12.3
Oil and grease	9.32	5.50
TSS	19.1	9.09
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

(g) *Surface treatment rinse.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	8.32	3.4
Zinc	27.6	11.5
Ammonia	[illegible]	1110
Fluoride	1130	[illegible]
Oil and grease	378	227
TSS	775	[illegible]
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

(h) *Sawing or grinding spent emulsions.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sawed or ground	
Chromium	0.009	0.004
Zinc	0.029	0.012
Ammonia	2.60	1.15
Fluoride	1.16	0.515
Oil and grease	0.390	0.234
TSS	0.800	0.381
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

(i) *Degreasing spent solvents—Subpart B—BPT.* There shall be no discharge of process wastewater pollutants.

(j) *Wet air pollution control scrubber blowdown.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sanded and repaired or forged	
Chromium	0.273	0.112
Zinc	0.904	0.375
Ammonia	82.5	36.3
Fluoride	36.9	16.4
Oil and grease	12.4	7.43
TSS	25.4	12.1
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 471.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent emulsions.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium rolled with emulsions	
Chromium	0.033	0.014
Zinc	0.109	0.046
Ammonia	9.95	4.37
Fluoride	4.44	1.97

(b) *Forging spent lubricants*—Subpart B—BAT. There shall be no discharge of process wastewater pollutants.

(c) *Forging contact cooling water.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged magnesium cooled with water	
Chromium	0.127	0.052
Zinc	0.422	0.177
Ammonia	38.5	17.0
Fluoride	17.2	7.63

(d) *Forging equipment cleaning wastewater.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	[illegible]	[illegible]
Zinc	0.006	0.003
Ammonia	0.532	0.234
Fluoride	0.236	0.106

(e) *Direct chill casting contact cooling water.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cast with direct chill methods	
Chromium	1.74	0.711
Zinc	5.77	2.41
Ammonia	[illegible]	232
Fluoride	[illegible]	105

(f) *Surface treatment spent baths.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	[illegible]	[illegible]
Zinc	[illegible]	0.265
Ammonia	[illegible]	27.3
Fluoride	[illegible]	12.3

(g) *Surface treatment rinse.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.832	0.340
Zinc	2.76	1.16
Ammonia	252	111
Fluoride	113	49.9

(h) *Sawing or grinding spent emulsions.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sawed or ground	
Chromium	0.009	0.004
Zinc	0.029	0.012
Ammonia	2.60	1.15
Fluoride	1.16	0.515

(i) *Degreasing spent solvents—Subpart B—BAT.* There shall be no discharge of process wastewater pollutants.

(j) *Wet air pollution control scrubber blowdown.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sanded and repaired or forged	
Chromium	0.273	0.112
Zinc	[illegible]	[illegible]
Ammonia	[illegible]	36.3
Fluoride	[illegible]	16.4

§ 471.23 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards. The mass of pollutants in the magnesium forming process wastewater shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of magnesium rolled with emulsions	
Chromium	0.026	0.011
Zinc	0.076	0.032
Ammonia	9.95	4.37
Fluoride	4.44	1.97
Oil and grease	0.746	0.746
TSS	1.12	0.895
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(b) *Forging spent lubricants—Subpart B—NSPS.* There shall be no discharge of process wastewater pollutants.

(c) *Forging contact cooling water.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of forged magnesium cooled with water	
Chromium	0.117	0.044
Zinc	[illegible]	[illegible]
Ammonia	38.5	17.0
Fluoride	17.2	[illegible]
Oil and grease	[illegible]	2.89
TSS	4.34	3.47
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(d) *Forging equipment cleaning wastewater.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of magnesium forged	
Chromium	[illegible]	[illegible]
Zinc	0.004	0.002
Ammonia	0.532	0.234
Fluoride	[illegible]	[illegible]
Oil and grease	0.040	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(e) *Direct chill casting contact cooling water.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cast with direct chill methods	
Chromium	1.46	[illegible]
Zinc	4.03	1.65
Ammonia	527	232
Fluoride	235	105
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	47.4
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(f) *Surface treatment spent baths.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.173	[illegible]
Zinc	[illegible]	[illegible]
Ammonia	[illegible]	27.3
Fluoride	27.8	12.3
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times

(g) *Surface treatment rinse.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pound pers million off-pounds) of magnesium surface treated	
Chromium	0.700	0.284
Zinc	1.93	0.794
Ammonia	252	111
Fluoride	113	49
Oil and grease	18.9	18.9
TSS	26.4	22.7
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times

(h) *Sawing or grinding spent emulsions.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sawed or ground	
Chromium	0.007	0.003
Zinc	0.026	0.004
Ammonia	2.60	1.15
Fluoride	1.16	0.575
Oil and grease	0.195	0.195
TSS	0.293	0.293
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Degreasing spent Solvents—Subpart B—NSPS.* There shall be no discharge of process wastewater pollutants.

(j) *Wet air pollution control scrubber blowdown.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sanded and repaired or forged	
Chromium	0.229	0.093
Zinc	0.632	0.260
Ammonia	82.5	36.3
Fluoride	36.9	16.4
Oil and grease	6.19	6.19
TSS	9.29	7.43
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times

§ 471.24 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in magnesium forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium rolled with emulsions	
Chromium	0.033	0.014
Zinc	0.109	0.046
Ammonia	9.95	4.37
Fluoride	4.44	1.97

(b) *Forging spent lubricants—Subpart B—PSE.* There shall be no discharge of process wastewater pollutants.

(c) *Forging contact cooling water.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cooled with water	
Chromium	0.127	0.052
Zinc	0.422	0.177
Ammonia	38.5	17.0
Fluoride	17.2	7.63

(d) *Forging equipment cleaning wastewater.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	0.002	0.0007
Zinc	0.006	0.003
Ammonia	0.532	0.254
Fluoride	0.238	0.100

(e) *Direct chill casting contact cooling water.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cast with direct chill methods	
Chromium	1.74	0.711
Zinc	5.77	2.41
Ammonia	527	232
Fluoride	235	105

(f) *Surface treatment spent baths.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.205	0.084
Zinc	0.681	0.285
Ammonia	62.1	27.3
Fluoride	27.8	12.3

(g) *Surface treatment rinse.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.832	0.340
Zinc	2.76	1.16

SUBPART B—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia	258	111
Fluoride	113	48.8

(h) *Sawing or grinding spent emulsions.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Minimum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sawed or ground	
Chromium	0.033	0.014
Zinc	0.109	0.102
Ammonia	2.60	1.15
Fluoride	1.16	0.515

(i) *Degreasing Spent Solvents—Subpart B—PSES.* There shall be no discharge of process wastewater pollutants.

(j) *Wet air pollution control scrubber blowdown.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sanded and repaired or forged	
Chromium	0.273	0.112
Zinc	0.904	0.378
Ammonia	8.25	36.3
Fluoride	36.9	16.4

§ 471.25 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater pollutants in magnesium forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	0.026	0.011
Zinc	0.076	0.032
Ammonia	9.95	4.37
Fluoride	4.44	1.97

(b) *Forging spent lubricants—Subpart B—PSNS.* There shall be no discharge of process wastewater pollutants.

(c) *Forging contact cooling water.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged magnesium cooled with water	
Chromium	0.107	0.044
Zinc	0.295	0.122
Ammonia	35.5	17.0
Fluoride	17.2	7.65

(d) *Forging equipment cleaning wastewater.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	0.002	0.0008
Zinc	0.004	0.002
Ammonia	0.532	0.254
Fluoride	0.258	0.106

(e) *Direct chill casting contact cooling water.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cast with direct chill methods	
Chromium	1.48	0.593
Zinc	4.00	1.66
Ammonia	527	232
Fluoride	235	105

(f) *Surface treatment spent baths.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.173	0.079
Zinc	0.478	0.196
Ammonia	62.1	27.3
Fluoride	27.6	12.3

(g) *Surface treatment rinse.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium treated	
Chromium	0.700	0.294
Zinc	1.93	0.794
Ammonia	352	111
Fluoride	113	46.6

(h) *Sawing or grinding spent emulsions.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sawed or ground	
Chromium	0.007	0.003
Zinc	0.020	0.008
Ammonia	2.50	1.15
Fluoride	1.16	0.515

(i) *Degreasing spent solvents—Subpart B—PSNS.* There shall be no discharge of process wastewater pollutants.

(j) *Wet air pollution control scrubber blowdown.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sanded and repaired or forged	
Chromium	0.229	0.093
Zinc	0.632	0.260
Ammonia	82.5	36.3
Fluoride	36.8	16.4

§ 471.26 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart C—Nickel-Cobalt Forming Subcategory

§ 471.30 Applicability; description of the nickel-cobalt forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the nickel-cobalt forming subcategory.

§ 471.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with emulsions	
Chromium	0.075	0.031
Nickel	0.327	0.216
Fluoride	10.1	4.49
Oil and grease	3.4	2.04
TSS	6.97	3.32
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Rolling contact cooling water.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with water	
Chromium	1.66	0.670
Nickel	7.24	4.79
Fluoride	224	99.6
Oil and grease	75.4	45.3
TSS	154	73.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Tube reducing spent lubricant—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants.

(e) *Drawing spent neat oils—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants

(f) *Drawing spent emulsions.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt drawn with emulsions	
Chromium	0.042	0.017
Nickel	0.183	0.121
Fluoride	5.66	2.52

SUBPART C—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and grease	1.91	1.15
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Extrusion spent lubricants—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants.

(h) *Extrusion press or solution heat treatment contact cooling water.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt heat treated	
Chromium	0.037	0.015
Nickel	0.160	0.106
Fluoride	4.95	2.20
Oil and grease	1.67	0.999
TSS	3.41	1.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Extrusion press hydraulic fluid leakage.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt extruded	
Chromium	0.102	0.042
Nickel	0.446	[illegible]
Fluoride	13.8	6.13
Oil and grease	4.64	2.79
TSS	9.51	4.53
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Forging equipment cleaning wastewater.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.018	0.007
Nickel	0.077	0.051
Fluoride	2.38	1.06
Oil and grease	0.800	0.480
TSS	1.640	0.780
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Forging contact cooling water.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged nickel-cobalt cooled with water	
Chromium	108	44.1
Nickel	471	311
Fluoride	14,600	6,470
Oil and grease	4,900	2,940
TSS	10,100	4,780
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Forging press hydraulic fluid leakage.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	[illegible]	[illegible]
Nickel	0.359	[illegible]
Fluoride	11.2	[illegible]
Oil and grease	3.74	[illegible]
TSS	7.67	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Forging spent lubricants—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants.

(n) *Stationary casting contact cooling water.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt cast with stationary casting methods	
Chromium	5.33	2.18
Nickel	23.3	15.4
Fluoride	720	320
Oil and grease	242	145
TSS	496	236
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Vacuum melting steam condensate—Subpart C—BPT.* There shall be no allowance for the discharge of process wastewater pollutants.

(p) *Metal powder production atomization wastewater.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt metal powder atomized	
Chromium	1.16	[illegible]
Nickel	5.03	[illegible]

SUBPART C—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	156	[illegible]
Oil and grease	52.4	31.5
TSS	106	51.1
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Annealing and solution heat treatment contact cooling water—Subpart C—BPT.* There shall be no allowance for the discharge of process wastewater pollutants.

(r) *Wet air pollution control scrubber blowdown.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.357	[illegible]
Nickel	1.56	[illegible]
Fluoride	[illegible]	21.4
Oil and grease	16.2	[illegible]
TSS	33.2	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Surface treatment spent baths.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	1.19
Fluoride	55.7	24.7
Oil and grease	18.7	11.2
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Surface treatment rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	10.4	[illegible]
Nickel	45.3	[illegible]
Fluoride	1410	[illegible]
Oil and grease	472	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) *Alkaline cleaning spent baths.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	[illegible]	0.895
Oil and grease	0.678	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Alkaline cleaning rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	1.03	0.420
Nickel	[illegible]	2.96
Fluoride	[illegible]	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) *Molten salt rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with molten salt	
Chromium	0.550	0.225
Nickel	2.40	1.59
Fluoride	74.4	33.0
Oil and grease	25.0	15.0
TSS	51.3	24.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) *Ammonia rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with ammonia solution	
Chromium	0.007	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	[illegible]	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	0.289
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) *Sawing or grinding spent emulsions.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt sawed or ground with emulsions	
Chromium	0.018	0.007
Nickel	75.8	50.1
Fluoride	2,350	1,040
Oil and grease	788	472
TSS	1,620.4	769
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(z) *Sawing or grinding rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground nickel-cobalt rinsed	
Chromium	0.797	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	108	47.8
Oil and grease	[illegible]	21.7
TSS	74.2	35.3
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(aa) *Steam Cleaning Condensate.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt steam cleaned	
Chromium	0.013	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	1.79	[illegible]
Oil and grease	[illegible]	0.361
TSS	1.24	[illegible]
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(bb) *Hydrostatic tube testing and ultrasonic testing wastewater—Subpart C—BPT.* There shall be no allowance for the discharge of process wastewater pollutants.

(cc) *Degreasing spent solvents—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants.

(dd) *Dye penetrant testing wastewater.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt tested with dye penetrant method	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	0.271

SUBPART C—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	12.7	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	8.74	4.16
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(ee) *Electrocoating rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt electrocoated	
Chromium	1.48	[illegible]
Nickel	6.47	[illegible]
Fluoride	201	[illegible]
Oil and grease	67.4	40.5
TSS	[illegible]	65.7
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(ff) *Miscellaneous wastewater sources.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	0.313
Fluoride	14.7	6.50
Oil and grease	4.92	2.95
TSS	10.1	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 471.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with emulsions	
Chromium	[illegible]	[illegible]

SUBPART C—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	0.054	0.043
Fluoride	10.1	4.49

(c) *Rolling contact cooling water.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with water	
Chromium	0.028	0.011
Nickel	0.042	0.026
Fluoride	4.49	1.99

(d) *Tube reducing spent lubricants—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(e) *Drawing spent neat oils—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(f) *Drawing spent emulsions.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt drawn with emulsions	
Chromium	0.036	0.015
Nickel	0.050	0.036
Fluoride	5.56	2.52

(g) *Extrusion spent lubricants—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(h) *Extrusion press or solution heat treatment contact cooling water.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded nickel-cobalt heat treated	
Chromium	0.031	0.013
Nickel	0.048	0.031
Fluoride	4.95	2.20

(i) *Extrusion press hydraulic fluid leakage.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt extruded	
Chromium	0.066	0.034
Nickel	0.128	0.066
Fluoride	13.8	6.11

(j) *Forging equipment cleaning wastewater.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.002	0.0008
Nickel	0.002	0.002
Fluoride	0.238	0.106

(k) *Forging contact cooling water.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged nickel-cobalt cooled with water	
Chromium	0.009	0.004
Nickel	0.014	0.009
Fluoride	1.46	0.647

(l) *Forging press hydraulic fluid leakage.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.050	0.024
Nickel	.103	0.060
Fluoride	11.2	4.94

(m) *Forging spent lubricants—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(n) *Stationary casting contact cooling water.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt cast with stationary casting methods	
Chromium	0.448	0.182
Nickel	.666	.446

SUBPART C—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	72.0	32.0

(o) *Vacuum melting steam condensate—Subpart C—BAT.* There shall be no allowance for the discharge of wastewater pollutants.

(p) *Metal powder production atomization wastewater.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt metal powder atomized	
Chromium	0.970	0.396
Nickel	1.44	0.970
Fluoride	156	86.2

(q) *Annealing and solution heat treatment contact cooling water—Subpart C—BAT.* There shall be no allowance for the discharge of wastewater pollutants.

(r) *Wet air pollution control scrubber blowdown.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.300	0.132
Nickel	.448	.300
Fluoride	48.2	11.20

(s) *Surface treatment spent baths.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.346	0.141
Nickel	.514	0.346
Fluoride	55.7	24.7

(t) *Surface treatment rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.673	0.254
Nickel	1.30	0.73

SUBPART C—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	141	[illegible]

(u) *Alkaline cleaning spent baths.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	2.11	[illegible]

(v) *Alkaline cleaning rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	[illegible]	[illegible]
Nickel	0.126	[illegible]
Fluoride	[illegible]	6.15

(w) *Molten salt rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with molten salt	
Chromium	0.047	[illegible]
Nickel	[illegible]	0.047
Fluoride	7.44	3.30

(x) *Ammonia rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with ammonia solution	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	[illegible]	[illegible]

(y) *Sawing or grinding spent emulsions.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt sawed or ground with emulsions	
Chromium	[illegible]	0.008
Nickel	[illegible]	[illegible]
Fluoride	[illegible]	1.04

(z) *Sawing or grinding rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground nickel-cobalt rinsed	
Chromium	[illegible]	[illegible]
Nickel	0.100	[illegible]
Fluoride	10.8	4.76

(aa) *Steam cleaning condensate.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt steam cleaned	
Chromium	0.011	[illegible]
Nickel	0.017	0.011
Fluoride	[illegible]	[illegible]

(bb) *Hydrostatic tube testing and ultrasonic testing wastewater—Subpart C—BAT.* There shall be no allowance for the discharge of process wastewater pollutants.

(cc) *Degreasing spent solvents—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(dd) *Dye penetrant testing wastewater.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt tested with dye penetrant method	
Chromium	[illegible]	0.038
Nickel	[illegible]	0.271
Fluoride	12.7	[illegible]

(ee) *Electrocoating rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt electrocoated	
Chromium	[illegible]	0.506
Nickel	1.86	[illegible]
Fluoride	201	[illegible]

(ff) *Miscellaneous wastewater sources.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	14.7	[illegible]

§ 471.33 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). The mass of pollutants in the nickel-cobalt forming process wastewater shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with emulsions	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	10.1	[illegible]
Oil and grease	1.70	1.70
TSS	2.55	2.04
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Rolling contact cooling water.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with water	
Chromium	0.026	0.012
Nickel	0.042	0.026
Fluoride	4.49	1.99
Oil and grease	0.754	0.754
TSS	1.13	0.905
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Tube reducing spent lubricant—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(e) *Drawing spent neat oils—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(f) *Drawing spent emulsions.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt drawn with emulsions	
Chromium	[illegible]	0.015
Nickel	[illegible]	[illegible]
Fluoride	[illegible]	[illegible]
Oil and grease	0.954	0.954
TSS	1.43	1.15
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Extrusion spent lubricants—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(h) *Extrusion press or solution heat treatment contact cooling water.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded nickel-cobalt heat treated	
Chromium	0.031	[illegible]
Nickel	[illegible]	0.031
Fluoride	[illegible]	[illegible]
Oil and grease	[illegible]	0.632
TSS	1.25	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Extrusion press hydraulic fluid leakage.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt extruded	
Chromium	0.066	0.036
Nickel	0.126	0.066
Fluoride	13.8	6.13
Oil and grease	2.32	2.32
TSS	3.46	2.79
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Forging equipment cleaning wastewater.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	[illegible]	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Forging contact cooling water.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged nickel-cobalt cooled with water	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	1.46	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Forging press hydraulic fluid leakage.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	11.2	[illegible]
Oil and grease	1.67	1.67
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Forging spent lubricants—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(n) *Stationary casting contact cooling water.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt cast with stationary casting wellhole	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	72.0	32.0
Oil and grease	12.1	12.1
TSS	18.2	14.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Vacuum melting steam condensate—Subpart C—NSPS.* There shall be no allowance for the discharge of process wastewater pollutants.

(p) *Metal powder production atomization wastewater.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt metal powder produced	
Chromium	0.970	[illegible]
Nickel	1.44	[illegible]
Fluoride	156	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	[illegible]

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Annealing and solution heat treatment contact cooling water—Subpart C—NSPS.* There shall be no allowance for the discharge of process wastewater pollutants.

(r) *Wet air pollution control scrubber blowdown.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.300	[illegible]
Nickel	0.450	[illegible]
Fluoride	[illegible]	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	[illegible]
pH	[illegible]	[illegible]

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Surface treatment spent baths.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.346	[illegible]
Nickel	0.515	[illegible]
Fluoride	55.7	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	14.1	11.2
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Surface treatment rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	141	[illegible]

SUBPART C—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and grease	23.6	[illegible]
TSS	[illegible]	28.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) *Alkaline cleaning spent baths.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.013	0.005
Nickel	0.019	0.013
Fluoride	2.02	0.895
Oil and grease	0.339	0.339
TSS	0.509	0.407
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Alkaline cleaning rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.066	0.035
Nickel	.126	.066
Fluoride	13.9	6.15
Oil and grease	2.33	2.33
TSS	3.50	2.80
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) *Molten salt rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with molten salt	
Chromium	[illegible]	0.019
Nickel	[illegible]	.047
Fluoride	7.44	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) *Ammonia rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with ammonia solution	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]

SUBPART C—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	[illegible]	.391
Oil and grease	.148	.148
TSS	222	178
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) *Sawing or grinding spent emulsions.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt sawed or ground	
Chromium	0.015	[illegible]
Nickel	.002	.015
Fluoride	2.35	1.04
Oil and grease	.394	.394
TSS	591	473
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(z) *Sawing or grinding rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground nickel-cobalt [illegible]	
Chromium	0.067	0.027
Nickel	0.100	0.067
Fluoride	10.8	4.78
Oil and grease	1.81	1.81
TSS	2.72	217
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(aa) *Steam cleaning condensate.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt [illegible] cleaned	
Chromium	0.011	[illegible]
Nickel	0.017	0.011
Fluoride	1.79	0.795
Oil and grease	[illegible]	0.301
TSS	0.452	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(bb) *Hydrostatic tube testing and ultrasonic testing wastewater—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(cc) *Degreasing spent solvents.—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(dd) *Dye penetrant testing wastewater.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt tested with dye penetrant method	
Chromium	[illegible]	0.032
Nickel	0.117	[illegible]
Fluoride	12.7	[illegible]
Oil and grease	2.13	2.13
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(ee) *Electrocoating rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt electrocoated	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	[illegible]	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(ff) *Miscellaneous wastewater sources.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	14.7	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 471.34 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in nickel-cobalt forming wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with emulsions	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	10.1	4.49

(c) *Rolling contact cooling water.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with water	
Chromium	[illegible]	0.011
Nickel	0.042	0.026
Fluoride	[illegible]	[illegible]

(d) *Tube reducing spent lubricants—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(e) *Drawing spent neat oils—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(f) *Drawing spent emulsions.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt drawn with emulsions	
Chromium	[illegible]	0.014
Nickel	[illegible]	0.036
Fluoride	[illegible]	2.52

(g) *Extrusion spent lubricants—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(h) *Extrusion press or solution heat treatment contact cooling water.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded nickel-cobalt heat treated	
Chromium	0.031	0.013
Nickel	[illegible]	0.031
Fluoride	[illegible]	2.20

(i) *Extrusion press hydraulic fluid leakage.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt extruded	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	[illegible]	[illegible]

(j) *Forging equipment cleaning wastewater.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.002	[illegible]
Nickel	0.002	[illegible]
Fluoride	[illegible]	0.105

(k) *Forging contact cooling water.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged nickel-cobalt cooled with water	
Chromium	[illegible]	0.004
Nickel	0.014	[illegible]
Fluoride	[illegible]	0.647

(l) *Forging press hydraulic fluid leakage.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.069	0.026
Nickel	0.103	[illegible]
Fluoride	11.2	4.94

(m) *Forging spent lubricants—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(n) *Stationary casting contact cooling water.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt cast with stationary methods	
Chromium	0.448	0.182
Nickel	[illegible]	[illegible]

SUBPART C—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	[illegible]	[illegible]

(o) *Vacuum melting steam condensate—Subpart C—PSES.* There shall be no allowance for the discharge of wastewater pollutants.

(p) *Metal powder production atomization wastewater.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt metal powder atomized	
Chromium	0.270	[illegible]
Nickel	1.44	0.970
Fluoride	[illegible]	[illegible]

(q) *Annealing and solution heat treatment contact cooling water—Subpart C—PSES.* There shall be no allowance for the discharge of wastewater pollutants.

(r) *Wet air pollution control scrubber blowdown.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	48.2	[illegible]

(s) *Surface treatment spent baths.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	[illegible]	0.141
Nickel	0.514	[illegible]
Fluoride	55.7	24.7

(t) *Surface treatment rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	[illegible]	[illegible]
Nickel	1.30	[illegible]

SUBPART C—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	1.41	82.3

(u) *Alkaline cleaning spent baths.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.013	0.005
Nickel	0.019	0.013
Fluoride	3.02	0.805

(v) *Alkaline cleaning rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.068	0.035
Nickel	0.125	0.078
Fluoride	15.9	8.15

(w) *Molten salt rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with molten salt	
Chromium	0.047	0.018
Nickel	0.069	0.047
Fluoride	7.44	3.30

(x) *Ammonia rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with ammonia solution	
Chromium	0.006	0.003
Nickel	0.019	0.008
Fluoride	0.881	0.391

(y) *Sawing or grinding spent emulsions.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt sawed or ground with emulsions	
Chromium	0.015	0.006
Nickel	0.032	0.015
Fluoride	2.25	1.04

(z) *Sawing or grinding rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground nickel-cobalt rinsed	
Chromium	0.067	0.027
Nickel	0.100	0.067
Fluoride	10.8	4.78

(aa) *Steam cleaning condensate.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt steam cleaned	
Chromium	0.011	0.006
Nickel	0.017	0.011
Fluoride	1.79	0.795

(bb) *Hydrostatic Tube Testing and Ultrasonic Testing Wastewater—Subpart C—PSES.* There shall be no allowance for the discharge of process wastewater pollutants.

(cc) *Degreasing Spent Solvents—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(dd) *Dye Penetrant Testing Wastewater.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt tested with dye penetrant method	
Chromium	0.054	0.026
Nickel	0.409	0.271
Fluoride	12.7	5.63

(ee) *Electrocoating rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt electrocoated	
Chromium	1.25	0.506
Nickel	1.86	1.25
Fluoride	201	89.0

(ff) *Miscellaneous wastewater sources.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.091	0.037
Nickel	0.136	0.091
Fluoride	14.7	8.50

§ 471.35 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in nickel-cobalt forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with emulsions	
Chromium	0.065	0.026
Nickel	0.094	0.063
Fluoride	10.1	4.49

(c) *Rolling contact cooling water.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with water	
Chromium	0.028	0.012
Nickel	0.042	0.028
Fluoride	4.49	1.99

(d) *Tube reducing spent lubricant—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(e) *Drawing spent neat oils—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(f) *Drawing spent emulsions.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt drawn with emulsions	
Chromium	0.036	0.015
Nickel	0.053	0.036
Fluoride	5.88	2.52

(g) *Extrusion spent lubricants—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(h) *Extrusion press or solution heat treatment contact cooling water.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded nickel-cobalt heat treated	
Chromium	0.031	0.013
Nickel	0.046	0.031
Fluoride	4.95	2.20

(i) *Extrusion press hydraulic fluid leakage.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt extruded	
Chromium	0.066	0.034
Nickel	0.128	0.066
Fluoride	13.8	6.13

(j) *Forging equipment cleaning wastewater.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.002	0.0006
Nickel	0.002	0.002
Fluoride	0.236	0.106

(k) *Forging contact cooling water.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged nickel-cobalt cooled with water	
Chromium	0.009	0.004
Nickel	0.014	0.009
Fluoride	1.48	0.647

(l) *Forging press hydraulic fluid leakage.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.059	0.026
Nickel	0.103	0.059
Fluoride	11.2	4.94

(m) *Forging spent lubricants—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(n) *Stationary casting contact cooling water.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt cast with stationary methods	
Chromium	0.448	0.152
Nickel	0.686	0.448
Fluoride	72.0	32.0

(o) *Vacuum melting steam condensate—Subpart C—PSNS.* There shall be no allowance for the discharge of process wastewater pollutants.

(p) *Metal powder production atomization wastewater.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt metal powder atomized	
Chromium	0.970	0.320
Nickel	1.44	0.970
Fluoride	156	69.2

(q) *Annealing and Solution Heat Treatment Contact Cooling Water—Subpart C—PSNS.* There shall be no allowance for the discharge of process wastewater pollutant.

(r) *Wet Air Pollution Control Scrubber Blowdown.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.300	0.122
Nickel	0.450	0.300
Fluoride	48.2	21.4

(s) *Surface treatment spent baths.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.346	0.141
Nickel	0.515	0.346
Fluoride	55.7	24.7

(t) *Surface treatment rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.874	0.354
Nickel	1.30	0.873
Fluoride	141	62.9

(u) *Alkaline cleaning spent baths.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.013	0.005
Nickel	0.019	0.013
Fluoride	2.02	0.895

(v) *Alkaline cleaning rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.086	0.035
Nickel	0.128	0.086
Fluoride	13.8	6.15

(w) *Molten salt rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with molten salt	
Chromium	0.047	0.018
Nickel	0.069	0.047
Fluoride	7.44	2.80

(x) *Ammonia rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with ammonia solution	
Chromium	0.006	0.002
Nickel	0.038	0.006
Fluoride	0.991	0.391

(y) *Sawing or grinding spent emulsions.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt sawed or ground with emulsions	
Chromium	0.015	0.006
Nickel	0.022	0.015
Fluoride	2.35	1.04

(z) *Sawing or grinding rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground nickel-cobalt rinsed	
Chromium	0.067	0.027
Nickel	0.100	0.067
Fluoride	10.8	4.78

(aa) *Steam cleaning condensate.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt steam cleaned	
Chromium	0.011	0.005
Nickel	0.017	0.011
Fluoride	1.79	0.795

(bb) *Hydrostatic tube testing and ultrasonic testing wastewater—Subpart C—PSNS.* There shall be no allowance discharge of process wastewater pollutants.

(cc) *Degreasing spent solvents—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(dd) *Dye penetrant testing wastewater.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt tested with dye penetrant method	
Chromium	0.094	0.036
Nickel	0.409	0.271
Fluoride	12.7	5.03

(ee) *Electrocoating rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt electroformed	
Chromium	1.25	0.506
Nickel	1.86	0.125
Fluoride	201	89.0

(ff) *Miscellaneous wastewater sources.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.091	0.037
Nickel	0.138	0.091
Fluoride	14.7	5.50

§ 471.36 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart D—Precious Metals Forming Subcategory

§ 471.40 Applicability; description of the precious metals forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the precious metals forming subcategory.

§ 471.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils—Subpart D—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals rolled with emulsions	
Chromium	0.026	0.012
Copper	0.147	0.077
Cyanide	0.023	0.010
Silver	0.031	0.015
Oil and grease	1.54	0.925
TSS	3.16	1.51
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart D—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with emulsions	
Cadmium	0.016	0.007
Copper	0.091	0.048
Cyanide	0.014	0.006
Silver	0.020	0.008
Oil and grease	0.950	0.570
TSS	1.95	0.926
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Drawing spent soap solutions.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with soap solutions	
Cadmium	0.001	0.0005
Copper	0.006	0.003
Cyanide	0.0009	0.0004
Silver	0.001	0.0005
Oil and grease	0.063	0.038
TSS	0.126	0.061

SUBPART D—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Metal powder production wet atomization wastewater.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals powder wet atomized	
Cadmium	2.27	1.00
Copper	12.7	6.70
Cyanide	1.94	0.802
Silver	2.70	1.14
Oil and grease	134	80.2
TSS	274	130
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Heat treatment contact cooling water.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded precious metals heat treated	
Cadmium	1.42	0.626
Copper	7.98	4.17
Cyanide	1.21	0.501
Silver	1.71	0.709
Oil and grease	85.4	50.1
TSS	171	81.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Semi-continuous or continuous casting contact cooling water.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	3.50	1.55
Copper	19.6	10.3
Cyanide	2.99	1.24
Silver	4.23	1.75
Oil and grease	206	124
TSS	423	209
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Stationary casting contact cooling water—Subpart D—BPT.* **There shall be no discharge of process wastewater pollutants.**

(j) *Direct chill casting contact cooling water.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the direct chill method	
Cadmium	3.57	1.62
Copper	20.5	10.8
Cyanide	3.13	1.30
Silver	4.43	1.85
Oil and grease	216	130
TSS	445	211
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Shot casting contact cooling water.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals shot cast	
Cadmium	1.25	0.551
Copper	8.06	3.67
Cyanide	1.07	0.441
Silver	1.51	0.624
Oil and grease	72.4	44.1
TSS	151	71.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Wet air pollution control scrubber blowdown—Subpart D—BPT.* **There shall be no discharge of process wastewater pollutants.**

(m) *Pressure bonding contact cooling water.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal pressure bonded	
Cadmium	0.029	0.013
Copper	0.159	0.084
Cyanide	0.024	0.010
Silver	0.034	0.014
Oil and grease	1.67	1.00
TSS	3.43	1.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Surface treatment spent baths.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.035	0.015
Copper	0.183	0.097
Cyanide	0.028	0.012
Silver	0.040	0.017
Oil and grease	1.93	1.16
TSS	3.95	1.65

SUBPART D—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Surface treatment rinse.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.970	0.430
Copper	5.4	2.85
Cyanide	0.825	0.340
Silver	1.20	0.490
Oil and grease	57.0	34.0
TSS	120	55.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Alkaline cleaning spent baths.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.021	0.009
Copper	0.114	0.060
Cyanide	0.018	0.007
Silver	0.025	0.010
Oil and grease	1.20	0.720
TSS	2.46	1.170
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Alkaline cleaning rinse.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	3.81	1.66
Copper	21.3	11.2
Cyanide	3.25	1.35
Silver	4.58	1.91
Oil and grease	224	13.5
TSS	459	219
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Alkaline cleaning prebonding wastewater.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal cleaned prior to bonding	
Cadmium	3.95	1.74
Copper	22.1	11.6
Cyanide	3.37	1.39
Silver	4.76	1.97
Oil and grease	232	139
TSS	476	226
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Tumbling or burnishing wastewater.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals tumbled or burnished	
Cadmium	4.12	1.82
Copper	23.0	12.1
Cyanide	3.51	1.45
Silver	4.96	2.06
Oil and grease	242	145
TSS	496	238
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding spent oils—Subpart D—BPT.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals sawed or ground with emulsions	
Cadmium	[illegible]	0.014
Copper	0.178	[illegible]
Cyanide	0.027	0.011
Silver	[illegible]	0.016
Oil and grease	1.87	1.12
TSS	[illegible]	1.82
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Degreasing spent solvents—Subpart D—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils—Subpart D—BAT.* There shall be no discharge of wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals rolled with emulsions	
Cadmium	0.026	0.012
Copper	0.147	0.077
Cyanide	0.023	0.010
Silver	0.032	0

(c) *Drawing spent neat oils—Subpart D—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with emulsions	
Cadmium	0.016	0.007
Copper	0.091	0.048
Cyanide	0.014	0.006
Silver	0.020	0.009

(e) *Drawing spent soap solutions.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with soap solutions	
Cadmium	0.001	0.0005
Copper	[illegible]	[illegible]
Cyanide	[illegible]	[illegible]
Silver	0.002	[illegible]

(f) *Metal powder production wet atomization wastewater.*

SUBPART D—BAT†

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals powder wet atomized	
Cadmium	2.27	1.00
Copper	12.7	6.66
Cyanide	1.94	0.802
Silver	2.74	1.14

(g) *Heat treatment contact cooling water.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals heat treated	
Cadmium	0.142	0.063
Copper	0.793	0.417
Cyanide	0.121	0.050
Silver	0.171	0.071
Gold		

(h) *Semi-continuous and continuous casting contact cooling water.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	0.350	0.155
Copper	1.96	1.03
Cyanide	0.299	0.124
Silver	0.423	0.175

(i) *Stationary casting contact cooling water—Subpart D—BAT.* There shall be no discharge of process wastewater pollutants.

(j) *Direct chill casting contact cooling water.*

Subpart D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the Direct chill method	
Cadmium	0.3676	0.162
Copper	2.05	1.08
Cyanide	0.313	0.130
Silver	0.443	0.184

(k) *Shot casting contact cooling water.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals shot cast	
Cadmium	[illegible]	[illegible]
Copper	[illegible]	[illegible]
Cyanide	0.107	[illegible]
Silver	0.151	[illegible]

(l) *Wet air pollution control scrubber blowdown—Subpart D—BAT.* There

shall be no discharge of process wastewater pollutants.

(m) *Pressure bonding contact cooling water.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metal and base metal pressure bonded	
Cadmium	0.0297	0.013
Copper	0.159	0.064
Cyanide	0.0247	0.010
Silver	0.0342	0.014

(n) *Surface treatment spent baths.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.033	0.015
Copper	0.183	0.097
Cyanide	0.026	0.012
Silver	0.040	0.017

(o) *Surface treatment rinse.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.210	0.093
Copper	1.17	0.610
Cyanide	0.179	0.074
Silver	0.253	0.106

(p) *Alkaline cleaning spent baths.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.021	0.009
Copper	0.114	0.060
Cyanide	0.018	0.007
Silver	0.025	0.010

(q) *Alkaline cleaning rinse.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.361	0.166
Copper	2.13	1.12
Cyanide	0.325	0.135
Silver	0.459	0.191

(r) *Alkaline cleaning prebonding wastewater.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metal and base metal cleaned prior to bonding	
Cadmium	0.450	0.174
Copper	2.210	1.16
Cyanide	0.307	0.139
Silver	0.475	0.197

(s) *Tumbling or burnishing wastewater.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals tumbled or burnished	
Cadmium	0.412	0.159
Copper	2.300	1.21
Cyanide	0.351	0.145
Silver	0.495	0.206

(t) *Sawing or grinding spent neat oils—Subpart D—BAT.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals sawed or ground with emulsions	
Cadmium	0.0327	0.0114
Copper	0.178	0.0894
Cyanide	0.0277	0.0111
Silver	0.0381	0.016

(v) *Degreasing spent solvents—Subpart D—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.43 **New source performance standards (NSPS).**

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) *Rolling Spent Neat Oils—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals rolled with emulsions	
Cadmium	0.036	0.012
Copper	0.147	0.077
Cyanide	0.023	0.010
Silver	0.032	0.013
Oil and grease	1.54	0.625
TSS	3.16	1.51
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with emulsions	
Cadmium	0.017	0.007
Copper	0.091	0.048
Cyanide	0.014	0.006
Silver	0.020	0.008
Oil and grease	0.950	0.570
TSS	1.95	0.927
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) *Drawing spent soap solutions.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with soap solutions	
Cadmium	0.001	0.0005
Copper	0.006	0.003
Cyanide	0.009	0.0004
Silver	0.002	0.006
Oil and grease	0.063	0.038
TSS	0.128	0.061
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Metal powder production atomization wastewater.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals powder wet atomized	
Cadmium	2.27	1.00
Copper	12.7	6.68
Cyanide	1.94	0.802
Silver	2.74	1.14
Oil and grease	134	80.2
TSS	274	131
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Heat treatment contact cooling water.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals heat treated	
Cadmium	0.142	0.063
Copper	0.793	0.417
Cyanide	0.121	0.050
Silver	0.171	0.071
Oil and grease	8.34	5.01
TSS	17.1	8.13
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Semi-continuous and continuous casting contact cooling water.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	0.350	0.155
Copper	1.96	1.01
Cyanide	0.299	0.124
Silver	0.423	0.175
Oil and grease	30.6	12.4
TSS	42.3	20.1
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Stationary casting contact cooling water—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

(j) *Direct chill casting contact cooling water.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the direct chill method	
Cadmium	0.387	0.162
Copper	2.05	1.08

SUBPART D—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide	0.313	0.130
Silver	0.443	0.184
Oil and grease	21.6	13.0
TSS	44.1	21.1
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Shot casting contact cooling water.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals shot cast	
Cadmium	0.125	0.055
Copper	0.698	0.367
Cyanide	0.107	0.044
Silver	0.151	0.063
Oil and grease	7.34	4.41
TSS	15.1	7.16
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Wet air pollution control scrubber blowdown—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

(m) *Pressure bonding contact cooling water.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal pressure bonded	
Cadmium	0.025	0.013
Copper	0.159	0.084
Cyanide	0.024	0.010
Silver	0.034	0.014
Oil and grease	1.67	1.00
TSS	3.43	1.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Surface treatment spent baths.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.003	0.015
Copper	0.183	0.097
Cyanide	0.026	0.012
Silver	0.040	0.017
Oil and grease	1.93	1.16
TSS	3.95	1.88
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Surface treatment rinse.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.210	0.093
Copper	1.17	0.616
Cyanide	0.179	0.074
Silver	0.253	0.105
Oil and grease	12.3	7.39
TSS	25.3	12.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Alkaline cleaning spent baths.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.021	0.009
Copper	0.114	0.060
Cyanide	0.018	0.007
Silver	0.025	0.010
Oil and grease	1.20	0.720
TSS	2.46	1.17
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Alkaline cleaning rinse.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.381	0.168
Copper	2.13	1.112
Cyanide	0.325	0.135
Silver	0.476	0.191
Oil and grease	22.4	13.5
TSS	45.9	21.9
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Alkaline cleaning pre-bonding wastewater.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal cleaned prior to bonding	
Cadmium	0.400	0.174
Copper	2.21	1.16
Cyanide	0.337	0.139
Silver	0.476	0.197
Oil and grease	23.2	13.9
TSS	47.6	22.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Tumbling or burnishing wastewater.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals tumbled or burnished	
Cadmium	0.412	0.182
Copper	2.30	1.21
Cyanide	0.351	0.145
Silver	0.496	0.206
Oil and grease	24.2	14.5
TSS	49.6	23.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding spent neat oils—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals sawed or ground with emulsions	
Cadmium	0.032	0.014
Copper	0.178	0.064
Cyanide	0.027	0.011
Silver	0.038	0.016
Oil and grease	1.87	1.12
TSS	3.83	1.82
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Degreasing spent solvents—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

§ 471.44 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1985 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in precious metals forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart D—PSES.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals rolled with emulsions	
Cadmium	0.026	0.012
Copper	0.147	0.077
Cyanide	0.023	0.010
Silver	0.032	0.013

(c) *Drawing spent neat oils—Subpart D—PSES.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with emulsions	
Cadmium	0.016	0.007
Copper	0.091	0.0048
Cyanide	0.014	0.006
Silver	0.020	0.008

(e) *Drawing spent soap solutions.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with soap solutions	
Cadmium	0.001	0.0005
Copper	0.006	0.003
Cyanide	0.0009	0.0004
Silver	0.002	0.0006

(f) *Metal powder production atomization wastewater.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals powder wet atomized	
Cadmium	2.27	1.00
Copper	12.7	6.66
Cyanide	1.94	0.802
Silver	2.74	1.14

(g) *Heat treatment contact cooling water.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals heat treated	
Cadmium	0.142	0.060
Copper	0.793	0.417
Cyanide	0.121	0.050
Silver	0.171	0.071

(h) *Semi-continuous and continuous casting contact cooling water.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	0.350	0.145
Copper	1.96	1.00
Cyanide	0.299	0.124
Silver	0.423	0.175

(i) *Stationary casting contact cooling water—Subpart D—PSES.* There shall be no discharge of process wastewater pollutants.

(j) *Direct chill casting contact cooling water.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the direct chill method	
Cadmium	0.367	0.152
Copper	2.05	1.08
Cyanide	0.313	0.130
Silver	0.443	0.184

(k) *Shot casting contact cooling water.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals shot cast	
Cadmium	0.125	0.055
Copper	0.688	0.367
Cyanide	0.107	0.044
Silver	0.151	0.068

(l) *Wet air pollution control scrubber blowdown—Subpart D—PSES.* There shall be no discharge of process wastewater pollutants.

(m) *Pressure bonding contact cooling water.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metal and base metal pressure bonded	
Cadmium	0.029	0.013
Copper	0.159	0.064
Cyanide	0.024	0.010
Silver	0.034	0.014

(n) *Surface treatment spent baths.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.033	0.015
Copper	0.183	0.097
Cyanide	0.026	0.012
Silver	0.040	0.017

(o) *Surface treatment rinse.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.210	0.093
Copper	1.17	0.616
Cyanide	0.179	0.074
Silver	0.253	0.105

(p) *Alkaline cleaning spent baths.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.021	0.009
Copper	0.114	0.060
Cyanide	0.018	0.007
Silver	0.025	0.010

(q) *Alkaline cleaning rinse.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.361	0.158
Copper	2.13	1.12
Cyanide	0.325	0.135

SUBPART D—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Silver	0.459	0.191

(r) *Alkaline cleaning prebonding wastewater.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal cleaned prior to bonding	
Cadmium	0.400	0.174
Copper	2.210	1.16
Cyanide	0.337	0.139
Silver	0.476	0.197

(s) *Tumbling or burnishing wastewater.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals tumbled or burnished	
Cadmium	0.412	0.182
Copper	2.300	1.21
Cyanide	0.351	0.145
Silver	0.496	0.206

(t) *Sawing or grinding spent neat oils—Subpart D—PSES.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals sawed or ground with emulsions	
Cadmium	0.032	0.014
Copper	0.176	0.094
Cyanide	0.027	0.011
Silver	0.038	0.015

(v) *Degreasing spent solvents—Subpart D—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.45 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater pollutants in precious metals forming wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart D—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals rolled with emulsions	
Cadmium	0.026	0.012
Copper	0.147	0.077
Cyanide	0.023	0.010
Silver	0.030	0.013

(c) *Drawing spent neat oils—Subpart D—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with emulsions	
Cadmium	0.016	0.007
Copper	0.091	0.048
Cyanide	0.014	0.006
Silver	0.020	0.008

(e) *Drawing spent soap solutions.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with soap solutions	
Cadmium	0.001	0.0005
Copper	0.006	0.003
Cyanide	0.0009	0.0004
Silver	0.002	0.0008

(f) *Metal powder production wet atomization wastewater.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals powder wet atomized	
Cadmium	2.27	1.00

SUBPART D—PSNS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Copper	12.7	6.58
Cyanide	1.94	0.802
Silver	2.74	1.14

(g) *Heat treatment contact cooling water.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extended precious metals heat treated	
Cadmium	0.142	0.063
Copper	0.793	0.417
Cyanide	0.121	0.050
Silver	0.171	0.071

(h) *Semi-continuous and continuous casting contact cooling water.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	0.360	0.155
Copper	1.95	0.829
Cyanide	0.299	0.124
Silver	0.420	0.175

(i) *Stationary casting contact cooling water—Subpart D—PSNS.* **There shall be no discharge of process wastewater pollutants.**

(j) *Direct chill casting contact cooling water.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the direct chill method	
Cadmium	0.367	0.162
Copper	2.05	1.08
Cyanide	0.313	0.130
Silver	0.443	0.184

(k) *Shot casting contact cooling water.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals heat treated	
Cadmium	0.125	0.055
Copper	0.698	0.367
Cyanide	0.107	0.044
Silver	0.151	0.0631

(l) *Wet air pollution control scrubber blowdown—Subpart D—PSNS.* **There shall be no discharge of process wastewater pollutants.**

(m) *Pressure bonding contact cooling water.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal pressure bonded	
Cadmium	0.029	0.013
Copper	0.158	0.084
Cyanide	0.024	0.010
Silver	0.034	0.014

(n) *Surface treatment spent baths.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.033	0.015
Copper	0.163	0.097
Cyanide	0.026	0.012
Silver	0.040	0.017

(o) *Surface treatment rinse.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.210	0.093
Copper	1.17	0.616
Cyanide	0.179	0.074
Silver	0.253	0.105

(p) *Alkaline cleaning spent baths.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.021	0.009
Copper	0.114	0.060
Cyanide	0.011	0.007
Silver	0.025	0.010

(q) *Alkaline cleaning rinse.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.361	0.166
Copper	2.13	1.12
Cyanide	0.305	0.135
Silver	0.456	0.191

(r) *Alkaline cleaning pre-bonding wastewater.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal cleaned prior to bonding	
Cadmium	0.400	0.174
Copper	2.21	1.16
Cyanide	0.337	0.139
Silver	0.476	0.197

(s) *Tumbling or burnishing wastewater.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals tumbled or burnished	
Cadmium	0.412	0.182
Copper	2.30	1.21
Cyanide	0.351	0.145
Silver	0.496	0.206

(t) *Sawing or grinding spent neat oils—Subpart D—PSNS.* **There shall be no discharge of process wastewater pollutants.**

(u) *Sawing or grinding spent emulsions.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals sawed or ground with emulsions	
Cadmium	0.032	0.014
Copper	0.178	0.080
Cyanide	0.027	0.011
Silver	0.038	0.016

(v) *Degreasing spent solvents—Supart D—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.48 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart E—Refractory Metals Forming Subcategory

§ 471.50 Applicability; description of the refractory metals forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the refractory metals forming subcategory.

§ 471.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils and graphite based lubricants—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals rolled with emulsions	
Copper	0.815	0.429
Nickel	0.824	0.545
Fluoride	25.5	11.3
Molybdenum	2.84	1.47
Oil and grease	11.0	5.15
TSS	17.6	8.17
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent lubricants—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent lubricants—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion press hydraulic fluid leakage.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals extruded	
Copper	2.26	1.19
Nickel	2.29	1.51
Fluoride	70.8	31.4
Molybdenum	7.87	4.07
Oil and grease	23.8	14.3
TSS	48.8	23.2
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Forging spent lubricants—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(g) *Forging contact cooling water.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged refractory metals cooled with water	
Copper	0.614	0.323
Nickel	0.780	0.410
Fluoride	19.2	8.53
Molybdenum	2.14	1.11
Oil and grease	5.46	1.86
TSS	13.3	6.30
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Equipment cleaning wastewater.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.790	0.420
Nickel	0.800	0.530
Fluoride	25.0	11.0
Molybdenum	0.850	0.360
Oil and grease	8.30	5.00
TSS	17.0	8.10
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Metal powder production wastewater.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals powder produced	
Copper	0.534	0.281
Nickel	0.540	0.357
Fluoride	16.70	7.42
Molybdenum	8.99	4.65
Oil and grease	5.62	3.37
TSS	11.5	5.48
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Metal powder production floor wash wastewater—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(k) *Metal powder pressing spent lubricants—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(l) *Surface treatment spent baths.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	0.739	0.389
Nickel	0.747	0.494
Fluoride	23.2	10.3
Molybdenum	2.57	1.33
Oil and grease	7.78	4.68
TSS	16.0	7.59
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Surface treatment rinse.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	230	121
Nickel	232	154
Fluoride	7,200	3,200
Molybdenum	800	414
Oil and grease	2,420	1,450
TSS	4,960	2,360
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Alkaline cleaning spent baths.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	0.635	0.334

SUBPART E—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	0.641	0.424
Fluoride	18.9	8.82
Molybdenum	2.21	1.14
Oil and grease	8.86	4.01
TSS	13.7	6.51
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Alkaline cleaning rinse.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	1,550	818
Nickel	1,570	1,040
Fluoride	46,800	21,600
Molybdenum	5,400	2,790
Oil and grease	16,300	9,790
TSS	33,500	15,900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Molten salt rinse.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals treated with molten salt	
Copper	12.1	5.33
Nickel	12.2	5.04
Fluoride	377	167
Molybdenum	41.9	2.17
Oil and grease	127	76.0
TSS	260	124
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Tumbling or burnishing wastewater.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tumbled or burnished	
Copper	23.6	12.5
Nickel	24.0	16.0
Fluoride	744	330
Molybdenum	82.7	42.6
Oil and grease	25.0	150
TSS	513	244
pH	(1)	(1)

Within the range of 7.5 to 10.0 at all times.

(r) *Sawing or grinding spent neat oils—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(s) *Sawing or grinding spent emulsions.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with emulsions	
Copper	0.565	0.297
Nickel	0.570	0.377
Fluoride	17.7	7.84
Molybdenum	1.97	1.02
Oil and grease	5.94	3.57
TSS	12.2	5.79
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding contact cooling water.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with contact cooling water	
Copper	46.2	24.3
Nickel	46.7	30.9
Fluoride	1450	642
Molybdenum	161	83.1
Oil and grease	486	292
TSS	997	474
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) *Sawing or grinding rinse.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground refractory metals rinsed	
Copper	0.257	0.135
Nickel	0.259	0.172
Fluoride	8.03	3.57
Molybdenum	0.893	0.462
Oil and grease	2.70	1.62
TSS	5.54	2.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Wet air pollution control scrubber blowdown.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground, surface coated or surface treated	
Copper	1.50	0.787
Nickel	1.51	1.00
Fluoride	46.8	20.8
Molybdenum	5.20	3.58
Oil and grease	15.8	9.45
TSS	32.3	15.4

SUBPART E—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) *Miscellaneous wastewater sources.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.656	0.345
Nickel	0.663	0.438
Fluoride	20.6	9.11
Molybdenum	2.28	1.18
Oil and grease	6.9	4.14
TSS	14.2	6.73
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) *Dye penetrant testing wastewater.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tested	
Copper	0.150	0.078
Nickel	0.150	0.099
Fluoride	4.60	2.09
Molybdenum	0.160	0.071
Oil and grease	1.60	0.930
TSS	3.20	1.50
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) *Degreasing spent solvents—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.52 Effluent limitations representating the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils and graphite based lubricants—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART E-BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals rolled with emulsions	
Copper	0.549	0.262
Nickel	0.236	0.157
Fluoride	25.5	11.3
Molybdenum	2.16	0.957

(c) *Drawing spent lubricants—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent lubricants—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion press hydraulic fluid leakage.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals extruded	
Copper	1.5	0.730
Nickel	0.650	0.340
Fluoride	71.000	31.0
Molybdenum	0.820	0.380

(f) *Forging spent lubricants—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(g) *Forging contact cooling water.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged refractory metals cooled with water	
Copper	0.041	0.020
Nickel	0.018	0.012
Fluoride	1.92	0.893
Molybdenum	0.163	0.072

(h) *Equipment cleaning wastewater.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.174	0.083
Nickel	0.075	0.051
Fluoride	8.05	3.59
Molybdenum	0.684	0.305

(i) *Metal powder production wastewater.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals powder produced	
Copper	0.360	0.172
Nickel	0.155	0.104
Fluoride	16.7	7.42
Molybdenum	1.42	0.627

(j) *Metal powder production floor wash wastewater—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(k) *Metal powder pressing spent lubricants—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(l) *Surface treatment spent baths.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	0.498	0.237
Nickel	0.214	0.144
Fluoride	23.2	10.3
Molybdenum	1.96	0.368

(m) *Surface treatment rinse.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	15.5	7.38
Nickel	6.68	4.48
Fluoride	720	320
Molybdenum	60.9	27.0

(n) *Alkaline cleaning spent baths.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	0.428	0.204
Nickel	0.184	0.124
Fluoride	19.9	8.82
Molybdenum	1.68	0.745

(o) *Alkaline cleaning rinse.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	10.5	4.98
Nickel	4.49	3.02
Fluoride	486	216
Molybdenum	41.1	18.2

(p) *Molten salt rinse.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals treated with molten salt	
Copper	0.810	0.386
Nickel	0.348	0.234
Fluoride	37.7	16.7
Molybdenum	1.41	3.19

(q) *Tumbling or burnishing wastewater.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tumbled or burnished	
Copper	1.60	0.763
Nickel	0.666	0.463
Fluoride	74.4	33.0
Molybdenum	6.29	2.79

(r) *Sawing or grinding spent neat oils—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(s) *Sawing or grinding spent emulsions.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with emulsions	
Copper	0.380	0.181
Nickel	0.164	0.110
Fluoride	17.7	7.84
Molybdenum	1.50	0.663

(t) *Sawing or grinding contact cooling water.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with contact cooling water	
Copper	3.11	1.48
Nickel	1.34	0.899
Fluoride	145.0	64.2
Molybdenum	12.2	5.42

(u) *Sawing or grinding rinse.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground refractory metals rinsed	
Copper	0.018	0.009
Nickel	0.008	0.005
Fluoride	0.603	0.350
Molybdenum	0.088	0.030

(v) *Wet air pollution control scrubber blowdown.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed, surface coated or surface treated	
Copper	1.01	0.480
Nickel	0.433	0.291
Fluoride	46.8	20.8
Molybdenum	3.96	1.76

(w) *Miscellaneous wastewater sources.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.856	0.345
Nickel	0.663	0.436
Fluoride	20.6	9.11
Molybdenum	2.28	1.18

(x) *Dye penetrant testing wastewater.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals product finished	
Copper	0.010	0.004
Nickel	0.005	0.003
Fluoride	0.460	0.200
Molybdenum	0.039	0.016

(y) *Degreasing spent solvents—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.53 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) *Rolling spent neat oils and graphite based lubricants—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals rolled with emulsions	
Copper	0.549	0.262
Nickel	0.236	0.159
Fluoride	25.5	11.3
Molybdenum	2.16	0.957
Oil and grease	4.29	4.29
TSS	6.44	5.15
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent lubricants.—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent lubricants.—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion press hydraulic fluid leakage.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals extruded	
Copper	1.53	0.726
Nickel	0.655	0.441
Fluoride	7.08	31.4
Molybdenum	5.99	2.66
Oil and grease	11.9	11.9
TSS	17.9	14.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Forging spent lubricants—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(g) *Forging contact cooling water.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged refractory metals cooled with water	
Copper	0.041	0.320
Nickel	0.018	0.021
Fluoride	1.92	1.92
Molybdenum	0.163	0.072
Oil and grease	0.323	0.323
TSS	0.485	1.94
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Equipment cleaning wastewater.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.174	0.077
Nickel	0.075	0.051
Fluoride	8.08	3.59
Molybdenum	0.684	0.303
Oil and grease	1.36	1.36
TSS	3.04	1.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Metal powder production wastewater.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals powder produced	
Copper	0.360	0.172
Nickel	0.155	0.104
Fluoride	16.7	7.42
Molybdenum	1.42	0.627
Oil and grease	2.81	2.81
TSS	4.22	3.37
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Metal powder production floor wash wastewater—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(k) *Metal powder pressing spent lubricants—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(l) *Surface treatment spent baths.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	0.498	0.237
Nickel	0.214	0.144
Fluoride	23.2	10.9
Molybdenum	1.86	0.868
Oil and grease	3.85	3.69
TSS	3.84	4.67
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Surface treatment rinse.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	15.5	7.38
Nickel	6.66	4.48
Fluoride	720	320
Molybdenum	69.9	27.0
Oil and grease	121	121
TSS	182	145
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Alkaline cleaning spent baths.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	0.426	0.204
Nickel	.184	0.124
Fluoride	19.9	8.82
Molybdenum	1.68	0.745
Oil and grease	3.34	3.34
TSS	5.01	4.01
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Alkaline cleaning rinse.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	10.5	4.98
Nickel	4.49	3.02
Fluoride	486	216
Molybdenum	41.1	18.2
Oil and grease	81.6	81.6
TSS	123	97.9
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Molten salt rinse.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals treated with molten salt	
Copper	0.810	0.386
Nickel	0.346	0.254
Fluoride	37.7	16.7
Molybdenum	3.19	1.41
Oil and grease	5.29	5.29
TSS	9.5	7.8
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Tumbling or burnishing wastewater.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tumbled or burnished	
Copper	1.60	0.763
Nickel	0.688	0.463
Fluoride	74.4	33.0
Molybdenum	6.29	2.79
Oil and grease	12.5	12.5
TSS	18.8	15.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Sawing or grinding spent neat oils—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(s) *Sawing or grinding spent emulsions.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with emulsions	
Copper	0.360	0.161
Nickel	0.164	0.110
Fluoride	17.7	7.84
Molybdenum	1.5	0.663
Oil and grease	2.97	2.97
TSS	4.46	3.57
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding contact cooling water.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with contact cooling water	
Copper	3.11	1.48

SUBPART E—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	1.34	0.800
Fluoride	185	84.2
Molybdenum	12.2	5.42
Oil and grease	24.3	24.3
TSS	36.5	25.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) *Sawing or grinding rinse.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground refractory metals rinsed	
Copper	0.018	0.009
Nickel	0.008	0.005
Fluoride	0.803	0.357
Molybdenum	0.068	0.030
Oil and grease	0.135	0.135
TSS	0.203	0.162
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Wet air pollution control scrubber blowdown.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed, ground, surface coated or surface treated	
Copper	1.01	0.480
Nickel	0.433	0.291
Fluoride	46.8	20.8
Molybdenum	3.96	1.76
Oil and grease	7.87	7.87
TSS	11.8	9.45
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) *Miscellaneous wastewater sources.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.656	0.345
Nickel	0.663	0.438
Fluoride	20.6	9.11
Molybdenum	2.26	1.16
Oil and grease	6.9	4.14
TSS	14.2	6.73
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) *Dye penetrant testing wastewater.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals product tested	
Copper	0.010	0.005
Nickel	0.005	0.003
Fluoride	0.460	0.200
Molybdenum	0.039	0.018
Oil and grease	0.078	0.078
TSS	0.120	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) *Degreasing spent solvents—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

§ 471.54 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in refractory metals forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils and graphite based lubricants—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals rolled with emulsions	
Copper	0.815	0.429
Nickel	[illegible]	0.545
Fluoride	25.5	11.4
Molybdenum	2.84	1.47

(c) *Drawing spent lubricants—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent lubricants—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion press hydraulic fluid leakage.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals extruded	
Copper	[illegible]	1.19
Nickel	[illegible]	1.51
Fluoride	70.8	31.4
Molybdenum	7.87	4.07

(f) *Forging spent lubricants—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(g) *Forging contact cooling water.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged refractory metals cooled with water	
Copper	0.062	0.033
Nickel	0.062	0.041
Fluoride	1.92	0.853
Molybdenum	0.214	0.111

(h) *Equipment cleaning wastewater.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	[illegible]	0.136
Nickel	0.261	0.173
Fluoride	[illegible]	[illegible]
Molybdenum	[illegible]	[illegible]

(i) *Metal powder production wastewater.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals powder produced	
Copper	[illegible]	[illegible]
Nickel	[illegible]	0.357
Fluoride	16.7	7.42
Molybdenum	[illegible]	[illegible]

(j) *Metal powder production floor wash wastewater—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(k) *Metal powder pressing spent lubricants—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(l) *Surface treatment spent baths.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	[illegible]	[illegible]
Nickel	0.747	[illegible]
Fluoride	[illegible]	10.3
Molybdenum	2.57	[illegible]

(m) *Surface treatment rinse.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	23.0	12.1
Nickel	23.3	15.4
Fluoride	[illegible]	320
Molybdenum	[illegible]	41.4

(n) *Alkaline cleaning spent baths.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	0.635	0.334
Nickel	0.642	0.424
Fluoride	19.9	8.82
Molybdenum	2.21	1.14

(o) *Alkaline cleaning rinse.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	15.5	8.16
Nickel	15.7	10.4
Fluoride	486.	216.0
Molybdenum	54.0	27.9

(p) *Molten salt rinse.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals treated with molten salt	
Copper	1.20	0.633
Nickel	1.22	[illegible]
Fluoride	37.7	16.7

SUBPART E—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Molybdenum	4.19	2.17

(q) *Tumbling or burnishing wastewater.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tumbled or burnished	
Copper	3.38	1.25
Nickel	2.40	1.59
Fluoride	74.4	33.0
Molybdenum	8.27	4.26

(r) *Sawing or grinding spent neat oils—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(s) *Sawing or grinding spent emulsions.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with emulsions	
Copper	0.565	0.297
Nickel	0.570	0.377
Fluoride	17.7	7.64
Molybdenum	1.97	1.02

(t) *Sawing or grinding contact cooling water.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with contact cooling water	
Copper	4.82	2.43
Nickel	4.67	3.09
Fluoride	145.	54.2
Molybdenum	16.1	8.31

(u) *Sawing or grinding rinse.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground refractory metals rinsed	
Copper	0.028	0.014

SUBPART E—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	0.026	0.017
Fluoride	0.804	0.357
Molybdenum	0.089	0.046

(v) *Wet air pollution control blowdown.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed, surface coated or surface treated	
Copper	1.50	0.787
Nickel	1.51	1.00
Fluoride	48.9	20.8
Molybdenum	5.20	2.69

(w) *Miscellaneous wastewater sources.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.656	0.345
Nickel	0.563	0.436
Fluoride	23.6	9.11
Molybdenum	2.28	1.18

(x) *Dye penetrant testing wastewater.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals product tested	
Copper	0.015	0.006
Nickel	0.016	0.010
Fluoride	0.460	0.205
Molybdenum	0.053	0.027

(y) *Degreasing spent solvents—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

§ 471.55 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater pollutants in the refractory metals forming process wastewater shall not exceed the values set forth below:

(a) *Rolling spent neat oils and graphite based lubricants—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals rolled with emulsions	
Copper	0.540	0.262
Nickel	0.206	0.159
Fluoride	25.5	11.3
Molybdenum	2.18	0.957

(c) *Drawing spent lubricants—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent lubricants—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion press hydraulic fluid leakage.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals extruded	
Copper	1.53	0.726
Nickel	0.655	0.441
Fluoride	7.06	31.4
Molybdenum	5.99	2.66

(f) *Forging spent lubricants—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

(g) *Forging contact cooling water.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged refractory metals cooled with water	
Copper	0.041	0.320
Nickel	0.018	0.021
Fluoride	1.92	0.853
Molybdenum	0.163	0.072

(h) *Equipment cleaning wastewater.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.174	0.083
Nickel	0.075	0.051
Fluonde	8.09	3.59
Molybdenum	0.684	0.303

(i) *Metal powder production wastewater.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals powder produced	
Copper	[illegible]	0.172
Nickel	0.155	0.104
Fluoride	16.7	7.42
Molybdenum	1.42	0.627

(j) *Metal powder production floor wash wastewater—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

(k) *Metal powder pressing spent lubricants—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

(l) *Surface treatment spent baths.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	0.498	0.237
Nickel	0.214	0.144
Fluoride	23.2	10.3
Molybdenum	1.96	0.868

(m) *Surface treatment rinse.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	15.5	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	720	[illegible]
Molybdenum	60.9	27.0

(n) *Alkaline cleaning spent baths.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	0.428	0.204
Nickel	0.184	0.124
Fluoride	19.9	8.82
Molybdenum	1.68	0.745

(o) *Alkaline cleaning rinse.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	10.5	4.98
Nickel	4.49	3.02
Fluoride	48.6	216
Molybdenum	41.1	18.2

(p) *Molten salt rinse.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals treated with molten salt	
Copper	0.610	0.386
Nickel	0.348	0.234
Fluoride	37.7	16.7
Molybdenum	3.19	1.41

(q) *Tumbling or burnishing wastewater.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tumbled or burnished	
Copper	1.80	0.760
Nickel	[illegible]	0.460
Fluonde	74.4	33.0
Molybdenum	6.29	2.78

(r) *Sawing or grinding spent neat oils—Subpart E—PSNS.* There shall be no discharge or process wastewater pollutants.

(s) *Sawing or grinding spent emulsions.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground with emulsions	
Copper	0.380	0.161
Nickel	0.164	0.110
Fluoride	17.7	7.84
Molybdenum	1.50	0.663

(t) *Sawing or grinding contact cooling water.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with contact cooling water	
Copper	3.11	[illegible]
Nickel	1.34	[illegible]
Fluoride	145	[illegible]
Molybdenum	12.2	5.42

(u) *Sawing or grinding rinse.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground refractory metals rinsed	
Copper	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	[illegible]	[illegible]
Molybdenum	[illegible]	0.030

(v) *Wet air pollution control blowdown.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed, ground, surface coated or surface treated	
Copper	1.01	[illegible]
Nickel	[illegible]	[illegible]
Fluoride	[illegible]	20.8
Molybdenum	[illegible]	[illegible]

(w) *Miscellaneous wastewater source.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.656	0.345
Nickel	0.663	0.438
Fluoride	20.6	9.11
Molybdenum	2.28	1.18

(x) *Dye penetrant testing wastewater.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals product tested	
Copper	0.010	0.005
Nickel	0.005	0.003
Fluoride	0.460	0.200
Molybdenum	0.039	0.018

(y) *Degreasing spend solvents—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.56 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart F—Titanium Forming Subcategory

§ 471.60 Applicability; description of the titanium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the titanium forming subcategory.

§ 471.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils.—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling contact cooling water.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium rolled with contact cooling water	
Cyanide	1.4	0.586
Lead	2.05	0.970
Zinc	7.13	2.99
Ammonia	870	360
Fluoride	304	126
Oil and grease	97.0	58.0
TSS	230.0	96.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent neat oils—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion spent emulsions.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.021	0.009
Lead	0.030	0.016
Zinc	0.106	0.074
Ammonia	13	5.5
Fluoride	4.26	1.8
Oil and grease	1.44	0.865
TSS	2.96	1.4
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Extrusion press hydraulic fluid leakage.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.052	0.022
Lead	0.075	0.036
Zinc	0.260	0.109
Ammonia	23.7	10.5
Fluoride	10.6	4.70
Oil and grease	3.56	2.14
TSS	7.30	3.47
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Forging spent lubricants—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(h) *Forging contact cooling water.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged titanium cooled with water	
Cyanide	0.560	0.240
Lead	0.840	0.400
Zinc	2.92	1.22
Ammonia	400	180
Fluoride	119	52.8
Oil and grease	40.0	24.0
TSS	82.0	38.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Forging equipment cleaning wastewater.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals forged	
Cyanide	0.012	0.005
Lead	0.017	0.008
Zinc	0.059	0.025
Ammonia	5.39	2.35
Fluoride	2.38	1.06
Oil and grease	0.800	0.480
TSS	1.64	0.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Forging press hydraulic fluid leakage.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals forged	
Cyanide	0.293	0.121
Lead	0.424	0.202
Zinc	1.48	0.616
Ammonia	135	59.2
Fluoride	60.1	26.7
Oil and grease	20.2	12.1
TSS	41.4	19.7
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Tube reducing spent lubricants—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(l) *Heat treatment contact cooling water—Subpart F—BPT.* There shall be no allowance for the discharge of process wastewater pollutants.

(m) *Surface treatment spent baths.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.051	0.025
Lead	0.068	0.042
Zinc	0.304	0.127
Ammonia	21.0	8.40
Fluoride	12.4	5.48
Oil and grease	4.16	2.50
TSS	6.53	4.08
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Surface treatment rinse.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	8.47	3.51
Lead	12.3	5.04
Zinc	42.7	13.0
Ammonia	3,450	1,710
Fluoride	1,740	771
Oil and grease	964	351
TSS	1,200	570
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Wet air pollution control scrubber blowdown.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated or forged	
Cyanide	0.621	0.257
Lead	0.829	0.428
Zinc	3.13	1.31
Ammonia	255	126
Fluoride	129	56.5
Oil and grease	42.8	25.7
TSS	67.2	41.8
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Alkaline cleaning spent baths.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.070	0.029
Lead	0.101	0.048
Zinc	0.351	0.147
Ammonia	32.0	14.1
Fluoride	14.3	6.34
Oil and grease	4.60	2.58
TSS	5.64	4.06
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Alkaline cleaning rinse.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.501	0.331
Lead	1.16	0.552
Zinc	4.03	1.69
Ammonia	370	180
Fluoride	184	72.8
Oil and grease	55.2	33.1
TSS	113	53.8
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Molten salt rinse.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated with molten salt	
Cyanide	0.277	0.115
Lead	0.401	0.191
Zinc	1.40	0.583
Ammonia	1.28	56.0
Fluoride	56.6	25.2
Oil and grease	19.1	11.5
TSS	39.2	18.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Tumbling wastewater.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tumbled	
Cyanide	0.229	0.095
Lead	0.302	0.156
Zinc	1.16	0.482
Ammonia	110	48
Fluoride	47.0	20.9
Oil and grease	15.8	9.48
TSS	32.4	15.4
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding spent neat oils—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding of spent emulsions.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with an emulsion	
Cyanide	0.053	0.022
Lead	0.077	0.037
Zinc	0.267	0.112
Ammonia	8.80	2.90

SUBPART F—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	10.9	4.83
Oil and grease	5.06	2.20
TSS	7.51	3.57
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Sawing or grinding contact cooling water.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with contact cooling water	
Cyanide	1.36	0.571
Lead	2.00	0.852
Zinc	6.95	2.91
Ammonia	635	276
Fluoride	283	126
Oil and grease	95.2	57.1
TSS	185	92.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) *Dye penetrant testing wastewater.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tested with dye penetrant methods	
Cyanide	0.325	0.136
Lead	0.471	0.224
Zinc	1.64	0.683
Ammonia	149	65.7
Fluoride	66.7	29.6
Oil and grease	32.4	13.5
TSS	45.9	21.9
pH	(1) -	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) *Miscellaneous wastewater sources.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium formed	
Cyanide	0.010	0.004
Lead	0.014	0.007
Zinc	0.048	0.020
Ammonia	4.32	1.80
Fluoride	1.93	0.856
Oil and grease	0.646	0.389
TSS	1.33	0.632
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) *Degreasing spent solvents—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling contact cooling water.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium rolled with contact cooling water	
Cyanide	0.142	0.058
Lead	0.205	0.099
Zinc	0.713	0.298
Ammonia	97.0	25.0
Fluoride	29.1	12.90

(c) *Drawing spent neat oils—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent neat oils—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion spent lubricants.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.021	0.009
Lead	0.030	0.015
Zinc	0.105	0.044
Ammonia	37.0	16.0
Fluoride	4.28	1.90

(f) *Extrusion press hydraulic fluid leakage.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.050	0.022
Lead	0.075	0.036
Zinc	0.260	0.109
Ammonia	23.7	10.5
Fluoride	10.8	4.75

(g) *Forging spent lubricants—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(h) *Forging contact cooling water.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged titanium cooled with water	
Cyanide	0.029	0.012
Lead	0.042	0.020
Zinc	0.146	0.061
Ammonia	19.3	5.86
Fluoride	5.95	2.64

(i) *Forging equipment cleaning wastewater.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged cyanide	
Cyanide	0.012	0.005
Lead	0.017	0.008
Zinc	0.059	0.025
Ammonia	5.33	2.26
Fluoride	2.38	1.06

(j) *Forging press hydraulic fluid leakage.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.253	0.121
Lead	0.424	0.203
Zinc	1.48	0.615
Ammonia	135	58.2
Fluoride	60.1	26.7

(k) *Tube reducing spent lubricants—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(l) *Heat treatment contact cooling water—Subpart F—BAT.* There shall be no discharge allowance for process wastewater pollutants.

(m) *Surface treatment spent baths.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.061	0.025
Lead	0.095	0.042
Zinc	0.304	0.127
Ammonia	21.0	9.40
Fluoride	12.4	5.49

(n) *Surface treatment rinse.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.847	0.351
Lead	1.23	0.584
Zinc	4.27	1.76
Ammonia	290	120
Fluoride	174	77.1

(o) *Wet air pollutant control scrubber blowdown.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated or forged	
Cyanide	0.062	0.026
Lead	0.090	0.043
Zinc	0.313	0.131
Ammonia	26.5	12.8
Fluoride	12.8	5.69

(p) *Alkaline cleaning spent baths.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.070	0.030
Lead	0.101	0.046
Zinc	0.351	0.147
Ammonia	111	14.1
Fluoride	14.3	6.34

(q) *Akaline cleaning rinse.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.050	0.022
Lead	0.116	0.052
Zinc	0.403	0.169
Ammonia	90.8	16.2
Fluoride	16.4	7.29

(r) *Molten salt rinse.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated with molten salt	
Cyanide	0.277	0.115

SUBPART F—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	0.401	0.191
Zinc	1.40	0.583
Ammonia	128	[illegible]
Fluoride	[illegible]	25.2

(s) *Tumbling wastewater.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tumbled	
Cyanide	0.022	0.010
Lead	0.033	0.016
Zinc	0.116	0.048
Ammonia	11.0	4.60
Fluoride	4.70	2.09

(t) *Sawing or grinding spent neat oils—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with emulsions	
Cyanide	0.053	0.022
Lead	0.077	0.037
Zinc	0.267	0.112
Ammonia	[illegible]	2.90
Fluoride	10.9	4.63

(v) *Sawing or grinding contact cooling water.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with contact cooling water	
Cyanide	0.138	[illegible]
Lead	0.200	[illegible]
Zinc	[illegible]	0.291
Ammonia	63.5	[illegible]
Fluoride	[illegible]	12.6

(w) *Dye penetrant testing wastewater.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tested with dye penetrant methods	
Cyanide	[illegible]	0.135
Lead	0.471	0.224
Zinc	1.64	[illegible]
Ammonia	149	[illegible]
Fluoride	[illegible]	[illegible]

(x) *Miscellaneous wastewater sources.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium formed	
Cyanide	[illegible]	[illegible]
Lead	0.014	[illegible]
Zinc	0.049	0.020
Ammonia	[illegible]	[illegible]
Fluoride	[illegible]	[illegible]

(y) *Degreasing spent solvents—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.63 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). The discharge of wastewater pollutants from titanium process wastewater shall not exceed the values set forth below:

(a) *Rolling spent neat oils—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling contact cooling water.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium rolled with contact cooling water	
Cyanide	0.142	0.059
Lead	0.205	0.098
Zinc	0.713	0.298
Ammonia	65.1	28.6
Fluoride	29.1	12.9
Oil and grease	9.76	5.86
TSS	20.0	9.52
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent neat oils—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion spent emulsions.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	[illegible]	[illegible]
Lead	[illegible]	[illegible]
Zinc	[illegible]	[illegible]
Ammonia	[illegible]	[illegible]
Fluoride	[illegible]	1.9
Oil and grease	1.44	[illegible]
TSS	[illegible]	1.40
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Extrusion press hydraulic fluid leakage*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.052	0.022
Lead	0.075	[illegible]
Zinc	[illegible]	[illegible]
Ammonia	[illegible]	10.5
Fluoride	[illegible]	[illegible]
Oil and grease	[illegible]	2.14
TSS	7.30	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Forging spent lubricants—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(h) *Forging contact cooling water.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged titanium cooled with water	
Cyanide	[illegible]	[illegible]
Lead	[illegible]	[illegible]
Zinc	0.146	[illegible]
Ammonia	[illegible]	[illegible]
Fluoride	[illegible]	[illegible]
Oil and grease	[illegible]	[illegible]
TSS	4.10	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Forging equipment cleaning wastewater.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	[illegible]	[illegible]
Lead	[illegible]	[illegible]
Zinc	[illegible]	[illegible]

SUBPART F—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia	0.533	0.235
Fluoride	0.238	0.106
Oil and grease	0.090	0.046
TSS	0.164	0.076
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Forging press hydraulic fluid leakage.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.250	0.121
Lead	0.424	0.202
Zinc	1.48	0.616
Ammonia	135	59.2
Fluoride	48.1	26.7
Oil and grease	20.2	12.1
TSS	41.4	19.7
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Tube reducing spent lubricants—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(l) *Heat treatment contact cooling water—Subpart F—NSPS.* There shall be no discharge allowance for the discharge of process wastewater pollutants.

(m) *Surface treatment spent baths.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.061	0.025
Lead	0.088	0.042
Zinc	0.304	0.127
Ammonia	21.0	9.40
Fluoride	12.4	5.49
Oil and grease	4.16	2.50
TSS	8.53	4.06
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Surface treatment rinse.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.847	0.351
Lead	1.23	0.584
Zinc	3.10	1.30
Ammonia	369	171

SUBPART F—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	174	77.1
Oil and grease	85.4	35.1
TSS	125	57.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Wet air pollution control scrubber blowdown.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated or forged	
Cyanide	0.062	0.026
Lead	0.090	0.043
Zinc	0.313	0.131
Ammonia	80.5	12.6
Fluoride	13.8	5.65
Oil and grease	4.25	2.57
TSS	8.78	4.18
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Alkaline cleaning spent baths.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.070	0.030
Lead	0.101	0.048
Zinc	0.351	0.147
Ammonia	340	150
Fluoride	14.3	6.34
Oil and grease	4.80	2.88
TSS	9.84	4.68
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Alkaline cleaning rinse.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.060	0.033
Lead	0.116	0.055
Zinc	0.403	0.169
Ammonia	36.8	16.2
Fluoride	16.4	7.29
Oil and grease	5.52	3.31
TSS	11.3	5.38
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Molten salt rinse.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated with molten salt	
Cyanide	0.277	0.115
Lead	0.401	0.191
Zinc	1.40	0.583
Ammonia	135	56.0
Fluoride	66.8	26.2
Oil and grease	19.1	11.5
TSS	39.2	19.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Tumbling wastewater.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tumbled	
Cyanide	0.025	0.010
Lead	0.033	0.016
Zinc	0.116	0.048
Ammonia	10.5	4.55
Fluoride	4.70	2.09
Oil and grease	1.58	0.946
TSS	3.24	1.54
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding spent neat oils—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with emulsions	
Cyanide	0.053	0.022
Lead	0.077	0.037
Zinc	0.267	0.112
Ammonia	24.4	10.7
Fluoride	10.9	4.63
Oil and grease	3.66	2.20
TSS	7.51	3.57
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Sawing or grinding contact cooling water.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with contact cooling water	
Cyanide	0.158	0.067
Lead	0.200	0.095

SUBPART F—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Zinc	0.595	0.291
Ammonia	63.5	27.9
Fluoride	28.7	12.6
Oil and grease	9.52	5.71
TSS	19.5	9.28
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) *Dye penetrant testing wastewater.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tested using dye penetrant methods	
Cyanide	0.325	0.135
Lead	0.471	0.224
Zinc	1.64	0.683
Ammonia	149	65.7
Fluoride	66.7	29.6
Oil and grease	22.4	13.5
TSS	45.9	21.9
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) *Miscellaneous wastewater sources.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium formed	
Cyanide	0.010	0.004
Lead	0.014	0.007
Zinc	0.0581	0.0276
Ammonia	4.32	1.90
Fluoride	1.93	0.856
Oil and grease	0.648	0.308
TSS	1.33	0.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) *Degreasing spent solvents—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutant.

§ 471.64 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES) The mass of wastewater pollutants in titanium forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling contact cooling water.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium rolled with contact cooling water	
Cyanide	0.142	0.059
Lead	0.205	0.098
Zinc	0.713	0.298
Ammonia	65.1	28.6
Fluoride	29.1	12.9

(c) *Drawing spent neat oils—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent neat oils—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion spent emulsions.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.021	0.009
Lead	0.030	0.015
Zinc	0.105	0.044
Ammonia	9.59	4.22
Fluoride	4.28	1.90

(f) *Extrusion press hydraulic fluid leakage.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.052	0.023
Lead	0.75	0.034
Zinc	2.61	1.19
Ammonia	23.7	10.5
Fluoride	10.6	4.70

(g) *Forging spent lubricants—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(h) *Forging contact cooling water.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged titanium cooled with water	
Cyanide	0.029	0.012
Lead	0.042	0.020
Zinc	0.146	0.061
Ammonia	13.3	5.86
Fluoride	5.95	2.64

(i) *Forging equipment cleaning wastewater.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.012	0.005
Lead	0.017	0.008
Zinc	0.059	0.025
Ammonia	5.33	2.35
Fluoride	2.38	1.06

(j) *Forging press hydraulic fluid leakage.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.293	0.129
Lead	0.424	0.202
Zinc	1.48	0.616
Ammonia	134	59.2
Fluoride	60.1	26.7

(k) *Tube reducing spent lubricants—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(l) *Heat treatment contact cooling water—Subpart F—PSES.* There shall be no discharge allowance for the discharge of process wastewater pollutants.

(m) *Surface treatment spent baths.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.061	0.025
Lead	0.088	0.042
Zinc	0.304	0.127
Ammonia	27.7	11.6
Fluoride	12.4	5.18

(n) *Surface treatment rinse.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.847	0.351
Lead	1.23	0.554
Zinc	4.27	1.78
Ammonia	409	171
Fluoride	174	77.1

(o) *Wet air pollution control scrubber blowdown.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated or forged	
Cyanide	0.062	0.026
Lead	0.092	0.043
Zinc	0.313	0.131
Ammonia	30.5	12.6
Fluoride	13.8	5.65

(p) *Alkaline cleaning spent baths.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.070	0.029
Lead	0.101	0.048
Zinc	0.351	0.147
Ammonia	32.0	14.1
Fluoride	14.3	6.34

(q) *Alkaline cleaning rinse.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.080	0.033
Lead	0.116	0.055
Zinc	0.405	0.169
Ammonia	36.8	15.2
Fluoride	16.4	7.29

(r) *Molten salt rinse.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated with molten salt	
Cyanide	0.277	0.115
Lead	0.401	0.191
Zinc	1.40	0.583
Ammonia	128	56.0
Fluoride	56.8	25.2

(s) *Tumbling wastewater.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tumbled	
Cyanide	0.023	0.010
Lead	0.033	0.016
Zinc	0.116	0.048
Ammonia	10.6	4.83
Fluoride	4.70	2.09

(t) *Sawing or grinding spent neat oils—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with emulsions	
Cyanide	0.053	0.022
Lead	0.077	0.037
Zinc	0.267	0.112
Ammonia	24.4	10.7
Fluoride	10.9	4.83

(v) *Sawing or grinding contact cooling water.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with contact cooling water	
Cyanide	0.136	0.057
Lead	0.200	0.095
Zinc	0.695	0.291
Ammonia	63.5	27.9
Fluoride	28.3	12.6

(w) *Dye pentrant testing wastewater.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated using dye penetrant methods	
Cyanide	0.325	0.135
Lead	0.471	0.224
Zinc	1.64	0.686
Ammonia	149	65.7
Fluoride	66.7	29.8

(x) *Miscellaneous wastewater sources.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium formed	
Cyanide	0.010	0.004
Lead	0.014	0.007
Zinc	0.048	0.020
Ammonia	4.32	1.90
Fluoride	1.93	0.858

(y) *Degreasing spent solvents—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

§ 471.65 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater pollutants in the titanium forming process wastewater shall not exceed the values set forth below:

(a) *Rolling spent neat oils—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling contact cooling water.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium rolled with contact cooling water	
Cyanide	0.142	0.059
Lead	0.205	0.096
Zinc	0.713	0.298
Ammonia	66.1	28.6
Fluoride	29.1	12.9

(c) *Drawing spent neat oils—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent neat oils—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion spent emulsions.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.021	0.009
Lead	0.030	0.015
Zinc	0.105	0.044
Ammonia	9.59	4.22
Fluoride	4.28	1.90

(f) *Extrusion press hydraulic fluid leakage.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.052	0.022
Lead	0.075	0.036
Zinc	0.260	0.109
Ammonia	23.7	10.5
Fluoride	10.6	4.70

(g) *Forging spent lubricants—Subpart F—PSNS.* **There shall be no discharge of process wastewater pollutants.**

(h) *Forging contact cooling water.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged titanium cooled with [illegible]	
Cyanide	0.029	0.012
Lead	0.042	[illegible]
Zinc	0.146	[illegible]
Ammonia	13.3	[illegible]
Fluoride	5.95	[illegible]

(i) *Forging equipment cleaning wastewater.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.012	[illegible]
Lead	0.017	[illegible]
Zinc	[illegible]	[illegible]
Ammonia	5.33	2.35
Fluoride	[illegible]	1.06

(j) *Forging press hydraulic fluid leakage.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.293	0.121
Lead	0.424	0.202
Zinc	1.48	0.616
Ammonia	135	59.2
Fluoride	60.1	26.7

(k) *Tube reducing spent lubricants—Subpart F—PSNS.* **There shall be no discharge of process wastewater pollutants.**

(l) *Heat treatment contact cooling water—Subpart F—PSNS.* **There shall be no discharge allowance for the discharge of process wastewater pollutants.**

(m) *Surface treatment spent baths.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	[illegible]	[illegible]
Lead	[illegible]	[illegible]
Zinc	[illegible]	0.127
Ammonia	27.7	[illegible]
Fluoride	12.4	[illegible]

(n) *Surface treatment rinse.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	[illegible]	[illegible]
Lead	1.23	[illegible]
Zinc	4.27	1.78
Ammonia	[illegible]	171
Fluoride	174	77.1

(o) *Wet air pollution control scrubber blowdown.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	[illegible]	[illegible]
Lead	[illegible]	[illegible]
Zinc	[illegible]	[illegible]
Ammonia	[illegible]	12.6
Fluoride	12.8	[illegible]

(p) *Alkaline cleaning spent baths.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	[illegible]	[illegible]
Lead	[illegible]	[illegible]
Zinc	[illegible]	[illegible]
Ammonia	[illegible]	14.1
Fluoride	14.3	[illegible]

(q) *Alkaline cleaning rinse.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	[illegible]	0.033
Lead	[illegible]	[illegible]
Zinc	[illegible]	[illegible]
Ammonia	[illegible]	[illegible]
Fluoride	15.4	[illegible]

(r) *Molten salt rinse.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated with molten salt	
Cyanide	0.277	0.115
Lead	0.401	[illegible]
Zinc	[illegible]	[illegible]
Ammonia	128	56.0
Fluoride	[illegible]	25.2

(s) *Tumbling wastewater.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tumbled	
Cyanide	[illegible]	0.010
Lead	[illegible]	[illegible]
Zinc	[illegible]	[illegible]
Ammonia	[illegible]	[illegible]
Fluoride	4.70	[illegible]

(t) *Sawing or grinding spent neat oils—Subpart F—PSNS.* **There shall be no discharge of process wastewater pollutants.**

(u) *Sawing or grinding spent emulsions.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with emulsions	
Cyanide	0.053	0.022
Lead	0.077	0.037
Zinc	0.267	0.112
Ammonia	24.4	10.7
Fluoride	10.9	4.83

(v) *Sawing or grinding contact cooling water.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with contact cooling water	
Cyanide	0.138	0.057
Lead	0.200	0.095
Zinc	0.695	0.291
Ammonia	63.5	27.9
Fluoride	28.3	12.6

(w) *Dye penetrant testing wastewater.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated using dye penetrant methods	
Cyanide	[illegible]	0.135
Lead	0.471	0.224
Zinc	1.64	0.683
Ammonia	[illegible]	65.7
Fluoride	[illegible]	29.8

(x) *Miscellaneous wastewater sources.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium formed	
Cyanide	0.010	0.004
Lead	0.014	0.007
Zinc	0.048	0.020
Ammonia	4.32	1.90
Fluoride	1.93	0.854

(y) *Degreasing spent solvents—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.66 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart G—Uranium Forming Subcategory

§ 471.70 Applicability; description of the uranium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the uranium forming subcategory.

§ 471.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best praticable control technology currently available (BPT):

(a) *Extrusion spent lubricants—Subpart G—BPT.* There shall be no discharge process wastewater pollutants.

(b) *Extrusion tool contact cooling water.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium extruded	
Cadium	0.117	0.052
Chromium	0.152	0.062
Copper	0.654	0.344
Lead	0.145	0.069
Nickel	0.661	0.437
Fluoride	20.5	9.06
Molybdenum	2.28	1.18
Oil and grease	6.88	4.13
TSS	14.1	6.71
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Heat treatment contact cooling water.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded or forged uranium heat treated	
Cadium	0.646	0.285
Chromium	0.836	0.342
Copper	3.61	1.90
Lead	0.798	0.380
Nickel	3.65	2.42
Fluoride	113	50.2
Molybdenum	12.6	6.5
Oil and grease	38	22.8
TSS	77.9	37.1
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Forging spent lubricants—Subpart G—BPT.* There shall be no discharge of process wastewater pollutants.

(e) *Surface treatment spent baths.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off- pounds) of uranium surface treated	
Cadmium	0.010	0.004
Chromium	0.012	0.005
Copper	0.052	0.027
Lead	0.012	0.006
Nickel	0.042	0.021
Fluoride	1.62	0.718
Molybdenum	0.180	0.093
Oil and grease	0.844	0.327
TSS	1.12	0.531
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Surface treatment rinse.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.115	0.050
Chromium	0.149	0.061
Copper	0.641	0.041
Lead	0.142	0.068
Nickel	0.647	0.428
Fluoride	20.1	8.90
Molybdenum	2.23	1.16
Oil and grease	6.74	4.05
TSS	13.8	6.57
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Wet air pollution control scrubber blowdown.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.00	0.0006
Chromium	0.002	0.0007
Copper	0.007	0.004
Lead	0.002	0.698
Nickel	0.007	0.005
Fluoride	0.258	0.092
Molybdenum	0.023	0.012
Oil and grease	0.070	0.042
TSS	0.143	0.068
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Sawing or grinding spent emulsions.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with emulsions	
Cadmium	0.002	0.0009
Chromium	0.003	0.001
Copper	0.011	0.006
Lead	0.003	0.001
Nickel	0.011	0.007
Fluoride	0.338	0.150
Molybdenum	0.038	0.020
Oil and grease	0.114	0.068
TSS	0.233	0.111
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Sawing or grinding contact cooling water.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with contact cooling ater	
Cadmium	0.561	0.248
Chromium	0.726	0.297
Copper	3.14	1.65
Lead	0.803	0.350
Nickel	3.17	2.1
Fluoride	96.3	43.6
Molybdenum	10.5	5.65
Oil and grease	33.0	15.8
TSS	67.7	32.2
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Sawing or grinding rinse.*

SUPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground uranium rinses	
Cadmium	0.002	0.0007
Chromium	0.002	0.0008
Copper	0.009	0.005
Lead	0.002	0.001
Nickel	0.009	0.006
Fluoride	0.277	0.123
Molybdenum	0.031	0.016
Oil and grease	0.093	0.056
TSS	0.191	0.091
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Area cleaning rinse.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.015	0.007
Chromium	0.019	0.008
Copper	0.082	0.043
Lead	0.018	0.008

SUBPART G—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	0.083	0.055
Fluoride	2.56	1.14
Molybdenum	0.284	0.147
Oil and grease	0.858	0.515
TSS	1.76	0.837
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Drum washwater.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.015	0.007
Chromium	0.020	0.009
Copper	0.084	0.045
Lead	0.019	0.009
Nickel	0.085	0.057
Fluoride	2.64	1.17
Molybdenum	0.293	0.150
Oil and grease	0.886	0.530
TSS	1.82	0.864
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Laundry washwater.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/employee—day	
Cadmium	0.018	0.008
Chromium	.023	.010
Copper	.100	.052
Lead	.022	.011
Nickel	.101	.067
Fluoride	3.12	1.38
Molybdenum	.347	.179
Oil and grease	1.05	.528
TSS	2.15	1.02
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Degreasing spent solvents—Subpart G—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Extrusion spent lubricants—Subpart G—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Extrusion tool contact cooling water.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium extruded	
Cadmium	0.007	0.003
Chromium	0.013	0.005
Copper	0.044	0.021
Lead	0.010	0.005
Nickel	0.018	0.013
Fluoride	2.05	0.906
Molybdenum	0.173	0.077

(c) *Heat treatment contact cooling water.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded or forged uranium heat treated	
Cadmium	0.006	0.003
Chromium	0.012	0.005
Copper	0.040	0.019
Lead	0.009	0.004
Nickel	0.017	0.012
Fluoride	1.86	0.827
Molybdenum	0.158	0.070

(d) *Forging spent lubricants—Subpart G—BAT.* **There shall be no discharge of process wastewater pollutants.**

(e) *Surface treatment spent baths.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.005	0.002
Chromium	0.010	0.004
Copper	0.039	0.017
Lead	0.008	0.004
Nickel	0.015	0.010
Fluoride	1.65	0.718
Molybdenum	0.137	0.061

(f) *Surface treatment rinse.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.060	0.027
Chromium	0.125	0.051
Copper	0.493	0.293
Lead	0.095	0.044
Nickel	0.156	0.125
Fluoride	20.1	8.90
Molybdenum	1.70	0.752

(g) *Wet air pollution control scrubber blowdown.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.0007	0.0003
Chromium	0.001	0.0005
Copper	0.005	0.002
Lead	0.001	0.0005
Nickel	0.002	0.001
Fluoride	0.208	0.082
Molybdenum	0.018	0.008

(h) *Sawing or grinding spent emulsions.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with emulsions	
Cadmium	0.001	0.0005
Chromium	0.002	0.0009
Copper	0.007	0.004
Lead	0.001	0.002
Nickel	0.003	0.002
Fluoride	0.338	0.150
Molybdenum	0.029	0.013

(i) *Sawing or grinding contact cooling water.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with contact cooling water	
Cadmium	0.033	0.013
Chromium	0.061	0.025
Copper	0.211	0.101
Lead	0.046	0.022
Nickel	0.091	0.061
Fluoride	9.82	4.36
Molybdenum	0.830	0.368

(j) *Sawing or grinding rinse.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground uranium rinse	
Cadmium	0.001	0.0004
Chromium	0.002	0.0007
Copper	0.006	0.003
Lead	0.002	0.0006
Nickel	0.003	0.002
Fluoride	0.277	0.123
Molybdenum	0.024	0.011

(k) *Area cleaning rinse.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.009	0.004
Chromium	0.016	0.007
Copper	0.058	0.026
Lead	0.012	0.005
Nickel	0.024	0.016
Fluoride	2.58	1.14
Molybdenum	0.216	0.17

(l) *Drum, washwater.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.009	0.004
Chromium	0.017	0.007
Copper	0.057	0.027
Lead	0.013	0.006
Nickel	0.025	0.017
Fluoride	2.64	1.17
Molybdenum	0.223	0.099

(m) *Laundry washwater.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/employee—day	
Cadmium	0.006	0.002
Chromium	0.010	0.004
Copper	0.034	0.011
Lead	0.008	0.004
Nickel	0.015	0.010
Fluoride	1.56	0.007
Molybdenum	0.130	0.059

(n) *Degreasing spent solvents—Subpart G—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.73 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). The mass of pollutants in the uranium forming process wastewater shall not exceed the following values:

(a) *Extrusion spent lubricants—Subpart G—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Extrusion tool contact cooling water.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium extruded	
Cadmium	0.007	0.003
Chromium	0.013	0.005
Copper	0.044	0.021
Lead	0.010	0.004
Nickel	0.018	0.013
Fluoride	2.05	0.906
Molybdenum	0.173	0.077
Oil and grease	0.344	0.344
TSS	0.516	0.413
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Heat treatment contact cooling water.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded or forged uranium heat treated	
Cadmium	0.008	0.003
Chromium	0.012	0.005
Copper	0.040	0.019
Lead	0.009	0.004
Nickel	0.017	0.012
Fluoride	1.86	0.827
Molybdenum	0.158	0.070
Oil and grease	0.313	0.313
TSS	0.470	0.376
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Forging spent lubricants—Subpart G—NSPS.* There shall be no discharge of process wastewater pollutants.

(e) *Surface treatment spent baths.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.009	0.003
Chromium	0.010	0.004
Copper	0.035	0.017
Lead	0.008	0.004
Nickel	0.015	0.010
Fluoride	1.62	0.718
Molybdenum	0.137	0.061
Oil and grease	0.272	0.272
TSS	0.408	0.327
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Surface treatment rinse.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.068	0.027

SUBPART G—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Chromium	0.125	0.051
Copper	0.432	0.206
Lead	0.095	0.044
Nickel	0.166	0.125
Fluoride	20.1	8.90
Molybdenum	1.70	0.752
Oil and grease	3.37	3.37
TSS	5.06	4.05
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Wet air pollution control scrubber blowdown.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.0007	0.0003
Chromium	0.001	0.0005
Copper	0.005	0.002
Lead	0.001	0.0005
Nickel	0.002	0.001
Fluoride	0.208	0.092
Molybdenum	0.018	0.008
Oil and grease	0.035	0.035
TSS	0.053	0.042
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Sawing or grinding spent emulsions.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with emulsions	
Cadmium	0.001	0.0005
Chromium	0.002	0.0009
Copper	0.007	0.0004
Lead	0.001	0.0002
Nickel	0.003	0.002
Fluoride	0.336	0.150
Molybdenum	0.029	0.013
Oil and grease	0.057	0.057
TSS	0.085	0.068
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Sawing or grinding contact cooling water.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with contact cooling water	
Cadmium	0.033	0.013
Chromium	0.061	0.025
Copper	0.211	0.101
Lead	0.046	0.022
Nickel	0.091	0.061
Fluoride	8.82	4.34

SUBPART G—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Molybdenum	0.030	0.014
Oil and grease	1.65	1.65
TSS	2.48	1.86
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Sawing or grinding rinse.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground uranium rinsed	
Cadmium	0.001	0.0004
Chromium	0.002	0.0007
Copper	0.006	0.003
Lead	0.002	0.0006
Nickel	0.005	0.002
Fluoride	0.277	0.123
Molybdenum	0.024	0.011
Oil and grease	0.047	0.047
TSS	0.070	0.056
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Area cleaning rinse.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.006	0.0024
Chromium	0.016	0.007
Copper	0.050	0.020
Lead	0.012	0.0060
Nickel	0.024	0.016
Fluoride	2.56	1.14
Molybdenum	0.216	0.096
Oil and grease	0.429	0.429
TSS	0.644	0.515
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Drum washwater.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.009	0.004
Chromium	0.017	0.007
Copper	0.057	0.027
Lead	0.013	0.006
Nickel	0.025	0.017
Fluoride	2.64	1.17
Molybdenum	0.223	0.099
Oil and grease	0.443	0.443
TSS	0.665	0.532
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Laundry washwater.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/employee—day	
Cadmium	0.005	0.002
Chromium	0.010	0.004
Copper	0.034	0.016
Lead	0.008	0.004
Nickel	0.015	0.010
Fluoride	1.56	0.692
Molybdenum	0.132	0.059
Oil and grease	0.262	0.262
TSS	0.393	0.315
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Degreasing spent solvents—Subpart G—NSPS.* There shall be no discharge of process waster pollutants.

§ 471.74 Pretreatment standards for existing sources (PSES) [Reserved].

§ 471.75 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater pollutants in uranium forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Extrusion spent lubricants—Subpart G—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Extrusion tool contact cooling water.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium extruded	
Cadmium	0.007	0.003
Chromium	0.013	0.005
Copper	0.044	0.021
Lead	0.010	0.005
Nickel	0.019	0.013
Fluoride	2.05	0.904
Molybdenum	0.173	0.077

(c) *Heat treatment contact cooling water.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded or forged uranium heat treated	
Cadmium	0.006	0.003
Chromium	0.012	0.005

SUBPART G—PSNS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Copper	0.040	0.019
Lead	[illegible]	[illegible]
Nickel	0.017	0.012
Fluoride	1.86	0.827
Molybdenum	0.158	0.070

(d) *Forging spent lubricants—Subpart G—PSNS.* There shall be no discharge of process wastewater pollutants.

(e) *Surface treatment spent baths.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.006	0.002
Chromium	0.010	0.004
Copper	0.035	0.017
Lead	[illegible]	0.004
Nickel	0.015	0.010
Fluoride	1.62	0.718
Molybdenum	0.137	0.061

(f) *Surface treatment rinse.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.068	0.027
Chromium	0.125	0.051
Copper	0.432	0.260
Lead	0.095	0.044
Nickel	0.186	0.125
Fluoride	20.1	[illegible]
Molybdenum	1.70	0.752

(g) *Wet air pollution control scrubber blowdown.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.0007	0.0003
Chromium	0.001	0.0005
Copper	0.005	0.002
Lead	0.010	0.005
Nickel	0.002	0.001
Fluoride	[illegible]	0.092
Molybdenum	0.018	[illegible]

(h) *Sawing or grinding spent emulsions.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with [illegible]	
Cadmium	0.001	0.0005
Chromium	0.002	[illegible]
Copper	0.007	[illegible]
Lead	0.001	[illegible]
Nickel	0.003	0.002
Fluoride	0.338	0.150
Molybdenum	0.029	0.013

(i) *Sawing or grinding contact cooling water.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with contact cooling water	
Cadmium	0.033	0.013
Chromium	0.061	0.025
Copper	0.211	0.101
Lead	0.046	0.022
Nickel	0.091	0.061
Fluoride	9.82	4.36
Molybdenum	[illegible]	[illegible]

(j) *Sawing or grinding rinse.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of sawed or ground uranium rinsed	
Cadmium	0.010	0.0004
Chromium	0.002	0.0007
Copper	0.006	[illegible]
Lead	0.002	[illegible]
Nickel	0.003	
Fluoride	0.277	0.123
Molybdenum	0.024	0.011

(k) *Area cleaning rinse.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	[illegible]	0.004
Chromium	0.016	0.007
Copper	0.055	0.026
Lead	0.012	[illegible]
Nickel	0.024	0.016
Fluoride	2.56	1.14
Molybdenum	0.216	[illegible]

(l) *Drum washwater.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	[illegible]	0.004
Chromium	0.017	0.007
Copper	0.057	0.027
Lead	0.013	[illegible]
Nickel	0.025	0.017
Fluoride	2.64	1.17
Molybdenum	0.223	[illegible]

(m) *Laundry washwater.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/employee—day	
Cadmium	[illegible]	0.002
Chromium	0.010	[illegible]
Copper	0.034	0.011
Lead	[illegible]	[illegible]
Nickel	0.015	0.010
Fluoride	1.56	0.007
Molybdenum	0.130	0.059

(n) *Degreasing spent solvents—Subpart G—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.76 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart H—Zinc Forming Subcategory

§ 471.80 Applicability; description of the zinc forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the zinc forming subcategory.

§ 471.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils—Subpart H—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with emulsions	
Chromium	0.0036	0.0005
Copper	0.023	0.012
Cyanide	0.0004	0.0002
Zinc	0.012	0.006
Oil and grease	0.026	0.017
TSS	0.057	0.027
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Rolling contact cooling water.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with contact cooling water	
Chromium	0.236	0.0097
Copper	1.02	0.536
Cyanide	0.156	0.065
Zinc	0.783	0.327
Oil and grease	10.7	6.43
TSS	22.0	10.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Drawing spent emulsions.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc drawn with emulsions	
Chromium	0.003	0.001
Copper	0.011	0.006
Cyanide	0.002	0.0007
Zinc	0.009	0.004
Oil and grease	0.116	0.070
TSS	0.238	0.113
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Direct chill casting contact cooling water.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc cast by the direct chill method	
Chromium	0.222	0.091
Copper	0.960	0.505
Cyanide	0.147	0.061
Zinc	0.738	0.308
Oil and grease	10.1	6.06
TSS	20.7	9.85
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Stationary casting contact cooling water—Subpart H—BPT.* There shall be no discharge of process wastewater pollutants.

(g) *Heat treatment contact cooling water.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc heat treated	
Chromium	0.336	0.138
Copper	1.45	0.763
Cyanide	0.221	0.092
Zinc	1.12	0.466
Oil and grease	15.3	9.16
TSS	31.3	14.9
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Surface treatment spent baths.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc [illegible] treated	
Chromium	0.039	0.016
Copper	0.169	0.089
Cyanide	0.026	0.011
Zinc	0.130	0.054
Oil and grease	1.78	1.07
TSS	3.64	1.73
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Surface treatment rinse.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	1.58	0.645
Copper	6.80	3.58
Cyanide	1.04	0.430
Zinc	5.23	2.19
Oil and grease	71.6	43.0
TSS	147	69.8
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Alkaline cleaning spent baths.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc [illegible] cleaned	
Chromium	0.002	0.007
Copper	0.007	0.004
Cyanide	0.001	0.0004
Zinc	0.005	0.002
Oil and grease	0.071	0.043
TSS	0.146	0.069
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Alkaline cleaning rinse.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc [illegible] cleaned	
Chromium	0.744	0.254
Copper	3.21	1.69
Cyanide	0.490	0.203
Zinc	2.47	1.03
Oil and grease	33.8	20.3
TSS	68.1	31.8
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Sawing or grinding spent emulsions.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc sawed or ground with emulsions	
Chromium	0.011	0.005
Copper	0.042	0.024
Cyanide	0.007	0.003
Zinc	0.035	0.015
Oil and grease	0.476	0.266
TSS	0.976	0.464
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Electrocoating rinse.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc electrocoated	
Chromium	1.01	0.412
Copper	4.35	2.29
Cyanide	0.684	0.275
Zinc	3.35	1.40
Oil and grease	45.8	27.5
TSS	93.9	44.7
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Degreasing spent solvents—Subpart H—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils—Subpart H—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with emulsions	
Chromium	0.0005	0.0002
Copper	0.008	0.0029
Cyanide	0.0003	0.0001
Zinc	0.002	0.0006

(c) *Rolling contact cooling water.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with contact cooling water	
Chromium	0.020	0.008
Copper	0.060	0.021
Cyanide	0.011	0.004
Zinc	0.055	0.023

(d) *Drawing spent emulsions.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc drawn with emulsions	
Chromium	0.002	0.0009
Copper	0.008	0.004
Cyanide	0.001	0.0005
Zinc	0.006	0.003

(e) *Direct chill casting contact cooling water.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc cast by the direct chill method	
Chromium	0.018	0.008
Copper	0.060	0.021
Cyanide	0.010	0.004
Zinc	0.052	0.021

(f) *Stationary casting contact cooling water—Subpart H—BAT.* There shall be no discharge of process wastewater pollutants.

(g) *Heat treatment contact cooling water.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc heat treated	
Chromium	0.028	0.012
Copper	0.098	0.047
Cyanide	0.016	0.006
Zinc	0.078	0.032

(h) *Surface treatment spent baths.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.033	0.014
Copper	0.001	0.054
Cyanide	0.018	0.007
Zinc	0.091	0.038

(i) *Surface treatment rinse.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.133	0.054
Copper	0.457	0.219
Cyanide	0.072	0.029
Zinc	0.365	0.151

(j) *Alkaline cleaning spent baths.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.002	0.0006
Copper	0.005	0.002
Cyanide	0.0007	0.0003
Zinc	0.004	0.002

(k) *Alkaline cleaning rinse.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.626	0.254
Copper	2.17	1.03
Cyanide	0.338	0.135
Zinc	1.73	0.710

(l) *Sawing or grinding spent emulsions.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc sawed or ground with emulsions	
Chromium	0.009	0.004
Copper	0.031	0.015
Cyanide	0.005	0.002
Zinc	0.025	0.010

(m) *Electrocoating rinse.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc electrocoated	
Chromium	0.080	0.035
Copper	0.293	0.140
Cyanide	0.044	0.019
Zinc	0.234	0.098

(n) *Degreasing spent solvents—Subpart H—BAT.* There shall be no discharge or process wastewater pollutants.

§ 471.83 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) *Rolling spent neat oils—Subpart H—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with emulsions	
Chromium	0.0005	0.0002
Copper	0.002	0.0009
Cyanide	0.0003	0.0001
Zinc	0.002	0.0006
Oil and grease	0.014	0.014
TSS	0.021	0.017
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Rolling contact cooling water.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with contact cooling water	
Chromium	0.020	0.008
Copper	0.060	0.037
Cyanide	0.011	0.004
Zinc	0.055	0.023

SUBPART H—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and grease	0.505	0.536
TSS	0.804	0.643
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Drawing spent emulsions.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc drawn with emulsions	
Chromium	0.002	0.009
Copper	0.006	0.004
Cyanide	0.001	0.0005
Zinc	0.006	0.003
Oil and grease	0.058	0.058
TSS	0.087	0.070
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(e) *Direct chill casting contact cooling water.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc cast by the direct chill method	
Chromium	0.019	0.008
Copper	0.088	0.031
Cyanide	0.010	0.004
Zinc	0.052	0.021
Oil and grease	0.505	0.505
TSS	0.758	0.606
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Stationary casting contact cooling water—Subpart H—NSPS.* There shall be no discharge of process wastewater pollutants.

(g) *Heat treatment contact cooling water.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc heat treated	
Chromium	0.029	0.012
Copper	0.095	0.047
Cyanide	0.016	0.006
Zinc	0.078	0.032
Oil and grease	0.763	0.763
TSS	1.15	0.916
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Surface treatment spent baths.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.033	0.014
Copper	0.114	0.054
Cyanide	0.018	0.007
Zinc	0.091	0.036
Oil and grease	0.887	0.887
TSS	1.33	1.07
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Surface treatment rinse.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.133	0.054
Copper	0.459	0.219
Cyanide	0.072	0.029
Zinc	0.365	0.151
Oil and grease	3.58	3.58
TSS	5.37	4.30
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Alkaline cleaning spent baths.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.002	0.0008
Copper	0.005	0.002
Cyanide	0.0007	0.0003
Zinc	0.004	0.002
Oil and grease	0.036	0.036
TSS	0.054	0.043
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Alkaline cleaning rinse.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.626	0.259
Copper	2.17	1.03
Cyanide	0.338	0.135
Zinc	1.73	0.710
Oil and grease	16.9	16.9
TSS	25.4	20.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Sawing or grinding spent emulsions.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc sawed or ground with emulsions	
Chromium	0.009	0.004
Copper	0.031	0.015
Cyanide	0.005	0.002
Zinc	0.025	0.010
Oil and grease	0.235	0.235
TSS	0.353	0.082
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Electrocoating rinse.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc electrocoated	
Chromium	0.085	0.035
Copper	0.293	0.140
Cyanide	0.046	0.019
Zinc	0.234	0.096
Oil and grease	2.29	2.29
TSS	34.4	27.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Degreasing spent solvents—Subpart H—NSPS.* There shall be no discharge of process wastewater pollutants.

§ 471.84 Pretreatment standards for existing sources (PSES) [Reserved].

§ 471.85 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of the wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart H—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with emulsions	
Chromium	0.0005	0.0002
Copper	0.002	0.0009
Cyanide	0.0003	0.0001
Zinc	0.002	0.0008

(c) *Rolling contact cooling water.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with contact cooling water	
Chromium	0.020	0.008
Copper	0.069	0.033
Cyanide	0.011	0.004
Zinc	0.055	0.023

(d) *Drawing spent emulsions.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc drawn with emulsions	
Chromium	0.002	0.0008
Copper	0.008	0.004
Cyanide	0.001	0.0005
Zinc	0.009	0.003

(e) *Direct chill casting contact cooling water.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc cast by the direct chill method	
Chromium	0.019	0.008
Copper	0.085	0.031
Cyanide	0.010	0.004
Zinc	0.052	0.021

(f) *Stationary casting contact cooling water—Subpart H—PSNS.* There shall be no discharge of process wastewater pollutants.

(g) *Heat treatment contact cooling water.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc heat treated	
Chromium	0.028	0.012
Copper	0.090	0.047
Cyanide	0.016	0.006
Zinc	0.078	0.032

(h) *Surface treatment spent baths.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.033	0.014
Copper	0.001	0.054
Cyanide	0.018	0.007
Zinc	0.091	0.038

(i) *Surface treatment rinse.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.152	0.064
Copper	0.459	0.219
Cyanide	0.072	0.030
Zinc	0.365	0.151

(j) *Alkaline cleaning spent baths.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.002	0.0008
Copper	0.005	0.002
Cyanide	0.072	0.0003
Zinc	0.004	0.002

(k) *Alkaline cleaning rinse.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.626	0.254
Copper	2.17	1.03
Cyanide	0.338	0.134
Zinc	1.73	0.710

(l) *Sawing or grinding spent emulsions.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc sawed or ground with emulsions	
Chromium	0.004	0.004
Copper	0.031	0.015
Cyanide	0.005	0.002
Zinc	0.025	0.010

(m) *Electrocoating rinse.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc electrocoated	
Chromium	0.085	0.035
Copper	0.293	0.140
Cyanide	0.046	0.019
Zinc	0.234	0.096

(n) *Decreasing spent solvents—Subpart H—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.86 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart I—Zirconium-Hafnium Forming Subcategory

§ 471.90 Applicability; description of the zirconium-hafnium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the zirconium-hafnium forming subcategory

§ 471.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Drawing spent lubricants—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(c) *Extrusion spend emulsions—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion press hydraulic fluid leakage.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium extruded	
Chromium	0.104	0.043
Cyanide	0.069	0.029
Nickel	0.455	0.301
Ammonia	31.6	13.9
Fluoride	14.1	6.26
Oil and grease	4.74	2.85
TSS	9.71	4.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Swaging spent neat oils—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(f) *Heat treatment contact cooling water.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium heat treated	
Chromium	0.151	0.062
Cyanide	0.100	0.041
Nickel	0.659	0.436
Ammonia	45.7	20.1
Fluoride	20.4	8.06
Oil and grease	6.86	4.12
TSS	14.1	5.80
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Tube reducing spent lubricants—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(h) *Surface treatment spent baths.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.150	0.61
Cyanide	0.099	0.041
Nickel	0.653	0.432
Ammonia	45.3	20
Fluoride	20.3	8.98
Oil and grease	6.80	4.08
TSS	14	6.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Surface treatment rinse.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	3.91	1.65
Cyanide	2.58	1.07
Nickel	17.1	11.3
Ammonia	1,190	521
Fluoride	526	235
Oil and grease	178	107
TSS	364	173
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Alkaline cleaning spent baths.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	0.704	0.298
Cyanide	0.464	0.192
Nickel	3.07	2.01
Ammonia	214	93.8
Fluoride	95.2	42.3
Oil and grease	32	19.2
TSS	65.6	31.2
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Alkaline cleaning rinse.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	13.8	5.65
Cyanide	9.11	3.77
Nickel	60.3	39.9
Ammonia	4,190	1,840
Fluoride	1,870	829
Oil and grease	628	377
TSS	1,290	615
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Sawing or grinding spent emulsions.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with emulsions	
Chromium	0.124	0.051
Cyanide	0.082	0.034
Nickel	0.840	0.357
Ammonia	37.5	16.5
Fluoride	16.7	7.42
Oil and grease	5.62	3.37
TSS	11.5	5.46

SUBPART I—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Wet air pollution control scrubber blowdown—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(n) *Degreasing spent solvents—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(o) *Degreasing rinse—Subpart I—BPT.* There shall be no discharge or process wastewater pollutants.

(p) *Molten salt rinse.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium treated with molten salt	
Chromium	3.33	1.36
Cyanide	2.29	0.937
Nickel	14.5	8.80
Ammonia	1,010	413
Fluoride	450	184
Oil and grease	151	86.7
TSS	310	146
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Sawing or grinding contact cooling water.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with contact cooling water	
Chromium	0.142	0.058
Cyanide	0.093	0.039
Nickel	0.617	0.408
Ammonia	42.8	18.8
Fluoride	19.1	8.49
Oil and grease	6.42	3.85
TSS	1.32	6.26
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Sawing on grinding rinse.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground zirconium hafnium rinsed	
Chromium	0.792	0.334
Cyanide	0.522	0.216
Nickel	3.46	2.29

SUBPART I—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia	240	106
Fluorice	107	47.5
Oil and grease	36	21.6
TSS	73.8	35.1
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Sawing or grinding spent neat oils—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(t) *Inspection and testing wastewater.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium treated	
Chromium	0.007	0.003
Cyanide	0.005	0.002
Nickel	0.030	0.020
Ammonia	2.06	0.903
Fluoride	0.917	0.407
Oil and grease	0.308	0.135
TSS	0.532	0.301
pH	(1)	(1)

[1] Within the range of 7.05 to 10.0 at all times.

§ 471.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Drawing spent lubricants—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(c) *Extrusion spent emulsions—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion press hydraulic fluid leakage.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium extruded	
Chromium	0.104	0.043

SUBPART I—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide	0.056	0.029
Nickel	0.455	0.301
Ammonia	31.6	13.9
Fluoride	14.1	6.25

(e) *Swaging spent neat oils.*—There shall be no discharge of process wastewater pollutants.

(f) *Heat treatment contact cooling water.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium heat treated	
Chromium	0.015	0.006
Cyanide	0.010	0.004
Nickel	0.068	0.044
Ammonia	4.57	2.01
Fluoride	0.64	0.305

(g) *Tube reducing spent lubricants.*—There shall be no discharge of process wastewater pollutants.

(h) *Surface treatment spent baths.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.150	0.061
Cyanide	0.099	0.041
Nickel	0.653	0.432
Ammonia	45.3	20
Fluoride	20.3	8.98

(i) *Surface treatment rinse.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.391	0.160
Cyanide	0.258	0.107
Nickel	1.71	1.13
Ammonia	119	52.1
Fluoride	52.9	23.5

(j) *Alkaline cleaning spent baths.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	0.704	0.288
Cyanide	0.464	0.192
Nickel	3.07	2.03
Ammonia	214	93.6
Fluoride	95.2	42.3

(k) *Alkaline cleaning rinse.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	1.380	0.565
Cyanide	0.911	3.377
Nickel	6.03	3.99
Ammonia	419	184
Fluoride	187	82.9

(l) *Sawing or grinding spent emulsions.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with emulsions	
Chromium	0.124	0.051
Cyanide	0.082	0.034
Nickel	0.540	0.357
Ammonia	37.5	18.5
Fluoride	16.7	7.42

(m) *Wet air pollution control scrubber blowdown—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(n) *Degreasing spent solvents—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(o) *Degreasing rinse—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(p) *Molten salt rinse.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium treated with molten salt	
Chromium	0.333	0.135
Cyanide	0.220	0.091
Nickel	1.45	0.960
Ammonia	101	44.3

SUBPART I—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	45.0	20.0

(q) *Sawing or grinding contact cooling water.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with contact cooling water	
Chromium	0.142	0.056
Cyanide	0.093	0.039
Nickel	0.617	0.406
Ammonia	43.8	18.8
Fluoride	19.1	8.48

(r) *Sawing or grinding rinse.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground zirconium-hafnium rinsed	
Chromium	0.079	0.033
Cyanide	0.052	0.022
Nickel	0.346	0.229
Ammonia	24.1	10.6
Fluoride	10.7	4.75

(s) *Sawing or grinding spent neat oils—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(t) *Inspection and testing wastewater.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium tested	
Chromium	0.007	0.003
Cyanide	0.005	0.002
Nickel	0.030	0.020
Ammonia	2.06	0.973
Fluoride	0.917	0.704

§ 471.93 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). The mass of pollutant in the zirconium-hafnium process wastewater shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Drawing spent lubricants—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(c) *Extrusion spent emulsions—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion press hydraulic fluid leakage.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium extruded	
Chromium	0.104	0.043
Cyanide	0.069	0.029
Nickel	0.455	0.301
Ammonia	31.6	13.9
Fluoride	14.1	6.26
Oil and grease	4.74	2.85
TSS	9.72	4.62
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Swaging spent neat oils—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(f) *Heat treatment contact cooling water.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium heat treated	
Chromium	0.015	0.006
Cyanide	0.010	0.004
Nickel	0.066	0.044
Ammonia	4.57	2.01
Fluoride	2.04	0.898
Oil and grease	0.680	0.412
TSS	1.41	0.669
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Tube reducing spent lubricants—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(h) *Surface treatment spent baths.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.150	0.061
Cyanide	0.099	0.041
Nickel	0.653	0.432
Ammonia	45.3	20.0
Fluoride	20.0	8.86
Oil and grease	6.80	4.08
TSS	14.0	6.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Surface treatment rinse.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.361	0.149
Cyanide	0.25	0.103
Nickel	1.71	1.13
Ammonia	118	52.1
Fluoride	52.9	23.5
Oil and grease	17.0	10.7
TSS	36.4	17.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Alkaline cleaning spent baths.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	0.704	0.288
Cyanide	0.464	0.192
Nickel	3.07	2.03
Ammonia	214	93.8
Fluoride	95.2	42.3
Oil and grease	32.0	19.2
TSS	65.6	31.2
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Alkaline cleaning rinse.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	1.36	0.565
Cyanide	0.911	0.377
Nickel	6.01	3.98
Ammonia	4.9	204
Fluoride	187	82.9
Oil and grease	62.8	37.7
TSS	129	61.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Sawing or grinding spent emulsions.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with emulsions	
Chromium	0.124	0.051
Cyanide	0.082	0.034
Nickel	0.540	0.357
Ammonia	37.5	16.5
Fluoride	16.7	7.42

SUBPART I—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
Oil and grease	5.62	3.37
TSS	11.5	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Wet air pollution control scrubber blowdown—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(n) *Degreasing spent solvents—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(o) *Degreasing rinse—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants

(p) *Molten salt rinse.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium treated with molten salt	
Chromium	0.333	0.136
Cyanide	0.220	0.091
[illegible]	0.002	0.960
Ammonia	101	44.3
[illegible]	45.0	20.0
Oil and grease	15.1	9.07
TSS	31.0	14.8
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Sawing or grinding contact cooling water.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with contact cooling water	
Chromium	0.142	0.058
Cyanide	0.093	0.039
Nickel	0.617	0.408
Ammonia	42.8	18.8
[illegible]	19.1	8.48
Oil and grease	6.42	3.85
TSS	13.2	6.26
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Sawing or grinding rinse.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground zirconium-hafnium rinsed	
Chromium	0.079	0.033

SUBPART I—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
Cyanide	0.052	0.022
Nickel	0.346	0.229
Ammonia	24.0	10.6
Fluoride	10.7	4.75
Oil and Grease	3.60	2.16
TSS	7.38	3.51
pH	(1)	(1)

[1] Within range of 7.5 to 10.0 at all times.

(s) *Sawing or grinding spent neat oils—Subpart I—NSPS.* There shall be no discharge or process wastewater pollutants.

(t) *Inspection and testing wastewater.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium tested	
Chromium	0.007	[illegible]
Cyanide	0.005	0.002
Nickel	0.030	0.020
Ammonia	[illegible]	0.903
Fluoride	0.917	0.407
Oil and grease	[illegible]	0.185
TSS	0.632	0.301
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 471.94 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in zirconium-hafnium forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(b) *Drawing spent lubricants—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(c) *Extrusion spent emulsion—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion press hydraulic fluid leakage.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium extruded	
Chromium	0.104	0.043
Cyanide	0.069	0.029
Nickel	0.455	0.301
Ammonia	31.6	13.9
Fluoride	41.1	6.26

(e) *Swaging spent neat oils—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(f) *Heat treatment contact cooling water.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium heat treated	
Chromium	0.015	[illegible]
Cyanide	0.010	[illegible]
Nickel	[illegible]	[illegible]
Ammonia	4.57	2.01
Fluoride	[illegible]	0.906

(g) *Tube reducing spent lubricants—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(h) *Surface treatment spent baths.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.150	0.061
Cyanide	0.099	0.041
Nickel	0.653	0.432
Ammonia	45.3	20.0
Fluoride	20.0	8.96

(i) *Surface treatment rinse.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.391	0.160
Cyanide	0.258	0.107
Nickel	1.71	1.13
Ammonia	119	52.1
Fluoride	52.9	23.5

(j) *Alkaline cleaning spent baths.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	0.704	0.288
Cyanide	0.484	0.192
Nickel	3.07	2.03
Ammonia	214	93.8
Fluoride	95.3	42.3

(k) *Alkaline cleaning rinse.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	1.38	0.565
Cyanide	0.911	0.377
Nickel	6.03	3.99
Ammonia	419	184
Fluoride	187	82.9

(l) *Sawing or grinding spent emulsions.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with emulsions	
Chromium	0.124	0.051
Cyanide	0.082	0.034
Nickel	0.540	0.357
Ammonia	37.5	16.50
Fluoride	16.7	7.42

(m) *Wet air pollution control scrubber blowdown—Subpart I—PSES.* There shall be no discharge or process wastewater pollutants.

(n) *Degreasing spent solvents—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(o) *Degreasing rinse—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(p) *Molten salt rinse.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium treated with molten salt	
Chromium	0.333	0.136
Cyanide	0.220	0.091
Nickel	1.45	0.580
Ammonia	101	44.3

SUBPART I—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	45	18

(q) *Sawing or grinding contact cooling water.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with contact cooling water	
Chromium	0.142	0.058
Cyanide	0.093	0.039
Nickel	0.617	0.408
Ammonia	42.8	18.8
Fluoride	19.1	8.48

(r) *Sawing or grinding rinse.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground zirconium-hafnium rinsed	
Chromium	0.078	0.032
Cyanide	0.052	0.022
Nickel	0.346	0.229
Ammonia	24	10.6
Fluoride	10.7	4.75

(s) *Sawing or grinding spent neat oils—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(t) *Inspection and testing wastewater.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium tested	
Chromium	0.007	0.003
Cyanide	0.005	0.002
Nickel	0.030	0.020
Ammonia	2.06	0.903
Fluoride	0.917	0.407

§ 471.95 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater shall not exceed the following:

(a) *Rolling spent neat oils—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Drawing spent lubricants—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(c) *Extrusion spent emulsions—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion press hydraulic fluid leakage.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium extruded	
Chromium	0.709	0.312
Cyanide	0.489	0.215
Nickel	3.10	2.05
Ammonia	216	94.8
Fluoride	96.1	42.6

(e) *Swaging spent neat oils—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(f) *Heat treatment contact cooling water.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of zirconium-hafnium heat treated	
Chromium	0.013	0.006
Cyanide	0.010	0.004
Nickel	0.066	0.044
Ammonia	4.57	2.01
Fluoride	2.04	0.906

(g) *Tube reducing spent lubricants—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(h) *Surface treatment spent baths.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.152	0.061
Cyanide	0.105	0.041
Nickel	0.662	0.432
Ammonia	45.3	19.9
Fluoride	20	8.78

(i) *Surface treatment rinse.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.391	[illegible]
Cyanide	[illegible]	0.107
Nickel	1.71	1.13
Ammonia	119	[illegible]
Fluoride	[illegible]	23.5

(j) *Alkaline cleaning spent baths.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	0.704	[illegible]
Cyanide	[illegible]	0.192
Nickel	3.07	2.03
Ammonia	214	93.6
Fluoride	[illegible]	42.3

(k) *Alkaline cleaning rinse.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	1.38	[illegible]
Cyanide	0.911	0.377
Nickel	[illegible]	[illegible]
Ammonia	419	[illegible]
Fluoride	187	[illegible]

(l) *Sawing or grinding spent emulsions.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with emulsions	
Chromium	0.124	0.051
Cyanide	[illegible]	[illegible]
Nickel	[illegible]	0.357
Ammonia	37.5	[illegible]
Fluoride	16.7	7.42

(m) *Wet air pollution control scrubber blowdown—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(n) *Degreasing spent solvents—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(o) *Degreasing rinse—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(p) *Molten salt rinse.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium rinsed following molten salt treatment	
Chromium	[illegible]	[illegible]
Cyanide	[illegible]	0.091
Nickel	1.45	[illegible]
Ammonia	101	44.3
Fluoride	45.0	[illegible]

(q) *Sawing or grinding contact cooling water.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with contact cooling water	
Chromium	0.142	[illegible]
Cyanide	[illegible]	[illegible]
Nickel	0.617	[illegible]
Ammonia	[illegible]	18.8
Fluoride	19.1	[illegible]

(r) *Sawing or grinding rinse.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground zirconium-hafnium rinsed	
Chromium	0.079	0.033
Cyanide	0.052	0.022
Nickel	0.346	0.229
Ammonia	24.0	10.6
Fluoride	10.7	4.75

(s) *Sawing or grinding spent neat oils—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(t) *Inspection and testing wastewater.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium rinsed	
Chromium	0.007	[illegible]
Cyanide	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Ammonia	[illegible]	[illegible]
Fluoride	0.917	0.407

§ 471.96 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart J—Metals Powders Subcategory

§ 471.100 Applicability; description of the powder metals subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the metal powders subcategory.

§ 471.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Metal powder production atomization wastewater.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder wet atomized	
Copper	9.58	5.04
Cyanide	1.46	0.605
Lead	2.12	1.01
Oil and grease	101	60.5
TSS	207	98.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Sizing spent emulsion.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sized	
Copper	0.028	0.015
Cyanide	0.004	0.002
Lead	0.006	0.003
Oil and grease	0.292	0.175
TSS	0.599	0.285
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Oil-resin impregnation wastewater—Subpart J—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Steam treatment wet air pollution control scrubber blowdown.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of power metallurgy parts steam treated	
Copper	1.51	0.792
Cyanide	0.290	0.095
Lead	0.933	0.159
Oil and grease	15.9	9.51
TSS	32.5	15.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Tumbling, burnishing and cleaning wastewater.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts tumbled, burnished, or cleaned	
Copper	8.36	4.40
Cyanide	1.26	0.526
Lead	1.85	0.880
Oil and grease	88.0	52.800
TSS	181	85.8
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Sawing or grinding spent neat oils.—Subpart J—BPT.* There shall be no discharge of process wastewater pollutants.

(g) *Sawing or grinding spent emulsion.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts sawed or ground with emulsion	
Copper	0.035	0.018
Cyanide	0.005	0.002
Lead	0.008	0.004
Oil and grease	0.362	0.217
TSS	0.742	0.353
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Sawing or grinding contact cooling water.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts sawed or ground with contact cooling	
Copper	3.06	1.62
Cyanide	0.470	0.195
Lead	0.661	0.324
Oil and grease	32.4	19.5
TSS	66.4	31.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Hot pressing contact cooling water.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder cooled after pressing	
Copper	16.7	8.60
Cyanide	2.55	1.06
Lead	3.70	1.76
Oil and grease	176	106
TSS	361	172
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Mixing wet air pollution control scrubber blowdown.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder mixed	
Copper	15.0	7.90
Cyanide	2.29	0.948
Lead	3.32	1.58
Oil and grease	158	94.8
TSS	324	15.4
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Degreasing spent solvents.—Subpart J—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Metal powder production atomization wastewater.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder wet atomized	
Copper	9.58	5.04
Cyanide	1.46	0.605
Lead	2.12	1.01

(b) *Sizing spent emulsions.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sized	
Copper	0.258	0.135
Cyanide	0.054	0.022
Lead	0.206	0.088

(c) *Oil-resin impregnation wastewater—Subpart J—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Steam treatment wet air pollution control scrubber blowdown.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts steam treated	
Copper	1.51	0.792
Cyanide	0.290	0.095
Lead	0.933	0.159

(e) *Tumbling, burnishing and cleaning wastewater.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts tumbled, burnished, or cleaned	
Copper	8360	4400
Cyanide	1260	526
Lead	1850	880

(f) *Sawing or grinding spent neat oils. Subpart J—BAT.* There shall be no discharge of process wastewater pollutants.

(g) *Sawing or grinding spent emulsions.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts sawed or ground with emulsions	
Copper	54.4	18.1
Cyanide	5.25	2.17
Lead	7.80	3.52

(h) *Sawing or grinding contact cooling water.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sawed or ground with contact cooling	
Copper	3.08	1.62
Cyanide	0.470	0.195
Lead	0.661	0.324

(i) *Hot pressing contact cooling water.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder cooled after pressing	
Copper	16.7	8.80
Cyanide	2.55	1.06
Lead	3.70	1.76

(j) *Mixing wet air pollution control scrubber blowdown.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder mixed	
Copper	1.50	7.00
Cyanide	0.258	0.948
Lead	0.32	1.58

(k) *Degreasing spent solvents—Subpart J—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.103 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). The mass of pollutants in the metal powder process wastewater shall not exceed the following values:

(a) *Metal powder production atomization wastewater.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder wet atomized	
Copper	9.58	5.04
Cyanide	1.46	0.605
Lead	2.12	1.01
Oil and grease	101	60.5
TSS	207	98.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Sizing spent emulsions.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sized	
Copper	0.026	0.015
Cyanide	0.004	0.002
Lead	0.006	0.003
Oil and grease	0.292	0.175
TSS	0.599	0.285
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Oil-resin impregnation wastewater.—Subpart J—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Steam treatment wet air pollution control scrubber blowdwn.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts steam treated	
Copper	1.51	0.792
Cyanide	0.230	0.095
Lead	0.333	0.159
Oil and grease	15.8	8.51
TSS	33.8	15.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Tumbling, burnishing and cleaning wastewater.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts tumbled, burnished, or cleaned	
Copper	8.56	4.40
Cyanide	1.28	0.528
Lead	1.85	0.880
Oil and grease	99.0	52.8

SUBPART J—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
TSS	181	81.9
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Sawing or grinding spent neat oils.—Subpart J—NSPS.* There shall be no discharge of process wastewater pollutants.

(g) *Sawing or grinding spent emulsions.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts sawed or ground with emulsions	
Copper	0.026	0.010
Cyanide	0.004	0.002
Lead	0.006	0.004
Oil and grease	0.362	0.217
TSS	0.742	0.353
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Sawing or grinding contact cooling water.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sawed or ground with contact cooling	
Copper	3.08	1.62
Cyanide	0.470	0.195
Lead	0.661	0.324
Oil and grease	32.4	19.5
TSS	66.4	31.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Hot pressing contact cooling water.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder cooled after pressing	
Copper	16.7	8.80
Cyanide	2.55	1.06
Lead	3.70	1.76
Oil and grease	176	106
TSS	361	172
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Mixing wet air pollution control scrubber blowdown.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder mixed	
Copper	15.0	7.90
Cyanide	2.29	0.948
Lead	3.32	1.58
Oil and grease	158	94.8
TSS	324	15.4
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Degreasing spent solvents.—Subpart J—NSPS.* There shall be no discharge of process wastewater pollutants.

§ 471.104 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in metal powders process wastewater introduced into a POTW shall not exceed the following values:

(a) *Metal powder production atomization wastewater.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder wet atomized	
Copper	9.58	5.040
Cyanide	1.46	0.605
Lead	2.12	1.01

(b) *Sizing spent emulsions.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sized	
Copper	0.028	0.015
Cyanide	0.004	0.002
Lead	0.006	0.003

(c) *Oil-resin impregnation wastewater.—Subpart J—PSES.*

(d) *Steam treatment wet air pollution control scrubber blowdown.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy part steam treated	
Copper	1.51	0.792
Cyanide	0.230	0.095
Lead	0.333	0.150

(e) *Tumbling, burnishing and cleaning wastewater.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts tumbled, burnished, or cleaned	
Copper	8.36	4.40
Cyanide	1.26	0.528
Lead	1.65	0.660

(f) *Sawing or grinding spent neat oils.—Subpart J—PSES.* There shall be no discharge of process watewater pollutants.

(g) *Sawing or grinding spent emulsions.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts sawed or ground with emulsions	
Copper	0.035	0.018
Cyanide	0.005	0.002
Lead	0.008	0.004

(h) *Sawing or grinding contact cooling water.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sawed or ground with contact cooling water	
Copper	3.08	1.62
Cyanide	0.470	0.195
Lead	0.681	0.324

(i) *Hot pressing contact cooling water.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder cooled after pressing	
Copper	16.7	8.80
Cyanide	2.55	1.06
Lead	3.70	1.76

(j) *Mixing wet air pollution control scrubber blowdown.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder mixed	
Copper	1.50	7.90
Cyanide	2.29	0.948
Lead	3.32	1.58

(k) *Degreasing spent solvents—Subpart J—PSES.* There shall be no discharge of process wastewater pollutants.

§ 471.105 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subject which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in metal powders process wastewater introduced into a POTW shall not exceed the following values:

(a) *Metal powder production atomization wastewater.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder wet atomized	
Copper	9.58	5.04
Cyanide	1.46	0.605
Lead	2.12	1.01

(b) *Sizing spent emulsions.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sized	
Copper	0.028	0.015
Cyanide	0.004	0.002

SUBPART J—PSNS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
[illegible]	0.006	0.003

(c) *Oil-resin impregnation wastewater—Subpart J—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Steam treatment wet air pollution control scrubber blowdown.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts steam treated	
Copper	1.51	0.792
Cyanide	0.230	0.095
Lead	0.333	0.159

(e) *Tumbling, burnishing and cleaning wastewater.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts tumbled, burnished, or cleaned	
Copper	8.36	4.40
Cyanide	1.28	0.528
Lead	1.85	0.880

(f) *Sawing or grinding spent neat oils—Subpart J—PSNS.* There shall be no discharge of process wastewater pollutants.

(g) *Sawing or grinding spent emulsions.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground with [illegible]	
Copper	0.035	0.018
Cyanide	0.005	0.002

SUBPART J—PSNS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	0.006	0.004

(h) *Sawing or grinding contact cooling water.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sawed or ground with contact cooling water	
Copper	3.08	1.620
Cyanide	0.470	0.195
Lead	0.681	0.324

(i) *Hot pressing contact cooling water.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder cooled after pressing	
Copper	16.7	8.80
Cyanide	2.55	1.06
Lead	3.70	1.70

(j) *Mixing wet air pollution control scrubber blowdown.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder mixed	
Copper	1.50	[illegible]
Cyanide	2.29	[illegible]
Lead	3.32	1.58

(k) *Degreasing spent solvents—Subpart J—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.106 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

PART 468—COPPER FORMING POINT SOURCE CATEGORY

For the reasons stated above, EPA is amending 40 CFR Part 468 as follows:

1. The authority citation for Part 468 continues to read as follows:

Authority: Sections 301, 304 (b), (c), (e) and (g), 306 (b) and (c), 307 (b) and (c), 308 and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e) and (g), 1316 (b) and (c), 1317 (b) and (c), 1318 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. 40 CFR 468.01 is revised to read as follows:

§ 468.01 Applicability.

The provisions of this subpart are applicable to discharges resulting from the manufacture of formed copper and copper alloy products. The forming operations covered are hot rolling, cold rolling, drawing, extrusion, and forging. This part does not regulate the forming of precious metals. (See 40 CFR Part 471.) The casting of copper and copper alloys is not covered by this part. (See 40 CFR Part 451.)

3. 40 CFR 468.02 is amended by adding a new paragraph (x) to read as follows. The introductory text of the section is shown for the convenience of the reader and remains unchanged.

§ 468.02 Specialized definitions.

In addition to the definitions set forth in 40 CFR Part 401 and the chemical analysis methods in 40 CFR Part 136, the following definitions apply to this part:

* * * * *

(x) The term "precious metals" shall mean gold, platinum, palladium and silver and their alloys. Any alloy containing 30 or greater percent by weight of precious metals is considered a precious metal.

[FR Doc. 85–19248 Filed 8–22–85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
August 23, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California:	
CA84–5022	Oct. 5, 1984.
CA84–5007	May 18, 1984.
Kansas: KS85–4007	May 10, 1985.
Minnesota:	
MN85–5006	Feb. 1, 1985.
MN84–5015	May 25, 1984.
Montana: MT83–5101	Feb. 18, 1983.
Nebraska: NE85–4033	Aug. 16, 1985.
New Jersey:	
NJ85–3031	Aug. 2, 1985.
NJ85–3032	July 19, 1985.
NJ85–3033	July 12, 1985.
Pennsylvania:	
PA84–3035	Sept. 21, 1984.
PA85–3035	July 12, 1985.
Washington: WA84–5040	Nov. 16, 1984.

Cancellation of General Wage Determination Decision

General Wage Decision Number AR84–4111, Crawford, Sebastian and Washington Counties, Arkansas is cancelled. Agencies with construction projects pending to which the cancelled decision would have been applicable should utilize the project determination procedure by submitting form SF–308. See Regulations Part 1, 29 CFR, section 1.5. Contracts for which bids have been opened shall not be effected by this notice. Also consistent with 29 CFR, 1.6 (c)(3)(i)(A), the incorporation of the cancelled decision in contract specifications, the opening of bids for which is within ten (10) days of the notice, need not be affected.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

California: CA83–5119 (CA85–5034)	Sept. 16, 1983.
Missouri: MO85–4005 (MO85–4023)	Apr. 12, 1985.
New York:	
NY83–3050 (NY85–3044)	Nov. 4, 1983.
NY81–3055 (NY85–3043)	July 17, 1981.
Oklahoma: OK83–4031 (OK85–4034)	Apr. 15, 1983.
Pennsylvania: PA84–3000 (PA85–3034)	Jan. 13, 1984.

Signed at Washington, D.C. this 16th day of August 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. CA84-5022 - Mod. #11 (49 FR 39416 - October 5, 1984) Alameda, Alpine, Amador, etc., Counties, CA	Basic Hourly Rates	Fringe Benefits
Omit:		
Power Equipment Operator:		
Dredging - Schedule I (Clamshell and Dipper Dredging - new construction)		
Dredging - Schedule II (Hydraulic Suction Dredging and all other Dredging)		
Add:		
Power Equipment Operator:		
Clamshell and Dipper Dredging; Hydraulic Suction Dredging:		
Area 1:		
Group 1	$15.79	$9.41
Group 2	17.28	9.41
Group 3:		
Clamshell and Dipper Dredging - new construction	18.78	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	18.33	9.41
Group 4:		
Clamshell and Dipper Dredging - new construction	21.72	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	19.94	9.41
Group 5	24.84	9.41
Area 2:		
Group 1	17.26	9.41
Group 2	18.75	9.41

DECISION NO. CA84-5022 - Mod. #11 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Power Equipment Operator (Cont'd):		
Clamshell and Dipper Dredging; Hydraulic Suction Dredging:		
Area 2 (Cont'd):		
Group 3:		
Clamshell and Dipper Dredging - new construction	$20.24	$9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	19.79	9.41
Group 4:		
Clamshell and Dipper Dredging - new construction	23.19	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	21.41	9.41
Group 5	25.98	9.41
Area 3:		
Group 1	17.69	9.41
Group 2	19.18	9.41
Group 3:		
Clamshell and Dipper Dredging - new construction	20.67	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	20.22	9.41

(3)

DECISION NO. CA84-5022 - Mod. #11 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Power Equipment Operator (Cont'd):		
Clamshell and Dipper Dredging; Hydraulic Suction Dredging:		
Area 3 (Cont'd):		
Group 4:		
Clamshell and Dipper Dredging - new construction	$23.62	$9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	21.84	9.41
Group 5	26.41	9.41
Area 4:		
Group 1	18.13	9.41
Group 2	19.62	9.41
Group 3:		
Clamshell and Dipper Dredging - new construction	21.11	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	20.66	9.41
Group 4:		
Clamshell and Dipper Dredging - new construction	24.06	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	22.28	9.41
Group 5	27.03	9.41
DEFINITION OF AREAS:		
Area 1: Area up to 20 road miles from centers listed below		

DECISION NO. CA84-5022 - Mod. #11 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Power Equipment Operator (Cont'd):		
Clamshell and Dipper Dredging; Hydraulic Suction Dredging:		
DEF. OF AREAS:		
Area 2:		
Area more than 20 road miles up to and including 30 road miles from centers listed below		
Area 3:		
Area over 30 road miles from centers listed below.		
Area 4:		
Area extending 25 miles from the shoreline of Lake Tahoe and up to and including 30 road miles from the centers listed below		
City Halls of Bodega Bay, Crescent City, Eureka, Fort Bragg and Moss Landing.		
DEFINITION OF GROUPS:		
Group 1: Barge-hand; Deck-hand; Fire-fighter; Leveehand; Oiler		
Group 2: Winch (stern winches on dredge)		
Group 3: Booster pump operator; Deck engineer; Deck-mate; Welder and/or mechanic on new		

(4)

DECISION NO. CA84-5022 - Mod. #11 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Power Equipment Operator (Cont'd):		
Clamshell and Dipper Dredging; Hydraulic Suction Dredging:		
DEFINITION OF AREAS (Cont'd):		
Group 3 (Cont'd): construction: Watch engineer; Welder		
Group 4: Lever: Clamshell operator (up to and including 7 cu. yds. m.r.c.) (long boom pay); Clamshell operator (over 7 cu. yds. m.r.c.) (long boom pay) (on new construction only)		
Group 5: Chief Engineer		
Change:		
Power Equipment Operator:		
Area 1:		
Group 1	$15.54	$9.60
Group [illegible]	16.09	9.60
Group [illegible]	16.42	9.60
Group [illegible]	17.27	9.60
Group [illegible]	17.60	9.60
Group [illegible]	17.83	9.60
Group 7	18.08	9.60
Group 8	18.76	9.60
Group [illegible]	19.10	9.60
Group 10	19.45	9.60
Group 10-A	19.64	9.60
Group 11	19.91	9.60
Group 11-A1	21.71	9.60
Group 11-B	22.14	9.60
Group 11-C	22.65	9.60
Area 2:		
Group 1	17.54	9.60
Group 2	18.09	9.60

(5)

DECISION NO. CA84-5022 - Mod. #11 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Power Equipment Operator (Cont'd):		
Area 2 (Cont'd):		
Group 3	$18.42	$9.60
Group 4	19.27	9.60
Group 5	19.60	9.60
Group 6	19.83	9.60
Group 7	20.08	9.60
Group 8	20.76	9.60
Group 9	21.10	9.60
Group 10	21.45	9.60
Group 10-A	21.64	9.60
Group 11	21.91	9.60
Group 11-A	23.71	9.60
Group 11-B	24.14	9.60
Group 11-C	24.65	9.60
Piledriving:		
Group 1	15.61	9.60
Group 1-A	16.16	9.60
Group 1-B	16.47	9.60
Group 2-A	16.47	9.60
Group 2-B	17.33	9.60
Group 2-C	17.67	9.60
Group 2-D	17.91	9.60
Group [illegible]	18.14	9.60
Group 3-A	18.83	9.60
Group [illegible]	19.70	9.60
Group [illegible]	19.98	9.60
Group 6	21.77	9.60
Steel Erection:		
Group 1	16.36	9.60
Group 2	16.94	9.60
Group 3	18.58	9.60
Group 4	18.79	9.60
Group 4-A	19.30	9.60
Group 5	20.09	9.60
Group 6	20.77	9.60
Group 7	21.25	9.60
Group 8	21.71	9.60
Group 9	23.37	9.60

DECISION NO. CA84-5007 - Mod. #12 (49 FR 21245 - May 18, 1984) Imperial, Inyo, Kern, etc., Counties, CA	Basic Hourly Rates	Fringe Benefits
Add:		
Plumbers; Steamfitters:		
Area 1:		
Definition of Zones:		
Zone 1: Remainder of area		
Zone 2: Camp Pendleton, Camp Roberts, Edwards Air Force Base, George Air Force Base, Vandenberg Air Force Base		
Zone 3: Fort Irwin Army Base, Marine Corps Logistic Base at Nebo, Marine Corps Logistic Base at Yermo, Nicolaus Island Naval Base, 29 Palms Marine [illegible]		

DECISION NO. KS85-4007 MOD. # 1 (50FR19851 - May 10, 1985)	Basic Hourly Rates	Fringe Benefits
SEDGWICK County, KANSAS		
ADD:		
ELECTRICIANS	$11.50	

(6)

DECISION NO. MN84-5015 - MOD. #7
(49 FR 22184 - May 25, 1984)
Aitkin, Becker,...Wright & Yellow Medicine Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons:		
Area 8	$16.61	$1.75
Area 14	15.01	1.90
Cement Masons; Plasterers:		
Area 3:		
Cement Masons	16.85	1.85
Area 12:		
Cement Masons	15.85	1.75
Electricians:		
Area 1	16.00+ 11%	21%
Area 4:		
Electrical Installations over $100,000.00	16.18	13.5%+ 1.57
Electrical Installations under $100,000.00	13.74	13.5%+ 1.57
Area 6:		
Electrical Installations over $100,000.00	16.18	13.5%+ 1.57
Electrical Installations under $100,000.00	13.01	13.5%+ 1.57
Area 9:		
Electrical Installations over $100,000.00	16.18	13.5%+ 1.57
Electrical Installations under $100,000.00	13.01	13.5%+ 1.57
Pipefitters; Plumbers; & Steamfitters:		
Area 4:		
Pipefitters; Steamfitters	19.22	3.39
Plumbers	18.40	4.03+c
Area 8:		
Plumbers	15.15	7.24+c

	Basic Hourly Rates	Fringe Benefits
Omit:		
Bricklayers; Stonemasons:		
Area 2 Wage rates & Area Descriptions		
Electricians:		
Area 3 wage rates		
Add:		
Bricklayers; Stonemasons:		
Area 2	$17.15	$1.85
Area 15	17.45	1.55
Electricians:		
Area 3:		
Electricians	16.17	32½%
Cable Splicers	16.72	32½%
Area Descriptions:		
Bricklayers; Stonemasons:		
Area 2: Aitkin (W ½), Becker, Beltrami, Cass, Clay, Clearwater, Crow Wing, Hubbard, Lake of the Woods, Mille Lacs (N. of an E-W extension of the northern border of Isanti Co.), Otter Tail & Wadena Cos.		
Area 15: Kittson, Mahnomen, Marshall, Norman, Pennington, Polk, Red Lake & Roseau Cos.		

DECISION NO. MN85-5006 - MOD. #7
(50 FR 4837 - February 1, 1985)
Anoka, Benton, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, Scott, Sherburne, Stearns, & Washington Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons:		
Area 5	$17.15	$1.85
Cement Masons (Building):		
Area 5	16.85	1.85
Electricians:		
Area 3:		
Electrical Installations over $100,000.00	16.18	13.5%+ 1.57
Electrical Installations under $100,000.00	13.74	13.5%+ 1.57
Area 4	16.00+ 11%	21%
Pipefitters; Plumbers; & Steamfitters:		
Area 1:		
Plumbers	15.15	7.24+g
Area 5:		
Pipefitters; Steamfitters	19.22	3.39
Plumbers	18.40	4.03+g

	Basic Hourly Rates	Fringe Benefits
Omit:		
Electricians:		
Area 5 wage rates		
Add:		
Electricians:		
Area 5:		
Residential up to & inclu. 6-plexes under 1 roof	$ 9.19	3%+ $1.44
All Other Work:		
Electricians	16.17	32½%
Cable Splicers	16.72	32½%

DECISION NO. MT83-5101 - MOD. #9
(48 FR 7370 - February 18, 1983)
Statewide, Montana

	Basic Hourly Rates	Fringe Benefits
Omit:		
LINE CONSTRUCTION:		
Area's 1 and 2:		
All Classifications and wage rates		

DECISION NO. NE85-4033 - MOD. #1
(50 FR - 8/16/85)
Lancaster Co., Nebraska

	Basic Hourly Rates	Fringe Benefits
ADD:		
Ironworkers	$ 8.60	

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NJ85-3031		
MOD. NO. 2		
(50 FR 31459 - August 2, 1985)		
Bergen, Essex, Hudson, (excluding Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey		
CHANGE:		
Bricklayers & Stonemasons		
Zone 6	$18.07	4.19
Carpenters, Insulators amd Millwrights:		
Zone 5		
Carpenters & Insulators	19.26	23.5%
Millwrights	19.76	23.5%
Zone 6		
Carpenters & Insulators	18.50	20.5%
Millwrights	19.00	20.5%
Divers & Diver Tenders:		
Zone 1:		
Divers	22.33	7.72
Divers Tenders	18.19	7.72
Dock Builders & Piledrivermen	19.66	7.72
Laborers:		
Zone 1		
Group 1	12.55	3.60
Zone 2		
Group 1	11.80	4.35
LINE CONSTRUCTION:		
Zone 3		
Lineman & Equipment Operators	21.99	1.00+28%
Groundman	20.82	1.00+28%
Sprinkler Fitters		
Zone 1	19.28	5.87

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NJ85-3032		
MOD. NO. 3		
(50 FR 29594 - July 19, 1985)		
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties, New Jersey		
CHANGE:		
Asbestos Workers		
Zone 1	19.61	5.42
Carpenters & Insulators		
Zone 2	19.74	20.5%
Zone 3	19.26	23.5%
Millwrights		
Zone 3	19.51	23.5%
Carpenters, Insulators & Millwrights		
Zone 4	17.81	5.94
Divers & Diver Tenders:		
Zone 1		
Divers	23.33	7.72
Diver Tenders	18.19	7.72
Dock Builders & Piledrivermen		
Zone 2	19.66	7.72
Electricians		
Zone 4	19.77	10%+ 1.89
Ironworkers		
Zone 3	18.10	5.80
Mod. No. 2 published in 50 FR -32350, dated August 9, 1985, to read Change: (Laborers Heavy & Highway Construction)		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NJ85-3033		
MOD. NO. 1		
(50 FR 28506 - July 12, 1985)		
Bergen, Essex, Hudson and Passaic Counties, New Jersey		
CHANGE:		
Carpenters, Insulators, and Millwrights:		
Zone 2		
Carpenters & Insulators	$18.50	20.5%
Millwrights	19.00	20.5%
Zone 4		
Carpenters & Insulators	19.26	23.5%
Millwrights	19.76	23.5%
Divers & Diver Tenders:		
Divers	23.33	7.72
Divers Tenders	18.19	7.72
Dock Builders and Piledriver-	19.66	7.72
Laborers:		
Zone 1		
Group 1	12.55	3.60
Zone 2		
Group 1	11.80	4.35
LINE CONSTRUCTION:		
Zone 3		
Lineman & Equipment Op.	21.99	1.00+28%
Groundman	20.82	1.00+28%
Sprinkler Fitters	19.28	5.87
ADD:		
Bricklayers & Stonemasons		
Zone 5	18.07	4.19

	Basic Hourly Rates	Fringe Benefits
DECISION NO. WA84-5040 - Mod#10		
(49 FR 45532 - Nov. 16, 1984)		
Statewide Washington		
OMIT:		
DESCRIPTION OF WORK: Building Projects (does not include single-family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging		
ADD:		
DESCRIPTION OF WORK: Heavy and Highway projects and Dredging		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA84-3035		
MOD. NO. 5		
(49 FR 27243 - Sept. 21, 1984)		
Lackawanna, Susquehanna, Wayne & Wyoming Counties, Pennsylvania		
CHANGE:		
LABORERS:		
Lackawanna, Susquehanna, Wayne & Northern part of Wyoming County:		
Class 1	$12.80	3.07
Class 2	12.95	3.07
Class 3	13.20	3.07
Class 4	12.95	3.07
Southern Part of Wyoming County:		
Class 1	12.87	2.90
Class 2	13.07	2.90
Class 3	13.19	2.90
Class 4	13.27	2.90

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA85-3035		
MOD. NO. 1		
(50 FR 28511 - July 12, 1985)		
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania		
CHANGE:		
Supersedeas Decision No. PA84-3012, dated May 11, 1984, in 49FR 20229, to read PA84-3013.		

SUPERSEDES DECISION

STATE: California
DECISION NUMBERS: CA85-5034
COUNTY: San Diego
DATE: Date of Publication
Supersedes Decision No. CA83-5119 dated September 16, 1983; in 48 FR 41702.
DESCRIPTION OF WORK: Building Projects; Heavy Projects (excluding Water Drilling); Highway Projects; Residential Projects (including single family homes and garden-type apartments up to and including 4 stories); and Dredging

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$22.06	$5.45
BOILERMAKERS:		
Boilermakers	21.60	4.25
Boilermaker- Blacksmith (storage tank erection)	17.25	4.00
Boilermaker-Blacksmith (storage tank repair)	16.05	4.00
BRICKLAYERS; STONEMASONS	19.09	3.59
BRICK TENDERS	15.42	4.54
CARPENTERS:		
Carpenters; Shinglers Work on single family homes and apartments up to and including three stories	19.76	4.76
	15.20	4.76
Piledriver	20.01	4.76
Millwrights; Pneumatic Nailer; Hardwood Floor-layers	20.36	4.76
CEMENT MASONS:		
Cement Masons	14.66	6.87
Color Work; Composition, Mastic or Epoxy; Finishing Machine; Curb Machine	14.96	6.87
DIVERS:		
Diver	43.37	4.76
Stand-by Divers	22.26	4.76
Tender	21.26	4.76
DRYWALL INSTALLERS/LATHERS:		
Drywall Installers/Lathers	19.14	3.97
Drywall Stocker, Scrapper and Clean-up	9.57	1.37
ELECTRICIANS:		
Electricians	18.00	3.90+ 3%
Cable Splicers	18.45	3.90+ 3%
Utility Technician #1	16.50	.74+ 3%
Utility Technician #2	12.50	.74+ 3%
Sound Installers	16.47	1.46+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	23.14	3.29+a
Helpers	16.20	3.29+a
Probationary Helpers	11.57	
GLAZIERS	17.87	3.15
IRONWORKERS:		
Fence Erectors	18.01	8.93
Reinforcing; Ornamental; Structural	18.90	8.93
IRRIGATION and LAWN SPRINKLERS	15.00	39%
LINE CONSTRUCTION:		
Ground	17.41	3.65+ 4%
Line Worker	22.61	3.65+ 4%
Cable Splicers	22.91	3.65+ 4%
PAINTERS:		
Brush, Paint Burner	18.37	4.67
Brush (swing stage), Spray	18.62	4.67
Paperhangers, Spray (swing stage)	18.87	4.67
Sandblaster (swing stage); Iron, steel and bridge painters (swing stage); Iron steel and bridge painters, Spray (swing stage)	19.37	4.67
Sandblaster; Iron, steel and bridge painter (groundwork); Iron, steel and bridge painters, spray (groundwork); Riggers, climbing steel; Brush, climbing steel and bridge; Spray, climbing steel and bridge	19.12	4.67
Steeplejack	20.02	4.67
Taper	19.37	4.67
Parking Lot Work and/or Highway Markers:		
Traffic Delineating Device Applicator	14.83	2.00+b
Wheel Stop Installer; Striper; Sandblaster	14.30	2.00+b

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	Basic Hourly Rates	Fringe Benefits
PAINTERS: (Cont'd)		
Parking Lot Work and/or Highway Markers: (Cont'd)		
Pavement Sealing, Slurry Seal, Resurfacing and Repair:		
Mixer Operator	13.95	2.00+b
Applicator Operator; Shuttle; Squeegee	12.37	2.00+b
Top	10.39	2.00+b
Traffic Control and Service	7.00	2.00+b
PLASTER TENDERS:		
Single family homes and apartments up to and including 3 stories	13.34	5.29
All others work	16.34	5.29
PLASTERERS:		
Single family homes and apartments up to and including 3 stories	14.61	4.27
All others work	17.61	4.27
PLUMBERS; PIPEFITTERS; STEAMFITTERS; AIR CONDITION, REFIGERATION:		
Camp Pendleton	23.73	8.42
Rest of County	21.48	8.42
POWER EQUIPMENT OPERATORS:		
Group 1	17.50	7.35
Group 2	17.78	7.35
Group 3	18.07	7.35
Group 4	18.21	7.35
Group 5	18.43	7.35
Group 6	18.54	7.35
Group 7	18.66	7.35
Group 8	18.83	7.35
Group 9	18.96	7.35
DREDGING: (Hydraulic Suction Dredge):		
Lever	19.10	7.35
Watch Engineer; Welder; and Deckmate	18.77	7.35
Winch Operator (Stern Winch on Dredge)	18.22	7.35
Bargehand; Deckhand; Firefighter; Oiler; Leveehand	17.68	7.35
CLAMSHELL DREDGES:		
Lever	19.35	7.35
Watch Engineers; Deckmate	18.77	7.35
Bargemate	18.29	7.35
Bargehand; Deckhand; Firefighter; Oiler	17.68	7.35
TRUCK DRIVERS:		
Group 1	16.49	5.99
Group 2	16.79	5.99
Group 3	16.99	5.99
Group 4	17.19	5.99
Group 5	17.39	5.99
Group 6	19.39	5.99
ROOFERS	$14.54	$5.16
SHEET METAL WORKERS	20.38	6.04
SOFT FLOOR LAYERS	18.45	3.94
SPRINKLER FITTERS	21.87	3.23
TILE, MARBLE AND TERRAZZO SETTERS	19.76	5.12
TILE, MARBLE AND TERRAZZO FINISHERS	14.14	3.80
LABORERS:		
Group 1	14.95	6.12
Group 2	15.25	6.12
TUNNEL LABORERS:		
Group 1	15.25	6.12
Group 2	15.45	6.12
Group 3	15.70	6.12

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RIGGERS; WELDERS - Receive rate prescribed for craft performing operation to which rigging or welding is incidental.

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

b. Employer contributes $.80 per hour to Vacation Fund for the first year of employment, 1 year but less than 5 years $1.13 per hour to Vacation, 5 years but less than 10 years $.48 per hour to Vacation Fund, over 10 years $1.83 per hour to Vaction Fund.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

ELECTRICIANS

Utility Technicians #1: Installation of street lights and traffic signals, including electrical circuitry, programable controller, pedestal mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius at duct banks, location for manholes, street lights, and traffic signals.

Utility Technicians #2: Distribution material of job site, installation of underground ducts for electrical, telephone, cable TV, and communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

LABORERS

Group 1: Laborer (general construction); Asphalt Ironer - Spreader; Boring Machine Tender; Caulker; Cesspool Digger and Installer; Chucktender (except tunnels); Concrete Curer (Impervious Membrane and Form Oiler); Concrete Water curing, Cutting Torch Operator (demolition); Driller's Tender (Caisson) including Bellowers, Dri-Pak-it Machine, Concrete Cutting Torch, Dry packing of concrete, plugging, filling of Shee Bolt Holes, Fine Grader on Highways, streets and airport paving (sewer and drainage lines when employed); Form Blower; Gas and Oil Pipeline Laborer; Guinea Chaser; Jet; Landscape Gardener and Nursery; Laser Beam in connection with Laborers work; Packing Rod Steel and Pans; Pipelayer's Backup (coating, grouting, making of joints, sealing, caulking, diapering and including Rubber Gasket Joints and pointing); Railroad work Laborer; Rigging and Signaling, Riprap Stonepaver; Sandblaster (Pot Tender); Scaler, Septic Tank Digger and Installer; Tank Scaler and Cleaner, Tool Shed Checker; Window Cleaner; Rebound (gunite industry); Housemover

LABORERS (Cont'd)

Group 2: Asphalt Raker; Buggymobile; Cement Dumper (on 1 yard or larger mixers and handling bulk cement); Concrete Saw (excluding tractor type, Roto-scraper, Chipping Hammer, Concrete Core Cutter and Concrete Grinder and Sander); Cribber - Shorer, Lagging and Trench Bracing, Hand-guided Lagging Hammer; Driller - All power Drills, including Jackhammer, whether Core, Diamond, Wagon, Track, Multiple Unit, and all types of Mechanical Drills without regard to the form of motive power; Driller (all other where drilling is for use of explosives); Gas and Oil Pipeline Wrapper (Pot Tender and Form); Gas and Oil Pipeline Wrapper (6 inch pipe and over); Operator and Tenders of pneumatic, gas and electric tools; Concrete Pumps; Vibrating Machines; Multi-plate Impact Wrench and similar mechanical tools not separately classified herein; Pipelayer (performing all services in the laying and installation of pipe from the point of receiving pipe until completion of the operation, including any and all forms of tubular material, whether Pipe, Metallic or Non-metallic, Conduit and any other stationary type of tubular device used for the conveying of substance or element, whether water, sewage, solid, gas, air or other products what-so-ever and without regard to the nature of material from which the tubular material is fabricated; Powder; Blasters' Tenders; Prefabricated Manhole Installer; Rock Slinger; Sandblaster and Waterblaster (Nozzle operator); Scaler (using Bos'n Chair, Safety Belt); Steel Headerboard; Tree Climber, using mechanical tools; Welding in connection with Laborer's work; Gun Operator (gunite industry)

TUNNEL LABORERS

Group 1: Blasters; Drillers; Powder; Cherry Picker; Grout Gun; Kemper and other pneumatic Concrete Placer Operator; Miners in short dry tunnels under streets, highways and similar places; Miners - tunnel (hand or machine); Powder (tunnel work); Steel Form Raisers and Setters; Timber; Retimber wood or steel

Group 2: Bull Gang Muckers (Track); Chucktender; Cabletender; Concrete Crew (includes Rodders and Spreaders); Dump; Grout Crew; Tender for Steel Form Raisers and Setters; Muckers - Tunnel (hand or machine); Nipper; Swamper (Break and Switch) on tunnel work; Vibrator; Jackhammer; Pneumatic tools (except Driller); Multi-plate Impact Wrench

Group 3: Powder - Primer House (licensed on tunnel work); Shaft and Raise Miner; Shifters; Blasters (licensed) all work of whatever type regardless of method used for such loading and placing

POWER EQUIPMENT OPERATORS

Group 1: Brake; Compressor Operator; Engineer Oiler; Generator; Pump; Signal; Switch; Ditchwitch; Elevator Operator (inside); Forklift (under 5 tons);

Group 2: Concrete Mixer (skip type); Conveyor; Firefighter; Hydrostatic Pump; Plant Operator; Generator, Pump or Compressor; Rotary Drill Tender (oilfield); Skiploader - wheel type up to 3/4 yd. without attachments; Soils Field Technician; Tar Pot Firefighter; Temporary Heating Plant; Trenching Machine Oiler; Concrete Pump Oiler (truck mounted)

Group 3: Ford Ferguson (with dragtype attachments); Helicopter Radio Operator (ground); Power Concrete Curing Machine. Power driven Jumbo Form Setter; Stationary Pipe Wrapping and Cleaning Machine; Gradall Oiler; Surge Tank and Weight Master (Hot Plant); Trencher Oiler (foundations); Truck Crane Oiler

Group 4: Asphalt Plant Firefighter; Boring Machine; Chip Spreading Machine; Concrete Pump Operator; Dinkey Locomotive or Motor Operator (10 ton); Helicopter Hoist; Highline Cableway Signal; Power Sweeper; Trenching Machine (up to 6 ft.); Concrete Pump Operator, truck mounted; Helicopter Radio Operator

Group 5: A-frame Winch Truck Operator; Asphalt Plant or Concrete Batch Plant Operator (where commercial power is not used, no less than one Generator Operator is required); Asphalt Spreading Machine Operator (Spreader Bar and similar); Bit Sharpener; Box or Mixer (asphalt or concrete); Concrete Joint Machine Operator (canal and similar type); Concrete Planer Operator; Derrick (oilfield type); Drilling Machine Operator (including water wells); Equipment Greaser (Mobile and Grease Rack); Forklift Operator (over 5 ton capacity); Hydro-hammer - Aero Stomper; Hydrographic Seeder Machine Operator (straw, pulp, or seed); Machine Tool Operator; Maginnis Internal Full Slab Vibrator; Mechanical Finisher Operator (Concrete-Clary-Johnson-Bidwell or similar); Pavement Breaker Operator (truck mounted, oiler required); Road Oil Mixing Machine Operator; Roller Operator; Ross Carrier Operator (jobsite); Self-propelled Tar Pipelining Machine Operator; Skiploader Operator (wheel or track type over 3/4 yd. up to and including 1¼ yds.); Skiploader - Ford Ferguson up to 3/4 yd. with drag attachments; Slip Form Pump Operator (power driven hydraulic lifting device for concrete forms); Screed Operator; Stinger Crane (Austin-Western or similar type); Traveling Pipe Wrapping, Cleaning and Bending Machine Operator; Truck type Loader; Tugger Hoist (1 drum)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 6: Asphalt or Concrete Plant Engineer; Asphalt or Concrete Spreading Operator (tamping or finishing); Asphalt Paving Machine Operator (Barber Green or similar type); Automatic Curb Machine; Belt Splicer or Vulcanizer; BHL Lima Road Pactor; Wagner Pactor or similar Operator; Bridge Crane Operator; Bridge type Unloader and Turntable Operator; Cast-in-place Laying Machine; Combination Mixer and Compressor Operator (Gunite work); Concrete Mixer; Concrete Mixer Operator - paving (Oiler required); Crane Operator (up to and including 25 ton capacity)(Oiler required)(Long Boom Pay applicable); Crushing Plant Operator (Oiler required)(where commercial power is not used, no less than one Generator Operator is required); Deck Engine Operator; Drill Doctor; Elevating Grade Operator; Gradall Operator (Oiler required); Grade Checker; Grouting Machine Operator; Guard Rail Post Driver Operator; Heavy Duty Repair; Hoist Operator (single drum - Buck Hoist- Chicago Boom and similar type); Hoist Operator (2 or 3 drum); Kolman Belt Loader and similar type (when two or more are working together an additional employee shall be required); LeTourneau Blob Compactor or similar type; Lift Mobile Operator (Oiler required); Lift Slab Machine Operator (Vagtborg and similar types); Material Hoist Operator (1 drum); Mucking Machine Operator (1/4 yd.) (Oiler required)(rubber-tired, rail or track type); Pile Driver Operator (Oiler required); Pneumatic Concrete Placing Machine Operator (Hackley-Presswell or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun Operator; Polar Gantry Crane Operator; Rotary Drill Operator (excluding Caisson type)(Oiler required); Rubber-tired Earth Moving Equipment Operator (single engine - Caterpillar, Euclid, Athey Wagon - Water Pulls and similar types with any and all attachments up to 50 cu. yds. struck); Rubber-tired Scraper Operator (self-loading paddle wheel type - John Deere 104 and similar single unit); Skiploader Operator (wheel or track type, over 1¼ yds. up to and including 6¼ yds.); Stinger Crane (Austin-Western-Pettibone or similar type) (over 5 tons); Surface Heaters and Planer Operator; Tractor Compressor Drill Combination Operator; Tractor Operator (Bull Dozer, Tamper, Scraper, and Push Tractor, single engine); Trenching Machine Operator (over 6 ft. depth capacity - manufacturer's rating) (Oiler required); Tunnel Locomotive Operator (10 to 30 tons); Universal Equipment Operator (Shovel, Backhoe, Dragline, Clamshell, up to and including 1 cu. yd. M.R.C.) (Oiler required) (Long Boom Pay applicable); Welder (general)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 7: Automatic Lineau Tension Machine (2 Operator required); Crane Operator (over 25 tons, up to and including 100 ton M.R.C.) (Long Boom Pay applicable) (Oiler required); Derrick Barge Operator (Oiler required, up to 100 tons) (over 100 tons, Fireflighter or Oiler required); Dual Drum Mixer (Oiler required); Hoist Operator (2 or 3 drum with boom attachment); Hoist Operator (Stiff Leg, Guy Derrick or similar type up to 100 ton capacity) (Oiler required, Long Boom pay applicable); Loader Operator (Athey, Euclid, Sierra or similar type); Monorail Locomotive Operator (diesel, gas, or electric); Motor Patrol - Blade Operator; Multiple Engine Tractor Operator (Euclid and similar type, except Quad 9 Cat); Pre-stressed Wrapping Machine Operator (2 Operators required); Rubber-tired Earth Moving Equipment Operator (multiple engine, Euclid, Caterpillar and similar type up to 50 cu. yds. struck); Tractor Loader Operator (Crawler and wheel type over 6½ yds.); Tractor Operator (boom attachments) (over 40 ft. boom, Oiler required); Tower Crane Operator (two Operators required); Tower Crane Repair; Universal Equipment Operator (Shovel, Backhoe, Dragline, Clamshell, over 1 cu. yd. M.R.C.); Welder - certified; Welder-Heavy Duty Repair Combination; Woods Mixer Operator and other similar Pugmill Equipment

Group 8: Auto Grader Operator (one Grade Checker and one additional employee required); Automatic Slip Form Operator (Grade Checker and one additional employee required); Crane Operator (over 100 tons, two Operators required, Long Boom Pay applicable); Mass Excavator Operator (two or more Operators and Oiler required, less than 750 cu. yds.); Mechanical Finishing Machine Operator; Mobile Form Traveler Operator; Motor Patrol Operator (multi-engine); Pipe Mobile Machine Operator (two Operators required); Rubber-tired Earth Moving Equipment Operator (multi-engine, Euclid, Caterpillar, and similar type over 50 cu. yds. struck); Rubber-tired Scraper Operator (pushing one another without Push Cat, Push Pull - $.50 per hour additional to base rate); Rubber-tired Self Loading Scraper Operator (paddle wheel - Auger type Self Loading, 2 or more units); Polar Crane Operator; Tandem Equipment Operator (2 units only); Tandem Tractor Operator (Quad 9 or similar type); Tunnel Mole Boring Machine Operator

Group 9: Canal Liner or Trimmer Operators (not less than four (4) employees required - Oiler, Welder - Mechanic and Grade Checker); Helicopter Pilot; Highline Cableway Operator; Remote Controlled Earth Moving Equipment Operator (no one Operator shall operate more than two pieces of earth moving equipment at one time) ($1.00 per hour additional to base rate); Wheel Excavator Operator (over 750 cu. yds. per hour, two Operators and one Oiler and two Heavy Duty Repair required)

TRUCK DRIVERS

Group 1: Traffic Control, also Swampers and Pickups

Group 2: 2 axle Dumps; 2 axle Flatbed; Bunker; Concrete Pumping; Industrial Lift; Forklift, under 15,000 lbs.

Group 3: 3 axle Dump; 3 axle Flatbed; 2 axle Water Trucks; Erosion Control Nozzle; Dumpcrete, less than 6½ yds.; Forklift 15,000 lbs. and over; Prell; Pipeline working Truck Driver; Road Oil Spreader; Cement Distributor or Slurry Driver; Boot; Ross Carrier

Group 4: Off-road Dump, under 35 tons; 4 axle but less than 7 axle; Lowbed and Trailer; Transit Mix, under 8 yds.; 3 axle Water Trucks; Erosion Control; Grout Mixer; Dumpcrete 6½ yds. and over; Dumpsters; DW 10's, 20's and over; Fuel Truck and Dynamite; Winch, 2 axle; Truck Greaser

Group 5: Off-road Dump, 35 tons and over; 7 axle or more; Transit Mix, 8 yds. and over; A-frame or Swedish Cranes; Tire; Water Pull Tankers; Welder; Winch Truck, 3 axle or more

Group 6: Truck Repair

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

SUPERSEDEAS DECISION

STATE: Missouri
DECISION NO.: MO85-4023
COUNTIES: Statewide
DATE: Date of Publication
Supersedes Decision No. MO85-4005 dated April 12, 1985 50 FR 14568.
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
Zone 1	17.81	3.83
Zone 1A	17.41	3.83
Zone 2	16.46	3.83
Zone 3	16.15	2.38
Zone 4	15.55	2.38
Zone 5	15.75	2.38
Zone 6	17.92	.86
Zone 6A	16.62	1.31
Zone 7	17.92	.86
Zone 7A	17.47	1.31
Zone 7B	17.92	.86
Zone 7C	17.42	1.36
Zone 7D	17.92	.86
Zone 8	16.30	2.05
Zone 9	16.05	2.67
Zone 10	17.81	3.17
CEMENT MASONS:		
Zone 1	15.895	2.38
Zone 2	15.28	1.95
Zone 3	15.87	2.38
Zone 4	12.75	
Zone 5	14.23	
Zone 6	15.85	
Zone 7	14.85	
Zone 8	14.80	2.38
Zone 9	15.35	2.60
Zone 10	14.65	2.60
Zone 11	12.95	2.95
ELECTRICIANS:		
Zone 1:		
Electrical contracts over $30,000.00	16.42	1.15+ 14.75%
Electrical contracts $30,000.00 & under	13.62	1.15+ 14.75%
Zone 2	16.18	3.01+ 10%
Zone 3:		
Electrical contracts not to exceed 2000 man hours	15.18	3.01+ 10%

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (CONT'D):		
Electrical contracts 2000 man hours & over	16.18	3.01+ 10%
Zone 4:		
Electrical contracts not to exceed 2000 man hours	15.18	3.01+ 10%
Electrical contracts 2000 man hours & over	16.18	3.01+ 10%
Zone 5:		
Electrical contracts not to exceed 2000 man hours	14.58	3.01+ 10%
Electrical contracts 2000 man hours & over	16.18	3.01+ 10%
Zone 6	18.20	3.01+ 28-1/2%
Zone 7:		
Electrical contracts over $15,000.00	18.20	3.01+ 28-1/2%
Zone 8:		
Electrical contracts $15,000.00 & under	14.78	3.01+ 28-1/2%
Zone 9:		
Electrical contracts $15,000.00 & under	11.43	3.01+ 28-1/2%
Zone 10:		
Electrical contracts $15,000.00 & under	8.07	3.01+ 28-1/2%
Zone 11	14.55	1.89+ 9%
Zone 12	15.04	1.89+ 9%

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (CONT'D):		
Zone 13	14.22	2.02 + 10%
Zone 14:		
Electricians	13.09	1.67+ 9%
Cable Splicers	13.44	1.67+ 9%
Zone 15:		
Electricians	15.71	3.47+ 10%
Cable Splicers	15.96	3.47+ 10%
IRONWORKERS:		
Zone 1	16.075	3.40
Zone 2	17.51	3.37
Zone 3	14.51	3.37
Zone 4	14.60	2.67
Zone 5	15.00	2.40
Zone 6	16.05	2.45
Zone 7	15.325	3.40
Zone 8	16.725	3.49
LABORERS:		
Group 1:		
Zone 1	12.68	3.60
Zone 2	11.53	3.35
Zone 3:		
(a)	15.60	2.30
(b)	15.10	2.80
Zone 4:		
(a)	14.65	2.30
(b)	14.15	2.80
Group 2:		
Zone 1	13.03	3.60
Zone 2	12.08	3.35
Zone 3:		
(a)	16.20	2.30
(b)	15.70	2.80
Zone 4:		
(a)	15.25	2.30
(b)	14.75	2.80
Zone 5: (Clay,Jackson, Platte & Ray Counties):		
Group 1	13.09	3.60
Group 2	13.82	3.60
Zone 6: (St. Louis City and County):		
General Laborer	15.275	2.58
Dynamiter or Powderman	15.775	2.58

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Zone 1:		
Lineman	$18.33	$1.25 + 8-1/2%
Lineman Operator	17.10	1.25 + 8-1/2%
Groundman Powderman	12.84	1.25 + 8-1/2%
Groundman	12.29	1.25 + 8-1/2%
Zone 2:		
Lineman	17.56	1.25 + 8-1/2%
Lineman Operator	16.73	1.25 + 8-1/2%
Groundman Powderman	12.97	1.25 + 8-1/2%
Groundman	11.36	1.25 + 8-1/2%
Zone 3:		
Linemen & Cable Splicer	16.53	1.25+ 23.75%
Groundman-Winch Driver	12.15	1.25+ 23.75%
Groundman-Driver	11.72	1.25+ 23.75%
Equipment Operator	14.79	1.25+ 23.75%
Groundman	11.72	1.25+ 23.75%
Zone 4:		
Lineman	17.75	.65+ 13-1/2%
Groundman Equipment Operator	15.14	.65+ 13-1/2%
Groundman - Class A	11.26	.65+ 13-1/2%
Zone 5: Railroad & Cross County Transmission Lines:		
Lineman	15.50	1.00+ 8-1/2%
Lineman Operator	14.36	1.00+ 8-1/2%
Groundman Powderman	10.79	1.00+ 8-1/2%
Groundman	10.09	1.00+ 8-1/2%

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	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D):		
Zone 5 (Cont'd):		
Pole Treating Specialist	$16.24	$1.00+ 8-1/2%
Pole Treating Truck Driver	10.79	1.00+ 8-1/2%
Pole Treating Groundman	10.09	1.00+ 8-1/2%
Zone 6: Telephone and Telegraph Railroad Communications and C.A.T.V. Work: Cable Splicer, Air Pressure Technician, Central Office Equipment Man and Key System Installer	10.16	.50+ 8-1/2%
Telephone Lineman, Installer, CATV Terminator and Equipment Operator (D-4 or larger Crawler, Wheel Trencher Quarter Yard Backhoe or larger)	9.73	.50+ 8-1/2%
Equipment Operator (all other small equipment)	8.50	.50+ 8-1/2%
Groundman-Winch Driver	7.61	.50+ 8-1/2%
Groundman	6.67	.50+ 8-1/2%
Zone 7: Telephone & Telegraph & CATV Work: Cable Splicers; Air Pressure Technician, Central Office Equipment Man	10.96	.45+3%
Telephone Lineman & Installer, Repairman, CATV Terminator, Equipment Operator (1/4 yd. Backhoe & larger & D-4 Crawler & larger)	10.39	.45+3%
Groundman-Winch Driver	7.87	.45+3%
Groundman	6.36	.45+3%

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Zone 1:		
Brush & Roller	$16.04	$2.00
Spray	17.04	2.00
Bridge	16.79	2.00
Zone 2:		
Brush	11.30	1.07
Spray	12.30	1.07
Sandblasting & Waterblasting Tower, Stacks, Walkway, Cables, Tanks, and Bridges	13.10	1.07
Bridges over 500 ft. in length	12.80	1.07
Zone 3:		
Brush	16.52	1.07
Spray, Structural Steel & Sandblasting	13.00	2.60
Zone 4:		
Brush	14.25	2.60
Bridge	14.50	
Spray, Sandblasting Operator; Work performed on bridges 75 ft. in height	15.25	
All Structural Steel over 50 ft. in height	15.50	
Zone 5:	15.25	
Brush	14.60	1.45
Spray	15.60	1.45
Steel, storage bin & tank	15.00	1.45
Bridges, stage; Belt; Bazooka	15.10	1.45
Zone 6:		
Brush, Roller	13.02	.60
Spray	13.52	.60
Zone 7:		
Brush	13.70	.45
Spray	14.20	.45
Zone 8:		
Brush	16.00	2.53
Spray	18.00	2.53
Zone 9:		
Brush	13.73	1.28
Spray, Bridgeman, Steelmen	14.23	1.28
Zone 10:		
Brush	14.00	
Spray	16.00	

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Zone 1:		
Group I	$15.30	$4.07
Group II	15.05	4.07
Group III	14.35	4.07
Group IV:		
(a)	10.33	4.07
(b)	13.35	4.07
Zone 2:		
Group I	16.32	4.04
Group II	16.32	4.04
Group III	15.02	4.04
Group III (a)	13.95	4.04
Group IV	14.57	4.04
Group IV (a)	13.49	4.04
Group V:		
(a)	17.02	4.04
(b)	17.87	4.04
(c)	18.32	4.04
(d)	19.07	4.04
Zone 3:		
Group I	16.45	3.97
Group II	16.25	3.97
Group III	16.05	3.97
Group IV	15.45	3.97
Zone 4:		
Group I	14.85	3.97
Group II	14.50	3.97
Group III	14.30	3.97
Group IV	13.45	3.97
Zone 5:		
Group I	15.10	4.05
Group II	14.85	4.05
Group III	14.15	4.05
Group IV	12.65	4.05
Zone 6:		
Group I	15.05	4.05
Group II	14.70	4.05
Group III	14.50	4.05
Group IV	12.70	4.05
Zone 7:		
Group I	15.47	2.90
Group II	15.12	2.90
Group III	14.92	2.90
Group IV	12.87	2.90
Zone 8:		
Group I	15.90	3.97
Group II	15.70	3.97
Group III	15.50	3.97
Group IV	14.90	3.97

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Zone 1:		
Group 1	$14.17	$ 4.25
Group 2	14.02	4.25
Group 3	13.65	4.25
Group 4	13.51	4.25
Group 5	13.29	4.25
Zone 2:		
Group 1	20.40	
Group 2	20.55	
Group 3	20.62	
Group 4	20.51	
Group 5	20.30	
Zone 3:		
Group 1	19.05	
Group 2	19.20	
Group 3	19.27	
Group 4	19.16	
Group 5	18.95	-
Zone 4:		
Group 1	15.54	3.25
Group 2	15.69	3.25
Group 3	15.76	3.25
Group 4	15.65	3.25
Group 5	15.44	3.25
Zone 5:		
Group 1	14.33	3.25
Group 2	14.48	3.25
Group 3	14.60	3.25
Group 4	14.49	3.25
Group 5	14.27	3.25
Zone 6:		
Group 1	13.60	3.25
Group 2	13.75	3.25
Group 3	13.87	3.25
Group 4	13.76	3.25
Group 5	13.50	3.25
Zone 7:		
Group 1: Trucks or Trailers of a water level capacity of 11.99 cu. yds. or less.	15.17	55.00 +a
Group 2: Forklift Trucks: Job Site Ambulance & Pickup Trucks & Flat Bed Trucks	14.00	55.00 +a

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (CONT'D):		
Zone 7 (Cont'd):		
Group 3: Truck or Trailers of a water level capacity of 12.0 cu. yds. up to 22.0 cu. yds. including Euclids, Speedace and similar equipment of same capacity and Compressors	$15.37	$55.00 +a
Group 4: Trucks or Trailers of a water level capacity of 22.0 cu. yds. and over including Euclids, speedace and all Floats, Flat Bed Trailers, Boom Trucks, Winch Trucks including small trailers, Farm Wagons, Tilt-top Trailers, Field Offices Tool Trailers, Concrete Pumps, Concrete Conveyors and Gasoline Tank Trailers	15.47	55.00 +a

FOOTNOTE:
a - 7 Paid Holidays also, paid vacation of 3 days of 600 hours of service in any one contract year; 4 days paid vacation for 800 hours of service in any contract year; 5 days paid vacation for 1,000 hours of service in any one contract year; also .80 per hour health and welfare.

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

AREAS COVERED BY CARPENTERS AND PILEDRIVERMEN ZONES

Zone 1 - Franklin, Jefferson, St. Charles Counties
Zone 1A - Lincoln, Warren Counties
Zone 2 - Pike, St. Francois, Washington Counties
Zone 3 - Cass, Lafayette, Buchanan, Clinton and Johnson Counties
Zone 4 - Atchison, Andrew, Barry, Barton, Bates, Caldwell, Camden, Carroll, Cedar, Christian, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Jasper, Laclede, Lawrence, Livingston, McDonald, Mercer, Newton, Nodaway, Ozark, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, Worth & Wright Counties
Zone 5 - Crawford, Dent, Gasconade, Iron, Madison, Maries, Montgomery, Phelps, Pulaski, Reynolds, Shannon & Texas Counties
Zone 6 - Boone, Cooper and Howard Counties
Zone 6A - Pettis, Benton and Morgan Counties
Zone 7 - Lewis, Marion and Ralls Counties
Zone 7A - Callaway, Cole, Miller, Moniteau and Osage Counties
Zone 7B - Adair, Putnam, Sahuyler, Knox and Sullivan Counties
Zone 7C - Audrain and Monroe Counties
Zone 7D - Randalph, Chariton, Linn, Macon and Shelby Counties
Zone 8 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Howell, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Ripley, Ste. Genevieve, Scott, Stoddard and Wayne Counties
Zone 9 - Clay, Jackson, Platte and Ray Counties
Zone 10 - St. Louis County and City

AREAS COVERED BY CEMENT MASONS ZONES

Zone 1 - Bates, Carroll, Cass & Lafayette Counties
Zone 2 - Dent, Phelps, Pike, Pulaski, Texas, Marion, Ralls and Shannon Counties
Zone 3 - Clay, Jackson, Platte & Ray Counties
Zone 4 - Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Laclede, Ozark, Polk, Stone, Taney, Webster & Wright Counties
Zone 5 - Benton, Henry, Hickory, Johnson, Morgan, Pettis, Saline & St. Clair Counties
Zone 6 - Adair, Audrain, Boone, Chariton, Cooper, Howard, Linn, Macon, Moniteau, Monroe, Randolph, Shelby, Schuyler, Sullivan & Putnam Counties
Zone 7 - Callaway, Camden, Cole, Gasconade, Maries, Miller, Montgomery, & Osage Counties
Zone 8 - Andrew, Atchison, Buchanan, Caldwell, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway & Worth Counties
Zone 9 - St. Louis City & County, Jefferson & St. Charles Counties
Zone 10 - Franklin, Lincoln, Warren, Iron, St. Francois, Ste. Genevieve, Washington, Reynolds & Madison Counties
Zone 11 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Ripley, Scott, Stoddard and Wayne Counties

AREAS COVERED BY ELECTRICIAN ZONES

Zone 1 - Adair, Audrain (that part of east of Highway 19), Clark, Knox, Lewis Linn, Macon, Marion, Monroe, Montgomery, Pike, Putnam, Ralls, Schuyler, Scotland, Shelby and Sullivan Counties
Zone 2 - Area bounded on the North by State Highway 92 in Platte & Clay Counties; east bya straight line from Intersection of State Highway 92 & 33 in Clay County Intersection of U.S. Highway 24 & State Highway 7 in Jackson County, south on Highway 7 to Pleasant Hill; South from Pleasant Hill due West to the Missouri - Kansas State Line; West by the Missouri - Kansas State Line. Towns of Pleasant Hill & Blue Springs are excluded
Zone 3 - Portion of Cass, Clay, Jackson and Platte Counties not included in Zone 2
Zone 4 - Bates, Benton, Henry, Johnson, Lafayette & Pettis Counties
Zone 5 - Carroll, Cooper, Morgan, Ray and Saline Counties
Zone 6 - St. Charles County, St. Louis County and City
Zone 7 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Franklin, Iron, Jefferson, Lincoln, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, St. Francois, Ste. Genevieve, Stoddard, Warren, Washington and Wayne Counties
Zone 8 - Franklin, Jefferson, Lincoln & Warren Counties
Zone 9 - Bollinger, Cape Girardeau, Perry, Scott, St. Francois and Ste. Genevieve Counties
Zone 10 - Butler, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Pemiscot, Ripley, Reynolds, Stoddard, Washington and Wayne Counties
Zone 11 - Christian, Dallas, Douglas, Greene, Hickory, Howell, Laclede, Oregon, Ozark, Polk, Shannon, Stone, Taney, Texas, Webster and Wright Counties
Zone 12 - Pulaski County
Zone 13 - Andrew, Buchanan, Clinton, DeKalb, Atchison, Holt, Mercer, Gentry, Harrison, Daviess, Grundy, Worth, Livingston, Nodaway, Caldwell Counties
Zone 14 - Barry, Barton, Cedar, Dade, Jasper, McDonald, Newton, St. Clair, Vernon and Lawrence Counties
Zone 15 - Audrain (except Cuivre Township), Boone, Callaway, Camden, Charlton, Cole, Crawford, Dent, Gasconade, Howard, Maries, Miller, Moniteau, Osage Phelps and Randolph Counties

AREAS COVERED BY IRONWORKERS ZONES

Zone 1 - Audrain, Booñe, Callaway, Cole, Crawford, Dent, Gasconade, Maries, Montgomery, Osage, Phelps, Pike, Pulaski and Shannon Counties
Zone 2 - Buchanan, Cass, Clay, Jackson, Lafayette, Platte and Ray Counties
Zone 3 - Andrew, Atchison, Barton, Bates, Benton, Caldwell, Carroll, Cedar, Charlton, Christian, Clinton, Cooper, Dade, Dallas, Daviess, DeKalb, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Johnson, Laclede, Linn, Livingston, Mercer, Moniteau, Morgan, Nodaway, Pettis, Ozark Polk, Randolph, St. Clair, Saline, Sullivan, Vernon, Webster, Taney, Wright and Worth Counties
Zone 4 - Barry, Jasper, Lawrence, McDonlad, Newton and Stone Counties
Zone 5 - Adair, Clark, Knox, Lewis, Macon, Marion, Schuyler, Scotland, Ralls, Monroe and Shelby Counties

AREAS COVERED BY IRONWORKERS ZONES - (CONT'D)

Zone 6 - Butler, Cape, Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Ripley, Scott, Stoddard and Wayne Counties
Zone 7 - Camden, Douglas, Howell, Miller, Oregon Texas Counties.
Zone 8 - City & County of St. Louis, St. Charles, Jefferson, Franklin, Lincoln, Warren, Washington, St. Francois, Iron, Ste. Genevieve, Reynolds, Madison, Bollinger, Carter and Wayne Counties

LABORERS CLASSIFICATIONS DEFINITIONS ZONES 1 AND 2

GROUP 1 - GeneralLaborers - Carpenter tenders; salamander tenders; loading trucks under bins; hopper & conveyors; track mens all other general laborers; air tool operator;cement handler, bulk or sack; dump man on earth fill; georgie buggie man; material batch hopper man; material mixer man (except on manholes); coffer dams; riprap pavers - rock, block or brick; scaffolds over ten feet notself-supported from ground up; skipman on concrete paving; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator, all work in connection with hydraulic or general dredging operations; puddlers (paving only); straw blower nozzleman; asphalt plant platform man; chuck tender; crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); topper of standing trees; batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; deck hands; pile dike and revetment work; all laborers working on underground tunnels less than 25 feet where compressed air is not used; abutment and pier hole men working six (6) feet or more below ground; men working in coffer dams for bridge piers and footings in the river; ditchliners; pressure groutmen; caulker and chain or concrete saw; cliffscalers working from scaffolds, bosuns' chairs or platforms on dams or power plants over (10) feet above ground; mortarmen on brick or block manholes.
GROUP 2 - Skilled Laborers - Head pipe layer on sewer work; laser beam man; Jackson on any other similar tamp; cutting torch man; form setters; liners and stringline men on concrete paving, curb, gutters; hot mastic kettleman; hot tar applicator; sandblasting and gunite nozzlemen; air tool operator in tunnels; screed man on asphalt machine; asphalt raker; barco tamper; churn drills; air track drills and all similar drills; vibrator man; stringline man for electronic grade control; manhole builders--brick or block; dynamite and powder men; welder; grade checker on cuts and fills

LABORERS CLASSIFICATIONS DEFINITIONS ZONES 3 AND 4

GROUP 1 - General Labor-Carpenter tenders; salamander tenders; dump man; ticket takers; loading trucks under bins, hoppers, and conveyors; track man; cement handler; dump man on earth fill; georgie buggie man; material batch hopper man; spreader on asphalt machine; material mixer man (except on manholes); coffer dams; riprap pavers-rock, block or brick; scaffolds over ten feet not self-supported from ground up; skipman on concrete paving; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil,drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; form setters, puddlers (paving only); straw blower nozzleman; asphalt plant platform man; chuck tender; crusher feeder; men handling creosote ties or creosote materials; men working with and handlingepoxy material; topper of standing trees; feeder man on wood pulverizers, board and willow mat weavers and cable tiers on river work; deck hands; pile dike and revetment work; all laborers working on underground tunnels less than 25 ft. where compressed air is not used; abutment and pier hole men working six (6) ft. or more below ground; men working in coffer dams for bridge piers and footings in the river; barco tamper; jackson or any other similar tamp; cutting torch man; liners, curb, gutters, ditch liners; hot mastic kettleman; hot tar applicator; hand blade operator; mortar men on brick or block manholes; rubbing concrete, air tool operator under 65 lbs.; caulker and lead man; chain or concrete saw under 15 h.p.

GROUP 2 - Skilled Laborers - Vibrator man; asphalt raker; head pipe layer on sewer work; batterboard man on pipe and ditch work; cliff scalers working from bosun's chairs; scaffolds or platforms on dams or power plants over 10 ft. high; air tool operator over 65 lbs.; stringline man on concrete paving; sandblast man; laser beam man; wagon drill; churn drill; air track drill and all other similar type drills,gunite nozzle man; pressure grout man; screed man on asphalt; concrete saw 15 h.p. and over; grade checker; stringline man on electronic grade control; manhole builder; dynamite man; powder man; welder; tunnel man

AREAS COVERED BY LABORERS

Zone 1 - Buchanan, Cass and Lafayette Counties
Zone 2 - Andrew, Atchison, Barry, Barton, Bates, Benton, Caldwell, Camden, Carroll, Cedar, Christian, Clinton, Dade Dallas, Daviess, DeKalb, Douglas, Greene,Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jasper, Johnson, Laclede, Lawrence, Livingston, McDonald, Mercer, Morgan, Newton, Nodaway, Ozark, Pettis, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, Wright and Worth Counties.
Zone 3:
a - Franklin and Jefferson Counties
b - St. Charles County
Zone 4:
a - Adair, Audrain, Bollinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Chariton, Clark, Cole, Cooper, Crawford, Dent, Dunklin, Gasconade, Howard, Howell, Iron, Knox, Lewis, Linn, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam,Ralls, Randolph, Reynolds, Ripley, St.Francois, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Sullivan, Texas, Washington and Wayne Counties

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AREAS COVERED BY LABORERS - (CONT'D)

Zone 4 (Cont'd):
b - Lincoln, Montgomery and Warren Counties

LABORER CLASSIFICATION DEFINITIONS - ZONE 5 - CLAY, JACKSON PLATTE AND RAY COUNTIES

Group 1 - General laborer - Carpenter tenders, salamander tenders; loading trucks under bins, hoppers and conveyors; track men and all other general laborers; air tool operator; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgia buggies man; material batch hopper man; scale man; material mixer man (except on manholes); coffer dams; abutments and pier hole men working below ground); riprap pavers rock, block or brick; signal man; scaffolds over 10 ft. not self-supported from ground up; skipman on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile & duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; puddlers (paving only); crusher feeder; men handling creosote ties on creosote materials; men working with and handling epoxy material or materials (where specialprotection is required); topper of standing trees; batter board man on pipe & ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on under ground tunnels where compressed air is not used

Group 2 - Skilled Laborers - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamp; wagon driller, churn drills, air trackdrills and all other similar drills; cutting torch man; form setters; liners and stringline men on concrete paving, curb, gutters and (etc.); hot mastic kettleman; hot tar applicator; hand blade operators; mortar men on brick or block manholes; sandblasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels; head pipe layer on sewer work; manhole builder (brick or block); dynamite and powder men; welder

AREA COVERED BY LINE CONSTRUCTION

Zone 1 - Bates, Benton, Carroll, Cass, Clay, Henry, Johnson, Jackson, Lafayette, Pettis, Platte, Ray and Saline Counties
Zone 2 - Andrew, Atchinson, Barry, Barton, Buchanan, Caldwell, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Hickory, Holt, Jasper, Laclede, Lawrence, Livingston, McDonald, Mercer, Newton, Modaway, Ozark, Polk, St. Clair, Stone, Taney, Vernon, Webster, Worth and Wright Counties
Zone 3 - Crawford, Franklin, Iron, Jefferson,Reynolds, St. Charles, St. Francois, St. Louis and City, Washington, Adair, Audrain, Boone, Callaway, Camden, Carter, Chariton, Clark, Cole, Cooper, Dent, Gasconade, Howard, Howell, Knox, Lewis, Lincoln, Linn, Macon, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Ripley, Ste. Genevieve, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas and Warren Counties

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AREA COVERED BY LINE CONSTRUCTION (CONT'D)

Zone 4 - Bollinger, Butler, Cape Girardeau, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Scott, Stoddard and Wayne Counties
Zone 5 - Atchison, Nodaway, Worth, Harrison, Mercer, Holt, Andrew DeKalb, Davies, Grundy, Buchanan, Clinton, Caldwell, Livingston, Platte, Clay, Ray, Carroll, Jackson, Lafayette, Saline, Cass, Johnson, Pettis, Bates, Henry, Vernon, Benton, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, Laclede, Jasper, Dade, Lawrence, Greene, Webster, Wright, Newton, McDonald, Barry, Stone, Christian, Douglas, Taney, Ozark and Gentry Counties
ZONE 6 - Adair, Audrain, Boone, Callaway, Camden, Carter, Chariton, Clark, Cole, Cooper, Crawford, Dent, Franklin, Gasconade, Howard, Howell, Iron, Jefferson, Knox, Lewis, Lincoln, Linn, Macon, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, St. Louis and City, Ste. Genevieve, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas, Warren and Washington Counties
ZONE 7 - Atchison, Nodaway, Worth, Harrison, Mercer, Holt, Andrew, DeKalb, Daviess, Grundy, Buchanan, Clinton, Caldwell, Livingston, Platte, Clay, Ray, Carroll, Jackson, Lafayette, Saline, Cass, Johnson, Pettis, Bates, Henry, Benton, Vernon, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, LacFede, Jasper, Dade, Lawrence, Greene, Webster, Wright, Newton, McDonald, Barry, Stone, Christian, Douglas, Taney, Ozark, Gentry Counties

AREA COVERED BY PAINTERS

Zone 1 - Bates, Caldwell, Carroll, Clinton, Cass, Clay, Daviess, Grundy, Linn Henry, Harrison, Jackson, Johnson (excluding Whiteman Air Force Base, Lafayette, Livingston, Mercer, Platte and Ray Counties
Zone 2 - Bollinger, Cape Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard, Reynolds, Iron, Butler, Carter, Shannon, Wayne, Oregon, Ripley, Ste. Genevieve, St.Francois, Perry, Washington, & Madison Counties
Zone 3 - Camden, Crawford, Dent Laclede, Maries, Miller, Phelps, Pulaski and Texas Counties
Zone 4 - Benton, Cooper, Moniteau, Morgan, Pettis and Saline Counties
Zone 5 - Andrew, Atchinson, Buchanan, DeKalb, Gentry, Holt, Nodaway, Worth Counties
Zone 6 - Barry, Barton, Cedar, Dade, Jasper, Lawrence, McDonald, Newton, St. Clair and Vernon Counties
Zone 7 - Adair, Audrain, Boone, Callaway, Chariton, Cole, Gasconade, Howard, Monroe, Montgomery, Linn, Osage Scotland and Randolph Counties
Zone 8 - Jefferson, St. Charles, St. Louis & City, Warren, Lincoln, Pike and Franklin Counties
Zone 9 - Christian, Dallas, Douglas, Greene, Hickory, Howell, Ozark, Polk, Stone, Taney, Webster andWright Counties
Zone 10 - Clark, Lewis, Marion, and Ralls Counties.

CLASSIFICATION DEFINITIONS

Power Equipment Operators Zone 1

Group I - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, alltypes; boilers-2; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator-2; concrete plant operator, central mix; concrete mixer paver; crane operator, derrick or derrick-trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drill-cat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader-fork lift; hoisting engineer-2 active drums; locomotive operator, standard guage; mechanics and welders, field; maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump-2; pushcat operators; quad-trac; scoop operator- all types; scoops in tandem; self-propelled rotary drill (leroy or equal-not air trac); shovel operator; side discharge spreader; sideboom cats; skimmer scoop operator; slipform paver (CMI, REX or Equal); throttle man; truck crane; welding machine maintenance operator-2
Group II - "A" frame truck; asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; backfiller operator; chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator; elevating grader operator; greaser; hoisting engine-1 drum; LaTourneau rooter; multiple compactor; pavement breaker, self-propelled, of the hydra-hammer or similar type; power shield; pub mill operator; stump cutting machine; towboat operator; tractor operator-over 50 HP
Group III - Boilers-1; chip spreader (front man); churn drill operator; compressor maintenance operator-1; concrete saws, self-propelled; conveyoroperator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; subgrading machine operator; tank car heater operator - combination boiler and booster; tractor, 50 HP or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator-1
Group IV:
(a) Oilers
(b) Oiler driver, (all types)

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE $.25) ABOVE GROUP I RATE
Clamshells - 3 yd. capacity or over - crane or rigs, 80 ft. boom or over (including jib) - draglines, 3 yd. capacity or over - piledrivers, 80 ft. of boom or over (including jib) - shovels & backhoes, 3 yd. capacity or over

Power Equipment Operators Zone 2

Group I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted - 16 tons & over; crane locomotive; derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted; locomotive, gas, steam & other powers; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas, electric, or other powers); switch boat; whirley

Group II - air tuggerw/air compressor; anchor-placing barge; asphalt spreader; athey force feeder loader (self-propelled); backfilling machine; boat operator-push boat or tow boat (jobsite); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer (such as mixermobile); compressors, two, not more than 50 ft. apart; compressor (when operator runs throttle); compressor-generator combination, compressor-pump combination; generators, two 30 KW or over, or any number developing over 30 KW; generator-pump combination; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pump-crete machine; concrete spreader; conveyor, large (not self-propelled), hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic-rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons; drilling machines,self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers,jackhammers and barco equipment - no engineer required); elevating grader; engineman, dredge; excavator or sewerbelt machine; finishing machine, self-propelled oscillating screed; forklift; grader, road with power blade; highlift; hoist; concrete and brick (brick cages or concrete skips operating in or on tower, towermobile, or similar equipment); hoist; stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greene); mechanic, on job site; mixer, paving; mixer-mobile; mucking machine; pipe cleaning machine; pipe wrapping machines; plant asphalt; plant, concrete producing or ready-mix job site; plant heating-job site; plant mixing-job site; plant power, generating-job site; pumps, two self-powered over 2" through 6"; pumps, electric submersible, one through three, over 4"; quad-track; roller, asphalt, top or sub-grade; scoop, tractor drawn; spreader box; sub-grader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine; tunnel boring machine; vibrating machine automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine

Group III - Conveyor, large (not self-propelled); conveyor, large (not self-propelled) moving brick and concrete (distributing) on floor level; mixer two or more mixers of one bag capacityor less, air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-one; compressor air (mounted on truck; concrete saw, self-propelled;curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; form grader; generator, one over 30 KW or any number developing over 30 KW; greaser; hoist; one drum regardless of size (except brick or concrete); lad-a-vator, other hoisting; manlift; mixer, asphalt, over 8 cu. ft. capacity, mixer, if two or more mixers of one bag capacity or less are

Group III - (Cont'd):
used by one employer on job an operator is required; mixer, with outside loader, 2 bag capacity or more; mixer, with side loader,regardless of size, not paver; oiler on dredge; oiler on truck crane pug mill operator; pump, sump-self-powered, automatic controlled over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); tractor, small wheel type 50 h.p. & under with grader blade & similar equipment

Group III(a) - Truck crane and dredge

Group IV - Boat operator-outboard motor (job site); conveyor (such as con-vay-it) regardlessof how used; oiler; sweeper, floor

Group IV(a) - Crawler type

Group V - (a) Air pressure, oiler engineer, operating under ten pounds (b) air pressure, oiler engineer operating over ten pounds (c) air pressure engineer operating under ten pounds (d) air pressure engineer operating over ten pounds (e) crane-piledriving and extracting; crane using rock socket tool; dragline - 7 cu. yds. & over; shovel, power - 7 cu. yds. and over; crane, climbing such as Linden); derrick, diesel, gas or electric hoisting material and erecting steel - 150' or more above ground; hoists, three or more drums; scoop,tandem; tractor, tandem crawler

Crane with boom (including jib), over 100' from pin to pin (add 1¢ per foot to maximum of $2.00) above basic rate for crane

Work in tunnel or tunnel shaft, .50¢ above base rate

Power Equipment Operators Zones 3, 4 and 8

Group I - Asphalt finishing machine & trench widening spreader, asphalt plant console operator; autograder; automatic slipform paver; back hoe; blade operator - all types; boat operator - tow; boiler - 2; central mix concrete plant operator; clam shell operator; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dozer operator; dragline opr.; dredge booster pump ;dredge engineman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader; hoisting engine - 2 active drums; launch-hammer wheel; locomotive operator- standard guage; mechanics and welders; mucking machine; piledriver operator; pitman crane operator; push cat operator; quad-trac; scoop operator; sideboom cats; skimmer scoop operator; trenching machine operator; truck crane, shovel operator

Group II - A-Frame; asphalt hot-mix silo; asphalt roller operator; asphalt plant fireman (drum or boiler); asphalt plant man; asphalt plant mixer operator; backfiller operator; barber-greene loader; boat operator (bridge & dams); chip spreader; concrete mixer operator - skip loader; concrete plant operator; concrete pump operator; dredge oiler; elevating grader operator; fork lift; grease fleet; hoisting engine - 1; locomotive operator - narrow guage; multiple compactor; pavement breaker; powerbroom-self-propelled; power shield; rooter; slip-form finishing machine; stumpcutter machine; side discharge concrete spreader; throttleman; tractor operator (over 50 hp); winch truck; asphalt roller operator; crusher operator

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Group III - Spreader box operator, self-propelled (not asphalt; tractor operator (50 h.p. or less); boilers - 1; chip spreader (front man); churn drill operator; compressor over 105 CFM 2 - 3 pumps 4" & over; 2-3 light plant 7.5 KWA or any combination thereof; clef plane opr.; compressor maintenance operator 2 or 3; concrete saw operator (self-propelled); curb finishingmachine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high type asphalt; screening & washing plant operator; siphons & jets; subgrading machine operator; tank car heater (combination boiler & booster); ulmac, ulric or similar spreader; vibrating machine operator; hydrobroom

Group IV - Oiler; grout machine; oiler-driver; compressor over 105 CFM-1; conveyor operator - 1; maintenance operator; pump - 4" & over - 1

FOOTNOTE:

HOURLY PREMIUMS

FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.25) ABOVE GROUP I RATE

Crane with 3 yds. & over buckets; dragline operator - 3 yds. & over; shovel - 3 yds. & over; piledrivers - all types; clamshell - 3 yds. & over; hoists - each additional active drum over 2 drums

FOLLOWING CLASSIFICATION SHALL RECEIVE ($.50) ABOVE GROUP I RATE

Tandem scoop operator

Crane, rigs over 100 feet (incl. jib) - 1¢ per foot

Power Equipment Operators Zones 5, 6 & 7

Group I - Asphalt finishing machine & trench widening spreader; asphalt plant console operator; automatic slipform paver; autograder; backhoe; blade operator, - all types; boat operator - tow; boilers - 2; central mix concrete plant operator; clamshell operator; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dozer operator; dragline operator; dredge booster pump; dredge engineman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader; hoisting engine - 2 active drums; launch hammer wheel; locomotive operator; - standard guage; mechanics and welder; mucking machine; piledriver operator; sideboom cats; skimmer scoop operators; trenching machine operator; truck crane; scoop operators - all types

Group II - A-frame; asphalt hot mix silo; asphalt plant fireman (drum or boiler); asphalt roller operator; asphalt plant man; asphalt plant mixer operator; backfiller operator; barber-greene loader; boat operator (bridges and dams); chip spreader; concrete mixer operator - skip loader; concrete plant operator; concrete pump operator; crusher operator; dredge oiler; elevating grader operator; fork lift; greaser-fleet; hoisting engine - 1; locomotive operator - narrow guage; multiple compactor, pavement breaker; power - broom - self-propelled; power shield; rooter; slip form finishing machine; stumpcutter machine; side discharge concrete spreader; throttle man; tractor operator (over 50 hp); winch truck

POWER EQUIPMENT OPERATORS - ZONES 5,6, & 7 (CONT'D)

GROUP III - Boilers - 1; chip spreader (front man); churn drill operator; clef plane operator; concrete saw operator (self-propelled); curb finishing machine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high type asphalt; screening & washing plant operator; siphons & jets; subgrading machine operator; spreader box operator, self-propelled (not asphalt); tank car heater operator; (combination boiler & booster); ulmac, ulric, or similar spreader; vibrating machine operator, not hands; tractor operator (50 hp or less)

GROUP IV - Oiler; oiler driver

FOOTNOTE:

HOURLY PREMIUMS

FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.25) ABOVE GROUP I RATE

DRAGLINE operator - 3 yds. & over; shovel - 3 yds. & over; clamshell - 3 yds. & over; crane, rigs or piledrivers, 100' of boom or over (incl. jib.), hoists - each additional active drum over 2 drums

FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.50) ABOVE GROUP I RATE

Tandem scoop operator; crane, rigs or piledrivers 150' to 200' of boom (incl. jib.)

FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.75) ABOVE GROUP I RATE

Crane rigs, or piledrivers 200 ft. of boom or over (incl. jib.)

AREAS COVERED BY POWER EQUIPMENT OPERATORS ZONES

ZONE 1 - Clay, Jackson, Platte and Ray Counties
ZONE 2 - St. Louis City and County
ZONE 3 - Franklin, Jefferson, St. Charles Counties
ZONE 4 - Adair, Audrain, Boillinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Clark, Cole, Crawford, Dent, Dunklin, Gasconade, Howell, Iron, Knox, Lewis, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Francois, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Texas, Washington, and Wayne Counties
ZONE 5 - Buchanan, Cass, Clinton and Lafayette Counties
ZONE 6 - Andrew, Atchinson, Bates, Benton, Caldwell, Carroll, Charlton, Cooper, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Holt, Howard, Johnson, Linn, Livingston, Mercer, Nodaway, Pettis, Saline, Sullivan and Worth Counties
ZONE 7 - Christian, Greene, Jasper, Lawrence, Taney, Barry, Barton, Camden, Cedar, Dade, Dallas, Douglas, Hickory, Laclede, McDonald, Newton, Ozark, Polk, St. Clair, Stone, Vernon, Webster and Wright Counties
ZONE 8 - Lincoln and Warren Counties

TRUCK DRIVER CLASSIFICATION DEFINITIONS

ZONE 1

Group 1 - Mechanics & Welders-field
Group 2 - A-frame low boy-boom truck driver

Group 3 - Insley wagons; dump trucks, excavating, 5 cu. yds. and over; dumpsters; half-tracks: speedace: euclids and similar excavating equipment material trucks, tandem two teams; semi-trailers; winch-truck-fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers, tandem or semi
Group 4 - One team; station wagons; pickup truck; material trucks, single axle, tank wagon drivers, single axle
Group 5 - Oilers and greasers-field

ZONES 2, 3, 4, 5 & 6

Group 1 - Flat bed trucks - single axle; station wagon; pickup trucks; material trucks - single axle; tank wagon - single axle
Group 2 - Flat bed trucks - tandem axle; material trucks, tandem axle; tank wagon - tandem axle
Group 3 - Semi and/or pole trailers; winch fork and steel trucks; Insley wagons, dumpsters, half tracks, speedace, euclids, and other similar equipment, a-frame and derrick trucks, float or low boy distributor drivers and operators, tank wagon, semi-trailer
Group 4 - Agitator and transit mix truck
Group 5 - Warehousemen

AREA COVERED BY TRUCK DRIVER ZONES

ZONE 1 - Clay, Jackson, Platte & Ray Counties
ZONE 2 - Franklin, Jefferson and St. Charles Counties
ZONE 3 - Lincoln and Warren Counties
ZONE 4 - Buchanan, Cass, Johnson and Lafayette Counties
ZONE 5 - Andrew, Audrain, Barton, Bates, Benton, Bollinger, Boone, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Christian, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Gasconade, Greene, Henry, Hickory, Howard, Iron, Jasper, Laclede, Lawrence, Linn, Livingston, Macon, Maidson, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgran, New Madrid, Newton, Osage, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Ralls, Randolph, Reynolds, St. Clair, St. Francois, Ste. Genevieve, Saline, Scott, Shannon, Shelby, Stoddard, Texas, Vernon, Washington, Wayne, Webster and Wright Counties
ZONE 6 - Adair, Atchinson, Perry, Butler, Clark, Dunklin, Gentry, Grundy, Harrison, Holt, Howell, Knox, Lewis, McDonald, Mercer, Nodaway, Oregon, Ozark, Putnam, Ripley, Schuyler, Scotland, Stone, Sullivan, Taney and Worth Counties
ZONE 7 - St. Louis City and County

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTY: CHEMUNG
DECISION NO. NY85-3044 DATE: Date of Publication
Supersedes Decision No. NY83-3050, dated November 4, 1983 in 48 FR 50990.
DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories), heavy (except water well drilling) & Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.70	3.41
[illegible]	18.93	1.875+ 10%
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS, & TILE SETTERS	12.45	1.35
CARPENTERS:		
All of the area west of a straight line from the intersection of Southport Twp. line and Clark Hallow Road to Route 17E to Winter Street, Big Flats, then in a straight line north to the Schuyler County line:		
Carpenters	12.30	3.08
Millwrights & Piledrivers	12.20	3.08
Heavy & Highway	14.11	3.035+ a
Remainder of County:		
Carpenters	12.82	1.83
Millwrights & Piledrivers	13.17	1.83
Heavy & Highway	15.35	1.795 +a
CEMENT MASONS (Heavy & Highway)	13.81	3.60
ELECTRICIANS	17.00	3.15+b +3%
ELEVATORS CONSTRUCTORS	14.48	2.69+ b+c
HELPERS	10.14	"
HELPERS (PROB.)	7.24	[illegible]
GLAZIERS	10.92	1.68
[illegible]	14.40	3.10
LABORERS:		
Building	10.87	1.15
Heavy and Highway:		
Class A	13.39	1.50+d
Class B	13.59	1.50+d
Class C	13.79	1.50+d
Class D	13.99	1.50+d

LINE CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits
Substation and switching structures; Pipe type cable installation and maintenance jobs or projects; Railroad catenary installation and maintenance; Bonding of rails:		
Lineman; Technician	17.75	4.35+e +6.25%
Cable Splicer	19.525	4.35+e +6.25%
Groundman Digging Machine operator; dynamite man	15.975	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+e +6.25%
Mobile equipment operator; groundman truck drivers; mechanic	13.464	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work:		
Lineman; Technican	16.83	4.35+e +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+e +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D):		
Overhead transmission line work where other work is or has been involved):		
Lineman; Technician	19.61	4.35+e +6.25%
Groundman digging machine operator; dynamite man	17.649	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+e +6.25%
Mobile equipment operator; groundman truck driver; mechanic	15.688	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%
PAINTERS:		
Brush	11.20	2.20
Toothpick staging over 25'; structural Scaffold over 35'	10.30	1.45
Paperhangers; Vinyl Hangers	10.40	1.45
Swing Chair, Swing Scaffold; Power Grinder with Respirator	10.55	1.45
Epoxy - Brush and Roll	10.60	1.45
Stilts	10.80	1.45
Spray	10.90	1.45
Structural Steel; Steeplejack (over 100'); Sandblasting; Steamcleaning (acid or hi-pressure water)	11.05	1.45
Spray - Epoxy	11.30	1.45
PLUMBERS & STEAMFITTERS	15.80	3.40
POWER EQUIPMENT OPERATORS:		
BUILDING CONSTRUCTION		
GROUP I:		
I-A	16.36	3.40+f
I-B	16.69	3.40+f
I-C	17.01	3.40+f
I-D	17.34	3.40+f
I-E	17.99	3.40+f
I-F	19.64	3.40+f
I-G	19.28	3.40+f
I-H	19.93	3.40+f
GROUP II	16.04	3.40+f
GROUP III	16.13	3.40+f
GROUP IV	14.71	3.40+f
GROUP V	12.13	3.40+f
GROUP VI	16.92	3.40+f

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
HEAVY & HIGHWAY CONSTRUCTION		
GROUP I	15.81	3.55+d
GROUP II	15.27	3.55+d
GROUP III	13.74	3.55+d
GROUP IV	12.39	3.55+d
ROOFERS	13.14	2.99
SHEET METAL WORKERS	14.95	2.55+ 3%
SPRINKLER FITTERS	16.92	3.13
TRUCK DRIVERS:		
(HEAVY & HIGHWAY):		
Class 1	13.49	2.45+d
Class 2	13.54	2.45+d
Class 3	13.59	2.45+d
Class 4	13.74	2.45+d
Class 5	13.69	2.45+d

WELDERS - Rate for craft to which welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B--Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving; F-Christmas Day.

a. Paid Holidays: C & D, provided employee works his scheduled work day before and his scheduled work day after the holiday and is on the payroll in the payroll week in which the holiday falls.

b. Paid Holiday: A through F, and the Friday after Thanksgiving.

c. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

d. Paid Holidays: A through F, provided the employee works the working day before and the working day after the holiday.

e. Paid Holidays: A through F, Washington's Birthday, Good Friday, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

f. Paid Holidays: A through F, provided the employee works either the work day immediately preceding the holiday or the scheduled work day immediately following the holiday.

CLASSIFICATION DESCRIPTIONS

LABORERS (HEAVY AND HIGHWAY CONSTRUCTION):

CLASS A: Laborers, drill tenders, outboard and hand boats.

CLASS B: Bull float, chain saw, concrete aggregate, bin concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or crew op. on asphalt paver, water pump op. (1½" and single diaphram), nozzle (asphalt, gunnite, seeding, and sandblasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C: All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D: Blasters, form setter, stone or granite curb setters.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):

GROUP I: Cranes (cable and hydraulic climbing and tower)
I-A: 121 ft. and under
I-B: Between 121 ft. and 151 ft.
I-C: Between 151 ft. and 201 ft.
I-D: Between 201 ft. and 251 ft.
I-E: Between 251 ft. and 301 ft.
I-F: Between 301 ft. and 351 ft.
I-G: Between 351 ft. and 401 ft.
I-H: Between 401 ft. and 451 ft.

GROUP II: Air tugger; derrick; dredge; big generator plant; cableway, backhoe, clamshell, dragline, shovel and similar machines over 3/8 cubic yards capacity (factory rating); bridge crane (all types); caisson auger and similar type machine; forklift (with factory rating of 15 ft. or more of lift); hoist (on steel erection); mucking machines; Ross carrier (and similar types); three drum hoist (when all three drums are in use).

GROUP III: A-frame truck; backfilling machine; hoist (1 or 2 drums); Barber Green and similar type machines; maintenance engineer (mechanic); mechanical slurry machines (all kinds); belt crete and similar type machine; bituminous spreading machines; post hole digger; bulldozer; carry-all type scraper; core drill; pumps (regardless of motive power) no more than (4) in number not to exceed 20 inches in total capacity); fine grade and finish rollers, side boom tractor; stone crusher; compressors (4 not to exceed 200 CFM combined capacity, or 3 or less with more than 1200 CFM, but not to exceed 2000 CFM); concrete mixer; concrete pumps, Tournadozer and similar types; crane hoe shovel 3/8 yds. capacity or less (factory rating); Tournapull and similar types; dinky locomitives (all types), tower-mobile and similar types; elevating grader; elevator; trenching machines; fine grade macines (all kinds); welder; front end loader; forklift, with factory rating of less than 15 feet of lift; well drill; well point system; high pressure boiler.

CLASSIFICATION DESCRIPTIONS (CONT'D)

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION): (CONT'D)

GROUP III (CONT'D): concrete pumps, Tournadozer and similar types; crane hoe shovel 3/8 yds. capacity or less (factory rating); tournapull and similar types; dinky locomotives (all types), tower-mobile and similar types; elevating grader; elevator; trenching machines; fine grade machines (all kinds); welder; front end loader; forklift, with factory rating of less than 15 feet of lift; well drill; well point system; high pressure boiler.

GROUP IV: Any combination (not to exceed 3 pieces of equipment); welding; machine or mechanical conveyor (over 12 ft. in length); fireman; belt crete generator; mechanical heater; roller (fill & grade); pumps (regardless of motive power), no more than (3) in number, not to exceed twelve inches total capacity); rubber tired tractor; compressor 3 or less, not to exceed 1200 CFM combined capacity; longitudinal float.

GROUP V: Truck Crane.

GROUP VI: Master Mechanic.

POWER EQUIPMENT OPERATORS (HEAVY AND HIGHWAY CONSTRUCTION):

GROUP I: Automated concrete spreader (CMI); automatic fine grade; backhoe (except tractor mounted, rubber tired); belt placer (CMI type); blacktop plant (automated); cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity); concrete pump (8" or over); crane, cranes & derricks (steel erection); dragline; dredge; dual drum paver; excavator (all purpose-hydraulically operated) (gradall or similar); fork lift (factory rated 15 ft. and over); front end loader 4 c.y. and over); head tower (sauerman or equal); hoist (2 or 3 drum), mine hoist, mucking machine or mole, over head crane (gantry or straddle type); piledriver; power grader; quad 9; quarry master (or equivalent); scraper; shovel; sideboom; slip form paver; tractor drawn belt type loader; truck cranes; truck or trailer mounted log chipper (self-feeder); tug operator (except manned rented equipment); tunnel shovel.

GROUP II: Backhoe (tractor mounted, rubber tired); bituminous spreader and mixer; blacktop plant (non-automated), blast or rotary drill (truck or tractor mounted); boring machine; cage-hoist; central mix plant (non-automated and all concrete batching plants; cherry picker (5 tons capacity and under); compressors (4 or less) exceeding 2000 C.F.M. combined capacity; concrete paver (over 16S); concrete pump (under 8"); crusher; diesel power unit; drill rigs (tractor mounted); front end loader (under 4 c.y.); hi-pressure boiler (15 lbs. and over); hoist (one drum); Kolman plant loader and similar type loaders; L.C.M. work boat operator; locomotive; maintenance/engineer/greaseman/welder; mixer (for stabilized base self-propelled); monorail machine; plant engineer; pump crete; ready mix concrete plant; refrigeration equipment (for soil stabilization); road widener; roller (all above sub-grade); sea mule; tractor with dozer and/or pusher; trencher; tugger-hoist; winch; winch cat.

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CLASSIFICATION DESCRIPTIONS (CONT'D)

POWER EQUIPMENT OPERATORS (HEAVY AND HIGHWAY CONSTRUCTION): CONT'D)

GROUP III: A-frame truck; compressors, dust collectors, generators, pumps, welding machines; light plants (4 of any type of conbination); concrete pavement spreaders and finishers; conveyor; drill-core; drill-well; electric pumps used in conjunction with well point system; farm tractor with accessories; fine grade machine; fork lift (under 15 feet); grout pump; gunnite machine; hammers (hydraulic-self-propelled); hydra-spiker (ride-on); hydro blaster (water); post hole digger and post driver; power sweeper; roller (grade and fill); submersible electric pump (when used in lieu of well point system); tractor with towed accessories; vibratory compactor; vibro tamp; well point.

GROUP IV: Aggregate plant; boiler (used in conjunction with production; cement and bin operator; compressors, dust collectors, generator pumps, welding machines, light plants (3 or less of any type or combination; concrete paver or mixer (16S and under), concrete saw (self-propelled); fireman; form tamper; hydraulic pump (jacking system); mulching machine; oiler; papapet concrete or pavement grinder; power broom (towed), power heaterman; Revinus widener; shell winder; steam cleaner; tractor.

TRUCK DRIVERS (HEAVY & HIGHWAY CONSTRUCTION):

CLASS 1: Warehouseman, yardmen, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, greasers, truck tiremen, mechanic helpers and parts chaser.

CLASS 2: Tandems, batch trucks, mechanics and dispatcher.

CLASS 3: Semi-trailers, low-boy trucks asphalt distributor trucks, agitator,

CLASS 4: Specialized earth moving equipment - Euclid type or similar off-highway equipment where not self-loaded, straddle (Ross) carrier and self-contained concrete mobile unit.

CLASS 5: Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self loaded.

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTY: NIAGARA
DECISION NO. NY85-3043 DATE: DATE OF PUBLICATION
Supersedes Decision No. NY81-3055 dated July 17, 1981 in 46 FR 37204.
DESCRIPTION OF WORK: Building (excluding single family homes and apartments up to and including 4 stories), Heavy (except water well drilling) & Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.35	4.16
BOILERMAKERS	18.50	4.79
BRICKLAYERS		
North Tonawanda		
Bricklayers & Stone [illegible]	16.66	5.00
Terrazzo Workers & Tile Setters	16.28	5.00
Marble Setters	16.375	5.00
Remainder of County		
Bricklayers & Stone Masons	15.00	2.95
Marble Masons, Terrazzo Workers & Tile Setters	14.75	2.95
CARPENTERS		
North Tonawanda		
Carpenters, Millwrights Piledrivermen & Soft Floor Layers	16.93	4.60
Remainder of County		
Carpenters & Soft Floor Layers	15.23	5.375
Millwrights	15.33	5.375
Carpenters & Piledrivermen (Heavy & Highway)	11.765	5.33+a
CEMENT MASONS	14.99	4.60
ELECTRICIANS		
Electricians	18.58	3.50+ 3 1/4%
Cable Splicers	20.44	3.50+ 3 1/4%
ELEVATOR CONSTRUCTORS	18.62	3.29+ b+c
ELEVATOR CONSTRUCTORS' HELPERS	13.03	3.29+ b+c
ELEVATORS CONSTRUCTORS HELPERS(PROBATIONARY)	9.31	
GLAZIERS	15.98	4.71
IRONWORKERS:		
Jobs on which the total project cost is $3 million or less	15.01	2.62
Jobs on which the total project cost is over $3 million	16.68	2.62
Pre-engineered buildings	11.50	2.62
LABORERS (North Tonawanda)		
BUILDING CONSTRUCTION:		
Class I	13.745	4.21
Class II	13.845	4.21
Class III	13.895	4.21
Class IV	13.945	4.21
Class V	13.995	4.21
Class VI	13.745	4.21
HEAVY & HIGHWAY		
Class I	13.445	4.21
Class II	13.695	4.21
Class III	14.195	4.21
Class IV	14.295	4.21
Class V	14.695	4.21
Class VI	14.945	4.21
FREE AIR TUNNEL:		
Class I	12.945	4.21
Class II	13.145	4.21
Class III	13.345	4.21
Class IV	13.545	4.21
LABORERS (Remainder of County): BUILDING, HEAVY & HIGHWAY		
CONSTRUCTION:		
Group I	13.66	5.30
Group II	14.16	5.30
Group III	13.86	5.30
Group IV	14.93	5.30
LABORERS: ROCK TUNNEL		
FREE AIR CONSTRUCTION		
NIAGARA COUNTY: EXCEPT NORTH TONAWANDA		
Group I	9.61	1.75
Group II	9.51	1.75
Group III	10.46	1.75
Group IV	9.76	1.75
Group V	9.86	1.75
Group VI	10.26	1.75
Group VII	9.76	1.75

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	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Substations and switching structures; Pipe type cable installation and maintenance jobs or projects; Railroad catenary installation and maintenance; Bonding of rails:		
Lineman; Technician	17.75	4.35+e +6.25%
Cable splicer	19.525	4.35+e +6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	15.[illegible]	4.35+e +6.25%
Mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+e +6.25%
Groundman	10.[illegible]	4.35+e +6.25%
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work:		
Lineman; Technician	16.83	4.35+e +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+e +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technician	19.61	4.35+e +6.25%
Groundman digging machine operator; dynamite man	17.649	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+e +6.25%
Mobile equipment operator; Groundman truck driver; mechanic	15.688	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Twps. of Somerset, Hartland, Royalton, New Fane, Lockport, Pendleton and the eastern half of Cambria and Wilson		
Brush	15.65	3.94
Cranes, Steel, Tanks, Towers, Stacks, Bridges, Flag Poles, Radio & TV Towers	16.40	3.94
Sandblasting, Swing Stages, Scaffold, Epoxy, Spray, Bosun Chair	15.90	3.94
Bridges 35' high or in depth of 35' from road level	17.565	3.94
Remainder of County	14.46	5.35
Repaint (except bridges and tanks)	13.46	4.86
Brush & Roll	14.96	4.86
Papers	15.21	4.86
Spray; spraying mastic; vinyl or paperhangers; sandblasting and waterblasting; swinging scaffold or boatswain chair; stage or chair on building over 25 ft. from ground level; steeplejack used painting steel tanks, smokestacks and chruch steeples; steel painting	15.96	4.86
Domeshaper tanks on legs or stilts over 50 ft. from ground	16.955	4.86
Bridges	16.955	4.86
PLUMBERS & STEAMFITTERS	19.00	3.25
POWER EQUIPMENT OPERATORS:		
(BUILDING CONSTRUCTION)		
Group I	16.70	4.05+f
Group II	15.49	4.05+f
Group III	11.96	4.05+f
Group IV	13.46	4.05+f
Group V	11.70	4.05+f
Group VI	17.92	4.05+f
Group VII	17.20	4.05+f
(HEAVY & HIGHWAY)		
Group I	17.45	4.05+f
Group II	16.13	4.05+f
Group III	12.51	4.05+f
Group IV	14.15	4.05+f
Group V	11.98	4.05+f
Group VI	18.79	4.05

DECISION NO NY85-3043

	Basic Hourly Rates	Fringe Benefits
ROOFERS		
Composition, Damp Waterproofers, Sprayers, Asphalt Mastic, Wood Block Floor Workers, Steep Roofers & Siders	16.86	2.71
Slate, Tile Asbestos & Precast Tile	17.01	2.71
SHEET METAL WORKERS	17.68	5.36
SPRINKLER FITTERS	16.49	3.23

WELDERS _ Rate for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays B & D

b. Paid Holidays: A through F

c. Employer contributes 8% of the basic hourly rate for 5 years or more of service and 6% of the basic hourly rate for 6 months to 5 years of service as vacation pay credit.

d. A through F, provided the employee works the scheduled working day before and the scheduled working day after the holiday.

e. Paid Holidays: A through F, Washington's Birthday, Good Friday, and Election Day for the president of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

f. Holidays A through F, provided employee works the day before and the day after the holiday.

CLASSIFICATIONS DESCRIPTIONS

LABORERS (North Tonawanda)

BUILDING CONSTRUCTION:

Class I: Laborers

Class II: Foundation laborers (over 8' in depth); hod carriers; plasterer tender; plasterer scaffold builders; pneumatic, gas, electric tool operator (including all forms of busters, jackhammers and chipping guns); steel burners.

Class III: Mortar mixer

Class IV: Tool operator over 8' in depth; swing scaffold; blaster; plumbing laborers; wagon drill operator.

Class V: Bottom man (caisson & cofferdam).

Class VI: Top man; wreckers

HEAVY & HIGHWAY CONSTRUCTION:

Class I: Laborers, drill helpers, outboard and hand boats.

Class II: Bull float, chain saw, concrete aggregate bin, concrete bootman, gin buggy, and or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw operator on asphalt paver, water pump operator (1 1/2" and single diaphram), nozzle (asphalt, gunnite, seeding and sandblasting), laborers on chain link fence erection rock splitter and power unit, pusher-type concrete saw and all other gas electric, oil and air tool operators, wrecking laborer.

Class III: All rock or drill machine opertors (except quarry master and similar type), acetylene torch operator, asphalt raker, powderman.

Class IV: Blasters, form setter, stone or granite curb setters.

FREE AIR TUNNEL:

Class I: Laborers; mole nippers; top laborers.

Class II: Top bell

Class III: Side or roofbolt driller; conveyor men; block layers; caulkers; track men; nippers; burners; derail men; electrical cablemen; hosemen;

Class IV: Powder monkey

Class V: Blasters; cement finishers; ironmen; miners.

Class VI: Steel erectors; piledrivers; riggers.

LABORERS (Remainder of County)

BUILDING, HEAVY & HIGHWAY CONSTRUCTION

GROUP I: Laborers

GROUP II: Form setter; wagon drill operators; road finishers; gunnite nozzlemen; sandblaster; burning torch; concrete saw operators.

GROUP III: Potman; pipelayers; pavement breakers or busters; jackhammer operators; barco rammers; chain saw; powder monkey; black top rakers; scalers; drill tenders; mortar mixers; men working from swinging scaffold bosum chair; suspended cate or bucket; work in caisson below 8 feet; concrete motor buggy; all other operators of mechanical tools, including vibrators regardless of type of power.

GROUP IV: Blasters

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)

GROUP I: Finish blacktop rollers, crane work, shovels, derricks, steel erection, overhead or bridge cranes and clam buckets, all excavating machines, backfillers, cableways, draglines, backhoes, piledriving rigs, tunnel mucking machines, all tractors used in connection with scraper wagon, snowloader, all repair work or maintenance work under the supervison of a master mechanics, lubrication engineers, bulldozers, graders, blacktop spreaders, front and back loaders (except small types), power driver stone spreaders, portable stone crushers, crawler or rubber tire tractor with blade or bucket and crane boom or hoe boom or shovel boom attached (except farm type crawler or rubber tire tractor unless used with hydraulic backhoe), compressor with paving breaker attached, graders with bull-dozer blades, multiple drum hoist with air compressor when used simultaneously for more than one purpose and single drum hoist when used to hoist steel, portable concrete batching machine, automatic batch plant op., concrete spreader op., finishing machine op., form puller, scraper (either double or single bowl), CMI grading machine, truck mounted concrete pumps, self-propelled riding vibrators, kolman loaders, mechanic, welder, euclid type belt loader, mechanical and hydraulic pipe pushing machine, scoopmobiles, forklifts and hoist which lift higher than 25 feet, trenchers when excavation over 6 feet in depth, post drivers (except truck mounted, postdrivers), concrete mixers 1 yard and over, concrete planers.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION) CONT'D

GROUP II: Elevators, material hoist, road rollers except finish blacktop roller, tractors, pavement busters, pumps over 4 inches, concrete blowers, compressors when used in banks of (2) and not over (3) within a 50 foot radius if such is possible, but at least within 50 foot radius, and if fuel is stored it will be stored within the same radius, gunite machines, locomotives, scoop-mobiles (when used as a stationary hoist or one which does not lift over twenty five feet, concrete pumps, conveyors, gas or diesel driven temporary lighting and power systems of 25 kilowatt capacity or over), stone crushers and winch hoist mounted on trucks, all earth drills, le tourneau turnatrailers, highlift hoist which does not lift over 25 feet, gasoline heaters used in banks of (2) and not over (3) within an area of 100 foot radius, and for (2) but not over (3) gasoline or diesel drive welding machines, trenchers on the back of a jeep, truck mounted post drivers, snow-go, small front and back loaders, small type crawler or rubber tire tractor with blade or bucket not to exceed ½ yd. capacity, single drum hoist for hoisting materials other than steel, pug machine, self propelled rollers not on finish blacktop and under 7 tons, bobcat loader or forklift which does not lift over twenty five feet, trenchers, winch tractors, trenchers excavating up to 6 feet in depth, air compressors over 165 cu. ft.

GROUP III: Oilers on shovels, cranes, draglines, backhoe (over 3/4 cu. yds.) dredges, derrick boats, pavers (excluding stationary set-ups), trenching machines, pile drivers, quarry master (or its equivalent), hydrocranes, automated batch plants (wet or dry mix plants), compressors (165 cu. ft. per minute or under), pumps up to and including 4 inches.

GROUP IV: Truck crane oiler

GROUP V: Steam boiler operator.

GROUP VI: Master Mechanic.

GROUP VII: Cranes carrying over 100 feet of main boom.

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION)

GROUP I: Finish blacktop rollers, crane work, shovels, derricks, steel erection, overhead or bridge cranes and clam buckets, all excavating machines, backfillers, cableways, draglines, backhoes, piledriving rigs, tunnel mucking machines, all tractors used in connection with scraper wagon, snowloader, wagons, snowloader, all repair work or maintenance work under the supervision of a master mechanic , lubrication engineers, bulldozers, graders, blacktop spreaders, front and back loaders (except small types), power driver stone spreaders, portable stone crushers, crawler or rubber tire tractor with blade or bucket and crane boom or hoe boom or shovel boom attached (except farm type crawler or rubber tire tractor unless used with hydraulic backhoe), compressor with paving breaker attached, graders with bulldozer blades, multiple drum hoist with air compressor when used simultaneously for more than one purpose and single drum hoist when used to hoist steel, portable concrete batching machine, automatic batch plant op., concrete spreader op., finishing machine op., form puller, self propelled rollers if on blacktop, scraper, either double or single bowl, CMI grading machine, truck mounted concrete pumps, self-propelled riding vibrators, kolman loaders, mechanic, welder, euclid type belt loader, mechanical and hydraulic pipe pushing machine, scoopmobiles, fork-lifts and hoist which lift higher than 25 feet.

GROUP II: Elevators, material hoist, road rollers except finish blacktop roller, tractors, pavement busters, pumps over 4 inches, concrete blowers, compressors when used in banks of (2) and not over (3) within a 50 foot radius if such is possible, but at least within 50 foot radius, and if fuel is stored it will be stored within the same radius, gunite machines, locomotives, scoop-mobiles (when used as a stationary hoist or one which does not lift over twenty five feet, concrete pumps, conveyors, gas or diesel driven temporary lighting and power systems of 25 kilowatt capacity or over), stone crushers and winch hoist mounted on trucks, all earth drills, le tourneau turnatrailers, highlift hoist which does not lift over 25 feet, gasoline heaters used in banks of (2) and not over (3) within an area of 100 foot radius, and for (2) but not over (3) gasoline or diesel driven welding machines, trenchers on the back of a jeep, truck mounted post drivers, snow-go, small front and back loaders, small type crawler or rubber tire tractor with blade or bucket not to exceed ½ yd. capacity, single drum hoist for hoisting materials other than steel, pug machine, self propelled rollers not on finish blacktop and under 7 tons, bobcat loader or forklift which does not lift over twenty five feet, trenchers, winch tractors, trenchers excavating up to 6 feet in depth, air compressors over 165 cu. ft.

GROUP III: Oilers on shovels, cranes, draglines, backhoe (over 3/4 cu. yds.) dredges, derrick boats, pavers (excluding stationary set-ups), trenching machines, pile drivers, quarry master (or its equivalent), hydrocranes, automated batch plants (wet or dry mix plants), compressors (165 cu. ft. per minute or under), pumps up to and including 4 inches.

GROUP IV: Truck crane oiler

GROUP V: Steam boiler operator.

GROUP VI: Master Mechanic.

GROUP VII: Cranes carrying over 100 feet of main boom.

SUPERSEDEAS DECISION

STATE: Oklahoma
DECISION NO. OK85-4035
SUPERSEDEAS DECISION NO. OK83-4031 dated April 15, 1983 in FR 16420
COUNTY: RURAL COUNTIES (see below*)
DATE: Date of Publication
DESCRIPTION OF WORK: Construction, alteration, and/or repair of streets, highways, runways, erosion control structures, and water and sewer utilities (but does not include building structures on highway rest areas).

*All counties except heavy construction within the city of Muskogee. Canadian, Comanche, Creek, Garfield, Logan, McClain, Oklahoma, Osage, Rogers, Tulsa, Wagoner, and Washington Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits
Carpenters	$7.52	
Carpenters helper	6.38	
Concrete finishers	7.69	
Concrete finisher helper	6.00	
Form builder	6.75	
IRONWORKERS:		
Reinforcing steel	7.90	
LABORERS:		
Common laborers	5.71	
Air tool man	6.05	
Asphalt raker	7.11	
Asphalt shoveler	5.71	
Form setter	7.17	
Mechanic	8.51	
Mechanic helper	7.10	
POWER EQUIPMENT OPERATORS:		
Asphalt distributor	7.22	
Asphalt laydown machine	7.74	
Asphalt paving machine	7.85	
Asphalt plant operator	7.86	
Backhoe operator	8.11	
Blade operator	8.60	
Bulldozer operator	7.93	
Concrete paving machine	7.53	
Concrete saw operator	7.00	
Crane operator	7.50	
POWER EQUIP. OP. (CONt'D):		
FRONT END LOADERS:		
1 CY and less	$7.48	
Over 1 CY	7.63	
Motor grader operator	8.18	
Oiler	7.83	
Power broom operator	6.64	
Roller operator	7.46	
Roller pneumatic	6.06	
Roller steel wheel	7.26	
Scrapers	7.54	
Traffic signal installer	8.72	
Tractor operator	7.09	
TRUCK DRIVERS:		
Over 2 tons	6.44	
2 tons and under	6.20	
Tandem axle & semi-trailer	6.77	
Traveling mixer	7.13	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards clauses (29 CFR, 5.5(a)(1)(ii)).

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SUPERSEDEAS DECISION

STATE: Oklahoma
DECISION NO. OK85-4034
SUPERSEDEAS DECISION NO. OK83-4031 dated April 15, 1983 in FR 16420
COUNTY: METROPOLITIAN COS. (see below*)
DATE: Date of publication
DESCRIPTION OF WORK: Construction, alteration, and/or repair of streets, and highways, runways, erosion control structures, and water and sewer utilities (but does not include building structures on highway rest areas).

*Canadian, Comanche, Creek, Garfield, Logan, McClain, Oklahoma, Osage, Rogers, Tulsa, Wagoner and Washington Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits
Carpenters	$7.52	
Carpenters helper	6.38	
Concrete finishers	7.69	
Concrete finisher helper	6.00	
Form builder	6.75	
IRONWORKERS:		
Reinforcing steel	7.90	
LABORERS:		
Common laborers	5.71	
Air tool man	6.05	
Asphalt raker	7.11	
Asphalt shoveler	5.71	
Form setter	7.17	
Mechanic	8.51	
Mechanic helper	7.10	
POWER EQUIPMENT OPERATORS:		
Asphalt distributor	7.22	
Asphalt laydown machine	7.74	
Asphalt paving machine	7.85	
Asphalt plant operator	7.86	
Backhoe operator	8.11	
Blade operator	8.60	
Bulldozer operator	7.93	
Concrete paving machine	7.53	
Concrete saw operator	7.00	
Crane operator	7.50	
POWER EQUIP. OP. (CONt'D):		
FRONT END LOADERS:		
1 CY and less	$7.48	
Over 1 CY	7.63	
Motor grader operator	8.18	
Oiler	7.83	
Power broom operator	6.64	
Roller operator	7.46	
Roller pneumatic	6.06	
Roller steel wheel	7.26	
Scrapers	7.54	
Traffic signal installer	8.72	
Tractor operator	7.09	
TRUCK DRIVERS:		
Over 2 tons	6.44	
2 tons and under	6.20	
Tandem axle & semi-trailer	6.77	
Traveling mixer	7.13	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards clauses (29 CFR, 5.5(a)(1)(ii)).

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STATE: PENNSYLVANIA COUNTIES: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clintion, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Sommerset, Venango, Warren, Washington, Westmoreland.
DECISION NUMBER: PA85-3034 DATE: Date of Publication
Supersedes Decision No. PA84-3000 dated January 13, 1984, in 49 FR 1851.
DESCRIPTION OF WORK: Heavy and Highway Construction, excluding Sewage and Water Treatment Plant Projects.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS		
Zone I	14.58	31%
Zone II	14.39	31%
CARPENTER - WELDER		
Zone I	14.96	31%
Zone II	14.77	31%
CARPENTER - BURNER		
Zone I	14.77	31%
Zone II	14.58	31%
CEMENT MASONS	14.86	31%
PILEDRIVERMEN	15.53	30%
PILEDRIVERMEN - WELDER	15.76	30%
IRONWORKERS		
Reinforcing		
Zone 1	11.31	3.505
Structural, Ornamental & Reinforcing		
Zone 2	17.515	4.75
Zone 3	16.37	6.50
Zone 4	14.59	5.38
LABORERS		
Class I		
Zone I	12.44	24%
Zone II	12.32	24%
Class II		
Zone I	12.59	24%
Zone II	12.49	24%
Class III		
Zone I	13.00	24%
Zone II	13.00	24%
Class IV		
Zone I	13.92	24%
Zone II	13.92	24%
LANDSCAPING		
Zone 1		
Class 1	10.77	26%
Class 2	11.19	26%
Zone 2		
Class 1	12.60	23%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION		
Class I		
Zone 1	18.61	.80+3 3/8%
Zone 2	15.56	.80+3 3/8%
Class II		
Zone 1	13.03	.80+3 3/8%
Zone II	10.89	.80+3 3/8%
Class III		
Zone 1	12.10	.80+3 3/8%
Zone 2	10.11	.80+3 3/8%
Class IV		
Zone 1	11.17	.80+3 3/8%
Zone 2	9.34	.80+3 3/8%
Zone 3		
Class 1	16.04	.08+3 3/8%
Class 2	11.34	.80+3 3/8%
Class 3	11.12	.80+3 3/8%
Class 4	10.05	.80+3 3/8%
LINE CONSTRUCTION (Railroad Only)		
Zone 1		
Class 1	12.34	.60+ 6%+a
Class 2	12.34	.60+ 6%+a
Class 3	10.78	.60+ 6%+a

DECISION NO. PA85-3034

	Basic Hourly Rates	Fringe Benefits
PLUMBERS (Bridge - Drain Pipe)		
Zone 1	16.65	4.69
POWER EQUIPMENT OPERATORS		
Class I		
Zone I	16.42	23.17%
Zone II	16.18	23.17%
Class II		
Zone 1	16.20	23.17%
Zone II	15.95	23.17%
Class III		
Zone I	13.23	23.17%
Zone II	13.00	23.17%
Class IV		
Zone 1	12.87	23.17%
Zone II	12.60	23.17%
Class V		
Zone I	12.26	23.17%
Zone II	12.43	23.17%
TRUCK DRIVERS:		
Class 1	9.00b	19%
Class 2	11.00b	19%
Class 3	12.00b	19%
Class 4	13.48b	19%
Class 5		
See Area Description		
Class 6		
See Area Description		

WELDERS - Rate for craft to which welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided inthe labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

FOOTNOTE:

a. Paid Holidays: New Year's Day; Declaration Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day and Good Friday.

b. Travel, with vehicle, to and from project site and company's offices or yard will be at the federally established minimum wage rate of $3.35 per hour when a full eight hours of job site work is scheduled. (First trip in and last trip out daily, to a maximum of one hour each trip per day). Fringe benefit payments for this work will be based upon project site rate for similar vehicle.

AREA COVERED BY CARPENTERS ZONES

ZONE I - Allegheny, Armstrong, Beaver, Butler, Erie, Fayette, Greene, Lawrence, Mercer, Washington and Westmoreland
ZONE II - Bedford, Blair, Cambria, Cameron, Centre, Clarion, Clinton, Clearfield, Crawford, Elk, Forest, Franklin, Fulton, Huntingdon, Indiana, Jefferson, McKean, Mifflin, Potter, Seomerset, Venango and Warren

AREA COVERED BY IRONWORRERS ZONES

ZONE 1 - Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence, Somerset, Allegheny, Beaver, Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Venango, Warren, Bedford, Jefferson, Clinton, Elk, Fulton and Potter Counties

ZONE 2 - Franklin, Huntingdon and Mifflin Counties

ZONE 3 - Allegheny, Armstrong, Beaver, Butler, Cambria, Clarion, Fayette, Indiana, Washington & Westmoreland Counties

ZONE 4 - Clearfield, Blair, Cameron, Centre, Elk, Jefferson, Mckean, Clinton & Potter.

AREA COVERED BY LABORERS ZONES

ZONE I - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Clarion, Clearfield, Elk, Erie, Fayette, Greene, Indiana, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, Westmoreland

ZONE II - Bedford, Cameron, Centre, Clinton, Crawford, Forest, Franklin, Fulton, Huntingdon, Jefferson, Mifflin, Potter

AREA COVERED BY LANDSCAPE LABORERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Butler, Clarion, Crawford, Fayette, Greene, Indiana, Jefferson, Lawrence, Mercer, Venango, Washington, Westmoreland, Bedford, Blair, Cambria, Centre, Clearfield, Clinton, Erie, Franklin, Fulton, Huntingdon, Mifflin, Somerset

ZONE 2 - Cameron, Elk, Forest, McKean, Potter, Warren

AREA COVERED BY LINE CONSTRUCTION ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Bedford, Blair, Cambria, Centre, Clarion, Clearfield, Fayette, Fulton, Greene, Huntingdon, Indiana, Jefferson, Somerset, Washington & Westmoreland Counties

ZONE 2 - Franklin & Mifflin Counties

ZONE 3 - Butler, Cameron, Clinton, Crawford, Elk, Erie, Forest, Lawrence, McKean, Mercer, Venango, Warren & Potter Counties

AREA COVERD BY LINE CONSTRUCTION (Railroad Only)

ZONE 1 - Armstrong, Bedford, Blair, Cambria, Centre, Clarion, Clearfield, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Indiana, Jefferson, Somerset, Washington, Westmoreland Counties:

AREA COVERD BY PLUMBERS (Bridge - Drain Pipe)

ZONE 1 - Allegheny, Washington, Greene, Armstrong Counties.

AREA COVERED BY POWER EQUIPMENT OPERATORS ZONES

ZONE I - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Clarion, Centre, Clearfield, Crawford, Erie, Elk, Fayette, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington & Westmoreland Counties

ZONE II - Bedford, Cameron, Clinton, Forest, Franklin, Fulton, Huntingdon, Mifflin, Potter

LABORERS CLASSIFICATION DEFINITIONS

CLASS I - Heavy & Highway Construction Laborers (Including Craft Tenders, handling Salamanders L. P. Gas Heaters or similar etc.); Asphalt Curb Sealer; Asphalt Tamper; Batchman (weigh); Blaster's Helper; Boatman; Brakeman; Change House Attendant; Coffer Dam; Concrete Curing Pitman; Puddler; Drill Runner's Helper, (Including Drill Mounted on Truck, Track, or similar and Davey Drill - Spots-clean-up & Helps to maintain); Electric Brush and or Grinder; Fence Construction (including Fence Machine Operator); Form Stripper and Mover; Gabion (Erectors and Placers); Hydro Jet Claster Nozzlemen; Manually moved Emulsion Sprayer; Radio Actuated Traffic Control Operator; Rip Rap Work, Scaffolds and Runways; Sheeters and Shorers; Structural Concrete Top Surfacer; Walk Behind Street Sweeper; Welder's Helper (pipeline); Wood Chipper, reinforcing steel placers (bending aligning and securing and cadweld)

CLASS II - Air Tool Operator (all types); Asphalt, Batch & Concrete Plant Operator (manually operated) asphalt Rakers; Burner; Caisson Men (open air); Carryable Pumps; Chain Saw Operator (Including attachments); Cribbing (Concrete or steel); Curb Machine Operator (asphalt or concrete - walk behind); Diamond Head Core Driller; Drill Runner's Helper (Tunnel); Fork Lift (walk behind); Form Setter (Road Forms Line Man); Highway Slab Reinforcement Placers (Including Joint and Basket Setters); Hydraulic Pipe Pusher; Liner Plates (Tile or Vitrified Clay); Mechanical Compacting Equipment Operators; Mechanical Joint Sealer, Dope Pot and Tar Kettle; Mortar Mixer (hand or machine); Muckers, Brakemen & All Other Labor (Includes installation of Utility Lines); Pipe Layers (Regardless of material); Portable Single Unit Conveyor; Post Hole Auger (2 or 4 cycle-hand operated); Power Wheelbarrows and Buggies; Rail Porter or Similar; Sand Blaster; Vibrator Operator, All Rail Road Track Work to Include The Following: Adzing Machine, Ballast Router; Bolting Machine; Power Jacks; Rail Drill; Railroad Brakeman; Rail Saw; Spike Drivers (Manually or handheld tool); Spike Pullers; Tamping Machine; Thermitweld

CLASS III - Blacksmith, blaster, brick stone and block pavers and block cutters (wood, belgian and asphalt), cement mortar lining car pusher, cement mortar mixer (pipe relining), cement mortar pipe reliners, concrete saw operator (walk behind), curb cutters and setters, elevated roadway drainage construction, form setter (road forms-lead man), grout machine operator, gunite or dry pack gun (nozzle and machine man), manhole or catch basin (brick, block, concrete or any prefabrication), Miners and drillers (including lining, supporting and form workmen, setting of shields, miscellaneous equipment and jumbos), multi-plate pipe (aligning and securing), placing wire mesh on gunite projects, wagon drill operators (air track or sililar), walk behind ditching machine (trencher or similar), welder

CLASS IV - Welder (pipeline); High Burner (any burning not done from deck)

LANDSCAPE LABORERS CLASSIFICATIONS DEFINITIONS

CLASS 1 - Landscape laborer to include general landscaping work and the driving of trucks for the distribution of materials on the job site but not to include dump trucks used to transport supplies to the job

CLASS 2 - Landscape tractor operator to operate small industrial rubber tire tractor equipped with front end loader and back hoe attachment used for the sole purpose of landscape work including soil spreading, but not for heavy and highway

LINE CONSTRUCTION CLASSIFICATIONS DEFINITIONS

ZONE 1 & 2
CLASS 1 - Linemen
Class 2 - Winch truck operators
Class 3 - Truck Driver
Class 4 - Groundman
ZONE 3
Class 1 - Lineman, Dynamite man, Heavy Equipment Operator
Class 2 - Winch truck operator
Class 3 - Truck Driver
Class 4 - Groundman

CLASSIFICATION DEFINITIONS FOR LINE CONSTRUCTION (RAILROAD ONLY)

ZONE 1
CLASS 1 - Lineman

CLASS 2:

A" Equipment Operators:

1. Hoisting equipment - when erecting complete towers, erecting framed structures, erecting steel transmission poles, erecting railroad pole extensions and crossbeams and when operating personnel lift baskets.

2. Tension pulling equipment under energized conditions - paralled with other energized circuits or above energized circuits on the same structure, not to include crossovers. Bunled consuctor stringing, including static conductors on bundled conductor lines.

3. Excavating augures 36" inches in diameter or larger, 5/8 cubic yard backhoe and larger, trencher over four feet in depth, bulldozer D-6 (caterpillar) or larger, and blade on finish grade work

CLASS 3:

"B" Equipment Operators:
Operators of all other equipment

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POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

CLASS I - Autograde (C.M.I. & similar); Backfiller; Backhoe - 360° Swing; Cableway; Caisson Drill (similar to Hugh Williams); Central Mix Plant; Cooling Plant; Concrete Paving Mixer; Concrete Pump (self-propelled); Cranes; Cranes (Boom or mast 101 ft. or over up to & including 150 ft. inclusive of job + $.25; Boom or mast over 150 ft. up to & including 200 ft. inclusive of jib + $.50; Boom or mast over 200 ft. inclusive of jib + $.75; Tower-Stationary-Climbing Tower Crane); Derrick; Derrick Boat; Dozer (D-6 & over); Dragline; Dredge; Dredge Hydraulic; Elevating Grader; Franki Pile Machine; Gradall (Remote control or other-wise); Grader (Power-Fine Grade); Helicopter; Hilift (4 cy. and over); Hoist 2 Drums or more (in one unit); Hydraulic Boom TRuck (with pivotal cab) (single motor-Pitman or similar); Kocal; Locomotive (std. Gauge); Metro-chip Harvester or similar; Milling Machine (Roto Mill or Similar); Mix Mobile; Mucking Machine (Tunnel); Pile Driver Machine; Pipe Extrusion Machine; Presplitr Drill (Self contained); Refrigeration Plant (Soil Stabilization) Rough Terrain Crane; Scrapers; Shovel-Power; SliP Form Paver (C.M.I. and similar); Trenching Machine; Tunnel Machine (Mark XXI Jarva or similar) 1 Whirley

CLASS II - Asphalt paving machines (spreader), asphalt plant operator, auger (tractor mtd.), auger (truck mtd.), backhoe (rear pivotal swing) (180 swing), belt loader (euclid or similar), boring machine, cable placer or layer, compacter with blade, concrete batch plant (electronically synchronized), concrete belt placer (C.M.I. and similar), concrete finishing machine and spreader concrete mixer (over 1 cy.), concrete pump (stationary), core drill (truck or skid mtd. - similar to Pen drill), dozer (under D-6), force feedloader, fork lift (lull or similar), grader - power, grease unit operator (head), guard rail post driver (truck mounted), guard rail post driver (skid type), hi-lift (under 4 cy.) hydraulic boom truck (Non-Pivotal cab), job work boat (powered) when assistance is required it shall be a deckhand), jumbo operator, locomotive (narrow guage), mechanic, minor equipment operator (accumulative four units), mucking machine, multi-head saw (groover), overhead crane, roller - power-asphalt, ross carrier, side boom or tractor mounted boom, stone cursher, (screening-washing plants), stone spreader (self-propelled) truck mounted drill (davey or similar), welder and repairman, well point pump operator

DECISION NO. PA85-3034

POWER EQUIPMENT OPERATORS (CONTINUED)

CLASS III - Broom Finisher (C.M.I. or similar); Compactors/Rollers (Static or Vibratory (Self-propelled); Curb Builder; Minor Equipment Operator (two to three units); Multi-head Tie Tamper, Pavement Breaker (Self-Propelled or ridden); Soil Stabilizer Machine; Tire Repairman; Tractor (Snaking and hauling); Well Driller and Horizontal; Winch or "A" Frame Truck (when hoisting and lowering)

CLASS IV - Ballast Regulator, Compressor, Concrete Mixer (1 cy. & under with skip), Concrete Saw (Ridden or self-propelled), Conveyor, Elevator (Material hauling only), Fork-lift (Ridden or self-propelled), Form Line Machine, Generator, Groute Pump, Heater (Mechanical), Hoist (Single Drum), Ladavator Light Plant, Mulching Machine, Spray Cure Machine (powered Driven), Subgrader, Tie Puller, Tugger and welding Machine (Gas or Diesel)

CLASS V - Deck Hand, Farm Tractor; Fireman on Boiler; Mechanic's Helper; Oiler, Power Broom, Side Delivery Shoulder Spreader

TRUCK DRIVERS CLASSIFICATIONS DEFINITIONS

CLASS I - Pickup Farm Tractor (When pulling or Haulding, Helpers, Warehouseman

CLASS II - Single Axle, Forklift

CLASS III - Tri-axle, Tandem Axle & Tractor pulled Trailers

CLASS IV - Specialty Vehicles Off Road (45T-++), Distributor, Lo-Boy

CLASS V - Partsmen will be paid on basis of Behicle utilized

CLASS VI - Dual purpose Truck, when load has been, loaded or unloaded with truck winch loading, haulding & unloading) will, be paid according, to the axle

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August 23, 1985

Part IV

Department of Transportation

Office of the Secretary
Research and Special Programs Administration

14 CFR Part 241

Aviation Regulations; Uniform System of Accounts and Reports for Large Certificated Air Carriers; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Research and Special Programs Administration

14 CFR Part 241

[Docket No. 43351; Notice No. 85-11]

Aviation Regulations; Uniform System of Accounts and Reports for Large Certificated Air Carriers

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule requests comments on the need for and use of the financial and operating statistics reported by large certificated air carriers on RSPA Form 41 (formerly CAB Form 41). The Department proposes to reduce air carrier reporting burdens by more closely aligning the data collected with the data needed to fulfill its aviation responsibilities under the Federal Aviation Act of 1958, as amended.

DATE: Comments on the proposed rule must be received on or before October 22, 1985.

ADDRESS: Comments should be directed to the Docket Clerk, Docket 43351, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jack M. Calloway or M. Clay Moritz, Jr., Office of Aviation Information Management, Data Requirements and Public Reports Division, DAI-10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 426-7372.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increased in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These proposed regulations would result in a reduction in reporting burden for large certificated air carriers. Accordingly, a regulatory impact analysis is not required.

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies. Its economic impact should be minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities.[1] The proposed amendments would affect only large certificated air carriers.

The collection of information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. These requirements will be submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the collection-of-information requirements to OMB. Comments should be directed to Sam Fairchild, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. It would be appreciated if a copy of any comments sent to OMB is also sent to the DOT rules docket.

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. 43351. The postcard will be date/time stamped and returned to the commenter. All communications received between the specified opening and closing dates for comments will be considered by the Administrator before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

The Airline Deregulation Act (Pub. L. No. 95-504, October 24, 1978 ("ADA"), as amended by the Civil Aeronautics Board Sunset Act of 1984, Pub. L. No. 98-443, October 4, 1984) revised section 329(b)(1) of Title 49 of the United States Code to require the Secretary of Transportation to collect and disseminate information on civil aeronautics and continue certain data collection activities of the former Civil Aeronautics Board (CAB) under section 407(a) of the Federal Aviation Act of 1958, as amended (Act).[2] Included in the transfer of CAB data systems to DOT was CAB Form 41 "Report of Financial and Operating Statistics for Large Certificated Air Carriers."[3] This data collection form has been redesignated as RSPA Form 41 and is administered by the Office of Aviation Information Management (OAIM) of the Department's Research and Special Programs Administration (RSPA).

The Form 41 report consists of the following twenty-eight schedules.

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[1] For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act.

[2] Section 407(a) authorizes the Secretary, DOT, to require recurrent and special reports from any air carrier when the information is needed for regulatory purposes.

[3] "Large certificated air carriers" include all section 401 carriers that either: (1) Operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds; or (2) conduct operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands.

LIST OF SCHEDULES IN RSPA FORM 41 REPORT

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
A	Certification	O	(1)	X	X
B-1	Balance Sheet	O	(1)	X	X
B-1.1	Balance Sheet	S-A	(2)		
B-7	Airframes and Aircraft Engines Acquired	Q		X	X
B-8	Flight Equipment Retired	O		X	X
B-12	Statement of Changes in Financial Position	O	(1)	X	X
B-43	Inventory of Airframes and Aircraft Engines	A	X	X	X
P-1.1	Statement of Operations	S-A	(2)		
P-1.2	Statement of Operations	O	(1)	X	X
P-1(a)	Interim Operations Report	M	X	X	X
P-2	Notes to RSPA Form 41 Report	O	(1)	X	X
P-5.1	Aircraft Operating Expenses	Q(1)/S-A(2)	X		
P-5.2	Aircraft Operating Expenses	O		X	X
P-6	Maintenance, Passenger Service and General Administrative Expense Functions	O	(1)	X	X
P-7	Aircraft and Traffic Servicing, and Promotion and Sales Expense Functions—Group II and Group III Air Carriers	O		X	X
P-8	Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions—Group III Air Carriers	O			X
P-10	Employment Statistics by Labor Category	A	(1)	X	X
P-12(a)	Fuel Consumption by Type of Service and Entity	M	(2)	X	X
T-1(a)	Traffic and Capacity Statistics by Class of Service	M	(3)	X	X
T-1(b)	Traffic and Capacity Statistics by Class of Service-Scheduled Services	M		X	X
T-1(c)	Traffic and Capacity Statistics by Class of Service-Nonscheduled Services	M		X	X
T-2	Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft	O	X	X	X
T-3(a)	Airport Activity Statistics—Scheduled Revenue Service	Q	X	X	X
T-3(b)	Airport Activity Statistics—Scheduled Revenue Service	Q	X	X	X
T-3(c)	Airport Activity Statistics—Nonscheduled Revenue Service	O	X	X	X
T-8	Report of All-Cargo Operations	A	(3)	(3)	(3)
T-9	Nonstop Market Report	M	X	X	
G-41	Persons Holding More Than 5 Per Centum of Respondent's Capital Stock or Capital	A	(1)	X	X

NOTE: M=Monthly; Q=Quarterly; S-A=Semiannually; A=Annually; and X=All Carriers.

(1) Applicable to Group I air carriers with annual operating revenues of $10 million or more.
(2) Applicable to Group I air carriers with annual operating revenues below $10 million.
(3) Applicable to carriers conducting Section 418 all-cargo operations.

NOTE: Group I carriers are those with $0 to $75,000,000 in total annual operating revenues, Group II includes carriers with $75,000,001 to $200,000,000, and Group III includes all carriers with over $200,000,000.

As can be seen by the above listing, the extent of carrier reporting is based on a carrier's size or level of operations as measured by its total annual operating revenues.

During 1984, the CAB instituted a rulemaking proceeding to reduce the Form 41 reporting to the level needed to support the effective administration of Federal programs, including those CAB aviation programs transferring to DOT at sunset, as well as on-going DOT and other Federal programs. On November 28, 1984, the CAB adopted Economic Regulation ER-1401 (50 FR 232, January 3, 1985), which eliminated fourteen Form 41 schedules and culminated a 54 percent reduction in the number of Form 41 schedules from 61, at the enactment of the ADA, to the current level of 28.

The Department participated in accomplishing the reporting reductions realized by ER-1401 and had a close working relationship with CAB staff in identifying the Form 41 schedules no longer needed by DOT. Nevertheless, the Department also recognizes the degree of burden that still remains and seeks to explore the possibility of further reductions. To this end, the Department is instituting this rulemaking proceeding on the need for and use of Form 41 data.[4]

Review of DOT Data Needs

In developing this notice of proposed rulemaking, the Department, recognizing its role as the central government source for aviation data, conducted a zero base review of the air carrier information currently reported on RSPA Form 41 schedules in order to determine what data elements [5] the Department needs to administer its various aviation responsibilities, including air carrier safety, airport development and planning, fitness, international fares and routes, subsidy, and forecasting. The review was conducted by RSPA's Office of Aviation Information Management (OAIM) whose staff members met with the senior aviation program managers in DOT's Office of the Secretary and Federal Aviation Administration (FAA) in order to determine: (1) What Form 41 data elements are relied on for decisionmaking in aviation related matters; (2) what DOT programs are benefitted; (3) what is the frequency of data use; (4) what data are needed by entity;[6] (5) what domestic entity data are needed; and (6) what alternative sources of data are available for meeting DOT information requirements.

The results of OAIM's Form 41 data element review is included in Exhibit A, which contains the twenty-eight schedules currently comprising RSPA Form 41. On the face of each schedule is indicated whether the specific data element being reported is: (1) Needed by DOT, (2) needed for ICAO (International Civil Aviation Organization) reporting, (3) needed for mathematical verification purposes, or (4) not needed by DOT.

As can be seen by reviewing Exhibit A, the Department proposes to retain the majority of the data elements now being reported since they are still needed to support the Department's aviation programs. It should be noted, however, that the significant reporting reductions achieved by ER-1401 were only a few months old before being subjected to the current zero base review. Despite this, the zero base review did reveal two significant areas where further reductions can be made. Schedule G-41 on stock ownership reporting is no longer needed on a recurrent basis, and the reporting of air carrier operating expense data can be simplified. While ER-1401 resulted in a reporting burden

[4] Prior to the adoption of ER-1401, the Office of Management and Budget had directed the CAB to issue a rulemaking proposal to consider reductions in Form 41 reporting. The CAB, with the full support of DOT, issued, on December 28, 1984, a notice of intent (50 FR 101, January 2, 1985) to institute a rulemaking proceeding to solicit comments on Form 41.

[5] Data element is a distinct or single piece of information such as name, amounts, terms, number, abbreviation, symbol, etc.

[6] The word "entity" means a distinct geographical area. The entities are domestic and international, with international being further broken down into Atlantic, Pacific and Latin America for scheduled operations.

reduction on the air carriers of 8,300 hours or 16 percent, it is estimated that the revisions to Form 41 proposed by this rulemaking notice would result in an additional reduction of 3,300 burden hours or 8 percent for a total decrease of 23 percent. The 3,300 burden hours represents the elimination of 334 data elements out of the total currently reported of 1,011, or a 33 percent reduction.

Form 41 Schedule G–41 "Persons Holding More Than 5 Per Centum of Respondent's Capital Stock or Capital" was intended to collect the annual air carrier stock ownership data that was mandated by section 407(b) of the Act. This section was eliminated by the ADA. Therefore, the Department is proposing to eliminate Schedule G–41.

The staff review of the reporting of air carrier operating expense revealed that the current highly detailed level of expense reporting is no longer needed, even though the Department does extensively use operating cost by aircraft type in exercising its decisionmaking responsibilities. In order to relieve the carriers from having to file more detailed cost data than are necessary, the staff has developed a proposed set of simplified cost schedules that would reduce by 77 percent the number of data elements now reported by the largest (Group III) air carriers. Under this proposal, Schedule P–5.2 "Aircraft Operating Expenses" would be revised by consolidating some accounts, while Schedules P–6, "Maintenance, Passenger Service and General Administrative Expense Functions," P–7, "Aircraft and Traffic Servicing and Promotion and Sales Expense Functions—Group II and Group III Air Carriers," and P–8, "Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions—Group III Air Carriers," would be replaced by a simplified Schedule P–6, "Operating Expenses by Objective Groupings," and P–7, "Operating Expenses by Functional Groupings."

In comparing the current and proposed reporting, Group I air carriers, with annual operating revenues of $10 million or more, would file the simplified Schedule P–6 in lieu of the current Schedule P–6; Group II carriers would file the revised Schedule P–6 in lieu of the current Schedules P–6 and P–7; and Group III air carriers would file the revised Schedules P–6 and P–7 in lieu of current Schedules P–6, P–7 and P–8. For comparative purposes, the formats of the current schedules are included in Exhibit A and the formats for the proposed schedules are provided as Exhibit B.

The Department is considering a petition by United Air Lines, Inc. (Docket 42883) on February 20, 1985, requesting the elimination of the gallonage consumption of aircraft fuel and oil on Schedule T–2 "Traffic, Capacity, Aircraft Operations, and Miscellaneous Statistics by Type of Aircraft." United is concerned that the public disclosure of fuel data tends to stabilize fuel prices by eliminating supplier incentives to negotiate price discounts. While this notice of proposed rulemaking details DOT needs for Schedule T–2 data, the Department will respond to United's petition for eliminating the above data elements under Docket 42883.

The Department proposes to continue collecting carrier expense data by entity of operation, including domestic operations data. As to balance sheet and cash flow information, the Department uses such data for the total carrier entity in monitoring the continuing fitness of each air carrier as required by section 401(r) of the Federal Aviation Act, as amended. Income statement data are also used in reviewing continuing fitness as well as computing carrier yields by entity for use in balance of benefits analyses of international aviation agreements. The FAA uses these basic financial reports to monitor individual carrier financial status in allocating its safety inspection program resources.[7]

Cost, traffic, and capacity data by entity are used in negotiating and monitoring the effects of international agreements. Domestic entity data are reviewed to monitor the effects of carrier cost allocations between entities on reported international data. Such allocations can materially effect an international entity's operating cost levels which the Department reviews in granting international route authority and evaluating international fare and rate proposals. Domestic data are also used for calculating fare and rate levels for Canadian transborder operations since such operations are reported in the domestic entity. Cost data by aircraft type and entity, including domestic, are utilized to estimate foreign carrier operating costs in calculating the balance of benefits under air transport agreements. Carrier selection cases for international route awards, and carrier certification proceedings also use reported carrier data, by aircraft type, to evaluate the reasonableness of proposed operating plans.

FAA airport programs allocate Federal monies to domestic airports based on airport activity data for both domestic and foreign operations.

While the above discussion highlights the Department's need for entity data, including domestic, further discussion of the need for entity reporting is contained in the following discussion of DOT's various aviation programs.

Air Carrier Safety

FAA is responsible for monitoring the safety levels and regulatory compliance disposition of individual air carriers. The financial and traffic results of all carriers are analyzed at least quarterly, and the FAA Administrator is kept informed of the financial and operational health of the carriers. Financial information is one of the factors used by the FAA in allocating its safety inspection program resources to the various inspection sites.

When warranted, monthly financial and traffic data are used to closely monitor a carrier's revenue, traffic, and financial trends. Currently, FAA is studying the relationship between carrier financial results and safety to identify specific financial indicators or ratios that can be used to better allocate the Department's aviation safety inspection resources.

Passengers enplaned by point, and transported by service segment are used by FAA to determine population exposure levels when reviewing exemption requests to the regulations for the transportation of hazardous materials by air. Enplanement data are also used to identify hub airports that require a more detailed review of operational errors and incidents. Finally, enplanement and departure data by aircraft type by airport are used in identifying airport needs for instrument landing systems.

Carrier financial and statistical data are used to evaluate the prospective impact of proposed regulatory actions on the affected segment(s) of the air transportation industry. Cost/benefit analyses are perfomed to ensure that the costs of implementing a contemplated regulatory change do not outweigh the expected derivation of benefits.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–1(a), P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–10, P–12(a), T–1(a), T–1(b), T–2, T–3(a), T–3(b), T–3(c), T–8 and T–9.

[7] In recognition of carrier reporting burden, balance sheet and fund flow reports have never been required on an entity basis; however, revenue, expense, traffic, and capacity data, by entity, are heavily utilized in administering Federal aviation programs.

International Negotiations

Air services between the United States and most foreign countries are governed by bilateral aviation agreements. Evaluations of existing bilateral agreements and proposed changes to such agreements are based on a determination of the "balance of benefits" between the United States and foreign carriers.

The United States and foreign carrier benefits are computed and then adjusted for any proposed changes. Among the information used to determine the balance of benefits is traffic volume, aircraft seating density, available cargo capacity, load factors, traffic yields and unit costs, including cost per mile by length of haul and aircraft type. For comparative purposes, yield data are computed by carrier and by industry average. Estimations of foreign carriers' costs are computed using U.S. carrier data that may represent similar operating characteristics (aircraft type, length of haul, etc.).

Questions also arise in negotiations with foreign governments over employee productivity and excess baggage revenue estimates. Consequently, data are needed on the number of employees by labor category, allocated by entity, and on the amount of revenues collected for transporting excess baggage.

Operating cost data including costs by aircraft type and breakeven load factors are used to support fare proposals and monitor carriers serving particular markets. In the multilateral pricing negotiations with the European Civil Aviation Conference (ECAC), the aviation organization which represents most European countries, costs of service must be computed every three months. Over the past several years, the ECAC negotiations have been the mechanism for the establishment of acceptable fare levels for the United States-Europe markets over the North Atlantic.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–1(a), P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–10, P–12(a), T–1(a), T–1(b), T–2 and T–9.

International Fares and Rates

Mail

The Department is responsible for establishing international and intra-Alaska mail rates. Separate international mail rates are set for each of the Atlantic, Latin America, and Pacific entities. Mail rates are also individually set for priority and nonpriority mail. It should be noted that carrier data reported for the domestic entity are used to set rates for Canadian transborder mail.

A carrier's investment base is calculated during the ratemaking process to ensure a reasonable return on investment. This process requires the segregation of operating and nonoperating property and equipment, along with the applicable depreciation and amortization expenses. Cost data for aircraft type by entity are also used in ratemaking. Domestic entity cost data are used to review the reasonableness of the allocation of costs between entities.

Recurrent carrier cost data and current fuel costs are used to review the established mail rates every three or six months, depending on factors such as overall inflation and fluctuations in fuel costs. These reviews are conducted to ensure that carriers are being adequately compensated for their costs.

Form 41 schedules used: B–1, B–1.1, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–12(a), T–1(a), T–2, T–3(a), T–3(c) and T–9. If a mail rate investigation occurs, Schedules B–7, B–8, B–12 and B–43 are also used.

Passenger and Cargo

In addition to mail rates, the Department is also charged with establishing benchmarks for international fares and rates for passenger and cargo traffic, respectively. Passenger fares are reflected by the Standard Foreign Fare Level (SFFL) and cargo rates by the Standard Foreign Rate Level (SFRL). The SFFL and SFRL establish levels below which fare and rate applications are automatically approved. Separate passenger fare levels are calculated for the Canadian, Atlantic, Latin America, and Pacific areas. Cargo rate levels are calculated for each operating region: Atlantic, Western Hemisphere, and Pacific.

SFFL, by law,[8] must be adjusted at least every 60 days for fuel costs and every 180 days for all other costs. Section 399.41(f)(4) of the Department's Policy Regulations (14 CFR 399.41(f)(4)) requires SFRL adjustments to be performed on April 1 and October 1 of each year, or more frequently if warranted. The SFFL indices are based on actual operating costs per available seat-mile, and the SFRL indices are founded on average operating costs per available ton-mile. Historical cost trends are developed and projected to arrive at the revised fare and rate levels.

The domestic Standard Industry Fare Level (SIFL) is computed at least semiannually for domestic air transportation. It is used internally to review the reasonableness of existing or proposed fares in essential air service markets. Some of the domestic data are also used to calculate the SFFL for Canadian operations.

The SFFL/SFRL/SIFL mechanisms, with their periodic adjustment, permit carriers to react quickly to changing market conditions, as well as changes in input costs, such as fuel, without having to go through a lengthy administrative process. Using these indices enables carriers to recover costs with minimum regulatory lag, and set fares in accordance with current and projected cost levels.

Form 41 schedules used: B–1, B–1.1, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–12(a), T–1(a), T–1(b) and T–2.

International Routes

In carrier selection cases for international routes, the carriers submit an operating plan containing proposed pricing and detailed costs. Current and historical cost data are examined for applicants and other carriers with the same aircraft type, type of service, and length of haul and are used to validate the proposed operating plan. This review provides evidence concerning the reliability of management forecasts, including an evaluation of whether the proposed fare levels are credible.

When evaluating the operating plan, the Department examines the carrier's revenue generation estimates by analyzing historical fare levels and traffic patterns (seasonality). Also examined are a carrier's balance sheet and cash flow statements, direct operating costs, indirect costs, operating profit, and net profit. Operating expenses are grouped by functional categories and analyzed based on the historical cost of units of production such as block hours, available seat-miles, revenue passenger-miles, departures, enplanements and passenger revenue. Forecasts of revenues and expenses are developed to assess the impact of the proposed service on a carrier's total operations. For example, aircraft overhaul expenses are examined in evaluating carrier cost estimates, since the direct expensing of overhauls can affect an operating plan's estimated costs. Fuel cost data by aircraft type are also examined closely in evaluating projected expenses due to the significance of fuel cost to total operating cost.

Historical operating costs are examined not only for the entity affected by the proposed change in operations, but for all remaining operating entities of the carrier as well.

[8] Section 24(a)(9) "International Air Transportation Competition Act of 1979," Pub. L. 96–192, February 15, 1980.

This enables the Department to review a carrier's cost allocations between entities, which can materially affect the operating plan expenses forecast as well as the reasonableness of a carrier's fare proposals. Cost analysis also involves comparing the proposed cost projections against the historical cost trends of several similarly sized carriers operating the same or similar equipment and length of haul.

Airport activity data are also used to resolve allegations regarding airport dominance by specific carriers. In these instances, the airport data that are available for all carriers serving the particular airport would be examined. Nonstop market data provide the Department with the information needed to evaluate traffic projections by analzying load factors by market.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–12(a), T–1(a), T–1(b), T–2, T–3(a), T–3(b), T–3(c) and T–9.

Applications for Permits by Foreign Carriers

Foreign carrier applications include a forecast of the total traffic and financial results of the proposed services for the first full year of normal operations as well as the supporting data employed to calculate the financial forecast. Data reported by certificated U.S. carriers with the same or similar aircraft type and characteristics such as fare levels, class of service, length of haul, etc. are used to analyze the validity of the foreign carrier's data submission.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–12(a), T–1(a), T–2, T–3(a), T–3(b), T–3(c) and T–9.

Air Carrier Fitness

New Authority or Substantial Changes

Fitness determinations are made for applicants for certificate authority that are not currently certificated and established air carriers proposing a substantial change in operations.

Noncertificated applicants are required under 14 CFR Part 204 to file with the Department a balance sheet and income statement for their three most recent calendar or fiscal years. Also required are data on aircraft inventory and aircraft purchase plans. Filing requirements also include an illustrative service proposal, a twelve month forecasted balance sheet and income statement, which includes estimated revenue block hours (or airborne hours for charter operators) and revenue miles by type of aircraft, number of passengers and number of tons of mail and cargo carried, transport revenues, and the estimated traffic that would be generated in each market receiving the proposed service. These descriptive operating statements also include an explanation of the derivation of unit costs used in estimating operating expenses, and a description of the manner in which costs and revenues are allocated.

The data submitted by the applicants are compared to the revenue, expense, and operating data for a carrier or carriers with the same aircraft type and similar operating characteristics. This comparative review of the proposed operating plan supports the reliability of the submitted forecasts and, at the same time, provides additional evidence concerning the competency of management.

Certificated air carriers that seek to substantially change their operations must also undergo a fitness determination. Section 204.2 of DOT's Economic Regulations defines "substantial change in operations" as including, but not limited to, changes in operations from charter to scheduled service, cargo to passenger service, short-haul service to long-haul service, or a large increase in the number of markets served. Air carriers falling within this category are required under Section 204.4(g) to provide a description of their current aircraft fleet and plans, including financing arrangements, for purchasing or leasing additional aircraft.

Section 204.4(f) provides for the submission of an income statement forecast for the first normalized year of proposed operations, including estimated revenue block hours (or airborne hours for charter operations) and revenue miles by aircraft type, number of passengers and number of tons of mail and cargo carried, transport revenues, and an estimate of the traffic which would be generated in each market receiving the proposed service. As with new entrants, the statements filed must also include an explanation of the derivation of unit costs used in estimating operating expenses and a description of the manner in which costs and revenues are allocated.

As with noncertificated carriers undergoing a fitness determination, the data submitted by carriers proposing a significant change in operations are also compared to reported data by other carriers operating the same aircraft type and having similar operating characteristics.

It should be noted that the Department's regulations on the data to be filed in fitness determinations are formulated so as to minimize the data collection burden on both certificated and already established carriers by stating that if the required data have been previously filed with the Department, or another Federal agency from which they are available to the Department, the affected carrier need only identify the data and provide a citation for the date and place of filing.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, T–1(a), T–2, T–3(a), T–3(b), T–3(c) and T–9.

Continuing Fitness

Section 401(r) of the Act mandates that "the requirement that each applicant for a certificate or any other authority under this title must be found fit, willing, and able to perform properly the transportation covered by its application, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board under this Act, shall be a continuing requirement applicable to each such air carrier with respect to the transportation authorized by the Board.[9]

As indicated above, the continuing fitness requirement applies to all operating certificated air carriers. In evaluating an operating carrier's fitness to perform its authorized levels of transportation, the Department requires certain basic financial data such as provided by a balance sheet, an income statement, and a statement of the source and application of funds (funds flow). Data comparisons are made between current and past periods in order to assess the current financial position of the carrier. Financial trend lines are extended into the future to analyze the continued viability of the air transportation enterprise. Operating costs by aircraft type are reviewed to determine the representativeness of costs to the expenses being incurred by carriers of similar size and operating characteristics. Operating statistics are also reviewed to analyze a carrier's levels of traffic and capacity. Load factors (passenger and cargo) are compared to those of carriers with similar operating characteristics, and used to assess trends in the level of operations.

Certificated air carriers that have not begun operating within two years of certification are also subject to a continuing fitness review before starting service.

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[9] "Title" refers to Title IV "Air Carrier Economic Regulation" of the Federal Aviation Act of 1958, as amended. The authority of "Board" to determine continuing fitness transferred to the Secretary, DOT, on January 1, 1985, under the provisions of the Civil Aeronautics Board Sunset Act of 1984.

Form 41 schedules used: B–1, B–1.1, B–12, P–1.1, P–1.2, P–1(a), P–2, P–5.1, P–5.2, P–6, P–7, P–8 and T–1(a).

Airport Programs

The Department uses carrier data for: (1) Allocating Federal funds for airport development, (2) assessing the current level of airport security personnel and equipment and forecasting future requirements in this area, (3) projecting the anticipated level of activity for individual airports to forecast future requirements for airport facilities and staffing levels, and (4) assessing the level and frequency of service at individual airports in order to determine the environmental noise impact or carrier operations.

The Airport and Airway Improvement Act of 1982 (Pub. L. 97–248) specifies that fifty percent of the Federal funds allocated shall be distributed to primary airports on the basis of revenue passengers enplaned each calendar year immediately preceding the fiscal year in which the funds are appropriated. Revenue passenger enplanements by airport, which are reported by certificated air carriers, are used to both calculate the initial allocation of funds to the affected airports and resolve questions that may arise during the calendar year as to the level of enplanements used to disburse the Federal monies. It is critical that a reliable, certified source of data be available for computing fund allocations, since serious disruptions in individual airport planning, development, and funding commitments could occur should funds be misallocated and the Department be forced to seek recovery.

Revenue passenger enplanement data by airport are also used in airport planning under the Airport and Airway Improvement Act of 1982, which calls for establishing a National Plan of Integrated Airport Systems. Under this plan, forecasts of activity levels by airport are developed to ascertain the future development needs for each airport in the Plan.

Commercial air cargo carrier activity data are used in airport planning and development as well. Since several airports in the national system are heavily involved in air freight, all-cargo traffic and capacity data such as revenue tons enplaned and departures are used to plan for the future needs of those airports.

The FAA's Office of Aviation Policy and Plans, Forecast Branch, prepares air carrier traffic and operational forecasts in support of decisions on budget and staffing plans, facility and equipment funding, environmental impact, and policy analyses. Among the data used in its forcasts are passenger, mail, and freight yields. Fuel cost and consumption data by aircraft type are used to obtain an average per gallon cost for jet fuel, which is one of the inputs to the yield model. Yield data are also needed to develop the aviation trust fund revenue projections that the FAA is required to provide to the U.S. Treasury Department and the Office of Management and Budget twice a year.

Aircraft departure data by airport are used to compute the index level of crash, fire and rescue equipment needed for safe operations. Scheduled aircraft departures by aircraft type by airport are used in determining the practical annual capacity (PANCAP) at airports as prescribed in FAA Advisory Circular "Airport Capacity Critera Used in Preparing the National Airport Plan." PANCAP is a safety-related benchmark measure of the annual capacity or level of operations at an airport. It is a predictive measure which indicates when airport management should be concerned about capacity problems, delays, and possible needed airport expansion or runway construction. If the level of operations at an airport exceeds the PANCAP significantly, the frequency and length of delays will increase; so too, will the risk of accidents. The forecasts of operations show those years in which the level of operations will exceed PANCAP, and the relationship between total operations and PANCAP during the forecast or planning horizon. Operations by equipment type are also used in determining the proper classification of operations when air carriers/commuters use common codes.

Air carrier direct operating costs by aircraft type for flight crew, fuel and oil, and maintenance are used to estimate the cost of airport operating delays. The cost of operating delays is then compared to the cost of acquiring new FAA equipment and/or implementing new procedures designed to alleviate delays so as to assess the costs and benefits of delay avoidance alternatives.

Form 41 schedules used: P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–10, P–12(a), T–1(a), T–1(b), T–1(c), T–2, T–3(a), T–3(b), T–3(c), T–8 and T–9.

Air Carrier Acquisitions and Mergers

Air carrier acquisition and merger proposals are reviewed to determine if there are any potential anti-competitive effects. In determining potential anti-competitive or anti-trust implications, the degree of competition in the markets served by the affected carriers is analyzed. This analysis includes a review of the volume of traffic handled by each carrier at those airports and in those markets which would be affected by the proposed acquisition or merger.

Form 41 schedules used: T–3(a), T–3(c) and T–9.

War Air Service Program (WASP)

The mandate of the Civil Aeronautics Board under WASP (Executive Order 11490, as amended) for emergency preparedness planning in the event of war or national emergency transferred to the Secretary, Department of Transportation on January 1, 1985. To fulfill its mobilization responsibilities for airlift in the event of a national emergency, the Department needs timely aircraft inventory data. Data elements used in assessing total available airlift capacity include, for each aircraft operator, the number of aircraft by type, the airframe license number, the air capacity (passenger and/or cargo), and whether or not the aircraft is approved for overwater operation. Revenue aircraft miles, revenue aircraft hours (airborne), aircraft fuels issued (gallons), aircraft days assigned to service and aircraft hours (ramp-to-ramp) are also needed for each reported aircraft type.

Form 41 schedules used: B–7, B–8, B–43, and T–2.

Aircraft Loan Guarantee Program

Once a loan has been guaranteed by the U.S. government, the guaranteed carriers' financial data are continuously monitored to protect the government's interests over the repayment period. The data are used to project a carrier's ability to continue to meet its loan repayment obligations.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7 and P–8.

Essential Air Service (EAS)

The Airline Deregulation Act of 1978 requires periodic reassessments of service level determinations at essential points. Historical passenger enplanement data by airport, and passengers transported by market are analyzed in setting essential air service levels.

Air carrier financial data are used to validate the reasonableness of carrier bids for providing subsidized EAS service. In addition, carrier aircraft operating and other cost data are used as a guide for setting initial rates for carriers that are forced to continue providing EAS service pending selection of a replacement. Such data are also used in setting subsidy rates for service to certain Alaskan points, where the CAB Sunset Act of 1984 stipulates the continuance of jet service.

Form 41 schedules used: B–1, B–1.1, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–12(a) and T–9.

International Civil Aviation Organization (ICAO)

Under Article 67 of the 1944 Chicago Convention, the United States is obligated to supply certain individual U.S. air carrier data to ICAO. The frequency and type of data established by ICAO are dependent on the nature of the air carrier operations. The required reports include monthly, quarterly, and annual traffic data; annual traffic flow data; and annual reports, including balance sheet, profit and loss, aircraft inventory, aircraft operating and utilization statistics; and employee data including number and salaries by general category. ICAO reports rely upon approximately 45 percent of current Form 41 data elements. It should be noted that the Department extracts carrier Form 41 data and prepares the applicable ICAO reports, where possible, in order to save carriers the burden of duplicative reporting.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–43, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–10, P–12(a), T–1(a), T–1(c), T–2, T–3(a), T–3(b), T–3(c) and T–9.

Employee Protection Program

In reviewing Employee Protection Program petitions, the staff must make a finding as to whether employee layoffs were due to deregulation or caused by other factors. Among the factors reviewed in making such a determination are employment level trends and the financial statistics for a particular airline in comparison with the industry and its own historical trend. At the present time, the program is in litigation. However, none of the data elements proposed for retention are exclusive to this program.

Form 41 schedules used: P–1.1, P–1.2, P–1(a), P–2, P–5.1, P–5.2, and P–10.

Program Impact if Form 41 Data Were Not Available

The elimination of Form 41 could result in the air transportation industry having to meet a myriad of reporting requirements that would be generated by DOT and other Federal, State and local agencies to meet program data needs that now rely on the Department's data collection.

As to the Department's aviation programs, the following list highlights the aviation program impacts that the Department believes would result from the elimination of Form 41:

- Individual carrier financial data would not be available for identifying those carriers that are in financial difficulty and determining the need for augmented safety analysis inspections.
- International negotiations on the level of service would be significantly disadvantaged due to the lack of carrier data that are needed for evaluating the United States' position in the market.
- Carrier selections to serve international routes would be inordinately delayed due to the lack of comparable industry data for evaluating carrier operating plan proposals.
- U.S. carrier data would not be available for use in evaluating foreign air carrier applications and service proposals.
- Individual carrier traffic data by airport and market would not be available for use in evaluating the potential competitive harm from carrier merger proposals.
- Carrier fitness reviews would be delayed due to the lack of comparable carrier or industry data that are used to assess carrier operations.
- Airport enplanement data would not be available for allocating, under the Congressionally prescribed method, Federal funds under the Airport Development Aid Program.
- Traffic data by airport would not be available for forecasing airport facility and safety requirements.
- Without adequate aircraft inventory and capacity data, the Department would be unable to fulfill its responsibilities under the War Air Service Program.
- The elimination of Form 41 data would require the Department to establish an alternative data collection system to ensure the continued availability of the Form 41 data elements it must submit to the International Civil Aviation Organization in compliance with a U.S. treaty obligation.
- Market data would not be available to determine the proper level of air service needed at an essential point.
- Essential air service subsidy determinations would be delayed due to the lack of comparable carrier financial data for analyzing proposed subsidy rates. The lack of timely data would pose a hardship for the community seeking air service as well as the carrier needing the cost reimbursement. Lack of data could also cause the setting of subsidy levels that may be too high.

Data Collection Alternatives

As can be seen from the above discussion, the Department needs certain air carrier data in order to fulfill its legislated responsibilities, including those originally vested in DOT and those inherited from the Civil Aeronautics Board. The Department needs: Basic financial information such as the balance sheet, income statement, and funds flow statement; aircraft inventory data; revenue and expense data by entity of operation; costing data by aircraft type; fuel cost data; employment data; traffic and capacity data; airport activity data, including enplanement and departure data (by aircraft type); and nonstop market data.

While the Department is concerned about the level of carrier reporting burden and seeks to eliminate the reporting of data that are no longer necessary in the current deregulatory environment, it also recognizes that the need still exists for data to support the maintenance of a safe and reliable national air transportation system. Congress recognized the Department's need for aviation data to administer both its own and recently assumed CAB programs by transferring the CAB's data collection authority to the Department of sunset.

In reviewing the need for air transportation data, the Department reviewed each Form 41 schedule, data element by data element, and also analyzed how often or at what frequency the required data elements are needed. Data collection frequency was reviewed in order to determine if *ad hoc* reporting would enable the Department to effectively perform its air transportation responsibilities. Interviews of program data users have confirmed the need for retaining the current data collection frequencies. The nature of its data requirements generally precludes the Department from using *ad hoc* reporting. For example, historical cost trends by entity are used in analyzing the balance of benefits for each bilateral agreement. Data reported in the domestic entity are used to review the allocation of costs between entities and to review the total air carrier operation. U.S. carrier data, including domestic entity data, are also used to estimate foreign carrier costs in international route cases and bilateral negotiations.

An important advantage to maintaining a historical data base is that it gives the Department greater ability to use show cause orders in granting new or revised operating authority. Without the availability of historical industry-wide carrier data, show cause orders would not be feasible in many cases and the Department would have to hold formal hearings for many grants of new or revised authority. This process would be costly and time consuming for both the carriers and the Federal government. Moreover, the use

of show cause orders provides for freer market entry which further promotes competition in the air transportation industry.

The Department has also attempted to identify and review alternative sources of air carrier data that could be used to satisfy the Department's data requirements. No viable alternative source could be found, including private sector and other Federal data collections.

In the Federal sector, several data systems were considered, including the air carrier quarterly 10Q and annual 10K filings with the Securities and Exchange Commission (SEC). The Department has reviewed the SEC reports and found five critical flaws, which are highlighted below, in using SEC data for Departmental program decision-making.

First, reporting periods are not standard since the SEC reports are based on the carrier fiscal accounting year. Any comparisons between carriers or groups of carriers, and any total industry comparisons are precluded.

Second, filings are made for the holding company on a consolidated basis, which may include nonaviation operations such as hotels, rental cars, etc. along with the air transportation operation. The purpose of the Form 41 report is to account for, or measure, the airline operations. It would be very difficult to perform any meaningful economic analysis concerning air transportation when the figures include other economic pursuits.

Third, SEC reports do not disclose revenue and expense data by entity of operation, which, as previously discussed, are used in a number of DOT programs.

Fourth, revenue and expense data are reported in broad categories. For example, all passenger revenue may be grouped as "passenger" without disclosing the source—charter or scheduled passenger. These broad SEC categories do not permit any detailed economic analysis. One of the major faults of this broad approach is that aircraft costs, major ingredients in the carrier selection process, are not identifiable.

Fifth, only publicly held carriers are required to file with the SEC. In July 1984, an analysis of the SEC filings disclosed that only 40 percent of the carriers reporting Form 41 data also file with the SEC, leaving 47 carriers not filing with the SEC.

Moreover, the Department uses industry totals and averages, by entity, extensively in connection with its international negotiation analyses and its calculations of the Standard Foreign Fare Level, the Standard Foreign Rate Level and international mail rates.

Other data collection alternatives that were reviewed included statistical sampling strategies, and voluntary reporting to private sector groups.

The staff considered statistically sampling the air transportation industry for three calendar quarters by collecting randomly selected schedules from randomly selected carriers. In the fourth quarter, full industry reports would be collected. Statistical sampling was rejected since sampling is used to work with an entire population or universe, and the Department's most frequent use of Form 41 data is on an individual carrier and not a total industry basis. For example, the Department uses: (1) Recurrent individual carrier financial data for continuous individual fitness monitoring, including carrier safety; (2) a continuous *total* aircraft inventory by carrier for the War Air Service Program; and (3) recurrent airport activity data from each certificated carrier. It should also be noted that statistical sampling would be difficult to apply even to the large certificated industry population, since the universe of carriers is constantly changing with carriers starting, suspending, or changing their operations.

Voluntary reporting through trade associations or data utility firms such as the Air Transport Association, I.P. Sharp, or STSC has been tentatively rejected due to the problems that have been experienced in the past with carrier compliance under voluntary systems. The CAB previously attempted to use a private sector firm for collecting small air carrier financial data for fitness determinations. The program had to be dropped due to a very low participation rate. As to large certificated air carriers, the Passenger Origin-Destination Survey was for years a voluntary system between the participating carriers and the Federal government, until the advent of deregulation and freer market entry. New entrants balked or refused to participate in the survey, with the participating carriers threatening to drop out if the newly certificated carriers did not join. Consequently, the CAB made the system mandatory. Carriers have also expressed a preference for reporting directly to a government agency due to their concern over the confidentiality of their data in private sector hands.

Despite tentatively rejecting these alternate collection methods for meeting DOT's aviation data needs, the Department remains concerned over carrier reporting burden. Evidence of this concern is the Department's (1) Support of the ER–1401 reporting reductions, (2) zero-based data element review of the post ER–1401 reporting level and (3) efforts within the ICAO organizational framework to ensure that carrier reporting burden is kept to the minimum level needed to meet the reporting objectives. In the future, the Department plans to explore other avenues of potential burden reduction. One possibility is using carrier service segment/Schedule T–9 data to generate the summary traffic data schedules needed by the Department.

Other Federal Users of Form 41 Data

While this rulemaking notice identifies only DOT's need for air carrier data, the Department recognizes that other Federal agencies have come to rely on former CAB, now DOT, data collections to administer various Federal programs that utilize air transportation data. A list of those agencies that have expressed a need for Form 41 data, along with their affected programs, follows.

Department of the Air Force—Military Airlift Command

- Ratemaking for Civil Reserve Air Fleet Program

Department of Commerce—Bureau of Economic Analysis

- Estimation of Gross National Product
- Analysis of International Transactions Accounts
- Compilation of Input-Output Tables of the United States

Department of Labor

- Labor Statistical Program
- Employee Protection Program

National Transportation Safety Board

- Analysis of Safety Levels in Commercial Aviation

Department of Energy

- Monitoring of Industry Fuel Consumption for Emergency Preparedness Planning

Securities and Exchange Commission

- Review of Airline Registration Statements

The Department invites all Federal agencies, especially those listed above, to carefully review the proposed changes to RSPA Form 41, as shown in Exhibits A and B. These changes are based on RSPA's zero-based data element review of DOT's need for large certificated air carrier data. The Department would appreciate knowing whether the proposed aviation data collection changes would adversely affect their program administration. Conversely, we also seek comments reaffirming other Federal agency requirements for those data elements that are also needed for DOT programs.

Editorial Changes

While the actual Form 41 reporting schedules (see Exhibit A) have been revised and reprinted as RSPA Form 41, Part 241 still contains references to the "CAB Form 41 Report." Some of the proposed amendatory language in this notice of proposed rulemaking would still refer to RSPA Form 41 under its former CAB designation. The Department plans to issue in the future a single comprehensive rulemaking notice that would update at one time all of the Part 241 references to the Civil Aeronautics Board and its components.

This rulemaking notice does propose an editorial change to the reporting instructions for Form 41 Schedule P–5.1 "Aircraft Operating Expenses" to reflect the fact Group I air carriers with annual operating revenues of over $10 million do not have to report the indirect expense data on Schedule P–5.2, since these carriers already report such data on Schedule P–6 "Maintenance, Passenger Service, and General Services and Administration Expense Functions."

OMB Comments

The Office of Management and Budget believes that a need for the aviation data on the domestic operations of large certificated air carriers that are currently reported on RSPA Form 41 no longer exists in a deregulated environment. The Department solicits public comments on the need for Form 41 data.

List of Subjects in 14 CFR Part 241

Air carriers, Uniform system of accounts and reports.

Proposed Rule

PART 241—[AMENDED]

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 241, *Uniform System of Accounts and Reports for Large Certificated Air Carriers* as follows:

1. The authority citation for Part 241 continues to read as follows:

Authority: Sections 204, 401, 407, 416, 417, 901, 902, 1002 of the Federal Aviation Act of 1958, as amended; 49 U.S.C. 106, 1324, 1371, 1377, 1386, 1387, 1471, 1472 and 1482.

2. The Table of Contents of the *Uniformed System of Accounts and Reports for Large Certificated Air Carriers* would be amended by:

A. Revising the center heading, *Traffic and Corporate Reporting Requirements*, to read as follows:

Traffic Reporting Requirements

B. Removing Section 26, *General Corporate Elements*.

3. Section 21 would be amended by revising paragraphs (b), (d) and (l) to read as follows:

Section 21 Introduction to Systems of Reports

* * * * *

(b) The system prescribed provides for the submission by each air carrier of five classes of financial and operating statistics, on individual schedules of the CAB Form 41 Report, grouped as follows:

A. Certification.
B. Balance Sheet Elements.
P. Profit and Loss Elements.
T. Traffic and Capacity Elements.

* * * * *

(d) Each schedule of the prescribed CAB Form 41 Report has been assigned a specific code. The prefix alphabetical codes A, B, P and T, respectively, have been employed to denote certification, balance sheet, profit and loss, and traffic and capacity. The digits immediately following the alphabetical prefix designate the particular schedule.

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(l) When and as required in the national interest, any air carrier which performs nonscheduled transport services for the Department of Defense shall, when directed by the Department, make separate reports for such services as if they were conducted by a physically separate transport entity, such reports shall consist of Schedules P–1 through P–7, T–1, and T–2. The letter "D" shall be inserted on such reports, following the schedule number of each P and T schedule. When a carrier has more than one reporting entity, nonscheduled transport and nonscheduled Defense services shall be assigned to the reporting entity to which more closely related.

4. Section 22 would be amended by revising the List of Schedules in CAB Form 41 Report and the Due Dates of Schedules in CAB Form 41 Report in paragraph (a), by revising subparagraph (1) of paragraph (b) to read as follows:

Section 22 General Reporting Instructions

(a) * * *

LIST OF SCHEDULES IN CAB FORM 41 REPORT

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
A	Certification	Q	(1)	X	X
B–1	Balance Sheet	Q	(1)	X	X
B–1.1	Balance Sheet	S–A	(2)		
B–7	Airframes and Aircraft Engines Acquired	Q		X	X
B–8	Flight Equipment Retired	Q		X	X
B–12	Statement of Changes in Financial Position	Q	(1)	X	X
B–43	Inventory of Airframes and Aircraft Engines	A	X	X	X
P–1.1	Statement of Operations	S–A	(2)		
P–1.2	Statement of Operations	Q	(1)	X	X
P–1(a)	Interim Operations Report	M	X	X	X
P–2	Notes to CAB Form 41 Report	Q	(1)	X	X
P–5.1	Aircraft Operating Expenses	Q(1)/S–A(2)	X		
P–5.2	Aircraft Operating Expenses	Q		X	X
P–6	Operating Expenses by Objective Groupings	Q	(1)	X	X
P–7	Operating Expenses by Functional Groupings—Group III Air Carriers	Q			X
P–10	Employment Statistics by Labor Category	A	(1)	X	X
P–12(a)	Fuel Consumption by Type of Service and Entity	M	(1)	X	X
T–1(a)	Traffic and Capacity Statistics by Class of Service	M	X	X	X
T–1(b)	Traffic and Capacity Statistics by Class of Service-Scheduled Services	M		X	X
T–1(c)	Traffic and Capacity Statistics by Class of Service-Nonscheduled Services	M		X	X
T–2	Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft	Q	X	X	X
T–3(a)	Airport Activity Statistics—Scheduled Revenue Service	Q	X	X	X
T–3(b)	Airport Activity Statistics—Scheduled Revenue Service	Q	X	X	X
T–3(c)	Airport Activity Statistics—Nonscheduled Revenue Service	Q	X	X	X
T–8	Report of All-Cargo Operations	A	(3)	(3)	(3)
T–9	Nonstop Market Report	M	X	X	

[1] Applicable to Group I air carriers with annual operating revenues of $10 million or more.
[2] Applicable to Group I air carriers with annual operating revenues below $10 million.
[3] Applicable to carriers conducting section 418 all-cargo operations.
NOTE: M=Monthly; Q=Quarterly; S–A=Semiannually; A=Annually; and X=All Carriers.

DUE DATES OF SCHEDULES IN CAB FORM 41 REPORT

Due dates [1]	Schedule No.
Jan. 20	P-12(a).
Jan. 30	P-1(a), T-1, T-2, T-3, T-9.
Feb. 10 [2]	A, B-1, B-1.1, B-7, B-8, B-12, P-1.1, P-1.2, P-2, P-5.1, P-5.2, P-6, P-7, P-10.
Feb. 20	P-12(a)
Mar. 1	P-1(a), T-1, T-9.
Mar. 20	P-12(a).
Mar. 30	B-43, P-1(a), T-1, T-8, T-9.
Apr. 20	P-12(a).
Apr. 30	P-1(a), T-1, T-2, T-3, T-9.
May 10	A, B-1, B-7, B-8, B-12, P-1.2, P-2, P-5.1, P-5.2, P-6, P-7.
May 20	P-12(a).
May 30	P-1(a), T-1, T-9.
June 20	P-12(a).
June 30	P-1(a), T-1, T-9.
July 20	P-12(a).
July 30	P-1(a), T-1, T-2, T-3, T-9.
Aug. 10	A, B-1, B-1.1, B-7, B-8, B-12, P-1.1, P-1.2, P-2, P-5.1, P-5.2, P-6, P-7.
Aug. 20	P-12(a).
Aug. 30	P-1(a), T-1, T-9.
Sept. 20	P-12(a).
Sept. 30	P-1(a), T-1, T-9.
Oct. 20	P-12(a).
Oct. 30	P-1(a), T-1, T-2, T-3, T-9.
Nov. 10	A, B-1, B-7, B-8, B-12, P-1.2, P-2, P-5.1, P-5.2, P-6, P-7.
Nov. 20	P-12(a).
Nov. 30	P-1(a), T-1, T-9.
Dec. 20	P-12(a).
Dec. 30	P-1(a), T-1, T-9.

[1] Due dates falling on a Saturday, Sunday or national holiday will become effective the first following work day.
[2] B and P reporting due dates are extended to March 30 if preliminary schedules are filed at DOT by February 10.

5. Section 23, *Certification and Balance Sheet Elements,* would be amended by removing and reserving paragraph (e) from the reporting instructions for Schedule B–7, *Airframes and Aircraft Engines Acquired.*

6. Section 24, *Profit and Loss Elements,* would be amended by:

A. Revising paragraphs (a) of the reporting instructions for Schedule P–5.1 to read as follows:

Schedule P–5.1—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group I air carriers. Group I air carriers that have annual operating revenues of $10 million or more shall file this schedule quarterly and only report direct operating expense data (lines 1 thru 9). Group I air carriers that have annual operating revenues below $10 million shall file this schedule semiannually and report both direct and indirect operating expense data (lines 1 thru 16).

* * * * *

B. Removing and reserving paragraph (f) and revising paragraph (h) of the reporting instructions for Schedule P–5.2 to read as follows:

Schedule P–5.2—Aircraft Operating Expenses

* * * * *

(f) (Reserved).

* * * * *

(h) The total of function 5100 "Flying Operations" reported on this schedule shall agree with corresponding amounts reported on Schedule P–1.2.

C. Revising the title and reporting instructions for Schedule P–6, *Maintenance, Passenger Service and General Services and Administration Expense Functions,* to read as follows:

Schedule P–6—Operating Expenses by Objective Groupings

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity.

(c) Line 36 "Total Operating Expenses" shall agree with the corresponding amount reported on Schedule P–1.

D. Revising the title and reporting instructions for Schedule P–7, *Aircraft and Traffic Servicing, Promotion and Sales, and General and Administrative Expense Functions,* to read as follows:

Schedule P–7—Operating Expenses by Functional Groupings—Group III Air Carriers

(a) This schedule shall be filed by all Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Line 38 "Total Operating Expenses" shall agree with the corresponding amount reported on Schedule P–1.2.

E. Removing the title and reporting instructions of Schedule P–8, *Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions.*

7. The title and contents of Section 26, *General Corporate Elements,* would be removed.

8. RSPA Form 41 Report would be revised as shown in Exhibits A and B attached. (Form 41 Report will not appear in the Code of Federal Regulations.)

Issued in Washington, DC, on August 15, 1985.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration, DOT.

BILLING CODE 4910-62-M

Exhibit A
Page 1 of 28

Approved by OMB
OMB No. 2138-0013
Expires: 6-30-85

U.S Department of Transportation
Research and Special Programs Administration

REPORT OF FINANCIAL AND OPERATING STATISTICS FOR LARGE CERTIFICATED AIR CARRIERS

Period ended _____, 19____.

_____
(Full name of reporting company)

CERTIFICATION*

I, the undersigned _____
(Title of officer in charge of accounts)

of the _____
(Full name of reporting company)

do certify that this report and all schedules and supporting documents which are submitted herewith or have been submitted heretofore as parts of this report filed for the above indicated period have been prepared under my direction; that I have carefully examined them and declare that they correctly reflect the accounts and records of the company, and to the best of my knowledge and belief are a complete and accurate statement, after adjustments to reflect full accruals, of the operating revenues and expenses, income items, assets, liabilities, capital, surplus, and operating statistics for the periods reported in the several schedules; that the various items herein reported were determined in accordance with the Uniform System of Accounts and Reports for Large Certificated Air Carriers prescribed by the Department of Transportation; and that the data contained herein are reported on a basis consistent with that of the preceding report except as specifically noted in explanations accompanying the financial and statistical statements.

NEED DOT	NEED ICAO	NO DOT NEED MV*
X	X	

_____
(Signature)

_____
(Air Carrier Home Office Address)

Dated _____, 19____

*Title 18 U.S.C. Sec. 1001, Crimes and Criminal Procedure, makes it a criminal offense subto a maximum fine of $10,000 or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within jurisdiction of any agency of the United States.

BALANCE SHEET

AS AT: Air Carrier:

ASSETS	Account	NEED DOT	NEED ICAO	NEED MV**	NO DOT NEED
CURRENT ASSETS:					
Cash	1010	X			
Short-term investments	1100	X			
Notes receivable	1200	X			
Accounts receivable	1270	X			
Less: Allowance for uncollectible accounts	1290	X			
Notes and accounts receivable—net	1299	X			
Spare parts and supplies—net	1399	X			
Prepaid items	1410	X			
Other current assets	1420	X			
Total current assets	1499		X	X	
INVESTMENTS AND SPECIAL FUNDS:					
Investments in associated companies	1510	X	X		
Other investments and receivables	1530	X			
Special funds	1550	X	X		
Total investments and special funds	1599			X	
OPERATING PROPERTY AND EQUIPMENT:					
Flight equipment	1609	X	X		
Ground-property and equipment	1649	X	X		
Less: Allowances for depreciation	1650	X	X		
Property and equipment—net	1675	X			
Land	1679	X	X		
Equipment purchase deposits and advance payments	1685	X	X		
Construction work in progress	1689	X	X		
Leased property under capital leases	1695	X	X		
Leased property under capital leases—accumulated amortization	1696	X	X		
Total operating property and equipment	1699			X	
NON-OPERATING PROPERTY AND EQUIPMENT:	1791	X			
Less: Allowance for depreciation/accumulated amortization	1792	X			
Nonoperating property and equipment	1799		X	X	
OTHER ASSETS:					
Long-term prepayments	1820	X	X		
Unamortized development and preoperating costs	1830	X	X		
Other assets and deferred charges	1890	X	X		
Total other assets	1895	X			
TOTAL ASSETS	1899		X	X	

LIABILITIES AND STOCKHOLDERS' EQUITY	Account No.	NEED DOT	NEED ICAO	NEED MV**	NO DOT NEED
CURRENT LIABILITIES:					
Current maturities of long-term debt	2000	X			
Notes Payable—Banks	2005	X			
Notes Payable—Others	2015	X			
Trade accounts payable	2021	X			
Accounts payable—Others	2025	X			
Current obligations under capital leases	2080	X			
Accrued salaries, wages	2110	X			
Accrued vacation liability	2120	X			
Accrued interest	2125	X			
Accrued taxes	2130	X			
Dividends declared	2140	X			
Air traffic liability	2160	X	X		
Other current liabilities	2190	X			
Total current liabilities	2199		X	X	
NONCURRENT LIABILITIES:					
Long-term debt	2210	X	X		
Advances from associated companies	2240	X	X		
Pension liability	2250	X	X		
Noncurrent obligations under capital leases	2280	X	X		
Other noncurrent liabilities	2290	X	X		
Total noncurrent liabilities	2299			X	
DEFERRED CREDITS:					
Deferred income taxes	2340	X			
Deferred investment tax credits	2345	X			
Other deferred credits	2390	X			
Total deferred credits	2399		X	X	
STOCKHOLDERS' EQUITY:					
Capital stock:					
Preferred shares issued _____	2820	X			
Common shares issued _____	2840	X			
Subscribed and unissued	2860	X			
Total capital stock	2869		X	X	
Additional capital invested	2890	X	X		
Total paid-in capital	2899			X	
Retained earnings	2900	X	X		
Total stockholders' equity	2959			X	
Less: Treasury stock shares _____	2990	X	X		
Net stockholders' equity	2995	X			
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	2999		X	X	

*Denotes inverse amount

RSPA Form 41 Schedule B-1 (1-85)
Formerly CAB Form 41 Schedule B-1

**MV - Data element used for mathematical verification

Exhibit A
Page 2 of 2

Exhibit A
Page 3 of 28

Approved by OMB
OMB No. 2138-0013
Expires: 6-30-85

US Department of Transportation
Research and Special Programs Administration

BALANCE SHEET

(OAG Code)

Air Carrier (Corporate Name) _____ (Carrier code)

As at _____

		NEED DOT	NEED ICAO	NO DOT NEED MV**
ASSETS				
Current assets:				
Cash and equivalents	1	X		
Notes and accounts receivable-net	2	X		
Other current assets	3	X		
Total current assets	4		X	X
Property and equipment:				
Owned property and equipment	5	X	X	
Less accumulated depreciation	6	X	X	
Property and equipment obtained under capital leases	7	X	X	
Less accumulated amortization	8	X	X	
Total property and equipment	9		X	X
Other assets	10	X	X	
Total assets	11		X	X
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Notes and accounts payable	12	X		
Accrued taxes	13	X		
Other current liabilities	14	X		
Total current liabilities	15		X	X
Long-term debt	16	X	X	
Other liabilities	17	X	X	
Deferred credits	18	X	X	
Stockholders' equity:				
Capital stock				
Preferred _____ shares outstanding	19	X	X	
Common _____ shares outstanding	20	X	X	
Other paid-in capital	21	X	X	
Retained earnings	22	X	X	
Total stockholders equity	23			X
Less: Treasury stock	24	X	X	
Net stockholders' equity	25			X
Total liabilities and stockholders' equity	26		X	X

I, the undersigned, (Title) _____ of the above-named air carrier certify that the above report and the attached Financial Schedules and Statements of Operations and Traffic and Capacity Statistics have been examined by me and to the best of my knowledge and belief are true, correct and complete reports for the period stated.

Date: _____ Signature: _____

Name (Please Type or Print): _____

* Denotes inverse amount.

RSPA Form 41 Schedule B-1.1 (1-86)
Formerly CAB Form 41 Schedule B-1.1

**MV - Data element used for mathematical verification

Exhibit A
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US Department of Transportation
Research and Special Programs Administration

AIRFRAMES AND AIRCRAFT ENGINES ACQUIRED

Air Carrier _____

Quarter Ended _____, 19 ____

Line No.	Date Acquired (1)	Used Placed in Transport Service (Airframes) (2)	Airframe Licence No. (3)	New or Used (4)	Number of Aircraft Engines Acquired (5)	Account No. (6)	Type, Model, and Cabin, Design (7)	Max. Seat Capacity (8)	Cost (9)	Acquired From (10)	Line No.
1											1
2											2
3											3
DOT NEED 4	X		X		X		X	X	X	X	4
5											5
ICAO NEED 6	X						X	X			6
7											7
MV** 8											8
9											9
NO DOT NEED 10		X		X		X					10
11											11
12											12
13											13
14											14
15											15
16											16
17											17
18											18
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38											38
39											39
40											40
41											41
42											42
43											43
44											44
45											45
46											46
47											47
48											48
49											49
50											50

*Denotes inverse amount.

RSPA Form 41 Schedule B-7 (1-85)
Formerly CAB Form 41 Schedule B-7

**MV - Data element used for mathematical verification

DOT NEED

ICAO NEED

MV**

NO DOT NEED

FLIGHT EQUIPMENT RETIRED

Air Carrier _____

Quarter Ended _____, 19 ____

	Date Retired (1)	Date Acquired (Airframes) (2)	Airframe Manufacturer No. (3)	Number of Aircraft Engines Retired (4)	Aircraft (5)	Type and Model (6)	Class (7)	Purchased or Depreciated Cost (8)	Destination (9)	Disposition (10)	
1											1
2											2
3	X	X	X	X		X	X	X	X	X	3
4											4
5	X					X					5
6											6
7											7
8											8
9					X						9
10											10
11											11
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41											41
42											42
43											43
44											44
45											45
46											46
47											47
48											48
49											49
50											50

*Denotes inverse amount.

Form 41 Schedule B-6 (1-85)
Formerly CAB Form 41 Schedule B-9

**MV - Data element used for mathematical verification

Exhibit A
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U.S. Department of Transportation
Research and Special Programs Administration

STATEMENT OF CHANGES IN FINANCIAL POSITION

	NEED DOT	NEED ICAO	NEED MV*	NO DOT NEED	
Sources of working capital					
Operations					
Net income			X		1
Add expenses not requiring working capital in the current period:					
Depreciation			X		2
Amortization			X		3
Deferred Federal income taxes			X		4
Deferred investment tax credits			X		5
Other			X		6
Total from operations			X		7
Retirement of property and equipment			X		8
Investments and special funds			X		9
Long-term debt incurred			X		10
Capital stock issued			X		11
Other sources			X		12
Total sources of working capital			X		13
Applications of working capital:					
Acquisition of property and equipment			X		14
Investment and special funds			X		15
Repayment or reacquisition of long-term debt			X		16
Dividends declared (other than stock dividends)			X		17
Other applications			X		18
Total application of working capital			X		19
Increase (decrease) in working capital			X		20
Summary of changes in working capital:					
Increases (decreases) in current assets:					
Cash			X		21
Short-term investments			X		22
Notes and accounts receivable (net)			X		23
Inventories			X		24
Prepaid items			X		25
Other			X		26
Net increase (decrease)			X		27
Increases (decreases) in current liabilities:					
Current maturities of long-term debt			X		28
Notes and accounts payable			X		29
Accrued expenses			X		30
Accrued taxes			X		31
Dividends declared			X		32
Air traffic liability			X		33
Other			X		34
Net increase (decrease)			X		35
Increase (decrease) in working capital			X		36

RSPA Form 41 Schedule B-12 (1-86)
Formerly CAB Form 41 Schedule B-12

*MV - Data element used for mathematical verification

U.S. Department of Transportation
Research and Special Programs Administration

INVENTORY OF AIRFRAMES AND AIRCRAFT ENGINES

Air Carrier (Corporate Name)_____

_____ (OAG Code)

_____ (Carrier Code)

Year Ended December 31, 19 ____

	LINE NO	Airframe License Number*	Date Placed in Service Month/Day/Year	Usual Seat Configuration	Number of Aircraft Engines (By Type)	Manufacturer	Type, Model and Cabin Design	Available Capacity (Weight)	Acquired Cost or Capitalized Value	Allowance for Depreciation or Amortization	Depreciated Cost or Amortized Value	Estimated Residual Value	Estimated Depreciable or Amortizable Life (Months)
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	1												
DOT NEED	2	X	X	X	X	X	X	X	X	X	X	X	X
	3												
ICAO NEED	4			X		X	X						
	5												
MV**	6												
	7												
NO DOT NEED	8												
	9												
	10												
	11												
	12												
	13												
	14												
	15												
	16												
	17												
	18												
	19												
	20												

*Denotes airframe currently equipped under FAA Regulation Part 121 for operation over water.

RSPA Form 41 Schedule B-43 (1-84)
Formerly CAB Form 41 Schedule B-43

**MV - Data element used for mathematical verification

Exhibit A
Page 8 of 28

Air Carrier _____ Date Y Y M M

Month Ended _____ Carrier Code _____

INTERIM OPERATIONS REPORT

			NEED DOT	NEED ICAO	MV*	NO DOT NEED
	Financial					
(1)	Total Operating Revenues	4999	X			
(2)	Total Operating Expenses	7199	X			
(3)	Operating Profit or Loss	7999			X	
(4)	Net Income	9899	X			
(5)	Passenger Revenues – Scheduled Service	3901	X			
(6)	Public Service Revenues (Subsidy)	4808	X			
	Other					
(7)	Number of Full-Time Employees				X	
(8)	Number of Part-Time Employees				X	

RSPA Form 41 Schedule P-1(a) (1-86)
Formerly CAB Form 41 Schedule P-1(a)

*MV - Data element used for mathematical verification

US Department of Transportation
Research and Special Programs Administration

STATEMENT OF OPERATIONS

OAG Code

Air Carrier (Corporate Name) _____ (Carrier code)

Six Months Ended _____

		NEED DOT	NEED ICAO	NO DOT NEED MV**
Operating Revenue				
Transport Revenue				
Scheduled Service				
Passenger	1	X	X	
Other	2	X	X	
Nonscheduled Service	3	X	X	
Transport Related Revenue				
Public Service Revenue	4	X	X	
Other	5	X	X	
Total Operating Revenue	6		X	X
Operating Expense				
Flying Operations	7	X	X	
Maintenance	8	X	X	
General and Administrative	9	X	X	
Depreciation and Amortization				
Owned Property and Equipment	10	X	X	
Leased Property and Equipment	11	X	X	
Transport Related Expense	12	X	X	
Total Operating Expense	13		X	X
Operating Profit	14		X	X
Non-operating Income and Expense:				
Interest Expense	15	X	X	
Other Nonoperating (Net)	16	X	X	
Income Tax	17	X	X	
Discontinued operations, extraordinary items or Accounting changes	18	X	X	
Net Income	19		X	X

* Denotes inverse amount; on lines 16 and 18 denotes a debit amount.

RSPA Form 41 Schedule P-1.1 (1-86)
Formerly CAB Form 41 Schedule P-1.1

**MV - Data element used for mathematical verification

Exhibit A
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US Department of Transportation
Research and Special Programs Administration

Air Carrier _____
Operation _____

STATEMENT OF OPERATIONS

	Account No.	12 Months Ended NEED DOT	NEED ICAO	NEED MV**	NO DOT NEED
OPERATING REVENUES					
Passenger-First Class	3901.1	X	X		X
Passenger-Coach	3901.2	X	X		X
Mail	3905	X	X		X
Property-Freight	3906.1	X	X		X
Property-Excess Passenger Baggage	3906.2	X	X		X
Charter-Passenger	3907.1	X	X		X
Charter-Property	3907.2	X	X		X
Reservation Cancellation Fees	3919.1	X	X		X
Miscellaneous Operating Revenues	3919.2	X	X		X
Public service revenues (Subsidy)	4808	X	X		X
Transport related revenues	4898	X	X		X
Total Operating Revenues	4999		X	X	X
OPERATING EXPENSES					
Flying operations	5100	X	X		X
Maintenance	5400	X	X		X
Passenger service •	5500	X	X		X
Aircraft and traffic servicing •	5400	X	X		X
Promotion and sales •	6700	X	X		X
General and administrative •	5800	X	X		X
General and administrative +	6900	X	X		X
Depreciation and amortization	7000	X	X		X
Transport related expenses	7100	X	X		X
Total Operating Expenses	7199		X	X	X
Operating profit or loss	7999		X	X	X
NONOPERATING INCOME AND EXPENSE					
Interest on Long-Term Debt and Capital Leases	8181	X	X		X
Other Interest Expense	8182	X	X		X
Foreign Exchange Gains and Losses	8185	X	X		X
Capital Gains and Losses	8188.5 8188.6	X	X		X
Other Income and Expenses-Net	8189	X	X		X
Nonoperating Income and Expense	8199	X	X		X
Income before Income Taxes	8999		X	X	X
INCOME TAXES FOR CURRENT PERIOD	9100	X	X		X
Income before discontinued operations, extraordinary items and accounting changes	9199		X	X	X
DISCONTINUED OPERATIONS	9600	X	X		X
EXTRAORDINARY ITEMS	9796	X	X		X
Income taxes applicable to extraordinary items	9797	X	X		X
ACCOUNTING CHANGES	9800	X	X		X
Net income	9899		X	X	X

* Denotes inverse amount; in accounts 8100, 9600, 9700, and 9800 denotes debit amount.

\+ Group I Air Carriers Only

• Group II and Group III Air Carriers Only

**MV - Data element used for mathematical verification

RSPA Form 41 Schedule P-1.2 (6-85)
Formerly CAB Form 41 Schedule P-1.2

Exhibit A
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US Department of Transportation
Research and Special Programs Administration

Air Carrier _____

Operation _____

Period Ended _____

NOTES TO RSPA FORM 41 REPORT

NEED DOT	NEED ICAO	MV*	NO DOT NEED
X	X		

RSPA Form 41 Schedule P-2 (1-86)
Formerly CAB Form 41 Schedule P-2

*MV - Data element used for mathematical verification

U.S. Department of Transportation
Research and Special Programs Administration

AIRCRAFT OPERATING EXPENSES—GROUP I AIR CARRIERS

Air Carrier (Corporate name including DBA) _____

Quarter ☐ Six Months ☐ Ended _____

Line No.		NEED DOT	NEED ICAO	MV*	NO DOT NEED	AIRCRAFT TYPE / CODE	AIRCRAFT TYPE / CODE	AIRCRAFT TYPE / CODE	AIRCRAFT TYPE / CODE
1	Direct Expense:								
2	Flying Operations (Less Rentals):								
3	Pilot and Copilot[1]	X	X						
4	Aircraft Fuel and Oil	X	X						
5	Other	X	X						
6	Total Flying Operations (Less Rentals)		X	X					
7	Maintenance-Flight Equipment	X	X						
8	Depreciation & Rental-Flight Equipment	X	X						
9	Total Direct Expense			X					
10	Indirect Expense:								
11	Flight Attendant Expense[1]	X	X						
12	Traffic Related Expense	X	X						
13	Departure Related Expense (Station)	X	X						
14	Capacity Related Expense	X	X						
15	Total Indirect Expense		X	X					
16	Total Operating Expense[2]		X	X					

[1]Includes Salaries and Fringe Benefits
[2]Excludes Transport Related Expenses

RSPA Form 41 Schedule P-5.1 (1-85)
Formerly CAB Form 41 Schedule P-5.1

*MV - Data element used for mathematical verification

See Note Below

Exhibit A
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AIRCRAFT OPERATING EXPENSES Group II and Group III Air Carriers	Air Carrier _____ Operation _____ Total—All Aircraft Types Quarter Ended _____, 19__		Aircraft Type _____ Aircraft Code _____		Aircraft Type _____ Aircraft Code _____		Aircraft Type _____ Aircraft Code _____	
FLYING OPERATIONS	5100		5100		5100		5100	
Pilots and copilots	23		23		23		23	
Other flight personnel	24		24		24		24	
Trainees and instructors	28.1		28.1		28.1		28.1	
Personnel expenses	26		26		26		26	
Professional and technical fees and expenses	41		41		41		41	
Aircraft interchange charges—ass. co's	42.7		42.7		42.7		42.7	
Aircraft interchange charges—outside	43.7		43.7		43.7		43.7	
Aircraft Fuels	45.1		45.1		45.1		45.1	
Aircraft oils	45.2		45.2		45.2		45.2	
Rentals	47		47		47		47	
Other supplies	33		33		33		33	
Insurance purchased—general	55.1		55.1		55.1		55.1	
Employee benefits and pensions	57		57		57		57	
Injuries, loss and damage	58		58		58		58	
Taxes—payroll	68		68		68		68	
Taxes—other than payroll	69		69		69		69	
Other expenses	71		71		71		71	
Total flying operations (per sch. P-1)	5199		5199		5199		5199	
DIRECT MAINTENANCE—FLIGHT EQUIP.	5200		5200		5200		5200	
Labor—airframes	25.1		25.1		25.1		25.1	
Labor—aircraft engines	25.2		25.2		25.2		25.2	
Airframe repairs—associated companies	42.1		42.1		42.1		42.1	
Aircraft engine repairs—associated co's.	42.2		42.2		42.2		42.2	
Aircraft misc. charges—associated co's.	42.7		42.7		42.7		42.7	
Airframe repairs—outside	43.1		43.1		43.1		43.1	
Aircraft engine repairs—outside	43.2		43.2		43.2		43.2	
Aircraft interchange charges—outside	43.7		43.7		43.7		43.7	
Maintenance materials—airframes	46.1		46.1		46.1		46.1	
Maintenance materials—aircraft engines	46.2		46.2		46.2		46.2	
Airworth. allow. provs.—airframes	72.1		72.1		72.1		72.1	
Airframe overhauls def. (cr.)	72.3		72.3		72.3		72.3	
Airworth. allow. provs.—aircr. eng.	72.6		72.6		72.6		72.6	
Aircraft eng. overhauls def. (cr).	72.8		72.8		72.8		72.8	
Total dir. maint.—flt. equip. (to sch. P-6)	78		78		78		78	
AP. MT. BURDEN—FLT. EQP.(per sch P-6)	79.6		79.6		79.6		79.6	
Total flight equip. maintenance (Memo)	5299		5299		5299		5299	
OBSOL. & DETERIOR'N.—EXP. PARTS	7073		7073		7073		7073	
Net obsol. & deterior'n.—exp. parts	7073.9		7073.9		7073.9		7073.9	
DEPRECIATION—FLIGHT EQUIPMENT	7000		7000		7000		7000	
Depreciation—airframes	75.1		75.1		75.1		75.1	
Depreciation—aircraft engines	75.2		75.2		75.2		75.2	
Depreciation—airframe parts	75.3		75.3		75.3		75.3	
Depreciation—aircraft engine parts	75.4		75.4		75.4		75.4	
Depreciation—other flight equipment	75.5		75.5		75.5		75.5	
Total depr. flight equip.	75.6		75.6		75.6		75.6	
Amortization Expense—Capital Leases-Flt. Eqp.	76.1		76.1		76.1		76.1	
EXP. OF INTERCHANGE AIRCRAFT								
Flying operations	98.1	X X X X X X X X	98.1		98.1		98.1	
Maintenance	98.2	X X X X X X X X	98.2		98.2		98.2	
TOTAL AIRCRAFT OP. EXPENSES	7098.9		7098.9		7098.9		7098.9	

OTHER DEPRECIATION AND AMORTIZATION		
Amortization—developmental and preop. exp	74.1	
Amortization—other intangibles	74.2	
Depreciation—maint. equip. and hangars	75.8	
Depreciation—general ground property	75.9	
Amortization—capital leases	76.2	

*Denotes inverse amount

RSPA Form 41 Schedule P-5.2 (1-86)
Formerly CAB Form 41 Schedule P-5.2

Note: To be revised as shown in Exhibit B page 1 of 10

Exhibit A
Page 14 of 26

See Note Below

MAINTENANCE, PASSENGER SERVICE AND GENERAL SERVICES AND ADMINISTRATION EXPENSE FUNCTIONS All Air Carrier Groups	Air Carrier _____ Operation _____ Name: Direct Maintenance (5200) Quarter Ended _____ 19 _____			Name: Maintenance Burden (5300)		Name: Passenger Service (5500)		Name: Gen. Serv. & Admin. (5800)	
General management personnel			21		21		21		
Other flight personnel					24			24	
Labor-ground property and equipment	25.9		25.9						
Aircraft and traffic handling personnel								26	
Trainees and instructors			28.1		28.1			28.1	
Unallocated shop labor			28.2						
Communications personnel			30		30			30	
Recordkeeping and statistical personnel			31		31			31	
Lawyers and law clerks								32	
Traffic solicitors								33	
Purchasing personnel			34					34	
Other personnel			35		35			35	
Personnel expenses			36		36			36	
Communications purchased			37		37			37	
Light, heat, power, and water			38		38			38	
Traffic commissions								39	
Legal fees and expenses								40	
Professional and technical fees and expenses			41		41			41	
General interchange serv. charges-asso. cos.	42.8				42.8			42.8	
Other services-associated companies	42.9		42.9		42.9			42.9	
General interchange service charges-outside	43.8				43.8			43.8	
Other services-outside	43.9		43.9		43.9			43.9	
Landing fees								44	
Maint. materials-ground prop. and equip.	46.9		46.9						
Rentals			47		47			47	
Shop and servicing supplies			49					49	
Stationery, printing, and office supplies			50		50			50	
Passenger food expense					51			51	
Other supplies			53		53			53	
Inventory adjustments			54		54			54	
Insurance purchased-general			55.1					55.1	
Insurance-traffic liability					56			56	
Employee benefits and pensions			57		57			57	
Injuries, loss and damage			58		58			58	
Tariffs, schedules and timetables								59	
Advertising								60	
Foreign exchange gains and losses								61	
Other promotional and publicity expenses								62	
Interrupted trips expense					63			63	
Memberships			64		64			64	
Corporate and fiscal expenses								65	
Uncollectible accounts								66	
Clearance, customs and duties								67	
Taxes-payroll			68		68			68	
Taxes-other than payroll								69	
Other expenses			71		71			71	
Airworth.allow.provs.-airframes			72.1						
Airworth.allow.chgs.-airframes (cr.)			72.2						
Airframe overhauls deferred (cr.)			72.3						
Amort. of airframe overhauls			72.4						
Airworth.allow.provs.-aircr.engs.			72.6						
Airworth.allow.chgs.-aircr.engs.(cr.)			72.7						
Aircraft eng. overhauls deferred (cr.)			72.8						
Amort. of engine overhauls			72.9						
Uncleared interchange expense credits			77.8		77.8			77.8	
Other uncleared expense credits			77.9		77.9			77.9	
Dir. maint.-flight equip. (per sch. P-5)	78								
Totals	99		99		99			99	
App. Maint. burden-flt. equipment (to sch. P-5)			79.6						
Appl. maint. burden-general ground property			79.8						
Over or under applied burden			79.9						

RSPA Form 41 Schedule P-6 (1-88)
Formerly CAB Form 41 Schedule P-6

*Denotes inverse amount

Note: To be revised as shown in Exhibit B page 2 of 10

See Note Below

AIRCRAFT AND TRAFFIC SERVICING, PROMOTION AND SALES, AND GENERAL AND ADMINISTRATIVE EXPENSE FUNCTIONS Group II and Group III Air Carriers	Air Carrier _____ Operation _____ Name: Aircraft and Traffic Servicing (6400) Quarter Ended _____ 19 ___ Group II Air Carriers Only		Operation _____ Name: Promotion and Sales (6700) Group II Air Carriers Only		Operation _____ Name: General and Administrative (6800)		Operation _____ Name: Aircraft Servicing (6100) Group III Air Carriers Only	
General management personnel	21		21		21		21	
General aircraft and traffic handling personnel	26.1		26.1				26.1	
Aircraft control personnel	26.2						26.2	
Passenger handling personnel	26.3		26.3					
Cargo handling personnel	26.4		26.4					
Trainees and instructors	28.1		28.1		28.1		28.1	
Communications personnel	30		30		30		30	
Record keeping and statistical personnel	31		31		31		31	
Lawyers and law clerks					32			
Traffic solicitors			33					
Purchasing personnel					34			
Other personnel	35		35		35		35	
Personnel expenses	36		36		36		36	
Communications purchased	37		37		37		37	
Light, heat, power and water	38		38		38		38	
Commissions—passenger			39.1					
Commissions—property			39.2					
Legal fees and expenses					40			
Professional and technical fees and expenses	41		41		41		41	
General interchange service charges—assoc. cpt.	42.8		42.8		42.8		42.8	
Other services—associated companies	42.9		42.9		42.9		42.9	
General interchange service charges—outside	43.8		43.8		43.8		43.8	
Other services—outside	43.9		43.9		43.9		43.9	
Landing fees	44						44	
Rentals	47		47		47		47	
Shop and servicing supplies	48						48	
Stationery, printing and office supplies	50		50		50		50	
Other supplies	53		53		53		53	
Insurance purchased—general					55.1			
Insurance—traffic liability	56							
Employee benefits and pensions	57		57		57		57	
Injuries, loss and damage	58		58		58		58	
Tariffs, schedules and timetables			59					
Advertising			60					
Foreign exchange gains and losses					67			
Other promotional and publicity expenses			62					
Interrupted trips expense			63					
Memberships	64		64		64		64	
Corporate and fiscal expenses					65			
Uncollectible accounts					66			
Clearance, customs and duties	67						67	
Taxes—payroll	68		68		68		68	
Taxes—other than payroll					69			
Other expenses	71		71		71		71	
Uncleared interchange expense credits	77.8		77.8		77.8		77.8	
Other uncleared expense credits	77.9		77.9		77.9		77.9	
Totals—Quarter	99		99		99		99	

BSPA Form 41 Schedule P-7 (1-86)
Formerly CAB Form 41 Schedule P-7

*Denotes inverse amount

Note: To be revised as shown in Exhibit B page 6 of 10

Exhibit A
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See Note Below

AIRCRAFT AND TRAFFIC SERVICING, AND PROMOTION AND SALES, EXPENSE SUBFUNCTIONS Group III Air Carriers	Air Carrier _____ Operation _____ Name: Traffic Servicing (5202) Quarter Ended _____, 19__		Name: Servicing Administration (5203)		Name: Reservations and Sales (5204)		Name: Advertising and Publicity (5205)	
General management personnel	21		21		21		21	
General aircraft and traffic handling personnel	26.1		26.1		26.1			
Passenger handling personnel	26.3				26.3			
Cargo handling personnel	26.4				26.4			
Trainees and instructors	28.1		28.1		28.1		28.1	
Communications personnel	30		30		30		30	
Record keeping and statistical personnel	31		31		31		31	
Traffic solicitors					33			
Other personnel	35		35		35		35	
Personnel expenses	36		36		36		36	
Communications purchased	37		37		37		37	
Light, heat, power and water	38		38		38		38	
Commissions—passenger					39.1			
Commissions—property					39.2			
Professional and technical fees and expenses	41		41		41		41	
General interchange service charges—assoc. cos.	42.8		42.8		42.8		42.8	
Other services—associated companies	42.9		42.9		42.9		42.9	
General interchange service charges—outside	43.8		43.8		43.8		43.8	
Other services—outside	43.9		43.9		43.9		43.9	
Rentals	47		47		47		47	
Stationery, printing and office supplies	50		50		50		50	
Other supplies	53		53		53		53	
Insurance—traffic liability	56							
Employee benefits and pensions	57		57		57		57	
Injuries, loss and damage	58		58		58		58	
Tariffs, schedules and timetables					59		59	
Advertising							60	
Other promotional and publicity expenses							62	
Interrupted trips expense					63			
Memberships	64		64		64		64	
Clearance, customs and duties	67							
Taxes—payroll	68		68		68		68	
Othe expenses	71		71		71		71	
Uncleared interchange expense credits	77.8		77.8		77.8		77.8	
Other uncleared expense credits	77.9		77.9		77.9		77.9	
Totals—Quarter	99		99		99		99	

*Denotes reverse entries

BSPA Form 41 Schedule P-6 (1-68)
Formerly CAB Form 41 Schedule P-6

Note: To be revised as shown in Exhibit B page 6 of 10

US Department of Transportation
Research and Special Programs Administration

EMPLOYMENT STATISTICS BY LABOR CATEGORY

Aircraft Carrier _____
Operation _____
Calendar Year Ended _____

Account No.	Description	NEED DOT	NEED ICAO	MV*	NO NEED DOT
21	General management personnel	X	X		
23	Pilots and copilots	X	X		
24	Other flight personnel:				
5124	Flying operations	X	X		
5524	Passenger service	X	X		
6924	General services and administration[1]	X	X		
25	Maintenance labor[4]	X	X		
26	Aircraft and traffic handling personnel[1]	X	X		
26.1	General aircraft and traffic handling personnel:				
6126.1	Aircraft servicing[3]	X	X		
6226.1	Traffic servicing[3]	X	X		
6326.1	Servicing administration[3]	X	X		
6426.1	Aircraft and traffic servicing[2]	X	X		
6526.1	Reservations and sales[3]	X	X		
6726.1	Promotion and sales[2]	X	X		
26.2	Aircraft control personnel:				
6126.2	Aircraft servicing[3]	X	X		
6426.2	Aircraft and traffic servicing[2]	X	X		
26.3	Passenger handling personnel:				
6226.3	Traffic servicing[3]	X	X		
6426.3	Aircraft and traffic servicing[2]	X	X		
6526.3	Reservations and sales[3]	X	X		
6726.3	Promotion and sales[2]	X	X		
26.4	Cargo handling personnel:				
6226.4	Traffic servicing[3]	X	X		
6426.4	Aircraft and traffic servicing[2]	X	X		
6526.4	Reservations and sales[3]	X	X		
6726.4	Promotion and sales[2]	X	X		
28.1	Trainees and instructors	X	X		
31	Record keeping and statistical personnel	X	X		
33	Traffic solicitors	X	X		
	Other personnel	X	X		
	Transport-related	X	X		
	Total		X	X	

1 Group I air carriers.
2 Group II air carriers.
3 Group III air carriers.
4 Include unallocated maintenance shop labor.

RSPA Form 41 Schedule P-10 (1-86)
Formerly CAB Form 41 Schedule P-10

*MV - Data element used for mathematical verification

Exhibit A
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FUEL CONSUMPTION BY TYPE OF SERVICE AND ENTITY

Air Carrier _____

Month Ended _____, 19 ____

Service/Entity	Gallons				Cost			
	NEED DOT	NEED ICAO	NEED MV*	NO DOT NEED	NEED DOT	NEED ICAO	NEED MV*	NO DOT NEED
Scheduled Service								
Domestic								
Intra-Alaska	X				X			
Domestic (excluding Intra-Alaska)	X				X			
Domestic Subtotal			X				X	
International								
Atlantic	X				X			
Pacific	X				X			
Latin America	X				X			
International Subtotal			X				X	
Total Scheduled Service			X				X	
Nonscheduled Service								
Domestic								
Intra-Alaska	X				X			
Domestic (excluding Intra-Alaska)	X				X			
MAC Operations	X				X			
Domestic Subtotal			X				X	
International								
Atlantic	X				X			
Pacific	X				X			
Latin America	X				X			
MAC Operations	X				X			
International Subtotal			X				X	
Total Nonscheduled Service			X				X	

RSPA Form 41 Schedule P-12(a) (1-85)
Formerly CAB Form 41 Schedule P-12(a)

*MV - Data element used for mathematical verification

U.S. Department of Transportation
Research and Special Programs Administration

TRAFFIC AND CAPACITY STATISTICS BY CLASS OF SERVICE

Air Carrier _____
Operating Entity _____
Month Ended _____

		Total—All Services				Total—Scheduled Services				Total—Nonscheduled Services			
		NEED			NO DOT NEED	NEED			NO DOT NEED	NEED			NO DOT NEED
TRAFFIC ON REVENUE FLIGHTS		DOT	ICAO	MV*		DOT	ICAO	MV*		DOT	ICAO	MV*	
Revenue passengers enplaned	Z110			X		K110	X	X		V110	X	X	
Revenue passenger-miles (000)	Z140			X		K140	X	X		V140	X	X	
First class	Z141				xxxxx	K141	X			xxxx			xxxxx
Coach	Z142				xxxxx	K142	X			xxxx			xxxxx
Nonrevenue passenger-miles (000)	Z160			X		K160	X			V160	X		
Revenue ton-miles	Z240			X		K240	X	X		V240	X	X	
Passenger	Z241			X		K241	X	X		V241	X	X	
U.S. mail-priority	Z243			X		K243	X	X		V243	X	X	
U.S. mail-nonpriority	Z244			X		K244	X	X		V244	X	X	
Foreign mail	Z245			X		K245	X	X		V245	X	X	
Freight	Z247			X		K247	X	X		V247	X	X	
Nonrevenue ton-miles	Z260			X		K260	X			V260	X		
AIRCRAFT CAPACITY OPERATED													
Available seat-miles (000)	Z320			X		K320	X	X		V320	X	X	
First class	Z321				xxxxx	K321	X			xxxx			xxxxx
Coach	Z322				xxxxx	K322	X			xxxx			xxxxx
Available ton-miles	Z280			X		K280	X	X		V280	X	X	
Revenue aircraft miles flown	Z410			X		K410	X	X		V410	X	X	
Revenue aircraft miles scheduled	Z430			X		K430	X			xxxx			xxxxx
Scheduled aircraft miles completed	Z431			X		K431	X			xxxx			xxxxx
Revenue aircraft departures performed	Z510			X		K510	X	X		V510	X	X	
Revenue aircraft hours (airborne)	Z610			X		K610	X	X		V610	X	X	
Nonrevenue aircraft hours (airborne)	Z620	X	X			xxxx			xxxxx	xxxx			xxxxx

RSPA Form 41 Schedule T-1(a) (1-85)
Formerly CAB Form 41 Schedule T-1(a)

*MV - Data element used for mathematical verification

US Department of Transportation
Research and Special Programs Administration

TRAFFIC AND CAPACITY STATISTICS BY CLASS OF SERVICE
SCHEDULED SERVICES

Air Carrier _____
Operating Entity _____
Month Ended _____

TRAFFIC ON REVENUE FLIGHTS		First Class Pass.—Cargo Service				Coach Pass.—Cargo Service				Mixed Pass.—Cargo Service				Cargo Service			
		NEED			NO DOT NEED	NEED			NO DOT NEED	NEED			NO DOT NEED	NEED			NO DOT NEED
		DOT	ICAO	MV*		DOT	ICAO	MV*		DOT	ICAO	MV*		DOT	ICAO	MV*	
Revenue passengers enplaned	A110	X				C110	X			E110	X			G110	X		
Revenue passenger-miles (000)	A140	X				C140	X			E140	X			G140	X		
First class	A141	X				xxxx		xxxxx		E141	X			G141	X		
Coach	xxxx			xxxxx		C142	X			E142	X			G142	X		
Nonrevenue passenger-miles (000)	A160	X				C160	X			E160	X			G160	X		
Revenue ton-miles	A240	X				C240	X			E240	X			G240	X	X	
Passenger	A241	X				C241	X			E241	X			G241	X	X	
U.S. mail-priority	A243	X				C243	X			E243	X			G243	X	X	
U.S. mail-nonpriority	A244	X				C244	X			E244	X			G244	X	X	
Foreign mail	A245	X				C245	X			E245	X			G245	X	X	
Freight	A247	X				C247	X			E247	X			G247	X	X	
Nonrevenue ton-miles	A260	X				C260	X			E260	X			G260			
AIRCRAFT CAPACITY OPERATED																	
Available seat-miles (000)	A320	X				C320	X			E320	X			G320	X	X	
First class	A321	X				xxxx		xxxxx		E321	X			G321	X		
Coach	xxxx			xxxxx		C322	X			E322	X			G322	X		
Available ton-miles	A280	X				C280	X			E280	X			G280	X		
Revenue aircraft miles flown	A410	X				C410	X			E410	X			G410	X	X	
Revenue aircraft miles scheduled	A430	X				C430	X			E430	X			G430	X		
Scheduled aircraft miles completed	A431	X				C431	X			E431	X			G431	X		
Revenue aircraft departures performed	A510	X				C510	X			E510	X			G510	X	X	
Revenue aircraft hours (airborne)	A610	X				C610	X			E610	X			G810	X	X	
Nonrevenue aircraft hours (airborne)	xxxx			xxxxx		xxxx		xxxxx		xxxx		xxxxx		xxxx			xxxxx

RSPA Form 41 Schedule T-1(b) (1-86)
Formerly CAB Form 41 Schedule T-1(b)

*MV - Data element used for mathematical verification

Exhibit A
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U.S. Department of Transportation
Research and Special Programs Administration

TRAFFIC AND CAPACITY STATISTICS BY CLASS OF SERVICE
NONSCHEDULED SERVICES

Air Carrier _____
Operating Entity _____
Month Ended _____

		Civilian Pass.—Cargo Service All Aircraft Types				Military Pass.—Cargo Service				Civilian Cargo Service				Military Cargo Service			
		NEED			NO DOT NEED		NEED		NO DOT NEED		NEED		NO DOT NEED		NEED		NO DOT NEED
TRAFFIC ON REVENUE FLIGHTS		DOT	ICAO	MV*			DOT	ICAO	MV*		DOT	ICAO	MV*		DOT	ICAO	MV*	
Revenue passengers enplaned	L110	X				N110	X			P110	X			R110	X			
Revenue passenger-miles (000)	L140	X				N140	X			P140	X			R140	X			
First class	xxxx			xxxxx		xxxx			xxxxx	xxxx			xxxxx	xxxx			xxxxx	
Coach	xxxx			xxxxx		xxxx			xxxxx	xxxx			xxxxx	xxxx			xxxxx	
Nonrevenue passenger-miles (000)	L160	X				N160	X			P160	X			R160	X			
Revenue ton-miles	L240	X				N240	X			P240	X	X		R240	X	X		
Passenger	L241	X				N241	X			P241	X	X		R241	X	X		
U.S. mail-priority	L243	X				N243	X			P243	X	X		R243	X	X		
U.S. mail-nonpriority	L244	X				N244	X			P244	X	X		R244	X	X		
Foreign mail	L245	X				N245	X			P245	X	X		R245	X	X		
Freight	L247	X				N247	X			P247	X	X		R247	X	X		
Nonrevenue ton-miles	L260	X				N260	X			P260	X			R260	X			
AIRCRAFT CAPACITY OPERATED																		
Available seat-miles (000)	L320	X				N320	X			P320	X			R320	X			
First class	xxxx			xxxxx		xxxx			xxxxx	xxxx			xxxxx	xxxx			xxxxx	
Coach	xxxx			xxxxx		xxxx			xxxxx	xxxx			xxxxx	xxxx			xxxxx	
Available ton-miles	L280	X				N280	X			P280	X			R280	X			
Revenue aircraft miles flown	L410	X				N410	X			P410	X	X		R410	X	X		
Revenue aircraft miles scheduled	xxxx			xxxxx		xxxx			xxxxx	xxxx			xxxxx	xxxx			xxxxx	
Scheduled aircraft miles completed	xxxx			xxxxx		xxxx			xxxxx	xxxx			xxxxx	xxxx			xxxxx	
Revenue aircraft departures performed	L510	X				N510	X			P510	X	X		R510	X	X		
Revenue aircraft hours (airborne)	L610	X				N610	X			P610	X	X		R610	X	X		
Nonrevenue aircraft hours (airborne)	xxxx			xxxxx		xxxx			xxxxx	xxxx			xxxxx	xxxx			xxxxx	
Revenue aircraft hours (ramp to ramp)	xxxx			xxxxx			X			xxxx			xxxxx	xxxx			X	

RSPA Form 41 Schedule T-1(c) (1-86)
Formerly CAB Form 41 Schedule T-1(c)

*MV - Data element used for mathematical verification

U.S. Department of Transportation
Research and Special Programs Administration

TRAFFIC, CAPACITY, AIRCRAFT OPERATIONS, AND MISCELLANEOUS STATISTICS BY TYPE OF AIRCRAFT

Air Carrier _____
Operating Entity _____
Quarter Ended _____

		ALL Types NEED DOT	ALL Types NEED ICAO	ALL Types MV*	ALL Types NO DOT NEED	Type: Code:	Type: Code:	Type: Code:	Type: Code:
SCHEDULED SERVICES									
Revenue passengers-miles (000)									
First Class/Mixed Passenger-Cargo	A140, E141	X							
Coach/Mixed Passenger-Cargo	C140, E142	X							
Cargo	G140	X							
Total	K140			X					
Available seat-miles (000)									
First Class/Mixed Passenger-Cargo	A320, E321	X							
Coach/Mixed Passenger-Cargo	C320, E322	X							
Cargo	G320	X							
Total	K320			X					
Revenue ton-miles	K240	X							
Available ton-miles	K280	X							
Revenue aircraft miles flown:									
Passenger-cargo	A, C410	X							
Cargo	G410	X							
Total	K410			X					
ALL SERVICES									
Revenue passengers-miles (000)	Z140	X							
Available seat-miles (000)	Z320	X							
Revenue ton-miles	Z240	X							
Available ton-miles	Z280	X							
Revenue aircraft miles flown	Z410	X							
AIRCRAFT HOURS FLOWN									
Revenue aircraft hours (airborne)	Z610	X	X						
Nonrevenue aircraft hours (airborne)	Z620	X	X						
Total aircraft hours (airborne)	Z630		X	X					
MISCELLANEOUS OPERATING FACTORS									
Aircraft days assigned to service-carrier's equipment	Z810	X							
Aircraft days assigned to service-carrier's routes	Z820		X						
Nonrevenue aircraft miles flown	Z420				X				
Carrier's interchange equipment:									
Hours on others (airborne)	Z830	X							
Aircraft hours (ramp-to-ramp)	Z630	X							
Aircraft fuels issued (gallons)	Z921	X							
Aircraft oils issued (gallons)	Z922	X							

RSPA Form 41 Schedule T-2 (1-86)
Formerly CAB Form 41 Schedule T-2(a) & (b)

*MV - Data element used for mathematical verification

Exhibit A
Page 22 of 28

U.S. Department of Transportation
Research and Special Programs Administration

AIRPORT ACTIVITY STATISTICS
SCHEDULED REVENUE SERVICE

Air Carrier _____
Operating Entity _____
Quarter Ended _____

Airport	Code	Departures Scheduled K520	Scheduled Departures Completed K521	Scheduled & Extra Section Departures Performed Total K510	Enplaned Passengers K110	Enplaned Revenue Cargo (Tons)			
						U.S. Mail		Foreign Mail K215	Freight K217
						Priority K213	Nonpriority K214		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
DOT NEED	X	X	X	X	X	X	X	X	X
ICAO NEED									X
MV*									
NO DOT NEED									

RSPA Form 41 Schedule T-3(a) (1-86)
Formerly CAB Form 41 Schedule T-3(a)

*MV - Data element used for mathematical verification

Exhibit A
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U.S. Department of Transportation
Research and Special Programs Administration

AIRPORT ACTIVITY STATISTICS
SCHEDULED REVENUE SERVICE

Air Carrier _____
Operating Entity _____
Quarter Ended _____

		Scheduled and Extra Section Departures Performed by Aircraft Type/Aircraft Code											
Airport	Code												
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
DOT NEED	X	X	X	X	X	X	X	X	X	X	X	X	X
ICAO NEED		X	X	X	X	X	X	X	X	X	X	X	X
MV*													
NO DOT NEED													

RSPA Form 41 Schedule T-3(b) (1-85)
Formerly CAB Form 41 Schedule T-3(b)

*MV - Data element used for mathematical verification

US Department of Transportation
Research and Special Programs Administration

AIRPORT ACTIVITY STATISTICS
NONSCHEDULED REVENUE SERVICE

Air Carrier _____
Operating Entity _____
Quarter Ended _____

	Airport	Code	Enplaned Passengers V110	Enplaned Revenue Cargo (Tons)				Departures Performed by Aircraft Type/Aircraft Code						
				US Mail Priority V213	US Mail Nonpriority V214	Foreign Mail V215	Freight V217	Total V510						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
DOT NEED	X	X	X	X	X	X	X	X	X	X	X	X	X	X
ICAO NEED							X	X	X	X	X	X	X	X
MV*														
NO DOT NEED														

RSPA Form 41 Schedule T-3(c) (1-85)
Formerly CAB Form 41 Schedule T-3(c)

*MV - Data element used for mathematical verification

Exhibit A
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U.S. Department of Transportation
Research and Special Programs Administration

REPORT OF ALL-CARGO OPERATIONS

Air Carrier		All-Cargo Operations	
Year Ended December 31, 19____		Domestic (418)	Other Than Section 418
		NEED DOT ICAO MV* NO DOT NEED	(B)
Operating Revenues and Expenses			
Transport Revenue:			
Property	1	X	
Mail	2	X	
Transport Related Revenue	3	X	
Total Operating Revenue	4	X	
Total Operating Expense	5	X	
Operating Profit or (Loss)	6	X	
Traffic and Capacity Statistics			
Total Revenue Ton-Miles:			
Property	7	X	
Mail	8	X	
Revenue Tons Enplaned	9	X	
Available Ton Miles	10	X	
Aircraft Miles Flown	11	X	
Aircraft Departures Performed	12	X	
Aircraft Hours (Airborne)	13	X	

RSPA Form 41 Schedule T-6 (1-86)
Formerly CAB Form 41 Schedule T-6

*MV - Data element used for mathematical verification

NONSTOP MARKET REPORT

CARRIER NAME _____ DATE Y Y M M (1–4)

OPERATION _____ CARRIER CODE _____ (5–8)

MONTH _____

LINE NUMBER	AIRPORT		AIRCRAFT TYPE	INTER-AIRPORT DISTANCE (501)	REVENUE AIRCRAFT DEPARTURES PERFORMED (310)	SEATS AVAILABLE		RAMP TO RAMP (07x)	TONS AVAILABLE (LBS.) (270)	REVENUE PASSENGERS TRANSPORTED		REVENUE TONS TRANSPORTED (LBS.) (230)	REVENUE PASSENGERS ENPLANED		REVENUE CARGO TONS ENPLANED (LBS.) (810)
	TAKEOFF	LANDING				FIRST CLASS (111)	COACH (112)			FIRST CLASS (131)	COACH (132)		FIRST CLASS (111)	COACH (112)	
1 (10-12)	2 (13-15)	3 (16-18)	4 (19-22)	5 (23-26)	6 (27-30)	7 (31-34)	8 (35-38)	9 (39-42)	10 (43-46)	11 (47-50)	12 (51-53)	13 (66-73)	14 (74-77)	15 (78-82)	16 (83-89)
DOT NEED	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
ICAO NEED	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
MV*															
NO DOT NEED															

RSPA Form 41 Schedule T-9 (1-85)
Formerly CAB Form 41 Schedule T-9

*MV - Data element used for mathematical verification

Exhibit A
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Schedule G-41

CAB Form 41

*MV - Data element used for mathematical verification

DOT NEED
ICAO NEED
MV*
NO DOT NEED

PERSONS HOLDING MORE THAN 5 PER CENT OF RESPONDENT'S CAPITAL STOCK OR CAPITAL

(Pursuant to Section 407(b) of the Federal Aviation Act)

Air Carrier _____

As at December 31, 19 _____

LINE NO.	NAME (1)	ADDRESS (2)	HELD FOR OWN ACCOUNT (Yes or No) (3)	CAPITAL STOCK OR INVESTED CAPITAL				
				CLASS(ES) OF SHARES (4)	MAXIMUM HELD DURING THE YEAR		HELD AT YEAR END	
					NUMBER OF SHARES OR AMOUNT OF CAPITAL (5)	PERCENT OF TOTAL OUTSTANDING CAPITAL (6)	NUMBER OF SHARES OR AMOUNT OF CAPITAL (7)	
1								
2								
3								
4				X	X	X	X	
5								
6								
7								
8	X	X	X					
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
21								
22								
23								
24								
25								
26								

Persons for whose account stock is held if answer in column 3 above is "No"

1	
2	
3	
4	
5	
6	

AIRCRAFT OPERATING EXPENSES -- GROUP II AND GROUP III AIR CARRIERS

CARRIER: _____ OPERATION: _____

QUARTER ENDING: _____

	Account Number	Total-All Aircraft Types	Aircraft Type	Aircraft Type
Flying Operation	5100			
Pilots and copilots		23 + allocation from a/c 57		
Aircraft fuels		45.1 + allocation from a/c 69		
Aircraft oils		45.2 + allocation from a/c 69		
Rentals		47		
Other expenses		71 + a/c 24, 28.1, 36, 41, 42.7, 43.7, 53, 55.1, 57, 58, 68 and 69		
Total flying operations (per Sch. P-1)				
Direct Maintenance-Flight Equipment	5200			
Labor-airframes		25.1		
Labor-aircraft engines		25.2		
Airframe repairs		42.1 + 43.1		
Aircraft engine repairs		42.2 + 43.2		
Aircraft interchange charges		42.7 + 43.7		
Maintenance materials-airframes		46.1		
Maintenance materials-aircraft engines		46.2		
Airworth. allow. provs.-airframes		72.1		
Airframe overhauls deferred (cr.)		72.3		
Airworth. allow. provs.-aircraft engines		72.6		
Aircraft eng. overhauls def. (cr.)		72.8		
Total dir. main.-flt. equip.		78		
Applied Main. Burden-Flt. Equip.		79.6		
Total flight equip. main. (MEMO)	5299			
Net obsol. & deterior.-exp. parts	7073.9			
Depreciation-Flight Equipment	7000			
Depreciation-airframes		75.1		
Depreciation-aircraft engines		75.2		
Depreciation-airframe parts		75.3		
Depreciation-aircraft engine parts		75.4		
Total depr.-flight equipment		75.6		
Amortization Expense-Capital Leases-Flight Equipment		76.1		
Expense of Interchange Aircraft				
Flying operations		98.1	----	
Maintenance		98.2	----	
Total Aircraft Operating Expenses	7098.9			
Other Depreciation and Amortization	7000			
Amortization-developmental and preop. exp.		74.1		
Amortization-other intangibles		74.2		
Depreciation-maint. equip. and hangars		75.8		
Depreciation-general ground property		75.9		
Amortization-capital leases		76.2		

OPERATING EXPENSES BY OBJECTIVE GROUPINGS

CARRIER: _____ OPERATION: _____

QUARTER ENDING: _____

Line 1	SALARIES AND RELATED FRINGE BENEFITS:	
Line 2	SALARIES:	
Line 3	General management personnel _____	XX
Line 4	Flight personnel _____	XX
Line 5	Maintenance labor _____	XX
Line 6	Aircraft and traffic handling personnel _____	XX
Line 7	Other personnel _____	XX
Line 8	Total Salaries _____	XXX
Line 9	RELATED FRINGE BENEFITS:	
Line 10	Personnel expense _____	XX
Line 11	Employee benefits and pensions _____	XX
Line 12	Payroll taxes _____	XX
Line 13	Total Related Fringe Benefits _____	XXX
Line 14	Total Salaries and Related Fringe Benefits _____	XXX
Line 15	MATERIALS PURCHASED:	
Line 16	Aircraft fuel and oil _____	XX
Line 17	Maintenance material _____	XX
Line 18	Passenger food _____	XX
Line 19	Other materials _____	XX
Line 20	Total Materials _____	XXX
Line 21	SERVICES PURCHASED:	
Line 22	Advertising and other promotion _____	XX
Line 23	Communications _____	XX
Line 24	Insurance _____	XX
Line 25	Outside flight equipment maintenance _____	XX
Line 26	Traffic commissions - Passenger _____	XX
Line 27	Traffic commissions - Cargo _____	XX
Line 28	Other services _____	XX
Line 29	Total Services _____	XXX
Line 30	LANDING FEES _____	XXX
Line 31	RENTALS _____	XXX
Line 32	DEPRECIATION _____	XXX
Line 33	AMORTIZATION _____	XXX
Line 34	OTHER _____	XXX
Line 35	TRANSPORT RELATED EXPENSE _____	XXX
Line 36	TOTAL OPERATING EXPENSES _____	XXX

INSTRUCTIONS FOR
PROPOSED SCHEDULE P-6

Line 1 Salaries and related fringe benefits shall be reported in the following categories:

Line 2 Salaries shall be subdivided as follows:

Line 3 General Management Personnel = Sum of objective Account 21 for all functions

Line 4 Flight Personnel = Sum of objective Accounts 23 and 24 for all functions

Line 5 Maintenance Labor = Sum of objective Accounts 25.1 + 25.2 + 25.3 + 25.6 + 25.9 + 28.2 for all functions + proration for Line 5 (See footnote 2/)

Line 6 Aircraft and Traffic Handling Personnel = Sum of objective Accounts 26 + 26.1 + 26.2 + 26.3 + 26.4 for all functions

Line 7 Other Personnel = Sum of objective Accounts 28.1 + 30 + 31 + 32 + 33 + 34 + 35 for all functions

Line 8 Total Salaries = Sum of Line 3 + 4 + 5 + 6 + 7

Line 9 Related fringe benefits shall be subdivided as follows:

Line 10 Personnel Expense = Sum of objective Account 36 for all functions

Line 11 Employee Benefits and Pensions = Sum of objective Account 57 for all functions

Line 12 Payroll Taxes = Sum of objective Account 68 for all functions

Line 13 Total Related Fringe Benefits = Sum of Lines 10 + 11 + 12

Line 14 Total Salaries and Related Fringe Benefits = Sum of Lines 8 + 13

Line 15 Materials purchased shall be reported in the following categories:

Line 16 Aircraft Fuel and Oil = Sum of objective Accounts 45 + 45.1 + 45.2 for all functions + objective Account 69 for 5100 function only

Line 17 Maintenance Material = Sum of objective Accounts 46.1 + 46.2 + 46.3 + 46.6 + 46.9 + 49 + 54 for all functions + proration for Line 17 (See footnote 2/)

Line 18 Passenger Food = Sum of objective Account 51 for all functions

Line 19 Other Materials = Sum of objective Accounts 38 + 50 + 53 for all functions

Line 20 Total Materials = Sum of Lines 16 + 17 + 18 + 19

Line 21 Services purchased shall be reported in the following categories:

Line 22 Advertising and Other Promotion = Sum of objective Accounts 59 + 60 + 62 for all functions

Line 23 Communications = Sum of objective Account 37 for all functions

Line 24 Insurance = Sum of objective Accounts 55 + 56 for all functions

Line 25 Outside Flight Equipment Maintenance = Sum of objective Accounts 42.1 + 42.2 + 42.3 + 42.6 + 42.7 + 42.8 + 42.9 + 43.1 + 43.2 + 43.3 + 43.6 + 43.7 + 43.8 + 43.9 for 5200 function only + proration for Line 25 (See footnote 2/)

Line 26 Traffic Commissions - Passenger = Sum of objective Accounts 39 (See footnote 1/) + 39.1 for all functions

Line 27 Traffic Commissions - Cargo = Sum of objective Accounts 39 (See footnote 1/) + 39.2 for all functions

Line 28 Other Services = Sum of objective Accounts 40 + 41 for all functions + objective Accounts 42.7 + 42.8 + 42.9 + 43.7 + 43.8 + 43.9 for all functions except 5200

Line 29 Total Services = Sum of Lines 22 + 23 + 24 + 25 + 26 + 27 + 28

Line 30 Landing Fees = Sum of objective Account 44 for all functions

Line 31 Rentals = Sum of objective Account 47 for all functions

Line 32 Depreciation = Sum of objective Accounts 73.1 + 73.2 + 75.6 + 75.8 + 75.9 for 7000 function

Line 33 Amortization = Sum of objective Accounts 74.1 + 74.2 + 76 for 7000 function

Line 34 Other = Sum of objective Accounts 58 + 61 + 63 + 64 + 65 + 66 + 67 + 71 + 77.8 + 77.9 for all functions + 69 for all functions except 5100

Line 35 Transport Related Expenses = Total of 7100 function

Line 36 Total Operating Expenses = Sum of Lines 14 + 20 + 29 + 30 + 31 + 32 + 33 + 34 + 35

FOOTNOTES

1/ Under this Schedule P-6, Group I carriers would be required to report a separate amount for Traffic Commissions - Passenger (6939.1) and Traffic Commissions - Cargo (6939.2). Previously, this group reported only Total Traffic Commissions (6939).

2/ For all groups, proration for Lines 5 and 17 and 25.

- Step 1: Net of accounts

5272.1	5372.1
5272.2	5372.2
5272.3	5372.3
5272.4	5372.4
5272.6	5372.6
5272.7	5372.7
5272.8	5372.8
5272.9	5372.9

Net

Step 2: Sum of Lines 5 + 17 + 25 before proration of amount in Step 1.

For proration applicable to Line 5

Step 3: Line 5 before proration - Sum of Lines 5 + 17 + 25 before proration

Step 4: Proration = Net (Step 1) X Ratio (Step 3)

For proration applicable to Line 17

Step 3A: Line 17 before proration - Sum of Lines 5 + 17 + 25 before proration

Step 4A: Proration = Net (Step 1) X Ratio (Step 3A)

For proration applicable to Line 25

Step 3B: Line 25 before proration - Sum of Lines 5 + 17 + 25 before proration

Step 4B: Proration = Net (Step 1) X Ratio (Step 3B)

OPERATING EXPENSES BY FUNCTIONAL GROUPINGS

CARRIER: _____ OPERATION: _____

QUARTER ENDING: _____

Line 1	AIRCRAFT OPERATING EXPENSES (DIRECT OPERATING COSTS):	
Line 2	Total *	XXX
Line 3	SERVICING, SALES AND GENERAL OPERATING EXPENSES (INDIRECT OPERATING COSTS:	
Line 4	PASSENGER SERVICE EXPENSE:	
Line 5	Flight attendant expense	XX
Line 6	Food expense	XX
Line 7	Other in-flight expense	XX
Line 8	Total Passenger Service Expense	XXX
Line 9	AIRCRAFT SERVICING EXPENSE:	
Line 10	Line servicing expense	XX
Line 11	Control expense	XX
Line 12	Landing fees	XX
Line 13	Total Aircraft Servicing Expense	XXX
Line 14	TRAFFIC SERVICING EXPENSE:	
Line 15	Directly assignable to passenger	XX
Line 16	Directly assignable to baggage and cargo	XX
Line 17	Not directly assignable	XX
Line 18	Total Traffic Servicing Expense	XXX
Line 19	RESERVATION AND SALES EXPENSE:	
Line 20	Directly assignable to passenger	XX
Line 21	Directly assignable to cargo	XX
Line 22	Not directly assignable	XX
Line 23	Total Reservation and Sales Expense	XXX
Line 24	ADVERTISING AND PUBLICITY EXPENSE:	
Line 25	Directly assignable to passenger	XX
Line 26	Directly assignable to cargo	XX
Line 27	Institutional advertising expense	XX
Line 28	Total Advertising and Publicity Expense	XXX
Line 29	GENERAL AND ADMINISTRATIVE EXPENSE	XXX
Line 30	MAINTENANCE AND DEPRECIATION--GROUND PROPERTY AND EQUIPMENT:	
Line 31	Maintenance	XX
Line 32	Depreciation	XX
Line 33	Total Maintenance and Depreciation--Ground Property and Equipment	XXX
Line 34	DEPRECIATION EXPENSE--MAINTENANCE EQUIPMENT	XXX
Line 35	AMORTIZATION (OTHER THAN FLIGHT EQUIPMENT)	XXX
Line 36	TOTAL SERVICING, SALES AND GENERAL OPERATING EXPENSES	XXX
Line 37	TRANSPORT RELATED EXPENSES	XXX
Line 38	TOTAL OPERATING EXPENSES	XXX

* Detail by aircraft type on Schedule P-5.

INSTRUCTIONS FOR
PROPOSED SCHEDULE P-7

(GROUP III CARRIERS ONLY)

Line 1 Aircraft operating expenses (direct operating costs) shall be reported as follows:

Line 2 Total = Account 7098.9 for total all aircraft types from Schedule P-5.2

Line 3 Servicing, sales and general operating expenses (indirect operating costs) shall be reported in the following categories:

Line 4 Passenger service expense shall be subdivided as follows:

Line 5 Flight Attendant Expense = Sum of Accounts 5524 + 5528.1 + 5530 + 5531 + 5535 + 5536 + 5557 + 5568

Line 6 Food Expense = Account 5551

Line 7 Other In-flight Expense = Account 5599 - (Line 5 + Line 6)

Line 8 Total Passenger Service Expense = Sum of Lines 5 + 6 + 7

Line 9 Aircraft servicing expense shall be subdivided as follows:

Line 10 Line Servicing Expense = Account 6126.1

PLUS an allocation of the balance in the aircraft servicing expense function (Account 6100) after the following accounts have been excluded: Accounts 6126.1, 6126.2, 6130, 6137 and 6144. This allocation to Line 10 is based on the ratio of Account 6126.1 to the total of Accounts 6126.1 + 6126.2 + 6130.

PLUS an allocation of the servicing administration expense function (Account 6300), based on the ratio of total salary expenses included in Line 10 (both directly assigned and allocated as above) to total salary expenses in both the aircraft servicing expense function (Account 6100) and the traffic servicing expense function (Account 6200).

Line 11 Control Expense = Accounts 6126.2 + 6130 + 6137

PLUS an allocation of the balance in the aircraft servicing expense function (Account 6100) after the following accounts have been excluded: Accounts 6126.1, 6126.2, 6130, 6137 and 6144. This allocation to Line 11 is based on the ratio of the total of Accounts 6126.2 + 6130 to the total of Accounts 6126.1 + 6126.2 + 6130.

PLUS an allocation of the servicing administration expense function (Account 6300), based on the ratio of total salary expenses included in Line 11 (both directly assigned and allocated as above) to total salary expenses in both the aircraft servicing expense function (Account 6100) and the traffic servicing expense function (Account 6200).

Line 12 Landing Fees = Account 6144

Line 13 Total Aircraft Servicing Expense = Sum of Lines 10 + 11 + 12

Line 14 Traffic servicing expense shall be subdivided as follows:

Line 15 Directly Assignable to Passenger = Account 6226.3

PLUS all other expenses in the traffic servicing expense function (Account 6200) that can be directly assigned or is directly attributable to passenger service based on the carrier's own detailed system of accounts.

PLUS allocation of the servicing administration expense function (Account 6300), based on the ratio of total salary expenses included in Line 15 (before allocation) to total salary expenses in both the aircraft servicing expense function (Account 6100) and the traffic servicing expense function (Account 6200).

Line 16 Directly Assignable to Baggage and Cargo = Accounts 6226.4 + 6256

PLUS all other expenses in the traffic servicing expense function (Account 6200) that can be directly assigned or is directly attributable to baggage and/or cargo service based on the carrier's own detailed system of accounts.

PLUS an allocation of the servicing administration expense function (Account 6300), based on the ratio of total salary expenses incuded in Line 16 (before allocation) to total salary expenses in both the aircraft servicing expense function (Account 6200).

Line 17 Not Directly Assignable =

The total of the traffic servicing expense function (Account 6200) less all 6200 related amounts in Lines 15 and 16.

PLUS an allocation of the servicing administration expense function (Account 6300), based on the ratio of total salary expenses included in Line 17 (before allocation) to total salary expenses in both the aircraft servicing expense function (Account 6100) and the traffic servicing expense function (Account 6200).

Line 18 Total Traffic Servicing Expense = Sum of Lines 15 + 16 + 17

Line 19 Reservation and sales expense shall be subdivided as follows:

Line 20 Directly Assignable to Passenger = Accounts 6526.3 + 6539.1 + 6563

PLUS all other expenses in the reservations and sales expense function (Account 6500) that can be directly assigned or is directly attributable to passenger service based on the carrier's own detailed system of accounts.

Line 21 Directly Assignable to Cargo = Accounts 6526.4 + 6539.2

PLUS all other expenses in the reservations and sales expense function (Account 6500) that can be directly assigned or is directly attributable to cargo service based on the carrier's own detailed system of accounts.

Line 22 Not Directly Assignable =

The total of the reservations and sales expense function (Account 6500) less Lines 20 + 21.

Line 23 Total Reservation and Sales Expense = Sum of Lines 20 + 21 + 22

Line 24 Advertising and publicity expense shall be subdivided as follows:

Line 25 Directly Assignable to Passenger =

All expenses in the advertising and publicity expense function (Account 6600) that can be directly assigned or is directly attributable to passenger service based on the carrier's own detailed system of accounts.

Line 26 Directly Assignable to Cargo =

All expenses in the advertising and publicity expense function (Account 6600) that can be directly assigned or is directly attributable to cargo service based on the carrier's own detailed system of accounts.

Line 27 Institutional Advertising Expense =

The total of the advertising and publicity expense function (Account 6600) less Lines 26 + 27.

Line 28 Total Advertising and Publicity Expense = Sum of Lines 25 + 26 + 27

Line 29 General and Administrative Expense = Total of 6800 function

Line 30 Maintenance and depreciation--ground property and equipment shall be subdivided as follows:

Line 31 Maintenance = The total of the maintenance expense function (Account 5400) less Account 5299 for total all aircraft types from Schedule P-5.2.

Line 32 Depreciation = Account 7075.9

Line 33 Total Maintenance and Depreciation--Ground Property and Equipment= Sum of Lines 31 + 32

Line 34 Depreciation Expense--Maintenance Equipment - Account 7075.8

Line 35 Amortization (other than flight equipment) = Accounts 7074.1 + 7074.2 + 7076 (less Account 7076 for total all aircraft types from Schedules P-5.2).

Line 36 Total Servicing, Sales and General Operating Expenses = Sum of Lines 8 + 13 + 18 + 23 + 28 + 29 + 33 + 34 + 35

Line 37 Transport Related Expenses = Total of 7100 function

Line 38 Total Operating Expenses = Sum of Lines 2 + 36 + 37

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August 23, 1985

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule amends existing regulations governing the Health Professions Student Loan (HPSL) program. These amendments impose more detailed requirements concerning the exercise of due diligence by schools in loan collections, specify a penalty for failure to comply with reporting requirements, address the requirements for proper execution and safeguarding of promissory notes, and clarify the write-off provision.

EFFECTIVE DATE: These regulations are effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: On September 6, 1984, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (49 FR 35324) a Notice of Proposed Rulemaking (NPRM) for the HPSL program which proposed to specify procedures that a school must follow prospectively in order to satisfy the due diligence requirement in the collection of loans. The September 6 NPRM also proposed to clarify the requirements relating to proper execution and safeguarding of promissory notes, the penalty for failure to comply with reporting requirements, and the provisions applicable to the write-off of uncollectible loans.

The Secretary invited interested persons to submit comments on the proposed rule on or before October 22, 1984. In response, the Department received 22 comments from health professions school officials and professional associations. A discussion of the comments, the Department's responses, and the regulatory changes follows.

Discussion of Comments, Responses, and Regulatory Changes

Section 57.208 Health professions student loan promissory note.

Three of four respondents supported the proposed amendment to § 57.208, which would require that, where State law permits individuals to void contracts entered during minority, schools must obtain security or endorsement on promissory notes with minors. One respondent opposed the language of this provision because he felt that the operational burden associated with obtaining security could be overwhelming for an educational institution. The respondent therefore recommended that the Department eliminate the reference to security.

The Department recognizes the respondent's concern for keeping operational burdens to a minimum, but believes that schools should have flexibility where possible in complying with regulatory requirements. Therefore, since the proposed language gives a school the option of obtaining either security or endorsement, and would not preclude an institution from requiring endorsement in these cases, the Department has adopted the provision as proposed.

Section 57.210 Repayment and collection of health professions student loans.

Section 57.210(b)(1)(i): Eight respondents opposed § 57.210(b)(1)(i), which would require the school to conduct and document an entrance interview with the borrower. These respondents stated that most schools would find it difficult if not impossible to have an entrance interview with each loan recipient due to staff and time requirements, and that it was unnecessary, since carrying out all the other due diligence steps should result in timely repayment of student loans. Individual respondents also questioned the cost-effectiveness of this requirement, suggesting that its only value lay in educating students who drop out with no warning and indicating that this is an unusual occurrence among HPSL borrowers. They also doubted that there would be significant retention of entrance interview information by the borrowers and disagreed with the Department's statement that conducting entrance interviews is a common practice among institutions.

As alternatives to the proposed entrance interview requirement, these respondents recommended one or more of the following: (1) That the promissory note be regarded as sufficient notification to the borrower of his or her repayment responsibilities; (2) that the Department require the award letter to identify HPSL funds as a loan and explain the repayment terms, and that this replace the entrance interview requirement; (3) that the Department permit group entrance interviews, with verified attendance as sufficient documentation; (4) that the Department permit schools to conduct the entrance interview by mail; (5) that the language in the National Direct Student Loan (NDSL) regulations (34 CFR 674.16), which specifies information which the borrower must receive and permits the school to mail the information to borrowers, be adopted in place of this requirement; and (6) that the entrance interview be suggested but not required, with emphasis instead on the exit interview. Respondents also requested that, if implemented, the requirement be explained in greater detail, and phased in over 2 years to allow schools time to allocate sufficient money and personnel for its implementation.

In developing this provision, the Department purposely chose language that did not specify the manner in which the entrance interview must be conducted so that each institution could develop entrance interview procedures that are practical, given its level of staff and financial resources. The Department views the term "entrance interview" to mean a meeting (individually or in groups) during which the school informs the borrower of the rights and responsibilities associated with the loan and obtains personal information from the borrower that would assist in the loan collection process.

Since the public comments expressed both opposition and uncertainty regarding the proposed requirement of an entrance interview, the Department has modified the provision. The provision as modified requires that before disbursing HPSL funds to a borrower in a given academic year, the school must have documentation which indicated that the borrower is aware of the rights and responsibilities associated with HPSL funds, and must obtain personal information that would assist in locating the borrower, if he or she fails to keep the school informed of his or her current address. Although not required by this provision, the Department also strongly encourages schools to use the entrance interview as an opportunity to provide borrowers with comprehensive debt management counseling in order to prevent delinquency. The Department recommends that entrance interviews be conducted in person (individually or in

groups); however, the provision as implemented will permit a school to satisfy this requirement through an exchange of information by mail when the school determines that a face-to-face meeting is impracticable.

Section 57.210(b)(1)(ii): Two respondents opposed § 57.210(b)(1)(ii), which would require schools to conduct and document exit interviews with borrowers. Both requested that the Department clarify the information that schools must collect during the exit interview so that schools could be assured that they are in compliance with this requirement. In response to these comments, the Department has modified this provision to require that, during the exit interview, the school must inform each borrower of the terms of repayment, remind the borrower of his or her rights and responsibilities, and update the personal information collected during the entrance interview which would assist in locating the borrower if he or she fails to notify the school of an address change.

One respondent also suggested that the exit interview be required to address all of the student's educational loans, noting that a comprehensive overview of his or her debt would help the student to manage all obligations more easily. Although the Department agrees that the exit interview could be used for comprehensive debt counseling, debts other than HPSL loans are beyond the scope of these regulations.

Section 57.210(b)(1)(iii), (iv), and (v): Two respondents opposed as regulatory requirements § 57.210(b)(1)(iii), (iv), and (v), which would require that the school notify the borrower in writing of the impending repayment obligation at least twice during the grace period and once prior to the end of an approved period of deferment, and perform regular billing. Both opponents agreed that these were excellent guidelines for schools to follow, but objected to them as requirements which, if not met, would automatically result in denial of a write-off request (regardless of the extensiveness of a school's collection efforts as a whole) for loans covered by these regulations.

The Department developed these proposals because over time many schools have requested a series of specific regulatory procedures that would clarify the due diligence requirement for purposes of requesting the write-off of uncollectible loans. In the absence of additional opposition from respondents, the Department continues to believe that most schools still favor more specific regulatory due diligence provisions, and further notes that the two respondents did not object to the provisions themselves. Therefore, the Department has implemented them as proposed, except that the time frame during which the notification to a borrower in deferment must occur has been changed to 1 to 3 months prior to the expiration of the approved deferment period to provide schools with more flexibility in complying with this requirement.

Section 57.210(b)(1)(vi): Eight respondents opposed § 57.210(b)(1)(vi), which would require at least five attempts to contact past due borrowers prior to their payments becoming 120 days past due. These respondents indicated that five written contacts were excessive, and that this proposal as written would not assist in promoting collections. Two respondents felt that contacts at intervals more frequent than 30 days would be cumbersome and expensive, would not provide sufficient time to process checks or deferments, and could cause misunderstanding and frustration when letters demanding payment crossed in the mail with payments from borrowers. One respondent also noted there are no data to show that the cost-benefit ratio of five contacts is greater than that of three or four contacts.

Two respondents suggested that since regular billing will continue during this time, three notices in addition to the regular billing should suffice. Three suggested that this provision of the HPSL regulations should be consistent with the Department of Education's (ED) proposed modification to the NDSL regulations, which would require three written notices within 60 days of delinquency. One recommended that the provision allow for two of the five contacts to be made by phone, rather than in writing, citing several advantages of telephone collections. Another recommended that four written contacts would be more appropriate, and requested that the Department demonstrate the utility of the fifth letter before requiring it.

In response to these comments, the Department has modified this provision to require a minimum of four documented and reasonably spaced contacts, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower. These revisions will permit each school to use follow-up procedures for collecting HPSL funds which are consistent with its NDSL collection procedures and will provide the option of using personal or telephone contacts as part of its follow-up procedures. Personal or telephone contacts, if used, must be documented as to the date of contact, the person(s) contacted, and a short summary of the substance of the conversation. The requirement that the contacts be reasonably spaced will permit each school to establish intervals which will be most effective in its collection efforts but will also assure that a school does not make four contacts in a single week and claim to be in compliance with this provision. Further, the revised provision makes allowance for those cases in which a school does not have a current address for the borrower and thus cannot make four contacts in the 120-day period following the payment due date. The Department reminds schools that this provision sets forth minimum requirements, and strongly encourages schools to include additional written, telephone, or personal contacts in their follow-up procedures as necessary to maximize the effectiveness of their loan collection efforts.

Section 57.210(b)(1)(viii): One respondent commented on the requirement to use collection agents, requesting that the Department allow the costs of in-house collection agents to be charged to the fund. The Department notes that § 57.205(a)(3) of the existing regulations permits schools to charge to the fund, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of health professions student loans. Based on this regulatory provision, departmental policy permits schools to charge the costs of a collection agent (commercial or in-house) to the HPSL fund as long as the school is exercising due diligence in its collection efforts. Further guidance regarding the actual in-house collection agent costs that can be charged to the fund is provided in program policy documents.

Section 57.210(b)(1)(ix): Five respondents opposed § 57.210(b)(1)(ix), which would require that schools institute litigation to collect delinquent loans after all other collection efforts have failed, provided that litigation is appropriate. The opposition focused on the lack of criteria to be followed in determining whether to litigate. Respondents requested that the Department either leave the determination of when to litigate solely at the discretion of the institution or define specific criteria for schools to follow, so that the Department could not deny a write-off request if it disagreed with the school's criteria for deciding when to litigate. Others suggested that the Department incorporate into this provision the NDSL regulations which

specify when to litigate delinquent NDSL accounts or define "appropriate" in terms of cost-effectiveness. It was also requested that the language of the litigation provision be flexible enough so that State schools would not be bound by requirements that conflict with State litigation procedures.

In response to these comments, the Department clarifies that a school should not litigate a delinquent loan when such action would not be cost-effective, but considers litigation an essential part of sound due diligence procedures in all other cases. Accordingly, the Department has modified this provision to require litigation unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective.

Section 57.210(b)(1)(x): Three respondents opposed § 57.210(b)(1)(x), which would require schools to report borrowers who are more than 120 days past due to credit bureaus, when appropriate. Two respondents stated that the Department should grant schools discretion in determining when to use credit bureaus and should not require the use of credit bureaus until all other collection efforts have proven unsuccessful. They were concerned that this requirement could preclude a delinquent borrower from securing a commercial loan to repay the HPSL loan, and thus would inhibit rather than aid the collections process.

Although there could be occasional instances where disclosure of a borrower's delinquent status to a credit bureau would make it more difficult for the borrower to repay, many schools have indicated that reporting to a credit bureau is more often a valuable and effective collection tool which augments rather than impedes their collection efforts. Therefore, the Department has maintained this provision and has clarifies it by deleting the reference to "when appropriate." This revision will require that a school apply the credit bureau provision uniformly. The Department also clarified that if a school encounters situations in which it believes that a credit bureau should not be used, it may request an exception as permitted under § 57.210(b)(1).

One respondent felt that this requirement would be costly and burdensome and could result in schools that are unfamiliar with credit bureau laws becoming involved in lawsuits for failure to comply with the laws governing the use of credit bureaus. The Department notes that § 57.205(a)(3) of the HPSL regulations permits schools to charge to the HPSL fund the costs associated with membership in credit bureaus, which would include the cost of reporting delinquent accounts to a credit bureau. Further, in addition to the Department's guidance for complying with the credit bureau requirement, schools should be able to obtain information on credit bureau laws from their professional associations, credit bureaus, or their institutional legal counsel to assist them in establishing routine procedures for using credit bureaus which comply with credit bureau laws and are not overly burdensome.

Section 57.210(b)(1): Two respondents opposed the last sentence of § 57.210(b)(1), which would permit schools to substitute other collection techniques in place of those outlined in the regulations, provided that they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary. Both respondents were concerned that the requirement to demonstrate the effectiveness of a technique would be burdensome and would inhibit innovation in collection efforts. One recommended that the Department establish "Criteria for Acceptable Methods of Due Diligence," to be used in auditing the school's compliance with the regulations.

The Department included this provision because it recognized that schools may have specific reasons for deviating from the prescribed procedures and that such deviations would not necessarily result in a lack of due diligence. The Department, therefore, wishes to permit alternative procedures to be used; however, the Department must determine that the regulatory requirement to exercise due diligence is still met. Accordingly, the Department has made no change in this provision.

Section 57.210(b)(4): Eight respondents opposed § 57.210(b)(4), which would clarify the write-off procedures. One respondent felt that this provision would fail to encourage the use of the write-off process by requiring schools to reimburse the fund for loans that are disapproved. The Department reminds schools that although they are responsible for reimbursing the fund for disapprovals, there is no required time-frame within which such reimbursement must occur. Accordingly, if the Department disapproves a write-off request, the school has the option of reimbursing the fund out of institutional moneys at its convenience or of carrying they loan on its books as a delinquent account until the distribution of assets.

Respondents also suggested that the Department replace write-off with an assignment process so that it could use Federal expertise and resources to attempt to collect these loans and return any money collected to the schools' loan funds. Since section 741(h) of the existing HPSL legislation prohibits assignment the Department cannot accept this recommendation. Schools should note that an assignment process would involve a legal transfer of the defaulted notes to the Federal Government and thus would not allow for a return of collections to the schools' HPSL funds. However, Congress has considered in recent legislative proposals a referral provision, which would permit the Federal Government to assist the schools in collecting delinquent loans and return a portion of any loans collected the schools' HPSL funds.

Two respondents were concerned that the Department would apply the due diligence procedures in § 57.210(b)(1)(i) through (x) retroactively, rather than prospectively, in reviewing write-off requests.

The Department clarifies that the series of procedures outlined in (i) through (vii) are required steps of the due diligence process as of the effective date of these regulatory amendments. These steps are in addition to the procedures outlined in (viii) through (x), which were already in effect under previously existing regulations. For any loan made on or after the effective date of these regulatory amendments, the Department requires that a school follow each of the steps (i) through (x) (unless they have requested and received written approval of alternate techniques) in order to be in compliance with the due diligence requirement.

For any loan made prior to the effective date of these regulatory amendments, the Department requires that a school apply the new due diligence requirements prospectively to the extent that it is possible to do so. Thus, in order to be in compliance with the due diligence requirement for such a loan, the procedures that a school followed prior to the effective date of these amendments must be in conformance with "generally accepted collection practices," as required by previously existing regulations, and the procedures followed after the effective date of the amended regulations must include all steps of the new requirement that can be followed prospectively (unless the Department has approved alternate techniques).

One respondent suggested that schools be given authority to write off loans of $500 or less and that loans greater than $500 should be accepted by the Department without undergoing a

case-by-case review, provided that the biennial audit confirms that the school is in compliance with the requirement to exercise due diligence. Since the Department must assure that the revolving loan funds do not absorb losses that occur because of improper management by the schools, it is necessary to continue to review write-off requests on a case-by-case basis.

Another respondent felt that the issue in reviewing a write-off request should be whether the institution's inaction contributed to a loan's uncollectibility, not whether the institution can document that it completed each step of the due diligence procedures. The Department believes that failure to perform any of these steps (or approved alternative procedures, if applicable) would be an important factor contributing to the uncollectibility of a loan and therefore would be proper grounds for denying write-off.

One respondent recommended that for loans delinquent prior to the effective date of these regulations, the Department should ignore past inadequacies in the school's due diligence procedures and require that a school pursue any collection efforts currently possible to be eligible for write-off approval. Two respondents noted that this approach would be consistent with the S. 2574 conference report language, which stated that schools should not be penalized for past administrative inadequacies.

As indicated previously, the purpose of the write-off review process is to assure that the revolving loan funds are not diminished by losses which occur because a school failed to comply with the longstanding requirement to exercise due diligence in the collection of HPSL funds. The Department continues to believe that it would be poor stewardship of Federal monies to grant write-off approval in cases where schools are unable to show that they complied with the regulatory due diligence requirement in their past collection efforts.

One respondent expressed concern that the regulations fail to specify in detail the documentation necessary for write-off approval. This respondent noted that an institution can perform the steps outlined in these proposed regulations and still be denied write-off for failure to maintain and submit such records as copies of bills or other specific proof of regular billing. The Department clarifies that the types of documentation necessary for receiving write-off approval should be available as part of the records that a school maintains in keeping with its standard accounting and fiscal management procedures. Since the actual format of this documentation may vary from one institution to another, the Department believes it is to the schools' benefit not to outline more specific documentation requirements in the regulations and has, therefore, retained the provision as proposed. However, recent policy memoranda have provided clarification regarding the types of documentation necessary for receiving write-off approval. Because there continues to be concern among schools that existing documentation requirements are burdensome and unreasonable, the Department will notify the schools through future policy memoranda if it determines that changes in documentation requirements are possible.

Section 57.215 Records, reports, inspection, and audit.

Six respondents opposed § 57.215, which would require schools to submit required reports within 45 days of the close of the reporting period and specify penalties for failure to comply with the reporting requirements. Two respondents stated that a 45-day deadline for submission of annual reports may necessitate that the data be prepared manually, causing an unjustified increase in the workload and expense of completing the report, and may result in less accurate data. As alternatives, one respondent suggested that the mandatory time frame be eliminated, and two others suggested that schools be given 60 days to complete the annual report to allow schools more time at the close of their fiscal year to resolve ledger discrepancies before constructing the data base needed for completing the annual report.

The 45-day reporting deadline is critical for assuring that the Department can conduct Federal monitoring activities, such as reviewing schools' delinquency rates and complying with Federal reporting requirements, on a timely basis. Therefore, no change has been made in this requirement.

Respondents also suggested that the Department permit schools to collect an administrative allowance from their HPSL funds. The Department notes that the HPSL legislation does not permit the HPSL fund to be used for general administrative costs.

Three respondents commented on the penalties for failure to comply with the reporting requirements. While they recognized that the Department needs to penalize schools that blatantly disregard program regulations, they viewed suspension as an unnecessary and unwarranted penalty which hurts future loan recipients and is too severe as a first corrective action, and felt that the Department should not impose termination without giving the school an opportunity to appeal. To improve this provision, they suggested that the Department: (1) send each school a notification confirming receipt of its report, or indicating nonreceipt and reminding it of the due date prior to suspension, and (2) notify suspended institutions of the exact date that such status becomes effective rather than placing the responsibility of ensuring receipt on the school.

In response to these comments, the Department reminds schools that the instructions accompanying the reports do indicate both the due date and the date upon which a school will enter suspended status if its report has not been received on time. Following the due date, the Department mails a follow-up letter to schools which have not submitted their reports, reminding them that they are in suspended status. To send the suspension letter any earlier would create unnecessary confusion, since many reports are received just before or on the due date.

One respondent commented on the requirement that a school in suspended status place its HPSL funds in an insured interest-bearing account, and questioned whether the Federal Government can require a State to pay interest to the fund. The Department notes that Federal regulations preempt State law, and that the terms of agreement for participating in the HPSL program require that any earnings of the fund be returned to the fund.

The Department has also included a paragraph (e) in this section to state that institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations. This language is being added to clarify the role of the HHS Office of Inspector General in investigating actual or suspected acts of fraud, as well as to inform individuals who are party to financial transactions involving these funds of their responsibility to report information regarding such acts to the appropriate Regional Inspector General for Investigations.

Regulatory Flexibility Act and Executive Order 12291

One respondent felt that the burden of 48.6 hours per school in the proposed

rule is not realistic and that schools have incurred many more hours of work to implement the ten steps proposed. The Department clarifies that the 48.6 hour average burden per school was based on the time required to comply with the reporting and recordkeeping requirements imposed by these regulations, but does not address time required to carry out activities of these regulations apart from the reporting or recordkeeping requirements. This figure has been updated below.

As the proposed rule stated, there are two areas of potential impact resulting from this regulation. First, the new requirements may impose some administrative costs on schools. These costs will be minor because for the most part the regulations merely codify existing due diligence practices. A few schools may be required, as a result of these rules, to expand their due diligence practices. However, these schools are likely to improve the administration of their loan programs, so that any added administrative costs would be offset by increased loan collections. Further, although there are new recordkeeping and reporting requirements, they are minor, imposing an average burden of 51.4 hours on each school.

Second, the rules will have some effect on each school's loan fund. We expect that most schools will comply with the new due diligence requirements and as a result their loan collections should increase. A few schools may not comply with the new requirements, in which case they would be required to reimburse the fund for the unpaid balance of any loan to which these requirements apply.

For the reasons described above, the Secretary certifies that this proposed regulation does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. Further the rule does not meet the criteria for a major rule under Executive Order 12291 and therefore does not require a regulatory impact analysis and review.

Paperwork Reduction Act

These final regulations contain the following recordkeeping, reporting, and disclosure/notification requirements which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511): § 57.208, approval number 0915–0094 (promissory note); § 57.210, approval number 0915–0094 (entrance interview, exit interview, borrower notifications, credit bureau notification); § 57.215, approval number 0915–0094 (reporting requirements).

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, the Department of Health and Human Services amends Subpart C of 42 CFR Part 57 as follows:

Dated: June 20, 1985.

James O. Mason,

Assistant Secretary for Health.

Approved: August 2, 1985.

Margaret M. Heckler,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.342, Health Professions Student Loan Program)

PART 57—[AMENDED]

Subpart C—Health Professions Student Loans

1. The authority citation for Part 57 continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–744, Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920 (42 U.S.C. 294m-q).

2. Section 57.208 is amended by revising paragraph (a) introductory text and paragraph (b) and adding the OMB control number at the end of the section to read as follows:

§ 57.208 Health professions student loan promissory note.

(a) *Promissory note form.* Each health professions student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

* * * * *

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

(Approved by the Office of Management and Budget under control number 0915–0094)

3. Section 57.210 is amended by revising paragraph (b)(1), adding paragraph (b)(4), and adding the OMB control number at the end of the section to read as follows:

§ 57.210 Repayment and collection of health professions student loans.

* * * * *

(b)(1) Each school at which a fund is established must exercise due diligence in the collection of health professions student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview (individually or in groups) with the borrower prior to disbursing HPSL funds in an academic year. During the entrance interview the school must obtain documentation which indicates that the borrower is aware of the rights and responsibilities associated with HPSL funds and personal information which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. The requirements of this subparagraph may be met by correspondence, if the school determines that a face-to-face meeting (individually or in groups) is impracticable.

(ii) Conduct and document an exit interview (individually or in groups) with the borrower. During the exit interview, the school must provide each borrower with information necessary to carry out the terms of repayment, remind the borrower of the rights and responsibilities associated with HPSL funds, and update the personal information collected prior to disbursing HPSL funds which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. If the borrower terminates studies without advance notice, the school must document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail.

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation 1 to 3 months prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least four documented and reasonably spaced attempts to contact the borrower, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective; and

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary.

* * * * *

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the Federal Government will absorb the Federal share of the loss by permitting the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

(Approved by the Office of Management and Budget under contol number 0915–0094.)

4. Section 57.215 is amended by revising paragraph (a), adding paragraph (e), and adding the OMB control number at the end of the section to read as follows:

§57.215 Records, reports, inspection, and audit.

(a) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan funds as the Secretary may find necessary to carry out the purposes of the Act and these regulations. A school must submit required reports to the Secretary within 45 days of the close of the reporting period. A school which fails to submit a required report for its Federal capital contribution fund within 45 days of the close of the reporting period:

(1) Shall be prohibited from receiving new Federal capital contributions;

(2) Must place the revolving fund and all subsequent collections into an insured interest-bearing account; and

(3) May make no new loan disbursements.

The above restrictions apply until the Secretary determines that the school is in compliance with the reporting requirement. A school that fails to submit a complete report within 6 months of the close of the reporting period will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for this reason may reapply for participation in the program once it has submitted the overdue report. The school must also comply with the requirements of 45 CFR Part 74 and section 705 of the Act concerning recordkeeping, audit, and inspection.

* * * * *

(e) Institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(Approved by the Office of Management and Budget under control number 0915–0094.)

[FR Doc. 85–20125 Filed 8–22–85; 8:45 am]

BILLING CODE 4160-15-M

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42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule amends existing regulations governing the Health Professions Student Loan (HPSL) program. This amendment modifies the procedures for determining whether or not a school is in compliance with the 5 percent performance standard.

EFFECTIVE DATE: The amendments made by this rule are effective on June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301–443–4540.

SUPPLEMENTARY INFORMATION: On June 3, 1983, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (48 FR 25071) A Notice of Proposed Rulemaking (NPRM) for the HPSL program which addressed the formula for calculating a school's delinquency rate for purposes of determining compliance with the 5 percent performance standard set forth in 42 CFR 57.216a of the HPSL regulations. The June 3, 1983 NPRM proposed a change the HPSL regulations published on the same day in the **Federal Register** (48 FR 25064), which required that each school participating in the program maintain a delinquency rate of not more than 5 percent based upon either the number of delinquent borrowers (borrower delinquency rate) or the amount of unpaid principal on delinquent loans (dollar delinquency rate). The NPRM proposed to eliminate a school's option to use either the borrower or the dollar delinquency rate to meet the 5 percent performance standard, and instead proposed that only the dollar delinquency rate be used to determine compliance.

The Secretary invited interested persons to submit comments to the proposed rule on or before July 5, 1983. In response to the proposed rule, the Department received 38 comments from school officials and professional associations. A discussion of the comments, the Department's responses, and the regulatory changes follow:

Thirty-six respondents opposed the proposal to eliminate the option of using the borrower delinquency rate to determine compliance with the performance standard. Of these, 13 considered the Department's rationale inadequate, noting that the Department provided no evidence that the use of the dollar delinquency rate would produce the best management of the HPSL program. Five indicated that this proposed change would not increase the amount of dollars collected because the incentive to maximize collections already exists. Four stated that schools need to emphasize small accounts as well as large ones because they are easier to collect and yield significant dollars. In addition, four mentioned that

the concept of concentrating collection efforts on large delinquent accounts is in sharp contrast with the concept of due diligence, which requires that maximum effort be used to collect each loan regardless of its size. They also indicated that the best program management occurs when the school has systematic collection procedures that treat all delinquent loans with equal aggressiveness.

The Department agrees that a school must aggressively pursue the collection of each loan, regardless of size, in order to comply with the requirement to exercise due diligence in the collection of HPSL funds. Nevertheless, eliminating the borrower delinquency rate option will help to assure that, in any collection efforts that go beyond routine activities, a school does not focus undue attention on its smaller delinquent accounts (with the intent of reducing the borrower rate), and thereby devote less effort towards collecting its larger delinquent accounts.

Twelve respondents felt that the 5 percent performance standard is so stringent that achievement of the standard using either the borrower or dollar delinquency rate should be acceptable. In response, the Department notes that although the 5 percent standard may seem stringent, the characteristics of HPSL borrowers (e.g., level of education, employability, and income potential) set them apart from the types of borrowers assisted under other Federal student loan programs which focus primarily on undergraduate students in non-specialized training. In view of these differences, the Department believes it is reasonable to require schools to attain a 5 percent standard for the HPSL program using the dollar delinquent rate. The fact that most HPSL schools have been able to meet this standard, and that borrower delinquency has been a factor in only a few instances of meeting the standard, underscores this point.

Eleven respondents pointed out that because the Department of Education (ED) loan programs differ from the HPSL program in many respects (e.g., the performance standard, delinquency rate formula, definition of delinquent account), it was inappropriate to eliminate the borrower delinquency rate in order to make this one area of program administration consistent with ED. The Department acknowledges that there are many provisions in ED's loan programs which differ from the HPSL program, and that consistency with ED is not in itself an adequate reason for eliminating the borrower delinquency rate option. However, the fact that ED uses a dollar delinquency rate, when considered in conjunction with other reasons which favor eliminating the borrower delinquency rate option, further indicates that the dollar rate is a preferred method for measuring levels of delinquency.

Eleven respondents felt that the proposal unfairly penalizes schools with only a few borrowers in repayment status and may also penalize a substantial number of future students because of the delinquency of a few individuals with high levels of indebtedness. Seven pointed out that normally, before schools can resolve large delinquent accounts, they must devote considerable effort, and that in the interim, for them, the borrower option may be necessary to be able to comply with the performance standard. One suggested that the Department develop a more sensitive system that is responsive to the unique features of different institutions, especially for newer schools.

In response to these comments, the Department notes that although schools with a small number of borrowers in repayment status or several large delinquent accounts could have higher delinquency rates than other schools, the performance standard provision should provide enough leeway to allow these schools to comply, even in the absence of the borrower delinquency rate option. The provision requires a review for compliance with the performance standard on an annual basis, and provides a 6-month probationary period for schools that do not meet the standard at the time of the annual review. This 6-month probationary period, along with the aggressive collection procedures that have been recommended during recent years, should make it possible for a school to reduce its dollar delinquency rate to an acceptable level before penalties would be imposed.

Eleven respondents felt that the proposal unfarily penalizes schools with large numbers of disadvantaged students, and ten commented that it discriminates against disadvantaged students by making them the primary focus of any collection efforts. These comments were founded on the belief that students with large loan amounts may have been the most disadvantaged and may not have completed the degree program, and thus may have the most difficulty repaying. The Department notes that when a school has documentation of circumstances that make it impossible for a borrower to comply with the repayment schedule, the school may renegotiate the schedule or grant forbearance (so long as the period of time does not exceed the original 10-year repayment period), and in doing so may remove the account from delinquent status. In addition, the school can request approval to write off uncollectible loans. When the Department grants write-off approval, the dollar amount of the loan written off is removed from the delinquency rate formula.

Seven respondents insisted that the borrower delinquency rate option is necessary because the formula for calculating the dollar delinquency rate is too stringent. Two noted that including in the numerator the total unpaid principal balance on delinquent loans, rather than just the past due installments, results in an inflated dollar delinquency rate that does not accurately reflect the effectiveness of the school's collection efforts. One commented that the denominator should include the total amount loaned to all borrowers. The Department clarifies that the denominator includes only loans currently in repayment because the formula is designed to measure the effectiveness of a school's current collection efforts. Further, the Department believes that the outstanding principal balance of any loan that becomes more than 60 days past due must be viewed as a potential loss to the fund; thus, an accurate measure of delinquent dollars requires that the school include in the numerator the total unpaid principal balance on these loans.

Nine respondents noted that during the 2-year period before the proposed rule was published schools achieved a substantial reduction in their deliquency rates, and suggested that the Department first determine the extent to which these efforts had been successful before making additional changes in the regulations. The Department agreed that changes in this regulatory provision were inadvisable until there was a better indication of the effectiveness and reasonableness of the existing provision. Accordingly, the Department delayed publication of changes in this provision for 24 months to provide further time to study the impact of the existing regulations.

Data as of December 31, 1984, indicates that 290 of the 313 schools participating in the HPSL program have succeeded in either complying with the 5 percent standard or making the necessary reductions to avoid being placed in suspended status. Further, only 17 schools have needed the borrower delinquency rate to comply with the performance standard provision, and in all but one case, the

dollar delinquency rates for these schools have been within a few percentage points of 5 percent. Therefore, since the majority of health professions schools have succeeded in complying with the performance standard, and the number of schools that have needed the borrower delinquency rate to comply with the 5 percent standard has been small, the Department is implementing its proposal to require that schools use the dollar delinquency rate to comply with the performance standard, effective June 30, 1986.

Regulatory Flexibility Act and Executive Order 12291

One respondent noted that the Department did not adequately explain why a regulatory flexibility analysis was not required. The following statement addresses that concern.

The Department certifies that these regulations will not have a significant economic impact on a substantial number of small entities and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. These regulations implement modified procedures for determining compliance with the 5 percent performance standard. The small entities affected are health professions schools. The effect of the modified procedures will be to eliminate the borrower delinquency rate formula, an option for measuring a schools' HPSL delinquency rate which, as indicated by the data set forth above, has been of little significance under the existing regulations. Therefore, the regulations will not have an adverse economic impact on these institutions.

These regulations have been reviewed in accordance with Executive Order 12291. The Department has determined that these regulations are not major regulations because they do not meet the criteria for major regulations established in the order and, therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

The Department has determined that this amendment to the regulations does not affect the existing reporting and recordkeeping requirements of the program approved by OMB (numbers 0915–0044, 0915–0046, and 0915–0047) under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart C of 42 CFR Part 57 is amended as set forth below.

Dated: June 5, 1985.

James F. Dickson

Acting Assistant Secretary for Health.

Approved: August 2, 1985.

Margaret M. Heckler,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

PART 57—[AMENDED]

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); secs. 740–744 of the Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920 (42 U.S.C. 294m-q).

Subpart C—Health Professions Student Loans

1. The authority citation for Part 57 continues to read as follows:

27. Effective on June 30, 1986, § 57.216a of Title 42, CFR, is revised to read as follows:

§ 57.216a Performance Standard.

On June 30, 1986, and on each June 30 thereafter, except as provided in paragraph (b) of this section, each school must have a delinquency rate (as calculated under paragraph (a) of this section) of not more than 5 percent. All accounts overdue by more than 60 days must be considered delinquent.

(a) The delinquency rate for each school must be calculated by dividing the sum of the total amount of principal outstanding on all loans delinquent by the total principal amount loaned for all loans in repayment status.

(b) Any school that has a delinquency rate greater than 5 percent on June 30 of any year will be required to:

(1) Reduce its delinquency rate by 50 percent (or a school with a delinquency rate below 10 percent must reduce its rate to 5 percent) by the close of the following 6-month period; and

(2) By the end of each succeeding 6-month period, reduce its delinquency rate to 50 percent of the required rate for the previous 6-month period, until it reaches 5 percent.

(c) Any school subject to the provisions of paragraph (b) of this section which fails to comply with those requirements will receive no new HPSL funds and will be required to:

(1) Place the revolving fund monies and all subsequent collections into an insured interest-bearing account;

(2) Make no loan disbursements; and

(3) By the end of the succeeding 6-month period, reduce its delinquency rate to 50 percent of the rate it failed to achieve under paragraph (b) of this section, or 5 percent. A school that meets the requirements of subparagraph (c)(3) of this section will be permitted to resume the use of its HPSL funds, but must continue to comply with the requirements of subparagraph (b)(2) of this section if its delinquency rate is still greater than 5 percent.

(d) Any school subject to the provisions of subparagraph (c)(3) of this section which fails to comply with those requirements will be terminated from the program and must return all Federal funds in the loan account to the Department. Any school which has been terminated must continue to pursue collections and may reapply for participation in the program only when it has attained a delinquency rate of 5 percent or less.

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Part VI

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Nursing Student Loan Program; Final Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 57

Nursing Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule amends existing regulations governing the Nursing Student Loan (NSL) program set forth in Subpart D of 42 CFR Part 57. These revisions: (1) Reflect legislative amendments made to sections 835–841 of the Public Health Service Act (the Act) since the existing regulations were published in the **Federal Register** on May 9, 1974; (2) simplify the existing regulations so that they are written in clear, concise language; (3) strengthen the regulations regarding recordkeeping and collection procedures; (4) impose more detailed requirements concerning the exercise of due diligence by schools in loan collections; and (5) establish a performance standard against which a nursing school's delinquency rate will be measured.

EFFECTIVE DATE: These regulations are effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: In response to concerns expressed about the manner in which schools and the Federal Government administer the NSL program, the Department published in the **Federal Register** of June 3, 1983 (48 FR 25072) and September 6, 1984 (49 FR 35328), two Notices of Proposed Rulemaking (NPRMs). These proposed rules were designed to strengthen the regulations regarding recordkeeping and collection procedures, specify procedures that a school must follow prospectively in order to satisfy the due diligence requirement in the collection of loans, and establish a performance standard against which a nursing school's delinquency rate would be measured.

The proposed regulations of June 3, 1983, also incorporated legislative amendments made to sections 835–841 of the Act since the existing regulations were published in the **Federal Register** on May 9, 1974. Even though these legislative amendments have not been reflected in published regulations until now, they have been applicable to the administration of the NSL program as of their statutory effective dates. The amendments are as follows:

(1) The Nurse Training Act of 1975, Pub. L. 94–63, enacted on July 29, 1975, repealed the Federal Capital Loan (FCL) Fund except to honor existing commitments and added training to be a nurse anesthetist as an eligible deferment activity;

(2) The Nurse Training Amendments of 1979, Pub. L. 96–76, enacted on September 29, 1979, repealed the cancellation benefits for loans made on or after September 29, 1979; and

(3) The Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, enacted on August 13, 1981, repealed the prohibition against the receipt of concurrent National Direct Student Loan (NDSL) funds and NSL funds and increased the NSL interest rate from 3 to 6 percent per year.

Other changes proposed in the June 3, 1983 NPRM were intended to simplify the existing regulations so that they are written in clear, concise language, revise the index to reflect these changes, and incorporate minor technical and editorial changes.

The Secretary invited interested persons to submit comments on the proposed rules and received 117 comments from students, school officials, and professional and student organizations. A discussion of the comments, the Department's responses, and the regulatory changes follows.

Discussion of Comments, Responses and Regulatory Changes

Section 57.305 Nursing student loan funds.

Seven respondents supported the proposed amendment to § 57.305(a)(1)(iii), which would allow schools to charge to the NSL fund the costs associated with membership in credit bureaus. Accordingly, the Department has implemented this provision as proposed.

Section 57.306 Eligibility and selection of nursing student loan applicants.

Section 57.306(a)(2): Thirteen of 15 respondents supported § 57.306(a)(2), which would require NSL applicants who previously have attended an institution of higher education to submit a financial aid transcript. Two respondents objected to the requirement to collect information on prior grants as part ot the financial aid transcript. They were concerned that this would conflict with Department of Education (ED) requirements, require a separate financial aid transcript form, and create unnecessary paperwork. One suggested that the Department coordinate with ED so that a single form would satisfy all Federal loan programs.

In response to these comments, the Department believes that information on a debtor's previous financial aid and indebtedness, including refunds owed on grants, would be useful in the administration of the NSL program, and has therefore retained the provision as proposed. The financial aid transcript provision does not preclude schools from using the same form that is currently used for ED programs since information on grants can be collected on this form.

One respondent suggested that the Department limit the financial aid transcript requirement to those borrowers who have attended other educational institutions within 5 years prior to application. Another was concerned that information would not be available if the record retention period had lapsed. The Department does not believe that a time limit is necessary or advisable since a borrower who has been away from school for more than 5 years could still have delinquent loans. If the record retention period has lapsed, this requirement would be satisfied by certification of that fact by the institution which the borrower previously attended.

One respondent encouraged the Department to allow schools flexibility in awarding funds if the financial aid transcript was not readily forthcoming. Specifically, it was suggested that the cutoff date for submission should be the time of disbursement of loan funds rather than the time of application. The Department has made no change since the regulations do not specify a cutoff date for submission of the transcript. Because the regulations are silent regarding this issue, each school will be responsible for determining the date by which an NSL applicant who previously attended an institution of higher education must submit a financial aid transcript.

Section 57.306(b)(2)(i): Eleven respondents supported § 57.306(b)(2)(i), which would require schools to use one of the national needs analysis systems or any other procedure approved by the Secretary of Education set forth in 34 CFR 674.13 for use in determining the financial needs of an applicant. Accordingly, the Department has implemented this provision as proposed.

Section 57.308 Nursing student loan promissory note.

Section 57.308(a): One respondent objected to the proposed amendment to

§ 57.308(a), which would require that the promissory note be in a form approved by the Secretary, and suggested that the promissory note form be subject to State requirements rather than Federal regulations. The Department clarifies that the existing regulations require the Secretary's approval of the promissory note to assure that the note contains those terms and conditions required by the NSL statute and regulations. However, State requirements would apply to any promissory note provisions which are not addressed in the NSL statute or regulations.

Section 57.308(a)(2): Thirteen respondents supported § 57.308(a)(2), which would require that promissory notes contain a clause permitting the acceleration of delinquent loans at the school's option. However, five respondents were concerned that the Department not impose the acceleration clause retroactively on existing signed promissory notes. The Department notes that the acceleration clause will be required as part of any promissory note signed on or after the effective date of these regulations, but cannot be added to notes signed prior to that date without the borrower's agreement.

One respondent suggested that acceleration only be exercised as a last resort. The Department has made no change since the provision as proposed allows the school to determine when to accelerate a loan. The Department expects that school officials will use their professional judgment to determine when acceleration is appropriate.

One respondent suggested that the language of the acceleration clause should be similiar to the NDSL program language. The Department will be using the language from the Health Professions Student Loan (HPSL) promissory note, which is similar to the NDSL language.

Section 57.308(b): Four respondents supported the amendment to § 57.308(b), which would require that, where State law permits individuals to void contracts entered during minority, schools must obtain security or endorsement on promissory notes with minors. Since there was no opposition the Department has implemented this provision as proposed.

Section 57.310 Repayment and collection of nursing student loans.

Section 57.310(a)(2): Nine respondents opposed § 57.310(a)(2), which would require that any borrower whose repayment becomes more than 60 days past due must establish a monthly repayment schedule with the school. Six noted that this provision would be burdensome for institutions which do not use outside billing agents and have limited staff. They also felt that the cost would exceed the benefit of revising the schedule and that the time required to comply with this requirement would detract from time that could be devoted to other collection activities, resulting in less effective due diligence procedures. Three suggested that placing delinquent borrowers on monthly schedules be optional rather than required. Others were concerned that this requirement was overly stringent, arbitrary, and unwarranted, was not in the best interests of the program, and did not allow enough time to exercise due diligence prior to revising the schedule.

In response to these comments, the Department has retained this provision because placing delinquent borrowers on monthly schedules will assure frequent contact and more management payment amounts. The Department also expects that as borrowers become aware of this requirement it will serve to prevent delinquencies and thus will not create a substantial amount of additional work for loan collection staff.

Several respondents were concerned that this requirement would violate State law and therefore suggested that the new provision be applied only to borrowers who graduate or receive loans after the amended regulations take effect. The Department notes that borrowers who become delinquent forfeit their rights to any previously established repayment agreement. Accordingly, it is legally supportable to impose this requirement on any borrowers who are delinquent on or after the effective date of these regulations, regardless of when they graduated or received their loans.

One respondent suggested that the Department require monthly payments for all borrowers (non-delinquent as well as delinquent) and automatically accelerate loans in default. The Department has not adopted this suggestion because requiring monthly payments for all borrowers may not be warranted. Further, since acceleration of defaulted loans is not always appropriate, school officials are expected to use their professional judgment to determine when the option to accelerate a delinquent loan should be exercised.

One respondent was concerned that the language of this provision should be changed to clarify that it is the school's responsibility to bill delinquent borrowers on a monthly basis rather than the borrower's responsibility to establish a monthly schedule with the school. In response, the Department has revised § 57.310(a)(2) to state that the school must place delinquent borrowers on monthly repayment schedules.

Section 57.310(a)(3): Sixteen of 18 respondents supported § 57.310(a)(3), which would permit schools to grant forbearance when extraordinary circumstances such as unemployment, poor health, or other personal problems affect the borrower's ability to make payments. Two expressed concern that the regulations did not provide sufficient guidance regarding the length of forbearance periods or criteria for granting forbearance and anticipated that this provision could allow schools to artificially reduce their delinquency rates. Another felt that borrowers with high indebtedness and low incomes should qualify for forbearance.

In response to these comments, the Department has not changed the language of the forbearance provision since including more specific criteria in the regulations may unduly restrict schools in granting forbearance. The provision as implemented will allow school officials to use their professional judgment to determine when a borrower's situation warrants a temporary suspension of his or her scheduled payments.

Section 57.310(b)(1)(i): Seven respondents opposed § 57.310(b)(1)(i) which would require the school to conduct and document an entrance interview with the borrower. These respondents stated that most schools would find it difficult if not impossible to have an entrance interview with each loan recipient due to staff and time and that it was unnecessary, since carrying out all of the other due diligence steps should result in timely repayment of student loans. Four respondents disagreed with the Department's statement that conducting entrance interviews is a common practice among institutions.

As alternatives to the proposed entrance interview requirement, these respondents recommended the following: (1) That the promissory note be regarded as sufficient notification to the borrower of his or her repayment responsibilities; (2) that the Department permit group entrance interviews; (3) that the Department permit schools to conduct the entrance interview by mail; (4) that the language in the NDSL regulations (34 CFR Part 674.16), which specifies information which the borrower must receive and permits the school to mail the information to borrowers, be adopted in place of this requirement; and (5) that the entrance interview be suggested but not required. Four respondents also requested that, if implemented, the requirement be

explained in greater detail and phased in over 2 years to allow schools time to allocate sufficient money and personnel for its implementation.

In developing the proposed entrance interview provision, the Department purposely chose language that did not specify the manner in which the entrance interview must be conducted so that each institution would have the flexibility to develop entrance interview procedures that are practical, given its level of staff and financial resources. The Department views the term "entrance interview" to mean a meeting (individually or in groups) during which the school informs the borrower of the rights and responsibilities associated with the loan and obtains personal information from the borrower that would assist in the loan collection process.

Since the public comments expressed both opposition and uncertainty regarding the proposed requirement of an entrance interview, the Department has modified the provision. The provision as modified requires that before disbursing NSL funds to a borrower in a given academic year, the school must have documentation which indicates that the borrower is aware of the rights and responsibilities associated with NSL funds, and must obtain personal information that would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. Although the Department would prefer that entrance interviews be conducted in person (individually or in groups), it is possible for the requirements of the provision, as modified, to be met through an exchange of information by mail when a face-to-face meeting is impracticable. However, the Department encourages schools to use the entrance interview as an opportunity to provide borrowers with comprehensive debt management counseling in order to prevent delinquency.

Section 57.310(b)(1)(ii): Six of eight respondents supported § 57.310(b)(1)(ii), which would require schools to conduct and document exit interviews with borrowers. Both opponents requested that the Department clarify the information that schools must collect during the exit interview so that schools could be assured that they are in compliance with this requirement. In response to these comments, the Department has modified the provision to require that, during the exit interview, the school must inform each borrower of the terms of repayment, remind the borrower of his or her rights and responsibilities, and update the personal information collected during the entrance interview which would assist in locating the borrower if he or she fails to notify the school of an address change.

Sections 57.310(b)(1) (iii) and (iv): Four of six respondents supported §§ 57.310(b)(1) (iii) and (iv), which would require that the school notify the borrower in writing of the impending repayment obligation at least twice during the grace period and once prior to the end of an approved period of deferment. One opponent indicated that these provisions were unnecessarily restrictive and suggested that the specific requirements (e.g., two grace period notifications) be removed to provide greater flexibility. The other opponent stated that these were excellent guidelines but objected to them as requirements which, if not met, would automatically result in denial of a write-off request (regardless of the extensiveness of a school's collection efforts as a whole) for loans covered by these regulations.

The Department developed these proposals in response to schools' requests for a series of specific regulatory procedures that would clarify the due diligence requirement for purposes of requesting approval to write off uncollectable loans. Therefore, the Department has implemented them as proposed, except that the time frame during which the notification to a borrower in deferment must occur has been changed to 1 to 3 months prior to the expiration of the approved deferment period to provide schools with more flexibility in complying with this provision.

Section 57.310(b)(1)(v): Four of seven respondents supported § 57.310(b)(1)(v), which would require that schools perform regular billing. Opposition to this requirement was based on its being unnecessarily restrictive, and acceptable as a guideline but not as a requirement. One respondent noted that during the past 4 years his school has adopted all of the Department's other suggestions and has succeeded in reducing its delinquency rate from 37.7 percent to less than 10 percent without performing regular billing. He explained that borrowers are given a repayment schedule and that the school has a strict follow-up plan for past due payments. Based on the cost estimates for implementing a regular billing practice, as compared with the total dollars collected annually, he felt that the additional expense for regular billing could not be justified. Since the school's decreased delinquency rate indicated that existing collection practices were working, the respondent felt that this requirement was unfair and would result in increased administrative costs that would have to be passed on to the students.

In response to this comment, the Department believes that regular billing is an essential part of normal due diligence practices, but also notes that the statement at the end of § 57.310(b)(1) allowing alternative practices with departmental approval would provide for consideration of unusual circumstances such as the one described above. Therefore, this provision has been implemented as proposed.

Section 57.310(b)(1)(vi): Nine respondents opposed § 57.310(b)(1)(vi), which would require at least five attempts to contact past due borrowers prior to their payments becoming 120 days past due. These respondents indicated that five written contacts were excessive, costly, and unnecessarily restrictive, and could cause confusion when letters demanding payment crossed in the mail with payments from borrowers. One respondent also noted there are no data to show that the cost-benefit ratio of five contacts is greater than that of three or four contacts, two felt that the return was not commensurate with the cost of a fifth letter, and one felt that the burden of implementing this requirement would be greater than 18.4 hours.

One respondent suggested that since regular billing will continue during this time, three notices in addition to the regular billing should suffice. Two suggested that this provision of the NSL regulations should be consistent with the Department of Education's (ED) proposed modification to the NDSL regulations, which would require three written notices within 60 days of deliquency. Others recommended that three contacts should be adequate, that 30-day intervals between contacts would be more cost-effective, and the greater flexibility was necessary. One suggested that this provision be recommended but not required.

In response to these comments, the Department has modified this provision to require a minimum of four documented and reasonably spaced contacts, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower. These revisions will permit each school to use follow-up procedures for collecting NSL funds which are consistent with its NDSL collection procedures and will provide the option of using personal or telephone contacts

as part of its follow-up procedures. Personal of telephone contacts, if used, must be documented as to the date of contact, the person(s) contacted, and a short summary of the substance of the conversation. The requirement that the contacts be reasonably spaced will permit each school to establish intervals which will be most effective in its collection efforts but will also assure that a school does not make four contacts in a single week and claim to be in compliance with the provision. Further, the revised provision makes allowance for those cases in which a school does not have a current address for the borrower and thus cannot make four contacts in the 120-day period following the payment due date. The Department reminds schools that this provision sets forth minimum requirements, and strongly encourages schools to include additional written, telephone, or personal contacts in their follow-up procedures as necessary to maximize the effectiveness of their loan collection efforts.

Section 57.310(b)(1)(vii): Four of five respondents supported § 57.310(b)(1)(vii), which would require schools to perform address searches when necessary. One respondent objected that the regulations do not specify when an address search would be necessary and indicated that this requirement could be more time consuming, costly, and burdensome to loan officers than the Department intended, as described under the regulatory impact section.

The Department clarifies that an address search would be necessary when the school's current address for the borrower is not correct. Although address searches may be time consuming and costly in some cases, this requirement is an essential part of sound due diligence procedures, and thus has been implemented as proposed.

Section 57.310(b)(1)(viii): Ten of 13 respondents supported § 57.310(b)(1)(viii), which would require the use of collection agents as part of the due diligence procedures. Two respondents felt that the use of collection agents should be at the discretion of the institution and one questioned how a school using an internal collection agent can be assured that its efforts meet this requirement. The Department clarifies that as long as the internal collection agent is performing basically the same functions as an external collection agent the school would be in compliance with this requirement. Since this is an essential part of normal due diligence procedures, the Department has implemented the provision as proposed.

One respondent requested that the Department allow the costs of in-house collection agents to be charged to the fund. The Department notes that § 57.305(a)(1) of these regulations permits schools to charge to the fund, to the extent specifically approved by the Secretary, other collection costs that are in excess of the usual expenses incurred in the collection of NSL funds. Under this provision, the Secretary permits schools to charge the costs of a collection agent (commercial or in-house) to the NSL fund as long as the school is exercising due diligence in its collection efforts. Further guidance regarding the actual in-house collection agent costs that can be charged to the fund is provided in program policy documents.

Section 57.310(b)(1)(ix): Six of 11 respondents supported § 57.310(b)(1)(ix), which would require that schools institute litigation to collect delinquent loans after all other collection efforts have failed, provided that litigation is appropriate. The opposition focused on the lack of criteria to be followed in determining whether to litigate. There was concern that litigation might present a financial problem for nursing schools, and that if the cost of litigation exceeded the balance of the loan litigation might be appropriate but would not be in the best interest of the school. The respondents requested that determinations of when to litigate either be left solely to the discretion of the institution or be specifically defined by the Department so that a write-off request could not be denied if the Department disagreed with the school's criteria for deciding when to litigate. One suggested that litigation be optional.

In response to these comments, the Department clarifies that a school should not litigate a delinquent loan when such action would not be cost-effective, but considers litigation an essential part of sound due diligence procedures in any other cases. Accordingly, the Department has modified this provision to require litigation unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective.

Section 57.310(b)(1)(x): Fourteen of 27 respondents supported § 57.310(b)(1)(x), which would require each school to become a member of a credit bureau and notify the credit bureau of accounts overdue more than 120 days, when appropriate.

Five respondents felt that the use of credit bureaus should be optional. Others considered this an unreasonable, time-consuming, and costly administrative burden for schools that were effectively collecting their loans without using credit bureaus. Several questioned its effectiveness for improving loan collections and one suggested that schools with delinquency rates under 5 percent not be required to bear the expense of using a credit bureau.

The Department considers credit bureaus to be valuable collection tools, regardless of a school's delinquency rate, that warrant the additional burden associated with their use. Since most borrowers are interested in maintaining a good credit rating, the Department expects that this requirement will serve primarily to prevent loans from becoming seriously delinquent, and thus the administrative burden should be minimal. Also, schools may charge the costs associated with membership in a credit bureau to the loan fund since those costs may reasonably be considered "costs of collection" within the meaning of section 835(b)(3) of the Act.

Two respondents suggested that schools not be required to use credit bureaus until all other collection efforts have proven unsuccessful, and one commented that the requirement to report loans 120 days past due could preclude a delinquent borrower from securing a commercial loan to repay the NSL loan and would thus inhibit rather than aid the collection process. Two also requested that the Department clarify those circumstances when it would be inappropriate for schools to use a credit bureau.

The Department expects that this provision, by requiring schools to report only those loans more than 120 days past due to credit bureaus, will provide schools with adequate opportunity to exhaust less stringent collection efforts before having to take this step. Although there could be occasional instances where disclosure of a borrower's delinquent status to a credit bureau would make it more difficult for the borrower to repay, many schools have indicated that reporting to a credit bureau is more often an effective collection technique which augments rather than impedes their collection efforts. Therefore, the Department has maintained the provision and has clarified it by deleting the reference to "when appropriate." This revision will require that a school apply the credit bureau provision uniformly. The Department also clarifies that if a school

encounters situations in which it believes that a credit bureau should not be used, it may request an exception as permitted under § 57.210(b)(1).

One respondent stated that this provision would be of little or no value for selecting borrowers. The Department clarifies that this requirement does not pertain to the selection of borrowers but rather to the school's efforts to collect from delinquent borrowers.

Five respondents commented that the Department should not apply the requirements to use collection agents, litigation, and credit bureaus retroactively. The Department will require these three steps as part of each school's due diligence procedures as of the effective date of these regulations. Henceforth, schools will have to apply these requirements in the collection of any delinquent loans since it is reasonable for a school to use these procedures regardless of when the loan was awarded.

Section 57.310(b)(1): Three of five respondents supported the last sentence of § 57.310(b)(1), which would permit schools to substitute other collection techniques in place of those outlined in the regulations, provided that they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary. One respondent commented that the requirement to demonstrate the effectiveness of a technique would be burdensome. In response to this comment, the Department believes it can permit the substitution of an alternative procedure only if it is clear that the regulatory due diligence requirement is still met.

One respondent suggested that the Department amend the provision to specify that when the Secretary grants written approval of alternative practices the school would be notified that the ten provisions for due diligence no longer apply to that institution. The Department clarifies that the Secretary's written approval of alternative practices would state that the school no longer would be required to comply with whichever of the ten steps would be affected by the alternative practice, but that the school still would be required to comply with any of the steps which would not be so affected.

Section 57.310(b)(4): Nine respondents opposed § 57.310(b)(4), which would clarify the write-off procedures. Four respondents objected to the requirement that a school must reimburse the NSL fund for uncollectible loans on which it failed to exercise due diligence and felt that this provision should not apply to old loans. The Department points out that there has been a longstanding regulatory requirement to exercise due diligence in the collection of NSL funds, and that the means by which that requirement has been enforced has been to require reimbursement of the fund for uncollectible loans for which there is insufficient evidence of due diligence. This enforcement tool is necessary to assure proper stewardship of Federal funds and to maintain the solvency of the NSL funds; therefore, it will continue to apply to all loans.

One respondent felt that this provision would discourage the use of the write-off process since it requires schools to reimburse the fund for loans that are disapproved. The Department clarifies that although schools are responsible for reimbursing the NSL fund for disapproved write-off requests there is no required time frame within which reimbursement must occur. Accordingly, if a write-off request is disapproved, the school may reimburse the fund out of institutional monies at any time prior to the distribution of assets.

Another respondent felt that the issue in reviewing a write-off request should be whether the institution's inaction contributed to a loan's uncollectibility, not whether the institution can document that it completed each step of the due diligence procedure. The Department believes that failure to perform any of these steps would be an important factor in contributing to the uncollectibility of a loan and therefore would be proper grounds for denying write-off.

Two respondents were concerned that the Department would apply the due diligence procedures in § 57.310(b)(1) (i) through (x) retroactively, rather than prospectively, in reviewing write-off requests. The Department clarifies that the series of procedures outlined in (i) through (x) are required steps of the due diligence process as of the effective date of these regulations. For any loan made on or after that date a school must follow each of the steps (i) through (x) (unless it has requested and received written approval of alternate techniques) to be in compliance with the due diligence requirement.

For any loan made prior to the effective date of these regulations, a school must apply the new due diligence requirements prospectively to the extent that it is possible to do so. Thus, in order to be in compliance with the due diligence requirement for such a loan, the procedures that a school followed prior to the effective date of these regulations must be in conformance with "generally accepted collection practices," as required by the previously existing regulations, and the procedures followed after the effective date of these regulations must include any steps of the new requirements that can be followed prospectively (unless alternate techniques have been approved).

Section 57.313a Loan cancellation reimbursement.

Two respondents commented on the provision for reimbursing schools for their share of loans canceled for service, death, or disability in the event insufficient funds are available to pay all schools in a given fiscal year. One respondent felt that this would encourage schools to refuse cancellation requests. The Department notes that a school cannot deny cancellation benefits to borrowers who are eligible for cancellation and who notify the school of their eligibility in a timely manner.

One respondent stated that the Federal Government was obligated to fulfill this contractual obligation on time and that failure to do so would deprive new students of NSL funds. The Department notes that although section 836(c) of the Act provides for the reimbursement of canceled loans, it does not indicate when such reimbursement should occur. Further, cancellation reimbursements are institutional funds and do not go back into the NSL fund unless the school chooses to deposit them in the fund as part of the institutional contribution.

Section 57.315 Records, reports, inspection, and audit.

Section 57.315(a)(1): Three respondents opposed § 57.315(a)(1), which would state that required reports must be submitted to the Secretary within 45 days of the close of the reporting period. Two suggested that the time frame be changed to 60 days after the close of the reporting period, believing that 45 days did not allow sufficient time to conduct a complete reconciliation and prepare an auditable document. Another suggested that schools be granted 90 days to complete and submit required reports. The Department has not changed this provision since the 45-day reporting deadline is critical for assuring that Federal monitoring activities, such as reviewing school's delinquency rates and complying with Federal reporting requirements, can be conducted on a timely basis.

Two respondents opposed the requirement that schools submit quarterly reports. Since the performance standard provision requires a biannual review of those schools with delinquency rates greater than 5 percent,

the respondents felt that it would be more appropriate to implement semiannual reports and require the December 31 report only from schools with delinquency rates greater than 5 percent. The Department notes that § 57.315(a)(1) does not specify the frequency of required reports and thus does not preclude the possibility of less frequent reporting requirements in the future if the Department finds that such a change is possible. Currently, however, the quarterly report is necessary for complying with Federal reporting requirements and for monitoring cash balances and other indicators of proper program management.

Section 57.315(a)(3): One respondent opposed § 57.315(a)(3), which would require that repayment records be retained for 5 years after a loan has been repaid, and suggested that this proposal be amended to allow for disposal of these records sooner if an audit has been performed. The Department has not changed this provision since it considers the retention of records for this period to be essential for monitoring purposes.

Section 57.315(b)(2): Two of three respondents supported § 57.315(b)(2), which would require that an institution receiving NSL funds must have itself audited by non-Federal independent auditors every 2 years. One expressed concern that there was no mention of startup dates or required time frames and suggested that schools be allowed to have the NSL audit performed in conjunction with the audit of the campus-based programs. The need for an audit guide also was mentioned. The Department does not consider it appropriate to include audit dates or time frames in the regulations but will issue guidance in policy documents after publication of these regulations. In addition, the Department notes that the *Student Financial Aid Guidelines* contain an audit section which is to be used in conjunction with ED's audit guide for the campus-based programs in performing the NSL audit. The Department will notify schools of any changes in audit procedures through future policy memoranda.

Section 57.315(c): The Department has also included a paragraph (c) in this section to state that institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations. This language is being added to clarify the role of the HHS Office of Inspector General in investigating actual or suspected acts of fraud, as well as to inform individuals who are party to financial transactions involving these funds of their responsibility to report information regarding such acts to the appropriate Regional Inspector General for Investigations.

Section 57.316a Performance standard.

Maximum Level of Delinquency: Seventy-three respondents opposed the 5 percent performance standard. Of these, 48 felt that it was unreasonable and overly restrictive for nursing schools. Thirty-one objected to the Department's use of delinquency statistics from commercial lending institutions in developing the 5 percent performance standard, feeling that there were too many differences between commercial loans and nursing student loans to make this an appropriate comparison. Nineteen noted that commercial lending institutions consider employment history, income level, and creditworthiness in determining a borrower's eligibility for funds, factors which are not considered in making NSL awards. In addition, they noted that nursing student loans are unsecured and have a different level of risk than commercial loans since borrowers have to demonstrate financial need in order to receive NSL funds. Others mentioned differences in the length and timing of the repayment period, the level of collection experience of the lending institutions, and the borrowers' understanding of repayment responsibilities.

The Department is aware of the different criteria used for granting a commercial loan as compared with a nursing student loan. However, the Department used the delinquency rates for professionals who borrow from commercial lending institutions as a basis for the NSL performance standard because of the similarities between professionals with commercial loans and NSL borrowers at the time of repayment.

Seventeen respondents objected to the adoption of a 5 percent performance standard based on a comparison of NSL and HPSL borrowers, noting that NSL borrowers have lower incomes, less earning power, lower employment rates, different job opportunities, different economic backgrounds, and higher rates of attrition. Five respondents considered the comparison between NSL borrowers and other professionals with loans inappropriate since the income level of nurses does not approach the income level of other professionals. Twelve indicated that NSL borrowers are often unable to repay because of their high indebtedness and other financial responsibilities which cannot be managed adequately on their low starting salaries. They felt that the 5 percent performance standard failed to recognize the economic situation of most NSL borrowers. Four stated that a standardized measure was not equitable because of regional economic problems that affect the ability of borrowers to repay.

In response to these comments, the Department notes that although NSL borrowers generally have a different income level than HPSL borrowers, those who graduate do have a marketable skill which should make it possible to obtain employment and thus repay their loans. Further, in any situation where economic hardship is preventing the borrower from making his or her scheduled payments, the school may renegotiate the repayment schedule or grant forbearance (as long as the 10-year repayment period is not exceeded), and in doing so may remove the borrower from delinquent status.

Eight respondents indicated that the proposed performance standard is racially discriminatory and penalizes schools which actively recruit low-income and disadvantaged students, since it would force these schools to terminate their participation in the program, and thereby preclude many of the neediest students from receiving NSL funds. The Department expects that the implementation date for the performance standard, as indicated below, along with the methods available for reducing delinquency rates (e.g., write-off, renegotiation, forbearance, and tools for aggressively pursuing delinquent borrowers), should make it possible for all schools, including those with a high percentage of low-income and disadvantaged students, to comply with these regulations.

Twenty-eight respondents suggested that a 10 percent standard would be more realistic. Six suggested that the Department adopt the NDSL criteria, which allows a school to continue using collections regardless of its delinquency rate but uses the delinquency rate to determine eligibility for new Federal capital contributions. Three respondents wanted the Department to consider the effectiveness of each institution in reducing its delinquency rate and recognize good faith efforts made by an institution regardless of its delinquency rate. Two other respondents suggested that the Department determine an acceptable delinquency rate for each school based on the socioeconomic

composition of its student population. Other suggestions included changing the performance standard to 15 percent, lowering the standards for write-off, applying the 5 percent performance standard only to loans made since the recent emphasis on debt collection, establishing an appeals process, and delaying implementation until Congress enacts legislation allowing the use of the Internal Revenue Service (IRS) for skip-tracing. One respondent stated that it was inappropriate to impose a 5 percent performance standard for the NSL program on the basis of a 3.2 percent delinquency rate among professionals who have loans since the delinquency rate formula used by the American Bankers' Association (ABA) is more lenient than the formula proposed by the Department.

In response to these numerous comments, and in order to determine the most appropriate performance standard for the NSL program, the Department considered the following: (1) The improvements in debt management that have occurred at nursing schools since December 1981; (2) the current delinquency rates in the NSL program; (3) a comparison of the average delinquency rates for the HPSL and NSL programs; (4) a comparison of the HPSL and NSL delinquency rates at institutions that participate in both the HPSL and NSL programs; and (5) legislative and programmatic similarities and differences between the HPSL and NSL programs. Based on the above considerations, and because the Department believes that the 5 percent performance standard level provides the most effective way of encouraging schools to reduce their delinquency rates and thereby maximize the level of dollars in their revolving NSL funds, the Department has implemented the provision as proposed.

Definition of delinquent account: Twenty-seven respondents opposed the provision to define as delinquent any loan more than 60 days past due. Fourteen noted that the majority of loans 60–120 days past due do not represent bad debts but eventually return to current status and are paid in full. The proposed definition of a delinquent account was therefore considered unreasonable, unrealistic, and unjustified. Nine felt that this was inconsistent with the due diligence procedures since it does not allow adequate time to perform the suggested steps before a loan has to be considered delinquent. Others noted that this contrasts with prior departmental policy and is at variance with the NDSL program, which uses 120 days as the cutoff point for delinquent accounts.

In response to these comments, the Department clarifies that the 60-day definition of delinquency was proposed to assure that the delinquency rate accurately reflects those accounts which are collection problems for the school. Although borrowers 60-120 days past due may eventually repay in full, collecting their accounts requires extra effort by the school and therefore, the Department believes that they should be reflected as delinquent accounts until they are made current.

Delinquency rate formula: Forty-one opposed the formula for calculating a school's delinquency rate. Of these, sixteen indicated that there was no justification for considering the entire outstanding principal balance of a delinquent loan as uncollectible, and nine proposed that the formula include in the numerator only the past due amount on delinquent loans. Others suggested that the Department exclude from the numerator principal not yet due for accounts 60-90 days past due. As indicated above, the Department considers accounts more than 60 days past due to be collection problems for the school which represent potential losses to the fund. Therefore, the Department believes it is appropriate to include in the numerator the principal outstanding on loans more than 60 days past due.

Eleven respondents felt that the denominator should include retired loans. Others suggested that the denominator should include accounts in deferment, and that the formula should exclude accounts in default and accounts on which the school can take no further action. The Department considers it inappropriate to include retired loans or loans in deferment in the denominator since the purpose of the delinquency rate calculation is to measure a school's effectiveness in collecting those loans on which borrowers currently should be making payments. The Department reminds schools that in addition to excluding loans that have been fully repaid by borrowers, the formula also does exclude uncollectible loans that have been written off or reimbursed by the school. When a school has exercised due diligence, uncollectible accounts normally should become eligible for write-off before other accounts that entered repayment status at the same time have been fully repaid by the borrower; thus, the exclusion of fully retired loans should be offset by the exclusion of uncollectible loans.

Six respondents stated that a standard delinquency rate formula cannot provide an accurate assessment of a school's due diligence procedures, and five considered the formula unrealistic and inaccurate. Four noted that the proposed formula was inconsistent with the NDSL formula and two suggested that the Department adopt the NDSL formula. Four others objected to the formula because it fails to consider the level of risk associated with the student population at each institution. One respondent noted that the ABA formula used to calculate the delinquency statistics cited by the Department in the June 3, 1983 NPRM includes in the numerator only the past due amount rather than the total principal outstanding on delinquent loans.

In response to these comments, the Department recognizes that delinquency formulas do vary significantly from one organization to another depending upon what they are designed to measure; therefore, the formula used by one agency or organization is not necessarily appropriate for another agency. After considering these comments and evaluating various alternatives to the proposed formula, the Department has determined that the delinquency formula should not be modified since it provides a conservative measure of the effectiveness of a school's current collection efforts, and thereby assures responsible fiscal management of public funds.

Respondents also suggested that the Department allow any account more than 2 years past due to be written off automatically and thus be excluded from the delinquency rate. The Department has not adopted this suggestion since it would be poor stewardship of Federal funds to permit write-off approval if a school had not exercised due diligence in its collection efforts.

Five respondents suggested that for accounts on which borrowers are making partial payments the Department should include only the amount in arrears in the numerator and five others thought that the Department should consider any accounts with regular payment patterns as current. The Department clarifies that any loan on which the borrower is making partial payments on a regular basis may be eligible for a renegotiated repayment schedule, in which case the borrower would no longer be delinquent if he or she makes payments as required by the revised schedule.

Two respondents stated that the Department should exclude dropouts and accounts in litigation from the delinquency formula. The Department notes that dropouts who are unable to make payments due to financial hardship may be eligible for forbearance in which case they are not included in the delinquency calculation. However, the Department does not exclude loans in litigation from the delinquency calculation since these loans are still delinquent and the school can continue to make efforts to collect them during the litigation proceedings.

Implementation date and phase-in procedures: Thirty respondents opposed the proposed implementation date and phase-in procedures for the performance standard. Nineteen considered these procedures unrealistic, unreasonable, and illogical. Three felt that December was a bad time of year for determining compliance with the performance standard since it could prohibit schools from fulfilling award commitments made at the beginning of the academic year and is typically a time when mail is slow and many of the borrowers and institutional staff are on vocation. Two noted that a 6-month period for reducing the delinquency rate by 50 percent did not provide adequate time to exhaust the more complex due diligence steps of collection agents and litigation and also request write-off approval. Others stated that these procedures would penalize schools which have been working hard to improve their collection efforts during the past 2 years and are now faced with their more difficult accounts. Several suggested alternative proposals such as allowing schools more time (ranging up to 3 years) to meet the performance standard, reviewing schools annually rather than semiannually, recognizing good faith efforts, reviewing schools for compliance with due diligence rather than compliance with a performance standard, and establishing performance checkpoints based on reductions of 25–33 percent rather than 50 percent.

In response to these comments, the Department has established the implementation date of the performance standard as June 30, 1986. This should provide nursing schools with adequate time to exhaust the more complex due diligence steps for accounts that are currently delinquent and request write-off approval for uncollectible loans before the performance standard is implemented.

Penalty for noncompliance: Thirty-four respondents opposed the penalty for noncompliance with the performance standard. Twenty-one felt that it was inappropriate, would have a harsh impact on needy students, and would deny the opportunity for a nursing education to low-income and disadvantaged individuals. Eight stated that it would result in the termination of the NSL program at most schools. Five felt that it unduly penalizes schools which are exercising due diligence but are unable to meet the performance standard, four considered it inconsistent with the intent of the NSL legislation, and two indicated that it would reduce incentive to continue collections.

Six respondents suggested that the Department should be required to show direct proof of improper program administration before terminating a school's participation in the NSL program. Four suggested that the Department help schools resolve their old accounts before imposing such a penalty; two wanted the Department to allow all schools to continue participation regardless of their delinquency rates; two thought that suspension of new funding would be more appropriate than termination; and two suggested using the NDSL penalty, which reduces the level of new funds awarded to schools with delinquency rates between 10 and 25 percent, and suspends new funding for schools with delinquency rates over 25 percent, but allows any school to continue using its collections, regardless of its delinquency rate.

In response to these comments, the Department expects that implementing the performance standard provision on June 30, 1986, should provide schools with adequate time to reduce their delinquency rates to the required level, and that schools unable to comply with requirements of the provision after that date should not be permitted to continue loaning NSL funds. Therefore, the Department has implemented the penalty for noncompliance as proposed.

Additional Comments

Many respondents suggested other changes that would require legislative amendments, including the following: (1) an amendment to allow the use of the IRS skip-tracing service; (2) a provision for assigning uncollectible loans to the Federal Government for further collection efforts; (3) elimination of the set-aside fund; (4) a procedure for withholding the tax refunds of delinquent borrowers; (5) a requirement that all borrowers have a cosigner; (6) a provision to allow cancellation for service in a low-income area; (7) a reduction in the interest rate; (8) modifications to the deferment provisions; (9) authority to extend the repayment period beyond 10 years; (10) an administrative allowance to be paid from the NSL fund; (11) changes in the minimum monthly payment provisions; and (12) an amendment to make the loan repayment provision for failure to complete studies (§ 57.314) an entitlement. The Department cannot implement any of these suggestions since it lacks statutory authority to do so.

Regulatory Flexibility Act and Executive Order 12291

Three respondents believed that these regulations would have a significant economic impact since they expected that the majority of schools would face termination as a result of their implementation as proposed. Some also felt that the response burden was grossly understated by the Department.

One respondent commented that the burden of 18.4 hours per school indicated in the September 6, 1984 NPRM is not realistic, and stated that schools have incurred many more hours of work, including evening time, to implement the ten steps proposed in the NPRM. The Department clarifies that the 18.4 hour average burden per school was determined based on the time required to comply with the reporting and recordkeeping requirements included in that NPRM, but did not address the time required to carry out activities of the proposal apart from the reporting or recordkeeping requirements.

In response to the other comments, the Department expects that the modifications that have been made to the proposed rules will assure that these regulations do not have a significant economic impact on a substantial number of small entities. These regulations prescribe procedures for improving loan collections and a performance standard against which schools' delinquency rates will be measured.

The small entities affected are nursing schools. The amendments to the regulations strengthen loan collections and may result in the termination of some nursing schools' participation in the NSL program. However, each school with an unacceptable level of delinquency will have several opportunities to reduce its delinquency rate prior to termination, and thus will have adequate time to prepare for the loss of funds which will occur as a result of termination. These schools will also be able to resume the use of future collections once they are able to meet the performance standard. Therefore, the regulations will not have a significant economic impact on a substantial number of small entities.

These regulations have been reviewed in accordance with Executive Order 12291. The Department has determined that this rule is not a "major rule" under Executive Order 12291 because it does not meet the criteria for major regulations established in the Order; therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations contain the following recordkeeping and reporting requirements which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511): Section 57.306, approval number 0915–0048 (Financial Aid Transcript, Educational Costs); § 57.308, approval number 0915–0095 (Promissory Note); § 57.310, approval number 0915–0095 (Entrance Interview, Exit Interview, Borrower Notifications, Credit Bureau Notification); § 57.312, approval number 0915–0048 (Reporting of Loans for Loan Repayment); and § 57.315, approval number 0915–0047 (Reporting Requirements, Student Records, Repayment Records).

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Grant programs—education, Grant programs—health, Student aid.

42 CFR Part 57, Subpart D is amended as set forth below.

Dated: June 20, 1985.

James O. Mason,

Assistant Secretary for Health.

Approved: August 2, 1985.

Margaret M. Heckler,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.364, Nursing Student Loan Program)

PART 57—[AMENDED]

Subpart D of 42 CFR Part 57 is revised to read as follows:

Subpart D—Nursing Student Loans

Sec.

57.301 Applicability.
57.302 Definitions.
57.303 Application by school.
57.304 Payment of Federal capital contributions.
57.305 Nursing student loan funds.
57.306 Eligibility and selection of nursing student loan applicants.
57.307 Maximum amount of nursing student loans.
57.308 Nursing student loan promissory note.
57.309 Payment of nursing student loans.
57.310 Repayment and collection of nursing student loans.
57.311 Cancellation of nursing student loans for disability or death.
57.312 Repayment of loans for service in a shortage area.
57.313 Loan cancellation for full-time employment as a registered nurse.
57.313a Loan cancellation reimbursement.
57.314 Repayment of loans made after November 17, 1971, for failure to complete a program of study.
57.315 Records, reports, inspection, and audit.
57.316 Nondiscrimination.
57.316a Performance standard.
57.317 Additional conditions.
57.318 Noncompliance.

Authority: Sec. 215 Public Health Service Act, 58 Stat. 690, 67 Stat. 631, (42 U.S.C. 216); sections 835–841 Public Health Service Act, 78 Stat. 913–916, as amended (42 U.S.C 297a–h).

Subpart D—Nursing Student Loans

§ 57.301 Applicability.

The regulations in this subpart apply to the Federal capital contributions made by the Secretary to public or other nonprofit schools of nursing for the establishment of nursing student loan funds and to loans made to students from these funds.

§ 57.302 Definitions.

As used in this subpart:

"Academic year" means the traditional, approximately 9-month September to June annual session. For the purpose of computing academic year equivalents for students who, during a 12-month period, attend for a longer period than the traditional academic year, the academic year will be considered to be of 9 months' duration.

"Act" means the Public Health Service Act, as amended.

"Date upon which a student ceases to be a full-time or half-time student" means the first day of the month which is nearest to the date upon which an individual ceases to be a full-time or half-time student, as defined in this section.

"Federal capital loan" means a loan made by the Secretary to a school under section 827(a) of the Act, as in effect prior to July 29, 1975, the proceeds of which are to be returned to the Secretary.

"Full-time student" means a student who is enrolled in a school and pursuing a course of study which constitutes a full-time academic workload, as determined by the school, leading to a diploma in nursing, an associate degree in nursing or an equivalent degree, a baccalaureate degree in nursing or an equivalent degree, or a graduate degree in nursing.

"Good standing" means the eligibility of a student to continue in attendance at the school where he or she is enrolled as a student in accordance with the school's standards and practices.

"Half-time student" means a student who is enrolled in a school and pursuing a course of study which constitutes at least one-half of a full-time academic workload but less than a full-time academic workload, as determined by the school, leading to a diploma in nursing, an associate degree in nursing or an equivalent degree, a baccalaureate degree in nursing or an equivalent degree, or a graduate degree in nursing.

"Institutional capital contribution" means the money provided by a school, in an amount not less than one-ninth of the Federal capital contribution, and deposited in a nursing student loan fund.

"National of the United States" means: (1) A citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

"Nursing student loan" means the amount of money advanced to a student by a school from a nursing student loan fund under a properly executed promissory note.

"Registered nurse" means an individual who has been licensed by a State Board of Nursing to practice professional nursing in accordance with State licensing laws requiring as a minimum one of the degrees or diplomas specified in this section.

"School" means a public or other nonprofit school of nursing, as defined in section 853 of the Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee to whom the authority involved has been delegated.

"State" means, in addition to the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

§ 57.303 Application by school.

(a) Each school seeking a Federal capital contribution must submit an application at the time and in the form and manner that the Secretary may require.[1] The application must be signed

[1] Applications and instructions are available from the Division of Student Assistance, Bureau of Health Professions, 5600 Fishers Lane, Parklawn Building, Room 8–44, Rockville, Maryland 20857.

by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, the regulations of this subpart, and the terms and conditions of the award.

(b) Each application will be reviewed to determine eligibility and the reasonableness of the amount of Federal support requested. The Secretary may require the applicant to submit additional data for this purpose.

(c) An application will not be approved unless an agreement between the Secretary and the applicant school for a Federal capital contribution under section 835 of the Act is reached.

§ 57.304 Payment of Federal capital contributions.

(a) *Annual payment.* The Secretary will make payments at a time determined by him or her, to each school with which he or she has entered into an agreement under the Act.

(1) For any fiscal year for which "set-aside" funds are available, the Secretary will first make payments in the manner described in (a)(2) of this section of not less than $1,000,000 of the amount of Federal funds determined by the Secretary at the time of payment to be available for making loans under this subpart. These funds will be paid to schools submitting an application for "set-aside" funds to be used only for the purpose of making loans to individuals qualified to receive loans under this subpart who, on the date they receive the loan, have not been employed on a full-time basis or been enrolled in any educational institution on a full-time basis for at least 7 years. An individual may not receive a loan under this subparagraph that exceeds $500 for any academic year.

(2) If the total of the amounts requested for any fiscal year by all schools for Federal capital contributions minus the amount received under paragraph (a)(1) of this section exceeds the amount of Federal funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller: (i) The amount requested in the application, or (ii) an amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of payment to be available for that fiscal year for the Nursing Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in all participating schools during that year.

(3) Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, but with whatever adjustments that may be necessary to prevent the total paid to any school from exceeding the total requested by it.

(b) *Method of payment.* The payment of Federal capital contributions to a school will be paid in a manner that avoids unnecessary accumulations of money in any nursing student loan fund.

§ 57.305 Nursing student loan funds.

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school. At all times the fund must contain moneys representing the institutional capital contribution.

(1) Except for funds transferred under paragraph (a)(2) of this section, this fund is to be used by the school only for: (i) Nursing student loans to full-time and half-time students; (ii) capital distribution as provided in section 839 of the Act or as agreed to by the school and the Secretary; and (iii) costs of litigation, costs associated with membership in credit bureaus, and, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of nursing student loans.

(2) An amount not to exceed 20 percent of the amount paid to a school from the appropriation for any fiscal year for Federal capital contributions may be transferred by the school to be used for scholarship awards under section 845 of the Act. However, if the Secretary finds in a particular case that a school has demonstrated an unusual need for scholarship funds, he or she may approve the transfer of any amount in excess of 20 percent to be used for scholarship awards. In the case of any transfer under this subparagraph, the proportionate amount of the institutional capital contribution (i.e., one-ninth of the amount so transferred) may be withdrawn by the school from the fund.

(b) *Funds established with Federal capital loans.* (1) Each Federal capital loan is subject to the terms of the promissory note executed by an authorized official on behalf of the borrowing school.

(2) The Federal capital loans must be carried in a special account of the school, to be used by the school only for: (i) Repayments of principal and interest on Federal capital loans; and (ii) costs of litigation, costs associated with membership in credit bureaus, and, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of nursing student loans.

§ 57.306 Eligibility and selection of nursing student loan applicants.

(a) *Determination of eligibility.* (1) Applicants are eligible for consideration for a nursing student loan if they are:

(i) Citizens, nationals, or lawful permanent residents of the United States, permanent residents of the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or American Samoa, or lawful permanent residents of the Commonwealth of Puerto Rico, the Virgin Islands or Guam;

(ii) Enrolled, or accepted for enrollment in the school as full-time or half-time students;

(iii) In need of the amount of the loan to pursue the course of study at the school; and

(iv) Capable, in the opinion of the school, of maintaining good standing in the course of study.

(2) An applicant who has previously attended an institution of higher education must submit a financial aid transcript which includes at least the following data:

(i) Applicant's name and social security number;

(ii) Amounts and sources of loans and grants previously received by the applicant for study at an institution of higher education;

(iii) Whether the applicant is in default on any of these loans, or owes a refund on any grants;

(iv) Certification from each institution previously attended by the applicant that the applicant has received no financial aid, if applicable; and

(v) From each institution previously attended, the signature of an official authorized by the institution to sign such transcripts on behalf of the institution.

(b) *Selection of nursing student loan applicants and determinations of need.* The school will select qualified applicants, make reasonable determinations of need, and determine the amount of student loans.

(1) In selecting nursing student loan applicants the school will give preference to licensed practical nurses.

(2) In determining whether a student is in need of a nursing student loan to pursue a full-time or half-time course of study at the school, the school will take into consideration:

(i) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Secretary of

Education and published under 34 CFR 674.13 in combination with other information which the school has regarding the student's financial status; and

(ii) The costs reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's financial ability to attend the school on a full-time or half-time basis. The school must document the criteria used for determining these costs.

(Approved by the Office of Management and Budget under control number 0915–0048.)

§ 57.307 Maximum amount of nursing student loans.

The total of the nursing student loans made from the fund to any student for an academic year may not exceed $2,500. The maximum amount loaned during a 12-month period to any student enrolled in a school which provides a course of study longer than the 9–month academic year may be proportionately increased. The total of all nursing student loans to any student may not exceed $10,000.

§57.308 Nursing student loan promissory note.

(a) *Promissory note form.* Each nursing student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

(1) Each promissory note must state that the loan will bear interest on the unpaid balance computed only for periods during which repayment of the loan is required, at the rate of 6 percent per year.

(2) Each promissory note must contain an acceleration clause provided by the Secretary, which will permit the acceleration of delinquent loans at the school's option.

(3) A copy of each executed note must be supplied by the school to the student borrower.

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

(Approved by the Office of Management and Budget under control number 0915–0095.)

§ 57.309 Payment of nursing student loans.

(a) Nursing student loans from any fund may be paid to or on behalf of student borrowers in installments considered appropriate by the school except that a school may not pay to or on behalf of any borrower more during any given installment period (e.g., semester, term, or quarter) than the school determines the student needs for that period.

(b) No payment may be made from a fund to or on behalf of any student borrower if at the time of the payment the borrower is not a full-time or half-time student.

§ 57.310 Repayment and collection of nursing student loans.

(a) Each nursing student loan, including accrued interest, will be repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Repayment of a loan must begin 9 months after the student ceases to be a full-time or half-time student, except that if a borrower reenters the same or another school as a full-time or half-time student within the 9-month period, the date upon which interest will accrue and the repayment period will begin will be determined by the date upon which the student last ceases to be a full-time or half-time student at that school.

(1) The following periods will be excluded from the 10-year repayment period: (a) All periods up to a total of 3 years of active duty performed by the borrower as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration Corps or the U.S. Public Health Service Commissioned Corps; (ii) all periods up to a total of 3 years of service as a volunteer under the Peace Corps Act; and (iii) all periods up to a total of 5 years during which the borrower is pursuing a full-time course of study at a school leading to a baccalaureate degree in nursing or an equivalent degree, or to a graduate degree in nursing, or is otherwise pursuing advanced professional training in nursing (or training to be a nurse anesthetist). For purposes of this paragraph, "otherwise pursuing advanced professional training in nursing" shall include only full-time training, beyond the first diploma or degree in nursing received by the particular borrower, of at least 1 academic year which will advance the borrower's knowledge of and strengthen his or her skills in the provision of nursing services.[2]

[2] Individuals who received nursing student loans prior to July 1, 1980, remain subject to the repayment provisions of 42 CFR 57.314(a)(3)(1976) as adopted on February 4, 1974. These provisions can be found at 39 FR 18473 (May 9, 1974), and a copy can be obtained by writing the Division of Student Assistance, Bureau of Health Professions, 5600 Fishers Lane, Parklawn Building, Room 8–48, Rockville, Maryland 20857.

(2) Subject to the provisions of paragraph (b)(3) of this section, a borrower must establish a repayment schedule with the school providing for payments not less often than quarterly. Any borrower whose repayment becomes more than 60 days past due must be placed on a monthly repayment schedule by the school. A borrower may at his or her option and without penalty, prepay all or part of the principal and accrued interest at any time.

(3) A school may grant forbearance whenever extraordinary circumstances such as unemployment, poor health or other personal problems temporarily affect the borrower's ability to make scheduled loan repayments.

(b) *Collection of nursing student loans.* (1) Each school at which a fund is established must exercise due diligence in the collection of nursing student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview (individually or in groups) with the borrower prior to disbursing NSL funds in any academic year. During the entrance interview the school must obtain documentation which indicates that the borrower is aware of the rights and responsibilities associated with NSL funds and personal information which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. The requirement of this subparagraph may be met by correspondence if the school determines that a face-to-face meeting (individually or in groups) is impracticable.

(ii) Conduct and document an exit interview (individually or in groups) with the borrower. During the exit interview, the school must provide each borrower with information necessary to carry out the terms of repayment, remind the borrower of the rights and responsibilities associated with NSL funds, and update the personal information collected prior to disbursing NSL funds which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. If the borrower terminates studies without advance notice, the school must document

attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail.

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation 1 to 3 months prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least four documented and reasonably spaced attempts to contact the borrower, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective; and

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary.

(2) With respect to any nursing student loan made after June 30, 1969, the school may fix a charge for failure of the borrower to pay all or any part of an installment when it is due, and in the case of a borrower who is entitled to a deferment under section 836(b)(2) of the Act, or cancellation or repayment under section 836(b)(3) of the Act, for any failure to file timely and satisfactory evidence of the entitlement. The amount of the charge may not exceed $1 for the first month or part of a month by which the installment or evidence is late and $2 for each succeeding month or part of a month. The school may elect to add the amount of this charge to the principal amount of the loan as of the day after the day on which the installment or evidence was due, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

(3) With respect to any nursing student loan made after June 30, 1969, the school may require the borrower to make payments of at least $15 per month on all outstanding nursing student loans during the repayment period.

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the Federal Government will absorb the Federal share of the loss by permitting the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

(Approved by the Office of Management and Budget under control number 0915–0095.)

§ 57.311 Cancellation of nursing students loans for disability or death.

(a) *Permanent and total disability.* The Secretary will cancel a borrower's indebtedness in accordance with section 836(b)(4) of the Act if the borrower is found to be permanently and totally disabled on recommendation of the school and as supported by whatever medical certification the Secretary may require. A borrower is totally and permanently disabled if he or she is unable to engage in any substantial gainful activity because of a medically determinable impairment, which the Secretary expects to continue for a long time or to result in death.

(b) *Death.* The Secretary will cancel a borrower's indebtedness in accordance with section 836(b)(4) of the Act upon the death of the borrower. The school to which the borrower was indebted must secure a certification of death or whatever official proof is conclusive under State law.

§ 57.312 Repayment of loans for service in a shortage area.[3]

(a) *Service in a shortage area.* Subject to the availability of funds, a person who: (1) Has obtained a degree as specified in section 836(h)(1)(A) of the Act; (2) has obtained one or more nursing student loans or any other loans necessary for costs (including tuition, books, fees, equipment, living and other expenses which the Secretary determines were necessary) of attending a school of nursing; and (3) enters into an agreement with the Secretary to serve as a full-time registered nurse for at least 2 consecutive years in a shortage area determined by the Secretary, is entitled to have a portion of these loans repaid by the Secretary in accordance with paragraph (b) of this section. Prior to entering an agreement for repayment of loans, other than nursing student loans, the Secretary will require an individual to provide evidence satisfactory to the Secretary of the existence and reasonableness of the education loans, including a copy of the written loan agreement establishing the loan, and a notarized statement that the copy is a true copy of the loan agreement.

(b) *Repayment.* Loan repayment will be made by the Secretary to persons who meet the conditions set forth in paragraph (a) of this section. Payment will be as follows:

(1) Upon completion by the borrower of the first year of service as specified in the agreement, the Secretary will pay 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her service;

(2) Upon completion by the borrower of the second year of service, the Secretary will pay another 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her service;

(3) Upon completion by the borrower of a third year of service, the Secretary will pay another 25 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her service; and

(4) No more than 85 percent of the principal of any loan will be paid under this section.

(Approved by the Office of Management and Budget under control number 0915–0048.)

§ 57.313 Loan cancellation for full-time employment as a registered nurse.

(a) *For loans made after November 18, 1971, and before September 29, 1979.* A person who: (1) Received one or more nursing student loans after November 18, 1971, and before September 29, 1979; (2) is in compliance with the requirements of Title VIII of the Act and

[3] Effective November 22, 1982, the Secretary stopped accepting applications under § 57.312 because Federal funds are not available for this provision.

these regulations; and (3) engages in full-time employment as a registered nurse (including teaching in any of the fields of nurse training or service as an administrator, supervisor, or consultant in any of the fields of nursing) in any public or nonprofit private agency, institution, or organization (including neighborhood health centers) is entitled to have a portion of these nursing student loans canceled as follows: 15 percent of the total amount of the loans plus accrued interest on the loan which is unpaid on the first day of his or her service, for each of the first, second, and third year of service; and 20 percent of the total amount of the loan plus accrued interest on the loan for each complete fourth and fifth year of service thereafter, up to 85 percent of the total of the loans, plus accrued interest.

(b) *Continuation of provisions for cancellation of loans made prior to November 18, 1971.* A person who received one or more nursing student loans prior to November 18, 1971, may still receive cancellation of these loans for service under section 836(i) of the Act. The regulations set forth in 42 CFR 57.316 (a) and (b)(6) (1976), as adopted on February 4, 1974, remain applicable to cancellation on this basis. The provisions can be found at 39 FR 16473 (May 9, 1974) and a copy can be obtained by writing to the Division of Student Assistance, Bureau of Health Professions, Room 8–48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(c) The determination of whether a person is entitled to have any portion of his or her nursing student loan canceled for full-time employment as a registered nurse will be made by the institution to whose fund his or her loan is payable, upon receipt and evaluation of an application for cancellation from that person.

§ 57.313a Loan cancellation reimbursement.

In the event that insufficient funds are available to the Secretary in any fiscal year to enable him or her to pay to all schools their proportionate shares of all loans and interest canceled under this subpart for full-time employment as a nurse, death, or disability:

(a) Each school will be paid an amount bearing the same ratio to the total of the funds available for that purpose as the principal of loans canceled by that school in that fiscal year bears to the total principal of loans canceled by all schools in that year; and

(b) Any additional amounts to which a school is entitled will be paid by the Secretary at the time of distribution of the assets of the school's fund under section 839 of the Act.

§ 57.314 Repayment of loans made after November 17, 1971, for failure to complete a program of study.[4]

In the event that the Secretary undertakes to repay educational loans under section 836(j) of the Act, he or she will use the following criteria to make a determination as to each applicant's eligibility:

(a) An applicant will be considered to have failed to complete the course of study in nursing for which an eligible education loan was made upon certification by a school of nursing that the individual ceased to be enrolled in the school subsequent to November 17, 1971;

(b) An applicant will be considered to be in exceptionally needy circumstances if, upon comparison of the income and other financial resources of the applicant with his or her expenses and financial obligations, the Secretary determines that repayment of the loan would constitute a serious economic burden on the applicant. In making this determination, the Secretary will take into consideration the applicant's net financial assets, his or her potential earning capacity, and the relationship of the income available to the applicant to the low-income levels published annually by the Secretary under paragraph (c) of this section;

(c) An applicant will be considered to be from a low-income family if the applicant comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in this program, and the family has no substantial net financial assets. Income levels as adjusted will be published annually by the Secretary in the Federal Register;

(d) An applicant will be considered to be from a disadvantaged family if the individual comes from a family in which the annual income minus unusual expenses which contribute to the economic burdens borne by the family does not exceed the low-income levels published by the Secretary under paragraph (c) of this section and the family has no substantial net financial assets;

(e) An applicant will be considered as not having resumed his or her nursing studies within 2 years following the date the individual ceased to be a student upon certification so stating from the applicant; and

(f) An applicant will be considered as not reasonably expected to resume his or her nursing studies within 2 years following the date upon which he or she terminated these studies, based upon consideration of the reasons for the applicant's failure to complete these studies, taking into account such factors as academic, medical, or financial difficulties. The Secretary will only repay education loans made after November 17, 1971.

§ 57.315 Records, reports, inspection, and audit.

(a) *Records and reports.* (1) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its nursing student loan fund that the Secretary may find necessary to carry out the purposes of the Act and these regulations. All required reports must be submitted to the Secretary within 45 days of the close of the reporting period. Any such school which fails to submit any completed required report within 45 days of the close of the reporting period must place the revolving fund and all subsequent collections into an interest bearing account and make no new loans until the Secretary determines that the school is in compliance with the requirement. Any school that remains in noncompliance under this provision for more than 6 months will be terminated from participation in the program and will be required to return all funds to the Department.

(2) The following student records must be retained by the school for 5 years after the individual student ceases to be a full-time or half-time student:

(i) Approved student applications for nursing student loans;

(ii) Documentation of the financial need of applicants; and

(iii) Copy of financial aid transcripts.

(3) The following repayment records for each individual borrower must be retained for at least 5 years from the date of retirement of a loan:

(i) The amount and date of each loan;

(ii) The amount and date of each payment or cancellation;

(iii) Records of periods of deferment;

(iv) Date, nature, and result of each contract with the borrower or proper endorser in the collection of an overdue loan;

(v) Copies of all correspondence to or from the borrower and endorser;

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[4] Effective November 20, 1984, the Secretary stopped accepting applications under § 57.314 because Federal funds are not available for this provision.

(vi) Copies of all correspondence with a collection agency related to the individual borrower;

(vii) Copies of all correspondence with a credit bureau related to an individual borrower; and

(viii) Copies of all correspondence relating to uncollectible loans which have been written off by the Federal Government or repaid by the school.

(4) The school must also retain other records as the Secretary may prescribe. In all cases where questions have arisen as a result of a Federal audit, the records must be retained until resolution of all questions.

(b) *Inspection and audit.* (1) Any application for a Federal capital contribution will constitute the consent of the applicant school to inspection and fiscal audit, by the Secretary and the Comptroller General of the United States or any of their duly authorized representatives, of the fiscal and other records of the applicant school which relate to the Federal capital contribution or Federal capital loan.

(2) The school must comply with the audit requirements of the Department of Health and Human Services' Administration of Grants regulations which are set forth in 45 CFR Part 74.

(c) Institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(Approved by the Office of Management and Budget under control number 0915–0047.)

§ 57.316 Nondiscrimination.

Participating schools are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations apply:

(a) Section 855 of the Act (42 U.S.C. 298b–2) and its implementing regulations, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs);

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its implementing regulations, 45 CFR Part 80 (prohibiting discrimination in federally assisted programs on the grounds of race, color, or national origin);

(c) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and its implementing regulations, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in federally assisted education programs);

(d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulations, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap); and

(e) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and its implementing regulations, 45 CFR Part 91.

§ 57.316a Performance standard.

On June 30, 1986, and on each June 30 thereafter, except as provided in paragraph (b) of this section, each school must have a delinquency rate (as calculated in paragraph (a) of this section) of not more than 5 percent. All accounts overdue by more than 60 days must be considered delinquent.

(a) The delinquency rate for each school must be calculated by dividing the sum of the total amount of principal outstanding on all loans delinquent by the total principal amount loaned for all loans in repayment status.

(b) Any school that has a delinquency rate greater than 5 percent on June 30, 1986, or on June 30 of any year thereafter will be required to:

(1) Reduce its delinquency rate by 50 percent (or a school with a delinquency rate below 10 percent must reduce its rate to 5 percent) by the close of the following 6-month period; and

(2) By the end of each succeeding 6-month period, reduce its delinquency rate to 50 percent of the required rate for the previous 6-month period, until it reaches 5 percent.

(c) Any school subject to the provisions of paragraph (b) of this section which fails to comply with those requirements will receive no new NSL funds and will be required to:

(1) Place the revolving fund monies and all subsequent collections into an insured interest-bearing account;

(2) Make no loan disbursements; and

(3) By the end of the succeeding 6-month period, reduce its delinquency rate to 50 percent of the rate it failed to achieve under paragraph (b) of this section, or 5 percent.

A school that meets the requirements of subparagraph (c)(3) of this section will be permitted to resume the use of its NSL funds, but must continue to comply with the requirements of subparagraph (b)(2) of this section if its delinquency rate is still greater than 5 percent.

(d) Any school subject to the provisions of subparagraph (c)(3) of this section which fails to comply with those requirements will be terminated from the program and must return all Federal funds in the loan account to the Department. Any school which has been terminated must continue to purse collections and may reapply for participation in the program only when it has attained a delinquency rate of 5 percent or less.

§ 57.317 Additional conditions.

The Secretary may, with respect to any agreement entered into with any school under § 57.305, impose additional conditions prior to or at the time of any award when in his or her judgment the conditions are necessary to assure or protect advancement of the purposes of the agreement, the interest of the public health, or the conservation of funds awarded.

§ 57.318 Noncompliance.

Whenever the Secretary finds that a participating school has failed to comply with the applicable provisions of the Act or the regulations of this subpart he or she may, on reasonable notice to the school, withhold further payments of Federal capital contributions and take other action, including the termination of any agreement, as he or she finds necessary to enforce the Act and regulations. In such case no further expenditures shall be made from the nursing student loan fund or funds involved until the Secretary determines that there is no longer any failure of compliance.

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Title 3—

The President

Presidential Determination No. 85–19 of August 20, 1985

Memorandum for the Secretary of Defense

Pursuant to Section 205 of the Department of Defense Authorization Act, 1985, as enacted by P.L. 98–525, I hereby determine and certify that:

The United States is endeavoring in good faith to negotiate with the Soviet Union a mutual and verifiable agreement with the strictest possible limitations on anti-satellite weapons consistent with the national security interests of the United States.

Pending agreement on such strict limitations, testing against objects in space of the F–15 launched miniature homing vehicle anti-satellite warhead by the United States is necessary to avert clear and irrevocable harm to the national security.

Such testing would not constitute an irreversible step that would gravely impair prospects for negotiations on anti-satellite weapons.

Such testing is fully consistent with the rights and obligations of the U.S. under the Anti-Ballistic Missile Treaty of 1972 as those rights and obligations exist at the time of such testing.

You are directed on my behalf to report this determination and certification to the Congress.

You or your delegatee are authorized and directed to publish this determination and certification in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE
Washington, August 20, 1985.

MV ASAT Testing Certification

On March 31, 1984 I submitted a Report to the Congress, in classified and unclassified forms, which detailed many of the considerations involved in analyzing possible limitations on anti-satellite weapons. As that report notes, any realistic and balanced consideration of this topic must take into account a number of problems. These problems include: the need for effective verification; the potential for breakout; the risks of disclosing sensitive information; the problems of definition of space weapons; the vulnerability of satellite support systems; and Soviet military space activity. In particular, it should be noted that definitional and monitoring difficulties plus the need to counter such satellites as the space-based, targeting elements of Soviet weapons systems contribute to the conclusion that a comprehensive ban that would seek to eliminate development, testing, deployment, and use of all means of countering satellites is not verifiable and not in our national security interest. Moreover, no arrangements or agreements beyond those already governing military activities in outer space have been found to date that are judged to be

in the overall interest of the United States and its Allies and that meet the Congressionally-mandated requirements of verifiability and consistency with the national security.

The United States is presently involved in negotiations at Geneva on a whole range of nuclear and space issues. At these negotiations, Ambassador Kampelman is, among other things, seeking to explore with the Soviet Union the merits of a strategic relationship characterized by a greater reliance on defenses.

We have been unable, to date, to identify a specific ASAT proposal which meets the requirements identified by the Congress in 1984. We are seriously exploring with the USSR arms control arrangements intended to prevent an arms race in space while—we hope—easing a possible transition to a more reliable and effective deterrent posture for both sides. We will continue to study possible ASAT limitations in good faith to see whether such limitations are consistent with the national security interests of the United States. We are, therefore, acting in conformity with the first certification requirement.

The primary purposes of a United States ASAT capability are to deter threats to space systems of the United States and its Allies and, within such limits imposed by international law, to deny any adversary advantages arising from the offensive use of space-based systems which could undermine deterrence.

The USSR has the world's only operational ASAT system with an effective capability to seek and destroy critical U.S. space systems in near-earth orbit. In 1982, a test of this system was integrated into an exercise of Soviet strategic offensive and defensive forces. Moreover, the USSR maintains a very large directed energy research program, including ground based lasers assessed to be capable of performing some ASAT functions. This program could also result in the launch of the first prototype of a space-based laser ASAT in the late 1980s or very early 1990s. In addition, since space systems are vulnerable to a broad range of threats from direct attack to electronic warfare to nuclear effects, the Soviet Union could have developed—without our knowledge—a variety of other means to attack our satellites.

There is also a growing threat posed by present and prospective Soviet satellites which, while not weapons themselves, are designed to support directly the USSR's terrestrial forces in the event of conflict. These include ocean reconnaissance satellites which use radar and electronic intelligence in efforts to provide targeting data for use in attacking U.S. and allied surface fleets. They also include photographic and electronic intelligence satellites which provide targeting data and other information useful in supporting Soviet land forces. These Soviet space assets constitute a clear threat to our national security and that of our allies.

The United States must take the steps necessary to avert a situation in which the Soviet Union has full freedom to conduct effective attacks on our space systems knowing that their space objects, including those that provide targeting data, are not vulnerable to U.S. attack. The resultant instability from this asymmetry creates a risk of irrevocable harm to the United States. U.S. development of a credible anti-satellite system is a necessary, integral part of the steps needed to avert this situation. Therefore, testing of the MV against objects in space by the United States is necessary to avert clear and irrevocable harm to the national security of the United States and its allies.

The ASAT testing which we intend to undertake follows by twelve years the initiation by the USSR of its testing of a coorbital ASAT system which has for some time been the world's only operational ASAT system. The Soviets, moreover, as noted above, have tested and, in some cases deployed, systems which have inherent ASAT capabilities. The existence of such Soviet capabilities and their testing effectively preclude the possibility that testing by the United States of its MV ASAT will constitute an irreversible step.

In addition, we believe that testing can constitute an incentive to the Soviet Union to reach agreements on a wide range of issues and thus would not

impair prospects for a successful conclusion to the negotiations now underway.

The testing against objects in space of the U.S. F–15 MV ASAT system will not give the system the capability to counter strategic ballistic missiles or their elements in flight trajectory and will not constitute a test in an ABM mode. Therefore, such testing is not prohibited by the ABM Treaty.

Ronald Reagan

[FR Doc. 85–20402
Filed 8–22–85; 12:14 pm]
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Presidential Documents

Proclamation 5364 of August 23, 1985

Women's Equality Day, 1985

By the President of the United States of America

A Proclamation

Women's Equality Day is celebrated each year on August 26 because it was on that day in 1920 that the 19th Amendment, guaranteeing women the right to vote, became part of our Constitution. This was an accomplishment of great practical and symbolic importance, since it recognized women as full participants in our democratic system of self-government.

The adoption of the 19th Amendment was a tremendous victory for the ideals of democracy, but its consequences have not been confined to our political system. In every field of endeavor, women have made notable contributions to our national life. Their achievements have shown that America's women are a tremendous human resource for our Nation—an inexhaustible reserve of talent, imagination, and ambition.

Today, women have an unparalleled degree of opportunity to decide what they want to achieve in their lives. Whether they devote themselves to raising families or to pursuing careers, their contributions to America are leaving an indelible mark on our Nation's life. In the years ahead, their accomplishments will continue to shape profoundly our Nation's destiny.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 26, 1985, as Women's Equality Day. I call upon all Americans to mark this occasion with appropriate observances.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of August, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-20501
Filed 8-23-85; 11:31 am]
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Rules and Regulations

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Monday, August 26, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-349]

Imported Fire Ant Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the list of regulated areas under the imported fire ant quarantine and regulations by designating a previously nonregulated area in South Carolina as a generally infested area and by expanding previously designated generally infested areas in South Carolina and Texas. The quarantine and regulations, among other things, impose restrictions on the interstate movement of regulated articles from generally infested areas. This action is necessary as an emergency measure to prevent the artificial spread of the imported fire ant through the interstate movement of regulated articles.

DATES: Effective date of the interim rule: August 26, 1985. Written comments concerning this interim rule must be received on or before October 25, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this interim rule. Because of the possibility that the imported fire ant could spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments are being solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

The imported fire ant (*Solenopsis* spp.) is an insect that interferes with farming operations, can cause damage to certain crops, and is a pest of livestock and pets, as well as of people, in rural and urban areas.

The imported fire ant quarantine and regulations (7 CFR 301.81 through 301.81-10) quarantine the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, and Texas because of the imported fire ant; and restrict the interstate movement of regulated articles from regulated areas in these States in order to prevent the artificial spread of the imported fire ant.

Under the quarantine and regulations, an area may be designated as a regulated area if it is an area in which the imported fire ant has been found, or in which there is reason to believe that the imported fire ant is present, or which it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Regulated areas are classified as either suppressive areas or generally infested areas. Suppressive areas are regulated areas in which eradication of the imported fire ant is undertaken as an objective. Generally infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from both generally infested areas and suppressive areas in order to prevent the artificial movement of the imported fire ant into noninfested areas, and to prevent the reinfestation of suppressive areas after the imported fire ant has been eradicated.

Designation of Areas as Generally Infested Areas

This document designates all of Live Oak County in Texas as an imported fire ant generally infested area. Prior to the effective date of this rule, none of Live Oak County had been designated as a regulated area.

This document also expands previously designated imported fire ant generally infested areas in South Carolina and Texas as set forth below.

Previously, only the following portion of Edgefield County in South Carolina, was included as an imported fire ant generally infested area: "That portion of the county bounded by a line beginning at a point where State Primary Highway 23 intersects the Edgefield-McCormick County line, thence east along said highway to its intersection with State Secondary Highway 10, thence southeast along said highway to its junction with U.S. Highway 25, thence southeast along said highway to its junction with State Primary Highway 19, thence southeast along said highway to its intersection with Edgefield-Aiken County line, thence southwest along said county line to its junction with the Savannah River, thence northwest along said river to its junction with the Edgefield-McCormick County line, thence north along said county line to the point of beginning." This document expands the area designated as an imported fire ant generally infested area by designating all of Edgefield County as an imported fire ant generally infested area.

Previously, only the following portion of Ellis County in Texas, was included

as an imported fire ant generally infested area: "That portion of the county lying north of U.S. Highway 287 including the cities of Midlothian and Ennis, but excluding the city of Waxahachie." This document expands the area designated as an imported fire ant generally infested area by designating all of Ellis County as an imported fire ant generally infested area.

Previously, only the following portion of Hill County in Texas, was included as an imported fire ant generally infested area: "That area within a circle having a radius of 4 miles with the center where State Highway 22 intersects U.S. Highway 77 at the most northern point." This document expands the area designated as an imported fire ant generally infested area by designating all of Hill County as an imported fire ant generally infested area.

Previously, only the following portion of Navarro County in Texas, was included as an imported fire ant generally infested area: "That area within a circle having a radius of 3 miles with the focal point at the intersection of Texas Highway 31 and Farm to Market Road 1129." This document expands the area designated as an imported fire ant generally infested area by designating all of Navarro County as an imported fire ant generally infested area.

Previously, only the following portion of Upshur County in Texas, was included as an imported fire ant generally infested area: "That portion of the county lying south of a line beginning where State Highway 154 intersects the Wood-Upshur County line, thence easterly along said highway to its intersection with State Highway 155, thence northeasterly along said highway to its intersection with the Upshur-Marion County line where the line ends, including the city of Gilmer." This document expands the area designated as an imported fire ant generally infested area by designating all of Upshur County as an imported fire ant generally infested area.

Previously, only the following portion of Wood County in Texas, was included as an imported fire ant generally infested area: "That portion of the county lying south of the city limits of Alba, State Highway 182 and State Highway 154, but excluding the cities of Alba and Quitman." This document expands the area designated as an imported fire ant generally infested area by designating all of Wood County as an imported fire ant generally infested area.

Recent surveys conducted by inspectors of the United States Department of Agriculture and officials of State agencies establish that the imported fire ant has spread to such areas in South Carolina and Texas added to the list of imported fire ant generally infested areas. Also, eradication of the infestation is not undertaken as an objective in these areas. Therefore, as an emergency measure, it is necessary to add areas as imported fire ant generally infested areas and impose restrictions on the interstate movement of regulated articles from these areas in order to prevent the artificial spread of the imported fire ant.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an estimated annual effect on the economy of approximately $5,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in the States of South Carolina and Texas. There are thousands of small entities that move such articles interstate from South Carolina and Texas and many more thousands of small entities that move such articles interstate from other States. However, based on information compiled by the Department, it has been determined that approximately 72 small entities move such articles interstate from the specified areas in those States. Further, the overall economic impact from this action is estimated to be approximately $5,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Imported fire ant, Plant diseases, Plant pests, Plants (Agriculture), Quarantines, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances described above, the "Imported Fire Ant" quarantine and regulations (contained in 7 CFR 301.81 *et seq.*) is amended as follows:

1. The authority citation for Part 301 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.81–2a, relating to the States of South Carolina and Texas the following descriptions for generally infested areas are amended by revising the entry for Edgefield County in South Carolina, and revising the entries for Ellis, Hill, Navarro, Upshur, and Wood Counties and adding the entire county of Live Oak County in Texas, in alphabetical order to read as follows:

§ 301.81–2a Regulated areas; suppressive and generally infested areas.

* * * * *

South Carolina

(1) *Generally infested areas.*

* * * * *

Edgefield County. The entire county.

* * * * *

Texas

* * * * *

Ellis County. The entire county.

* * * * *

Hill County. The entire county.

* * * * *

Live Oak County. The entire county.

* * * * *

Navarro County. The entire county.

* * * * *

Upshur County. The entire county.

* * * * *

Wood County. The entire county.

* * * * *

Done at Washington, D.C., this 21st day of August 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-20287 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 760

Dairy Indemnity Payment Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Dairy Indemnity Payment Program Regulations to extend the operation of the program through September 30, 1985 and to set forth the final date when applications for assistance under the program must be submitted for fiscal year 1985.

EFFECTIVE DATES: This regulation shall become effective August 26, 1985.

FOR FURTHER INFORMATION CONTACT: Clarence Domire, Agricultural Program Specialist, Emergency Operations and Livestock Programs Division, ASCS, USDA, South Building, Room 4095, Washington, D.C. 20013; (202) 447-7673.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 760) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control No. 0560-0045.

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major." This rule has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this rule applies are: Title—Dairy Indemnity Payments, Number—10.053, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The Dairy Indemnity Payment Program was originally authorized by section 331 of the Economic Opportunity Act of 1964 (78 Stat. 508). The statutory authority of the program has been extended several times, most recently by the Agriculture and Food Act of 1981 (95 Stat. 1220) which authorized the program to be carried out through September 30, 1985. The objective of the program is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses on milk or milk products removed from commercial markets because such products contain certain harmful residues. In addition, dairy farmers can also be indemnified for income losses on milk required to be removed from commercial markets due to residues of chemicals of toxic substances or contamination by nuclear radiation or fallout.

The Agriculture and Food Act of 1981 made no substantive changes with respect to the Dairy Indemnity Payment Program but merely extended the time period for conducting the program. The sum of $100,000 was appropriated to cover fiscal year 1984 and 1985 claims under the program. Of this amount, approximately $40,000 will be used to pay fiscal year 1984 claims. This leaves $60,000 remaining for the payment of fiscal year 1985 claims. The regulations currently authorize the operation of the program through September 30, 1984. Accordingly, it is necessary to amend these regulations to provide that the program will be carried out through the end of the fiscal year (i.e., September 30, 1985).

Program funds which are appropriated for a specific fiscal year must be obligated by the end of that fiscal year, or returned to the U.S. Treasury. Since the statute which authorizes the Dairy Indemnity Payment Program expires on September 30, 1985, and no funds are available beyond fiscal year 1985 to pay claims under the program; it has been determined that all applications for payment for fiscal year 1985 claims must be filed no later than October 7, 1985, for losses incurred through September 30, 1985. The regulations have been amended accordingly.

Since the only purpose of this final rule is to make technical amendments to the regulations to extend the operation of the Dairy Indemnity Payment Program, through September 30, 1985 and to set forth the final date (i.e., October 7, 1985) when applications for assistance under the program must be submitted for fiscal year 1985 claims, it has been determined that no further public rulemaking is required. Therefore, these regulations shall become effective upon date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 760

Bees, Dairy Products, Honey, Indemnity payments, Pesticides and Pests.

PART 760—[AMENDED]

Final Rule

Accordingly, the regulations at 7 CFR Part 760 are amended as follows:

1. The authority citation for Part 760 continues to read:

Authority: Secs. 1, 2, and 3, 82 Stat. 750, as amended (7 U.S.C. 450j, k, and l).

§ 760.2 [Amended]

2. In Section 760.2, paragraphs (k) (1) and (2), (l), and (o) are amended by striking out "1984" and inserting in lieu thereof "1985".

§ 760.8 [Amended]

3. Section 760.8 is amended by striking out "December 31, 1984" and inserting in lieu thereof "October 7, 1985".

Signed at Washington, D.C. on August 19, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-20244 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-20-AD; Amdt. 39-5125]

Airworthiness Directives; Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable of Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes which requires inspection of the inboard end on replacement wings or rear spars (full spar or inboard end) to determine if a doubler had been installed during manufacture. If the doubler is not installed, corrective action is required to prevent possible failure of the wing rear spars.

DATES: Effective date: September 30, 1985.

Compliance: within the next 100 hours time in service after the effective date of this AD.

ADDRESSES: Cessna Single Engine Service Bulletin SEB 85-9 dated May 3, 1985, applicable to this AD may be obtained from Cessna Aircraft Company, Post Office Box 1521, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, FAA, ACE-120W, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection of the inboard end of certain Cessna 206 and 207 series airplane replacement wings or rear spars was published in the **Federal Register** on June 18, 1985 (50 FR 25253). The proposal resulted from the manufacture of wing rear spars for spare parts in which the manufacturer inadvertently failed to install a doubler on the inboard end. Static tests revealed that such spars could not hold the required ultimate load. Therefore, it is necessary to inspect and repair as appropriate the rear spar on those affected aircraft that have had the full spar or the inboard end of the spar replaced. Inspection and repair procedures are called out in Cessna Single Engine Service Bulletin SEB85-9 dated May 3, 1985. Since the condition described herein is likely to exist or develop in other Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes of the same design, the proposed AD requires inspection of replacement wings or rear spars (full spar or inboard end) of these airplanes for a missing doubler and repair, as necessary per Cessna Single Engine Service Bulletin SEB85-9.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

There are approximately 3716 airplanes affected by this AD. The FAA estimates that approximately 12 of these airplanes may have to be modified. The cost of accomplishing this AD on these 12 airplanes is estimated to be $630 per airplane. The total cost of inspecting all 3716 airplanes and the modification of approximately 12 airplanes is estimated to be $137,620. The cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Cessna: Applies to the following Cessna airplanes certificated in any catgegory:

Model and Serial Number

U206F/TU206F—S/N U20601071 thru U20603521
U206G/TU206G—S/N U20603522 thru U20604649
207/T207—S/N 20700001 thru 20700315
207A/T207A—S/N 20700316 thru 20700767

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD unless already accomplished.

To prevent a possible failure in the wing rear spar on airplanes that have had the full spar or inboard end of the spar replaced, accomplish the following:

(a) Visually inspect the airplane in accordance with Cessna Single Engine Service Bulletin SEB85-9 dated May 3, 1985. If the P/N 1222111-1 doubler is missing, prior to further flight repair the spar in accordance with SEB85-9.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent method of compliance with this AD may be used if approved by Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Cessna Aircraft Company, Post Office Box 1521, Wichita, Kansas 67201 or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 30, 1985.

Issued in Kansas City, Missouri, on August 16, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-20262 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-CE-30-AD; Amt. 39-5126]

Airworthiness Directives; Empresa Brasileria De Aeronautica S.A. (Embraer) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Embraer Models EMB-110P1 and EMB-110P2 airplanes, which requires inspection and replacement of the elevator control rod tubes. There have been two reports of failure of the elevator control rod tube on aircraft with aluminum control rod tubes. The AD is needed to prevent failure of the elevator control rod tube which could result in loss of control of the airplane.

DATES: Effective Date: August 30, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Embraer Service Bulletin No. 110–27–076, Revision 01, dated July 2, 1985, applicable to the AD, may be obtained from Empresa Brasileira de Aeronautica S.A. (Embraer) Post Office Box 343–CEP 12.200 Sao Jose dos Campos, Sao Paulo, Brazil. Copies of the Service Bulletin are contained in the Rules Docket, FAA, Office of the Regional Counsel, Attention: Rules Docket No. 85–CE–30–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106, and in the Central File Room, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, ACE–120A, Atlanta Aircraft Certification Office, Central Region, Federal Aviation Administration, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7407.

SUPPLEMENTARY INFORMATION: There have been two reports of failure of the elevator control rod tube on Embraer Models EMB–110P1 and EMB–110P2 airplanes which could result in loss of control of the airplane. One failure was caused by corrosion and the other by vibration induced by a failed elevator trim tab rod. As a result, Embraer has issued Service Bulletin 110–27–076, Revision 01, which provides instructions for the inspection and replacement of the elevator control rod tubes. The Centro Tecnico Aeroespacial (CTA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Brazil has classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Brazilian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CTA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Service Bulletin No. 110–27–076, Revision 01, and the mandatory classification of this Service Bulletin by the CTA. Based on the foregoing, the FAA has determined that the condition described therein is unsafe and may exist on all Embraer Models EMB–110P1 and EMB–110P2 airplanes certificated for operation in the United States.

Therefore, an AD is being issued requiring inspection and replacement of the elevator control rod tubes on these airplanes.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Empresa Brasileria De Aeronautica S.A. (Embraer): Applies to Models EMB–110P1 and EMB–110P2 (all serial numbers) airplanes certificated in any category which have aluminum elevator control rod tubes installed.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the elevator control rod tube, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this AD, visually inspect the elevator control rod tubes, P/N 4A–500–10–09–01, for evidence of corrosion or cracks. If corrosion or cracks are found, prior to further flight replace the control rod tube in accordance with Embraer Service Bulletin (S/B) No. 110–27–076, Revision 01, dated July 2, 1985.

(b) Within 150 hours time-in-service or 30 (thirty) days, whichever occurs first, after the effective date of this AD, replace both left and right elevator aluminum control rod tubes P/N 4A–500–10–09–01 with steel control rod tubes P/N 110–500–10–00–04–01. Reidentify the elevator control rod assembly with the new P/N 110–500–10–00–09.

(c) Airplanes may be flown in accordance with Federal Aviation Regulation 21.197 to a location where the Ad may be accomplished.

(d) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7428.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Embraer, Post Office Box 343 CEP 12.200 Sao Jose Dos Campos, Sao Paulo, Brazil, or FAA, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on August 30, 1985.

Issued in Kansas City, Missouri, on August 16, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85–20283 Filed 8–23–85; 8:45 am]

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14 CFR Part 39

[Docket No. 76–CE–6–AD; Amdt. 39–5124]

Airworthiness Directives; Cessna Models 210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, T210F, T210G, T210H, and T210J Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 76–14–07 Amendment 39–2778 applicable to Cessna Models 210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, T210F, T210G, T210H, and T210J airplanes to permit the use of newly designed main landing gear saddles on certain models. This revision will thus provide an alternate means of compliance with AD 76–14–07.

DATE: *Effective Date:* September 27, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESS: Parts availability information may be obtained from the Cessna

Aircraft Corporation Customer Service, P.O. Box 1521, Wichita, Kansas 67201.

FOR FURTHER INFORMATION CONTACT:
Mr. Douglas W. Haig, Aerospace Engineer, FAA, ACE-120W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone 316-946-4409.

SUPPLEMENTARY INFORMATION:
Airworthiness Directive 76-14-07 Amendment No. 39-2778 applicable to certain Cessna Model 210 series airplanes requires inspection and/or replacement of the mail landing gear saddle. Subsequent to the issuance of this AD, the manufacturer designed new main landing gear saddles identified by part numbers 1294151-1 and 1294151-2 applicable to the Models 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, T210F, T210G, T210H, and T210J airplanes. Therefore, the FAA is revising AD 76-14-07 to allow the use of the new style main landing gear saddles.

This amendment updates the AD by incorporating presently available information or corrective action, providing an equivalent level of safety which was not available to the FAA at the time of original issuance. It imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary and contrary to the public interest.

The FAA has determined that this document involves an amendment which provides an alternative means of compliance consistent with current improved parts replacement. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291 and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising AD 76-14-07 as follows:

Revise paragraph F. to read as follows:

An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

Add paragraph G. as follows:

Installation of main landing gear saddles part numbers 1294151-1 and 1294151-2 in lieu of part numbers 1241423-1 and 1241423-2 constitutes an equivalent means of compliance for this AD.

This amendment revises AD 76-14-07, Amendment 39-2778.

This amendment becomes effective September 27, 1985.

Issued in Kansas City, Missouri, on August 13, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-20363 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 84F-0040]

Indirect Food Additives: Paper and Paperboard Components

Correction

In FR Doc. 85-18181 appearing on page 31165 in the issue of Thursday, August 1, 1985, make the following correction:

In the third column, in the **"Authority"**, first line, "202" should read "201".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Parts 1 and 3

Adjudication of Claims Based on Exposure to Dioxin or Ionizing Radiation

AGENCY: Veterans Administration.

ACTION: Final rules.

SUMMARY: The Veterans Administration (VA) has adopted the following regulations to implement the "Veterans' Dioxin and Radiation Exposure Compensation Standards Act," Pub. L. 98-542 (Oct. 24, 1984). The Act required that the VA conduct rulemaking regarding its guidelines for the adjudication of compensation claims based upon disabilities or deaths of certain veterans who, while in military service, were exposed to ionizing radiation or herbicides containing dioxin. The stated purpose of the Act is to ensure compensation for "veterans who were exposed during service in the Armed Forces in the Republic of Vietnam to a herbicide containing dioxin or to ionizing radiation in connection with atmospheric nuclear tests or in connection with the American occupation of Hiroshima or Nagasaki, Japan, for all disabilities arising after that service that are connected, based on sound scientific and medical evidence, to such service."

DATES: These rules are effective September 25, 1985, with the exception of § 3.813 which is effective October 1, 1984, as required by law.

FOR FURTHER INFORMATION CONTACT:
Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits (202) 389-3005.

SUPPLEMENTARY INFORMATION: On pages 15848 through 15855 of the **Federal Register** of April 22, 1985, the VA published proposed amendments to title 38, Code of Federal Regulations, on the adjudication of claims based on exposure to dioxin or ionizing radiation. Included in those proposed amendments were a new § 1.17 on evaluation of studies relating to health effects of dioxin and radiation exposure, a revision of § 3.102 giving the benefit of reasonable doubt to claimants, and new §§ 3.311a, 3.311b and 3.813 dealing with claims based on dioxin exposure, claims based on radiation exposure and claims for interim benefit. Interested persons were given until July 22, 1985, to submit comments, suggestions or objections to the proposed rules.

The VA received a number of comments on these proposed rules from a variety of sources. The commenters included the Chairman and the Ranking Minority Member of the House Veterans' Affairs Committee, the Ranking Minority Member of the Senate Veterans' Affairs Committee, the junior Senator from Massachusetts, the Congressman from the Eighth District of Georgia, the Congressman from the Fourth District of Massachusetts, the U.S. Army and Joint Services Environmental Support Group, the Department of Justice, the Defense Nuclear Agency, the Environmental

Protection Agency, the Federal Emergency Management Agency, the Nuclear Regulatory Commission, the Department of the Navy, The Public Health Service, The Cabinet Council Agent Orange Working Group, Paralyzed Veterans of America, American Veterans of World War II, Korea and Vietnam, Veterans of Foreign Wars of the United States, Disabled American Veterans, The American Legion, National Association of Radiation Survivors, National Association of Atomic Veterans, Vietnam Veterans of America, American Ex-Prisoners of War, Military Order of the Purple Heart, American College of Radiology, American Board of Health Physics, the Advisory Committee on Former Prisoners of War, an epidemiologist from the School of Public Health at the University of California, Berkeley, Office of Commissioner of Veterans Services for Massachusetts, and seven members of the general public.

The VA has also received recommendations from the Veterans' Advisory Committee on Environmental Hazards (and the Scientific Council thereof) with respect to the proposed rules. Because its first meeting could not be held until April 22, 1985, the Environmental Hazards Committee did not participate in development of the proposed rules. The Committee did, however, review the proposed rules after publication and has made recommendations which were considered together with other comments in development of the final rules as required by Pub. L. 98–542.

The comments and recommendations with respect to each proposed rule have been summarized and are set forth below together with the actions and/or responses of the VA.

Comments and Recommendations

Section 1.17 Study evaluations.

One commenter strongly urged that specific standards be established and published to "ensure that all diseases that may be associated with dioxin will be evaluated in a uniform, consistent manner," noting that "other federal agencies have been using specific standards to evaluate scientific evidence concerning the health risks associated with chemicals like dioxin." The commenter further recommended that the VA use such "risk assessment principles" rather than establishment of cause and effect in determining the relation between exposure to dioxin and diseases.

The concept of risk assessment does not intrinsically differ from a cause-and-effect analysis. Risk assessment allows for a quantification of the possibility or probability that a given effect is attributable to a past event, or that a present event will give rise to a future consequence. Hence we do not regard this comment as setting forth a useful distinction.

The proposed VA regulations are intended to be workable guidelines that fulfill the intent of Pub. L. 98–542, which deals with determining the connection between present disabilities and past exposures rather than regulation of future exposures. It is possible to be much more consistent in applying principles of risk assessment where the possible future consequences of current exposure are estimated, usually in order to appropriately reduce or eliminate the exposure and thereby to control its consequences. The two situations are roughly analogous to the court procedure that determines the relation between present consequences and past acts on the one hand and, on the other, the evaluation of a hazardous condition in order to eliminate it by law or regulation and so to avoid future harm.

The Environmental Hazards Committee recommended that the words "statistically and epidemiologically valid" be substituted for the words "statistically significant" in proposed § 1.17(b)(1). The Committee noted that a study may present statistically significant findings and still not be a valid study. In this regard the Committee believed that statistical and epidemiological validity provided a better guideline for use in evaluating scientific studies.

The VA understands the rationale of the Committee in making this recommendation but notes the language of section 5(b)(1)(A) of Pub. L. 98–542 which requires the Administrator, in evaluating scientific studies, to take into account whether study results are statistically significant. Because statistical and epidemiological validity is not synonymous with statistical significance, the VA cannot adopt the recommended substitution. However, the statistical and epidemiological validity of a study's findings can be included in the views of the appropriate panel of the Committee's Scientific Council and, in that way, receive consideration under § 1.17 as proposed.

The Committee noted that the words "statistically significant" were also contained in the definitions of "sound scientific evidence" in proposed §§ 3.311a(a)(3) and 3.311b(c)(3) and recommended the same substitution of the words "statistically and epidemiologically valid." Since the content of these definitions is not mandated by law, we have appropriately amended the affected sections to implement the Committee's recommendation.

One commenter suggested that the term "statistical significance" should be defined in this rule while others suggested that the terms "statistical significance" and "peer review" should not be used to evaluate adjudication procedures and that they were simply additional methods for denying claims. These terms apply to the evaluation of scientific and medical studies and not to the adjudication of individual claims. The terms are well-understood by the scientific and medical communities as well as by those charged with the responsibility for evaluating the results of studies. The meaning of these terms was discussed in the preamble of the proposed rule and need not be repeated here nor included in the final rule.

One comment was to the effect that the rules should set "specific standards for evaluating studies," and specify a formula against which results of studies can be measured in order to determine if evidence is sufficient to justify findings of service-connection. It was suggested this would lend credibility to the process, and that the law requires no less.

The new law requires that, in general, these regulations include "guidelines and (where appropriate) standards and criteria." More specifically, with respect to study evaluations, the law requires issuance of "guidelines." Specific standards are not required, and would be inappropriate.

The proposed rule lists 5 factors to be considered in evaluating studies. To convert these to hard standards would require assignment of both rigid tolerance limits and specific relative weights to each factor. Such an all-purpose formula would not permit the necessary flexibility that reasoned policy-making requires. For example, in certain cases it may be extremely important that the differences between study and control groups are "statistically significant," but in others less so if, for example, the findings are not particularly "applicable to the veteran population of interest." Also, creating a hard formula in an informational vacuum would be extremely unwise. If, for example, a decision were now made to recognize as service-connected any diseases which studies show appear with a 10 percent greater frequency among veterans exposed to certain herbicides, should a decision to award benefits be foreclosed if evidence eventually shows only an 8 or 9 percent greater incidence? Certainly

other factors, including the severity of the resulting disablement, must come into play in making those sorts of policy choices.

It was recommended that VA apply its "reasonable doubt" policy to the evaluation of studies. The reasonable doubt policy, discussed in the next section, has always been a rule of claims adjudication. While we consider that sound scientific findings should be applied in the manner most beneficial to claimants, it would not be appropriate to assess the soundness of data in the manner proposed.

Section 3.102 Reasonable doubt policy.

We also received several comments on the proposed reformulation of the "reasonable doubt" rule, 38 CFR 3.102. One comment expressed concern that the revision would tend to shift the burden of proof to the claimant, especially in view of certain deletions. Another requested retention of the current characterization of the term "reasonable doubt." Several objected to the deletion of a reference to the rule's applicability in cases where official records cannot be located. Most of these commenters urge complete retention of the rule's current text so as not to impair the "working understanding" of the reasonable doubt rule that has developed over time. With one minor clarifying modification, we have decided to retain the current text of § 3.102 as urged by these commenters.

As observed in the Notice of Proposed Rulemaking, restatement of the "reasonable doubt" policy was proposed in keeping with the congressional reformulation of section 2(13) of Pub. L. 98–542. Review of the regulatory history of the "reasonable doubt" policy confirms our view that section 2(13) is a precise and coherent statement of this policy. The "reasonable doubt" policy goes back to the post-Civil War era when determining the extent of a veteran's disability—today called "rating"—was done on a case-by-case basis by Bureau of Pension physicians without reference to uniform guidelines such as now appear in the Rating Schedule (38 CFR Part 4). For example, in an 1899 Bureau of Pension report, this statement appears: "[s]o far as it was permissible under the laws as they exist and the established practice of the Bureau, the benefit of any doubt has been resolved in favor of the claimant." Report of Medicine Division, Bureau of Pensions, July 26, 1899.

Following World War I, rating schedules were promulgated. The earliest schedule of which we have record is dated September 22, 1921, and its preface contains this statement: "The law must be administered by its broadest interpretation and ratings of disability should be made as generous as possible in consistency with the facts. Wherever a question of doubt arises the benefit of such doubt must be given to the claimant." The preface goes on to explain the policy's application in two situations, rating and determining service connection. In rating, if the medical evidence points to two possible ratings, the higher should be assigned until it is clearly shown not to be justified. (We continue this rule today, *see* 38 CFR 4.7.) In determining service-connection, even though a disability is not clearly established as of service origin, it should be so considered if this would be reasonable in the light of medical experience and judgment.

In 1924, the foundation for the present text of § 3.102 was laid in a Veterans Bureau General Counsel opinion involving a World War I veteran who has applied for compensation for a psychoneurotic disability. There was credible evidence for and against the claim. The General Counsel outlined the "benefit of the doubt" policy and explained it was not to be applied if the truth could be established by a preponderance of the evidence; on the other hand, proof "beyond a reasonable doubt" was never required. In 1930, the policy statement appearing in the schedule for Rating Disabilities for that year was revised to reflect the General Counsel opinion. As so revised, it was the predecessor of 38 CFR 3.102.

These commenters suggest that, because Congress did not specifically mandate this revision, it should not be made. Section 5(a)(2) of Pub. L. 98–542 requires these new regulations to include provisions that ensure, with respect to exposure claims, that "the policy of the United States described in section 2(13) (of Pub. L. 98–542) is carried out." This is an express directive to include in the new regulations assurance that this policy applies to these claims. This could be accomplished either by restating the policy in the new regulations or providing a cross-reference to 38 CFR 3.102. The latter means, being simpler, was selected. To avoid two separate formulas for the same policy, revision of § 3.102 was proposed. No substantive change in the policy was intended. Rather, we hoped that simplifying the rule's text would help to avoid misconception and misuse. Among other matters, § 3.102 states that information in support of a claim must be sufficient to persuade an impartial person of its validity. This is a common-sense rule of thumb that differs sharply from the degree of evidence required for a criminal conviction. When claims are denied, however, the Agency is sometimes wrongly charged with requiring proof "beyond a reasonable doubt." Other times the claimant, on appeal, urges application of the reasonable doubt policy to his or her claim even though the claim was denied for a clear lack of sufficient evidence to support it.

As indicated above, we have determined to retain § 3.102's present text with one clarification. This clarification provides a guideline as to when the reasonable doubt policy is to be followed. In situations where the evidence for or against the claim is clearly preponderant, this policy does not apply. It should be carefully adhered to, however, when there is credible evidence on both sides of a material issue.

This modification should not be interpreted as "shifting the burden of proof" to the claimant.

The adjudication process at the VA is a truth-finding process in which both the claimant and the Agency have responsibility for locating and developing evidence pertinent to the claim, *see* 38 CFR 3.103(a). The concept of "burden of proof" in the courtroom sense is inconsistent with the nonadversarial, *ex parte* nature of VA adjudicatory proceedings.

One commenter objected to the revised rule and also proposed certain additions to the current text. First, it was suggested adjudicators should be required to accept a veteran's testimony as evidence. Second, it was contended that a veteran's unsupported testimony, if credible, should be accepted as dispositive if there is no "credible, contradictory, authenticated documentary" evidence in opposition. Neither suggestion requires changes in current regulations. Under VA rules, claimants' testimony is considered evidence and is part of the evidentiary record under 38 CFR 3.103(c). Second, nothing in current VA rules precludes the awarding of benefits based upon credible testimonial evidence.

Section 3.311a Dioxin rule

One commenter stated that "sufficient data exists for the identification of veterans exposed to dioxin" and that requests for certification of dioxin exposure should be forwarded to the Department of Defense in a manner similar to the procedures for requesting radiation dose information. The VA's longstanding policy of presuming dioxin exposure in the cases of veterans who served in the Republic of Vietnam

during the Vietnam era is based on the many uncertainties associated with herbicide spraying during that period which are further confounded by lack of precise data on troop movements at the time. While it may be possible to approximate areas where herbicides were sprayed, it would be extremely difficult to determine with an acceptable degree of precision whether an individual veteran was exposed to dioxin. Accordingly, the policy of presumed exposure as stated in § 3.311a(b) will remain unchanged.

Other commenters suggested that, in order to avoid misinterpretation by rating boards, the term "sound medical and scientific evidence" should be clarified relative to the term "sound medical principles" because the latter was a cornerstone of claims adjudication. While the term "sound medical principles" may have been used in other VA publications on claims adjudication, we have been unable to identify that precise term elsewhere in 38 CFR Part 3 (except in the limited context of tuberculosis cases). For that reason, and because the terms "sound medical evidence" and "sound scientific evidence" are clearly defined in §§ 3.311a and 3.311b, we do not believe that rating boards will misinterpret them.

One suggestion was made that a paragraph be added to make clear that service-connection is a temporal, rather than causal, relationship. However, there are both temporal and causal components of any finding of service-connection.

The temporal relationship which must be shown is that injury or disease was incurred or aggravated coincident in time with a veteran's military service. (Statutory presumptions make this literally unnecessary in certain cases.) There must, however, also be a showing that disability or death resulted from—was caused by—such an injury or disease. Strictly speaking, it is not injuries or diseases which are service-connected, but the disabilities or deaths resulting therefrom.

Thus, where it is shown that a veteran was exposed to potentially injurious radiation in service, and it is contended cellular injury sustained at that time gave rise to development of cancer after a latent period of perhaps 10 years, the question of causation of the disease and resulting disability or death by the insult or injury becomes the central issue. Accordingly, this suggestion has not been adopted.

Additional comments indicated a preference for affirmative wording in §§ 3.311a(c) and (d) with regard to diseases which may or may not result from dioxin exposure in order to avoid confusion and to eliminate the necessity for § 3.311a(g). While we endeavor to couch our regulatory amendments in positive terms, where appropriate, there are instances when negative language is more desirable. For example, sound medical and scientific evidence has not established a relationship between porphyria cutanea tarda (PCT) and dioxin exposure. That is a negative fact and should be stated in the negative. This does not mean that service connection cannot be established for PCT on other grounds, and it is precisely for that reason that § 3.311a(g) was proposed. The thrust of this comment was that rating boards should be alert to other rules by which service-connection can be established. We are in complete agreement and will include a cross-reference to paragraph (g) at the end of paragraph (c). For additional emphasis we will include a specific paragraph on this subject in the transmittal sheet that will accompany these regulations when they are sent to adjudication personnel.

In this same vein three commenters and the Veteran's Advisory Committee on Environmental Hazards were concerned that some claims of service-connection for chloracne may be prejudiced by an initial misdiagnosis within the applicable three-month period. This situation is already covered by 38 CFR 3.307(c) which provides authority to reconsider earlier manifestations of a disease once a definite diagnosis is established. To further emphasize this point, however, a cross-reference to § 3.307(c) will be included in § 3.311a(c), and details will be provided in the regulations transmittal sheet to alert adjudication personnel to the existing regulatory provisions that permit a skin condition, initially misdiagnosed, to be considered as a *manifestation* of a later diagnosed case of confirmed chloracne.

One commenter suggested the three-month period should be extended to one year because of the in-service diagnostic uncertainties. A veteran incurring chloracne within one year of departure from Vietnam would be eligible for interim benefits under new § 3.813, if disabled. We will take this comment under advisement pending a review of our claims experience under § 3.813.

A commenter who is a scientist, and others who are not, objected that the **Federal Register** notice of proposed rulemaking did not report fully all information and scientific investigations of the possible relationship between phenoxy herbicide exposure and soft tissue sarcomas. They imply that a cause-and-effect relationship has been demonstrated. In addition, these commenters would add malignant lymphoma to the list of conditions they believe can result from phenoxy herbicide exposure, as well as soft-tissue sarcomas developing within 20 years of exposure.

Although not all the investigations mentioned by these commenters were discussed in the Preamble to the notice of proposed rulemaking, all published studies bearing on the issues of concern and other information were carefully considered in the development of the proposed regulations. In addition, the Environmental Hazards Advisory Committee agrees with the Administration's conclusion that the "jury is still out" concerning a causal association between dioxin exposure and cancer such as soft tissue sarcomas and malignant lymphoma.

Review by the Advisory Committee and the Administration of studies like those referred to by the commenters will continue. If, at a later time, sound medical and scientific evidence supports inclusion of soft tissue sarcomas and/or malignant lymphoma, amendment of these regulations will promptly follow.

Four commenters also recommended that porphyria cutanea tarda be included among diseases caused by dioxin, but advert to no evidence not previously considered. Review of the available information does not now disclose sound medical and scientific evidence sufficient to justify that inclusion. As with the malignancies, later information will be carefully evaluated and these regulations amended as warranted.

Section 3.311b Radiation rule.

Comments were received indicating that the VA was proposing a more restrictive rule with regard to radiation dose estimates than that previously in effect. Whereas the prior rule specified a policy of conceding the highest exposure level reported by the Department of Defense when a range of doses was supplied or estimated for the veteran's unit or when the overall estimated exposure level of the veteran's unit exceeded the documented reading for the veteran, proposed § 3.311b(a) provides simply that dose data will be obtained from the Department of Defense.

VA's proposed rule was published before it was known how the Defense Nuclear Agency (DNA) would modify its procedures for reporting exposure and dose information to the VA. Pub. L. 98-542 required DNA to issue regulations containing requirements for the uniform reporting of dose estimates to the VA. Under regulations proposed on May 9,

1984 (50 FR 19538–39), DNA will report to the VA upon request a veteran's recorded radiation exposure or, if recorded dosimetry data is unavailable or incomplete, the dose reconstruction for the most probable dose, with error limits, if available. In most cases, therefore, under DNA's proposal a single value for a veteran's radiation exposure level will be reported. There will, however, be situations where information sufficient for dose reconstruction cannot be obtained and DNA will furnish the VA a range of doses to which the veteran may have been exposed given the circumstances of the exposure which can be ascertained. In such cases the VA will maintain its present policy of presuming exposure at the highest level of any dose range reported by DNA. Accordingly, we have amended proposed § 3.311b(a) to incorporate this policy.

Objections were also raised with regard to the provisions of proposed § 3.311b(b) which call for review, by the Chief Medical Director of radiation claims meeting the initial review criteria. This referral was said to be tantamount to a transfer of rating jurisdiction from the Department of Veterans Benefits to the Department of Medicine and Surgery.

While no such transfer of jurisdiction was contemplated, we recognize a need to prevent any such misunderstanding. Accordingly, paragraphs (b), (c), (d) and (f) of § 3.311b have been appropriately amended to provide for referral of all claims meeting the initial review criteria to the Chief Benefits Director for further consideration with the option of requesting an advisory medical opinion from the Chief Medical Director. These changes will leave no doubt as to the jurisidiction of the Department of Veterans Benefits over service-connection determinations.

Two commenters pointed out that it cannot be assumed a veteran was not exposed in service just because a DD Form 1141 does not exist. We agree, and have revised § 3.311b(a)(2)(iii) to make clear that a search should be made for any records that may evidence exposure.

Comments were also received which questioned the periods of time in § 3.311b(b)(4) (i) and (ii) during which certain cancers must have become manifest in order to be further considered as having resulted from prior exposure to ionizing radiation. It was noted that under 38 U.S.C. 301 and 312, service-connection may be established for cancers which become manifest within one year of discharge from active duty and that under the proposed rule service-connection for leukemias and bone cancer could be denied if a veteran were discharged immediately following radiation exposure and developed one of those cancers more than one but less than two year later.

In addition, the Environmental Hazards Committee reviewed the epidemiologic basis for these time periods and, while it generally agreed they were adequate for most cases, recommended that further consideration of service-connection be accorded to leukemias (other than chronic lymphatic leukemia) and bone cancer which become manifest more than one year but less than thirty years after exposure, and that further consideration of service-connection be accorded to other radiogenic cancers (as defined in § 3.311b(b)(2)) which became manifest more than five years after exposure. Based on these comments and recommendations we have amended § 3.311b(b)(4) (i) and (ii) to provide further consideration of service-connection for leukemias (except chronic lymphatic leukemia) and bone cancer which become manifest within 30 years after radiation exposure and for other forms of radiogenic cancer which become manifest 5 years or more after exposure.

The period of 30 years after exposure within which leukemias must become manifest in order to be considered due to that exposure has been questioned. Data on the Japanese survivors indicate a pronounced decrease in the excess deaths from leukemia among the Japanese survivors by the end of the first decade after the nuclear bomb exposures. The rate fell further during the next decade, and thereafter the death rate was less than one per million person-year rad above that in the comparable Japanese population. The 30-year limit, therefore, seems reasonable, but the Advisory Committee will be asked to review this information.

Several commenters questioned the omission of polycythemia vera from the list of radiogenic diseases. Review of the reports from test "Smokey" and from Japan has been judged not to present sufficient evidence to warrant a conclusion that exposure to radiation encountered by American veterans resulted in the later development of polycythemia vera. The preliminary "letter" regarding the condition in British veterans contains incomplete information in a form that does not provide grounds for a sound decision. A second letter (E.G. Knox et al. Lancet, Oct. 8, 1983, pp. 856–857) by the same authors cautions, in the light of further data, "There is no longer an excess of reported deaths of RES neoplasms." Further information about these observations or other studies will be reviewed by the Advisory Committee and the Administration. These regulations will be amended promptly if the review establishes that this can be done on the basis of sound medical and scientific evidence.

Several recommendations were made to include other cancers as well as some non-cancerous diseases. On recommendation of the Advisory Committee, the Administrator has expanded the list of radiogenic cancers in the proposed regulation of April 22 (§ 3.311b(b)(2)) to include cancers of the esophagus, stomach, colon, pancreas, kidney, urinary bladder and salivary gland. The Committee did not advise expanding further the list of "radiogenic diseases" at present.

In light of the continuing study of nuclear blast survivors in Japan, however, multiple myeloma has also been included. The Advisory Committee will be asked to consider the addition of non-malignant thyroid nodular disease, posterior subcapsular cataracts and premature aging as radiogenic.

The Committee and the Administration will consider new information and the Administrator will amend the regulations to include additional diseases when sound medical and scientific evidence to do so is available.

A total of eight commenters urged the VA to consider individuals certified in the field of health physics as "credible sources" from whom claimants could obtain independent radiation dose estimates in support of their claims. One commenter also suggested that certifying groups would not describe themselves as "governing bodies." We concur with these comments and have appropriately amended § 3.311b(a)(3)(ii) to define "credible sources" as persons certified by an appropriate professional body in the field of health physics, nuclear medicine or radiology.

One commenter indicated that some individuals who are highly qualified to calculate dose estimates may not be certified by any group but should not be excluded from consideration as a "credible source." It was suggested that certification could be a qualifying factor but not a necessary one. Because the law requires independent dose estimates to be calculated by credible individuals, there is clearly a requirement that some restrictions be placed on the acceptability of the evidence that would automatically trigger referral to an independent expert selected by the Director of the National Institutes of Health. Nothing in the proposed rule precludes VA from

referring other estimates for reconciliation if that appears to be warranted, and we believe the definition, as amended, provides a wide variety of sources which claimants may employ to challenge official dose estimates.

Two comments were received which recommended that provision be made for permitting DoD to comment on the dose estimate from a claimant's "credible source" before the matter is submitted to NIH to reconcile material differences. The proposed rule also does not preclude that, and we believe it is unnecessary to make it a routine requirement. If it is clear from the two estimates that significantly different data or assumptions were employed, VA may request clarification from the estimator (either DoD or the unofficial source) of the underlying information. These differences are then to be reviewed by an independent expert. While the DoD estimate is always available to a claimant, and VA may request DoD's appraisal of the estimate supplied by the claimant's source, we believe it is unnecessary to routinely require review of either estimate.

The Scientific Council of the Veterans' Advisory Committee on Environmental Hazards recommended that the radioepidemiological tables developed by the Department of Health and Human Services be used as a starting point in considering claims but, in view of the uncertainties associated with the tables, should not be the final determinative in granting or denying service-connection. Use of the tables was supported by one other commenter.

The VA has formally requested the Committee on Interagency Radiation Research and Policy Coordination (CIRRPC) of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET) to assess the utility of employing the tables in some fashion to adjudicate compensation claims. That assessment is expected to take several months. In addition, comments were received from veterans' groups and others expressing serious reservations about the formal adoption of the tables by VA, and some advocates for individuals exposed to ionizing radiation have recently testified strongly before Congress against use of the tables in adjudicating claims. We have decided to withhold final judgment on use of the tables until CIRRPC has made its assessment.

Several comments were received which were critical of the radiation dose data supplied to VA by the military services. Some even suggested it was so unreliable, in terms of underestimating the doses sustained, that it should not be used at all.

As the official repository for Government records concerning the military's participation in the atmospheric tests and occupation of postwar Japan, the Department of Defense (DoD) is in possession of invaluable dosimetry data of direct relevance to the issue of exposure. For several years, the Defense Nuclear Agency has been DoD's executive agent for the Nuclear Test Personnel Review program, a major function of which is to assist VA in verifying claimants' participation in the tests and supplying either film badge readings for them or estimates of doses when the former do not exist. The "NTPR" effort has also included a detailed research program to recover all data pertaining to possible exposure of the occupation forces.

VA would certainly be remiss if it did not routinely draw upon this storehouse of data in weighing the merits of claims filed by former participants. The Congress has tacitly acknowledged the propriety of this practice, and has specified in Pub. L. 98–542 what form the reported dose estimates from DoD should assume. The VA's proposed rule specifies that "known limitations in the dosimetry devices employed or the methodologies employed" in the dose estimation shall be taken into account, as will be dose estimates from other, credible sources. Thus, VA has not revised its proposed rule in response to these particular comments.

One commenter suggested that specific weights should be assigned to the factors for consideration in evaluating claims, and that the officials responsible for the initial review of the claims should be indentified. The former is not possible to do in any way that would be scientifically valid and afford VA the flexibility necessary to take into account facts unique to each claim. Also, because adjudication personnel at VA regional offices have responsibility for all initial reviews of claims for veterans' or survivors' compensation benefits, it is not necessary to specify that fact in this context.

Another commenter asked that VA refer claims to outside consultants for opinions even if it determines there is no reasonable possibility of a relationship between disability and exposure. This is unnecessary and would only tend to delay the disposition of clearly undeserving claims.

Another suggestion was made that more guidance is required with respect to the "willful misconduct" and "supervening cause" provisos in paragraph (g) of this rule. The former is already defined at 38 CFR 3.1(n), and the latter concept is also one with which adjudication personnel are already familiar (see 38 CFR 3.307(d)). Finally, the same commenter suggested that strict guidelines be established regarding claims-processing time. Because no two claims are alike, and the needs for evidentiary development and analysis vary so widely, this simply is not feasible for this or any other class of disability claims.

Another suggestion was made that VA require all claimants to be on a "radiation registry." VA has for some time maintained statistics with respect to all claims decided in which it has been contended that radiation exposure in service resulted in disability or death.

Two commenters suggested the rules should make clear that a claimant can appeal an adverse determination. The appeals process is already addressed elsewhere in VA regulations (see 38 CFR Part 19) which specify that all claimants are to be advised of their appellate rights.

Finally, with regard to the provisions for referral to outside consultants for additional medical opinions in some cases, it was suggested that the regulations be specific as to who shall pay such consultants, out of which appropriations payments will be made and how much the payments shall be. In addition, one agency expressed concern as to how the experts were to be compensated. These administrative details are covered by current budgetary procedures and are not appropriate for inclusion in adjudication regulations.

Section 3.813 Special interim benefits.

No comments, suggestions or objections were received with regard to this proposed rule.

Other Comments

One commenter expressed the opinion that some benefits should be available to the women and children who have suffered because of a veteran's exposure to dioxin or ionizing radiation. Public Law 98–542 does not, however, authorize direct benefits to the classes of persons about which the commenter was concerned. While there are no programs for compensating spouses and children directly because of a living veteran's service-connected disability, there is a program of dependency and indemnity compensation for surviving spouses and children of veterans who die as a result of service-connected disabilities, and there are additional allowances payable to living disabled veterans with eligible dependents.

All comments will be shared with the Veterans Advisory Committee on Environmental Hazards, including one relating to concerns about the committee's duties and functions.

We appreciate the comments and the suggestions of those concerned individuals and organizations that responded to publication of the proposed rules, and we acknowledge the significant contributions of the Veterans' Advisory Committee on Environmental Hazards in developing these final rules. The proposed rules are, therefore, adopted with the amendments noted above and minor conforming amendments of a technical nature. The final rules are set forth below.

Regulatory Evaluations

The Administrator hereby certifies that these regulations do not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulations are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more;

(2) They will not cause a major increase in costs or prices;

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110)

Approved: August 20, 1985.

Harry N. Walters,

Administrator.

PART 1—[AMENDED]

1. Part 1 is amended by adding a new § 1.17 to read as follows:

§ 1.17 Evaluation of studies relating to health effects of dioxin and radiation exposure.

(a) From time to time, the Administrator shall publish evaluations of scientific or medical studies relating to the adverse health effects of exposure to 2,3,7,8 tetrachlorodibenzo-p-dioxin or ionizing radiation in the "Notices" section of the **Federal Register**.

(b) Factors to be considered in evaluating scientific studies include:

(1) Whether the study's findings are statistically significant and replicable.

(2) Whether the study and its findings have withstood peer review.

(3) Whether the study methodology has been sufficiently described to permit replication of the study.

(4) Whether the study's findings are applicable to the veteran population of interest.

(5) The views of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards.

(Pub. L. 98–542)

PART 3—[AMENDED]

2. Part 3 is amended by revising § 3.102, by removing and reserving § 3.311 and by adding new §§ 3.311a, 3.311b and 3.813 so that the new and revised material reads as follows:

§ 3.102 Reasonable doubt.

It is the defined and consistently applied policy of the Veterans Administration to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence; the claimant is required to submit evidence sufficient to justify a belief in a fair and impartial mind that the claim is well grounded. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire, complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships. (38 U.S.C. 210(c))

§ 3.311a Claims based on exposure to herbicides containing dioxin during service in the Republic of Vietnam.

(a) *Definitions.* For purposes of this section:

(1) "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations, if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) "Dioxin" means 2, 3, 7, 8 tetrachlorodibenzo-p-dioxin.

(3) "Sound scientific evidence" means observations, findings, or conclusions which are statistically and epidemiologically valid, are statistically significant, are capable of replication, and withstand peer review.

(4) "Sound medical evidence" means observations, findings, or conclusions which are consistent with current medical knowledge and are so reasonable and logical as to serve as the basis for management of a medical condition.

(b) *Presumption of exposure.* A veteran who served in the Republic of Vietnam during the Vietnam era shall be presumed to have been exposed to a herbicide containing dioxin while in Vietnam. The commencement date of any period specified in paragraph (c) of this section shall be the day of the veteran's latest departure from the Republic of Vietnam during such service.

(c) *Service-connection based on dioxin exposure.* Except as provided in paragraph (e) of this section, exposure to dioxin together with the development of the following disease within the period specified is sufficient to establish service-connection for resulting disability: Chloracne manifested not later than three months from the date of exposure. (See paragraph (g) of this section with regard to service-connection on other grounds and § 3.307(c) in cases where chloracne is initially misdiagnosed.)

(d) *Diseases not associated with dioxin exposure.* Sound scientific and medical evidence does not establish a cause and effect relationship between dioxin exposure and the following diseases:

(1) Porphyria cutanea tarda.

(2) Soft tissue sarcomas.

(3) Any other disease not specified in paragraph (c) of this section.

(e) *Exceptions.* Service-connection will not be established if the claimed disease is due to the veteran's own willful misconduct or there is affirmative evidence that establishes a nonservice-related supervening condition or event as the cause of the disease.

(f) *Study evaluations.* In the adjudication of individual claims, due consideration shall be given to the evaluations of study findings published pursuant to § 1.17 of this title.

(g) *Service-connection under other provisions.* Nothing in this section will be construed to prevent the establishment of service-connection for any disease or disorder shown by sound scientific or medical evidence to have been incurred or aggravated during active service.

(h) *Reasonable doubt doctrine.* With regard to any issue material to the determination of an individual claim, the provisions of § 3.102 of this title shall apply.

(Sec. 5(a)(2) of Pub. L. 98–542)

§ 3.311b Claims based on exposure to ionizing radiation.

(a) *Determinations of exposure and dose*—(1) *Dose assessment.* In all claims in which it is established that a radiogenic disease, listed in paragraph (b)(2) of this section, first became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in § 3.307, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. When dose estimates provided pursuant to paragraph (a)(2) of this section are reported as a range of doses to which a veteran may have been exposed, exposure at the highest level of the dose range reported will be presumed.

(2) *Request for dose information.* Where necessary pursuant to paragraph (a)(1) of this section, dose information will be requested as follows:

(i) *Atmospheric nuclear weapons test participation claims.* In claims based upon participation in atmospheric nuclear testing, dose data will in all cases be requested from the appropriate office of the Department of Defense.

(ii) *Hiroshima and Nagasaki occupation claims.* In all claims based on participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, dose data will be requested from the Department of Defense.

(iii) *Other exposure claims.* In all other claims involving radiation exposure, a request will be made for any available records concerning the veteran's exposure to radiation. These records normally include but may not be limited to the veteran's Record of Occupational Exposure to Ionizing Radiation (DD Form 1141), if maintained, service medical records, and other records which may contain information pertaining to the veteran's radiation dose in service. All such records will be forwarded to the Chief Medical Director, who will be responsible for preparation of a dose estimate, to the extent feasible, based on available methodologies.

(3) *Referral to independent expert.* When necessary to reconcile a material difference between an estimate of dose, from a credible source, submitted by or on behalf of a claimant, and dose data derived from official military records, the estimates and supporting documentation shall be referred to an independent expert, selected by the Director of the National Institutes of Health, who shall prepare a separate radiation dose estimate for consideration in adjudication of the claim. For purposes of this paragraph:

(i) The difference between the claimant's estimate and dose data derived from official military records shall ordinarily be considered material if one estimate is at least double the other estimate.

(ii) A dose estimate shall be considered from a "credible source" if prepared by a person or persons certified by an appropriate professional body in the field of health physics, nuclear medicine or radiology and if based on analysis of the facts and circumstances of the particular claim.

(4) *Exposure.* In cases described in paragraph (a)(2) (i) and (ii) of this section:

(i) If military records do not establish presence at or absence from a site at which exposure to radiation is claimed to have occurred, the veteran's presence at the site will be conceded.

(ii) Neither the veteran nor the veteran's survivors may be required to produce evidence substantiating exposure if the information in the veteran's service records or other records maintained by the Department of Defense is consistent with the claim that the veteran was present where and when the claimed exposure occurred.

(b) *Initial review of claims.* (1) When it is determined:

(i) A veteran was exposed to ionizing radiation as a result of participation in the atmospheric testing of nuclear weapons, the occupation of Hiroshima or Nagasaki, Japan, from September 1945 until July 1946, or other activities as claimed:

(ii) The veteran subsequently developed a radiogenic disease specified in paragraph (b)(2) of this section; and

(iii) Such disease first became manifest within the period specified in paragraph (b)(4) of this section; before its adjudication the claim will be referred to the Chief Benefits Director for further consideration in accordance with paragraph (c) of this section. If any of the foregoing 3 requirements has not been met, it shall not be determined that a disease has resulted from exposure to ionizing radiation under such circumstances. (But see paragraph (h) of this section.)

(2) For purposes of paragraphs (a)(1) and (b)(1) of this section, "radiogenic disease" shall include only the following:

(i) All forms of leukemia except chronic lymphatic leukemia;
(ii) Thyroid cancer;
(iii) Female breast cancer;
(iv) Lung cancer;
(v) Bone cancer;
(vi) Liver cancer;
(vii) Skin cancer;
(viii) Esophageal cancer;
(ix) Stomach cancer;
(x) Colon cancer;
(xi) Pancreatic cancer;
(xii) Kidney cancer;
(xiii) Urinary bladder cancer;
(xiv) Salivary gland cancer; and
(xv) Multiple myeloma.

(3) For purposes of paragraphs (a)(1) and (b)(1) of this section, "radiogenic disease" shall not include polycythemia vera.

(4) For purposes of paragraph (b)(1) of this section:

(i) Leukemias and bone cancer must become manifest within 30 years after exposure;

(ii) Other forms of cancer specified in paragraph (b)(2) of this section must become manifest 5 years or more after exposure.

(c) *Review by Chief Benefits Director.* (1) When a claim is forwarded for review pursuant to paragraph (b)(1) of this section, the Chief Benefits Director shall consider the claim with reference to the factors specified in paragraph (e) of this section and may request an advisory medical opinion from the Chief Medical Director.

(i) If after such consideration the Chief Benefits Director is convinced sound scientific and medical evidence supports the conclusion it is at least as likely as not the veteran's disease resulted from exposure to radiation in

service, the Chief Benefits Director shall so inform the regional office of jurisdiction in writing. The Chief Benefits Director shall set forth the rationale for this conclusion, including an evaluation of the claim under the applicable factors specified in paragraph (e) of this section.

(ii) If the Chief Benefits Director determines there is no reasonable possibility that the veteran's disease resulted from radiation exposure in service, the Chief Benefits Director shall so inform the regional office of jurisidiction in writing, setting forth the rationale for this conclusion.

(2) If the Chief Benefits Director, after considering any opinion of the Chief Medical Director, is unable to conclude whether it is at least as likely as not, or that there is no reasonable possibility, the veteran's disease resulted from radiation exposure in service, the Chief Benefits Director shall refer the matter to an outside consultant in accordance with paragraph (d) of this section.

(3) For purposes of paragraph (c)(1) of this section, "sound scientific evidence" means observations, findings, or conclusions which are statistically and epidemiologically valid, are statistically significant, are capable of replication, and withstand peer review, and "sound medical evidence" means observations, findings, or conclusions which are consistent with current medical knowledge and are so reasonable and logical as to serve as the basis of management of a medical condition.

(d) *Referral outside consultants.* (1) Referrals pursuant to paragraph (c) of this section shall be to consultants selected by the Chief Medical Director from outside the VA, upon the recommendation of the Director of the National Cancer Institute. The consultant will be asked to evaluate the claim and provide an opinion as to the likelihood the disease is a result of exposure as claimed.

(2) The request for opinion shall be in writing and shall include a description of:

(i) The disease, including the specific cell type and stage, if known, and when the disease first became manifest;

(ii) The circumstances, including date, of the veteran's exposure;

(iii) The veteran's age, gender, and pertinent family history;

(iv) The veteran's history of exposure to known carcinogens, occupationally or otherwise;

(v) Evidence of any other effects radiation exposure may have had on the veteran; and

(vi) Any other information relevant to determination of causation of the veteran's disease.

The Chief Benefits Director shall forward, with the request, copies of pertinent medical records and, where available, dose assessments from official sources, from credible sources as defined in paragraph (a)(3)(ii) of this section, and from an independent expert pursuant to paragraph (a)(3) of this section.

(3) The consultant shall evaluate the claim under the factors specified in paragraph (e) of this section and respond in writing, stating whether it is either likely, unlikely, or approximately as likely as not the veteran's disease resulted from exposure to ionizing radiation in service. The response shall set forth the rationale for the consultant's conclusion, including the consultant's evaluation under the applicable factors specified in paragraph (e) of this section. The Chief Benefits Director shall review the consultant's response and transmit it with any comments to the regional office of jurisdiction for use in adjudication of the claim.

(e) *Factors for consideration.* Factors to be considered in determining whether a veteran's disease resulted from exposure to ionizing radiation in service include:

(1) The probable dose, in terms of dose type, rate and duration as a factor in inducing the disease, taking into account any known limitations in the dosimetry devices employed in its measurement or the methodologies employed in its estimation;

(2) The relative sensitivity of the involved tissue to induction, by ionizing radiation, of the specific pathology;

(3) The veteran's gender and pertinent family history;

(4) The veteran's age at time of exposure;

(5) The time-lapse between exposure and onset of the disease; and

(6) The extent to which exposure to radiation, or other carcinogens, outside of service may have contributed to development of the disease.

(f) *Adjudication of claim.* The determination of service connection will be made under the generally applicable provisions of this part, giving due consideration to all evidence of record, including any opinion provided by the Chief Medical Director or an outside consultant, and to the evaluations published pursuant to § 1.17 of this title. With regard to any issue material to consideration of a claim, the provisions of § 3.102 of this title apply.

(g) *Willful misconduct and supervening cause.* In no case will service connection be established if the disease is due to the veteran's own willful misconduct, or if there is affirmative evidence to establish that a supervening, nonservice-related condition or event is more likely the cause of the disease.

(h) *Service connection otherwise established.* Nothing in this section will be construed to prevent the establishment of service connection for any injury or disease otherwise shown by sound scientific or medical evidence to have been incurred or aggravated during active service.

(Pub. L. 98–542)

§ 3.813 Interim benefits for disability or death due to chloracne or porphyria cutanea tarda.

(a) *Disability benefits.* Except as provided in paragraph (c) of this section, a veteran who served in the active military, naval or air service in the Republic of Vietnam during the Vietnam era, and who suffers from chloracne or porphyria cutanea tarda which became manifest within one year after the date of the veteran's most recent departure from the Republic of Vietnam during such service, shall be paid interim disability benefits under this section in the same manner and to the same extent that compensation would be payable if such disabilities were service-connected.

(b) *Death benefits.* Except as provided in paragraph (c) of this section, if a veteran described in paragraph (a) of this section dies as a result of chloracne or porphyria cutanea tarda, the veteran's survivors shall be paid interim death benefits under this section based upon the same elgibility requirements and at the same rates that dependency and indemnity compensation would be payable if the death were service-connected.

(c) *Exceptions.* Benefits under this section are not payable for any month for which compensation or dependency and indemnity compensation is payable for the same disability or death, nor are benefits payable under this section (1) when there is affirmative evidence that the disease was not incurred by the veteran during service in the Republic of Vietnam during the Vietnam era, (2) when there is affirmative evidence to establish that an intercurrent injury or disease, which is a recognized cause of the disease for which benefits are being claimed, was suffered by the veteran between the date of the veteran's most recent departure from the Republic of Vietnam during active military, naval or air service and the onset of the claimed disease, or (3) if it is determined, based on evidence in the veteran's service records and other records provided by the Secretary of Defense, that the

veteran was not exposed to dioxin during active military, naval or air service in the Republic of Vietnam during the Vietnam era.

(d) *Similarity to service-connected benefits.* For purposes of all laws administered by the VA (except chapters 11 and 13 of Title 38, United States Code), a disease establishing eligibility for disability or death benefits under this section shall be treated as if it were service-connected, and the receipt of disability or death benefits shall be treated as if such benefits were compensation or dependency and indemnity compensation, respectively.

(e) *Effective dates.* Benefits under this section may not be paid for any period prior to October 1, 1984, nor for any period after September 30, 1986.

(Pub. L. 98-542) (Oct. 1, 1984)

[FR Doc. 85-20381 Filed 8-22-85; 10:55 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2887-6]

Review of Standards of Performance for New Stationary Sources; Sulfuric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: The EPA is required to review standards of performance for new, modified, or reconstructed stationary sources every 4 years by the Clean Air Act. A review of the existing new source performance standards (NSPS) for sulfuric acid plants (40 CFR Part 60, Subpart H) has been completed to determine if changes are needed. The review indicates that no revision to the standards is necessary.

DATE: Comments must be received on or before October 25, 1985.

ADDRESSES: Send comments (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-85-20, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Review Document: The document summarizing information gathered during the review may be obtained from the EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Review of New Source Performance Standards for Sulfuric Acid Plants," EPA-450/3-85-012, March 1985.

Docket. Docket No. A-85-20, containing supporting information gathered during the review is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC, 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Crowder, Industrial Studies Branch, Emission Standards and Engineering Division (MD-13) U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5601.

SUPPLEMENTARY INFORMATION:

Background

Emissions from sulfuric acid plants were among the first pollutants to be regulated by EPA under the Clean Air Act. The NSPS were promulgated for sulfuric acid plants on December 23, 1971 (40 CFR 60.80, Subpart H). The standards limit emissions of sulfur dioxide (SO_2), sulfuric acid mist, and opacity from new or modified sulfuric acid production units that have been constructed, modified, or reconstructed after the date of proposal (August 17, 1971). The promulgated standard limits SO_2 to 2 kg per metric ton of sulfuric acid (H_2SO_4) produced (4 lb/ton), sulfuric acid mist to 0.075 kg per metric ton of acid produced (0.15 lb per ton), and opacity to less than 10 percent. The acid produced is always expressed as 100 percent H_2SO_4, even though the acid is usually produced and marketed at lower concentrations.

Requirements were also included in the promulgated standards for continuous monitoring of SO_2 in the stack gas. Excess SO_2 emissions are required to be reported to the EPA (or the appropriate State regulatory agency) for all 3-hour periods of such emissions (or the arithmetic average of three consecutive 1-hour periods). Periods of excess emission are considered to occur when the average plant stack SO_2 emission exceeds the standard of 4 lb/ton of 100 percent H_2SO_4 produced.

Each sulfuric acid production unit (or "train") is the affected facility. The standards of performance apply to contact-process sulfuric acid and oleum facilities that burn elemental sulfur, alkylation acid, hydrogen sulfide, metallic sulfides, organic sulfides, mercaptans, or acid sludge. The NSPS does not apply to metallurgical plants that use acid plants as control systems, or to chamber process plants or acid concentrators.

The Clean Air Act Amendments of 1977 require that the Administrator review and, if appropriate, revise established standards of performance for new stationary sources at least every 4 years [Section 111(b)(1)(B)]. A review of the sulfuric acid plant standard was previously conducted in 1979 (44 FR 15742). However, no revisions to the NSPS were made as a result of the 1979 review. A second review has been conducted by contacting EPA regional offices, other Federal agencies, State agencies, and companies with plants subject to the NSPS. Information was collected on the number and location of all facilities subject to the NSPS, on control equipment performance and costs, and on the results of performance tests and continuous stack gas monitoring. From these sources, a background document (EPA-450/3-85-012) was prepared covering the current status of control technology, compliance test data, monitoring systems employed, cost, and cost effectiveness for representative control systems on different sizes of acid plants. This notice announces that the EPA has completed the review and invites comments on its results.

Findings

Industry Growth Rate

U.S. sulfuric acid production in 1971 was 29.0 million tons, and approximately 36.6 million tons in 1983. Production is expected to increase to 48.0 million tons by the year 1995. Over 77 percent of the sulfuric acid design capacity is located in the South, and over half of the NSPS plants are located in Florida.

In 1971, the EPA projected two new units to be coming on-line each year for the next several years. On the average, three to four new units have been completed each year since 1971, representing an annual growth in production averaging 2 percent.

Control Technology

Sulfur dioxide and acid mist are present in the tail gas from all contact process sulfuric acid production units. In modern four-stage contact process plants burning sulfur with approximately 8 percent SO_2 in the converter feed and producing 98 percent acid, SO_2 and acid mist emissions are generated at the rate of 26 to 56 lb/ton of 100 percent acid and 0.4 to 4 lb/ton of 100 percent acid, respectively. The dual absorption process is the best demonstrated control technology for SO_2 emissions from sulfuric acid plants, while the high efficiency acid mist

eliminator is the best demonstrated control technology for acid mist emissions. These two emission control systems have become the predominant control strategy chosen for sulfuric acid plants built or modified since promulgation of the NSPS. Forty of the 46 new or modified sulfuric acid production plants built since 1971 and subject to NSPS incorporate the dual absorption process, and all 46 plants use the high efficiency acid mist eliminator.

The six plants which do not use dual absorption to control SO_2 emissions use single absorption followed by scrubbing. The scrubbers use either sodium sulfite or ammonium hydroxide to absorb SO_2. Molecular sieves were used by one plant, but abandoned after operational difficulties.

The review did not find any other demonstrated technologies for controlling emissions other than the technologies described here. Therefore, the EPA concluded that there are now three technologies capable of achieving the NSPS for SO_2 (dual absorption, sodium sulfite-bisulfite scrubbing, and ammonia scrubbing). Only high efficiency mist eliminators have been used to achieve the NSPS for acid mist and opacity. Due to cost considerations, dual absorption followed by high efficiency mist eliminators is expected to remain the technology of choice for attaining the NSPS for SO_2, acid mist, and opacity.

Levels Achievable With Demonstrated Control Technology

The NSPS limits emissions of SO_2 to 4 lb/ton of acid produced. Results of compliance tests (Method 8) on the 46 sulfuric acid units indicate that all have achieved the NSPS for SO_2. Also, continuous monitoring data indicate that the plants generally comply with the NSPS on a continuing basis, except during startup (e.g. after annual maintenance turnarounds). Most of the plants have demonstrated compliance with SO_2 emissions between 2 and 4 lb/ton, but about one-fourth of the plants have exceeded 3 lb/ton during performance tests. The available information is insufficient to determine whether the plants with the highest emissions could achieve lower emissions through changes in maintenance or operation.

Performance test results indicate that all plants have also complied with the NSPS for acid mist, and no violation of the opacity regulation was measured at 30 plants. Similar to the SO_2 emissions, many plants were found to be operating close the NSPS limit for acid mist and opacity. Opacity data are not available for 16 plants.

The current performance levels for SO_2 (0.12 to 3.8 lb/ton) span a wider range than the performance levels (1.2 to 2.9 lb/ton) on which the standard was originally based. This is also true for the performance levels for acid mist (0.04 to 0.15 lb/ton previously vs. 0.004 to 0.15 lb/ton now).

Since all plants have demonstrated compliance with the NSPS levels of control, the EPA has concluded that less stringent emission limits are not justified. A more stringent standard was considered, but was rejected on the basis that the technology on which the NSPS regulation was based (dual absorption followed by high efficiency mist eliminators) has not changed and no new, more effective control technology is available. Also, considering current performance levels of existing plants, there are insufficient data to determine whether new plants could operate continuously at levels more restrictive than the existing NSPS.

Cost Effectiveness of the NSPS

The cost effectiveness of control was estimated for four types of SO_2 control systems: dual absorption, ammonia scrubbing, sodium sulfite scrubbing, and molecular sieve adsorption. The cost effectiveness ranged from $245 to $625 per ton of SO_2 removed for the large (1,500 TPD) model plant size, and from $282 to $751 per ton for the small (750 TPD) model plant size. For both plant sizes, dual absorption was estimated to be the most cost effective control option.

The cost analysis for acid mist control showed essentially no difference in cost effectiveness ($47–50 per ton of acid mist removed) for the vertical tube and the horizontal dual pad mist eliminators for the two model plant sizes.

Monitoring, Recordkeeping, and Reporting

SO_2 emissions in the tail gas from sulfuric acid plants are required to be continuously monitored. Continuous SO_2 monitoring instrumentation should be able to: (1) Provide a record of performance, and (2) provide intelligence to plant operating personnel such that suitable corrections can be made when the system is shown to be out of adjustment. Plant operators are required to maintain the monitoring equipment in calibration and to furnish records of SO_2 excess emission values to the Administrator of EPA or to the responsible State agency.

Measurement principles used in the gas analysis instruments are:

1. Infrared absorption.
2. Colorimetric titration of iodine.
3. Selective permeation of SO_2 through a membrane.
4. Flame photometric measurement.
5. Chromatographic measurement.
6. Ultraviolet absorption.

The ultraviolet absorption system and the iodine titration method have received widespread application for SO_2 measurement in sulfuric acid plants subject to NSPS.

The continuous monitoring system is calibrated using a gas mixture of known SO_2 concentration. Performance evaluation of the monitoring system is conducted using the SO_2 portion of EPA Method 8.

Excess SO_2 emissions are required to be reported to the EPA (or appropriate State regulatory agencies) for all 3-hour periods of such emissions (or the arithmetic average of three consecutive 1-hour periods). Periods of excess emissions are considered to occur when the integrated (or arithmetic average) plant stack SO_2 emission exceeds the standard of 4 lb/ton of 100 percent H_2SO_4 produced.

A separate study by the EPA (NSPS Triennial Review, EPA Contract No. 68–01–6826) reported that the monitoring, reporting and recordkeeping aspects of the NSPS for sulfuric acid plants are generally accepted by the industry and serve their intended purposes to the Agency. No changes in the existing monitoring, recordkeeping, and reporting requirements ae being proposed.

Conclusions

Based on the above findings, the EPA concludes that the level of control required by the NSPS for sulfuric acid plants reflects best demonstrated control technology considering cost, energy, and non-air environmental impacts. A review of the cost effectiveness of the NSPS found that the costs relative to the emissions controlled are reasonable. Also, the monitoring, recordkeeping and reporting requirements are serving their intended purposes. Therefore, the EPA has concluded that the emission limits for SO_2, acid mist and opacity from sulfuric acid manufacturing plants should not be changed, and that the existing monitoring, recordkeeping, and reporting requirements should not be changed.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt cement industry, Can surface coating, Coal, Copper, Electric power plants, Glass and glass products, Grains, Incorporation by references, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum,

Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Tires, Waste treatment and disposal, Zinc.

Authority: 42 U.S.C. 7411, section 111 of the Clean Air Act.

Dated: August 15, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-20314 Filed 8-23-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50521A; FRL-2846-3]

Disubstituted Diamino Anisole; Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice (PMN) P-83-822 and a TSCA section 5(e) consent order issued by EPA. The Agency believes that this substance may be hazardous to human health and that the uses described in this rule may result in significant human exposure.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern "daylight" time on September 9, 1985. This rule shall become effective November 8, 1985.

FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Toll free: (800-424-9065).
In Washington, D.C.: (554-1404).
Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5(b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5 (e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

EPA has promulgated general provisions applicable to SNURs under 40 CFR Part 721, Subpart A published in the **Federal Register** of September 5, 1984 (49 FR 35011). Interested persons should refer to that document for a detailed discussion of the general provisions. These general provisions will apply to this SNUR without change except as discussed in this preamble and as set forth in § 721.120.

III. Summary of This Rule

The chemical substance which is the subject of this rule is identified generically as disubstituted diamino anisole. It was the subject of PMN P-83-822. EPA is designating the following as significant new uses of the substance: (1) Use other than as an intermediate and (2) manufacturing, importing, or processing for use as an intermediate without establishing a program whereby (a) persons who may be exposed to the substance wear protective gloves and (b) packages of the substance are appropriately labeled.

IV. Background

The chemical substance which is the subject of this rule was the subject of a PMN designated P-83-822. The notice submitter claimed the following as confidential business information (CBI): The submitter's identity, the specific chemical identity, and the estimated production volume. For purposes of clarity, the substance is referred to in this preamble and § 721.120 by its generic chemical name and PMN number.

The Agency proposed a SNUR for this substance which was published in the **Federal Register** of December 7, 1984 (49 FR 47874). The background of the PMN and the reasons for proposing the SNUR are set forth in the preamble to the proposed rule. EPA received no comments during the public comment period for this SNUR.

V. Designation of Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA is defining the significant new uses of P-83-822 as set forth in paragraph (a)(2) of § 721.120.

Based on analogy to related compounds demonstrated to be animal carcinogens, the Agency believes that any significant exposure to P-83-822 would present a health risk to workers. The Agency believes that the data described in this preamble and in the preamble to the proposed rule are sufficient to substantiate the contention that the significant new uses of P-83-822 present a potentially significant increase in the magnitude and type of exposure. Section 5(a)(2) of TSCA does not require the Agency to make either a "may present" or a "will present" risk finding with regard to satisfying the requirements for a significant new use. The statute imposes the requirement that the Agency provide for a "consideration of all relevant factors." The Agency believes that a reasonable qualitative assessment of these factors was incorporated in the preamble of the proposed rule published in the **Federal Register** of December 7, 1984 (49 FR 47874).

VI. Alternatives

In the proposed SNUR, EPA considered other possible approaches. These alternatives included the promulgation of a section 8(a) reporting rule and/or regulation under section 6. In the absence of comments and for the reasons discussed in the preamble to the proposed rule, the Agency has elected to proceed with the promulgation of a SNUR covering significant new uses of P-83-822.

VII. Recordkeeping

To ensure compliance with this rule, and to assist enforcement efforts, EPA is requiring, under its authority in sections 5 and 8(a) of TSCA, that, in addition to meeting the requirements of § 721.17, persons who manufacture, import, or process P–83–822 maintain the following records for 5 years from their creation: records of the results of determinations that gloves are impervious, the names of persons required to wear gloves, and copies of the labels. These recordkeeping requirements apply to small manufacturers, importers, and processors as well because the small business exemption of section 8 of TSCA is not applicable when the chemical substance which is the subject of the rule is also the subject of a section 5(e) order.

The Agency considered omitting recordkeeping requirements, but believes compliance monitoring for this SNUR would be made more difficult without them.

VIII. Exemptions to Reporting Requirements

The Agency has promulgated exemptions to SNUR reporting requirements under § 721.19. In the case of P–83–822, the terms of § 721.19 apply without change.

EPA issued its final premanufacture notification rules under 40 CFR Part 720, published in the **Federal Register** of May 13, 1983 (48 FR 21722), including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Revisions of § 720.36 and other provisions were proposed on December 27, 1984 (49 FR 50201). Because § 720.36 was not in effect when EPA condified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance, section 12(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing for a significant new use. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)); an amendment clarifying this definition was proposed on December 27, 1984 (49 FR 50208). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, persons would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S.; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S., such manufacture and processing would not be "solely for export" because manufacture and processing would be for use in the U.S. regardless of whether any quantity of the substance was later exported.

IX. Applicability to Uses Which May Have Occurred Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question had just undergone premanufacture review. The Agency received no information that the significant new uses are ongoing. Therefore, at this time, the Agency believes that these uses are significant new uses.

As indicated in the proposal, EPA has found that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, even if the substance was manufactured, imported, or processed for the significant new uses between proposal and promulgation of this rule, such activities may not continue after the effective date of this rule. Any such person must cease such activity until it has complied with all SNUR notice requirements.

X. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risk that may be posed by a significant new use of P–83–822, EPA encourages possible SNUR notice submitters to test the substance's potential for carcinogenic effects. The Agency believes that the results of a 2-year rodent bioassay would adequately characterize possible carcinogenic effects of the substance. If a SNUR notice is submitted for a use involving significant exposure without adequate test data, EPA is likely to take action under section 5(e). As an alternative to testing the substance, potential notice submitters may want to consider the use of personal protective equipment to reduce exposure to the substance.

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this prenotice consultation, EPA will discuss the test data it believes necessary to evaluate significant new uses of the substance. Data should be developed and submitted in accordance with the TSCA good laboratory practices regulations at 40 CFR Part 792.

EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new uses. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

XI. Economic Analysis

The agency has evaluated the potential costs of establishing significant new use reporting requirements for P–83–822. This evaluation is summarized in the preamble to the proposed rule (49 FR 47874).

The Agency's complete economic analysis is available in the public file.

XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50521A). A public version of this record from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Reading Room, Rm. E–107, 401 M St. SW., Washington, DC.

The record includes basic information considered by the Agency in developing this rule. The record now includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. The proposed SNUR.
4. The section 5(e) consent order.
5. The economic analysis of this SNUR.
6. The economic support document for the section 5(e) consent order.
7. The toxicity support document for the section 5(e) order.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, for the reason explained in Unit XI of the preamble to the proposal for this rule, EPA believes that the cost will be low. In addition, because of the nature of the rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the suggested testing and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage an innovation which has high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial even if all the potential new uses were developed by small companies. EPA expects to receive few SNUR notices for the substance.

C. Paperwork Reduction Act

Information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0012.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 16, 1985.

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 is revised to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.120 to read as follows:

§ 721.120 Disubstituted diamino anisole.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance referred to by its premanufacture notice number and generic chemical name is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: P–83–822, disubstituted diamino anisole.

(2) The significant new uses are:

(i) Use other than as an intermediate.

(ii) Manufacture, import, or processing for use as an intermediate without establishing a program whereby:

(A) Persons employed by or under the control of the manufacturer, importer, or processor who may be exposed to the substance (including those persons involved in maintenance, packaging, and storage operations) wear protective gloves determined to be impervious to the substance by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves, and

(B) Packages containing the substance (including those storing the substance between manufacturing or importing and processing stages) are labeled to indicate that the substance should be handled only while using gloves determined to be impervious to the substance.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substance identified in paragraph (a)(1) of this section must maintain the following records for 5 years from their creation:

(i) The results of any determination that gloves are impervious.

(ii) The names of persons required to wear gloves.

(iii) Copies of labels described in paragraph (a)(ii)(B) of this section.

(2) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 85–20305 Filed 8–23–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–508; RM–4676]

FM Broadcast Station in Shawnee, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 236 to Shawnee, Oklahoma, in response to an expression of interest filed by Carl Corrick. The allotment could provide a first local service to the community.

EFFECTIVE DATE: September 26, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions

authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Shawnee, Oklahoma) MM Docket No. 84–508; RM–4678.

Adopted: August 13, 1985.
Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 24401, published June 13, 1984, in response to a petition filed by Linda K. Allen ("petitioner"). The *Notice* proposed the allotment of FM Channel 236 to Shawnee, Oklahoma, as that community's first FM service. Petitioner failed to file comments of interest as required in the Appendix to the *Notice*. However, Carl D. Corrick did file comments supporting the allotment and expressed his intention to apply for the channel.

2. Channel 236 can be allotted to Shawnee in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules provided there is a site restriction of approximately 31.4 miles southeast of the community. The site restriction will prevent short spacing to FM Station KICT, Channel 236, Wichita, Kansas, FM Station KEBC, Channel 234, Oklahoma City, Oklahoma, and FM Station KMGZ, Channel 237A, Lawton, Oklahoma.[1]

3. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request, since it could provide for the first local service to Shawnee.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective September 26, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules is amended with respect to the community listed below:

City	Channel No.
Shawnee, Oklahoma	[illegible]

5. The window period for filing applications will open on September 27, 1985 and close on October 28, 1985.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20277 Filed 8–23–85; 8:45 am]

BILLING CODE 6712–01–M

[1] Existing Class C stations operating with less than a 300 meter antenna height are now permitted a buffer zone. However, this requirement does not apply to petitions such as the instant one which were filed before March 1, 1984. See BC Docket 80–90, *recons.* 97 FCC 2d 279 (1984). Therefore, Channel 236 Wichita, Kansas and Channel 234, Oklahoma City, Oklahoma, are not entitled to the buffer zone in the direction of Shawnee. Nevertheless interested applicants should attempt to select a transmitter location which would protect these buffer zones to the extent possible.

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47 CFR Part 73

[MM Docket No. 84–1043; RM–4730]

FM Broadcast Stations in Cambridge and Salisbury, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allocates Channel 232A to Cambridge, Maryland, as that community's second FM allocation, in response to a petition filed by Philip G. D'Adamo. The allocation requires Channel 248A be substituted for Channel 232A at Salisbury, Maryland, and modification of the license at Salisbury, to accommodate the allocation at Cambridge.

EFFECTIVE DATE: September 26, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Cambridge and Salisbury, Maryland); MM Docket No. 84–1043, RM–4730.

Adopted: August 13, 1985.
Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the *Notice of Proposed Rule Making and Order to Show Cause*, 49 FR 46444, published November 26, 1984, issued in response to a petition for rule making filed by Philip D'Adamo ("petitioner") proposing to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules by allotting Channel 232A to Cambridge, Maryland, by deleting that channel from Salisbury, Maryland and by allocating Channel 248A to Salisbury. The *Notice* also ordered that the license of Prettyman Broadcasting Company ("Prettyman") for Station WICO–FM, Salisbury, Maryland, be modified to specify operation on Channel 248A in lieu of 232A. Petitioner and Prettyman filed comments supporting the proposal.

2. Prettyman Broadcasting Company, licensee of Station WICO–FM, Channel 232A, Salisbury, Maryland, agrees to change its channel in order to accommodate allotment of Channel 232A to Cambridge provided it is reimbursed for all legitimate expenses. It is Prettyman's understanding that despite the change in channel, WICO–FM's coverage will remain essentially the same and that operation can continue from the same transmitter location. As set forth in the *Notice*, Prettyman will be reimbursed for all legitimate expenses incurred in this modification by Philip D'Adamo or the ultimate permittee of FM Channel 232A, Cambridge, Maryland.

3. The allotment of FM Channel 232A to Cambridge could provide that community with its second broadcast service. Channels 232A and 248A can be allocated in compliance with the Commission's mileage separation requirements.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective September 26, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended for the following communities:

City	Channel No.
Cambridge, Maryland	232A, 292A.
Salisbury, Maryland	248A, 255A, and 288A.

5. The window period for filing applications will open on September 27, 1985, and close on October 28, 1985.

6. It is further ordered, pursuant to the authority contained in section 316(a) of the Communications Act of 1934, as amended, that the license for Station WICO, Salisbury, Maryland, is modified effective September 27, 1985, to specify operation on 248A in lieu of Channel 232A, with the condition that it will be reimbursed for the reasonable costs incurred in changing frequencies, from the ultimate permittee of Channel 232A, Cambridge. Station WICO may continue to operate on Channel 232A for one year from the effective date of this action or may commence operations on Channel 248A at an earlier date subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

7. It is further ordered that the Secretary shall send a copy of this *Report and Order* by certified mail, Return Receipt Requested, to: Prettyman Broadcasting Co., Box 909, Salisbury, Maryland 21801.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20284 Filed 8–23–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–787; RM–4725]

FM Broadcast Station in Palm Desert, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots FM Channel 219A to Palm Desert, California, as that community's first local noncommercial education channel, in response to a petition filed by the University of Southern California.

EFFECTIVE DATE: September 26, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.504(a) Table of Allotments Noncommercial Educational FM Broadcast Stations (Palm Desert, California); MM Docket No. 84–787, RM–4725.

Adopted: August 13, 1985.
Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 49 FR 33459, published August 23, 1984, issued in response to a petition filed by the University of Southern California ("petitioner"), proposing the allotment of FM Channel 219A to Palm Desert, California, as that community's first local noncommercial educational channel. Supporting comments were filed by petitioner reaffirming its intention to apply for the channel. No oppositions to the proposal were received.

2. We believe the public interest would be served by allotting Channel 219A to Palm Desert since it could provide the community with its first local noncommercial educational service.

3. Channel 219A can be allotted consistent with the minimum distance separation requirements of §§ 73.207 and 73.507 of the Commission's Rules provided the transmitter is located 8.7 kilometers (5.4 miles) southeast of the community to avoid short-spacing to Station KVCR (Channel 220), San Bernardino, California. Additionally, since the proposed allotment is within 320 kilometers (199 miles) of the common U.S.-Mexico border, the concurrence of the Mexican Government was obtained.

PART 73—[AMENDED]

§ 73.504 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 26, 1985, the Noncommercial Educational FM Table of Allotments, § 73.504(a) of the Commission's Rules is amended to include the community listed below, as follows:

City	Channel No.
Palm Desert, California	219A

5. The window for filing applications on this channel will open on September 27, 1985 and close on October 28, 1985.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20281 Filed 8–23–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83–488; RM–4425]

TV Broadcast Station in Gainesville, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action imposes a site restriction on UHF television Channel 61, at Gainesville, Florida, in response to a Petition for Reconsideration, filed by Christian Channel/Ro-Mar Communications, Inc. in order to avoid a short spacing to an application for Channel 53, High Springs, Florida.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Memorandum Opinion and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Gainesville, Florida); MM Docket 83–488, RM–4425.

Adopted: August 12, 1985.
Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it two petitions for reconsideration of the *Report and Order*, 49 FR 11638, published March 27, 1984, wherein the Commission assigned UHF television Channel 61 to Gainesville, Florida, in response to a petition filed by Holt Robinson Communications ("Holt"). Reconsideration of that decision is sought by Christian Channel/Ro-Mar Communications, Inc. ("CCR"), and by High Springs Television, Inc. ("HST").[1] Both petitioners have applied for Channel 53 at High Springs, Florida. Holt filed comments in response to the request for reconsideration.

2. CCR argues that the *Notice of proposed Rule Making*, which proposed to assign Channel 61 to Gainesville, failed to inform the applicants for Channel 53 at High Springs of a potential short spacing at their proposed sites. In the *Report and Order*, CCR notes that the Commission directed applicants for Channel 53 at High Springs, to rectify any short spacing caused by the Channel 61 reference point to their proposed site. According to its calculations, the Channel 61 reference point is only 0.7 miles short-spaced to its proposed site. Petitioner argues that the applicants for Channel 61 at Gainesville should be ordered to select a restricted site.

3. Holt responds that it does not object to the location proposed by the Channel 53 applicant, since an adequate area is available to the south of Gainesville where a tower can be located for use by a Channel 61 station.

4. We believe that the petition for reconsideration should be granted. While petitioner has stated that it was not aware of the *Notice* and therefore it could not comment on a possible short spacing to its application for Channel 53, the self-imposed limits set by the six applicants for Channel 61 now meet the spacing requirements to Channel 53. Since there is currently no short spacing between the sites proposed by the Gainesville applicants and that proposed by the High Springs applicants, the Commission believes that it would be in the public interest to grant the petition for reconsideration. The imposition of this site restriction at Gainesville will enable the High Springs applications to be processed without having to waive the short spacing violation to the city reference point.

5. Accordingly, it is ordered, that the petition for reconsideration, filed by Christian Channel/Ro-Mar Communications, Inc. is granted to the degree stated herein: a site restriction of approximately 3.2 km (2 miles) southeast is imposed on UHF television Channel 61 at Gainesville, Florida.

6. It is further ordered, that this proceeding is terminated.

7. For further information, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20282 Filed 8–23–85; 8:45 am]

BILLING CODE 6712-01-M

[1] On September 17, 1984, HST submitted a "Motion to Dismiss Petition for Partial Reconsideration," indicating that it has since amended its application for construction permit to cure any potential short spacing to Channel 61 at Gainesville.

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47 CFR Part 90

[PR Docket No. 85–102]

Radio Services, Special; To Make Additional Channels Available for Private Carrier Paging Operations in the 929–930 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules reapportioning the number of channels available for private non-commercial paging and private carrier paging operations and allowing inter-pool sharing. This action is taken to ensure the maximum utilization of available spectrum.

EFFECTIVE DATE: September 23, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, Rules Branch, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Report and Order

In the matter of amendment of Part 90 of the Commission's Rules to make additional channels available for private carrier paging operations in the 929–930 MHz band.

[PR Docket No. 85–102]

Adopted: August 12, 1985.
Released: August 16, 1985.

By the Commission.

Introduction

1. On April 1, 1985 the Commission adopted a *Notice of Proposed Rule Making* (NPRM) proposing a modification in the number of channels available for private non-commercial paging and private carrier paging (PCP) operations in the 929–930 MHz band.[1] More specifically, the Commission proposed to take ten channels from the non-commercial pool and redistribute them to the private carrier pool. The Commission also proposed to allow inter-pool sharing starting January 1, 1987. The proposals were intended to promote more efficient use of the frequencies in the 929–930 MHz band by reducing the chances of frequencies in one pool would remain unused while frequencies in the other pool were heavily utilized.

Background

2. In July of 1982, the Commission adopted a *Second Report and Order* in Docket No. 80–183 establishing rules and policies to govern the operations of private paging stations in the 929–930 MHz band.[2] The Commission provided private land mobile users two alternatives to satisfy their paging requirements: (1) Non-commercial private systems (including shared paging facilities with multiple licensing or cooperative sharing arrangements) and (2) private carrier (commercial) paging systems. In order to ensure that an adequate pool of frequencies would be available for non-commercial applicants, the Commission established separate frequency pools. Based on projected user demand, the Commission allocated thirty channels for private non-commercial systems and ten

[1] *Notice of Proposed Rule Making*, PR Docket 85–102, 50 FR 13997 (April 9, 1985).

[2] *Second Report and Order*, Docket No. 80–183, 47 FR 39502 (September 8, 1982).

channels for private carrier paging systems. The Commission stated, however, that should a significant number of channels in either category remain unused it would review the allocation of channels in each pool.

Comments

3. Comments on the Commission's proposals were received from two parties—Motorola and the National Association of Business and Educational Radio, Inc. (NABER). Motorola filed reply comments.

4. Motorola supported the underlying objective of the Commission's proposal, i.e., to ensure more effective utilization of the spectrum in the 929–930 MHz band. It was concerned, however, about the potential impact of the proposals on slower developing non-commercial operations. It was particularly concerned over the Commission's inter-pool sharing proposal. Motorola contended that under inter-pool sharing private carrier entrepreneurs could file applications and secure authorizations for all the 900 MHz private carrier paging channels without fully utilizing their systems and then be eligible to "invade" the non-commercial pool. It recommended the Commission establish loading standards and enforce construction dates for PCP systems prior to permitting any inter-pool sharing. Motorola also raised the issue of the number of frequencies available for non-commercial operations above Line A.[3] Under the Commission's proposal the available channels would be divided equally between the two pools. Motorola pointed out, however, that because of an agreement with Canada, frequencies between 929–929.5 MHz are not assigned in the United States north of Line A. Consequently, the Commission's proposal actual results in a 75/25 channel distribution ratio above Line A in favor of commercial use.[4] In order maintain the 50/50 channel ratio everywhere Motorola recommended the Commission redistribute only 5 channels to the private carrier pool above Line A.

5. NABER, in its comments, also supported the Commission's efforts to use the 929–930 MHz band more effectively. According to NABER, "it is vital that the Commission take necessary steps in order to assure that the greatest number of users may be accommodated and that spectrum is effectively utilized with no degradation of service." However, like Motorola, NABER voiced concern that license activity may not be a true indicator of use. It conditioned its support of more channels for PCP operations on the finding that there is sufficient loading on the current PCP frequencies to warrant a redistribution.

Decision

6. We have considered all the comments carefully and have decided for the reasons discussed below, to adopt the rules as proposed.

7. The original allocation of 30 channels for private non-commercial systems and 10 channels for private carrier operations reflected what the Commission considered to be a reasonable approximation of likely user demand. We specifically reserved 30 channels for non-commercial systems ". . . to assure that all private service eligibles . . . have an opportunity to apply for channels and implement systems in a manner best suited to their needs."[5] In so doing, we recognized that ". . . private users generally do not apply for channels until they need them, unlike commercial applicants who have an immediate need for channels as part of a business venture."[6] Nonetheless, we also stated at the time the original allocation was made that if there is a significant difference in use between the two pools we would modify the distribution. As stated in the *Notice*, we have authorized over 600 PCP stations and less than 30 non-commercial stations. We believe this constitutes a significant difference. The interest shown to date in establishing private carrier systems versus that for establishing non-commercial systems, in our opinion, supports a more equitable distribution of channels. However, the concerns articulated earlier in the allocation proceeding about ensuring adequate spectrum to accommodate the future needs of non-commercial operations remain valid. Therefore, we are reallocating ten channels from the non-commercial paging pool to the private carrier paging pool.[7]

8. In addition to the redistribution we proposed to allow inter-pool sharing. Dividing the forty channels equally into two pools should, in most cases, provide sufficient frequencies for each type of use. However, it is difficult to accurately predict what will happen in the future. There may be certain situations, for instance, where more than twenty channels are needed for private carrier operation and less than twenty for non-commercial systems, or vice versa. In order to provide for these situations we proposed to allow inter-pool sharing. Motorola, however, was concerned that if private carrier applicants are allowed access to the non-commercial pool they would speculate by applying for all the private carrier frequencies without fully utilizing their systems and then start on the non-commercial pool. They recommend the Commission establish loading standards and enforce construction dates for PCP systems prior to permitting inter-pool sharing.

9. In Docket No. 80–183, the Commission considered the use of a minimum loading standard to determine whether a particular channel is reasonably loaded. Such use of a standard was rejected as being inconsistent with our spectrum efficiency goals. The Commission believes that loading standards are impractical because paging technology is progressing so rapidly that the number of pagers possible on a channel is likely to change often, thereby requiring constant reexamination and modification of any given loading standard. Morever, we have previously found that the likelihood of frequency warehousing in the paging services is comparatively small and, thus, that loading requirements are unnecessary.[8] For these reasons and in view of the provisions that we will apply to inter-pool sharing, we believe loading standards are not necessary.

10. Moreover, the purpose of inter-pool sharing is to provide additional flexibility in our allocation scheme and thereby increase the use of these channels. While it is true that allowing private carrier applicants access to frequencies in the non-commercial pool without safeguards could lead to speculation and to the 900 MHz paging frequencies being exhausted more quickly or being under-utilized, we do not believe this will happen. The inter-pool sharing criteria we are adopting provide adequate protection against such speculation. For example, in order to allow non-commercial eligible sample opportunity to apply for channels, inter-pool sharing would not be permitted until January 1, 1987. Further, under

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[3] Line A is an imaginary line within the U.S., approximately paralleling the U.S.-Canadian border, north of which Commission coordination with Canadian authorities in the assignment of frequencies is generally required.

[4] Since the agreement with Canada permits U.S. licensees to use only those frequencies between 929.5 MHz and and 930 MHz, there is a total of only 20 channels to be allocated among the non-commercial users and private carriers above Line A. Under the proposal, fifteen of these channels would be in the private carrier pool and five channels in the non-commercial pool.

[5] *Second Report and Order, supra.*

[6] *Id.*

[7] There are currently no licensees on these ten channels.

[8] *Fourth Report and Order.* Docket No. 20870, 56 RR 2nd 645, 648 (1984). Loading studies for the common carrier paging services will not be required after January 1, 1986.

inter-pool sharing, an applicant could use channels in the other pool only if there are no satisfactory frequencies available in the pool in which the applicant is actually eligible as determined by the frequency coordinator and if no in-pool user is on the requested frequency(ies). Coordinators should be thoroughly familiar with radio systems already in operation. Therefore they, rather than the Commission, should be in the best position to decide whether a channel is not being efficiently utilized and recommend additional compatible users be licensed on the frequency or if there are no satisfactory channels available and inter-pool sharing is in order.[9] Accordingly, we are adopting the inter-pool sharing rules as proposed.

11. The other issue raised in the comments concerned the channel ratio in the two pools for operations above Line A. The *Notice* proposed a 50/50 ratio of channels between non-commercial and commercial channels. Motorola supported this ratio but stated that for operations above Line A an adjustment in the proposed allocation is needed to maintain that ratio nationwide. To correct the imbalance Motorola recommended that above Line A ten channels be made available in each pool. We believe this suggestion has merit. Accordingly, we have adjusted the allocation so that there are ten channels available in each pool for operations above Line A.

Final Regulatory Flexibility Act Analysis

12. As stated in the Notice, the Commission certifies that sections 603 and 604 of the Regulatory Flexibility Act of 1980 do not apply to the rule changes in this Report and Order because these changes will not have a significant economic impact on a substantial number of small entities. The Secretary shall cause a copy of this Report and Order, including the above certification, to be published in the **Federal Register**, and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Paperwork Reduction Act Statement

13. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

14. Accordingly, it is ordered, that pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 90 of the Commission's Rules is amended effective September 23, 1985 as set forth in the attached Appendix. It is further ordered that this proceeding is terminated.

15. Further information on this matter may be obtained by contacting Herbert Zeiler (202) 634–2443, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—[AMENDED]

The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

1. Section 90.494 is amended by revising the table in paragraph (a) and adding a new paragraph (g).

§ 90.494 One-way paging operations in the 929–930 MHz band.

(a) * * *

TABLE

Pool 1 (MHz)	Pool 2 (MHz)
929.0125	929.3625
929.0375	929.3875
929.0625	929.4125
929.0875	929.4375
929.1125	929.4625
929.1375	[1] 929.6375
929.1625	[1] 929.6625
929.1875	[1] 929.6875
929.2125	[1] 929.7125
929.2375	[1] 929.7375
929.2625	929.7625
929.2875	929.7875
929.3125	929.8125
929.3375	929.8375
929.4875	929.8625
929.5125	929.8875
929.5375	929.9125
929.5625	929.9375
929.5875	929.9625
929.6125	929.9875

[1] Above Line A this frequency is available only to eligibles in Pool 1

Frequencies listed in Pool 1 are available for shared use by all eligible Part 90 users except those eligible as private carrier paging (PCP) licensees.

Frequencies listed in Pool 2 are available only for shared use by private carrier paging (PCP) licensees.

Frequencies 929.7625 and 929.9875 are available for shared use in multi-area paging systems by private carrier paging (PCP) licensees.

Frequencies 929.2625 and 929.4875 are available only for shared use in multi-area paging systems for all Part 90 users except private carrier paging (PCP) licensees.

* * * * *

(g) Except for the channels available for multi-area operation, the channels listed in the Table in paragraph (a) of this section are available as of January 1, 1987, on a shared basis to all persons eligible in both pools under the following conditions:

(1) Channels will be available for inter-pool sharing only if there are no satisfactory frequencies available in the pool in which the applicant is actually eligible.

(2) There are no in-pool users authorized on the frequency in the proposed area of operation.

* * * * *

[FR Doc. 85–20275 Filed 8–23–85; 8:45 am]

BILLING CODE 6712-01-M

[9] The National Association of Business and Educational Radio (NABER) is presently the recognized coordinator for this band.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–82, Amdt. 195–34]

Transportation of Hazardous Liquids by Pipeline; Recordkeeping and Accident Reporting

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Final rule.

SUMMARY: This final rule (1) reduces the overall recordkeeping requirements and simplifies and modifies the accident reporting requirements for operators of interstate pipelines that transport petroleum, petroleum products, or anhydrous ammonia, and (2) makes these requirements applicable to operators of intrastate pipelines that transport those commodities. This action will reduce the paperwork burden on interstate pipeline operators without reducing pipeline safety, impose a minimum paperwork burden or intrastate operators, and will provide more meaningful data to assess compliance and analyze pipeline accidents.

EFFECTIVE DATE: The effective date of this final rule is October 21, 1985. This date coincides with the date Part 195 becomes effective for intrastate pipelines (Amendment 195–33, Docket PS–80, 50 FR 15895) and allows time for interstate pipelines to prepare for compliance.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, (202) 426–2392

regarding the content of this final rule or the Docket Branch (202) 426–3148 regarding copies of this final rule or other information in the docket. Copies of the revised accident report form (DOT Form 7000–1) and instructions are available by writing the Information Systems Manager, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1984, the MTB published a notice of proposed rulemaking (NPRM) proposing to amend the accident reporting requirements of Subpart B of Part 195 and the recordkeeping requirements of §§ 195.266, 195.310, and 195.404 and to apply these requirements to intrastate pipelines. The NPRM resulted from a review of all the accident reporting and recordkeeping requirements in an effort to reduce unnecessary paperwork for operators of intrastate pipelines and to propose simplified requirements for operators of intrastate pipelines.

Ten commenters responded to the notice; the American Petroleum Institute (API), the Oil, Chemical and Atomic Workers International Union, AFL–CIO, the State Fire Marshal of California, and seven pipeline operators. In addition, the NPRM was presented in draft to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) on November 1, 1984, for informal consideration. The recommendations of the committee and the commenters together with the actions taken as a result of the recommendations follow.

General

No commenters objected to the proposed application of Subpart B accident reporting requirements and the recordkeeping requirements of §§ 195.266, 195.310, and 195.404 (with proposed amendments) to operators of intrastate pipelines to which Part 195 applies. To accomplish this objective, § 195.1(c), which was adopted by Amendment 195–33, Docket PS–80 (50 FR 15895, April 23, 1985), and excepts intrastate pipelines from the aforementioned requirements, is deleted.

Recordkeeping

Section 195.266

The NPRM proposed the deletion of the requirement to maintain a record of the location of "weighted pipe" or "other item connected to the pipe" when a new pipeline is constructed or an existing pipeline is relocated, replaced, or otherwise changed. The rationale was that the records are superfluous because they are not needed to assure compliance with any related regulation in Part 195, to facilitate required inspections or tests, or for other safety reasons.

All but one of the commenters endorsed the proposed deletion by commending MTB's efforts to reduce recordkeeping or by specifically agreeing with the proposal.

One commenter disagreed, arguing that recording the location of weighted pipe and other items connected to the pipe does not impose a burden on the operator, and that a prudent operator would maintain these records for maintenance purposes.

While recording the location of weighted pipe and other items connected to pipe might not be a burden for operators who make such recordings during their normal course of business, for others the work of recordation is a burden imposed by Federal regulation. MTB believes that any regulatory burden that is not supported by a regulatory need should be removed. The commenter noted that the records at issue are used by some operators for maintenance. However, such records are not needed to perform or enforce the performance of maintenance activites that are required by Part 195 standards. In the absence of such need or any other clear need for the records, the better choice is to delete the requirement to keep these records. Consequently, § 195.266 is amended as proposed.

Section 195.310(a)

The notice proposed to amend § 195.310(a) to permit operators to discard all but the latest hydrostatic test records.

Most of the commenters who addressed the issue agreed with the proposal to keep only the latest hydrostatic test records. One commenter recommended that the rule be changed to require only the retention of records of the latest test by which the operator establishes the pipeline's maximum operating pressure. This commenter argued that it is possible for an operator to establish a pipeline's maximum operating pressure under an initial test and at some time later test to a lower pressure that is not used to qualify the pipeline's maximum operating pressure. According to the commenter, records of the latest test are not appropriate under these circumstances.

MTB believes this commenter misunderstands the recordkeeping requirement of § 195.310(a). Under this rule, records must be kept for tests performed as required by Subpart E, but not for other hydrostatic tests an operator does voluntarily. In addition, Subpart E only requires tests to qualify a pipeline's maximum operating pressure. However, to avoid future confusion the final rule is changed to clarify the intent that only those tests required by Subpart E must be recorded and then, as proposed, only the record of the latest test must be kept.

Section 195.310(b)

The notice proposed to amend this section to permit operators to retain test information on documents other than the recording chart. It was also proposed to change the term "dead weight tester data" to "test instrument calibration data" to comport with modern instrumentation.

Most of the commenters agreed with the proposal.

One of the commenters recommended that the proposal be amended to require that the pipe tested be identified in the records and that the recording chart be cross referenced with other test records. The MTB believes, however, that the proposed § 195.310(b)(7), which requires a description of the facility tested, and the proposed § 195.310(b)(1), which requires retention of the pressure recording charts, will provide adequate identification and cross referencing. In view of the above, § 195.310(b) is adopted as proposed.

Section 195.404(a)(1)

The NPRM proposed an amended § 195.404(a)(1) which would substitute a list of specific facilities for "major facilities". This amendment was proposed to assist operators and enforcement personnel to determine compliance with other operation and maintenance rules in Subpart F that directly pertain to the specific facilities. None of the commenters disagreed with the proposed amendment. The final rule is adopted as proposed.

Section 195.404(b)

The NPRM discussed MTB's decision not to grant API's petition that the 3-year retention period for daily operating records be reduced to one year.

One State agency and three pipeline operators addressed this issue. The State agency agreed with MTB. Three pipeline operators recommended a 1-year retention period, arguing that many equipment and operating changes occur over a 3-year period and, as a result, no valid conclusions could be drawn regarding operational problems by reviewing three years of daily operating records. These records are also used to assess the adequacy of normal, abnormal and emergency procedures

prescribed by § 195.402 and one-year records are sufficient for that purpose according to these commenters.

Although MTB recognizes that in some cases one-year records may prove sufficient, as a general rule MTB still believes that 3 years of daily operating records are needed to exhibit problems that are difficult to spot. At this time, therefore, no change to the 3-year period is being considered.

The NPRM also proposed to change in § 195.404(b) the term, "any unusual operations of a facility", to "any emergency or abnormal operation to which the procedures under § 195.402 apply". This change in terms was proposed because MTB felt the term, "any unusual operations of a facility", is indefinite whereas the term, "any emergency or abnormal operation to which the procedures under § 195.402 apply", comports with the use of terms in § 195.402 (d) and (e) and would aid enforcement personnel in investigating the operators' use of their procedures to respond to abnormal operations and emergencies.

Three pipeline operators supported the proposed change of terms in the proposed § 195.404(b). None of the commenters opposed the change. Consequently, the change in terms in § 195.404(b) is adopted as proposed.

Section 195.404(c)

The NPRM proposed to distinguish between records of repairs made to pipe and records of repairs made to parts of the pipeline system other than pipe. Records of repairs made to pipe were proposed to be retained for the useful life of the pipe—no change from the existing rule. The retention period for records of repairs to parts of the pipeline system other than pipe was proposed to be reduced from "the useful life of that part of the pipeline system to which they relate" to 1-year. The period for records of Subpart F inspections and tests was proposed to be reduced from "the life of the facility" to at least 5 years.

In general, the proposal to reduce record retention periods was well supported by the commenters. One commenter argued against relaxation of the record retention period for parts of the pipeline system other than pipe. This commenter argued that allowing operators to dispose of component repair records after one year would remove a source of information which might indicate defective components.

MTB recognizes that adopting a requirement to retain component repair records for only 1 year might occasionally have this effect. However, variations among operators in the form of the records themselves might also have this effect. Furthermore, the purpose of keeping these records is to tell whether component malfunctions are due to faulty repairs rather than possible defects in component design or manufacture. Problems associated with repair usually show up within a short time after repair, so that a 1-year record retention requirement is adequate. At the same time, serious design or manufacturing defects which cause accidents would be discovered through accident investigation procedures. Therefore, the proposed 1-year retention period for records of repairs on components other than pipe is adopted as final.

One pipeline operator recommended retention of Subpart F inspection and test records for two years, except those inspections and tests done on 5-year intervals. This commenter argued that records of previous inspections are not a useful indication of a pipeline's status and, therefore, retention of these previous records does not enhance safety. MTB agrees. There are a variety of less-than-5-year inspection and test intervals in Subpart F, for example, 3 weeks in § 195.412(a), 2½ months in § 195.416(c), 7½ months in § 195.428(a), and 15 months in § 195.432. Keeping these records for 5 years does not appear needed for safety or enforcement purposes. Therefore, this comment is adopted and the final rule changed to require retention for the longer of 2 years or the required inspection or test interval.

Another commenter recommended a 10-year retention period for Subpart F inspection and test records on the basis that 10 years would provide a good history of performance but yet be much less burdensome that the existing "life of the facility" requirement. In the absence of an adequate rationale, this comment did not persuade MTB that 10-year records are needed for safety. Thus, it was not adopted.

Accident Reporting

The NPRM proposed to amend the accident reporting form (DOT Form 7000–1) to delete unnecessary information items and to gather more meaningful data. The specific changes proposed, the comments received concerning the proposed changes, and the reasons for the final rules follow:

Section 195.54

The NPRM proposed to increase the 15-day period for reporting accidents to 30 days to provide more time for gathering data. This proposal was well supported by the commenters, with only one industry commenter recommending a 45-day period to provide more time for damage estimates. The 30-day period is maintained in the final rule, however, because MTB believes that this period is sufficient time to gather data for most accidents and, in those cases where additional time is needed, an interim report can be filed and a change or addition to the report can be filed under § 195.58 as more data become available. Further, the 30-day period is consistent with the filing period for leak reports on gas transmission and gas gathering lines under 49 CFR 191.15 and for leak reports on gas distribution systems under 49 CFR 191.9.

Section 195.56

The NPRM proposed to delete § 195.56 and publish the instructions contained in § 195.56 on the accident report form (DOT Form 7000–1). This amendment was proposed in order to make the accident report form easier to complete. Also, it was stated that deleting § 195.56 would allow the instructions to be modified more easily as the MTB and the industry gain experience with the new form.

While all of the commenters agreed with placing the instructions on the accident report form, four commenters argued against deleting § 195.56 on the basis that if the instructions are not published in the Code of Federal Regulations (CFR), they could be too easily changed without regard for the notice requirements of the Administrative Procedure Act (APA) (5 U.S.C. 551–553).

In proposing to delete § 195.56, MTB was not preparing to skirt APA requirements. The APA requires prior notice and comment for substantive rules, regardless of whether those rules are published in the CFR. Thus, any future changes MTB makes to the accident report form or its instructions that have the effect of creating or amending substantive reporting rules will be subject to the APA requirements for notice and comment, even though the form and instructions are not published in the CFR. Other types of changes, which might be explanatory, editorial, or procedural, are excepted from the APA notice and comment requirements. MTB expects that most future changes to the instructions will fall into these latter categories, and they can be made more readily with less cost if a change to the CFR is not involved. Separate publication has long been the practice for instructions to the gas pipeline reporting forms required by 49 CFR Part 191. Therefore, § 195.56 is deleted as proposed.

One commenter recommended that the instructions describe the accidents

to be reported and define the term "highly volatile liquid" or "HVL". Describing in the instructions the accidents to which the form applies would involve reproducing §§ 195.50 and 195.52. This would not be consistent with the purpose of the instructions which is to assist operators in filling out the form, not to display substantive requirements. The introductory paragraph to the instructions directs the reader to Subpart B for a description of accidents to which the form applies. Therefore, this comment was not adopted.

The NPRM proposed language in the instructions for Part G, item 2, referring the reader to § 195.2 for a definition of "highly volatile liquid". As a result of the above comment, MTB now believes these directions may not give the reader adequate guidance, and has incorporated the § 195.2 definition of "HVL" into the instructions.

Accident Report Form

No substantive comments were filed concerning the proposed Parts A thru D of the accident report form. Therefore these parts are adopted substantially as proposed. However, one data item, "Malfunction of Control or Relief Equipment", has been added to Part D. In view of increasing automation of pipelines, this item has been added to indicate the reliability of this equipment.

Part E

The NPRM proposed deletion of the distinction between employee and nonemployees when reporting deaths and injuries. The THLPSSC and two commenters recommended retaining this distinction on the basis that employee and nonemployee death and injury statistics gathered by MTB are used by private companies and safety associations in evaluations of exposure risks. In view of this information, the distinction between employee and non-employee deaths and injuries is retained in the final rule.

Part F

One member of the THLPSSC recommended that Part F clearly state that the costs of clean up and commodity lost are to be included in the estimated total property damage. The instructions for Part F make this clear in the final rule.

Part G

Item 3 of Part G of the proposed form included only an entry for the estimated amount of commodity spilled. Five commenters recommended that an additional information item be included to indicate the amount of commodity recovered. These commenters argued that this information is necessary in order to distinguish between the amount of commodity not recovered (which is to be included in the estimated total property damage in Part F) and the amount of the commodity spilled. MTB agrees and has added an entry under item 3 to indicate the amount of commodity recovered.

Part H

The notice proposed deletion of data entries for condition when installed, pipe configuration, amount of cover, and test medium on the basis that these items are not usually associated with the cause of an accident. One commenter recommended against deleting these items but did not give information supporting the recommendation. Consequently, deletion of those items in the final rule is adopted as proposed.

Part I

The notice proposed a new entry to indicate whether corrosion was galvanic or some other type. One commenter argued that, in one way or another, all corrosion is galvanic and that few field personnel would be able to distinguish between the various types of galvanic corrosion. This commenter recommended that the entry be changed to indicate whether the leak site was underground or atmospheric but did not explain how this information would be used.

The MTB does not believe that an indication of whether the leak site is underground or atmospheric will provide the information sought. The purpose of the entry is to categorize corrosion leaks to determine whether leaks are due to inadequate cathodic protection or to some other cause, and the proposed data entry will provide that information. While only a few field personnel might have the expertise to properly categorize corrosion, it is expected that personnel able to make that determination will be utilized in gathering the important information needed to complete an accident report. Consequently, the entry for indicating the type of corrosion is adopted as proposed.

Part J

The notice proposed deletion of entries for distance to the closest permanent line marker, information on the marker, and the length of time between patrols because standards in Part 195 govern those topics. Only one commenter argued against deletion of these items. This commenter argued that the information might be useful to urge legislation concerning third party damage. The MTB does not believe, however, that a widespread need exists for this information and has deleted these items in the final rule as proposed in the notice.

Paperwork Reduction Act

This final rule contains information collection requirements in the following sections: Subpart B of Part 195 and §§ 195.266, 195.310 and 195.404. These requirements have been approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). A new § 195.63 is added to the final rule to comply with the OMB requirement (5 CFR Part 1320) to display the information collection control number assigned by OMB. This new number is also printed on the upper right hand corner of the accident report form.

Cost Impact

This final rule does not propose a "major rule" under Executive Order 12291, and it does not propose a "significant rule" as defined by the Department of Transportation Policies and Procedures (DOT Order 2100.5). With respect to interstate pipelines, the final rule will reduce the number of records to be kept, reduce the overall retention time for records, and simplify accident reporting. However, the reduced paperwork burden and lowered costs to interstate pipeline operators and the government are not considered substantial enough to warrant further evaluation of the economic impact. With respect to intrastate pipelines, the Final Evaluation prepared for Docket PS–80 covers the existing recordkeeping and accident reporting requirements of Part 195. That evaluation shows that net benefits would result if Part 195 were extended in its present form to intrastate operators. The changes to the paperwork requirements of Part 195 resulting from this final rule will increase those benefits by reducing the paperwork burden projected by the evaluation.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires a review of certain rules proposed after January 1, 1981, for their effects on small businesses, organizations, and governmental bodies. I certify that the final rules will not have a significant economic impact on a substantial number of small entities. Few, if any, small entities operate interstate pipelines. Also, the Final Evaluation in Docket PS–80 shows that small entities that operate intrastate pipelines will not be affected by the final rules.

List of Subjects in 49 CFR Part 195

Anhydrous ammonia, Hazardous liquids, Petroleum, Petroleum products, Pipeline safety, Accident reporting and recordkeeping requirements.

Therefore, in view of the foregoing, MTB amends 49 CFR Part 195 and DOT Form 7000–1 and its instructions as follows:

PART 195—[AMENDED]

1. The authority citation for Part 195 is revised to read as set forth below, and the authority citations following any sections in Part 195 are removed.

Authority: 49 U.S.C. 2002; Subpart B and §§ 195.266, 195.310, and 195.404 also issued under 49 U.S.C. 2010(b); 49 CFR 1.53 and Appendix A to Part 1.

§ 195.1 [Amended]

2. Section 195.1(c) is removed.

3. Section 195.54 is revised to read as follows:

§ 195.54 Accident reporting.

Each operator that experiences an accident that is required to be reported under this subpart shall as soon as practicable but not later than 30 days after discovery of the accident, prepare and file an accident report on DOT Form 7000–1, or a facsimile, with the Information Systems Manager, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590. The operator shall file two copies of each report and shall retain one copy at its principal place of business. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2004) may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Systems Manager.

§ 195.56 [Removed]

4. Section 195.56 is removed.

5. Section 195.58 is revised to read as follows:

§ 195.58 Changes in or additions to accident report.

Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000–1, it shall file a supplemental report within 30 days with the Information Systems Manager, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2004) may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Systems Manager.

6. A new § 195.63 is added to read as follows:

§ 195.63 OMB control number assigned to information collection.

The control number assigned by the Office of Management and Budget to the hazardous liquid pipeline information collection requirements of this part pursuant to the Paperwork Reduction Act of 1980 is 2137–0047.

7. Section 195.266(f) is revised as follows:

§ 195.266 Construction records.

* * * * *

(f) The location of each valve and corrosion test station.

8. Section 195.310 is revised as follows:

§ 195.310 Records.

(a) A record must be made of each hydrostatic test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.

(b) The record required by paragraph (a) of this section must include:

(1) The pressure recording charts;

(2) Test instrument calibration data;

(3) The name of the operator, the name of the person responsible for making the test, and the name of the test company used, if any;

(4) The date and time of the test;

(5) The minimum test pressure;

(6) The test medium;

(7) A description of the facility tested and the test apparatus;

(8) An explanation of any pressure discontinuities, including test failures, that appear on the pressure recording charts; and

(9) Where elevation differences in the section under test exceed 100 feet, a profile of the pipeline that shows the elevation and test sites over the entire length of the test section.

9. In § 195.404, paragraphs (a)(1), (b), and (c) are revised to read as follows:

§ 195.404 Maps and records.

(a) * * *

(1) Location and identification of the following pipeline facilities:

(i) Breakout tanks;

(ii) Pump stations;

(iii) Scraper and sphere facilities;

(iv) Pipeline valves;

(v) Cathodically protected facilities;

(vi) Facilities to which § 195.402(c)(9) applies;

(vii) Rights-of-way; and

(viii) Safety devices to which § 195.428 applies.

* * * * *

(b) Each operator shall maintain for at least 3 years daily operating records that indicate—

(1) The discharge pressure at each pump station; and

(2) Any emergency or abnormal operation to which the procedures under § 195.402 apply.

(c) Each operator shall maintain the following records for the periods specified:

(1) The date, location, and description of each repair made to pipe shall be maintained for the useful life of the pipe.

(2) The date, location, and description of each repair made to parts of the pipeline system other than pipe shall be maintained for at least 1 year.

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

DOT Form 7000–1 [Revised]

The accident report form (DOT Form 7000–1) and instructions for completing it are revised to read as set forth in this issue of the **Federal Register** immediately following this rulemaking document.

Note.—DOT Form 7000–1 and instructions will not be shown in the Code of Federal Regulations.

Issued in Washington, D.C. on August 20, 1985.

M. Cynthia Douglass,

Acting Director, Materials Transportation Bureau.

Department of Transportation

Liquid Pipeline Accident Report

Instructions: Submit in duplicate for each accident reportable under Code of Federal Regulations, Title 49, Part 195, Subpart B. If the space provided for any question is not adequate, attach an additional sheet. File both copies of this report within 30 days after discovery of the accident with the Information Systems Manager (DMT–63), Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under Section 205 of the Hazardous Liquid Pipelines Safety Act of 1979 may be submitted in duplicate to the State agency if the regulations of that agency require

submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Systems Manager.

Please write or call the Information Systems Manager (202–472–1024) concerning questions about this report or these instructions, or to obtain copies of DOT Form 7000–1.

Each operator shall prepare each report of an accident on Form DOT 7000–1 or a facsimile as follows:

(1) General. Each applicable item must be marked or filled in as fully and as accurately as information accessible to the operator at the time of filing the report will permit. More than one item may apply.

(2) Part A. Enter the complete corporate name of the operator. Enter the address of the operator's principal place of business, including zip code.

(3) Part B, Item 1. Enter the date the accident occurred or was discovered. If the accident was not discovered on the date it occurred, state this under Part K. Indicate whether the accident occurred on Federal lands. For purposes of this report "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

Item 2. Enter the time the accident occurred according to a 24 hour clock (e.g., 1945). If the time of occurrence is not known, enter the time the accident was discovered and state this fact under Part K.

(4) Part E. Give the number of deaths and injuries known at the time of filing this report even if they were previously reported telephonically to the Department of Transportation. If none, state none.

(5) Part F. Indicate the total estimated property damage in present day costs including the cost of the commodity not recovered, damage to other parties, and cost of clean up. If none, state none.

(6) Part G, Item 1. State the commonly used name of the commodity spilled such as #2 fuel oil, regular gasoline, propane, etc.

Item 2. Give the classification of the commodity spilled and if it is a petroleum product, indicate whether it is a highly volatile liquid (HVL) or non-HVL. "HVL" means a hazardous liquid which will form a vapor cloud when released to the atmosphere and which has a vapor pressure exceeding 276kPa (40 psia) at 37.8°c (100°F). If the commodity spilled is not anhydrous ammonia, petroleum, or a petroleum product, it is not necessary to file this report.

(7) Part K. Give an account of the accident sufficiently complete and detailed to convey an understanding of the cause of the accident. Continue on an extra sheet of paper if more space is needed.

BILLING CODE 4910-60-M

OMB No. 2137-0047

ACCIDENT REPORT-HAZARDOUS LIQUID PIPELINE

Report Date _____

No. 7000-1 (DOT)

PART A—OPERATOR INFORMATION

1.) Name of operator _____

2.) Principal business address _____

_____

(*city*) (*state*) (*zip code*)

3.) Is pipeline interstate? ☐ yes ☐ no

PART B—TIME AND LOCATION OF ACCIDENT

1.) Date: (*month*) _____ (*day*) _____ (*year*) _____

2.) Hour (*24 hour clock*) _____

3.) If onshore give state (*including Puerto Rico and Washington, D.C.*), and county or city. _____

4.) If offshore, give offshore coordinates _____

5.) Did accident occur on Federal Land? ☐ yes ☐ no
(*See instructions for definition of Federal Land.*)

6.) Specific location (*If location is near offshore platforms, buildings, or other landmarks, such as highways, waterways, or railroads, attach a sketch or drawing showing relationship of accident location to these landmarks*)

_____

_____

_____

PART C—ORIGIN OF RELEASE OF LIQUID OR VAPOR. (*Check all applicable items*)

1.) Part of system involved:
☐ line pipe ☐ tank farm ☐ pump station

2.) Item involved: ☐ pipe ☐ valve ☐ scraper trap ☐ pump
☐ welded fitting ☐ girth weld ☐ tank
☐ bolted fitting ☐ longitudial weld

Other (*specify*) _____

3.) Year item installed _____

PART D—CAUSE OF ACCIDENT

☐ corrosion ☐ failed weld ☐ incorrect operation by operator personnel
☐ failed pipe ☐ outside force damage
☐ malfunction of control or relief equipment.
☐ other(*specify*) _____

PART E—DEATH OR INJURY

1.) Number of persons killed. _____
_____ Operator employees _____ Non-employees

2.) Number of persons injured. _____
_____ Operator employees _____ Non-employees

PART F—ESTIMATED TOTAL PROPERTY DAMAGE:

$ _____

PART G—COMMODITY SPILLED

1.) Name of commodity spilled: _____
2.) Classification of commodity spilled:
☐ Petroleum Petroleum product: ☐ HVL or ☐ Non-HVL
☐ Anhydrous ammonia
3.) Estimated amount of commodity involved
___ Barrels spilled ___ Barrels recovered
4.) Was there an explosion?
☐ yes ☐ no
5.) Was there a Fire?
☐ yes ☐ no

INSTRUCTIONS: Answer sections H, I, or J only if it applies to the particular accident being reported.

PART H—OCCURRED IN LINE PIPE

1.) Nominal diameter (*inches*) ___ 2.) Wall thickness (*inches*) ___
3.) SMYS (*psi*) ___ 4.) Type of joint: ☐ welded ☐ flanged ☐ threaded ☐ coupled ☐ other
5.) Pipe was ☐ Below ground ☐ Above ground
6.) Maximum operating pressure (*psig*) _____
7.) Pressure at time and location of accident (*psig*) _____
8.) Had there been a pressure test on system?
☐ yes ☐ no
9.) Duration of test (*hrs*) _____
10.) Maximum test pressure (*psig*) _____
11.) Date of latest test _____

PART I—CAUSED BY CORROSION

1. Location of corrosion
☐ internal ☐ external
2. Facility coated?
☐ yes ☐ no
3. Facility under cathodic protection?
☐ yes ☐ no
4. Type of corrosion
☐ galvanic ☐ other (*Specify*)
_____

PART J—CAUSED BY OUTSIDE FORCE

1. ☐ Damage by operator or its contractor
☐ Damage by others
☐ Damage by natural forces
☐ Landslide
☐ Subsidence
☐ Washout
☐ Frostheave
☐ Earthquake
☐ Ship anchor
☐ Mudslide
☐ Fishing operations
Other _____
2. Was a damage prevention program in effect?
☐ yes ☐ no
3. If yes, was the program
☐ "one-call" ☐ other _____
4. Did excavator call?
☐ yes ☐ no
5. Was pipeline location temporarily marked for the excavator?
☐ yes ☐ no

PART K—ACCOUNT OF ACCIDENT

NAME AND TITLE OF OPERATOR OFFICIAL FILING THIS REPORT.

_____

_____ _____
Telephone no. (*Including area code*) Date

DOT Form 7000-1 (4-85)

[FR Doc. 85-20319 Filed 8-23-85; 8:45 am]
BILLING CODE 4910-60-C

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1048

[Ex Parte No. MC-37 (Sub-37)]

Motor Carriers; Commercial Zone; New York, NY

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission instituted this proceeding in response to a petition filed by the International Trade Center of Mt. Olive Township, Morris County, NJ. (49 FR 28572, July 13, 1984). Comments were invited on its proposal to amend the existing regulations set forth at 49 CFR Part 1048 to expand the New York, NY, commercial zone to include the portion of Morris County adjacent to the present zone in which the International Trade Center is located or, alternatively, all points in Morris County. No comments in opposition to the proposals were filed. Petitioner filed statements in support of its proposals. The Commission will amend its regulations by adopting a new section, 49 CFR 1048.20, that individually describes the New York, NY, commercial zone to include all points previously included in the zone and all points in Morris County, NJ.

EFFECTIVE DATE: The new rule will be effective on September 25, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler, (202) 275–7982;

or

Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, D.C., 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Regulatory Flexibility Analysis

We affirm our preliminary conclusion that adoption of the proposed redefinition of the New York, NY, commercial zone to include Morris County, NJ, will not have a significant economic impact on a substantial number of small entities. To the extent that the redefinition would expand the present zone, the expansion is slight and would have no measurable impact on small entities.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Part 1048 of Chapter X of Title 49 of the Code of Federal Regulations is amended in the manner specified in the appendix.

Index

List of Subjects in 49 CFR Part 1048

Motor carriers, Commercial zones.

Dated: August 15, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

Appendix

Title 49 of the Code of Federal Regulations, Part 1048, is amended as follows:

PART 1048—[AMENDED]

(1) The authority citation for Part 1048 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10526 and 5 U.S.C. 553.

(2) A new § 1048.20 is added to read as follows:

§ 1048.20 New York, NY.

The zone adjacent to, and commercially a part of, New York, NY, within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for shipment to or from points beyond such zone is partially exempt from regulation under section 49 U.S.C. 10526(b)(1) of the Interstate Commerce Act (49 U.S.C. 10526(b)(1)), includes and is comprised of all points as follows:

(a) The municipality of New York, NY, itself;

(b) All points within a line drawn 20 miles beyond the municipal limits of New York, NY;

(c) All points in Morris County, NJ;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c); and

(e) All of any municipality wholly surrounded, or so surrounded except by a water boundary, by the municipality of New York or by any other municipality included under the terms of paragraph (d) of this section.

[FR Doc. 85–20291 Filed 8–23–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Addition of Twenty National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird Hunting, Upland Game Hunting, Big Game Hunting, and/or Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is adding twenty national wildlife refuges to the lists of open areas for migratory game bird hunting, upland game hunting, big game hunting, and/or sport fishing. The Secretary of the Interior has determined that this action is in accordance with the provisions of all applicable laws, is consistent with the principles of sound wildlife management, and is otherwise in the public interest. The Secretary has further determined that such uses will be compatible with, and in some cases enhance, the major purposes for which each refuge was established. The hunting of migratory game birds, upland game and big game, and/or sport fishing will provide additional public recreational opportunities.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, Main Interior Building, 18th and C Streets, NW, Room 2343, Washington, DC 20240; Telephone (202) 343–4311.

SUPPLEMENTARY INFORMATION: National wildlife refuges are closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purposes for which the refuge areas were established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest.

On May 16, 1985, at 50 FR 20462, the Service published a proposed rule to open twenty refuges to hunting and/or sport fishing. Some of the hunting and fishing programs require refuge-specific hunting or fishing regulations, and these regulations were also included in the rulemaking. The policy of the

Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, written comments received on the proposed rule are addressed in the following section.

Responses to Comments Received

Written comments on the proposed rule were received from 14 organizations, agencies, and individuals. Substantive comments on issues not already addressed in hunting and fishing plans, environmental assessments, and section 7 endangered species analyses (all of which were available for public review during the comment period for the proposed rule) are responded to below:

Issue: Hunting on national wildlife refuges is illegal under the Refuge Administration Act and Refuge Recreation Act because it is incompatible with the legal responsibilities of the Refuge System to preserve, protect, and enhance wildlife.

Service Response: The Refuge Recreation Act states that the Secretary of the Interior is authorized to administer refuges for public recreation. The Refuge Administration Act authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including hunting. Thus, the Service believes that Congress clearly intended that recreation be an important part of a refuge management program to the extent that it can be made compatible with the primary purposes of a refuge. This was affirmed in the decision in Humane Society of the United States v. Morton, Civil Action No. 3627 (D. D.C. 1973), where the court found that hunting on Great Swamp, Eastern Neck, and Chincoteague NWRs was a valid and legal form of public recreation on these refuges. The compatibility provision applies to the purposes of individual refuges, not to the purposes of the entire Refuge System. The proposed rule contained a compatibility statement for each refuge where hunting was proposed. The purpose for which each refuge was established, and a brief description of how each hunting program is compatible with these purposes, was discussed. (These statements are also contained in the preamble of this final rule.) The hunting plans, environmental assessments, and section 7 endangered species determinations for each refuge were also available to the public during the 30-day comment period for the proposed rule. The Service believes that these documents contain the necessary data to substantiate the compatibility of the proposed hunting programs, and that the statement that hunting on refuges is illegal is without statutory foundation.

Issue: Issuing refuge-specific regulations as a one-time publication illegally prejudges compatibility and violates the Service's duty to make compatibility determination annually.

Service Response: Refuge hunting programs and regulations are reviewed annually to ensure their continued compatibility and consistency with refuge purposes. Refuge-specific regulations can be and are amended through the rulemaking process whenever necessary.

Issue: The proposed refuge hunting programs violate the Refuge Recreation Act if their projected costs have not been specifically allocated within refuge budgets because they will take funds away from other refuge programs.

Service Response: The Service has determined that sufficient funds are available to manage the proposed refuge hunts without detracting from other refuge programs; the hunts will only use a small percentage of the annual budgets of the refuges in question. The Refuge Recreation Act does not state that hunting programs cannot use funds that could have been used for other refuge programs. It merely requires that sufficient funding be available for refuge recreation. The allocation of a refuge's budget is made according to an annual work plan, which includes hunting as well as other refuge programs.

Issue: The proposed hunting programs are a violation of the Endangered Species Act.

Service Response: When the hunting plans and environmental assessments for the hunting programs were developed, consideration was given to the potential impact upon any endangered or threatened species that might use the refuges involved. Where necessary, the Service prepared section 7 analyses, thereby complying with the Endangered Species Act. None of the proposed hunts is likely to jeopardize endangered or threatened species or to interfere with their recovery plans or their conservation. The hunting programs were developed to minimize any potential adverse impacts on endangered and threatened species and, when needed, refuge-specific regulations were proposed to ensure that the hunting programs would not affect threatened or endangered species. The programs will be administered by wildlife professionals who have the responsibility to conserve endangered and threatened species. In the case of Columbian White-tailed Deer NWR, elk hunting will benefit the endangered deer species. Not all Service programs are required to benefit endangered species, however; the Endangered Species Act was not meant to repeal all other program authorizations and goals. Service studies of the impact of migratory bird hunting nationwide on endangered species suggest losses of such species are infinitesimal. Since refuge hunting is but a small fraction of total migratory game bird hunting, no impact is likely.

Issue: The Service did not comply with the National Environmental Policy Act (NEPA) because environmental impact statements (EISs) were not prepared for the individual refuge hunting programs.

Service Response: Environmental assessments were prepared for each proposed hunting program. These assessments, which were available for public review during the comment period, demonstrated that the proposed hunting programs do not constitute major Federal actions significantly affecting the quality of the human environment. Therefore, following the Council on Environmental Quality's regulations for implementing NEPA, EISs were not required. The Service has, moreover, prepared EISs on the operation of the Refuge System and on migratory bird hunting, which were reviewed in combination with the environmental assessments.

Issue: The surplus determinations required under 50 CFR 31.1 and 31.2 have not been made.

Service Response: 50 CFR Part 31 is limited to recognizing general authority to dispose of surplus wildlife and lists hunting as one method of control and disposition. The Service's procedure for permitting hunting on refuges is set forth in 50 CFR Part 32. This rule involves the policy and regulations in Part 32 which essentially require that hunting be consistent with the principles of sound wildlife management and otherwise be in the public interest.

Issue: The proposed hunting programs, because they will be governed principally by State regulations, will transfer authority to the States, which is illegal under the Refuge Administration Act.

Service Response: The regulations governing the proposed hunting programs will not transfer Service authority for managing national wildlife refuges. National wildlife refuges are opened to hunting and hunting is managed in accordance with the Secretary's authority under the Refuge Administration Act and the Refuge Recreation Act. Once the Secretary has made the mandated determinations

under these authorities, it is Department policy to conduct hunting within the framework of State laws and regulations and to impose additional requirements, where necessary, as refuge-specific regulations. This policy is clearly stated in 50 CFR 32.2(d): "Each person shall comply with the applicable provisions of the laws and regulations of the State wherein any area is located unless further restricted by Federal law or regulations." Under the regulations that will govern these hunts, the Service maintains it authority to enforce all State and Federal game regulations on national wildlife refuges.

Issue: Hunting on refuges violates the recommendations of the 1979 National Wildlife Refuge System Task Force.

Service Response: The Task Force recommendations state that hunting is "consistent with the concept of providing habitat in refuges for healthy populations of wildlife and [is] compatible with sound wildlife management principles and practices." The Service feels that its hunting proposals are consistent with this viewpoint.

Issue: Hunting will disturb non-target species and displace non-consumptive refuge uses.

Service Response: Hunting will only occur on designated areas of each refuge, and only for short periods of time. Disturbance and displacement will be, in the Service's experience, minor, temporary, and localized. Hunters generally seek to minimize their visibility, and thus any disturbance, to wildlife

Issue: By putting the phrase "safe haven" in quotations in the statement in the proposed rule that wildlife refuges are not intended to be "safe havens" for individual animals, the Service inferred that the phrase was a legal term and thus not subject to comment.

Service Response: The phrase "safe haven" was put in quotes because it is considered by some to be a definition of refuge. The phrase was, along with the rest of the rule, open to public comment.

Issue: What are the primary purposes for which each of the refuges listed in the proposed rule was established and in which cases will the proposed hunting or fishing programs enhance these purposes?

Service Response: The purposes for which each refuge listed in the rule was established are contained in the preamble of the proposed rule and this rule. The preamble also indicates those refuges on which hunting and/or fishing will enhance refuge purposes.

Issue: The information given in the proposed rule was inadequate to evaluate the proposals.

Service Response: The proposed rule sets forth its bases and purposes and stated clearly that hunting and fishing plans, environmental assessments, and (where appropriate) section 7 documents were available for public review during the 30-day comment period.

Issue: Some reviewers felt the biological data reported for some of the refuges in question are outdated, insufficient, or lacking, and do not justify the need for hunting.

Service Response: The Service recognizes hunting as an acceptable, traditional form of wildlife-oriented recreation that can be, and is sometimes used as, a management tool to effectively manipulate wildlife population levels. The primary objective of refuge hunting programs is to provide the general public with a quality recreational experience and an opportunity to utilize a renewable resource. A less often seen need is to maintain wildlife populations at levels compatible with refuge habitat. The Service feels that the hunting plans and environmental assessments available for public review during the comment period contain adequate biological information. However, the Service endorses the generally held principle that hunting need not be allowed only when wildlife populations are so high that harvest is necessary to protect a species from the impacts of its own excessive numbers. To delay harvesing until populations reach maximum carrying capacity risks habitat damage, disease, and population crashes. Game species in suitable habitat will generate harvestable surpluses which can be taken regularly without impairing desired population trends. This avoids the development of excessive numbers. The Service believes that consumptive uses of wildlife, when managed properly, have no adverse effects on the long-term well-being wildlife populations or their habitats. Refuge hunting progams are monitored and, if necessary, adjusted over time to ensure no detriment to desired population trends.

Issue: Hunters at Back Bay NWR will be allowed to use vehicles in areas normally closed to vehicular traffic.

Service Response: The Service has reconsidered the effects of private vehicular access for big game hunting at Back Bay NWR. We have now determined that private vehicular access to the areas south of the maintenance compound for the purpose of big game hunting is not appropriate. Instead, hunters will be transported to hunting areas and game transported from such areas in refuge vehicles. Efforts will be made to recover the costs of transporting hunters to and from the hunting area. The associated environmental effects of shuttling hunters should be considerably less than those which could occur through the use of private vehicles. The refuge hunting plan and environmental assessment have been revised to incorporate this change.

Issue: The proposed deer hunt at Bogue Chitto NWR should not be allowed because the hunting plan states that the deer herd has been "negatively impacted by many years of excessive pressure."

Service Response: The hunting program will shortern seasons, prohibit the use of dogs and take other restrictive measures that the Service believes will restore deer sex ratios and populations to proper levels.

Issue: Because hunting at Buenos Aires NWR may result in the accidental taking or stressing of some individual masked bobwhite quail, it is incompatible with the refuge's purpose and, therefore, violates the Refuge Administration Act and the Refuge Recreation Act. It also violates the Endangered Species Act.

Service Response: The Service believes that by closing to all quail hunting the approximately 50,000-acre area in which masked bobwhites will be reintroduced, the probability of adverse effects on the species will be minimized. The closed area comprises about 42% of the refuge and contains the masked bobwhite's preferred habitat on the refuge. Hunter education, posting of closed area, law enforcement, and population monitoring will also reduce the likelihood of adverse impacts. Hunting pressure has traditionally been light in the area. According to the Masked Bobwhite Quail Recovery Plan, the species is characterized by a high natural mortality rate (probably 70% annually) which is more than offset by a high reproductive rate (5–15 birds per brood). The species' endangerment is not a consequence of takings, but rather of habitat loss caused by overgrazing. The refuge's establishment will permit the habitat to recover and support the masked bobwhite. Even were a few individuals to be taken accidentally—a risk the Service will minimize as set out above—the impact on the species would be infinitesimal in light of its natural reproductive and mortality rates.

Issue: To ensure the protection of the masked bobwhite quail at Buenos Aires NWR, no hunting should be permitted in the 50,000-acre bottomlands habitat where these quail will be released and

no quail hunting should be permitted on the remainder of the refuge.

Service Response: This alternative is not possible because the Service lacks authority to regulate hunting on State-owned land within the refuge boundary. Enforcement of the resulting patchwork of jurisdictions and rules would be virtually impossible. For reasons given in the above response, however, the Service feels that the proposed hunting program will offer the masked bobwhite quail adequate protection to ensure its continued existence.

Issue: Use of dogs for rabbit hunting on the bottomlands masked bobwhite quail habitat at Buenos Aires NWR should be prohibited to protect the quail.

Service Response: Fewer rabbit hunters in Arizona use dogs for hunting. Rabbits are most often taken incidental to other hunting activities. The Service feels that if any dogs are used on the refuge, no more than one or two will be present at any one time. These hunts will be for short periods and will be widely dispersed throughout the refuge. The total disturbance caused by all hunting dogs will be negligible and much less than that caused by a single coyote or bobcat. Refuge personnel monitoring the hunt will, however, be alert to the remote possibility of disturbance and, if necessary, contact rabbit hunters using dogs within the masked bobwhite hunting closure to request their cooperation in minimizing disturbance.

Issue: Observers should be required in the bottomlands masked bobwhite quail habitat at Buenos Airs NWR during quail and dove hunting to ensure the safety of the masked bobwhite quail.

Service Response: Appropriate State and Federal law enforcement personnel will patrol the hunt to ensure the masked bobwhite's safety in the bottomlands area. Quail hunting will not be permitted in the bottomlands.

Issue: Deposition of lead shotgun pellets from dove, quail, and waterfowl hunting at Buenos Aires NWR will degrade refuge habitat and may cause lead poisoning in the endangered masked bobwhite quail.

Service Response: The Service considered the possibility of lead shot ingestion when the section 7 consultation was done for the proposed hunting program at Buenos Aires NWR. Several factors make it unlikely that lead shot ingestion will be a problem for masked bobwhite quail or other wildlife species. Among these factors are the fact that hunters will be widely dispersed throughout the refuge; that "firing line" situations, which would concentrate lead shot deposition, are highly unlikely to develop; that the terrain provides copious amounts of natural grit; and that shotgun hunting pressure within the quail hunting closure is expected to be very light. In addition, since the refuge was only acquired in late February, 1985, there was inadequate time for the Service to request that the State incorporate lead shot prohibitions into Arizona regulations (approximately 90,000 acres within the refuge are State lands). Further, imposition of steel shot requires adequate notification to ammunition dealers. No steel shot ammunition distribution is established in Arizona due to the lack of steel shot hunting zone designations. For these reasons and since the hunting plan is for an interim period only, the Service feels that imposition of a lead shot prohibition at Buenos Aires NWR would be premature at this time. The Service will evaluate hunter use patterns during the upcoming season to determine whether lead shot is likely to become a problem in the future. If hunter concentrations or wildlife use patterns are suspected to be a potential problem, appropriate restrictions will be proposed. In any event, the patchwork jurisdictions on the refuge will require unanimous State/Federal support for the final decision, be it for or against steel shot. Adequate notification time must also be allowed to establish a steel shot distribution system if steel shot were to be required.

Issue: At Buffalo Lake NWR, why are restrictions necessary on the number of hunters on the refuge and why will only pheasants be hunted there?

Service Response: It is necessary to restrict the number of hunters at Buffalo Lake NWR because of the small areas of open huntable habitat available. Pheasants are the only species available in huntable numbers.

Issue: Hunter densities at Harbor Island NWR should be controlled by a quota system.

Service Response: The Service feels that the relative inaccessibility of this refuge will limit the number of hunters using it. If hunter density is found to be too high, a permit system can be established to control numbers.

Issue: What provisions will be made to protect marine turtles from fishing activity at Hobe Sound NWR?

Service Response: As stated in the rule and section 7 evaluation available for public review, fishing at Hobe Sound NWR will only be permitted during daylight hours, so will not adversely impact nesting marine turtles, which use refuge beaches only at night.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge Administration Act authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which areas were established. The compatibility determination for each refuge affected by this rulemaking is discussed below.

The Refuge Recreation Act gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, opening refuges to hunting or fishing under the Refuge Recreation Act requires that the Secretary determine that funds be made available for the development, operation, and maintenance of these permitted forms of recreation prior to initiating such uses of refuge areas.

Executive Orders 1014 and 5316 and Proclamation 2416 recognized that on a number of refuges, including Back Bay National Wildlife Refuge (NWR), Cedar Keys NWR, Pelican Island NWR, Tybee NWR, Union Slough NWR, and Wolf Island NWR, public taking of game was not allowed "except as permitted" by the Secretary through regulations. Thus, authority to open these refuges by regulation predates the Refuge Recreation Act.

The Secretary of the Interior has determined that the hunting and fishing openings described below are appropriate under applicable Executive Orders and, in accordance with the Refuge Administration Act and Refuge Recreation Act, are compatible and consistent with the primary purposes for which each of the refuges listed was established. The hunting and fishing programs are consistent with State and Federal (migratory game bird) regulatory frameworks which are developed specifically to ensure conservation of fish and wildlife populations. A discussion of the compatibility of the hunting and fishing programs with the

purposes for which each refuge was established and the availability of funding for each program follows:

Back Bay NWR was established in 1938 by Executive Order 7907 as "a refuge and breeding ground for migratory birds and other wildlife." The Service will open the refuge to big game hunting. Currently, white-tailed deer populations exceed the carrying capacity of the refuge's habitat. This has led to habitat damage and a documented parasite problem within the refuge deer herd. In addition, feral hogs are present in sufficient numbers on the refuge that they also are destroying valuable wildlife habitat. Refuge hunting will be regulated to allow only the taking of white-tailed deer and feral hogs, and a refuge permit will be required to limit the number of hunters on the refuge. Time and space zoning will be implemented to ensure that the hunting program will not interfere with the management of other refuge wildlife. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and are not intended to be "safe havens" for individual animals, the use of hunting as a management tool is in keeping with refuge purposes to conserve wildlife populations and habitats. Controlling refuge deer and hog populations will ensure the preservation and enhancement of habitat for breeding birds and other wildlife, and will occur at a time of year so as not to disturb nesting birds. For these reasons, the opening of Back Bay NWR to big game hunting is an appropriate exercise of Secretarial power under Proclamation 2416, furthers the purposes for which the refuge was established, and is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $8,900. Within the annual refuge budget of approximately $422,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Back Bay NWR to big game hunting is in compliance with the Refuge Recreation Act.

Bogue Chitto NWR was established in 1980 by Pub. L. 96–288 to preserve bottomland hardwood habitat and its associated wildlife, and for wildlife-oriented recreation and education. The Service will open the recently-acquired Mississippi portion of the refuge to migratory game bird, upland game, and big game hunting. The Louisiana portion of the refuge is currently open to these activities. Time and space zoning and other refuge-specific regulations will be implemented to ensure that hunting will not interfere with other refuge wildlife programs; these measures have proven effective on the Louisiana portion of the refuge. In addition, opening the Mississippi portion of the refuge to hunting will contribute toward accomplishment of one of the refuge's primary purposes by making the area available to hunting, an important form of outdoor recreation. For these reasons, the opening of Bogue Chitto NWR to migratory game bird, upland game, and big game hunting will enhance the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is less than $16,000. Within the annual refuge budget of approximately $170,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Bogue Chitto NWR to migratory game bird, upland game, and big game hunting is in compliance with the Refuge Recreation Act.

Bon Secour NWR was established in 1980 by Pub. L. 96–287 to preserve coastal barrier island habitat for migratory birds and threatened and endangered wildlife, and to provide wildlife-oriented recreation. The Service will open the refuge to sport fishing. The fishing activity will permit continuation of recreational uses which have occurred, with no adverse impacts, since long before the refuge was established. This activity will involve fishing in two small freshwater lakes on the refuge. Boats with gasoline-powered motors will be prohibited from these waters. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. A Section 7 evaluation indicated that threatened and endangered wildlife species will not be adversely impacted by the fishing program. Accomplishment of one of the refuge's primary purposes will be enhanced by making the area available to an important form of outdoor recreation. For these reasons, the opening of Bon Secour NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program is approximately $500. Within the annual refuge budget of approximately $50,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Bon Secour NWR to sport fishing is in compliance with the Refuge Recreation Act.

Buenos Aires NWR was established in 1985 under authority of the Endangered Species Act, as amended (16 U.S.C. 1531), to provide protected and managed habitat for the endangered masked bobwhite quail. The Service owns 21,258 acres of the 118,694-acre refuge. Eventually, cooperative agreements, leases, and easements will allow the Service to consolidate management authority over the remainder of the refuge, which is owned by the State of Arizona (90,191 acres), the U.S. Forest Service (6,662 acres), and the Bureau of Land Management (583 acres). The Service will open the refuge to migratory game bird, upland game, and big game hunting. Hunting has traditionally occurred on portions of the Buenos Aires Ranch by permission of the landowner on private lands and by open hunting on State and Federal lands within the Ranch boundaries. Bottomland grassland habitats preferred by masked bobwhite quail, which comprise about 50,000 acres of the refuge, have been closed to all quail hunting by the State of Arizona for several years. (Gambel's, Montezuma, and scaled quail also occur on the refuge.) The Service will continue traditional hunting uses on an interim basis until a master plan is completed for the refuge. All quail hunting will continue to be prohibited on the 50,000 acres of bottomland masked bobwhite quail habitats closed in the past by the State. Opening limited areas of the refuge to hunting will result in only minor and temporary disturbances to refuge habitat. In the experience of the Service, such minor distubances will have no measurable adverse effects on wildlife populations. In addition, hunting on the bottomlands may aid in reestablishing masked bobwhite quail populations by reducing predation. A section 7 consultation determined that the continued existence of the endangered masked bobwhite quail will not be jeopardized by the hunting program. The possibility of accidental taking of masked bobwhites will be minimized through hunter education, posting of the closed quail hunting area, law enforcement, and population monitoring. Also, the preferred habitat of the masked bobwhite, and potential release sites for reintroduced birds, are located within the area closed to all quail hunting. For these reasons, the opening of Buenos Aires NWR to migratory game bird, upland game, and big game hunting will not interfere with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $8,820. Within the projected annual

refuge budget of $300,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Buenos Aires NWR to migratory game bird, upland game, and big game hunting is in compliance with the Refuge Recreation Act.

Buffalo Lake NWR was established in 1958 by Executive Order 10787 for the conservation of migratory birds. The Service will open the refuge to upland game hunting. Refuge hunting will be regulated to allow only the taking of pheasants, and a refuge permit will be required to limit the number of hunters on the refuge. The area that will be hunted is dry lake bed and grassland habitat used primarily by resident wildlife species. During periods of increased runoff, when the lake bed holds standing water, upland game habitat is inundated and upland game populations disperse. Under such conditions, the hunting program will be modified or suspended. Because only a nonmigratory species will be hunted, and only on a portion of the refuge used primarily by resident wildlife species, migratory birds will not be adversely affected by the hunting activity. Therefore, the opening of Buffalo Lake NWR to upland game hunting is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $5,600. Within the annual refuge budget of approximately $99,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Buffalo Lake NWR to upland game hunting is in compliance with the Refuge Recreation Act.

Cedar Keys NWR was established in 1929 by Executive Order 5158 as "a refuge and breeding ground for birds." The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters surrounding the refuge, with no adverse impacts. The fishing program will only permit fishing from refuge beaches into the surrounding waters, and only during daylight hours. Most fishing will occur in conjunction with other refuge activities such as picnicking and beachcombing. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect bird populations or habitats. Therefore, the opening of Cedar Keys NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program is approximately $100. Within the annual refuge budget of approximately $5,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Cedar Keys NWR to sport fishing is in compliance with the Refuge Recreation Act.

Columbian White-tailed Deer NWR was established in 1972 under authority of the Endangered Species Act, as amended, to preserve and manage critical habitat for the endangered Columbian white-tailed deer. It is currently administered as part of the Lower Columbia River Refuge Complex. The Service will open the refuge to big game hunting. In 1983, the Columbian White-tailed Deer Recovery Team determined that the presence of large numbers of Roosevelt elk on the refuge is jeopardizing the continued survival of the deer. Hunting will help to maintain the elk population at a level that will minimize adverse impacts on the Columbian White-tailed deer. The elk control program is intended to reduce competition between elk and the endangered deer for the available habitat. The hunt will be implemented only when other methods of population reduction, such as trapping and transplanting, fencing, and off-refuge hunting, fail to achieve the desired elk herd size. Elk hunting will be regulated to ensure that it will not jeopardize the endangered deer, adversely modify its habitat, or interfere with or distract from the conservation of fish and other wildlife and their habitats. Since reduction of the refuge elk herd will contribute materially to the accomplishment of the refuge purpose of conserving Columbian white-tailed deer habitat, the opening of Columbian White-tailed Deer NWR to big game hunting is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $14,000. Within the annual Lower Columbia River Refuge Complex budget of approximately $800,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Columbian White-tailed Deer NWR to big game hunting is in compliance with the Refuge Recreation Act.

The Service will also open Columbian White-tailed Deer NWR to sport fishing. The fishing activity will permit continuation of recreational uses which have occurred, with no adverse impacts, since long before the refuge was established. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. The activity will involve fishing from a refuge dike to take fish from non-refuge waters and fishing in a refuge pond.

The locations where fishing will occur are such that they will not jeopardize the endangered deer or adversely modify its habitat. Therefore, the opening of Columbian White-tailed Deer NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it and public access will be via a county road open to all refuge visitors. Within the annual Lower Columbia River Refuge Complex budget of approximately $800,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Columbian White-tailed Deer NWR to sport fishing is in compliance with the Refuge Recreation Act.

Egmont Key NWR was established in 1974 by Pub. L. 93–341 to preserve habitat for shore and colonial birds. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters surrounding the refuge, with no adverse impacts. The fishing program will only permit fishing from refuge beaches into the surrounding waters, and only during daylight hours. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. No bird nesting occurs on the island. In the experience of the Service, the fishing activity will not adversely affect bird habitat. Therefore, the opening of Egmont Key NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual refuge budget of approximately $8,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Egmont Key NWR to sport fishing is in compliance with the Refuge Recreation Act.

Harbor Island NWR was established in 1984 under authority of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742), to preserve and enhance the island's unique ecosystem. It is currently administered by Seney NWR. The Service will open the refuge to migratory game bird, upland game, and big game hunting. Hunting occurred regularly on the island prior to its purchase from The Nature Conservancy, with no adverse impacts. Access to Harbor Island is by boat only, which will limit hunter use of

the refuge and result in only minor and temporary disturbances to refuge wildlife and habitat. Hunting will help to preserve the island's habitat by maintaining wildlife populations at acceptable levels. Therefore, the opening of Harbor Island NWR to migratory game bird, upland game, and big game hunting is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $1,000. Within the annual Seney NWR budget of approximately $275,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Harbor Island NWR to migratory game bird, upland game, and big game hunting is in compliance with the Refuge Recreation Act.

Harris Neck NWR was established in 1962 under authority of Pub. L. 80–537 to provide winter feeding and resting habitat for migratory birds. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The fishing program will only permit bank fishing from refuge lands into the surrounding waters, and only during daylight hours. Fishing will not be permitted during the refuge hunting season. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect migratory bird habitat. Therefore, the opening of Harris Neck NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Harris Neck NWR to sport fishing is in compliance with the Refuge Recreation Act.

Hobe Sound NWR was established in 1968 under authority of the Fish and Wildlife Act of 1956 to provide nesting habitat for threatened and endangered marine turtles. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. The fishing program will permit a limited number of individuals to fish from designated beach areas on the refuge. A Section 7 evaluation indicated that because fishing will only be permitted during daylight hours, it will not interfere with turtle nesting, which occurs at night. Therefore, the opening of Hobe Sound NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program is approximately $750. Within the annual refuge budget of approximately $60,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Hobe Sound NWR to sport fishing is in compliance with the Refuge Recreation Act.

Lower Suwannee NWR was established in 1979 under authority of the Fish and Wildlife Act of 1956 to protect and manage a unique ecosystem used by wintering waterfowl and threatened and endangered species, and to provide essential feeding habitat for the West Indian Manatee. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The fishing program will only permit bank fishing into interior refuge waters. Fishing will not be permitted during the refuge hunting season. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect waterfowl or Manatee habitat. A section 7 evaluation indicated that threatened and endangered wildlife species, including the Manatee, will not be adversely impacted by the fishing activity either. For these reasons, the opening of Lower Suwannee NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program is approximately $1,000. Within the annual refuge budget of approximately $70,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Lower Suwannee NWR to sport fishing is in compliance with the Refuge Recreation Act.

Pelican Island NWR was established in 1903 by an unnumbered Executive Order as "a preserve and breeding ground for native birds", and redesignated by Proclamation 2416 in 1940. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. The fishing program will only permit fishing during daylight hours from designated areas of the refuge into the surrounding waters. The public will continue to be prohibited from using these portions of the refuge that are sanctuary for colonial nesting birds. Therefore, the opening of Pelican Island NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual refuge budget of approximately $12,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Pelican Island NWR to sport fishing is in compliance with the Refuge Recreation Act.

Pinckney Island NWR was established in 1975 under authority of the Fish and Wildlife Act of 1956 to provide feeding and nesting habitat for migratory birds. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the waters near the refuge, with no adverse impacts. The fishing program will only permit fishing from boats into tidal creeks. A lease with the State of South Carolina conveys jurisdiction of these waters to the Service. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect migratory bird habitat. Therefore, the opening of Pinckney Island NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Pinckney Island NWR to sport fishing is in compliance with the Refuge Recreation Act.

Pinellas NWR was established in 1906 by an unnumbered Executive Order as "a preserve and breeding ground for native birds." The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the waters surrounding the refuge, with no adverse

impacts. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. The fishing activity will only permit fishing from boats into the waters surrounding the Tarpon Key portion of the refuge. A lease with the State of Florida conveys jurisdiction of these waters to the Service. No fishing will be permitted from refuge shores to protect colonial nesting birds. Therefore, the opening of Pinellas NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual refuge budget of approximately $2,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Pinellas NWR to sport fishing is in compliance with the Refuge Recreation Act.

Tybee NWR was established in 1938 by Executive Order 7882 as "a refuge and breeding ground for migratory birds and other wildlife." It is currently administered as part of the Savannah Coastal Refuge Complex. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The fishing program will only permit bank fishing from refuge lands into the surrounding waters, and only during daylight hours. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect wildlife populations or habitats. Therefore, the opening of Tybee NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Tybee NWR to sport fishing is in compliance with the Refuge Recreation Act.

Union Slough NWR was established in 1938 by Executive Order 7976 as "a refuge and breeding ground for migratory birds and other wildlife", and redesignated by Proclamation 2416 in 1940. The Service will open the refuge to migratory game bird, upland game, and big game hunting. Hunting will be limited to the Buffalo Creek and Schwob Units, which will soon be transferred to the Service from the Iowa Conservation Commission. The State has permitted hunting on these areas, with no adverse impacts. The units lie adjacent to those portions of the refuge devoted to intensive management for migratory bird production and maintenance. Hunting will be regulated to assure that disturbances to refuge wildlife and habitat will be minor and temporary; it will occur at a time of year so as not to disturb nesting birds. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and not intended to be "safe havens" for individual animals, the use of hunting as a management tool is in keeping with refuge purposes to conserve wildlife populations and habitats. For these reasons, the opening of Union Slough NWR to migratory game bird, upland game, and big game hunting is an appropriate use of the discretion given in Proclamation 2416 to allow taking of game and would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $2,500. Within the annual refuge budget of approximately $130,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Union Slough NWR to migratory game bird, upland game, and big game hunting is in compliance with the Refuge Recreation Act.

Wassaw NWR was established in 1969 under authority of the Fish and Wildlife Act of 1956 to protect wintering habitat for migratory birds. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The fishing program will only permit bank fishing from refuge lands into the surrounding waters, and only during daylight hours. Fishing will not be permitted during the refuge hunting season. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect migratory bird habitat. Therefore, the opening of Wassaw NWR to sport fishing is in compliance with the Refuge Administration Act. The annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Wassaw NWR to sport fishing is in compliance with the Refuge Recreation Act.

Wheeler NWR was established in 1938 by Executive Order 7926 as "a refuge and breeding ground for migratory birds and other wild life." The Service will open the refuge to sport fishing. The fishing activity will permit continuation of recreational uses which have occurred, with no adverse impacts, since before the refuge was established. Refuge fishing will be in accordance with State regulations which ensure the conservaton of the fishery resource. The primary use of the refuge by migratory birds is during the fall and winter, whereas the peak periods of fishing activity will be during spring and summer. In the experience of the Service, the fishing activity will not adversely affect wildlife populations or habitats. For these reasons, the opening of Wheeler NWR to sport fishing will not interfere with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual refuge budget of approximately $420,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Wheeler NWR to sport fishing is in compliance with the Refuge Recreation Act.

Wolf Island NWR was established in 1930 by Executive Order 5316 as "a refuge and breeding ground for wild animals and birds", and redesignated by Proclamation 2416 in 1940. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The fishing program will permit bank fishing from refuge lands into the surrounding waters, and fishing from boats into the refuge-controlled waters of two creeks. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect wildlife populations or habitats. Therefore, the opening of Wolf Island NWR to sport fishing is appropriate under Proclamation 2416 and is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be

required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Wolf Island NWR to sport fishing is in compliance with the Refuge Recreation Act.

In summary, the Service has determined that these hunting and fishing programs will be appropriate incidental or secondary uses of these refuges; will be compatible with, will not interfere with, and in some cases will enhance, the primary purposes for which these refuges were established; will be biologically sound and compatible with the principles of sound wildlife management; and will not be inconsistent with any other previously authorized Federal programs or with the primary objectives of these refuges. The Service has further determined that funds are available for administration of these programs, and that these programs are otherwise in the public interest in that they will provide needed recreational opportunities without impairment of the resource. Hunting and fishing plans are developed for each hunting and fishing program on a refuge prior to the opening of the refuge to hunting and/or fishing. In some cases, refuge-specific hunting and/or fishing regulations are included as a part of the hunting or fishing plan to ensure the compatibility of the programs with refuge purposes. For this reason, refuge-specific regulations necessary for the hunting and fishing programs outlined above are also included in this rulemaking. Refuge-specific regulations for refuges open to migratory game bird, upland game, and big game hunting are codified in 50 CFR Part 32, §§ 32.12, 32.22, and 32.32, respectively (see 49 FR 36736, 49 FR 38642, 49 FR 37093, 49 FR 43549, and 49 FR 50049). On July 23, 1985, at 50 FR 29972, a final rule was published which codified refuge-specific fishing regulations for refuges open to sport fishing in 50 CFR Part 33, §§ 33.5 through 33.54.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

It is estimated that the opening of these refuges to hunting and fishing will generate approximately 130,000 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, total annual receipts generated from purchases of food, transportation, hunting equipment, fishing gear, fees, and licenses associated with these programs are expected to be approximately $2.6 million, or substantially less than $100 million. In addition, since these estimated receipts will be spread over 11 states, the implementation of this rule should not have a significant economic impact on the overall economy of a particular region, industry or group of industries, or level of government.

With respect to small entities, this rule will have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. The refuge openings will provide recreational opportunities and generate economic benefits that will not otherwise exist, and will impose no new cost on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added costs to the Federal government of law enforcement, posting, etc., needed to implement activities under this rule will be less than the income generated from the implementation of these hunting and/or sport fishing programs. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of Information Collection	[redacted] Approval [redacted]
Hunter Surveys	1018-0044
Special Use Permits	1018-0046
Hunter Reservation/Permit Application/Blind Assignment	1018-0047

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76-59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1976 (41 FR 51131). Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), environmental assessments were prepared for these refuge openings. Section 7 evaluations were prepared, where appropriate, pursuant to the Endangered Species Act.

Stephen J. Lewis, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, Parts 32 and 33, Subchapter C, Chapter I of Title 50 of the Code of Federal Regulations are amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 is revised to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, sec. 5, 45 Stat. 449, sec. 10, 45 Stat. 1224, sec. 4, 48 Stat. 402, as amended, sec. 4, 48 Stat. 451, as amended, sec. 2, 48 Stat. 1270, sec. 4, 76 Stat. 654, as amended, sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k, 668dd; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb; Proclamation 2416, 5 FR 2677, 3 CFR, 1938-1943 Comp., p. 167; E.O. 1014 (January 26, 1909).

2. Section 32.11 is amended by adding Buenos Aires NWR, AZ, Union Slough NWR, IA, Harbor Island NWR, MI, and Bogue Chitto NWR, MS, alphabetically by State as follows:

§ 32.11 List of open areas; migratory game birds.

* * * * *

Arizona

Buenos Aires National Wildlife Refuge

* * * * *

Iowa

Union Slough National Wildlife Refuge

* * * * *

Michigan

Harbor Island National Wildlife Refuge

* * * * *

Mississippi

Bogue Chitto National Wildlife Refuge

* * * * *

3. Section 32.12 is amended by redesignating paragraphs (c) through (rr) as (d) through (ss), respectively; adding a new paragraph (c); redesignating newly designated paragraphs (v)(1) through (v)(6) as paragraphs (v)(2) through (v)(7), respectively; and by adding a new paragraph (v)(1) as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(c) *Arizona—Buenos Aires National Wildlife Refuge.* Hunting of mourning doves, white-winged doves, ducks, geese, and coots is permitted on designated areas of the refuge.

* * * * *

(v) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Duck hunting is not permitted during the special teal season.

(ii) Hunting is permitted until noon each day.

(iii) Only temporary blinds are permitted.

* * * * *

4. Section 32.21 is amended by adding Buenos Aires NWR, AZ, Union Slough NWR, IA, Harbor Island NWR, MI, Bogue Chitto NWR, MS, and Buffalo Lake NWR, TX, alphabetically by State as follows:

§ 32.21 List of open areas; upland game.

* * * * *

Arizona

Buenos Aires National Wildlife Refuge

* * * * *

Iowa

Union Slough National Wildlife Refuge

* * * * *

Michigan

Harbor Island National Wildlife Refuge

* * * * *

Mississippi

Bogue Chitto National Wildlife Refuge

* * * * *

Texas

Buffalo Lake National Wildlife Refuge

* * * * *

5. Section 32.22 is amended by redesignating paragraph (b) introductory text and paragraphs (b)(1), (b)(2), and (b)(3) as paragraphs (b)(2), (b)(2)(i), (b)(2)(ii), and (b)(2)(iii), respectively; adding a new paragraph (b)(1); redesignating paragraphs (v)(1) through (v)(6) as paragraphs (v)(2) through (v)(7), respectively; by adding a new paragraph (v)(1); by redesignating paragraph (kk) introductory text and paragraphs (kk)(1) and (kk)(2) as paragraphs (kk)(2), (kk)(2)(i), and (kk)(2)(ii), respectively; and by adding a new paragraph (kk)(1) as follows:

§ 32.22 Refuge-specific regulations; upland game.

* * * * *

(b) *Arizona*—(1) *Buenos Aires National Wildlife Refuge.* Hunting of quail (except masked bobwhite quail), cottontail rabbit, jackrabbit, coyote, fox, and bobcat is permitted on designated ares of the refuge.

(2) *Kofa National Wildlife Refuge.*

* * *

* * * * *

(v) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of squirrel, rabbit, and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Dogs are permitted for rabbit hunting following the last day of the State deer season.

(ii) Hunting of raccoon and opossum is permitted from the opening day of the State season through the month of November.

* * * * *

(kk) *Texas*—(1) *Buffalo Lake National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: A refuge hunting permit is required.

(2) *Hagerman National Wildlife Refuge.* * * *

* * * * *

6. Section 32.31 is amended by adding Buenos Aires NWR, AZ, Union Slough NWR, IA, Harbor Island NWR, MI, Bogue Chitto NWR, MS, Back Bay NWR, VA, and Columbian White-tailed Deer NWR, WA, alphabetically by State as follows:

§ 32.31 List of open areas; big game.

* * * * *

Arizona

Buenos Aires National Wildlife Refuge

* * * * *

Iowa

Union Slough National Wildlife Refuge

* * * * *

Michigan

Harbor Island National Wildlife Refuge

* * * * *

Mississippi

Bogue Chitto National Wildlife Refuge

* * * * *

Virginia

Back Bay National Wildlife Refuge

* * * * *

Washington

Columbian White-tailed Deer National Wildlife Refuge

* * * * *

7. Section 32.32 is amended by redesignating paragraphs (b)(1) through (b)(3) as paragraphs (b)(2) through (b)(4), respectively; adding a new paragraph (b)(1); redesignating paragraph (p) introductory text and paragraphs (p)(1) through (p)(4) as paragraphs (p)(1) and (p)(1)(i) through (p)(1)(iv), respectively; by adding a new paragraph (p)(2); by redesignating paragraphs (v)(1) and (v)(2) as paragraphs (v)(2) and (v)(3), respectively; by adding a new paragraph (v)(1); by redesignating paragraphs (x)(1) through (x)(6) as paragraphs (x)(2) through (x)(7), respectively; by adding a new paragraph (x)(1); by redesignating paragraphs (qq)(1) through (qq)(3) as paragraphs (qq)(2) through (qq)(4), respectively; and by adding a new paragraph (qq)(1) as follows:

§ 32.32 Refuge-specific regulations; big game.

* * * * *

(b) *Arizona*—(1) *Buenos Aires National Wildlife Refuge.* Hunting of mule deer, white-tailed deer, and javelina is permitted on designated areas of the refuge.

* * * * *

(p) *Iowa*—(1) *De Soto National Wildlife Refuge.* * * *

(2) *Union Slough National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge.

* * * * *

(v) *Michigan*—(1) *Harbor Island National Wildlife.* Hunting of white-tailed deer and black bear is permitted on designated areas of the refuge.

(x) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Archery hunting is permitted.

(ii) A 14-day primitive weapon deer hunt is permitted beginning December 2. During this hunt, one deer of either sex may be taken.

(iii) An 8-day gun deer hunt is permitted beginning December 16. During this hunt, only male deer may be taken.

* * * * *

(qq) *Virginia*—(1) *Back Bay National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only shotguns 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bow and arrow, are permitted.

(iii) Dogs are not permitted.

(iv) Possession of loaded firearms or nocked arrows is not permitted on refuge roads or proclamation waters.

(v) Hunters must wear in a conspicuous manner on head, chest, and back, a minimum of 400 square inches of "hunter orange" clothing or material.

* * * * *

PART 33—[AMENDED]

8. The authority citation for Part 33 is revised to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 451, 1270, sec. 4, 76 Stat. 654; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb; Proclamation 2416, 5 FR 2677, 3 CFR, 1938–1943 Comp., p. 167; E. O. 1014 (January 26, 1909).

9. Section 33.4 is amended by adding Bon Secour NWR, AL, Wheeler NWR, AL, Cedar Keys NWR, FL, Egmont Key NWR, FL, Hobe Sound NWR, FL, Lower Suwannee NWR, FL, Pelican Island NWR, FL, Pinellas NWR, FL, Harris Neck NWR, GA, Tybee NWR, GA, Wassaw NWR, GA, Wolf Island NWR, GA, Pinckney Island NWR, SC, and Columbian White-tailed Deer NWR, WA, alphabetically by State as follows:

§ 33.4 List of open areas; sport fishing.

* * * * *

Alabama

Bon Secour National Wildlife Refuge

* * * * *

Wheeler National Wildlife Refuge

* * * * *

Florida

Cedar Keys National Wildlife Refuge

* * * * *

Egmont Key National Wildlife Refuge

* * * * *

Hobe Sound National Wildlife Refuge

* * * * *

Lower Suwannee National Wildlife Refuge

* * * * *

Pelican Island National Wildlife Refuge

* * * * *

Pinellas National Wildlife Refuge

* * * * *

Georgia

Harris Neck National Wildlife Refuge

* * * * *

Tybee National Wildlife Refuge
Wassaw National Wildlife Refuge
Wolf Island National Wildlife Refuge

* * * * *

South Carolina

Pinckney Island National Wildlife Refuge

* * * * *

Washington

Columbian White-tailed Deer National Wildlife Refuge

* * * * *

10. Section 35.5 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively; and by adding new paragraphs (a) and (d), to read as follows:

§ 33.5 Refuge-specific fishing regulations—Alabama.

(a) *Bon Secour National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during daylight hours only.

(2) Only nonmotorized boats and boats with electric motors are permitted on Gator and Little Gator Lakes.

* * * * *

(d) *Wheeler National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Bank fishing is not permitted around the shoreline of the refuge headquarters and in the display pool.

11. Section 33.13 is amended by redesignating paragraphs (a), (b), (c), (d), (e), and (f) as paragraphs (d), (e), (g), (h), (k), and (l), respectively; and by adding new paragraphs (a), (b), (c), (f), (i), and (j) as follows:

§ 33.13 Refuge-specific fishing regulations—Florida.

(a) *Cedar Keys National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during daylight hours only.

(2) Fishing is permitted year-round, from refuge beaches only.

(b) *Egmont Key National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during daylight hours only.

(2) Fishing is permitted year-round, from refuge beaches only.

(c) *Hobe Sound National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted year-round, during daylight hours only.

* * * * *

(f) *Lower Suwannee National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Bank fishing is permitted into interior refuge creeks, borrow pits, and canals from March 15 to September 30 only.

* * * * *

(i) *Pelican Island National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round.

(2) Bank fishing from spoil islands is permitted, during daylight hours only.

(j) *Pinellas National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is only permitted from boats, into the waters surrounding Tarpon Key.

* * * * *

12. Section 33.14 is amended by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively; and by adding new paragraphs (c), (g), and (h) as follows:

§ 33.14 Refuge-specific fishing regulations—Georgia.

(c) *Harris Neck National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round, except during refuge hunts.

(2) Bank fishing into estuarine waters is permitted, during daylight hours only.

* * * * *

(g) *Wassaw National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round except during refuge hunts.

(2) Bank fishing into estuarine waters is permitted, during daylight hours only.

(h) *Wolf Island National Wildlife Refuge.* Fishing is permitted on

designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round.

(2) Fishing from boats is only permitted on Beacon and Wolf Creeks.

(3) Bank fishing into estuarine waters is permitted, during daylight hours only.

13. Section 33.44 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and by adding a new paragraph (c) as follows:

§ 33.44 Refuge-specific fishing regulations—South Carolina.

* * * * *

(c) *Pinckney Island National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round.

(2) Fishing is only permitted from boats, into the estuarine waters adjacent to the refuge.

* * * * *

Dated: August 7, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-20271 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 165
Monday, August 26, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 655

State Specifications for Soil Removal, Stockpiling, Replacement and Reconstruction for Surface Coal Mining and Reclamation Operations in Illinois, Kentucky, North Dakota, and Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Soil Conservation Service (SCS) of the U.S. Department of Agriculture (USDA) intends to propose a rule and develop an administrative record on the specifications for soil handling (removal, stockpiling, replacement, and reconstruction) related to mining activities on prime farmland as provided for in section 515(b)(7) of the Surface Mining Control and Reclamation Act. In Illinois, Kentucky, North Dakota and Ohio, SCS staff specialists, in cooperation with State regulatory authorities and others, are developing drafts of such specifications for effective soil handling with consideration of the soils, climate, geology, crops, and mining technologies within each state. Interested individuals may obtain copies of the draft specifications by requesting them from the SCS State Conservationists in these states. Similar drafts are also being developed in other states affected by section 515(b)(7), but they are in less advanced stages at this time.

FOR FURTHER INFORMATION CONTACT: Donald E. McCormack, National Leader, Soil Technology, Soil Survey Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013. For copies of the draft specifications, contact: John J. Eckes, State Conservationist, Springer Federal Building, 301 North Randolph Street, Champaign, Illinois 61820; Randall W. Giessler, State Conservationist, 333 Waller Avenue, Room 305, Lexington, Kentucky 40504; August J. Dornbusch, State Conservationist, Rosser Avenue & Third Street, Federal Building, P.O. Box 1458, Bismarck, North Dakota 58502; Harry W. Oneth, State Conservationist, 200 North High Street, Room 522, Columbus, Ohio 43215.

SUPPLEMENTARY INFORMATION:

(a) Background. Section 515(b)(7) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, requires the Secretary of Agriculture to establish specifications for soil removal, storage, replacement and reconstruction for all prime farmlands, as identified in section 507(b)(16) of the Act, to be mined and reclaimed. This function was delegated to the Soil Conservation Service (SCS) by the Secretary of Agriculture in 7 CFR 601.2(i).

(b) SCS has determined that it is not possible or appropriate to develop national specifications for soil handling because of the wide diversity of soils, geology, climate, mining equipment, and crops in coal mining areas across the nation. This finding is reflected in the permanent program regulations published by the Office of Surface Mining (OSM), U.S. Department of the Interior, specifically in 30 CFR 823.4(a) which states that "SCS within each State shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction." That rule further elaborates general provisions of such specifications under the headings Soil Removal and Stockpiling (30 CFR 823.12) and Soil Replacement (30 CFR 823.14).

(c) In 1984, SCS reversed an earlier position that the specification to be established in each State were highly technical provisions of interest to only a few scientists and thus that it would not be useful or helpful to obtain public review and comment. Due to previous recommendations by OSM and various concerned individuals, SCS concluded that the specifications should be published for review and comment. On October 1, 1984, the U.S. District Court for the District of Columbia found that these specifications must be published in the **Federal Register** for public comment (*In Re Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144).

(d) In Illinois, Kentucky, North Dakota, and Ohio, specialists of the Agricultural Experiment Stations and the State regulatory authorities (SRA's) are assisting in the development of the specifications for soil handling. In addition, individuals employed by the mining industry and others are providing pertinent information. To the fullest possible extent, the state specifications will reflect the latest scientific information and experience available to guide reclamation techniques so that levels of reclamation required by the Act can be achieved.

General National Guidelines

(a) During the development of the proposed state specifications, certain general guidelines were provided at the national level by SCS to assist the states in developing the required specifications. These guidelines reflect in-depth discussions between SCS and OSM personnel, university scientists, scientists and others of the coal mining industry, state agencies including SRA's, and members of conservation and environmental organizations. Careful consideration and thorough scientific evaluation has been directed toward development of both the national guidelines and the draft state specifications to assure that all scientific evidence is properly reflected.

(b) To assist in understanding the draft state specifications, the national guidelines used are presented herein for: (a) Soil moisture and temperature as they affect soil handling; (b) reconstructed soil slope; (c) depth of soil reconstruction; (d) substitute soil materials; (e) compaction and density; (f) and texture and pH. These guidelines are not presented as rigid standards for universal application, but do represent minimum levels, in general terms, for soil handling. Additional provisions of the individual state specifications are a result of state laws, or unique soils, geology and climate.

(1) *Soil moisture and temperature.* Operating decisions about whether the

soil has proper moisture conditions for grading must be the responsibility of the mine operator. They are day-to-day and hour-to-hour decisions. It is in the best interest of the operator and a clear requirement of the Act, that the soil be handled so as to minimize compaction and to help assure success in restoring soil productivity. Avoidance of overcompaction has proven to be one aspect of restoring soil productivity that is difficult in many cases and thus deserving of careful attention by both the industry and regulatory authorities. Limiting soil handling to those moisture conditions at which proper compaction is least difficult to achieve is thus desirable.

(2) *Reconstructed soil slope.* Most prime farmland has slopes of less than 5 or 6 percent and the creation of slopes favorable to agricultural cropping does not generally pose a difficult problem for mine operators. However, in some cases the prime farmland soil was level or nearly so before mining. On many such soils, farm drainage systems had been installed prior to mining. For such level areas, it is advisable to reconstruct the soils with slopes of 1 to 2 percent to assure that there is sufficient runoff to prevent the creation of undue soil wetness. It is essential that adequate surface drainage be provided so that ponding of surface water is avoided.

There may be, in this and other kinds of situations, the opportunity to create, at no extra cost, a soil that is better drained, less erodible and/or more productive, than the soil that existed prior to mining. This may be an attractive opportunity and where it can be done at no extra cost to the mine operator, SCS should bring such cases to the attention of the SRA.

(3) *Depth of soil reconstruction.* Most prime farmland soils have a favorable rooting depth of at least 48 inches and for most such soils proper soil reconstruction to this depth will result in restoration of productivity. However, there may be some prime farmland soils for which reconstruction to a greater depth is needed. The 48 inch depth is specified in state laws in several states.

Where bedrock or approved root inhibiting horizons are at depths of less than 48 inches, reconstruction is thus required to a lesser depth.

Fragipans or other root inhibiting layers, in order to qualify for exclusion from reconstruction, must contribute little or nothing to the productive capacity of the soil. This contribution must be less than 0.06 inches per inch of available water capacity to qualify for such exclusion.

(4) *Compaction and density.* Because of the diversity of soil texture, rock fragments, climate, mining equipment and techniques, it has not been possible to establish soil density standards which clearly relate to soil productivity. In spite of overall high soil density, there are cases where good root deployment and targeted crop yields have been achieved, mainly because the pattern of pore spaces was favorable. On the other hand, there are cases in which the overall density is not high and good root deployment was expected, but a very thin highly compacted layer that could not be detected in standard test methods prohibited the entry of plant roots.

SCS has studied the density issue over a period of more than 5 years, and has concluded that more research is needed before useful limits of density can be established. Excessive compaction within the required depth must be avoided, but until better information is available it is necessary to evaluate crop performance and root system development of the reference crop(s) to determine whether or not the necessary porosity exists. Special techniques and equipment that will prevent over-compaction will be used, or techniques that will alleviate excessive compaction should be required.

(5) *Texture and pH.* The texture and pH of the reconstructed soil horizons will be essentially the same as comparable horizons of the unmined soil, or of any approved mixtures of horizons or strata.

Plans for rulemaking

Accordingly, for the purpose of determining the proper provisions of specifications for soil removal, storage, replacement and reconstruction as required in section 515(b)(7) of the Act and 30 CFR 823.12 and 823.14, SCS intends to propose a rule, on a state-by-state basis, which will address the issue of how the soil should be handled in surface coal mining and reclamation operations on prime farmland. SCS invites public comment on the national guidelines published herein, and on the draft state specifications being developed in Illinois, Kentucky, North Dakota and Ohio. Similar specifications are in early stages of development in the other states with surface coal mining on prime farmland. As appropriate, SCS will announce their availability for review in the **Federal Register.**

Wilson Scaling,

Chief.

[FR Doc. 85-20285 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-16-M

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO-313-A33]

Milk in the Southern Illinois Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that the location adjustment provisions of the Southern Illinois order be amended to reestablish the same location value of milk at plants in the St. Louis metropolitan area that applied at such plants under the former St. Louis-Ozarks order, which was terminated on April 1, 1985. The amendment was proposed by six dairy cooperatives that represent about 90 percent of the producers who supply milk to the Southern Illinois market. The location adjustment change is needed to assure that an adequate supply of milk for fluid use will be shipped to distributing plants in the St. Louis metropolitan area.

DATE: Comments are due on or before September 10, 1985.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued April 12, 1985; published April 18, 1985 (50 FR 15432).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Southern Illinois marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC., 20250, by the 15th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). It is found that it is impracticable and contrary to the public interest to have a comment period which is longer than 15 days because, for purposes of orderly marketing in the area, there is a need to resolve the issue of the proposed location adjustment amendment as soon as possible.

The proposed amendments set forth below are based on the record of a public hearing held at Bridgeton, Missouri, on April 30, 1985, pursuant to a notice of hearing issued April 12, 1985 (50 FR 15432).

The material issues on the record of hearing relate to:

1. Location adjustments.
2. Whether emergency marketing conditions exist with respect to issue No. 1.
3. Conforming and technical changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Location adjustments.*

The location adjustment provisions should be amended to provide for a plus 7-cent location adjustment at plants located in the St. Louis metropolitan area. Such area includes the city of St. Louis, the Missouri counties of Jefferson, St. Charles and St. Louis and the adjacent Illinois counties of Madison (except Alton Township), Monroe and St. Clair. Application of the 7-cent location adjustment results in reestablishing the same location value of milk that existed at plants in this area under the St. Louis-Ozarks order that was terminated on April 1, 1985.

Six cooperative associations (Mid-America Dairymen, Inc., Associated Milk Producers, Inc., Land O'Lakes, Inc., Midwest Dairymen's Company, Prairie Farms Dairy, Inc. and Wisconsin Dairies Cooperative) that represent about 90 percent of the producers who supply the Southern Illinois market proposed the location adjustment amendment to reestablish the Class I price level that existed at plants in the St. Louis metropolitan area that have become regulated under the Southern Illinois order. The cooperatives contend that the action is necessary to maintain the historical 7-cent price difference that existed between plants in the St. Louis area and plants located in the base zone of the Southern Illinois marketing area. The cooperatives contend that the maintenance of the price difference is necessary to attract a supply of milk to plants in the St. Louis area from alternative production areas that must be relied on to furnish a sufficient supply of milk to meet the fluid milk needs of this major consumption center. The cooperatives contend that, in the absence of the price difference between St. Louis and Southern Illinois base zone areas, there will not be a sufficient incentive for milk to be shipped to the St. Louis area from production areas that are also a source of supplemental supplies for plants located in the base zone of the Southern Illinois marketing area. In effect, the cooperatives contend that there is a greater economic service provided in supplying the St. Louis area since the supply sources are further from the St. Louis area than from plant locations in the Southern Illinois base zone.

The location adjustment proposal was opposed by three handlers that operate distributing plants in the St. Louis metropolitan area that were formerly regulated under the St. Louis-Ozarks order. A witness for the handlers contended that there should be no difference in prices between the St. Louis area and the base zone of the Southern Illinois marketing area. The witness further contended that the Class I price plants should bear a relationship to the distances that such plants are located from Eau Claire, Wisconsin.

The St. Louis-Ozarks order was terminated effective April 1, 1985. Five distributing plants located in the St. Louis metropolitan area became regulated under the adjacent Southern Illinois order as a result of their fluid milk sales within the marketing area. (Official Notice is taken of the Market Administrator's *Computation of Uniform Price* for the Southern Illinois order for April 1985.) As a result of the change in regulation, distributing plants in the St. Louis metropolitan area became subject to the Southern Illinois base zone price, which is 7 cents per hundredweight below the price that previously applied at such plants under the St. Louis-Ozarks order.

The metropolitan St. Louis area is a major consumption center with a population in excess of 2.2 million and total Class I route sales in the area during 1983 that approached 461 million pounds. The St. Louis area distributing plants that supply the metropolitan area also supply a substantial proportion of the fluid milk needs of the Southern Illinois market. Class I route sales by St. Louis area plants in the Southern Illinois marketing area represents about 28 percent of the total sales in the area, or about 11 million pounds per month. Hence, these plants are also an integral part of the Southern Illinois market.

The St. Louis metropolitan area is a deficit milk production area. Total sales by milk dealers in the St. Louis area are considerably greater than the amount of milk produced by dairy farmers located within a 50-mile radius of St. Louis. In every month but three during the four-year period of 1981–1984, route sales in the St. Louis area exceeded production by dairy farmers in the nearby production area. During 1983, fluid milk sales exceeded production by about 23 million pounds per month. In addition, the total Class I use by distributing plants located in the St. Louis area exceeded direct receipts from producers by about 11 million pounds per month during the recent 15-month period of January 1984–March 1985.

Because there is not sufficient quantity of milk produced in the nearby direct-ship area to meet the fluid needs of distributing plants in the St. Louis area, such distributing plants must rely on supplemental shipments of milk from plants located beyond the local procurement area to meet their fluid milk needs. On a monthly basis over the 15-month period, shipments from supply plants to St. Louis distributing plants ranged from a low of 23 million pounds in February 1985 to a high of 30 million pounds during October 1984.

Each of the distributing plants in the St. Louis area that will be regulated under the Southern Illinois order received shipments from supply plants during the aforementioned 15-month period. Each such plant depends on milk from supply plants to supplement their direct receipts from dairy farmers. Supplemental milk supplies from supply plants located in southwestern and

south-central Missouri, and formerly pooled under the St. Louis-Ozarks order, likely will not be available to supply the needs of distributing plants in St. Louis in the future. The milk at these plants most likely will be attracted to markets to the south where higher returns to the dairy farmers will be available than if such plants were regulated under the Southern Illinois order. Thus, in the future, St. Louis distributing plants will have to place greater reliance on supplemental shipments from supply plants located primarily to the north of the marketing area.

Distributing plants regulated under the Southern Illinois order also have depended on supplemental milk shipments from supply plants and other order sources to furnish their needs. For instance, during the 15-month period of January 1984–March 1985, Southern Illinois distributing plants imported 186 million pounds or about 12 million pounds per month from such outside sources. On a monthly basis over that 15-month period, shipments to Southern Illinois distributing plants ranged from a low of 10 million pounds in March 1985 to a high of about 15 million pounds in October 1984.

There are two supply plants regulated under the Southern Illinois order that are located to the north of the marketing area at Spring Valley, Minnesota, and Waukon, Iowa. These plants were pooled under the Southern Illinois order for each of the months of January 1984–March 1985. In that capacity, they have constituted a regular source of supplemental milk for Southern Illinois distributing plants.

It is evident that distributing plants in the St. Louis area will have to compete with the Southern Illinois base zone price for supplies of supplemental milk from northern supply plants. Since it is 25 miles further from Spring Valley, Minnesota, to St. Louis than to Carlinville, Illinois, it costs about 9 cents more to haul milk from Spring Valley to the St. Louis area than to Carlinville. Likewise, it costs about 12 cents more to haul milk from the supply plant at Waukon, Iowa, to St. Louis rather than to Carlinville because it is 35 miles further from Waukon to St. Louis than it is to Carlinville. Supplemental milk also has been shipped to St. Louis from a supply plant located at Arlington, Iowa. Because it is 35 miles further from Arlington to St. Louis than to Carlinville, it costs about 12 cents more to transport milk from Arlington to St. Louis than it does to move the milk to Carlinville. If the price level were equal at St. Louis and Carlinville, supplemental milk from the foregoing three supply plants would not be attracted to the more-distant St. Louis area.

It is evident from the foregoing that the location pricing proposal advanced by proponent cooperatives is needed to assure that adequate supplies of milk for fluid use will be shipped to distributing plants in the St. Louis area. A 7-cent plus location adjustment for plants in the St. Louis area will reflect a portion of the additional cost incurred in securing a supply of milk from northern supply areas that are more distant from St. Louis than from other Southern Illinois plants. Accordingly, the necessary changes to reestablish the former location value of milk at plants in the St. Louis area are adopted in this decision.

The need to reflect the greater distances that milk must be shipped from northern supply plant locations to St. Louis area plants, versus plants in the base zone of the Southern Illinois marketing area, disputes the views of opponent handlers who contend that there should be no difference in price between the two areas. A higher price in the St. Louis area, relative to the base zone of the Southern Illinois marketing area is necessary to cover at least a portion of the additional transportation cost involved in shipping milk to St. Louis versus Carlinville from northern supply plant locations. In addition, the mileages from Eau Claire, Wisconsin, to distributing plants in the St. Louis area, versus the mileage from Eau Claire to Carlinville, supports the conclusion that a higher price is necessary in the St. Louis area than in Carlinville.

2. *Whether emergency marketing conditions exist with respect to issue No. 1.*

The hearing notice indicated that evidence would be taken at the hearing to determine whether the omission of a recommended decision and the opportunity to file exceptions thereto would be warranted because of emergency marketing conditions.

Proponent cooperatives did not present any evidence of emergency marketing conditions, but requested that a decision be issued as expeditiously as possible. Since no information of a compelling nature was presented, it would be inappropriate to omit the issuance of a recommended decision and the opportunity for interested parties to file exceptions to such decision. Consequently, the request for emergency action is denied.

3. *Conforming and technical changes.*

As stated in issue No. 1, the location adjustment provisions should be amended to assure the delivery of adequate supplies of milk for fluid use to distributing plants in the St. Louis metropolitan area. The proposal by cooperative associations would accomplish this objective by establishing a plus 7-cent location adjustment at plants located in such area.

Portions of the area in the State of Illinois that were proposed to be included in the plus 7-cent zone are currently located within the Southern Illinois marketing area while other portions in the States of Illinois and Missouri are located outside the marketing area. Although the intent of the proposal should be adopted, the amendatory language contained herein is revised from what was proposed to conform with the current zone-pricing structure of the Southern Illinois order.

The Southern Illinois marketing area currently consists of three zones for pricing purposes. No location adjustment applies at plants located in the base zone. Prices at plants in the northern zone are 7 cents per hundredweight below the base zone price while prices in the southern zone are 7 cents per hundredweight above the base zone price.

Those portions of the St. Louis metropolitan area that are currently located in the base zone of the marketing area should be included in the southern zone. The remaining territory in the States of Illinois and Missouri that is outside the marketing area are included in a separate pricing zone with a plus 7-cent location adjustment. These changes do not result in any substantive change from what was proposed but are more consistent with the current zone pricing structure of the order. Several other minor changes are included within the location adjustment provisions because of the above modifications. These modifications are also of a nonsubstantive nature and are intended to make the entire location adjustment section clearer and easier to read and understand.

In addition to the above conforming changes, two technical, nonsubstantive revisions are included in the accompanying amendments to the order. One of these incorporates within the order language the currently effective equivalent price determination that was issued by the Acting Assistant Secretary on March 21, 1985. The determination of an equivalent price for use in computing Class I prices under the Southern Illinois order was necessitated by the April 1,1985, termination of the St. Louis-Ozarks order. Prior to the termination of the St. Louis-Ozarks order, the Class I price for any month under the Southern

Illinois order was the Class I price under the St. Louis-Ozarks order less 7 cents per hundredweight. In order to establish monthly Class I prices under the Southern Illinois order that are identical to Class I prices that would be established under the order in the absence of a termination of the St. Louis-Ozarks order, the equivalent price determination specifies that the Class I price for the month shall be the basic formula price for the second preceding month plus $1.53. Such language is hereby incorporated within § 1032.50(a) to update 7 CFR Part 1032.

A review of 7 CFR part 1032 indicates that § 1032.70(b) should be terminated. This provision applies to a seasonal payment plan that was terminated effective April 7, 1980. Consequently, the provision serves no useful purpose and is terminated to update future publications of the Code of Federal Regulations.

Rulings on Proposed Findings and Conclusions

A single brief and proposed findings and conclusions were filed on behalf of one interested party. Such brief, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by such interested party are inconsistent with the findings and conclusions set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously stated in this decisions.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Illinois order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Southern Illinois marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List Of Subjects In 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

The authority citation for Part 1032 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

1. Section 1032.2 is revised to read as follows:

§ 1032.2 Southern Illinois marketing area.

"Southern Illinois marketing area", hereinafter called the "marketing area", means all the territory within the following counties, all of which are in the State of Illinois, together with all municipal corporations therein and all institutions owned or operated by the Federal, State, county, or municipal governments located wholly or partially within such counties:

Base zone

Bond, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edwards, Effingham, Fayette, Greene, Jasper, Jefferson, Jersey, Lawrence, Macoupin, Madison (Alton Township only), Marion, Montgomery, Richland, Shelby, Wabash, Washington and Wayne.

Northern Zone

Champaign, De Witt, Douglas, Edgar, Logan, Macon, McLean, Menard, Morgan, Moultrie, Piatt, Sangamon and Vermilion.

Southern Zone

Franklin, Hamilton, Jackson, Madison (except Alton Township), Monroe, Perry, Randolph, Saline, St. Clair (except Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites Townships and the city of Belleville), White and Williamson.

2. In § 1032.50, paragraph (a) is revised to read as follows:

§ 1032.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.53.

* * * * *

3. In § 1032.52, paragraph (a)(1), (2) and (3) is revised to read as follows:

§ 1032.52 Plant location adjustments for handlers.

(a) * * *

(1) For a plant located within one of the zones designated in § 1032.2, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
Base Zone	No adjustment.
Northern Zone	Minus 7 cents.
Southern Zone	Plus 7 cents.

(2) For a plant located outside the marketing area but in any of the following territory the adjustment shall be as follows:

(i) *Plus 7 cents.* St. Clair County (Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites Townships and the city of Belleville only) in the State of Illinois and the counties of Jefferson, St. Charles and St. Louis and the city of St. Louis in the State of Missouri.

(ii) *Minus 7 cents.* In the State of Illinois and south of the northern boundaries of Adams and Schuyler counties (except for the territory in St. Clair County, Illinois specified in paragraph (a)(2)(i) of this section) and in the counties of Fountain, Parke, Vermilion and Warren in the State of Indiana.

(3) For a plant located outside the marketing area and the area described in paragraph (a)(2) of this section, the adjustment shall be minus 15 cents for any such plant located 100 miles or more from the city or village limit of Alton, Robinson, or Vandalia, Illinois, whichever is nearest, and minus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

* * * * *

§ 1032.70 [Amended]

4. In § 1032.70, paragraph (b) is removed.

Signed at Washington, D.C., on August 20, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-20337 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-85-8]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initition of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before, October 28, 1985.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 20, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
2476	Insurance Institute for Highway Safety.	Description of Petition: To amend the Federal Aviation Regulations to prohibit any person from acting or attempting to act as a crewmember with a blood alcohol concentration above 0.00 percent Regulations Affected: 14 CFR 91.11(a)(4) Petitioner's Reason for Rule: Petitioner offers as a basis for its petition research demonstrating that individuals are impaired by very low doses of alcohol, far below the current prohibited blood alcohol concentration of 0.04 percent.

[FR Doc. 85-20362 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-78-AD]

Airworthiness Directives; Saab-Fairchild Corporation Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the empennage deicer boot system, the nacelle inlet protection device, and the engine control cables on certain Saab-Fairchild Model SF-340A airplanes. These actions are necessary to prevent water accumulation and subsequent freezing. Ice formations may prevent operation of the tail deicer system, prevent proper draining of the nacelle, and cause binding of the engine control cables.

DATE: Comments must be received on or before October 21, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administation, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-78-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Saab-Fairchild Corporation, Product Support, S.58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–78–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Swedish Board of Civil Aviation (BCA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of several unsafe conditions that may exist on certain Model SF–340A airplanes. Water can accumulate in the empennage deicer boot pneumatic system, the nacelle inlet protection device drain system, and the engine control cables at the wing/fuselage interface. The entrapped moisture can freeze and result in improper operation of those systems. To prevent this from occurring, the BCA, on February 12, 1985, issued an airworthiness directive which mandates modifications in accordance with Saab-Fairchild Service Bulletins SF340–30–008, SF340–54–002, and SF340–76–006.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, and AD is proposed that would require compliance with the previously mentioned service bulletins.

It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 15 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Saab-Fairchild Model SF–240A airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Saab-Fairchild: Applies to Model SF–340A series airplanes as listed in each service bulletin cited below, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent moisture accumulation, accomplish the following, unless previously accomplished:

1. Modify the empennage deicer boot pneumatic system in accordance with Saab-Fairchild Service Bulletin SF 340–30–008, Revision 1, dated February 11, 1985.

2. Modify the nacelle inlet protection device exhaust nozzle in accordance with Saab-Fairchild Service Bulletin SF 340–54–002, Revision 1, dated April 3, 1985.

3. Modify the engine control cables in accordance with Saab-Fairchild Service Bulletin SF 340–76–006, dated February 8, 1985.

4. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

5. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspection and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to Saab-Fairchild Corporation, Product Support, S.58188, Linkoping, Sweden. These documents may be examined at the FAS, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 20, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–20360 Filed 8–23–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 85–NM–77–AD]

Airworthiness Directives; Short Brothers Ltd. Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require replacement of certain ⅛-inch diameter standard blind rivets in the horizontal stabilizer lower skin to rear spar attachment joint with larger Cherrymax rivets and bolts on certain Short Brothers Model SD3–60 airplanes. This action is prompted by reports of loose fasteners and is necessary to prevent the stabilizer skin from detaching from the spar chord. These failures, if not corrected, could compromise the structural capability of the stabilizer.

DATES: Comments must be received on or before October 18, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–77–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All

communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A reported summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–77–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

DISCUSSION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on certain Short Brothers Ltd. Model SD3–60 airplanes. Some operators have reported that ⅛-inch diameter standard blind rivets, which attach the stabilizer lower skin to the rear spar chord, are becoming loose. In order to prevent this from occurring, the CAA has mandated compliance with Short Brothers Ltd. Service Bulletin SD–360–55–06, Revision 1, dated May 1985, which describes replacement of certain ⅛-inch fasteners with larger diameter Cherrymax fasteners and bolts.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 33 airplanes would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $50 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $65,010.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brother Model SD3–60 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Short Brothers Ltd.: Applies to Model SD3–60 airplanes, serial numbers SH3601 through SH3676 inclusive, certificated in any category. Compliance is required within 90 days after the effective date of this AD, To maintain the structural integrity of the horizontal stabilizer, accomplish the following, unless previously accomplished:

1. Modify the horizontal stabilizer lower skin to spar attachment in accordance with Short Brothers Ltd. Service Bulletin SD360–55–06, Revision 1, dated May 1985.

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affective by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to Short Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 19, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–20261 Filed 8–23–85; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CGD8–85–15]

Drawbridge Operation Regulation; Pearl River, Louisiana/Mississippi.

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Seaboard System Railroad (SSR) and the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change in the regulations governing the operations of the following swing span bridges over the Pearl River:

a. The railroad bridge, mile 1.0, between English Lookout, St. Tammany Parish, Louisiana, and Ansley, Hancock County, Mississippi.

b. The US Highway 90 bridge, mile 8.8, between St. Tammany Parish, Louisiana, and Pearlington, Hancock County, Mississippi.

This proposed change would require that the draws of the bridges open on at least four hours advance notice from 9 p.m. to 5 a.m. The draws would open on signal outside these hours. Presently, the draws are required to open on signal at all times.

This proposal is being made because of the infrequent requests for opening the draws during the proposed advance notice period. This action should relieve the bridge owners of the burden of having persons constantly available at the bridges between 9 p.m. and 5 a.m., and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 10, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials reference in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, or bridges, and give reasons for concurrence with or any recommended changes in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in the light of comments received.

Drafting Information:

The drafters of this notice are Perry Haynes, project, officer, and LCDR James Vallone, USCG, project attorney.

Discussion of Proposed Regulations

a. Vertical Clearance of the railroad bridge in the closed position is 14.0 feet above higher water and 16.0 feet above low water. There are, on average, 12 trains crossing this bridge daily. Navigation through the bridge consists of tugs with tows, shrimp/fish boats and pleasure craft. Data submitted by the SSR for the 12-month period from January 1984 through December 1984 show that this traffic through the bridge is as follows:

(1) During the proposed advance notice period of 9 p.m. to 5 a.m., there were 66 bridge opening-san average of 5.5 openings per month or an average of one opening every six days.

(2) During the remaining hours of 5 a.m. to 9 p.m., there were 900 bridge openings—an average of 75.0 openings per month or an average of 2.5 openings per day.

b. Vertical clearance of the highway bridge in the closed position is 10.0 feet above high water and 12.0 feet above low water. Navigation through the bridge consists of single barge tows, shrimp/fish boats and pleasure craft. Data submitted by the LDOTD show that this traffic is as follows:

(1) In 1984, during the proposed advance notice period of 9 p.m. to 5 a.m., there were 89 bridge openings—an average of 7.4 openings per month or an average of one opening every four days. In 1983, during this same period, there were 110 bridge openings—an average of 9.2 openings per month or an average of one opening every three days.

Considering the few openings involved, the Coast Guard feels that the current on site attendance at the bridges between 9 p.m. and 5 a.m. is not warranted and that the bridges can be placed on four hours advance notice for an opening between 9 p.m. and 5 a.m. Outside these hours, the bridges would continue to open on signal. This will allow relief to the bridge owners, while still providing for the reasonable needs of navigation.

The advance notice for opening the railroad bridge would be given by placing a collect call at any time to the Chief Dispatcher's office in Mobile, Alabama, telephone (205) 432–0725. The advance notice for opening the highway bridge would be given by placing a collect call at any time to LDOTD District Office in Hammond, Louisiana, telephone (504) 345–7390. To provide for leeway in the appointed arrival times, the SSR and LDOTD would have tenders at the bridges at least one-half hour before the appointed time who would remain at least one-half hour after that time for a late arriving vessel.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass the bridges during the proposed advance notice period of 9 p.m. to 5 a.m., as evidenced by the 1984 log of bridge openings which show that during this period the railroad bridge averages one opening every six days and the highway bridge averages one opening every four days. These vessels can reasonably give four hours advance notice for a bridge opening by placing a collect call at any time to the bridge owners. Mariners requiring the bridges to open are mainly repeat users and scheduling their arrival at the bridges at the appointed time should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. Sections 117.488 and 117.684 are added to read as follows:

§ 117.488 Pearl River.

The draws of the Seaboard System Railroad bridge, mile 1.0 near English Lookout, and the US 90 Highway bridge, mile 8.8 near Pearlington, shall open on signal; except that, from 9 p.m. to 5 a.m. the draws shall open on signal if at least four hours notice is given. During the advance notice period, the draws shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

§ 117.684 Pearl River.

The draws of the Seaboard System Railroad bridge, mile 1.0 near Ansley, and the US 90 Highway bridge, mile 8.8 near Pearlington, shall open on signal; except that, from 9 p.m. to 5 a.m. the draws shall open on signal if at least four hours notice is given. During the advance notice period, the draws shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: August 1, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District

[FR Doc. 85–20315 Filed 8–23–85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 3

Frequency of Payment of Improved Pension

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations to update the annual benefit amounts of improved pension that may be paid less frequently than monthly. These amendments are necessary to reduce the number of

improved pension checks that are issued for relatively small amounts. The effect of these amendments will be the issuance of fewer checks in larger check amounts with no less of benefits to claimants.

DATES: Comments must be received on or before September 25, 1985. We propose to make these changes effective December 1, 1985.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132 at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 8, 1985.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 389–3005.

SUPPLEMENTARY INFORMATION: Each month a large number of improved pension checks are issued in relatively small benefit amounts of $18 dollars or less. Checks for such amounts are both costly for the Government to issue and a nuisance for beneficiaries who must deposit or cash them and for financial institutions which must process them. Congress recognized these problems when Public Law 95–588 was enacted by providing the VA with authority under 38 U.S.C. 508 to pay improved pension benefits less frequently than monthly when the total amount of annual benefits payable to a beneficiary was less than four percent of the maximum annual rate payable to a single veteran.

The current regulatory schedule for making improved pension payments less frequently than monthly (38 CFR 3.30) was implemented in 1979. At that time the maximum annual improved pension rate for a single veteran was $3,550. Under 38 U.S.C. 3112, however, the maximum annual rates of improved pension have been increased from time to time to keep pace with increases in social security benefits. Since 1979 the maximum rate for a single veteran has increased by 60 percent to $5,709 with no corresponding adjustment in the regulatory schedule for paying benefits less frequently than monthly.

The VA currently has the authority under 38 U.S.C. 508 to pay improved pension benefits less frequently than monthly if a beneficiary's annual entitlement is less than $228.36 (four percent of $5,709). Under these proposed amendments to 38 CFR 3.30 the VA would continue to pay improved pension on a monthly basis if a beneficiary's monthly entitlement is $19 or more. If monthly entitlement is at least $12 but less than $19, benefits would be accumulated and paid quarterly. If monthly entitlement is at least $6 but less than $12, benefits would be accumulated and paid semiannually. If monthly entitlement is less than $6, benefits would be accumulated and paid annually except that payments of less than $1 annually would not be made.

The proposed change to the current regulation on frequency of improved pension payments would result in lower check production and mailing costs with no monetary loss to beneficiaries.

The Administrator hereby certifies that these proposed regulations do not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected. In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulations are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105)

Approved: August 5, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, ADJUDICATION, is amended by revising § 3.30(a) through (d) to read as follows:

§ 3.30 Frequency of payment of improved pension.

(a) *Monthly.* Payment shall be made monthly if the annual rate payable is $228 or more.

(b) *Quarterly.* Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least $144 but less than $228. The provisions of § 3.29(b) apply to this paragraph.

(c) *Semiannually.* Payment shall be made very 6 months on or about June 1, and December 1, if the annual rate payable is at least $72 but less than $144. The provisions of § 3.29(b) apply to this paragraph.

(d) *Annually.* Payment shall be made annually on or about June 1, if the annual rate payable is less than $72. (38 U.S.C. 508)

* * * * *

[FR Doc. 85–20333 Filed 8–23–85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW–FRL–2888–3]

Water Quality Standards for Surface Waters of the State of Idaho; Correction

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; correction.

SUMMARY: This notice corrects a proposed rule on Water Quality Standards for Surface Waters of the State of Idaho that appeared at page 33672 in the **Federal Register** of Tuesday, August 20, 1985, (50 FR 33672). The action is necessary to correct typographical errors in the **ADDRESSES** section. Consequently, the entire **ADDRESSES** section is reprinted in this notice.

DATES: Comments on the proposed rule must be submitted on or before November 18, 1985.

ADDRESSES: Written comments should be submitted to David Sabock, Criteria and Standards Division (WH–585), EPA, Washington, DC 20460. EPA will hold public hearings on September 24, 1985, 7:30 P.M., Boise State University, Big Four Room, 1910 University Drive, Boise, Idaho; September 25, 1985, 1:00 P.M., Canyon Springs Inn, 1357 Blue Lakes Boulevard, North Twin Falls, Idaho; September 25, 1985, 7:30 P.M., Idaho, State University, Salmon River Suite, Student Union Building, Pocatello,

Idaho; and September 26, 1985, 7:30 P.M., Coeur d'Alene City Hall, Coeur D'Alene, Idaho.

FOR FURTHER INFORMATION CONTACT: David Sabock, (202) 245–3042.

Dated: August 21, 1985.

James M. Conlon, Acting

Director, Office of Water Regulations and Standards.

[FR Doc. 85–20433 Filed 8–23–85; 8:45 am]

BILLING CODE [illegible]

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40 CFR Part 721

[OPTS–50534; TSH FRL–2848–7]

Halogenated-N-(2-Propenyl)-N-[Substituted Phenyl] Acetamide; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice (PMN) P–83–1085 and a TSCA section 5(e) consent order issued by EPA. The Agency believes that this substance may be hazardous to human health and the environment and that the uses described in this proposed rule may result in significant human or environmental exposure.

DATE: Written comments should be submitted by October 25, 1985.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate: Document Control Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–209, 401 M St., SW., Washington, DC 20460.

Comments should include the docket control number OPTS–50534. Non-confidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E–107 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit XI of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460.

Toll Free: (80–424–9065)
In Washington, DC: (554–1404)
Outside the USA: (Operator-202–554–1404)

SUPPLEMENTARY INFORMATION: OMB control number 2070–0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5(b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5(e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 of TSCA to control activities on which it has received a SNUR notice, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intent to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

EPA promulgated general provisions applicable to SNURs under 40 CFR Part 721, Subpart A published in the **Federal Register** of September 5, 1984 (49 FR 35011). Interested persons should refer to that document for a detailed discussion of the general provisions. EPA is proposing that these general provisions apply to this SNUR without change except as discussed in this preamble and set forth in § 721.54.

III. Sumamry of This Proposed Rule

The chemical substance that is the subject of this proposed rule is identified generally as halogenated-N-(2-propenyl)-N-[substituted phenyl] acetamide. It was the subject of PMN P–83–1085. EPA is proposing to designate the following as significant new usees of the substance: manufacture of the substance in the United States; use other than as an intermediate; processing or distribution in commerce without establishing a program whereby persons who may be dermally exposed to the substance are required to use certain personal protective equipment and are informed of the health concerns presented by the substance; packaging the substance without proper labeling; distrubution of the substance in commerce without inclusion of a material safety data sheet (MSDS); and release of the substance into navigable waters.

IV. Background

On August 25, 1983, EPA received a PMN which the Agency designated as P–83–1085. EPA announced receipt of the PMN in the **Federal Register** of September 1, 1983 (48 FR 39689). The notice submitter stated that the substance will be imported and used as an intermediate in the manufacture of a specific substance.

The notice submitter claimed the following as confidential business information (CBI): The submitter's identity, the specific chemical identity, estimated production volume, and the specific use. Under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its generic name and PMN number.

Based upon results obtained from bioassays on a structurally similar substance, the Agency believes P–83–1085 may be carconogenic. Also, data on this and other structural analogues and acute toxicity data on the PMN substance indicate that the substance is likely to be absorbed via the skin and via the lungs and gastrointestinal tract. During review of the PMN, the Agency concluded that the uncontrolled manufacture, processing, distribution in commerce, and use of the substance may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substance under section 5(e) of TSCA pending the development

of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that use of appropriate protective equipment will significantly reduce exposures and potential risks to persons exposed to the substance. A section 5(e) consent order requiring the use of appropriate controls was negotiated with the notice submitter. The order became effective December 8, 1983.

The reporting requirements of this proposed SNUR differ from the terms of the section 5(e) consent order in that the SNUR requires notice prior to any release into navigable waters. The consent order contains no comparable restriction because the submitter indicated that no such releases would result from the activities described in the PMN. The Agency is proposing that the SNUR address such releases because, if they were to occur, there could be potential exposure to consumers via drinking water. EPA also is concerned that the substance may be toxic to fish and both terrestrial and aquatic plants.

By issuing a section 5(e) consent order which allows import and controlled processing and use of the substance, EPA has taken a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture, import, and processing of the substance until additional data are submitted. At the same time, the section 5(e) order protects human health by requiring precautionary controls pending the development of the data needed for a more fully reasoned evaluation of the risks associated with the substance.

Section 5(e) orders apply only to the notice submitter. When the notice submitter commenced commercial import of the substance and submitted a notice of commencement of import to EPA, the Agency added the substance to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, or process the substance without controls. Therefore, EPA is proposing to designate the uses set forth in paragraph (a)(2) of the proposed § 721.54 as significant new uses so that the Agency can review these uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance before a significant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of P–83–1085 that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance and potential exposures and releases associated with possible uses and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA proposes to define the significant new uses of P–83–1085 as set forth in paragraph (a)(2) of the proposed § 721.54.

EPA has already deteermined in the section 5(e) order that unrestricted manufacture, processing, distribution in commerce, and use of the substance may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it supports a determination that these uses of the substance would be significant.

VI. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA that, in addition to meeting the requirements in § 721.17, persons who import or process P–83–1085 maintain the following records for 5 years from their creation:

1. Any determination that gloves are impervious to the substance.
2. Names of all persons required to wear protective equipment.
3. Records of shipments of containers which have been labeled.
4. Records of disposal of wastes containing P–83–1085.
5. Copies of all MSDSs.

These recordkeeping requirements would apply to small manufacturers, importers, and processors as well because the small business exemption of section 8 of TSCA is not applicable when the chemical substance which is the subject of the rule also is the subject of a section 5(e) order.

The Agency considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them.

The basis for the Agency's recordkeeping requirements has been fully discussed in the preamble to previously proposed SNURs. Persons interested in reading a complete discussion of this issue should read the proposed SNUR for P–83–370 published in the **Federal Register** of January 13, 1984 (49 FR 1753).

VII. Exemptions to Reporting Requirements

EPA has codified general exemption provisions covering SNUR reporting under § 721.19. On a case-by-case basis the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722), including § 720.36 which contained rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Revisions of § 720.36 and other provisions were proposed on December 27, 1984 (49 FR 50201). Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure and environmental release during manufacture and processing of the substance, section 12(a) of TSCA prohibits the Agency from requiring reporting of such manufacture or processing for a significant new use. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)); an amendment clarifying this definition was proposed December 27, 1984 (49 FR 50206). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, persons would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export

from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S.; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S., such activity would not be "solely for export" because the manufacture and processing would be for use in the U.S.

VIII. Applicability of Proposal to Uses, Occurring Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter began import of the substance, the submitter sent EPA a Notice of Commencement of Import and the substance was added to the Inventory. The notice submitter is prohibited by the section 5(e) order from undertaking the activities which the Agency is proposing to designate as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that once the chemical substance identified in this SNUR has been added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

If, after publication of this proposal, someone were to undertake the designated significant new uses, they could argue that the uses are not "New" at the time the rule is promulgated, and therefore not significant new uses. EPA finds that the intent of section 5(a)(1)(B) is best served by determining that a use is a significant new use on the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substance is manufactured, imported or processed between proposal and promulgation for a proposed significant new use, the Agency will consider such use to be a significant new use if it is retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who begin manufacture, import, or processing of the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; and, persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who engage in a proposed significant new use prior to promulgation of a final SNUR, is considering amending Subpart A of 40 CFR Part 721 to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgtion). EPA will solicit public comments on an advance compliance exemption when such an exemption is proposed in the **Federal Register.**

Because the identity of P–83–1085 is confidential, any person who proposes to manufacture or import P–83–1085 is unlikely to know that the substance is on the Inventory and, therefore, is likely to submit a PMN or a *bona fide* request under either 40 CFR 710.7(e) or 720.25(b) to determine whether the substance is on the Inventory. If EPA determines that the person has a *bona fide* intent to manufacture or import the substance and that the substance the person proposes to manufacture or import is P–83–1085, or if the person submits a PMN for the substance, EPA will inform the person that the substance is subject to this proposal. This will give the person notice of this proposal.

IX. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health and environmental risks that may be posed by a significant new use of this substance, EPA believes that a reasoned evaluation of the risks posed by this use would require additional data on carcinogenicity and ecotoxicity. The carcinogenicity data might be generated by a 2-year rodent bioassary. Fish, daphnia, and algae acute toxicity tests would provide data necessary to assess the aquatic ecotoxicity concerns. After evaluation of the acute ecotoxicity tests, additional chronic studies may be necessary. These studies may not be the only means of addressing the potential risks.

EPA encourages potential SNUR notice submitters to test the substance for these concerns. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e). As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance.

Test data should be developed according to TSCA good laboratory practices regulations at 40 CFR Part 792. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. EPA urges SNUR notice submitters to provide detailed information on human and environmental exposure that will result from the significant new Uses. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compare to risks posed by substitutes.

X. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for this substance. This evaluation is summarized below. The Agency's complete economic analysis is available in the public file.

A. Costs

The only direct costs that will definitely occur as a result of promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. It is estimated the Agency cost of issuing a SNUR is $10,504–$20,488. The Agency would also incur enforcement costs, although it cannot quantify these costs at this time.

Subsequent to promulgation of the SNUR, EPA believes there are five possible outcomes for firms that would manufacture or process P–83–1085: (1) Process P–83–1085 with the specific protective equipment in place and therefore not trigger the SNUR; (2) submit a SNUR notice proposing manufacture of P–83–1085 in the U.S.; (3) file a SNUR notice with informtion showing other methods of controlling exposure that will mitigate EPA's concerns; (4) file a SNUR notice with the results of recommended testing completed or be prepared to respond to a section 5(e) order requiring the testing; or (5) not manufacture or process the PMN substance because of the restrictions imposed by the SNUR. The costs of these outcomes are summarized below.

Outcome 1

If a company decided to process P–83–1085 under the terms of the SNUR it would not incur the cost of submitting a

SNUR notice. The only cost to the company would be the cost of specific protective equipment and recordkeeping costs. For purposes of this analysis, EPA has assumed that workers would be exposed to P–83–1085 over 36 days a year. Actual exposure data has been claimed as CBI by the original PMN submitter. Each worker would be required to wear full-face shields and gloves (determined to be impermeable to P–83–1085). Assuming a 10 percent interest rate, and a 10-year economic life for P–83–1085, the present value of the cost of protective equipment for one worker would be $672.05. The annualized cost of protective equipment for one worker would be $109.37.

Permeation tests, which can be used to determine if the protective equipment is impervious to P–83–1085, have been estimated to cost $500 per substrate tested (annualized cost of $80), and may cost up to $7,000 to $10,000 if different substrates (i.e., different compositions of gloves) are tested (annualized cost of $1,480).

The company also would have to inform its workers of the hazards presented by the chemical substance with appropriate labels and to maintain certain records. The initial cost of labeling requirements would be between $135 and $500. This is the label development cost. Other labeling costs are expected to be minimal. The annualized labeling cost would be $80.

The present value of the cost of maintaining records over a 10-year period is estimated to be $1,520 or $250 on an annualized basis. An MSDS has been estimated to cost $20.

EPA will incur only enforcement costs once the SNUR has been promulgated.

Outcome 2

A company considering manufacture in the U.S. would face the necessity of filing a SNUR notice. In this case, a company would incur the cost of filing a notice ($1,400 to $8,000); the costs of delaying manufacture of the substance, if any, while the SNUR notice is prepared and reviewed (up to 3.2 percent reduction in profits); the costs of changes in production and marketing plans because of the uncertainty impacts of a SNUR; and the costs of regulatory followup, if any.

SNUR costs following promulgation of the SNUR under this outcome would include reviewing the SNUR notice ($7,100) and modifying the terms of the SNUR ($8,700) if the information provided showed that modification of the SNUR was warranted. EPA would continue to incur enforcement costs.

Outcome 3

In some circumstances it would be cost effective for a company to file a SNUR notice with data which shows that other means of controlling exposure could mitigate EPA's concerns. In this case, the company would incure the cost of filing the SNUR notice ($1,400 to $8,000) and possibly the costs of some exposure controls which would ordinarily not be used without the existence of a SNUR. The submitter may also incur up to a 3.2 percent reduction in profits due to delays in processing, and the cost of regulatory follow-up if any.

EPA costs following promulgation of the SNUR under this outcome would include reviewing the SNUR notice ($7,100) and modifying the terms of the SNUR ($8,700) if the information provided showed that EPA's concerns would be adequately addressed by the use of a different type of exposure control. EPA would continue to incur enforcement costs.

Outcome 4

It is theoretically possible that a company could file a SNUR notice which would include the test results of the recommended testing (2-year bioassay and fish, daphnia, and algae acute toxicity tests). In this case, a company would incur the cost of filing a notice ($1,400 to $8,000), performing the tests ($855,000 in 1983 dollars), the cost of delay (probably a delay in profits of 2.5 to 3.0 years), and the cost of regulatory follow-up, if any. The cost of this option is expected to be prohibitive.

Outcome 5

Some companies could find the cost of controlling exposure too expensive to justify manufacture or processing. Under this outcome a company would not incure any direct costs as a result of the SNUR. The company and society could lose benefits that would have been derived from the manufacture or processing of the PMN substance. However, the fact that the original PMN submitter intends to import and process P–83–1085 with the protective equipment in place indicates that the intended use of the PMN substance will still return an acceptable profit.

B. Benefits

EPA has not attempted to quantify the benefits of the proposed SNUR. In general, however, benefits will accure if the proposed action leads to the identification and control of unreasonable risk before significant health effects can occur. The proposal and promulgation of the SNUR provides the benefits of reduced health risks until production or processing of P–83–1085 ceases.

XI. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA reguests that any party submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50534). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. The section 5(e) consent order.
4. The economic analysis of the proposed rule.
5. The health and environmental effects support document.

The Agency will accept additional materials for inclusion in the record at any time between this notice and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Public Information Office, Rm. E–107, 401 M St., Washington, DC.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, must judge whether a regulation is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, for the reasons discussed in Unit X of this

preamble, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substance identified in it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

b. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0012. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 16, 1985.

Marcia E. Williams,

Acting Assistant Administrator, for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.54 to read as follows:

§ 721.54 Halogenated-N-(2-Propenyl)-N-[substituted phenyl] acetamide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance referred to by its premanufacture notice number and generic chemical name is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: P–83–1085, halogenated-N-(2-propenyl)-N-[substituted phenyl] acetamide.

(2) The significant new uses are:

(i) Manufacture (excluding import) of the substance in the United States.

(ii) Use other than as an intermediate.

(iii) Processing or distribution in commerce without establishing a program whereby:

(A) During all stages of processing, use, or cleanup operations involving the substance, any person who is employed by or under the control of the processor and involved in, or in the immediate area of, any operation where dermal contact with the substance may occur is required to wear:

(*1*) Full face-shield.

(*2*) Protective gloves which are determined to be impervious to the substance under the condition of exposure, including duration of exposure. This determination is made either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of manufacturer's specifications includes consideration of permability, penetration, and potential chemical and physical degradation by the substance and associated chemical substances.

(B) All persons described in paragraph (a)(2)(iii)(A) of this section are informed of the following in writing or by presenting the information as part of a safety training program where attendance is recorded: That contact with skin may be harmful; that structurally similar chemicals have been found to cause cancer in laboratory animals; and that use of full face-shields and impervious gloves will help protect them.

(C) A label is affixed to each container containing the substance, or a formulation containing the substance, which may be distributed to another person. The label includes, at a minimum, the following information (in print size no smaller than 10-point type):

Warning: A chemical similar to [Insert Appropriate Trade Name] has been shown to cause cancer in laboratory animals. Avoid all contact with skin, eyes, and clothing. Wear gloves and full face-shield when handling.

(D) A material safety data sheet (MSDS) accompanies the distribtuion in commerce of any amount of the substance. The MSDS contains the language specified in paragraph (a)(2)(iii)(C) of this section and specifies the requirements for protective equipment identified in paragraph (a)(2)(iii)(A) of this section.

(iv) Release of the substance into navigable waters.

(b) *Specific requirements.* The provisions of Subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* In addition to the requirement § 721.17, importers and processors of the chemical substance identified in paragraph (a)(1) of this section must maintain the following records for 5 years from their creation:

(i) Any determination that gloves are impervious to the substance as specified in paragraph (a)(2)(iii)(A)(*2*) of this section.

(ii) Names of persons required to wear protective equipment specified in paragraph (a)(2)(iii)(A) of this section, the dates on which they were informed, and the means by which they were informed as specified in paragraph (a)(2)(iii)(B) of this section.

(iii) Dates of shipments of containers which have been labeled in accordance with paragraphs (a)(2)(iii)(C) of this section, a copy of the label, and the identities of persons to whom the containers were shipped.

(iv) Records of quantities, locations, dates, and methods of disposal which demonstrate how wastes containing the substance were disposed of.

(v) Copies of all MSDSs containing reference to the substance.

(2) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 85–20304 Filed 8–23–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 721

[OPTS–50536; TSH FRL–2846–2]

Poly(oxy-1,4-butanediyl)-alpha-(1-oxo-2-propenyl)-omega-[(1-oxo-2-Propenyl)oxy]; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice (PMN) P–84–274 and a TSCA section 5(e) consent order issued by EPA. The Agency believes that the substance may be hazardous to human health and that the uses described in the proposed rule would result in significant human exposure.

DATES: Written comments should be submitted by October 25, 1985.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Room E–209, 401 M Street SW., Washington, DC 20460.

Comments should include the docket control number OPTS–50536. Non-confidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays, in Room E–107 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit XI of the preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M Street SW., Washington, DC 20460. Toll Free: (800–424–9065). In Washington, DC: (554–1404). Outside the USA: (Operator–202–554–1404) .

SUPPLEMENTARY INFORMATION: OMB control number 2070–0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5 (b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5 (e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

EPA promulgated general provisions applicable to SNUR's under 40 CFR Part 721, Subpart A published in the **Federal Register** of September 5, 1984 (49 FR 35011). Interested persons should refer to that document for a detailed discussion of the general provisions. EPA is proposing that these general provisions apply to this SNUR without change except as discussed in this preamble and set forth § 721.567.

III Summary of This Proposed Rule

The chemical substance that is the subject of this proposed rule is identified as poly(oxy-1,4-butanediyl)-alpha-)1-oxo-2-propenyl)-omega-[(1-oxo-2-propenyl)oxy]. It was the subject of PMN P–84–274. EPA is proposing to designate the following as significant new uses: (1) Manufacturing, processing, or distribution in commerce for use as a component in industrial coatings unless specified protective equipment is used, (2) use other than as a component in industrial coatings, and (3) manufacturing, processing, or distribution in commerce without establishing programs to ensure that all persons potentially exposed to the substance are informed of the health concerns which may be presented by the substance; that packages containing the substance or formulations containing the substance are labeled according to the terms specified in § 721.567; and that a material safety data sheet (MSDS) accompanies distribution of the substance in commerce.

The Agency proposed a definition for "industrial coating" in the proposed SNUR published on March 27, 1985 (50 FR 12046). EPA has reexamined this definition and is proposing to redefine "industrial coating" as stated in this proposal rule. The new definition would apply to both proposed SNUR's.

IV. Background

On December 20, 1983, EPA received a PMN which the Agency designated as P–84–274. EPA announced receipt of the PMN in the **Federal Register** of December 30, 1983 (48 FR 57618). The notice submitter stated that the substance will be used as a component in industrial coatings.

The notice submitter claimed the following as confidential business information (CBI): Chemical identity of impurities and byproducts, production volume, and process information. Under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its specific name and PMN number.

Based upon data on two analogues of P–84–274, triethylene glycol diacrylate and tetraethylene glycol diacrylate, which were submitted to EPA under section 8(e) TSCA, the Agency believes P–84–274 may cause cancer. During review of the PMN, the Agency concluded that the uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal of the substance may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substance under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that use of appropriate protective equipment will significantly reduce exposures and potential risks to persons potentially exposed to the substance. A section 5(e) order requiring

use of appropriate controls was negotiated with the submitter. The order became effective August 16, 1984.

The reporting requirements of this proposed SNUR differ from the terms of the section 5(e) consent order in the following way. The proposed SNUR designates spray application of P–84–274, unless respirators are used, as a significant new use. In the consent order, EPA prohibited spray application because the Agency is concerned about uses which could result in inhalation of significant amounts of the substance. The Agency now believes that the approach in the proposed SNUR is preferable because it would allow spray applications of P–84–274 provided appropriate respirators are used. EPA finds that respirators can effectively limit inhalation exposure and that only spray applications without the use of respirators could lead to significant levels of inhalation exposure which should be subject to reporting and Agency review.

The order also limited disposal to incineration pursuant to 40 CFR Part 270. This restriction was based on the possibility that other methods of disposal could present ecotoxicity and drinking water contamination concerns. However, after issuing the order, the Agency determined through further analysis that is no longer has an ecotoxicity concern. In addition, EPA found that there was little chance that commercialization of the substance could result in drinking water contamination. Therefore, this proposed SNUR does not identify any disposal or an environmental release as a significant new use.

By issuing a section 5(e) consent order which allows controlled commercial production, import, processing, distribution in commerce, use, and disposal of the substance, EPA has taken a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture of the substance until additional data are submitted. At the same time, such an approach protects human health by requiring precautionary controls pending the development of the data needed for a more fully reasoned evaluation of the risks associated with the substance.

Section 5(e) orders only to the notice submitter. When the notice submitter commences commercial manufacture of the substance and submits a Notice of Commencement of Manufacture or Import to EPA, the Agency adds the substance to the TSCA Chemical Substances Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, process, or dispose of the substance without controls. Therefore, EPA is proposing to designate the uses set forth in paragraph (a)(2) of the proposed § 721.567 as significant new uses so that the Agency can review these uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance before a signficant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of P–84–274 that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute a significant new use of this chemical substance, EPA considered relevant information about the toxicity of the substance and potential exposures and releases associated with possible uses and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA proposed to define the significant new uses of P–84–274 as set forth in paragraph (a)(2) of § 721.567.

EPA has already determined in the section 5(e) order that unrestricted manufacture, import, processing distribution in commerce, use, and disposal of the substance may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it supports a determination that the uses of the substance would be significant.

VI. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA that, in addition to meeting the requirements in § 721.17, persons who manufacture, import, or process P–84–274 be required to maintain the following records for 5 years from their creation:

1. Any determination that gloves are impervious to the substance.
2. Names used for the substance and the dates on which those names were in use.
3. Names of persons who have been informed on the health concerns, the means by which they were informed, and the dates they were informed.
4. Dates of shipments of containers which have been labeled and the identities of persons to whom they have been shipped.
5. Copies of any MSDSs used.

These recordkeeping requirements would apply to small manufacturers, importers, and processors as well because the small business exemption of section 8 of TSCA is not applicable when the chemical substance which is the subject of the rule also is the subject of a section 5(e) order.

The Agency considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them.

The basis for the Agency's recordkeeping requirements has been set forth in the preambles to previously proposed SNURs. Persons interested in reading a complete discussion of this issue should read the proposed SNUR for P–83–370 published in the **Federal Register** of January 13, 1984 (49 FR 1753).

VII. Exemptions to Reporting Requirements

EPA has codified general exemption provisions covering SNUR reporting under § 721.19. On a case-by-case basis the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722), including § 720.36 which contained rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. (Revisions of § 720.36 and other provisions were proposed on December 27, 1984 (49 FR 50201). Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities quality under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance, section 12(a) of TSCA prohibits the Agency from requiring reporting of such manufacture or processing for a significant new use.

However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)); an amendment clarifying this definition was proposed December 27, 1984 (49 FR 50208). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, person would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S.; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and use in the U.S., such activity would not be "solely for export" because the manufacture and processing would be for use in the U.S.

VIII. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter began manufacture of the substance, the submitter sent EPA a Notice of Commencement of Manufacture and the substance was added to the Inventory. The notice submitter is prohibted by the section 5(e) order from undertaking the activities which the Agency is proposing be designated as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that once the chemical substance identified in this SNUR is added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

If, after publication of this proposal, someone were to undertake the designated significant new uses, they could argue that the uses are not "new" at the time the rule is promulgated, and therefore not significant new uses. EPA finds that the intent of section 5(a)(1)(B) is best served by determining that a use is a significant new use on the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substance is manufactured, imported, or processed between proposal and promulgation for a proposed significant new use, the Agency will consider such use to be a significant new use if it is retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who begin manufacture, import, or processing of the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; and, persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who engage in a proposed significant new use prior to promulgation of a final SNUR, is considering amending Subpart A of 40 CFR Part 721 to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation). EPA will solicit public comment on an advance compliance exemption when such an exemption is proposed in the **Federal Register.**

IX. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risks that may be posed by a significant new use of this substance, EPA believes that a reasoned evaluation of the risks posed by the significant new uses would require additional data on carcinogenicity. These data might be generated by a 2-year rodent bioassay. These studies may not be the only means of addressing the potential risks.

EPA encourages potential SNUR notice submitters to test the substance for this concern. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e). As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance.

Test data should be developed according to TSCA good laboratory practices regulations at 40 CFR Part 792. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new uses. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

X. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for this substance. This evaluation is summarized below. The Agency's complete economic analysis is available in the public file.

A. Costs

The only direct costs that would definitely occur as a result of promulgation of this SNUR would be EPA's cost of issuing and enforcing the SNUR. It is estimated that the Agency costs of issuing the SNUR are $43,600. The Agency would also incur enforcement costs, although it cannot quantify these costs at this time.

Subsequent to promulgation of the SNUR, EPA believes that there are three possible outcomes for firms that would manufacture, process, or use P–84–274: (1) Abide by the provisions of the SNUR (e.g., use the substance only as a component of industrial inks, coatings, and adhesives; attach warning labels, etc.) which would not necessitate the filing of a SNUR notice; (2) submit a SNUR notice describing the intention to manufacture, process, or use P–84–274; or, (3) choose not to manufacture, process, or use P–84–274 due to the existence of the SNUR. The costs of these outcomes are summarized below.

Outcome 1

If a firm complied with the provisions of the SNUR, it would not have to submit a SNUR notice. There may be some costs to a firm to avoid triggering the SNUR, e.g., if a firm had to purchase personal protective equipment specifically to comply with this SNUR. The costs associated with not triggering the SNUR revolve around the use of certain protective equipment, labeling requirements, the creation of MSDS, etc. A discussion of these costs follows.

Limiting the use of P–84–274 to industrial inks, coatings, or adhesives is

not expected to increase the costs of any firm. These use areas are broad enough to cover a wide variety of applications. Consumer use of the substance in its unreacted form is unlikely. The substance will be used in radiation-curable formulations, which are cured (hardened) by exposure to ultraviolet (UV) light or electron beam (EB) energy. EPA knows of no consumer applications for radiation curing; the capital costs associated with equipment purchases preclude use by consumers. EPA cannot, however, rule out future technological developments such as hand-held UV sources that would be purchased by consumers to cure adhesives or coatings.

The costs of protective equipment such as gloves and goggles would vary from company to company. Many firms already have this equipment on hand for use by employees due to the use of different coating components such as resins and organic solvents. Even where radiation-curing is used, organic solvents such as glycol ethers, ketones, and alcohols are used to clean machinery.

On the other hand, if other firms wanted to use the substance, they would have to purchase gloves, goggles, and possibly, respirators. There are many kinds of gloves available for purchase. Specific types of gloves (e.g., neoprene and butyl rubber) are chosen on the basis of cost, type of chemical exposure, duration of exposure, etc.

This SNUR would require that workers wear gloves, goggles, and respirators (in the case of spray applications). While the SNUR would require that the gloves be impervious to the substance, it does not specify what kind of gloves one should wear (e.g., latex, neoprene, and butyl rubber). Gloves range in price from around $1/pair to $30/pair. EPA's experience with industry concerning acrylates indicates that neoprene gloves are often worn, because the exposures are not of a long duration, and the gloves are not overly expensive. Neoprene gloves are disposable gloves that cost around $15 a dozen (about $1.25/pair). Chemical goggles cost about $4.75/pair. For respirators, EPA assumes use of a half-face piece type respirator. These respirators currently cost $15.75 each. Replacement filters cost $5.75/pair, and paint mist prefilters cost $1.81/pair.

For analytical purposes EPA assumed the following: A worker would be exposed to the substance for 45 days a year; gloves would be replaced daily; goggles would be replaced once; filters and prefilters would be changed on a weekly basis; and the respirator itself would last for a year.

On an annual basis, these costs would total about $165 per worker. Assuming a 10-year life cycle for the substance and a 10 percent discount rate, the present value of the $165 is $1,115; the annualized cost is $182 per worker.

In processing and use, the same workers exposed to the PMN substance would likely be exposed to other resins, and perhaps solvents (used in cleanup operations). Protection against these other chemicals by using the equipment specified here will unavoidably occur, and will help to degrade the equipment. Thus, it would be inappropriate to assign all equipment costs to this SNUR.

The SNUR would require labels to be attached to products containing the substance. New products that have not been commercialized would meet this requirement by inclusion of a warning statement. Since such labels have not been prepared, the cost probably will not be directly attributable to this SNUR.

If an entirely new label has to be made, the initial cost of labeling requirement will be between $135–500 (which is the development cost of the label). The annualized cost of labeling is $80. Other labeling costs will be minimal (around $0.02 per label).

The SNUR would require that a MSDS accompany any distribution of products containing the substance. EPA estimates that it costs around $20 to develop a MSDS.

Outcome 2

In some circumstances it would be cost effective for a company to file a SNUR notice with data which shows that its means of controlling exposures could mitigate EPA's concerns. In this case, the company would incur the cost of filing a SNUR notice, which has been estimated at $1,400–$8,000 and possibly the costs of some exposure controls which would ordinarily not be used without the existence of the SNUR. The submitter may also incur up to a 3.2 percent reduction in profits due to delays in manufacture, import, or processing and the cost of regulatory followup, if any.

Another alternative under this outcome would be a firm submitting a SNUR notice with the results of a 2-year bioassay on the substance. The cost of one 2-year bioassay, however, is in the $850,000 range per substance. Therefore, the agency does not expect this alternative to occur.

Outcome 3

Some companies could find the cost of controlling exposure too expensive to justify production, processing, or use. Under this outcome, a company would not incur any direct costs as a result of the SNUR. The company and society could then lose benefits that would have been derived from the manufacturing, processing, or use of the substance. However, the original PMN submitter intends to produce the substance under the conditions of the section 5(e) consent order, which are stricter than in this SNUR. This indicates that some uses of the substance will return an acceptable profit.

B. Benefits

EPA has not attempted to quantify the benefits of the proposed SNUR. In general, however, benefits will accrue if the proposed action leads to the identification and, if necessary, the control of unreasonable risk before significant health effects can occur. The proposal and promulgation of the SNUR provides these benefits of reduced health risk during manufacture, processing, and use of P–84–274.

The PMN submitter will benefit from the SNUR because marketing restrictions contained in the section 5(e) consent order can be lifted once the SNUR is promulgated. Specifically, the submitter will be able to sell P–84–274 to formulators, who play a major role in the sales and distribution of radiation-curable inks, coatings, and adhesives.

XI. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments perpare and submit a sanitized version of the comments which EPA can place in the public file.

XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50536). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. The section 5(e) consent order.
4. The economic analysis of the proposed rule.

5. The health effects support document for the section 5(e) order.

6. The Engineering Report.

The Agency will accept additional materials for inclusion in the record at any time between this notice and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Public Information Office, Rm. E-107, 401 M Street SW., Washington, D.C.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, for the reasons discussed in Unit X of this preamble, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substance identified in it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C 605(b) EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to the substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0012. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 16, 1985.

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.567 to read as follows:

§ 721.567 Poly(oxy-1,4-butanediyl)-alpha-(1-oxo-2-propenyl)-omega-[(1-oxo-2-propenyl)oxy].

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance, referred to by its CAS number and chemical name, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: 52277-33-5; poly(oxy-1,4-butanediyl)-alpha-(1-oxo-2-propenyl)-omega-[(1-oxo 2-propenyl)oxy].

(2) The significant new uses are:

(i) Use other than as a component in industrial coatings.

(ii) Manufacturing, processing, or distribution in commerce without establishing a program whereby:

(A) During all stages of manufacture, processing, use, or cleanup operations involving the substance any person who is employed by or under the control of the manufacturer or processor and who is involved in, or in the immediate area of, any operation where dermal contact with the substance may occur must wear:

(*1*) Gloves which are determined to be impervious to the substance under the conditions of exposure, including the duration of exposure. This determination must be made either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of manufacturer's specifications shall include consideration of permeability, penetration, and potential chemical and physical degradation by the substance and associated chemical substances.

(*2*) Chemical safety goggles or equivalent eye protection.

(*3*) Clothing which covers any other exposed areas of the arms, legs, and torso.

(B) During spray application of the substance, workers who are potentially exposed to the substances as an aerosol or mist are required to wear:

(*1*) A National Institute for Occupational Safety and Health approved, category 21c, high efficiency filter respirator, excluding single-use or disposable types in accordance with 30 CFR 11.150; category 23c respirator equipped with combination cartridges and approved for paints, enamels, and lacquers; or category 19c; air-supplied respirator; and the selected respirator is used in accordance with 29 CFR 1910.134 and 30 CFR Part 11.

(*2*) [Reserved]

(C) All persons described in paragraph (a)(2)(ii)(A) and (B) of this section are informed in writing, or by presenting the information as part of a safety training program where attendance is recorded, that contact with skin may be harmful; that mist generated from spray application may be harmful if inhaled; that structurally similar chemicals have been found to cause cancer in laboratory animals; and that the use of safety goggles, respirators, impervious gloves, and other clothing will help to protect them.

(D) Each container of the substance, or of a formulation containing the substance, which may be distributed to another person, is labeled at a minimum with the following information (in a print size no smaller than 10-point type):

WARNING: Avoid contact. Contact with skin may be harmful. Chemicals similar in structure to [INSERT APPROPRIATE TRADE NAME] have been found to cause skin cancer in laboratory animals. The required use of safety goggles or equivalent eye protection, impervious gloves, and other clothing will help to protect you. Respirators are required

during spray operations if there is potential inhalation exposure.

(E) A material safety data sheet (MSDS) is included to accompany the distribution of the substance in commerce which contains the language specified in paragraph (a)(2)(ii)(D) of this section and specifies the requirements for protective equipment set forth in paragraph (a)(2)(ii)(A) and (B) of this section.

(b) *Special requirements.* The provisions of Subpart A of this part apply to this section except as modified by the following paragraphs.

(1) *Definitions.* In addition to the definitions in § 721.3, the following definition applies to this section: "Industrial coating" means a coating formulation, including inks and adhesives, applied to a substrate within the confines of a business establishment for purposes of further distribution in commerce or for use by that business.

(2) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substance identified in paragraph (a)(1) of this section must maintain the following records for 5 years from the date such records are completed:

(i) Any determination that gloves are impervious to the substance as specified in paragraph (a)(2)(ii)(A)(1) of this section.

(ii) Names used for the substance and the dates on which those names were in use.

(iii) Names of persons who have been informed in accordance with paragraph (a)(2)(ii)(C) of this section, the means by which they were informed, and the dates they were informed.

(iv) Dates of shipments of containers which have been labeled in accordance with paragraph (a)(2)(ii)(D) of this section, a copy of the label, and the identities of persons to whom the containers were shipped.

(v) Copies of any MSDSs used.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070–0012)

[FR Doc. 85–20303 File 8–23–85; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Proposal rule; revision.

SUMMARY: On January 4, 1985, the Legal Services Corporation republished Part 1614 of its regulations for comment (50 FR 509). Based upon comments received and recommendations of the Board's Operations and Regulations Committee, the Board of Directors on August 2, 1985 voted to continue requiring recipients to spend 12½% of their annualized basic field awards on private attorney involvement (PAI). Although the Board has now resolved the issue of whether the 12½% standard is a requirement or a guideline, several major changes have been made in Part 1614 since the last publication of the proposed rule. Because of these changes the Board determined that Part 1614 should be published in revised form for further comment.

The revision makes six major changes in Part 1614. Completely new provisions dealing with joint ventures, waiver, and failure to comply have been added to Part 1614. The audit provisions and the provisions on revolving litigation funds have been substantially rewritten. Section 1614.3 has been revised to require recipients to include the direct delivery of legal services by private attorneys in their PAI programs. Numerous technical changes have also been made which do not affect the substance of the regulation.

DATE: Comments must be received on or before September 25, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting General Counsel, (202) 272–4010.

SUPPLEMENTARY INFORMATION: Part 1614 of the Corporation's regulations, which concerns private attorney involvement, was adopted by the Corporation's Board of Directors on April 28, 1984. It was published in final form in the **Federal Register** on May 21, 1984, 49 FR 21328. Since September of 1984, the Corporation received comments concerning both substantive and procedural issues involving the adoption of this regulation. After deliberation, the Corporation's Board of Directors, at its December 20, 1984, meeting, decided to republish, for comment, certain regulations, including Part 1614. Part 1614 was republished in the **Federal Register** on January 4, 1985, 50 FR 509. Comments were received and reviewed. Changes were recommended in response to the comments received. A revised draft of Part 1614 was published in the **Federal Register** on June 18, 1985, 50 FR 25270, to inform interested parties of the progress the Corporation had made in revising the regulation. On August 2, 1985, the Corporation's Board of Directors, acting upon recommendations of its Operations and Regulations Committee, voted to continue requiring recipients to spend 12½% of their annualized basic field awards on PAI. It also voted to amend Part 1614 of the regulations, and, because of the amendments that had been made, to publish the regulation, in revised form, for further comment.

The major issues before the Board over the past half year with respect to Part 1614 were whether the 12½% standard should continue to be a requirement or should be considered simply a guideline and whether the standard should remain at 12½%. The board receive 83 comments on these issues and heard extensive public testimony on them. In addition it conducted an extensive study of the degree to which local programs have complied with the 12½% standard. At the May 23, 1985 meeting of the Operations and Regulations Committee, the Office of Field Services presented a preliminary, program-by-program study of the amount of money spent on PAI. To prepare this study, Corporation staff went through the 180 audit files of the programs whose fiscal years ended on December 31, 1984, the first programs that were required to report PAI expenditures separately on their audits. The Office Field Services took a number of steps to doublecheck the preliminary figures presented at the May meeting. On May 17, before the meeting, the Corporation mailed a copy of the statistics to all LSC recipients and regional offices. On June 7, a draft copy of a revised and expanded PAI report, with a request for review and comment, was express mailed to all regional offices. Between June 1 and June 17, LSC staff in Washington, DC, contacted all nine regional offices and verified the statistics with them. The revised figures showed that 20.8% of the programs reviewed (37 out of 180) had fallen short of the 12½% level of compliance.

After considering the comments, the testimony at its meeting, and the statistics, the Board decided to continue employing the 12½% standard as a requirement. Except for the deletion of the old waiver provision and for technical changes that make the mandatory nature of the 12½% standard clear, it has left § 1614.1 as it was.

Although the Board has resolved the issue of whether the 12½% standard is a requirement or a guideline, several major changes have been made in Part 1614 since the last publication of the proposed rule. It is with respect to these

changes, detailed below, that the Board invites further comment.

A new paragraph (b) dealing with joint ventures has been added to § 1614.2. This provision makes clear that recipients whose case service areas are adjacent, coterminous, or overlapping may enter into joint venture agreements. For a joint venture to qualify, however, each of the conditions enumerated in paragraph (b) must be met: The Office of Field Services must approve the joint venture; the venture must meet certain expenditure requirements; each participant must be a bona fide participant; and the venture must provide opportunity for involving private attorneys throughout the entire joint service area. The expenditure requirements vary according to the nature of the joint venture. Where recipients whose case service areas are coterminous or overlapping enter into a joint venture, the recipients must spend at least 12½% of the aggregate of their basic field awards on private attorney involvement (PAI). Where a joint venture involves recipients whose service areas are adjacent but not coterminous or overlapping *each* recipient must spend 12½% of its basic field grant on PAI.

The Board believes that the essence of PAI is the direct delivery of legal services to the poor by private attorneys and that all recipients ought to incorporate direct delivery into their PAI programs. Section 1614.3, accordingly, has been amended to make clear that the direct delivery of legal assistance is a mandatory part of PAI programs. The Board has declined to state what percentage of a PAI program ought to involve direct delivery. Local programs may make that determination. Under new paragraph (a) recipients must include the direct delivery of legal assistance by private attorneys in their PAI programs. Under new paragraph (b), at the option of recipients, PAI programs may also include support activities and other forms of indirect delivery of service. It should be noted, however, that it is not the Board's intent under § 1614.3 to permit recipients to meet their 12½% spending requirement by providing private attorneys with services from national and state support centers.

The Corporation received numerous complaints about the burdensome paperwork requirements formerly contained in § 1614.3(d), the auditing provision. Upon study the Board reached the conclusion that these paperwork and record-keeping requirements went beyond what was necessary. At the same time it recognized that any time the Corporation issues a regulation requiring an expenditure of funds for a certain purpose, it will be necessary to impose a certain number of accounting and bookkeeping requirements. The Board has entirely rewritten the auditing provision which now appears as § 1614.3(e) and has sought to impose only those record-keeping requirements needed to track the progress of recipients in implementing PAI.

Perhaps the most significant change in the auditing provision relates to documenting the time staff attorneys and other recipient employees spend on PAI. Old § 1614.3(d)(6) required that if a recipient allocated the time of staff attorneys or paralegals to PAI, it had to submit detailed timesheets accounting for *all* the time of those employees, not just the time spent on PAI activities. By contrast new § 1614.3(e)(1)(i) requires timesheets from attorneys and paralegals only for time spent on PAI activities. It retains the provision excluding such employees as receptionists, secretaries, intake personnel or bookkeepers from the requirement of keeping timesheets, but with slightly different wording. The Operations and Regulatons Committee found the wording of the old provision to be ambiguous: It might mean either that a recipient could not allocate the time of these staff to PAI or that the recipient simply did not have to keep time records for these personnel. The amended language makes it clear that the second meaning is the one intended, and that, although recipients do not have to keep time sheets for these personnel, they do have to have some reasonable way of allocating their time between PAI and their regular staff duties.

The Board has also deleted from the auditing section the provision (formerly § 1614.3(d)(10)) requiring programs that use Judicare or another compensated bar mechanism to establish an encumbrance system. New § 1614.3(e)(1)(i), however, retains the requirement that encumbrances not be included in calculating whether a recipient has met its PAI requirement.

Finally, the auditing provision now requires that in the year-end audit, recipients report PAI expenditures as a separate fund or on a separate schedule. (§ 1614.3(e)(2)) The approach of old § 1614.3(d)(3) which made establishing a separate fund or schedule optional raised consideration problems for the Corporation in collecting data on PAI. In their year-end audits, some programs explained their PAI activities and expenses in a footnote. Others programs, however, reported only a one-line item expenses for PAI making it impossible for the Corporation to determine how they had spent their PAI money. Still others gave no data about PAI in their audits at all, despite Corporation requirements. The Board has determined that, for the Corporation to track the progress of PAI, there must be more uniformity in the way programs report PAI. The new provision, accordingly, requires that programs highlight PAI expenditures in a separate column in their financial statements. It does not require that programs establish separate bank accounts or separate books to account for PAI expenditures. The words "a separate fund" are a technical phrase used by auditors and are intended to be synonymous with "a separate schedule", words that are perhaps clearer to non-auditors.

For the sake of clarity § 1614.5, prohibiting certain kinds of revolving litigation funds, has been entirely rewritten. New paragraph (a) defines a revolving litigation fund system. Under such systems recipients advance funds to private attorneys to enable them to pay costs, expenses or attorneys fees for representing clients. The private attorneys on their part agree to repay the money advanced from fees or monies awarded as a result of the case. Paragraph (b) makes it clear that recipients may not use LSC funds to establish or maintain systems that advance attorneys fees. Paragraph (c) permits systems that advance costs and expenses as long as two conditions are met in each case: The private attorney involved is representing an eligible client in a matter in which representation of the eligible client would be allowed under the LSC Act and LSC regulations; and the private attorney either spends funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, requests the recipient to advance the funds.

The old waiver provision contained in the last sentence of § 1614.1(a) was overly narrow. Replacing this provision, in accordance with the Board's concern for flexibility as well as accountability, is a completely new section on waiver, § 1614.6. It is the hope of the Board that this provision will address all the possible situations in which imposition of the 12½% requirement would cause hardship or would hinder the goal of the economical and effective use of Corporation funds.

Section 1614.6 provides for three kinds of waivers, a complete or full waiver of the expenditure requirement for a fiscal

year, a partial waiver of the expenditure requirement, and a waiver of the special accounting and bookkeeping requirements. The two circumstances under which the Office of Field Service (OFS) will grant a complete or full waiver of the spending requirement are set forth in § 1614.6(b): Where there simply are not enough qualified private attorneys to conduct a PAI program, or where all qualified private attorneys either refuse to take part in the program or have conflicts that render their participation inappropriate. Section 1614.6(c) sets forth the six circumstances under which OFS will grant a partial waiver. First, OFS may grant such a waiver where the pool of available and qualified private attorneys is simply too small to use all the PAI funds economically and effectively. Second, OFS may grant a partial waiver where, despite the recipient's best efforts, there simply are not enough qualified private attorneys willing to take part in the program. The third instance in which OFS may grant a partial waiver is where a recipient, despite its best efforts, finds itself unable to spend the full PAI allocation during a program year. In studying how recipients have complied with the PAI requirement, the Board was distressed to discover that, although a significant number of programs had not come near the 12½% standard, only about four programs had contacted or attempted to communicate with the Corporation about their problems with PAI. The Board believes that communicating with the Corporation about such problems is an affirmative duty that recipients incur when they accept a grant from the Corporation. Accordingly, in defining what constitutes a recipient's "best efforts" for the purposes of § 1614.3(c)(3), the Board included the requirement that the recipient communicate to OFS its problems spending its PAI allocation and that it request and avail itself of assistance or advice from OFS. Unless unusual circumstances caused the shortfall, a recipient is required under this subsection to accompany a waiver with a plan to avoid a shortfall in the future. Programs sending out PAI cases to private attorneys at an even rate have little control over when the attorneys will perform work or when they will bill for their work. The third and fourth types of partial waivers address the problems that might arise because of the time a recipient is billed. Section 1614.6(c)(4) permits a waiver where, simply because attorneys have failed to bill a recipient during one fiscal year, the recipient's PAI expenditure for that year falls below 12½%. Section 1614.6(c)(5) permits a waiver in the situation: Where, simply because attorneys chose to bill a recipient during one fiscal year, it is appropriate to permit PAI expenditures for the following fiscal year to fall below 12½%. Sixth, OFS may grant a partial waiver where a recipient can show that, in the reasonable judgment of its governing body, it would not be economical and efficient for it to expend its full 12½% allocation of PAI. This sixth type of partial waiver, however, may be granted only in two cases: Where a recipient has received substantial contributions from the private bar or other sources and, consequently, has handled and expects to continue handling at least 12½% of its cases through PAI programs; or where the recipient has been unusually efficient and has handled and expects to continue handling at least 12½% of its cases through its PAI programs.

Section 1614.6(d) permits the Audit Division with the concurrence of OFS to grant waivers of the special accounting and bookkeeping requirements. Except with respect to subgrants, it is expected that such waivers will be rarely granted. As discussed above, the auditing requirements have been rewritten to require only the minimum record-keeping necessary for the Corporation to monitor PAI. In most instances, therefore, granting a waiver of these requirements would make it impossible for the Corporation to track a recipient's compliance with the PAI requirement.

Recipients, as set forth in § 1614.6(e)(1), may apply for a waiver for the current or for the next fiscal year. All applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year. At the expiration of a waiver, a recipient may seek a similar or identical waiver.

In drafting the new waiver provision, the Board has required that within thirty days the Corporation respond in writing to requests for waivers (§ 1614.6(f)). If the Corporation fails to meet this thirty day deadline, the recipient will automatically receive a waiver. The Board determined that it is necessary for the Corporation to rule speedily on waiver requests so that recipients denied waivers late in the year will still have time to comply with the spending requirement.

In addition to the new waiver provision, an enforcement provision has been added to Part 1614. This new provision, § 1614.7, details the penalties assessed against recipients who fail to meet the 12½% spending requirement and who fail to take advantage of the liberal waiver provision. Under paragraphs (a) and (c) of § 1614.7, if a recipient falls short of the 12½% spending requirement and also fails without good cause to seek a waiver, it loses the unspent money to qualified PAI programs in its service area. In any case where a recipient applies for a waiver, however, or, in cases where it fails with good cause to seek a waiver, the recipient does not lost its money; it must simply spend the required amount of money during its next fiscal year. To avoid losing its money under the penalty provision in § 1614.7(c), all a recipient need do is apply for a waiver. It does not actually have to receive a waiver nor does it need good cause for requesting one.

List of Subjects in 45 CFR Part 1614

Legal Services, Private attorneys.

For the reasons set out above 45 CFR Part 1614 is proposed to be revised to read as follows:

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.

1614.1 Purpose.
1614.2 General policy.
1614.3 Range of activities.
1614.4 Procedure.
1614.5 Prohibition of revolving litigation funds.
1614.6 Waivers.
1614.7 Failure to comply.

Authority: Sec. 1007(a)(2)(C) and Sec. 1007(a)(3); (42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3)).

§ 1614.1 Purpose.

(a) This Part is designed to ensure that recipients of Legal Services Corporation funds involve private attorneys in the delivery of legal assistance to eligible clients. Except as provided hereafter, a recipient of Legal Services Corporation funding shall devote an amount equal to at least twelve and one-half percent (12½%) of the recipient's LSC annualized basic field award to the involvement of private attorneys in such delivery of legal services. Funds received from the Corporation as one-time special grants shall not be considered in determining the private attorney involvement (PAI) requirements.

(b) Recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the

Corporation that such involvement is not feasible.

(c) Because the Corporation's PAI requirement is based upon an effort to generate the most possible legal services for eligible clients from available, but limited, resources, recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

§ 1614.2 General policy.

(a) This part implements the policy adopted by the Board of Directors of the Corporation that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economical and efficient manner.

(b) In the case of recipients whose service areas are adjacent, coterminous or overlapping, the recipients may enter into joint efforts to involve the private attorneys in the delivery of legal services to eligible clients, subject to the following conditions:

(1) The joint venture plan must be approved by the Office of Field Services;

(2) The recipients involved in the joint venture must expend at least twelve and one-half percent (12½%) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, 12½% of each recipient's grant shall be expended on PAI;

(3) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture; and

(4) The joint PAI venture must provide opportunity for involving private attorneys throughout the entire joint service area(s).

(c) Private attorney involvement shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients. Decisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation.

§ 1614.3 Range of activities

(a) Activities undertaken by the recipient to meet the requirements of this Part must include the direct delivery of legal assistance to eligible clients through programs such as organized *pro bono* plans, reduced fee plans, judicare panels, private attorney contracts, or those modified *pro bono* plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that payment of attorneys' fees through "revolving litigation fund" systems, as described in § 1614.5 of this part, shall neither be used nor funded under this Part nor funded with any LSC support;

(b) Activities undertaken by recipients to meet the requirements of this part may also include, but are not limited to

(1) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and,

(2) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel; or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

(c) The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient's taking into account the following factors:

(1) The priorities established pursuant to Part 1620 of these regulations;

(2) The effective and economical delivery of legal assistance to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy;

(4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients; and,

(5) The substantive and practical expertise, skills and willingness to undertake new or unique areas of the law of participating attorneys.

(d) Systems designed to provide direct services to eligible clients by private attorneys on either a *pro bono* or reduced fee basis, shall include at a minimum, the following components:

(1) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(3) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

(4) Access by private attorneys to LSC recipient resources, including those of LSC national and state support centers, that provide back-up on substantive and procedural issues of the law.

(e) The recipient shall demonstrate compliance with this part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort. Such systems and records shall meet the requirements of the Corporation's Audit and Accounting Guide for Recipients and Auditors and shall have the following characteristics:

(1) They shall accurately identify and account for:

(i) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers; however, personnel cost allocations for non-attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented;

(ii) Payments to private attorneys for support or direct client services rendered. The recipient shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees. Bills and/or invoices from private attorneys shall be submitted before payments are made. Encumbrances shall not be included in calculating whether a recipient has met the requirement of this part;

(iii) Contractual payments to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this part. Contracts concerning transfer of LSC funds for PAI activities shall require that such funds be accounted for by the recipient in accordance with LSC guidelines, including the requirements of the Audit

and Accounting Guide for Recipients and Auditors and 45 CFR Part 1627;

(iv) Other such actual costs as may be incurred by the recipient in this regard.

(2) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund or providing a separate schedule in the financial statement to account for the entire PAI allocation. Recipients are not required to establish separate bank accounts to segregate funds allocated to PAI. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.

(3) In private attorney models, attorneys may be reimbursed for actual costs and expenses. Attorney's fees paid may not exceed 50% of the local prevailing market rate for that type of service.

(4) All records pertaining to a recipient's PAI requirements which do not contain client confidences or secrets as defined by applicable state law shall be made available for inspection and review by LSC auditors and monitors during regular business hours.

§ 1614.4 Procedure.

(a) The recipient shall develop a plan and budget to meet the requirements of this part which shall be incorporated as a part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)) and Part 1620 of the Regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response.

§ 1614.5 Prohibition of revolving litigation funds.

(a) A revolving litigation fund system is a system under which funds are advanced to private attorneys to enable them to pay costs, expenses or attorneys fees for representing clients and under which the private attorneys agree to repay from fees or other money awarded as a result of the case any funds advanced to them.

(b) No funds received from the Legal Services Corporation shall be used to establish or maintain revolving litigation fund systems that advance funds to private attorneys for attorney fees.

(c) The prohibition in paragraph (b) of this section does not prevent recipients from reimbursing or paying private attorneys for costs and expenses, provided:

(1) The private attorney is representing an eligible client in a matter in which representation of the eligible client by the recipient would be allowed under the Act and under the Corporation's Regulations; and

(2) The private attorney has expended such funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, has requested the recipient to advance the funds.

§ 1614.6 Waivers.

(a) While it is the expectation and experience of the Corporation that most basic field programs can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.

(b) A complete waiver shall be granted by the Office of Field Services (OFS) when the recipient shows to the satisfaction of OFS that

(1) Because of the unavailability of qualified private attorneys, an attempt to carry out a PAI program would be futile; or

(2) All qualified private attorneys in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by OFS when the recipient shows to the satisfaction of OFS that

(1) The population of qualified private attorneys available to participate in the program is too small to use the full PAI allocation economically and effectively; or

(2) Despite the recipient's best efforts too few qualified private attorneys are willing to participate in the program to use the full PAI allocation economically and effectively; or

(3) Despite a recipient's best efforts,—including, but not limited to, communicating its problems expending the required amount of OFS and requesting and availing itself of assistance and/or advice from OFS regarding the problem—expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or

(4) The recipient uses a fee-for-service program whose encumbrances would meet the requirement, but its actual current expenditures do not meet the requirement, and could not be increased to do so economically and effectively in the remainder of the program year, or could not be increased to do so in a fiscally responsible manner in view of outstanding encumbrances; or

(5) The recipient uses a fee-for-service program and its PAI expenditures in the prior year exceeded the twelve and one-half percent (12½%) requirement but, because of variances in the timing of work performed by the private attorneys and the consequent billing for that work, its PAI expenditures for the current year fail to meet the twelve and one-half percent (12½%) requirement; or

(6) If, in the reasonable judgment of the recipient's governing body, it would not be economical and efficient for the recipient to expend its full 12½% of Corporation funds on PAI activities, provided that:

(i) The recipient has received substantial contributions from the private bar and/or other sources, and, consequently, the recipient has handled and expects to continue to handle at least 12½% of its cases through its PAI program(s); or

(ii) The recipient has been unusually efficient in the use of its PAI resources, and, consequently, the recipient has handled and expects to continue to handle at least 12½% of its cases through its PAI program(s).

(d)(1) A waiver of the special accounting and bookkeeping requirements of this Part maybe granted by the Audit Division with the concurrence of OFS, if the recipient shows to the satisfaction of the Audit Division and OFS that such waiver will advance the purpose of this Part as expressed in §§ 1614.1 and 1614.2.

(2) As provided in 45 CFR 1627.3(c) with respect to subgrants, alternatives to Corporation audit requirements or to the accounting requirements of this Part may be approved for subgrants by the Audit Division with the concurrence of OFS; such alternatives for PAI subgrants shall be approved liberally where necessary to foster increased PAI participation.

(e) Waivers of the PAI expenditure requirement may be full or partial, that is, the Corporation may waive all or some of the required expenditure for a fiscal year.

(1) Applications for waivers of any requirement under this Part may be for the current, or next fiscal year. All such applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All waiver requests shall be addressed to the Office of Field Services (OFS) or the Audit Division as is appropriate under the preceding provisions of this Part. The Corporation shall make a written response to each such request postmarked not later than thrity (30) days after its receipt. If the request is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial. If the waiver is to be denied because the information submitted is insufficient, the Corporation will inform the recipient as soon as possible, both orally and in writing, about what additional information is needed. Should the Corporation fail to so respond, the request shall be deemed to be granted.

§ 1614.7 Failure to comply.

(a) If a recipient fails to comply with the expenditure required by this part and if that recipient fails without good cause to seek a waiver during the term of the grant or contract, the Corporation shall withhold from the recipient's support payments an amount equal to the difference between the amount expended on PAI and twelve and one-half percent (12½%) of the recipient's basic field award.

(b) If a recipient fails with good cause to seek a waiver, or applies for but does not receive a waiver, or receives a waiver of part of the PAI requirement and does not expend the amount required to be expended, the PAI expenditure requirement for the ensuing year shall be increased for that recipient by an amount equal to the difference between the amount actually expended and the amount required to be expended.

(c) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services in the recipient's service area through PAI programs. Disbursement of these funds shall be made through a competitive solicitation and awarded on their basis of efficiency, quality, creativity, and demonstrated commitment to PAI service delivery to low-income people.

Dated: August 20, 1985.

Richard N. Bagenstos,

Acting General Counsel.

[FR Doc. 85-20272 Filed 8-23-85; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-248; RM-4950]

FM Broadcast Station in Wadley, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 247A to Wadley, Alabama, as that community's first local aural broadcast service, in response to a petition filed by Bob Haynes.

DATES: Comments must be filed on or before October 15, 1985, and reply comments on or before October 30, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Wadley, Alabama); (MM Docket No. 85-248, RM-4950).

Adopted: August 12, 1985.

Released: August 23, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Bob Haynes ("petitioner"),[1] requesting the allotment of Channel 247A to Wadley, Alabama, as that community's first local broadcast service. Petitioner submitted information in support of the proposal and stated his intention to apply for the channel.

2. A staff engineering study reveals that Channel 247A can be allotted to Wadley, Alabama, in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules, provided the transmitter is sited approximately 9.5 kilometers (5.9 miles) south of the community to avoid short-spacing to Channel 248A at both Talladega, Alabama, and Hogansville, Georgia.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the above, and the fact that the proposal could provide a first local broadcast service to Wadley, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules with regard to that community, as follows:

City	Channel No.	
	Present	Proposed
Wadley, AL		247A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before October 15, 1985, and reply comments on or before October 30, 1985, and are advised to read the Appendix for the proper

[1] Petitioner is the President of Clay County Broadcasters, Inc., licensee of daytime only AM Station WZZX, Lineville, Alabama.

procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Lauren A. Colby, Esq., Law Offices of Lauren A. Colby, 10 East Fourth Street, P.O. Box 113, Frederick, MD 21701.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(a), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the data for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filiings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW, Washington, DC.

[FR Doc. 85–20279 Filed 8–23–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–247; RM–4757]

FM Broadcast Station in Columbus, Central City, Crookston, Kearney, Lexington, McCook and Valentine, NE, Hill City, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Class C Channel 262 for 228A at Columbus, Nebraska, the modification of the Class A license for Station KTTT–FM and six related channel substitutions in response to a petition filed by City and Farm Broadcasting, Inc. The allotment could provide Columbus with a second Class C service.

DATES: Comments must be filed on or before October 15, 1985, and reply comments on or before October 30, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making and Orders To Show Cause

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Columbus, Central City, Crookston, Kearney, Lexington, McCook and Valentine, Nebraska, and Hill City, Kansas) (RM Docket No. 85–247; RM–4757).

Adopted: August 13, 1985.
Released: August 23, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition for rule making filed by City and Farm Broadcasting, Inc. ("petitioner"), licensee of KTTT–FM (Channel 228A),

Columbus, Nebraska, requesting the substitution of Class C Channel 262 for 228A and modification of its license to specify operation on the Class C channel.

2. Petitioner acknowledges that if Channel 262 is allocated to Columbus, it will be necessary to make channel substitutions at six communities. Petitioner states a willingness to reimburse the existing permittees or licensees for all reasonable costs involved in changing frequencies if petitioner is the ultimate licensee of Channel 262.

3. Channel 262 can be allocated to Columbus, Nebraska, in compliance with the Commission's minimum spacing requirements provided the following substitutions are made:

a. Substitute Channel 255 for 262 at Central City, Nebraska. Station KZEN is authorized to operate on Channel 262 by a recently issued construction permit.

b. Substitute Channel 227 for 255 at Kearney, Nebraska. Station KRNY–FM currently operates on Channel 255.

c. Substitute 241 for 226 at Lexington, Nebraska. Station KRVN–FM operates on Channel 226.

d. Substitute Channel 270 for 241 at McCook, Nebraska. Station KICX–FM is authorized to operate on Channel 241. It currently operates on Channel 240A. In Docket 80–569, Channel 241 was substituted for 240A with the license for Station KICX–FM modified to specify Channel 241.

e. Substitute Channel 228A for 270 at Hill City, Kansas. (New application pending. File No. BPH840604IB.)

f. Substitute Channel 222 for 241 at Crookston, Nebraska. Channel 241 is allocated to Valentine, Nebraska, but used at Crookston by Station KINI.

4. In support, petitioner asserts that the proposal would enable Station KTTT–FM to expand its coverage to reach over 16,000 additional miles of mainly farm area which is presently lacking in service. Only one FM signal serves the market that petitioner intends to serve with its upgraded FM station. Petitioner further states that another Class C FM allocation to Columbus is a necessity in light of the large population increase since the 1960's when the FM Table was originally developed. Along with the population increase, the area has also experienced a growth in the business community which could support a wide coverage station.

5. A staff engineering study indicates that the proposed substitution of Class C Channel 262 for Channel 228A at Columbus, Nebraska, could be made provided that each of the proposed channel substitutions previously discussed is made. The substitutions are mutually dependent. Thus, we shall also propose to make the following substitutions.

Channel 255 for 262 at Central City, Nebraska,
Channel 241 for 226 at Lexington, Nebraska,
Channel 227 for 255 at Kearney, Nebraska,
Channel 270 or 250A at McCook, Nebraska,
Channel 228A for 270 at Hill City, Kansas, and
Channel 222 for 241 at Crookston, Nebraska.

We shall also correct the Table of Allotments to reflect the actual usage of Channel 222 at Crookston, Nebraska, instead of Valentine, Nebraska. With the exception of Hill City, Kansas, each station will receive an equivalent substitute channel. At Hill City, the only applicant for a Class A station, Jerrell E. Kautz has indicated his consent to this substitution on an attached letter filed with the petition. Kautz is the only applicant affected since the cutoff date for Channel 270 has expired. We propose to retain Kautz' cutoff protection for Channel 228A. In its letter, Kautz also suggests that it would be more appropriate to continue the McCook, Nebraska, station as a Class A facility than to downgrade the Hill City channel. We believe it appropriate to seek comments on that option in view of the fact that almost 4 years (9/28/81) have transpired since Station KICX was modified to a Class C channel but has not yet effectuated the change. In this regard, Station KICX should indicate what steps it has taken to comply with its authority to operate on Class C Channel 241 at McCook. So as not to preclude the allotment of Channel 241 to Lexington, we have determined that Channel 230A could be substituted for Channel 240A at McCook.

6. On the basis of the foregoing, we shall propose the substitution of Class C Channel 262 for Channel 228A at Columbus, Nebraska, and modification of KTTT–FM's license to specify operation on Channel 262. However, conforming with Commission precedent, should another interest in the Class C assignment be shown, the proposed modification could not be permitted, unless an additional equivalent channel is allocated at Columbus. See, *Modification of FM Station Licenses*, Docket 83–1148, 98 F.C.C. 2d 916 (1984).

PART 73—[AMENDED]

§ 73.202 [Amended]

7. In view of the fact that the proposed allotment could provide a second wide area coverage FM service at Columbus, Nebraska, the Commission proposes two options to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No. Present	Proposed
Option I		
Hill City, KS	270	[illegible]
Central City, NE	262	255.
Columbus, NE	228A, 266	[illegible]
Crookston, NE		[illegible]
Kearney, NE	255, 272A, and 290.	227, 272A and [illegible]
Lexington, NE	226	241
McCook, NE	241, 287	270, 287.
Valentine, NE	241	
Option II		
Hill City, KS	[illegible]	270.
Central City, NE	262	255.
Columbus, NE	228A, 266	[illegible]
Crookston, NE		222.
Kearney, NE	255, 272A, and 290.	227, 272A, and [illegible]
Lexington, NE	226	241.
McCook, NE	241, 287	230A, 287
Valentine, NE	241	

8. It is ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, Osage Radio Inc., the licensee of Station KZEN (FM), Central City, Nebraska, shall show cause why its license should not be modified to specify operation on Channel 255 in lieu of 262.

9. It is ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, Semoco Broadcasting Corp., licensee of Station KRNY-FM, Kearney, Nebraska, shall show cause why its license should not be modified to specify operation on Channel 227 in lieu of 255.

10. It is ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, Nebraska Rural Radio Association, licensee of Station KRVN-FM, Lexington, Nebraska, shall show cause why its license should not be modified to specify operation on Channel 241 in lieu of 226.

11. It is ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, Semeco Broadcasting Corp., licensee of Station KICX-FM, McCook, Nebraska, shall show cause why its license should not be modified to specify operation on Channel 270 or Channel 250A in lieu of 241.

12. It is ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, Rosebud Educational Society, licensee of Station KINI, Crookston, Nebraska, shall show cause why its license should not be modified to specify operations on Channel 222 in lieu of 241.

13. Pursuant to § 1.87 of the Commission's Rules, these licensees or permittees may, not later than October 15, 1985, request that a hearing be held on the proposed modifications. If the right to request a hearing is waived, the licensees or permittees may, not later than October 15, 1985, file a written statement showing with particularity why its license or permit should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on the licensee or permittee to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the licenses or permits as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, the licensees or pemittees will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

14. It is further ordered, that the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Central City, Station KZEN, Channel 262, E.E. McCoy, Jr., President, Osage Radio, Inc., 520 Market Street, Osage City, Kansas 66523

Kearney, Station KRNY–FM, Channel 255, Semeco Broadcasting Corporation, 403 E. 25th Street, Kearney, Nebraska 68847

Lexington, Station KRVN-FM, Channel 266, Otto Geiger, President, Nebraska Rural Radio, Box 880, Lexington, Nebraska 68850

McCook, Station KICX-FM, Channel 241, Semeco Broadcasting Corporation, 201 West 4th Street, Box 333, McCook, Nebraska 69001

Hill City, Kansas, Channel 270, Kanza Society, Inc., One Broadcast Plaza, Pierceville, Kansas 67868

Crookston, Station KINI(FM), Channel 241, Rosebud Education Society Inc., St. Francis Mission, St. Francis, South Dakota 57572

15. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

16. Interested parties may file comments on or before October 15, 1985, and reply comments on or before October 30, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Joseph Stavas, Vice President, City and Farm Broadcasting, Inc., Box 518, Columbus, Nebraska 68601–0518.

17. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to the rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act do not apply to rule making to amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 FR 11549, published February 9, 1981.

18. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contract is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington DC.

[FR Doc. 85-20276 Filed 2-23-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-251]

TV Broadcast Stations in Santa Barbara, Ventura, and Bakersfield, CA; Streator and Galesburg, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of UHF channels at Santa Barbara, California; Ventura, California; Bakersfield, California; Streator, Illinois; and Galesburg, Illinois. These substitutions are proposed in order to make additional spectrum available to land mobile services pursuant to the Commission's recent Notice of Proposed Rule Making in Gen. Dkt. 85-172 (RM-3975, RM-4829).

DATES: Comments must be filed on or before October 15, 1985, and reply comments on or before October 30, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting, Television.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606, Table of Assignments, TV Broadcast Stations. (Santa Barbara, Ventura, and Bakersfield, California; Streator and Galesburg, Illinois); (MM Docket No. 85-251).

Adopted: August 13, 1985.
Released: August 23, 1985.

By the Commission.

1. The Commission on its own motion proposes to substitute UHF Channel *51 for UHF Channel *32 in Santa Barbara, California; UHF Channel 57 for UHF Channel 41 in Ventura, California; UHF Channel 45 for UHF Channel 48 in Bakersfield, California; UHF Channel *63 for UHF Channel *64 in Streator, Illinois; and Channel 67 for Channel 63 in Galesburg, Illinois. These substitutions are proposed in order to implement the Commission's recent *Notice of Proposed Rule Making* in Gen. Docket 85-172,[1] which proposes to make additional land mobile services available.

Background

2. In 1969 there were approximately 295,000 authorized stations in the private land mobile radio services. Due to the tremendous growth in these services over the last 15 years, there are now over one million authorized stations employing nearly eight million transmitters. As a result, the frequency bands below 800 MHz that are available to private land mobile users are heavily used, especially in and around the major urban areas.

3. Since 1970, spectrum sharing between land mobile and UHF television has helped to accommodate a significant portion of the demands of private land mobile service in major metropolitan areas. Under the rules adopted in Docket 18261,[2] the Commission designated thirteen major urban areas where private land mobile users could share certain specific UHF television channels between 14 through 20. Such utilization has accomplished an equitable and efficient means of accommodating some of the private land mobile requirements in the major urban markets.

4. On May 31, 1985, the Commission adopted the *Notice of Proposed Rule Making, Further Sharing of the UHF Television Band by Private Land Mobile Services,* General Docket No. 85-172. Therein, the Commission proposed additional spectrum sharing to provide sufficient communication capacity for land services in certain major urban areas of the country. In order to facilitate the changes proposed in that docket, several vacant UHF television assignments in these areas will have to be deleted. In each case, substitute channels are available.

5. Specifically, we are proposing to substitute UHF Channel *51 for Channel *32 in Santa Barbara, California. Since Santa Barbara is located within 200 miles of the Mexican border, Mexican concurrence is required. In Ventura, California, we are proposing to substitute UHF Channel 41 for Channel 57. There is one application pending for Ventura with a cut off date of July 25, 1985. The applicant for Channel 57, in Ventura, will be personally served with a copy of this *Notice.* Mexican concurrence is also required for Ventura. In Streator, Illinois, we are proposing to substitute UHF Channel *63 for Channel *64. In order to assign Channel *63 to Streator, it is also necessary to substitute UHF Channel 67 for Channel 63 in Galesburg, Illinois. Finally, we are proposing to substitute UHF Channel 45 for Channel 48 in Bakersfield, California. Channel 48 currently has six applications pending. However, Channel 45 can be substituted without affecting the proposed transmitter sites. Each applicant will be individually served with a copy of this *Notice.*

[1] 50 FR 25587, published June 20, 1985.
[2] 23 F.C.C. 2d 3255 (1970).

PART 73—[AMENDED]

§ 73.606 [Amended]

6. Accordingly, we consider it appropriate to elicit comments on the proposals to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules as follows:

City	Channel No	
	Present	Proposed
Bakersfield, CA	17, 23-, 29, *39-, and 48.	17, 23-, 29, *39-, and 45+
Santa Barbara, CA	3-, 14[1], *20[1], *32, and 36,.	3-, 14[1], *20[1] 38, and *51+
Ventura, CA	16+ and 41+	16+ and 57+
Galesburg, IL	63	67
Streator, IL	*64+	*63-

[1] Following the decision in Docket 18261, channels so indicated will not be available for television use until further action by the Commission.

7. It is further ordered, that the Secretary shall send copies of this *Notice of Proposed Rule Making* to the following:

Bakersfield

1. Liberty Broadcasting Corporation, c/o Seymour M. Chase, P.C., 4201 Connecticut Avenue, Washington, DC 20008.

2. Harold L. Mullican, 8608 West 72nd Street, Overland Park, Kansas 66204.

3. Crown City TV, Inc., c/o Edward J. Flynn, 840 Sierra Madre Blvd., San Marino, California 91108.

4. Dorothy J. Owens, Route 1, Box 526, Bakersfield, California 93308.

5. Bakersfield Television Associates, c/o Peter A. Casciato, Media Building, 943 Howard Street, San Francisco, California 94103.

6. Gamez Communications, Ltd. Partnership, 3021 Crest Avenue, Bakersfield, California 93306.

Ventura

1. Truecella Chumley, Rt. 1, Box 160C, Cumberland Gap, Tennessee 57724.
2. KFG "85, c/o 897 Hinkley Rd., Burlingame, California 94010.
3. Pobles Communications, Inc., 7462 Jackson Street, Ventura, California 93003.
4. Buenaventura Communications, 7633 Foothill Road, Ventura, California 93004.
5. Ventura 41 Associates, 774 Wildomar Street, Pacific Palisades, California 90272.
6. Costa De Oro Broadcasting Corp., 4628 Vanderbilt Court, Ventura, California 93003.

8. The Commission's authority to institute rule making proceedings, showings required, cut off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

9. Interested parties may file comments on or before October 15, 1985, and reply comments on or before October 30, 1985, and are advised to read the Appendix for the proper procedures.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Table of Television Assignments, § 73.606(b) of the Commission's Rules. See *Certification that sections 603 and 604 of the Regulatory Flexibility Act do not apply to rule making to amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contract Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte*, contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. it should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.

[FR Doc. 85–20278 Filed 8–23–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–250; RM–4981]

FM Broadcast Station in Twisp, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 292A to Twisp, Washington, as that community's first FM channel, at the request of Broadcasters Northwest, Inc.

DATES: Comments must be filed on or before October 15, 1985, and reply comments on or before October 30, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Twisp, Washington); MM Docket No. 85–250, RM–4981.

Adopted: August 12, 1985.
Released: August 23, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Broadcasters Northwest, Inc. ("petitioner"), requesting the allotment of FM Channel 292A to Twisp, Washington, as that community's first FM channel. Petitioner submitted information in support of the proposal and expressed an intention to apply for the channel, if allotted.

2. The channel can be allotted to Twisp in compliance with our minimum spacing requirements. Since Twisp, Washington is located 320 kilometers (200 miles) of the U.S.-Canadian border, the proposal requires concurrence by the Canadian government.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the fact that the proposed allotment could provide a first FM channel to Twisp, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Twisp, WA		292A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before October 15, 1985, and reply comments on or before October 30, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follws: Michael H. Bader, James E. Dunstan, Haley, Bader & Potts, 2000 M Street, NW, Suite 600, Washington, D.C. 20036.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is alloted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–20280 Filed 8–23–85; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 50, No. 165
Monday, August 26, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Amendment of an Existing System of Records

AGENCY: Office of Personnel, Office of the Secretary, USDA.

ACTION: Amendment of an existing system of records and to provide additional information concerning an earlier announced computer matching program.

SUMMARY: The purpose of this notice is to incorporate as a routine use the furnishing of data to a contractor from the system of records known as USDA/OP–1 and to provide additional information concerning a computer matching program.

EFFECTIVE DATE: A notice concerning the matching program was published at 49 FR 48071 on December 10, 1984, which referenced the use of a contractor to conduct the actual match. Because no comments to the proposal were received, we have determined that the amendment should be effective August 26, 1985.

FOR FURTHER INFORMATION CONTACT: Carolyn Wright, Security, Employee Management and Training Staff, Office of Personnel, Department of Agriculture, Washington, D.C. 20250, (202) 447–3083.

SUPPLEMENTARY INFORMATION: The Omnibus Reconcillation Act of 1980 (Pub. L. 96–499 dated December 5, 1980) transferred the administration of the Federal unemployment insurance program from the Department of Labor to Executive Departments and Agencies. In order to develop a viable unemployment compensation program, USDA has elected to contract out this function until an effective and efficient system can be developed which can be operated by agency personnel.

Under the terms of the contract, the contractor will use payroll data to determine if the claimant is a former USDA employee, identify the USDA agency which employed him/her, and complete the claim forms and return them to the requesting State agency. The contractor will review all employee separation documents for necessary employment information and review claimants' circumstances of separation, availability for work and allocation of severance payments. All matches will be referred back to the Department which will decide whether to accept or appeal State determinations. Collection of any overpayments found as a result of this matching program will be the responsibility of the requesting State, which overpayments will then be credited to the Department. Tapes received by the contractor from the requesting State(s) will be erased once the match has been conducted and returned to the State(s) for reuse.

The following routine use is being added to the Office of Personnel's system of records know as USDA/OP–1 published at 49 FR 45071 et seq., December 10, 1984.

USDA/OP–1

SYSTEM NAME:

Personnel and Payroll System for USDA Employees, USDA/OP.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * * *

(22) the contractor selected to conduct a matching program relating to unemployment compensation.

Dated: August 20, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85–20286 Filed 8–23–85; 8:45 am]

BILLING CODE 3410–01–M

National Plant Genetic Resources Board; Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: October 8–9, 1985.

Time:

8:30 a.m.–4:30 p.m., October 8.

8:30 a.m.–4:30 p.m., October 9.

Place: Room 104–A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, DC.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact person: C.F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC–West, Room 239, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344–1560.

Done at Beltsville, Maryland, this 6th day of August 1985.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 85–20347 Filed 8–23–85; 8:45 am]

BILLING CODE 3410–03–M

Agricultural Research Service

National Arboretum Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. (770–776), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council.

Date: October 7–8, 1985.

TIME:

9:00 a.m.—4:30 p.m., Oct. 7.

9:00 a.m.—4:30 p.m., Oct. 8.

Place: U.S. National Arboretum, 3501 New York Avenue, NE., Washington, D.C.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To reveiw progress of National Arboretum relating to Congressional mandate of research and education concerning trees and plant life. The Council submits its recommendations to the Secretary of Agriculture.

Contact person: Howard J. Brooks Executive Secretary, National Arboretum Advisory Council, Room 236 Bg–005, BARC–W, Beltsville, MD 20705. Telephone: AC 301/344–3912.

Done at Beltsville, Maryland, this 12th day of August 1985.

Howard J. Brooks,

Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 85-20346 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-03-M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.
Date: September 10-11, 1985.
Time: 8:30 a.m.-4:30 p.m.
Place: Faculty Club, University of California, Berkeley, California 94720.
Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.
Contact person for agenda and more information: Dr. Edward M. Wilson, Recording Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 209 Justin Smith Morrill Building, Washington, D.C. 20251; telephone: 202/447-4587.

Done at Washington, D.C., this 19th day of August 1985.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 85-20345 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-22-M

COMMISSION ON CIVIL RIGHTS

Massachusetts Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on September 26, 1985, at the U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, MA. The purpose of the meeting is to discuss plans for FY86 projects and community forums.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Phillip Perlmutter, or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 19, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 20322 Filed 8-23-85; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 10:00 a.m., break at 12:30 p.m. for lunch, reconvene at 2:30 p.m. and adjourn at 5:30 p.m. on September 27, 1985, at the Heart-O-Town (Holiday Inn), Washington and Broad Streets, East, 2nd Floor Committee Room, Charleston, West Virginia. The purpose of the meeting is to develop plans for a series of community forums in the State to determine the status of civil rights related to housing, employment, education, voting, and the administration of justice.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adam Kelly or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254-6717, (TDD 202/254-5461).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 21, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-20323 Filed 8-23-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: 1986 National Content Test.
Form number: Agency—DE-1 (PIA), (PIB) (P2); DE-2(PI)—(P4); OMB-N/A.
Type of request: New collection.
Burden: 50,000 respondents; 25,000 reporting hours.
Needs and uses: This Census Bureau is planning to test a variety of new questions, modifications to question wording, questionnaire design, and the effect of different envelopes on response rates in the National Content Test. Respondent will provide information similar to that asked in the Decennial Census.
Affected Public: Individuals or households.
Frequency: One time.
Respondent's obligation: Mandatory.
OMB desk officer: Timonthy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 20, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-20329 Filed 8-23-85; 8:45 am]

BILLING CODE 3510-07-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: General Administration.
Title: Preaward Surveys for Ship Construction, Ship Alteration, and Ship Repair.
Form number: ITA—N/A; OMB—N/A.
Type of request: New collection.
Burden: 12 respondents; 192 reporting hours.
Needs and uses: This collection will survey prospective ship repair contractors where the contract cost over $100,000, and where the contracting officer is unable to make an affirmative determination of responsibility.
Affected public: Businesses or other for-profit institutions, non-profit

institutions, and small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Timothy Sprehe, 395–4814.

Agency: General Administration.
Title: Women-Owned Small Business Sources Clause.
Form number: Agency—N/A; OMB—N/A.
Type of request: New collection.
Burden: 45 respondents; 540 reporting hours.
Needs and uses: This clause will increase opportunities for women-owned businesses by requiring contractors to provide information on opportunities to women-owned businesses and by requiring contractors to include women-owned businesses in their subcontracting plans where the contract cost is over $500,000.
Affected public: Businesses or other for-profit institutions; non-profit institutions; and small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 20, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–20330 Filed 8–23–85; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 29–85]

Proposed Foreign-Trade Zone; Coos County, OR; Within the Coos Bay Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Commissioners of the Oregon International Port of Coos Bay (Port Commission), requesting authority to establish a general-purpose foreign-trade zone in Coos County, Oregon, within the Coos Bay customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 19, 1985. The applicant is authorized to make this proposal under section 307.850 of the Oregon Revised Statutes.

The proposed foreign-trade zone would involve 3 sites on Coos Bay on the Oregon coast totaling 1300 acres. Site 1 covers 284 acres on the eastern shore of the central section of the North Spit Peninsula, Coos County, on the North Spit Access Road. It is owned by the Port Commission and would be used for heavy industrial operations and for deadloading barges. Site 2 is a 520-acre parcel located on the northeast section of the North Spit Peninsula, also on the access road. This facility is owned by Roseburg Lumber Company which would provide general-purpose zone warehousing services. Site 3 is a 500-acre parcel on the north shore of the Eastside section of the City of Coos Bay, on Coos River Highway. It is owned by the Port Authority and would be developed as an industrial park site.

The application contains evidence of the need for zone services in the Coos Bay area. Several firms have indicated an interest in warehousing and processing of items such as oil pipeline modules, bicycle components, wood products, fish, and wool materials. No specific manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

The application included a proposed subzone site for processing fish landed by foreign-flag vessels. While this activity is the subject of pending federal legislation, it is not permissible under present law. Thus, this portion of the proposed zone plan cannot be formally filed at this time.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Mr. Clyde Kellay, District Director, U.S. Customs Service, Pacific Region, 511 NW. Broadway, Federal Building, Room 198, Portland, OR 97209; and Colonel Gary R. Lord, District Engineer, U.S. Army Engineer District Portland, P.O. Box 2946, Portland, OR 97208.

As part of its investigation, the examiners committee will hold a public hearing on September 19, 1985, beginning at 9:00 a.m., in the Community Conference Room of the Port Building, Front and Market Streets, Coos Bay.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by September 13. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 28, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 324 N. Front St., Coos Bay, OR 97420
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room, 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated August 20, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–20295, Filed 8–23–85; 8:45 am.]

BILLING CODE 3510-25-M

International Trade Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance, Gothenburg Feed Products Co. et. al.

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Gothenburg Feed Products Company, P.O. Box 409, Gothenburg, Nebraska 69138, producer of alfalfa pellets and corn (July 22, 1985); (2) Pyrometer Instrument Company, Inc., 234 Industrial Parkway, Northvale, New Jersey 07647, producer of industrial temperature instruments (July 26, 1985); (3) Ferronics, Inc., 60 North Lincoln Road, East Rochester, New York 14445, producer of electronic computer components (July 29, 1985); (4) Woodville, Inc., 11680 Wright Road, Lynwood, California 90262, producer of household furniture (July 29, 1985); (5) Markbilt, Inc., 55 Thomas Road North, Hawthorne, New Jersey 07506, producer of knitted fabric (July 29, 1985); (6) PDS Technologies, Inc., 2000 Blackrock Turnpike, Fairfield, Connecticut 06430, producer of computers, parts and accessories; laboratory and medical equipment (July 30, 1985); (7) North Hoquiam Cedar Products, Inc., 902

Monroe Street, Hoquiam, Washington 98550, producer of shakes and shingles (July 30, 1985); (8) Littlestown Manufacturing Company, 2190 Whitehall Road, Littlestown, Pennsylvania 17340, producer of children's pants, shirts, coats, shorts, suits and dresses (July 31, 1985); (9) John Boos & Company, 315 South First Street, Effingham, Illinois 62401, producer of household and commercial furniture (July 31, 1985); (10) Apron Linen Tree of California, Inc., 2200 Zanker Road, Suite D, San Jose, California 95131, producer of table linens and aprons (August 2, 1985) (11) Dover Handbag Company, Inc., Route 46 & Flanders Road, Netcong, New Jersey 07857, producer of handbags (August 5, 1985); (12) Ampower Technologies, Inc., 26 Just Road, Fairfield, New Jersey 07006, producer of electronic photo-optic devices (August 5, 1985); (13) Micromax Systems, Inc., 6868 Nancy Ridge Drive, San Diego, California 92121, producer of computer circuit boards (August 6, 1985); (14) ORCA Pacific Products, Inc., P.O. Box 5029, Charleston, Oregon 97420, processor of seafood (August 6, 1985); (15) E. L. Smith & Sons Company, P.O. Box 1007, Quincy, Illinois 62306, producer of air compressors (August 6, 1985); (16) Superwood Corporation, P.O. Box 6267, Duluth, Minnesota 55806, producer of hardboard (August 7, 1985); (17) Charles I. Allen, Inc., P. O. Box 186, Pequabuck, Connecticut 06781, producer of wood handles, knobs, mallets, gavels and other wood turnings (August 8, 1985); (18) Fibrex, Inc., P.O. Box 1148, Aurora, Illinois 60507, producer of mineral fiber insulation (August 9, 1985); (19) Plycraft, Inc., 39 South Canal Street, Lawrence, Massachusetts 01843, producer of wood furniture (August 9, 1985); (20) Thomas Hodgson & Sons, Inc., Box A, Suncook, New Hampshire 03275, producer of yarn (August 9, 1985); (21) New York Toy Corporation, 250 Canal Street, Lawrence, Massachusetts 01840, producer of toys (August 9, 1985); (22) Franz Manufacturing Company, Inc., 240 Sargent Drive, New Haven, Connecticut 06511, producer of metronomes (August 9, 1985); (23) Caroline Becker, Inc., Cherry and Ford Streets, Brockton, Massachusetts 02403, producer of shoe soles and heels (August 9, 1985); (24) Interspace Industries Corporation, P.O. Box 5864, Caguas, Puerto Rico 00625, producer of household furniture (August 12, 1985); (25) Warley Worsted Mills, 12 Perkins Street, Lowell, Massachusetts 01854, producer of yarn (August 13, 1985); (26) Eastern Case Company, 52–07 Flushing Avenue, Maspeth, New York 11378, producer of briefcases, attache' cases and portfolios (August 13, 1985); (27) Gladys Spirawk, 5934 Vausold Road, Valois, New York 14888, producer of grapes (August 13, 1985); (28) North Shore Steel Company, Inc., 116 Oakville Avenue, Lynn, Massachusetts 01905, producer of structural steel (August 13, 1985); (29) Smith Fruit Farms, Route 414, Valois, New York 14888, producer of grapes and cherries (August 13, 1985); (30) Donald E. Singer, 4966 Route 414, Burdett, New York 14888, producer of grapes (August 13, 1985); (31) Douglas and Charlotte Bond, Route 414, Box 28, Hector, New York 14841, producer of grapes (August 13, 1985); (32) The Strong Group, Inc., 105 Maplewood Avenue, Gloucester, Massachusetts 01930, producer of leather holsters, belts, briefcases, and small leather goods (August 13, 1985); (33) Nancy's Fancy's Inc., 3790 East 44th Street, Tuscon, Arizona 85713, producer of fabric household accessories (August 14, 1985); (34) Soren Shirt Company, Inc., 350 Fifth Avenue, New York, New York 10018, producer of men's shirts (August 14, 1985); and (35) Sheffield Steel Corporation, P.O. Box 218, Sand Springs, Oklahoma 74063, producer of steel bars and posts (August 16, 1985).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93–618), 19 U.S.C. 2341, 15 CFR Part 320. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 85–20294 Filed 8–23–85; 8:45 am]

BILLING CODE 3510-DR-M

[C–351–406]

Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools. The net subsidy is 8.06 percent *ad valorem*. Our determination with respect to "critical circumstances" is addressed in the "Critical Circumstances" section of this notice.

We have notified the United States International Trade Commission (ITC) of our determinations. We are directing the U.S. Customs Service to continue to require a cash deposit or bond for each such entry in an amount equal to the net subsidy listed in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: August 26, 1985.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5050 or 377–2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Working-Capital Financing for Exports;
- Export Financing Under the CIC–CREGE 14–11 Circular;
- Finex Export Financing;
- Income Tax Exemption for Export Earnings; and

• Finep/ADTEN Long-Term Loans.

We determine the net subsidy to be 8.06 percent *ad valorem*.

Case History

On September 28, 1984, we received a petition filed by Ingersoll Products Corporation of Chicago, Ill., Empire Plow Company of Cleveland, Ohio, and Nichols Tillage Tools, Inc. of Sterling, Colo. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 18, 1984, we initiated such an investigation (49 FR 42971). We stated that we expected to issue a preliminary determination by December 22, 1984.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On November 12, 1984, the ITC preliminarily determined that there is a reasonable indication that these imports threaten material injury to a U.S. industry (49 FR 37856).

We presented a questionaire concerning the allegations to the government of Brazil in Washington, D.C. on October 29, 1984. On December 6, 1984, we received a response to the questionnaire.

On December 14, 1985, we received information from petitioners which established a reasonable basis to believe or suspect that the products under investigation benefitted from upstream subsidies in the form of subsidized steel inputs. Therefore, pursuant to section 701(g) of the Act, we included the upstream subsidy allegation in the investigation. In addition, because we determined that additional time was needed to make a determination concerning upstream subsidization, on January 3, 1985, we extended the due date for our preliminary determination to June 4, 1985, pursuant to section 703(h)(1) of the Act (50 FR 300). On January 25, 1985, we issued an upstream subsidy questionnaire, and received a response on February 25, 1985. On April 17, 1985, we issued a supplementary upstream subsidy questionnaire, and received responses on May 17, 22, and 28, 1985.

On the basis of information contained in these responses, we made a preliminary determination on June 4, 1985 (50 FR 24270). We verified the responses of the government of Brazil, the tillage tool producers, and their suppliers of steel inputs, from June 20 to July 11, 1985. Subsequent to the verification, we received an amended response from the government of Brazil on July 31, 1985.

Both petitioners and respondents submitted briefs addressing the issues arising from the investigation on July 19, 1985, and rebuttal briefs on August 2, 1985. Additional briefs were received on August 5 and August 8, 1985.

Scope of Investigation

The products covered by this investigation are certain agricultural tillage tools, which are defined for purposes of this proceeding as ground-engaging metal tools for tillage and cultivating equipment, such as cultivators, discers, and harrows. Tillage tools include round-shaped tools, such as colters, furrow-opener blades, etc., and tools that are not round-shaped (rectangular, triangular, and other odd shapes), such as points, chisels, sweeps, shovels, knives, furrowers, tines, drills, lister bottoms, rotary tiller blades, bed-shaping tools as well as plowshares, plowshines, moldboards, etc. Tillage tools are currently provided for in items 666.0015, 666.0020, 666.0050, 666.0060, 666.0065, and 666.0075 of the *Tariff Schedules of the United States, Annotated (TSUSA)*.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, issue of the **Federal Register** (49 FR 18006).

There are three known producers and exporters in Brazil of agricultural tillage tools to the United States for which we received information from the government of Brazil. These are Baldan Implementos Agrícolas S.A. (Baldan), Marchesan Implementos e Máquinas Agrícolas "TATV" S.A. (Baldan) and Companhia Semeato de Aços (Semeato). In addition, we identified Companhia Aços Especiais Itabira S.A. (ACESITA) and Usinas Siderúrgicas de Minas Gerais S.A. (USIMINAS) as the upstream suppliers of steel inputs to the tillage tool manufacturers mentioned above. For purposes of this final determination, the period for which we are measuring subsidization ("the review period") is the calendar year 1983.

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools under the following programs.

A. Preferential Working-Capital Financing for Exports

The Carteira do Comércio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working-capital financing for the purchase of inputs. During the review period, these working-capital loans were provided under Resolution 647 of the Banco Central do Brasil. On January 1, 1984, Resolution 647 was superseded by Resolution 882, which was itself substantially amended by Resolution 950 on August 21, 1984.

Eligibility for this type of financing is determined on the basis of past export performance or of an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports. During the review period, the maximum level of eligibility for such financing was 30 percent of the value of exports, and then 22 percent. At present, financing is capped at 20 percent of the value of exports.

Following approval by CACEX of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible. The certificates may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation.

Use of a certificate establishes a loan obligation with a term of up to one year (360 days). Certificates must be used within 12 months of the date of issue, and loans incurred as a result of their use must be repaid within 18 months of that date.

The interest rate ceiling was raised from 40 to 60 percent on loans obtained under Resolution 674 on June 11, 1983. On January 1, 1984, Resolution 882 changed the payment date for both interest and principal to the expiration date of the loan. On August 21, 1984,

Resolution 950 made this working-capital financing available from commercial banks, with interest calculated at the time of repayment.

Under Resolution 950, the Banco do Brasil paid lending institution an equalization fee of up to 10 percent of the interest (after monetary correction). In May 1985, the equalization fee was increased to up to 15 percent of the interest. Therefore, if the interest rate charged to the borrower is less than full monetary correction plus 15 percent, the Banco do Brasil pays the lending bank the difference, up to 15 percent. We verified that the lending bank, in turn, passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due or a credit to borrower's account. Receipt of the equalization fee by the borrower reduces the interest rate on these working-capital loans by 15 percentage points below the commercial rate of interest. In addition, Resolution 950 working-capital loans are exempted from the Imposto sobre Operações Financeiras (IOF), which is charged on all financial transactions in Brazil.

Since receipt of working-capital financing is contingent on export performance, and since the equalization fee results in interest rates lower than commercially available rates, we determine that this program confers an export subsidy.

Our stated policy is to take into account program-wide changes that go into effect after the review period and before our preliminary determination. As stated previously, the current maximum level of eligibility is 20 percent of the previous year's value of exports. At verification, respondents did not demonstrate that they are using less than the maximum amount of financing for which they are eligible. Therefore, to calculate the benefit, we multiplied 20 percent by the 15 percent equalization fee plus the IOF. We thus calculated a net subsidy of 3.30 percent *ad valorem.*

B. Export Financing Under the CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 circular ("14–11"), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan.

In addition to requiring exchange contracts, the Banco do Brasil requires that these loans be fully secured by collateral in the form of tangible property. The bank normally requires that the value of collateral equal at least 130 percent of the amount of the loan. The bank also charges a commission on all such loans.

All exporters of manufactured products with production cycles of less than 180 days may apply for these loans. The maximum level of eligibility is based on the value of the applicant's exports in the previous year. Companies receiving the working-capital export financing described in section I.A of this notice have a maximum eligibility of 10 percent of the previous year's export value. All other companies have a maximum eligibility of 15 percent.

Although this program does in certain aspects appear to operate on a commercial basis, the government of Brazil did not supply sufficient data, in its current responses or at verification, to support its assertion that commissions, exchange contract requirements and collateral requirements serve to raise the effective rate on these loans to a level of comparability with those on short-term loans from other commercial sources. Without sufficient information with which to quantify these additional charges, we must compare unadjusted nominal rates on 14–11 loans with our commercial benchmark, *i.e.*, the nomimal discount rate of accounts receivable, as the best information available. This comparision shows that the rate on 14–11 loans is below the benchmark. Therefore, we determine that this program confers an export subsidy.

Baldan and Marchesan both obtained loans under this program. To calculate the benefit, we compared the interest rates charged with the appropriate benchmark and applied the difference to the principal amounts. We then allocated the benefit over the total exports of the three tillage tool producers, which resulted in a net subsidy of 1.78 percent *ad valorem.*

C. FINEX Export Financing

Resolution 68 of the Conselho Nacional do Comércio Exterior (CONCEX) provides that CACEX may draw upon the resources of the Fundo de Financiamento à Exportação (FINEX) to extend medium- and long-term financing for manufactured exports. Financing may be provided to exporters or to foreign importers. When provided to exporters, up to 85 percent of the value of the merchandise can be financed. Resolution 68 sets no limit on the amount available to foreign importers, nor does it specify the interest rates charged to either importers or exporters.

In its response, the government of Brazil stated that the products under investigation were eligible for FINEX financing but that the respondents did not receive it on transactions with the United States during the review period. We verified that the exporters did not use this financing, but were unable, during verification, to obtain any information from the government of Brazil as to the level of financing (if any) received by U.S. importers of agricultural tillage tools from Brazil. We received a statement from Baldan's sole U.S. importer that it never used FINEX financing. We also recieved statements from some U.S. importers of Marchesan's products that they had not used this form of buyer's credit since mid-1984. The government of Brazil did not supply any documentation in its responses or at verification to demonstrate that Marchesan's and Semeato's importers did not receive FINEX financing during the review period or are not currently receiving it.

Because use of FINEX financing is contingent upon exports, we determine that it is countervailable to the extent that it is offered on preferential terms. As noted above, Resolution 68 does not specify the interest rates charged. However, the *Gazeta Mercantil* reported on June 21, 1985, that FINEX rates were being lowered by up to 1.5 percent. Comparison of the lowered rates to the average U.S. prime rate for the first five months of 1985 indicates that FINEX financing is made at preferential interest rates.

In order to measure the benefit conferred by FINEX financing on exports of tillage tools from Brazil, we have used the best information available. Information on the record indicates that Baldan's sole U.S. importer has never used FINEX. We have assumed that 100 percent of Marchesan's and Semeato's exports to the United States were financed at an interest rate of 6 percent, which is 1.5 percentage points below the lowest FINEX rate listed in the *Gazeta Mercantil.* To calculate the benefit, we multiplied Marchesan's and Semeato's exports to the United States by the interest rate differential. We then divided the benefit by total exports of tillage tools to the United States, and calculated a net subsidy 2.91 percent *ad valorem.*

D. Income Tax Exemption for Export Earnings

Under Decree-Laws 1158 and 1721, exporters of agricultural tillage tools are

eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine that this exemption confers an export subsidy. Semeato did not claim this exemption. Baldan and Marchesan both took an exemption from income tax payable in 1983 on a portion of export profits earned in 1982. We indexed that portion as required under Brazilian tax law, and multiplied it by each company's effective corporate tax rate to calculate the benefit. We determined each company's effective corporate tax rate by taking the base tax liability and adding, were applicable, the standard surcharge for excess profits, and subtracting the deductions for the investment tax credit and the Social Integration Program (SIP) tax taken by the respondents, and dividing the result by taxable income. In the past, we have refused to accept the investment tax credits in calculating an effective tax rate because, absent a showing of a reasonable expectation of returns from these investments, we considered them to be merely a way of targeting the firm's taxes. However, in this proceeding, Baldan and Marchesan have demonstrated that these investments can yield returns. Therefore, we have deducted the investment credits in calculating each company's effective tax rate. We allocated the benefit over the total value of all exports by the respondents to calculate a net subsidy of 0.07 percent *ad valorem*.

E. FINEP/ADTEN Long-Term Loans

During verification, we discovered that Semeato received in 1983 a long-term loan under the ADTEN program of FINEP, an agency of the government of Brazil.

We received no information from the government of Brazil describing FINEP's organization, purpose, and programs. Information on the record of the case of *Certain Cast-Iron Pipe Fittings from Brazil* (50 FR 8755) indicates that FINEP (Financiador de Estudos e Projectos) is charged with promoting scientific and technological development in Brazil, in conjunction with the Conselho Nacional de Desenvolvimento Científico e Tecnológico. To this end, FINEP grants loans through state-owned development banks, in the case of Semeato, the Banco Regional de Desenvolvimento de Extremo-Sul (BRDE). FINEP programs must implement the objectives set forth by the federal Secretaria de Planejamento (SEPLAN) in its third "Plano Básico de Desenvolimento Científico e Tecnológico" (III PBDCT).

Under the ADTEN program, FINEP makes loans for projects which:

- Develop new products,
- Adapt and absorb new technology,
- Train human resources to absorb new technology,
- Market new products and implement management techniques to employ new technology,
- Develop quality-control techniques,
- Establish new research and development centers in Brazil, and
- Engage in pure research.

Borrowers negotiate the terms of each loan with the regional development banks with which they deal. They must submit to the terms of the loan imposed by the bank and by FINEP, which disburses the funds in allotments, and maintains project oversight throughout the life of the loan.

The interest rate on this loan to Semeato was substantially equivalent to rates charged on loans made in 1983 by the Banco Nacional de Desenvolvimento Econômico e Social (BNDES). However, the principal amount of the loan was only partially indexed to inflation, as measured by the variation in ORTN (Obrigações Reajustáveis do Tesouro Nacional or National Treasury Readjustable Bonds). We have no information on the record of this case that BNDES loans are not fully indexed to the inflation rate. For this reason, and because the government of Brazil did not demonstrate that these loans were not provided to a specific enterprise, industry, or group of enterprises or industries, we determine that these loans are countervailable.

Using BNDES financing as the benchmark in this case, we compared principal and interest payments due on this loan in 1983 using both partial and full indexation, and took the differential in payment streams as the benefit. We allocated the benefit over the respondents' total sales, and calculated a net subsidy of less than 0.001 percent *ad valorem*.

II. Upstream Subsidies

Petitioners allege that Brazilian tillage tool producers receive an "upstream subsidy" through the purchase of subsidized steel inputs. Under section 771A(a) of the Act, we must apply the following tests in order to determine whether "upstream subsidies" are being paid or bestowed upon the products under investigation:

> The term "upstream subsidy" means any subsidy described in section 771(5)(B) (i), (ii), or (iii) by the government of a country that—
>
> (1) Is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;
>
> (2) In the judgment of the administering authority, bestows a competitive benefit on the merchandise; and
>
> (3) Has a significant effect on the cost of manufacturing or producing the merchandise.

In our preliminary determination, we found that the three tests were met. With respect to the last test, the "significant effect" test, we stated:

> We multiplied the *ad valorem* subsidy rates calculated for ACESITA and USIMINAS (the producers of the input product) by the percentage that the government of Brazil claims the subsidized steel inputs account for in the cost of producing tillage tools. In both cases, we found that the estimated net subsidy accounted for more than one percent of the cost of manufacturing or producing the merchandise. For purposes of this preliminary determination, we consider that the "significant effect" test has been met.

We also requested comments on this threshold measure for significant effect.

We have reviewed the comments submitted by petitioners and respondents and the legislative history of the upstream provision. We have concluded that it would be inappropriate to apply an automatic threshold in determining whether subsidies to suppliers of an input have a significant effect on the cost of producing the merchandise under investigation. We have been guided in reaching this conclusion by the statement of the House Committee on Ways and Means:

> The purpose of this condition is to avoid needless investigation and verification of upstream subsidies which, although passed through to the final merchandise, are insignificant in affecting the competitiveness of that final product.
>
> [H.R. Rep. No. 725, 98th Cong., 2d Sess. 34 (1984)].

Under our interpretation of this statement, any evaluation of the effect of upstream subsidies on the competitiveness of the final product involves more than a simple multiplication of the *ad valorem* subsidy rate on the input times the share that the input accounts for in the cost of producing the final product. Instead, the significance of the subsidies to the upstream product derives from the significance those subsidies may have on the competitiveness of the final product.

To assess the significance on the competitiveness of the final product, we must consider the degree to which the final product competes on the basis of price. When a small decrease in price can lead to a large increase in sales,

even a very small subsidy to an upstream supplier could have a significant effect on the competitiveness of the final product. In these circumstances, the application of a threshold exceeding one percent, as suggested by respondents, would be inappropriate. Conversely, when the competitiveness of the final product is heavily influenced by non-price factors, such as quality, consumer loyalty and consumer concern for diversity of supply, a higher threshold for significant effect may be appropriate. In short, we intend, at this time, to apply the significant effect test on a case-by-case basis.

While we cannot support at this time a fixed threshold for significant effect, we recognize that a case-by-case approach may lead to some uncertainty. In particular, petitioners should have some indication of whether it will be worthwhile to pursue an upstream investigation, and respondents should be made aware of the general standard to which they will be held accountable and the types of information we will need.

Therefore, we intend to apply the following standards with respect to the significant effect test. If the product of the *ad valorem* subsidy rate on the input times the share that the input product accounts for in the cost of producing the final product exceeds five percent, we will presume that the subsidies on the input have a significant effect on the cost of producing the merchandise under investigation. At the other extreme, if the product of the *ad valorem* subsidy rate on the input times the share that the input product accounts for in the cost of producing the final product is less than one percent, we will presume that the subsidies on the input do not have a significant effect on the cost of producing the merchandise under investigation. We consider both norms to be rebuttable presumptions; these one and five percent thresholds are not immutable. If the parties in a particular case present evidence that the competitive circumstances of the final product warrant a higher or lower thershold, we will take such evidence into consideration.

In establishing these norms, we also recognize our limited experience in administering the provision. As we attempt to apply these norms in future cases, we may find them to be inappropriate. We may learn that the proper administration of the upstream provision requires an automatic application of a minimum threshold.

As noted in the above-quoted legislative history, one purpose of this provision is to avoid needless investigation and verification of upstream subsidies. The standards we have proposed are an attempt to balance the competing concerns of finding those subsidies that confer a competitive benefit on the final product and of not expending our resources on difficult investigations that yield little in the way of relief to domestic industries. Based on our limited experience in administering this provision, a one percent threshold for initiating an upstream investigation is a reasonable starting point for achieving this balance.

We have applied the standards outlined above to determine whether the significant effect test is met in this investigation. We have calculated the net subsidy bestowed on the two suppliers of steel inputs, ACESITA and USIMINAS, and the share acounted for by this input in the cost of producing agricultural tillage tools.

A. Domestic Subsidies

Our calculation of the net subsidy is based on our determination that domestic subsidies are being provided to ACESITA and USIMINAS, suppliers of hot-rolled carbon steel plate in coil and hot-rolled carbon steel sheet in coil to the tillage tool manufacturers, under the following programs.

1. *Government Provision of Equity Capital to USIMINAS.* Siderurgia Brasileira S.A. (SIDERBRAS) is a government-controlled corporation under the jurisdication of the Ministry of Industry and Commerce. Pursuant to Decree-Law 6159 of December 6, 1974, SIDERBRAS became the holding company for the federally-owned steel corporations. SIDERBRAS is a majority shareholder of nine Brazilian steel producers and a minority shareholder of one small Brazilian steel producer. During 1979–1983, SIDERBRAS made equity infusions into USIMINAS.

We have consistently held that government provision of, or assistance in obtaining, capital does not *per se* confer a subsidy. Government equity purchases or financial backing bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations. When a company's shares are not publicly traded and, hence, there is no market-determined price for the shares, we examine whether the company was a reasonable equity investment (a condition we have termed "equityworthiness") in order to determine whether the equity infusions were inconsistent with commercial considerations.

For purposes of this determination, we reviewed the company's financial data and all other factors on the record. We focused on the rate of return on equity and long-term prospects for the company in question for the period 1977 through 1983. We examined financial ratios, profits and losses, and other factors, such as market demand projections and current operating results, to evaluate the company's current and future ability to earn a reasonable rate of return on equity investments.

Based on these factors, as applied to information on the record, we found USIMINAS to be equityworthy between 1977 and 1979 and unequityworthy between 1980 through 1982 [*see* "Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations (49 FR 17988)]. In addition, we now find USIMINAS to be unequityworthy in 1983. Accordingly, we determine that the action of the government in taking an equity position in the company in those years is inconsistent with commercial considerations and confers a subsidy.

2. *IPI Tax Rebates for Capital Investment.* Decree-Law 1547, enacted in April 1977, provides funding for capital investment in approved expansion projects in the brazilian steel industry through a rebate of the Imposto sobre Produtos Industrializados (IPI), which is a value-added tax imposed on domestic sales. The IPI tax is an indirect tax and, as such, is passed on to the consumer. A steel company collects this tax on sales as an agent for the government, and does not pay the tax itself. Decree-Law 1547 is a mechanism by which a steel company is permitted to collect funds due the government and then receive a 95 percent tax rebate. The program does not involve the rebate of payments made from the company's own funds.

Originally, the IPI tax applied to all domestic sales transactions. In 1979, the value-added tax was eliminated except for producers in 14 industry sectors, including tobacco, automobiles, spirits and alcohol, ceramics, rubber, and steel. The tax rate is different for each of the specified industry sectors; for steel products, the value-added tax is 5 percent.

A Brazilian steel company may deposit 95 percent of the net IPI tax due in a special account with the Banco do Brasil. The amounts deposited are to be applied to steel expansion projects. When rebated to the firms, they constitute reserves that must eventually be converted into subscribed capital.

Under the terms of Resolution 68–77 issued by the Conselho de Näo-Ferrosos e Siderurgia (CONSIDER), which implements Decree-Law 1547, IPI tax

rebates are payable only on basic steel product and certain fabricated steel products such as seamless steel pipes. ACESITA and USIMINAS both received IPI tax rebates as manufacturers of basic steel products. Because IPI tax rebates are limited to a specific number of products and tied to investiments in government-approved projects, we determine that these rebates confer a subsidy.

3. *Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI).* Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

Decree-Law 1726 repealed this program in 1979. Subsequently, no new projects were eligible for these benefits. However, companies whose projects were approved prior to the repeal still receive these benefits pending completion of the project.

Both ACESITA and USIMINAS received benefits under this program during the review period. In "Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations" (49 FR 17988), we found that receipt of this benefit is limited to projects in 14 industries approved by the government of Brazil. During verification, the government of Brazil provided no new documentation with respect to this program. Based on the record of this and earlier Brazilian countervailing duty investigations, we have concluded that these benefits are limited to specific enterprises or industries. Accordingly, we determine the CDI program confers a subsidy on ACESITA and USIMINAS.

We examined several other domestic programs which were available to ACESITA and USIMINAS:

- Loan Guarantees on Foreign-Denominated Debt;
- Special Tax Deductions; and
- Accelerated Depreciation for Brazilian-Made Capital Equipment.

The first of these programs is determined not to confer a subsidy, and is discussed below in "Program Determined Not to Confer a Subsidy;" the last two are discussed in "Programs Determined Not to Be Used."

B. Calculation of Net Subsidy to Input Suppliers

Using the methodogies outlined in our preliminary determination, we calculated the net subsidies under the domestic subsidy programs described above. We then calculated the overall subsidy to suppliers of steel inputs by weighting the net subsidy received by ACESITA and USIMINAS by the percentage of steel they each supplied for the production of tillage tools in 1983. This net subsidy is 2.43 percent *ad valorem.*

C. Share of the Cost of Production Accounted for by Steel Inputs

Petitioners alleged that steel inputs account for 50 percent of the cost of producing tillage tools. In its initial response, the government of Brazil stated this figure was approximately 47 percent. At verification, the respondents were unable to demonstrate that 47 percent was an accurate figure, and instead provided a number of lower estimates. Petitioners, however, stated in their briefs that the Department must continue to use the 47 percent average supplied by the government of Brazil in its response, and not the lower estimates supplied during verification. Moreover, the government of Brazil indicated that 47 percent was not an inaccurate estimate. Accordingly, we are assuming, as best information available, that steel inputs account for 47 percent of the cost of producing tillage tools.

D. Significant Effect

According to the significant effect methodology outlined *supra*, the product of the *ad valorem* subsidy rate on the input product times the share that the input accounts for in the cost of producing agricultural tillage tools is 1.14 percent. This is slightly greater than the one percent threshold and, therefore, we have analyzed its potential significance by examining the competitiveness of the final product.

We did not seek this type of information in this investigation. Nevertheless, respondents have claimed that "tillage tools are not fungible and quality differs among products." We have compared this claim to the information contained in the ITC's preliminary report and have concluded that such an unqualified statement is not substantiated by evidence on the record.

Statements in the ITC report by purchasers of tillage tools indicate that the Brazilian product is of a lower quality. They also indicate that there is a price/quality tradeoff in the view of consumers. When there is a slight price differential, the purchaser will opt for the higher quality product. When the price differential is large, purchasers appear to select the lower-priced product. For example, Brazilian prices are reportedly 30 to 50 percent lower. Other purchasers have used the Brazilian product because their suppliers stock this product or for diversity of supply. Thus, there are indications of both price and non-price competition.

We have concluded that if the quality of the Brazilian tillage tools were comparable to that of the products with which they compete, the subsidies to the input suppliers might have a significant effect on the competitiveness of Brazilian tillage tools. However, this is not the case. Quality differences and other non-price factors appear to be important determinants of demand for agricultural tillage tools. Also, substantial price differentials appear to encourage consumers to switch to the Brazilian products. Given the magnitude of the cited price differentials, we conclude that a subsidy to input producers that accounts for 1.14 percent of the cost of producing tillage tools does not have a significant effect on the competitiveness of the Brazilian tillage tools. Therefore, we determine that the subsidies to Brazilian steel producers do not have a significant effect on the cost of producing Brazilian agricultural tillage tools. Given this finding, we need not determine whether subsidies to Brazilian steel producers confer a competitive benefit on agricultural tillage tool producers in Brazil.

III. Program Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools under the following program.

Loan Guarantees to Input Suppliers on Foreign-Denominated Debt

During verification, we ascertained that both ACESITA and USIMINAS had received government guarantees on foreign-denominated loans that were still outstanding during the review period. Under Decree-Law 1312, guarantees on foreign-denominated debt are available to Brazilian borrowers to finance the following projects: Modernization of harbors, programs of Federal agencies abroad, transportation, cold storage and slaughterhouses, electrical energy, basic industries and agriculture, education, public health,

urban or rural sanitation, communications, fisheries, assistance to small and medium enterprises, housing, livestock raising, urban and regional integration and development, and national security. The law also indicates that guarantees are available to private as well as government-owned firms. Accordingly, we determine that government loan guarantees on foreign-denominated debt are not limited to a specific enterprise or industry or group of enterprises or industries.

IV. Programs Determined Not To Be Used

We determine that manufacturers, producers or exporters in Brazil of certain agricultural tillage tools did not use the following programs which were listed in our notice of "Initiation of a Countervailing Duty Investigation: Agricultural Tillage Tools from Brazil" (49 FR 40431).

A. IPI Tax Rebates for Capital Investment

Decree-Law 1547, enacted in April 1977, provides funding for approved expansion projects in the Brazilian steel industry through a rebate of the IPI, a value-added tax imposed on domestic sales.

The government of Brazil stated in its response that tillage tool producers are not eligible for IPI rebates under Decree-Law 1547. During verification, we ascertained from our review of the legislation that tillage tool manufacturers are ineligible for these rebates. We also reviewed the respondents' balance sheets and accounting ledgers, and saw no evidence that they had received these rebates.

B. Resolution 330 of the Banco Central do Brasil

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. Exporters of agricultural tillage tools would be eligible for financing under this program. However, the government of Brazil stated in its response that none of the tillage tool producers participated in this program during the review period. During verification, we reviewed each company's accounting ledgers and found no evidence that the respondents received such financing with respect to their exports.

C. Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)

Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil. We verified that none of the tillage tool producers received incentives under this program during the review period.

D. The BEFIEX Program

The Comissão para a Concessão de Benefícios Fiscais a Programas Especiais de Exportação (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediate products;
- Under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from 4 to 6 years; and
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects.

We verified that none of the tillage tool producers participated in this program.

E. The CIEX Program

Decree-Law 1428 authorized the Comissão para Incentivos à Exportação (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. We verified that none of the tillage tool producers received any benefits under this program.

F. Accelerated Depreciation for Brazilian-Made Capital Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. We verified that none of the respondents availed itself of this program during the review period.

G. Incentives for Trading Companies

Under Resolution 643 of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufacturers under Resolution 674, 882, and 950. Tillage tool producers are ineligible for participation in this program because such participation is precluded by receipt of working-capital export financing. At verification we saw no evidence that any of the tillage tool producers used the services of trading companies for export sales.

H. The PROEX Program

Short-term credits for exports are available under the Programa de Financiamento à Produção para à Exportação (PROEX), previously referred to as the Apôio à Exportação program. We verified that none of the tillage tool producers participated in this program during the review period.

I. Programs Not Used by Input Suppliers

1. *Special Tax Deductions.* We verified that USIMINAS incurred a loss in 1982 and paid no income tax for that year in 1983; therefore, it could not have used losses of other companies in the SIDERBRAS group to offset profits during the review period. We also verified that neither ACESITA nor USIMINAS benefits from any local tax incentives which minimize their tax liability. Accordingly, we determine that neither ACESITA nor USIMINAS received any special tax deductions.

2. *Accelerated Depreciation for Brazilian-Made Capital Equipment.* We verified that ACESITA took advantage of this tax provision during the review period. Under this provision, after taking the initial deductions for accelerated depreciation, companies must, in subsequent years, add back to net profits amounts equal to the accelerated depreciation previously claimed. On the income tax return filed during the review period, ACESITA added back more accelerated depreciation than it deducted, thereby cancelling out any benefit that could have accrued to the company. We also verified that USIMINAS paid no corporate income taxes in 1983 because it incurred a loss in 1982.

V. Program Determined To Have Been Terminated

IPI Export Credit Premium

Until very recently, Brazilian exporters of manufactured products were eligible for a tax credit on the

Imposto, sobre Productos Industrializados (Tax on Industrialized Products, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to confer a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of Ministry of Finance "Portaria" (Notice) No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985. We verified that the tillage tool producers received no IPI export credit premiums after that date.

Accordingly, consistent with our stated policy of taking into account program-wide changes that occur subsequent to the review period but prior to our preliminary determination, we determine that this program has been terminated, and no benefits under the program are accruing to current exports of tillage tools to the United States.

VI. Program Determined Not To Exist

Income Tax Deductions for Foreign Selling Expenses

During verification, we reviewed the respondents' income tax returns and the instruction manual for filling out Brazilian income tax forms. We saw no evidence that there exists a special program of tax deductions for foreign selling expenses. Accordingly, we determine this program does not exist.

Petitioners' Comments

Comment 1: Petitioners argue that the information provided by the respondents regarding the utilization of FINEX financing by U.S. importers of tillage tools is not verifiable, and should not affect the Department's final determination.

DOC Position: As best information available, we have accepted the information in the record that Baldan's sole U.S. importer has never used FINEX buyer credits. However, since we do have information on the record from several other importers stating that they have used FINEX, we consider this to be the best information available, and are using it in our calculation of benefits provided to U.S. importers of tillage tools under this program.

Comment 2: Petitioners argue that the types of subsidies being bestowed on the input producers provide those producers with a windfall of "up-front" cash, or may allow them to achieve economies of scale or increased productivity so that a small subsidy may have an effect that extends beyond the value of the subsidy as calculated by the Department. Moreover, cash infusions can affect a company's debt/equity ratio and its creditworthiness. This, in turn, means that the consumers of those inputs realize a savings greater than the per-unit subsidy attributed to the inputs they purchase. Therefore, petitioners argue that an upstream subsidy of one percent or more of the cost of producing tillage tools meets the significant effect standard.

DOC Position: We diagree. In determining significant effect, we have followed the statutory mandate of examining the effect that domestic subsidies to input suppliers have on the cost of producing tillage tools. The methodology we apply to value subsidy programs captures the benefits which can be measured. Petitioners are asking us to consider secondary effects of domestic subsidies to the input producers. We have consistently maintained that we will not look at these effects because such analysis is highly speculative and could result in double-counting (see, *e.g.*, "Final Affirmative Countervailing Duty Determination; Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina," 49 FR 18006). More importantly, were we to find that a competitive benefit is being bestowed on agricultural tillage tools through upstream subsidies, the amount of the countervailing duty on the tillage tools could not, under section 771A(c) of the Act, exceed the amount of the domestic subsidy found to exist on the input product. Therefore, it would be inappropriate to consider any secondary effects the subsidies on inputs may have on the merchandise under investigation. While we have adopted the rebuttable presumption of a one percent threshold for the significant effect test, it was for the reasons described in section II of our notice.

Comment 3: Petitioners argue that there is no verified evidence that the two CIC–CREGE 14–11 loans taken out by Marchesan were repaid. The Department should therefore treat any loans outstanding beyond their term as grants to the producer.

DOC Position: The evidence on the record shows that Marchesan has repaid these loans; therefore, we are calculating the benefit in accordance with our standard short-term loan methodology.

Comment 4: Petitioners argue that because respondents did not provide an explanation for Semeato's exemption from the IPI tax, the Department should find that the exemption constitutes an export subsidy

DOC Position: The verification exhibits show that Semeato received one very small exemption from the IPI tax on one of its import shipments and that the IPI tax was charged on all other imports of the same merchandise. This one small exemption does not provide any indication that Semeato is benefiting from regular exemptions from the IPI tax on imported goods. Even if we were to consider that this single small exemption was a subsidy, the amount of the subsidy would be so small that there would be no effect on the overall net subsidy calculated.

Respondents' Comments

Comment 1: The government of Brazil contends the Department improperly valued the amount of net subsidy from Resolution 950 loans by erroneously assuming a maximum utilization level and interest rate differential.

DOC Position: We disagree. With respect to our use of a maximum interest rate differential of 15 percent, we verified that the lending bank passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due or a credit to the borrower's account. Regarding our assumption of the maximum 20 percent utilization rate, the respondents did not demonstrate during verification that they are using less than the maximum amount of financing for which they are eligible.

Comment 2: The government of Brazil contends that the Imposto sobre Operações Financeiras (IOF) is an indirect tax on the production of goods for export, that the exemption of loans under Resolutions 674/882/950 from this tax is not a subsidy, and that if we determine that Resolution 674 financing provides a subsidy, we should not consider this exemption as part of that subsidy.

DOC Position: We disagree. Since financing for domestic transactions is subject to the IOF tax, it is appropriate that we reflect the exemption of Resolution 950 loans from the IOF as part of the subsidy in order to measure the full benefit provided under this program. Moreover, we do not view the IOF as a tax on the production or distribution of the product.

Comment 3: The government of Brazil argues that the CIC-CREGE 14–11 circular is not a government program and, therefore, does not bestow a government subsidy on the exportation of agricultural tillage tools. The CIC-CREGE 14–11 program is consistent with commercial considerations, since the costs of the program are covered by charges payable by the recipients; therefore, under Annex A of the Subsidies Code, paragraphs (j) and (k), this program does not confer a subsidy.

DOC Position: We disagree. Our determination that the CIC-CREGE 14–11 program provides countervailable benefits is based on (1) the fact that, under Brazilian law, the Banco do Brasil, which administers this program, acts as the government of Brazil's financial agent, and (2) respondents' failure to demonstrate that the program does not provide preferential loans to exporters. Our uniform practice has been to calculate a subsidy provided under a preferential loan program by comparing the preferential rate to the benchmark interest rate, rather than to the cost of the funds to the lender.

As previously stated in our notice of "Final Affirmative Countervailing Duty Determination; Ceramic Tile from Mexico" (47 FR 20012), "[r]egardless of what effects the Illustrative List of Export Subsidies may have on U.S. law otherwise, the uniform past practice on this issue in comparison with the legislative history of the Trade Act requires us to calculate the bounty or grant provided under a preferential loan program on the basis of a comparison between the preferential rate and the commercially available rate rather than on the basis of a comparison with the cost of funds to the government."

Comment 4: The government of Brazil claims the Department, in calculating the subsidy benefit derived from the alleged CIC–CREGE 14–11 program, incorrectly includes the IOF tax in the benchmark. Furthermore, the government of Brazil contends that the use of a compounded average benchmark for the period is inappropriate because the discount rate in effect on the date the loan was taken out most accurately reflects the cost of alternative available financing.

DOC Position: We disagree. We consider that it is appropriate to include the IOF tax in our benchmark since the IOF tax is imposed on all domestic financial transactions. With respect to the benchmark, because the CIC–CREGE 14–11 loans we are examining were taken out throughout the review period, we have calculated a benchmark for that some period. Calculating a specific benchmark rate for each loan, as respondents suggest, would undermine our short-term loan methodology which states that the use of company-specific benchmarks would significantly impair our ability to administer the countervailing duty law within the short time limits established by the Act.

Comment 5: The government of Brazil claims that the Department has overstated the benefit from the income tax exemption for export earnings by using the nominal tax rate, as opposed to the effective tax rate applicable to the respondents. Brazilian tax law allows corporations to invest 26 percent of taxes owed into certain specified corporations or funds. The government argues that this provision results in an effective reduction of the corporate income tax rate, which decreases the benefit from the income tax exemption.

DOC Position: Where we were able to verify that the company used the 26 percent investment tax credit, we have taken it into account in calculating the company's effective tax rate.

Comment 6: As it has in the past, the government of Brazil argues that the Department erred in valuing the subsidy arising from the income tax exemption for export earnings by allocating the benefit over export sales rather than total sales. Because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefits accrue to the entire operations of the firm and not just to exports. Further, an income tax exemption calculated on this basis does not affect the price of the exported product only; rather, it must have a general effect on all prices, both domestic and export.

DOC Position: We disagree. As we have stated repeatedly in prior Brazilian determinations, when a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program confers an export subsidy. The fact that the firm as a whole must be profitible to benefit from the program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

Comment 7: The government of Brazil argues that FINEX export financing does not confer a subsidy because the terms of such financing are commercially reasonable.

DOC Position: We disagree. Information on the record indicates that FINEX interest rates are below prevailing commerical interest rates that would be paid by importers in the United States.

Comment 8: Respondents contend that no Brazilian exporters or U.S. importers of tillage tools received any short-term FINEX export financing during the review period. Furthermore, respondents contend that tillage tools have not been eligible for long-term FINEX financing since September 1984, and that our stated policy to take into account program-wide changes made subsequent to the review period but prior to the preliminary determination should preclude us from finding this program to confer an export subsidy.

DOC Position: We disagree. There is no evidence on the record of this case to document either of these assertions, which were made subsequent to the verification.

Comment 9: The government of Brazil contends that FINEP/ADTEN loans are generally available to all industries in Brazil and should not be found to confer a domestic subsidy.

DOC Position: We disagree. The only information on the record concerning these loans is a telex from one Brazilian government agency to counsel for the government of Brazil in Washington. During verification, Department officials were not given an opportunity to meet with FINEP administrators or to examine program records.

Comment 10: The government of Brazil argues that the Department, in finding government equity infusions in USIMINAS to be inconsistent with commercial considerations, erred by focusing on a restricted number of short-term financial ratios, thereby ignoring the broader industrial and financial context in which this company operates.

DOC Position: In arriving at our determination, we considered the information submitted by the respondents concerning this issue, specially untranslated annual reports and financial statements for the last several years. Therefore, we focused our reveiw on the financial results of the company, including the ability to meet debt obligations, current operations, and rates of return on assets and equity. In light of these results, we consider USIMINAS to be unequityworthy and uncreditworthy in 1983.

Comment 11: The government of Brazil contends that a review of the performance of USIMINAS over the past 15 years demonstrates that, with a few exceptions, the company has had a record of positive rates of return on equity and postive financial ratios.

DOC Position: Although USIMINAS earned some profits between 1975 and 1980, it showed very low or negative

profits from 1980 onwards. Since a private investor will focus on a company's most recent performance as an indication of future earnings trends, we considered the more recent years to be more important to our analysis of whether government equity infusions into USIMINAS were inconsistent with commercial considerations. Moreover, a demonstration of profits or earnings alone is not sufficient for a company to be equityworthy. The rate of earnings per unit of equity, and not the absolute level of earnings, is a far more important determinant of a company's performance.

Comment 12: The government of Brazil argues that the Department should not use the year-end equity amount when determining the rate of return on equity used in our short-fall calculation. The government argues that the rate of return on equity is distorted by use of a year-end equity figure which already reflects the amount of the loss.

DOC Position: We agree that the year-end equity figure should not be used since it does not reflect the average amount of equity employed by the company throughout the year. Accordingly, we have revised the company's rate of return on equity by calculating this return on the average equity for 1983.

Comment 13: The government of Brazil argues that the Department erroneously calculated the benefits from equity infusions in USIMINAS by distributing over all of 1983 infusions which were not made until later in that year.

DOC Position: We disagree. It has been our consistent practice to compute benefits received by a firm during a period of time (in this case the 1983 calendar year), and apply them to the total value of sales for the same period (see, *e.g.*, "Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products from France," 47 FR 39332). Any other approach would present an enormous administrative burden. When there are many types of benefits received and the number of disbursements under any given program is large, it would be unduly burdensome to make adjustments for the fact that a particular benefit was received earlier or later in the review period., Therefore, to be consistent in our treatment of different types of subsidies and across cases, we have chosen to treat all benefits received during the review period as applying to all sales made during that same period.

Comment 14: The government of Brazil contends that the Department incorrectly applied average annual ORTN coefficients in converting cruzeiro-denominated equity infusions to determine the amount of benefit, rather than using the ORTN value in effect on the date of the equity infusion.

DOC Position: We disagree. We would prefer to use in this calculation the equity amount adjusted for inflation as reported in the company's books. However, absent this information, we are not persuaded that using average ORTN rates to adjust the value of the equity is inappropriate.

Comment 15: The government of Brazil states the Department erred in using its benchmark an industry-wide average rate of return, rather than the average rate of return applicable to heavy industry.

DOC Position: We disagree. In the Subsidies Appendix, we stated that "[f]or government equity purchases which we deem inconsistent with commercial considerations, we measure the benefit by multiplying the difference between the company's rate of return on equity and the national average rate (of return on equity)." The national, as opposed to a sectoral, rate of return is a more accurate measure of what a reasonable investor in Brazil will earn on his investments.

Comment 16: The government of Brazil contends, with respect to IPI tax rebates provided under Decree-Law 1547, that the value-added tax or IPI is not generally applicable in Brazil and that the rebate of this tax does not confer a countervailable benefit.

DOC Position: We disagree. Although the same amount of IPI tax is applied to all steel products, only companies producing certain priority products and whose expansion projects are government-approved may receive the rebates. Fabricators of steel products (such as welded pipe and tube manufacturers who purchase coil) are not eligible for the rebates. USIMINAS itself has not been eligible for the rebates since Decree-Law 1843, enacted in December 1980, directed that rebates of the IPI tax collected on sales by state-owned steel companies accrue to SIDERBRAS. Therefore, the rebates are not generally available and constitute a benefit to selected producers.

Comment 17: The government of Brazil argues that since IPI tax rebates under Decree-Law 1547 are paid only on goods sold in the domestic market, no products exported to the United States benefit from the rebate and therefore no subsidy is conferred.

DOC Position: We are countervailing these rebates because receipt thereof is tied to investment in government-approved projects. Although the amount of rebate any firm receives may increase along with domestic sales, the existence of domestic sales does not guarantee that a rebate will be received.

Comment 18: The government of Brazil argues that the Department's calculation of the benefits to USIMINAS from IPI rebates was erroneous because (1) a discount rate reflecting USIMINAS's creditworthiness from 1977–79 should have been used for grants in those years; (2) the discount rate during USIMINAS's uncreditworthy period included compensating balances, which the Department has recognized are not required in Brazil; and (3) the maximum interest rate inherently includes a risk premium and, therefore, the addition of a risk premium is not justified.

DOC Position: We have found USIMINAS to be creditworthy through 1979, and uncreditworthy from 1980 through 1983 (see "Final Affirmative Countervailing Determinations; Certain Carbon Steel Products from Brazil" (49 FR 17988) and "DOC Position" on respondents' Comment 10 above). In accordance with the Subsidies Appendix, we have calculated a discount rate for allocating benefits received during the uncreditworthy period by adding a risk premium to the highest commercial interest rate a creditworthy borrower would have to pay in order to receive a loan. The rate for discounting accounts receivable, including compensating balances, is the best information available on the highest commercial interest rate applicable to creditworthy borrowers. The addition of a risk premium to this rate reflects the additional risk in lending to an uncreditworthy firm. For grants received during the period when USIMINAS was creditworthy we used a discount rate reflecting the firm's creditworthiness.

Comment 19: The government of Brazil contends that the CDI program is generally available to all industries of Brazil.

DOC Position: We disagree. Under the terms of Decree-Law 1428, which instituted the CDI program, exemptions from the IPI tax and import duties under the CDI program were limited to certain government-approved projects in fourteen selected industries. Based on the record of this and earlier countervailing duty determinations on Brazilian products, we have no evidence that this requirement does not allow the government of Brazil to target benefits to particular companies.

Comment 20: Respondents argue the Department erred in setting the threshold for "significant effect" of upstream subsidies on the cost of

production of a downstream product at one percent. Respondents also cite a number of previous antidumping and countervailing duty, and other precedents where the numerical value of the term "significant" was considered higher than one percent.

DOC Position: Our determination with respect to the signifiant effect test is addressed in the "Upstream Subsidies" section of the notice.

Comment 21: Respondents argue that the Department erred in calculating a separate "significant effect" for each supplier of subsidized steel inputs, because ACESITA's flat-rolled capacity far exceeds the total demand of the tillage tool producers. Accordingly, the higher domestic subsidy rate for USIMINAS is irrelevant in determining either significant effect or competitive benefit.

DOC Position: The fact that ACESITA's capacity exceeds the total demand for tillage tool inputs is irrelevant because tillage tool producers purchase steel inputs from both ACESITA and USIMINAS. Therefore, any domestic subsidies accruing to USIMINAS can potentially have a significant effect on the purchasers' costs of production.

Comment 22: The government of Brazil argues that the Department erred in assuming a full pass-through of upstream subsidies to tillage tool producers, because these subsidies benefit the entire operations of the company rather than specific inputs.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 23: The government of Brazil contends that, in making its competitive benefit analysis, the Department erroneously disregarded the competitive, arms-length prices charged by the two steel suppliers, ACESITA and USIMINAS.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 24: Respondents contend that since the prices paid to ACESITA and USIMINAS by the tillage tool producers are still lower than the benchmark steel import price, competitive benefit should be measured by constructing average adjusted, unsubsidized prices for both ACESITA and USIMINAS. When this is done, USIMINAS' average adjusted price is lower than ACESITA's. Consequently, respondents argue, steel purchasers received no competitive benefit from subsidies to ACESITA since they could have purchased all their inputs from USIMINAS at a lower price.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 25: The government of Brazil contends that the use of Japanese surrogate prices is inappropriate since Brazilian tillage tool producers do not purchase sheet from Japan. Furthermore, the Japanese price used was a price to the East Coast of the United States which bears no relationship to prices to Brazil.

DOC Position: Because we have determined that no significant effect exists, the issue of which benchmark price to use is moot. However, the government of Brazil is incorrect in its statement that we used, in our preliminary determination, a price to the East Coast of the United States. We used an average Japanese export price to all markets except the United States.

Comment 26: The government of Brazil contends the Department erred in weight-averaging its surrogate domestic and import prices. This averaging is erroneous and bears no relationship to competitive benefit. The Department should have used the lowest unsubsidized price as its benchmark price.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 27: Respondents contend that the Department erred in weight-averaging surrogate Brazilian domestic steel prices, one including import duties and the other excluding import duties. Because we are seeking to determine whether tillage tools exported to the U.S. are subsidized, the higher effective price of steel imports used to make tillage tools sold in Brazil is irrelevant and import duties should be excluded from the benchmark formula.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 28: Respondent argue that the Department incorrectly relied on the formula set out in section 771A(b) of the Act in calculating the amount of "competitive benefit," since the value of the upstream subsidy to the downstream user is not necessarily equal to the difference between the price of the subsidized input and that which would be paid to another seller in an arms-length transaction.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 29: Respondents argue that the Department erred in summarily rejecting the concept that upstream subsidies must be afforded to specific industries in order to be countervailable. They contend that the inputs at issue (flat-rolled steel products), are used by virtually all manufacturing sectors in Brazil, making the provision of "benefits" to such a large economic sector generally available.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 30: The government of Brazil maintains that the Department applied incorrect standards in determining that Brazilian export subsidies are inconsistent with the Subsidies Code. In particular, the Department ignored Brazil's commitment under the GATT to phase out its export subsidies. Unless the Department determines that Brazil is in violation of its commitment, it cannot find Brazil's export subsidies to be inconsistent with the Subsidies Code.

DOC Position: Our determination with respect to whether Brazilian export subsidies are inconsistent with the Subsidies Code is addressed in the "Critical Circumstances" section of this notice.

Comment 31: The government of Brazil contends that the Department erred in finding a massive increase in imports of tillage tools in a relatively short period. Increases in shipments in 1984 and 1985 were lower than increases in 1981 and 1982. Moreover, the Department's comparison of import levels for the seven months preceding the filing of the petition with import levels during the seven months following filing is arbitrary, a sixteen percent increase is not massive, and, the increase reflects the cyclical nature of demand for this product.

DOC Position: Respondents have provided no reason as to why a comparison of the percentage increase in imports in 1984 and 1985 to the percentage increases in 1981 and 1982 is an appropriate measure of whether there has been a massive increase in imports over a relatively short period of time. Indeed, as respondents have pointed out we would expect the rate of increase to be much higher in the earlier period because imports were effectively zero in 1980. Nor have they provided any evidence regarding cyclical demand for the product or why a sixteen percent increase should not be considered massive. We focus on the months following the filing of the petition to be the "relatively short period" referred to by the statute because we regard the purpose of the critical circumstances provision as acting as a deterrent to exporters who would try to circumvent the intent of the law by increasing shipments during this period.

Comment 32: Respondents argue that the Department has mistakenly equated the term "serious prejudice" with the "material injury" standard of the ITC. Not only does this undermine the statutory authority of the ITC, but a casual link must be demonstrated between the export subsidy and the "serious prejudice" to a signatory.

DOC Position: Our determination with respect to the issue of "serious prejudice" is addressed in the "Critical Circumstances" section of this notice.

Critical circumstances

Where, as in this case, petitioners have alleged the existence of critical circumstances, section 705(a)(2) of the Act requires us to include in our final determination "a finding as to whether—(A) the subsidy is inconsistent with the Agreement, and (B) there have been massive imports of the class or kind of merchandise involved over a relatively short period.'

A. Consistency With the Subsidies Code

We have determined that the government of Brazil provides export subsidies on the merchandise under investigation. As we noted in our preliminary determination (50 FR 24270), Article 9 of the Subsidies Code prohibits the use of export subsidies on non-primary products. When given by developed countries, such subsidies are inconsistent with the Subsidies Code and are actionable under its dispute settlement provisions. However, Article 14 section 3 provides an exception for developing countries, provided they do not use "export subsidies on their industrial products . . . in a manner which causes serious prejudice to the trade or production of another signatory." For a developing country like Brazil, then, the issue is whether we find export subsidies causing "serious prejudice" to trade or production of agricultural tillage tools in the United States. Under section 771(7)(C)(iii) of the Act, the ITC evaluates all relevant economic factors bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investment, and capacity utilization. Thus, in making its preliminary and final injury determinations, the ITC considers trade and production in the United States. We conclude that, in principal, serious prejudice can exist where material injury to a U.S. industry occurs by reason of imports benefiting from export subsidies. Therefore, should the ITC make a final determination of material injury, we determine serious prejudice exists.

If the ITC's final determination should be negative, our critical circumstances finding will be moot; in any event, under section 705(a)(4)(A) of the Act, the ITC must make its own affirmative determination of critical circumstances to effect our affirmative finding. If the ITC's final determination is that a U.S. industry is threatened with material injury, we conclude serious prejudice does not exist therefore, critical circumstances do not exist.

We stress that this finding is limited to the facts of this case and the application of Article 14 section 3 of the Subsidies Code. This finding draws no conclusion, and none should be inferred, with respect to the commitment made by the government of Brazil under Article 14 section 5 of the Subsidies Code. Under Article 14 section 5, developing countries are urged to "enter into a commitment to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs." Article 14 section 6 precludes any signatory from taking countermeasures pursuant to the provisions of Parts II and VI of the Subsidies Code against any export subsidies of such developing country, to the extent that the subsidies in question are covered by a commitment made under Article 14 section 5.

Parts II and VI of the Subsidies Code concern notification of subsidies and international dispute settlement. Significantly, Article 14 section 6 does not affect actions taken under Part I of the Subsidies Code, concerning domestic countervailing duty proceedings.

B. Massive Imports

In determining whether there have been massive imports over a relatively short period, we considered the following factors: (1) Whether imports have surged recently, (2) whether recent imports are significantly above the average calculated over several years (1980–1984), and (3) whether the patterns of imports over that four-year period may be explained by seasonal swings. Based upon our analysis of the information, we determine that imports of the products covered by this investigation appear massive over a relatively short period.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. Commerce officials spent the period from June 20 to July 11, 1985, verifying the information submitted by respondents and the government of Brazil, and gathering additional information to be used in this determination. We followed normal verification procedures, including inspection of documents and ledgers, and tracing the information in the response to source documents, accounting ledgers, and to financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of certain agricultural tillage tools from Brazil entered, or withdrawn from warehouse, for consumption, on or after March 12, 1985. As of the date of publication of this notice in the Federal Register, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended and the Customs Services should require a cash deposit or bond of 8.06 percent *ad valorem* for each such entry of this merchandise. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will detemine whether these imports materially injure, or threaten material injury to, a U.S. industry 45 days after the date of publication of this notice.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that material injury and critical circumstances do exist, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on certain agricultural tillage tools from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation indicated in the "Suspension of Liquidation"

section of this notice, equal to the net subsidy of 8.06 percent *ad valorem*. If the ITC determines that a threat of material injury exists, or that material injury exists but critical circumstances do not exist, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on certain agricultural tillage tools from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of our preliminary determination (June 10, 1985), equal to the net subsidy of 8.06 percent *ad valorem*.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

August 19, 1985.

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BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; North Carolina State University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 86-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85-263. Applicant: North Carolina State University, Box 7908, Raleigh, NC 27695-7908. Instrument: Soil Testing System. Manufacturer: GDS Instruments, Limited, United Kingdom. Intended use: Studies of both trimmed samples of natural soil and reconstituted samples. The phenomena to be studied will be the stress-strain properties and shear strength of the soil. The objective of these studies is to experimentally determine the compressibility that should be used to predict the amount of settlement of buildings constructed and to determine the shear strength for use in design of retaining walls and excavated slopes. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85-264. Applicant: Berea College, CPO 1630, Berea, KY 40404. Instrument: Planetarium Projector and Remote Control Console, Model MS-10. Manufacturer: Minolta Camera Company, Limited, Japan. Intended use: The instrument is intended to be used for teaching the following courses:

1. Physics 111—Introduction to Astronomy.
2. Physics 270—Advanced Astronomy.
3. Physics 115—General Physics I.
4. Physics 215—Intermediate Mechanics and Heat.
5. Education 200—Teaching Science in the Elementary School.
6. Education 214—Methods of Teaching Secondary School Science.
7. General Studies 206—Religious and Historical Perspectives.
8. General Studies 232—Natural Science.

Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85-265. Applicant: University Medical Center, Clinical Pathology, 1501 N. Campbell Avenue, Tucson, AZ 85724. Instrument: Electron Microscope, Model JEM-100CXCII. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument is intended to be used to study the structure of various biologic specimens involved in human diseases. Studies will be done correlating the transmission image with the elemental content using the x-ray analysis capabilities of the instrument. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85-266. Applicant: University of California, San Diego, Department of Chemistry, D-006, La Jolla, CA 92093. Instrument: Stopped Flow Apparatus. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended use: The instrument is intended to be used in kinetic studies of heme proteins, which transport and utilize oxygen in living systems, and synthetic iron porphyrin or other iron complexes which mimic the biological system. It will be used to follow rapid chemical and biochemical reactions. The objectives of the experiments to be conducted are to understand the mechanisms by which oxygen is transported by iron proteins and to understand in detail the mechanisms of oxidation of organic compounds catayzed by enzymes such as cytochrome P-450 and drugs such as bleomycin. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85-267. Applicant: East Carolina University, Fifth Street, Greenville, NC 27834. Instrument: Electron Microscope, Model JEM-1200EX. Manufacturer: JEOL, Limited, Japan. Intended use: The instrument is intended to be used to view and analyze cells in various organs and tissues following experimental treatment. The research projects will include:

(1) Determining the role of ovarian nerves in reproductive function.

(2) Delineating the diversity and migration of macrophages and their role in the immune response.

(3) Determining the role of opioid peptidergic neurons in the brain.

(4) Determining the influence of elevated prolactin (as found in many pituitary tumors) on gonadotrope cells;

(5) Defining the control of muscle protein metabolism during exercise.

In addition, the instrument will be used in training M.D. and Ph.D. candidates in biomedicine. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85-269. Applicant: Columbia University, Department of Chemistry, 119th Street & Broadway, New York, NY 10027. Instrument: Spectropolarimeter, Model J-500A. Manufacturer: Japan Spectroscopic Company, Limited, Japan. Intended use: The article is intended to be used to conduct research in the following areas:

a. Development of inorganic complexes as probes for DNA helical conformation and the design of drugs that bind to DNA with high stereospecificity.

b. Conformational changes of biopolymers, e.g., kinetics of self-assembly of hemoglobin, folding kinetics of Hb a and b chains, B to Z transition of DNA.

c. Development of catalysts that mimic enzymes.

d. Development of helical metallocenes and the study of their binding to DNA.

e. Development of the exciton chirality method and its application in micro-scale studies of oligosaccharide structures.

f. Studies on the chiral properties of the retinal binding site in visual pigments, bacteriorhodopsin, and related pigments.

g. Synthetic studies of chiral induction using chiral auxiliaries. Application received by Commissioner of Customs: August 2, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-20325 Filed 8-23-85; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Purdue University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–257. Applicant: Purdue University, 401 South Grant Street, Freehafer Building, West Lafayette, IN 47907. Instrument: Electron Microscope, Model EM 109TS with Accessories. Manufacturer: Carl Zeiss, Incorporated, West Germany. Intended Use: Studies of biological specimens—cells, tissues and subcellular fraction—in experiments to monitor and evaluate, at the ultrastructural level, separations achieved in a cell/organelle subfractionation facility. Investigations will be conducted to accurately document the morphology of the specimens under investigation and to provide quantitation of those morphological parameters required to provide conclusive evaluations of fraction purity, changes during different developmental changes, etc. The instrument will also be used for training purposes in Biology and Medicinal Chemistry courses. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85–258. Applicant: The Institute for Orgonomic Science, P.O. Box 304, Gwynedd Valley, PA 19437. Instrument: Light Microscope with Camera Attachments and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies of tissue and blood cells of experimental animals (mice). Pathologic changes in structure and function of living tissue and blood cells and pathologic morphology of fixed and stained tissue will be investigated to determine the effects of carcinogenic stimuli on these issues. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85–259. Applicant: University of Oklahoma, 660 Parrington Oval, Norman, OK 73019. Instrument: Mass Spectrometer, Model MS–25 with Accessories. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended Use: Studies of pure chemical compounds and mixtures of chemical compounds including but not limited to: polynuclear aromatic carcinogenic materials, highly polar oxygenated derivatives of nucleotides and other chemicals of biological/biochemical origin, and trace compounds from marine organisms and bacteria. The objective of all the studies envisioned is the determination of the structure of molecules, whether available in pure form or in mixtures. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85–260. Applicant: State University of New York at Stony Brook, Stony Brook, NY 11794. Instrument: Monolayer Handling Instrumentation. Manufacturer: Mayer-Feintechnik, West Germany. Intended use: Study of the molecular area, surface pressure, and surface potential of multicomponent lipid monolayer and multilayer assemblies formed from the following materials: phosphatidylcholine, triphosphoinositide, ganglioside, and phosphatidylserine. Experiments will be conducted to measure the dependence of surface potential on the subphase composition for a single film. These assemblies will be formed over the following aqueous substrates: 0.1M NaCl, 0.001M NACl, 0.01M NaCl. The same monomolecular film (monolayer) will be transferred from one substrate to another, to measure the accompanying change in surface potential. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85–261. Applicant: Michigan State University, East Lansing, MI 48824. Intrument: Electron Microscope, Model JEM–100 CXII with Accessories. Manufacturer: JEOL, Japan. Intended use: The instrument is intended to be used to carry out the following research projects:

1. Fine structure of animals treated with pyrethroid pesticides.
2. Analysis of WH, a mutation in the Syrian hamster.
3. Ultrastructure of methyl mercury toxicity in neurons.
4. Spatial orientation of axonal microtubules.
5. Morphological studies of isolated mammalian myocytes.
6. Biodynamics of the nuclear membrane and matrix.
7. Ultrastructure of action of prostaglandins.
8. Ultrastructural analysis of fibroblast growth regulator.

In addition, the intrument will be used in the training of graduate students and postdoctoral fellows for high resolution TEM. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85–262. Applicant: North Carolina State University, Soil Science Department, Box 7619, Raleigh, NC 27695–7619. Instrument: Root Length Scanner. Manufacturer: Commonwealth Aircraft Corporation Limited, Australia. Intended use: The instrument is intended to be used to measure the length of plant roots in an attempt to identify the best combinations of plows, disks, etc. which can be used to maximize the length of crop roots in soil. Application received by Commissioner of Customs: August 2, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–20327 Filed 8–23–85; 8:45 am]

BILLING CODE 3510–DS–M

The Pennsylvania State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–158. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Electrophoresis Apparatus, Model Mark II with Accessories. Manufacturer: Rank Brothers, United Kingdom. Intended use: See notice at 50 FR 21481.

Comments: None.

Decision: Denied. An instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The applicant has not adequately supported the claim for duty-free waiver, which rests on a demonstration that a domestic instrument suitable for the institution's purposes is not available. In fact, the applicant in response to Question 8.c.(2) states that the domestic instrument (Model 501 Laser Zee Meter) manufactured by PenKem, Inc., Bedford Hills, NY, ". . . would be suitable for our purposes but its cost ($16,000) was well beyond the funds available." Cost and the availability of funds may not be

considered in making our finding. Accordingly, we deny pursuant to § 301.5(d)(1)(i) and § 301.5(d)(3) of the regulations.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-20326 Filed 8-23-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Daniel H. Mann

On June 25, 1985, notice was published in the **Federal Register** (50 FR 26243) that an application had been filed by the Daniel Mann, (P361), College of Forest Resources, AR-10, University of Washington, Seattle, Washington 98195 to import 20 unidentified whale bones.

Notice is hereby given that on August 16, 1985, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: August 20, 1985.

Carmen J. Blodin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-20356 Filed 8-23-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary Retirement Board of Actuaries; Meeting

AGENCY: Department of Defense, Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of chapter 74, title 10, United States Code (10 U.S.C. 1461 et. seq). The Board shall review and authorize the FY86 normal cost percentage and unfunded liability payment of the military retirement system. The FY87 DoD budget figures will be approved. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 17, 1985, 1:00 p.m. to 5:00 p.m.

ADDRESS: Room 3E794, the Pentagon (River Entrance).

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, Defense Manpower Data Center, 4th floor, 1600 Wilson Blvd., Arlington, Virginia 22209 (202/696-5793).

Linda M. Lawson,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-20359 Filed 8-23-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Armed Forces Epidemiological Board; Closed Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a closed meeting of the Armed Forces Epidemiological Board has been scheduled on September 11-13, 1985 at the McCormick Facility Parson's Island, Kent Island, Maryland.

2. As defined in section 552(b) of Title 5 United States Code, subparagraphs 2 and 6, this meeting, commencing at 1300 hours on September 11 and concluding at 1200 hours September 13, will be closed to the public due to a comprehensive review of immune deficiency diseases involving patient case reports, disclosure of which would constitute unwarranted invasion of individual patient privacy. In addition, discussions involving representatives from the Department of Defense, Health Affairs and the other military medical services will include and involve substantive issues relative to internal personnel rules and Department of Defense agency practices.

Dated: August 13, 1985.

Robert F. Nikolewski,

Col, USAF, BSC, Executive Secretary.

[FR Doc. 85-20351 Filed 8-23-85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee, National Energy Security Policy Task Force; Closed Meeting; Correction

Notice was given August 1, 1985, at 50 FR 31218 of a meeting of the Chief of Naval Operations Executive Panel Advisory Committee National Energy Security Policy Task Task Force on August 29-30, 1985, from 9 a.m. to 5 p.m. each day. The dates and times for the meeting have been changed to October 1-2, 1985, from 9 a.m. to 5 p.m. All other information in the previous notice remains effective.

For further information on this meeting contact Lieutenant Thomas E. Arnold, Executive Secretary of the Chief on Naval Operations Executive Panel Advisory Committee, telephone (703) 756-1205.

Dated: August 21, 1985.

R.E. Coyle,

Captain, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 85-20332 Filed 8-23-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Withdrawal of Intent To Prepare an Environmental Impact Statement for Powerplant Conversions to Coal in the State of Florida

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Withdrawal of Intent to Prepare an Environmental Impact Statement for Powerplant Conversions to Coal in the State of Florida.

SUMMARY: The Department of Energy (DOE) announces its intent to withdraw the April 7, 1982, notice of intent to prepare an environmental impact statement (EIS) (47 FR 15088). DOE is preparing an environmental impact

report which will be available in September 1985. Those individuals who would like to receive a copy of this report should contact Ms. Deborah Valentine at the address printed below.

FOR FURTHER INFORMATION CONTACT:

Deborah Valentine, RG–22, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–9504

Elizabeth V. Jankus, EH–151, Environmental Compliance Division, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–6374

SUPPLEMENTARY INFORMATION: On April 7, 1982, DOE announced its intent to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA), to analyze the potential environmental impacts associated with the proposed conversions of up to 31 powerplants at 15 stations in Florida from oil to coal, later revised to 27 powerplants and 14 stations. The powerplants included in the environmental impact analysis were selected and submitted to DOE by the Florida Public Service Commission as potential recipients of proposed prohibition orders under the amended Powerplant and Industrial Fuel Use Act of 1978 (FUA). Under FUA, as amended by the Omnibus Budget Reconciliation Act of 1981, a utility may certify to DOE that it is technically and economically feasible to convert a powerplant from oil to coal. DOE may then issue to the utility a prohibition order after completion of the appropriate level of compliance required by NEPA.

To date, none of the subject utilities have certified that it is technically and economically feasible to convert their powerplants. Therefore, DOE has decided not to prepare an EIS. However, DOE will utilize the environmental impact analysis to prepare an environmental impact report entitled "The Florida Statewide Coal Conversion Study: A Report on the Potential Environmental Impacts of the Conversion of up to 27 Powerplants from Oil to Coal or Alternate Fuels." This report will be made available in September 1985. Questions regarding the withdrawal notice or the environmental report should be addressed to Ms. Valentine at (202) 252–9504.

Issued in Washington, DC, on August 12, 1985.

William A. Vaughan,

Assistant Secretary, Environment, Safety, and Health.

[FR Doc. 85–20283 Filed 8–23–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 3133–007 et al.]

Hydroelectric Applications, (Union Water Power Co. et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Transfer of License (Major).

b. Project No. 3133–007.

c. Dated Filed: July 29, 1985.

d. Applicant: Union Water Power Company, Public Service Company of New Hampshire and Errol Hydroelectric Limited Partnership.

e. Name of Project: Errol Dam.

f. Location: On the Androscoggin River in Coos County, New Hampshire and Oxford County, Maine.

g. Filed Pursuant to: Section 9 of the Federal Power Act Sections 791(a)–825(r).

h. Contact Person: Mr. Charles E. Monty, Union Water Power Company, Edison Drive, Augusta, ME 04336.

i. Comment Date: September 30, 1985.

j. Description of Project: On August 29, 1983, a major license was issued to the Public Service Company of New Hampshire (PSNH) and Union Water Power Company (UWPC) to construct, operate, and maintain the Errol Dam Project No. 3133. The PSNH intends to sell its interest in the project to the Errol Hydroelectric Limited Partnership (EHLP). For that reason, UWPC, PSNH and EHLP have filed a request that the project license be transferred to UWPC and EHLP.

k. This notice also consists of the following standard paragraphs: B and C.

2. a. Type of Application: Major License (Over 5MW).

b. Project No.: 5993–001.

c. Date Filed: December 3, 1982.

d. Applicant: White Chuck Water Company.

e. Name of Project: Lime Creek.

f. Location: On Lime Creek, tributary to the Suiattle River, in Snohomish and Skagit Counties, Washington, and affecting U.S. lands within the Mt. Baker National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. William N. Fowler, White Chuck Water Company, 91 Newbury Street, Boston, MA 02116.

i. Comment Date: September 23, 1985.

j. Competing Application: Project No. 5792, Date Filed: 05/14/82.

k. Description of Project: The proposed run-of-river project would consist of: (1) A 6-foot-high, 40-foot-long ogee-type reinforced-concrete diversion weir across Indigo Creek having spillway crest elevation 3,360 feet msl and having a gated, screened intake structure along the right bank with a fishway/sluiceway; (2) a 2-foot-diameter, 5,700-foot-long steel pipeline leading to; (3) a 6-foot-high, 30-foot-long ogee-type reinforced-concrete diversion weir across Unnamed Creek having spillway crest elevation 3,215 feet msl and having a gated, screened intake structure along the right bank with a fishway/sluiceway; (4) a 2½-foot-diameter, 2,500-foot-long steel pipeline leading to; (5) an 8-foot-high, 60-foot-long ogee-type reinforced-concrete diversion weir across Meadow Creek having spillway crest elevation 3,200 feet msl and having a gated, screened intake structure along the right bank with a fishway/sluiceway; (6) a 3-foot-diameter 1,300-foot-long steel penstock; (8) an upper powerhouse containing a generating unit rated at 2.5-MW operated at a gross head of 480 feet and at a flow of 76 cfs; (9) a 13,600-foot-long, 13.5-kV underground transmission line; (10) a 350-foot-long tailrace leading to; (11) a 10-foot-high, 70-foot-long ogee-type reinforced-concrete diversion wier across Lime Creek having spillway crest elevation 2,700 feet msl and having a gated, screened intake structure along the right bank with a fishway/sluiceway; (12) a 4½-foot-diameter, 13,600-foot-long steel penstock; (13) a lower powerhouse containing a generating unit rated at 2.5-MW operated at a flow of 30 cfs and a generating unit rated at 15.0-MW operated at a flow of 200 cfs both operated at a gross head of 1,260 feet; (14) a 4½-foot-diameter, 900-foot-long pipe tailrace and a 5-foot-diameter, 150-foot-long pipe tailrace; (15) 22.3-mile-long, 34.5-kV underground transmission line; and (16) new temporary access roads to the Indigo Creek Diversion, Meadow Creek Diversion, and the lower powerhouse. Applicant would also construct and maintain recreational facilities consisting of a roadside turnout, campground, and picnic area.

l. Purpose of Project: Applicant estimates that the average annual generation for the Upper Development

would be 7,400-MWh and the Lower Development would be 67,000-MWh. The project total construction cost would be $21,855,000 in 1983 dollars. Project energy would be sold.

m. This notice also consists of the following standard paragraphs: A5, B, and C.

3 a. Type of Application: Major License.

b. Project No.: 6151–006.

c. Date Filed: November 15, 1984.

d. Applicant: S.V. Hydrotech, Incorporated.

e. Name of Project: Cabin Creek.

f. Location: On Cabin Creek, tributary to the Humma Hamma River, in Mason and Jefferson Counties, Washington, and affecting lands within the Olympic National Forest.

g. Filed Pursuant to: Federal Power Act., 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael Smith, S.V. Hydrotech, Inc., 11400 Washington Plaza West, Suite 1203, Reston, VA 22090.

i. Comment Date: September 23, 1985.

j. Competing Application: Project No. 5900, Date Filed: 01/19/82.

k. Description of Project: The proposed run-of-river project would consist of: (1) A 6-foot-high, 30-foot-long ogee-type reinforced-concrete diversion weir having spillway crest elevation 1,501 feet msl and having a 1-foot-deep, 4-foot-long low-flow notch and a gated sluiceway; (2) an intake structure at the right (west) bank; (3) a 30-inch-diameter, 5,400-foot-long buried steel pipeline; (4) a 30-inch-diameter, 1,800-foot-long steel penstock; (5) a powerhouse containing a generating unit rated at 2.89–MW operated at a net head of 850 feet and at a flow of 45 cfs; (6) a 60-inch-diameter, 25-foot-long pipe tailrace; (7) a 7.0-mile-long, 12.47–kV transmission line; and (8) a 1,200-foot-long access road to the powerhouse and a 3,300-foot-long access road to the diversion.

This application has been accepted for filing as of April 1, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to *Eagle Power Company*, 28 FERC ¶61,061 issued July 18, 1984. Applicant estimates that the average annual generation would be 11,870,000 kWh and that the total construction cost in 1984 dollars would be $3,645,000. Project energy would be sold.

l. This notice also consists of the following standard paragraphs: A9, B, C, and D1.

4 a. Type of Application: License (Under 5MW).

b. Project No.: 6279–001.

c. Date Filed: May 25, 1985.

d. Applicant: F & T Services Corporation.

e. Name of Project: Bayou D'Arbonne.

f. Location: Bayou D'Arbonne, Union Parish, Louisiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. V.A. Forte, F & T Services Corporation, Post Office Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed project would consist of: (1) the existing Bayou D'Arbonne Lake Dam owned by the State of Louisiana, an approximately 2,400-foot-long, 34-foot-high earthfill structure (2) an existing reservoir, approximately 15,250 acres in surface area, with a storage capacity of approximately 130,000 acre-feet; (3) a proposed siphon intake structure; (4) three proposed penstocks, each about 280 feet long, and 8 feet in diameter; (5) a proposed powerhouse containing three generating units of 600 kW capacity each; (6) a proposed tailwater channel, approximately 130 feet long and 45 feet wide; (7) a proposed ½ mile long transmission line; and (8) appurtenant facilities.

k. Purpose of Project: The estimated average annual generation of 6,622,560 kWh would be sold to Louisiana Power and Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

5 a. Type of Application: Minor License.

b. Project No.: 6434–006.

c. Date Filed: August 8, 1984.

d. Applicant: Thomas A. Nelson.

e. Name of Project: Ditch Creek Hydro.

f. Location: On Ditch Creek, within Boise National Forest in Valley County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Warren B. Nelson, 3410 Montvue Drive, Meridian, ID 83642.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 45-foot-long aluminum diversion dam with the crest at elevation 6,020 feet; (2) an 18-inch-diameter, 5,200-foot-long penstock; (3) a log powerhouse at elevation 5,320 feet containing two generating units with a total rated capacity of 440 kW operated at a head of 680 feet and at a flow of 10 cfs; and (4) a 69-kV, 100-foot-long transmission line connecting to an existing Idaho Power Company transmission line. A fish passage facility would be constructed at the diversion and step-dams are proposed to be installed below the diversion site to enhance the fishery. The project would have an average annual generation of 2.4 GWh and an estimated cost, as of August 1984, of $450,000.

This application has been accepted for filing as of June 15, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd. et al., 28 FERC ¶ 61,062, issued July 18, 1984.

k. Purpose of Project: Project output would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A9, B, C, and D1.

m. License or Conduct Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

6 a. Type of Application: Major License (Under 5MW).

b. Project No.: 7077–001.

c. Date Filed: November 23, 1984.

d. Applicant: Frontier Land and Power.

e. Name of Project: Genesee.

f. Location: On Little Grizzly Creek, a tributary to Indian Creek, thence to the North Fork Feather River, near Genesee, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bruce McDowell, Frontier Land and Power, 3054 Franklin Street, San Francisco, CA 94123, (415) 885–6160.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 5-foot-high, 50-foot-long concrete diversion structure located across Little

Grizzly Creek at elevation 4,250 feet msl; (2) a 42-inch-diameter, 8,500-foot-long steel pipe penstock; (3) a powerhouse located at elevation 3,840 feet msl in the SE ¼ of the SW ¼ of Section 17, T25N R11E MDM, containing five 400 kW reaction turbine-generator units with a total installed capacity of 2.0 MW and producing an estimated average annual generation of 6.132 GWh; (4) a tailrace; and (5) a 7,000-foot-Long primary transmission line to incterconnect the project to an existing Pacific Gas and Electric Company (PG&E) line. The project would be located entirely on Plumas National Forest lands. Project power would be sold to PG&E. Applicant estimates the project cost at $2 million.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

7 a. Type of Application: License (Minor).

b. Project No.: 7342–001.

c. Date Filed: November 23, 1984.

d. Applicant: Manti City Corporation.

e. Name of Project: Manti Canyon Towr Project.

f. Location: Manti Creek in Sanpete County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Patrick M. Hanlon, Esq., Shea & Gardner, 1800 Massachusetts Avenue, NW, Washington, D.C. 20036.

i. Comment Date: October 15, 1985.

j. Description of Project: The Lower Manti Project is currently a constructed operating unlicensed project, part of which is located within the Manti-Lasal National Forest. A proposed redevelopment of the project consists of: (1) Removing the present diversion structure, powerhouse canal, and penstock; (2) constructing a new diversion structure, 4 feet high and 35 feet long, across Manti Creek about 2,080 feet upstream of the present structure; (3) constructing a new penstock, 24-inches to 30-inches in diameter and 10,200 feet long; (4) renovating the powerhouse and installing a new turbine-generator unit rated at 1,285 kW, replacing the existing 105-kW unit; (5) constructing a new concrete tailrace returning flow to Manti Creek; (6) utilizing the existing 4.160-kV transmission line to Manti's distribution system; and (7) providing appurtenant new facilities. The Applicant estimates that the average annual energy output will be increased from 750,000 kWh to 5,024,170 kWh.

k. Purpose of Project: Project energy will continue to be utilized by the Applicant.

l. This application has been accepted for filing as of June 6, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to Eagle Power, 28 FERC ¶ 61,061 issued July 18, 1984.

m. This notice also consists of the following standard paragraphs: B and C.

8 a. Type of Application: Conduit Exemption.

b. Project No.: 8375–001.

c. Date Filed: December 13, 1984.

d. Applicant: Blind Canyon Aquaranch, Incorporated.

e. Name of Project: Blind Canyon.

f. Location: At Blind Canyon, on a tributary to the Snake River, in Gooding County, Idaho.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Samuel F. Curtis, Jr., Route 3–6 Ranch View W., Twin Falls, ID 83301.

i Comment Date: September 23, 1985.

j. Description of Project: The proposed project would utilize return flows from the North Side Canal Irrigation Company S. Coulee sediment holding pond located at the head of Blind Canyon and would consist of: (1) A 2,000-foot-long canal; (2) a headworks structure; (3) an 800-foot-long, 45-inch-diameter penstock; (4) a powerhouse containing two generating units each rated at 610-kW operated at a head of 300 feet and at a flow of 30 cfs; (5) a transformer; (6) a 500-foot-long transmission line; and (7) a short tailrace to the Snake River.

Applicant estimates that the average annual energy production would be 5,656,896 kWh. Project energy would be sold.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

9 a. Type of Application: Exemption (5MW or less).

b. Project No.: 8960–000.

c. Date Filed: February 8, 1985.

d. Applicant: Jared E. and Pamela Holve.

e. Name of Project: Bear Creek Hydroelectric Project.

f. Location: On Bear Creek, partly within the Sequoia National Forest, in Tulare County, California.

g. Filed Pursuant to: Section 408 of Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Jared E. and Pamela Holve, Route 2, Box 190, Springville, CA 93265.

i Comment Date: September 23, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 3-feet-high concrete diversion dam at elevation 3,200 feet; (2) a 24-inch-diameter, 7,350-foot-long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 1,200 kW operating under a head of 1140 feet; and (4) a 2,000-foot-long, 12-kV transmission line will connect the project with an existing Southern California Edison Company's (SE) line north of the powerhouse.

k. Purpose of Project: The project's estimated annaul generation of 4.3 million kWh will be sold to SCE.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

10 a. Type of Application: Preliminary Permit.

b. Project No: 9109–000.

c. Date Filed: April 16, 1985.

d. Applicant: ATCP Associates.

e. Name of Project: Soapstone.

f. Location: On Grizzly Creek, near Storrie, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Roy Avery, ATCP Associates, 2001 Odyssey Falls, Greenwood, CA 95635, (702) 826–8032.

Mr. Robert F. Young, Raymond Vail & Associates, 1410 Ethan Way, Sacramento, CA 95825, (916) 929–3323.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 80-foot-long Gabion-type diversion structure across Grizzly Creek at elevation 2,400 feet msl; (2) a 42-inch-diameter, 10,000-foot-long pipeline; (3) a 42-inch-diameter, 1,500-foot-long penstock; (4) a powerhouse located adjacent to Grizzly Creek at elevation 1,600 feet msl, containing a single Pelton turbine-generator unit with a rated capacity of 4.9 MW and producing an estimated average annual generation of 8.45 GWh; (5) a tailrace; and (6) a 700-foot-long, 12-kV transmission line. Project power would be sold to Pacific Gas and Electric Company (PG&E).

A preliminary permit, if issued, does not authorize construction. Applicant seeks a preliminary permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $150,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. The proposed project would be located within the project boundary of PG&E's Bucks Creek Project No. 619.

11 a. Type of Application: Preliminary Permit.

b. Project No: 9111–000.

c. Date Filed: April 16, 1985.

d. Applicant: ATCP Associates.

e. Name of Project: Storrie.

f. Location: On Bucks Creek, a tributary to the North Fork Feather River, near Storrie, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Roy Avery, ATCP Associates, 2001 Odyssey Falls, Greenwood, CA 95635, (702) 826–8032.

Mr. Robert F. Young, Raymond Vail and Associates, 1410 Ethan Way, Sacramento, CA 95825, (916) 929–3323.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 80–foot-long gabion diversion dam located across Bucks Creek at elevation 2,200-feet msl; (2) a 42-inch-diameter, 5,000-foot-long pipeline; (3) a 42-inch-diameter, 1,200-foot-long penstock; (4) a powerhouse located adjacent to the confluence of Bucks Creek and the North Fork Feather River at elevation 1,840 feet msl, containing a single Pelton turbine-generator unit with a rated capacity of 1.8 MW and producing an estimated average annual generation of 4.56 GWh; (5) a tailrace; and (6) an 800-foot-long, 12-kV transmission line. Project power would be sold to Pacific Gas and Electric Company (PG&E). The project would be located on Plumas National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a preliminary permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $150,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. The proposed project would be located adjacent to PG&E's Bucks Creek Project No. 619.

12a. Type of Application: Preliminary Permit.

b. Project No.: 9125–000.

c. Date Filed: April 22, 1985.

d. Applicant: ATCP Associates.

e. Name of Project: New York.

f. Location: Round Valley Reservoir on North Canyon Creek, near Greenville, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Roy Avery, ATCP Associates, 2001 Odyssey Falls, Greenwood, CA 95635, (702) 826–8032.

Mr. Robert F. Young, Raymond Vail and Associates, 1410 Ethan Way, Sacramento, CA 95825, (916) 929–3323.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed run-of-the-river project would utilize the outlet works at the existing Pacific Gas and Electric Company (PG&E) Round Valley Dam and Reservoir and would consist of: (1) A 24-inch-diameter, 8,500-foot-long pipeline/penstock; (2) a powerhouse located adjacent to North Canyon Creek at elevation 3,670 feet msl, containing a single Pelton turbine-generator unit with a rated capacity of 1.2 MW and producing an estimated average annual generation of 3.288 GWH; (3) a tailrace; and (4) a 3,000-foot-long, 12-kV transmission line. Project power would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a preliminary permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $100,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. The proposed project would be located within the project boundary of PG&E's DeSable-Centerville Project No. 803.

13a. Type of Application: Preliminary Permit.

b. Project No.: 9138–000.

c. Date Filed: April 29, 1985.

d. Applicant: Energy Locators, Inc.

e. Name of Project: Lake Francis Dam.

f. Location: On the Illinois River at Lake Francis in Adair County, Oklahoma and Washington County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Stephen Sloan Thomas, President, Energy Locators, Inc. 903 Mayo Building, Fifth and Main, Tulsa, Oklahoma 74103.

i. Comment Date: September 23, 1985.

j. Competing Application: Project No. 9022–000; Date Filed: March 12, 1985; Due Date: August 12, 1985.

k. Description of Project: The Applicant would utilize an existing dam owned by the City of Siloam Springs, Arkansas. The proposed project would consist of: (1) An existing 6,000-foot-long, earthfilled dam; (2) an existing reservoir with a storage capacity of 2,000 acre-feet and a surface area of 577 acres at powerpool elevation of 936 feet m.s.l.; (3) a proposed 20-foot-long, 42-inch-diameter penstock; (4) a refurbished powerhouse containing one generating unit rated at 100 kW; (5) a proposed 15-foot-long, 10-foot-deep, and 30-foot-long tailrace; (6) a proposed 1,500-foot-long, 12.5-kV transmission line; and (7) appurtenant facilities. The estimated average annual energy output for the proposed project would be 657 MWh.

l. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

14 a. Type of Application: Minor License.

b. Project No.: 9160–000.

c. Date File: May 2, 1985.

d. Applicant: Glenwood Springs Power Company.

e. Name of Project: Twin Tunnels.

f. Location: City of Glenwood Springs, in Garfield County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Scott M. Balcomb, Delaney & Balcomb, PC, P.O. Drawer 790, Glenwood Springs, CO 81602, (303) 945–6546.

i. Comment Date: October 11, 1985.

j. Description of Project: The proposed project would utilize the existing City of Glenwood Springs' water conveyance system and would consist of: (1) A bifurcation in the existing flume leading to the City's pre-treatment storage tanks; (2) a 1,500-foot-long penstock, 18 to 24 inches in diameter; (3) a 37-foot by 31-foot powerhouse containing a single turbine-generator unit with a rated capacity of 650 kW and producing an estimated average annual generation of 2.456 GWh; (4) a tailrace discharging to the Colorado River; and (5) a 1,400-foot-long primary transmission line. Applicant intends to sell the project power to either Public Service Company of Colorado or the City of Glenwood Springs. Applicant estimates the project cost at $1,400,000.

k. Purpose of Project: Municipal raw water is diverted by the City of Glenwood Springs at Grizzly and No Name Creeks and conveyed to two pre-treatment storage tanks. Excess water spills over the tanks and cascades to the Colorado River. Applicant intends to utilize excess spilled water.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

15 a. Type of Application: Minor License

b. Project No.: 9202–000
c. Date Filed: May 20, 1985
d. Applicant: Upper Yampa Water Conservancy District
e. Name of Project: Stagecoach
f. Location: On the Yampa River, near Steamboat Springs, in Routt County, Colorado
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)
h. Contact Person:
Mr. John Fetcher, Upper Yampa Water Conservancy District, Steamboat Springs, CO 80486–0339.
Mr. Jean Yves Perez, Woodward—Clyde Consultants, Harlequin Plaza—North, 7600 East Orchard Road, Suite 101, Eaglewood, CO 80111, (303) 694–2770.
i. Comment Date: October 15, 1985.
j. Description of Project: The proposed project would consist of: (1) A 145-foot-high, 450-foot-long concrete dam located downstream of the confluence of Morrison Creek and the Yampa River, impounding; (2) a proposed reservoir with a total storage capacity of 33,738 acre-feet and a surface area of 777 acres at a spillcrest elevation of 7,200 feet msl; (3) a 60–inch–diameter, 120-foot-long steel pipeline; (4) a 36–inch-diameter, 20–foot–long steel penstock; (5) a 40-foot by 40-foot powerhouse, located in the vicinity of the dam's outlet works, containing a single Francis turbine-generator unit with an installed capacity of 800 kW and producing an estimated average annual generation of 4.26 GWh; (6) a tailrace; and (7) a 1.8-mile-long, 12.5–kV transmission line. Applicant intends to sell the project power to a public utility and estimates the total project cost at $1,100,000. No Federal lands would be affected. The project includes extensive plans for recreational facilities.
k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.
16 a. Type of Application: Preliminary Permit.
b. Project No.: 9204–000.
c. Date Filed: May 20, 1985.
d. Applicant: Millstream Hydro.
e. Name of Project: Swain-Lowell Dam.
f. Location: On the Warner River in Merrimack County, New Hampshire.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).
h. Contact Person: Mr. Scott T Waite, Millstream Hydro, Box 287, Bradford, NH 03221.
i. Comment Date: October 15, 1985.
j. Description of Project: The proposed project would consist of: (1) An existing 9-foot-high, 114-foot-long concrete gravity dam; (2) a reservoir with a surface area of 6 acres, a storage capacity of 24 acre-feet, and a normal water surface elevation of 520 feet m.s.l.; (3) an existing 5-foot-wide, 12-foot-high concrete intake structure; (4) an existing wood frame powerhouse containing one generating unit with a capacity of 100 kW; (5) an existing 10-foot-wide, 150-foot-long earth-cut tailrace; (6) a new transmission line, 60 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 350,000 kWh. The existing dam is owned by Mr. Wilson F. Sammis, Bradford, New Hampshire.
k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorized construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives; financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $4,500.
17 a. Type of Application: 5MW Exemption.
b. Project No.: P–9263–000.
c. Date Filed: June 3, 1985.
d. Applicant: Hutchins-Stevens Branch Hydro, Inc.
e. Name of Project: Hutchins-Stevens Branch.
f. Location: On the Jail Branch River in Washington County, Vermont.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.
h. Contact Person: Kermit Hutchins, P.O. Box 222, East Barre, VT 05649.
i. Comment Date: September 23,1985.
j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high and 60-foot-long concrete gravity dam with a spillway crest elevation of 1072 feet m.s.l. owned by Hutchins and Perreault, Inc.; (2) an existing reservoir of negligible size and storage capacity; (3) a proposed 295-foot-long and 48-inch-diameter penstock; (4) a proposed powerhouse to contain one turbine/generator unit with an installed capacity of 100 kW; (5) an existing 18-foot-long tailrace; (6) a new 480-volt transmission line 100 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 450,000 kWh.
k. Purpose of Project: Project power would be sold to Green Mountain Power Corporation.
l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.
m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to develop the project.
18 a. Type of Application: Preliminary Permit.
b. Project No.: 9296–000.
c. Date Filed: June 19, 1985.
d. Applicant: Seneacquoteen Associates.
e. Name of Project: Trapper Creek.
f. Location: On Trapper Creek, tributary to Rapid Lightning Creek in Bonner County, Idaho.
g. Filed Pursuant to : Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Dan Jacobson, P.O. Box 905, Sandpoint, ID 83864.
i. Comment Date: October 15, 1985.
j. Description of Project: The proposed project would consist of: (1) A 3-foot-high diversion dam at elevation 4,000 feet; (2) a settling tank; (3) a 6,000-foot-long, 21-inch-diameter pipeline; (4) a powerhouse containing two generating units with a total capacity of 600 kW and an average annual generation of 2.6 GWh; and (5) a 2.2-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $45,000. No new roads would be constructed or drilling conducted during the feasibility study.
k. Purpose of Project: Project power would be sold.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.
19 a. Type of Application: Preliminary Permit.
b. Project No.: 9339–000.
c. Date Filed: July 8, 1985.
d. Applicant: Mountain Empire Hydro, Ltd.
e. Name of Project: Mountain Empire Hydroelectric Project.
f. Location: On Leavitt Creek, within Toiyabe National Forest, in Mono County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, P.O. Box 11154, Beverly Hills, CA 90213–4154.

i. Comment Date: October 15, 1985.

k. Description of Project: The proposed project would consist of: (1) 5-foot-high diversion dam at elevation 7,810 feet; (2) a 42-inch-diameter, 1,500-foot-long low pressure pipe; (3) a 30-inch-diameter, 1,700-foot-long penstock; (4) a powerhouse to contain generating units with a total rated capacity of 2,450 kW operating under a head of 620 feet; and (5) a 3-mile-long, 12.5-kV transmission line would connect the project with an existing Southern California Edison Company's line northeast of the powerhouse.

l. Purpose of Project: The project's estimated 7.2 million kWh of annual energy will be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D3.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 585.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 21, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20343 Filed 8-23-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-2887-6]

Availability of the Coastal Marinas Assessment Handbook

AGENCY: Environmental Protection Agency.

ACTION: Announcing the Availability of the Coastal Marinas Assessment Handbook [EPA 904/6-85-132].

SUMMARY: EPA, Region IV recently completed an environmental assessment addressing the regulation and development of coastal marinas in the southeastern United States. The Coastal Marinas Assessment Handbook provides information and guidance for the environmentally sound development of coastal marinas. The Handbook covers key marina development topics including marina siting, environmental impacts of marina development, marina impact mitigation measures and regulation of coastal marina development in EPA, Region IV. A general information booklet "Coastal Marinas: An Environmental Approach" that serves as a non-technical introduction to the subject of coastal marina development and a guide to the Handbook is also available.

ADDRESS: Copies of the Coastal Marinas Assessment Handbook and information booklet may be obtained by contacting Mr. Robert J. Lord, Project Monitor, Environmental Assessment Branch, EPA-Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/881-3776 or FTS 257-3776.

FOR FURTHER INFORMATION CONTACT: Robert Lord at 404-881-3776.

Dated: July 30, 1985.

Sanford W. Harvey, Jr.,

Acting Regional Administrator.

[FR Doc. 85-20316 Filed 8-23-85; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2887-5]

Antidegradation Policy; Water Quality Standards; Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA announces the availability of a series of questions and answers on the antigradation policy and its interpretation. The document addresses the origin and application of the policy in broad terms and in specific examples. An antidegradation policy is one of the required components of water quality standards adopted by the States and approved by EPA pursuant to Section 303(c) of the Clean Water Act.

Availability of Document: Copies of the document, titled *Questions and Answers on Antidegradation* are available by written request from the name and address listed below.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Sabock, Chief, Standards Branch, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 245-3042.

SUPPLEMENTARY INFORMATION:

Background

Water quality standards for all waters of the United States are required to be established by the States pursuant to the general requirements of section 303(c) of the Clean Water Act. An antidegradation policy is one of the minimum requirements to be included in a State's standards. The basic policy was established on February 8, 1968, by the Secretary of the U.S. Department of the Interior. It was included in the first water quality standards regulation, 40 CFR 130.17, 40 FR 55340-41, November 28, 1975. It was slightly refined and repromulgated as part of the current program regulation published on November 8, 1983, (48 FR 51400, 40 CFR 131.12).

This document describes the antidegradation policy and its application. The rationale for the Agency's requirements and interpretation is also included.

Dated: August 16, 1985.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 85-20317 Filed 8-23-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42072; FRL-2866-7]

2-Chloro-1,3-Butadiene; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is EPA's response to the Interagency Testing Committee's (ITC's) recommendation that EPA consider requiring chemical fate and

environmental effects testing of 2-chloro-1,3-butadiene (chloroprene, CAS No. 126–99–8) under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not at this time initiating rulemaking under section 4(a) to require chemical fate or environmental effects testing of chloroprene.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800–424–9065). In Washington, D.C. (554–1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTAL INFORMATION: EPA is not initiating rulemaking at this time under section 4(a) of TSCA to require environmental effects or chemical fate testing of chloroprene as designated by the ITC In its Fifteenth Report.

I. Introduction

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated chloroprene (CAS No. 126–99–8) for priority consideration in its 15th Report submitted to EPA on November 6, 1984. The report was published in the **Federal Register** of November 29, 1984 (49 FR 46931). The ITC recommended that chloroprene be considered for chemical fate testing, including water solubility and persistence, and environmental effects testing, including acute toxicity to algae, aquatic invertebrates, and sensitive life stages of fish. The bases for these recommendations were as follows: (1) Estimated annual production volume of 254 million pounds; (2) probable environmental release; (3) need for information on the rate and extent of chloroprene's partitioning to the atmosphere and other environmental media; (4) lack of persistence data; and (5) inadequate ecotoxicology data (LC_{50} and EC_{50} values were based on nominal concentrations).

Further testing for health effects was not recommended by the ITC because sufficient testing of potential health effects either has been conducted, is underway, or is planned. The National Toxicology Program is testing chloroprene for a number of toxicological endpoints (sperm morphology and vaginal cytology; *in vivo* cytogenetics, carcinogenicity by inhalation, toxicokinetcs and metabolism, inhalation teratology, and fertility assessment in mice).

In evaluation the ITC's testing recommendations for chloroprene, EPA considered all relevant information, including: (1) Information presented in the ITC's Fifteenth Report; (2) information reported by manufacturers of chloroprene; (3) data submitted under TSCA sections 8(a), Preliminary Assessment Information Rule (40 CFR Part 712), and 8(d), Health and Safety Data Reporting Rule (40 CFR Part 716); and (4) other published and unpublished data available to the Agency. Based on its evaluation, as discussed in Unit III, EPA is not initiating rulemaking at this time under section 4(a) to require chemical fate or environmental effects testing of chloroprene.

II. Review of Available Data

A. Production, use, and Exposure

Chloroprene (2-chloro-1,3,-butadiene) is a colorless liquid at room temperature (boiling point 58.4 °C at 1 atm., Ref. 1) with an ethereal odor (Ref. 2). It is volatile (vapor pressure 188 mm Hg at 20 °C, Ref. 3) and water soluble (1270 mg/l at 25 °C, Ref. 4).

1. *Production and use.* The major current U.S. manufacturers of chloroprene are E.I. du Pont de Nemours & Co., Inc., and Denka Chemical Corp. Production information has been submitted under TSCA section 8(a) as confidential business information (CBI). The total annual production volume can be estimated, however, from its use in the production of polychloroprene (neoprene) elastomers, the reported significant use of chloroprene (Ref. 5). In 1983, approximately 254 million pounds of polychloroprene were produced in the United States (Ref. 6); the amount of chloroprene produced is expected to be similar. In 1976, approximately 63 percent of the production volume of polychloroprene was used in the production of automotive tubing, belts, and gaskets; 13 percent in wire and cable jackets; 10 percent in contruction applications; and 8 percent in adhesives (Ref. 7).

Conoco Chemicals Co. reported production of 1.71 million lbs of chloroprene on the 1977 TSCA Inventory as a reaction by-product of ethylene cichloride manufacture. Conoco has stated that current (1984) annual production of chloroprene is still at approximately that level (Ref. 8).

2. *Exposure and release.* Information submitted as CBI by the manufacturers under section 8(a) fo TSCA indicates that there is substantial release of chloroprene to the evnironment for manufacturing and processing.

The primary route of release during manufacturing and processing is through vents to the atmosphere. Two chloroprene exposure estimates were made by EPA for one of the manufacturing sites. Airborne levels were estimated assuming first, atmospheric degradation as predicted by the FAP (Fat of Atmospheric Pollutants) mathematical model, and second, no atmospheric degradation. The maximum ambient atmospheric concentration of chloroprene in the vicinity of the manuracturing plant is 5.1 ppb (Ref. 9). Air monitoring data from 1984 were provided by Denka Chemical Corp. for its manufacturing and processing site where water chloroprene is discharged to biological oxidation ponds for treatment. Chloroprene concentrations in air at the biological waste treatment facility were less than 0.5 pp. (Ref. 10).

Chloroprene is expected to occur in the aquatic environment at very low levels. At the manufacturing and processing site where chloroprene is treated in biological oxidation ponds, a general exposure evaluation model (EXAMS) used by EPA predicted a maximum concentration of 2.5 ppb in the stream at the point of chloroprene effluent release after treatment (Ref. 11). This ambient concentration would be further reduced by volatilization and down-stream dilution.

Estimates were also made of altmospheric depositons to a lake near a manufacturing site. Assuming a water depth of only 1 meter, the concentration of chloroprene in water as a result of atmospheric release was calculated to be 0.18 ppb (Ref. 9). Actual concentrations in the lake are expected to be less than this value, because this estimate neglects volatilization, transformation, transport from the lake, and the likelihood that water depth is greater than 1 meter.

Conoco Chemical Co. was the only company to report production of waste chloroprene as a reaction by-product of ethylene dichloride manufacture. The waste chloroprene is incinerated as part of the "tars" formed at the bottom of processing columns (Ref. 12).

No significant release of chloroprene is expected from the final polychloroprene products because steps are taken to recover both light and heavy monomers after polymerization. The Consumer Poduct Safety commission in a limited literature search found no information to suggest that significant levels of chloroprene remain in any consumer product (Ref. 13).

B. Chemical Fate

As discussed in Unit II.A. above, chloroprene is water soluble, although

its volatility indicates that it would partition to the atmosphere if an aquatic release were to occur. Volatilization half-life estimates range from 1–4 days (Ref. 9).

Once released or partitioned to the atmosphere, chloroprene is oxidized rapidly by reacting with hydroxyl radicals and ozone (Ref. 14). The atmospheric half-life of chloroprene was estimated by EPA to be 1.55 hours (Ref. 15).

C. Environmental Effects

Acute toxicity studies of chloroprene have been conducted using fish and algae (Ref. 16). A test of bluegill sunfish (*Lepomis macrochirus* Raf.) under continuous-flow conditions resulted in a 96-hr LC_{50} of 245 ppm, based on nominal concentrations. For the diatom (*Navicula seminulum* var. *hustedtii* Patr.) batch growth rate test, the 7-day EC_{50} was 380 ppm, also based on nominal concentrations.

Chloroprene is not likely to bioconcentrate or bioaccumulate in organisms, bsed on the octanol/water partition coefficient (log P=1.73) calculated using the method of Hansch and Leo (Ref. 17).

III. Decision Not To Initiate Rulemaking

The Agency is not at this time proposing testing of section 4 of TSCA, for the following reasons: (1) Adequate water solubility data are available; (2) adequate fate and monitoring data and modeling results are available to reasonably predict limited persistence in the environment; (3) available data provide no evidence of potential unreasonable risk to aquatic organisms; and (4) although there is substantial production and release of chloroprene to the air, available data are sufficient to reasonably predict that chloroprene will not enter or partition to the aquatic environment in sufficient quantitites to warrant further aquatic toxicity testing.

Chloroprene is rapidly degraded in the atmosphere and is not expected to enter the aquatic environment in substantial quantities (see Units II.A. and C. above). Environmental levels of chloroprene in air and water are expected to be less than 0.5 ppm and 3 ppb, respectively (see Unit II.A.).

IV. Public Record

The EPA has established a public record for this testing decision, docket number [OPTS–42072], which includes:

A. Supporting Documentation

(1) **Federal Register** notice designating chloroprene to the Priority List and any public comments received thereon (49 FR 46931; November 29, 1984).

(2) Rules requiring TSCA section 8(a) and 8(d) reporting on chloroprene (49 FR 46739, 46741; November 29, 1984).

(3) Communications from industry consisting of letters, contact reports of telephone conversations, and meeting summaries.

(4) Published and unpublished data.

B. References

(1) Verschueren, K. Handbook of Environmental Data on Organic Chemicals, 2nd ed. New York: Van Nostrand Reinhold Co. p. 384. 1983.

(2) Johnson, P.R. "Chloroprene" under "Chlorocarbons and chlorohydrocarbons" in Kirk-Othmer Encyclopedia of Chemical Technology, 3rd ed., Vol. 5, pp. 773–785. E.I. du Pont de Nemours & Co., Inc. 1979.

(3) NIOSH. Criteria for a recommended standard . . . Occupational exposure to chloroprene. U.S. Dept. of Health, Education, and Welfare. National Institute for Occupational Safety and Health. DHEW (NIOSH) Publ. No. 79–210. 176 pp. 1977.

(4) Du Pont. Solubility and removal of organic materials from waste brine. Biweekly Summary No. 73–5. 1973.

(5) CEH. Chemical Economics Handbook. Stanford Research Institute. Menlo Park, CA: SRI International. Sections 300.5802 J,K. 1982.

(6) Greek, B.F. Elastomers finally recover growth. *Chem. Eng. News*, April 30, 1984, pp. 35–56.

(7) International Agency for Research on Cancer. IARC monographs on the evaluation of the carcinogenic risk of chemicals to humans, v. 19. Lyon, France: IARC; 131–156. 1979.

(8) Hall, J.J. Letter from J.J. Hall, Conoco Chemical Co., to M. Grief, TSCA ITC. July 20, 1984.

(9) Harrigan, P. Memorandum from P. Harrigan, EPA Design Development Branch, to K. Hart, EPA Test Rules Development Branch. April 4, 1985.

(10) Hinkson, R.E. Letter from R.R. Hinkson, Denka Chemical Corp., to K. Hart, EPA Test Rules Development Branch. May 1, 1985.

(11) Harrigan, P. Memorandum from P. Harrigan, EPA Design Development Branch, to K. Hart, EPA Test Rules Development Branch. April 26, 1985.

(12) Hall, J.J. Telephone conversation. K. Hart, TRDB, USEPA to J.J. Hall, Conoco Chemical Co., Houston, TX. March 25, 1985.

(13) Simpson, G. Memorandum from G. Simpson, U.S. Consumer Product Safety Commission, August 12, 1980.

(14) Cupitt, L.T. Fate of toxic and hazardous materials in the air environment. Research Triangle Park, NC: U.S. Environmental Protection Agency; EPA Report No. EPA–600/3–80–084. Available from NTIS, Springfield, VA; PB 80–2211948. 1980.

(15) Unpublished data. Estimates of physical/chemical properties and fate of chloroprene. EPA Design Development Branch. April 19, 1985.

(16) Academy of Natural Sciences of Philadelphia. Toxicity tests on the fish, *Lepomis macrochirus* Raf., and the diatom *Navicula seminulum* var. *hustedtii* Patr. for E.I. du Point de Nemours and Company. Acad. Nat. Sci. Phil., Philadelphia, PA 19103. 1971.

(17) Hansch, C. Leo, A. Substituent constants for correlations analysis in chemistry and biology. New York, NY: John Wiley & Sons. 1979.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in Rm. E–107, 401 M St., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

(15 U.S.C. 2603)

Dated: August 19, 1985.

Marcia Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–20308 Filed 8–23–85; 8:45 am]

BILLING CODE 6560–50–M

[OW-FRL-2888-4]

Underground Injection Control Program; Proposed Fracture Gradients and Establishment of Maximum Injection Pressure Formula for Rule Authorized Fields in the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA Region III has, after extensive investigation, developed and is proposing, for public comment today, fracture gradients and a maximum injection pressure formula for oil/gas-bearing geologic formations in the Commonwealth of Pennsylvania where enhanced recovery injection wells operate under the Underground Injection Control (UIC) program's rule authorization. EPA is making this proposal in accordance with the Programmatic Requirements and State Specific Requirements of the Underground Injection Control (UIC) program, §§ 144.22(b) 144.28(f)(3)(i) and 147.1954(a) respectively.

DATES: Anyone wishing to make comments for the record may do so until October 3, 1985. If no significant public comments are received which warrant changes to this proposal, including public comment which may be received if a public hearing is held, this proposal will become final on November 2, 1985. A public hearing to discuss this proposal has been scheduled for 7:00 p.m. on Thursday, September 26, 1985. However, if sufficient public comments requesting a public hearing are not received by

September 17, 1985, EPA reserves the right to cancel this hearing.

ADDRESS: Comments should be submitted to Stephen Platt, Pennsylvania Implementation Section, Water Supply Branch, USEPA, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The public hearing will be located at the University of Pittsburgh, Bradford Campus auditorium, East Washington Street, Bradford, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Stephen Platt, (215) 597–2783.

SUPPLEMENTARY INFORMATION: .

Background

Section 147.1954(a)(1)(i) of the Underground Injection Control (UIC) program State Specific Requirements states * * * "the owner or operator shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum injection pressure after notice, opportunity for comment, and opportunity for public hearing * * *".

EPA, Region III has developed fracture gradients and a maximum injection pressure formula for oil/gas-bearing geologic formations in the Commonwealth of Pennsylvania where enhanced recovery operations occur under the UIC program's rule authorization.

Basis for Proposal

The proposed fracture gradients and the maximum injection pressure formula set forth today were developed from information submitted to EPA during the promulgation process of the Pennsylvania UIC program in 1984 as well as from additional information supplied to EPA by owners and operators during the first year of program implementation.

Table 1 provides information on the fracture gradient of each of the geologic formations and the representative fields of concern. These fracture gradients were determined by analyzing instantaneous shut-in pressures, step-rate tests, and other relevant geologic data from wells drilled into these oil/gas-bearing strata. During calculation of each fracture gradient the hydrostatic pressure gradient was assumed to be equivalent to .433 psi/ft of depth multiplied by the average depth to the top of the producing formation.

TABLE 1

Oil/gas fields	Producing formation(s)	Fracture gradient
Bradford and Guffey.	Bradford Sands: 1st 2nd, and 3rd.	1.18
Lewis Run	....do	1.18
Windfall	....do	1.21
Shinglehouse and Ormsby.	Chipmunk	1.20
Kane	Kane Sand	1.20
Youngsville	Glade	1.21
	Cherry Grove	1.23
Foster-Reno	Venango Sands	1.10
Pleasantville	Venango/Red Valley	1.10
Glade and Morrison Run.	Glade	1.21
Cooper	Cooper	1.24
Washington-Taylorstown.	Gordon Sand (and related sands including Big Injun, Squaw Sand, 100 Foot Sand, Fourth Sand and Fifth Sand).	1.20

The maximum injection pressure formula to be utilized for each well or well field authorized by rule is as follows:

Pmax = [Fracture Gradient − (.433 × Specific Gravity)] × Well Depth

In determining final maximum injection pressures, if the injection fluid does not have a specific gravity (Sg) of 1.00, the hydrostatic pressure gradient (.433 psi/ft.) must be multiplied by the specific gravity of the injection fluid before being subtracted from the fracture gradient. The shallowest well depth in a rule authorized project should be the well depth utilized for multiplication purposes for calculation of maximum injection pressure for all wells in that project.

If a sufficient data base were not available to determine an appropriate formation fracture gradient, EPA Region III did not list a specific gradient. Therefore, for those geologic formations being utilized for the enhanced recovery of oil or gas not listed above, the formula to be utilized for determining maximum injection pressure is:

[.733 × (Specific Gravity)] × Well Depth (shallowest well of project)

Upon EPA's receipt of additional data appropriate to the determination of the fracture gradient for a specific formation or a specific field within a particular formation, or for the calculation of maximum injection pressure, EPA Region III will entertain amendments to the above specifications. The request must be in writing and sent to the address provided at the beginning of this notice. Also, anyone wishing to review the supporting information which led to the development of this proposal may do so by visiting the offices of EPA Region III.

Dated: August 21, 1985.

James M. Seif,

Regional Administrator, EPA Region III.

[FR Doc. 85–20432 Filed 8–23–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0515D]

ACH Transaction Data Report; Final Approval of Information Collection Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final approval of information collection request.

SUMMARY: Notice is hereby given of final approval of the ACH Transaction Data Report (FR 2220; OMB No. 7100–0211) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public). Respondents will have the option of filing the reports weekly or daily.

In response to comments raised during the public comment period, the Board is also modifying the ex post monitoring procedures for automated clearing house transactions by both Federal Reserve and privately operated ACHs that obtain net settlement services from the Federal Reserve.

DATE: The Board will begin collecting information from privately operated ACHs beginning December 5, 1985.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director (202/452–3368), David B. Humphrey, Assistant Director (202/452–2557), Division of Research and Statistics; Elliott C. McEntee, Associate Director (202/452–2231), Florence M. Young, Adviser (202/452–3955), Division of Federal Reserve Bank Operations; Joseph R. Alexander, Attorney (202/452–2489), Legal Division); or Joy W. O'Connell, Telecommunications Device for the Deaf (202/452–3244).

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC. 20551 (202/452–3829).

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC. 20503 (202–395–6880).

SUPPLEMENTARY INFORMATION: Recently, the automated clearing house (ACH)

mechanism has been evolving in such a way that it appears to be taking on many of the characteristics of large-dollar electronic funds transfer systems, and consequently presents many of the same risks. In light of the changes occurring in the ACH, the Board directed its staff to undertake a study of ACH risk, and, on May 17, 1985, issued for comment a series of questions concerning the various aspects of such risk. See Docket No. R–0515B, 50 FR 21,130 (May 22, 1985).

In its May 17 request for comments, the Board noted that pending the formulation a new policy to deal with ACH risk, it had determined that its procedures for ex post monitoring of intra-day credit exposures should be modified to (1) recognize the potential risks associated with ACH transactions processed by both the Federal Reserve and privately operated ACHs, and (2) inhibit the use of the ACH to circumvent the Board's risk reduction policies for large-dollar electronic funds transfer systems. In order to meet these objectives, the Board requested comments on a modification of its ex post monitoring procedures so that gross debits resulting from the origination of credit transactions and gross credits resulting from the receipt of credit transactions would be posted at the Reserve Banks' opening of business on the settlement date, and gross credits resulting from the origination of debit transactions and gross debits resulting from the receipt of debit transactions would be posted at the Reserve Banks' close of business on the settlement date.

The Board determined that any change in the data used for its ex post monitoring procedures would apply not only to the Reserve Banks, but also to privately operated ACHs that obtain net settlement services from the Federal Reserve. Accordingly, such privately operated ACHs would be required to provide any data necessary for modification of the ex post monitoring system for each of its participants.

In response to the issues raised by the commenters, the Board has determined to give final approval to the proposed information collection request, but to make certain modifications to the proposal and to the procedures for ex post monitoring of the intra-day credit exposures. Specifically, the Board made the following decisions:

1. Privately operated ACHs will not be eligible to receive Federal Reserve net settlement services unless they agree to provide the Federal Reserve with the following data elements for each settling participant:[1]

(a) The total dollar value of gross debits resulting from the origination of credit transactions,

(b) The total dollar value of gross credits resulting from the receipt of credit transactions,

(c) The total dollar value of gross credits resulting from the origination of debit transactions, and

(d) The total dollar value of gross debits resulting from the receipt of debit transactions.

2. Because the majority of commenters reported that it would be less costly to provide the four data elements regardless of the dollar value of each element, the Board has determined not to adopt a dollar cut-off for this information collection request.

3. Privately-operated ACHs will be given the option of submitting data on a weekly basis for a seven day period ending on Wednesday or submitting the ex post data each day with settlement data.

4. Only transactions processed solely by the privately operated ACH should be included in the information provided to the Federal Reserve. Any transactions deposited by a privately operated ACH with the Federal Reserve will be included in the ex post monitoring data generated by the Reserve Banks.

5. The Board has modified the way it will monitor ACH transactions to determine an institution's intra-day position. Specifically, rather than posting ACH credit transactions at the opening of business and ACH debit transactions at the close of business, the Board determined that all ACH transactions will be posted to the daylight overdraft monitoring system at the opening of business on the settlement date. It should be noted that (a) this procedure may be modified after the Board reviews the staff study on ACH payments risks now underway, and (b) these procedures are for monitoring purposes only and do not affect the finality accorded to these ACH transactions under the Reserve Banks' uniform ACH operating circulars or net settlement agreements with privately operated ACHs.

6. The Federal Reserve will begin collecting the four data elements from privately operated ACHs on December 5, 1985, rather than September 30, 1985, as originally proposed.

7. Federal Reserve operated ACHs will also have to provide the four data elements to the Board, and the data for ex post monitoring procedures will also be applied to ACH transactions processed by the Federal Reserve. The costs of providing these data to the Board and of the monitoring will be included in the Federal Reserve's ACH cost base so that the new ex post monitoring procedures will have a comparable effect on Federal Reserve and privately operated ACHs.

The Board has determined that this information collection will not have a significant economic impact on a substantial number of small entities.

By order of the Board of Governors of the Federal Reserve System, August 21, 1985.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 85–20335 Filed 8–23–85; 8:45 am]

BILLING CODE 6210–01–M

[1] The term "settling participant" is defined as a participant for which settlement entries are presented to the Federal Reserve. A settling participant may settle for its own account only or for its own account and the accounts of one or more respondents.

Signal Hills Associates, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 16, 1985.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Signal Hills Associates, Inc.,* West St. Paul, Minnesota; to acquire 100

percent of the voting shares of State Bank of Hampton, Hampton, Minnesota.

Board of Governors of the Federal Reserve System, August 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20342 Filed 8-23-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement for a Project to Support a Cross-sectional Epidemiologic Study to Evaluate the Possible Relationship of Birth Defects to Residence Near Superfund Sites; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1985 for a Cooperative Agreement to assist the California Department of Health Services to conduct a cross-sectional epidemiologic study to determine the degree, if any, that rates of congenital malformation are different in census tracts where exposure to superfund hazardous waste sites occur compared to rates in other San Francisco Bay area census tracts. This program is authorized under section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" Act).

There is concern that exposure to water and air contaminants from hazardous waste sites are associated with congenital malformations. In California, concern has recently focused on Santa Clara County where a California Department of Health Services report suggested higher congenital malformations and spontaneous abortions for populations living in an area receiving water contaminated by chemical leaks.

Assistance will be provided only to the State of California which, under its legal authorities, has the responsibility to perform studies on the health of its residents. Under the "Superfund" Act, CDC is authorized to enter into cooperative agreements with States to conduct studies and/or surveys of potential health effects at hazardous waste sites. Accordingly, California has requested assistance to conduct the above described epidemiologic study.

This is not a formal request for applications, and no other applications will be accepted.

The proposed project is of 3 years duration. It is expected that approximately $185,300 will be available during Fiscal Year 1985 to support this project. Continuation awards will depend upon scientific need, technical feasibility, and the availability of funds.

Technical information may be obtained from Larry Edmonds, Birth Defects Branch, Chronic Disease Division, Center for Environmental Health, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 452-4035 or FTS 236-4035.

Business information may be obtained from Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA. 303035, telephone (404) 262-6575 or FTS 236-6575.

This project is not subject to review under Executive Order 12372.

Dated: August 16, 1985.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 20350 Filed 8-23-85: 8:45 am]

BILLING CODE 4155-18-M

Cooperative Agreement for a Project to Design and Support a Communitywide Survey of Human PCB Serum Levels; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1985 for a Cooperative Agreement to assist the Indiana State Board of Health (ISBH) to design and conduct a communitywide survey in Monroe County to evaluate the extent and magnitude of elevated polychlorinated biphenyls (PCB) serum levels.

In 1981, the U.S. Environmental Protection Agency identified PCB's in soil leachates and groundwater samples around three waste disposal sites in Bloomington in Monroe County. Two hundred additional sites in the county are being evaluated. In 1984, the ISBH and CDC conducted a pilot study which was intended to measure exposure to PCB in persons living around the above mentioned three sites who were presumed to be at higher risk of exposure. The findings suggested that in general persons residing in the three sites may have higher than average PCB serum levels.

The State of Indiana, under its legal authorities, has the responsibility to perform studies related to the health of its residents. Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" Act), CDC is authorized to enter into Cooperative Agreements with States to conduct studies and/or surveys of potential health effects at hazardous waste sites. Accordingly, Indiana has requested assistance to conduct the above described survey.

This is not a formal request for applications, and other applications will not be accepted.

The proposed project is of 3 years duration. It is expected that approximately $269,000 will be available during Fiscal Year 1985 to support this project. Continuation awards will depend upon scientific need, technical feasibility, and the availability of funds.

Technical information may be obtained from Paul A. Stehr, Dr.P.H., Chronic Diseases Division, Center for Environmental Health, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 452-4161 or FTS 236-4161.

Business information may be obtained from Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Ga. 30335, telephone (404) 262-6575 or FTS 236-6575.

This project is not subject to review under Executive Order 12372.

Dated: August 16, 1985.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 85-20349 Filed 8-23-85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 85E-0320]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ridaura Capsules

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ridaura capsules and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ridaura capsules, an oral form of auranofin, which is indicated in the management of adults with active classical or definite rheumatoid arthritis. Based on this approval, Smith Kline Beckman Corp. now seeks patent term restoration.

FDA has determined that the applicable regulatory review period for Ridaura capsules is 3,005 days. Of this time, 1,677 days occurred during the testing phase of the regulatory review period, while 1,328 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* March 3, 1977. FDA has verified that the date that the exemption application was received and became effective was March 3, 1977.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* October 5, 1981. FDA has verified that the date that the application for the new drug approval was received and became effective was October 5, 1981.

3. *The date the application was approved:* May 24, 1985. FDA has verified that the application (NDA 18–689) was approved on May 24, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 25, 1985, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 24, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the document number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85–20266 Filed 8–23–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85E–0311]

Determination of Regulatory Review Period for Purposes of Patent Extension; Seldane Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Seldane tablets and is publishing this notice of that determination has required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims the human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Seldane tablets, an oral form of terfenadine, which is indicated for the treatment of seasonal allergic rhinitis. Based on the recent

approval of Seldane tablets, Merrell Dow Pharmaceuticals, Inc., applied for patent term restoration.

FDA has determined that the applicable regulatory review period for Seldane tablets is 4,614 days. Of this time, 3,814 days occurred during the testing phase of the regulatory review period, while 800 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* September 20, 1972. The applicant claimed August 16, 1972, as the date that the exemption was submitted; however, FDA did not receive the exemption until August 22, 1972. Moreover, under FDA regulations (21 CFR 312.1(b)(4)), the exemption did not become effective until 30 days after the notice of claimed investigational exemption for the drug was received by FDA.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* March 1, 1983. FDA has verified that the application (NDA 18–949) was initially submitted on March 1, 1983.

3. *The date the application was approved:* May 8, 1985. FDA has verified that the application (NDA 18–949) was approved on May 8, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 25, 1985, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 24, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and indentified with the document number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85–20267 Filed 8–23–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0179]

Recommendations To Minimize Diagnostic Nuclear Medicine Exposure to the Embryo, Fetus, and Infant; Availability of Draft Recommendations

Correction

In FR Doc. 85–16425 appearing on page 28265 in the issue of Thursday, July 11, 1985, make the following correction: In the Second Column, in the date paragraph, "September 1" should read "September 9".

BILLING CODE 1505-01-M

Centers for Disease Control

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 50 FR 26053, June 24, 1985), is amended to reflect the reorganization of the Center for Environmental Health and a restatement of its mission.

Section HC–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the statement for the *Center for Environmental Health (HCN)* and substitute the following:

Center for Environmental Health (HCN). Plans, directs, and coordinates a national program to maintain and improve the health of the American people by promoting a healthy environment and by preventing premature death and avoidable illness and disability caused by noninfectious, nonoccupational environmental and related factors. In carrying out this mission, the Center: (1) Assists in increasing the capacity of States to prevent and control environmental and chronic disease public health problems through training, technology transfer, grants, cooperative agreements, contracts, and other means; (2) provides services, advice, technical assistance, and information to State and local public health officials, other Federal agencies, academic, professional, international, and private organizations, and the general public; (3) plans for and provides emergency response assistance to States, localities, other Federal agencies, and international organizations; (4) identifies, designs, develops, implements, influences, and evaluates interventions to reduce or eliminate environmental hazards, exposures to these hazards, and adverse health outcomes resulting from exposure to these hazards; (5) measures, estimates, and predicts the incidence of adverse health outcomes through surveillance, surveys, and registries; (6) measures, estimates, and preducts the incidence of exposure to substances, conditions, or forces in the environment through surveillance, surveys, and registries; (7) describes and evaluates associations between environmental exposures and adverse health outcomes by using information from surveillance systems, surveys, registries, epidemiologic and laboratory studies, and by developing and maintaining a broad base of normative and diagnostic laboratory data; (8) develops and validates advanced laboratory technology for diagnosing chronic diseases and for assessing exposure and health effects in persons exposed or potentially exposed to environmental toxicants or other environmental agents; (9) develops and validates new epidemiologic techniques for use in study of chronic diseases and the effects of exposure to environmental hazards; (10) provides leadership in coordinating efforts in States and in national and international organizations concerned with standardizing selected laboratory measurement systems; (11) conducts special programs, e.g., coordination and review of Environmental Impact Statements; (12) in carrying out the above functions, collaborates, as appropriate, with other Centers/Institute/Offices of CDC.

Office of the Director (HCN1). (1) Manages, directs, coordinates, and evaluates the activities of the Center for Environmental Health (CEH); (2) develops goals and objectives and provides leadership, policy formulation, scientific oversight, and guidance in program planning and development; (3) coordinates assistance provided by CEH to other CDC organizations, other Federal, State and local Government agencies, the private sector, and other nations; (4) provides administrative, fiscal, information, publications, and

distribution services to CEH; (5) coordinates CEH program activities with other PHS agencies and other Federal agencies, as appropriate.

Office of Planning, Legislation, and Information Management (HCN13). (1) Within the policies and guidelines of HHS, PHS, and CDC, conducts CEH planning and evalution activities including tracking objectives and performing evaluation studies; (2) provides information for the development of CEH's annual budget submission and supporting documents; (3) reviews, prepares, and coordinates legislation, congressional testimony, and briefing documents, develops proposed legislation, analyzes bills, and provides for other legislative-related activities; (4) provides publications-related activities including editing, preparing articles and drafting news releases, distributing publications, and bibliographic services; (5) provides technical information support to the environmental epidemiology, toxicologic, and other scientific services and applied research activities of CEH; (6) coordinates the utilization of data, requests for the acquisition of ADP, word processing, and telecommunications equipment, and the provision of information services with the CDC central services; (7) provides liaison with staff offices and other officials of CDC.

Office of Program Operations and Management (HCN14). (1) Plans, coordinates, and provides administrative and management support, advice, and guidance to CEH; (2) coordinates CEH-wide administrative management and support services in the areas of fiscal management, personnel, travel, and other administrative services; (3) prepares annual budget plans and budget justifications; (4) coordinates CEH requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (5) develops and implements administrative policies, procedures, and operations, as appropriate, for CEH, and prepares special reports and studies, as required, in the administrative management areas; (6) maintains liaison with staff offices and other officials of CDC.

Division of Birth Defects and Developmental Disabilities (HCN5). (1) Conducts and disseminates findings of epidiologic research, investigations, demonstrations, and programs directed toward determining the environmental, both naturally occurring and man-made, causes of selected adverse reproductive outcomes and perinatal and childhood diseases, including developmental disabilities; (2) plans, develops, establishes, and maintains systems of surveillance including registries for monitoring, evaluating, and disseminating information on these conditions; (3) develops and evaluates prevention strategies and provides training and technical consultation and assistance to States and localities in developing their capacity in planning, establishing, and maintaining surveillance and prevention programs for these conditions; (4) provides training in the epidemiology of these conditions for professionals from within and outside the United States; (5) works closely with international organizations and entities in developing strategies and programs for reducing these conditions; (6) provides assistance to State and local health departments on community exposures to teratogenic, mutagenic, embryotoxic, or other environmental agents adversely interfering with normal growth and development; (7) collaborates and coordinates Division activities with other CDC organizations and PHS agencies, as appropriate.

Division of Chronic Disease Control (HCN6). (1) Serves as the focal point within CDC for the identification of problems, needs, and recommendations of priorities for the prevention and control of chronic diseases, including health problems of older persons and environmentally related health conditions; (2) plans, directs, and conducts epidemiologic research and investigations, demonstrations, and programs directed toward the definition, prevention, and control of chronic diseases that are environmentally related, suspected of being environmentally related, or of multiple etiologies; (3) plans, develops, establishes, and maintains systems of surveillance, including registries, of selected chronic diseases; (4) develops and evaluates prevention strategies and provides training and technical consultation and assistance to States and localities in planning, establishing, maintaining, and evaluating prevention and control programs for selected chronic diseases; (5) conducts surveillance activities and epidemiologic research and evaluation studies into the health effects of ionizing radiation, coordinates PHS/HHS activities in response to radiation emergencies, and participates in response planning and field exercises; (6) plans and conducts specially mandated epidemiologic studies; (7) provides consultation to Federal, State, and local agencies, and other national, international, and private organizations on selected chronic diseases; (8) disseminates to interested individuals and organizations findings from all activities; (9) serves as a primary Federal resource of technical assistance and expertise in the epidemiology and control of selected chronic diseases; (10) coordinates Division activities with other CDC organizations and PHS agencies, as appropriate.

Division of Environmental Hazards and Health Effects (HCN7). (1) Conducts and disseminates findings of surveillance and epidemiologic research and investigations of human exposure to environmental hazards, including man-made and naturally occurring toxins, and resultant and presumed health effects, including environmentally related syndromes of unknow etiology; (2) develops methods and conducts activities to assess risk to human populations from exposure to environmental hazards; (3) plans, develops, implements, and maintains surveillance systems, including registries relating to exposure to environmental hazards, e.g., lead, weather phenomena, and natural hazards, and to resultant diseases or syndromes; (4) provides epidemiologic emergency response to natural and other environmental disasters; (5) maintains liasion with and serves as a primary Federal resource of specialized technical and managerial assistance and consultation to Federal, State and local agencies, and other national, international, and private organizations on a wide range of environmental health issues including natural and other environmental disasters; (6) provides consultation and technical assistance on the development and implementation of environmental health programs addressing the prevention of human health problems associated with environmental toxicants, climate extremes, lead hazards, and other health hazards; (7) develops mechanisms to disseminate information on environmental health technologies to State and local health departments, and to other agencies with related responsibilities; (8) assists States and local governments in the development of personnel, training programs, and other services to deal with chemical and other environmental health hazards; (9) coordinates Division activities with other CDC organizations and PHS agencies, as appropriate.

Division of Environmental Health Laboratory Sciences (HCN8). (1) Develops and maintains a national laboratory response capability for applying state of the art technology to the resolution of noninfectious environmental health emergencies and the identification of hazardous

substances in the population; (2) provides services, advice, assistance, and information to State and local public health authorities, Federal agencies, international organizations, academic, international, and private laboratories, and professional organizations to support laboratory science in the fields of environmental health and noninfectious chronic diseases; (3) assists in increasing the capacity of State, national, and international laboratories through training, technology transfer, cooperative agreements, and other mechanisms to respond to environmental and chronic disease public health problems; (4) measures, estimates, and predicts the incidence of exposure to substances in the environment through laboratory support of surveillance, surveys, registries, and other epidemiologic studies; (5) describes and evaluates associations between environmental exposures and adverse health outcomes by evaluating laboratory information from epidemiologic studies, and by developing and maintaining a broad base of normative and diagnostic laboratory data; (6) develops and validates advanced laboratory technology for assessing both public health problems in selected chronic diseases and genetics, and health effects in persons exposed or potentially exposed to chemical toxicants or other enviromental agents; (7) provides leadership in coordinating efforts in States and in national and international organizations concerned with standardizing selected laboratory measurement systems; (8) conducts and/or supports special laboratory and epidemiologic programs; (9) collaborates with other CDC organizations and PHS agencies, as appropriate.

Division of Injury-Epidemiology and Control (HCN9). (1) Proposes goals and objectives for unintentional, nonoccupational national injury prevention and control programs, recommends priority prevention activities and facilitates similar analyses by other interested Federal, State, and local agencies; (2) plans, directs, and conducts epidemiologic research focused on development and evaluation of strategies to prevent injuries; (3) plans, establishes, and evaluates surveillance systems to monitor national trends in morbidity and epidemiology of injuries and to facilitate surveillance by State and local agencies; (4) develops, implements, directs, and evaluates demonstration programs to prevent injuries; (5) provides technical and management consultation and assistance to States and localities in assessing the problem of injuries, planning prevention programs, and evaluating these prevention activities; (6) develops, directs, and provides technical and managerial training in the prevention of injuries; (7) disseminates findings from all activities to Federal, State, and local agencies, private organizations, and other national and international groups; (8) conducts on-site reviews and analyses documents relating to the testing, transportation, or disposal of biological/chemical warfare agents; (9) serves as a primary Federal resource of technical assistance and management expertise in the epidemiology and prevention of unintentional, nonoccupational injuries; (10) coordinates Division activities with other CDC organizations, PHS agencies, and other Federal agencies and private organizations, as appropriate.

Dated: August 15, 1985.

James F. Dickson,

Acting Assistant Secretary for Health.

[FR Doc. 85-20344 Filed 8-23-85; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pascua Yaqui Indian Reservation, Arizona; Acceptance of Retrocession of Jurisdiction

August 14, 1985.

Pursuant to the authority vested in the Secretary of the Interior by Executive Order No. 11435 of November 21, 1968, (33 FR 17339) and redelegated to the Assistant Secretary—Indian Affairs by 209 DM 8, I hereby accept, as of 12:01 a.m., MST, of the day following publication of this notice in the **Federal Register**, retrocession to the United States of all jurisdiction, Civil and criminal, over the Pascua Yaqui Indian Reservation which was vested in the State of Arizona by section 1(c) of the Act of September 18, 1978, Pub. L. 95-375, 25 U.S.C. 1300f(c) and section 3 of the Act of December 23, 1982, Pub. L. 97-386, 96 Stat. 1946.

The retrocession herein accepted was offered by Proclamation of the Governor of the State of Arizona dated October 4, 1984. By Resoluton No. C-42-84(A), dated September 3, 1984, the Pascua Yaqui Tribe requested that the State of Arizona retrocede civil and criminal jurisdiction to the United States.

James S. Bregman,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-20352 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-02-M

Fish and Wildlife Service

Endangered and Threatened Species; Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-691992

Applicant: Nicholas/Hendrix/Post Corp., Key Largo, FL.

The applicant requests a permit for incidental taking in order to capture all specimens of Key Largo wood rats *(Neotoma floridiana smalli)* and Key Largo cotton mice *(Peromyscus gossypinus allapaticola)* from one acre of a three-acre tract he owns and wishes to clear for development, and transplant the specimens to nearby sites.

PRT-696581

Applicant: John M. Hinerwadel, North Syracuse, NY.

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of Mike D'Alton, Couzierskraal, Bredasddorp, Cape Province, South Africa, for the purpose of enhancement of propagation

PRT-697111

Applicant: James T. Parsons, Birmingham, AL.

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of C.J. Retief, Greenlands Game Ranch in Harrismith, South Africa, for the purpose of enhancement of propagation.

PRT-696918

Applicant: Albert A. Cheramie, Golden Meadow, LA.

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of the Clober Ranch, Mafeking, South Africa, for the purpose of enhancement of propagation.

PRT-697329

Applicant: Darryl J. Hastings, Rochester, MI

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of Frank Bowker of Grahamstown, South Africa, for the purpose of enhancement of propagation.

PRT–697808

Applicant: Bernard C. Hennings, Modesto, CA.

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of Theo Erasmus, Free State Safaris, South Africa, for the purpose of enhancement of propagation.

PRT–694184

Applicant: Robert Trembath/Austin Zoo, Austin, TX.

The applicant requests a permit to import 5 captive-born cheetah *(Acinonyx jubatus)* from Neil Hulett, Natal, South Africa, for enhancement of propagation.

PRT–697813

Applicant: Dan Mooney, Kerrville, TX.

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of Phil van der Merwe, Skietkuil, Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

PRT–697170

Applicant: Dallas Zoo, Dallas, TX.

The applicant requests a permit to export nine (9) captive-born San Francisco garter snakes *(Thamnophis sirtalis tetrataenia)* to the Jersey Wildlife Preservation Trust, Jersey, for the purpose of enhancement of propagation of the species.

PRT–697917

Applicant: National Park Service, Golden Gate National Recreation Area, San Francisco, CA.

The applicant requests a permit to remove and reduce to possession (take) one specimen of Ravens Manzanita *(Arcostaphylos hookeri ravenii)* to serve as parental stock for artificial propagation of specimens to return to the wild.

PRT–696999

Applicant: Fresno Zoo, Fresno, CA.

The applicant requests a permit to export three (3) captive-born timber wolves *(Canis lupus)* to the Zacango Zoo, Toluca, Mexico, for enhancement of the propagation and survivial of the species.

PRT–697730

Applicant: Honolulu Zoo, Honolulu, HI.

The applicant requests a permit to import one captive born female Asian elephant *(Elephas maximus)* from India for enhancement of propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: August 20, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–20273 Filed 8–23–85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AA–6661–C]

Alaska Native Claims Selection; Eklutna, Inc.

Correction

In FR Doc. 85–19729 appearing on page 33418 in the issue of Monday, August 19, 1985, make the following corrections: In the first column, in the first paragraph, in the sixth line, "40 FR" should read "50 FR"; in the second paragraph, in the third line, "1988" should read "1985".

BILLING CODE 1505–01–M

Alaska Native Claims Selection; Sealaska Corp.

Correction

In FR Doc. 85–19593 appearing on page 33116 in the issue of Friday, August 16, 1985, make the following correction: In the first column, in the third paragraph, in the third line, remove the words "30 days after".

BILLING CODE 1505–01–M

Resource Management Plans; Colorado; Partial Record of Decision for the San Juan-San Miguel Planning Area

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of Partial Record of Decision for the San Juan-San Miguel Planning Area, Montrose District, Colorado.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management (BLM), has issued a Partial Record of Decision on the Final San Juan-San Miguel Resource Management Plan/Environmental Impact Statement (FRMP/EIS).

ADDRESS: Copies of the Partial Record of Decision are available upon request at the San Juan Resource Area Office, Bureau of Land Management, Federal Building, Room 102, 701 Camino del Rio, Durango, Colorado 81301, telephone (303) 247–4982; or Uncompahgre Resource Area, 2505 South Townsend, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: David J. Miller, San Juan Resource Area Manager, Federal Building, Room 102, 701 Camino del Rio, Durango, Colorado 81301, telephone (303) 247–4082; or Lance Nimmo, Uncompahgre Resource Area Manager, 2505 South Townsend, Montrose, Colorado 81401, telephone (303) 249–7791.

SUPPLEMENTARY INFORMATION:

Alternatives Analyzed: Four alternatives for managing the resources were considered: Current Management, Resource Conservation, Resource Utilization, and Preferred.

The Current Management Alternative emphasized current management direction, policies, and existing land use plans; it was the No Action Alternative required by the National Environmental Policy Act.

The Resource Conservation Alternative emphasized nonconsumptive natural resource values.

The Resource Utilization Alternative emphasized consumptive use of resources in the planning area.

The Preferred Alternative (called the Proposed Plan in the Final Environmental Impact Statement) balances competing demands by providing goods and services while protecting important environmental values.

Decision: The decision is to adopt the Proposed Plan as the San Juan-San Miguel Resource Management Plan except where the BLM Director authorized certain changes in response to public comments on the Final RMP/EIS. This document identifies one decision reached by BLM. Further decisions will be documented in a subsequent Record of Decision (ROD).

when the remaining protests are resolved by decision of the Director. The specific action contained in this document is:

A wild horse herd consisting of an average of 50 horses will be maintained on the Spring Creek Basin rangeland. All wild horses will be removed from the Naturita Ridge area. This decision responds to a desire by the public to maintain a wild horse herd in southwestern Colorado, while minimizing conflicts with other resources and users of the public lands.

Mitigation Measures: All practical measures will be taken to mitigate adverse impacts. These measures will be strictly enforced during implementation of the RMP. Monitoring will tell how effective these measures are in minimizing environmental impacts. Additional measures to protect the environment may be taken during or following monitoring as warranted.

Dated: August 16, 1985.

Kannon Richards,

Bureau of Land Management.

[FR Doc. 85-20353 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-JB-M

[ES-035241, Group 58]

Louisiana; Filing of Plat of Dependent Resurvey

August 20, 1985.

1. The plat of the dependent resurvey of the Tunica-Biloxi Indian Reservation in section 65, Township 2 North, Range 4 East, Louisiana Meridian, Louisiana, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on October 4, 1985.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., October 4, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85-20358 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-GJ-M

Realty Action; Exchange of Public Lands; La Paz and Mohave Counties, AZ

The Bureau of Land Management (BLM) proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to the Federal Land Policy and Management Act of 1976, according to section 206(a) (90 Stat. 2758, 43 U.S.C. 1716).

Gila and Salt River Meridian, La Paz and Mohave Counties, Arizona

Township	Range	Section	Subdivisions
Mohave County			
20N	21W	[illegible]	All.
		18	All
		[illegible]	[illegible]
16N	21W	1	All.
		[illegible]	E2.
		[illegible]	[illegible]
		12	All
		13	All.
		22	E2E2
		[illegible]	[illegible]
		25	All.
		[illegible]	N2; SE.
La Paz County			
8N	19W	1	W2.
		[illegible]	All available
		11	E2; E2W2.
		12	W2.
		13	W2.
		14	E2; E2W2; SWSW
		15	[illegible].
		[illegible]	All.
		22	All available.
		[illegible]	All.
		24	W2.
		[illegible]	W2.
		26	All.
		27	NWNW; E2SE
		[illegible]	All available.
		29	All available
		32	All available
		33	All
		34	All available
		35	All available
		[illegible]	W2.
7N	19W	3	W2E2; W2.
		4	All.
		5	All.
		6	All available.
		7	All available
		8	All.
		9	All
		10	W2E2; W2

Final determination on disposal will await completion of an environmental analysis. In exchange for these lands, the United States will acquire presently undescribed lands throughout the state.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands as described in this notice from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation, or the expiration of two years from the date of the publication, whichever occurs first.

For a period of forty-five (45) days from the date shown below, interested parties may submit comments to the District Manager, Yuma District Office, Post Office Box 5680, Yuma, Arizona 85364.

Dated: August 16, 1985.

J. Darwin Snell,

District Manager, Yuma District Office.

[FR Doc. 85-20357 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-32-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30682]

Hammermill Paper Co.; Exemption From 49 U.S.C. 10746, 10901, 11301, and 11343 et seq.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts (1) the Allegheny Railroad Company, Hammermill Paper Company's (Hammermill) wholly-owned, to-be-formed subsidiary (a) from the provisions of 49 U.S.C. 10901 with respect to the operation of certain lines of railroad and, in connection with the acquisition of a lease and operating agreement and an agreement to interchange, (b) from the provisions of 49 U.S.C. 11301 with respect to the issuance of securities, and (c) from the provisions of 49 U.S.C. 10746; and (2) Hammermill from the provisions of 49 U.S.C. 11343 with respect to its acquisition of a controlling interest in IWK&J Railroad Company.

DATES: This exemption will be effective on August 21, 1985. Petitions to reopen must be filed by September 16, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30682 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Virginia D. Green, 1150 Connecticut Avenue, NW. Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washinton, DC 20423, or call 289-4357

(DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 2, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Lamboley concurred with a separate expression. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85–20289 Filed 8–23–85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30687]

Missouri Pacific Railroad Co., Lease Exemption; Consolidated Rail Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 *et seq.*, the lease by Missouri Pacific Railroad Company of a 1.8-mile line of Consolidated Rail Corporation between Altamont and East St. Elmo, IL, subject to standard employee protective conditions.

DATES: This exemption is effective on September 25, 1985. Petitions to stay must be filed by September 5, 1985 and petitions for reconsideration must be filed by September 16, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30687 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC. 20423.

(2) James C. Stroo, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll-free 800–424–5403.

Decided: August 19, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor was absent and did not participate in this proceeding. Commissioner Sterrett did not participate in this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85–20290 Filed 8–23–85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Festivals Section) to the National Council on the Arts will be held on Monday, September 9, 1985 from 9:00 am-5:30 pm, and on Tuesday, September 10, 1985 from 9:00 am-5:30 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC.

A portion of this meeting will be open to the public on September 10, 1985 from 1:30–3:00 pm to discuss policy issues and guidelines.

The remaining sessions of this meeting on September 9, 1985 from 9:00 am-5:30 pm and September 10, 1985 from 9:00 am-12:30 pm and 3:00–5:30 pm are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1985, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 20, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–20264 Filed 8–23–85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Physics; Subcommittee for Review of the NSF Nuclear Science Programs; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committtee for Physics; Subcommittee for the Review of the NSF Nuclear Science Programs.

Date and time:

September 10, 1985; 9:00 a.m. to 9:30 p.m.
September 11, 1985; 8:00 a.m. to 4:00 p.m.

Place: Room 341, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Marcel Bardon, Director, Division of Physics, Room 341, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357–7985.

Purpose of subcommittee: To provide oversight concerning NSF support and planning for research in nuclear science.

Agenda: To review NSF Nuclear Science Section documentation as part of the program oversight function.

Reason for closing: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Managment Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: August 21, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–20274 Filed 8–23–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 73—Physical Protection of Plants and Materials.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Reports are submitted at irregular intervals as events occur. Licensee logs are submitted to NRC every three months.

5. Who will be required or asked to report: Licensees who are authorized to operate a nuclear power reactor or fuel reprocessing plant, who possess or use special nuclear material or spent reactor fuel in excess of 100 grams, are authorized to transport or deliver to a carrier for transportation or to take delivery of special nuclear material or spent reactor fuel in excess of 100 grams, or who import or export special nuclear material.

6. An estimate of the number of responses: 720

7. An estimate of the total number of hours needed to complete the requirement or request: 5,220.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC is proposing revisions to 10 CFR 73.71 to clarify the requirements for the reporting of safeguards events. Certain definitions of safeguards events would be eliminated or redefined. Telephonic notification and followup reporting requirements for safeguards events would be revised.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 21st day of August, 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–20338 Filed 8–23–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–321]

Consideration of Issuance of Amendment To Facility Operating License and Opportunity for Prior Hearing; Georgia Power Co. et al.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–57 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensees), for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1, located in Appling County, Georgia.

In accordance with the licensees' application for amendment dated July 24, 1985, the amendment would modify the Technical Specifications for Hatch Unit 1 to account for and support modifications to the plant design associated with the planned final installation of an Analog Transmitter Trip System (ATTS). The proposed revisions include changes to the following:

1. Surveillance and trip setpoint requirement for the ATTS components;
2. Reactor core isolation cooling turbine exhaust pressure trip setpoint;
3. Drywell pressure sensor functions;
4. Post-accident monitoring instrumentation ranges and surveillance requirements;
5. Trip setpoint/allowable values for reactor vessel water level, shroud water level and reactor steam dome pressure instruments;
6. Reactor steam dome pressure permissive setpoint for Core Spray and Low Pressure Coolant Injection System injection valves; and
7. Nomenclature changes.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 25, 1985, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petion for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the

Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 24, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated a Bethesda, Maryland, this 20th day of August, 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 85–20339 Filed 8–23–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–321]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing; Georgia Power Co. et al.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–57 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensees), for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1, located in Appling County, Georgia.

In accordance with the licensees' application for amendment dated August 1, 1985, the amendment would modify the Technical Specifications for Hatch Unit 1 to: (1) Delete the current requirements that certain Emergency Core Cooling Systems (ECCS) be demonstrated to be operable when a redundant or associated safety-related component is declared inoperable; (2) modify the current requirements for inservice inspection of the reactor coolant system pressure boundary; (3) decrease the number of plant service water pumps required to be operable prior to startup; (4) delete monthly operability tests for ECCS pumps and valves; (5) provide requirements to test Class 1, 2, and 3 components in accordance with section XI of the ASME Boiler and Pressure Vessel Code; and (6) make miscellaneous editorial changes.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 25, 1985, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or

request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 1, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland this 20th day of August, 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 85–20340 Filed 8–23–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Withdrawal of Application for Amendment To Facility Operating Licenses; Wisconsin Public Service Corp.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Wisconsin Public Service Corporation (the licensee) to withdraw its August 7, 1981 application of the Kewaunee Nuclear Power Plant located in Kewaunee County, Wisconsin. The proposed amendment would have revised the provisions in the Technical Specifications for the Kewaunee Plant in regard to testing pressure isolation valves at variance to our Order of April 20, 1981. The Commission issued a Notice of Consideration of Issuance of the Amendment in the **Federal Register** on July 20, 1983 (48 FR 33095). By letter dated July 19, 1985, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw its application for the proposed amendment. The Commission has considered the licensee's July 19, 1985 request and has determined that permission to withdraw the August 7, 1981 application for amendment should be granted.

For further details with respect to this action, see (1) NRC Order of April 20, 1981; (2) the application for amendment dated August 7, 1981; (3) the licensee's letter dated July 19, 1985, withdrawing the application for license amendment; and (4) our letter dated August 19, 1985. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the University of Wisconsin Library Learning Center, 2402 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Bethesda, Maryland this 19th day of August 1985.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 85–20341 Filed 8–23–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 1C–14685; File No. 812–6138]

The Guardian Insurance & Annuity Company, Inc., et al.; application and Opportunity for Hearing

August 20, 1985.

Notice is hereby given that The Guardian Insurance & Annuity Company, Inc. ("Guardian"), 201 Park Avenue South, New York, NY 10003, and The Guardian Separate Account B, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (the "Account") (collectively known as "Applicants"), as issuers of certain single premium variable life insurance contracts funded by the Account, filed an application on June 24, 1985, and an amendment thereto on August 13, 1985, for an order pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of sections 9(a), 12(d)(1), 13(a), 15(a), 15(b), 26(a)(2), and 27(c)(2) of the Act, and from Rule 6e2(b)(15) thereunder, to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the represenations contained therein, which are summarized below, and are referred to the Act and rules thereunder for a statement of the relevant provisions.

Sections 12(d)(1), 26(a)(2) and 27(c)(2)

Under Applicants' proposed structure, the Account would invest at net asset value in shares issued by either the Value Line Centurion Fund, Inc., The Guardian Cash Fund, Inc., The Guardian Stock Fund, Inc., or the The Guardian Bond Fund, Inc., ("the Funds"), each of which is a diversified open-end management investment company, or units of a unit investment trust, The Shearson Lehman Brothers Fund of Stripped ("Zero") U.S. treasury Securities, Series A, and any subsequent series ("Zero Trust"), to be established by Shearson Lehaman Brothers, Inc. ("Shearson"). The Zero Trust is registered under the Act and will be comprised of multiple unit investment trusts ("Trusts"), each Trust containing U.S. Treasury securities which have been stripped of their unmatured interest coupons, interest coupons which have been stripped from U.S. Treasury securities, and receipts and certificates for such stripped obligations and coupons ("zero coupon bonds"). The Account will purchase units of each Trust based upon the net transactions by contractowners. Applicants state that the total offering price of Zero Trust units placed in the Account, whether they are sold to the Account in the primary or secondary market, will include a "transaction charge." At the time of purchase, the Account will pay that portion of the total price of the units equal to their "net asset value." Guardian will directly pay to shearson out of its general assets a transaction charge, which is currently designed to range from .5–2.0% of the offering price depending upon the maturity of the Trusts for which securities are purchased. Thereafter, Guardian will seek to be reimbursed for the amounts advanced by assessing a charge on the assets of the Account held in the investment divisions investing in the Zero Trust. Applicants represent that this charge may vary, but will only reflect actual costs. These actual costs will include an element of interest compensating Guardian for the delay in recouping amounts advanced. Applicants state that the rate of interest will be based on the current yield for U.S. Treasury bonds having a maturity equal to the weighted average maturity of the bonds held in the Zero Trust. Applicants represent that the total charge against account assets will never exceed an effective annual rate of .50 percent of the average daily net assets of each of the Account's investment divisions investing in the Trusts.

Guardian and the Account seek relief from the provisions of section 12(d)(1) to allow the Account to acquire the units of the Zero Trust and from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit Guardian to recover through an asset charge the amounts paid by it to Shearson in connection with the Account's acquisition of Zero Trust units. In support of their application, Applicants assert that this proposed structure does not raise legal or policy issues materially different from the common separate account structure in which a unit investment trust invests solely in shares of an underlying open-end management investment company, which Applicants assert is permitted by section 12(d)(1)(E) of the Act. Moreover, Applicants note that by permitting the investment divisions of the Account to

be allocated to the Zero Trust, which invests in zero coupon bonds, contractowners will have available an investment vehicle that will have a fixed yield for a specified period of time. Applicants contend that the proposed transaction does not run counter to the statutory purposes underlying section 12. In this regard, Applicants state that the transaction is not a method for leveraging control or assessing overlapping charges. Applicants claim that the compensation received by Shearson is necessary to induce Shearson to create the Zero Trust, to implement the operational procedures for the Zero Trust, and to enter into a contractural agreement with Guardian to maintain a secondary market in Zero Trusts units, and, thus, is a necessary acquisition cost. In this connection, Applicants note that the secondary market here, unlike the case of most publicly offered unit investment trusts, is not merely a desirable feature designed to avoid disruption of the Zero Trust's portfolio; it is necessary to maintain the stabilized rate of return on the funds in an investment division. Applicants also represent that the compensation will reimburse Shearson for operational and overhead expenses, and legal, accounting and evaluator's fees, and that none of this compensation is designed as reimbursement of distribution expenses or compensation for sales efforts. Guardian believes that allocating a proportionate share of the acquisition expenses to all contractowners who allocate premiums to the investment divisions investing in the Zero Trust, rather than permitting the expenses borne by individual contractowners to vary based upon the timing of their particular allocation, benefits contractowners by stabilizing yield and by creating more equitable results among contractowners.

Applicants also believe that the proposed asset charge is a reasonable and proper charge designed to cover expenses that are properly viewed as a cost of operating and administering the Account. Moreover, Applicants point out that Shearson is neither an affiliated person nor a principal underwriter for the Account; therefore the negotiations between Shearson and Guardian and its Account in setting the amount of the compensation were at arm's length and are presumed to have yielded fair values. Finally, Applicants assert that the agreement between Guardian and Shearson in establishing this structure will require that the terms of the transactions will be at least as good, if not better, than the Account could receive from other parties. Applicants note that unit investment trusts offering units to the public charge a sales load of 3 to 5% of purchases while the maximum transaction charge assessed by Shearson is 2%, although Shearson, because units of the Zero Trust will be offered solely to the Account, will bear no distribution expenses.

Applicants assert it is appropriate to recover interest costs through deduction of the proposed asset charge. Guardian expects to advance large amounts in the early years in connection with the purchase of units of interest in the Zero Trust, but considerably less in later years because purchases of units (and transaction charges) will diminish since later purchases by contractowners will be offset by redemptions. Because the asset charge will be designed to recover these charges over the life of each of the Trusts (thus spreading the costs among contractowners purchasing early in the life of each Trust and those purchasing later), Applicants represent that a significant portion of the cost to Guardian is the loss of interest on monies advanced caused by the delay in recovery. Given that Guardian anticipated recovery of the transaction costs over the life of each Trust, Applicants believe that a rate of interest associated with the weighted average maturity of the bonds held by the Trust is the fair and reasonable measure of the time value of the monies advanced by Guardian. Applicants represent that as to each investment division, the rate of interest will be applied to the amounts by which the transaction charges for the division for each quarter exceed the asset charges collected as reimbursement for such charges, plus any amounts (including interest) that were unrecovered at the end of the prior quarter. Applicants further represent that Guardian will monitor the cumulative amounts collected for each division through this asset charge in comparison with the amounts paid by Guardian and will not charge any division of the Account more than actual costs.

Section 9(a), 13(a), 15(a), 15(b) and Rule 6e–2(b)(15)

Applicants request an exemption from Rule 6e–2, the exemptive rule under the Act for separate accounts offering scheduled premium variable life contracts, and sections 9(a), 13(a), 15(a), and 15(b) of the Act to the extent necessary to permit applicants to rely on the relief provided under paragraph (b)(15) of Rule 6e–2, even though (1) the Funds will offer their shares to the Account, The Guardian Separate Account A, which is a separate account established by Guardian issuing individual and group variable annuity contracts, and possibly other variable life (scheduled or flexible premium) or variable annuity separate accounts sponsored by Guardian or an affiliated insurance company (this practice is commonly referred to as "mixed funding"), and (2) the Account will invest in the Zero Trust, which is not a management investment company. Applicants state that, in addition, additional registered management investment companies may be created in the future which would offer their shares to both the Account and other separate accounts established by Guardian or an affiliated company to fund both variable annuity and variable life contracts.

Applicants submit that paragraph (b)(15) limits its exemptive relief to a unit investment trust all the assets of which consist of shares of one or more registered *management investment companies* which offer their shares *exclusively* to variable life insurnace separate accounts of the insurer or an affiliated insurer. Because shares of the Funds are currently offered to a variable annuity separate account, The Guardian Separate Account A, and possibly will be offered to other separate accounts in the future, Applicants assert that the exclusivity requirement of paragraph (b)(15) may not be satisfied. Additionally, because paragraph (b)(15) explicitly refers to a separate account investing all of its assets in shares of one or more registered management investment companies, Applicants assert that the literal language of this paragraph could be interpreted so as not to extend relief to a separate account, organized as a unit investment trust, that invests in a unit investment trust such as the Account's investments in the Zero Trust.

Applicants represent that granting the requested relief will not compromise the regulatory purposes of the above cited provisions and will result in cost savings for purchasers and that they will comply with certain conditions set forth in the application, which are summarized as follows: (1) Any Fund which is organized as a Massachusetts business trust will comply with all provisions of the Act requiring voting by shareholders, and in particular such Fund will either provide for annual meetings or comply with section 16(c) of the Act (even if the Fund is not one of the trusts described in section 16(c) of the Act) as well as with Sections 16(a) and, if applicable, 16(b). Further, such Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with

respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto. (2) A majority of the board of directors of each Fund shall consist of persons who, with limited exceptions as described in the application, are not "interested persons" of the Fund, as described in the Act. (3) The board of directors of each Fund will monitor whether, from the standpoint of variable life insurance contractowners or variable annuity contractowners, mixed funding would create an irreconcilable material conflict. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any portfolio are being managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by an insurer to disregard the voting instructions of policyowners. (4) Guardian and any affiliated insurance company whose separate account invests in a Fund shall monitor the Fund and shall promptly provide the board of directors of the Fund with information regarding any potential or existing irreconcilable material conflict. Such insurance companies will be responsible for assisting the board in carrying out its responsibilities under these conditions, by providing the board with all information reasonably necessary for the board to consider any issues raised. This includes, but is not limited to, an obligation by each such insurance company to inform the board whenever policyowner voting instructions are disregarded. (5) If it is determined by either the board of directors of a Fund, a majority of its disinterested directors, or Guardian or an affiliated insurance company of Guardian whose separate account invests in the Fund, that an irreconcilable material conflict has occurred, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy the conflict, up to and including: (i) Establishing a new registered management investment company or managed separate account, and (ii) withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contractholders and, as appropriate, segregating the assets of any group (i.e., owners of annuity contracts, owners of life insurance or owners of variable contracts of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected policyowners the option of making such a change. For purposes of condition 5, Applicants state that a majority of the disinterested directors of the board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contractowners materially adversely affected by the irreconcilable material conflict.

Finally, Applicants represent that if and to the extent that Rule 6e–2 is amended to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed funding on terms different from any relief granted to them by order, then Applicants, the Funds or both shall take such steps as are necessary to comply with the amended rule.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–20310 Filed 8–23–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14684; 812–6089]

Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al.; Application for an Order Amending Previous Orders Approving Certain Offers of Exchange, and Approving Proposed Offers of Exchange

August 19, 1985.

Notice is hereby given that Merrill Lynch, Pierce, Fenner & Smith Incorporated, Prudential-Bache Securities Inc., Shearson Lehman Brothers Inc., Dean Witter Reynolds Inc. And Paine Webber Incorporated ("Sponsors"), and all presently outstanding and subsequently issued series ("Series") (with the exception of short-term Series, or any other Series on which the maximum applicable sales charge is lower than that applicable to the current public offering price of the Intermediate Term Series of The Corporate Income Fund) of The Corporate Income Fund, The Equity Income Fund, The Government Securities Income Fund, The International Bond Fund, The Liberty Street Trusts, Municipal Income Fund and Municipal Investment Trust Fund, unit investment trusts registered or to be registered under the Investment Company Act of 1940 ("Act") ("Funds" and, together with sponsors, "Applicants"), c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated, One Liberty Plaza, 165 Broadway, New York, New York 10080, filed an application on April 11, 1985, and amendments thereto on June 26, July 11, and August 5, 1985 pursuant to sections 6(c) and 11 of the Act, for an order (1) amending the conditions prescribed in three prior orders issued by the Commission approving certain offers of exchange ("Exchange Option"); (2) approving, on substantially identical terms, an offer of exchange proposed to be made by all present and subsequent and similar series of the International Bond Fund; and (3) approving an additional offer of exchange ("Conversion Option") which Applicants propose to extend to holders of any registered unit investment trust carrying a specified sales load. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized

below, and to the Act for the text of the applicable statutory provisions.

Applicants state that each Series is created by a separate trust indenture on the deposit of a portfolio of securities by the Sponsor as consideration for units of fractional undivided interest ("Units") which the Sponsors then offer to the public by means of a separate prospectus at maximum applicable sales charges currently ranging from 3.25 to 4.0% of the public offering price (5.5% on The Liberty Street Trusts), depending on the type of Series. In is further stated that although they are not obligated to do so, the Sponsors maintain secondary markets for Units at prices generally based on the higher, "offering side" evaluation of the underlying securities (the prices for the Liberty Street Trusts, however, are based on the bid side evaluation, while prices for Units of the Equity Income Fund are normally based on closing sale prices on the New York Stock Exchange). Units purchased in the secondary market may be re-offered by the Sponsors to the public at prices based on the current aggregate offering side evaluation (excepting series of The Liberty Street Trusts and The Equity Income Fund) of underlying securities plus the applicable sales charge, or they may be deposited in future Series at prices based on the offering side evaluation only, or presented to the trustee of the particular Series for redemption at prices based on the bid side evaluation of those securities. If the secondary market were to be discontinued, holders could present Units to the trustee for redemption, but the redemption price, it is noted, is generally 1 to 2% below the price based on the offering side evaluation.

Applicants further state that Series of The Corporate Income Fund, The Government Securities Fund, The Municipal Income Fund and Municipal Investment Trust Fund have established the Exchange Offer in accordance with an order issued by the Commission on November 16, 1978 (Investment Company Act Release No. 10481); and that Series of The Equity Income Fund are permitted to participate in the Exchange Option by an order dated December 16, 1980 (Investment Company Act Release No. 11494). Lastly, by order dated September 8, 1982 (Investment Company Act Release No. 22647) Series of The Liberty Street Trusts are permitted to participate in the Exchange Option to the extent that Units of certain Series of the Liberty Street Trusts may be exchanged for Units of certain other Series of The Liberty Street Trusts.

It is further stated that to exercise his Exchange Option, a Unitholder sells his Units to the Sponsor, who applies the sales proceeds to the purchase, at the current public offering price, including a reduced sales charge, of whole Units of the Series into which the Unitholder wishes to exchange. The reduced sales charge is normally $15 per Unit, reflecting certain cost savings. Under present restrictions, a Unitholder must exchange his investment for whole Units only, i.e., he is not permitted to make up any difference between the proceeds from the Units submitted for exchange and the cost of the Units being acquired, so that any excess amount representing less than the price of the whole Unit of the Series into which the exchange is being made must be distributed to him in cash. Applicants therefore, propose that the Unitholder be permitted to contribute the amount of this difference in cash to round up to the next highest number of whole Units.

Applicant's second amendatory proposal involves the present provision of the Exchange Option requiring a Unitholder who wishes to exchange his Units prior to the expiration of eight months from the date of his purchase of the Units to be exchanged to pay the difference, if any, between the sales charge he paid on the Units he holds and the sales charge on the Units to be acquired, if that difference is greater than the fixed Exchange Option charge (generally, $15 per Unit). Applicants' requested amendment would permit the reduction of this eight-month period to five months. The justification offered for this reduction is that the minimum period for differentiating between short-term and long-term capital gains and losses under the Internal Revenue Code of 1954 ("Code") for property acquired on or after June 23, 1984, and before January 1, 1988, is currently "more than six months," increased from "more than one year." It is submitted that many exchanges between Series may be motivated by the desire to take profits as soon as the preferential long-term capital gains treatment under the Code is available; or, conversely, to realize short-term capital losses to be applied to reduce taxable income—an objective which could be impeded by an Exchange Option holding period requirement that exceeds six months. Therefore, in order to permit the Exchange Option to be utilized without forfeiting any such tax benefits, Applicants propose that a five-month period be instituted in place of the present eight-month holding requirement. This modification would not, Applicants assert, materially reduce the protection against unfair pricing afforded by the provisional period requirement, and would meet the objective of conforming the requirement to the terms of current federal income tax policy.

The Exchange Option, as described above, is not presently being offered by Series of the International Bond Fund (811–2843) (originally, "The International Dollar Fund", and thereafter, "The International Income Fund"), for the reason that the exemptive relief from the Act needed to permit the International Bond Fund to participate in the Exchange Option has heretofore never been applied for. Applicants represent that on May 17, 1984, the Sponsors (except Paine Webber Incorporated) entered into a trust indenture for the First Multi-Currency Series of The International Income Fund, a unit trust designed to provide current income and the prospect of capital appreciation through investment in a fixed portfolio of interest-bearing debt obligations payable in foreign currencies which, in the opinion of the Sponsors, appear to have the ability to maintain or improve their strength in the world economy relative to the U.S. dollar over the intermediate term. Since May, 1984, the Sponsors have created five Multi-Currency Series of The International Bond Fund (the first Series was named "The International Income Fund"; the name of the Fund for the Second through Fifth Multi-Currency Series was changed to "The International Bond Fund"). With a sales charge of 4.0% of the public offering price, scaled down on purchases of 100 Units (approximately $100,000) or more, the operations of these Series are identical to the Funds with respect to which the Commission has heretofore granted exemptions from Section 11 to permit the Exchange Option to be offered. Therefore, Applicants request that this relief be granted pursuant to Section 6(c) of the Act, subject to the same terms and conditions, to permit The International Bond Fund to participate in the Exchange Option.

In addition to the foregoing, Applicants request further exemptive relief to permit the Funds to offer on terms substantially the same as the Exchange Option, in exchange for beneficial interests in any and all registered unit investment trusts which have been initially offered to the public at a maximum applicable sales charge of at least 3% ("Conversion Trust"). This proposed new exchange offer (referred to hereinafter as the "Conversion Option") would apply to Units of any Series (except Series of The Liberty

Street Trusts) in which the Sponsors may be maintaining a secondary market. Unit investment trusts promoted by the Sponsors, but not included among the Funds, may be Conversion Trusts. Applicants state, but all holders of Conversion Trust will be eligible to participate in the Conversion Option regardless of whether they are or were retail customers of any Sponsor, or whether any Sponsor participated as an underwriter or selling dealer in the original public offering of units of the Conversion Trust.

It is further stated that holders of Conversion Trust interests may wish to exercise the Conversion Option for a variety of reasons, including a revision of their investment objectives; a desire to acquire an interest in an underlying portfolio not previously available in a unit trust format; a desire to enhance income tax results; or, in the instance of a Conversion Trust for which no secondary market has been established, the desire to participate in a unit investment trust which is active and ongoing, and for which attendant investor services are offered of the type supplied by the Sponsors. Applicants assert that the Conversion Option is expected to appeal to investors of active trusts only if the Funds are offering a better investment opportunity than the conversion Trusts.

Applicants represent that, pursuant to the Conversion Option, holders of Conversion Trust interests would, in general, be eligible to acquire Units of a Series of the Funds at a reduced charge, which normally will be $15 per Unit of about $1000 face amount ($15 per 1,000 Units of about $1 face amount, or 1.50% of the public offering price for certain other Series). This fixed reduced sales charge is expected to approximate about 1.5% of the offering price, and as a condition to the granting of the exemption requested, the Sponsors have agreed to charge no more than $5 per Unit more for the Conversion Option than the corresponding fee currently being charged for the Exchange Option. It is stated that these reductions reflect the fact that while conversion is likely to require some professional assistance, such as the analysis of an investor's financial and tax circumstances, the customer's essential investment needs will have been determined previously and, as the structure of unit trusts are similar, somewhat less advice and selling effort is expected. Applicants submit that the reduced sales charge is a reasonable and justifiable expense to be allocated to the professional assistance and operational expenses which are contemplated in connection with these transactions.

As in the case of the Exchange Option, a holder of a Conversion Trust interest who at the time of purchase of that interest paid a sales charge lower than that applicable to a direct purchase of the quantity of Units to be acquired, and who has held his Conversion Trust interest for at least five months, would be allowed to exercise the Conversion Option at the reduced fixed sales charge stated above. However, if the Conversion Trust interests have been held for less than five months, the sales charge collected will be the greater of the reduced fixed sales charge, described above, or the difference between the sales charge actually paid on acquisition of the Conversion Trust interests, on the one hand, and the sales charge applicable to direct purchases of the quantity of Units of the Series being acquires through exercise of the Conversion Option, on the other. Applicants submit that the purpose of the holding period, as reduced to five months, is to diminish any unfairness or price discrimination between an investor who acquired Units pursuant to the Conversion Option and one who acquires Units by direct purchase, paying the full sales load.

Notice is further given that any interested person wishing to request a hearing on the application may, not later that September 9, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission order a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20311 Filed 8-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14683; 812-6155]

Merrill Lynch California Municipal Series Trust; Application For An Order Granting Exemption

August 19, 1985.

Notice is hereby given that Merrill Lynch California Municipal Series Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on July 17, 1985, and an amendment thereto on August 7, 1985, for an order of the Commission, pursuant to section 6(c) of the Act exempting Applicant from the provisions of section 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act, and Rule 22c-1 thereunder, to the extent necessary to permit Applicant to assess a contingent deferred sales charge on certain redemptions of shares of Applicant's Merrill Lynch California Tax-Exempt Fund ("Fund"), a sole separate series, and to waive the contingent deferred sales charge with respect to redemptions which result from the death or disability (as defined in section 72(m)(7) of the Internal Revenue Code of 1954 ("Code")) of a shareholder, or which pertain to certain distributions from Individual Retirement Accounts, or other qualified retirement plans to the extent such accounts or plans (which generally would not be expected to invest in Applicant) maintain a position in Applicant's shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant is organized as a business trust under the laws of the Commonwealth of Massachusetts. The Fund is its only existing portfolio, and has as its investment objective the maximum level of income exempt from federal and state (California) income taxes consistent with prudent investment management. It is further stated that Fund Asset Management, Inc. ("Management"), a wholly-owned subsidiary of Merrill Lynch Asset Management, Inc., is the Fund's investment adviser, and that Merrill Lynch Asset Management, Inc. ("Distributor") is the Fund's principal underwriter/distributor.

Applicant states that mutual funds sold with a sales charge have traditionally imposed a front-end load, so that purchase payments are invested after the deduction of any applicable

sales charge. Applicant proposes to offer the Fund's shares without an initial sales charge so that investors will have the entire amount of their purchase payments fully invested a contingent deferred sales charge out of the proceeds of certain redemptions of its shares. Applicant states that in no event could the amount of such charges, in the aggregate, exceed 4% of the aggregate purchase made by the investor.

The contingent deferred sales charge will not be imposed on redemptions of Fund shares which were purchased more than 4 years prior to the redemption, or which were derived from reinvestment of distributions. In addition, with respect to shares purchased during the four years preceding the redemption, no contingent deferred sales charge will be imposed on an amount which represents an increase in the value of the particular shares being redeemed due to capital appreciation. Applicant states that for purposes of determining whether a contingent deferred sales charge will be imposed it will be assumed that a redemption is made, first, of shares purchase more than four years prior to the redemption, second, of shares derived from reinvestment of distributions and, third, of shares purchased less than four years prior to the redemption. Where a contingent deferred sales charge is imposed, the amount of the charge will depend upon the number of years which have elapsed since the investor made the purchase from which an amount is being redeemed according to the following table:

Year since purchase payment made	Contingent deferred sales load as a percentage of amount redeemed
First	4.0.
Second	3.0.
Third	2.0.
Fourth	1.0.
Fifth and Thereafter	None

Applicant further states that, in determining the rate of any applicable contingent deferred sales charge, it will be assumed that a redemption is made of Fund shares held by the investor for the maximum length of time within the applicable four-year period.

Applicant believes that the imposition of the contingent deferred sales charge is fair and in the best interests of the Fund's shareholders. Applicant submits that the proposed transaction permits shareholders to reap the benefit of a larger amount of capital invested for them from the time of their purchase of Fund shares. Moreover, Applicant states that, because the contingent deferred sales charge applies only to redemptions of amounts representing purchase payments during the first four years after the purchases, it does not apply to increases in net asset value per share, or to amounts representing reinvestment of distributions.

Applicant proposes, in addition, to finance the Fund's distribution expenses pursuant to a plan adopted under Rule 12b–1 under the Act (the "Plan"). Under the Plan, the Fund will pay an annual fee to the Distributor to defray certain costs incurred in offering the Fund's shares. These expenses include advertising and promotional costs, sales administration and related sales expenses, including the costs of printing and distributing prospectuses to prospective investors, and sales commissions and incentive compensation. Applicant's distribution fee will be calculated on the basis of .50% per annum of the average daily net assets of the Fund. The distribution fee will be accounted for as a current expense by the Fund.

Where amounts attributable to purchase payments are redeemed (and thus no longer are contributing to the annual distribution charge), Applicant believes that it is fair (1) to impose on the withdrawing shareholder a lump-sum payment (i.e., the proposed contingent deferred sales charge) reflecting expenses which have not been recovered through payments by the Fund, and (2) to remove the assets on which the contingent deferred sales charge was imposed from the base amount on which the Fund's distribution fee is calculated. Applicant asserts that the amount, computation and timing the contingent deferred sales charge thus are designed to promote fair treatment of all shareholders, while permitting the Fund to offer investors the benefit of having purchase payments fully invested on their behalf immediately. Applicant represents that, in its review of the Plan pursuant to Rule 12b–1, Applicant's board of trustees will consider the use by the Distributor of revenues raised by the contingent deferred sales charges.

Applicant proposes to waive the contingent deferred sales charge on any redemption following the death or disability of a shareholder. An individual would be considered disabled for this purpose if he meets the definition thereof set forth in section 72(m)(7) of the Code. The waiver would be applicable where the decedent or disabled person is either an individual shareholder or owns the shares with his or here spouse as a joint tenant with right of survivorship, and where the redemption is made within one year of the death or initial determination of disability.

Applicant also proposes to waive the contingent deferred sales charge when a total or partial redemption is made in connection with certain distributions from Individual Retirement Accounts ("IRA's"), or other qualified retirement plans (IRA's and other qualified retirement plans would not generally be expected to invest in the Fund, but may nevertheless do so if they so desire). It is proposed that the charge be waived for any redemption in connection with a lump-sum, or other distribution following retirement, or in the case of an IRA or self-employed retirement plan qualified under section 401 of the Code (Keogh Plan) or a custodial account established pursuant to section 403(b)(7) of the Code, after attaining age 59½. The deferred charge also would be waived on any redemption resulting from the tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code.

Applicant submits that the imposition of the contingent deferred sales charge in the manner described above would not cause shares of Applicant to fall outside the definition of redeemable securities in section 2(a)(32) of the Act. Applicant further believes that imposition of the contingent deferred sales charge in no way restricts a shareholder from receiving his proportionate share of the current net assets of the Fund, but merely defers the deduction of a sales charge and makes it contingent upon an even which may never occur. Although the contingent deferred sales charge is not a redemption charge in the ordinary sense, Applicant submits that the conditions of section 10(d) of the Act contemplate that an investment company may both be an open-end company and impose a discount from net asset value on redemption of its shares. However, in order to resolve any ambiguity in this regard, Applicant requests an exemption from section 2(a)(32) of the Act to the extent necessary to permit implementation of the proposed contingent deferred sales charge.

Applicant further submits that the proposed contingent deferred sales charge is consistent with the intent of the definition "sales load" contained in section 2(a)(35). The contingent deferred sales charge will be paid to the Distributor as sales compensation and reimbursement for expenses related to offering the Fund's shares for sale to the public. Therefore, Applicant submits

that this arrangement would fall within the section 2(a)(35) definition of sales load but for the timing of the imposition of the charge. Applicant contends that postponement of the sales charge, and its contingency upon the occurrence of an event which might not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. However, Applicant requests an exemption from the provisions of section 2(a)(35) to the extent necessary to implement the proposed charge.

Applicant submits, in addition, that implementation of the proposed contingent deferred sales charge is in no way violative of the current pricing requirements of section 22(c) of the Act, or Rule 22c–1 thereunder. When a redemption of Applicant's shares is effected, it is stated, the price of the shares at which redemption will be effected will be based on current net asset value. The contingent deferred sales charge will merely be deducted at the time of redemption in order to determine the shareholder's proportionate redemption proceeds. Applicant will, it is stated, disclose the contingent deferred sales charge in its prospectus.

In further support of its request for exemptive relief, Applicant submits that, because of the manner in which its contingent deferred sales charge and the waiver therefrom will be applied, Rule 22d–1 exempts the contingent deferred sales charge and the waiver therefrom from the prohibitions of section 22(d) of the Act. Specifically, Applicant asserts that the waiver of the contingent deferred sales charge in the extraordinary circumstance of death or total disability of the investor is justified on the basis of fairness. This waiver, Applicant submits, will not discriminate against shareholders of funds having traditional initial sales loads for which no such waiver or reduction is proposed because the impact of such a charge is not sustained by the shareholder at the time of redemption (as it is with a contingent deferred sales charge).

Furthermore, it is stated, the waiver of the contingent deferred sales charge under the circumstances contemplated would not adversely effect existing shareholders. Waiver of the charge would not result in the loss of any revenue to Applicant because proceeds from the charge will be paid to the Distributor. Furthermore, Applicant asserts, because the .50% distribution fee payable by the Fund is based on the average daily net assets of the Fund, amounts redeemed, including amounts upon which the contingent charge has been waived, will be removed from the base upon which the fee is calculated.

Applicant submits that the exemptions it has requested are appropriate and in the public interest, consistent with the protection of investors and purposes fairly intended by the Act. Applicant further submits that waiver of the contingent deferred sales charge under the above-described circumstances will not harm Applicant or its remaining shareholders or purchasers. Additionally, Applicant represents that it will fully disclose the waiver provision in the Fund's prospectus.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 9, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–20312 Filed 8–23–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14686; File No. 812–6064]

Ryland Acceptance Corporation Four; Mortgage-Backed Bond Application

August 20, 1985.

Notice is hereby given that Ryland Acceptance Corporation Four (the "Applicant"), 10221 Wincopin Circle, Columbia, MD 21044, filed an application on February 28, 1985, and amendments thereto on May 24, July 31, and August 19, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting it from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below and to the Act and rules thereunder for the text of their relevant provisions.

According to the application, Applicant is a wholly-owned subsidiary of Ryland Mortgage Company ("Ryland"), which is a wholly-owned subsidiary of The Ryland Group, Inc., a homebuilder whose common stock is listed on the New York Stock Exchange. Applicant proposes to issue one or more series of Bonds ("Series of Bonds") rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is unaffiliated with the Applicant. Applicant represents that each Series of Bonds will be secured primarily by collateral pledged to secure only that Series of Bonds ("Bond Collateral") and each Series of Bonds will consist of one or more classes of Bonds and will be issued pursuant to an indenture ("Indenture") between the Applicant and an independent trustee ("Trustee"). The Bond Collateral securing each Series of Bonds, including Notes, Mortgage Collateral (Both as defined below) (whether owned by the Applicant or pledged by a participating financial affiliate to secure Notes) and reserve funds, other than buy-down reserve funds, will be held by the Trustee or by an independent custodian on behalf of the Trustee pursuant to the Indenture for that Series of Bonds.

Applicant states that the Bond Collateral will consist primarily of interests in some combination of the following (collectively, "Mortgage Collateral"): (a) Funding agreements together with related promissory notes evidencing loans made by the Applicant to limited purpose financial subsidiaries of homebuilders or mortgage originating institutions ("Financial Affiliates"), which notes are secured by Mortgage Certificates or Mortgage Loans (both as defined below) and (b) fully modified pass-through certificates guaranteed as to timely payment of principal and interest by the Government National Mortgage Association, mortgage pass-through securities guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association, or mortgage participation certificates guaranteed as to timely payment of interest and ultimate collection of principal by the Federal Home Loan Mortgage Corportion (collectively, "Guaranteed Mortgage Certificates"), (c) other pass-through certificates evidencing an undivided interest in pools of mortgage loans secured by first liens on single family residences (together with Guaranteed Mortgage Certificates, "Mortgage Certificates") or (d) mortgage loans secured by first liens on single family residences ("Mortgage Loans"), together

with payments that may become due under certain related mortgage insurance and hazard insurance policies.

Applicant states that Bond Collateral may include several types of reserve funds and accounts. First, payments received in respect of the Mortgage Collateral will be held by the Trustee and reinvested pending the next bond payment date; all such reinvestments will mature on or prior to such bond payment date, and on such bond payment date such payments and the earnings thereon will be distributed as required by the Indenture. Second, certain reserve funds may have a fixed or declining amount, and earnings on such funds will be released from the lien of the Indenture on certification by independent accountants. Finally, there may be established certain reserve funds or accounts that are required by the rating agencies that rate the Bonds as additional collateral in light of the nature of the Mortgage Collateral and of Applicant's obligations on the Bonds. In any event, the amounts due pursuant to the terms of the Bonds will not depend on the actual earnings on such reserve funds.

Applicant will obtain the Mortgage Collateral used to secure a Series of Bonds by sale from Ryland and by pledge pursuant to funding agreements between the Applicant and each Financial Affiliate participating in the issuance of a Series of Bonds ("Funding Agreements"). The Funding Agreements provide that (i) Applicant will make a loan out of the net proceeds of the sale of such Series of Bonds to each Financial Affiliate, such loan to be evidenced by one or more promissory notes (Notes"); (ii) each such Financial Affiliate will pledge Mortgage Collateral to the Applicant as security for its loan; and (iii) each such Financial Affiliate will be obligated to repay its loan by causing payments on the Mortgage Collateral that secures its Notes to be made directly to the Trustee. Applicant will in turn pledge its entire right, title and interst in such Funding Agreements (except as provided in the Indenture), and in the related Notes and Mortgage Collateral to the Trustee as security for such Series of Bonds. Each Financial Affiliate is expected to distribute its loan proceeds to its related homebuilder or mortgage originating institution, which in turn is expected to use some or all of such proceeds to build houses or invest in mortgage loans and mortgage-related securities.

Where the Mortgage Collateral pledged by a participating Financial Affiliate pursuant to a Funding Agreement includes Mortgage Loans, such Mortgage Loans will consist of mortgage loans that were initially originated on behalf of the builder or a mortgage originating institution ("Participant") with which such Financial Affiliate is affiliated. Where such Mortgage Collateral includes Mortgage Certificates, the Applicant will not control whether all the underlying mortgage loans were initially originated on behalf of such Participant; however, each Participant will represent that except for de minimus amounts the mortgage loans underlying such Mortgage Certificates were originated on behalf of the Participant or a predecessor.

Applicant and each Financial Affiliate will have the limited right to pledge new Mortgage Collateral ("Substitute Collateral") in place of the Mortgage Collateral beneficially owned by it and initially pledged as security for the Bonds or Notes. The Substitute Collateral will have payment terms similar to, and in no event scheduled cash flows less than, those of the Mortgage Collateral it replaces. After giving effect to any such substitution, the scheduled cash flows on the Mortgage Collateral, together with the reinvestment income thereon at assumed rates acceptable to the rating agencies that rate the Bonds, will be sufficient, according to the application, to make payments on the Bonds in accordance with their terms. Applicant and any Financial Affiliate will only be permitted to replace (i) Mortgage Loans with Mortgage Loans of equal or better quality, (ii) Guaranteed Mortgage Certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates") with other GNMA Certificates, (iii) Guaranteed Mortgage Certificates guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation ("FNMA Certificates" or "FHLMC Certificates," respectively) with GNMA Certificates, FNMA Certificates, or FHLMC Certificates, and (iv) private Mortgage Certificates with private Mortgage Certificates of equal or better quality issued by the same entity; provided that in case of a Mortgage Loan that the substituted Mortgage Loan is of higher or equal quality (that is, such substitute Mortgage Loan is insured to at least the same level by a mortgage insurer, the claims paying ability of which is rated at least as high as that of the insurer of the Mortgage Loan being replaced, by the rating agency or agencies rating the Bonds, or if the Mortgage Loan being replaced is not so insured, the substitute Mortgage Loan has a loan to value ratio no higher than the Mortgage Loan being replaced). In the event that Mortgage Loans originated more than one year prior to substitution are substituted for Mortgage Loans orginially included in the Mortgage Collateral, each such substitute Mortgage Loan will be reviewed for continuing underwriting qualification. Applicant represents that it will be a further condition of any such substitution that the outstanding ratings of the Bonds not be affected by such substitution.

Applicant does not anticipate that substitution of Mortgage Collateral will occur frequently. Applicant believes that, in practice, substitution is likely to occur, if at all, only where the Applicant or a participating Financial Affiliate desires to remove a particular loan from the Bond Collateral in order to have greater discretion in dealing with a particular homeowner.

Applicant states that the Bonds may be subject to redemption by the Applicant under circumstances set forth in the prospectus supplement for each Series of Bonds. The Bonds will not be redeemable at the option of the Bondholders. Unless an event of default on a series has occurred and is continuing, Applicant states that Bondholders will not be entitled to accelerate payment of the Bonds of that series.

Applicant represents that it will provide computer data concerning any Mortgage Loans and mortgage loans underlying any private Mortgage Certificates securing a Series of Bonds to the rating agency or agencies rating the Series of Bonds for their review with respect to relevant credit considerations, including the type of lien, the type of property, the payment terms, the location and dispersion of the properties, the size of the loans, loan-to-value ratios, the number of loans, and other matters. The rating agencies rating the Bonds will approve the methodology used to compute collateral value. Independent accountants or other independent third parties will verify the accuracy of the computer data by examing the original loan files, by statistical sampling or other generally accepted methods. Based upon their review, the independent accountants will confirm the collateral values assigned to the Mortgage Collateral. The Trustee or another independent party will review the mortgage note, the mortgage or deed of trust, the title insurance policy, the standard hazard insurance policy, the primary mortgage insurance policy, if any, the appraisal report, the loan application, the loan settlement and other documentation

related to each Mortgage Loan. Applicant believes that the foregoing procedures, conducted by independent third parties, will be sufficient to determine the quality and value of such Mortgage Collateral.

Applicant submits that it is not the type of entity that the Act was intended to regulate, that the interest of investors will be adequately protected and that there are strong public policy reasons for granting Applicant an exemptive order.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20313 Filed 8-23-85; 8:45am]

BILLING CODE 8010-01-M

[Release No. 34-22339; File No. SR-MSRB-85-16]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Proposed Rule Change

The Municipal Securities Rulemaking Board on August 13, 1985, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing amendments to rule rule G-12(b) concerning settlement dates for when, as and if issued ("when-issued") transactions (hereafter referred to as "the proposed rule change"), as follows:

Rule G-12*

(a)-(b)(ii)(B) No change.

(C) for "when, as and if issued" transactions, a date agreed upon by both parties, which date shall not be earlier than the fifth business day following the date the confirmation indicating the final settlement date is sent, or, with respect to transactions between the manager and members of a syndicate or account formed to purchase securities from an issuer, a date not earlier than the sixth business day following the date the confirmation indicating the final settlement date is sent; *provided, however,* that [if the issuer gives notice of pending delivery within less than six business days before delivery, the settlement date for transactions with respect to such issue of securities may be accelerated

(1) For transactions between the manager and members of the syndicate or account, as determined by the manager,

(2) For transactions between members of the syndicate or account, as determined by each seller, but by not more than the number of days of acceleration by the syndicate manager, and

(3) For all other transactions, as may be determined by agreement between the parties to such transactions; and]

for when, as and if issued transactions compared through the automated comparison facilities of a registered clearing agency under paragraph (f) of this rule, a managing underwriter shall provide the registered clearing agency with not less than six business days notice of settlement for the issue, and the settlement date shall be not less than five business days following the date notice indicating the final settlement date is provided by the registered clearing agency; and

(D) No change.

[(iii) Notice of Accelerated Delivery. In the event the issuer gives notice of pending delivery of securities within less than six business days before delivery, the manager of a syndicate or account formed to purchase the securities from the issuer shall, immediately upon determination of the accelerated delivery date pursuant to subparagraph (b)(ii)(C) hereof, give immediate notice to the members of the syndicate or account of the settlement date for transactions between the manager and the members].

(d)-(k) No change.

* Italics indicate new language; [brackets] indicate deletions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Under current provisions of rule G-12(b)(ii)(C), if an issuer notifies a syndicate manager that it would like to go to settlement in less than six days, the manager, in turn, can accelerate its deliveries to syndicate members. Syndicate members may not force other dealers to accept accelerated settlements unless the dealers agree to them, and, of course under rule G-15, a dealer may not accelerate a settlement with a customer unless the customer agrees.

Rule G-12(b)(iii) provides that a manager who receives notice from an issuer of an accelerated settlement and who wishes to accelerate delivery of the securities to syndicate members under paragraph (b)(ii)(C), shall give immediate notice to the syndicate members of the new settlement date.

These provisions are consistent with the Board's efforts to provide the industry with sufficient flexibility to accommodate various trading practices on a day-to-day basis. The Board recognizes, however, that as automated comparison, clearance and settlement of municipal securities transactions becomes the norm, some of the flexibility currently enjoyed by the industry will be lost while operational efficiencies and cost savings should increase. The Board was informed that automated comparison facilities soon will be available for when-issued transactions that meet the criteria of rule G-12(f). It also has learned that this system does not distinguish between intra-syndicate transactions and transactions between syndicate members and other dealers ("street trades") for purposes of specifying settlement dates for when-issued transactions. After considering this issue, the Board has concluded that it would be appropriate to amend rule G-12(b) to specify standardized settlement dates for all when-issued inter-dealer transactions.

The draft amendments would retain the current definition of settlement date for when-issued transactions compared pursuant to rule G-12 (*i.e.* five business days, or six business days in the case of

transactions between a manager and syndicate members, after the date the final confirmation is sent). For transactions compared through the automated comparison facilities of a registered clearing agency, the rule would require a managing underwriter to provide the registered clearing agency with not less than six days notice of settlement for the issue and would specify that the settlement date would be not less than five business days following the date notice indicating the final settlement date is provided by the clearing agency. The amendments would delete the provisions that, when a manager receives less than six business days notice of settlement from an issuer, permit acceleration of when-issued transactions. The rule amendments, however, would not limit the ability of a syndicate manager to accept an accelerated delivery from an issuer.

The Board concluded that it was appropriate to adopt these provisions in light of the need to accommodate the current automated clearance systems. It believes that substantial cost savings should be realized from comparing when-issued trades on an automated basis. In addition, the Board understands that instances in which issuers accelerate settlements are rare and that in most instances final confirmations of when-issued transactions are sent well in advance of the six and five day minimum time periods. The Board is suggesting that syndicate managers take appropriate steps in setting settlement dates with issuers to avoid unnecessary settlement accelerations by issuers.

(2) The Board has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act which authorizes the Board to adopt rules designed to foster coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, and section 17A of the Act which mandates the creation of a national clearing system that envisions the development of uniform standards and procedures for clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not affect the conduct of business by any broker, dealer, or municipal securities dealer. The Board, therefore, believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither solicited nor received formal comments on the proposed rule change, although it has had informal discussions with NSCC and other interested industry members on this matter.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by September 16, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

August 20, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20354 Filed 8-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22338; File No. SR-NYSE-85-27]

Self-Regulatory Organization; Proposed Rule Change by New York Stock Exchange, Inc.; Relating to Amendment to Rule 51 of the NYSE Rules To Provide That the Exchange Will Be Open for the Transaction of Business at 9:30 a.m. Instead of 10:00 a.m.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 9, 1985 the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to Rule 51 to provide that the new hours of trading, effective September 30, 1985, shall be 9:30 a.m. to 4:00 p.m. instead of the present hours of 10:00 a.m. to 4:00 p.m.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose. The Exchange's determination that trading should commence at 9:30 a.m. is based on a conviction that the Exchange must be competitive in a rapidly changing and increasingly complex business environment. The growth of securities markets is already creating round-the-clock investor interest in securities listed on the Exchange, and that interest does not stop at national boundaries or time zones. The growth in international

securities trading has come from increased activity on overseas exchanges as well as greater use of U.S. markets by foreigners.

More than ten years have elapsed since the last change in trading hours by the NYSE. While volume has increased dramatically during the intervening period, the Exchange's hours of trading have remained constant. Member firm offices are already open for business prior to the opening of trading on the Exchange. The additional ½ hour of trading will provide a vehicle for trading in the primary market during a period when such market was previously unavailable, and should provide greater flexibility and convenience to public investors.

In the last few years, both the domestic and international nature of securities trading has given rise to consideration of extending trading hours to accommodate differences in time zones, to give public investors greater access to the primary trading market, and to respond to competitive factors.

The additional ½ hour of trading will increase the current period of overlap between trading hours in New York and London. It is expected that the one-half hour extension of trading in the morning will be a factor in attracting both domestic and foreign business to the Exchange and its member firms, and in accommodating the needs of public investors. In deciding to extend trading the Exchange has been responsive to member firm desires to expand retail order flow and to enhance the international competitiveness of the U.S. market.

It is anticipated that the longer hours for trading will be a cost-efficient method for increasing business for member firms and the Exchange. The one-half hour extension is a modest but essential step, and will enable the Exchange to evaluate whether further extensions of trading hours will be beneficial, and result in increased business, volume and public convenience.

In December 1984 and January 1985 the Exchange initiated a broad preliminary survey which was sent to nearly 3,400 Exchange constituents. The survey response rate was 28%.

The questions in the survey included matters such as 24 hour trading, opening on Good Friday, and extending trading hours in the morning or afternoon, and for varying lengths of time. The results of the survey were that upstairs firms, particularly the major firms, and listed companies were generally in favor of extending trading hours, while floor brokers, specialists and institutions were generally opposed. Significantly, among the top 20 member firms, which represent 61% of the Exchange's volume, 70% favored the extension of trading hours. The majority of those favoring an extension of trading hours preferred adding a half hour at the beginning of the day.

(2) *Statutory Basis for the Proposed Rule Change.* The statutory basis for the proposed rule change is section 11A(a)(1) of the Securities Exchange Act of 1934 which states, in relevant part, that the "securities markets are an important national asset which must be preserved and strengthened", and declares that it is "in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets" to assure "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets".

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition. In fact, it is anticipated that the extension of trading hours will promote competition among the Exchange and other markets by providing access to the primary market during a period when such market was previously closed.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received. (See item IIA, above, for discussion of preliminary survey results).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [21 days from the date of this publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 20, 1985.

[FR Doc. 85-20355 Filed 8-23-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2195; Amdt. 1]

California; Declaration of Economic Injury, Disaster Loan Area

The above-mentioned declaration (50 FR 30554) is amended in accordance with the President's declaration of July 18, 1985, to include those portions of Los Angeles County that were not previously declared to now constitute an adjacent area in the State of California as a result of damage from forest fires beginning on or about June 26, 1985. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on September 16, 1985.

and for economic injury until the close of business on April 18, 1986.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 16, 1985.

Win Allred,

Acting, Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-20297 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0147]

Benson Investment Company, Inc.; Surrender of License

Notice is hereby given that Benson Investment Company, Inc. (Benson), 406 South Commerce Street, Geneva, Alabama 36340 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Benson was licensed by the Small Business Administration on August 3, 1978.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on August 16, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: August 20, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-20298 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

Augusta District Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, Maine, will hold a public meeting at 12:00 noon on Thursday, October 3, 1985, at the Senator Inn & Restaurant, Outer Western Avenue, Augusta, Maine, to discussion such matters as may presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Tom McGillicuddy, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine (207) 622-6382.

August 19, 1985.

Jean M. Nowak,

Director, Office of Advisory Council.

[FR Doc. 85-20299 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

El Paso District Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of El Paso, Texas, will hold a public meeting on Tuesday, September 3, 1985, 10:00 a.m. thru 12:00 noon, at the District Office Conference Room, 10737 Gateway West, Suite 320, El Paso, Texas 79935, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Henry Zuniga, District Director, U.S. Small Business Administration, 10737 Gateway Boulevard, West, Suite 320, El Paso, Texas 79935, (915) 541-7586.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 19, 1985.

[FR Doc. 85-20300 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

Region VI—San Antonio Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of San Antonio, Texas, will hold a public meeting at 9:00 a.m., on Thursday, September 19, 1985, at the Federal Building, 727 E. Durango, Room A-206 (2nd Floor), San Antonio, Texas, 78206, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For futher information, write or call Julio G. Perez, District Director, U.S. Small Business Administration, Federal Building, Room A-513, 727 E. Durango, San Antonio, Texas, (512) 229-6105.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 19, 1985.

[FR Doc. 85-20301 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

Region VII—St. Louis Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII St. Louis Advisory Council, located in the geographical area of St. Louis and Eastern Missouri, will hold a public meeting at 10:00 a.m., on Tuesday, October 8, 1985, at Omni International Hotel, St. Louis Union Station, 1820 Market Street, St. Louis, Missouri, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For futher information, write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive St., Room 242, St. Louis, Missouri, 63101—314/425-6600.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 19, 1985.

[FR Doc. 85-20302 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CCG 85-056]

Marine Transportation of Oil Field Wastes; Public Meeting

August 21, 1985

The Eighth Coast Guard District sponsored public meeting to discuss the marine transportation of oil field wastes will be held at the Marriott Hotel, Galley 6, 550 Canal Street, New Orleans, LA on September 12, 1985. It will begin at 8:00 a.m. Details were published in the July 25, 1985 **Federal Register** (50 FR 30325).

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statement, but no later than the day before the meeting, members of the public shall submit in writing, to Commander, Eighth Coast Guard District (mvs), Hale Boggs Federal Building, 500 Camp Street New Orleans, LA 70130 the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and if applicable, the organization they are representing. Any member of the public may submit a written statement at any time.

Additional information may be obtained from Commander D.R. Carlberg, USCG, c/o Commander, Eighth Coast Guard District (mvs), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone (504) 589-6271.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 85-20328 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Aircraft Fly-By-Wire and Other Advanced Control System Designs; Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Technical Information Exchange Conference on Aircraft Fly-By-Wire and Other Advanced Control System Designs.

The Federal Aviation Administration hereby gives notice that it intends to hold daily meetings on the subject at 8:30 a.m. on October 28, 29, and 30, 1985, at the Twin Bridges Marriott Hotel, 333 Jefferson Davis Highway, Arlington, Virginia. For further information concerning technical issues, please contact Mr. Frank Rock, Aircraft Engineering Division, Office of Airworthiness, (202) 426–8323. For matters concerning conference administration, accomodations, and meeting agenda, please contact Ms. Jocelyn Gushue, Conference Coordinator, The Washington Consulting Group, 1625 I Street, NW., Suite 214, Washington, DC 20006, (202) 427–0233.

Information from this meeting could be the basis for agency decisionmaking regarding the criteria and guidance necessary for the certification of aircraft with control systems dependent on electrical, electronic technology, or other advanced technology for their proper operation. Such aircraft are commonly referred to as fly-by-wire aircraft. None of the civil aircraft certificated by the Federal Aviation Administration have flight control systems that are completely fly-by-wire control system, but several current military aircraft are so equipped and at least one currently proposed civil transport aircraft, is expected to have a fly-by-wire control system.

Time will be allowed the first day for selected papers, 30 minute maximum, on the current fly-by-wire technology as it applies to transport aircraft, general aviation aircraft, and rotorcraft. Agenda items and obstracts of proposed papers to be submitted before September 28, 1985, to Frank Rock, Aircraft Engineering Department Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

The Federal Aviation Administration is seeking to establish the issues which should be considered for certification of fly-by-wire aircraft; and intends to use this forum to receive the views and ideas of both the domestic and international Government/industry aviation communites.

Issued In Washington, D.C., on July 23, 1985.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division.

[FR Doc. 85–20361 Filed 8–23–85; 8:45 am]

BILLING CODE 4910–13–M

[FAA Order 6850.26A]

Federal Funding of Visual Glideslope Indicators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Funding Policy.

SUMMARY: This notice announces the FAA's intention to implement the FAA Order which sets policy for Federal Funding of visual glideslope indicators. The Precision Approach Path Indicator (PAPI) system is proposed as the national standard visual glideslope indicator for Federal funding purposes in order to enhance safety through standardization.

DATE: Comments must be received on or before September 27, 1985.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed funding policy by submitting such written data, views, or arguments as they may desire. Communications should identify the Order number and be submitted in duplicate to: Federal Aviation Administration, Office of Airport Standards, Attention: Mr. Robert Bates, AAS–200, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before September 27, 1985 will be considered by the Administrator. All comments submitted will be available, both before and after the closing date for comments, in the Office of Airport Standards for examination by interested persons on weekdays, except Federal holidays, between 8:30 a m. and 5:00 p.m.

As a rule, any decision which relates to "public property, loans, grants, benefits, or contracts", such as that reflected in FAA Order 6850.26A, is exempt from the requirements of notice and public comment applicable to regulatory actions by administrative agencies. 5 U.S.C. 553(a)(2). However, as to the matter addressed by FAA Order 6850.26A, Congress has directed the FAA not to implement or enforce any national policy regarding the "Federal funding of visual glideslope indicators until such time as the Administrator has published notice in the Federal Register and has provided for adequate opportunity for public comment concerning a national policy for Federal funding of such indicators", Pub. L. No. 99–88 (1985). This notice is in response to that directive. Unitl the FAA has had an opportunity to review the comments sent in response to this notice, no new funding for any type of visual glideslope indicator will be approved. Projects specifically approved by the FAA, before the new law became effective, for the purchase or funding of visual glideslope indicators for specific airports are not affected by the new law.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on FAA Order No. 6850.26A." The Postcard will be dated and time stamped and returned to the commenter.

Availability of Notice

Any person may obtain a copy of the Notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–3058. Communications must identify the Order number.

Statutory Authority

FAA Order No. 6850.26A contains national policy on Federal funding of visual glideslope indicators pursuant to statutory authority found at section 519 of the Airport and Airway Improvement Act of 1982 (AAIA). 49 U.S.C. 2218. This provision is a grant of broad discretionary authority for the purpose of aiding in the implementation of other sections of the AAIA. This particular Order furthers the implementation of sections 505(a) and 507(a)(3)(A) of the AAIA, 49 U.S.C. 2204(a) and 2206(a)(3)(A), which authorize grants for the purpose of airport development, and section 506(a) of the AAIA, 49 U.S.C. 2205(a), which permits appropriations for expenditures under the Facilities and Equipment Program of section 307(b) of the Federal Aviation Act of 1958. 49 U.S.C. 1348(b).

Discussion of the Proposed Funding Policy

Federal funding of visual glideslope indicators was first initiated in 1961. This was preceded by a test program to select the best available system. Systems tested included the Westinghouse tri-color, Navy mirror,

British RAE system, USAF interim mirror, and the Australian Cumming-Lane system. The system selected as the national standard was the British RAE system. This system was also shortly thereafter selected as the international standard by the International Civil Aviation Organization (ICAO) and became known as the VASI (Visual Approach Slope Indicator).

During the period from, 1961 to 1982 the VASI was the U.S. standard system and was the only system eligible for Federal funding. During this period over 300 runways in the U.S. were equipped with a VASI. Although the VASI was an English developed system, it was not patented and could be made by anyone. All of the systems installed in the U.S. were made by American manufactures.

In 1978, a system called the Precision Approach Path Indicator (PAPI) was proposed for adoption as a new international standard to replace the VASI. The PAPI is basically a reconfigured VASI with an improved signal format and consists of four light units located on a line perpendicular to the runway centerline. The PAPI was thoroughly tested by a number of countries, including the U.S., and was adopted by ICAO as the new international standard in 1982. The VASI will cease to be an international standard on January 1, 1995.

In 1983, the FAA revised its longstanding policy of funding only one standard system. The new policy permitted Federal funding of only the new international system, the PAPI, at international airports while permitting the funding of various types of systems at other than international airports. During the period this policy was in effect, three systems, including the PAPI, VASI, and the Pulsed Light Approach Slope Indicator (PLASI), were made eligible for Federal funding at non-international airports.

The three systems (VASI, PAPI, PLASI) were all in a comparable price range. For Federally funded projects, competitive bidding must be followed. Because of their similar price range, any of the three approved systems could be the lowest bid on any particular project. This could result in a situation where a particular airport could have three different systems. As more systems, each employing a different signal format, were expected to be added to the approved list, this problem would have become even more pronounced. Several of the other systems on the market which were expected to be added to the approved list were substantially lower in price than the three original systems on the list. Thus, the competitive bid process would insure that only the lowest cost systems would be funded. This would have effectively eliminated the three original systems. (VASI, PAPI, PLASI).

Need for Standardization

It seemed apparent that the new policy would lead to a proliferation of systems, each having a different signal format. Also, it was felt that pilots need to see the same visual presentation at all airports and especially when breaking out of a low overcast or approaching a new field at night. FAA professional opinion did not consider these issues to be in the best interest of aviation safety. In the critical approach to landing phase, a pilot has many things to do and it was felt by those who considered the issue that pilots should not be unnecessarily burdened with the need to determine which of several different signal formats is presented by the visual glideslope indicator. It was also felt that the use of a standard signal format lessens the pilot's workload by having one less thing to concentrate on, thereby reducing the margin of error and enhancing safety. One approach that was considered would have limited Federal funding to the three systems previously approved. However, this was not considered a fair approach since it would favor some manufacturers while discriminating against others. Also, it would not lead to the desired goal of standardization.

The PAPI was chosen as the new national standard for Federal funding purposes primarily because it is the system that has been adopted by the International Civil Aviation Organization (ICAO) as the standard international system for use by fixed-wing aircraft. It is the policy of the Federal Aviation Administration (FAA), consistent with U.S. obligations under the convention on international civil aviation to implement ICAO standards in international airports, whenever practicable. To select a system other than the PAPI for use at non-international airports would not be consistent with the desired goal of standardization.

The PAPI is a moderately priced system with an excellent signal format. It is a multiple light system which makes it easily identifiable as a visual glideslope indicator. It was felt that single light source systems did not provide this latter characteristic. Several instances have been reported where lights on an airport have been mistakenly identified as a single light type visual glideslope indicator. The PAPI equipment is very simple and has no moving parts, which assures long life and makes it very easy to maintain (which is a very important feature for smaller airports). Also, the PAPI system is not patented and can be made by anyone. There are currently six U.S. manufacturers who already or plan to market the PAPI. The PAPI has also been selected as the standard visual glideslope indicator for use by fixed-wing aircraft by the U.S. Army, the U.S. Navy, and by NATO (North Atlantic Treaty Organization).

One of the most fundamental responsibilities provided for under the Federal Aviation Act of 1958 is to develop a safe aviation system. Inherent in this charge is the wide discretionary latitude to establish standards and regulations that are directed towards accomplishing this goal. This mandate covers landing aids for aircraft; consequently, the FAA has a duty to provide a standard for a visual glideslope indicator system that is safe and unambiguous. It is the firm belief of this Agency that standardization is directly related to safety and that the issueing of an Order establishing a standard is necessary to discharge the FAA's statutory duty.

Supplemental Background (Test Results)

Federal Aviation Administration Tests

The FAA conducted a comparative evaluation of the VASI and PAPI at the FAA Technical Center in Atlantic City, N.J. in 1980. Twelve test pilots made a total of 108 tracked approaches with the results that 58% preferred the PAPI, 42% rated the VASI and PAPI equally, and none preferred the VASI over the PAPI.

An in-service evaluation was also conducted at Newark International Airport during 1981. A total of 117 pilots returned questionnaires and the tabulated results are as follows:

	PAPI better than VASI	PAPI same as VASI	PAPI worse than VASI
Rate of information	57	37	[illegible]
Ease of maintaining approach angle	50	43	7
Correcting vertical excursions	57	33	10
Usefulness of touchdown aiming point	40	53	7
Coincidence with ILS	40	57	3
Initial contact range	[illegible]	[illegible]	11
Overall value compared with VASI	61	[illegible]	11

U.S. Army Test

The U.S. Army conducted a comparative evaluation of five visual glideslope indicator systems at Ft. Meade, Maryland, during August–October 1983. The systems tested were the CHAPI, PAPI, VASI, OASIS, and PLASI.

The five systems were combined into 10 different pairs, one pair for each test session. This allowed each system to be compared to each of the other systems. Pairs for each session were chosen at random. The order in which systems were evaluated in each session was arranged to eliminate any patterns which would favor a particular system. During a typical evaluation session, a pilot would fly three approaches to each of the two systems and observe three approaches to each system flown by a second pilot. This made a total of 12 approaches for each pilot per evaluation session. A total of 35 pilots participated in the tests.

Pilots were asked to rate each of the following:

Acquisition and Identification
Signal Interpretation
Determining Glidepath Deviations
Required Workload
Maintaining Glidepath Signal

Rating factors for each of the preceding were as follows:

Rating factor	Numerical rating assigned
Very difficult	1
Difficult	2
Acceptable	[illegible]
Easy	4
Very easy	[illegible]

The results are shown as follows:

System name	Acquisition and identification	Signal interpretation	Determine glidepath deviations	Require more attention	Maintain glidepath signal	Average score
Individual scores: [1]						
CHAPI	4.59	4.77	4.82	4.46	4.17	4.5623
VASI	4.13	4.09	4.218	4.00	4.04	4.096
PAPI	4.12	4.25	4.12	3.91	4.04	[illegible]
PLASI	3.65	3.91	4.04	3.78	3.78	3.832
OASIS	3.917	3.71	3.71	3.79	3.783	3.782
Individual ranking: [2]						
CHAPI	1	1	1	[illegible]	1	
VASI	2	[illegible]	2	2	2	
PAPI	3	[illegible]	3	[illegible]	[illegible]	
PLASI	5	[illegible]	[illegible]	5	5	
OASIS	[illegible]	5	5	[illegible]	4	
Overall ranking:						
CHAPI	1					
VASI	2					
PAPI	3					
OASIS	4					
PLASI	5					

[1] Highest numbers reflect best performance.
[2] 1 indicates highest ranking.

U.S. Air Force Tests

The U.S. Air Force conducted a comparative evaluation of the VASI, PAPI, and PLASI at Tuscon, Arizona, in 1984. These tests showed that the PAPI and PLASI were exactly equivalent in ability to maintain the glideslope angle with both rating above the VASI in this respect. A second part of this evaluation consisted of asking pilots the question, "Which system would you prefer to have?" This question was asked of 8 pilots and the results were as follows:

NUMBER OF PILOTS

	PLASI	EVASI	PAPI
First choice	[illegible]	[illegible]	1
Second choice	3	[illegible]	1
Third choice	[illegible]	3	5

Costs

An analysis of visual glideslope indicators funded under the Airport Improvement Program during the period of May 1982 to February 1985 (the period in which the FAA permitted the funding of various systems) reveals the following system installed cost based on the lowest bid price.

VASI (2-unit)—$8,562 average for 56 locations
VASI (4-unit)—$11,900 average for 27 locations
PAPI—$10,885 average for 20 locations
VASI—$17,695 average for 27 locations

A complete listing of these bid prices are as follows:

	Location	VASI-4	PLASI	PAPI
Kissimmee, FL	$5,975			
Do	5,975			
Ocala, FL				[illegible]
Do				[illegible]
Ormand Beach, FL	7,810			
Do	7,810			
St. Augustine, FL		5,500		
Do	6,820			
Leesburg, FL		7,070		
Do		7,070		
Mt. Pleasant, SC				7,955
Do				7,955
Greenville, NC		9,400		
Do		9,400		
Lincolntown, NC		9,475		9,475
Raleigh, NC				[illegible]
Cartersville, GA	6,500			
Newnan, GA	5,650			
Do	5,650			
Dalton, GA		9,000		
Do		9,000		
Punxsutawney, PA	7,950		9,110	
Altoona, PA	13,085		16,000	
Greenville, PA	28,875		30,000	
Do	28,875		[illegible]	
Reedsville, PA	21,000		23,500	
Do	21,000		23,500	
Somerset, PA		14,915	[illegible]	
[illegible], NY		22,250	19,500	
Do		22,250	19,500	
Olean, NY	7,725		13,817	
Poughkeepsie, NY	12,700		21,900	
Albany County, NY		27,840	17,391	
Utica, NY		23,432	25,775	
Port Lavaca, TX				[illegible]
Austin, TX	7,000			
McKinney, TX				15,975
Clarksville, ARK	10,608			
Sweetwater, TX	19,945			
McAllen, TX	7,800			
Conroe, TX		12,745		[illegible]
Harlem, MT			17,725	
Milbank, SD	6,510			
Pine Ridge, SD	8,240			
Do	[illegible]			
Duluth, MN		9,350	[illegible]	7,750
Mora, MN				[illegible]
Ely, MN		13,800	14,475	[illegible]
Red Wing, MN				[illegible]
Austin, MN				[illegible]
Ulm, MN		[illegible]		[illegible]
Watford, ND	5,170			
Walpeton, ND	[illegible]		[illegible]	[illegible]
Bowman, ND	5,500			
Dickenson, ND	5,500			
Frederick, MD		[illegible]	[illegible]	
Ocean City, MD		13,630	15,156	
Do		13,630	15,156	
Chesterfield, VA		9,484	10,420	
Blacksburg, VA			25,718	
[illegible], VA	7,676		[illegible]	
Brawley, CA	7,077			
Do	7,077			
Santaynez, CA	7,200		[illegible]	
Sedona, CA	11,800		[illegible]	
Coolidge, AZ	6,500			
Do	6,500			
Casa Grande, AZ	6,197			
Do	6,197			
Safford, CA	5,000			
Do	5,000			
Calexico, CA	7,564			
Do	7,564			
Moses Lake, WA				[illegible]
Pittsburg, KS		7,201		
Do		7,201		
Lebanon, MO			[illegible]	
Do			15,000	

	Location	VASI-4	PLASI	PAPI
Independence, IA	[illegible]			
Do	5,596			
Shennandoah, IA	5,164			
Do	5,164			
Hartselle, AL	11,279			
Do	11,279			
Talladega, AL		7,095		
Do		7,095		
Columbus, MS	6,000			
Troy, AL		16,000		
Fairhope, AL				6,600
Do				6,600
Enterprise, AL	6,000			
Do	6,000			
Eufaula, AL	8,300			
Do	[illegible]			
Pittsfield, MA	3,500			
Claremont, NH	5,921			
Highgate, VT	6,350			
Fryeburg, ME	6,709			
Laconia, NH		12,000		
Morrisville, VT	7,500			
Marathon, FL				17,804
Do				17,804

In consideration of the foregoing, the FAA proposes to implement the following Order with respect to the funding of visual glideslope indicators.

Issued in Washington, D.C., on August 21, 1985.

Donald D. Engen,

Administrator.

FAA Order Number 6850.26A

Subject: Visual glideslope Indicators

1. *Purpose.* This order establishes national policy on Federal funding of visual glideslope indicators which provide visual descent guidance to pilots of landing aircraft.

2. *Distribution.* This order is distributed to the division level in the Office of Flight Operations, Office of Airport Standards, Office of Airport Planning and Programming, Office of Aviation Policy and Plans, Program Engineering and Maintenance Service, Systems Engineering Service, Air Traffic Service, and to the regional Airports, Air Traffic, Airway Facilities, and Flight Standards Divisions.

3. *Cancellation.* Order 6850.26, Visual Approach Slope Indicators, dated May 9, 1983, is cancelled.

4. *Background.* a. The visual approach slope indicator (VASI) (as described in Order 1010.47B, cancelled October 31, 1982), was selected as the national standard visual glideslope indicator in 1961 and shortly thereafter was adopted as the international standard by the International Civil Aviation Organization (ICAO). To date, over 3000 runways in the United States have been equipped with a VASI. The VASI has been, and continues to be, effective aid for providing visual descent guidance.

b. An improved version of the VASI, called the precision approach path indicator (PAPI), was recently adopted by ICAO as the new international standard to replace the VASI. The VASI will cease to be an ICAO standard system after January 1, 1995.

5. *Explanation of Changes.* The policy has been revised to promote standardization of visual glidepath indicators by limiting Federal funding to only one system, the PAPI, for use by pilots of fixed-wing aircraft.

6. *Policy.* a. The PAPI, as described in ICAO Annex 14, Aerodromes, shall be the standard visual glideslope indicator for new installations at U.S. airports when funded under the Facilities and Equipment Program or through the Airport Improvement Program.

b. Existing VASI installations shall remain in service and need not be replaced with the PAPI.

c. Other types of systems, which have been determined operationally suitable by the Office of Flight Operations, may be Federally funded for use on heliports or may be installed on airports when non-Federally funded.

7. *Responsibilities.* a. The Office of Flight Operations shall develop performance characteristics which assure safe and effective visual guidance for all visual glidepath indicators and shall determine acceptability of proposed system concepts for operational use.

b. The Office of Airport Standards shall develop equipment and installation standards for those visual glideslope indicators, which have been determined to be acceptable by the Office of Flight Operations, to be funded under the Airport Improvement Program.

c. The Program Engineering and Maintenance Service shall develop equipment and installation standards for those visual glideslope indicators, which have been determined to be operationally acceptable by the Office of Flight Operations, to be funded under the Facilities and Equipment Program.

d. The equipment specifications and installation standards issued under the Airport Improvement Program and the Facilities and Equipment Program shall be coordinated with the Office of Airport Standards and the Program Engineering and Maintenance Service, respectively, to assure that the agency specifications and standards are uniform in meeting the operational requirements of the Office of Flight Operations.

e. The Office of Aviation Policy and Plans shall have the responsibility for developing establishment, discontinuance, and replacement criteria for visual glideslope indicators to be funded under the Facilities and Equipment Program.

[FR Doc. 85-20364 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP85-8; Notice 2]

B.F. Goodrich Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by B.F. Goodrich Co., of Akron, Ohio, to be exempted from the notification and remedy requirements of the National Highway Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR Part 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on May 14, 1985, and an opportunity afforded for comment (50 FR 20159).

Paragraph section 6.5(c) of Standard No. 119 requires tires to be marked with the tire size designation as listed in the documents and publications designated in section 5.1. Goodrich manufactured 2,823 LT235/85R16 Goodrich Trail Edge light truck tires labled as LT235/80R16. The incorrect stamping is in the bead area, on the opposite-serial side. The tires were produced from December 16, 1984 through March 24, 1985. The correct aspect ratio appears in all other size designations on these light truck tires.

Goodrich argued that the noncompliance was inconsequential because the failure to label properly has no impact on safety, and the tires otherwise comply with all requirements of Standard No. 119. Goodrich contended that the tire industry has confined these LT type tires to the 75 and 85 aspect series to date and to the best of their knowlege there is no such tire size as LT235/80R16. It stated that since the incorrect stamping is in 0.250-inch high characters in the bead area, it would be impractical to corrent the label by buffing-off the incorrect numeral 0 and rebranding with the numeral 5. Further, Goodrich stated that the point of sale information, on the paper tread labels, contains the correct identification for the light truck tires.

No comments were received on the petition.

The NHTSA has decided to grant this petition. It notes that each tire has four tire size designations, two on each sidewall, one in larger characters than the other. The error appears only in the smaller of the two sizes and only on the opposite serial side. In any investigation of tire size, there would be a tendency to read the larger of the two designations, in NHTSA's view. Were the tires subject to inventory control or inspection, the inspection would be made on the serial side which contains the correct labelling on both upper and lower sidewalls.

The tires are certified as otherwise meeting the requirements of Standard No. 119. If the tires are retreaded, the noncompliance would not cause a change in the buffing process as the critical measurements of tread circumference and selection of the matrix size are made after buffing. Rebranding could possibly damage the bead area of the tire and is not advisable.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 20, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–20318 Filed 8–23–85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 85–138]

Reimbursable Service; Excess Cost of Preclearance Operation

August 16, 1985.

Notice is hereby given that pursuant to § 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning August 18, 1985.

Installation	Biweekly excess cost
Montreal, Canada	$22,518
Toronto, Canada	33,350
Kindley Field, Bermuda	11,251
Nassau, Bahama Islands	23,330
Vancouver, Canada	17,987
Winnipeg, Canada	4,111
Freeport, Bahama Islands	14,509
Calgary, Canada	10,218
Edmonton, Canada	5,410

D. Lynn Cordon,

Acting Comptroller.

[FR Doc. 85–20324 Filed 8–23–85; 8:45 am]

BILLING CODE 4810-01-M

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 35]

Surety Companies Acceptable on Federal Bonds; Change of Name; American Credit Indemnity Co.

American Credit Indemnity Company of New York, a New York Corporation, has formally changed its name to American Credit Indemnity Company, effective December 7, 1984. The company is listed as an acceptable surety on Federal bonds in 50 FR 27106, July 1, 1985, under its new name.

A Certificate of Authority as an acceptable surety on Federal bonds, dated July 1, 1985, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to American Credit Indemnity Company. This new certificate replaces the Certificate of Authority issued to the Company under its former name, American Credit Indemnity Company of New York. The underwriting limitation of $5,749,000 established for the company as of July 1, 1985, remains unchanged until the July 1, 1986 revision is published.

Certificates of Authority expire on June 30, each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the circular may be obtaied from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226, or by calling (202) 634–2319.

Dated: August 13, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–20268 Filed 8–23–85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 36]

Surety Companies Acceptable on Federal Bonds; Change of Name; Delta America Insurance Co.

Delta America Insurance Company, a New Hampshire Corporation, has formally changed its name to North American Specialty Insurance Company, effective March 26, 1985. The company is listed as an acceptable surety on Federal bonds in 50 FR, 27125, July 1, 1985, under its new name.

A Certificate of Authority as an acceptable surety on Federal bonds, dated July 1, 1985, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to North American Specialty Insurance Company. This new certificate replaces the Certificate of Authority issued to the company under its former name. The Underwriting Limitation of $531,000, established for the company as of July 1, 1985, remains unchanged until the July 1, 1986 revision is published.

Certificates of Authority expire on June 30, each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to Underwriting Limitations, licensing areas, and footnotes containing other information. Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226, or by calling (202) 634–2319.

Dated: August 12, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–20269 Filed 8–23–85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 34]

Surety Companies Acceptable on Federal Bonds: Termination of Authority; Van Tol Surety Co., Inc.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Van Tol Surety Co., Inc. of Brookings, South Dakota, under sections 9304 to 9308 of Title 31 of the United States Code; to qualify as an acceptable surety on Federal bonds is hereby terminated effective June 30, 1985.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27262, July 2, 1984.

With respect to any bonds currently in force with Van Tol Surety Co., Inc., bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2349.

Dated: August 13, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–20270 Filed 8–23–85; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Afghan Media Project; Request for Concept Papers

AGENCY: United States Information Agency.

ACTION: Announcement of request for concept papers.

SUMMARY: The United States Information Agency announces that it is seeking concept papers from qualified applicants interested in participating in the promotion of an independent media service by the Afghan people and in training Afghans in media and media-related fields. Applicants presenting promising concept papers will be invited to submit detailed grant proposals.

DATE: Concept Papers must be received on or before September 25, 1985.

ADDRESS: John Mosher, Director, Office of Program Coordination and Development (P/D), United States Information Agency, Room 550, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: John Mosher, Director, Office of Program Coordination and Development (P/D), United States Information Agency, Room 550, 301 4th Street, SW., Washington, DC 20547, (202) 485–2764).

SUPPLEMENTARY INFORMATION: Under the 1985 Supplemental Appropriations the United States Congress appropriated $500,000 to the United States Information Agency "to promote the development of an independent media service by the Afghan people and to provide for the training of Afghans in media and media-related fields." The Agency contemplates that a major portion of the funds will be given, in the form of one or more grants, to the one or more applicants best able to perform all or a portion of the projected tasks in a timely fashion. The grants shall be made in accordance with Agency authority under the Mutual Educational and Cultural Exchange Act of 1961, as amended, and the United States Information and Educational Exchange Act of 1948, as amended. At this time the Agency is seeking concept papers outlining strategies for achieving project goals. Applicants presenting promising concept papers will be invited to submit detailed grant proposals.

Project Goals

It is the goal of this project to faciliate the collection, development and distribution of credible, objective and timely professional-quality news stories, photographs and television images about developments in Afghanistan in an effort to overcome the substantial obstacles encountered by media representatives in bringing the story to world attention.

Concept Papers should demonstrate an appreciation for the two principal objectives of this project: (1) Immediate efforts to work with existing Afghan information groups to extend facilitative assistance to journalists and bring about increased and improved international coverage of Afghanistan; and (2) training of Afghans in media and media-related fields to develop an independent, self-funded media organization.

Project Tasks

Concept Papers will be judged on their ability to effect the following project tasks:

—Devise and implement a program to encourage improved and increased coverage of the Afghan situation by international print and broadcast journalists including, but not limited to, facilitating their travel, assuring their timely access to developments in Afghanistan, making available video and other Afghan-produced materials and seeking widespread placement for their stories;

—Train and equip a group of Afghan TV cameramen to operate inside Afghanistan to provide credible and timely video coverage of newsworthy developments within the country;

—Undertake the first steps toward creation of an independent Afghan Media Resource Center in proximity to the war zone. This Center should cooperate with, build on and encourage existing local Afghan media talents and resources. The Center should provide appropriate equipment, personnel and training to expand current activities and to promote the collection and dissemination of credible, timely and quality news materials to media elements worldwide;

—Develop a realistic strategy for marketing Afghan-produced materials which will lead to a fee-based funding support for the Center, with possible outcome being a professional, independent and credible Afghan news agency.

Eligibility Requirements

Concept Papers should be specific as to which project tasks or aspects of project tasks the applicant is willing and able to undertake. Applicant must demonstrate expertise in and knowledge of the tasks to be performed. A proven track record on similar projects would be helpful. Applicant must also demonstrate knowledge of the news media and the global media environment and a keen understanding of Afghanistan, its peoples, history and culture. The grant will be administered in accordance with OMB Circular A-110 Uniform Administrative Requirements. Grantees will be expected to comply with OMB Circular A-122 or A-21 governing cost principles.

Dated: August 21, 1985.

Marvin L. Stone,

Acting Director, United States Information Agency.

[FR Doc. 85–20348 Filed 8–23–85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 165
Monday, August 26, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: August 21, 1985, 50 FR 34034.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: August 27, 1985, 11:00 a.m.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

3. Consideration of proposed plan relative to performance awards for members of the Performance Management and Recognition System.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20403 Filed 8–22–85; 12:23 pm]

BILLING CODE 6730–01–M

2

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 24, 1985.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 85–20413 Filed 8–22–85; 2:33 pm]

BILLING CODE 3710–GX–M

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federal register

Monday
August 26, 1985

Part II

Environmental Protection Agency

40 CFR Part 435
Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL-2719-1]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation and request for comments.

SUMMARY: EPA is proposing regulations under the Clean Water Act to limit effluent discharges to waters of the United States from offshore oil and gas extraction facilities. The purpose of this proposal is to establish new source performance standards (NSPS), best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) effluent limitations guidelines for the offshore segment of this industry. After considering comments received in response to this proposal, EPA will promulgate a final rule. This proposal would also amend the current definition of "free oil" and the analytical method of compliance, both of which will apply to BPT as well as BAT, BCT and NSPS.

The Agency has scheduled two technical workshops for State and EPA permit writers. EPA will present and explain the proposed regulation at these workshops. The Agency believes the workshop information will also be of interest to industry representatives and members of environmental and public interest groups.

DATES: The comment period for this proposed rule will begin on September 16, 1985 and end on December 16, 1985. The development documents and rulemaking record for this proposed rule will be available beginning September 16, 1985.

The general public is invited to attend the workshops on September 24–25 in New Orleans, Louisiana, and October 29–30 in Santa Barbara, California. For locations and time please see the ADDRESSES section of this document.

ADDRESSES: Comments should be sent to Mr. Dennis Ruddy, Industrial Technology Division (WH–522), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear of EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying. Technical information and copies of technical documents may be obtained from Mr. Dennis Ruddy at the above address. The economic analysis report may be obtained from Ms. Kathleen Ehrensberger, Economic Analysis Staff (WH–586), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or call (202) 382–5397. The environmental assessment report may be obtained from Ms. Eleanor Zimmerman, Industrial Technology Division (WH–552), at the above address, or call (202) 382–7126.

The workshops will be conducted at the following locations:

September 24–25, 1985, Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana

October 29–30, 1985, Sheraton Santa Barbara Hotel, 1111 East Cabrillo Boulevard, Santa Barbara, California

There will be no pre-registration. On-site registration will begin at 8:30 a.m. The workshops will be conducted from 9:00 a.m. to 4:00 p.m. local time.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Ruddy at the above address, or call (202) 382–7131.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

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XXI. Solicitation of Comments
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  A. Abbreviations, Acronyms, and Other Terms Used in This Notice
  B. Generic Drilling Fluids List
  C. 126 Priority Pollutants
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Introduction

The Supplementary Information section of this preamble describes the legal authority and background, the technical and economic bases, and other aspects of the proposed regulations. That section also solicits comments on specific areas of interest. Abbreviations, and other terms used in this preamble, generic drilling fluids, priority pollutants, and certain technical, economic and environmental documents used in regulation development are listed in Appendices A through D to this preamble.

These proposed regulations are supported by documents available from EPA. Technical conclusions are detailed in the *Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Segment of the Oil and Gas Extraction Point Source Category* (EPA 440/1–85/0556). The Agency's economic analysis is found in *Economic Impact Analysis of Proposed Effluent Limitations and Standards for the Offshore Oil and Gas Industry* (EPA 440/2–85/003). An environmental analysis is presented in *Assessment of Environmental Fate and Effects of Discharges from Offshore Oil and Gas Operations* (EPA 440/4–85/002).

I. Legal Authority

The regulations described in this notice are proposed under the authority of Sections 301, 304, 306, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95–217), also called the "Act." These regulations are also proposed in response to the Court Order in *Natural Resources Defense Council, Inc.* v. *Costle,* C.A. No. 79–3442 (D.D.C.) July 7, 1980.

II. Scope of This Rulemaking

The purpose of this rulemaking is to propose standards of performance for new sources and effluent limitations guidelines for existing sources under sections 301, 304, 306, 307 and 501 of the Clean Water Act.

These proposed regulations would apply to discharges from offshore oil and gas extraction facilities, including exploration, development and production operations. These processes and operations comprise the offshore oil and gas extraction segment (Standard Industrial Classification (SIC) Major Group 13).

EPA's 1973 to 1976 rulemaking efforts emphasized the achievement of best practicable control technology currently available (BPT) by July 1, 1977. In general, BPT represents the average of the best existing performances of well known technologies for control of traditional (i.e., "classic") pollutants. BPT for this industrial subcategory limits the discharge of oil and grease in produced water to a daily maximum of 72 mg/l and a thirty day average of 48 mg/l; prohibits the discharge of free oil in deck drainage, drilling fluids, drill cuttings, and well treatment fluids; requires a minimum residual chlorine content of 1 mg/l in sanitary discharges; and prohibits the discharge of floating solids in sanitary and domestic wastes.

This rulemaking aims for the achievement of the best available technology economically achievable (BAT) that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. At a minimum, BAT represents the best economically achievable performance in the industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of listed toxic pollutants. The BAT effluent limitations guidelines being proposed today would prohibit the discharge of free oil in drilling fluids, deck drainage, drill cuttings, produced sand and well treatment fluids; prohibit the discharge of drilling fluids that are oil-based or that contain diesel oil; prohibit the discharge of drill cuttings that are contaminated with diesel oil or that are generated with the use of drilling fluids that are oil-based; limit the acute toxicity of drilling fluid discharges to a minimum 96-hr LC–50 (lethal concentration to 50 percent of the test organisms) of 3 percent (30,000 ppm) as measured in the diluted suspended particulate phase (SPP); and limit the discharge of cadmium and mercury in drilling fluids to a maximum of 1 mg/kg, each (whole fluid basis). BAT effluent limitations guidelines for produced water, and for deck drainage, produced sand and well treatment fluids for pollutants other than free oil are being reserved for future rulemaking.

EPA is proposing BCT equal to the previously promulgated BPT effluent limitations guidelines. EPA is, however, reserving BCT effluent limitations guidelines for additional conventional pollutant parameters in deck drainage, drilling fluids, drill cuttings, produced sand, and well treatment fluids for future rulemaking.

New source performance standards are also being proposed today. These proposed standards are the same as the Agency's proposed BAT/BCT effluent limitations guidelines with one exception. EPA is proposing a prohibition on the discharge of produced water from all offshore oil production facilities that are located in or would discharge to shallow water areas as defined in the proposed regulation. Produced water discharges from all other new source offshore facilities engaged in exploration, development, and production activities would be limited to a maximum oil and grease concentration of 59 mg/l (i.e., no single sample to exceed).

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Section 101(a). To implement the Act, EPA is to issue effluent limitations guidelines, new source performance standards, and pretreatment standards for industry dischargers. These are discussed in detail in the Development Document supporting these proposed regulations. The following is a brief summary:

1. Best Practicable Control Technology Currently Available (BPT). BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the industry or subcategory.

In establishing BPT limitations, EPA considers the total cost of applying the technology in relation to the effluent reduction derived, the age of equipment and facilities involved, the process employed, the engineering aspects of control technologies, process changes, and nonwater quality environmental impacts (including energy requirements) and other factors the Administrator considers appropriate. The total cost of applying the technology is balanced against the effluent reduction. EPA promulgated BPT for the offshore segment of the oil and gas extraction point source category on April 13, 1979 (44 FR 22069). The only portion of the BPT regulation being opened for comment today is the proposed change in definition of "no discharge of free oil" and the method for determining compliance with this limitation. Otherwise, BPT is printed in this proposed rule only for sake of completeness to the reader.

2. Best Available Technology Economically Achievable (BAT). BAT limitations, in general, represent the best existing performance of technology in the industrial category of subcategory. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters.

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, nonwater quality environmental impacts (including energy requirements) and the costs of applying such technology (section 304(b)(2)(B) of the Clean Water Act). At a minimum, the BAT technology level represents the best economically achievable performance of plants of various ages, sizes, processes or other shared characteristics. As with BPT, where the Agency has found the existing performance to be uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may include feasible process changes or internal controls, even when not in common industry practice.

The required assessment of BAT "considers" costs, but does not require a balancing of costs against pollutant removal benefits (see *Weyerhaeuser* v. *Costle, supra*). In developing the proposed BAT, however, EPA has given substantial weight to the reasonableness of cost. The Agency has considered the volume and nature of discharges expected after application of BAT, the

general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels.

Despite this expanded consideration of costs, the primary determinant of BAT is still pollutant removal capability. As a result of the Clean Water Act of 1977, the achievement of BAT has become the principal national means of controlling toxic water pollution.

3. Best Conventional Pollutant Control Technology (BCT). The 1977 Amendment added Section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharge of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4) [biochemical oxygen demand (BOD5), total suspended solids (TSS), fecal coliform and pH], and any additional pollutants defined by the Administrator as "conventional" (oil and grease, 44 FR 44501, July 30, 1979).

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires the BCT limitations be assessed in light of a two part "cost-reasonableness" test, *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50372). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that the second cost test was not required.)

On October 29, 1982, the Agency proposed a revised BCT methodology. On September 20, 1984, EPA noticed the availability of new data and analyses that it was considering for the development of BCT limitations (49 FR 37046). EPA is today proposing BCT limitations for produced water, deck drainage, drilling fluids, drill cuttings, well treatment fluids, sanitary, domestic and produced sand waste streams. The Agency is reserving BCT coverage of all pollutants except free oil for deck drainage, drilling fluids, drill cuttings, well treatment fluids, and produced sand waste streams pending additional data collection and promulgation of the final methodology for BCT.

4. Pretreatment Standards. No pretreatment standards have been promulgated for the offshore segment of this industry and EPA does not intend to propose pretreatment standards for the offshore segment. This is because the Agency is not aware of any existing or planned indirect dischargers in the offshore segment.

5. New Source Performance Standards (NSPS). The basis for NSPS under Section 306 of the Act is the best available demonstrated technology. New facilities have the opportunity to design the best and most efficient wastewater treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible.

IV. Prior EPA Regulations

On September 15, 1975, EPA promulgated effluent limitations guidelines for interim final BPT (40 FR 42543) and proposed regulations for BAT and NSPS (40 FR 42572) for the offshore segment of the oil and gas extraction point source category. The Agency promulgated final BPT regulations for the offshore segment on April 13, 1979 (44 FR 22069), but deferred action on the BAT and NSPS regulations.

The Natural Resources Defense Council filed suit on December 29, 1979 seeking an order to compel the Administrator to promulgate final NSPS for the offshore subcategory. In settlement of *NRDC* v. *Costle*, C.A. No. 79–3442 (D.D.C.), the Agency acknowledged the statutory requirement and agreed to take steps to issue such standards. However, because of the length of time that had passed since proposal, EPA believed that examination of additional data and reproposal were necessary. Consequently, the Agency withdrew the proposed NSPS on August 22, 1980 (45 FR 56115). The proposed BAT regulations were withdrawn on March 19, 1981 (46 FR 17567).

This notice serves to propose NSPS, BAT, BCT, and certain amendents to BPT. For convenience to the reader, today's proposed regulation also contains all of the existing BPT limitations applicable to the offshore oil and gas extraction subcategory. With the exception of one proposed amendment to BPT, the existing BPT limitations are not being subjected to comment. The one proposed amendment concerns the prohibition on discharges of free oil, which is discussed below.

Ocean discharge criteria also applicable to this industry segment were promulgated on October 3, 1980 (45 FR 65942) under Section 403(c) of the Act. These guidelines are to be used in making site specific assessments of the impacts of discharges; Section 403 limitations are imposed through Section 402 NPDES permits. Section 403 is intended to prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal.

Offshore oil and gas facilities may also be required to prepare and implement spill prevention control and countermeasure (SPCC) plans under Section 311(j) of the Act. These requirements are set forth at 40 CFR Part 112.

V. Overview of the Industry

A. Industry Profile

The offshore segment of the oil and gas extraction point source category covers those facilities located off the coast of the United States that are engaged in the production of crude petroleum and natural gas, the drilling of oil and gas wells, and oil and gas field exploration services. These facilities, such as exploratory rigs, drilling platforms, and production platforms, are considered offshore if they are located in waters that are seaward of the inner boundary of the territorial seas, as defined in Section 502 of the Act.

There are currently about 3900 platforms producing oil and gas in U.S. offshore waters. This estimate covers all federal and state leased tracts in the Gulf of Mexico and along the coasts of California and Alaska. In 1982 over 405 million barrels of oil and 4.7 trillion cubic feet of gas with a market value of almost $23 billion were produced offshore. These quantities represent 15 percent and 25 percent, respectively, of the total oil and gas produced in the United States. The combined bonus payments and royalties paid to the Federal government for offshore leases totaled almost $10 billion in 1981.

The majority (98 percent) of existing U.S. operations are located in the Gulf of Mexico. However, exploration and development activities are expected to expand in the California, Alaska, and Atlantic Coast regions. For example, large potential petroleum reserves have been discovered at Point Arguello, California and in the Beaufort Sea, Alaska. Results of exploration drilling to

date for the Atlantic outer continental shelf (OCS) areas and the Gulf of Alaska have not demonstrated significant petroleum reserves. The lack of geologic data to confirm the presence of economically recoverable oil or gas make development projections for these areas less certain.

Offshore drilling activity varies from year to year depending on such factors as hydrocarbon market conditions, state and federal leasing programs, reservoir discoveries, and the strategic planning decisions and financial health of companies within the industry. In 1981 there were almost 1500 wells drilled offshore, culminating a steady upward trend throughout the 1970's. The average number for the period 1972–82 is approximately 1100 wells per year. Drilling rig utilization declined in 1982, and activity is not expected to improve significantly for some time, especially with the current downturn in crude oil prices.

EPA estimates that approximately 833 new source oil and gas platforms will be constructed between 1986 and the year 2000 in offshore U.S. waters. Today's proposed regulation distinguishes between oil facilities and gas facilities in the following manner. A gas facility consists of only gas wells. An oil facility consists of one or more oil wells, but could also have gas wells. Definitions in Section 435.11 in today's proposed regulations present these distinctions.

B. Exploration, Development, and Production

Exploration, development, and production activities generate waste discharges that include produced water, deck drainage, drilling fluids, drill cuttings, well treatment fluids, produced sand, and sanitary and domestic wastes.

Exploration activities are those operations involving the drilling of wells to determine the nature of potential hydrocarbon reservoirs. These operations are usually of short duration at a given site, involve a small number of wells and are generally conducted from mobile drilling units. Discharges are composed principally of drilling fluids and drill cuttings.

Development activities involve the drilling and completion of production wells once a hydrocarbon reserve has been identified. These operations usually involve a large number of wells and are typically conducted from a fixed platform. Discharges are composed principally of drilling fluids and drill cuttings.

Production activities begin as each well is completed during the development phase. The production phase involves active recovery of hydrocarbons from producing formations. Development and production activities may occur simultaneously until all wells are completed and reworked. During production, discharges are composed principally of produced water and also drilling fluids and drill cuttings while concurrent development is in progress. The discharge of drilling fluids and drill cutting stops when development and well reworking operations end.

C. Waste Streams

Produced water (brine) is brought up from the hydrocarbon-bearing strata along with produced oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

Drilling fluids (muds) are those materials used to maintain hydrostatic pressure control in the well, lubricate the drill bit, remove drill cuttings from the well, and stabilize the walls of the well during drilling or workover operations.

Drill cuttings are the solids resulting from drilling into subsurface geologic formations, and are bought to the surface of the well in the drilling fluid system.

Deck drainage includes all waste resulting from platform washings, deck washings, rainwater, and runoff from curbs, gutters, and drains including drip pans and work areas.

Well treatment wastes are spent fluids that result from acidizing and hydraulic fracturing operations to improve oil recovery. Workover fluids and completion fluids are also considered to be well treatment wastes.

Produced sand consists of the slurried particles used in hydraulic fracturing and the accumulated formation sands generated during production.

Sanitary wastes originate from toilets and domestic wastes originate from sinks, showers, laundries, and galleys located on drilling and production facilities.

VI. Summary of Methodology

In developing effluent regulations for this industry segment, EPA first studied the industry to determine whether differences in factors such as production methodology, location and type of operation, size and age of facility, and waste constituents require separate limitations and standards for different segments of the category. This study involved an evaluation of how these factors affect raw waste loads, and the identification of raw waste and treated effluent characteristics, including sources and volumes of waste streams. The Agency then determined the waste constitutents, including toxic pollutants, which should be considered for effluent limitations guidelines and standards of performance.

EPA also identified both actual and potential control and treatment technologies that can be applied within each industry segment. The Agency compiled and evaluated both historical and newly generated data on the performance and operational limitations of these technologies. In addition, EPA considered the impacts of these technologies on air quality, solid waste generation, and energy requirements.

The Agency also estimated capital and annual costs associated with each control and treatment alternative. In general, unit process costs were derived by applying data on production and waste characteristics for model facilities to unit costs developed for each control and treatment process. These unit process costs were added together to yield a total cost for each treatment level. The Agency was then able to determine total industry costs, evaluate the costs of applying alternative technologies, and assess the economic impacts of compliance for each regulatory option considered.

Consideration of these factors enabled EPA to classify the various control and treatment technologies as a basis for NSPS, BAT, and BCT regulations. The proposed regulations, however, do not require the application of any particular technology. Rather, they require compliance with effluent limitations and standards representative of the proper operation of these or equivalent technologies.

VII. Data Gathering Efforts

A. Existing Information

After the proposed NSPS were withdrawn in 1980 in accordance with the Court Order in *NRDC* v. *Costle*, the Agency conducted and assessment of existing information related to point source discharges from the offshore segment of the industry. This included profiles of current and projected offshore drilling and production activities, regulatory history and enforcement status, waste characterization, existing and potential control and treatment technologies, and the cost, energy and non-water quality impacts of pollution control. Existing data were assembled through contacts with EPA regional offices, other Federal and State government agencies, industry associations, industry representatives, third party oil transmission pipeline companies, solid waste dump site

operators, drill cuttings washer suppliers, equipment manufacturers, and various technical publications.

B. Additional Data Collection

Several areas were identified that required further study to support the reproposal of effluent limitations guidelines and standards. These included an evaluation of priority pollutant levels in produced water discharges, an evaluation of alternative control and treatment technologies for reducing the discharge of priority pollutants, a characterization of drilling fluids and additives presently in use, an investigation of alternative disposal practices for drilling fluids and drill cuttings, an assessment of the impacts of discharging drilling and production wastes to the marine environment in general, and updated projections on the location, size and configuration of new sources.

C. Sampling and Analytical Programs

The sampling and analysis programs conducted for this rulemaking have focused on produced water and drilling fluids and cuttings, and on the toxic pollutants designated in the Clean Water Act. However, EPA sampled and analyzed wastes in the offshore subcategory for certain conventional and nonconventional pollutants as well as inorganic and organic toxic pollutants. Analyses for priority pollutants were based on a number of the proposed analytical methods (44 FR 69464 (December 3, 1979); 44 FR 75028 (December 18, 1979)). The final analytical methods were published on October 26, 1984 (49 FR 43234).

1. Produced Water

The Agency's initial effort to investigate priority pollutants in produced water consisted of a preliminary screening survey conducted at six production platforms in the Gulf of Mexico during 1980. Results obtained by using the standard procedures proposed by EPA at that time indicated the presence of toxic organics and metals. However, produced waters are brines containing significant concentrations of dissolved salts. The briny nature of this waste stream required the Agency to develop modified or unique analytical methods. Representatives of the Offshore Operators Committee (OOC), the American Petroleum Institute, and EPA cooperated in a joint effort in 1981 to develop analytical protocols to measure toxic pollutants in produced water.

During the first of a two-phase analytical program, produced water samples were collected at two production platforms in the Gulf of Mexico and sent to several Agency and industry laboratories for comparative testing. Final analytical protocols were established employing standards purged from ten percent sodium chloride brines, isotope dilution gas chromatography/mass spectrometry (GCMS) for analysis of volatile organic pollutants, continuous and/or acid/neutral extraction and fused silica capillary column isotope dilution GCMS for analysis of semivolatile organic pollutants, and standard addition flame atomic absorption for metals analysis.

The second phase of the analytical program was conducted with the use of established protocols to confirm the presence and further quantify the concentrations of toxic pollutants in produced water discharges at 30 production facilities in the Gulf of Mexico. Selected conventional and non-conventional parameters were also investigated. Samples were taken of influents to and effluents from produced water treatment systems during visits that ranged from one to three days at individual sites. Strict adherence to specified collection and quality assurance procedures was maintained throughout the program. Additional samples were collected for independent analyses sponsored by the OOC.

Priority pollutant sampling efforts have also been conducted at Alaska and California sites. Produced water samples were collected from both offshore and onshore treatment facilities at Cook Inlet and Prudhoe Bay in Alaska and from three offshore production platforms in California's Santa Barbara Channel.

2. Drilling Fluids

Another program was initiated by the Agency for this rulemaking to evaluate the characteristics of water-based drilling fluids. Such fluids, or muds, include a variety of compositions used as aids in drilling and stabilizing a borehole in the earth.

One objective of this on-going program is to examine the test procedures that are being proposed today as analytical methods applicable to this industrial subcategory for measuring acute toxicity and for detecting the presence of diesel oil in mud discharges. A second objective is to evaluate test results derived from these and other Agency approved analytical procedures in the development of effluent limitations guidelines and standards.

The first phase of this program involved the selection and specification of test muds. The Agency's intent was to select a group of the more commonly used water-based mud formulations for testing purposes. In doing so, the Agency relied upon information gathered during the development of NPDES permits issued in 1978 to operators drilling on leases in the Atlantic Ocean. Eight basic mud types were defined during the Mid-Atlantic Bioassay Program conducted by the Atlantic Ocean permittees in cooperation with EPA Region II and the Offshore Operators Committee (OOC). These eight generic mud types were selected to encompass virtually all water-based muds, exclusive of specialty additives, used on the outer continental shelf. The components of each mud type were identified, and allowable concentration ranges for each component were specified, as presented in Appendix B to this preamble. Bioassay test were conducted as a permit condition, and results of the Mid-Atlantic Program indicated that all eight generic muds demonstrated relatively low toxicity. Under their NPDES permits, operators were allowed to discharge muds that complied with these specifications. This generic fluid concept has been employed by other EPA regional offices in the permitting process.

Since these eight generic mud types were considered to be operationally satisfactory for the majority of offshore drilling situations, the Agency selected the same mud compositions for investigation under the BAT and NSPS regulation development program. However, it was determined that, for regulation development, tests would be more appropriately conducted on mud mixtures with components at the upper limits of the allowable concentrations. Laboratory-prepared muds, based on the eight generic fluid formulations with most components present at the upper limits of allowable concentration, were obtained from the Petroleum Equipment Suppliers Association (PESA) in mid-1983. Samples of these formulations were sent to EPA laboratories for chemical, physical, and biological testing. Bioassay data collected over the post five years by both government and industry sponsored studies on the acute toxicity of drilling fluids were considered unsatisfactory as a basis for establishing effluent limitations because of non-standard testing procedures and a high degree of variability among testing laboratories. The Agency therefore developed a standard method for measuring acute toxicity of drilling fluids for this industrial subcategory (see Appendix 3 of the proposed regulation). Toxicity tests were then conducted at EPA's Environmental

Research Laboratories in Gulf Breeze, FL and Narragansett, RI using the standard bioassay procedure being proposed in today's rulemaking. Analyses for oil content, biochemical oxygen demand, chemical oxygen demand, total organic carbon, and priority pollutants excluding pesticides were also performed at EPA contract laboratories, along with the static sheen test being proposed today (Appendix 1 of the proposed regulation).

To examine the characteristics of oil contaminated muds, the Agency also obtained, through PESA and OOC, samples of two of the generic mud formulations spiked with various amounts of mineral and diesel oils. The two mud types selected were those that are most often used in drilling situations that require oil additives. The same analytical procedures were used to test both the spiked and unspiked formulations.

One drilling fluid constituent that is a focus of concern is diesel oil, which is typically used as the primary component in conventional oil-based drilling fluids, and is a fuel oil readily available offshore for use as a spotting fluid and lubricating agent in water-based muds. Research sponsored by both industry and government agencies has shown that diesel oil contributes significantly to the acute toxicity of such fluids. To add to the information already available in the literature on the chemical makeup of diesel oil, the Agency gathered and tested samples of commercially available diesel fuels and a diesel mud additive from an offshore drilling operation in the Gulf of Mexico. Samples were analyzed for the organic priority pollutant compounds using gas chromatography/mass spectrometry. Gas chromatography methods are also being used to determine the presence of diesel oil in drilling fluids.

The Offshore Operators Committee is also conducting a program to collect data on the organic constituents of diesel and mineral oils used as drilling fluid additives. The Agency is participating in this program which will examine the differences in chemical composition and toxicity between diesel and mineral oil, and evaluate methods for measuring the diesel content of drilling fluids.

Another major constituent of drilling fluid systems is barium sulfate, commonly called barite, a mineral used primarily as a weighting agent to control downhole pressures. Commercial forms of barite can contain various impurities, including toxic metals. To investigate the presence of these contaminants, the Agency obtained samples of barite from four different sources and analyzed them for priority pollutant metals. The Agency intends to continue its survey of the quality and availability of commercial barite stocks.

EPA will continue to evaluate the proposed Drilling Fluids Toxicity Test, Static Sheen Test and the gas chromatography method for detecting the presence of diesel oil. The Agency plans to conduct interlaboratory validation programs before the promulgation of final regulations to determine the precision and accuracy of these methods.

3. Drill Cuttings

The discharge of oil and other mud constituents that adhere to or are mixed with waste cuttings is the primary concern in the drill cuttings waste stream. The data gathered on the quality of mud compositions were used to assess the expected effects of the discharge of contaminated drill cuttings to the ocean. In addition, information was obtained from suppliers of various types of cuttings washer systems on projected washer performance and treatment costs. Selected samples of oil contaminated drill cuttings before and after washing were obtained for screening purposes and tested for the same conventional, nonconventional, and some priority pollutant parameters that were investigated during the drilling fluids program.

4. Other Waste Streams

The Agency did not perform any new sampling or analytical programs for deck drainage, sanitary, domestic, produced sand, and well treatment fluids waste streams. Today's NSPS, BAT, and BCT proposed regulations for these waste streams are based upon information collected during the development of the existing BPT regulations. Effluent limitations and standards for certain toxic, conventional, and nonconventional pollutants are being reserved for certain of these waste streams, as described below, pending additional data collection by the Agency.

D. Environmental Effects Information Collection

The Agency has obtained information from numerous sources regarding the general environmental effects of discharges from offshore oil and gas platforms. In November of 1982, EPA issued a draft report entitled, *Interim Final Assessment of Environmental Fate and Effects of Discharges from Offshore Oil and Gas Operations* which summarized recent literature on the effects of produced water, drilling fluids, drill cuttings, deck drainage and sanitary wastes. The Agency distributed the report for comment to some environmental organizations and industry groups. On April 19, 1983, the Agency met with the Offshore Operators Committee (OOC) in Houston, Texas to discuss their comments on this report.

Subsequent to the issuance of this report, the Agency investigated other data sources on produced water including an API report titled *Effects of Oilfield Brine Effluent on Benthic Organisms in Trinity Bay, Texas* (API Publication No. 4291) and a more recent draft report titled *Ecological Effects of Produced Water Discharges from Offshore Oil and Gas Production Platforms* (API Project No. 248). Other reports on drilling fluids and cuttings were also reviewed which include, *Drilling Discharges in the Marine Environment* by the National Research Council and *Results of the Drilling Fluids Research Program Sponsored by the Gulf Breeze Environmental Research Laboratory, 1976–1984 and Their Application to Hazard Assessment* (EPA Publication 600/4–84–055).

In response to comments on the draft environmental assessment, the Agency has also summarized findings from other field studies pertinent to this regulation in the final environmental assessment. This assessment, titled *Assessment of Environmental Fate and Effects of Discharges From Offshore Oil and Gas Operations*, is included as supporting documentation for today's proposed regulations and supersedes the draft assessment of November 1982. In addition to the discussion of the field studies and other reports, this final assessment discusses the results from the PLUME model which was developed by EPA's Corvallis Environmental Research Laboratory. This model predicts dilution, trap depth and depth of maximum penetration of the produced water discharges.

The Agency has also investigated the following: (1) biocides in use on platforms and rigs; (2) commercial landings of fish and invertebrates and level of effort statistics for the Gulf of Mexico; (3) marine species distributions for the United States; and (4) potential impacts from barite discharges. An EPA report on biocides titled *Biocides in Use on Offshore Oil and Gas Platforms and Rigs* is included in the rulemaking record and referenced in the environmental assessment. The other analyses are also summarized in the final environmental assessment supporting the proposed regulations.

E. Economic Information Collection

The Agency obtained most of the economic data from a variety of secondary sources. Department of the Interior publications provided information on offshore leasing, platform development, production and income. Department of Energy publications were used for information on energy development, production and price. Annual and 10–K reports and industry trade publications were used to construct financial profiles of energy development companies. In addition to the above sources, a number of industry specialists in both the public and private sector provided data and opinions on technical and economic issues.

VIII. Waste Characterization

The major sources of waste generated from offshore exploration, development, and production activities are summarized in Section V. Pollutant parameters of concern include oil content (oil and grease, free oil, oil-based drilling fluids, diesel oil), organic and inorganic priority pollutants, acute toxicity, residual chlorine, and floating solids. The Agency's effort to develop effluent limitations and standards for this rulemaking focused on produced water, drilling fluids, and drill cuttings.

A. Produced Water

Water brought up from hydrocarbon-bearing strata with petroleum liquids and natural gas includes brine trapped with oil and gas in the formation and water injected into the reservoir to increase productivity. Such produced water is the major source of wastewater from offshore production operations. Data from a recent survey by the Offshore Operators Committee indicate that more than 1.5 million barrels per day of produced water were discharged to state and federal waters of the Gulf of Mexico in 1983. The percentage of water in the total fluid production from a reservoir ranges considerably, but generally increases with the age of a well. Although produced water discharge rates vary widely, it has been found that, on the average, gas wells generate considerably less water than do oil wells. Data gathered by the Offshore Operators Committee show that, for the Gulf of Mexico OCS in 1983, the average produced water discharge from a gas production well is about ten percent of that discharged by an oil production well.

Produced water contains an abundance of chlorides and dissolved solids in concentrations several times greater than in seawater. Significant concentrations of oil and grease, suspended and settleable solids, and dissolved hydrocarbons are also present.

The analytical data obtained on the presence and concentration of priority pollutants in produced water confirms the presence of several of these pollutants in both untreated and BPT-treated effluents. The results of EPA's survey of produced water discharges from 30 production platforms in the Gulf of Mexico described above show that, of 88 organic priority pollutants analyzed for, benzene, ethylbenzene, naphthalene, phenol, toluene, and 2,4-dimethylphenol were detected in most if not all of the 79 samples tested. Bis(2-ethylhexyl) phthalate, anthracene, and phenanthrene were found somewhat less frequently, but in more than half of the samples analyzed. Twenty-one of the organic priority pollutants were detected at significantly lower frequencies (less than 30 percent), and 58 of the organic priority pollutants were never detected.

Of the seven priority pollutant metals analyzed in the same study, zinc was the only metal detected at quantifiable levels in the majority of samples (more than 80 percent). Copper, nickel, lead, cadmium, and silver were detected at trace levels at significantly lower frequencies. Chromium was not detected in quantifiable amounts.

During a 1980 survey of 10 production platforms in the Gulf of Mexico sponsored by the Agency's Office of Research and Development, and summarized in a report titled *Oil Content in Produced Brine on Ten Louisiana Production Platforms* (the "Crest" report), several other chemicals were found in produced water. These chemicals include biocides, coagulants, corrosion inhibitors, cleaners, dispersants, emulsion breakers, paraffin control agents, reverse emulsion breakers and scale inhibitors. EPA has determined that most of the biocides registered for use in this industry are not priority pollutants. The priority pollutants identified as active ingredients in biocides registered for use in this industry were acrolein and pentachlorophenol. At the present time no halogenated phenol compounds, such as polychlorinated biphenyls and pentachlorophenol, may be used in any operational activity. This is based on an operating order published by U.S. Geological Survey (see 44 FR 39031).

Analytical results also confirm the findings of the study supporting BPT that significant levels of oil and grease are found in untreated produced water. In the 30-platform study, the median oil and grease removal from produced water by existing treatment systems was estimated at 63 percent. In fact, the Agency determined that, with improved operation and maintenance practices, BPT treatment facilities can achieve measurable additional reductions in oil and grease (see Section X). The effects of BPT treatment on the other chemicals (non-priority pollutants) found in produced water are incidental because the BPT equipment is not designed to remove these chemicals, which are added directly to the production or treatment systems in many instances (biocides, corrosion inhibitors, coagulants, etc). Generally, no measurable reduction in the levels of such chemicals is expected from existing BPT-type treatment systems.

Analytical results were compared to those reported by the Offshore Operators Committee (OOC) from duplicate samples taken at 6 of the 30 offshore platforms sampled by EPA. The quantitative concentrations measured by the industry differed somewhat from those reported by EPA contract laboratories. However, the industry data does confirm the presence of priority pollutants in produced water; that BPT treatment reduces the level of some of these priority pollutants; and that priority pollutants are still being discharged to waters of the United States after existing treatment.

For purposes of determining appropriate limitations and standards, the Agency categorized the pollutants present in produced water waste streams as follows. First, the priority pollutants, organics and metals are "toxic" pollutants being designated as such pursuant to Section 307(a)(1) of the Act. It would be appropriate to set BAT limitations for these pollutants as well as for NSPS. Then the other chemicals, such as those contained in biocides, coagulants, corrosion inhibitors, cleaners, dispersants, emulsion breakers, paraffin control agents, reverse emulsion breakers and scale inhibitors which have not been identified as containing designated "toxic" pollutants, would be considered nonconventional pollutants subject to BAT limitations and NSPS. Any pollutants in these products which have been designated "toxic pollutants" would be subject to BAT and NSPS toxic limitations and standards. Finally, the oil and grease present in produced water would be considered a conventional pollutant subject to BCT limitations and NSPS.

B. Drilling Fluids

Drilling fluids, or muds, are suspensions of solids and dissolved

materials in a base of water or oil that are used in rotary drilling operations to lubricate and cool the drill bit, carry cuttings from the hole to the surface, and maintain hydrostatic pressure downhole. Oil-based drilling fluids are those in which oil, typically diesel, serves as the continuous phase with water as the dispersed phase. Such fluids contain blown asphalt and usually one to five percent water emulsified into the system with caustic soda or quicklime and an organic acid. Silicate, salt, and phosphate may also be present. Oil-based muds are more costly and more toxic than water-based muds, and are normally used only for particularly demanding drilling conditions. In water-based muds, water is the suspending medium for solids and is the continuous phase, whether or not oil is present. Water-based muds are more commonly for use offshore and were focused upon in the development of today's rulemaking.

Drilling fluids are specifically formulated to meet the physical and chemical requirements of a particular well. Mud composition is affected by geographic location, well depth, and rock type, and is altered as well depth, rock formations, and other conditions change. The number and nature of mud components varies by well, and several products may be used at any given time to control the properties of a mud system.

A survey was conducted by the Agency of drilling muds used in recently completed wells in the Gulf of Mexico. Its purpose was to obtain an accurate estimate of the types and quantities of mud components used in current practice. Chemical inventories of base components and specialty additives used downhole were collected for 74 exploratory and development wells drilled offshore since 1981. These wells were representative of drilling activities in 55 lease areas throughout Louisiana state waters, Texas state waters, and federal OCS waters.

Survey findings indicate that four kinds of material, excluding water, account for about 90 percent by weight of all components used, namely barite, clays, lignosulfonates, and lignites. Other components, including lime, caustic soda, soda ash, and a multitude of specialty additives, are used as dictated by well requirements. The quantities of components used were found to vary considerably from well to well, but certain trends were observed. Wells in federal outer continental shelf waters required, on average, more drilling muds and specialty additives than did wells in state waters. Also, exploratory wells required more drilling mud and specialty additives than did development wells. Average total mud consumption for the surveyed wells amounted to 3.1 million pounds per exploratory well and 0.8 million pounds per development well.

Direct discharges of drilling fluids are generally in bulk form and occur intermittently during well drilling. Low volume discharges are made to maintain proper solids levels in mud systems. High volume discharges occur during changes in mud types, for dilution purposes, and when mud tanks are emptied at the end of drilling operations if fluids are not being reused. Such discharges can occur several times while drilling a well, and can total 2,000 barrels or more for each drilling fluid system changeover.

As discussed in Section VII, the Agency selected eight generic, water-based mud types for investigation during the development of today's proposed rulemaking. Chemical, physical, and biological analyses were conducted on laboratory-prepared samples of these eight formulations, both with and without oil additives. Samples were hot-rolled prior to testing to simulate the downhole pressures and temperatures to which spent muds would be subjected.

Analtyical results indicate that none of the organic priority pollutants were detected in any of the base generic drilling fluid formulations. However, 10 of the 13 metals on the priority pollutant list were found in detectable quantities in the generic formulations. Cadmium and mercury, in particular, were present in all muds tested, but at levels below 1 mg/kg each.

Bioassay results indicate that the acute toxicity of the generic muds range considerably. No median effects (50 percent mortality) were observed for three of the eight mud types, whereas the most toxic was found to be the potassium/polymer mud. Its suspended particulate phase showed a 96-hr LC–50 of 3 percent by volume (30,000 ppm), as measured by the proposed bioassay test method (Appendix 3 of today's proposed regulation).

Drilling fluid toxicity was found to increase with the addition of mineral oil, and even more so with diesel oil additions. These findings are consistent with results of other research activities conducted at EPA's Environmental Research Laboratory in Gulf Breeze, Florida. The Agency will continue to investigate the toxicity of various mineral oil additives to determine which formulations are operationally adequate substitutes for the more toxic diesel oil and result in the least overall toxicity in generic drilling fluid formulations.

GC/MS analyses of diesel additives to date show the presence of organic priority pollutants, including benzene, toluene, ethylbenzene, naphthalene, and phenanthrene. Limited analyses of mineral oils to date also show the presence of organics, including benzene, naphthalene, phenanthrene, and fluorene.

Static sheen tests were conducted on the generic muds using the proposed methodology. Free oil was not detected in any of the eight base formulations that did not contain oil additives. Sheen tests were also conducted on water-based muds that contained various amounts of mineral and diesel oil. The two generic mud types selected for testing were those that are most often used in drilling situations that require oil additives. Both mineral and diesel oil additions were found to cause sheens on test waters. However, water-based muds with diesel spikes produced sheens at lower spiking concentrations, as low as one percent by volume.

The Agency categorized the pollutants present in drilling fluids waste streams for purposes of determining appropriate limitations and standards. First, the priority pollutants, organics and metals, are "toxic pollutants" being designated as such pursuant to Section 307(a)(1) of the Act. These toxic pollutants include the mercury and cadmium in barite and the organic pollutants listed above which are present in the diesel and mineral oils which may be added to drilling fluids. Also, the large number of specialty additives which may be used can contain priority pollutants or nonconventional pollutants. It would be appropriate to establish BAT limitations as well as NSPS for the toxic and nonconventional pollutants. As discussed in greater detail in Section XI.A.2, the Agency has proposed specific numeric limitations on mercury and cadmium, and a prohibition on the discharge of free oil, oil-based drilling fluids, and diesel oil, which are all considered as "indicators" of toxic pollutants. Second, the oil and grease present in drilling fluids would be considered a conventional pollutant subject to BCT limitations as well as NSPS.

C. Drill Cuttings

When circulating drilling fluid returns to the platform from the well being drilled, it contains drill cuttings that have been cut from the well bore by the bit. These cuttings range from micron-sized to coarse, sand- to pebble-like particles. The cuttings are coated with

drilling fluid. Drilling fluid additives may absorb onto or be absorbed by the cuttings.

The drilling fluid from the well discharges to a rig shale shaker where the cuttings are separated from the drilling fluid. This separation step does not completely remove drilling fluid from the cuttings. Some drilling fluid and additives remain on the drill cuttings. Therefore, the composition of the cuttings will be similar to the drilling fluid except for the downhole formation particles, particle size distribution, and the relative amounts of the various drilling fluid constituents.

Results of recent analyses by EPA contract laboratories on drill cuttings derived from the use of oil-based drilling fluids show oil and grease levels of up to 136,000 mg/kg, chemical oxygen demand (COD) running as high as 270,000 mg/kg, and biochemical oxygen demand (BOD) as high as 8,000 mg/kg. The BOD values are artificially low as a result of the inhibition by oil. In addition, several toxic organic compounds, including naphthalene, acenaphthene, phenanthrene, 4-nitrophenol, N-nitrosodiphenylamine, pyrene, and bis (2-ethylhexyl) phthalate, and 10 of the 13 priority pollutant metals were found in measurable quantities. These data indicate the presence of toxic pollutants in oil-contaminated cuttings, and that organic loadings due to the discharge of such waste streams can be significant.

The Agency's approach to determining the appropriate limitations and standards for drill cuttings is the same as that used for drilling fluids since the drilling fluids that adhere to the drill cuttings are the major concern. The priority pollutants present in the drilling fluids would be controlled by BAT limitations and NSPS that prohibit the discharge of free oil and cuttings from oil-based fluid systems. These limitations serve as indicators of the toxic pollutants that could be present in the drilling fluids adhering to the drill cuttings.

The conventional pollutant "oil and grease" will be subject to a BCT limitation and NSPS prohibiting the discharge of free oil.

D. Deck Drainage

Deck drainage results primarily from precipitation runoff miscellaneous leakage and spills, and washdown of platform or drill ship decks and floors. It often contains petroleum-based oils from miscellaneous spills and leakage of oils and other production chemicals used by the facility. It may also contain detergents from washdown operations and discarded or spilled drilling fluid components. For the reasons described above, the Agency has identified priority pollutant constituents of oil as pollutants of concern and has proposed a no discharge of free oil limitation as both a BAT limitation serving as an indicator toxic pollutants and as a BCT limitation for conventional pollutants.

E. Sanitary Wastes

The volume and concentration of sanitary wastes vary widely with time, facility occupancy, and operational situation. The wastewater primarily contains body waste but, depending upon the sanitary system for the particular facility, other waste may be contained in the waste stream. Usually the toilets are flushed with fresh water but, in some cases brackish or sea water is used.

The concentrations of waste are significantly different from those for municipal domestic discharges, since the offshore operations require regimented work cycles which impact waste concentrations and cause fluctuation in flows. Waste flows have been found to fluctuate up to 300 percent of the daily average, and BOD concentrations have varied up to 400 percent.

Waste flows may vary from zero for intermittently manned facilities to several thousand gallons per day for large facilities. Pollutants of concern are the conventional pollutants fecal coliform and floating solids and are proposed to be regulated for the BCT level of control. Fecal coliform would be controlled by a residual chlorine limitation.

F. Domestic Wastes

Domestic wastes result from laundries, galleys, showers, etc. Waste flows may vary from zero for intermittently manned facilities to several thousand gallons per day for large facilities. Since these wastes do not contain fecal coliform, which must be chlorinated, they must only be ground up so as not to cause floating solids on discharge. Thus, the conventional pollutant of concern is floating solids which is proposed to be regulated for the BCT level of control.

G. Produced Sand

The fluids produced with oil and gas may contain varying amounts of sand and other particles such as scale, which must be removed from lines and vessels. This may be accomplished by opening a series of valves in the vessel manifolds that create high fluid velocity around the valve. The sand is then flushed through a drain valve into a collector vessel or drum. Produced sand may also be removed in cyclone separators when it occurs in appreciable amounts. Produced sand has been reported to be generated at the rate of one barrel per 2,000 barrels of oil.

The sand that is removed from the produced fluids typically has a high oil content. The primary pollutant of concern in produced sand wastes is oil. Therefore, for the reasons discussed above, the Agency has proposed no discharge of free oil as a BAT limitation serving as an indicator of toxic pollutants. The no discharge of free oil is also proposed as a BCT limitation on conventional pollutants.

H. Well Treatment Fluids

Well treatment fluids include chemicals used in acidizing and fracturing operations performed as part of remedial service work on old or new wells. Additionally, the fluids used to "kill" a well so that it can be serviced may create wastes for disposal.

Spent acid and fracturing fluids usually move through the normal production system and through the waste water treatment systems. Therefore, the fluids do not appear as a discrete waste source. However, their presence in the waste treatment system can cause upsets and a higher oil content in the discharged water. Liquids used to kill wells are normally drilling mud, water, or an oil.

Coverage of well treatment fluids for all pollutants except free oil is reserved in this proposed rulemaking pending collection and analysis of sufficient analytical data and information by EPA. However, to the extent any particular offshore facility passes such wastes through the produced water treatment system or commingles it with other regulated wastes streams for discharge, the commingled well treatment fluids would also be subject to the same effluent limitations as for the regulated waste stream(s).

IX. Industry Subcategorization

In many industries, factors which affect the ability of facilities to achieve technology-based limitations vary among groups of facilities. In such cases, EPA will establish different effluent limitations guidelines or standards for the various groups of facilities (i.e., subcategories). Essentially, subcategorization allows the Agency to more precisely tailor the requirements of technology-based limitations to the capacity of a diverse industry.

The oil and gas extraction point source category currently includes five subcategories: offshore, onshore, coastal, agricultural and wildlife water use, and stripper (40 CFR Part 435). Today's proposal covers only the

offshore subcategory. This subcategory is applicable to those facilities engaged in field exploration, drilling, well production, and well treatment in the oil and gas extraction industry which are located in waters that are seaward of the inner boundary of the territorial seas as defined in section 502 of the Act.

The studies in support of previously proposed NSPS and BAT and final BPT regulations for the oil and gas extraction industry concluded that three major factors—geographic location, type of facility, and waste water disposition—are the bases for subcategorization of this industry. (41 FR 44945, 44 FR 22069).

In developing today's proposed NSPS, BAT, and BCT regulations for the offshore segment of this industry, EPA evaluated characteristics of wells, platform waste effluents, available treatment technologies, and platform operations to determine if it was appropriate to modify the BPT subcategorization scheme. EPA found no basis upon which to change the existing subcategorization for the offshore segment. The Agency concluded that the existing single subcategory for the offshore segment was also appropriate for today's proposed NSPS, BAT and BCT regulations. It should be noted that while the Agency determined that it was not necessary to change the existing offshore subcategorization, the proposed NSPS includes different produced water standards based on the type of operation and location of the facility. (See § 435.15 of today's proposed regulations.)

X. Control and Treatment Technologies

A. Current Practice

BPT regulations established for the offshore segment of the industry are focused primarily on the control of the oil content of waste streams that are discharged to the ocean.

1. Produced Water

Existing technologies for the on-site removal of oil and grease from produced water discharges include gas flotation, parallel plate coalescers, loose or fibrous media filtration, gravity separation, and chemical addition to assist oil-water separation. On-site disposal methods from offshore production platforms include free fall discharge to the ocean, discharge below the water surface, and reinjection into a subsurface formation. As an alternative, some production sites transport produced fluids by pipeline to shore facilities for oil-water separation and disposal.

The removal of priority pollutants in BPT treatment systems is a complex phenomenon that has not been fully explored. While the sampling data indicated quantifiable reductions of naphthalene, lead, and ethylbenzene after BPT treatment (i.e., by oil water separator technology), the presence of significant levels of priority pollutants (e.g., naphthalene and ethylbenzene) in all effluent samples demonstrates the limitations of such treatment technologies.

Reinjection is a disposal technique for injection of produced water into a subsurface formation. When reinjection is used for disposal purposes only, the receiving formation may not be the same formation from which produced fluids were extracted. Secondary recovery or pressure maintenance is when produced water (or other fluids) is injected into a producing formation to enhance recovery of hydrocarbons. Reinjection of produced water into a producing formation may serve both purposes, i.e., disposal of produced water and enhanced recovery of hydrocarbons.

Treatment of produced water prior to injection may be necessary and may include oil-water separation and/or filtration to minimize plugging of the receiving formation. (Oil-water separation also serves for recovery of oil as a commercial product.) Also, biocides, corrosion inhibitors and sequestering agents may be added to the water to reduce or prevent scaling and corrosion of the injection equipment. The type and amount of treatment depends primarily on the properties of the receiving formation and wastewater characteristics.

2. Drilling Fluids

Disposal of drilling fluids, as currently regulated by BPT, prohibits the discharge of free oil that would cause a film or sheen upon or a discoloration of the surface of the receiving water. The discharge of drilling fluids is regulated by NPDES permits under section 402 of the Clean Water Act and by Department of the Interior lease sale stipulations under the Outer Continental Shelf Lands Act. Water-based drilling fluids are discharged directly to the oceans unless the fluid has been contaminated with oil. Water-based fluids are discharged at the surface, into the water column, or shunted to the ocean bottom through a pipe. Where water-based drilling fluids are contaminated with oil to the extent that they would cause a sheen upon discharge, current BPT regulations prohibit their discharge; compliance with the prohibition is by transportation of the spent fluids to shore for recovery or land disposal. When oil-based drilling fluids are used offshore, the fluids are not discharged, but are returned to shore for reconditioning and reuse or disposal.

3. Drill Cuttings

Existing practices for the handling of drill cuttings include: (1) on-site disposal of drill cuttings with an oil content that does not cause a sheen on the receiving water; (2) washing of drill cuttings that contain oil at a level that would cause a sheen so that they may be discharged to a receiving water; and (3) transportation to shore for land disposal. Some cases of disposal of muds and cuttings contaminated by oil have been reported in the Gulf of Mexico by the Minerals Management Service (MMS). MMS's District supervisors have issued at least 13 letters since 1980 that list items of non-compliance (INC) involving oil in discharged muds and cuttings. MMS required the responsible operators to clean up the disposal sites where oil was seeping to the ocean surface and causing a sheen.

The cuttings are segregated from the drilling fluid with a shale shaker and associated separation equipment. If the cuttings contain no oil or levels of oil that will not cause a sheen upon discharge, the cuttings are sluiced with sea water to the receiving water. However, if the levels of oil in the cuttings are such that a sheen would occur if the cuttings were discharged to the receiving water, the cuttings are either washed prior to discharge or transported to shore for land disposal.

Various types of cuttings washers are available. The basic process for the washing of cuttings is similar for all cuttings washer systems that were investigated. The process consists of first exposing the cuttings to a washing liquid (water, water plus cleaning chemicals, or solvents). The "washed" cuttings are then processed to remove the working liquid and discharged to the receiving water or transported to shore for land disposal. The washing liquid is then processed to recover the oil washed from the cuttings and reused. Separated oil is directed to the oil-water separation system serving the production wells. Oil-contaminated wash fluids are either reused in the drill cuttings wash process, burned, or transported to shore for disposal.

The greater the sophistication and cost of the cuttings washer system, the more efficient the oil removal. All washer systems investigated were reported to reduce oil content of drill cuttings to less than 10 percent, by weight. The more sophisticated systems using solvents are reported to reduce oil to less than 0.5 percent, by weight. Quantitative information on cuttings

washer performance was not well documented in the information obtained from suppliers.

4. Deck Drainage.

Deck drainage is either collected and treated separately for oil removal by gravity separation or is handled by the produced water treatment system before discharge.

A commonly used treatment technology for removal of free oils from deck drainage is oil-water separation. This is typically a gravity separation process, whereby the waste stream is collected and diverted to a tank, pit, sump pile, or other vessel. Adequate volume is provided in the vessel to provide sufficient detention time for the free oil and water to separate. The oil layer is then removed by decanting or skimming and returned to the production process, and the water layer drawn off for discharge. The majority of platforms in the Gulf of Mexico and offshore California use gravity separation technology on the platform for treatment of deck drainage. Some California platforms pipe deck drainage along with produced water to shore for treatment. Alaska operations typically treat deck drainage wastes on the platform.

Deck drainage treatment systems and systems that handle both produced water and deck drainage operate much more efficiently when good housekeeping and maintenance practices are employed. These include separation of crank case oils from the deck drainage collection system, minimization of spills, discriminate use of detergents, and preventing drilling fluids from entering the deck drainage collection system.

5. Produced Sand

Produced sand wastes are either transported to shore for disposal or are treated by water and/or solvent washes for oil removal to prevent the discharge of free oil.

6. Sanitary Wastes

Sanitary wastes from offshore facilities are usually treated at the source by physical/chemical systems. Facilities that are manned continuously by ten or more people are required to maintain a residual chlorine concentration in the sanitary waste discharge as close to 1 mg/l as possible for disinfection purposes. This chlorine residual is achieved by introducing chlorine in flow dependent amounts. Chlorine is either supplied from commercial sources or may be electrocatalytically generated from seawater. This chlorine requirement is based upon the use of U.S. Coast Guard approved marine sanitation devices (40 CFR Part 140) and is required by the BPT regulations.

7. Domestic Wastes

Domestic wastes at all facilities and sanitary discharges from facilities that are manned intermittently by nine or fewer people must be free of floating solids which is required by the BPT regulations. This is accomplished with the use of shredders or screening devices.

B. Additional Technologies Considered

The Agency considered the following additional control and treatment technologies in the formulation of today's proposed regulations.

1. Produced Water

EPA evaluated each of the following treatment technologies for NSPS. These technologies were considered for implementation at offshore facilities, and onshore where produced water is piped to shore for treatment.

(a) Improved Performance of BPT Technology. EPA evaluated the costs and feasibility of improved performance of existing BPT treatment technologies to determine whether more stringent effluent limitations for oil and grease would be appropriate. This technology would consist of improved operation and maintenance of existing BPT treatment equipment (e.g., gas flotation, coalescers, gravity oil separation), more operator attention to treatment system operation, and possibly resizing of certain treatment system components for better treatment efficiency.

Based upon statistical analysis of effluent data from facilities sampled during the Agency's 30-platform survey, EPA determined that an oil and grease effluent limitation of 59 mg/l maximum (i.e., no single sample to exceed) can be achieved through improved performance of BPT technology. This limitation would supersede the existing 72 mg/l BPT daily maximum (average of four samples in one day). This limitation is supported by information presented in the report titled *Potential Impact of Proposed EPA BAT/NSPS Standards for Produced Water Discharges From Offshore Oil and Gas Extraction Industry*, (January 1984), sponsored by the Offshore Operator's Committee for the Gulf of Mexico. The Agency's analysis of information from this study concluded that at least 75 percent of existing offshore operations in the Gulf of Mexico were already achieving oil and grease levels of 59 mg/l (maximum) or less in produced water. In addition, the Agency analyzed produced water effluent data from available discharge monitoring reports (DMR's) submitted by operators of offshore production facilities in the Gulf of Mexico. The results indicate that at least 60 percent of these facilities are presently achieving an oil and grease concentration of 59 mg/l or less (daily maximum) in produced water discharges. Thus, the Agency concluded that improved BPT performance to achieve greater reduction in oil and grease warranted further consideration in the development of NSPS and BCT for produced water.

(b) Filtration. EPA considered filtration as an add-on technology to BPT. The purpose of filtration is to remove suspended matter, including insoluble oils, from produced water. The filtration process is physical in nature and normally will not remove soluble materials. Because the majority of the priority pollutants in produced water are in solution or in a soluble form, no quantifiable reductions in priority pollutants are effected by filtration technology alone. However, reductions in conventional pollutants such as total suspended solids and oil and grease are expected. These conclusions are supported by analytical results obtained by EPA from sampling filtration systems that treat produced water.

While the Agency determined that filtration is technologically feasible to implement on an industry-wide basis, EPA rejected filtration from further consideration as a BAT treatment alternative because it is not effective in reducing priority pollutant levels. However, because filtration is a feasible technology for controlling conventional pollutants (i.e., oil and grease), the Agency concluded that filtration warranted further consideration in developing NSPS and BCT.

(c) Reinjection. Reinjection technology for produced water typically consists of injecting it under pressure to subsurface strata or formations. Treatment of the waters prior to injection is usually necessary. Such treatment may include removal of free oils and suspended matter by oil-water separation and filtration technologies. The removal of suspended matter prior to injection is usually performed to prevent pressure buildup and plugging of the receiving formation or strata. Biocides and corrosion inhibitors are typically added to the waters to minimize corrosion and scaling of the injection equipment. Reinjection technology results in no discharge to surface waters, i.e., zero discharge.

EPA evaluated this technology for implementation by both existing and new platforms. While EPA found that

reinjection is technologically feasible and economically achievable for implementation by new sources, the Agency currently lacks sufficient information on the technological feasibility and costs of retrofitting this model technology on a national basis for existing facilities. This is due to uncertainty of retrofit requirements for existing platforms, which can include either construction of additions to existing platforms or construction of auxiliary platforms to accommodate injection well slots and other injection equipment.

(d) Carbon Adsorption. EPA considered carbon adsorption as an add-on technology to BPT. The purpose of carbon adsorption would be to reduce the levels of priority organic pollutants in produced water. EPA determined that carbon adsorption is presently technologically infeasible to implement in this industry segment. This is because of the unknown effects that the brine-like nature of produced waters has on the adsorption process, the lack of performance information in either the literature or on a pilot or full-scale basis, and the disproportionately high costs to even attempt to implement this technology on a national basis for this industry segment. Therefore, EPA rejected carbon adsorption from further consideration for NSPS and BAT.

(e) Biological Treatment. Biological treatment of produced water was considered as an add-on technology to BPT. The purpose of biological treatment would be to reduce the levels of priority organic pollutants and oil in produced water. The available literature on the treatment of wastewater containing high dissolved solids levels (such as produced water) indicates severe problems with acclimating and maintaining biological cultures to treat such briny wastes. The dissolved solids (measure of brine content) levels in produced water are significantly higher than levels at which any biologically activated treatment system has been used or even tested. Therefore, EPA rejected bological treatment from further consideration for NSPS and BAT because it is, at present, technologically infeasible to implement on a national basis for this industry segment.

(f) Chemical Precipitation EPA evaluated chemical precipitation as an add-on technology to BPT for the reduction of priority pollutant levels in produced water. Chemical precipitation technology can be effective in removing soluble metallic ions by their conversion to an insoluble form with subsequent removal be sedimentation (settling) or filtration. The Agency evaluated the efficacy of hydroxide (lime) and sulfide precipitation, the two most likely types of chemical treatment for this type of wastewater. The Agency's analytical data on produced water prior to treatment indicated that zinc is the only priority pollutant metal found in the majority of samples of produced water discharges. Hydroxide and sulfide precipitation were determined to effect virtually no removal of zinc from BPT-treated produced water because of the low concentrations of zinc in the BPT effluent. Sulfide precipitation was also found to cause potentially serious problems with its use, including generation of sulfide gases and toxicity of the treatment chemicals. In addition, with the use of chemical precipitation, large settling facilities would be required to effect proper treatment and then the large quantities of sludge generated would have to be disposed. Thus, EPA rejected chemical precipitation from further consideration for NSPS and BAT on a national basis for this industry segment because of operational problems with implementing the technology and nonquantifiable reductions of priority pollutant metals levels in BPT-treated produced water.

2. Drilling Fluids.

EPA evaluated each of the following practices with respect to offshore drilling operations.

(a) Clearinghouse/Toxicity Approach. The concept of generic muds is that operationally satisfactory mud systems can be formulated with constituents that are less environmentally harmfull than many currently used drilling mud components. This concept is based on the stipulation of general, water-based mud types, classified by major components, which are considered acceptable for discharge.

One such approach to the control of drilling fluid discharges during drilling activities was developed cooperatively in the late 1970's by EPA Region II and the Offshore Operators' Committee. Operators working on leases in the Baltimore Canyon had applied to Region II for NPDES permits to discharge drilling wastes. At the time, the Agency grouped all drilling muds into two broad categories, oil-based and water-based, and did not recognize differences among water-based systems. Region II prohibited the discharge of all oil-based drilling fluids, but needed a means of classifying and controlling the discharge of water-based systems which could contain numerous possible combinations of constituents.

As an alternative to requiring each mid-Atlantic permittee to perform bioassay and chemical tests every time a mud discharge occurred, Region II allowed a joint testing program to cover all muds selected for use. Eight generic mud types were identified which encompassed virtually all water-based mud compositions used on the Outer Continental Shelf. (See Appendix B of this preamble). Concentration ranges of various base constituents were specified to allow sufficient flexibility in performance characteristics and operational needs. A bioassay procedure was developed and tests were conducted on samples of field muds representing each of the eight basic mud types. Results of the Mid-Atlantic Bioassay Program indicated that the eight selected mud types demonstrated relatively low toxicity. Operators were then allowed to discharge drilling fluids of the eight types, including certain approved specialty additives, without conducting additional tests. This generic mud concept has since been incorporated into permits issued by other EPA regional offices.

(b) Product Substitution/Toxicity Approach. This option involves a series of product substitutions to reduce or eliminate the discharge of priority pollutants and minimize the toxicity of discharged drilling fluids and additives. Product substitutions include: use of generic (water-based driling fluid base formulations instead of oil-based drilling fluids (as discussed in option (a) above), use of mineral oil instead of diesel oil for lubricity and spotting purposes to reduce the toxic organics content of discharged fluids, use of barite with low to non-existent toxic metals content, and use of low-toxicity specialty additives. This option would also include a toxicity limitation (LC–50) to be achieved when the drilling fluid system is discharged. The toxicity limitation would be based upon the use of water-based drilling fluids to encourage their use.

(c) Zero Discharge. This option is based upon the transport of spent drilling fluids to shore for recovery, reconditioning for reuse, or land disposal. This option would result in no discharge of pollutants to surface waters.

3. Drill Cuttings

EPA evaluated the following treatment technologies with respect to implementation at the facility.

(a) Mechanical Processes. Drill cuttings are typically separated from the drilling fluid in a shale shaker or other similar device. However, quantities of drilling fluid, and oil and additives if used, remain with the separated drill

cuttings. The drilling mud is first loosened from the cuttings either by a pressure spray or by immersion in a tank containing a wash solution and equipped with an agitator. The wash solution may be seawater, a water-based wash solution, or a closed-solvent wash system. Sometimes a detergent is used to facilitate washing of the cuttings. A mechanical separation step usually follows which separates the solids, oils and additives from the wash solution. The separated oil and additives may be returned to the drilling mud system. Wash solutions are recycled, and the washed cuttings are typically discharged overboard.

The performance of cuttings washer systems is measured in terms of residual oil remaining on the cuttings. Most of the washer suppliers claim that the residual oil after washing will be less than 10 percent by weight and no sheen will result from their discharge. One washer supplier provides a system that dries the cuttings after washing to a powder-like form with claimed oil residuals of 0.5 percent or less, by weight.

The mechanical washing process is the most prevalent system in operation in the Gulf of Mexico, off the California Coast and in the North Sea.

(b) Solvent Extraction System. In this process, oil from the cuttings is extracted by a solvent, the cuttings are separated from the solvent wash solution, and discharged to the sea. Oil is separated from the solvent by a proprietary process and the solvent reused.

One supplier of solvent type washer systems claims that residual oil on the cuttings would not exceed 1 percent by weight and it may be possible to reduce the oil content to a maximum of 0.2 percent by weight. No solvent extraction unit is known, as yet, to be in full-scale field operation. Therefore, this technology was not given further consideration at this time.

(c) Vacuum Distillation. Vacuum distillation of cuttings is basically a "mini-refinery" process where the cuttings are ground to a fine powder and fed to a vacuum retort. The retort is heated and a two-stage vacuum pump removes the evaporated water, oil and chemicals. The mixed vapor first flows through a cyclone for solids separation and then to a vapor condenser. The condensed liquid (oil, water and some chemicals) is recycled in the mud system and the cuttings, in the form of solid residues, are discharged overboard.

The washer supplier claims that the amount of oil remaining on the cuttings will be in the range of 100 to 500 ppm, by weight (i.e., less than 0.05 percent).

Three units have been manufactured and sold for use in the United Kingdom. The operational history of this type of unit has not been reported thus far. Therefore, this technology was not given further consideration at this time.

4. Deck Drainage, Sanitary Wastes, Domestic Wastes, Produced Sand

The Agency did not identify any control and treatment technologies other than the current practices discussed above.

5. Well Treatment Fluids

The Agency is reserving coverage of NSPS, BAT and BCT for all pollutants except free oil for this waste stream pending additional data collection and analysis.

XI. Selection of Control and Treatment Options

A. New Source Performance Standards

The basis for new source performance standards under Section 306 of the Act is the best available demonstrated technology. New facilities have the opportunity to design and implement the best and most efficient processes and waste treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible.

The Agency has investigated several control and treatment options as a basis for NSPS to reduce the discharge of pollutants in waste streams generated by the offshore segment of this industry. These options and the rationale for selecting NSPS are presented below for the major waste streams.

1. Produced Water

(a) Control and Treatment Options Considered. EPA evaluated the following three control and treatment options for establishing NSPS for produced water.

OPTION 1

Option 1 would base performance standards on the improved performance of BPT technology. A discharge standard of 59 mg/l (maximum) for oil and grease would result from this option. For the 833 projected new source platforms in the year 2000, this level of technology would result in an annual reduction of 700,000 pounds of oil and grease beyond the allowable BPT discharge level. This option would not result in quantifiable reductions of priority pollutants beyond those achieved by existing BPT-type treatment technologies.

The Agency was unable to develop incremental cost estimates for imposing Option 1 on all new source platforms. This is because the elements of improved operation and maintenance of BPT treatment equipment are very site specific. However, the Agency does believe that, for any particular new source platform, such costs are minimal compared to the installed costs of the BPT equipment and the cost of operation and maintenance to achieve the BPT effluent limitations. Also, new source operators have the opportunity to design for and install the latest equipment as an integrated part of the platform superstructure; therefore they would not be subject to any retrofit expenditures that were incurred by existing platforms to comply with the BPT regulations. Furthermore, the Offshore Operator's Committee report titled *Potential Impact of Proposed EPA BAT/NSPS Standards for Produced Water Discharge From Offshore Oil and Gas Extraction Industry* (January 1984), projects that at least 75 percent of the existing offshore platforms in the Gulf of Mexico are already achieving the 59 mg/l oil and grease limitation with treatment technology designed to achieve compliance with BPT limitations.

OPTION 2

Option 2 would base performance standards on granular media filtration as an add-on technology to BPT. This level of technology would result in additional reductions of conventional pollutants beyond the BPT level of control. Effluent limitations of 20 mg/l monthly average and 30 mg/l daily maximum for both oil and grease and total suspended solids would result from this option. For the 833 projected new source platforms, this option would result in an annualized cost of $275.7 million in the year 2000 (1983 dollars). Investment costs for the 62 platforms expected to be installed in the year 2000 are estimated to be $185.4 million (1983 dollars). These compliance costs are incremental to BPT technology, i.e., they do not include the costs for BPT technology.

This option would result in an annual reduction of 4.2 million pounds of oil and grease beyond the levels allowed under the BPT level of control. Significant reductions of total suspended solids levels are also achieved by granular media filtration. No quantifiable reductions in priority pollutants found in BPT-treated discharges would be achieved by this option.

OPTION 3

Option 3 would require zero discharge, based upon reinjection technology. This level of technology would result in no discharge of pollutants to surface waters.

For the projected 833 new platforms, this option would result in an annualized cost of $487.1 million in the year 2000 (1983 dollars). Investment costs for the 62 platforms expected to be installed in the year 2000 are estimated to be $442.0 million (1983 dollars). These compliance costs are incremental to BPT technology, which may be required ahead of the reinjection system required by this option.

This option would result in an annual reduction of 3.9 million pounds of priority pollutants beyond the discharge levels observed for existing platforms using BPT technology. This option would also result in an annual reduction of 7.0 million pounds of conventional pollutants (oil and grease) beyond the levels allowed under the BPT level of control. Significant reductions of total suspended solids levels are also achieved by this option.

(b) *Selected Option and Basis for Selection:* The option which the Agency is proposing for NSPS is a combination of Options 1 and 3. Option 3, or zero discharge, would be required for all oil production facilities that are located in or would discharge to shallow water areas, i.e., platforms in 20 meters of water or less in the Gulf of Mexico, the Atlantic Coast, and the Norton Basin; in 50 meters of water or less for the California Coast, Cook Inlet/Shelikof Strait, Bristol Bay, and Gulf of Alaska; and in 10 meters of water or less in the Beaufort Sea. The regulatory boundaries for each of these areas are defined in Appendix 4 of today's proposed regulation. The Agency has selected Option 1, improved BPT-treatment technology, which requires compliance with a 59 mg/l limitation for oil and grease (maximum for any single sample), for all oil facilities that are neither located in nor discharge to these shallow water areas, for all gas facilities regardless of location or water depth, and for all exploratory facilities regardless of location or water depth.

This selected option would require an estimated 132 new oil production facilities to meet the zero discharge standard. The other 701 new production facilities would be required to meet an oil and grease standard of 59 mg/l (maximum) based upon improved performance of BPT technology.

In selecting NSPS for produced water, the Agency considered the technical feasibility and industry compliance costs of imposing each of the above three NSPS options. In addition, EPA calculated aggregate industry compliance costs with various combinations of these options based upon platform type and location. The record supporting today's proposal presents the details of these other options.

Because Option 3, which is based on reinjection, is the only treatment technology that EPA found to be both technologically feasible to implement and capable of achieving reductions of all pollutants, including priority pollutants, the Agency focused its evaluation on reinjection. The Agency recognized that, while reinjection is an available and demonstrated technology for controlling the discharge of pollutants in produced water from offshore oil and gas facilities, the Agency also had to consider the costs of implementing such a control option. The estimated total annualized cost for all 833 projected new facilities to implement reinjection of produced water is $487.1 million in the year 2000 (1983 dollars). In light of the statutory mandate to consider cost in establishing NSPS, EPA decided to reject the imposition of this option on all new facilities in the offshore subcategory because of its very high aggregate cost. This prompted the Agency to evaluate limiting the scope of a zero discharge requirement (i.e., reinjection) in order to reduce the total cost.

To analyze possible ways to reduce the total aggregate cost of Option 3, the Agency then developed costs for reinjection based upon the type of facility, i.e., oil platforms or gas platforms. Not imposing a zero discharge requirement on the estimated 537 new source gas platforms would reduce the annualized cost of NSPS Optioin 3 by $217.8 million in the year 2000 (1983 dollars). The Agency decided to exclude all gas platforms from coverage by Option 3 to reduce total aggregate costs.

To confirm this decision, EPA evaluated the characteristics of produced water from oil platforms versus gas platforms. The Agency determined that, while produced water from gas wells exhibits higher concentrations of the priority pollutants then produced water from oil wells (approximately fourfold higher), the typical flow volume of produced water from gas wells is significantly less (approximately 1/15) than that for oil wells. Thus, on a mass basis, discharges of priority pollutants from gas wells are approximately 25 percent of those from oil wells. The higher quantity of priority pollutants discharged from oil platforms compared to gas platforms supports the Agency's decision that deleting gas platforms from a zero discharge requirement to reduce aggregate annualized costs was appropriate. This reduced total annualized costs to $289.3 million (1983 dollars) while continuing to target attention on the discharges of greatest concern.

While total projected annualized costs were reduced, the Agency believed that $289.3 million was still too high and evaluated reducing costs further by limiting the zero discharge option to shallower waters where compliance costs would be less. Facilities in shallow waters generally have the alternative of onshore reinjection which is less costly than reinjection offshore.

The Agency has found that in shallower waters a high percentage of the existing production platforms pipe to shore for treatment rather than treating the produced waters on the platform. The Agency has also determined that the costs of drilling and equipping reinjection wells on land is less costly than drilling reinjection wells at the platform.

The Agency has selected variable depth limits for different offshore areas which represent the shallower waters and which generally allow for the alternative of onshore reinjection by the facility.

Industry data for the Gulf of Mexico indicate that 82 percent of the projected new sources in state waters and 25 percent of the projected new sources in federal waters would pipe produced water to shore for treatment. The data also indicate that about 52 percent of all new sources in 15 meters or less of offshore waters would pipe produced water to shore. The Agency believes this same percentage of platforms in water depths of 20 meters or less could pipe to shore and reinject.

The 20 meter water depth was also selected for the Atlantic Coast. There is no historic trend for production platforms in this area. Therefore, the Gulf of Mexico statistics on the probable practice of onshore reinjection were assumed to be applicable for production facilities in the Atlantic Ocean.

In California, statistics indicate that 60 percent of the active production platforms located in water depths of 50 meters or less pipe to shore for treatment and only eight percent of the facilities in water depths greater than 50 meters pipe to shore for treatment. Based on this data, a depth of 50 meters or less was selected for the California Coast.

The Agency does not have historic data on production platforms for some

parts of Alaska since no offshore production platforms have been constructed to date in those areas. All of the 14 existing production platforms in Cook Inlet are classified in the coastal subcategory. The Agency believes that the Southern Alaskan bathymetry is somewhat similar to California's bathymetry and therefore, a water depth of 50 meters or less is proposed for Southern Alaska since platforms locating in this water depth may choose to pipe produced water to shore for treatment. The Southern Alaska region includes the Bristol Bay/Aleutian Island Chain, Cook Inlet and the Gulf of Alaska. The Agency realizes that some of these areas may not be amenable to piping to shore for reinjection because of seasonal ice formations, glaciers, or unsuitable terrain. However, the Agency believes that piping to shore in shallow waters will occur in areas that are suitable.

For other parts of Alaska, the Agency believes the platforms which locate in the Norton Basin in water depths of 20 meters or less and in the Beaufort Sea in 10 meters or less will have the option of piping to shore for treatment. The water depths are less than the 50 meters selected for Southern Alaska because the harsher climates in these more northern regions would result in a lesser probability of piping to shore for treatment.

The Agency developed a zero discharge option for facilities in 20 meters of water or less in the Gulf of Mexico, the Atlantic Coast and the Norton Basin; for 50 meters of water or less for the California Coast and Southern Alaska including the Aleutian Island Chain; and for 10 meters of water or less in the Beaufort Sea.

EPA then calculated the total costs of this zero discharge option in shallower waters. In the Gulf of Mexico, the agency projects that 124 new platforms will be built in 20 meters of water or less by the year 2000. The Agency estimates annualized costs of a zero discharge standard to be $50.0 million in the year 2000 (1983 dollars). For the California Coast, the Agency projects two new platforms that will be built in 50 meters or less of water and estimates the annualized cost to be $5.5 million (1983 dollars). While six platforms are projected to be built in the shallow waters of the Beaufort Sea, the Agency is not attributing incremental compliance costs to this regulation because existing Department of the Interior and State of Alaska lease stipulations already require zero discharge of produced water. However, these costs are included in the Agency's baseline economic analysis for these proposed regulations. Similarly, no costs are attributed to Atlantic Coast operations because no facilities are projected to be built in 20 meters of water or less by the year 2000. Nonetheless, EPA realizes that development is possible in the Atlantic and has found that reinjection technology is feasible for meeting a zero discharge standard for platforms located in 20 meters of water or less for the Atlantic Coast.

The proposed regulatory option, developed from the variable depth considerations presented above, results in an annualized cost of $55.6 million in the year 2000 (1983 dollars). The annualized costs apply to 126 of the 132 new oil facilities expected to be built between 1986 and the year 2000 which would be subject to this zero discharge requirement. The other six facilities are projected to be located in Alaskan waters and subject to reinjection, but the cost of reinjection is not attributed to this regulation, as described above. The Agency found these costs to be economically achievable. This cost represents the total annualized cost of NSPS. This is because the Agency's selection of improved BPT performance (i.e., 59 mg/l maximum oil and grease) for all facilities not subject to the zero discharge standard would result in negligible costs incremental to BPT.

As explained above, the agency assumes only minimal incremental costs for new sources to meet 59 mg/l oil and grease for produced water. The Agency selected Option 1 (improved BPT) over option 2 (filtration) because the aggregate annualized cost of $275.7 million (1983 dollars) to implement Option 2 is believed to be too high.

The proposed regulatory option would result in an estimated annual reduction of 700,000 pounds of priority pollutants based on discharge levels observed for existing facilities using BPT technology. This option would also result in an annual reduction of 1.3 million pounds of conventional pollutants beyond the discharge levels allowed under the BPT level of control. No decline in energy production is projected to occur from this option.

Both reinjection and improved BPT technology represent the application of the best available demonstrated control technology in the respective areas where they will need to be used to meet the proposed standards. The Agency has thoroughly considered the cost of achieving the proposed standards and concludes that the costs will not be a barrier to future entry into offshore oil and gas exploration, development or production operations. No adverse non-water quality environmental impacts or substantial increases in energy requirements will occur as a result of these proposed regulations.

This proposed option would require produced water from all new exploration facilities regardless of location or water depth to comply with a 59 mg/l maximum oil and grease standard, based upon improved operation of BPT. Because of the short duration of exploratory operations, the small amount of water which is generated during exploratory operations, and the fact that each exploratory well could require the drilling of a reinjection well, the Agency concluded that the cost of a zero discharge requirement for any exploratory operation is too high.

EPA is proposing that development/production facilities that would have to implement zero discharge under this option would have up to 300 days from the commencement of well drilling operations to begin complying with the zero discharge standard. For this purpose, commencement of well drilling operations means the start of borehole drilling for the first development well at an offshore oil facility.

During this 300-day period, any discharges of produced water would have to comply with a 59 mg/l (maximum) oil and grease standard, which is based upon improved performance of BPT technology. This 300-day period is being proposed in order to allow for the use of any dry (non-producing) wells which are suitable for reinjection. It is based upon the time required for the average number of development wells to be drilled before encountering a dry well that could be reworked and equipped for use as an injection well, and the average time to rework and equip the dry well for injection of produced water. If no dry wells become available and are ready for use as injection wells within this period, then compliance with the zero discharge standard would be achieved by drilling and equipping an injection well(s) for use by the 301st day from the commencement of development drilling operations.

The Agency estimates that, typically, less than two percent by volume of the produced water generated over the life of a facility would be discharged during the initial 300-day period. The Agency estimates that the difference in cost between the use of a new injection well and use of a reworked dry well for reinjection is a minimum of $400,000 per facility. The Agency believes that it is reasonable to delay the requirement for

meeting zero discharge by new offshore oil facilties for 300 days from commencement of develoment drilling in order to minimize the expenditure of these substantial costs.

The reasonableness of the Agency's decision to require zero discharge in the shallow waters is confirmed by the Agency's analyses which show that it would provide protection to the most environmentally sensitive marine environments. In reviewing the environmental documents referenced in Section VII.D, the Agency determined that the highest probability of direct environmental effects of produced water discharges is most prevalent in shallower waters. In the Gulf of Mexico, for example, species distribution data provided by the National Oceanic and Atmospheric Administration (NOAA) indicate that water depths of 20 meters or less encompass approximately 88 percent of the nursery areas for selected fish and invertebrates. The Agency projected that 124 new platforms would be built in 20 meters or less of water in the Gulf of Mexico.

The Agency also evaluated the Beaufort Sea, Norton Basin, Cook Inlet, Bristol Bay, and the Gulf of Alaska in Alaska. EPA analyses indicate that a 10-meter isobath (i.e., water depth of 10 meters or less) in the Beaufort Sea; a 20-meter isobath in the Norton Basin; and a 50-meter isobath in Cook Inlet/Shelikof Strait, Bristol Bay, and the Gulf of Alaska would provide substantial protection of valuable life stages for the commercial and subsistence species in each region.

For the California Coast, EPA's analyses indicate that the 50-meter isobath will protect the majority of the designated areas of biological significance. It will also protect most of the known nursery areas.

Along the Atlantic Coast, species distribution data were obtained from NOAA that indicate approximately 83 percent of the nursery areas for the selected fish and invertebrates are encompassed by water depths of 20 meters or less.

A zero discharge requirement for produced water would also achieve control of many nonconventional, toxic pollutants in addition to the 126 listed priority pollutants (See Appendix C of this preamble). An EPA survey of 10 production platforms in Louisiana (the "Crest" report) identified chemicals containing toxic or nonconventional, toxic pollutants in use on the platforms that were either present or likely to be present in produced water. These chemicals include biocides, coagulants, corrosion inhibitors, cleaners, dispersants, emulsion breakers, paraffin control agents, reverse emulsion breakers, and scale inhibitors. Detergents used to clean the platforms were also found in produced water. The Agency is currently collecting additional information on the use and effects of biocides and other chemicals in this industry for consideration in development of the final regulations.

The regulatory boundaries for each geographic area covered by today's proposed regulations are based on some of the Minerals Management Service (MMS) proposed planning areas for the new 5-year Outer Continential Shelf (OCS) oil and gas leasing program (49 FR 28332, July 11, 1984) which encompass all federal oil and gas lease activities. For the purpose of today's proposed regulations, the regulatory boundaries include the area from the state water boundary that adjoins the MMS planning area boundary landward to the inner boundary of the territorial seas. In addition, the outer (seaward) boundary of each regulatory area is proposed to coincide with the 200-mile Fishery Conservation Zone boundary.

The regulatory areas include the Gulf of Mexico, the Atlantic Coast, the California Coast and portions of Alaskan waters, as presented in Appendix 4 of today's proposed regulations.

2. Drilling Fluids

(a) *Control and Treatment Options Considered.* This section presents the regulatory options considered for NSPS drilling fluids. Because these options are the same as the options considered for BAT, the discussion of costs is presented in the BAT section for drilling fluids. Thus there are no NSPS costs or impact incremental to BAT for drilling fluids.

OPTION 1—TOXICITY LIMITATION

This option would result in the regulation of free oil, oil-based fluids, diesel oil, cadmium, mercury and the toxicity of the discharged drilling fluid. Most of these limitations are achieved by product substitution—specifically, through the use of water-based drilling fluids (i.e., generic muds), low toxicity specialty additives, the use of mineral oil instead of diesel oil for lubricity and spotting purposes, and use of barite with low toxic metals content.

Under this option the discharge of free oil would be prohibited, as in the existing BPT regulation. The discharge of oil-based fluids would also be prohibited. Oil-based fluids typically contain 50 or more volume percent of oil. One method of compliance is substitution with less toxic water-based fluids. Water-based, or generic, drilling fluids, as explained under Option 2 below, can be used in virtually all offshore drilling situations.

The prohibition on the discharge of free oil for BPT effectively prohibits the discharge of oil-based drilling fluids. Therefore, any differential costs incurred to implement substitution of water-based for oil-based fluids is a cost attributable to compliance with BPT requirements. Moreover, in contrast to the BPT regulation, this NSPS option contains an explicit prohibition on the discharge of oil-based fluids in addition to the prohibition on discharges of free oil. The alternative to product substitution, i.e., use of water based mud systems, is to transport the spent mud system to shore for reconditioning, recovery or land disposal.

The prohibition on the discharge of oil-based fluids is included in this option as an "indicator" of the toxic pollutants present in oil-based fluids. The free oil discharge prohibition in BPT originally was imposed to prevent the discharge of oils in amounts that would cause a sheen on receiving waters and this limitation will continue.

The discharge of diesel oil, either as a component in an oil-based drilling fluid or as an additive to a water-based drilling fluid, would be prohibited under this option. Diesel oil would be regulated as a toxic pollutant because it contains such toxic organic pollutants as benzene, toluene, ethylbenzene, naphthalene, and phenanthrene. The method of compliance with this prohibition is to use mineral oil instead of diesel oil for lubricity and spotting purposes. Mineral oil is a less toxic alternative to diesel oil and is available to serve the same operational requirements. Low toxicity mineral oils are also available as substitutes for diesel oil and continue to be developed for use in drilling fluids.

The purpose of the toxicity limitation for any drilling fluids which are to be discharged is to encourage the use of generic or water-based drilling fluids and the use of low-toxicity drilling fluid additives (i.e., product substitution). The basis for the toxicity (LC–50) limitation is the toxicity of the most toxic of the generic fluids discussed in Option 2 below. The most toxic generic fluid is potassium/polymer mud (see Appendix B of this preamble). The imposition of an LC–50 toxicity limitation for all drilling fluids which are to be discharged would allow for use of at least any of the eight generic drilling fluids. Seven of the generic drilling fluids (i.e., all but potassium/polymer mud) could be supplemented with low-toxicity specialty additives and lubricity agents

to meet operational requirements, and should still be able to comply with the LC–50 toxicity limitation prior to discharge. The potassium/polymer drilling fluid probably could not be supplemented with additives that exhibit a toxicity greater than the proposed LC–50 limitation because the LC–50 toxicity limitation is based upon the base formulation of this drilling fluid. However, industry operators and drilling fluid suppliers have indicated that potassium/polymer drilling fluid is seldom used. In drilling situations where there is no substitute for potassium/polymer drilling fluid for operational reasons, such a spent mud system would comply with the proposed LC–50 toxicity limitation (3 percent, diluted suspended particulate phase) only if any required lubricity agents (oils) or specialty additives are no more toxic than the base mud formulation. Such additives are available. However, where the toxicity of the spent mud system exceeds the LC–50 toxicity limitation, the method of compliance with this option would be to transport the spent fluid system to shore for either reconditioning for reuse or land disposal.

The toxicity limitation would apply to any periodic blowdown of drilling fluid as well as to bulk discharges of drilling fluid systems. The term drilling fluid systems refers to the major types of muds used during the drilling of a single well. As an example, the drilling of a particular well may use a spud mud for the first 200 feet, a seawater gel mud to a depth of 1,000 feet, a lightly treated lignosulfonate mud to 5,000 feet, and finally a freshwater lignosulfonate mud system to a bottom hole depth of 15,000 feet. Typically, bulk discharges of 1,000 to 2,000 barrels of spent drilling fluids occur when such mud systems are changed during the drilling of a well or at the completion of a well.

For the purpose of self monitoring and reporting requirements in NPDES permits, it is intended that only samples of the spent drilling fluid system discharges be analyzed in accordance with the proposed bioassay method. These bulk discharges are the highest volume mud discharges and will contain all the specialty additives included in each mud system. Thus, spent drilling fluid system discharges are the most appropriate discharges for which compliance with the toxicity limitation should be demonstrated. In the above example, four such determinations would be necessary.

For determining the toxicity of the bulk discharge of mud used at maximum well depth, samples may be obtained at any time after 80 percent of actual well footage (not total vertical depth) has been drilled and up to and including the time of discharge. This would allow time for a sample to be collected and analyzed by bioassay and for the operator to evaluate the bioassay results so that the operator will have adequate time to plan for the final disposition of the spent drilling fluid system, e.g., if the bioassay test is failed, the operator could then anticipate and plan for transport of the spent drilling fluid system to shore in order to comply with the effluent limitation. However, the operator is not precluded from discharging a spent mud system prior to receiving analytical results. Nonetheless, the operator would be subject to compliance with the effluent limitations regardless of when self monitoring analyses are performed. The prohibition on discharges of free oil, oil-based drilling fluids, and diesel oil would apply to all discharges of drilling fluid at any time.

Cadmium and mercury would be regulated at a level of 1 mg/kg, each, as a maximum value ("not to exceed") on a dry weight basis in any spent drilling fluid system discharge. These two toxic metals would be regulated to control the metals content of the barite component of any drilling fluid discharges. The method of compliance with these limitations is product substitution. This involves use of barite from sources that either do not contain these metals or contain the metals at low enough levels such that resultant levels in discharges of the drilling fluid do not exceed the limitations.

The causes for noncompliance with the specific requirements of this option could include: inability to use a drilling fluid that can meet the proposed toxicity limitation, such as the need for an oil-based mud or a potassium/polymer mud with oil additives because of operational reasons, the need to add lubricity agents or other specialty additives to a mud system to meet particular operational requirements, or the unavailability of barite containing low toxic metals levels. However, as previously noted, BPT effectively prohibits the discharge of oil-based drilling fluids, and less toxic water-based fluids are available substitutes. Although the potassium/polymer mud represents the most toxic water-based fluid allowed for discharge, it is seldom used for offshore drilling purposes. It is also recognized that the availability of barite stocks containing low levels of trace metals could be limited at any given time due to market conditions. For the purposes of today's proposal, the Agency assumed that sufficient sources of such barite do exist and can be directed to offshore drilling use in those cases where an operator intends to discharge drilling fluids. Mineral oil is an available alternative to diesel oil for use as a lubricant or spotting fluid. Although there are specialty additives for which less toxic substitutes have not been identified, the toxicity limitation is applied to the discharge of the entire drilling fluid system, and not to individual components. Thus, the Agency believes that only a limited number of offshore drilling operations would not be allowed to discharge spent drilling fluids due to violation of one or more of the requirements of this option. A conservative estimate is that, at most, ten percent of all spent drilling fluid systems would violate the proposed limitations and would have to be transported to shore to comply with this NSPS option.

OPTION 2—CLEARINGHOUSE APPROACH

Option 2 would provide for the establishment of a national clearinghouse administered by EPA which would serve as a repository for all toxicity and related physical and chemical characteristics of base drilling fluid formulations and additives. This information would be available to operators (as well as the general public) for use in selecting drilling fluid formulations that would likely comply with the established toxicity limitation. The initial list would include the eight generic fluids discussed in Section VIII and presented in Appendix B of this preamble. These fluids are of known composition and toxicity and have been evaluated and listed as acceptable for discharge in NPDES permit actions.

Chemical and toxicity information on new additives and mud formulations would be included in the clearinghouse data base as adequate testing data become available.

OPTION 3—ZERO DISCHARGE

This option would require zero discharge for all drilling fluids, based upon transport of spent drilling fluids to shore for recovery, reconditioning for reuse, or land disposal, or transport to an approved ocean disposal site. This level of technology would result in no discharge of pollutants to surface waters except at approved ocean disposal sites.

(b) Selected Option and Basis for Selection. EPA has selected Option 1 as the basis for proposed new source performance standards for drilling fluids. The proposed standards include the following limitations:

• A prohibition on the discharge of free oil, oil-based drilling fluids, and diesel oil, all considered as "indicators" of priority pollutants.

• A 96-hour LC–50 toxicity limitation on the discharged drilling fluids of no less than 3.0 percent by volume of the diluted suspended particulate phase.

• A maximum limitation (i.e., no single sample to exceed) on the amount of cadmium and mercury in discharged drilling fluids of 1 mg/kg each.

The prohibitions on the discharge of free oil, oil-based drilling fluids, and diesel oil are all intended to limit the oil content in drilling fluid waste streams and thereby control the priority as well as conventional and nonconventional pollutants present in those oils. The pollutants "free oil," "oil-based drilling fluids," and "diesel oil" are each considered to be "indicators" of the priority pollutants present in these complex hydrocarbon mixtures used in drilling fluid systems. These pollutants include benzene, toluene, ethylbenzene, napthalene and phenanthrene. The Agency's primary concern is controlling the priority pollutants in the oils although these prohibitions also will serve to control nonconventional and conventional pollutants. The Agency selected the "indicator" approach as an alternative to establishing limitations on each of the specific toxic and nontoxic pollutants present in these oil-contaminated wastestreams. The sampling and analysis data demonstrate that when the amount of oil, especially diesel, is reduced in drilling fluid, the concentrations of priority pollutants and the overall toxicity of the fluid generally are reduced. The Agency has determined that control of the amount or type of oil present in drilling fluids with limitations on the three "indicators" (free oil, oil-based drilling fluids and diesel oil) will provide a good level of control of the priority pollutants present in drilling fluids. This method of toxic regulation obviates the difficulties and costs of monitoring and analysis if limitations were established for each of the organic priority pollutants present in the drilling fluids. The Agency requests comment on its decision to use these three limitations as "indicators" of priority pollutants. The Agency also requests comment on whether limitations should be established for each of the specific organic priority pollutants present in drilling fluids.

The purpose for the LC–50 toxicity limitation on the discharge of drilling fluids is to reduce the toxic constituents in drilling fluid discharges. While the three indicator limitations on the amount or type of oil present in drilling fluids should significantly reduce the toxic pollutants present in drilling fluids, other additives such as mineral oil or some of the numerous specialty additives may greatly increase the toxicity of the drilling fluid. The toxicity is, in part, caused by the presence and concentration of priority pollutants. By establishing a toxicity limitation, the Agency believes that operators will consider toxicity in selecting additives and select the less toxic alternative. For instance, there can be a broad spectrum in the toxicity of mineral oils. The Agency believes that the Clean Water Act authorizes the Agency to establish a toxicity limitation as an effluent limitation designed to control the chemical or toxic constituents of the discharge. The availability of a wide selection of additives makes product substitution the best available demonstrated technology for complying with the toxicity limitation. The Agency has considered the costs of product substitution and finds them to be acceptable for this industry, resulting in no barrier to future entry. These standards are not expected to have any adverse non-water quality environmental impacts or increase energy requirements. The generic drilling fluids list is a primary basis for both the prohibitions on the discharge of free oil and oil-based drilling fluids and the LC–50 limitation. As discussed in section VIII, EPA has determined, through the NPDES permit process, that the eight generic water-based drilling fluids, whose formulations are presented in Appendix B of this preamble, are adequate for virtually all drilling situations and are less toxic than oil-based drilling fluids. In order for a drilling fluid to be discharged, it must be no more toxic than the proposed LC–50 standard as determined with the Drilling Fluids Toxicity Test presented in Appendix 3 of today's proposed regulation.

Under this option, a drilling fluid can be discharged only if it does not contain additives that would cause its toxicity to exceed the toxicity of the most toxic generic mud. Further, EPA has determined that refined mineral oil is an adequate substitute for diesel oil and is a less toxic alternative to diesel oil. Accordingly, diesel oil would not be an allowable additive, either as a lubricity agent or spotting fluid, to a drilling fluid intended to be discharged. Mineral oil would be allowed as a lubricity agent and spotting agent in the drilling fluid provided that its addition would not cause the toxicity of the discharged drilling fluid, including all other additives, to exceed the proposed LC–50 standard.

The limitations on cadmium and mercury for discharged drilling fluids are intended to control the concentrations of toxic metals in barite, a major component of drilling fluids. As discussed above, these limitations would be met by product substitution, the best available demonstrated technology which is economically achievable.

In addition, the Agency is proposing a different definition of the term "no discharge of free oil" from that promulgated for the BPT regulation (44 FR 22075, April 13, 1979). Also, the test procedure for determining compliance with this prohibition on free oil discharges is proposed to be changed from that used for BPT. This revised test procedure is called the "Static Sheen Test", and is presented in Appendix 1 of today's proposed regulation. The rationale for these proposed changes is the same as that discussed in Section XI.B.

This NSPS option is the same as the proposed BAT option for drilling fluids, as discussed below. Therefore, there are no NSPS compliance costs or impacts incremental to BAT for drilling fluids.

Option 2 was not selected as the basis for NSPS at this time because the Agency does not anticipate such a "clearinghouse" program to be established prior to promulgation of NSPS. Development of listing methodologies and criteria and compilation of an adequate toxicity data base, which is central to the "clearinghouse approach" of Option 2, is estimated to take from three to five years. Such methodologies, criteria and data are essential for full implementation on a nationwide basis. The Agency has begun to investigate the requirements for management of a clearinghouse approach. Upon completion of the investigation and if the Agency establishes such a program, the Agency may decide to propose to amend the approach to NSPS accordingly.

The Agency rejected Option 3, zero discharge, for implementation on a national basis for two major reasons. The Agency believes that the aggregate industry compliance costs of $126.3 million annually (1983 dollars) for transport and land disposal of all spent drilling fluids is too high. In addition, the Agency believes that there may be problems with adequate land availability for disposal of spent drilling fluids under such a zero discharge option. In part, this may be due to existing or future restrictions on the land disposal of drilling fluids under the

requirements of hazardous waste disposal laws.

3. Drill Cuttings

(a) Control and Treatment Options Considered. Option 1 would result in the regulation of free oil, oil-based fluids, and diesel oil in discharged drill cuttings. These limitations, as for the selected option for drilling fluids, are achieved by product substitution. Water-based drilling fluids would be substituted for oil-based fluids and mineral oil would be substituted for diesel oil. These three pollutant parameters would be regulated in a manner identical to that for the same pollutant parameters for drilling fluids Option 1. The rationale for their regulation is also the same as for drilling fluids Option 1 because the constituent of concern in the drill cuttings waste stream is the residual drilling fluid that adheres to the drill cuttings.

Option 2 would be equivalent to Option 1 plus a limitation on the allowable oil content of the discharged cuttings. The oil content limitation of 10 percent maximum by weight would be based upon water/detergent washer technology, as discussed in Section X of this preamble. This "residual oil" limitation would be imposed as an indicator of toxic pollutants, specifically the priority organic pollutants in oils that are added to drilling fluid systems, and to control conventional pollutants in this waste stream.

Option 3 would require zero discharge of all drill cuttings, based upon transport of drill cuttings to shore for land disposal or to an approved ocean disposal site. This option would result in no discharge of pollutants to surface waters except at approved ocean disposal sites.

(b) Selected Option and Basis for Selection. The Agency selected Option 1 as the basis for proposed NSPS for drill cuttings. The requirements of Option 1 are comparable to those of the selected option for drilling fluids.

The Agency did not select Option 2 at this time because it believes that establishing an oil content limitation on drill cuttings may be redundant because the prohibition on the discharge of free oil appears to be a more stringent limitation. While presently demonstrated cuttings washer technology will reduce residual oil content to less than ten percent by weight, the Agency's data base indicates that visible sheen can be caused by as little as one percent oil. Thus, the free oil discharge prohibition may be more stringent than any residual oil limitation that can be presently established with cuttings washer technology that has been demonstrated on a full-scale basis. The Agency will collect and evaluate additional cuttings washer performance data, especially with respect to the use of mineral oil for lubricity and spotting purposes, to establish whether an oil content limitation is more stringent than the prohibition on the discharge of free oil.

The Agency rejected Option 3, zero discharge, because of high aggregate compliance costs and land availability problems as discussed below for drilling fluids BAT Option 3.

4. Deck Drainage

As with BAT/BCT, the Agency is proposing to establish NSPS for deck drainage the same as the BPT level of control. This would result in a prohibition on the discharge of free oil. The technology basis is oil-water separation. The Agency is reserving coverage for all other pollutant parameters and characteristics for deck drainage pending additional data collection and analysis. This additional data will include toxic, nonconventional, and conventional pollutant information and control and treatment technology evaluation.

The method of determining compliance with the free oil prohibition is by the static sheen test discussed earlier and as presented in Appendix 1 of today's proposed regulation. Where deck drainage is collected and treated separately from produced water, the free oil prohibition would apply. However, where deck drainage is commingled and cotreated with produced water, only the effluent limitations for produced water would apply to these two combined waste streams.

Because this proposed standard is equal to BAT/BCT, there are no incremental compliance costs due to NSPS.

5. Sanitary Wastes

The Agency is proposing to establish NSPS for sanitary wastes equal to the BAT/BCT level of control. This would result in: (1) a prohibition on the discharge of floating solids for facilities manned by nine or fewer persons or intermittently manned by any number of persons; and (2) an effluent standard for residual chlorine of 1 mg/l minimum and to be maintained as close as possible to 1 mg/l, for facilities continuously manned by ten or more persons. Because these proposed standards are equal to BAT/BCT, there are no incremental compliance costs due to NSPS.

6. Domestic Wastes

The Agency is proposing to establish NSPS equal to the BCT level of control for domestic wastes. This would result in a prohibition on the discharge of floating solids. Since NSPS would equal BCT, no compliance costs incremental to BCT are associated with this standard.

7. Produced Sand

As with BAT/BCT, the Agency is proposing to establish a prohibition on the discharge of free oil for produced sand NSPS. The technology basis for this standard is water or solvent wash of produced sands prior to discharge, or transport of produced sand to shore for land disposal. The method of determining compliance with the free oil prohibition is by the static sheen test discussed earlier and as presented in Appendix 1 of today's proposed regulation. There are no NSPS compliance costs incremental to the proposed BAT/BCT limitations.

The Agency is reserving coverage for all other pollutant parameters and characteristics for produced sand pending additional data collection and analysis. This additional data will include toxic, nonconventional, and conventional pollutant information and control and treatment technology evaluation.

8. Well Treatment Fluids

The Agency is proposing to establish an NSPS prohibition on the discharge of free oil for well treatment fluids as an "indicator" to reduce or eliminate the discharge of any toxic pollutants in the free oil to surface waters. The method of determining compliance with the free oil prohibition is by the static sheen test discussed earlier and as presented in Appendix 1 of today's proposed regulation. This is equal to the proposed BAT level of control, as discussed below. Therefore, there are no NSPS compliance costs incremental to BAT.

The Agency is reserving NSPS coverage of all other pollutant parameters for well treatment fluids and characteristics pending additional data collection and evaluation. This additional data will include toxic, nonconventional and conventional pollutant information and control and treatment technology evaluation.

B. Best Available Technology

1. Produced Water

The Agency is not proposing BAT effluent limitations for produced water from existing sources at this time. The Agency lacks sufficient information on reinjection and control of biocides and

other chemical usage by existing facilities to properly evaluate the technological feasibility and economic achievability of these options.

The Agency is presently undertaking a data collection effort to obtain industry profile information, retrofit costing information for reinjection, information on the extent of biocide and other chemical use, and associated environmental impacts for existing facilities. Upon analysis of this information, the Agency may propose at a future date a BAT regulatory option of: (1) reinjection based upon water depth or use of biocides and other chemicals; (2) product substitution to require the use of less toxic or persistent biocides and chemicals; (3) establishment of effluent limitations to limit the quantities of biocides and chemicals discharged or an option based upon a combination of these three approaches.

Because BAT is intended to control toxic and nonconventional pollutants, the Agency will not further consider the improved BPT or filtration technologies of options 1 and 2 for existing sources because these technologies primarily control conventional pollutants, and do not effect quantifiable reductions of toxic pollutants.

2. Drilling Fluids

(a) Control and Treatment Options Considered.

OPTION 1—TOXICITY LIMITATION APPROACH

This option is the same as NSPS Option 1 for drilling fluids. It would regulate the discharge of free oil, oil-based fluids, diesel oil, cadmium, mercury and the toxicity of discharged drilling fluids. These limitations are achieved by product substitution through the use of water-based drilling fluids (i.e., generic muds), low toxicity specialty additives, the use of mineral oil instead of diesel oil for lubricity and spotting purposes, and use of barite with low toxic metals content. The purpose and rationale for these effluent standards is the same as that presented above for NSPS.

This option would result in an annual cost of $26.3 million (1983 dollars) for an estimated 1166 wells. These costs are incremental to BPT requirements and are based upon the following: transport of ten percent of all spent drilling fluid systems either to shore for recovery, reuse or land disposal or to an approved ocean disposal site; a 15 percent increase in barite costs due to increased storage and handling costs and increased demand for barite with low toxic metals content; analytical costs associated with the toxicity limitation and the mercury and cadmium effluent limitations; and monitoring costs based on the sampling frequencies presented in Section XII of this preamble. The differential cost of substituting mineral oil for diesel oil (approx. $2.10 per gallon, including storage, for the Gulf of Mexico) is not attributable to the BAT option as an incremental cost to BPT. While BPT does not explicitly prohibit the discharge of diesel oil, the discharge of diesel oil in any significant amounts (i.e., one volume percent or more) would cause a sheen on receiving waters which would violate the BPT prohibition on the discharge of free oil. Therefore, the amount of mineral oil required to comply with a proposed prohibition on the discharge of diesel oil would be minimal, and the associated costs would be minimal.

OPTION 2—CLEARINGHOUSE APPROACH

This option is the same as NSPS Option 2 for drilling fluids. It is based upon the establishment by EPA of a toxicity and chemical data base of drilling fluid formulations and additives that would be used to determine whether drilling fluid systems would likely be acceptable for discharge.

OPTION 3—ZERO DISCHARGE

This option is the same as NSPS Option 3 for drilling fluids. It would require zero discharge for all drilling fluids, based upon transport of spent drilling fluids to shore for recovery, reconditioning for reuse, land disposal, or transport to an approved ocean disposal site. This level of technology would result in no discharge of pollutants to surface waters, except at approved ocean disposal sites.

For the estimated 1166 wells drilled annually, this option would cost $126.3 million (1983 dollars). These compliance costs are incremental to BPT requirements, and reflect barging and monitoring costs.

This option would result in an annual reduction of 6.2 million barrels of drilling fluids to surface waters, except at approved ocean disposal sites.

(b) Selected Option and Basis for Selection. EPA has selected Option 1 as the basis for proposed BAT for drilling fluids. BAT would include the same limitations as NSPS:

- A prohibition on the discharge of free oil, oil-based drilling fluids, and diesel oil, all considered as "indicators" of toxic pollutants.
- A 96-hour LC–50 toxicity limitation on discharged drilling fluids of no less than 3.0 percent by volume of the diluted suspended particulate phase.
- A maximum limitation (i.e., no single sample to exceed) on the amount of cadmium and mercury in the discharged drilling fluids of 1 mg/kg each, dry weight basis.

Options 2 and 3 were rejected for the same reasons as discussed above for NSPS.

As with NSPS, the three discharge prohibitions on oil will serve as "indicators" of toxic pollutants. The Agency believes it is appropriate to establish these prohibitions as BAT toxic limitations. The primary purpose is to control the priority pollutants present in the oils. Control on the oil content of fluids could also be achieved through a numeric limitation on the conventional pollutant "oil and grease." In fact, the Agency has included the prohibition on the discharge of free oil as a BCT limitation in recognition of the complex nature of the oils present in drilling fluids. However, the Agency's decision to establish BAT limitations through the three oil prohibitions was based on the consideration that it would be less difficult and costly to comply with these three "indicator" limitations than numeric limitations on each of the organic priority pollutants present in the oils. This decision to establish limitations on oils as indicators of priority pollutants is consistent with the Agency's listing of "oil and grease" as a conventional pollutant. (44 FR 44501.) In that notice, the Agency explained that "where toxic substances are associated with oil and grease, the Agency may require control at BAT levels. This will be done either by identification of oil and grease as an indicator pollutant or by establishing BAT limitations for the specific toxic pollutant." *Id.* The Agency solicits comments on its decision to establish these indicator pollutant limitations as BAT rather than setting numeric limitations on the specific organic priority pollutants or conventional pollutants. Since the oils would be considered BAT toxic indicators, such limitations would not be subject to Section 301(c) or Section 301(g) modifications.

The LC–50 toxicity limitation and limitations on mercury and cadmium also are appropriate BAT limitations. Compliance with these limitations as well as the three oil prohibitions can be achieved through product substitution. Product substitution is both a technologically feasible and economically achievable means for compliance.

Related to this option, the Agency is proposing to amend the current definition of the term "no discharge of free oil." The current definition of "no

discharge of free oil" defines the term to mean "that a discharge does not cause a film or sheen upon or a discoloration on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines." This limitation was originally intended to prohibit the discharge of drilling fluids (as well as drill cuttings and well treatment fluids) that, when discharged, would cause a sheen on the receiving water. The limitation was then extended for final BPT regulations to include deck drainage, and the current definition of the term "no discharge of free oil" was established to be consistent with the oil discharge provision of Section 311 of the Act. Technically, however, discharged drilling fluids could be considered "sludge." For this reason, the Agency is proposing to amend the current definition by excluding language that prohibits the deposition of sludge beneath the surface of the receiving water. This would allow the discharge of drilling fluids, provided that other effluent limitations are met.

The amended definition is accompanied by a test procedure for determining compliance with the prohibition on free oil discharges. This test is the "static sheen test" used in definition § 435.11(m) and presented in Appendix 1 of today's proposed regulations. This would apply to the same waste streams that are covered by the existing BPT prohibition, i.e., deck drainage, drilling fluids, drill cuttings, and well treatment fluids.

The compliance monitoring procedure previously required by permits was a visual inspection of the receiving water after discharge. However, since the intent of the limitations is to prohibit discharges containing free oil that will cause a sheen, the method of determining compliance should examine oil contamination prior to discharge. Also, concerns have been raised that the intent of the existing definition of "no discharge of free oil" may be violated too easily for the limitation to be effective. Violations which may result from intentional or unintentional actions include the use of emulsifiers or surfactants, discharges that occur under poor visibility conditions (i.e., at night or during stormy weather), and discharges into heavy seas, which are common on the outer continental shelf. Additionally, concerns have been expressed over the utility of the visual observation of the receiving water compliance monitoring procedure for certain discharges during ice conditions as in Alaskan operations. These include above-ice discharges where the receiving water would be covered with broken or solid ice, and below-ice discharges where the effluent stream would be obscured.

To correct for these monitoring problems, the Agency developed an alternative compliance test, the Static Sheet Test, which is presented in Appendix 1 of today's proposed regulations. The alternative test continues the visual observation for sheen, but provides for inspection before discharge using laboratory procedures. The test is conducted by adding samples of the effluent stream into a container in which the sample is mechanically mixed with a specific proportion of seawater, allowed to stand for a designated period of time, and then viewed for a sheen.

Since the intent of a "no discharge of free oil" limitation is to prevent the occurrence of a sheen on the receiving water, the new test method will prevent the discharge of fluids that will cause such a sheen.

3. Drill Cuttings

(a) Control and Treatment Options Considered.

OPTION 1

Option 1 is the same as NSPS Option 1 for drill cuttings. It would result in the prohibited discharge of free oil, oil-based fluids, and diesel oil in discharged drill cuttings. These limitations, as for the selected option for drilling fluids, are achieved by product substitution. The rationale for these limitations is also the same as for drilling fluids Option 1 because the constituent of concern in the drill cuttings waste stream is the residual drilling fluid that mixes with and adheres to the drill cuttings.

For the estimated 1166 wells drilled annually, this option would result in an estimated annual cost of $8.6 million (1983 dollars) for transport of drill cuttings to shore for land disposal and for effluent monitoring. No investment costs are expected to occur from this option. This option would result in an estimated annual reduction of at least 1.3 million pounds of oil otherwise discharged to surface waters.

OPTION 2

Option 2 is equivalent to Option 1 plus a limitation on the allowable oil content of the discharged cuttings. This option is the same as NSPS Option 2 for drill cuttings. The oil content limitation of 10 percent maximum by weight would be based upon drill cuttings water/detergent washer technology, as discussed in Section XI of this preamble.

OPTION 3

Option 3 would require zero discharge of all drill cuttings, based upon transport of drill cuttings to shore for recovery and reuse or land disposal, or transport to an approved ocean disposal site. This option would result in no discharge of pollutants to surface waters, except at approved ocean disposal sites. This option is the same as NSPS Option 3 for drill cuttings.

For the estimated 1166 wells drilled annually, this option would result in annual effluent monitoring and transport costs of $77.1 million (1983 dollars). This option would result in an annual reduction of 1.7 million barrels of drill cuttings discharged to surface waters.

(b) Selected Option and Basis for Selection. The Agency selected Option 1 as the basis for proposed BAT for drill cuttings. The requirements of Option 1 are comparable to those of the selected option for drilling fluids. This option is based on product substitution which is both a technologically feasible and economically achievable means for compliance by the industry.

The Agency is not selecting Option 2 at this time because it believes, as discussed above for NSPS, that establishing an oil content limitation on drill cuttings may be redundant because the prohibition on the discharge of free oil appears to be a more stringent limitation. The Agency will collect and evaluate additional cuttings washer performance data, especially with respect to the use of mineral oil for lubricity and spotting purposes, to establish whether an oil content limitation is more stringent than the free oil limitation.

The Agency rejected Option 3, zero discharge, because of high aggregate compliance costs and concern for adequate land availability for disposal as discussed above for NSPS.

4. Deck Drainage

The Agency is proposing to establish BAT for deck drainage equal to the BPT level of control. This would result in a prohibition on the discharge of free oil as an "indicator" to reduce or eliminate the discharge of any toxic pollutants in the free oil to surface waters. The technology basis is oil-water separation. BAT compliance costs incremental to BPT consist of additional compliance monitoring expenditures of $1.09 million (1983 dollars) annually, reflecting use of the proposed static sheet test to determine compliance with the prohibition on the discharge of free oil.

The Agency is reserving coverage of all other toxic and nonconventional pollutant parameters and characteristics for deck drainage pending additional data collection and analysis. This additional data will include toxic

pollutant information and control and treatment technology evaluation.

5. Sanitary Wastes and Domestic Wastes

The Agency is not proposing to establish BAT effluent limitations for these waste streams because there have been no toxic or nonconventional pollutants of concern identified in sanitary or domestic wastes.

6. Produced Sand

The Agency is proposing to establish a BAT prohibition on the discharge of free oil for produced sand as an "indicator" to reduce or eliminate the discharge of any toxic pollutants in the free oil to surface waters. The technology basis for this limitation is water or solvent wash of produced sand prior to discharge, or transport of produced sand to shore for land disposal. Because this waste stream is of low volume and because most facilities currently practice either washing or land disposal, the Agency did not attribute any compliance costs to this proposed limitation, except for nominal compliance monitoring expenses to perform the static sheen test to determine the presence of free oil.

The Agency is reserving coverage of all other toxic and nonconventional pollutant parameters and characteristics for produced sand pending additional data collection and analysis. This additional data will include toxic pollutant information and control and treatment technology evaluation.

7. Well Treatment Fluids

The Agency is proposing to establish a BAT prohibition on the discharge of free oil for well treatment fluids as an "indicator" to reduce or eliminate the discharge of any toxic pollutants in the free oil to surface waters. This is equal to the BPT level of control. Therefore, there are no compliance costs incremental to BPT, except for nominal compliance monitoring expenses to perform the static sheen test to determine the presence of free oil.

The Agency is reserving BAT coverage of all other pollutants and characteristics for well treatment fluids pending additional data collection and evaluation. This additional data will include toxic and nonconventional pollutants information and control and treatment technology evaluation.

C. Best Conventional Technology

The 1977 amendments added section 301(b)(4)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in section 304(b)(4)—BOD, TSS, fecal coliform and pH—and any additional pollutants defined by the Administrator as "conventional." On July 30, 1979, EPA designated "oil and grease" as a conventional pollutant (44 FR 44501).

BCT is not an additional limitation; rather it replaces BAT for the control of conventional pollutants. BCT requires that limitations for conventional pollutants be assessed in light of "cost-reasonableness." EPA published proposed rules for BCT on October 29, 1982 (47 FR 49176). These proposed rules set forth a revised procedure which includes two tests to determine the reasonableness of costs incurred to comply with candidate BCT technologies. These cost tests are the "POTW test" and the "industry cost test." On September 20, 1984, EPA published a "notice of data availability" concerning the proposed BCT regulations (49 FR 37046).

1. Produced Water

(a) Control and Treatment Options Considered. EPA examined three treatment options for removing conventional pollutants from produced water in relation to the proposed BCT methodology.

OPTION 1—IMPROVED PERFORMANCE OF BPT

This option would require effluent limitations based on the improved performance of BPT technology. As presented above for NSPS option 1, this level of technology would result in additional reductions of oil and grease beyond the BPT level of control. A discharge limitation of 59 mg/l maximum (no single sample to exceed) for oil and grease would result from this option.

OPTION 2—FILTRATION ON SITE

This option would require effluent limitations based on granular media filtration as an add-on technology to BPT. Filtration equipment would be installed on the platform with the treated effluent being discharged at the platform. This level of technology would result in additional reductions of conventional pollutants beyond the BPT level of control. Effluent limitations of 20 mg/l monthly average and 30 mg/l daily maximum for oil and grease would result from this option.

OPTION 3—FILTRATION ONSHORE

This option is the same as Option 2 except it is applicable to facilities which presently separate produced water from hydrocarbon product at the platform, pipe the produced water to shore for treatment to meet BPT effluent limitations, and discharge the treated effluent to surface waters.

(b) Selected Option and Basis for Selection. The Agency rejected the options presented above and is proposing to establish BCT for produced water at the BPT level of control. This would result in effluent limitations of 48 mg/l monthly average and 72 mg/l daily maximum for oil and grease, based upon oil water separation technologies. The Agency rejected Options 1 through 3 because they all fail the first part of the Agency's proposed BCT cost test (the "POTW test").

For Option 1, the Agency was unable to directly perform the POTW test because the Agency lacks sufficient information to accurately estimate the incremental cost of improved BPT performance (see section XI.A.1(a) above); this cost is necessary in order to perform the POTW test. Therefore, the Agency analyzed this option by determining the maximum dollar expenditure per day that model platforms could incur to implement this option without exceeding the POTW test benchmark.

The maximum cost per pound of conventional pollutant removal whereby the "POTW test" will be passed is presented in the BCT "notice of data availability" referenced above. These maximum costs were used to calculate the total dollars that could be expended at each of the 32 model platforms to comply with this option and still pass the "POTW test." This was accomplished by multiplying the pounds of conventional pollutants that would be removed by BCT Option 1 technology for each of the 32 model platforms used for this study by the benchmark cost per pound presented in the "notice of data availability."

This total cost for each model platform ranged from $0.79 per day for the smallest model platform to $182 per day for the largest model platform. The Agency believes that the cost of implementing Option 1 is minimal, although not as low as the range of daily costs derived by the above procedure. Therefore, the Agency rejected Option 1 because it fails the POTW cost test.

For Options 2 and 3, the Agency calculated compliance costs (incremental to BPT) for each of 32 model platforms and then performed the POTW test for each model size platform. The range in costs per pound of conventional pollutant removed beyond BPT for Options 2 and 3 based on model platform size, is as follows:

	Lowest cost—dollars per pound removed (1980 dollars)	Highest cost—dollars per pound removed (1980 dollars)
Option 2	64	71
Option 3	54	63

These costs were compared with the fourth quarter, 1980 POTW proposed benchmark of $1.04 per pound of conventional pollutant removed. The POTW test failed for Options 2 and 3 for all of the model platforms. Therefore, EPA rejected these options for the BCT level of control. The Agency intends to evaluate reinjection technology for BCT after collection of certain additional technology and cost information (see Section XX) prior to promulgation of the final regulations. The Agency may also re-evaluate the proposed BCT limitations for produced water when the final BCT methodology is promulgated.

2. Drilling Fluids, Drill Cuttings, Deck Drainage and Well Treatment Fluids

With one exception, the Agency is reserving BCT requirements for drilling fluids, drill cuttings, deck drainage and well treatment fluids until final promulgation of the general BCT methodology. The exception is a prohibition on the discharge of free oil. This limitation is equal to the BPT level of control for these waste streams. Therefore, no incremental costs are associated with this proposed BCT limitation. Because BCT is proposed to be equal to BPT, the free oil discharge prohibition will pass any BCT cost test. When the final BCT methodology is promulgated, the Agency may propose to establish BCT limitations for other conventional pollutants for these waste streams. At this time, the Agency is soliciting comment on what pollutants in drilling fluid and drill cuttings waste streams should be considered conventional pollutants. Specifically, the Agency solicits comments on whether the solids components of the fluids and cuttings should be considered total suspended solids.

3. Domestic and Sanitary Wastes

The Agency is proposing BCT coverage for sanitary and domestic wastes equal to the BPT level of control. The Agency is proposing a residual chlorine effluent limitation for facilities continuously manned by 10 or more persons of 1 mg/l maximum and maintained as close to this level as possible in sanitary discharges to control fecal coliform. Residual chlorine is being treated as a BCT parameter because its purpose is to control the conventional pollutant fecal coliform.

The proposed BCT limitation for domestic wastes from all facilities and sanitary wastes from facilities continuously manned by 9 or fewer persons or manned intermittently by any number of persons is "no discharge of floating solids." No compliance costs incremental to BPT are associated with the proposed BCT limitations. Since no additional costs will be incurred these limitations pass the BCT cost tests.

4. Produced Sand

With one exception, the Agency is reserving BCT coverage for produced sand until the promulgation of the final BCT methodology. The Agency is proposing a BCT limitation that would prohibit the discharge of free oil for produced sand discharges. As discussed above for BAT, this limitation would result in negligible compliance costs.

The Agency solicits comment on other pollutants in the produced sand waste stream that should be considered for regulation at the BCT level of control.

D. Best Practicable Technology

As discussed above for NSPS and BAT, the Agency is proposing to amend the definition of the term "no discharge of free oil" and the test procedure for determining compliance with the prohibition of free oil discharges. For consistency, the Agency is proposing the same change to the existing BPT regulations. This change does not affect the conclusion that the current BPT limitation of no discharge of free oil may be met through use of the best practicable control technology currently available and that the costs of that technology are justified by the effluent reduction benefits.

XII. Cost and Economic Impact

A. Treatment Technology Costs

The costs of implementing the treatment options considered for today's proposed regulations were developed through compilation of cost data obtained from equipment manufacturers, the offshore oil and gas extraction industry, cost estimating manuals, and by the application of standard engineering data and cost estimation techniques.

Costs were determined for 32 model platform sizes. Treatment components were sized and costed for each model platform for all treatment options which were considered to be technologically feasible. In addition, a typical or model well depth was established so that cost estimates accounted for situations where well depth affected pollution control costs.

Various assumptions were made on the area required for installation of equipment, cost of new platform space, cost of land used for onshore treatment, and piping and energy costs. The Agency estimated that from 17 to 84 percent of new offshore production facilities covered by this regulation would reinject onshore, depending upon geographic location, e.g., Gulf of Mexico, California, Alaska.

Energy costs were determined based on pumping requirements and treatment facility operation. Natural gas was assumed to be the source of energy to power either electrical generation or prime movers for waste treatment on platforms, with the cost of the natural gas at commercial value. Natural gas was the chosen fuel source because of its availability and because air emissions from natural gas combustion are cleaner than those from diesel fuel. For onshore treatment installations, use of locally generated electrical power was assumed, at commercial rates.

The costs of barging and land disposal were obtained from barge operators, oil industry contacts, and landfill operators. Dry wells were assumed to be available for use as injection wells for produced water. Exhausted production wells were assumed not to be available. However, additional cost savings could be realized by using exhausted production wells for injection of produced water. These assumptions were based on API drilling statistics for the Gulf of Mexico and discussions with state officials.

To determine the installed cost of equipment on platforms, multipliers of 3.5 times the equipment purchase cost were used for skid-mounted equipment and 4.0 times the equipment purchase cost for items shipped loose. These factors were supplied by an engineering consultant to OOC in a report titled *Determination of Best Practicable Control Technology Currently Available to Remove Oil from Water Produced with Oil and Gas*, Brown and Root, Inc., March 1974. EPA solicits comments on the reasonableness of these factors used to estimate installed costs.

Geographical factors were also used to translate the cost from the base location, the Gulf of Mexico (multiplier =1), to Alaska, the California Coast and the Atlantic Coast. The following are the cost multipliers used:

Location	Capital cost multiplier	Applicable to—
Atlantic Coast	1.6	Equipment and [illegible]
California Coast	1.6	Do

Location	Capital cost multiplier	Applicable to—
Alaska:		
Norton Basin	3.5	Do.
Beaufort Sea	3.5	Do.
Bristol Bay	3.5	Do.
Gulf of Alaska	1.5	Do.
Cook Inlet/Shelikof Strait.	2.0	Equipment.
Cook Inlet/Shelikof Strait.	2.5	Wells.

EPA also solicits comments on the reasonableness of these cost multipliers.

The Agency did not include potential costs for compliance with the underground injection control (UIC) program administered under the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*). The Agency invites comments and supporting data on the impacts of UIC requirements for onshore reinjection including the costs of complying with these requirements.

None of the technologies studied in the development of these proposed regulations is considered to be innovative. All of the controls described in this preamble and in greater detail in the Development Document have either been used or investigated for use in this industry and do not represent major process changes.

B. Compliance Monitoring Frequencies and Costs

The Agency has estimated compliance monitoring costs for a facility where both development and production operations are being performed. As such, the total monitoring costs presented below are conservative. The BAT compliance monitoring costs for drilling fluids and all sheen tests are the monitoring costs that are incremental to existing BPT monitoring costs.

Waste stream	Analyses	Cost per sample for analysis and labor	Frequency	Cost per month
Produced water	Oil and grease	[1] $40	1/week	[illegible]
Drilling fluids	Bioassay (LC-50)	$1,000	1/month [2]	1,000
	Mercury, total	$50	1/month [2]	[illegible]
	Cadmium, total	[illegible]	1/month [2]	50
	Static sheen	[illegible]	3/week	[illegible]
Drilling cuttings	do.	[illegible]	daily	750
Deck drainage	do.	[illegible]	do.	[illegible]
Produced sand	do.	$25	do.	[illegible]
Well treatment fluids	do.	[illegible]	1/month [3]	25
Sanitary M9/M and Domestic wastes	Floating solids	[illegible]	daily	[illegible]
Sanitary M10	Residual chlorine	[illegible]	1/month	[illegible]

[1] Four samples per determination.
[2] Twice per well.
[3] As needed.

C. Economic Impact

1. Introduction

The Agency's economic impact assessment is set forth in the *Economic Impact Analysis of Proposed Effluent Limitations and Standards of Performance for the Offshore Oil and Gas Industry.* (EPA 440/2–85/003). This report details the investment and annualized costs for the industry as a whole and for facilities covered by the offshore segment. The report also estimates the probable economic effect of compliance costs in terms of prices, Federal and State revenues, production levels, employment, and international trade effects and profitability.

EPA has also conducted an analysis of the cost-effectiveness of alternative treatment technologies that remove toxic pollutants from produced water. The results of this cost-effectiveness analysis are expressed in terms of the incremental removal cost per pound-equivalent, where differences in toxicity among the pollutants found are taken into account through the use of toxic weighting factors. In this analysis, a pound-equivalent is calculated by multiplying the number of pounds of pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper), divided by the water quality criterion for the pollutant being evaluated. The cost per pound-equivalent removed would be lower when a highly toxic pollutant is removed. This analysis is included in the record of this rulemaking, and is titled *Cost Effectiveness Analysis of Proposed Regulations for the Offshore Oil and Gas Industry.* Copies of this report may be obtained from the economic analysis staff referenced in the Addresses section of this preamble.

2. Impacts

a. Basis of Analysis. The costs and economic impacts associated with today's proposed regulations differ depending on whether drilling or production operations are analyzed. Costs to control drilling related effluents are the same for existing source platforms and for new platforms. Additional costs from production related effluents, however, arise from the zero discharge requirement for certain new source facilities.

Production related effluents at existing facilities would be regulated at the BPT level of control. Also, for existing source production facilities, the proposed regulations would prohibit the discharge of free oil for produced sand discharges. As explained in Section XI.B, no compliance costs are attributed to this proposed limitation, except for nominal compliance monitoring expenses.

The economic analysis of drilling operations is based on the total number of exploratory, delineation and development wells which the Agency expects to be drilled each year. Offshore drilling operations occur primarily in the Gulf of Mexico along the Texas and Louisiana coasts although increasing efforts are being made in offshore California and Alaska, and, to a lesser extent, in the Atlantic. The average number of wells drilled annually over the past ten years is 1166; the total annual footage drilled is 11 million feet. All of the wells drilled for exploratory, delineation, and development purposes are covered by the proposed regulation.

The analysis of production operations is based on the number of platforms projected to be built between 1986 and the year 2000. By the year 2000, new source oil and gas development should have stabilized such that the rate of growth of new facilities should equal the rate of obsolesence of facilities already covered by the regulation. EPA expects 833 new platforms to be built between 1986 and the year 2000. EPA based its estimates for platform and well development on Department of Energy projections of future energy production, Department of Interior historical data, and on industry estimates. Of the 833 new platforms, 132 are expected to be located in water depths that would be subject to the zero discharge requirement for produced water. The remaining platforms would be subject to the oil and grease standard of 59 mg/l maximum for produced water discharges.

b. Aggregate Impacts and Costs. The combined annualized cost of today's proposed BCT, BAT and NSPS regulations is $31.5 million (1983 dollars) in the year 2000. The capital investment for these proposed requirements is $18.6 million (in 1983 dollars). No price changes will result due to this regulation. No curtailment of oil or gas production is expected. State and Federal lease revenues are expected to decline by $49.1 million in the year 2000

(1983 dollars) if companies reduce their lease bid prices. The effect of reduced bid prices is not expected to exceed 0.1 percent of total revenues for States affected by the proposed option. No employment or international trade effects are projected.

Between 85 to 95 percent of new facility construction is likely to occur on new lease tracts. These operations cannot pass the additional cost of the regulation on to customers in the form of price increases, since the price is determined in a large international market. The operations are expected to pass the additional cost of the regulation on to the State and Federal government in the form of lower lease bids. The Agency's analysis projected the revenue effects on the States and Federal government.

Some new drilling and platform construction is likely to occur on existing lease tracts. These operations must absorb the costs of the regulation, since the costs cannot be passed on in the form of higher prices or lower lease bids.

c. Methodology. The Agency used a net present value analysis to calculate whether offshore development operations could remain profitable after regulatory costs were incurred. Costs and revenues were projected over the life of the model project first based on the existing BPT requirements. Then the regulatory costs were added to these baseline costs to determine if model platforms remained profitable. EPA used 32 model platforms representing operations in the Gulf of Mexico, California Coast, Alaska and the Atlantic Coast. Distinct technical and economic characteristics for facilities in these areas were developed. Costs included in the baseline condition were those associated with leasing, exploration, delineation, development and production operations.

To assess the impact on offshore oil and gas companies, the Agency developed two representative company financial profiles: one for major integrated companies and one for independents. Pre- and post-regulation balance sheets were developed and the effect of the regulatory costs on their financial condition was assessed.

3. Best Conventional Pollutant Control Technology

BCT is either proposed equal to existing BPT requirements or reserved for this proposed rulemaking. No costs or impacts are projected as a result of today's proposal of BCT.

4. Best Available Technology Economically Achievable

Because the Agency is reserving coverage of produced water for BAT, no costs or impacts are projected for the discharge of produced water by existing platforms.

Exploratory, delineation, and development operations will incur a combined cost of $35.9 million annually to comply with the drilling fluids and cuttings limitations (1983 dollars). No capital investment will need to be made to meet these limitations. The costs are based on an estimated annual drilled footage of 11.2 million and include incremental costs of clean barite for drilling fluids as well as monitoring and barging costs. Monitoring and testing costs total $5.0 million and are based on the sampling frequency presented in Part B of this section. Costs of transportation to shore and land disposal total $20.2 million; these costs are expected to occur when drilling fluid discharges exceed either the LC–50 limitation or mercury or cadmium limitations, or when fluids or cuttings discharges would not pass the static sheen test. An estimated 10 percent of all drilling operations are expected to incur transport costs. Barite costs total $10.7 million and are based on an assumed price increase of 15 percent to reflect the combined increased storage and handling costs as well as increases in price of blended barite.

To calculate the decline in the rate of return associated with the BAT limitation, the Agency used the net present value analysis described above but used the BPT requirements as a baseline. The decline in rate of return of the model platforms was approximately 0.1 percent. No curtailment in drilling activities is expected to occur from the proposed requirements. No effect on oil and gas prices, employment or international trade is projected. The Agency finds these costs to be economically achievable for the oil and gas industry.

5. New Source Performance Standards

Incremental costs of compliance with the proposed regulation will arise only from production operations. Control of effluents from drilling operations at new sources is no more stringent than that for existing sources; therefore, no incremental costs are assigned to new sources.

Of the 833 platforms projected to be built between 1986 and the year 2000, 701 would be subject to the proposed 59 mg/l oil and grease standard for produced water. Incremental costs for platforms complying with the 59 mg/l standard are expected to be *de minimis* and, therefore, are considered to be economically achievable. This standard represents improved operation and maintenance of existing BPT treatment technology. An estimated 126 of the other 132 facilities are expected to incur an annualized cost of $55.6 million (1983 dollars) to comply with the zero discharge requirement for produced water. This annualized cost reflects the cost for 124 new platforms operating in the year 2000 in water depths of 20 meters or less in the Gulf of Mexico and two platforms located in 50 meters or less of water for the California Coast. The six platforms projected in 10 meters or less of water in Alaska must comply with an existing zero discharge requirement and are not expected to incur additional costs associated with their produced water effluent. The investment cost for facilities in the year 2000 is $18.6 million (1983 dollars). The investment cost applies to new facilities projected for the year 2000 in the depth coverage areas.

In calculating the costs associated with the zero discharge requirement, the Agency assumed that from 20 to 50 percent of all wells drilled are dry and between 7 and 25 percent of all dry wells are usable for injection. The Agency also assumed that between 17 and 84 percent of the platforms will reinject onshore depending upon distances from shore. The onshore reinjection costs include the drilling of all injection wells necessary to handle produced water volumes. EPA does not expect any of the facilities that are projected to be placed in the depth coverage areas to become umprofitable due to reinjection requirements.

The majority of new facilties will be built in new lease tracts. These operations cannot pass the additional costs of the regulation on to their customers as price increases because they represent only a very small segment of the international market in which prices are determined. However, they are not expected to experience significant declines in profits because they are expected to pass any additional costs of the regulation on to state and federal governments through lower lease prices. Thus, for the majority of new platforms, the impact of the regulations would be to reduce federal and state revenues. The reduction in revenues for the affected states is not expected to exceed 0.1 percent.

For the 5 to 15 percent of new platforms to be constructed on existing lease tracts, the cost of the regulation cannot be passed on as reduced lease bids. As a result, the rate of return for

these operations is expected to decline from 0.4 to 4.5 percent (with an average decline of 1.8 percent).

The Agency projects no net decline in energy production as a result of the zero discharge requirement because the majority of platforms are not expected to experience a change in production levels. Some platforms may shut down a year early and therefore produce less oil than they would have without the regulation. Approximately one-third of the model platforms are projected to shut down early due to an increase in the water/oil ratio in produced water, which will reduce profitability. Those that do are not expected to shut down more than a year early and the resultant decline in production is less than 0.1 percent of total model project production. Platforms able to use waterflooding may benefit from reinjection of produced water. As water is injected into a producing formation, increased pressure causes oil production increases. On balance, these production changes are expected to offset each other.

The Agency projects no employment or international trade effects as a result of this regulation.

XIII. Nonwater Quality Environmental Impact

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require the Agency to consider the non-water quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, the Agency has considered the effect of these regulations on air pollution, solid waste generation, water scarcity, and energy consumption. This proposal was circulated to and reviewed by Agency personnel responsible for nonwater quality environmental programs. While it is difficult to balance pollution problems against each other and against energy use, the Agency is proposing regulations that it believes best serve often competing national goals.

The following are the nonwater quality environmental impacts associated with today's proposed regulations:

A. Energy Requirements

Additional energy requirements imposed by these regulations are due primarily to the filtration and pumping of produced water into injection wells for those new source facilities subject to the zero discharge standard. The energy requirements for the 132 new source platforms that would be required to reinject produced water total approximately 170 million kilowatt-hours per year. This represents approximately 0.05 percent of the energy content of the produced hydrocarbons from these facilities. Therefore, the small incremental energy requirements for reinjection of produced water will not significantly affect the cost of pollution control, nor will they measurably affect energy supplies.

There are no measurable increases in energy requirements beyond BAT for those new sources that would be subject to improved performance of BPT technology for produced water.

Today's proposed NSPS regulations for waste streams other than produced water and the proposed BAT regulations are based primarily on product substitution techniques and practices that do not involve the expenditure of measureable amounts of energy.

B. Air Pollution

This Agency estimated air pollution from offshore oil and gas platforms in a report titled *Atmospheric Emissions from Offshore Oil and Gas Development and Production*, June 1977 (EPA 450/3–77–026). Emissions of hydrocarbons, hydrogen sulfide, nitrogen oxide and sulfur dioxides are estimated in this report. Presently there are no national standards that directly regulate emissions from offshore oil and gas facilities.

Sources of air pollution include leaks, oil water separators, dissolved air flotation units, painting apparatus, storage tanks and diesel or gas engines for generating power. The following discussion addresses air pollution aspects of the proposed regulations.

When additional pumping is required, due to the application of a particular pollution control technology for produced water, additional air emissions will be created due to the use of fuel to power either electric generators or prime movers. However, the use of gas turbine engines projected for the majority of sites offshore should result in the least emissions to the atmosphere. If treatment facilities are located onshore, power would be obtained from local electric power companies, with no air emissions from on-site power generation.

C. Solid Waste

Operators of offshore platforms could discharge drilling fluids and drill cuttings in accordance with today's proposed regulations and any additional 403(c) considerations. In the majority of situations, drilling fluids and additives can be selected such that they would achieve the effluent limitations. As such, minimal solid waste generation for onshore disposal is expected to result from these regulations.

Section 3001 of the Resource Conservation and Recovery Act (RCRA) presently exempts offshore drilling wastes from compliance with solid waste disposal regulations. Section 3001 of RCRA states that "drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing state or federal regulatory programs in lieu of Subtitle C [regulation of land disposed hazardous wastes] * * *."

Section 8002 of RCRA prescribes that these exempt waste streams be investigated by the EPA's Office of Solid Waste and that a final determination be made on their status of exemption from RCRA. The Agency is currently preparing a preliminary assessment of these wastes.

Minimal additional solid waste is associated with filtration when used to treat produced water prior to reinjection. The final disposition of the filtration wastes would be in approved land fills, except for platforms in offshore California waters where controlled ocean disposal of drilling wastes may be allowed.

D. Consumptive Water Loss

No consumptive water loss is expected as a result of these regulations.

XIV. New Source Definition

The exploration, development, and production of oil and gas in offshore waters involves operations sometimes unique from normal industrial operations performed on land. The definition section of this regulation includes a definition of "new source" appropriate for this subcategory of the oil and gas industry. While the provisions in the NPDES regulations that define new source (40 CFR 122.2) and establish criteria for a new source determination (40 CFR 122.29(b)) are applicable to this subcategory, two terms, "water area" and "significant site preparation work", are defined in this subcategory-specific new source definition in order to give the terms meanings relevant to offshore oil and gas operations. The special definitions in today's proposed regulations are consistent with § 122.29(b)(1) which provides that § 122.2 and 122.29(b) shall apply "Except as otherwise provided in an applicable new source performance standard." See 49 FR 38048 (September 26, 1984).

Before discussing the two special definitions, a brief discussion follows on the scope of the term "new source" for the offshore oil and gas industry. The term "new source" is applicable to all activities covered by the offshore subcategory. This includes mobile and/or fixed exploratory and development drilling operations as well as production operations. Coverage of all such offshore oil and gas operations is required by Section 306 of the Act.

Section 306(a)(2) defines a "new source" to mean "any source, the construction of which is commenced" after publication of the proposed NSPS if such standards are promulgated consistent with section 306. The Act defines "source" to mean any "facility . . . from which there is or may be the discharge of pollutants" and "construction" to mean "any placement, assembly, or installation of facilities or equipment . . . at the premises where such equipment will be used." The term "source" clearly would include all drilling rigs and platforms as well as production platforms. The breadth of the term "construction," which encompases the concept of "placement" of "equipment" at the "premises," would include the location and commencement of drilling or production operations at an offshore site to be "construction" of a new source. This is a critical distinction. Drilling rigs obviously are moved from site to site for several years. Production platforms are built on shore and transported to an offshore site. The appropriate reading of section 306(a)(5) would not make the date of building the rig or platform determinative of whether the rig or platform was a new source, but rather when the rig or platform was placed at the offshore site where the drilling and production activity and discharge would occur. Therefore, drilling operations that commence after the NSPS are effective, even if performed by an existing mobile rig, would be new sources, coming within the definition of "constructed" by "placement" of "equipment" at the "premises."

Similarly, a mobile drilling rig which carries the drilling equipment would be considered "placed" at the location it anchors for drilling, which would be the "premises." The Agency considers the drilling rig to be the "facility . . . from which there is or may be the discharge of pollutants" within the meaning of Section 306(a)(3). The same reasoning applies to development drilling rigs and structures and production structures, platforms or equipment. The critical determination of whether a source is a "new source" is the date of placement and commencement of operations, not the date the source orginally was built.

The first special term that is defined in these proposed regulations is "water area" as used in the term "site" in § 122.29(b). The term "site" is defined in § 122.2 to include the "water area" where a facility is "physically located" or an activity is "conducted." For the purposes of determining the "site" of new source offshore oil and gas operations, the Agency is proposing to define "water area" to mean the specific geographical location where the exploration, development, or production activity is conducted, including the water column and ocean floor beneath such activities. Therefore, if a new platform is built at or moved from a different location, it will be considered a new source when placed at the new site where its oil and gas activities take place. Even if the platform is placed adjacent to an existing platform the new platform will still be considered a "new source," occupying a new "water area" and therefore a new site.

EPA considered defining "water area" as a larger body of water, such as a lease block area. This alternative was rejected because such an artificial distinction would allow the commencement of many additional oil and gas activities (not considered to be "new sources") in an area merely by virtue of the fact that an existing activity was currently operating in the lease block. This result is inconsistent with the definitions and purpose of Section 306 of the Act. Under Section 306 a "new source" means "*any* source" the construction of which begins after the Agency publishes a NSPS.

The second special term for which EPA is proposing a special definition is "significant site preparation work." As explained above, the date of "placement" of a rig or platform is determinative of when a source is considered to be "constructed." The date of "placement" (i.e., "construction") may be earlier under the provision of 40 CFR § 122.29(b)(4) which defines construction as being commenced when "signifcant site preparation work" has been done at a site. The effect of the proposed definition for "significant site preparation work" is important in determining what individual sources would be considered to have "commenced construction" or commenced "placement" prior to the publication of the NSPS and therefore would not be considered a new source. EPA is proposing to define this term to mean the processes of clearing and preparing an area of the ocean floor for purposes of constructing or placing a development or production facility on or over the site. Therefore, if clearing or preparation of an area for development or production had occurred at a site prior to the publication of the NSPS, then subsequent development *and* production activities at that site would not be considered a new source. The significance of this definition is that exploration activities at a site prior to the effective date of the NSPS are not considered significant site preparation work. Therefore, if only exploratory drilling had been performed at a site, subsequent development and production activities would not be "grandfathered in" as existing sources at the site but rather would be considered "new sources." The Agency does not consider exploratory activities to be "significant site preparation work" because such activities are not necessarily followed by development or production activities at a site. Even when exploratory drilling ultimately leads to drilling and production activities, the latter may not be commenced for months or years after the exploratory drilling is completed. The purpose of this provision is to allow a future source to be considered an existing source if "significant site preparation work," thereby evidencing an intent to establish full-scale operations at a site, had been performed prior to NSPS becoming effective. While a development or production platform would not be built unless an exploratory well had been drilled, exploration wells are drilled at vastly more sites and can precede development by months or years.

Another provision of § 122.29(b)(4) regarding when construction of a new source has commenced, provides that construction has commenced if the owner or operator has "entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time." The Agency is not proposing a special definition of this provision believing it should appropriately be a decision for the permit writer. However, the Agency carefully has considered this provision and is providing the following general guidance concerning the proper application of the provision for the special circumstances of offshore oil and gas activities.

A common practice in the industry is for oil companies to enter into long-term contracts with independent drilling companies. These contracts may require that the drilling company will provide its services for a specified number of wells over a period of months or years. The exact site for the exploratory drilling

services may not be specified. The Agency believes such contracts would appropriately fall within the provision of § 122.29(b)(4)(ii) thereby making the drilling activities under those contracts existing sources, not new sources. Such contracts generally do not or cannot specify the exact site for future exploratory drilling.

The situation generally is not the same for development drilling or production activities. Contracts for these activities usually specify the site where activities are to be conducted or facilities placed. Therefore, a contract that meets the conditions of § 122.29(b)(4)(ii) for an exact site probably would not be considered a new source. However, a general contract for construction or use of a development or production platform with no indication of the location where it would be placed or used would not qualify to make a future selected site for its use an existing source. An opposite result would allow companies to move an existing platform or use old platforms at new sites in shallow water areas thereby avoiding the NSPS zero discharge requirement for produced water. Such a result would be contrary to the purpose of establishing NSPS.

An issue of continuing concern under the Clean Water Act has been whether NSPS must be applied after their proposal or only after their promulgation. Section 306(a)(1) of the Act provides that a "new source" is a source, the construction of which commences after proposal of NSPS if such NSPS are promulgated in accordance with section 306. Section 306(b)(1)(B) requires promulgation within 120 days of proposal. EPA's implementing regulations for direct dischargers provide that a new source means a source, the construction of which commenced either after proposal if the NSPS are promulgated within 120 days of after promulgation in all other cases. Section 122.2.

EPA does not intend that the NSPS for this subcategory shall be effective until they are promulgated unless they are promulgated within 120 days of proposal in which case the effective date would be the date of proposal. Therefore, no source will be considered a "new source" subject to NSPS until the Agency promulgates the NSPS. This decision is consistent with the Agency's definition of "new source" in 40 CFR § 122.2 since for the reasons discussed below the Agency will not be able to promulgate NSPS within 120 days of proposal. While the Agency continues to believe the definition of new source in § 122.2 is appropriate and consistent with the Act, the Third Circuit Court of Appeals has twice in *NAMF* v. *EPA*, 719 F.2d 624, 641 (3rd Cir. 1983) and *Pennsylvania Department of Environmental Resources* v. *EPA*, 618 F.2d 991 (3rd Cir. 1980), held that as a general matter EPA's new source standards shall be applied as of their date of proposal. However, the Court in those cases also recognized that there may be circumstances, such as cases where "substantial changes" may occur between proposal and promulgation that would justify an NSPS effective date as the date of promulgation. See *NAMF* v. *EPA*, 719 F.2d at 643 n.20. The Agency believes that today's proposal is such a case, as discussed below.

First, one of the issues in this rulemaking is the definition of "new source." The Agency has solicited public comment on the proposed definition of new source. The agency's final decision on the definition of new source for this subcategory will be critical to knowing what facilities must comply with the NSPS. Because the proposed definition of NSPS may change upon promulgation, individual dischargers would be unable to determine their status for an extended period of time. This would hinder operational planning during the period.

Second, the proposed standards may change on promulgation. After proposal and prior to promulgation, the Agency will be collecting substantial additional data on the proposed standards and will be reconsidering its decisions. In light of this fact and the substantial number of expected comments, it seems inappropriate to require compliance with the proposed NSPS.

Finally, one of the primary effects of a decision to apply NSPS at the date of proposal would be that the National Environmental Policy Act (NEPA) would apply to the action of issuing the permit for the new source. For new lease areas, the Department of Interior ("DOI") already is preparing environmental impact statements (EIS) that consider the proposed oil and gas operations in the lease areas. EPA has entered into a memorandum of understanding with DOI providing for EPA participation in the EIS process. Therefore, for new federal lease areas, the provisions of NEPA are being applied.

XV. Best Management Practices

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" ("BMP") to control "plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage." Section 402(a)(1) and NPDES regulations (40 CFR 122) also provide for best management practices to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. However, the Administrator may prescribe BMP's only where he finds that they are needed to prevent "significant amounts" of toxic or hazardous pollutants from entering navigable waters.

In the offshore oil and gas industry there are various types of wastes that may be affected by the application of BMP's in NPDES permits. These include deck drainage and leaks and spills from various sources. The amount of contaminated deck drainage can be decreased considerably if proper segregation is practiced. "Clean" deck drainage should be segregated from sources of contamination. Many sources exist on an offshore platform where leaks or spillages could occur. The areas should be secured so that all leakages and/or spills are contained and not discharged overboard.

Good operation and maintenance practices reduce waste flows and improve treatment efficiencies, as well as reducing the frequency and magnitude of system upsets. Some examples of good offshore operation are:

1. Separation of waste crankcase oils from deck drainage collection systems.

2. Minimization of wastewater treatment system upsets by the controlled usage of deck washdown detergents.

3. Reduction of oil spillage through the use of good prevention techniques such as drip pans and other collection methods.

4. Elimination of oil drainage from pump bearings and/or seals by directing the drainage to the crude oil processing system.

5. If oil is used as a spotting fluid, careful attention to the operation of the drilling fluid system could result in the segregation from the main drilling fluid system of the spotting fluid and the drilling fluid that has been contaminated by the spotting oil. Once segregated, the contaminated drilling fluid can be disposed of in an environmentally acceptable manner.

Proper initial engineering of the various systems is essential to proper operation and ease of maintenance. The use of spare equipment is a requirement for continual operation when breakdowns occur. Selection of proper treatment chemicals,to insure optimum pollutant removals, is essential. Alarms should be provided to make the operator aware of off-normal conditions so corrective action can be taken.

Careful planning, good engineering and a commitment on the part of the operating, maintenance and management personnel are needed to ensure that the full benefits of all pollution reduction facilities are realized.

The Agency solicits comment on whether the final regulation should include best management practices and what substantive areas should be addressed.

XVI. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion", is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision is necessary in EPA's effluent limitations because such upsets will inevitably occur even in properly operated control equipment. Because technology based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle*, 590 F.2d 1011 (D.C. Cir. 1978), and *Corn Refiners Association, et al.* v. *Costle*, 594 F.2d 1223 (8th Cir., 1979). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976); and *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

A bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented because of an emergency situation. EPA has in the past included bypass provisions in NPDES permits.

The Agency has determined that both upset and bypass provisions should be included in NPDES permits. (See 40 CFR 122.41 (m) and (n), published at 48 FR 14168, April 1, 1983.) The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, permittees in the offshore segment of this industry will be entitled to upset and bypass provisions in NPDES permits. Thus, these proposed regulations do not address these issues.

XVII. Variances and Modifications

Upon the promulgation of final regulations, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the oil and gas extraction industry.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E.I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle*, supra; *EPA* v. *National Crushed Stone Association, et al.* 449 U.S. 64 (1980). This variance recognizes that there may be factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. This variance clause was originally set forth in EPA's 1973–1976 industry regulations. It is now included in the NPDES regulations and will not be included in specific industry regulations. See the NPDES regulation, 40 CFR 125, Subpart D, 44 FR 32854, 32893 (June 7, 1979), 45 FR 33512 (May 19, 1980), 46 FR 9460 (January 28, 1981), and 47 FR 52309 (November 19, 1982) for the text and explanation of the "fundamentally different factors" variance.

Dischargers subject to BAT and BCT limitations are also eligible for EPA's "fundamentally different factors" variance. In addition, BAT limitations for nonconventional pollutants may be modified under sections 301 (c) and (g) of the Act. Section 301(1) precludes the Administrator from modifying BAT requirements for any pollutants which are on the toxic pollutant list under section 307(a)(1) of the Act.

The economic modification section (301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants for dischargers who file a permit application after July 1, 1977, upon a showing that such modified requirements will: (1) represent the maximum use of technology within the economic capability of the owner or operator; and (2) result in reasonable further progress toward the elimination of the discharge of pollutants.

The environmental modification section (301(g)) allows the Administrator, with the concurrence of the State, to modify limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards;

(b) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

Section 301(j)(1)(B) of the Act requires that application for modifications under section 301 (c) or (g) must be filed within 270 days after the promulgation of an applicable effluent guideline. For further details, see 43 FR 40859, September 13, 1978.

XVIII. Relationship to NPDES Permits

The effluent limitations in these regulations will be applied to individual dischargers through NPDES permits issued by EPA or approved State agencies under section 402 of the Act. The preceding section of this preamble discussed the binding effect of this regulation on NPDES permits, except to the extent that variances and modifications are expressly authorized. This section describes several other aspects of the interaction of these regulations with NPDES permits.

One matter that has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations, guidelines, and standards. Under current EPA regulations, states and EPA regions that issue NPDES permits before regulations are promulgated do so on a case-by-case basis on consideration of the statutory factors. See *U.S. Steel Corp.* v. *Train*, 556 F.2d 844, 854 (7th Cir. 1977.) In these situations, EPA documents and draft documents (including these proposed regulations and supporting documents) are relevant evidence, but are not binding in NPDES permit proceedings. (See 44 FR 32854, June 7, 1979.)

Another noteworthy topic is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not

restrict the power of any permit-issuing authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

One additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing this regulation. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the limitation of enforcement proceedings by EPA is discretionary (*Sierra Club* v. *Train*, 527 F.2d 485, 5th Cir. 1977). EPA has exercised and intends to exercise that discretion in a manner that recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

XIX. Summary of Public Participation

The Agency has had contact with individual companies in the industry and with associations such as the Offshore Operators Committee, the Petroleum Equipment Suppliers Association, the Western Oil and Gas Association, the Alaska Oil and Gas Association, and the American Petroleum Institute during the collection of information and data basic to this proposal. Information supplied by these groups was used in the development of this proposal. The Agency has also met with or received comments from other organizations such as the Natural Resources Defense Council and the Sierra Club. The Agency held meetings on BAT permits based upon best professional judgement and to solicit input from the above groups, the general public, and the states in Denver, Colorado on June 11–12, 1984 and in Santa Barbara, California on July 27–29, 1984.

XX. Alternative Approaches to Regulation

A. Diesel Oil Recovery

During the drilling of a well, the addition of oil ("pill") may be required to free a stuck drill bit or string. The type of oil typically used is diesel oil. This oil, when added, would most likely cause the drilling fluid to exceed effluent limitations for free oil (sheen) and toxicity (LC–50), which would make it unacceptable for discharge. If the portion of the drilling fluid that contains the diesel oil can be segregated from the rest of the drilling fluid system and removed ("pill" removal or recovery), then it could be disposed of in an environmentally acceptable manner. Then the remainder of the spent drilling fluid system has a higher likelihood of meeting the free oil and toxicity limitations and may be acceptable for discharge.

The volume of drilling wastes that must be removed from the drilling fluid system to assure recovery of all spotting fluids is yet to be determined. The Agency is currently developing an information collection program to resolve such technical issues. This information will be considered during development of the final regulations, which could result in the allowable discharge of drilling fluids to which diesel oil pills have been added, provided effective pill removal/recovery practices are implemented. The Agency solicits comments on this approach to the regulation of drilling fluids and drill cuttings.

B. Specific Pollutant Approach

The Agency is considering an alternate approach to the regulation of waste discharges for this industry segment whereby specific pollutants would be limited instead of formulations or compounds. For example, rather than regulating "diesel oil" as a pollutant parameter, one or more of its toxic pollutant constituents would be regulated. For diesel oil this could include benzene, toluene, ethylbenzene, and naphthalene. The Agency will consider this approach when reviewing the comments on the proposed limitations. Those commenters criticizing proposed toxicity limitations or a prohibition on the discharge of diesel oil should address the alternative of specific numeric limitations on the priority pollutant constituents of drilling fluids and additives.

C. Alternatives for Regulating Produced Water Discharges

The Agency is evaluating several alternative approaches to NSPS for produced water other than, or combined with, the water depth basis for reinjection selected for today's proposed regulations.

One alternative approach is to target zero discharge requirements to those platforms which use biocides or other chemicals in their produced water handling systems, regardless of facility type or location. In other words, those facilities that use biocides or other chemicals would be required to meet a zero discharge standard for produced water. Another approach would be to regulate the types and discharge levels of any biocides used as well as other pollutants added to produced water wastestreams. This could be accomplished by meeting a toxicity-based effluent limitation through use of less toxic biocides, i.e., product substitution, or by limiting the quantities of biocides or other chemicals used.

The Agency will be performing an extensive survey on the use and discharge of biocides and other chemicals in produced water by existing offshore facilities in order to evaluate the appropriateness and feasibility of this type of approach. This information will be considered during development of the final regulations. Upon analysis of this information, the Agency may select a final regulatory option for produced water based upon reinjection for facilities that use biocides or other chemicals, product substitution to require the use of less toxic or persistent biocides and chemicals, establishing effluent limitations and standards to limit the quantities of biocides and chemicals, or an option based on a combination of these three approaches.

The Agency is also evaluating the appropriateness of imposing the zero discharge requirement for new source facilities located in the Gulf of Mexico in water depths of less than the 20 meter isobath appearing in today's proposed NSPS regulations. This includes estimating the number, size and type of facilities to be located in such waters, and analysis of differential costs, and amount of pollutants removed compared to the depth bases of today's NSPS proposal for produced water.

The Agency will be performing a tract-by-tract assessment of water depth to obtain NSPS profile and costing information in order to properly characterize this segment of NSPS offshore platforms. This information will be considered during development of the final regulations.

D. Oil Content Limitations

The Agency is considering the establishment of quantitative effluent limitations and standards on oil content, which would replace either the visible sheen or static sheen detection method for determining compliance with the prohibition on discharges of free oil. Such an alternative limitation could apply to deck drainage, drilling fluids, drill cuttings, well treatment fluids, and produced sand waste streams. The Agency solicits comment on this alternative.

XXI. Solicitation of Comments

The Agency invites and encourages comments on any aspect of these proposed regulations, but is particularly interested in receiving comments on the issues listed below, the alternative approaches to regulation discussed in Section XX, and on the "clearinghouse" approach to drilling fluids (NSPS and BAT Option 2). In order for the Agency to evaluate views expressed by commenters, the comments should contain specific data and information to support their views.

1. The Agency does not have adequate information on whether an operator can determine prior to the commencement of production operations whether biocides or other chemicals will be required during such production operations. The Agency is requesting additional information to determine whether an operator can determine in advance of development and production whether it will need biocides or other chemicals. This information will be used to determine whether an operator could plan during design and construction of a new facility for compliance with limitations and standards based upon biocide or other chemical usage.

2. The Agency's information on biocides is based on the registration of various pesticides with EPA's Office of Pesticides. The Agency's approach to determining which biocides are used and quantities of use is presented in the EPA report titled *Biocides in Use on Offshore Oil and Gas Platforms and Rigs*. The Agency is soliciting additional data on the actual use and application rates of biocides. In addition, the Agency invites comments and supporting data on alternatives to biocides for control of bacteria.

3. The Agency's evaluation of various treatment technologies shows that only reinjection of produced water effectively reduces priority pollutant discharges associated with produced water. In particular, EPA concluded that BPT technologies are not effective in reducing priority pollutant levels. The Agency invites comments on the use of other treatment technologies that reduce or eliminate priority pollutants in produced water discharges from offshore operations.

4. The Agency's estimate of new source compliance costs for zero discharge of produced water in the Gulf of Mexico is based on a projection of platforms in depths of 50 feet (approximately 15 meters) and extrapolated to 20 meters. The Agency will be performing tract-by-tract assessments to determine whether a zero discharge requirement for water depths less than the 20 meter isobath would be more appropriate for the Gulf of Mexico. The Agency will also use this information to refine its cost estimates for today's proposed NSPS option for produced water. The Agency invites interested parties to suggest approaches and provide information to perform this assessment.

5. The Agency has limited information on the mercury and cadmium content in foreign and domestic sources of barite. The Agency also has limited data on the effect that blending of different barite sources has on barite metals content. For purposes of its economic analysis supporting today's proposal, the Agency assumed a fifteen percent increase in the price of barite to reflect the additional storage, maintenance, transportation, and monitoring costs associated with providing offshore operations with barite of low toxic metals content. The Agency invites comments and supporting data on the availability of barite with low metals content and the priority pollutant content of barite.

The Agency also has limited information on the heavy metals content of drilling mud clays and additives and seeks to determine whether their toxic metals content warrants regulation on a national basis. The Agency solicits additional information on the concentrations of mercury, cadmium, and other toxic metals in the basic drilling mud clays, such as bentonite, attapulgite and hematite.

6. The Agency intends to prepare cost estimates for the application of add-on technologies for the handling and treatment of produced water, drilling fluids, drill cuttings and deck drainage waste streams from existing offshore oil and gas facilities. In the performance of this work, an important element will be retrofit costs to install new equipment on existing platforms. These costs would include platform addition costs, auxiliary platform costs and equipment rearrangement costs. The Agency solicits such costs, including geographic cost multipliers for use in preparing the estimates. Comments received on the subject should be in a form usable for the intended purpose, with appropriate references to substantiate their bases.

7. The proposed NSPS regulation for produced water is, in part, based on improved operation of BPT treatment to achieve oil and grease levels in the produced water discharge which are lower than BPT levels. The Agency believes that incremental costs beyond BPT to achieve a 59 mg/l maximum oil and grease standard will be minimal but some costs will be realized. The Agency solicits comments on the cost differential to meet the lower oil and grease level, realizing, however, that new sources will not incur retrofit expenses. These costs could include the cost of increased chemical use and more operator labor.

8. In the preparation of capital cost estimates, the Agency used various geographic and location cost multipliers to determine installed equipment costs and to adjust the base costs of facilities (which were prepared for the Gulf of Mexico) to other geographic locations. These other locations are: Atlantic Coast, California Coast, Cook Inlet/ Shelikof Strait, Norton Basin, Gulf of Alaska, and the Beaufort Sea. The Agency solicits comments on the accuracy of the factors used, which are presented in Section XII A. of this preamble.

9. During the data gathering programs for the development of today's proposed regulations, the Agency was unable to obtain sufficient information on the oil content of drill cuttings before and after application of cuttings washer technology with which to establish national effluent limitations. While some information was available, the Agency does not believe that the data base is complete enough to be used for the formulation of national regulations. Therefore, the Agency solicits comments, including empirical data, on the oil content of drill cuttings before and after washing. This includes water wash, solvent cleaning and thermal processing technologies. This information is solicited for the use of both diesel oil and mineral oil as lubricity agents or spotting fluids for the drilling of offshore oil and gas wells. In addition, the Agency is considering and solicits comments on the appropriateness of establishing effluent limitations on oil content for drill cuttings in addition to the limitations on free oil, diesel oil and oil-based drilling fluids in the proposed options for NSPS and BAT.

10. The Agency is aware that at least two other processes exist for the treatment and disposal of drilling fluids, namely detoxification and solidification. These are relatively new technologies and, as such, were not considered by the Agency for this proposed rulemaking. The Agency solicits comments on the applicability of these two technologies for the offshore subcategory, and seeks information on cost, energy and nonwater quality aspects of using these techniques to process and dispose of drilling fluid waste streams.

11. The Agency requests comment on all aspects of the static sheen test as presented in Appendix 1 of today's

proposed regulations. The Agency particularly invites comment on the sample volumes, method of observation for sheen, and precision (reproducibility) of the proposed method.

12. The Agency requests comment on all aspects of the diesel oil analytical method as presented in Appendix 2 of today's proposed regulations for use on drilling fluids and drill cuttings waste streams.

13. The Agency requests comment on the appropriateness of establishing a limitation or standard on oil and grease for deck drainage in addition to, or instead of, a prohibition on the discharge of free oil.

XXII. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. The primary purpose of the Executive Order is to ensure that regulatory agencies carefully evaluate the need for taking the regulatory action. Major rules are those which impose a cost on the economy of $100 million a year or more or have certain other economic impacts. This regulation is not a major regulation because its annualized cost of $91.5 million (1983 dollars) is less than $100 million and it meets none of the other criteria specified in paragraph (b) of Executive Order 12291.

XXIII. Regulatory Flexibility Analysis

Pub. L. 96–354 requires EPA to prepare an Initial Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. This analysis may be done in conjunction with or as part of any other analysis conducted by the Agency. The economic impact analysis described above indicates that there will not be a significant impact on any segment of the regulated population. Additionally, the analysis has determined that none of the oil and gas development companies directly affected by the regulation are small businesses. Therefore, a formal regulatory flexibility analysis is not required.

XXIV. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

XXV. List of Subjects in 40 CFR Part 435

Oil and gas extraction, Waste treatment and disposal, Water pollution control.

XXVI. Appendices

Appendix A—Abbreviations, Acronyms, and Other Terms Used in this Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

API—American Petroleum Institute.

BAT—The best available technology economically achievable, under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology.

BDT—The best available demonstrated control technology processes, operating methods, or other alternatives, including where practicable, a standard permitting no discharge of pollutants under Section 306(a)(1) of the Act.

BMP—Best management practices under Section 304(e) of the Act.

BOD—Biochemical oxygen demand.

BPT—The best practicable control technology currently available, under Section 304(b)(1) of the Act.

Bypass—An act of intentional noncompliance during which waste treatment facilities are circumvented because of an emergency situation.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended by the Clean Water Act of 1977 (Pub. L. 95–217).

COD—Chemical oxygen demand.

Direct discharger—A facility which discharges or may discharge pollutants to waters of the United States.

LC–50—The concentration of a test material that is lethal to 50 percent of the test organisms in a bioassay.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NRDC—Natural Resources Defense Council.

NSPS—New source performance standards under Section 306 of the Act.

OOC—Offshore Operators Committee.

PESA—Petroleum Equipment Suppliers Association.

Priority Pollutants—The 65 pollutants and classes of pollutants declared toxic under Section 307(a) of the Act. Appendix C contains a listing of specific elements and compounds.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94–580) of 1976. Amendments to Solid Waste Disposal Act.

SPCC—A spill prevention control and countermeasure plan required under Section 311(j) of the Act.

Spot—The introduction of oil to a drilling fluid system for the purpose of freeing a stuck drill bit or string.

TOC—Total organic carbon.

Upset—An unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee.

WOGA—Western Oil and Gas Association.

Appendix B—Generic Drilling Fluids List

Type of fluid and base components	Typical concentration range (pound per barrel)
1 Potassium/Polymer Mud:	
Barite	[illegible]
Caustic soda	[illegible]
Cellulose polymer	[illegible]
Drilled solids	[illegible]
Potassium chloride	[illegible]
Seawater or fresh water	(1)
Starch	[illegible]
Xanthan gum polymer	[illegible]
2 Seawater/Lignosulfonate Mud:	
Attapulgite or bentonite	[illegible]
Barite	[illegible]
Caustic soda	1–6
Cellulose polymer	[illegible]
Drilled solids	[illegible]
Lignite	[illegible]
Lignosulfonate	[illegible]
Seawater	(1)
Soda ash/sodium bicarbonate	[illegible]
3. Lime Mud:	
Barite	[illegible]
Bentonite	[illegible]
Caustic soda	1–6
Drilled solids	[illegible]
Fresh water or seawater	(1)
Lignite	[illegible]
Lignosulfonate	[illegible]
Lime	[illegible]
Soda ash/sodium bicarbonate	[illegible]
4. Nondispersed Mud:	
Acrylic polymer	[illegible]
Barite	[illegible]
Bentonite	[illegible]
Drilled solids	[illegible]
Fresh water or seawater	(1)
5 Spud Mud (slugged intermittently with seawater)	
Attapulgite or bentonite	[illegible]
Barite	[illegible]
Caustic soda	[illegible]
Lime	[illegible]
Seawater	(1)
Soda ash/sodium bicarbonate	[illegible]
6. Seawater/Fresh Water Gel Mud:	
Attapulgite or bentonite	[illegible]
Barite	[illegible]
Caustic soda	[illegible]
Cellulose polymer	[illegible]
Drilled solids	[illegible]
Lime	[illegible]
Seawater or fresh water	(1)
Soda ash/sodium bicarbonate	0–2
7. Lightly Treated Lignosulfonate Freshwater/Seawater Mud:	
Barite	[illegible]
Bentonite	[illegible]
Caustic soda	1–3
Cellulose polymer	[illegible]
Drilled solids	[illegible]
Lignite	[illegible]
Lignosulfonate	[illegible]
Lime	[illegible]
Seawater-to-freshwater ratio	[illegible]
Soda ash/sodium bicarbonate	[illegible]
8. Lignosulfonate Freshwater Mud:	
Barite	[illegible]
Bentonite	[illegible]
Caustic soda	[illegible]
Cellulose polymer	[illegible]
Drilled solids	[illegible]
Fresh water	(1)
Lignite	[illegible]
Lignosulfonate	4–15
Lime	[illegible]

[1] As needed.
[2] 1:1 approximately.

Appendix C—126 Priority Pollutants

Acenaphthene
Acrolein
Acrylonitrile
Benzene
Benzidine

Carbon tetrachloride (tetrachloromethane)
Chlorobenzene
1,2,4-trichlorobenzene
Hexachlorobenzene
1,2-dichloroethane
1,1,1-trichloroethane
Hexachloroethane
1,1-dichloroethane
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
Chloroethane
Bis(2-chloroethyl) ether
2-chloroethyl vinyl ether (mixed)
2-chloronaphthalene
2,4,6-trichlorophenol
Parachlorometa cresol
Chloroform (trichloromethane)
2-chlorophenol
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3-dichlorobenzidine
1,1-dichloroethylene
1,2-trans-dichloroethylene
2,4-dichlorophenol
1,2-dichloropropane
1,2-dichloropropylene (1,3-dichloropropene)
2,4-dimethylphenol
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
Ethylbenzene
Fluoranthene
4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
Bis(2-chloroisopropyl) ether
Bis(2-chloroethoxy) methane
Methylene chloride(dichloromethane)
Methyl chloride (dichloromethane)
Methyl bromide (bromomethane)
Bromoform (tribromomethane)
Dichlorobromomethane
Chlorodibromomethane
Hexachlorobutadiene
Hexachlorocyclopentadiene
Isophorone
Naphthalene
Nitrobenzene
2-nitrophenol
4-nitrophenol
2,4-dinitrophenol
4,6-dinitro-o-cresol
N-nitrosodimethylamine
N-nitrosodiphenylamine
N-nitrosodi-n-propylamine
Pentachlorophenol
Phenol
Bis(2-ethylhexyl)phthalate
Butyl benzyl phthalate
Di-N-Butyl Phthalate
Di-n-Octyl phthalate
Diethyl Phthalate
Dimethyl phthalate
1,2-benzanthracene (benzo(a)anthracene)
Benzo(a)pyrene (3,4-benzo-pyrene)
3,4-Benzofluoranthene(benzo(b)fluoranthene)
11,12-benzofluoranthene(benzo(b)fluoranthene)
Chrysene
Acenaphthylene
Anthracene
1,12-benzoperylene(benzo(ghi)perylene)
Fluorene
Phenanthrene
1,2,5,6-dibenzanthracene(dibenzo(h)anthracene)
Indeno(1,2,3-cd)pyrene(2,3-o-phenylene pyrene)
Pyrene
Tetrachloroethylene
Toluene
Trichloroethylene
Vinyl chloride (chloroethylene)
Aldrin
Dieldrin
Chlordane (technical mixture and metabolites)
4,4-DDT
4,4-DDE(p,p-DDX)
4,4-DDD(p,p-TDE)
Alpha-endosulfan
Beta-endosulfan
Endosulfan sulfate
Endrin
Endrin aldehyde
Heptachlor
Heptachlor epoxide (BHC-hexachlorocyclohexane)
Alpha-BHC
Beta-BHC
Gamma-BHC(lindane)
Delta-BHC(PCB-polychlorinated biphenyls)
PCB-1242(Arochlor 1242)
PCB-1254(Arochlor 1254)
PCB-1221(Arochlor 1221)
PCB-1232(Arochlor 1232)
PCB-1248(Arochlor 1248)
PCB-1260(Arochlor 1260)
PCB-1016(Arochlor 1016)
Toxaphene
Antimony
Arsenic
Asbestos
Beryllium
Cadmium
Chromium
Copper
Cyanide, Total
Lead
Mercury
Nickel
Selenium
Silver
Thallium
Zinc
2,3,7,8-tetrachloro-dibenzo-p-dioxin (TCDD)

Appendix D—Major Documents Supporting the Proposed Regulation

With the exception of the first document listed in each of the following subsections, all documents are available only for public inspection and copying at Room 2404, U.S. EPA, 401 M St., S.W., Washington, D.C. from 9:00 am to 4:00 pm Monday through Friday, excluding Federal holidays. The first document listed in each section may be obtained by contacting the individuals listed in the Addresses section of this preamble.

Technology and Cost Reports

1. Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Segment of the Oil and Gas Extraction Point Source Category, EPA 440/1–85/0556.

2. Assessment of Existing Data for the Offshore Oil and Gas Extraction Industry, October 6, 1980.

3. Technical Feasibility of Brine Reinjection for the Offshore Oil and Gas Extraction Industry, May, 1981.

4. Sampling and Logistics Plan for EPA Priority Pollutant Sampling Program, Offshore Oil and Gas Extraction Industry, October 5, 1981.

5. Evaluation of Analytical Data Obtained from the Gulf of Mexico Sampling Program, Offshore Oil and Gas Extraction Industry, Volumes I and II, February 4, 1983.

6. Review of Drill Cuttings Washer Systems, Offshore Oil and Gas Extraction Industry, October 14, 1983.

7. Technologies for the Onshore Treatment of Produced Waters from Offshore Oil and Gas Platforms, December, 1983.

8. Results of Laboratory Analyses on Drilling Fluids and Cuttings, April 3, 1984.

9. Acute Toxicity of Eight Laboratory-Prepared Generic Drilling Fluids to Mysids, May, 1984.

10. Acute Toxicity of Suspended Particulate Phase of Drilling Fluids Containing Diesel Fuels, May, 1984.

11. Results of the Drilling Fluids Research Program Sponsored by EPA's Gulf Breeze Environmental Research Laboratory, 1976–1984, and Their Application to Hazard Assessment, EPA–600/4–84–055, June, 1984.

12. Summary of Cost Estimates for Systems to Treat Produced Water Discharges in the Offshore Oil and Gas Industry to Meet BAT and NSPS, June 28, 1984.

13. Application of the Proposed Best Conventional Pollutant Control Technology (BCT) Cost Tests on Produced Water—Offshore Oil and Gas Extraction Industry, June 28, 1984.

14. Cost of Offshore Cuttings Washer Systems, Offshore Oil and Gas Extraction Industry, September 12, 1983, revised June, 1984.

15. Technical Memorandum: Costs of Drill Cuttings Washing and Mud and Cuttings Transportation to Shore and Land Disposal for the Offshore Oil and Gas Industry—Gulf of Mexico, April 1984, revised July 5, 1984.

Environmental Reports

1. Assessment of Environmental Fate and Effects of Discharges From Offshore Oil and Gas Operations, 1984, EPA 440/4–85/002.

2. Analysis of Drilling Muds from 74 Offshore Oil and Gas Wells in the Gulf of Mexico, 1984.

3. Biocides in Use on Offshore Oil and Gas Platforms and Rigs, 1984.

4. 403(c) Determination for Lease Sale No. 52: Background Review, 1984.

Economic Reports

1. Economic Impact Analysis of Proposed Effluent Guidelines and Standards for the Offshore Oil and Gas Industry, EPA 440/2–85/003, 1984.

2. Cost Effectiveness Analysis of Proposed Effluent Guidelines and Regulations for the Offshore Oil and Gas Industry, 1984.

3. Economic Impacts Analysis of the Offshore Effluent Guideline Affecting the Barite Industry, 1984

Dated: August 2, 1985.

Lee M. Thomas,

Administrator.

For the reasons discussed above, EPA proposes to revise 40 CFR Part 435 as follows:

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

Subpart A—Offshore Subcategory

Sec.
435.10 Applicability; description of the offshore subcategory.
435.11 Specialized definitions.
435.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
435.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
435.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
435.15 Standards of performance for new sources (NSPS).
Appendix 1—Static Sheen Test
Appendix 2—Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings
Appendix 3—Drilling Fluids Toxicity Test
Appendix 4—Regulatory Boundaries

Authority: Secs 301, 304 (b), (c), (e), and (g). 306 (b) and (c), 307 (b) and (c), and 501, Federal Water Pollution Control Act as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), 1318 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

Subpart A—Offshore Subcategory

§ 435.10 Applicability; description of the offshore subcategory.

The provisions of this subpart are applicable to those facilities engaged in field exploration, drilling, well production, and well treatment in the oil and gas extraction industry which are located in waters that are seaward of the inner boundary of the territorial seas ("offshore") as defined in section 502 of the Act. This includes offshore facilities that transport wastes to onshore locations for treatment or disposal.

§ 435.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "drilling fluid" shall refer to the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-base drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil-base drilling fluid has diesel, crude, or some other oil as its continuous phase with water as the dispersed phase.

(c) The term "spent drilling fluid system discharge" shall mean the bulk discharge of an entire drilling fluid system prior to a complete changeover to another drilling fluid system, or at the completion of the drilling of a well.

(d) The term "drill cuttings" shall refer to the particles generated by drilling into subsurface geologic formations and carried to the surface with the drilling fluid.

(e) The term "deck drainage" shall refer to any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities subject to this subpart.

(f) The term "produced water" shall refer to the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(g) The term "produced sand" shall refer to slurried particles used in hydraulic fracturing and the accumulated formation sands and scales particles generated during production.

(h) The term "well treatment fluids" shall refer to those fluids used in stimulating a hydrocarbon-bearing formation or in completing a well for oil and gas production, and drilling fluids used in reworking a well to increase or restore productivity.

(i) The term "sanitary waste" shall refer to human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(j) The term "domestic waste" shall refer to materials discharged from sinks, showers, laundries, and galleys located within facilities subject to this subpart.

(k) The term "M10" shall mean those offshore facilities continuously manned by ten (10) or more persons.

(l) The term "M9IM" shall mean those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(m) The term "no discharge of free oil" shall mean that waste streams may not be discharged when they would cause a film or sheen upon or a discoloration of the surface of the receiving water, as determined by the Static Sheen Test.

(n) The term "Static Sheen Test" shall refer to the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the Static Sheen Test is presented in Appendix 1 of this regulation.

(o) The term "Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings" shall refer to the standard test procedure that has been developed for this industrial subcategory for the purpose of determining the presence of diesel oil in drilling fluids and drill cuttings. The methodology for performing this test is presented in Appendix 2 of this regulation.

(p) the term "diesel oil" shall refer to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials' Standard Specification D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids.

(q) The term "Drilling Fluids Toxicity Test" shall refer to the standard bioassay test procedure that has been developed for this industrial subcategory for the purpose of measuring the toxicity of drilling fluids. The methodology for performing the Drilling Fluids Toxicity Test is presented in Appendix 3 of this regulation.

(r) The term "96-hr LC–50" shall mean the concentration of test material that is lethal to 50 percent of a the test organisms in a bioassay after 96 hours of constant exposure.

(s) The term "exploration facility" shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(t) The term "development facility" shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling and completion of productive wells.

(u) The term "production facility" shall mean any platform or fixed structure subject to this subpart that is used for active recovery of hydrocarbons from producing formations.

(v) The term "new source" means any exploratory, development or production facility or activity that meets the definition of "new source" under 40 CFR § 122.2 and meets the criteria for determination of new sources under 40 CFR § 122.29(b) applied consistent with the following definitions:

(1) The term "water area" as used in 40 CFR § 122.29(b)(1)(i) shall mean the water area and ocean floor beneath any

exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(2) The term "significant site preparation work" shall mean the process of surveying, clearing and preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.

(w) The term "gas well" shall refer to any well that produces more than 15,000 cubic feet of natural gas for each barrel of produced petroleum liquids.

(x) The term "oil well" shall refer to any well that produces 15,000 cubic feet or less of natural gas for each barrel of produced petroleum liquids.

(y) The term "gas development and production facilities" shall mean those facilities subject to this subpart that are engaged in the development of or production from gas wells only.

(z) The term "oil development and production facilities" shall mean those facilities subject to this subpart that are engaged in the development of or production from oil wells or oil and gas wells.

(aa) The term "maximum for any one day" as applied to BPT and BCT effluent limitations for oil and grease in produced water shall mean the maximum concentration allowed as measured by the average of four grab samples collected over a 24 hour period that are analyzed separately.

(bb) The term "maximum" as applied to BAT effluent limitations for drilling fluids and to NSPS for produced water and drilling fluids shall mean the maximum concentration allowed as measured in any single sample of the discharged waste stream.

(cc) The term "minimum" as applied to BAT effluent limitations and NSPS for drilling fluids shall mean the minimum 96-hour LC–50 value allowed as measured in any single sample of the discharged waste stream.

§ 435.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

Pollutant parameter waste source	BPT Effluent Limitations		
	Oil and grease, mg/l		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—	Residual chlorine, mg/l. Minimum for any 1 day
Produced water	72	[illegible]	NA
Deck drainage	(1)	(1)	NA
Drilling fluids	(1)	(1)	NA
Drill cuttings	(1)	(1)	NA
Well treatment fluids	(1)	(1)	NA
Sanitary:			
M10	NA	NA	(2) 1
M9IM [3]	NA	NA	NA
Domestic [3]	NA	NA	NA

[1] No discharge of free oil.
[2] Minimum of 1 mg/l and maintained as close to this concentration as possible
[3] There shall be no floating solids as a result of the discharge of these wastes.
NA—Not applicable.

§ 435.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

BAT Effluent Limitations

Waste source	Pollutant parameter or characteristic	BAT effluent limitations
Produced water	[Reserved]	[Reserved]
Deck drainage	Free oil	No discharge.
	[All other pollutant parameters reserved].	
Drilling fluids	Free oil	No discharge.
	Oil-based fluid	No discharge.
	Diesel oil	No discharge in detectable amounts.
	Toxicity	Minimum 96-hr LC–50 of the diluted suspended particulate phase (SPP) of the drilling fluid shall be 3.0 percent by volume
	Cadmium	1 mg/kg dry weight maximum in the whole drilling fluid.
	Mercury	1 mg/kg dry weight maximum in the whole drilling fluid.
Drill cuttings	Free oil	No discharge
	Oil-based fluid.	No discharge
	Diesel oil	No discharge in detectable amounts.
Sanitary M10.	None	
Sanitary [illegible]	None	
Domestic [illegible]	None	
Produced sand.	Free oil	No discharge.
	[All other pollutant parameters reserved].	
[illegible] treatment [illegible]	Free oil	No discharge

BAT Effluent Limitations—Continued

Waste source	Pollutant parameter or characteristic	BAT effluent limitations
	[All other pollutant parameters reserved].	

§ 435.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

BCT Effluent Limitations

Waste source	Pollutant parameter or characteristic	BCT effluent limitations	
		Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Produced water.	Oil and grease	72 mg/l	48 mg/l
Deck drainage.	Free Oil	No discharge.	
	[All other pollutant parameters reserved].		
Drilling fluids.	Free oil	No discharge.	
	[All other pollutant parameters reserved]		
Drilling cuttings.	Free oil	No discharge	
	[All other pollutant parameters reserved]		
Sanitary M10.	Residual Chlorine [1].	Minimum of 1 mg/l and maintained as close to this concentration as possible.	
Sanitary [illegible]	Floating solids	No discharge	
Domestic waste.	Floating solids	No discharge.	
Produced sand.	Free oil	No discharge	
	[All other pollutant parameters reserved].		
Well treatment [illegible]	Free oil	No discharge	
	[All other pollutant parameters reserved].		

[1] For the control of fecal coliform.

§ 435.15 Standards of performance for new sources (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) For all oil development and production facilities located in or discharging to water depth of 20 meters or less in the Gulf of Mexico, Atlantic Coast, and Norton Basin; water depth of 50 meters or less in the California Coast, Cook Inlet/Shelikof Strait, the Aleutian Island Chain including Bristol Bay and Gulf of Alaska; and water dept of 10 meters or less in the Beaufort Sea as specified in Appendix 4 (Regulatory Boundaries):

NSPS EFFLUENT LIMITATIONS

Waste source	Pollutant parameter or characteristic	NSPS effluent limitations
Produced water	.....	No discharge.[1]
Deck drainage.	Free oil.....	No discharge
	[All other pollutant parameters reserved]	
Drilling fluids..	Free oil.....	No discharge
	Oil-based fluid.	No discharge.
	Diesel oil.....	No discharge in detectable amounts.
	Toxicity.....	Minimum 96-hr LC-50 of the diluted suspended particulate phase (SPP) of the drilling fluid shall be 3.0 percent by volume.
	Cadmium.....	1 mg/kg dry weight maximum in the whole drilling fluid.
	Mercury.....	1 mg/kg dry weight maximum in the whole drilling fluid.
Drill cuttings..	Free oil.....	No discharge.
	Oil-based fluid.	No discharge
	Diesel oil.....	No discharge in detectable amounts
Sanitary M10.	Residual chlorine.	Minimum of 1 mg/l and maintained as close to this concentration as possible
Sanitary M9IM.	Floating solids.	No Discharge.
Domestic waste.	Floating solids	No discharge
Produced sand.	Free oil.....	No discharge.
	[All other pollutant parameters reserved]	
Well treatment fluids.	Free oil.....	No discharge
	[All other pollutant parameters reserved].	

[1] Facilities must be in compliance with the no discharge standard no later than 300 days after commencement of development drilling operations. Prior to that date, discharges shall comply with the oil and grease standard of 59 mg/l maximum in § 435.15(b).

(b) For all exploratory facilities and all gas development and production facilities regardless of location, and for all oil development and production facilities located in and discharging to water depth of more than 20 meters in the Gulf of Mexico, Atlantic Coast and Norton Basin; water depth of more than 50 meters in the California Coast, Cook Inlet/Shelikof Strait, the Aleutian Island Chain including Bristol Bay and Gulf of Alaska; and water depth of more than 10 meters in the Beaufort Sea as specified in Appendix 4 (Regulatory Boundaries):

NSPS EFFLUENT LIMITATIONS

Waste source	Pollutant parameter or characteristic	NSPS effluent limitations
Produced Water	Oil and grease	59 mg/l maximum.
Deck drainage.	Free oil.....	No discharge.
	[All other pollutants—Reserved]	
Drilling fluids..	Free oil.....	No discharge.
	Oil-based fluid.	No discharge.
	Diesel oil.....	No discharge in detectable amounts.
	Toxicity.....	Minimum 96-hr LC-50 of the diluted suspended particulate phase (SPP) of the drilling fluid shall be 3.0 percent by volume.
	Cadmium.....	1 mg/kg dry weight maximum in the whole drilling fluid.
	Mercury.....	1 mg/kg dry weight maximum in the whole drilling fluid
Drill cuttings..	Free oil.....	No discharge.
	Oil-based fluid.	No discharge.
	Diesel oil.....	No discharge in detectable amounts.
Sanitary M10.	Residual chlorine.	Minimum of 1 mg/l and maintained as close to this concentration as possible.
Sanitary M9IM.	Floating solids.	No Discharge.
Domestic waste.	Floating solids.	No discharge.
Produced sand.	Free oil.....	No discharge
	[All other pollutant parameters reserved]	
Well treatment fluids.	Free oil.....	No discharge
	[All other pollutant parameters reserved].	

Appendix 1—Static Sheen Test

1. Scope and Application

This method is to be used as a compliance test for the "no discharge of free oil" requirement for discharges of drilling fluids, drill cuttings, deck drainage, produced sand, and well treatment fluids. Free oil refers to any oil contained in a waste stream that when discharged will cause a film or sheen upon or a discoloration of the surface of the receiving water.

2. Summary of Method

Samples of drilling fluids, deck drainage or well treatment fluids (0.15 mL and 15 mL) and samples of drill cuttings or produced sand (1.5 g and 15 g, wet weight basis) are introduced into ambient seawater in a container having an air to liquid interface area of 1000 cm^2. Samples are dispersed within the container and observations made no more than 1 hour later to ascertain if these materials cause a sheen, iridescence, gloss, or increased reflectance on the surface of the test seawater. The occurence of any of these visual observations will constitute a demonstration that the tested material contains "free oil", and therefore, results in a prohibition on its discharge into receiving waters.

3. Interferences

Residual "free oil" adhering to sampling containers, the magnetic stirring bar used to mix drilling fluids, and the stainless steel spatula used to mix drill cuttings will be the principal sources of contamination problems. These problems should only occur if improperly washed and cleaned equipment are used for the test. The use of disposable equipment minimizes the potential for similar contamination from pipets and the test container.

4. Apparatus Materials and Reagents

4.1 *Apparatus.*

4.1.1 Sampling containers—1 liter polyethylene beakers.

4.1.2 Graduated cylinder—100 mL graduated cylinder required only for operations where predilution of mud discharges is required.

4.1.3 Plastic disposable weighing boats.

4.1.4 Triple beam scale.

4.1.5 Disposable pipets—1 mL and 25 mL disposable pipets.

4.1.6 Magnetic stirrer and stirring bar.

4.1.7 Stainless steel spatula.

4.1.8 Test container—open plastic container whose internal cross-section parallel to its opening has an area of 1000 ± 50 cm^2, and a depth of no more than 30 cm.

4.2 *Materials and Reagents.*

4.2.1 Plastic liners for the test container—Oil free, heavy duty plastic trash can liners that do not inhibit the spreading of an oil film. Liners must be of a sufficient size to completely cover the interior surface of the test container. Permittees must determine an appropriate local source of liners that do not inhibit the spreading of 0.05 mL diesel fuel added to the lined test container under the test conditions and protocol described below.

4.2.2 Ambient receiving water.

5. Calibration

None currently specified.

6. Quality Control Procedures

None currently specified.

7. Sample Collection and Handling

7.1 Sampling containers must be thoroughly washed with detergent, rinsed a minimum of 3 times with fresh water, and allowed to air dry before samples are collected.

7.2 Samples of drilling fluid must be obtained once per day from the active mud pit; the sample volume should range between 200 mL and 500 mL.

7.3 Samples of drill cuttings or produced sand must be obtained from each type of solids control equipment from which discharges occur on any given day prior to addition of any washdown water; samples should range between 200 and 500 grams.

7.4 Samples of deck drainage or well treatment fluids must be obtained from holding facility prior to discharge; the sample volume should range between 200 mL and 500 mL.

7.5 Samples must be tested no later than 1 hour after collection.

7.6 Drilling fluid samples must be mixed in their sampling containers for 5 minutes prior to testing using a magnetic bar stirrer. If predilution is imposed as a permit condition, the sample must be mixed at the same ratio with the same prediluting water as the discharged muds and stirred for 5 minutes.

7.7 Drill cuttings must be stirred and well mixed by hand in their sampling containers

prior to testing, using a stainless steel spatula.

8. Procedure

8.1 Ambient receiving water must be used as the "receiving water" in the test. The test container must have an air to liquid interface area of 1000±50 cm^2. The surface of the water should be no more than 5 cm below the top of the test container.

8.2 Plastic liners shall be used, one per container per test, and discarded afterwards. Some liners may inhibit spreading of added oil; operators shall determine an appropriate local source of liners that do not inhibit the spreading of the oil film.

8.3 Drilling fluid materials, well treatment fluids, or deck drainage must be introduced into the test container 1 cm below the water surface, by pipet, at 0.15 mL and 15 mL. Pipets must be filled and discharged with test material prior to the transfer of test material and its introduction into test containers. The test water-test material mixture must be stirred using the pipet to distribute the test material homogenously throughout the test water. The pipet must be used only once for a test and then discarded.

8.4 Drill cuttings or produced sand should be weighed on plastic weighing boats; 1.5 gram and 15 gram samples must be transferred by scraping test material into the test water with a stainless steel spatula. The weighing boat must be immersed in the test water and scraped with the spatula to transfer any residual material to the test container. The test material must be stirred with the spatula to an even distribution of solids on the bottom of the test container.

8.5 Observations must be made no later than 1 hour after the test material is transferred to the test container. Viewing points above the test container should be made from at least three sides of the test container, at viewing angles of approximately 60° and 30° from the horizontal. Illumination of the test container must be representative of adequate lighting for a working environment to conduct routine laboratory procedures.

8.6 Detection of a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface shall constitute a demonstration of "free oil." These visual observations include patches, sheets, or streaks of such altered surface characteristics.

Appendix 2—Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings

1. Scope and Application

This method is to be used as a compliance test for detecting the presence of diesel oil in drilling fluids and drill cuttings waste streams. The method involves the separation of diesel fuel from drilling fluid or drill cuttings samples and subsequent qualitative and quantitative analysis by capillary column gas chromatography. The method makes no attempt to chemically identify the individual diesel components but uses a pattern recognition technique for data analysis.

2. Summary of Method

A weighed amount of drilling fluid or drill cuttings is placed in a retort apparatus and distilled according to the retort manufacturer's instructions. The distillate is extracted with methylene chloride, an internal standard is added, and a GC analysis is conducted. Using low attenuation for high sensitivity, a detection of 1 mg/kg of diesel oil in the sample is possible with this method.

The analyst is cautioned that there is no standard diesel fuel oil. The components, as seen by gas chromatography, will differ depending upon the crude source, the date of the diesel production and the producer. In addition, there are three basic types of diesel fuel oils: ASTM Designations No. 1–D, No. 2–D, and No. 4–D. The No. 2–D is most commonly referred to in terms of "diesel fuel." However, No. 2–D is sometimes blended with No. 1–D which has a lower boiling range. Thus it is highly desirable that the sample chromatograms be matched with a reference standard made from the same diesel oil source suspected to be in the sample.

3. Apparatus, Reagents and Materials

3.1 *Apparatus.*

3.1.1 Gas Chromatograph (GC)—A temperature programmable GC equipped with a flame ionization detector.

3.1.2 Integrator—A recording integrator capable of resolving and integrating recorder response peaks.

3.1.3 Chromatographic Column—A borosilicate glass capillary column (WCOT), 30 meter x 0.25 mm ID, coated with Supelco SPB–1 (Bonded SE–30 methyl silicone) with 1.0 μm thickness (Supelco catalog number 2–4029). Other columns may be substituted if they can demonstrate similar and satisfactory results.

3.1.4 Distillation Apparatus—A 20 mL vetort apparatus.

3.1.5 Kuderna—Danish Concentrator—A 500 mL flask, 3-ball Snyder column and a 10 mL (or 15 mL) receiving ampule graduated in 0.1 ml units at the bottom.

3.1.6 Separatory Funnel—A 60 mL separatory funnel with a Teflon stopcock and glass stopper.

3.1.7 Glass Filtering Funnel—A glass filtering crucible holder (Corning 9480 or equivalent).

3.1.8 Centrifuge Tubes—15 mL glass centrifuge tubes.

3.2 *Materials and Reagents.*

3.2.1 Glass Wool—Corning 3950 or equivalent.

3.2.2 Anhydrous Sodium Sulfate—Analytical grade.

3.2.3 Methylene Chloride—Nanograde or equivalent.

3.2.4 Trichlorobenzene (TCB) Internal Standard—Dissolve 1.0 gm of 1,3,5 Trichlorobenzene (Kodak 1801 or equivalent) in 100 mL of Methylene Chloride. Store in glass and tightly cap with Teflon lid liner to prevent solvent evaporation loss.

4. Procedure

4.1 *Sample Preparation.*

4.1.1 Preweigh or tare the retort sample cup and cap to the nearest 0.1 gm. Transfer a well homogenized and representative portion of the material to be tested into the sample cup, filling it to the top. Place the cap on the cup, wipe off the excess material and reweigh. Record the weight of the sample to the nearest 0.1 gm.

4.1.2 Following the retort manufacturer's instructions, distill the sample. The presence of solids in the distillate will require that the distillation be rerun starting with a new portion of sample. Placing more steel wool in the retort expansion chamber, per instructions, will help prevent the solids from going over in the distillation.

4.2 *Gas Chromatography.*

4.2.1 Pour the retort distillate into a 60 mL separatory funnel. Rinse the distillate container with two full portions of methylene chloride into the separatory funnel. Stopper and shake for 1 minute and allow the layers to separate.

4.2.2 Prepare a crucible holder funnel by plugging the bottom with a piece of glass wool and pouring in 1–2 inches of anhydrous sodium sulfate. Wet the funnel with a small portion of methylene chloride and allow it to drain to a waste container.

4.2.3 Place the filter holder into the top of a Kuderna-Danish (K–D) flask equipped with a 10 mL separatory funnel containing the methylene chloride into the K–D flask passing it thorough the filter funnel.

4.2.4 Repeat the methylene chloride extraction twice more, rinsing the centrifuge tube with two through washings each time and draining each extraction into the K–D flask.

4.2.5 Place a Snyder column on the K–D flask and evaporate on a steam bath. Concentrate the sample to a 1.0 mL final volume or until the contents will not concentrate any further and note the final volume. The receiving ampule graduations should be laboratory calibrated for accuracy.

4.2.6 Using a micropipet, transfer equal portions of the sample from the K–D ampule and the TCB internal standard (a 100 μl portion of each is suggested) into a GC injection vial or other suitable container. Mix thoroughly.

4.2.7 Set up the gas chromatograph conditions as follows:

(a) GC—Injector Port and manifold temperature = 275 °C.

(b) Column—A SPB–1, 30 meter column with a nitrogen carrier at 0.2 mL/min, a split ratio of 100:1 and nitrogen make-up (if needed) at 60 cc/min.

(c) Temperature Program—80 °C initial temperature with no hold, 5° per minute to a final temperature of 250 °C; final hold for at least 10 minutes.

(d) Detector—FID with 30 cc/min hydrogen and 240 cc/min air. Set the amplifier range at 10^{-11} amps full scale (X10 on most instruments)

(e) Recording Integrator—Set the chart seed at a minimum of 1 cm/min. Adjust the attenuation during the run as to exclude minor peaks.

4.2.8 Inject 1 μL of the sample containing the internal standard. The TCB will elute at approximately 8.5 minutes into the run and should be approximately 50 percent at full scale at 8×10.

4.2.9 Prepare a reference standard using, if possible, the same diesel oil suspected to be in the sample. Using Table 1 as a guide,

weigh out the appropriate amount of oil into a tared 10 mL volumetric flask and dilute to volume with methylene chloride. Mix equal portions of the reference oil standard and the TCB as outlined in 4.2.8 and analyze using the same GC conditions used for the analysis of the sample.

5. Interpretation of Data

5.1 Compare the sample chromatogram to the chromatogram of the standard. If the sample contains No. 2 diesel oil, the major peaks present in the standard (e.g. those greater than 1 percent of the total integrated area) should also be present in the sample and in the same relative intensity and pattern (see Figure 1).

5.2 Some mineral oil lubricity additives have similar chromatographic patterns to that of diesel oil. The presence of early, smaller peaks from 1 minute (following the sovent peak) to approximately 4 minutes will differentiate between distillates containing only mineral oil and those with No. 2 diesel oil (See Figure 2).

5.3 The use of the TCB internal standard makes it possible to correlate peaks from sample to standard on the basis of Relative Retention Time (RTT). Approximate RRT's are presented in Table 2.

6. Calculation of Results

6.1 Choose those peaks that are applicable as outlined in Section 5; a minimum of 10 peaks should be used. Sum the integrated areas of the chosen peaks in the sample and divide by the integrated area of the Internal Standard in the sample:

$$\frac{\Sigma Apr}{Air} = RFr$$

where:

ΣAps = Summation of peak areas of interest in sample

Ais = Area of internal standard peak in sample

RFs = Response factor for sample

6.2 Repeat the above process (6.1) for the chosen peaks in the standard:

$$\frac{\Sigma Apr}{Air} = RFr$$

where:

ΣApr = Summation of peak areas of interest in reference standard

Air = Area of internal standard peak in the reference standard

RFr = Response factor for reference standard

6.3 Calculate the mg/kg of diesel oil in the sample as follows:

$$\text{mg/kg Diesel Oil} = \frac{RFs \times Vs \times Cr \times 1000}{RFr \times Gs}$$

where:

RFs = Response factor for sample

RFr = Response factor for reference standard

Vs = Final volume of sample from K–D in mL

Cr = Concentration of reference standard in mg/mL

Gs = Starting weight of sample in grams on a wet weight or whole mud basis.

Note.—This equation does not take into account attenuation changes if they affect the calculated peak areas as reported by the integration.

7. Quality Control

7.1 Each laboratory that uses this method is required to operate a formal quality control program. The minimum requirements of this program consist of an initial demonstration of laboratory capability, the analysis of a retorted No. 2 diesel oil standard as a continuing check on recovery, and duplicate samples for a precision check on performance. The laboratory is required to maintain performance records to define the quality of data that are generated. Ongoing performance checks must be compared with established performance criteria to determine if the results of analyses are within accuracy and precision limits expected of the method.

7.2 In order to demonstrate recovery, a No. 2 diesel oil standard must be subjected to the entire analytical procedure starting with section 4.1. Pipette 1.00 ml of the reference diesel oil into the preweighed or tared retort sample cup and weigh to the nearest 0.1 gram. Place a small plug of steel wool into the cup, cap and proceed with the retort distillation. Calculate the percent recovery of the retorted reference standard to that of a reference standard prepared as specified in section 4.2.9. The percent recovery of the retorted reference standard must fall within 80 to 120 percent recovery. This should be performed on each retort unit utilized before attempting any sample analyses. Reference standards should be run at least once for each batch of samples processed or for every ten samples analyzed.

7.3 The laboratory must analyze duplicate samples for each sample type at a minimum of 20 percent. A duplicate sample shall consist of a well-mixed, representative aliquot of the sample and should be subjected to the entire analytical procedure starting with section 4.1. The relative percent differences (RPD) for duplicates are calculated as follows:

$$RPD = \frac{(D_1 - D_2)}{(D_1 + D_2)/2} \times 100$$

where:

RPD = relative percent difference

D_1 = percent of diesel oil in the first sample

D_2 = percent diesel oil in the second sample (duplicate)

A control limit of ±20 percent for RPD shall be used.

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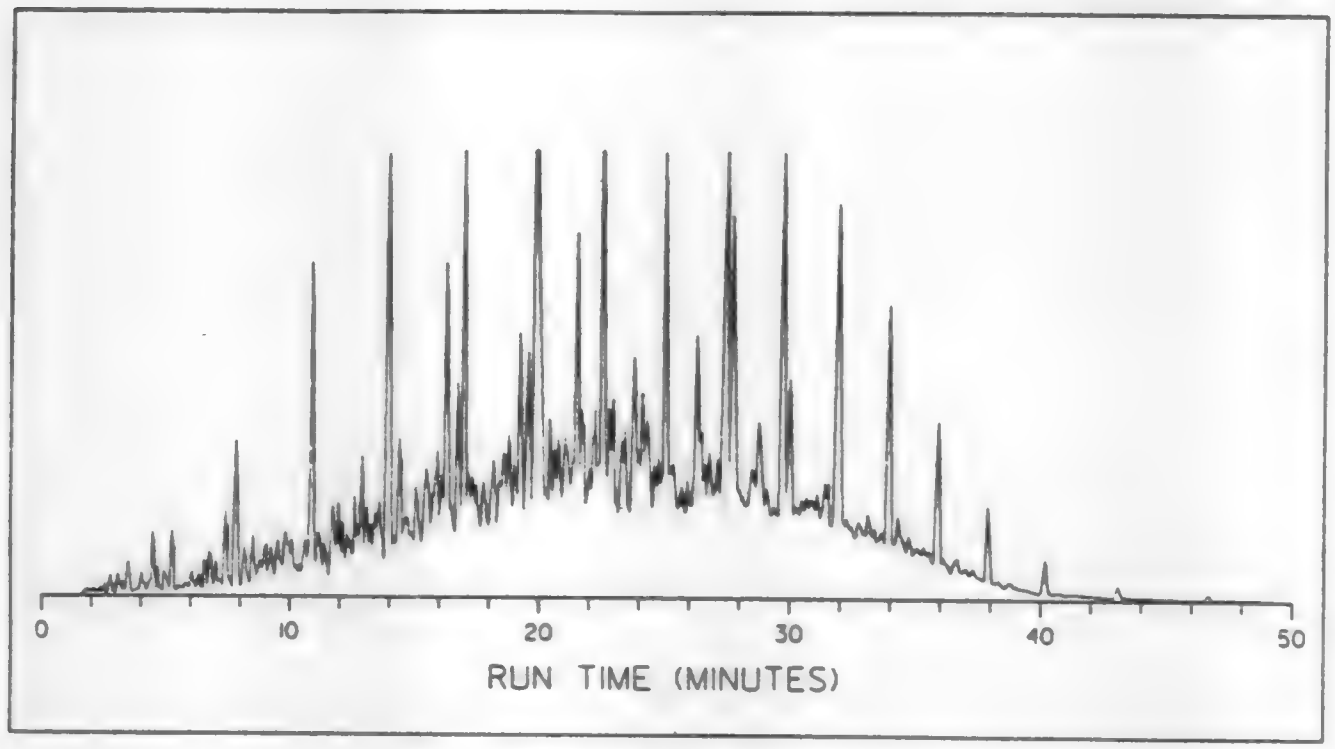


FIGURE 1
CHROMATOGRAM OF NO.2 DIESEL OIL SAMPLE
(NO SOLVENT OR INTERNAL STANDARD PEAKS PRESENT)

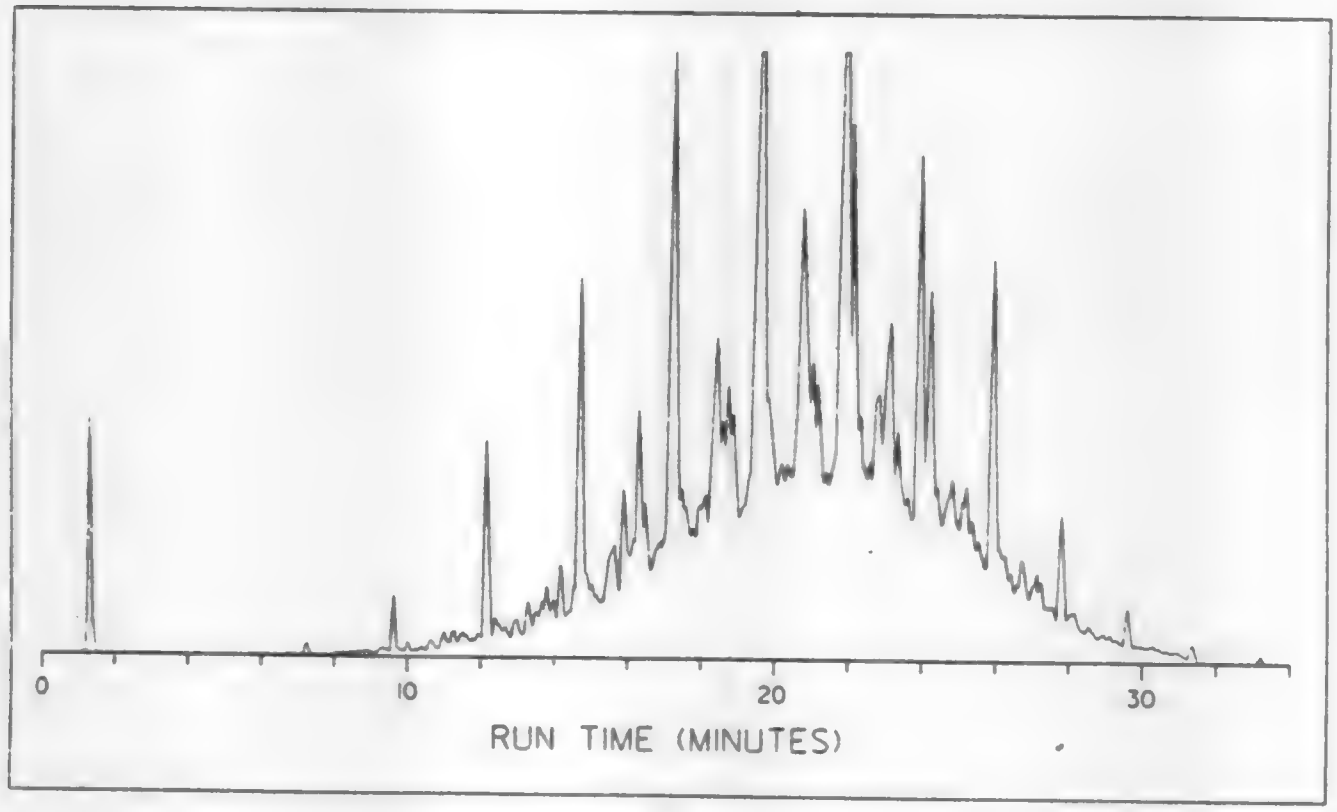


FIGURE 2
CHROMATOGRAM OF MINERAL OIL SAMPLE
250-A

BILLING CODE 6560-50-C

TABLE 1.—PERCENT RANGES OF DIESEL AND STANDARDS

Expected percent diesel in sample	Wt of No. 2-D oil in 10 mL volumetric [1] (g)
5	Use undiluted oil
3	7.6.
1	3.0.
0.5	1.5.

[1] Weigh oil to the nearest 0.1 mg

Table 2

Approximate Relative Retention Times for TCB IS and No. 2–D Diesel Fuel.

1,3,5 Trichlorobenzene Internal Standard = 100

Expected RRT's for Predominate Peaks in No. 2-D Diesel:

124	231
155	245
179	260
183	273
186	276
188	299
193	324
207	348
216	370
220	

Appendix 3—Drilling Fluids Toxicity Test

I. Sample Collection

The collection and preservation methods for drilling fluids (muds) and water samples presented here are designed to minimize sample contamination and alteration of the physical or chemical properties of the samples due to freezing, air oxidation, or drying.

I–A. Apparatus

(1) The following items are required for water and drilling mud sampling and storage:

a. Acid-rinsed linear-polyethylene bottles or other appropriate noncontaminating drilling mud sampler.

b. Acid-rinsed linear-polyethylene bottles or other appropriate noncontaminating water sampler.

c. Acid-rinsed linear-polyethylene bottles or other appropriate noncontaminated vessels for water and mud samples.

d. Ice chests for preservation and shipping of mud and water samples.

I–B. Water Sampling

(1) Collection of water samples shall be made with appropriate acid-rinsed linear-polyethylene bottles or other appropriate noncontaminating water sampling devices. Special care shall be taken to avoid the introduction of contaminants from the sampling devices and containers. Prior to use, the sampling devices and containers should be thoroughly cleaned with a detergent solution, rinsed with tap water, soaked in 10 percent hydrochloric acid (HCl) for 4 hours, and then thoroughly rinsed with glass-distilled water.

I–C. Drilling Mud Sampling

(1) Drilling mud formulations to be tested shall be collected from active field systems. Obtain a well-mixed sample from beneath the shale shaker after the mud has passed through the screens. Samples shall be stored in polyethylene containers or in other appropriate uncontaminated vessels. Prior to sealing the sample containers on the platform, flush as much air out of the container by filling it with drilling fluid sample, leaving a one inch space at the top.

(2) Mud samples shall be immediately shipped to the testing facility on blue or wet ice (do not use dry ice) and continuously maintained at 4 °C until the time of testing.

(3) Bulk mud samples shall be thoroughly mixed in the laboratory by using a 1,000-rpm high-shear mixer and then subdivided into individual, small wide-mouthed (e.g., one- or two-liter non-contaminating containers for storage.

(4) The drilling muds stored in the laboratory shall have any excess air removed by flushing the storage containers with nitrogen any time the containers are opened. Moreover, the sample in any container opened for testing must be thoroughly stirred by using a 1,000-rpm high-shear mixer prior to use.

(5) Most drilling mud samples may be stored for periods of time longer than 2 weeks prior to toxicity testing, provided that proper containers are used and proper conditions are maintained.

II. Suspended Particulate Phase Sample Preparation

(1) Mud samples that have been stored under specified conditions in this protocol shall be prepared for tests within three months after collection. The SPP shall be prepared as detailed below.

II–A Apparatus

(1) The following items are required:

a. Magnetic stir plates and bars.

b. Several graduated cylinders, ranging in volume from 10 mL to 1L.

c. Large (15-cm) powder funnels.

d. Several 2–L graduated cylinders.

e. Several 2–L large mouth graduated Erlenmeyer flasks.

(2) Prior to use, all glassware shall be thoroughtly cleaned. Wash all glassware with detergent, rinse five times with tap water, rinse once with acetone, rinse several times with distilled or deionized water, place in a clean 10-percent (or stronger) HCl acid bath for a minimum of 4 hours, rinse five times with tap water, and then rinse five times with distilled or deionized water. For test samples containing mineral oil or diesel oil, glassware should be washed with petroleum ether to assure removal of all residual oil.

Note.—If the glassware with nytex cups soaks in the acid solution longer than 24 hours, then an equally long deionized water soak should be performed.

II–B. Test Seawater Sample Preparation

(1) Diluent seawater and exposure seawater samples are prepared by filtration through a 1.0-micrometer filter prior to analysis.

(2) Artificial seawater may be used as long as the seawater has been prepared by standard methods or ASTM methods, has been properly "seasoned," flitered, and has been diluted with distilled water to the same specified 20±2ppt salinity and 20±2°C temperature as the natural seawater.

II–C. Sample Preparation

(1) The pH of the mud shall be measured before use. If the pH is less than 9, if black spots appear on the walls of the sample container, or if the mud sample has a foul odor, that sample shall be discarded. Subsample a manageable aliquot of drill mud from the well-mixed original sample. Mix the mud and filtered test seawater in a volumetric mud-to-water ratio of 1 to 9. This is best done by the method of volumetric displacement in a 2–L, large mouth, graduated Erlenmeyer flask. Place 1,000 mL of seawater into the graduated Erlenmeyer flask. The mud subsample is then carefully added funnel to obtain a total volume of 1,200 mL. (A 200-mL volume of mud will now be in the flask).

The 2–L, large mouth, graduated Erlenmeyer flask is then filled to the 2,000 mL mark with 800 mL of seawater, which produces a slurry with a final ratio of one volume drilling mud to nine volumes water. If the volume of SPP required for testing or analysis exceeds 1,500 to 1,600 mL, the initial volumes should be proportionately increased. Alternatively, several 2–L drill mud/water slurries may be prepared as outlined above and combined to provide sufficient SPP.

(2) Mix this mud/seawater slurry with magnetic stirrers for 5 minutes. Measure the pH and, if necessary, adjust (decrease) the pH of the slurry to within 0.2 units of the seawater by adding 6N HCl while stirring the slurry. Then, allow the slurry to settle for 1 hour. Record the amount of HCl added.

(3) At the end of the settling period, carefully decant (do not siphon) the Suspended Particulate Phase (SPP) into an appropriate container. Decanting the SPP is, one continuous action. In some cases, no clear interface will be present; that is, there will be no solid phase that has settled to the bottom. For those samples the entire SPP solution should be used when preparing test concentrations. However, in those cases when no clear interface is present, the sample must be remixed for five minutes. This insures the homogeneity of the mixture prior to the preparation of the test concentrations. In other cases, there will be samples with two or more phases, including a solid phase. For those samples, carefully and continuously decant the supernatant until the solid phase on the bottom of the flask is reached. The decanted solution is defined to be 100 percent SPP. Any other concentration of SPP refers to a percentage of SPP that is obtained by volumetrically mixing 100 percent SPP with seawater.

(4) SPP samples to be used in toxicity tests shall be mixed for 5 minutes and must not be preserved or stored.

(5) Measure the filterable and unfilterable residue of each SPP prepared for testing. Measure the dissolved oxygen (DO) and pH of the SPP. If the DO is less than 4.9 ppm, aerate the SPP to at least 4.9 ppm which is 65 percent of saturation. Maximum allowable aeration time is 5 minutes using a generic commercial air pump and air stone. Neutralize the pH of the SPP to a pH 7.8±.1 using a dilute HCl solution. If too much acid is added to lower the pH saturated NaOH may be used to raise the pH 7.8±.1 units. Record the amount of acid or NaOH needed

to adjust to the appropriate pH. Three repeated DO and pH measurements are needed to insure homogeneity and stability of the SPP. Preparation of test concentrations may begin after this step is complete.

(6) Add the appropriate volume of 100 percent SPP to the appropriate volume of seawater to obtain the desired SPP concentration. The control is seawater only. Mix all concentrations and the control for 5 minutes by using magnetic stirrers. Record the time; and, measure DO and pH for Day 0. Then, the animals shall be randomly selected and placed in the dishes in order to begin the 96-hour toxicity test.

III. Guidance for Performing Suspended Particulate Phase Toxicity Tests Using Mysidopsis bahia

III–A. Apparatus

(1) Items listed by Borthwick [1] are required for each test series, which consists of one set of control and test containers, with three replicates of each.

III–B. Sample Collection Preservation

(1) Drilling muds and water samples are collected and stored, and the suspended particulate phase prepared as described in Section 1–C.

3–C. Species Selection

(1) The suspended particulate phase (SPP) tests on drilling muds shall utilize the test species *Mysidopsis bahia*. Test animals shall be 3 to 6 days old on the first day of exposure. Whatever the source of the animals, collection and handling should be as gentle as possible. Transportation to the laboratory should be in well-aerated water from the animal culture site at the temperature and salinity in which they were cultured. Methods for handling, acclimating, and sizing test organisms given by Borthwick [1] and Nimmo [2] shall be followed in matters for which no guidance is given here.

III–D. Experimental Conditions

(1) Suspended particulate phase (SPP) tests should be conducted at a salinity of ±2 ppt. Experimental temperature should be 20±2 °C. Dissolved oxygen in the SPP shall be raised to or maintained above 65 percent of saturation prior to preparation of the test concentrations. Under these conditions of temperature and salinity, 65 percent of saturation is a DO of 5.3 ppm. Beginning at Day 0— before the animals are placed in the test containers DO, temperature, salinity, and pH shall be measured every 24-hours. DO should be reported in milligrams per liter.

(2) Aeration of test media is required during the entire test with a rate estimated to be 50-140 cubic centimeters/minute. This air flow to each test dish may be achieved through polyethylene tubing (0.045-inch inner diameter and 0.082-inch outer diameter) by a small, generic aquarium pump. The delivery method, surface area of the aeration stone, and flow characteristics shall be documented. All treatments, including control, shall be the same.

(3) Light intensity shall be 1,200 microwatts/cm ^{2}, using cool white fluorescent bulbs with a 14-hour light and 10-hr dark cycle. This light/dark cycle shall also be maintained during the acclimation period and the test.

III–E. Experimental Procedure

(1) Wash all glassware with detergent, rinse five times with tap water, rinse once with acetone, rinse several times with distilled or deionized water, place in a clean 10 percent HCl acid bath for a minimum of 4 hours, rinse five times with tap water, and then rinse five times with distilled water.

(2) Establish the definitive test concentrations based on the results of a range-finding test. A minimum of five test concentrations plus a control and positive control (reference toxicant) is required for the definitive test. To estimate the LC–50, two concentrations shall be chosen that should give (other than zero and 100 percent) mortality above and below 50 percent.

(3) Twenty organisms are exposed in each test dish. Nytex® cups shall be inserted into every test dish prior to adding the animals. These "nylon mesh screen" holding cups are fabricated by gluing a collar of 363-micrometer mesh nylon screen to a 15-centimeter wide Petri dish with silicone sealant. The nylon screen collar is approximately 5 centimeters high. The animals are placed into the test concentration within the confines of the Nytex® cups.

(4) Individual organisms shall be randomly selected and assigned to treatments. A randomization procedure is presented in Section V of this protocol. Make every attempt to expose animals of approximately equal size. The technique described by Borthwick,[1] or other suitable substitutes, should be used for transferring specimens. Throughout the test period, mysids shall be fed daily with approximately 50 *Artemia* (brine shrimp) nauplii per mysid. This will reduce stress and decrease cannibalism.

(5) Cover the dishes, aerate, and incubate the test containers in an appropriate test chamber. Positioning of the test containers holding various concentrations of test solution should be randomized if incubator arrangement indicates potential position difference. The test medium is not replaced during the 96-hour test.

(6) Observations may be attempted at 4, 6 and 8 hours. They must be attempted at 0, 24, 48, and 72 hours; and, must be made at 96 hours. Attempts at observations refers to placing a test dish on a light table and visually counting the animals. Do not lift the "nylon mesh screen" cup out of the test dish to make the observation. No unnecessary handling of the animals should occur during the 96-hour test period. DO and pH measurements must also be made at 0, 24, 48, 72, and 96 hours. Take and replace the test medium necessary for the DO and pH measurements outside of the Nytex® cups to minimize stresses on the animals.

(7) At the end of 96 hours, all live animals must be counted. Death is the end point, so the number of living organisms is recorded. Death is determined by lack of spontaneous movement. All crustaceans molt at regular intervals, shedding a complete exoskeleton. Care should be taken not to count an exoskeleton. Dead animals might decompose or be eaten between observations. Therefore, always count living, not dead animals. If daily observations are made, remove dead organisms and molted exoskeletons with a pipette or forceps. Care must be taken not to disturb living organisms and to minimize the amount of liquid withdrawn.

IV. Methods for Positive Control Tests (Reference Toxicant)

(1) Sodium lauryl sulfate (dodecyl sodium sulfate) is used as a reference toxicant for the positive control. The chemical used should be approximately 95 percent pure. The source, lot number, and percent purity shall be reported.

(2) Test methods are those used for the drilling fluid tests, except that the test material was prepared by weighing one gram of sodium lauryl sulfate on an analytical balance, adding the chemical to a 100-milliliter volumetric flask, and bringing the flask to volume with deionized water. After mixing this stock solution, the test mixtures are prepared by adding 0.1 milliliter of the stock solution for each part per million desired to one liter of seawater.

(3) The mixtures are stirred briefly, water quality is measured, animals are added to holding cups, and the test begins. Incubation and monitoring procedures are the same as those for the drilling fluids.

V. Randomization Procedure

V–A. Purpose and Procedure

(1) The purpose of this procedure is to assure that mysids are impartially selected and randomly assigned to six test treatments (five drilling fluid or reference toxicant concentrations and a control) and impartially counted at the end of the 96-hour test. Thus, each text setup, as specified in the randomization procedure, consists of 3 replicates of 20 animals for each of the six treatments, i.e., 360 animals per test. Figure 1 is a flow diagram that depicts the procedure schematically and should be reviewed to understand the over-all operation. The following tasks shall be performed in the order listed.

(2) Mysids are cultured in the laboratory in appropriate units. If mysids are purchased, go to Task 3.

(3) Remove mysids from culture tanks (6, 5, 4, and 3 days before the test will begin, i.e. Tuesday, Wednesday, Thursday, and Friday if the test will begin on Monday) and place them in suitably large maintenance containers so that they can swim about freely and be fed.

Note.—Not every detail (the definition of suitably large containers, for example) is provided here. Training and experience in aquatic animal culture and testing will be required to successfully complete these tests.

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[1] Borthwick, Patrick W. 1978. Methods for acute static toxicity tests with mysid shrimp (*Mysidopsis bahia*). *Bioassay Procedures for the Ocean Disposal Permit Program*, EPA–600/9–78–010: March.

[2] Nimmo, D.R., T.L. Hamaker, and C.A. Somers. 1978., Culturing the mysid (*Mysidopsis bahia*) in flowing sea water or a static system. *Bioassay Procedures for the Ocean Disposal Permit Program*. EPA–600/9–78–010: March.

(4) Remove mysids from maintenance containers and place all animals in a single container. The intent is to have a homogeneous test population of mysids of a known age (3–6 days old).

(5) For each toxicity test, assign two suitable containers (500-milliliter (mL) beakers are recommended) for mysid separation/enumeration. Label each container (A1, A2, B1, B2, and C1, C2, for example, if two drilling fluid tests and a reference toxicant test are to be set up on one day). The purpose of this task is to allow the investigator to obtain a close estimate of the number of animals available for testing and to prevent unnecessary crowding of the mysids while they are being counted and assigned to test containiers. Transfer the mysids from the large test population container to the labeled separation and enumeration containers but do not place more than 200 mysids in a 500-mL beaker. Be impartial in transferring the mysids; place approximately equal numbers of animals (10–15 mysids is convenient) in each container in a cyclic manner rather than placing the maximum number in each container at one time.

Note.—It is important that the animals not be unduly stressed during this selection and assignment procedure. Therefore, it will probably be necessary to place all animals (except the batch immediately being assigned to test containers) in mesh cups with flowing seawater or in larger volume containers with aeration. The idea is to provide the animals with near optimal conditons to avoid additional stress.

(6) Place the mysids from the two labeled enumeration containers assigned to a specific test into one or more suitable containers to be used as counting dishes (2-liter Carolina dishes are suggested). Because of the time required to separate, count, and assign mysids, two or more people may be involved in completing this task. If this is done, two or more counting dishes may be used, but the investigator must make sure that approximately equal numbers of mysids from each labeled container are placed in each counting dish.

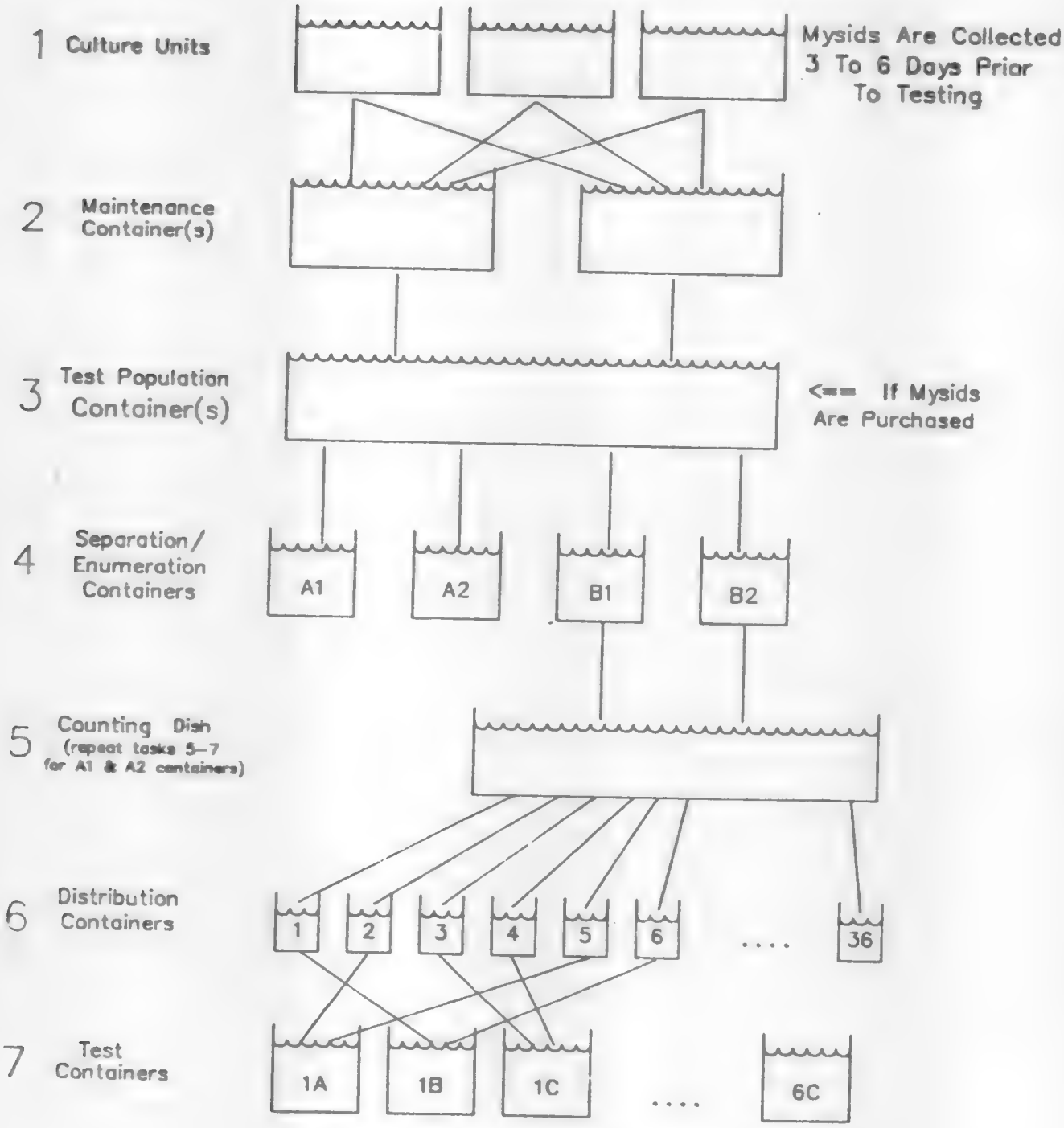
(7) By using a large-bore, smooth-tip glass pipette, select mysids from the counting dish(es) and place them in the 36 individually numbered distribution containers (10-ml beakers are suggested). The mysids are assigned two at a time to the 36 containers by using a randomization schedule similar to the one presented below. At the end of selection/assignment round 1, each container will contain two mysids; and so on until each contains ten mysids.

BILLING CODE 6560-50-M

Figure 1

Mysid Randomization Procedure

Task



272-A

BILLING CODE 6560-50-C

EXAMPLE OF A RANDOMIZATION SCHEDULE

Selection/ assignment round (2 mysids each)	Place mysid in the numbered distribution containers in the random order shown
1	8, 21, 6, 28, 33, 32, 1, 3, 10, 9, 4, 14, 23, 2, 34, 22, 36, 27, 5, 30, 35, 24, 12, 25, 11, 17, 19, 26, 31, 7, 20, 15, 18, 13, 16, 29
2	35, 18, 5, 12, 32, 34, 22, 3, 9, 16, 26, 13, 20, 28, 6, 21, 24, 30, 8, 31, 7, 23, 2, 15, 25, 17, 1, 11, 27, 4, 19, 36, 10, 33, 14, 29
3	7, 19, 14, 11, 34, 21, 25, 27, 17, [illegible], 6, 16, 29, 2, 32, 10, 4, 20, 3, 9, 1, 5, [illegible], 24, 31, 15, 22, 13, 33, 26, 36, 12, 8, 30, 35, 23
4	30, 2, 18, 5, 8, 27, 10, 25, 4, 20, 26, 15, 31, 36, 35, 23, 11, 29, 16, 17, [illegible], 1, 33, 14, 9, 34, 7, 3, 12, 22, 21, 6, 19, 24, 32, 13
5	34, 28, 16, 17, 10, 12, 1, 36, 20, 18, 15, 22, 2, 4, 19, 23, 27, 29, 25, 21, 30, 3, 9, 33, 32, 6, 14, 11, 35, 24, 26, 7, 31, 5, 13, 8

(8) Transfer mysids from the 36 distribution containers to 18 labeled test containers in random order. A label is assigned to each of the three replicates (A, B, C) of the six test concentrations. Count and record the 96 hour response in an impartial order.

(9) Repeat tasks 5–7 for each toxicity test. A new random schedule should be followed in Tasks 6 and 7 for each test.

Note.—If a partial toxicity test is conducted, the procedures described above are appropriate and should be used to prepare the single test concentration and control, along with the reference toxicant test.

V–B. Data Analysis and Interpretation

(1) Complete survival data in all test containers at each observation time shall be presented in tabular form. If greater than 10 percent mortality occurs in the control, the experiment shall be repeated. Unacceptably high control mortality indicates the presence of important stresses on the organisms other than the material being tested, such as injury or disease, stressful physical or chemical conditions in the containers, or improper handling, acclimation, or feeding. If 10 percent mortality or less occurs in the control, the data may be evaluated and reported.

(2) A definitive, full toxicity test conducted according to the EPA protocol is used to estimate the concentration that is lethal to 50 percent of the test organisms that do not die naturally. This toxicity measure is known as the median lethal concentration, or LC–50. The LC–50 is adjusted for natural mortality or natural responsiveness. The maximum likelihood estimation procedure with the adjustments for natural responsiveness as given by D.J. Finney, in *Probit Analysis* 3rd edition, 1971, Cambridge University Press, Chapter 7, can be used to obtain the probit model estimate of the LC–50 and the 95 percent fiducial (confidence) limits for the LC–50. These estimates are obtained by using the logarithmic transform of the concentration. The heterogeneity factor (Finney 1971, pages 70–72) is not used. For a test material to pass the toxicity test according to the requirements stated in the offshore oil and gas extraction industry BAT regulation, the lower 95 percent limit for the LC–50 adjusted for natural responsiveness must be greater than 3 percent suspended particulate phase (SPP) concentration by volume unadjusted for the 1 to 9 dilution. Other toxicity test models may be used to obtain toxicity estimates provided the modeled mathematical expression for the lethality rate must increase continuously with concentration. The lethality rate is modeled to increase with concentration to reflect an assumed increase with concentration to reflect an assumed increase in toxicity with concentration even though the observed lethality may not increase uniformly because of unpredictable animal response fluctuations.

(3) The range-finding test is used to establish a reasonable set of test concentrations in order to run the definitive test. However, if the lethality rate changes rapidly over a narrow range of concentrations, the range-finding test may be too coarse to establish an adequate set of test concentrations for a definitive test.

(4) The EPA Environmental Research Laboratory in Gulf Breeze, Florida prepared a Research and Development Report titled *Acute Toxicity of Eight Drilling Fluids to Mysid Shrimp (Mysidopsis bahia)*, May 1984 EPA–600/3–84–067. The Gulf Breeze data for drilling fluid number 1 are displayed in Table 1 for purposes of an example of the probit analysis described above. The SAS Probit Procedure (SAS Institute, Statistical Analysis System, Cary, North Carolina, 1982) was used to analyze these data. The 96-hour LC–50 adjusted for the estimated spontaneous mortality rate is 3.3 percent SPP with 95 percent limits of 3.0 and 3.5 percent SPP with the 1 to 9 dilution. The estimated spontaneous mortality rate based on all of the data is 9.6 percent.

TABLE 1.—LISTING OF ACUTE TOXICITY TEST DATA (AUGUST 1983 TO SEPTEMBER 1983) WITH EIGHT GENERIC DRILLING FLUIDS AND MYSID SHRIMP—FLUID N2=1

Percent concentration	Number exposed	Number dead (96 hrs)	Number alive (96 hrs)
0	60	3	57
1	60	11	49
2	60	11	[illegible]
3	60	25	35
4	60	[illegible]	12
5	60	60	0

V–C. The Partial Toxicity Test for Evaluation of Test Material

(1,) A partial test conducted according to EPA protocol can be used economically to demonstrate that a test material passes the toxicity test. The partial test cannot be used to estimate the LC–50 adjusted for natural response.

(2) To conduct a partial test, follow the test protocol for preparation of the test material and organisms. Prepare the control (zero concentration), one test concentration (3 percent suspended particulate phase) and the reference toxicant according to the methods of the full test. A range finding test is not used for the partial test.

(3) Sixty test organisms are used for each test concentration. Find the number of test organisms killed in the control (zero percent SPP) in the column labeled X_o of Table 2. If the number of test organisms killed in the control (zero percent SPP) exceeds the table values, then the test is unacceptable and must be repeated. If the number of organisms killed in the 3 percent test concentration is less than or equal to corresponding number in the column labeled X_1 then the test material passes the partial toxicity test. Otherwise the test material fails the toxicity test.

TABLE 2.

X_o	X_1
0	22
1	[illegible]
2	23
3	23
4	24
5	24
6	25

(4) Data shall be reported as percent suspended particulate phase.

6. References

(*1*) Borthwick, Patrick W. 1978. Methods for acute static toxicity tests with mysid shrimp (*Mysidopsis bahia*). *Bioassay Procedures for the Ocean Disposal Permit Program*, EPA–600/9–78–010: March.

(*2*) Nimmo, D.R., T.L. Hamaker, and C.A. Somers. 1978. Culturing the mysid (*Mysidopsis bahia*) in flowing sea water or a static system. *Bioassay Procedures for the Ocean Disposal Permit Program*, EPA–600/9–78–010: March.

(*3*) American Public Health Association et al. 1980. *Standard Methods for the Examination of Water and Wastewater*. Washington, D.C. 15th Edition: 90–99.

Appendix 4—Regulatory Boundaries

New source offshore oil production facilities located in or discharging to the following areas are subject to the zero discharge standard for produced water, depending upon water depth at the location of the facility or discharge. Unless otherwise stated below, the outer boundary for each designated area is the 200-mile boundary of the Fishery Conservation Zone.

(A) Gulf of Mexico—Water Depth 20 Meters or Less

Extending from the inner boundary of the territorial seas of Eastern Texas, Louisiana, Mississippi, Alabama and Western Florida.

(B) Atlantic Coast—Water Depth 20 Meters or Less

Extending from the inner boundary of the territorial seas offshore of the contiguous states between and including Maine and Florida.

(C) California Coast—Water Depth 50 Meters or Less

2. Central and Northern California: Extending offshore of California and bounded on the north by approximately 42 ° N. latitude and bounded on the south by the U.S.-Mexico boundary.

(D) Alaska

1. Gulf of Alaska—Water Depth 50 meters or less: It is bounded approximately on the west by 151° 55′ W. longitude; thence east along 59° N latitude to 148° W longitude; thence south to 58° N latitude; thence east along 58° N latitude to 147° W longitude, thence south.

2. Cook Inlet/Shelikof Strait—Water Depth 50 Meters or Less: Lies east of 156 ° W. longitude and north of 57° N latitude to the inner boundary of the territorial seas near Kalgin Island.

3. Bristol Bay/Aleutian Range—Water Depth 50 meters or less: (a) North Aleutian Basin: Lies in the eastern Bering Sea northwest of the Alaskan Peninsula and south of 59° N latitude. It is bounded on the west by 165° W. longitude and on the east by the inner boundary of the territorial seas.

(b) St. George Basin—Water Depth 50 meters or less: Lies in the eastern Bering Sea northwest of the Aleutina Islands chain and is bounded on the north by 59° N latitude and on the west by 174° W longitude from 59° N. latitude to 56° N. latitude; thence east to 171° W. longitude, thence south. It is bounded on the east by 165° W. longitude.

4. Norton Basin—Water Depth 20 meters or less: Lies south and southwest of the Seward Peninsula. It is bounded on the south by 63° N. latitude, on the west by the U.S.-Russia Convention Line of 1867, on the north by 65° 34′ N. latitude, and on the east by the inner boundary of the territorial seas.

5. Beaufort Sea—Water Depth 10 meters or less: Lies offshore of Alaska in the Beaufort Sea and the Arctic Ocean. It is bounded on the west by the Mineral Management Service Chukchi Sea planning area, extends eastward to the limit of U.S. jurisdiction, and on the south by the inner bounary of the territorial [illegible].

To determine water depth at the facility location, reference the most recent nautical charts or bathymetric maps with the smallest scale (highest resolution) available from the National Oceanic and Atmospheric Administration for the area in question. Water depth is the mean lower low water depth indicated on the appropriate map for the location of the facility or discharge. Water depth at the facility is based upon the proposed location of the facility's well slot structure or produced water discharge point.

[FR Doc. 85–19100 Filed 8–23–85; 8:45 am]

BILLING CODE [illegible]

Federal Register

Monday
August 26, 1985

Part III

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 324

Research in Education of the Handicapped; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 324

Office of Special Education and Rehabilitative Services; Research in Education of the Handicapped

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations under sections 641–644 of Part E of the Education of the Handicapped Act, as amended by Pub. L. 98–199. The program authorized by sections 641–644 of the Act provides support for research and related activities designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth. The regulations, among other things, describe the purpose of the program, identify the types of activities that are eligible for support, set forth the process for selecting funding priorities, and describe weighted selection criteria. An appendix to the regulations contains nonbinding guidelines for the preparation of applications.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Glidewell, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511–M/S 2313), Washington, D.C. 20202; Telephone: (202) 732–1099.

SUPPLEMENTARY INFORMATION: The Research in Education of the Handicapped program, authorized by sections 641–644 of Part E of the Education of the Handicapped Act, supports research, surveys, or demonstration projects, and other activities relating to the educational needs of handicapped children and youth. Under this program, the Secretary makes awards to eligible parties for research and related activities, to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth, and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and research-related activities supported under this program shall be designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth, including physical education and recreation.

The Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199, included amendments to the provisions of section 641. Under section 641(c) of the Act, the Secretary is required to publish proposed research priorities in the **Federal Register** every two years, analyze and consider any public comments received, and then publish final research priorities. In accordance with this authority, a notice of final biennial funding priorities was published on April 5, 1985 (50 FR 13734).

Regulations for this program were published on August 18, 1978 (43 FR 36634), were last amended on June 18, 1981 (46 FR 31997), and are currently codified at 34 CFR Part 324. These final regulations implement Sections 641–644 of the Act, as amended by Pub. L. 98–199, and incorporate the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78). These regulations are expected to become effective in time to apply to Fiscal Year 1986 awards. Grant awards made in Fiscal Year 1985 will be governed by the current regulations.

A notice of proposed rulemaking for this program was published on March 20, 1985 (50 FR 11356). Certain technical revisions have been made to the selection criteria in §§ 324.31 and 324.32. No substantive changes are intended, and no amendments to the applications are necessary. The comments received in response to this notice and the Secretary's responses are summarized below.

Comment. One commenter recommended that § 324.1(c) and (d) should be combined to avoid redundancy.

Response. No change has been made. This language is taken directly from section 642 of the Act.

Comment. Three commenters recommended that § 324.2(b) be expanded to specifically include the statutory authority for the Secretary to award grants as well as contracts for research and related purposes relating to physical education and recreation for handicapped children.

Response. A change has been made. Language has been added to § 324.2(b) to clarify that the Secretary may also make grants for research and related purposes relating to physical education and recreation for handicapped children.

Comment. One commenter recommended that § 324.30(a) be revised to give priority to three or more types of activities indicated so as to allow for broader access to grants under this section.

Response. No change has been made. Although the Secretary agrees with the intent of the comment, the number of priorities selected for funding in any fiscal year is largely dependent upon the availability of funds for new awards as well as support for continuation projects. Thus, the regulations must be flexible enough to allow for variation in the availability of uncommitted funds from year to year.

Comment. One commenter recommended that § 324.33 include a definition of "research related activities."

Response. No change has been made. Section 641 of the Act specifies illustrative types of research and related activities which can be supported under this program. Authorized activities are specified in § 324.10 of the regulations and are consistent with the definition of "research and related purposes" in section 602(b)13) of the Act.

Comment. One commenter recommended extending the date for report submission after completion of a project from 60 to 90 days.

Response. A change has been made. The Secretary agrees with the recommendation to extend the report deadline to 90 days.

A summary of these final regulations follows.

Subpart A—General.

Section 324.1 describes the basic purpose of the Research in Education of the Handicapped program.

Section 324.2 identifies the parties that are eligible to receive grants.

Section 324.3 lists other regulations that apply to this program.

Section 324.4 incorporates certain EDGAR definitions as well as the definitions of "handicapped children," "related services," and "special education" used in the Assistance to States for Education of Handicapped Children program (34 CFR Part 300). These definitions in 34 CFR Part 300, as well as the definition of "handicapped youth" under Section 602(b) of the Act, are adopted to ensure consistency among programs under the Act.

Subpart B—What Kinds of Projects Does the Secretary Assist Under this Program?

Section 324.10 identifies the types of projects that the Secretary supports. This section identifies the particular

activities authorized under sections 641(a) and 642 of the Act as examples of the kinds of projects that are consistent with the purposes of the Act. This section includes student-initiated and field-initiated activities, in accordance with the legislative history of the Act, which states: "The Committee intends that the field and student initiated research projects and successful model projects be continued." S. Rep. No. 191, 98th Cong., 1st Sess. 25 (1983).

Section 324.11 describes the kinds of research and model projects supported under this program. This information is included to assist applicants in understanding the purpose of the two different types of projects authorized under this part.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Sections 324.30 describes the process the Secretary uses to select priorities for funding. This process is consistent with the requirements of section 641(c) of the Act.

Sections 324.31 and 324.32 contain the selection criteria the Secretary uses to evaluate applications and award new grants. The Secretary establishes weighted criteria that reflect the relative importance of the elements of an application in order to ensure that the most promising projects are selected. The Secretary uses different selection criteria for research projects and for model projects to reflect the difference in the nature of those projects. The selection criteria contained in §§ 324.31(b)(3) and (h) and 324.32(b)(3) and (h) are designed to implement the requirement under section 641(b) of the Act that the Secretary shall consider the special education experience of an applicant and the ability of an applicant to disseminate the findings of any project funded under this part.

Subpart E—What Conditions Must be Met by a Grantee?

Section 324.40 describes the content of the project report that must be submitted upon completion of a project. These requirements are necessary to ensure that the project reports will be useful to the persons to whom they are disseminated.

Appendix.

The appendix to Part 324 (Guidelines—Education of the Handicapped Act—Part E) is revoked.

An appendix is attached which contains nonbinding guidance for use by applicants in preparing applications for research and model projects.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. The application procedures in the final regulations will not place undue burdens on small entities submitting applications under this program. The regulations do not impose other burdens that would have a significant economic impact on small entities participating in the program.

To the extent that the regulations affect States and State agencies, they will not have an impact on small entities. States and State agencies are not small entities under the Act.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 324

Education, Education of handicapped, Education—research, Grants program—education, Local education agency, Reporting and recordkeeping requirements, School, State educational agencies.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.023, Research in Education of the Handicapped)

Dated: August 19, 1985.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 324 of Title 34 of the Code of Federal Regulations to read as follows:

PART 324—RESEARCH IN EDUCATION OF THE HANDICAPPED PROGRAM

Subpart A—General

Sec.

324.1 What is the Research in Education of the Handicapped Program?
324.2 Who is eligible to apply for an award under this program?
324.3 What regulations apply to this program?
324.5 What definitions apply to this program?
324.5–324.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

324.10 What kinds of projects are authorized under this part?
324.11 What kinds of research and model projects are supported under this part?
324.12–324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

324.30 How does the Secretary select and announce funding priorities under this program?
324.31 What are the selection criteria for evaluating applications for research projects?
324.32 What are the selection criteria for evaluating application for model projects?
324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?
324.34–324.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Recipient?

324.40 What conditions must be met by a recipient?
324.41–324.49 [Reserved]

Authority: Secs. 641–644 of the Education of the Handicapped Act, as amended by Pub. L. 98–199, 97 Stat. 1372–1374 (20 U.S.C. 1441–1444), unless otherwise noted.

Subpart A—General

§ 324.1 What is the Research in Education of the Handicapped Program?

The purpose of this program is to provide support for—

(a) Research and related activties to assist special education personnel, related servcies personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth;

(b) Research, surveys, or demonstrations relating to the education of handicapped children and youth;

(c) Research and related purposes relating to physical education or recreation for handicapped children; and

(d) Research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(20 U.S.C. 1441(a), 1442)

§ 324.2 Who is eligible to apply for an award under this program?

(a) The Secretary may make grants to, or enter into contracts and cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for the research and related activities authorized under Section 641(a) of the Education of the Handicapped Act.

(b) The Secretary may award contracts to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and may make contracts with States, State and local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations for research and related purposes authorized under Section 642 of the Education of the Handicapped Act, relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(20 U.S.C. 1441(a), 1442)

§ 324.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this Part 324.

(b) The Education Department General Administrative Regulations (EDGAR), set out in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations); and

(4) Part 78 (Education Appeal Board).

(20 U.S.C. 1441–1444)

§ 324.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Project period
Secretary
State educational agency

(20 U.S.C. 1441–1444)

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5, 300.13, and 300.14:

Handicapped children
Related services
Special education

(20 U.S.C. 1401(a)(1), (16), (17))

(c) *Other definitions.* In addition to the definitions referred to in paragraphs (a) and (b) of this section, the following definition applies to this part:

"Handicapped youth" means any handicapped child who—

(1) Is twelve years of age or older; or

(2) Is enrolled in the seventh or higher grade in school.

(20 U.S.C. 1401(b))

§§ 324.5—324.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 324.10 What kinds of projects are authorized under this part?

Research and related activities that may be assisted under this part include, but are not limited to—

(a) The development of new and improved techniques and devices for teaching handicapped children and youth;

(b) The development of curricula which meet the unique educational needs of handicapped children and youth;

(c) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped children and youth;

(d) The development of program models and exemplary practices in areas of special education;

(e) The dissemination of information on research and related activities conducted under this part to interested individuals and organizations;

(f) Research and related activities, surveys, or demonstrations relating to physical education or recreation for handicapped children; and

(g) Student-initiated or field-initiated projects consistent with the purpose of the program, as described in § 324.1.

(20 U.S.C. 1441(a), 1442)

§ 324.11 What kinds of research and model projects are supported under this part?

(a) Research projects supported under this part must be designed to generate knowledge about the education of handicapped children and youth and to translate that knowledge into practical techniques and materials.

(b) Model projects supported under this part must develop and implement innovative educational programs that serve handicapped children and youth either directly or indirectly. These projects must be designed to—

(1) Improve significantly an aspect of the education of handicapped children and youth;

(2) Provide information about the comparative effectiveness of the model being demonstrated;

(3) Continue beyond the award period; and

(4) Provide for dissemination and replication of a successful program.

(20 U.S.C. 1441, 1442)

§§ 324.12–324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 324.30 How does the Secretary select and announce funding priorities under this program?

(a) For any fiscal year, the Secretary may give priority to one or more of the types of activities under § 324.10.

(b) Under Section 641(c) of the Education of the Handicapped Act, the Secretary is required to publish proposed research priorities for public comment in the **Federal Register** every two years, not later than July 1. The Secretary is required to publish final priorities for this program not later than 30 days after the close of the comment period.

(c) The Secretary establishes separate competitions for research and model projects for any activity for which the Secretary provides assistance under this part.

(20 U.S.C. 1441(c), 1442)

§ 324.31 What are the selection criteria for evaluating applications for research projects?

The Secretary uses the criteria in this section to evaluate applications for research projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) ***Adequacy of resources.*** **(5 points)**

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation, or compensation for the problem or issue relating to the education of handicapped children and youth being addressed.

(g) *Impact.* (5 points) The Secretary reviews each application to determine the probable impact of the proposed research and development products and the extent to which those products can be expected to have a direct influence on handicapped children and youth or personnel responsible for their education.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's special education experience; and

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (40 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) Instrumentation; and

(4) Data analysis procedures.

(20 U.S.C. 1441–1442)

§ 324.32 What are the selection criteria for evaluating applications for model projects?

The Secretary uses the criteria in this section to evaluate applications for model project awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project;

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualification, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews such application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross-reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine if—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's special education experience; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points)

(1) The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(i) The population to be served;

(ii) The model planning process;

(iii) Record keeping systems;

(iv) Coordination with other service providers;

(v) The identification and assessment of students;

(vi) Interventions to be used, including proposed curricula;

(vii) Individualized educational program planning; and

(viii) Parent and family participation.

(20 U.S.C. 1441–1442)

§ 324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?

The Secretary uses the criteria in 34 CFR 75.210 *(Selection criteria for a discretionary grant program that does not have regulations)* (to evaluate applications for new awards for research-related activities other than research and model projects.

(20 U.S.C. 1441–1442).

§§ 324.34–324.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Recipient?

§ 324.40 What conditions must be met by a recipient?

Not more than 90 days after the completion of a project assisted under this part, each recipient must submit a report to the Secretary that includes—

(a) An abstract of the project;

(b) For a research project, a description of the research problem and the methodological approach used in the research study; or

(c) For a model project—

(1) A description of the model which permits replication, in part or in whole, by appropriate parties to which it is disseminated; and

(2) A description of the evaluation procedures and findings related to the effectiveness of the model;

(d) A summary of the project findings; and

(e) A statement of the conclusions.

(20 U.S.C. 1441(d))

(Approved by the Office of Management and Budget under control number 1820–0002)

§§324.41–324.49 [Reserved]

Appendix

Note.—This appendix will not be codified in the Code of Federal Regulations.

Guidelines—Research in Education of the Handicapped Program

Part 1—Introduction

Sec.

1.1 Scope of guidelines.

Part 2—Application Information

2.1 Preparation of applications for research projects.

2.2 Preparation of applications for model projects.

Part 1—Introduction

§ 1.1 Scope of guidelines.

The guidelines contained in this document are recommendations and suggestions for meeting legal requirements which apply to Federal assistance under the Education of the Handicapped Act, Part E, sections 641–644. The legal requirements include the Act itself (20 U.S.C. 1441–1444) and applicable regulations (34 CFR Parts 75 and 324). The guidelines are not requirements. However, where the guidelines set forth a permissible means of meeting a legal requirement, the guidelines may be relied upon.

(20 U.S.C. 1441–1444)

Part 2—Application Information

§ 2.1 Preparation of applications for research projects.

It is suggested that project applications include the following features in the order listed:

(a) *Abstract.* A narrative abstract should describe—(1) The problem or issue the project is addressing; (2) the project's goals and products; and (3) the methodology. The overview of the methodology should provide specific detail on the sample, if one is to be used (i.e., number of local educational agencies, number of students, category of exceptionality), and a brief description of the project's design, measurement, and analysis procedures.

(b) *Importance.* This section should present the problem or issue to be addressed. Using previous research findings, the experiences of service providers, and a conceptual framework, the applicant should make a convincing argument for the significance of the need which exists, and the importance of the proposed project in understanding, remediating, or compensating for the problem/issue. This section should also include a description of the expected outcomes. Finally, it should provide a list of procedural objectives which describe the major activities to be implemented during the project and for which detailed explanations and justifications are provided in the subsequent sections of the application.

(c) *Technical Method (Soundness).* This section should provide both a description and justification for the project design, sample, measurement techniques, instrumentation, and data analysis procedures. This section should provide sufficient detail for reviewers to be able to make informed judgments about the soundness of the proposed research procedures. This is the one aspect of the application narrative which is frequently too short. Applicants need to explain and justify their selection of procedures. The relationship between the proposed activities and the proposed duration of the project should also be made apparent in this section.

(d) *Plan of Operation.* This section of the application should provide a management plan which includes—(1) An organizational chart accompanied by a narrative which describes the responsibilities associated with each position; (2) a time line indicating the initiation and completion dates for each major activity; and (3) a person loading chart which indicates, for each major activity, the number of days by person. This section should explicitly describe how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented.

(e) *Evaluation Plan.* This section of the application should describe procedures to assure that the project's activities are being implemented appropriately and that project objectives are being met. Project evaluation procedures should differ from the analysis procedures for the research data described in section (c), *Technical Methods (Soundness).*

(f) *Key Personnel.* This section should identify the person being proposed for each position presented in the management plan and the time commitment allocated to the position. Each person's qualifications should be presented in a manner that shows a clear relationship to the selection criteria for that designated position. This section should also describe procedures for encouraging applications for employment from persons who are members of groups that have been traditionally underrepresented such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. Finally, a full disclosure of all time commitments should be included for each person listed in the application. These should include both proposed and existing commitments to State, local, or privately-supported activities.

(g) *Adequacy of Resources.* This section should describe the resources, facilities, equipment, and supplies available to the applicant for carrying out the proposed project. It should include a summary of relevant experiences related to the proposed research activity, and it should demonstrate access to and commitment from schools, agencies, or other organizations necessary to carry out the proposed research. This is particularly important regarding access to proposed samples.

(h) *Impact.* This section of the application should be used to make the best case for the potential difference the proposed research could make in addressing the needs developed in the purpose section. The impact statement should consider the contribution the findings or products will make to current understanding, knowledge, and practice.

(i) *Organizational capability.* This section should clearly describe the special education experience of the applicant and how the findings and products will be disseminated to appropriate target groups to ensure that they can be used effectively.

(j) *Budget and Cost Effectiveness.* Instructions in the standard application for Federal assistance (Section E of ED Form 9037) provide guidance in preparing the budget section of the application.

§ 2.2 Preparation of applications for model projects.

It is suggested that project descriptions include the following features, in the order listed:

(a) *Abstract.* A narrative abstract should describe—(1) The service delivery problem the project is addressing; (2) the project's goals and strategies, and (3) the methods. The overview of the methods should provide specific details on the population to be served and the intervention to be used.

(b) *Importance.* This section should present the service delivery problem to be addressed. Using previous research findings, need assessments, and the experiences of service providers, the applicant should make a convincing argument for the significance of the delivery problem to service providers across the Nation.

(c) *Innovativeness.* This section should provide a conceptual framework that is founded on previous theory and research and provides a basis for the unique strategies and approaches that will be used in addressing the identified service delivery problem. This section should also make clear the contribution the proposed findings and products will make in advancing current knowledge, understanding, and practice.

(d) *Technical Method (Soundness).* This section should provide both a description and justification of the project's strategies. Specific information should be provided as to the population to be served, the model planning process, coordination among service providers, the interventions to be used, and parent and family participation. Model projects that will provide direct services to students should also include information as to the identification and assessment of students, record keeping systems, proposed curricula, and individualized educational program planning. This aspect of the application narrative should be detailed enough to make it clear what activities will be carried out in the project. Applicants need to explain and justify their strategies.

(e) *Plan of Operation.* This section of the application should provide a management plan which includes—(1) An organizational chart accompanied by a narrative which describes the responsibilities associated with each position; (2) a time line indicating the initiation and completion dates for each major activity; and (3) a person loading chart which indicates for each major activity the number of days by person. This section should explicity describe how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented.

(f) *Evaluation Plan.* This section should describe the plan and the procedures to evaluate the project, including the effectiveness of the model in educating handicapped students. In particular, procedures should be described for comparing the effectiveness of the model with other service delivery strategies.

(g) *Key Personnel.* This section should identify the person being proposed for each position presented in the management plan and the time commitment allocated to the position. Each person's qualifications should be presented in a manner that shows a clear relationship to the selection criteria for his/her designated position. This section should also describe procedures for encouraging applications or employment from persons who are members of groups that have been traditionally underrepresented such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. Finally, a full disclosure of all time commitments should be included for each person listed in the application. These should include both proposed and existing commitments to State, local, or privately supported activities.

(h) *Adequacy of Resources.* This section should describe the resources, facilities, equipment, and supplies available to the applicant for carrying out the proposed project. It should include a summary of relevant experiences related to the proposed project, and it should demonstrate access to schools, agencies, or other organizations necessary to carry out the proposed project.

(i) *Organizational capability.* This section should clearly describe the special education experience of the applicant and how the findings and products will be disseminated to

appropriate target groups to ensure that they can be used effectively.

(j) *Budget and Cost Effectiveness.* Instructions in the standard application for Federal assistance (Section E of ED Form 9037) provide guidance in preparing the budget section of the application.

(20 U.S.C. 1441–1444; 34 CFR 324.31–324.32)

[FR Doc. 85–20158 Filed 8–23–85; 8:45 am]

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Federal Register

Monday
August 26, 1985

Part IV

Department of Energy

Energy Information Administration

State-Level Energy End Use, Price, and Expenditures Information; Solicitation of Comments on Data User Needs; Notice

DEPARTMENT OF ENERGY

Energy Information Administration

State-Level Energy End Use, Price, and Expenditures Information; Solicitation of Comments on Data User Needs

AGENCY: Office of Energy Markets and End Use, Energy Information Administration, DOE.

ACTION: Notice of request for comments.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) is initiating a review of the requirements of data users for State-level information on energy end-use, prices, and expenditures. The EIA will use the results of the requirements review in determining which data elements EIA should continue to publish.

The EIA also is soliciting comments from data users on which State-level data they deem to be necessary. The EIA requests that data users identify the specific uses for the data they require, including, if applicable, the statutory mandate.

Any written comments received in response to this notice will be available for public inspection at the DOE Freedom of Information Office, Room 1E–090, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which is believed to be confidential and exempt by law from public disclosure, should submit one complete copy of the document and, if possible, 10 copies from which the information which is believed to be confidential has been deleted. The DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

DATE: Comments concerning this notice should be submitted within 60 days of the publication date of the notice.

ADDRESS: Comments should be submitted in writing to: Sue Streett, Office of Energy Markets and End Use, Energy Information Administration, EI–60, MS 1H–053, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Sue Streett, (202) 252–1617.

SUPPLEMENTARY INFORMATION: The EIA currently publishes the *State Energy Data Report* (SEDR) to provide historical time series data on consumption of energy by major end-use sectors and by State. The sectors reported in the SEDR are residential, commercial, industrial, transportation, and electric utilities. Consumption data published in the SEDR include both collected State-level data and calculated State-level estimates. EIA collects state-level consumption data on natural gas and electricity, and when publishing these data in the SEDR, makes minor adjustments for consistency among end-use sectors. In cases where EIA does not collect State-level consumption data, notably petroleum products, the SEDR relies on collected State-level sales, delivery, or distribution data. In general, these data are available directly from EIA collection forms and are adjusted in the SEDR to equal the reported national-level consumption data. In many cases, imputations are made to establish consistency in sectoral definitions or to reflect changes in EIA data collection forms for specific time series. The EIA publishes a companion report titled the *State Energy Price and Expenditures Report* (SEPER) which combines the SEDR consumption estimates with collected and imputed price data to provide annual estimates of energy prices and expenditures by major end-use sector at the State and national levels.

The EIA also conducts periodic surveys of energy consumption within the residential, commercial, and residential transportation sectors. The EIA energy end-use surveys are sent to a small sample of their respective populations and provide statistical data on energy end-use at the national and Census region level. Unlike the SEDR, these data are not available at the State-level. The EIA plans to conduct future energy end-use surveys on a triennial cycle.

The EIA is soliciting comments on the information needs of data users who use State-level information on energy end-use, prices and expenditures. The following questions are provided to focus the discussion on the specific needs for and uses of these data.

Please answer each of the following questions:

1. What are your minimal requirements for information on energy end-use, prices, and expenditures? For what do you use these data? Please be specific.

2. Are data aggregated at regional or national levels sufficient? If State-level data are required, please specify what data are required at State-level and why.

3. Do you require data for specific end-use sectors (such as residential, commercial, industrial, transportation, and electric utilities)? If so, for which ones? For what purpose?

4. With what periodicity do you need State-level energy end-use, price, and/or expenditure data? Is information published less often than once a year sufficient?

5. Do you now use EIA information on State-level energy end-use, prices, and expenditures? Which publications or public use tapes do you use? For what purposes do you use these data?

6. If you have used EIA State-level end-use publications and/or public use tapes, please identify elements of information for which you have no need.

7. If additional State-level end-use information is needed, what is it and how would it be used?

8. EIA continues to evaluate alternate forms of dissemination for its information products. Could you make use of State-level consumption and expenditure information if it were available only on 9 track magnetic tape, 5¼ inch floppy disk, or microfiche? Please specify which you could use.

Comments (excluding those comments DOE has determined are confidential) submitted in response to this notice will become a matter of public record.

Issued in Washington, DC, August 16, 1985.

H.A. Merklein,

Administrator, Energy Information Administration.

[FR Doc. 85–20197 Filed 8–23–85; 8:45 am]

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Federal Register

Monday
August 26, 1985

Part V

Environmental Protection Agency

40 CFR Part 123

National Pollutant Discharge Elimination System Regulations; Noncompliance and Program Reporting; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[OW-FRL 2840-8]

National Pollutant Discharge Elimination System Regulations; Noncompliance and Program Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: On July 23, 1984, EPA proposed revisions (49 FR 29720) to the program reporting requirements for the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act (CWA). This rule applies to EPA Regions and NPDES States. The proposed rule was intended to establish a consistent basis for EPA and State reporting of instances of noncompliance by major dischargers. The proposed regulation described criteria for three reporting formats: the Quarterly Noncompliance Report (QNCR), a second tier of narrative noncompliance reporting, and four options for a quarterly statistical summary of other instances of noncompliance.

On January 24, 1985, EPA published additional information (50 FR 3494) to explain the results of its evaluation of the four options for the statistical summary of other instances of noncompliance. In addition, EPA provided information to clarify the purpose of the QNCR and to distinguish between Category I and Category II instances of noncompliance.

After considering comments submitted on the proposed rule and the notice of additional information, EPA has amended the NPDES regulations and is promulgating the rule in final form today. The final rule describes the format and the instances of noncompliance that must be reported in the QNCR. The rule distinguishes between Category I noncompliance, which is based on specific criteria, and Category II instances of noncompliance which are harder to quantify but are also of concern to the regulatory agency. Both categories of noncompliance must be reported in the QNCR. Examples of Category II noncompliance are included in the final rule. The final rule also requires a semi-annual statistical summary of other instances of noncompliance.

DATES: This regulation will become effective October 1, 1985, and be used for the QNCR covering the period through December 31, 1985. All enforcement orders issued after October 1, 1985, must be reported on the QNCR in accordance with the requirements of the rule.

In accordance with 40 CFR 23.2 (50 FR 7268, February 25, 1985), these regulations shall be considered issued for purposes of judicial review at 1:00 p.m. eastern time on September 9, 1985. In order to assist EPA to correct any typographical errors, incorrect cross references, and similar technical errors, comments of a technical or nonsubstantive nature on the final regulations may be submitted on or before October 28, 1985.

ADDRESSES: Comments of a technical and nonsubstantive nature should be addressed to: Edward S. Bender, Water Enforcement Division (EN-338), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. The rulemaking record is available at the EPA Public Information Reference Unit, Room 2404 (rear) (PM-213), 401 M Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Edward Bender, (202) 475-8331.

SUPPLEMENTARY INFORMATION:

I. Background

On June 7, 1979, EPA promulgated final regulations for the National Pollutant Discharge Elimination System (NPDES) permit program (44 FR 32854; 40 CFR Parts 122-124) under the Clean Water Act (CWA). Section 122.23 of that regulation contained requirements for Quarterly Noncompliance Reports (QNCR) to be prepared and submitted by States approved to administer the NPDES program and by EPA Regions for States not yet approved. These regulations were a revision to previous QNCR requirements. Section 122.23 was retained in substantially the same form in the Consolidated Permit Regulations promulgated May 19, 1980 (45 FR 332901; § 122.18), and the deconsolidated NPDES regulations promulgated April 1, 1983 (48 FR 14146; § 123.45).

The latest, revised regulation (48 FR 14146, April 1, 1983), required the Director to submit quarterly reports of noncompliance with permit conditions by major dischargers. The narrative report, called the QNCR, was to include the following types of noncompliance: Failure to complete the construction elements of a compliance schedule; failure to provide reports; submission of deficient reports; and noncompliance with other permit requirements, such as effluent limitations. Generally, only noncompliance not corrected within a specified period (30 to 90 days) required reporting. Reporting agencies were also required to report other instances of noncompliance by major dischargers in a quarterly statistical summary. Section 123.45 was and continues to be a reporting mechanism and in no way determines what is an NPDES violation.

On July 23, 1984 (49 FR 29720) EPA proposed revisions to the noncompliance reporting requirements for NPDES under the CWA. In addition to requirements for a narrative report of instances of noncompliance, the proposed rule included a requirement for a quarterly statistical summary of other instances of noncompliance. In the July 3, 1984 proposal, EPA presented four options for revising the statistical summary.

During the initial public comment period on this proposed rule (July 23, 1984), several commenters indicated that two aspects of the proposed rule were unclear. These were: (1) The relationship of the QNCR to Agency enforcement policy, guidance or practice; and (2) the requirements for listing instances of noncompliance not defined as Category I in the regulation. EPA published additional information (50 FR 3494, January 24, 1985) to clarify the relationship of the QNCR to Agency enforcement policy, guidance, and practice and to explain the requirements for listing other instances of noncompliance (Category II noncompliance) on the QNCR. The notice also summarized the basis for EPA's recommended option for a statistical summary report.

II. Summary of the Final Rule

The final rule published today describes the requirements for NPDES States and EPA Regions to report instances of noncompliance by major permittes. The reporting requirements in the final rule include the QNCR and a statistical summary of other noncompliance. In the final rule, the QNCR includes two types of noncompliance which must be reported, Category I and Category II. Category I noncompliance involves specific criteria for violations of enforcement orders, compliance schedules, effluent limits, and reporting requirements. Category II noncompliance includes violations of permit conditions which the regulatory agency believes are of substantial concern and do not meet the Category I criteria. The examples of Category II noncompliance include several types of violations that were reported under the previous regulation as well as additional violations mentioned in the additional notice (50 FR 3494, January 24, 1985).

Category II violations are those which are more difficult to quantify.

The format and reporting schedule for the QNCR has not changed significantly in the final rule from the requirements in the previous rule. The final rule also changes the Quarterly Statistical Summary to a Semi-Annual Statistical Summary. EPA will provide guidance to help NPDES States and EPA Regions prepare the QNCR.

III. Response to Public Comments

Twenty-one individuals provided comments on the July 23, 1984 proposal; and six individuals provided comments on the January 24, 1985 notice of additional information. The commenters represented NPDES permittees, industrial trade organizations, environmental interest groups, State agencies, and EPA Regions. In order to assist the reader, comments have been grouped under subjects covered by the regulation. Under each subject area, there is a summary of public comments, EPA's response, and the resolution in the final rule.

A. Purposes of the QNCR

1. Relationship Between QNCR and Agency Enforcement Policy

Comment: Several commenters felt that the proposal failed to accurately discuss the relationship between the QNCR and the Agency's enforcement policies. Specific reference was made to two documents prepared by the Agency which discuss the use of QNCR and other information in developing enforcement responses to instances of permit noncompliance. (See "Policy Framework for State/Federal Enforcement Agreements", June 26, 1984 and "Guidance for Oversight of NPDES Programs", July 6, 1984).

Response: The preamble to the proposed rule stated that "the QNCR is intended to be used solely to track and evaluate the effectiveness of compliance and enforcement activities. The proposal has no impact ". . . upon what is considered a violation, or on whether or what kind of enforcement action will be taken in a given case." Appendix A stated that "the revised QNCR will be used as part of the administrative procedure for screening NPDES self-monitoring data and other data to report instances of noncompliance which are of major concern to the EPA and State regulatory agency." EPA provided clarification on the purpose of the QNCR in an additional notice (50 FR 3494).

The primary purpose of the QNCR has always been to provide information to the Agency by which it could assess the effectiveness of State and EPA Regional compliance activities and thereby best determine how to manage or oversee program activities. In evaluating such activities, EPA thought it more appropriate to focus primarily on patterns of noncompliance rather than on individual instances of noncompliance. Several commenters expressed support for this concept. In addition, EPA uses the QNCR to provide noncompliance information to Congress and the public. One of the main reasons EPA has proposed changes to the QNCR was to ensure that the instances of noncompliance reported on the QNCR were based on consistent criteria (Category I noncompliance) or were identified as having special regulatory concern (Category II noncompliance).

This rule establishes criteria for tracking permit noncompliance and does not establish criteria for selecting enforcement actions. EPA enforcement policy documents may reference the QNCR just as such guidance may refer to other codified reporting requirements. However, this regulation in no way codifies enforcement policy. That policy remains under EPA discretion and is outside of the scope of this rulemaking.

Regardless of whether a violation is listed on the QNCR, any violation of an NPDES permit is a violation of the CWA for which the permittee is liable and for which the Agency encourages some type of enforcement response to be taken. Being listed, or failure to be listed on the QNCR does not itself determine what type of response will be taken. The Office of Water has historically maintained an Enforcement Management System (EMS), which guides EPA Regions and States in responding to instances of noncompliance. Within EMS, an Enforcement Response Guide directs managers to escalate the level of enforcement in response to violations which are persistent, have potential water quality impacts, or recur frequently. As proposed, the QNCR regulation requires reporting of instances of noncompliance which exceed certain thresholds of time, magnitude or frequency of occurrence or which otherwise indicate particular environmental problems. Considering the basic principles of EMS, it is reasonable and likely that these instances of noncompliance will be given priority for resolution.

2. Citizen Suits

Comments: Two commenters expressed concern that the proposed rule could affect the ability of citizens to bring suits for Clean Water Act (CWA) violations because they believed that the new rule would allow States to submit less compliance information to EPA than was required under the old rule.

Response: The final rule will not impair the ability of citizens to bring suit for CWA violations. While the QNCR serves as a routine public disclosure of certain instances of noncompliance, EPA does not believe that it, in any way, limits public access to other compliance data. Furthermore, the preparation of the QNCR and the review of permittee DMRs should not limit or delay the public's access to this information. EPA believes that the final rule is an improvement over the quality and quantity of compliance information that we received in the past.

B. Format and Procedures for Reporting Noncompliance

1. Date of Resolution of Noncompliance

Comment: One commenter suggested that requiring the date of the compliance status review in paragraph (D) of § 124.45(a)(2) of the proposed rule is confusing and may not be useful.

Response: EPA agrees that this requirement as worded in the proposed rule needs clarification. Discharge Monitoring Reports (DMRs) are reviewed on different dates by various States and Regions but for consistency, we believe the QNCR should represent the compliance status for the entire QNCR review period (three to six months). If the noncompliance is resolved during the QNCR review period, the date of resolution and the method of resolution should be shown under the comments column of the report. Therefore, in the final rule the phrase "with the date of the review of the status" has been deleted.

2. Reporting the Same Violation in More Than One Quarter

Comment: Several commenters expressed concern that the proposed rule would require reporting of permit violations in more than one quarter.

Response: These commenters are correct; the Agency is retaining this system in order to monitor resolution of the noncompliance. The previous rule and the final rule (§ 123.45(a)(2)(i)) require that facilities continue to be listed on the QNCR until the instance of noncompliance is shown on at least one QNCR as resolved. Thus, a permittee with Category I or Category II noncompliance could be listed on more than one QNCR. If the permittee had no additional violations, the first QNCR would show the permittee in noncompliance, and the second QNCR

could list the permittee as returned to compliance or resolved.

3. Reporting Noncompliance Which Involves Mitigating Factors

Comment: Several commenters expressed concern that the States and Regions might report instances of noncompliance that involved some extenuating circumstances. They recommended that EPA exclude specific instances of noncompliance from the QNCR such as violations of permit limits when the limits were set near the analytical detection limit and violations which were attributable to an excusable bypass or upset conditions.

Response: EPA believes that the regulation should include these instances of noncompliance in the QNCR but that mitigating circumstances should be evaluated on a case-by-case basis. The format of the QNCR allows the regulatory agency to explain any special circumstances. The permittee must meet any NPDES permit limit. The NPDES permit usually requires that the permittee notify the regulatory agency and submit a noncompliance report for any violation. At the same time, the permittee should advise the regulatory agency why the violation occurred and what has been done to resolve the instance of noncompliance. Where the regulatory authority is aware of special circumstances, it should explain these circumstances on the QNCR. These circumstances may affect the compliance status of the permittee, but EPA intends that all instances of noncompliance which meet the criteria for Category I or Category II noncompliance must be reported on the QNCR (see § 123.45(a)(1)(i)(A)). In using this approach, the regulatory agency can consider other mitigating factors which may relate to a violation. EPA noted earlier that it intended to consider this type of approach (48 *FR* 11840).

4. Only Reporting Noncompliance of Federally-Designated Major Permittees

Comment: One commenter wanted the Agency to make clear whether only permittees federally-designated as major permittees should be listed on the QNCR. Another commenter suggested that the Agency should track non-major permittees.

Response: The QNCR covers instances of noncompliance by major permittees. EPA maintains a list of major permittees. Some States use different definitions of major permittees or include more permittees on a list of majors. For purposes of the QNCR, EPA is interested in compliance information for Federally-designated major permittees. If States or Regions wish to include information on other permittees, it should be submitted in a companion report with the QNCR. Minor permittee compliance is covered in a separate annual report.

5. Generation of the QNCR From Automated Data Bases

Comment: Several commenters requested additional information about State and EPA use of an automated data base to prepare the QNCR.

Response: The Permit Compliance System (PCS) is the national data base for NPDES permit and compliance information. As discussed in the proposal, EPA has used this system to produce portions of the Quarterly Noncompliance Report (QNCR) and EPA Management Reports. States are strongly urged to use PCS directly. If States do not use PCS directly, the States must submit necessary information to EPA in a timely manner and in a form suitable for data entry (e.g., preprinted Discharge Monitoring Reports, through an interface). Instances of Category I noncompliance can be identified automatically for the QNCR. This automation would reduce the current manual reporting burden and promote reporting consistency nationwide.

C. Category I Noncompliance

The proposed rule included an Appendix A "Criteria for Noncompliance Reporting in the NPDES Program." This appendix was developed by the EPA Regional compliance managers and reviewed by States. Criteria were established for four types of violations which are readily-quantifiable: violations of enforcement orders, violations of compliance schedules, violations of effluent limits, and violations of reporting requirements. These violations, which are based on specific criteria, are Category I noncompliance. The previous regulation only specified criteria for violations of compliance schedules and reporting requirements (both 30 days).

1. Violations of Enforcement Orders

Comment: EPA proposed to require that any violation of an enforcement order, other than a violation of a compliance schedule or report, be listed on the QNCR. Two commenters stated that this exception is inconsistent with EPA's intent to closely track violations of enforcement orders.

Response: EPA disagrees and will continue to use distinct criteria for reporting (1) violations of compliance schedules (paragraph (a)(2)(ii)(B)), (2) violations of reporting requirements (paragraph (iii)(C)), and (3) all other violations of enforcement orders (paragraph (a)(2)(ii)(A)). In addition, all enforcement orders issued after October 1, 1985, will be considered as "current enforcement orders" and tracked in a special section of the QNCR as provided in § 123.45 (a)(2)(i)(B). When a permittee has failed to comply with the order issued before October 1, 1985, the permittee will also be tracked as a current enforcement order. EPA believes that these provisions will result in consistent tracking of compliance with enforcement orders.

EPA will encourage permittees to report progress in a timely fashion by listing permittees on the QNCR that have not submitted compliance schedule progress reports within 30 days of the due date. In this manner, EPA will closely monitor permittee progress as required by the compliance schedule.

2. Violations of Compliance Schedules—The 90 Day Threshold

Comment: Most comments on the July 23, 1984 proposal supported the criteria which only require reporting when a permittee has missed a compliance schedule milestone by 90 days instead of the 30 days in the previous rule. However, two commenters said that the 90 day period was too long for an instance of noncompliance with a final compliance date. Under the previous rule, 30 days was applied to violations of all compliance schedule requirements (including milestones and reports) regardless of the purpose of the compliance schedule.

Response: EPA does not believe that delays of less than 90 days in achieving compliance schedule milestones warrant listing on the QNCR. EPA intends that the 90 day period apply for all schedule milestones for constructing additional treatment facilities or for implementing new permit requirements. The 90 day criterion applies to schedules established in an enforcement order or in a permit. EPA will encourage Regions and States to establish construction schedules which include dates, as a minimum, for starting construction, completing construction, and attaining operational levels (final compliance). Violations of these milestones by 90 days or more will be tracked as instances of Category I noncompliance because they will occur in all construction schedules. Violation of all other compliance milestones by 90 days or more must also be reported. However, because the number and types of milestones will vary with the compliance requirements and the schedule, these other violations will be reported as instances of Category II noncompliance. States and Regions

should be sure that the enforcement orders contain at least one enforceable schedule milestone for every six month period of the schedule.

3. Violation of Compliance Schedules—Acceptable Progress

Comment: Two commenters stated that the concept of acceptable progress used to evaluate compliance schedule violations by Federally-funded POTWs should also apply to non-municipal permittees.

Response: In the final rule, EPA has dropped the definition of acceptable progress. Instead all compliance schedule violations which persist for 90 days or longer must be listed, regardless of the type of permittee. EPA believes that this definition is easier for the regulatory agency to apply and understand than the more subjective term "acceptable progress". In addition, EPA has stated in its National Municipal Policy that POTWs are required to comply with their permit as soon as possible but not later than July 1, 1988, and that compliance with construction schedules should not be based on the availability of Federal funds.

4. Reporting Violations

Comment: Most commenters supported the proposal to report delinquent Discharge Monitoring Reports (DMRs) on the QNCR when delinquent by 60 days as opposed to the 30 day period in the previous rule. However, one commenter expressed concern because he believes that submitting self-monitoring data is the foundation of the NPDES program and that the proposal would undermine the requirements for timely reporting. One approved NPDES State also noted that the change to 60 days would mean that a DMR reporting violation which occurred in the last month of the quarter, would not be shown on the QNCR until the following quarter. This is because a QNCR must be prepared and submitted by States and EPA Regions to EPA Headquarters within 75 days after the quarter ends. Routinely, DMRs for the last month of the quarter must be submitted to the permit issuing agency (State or EPA Region) within 30 days after the quarter ends. Based on the proposed rule, a DMR would be considered overdue 60 days after the due date or 90 days after the end of the quarter. That date is 15 days after the QNCR should be submitted.

Response: EPA agrees that timely submission of self-monitoring data and other reports is important. EPA also wants to encourage the reporting of delinquent reports on the QNCR in the quarter the violation occurs. EPA believes that the shorter time period will encourage permittees to submit DMRs and other reports to the regulatory agency on schedule. Therefore, EPA will retain the 30 day period in the existing rule as recommended. This 30 days applies to all reports required by the permit and compliance schedules issued in conjunction with permits.

For program management purposes, EPA will classify POTW pretreatment reports (e.g., annual status reports and removal credit reports), DMRs and the compliance schedule progress report for attaining an operational level or final compliance which are delinquent by 30 days or more as an instance of Category I noncompliance. All other reports required by the permit or compliance schedule which are late by 30 days or more will be called Category II noncompliance.

5. Violations of Monthly Average Permit Limits

The proposed rule states that EPA believes that violations of effluent limits should be reported if they exceed the permit limit by a certain magnitude and/or occur at certain frequencies. EPA proposed criteria for monthly average violations that were: (1) Chronic, four exceedances of a monthly average in a six month period, regardless of the magnitude of the violation, and (2) based on both magnitude of the violation and its frequency of occurrence (twice in a six month period) (referred to as Technical Review Criteria). Two TRCs were proposed: 1.4 times the permit limit for Group I pollutants and 1.2 times the permit limit for Group II pollutants (see Appendix A).

a. Groups of Pollutants

Comment: One commenter noted that the list of parameters in Appendix A is incomplete.

Response: Appendix A included tables which showed the Technical Review Criteria for the two groups of pollutants. Group I includes mostly conventional types of pollutants and Group II other types of toxic and nonconventional pollutants. A detailed list was not included in the proposal because there are over eight hundred different parameters which may have permit limits and it was expected that new parameters may be added from time to time. Instead, EPA provided a list of general types of pollutants for each group. EPA will provide a detailed list to the States and Regions in guidance for preparing the QNCR. Several parameters were not included in either group because their evaluation would be based on water quality or public health concerns which are site specific. These parameters include pH, color, temperature, dissolved oxygen, pathogenic organisms and fecal coliform, and would be listed when appropriate as Category II noncompliance. Total residual chlorine was included in Group II because EPA has special concerns about exceedances of chlorine limitations.

b. Magnitude and/or Duration

Comment: EPA received several comments on the proposed criteria for defining monthly average effluent violations which must be reported on the QNCR (49 FR 29723, Appendix A). Most commenters expressed support for the concept that criteria for reporting effluent violations should be based on the magnitude and/or duration of the violation. However, some commenters urged that the EPA consider a statistical basis for establishing the frequency and magnitude criteria. These commenters provided data on the statistical estimates of variability associated with different analytical measurements, monitoring frequencies, and number of parameters in the permit. They then suggested that EPA use these different reporting thresholds in lieu of the proposed technical review criteria. Other commenters suggested that there was no basis for setting any reporting thresholds above the actual permit limits.

Response: EPA acknowledges that a variety of valid bases could have been used to set thresholds for mandatory reporting. EPA has previously used a TRC as part of the Enforcement Management System guide to identify violations that need technical review. EPA chose the TRCs to provide simple criteria that could be applied to effluent data without requiring additional information on production levels, monitoring frequencies, analytical methods, or the basis for the limit. In addition, EPA performed further analysis of the relationship of the TRC to absolute compliance in order to develop a recommendation for the statistical summary (50 FR 3494). As a result, EPA believes that the TRC can be used to prepare the QNCR and that it will provide useful and verifiable information.

EPA has reviewed the suggestions of commenters for establishing statistically-based criteria. The suggestions included developing equations that would require extensive data on such factors as the variability associated with sample collection, sample analysis, and treatment plant operation for each discharge by a

permittee. In most cases, the data required to apply the statistical criteria are not available for each permittee. EPA does not believe that the time and effort that would be required for permittees to develop this information and for the regulatory agencies to evaluate it, will improve the quality of the QNCR.

Like all changes from the previous QNCR rule, these multiplier thresholds do not create new permit limits. The only purpose of these thresholds is to moderate reporting burdens while still providing enough information to evaluate the vitality of State and Regional enforcement activities. EPA believes that the proposed criteria are easier to apply to all violations and easier for the public and permittee to understand than any of the suggestions offered by commenters. Therefore, we have maintained the criteria for reporting chronic and TRC violations in the final rule.

One commenter inquired about the relationship between a "well-operated treatment plant"' and the technical review criteria. EPA intends no relationship between the TRC thresholds for effluent violations and the notion that a "well-operated treatment plant" varies somewhat in performance and may exceed its permit limit some percent of the time. The TRC is merely a criterion that defines effluent violations which must be reported on the QNCR. EPA used the concept of a "well-operated treatment plant" to establish some regulatory limits for the Best Available Technology Economically Achievable (BAT) (see examples 48 FR 32469 and 48 FR 11839) that ensure that the plant operates and maintains the proper technology. Variations in measurements due to analytical methods, treatment system operation, and other sources inherent in this data set, are already considered in the development of the BAT limitation. In fact, EPA noted that "sound regulatory policy dictates that [BAT] levels be chosen that lessen the necessity for analytical disputes without setting the limits so high that inadequate treatment is allowed" (48 FR 11839). The TRC is not intended to be an additional allowance for variability in treatment or effluent monitoring, rather it represents one characteristic (magnitude) of effluent violations which EPA considers to be of concern and serves as a threshold for mandatory reporting of effluent violations.

D. Category II Noncompliance

On January 24, 1985 (50 FR 3494), EPA noted that Category I violations were based on objective criteria and easily set to ensure more consistent, uniform reporting. The Agency recognized that Category I did not include other potentially important violations of permit conditions because of the difficulty in developing quantifiable definitions or thresholds. EPA proposed making such violations a separate category for reporting purposes (Category II) and provided examples of Category II violations.

1. Definition and Need for Consistency

Comment: A number of commenters expressed concerns over language which allowed States to use discretion to report other instances of noncompliance in Category II. They noted that discretion would cause inconsistencies and should be avoided or eliminated. Another commenter noted that EPA had not properly defined examples that would fit in this second category.

Response: EPA stated in the proposal and continues to believe that States should have the ability to add any instances of noncompliance which they believe are of concern and maintains this system in § 123.45(a)(2)(iii)(G). EPA is also interested in establishing consistency. After reviewing comments, the final rule was reorganized to provide examples of Category II noncompliance and to clarify that the reporting of instances of noncompliance which fit these examples is mandatory. Category II noncompliance includes violations which have the potential or have actually caused an adverse water quality impact, and other violations which are of concern. EPA believes that both categories of noncompliance are important and must be reported. EPA will maintain the consistency of the QNCR statistics by requiring that the reporting agency identify the subparagraph which is the primary basis for listing the instances of noncompliance.

2. Violations Which May Have Adverse Water Quality or Human Health Impacts—Spills

Comment: One commenter believed that spills should be related to reportable quantities specified under section 311 if they were to be reported on the QNCR.

Response: This commenter inferred that EPA's concern over spills of carcinogenic, radioactive, or mutagenic substances is tied to violations of section 311 of the Clean Water Act. It is not EPA's intention to limit the universe of violations reportable under § 123.45(a)(2)(iii)(A) of the final rule to spills, and thus, the Agency has removed this specific language concerning spills that was in the proposal. Any discharge or spill which constitutes an NPDES violation and may have an adverse water quality or human health impact should be reported under this provision.

3. Oil Sheens and Other Violations Which May Have Adverse Human Health Impact

Comment: One commenter indicated that the example "oil sheens" was not appropriate for listing on the QNCR because of the de minimus impact on the environment.

Response: For the purposes of section 311(b) an "observable oil sheen" has been determined to be harmful and thus EPA will retain this example under Category II. EPA will also add to the examples, violations which may cause beach closings, public health warnings or restrict beneficial uses such as contact recreation, drinking water, or consumption of fish and shellfish.

4. Pretreatment Violations

Comment: Several commenters expressed concern over the limited information that the proposed rule would require for violations of pretreatment requirements. It was suggested that the QNCR should be used to track other violations by industrial users such as violations of categorical standards, local pretreatment standards, and reporting requirements.

Response: The QNCR is prepared from Discharge Monitoring Reports and other information which relates to major permittees. EPA is currently developing guidance for reporting and evaluating pretreatment violations. The immediate concerns of EPA regarding pretreatment are the development, approval, and implementation of POTW pretreatment programs, POTW permit violations which may be related to inadequate industrial pretreatment, and industrial user violations of Federal standards.

Where the NPDES permit contains the requirements for a major permittee to develop and implement a local pretreatment program, violations of these requirements can be tracked as an instance of noncompliance in the QNCR. Violations of pretreatment requirements by indirect discharges could be reported to a control authority (a major POTW permittee) and in turn to a State or EPA Regional Approval Authority. EPA does not believe that the QNCR can adequately track violations of pretreatment requirements by indirect dischargers as they are not NPDES permittees. However, where such violations are known to have occurred and the regulatory agency believes they

are related to Category I or Category II noncompliance by the POTW permittee, the name and violation of the industrial user should be shown under comments related to the permit violation.

The final rule will require that POTW violations of pretreatment requirements be reported as Category II noncompliance. However, EPA wants its Regions and NPDES States to include delinquent POTW annual reports as Category I noncompliance (using the criterion of 30 days). EPA will issue guidance on how to evaluate POTW compliance for other pretreatment requirements.

F. Additional Narrative Reporting

The proposal for a second tier of narrative reporting was intended to evaluate the effect of the Technical Review Criteria.

Comment: Several commenters thought that this requirement would be burdensome to the reporting agency.

Response: EPA agrees and believes that further subdivision and categorization of instances of noncompliance would be administratively complex and unnecessarily confusing. Therefore, the final rule does not include a second tier of narrative reporting.

G. Statistical Summary

The proposed rule included four options for revising the statistical summary of other instances of noncompliance by major dischargers. The existing regulations (48 *FR* 14146) require that all instances of noncompliance not otherwise identified on the QNCR be reflected in the statistical summary. On January 24, 1985, EPA presented a summary of its analysis of the four options. EPA proposed to define the criteria as two or more violations of the same monthly average limit by any amount in a six month period and require the report twice each year.

Comment: Several commenters suggested that the statistical summary may be of limited value and that it may be difficult to generate without automated data systems. Another commenter objected to limiting the instances of noncompliance that would be included in the statistical summary. They also indicated the name should not be changed from a statistical summary to a numerical summary.

Response: EPA believes that the revised statistical summary will provide useful information for determining trends and studying patterns of noncompliance with only a marginal increase in resource burdens. EPA explained in the January 24, 1985 notice that the statistical (numerical) summary would assist the Agency in conducting mid-year reviews of NPDES State enforcement activities and that it could be used to evaluate the Category I criteria. EPA is currently working with States and Regions to enter all DMR data into the Permit Compliance System (PCS, the National NPDES data base). Currently, some States are entering data into PCS. In those cases, EPA Headquarters can obtain the statistical summary directly from PCS and no separate statistical summary report will be required from the State or EPA Region.

IV. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation does not satisfy any of the criteria specified in section (b) of the Executive Order and, as such, does not constitute a major rulemaking. This regulation was reviewed by the Office of Management and Budget.

V. Paperwork Reduction Act

The information collection requirements contained in this rule was approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control Number 2040–0082.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's final rule will have no effect upon small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that this final rule will not have a significant impact on a substantial number of small entities

List of Subjects in 40 CFR Part 123

Hazardous materials, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Penalties, Confidential business information.

Dated: August 8, 1985.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Chapter I, Part 123 is amended as follows:

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for Part 123 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 123.45 is amended by revising the introductory text and paragraph (a), redesignating paragraphs (b) and (c) as (c) and (d), adding a new paragraph (b), adding a new OMB control number, and adding Appendix A to the section as follows:

§ 123.45 Noncompliance and Program Reporting by the Director.

The Director shall prepare quarterly, semi-annual, and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit all reports required under this section to the Regional Administrator, and the EPA Region in turn shall submit the State reports to EPA Headquarters. When EPA is the permit-issuing authority, the Regional Administrator shall submit all reports required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major permittees as follows:

(1) *Format.* The report shall use the following format:

(i) Provide a separate list of major NPDES permittees which shall be subcategorized as non-POTWs, POTWs, and Federal permittees.

(ii) Alphabetize each list by permittee name. When two or more permittees have the same name, the permittee with the lowest permit number shall be entered first.

(iii) For each permittee on the list, include the following information in the following order:

(A) The name, location, and permit number.

(B) A brief description and date of each instance of noncompliance for which paragraph (a)(2) of this section requires reporting. Each listing shall indicate each specific provision of paragraph (a)(2) (e.g., (ii)(A) thru (iii)(G)) which describes the reason for reporting the violation on the quarterly report.

(C) The date(s), and a brief description of the action(s) taken by the Director to ensure compliance.

(D) The status of the instance(s) of noncompliance and the date noncompliance was resolved.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance by major dischargers to be reported—(i) General.* Instances of noncompliance, as defined in paragraphs (a)(2)(ii) and (iii) of this section, by major dischargers shall be reported in successive reports until the noncompliance is reported as resolved (i.e., the permittee is no longer violating the permit conditions reported as noncompliance in the QNCR). Once an instance of noncompliance is

reported as resolved in the QNCR, it need not appear in subsequent reports.

(A) All reported violations must be listed on the QNCR for the reporting period when the violation occurred, even if the violation is resolved during that reporting period.

(B) All permittees under current enforcement orders (i.e., administrative and judicial orders and consent decrees) for previous instances of noncompliance must be listed in the QNCR until the orders have been satisfied in full and the permittee is in compliance with permit conditions. If the permittee is in compliance with the enforcement order, but has not achieved full compliance with permit conditions, the compliance status shall be reported as "resolved pending," but the permittee will continue to be listed on the QNCR.

(ii) *Category I noncompliance.* The following instances of noncompliance by major dischargers are Category I noncompliance:

(A) Violations of conditions in enforcement orders except compliance schedules and reports.

(B) Violations of compliance schedule milestones for starting construction, completing construction, and attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or a permit.

(C) Violations of permit effluent limits that exceed the Appendix A "Criteria for Noncompliance Reporting in the NPDES Program".

(D) Failure to provide a compliance schedule report for final compliance or a monitoring report. This applies when the permittee has failed to submit a final compliance schedule progress report, pretreatment report, or a Discharge Monitoring Report within 30 days from the due date specified in an enforcement order or a permit.

(iii) *Category II noncompliance.* Category II noncompliance includes violations of permit conditions which the Agency believes to be of substantial concern and may not meet the Category I criteria. The following are instances of noncompliance which must be reported as Category II noncompliance unless the same violation meets the criteria for Category I noncompliance:

(A) (*1*) Violation of a permit limit;

(*2*) An unauthorized bypass;

(*3*) An unpermitted discharge; or

(*4*) A pass-through of pollutants which causes or has the potential to cause a water quality problem (e.g., fish kills, oil sheens) or health problems (e.g., beach closings, fishing bans, or other restrictions of beneficial uses).

(B) Failure of an approved POTW to implement its approved pretreatment program adequately including failure to enforce industrial pretreatment requirements on industrial users as required in the approved program.

(C) Violations of any compliance schedule milestones (except those milestones listed in paragraph (a)(2)(ii)(B) of this section) by 90 days or more from the date specified in an enforcement order or a permit.

(D) Failure of the permittee to provide reports (other than those reports listed in paragraph (a)(2)(ii)(D) of this section) within 30 days from the due date specified in an enforcement order or a permit.

(E) Instances when the required reports provided by the permittee are so deficient or incomplete as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(F) Violations of narrative requirements (e.g., requirements to develop Spill Prevention Control and Countermeasure Plans and requirements to implement Best Management Practices), which are of substantial concern to the regulatory agency.

(G) Any other violation or group of permit violations which the Director or Regional Administrator considers to be of substantial concern.

(b) *Semi-Annual Statistical Summary Report.* Summary information shall be provided twice a year on the number of major permittees with two or more violations of the same monthly average permit limitation in a six month period, including those otherwise reported under paragraph (a) of this section. This report shall be submitted at the same time, according to the Federal fiscal year calendar, as the first and third quarter QNCRs.

* * * * *

(Approved by the Office of Management and Budget under Control Number 2040–0082)

Appendix A to § 123.45—Criteria for Noncompliance Reporting in the NPDES Program

This appendix describes the criteria for reporting violations of NPDES permit effluent limits in the quarterly noncompliance report (QNCR) as specified under § 123.45(a)(2)(ii)(c). Any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is liable. An agency's decision as to what enforcement action, if any, should be taken in such cases, will be based on an analysis of facts and legal requirements.

Violations of Permit Effluent Limits

Cases in which violations of permit effluent limits must be reported depend upon the magnitude and/or frequency of the violation. Effluent violations should be evaluated on a parameter-by-parameter and outfall-by-outfall basis. The criteria for reporting effluent violations are as follows:

a. Reporting Criteria for Violations of Monthly Average Permit Limits—Magnitude and Frequency

Violations of monthly average effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the effluent limit, and occur two months in a six month period must be reported. TRCs are for two groups of pollutants.

Group I Pollutants—TRC=1.4
Group II Pollutants—TRC=1.2

b. Reporting Criteria for Chronic Violations of Monthly Average Limits

Chronic violations must be reported in the QNCR if the monthly average permit limits are exceeded any four months in a six-month period. These criteria apply to all Group I and Group II pollutants.

Group I Pollutants—TRC=1.4

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Total Organic Carbon
Other

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Other

Nutrients

Inorganic Phosphorus Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils

MBAS
NTA
Oil and Grease
Other detergents or algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

Group II Pollutants—TRC=1.2

Metals (all forms)

Other metals not specifically listed under Group I

Inorganic

Cyanide
Total Residual Chlorine

Organics

All organics are Group II except those specifically listed under Group I.

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federal register

Monday
August 26, 1985

Part VI

Department of Energy

48 CFR Part 902 et al.
Acquisition Regulation; Miscellaneous Amendments; Proposed Rule

DEPARTMENT OF ENERGY

48 CFR Parts 902, 904, 913, 915, 917, 919, 925, 952, 970, and 971

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule is to amend the Department of Energy Acquisition Regulation (DEAR) to clarify certain policies and to reflect current procedures. These amendments concern updating documentation, use of standard and optional forms instead of Departmental forms, updating Source Evaluation Board (SEB) procedures, expanding existing guidance on interagency acquisition, prenegotiation objectives, price negotiation memorandum, clarification and guidance regarding the small business subcontracting program, instructions for construction contracts, and updating solicitation provisions and contract clauses.

DATE: Written comments should be submitted no later than September 25, 1985.

ADDRESS: Comments should be addressed to the Department of Energy, Procurement Policy Branch, Pamela Bolling, MA–421.1, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Pamela Bolling, Procurement Policy Branch, (MA–421.1), Procurement and Assistance Management Directorate, Washington, D.C. 20585, (202) 252–B251

Paul J. Sherry, Office of the AGC for Procurement and Financial Incentives, GC–43, Washington, D.C. 20585, (202) 252–1526

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
  A. Review Under Executive Order 12291
  B. Review Under the Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. National Environmental Policy Act
  E. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of the Department is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the Department of Energy Acquisition Regulation (DEAR) was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The purpose of this rulemaking is to revise the DEAR, as necessary, to conform with the Federal Acquisition Regulation (FAR) which is codified at 48 CFR Chapter 1. As a result, the following are affected: Correction to section 902.100, "Definitions." Subsection 904.601–70, "Procurement and Assistance Data System (PADS)," is revised. A new subsection 913.505–1, "Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation" is added and 913.505–2, "Agency order forms in lieu of Optional Forms 347 and 348," is removed. Subpart 915.6 "Source Selection", is revised to add a new section 915.608, "Proposal evaluation," to increase the threshold of applicability from $5 million to $10 million and exempt certain types of actions in section 915.612, "Formal source selection" and 915.613 "Alternative source selection procedures," respectively. Revise section 917.504, "Ordering procedures" and subsection 917.505–70, "Methods of financing employed by DOE" and 917.505–71, "Cost reimbursement standards." Section 919.501, "General" is revised. A new Subpart 919.6, "Certificates of Competency and Determinations of Eligibility" is added. A new subsection 919.705–2, "Determining the need for a subcontracting plan" is added; and subsection 919.705–5, "Awards involving subcontracting plan" is revised. Subpart 925.2, "Buy American Act—Construction Materials" is revised to add a new section 925.205, "Solicitation provision and contract clause." Subsections 925.204–2, "Security requirements," 952.209–72, "Organizational conflicts of interest—special clause," 952.212–70, "Rated or authorized controlled material orders for energy programs," 952.212–71, "Priorities, allocations, and allotments for energy programs," are revised. Subsection 952.219–9, "Small business and small disadvantaged business subcontracting plan" is revised to clarify submission of standard form. A new 952.225–70," Buy American Act Notice," is added. Subsection 970.0404–4, "Contract clauses," is revised. Subpart 970.19, "Small Business and Small Disadvantaged Business Concerns," is amended to revise section 970.1901, "General." A new subsection 970.5204–4, "Additional work, defense classified/unclassified," is added. Subsection 970.5204–13, "Allowable costs and fixed-fee (CPFF management and operating contracts)," 970.5204–22, "Contractor procurement," and 970.5204–33, "Priorities, allocations and allotments" are revised. Section 971.103, "Documentation submittals" is revised.

II. Procedural Requirements

A. Review Under Executive Order 12291

Inasmuch as this proposed rule relates to agency management of the procurement function, the OMB clearance procedures set forth in Executive Order 12291 (February 17, 1981) and OMB Circular 85–7 (December 17, 1984) are not applicable.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services or other direct economic factors. It will not have any indirect economic consequences such as stimulating or retarding new construction either. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this proposed rulemaking. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), or OMB's implementing regulations at 5 CFR Part 1320.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 432 *et seq.* 1976), or the Council on Environmental Quality regulations (40 CFR Parts 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to

Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice.

All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

List of Subjects in 48 CFR Parts 902, 904, 913, 915, 917, 919, 925, 952, 970 and 971

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on August 16, 1985.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 902—[AMENDED]

1. The authority citation for Part 902 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

2. Section 902.100 is amended by revising paragraph (e) of the "Procurement Executive" definition; and, by revising the definition for the "Senior Program Official" to read as follows:

902.100 Definitions.

* * * * *

(e) Exercise priorities authority on behalf of the agency, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, *et seq.*), Defense Priorities and Allocations System Delegation 2, dated June 21, 1984, and applicable policies and regulations; and the Energy Conservation and Policy Act, Pub. L. 94–164.;

* * * * *

"Senior Program Official" is any of the individuals appointed as Assistant Secretaries or Directors of DOE staff offices.

PART 904—[AMENDED]

3. The authority citation for Part 904 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

4. Subsection 904.601–70 is amended by revising paragraph (b)(3)(ii) to read as follows:

904.601–70 Procurement and Assistance Data System (PADS).

* * * * *

(b) * * *

(3) * * *

(ii) On a summary basis, by completion and submission of Standard Form 281, FPDS—Summary of Contract Actions of $10,000 or less. Summary reports shall be submitted within 25 calendar days after the end of each Federal fiscal quarter.

* * * * *

PART 913—[AMENDED]

5. The authority citation for Part 913 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

6. Subpart 913.5 is amended by adding a new subsection 913.505–1 and removing subsection 913.505–2. As revised, Subpart 913.5 reads:

Subpart 913.5—Purchase Orders

913.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

(a)(2) Optional Forms 347 and 348 shall be used for purchase orders using small purchase procedures. The form shall not be used as the contractor's invoice.

(b)(2) The addendum of applicable clauses, DOE Supplement 319 as provided to contracting activities by the Office of Policy, Procurement and Assistance Management Directorate, shall be used with each Optional Form 347.

PART 915—[AMENDED]

7. The authority citation for Part 915 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

8. Subpart 915.6 is amended by adding a new section 915.608. Section 915.612 is amended by revising paragraph (a) and adding a new paragraph (b); the existing paragraph 915.612(b) is redesignated as paragraph 915.612(g); paragraphs 915.612(c)(1) through (3) are redesignated as paragraphs 915.608(c)(1) through (3); paragraph 915.612(d) is redesignated as paragraph 915.608(c)(4); paragraph 915.612(e) is revised and redesignated as paragraph 915.612(h) and paragraph 915.612(q) is redesignated as paragraph 915.608(d). Section 915.613 is amended by revising the existing paragraph. Section 915.608, as added, and sections 915.612 and 915.613, as revised, read as set forth below:

Subpart 915.6—Source Selection

915.608 Proposal evaluation.

(c) In selections other than where price is the determining factor, the evaluation procedures set forth in (c)(1), (2), and (3) below should be considered.

(1) *Technical evaluation.* Generally, the contracting officer must rely on scientific and engineering personnel for assistance in reviewing proposals from a technical point of view. It is imperative, therefore, that technical evaluations and findings be fully documented and reviewed by responsible personnel. The report shall reflect the scoring and ranking of the proposals. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal shall be included. After evaluation and preparation of written and signed evaluation findings by the technical evaluators, such evaluations and proposals shall be returned to the contracting officer or authorized representative, and maintained as a permanent record in the contract file.

(2) *Business and management evaluation.* Management capabilities of the offeror to perform the required work in a timely manner must be appraised. In making this appraisal, the following factors, as appropriate, and as stated in the solicitation must be considered: the company's management organization; past performance; reputation for reliability; availability of required facilities; cost controls; ability to control, maintain, and account for any property provided by the Government; the offeror's willingness to devote its resources to the proposed work with appropriate diligence; and other pertinent administrative and business information that may have been requested in the solicitation, such as certifications and representations.

(3) *Price/cost determinations.* Each proposal requires some form of price/cost analysis. The evaluation should consider items such as categories and amounts of labor, indirect costs,

materials, travel, computer time, as well as information with regard to the contractor's past cost performance, including contracts or subcontracts for like services or supplies. The contracting officer must exercise judgment in determining the extent of analysis in each case and any desire to obtain assistance from personnel trained in this discipline.

(4) *Advisors.* Personnel from the DOE, other Government agencies, consultants, and contractors including those who operate or manage Government-owned facilities may be used in the evaluation process as advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are used as advisors, approval and disclosure procedures as required by 927.7000 shall be followed. In all instances, such personnel will be required to comply with DOE conflict of interest regulations and nondisclosure of information requirements.

(d) Revised proposals are evaluated, selection is made, and negotiations may be conducted with the selected offeror but only to definitize a final agreement on price, terms, and conditions, etc. No factor which could have had any effect on the selection process may be changed after the common cut-off date for discussions.

915.612 Formal source selection.

(a) Formal source selection procedures apply to those negotiated competitive acquisitions of $1 million through $10 million (unless the Procurement Executive determines that the provisions of 915.613 are applicable), and to those negotiated competitive acquisitions in excess of $10 million that are not subject to the provisions of 915.613. Acquisitions of less than $1 million will be conducted using less formal source evaluation and selection procedures.

(b) Notwithstanding FAR 15.612(b) the contracting officer shall perform the functions relating to the source selection authority without need for formal appointment unless a determination is made to designate some other official as the source selection authority. Any such designation shall be made only with the approval of the Procurement Executive.

(g) The contracting officer may form teams to evaluate the technical, business and management, and cost aspects of proposals. When teams are used, each will function independently of the other and report its findings to the contracting officer. When it is necessary to obtain the services of advisors to assist in the evaluation process, the procedures set forth in 915.608(c)(4) will be used. The contracting officer will discuss those findings with the teams (or representatives thereof) separately or together, as may be more helpful. The contracting officer will negotiate and execute the contractual instrument, using, in many cases, some of the same specialists who participated in earlier evaluations and discussions. Part 971 sets forth administrative requirements for the review and approval of certain contract actions.

(h) It is within the discretion of the Source Selection Official to select multiple offerors from those within the competitive range for negotiation and to direct that discussions be reopened with those offerors and that best and final offers be obtained on the basis of fully definitized contract documents executed by the offerors. The contracting officer should seek correction of each offeror's correctable weaknesses using only technical and other information which the Government is entitled to use for this purpose. At the conclusion of discussions, a final common cut-off date which allows a reasonable opportunity for submission of best and final offers shall be established and all participants notified.

915.613 Alternative source selection procedures.

Source Evaluation Board (SEB) procedures shall be used for all negotiated competitive prime acquisitions expected to exceed $10 million, except acquisitions for architect-engineer services, fixed-price acquisitions and acquisitions for which selections will be based solely on a published predetermined formula or on lowest price, and acquisitions specifically waived by the Procurement Executive. The appropriate procedures i.e., construction, architect-engineer, sealed bidding, etc., shall be used for those acquisitions in excess of $10 million that are not subject to this section. Guidance regarding the designation and operation of an SEB is set forth in the Acquisition Regulations Handbook—Source Evaluation Board (DOE/MA-0154). The source selection official shall be as determined by the applicable DOE directive.

9. Subpart 915.8 is amended by adding a new section 915.807 and by adding a new paragraph (a) and subparagraphs (11) through (15) to section 915.808 to read as follows:

Subpart 915.8—Price Negotiation

915.807 Prenegotiation objectives.

(d) The Head of the Contracting Activity shall assure that all prenegotiation objectives and proposed actions are documented in accordance with the requirements of FAR 15.807 and this 915.807. The degree of documentation should be commensurate with the complexity and dollar value of the procurement. For those procurement actions of $250,000 and above the contracting officer shall prepare a written prenegotiation plan which shall include prenegotiation objectives for price and other contract requirements, as appropriate. The prenegotiation plan required by this section shall be included as section I of the price negotiation memorandum at 915.808. The prenegotiation plan should include, to the extent applicable, the information cited below.

Prenegotiation Plan

(1) *General.*

(a) Procurement request number, and solicitation number, and contract number.

(b) Contractor(s) involved in the negotiation. Include address and location where effort is to be performed.

(c) Brief description of the work to be performed. (Reference to statement of work is not sufficient)

(d) Type of solicitation (RFP, PON, PRDA, etc.) pursuant to type of contract being awarded.

(e) Period of performance/delivery schedule.

(f) Proposed funding schedule for term of contract.

(2) *Prior Procurement History.*

(a) Names of previous contractors, if previous awards made for same or similar work to be performed.

(b) Contract number(s) and date(s) of award.

(3) *Solicitation data.*

(a) Summary of selection process used, including number of firms solicited, proposals received, competitive range, name of selection official if SEB was used.

(b) If noncompetitive, basis for approval and name and title of person approving the justification.

(c) Discuss what considerations were given to socio-economic requirements.

(4) *Advisory reports.* Identify, by title, and date, the advisory reports received in support of the negotiations, i.e., audit reports, technical evaluation reports, cost or price analysis reports, and any other advisory reports used in preparing the prenegotiation objectives.

(5) *Pricing objectives.*

(a) A schedule showing the elements of the proposer's cost proposal, recommended adjustments (auditor, technical evaluation, etc), and the negotiator's pricing objectives in columnar form.

(b) Discussion of how previous procurements impact the pricing objectives of the instant procurement.

(c) Appropriate comments justifying the negotiation objective for each element of cost. In discussing the DOE's objectives indicate the position of advisory reports, if

requested, and the proposed treatment of such advice/comments.

(d) The extent of subcontracting; justification for subcontract price(s) provided by the prime contractor and the justification as viewed by the DOE negotiator.

(e) Discussion of whether and to what extent, negotiation will be based on actual costs expended.

(f) Discussion of any special pricing techniques and the rationale for their use.

(g) Discussion of how the DOE's objective for fee and profit was established, including a copy of the weighted guideline analysis, if used. For construction contracts and construction management contracts; discuss how the profit or fee objective was established in accordance with the requirements of 915.971.

(h) Discussion of incentive arrangements, cost or technical, if applicable (i.e., share ratios, ceiling price, minimum/maximum fees).

(i) Discussion of the treatment given to facilities capital cost of money, if applicable, in establishing the fee/profit objective.

(j) A summary statement regarding the reasonableness of the total price objective and appropriate discussion of the considerations used to determine the reasonableness of price.

(6) *Other issues and factors.*

(a) Discuss any proposed special provisions.

(b) Identify any anticipated deviations to regulations and the required approvals.

(c) Identify any unusual features of the Statement of Work.

(d) If applicable, identify any solicitation provisions which have been challenged by the offeror.

(e) Indicate if the Consolidated List of Debarred, Suspended, and Ineligible Contractors has been reviewed.

(f) Discussion of whether the contractor has an approved purchasing and accounting system.

(g) Discuss any unique or peculiar features of the contract; e.g., cost sharing, facility ownership, options, etc.

(h) Discuss any deviations to regulations or exceptions suggested by offeror and discuss proposed disposition.

(i) Discuss any results of pre-award surveys of the bidder's/offeror' sfinancial, accounting and other management systems.

915.808 Price negotiation memorandum.

(a) The Head of the Contracting Activity shall assure that all contract actions are adequately documented and shall establish internal review requirements therefore. While documentation may be simplified for lesser dollar value acquisitions, the basic requirement for documenting prenegotiation objectives and negotiation summaries shall be maintained in order to promote the discipline of adequate preparation for negotiations and supervisory review. For acquisitions of $250,000 and above the price negotiation memorandum (PNM) shall be divided into two major sections: Section I, the prenegotiation plan and Section II, the post negotiation summary. The prenegotiation plan prepared in accordance with 915.807 shall document the negotiation objectives established prior to the start of formal negotiations. The post negotiation summary shall discuss the results of the negotiations leading to a final agreement, and in a general sense provide the results of the negotiation in terms of the extent to which prenegotiation objectives were met. In addition to the items listed at FAR 15.808 the following shall also be addressed in the PNM.

(11) Date and location of negotiations.

(12) Discussion of any issues raised during negotiations that were not addressed in the prenegotiation position.

(13) In the event the pricing or other contract terms cannot be justified to the satisfaction of the contracting officer but award is recommended because of compelling programmatic considerations, the PNM must fully document the efforts to obtain a more satisfactory agreement, including the extent to which the matter was escalated within DOE and the contractor's organization. The file must also show what consideration was given to alternate sources or other short or long term alternatives (See FAR 15.803(d)).

(14) Indicate the date on which agreement was reached on the price, and the date of the certificate of current cost or pricing data was signed, if applicable.

(15) Explain why the total price or estimated cost and fee are considered fair and reasonable if there was significant departure from the prenegotiation objectives.

* * * * *

PART 917—[AMENDED]

10. The authority citation for Part 917 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

11. Subpart 917.5 is amended by revising section 917.504 by removing paragraph (b) and inserting a new paragraph (b); by removing subparagraphs 917.504(b) (1) through (6) and inserting a new subparagraph 917.504(b) (6) through (14); revise 917.505-70 by completely revising the title and text; and by revising 917.505-71 by removing paragraphs (b) and (c) and inserting new paragraphs (b) through (e). Sections 917.504 and 917.505-70 are revised; § 917.505-71 is amended by revising paragraphs (b) and (c) and adding paragraphs (d) and (e) to read as follows:

Subpart 917.5—Interagency Acquisition Under the Economy Act

917.504 Ordering procedures.

(b) The DOE Form 1270.1, Order for an Interagency Acquisition, shall be used for an interagency acquisition. The order shall include an attachment, if necessary, addressing as a minimum the items listed at FAR 17.504(b) and the following:

(6) The parties to the interagency acquisition.

(7) Order number and/or modification number.

(8) Period covered by the interagency acquisition or duration of the order.

(9) Cost estimate of the project or order and the amount of funds to be provided by DOE including (i) the total estimated cost of the work for the period of time specified in the order; (ii) the capital equipment, if any, approved for acquisition under the acquisition; and (iii) limitations, if any, on the reimbursement of costs by DOE. If DOE participates with another agency or agencies in sponsoring a project, the amount of contribution to be made by each agency and the basis for distributing the costs incurred shall be specified.

(10) Termination provisions that allow the DOE to terminate the order upon 30 days written notice to the servicing agency. In the event of a termination, the DOE may reimburse the servicing agency for costs actually incurred to the effective date of termination and for any commitments extended beyond the termination date (but not exceeding the expiration date of the order) that the servicing agency is unable to cancel.

(11) Appropriate patent provisions which recognize DOE's mission of achieving widespread availability and competitive commercial utilization of the benefits of DOE-funded research, development, and demonstration activities. Specific wording will vary depending on the agency and acquisition involved and must be obtained from the cognizant DOE patent counsel.

(12) Reporting requirements and technical data provisions, if appropriate, which require technical reports prepared under the order be freely exchanged and made available for public sale, unless classified. A minimum of two copies of technical reports must be sent to the DOE Technical Information Center (TIC), P.O. Box 62, Oak Ridge, TN 37830.

(13) Financial reports as determined by the contracting officer.

(14) Security provisions of 952.204, if appropriate, for those interagency acquisitions requiring access to/or generating classified information. (Revisions to the DEAR clauses will be required to effect the appropriate relationship between the servicing agency and the DOE.)

917.505-70 Reimbursement by DOE.

(a) Payment methods to reimburse the servicing agency shall be specified in the interagency acquisition. Such specified payment methods shall be coordinated with the servicing finance officer to ensure that they are consistent with current Department of Treasury Regulations as implemented by DOE.

917.505-71 Cost-reimbursement standards.

(a) * * *

(b) Direct cost are the costs that can be directly identified with work under the acquisition. Examples of such costs are salaries and wages, technical services, materials, travel, transportation, communications, and any facilities and equipment expressly approved for purchase under the interagency acquisition.

(c) Indirect costs shall be limited to the properly allocable portion of costs that cannot be charged directly to the work, but can be shown as mutually benefiting the effort covered by the interagency agreement as well as other work of the servicing agency. Justification for any such charges shall be required, and the basis of allocation must be reasonable. Where interagency acquisitions are entered into under authority of Section 601 of the Economy Act of 1932, the servicing agency's charge for any indirect costs may include appropriately allocable charges for "general administration" or "central agency overhead," but only to the extent specified in the acquisition.

(d) The servicing agency shall be responsible for maintenance, safeguarding, control, and accounting of capital equipment (items of equipment expected to have an extended period of service, generally a year or more and generally of $1,000 or more) in a manner satisfactory to the DOE. The DOE reserves the right of first refusal for any capital equipment acquired under the interagency acquisition at completion or termination of the interagency acquisition.

(e) Unless authorized by the contracting officer in advance, the servicing agency shall not be reimbursed for the acquisition or condemnation of real property or any facility or plant construction or expansion.

PART 919—[AMENDED]

12. The authority citation for Part 919 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

13. Subpart 919.5 is amended by revising 919.501 by removing paragraph (c) and inserting a new paragraph (c) and adding a new paragraph (g). Section 919.501 as revised, reads as follows:

Subpart 915.5—Set Asides for Small Business

919.501 General

(c) The Department has established an internal comprehensive review and screening process for acquisitions exceeding $10,000. The review is intended to enhance the prospect of participation by small business, small disadvantaged business, and women-owned small business concerns.

(g) The policy prescribed by FAR 19.501(g), which requires that a product or service acquired by a successful small business set-aside shall continue to be acquired on a set-aside basis, is applicable to DOE. The small and disadvantaged business specialist at a contracting activity shall maintain a list of such small business set-aside awards.

14. A new Subpart 919.6 is added to read as follows:

Subpart 919.6—Certificates of Competency and Determinations of Eligibility 919.602 Procedures

919.602-1 Referrals.

(a)(2) The contracting officer shall coordinate with the small and disadvantaged business specialist and the SBA procurement center representative prior to referring a determination of nonresponsibility of a small business to the SBA Regional Office.

15. Subpart 919.7 is amended by adding a new subsection 919.705-2; and by adding a new paragraph (a)(5) to subsection 919.705-5 to read as follows:

Subpart 919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

919.705-2 Determining the need for a subcontracting plan.

(a) It is the policy of the DOE to comply with the spirit as well as the statutory requirements of Pub. L. 95-507. Therefore, options shall be considered in determining whether a contract should be required to have a subcontracting plan. Further, if the contracting officer has reason to believe that a contract will ultimately exceed $500,000, even though not priced at time of award, a subcontracting plan should be secured prior to the time of the initial award. Examples of such actions are contracts for basic research, including special research contracts awarded pursuant to 917.71, which may fund a portion of a project under the initial award, with any subsequent research funded by contract modification, and it is known or expected at time of award that the total contract value will most likely exceed $500,000. In such cases a subcontracting plan shall be obtained prior to the time of the initial award and included in the contract; that plan should then be modified, as appropriate, through the life of the contract.

(b) A subcontracting plan is generally not obtained from an offeror until selection of an awardee except in those cases where a plan is requested of all firms in a competitive range (see FAR 19.705-2(d)). When it is determined that a subcontracting plan is required in accordance with FAR 19.705-2, the contracting officer shall request development and submission for approval of a subcontracting plan which includes all of the elements listed in the contract clause at FAR 52.219-9 or to certify in writing that a subcontracting plan is not required because subcontracting opportunities do not exist.

(c) A copy of the determination required by FAR 19.705-2(c) shall be provided, prior to award, to the small and disadvantaged business specialist at the contracting activity.

919.705-5 Awards involving subcontracting plan.

(a)(5) Ensure that an acceptable plan is incorporated into and made a material part of the contract by including in every contract with a plan a provision which either incorporates the approved plan by reference into the contract, or makes the plan an attachment to, and thus a part of, the contract. Subsequent revisions to a plan, i.e., revised goals or other changes maybe incorporated by reference on approval of the contracting officer. The subcontracting plan must be included in the official contract file when the plan is incorporated into the contract by reference.

* * * * *

PART 925—[AMENDED]

16. The authority citation for Part 925 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644

of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

17. Subpart 925.2 is amended by adding a new section 925.205 to read as follows:

Subpart 925.2—Buy American Act—Construction Materials

925.205 Solicitation provision and contract clause.

Solicitations for construction in the United States shall include the solicitation provision at 952.225-70.

PART 952—[AMENDED]

18. The authority citation for Part 952 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

19. Subpart 952.2 of the Table of Contents is amended by correcting the entry for "952.261-7 Allowable cost and payment." to read "952.216-7 Allowable cost and payment."

20. Subsection 952.204-2 is amended by revising the first sentence in paragraph (a) of the Security clause, and revising a parenthetical reference, "42 U.S.C. 2100 *et seq.*" to read "42 U.S.C. 2011 *et seq.*" in paragraph (i) of the same clause as set forth below:

952.204-2 Security requirements.

* * * * *

Security (Apr. 1984)

(a) *Responsibility.* It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. * * *

(i) * * * (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794; and Executive Order 12356.)

* * * * *

21. Subsection 952.209-72 is amended by revising paragraph (b)(2)(iii) of the Organizational Conflicts of Interest—Special Clause to read as follows:

952.209-72 Organizational conflicts of interest—special clause.

* * * * *

Organizational Conflicts of Interest—Special Clause (Apr. 1984)

* * * * *

(b) * * *

(iii) The contractor shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produces under this contract for its private purpose provided that, as of the date of such use, all reporting requirements of this contract have been met.

* * * * *

22. Subsection 952.212-70 is amended by completely revising the title and text. As revised, it reads as follows:

952.212-70 Rated orders for energy programs.

As prescribed in 912.304(a), insert the following provision in solicitations that will result in the award of a rated contract for DOE atomic energy programs:

Rated Orders (Atomic Energy) (Oct. 1984)

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a /—/ DO-Rating; /—/ DX-Rating; in accordance with Defense Priorities Allocations System Regulation. (Contracting officer check appropriate box or boxes.)

Alternate I: As prescribed in 912.304(d), insert the following provision in solicitations that may result in a rated contract for authorized energy programs:

Rated Orders (Domestic Energy Supplies) (Oct. 1984)

Contracts or purchase orders awarded as a result of this solicitation may be eligible for priorities and allocations support in accordance with 10 CFR 216 and section 101(c) of the Defense Production Act of 1950, as amended.

23. Subsection 952.212-71 is revised to read as follows:

952.212-71 Priorities, allocations, and allotments for energy programs.

As prescribed in 912.304(b), insert the following clause in orders and contracts that are placed in support of authorized DOE atomic energy programs:

Priorities, Allocations, and Allotments (Atomic Energy) (Oct. 1984)

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) Regulation (see 15 CFR Parts 350) and all other applicable regulations and orders of the DPAS in obtaining controlled materials and other products and materials needed to fill this contract.

Alternate I: Certain contracts may be eligible for priorities and allocations support as described in 912.302 if their purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis. Guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. If the purpose of the contract is to maximize domestic energy resources, include the following clause:

Priorities, Allocations, and Allotments (Domestic Energy Supplies) (Oct. 1984)

(a) This contract may be eligible for priorities and allocations support, as provided for by section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Commerce and Energy.

(b) DOE Regulations regarding Material Allocation and Priority Performance under Contracts or Orders to Maximize Domestic Energy Supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

(c) Additional guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy Technical Information Center (TIC), Post Office Box 62, Oak Ridge, Tennessee 37830.

952.219-9 [Amended]

24. In subsection 952.219-9, paragraph (d)(10)(iii) of the clause is amended by inserting ", not later than the 25th day of the succeeding month," after "submit" in the phrase "submit standard form (SF) 294 only", and by inserting "current" after the phrase "on a quarterly basis".

25. A new subsection 952.225-70 is added to read as follows:

952.225-70 Buy American Act Notice.

In accordance with 925.205, insert the following provision in solicitations for construction to be performed within the United States:

Buy American Act Notice (Jan. 1984)

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in the performance of this contract (see the clause entitled "Buy American Act—Construction Materials"). This requirement does not apply to the following construction materials: (List excepted material or indicate "none.")

(b) Offers based on the use of other foreign construction material may be acceptable for award if the Government determines that—

(1) Comparable domestic construction material in sufficient and reasonably available commercial quantities, and of a satisfactory quality, is unavailable; or

(2) Use of comparable domestic construction material is impracticable or would unreasonably increase the cost.

(c) When an offer is based on the use of one or more other foreign construction materials the offer shall include data clearly demonstrating, for each particular foreign construction material, that the cost thereof, plus 6 percent, is less than the cost of comparable domestic construction material. The cost of other foreign construction material shall be computed as including all cost of delivery to the construction site, and the cost of other foreign construction material shall also include any applicable duty (whether or not a duty-free entry certificate may be issued).

(d) For evaluation purposes, the Government shall add to the offer 6 percent of the cost of the foreign construction material qualifying under paragraph (c) above.

(e) When offering other foreign construction material, offerors may also offer, at stated prices, any available comparable domestic construction material, in order to avoid the possibility that failure of a foreign construction material to be acceptable under this provision will cause rejection of the entire offer.

PART 970—[AMENDED]

28. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

27. Subsection 970.0404–4 is amended by revising paragraph (a)(1) and by removing paragraph (a)(2) and including the reference in the revised (a)(1); and adding a new (a)(2). As revised paragraphs (a) (1) and (2) read as follows:

970.0404–4 Contract clauses.

(a) * * *

(1) *Security and Classification, 970.5204–1.* This clause is required in contracts under section 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended; and all management and operating contracts which involve classified information.

(2) *Additional Work, Defense Classified/Unclassified, 970.5204–4.* This clause is required in all management and operating contracts.

* * * * *

28. Subpart 970.19 is amended by revising paragraph (a) in section 970.1901 and adding a new paragraph (i) as follows:

Subpart 970.19—Small Business and Small Disadvantaged Business Concerns

970.1901 General.

(a) The policies and procedures in the following FAR sections and subpart shall be applied to the acquisition activities of management and operating contracts: 19.301, 19.302, 19.502–2, 19.502–3, 19.508(b), 19.508(c), 19.508(d), and 19.7.

* * * * *

(i) Management and operating contracts shall include a subscontracting plan which is effective for the life of the contract. Goals for the contract shall be negotiated annually when revised funding levels are determined. The plan should include provisions for revising the goals or any other sections of the plan. Such revisions shall be in writing, approved by the contracting officer, and shall be specifically made a material part of the contract.

29. A new subsection 970.5204–4 is added to read as follows:

970.5204–4 Additional work, defense classified/unclassified.

The contractor agrees to accept any work assignments which fall within the general scope of the contract for work of a national defense nature, whether such work is classified or unclassified.

30. Subsection 970.5204–13 is amended by revising paragraph (d)(15) of the clause to read as follows:

970.5204–13 Allowable costs and fixed-fee (CPFF management and operating contracts).

* * * * *

(d) * * *

(15) Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters, if payments are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

* * * * * *

31. Subsection 970.5204–22 is amended by revising "Note A" to read as follows:

970.5204–22 Contractor procurement.

* * * * *

Note A.—When appropriate, the words, "if required by the contracting officer," may be inserted in the third sentence of paragraph (a) after the first use of the word "shall."

* * * * *

32. Subsection 970.5204–33 is revised to read as follows:

970.5204–33 Priorities, allocations, and allotments.

(a) The following clause shall be used in management and operating contracts for military and atomic energy production and directly related activity, where the programs have been authorized pursuant to the Atomic Energy Act of 1954, as amended.

Priorities, Allocations, and Allotments (Oct. 1984)

The contractor shall follow the rules, regulations, and procedures of the Defense Priorities and Allocations System Regulation and all other applicable regulations and orders of the International Trade Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed for contract performance.

(b) Management and operating contracts may be eligible for priorities and allocations support if their purpose maximizes domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis. Guidance is provided by DOE Publication PR–0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. If the purpose of the contract is to maximize domestic energy resources, include the following clause:

Priorities, Allocations, and Allotments—Special Clause (Oct. 1984)

This contract may be eligible for priorities and allocations support as provided for by section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94–163, 42 U.S.C. 6201 *et seq.*) if its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Commerce and Energy.

DOE regulations regarding material allocation and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

Additional guidance is provided by DOE Publication PR–0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Technical Information Center (TIC), Post Office Box 62, Oak Ridge, Tennessee 37830.

PART 971—[AMENDED]

33. The authority citation for Part 971 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

34. Section 791.103 is amended by adding new paragraphs (a) (3) and (4) to read as follows:

971.103 Documentation submittals.

(a) * * *

(3) *Prior to an advertised award.*

(i) Four copies of the successful bid

(ii) Copy of proposed contract

(iii) Record of bid opening and selection

(iv) Copy of the solicitation

(4) *After completing an advertised award.*

(i) Four copies of the award memorandum which documents that the award was made to the responsible, responsive bidder whose bid is most advantageous to the Government, price and other factors considered as provided in FAR 14.407.

(ii) One copy of any other documents the contracting officer believes would benefit the Headquarters review. (List of documents required for contract file are cited at FAR 4.803(a).)

[FR Doc. 85–20146 Filed 8–23–85; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Collection of Debts Due the Civil Service Retirement and Disability Fund

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management is publishing final regulations on the collection of debts due the Civil Service Retirement and Disability Fund (retirement fund). These regulations include changes made by Pub. L. 97–365, the Debt Collection Act of 1982 (DCA), enacted October 25, 1982. They also include the revisions made in the Federal Claims Collection Standards (FCCS) published jointly by the Department of Justice and the General Accounting Office on March 9, 1984 (49 FR 8889). The DCA requires an agency to prescribe regulations for the offset of debts from salary, and the FCCS require an agency to prescribe regulations for the administrative offset of debts from other payments.

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On November 19, 1984, we proposed regulations at 49 FR 45588 to revise Subpart M and delete Subpart P of Part 831, Title 5, Code of Federal Regulations, to reflect the concepts and procedures authorized in the DCA and the FCCS for debts owed to the retirement fund. Interested parties were given until December 19, 1984, to submit written comments concerning this proposal.

We received comments from three Federal agencies and three labor organizations. The following discussion is a summary of the changes to the proposed regulations based on our perception of items that needed clarification and based on comments received on the proposed regulations. An evaluation of comments that were not adopted and the rationale for our action is included under the appropriate subject headings.

Statute of Limitations

In preparing the final regulations, we discovered that the information necessary to extend the statute of limitations for administrative offsets from six to ten years as authorized by 31 U.S.C. 3716 had been inadvertently omitted from the proposed regulations. The necessary material has been included in 5 CFR 831.1308.

Notice of Debt

One agency recommended including, in the notice of debt, the standards to be used by our agency to evaluate requests for compromise. We accepted this recommendation and have, therefore, added the term "and compromise" to § 831.1304(a)(7).

Referral to a Collection Agency

Another commenter recommended that the criteria for referring a debt to a collection agency be described in the regulations. Since the specific details of these referrals will be covered by contract, we are adding a general reference to the use of collection agencies in a new § 831.1308 and former § 831.1308 is renumbered as § 831.1309.

Collections from Back Pay Awards

The supplementary information to the proposed regulations stated that an "alternative collection method" should be used to collect the balance of the debt when a back pay award is insufficient to cover payments made from the retirement fund. One commenter felt that the "alternative collection method" should be defined. Because this term is not used in the regulatory text, we decline to adopt the suggestion. The term refers, however, to any other authorized method of collection, such as salary offset, referral to a collection agency, or litigation.

Interest, Penalties, and Administrative Costs

One commenter felt that because we propose to charge interest, and where applicable, penalties or administrative charges on debts owed to the retirement fund, provisions should also be made to pay the debtor interest on penalties when amounts received by our agency are later found to have been collected erroneously. The Debt Collection Act of 1982 requires the assessment of interest, and of penalty fees, and administrative costs on delinquent debts as a means of strengthening enforcement of collections. No similar provision was made to pay interest or penalty fees to the debtor for erroneous collections. We are not authorized to make such payments in the absence of a specific statute or other authority.

One labor organization felt that it is inequitable to assess interest and penalty fees or administrative costs in situations when the individual was not at fault and financial hardship is involved. It suggested that the regulations do not distinguish between overpayments when the recipient is not at fault and those when the recipient has committed an act of fraud or misrepresentation that caused the overpayment.

We do not plan to make any changes in the regulations based on this comment. Individuals who can show they are not at fault and that collection would cause them financial hardship are entitled to have the collection of the debt waived. Under these circumstances, no interest or penalties would ever be assessed.

The assessment of interest and applicable penalties or administrative costs is intended to apply to those cases when the overpayment recipient is financially capable of repayment. Section 831.1305(b) of the final regulations provides for waiver of any additional charges using the same standards prescribed in §§ 831.1404 and 831.1405. Section 831.1406 specifically precludes waiver when the overpayment was obtained by fraud.

Debtor Rights to Waiver or Adjustment in Payment Schedule

One commenter from a labor organization suggested that our proposed regulations should fully inform overpayment recipients of their rights to a waiver or an adjustment in the manner of payment by quoting 5 CFR 831.1401, since the majority of annuitants do not have access to Federal regulations.

We did not adopt this suggestion. The information is currently provided to each debtor along with the notice of

debt, so the debtor does not need to have access to Federal regulations.

Limitation on Amount of Collection From Salary and Back Pay Awards

Another commenter from a labor organization suggested that recoupment of an overpayment from an employee's current pay and back pay awards should be limited to 20 percent and 40 percent respectively.

Section 831.1306(b)(2) states that we may collect a debt due the retirement fund from an employee's salary under 5 U.S.C. 5514. Section 5514 already limits the amount of the salary offset to 15 percent of disposable pay.

Deductions from back pay awarded under 5 U.S.C. 5596 are governed by § 550.805(e) of Title 5, Code of Federal Regulations. This section requires deduction of any erroneous retirement payments made as a result of an unjustified or unwarranted personnel action from the back pay award. There is no provision for a partial deduction, if the erroneous payment can be recovered in its entirety. However, any net indebtedness remaining after applying the back pay is subject to waiver under the appropriate authority. The proposed regulations made no change in the back pay regulations but simply listed this provision as one available form of administrative offset for debts due the retirement fund.

Offset From Other Payments

One commenter expressed concern that the provisions of § 831.1306(b) allowing for offset of retirement debts from other payments due the debtor from other agencies would unduly delay an employee's retirement when he or she had received an earlier refund from the retirement fund. However, a refund, unless it was erroneous, is not a debt due the retirement fund as defined in the regulations. Rather, the employee has the option to choose whether or not to pay back a prior refund to obtain credit for the applicable period of service. Administrative offset would not be appropriate in such a case.

Hearings

The proposed regulations eliminated the oral waiver hearing by us because the Merit Systems Protection Board's (MSPB) regulations provide for an oral hearing upon appeal. One labor organization suggested that our regulations should continue to allow us to provide an oral hearing. The organization felt that our oral waiver hearing would be different from an MSPB oral hearing, which it viewed as more "adversarial" in nature.

We decline to adopt the changes suggested in this comment. MSPB has held that its proceedings at the regional office level are *de novo* proceedings. An oral waiver hearing before MSPB would provide the same medium for submission of testimony, documents, and evidence by each side as an oral waiver hearing before us. Furthermore, the distinction between the nature of our oral waiver hearing and MSPB's oral waiver hearing overlooks the fact that we are the claimant of the debt—not a disinterested party. To call our hearing entirely "non-adversarial" is therefore inaccurate.

The same labor organization also suggested that our waiver hearing should be conducted by an official outside the supervision and control of our Director and that our role in such a proceeding should be limited to consideration of a proposed decision of the independent hearing officer.

In *Arnett* v. *Kennedy*, 416 U.S. 134, 155–156 (1974), the court held that the combination of the collection, hearing, and decision-making functions within one agency is perfectly valid. However, the amended regulations would permit swift oral hearings and final adjudication of the debtor's waiver claim by a body—MSPB—totally independent of our control.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations are on administrative practices that will affect only the Federal Government.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Accordingly, OPM amends 5 CFR Part 831 as follows:

PART 831—RETIREMENT

1. The authority for Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347(a).

2. Paragraph (b)(2) of § 831.109 is revised to read as follows:

§ 831.109 Initial decision and reconsideration.

* * * * *

(b) *Actions covered elsewhere.*

* * * * *

(2) A request for reconsideration of a decision to collect a debt will be made in accordance with § 831.1304(b).

* * * * *

3. Subpart M is revised to read as follows:

Subpart M—Collection of Debts

Sec.

831.1301 Purpose.
831.1302 Scope.
831.1303 Definitions.
831.1304 Processing.
831.1305 Collection of debts.
831.1306 Collection by administrative offset.
831.1307 Use of consumer reporting agencies.
831.1308 Referral to a collection agency.
831.1309 Referral for litigation.

Authority: 5 U.S.C. 8347(a).

Subpart M—Collection of Debts

§ 831.1301 Purpose.

This subpart prescribes procedures to be followed by the Office of Personnel Management (OPM) , which are consistent with the Federal Claims Collection Standards (FCCS) (Chapter II of Title 4, Code of Federal Regulations), in the collection of debts owed to the Civil Service Retirement and Disability Fund.

§ 831.1302 Scope.

This subpart covers the collection of debts due the Civil Service Retirement and Disability Fund, with the exception of the collection of court-imposed judgments, amounts referred to the Department of Justice because of fraud, and amounts collected from back pay awards in accordance with § 550.805(e)(2) of this chapter.

§ 831.1303 Definitions.

In this subpart—

"Additional charges" means interest, penalties, and/or administrative costs owed on a debt.

"Annuitant" means a retired employee or Member of Congress, spouse, widower, or child receiving recurring benefits under the provisions of subchapter III, chapter 83, of title 5, United States Code.

"Compromise" is an adjustment of the total amount of the debt to be collected based upon the considerations established by the FCCS (4 CFR Part 103).

"Consumer reporting agency" has the same meaning provided in 31 U.S.C. 3701(a)(3).

"Debt" means a payment of benefits to an individual in the absence of entitlement or in excess of the amount to which an individual is properly entitled.

"Delinquent" has the same meaning provided in 4 CFR 101.2(b).

"FCCS" means the Federal Claims Collection Standards (Chapter II of Title 4, Code of Federal Regulations).

"Offset" means to withhold the amount of a debt, or a portion of that amount, from one or more payments due the debtor. Offset also means the amount withheld in this manner.

"Reconsideration" means the process of reexamining an individual's liability for a debt based on—

(1) Proper application of law and regulation; and

(2) Correctness of the mathematical computation.

"Repayment schedule" means the amount of each payment and number of payments to be made to liquidate the debt as determined by OPM.

"Retirement fund" means the Civil Service Retirement and Disability Fund.

"Voluntary repayment agreement" means an alternative to offset that is agreed to by OPM and includes a repayment schedule.

"Waiver" is a decision not to recover a debt under authority of 5 U.S.C. 8346(b).

§ 831.1304 Processing.

(a) *Notice.* Except as provided in § 831.1305, OPM will, before starting collection, tell the debtor in writing—

(1) The reason for and the amount of the debt;

(2) The date on which the full payment is due;

(3) OPM's policy on interest, penalties, and administrative charges;

(4) If payment in full would create financial hardship to the debtor and offset is available, the types of payment(s) to be offset, the repayment schedule, the right to request an adjustment in the repayment schedule and the right to request a voluntary repayment agreement in lieu of offset;

(5) The individual's right to inspect and/or receive a copy of the Government's records relating to the debt;

(6) The method and time period (30 calendar days) for requesting reconsideration, waiver, and/or compromise and, in the case of offset, an adjustment to the repayment schedule;

(7) The standards, used by OPM for determining entitlement to waiver and compromise;

(8) The right to a hearing by the Merit Systems Protection Board on a waiver request (if OPM's waiver decision finds the individual liable) in accordance with paragraph (c)(2) of this section; and

(9) The fact that a timely filing of a request for reconsideration, waiver and/or compromise, or a later timely appeal of a waiver denial to the Merit Systems Protection Board, will stop collection proceedings, unless (i) failure to take the offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of these procedures.

(b) *Requests for reconsideration, waiver, and/or compromise.* (1) If a request for reconsideration, waiver and/or compromise is returned to us by mail, it must be postmarked within 30 calendar days of the date of the notice detailed in paragraph (a) of this section. If a request for reconsideration, waiver, and/or compromise is hand delivered, it must be received within 30 calendar days of the date of the notice detailed in paragraph (a) of this section. OPM may extend the 30 day time limit for filing when individuals can prove that they: (i) Were not notified of the time limit and were not otherwise aware of it; or (ii) were prevented by circumstances beyond their control from making the request within the time limit.

(2) When a request for reconsideration, waiver, and/or compromise covered by this paragarph is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(3) Individuals requesting reconsideration, waiver, and/or compromise will be given a full opportunity to present any pertinent information and documentation supporting their position.

(4) An individual's request for waiver will be evaluated on the basis of the standards set forth in Subpart N of this part. An individual's request for compromise will be evaluated on the basis of standards set forth in the FCCS (4 CFR Part 103).

(c) *Reconsideration, waiver, and/or compromise decisions.* (1) OPM's decision will be based upon the individual's written submissions, evidence of record, and other pertinent available information.

(2) After consideration of all pertinent information, a written decision will be issued. The decision will state the extent of the individual's liability, and, for waiver and compromise requests, whether the debt will be waived or compromised. If the individual is determined to be liable for all or a portion of the debt, the decision will reaffirm or modify the conditions for the collection previously proposed under paragraph (a) of this section. The decision will state the individual's right to appeal to the Merit Systems Protection Board as provided by § 1201.3 of this title, and, in the case of a denial of waiver, that a timely appeal will stop collection of the debt.

§ 831.1305 Collection of debts.

(a) *Means of collection.* Collection of a debt may be made by means of offset under § 831.1306, or under any statutory provision providing for offset of money due the debtor from the Federal Government, or by referral to the Justice Department for litigation, as provided in § 831.1306. Referral may also be made to a collection agency under the provisions of the FCCS.

(b) *Additional charges.* Interest, penalties, and administrative costs will be assessed on the debt in accordance with standards established in the FCCS at 4 CFR 102.13. Additional charges will be waived when required by the FCCS. In addition, such charges may be waived when OPM determines—

(1) Collection would be against equity and good conscience under the standards prescribed in §§ 831.1403 through 831.1405 of this part; or

(2) Waiver would be in the best interest of the United States.

(c) *Collection in installments.* Whenever feasible, debts will be collected in one lump sum. However, when the debtor is financially unable to pay in one lump sum of fails to respond to a demand for full payment and off-set is available, installment payments may be effected. The amount of the installment payments will be set in accordance with the criteria in 4 CFR 102.11.

(d) *Commencement of collection.* (1) Except as provided in paragraph (d)(2) of this section, collection will begin after the time limits for requesting further rights stated in § 831.1304(a)(6) expire or OPM has issued decisions on all timely requests for those rights and the Merit Systems Protection Board has acted on any timely appeal of a waiver denial, unless: (i) Failure to make an offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 831.1304 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly, and amounts recovered by offset but later found not owed will be refunded promptly.

(2) The procedures identified in § 831.1304 will not be applied when the

debt is caused by (i) a retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or (ii) interim, estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the last advance payment or the date the formal determination is made, whichever is later.

§ 831.1306 Collection by administrative offset.

(a) *Offset from retirement payments.* A debt may be collected in whole or in part from lump-sum retirement payment or recurring annuity payments.

(b) *Offset from other payments.*—(1) *Administrative offset.* (i) A debt may be offset from other payments due the debtor from other agencies in accordance with 4 CFR 102.3, except that offset from back pay awarded under the provisions of 5 U.S.C. 5596 (and 5 CFR 550.801 *et seq.*) will be made in accordance with § 550.805(e)(2) of this chapter.

(ii) In determining whether to collect claims by means of administrative offset after the expiration of the six year limitation provided in 5 U.S.C. 2415, the Director or his designee will determine the cost effectiveness of leaving a claim unresolved for more than 6 years. This decision will be based on such factors as the amount of the debt; the cost of collection; and the likelihood of recovering the debt.

(2) *Salary offset.* When the debtor is an employee, or a member of the Armed Forces or a reserve component of the Armed Forces, OPM may effect collection action by offset of the debtor's pay in accordance with 5 U.S.C. 5514 and 5 CFR 550.1101 *et seq.* Due process described in § 831.1304 will apply. The questions of fact and liability, and entitlements to waiver or compromise determined through that process are deemed correct and will not be amended under salary offset procedures. When the debtor did not receive a hearing on the amount of the offset under § 831.1304 and requests such hearing, one will be conducted in accordance with Subpart K of Part 550 of this chapter.

§ 831.1307 Use of consumer reporting agencies.

(a) *Notice.* If a debtor's response to the notice described in § 831.1304(a) does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to OPM, and the debtor's rights under § 831.1304 have been exhausted, OPM may report the debtor to a consumer reporting agency. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule may result in a report to a consumer reporting agency. Before making a report to a consumer reporting agency, OPM will notify the debtor in writing that—

(1) The payment is overdue;

(2) OPM intends, after 60 days, to make a report as described in paragraph (b) of this section to a consumer reporting agency;

(3) The debtor's right to dispute the liability has been exhausted under § 831.1304; and

(4) The debtor may suspend OPM action on referral by paying the debt in one lump sum or making payments current under a repayment schedule.

(b) *Report.* When a debtor's response to the notice described in paragraph (a) of this section fails to comply with paragraph (a)(4) of this section and 60 days have elapsed since the notice was mailed, OPM may report to a consumer reporting agency that an individual is responsible for an unpaid debt and provide the following information:

(1) The individual's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the debt; and

(3) The fact that the debt arose in connection with the administration of the Civil Service Retirement System.

(c) *Subsequent reports.* OPM will update its report to the consumer reporting agency whenever it has knowledge of events that substantially change the status or the amount of the liability.

§ 831.1308 Referral to a collection agency.

(a) OPM may refer certain debts to commercial collection agencies under the following conditions:

(1) All processing required by § 831.1304 has been completed before the debt is released.

(2) A contract for collection services has been negotiated.

(3) OPM retains the responsibility for resolving disputes, compromising claims, referring the debt for litigation, or suspending or terminating collection action.

§ 831.1309 Referral for litigation.

From time to time and in a manner consistent with the General Accounting Office's and the Justice Department's instructions, OPM will refer certain overpayments to the Justice Department for litigation. Referral for litigation will suspend processing under this subpart.

Subpart P—[Removed and Reserved]

4. Subpart P is removed and reserved.

[FR Doc. 85-20408 Filed 8-26-85; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 930

Motor Vehicle Operators

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to allow agencies to waive the requirement for the issuance of the United States Motor Vehicle Operator's Identification Card, Optional Form 346 (formerly Standard Form 46) if the agency develops alternative procedures to identify those employees who are qualified and authorized to operate Government-owned or -leased motor vehicles for official business. The maximum period permitted between periodic review of the employees driver authorization including the evaluation of the physical fitness of the employee concerned is extended from 3 to 4 years.

These regulations provide additional flexibility for Federal agencies to tailor their motor vehicle operator programs to their needs and driving situations while maintaining a cost effective and safe program that fulfills the requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. section 471 and section 491(j)).

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Van K. Yee, Examination Operations Division, Staffing Group, (202) 632-6030.

SUPPLEMENTARY INFORMATION: On April 16, 1984, OPM published proposed changes in the **Federal Register** (49 FR 14956) that specified the proposed changes to the Federal Motor Vehicle Operator Program and invited comments for a period of 60 days. Twelve comments were received from Federal agencies, one from a Federal employee union, and one from a Federal employee. The following summarizes the comments, suggestions, and actions taken.

Comment: Several comments were received concerning the need for this program and that the program is an unnecessary duplication of State

driver's licensing programs. Some commenters suggested that since States are required to have licensing programs that meet Federal requirements established under the Highway Safety Act of 1966 (Pub. L. 89–564) and that this program should be eliminated in part or entirely.

Response: The Federal requirements established under this law requires States to establish various programs for highway and driver safety. However, these requirements and standards provide sufficient flexibilities in application and interpretation for States in establishing their individual program. This could result in significant variations and differences among driver licensing procedures and standards (including medical or physical standards) among various States. For this reason, these suggestions were not adopted.

Comment: Comments were received from seven agencies and one union that address issues related to the retention, in § 930.108, of the requirement for "testing . . . the physical fitness" of each employee who operates a Government vehicle.

One agency suggested combining §§ 930.108 and 930.109 (on periodic review of physical fitness and renewal of authorization respectively) and amending them to provide for unspecified "periodic" review of both physical fitness and authorization to drive (thus eliminating the reference to the 4-year cycle of reviews).

Two agencies also recommended "periodic" review rather than a specific cycle without addressing the combination of sections. This suggestion is made to permit agencies to coordinate the timing of such reviews to State driver's license renewals.

Response: We believe that the current provision that physical fitness and authorization be reviewed at least once every 4 years gives adequate flexibility for agencies to establish whatever schedule of review is desirable, including one that is coordinated with State license renewals. In amending the previous requirement that such reviews be conducted every 3 years, we explicitly recognized and relied on the fact that the median State license renewal cycle is 4 years; in fact, only two States (Alaska and recently Virginia) have a longer cycle. Thus the agencies' objective can be accomplished within the 4-year framework proposed, and the policy assumes that a cycle at least as frequent as most States enforce for general licensing is required. A more general reference "periodic" would create ambiguity about the intent to parallel the State licensing cycle.

With respect to combining the sections, we believe that, while physical qualification is one issue in a decision to authorize a driver, it is not the only issue. Other issues (e.g., driving skill and driving records) are addressed separately from the authorization itself, and we believe it is appropirate for the issue of physical qualification to be separately addressed as well. For these reasons, the agencies' suggestions were not adopted.

Comment: One of the above agencies also suggested that a statement be added that "State licensing programs that meet the physical standards established by OPM may be used in lieu of Federal licensing programs." Another agency recommended similarly that State standards, "where comparable to OPM standards," should be acceptable in lieu of enforcing Federal requirements.

Response: As will be addressed further below, we believe adequate authority exists within the framework of the proposed regulations for agencies to accept licensing under a State program as adequate evidence that an individual is physically qualified to drive a Government vehicle. The language proposed goes well beyond that discretionary authority, however, and would have the effect of requiring OPM (or some other agency) to assess physical requirements established by the States and certify whether they "meet" or are "comparable to" requirements. This is an inappropriate and unnecessary role for a Federal agency, certainly for OPM. Even though such a determination would have no specific effect on the legal status of State licensing programs, it could create an unwarranted and unintended negative Federal opinion of State practices that would be inappropriate and potentially troublesome for the States. Therefore, the suggestion was not adopted.

Comment: One agency specifically objected to the requirement for periodic physical testing, especially for incidental drivers, because the agency is spending excessive amounts of money, presumably on medical examinations. The cost of such required tests is cited by other agencies as well, in support of the argument that State licenses be accepted as sufficient basis for Federal authorization, again especially for incidental drivers.

Response: In developing the proposed regulations, OPM decided not to eliminate a separate evaluation of physical qualifications for any class of drivers in favor of mandatory acceptance of a State license as adequate authorization for two reasons: (1) States do not have uniform physical requirements for drivers; some States do not effectively have any requirements beyond a basic vision test; and many States that nominally have requirements have no effective means of enforcing them. (2) Elimination of a separate physical standard for motor vehicle operators would eliminate agency authority under 5 CFR Part 339 to require a medical examination when there is a direct question of whether the individual is in fact physically capable of driving safely. Even in the case of incidental drivers, who on the one hand may drive up to 6 hours a day or, on the other hand, may drive infrequently but in a vehicle that is unfamiliar to them, the interests of public safety and potential liability strongly supported the retention of sufficient independent authority to determine that an individual is qualified to drive a Government vehicle without harm to himself/herself or others.

As indicated in response to earlier comments and suggestions regarding the physical fitness evaluation procedures, agencies may, if they have reason to do so, accept a State driver's license and/or self-certification as sufficient evidence of physical qualifications to drive. While these suggested changes were not adopted as proposed, their objectives of effecting further cost savings and paperwork reduction associated with this program have merit. We have concluded that certain changes could be made to reduce costs and paperwork while maintaining an effective and safe motor vehicle operators program tailored to the agency's needs. Therefore, we have revised the physical fitness evaluation procedures in Appendix A, chapter 930, of the Federal Personnel Manual to authorize agency discretion to waive the use of the self-certification procedure when available information shows that the employee is physically capable of driving the assigned vehicle safely and is in the possession of a valid State driver's license.

By authorizing agency discretion to waive self-certification and accept a State driver's license as sufficient evidence of physical qualifications to drive as part of the physical fitness evaluation process, the framework of the physical standard and the authority to require additional medical information or a medical examination can be retained so that agencies are aware of what physical qualifications to drive are generally accepted, and so that sufficient information can be obtained in a particular case to make a positive

determination about physical qualifications.

The requirement in the proposed (and past) regulations that individuals be "tested" periodically to determine their qualifications to drive a Government vehicle has been widely misinterpreted as a requirement that such individuals undergo a medical examination. The proposed § 930.108 states "at least once very 4 years, each agency shall provide for testing, *in accordance with standards and procedures established by OPM in the Federal Personnel Manual,* the physical fitness of each employee who operates a * * * vehicle." (Emphasis supplied) The "standards and procedures" referred to are found in Appendix A to FPM Chapter 930 and in the general guidance on medical determinations related to employability that is found in 5 CFR Part 339 and related guidance. The specific procedures for motor vehicle operators do not require nor recommend mandatory periodic physical or medical examinations. The requirement is only to evaluate physical qualifications, and the "testing" contemplated in the regulations is normally limited to a self-certification with respect to physical or medical conditions that may be present. Only if the reviewing official has reason to believe that a question of health status exists would a medical examination normally be required.

The physical standard for motor vehicle operators in Appendix A is intended only as guidance in reaching a decision about physical qualifications. The standard is not intended to mandate, nor may agencies presume, that a person with a medical condition described as potentially disqualifying in the standard should be denied authorization to drive on that basis alone. Under Appendix A as well as the general guidance on determining physical qualifications (notably FPM Chapter 339), agencies are required to assess whether the individual can perform the duties (in this case, drive safely) despite the condition. If that assessment shows that the individual can do so, he or she should be authorized to drive.

From the comments and from our related recent experience, we have concluded that some confusion may be inadvertently created by the continued use of certain terms in these regulations that arise from the original authorizing statutes, such as "physical testing" and "physical fitness." The final regulations include some editorial changes in §§ 930.104, 930.105, and 930.108 to more clearly describe the intended scope of the evaluation of physical qualifications to drive. The final regulations also include clarification in § 930.113 of appropriate corrective action if an individual cannot operate a Government vehicle safely because of a physical or medical condition.

Comments: One union recommended that the requirement for periodic evaluation of physical qualifications be eliminated in favor of a limited authority to reevaluate physical qualifications only when there is specific cause to conclude that a question about qualifications exists.

Response: We believe that the Federal government has a positive obligation to determine that employees who drive are capable of doing so safely. Such a responsibility necessarily requires that agencies assess qualifications to drive at least as frequently as States do in their licensing procedures, and that they have sufficient authority to do so before a problem arises or an incident occurs. Therefore, we cannot agree that such evaluations should be limited to only those circumstances wherein a specific cause to question qualifications is present and has been noticed.

Comment: The Federal employee union also commented on § 930.105 suggesting that the last sentence that states that agencies "may" establish additional requirements to those set forth for motor vehicle operators in this section be deleted. The union states that the requirements are sufficiently comprehensive and expressed concern "that a small agency could fabricate a requirement to force someone out of a motor vehicle operator position."

Response: The provision for establishing additional requirements to assure that the objectives of these regulations are met is to allow agencies the necessary flexibility to establish additional requirements to address unusual or special situations. As § 930.103 states, these regulations "establish minimum procedures to ensure the safe and efficient operation" of Government-owned or leased motor vehicles. Any additional requirements imposed by an agency that results in the removal of an employee is subject to the provisions of § 930.113 that requires agencies taking adverse or disciplinary action to follow applicable laws and regulations. These laws and regulations include provisions for protecting the employee from unreasonable and unjustifiable removal. For these reasons, this suggestion was not adopted.

Comment: This union also commented on § 930.113 stating that an adverse action can be taken against an employee even if the employee is no longer able to drive through no fault of the employee. The union proposes adding language to this section that would provide for placement of such an employee in a vacant position for which the employee is qualified at or as near as possible to the employee original grades.

Response: Section § 930.113 contains five reasons that constitute sufficient cause for taking disciplinary or other appropriate action concerning motor vehicle operators. Of the five reasons, four involve misconduct well within the employee's power to influence. A fifth reason * * * "A Federal medical officer finds that the employee fails to meet the required physical standards * * *", can involve circumstances beyond the control of the employee. Regulations under Part 752 (Adverse Actions) and related case law have long held that employees can be removed for physical inability to perform their assigned duties when alternative placement is not feasible or practicable. Under § 930.113 of these proposed regulations, management will continue to have the authority to reassign physically incapable motor vehicle operators when vacancies and other conditions permit. However, to make placement in a vacant position mandatory, as the suggestion implies, would be a major departure from established regulation and an unrealistic intrusion into an area where management and budgetary discretion is necessary.

Comment: Several comments were received concerning editorial and terminology changes.

Response: These comments and suggestions were considered and, when appropriate, revisions were made. A statement was added to § 930.101 to clarify the term "leased" that does not include vehicles rented by employees on travel. To avoid unnecessary confusion between Federal Medical Officers and physicians contracted by Federal agencies to provide similar medical services, the definition of "Medical Officer" was deleted from § 930.102, and § 930.113(c) was revised to read "* * * a Federal Medical Officer or other medical authority as appropriate." The definition of "Operator" in § 930.102 was revised to provide a more precise definition.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the changes do not impose

additional requirements, but rather allow for the use of agency developed alternatives in the interest of economy and efficiency.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Government employees, Motor vehicles.

Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Accordingly, the Office of Personnel Management is revising Subpart A of 5 CFR Part 930 to read as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart A—Motor Vehicle Operators

Sec.

930.101 Purpose.
930.102 Definitions.
930.103 Coverage.
930.104 Objectives.
930.105 Minimum requirements for competitive and excepted service positions.
930.106 Details in the competitive service.
930.107 Waiver of road test.
930.108 Periodic physical evaluation.
930.109 Periodic review and renewal of authorization.
930.110 Identification of authorized operators and incidental operators.
930.111 State license in possession.
930.112 Identification card or document in possession.
930.113 Corrective actions.
930.114 Reports required.
930.115 Requests for waiver of requirements.

Authority: 5 U.S.C. 3301, 3320, 7301; 40 U.S.C. 491; E.O. 10577, 3 CFR, 1954—1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964—1965 Comp., p. 306, unless otherwise noted. (Separate authority is listed under § 930.107).

Subpart A—Motor Vehicle Operators

§ 930.101 Purpose.

This subpart governs agencies in authorizing employees to operate Government-owned or -leased (acquired for other than short term use for which the Government does not have full control and accountability) motor vehicles for official purposes within the States of the Union, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

§ 930.102 Definitions.

In this subpart:

"Agency" means a department, independent establishment, or other unit of the executive branch of the Federal Government, including a wholly owned Government corporation, in the States of the Union, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

"Employee" means an employee of an agency in either the competitive or excepted service or an enrollee of the Job Corps established by section 102 of the Economic Opportunity Act of 1964 (42 U.S.C. 2712).

"Identification card" means the United States Government Motor Vehicle Operator's Identification Card, Optional Form 346, or an agency-issued identification card that names the types of Government-owned or -leased vehicles the holder is authorized to operate.

"Identification document" means an official identification form issued by an agency that properly identifies the individual as a Federal employee of the agency.

"Incidental operator" means an employee, other than one occupying a position officially classified as a motor vehicle operator, who is required to operate a Government-owned or -leased motor vehicle to properly carry out his or her assigned duties.

"Motor vehicle" means a vehicle designed and operated principally for highway transporation of property or passengers, but does not include a vehicle (a) designed or used for military field training, combat, or tactical purposes; (b) used principally within the confines of a regularly established military post, camp, or depot; or (c) regularly used by an agency in the performance of investigative, law enforcement, or intelligence duties if the head of the agency determines that exclusive control of the vehicle is essential to the effective performance of those duties.

"Operator" means an employee who is regularly required to operate Government-owned or -leased motor vehicles and is occupying a position officially classified as motor vehicle operator.

"Road test" means OPM's Test No. 544 or similar road tests developed by Federal agencies to evaluate the competency of prospective operators.

"State license" means a valid driver's license that would be required for the operation of similar vehicles for other than official Government business by the States, District of Columbia, Puerto Rico, or territory or possession of the United States in which the employee is domiciled or principally employed.

§ 930.103 Coverage.

This subpart governs agencies in authorizing their employees to operate Government-owned or -leased motor vehicles for official purposes within the States of the Union, the District of Columbia, Puerto Rico, and the territories or possessions of the United States and establishes minimum procedures to ensure the safe and efficient operation of such vehicles.

§ 930.104 Objectives.

This subpart requires that agencies (a) establish an efficient and effective system to identify those Federal employees who are qualified and authorized to operate Government-owned or -leased motor vehicles while on official Government business; and (b) periodically review the competence and physical qualifications of these Federal employees to operate such vehicles safely.

§ 930.105 Minimum requirements for competitive and excepted service positions.

(a) An agency may fill motor vehicle operator positions in the competitive or excepted services by any of the methods normally authorized for filling positions. Applicants for motor vehicle operator positions and incidental operators must meet the following requirements for these positions:

(1) Possess a safe driving record as defined in OPM qualification guides;

(2) Possess a valid State license;

(3) Except as provided in § 930.107, pass a road test; and

(4) Demonstrate that they are physically qualified to operate the appropriate motor vehicle safely in accordance with the standards and procedures published in chapters 339 and 930 of the Federal Personnel Manual.

(b) Agencies may establish additional requirements to assure that the objectives of this subpart are met.

§ 930.106 Details in the competitive service.

An agency may detail an employee to an operator position in the competitive service for 30 days or less when the employee possesses a State license. For details exceeding 30 days, the employee must meet all the requirements of § 930.105 and OPM's requirements applicable to position change and transfer found in the Federal Personnel Manual chapter 300.

§ 930.107 Waiver of road test.

Under the following conditions, OPM or an agency head or his or her designated representative may waive the road test:

(a) OPM waives the road test requirement for operators of vehicles of one ton load capacity or less who possess a current driver's license from

one of the 50 States, District of Columbia, or Puerto Rico, where the employee is domiciled or principally employed, except for operators of buses and vehicles used for: (1) Transportation of dangerous materials; (2) law enforcement; or (3) emergency services.

(b) OPM waives the road test for operators, and agencies may waive the road test for incidental operators of any class of vehicle, who possess a current driver's license for the specific type of vehicle to be operated from one of the 50 States, District of Columbia, or Puerto Rico, where the employee is domiciled or principally employed.

(c) An agency head may waive the road test for operators and incidental operators not covered by paragraphs (a) and (b) of this section, but only when in his or her opinion it is impractical to apply it, and then only for an employee whose competence as a driver has been established by his or her past driving record.

(5 U.S.C. 1104; Pub. L. 95–454, sec. 3(5))

§ 930.108 Periodic physical evaluation.

At least once every 4 years, each agency will evaluate in accordance with standards and procedures established by OPM in the Federal Personnel Manual, the physical qualifications of each employee who operates a Government-owned or -leased vehicle.

§ 930.109 Periodic review and renewal of authorization.

(a) At least once every 4 years, each agency will review each employee's authorization to operate Government-owned or -leased motor vehicles.

(b) An agency may renew the employee's authorization only after the agency head or his or her designated representative has determined that the employee continues to meet prescribed physical standards and continues to demonstrate competence to operate the type of motor vehicle to which assigned based on a continued safe driving record.

§ 930.110 Identification of authorized operators and incidental operators.

Agencies must have procedures to identify employees who are authorized to operate Government-owned or -leased motor vehicles. Such procedures must provide for adequate control of access to vehicles and assure that the other requirements of this subpart and the Federal Personnel Manual are met.

§ 930.111 State license in possession.

An operator or incidental operator will have a State license in his or her possession at all times while driving a Government-owned or -leased motor vehicle on a public highway.

§ 930.112 Identification card or document in possession.

The operator or incidental operator will have a valid agency identification card or document (e.g., building pass or credential) in his or her possession at all times while driving a Government-owned or -leased motor vehicle.

§ 930.113 Corrective action.

An agency will take adverse, disciplinary, or other appropriate action against an operator or an incidental operator in accordance with applicable laws and regulations. Agency orders and directives will include the following reasons among those constituting sufficient cause for such action against an operator or an incidental operator:

(a) The employee is convicted of operating under the intoxicating influence of alcohol, narcotics, or pathogenic drugs.

(b) The employee is convicted of leaving the scene of an accident without making his or her identity known.

(c) The employee is not qualified to operate a Government-owned or -leased vehicle safely because of a physical or medical condition. In making such a determination, agencies should consult a Federal medical officer or other medical authority as appropriate.

(d) The employee's State license is revoked.

(e) The employee's State license is suspended. However, the agency may continue the employee in his or her position for operation of Government-owned or -leased motor vehicles on other than public highways for not to exceed 45 days from the date of suspension of the State license.

§ 930.114 Reports required.

An agency will submit to OPM, on request (a) a copy of agency orders and directives issued in compliance with this subpart; and (b) such other reports as OPM may require for adequate administration and evaluation of the motor vehicle operator program.

§ 930.115 Requests for waiver of requirements.

Agencies may request authority from OPM to waive requirements in this subpart or the Federal Personnel Manual. OPM may grant exceptions or waivers when it finds these waivers or exceptions are in the interest of good administration and meet the objectives of this program.

[FR Doc. 85–20407 Filed 8–26–85; 8:45 am]
BILLING CODE 6315–01–M

Agricultural Marketing Service

7 CFR Part 58

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises §§ 58.101(k), 58.132, 58.133, 58.134(a) and (b), 58.135(a) and (b) and 58.322 of the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. The major revisions will:

1. Lower the maximum allowable bacterial estimate for manufacturing grade producer milk from 3 million bacteria to 1 million bacteria per milliliter.

2. Lower the maximum allowable somatic cell count from 1.5 million cells to 1 million cells per milliliter.

3. Provide a definition for goat milk so that the milk can be used in products where legally provided.

4. Provide for use of the current USDA tuberculosis and brucellosis program requirements.

5. Delete the requirements for farm separated cream.

6. Make editorial changes in the sediment content classification.

These revisions have been developed in cooperation with the National Association of State Departments of Agriculture, State regulatory agencies, and dairy trade associations and producer groups.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Richard W. Webber, Head, Standardization Section, Dairy Division, Agricultural Marketing Service, Washington, D.C., 20250 (202) 447–7473.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified a "non-major" rule under criteria contained therein. Also, pursuant to this Executive Order it has been determined that there would be no effect on trade sensitive activities.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that the

revisions will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. Public Law 96–354 (5 U.S.C. 601), because it is a voluntary standard and the revision will not increase costs to those utilizing the standard.

In 1983 the National Association of State Departments of Agriculture passed a resolution recommending that the manufacturing grade producer milk quality requirements be tightened. After coordination with State regulatory agencies, and major dairy trade associations and producer groups, it was determined that these changes will accurately describe the minimum quality requirements for this grade of producer milk. The major revisions are described below.

1. Lower the maximum allowable bacterial estimate for producer milk from 3 million to 1 million bacteria per milliliter.

USDA has an ongoing surveillance program to evaluate sanitation and production practices and physical facilities of producers of manufacturing grade milk. Based on this surveillance program, it has been determined that sufficient progress has been made in the production of better quality milk so that a satisfactory producer would not have any difficulty in meeting the revisions.

2. Lower the maximum allowable somatic cell count from 1.5 millon cells to 1 million cells per milliliter.

The Department's policy has been that the requirements for abnormal milk should be applied equally to all grades of milk. The National Conference on Interstate Milk Shipments has lowered the somatic cell count for Grade A milk. Therefore, a similar change is being made for manufacturing grade milk.

3. Provide a definition for goat milk so that the milk can be used in products where legally provided.

Goat milk is being produced and utilized for the manufacture of cheese, ice cream, evaporated milk and other products. The revision will recognize the production and use of goat milk, which will aid in its marketing.

4. Provide for the use of current USDA tuberculosis and brucellosis program requirements.

In 1982 the Department revised its Uniform Methods and Rules for these two programs. The manufacturing milk requirements cover herd health; therefore, the updated rules need to be referenced.

5. Delete the requirements for farm separated cream.

The production of farm-separated cream has greatly declined over the years. In 1970 the price support of butterfat in farm-separated cream was repealed. The U.S. grade standard for butter was amended in 1977 to delete the U.S. Grade C, which provided the quality criteria that were generally used to grade butter made from this type of cream. Since these changes have been made in the Department's programs, there is no need to retain requirements for farm-separate cream. This revision will not prevent the commercial use of this cream in the production of butter.

6. Make editorial changes in the sediment content classification.

The editorial changes will simplify the language concerning the requirement for sediment testing so that it will be clearer.

In addition to the major revisions outlined above, other revisions are being made for consistency. The basis for the classification of raw milk quality is being amended to clarify that producer milk shall be tested on an individual producer basis for somatic cell count and antibiotics. Updated test methods for somatic cell count are being adopted and the compliance procedures are changed to conform to current practices. Also, the requirement concerning the appearance of acceptable raw milk has been expanded to require that the milk be free of excessive coarse sediment when examined visually or by an acceptable test. Such a test as the Sani-Guide would be an acceptable test for determination of "free of excessive coarse sediment." When determining the somatic cell count of producer milk using the Wisconsin Mastitis Test as a screening test, a value of 19 mm. is being established. Since the acceptable level for bacterial estimate of producer milk is being lowered, only those test methods that can accurately reflect this level are being specified.

The current milk quality requirements have been in effect since October 10, 1975. With these changes, they will continue to aid in the orderly marketing of quality manufacturing grade milk from the approximately 74,000 producers in 30 states.

The Department is revising the parallel document "Milk for Manufacturing Purposes and its Production and Processing; Recommended Requirements for Adoption by State Regulatory Agencies." This document is offered to the States to assist in bringing about uniformity of State regulatory requirements.

USDA standards are voluntary standards that are developed to assist the orderly marketing process. Dairy plants are free to choose whether or not to use the standards. When dairy products are graded, the regulations governing the grading services of manufactured or processed dairy products, which require all graded dairy products to be produced in a USDA approved plant, would be in effect. These regulations also require a charge for grading services provided by USDA.

Public Comments

On February 27, 1985, the Department published a proposed rule to revise the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service (50 FR 7923–7925). The public comment period closed July 1, 1985. Fourteen comments were received. Seven comments supported the revisions, six supported the revisions with suggested changes, and one was against the revisions.

The suggested changes were:

1. One comment requested that the standard plate count for manufacturing grade milk approximate that for fluid grade milk.

Presently, the maximum bacterial limit individual producer Grade A raw milk is 100,000 per milliliter. As provided herein, the maximum bacterial limit for individual producer manufacturing grade milk will be lowered from 3 million to 1 million per milliliter. At this time, there is no indication on the part of processors, marketers and consumers that a maximum limit approaching 100,000 per milliliter is needed for the production of good quality manufactured dairy products for today's marketplace. Therefore, the Department is retaining this revision as proposed.

2. Two comments requested various changes in the testing for abnormal milk.

(a) Delete the Modified Whiteside Test as an acceptable screening test.

In the current edition of *Standard Methods for the Examination of Dairy Products* (SMEDP), this test method is now designated as one that is being phased out and is being superseded by other methods that have been used extensively and have proven to be more reliable. The Department agrees with the suggestion to delete this method.

(b) Delete the California Mastitis Test as an acceptable screening test.

The current edition of SMEDP indicates that this is still an acceptable test for milk of individual producers or commingled supplies. It also categorizes the test as one that has been subjected to a thorough evaluation, has been widely used, and has thereby demonstrated its value by extensive application. Therefore, the Department is retaining this test as an acceptable screening test.

(c) Delete the Membrane Filter DNA Somatic Cell Count as an acceptable confirmatory test.

This method has been removed as a recognized method in the current edition of SMEDP. Also, the sole source of the reagents used in the test has discontinued production of the reagents. The Department agrees with the suggestion to delete this method.

(d) Adopt procedures to differentiate the non-cell particles in goat milk from cells when using electronic and optical cell counting procedures.

A similar request was considered by the 1985 National Conference on Interstate Milk Shipments. The voting delegates representing state regulatory agencies unanimously denied the request. Therefore, the Department believes it should not adopt such changes since the states have taken this action.

3. Two comments requested changes in the way that the Direct Microscopic Clump (DMC) count for commingled milk is taken from plant storage tanks and utilized in determining the status of a plant survey.

The DMC count requirement was not a requirement proposed for revision. However, these comments will be made available to the Dairy Grading Section, Dairy Division, Agricultural Marketing Service, for their consideration as they evaluate the administrative procedures for carrying out the regulations concerning the commingled count requirement.

4. Two comments were applicable only to the revisions in the Companion document, "Milk For Manufacturing Purposes and its Production and Processing; Recommended Requirements for Adoption by State Regulatory Agencies," and are dealt with in that document.

The one comment received against the revisions was based on current costs of producing milk and religious beliefs. The Department's surveilance program for the state in which this producer is located has determined that producers in similar situations can satisfactorily meet the revised requirements.

List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products.

PART 58—[AMENDED]

In consideration of the foregoing, 7 CFR Part 58, Subpart B, is amended as follows:

1. The authority citation for 7 CFR Part 58 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090, as amended; 7 U.S.C. 1622, 1624.

2. In § 58.101, paragraph (k) is revised to read as follows:

§ 58.101 Meaning of words.

* * * * *

(k) *Milk.* The term "milk" shall include the following:

(1) Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. The cows shall be located in a Modified Accredited Area, an Accredited Free State, or an Accredited Free Herd for tuberculosis as determined by the Department. In addition, the cows shall be located in States meeting Class B status or Certified-Free Herds or shall be involved in a milk ring testing program or blood testing program under the current USDA Brucellosis Eradication Uniform Methods and Rules.

(2) Goat milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy goats. The goats shall be located in States meeting the current USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication or an Accredited Free Goat Herd. Goat milk shall only be used to manufacture dairy products that are legally provided for in 21 CFR or recognized as non-standardized traditional products normally manufactured from goats milk.

* * * * *

3. Section 58.132 is revised to read as follows:

§ 58.132 Basis for classification.

The quality classification of raw milk for manufacturing purposes from all individual producers shall be based on the following: Organoleptic examination (appearance and odor), quality control tests for sediment content, bacterial estimate, somatic cell count, and antibiotics. All milk received from producers shall not exceed the Food and Drug Administration's established limits for pesticide and herbicide residues. Producers shall be promptly notified of any shipment or portion thereof of their milk that fails to meet any of these quality specifications.

4. Section 58.133 is revised to read as follows:

§ 58.133 Methods for quality and wholesomeness determination.

(a) *Appearance and odor.* The appearance of acceptable raw milk shall be normal and free of excessive coarse sediment when examined visually or by an acceptable test procedure. The milk shall not show any abnormal condition (including, but not limited to, curdled, ropy, bloody or mastitic condition), as indicated by sight or other test procedures. The odor shall be fresh and sweet. The milk shall be free from objectionable feed and other off-odors that adversely affect the finished product.

(b) *Abnormal milk.* (1) A laboratory examination for the presence of somatic cells shall be made on all patrons' milk at least 4 times in each 6-month period at irregular intervals.

(2) A confirmatory test for somatic cells shall be done when a herd milk sample exceeds any of the following screening test results:

(i) California Mastitis Test—Weak Positive (CMT 1+).

(ii) Wisconsin Mastitis Test—WMT value of 19 mm.

(3) The confirmatory test for somatic cells shall be performed by using one of the following procedures:

(i) Direct Microscopic Somatic Cell Count (Single Strip Procedure). Pyronin Y-methyl green stain shall be used for goat milk.

(ii) Electronic Somatic Cell Count.

(iii) Optical Somatic Cell Count.

(4) The results of the confirmatory test for somatic cells shall be the official result.

(5) Whenever the confirmatory somatic cell count indicates the presence of more than 1,000,000 somatic cells per ml., the following procedures shall be applied:

(i) The producer shall be notified with a warning of the excessive somatic cell count.

(ii) Whenever two of the last four consecutive somatic cell counts exceed 1,000,000 per ml., the appropriate state regulatory authority shall be notified and a written notice given to the producer. This notice shall be in effect as long as two of the last four consecutive samples exceed 1,000,000 per ml.

(6) An additional milk sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (b)(5)(ii) of this section. If this sample also indicates a high somatic cell count, the patron's milk shall be rejected until satisfactory compliance is obtained. A temporary status may be approved by the appropriate state regulatory agency whenever an additional sample of herd milk is tested and found satisfactory. The producer may be fully reinstated when three out of four consecutive tests have counts of 1,000,000 or less somatic cells per ml. The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

(c) *Antibiotics.* At least 4 times in 6 months, at irregular intervals, each producer's milk or commingled sample representing all producers shall be tested for antibiotic residues using an officially recognized test procedure. All individual samples shall be tested when the commingled sample is positive. When an individual producer shows a positive test, the milk shall be immediately rejected from all markets and shall not be accepted until a subsequent test is negative.

5. In § 58.134, paragraphs (a) and (b) are revised to read as follows:

§ 58.134 Sediment content.

(a) *Method of testing.* Methods for determining the sediment content of the milk of individual producers shall be those described in the latest edition of Standard Methods for the Examination of Dairy Products. Sediment content shall be based on comparison with applicable charts of the United States Sediment Standards for Milk and Milk Products, Subpart T, § 58.2728 through 58.2732, of this part.

(b) *Sediment content classification.* Milk shall be classified for sediment content, regardless of the results of the appearance and odor examination required in § 58.133(a), as follows:

USDA Sediment Standard

No. 1 (acceptable)—not to exceed 0.50 mg. or equivalent.
No. 2 (acceptable)—not to exceed 1.50 mg. or equivalent.
No. 3 (probational, not over 10 days)—not to exceed 2.50 mg. or equivalent.
No. 4 (reject)—over 2.50 mg. or equivalent.

* * * * *

6. In § 58.135, paragraphs (a) and (b) are revised to read as follows:

§ 58.135 Bacterial estimate.

(a) *Method of testing.* Methods for determining the bacterial estimate of the milk of individual producers shall be those described in the latest edition of Standard Methods for the Examination of Dairy Products.

(b) *Bacterial estimate classification.* Milk shall be classified for bacterial estimate by one of the following methods:

Bacterial estimate classification	Direct Microscopic count, standard plate count or plate loop count
No. 1	Not over 500,000 per ml.
No. 2	Not over 1,000,000 per ml.
Undergrade	Over 1,000,000 per ml.

* * * * *

7. § 58.322, is revised to read as follows:

§ 58.322 Cream.

Cream separated at an approved plant and used for the manufacture of butter shall have been derived from raw material meeting the requirements as listed under §§ 58.132 through 58.136 of this subpart.

Signed at Washington, D.C. on: August 22, 1985.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 85-20442 Filed 8-26-85; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-348]

Mediterranean Fruit Fly; Removal of Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document removes from the Domestic Quarantine Notices "Subpart—Mediterranean Fruit Fly" quarantine and regulations which quarantined Florida and imposed restrictions on the interstate movement of regulated articles from a regulated area in Dade County, Florida. The quarantine and regulations were established for the purpose of preventing the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States. It has been determined that all infestations of Mediterranean fruit fly in Florida have been eradicated and the quarantine and regulations are no longer necessary. The effect of this action is to delete restrictions on the interstate movement of previously regulated articles from the previously regulated area in Dade County.

DATES: Effective date of this amendment August 27, 1985. Written comments concerning this interim rule must be received on or before October 28, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Direector, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728, Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glenn Lee, Assistant Director, Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611, Federal Building, 6505 Belcrest Road, Hyattsville, Md 20782, (301), 436-6365.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period because otherwise there would be unnecessary restrictions imposed on the interstate movement of certain articles. This situation requires immediate action to delete such unnecessary restrictions.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

A document published in the **Federal Register** on May 8, 1985 (50 FR 19313-19321) set forth an interim rule amending Part 301 (Domestic Quarantine Notices) of Title 7 of the Code of Federal Regulations (7 CFR Part 301) by adding a new subpart captioned "Subpart—Mediterranean Fruit Fly" quarantine and regulations (7 CFR 301.78 *et seq.*; referred to below as the regulations). The document of May 8 quarantined the State of Florida and established regulations restricting the interstate movement of regulated articles out of a regulated area in Dade County, Florida, in order to prevent the artificial spread interstate of Mediterranean fruit fly. This document deletes all of Subpart—Mediterranean Fruit Fly from Part 301.

The regulations designated a large number of fruits, nuts, vegetables, and berries as regulated articles and a portion of Dade County in Florida, as a regulated area. No other area was designated as a regulated area.

Based on trapping and sampling surveys conducted by inspectors of the U.S. Department of Agriculture and State agencies of Florida, it has now been determined that the Mediterranean fruit fly no longer occurs in Dade County. Specifically, the last finding of fruit flies was made on April 9, 1985. Since then no other fruit flies or other evidence of an infestation has been found. Based on Departmental expertise, it has been determined that sufficient time has passed without finding additional fruit flies or other evidence of an infestation to conclude that an infestation no longer exists in Dade County.

Further, trapping and sampling surveys indicate that the Mediterranean fruit fly does not exist in any other place in the United States.

Under these circumstances there is no longer a basis for imposing restrictions on the movement of articles from any area in Florida or elsewhere in the United States because of the Mediterranean fruit fly. Therefore, in order to relieve unnecessary restrictions on the interstate movement of certain articles, it is necessary to amend 7 CFR Part 301 by removing Subpart—Mediterranean Fruit Fly from the Domestic Quarantine Notices.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This amendment deletes restrictions that had been imposed on the interstate movement of regulated articles from a portion of Dade County, Florida, approximately 90 square miles in size. It appears that there is very little commercial activity that occurs in this area. Specifically, it is comprised of private residences; small entities, including approximately 75 nurseries and 70 retail stores; 125 street vendors and open fruit stands; and fewer than 10 premises with orchards and vegetable plots (ranging in size from 1/2 acre to 15 acres). Most regulated articles sold by small entities in this area are moved solely in intrastate commerce. Further, the retail shops and nurseries sell other items in addition to the regulated articles so that the effect, if any, of deleting restrictions on the interstate movement of articles sold by these entities appears to be minimal.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Mediterranean Fruit Fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51 and 371.2.

2. "Subpart—Mediterranean Fruit Fly" (7 CFR 301.78 through 301.78–10) is removed.

Done at Washington, DC, this 22nd day of August 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–20396 Filed 8–26–85; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 359]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 359 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period August 30–September 5, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 359 (§ 908.659) is effective for the period August 30–September 5, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Oranges Administration Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1984–85. The committee met publicly on August 20, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand for Valencia oranges continues to be slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To

effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.659 is added to read as follows:

§ 908.659 Valencia Orange Regulation 359.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period August 30, 1985, through September 5, 1985, are established as follows:

(a) *District 1:* 240,000 cartons;
(b) *District 2:* 410,000 cartons;
(c) *District 3:* Unlimited cartons.

Dated: August 22, 1985.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–20438 Filed 8–26–85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 921

Handling of Fresh Peaches Grown in Designated Counties in Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim final rule.

SUMMARY: The Department of Agriculture (USDA) has decided to leave in effect an interim final rule which relaxed the grade requirements for certain shipments of Washington peaches. These changes are designed to maximize the marketing of fresh peaches of suitable quality in the interest of producers and consumers.

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This finalization of an interim final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule became effective on July 1, 1985, and was published in the **Federal Register** (50 FR 27411) on July 3, 1985. The rule revised § 921.318 (Peach Regulation 18) under Marketing Order 921 establishing grade and size requirements for Washington peaches effective July 1, 1985. It provided that for the period ending March 31, 1986, peaches which grade Washington No. 2 Grade or better may be handled if they are packed in the western lug box. Prior to July 1, 1985, such peaches packed in the western lug box or standard peach box were required to grade Washington Fancy Grade or better. The grade requirement relaxation is intended to maximize the marketing of fresh peaches of suitable quality to producers and consumers. The rule provided that interested persons could file written comments through July 31, 1985, none of which were received.

The Washington peach regulation was based upon the recommendation of the Washington Fresh Peach Marketing Committee comprised of Washington peach producers and handlers, and was issued under the marketing agreement, as amended, and Order No. 921, as amended (7 CFR Part 921), regulating the handling of peaches grown in Washington. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

List of Subjects in 7 CFR Part 921

Marketing Agreements and Orders, Washington, Peaches.

PART 921—[AMENDED]

1. The authority citation for 7 CFR Part 921 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The interim final rule published in the **Federal Register** (50 FR 27411) revising § 921.318 is adopted as a final rule.

Dated: August 22, 1985.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–20439 Filed 8–26–85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 967

Celery Grown in Florida; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This handling regulation establishes the quantity of Florida celery to be marketed fresh during the 1985–86 season, with the objective of assuring adequate supplies and orderly marketing.

EFFECTIVE DATE: August 27, 1985.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–5432.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. Purusant to requirements set forth in the Regulatory Flexibility Act (RFA) William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 149 and Order No. 967, both as amended, regulate the handling of celery grown in Florida. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Celery Committee, established under the order, is responsible for local administration.

This regulation is based upon the unanimous recommendations made by the committee at its public meeting at Orlando on May 23.

The committee recommended a Marketable Quantity of approximately 6.9 million crates of fresh celery for the 1985–86 season. This recommendation is based on the appraisal of the expected supply and prospective market demand.

Notice of the proposed regulation was published in the July 11 **Federal Register** (50 FR 28210) inviting written comments by August 12, 1985. A comment was received from Anthony R. Conte, City Councillor, Revere, Massachusetts, objecting to the proposal and marketing orders in general. His comment was fully considered but rejected as inconsistent with the policy of the act and purposes of the order.

The Marketable Quantity is about 35 percent more than the approximately 5.1 million crates marketed fresh during the season which ended July 31, 1985. Each

producer registered pursuant to § 967.37(f) will have an allotment equal to 100 percent of his/her historical marketings. This recommendation provides the industry an opportunity to (1) produce to its fullest capacity for the benefit of the consumer, and (2) determine its actual or potential maximum production capacity.

As required by § 967.37(d)(1) a reserve of six percent of the 1984–85 total Base Quantities is authorized for new producers and for increases by existing producers. One application for a new base of 140,000 crates was received and approved.

Findings

On the basis of all considerations it is hereby determined that this regulation will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) in that (1) adequate notice has been given of the requirements of this regulation through publicity in the production area and by publication in the July 11 Federal Register; (2) the regulation should become effective as early as possible in the marketing year which begins August 1, so producers and handlers will be afforded maximum time in which to plan their operations; and (3) compliance with this section, which is similar to those issued in previous seasons, requires no special preparation by handlers which cannot be completed prior to the time actual handling of harvested celery begins, generally in the latter part of October.

List of Subjects in 7 CFR Part 967

Marketing agreements and orders, Celery, Florida.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

PART 967—[AMENDED]

§ 967.320 [Removed]

Section § 967.320 (49 FR 33204, August 22, 1984) is removed and a new § 967.321 is added as follows:

§ 967.321 Handling Regulation; Marketable Quantity; and Uniform Percentage for the 1985–86 Season ending July 31, 1986.

(a) The Marketable Quantity established under § 967.36(a) is 8,929,738 crates of celery.

(b) As provided in § 967.38(a), the Uniform Percentage shall be 100 percent.

(c) Pursuant to § 967.36(b) no handler shall handle any harvested celery unless it is within the Marketable Allotment of a producer who has a Base Quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1) a reserve of six percent of the total Base Quantities is hereby authorized for (1) new producers and (2) increases for existing Base Quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: August 22, 1985.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–20443 Filed 8–26–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AGL–15]

Alteration of Control Zone; Ohio

Correction

In FR Doc. 85–18553 beginning on page 32393 in the issue of Monday, August 12, 1985, in the third column of page 32393, and the first column of page 32394, correct the spelling of "Richenbacker Airport" to read "Rickenbacker Airport" each time it appears.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 145

[Docket No. 77P–0300]

Canned Peaches; Standard of Quality

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the U.S. standard of quality for canned peaches to include: (1) A uniformity of size requirement for whole, halves, and quarter styles based on the diameter of the units; (2) a limitation on pits and pieces of pit; and (3) requirements for chunky style. This action will promote honesty and fair dealing in the interest of consumers and facilitate international trade.

DATES: Effective July 1, 1987, all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date shall fully comply. Except as to any provisions that may be stayed by the filing of proper objections, voluntary compliance with this final regulation, including any required labeling changes may begin October 28, 1985. Objections by September 26, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION:

Background

In the Federal Register of August 28, 1980 (45 FR 56823), FDA published a proposal to amend the standard of quality for canned peaches (21 CFR 145.170(b)) in consideration of the quality provisions of the Recommended International Standard for Canned Peaches, First Revision, 1975 (CAC/RS 14–1969) (Codex standard) and petitions by Libby, McNeill & Libby, Inc., California League of Food Processors (formerly the Canners League of California), and the Food Safety and Quality Service, United States Department of Agriculture (USDA). Interested persons were given until October 27, 1980, to comment on the proposal. The agency published a final rule addressing part of the proposal in the Federal Register of June 26, 1981 (46 FR 33027). In that same issue of the Federal Register, the agency reopened and extended to April 27, 1982 the comment period (see 46 FR 33055; June 26, 1981) to permit the submission of data by the affected industry on its ability to meet the uniformity of size and pit and pit fragments limitation.

Comments

Two comments were received on the proposal. Based on data developed during the extended comment period, the comments supported the uniformity of size requirement but argued that the limitation on trimmed units should not be applicable to the chunky style because, by definition, chunky style canned peaches are not distinctively or uniformly shaped. The whole, halves, quarters, and slices styles of canned peaches are uniformly shaped to conform to the descriptive name for, and the normal shape of, the peach unit.

FDA agrees with the comments and has revised § 145.170(b)(1)(vi) accordingly.

The comments also recommended that FDA adopt the pit and pit fragment tolerance in the 1962 USDA voluntary grade standards, in lieu of the Codex requirement, for canned clingstone and canned freestone peaches because the proposed pit and pit fragments limitations do not reflect current good manufacturing practice. In support of their position, the comments included data that show that up to 34 percent of the clingstone peaches examined in July 1981 would not comply with the proposal.

FDA has carefully reviewed the comments and the submitted supporting data. The record shows that the 1962 USDA voluntary grade standards are reasonable and describe current good manufacturing practice more accurately than do the proposed Codex standards or other available standards. FDA believes that the inclusion in FDA's rule of the 1962 USDA voluntary standards will protect consumers and will promote honesty and fair dealing in the interest of consumers. FDA has revised § 145.170(b) (1)(viii) and (3) accordingly.

In accordance with the Regulatory Flexibility Act (Pub. L 96–354 (5 U.S.C. 601)), FDA has considered the effect that this final rule would have on small entities including small businesses and has determined that this final rule would have no adverse effects because, based on the comments received, industry considers these requirements, as revised, to be current good manufacturing practice. Therefore, FDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Any person who will be adversely affected by this regulation may at any time on or before September 26, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Notice of the filing of objections or lack thereof will be published in the **Federal Register**.

List of Subjects in 21 CFR Part 145

Canned fruits, Food standards, Fruits.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 145 is amended as follows:

PART 145—CANNED FRUITS

1. The authority citation for 21 CFR Part 145 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055–1056 as amended (21 U.S.C. 341, 371); 21 CFR 5.10.

2. In § 145.170 by revising paragraph (b), to read as follows:

§ 145.170 Canned peaches.

* * * * *

(b) *Quality.* (1) The standard of quality for canned peaches is as follows:

(i) *Maturity.* All units tested in accordance with the method prescribed in paragraph (b)(2) of this section are pierced by weight of not more than 300 grams (10.6 ounces).

(ii) *Minimum size.* In the case of halves and quarters styles, the weight of each unit is not less than 17 grams (0.6 ounce) and 8.5 grams (0.3 ounce), respectively.

(iii) *Uniformity of size—(a) Whole, halves, and quarters.* In the case of whole, halves, and quarters styles, the diameter (width) of the largest unit is not more than 1.5 centimeters (0.6 inch) greater than the diameter (width) of the smallest unit. In containers with more than 20 units, 2 units may be disregarded in making the determination. Where a unit has broken in the container, the combined broken pieces are to be reassembled to approximate a single unit of the appropriate style.

(*b*) *Chunky.* In the case of chunky style, not more than 25 percent of the drained weight of the contents of the container consists of units that will pass through an opening 13 millimeters (0.5 inch) wide or that are more than 44 millimeters (1.75 inches) along the longest cut edge.

(iv) *Peel.* Not more than 15 square centimeters aggregate area of peel per 1,000 grams (1.05 square inches per 16 ounces) of net weight. Include any peel adhering to the peach or loose in the container.

(v) *Blemished units.* Not more than 20 percent by count of the units in the container are blemished, e.g., with scab, hail injury, discoloration, or other abnormalities. Blemished units are units which contain surface discolorations that definitely contrast with the overall color and may penetrate into the flesh.

(vi) *Trimmed units.* In the case of whole, halves, quarters, and slices styles, all units are untrimmed or are so trimmed as to preserve normal shape of the units.

(vii) *Crushed or broken units.* In the case of whole, halves, halves and pieces, quarters, slices, dice and chunky styles, not more than 5 percent by count of the units in containers of 20 or more units and not more than 1 unit in containers of fewer than 20 units are crushed or broken. A unit that has lost its normal shape because of ripeness and bears no mark of crushing shall not be considered crushed or broken.

(viii) *Pits and pieces of pit.* In the case of all styles, except whole peaches and when whole peach pits or peach kernels are used as seasoning ingredients, there is not more than one loose pit or one loose large hard piece of pit (10 millimeters (⅜ inch) or larger) or one unit of peach (e.g., peach half or peach slice) to which one or more large hard pieces of pit are attached per 5.67 kilograms (200 ounces) net weight. In addition, there is not more than three of any one or any combination of two or more, per 2.83 kilograms (100 ounces) net weight of the following: (*a*) A unit to which one or more small hard pieces of pit less than 10 millimeters (⅜ inch) but not less than 1.6 millimeters (1/16 inch) are attached, (*b*) a unit to which three or more small pieces of pit less than 1.6 millimeters (1/16 inch) are attached, or (*c*) a loose small hard piece of pit less than 10 millimeters (⅜ inch).

(2) Canned peaches shall be tested by the following method to determine whether or not they meet the requirements of paragraph (b)(1)(i) of this section: So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of 29 millimeters (1.125 inches) inside diameter, with vertical sides; or rectangular in shape, 19 millimeters (0.75 inch) by 25 millimeters (1 inch) inside measurements, with ends vertical and sides sloping downward and joining at

the center at a vertical depth of 19 millimeters (0.75 inch). Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with a rectangular peel surface at least 13 millimeters (0.51 inch) by 25 millimeters (1 inch) cannot be trimmed. Test the piece by means of a round metal rod 4 millimeters (0.16 inch) in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams (3.53 ounces). Set the receptacle so that the surface of test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams (0.45 ounce) per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness.

(3) Determine compliance as specified in § 145.3(o) except that a lot shall be deemed to be in compliance for peel, pits, and pieces of pit based on the average of all samples analyzed according to the sampling plans set out in § 145.3(p).

(4) If the quality of canned peaches falls below the standard prescribed in paragraph (b)(1) of this section, the label shall bear the general statement of substandard quality defined in § 130.14(a) of this chapter, in the manner and form therein specified; however, if the quality of the canned peaches falls below standard with respect to only one of the factors of quality specified in paragraph (b)(1) (i) through (viii) of this section, there may be substituted for the second line of such general statement of substandard quality ("Good Food—Not High Grade") a new line, as specified after the corresponding designation of paragraph (b)(1) of this section which the canned peaches fail to meet, as follows: (i) "Not tender"; (ii) "Small halves" or "Small quarters" as the case may be; (iii) (*a*) "Mixed sizes"; (*b*) "Undersized and/or oversized pieces", (iv) "Excess peel"; (v) "Blemished"; (vi) "Unevenly trimmed"; (vii) "Partly crushed or broken"; (viii) "Contains pits or pit fragments". Such alternative statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "peaches" and any words and statements required or authorized to appear with such name by paragraph (a)(2) of this section.

* * * * *

Dated: August 9, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-20376 Filed 8-26-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Nutrius, Inc., providing for the manufacture of a 20-gram-per-pound tylosin premix to be used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: August 27, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Nutrius, Inc., Two Brecksville Commons, 8221 Brecksville Rd., Brecksville, OH 44141, is the sponsor of a supplement to NADA 93-518 submitted on its behalf by Elanco Products, Co. The supplement provides for the manufacture of a new 20-gram-per-pound tylosin premix used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1)(i) through (vi). Nutrius, Inc., had previously received approval for 1-, 2-, 4-, 5-, 8-, 10-, and 40-gram-per-pound tylosin premixes. The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.625 by revising paragraph (b)(2) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(2) To 051359: 1, 2, 4, 5, 8, 10, 20, and 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Dated: August 20, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-20380 Filed 8-26-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins, Monensin, and Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by American Hoechst Corp., providing for safe and effective use of 1 to 2 grams (g) of bambermycins per ton of complete broiler feed in combination with monensin and roxarsone.

EFFECTIVE DATE: August 27, 1985.

FOR FURTHER INFORMATION CONTACT:
Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION:
American Hoechst Corp., Animal Health Division, Route 202–206 North, Somerville, NJ 08876, is the sponsor of NADA 98–341 which provides for combining separately approved bambermycins, monensin, and roxarsone premixes in making a complete broiler feed. The currently approved complete feeds contain bambermycins, 1 g per ton; monensin, 90 to 110 g per ton; and roxarsone, 22.7 to 45.4 g per ton; used for increased rate of weight gain, improved feed efficiency, and as an aid in the prevention of coccidiosis caused by certain *Eimeria* species. This supplement provides for increasing the complete feed use level of bambermycins to 1 to 2 g per ton, the level currently approved for the drug alone as a growth promotant in broiler chicken feed. The supplemental NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.95 by adding new paragraph (e)(1)(xiii) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(e) * * *

(1) * * *

(xiii) *Amount per ton.* Bambermycins, 1 to 2 grams plus monensin, 90 to 110 grams plus roxarsone, 22.7 to 45.4 grams (0.0025 to 0.005 percent).

(*a*) *Indications for use.* For increased rate of weight gain; as an aid in prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(*b*) *Limitations.* See paragraph (e)(1)(vii)(*b*) of this section.

* * * * *

3. In § 558.355 by removing the word "[Reserved]" from paragraph (f)(1)(xvii) and adding a new paragraph to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(1) * * *

(xvii) *Amount per ton.* Monensin, 90 to 110 grams plus bambermycins, 1 to 2 grams plus roxarsone, 22.7 to 45.4 grams (0.0025 to 0.005 percent). See § 558.95(e)(1)(xiii) of this chapter.

Dated: August 20, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–20379 Filed 8–26–85; 8:45 am]

BILLING CODE 4160–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2640 and 2641

Definitions; Arbitration of Disputes In Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This regulation prescribes rules and procedues for the arbitration of disputes between employers and multiemployer pension plan sponsors concerning employer withdrawal liability under the Employee Retirement Income Security Act of 1974, as amended. The Act provides for the resolution of those disputes through arbitration and directs the Pension Benefit Guaranty Corporation to promulgate fair and equitable procedures for the conduct of the arbitration. This regulation is designed to provide procedures to facilitate prompt resolution of disputes by an impartial arbitrator.

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT:
Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, 2020 K Street, NW., Washington, DC 20006, 202–254–4856 (202–254–8010 for TTY and TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: On July 7, 1983, the Pension Benefit Guaranty Corporation ("PBGC") published a proposed rule that would amend 29 CFR Part 2640, Definitions, and add a new Part 2641, Arbitration of Disputes in Multiemployer Plans (48 FR 31251). The proposed rule was published pursuant to section 4221 of the Employee Retirement Income Security Act of 1974, *as amended by* the Multiemployer Pension Plan Amendments Act of 1980 (the "Act"). Section 4221 (29 U.S.C. 1401) provides that arbitration of disputes between an employer and the plan sponsor of a multiemployer plan concerning withdrawal liability under sections 4201 through 4219 of the Act (29 U.S.C. 1381–1399) shall be conducted in accordance with fair and equitable procedures to be promulgated by the PBGC.

The proposed rule provided a 60-day period for public comments on the regulatory provisions. In addition, the PBGC specifically invited public comment on the usefulness of a PBGC-maintained roster of qualified arbitrators. Twenty comments were received and reviewed by PBGC, and many of the suggestions offered have been incorporated in this final rule. Comments on a number of issues were sharply divided, requiring the PBGC to determine which of conflicting views would best fulfill the statutory mandate that the PBGC establish fair and equitable procedures. A full discussion of the comments received and the reasons for adopting or not adopting proposed changes follows. In addition, clarifying changes were made in the regulation where necessary.

PBGC Roster of Arbitrators

The majority of comments that addressed the issue opposed the maintenance of a roster of qualified arbitrators by the PBGC, arguing that such a roster would merely duplicate those already maintained by private organizations. The PBGC agrees that there is no convincing evidence of the need for a PBGC-maintained roster and therefore will not implement this proposal.

Section 2640.3 Definitions.

One comment urged that the definition of "employer" be revised to avoid creating any inferences concerning the proper parties to a withdrawal liability arbitration. The PBGC did not intend any such inference and has revised the definition accordingly.

Section 2641.1 Purpose and scope.

Several comments asked what impact the final regulation would have on arbitrations pending on its effective date and on plan rules governing arbitration procedures. The PBGC therefore has revised § 2641.1 to address these questions. The procedures in the final regulation will apply to arbitration proceedings that are initiated on or after the regulation's effective date. Plans will be allowed to adopt supplementary procedural rules that are consistent with the provisions of the final regulation, but these rules will be binding on the parties only to the extent determined by the arbitrator. One comment asked that plans be permitted to enforce any procedural rules that were not in "direct conflict" with the regulation. The PBGC has not adopted this suggestion, because there is too great a danger of unfairness if plans are allowed broad discretion to adopt procedural rules.

Section 2641.2 Initiation of arbitration.

Extension of time limits by mutual agreement. A number of comments urged that the parties be permitted by mutual agreement to defer initiation of arbitration, citing circumstances under which deferral would avoid unnecessary burdens. The PBGC agrees that there is no need to insist upon particular time limits when all parties to a proceeding are willing to waive them and has revised § 2641.2 accordingly.

PBGC's authority to prescribe time limits. One comment denied that the PBGC has the authority to prescribe time limits in the procedures that it promulgates and asked that such provisions be stricken here and elsewhere in the regulation. The PBGC disagrees. The Act authorizes the PBGC to promulgate fair and equitable arbitration procedures, and reasonable time limits are an essential part of such procedures.

Penalties for non-timely actions. Some comments relating to the various time limits specified in the proposed regulation noted that, in most cases, no penalties are specified for failure to act within these limits. The PBGC does not believe that appropriate penalties can be specified in a general procedural regulation. Rather, sanctions for failure of a party to take timely action should be determined by the arbitrator. If the arbitrator fails to observe time limits, judicial remedies are available to the parties.

Technical correction. The PBGC has also revised the time limits in § 2641.2(a) to correct an inadvertent discrepancy between the proposed regulation and the statutory time periods for the initiation of arbitration.

Section 2641.3 Appointment of the arbitrator.

Preselection of arbitrator. The proposed regulation did not permit the selection of an arbitrator before the initiation of arbitration. Three comments endorsed this restriction, and one opposed it. After consideration of the comments, the PBGC has concluded that preselection of the arbitrator would jeopardize the fairness of the arbitration procedure and undermine the purposes of mandatory arbitration of withdrawal liability disputes.

An arbitrator has wide latitude in conducting arbitration proceedings, and his award is subject to only limited judicial review. Fundamental fairness demands that the impartiality of one in whom such powers are vested be free from reasonable doubt, and the best way to ensure that all parties will have confidence in his impartiality is to have him selected by mutual consent. If preselection were allowed in withdrawal liability arbitrations, the arbitrator would, in practice, almost always be imposed unilaterally by the plan sponsor, a result entirely contrary to the PBGC's mandate to devise "fair and equitable" procedures.

The comment that favored preselection offered a variety of arguments, each of which the PBGC has considered and rejected. It argued, first, that the selection of an arbitrator before a dispute arises is common in commercial and other labor arbitrations. In the examples that were cited, however, either the decision to arbitrate future disputes was made voluntarily by the parties or the arbitrator was chosen by the mutual agreement of parties with opposing interests. Neither of these conditions normally exists in withdrawal liability disputes.

A withdrawing employer must resort to arbitration if it wishes to challenge the plan sponsor's assessment of liability, while parties to a commercial contract, for instance, are under no obligation to agree in advance to arbitrate rather than litigate their disputes. Nor can the withdrawing employer have any confidence that his interests will have been taken into account, at least at second hand, in the choice of an arbitrator. In an ordinary labor dispute, an employer knows that any arbitrator preselected under a collective bargaining agreement was chosen jointly by labor and management representatives and therefore can be expected to take into account both employer and employee points of view. On the other hand, there is no feasible means by which an arbitrator could be preselected by representatives of both the plan sponsor and the employers that will withdraw in the future (whose interests are materially different from those of the employers who will not withdraw). For these reasons, analogies to selection practices in other types of arbitration are unpersuasive.

Second, the minority comment adduced several alleged "policy and practical" advantages to preselection: that the commencement of arbitration would be expedited, that a preselected arbitrator would be more likely to be familiar with the industry covered by the plan, and that the repeated employment of the same arbitrator would guarantee greater consistency in awards, leading to fewer unnecessary disputes. There may be some merit to these points, but they do not outweigh the problem of apparent or actual bias on the part of the arbitrator. The time saved by preselection is not substantial, and the delay will not jeopardize the plan, since employers are required to pay withdrawal liability installments pending the outcome of arbitration. Detailed familiarity with the industry is not important in most withdrawal liability arbitrations, where the questions to be decided will rarely turn on the abstruse minutiae of industry practice. And consistency of awards can be achieved by means other than using the same arbitrator over and over again. In particular, the publication of awards, as contemplated by § 2641.7(g) of the regulation, should alleviate much of the concern about divergent decisions.

For these reasons, § 2541.3(a) of the final regulation requires that the arbitrator be selected after the initiation of arbitration. This requirement also applies if the parties are using a PBGC-approved arbitration procedure. The PBGC does not intend to imply, however, that the maintenance of a roster of arbitrators by the sponsor of an arbitration procedure would be deemed to be prohibited preselection.

Preselection of arbitration procedure. The proposed regulation allowed a plan to specify in advance a PBGC-approved procedure to be used for all arbitrations of withdrawal liability disputes. Some comments argued that the plan sponsor's preselection of procedures is

open to the same objections as preselection of the arbitrator. The PBGC disagrees. A PBGC-approved procedure must be sponsored by a neutral party and reviewed by the PBGC, making the risk of manipulation or abuse quite remote. On the other hand, there are obvious advantages to all parties if a plan's arbitration procedure is known in advance.

Qualifications of the arbitrator. The proposed regulation required that the arbitrator be chosen from a roster of individuals who were neutral and possessed specialized knowledge of Title IV. Several comments suggested that these criteria were too narrow, might not be applicable to the questions at issue in a particular arbitration, and could lead to later court challenges to the arbitrator's award. After considering these comments, the PBGC agrees that the requirement that the arbitrator be selected by mutual agreement of the parties after the dispute has arisen provides sufficient assurance that the person chosen will have the requisite qualifications for hearing the dispute. Therefore, the specific qualifications in the proposed regulation have been deleted. For the same reason, the PBGC has not adopted one comment's suggestion that the plan's permanent arbitrator be barred under all circumstances from arbitrating withdrawal liability disputes involving the plan by which he is employed.

Disqualification of the arbitrator. The proposed regulation required a newly selected arbitrator to reveal to the parties any facts that might indicate that he would be unable to hear the dispute impartially. He was then required to withdraw if any party objected. Thereafter, parties could request that the arbitrator withdraw but could not compel him to do so.

Two comments were received on this aspect of the proposed regulation, one arguing that it made disqualification too easy, the other that a mechanism should be provided for compelling an arbitrator's withdrawal at any time. After considering these comments, the PBGC has concluded that the scheme in the proposed regulation struck a reasonable balance and has made only clarifying changes in the final regulation.

Time for selecting replacement arbitrator. The proposed regulation allowed 45 days for the selection of a new arbitrator if the original arbitrator withdrew or was otherwise unable to act. The final regulation reduces this period to 20 days. The choice of a replacement arbitrator should be able to be made more expeditiously than the original selection, because suitable candidates will already have been identified in the course of the original selection process and the parties will not need the same preparation time as is necessary when an arbitration is newly begun.

Section 2641.4 Powers and duties of the arbitrator.

Interpretation of the law. The proposed regulation required the arbitrator to be "guided by interpretations given the Act by the courts and agencies charged with enforcement of the Act". This statement elicited various comments, ranging from a request that the arbitrator be precluded from considering legal issues to the suggestion that he interpret the Act "as if he were a United States district judge". Other comments urged the inclusion of additional possible sources of law, such as legislative history.

The arbitrator of a withdrawal liability dispute can scarcely avoid some application of the law in rendering his award. As the final regulation attempts to make clear, he is to follow existing law, as discerned from pertinent authorities. He is not free to disregard settled legal principles in pursuit of an individual perception of justice or equity. The final regulation does not, however, try to tell the arbitrator precisely where settled law is to be found.

Statutory presumptions. The proposed regulation paraphrased the presumptions set forth in section 4221(a)(3) of the Act. Several comments disagreed with aspects of this paraphrase or argued that it was superfluous. Upon reconsideration, the PBGC has decided that it is unnecessary, in a regulation dealing with arbitration procedures, to discuss the force and effect of the statutory presumptions. This silence is not intended to imply that the PBGC no longer holds the views expressed in the proposed regulation.

Prehearing discovery. Although the proposed regulation did not deal explicitly with prehearing discovery by the parties, several comments addressed the need for, and appropriate limitations on, discovery. The final regulation therefore includes discovery provisions, which are based largely upon the views expressed in the comments.

Due to the nature of withdrawal liability disputes, fairness will often require that discovery be available to the parties. The final regulation gives the arbitrator control over the scope of discovery so as to limit the burdens imposed on the parties. In general, the arbitrator should grant a discovery request if it appears likely to lead to the production of relevant evidence and the burden on the other parties is not disproportionate to the probable importance of that evidence. The arbitrator may impose appropriate sanctions for such actions as withholding evidence or harassing other parties through unnecessary discovery motions.

The PBGC notes that, as a number of comments pointed out, section 4221(e) of the Act does not apply to discovery proceedings. The contrary implication of § 2641.9 (a) and (b) of the proposed regulation was unintentional, and these paragraphs have been deleted from the final regulation.

Admissibility of evidence. The proposed regulation stated that conformity to the legal rules of evidence would not be required, unless the rights of the parties would be prejudiced. Several comments argued that the admissibility of evidence should be left to the discretion of the arbitrator in all cases. These comments contended that the proposal's reference to the legal rules of evidence was not needed to protect the rights of the parties, would open the door to appeals based on technicalities, and would place non-lawyer arbitrators at a disadvantage. The PBGC agrees with these comments and has revised the final regulation accordingly. The final regulation also makes it clear that the arbitrator can receive affidavits in evidence. Such evidence has, of course, only such weight as the arbitrator deems appropriate.

Prehearing conference. The proposed regulation authorized the PBGC to call a prehearing conference of the parties. Four comments objected to this provision, and none supported it. The adverse comments argued that such conferences would involve the PBGC too deeply in what is intended to be essentially a non-governmental arbitration process. In view of these comments, the provision has been deleted from the final regulation.

Section 2641.5 Hearing.

Time and place of hearing. A number of comments stated that the provision in proposed § 2641.5(a) for establishing the time and place of the hearing did not make clear whether the time limits applied to the establishment of the hearing date or to the hearing date itself, and that the time was too short if the latter was intended. This provision has been clarified, and the time limit within which the hearing must begin has been extended.

Counsel's standard of conduct. Several comments objected to the

requirement of § 2641.5(c) that counsel and other representatives adhere to a prescribed standard of conduct at the hearing. Since an arbitrator has the inherent power to enforce decorum, the PBGC believes that this provision is unnecessary and has stricken it from the final regulation.

Transcript and record of the hearing. One comment suggested that proposed § 2641.5(d) should distinguish between the record of the hearing and the transcript of the record. The regulation has been revised accordingly.

Order of presentation. Several comments objected to the provisions of § 2641.5(e)(2) concerning the order of presentation of the claim and proof. Since the PBGC believes that it is advisable to rely on the arbitrator's discretion as to how the hearing should proceed, proposed § 2641.5(e)(2) has been revised to leave the order of presentation at the hearing within the control of the arbitrator.

Section 2641.6 Reopening of proceedings.

The proposed regulation allowed the arbitrator to reopen the proceedings for good cause but also provided that the consent of all parties was required if reopening would delay the award beyond the deadline specified in proposed § 2641.7(b). Several comments objected to giving the parties the power to frustrate reopening. The PBGC agrees with this comment and has revised the final regulation accordingly.

Section 2641.4 Award.

Specification of findings of fact and conclusions of law. The proposed regulation required the arbitrator to include "specific findings of fact and conclusions of law" in his award. Some comments interpreted this as requiring that factual and legal conclusions be segregated and properly categorized. This requirement, it was asserted, would burden non-attorney arbitrators and lead to challenges based on the form of the award rather than its substance. The final regulation has been revised to make clear that the arbitrator need only state the factual and legal basis for the award, without explicitly characterizing his statements as "findings of fact" or "conclusions of law".

Recomputation of withdrawal liability payments. One comment interpreted the proposed regulation to require that the arbitrator personally compute and include in the award the employer's new withdrawal liability payment schedule, if it is changed by his decision. The comment pointed out that ordinarily the arbitrator would direct the plan to recompute the schedule in accordance with the principles laid down in the award. The final regulation has been revised to make it clear that such a procedure is proper.

Time of award. Two comments objected that the time allowed for rendering an award could be unreasonably short in complex cases. One of these comments suggested that the arbitrator be allowed to extend this time limit without the consent of the parties. The final regulation does not adopt this suggestion. It is the duty of an arbitrator, before agreeing to serve in a particular instance, to make sure that his schedule will permit him to issue an award promptly after the close of the proceedings. In the light of experience to date and the comments received, the PBGC believes that the time limits in the proposed regulation are adequate.

One comment suggested that the regulation include a penalty for lateness in rendering an award. The PBGC does not believe that it would be practicable to devise or enforce general rules governing such penalties. If an arbitrator is unduly tardy, the parties can seek relief through the courts. The PBGC anticipates, however, that "market pressures" will encourage arbitrators to issue their decisions promptly.

Publication of awards. One comment urged that the PBGC publish arbitration awards and maintain an index of awards by plan. The PBGC lacks the resources to enter the legal publication business but agrees that awards should be made public. Therefore, the final regulation requires plan sponsors to make copies of awards available to the PBGC and contributing employers. If there is sufficient public interest, commercial firms presumably will undertake the task of more widespread publication. After an award has been published in a readily available source, the plan sponsor's duty to provide copies will be satisfied if it refers inquiries to the published award.

Section 2641.8 Reconsideration of award.

Grounds for modification or reconsideration. One comment stated that the grounds for modification or reconsideration of an award set forth in § 2641.8(b) of the proposed regulation were unclear and might be interpreted as requiring "pleading-type rules" for the presentation of material. The provisions in the regulation reflect those of Title 9, section 11 of the United States Code and should be interpreted consistently with Title 9. As other provisions of the final regulation make clear, only minimum formalities are required in parties' presentations or in arbitrators' awards, and the PBGC does not believe that the rules governing modification or reconsideration of awards carry any divergent implication. Therefore, it has not been necessary to change these provisions in the final regulation.

Time limits for reconsideration. One comment requested that the arbitrator be given 30 days to decide a motion to modify or reconsider an award, because the Act allows a 30-day period for requesting judicial review. The PBGC believes that the time limits in the final regulation are reasonable and that there is no good reason to base one limitation period on the other.

Section 2641.9 Costs.

Many comments interpreted the provisions of the proposed regulation dealing with the allocation of the costs of arbitration as if they were discovery provisions. Responses to these comments are set forth *supra* in the discussion of § 2641.4.

The final rule provides that the costs of arbitration will ordinarily be shared equally by the opposing sides. The arbitrator may vary this allocation in the interests of justice. The regulation also includes two exceptions to the principle of equal sharing of costs. First, if only one party requests a transcript of the record of the arbitration, it must bear the costs of transcription and copying (§ 2641.5(d)). Second, the arbitrator may require one party to pay the reasonable attorney's fees of the other. Normally, each party should bear its own legal expenses, and the PBGC does not intend to imply that these costs should routinely be awarded to the victor. Rather, awards of attorneys' fees should be utilized only as a sanction against parties that initiate or defend an arbitration in bad faith or conduct themselves in a vexatious manner during the proceedings.

Section 2641.12 Filing or service of documents.

The proposed regulation uses the date of the United States Postal Service postmark as a starting point for various time periods. One comment suggested that the PBGC has ignored the possibility that postmarks often reflect a date two or three days after an item is mailed. The PBGC is aware that this may be a potential problem but has not adopted the comment's suggestion that all time periods in the regulation be extended by three days as a corrective measure. Instead, the final regulation enables the sender to establish the date of mailing by obtaining a certified or registered mail receipt from the Postal Service.

Section 2641.13 PBGC-approved arbitration procedures.

The proposed regulation referred to PBGC-approved alternatives to the procedures set forth in this part but, as several comments observed, did not explain how alternative procedures would be approved and did not make clear which portions of the procedures set forth in the regulation could be varied. A new § 2641.13 has been added to cover these points.

Regulatory Impact

The PBGC has determined that this proposed rule is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981 (46 FR 13193), because it will not result in an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices for consumers, individual industries or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PBGC certifies, under section 605(b) of the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities, *i.e.*, multiemployer pension plans and employers that contribute to such plans. The proposed regulation affects multiemployer pension plans and employers that withdraw from those plans and dispute the amount of withdrawal liability determined. Pension plans with fewer than 100 participants have traditionally been treated as small plans. Defining "small plans" as those with fewer than 100 participants, such plans represent only 10% of all multiemployer plans covered by PBGC (200 out of 2000). Further, small multiemployer plans represent only .3% of all small plans covered by the PBGC (200 out of 61,200) and less than .05% of all small plans (200 out of 427,900). Approximately 500,000 employers contribute to multiemployer plans, most of them small employers (under 100 employees). PBGC estimates that fewer than 25,000 (5%) of these employers will be subject to withdrawal liability in any year. Moreover, the proposed regulation does not impose an economic burden on the employers. Arbitration of a dispute concerning withdrawal liability is a statutory requirement. The statute sets out a detailed framework for the arbitration process that is explained in the regulation. No provision of the regulation independently imposes a significant economic impact on small employers or small plans. Therefore compliance with sections 603 and 604 of the Regulatory Flexibility Act is waived.

List of Subjects in 29 CFR Parts 2640 and 2641

Business and industry, Employee benefit plans, Pensions, and Small businesses.

In consideration of the foregoing, the Pension Benefit Guaranty Corporation amends Chapter XXVI of Title 29, Code of Federal Regulations as follows:

PART 2640—[AMENDED]

Part 2640 is amended as follows:

1. The authority for Part 2640 continues to read as follows:

Authority: Sec. 4002(b)(3), Pub. L. 93–406, as amended by sec. 403(1), Pub. L. 96–364, 94 Stat. 1208, 1302 (1980) (29 U.S.C. 1302).

2. A new § 2640.3 is added following § 2640.2 and preceding § 2640.4 and reading as follows:

§ 2640.3 Arbitration of disputes.

For purposes of Part 2641—

"Arbitrator" means an individual or panel of individuals selected according to Part 2641 of this chapter to decide a dispute concerning withdrawal liability.

"Employer" means an individual, partnership, corporation or other entity against which a plan sponsor has made a demand for payment of withdrawal liability pursuant to section 4219(b)(1) of the Act.

"Party" or "parties" means the employer and the plan sponsor involved in a withdrawal liability dispute.

"Plan sponsor" means the plan's joint board of trustees or, if none, the plan administrator, as defined in section 3(16) of the Act.

"Withdrawal liability dispute" means a dispute described in § 2641.1(a) of this chapter.

3. A new Part 2641 is added to read as follows:

PART 2641—ARBITRATION OF DISPUTES IN MULTIEMPLOYER PLANS

Sec.

2641.1 Purpose and scope.
2641.2 Initiation of arbitration.
2641.3 Appointment of the arbitrator.
2641.4 Powers and duties of the arbitrator.
2641.5 Hearing.
2641.6 Reopening of proceedings.
2641.7 Award.
2641.8 Reconsideration of award.
2641.9 Costs.
2641.10 Waiver of rules.
2641.11 Calculation of periods of time.
2641.12 Filing or service of documents.
2641.13 PBGC-approved arbitration procedures.

Authority: Secs. 4002(b)(3) and 4221, Pub. L. 93–406, as amended by secs. 403(1) and 104, Pub. L. 96–364, 94 Stat. 1208, 1302, and 1239 (1980) (29 U.S.C. 1302(b)(3) and 1401).

§ 2641.1 Purpose and scope.

(a) *Purpose.* Section 4221 of the Act provides that disputes between an employer and the plan sponsor of a multiemployer plan concerning the plan sponsor's determination of the employer's withdrawal liability under sections 4201 through 4219 and section 4225 shall be resolved through arbitration proceedings conducted in accordance with fair and equitable procedures to be promulgated by the PBGC. The purpose of this part is to establish procedures for the arbitration of withdrawal liability disputes.

(b) *Scope.* This part applies to arbitration proceedings initiated pursuant to section 4221 of the Act and this part on or after September 26, 1985. On and after the effective date, any plan rules governing arbitration procedures (other than a plan rule adopting a PBGC-approved arbitration procedure in accordance with § 2641.13) are effective only to the extent that they are consistent with this part and adopted by the arbitrator in a particular proceeding.

§ 2641.2 Initiation of arbitration.

(a) *Time limits for initiation of arbitration.* Arbitration of a withdrawal liability dispute may be initiated—

(1) By either of the parties within the 60-day period beginning on the 121st day after the date on which the employer requested reconsideration pursuant to section 4219(b)(2)(A) of the Act or, if earlier, within 60 days after the date on which the employer is notified pursuant to section 4219(b)(2)(B) of the Act of the plan sponsor's response to the request for reconsideration; or

(2) Jointly by the parties within the 180-day period beginning on the date of the plan sponsor's demand for payment of withdrawal liability pursuant to section 4219(b)(1) of the Act.

(b) *Waiver or extension of time limits.* Arbitration shall be initiated by one or both parties in accordance with this section, notwithstanding any inconsistent provision of any agreement entered into by the parties before the date on which the employer received notice of the plan's assessment or withdrawal liability. The parties may, however, by mutual agreement at any time, waive or extend the time limits specified in this section.

(c) *Establishment of timeliness of initiation.* A party that unilaterally initiates arbitration is responsible for establishing that the notice of initiation of arbitration was received by the other

party within the applicable period set forth in paragraph (a)(1) of this section (taking into account any waiver or extension under paragraph (b)). If arbitration is initiated by agreement of the parties, the date on which the agreement to arbitrate was executed establishes whether the arbitration was initiated within the time limit set forth in paragraph (a)(2) of this section (taking into account any waiver or extension under paragraph (b)).

(d) *Contents of agreement or notice.* If the employer initiates arbitration, it shall include in the notice of initiation a statement that it disputes the plan sponsor's determination of its withdrawal liability and is initiating arbitration. A copy of the demand for withdrawal liability and any request for reconsideration, and the response thereto, shall be attached to the notice. If a party other than an employer initiates arbitration, it shall include in the notice a statement that it is initiating arbitration and a brief description of the questions on which arbitration is sought. If arbitration is initiated by agreement, the agreement shall include a brief description of the questions submitted to arbitration. In no case is compliance with formal rules of pleading required.

(e) *Effect of incomplete agreement or notice.* If a party fails to object promptly in writing to deficiencies in an initiation agreement or a notice of initiation of arbitration, it waives its right to object.

§ 2641.3 Appointment of the arbitrator.

(a) *Appointment of and acceptance by arbitrator.* The parties shall select the arbitrator within 45 days after the arbitration is initiated, or within such other period as is mutually agreed after the initiation of arbitration, and shall mail to the designated arbitrator a notice of his appointment. The notice of appointment shall include a copy of the notice of initiation of arbitration or the initiation agreement, a statement that the arbitration is to be conducted in accordance with this part, and a request for a written acceptance by the arbitrator. The arbitrator's appointment becomes effective upon his written acceptance, stating his availability to serve and making any disclosures required by paragraph (b) of this section. If the arbitrator does not accept in writing within 15 days after the notice of appointment is mailed or delivered to him, he is deemed to have declined to act, and the parties shall select a new arbitrator in accordance with paragraph (d) of this section.

(b) *Disclosure by arbitrator and disqualification.* Upon accepting the appointment, the arbitrator shall disclose to the parties any circumstances likely to affect his impartiality, including any bias or any financial or personal interest in the result of the arbitration and any past or present relationship with the parties or their counsel. If any party determines that the arbitrator should be disqualified because of the information disclosed, that party shall notify all other parties and the arbitrator no later than 10 days after the arbitrator makes the disclosure required by this paragraph (but in no event later than the commencement of the hearing under § 2641.5). The arbitrator shall then withdraw, and the parties shall select another arbitrator in accordance with paragraph (d) of this section.

(c) *Challenge and withdrawal.* After the arbitrator has been selected, a party may request that he withdraw from the proceedings at any point before a final award is rendered on the ground that he is unable to render an award impartially. The request for withdrawal shall be served on all other parties and the arbitrator by hand or by certified or registered mail and shall include a statement of the circumstances that, in the requesting party's view, affect the arbitrator's impartiality and a statement that the requesting party has brought these circumstances to the attention of the arbitrator and the other parties at the earliest practicable point in the proceedings. If the arbitrator determines that the circumstances adduced are likely to affect his impartiality and have been presented in a timely fashion, he shall withdraw from the proceedings and notify the parties of the reasons for his withdrawal. The parties shall then select a new arbitrator in accordance with paragraph (d) of this section.

(d) *Filling vacancies.* If the designated arbitrator declines his appointment or, after accepting his appointment, is disqualified, resigns, dies, withdraws, or is unable to perform his duties at any time before a final award is rendered, the parties shall select another arbitrator to fill the vacancy. The selection shall be made, in accordance with the procedure used in the initial selection, within 20 days after the parties receive notice of the vacancy. The matter shall then be reheard by the newly chosen arbitrator, who may, in his discretion, rely on all or any portion of the record already established.

(e) *Failure to select arbitrator.* If the parties fail to select an arbitrator within the time prescribed by this section, either party or both may seek the designation and appointment of an arbitrator in a United States district court pursuant to the provisions of Title 9 of the United States Code.

§ 2641.4 Powers and duties of the arbitrator.

(a) *Arbitration hearing.* Except as otherwise provided in this part, the arbitrator shall conduct the arbitration hearing under § 2641.5 in the same manner, and shall possess the same powers, as an arbitrator conducting a proceeding under Title 9 of the United States Code.

(1) *Application of the law.* In reaching his decision, the arbitrator shall follow applicable law, as embodied in statutes, regulations, court decisions, interpretations of the agencies charged with the enforcement of the Act, and other pertinent authorities.

(2) *Prehearing discovery.* The arbitrator may allow any party to conduct prehearing discovery by interrogatories, depositions, requests for the production of documents, or other means, upon a showing that the discovery sought is likely to lead to the production of relevant evidence and will not be disproportionately burdensome to the other parties. The arbitrator may impose appropriate sanctions if he determines that a party has failed to respond to discovery in good faith or has conducted discovery proceedings in bad faith or for the purpose of harassment. The arbitrator may, at the request of any party or on his own motion, require parties to give advance notice of expert or other witnesses that they intend to introduce.

(3) *Admissibility of evidence.* The arbitrator determines the relevance and materiality of the evidence offered during the course of the hearing and is the judge of the admissibility of evidence offered. Conformity to legal rules of evidence is not necessary. To the extent reasonably practicable, all evidence shall be taken in the presence of the arbitrator and the parties. The arbitrator may, however, consider affidavits, transcripts of depositions, and similar documents.

(4) *Production of documents or other evidence.* The arbitrator may subpoena witnesses or documents upon his own initiative or upon request by any party after determining that the evidence is likely to be relevant to the dispute.

(b) *Prehearing conference.* If it appears that a prehearing conference will expedite the proceedings, the arbitrator may, at any time before the commencement of the arbitration hearing under § 2641.5, direct the parties to appear at a conference to consider—

(1) Settlement of the case;

(2) Clarification of issues and stipulation of facts not in dispute;

(3) Admission of documents to avoid unnecessary proof;

(4) Limitations on the number of expert or other witnesses; and

(5) Any other matters that could expedite the disposition of the proceedings.

(c) *Proceeding without hearing.* The arbitrator may render an award without a hearing if the parties agree and file with the arbitrator such evidence as the arbitrator deems necessary to enable him to render an award under § 2641.7.

§ 2641.5 Hearing.

(a) *Time and place of hearing established.* Unless the parties agree to proceed without a hearing as provided in § 2641.4(c), the parties and the arbitrator shall, no later than 15 days after the written acceptance by the arbitrator is mailed to the parties, establish a date and place for the hearing. If agreement is not reached within the 15-day period, the arbitrator shall, within 10 additional days, choose a location and set a hearing date. The date set for the hearing may be no later than 50 days after the mailing date of the arbitrator's written acceptance.

(b) *Notice.* After the time and place for the hearing have been established, the arbitrator shall serve a written notice of the hearing on the parties by hand or by certified or registered mail.

(c) *Appearances.* The parties may appear in person or by counsel or other representatives. Any party that, after being duly notified and without good cause shown, fails to appear in person or by representative at a hearing or conference, or fails to file documents in a timely manner, is deemed to have waived all rights with respect thereto and is subject to whatever orders or determinations the arbitrator may make.

(d) *Record and transcript of hearing.* Upon the request of either party, the arbitrator shall arrange for a record of the arbitration hearing to be made by stenographic means or by tape recording. The cost of making the record and the costs of transcription and copying are costs of the arbitration proceedings payable as provided in § 2641.9(b) except that, if only one party requests that a transcript of the record be made, that party shall pay the cost of the transcript.

(e) *Order of hearing.* The arbitrator shall conduct the hearing in accordance with the following rules:

(1) *Opening.* The arbitrator shall open the hearing and place in the record the notice of initiation of arbitration or the initiation agreement. The arbitrator may ask for statements clarifying the issues involved.

(2) *Presentation of claim and response.* The arbitrator shall establish the procedure for presentation of claim and response in such a manner as to afford full and equal opportunity to all parties for the presentation of their cases.

(3) *Witnesses.* All witnesses shall testify under oath or affirmation and are subject to cross-examination by opposing parties. If testimony of an expert witness is offered by a party without prior notice to the other party, the arbitrator shall grant the other party a reasonable time to prepare for cross-examination and to produce expert witnesses on its own behalf. The arbitrator may on his own initiative call expert witnesses on any issue raised in the arbitration. The cost of any expert called by the arbitrator is a cost of the proceedings payable as provided in § 2641.9(b).

(f) *Continuance of hearing.* The arbitrator may, for good cause shown, grant a continuance for a reasonable period. When granting a continuance, the arbitrator shall set a date for resumption of the hearing.

(g) *Filing of briefs.* Each party may file a written statement of facts and argument supporting the party's position. The parties' briefs are due no later than 30 days after the close of the hearing. Within 15 days thereafter, each party may file a reply brief concerning matters contained in the opposing brief. The arbitrator may establish a briefing schedule and may reduce or extend these time limits. Each party shall deliver copies of all of its briefs to the arbitrator and to all opposing parties.

§ 2641.6 Reopening of proceedings.

(a) *Grounds for reopening.* At any time before a final award is rendered, the proceedings may be reopened, on the motion of the arbitrator or at the request of any party, for the purpose of taking further evidence or rehearing or rearguing any matter, if the arbitrator determines that—

(1) The reopening is likely to result in new information that will have a material effect on the outcome of the arbitration;

(2) Good cause exists for the failure of the party that requested reopening to present such information at the hearing; and

(3) The delay caused by the reopening will not be unfairly injurious to any party.

(b) *Comments on and notice of reopening.* The arbitrator shall allow all affected parties the opportunity to comment on any motion or request to reopen the proceedings. If he determines that the proceedings should be reopened, he shall give all parties written notice of the reasons for reopening and of the schedule of the reopened proceedings.

§ 2641.7 Award.

(a) *Form.* The arbitrator shall render a written award that—

(1) States the basis for the award, including such findings of fact and conclusions of law (which need not be explicitly designated as such) as are necessary to resolve the dispute;

(2) Adjusts (or provides a method for adjusting) the amount or schedule of payments to be made after the award to reflect overpayments or underpayments made before the award was rendered or requires the plan sponsor to refund overpayments in accordance with § 2644.2(d); and

(3) Provides for an allocation of costs in accordance with § 2614.9.

(b) *Time of award.* Except as provided in paragraphs (c), (d), and (e) of this section, the arbitrator shall render the award no later than 30 days after the proceedings close. The award is rendered when filed or served on the parties as provided in § 2641.12. The award is final when the period for seeking modification or reconsideration in accordance with § 2641.8(a) has expired or the arbitrator has rendered a revised award in accordance with § 2641.8(c).

(c) *Reopened proceedings.* If the proceedings are reopened in accordance with § 2641.6 after the close of the hearing, the arbitrator shall render the award no later than 30 days after the date on which the reopened proceedings are closed.

(d) *Absence of hearing.* If the parties have chosen to proceed without a hearing, the arbitrator shall render the award no later than 30 days after the date on which final statements and proofs are filed with him.

(e) *Agreement for extension of time.* Notwithstanding paragraphs (b), (c), and (d), the parties may agree to an extension of time for the arbitrator's award in light of the particular facts and circumstances of their dispute.

(f) *Close of proceedings.* For purposes of paragraphs (b) and (c) of this section, the proceedings are closed on the date on which the last brief or reply brief is due or, if no briefs are to be filed, on the date on which the hearing or rehearing closes.

(g) *Publication of award.* After a final award has been rendered, the plan sponsor shall make copies available upon request to the PBGC and to all companies that contributes to the plan. The plan sponsor may impose reasonable charges for copying and postage.

§ 2641.8 Reconsideration of award.

(a) *Motion for reconsideration and objections.* A party may seek modification or reconsideration of the arbitrator's award by filing a written motion with the arbitrator and all opposing parties within 20 days after the award is rendered. Opposing parties may file objections to modification or reconsideration within 10 days after the motion is filed. The filing of a written motion for modification or reconsideration suspends the 30-day period under section 4221(b)(2) of the Act for requesting court review of the award. The 30-day statutory period again begins to run when the arbitrator denies the motion pursuant to paragraph (c) of this section or renders a revised award.

(b) *Grounds for modification or reconsideration.* The arbitrator may grant a motion for modification or reconsideration of the award only if—

(1) There is a numerical error or a mistake in the description of any person, thing, or property referred to in the award; or

(2) The arbitrator has rendered an award upon a matter not submitted to the arbitrator and the matter affects the merits of the decision; or

(3) The award is imperfect in a matter of form not affecting the merits of the dispute.

(c) *Decision of arbitrator.* The arbitrator shall deny the motion for modification or reconsideration or render an opinion pursuant to the request within 20 days after the request is filed with the arbitrator, or within 30 days after the request is filed if an objection is also filed.

§ 2641.9 Costs.

The costs of arbitration under this part shall be borne by the parties as follows:

(a) *Witnesses.* Each party to the dispute shall bear the costs of its own witnesses.

(b) *Other costs of arbitration.* Except as provided in § 2641.5(d) with respect to a transcript of the hearing, the parties shall bear the other costs of the arbitration proceedings equally unless the arbitrator determines otherwise. The parties may, however, agree to a different allocation of costs if their agreement is entered into after the employer has received notice of the plan's assessment of withdrawal liability.

(c) *Attorneys' fees.* The arbitrator may require a party that initiates or contests an arbitration in bad faith or engages in dilatory, harassing, or other improper conduct during the course of the arbitration to pay reasonable attorneys' fees of other parties.

§ 2641.10 Waiver of rules.

Any party that fails to object in writing in a timely manner to any deviation from any provision of this part is deemed to have waived the right to interpose that objection thereafter.

§ 2641.11 Calculation of periods of time.

For purposes of calculating any period of time under this part, the period begins to run on the day following the day that a communication is received or an act is completed. If the last day of the period is a Federal, State, or local holiday or a non-business day for one of the parties or the arbitrator, the period runs until the end of the first business day that follows. Holidays or non-business days occurring during the running of the period of time are included in calculating the period.

§ 2641.12 Filing or service of documents.

(a) *By mail.* A document that is to be filed or served under this part is considered filed or served on—

(1) The date of the receipt provided to the sender by the United States Postal Service, if the document was sent by certified or registered mail, postage prepaid, properly packaged, and properly addressed; or

(2) The date of the United States Postal Service postmark stamped on the cover in which the document is mailed, if subparagraph (1) is not applicable, a legible postmark was made, and the document was sent postage prepaid, properly packaged, and properly addressed.

(b) *By means other than mail.* A document required to be delivered under this part that is not mailed in accordance with paragraph (a) of this section is considered filed or served on the date on which it is received.

§ 2641.13 PBGC-approved arbitration procedures.

(a) *Use of PBGC-approved arbitration procedures.* In lieu of the procedures prescribed by this part, an arbitration may be conducted in accordance with an alternative arbitration procedure approved by the PBGC in accordance with paragraph (c) of this section. A plan may by plan amendment require the use of a PBGC-approved procedure for all arbitrations of withdrawal liability disputes, or the parties may agree to the use of a PBGC-approved procedure in a particular case.

(b) *Scope of alternative procedures.* If an arbitration is conducted in accordance with a PBGC-approved arbitration procedure, the alternative procedure shall govern all aspects of the arbitration, with the following exceptions:

(1) The time limits for the initiation of arbitration may not differ from those provided by § 2641.2.

(2) The arbitrator shall be selected after the initiation of the arbitration.

(3) The arbitrator shall give the parties opportunity for prehearing discovery substantially equivalent to that provided by § 2641.4(a)(2).

(4) The award shall be made available to the public to at least the extent provided by § 2641.7(g).

(5) The costs of arbitration shall be allocated in accordance with § 2641.9.

(c) *Procedure for approval of alternative procedures.* The PBGC may approve arbitration procedures on its own initiative by publishing an appropriate notice in the Federal Register. The sponsor of an arbitration procedure may request PBGC approval of its procedures by submitting an application to the PBGC. The application shall be submitted to the Case Classification and Control Division, Code 542, Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, and shall include the following information:

(1) A copy of the procedures for which approval is sought;

(2) A description of the history, structure and membership of the organization that sponsors the procedures; and

(3) A discussion of the reasons why, in the sponsoring organization's opinion, the procedures satisfy the criteria for approval set forth in this section.

(d) *Criteria for approval of alternative procedures.* The PBGC shall approve an application if it determines that the proposed procedures will be substantially fair to all parties involved in the arbitration of a withdrawal liability dispute and that the sponsoring organization is neutral and able to carry out its role under the procedures. The PBGC may request comments on the application by publishing an appropriate notice in the Federal Register. Notice of the PBGC's decision on the application shall be published in the Federal Register. Unless the notice of approval specifies otherwise, approval will remain effective until revoked by the PBGC through a Federal Register notice.

Issued at Washington, DC this 22nd day of August 1985.

William E. Brock,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this Final Rule.

Edward R. Mackiewicz,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 85-20461 Filed 8-26-85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MS-009; A-4-FRL-2868-1]

Designation of Areas for Air Quality Planning Purposes Mississippi; Redesignation of Total Suspended Particulate (TSP) Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today is approving a request by Mississippi that the attainment status designation of the City of Laurel (Jones County) be changed from nonattainment to attainment for the primary and secondary air quality standards for total suspended particulate (TSP). The State's request was supported by air quality data showing attainment and evidence of emission reductions.

DATE: This action will be effective on September 26, 1985.

ADDRESSES: Copies of the materials submitted by Mississippi may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Bureau of Pollution Control, Mississippi Dept. of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209

Also, a Technical Support Document setting forth the criteria upon which EPA evaluated the Mississippi request may be examined at the EPA Region IV address.

FOR FURTHER INFORMATION CONTACT: Al Yeast, EPA Region IV Air Management Branch, at the Atlanta address above, telephone 404/881-2864 [FTS 257-2864].

SUPPLEMENTARY INFORMATION: Section 107 of the Clean Air Act provides for changes in attainment status designation by the Administrator. On September 28, 1984, the Mississippi Bureau of Pollution Control submitted a request that EPA promulgate a new air quality classification for the City of Laurel (Jones County) with respect to total suspended particulate (TSP). This request was based on eight quarters of monitoring data and a demonstration of emission reduction consistent with the State's 1979 TSP Part D plan. EPA approved Mississippi's Part D plan for the Jones County TSP nonattainment area on January 10, 1980 (45 FR 2031). This redesignation was proposed on April 22, 1985 (50 FR 15762); no comments were received.

Supporting documentation submitted by the State shows that there have been no recorded violations of the primary or secondary TSP standards since 1981. In fact, air quality has been steadily improving since 1981. These data were collected at monitoring site number 1480002F02, which is located in the City of Laurel. This is a SLAMS site meeting EPA's siting requirements. This improvement in air quality corresponds to emission reductions achieved by implementing measures identified in the Part D control strategy for the area. A lumber mill dominates the emission inventory for the area. During 1981, there was an unexpected increase in nontraditional emissions (building demolition and land clearing for construction of a shopping mall) in the immediate area of the monitor. Once the added emissions ceased in 1981, the ambient TSP concentrations were reduced, and there have been no violations since. The base year 1975 inventory shows total point source emissions of 6,513 tons per year. By 1983 total emissions had been reduced by 71.6% to 1,857.1 tons per year.

Additional TSP monitoring data which has become available since the State's request provides further support for the redesignation of Jones County in that it shows no exceedance of any national ambient TSP standard.

Final Action

On the basis of eight quarters of monitoring data showing attainment and a determination by EPA that the improvement in the area's air quality is not a result of emission reductions brought about by an economic downturn, EPA is approving the redesignation of a portion of Jones County from nonattainment to full attainment for TSP.

Under section 307 (b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 20, 1985.

Lee M. Thomas,

Administrator.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 81, continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. In § 81.325 the attainment status designation table for Total Suspended Particulates (TSP) is revised to read as follows:

§ 81.325 Mississippi.

MISSISSIPPI—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Statewide				X

* * * * *

[FR Doc. 85-20437 Filed 8-26-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SWH-FRL-2885-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today granting final exclusions for the solid wastes generated at five particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261. 31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "site-specific basis" from

the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: August 27, 1985.

ADDRESSES: The public docket for these final exclusions is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free (800) 424–9346 or at (202) 382–3000. For technical information contact Mr. Myles Morse, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 475–8551.

SUPPLEMENTARY INFORMATION: On October 23, 1984, EPA proposed to exclude specific wastes generated by: (1) Imperial Clevite, located in Salem, Indiana; (2) LCP Chemical Company, located in Orrington, Maine; (3) Stauffer Chemical Company, located in Axis, Alabama, and St. Gabriel, Louisiana; and (4) Texas Instruments, Inc., located in Dallas, Texas, from the lists of hazardous wastes (see 49 FR 42580).[1] These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their waste from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based on the criteria for which the waste was listed. The petitioners also have provided information in order for the Agency to consider whether any other toxicants are present in the waste at levels of regulatory concern. The purpose of today's action is to make final those proposals and to make the exclusions effective immediately. More specifically, today's rule allows these facilities to manage these wastes as non-hazardous, in accordance with any conditions of the exclusion. These exclusions remain in effect unless: (1) They are granted for a one-time disposal of a specific volume of waste or (2) the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[2] In addition, generators still are obliged to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required under the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated all other factors (including additional constituents) for which there was a reasonable basis to believe that their presence could cause these wastes to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, oily waste EP toxicity test data (where appropriate), and test data on the four hazardous waste characteristics, and in some cases additional test data, including total organic carbon and total oil and grease, that their wastes do not exhibit any of the hazardous waste characteristics and do not contain any other toxicants at levels of regulatory concern. The Agency, in its proposal to exclude the wastes covered by this rule, provided all pertinent information necessary to evaluate the additional factors.

It also should be noted that the Agency recently proposed to use a dispersion model in evaluating the migratory potential of toxicants from wastes which are landfilled. (See 50 FR 7882, February 26, 1985.) This change in review procedure was developed to assist in standardizing the petition review process. The petitioners in today's publication were not required to undergo review using this proposed approach, since our decisions regarding the hazardousness of these wastes were proposed with a request for public comment under previous procedures. Since no public comments were received which questioned the technical decisions to delist the wastes listed below,[3] we have decided to proceed to exclude these wastes from the lists of hazardous wastes.[4]

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's, pursuant to Section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, no State delisting programs are presently authorized. The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State delisting program. Since a petitioner's waste may be regulated by a dual system, (*i.e.*, both Federal RCRA and State non-RCRA programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

Imperial Clevite, Salem, Indiana
LCP Chemical Company, Orrington, Maine
Stauffer Chemical Company, Axis, Alabama
Stauffer Chemical Company, St. Gabriel, Louisiana

[1] The Agency also proposed to exclude electroplating wastes generated by the Chrysler Corporation at their plants in Fenton, Missouri, and Belvidere, Illinois, and refinery wastes generated by the Amoco Oil Company at their Wood River, Illinois, petroleum refinery. The Agency is not making a final decision on Chrysler's petitions since the additional information required by the Hazardous and Solid Waste Amendments of 1984 has not been submitted. In particular, these amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed in order to determine whether any other toxicants may reasonably be present in the waste at levels of regulatory concern. Thus, petitioners are now required to submit sufficient information for the Agency to make such a determination. Until this information is submitted, the Agency cannot make a final decision as to the hazardousness of these wastes. With respect to Amoco, the Agency indicated concern over PNAs in Amoco's waste and deferred a decision until a study regarding PNAs in particular wastes was completed. This study has been completed and a notice of availability was published on May 9, 1985 (see 50 FR 19550). A final decision will be made after public comments on this report are addressed.

[2] The current exclusion only applies to the process covered by the original demonstration. A facility may file a new petition if it alters its process; however, the facility must treat its waste as hazardous until a new exclusion is granted.

[3] Comments addressing other points such as terminology or sampling under contingency plans were received and are addressed separately below.

[4] The Agency notes that although these petitioners were not required to make a demonstration under the petition review approach proposed on February 26, 1985, the decisions made here are equivalent under both "old" and "new" review approaches. That is, if the Agency used the modeling approach for these wastes, the same technical decision to exclude these wastes from hazardous waste control would be made.

Texas Instruments, Inc., Dallas, Texas

I. Imperial Clevite

A. Proposed Exclusion

Imperial Clevite has petitioned the Agency to exclude its still bottom waste from EPA Hazardous Waste No. F002 based on the low concentration of the listed solvent in the waste. The only solvent used by Imperial Clevite and found present in its resin cake is 1,1,2-trichloro-1,2,2-trifluoroethane (FC–113). FC–113 is used to clean metallurgy parts of excess liquid thermosetting epoxy resin. The FC–113 is recovered actively within the process, allowing only minor concentrations to remain in the spent resin still bottoms. In addition, Imperial Clevite submitted data on the other non-listed hazardous constitutents which indicates that no other hazardous constituents are present in these wastes at levels of regulatory concern. (See 49 FR 42582–42583, October 23, 1984, for a more detailed explanation of why EPA proposed to grant Imperial Clevite's petition.)

B. Agency Response to Public Comments

There were no comments on the proposed exclusion of this waste.

C. Final Agency Decision

Based on the low concentrations of FC–113 in Imperial Clevite's resin cake, and the low solubility of this solvent in water, this waste is not considered hazardous either through exposure by inhalation or ingestion (in drinking water). Minimal toxicological response has been reported in mammals for FC–113 at exposure levels in excess of 12,000 ppm. The American Conference of Governmental Industrial Hygienists has established a recommended threshold limit value of 1,000 ppm for FC–113 in workroom air. Due to the high vapor pressure of FC–113 and the retention time and operational temperature of Imperial Clevite's recovery system, most of the FC–113 available in the resin matrix would be expected to be recovered. The small quantity of FC–113 remaining within the still bottom resin (maximum 182 ppm) would not be expected to be mobile through evaporation or leaching. Even in a worst case scenario, if all of the FC–113 present in the waste were to enter the atmosphere, the total amount present in the waste would be well below the health-based standard and not of regulatory concern. If the FC–113 present in the waste were assumed to leach, the resultant levels expected in ground water also would not be considered of regulatory concern. The level of FC–113 available for leaching can be estimated from the compound's solubility in water, which is 17 ppm. Even if the FC–113 leached from the waste at its solubility limit, which is unlikely, since the waste is a solidified resin, this concentration would not pose a hazard to human health or the environment. This concentration is well below all available health-based standards. In addition, as indicated in the proposal, Imperial Clevite also submitted data on the other non-listed hazardous constituents which may reasonably be expected to be present in the waste. In particular, Imperial Clevite submitted a list of raw materials used in their manufacturing process; this list indicated that no other hazardous constitutents are used in the process.

The Agency considers Imperial Clevite's still bottom resin cake to be non-hazardous, for all reasons, and believes it should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Imperial Clevite for its still bottom resin cake listed as EPA Hazardous Waste No. F002 generated at its Salem, Indiana, facility.

II. LCP Chemical Company

A. Proposed Exclusion

LCP Chemicals and Plastics (LCP) has petitioned the Agency to exclude their treatment residues from EPA Hazardous Waste Nos. K071 and K106 based on their low mercury content and the inability of mercury to leach from these residues. LCP proposed to use either of the following treatment processes: (1) Retort distillation of the wastewater treatment sludges (K106 wastes) and stabilization of the brine muds (K071 wastes) using the SolidTek System "nine," an inorganic solidification and stabilization technology; or (2) sodium hydrosulfide treatment and filtration of the combined brine mud and mercury bearing wastewater treatment sludges. Both processes were designed to immobilize the mercury concentrations remaining in the wastes. In addition, LCP also submitted data on the other non-listed hazardous constituents which indicates that no other hazardous constituents are present in these wastes at levels of regulatory concern. (See 49 FR 42584–42586, October 23, 1984, for a more detailed explanation of why EPA proposed to grant LCP's petition.)

B. Agency Response to Public Comments

The Agency received one comment from the petitioner indicating that they did not submit a contingency plan to include continuous testing, but rather that bi-monthly testing using the EP toxicity test would provide satisfactory quality assurance.

The Agency notes that LCP proposed to test the treated waste to ensure proper treatment; however, LCP was correct that they did not offer to test *each batch* using the EP toxicity test. Thus, the Agency was incorrect in stating "In addition, LCP proposes to test each batch of waste to ensure proper treatment (no matter which treatment system is employed) using the EP toxicity test." See 49 FR 42586, October 23, 1984. Nevertheless, the Agency incorporated the batch testing requirement into the contingency plan to ensure consistent treatment.[5] The Agency notes that both treatment alternatives proposed by LCP were tested as "pilot" treatment processes, neither of which have been continuously used at the facility. Since these treatment procedures were not "on-line" processes, the Agency believes it is necessary to collect continuous "on-line" batch data over a period of time. The need for batch data is emphasized due to the Agency's experience with the inherent variability of mercury content in chlor-alkali wastewater and brine sludges. The Agency, therefore, maintains that the exclusion requires continuous batch testing for mercury using the EP toxicity test prior to disposal. The Agency, however, will review the data collected over an initial six-month period of "on-line" treatment. If the data indicate that mercury extract levels exhibit low variability, the Agency may propose to amend the exclusion to require frequent testing.

The petitioner also indicated that the proposed exclusion misstated the maximum mercury extract levels of the SolidTek treated brine waste as 100 ppm. The Agency notes that this was a typographical error and was correctly listed on the following page of the proposed exclusion as 0.015 ppm.

C. Final Agency Decision

Based on the low levels of mercury demonstrated to be present in the mercury-bearing wastewater treatment sludges and the low mercury extract levels exhibited by both of the proposed sludge treatment processes, the Agency believes the treatment residue is non-hazardous based on the criteria for which the waste was listed. The maximum extract levels of less than 0.015 ppm exhibited by the SolidTek

[5] The Agency indicated in the proposed exclusion that the waste would have to be tested on a batch basis for mercury mobility, using the EP toxicity test.

treated waste, and the average extract [6] level of 0.02 ppm exhibited by the sodium hydrosulfide treatment and filtration process are considered relatively low by the Agency (*i.e.*, within one order of magnitude of the National Interim Primary Drinking Water Standard). Attenuation and dilution by the soil column and any ground water source are expected to reduce these mercury concentrations below the drinking water standard. The Agency further believes that the matrices of both the SolidTek treated sludge and the slag residue from the retort furnace have high metal binding capacity. The Agency has, however, imposed a maximum acceptable mercury extract level for the treatment residue generated by both of these processes of 0.05 ppm. [7] This level was selected to ensure that very low levels of mercury would leach from the waste and is in part based on the large quantity of waste generated by LCP. LCP must test each batch of waste before disposal to assure that the waste exhibits mercury extract levels below 0.05 ppm. The Agency will review this data to determine whether variability is low enough to allow less frequent testing.

Based on the raw materials used by LCP in their manufacturing process, the Agency also has concluded that no other hazardous organic constituents are present in the waste at levels of regulatory concern. For the other toxic metals, the data submitted by LCP exhibited low extract levels. The Agency believes that attenuation and dilution will result in ground water concentrations well below the National Interim Primary Drinking Water Standards. [8] The Agency believes that LCP's petitioned wastes are non-hazardous for all reasons, under the conditions described above. The Agency, therefore, is granting a final conditional exclusion to LCP for its mercury bearing wastewaste treatment sludges and treated brine mud waste from EPA Hazardous Wastes Nos. K106 and K071 at its Orrington, Maine, facility.

[6] The average level was used since the maximum level was considered an outlier. Since this value was claimed to be caused by a modification of the treatment system rather than a laboratory or analytical aberration, the mean value was calculated using this maximum level rather than ignoring it.

[7] The Agency notes that if the proposed VHS modeling approach were used to evaluate this petition, the receptor well values generated (using the maximum extract levels from each treatment residue) would be below the National Interim Primary Drinking Water Standard for mercury. The modeling approach also indicates that if the waste exhibited an extract level of 0.05 (the maximum acceptable level set by the condition noted above) the receptor well value would still be below the National Interim Primary Drinking Water Standard.

[8] Analyses of extract data for all other EP toxic metals and nickel using the VHS model indicate receptor well levels below each appropriate health-based standard.

III. Stauffer Chemical Company

A. Proposed Exclusion

Stauffer Chemical Company (Stauffer) has petitioned the Agency to exclude its brine purification muds from EPA Hazardous Waste No. K071. Stauffer proposed to install a brine washing and filtration system at its St. Gabriel, Louisiana, facility. Stauffer claimed that the mercury present in the brine muds treated using this proposed, pilot scale system were immobile and, accordingly non-hazardous. In addition, Stauffer submitted data on other non-listed constituents which indicates that no other hazardous constituents are present in these wastes at levels of regulatory concern. (See 49 FR 42584, October 23, 1984, for a more detailed explanation of why EPA proposed to grant Stauffer's petition.)

B. Agency Response to Public Comments

The Agency received one comment from the petitioner. Stauffer claimed that although they had indicated in the petition that they would monitor the treatment system to assure that a non-hazardous waste was generated, they did not state that they would run an EP toxicity test on each batch of waste. Stauffer also claimed that it would not be necessary to run the EP toxicity test on each batch to ensure the non-hazardous nature of the waste. Stauffer states that normal operating and inspection procedures combined with EP toxicity testing of monthly composite samples (after an initial batch testing period) would be a sufficient program to assure non-variability and the non-hazardousness of the waste.

The Agency notes that Stauffer proposed to test and monitor the waste to ensure proper treatment; however, Stauffer was correct that they did not offer to test each batch continuously using the EP toxicity test. Thus, the Agency was incorrect in stating "To ensure proper treatment all the time, however, Stauffer also has proposed to test each batch of the brine purification muds generated at its facility using the EP toxicity test procedures." See 49 FR 42584, October 23, 1984. Nevertheless, the Agency incorporated the continuous batch testing requirement into the contingency plan to ensure consistent treatment. Due to the Agency's experience with the inherent variability of mercury content in chlor-alkali wastewater and brine sludges, the Agency maintains the need for batch testing using the EP toxicity test. This point is emphasized by the fact that Stauffer's petition was based on laboratory scale and pilot plant data for a washing and filtration treatment system which was not installed at the time the petition was filed. The Agency will therefore require continuous batch testing of the waste for mercury using the EP toxicity test prior to disposal. The Agency will, however, review the data collected over an initial six-month period of "on-line" treatment. If the data indicate that mercury extract levels exhibit low variability, the Agency may propose to amend the exclusion to require less frequent testing.

C. Final Agency Decision

Based on the low levels of mercury demonstrated to be present in the treated brine sludge and the low mercury extract levels exhibited by Stauffer's proposed sludge treatment system, the Agency believes the treatment residue is non-hazardous based on the criteria for which the waste was listed. The maximum extract level of 0.024 ppm exhibited by the treated brine sludge is below that of regulatory concern (*i.e.*, levels within approximately one order of magnitude of the National Interim Primary Drinking Water Standard). Attenuation and dilution by the soil column and any ground water source is expected to reduce these mercury concentrations below the drinking water standard. The Agency, however, has imposed a condition on Stauffer, requiring continuous batch testing of the treated brine sludge for mercury using the EP toxicity test. The Agency has imposed a maximum acceptable mercury extract level of 0.05 ppm on this batch testing condition. [9] This level was selected to ensure that very low levels would leach from the waste and is in part based on the variability associated with the brine muds generated in the chlor-alkali industry. Stauffer must perform continuous batch testing before disposal. The Agency will review this data to determine whether variability is low enough to allow sampling and testing on a less frequent basis.

Based on the raw materials used by Stauffer in their manufacturing process, the Agency also has concluded that no other hazardous organic constituents are present in the waste at levels of regulatory concern. For the other toxic metals, the data submitted by Stauffer shows extract levels within one order of

[9] See footnote 7.

magnitude of National Interim Primary Drinking Water Standards. These levels are below that of regulatory concern. The Agency believes that attenuation and dilution will result in ground water concentrations well below the National Interim Primary Drinking Water Standards.[10]

The Agency believes that Stauffer's proposed treatment system will produce, under the conditions described above, a treatment residue which is non-hazardous for all reasons. The Agency, therefore, is granting a final conditional exclusion to Stauffer for its treated brine sludge from EPA Hazardous Waste No. K071 at its St. Gabriel, Louisiana, facility.

IV. Stauffer Chemical Company

A. Proposed Exclusion

Stauffer Chemical Company (Stauffer) has petitioned the Agency to exclude its brine purification muds contained in its brine muds pond (designated HWTF: 5 EP–201) at its LaMoyne Plant in Axis, Alabama, from EPA Hazardous Waste No. K071. Stauffer claimed that this impounded sludge was non-hazardous due to the immobility of the mercury in the waste. In addition, Stauffer also submitted data on other non-listed constituents which indicates that no other hazardous constituents are present in these wastes at levels of regulatory concern. (See 49 FR 42583–42584, October 23, 1984, for a more detailed explanation of why EPA proposed to grant Stauffer's petition.)

B. Agency Response to Public Comment

No public comments were received regarding this petition.

C. Final Agency Decision

Based on the low levels of mobile mercury in this waste, the Agency believes that the waste contained in the brine mud pond is non-hazardous, based on the criteria for which the waste was listed. The maximum mercury extract level exhibited by this waste, 0.0032 ppm, is below that of regulatory concern (*i.e.*, levels less than one order of magnitude of the National Interim Primary Drinking Water Standard).[11] Attenuation and dilution by the soil column and any ground water source will reduce these mercury concentrations below the drinking water standard.

Based on the raw materials used by Stauffer in their manufacturing process, the Agency also has concluded that no other hazardous organic constituents are present in the waste at levels of regulatory concern. For the other toxic metals, the data submitted by Stauffer shows extract levels below the National Interim Primary Drinking Water Standards.[12]

The Agency believes the sludge contained in Stauffer's brine mud pond (5 EP–201) is non-hazardous for all reasons. The Agency, therefore, is granting a final one-time exclusion for the treated brine mud waste contained in pond 5 EP–201 at Stauffer's Axis, Alabama, facility.

V. Texas Instruments, Inc.

A. Proposed Exclusion

Texas Instruments, Inc., has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste Nos. F006 and F019 based on the destruction and immobilization of the listed hazardous constituents by its wastewater treatment system. In addition, Texas Instruments submitted data on other non-listed constituents which indicates that no other hazardous constituents are present in these wastes at levels of regulatory concern. (See 49 FR 42581–42582, October 23, 1984, for a more detailed explanation of why EPA proposed to grant Texas Instruments' petition.)

B. Agency Response to Public Comments

There were no comments on the proposed exclusion of these wastes.

C. Final Agency Decision

Texas Instruments' claim that their wastewater treatment sludge is non-hazardous was substantiated. First, representative samples of this waste were tested for total cyanide and leachable cyanide. Maximum total cyanide content for this waste was 0.25 ppm, which is well below the threshold limit value of 10 ppm for workroom air suggested by the American Conference of Governmental Industrial Hygienists. This low level is therefore not of regulatory concern to the Agency from an atmospheric exposure route. The maximum cyanide extract level was 0.01 ppm, which is well below the U.S. Public Health Service's Suggested Drinking Water Standard for cyanide, and is therefore not of regulatory concern with respect to ground water contamination.

The maximum extract levels for cadmium, chromium, and nickel were 0.37, 0.88, and 3.09 ppm, respectively. The Agency had proposed to condition the exclusion to include batch testing of the waste for cadmium, due to the cadmium extract variability reported in the petition.[13] The Agency proposed that any batch exhibiting a cadmium extract level above 0.3 ppm should be handled as a hazardous waste. This limitation was imposed by the Agency to ensure that only relatively low levels of cadmium would leach from the waste. Attenuation and dilution attributed to the soil column as well as any ground water source is expected to decrease these extract levels below the National Interim Primary Drinking Water Standards.[14] The Agency is still concerned about the variability exhibited by the cadmium extract values, and therefore is requiring TI to test each batch for cadmium using the EP toxicity test. The Agency is requesting TI to tabulate and report this data to the delisting program office on a monthly basis, as an addendum to their delisting petition. The Agency will not remove this condition until TI's data have been evaluated and made available for comment.

The maximum chromium and nickel extract values also are not considered of regulatory concern, since they are within approximately one order of magnitude of the National Interim Primary Drinking Water Standard for chromium and the Agency's Interim Health Advisory for nickel, respectively.[15] [16] Again, attenuation

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[10] See footnote 8.

[11] The Agency notes that if the proposed VHS modeling approach were used to evaluate this petition, the receptor well values generated (using the maximum extract level for the treatment residue) would also be below the National Interim Primary Drinking Water Standard for mercury.

[12] See footnote 8.

[13] Cadmium extract levels varied from 0.06 to 0.37 ppm.

[14] The Agency notes that if the proposed VHS modeling approach were used to evaluate this petition, the receptor well values generated (using the maximum cadmium extract level and TI's annual waste generation rate of 339 tons per year), would be below the National Interim Primary Drinking Water Standard for cadmium. The modeling approach also indicates that the maximum acceptable cadmium level which will generate a receptor well value below the National Interim Primary Drinking Water Standard is 0.5 ppm. The exclusion condition will remain at the 0.3 ppm level, however, since public comments on the modeling approach proposed on February 28, 1985, have not yet been evaluated.

[15] The Agency's previous delisting decisions for nickel were based on the 1980 Ambient Water Quality Criterion (AWQC) of 632 ppb. Since that time, various offices within the Agency have reviewed the studies from which the AWQC was determined. These studies were found to be flawed with respect to reproductive effects; therefore the Agency is conducting a new reproductive effects study to re-evaluate the toxicity of nickel. This will probably take more than eight months to complete. In the interim, the Agency has determined that the systemic toxicity results reported in the original studies (see Ambrose, *et al.*, 1976., J. Food Sci. Technol. 13:181–187) should be used to calculate an

and dilution are expected to decrease these levels below these health-based standards.

Based on the raw materials used by TI in their manufacturing process, the Agency also has concluded that no other hazardous organic constituents are present in the waste at levels of regulatory concern. For the other toxic metals, the data submitted by TI shows low extract levels. The Agency believes that attenuation and dilution will result in ground water concentrations well below the National Interim Primary Drinking Water Standards.[17]

The Agency believes that this waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to Texas Instruments for its electroplating wastewater treatment sludge listed as EPA Hazardous Waste Nos. F006 and F019 generated at its Dallas, Texas, facility.

VI. Effective Date

This rule is effective immediately. The HSWA amended Section 3010 of RCRA to allow rules to become effective in less than six-months period when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepares and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small Govenmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: August 12, 1985.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Waste Excluded under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Imperial Clevite	Salem, IN	Solid resin cakes containing EPA Hazardous Waste No. F002 generated after August 27, 1985, from solvent recovery operations.
Texas Instruments, Inc	Dallas, TX	Wastewater treatment sludges (EPA Hazardous Waste Nos. F006 and F019) generated after August 27, 1985, from their electroplating operations that have been batch tested for cadmium using the EP toxicity procedure and have been found to contain less than 0.30 ppm cadmium in the EP extract. Wastewater treatment sludges that exceed this level will be considered a hazardous waste.

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
LCP Chemical	Orrington, ME	Brine purification muds and wastewater treatment sludges generated after August 27, 1985 from their chlor-alkali manufacturing operations (EPA Hazardous Waste Nos. K071 and K106) that have been batch tested for mercury using the EP toxicity procedures and have been found to contain less than 0.05 ppm mercury in the EP extract. Brine purification muds and wastewater treatment sludges that exceed this level will be considered a [illegible] waste.
Stauffer Chemical Co.	Axis, AL	Brine purification muds generated from their chlor-alkali manufacturing operatings (EPA Hazardous Waste No. K 071) and disposed of in brine mud pond HWTF: 5 EP-201
Stauffer Chemical Co.	St. Gabriel, LA	Brine purification muds, which have been washed and vacuum filtered, generated after August 27, 1985 from their chlor-alkali manufacturing operations (EPA Hazardous Waste No. K071) that have been batch tested for mercury using the EP toxicity procedure and have been found to contain less than 0.05 ppm in mercury in the EP extract. Brine purificaton muds that exceed this level will be considered a hazardous waste

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interim health advisory for nickel. (See 50 *FR* 20247, Appendix I, May 15, 1985.) The Agency will use a calculated allowable drinking water concentration of 350 ppb. Until this study is completed, and a new health-based nickel standard is established, the Agency will grant final exclusions in cases where the predicted exposure to nickel is less than 350 ppb. For cases where the predicted concentration exceeds 350 ppb, the Agency will defer its decision on nickel, pending the establishment of a new standard.

[16] The Agency notes that if the proposed VHS modeling approach were used to evaluate this petition, the receptor well values generated (using the maximum extract levels from the treatment residue) would be below the National Interim Primary Drinking Water Standard for the listed EP toxic metals.

[17] Analysis of extract data for all other EP toxic metals and nickel using the VHS model indicate receptor well levels below each appropriate health-based standard.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

Social Security Administration

45 CFR Parts 232, 233, 302, and 303

Child Support Enforcement Program, and Aid to Families With Dependent Children Program; Treatment of Assigned Support Payments Received Directly and Retained by AFDC Applicants or Recipients

AGENCY: Office of Child Support Enforcement (OCSE), and Social Security Administration (SSA), HHS.

ACTION: Final rule.

SUMMARY: The Child Support Enforcement program under title IV–D of the Social Security Act (the Act) is charged with establishing paternity and securing support on behalf of recipents of Aid to Families with Dependent Children (AFDC) under title IV–A of the Act. As a condition of eligibility for AFDC, applicants and recipients must assign to the State the support rights of any person on whose behalf aid is sought or received. Assigned support collections are used, in part, to reimburse the assistance payments provided by the State and Federal governments, and generally do not affect the amount of the AFDC grant.

Another condition of eligibility for AFDC is that the applicant or recipient "cooperate with the State . . . in obtaining support payments." Current AFDC regulations at 45 CFR 232.12(b)(4) specify that cooperation includes "paying to the child support agency any [assigned] child support payments received from the absent parent." In some cases, however, recipients fail to forward these payments to the IV–D agency, and as a result have the use of the payments as income. To codify joint AFDC and Child Support Enforcement policy for handling those situations in which an AFDC recipient receives and retains child support payments from an absent parent, we published final regulations with comment period on October 5, 1982. (See Volume 47 of the **Federal Register**, pages 43953-43957.) This document responds to the comments received on those regulations.

EFFECTIVE DATE: This document is effective August 27, 1985.

FOR FURTHER INFORMATION CONTACT: Marianne Rufty, OCSE, Policy Branch, 6110 Executive Blvd., Rockville, MD 20852, (301) 443–5350; or Gary Ashcraft, SSA, Office of Family Assistance, Office of Policy, Transport Building, 2100 Second Street S.W., Washington, D.C. 20201, (202) 245–3284.

SUPPLEMENTARY INFORMATION:

Background

When an assignment of support rights has been made by an AFDC applicant or recipient under section 402(a)(26)(A) of the Act (42 U.S.C 602(a)(26)(A)), it is the responsibility of the IV–D agency under section 454(4) of the Act (42 U.S.C. 654(4)) to establish, enforce, and collect a support obligation for anyone covered by that assignment. Section 454(5) of the Act (42 U.S.C. 654(5)) specifically requires the IV–D agency to ensure that assigned payments "shall be made to the State for distribution pursuant to section 457 [with one exception] and shall not be paid directly to the family." Section 457 provides the method for assigned support collections to be either distributed among the State and Federal governments or given to the family.

The distribution requirements cannot be implemented when support payments are permitted to flow directly from the absent parent to the family for several reasons: first, the statutory requirements for distribution of assigned collections by the IV–D agency cannot be carried out when the IV–D agency does not receive the collection; second, the enforcement function of the IV–D agency is hampered because the agency cannot monitor payments by the absent parent. It is, therefore, a primary responsibility of the IV–D agency to take prompt action to redirect payments which are being received by the family so that these payments flow from the absent parent to the IV–D agency and not to the family. However, there are circumstances, such as a backlog of cases or the need to change the payee of a court-ordered support obligation, in which the AFDC recipient continues to receive support payments directly from the absent parent for some time after the case has been referred to the IV–D agency. For this reason, as noted above, AFDC regulations require that direct support payments be paid by the recipient to the IV–D agency, as a condition of AFDC eligibility.

A problem arises when a recipient fails to forward to the IV–D agency assigned support payments received directly from an absent parent (direct payments). For this reason, the Office of Family Assistance (OFA) and the Office of Child Support Enforcement (OCSE) issued a joint Action Transmittal-Program Instruction (SSA–AT–81–7 (OFA) and OCSE–AT–81–7, dated March 27, 1981) to provide Federal policy on treatment of support payments received and retained by AFDC applicants or recipients until publication of final regulations on this subject. The Action Transmittal also provides for the application of the sanction for failure to cooperate for retention of past as well as current support payments.

We published final regulations with a comment period in the **Federal Register** on October 5, 1982 to codify the policy contained in the Action Transmittal. This document responds to comments received on those regulations. One change was made to the final regulations as a result of the comments. In addition, one technical change was made as a result of enactment of Section 173 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982, which amends section 454(5) of the Act.

Provisions of the Final Regulations

States must implement on a Statewide basis one of two methods for the treatment of retained direct support payments. We emphasize that the two methods for treatment of retained direct support payments are not intended to preclude or restrict the prosecution for fraud under applicable State civil or criminal law where warranted. In addition, we want to remind States of the recently revised sections 402(a)(8)(A) and 457(b) of the Act which require that the first $50 collected on a monthly support obligation be paid to the AFDC family. Despite the fact that retained amounts must be repaid in accordance with either of the methods described below, the individual who retains a direct payment is entitled to the first $50 of the monthly support obligation. Therefore, regardless of whether the State is a IV–A income or a IV–D recovery State, the State must take into account the $50 payment to the AFDC family when determining the amount of retained support that is owed by an individual.

1. IV–A Income Method

Before publication of the regulations on October 5, 1982, AFDC regulations at 45 CFR 233.20(a) (1) and (3) required that the IV–A agency treat assigned support payments retained in the current month as income in determining need and amount of the assistance payment. An overpayment of assistance occurs for each month in which a direct support payment is retained by the recipient and not counted by the IV–A agency to reduce the AFDC payment. Under the IV–A income method, a State must implement the IV–A plan provisions of

45 CFR 233.20(a)(13) for recovering these overpayments.

After publication of the October 5, 1982 regulations, States that treated retained direct payments as income were not required to change. Under the IV–A income method of accounting for retained support payments, the role of the IV–D agency is essentially limited to: (1) Contacting the recipient in the month in which a payment is due to be forwarded to the IV–D agency to secure the release of that payment if it is in the possession of the recipient, and (2) informing the IV–A agency when it discovers that a recipient is retaining or has retained directly paid support.

Notwithstanding these provisions for IV–A agencies to account for retained direct support payments, recipients must still forward directly received support payments to the IV–D agency as a condition of eligibility under 45 CFR 232.12. If, in a IV–A income State, a recipient receives and retains a support payment in one month and consequently receives an overpayment of assistance for that month, the IV–A agency will implement recovery procedures consistent with the IV–A State plan.

2. IV–D Recovery Method

The final regulations published on October 5, 1982 amended IV–D State plan requirements at 45 CFR 302.31 by adding paragraph (a)(3) to provide a second method for treatment of retained direct payments whereby the IV–D agency elects to recover the retained amounts through a repayment agreement with the recipient. This required an exception to 45 CFR 223.20(a)(3) which had provided that retained support payments covered by an assignment be counted as income by the IV–A agency. When a State IV–D agency elects the IV–D recovery method in its State plan, the IV–A agency will not count any retained direct support payments as income to meet need, except when a sanction for failure to cooperate is applied under 45 CFR 232.12(d). The procedures for IV–D recovery are specified at 45 CFR 302.31(a)(3) and 303.80.

If a State elects the IV–D recovery method, the IV–D agency will establish a repayment plan with the AFDC recipient in accordance with the requirements of § 303.80. Section 303.80 provides specific procedures and limitations for repayment agreements between IV–D agencies and AFDC recipients. First, the IV–D agency must document that directly paid support has been retained and the amounts. Second, the IV–D agency must provide the recipient prior written notice of its intent to recover the retained amounts and the proposed method for recovery. The specific elements of this notice are specified at § 303.80(c)(2)(i) through (iv).

In addition to the written notice of intent to recover, the IV–D agency must provide the AFDC recipient with the opportunity for an informal meeting for the purpose of resolving any differences regarding repayment of the directly received retained support. The requirements for this meeting are specified in § 303.80(c)(3). At this meeting, the IV–D agency will explain the nature and amount of the recipient's debt. The recipient can submit documentation to rebut any part of the State's claim.

After these requirements have been met, the recipient enters into a repayment agreement with the IV–D agency subject to the requirements of § 303.80(d). This subsection provides that the repayment agreement must be individually structured so as to account for both the recipient's ability to repay and the size of the debt. Under the repayment agreement, a recipient may pay out-of-pocket in one payment or on an installment basis or through voluntary vendor payments pursuant to 45 CFR 234.60(a)(14). We believe that an individualized agreement is essential to avoid both undue hardship on the recipient and unreasonably long repayment periods in relation to the amount of retained support.

Under § 303.80(e), when a recipient does not enter into or comply with the terms of a repayment agreement with the IV–D agency, the IV–D agency must refer the case to the IV–A agency with evidence of failure to cooperate. Section 303.80(f) requires the IV–D agency to notify the IV–A agency when the recipient begins to cooperate. Cooperation is restored under § 303.80(f)(1) when a recipient, who initially refused to enter into an agreement, signs a repayment agreement with the IV–D agency and, under § 303.80(f)(2), when a recipient who defaults on a repayment agreement begins making regularly scheduled payments according to that agreement. Section 303.80(f)(2) further provides that the resumption of payment in the case of a default does not mean payment of past due amounts which went unpaid during the period of default. Rather, cooperation is restored when the recipient makes a current, regularly scheduled payment according to the terms of the agreement. Amounts due from any period of default simply extend the duration of the repayment agreement by the number of months in which payments were not made. We also specify at § 303.80(f)(2) that repayment agreements may not include provisions for balloon payments or an acceleration clause as a condition for restoring cooperation in the case of a default.

We also made a technical change in the regulations published October 5, 1982 which amended 45 CFR 233.20(a)(3)(vi) to delete the first full sentence. This section incorrectly provided that support from legally responsible relatives, in addition to an absent parent, can be sought for purposes of income to an AFDC assistance unit. Under section 402(a)(26) of the Act and 45 CFR 232.11, assigned support from any individual whom the State holds legally responsible must be paid to the IV–D agency and, with one exception, cannot be counted in the determination of the amount of the assistance payment. The remaining two sentences in this subparagraph remained unchanged.

Changes to Final Regulations

This document makes one change as a result of a comment received in response to the regulations published in the Federal Register on October 5, 1982.

Section 303.80(f)(2) stated that the IV–D agency must notify the IV–A agency when "the recipient who defaulted on repayment agreement begins making regularly scheduled payments according to the agreement." This paragraph further explains that "resumption of regularly scheduled payments cannot be interpreted to mean payment of amounts which were not paid during the period of default, nor amounts which could be categorized as balloon payments or which would be due as a result of an acceleration clause." Based on a comment received concerning the term "regularly scheduled payment," we revised § 303.80(f)(2) to include a definition of this term and to clarify how the IV–D agency is to recover amounts which were not paid during the period of default. The new § 303.80(f)(2) defines a "regularly scheduled payment" as a payment made in the current month for the amount specified in the initial repayment agreement between the IV–D agency and the recipient. It also provides that, in order to recover amounts which were not paid during the period of default, the IV–D agency must extend the duration of the repayment agreement.

We are also making a technical change to the final regulations. Under the current § 303.80(b), a direct payment which is used by the IV–A agency to determine an assistance unit ineligible for continued assistance is exempt from being recovered from the family. As of October 1, 1982, section 173 of Pub. L.

97–248 amended section 454(5) of the Act to require that a support payment used to determine the assistance unit ineligible for AFDC be retained by the State to reimburse it for assistance paid to the family. Since this payment is no longer paid to the family, the exception currently under § 303.80(b) is not applicable and any support payment retained by the family which causes ineligibility must be recovered by the IV–D agency. Therefore, this document deletes reference to that exception.

State Plan Amendments

We required amendments to both the IV–A State plan and the IV–D State plan to indicate whether a given State elects the IV–A income method or the IV–D recovery method. OCSE issued the necessary preprint page as part of the revised State Plan Preprint via Action Transmittal OCSE–AT–82–11 on September 21, 1982. OFA issued the necessary preprint page via Action Transmittal SSA–AT–82–32 on December 13, 1982. States are currently in the process of submitting the preprint pages for approval.

Response to Comments

We received five letters from State agencies response to the final rule published on October 5, 1982. A discussion of the comments contained in these letters and our responses follow.

Comment: One commenter stated that these regulations do not clearly define how the IV–A agency is to handle lump sum arrearage payments when an AFDC applicant or recipient receives the lump sum and retains it.

Response: Regardless of whether the State has decided to recover directly received and retained support payments through the IV–A income or the IV–D recovery method, Federal regulations at 45 CFR 233.20(a)(3)(ii)(D) apply to applicants who received a lump sum arrearage payment in the month of application. Applicants whose income in the month of application exceeds the need standard because of the receipt of lump sum income, regardless of the source, must be considered ineligible for assistance for the period computed by the IV–A agency under that regulation.

In IV–A income States only, lump sum arrearange support payments that are received directly and retained by an AFDC recipient must also be treated in accordance with 45 CFR 233.20(a)(3)(ii)(D). (See Section II. A. of SSA–AT–81–7 (OFA), March 27, 1981.)

Comment: Several State commenters felt that they were being forced to be IV–D recovery States because of the fiscal sanctions under the quality control system. However, they felt that reductions in assistance payments under title IV–A are the most efficient and effective way of recovering support payments that are received directly and retained by an AFDC recipient. One State believed that retained support payments should not be counted in computing a State's IV–A quality control error rate. Similarly, another recommended that State agencies be allowed to implement the IV–A income method without fear of fiscal sanction.

Response: One State which has chosen to be a IV–D recovery State has a productive idea for increasing the collection of retained support under that method. In addition to permitting recipients who have retained support to pay out-of-pocket in a single payment or on an installment basis, they will also permit the use of voluntary vendor payments authorized by section 406(b)(2) of the Social Security Act and implemented under 45 CFR 234.60(a)(14) as a way of meeting the terms of the repayment agreement. Under this optional provision, a recipient could voluntarily request that vendor payments be made by the IV–A agency to the IV–D agency or its designee for repayment of retained support. States whose title IV–A State plan does not now provide for this option must amend their plan if they elect to offer this method of repayment. A State may limit its use of this option solely to repayment of retained support by so stating in its State plan.

There are no plans to eliminate the review of directly received and retained support payments from the quality control system and the related fiscal sanctions in either IV–A income States or IV–D recovery States.

Comment: One commenter asked if the IV–A agency will make the determination of cooperation if a recipient refuses to enter into a repayment agreement or fails to make a payment under the repayment agreement. The commenter also asked if this determination will be straightforward or involve other considerations.

Response: The determination of whether an applicant or recipient has cooperated in establishing paternity and securing support will be made by the IV–A State agency. This is a title IV–A State plan requirement under section 402(a)(26) of the Act and 45 CFR 232.12. See the preamble to the regulations published on October 5 for explanation of how cooperation is determined.

Comment: One commenter recommended that States opting to implement the IV–D recovery method be allowed to recoup past support payments retained by the recipient by way of reduction of the recipient's AFDC grant.

Response: The regulations provide States with a choice between two methods. The elements of the two methods, however, are not interchangeable. There is no statutory or regulatory provision that authorizes a IV–D agency to reduce a recipient's AFDC grant. Therefore, the direct payment must be considered either as income to the recipient or an overpayment under title IV–A (IV–A income method), or as an amount owed to the State to be recovered by the IV–D agency (IV–D recovery method). If a State elects the IV–D recovery method, it may only recover direct payments using the recovery method authorized under § 302.80. As stated in response to the second comment, an AFDC recipient may voluntarily make a written request for the IV–A agency to make vendor payments to IV–D agency in satisfaction of a repayment agreement.

Comment: One commenter asked if the informal meeting between the IV–D agency and the AFDC recipient who retained direct payments can be conducted by telephone when the recipient resides in a rural area.

Response: To clarify the AFDC recipient's responsibilities and to resolve differences regarding the repayment of retained direct payments, we strongly urge that a face-to-face meeting occur between the IV–D agency and the recipient. This meeting can take place at the IV–D agency or at the recipient's residence and may involve travel by either party to the selected site. We do recognize, however, that in some situations travel by either party would be unreasonable or costly. In these cases, telephone contact may be used in place of a face-to-face meeting.

Comment: One commenter asked for more specific guidance in the area of the repayment agreement; however, the commenter did not indicate what areas needed further clarification.

Response: We believe that this regulation is sufficiently clear with respect to the repayment agreement. For more specific details on developing a repayment agreement, we suggest that the State agency contact the appropriate OCSE Regional Office for technical assistance on this matter.

Comment: One commenter asked if the AFDC recipient who defaults on a repayment agreement must repay the amounts that went unpaid during the period of default before a payment is considered a "regularly scheduled payment." In addition, the commenter asked how to distinguish between a current, regularly scheduled payment

and an AFDC recipient's effort to catch up on past due amounts which went unpaid.

Response: There is no need to distinguish between a current, regularly scheduled payment and the recipient's effort to catch up on past due amounts which went unpaid during default. In response to this comment, however, we revised § 303.80(f)(2) of the final regulations to clarify the term "regularly scheduled payment." (See previous discussion under Changes to Final Regulations.) As provided in the new § 303.80(f)(2), as soon as the recipient makes a payment according to the terms of the agreement, it is considered a current, regularly scheduled payment and cooperation is restored. Amounts due from any period of default simply extend the duration of the repayment agreement.

Comment: One commenter recommended that States be given flexibility to use both the IV–D recovery and the IV–A income methods to recoup retained direct payments, dependent on whether or not an individual was on public assistance. The commenter believes that the State would be most effective if its IV–A agency sought recovery while the individual was receiving assistance and its IV–D agency sought recovery after termination of assistance. In addition, because some States have sophisticated computer systems, the commenter recommended that these States be allowed to demonstrate to the Department that double recovery would be an unlikely result of combined IV–A and IV–D recoupment.

Response: In developing the final regulation, the Department felt that duplicate systems for recovering directly received and retained support payments would be administratively burdensome, create confusion for, and increase the possibility of duplicate recoveries from the AFDC recipient. Under the final regulation, a State cannot choose to be a IV–A income State while the responsible individuals are receiving AFDC and a IV–D recovery State after the case is closed. In a IV–A income State, the responsibility of the IV–A agency to collect overpayments of assistance does not end when the case is closed. Thus, it would be inconsistent with current regulations for the State to function as a IV–D recovery State once a case is closed. Similarly, the responsibility of the IV–D agency in a IV–D recovery State to collect retained support does not end when the AFDC case is closed. Therefore, to provide a uniform Federal policy that is workable and equitable to all States and to ensure equal treatment of AFDC recipients, the regulations require that each State select one of the two methods for treatment of retained direct payments and apply the procedures specified in that selected method to all recipients within the State.

Comment: One commenter expressed concern that, although this regulation states that the ". . . treatment of retained direct support payments are not intended to preclude or restrict the prosecution for fraud under applicable State, civil or criminal law where warranted," it does in fact restrict a State IV–D agency's obligation to notify the appropriate prosecutor.

Response: We believe that there are some instances where the direct payment is inadvertently retained by the AFDC recipient. In such cases where there is no criminal intent, there is no violation of criminal law. In cases where there is evidence of criminal intent, we believe that there is nothing in these regulations which preclude the caseworker from referring evidence of criminal activity to the local authorities.

OMB Clearance

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the revisions to the IV–A and IV–D State plans (§§ 232.12(b)(4), 233.20(a)(3)(v) and (vi) and 302.31(a)(3)) were approved by the Office of Management and Budget under existing OMB Nos. 0960–0252(OFA) and 0960–0253(OCSE).

Regulatory Impact Analysis

No significant costs will result from implementation of the final regulations because these regulations codified policy that is already in place in States. Therefore, the Secretary has determined that this document, which responds to the comments received on the final regulations, is not a major rule as described by Executive Order 12291. In addition, the Secretary certifies that for the reason stated above, these regulations will not have a significant economic impact on a substantial number of small entities and, therefore, will not require a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980.

List of Subjects

45 CFR Part 232

Aid to families with dependent children, Child support (new term), Child welfare, Family assistance office, Grant programs—social programs.

45 CFR Part 233

Aid to families with dependent children, Aliens, Family assistance office, Public assistance programs, Reporting requirements.

45 CFR Parts 302 and 303

Child welfare, Grant programs/social programs.

PART 303—[AMENDED]

1. The authority citation for Part 303 is revised to read as set forth below and the authority citations following all the sections in Part 303 are removed.

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. The final regulations published in the **Federal Reigster** on October 5, 1982 (47 FR 43953–43957) are confirmed as final rules with the following amendments: 45 CFR 303.80 (b) and (f)(2) are revised to read as follows:

§ 303.80 Recovery of Direct payments.

* * * * *

(b) *Direct payments that must be recovered by the IV–D agency.* In States that place the responsibility for recovery of direct payments with the IV–D agency under the State plan option at § 302.31(a)(3)(ii) of this chapter, the IV–D agency must recover all such payments. The only exception is a direct payment retained by the recipient during the period when the sanction for failure to cooperate is in effect, as provided at 45 CFR 232.12(d).

* * * * *

(f) *Subsequent notification to the IV–A agency as required.* If the IV–D agency has referred a case to the IV–A agency with evidence of failure to cooperate for either of the reasons in paragraph (e) above, the IV–D agency must notify the IV–A agency when either of the following changes in circumstances occurs:

(1) The recipient who refused to enter into a repayment agreement consents to do so and signs the agreement; or

(2) The recipient who defaulted on an agreement begins making regularly scheduled payments according to the agreement. Under this paragraph, a regularly scheduled payment is a payment made in the current month for the amount specified in the initial repayment agreement between the IV–D agency and the recipient. The resumption of regularly scheduled payments cannot be interpreted to mean payment of amounts which were not paid during the period of default, nor amounts which could be categorized as balloon payments or which would be due as a result of an acceleration clause. To recover amounts due from any period of default, the IV–D agency must extend

the duration of the repayment agreement.

(Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program, and Program No. 13.761, Public Assistance—Maintenance Assistance (State Aid))

Dated: June 6, 1985.

Martha A. McSteen,

Acting Commissioner, Social Security Administration.

Dated: April 16, 1985.

Stephen Ritchie,

Director, Office of Child Support Enforcement.

Approved: June 24, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-20292 Filed 8-26-85; 8:45 am]

BILLING CODE 4190-11-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

Interpretation Letter Regarding Separations Manual

AGENCY: Federal Communications Commission.

ACTION: Interpretation letter.

SUMMARY: Under delegated authority, the Common Carrier Bureau, in response to a request by Eagle Communications Inc./Colorado has provided an interpretation of Part 67 of the FCC Rules and Regulations. The issue concerns the frozen customer premises equipment (CPE) balances established in accordance with the *Decision and Order* in FCC Docket 80-286, released February 26, 1982. The interpretation provides guidance with respect to the transfer of the frozen CPE balances in the event of the sale of the telephone exchange.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Arthur S. Leahy, Common Carrier Bureau, (202) 632-7500.

August 13, 1985.

Mr. Bob Adkisson,
Eagle Telecommunications Inc./
Colorado, 801 Sawatch, Box 570,
Eagle, Colorado 81631

Dear Mr. Adkisson: In your letter of July 15, 1985, you requested clarification of the procedures for the transfer of frozen customer premise equipment (CPE) balances in the event of the sale of telephone exchanges. Specifically, you requested information as to whether Eagle Telecommunications, Inc. should include in the calculation of its revenue requirement the phase out amount of CPE associated with the purchase of two exchanges from Continental Telephone of the West. In response to that request we are providing the following interpretation of the Separations Manual, Part 67 of the *FCC Rules and Regulations.*

In its *Decision and Order (Order)* in Docket 80-286, released February 26, 1982, the Commission adopted the Amendment to the Separations Manual which required the amounts in the CPE plant accounts (other than Category 2) on the books as of December 31, 1982, to be frozen and to constitute a base amount for separations purposes. In the *Order* it is stated that the freeze and the associated phase out of the frozen base over five years is "to facilitate the implementation of the Commission's policies regarding detariffing of customer premises equipment . . . and to ensure that the detariffing does not result as [*sic*] abrupt rate increases."

As we indicated in our previous interpretation letter of June 4, 1984 to Mr. Ron Commingdeer of Panhandle Telephone Cooperative, it is our opinion that the Commission's intention of precluding abrupt rate increases will most properly be served when the frozen CPE balance continues to be effectively associated with the same locale it was associated with when the balance was frozen. Thus, any rate increase curtailment effected by the inclusion of the frozen CPE amount in the separations process would benefit the ratepayers in that area. In the event of a transfer of ownership of an exchange, the overriding consideration shall be that the ratepayer benefitting or likely to benefit from the frozen CPE balance at the time of transfer should continue to so benefit after the transfer to the extent possible. To assure this, it is expected that the frozen CPE balance shall remain with the exchange with which it was associated at December 31, 1982, and if an entire exchange should be sold, the associated frozen CPE balance shall transfer with the exchange to the new owner.

If you have any questions concerning this response, please contact Arthur Leahy at (202) 632-7500.

Sincerely,

Gerald P. Vaughan,

Chief, Accounting and Audits Division.

[FR Doc. 85-20382 Filed 8-26-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1232; RM-4569]

FM Broadcast Station in Grass Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 257A to Grass Valley, California, as that community's second local FM service, in response to a petition for reconsideration filed by Eric Hilding.

EFFECTIVE DATE: September 30, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Memorandum Opinion and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Grass Valley, California); MM Docket No. 83-1232, RM-4569.

Adopted: August 13, 1985.
Released: August 22, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for reconsideration [1] of the *Report and Order*, 49 FR 37125, published September 21, 1984, which denied a request of Eric R. Hilding ("petitioner") to substitute FM Channel 280A for Class C Channel 255 at Chester, California, and to allot Class B Channel 256 to Grass Valley, California. Opposition comments were filed by Michael E. and Teresa G. Worrall ("Worralls").[2]

[1] *Public Notice* of the petition was given November 2, 1984, Report No. 1485.

[2] The Worralls are one of two applicants for Channel 255 at Chester (File No. BPH831028AH). An application has also been filed by Almanor Broadcasting Associates (File No. BPH840731II).

Additionally, a motion to strike opposition comments, and a separate addendum thereto, were filed by Chester Coleman ("Coleman"), to which petitioner responded.

2. In the *Report and Order*, the Commission found that, on the basis of evaluating criteria for conflicting proposals,[3] Channel 255 should be retained at Chester in order to provide that community with the opportunity for its first local service. That determination was based not only on petitioner's failure to meet the burden of justifying the requested reallotment of the channel, for which applications are pending and for which no equivalent channel is available, citing *Martin and Salyersville, Kentucky*, 50 R.R. 2d 502 (1981), but also the fact that Grass Valley currently receives full time service from a local AM as well as a Class A FM station. Moreover, the Commission found that although no alternative Class B or B1 frequencies were available for Grass Valley, several Class A channels could be allotted to provide the diversity of service petitioner claims is needed. However, no interest in a Class A allotment was expressed by petitioner, or any other party. Thus, the Grass Valley proposal was denied.

3. On reconsideration, petitioner, *inter alia*, reiterates his previous arguments in favor of allotting Class B Channel 256 to Grass Valley, with the concomitant allotment of two Class C2 channels at Chester to satisfy the expressed interests there. However, in the absence of favorable consideration of his request, petitioner seeks the allotment of Channel 257A to Grass Valley to provide that community with an added voice for the dissemination of diverse viewpoints and programming. Accordingly, petitioner indicates that he will apply for Channel 257A if it is allotted to Grass Valley, as requested.

4. The bulk of petitioner's comments concern the assumed intentions of Chester Coleman to apply for Channel 255 at Chester. In response, Coleman addresses petitioner's alleged attack on the veracity of his intentions as a prospective applicant. However, since there are other *bona fide* applicants for the Chester allotment, the Coleman dispute is not relevant to the merits of the instant proceeding, nor, in fact, is it appropriate for consideration at the rule making level. Thus, to the extent comments are directed thereto, they warrant no further discussion.

5. Although the Worralls steadfastly oppose any suggested allotment of one or more Class C2 channels to Chester in exchange for a Class B channel at Grass Valley, they interpose no objection to petitioner's suggested allotment of a Class A channel to the latter community, provided it will not interfere with their intended operation on Channel 255 at Chester.

6. In view of the above, we believe that it is appropriate to respond to petitioner's interest in a Class A channel which could have been allotted to Grass Valley earlier, had we received the requisite expression of interest. See, *St. Johnsbury, Vermont*, 47 FR 2867, published January 20, 1982.

7. A staff engineering analysis reveals that Channel 257A can be allotted to Grass Valley with a site restriction 3.4 kilometers (2.1 miles) east to eliminate a short spacing to Station KRFD(FM) (Channel 260), Marysville, California.

8. Accordingly, it is ordered, that the petition for reconsideration, filed by Eric R. Hilding, is granted.

§ 73.202 [Amended]

9. It is further ordered, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, effective September 30, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below:

City	Channel No.
Grass Valley, CA	232A, 257A

10. It is further ordered, that this proceeding is terminated.

11. The filing window for applications on Channel 257A will open on October 1, 1985, and close on October 30, 1985.

12. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20366 Filed 8–26–85; 8:45 am]

BILLING CODE 6712–01–M

[3] See, *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

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47 CFR Part 73

[MM Docket No. 84–785; RM–4717]

FM Broadcast Station in Indio and Desert Center, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 272A to Indio, CA, as that community's second local service, and substitutes Channel 288A for Channel 272A at Desert Center, CA, in response to a petition filed by Lynn A. Christian. The outstanding permit of Station KORS(FM) (Channel 272A) at Desert Center is modified to specify operation on the newly allotted channel.

EFFECTIVE DATE: September 30, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

Radio broadcasting.

List of Subjects in 47 CFR Part 73

PART 73—[AMENDED]

The authority citation of Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Indio and Desert Center, California); MM Docket No. 84–785, RM–4717.

Adopted: August 13, 1985.
Released: August 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 49 FR 33148, published August 21, 1984, proposing the allotment of Channel 272A to Indio, California, as that community's second FM allocation, and the substitution of Channel 288A for Channel 272A at Desert Center, California, to accommodate the proposal. Lynn A. Christian ("petitioner") filed comments in support of the proposal and reiterated her intention to apply for the channel. Additionally, supporting comments were filed by Glenn E. Thompson ("Thompson"). Comments were also filed by Janice A. Murphy, d/b/a Desert Center Broadcasters, Inc. ("Desert Center"), permittee of Station KORS [1]

[1] When the *Notice* herein was issued, Channel 272A was unoccupied at Desert Center. Murphy advises that although the *Notice* identified the applicant for Channel 272A at Desert Center as Bill Harling, Desert Center Broadcasters, Inc. was, in fact, issued a construction permit on July 17, 1984, to operate Station KORS(FM) on that channel.

(Channel 272A) at Desert Center. Reply comments were filed by the petitioner.

2. In its comments, Desert Center advises it will not oppose the proposed modification of its construction permit provided it is reimbursed for all expenses incurred in changing frequencies.

3. In response, petitioner objects to Desert Center's request that she reimburse it for the entire sum of its liabilities involved in effectuating the requested frequency change. Rather, petitioner states, if she is the ultimate permittee of Channel 272A at Indio, she is willing to assume Desert Center's reimbursable and documented expenses incidental to the frequency change. Further, petitioner adds, that such reimbursable costs should be marginal since Station KORS is not an established operation or even licensed.

4. Based on the provision of a second local service to Indio, which could provide a diversity of information and programming, we find that the allocation of Channel 272A is warranted. Also, we will substitute channels at Desert Center to accommodate the proposal, and modify the permit for Station KORS (Channel 272A), Desert Center, to specify operation on Channel 288A.

5. Established Commission policy provides for reimbursement for reasonable costs of a channel change in a station's frequency from the party benefitting from a new channel assignment. We believe that equitable considerations dictate that Desert Center Broadcasters, Inc. should be reimbursed for such costs from the ultimate Indio permittee. Assisted by guidelines which we have furnished in similar cases, such as *Circleville, Ohio*, 8 FCC 2d 159 (1967), the appropriate costs constituting a "reasonable" reimbursement figure are generally left to the good faith judgment of the parties eventually involved, subject to Commission approval in the event of disagreement. See also, *Mitchell, South Dakota*, 62 FCC 2d 70 (1976).

6. Since Channel 272A is within 320 kilometers (199 miles) of the common U.S.-Mexican border, the Commission obtained the Mexican Government's consent to the proposal.

§ 73.202 [Amended]

7. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective September 30, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules is amended with respect to the communities listed below, as follows:

City	Channel No.
Indio, CA	224A, 272A
Desert Center, CA	[redacted] 288A

8. It is further ordered, that, pursuant to section 316(a) of the Communications Act of 1934, as amended, the outstanding permit held by Desert Center Broadcasters, Inc. for Station KORS(FM), Desert Center, California, is modified, effective September 30, 1985, to specify operation on Channel 288A in lieu of Channel 272A with the condition it will be reimbursed for the reasonable costs incurred in switching frequencies from the ultimate permittee of Channel 272A at Indio. Station KORS(FM) may continue to operate on Channel 272A at Desert Center for 1 year from the effective date of this action, or until it is ready to operate on Channel 288A, whichever is earlier, unless the Commission sooner directs. In addition, Station , KORS(FM) shall comply with the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301) specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

9. It is further ordered, that the Secretary of the Commission shall send a copy of this Order by Certified Mail, Return Receipt Requested, to Janice A. Murphy, d/b/a Desert Center Broadcasters, Inc., 640 W. Sheldon Street, Prescott, AZ 86301, and also a copy thereof, by regular mail, to her attorney, Robert L. Olender, Esq., of Baraff, Koerner, Olender and Hochberg, 2033 M Street, NW, Suite 203, Washington, D.C. 20036.

10. It is further ordered, that this proceeding is terminated.

11. The filing window for applications on Channel 272A at Indio, California will open on October 1, 1985 and close on October 30, 1985.

12. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20368 Filed 8–26–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–464; RM–4569]

FM Broadcast Station in Crestview and Fort Walton Beach, FL; Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein denies the request of Gulf Shores Broadcasting Company to reassign Channel 257A from Fort Walton Beach to Crestview, Florida.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), FM Broadcast Stations, Table of Allotments (Crestview and Fort Walton Beach, Florida); MM Docket No. 84–464, RM–4667.

Adopted: August 13, 1985.
Released: August 22, 1985.

By the Chief, Policy and Rules Division.

1. On May 8, 1984, the Commission issued the *Notice of Proposed Rule Making*, 49 FR 21982, published May 24, 1984, in the above proceeding proposing the deletion of Channel 257A from Fort Walton Beach, Florida, and its reallotment to Crestview, Florida. The *Notice* was adopted in response to a petition filed by Gulf Shores Broadcasting ("petitioner"). Supporting comments were filed by the petitioner reaffirming its interest in the Crestview allotment. Comments in opposition to the proposal were filed by Gospel Music

Productions, Inc. ("Gospel"); Contemporary Communications, Inc.[1]; PTP Limited; and Gulf Coast Broadcasters, Inc. ("GCBI"). Petitioner filed reply comments.[2]

2. As we indicated in the *Notice*, Channel 257A is currently allocated to Fort Walton Beach, Florida, and occupied by Vacationland Broadcasting Company ("Vacationland"), Station WFTW(FM). Vacationland has been granted a construction permit to convert its operation to Channel 243 at Fort Walton Beach in an Initial Decision (MM Docket 81-855). That decision was recently upheld by the Commission's Review Board. Thus, Channel 257A can be considered for reallotment.

3. In response to the *Notice* Gospel comments that there is an overwhelming need for additional FM service at Fort Walton Beach. Gospel refers to the fact that there were five applications when Channel 243 was designated for hearing. Gospel favors retaining Channel 257A at Fort Walton Beach and states its intention to apply for the channel. In opposition to the proposal, GCBI states that it does not dispute that Crestview as the seat of Okaloosa County would only be receiving its second FM station. However, it argues that the Commission should take into account, as it did in allotting Channel 243 to Fort Walton Beach in preference to Crestview,[3] that Fort Walton Beach is the preferred community in terms of need, size and growth. GCBI claims that the 1980 Census shows an even greater population disparity than that of 1970, inasmuch as Fort Walton Beach's population has increased 4.2% (to 20,829) while Crestview's population declined 4.2% (to 7,617).[4] Contemporary Communications, Inc. comments that Fort Walton Beach's population is nearly three times that of Crestview, thereby enabling more people to be served. Contemporary also contends that each community has equal service (2 AM and 1 FM stations).

4. In reply the petitioner argues that the number of potential applicants for a Fort Walton Beach facility is not material to its request. Rather the service to be provided to the two communities is the overriding concern. In this regard petitioner states that Crestview has three stations: two AM (daytime only) and one FM; while Fort Walton Beach also has three stations: two AM (one of which is fulltime) and one FM. In addition, FM stations at Destin and Mary Esther, Florida, are said to provide service to Fort Walton Beach. Petitioner alleges that the public interest could best be served by the Crestview proposal, in view of the abundance of service presently available to Fort Walton Beach.

5. Our *Notice* proposing the reallotment of Channel 257A from Fort Walton Beach to Crestview, Florida, was premised on a lack of interest for Channel 257A at Fort Walton Beach. However, subsequent to the *Notice* three applications for Channel 257A were received removing that basis for the proposed deletion of the channel. In an effort to satisfy the needs of both communities, our staff conducted a channel search and found that no other channels are available to either community. The Commission's criteria for evaluating conflicting proposals was set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982) as follows:

(1) First fulltime aural service
(2) Second fulltime aural service
(3) First local service
(4) Other public interest matters

Fort Walton Beach (population 20,829)[5] receives fulltime service from two AM stations, one daytime only AM station, and acceptable coverage from FM stations: WMMK (Destin), WMEZ and WTKX (Pensacola), and WXBM (Milton). In comparison Crestview receives local service from one FM station, two daytime only stations and nearby FM stations: WTKX (Pensacola, Florida), WXBM (Milton, Florida) and WKYD (Andalusia, Alabama). The population of Fort Walton Beach clearly favors that community over Crestview for the allocation.

6. Based on the above discussion we find that both communities appear to deserve a second FM service. Thus in making our decision we shall keep in mind our longstanding policy that unless the community can be accorded a clear preference, we shall not delete an existing allotment for which an application is pending. See *Martin and Salyersville, Kentucky*, 50 R.R. 2d 502 (1981). Here we find that the petitioner has not met the burden of justifying a reallotment of a channel for which an application is pending and for which no equivalent channel is available. Fort Walton Beach is significantly larger in population and was previously favored on a comparative basis to Crestview for a second FM channel.[6]

7. Accordingly it is ordered, that the petition of Gulf Shores Broadcasting to reallocate Channel 257A from Fort Walton Beach to Crestview, Florida is denied.

8. It is further ordered, that the petition of Marvin S. Steinman to reallot Channel 257A from Fort Walton Beach, Florida to Niceville, Florida is dismissed without prejudice.

9. It is further ordered, that this proceeding is terminated.

10. For further information contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division.

[FR Doc. 85-20369 Filed 8-26-85; 8:45 am]

BILLING CODE 6712-01-M

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[1] On July 25, 1984, Contemporary Communications, Inc. filed additional opposing comments. Since these comments were filed after the comment period ended, they will not be considered in this proceeding.

[2] In addition, on June 4, 1984, Marvin S. Steinman, submitted a letter requesting that Channel 257A be reallotted from Fort Walton Beach to Niceville, Florida. This request was advanced during the comment period as required by § 1.420(d). However, it does not meet the requirements of paragraph (9)(c) and (d) in that Steinman failed to serve the other parties and did not file an original and four copies of the petition. Therefore we have dismissed this petition as unacceptable for filing.

[3] See *Fort Walton Beach, Crestview and Destin, Florida*, 67 F.C.C. 2d 434 (1978); and 70 F.C.C. 2d 2007, 2011 (1979).

[4] GCBI reports that this information was taken from County and City Data Book 1983, U.S. Department of Commerce, Bureau of Census, page 827.

[5] Population figures were extracted from the 1980 U.S. Census.

[6] See footnote 3, *supra*.

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47 CFR Part 73

[MM Docket No. 83-357; RM-4379; RM-4462]

FM Broadcast Station in Killington, VT, Lake George, NY, Kittery, ME, and Concord, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 287A to Kittery, Maine, as that community's first local FM service, at the request of various parties, and Channel 287C2 to Killington, Vermont, as that community's first local FM service, at the request of First VT Women's Boradcasters. The request of Rumford Communications to substitute FM Channel 287B1 for Channel 288A at Concord, New Hampshire, is denied. In addition, the request of Edward F. Perry, Jr. for the allotment of Channel 287B to Lake George, New York, is denied.

EFFECTIVE DATE: September 27, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Killington, Vermont, Lake George, New York [1], Kittery, Maine, and Concord, New Hampshire [1]); MM Docket No. 83–357, RM–4379, RM–4462.

Adopted: August 13, 1985.
Released: August 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 16068, published April 14, 1983, proposing the allocation of Class B Channel 287 to Killington, Vermont, as that community's first local FM service, at the request of First VT Women's Broadcasters ("VT") and the counter-proposal of Edward F. Perry, Jr. ("Perry") requesting that the channel be allocated instead to Lake George, New York, as that community's first local FM service.[2] The Commission, on its own motion, proposed the allocation of Channel 287A to Kittery, Maine, as that community's first local FM service, in the omnibus *Notice* in Docket 84–231.[3] Timely filed as a counterproposal to the Kittery allotment was a request from Rumford Communications, Inc. ("Rumford") seeking the substitution of Channel 287B1 for Channel 288A at Concord, New Hampshire, and the simultaneous modification of its license for Station WJYY(FM) to specify operation on the new channel.[4] These proposals are being given joint consideration as the Commission's mileage separation requirements will not permit each community to receive its requested channel allotment.

2. Comments to this proceeding were filed by VT, Perry, John L. Eddy ("Eddy")[5], Vermont Radio, Inc. ("Vermont Radio"), Sherburne Corporation ("Sherburne") and Rumford, with VT and Rumford also filing reply comments. Rumford additionally filed a petition to consolidate this proceeding with pending Docket 84–718 which concerns FM allotments at Plattsburgh, New York, and Rutland, Vermont, to which Plattsburgh Broadcasting Corporation ("Plattsburgh Broadcasting") filed an opposition. Numerous parties filed comments in support of the Kittery proposal in Docket 84–231.[6] Seacoast Broadcasting Co., Inc. filed comments in opposition to the allocation. Keith B. Handyside, Richard A. DeFabio and Douglas B. Welldon filed reply comments supporting the Kittery allotment. Rumford also filed a counterproposal requesting the substitution of Channel 287B1 for Channel 288A at Concord, reply comments opposing the Kittery allocation, and a petition for reconsideration of the Commission's rejection of its counterproposal.

3. Class B co-channel allocations must be separated by 241 kilometers (150 miles) and Killington and Lake George are only 72 kilometers apart. Co-channel Class B and B1 channels must be 211 kilometers (131 miles) apart and Concord is only 171 kilometers from Lake George and 105 kilometers from Killington. Class A and B1 co-channels must be separated by 138 kilometers (86 miles) and Kittery and Concord are only 65 kilometers apart. In an effort to resolve these conflicts, the staff performed an engineering study to determine if alternate channels were available for allocation to any of the communities. We found that no other channel, other than the ones proposed, were available, with the exception of Killington. As pointed out in the *Notice*, Killington is located in Zone II, which is reserved for Class C stations. However, due to the allocation rules then in effect, no Class C channel was available for allocation to Killington in compliance with the mileage separation requirements. Therefore, as requested by VT, we proposed that Class B channel 287 be allocated to Killington, but stipulated a site restriction of 11.5 miles south, in Zone I. With the adoption of BC Docket 80–90, there are now two new Class C operations, these being C1 and C2, both of which require lesser facilities and lesser mileage separations than full Class C operations. We find that Channel 287C2 can be allocated to Killington, with a transmitter site restriction of only 0.6 kilometers (0.4 miles) west to avoid a short-spacing to Station WNKV(FM), St. Johnsbury, VT. This channel could allow placement of the transmitter in close proximity to Killington, within Zone II, thus negating the waiver of § 73.211(c) as contemplated by both VT and Sherburne. Channel 287C2 at Killington, however, remains in conflict with the Lake George and Concord proposals.

4. *Killington, Vermont:* The Commission proposed the allocation of Class B Channel 287 to Killington, as that community's first local aural service. Killington (population 891 persons),[6] [7] in Rutland County (population 58,347), is located approximately 16 miles east of Rutland, Vermont. With the availability of Channel 287C2, which can be sited in close proximity to Killington, we believe the arguments of Vermont Radio concerning possible coverage problems arising from the use of the originally proposed transmitter site need not be discussed. Comments in support of the Killington allocation were filed by VT and Sherburne. Both also expressed a desire to locate the transmitter within Zone II. In opposition, Perry and Vermont Radio contend that Killington is not a community for allocation purposes. They state that the place is not listed in the U.S. Census and argue that VT provided no information to show that Killington is anything more

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[1] These communities have been added to the caption.

[2] Public Notice of the filing of the counterproposal was given on June 2, 1983, Report No. 1407.

[3] *Implementation of BC Docket 80–90 to Increase the Availability of FM Broadcast Assignments*, 49 FR 11214, published March 26, 1984.

[4] Rumford also filed a counterproposal in this proceeding requesting that Channel 286B1 be allocated to Killington so as to make possible the use of Channel 287B1 at Concord. In the *Order* extending time for filing replay comments, the Commission stated that the request would not be accepted as it was premised on the new Docket 80–90 allocation rules, for which an effective date had not been set at that time. On July 16, 1984, Rumford filed a Motion for Acceptance of Late-File Request for Consideration of Comments and Counterproposal in this proceeding. It states that it had interpreted our rejection of its counterproposal herein as an invitation to file a counterproposal in the Docket 84–231 proceeding. Noting that the Commission has also declined to consider its request in that proceeding, Rumford again requests consideration of its Concord proposal here while simultaneously seeking reconsideration in Docket 84–231. The new allocation rules are now in effect and we believe that the public interest and the Commission's administrative procedures would be served by considering the Concord substitution at this time.

[5] Eddy filed comments herein for the purpose of apprising the Commission of a possible technical conflict between the Killington request and his request for the allocation of Channel 285A at Warren, Vermont. As no such conflict exists, Eddy's petition has been accepted as a separate request and is now the subject of the *Notice of Proposed Rule Making* in MM Docket 83–950, 48 FR 41464, published September 15, 1983. Therefore, his comments will not be discussed herein.

[6] Comments were filed by Perry, Pamela W. Peterson, Leon A. Byrnes, Eugene F. Mitchell, Douglas E. Welldon, jointly by Carol Benton and Andy Santamaria, Gary H. Reiner, Bay Communications, Inc., Harvey J. Shulman, David L. Mayer, William P. Egan, Donna L. Halper, jointly by Gene Fisk and Rudolf F. Haffenreffer, IV, Richard Taylor, Daniel E. Viles, Jr., Bill Holland, William L. Mayer, Walter D. Leathers, and Louis Frey, Jr.

[7] All population figures are derived from the 1980 U.S. Census, unless otherwise indicated.

[8] The population of Killington is that attributed to the community of Sherburne, Vermont, as shown in the 1980 U.S. Census and the 1980 Population and Local Government, State of Vermont.

than a ski resort with virtually no permanent population. Since it has no defined boundaries, according to Perry, the Commission would not be able to determine if the required 70 dBu city-grade signal would be provided to the entire community of license. Both parties cite *Cascade Village, Colorado*, 48 FR 19917 (1983), as being on point wherein the Commission denied the request for an FM allocation based on our finding that Cascade Village was only a ski resort and had none of the components traditionally considered by the Commission as comprising a "community" and additionally, with no officially recognized boundaries, there was no assurance that Section 73.315 of the Rules, with respect to signal coverage, could be met. Rumford, while not questioning Killington's status, suggests that Channel 286B1 be allocated to Killington, sited at Rutland's Station WRUT transmitter site, thus allowing Channel 287B1 to be allocated to Concord. If this is not possible, Rumford argues that Concord's larger population and its status as a state capital should override any first local service preference which would accrue to Killington.

5. VT, in its reply comments, refutes the allegation that Killington is not a "community" for allotment purposes. It appends a letter from James H. Douglas, Secretary of State for the State of Vermont, wherein he states that the Town of Sherburne is more commonly referred to as Killington, with the postal address being Killington and most businesses referring to their location not as Sherburne but as Killington. VT also included in its reply comments a photocopy of the State of Vermont's 1980 Population and Local Government publication, which shows that Killington, with a incorporation date of July 1761, was granted a change of name to Sherburne on November 4, 1800. It also provided information showing that the Town of Sherburne, with a 1980 U.S. Census population of 891 persons, has its own local government, with a Board of Selectmen and Town Manager, and community organizations and businesses which identify themselves with Killington. VT notes that the permanent populations of Lake George and Killington are similar and the allocation could provide each community with a first local aural service. However, VT believes that Killington should be preferred as its current population figure reflects continued and sustained growth, at an average rate of 6% a year since 1960, whereas the population of Lake George had remained virtually stagnant over the same period of time. It also claims that Killington's average daily population swells by about 1,000% with many of these vacationers not being transitory but permanent vacation home owners. Based on this information, VT argues that Killington, with continuing growth in permanent population, coupled with its large vacation population, should receive the allocation, citing *Palm Springs, California*, Docket 21174, 41 R.R. 2d 301 (1977), as support.

6. *Lake George, New York:* Perry seeks the allocation of Class B Channel 287 to Lake George, as that community's first local aural service. Lake George (population 1,047), in Warren County (population 54,854), is located approximately 7 miles north of Glens Falls, New York. He states that Lake George is a well known resort area. Perry seeks the allocation to the village of Lake George but states that he would also apply for the frequency should we allocate the channel to the Town of Lake George, with its larger population of 3,394 persons. Perry states that since Lake George is within Zone I, the transmitter can be sited close to the community without the necessity of a waiver of § 73.211 of the Rules.

7. Rumford opposes the proposal, reiterating its contention that Concord's large population and status as a state capital should negate any first local service preference for Lake George. It also implies that Lake George currently receives adequate local service, noting that the transmitter of Station WENU(FM), Hudson Falls, New York, is located closer to Lake George than could a transmitter for Channel 287. Rumford appends an engineering study stating that the site restriction for Lake George must be in a southeast direction, rather than the southwest, as claimed by Perry. It contends that it would be extremely difficult, if not impossible, for a station to serve Lake George from a transmitter site within the restricted area as the intervening terrain would preclude line-of-sight service and the signal would be subject to severe fading and multipath distortion. In order to clear the intervening terrain, Rumford states that an antenna of 1000 feet above ground would be required. However, it argues that the Federal Aviation Administration ("FAA") would restrict the height of the transmitter due to the close proximity of the Warren County Airport. It claims that this is a real, not theoretical problem, stating that Station WENU(FM) was restricted to an antenna height of only 248 feet above average terrain.

8. *Kittery, Maine:* The Commission proposed the allocation of Channel 287A to Kittery, as that community's first local aural service, as part of the omnibus *Notice* in Docket 84-231, *supra*. Rumford filed a counterproposal requesting the substitution of Channel 287B1 for Channel 288A at Concord, New Hampshire, and the modification of its license for Station WJYY to specify operation on the new frequency. Kittery (population 9,314), in York County (population 139,666), is located approximately 10 miles from Portsmouth, New Hampshire. Numerous parties filed letters of intent to apply for the frequency at Kittery. According to Bay Communications, Inc., the allocation would fulfill the Commission's section 307(b) mandate to allocate channels in a fair, efficient and equitable manner while also achieving one of the highest Commission priorities, that is the provision of a first local aural service to a community. Bay Communications also provides population and economic data concerning Kittery in support of the allotment. Gary H. Reiner, Chairman of the Kittery Town Council, supports the allotment and claims that Kittery "is the gateway to Maine" and thus has a large daily tourist influx. He also points out that the Portsmouth Naval Shipyard, with its 10,000 employees, is located in Kittery. Reiner acknowledges that Kittery receives aural service from Portsmouth, New Hampshire. However, he states that the community does not receive any radio service from stations located within Maine, with the nearest station being located 50 miles away in Portland. He believes that the residents of Kittery feel a lack of adequate coverage and exposure of the unique needs of the community by the Portsmouth stations. Seacoast Broadcasting Co., Inc., licensee of AM Station WBBX, Portsmouth, opposes the Kittery allotment, contending that the community is already well served as it receives radio service from a total of nine AM and FM stations, located in Portsmouth, Exeter, Rochester and Dover, all in New Hampshire.

9. *Concord, New Hampshire:* Rumford seeks the allocation of Channel 287B1 to Concord and the modification of its license for Station WJYY to specify the higher powered channel. Concord (population 30,400), in Merrimack County (population 98,302), is the capital of New Hampshire and is located 10 miles from Manchester, New Hampshire. Rumford states that it has long desired to upgrade its Station WJYY operation but that prior to the new allocation rules, no Class B channel was available which could be allocated in compliance with the Commission's

mileage separation requirements. Now it finds that Class B1 Channel 287 can be allocated but that it is the only such channel which can be. However, should the Commission allocate Channel 287A to Kittery, it would preclude its use at Concord. Rumford claims that the proposals should be jointly considered as the new allocation at Concord would provide a second aural service to an area of 13.5 square kilometers (5.2 square miles). While acknowledging that the Kittery proposal would provide a first local transmission service, it argues that this is an inferior priority under section 307(b) of the Communications Act. It claims that it is unlikely that a Kittery operation would provide any first or second transmission service due to the community's proximity to the Class B stations at Portsmouth and Dover, New Hampshire, contending that the 1 mV/m contour of a Class A station at Kittery would be fully encompassed by the 1 mV/m contour of these nearby facilities. It also argues that Concord should be preferred as it is a far larger community and more isolated from other communities than Kittery.

10. Perry filed comments opposing the Concord counterproposal. He notes that Rumford also filed a counterproposal to the Lake George and Killington rule makings, which the Commission refused to consider as it was predicated on allocation rules which were not then in effect. He argues that Rumford's proposal should not be considered here, either, since Concord already has two local FM stations whereas neither Kittery, Lake George nor Killington have any such local aural outlet.

Discussion

11. The Commission, in *Revision of FM Assignment Policies and Procedures,*[8] set forth the following allotment priorities:

(1) First fulltime aural service;

(2) Second fulltime aural service;

(3) First local service;

(4) Other public interest matter.

(Co-equal weight given to priorities 2 and 3).

Kittery, Lake George and Killington receive service from nearby communities but have no local aural service. Concord has local aural service from fulltime AM and FM stations. Rumford argues that no first local service perference should be awarded to the other communities as the new operation at Concord would provide a second aural service to outlying areas. Thus, it believes that all of the proposals should be considered on an equal footing.

12. In determining that priorities (2) and (3) would be given co-equal weight, the Commission envisioned a situation where, like here, a substantially larger community seeks an additional allotment which would provide service to unserved or underserved areas but is in competition with a much smaller community seeking its first local allotment. Therefore, in order to determine which proposal would provide a greater benefit to the public, the Commission stated that the populations which would benefit from the proposed allocations would be compared.[9] Here, a first local service could be provided to Kittery and either to Killington or Lake George, thus benefitting at least 10,205 persons. If Concord receives the allocation, no first local service is provided to any population but a second aural service could be provided to a 5.2 square mile area. However, Rumford does not provide any population figure for this area. Based on the omission of this data, we can only assume that the second aural service area is either unpopulated or very sparsely populated. Thus, we find that Rumford's proposal cannot be considered on an equal footing with the other proposals herein as it would not provide a comparable, much less superior, benefit to the public.

13. When viewed in this light, Rumford's proposal only falls within the fourth priority, that is other public interest matters. Concord already enjoys a number of local aural services, having two commercial FM stations, one fulltime AM station, as well as two noncommercial educational FM stations. We cannot find that an upgraded second local commercial FM service at Concord, with possibly no population receiving the alleged second aural service, would be of more benefit to the public than could a first aural service at Kittery, Lake George or Killington. Therefore, Rumford's proposal for the allotment of Channel 287B1 at Concord will be denied.

14. Besides the Concord proposal, there remains no bar to Kittery receiving its first local allotment. Numerous parties have expressed an intent to apply for the frequency and the channel can be allocated in compliance with the Commission's mileage separation requirements regardless of the disposition of the Killington and Lake George proposals. As to the opposition of Seacoast Broadcasting Co., the Commission has long held that reception service from stations licensed to nearby communities, who have no obligation to serve the needs of the distant community, is not a substitute for a community having its own local station. See *Clinton, Louisiana,* 45 R.R. 2d 1587 (1979) and *Westover and Grafton, West Virginia,* 46 FR 10737, published February 4, 1981. We believe the public interest would be served by allocating Channel 287A to Kittery, as that community's first local FM service.

15. Remaining for consideration are the requests for first FM allotments at Lake George and Killington. As stated in paragraph 3, *supra,* Channel 287C2 can be allocated to Killington, in lieu of the originally proposed Channel 287B, but this change in classification still requires a mileage separation of 241 kilometers (150 miles) between the two communities. Thus, both communities cannot receive an FM allotment.

16. Before a decision can be made, the status of Killington as a community needs to be resolved. Perry and Rumford contend that Killington is "merely a ski resort" and that it is not listed in the U.S. Census, indicating that there is no permanent population. We disagree. We find that VT has provided us with sufficient data which shows that Killington and Sherburne are one and the same community, as attested to by the Secretary of State of the State of Vermont. As such, Killington/Sherburne has a 1980 U.S. Census population of 891 persons and its own local government, with a Board of Selectmen and Town Manager. We have been provided with information that shows there are numerous area businesses and community organizations which identify themselves with Killington. Finally, the U.S. Postal Service does not recognize Sherburne, but rather mail must be addressed to Killington, which has its own zip code. Based on this information, we believe that Killington does meet the Commission's definition of a "community" for allocation purposes.

17. In comparing the two communities, we find that both are resort areas with insubstantial differences in population. Both receive several aural services from nearby communities. Killington's population, while somewhat smaller, reflects a substantial increase, which has continued over a long period of time, having grown from almost 300 persons in 1960. Lake George, on the other hand, has remained virtually the same, having increased by only 16 persons over the last 20 years. Killington, in addition to attracting both a very large number of winter and summer tourists also appears to have a sizeable part-time population, as reflected in the number of vacation

[8] 90 F.C.C. 2d 88 (1982).

[9] 90 F.C.C. 2d 88, 92 (1982).

homes which have been purchased. Perry has provided no comparable community and vacation population data other than to state that Lake George is a well known resort area.

18. Therefore, based on the above discussion, we believe that Killington, with its growing permanent population and large vacation population, should be preferred for the Channel 287 allocation. Channel 287C2 can be allocated to Killington with a site restriction of 0.6 kilometers (0.4 miles) west which should pose no coverage problems as the transmitter can also be sited in the same area currently being used by Rutland's FM stations. Channel 287A can be allocated to Kittery without requiring a site restriction. Canadian concurrence in the allotments has been received as both Kittery and Killington are located within 320 kilometers (200 miles) of the U.S.-Canadian border.

73.202 [Amended]

19. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's rules, it is ordered, that effective September 27, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the communities listed below, to read as follows:

City	[illegible] No.
Kittery, ME	287A
Killington, VT	287C2

20. It is further ordered, that the petition of Edward F. Perry, Jr. (RM–4462) is denied.

21. It is further ordered that the petition of Rumford Communications, Inc. is denied.

22. It is further ordered, that the petition to Consolidate Dockets 83–357 and 84–718, filed by Rumford Communications, Inc. is dismissed as moot.

23. The period for filing applications for these channels will open on September 30, 1985, and close on October 30, 1985.

24. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20367 Filed 8–26–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 81–332; RM–3756; RM–4784]

FM Broadcast Station in Newport, WA; Sandpoint, ID, and Libby, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allots FM channels to Sandpoint, Idaho and Newport, Washington, in response to a petition from Tri County Broadcasting and comments from Robert Johnson. Newport would receive a first local service and Sandpoint could obtain a second local service.

EFFECTIVE DATE: September 30, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by secific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Newport, Washington; Sandpoint, Idaho, and Libby, Montana) BC Docket No. 81–332, R1–3756, RM–4784.

Adopted: August 13, 1985.
Released: August 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Further Notice of Proposed Rule Making*, 47 FR 54521, published December 3, 1982, which proposed the allotment of FM Channel 285A to Newport, Washington, as a first FM channel and the allotment of Channel 269A to Sandpoint, Idaho, as that community's second FM channel. The Sandpoint allotment would require the substitution of Channel 292A for Channel 269A at Libby, Montana. Gerald E. Carpenter, Eric E. Carpenter, and Louis Musso, III, d/b/a Tri County Broadcasting ("Tri-County") filed comments reaffirming their interest in the Newport, Washington, and Sandpoint, Idaho, allotments. Robert Johnson filed comments in support of the Newport allotment. West Way, Inc., applicant for FM Channel 269A in Libby, Montana, filed opposing comments.

2. In the *Further Notice*, the proposed allotments of Channel 269A to Sandpoint, Idaho, and Channel 285A to Newport, Washington, were jointly considered. The *Further Notice* required petitioners to supply information regarding the nature and extent of the interest of the principals in Pend Oreille Valley ("Pend Oreille") and ("Tri-County Broadcasting") since there appeared to be common ownership and to demonstrate whether there would be any overlap of the 1 mV/m contours of the proposed Newport and Sandpoint stations with the earlier grant for a station at Deer Park, Washington, in contravention of § 73.240 of the Commission's Rules regarding concentration of control and prohibited signal overlap. However, in light of the Commission's recent decision deleting the regional concentration rule, our earlier expressed concerns have been rendered moot. Therefore, this issue will not be considered here. See, *Repeal of the Regional Concentration of Control Provisions of the Commission's Multiple Ownership Rules*,[1] *recon. den* F.C.C. 85–225, Mimeo No. 35700, rel. May 8, 1985.

3. In order to avoid the substitution of channels at Libby where a construction permit was recently issued, the staff has determined that Channel 273A can be allotted to Sandpoint. The Sandpoint and Newport proposals can be made consistent with the minimum separation requirements of the Commission's Rules. Canadian concurrence has been obtained for both communities.

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 204(b), and 0.239 of the Commission's Rules, it is ordered, That effective September 30, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the communities listed below:

City	[illegible] No.
Sandpoint, ID	237A, 273A
Newport, WA	285A

[1] 55 R.R. 2d 1389 (1984) *appeal pending sub nom. National Asociation for Better Broadcasting, et al. v. F.C.C.*, No. 84–1274, (D.C. Cir. filed June 29, 1984).

5. It is further ordered, that this proceeding is terminated.

6. The window period for filing applications on both channels will open on October 1, 1985, and close on October 30, 1985.

7. For further information concerning this proceeding contact Arthur D. Scrutchins, Mass Media Bureau (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 85–20370 Filed 8–26–85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Amdt. No. 3 to Revised Service Order No. 1500]

The Milwaukee Road Inc. Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor, (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 3 to revised service order No. 1500.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes The Milwaukee Road Inc. to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE: 11:59 p.m., August 31, 1985, and continuing in effect until 11:59 p.m., October 31, 1985, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M.F. Clemens, Jr., (202) 275–7840 or 275–1559.

List of Subjects in 49 CFR Part 1033

Railroads.

Decided: August 21, 1985.

Upon further consideration of Revised Service Order No. 1500 (50 FR 11366, 21264 and 26774) and good cause appearing therefor:

§ 1033.1500 [Amended]

It is ordered, § 1033.1500 *The Milwaukee Road Inc. Authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee),* Revised Service Order No. 1500 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended for an additional period of time and shall expire at 11:59 p.m., October 31, 1985, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., August 31, 1985.

This action is taken under the authority of 49 U.S.C. 10304–10305 and section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Bernard Gaillard, William J. Love and John H. O'Brien.

James H. Bayne,

Secretary.

[FR Doc. 85–20452 Filed 8–26–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 50458–5048]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the recreational salmon fishery in the fishery conservation zone (FCZ) between Leadbetter Point, Washington, and Cape Falcon, Oregon, at midnight, August 22, 1985, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW) that the recreational fishery quota of 99,000 coho salmon for the area will be reached by midnight, August 22, 1985. The intended effect is to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the FCZ between Leadbetter Point, Washington, and Cape Falcon, Oregon, to recreational salmon fishing is effective at 2400 hours Pacific Daylight Time, August 22, 1985.

ADDRESS: Information relevant to this notice has been compiled in aggregate form and is available for public review at the Northwest Region, NMFS, 7600 Sand Point Way N.E., Building 1, Seattle, Washington, from 8:00 a.m. to 4:30 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150.

SUPPLEMENTARY INFORMATION: The regulations implementing the framework amendment to the ocean salmon fishery management plan (49 FR 43679, October 31, 1984) specify at § 661.21(a)(1) that: "When a quota for the commercial or the recreational fishery, or both, for any salmon species during any period open to fishing in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register**, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Under the provisions of the framework amendment, the 1985 management measures were published on May 2, 1985 (50 FR 18672). The 1985 recreational season in the FCZ between Leadbetter Point, Washington, and Cape Falcon, Oregon, was established as June 30 through the earliest of September 19 or attainment of a quota of either 99,000 coho salmon or 12,100 chinook salmon. Based on the most recent catch and effort information supplied by WDF and ODFW, the recreational fishery catch in the area is projected to reach the 99,000 coho salmon quota by midnight, August 22, 1985. The Secretary therefore issues this notice to close the recreational fishery in the FCZ between Leadbetter Point, Washington, and Cape Falcon, Oregon, effective midnight, August 22,

1985. This notice does not apply to treaty Indian fisheries operating in the same area or other fisheries which may be operating in other areas.

The Regional Director consulted with the Directors of WDF and ODFW regarding this closure. The Directors of WDF and ODFW have confirmed that Washington and Oregon will close the recreational fishery in State waters adjacent to this area of the FCZ effective midnight, August 22, 1985.

Other Matters

This action is taken under the authority of 50 CFR Part 661 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 22, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-20463 Filed 8-22-85; 5:00 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 166
Tuesday, August 27, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, and 872

Basic Life Insurance, Standard Optional Life Insurance, and Additional Optional Life Insurance

AGENCY: Office of Personnel Management.

ACTION: Proposal rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed regulation which would eliminate one of the major restrictions on obtaining life insurance coverage under the Federal Employees' Group Life Insurance (FEGLI) program. Under the proposed regulation, the under age-50 requirement for cancellation of a waiver of insurance coverage would be lifted. Thus, an employee who has waived insurance coverage my cancel the waiver and become insured at any age if at least one year has elapsed since the effective date of the waiver and if the employee provides satisfactory evidence of insurability.

DATE: Comments must be received on or before October 28, 1985.

ADDRESS: Written comments may be sent to Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C., 20044, or delivered to OPM, Room 4351, 1900 E Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 254–7052.

SUPPLEMENTARY INFORMATION: The FEGLI law allows eligible employees to waive or decline program participation at any time (5 U.S.C 8702(b)), and the conditions under which such declination may be cancelled are governed by OPM regulations implementing the law. Presently, the regulations allow an individual to cancel a previous waiver of life insurance if he or she (1) is under age 50, (2) waits at least one year from the effective date of the last waiver, and (3) furnishes satisfactory evidence of insurability (5 CFR 870.204(b); 871.205(a); and 872.205(a)).

The age restriction on cancellation of a waiver has been in effect since the early days of the FEGLI program, when only the Basic coverage was available. Because voluntary retirement is permitted under the Civil Service Retirement System as early as age 55, a measure was necessary to prevent individuals from entering the FEGLI program at the very end of their careers and obtaining the "free" post-retirement coverage without having contributed to the funding of such benefits while employed. The age-50 limitation was prescribed to serve this purpose.

Two intervening legislative changes, however, have lessened the need for such a precaution. In 1978, the FEGLI law was changed to require a minimum of 5 years' participation in the program (or participation from first opportunity, if less) in order to continue the coverage during retirement. Thus, an employee must pay premiums for 5 years in order to obtain the "free" post-retirement benefit. Futher, the 1980 FEGLI amendments provide that employees retiring after December 31, 1989, will continue to pay premiums through age 65, the point at which the face value coverage begins to decline. Prospectively, an employee who retires at 55 will have to pay premiums for a minimum of 15 years, five years before retirement and 10 years after. This assurance that employees will contribute to the fund for a reasonable period of time serves essentially the same purpose as the age-50 limitation.

Except for the fact that an employee must be enrolled in Basic FEGLI to be eligible for optional coverage, the reasons that justified the age-50 limitation are largely irrelevent in the optional programs. Each optional coverage can be continued into retirement only if the employee is eligible to continue basic coverage into retirement and participates in the optional coverage for a minimum of five years prior to retirement. Further, the retiree must continue to pay premiums until the insurance begins to decline at age 65. and, except for a factor in the premium to cover the period during which the insurance declines after age 65, the premiums are age-related and there are no subsidies across age categories. An employee who enrolls before or at age 55 will pay his full share of the costs.

In view of the 1978 and 1980 legislative changes, the age-50 limitation has no vital role in the program as it exists today.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it would affect only Federal employees.

List of Subjects in 5 CFR Parts 870, 871, and 872

Administrative practice and procedure, Government employees, Life insurance.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

For the reasons set out in the preamble, the OPM is proposing to amend Part 870, 871, and 872 of Title 5 of the Code of Federal Regulations as follows:

1. The authority citation for Parts 870, 871, and 872 continues to read as follows:

Authority: 5 U.S.C. 8716, unless otherwise noted.

PART 870—BASIC LIFE INSURANCE

2. In § 870.204, paragraph (b) is revised to read as follows:

§ 870.204 Cancellation of waiver of insurance coverage.

* * * * *

(b) An employee who has filed a waiver of regular insurance coverage may cancel the waiver and become insured if (1) at least 1 year has elapsed since the effective date of such waiver and (2) he or she furnishes satisfactory evidence of insurability.

* * * * *

PART 871—STANDARD OPTIONAL LIFE INSURANCE

3. In § 871.205, paragraph (a) is revised to read as follows:

§ 871.205 Cancellation of declination.

(a) An employee who has declined the optional insurance may elect it if (1) at least 1 year has elapsed since the effective date of his or her last declination or waiver, and (2) he or she furnishes satisfactory evidence of insurability.

* * * * *

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

4. In 872.205, paragraph (a)(1) is revised to read as follows:

§ 872.205 Cancellation of declination.

(a) (1) An employee who has declined the additional optional insurance may elect it if (i) at least 1 year has elapsed since the effective date of his or her last declination or waiver, and (ii) he or she furnishes satisfactory evidence of insurability.

* * * * *

[FR Doc. 85-20409 Filed 8-26-85; 8:45 am]
BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70, 72, 73, and 74

Changes to Safeguards Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations for the reporting of safeguards events. The proposed rule would clarify the reporting requirements for NRC licensees and would improve the NRC safeguards event data base by requiring more uniform safeguards event reports. Licensees who will be affected are power and nonpower reactors, fuel cycle facilities, and some transporters, importers and exporters of special nuclear material. The NRC uses the reported information to respond to incidents and to identify potentially generic safeguards problems. The benefits to be derived from this action are the elimination of unnecessary reporting (which will result in significant savings for affected licensees and the NRC) and a more uniform and detailed reporting and data analysis system which will provide feedback to the industry for improving safeguards systems.

DATES: Submit comments by November 27, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given unless comments are received on or before this date.

ADDRESSES: Send comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 8:15 am and 5:00 pm.

Examine comments received and the regulatory analysis at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Yardumian (301) 427-4010 or Priscilla A. Dwyer, (301) 427-4773, Reactor Regulatory Requirements Section, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION: 10 CFR 73.71 establishes an event reporting program to inform the Commission of safeguards events to permit timely response to incidents. The data from this reporting program allows the Commission to determine the significance of events to identify possible generic problems in safeguards systems.

Paragraphs (a) and (b) of § 73.71 were first published in December 1973 (38 FR 35430). They require reports of unaccounted for shipments of special nuclear material, incidents or attempts of theft or unlawful diversion of special nuclear material, and incidents or attempts of sabotage. Subsequently, the Commission determined that it also needed reports of events which could be indicative of a loss of safeguards capability or circumstances which could be part of an overall plan to commit an act of theft or sabotage. In response to the Commission concern that a substantial public hazard could occur as a result of a deficiency in a given licensee's safeguards program, an amendment to 10 CFR 73.71 was proposed in October 1979 (44 FR 60743) that requires reports of events that threaten certain nuclear activities or lessens the effectiveness of a safeguards system. This amendment was published in January 1981 (46 FR 4858) in final form, as a new paragraph (c) to § 73.71.

Since the promulgation of 10 CFR 73.71, the NRC staff has found that the requirements are frequently misinterpreted, that reports submitted pursuant to the regulation lack uniformity, and that insufficient detail is reported for NRC analysis. Unless these problems can be corrected, the usefulness of these reports in developing an adequate data base for generic analysis is limited. For these reasons, the Commission is proposing clarifying amendments to 10 CFR 70.52, 72.52, 73.67, 73.71, and 74.11 and issuing revised guidance to assist licensees in determining which events should be reported and to provide a format for doing so.

For clarity, the distinction between an explicit and a potential threat has been removed. This distinction is now made clearer in the descriptions of reportable events. The categories of major and moderate losses have been eliminated and replaced by the descriptions of each type of loss. The losses are: "failures of the safeguards system that could allow unauthorized and undetected access" and "failures that degrade the effectiveness of the system." Events that must be reported are described in a new Appendix G to Part 73.

The primary impact of the revised reporting requirements on licensees will be an approximate 80% decrease in the number of telephonic and written reports to the NRC because the twenty-four hour telephonic notification and associated follow-up written report requirement has been deleted. This requirement can be deleted because the revised requirements will ensure that all events requiring immediate NRC response will be reported within one hour and those pertinent to NRC analysis activities will be logged for quarterly submittal.

The requirements of § 73.71 are consistent with those of §§ 50.72 and 50.73. Events reported under §§ 50.72 and 50.73 are safety-oriented in nature; those reported under § 73.71 are security-oriented. Proposed changes to § 73.71 do not alter commitments made in response to the requirements of Part 50. Events of a dual nature, having both safety and safeguards impact, do not require duplicate reports. Information on how to report events of a dual nature is provided in a revised Regulatory Guide.

This proposed rulemaking also contains conforming amendments to 10 CFR 70.52, 72.52, 73.67, and 74.11 to provide further consistency among reporting requirements.

The Commission received a petition for rulemaking assigned Docket No. PRM 50-36 from the Nuclear Utility Backfitting and Reform Group, (NUBARG). As discussed below, this proposed rule would grant a portion of the petition. The petitioner has requested that the Nuclear Regulatory Commission amend 10 CFR 50.54(p); 50.54(q); 50.55(e); 50.59(b); 50.72(a); Part 50, Appendix E, section 73.71; and the Commission's NUREG's on Standard

Technical Specifications with respect to certain reporting requirements. The members of this petitioner are constructing and/or operating nuclear power reactors used for the production of electricity under licenses issued by the NRC. Utilities licensed by the NRC to operate nuclear power reactors are currently subject to a variety of reporting requirements in connection with licensed activities. The petitioner suggests that the majority of these reporting requirements are valid and the purpose they serve justifies the considerable time which must be devoted to meeting them. However, some of these requuirements are, in the opinion of the petitioner, excessive and/or duplicative. Accordingly, the petitioner has proposed that the Commission modify the various reporting requirements discussed in PRM 50–36 in order to promote more efficient use of licensee time and resources. This proposed rulemaking responds specifically to section VI of the petition, Reporting Requirments Associataed with 10 CFR 73.71. In this section, the petitioner suggests that this regulation be amended to provide that the required written reports be submitted by the licensee within 30 days of initial notification rather than within 15 days. According to the petitioner, this would allow the licensee's staff more time during the critical period immediately following such occurence to devote to the resolution of the problem itself and would minimize interference with daily operations. The Commission agrees that it is desirable to extend this particular reporting period from 15 to 30 days and has included provisions to do so in this proposed rulemaking.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore neither and environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Statement

This proposed rule amends information collection requirements that are subject tok the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The costs to industry will decrease from the current cost of $972,000 per year to $317,800 per year, or a net decrease of over 66 percent. This is due to the decrease in the number of reports that must be made or submitted by affected licensees. The costs to the NRC will decrease from the current cost of $72,000 per year to $46,800 per year, or a net decrease of 35 percent. This is due to the reduction in telephone and written reports which will result in less time spent by the NRC in documenting and analyzing the submittals.

Regulatory Flexibility Certification

Based on the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that if promulgated, this rule will not have a significant economic impact upon a substantial number of small entities and should result in a reduction in burden to affected licensees. Some transporters, importers, and exporters of strategic special nuclear material (SSNM) and spent fuel may be affected by this rule. Each year out of approximately 600 reported events, about three come from this group which includes small entities. The NRC invites comments from these parties.

The proposed rule also affects licensees who operate nuclear power plants and fuel facilities under 10 CFR Parts 50 and 73. The companies that own these plants and facilities do not fall within the scope of the definition of "small entities" set forth in section 605(b) of the Regulatory Flexibility Act of 1980, or within the definition of Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121.

List of Subjects

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordingkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Material control and accounting, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, notice is hereby given that adoption of the following amendments to 10 CFR Parts 70, 72, 73, and 74 is contemplated.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5945, 5946).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70–36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24(a) and (b), 70–32(a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58(a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a), and (d), 70.20b (c), and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)–(g), 70.56, 70.57 (b) and (d), 70.58(a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 70.52 is revised to read as follows:

§ 70.52 Reports of accidental criticality or loss or theft or attempted theft of special nuclear material.

(a) Each licensee shall notify the NRC Operations Center listed in Appendix A of Part 73 of this chapter within one hour after discovery of any case of accidental criticality or any loss, other than normal operating loss, of special nuclear material.

(b) Each licensee who possesses one gram or more of contained uranium-235, uranium-233, or plutonium shall notify the NRC Operations Center listed in Appendix A of Part 73 of this chapter within one hour after discovery of any loss or theft or unlawful diversion of special nuclear material which the licensee is licensed to possess or any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of such material.

(c) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center [1] within one hour. The exemption of § 73.21(g)(3) applies to all telephonic reports required by this section.

(d) Reports required under § 73.71 need not be duplicated under the requirements of this section.

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL AT AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION

1. The authority citation for Part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2282); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332).

Section 72.10 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

2. Section 72.52 is revised to read as follows:

§ 72.52 Reports of accidental criticality or loss of special nuclear material.

(a) Each licensee shall notify the NRC Operations Center listed in Appendix A of Part 73 of this chapter within one hour of discovery of accidental criticality or any loss of special nuclear material.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or any other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center [1] within one hour. The exemption of § 73.21(g)(3) applies to all telephonic reports required by this section.

(c) Reports required under § 73.71 need not be duplicated under the requirements of this section.

[1] Commercial telephone number of the NRC Operations Center is (202) 951-0550.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for 10 CFR Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, 88 Stat. 1242, as amended, sec. 204, 88 Stat. 1245 (42 U.S.C. 5841, 5844).

Section 73.37(f) is also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27 (a) and (b), 73.37(f), 73.40 (b) and (d), 73.46 (g)(6) and (h)(2), 73.50(g)(2), (3)(iii) (B) and (h), 73.55(h)(2), and (4)(iii)(B), 73.70, 73.71, 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 73.67, paragraphs (e)(3)(vii) and (g)(3)(iii) are revised to read as follows:

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(e) * * *

(3) * * *

(vii) Notify the NRC Operations Center within one hour after the discovery of the loss of the shipment and within one hour after recovery of or accountability for such lost shipment in accordance with the provisions of § 73.71 of this part.

* * * * *

(g) * * *

(3) * * *

(iii) Conduct immediately a trace investigation of any shipment that is lost or unaccounted for after the estimated arrival time and notify the NRC Operations Center within one hour after the discovery of the loss of the shipment and within one hour after recovery of or accountability for such lost shipment in accordance with the provisions of § 73.71 of this part.

* * * * *

3. Section 73.71 is revised to read as follows:

§ 73.71 Reports of unaccounted for shipments, suspected thefts, or unlawful diversions and other safeguards events.

(a)(1) Each licensee subject to the provisions of §§ 73.25, 73.26, 73.27(c), 73.37, 73.67(e), or 73.67(g) shall notify the NRC Operations Center within one hour after discovery of the loss of any shipment of SNM or spend fuel, and within one hour after recovery of or accountability for such lost shipment.

(2) This notification must be made to the NRC Operations Center listed in Appendix A of Part 73 of this chapter via the Emergency Notification System, if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic systems or any other method that will ensure that a report is received by the NRC Operations Center [1] within one hour. The exemption of § 73.21(g)(3) applies to all telephonic reports required by this section.

(3) The licensee shall, upon request of the NRC, maintain an open and continuous communications channel with the NRC Operations Center.

(4) The initial telephonic notification must be followed within a period of thirty (30) days by a written report submitted to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555. The licensee shall also submit one copy each to the appropriate NRC Regional Office listed in Appendix A to this part and if applicable the appropriate NRC Resident Inspector.

(5) Significant supplemental information which becomes available after the initial telephonic notification to the NRC Operations Center or after the submission of the written report must be telephonically reported to the NRC Operations Center listed in Appendix A of Part 73 of this chapter and also submitted in a revised written report to the Regional Office, the Document Control Desk and if applicable the appropriate Resident Inspector. Errors discovered in a written report must be corrected in a revised report. The revised report must replace the previous report; therefore, the update must be a complete entity and not contain only supplementary or revised information. Each licensee shall maintain a copy of the written report of an event submitted

under this section as a record for a period of three years from the date of the report.

(b)(1) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, 73.55, 73.60, and 73.67 shall notify the NRC Operations Center listed in Appendix A of Part 73 of this chapter within one hour of discovery of the safeguards events described in paragraph I.(a)(1) of Appendix G to this part. Licensees subject to the provisions of § 73.20, 73.37, 73.55, 73.60 and each licensee possessing strategic special nuclear material (SSNM) and subject to §§ 73.67 (d) and (e) shall notify the NRC Operations Center within one hour after discovery of the safeguards events described in paragraphs I.(a)(2), (3), (b), and (c) of Appendix G to this part.

(2) This notification must be made in accordance with the requirements of paragraphs (a)(2), (3), (4), and (5) of this section.

(c)(1) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, 73.55, 73.60, and each licensee possessing SSNM and subject to §§ 73.67(d), and 73.67(e) shall maintain a current log and record the safeguards events described in paragraphs II.(a) and (b) of Appendix G to this part within 24 hours of discovery by a licensee employee or member of the licensee's contract security organizations. The licensee shall retain the log of events recorded under this section as a record for three years after the last entry is made in each log.

(2) Every three months, each licensee shall submit to the NRC copies of all safeguards event log entries not previously submitted. Each licensee shall submit one copy each of its log entries to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, and if applicable the appropriate NRC Resident Inspector.

(d) Each licensee shall submit to the Commission the 30-day written reports and copies of the safeguards event log entries required under the provisions of this section that are of a quality which will permit legible reproduction and micorgraphic processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report on NRC Forms 366 and 366A. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use these forms but shall prepare the written report in letter format. In either case the report must include sufficient information for NRC analysis and evaluation.

(e) Duplicate reports are not required for events that are also reportable in accordance with §§ 50.72 and 50.73 of this chapter.

4. A new Appendix G is added to read as follows:

Appendix G—Reportable Safeguards Events

Pursuant to the provisions of 10 CFR 73.71 (b) and (c), licensees subject to the provisions of 10 CFR 73.20, 73.37, 73.50, 73.55, 73.60, and 73.67 shall report or record, as appropriate, the following safeguards events.

I. *Events to be reported within one hour of discovery, followed by a written report within thirty days.*

(a) Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a credible threat to commit or cause:

(1) A theft or unlawful diversion of special nuclear material; or

(2) Significant physical damage to any facility possessing SSNM or its equipment or carrier equipment transporting nuclear fuel or spent nuclear fuel, or to the nuclear fuel or spent nuclear fuel a facility or carrier possesses; or

(3) Interruption of normal operation of a licensed nuclear power reactor through the unauthorized use of or tampering with its machinery, components, or controls including the security system.

(b) Any failure of a safeguards system or discovered noninherent vulnerability in a system that could allow unauthorized or undetected access to a protected area, material access area, controlled access area, vital area, or transport for which proper compensatory measures have not been established. A "proper compensatory measure" for a particular safeguards event as used in this Appendix means a measure that is specified in a security or contingency plan or security procedure. If the particular safeguards event is not described in a plan or procedure, then a "proper compensatory measure" means a measure implemented within 10 minutes of an event's discovery that provides a level of security essentially equivalent to that existing before the event.

(c) Any unauthorized entries through a required barrier (whether or not the event is properly compensated.)

II. *Events to be recorded within 24 hours and submitted in quarterly log.*

(a) Any failure of a safeguards system or discovered vulnerability in a system that could allow unauthorized or undetected access to a protected area, material access area, controlled access area, vital area, or transport for which proper compensatory measures have been established.

(b) Any other failure of a safeguards system not included in paragraph II. (a) of this appendix if the failure degrades the effectiveness of the system.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 74.31, 74.81, and 74.82 are issued under secs. 161b and 161i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b), 2201(i)); and §§ 74.11, 74.13, and 74.15 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 74.11 is revised to read as follows:

§ 74.11 Reports of loss or theft or attempted theft of special nuclear material.

(a) Each licensee who possesses one gram or more of contained uranium-235, uranium-233, or plutonium shall notify the NRC Operations Center listed in Appendix A of Part 73 of this chapter within one hour of discovery of any loss or theft or other unlawful diversion of special nuclear material which it is licensed to possess, or any incident in which an attempt has been made to commit a theft or unlawful diversion of special nuclear material. The requirement does not pertain to measured discards or inventory difference quantities.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system.

If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center [1] within one hour. The exemption of § 73.21(g)(3) applies to all telephonic reports required by this section.

(c) Reports required under § 73.71 need not be duplicated under the requirements of this section.

Dated at Bethesda, Maryland this 6th day of August, 1985.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Executive Director for Operations.

[FR Doc. 85-20462 Filed 8-26-85; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 602, 620, 621

Disclosure of Information on Reports to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), publishes for comment proposed new

regulations which would require banks and associations of the Farm Credit System (System) to issue annual reports and information statements to shareholders prior to annual meetings and to file reports of condition and performance with the FCA in accordance with prescribed accounting formats. The FCA also publishes for comment a proposed amendment to 12 CFR 605.250 relating to the disclosure of information under the Freedom of Information Act that designates reports to shareholders and specified portions of the reports of condition and performance as public information. The Federal Board believes that shareholders of System institutions should receive accurate and timely information prior to electing directors so as to encourage more shareholder participation in an institution's affairs and to hold directors and management accountable for their actions. The Federal Board also believes that disclosure to shareholders will assist the FCA in fulfilling its supervisory and examination responsibilities.

DATES: Written comments must be received on or before October 23, 1985.

ADDRESSES: Submit any comments in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Holland, Office of Examination and Supervision, Farm Credit Administration, (703) 883–4452;

or

Dorothy J. Acosta, Office of General Counsel, (703) 883–4020, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SUPPLEMENTARY INFORMATION:

A. Disclosure to Shareholders

While System banks and associations currently report to their shareholders annually, there are no standards for the form, content, and distribution of such reports. The Federal Board believes that shareholders of System institutions should receive accurate and timely information prior to electing directors so as to encourage more shareholder participation in an institution's affairs and to hold directors and management accountable for their actions. The Federal Board also believes that disclosure to shareholders will assist the FCA in fulfilling its supervisory and examination responsibilities. Therefore, the Federal Board proposes new regulations that would require each System bank and association to issue an annual report to its shareholders within 90 days of the end of the fiscal year and transmit a statement containing information specified in the regulation to shareholders at least 15 days prior to annual meetings at which directors are to be elected. The reports would also be filed with the FCA and will be available for public inspection.

The proposed standards for disclosure in the annual report to shareholders are similar to, though not as extensive as, those required by the Securities and Exchange Commission and other financial regulators.

The proposed regulation would require each institution's annual report to contain the following information: A description of the institution's business and property, material pending legal proceedings, capital structure, selected financial data for the last 5 years, a discussion and analysis of the financial condition and results of operations, information about officers and directors and their compensation and transactions with the institution, and audited financial statements prepared in accordance with generally accepted accounting principles (GAAP), except as otherwise provided by the Regulations of the FCA. The regulation would require comparative financial statements for the last 3 fiscal years, audited by a qualified public accountant, except that the financial statements of Federal land bank associations (FLBAs) would not be required to have an independent audit. The Federal Board believes that because FLBAs act as agents for the Federal land bank (FLB), which is the primary lender, an independent audit of the FLB will require sufficient examination of FLBAs to provide assurance that the financial position of the association is fairly reflected in its financial statements. However, FLBAs are required to send their financial statements, as well as the FLB's to their shareholders. The independent audit requirement would take effect for banks as of the end of the 1986 fiscal year and for production credit associations (PCAs) as of the end of the 1987 fiscal year. The annual report must be signed by the institution's principal executive officer, principal financial or accounting officer, and each member of the Board of Directors. The institution is required to disclose the identity of any person required to sign but who is unable or refuses to sign and the reasons therefor.

The information statement incorporates by reference the annual report to shareholders and must disclose the number of shareholders entitled to vote, information about incumbent directors and nominees for directors similar to information disclosed in the annual report to shareholders, and any events known to the institution during the past 5 years that are material to an evaluation of the ability or integrity of the nominee; material pending legal proceedings other than ordinary routine litigation incidental to the business; and any other matter that will be discussed at the meeting upon which a shareholder vote will be taken. If the annual meeting is held more than 120 days after the end of the institution's fiscal year, interim comparative balance sheets and income statements as of the closest preceding quarter must be included but unaudited. Information statements are required to be filed with the FCA at least 30 days prior to dissemination and must be disseminated to shareholders at least 15 days prior to any meeting at which directors are to be elected. Information contained in documents previously filed with the FCA and disclosed to shareholders may be incorporated by reference, and information in any part of the statement may be incorporated by reference in answer or partial answer to any other item of the statement. All information contained in disclosure reports will be available to the general public upon request (see information below).

B. Accounting and Reporting Regulation

The proposed rule would establish accounting requirements to ensure a uniform foundation for generating, presenting, and disclosing accurate financial information to all persons having or contemplating business transactions with System institutions, and to the FCA.

The proposed accounting requirements include specific standards and requirements covering such items as: (1) Nonperforming loans; (2) uncollectible interest on loans; (3) chargeoffs; and (4) adjustments to the book value of assets when book value exceeds actual value or when documentation is insufficient to support book value.

To ensure comparability of financial statements between System institutions and other private business entities, the proposed rule would require System institutions to prepare their financial statements and reports in accordance with GAAP, except as otherwise directed by statutory and regulatory requirements. Such instances must be explained in the notes to the financial statements.

The proposed regulation would also require System banks and PCAs to have their financial statements audited by qualified public accountants and to include a copy of the accountant's opinion in annual reports.

Because the FCA is increasing its use of financial reporting to monitor the condition and performance of System institutions, the information reported will be used in support of and as a supplement to onsite examination and supervisory functions. The requirements would establish a regulatory basis for reports of financial condition and performance filed with the FCA by System banks and associations.

The proposed rule would formalize the requirement that reports of condition and performance be filed quarterly with the FCA. It requires that such reports be prepared in accordance with instructions and specifications as may be prescribed by the FCA.

In addition, the proposed rule would require reports of condition and performance to be certified as true and accurate representations of the financial condition and performance of reporting institutions by an officer of each reporting institution.

Finally, the proposed rule would require financial information reported to Boards of Directors and stockholders to be prepared in accordance with rules and standards for preparing reports of condition and performance filed with the FCA if the items reported to directors and stockholders correspond to items reported to the FCA.

C. Disclosure Under the Freedom of Information Act

The Federal Board proposes to amend 12 CFR 602.250 to clarify that reports to shareholders are publicly available and that certain portions of the reports of condition and performance filed with the FCA will be available to the public under the Freedom of Information Act for a reasonable fee upon request. The portions of the reports of condition and performance that will be available to the public are those items that correspond to items that must be disclosed to shareholders under 12 CFR 620.3 and 620.10.

List of Subjects in 12 CFR Parts 602, 620, and 621

Accounting, Annual reports, Freedom of information, Information, Reports of condition and performance.

PART 602—RELEASING INFORMATION

As stated in the preamble, it is proposed that Part 602 of Chapter VI, Title 12, of the Code of Federal Regulations, be revised as follows:

1. The authority citation for Part 602 is amended by adding 5 U.S.C. 552(a)(1) to read as follows:

Authority: Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 5 U.S.C. 552(a)(1), 12 U.S.C. 2243, 2246, 2252.

2. Section 602.250 is amended by revising the introductory text of paragraph (a) and paragraph (a)(8) as follows:

§ 602.250 Official records of the Farm Credit Administration.

(a) The Farm Credit Administration shall, upon any request for records which reasonably describe them and is made in accordance with the provisions of this Subpart, make the records available as promptly as practicable to any person, except exempt records which include the following:

* * * * *

(8) Records of or related to examination, operating, or condition reports of or related to Farm Credit institutions under the supervision of the Farm Credit Administration that are prepared by, on behalf of, or for its use except that reports to shareholders filed with the FCA pursuant to §§ 620.1–620.11 and 611.1120–611.1125 of this chapter and certain portions of the reports of condition and performance filed with the Farm Credit Administration shall be available to the public for a reasonable fee upon request.

* * * * *

3. A new Part 620 is added consisting of §§ 620.1–620.11 to read as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

Subpart A—Annual Reports to Shareholders

Sec.
620.1 Definitions.
620.2 Preparing, distributing, and filing the report.
620.3 Contents of the annual report to stockholders.

Subpart B—Annual Meeting Information Statement

620.10 Preparing, distributing, and filing the information statement.
620.11 Contents of the annual meeting information statement.

Authority: 12 U.S.C. 2252(a)(16).

Subpart A—Annual Reports to Shareholders

§ 620.1 Definitions.

For the purpose of this part, the following definitions shall apply:

(a) "Affiliated organization" means any organization of which a director or officer of the reporting institution is a director or officer or is a majority shareholder.

(b) "Immediate family" means any relationship by blood, marriage, or adoption not more remote than first cousin.

(c) "Institution" means a bank or association chartered by the Farm Credit Administration.

(d) "Related organization" means any Farm Credit institution that is a shareholder of the reporting institution or in which the reporting institution has an ownership interest.

(e) "Risk funds" means the allowance for loan losses and all capital accounts exclusive of capital stock and allocated equities.

§ 620.2 Preparing, distributing, and filing the report.

(a) Each institution of the Farm Credit System shall prepare and distribute to its shareholders an annual report within 90 days after the end of its fiscal year.

(b) For the purposes of § 620.3(j), a Federal land bank association shall include the Federal land bank's financial statements in addition to its own. Federal land bank associations shall comply with all other sections of this Part.

(c) The report shall contain at a minimum the information specified in § 620.3, and in addition, such further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(d) Three complete copies of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents that are part of the report, shall be filed with the Farm Credit Administration simultaneously with its dissemination to shareholders and shall be available for public inspection at the Farm Credit Administration. At least one of the reports shall be manually signed.

(e) The report shall be signed and dated by and on behalf of the institution by its principal executive officer, its principal financial officer or accounting officer, and each member of its board of directors. The name of each person signing the report shall be typed or printed beneath his signature. The statement to which the signers of the report shall attest shall read as follows:

> The undersigned certify that the information contained in this report is true, accurate, and complete to the best of his or her knowledge.

If any officer or any member of the board of directors is unable to or refuses

to sign the report, the institution shall disclose the individual's name and the reasons therefor.

(f) If information required by this part is contained in information previously filed with the FCA and disclosed to shareholders, the information may be incorporated by reference as an exhibit to this report. Information in any part of the report may be incorporated by reference in answer, or partial answer, to any other item of the report.

§ 620.3 Contents of the annual report to shareholders.

The report shall address the following items:

(a) *Description of the institution's business.* The description shall include a brief discussion of the following items:

(1) The institution's business;

(2) The territory served;

(3) The persons eligible to borrow;

(4) The types of lending activities engaged in and financial services offered (banks shall also describe the lending and financial services offered by the associations that are its shareholders as well as financial services offered by any service corporation in which it has an ownership interest);

(5) Any significant developments within the last 5 years that had or could have a material impact on earnings or interest rates to borrowers, including, but not limited to, mergers or consolidations and financial assistance provided by or to the institution through loss-sharing or capital preservation agreements or any other source;

(6) The acquisition or disposition of any material assets other than in the ordinary course of business;

(7) Any material change in the manner of conducting the business;

(8) Any seasonal characteristics of the institution's business;

(9) Any concentrations of more than 10 percent of its assets in particular types of agricultural activity or business and the institution's dependence, if any, upon a single customer, or a few customers, including other financial institutions ("OFIs"), as defined in § 614.4540(e) of this title, the loss of any one of which would have a material effect on the institution; and

(10) A brief description of the business of any related Farm Credit organization and the nature of the institution's relationship to such organization.

(b) *Description of property.* State the location of and briefly describe the principal offices and other materially important physical properties of the institution. If any such property is not held in fee or is held subject to any major encumbrance, so state and describe briefly the terms and conditions of the agreement under which the property is used or occupied.

(c) *Legal proceedings.* Describe fully any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the institution, or any of its related organizations, is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Describe any material proceedings to which any director, officer, or related organization of the institution is a party. Provide a statement of management's opinion with respect to the impact the legal proceedings may have, if any, on the institution's financial position.

(d) *Description of institution's securities.* (1) Describe each class of stock and participation certificate the institution is authorized to issue and the rights, duties, and liabilities of each class. The description shall include:

(i) The number of shares of each class outstanding and the number of holders of each class;

(ii) The par or face value;

(iii) The voting and dividend rights;

(iv) The order of priority upon impairment or liquidation;

(v) The institution's retirement policies and restrictions on transfer;

(vi) The statutory requirement that a borrower must purchase stock as a condition to obtaining a loan;

(vii) The manner in which the stock is paid (i.e., promissory note to the issuer or cash not advanced by issuing institution); and

(viii) The statutory authority of the institution to require additional capital contributions.

(2) Describe the institution's debt, indicating the type, amount, maturity, and interest rates of each category of obligations outstanding at the end of the fiscal period just ended. Describe applicable and regulatory restrictions on the institution's ability to incur debt.

(3) Describe fully the institution's rights and obligations under any agreement, formal, or informal, between the institution and any other person or entity having to do with capital preservation, loss sharing, or any other financial assistance agreement.

(e) *Selected financial data.* Furnish in comparative columnar form for each of the last 5 fiscal years the following financial data:

(1) Operating revenues;

(2) Income (loss) from continuing operations;

(2) Net income;

(4) Total assets;

(5) Net loans;

(6) Long-term obligations;

(7) Cash dividends declared;

(8) Patronage refunds declared;

(9) The number of members of the institution;

(10) Loss-sharing assistance given or received;

11) Net chargeoffs;

(12) Analysis of the allowance for loan losses; and

(13) Such other schedules and items as the Farm Credit Administration shall require to effect adequate disclosure.

(f) *Management's discussion and analysis of financial condition and results of operations.* Fully discuss the institution's financial condition and changes in financial condition during the past 2 years. In addition to the items below, the discussion shall provide such other information that the institution believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations.

(1) *Financial position.* Describe the institution's existing lines of credit and sources of lendable funds in relation to applicable statutory or regulatory restrictions on its ability to incur indebtedness. State the institution's debt-to-capital and loan-to-capital ratios, noting any material variances from System or regulatory guidelines, and describe the components of the institution's capital accounts. Discuss the adequacy of the allowance for loan losses and other risk funds to absorb the risk inherent in the institution's operations and comment upon any trends, commitments, contingencies, or events that are reasonably likely to have a materially adverse effect upon the adequacy of available risk funds.

(2) *Capital acquisitions.* Describe any material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments.

(3) *Results of operations.* Describe on a comparative basis any unusual or infrequent events or transactions or any significant economic changes (including, but not limited to, financial assistance from or paid to other Farm Credit institutions) that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of

revenues or expenses that, in the institution's judgment, should be described in order to understand the institution's results of operations. Describe any known trends or uncertainties that have had or that the institution reasonably expects will have a material impact on net revenues or income from continuing operations. If known, disclose any events that will cause a material change in the relationship between costs and revenues. To the extent that the financial statements disclose material changes in revenues, provide a narrative discussion of the extend to which such changes are attributable to changes in fees or volume of services being sold or to the introduction of new products or services.

(g) *Directors and executive officers.* (1) List the names of all directors and executive officers of the institution, indicating the position and term of office of each.

(2) Briefly describe the business experience during the past 5 years of each director and executive officer, including each person's principal occupations and employment during the past 5 years.

(3) Indicate any other directorship(s) held by each director and briefly describe the principal business of the entity in which such directorship is held.

(4) Describe any event known to the institution that occurred during the past 5 years that is material to an evaluation of the ability or integrity of any director or executive officer, including, but not limited to, any bankruptcy or similar proceeding, any criminal proceeding, or any civil proceeding that reflects on the officer's ability or integrity.

(h) *Director compensation.* Describe the arrangements under which directors of the institution are compensated for all services as a director and state the total compensation paid to directors as a group. For each director, state:

(1) The number of days served at board meetings; and

(2) The total number of days served in other official activities.

(i) *Certain relationships and related transactions.* (1) State the institution's policies, if any, on loans to and transactions with officers and directors of the institution.

(2) Transactions other than loans. Describe briefly any transaction, or series of transactions (other than loans), that occurred at any time during the last fiscal year between the institution and any director or officer, any member of his or her immediate family, or any organization with which the director or executive officer is affiliated. State the name of the officer or director, his or her relationship to the institution, the nature of his or her interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(3) *Loans to management.* (i) If true, state that the institution has had loans outstanding during the last full fiscal year to date to its officers and directors that:

(A) Were made in the ordinary course of business;

(B) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons; and

(C) Did not involve more than the normal risk of collectibility or present other unfavorable terms.

(ii) If the conditions stated in paragraph (i)(3)(i) of this section do not apply to the loan(s) of any person who served as an officer or director during the specified time period, state:

(A) The person's name;

(B) The largest aggregate amount of indebtedness outstanding at any time during the last fiscal year;

(C) The nature of the loan(s);

(D) The amount outstanding as of the end of the last fiscal year;

(E) The rate of interest payable on the loan;

(F) The amortization schedule for the loan;

(G) The amount past due;

(H) The credit status of the loan as determined by the institution; and

(I) If applicable, the reason the loan is deemed to involve more than the normal risk of collectibility or present unfavorable features.

(j) *Financial statements.* (1) Furnish financial statements and related footnotes that have been prepared in accordance with generally accepted accounting principles and the instructions and other requirements of the Farm Credit Administration, and that have been audited in accordance with generally accepted auditing standards by a qualified public accountant, as defined in § 621.7(a)(1) of this title, and an opinion expressed thereon, except as provided in paragraph (j)(2) of this section. The statements shall include a comparative balance sheet, statement of income, statement of changes in capital, and statement of changes in financial position and related footnotes, for the last 3 fiscal years.

(2) The financial statements of Federal land bank associations need not be audited by a qualified public accountant for the purposes of this section.

(3) The audit requirements of paragraph (j)(1) of this section shall take effect as follows:

(i) For banks—as of the end of the bank's 1986 fiscal year; and

(ii) For production credit associations—as of the end of the association's 1987 fiscal year.

Subpart B—Annual Meeting Information Statement

§ 620.10 Preparing, distributing, and filing the information statement.

(a) Each institution of the Farm Credit System shall prepare and distribute to its shareholders at least 15 days prior to any meeting at which directors are to be elected an information statement (statement) containing the information specified in § 620.11.

(b) The statement shall contain, at a minimum, the information specified in this regulation, and in addition such further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(c) The statement shall incorporate by reference the annual report to shareholders required by Subpart A of this part. In addition, if any institution holds its annual meeting of shareholders more than 120 days after the end of its fiscal year, the information statement shall be accompanied by interim financial statements, prepared in accordance with Part 621, Subpart A, of this chapter, that accurately reflect the institution's financial condition as of the closest preceding quarter period and comparable statements for the same interim period in the prior fiscal year. The statements shall include, at a minimum, an interim balance sheet and income statement and may be unaudited.

(d) Three complete copies of the statement, including financial statements, financial statement schedules exhibits, exhibits, and all other papers and documents that are part of the statement, shall be filed with the Farm Credit Administration at least 30 days prior to its dissemination to shareholders. At least one of the statements shall be manually signed.

(e) The statement, including any interim financial statements that may be

required under paragraph (c) of this section, shall be signed and dated by and on behalf of the institution by its principal executive officer, its principal financial or accounting officer, and each member of its board of directors. The name of each person signing the statement shall be typed or printed beneath the signature. The statement to which the signers of the report shall attest shall read as follows:

> The undersigned certify that the information contained in this statement is true, correct, accurate, and complete to the best of his or her knowledge.

If any officer or any member of the board of directors is unable or refuses to sign the report, the institution shall disclose the individual's name and the reasons therefor.

(f) If any information required by this statement is contained in documents previously filed with the Farm Credit Administration and disclosed to shareholders, the information may be incorporated by reference. Information in any part of the statement may be incorporated by reference in answer, or partial answer, to any other item of the statement.

§620.11 Contents of the annual meeting information statement.

The statement shall address the following items:

(a) *Voting shareholders.* For each class of stock entitled to vote at the meeting, state the number of shareholders entitled to vote. State the record date as of which the shareholders entitled to vote will be determined.

(b) *Directors.* (1) State the names and ages of persons currently serving as directors of the institution, their terms of office, and the periods during which each such person has served. No information need be given with respect to any director whose term of office as a director will not continue after the meeting to which the statement relates.

(2) State the name of any incumbent director who attended fewer than 75 percent of the total of board meetings and any board committee meetings of committees on which he or she served during the last fiscal year.

(3) If any director resigned or declined to stand for reelection during the last year because of a policy disagreement with the board, and if the director has furnished a letter requesting disclosure of the nature of the disagreement, state the date of the director's resignation and summarize the director's description of the disagreement contained in the letter. If the institution holds a different view of the disagreement, the institution's view may be summarized.

(4) Describe the arrangements under which directors of the institution are compensated for all services as a director. For each director named, state:

(i) The number of days served at board meetings; and

(ii) The total number of days served.

(c) *Nominees.*

(1) If directors are nominated by region, describe the regions and state the number of shareholders entitled to vote in each region. If nominations from the floor are restricted by the bylaws to persons from a particular region, so state.

(2) If fewer than two nominees for each position are named, describe the efforts of the nominating committee to locate two willing nominees.

(3) For each nominee, state the nominee's age and business experience during the last 5 years, including each person's occupation and employment during the past 5 years.

(4) Describe any event known to the institution that occurred during the past 5 years that is material to an evaluation of the ability or integrity of any nominee, including, but not limited to, any bankruptcy or similar proceeding, any criminal proceeding, or any civil proceeding that reflects on the nominee's ability or integrity.

(5) Describe any transaction or series of transactions with the institution (other than loans) that occurred at any time since the beginning of the fiscal year between the institution and any nominee, any member of his or her immediate family, or any organization with which the nominee is affiliated. State the name of the nominee, the nature of his or her interest in the transaction, and the terms of the transaction. No information need be given where the rates or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000 or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not received by all stockholders. If any transactions were disclosed in the annual report to the shareholders, the information statement shall disclose the current status of the transactions.

(6) Describe any outstanding loan to any nominee that was not made in the ordinary course of business on the same terms, including interest rate, amortization schedule, or collateral, as those prevailing at the time for comparable transactions with other persons or that involves more than the normal risk of collectibility or presents other unfavorable features. For each such loan(s) state:

(i) The person's name;

(ii) The largest aggregate amount of indebtedness outstanding at any time during the year preceding the date of the annual meeting;

(iii) The nature of the loan(s);

(iv) The amount outstanding as of the date of the interim balance sheet, if any, provided in response to § 620.10(c);

(v) The rate of interest payable on the loan;

(vi) The amortization schedule for the loan;

(vii) The amount past due, if any;

(viii) The credit status of the loan; and

(ix) If applicable, the reason the loan is deemed to involve more than the normal risk of collectibility or present unfavorable features.

(7) If a person is nominated from the floor, he or she shall disclose the information required in paragraph (e)(6) of this section either orally or in writing.

(f) *Legal proceedings.* Describe fully any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the institution, or any of its related organizations, is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Describe any material proceedings to which any director, officer, or related organization of the institution is a party. Provide a statement of management's opinion with respect to the impact the legal proceedings may have, if any, on the institution's financial position.

(g) If shareholders are asked to vote on matters not normally required to be submitted to shareholders for approval, describe fully the material circumstances surrounding the matter, the reason shareholders are asked to vote, and the vote required for approval of the proposition.

(h) The information statement shall describe any other matter that will be discussed at the meeting upon which shareholder vote is not required.

4. A new Part 621 is added consisting of §§ 621.1–621.14 to read as follows:

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

Subpart A—Accounting Requirements

Sec.

621.1 Purpose and applicability.
621.2 Generally accepted accounting principles and audit standards.

Sec.
621.3 Nonperforming loans and similar assets.
621.4 Uncollectible interest on loans and similar assets—general rules.
621.5 Chargeoff of losses on loans—general rules.
621.6 Adjustments to book value of assets.
621.7 Audit by qualified public accounts.

Subpart B—Reports of Condition and Performance

621.10 Applicability and purpose.
621.11 Frequency and place of filing.
621.12 Content and standards—general rules.
621.13 Certification of correctness.
621.14 Corresponding reporting items.

Authority: 12 U.S.C. 2252(a)(3) and (16); 2254.

Subpart A—Accounting Requirements

§ 621.1 Purpose and applicability.

(a) This part sets forth accounting requirements to be followed by all banks, associations, and service corporations chartered by the Farm Credit Administration under authority of the Farm Credit Act of 1971, as amended.

(b) Accurate and reliable financial information, prepared in accordance with appropriate accounting requirements, is essential to ensuring the accountability of management and directors to stockholders.

(c) Accounting requirements are established to provide a uniform foundation for generating, presenting, and disclosing accurate and reliable information of a material nature to all persons having or contemplating business transactions with institutions of the Farm Credit System.

(d) The requirements set forth in this part include both requirements of general application and specific requirements focusing on particular areas of financial condition and operating performance. The specific requirements address areas of special importance to ensuring accurate and reliable information on lending operations.

§ 621.2 Generally accepted accounting principles and audit standards.

(a) *Definitions.*—(1) As used in this part, the term "generally accepted accounting principles" shall mean that body of conventions, rules, and procedures necessary to define accepted accounting practice at a particular time as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards of the accounting profession as practiced in the United States. Generally accepted accounting principles shall include not only broad guidelines of general application but also detailed practices and procedures which constitute standards against which financial presentations are evaluated.

(2) As used in this part, the term "generally accepted auditing standards" shall mean the standards and guidelines adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants to govern the overall quality of audit performance.

(b) General rules. All banks, associations, and chartered service corporations of the Farm Credit System shall:

(1) Prepare and maintain accurate and complete records of their business transactions as necessary to prepare financial statements and reports, including reports to the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements;

(2) Prepare their financial statements and reports, including reports to the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements for all material items;

(3) Employ with such specific accounting priniciples, practices, or procedures on particular accounting or reporting matters as the Farm Credit Administration may require by regulation or otherwise, generally accepted accounting principles notwithstanding;

(4) Prepare and maintain their books and records in such a manner as to facilitate reconciliation with financial statements and reports prepared from them by Farm Credit Administration examiners and independent certified public accountants using generally accepted auditing standards.

(c) *Accrual basis of accounting*—(1) *Definition.* As used in this part, the term "accrual basis of accounting" shall mean that accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether received or not received.

(2) *General rule.* The banks, associations, and chartered service corporations of the Farm Credit System shall use the accrual basis of accounting for all material items in the preparation and maintenance of their accounting records and to prepare their financial statements and reports for internal management purposes, for use by their boards of directors, to meet Farm Credit Administration reporting requirements, and for purposes of preparing reports to stockholders and investors.

§ 621.3 Nonperforming loans and similar assets.

(a) *Definitions.* For purposes of this part, the following definitions shall apply to all loans, leases, contracts, and similar assets appropriately classified as loans.

(1) *Adequately secured.* A loan shall be considered "adequately secured" only if:

(i) Collateralized by liens having a net realizable value sufficient to discharge the debt in full, including all principal, interest, and collection expenses as may be outstanding, accrued, or incurred to the time the debt is discharged in full; or,

(ii) Guaranteed by a financially responsible party in an amount sufficient to discharge the debt in full, including all principal as may be outstanding and all interest and collection expenses as may be accrued or incurred over the full contractual term of the loan.

(2) *Bankruptcy.* A loan shall be considered as being in "bankruptcy" if the lender has received formal notice that a petition has been filed in Bankruptcy Court by or against the borrower under any chapter of the Bankruptcy Act. Once a loan is in bankruptcy, it shall remain in that status so long as:

(i) The bankruptcy petition is not dismissed or the matter fully concluded and the court's jurisdiction terminated; or,

(ii) A repayment plan approved by the court remains in effect and no foreseeable contingencies exist that would reactivate the court's jurisdiction; or,

(iii) Any property in which the lender has a security interest has not gone to sale by foreclosure even though the automatic stay has been terminated and liquidation is proceeding.

(3) *Contractually past due.* A loan shall be considered "contractually past due" if any principal repayment(s) and/or interest payment(s) set forth or incorporated by reference in the lending agreement and/or otherwise required under any terms or conditions agreed to with the borrower is not received on or before the specified date required by the lender. Once contractually past due, loans shall remain in that status until the entire amount past due, including principal, accrued interest, and penalty interest if incurred by virtue of past due status, is collected or otherwise discharged in full.

(4) *Foreclosure.* A loan shall be considered in "foreclosure" if:

(i) The lender has authorized initiation of proceedings under state law or deed of trust to terminate the borrower's right in any property in which the lender has a security interest; and/or

(ii) The lender has received formal notice that a third party has initiated proceedings under state law or deed of trust to terminate the borrower's right in any property in which the lender has a security interest.

(5) *Formally restructured loans.* A loan shall be considered "formally restructured" if its contractual terms are amended or otherwise revised to incorporate concessions made to the borrower that would not otherwise be made by the lender for economic or legal reasons.

(i) Economic reasons shall include any and all factors influencing the borrower's ability to pay amounts contractually due.

(ii) Legal reasons shall include only concessions imposed by statute, regulation, or court order.

(iii) For purposes of this definition, the term "concessions" shall mean any modification to the term or conditions, or both, of a loan or that has the effect of:

(A) Reducing the amount of repayment(s) of principal or reducing the amount of interest payment(s), or both, from amounts stated or implicit in the original loan agreement; or

(B) Reducing the effective interest rate for the remaining original term of the debt; or

(C) Extending the term within which all principal and accrued interest is due in full.

(iv) After a loan is classified as "formally restructured," it shall continue to be reported as formally restructured until it is fully paid off or otherwise discharged.

(6) *Loans.* For purposes of this part, the term "loans" shall mean all extensions of credit, including lease financing, resulting from direct negotiations between a lender and a borrower which are recorded as assests on the books and records of a Farm Credit bank or association. A reporting institution may originate a loan through direct negotiation with a borrower or it may purchase all or part of a loan originated by another lender. Generally, the term "loans" shall include all loans, leases, contracts notes receivable, and other assets appropriately classified as loans.

(7) *Nonaccrual loans.* A loan shall be considered "nonaccrual" if and so long as:

(i) It has been classified "loss" as a result of a periodic credit evaluation, unless restructured; or

(ii) It is severely past due and not adequately secured and fully collectible with respect to all principal and interest, or both, as may be outstanding or accrued over its full term; or

(iii) Any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, is determined to be uncollectible for reasons other than credit classification or past due status.

(8) *Nonperforming loans.* The term "nonperforming loans" shall include all nonaccrual, formally restructured, other restructured and reduced rate, and other high risk loans as defined in this Section.

(9) *Other high risk loans.* The term "other high risk loans" shall mean all loans that:

(i) Have been officially classified "vulnerable" as a result of a periodic credit evaluation, unless restructured; or

(ii) Are severely past due but adequately secured; or

(iii) Are in process of liquidation, collection, bankruptcy, or foreclosure; or

(iv) Are not classified vulnerable, not severely past due, not in process of liquidation, collection, bankruptcy or foreclosure, but require abnormal servicing to ensure performance or otherwise prevent further deterioration even though the credit weaknesses that justify abnormal servicing are not so serious as to warrant restructuring. For purposes of this part, the term "vulnerable" shall have the same meaning as it does under § 614.4051(a)(4)(iii) of this chapter.

(10) After a loan is classified as "other high risk," it shall continue to be reported in that performance status so long as it meets any of the criteria for inclusion in that performance status.

(11) *Other restructured and reduced rate loans.* The term "other restructured and reduced rate loans" shall have the same meaning as "formally restructured loans" except that the concessions granted to the borrower shall not have been incorporated into the contractual terms and conditions of the loan by amendment or other revision.

(12) The terms "concessions" and "economic reasons" shall have the same meanings with respect to "other restructured and reduced rate loans" as they do with respect to "formally restructured loans" as defined in paragraph (a)(5) of this section.

(13) After a loan is classified as "other restructured or reduced rate," it shall continue to be reported in that performance status so long as the concessions granted to the borrower remain in effect or until the loan is paid off or otherwise discharged in full.

(14) *Performing loans.* The term "performing loans" shall mean all loans not identified as nonperforming under the definitions and standards established in this part.

(15) *Severely past due loans.* A loan shall be considered "severely past due" if any portion thereof is contractually due and uncollected for a period in excess of 90 calendar days with respect to principal, interest, or both.

(b) *Acceptable tolerances in applying definitions*—(1) *Past due amounts.* In determining amounts contractually past due for purposes of this part, earned and contractually due but uncollected amounts may be considered paid in full if part of the amount due is collected such that:

(i) At least 90 percent of all contractually due principal and interest has been collected; and

(ii) No more than a combined total of $100 of contractually due principal and interest remains uncollected.

(iii) However, amounts collected in successive partial payments or other credits shall be applied to the oldest contractually past due amount until it is paid in full, then to the next oldest past due amount until it is paid in full, an so on until the total amount of the partial collection(s) is exhausted.

(2) *Renewals and reamortizations.* For purposes of this part, a renewal of principal on a loan at maturity shall not be considered a restructuring, that is, making a concession to the borrower, provided that:

(i) The financial condition and performance and loan performance of the borrower support renewal; and

(ii) The renewed or reamortized loan is made under the same terms and conditions as are used to make similar loans to other borrowers whose financial condition and performance are sound and not deteriorating.

(c) *General rules.* All banks, associations, and chartered service corporations of the Farm Credit System shall:

(1) Account for, report, and disclose all material items concerning nonperforming loans and similar assets in accordance with generally accepted accounting principles and practices and such other requirements as may be prescribed by the Farm Credit Administration; and

(2) Account for, report, and disclose all material items with respect to nonperforming loans and similar assets in accordance with and through the application of the definitions and rules set forth in this part; and

(3) Develop, adopt, and apply policies governing nonperforming loans and similar assets which, as a minimum, conform to the definitions, rules, and standards set forth in this part and such other requirements and procedures as may be established by the Farm Credit Administration; and

(4) At least quarterly, review, at a minimum, all nonperforming loans and similar assets;

(i) To determine the collectibility of income accrued thereon, as appropriate; and

(ii) To determine whether formally restructured, other restructured and reduced rate, and other high risk loans should be transferred to nonaccrual status, as appropriate; and

(5) Recognize interest income from informally restructured loans and similar assets on their books and records and on their financial statements only when received in cash or cash equivalents, or at a rate of accrual lower than the contractual rate and consistent with amounts that they may reasonably expect to collect given the material facts of the borrower's situation.

§ 621.4 Uncollectible interest on loans and similar assets—general rules.

(a) The banks, associations, and chartered service corporations of the Farm Credit System shall employ generally accepted accounting principles and practices to charge off earned but uncollected income on loans, leases, contracts, and similar investments.

(b) Generally accepted accounting principles and practices notwithstanding, however, the following types of income shall, as a minimum, be classified as uncollectible:

(1) Earned but uncollected interest on any loan, if any portion thereof is severely past due and the loan is not adequately secured; and

(2) Earned but uncollected interest on any loan, lease, or similar investment that is not adequately secured and on which the bank, association, or service organization has commenced legal action to acquire title to, secure possession of, or force liquidation of the underlying collateral security, or to otherwise enforce performance on the loan by the borrower; and

(3) Earned but uncollected interest on any loan that is not adequately secured on which the bank, association, or chartered service organization has received notice that the borrower's bankruptcy petition, or similar instrument, has been accepted by a court with jurisdiction; and

(4) Earned but uncollected interest on loans that are being or have been restructured but such interest is not explicitly included in the principal amount of the restructured loan.

§ 621.5 Chargeoff of losses on loans—general rules.

All banks, associations, and chartered service corporations of the Farm Credit System shall:

(a) Charge off loans, wholly or partially as appropriate, at the time they are determined to be uncollectible; and

(b) Apply generally accepted accounting principles, or regulatory requirements where appropriate, consistently in all material aspects of recognizing, estimating, and recording chargeoffs; and

(c) Maintain an allowance for losses which, when considered in combination with their ability to make additional provisions for losses from current income, is adequate to absorb all chargeoffs that may be reasonably expected to exist in the loan portfolio; and

(d) Develop, adopt, and apply policies governing the establishment and maintenance of the allowance for loan losses which, as a minimum, conform to the rules and definitions, and standards set forth in this Part and such other requirements as may be specified by the Farm Credit Administration.

§ 621.6 Adjustments to book value of assets.

If the Farm Credit Administration determines that the value of a loan or other asset recorded on the books and records of a bank, association, or chartered service corporation exceeds its actual value, or that the documentation supporting the recorded asset value is inadequate, then the institution should immediately:

(a) Charge off the asset in the amount specified by the Farm Credit Administration; or

(b) If management of the institution disagrees with the determinations made by the Farm Credit Administration, and the differences are material, the institution shall disclose the following items in the notes to the financial statements contained in its annual report to shareholders:

(1) The amount of the chargeoff recommended to be taken by the Farm Credit Administration; and

(2) The amount of the chargeoff actually recorded to its books and records and shown in its financial statements; and

(3) The reasons supporting management's decision not to record the chargeoffs recommended by the Farm Credit Administration.

(c) These provisions do not apply to situations in which the amount of the chargeoff recorded in the financial statement is greater than that recommended by the Farm Credit Administration or in which the total amount of difference between recommended and recorded chargeoffs is not material to the institution's financial position.

§ 621.7 Audit by qualified public accountants.

(a) *Definitions.* The term "qualified public accountant" shall mean a person who:

(1) Holds a valid and unrevoked certificate, issued to such person by a legally constituted State authority, identifying such person as a certified public accountant; and

(2) Is licensed to practice as a public accountant by an appropriate regulatory authority of a State or other political subdivision of the United States; and

(3) Is in good standing as a certified and licensed public accountant under the laws of the State or other political subdivision of the United States in which is located the home office or corporate office of the bank, association, or service corporation that is to be audited; and

(4) Is not suspended or otherwise barred from practice as an accountant or public accountant before the U.S. Securities and Exchange Commission or any other appropriate Federal or State regulatory authority; and

(5) Is independent of the bank, association, or service corporation that is to be audited; for the purpose of this definition the term "independent" shall have the same meaning as it does under the rules and interpretations of the American Institute of Certified Public Accountants.

(b) *General rules.* (1) All banks, production credit associations, and chartered service corporations of the Farm Credit System shall, at least annually, have their financial statements audited by a qualified public accountant.

(2) The qualified public accountant's opinion of each institution's financial statements shall be included as a part of each annual report distributed or otherwise provided to stockholders of each bank, association, or chartered service corporation of the Farm Credit System.

(3) A copy of the qualified public accountant's opinion of each institution's financial statements shall be sent immediately upon receipt by each institution to the: Chief Accountant, Farm Credit

Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

(c) *Disagreements with accountant's opinion.* If a bank, association, or chartered service corportation of the Farm Credit System disagrees with the opinion of a qualified public accountant provided under the requirements of paragraph (b) of this section, then the following actions shall be taken immediately:

(1) The institution shall prepare a brief but thorough written description of the scope and content of the disagreement, noting each point of disagreement and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the institution's position in the disagreement is based;

(2) A copy of the institution's final description of the disagreement shall be given to the accountant who provided the opinion with which the institution disagrees;

(3) The accountant shall have 10 business days to develop and provide a brief but thorough final response to the institution's description of the disagreement, including all items believed to be incorrect or incomplete, and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the accountant's position in the disagreement is based;

(4) Both the institution's final description of the disagreement and the accountant's final response to it shall be included in the institution's annual report directly following the accountant's opinion of the institution's financial statements.

(d) *Changes in qualified public accountants.* If a bank, association, or chartered service corporation of the Farm Credit System selects a qualified public accountant to audit its financial statements and provide an opinion thereon for its annual report who is different from the accountant whose opinion appeared in the institution's most recent annual report, then the following items shall be included in the institution's annual report for the year in which the change of accountant's took place:

(1) The name and address of the accountant whose opinion appeared in the institution's most recent annual report;

(2) A brief but thorough statement of the reasons why the accountant selected for the most recent annual report was not selected for the current annual report. Such a statement shall identify all disagreements with the accountant's opinion prepared pursuant to paragraph (c) of this section;

(3) The identification of the highest ranking officer, committee of officers, or board of directors, as appropriate, which recommended, approved, or otherwise made the decision to change qualified public accountants;

(e) *Exemption for wholly owned service corporations.* The provisions of this Section shall not apply to service corporations chartered by the Farm Credit Administration in which no equity interest is owned by one or more entities not chartered by the Farm Credit Administration.

Subpart B—Reports of Condition and Performance

§ 621.10 Applicability and purpose.

(a) All banks, associations, and service corporations chartered by the Farm Credit Administration under authority of the Farm Credit Act of 1971, as amended, shall prepare and file such reports of condition and performance as may be required by the Farm Credit Administration.

(b) Reports of condition and performance shall be prepared and filed in order to:

(1) Provide a basis for monitoring the financial condition and performance of Farm Credit banks, associations, and service corporations in support of specific onsite examinations and supervisory functions;

(2) Help ensure prompt discovery of violations of applicable laws, regulations, instructions, and guidelines as well as variances from sound business practices and, in those events, to provide a basis for prompt remedial action; and

(3) Help meet congressional reporting requirements.

§ 621.11 Frequency and place of filing.

(a) *General rule.* Unless instructed otherwise by the Farm Credit Administration, reports of condition and performance shall be filed four times each year and shall accurately represent the financial condition and performance of each institution at the end of, and over the period of, each calendar quarter, provided that such additional reports as may be necessary to ensure timely, complete, and accurate monitoring and evaluation of the affairs, condition, and performance of Farm Credit institutions may be required, as determined by the Deputy Governor and Chief Examiner.

(b) All reports of condition and performance shall be filed with the Farm Credit Administration, Office of Administration, Management Information Division, 1501 Farm Credit Drive, McLean, VA 22102–5090.

§ 621.12 Content and standards—general rules

All banks, associations, and service corporations chartered by the Farm Credit Administration shall prepare reports of condition and performance:

(a) In accordance with such instructions and specifications and on such media as may be prescribed by the Farm Credit Administration;

(b) In accordance with generally accepted accounting principles and such other accounting requirements, standards, and procedures as may be prescribed by the Farm Credit Administration; and

(c) In such manner as to facilitate their reconciliation with the books and records of reporting institutions by Farm Credit Administration examiners/supervisors and qualified public accountants consistent with generally accepted auditing standards.

§ 621.13 Certification of correctness.

(a) Each report of condition and performance filed with the Farm Credit Administration shall be certified correct in the sense of being a true and accurate representation shall be certified correct in the sense of being a true and accurate representation of the financial condition and performance of the bank, association, or chartered service corporation to which it applies.

(b) The certification of reports of condition and performance shall be made by made by an officer of the reporting bank, association, or service corporation, named for that purpose by action of the reporting instruction's board of directors, provided that, if the board of directors of a bank, association, or service corporation has not acted to name an officer to certify the correctness of its reports of condition and performahce, then the reports shall be certified correct by the president or chief executive of the reporting institution.

§ 621.14 Corresponding reporting items.

(a) For purposes of this subpart, the term "corresponding reporting items" shall mean all items of essentially the same character used to monitor or other wise describe the financial condition and operating performance of Farm Credit banks, associations, or chartered service corporations that are required to be reported to the Farm Credit Administration and are also reported to boards of directors and/or stockholders of System institutions. Reporting items will be considered corresponding if

labeled with the same or similar titles or other descriptive labels.

(b) All corresponding reporting items shall be prepared in accordance with the rules set forth in §621.12 that govern the content and standards for preparing reports of condition and performance.

John C. Moore, Jr.,

Acting Governor.

[FR Doc. 85-20309 filed 8-26-85; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 85-AWA-2 and 85-AWA-3]

Proposed Establishment of Airport Radar Service Areas

Correction

In a correction document appearing on page 32578 in the issue of Tuesday, August 13, 1985, in the second column, entry 3.b. should have read:

b. In the third column, sixth line under the heading **Eppley Airfield, Omaha, NE—[New]** "5,00" should have read "5,000".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 160

[Docket No. 85P-0028/CP]

Lysozyme and Avidin Reduced Dried Egg Whites; Proposed Amendment of the Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standard of identity for dried egg whites to provide for the optional reduction of lysozyme and avidin content by cation exchange procedures before drying. The proposal would increase the ability of manufacturers to substitute food ingredients and would be in the best interest of consumers. This action is based on a petition filed on behalf of two food ingredient producers.

DATES: Written comments by October 28, 1985. The agency proposes that any final rule that may issue based upon this proposal become effective 60 days following the publication of the final rule, except for any provisions that may be stayed by the filing of proper objections.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: Societa Prodotti Antibiotici and Henningsen Foods, Inc., in a petition dated January 17, 1985, have requested that the U.S. standard of identity for dried egg whites (21 CFR 160.145) be amended: (1) To provide for the optional form of the food, lysozyme and avidin reduced dried egg whites, in which approximately 75 percent of the lysozyme and 90 percent of the avidin are removed (by an ion exchange resin) from the egg whites before drying; and (2) to specify maximum levels of not more than 0.8 percent lysozyme and not more than 0.005 percent avidin, calculated on a dry basis, for the resin treated dried egg whites.

In support of their requested amendment, the petitioners submitted data that demonstrate: (1) That lysozyme and avidin reduced dried egg whites obtained by the use of an ion exchange resin are not inferior, but are nutritionally and functionally equal in all respects to the currently standardized dried egg whites; (2) that in processing the food no substantive changes in proximate analysis, caloric value, or amino acid profile occur; (3) that the biological quality of the protein, measured as protein efficiency ratio, is equivalent; and (4) that the functional qualities of treated egg whites show no loss of whipping or heat coagulation properties.

FDA has, therefore, concluded that revising the U.S. standards of identity for dried egg whites as requested would increase the flexibility manufacturers now have to use substitute products and would be in the interest of consumers. The agency believes, however, that the various limits suggest in the petition are unnecessarily restrictive and serve no purpose in the standard of identity. Accordingly, the agency is not including the limits in the proposed amendment to the standard.

Therefore, the agency is proposing to revise § 160.145 by: (1) Amending paragraph (a) to provide for the reduction of the Lysozyme and avidin content by optional ion exchange treatment of egg whites, (2) redesignating paragraph (c) as paragraph (d), (3) establishing a new paragraph (c) to state that the treated food shall be equivalent in the biological quality of the protein to the untreated food and to provide an analytical method to determine the biological quality, and (4) adding a new paragraph (e) to provide a common or usual name for the optional form of the food.

The agency proposes that any final rule that may issue based upon this proposal become effective 60 days following the publication of the final rule, except for any provisions that may be stayed by the filing of proper objections. The final rule would apply to affected products initially introduced or initially delivered for introduction into interstate commerce on or after the effective date.

FDA, in accordance with the Regulatory Flexibility Act (Pub. L. 96-354), has considered the effect that this proposal would have on small entities including small businesses and has determined that the proposal would provide a standard of identity that is less restrictive than the current regulation. The agency believes that the proposal would provide increased flexibility to all manufacturers of dried egg whites. Therefore, FDA certifies in accordance with the section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

The agency has determined under 21 CFR 25.24(b)(1) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment not an environmental impact statement is required.

Interested persons may, on or before October 28, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 160

Food standards, Eggs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, it is proposed that Part 160 be amended as follows:

PART 160—EGGS AND EGG PRODUCTS

1. The authority citation for 21 CFR Part 160 is revised to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046, 1055–1056 as amended (21 U.S.C. 341, 371); 21 CFR 5.10, 5.61.

2. In § 160.145 by revising paragraph (a), by redesignating paragraph (c) as paragraph (d), and by adding new paragraphs (c) and (e), to read as follows:

§ 160.145 Dried egg whites.

(a) The food dried egg whites, egg white solids, dried egg albumen, egg albumen solids is prepared by drying liquid egg whites conforming to the requirements of § 160.140 (or deviating from that section only by not being *Salmonella* free). As a preliminary step to drying, the lysozyme and avidin contents may be reduced. If lysozyme and avidin levels are reduced, cation exchange resins regulated for use under § 173.25 of this chapter shall be used. As a further preliminary step to drying, the glucose content of the liquid egg whites is reduced by adjusting the pH, where necessary, with food-grade acid and by following one of the optional procedures set forth in paragraph (b) of this section. If the food is prepared from liquid egg whites conforming in all respects to the requirements of § 160.140, drying shall be done with such precautions that the finished food is free of viable *Salmonella* microorganisms. If the food is prepared from liquid egg whites that are not *Salmonella* free, the dried product shall be so treated by heat or otherwise as to render the finished food free of viable *Salmonella* microorganisms. Dried egg whites may be powdered.

* * * * *

(c)(1) Dried egg whites in which the lysozyme and avidin have been reduced shall not be nutritionally inferior, as defined in § 101.3(3)(4)(i) of this chapter, and shall be considered nutritionally equivalent to untreated egg whites if they meet the condition that the biological quality of the protein contained is equal to or greater than that of untreated egg white from the same batch of liquid egg white.

(2) Compliance with the biological quality of protein requirement of paragraph (c)(1) of this section shall be determined by the analytical method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th Ed. (1984), § 43.253.257, "Protein Efficiency Ratio, Rat Bioassay, Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

* * * * *

(e) The name of the food for which a definition and standard of identity is prescribed in this section is alternatively "Dried egg whites", "Egg white solids", "Dried egg albumen", or "Egg albumen solids". If the lysozyme and avidin content is reduced as provided in paragraph (a) of this section, the name shall be immediately preceded or followed by the statement "lysozyme and avidin reduced" when the food is sold as such.

Dated: August 20, 1985.

Richard J. Rouk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–20374 Filed 8–26–85; 8:45 am]

BILLING CODE 4160-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Waiver of Two-Year Operation Requirement

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The law generally requires a course to be in operation for two years before it can be approved for VA (Veterans Administration) training. The law contains several exceptions to this general rule and permits waivers by regulation in certain instances. This proposal liberalizes the pertinent regulation to make a waiver easier to obtain for a course offered pursuant to a contract with the Department of Transportation at a Coast Guard station.

DATES: Comments must be received on or before September 25, 1985.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays), until October 8, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (202) 389–2092.

SUPPLEMENTARY INFORMATION: This proposal would amend § 21.4251(g) to permit the waiver of the two-year operation requirement for certain courses offered under contract with the Department of Transportation at Coast Guard stations.

The VA has determined that this proposal does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator certifies that this proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), sections 601–612. Therefore, pursuant to 5 U.S.C. 605(b) these proposed regulations are exempt from the initial and final regulatory flexibility analyses requirements of sectins 603 and 604.

This certification can be made because only a few educational institutions offer courses at Coast Guard stations. Therefore, the number of affected small entities will not be substantial.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocation education, Vocational rehabilitation.

Approved: August 5, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising paragraphs (g)(1) introductory text and (g)(1)(i) of § 21.4251, to read as follows:

§ 21.4251 Period of operation of course.

* * * * *

(g) *Waivers.*

* * * * *

(1) The Director of the VA field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense or the Department of Transportation on or immediately adjacent to a military base or Coast Guard station located within a State. He or she may grant such a waiver only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to military personnel or Coast Guard personnel, their dependents, civilian employees of the base or station, persons who began the course while on active duty and who were discharged while remaining continuously enrolled in it or any combination of these classes of people. (38 U.S.C. 1789(b))

* * * * *

[FR Doc. 85-20334 Filed 8-26-85; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-8

Implementation of Federal Information Processing Standards (FIPS), Federal Telecommunication Standards (FED-STDS), and Joint FIPS/FED-STDS in the Federal Information Resources Management Regulation (FIRMR)

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulation updates the implementation provisions for a number of Federal Information Processing Standards (FIPS), the Federal Telecommunication Standards (FED-STDS), and Joint Federal Information Processing Standards/Federal Telecommunication Standards (FIPS/FED-STDS). Associated standard terminology that shall be used in solicitation documents, including requirements documents, where the standard is applicable is provided. The regulation updates FIPS PUB 1-1 to FIPS PUB 1-2 by consolidating FIPS PUBS 1-1, 7, 15, 35, and 36. Other revisions implement new FIPS PUBS 2-1, 8-5, and 33-1. FIPS PUBS 107, 108, and 111 and FED-STDS 1015, 1026, and 1028 are also added. FIPS PUB 98 is suspended indefinitely.

DATE: Comments are due: September 26, 1985.

ADDRESS: Comments should be submitted to the General Services Administration (KMPP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Phillip R. Patton, Policy Branch, Office of Information Resources Management, telephone (202) 566-0194 or FTS, 566-0194. The full text of the proposed rule is available upon request.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management, acquisition, and use regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Part 201-8

Computer technology, Telecommunications, Information resources activities, and Standards for Information resources.

Dated: August 9, 1985.

Francis A. McDonough,

Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 85-20399 Filed 8-26-85; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 37

Amendment to Specifications for Medical Examinations of Underground Coal Miners

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, Public Health Service, HHS.

ACTION: Proposed rule.

SUMMARY: NIOSH proposes to amend the specifications for chest roentgenograms (X-rays) obtained in medical examinations of underground coal miners. The proposed amendments will enable X-ray readers in the Department's medical surveillance program for underground coal miners to interpret miners' chest X-rays more accurately to classify any existing or developing pneumoconiosis.

DATES: Comments on the proposed rule must be received on or before September 26, 1985.

ADDRESSES: Comments should be mailed or delivered to: Annette N. McElhannon, Regulations Specialist, NIOSH, CDC, Room 3421, 1600 Clifton Road NE., Atlanta, GA 30333—Phone (404) 321-2279 or FTS: 236-2279.

FOR FURTHER INFORMATION CONTACT: Ms. Mitzie Martin, Chief, Receiving Center Section, Examinations Processing Branch, Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, WV 26505—Phone (304) 291-4301 or FTS: 923-4301.

SUPPLEMENTARY INFORMATION: NIOSH administers an X-ray surveillance program for coal miners as mandated by the Federal Mine Safety and Helath Act of 1977 (30 U.S.C. 801). This program has been conducted since 1970 under the provisions of the Federal Coal Mine Health and Safety Act of 1969 which was amended by the 1977 Act. Section 203 of the Act (30 U.S.C. 843) directs that operators of underground coal mines shall cooperate with the Secretary of Health and Human Services to provide miners with an opportunity for periodic X-ray examinations at intervals not to exceed 5 years. All X-ray examinations are to be made, submitted, and interpreted according to specifications developed by the Secretary of HHS. Underground miners who, based upon their chest X-rays, show evidence of the development of pneumoconiosis are afforded the option of transferring to a less dusty area of the mine, with no reduction in pay, for such periods as may be necessary to prevent further development of the disease.

The system for classifying the pneumoconioses was devised in 1971 by an international committee of the International Labor Office (ILO). Several years later, another ILO international committee of experts undertook the task of revising that classification system. Completed in 1980, the revised system clarified ambiguities of the 1971 system, extended the classification of abnormalities of the lining of the lung, and provided standard X-rays based on extensive international reading trials. In 1984, the 1980 revision of the ILO system for classifying X-rays of the pneumoconioses was adopted by NIOSH.

As a result of recent interaction among NIOSH, the Mine Health Research Advisory Committee to NIOSH, and the American College of Radiology Task Force on Pneumoconiosis, it is proposed that Part 37 of Title 42, Code of Federal Regulations, be amended to provide additional specifications to enable X-ray

readers in the Department's medical surveillance program for underground coal miners to interpret miners' chest X-rays more accurately. This proposed rule expands the specification for X-ray film size, specifies film/screen combinations and speeds which can be used, and specifies the method for obtaining a definitive interpretation of chest X-rays when two reader's interpretations do not agree.

The Department of Health and Human Services has determined that this proposed rule will not significantly impact on a substantial number of small entities and, therefore, does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96–354.

The Department also has determined that this proposal is not a "major rule" under Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more, result in significant adverse effects in competition, nor otherwise meet the thresholds established in the Executive Order. Therefore, preparation of a regulatory impact analysis is not required.

List of Subjects in 42 CFR Part 37

Health care, Lung diseases, Medical research, Mine safety and health, Miners, X-rays.

It is, therefore, proposed to amend Part 37 of Title 42, Code of Federal Regulations, as set forth below.

Dated: March 28, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

Approved: July 24, 1985.

Margaret M. Heckler,

Secretary.

PART 37—[AMENDED]

42 CFR Part 37 is amended as follows:

1. The authority citation for Part 37 continues to read:

Authority: Sec. 203, 83 Stat. 763 (30 U.S.C. 843).

2. In § 37.41, paragraphs (a) and (h)(3) are revised to read as follows:

§ 37.41 Chest roentgenogram specifications.

(a) Every chest roentgenogram shall be a single posteroanterior projection at full inspiration on a film being no less than 14 by 17 inches and not greater than 16 by 17 inches. The film and cassette shall be capable of being positioned both vertically and horizontally so that the chest roentgenogram will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then the projection shall include both apices with minimum loss of the costophrenic angle.

* * * * *

(h) To insure high quality chest roentgenograms:

* * * * *

(3) Medium speed film and medium speed intensifying screens are recommended. However, any film-screen combination, the rated "speed" of which is at least 100 and does not exceed 300, which produces roentgenograms with spatial resolution, contrast, latitude and quantum mottle similar to those of systems designated as "medium speed" may be employed.

* * * * *

3. In § 37.52, paragraph (b) is revised to read as follows:

§ 37.52 Method of obtaining definitive interpretations.

* * * * *

(b) Two interpreters shall be considered to be in agreement when they both find either stages A, B, or C complicated pneumoconiosis, or their findings with regard to simple pneumoconiosis are both in the same major category, or (with one exception noted below) are within one minor category (ILO Classification 12-point scale) of each other. In the last situation, the higher of the two interpretations shall be reported. The only exception to the one minor category principle is a reading sequence of 0/1, 1/0, or 1/0, 0/1. When such a sequence occurs, it shall not be considered agreement, and a third (or more) interpretation shall be obtained until a consensus involving two or more readings in the same major category is obtained.

[FR Doc. 85–20430 Filed 8–26–85; 8:45 am]

BILLING CODE 4150–19–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–249; RM–4989]

FM Broadcast Station in Custer, SD

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of channel 286C2 to Custer, South Dakota, as that community's first local FM service, at the request of Richard A. Deno.

DATES: Comments must be filed on or before October 15, 1985, and reply comments on or before October 30, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Custer, South Dakota); MM Docket NO. 85–249, RM–4989.

Notice of Proposed Rule Making

Adopted: August 12, 1985.
Released: August 23, 1985.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Richard A. Deno ("petitioner") requesting the allocation of Channel 286C2 to Custer, South Dakota, as that community's first local FM service. Petitioner states that he will apply for the channel, if allocated. Channel 286C2 can be allocated in compliance with the Commission's mileage separation and other technical requirements.

§ 73.202 [Amended]

2. We believe the public interest would be served by proposing the channel allocation as it could provide a first local service to Custer. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with regard to the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Custer, South Dakota		[illegible]C2

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is

required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before October 15, 1985, and reply comments on or before October 30, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Richard A. Deno, P.O. Box 89, Elm Street Court, Black River Falls, Wisconsin 54615.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b—, 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85–20371 Filed 8–26–85; 8:45]

BILLING CODE 6712–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 674

29 CFR Part 89

Senior Community Service Employment Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Department of Labor is extending for 30 days the comment period on the proposed rule for the Senior Community Service Employment Program.

DATE: Written comments on the proposed rulemaking must be received on or before September 19, 1985.

ADDRESS: Comments should be addressed to: Chief, OSTP, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, Room 6122, 601 D Street, NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Paul A. Mayrand, telephone (202) 376–6225.

SUPPLEMENTARY INFORMATION: On July 19, 1985, the Department of Labor published at 50 FR 29606 a proposed rule for the Senior Community Service Employment Program (SCSEP) which is authorized under Title V of the Older Americans Act of 1965, as amended, (42 U.S.C. 3056 et seq.).

The Department has been requested by the Select Committee on Aging of the U.S. House of Representatives to extend the comment period on the proposed rule for 30 days. The Department has determined that this is a reasonable request which will allow all interested parties a fuller opportunity to comment on the proposed rule. Therefore, the comment period on the proposed rule published 50 FR 29606 (July 19, 1985) is hereby extended through September 19, 1985.

Signed at Washington, D.C., this 20th day of August 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85–20447 Filed 8–26–85; 10:37 am]

BILLING CODE 4510–30–M

Notices

Federal Register
Vol. 50, No. 166
Tuesday, August 27, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement on the Activities of the Veterans Administration at Veterans Administration Medical Center, Wood, WI

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: This notice provides information about and invites comments on a proposed Programmatic Memorandum of Agreement that provides for the disposition of Buildings #38 and #47, and the development of a Preservation Plan for the identification, inventory, evaluation and treatment of historic, architectural and cultural properties at Veterans Administration Medical Center, Wood, Wisconsin.

Comments Due: Comments must be submitted on or before September 26, 1985.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, The Old Post Office, 1100 Pennsylvania Avenue, NW., Room 809, Washington, DC 20004.

The Council proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of its regulations (36 CFR Part 800) with the Veterans Administration and the Wisconsin State Historic Preservation Officer. The proposed Agreement allows for the transfer or lease of Buildings #38 and #47 and establishes standards for a Preservation Plan at the Veterans Administration Medical Center which will coordinate the management of historic, architectural and cultural properties with the activities of the Veterans Administration at the Center. The Veterans Administration's responsibilities at the Center, pursuant to Section 106 of the National Historic Preservation Act, will be fulfilled by implementation of the proposed Agreement. Interested parties are encouraged to obtain a copy of the proposed Agreement from the Council and submit comments.

Dated: August 20, 1985.

Robert R. Garvey,

Executive Director.

[FR Doc. 85-20397 Filed 8-26-85; 8:45 am]

BILLING CODE 4110-10-M

DEPARTMENT OF AGRICULTURE

Office of Grants and Program Systems; Policy Advisory Committee for the Science and Education Research Grants Program; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the U.S. Department of Agriculture announces the following meeting:

Name: Policy Advisory Committee for the Science and Education Research Grants Program.

Date: September 4, 1985.

Time: 9:00 a.m. to 3:30 p.m.

Place: U.S. Department of Agriculture, Room 023, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procecdures to be followed in implementing those programs of research grants to be awarded competitively.

Contact Person for Agenda and More Information:

Anne Holiday Schauer, Associate Chief, Competitive Research Grants Office, Office of Grants and Program Systems, USDA, Room 112, Justin Smith Morrill Building, Washington, D.C. 20251; Telephone: 202-475-5022.

Done at Washington, D.C., this 21 day of August 1985.

Anne Holiday Schauer,

Executive Secretary, Policy Advisory Committee.

[FR Doc. 85-20446 Filed 8-26-85; 8:45 am]

BILLING CODE 3410-MT-M

Agricultural Marketing Service

Notice To Revise the Requirements Recommended for Adoption by State Regulatory Agencies Regarding Milk for Manufacturing Purposes and Its Production and Processing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document revises sections B2(l), C1, C2, C3, C3(a) C4, C11(a) and (d), and D1(b) and (c), and adds a new section C11(e) of the recommended manufacturing milk requirements for State adoption. The major revisions will:

1. Lower the maximum allowable bacterial estimate for manufacturing grade producer milk from 3 million bacteria to 1 million bacteria per milliliter.
2. Lower the maximum allowable somatic cell count from 1.5 million cells to 1 million cells per milliliter.
3. Provide a definition for goat milk so that the milk can be used in products where legally provided.
4. Provide for use of the current USDA tuberculosis and brucellosis program requirements.
5. Add a requirement for the testing of producer milk for added water.
6. Make editorial changes in the sediment content classification.

These revisions have been developed in cooperation with the National Association of State Departments of Agriculture, State regulatory agencies and dairy trade associations and producer groups.

DATE: Effective July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Richard W. Webber, Head, Standardization Section, Dairy Division, Agricultural Marketing Service, Washington, D.C. 20250, (202) 447-7473.

SUPPLEMENTARY INFORMATION: Since 1969 there has been a continuing effort by the U.S. Department of Agriculture to assist in providing uniform quality, production, and sanitation requirements for the production of manufacturing grade milk at the farm level. In 1972, USDA published the recommended requirements for manufacturing grade milk for State adoption. These recommendations are to promote, through State adoption and enforcement, uniformity in State dairy

laws and regulations as well as national uniformity in the sanitary manner in which manufacturing grade milk is produced and processed. USDA has continuously assisted the States in an advisory and interpretive capacity in order to promote the purpose and intent for which these requirements have been published.

In 1983 the National Association of State Departments of Agriculture passed a resolution recommending that the manufacturing grade producer milk quality requirements be tightened. After coordination with State regulatory agencies, and major dairy trade associations and producer groups, it was determined that these changes will accurately describe the minimum quality requirements for this grade of producer milk. The major revisions are described below.

1. Lower the maximum allowable bacterial estimate for producer milk from 3 million to 1 million bacteria per milliliter.

USDA has an ongoing surveillance program to evaluate sanitation and production practices and physical facilities of producers of manufacturing grade milk. Based on this surveillance program, it has been determined that sufficient progress has been made in the production of better quality milk so that a satisfactory producer would not have any difficulty in meeting the revisions.

2. Lower the maximum allowable somatic cell count from 1.5 million cells to 1 million cells per milliliter.

The Department's policy has been that the requirements for abnormal milk should be applied equally to all grades of milk. The National Conference on Interstate Milk Shipments has lowered the somatic cell count for Grade A milk. Therefore, a similar change is being made for manufacturing grade milk.

3. Provide a definition for goat milk so that the milk can be used in products where legally provided.

Goat milk is being produced and utilized for the manufacture of cheese, ice cream, evaporated milk and other products. The revision will recognize the production and use of goat milk, which will aid in its marketing.

4. Provide for the use of the current USDA tuberculosis and brucellosis requirements.

In 1982 the Department revised its Uniform Methods and Rules for these two programs. The manufacturing milk requirements cover herd health; therefore, the updated rules need to be referenced.

5. Add a requirement for the testing of producer milk for added water.

The state regulatory agencies have requested this requirement be added because it will assist in preventing the contamination and adulteration of milk by elimination of added water.

6. Make editorial changes in the sediment content classification.

The editorial changes will simplify the language concerning the requirement for sediment testing so that it will be clearer.

In addition to the major revisions outlined above, other revisions are being made for consistency. The basis for classification is being amended to clarify that producer milk shall be tested for somatic cell count and antibiotics. Updated test methods for somatic cell count are being included and the compliance procedures are changed to conform to current practices. Also, the requirement concerning the appearance of acceptable raw milk has been expanded to require that it be free of excessive coarse sediment when examined visually or by an acceptable test. Such a test as the Sani-Guide would be an acceptable test for determination of "free of excessive coarse sediment." When determining the somatic cell count of producer milk using the Wisconsin Mastitis Test as a screening test, a value of 19 mm is being established. Since the acceptable level for bacterial estimate of producer milk is being lowered, only those test methods that can accurately reflect this level are being specified.

The current milk quality requirements have been in effect since October 10, 1975. With these changes, they will continue to aid in the orderly marketing of quality manufacturing grade milk from the approximately 74,000 producers in 30 states.

The Department is revising parallel document "General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service." This document is utilized in the voluntary USDA program to approve plants for official grading service.

Public Comments

On February 27, 1985, the Department published a notice to revise the recommended requirements for state adoption (50 FR 7936–7938). The public comment period closed July 1, 1985. Fourteen comments were received. Seven comments supported the revisions, six supported the revisions with suggested changes, and one was against the revisions.

The suggested changes were:

1. One comment requested that the standard plate count for manufacturing grade milk approximate that for fluid grade milk.

Presently, the maximum bacterial limit for individual producer Grade A raw milk is 100,000 per milliliter. As provided herein, the maximum bacterial limit for individual producer manufacturing grade milk will be lowered from 3 million to 1 million per milliliter. At this time, there is no indication on the part of processors, marketers and consumers that a maximum limit approaching 100,000 per milliliter is needed for the production of good quality manufactured dairy products for today's marketplace. Therefore, the Department is retaining this revision as proposed.

2. Two comments requested various changes in the testing for abnormal milk.

(a) Delete the Modified Whiteside Test as an acceptable screening test.

In the current edition of *Standard Methods for the Examination of Dairy Products* (SMEDP), this test method is now designated as one that is being phased out and is being superseded by other methods that have been used extensively and have proven to be more reliable. The Department agrees with the suggestion to delete this method.

(b) Delete the California Mastitis Test as an acceptable screening test.

The current edition of SMEDP indicates that this is still an acceptable test for milk of individual producers or commingled supplies. It also categorizes the test as one that has been subjected to a thorough evaluation, has been widely used, and has thereby demonstrated its value by extensive application. Therefore, the Department is retaining this test as an acceptable screening test.

(c) Delete the Membrane Filter DNA Somatic Cell Count as an acceptable confirmatory test.

This method has been removed as a recognized method in the current edition of SMEDP. Also, the sole source of the reagents used in the test has discontinued production of the reagents. The Department agrees with the suggestion to delete this method.

(d) Adopt procedures to differentiate the non-cell particles in goat milk from cells when using electronic and optical cell counting procedures.

A similar request was considered by the 1985 National Conference on Interstate Milk Shipments. The voting delegates representing state regulatory agencies unanimously denied the request. Therefore, the Department believes it should not adopt such changes since the states have taken this action.

3. Two comments requested the addition of a requirement for the testing of producer milk for added water.

The Department agrees with the suggestion since it will assist in

preventing the contamination and adulteration of milk by elimination of added water.

4. Two comments were applicable only to the revisions in the companion document, "General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service," and are dealt with in that document.

The one comment received against the revisions was based on current costs of producing milk and religious beliefs. The Department's surveillance program for the state in which this producer is located has determined that producers in similar situations can satisfactorily meet the revised requirements.

In consideration of the foregoing, the Recommended Requirements for Manufacturing Milk is amended as follows:

1. In Section B2, paragraph (l) is revised to read as follows:

Sec. B2. Terms defined.

(l) *Milk.* The term "milk" shall include the following:

(1) Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows.

(2) Goat milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy goats. Goat milk shall only be used to manufacture dairy products that are legally provided for in 21 CFR or recognized as non-standardized traditional products normally manufactured from goat milk.

(3) The word "milk" used herein includes only milk and goat milk for manufacturing purposes.

2. Section C1 through C3(a) is revised to read as follows:

Sec. C1. *Basis.* The quality classification of raw milk for manufacturing purposes from all individual producers shall be based on the following: organoleptic examination (appearance and odor), quality control tests for sediment content, bacterial estimate, somatic cell count, and antibiotics.

Sec. C2. *Appearance and odor.* The appearance of acceptable raw milk shall be normal and free of excessive coarse sediment when examined visually or by an acceptable test procedure. The milk shall not show any abnormal condition (including, but not limited to curdled, ropy, bloody or mastitic condition), as indicated by sight or other test procedures. The odor shall be fresh and sweet. The milk shall be free from objectionable feed and other off-odors that would adversely affect the finished product.

Sec. C3. *Sediment content classification.* Milk shall be classified for sediment content, regardless of the results of the appearance and odor examination described in Sec. C2, as follows:

The USDA Sediment Standard

No. 1 (acceptable)—not to exceed 0.50 mg or equivalent.

No. 2 (acceptable)—not to exceed 1.50 mg. or equivalent.

No. 3 (probational, not over 10 days)—not to exceed 2.50 mg. or equivalent.

No. 4 (reject)—over 2.50 mg. or equivalent.

(a) *Method of testing.* Methods for determining the sediment content of the milk of individual producers shall be those described in the latest edition of Standard Methods for the Examination of Dairy Products. Sediment content shall be based on comparison with applicable charts of the United States Sediment Standards for Milk and Milk Products, 7 CFR Part 58, Subpart T, §§ 58.2728 through 58.2732.

3. Section C4 is revised to read as follows:

Sec. C4. *Bacterial estimate classification.* Milk shall be classified for bacterial estimate by one of the following methods:

Bacterial estimate classification	Direct Microscopic count, standard plate count or plate loop count
No. 1	Not over 500,000 per ml.
No. 2	Not over 1,000,000 per ml.
Undergrade	Over 1,000,000 per ml.

4. Section C11 (a) and (d) are revised, and a new subsection (e) is added, to read as follows:

Sec. C11. *Abnormal milk.*

(a) *Mastitic milk*

(1) A laboratory examination for the presence of somatic cells shall be made on all patrons' milk at least 4 times in each 6-month period at irregular intervals. Samples shall be analyzed at an official laboratory or at a laboratory approved by the State regulatory agency.

(2) A confirmatory test for somatic cells shall be done when a herd sample exceeds any of the following screening test results:

(i) California Mastitis Test—Weak Positive (CMT 1+).

(ii) Wisconsin Mastitis Test—WMT value of 19 mm.

(3) The conformatory test for somatic cells shall be performed by using one of the following procedures:

(i) Direct Microscopic Somatic Cell Count (Single Strip Procedure). Pyronin Y—methyl green stain shall be used for goat milk.

(ii) Electronic Somatic Cell Count.

(iii) Optical Somatic Cell Count.

(4) The results of the confirmatory test for somatic cells shall be the official result.

(5) Whenever the confirmatory somatic cell count indicates the presence of more than 1,000,000 somatic cells per ml., the following procedures shall be applied:

(i) The producer shall be notified with a warning of the excessive somatic cell count.

(ii) Whenever two of the last four consecutive somatic cell counts exceed 1,000,000 per ml. the appropriate regulatory authority shall be notified and a written notice given to the producer. This notice shall be in effect so long as two of the last four consecutive samples exceed 1,000,000 per ml.

(6) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (a)(5)(ii) of this section. If this sample also indicates a high somatic cell count, the patron's milk shall be rejected until satisfactory compliance is obtained. A temporary permit may be approved by the regulatory agency whenever an additional sample of herd milk is tested and found satisfactory. The producer shall be fully reinstated when three out of four consecutive tests have counts of 1,000,000 or less somatic cells per ml. The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

(d) *Pesticides and herbicides.* Composite milk samples should be tested for pesticides and herbicides at a frequency which the regulatory agency determines to be adequate to protect the consumer. The samples shall not exceed established Food and Drug Administration limits.

(e) *Added water.* Individual producer milk samples should be tested for added water from each producer at a frequency which the regulatory agency determines to be adequate to protect against the addition of water to the milk supply.

5. Section D 1 (b) and (c) are revised as follows:

Sec. D 1. *Health of herd.*

(b) *Tuberculin test.* The cows shall be located in a Modified Accredited Area, an Accredited Free State, or an Accredited Free Herd as determined by the U.S. Department of Agriculture. The goats shall be located in States meeting the current USDA Uniform Methods and Rules and for Bovine Tuberculosis Eradication or an Accredited Free Goat Herd. If the animals are not located in such areas, they shall be tested annually under the jurisdiction of the aforesaid program. All additions to the herd shall

be from an area or from herds meeting those same requirements.

(c) *Brucellosis test.* The cows shall be located in States meeting Class B status, or Certified-Free Herds, or shall be involved in a milk ring test program or blood testing program under the current USDA Brucellosis Eradication Uniform Methods and Rules. All additions to the herd shall be from a State or from herds meeting these same requirements.

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, and 1090, as amended; 7 U.S.C. 1622, 1624)

Signed at Washington, D.C. on: August 22, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-20441 Filed 8-26-85; 8:45 am]

BILLING CODE 3410-02-M

Plant Variety Protection Advisory Board; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Advisory Board.

DATE: Tuesday, September 24, 1985, 8:30 a.m. to 4:00 p.m., open to the public.

ADDRESS: National Agricultural Library Building, Conference Room 1400, Beltsville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth H. Evans, Executive Secretary, Plant Variety Protection Board, National Agricultural Library Building, Beltsville, Maryland 20705 (301/344-2518).

SUPPLEMENTARY INFORMATION: The agenda for the meeting will consist of: (1) Plant variety protection operations, (2) Plant variety protection costs, (3) Plant variety protection fees, (4) Grower's exemption, (5) Other.

Done at Washington, D.C.: August 22, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-20440 Filed 8-26-85; 8:45 am]

BILLING CODE 3410-02-M

COMMISSION ON CIVIL RIGHTS

Utah Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Utah Advisory Committee to the Commission will convene at 7:30 p.m. and adjourn at 9:30 p.m. on September 12, 1985, at the Downtown Holiday Inn, 230 W. 600 South, Beehive Room, Salt Lake City, UT. The purpose of the meeting is to discuss plans for for FY86 projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John Florez, or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 21, 1985.

Bert Silver,

Assistant Staff Director for Regional Program.

[FR Doc. 85-20464 Filed 8-26-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 311]

Resolution and Order Approving the Application of the City and County of Denver, CO, for a Foreign-Trade Zone in Denver

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City and County of Denver, Colorado, filed with the Foreign Trade Zones Board (the Board) on November 1, 1984, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Denver, Colorado, within the Denver Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chiarman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Denver, Colorado

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City and County of Denver, Colorado (the Grantee) has made application (filed November 1, 1984, Docket No. 50-84, 49 FR 45201) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Denver, within the Denver Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 123 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout

the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C., this 16th day of August 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-20423 Filed 8-26-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-351-507]

Malleable Iron Pipe Fittings From Brazil; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether malleable iron pipe fittings from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 16, 1985, and we will make ours on or before January 7, 1986.

EFFECTIVE DATE: August 27, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur Simonetti; Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4198.

SUPPLEMENTARY INFORMATION:

The Petition

On July 31, 1985, we received a petition in proper form filed by the Cast Iron Pipe Fittings Committee, an *ad hoc* organization of domestic manufacturers of malleable iron pipe fittings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subjects merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. United States price was developed from sale offers by the Brazilian manufacturer's exclusive U.S. distributor. The price was determined by reference to a U.S. price list less discounts. Petitioner also made deductions for distributor markup, ocean freight and insurance, and U.S. inland freight. Petitioner selected prices for ½ inch black and ½ inch galavanized ell for margin calculations.

Foreign market value was derived by two methods. First, petitioner presented an April 3, 1983 price list for a Brazilian manufacturer which has been represented as a home market price list. The actual price is alleged to be discounted from the list price. The prices were adjusted by the ratio of ORTN indices (Obrigacoes Reajustaveis do Tesouro Nacional or National Treasury Readjustable Bonds) for April 1983 and November 1984. The prices were further reduced to reflect the internal value added tax. Although the petition states that the November exchange rate was used, the October 1, 1984 rate was actually used. We have adjusted petitioner's alleged dumping margins by using the November 15, 1984 exchange rate. The second method of establishing foreign market value was using a U.S. producer's cost of production with adjustments for cost differences in certain production inputs in Brazil. Petitioner added the statutory minimums of ten percent of the production cost for general expenses and eight percent for profit. Packing costs were also added and were based on actual expenses of a U.S. producer. Using these figures as modified above, petitioner found apparent dumping margins of 6.8 percent of 14.46 percent when foreign market value was based on adjusted production costs and dumping margins of 53.6 percent to 61.7 percent when home market prices were used for foreign market value.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on malleable iron pipe fittings from Brazil and have found that it meets the requirements of section 721(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether malleable iron pipe fittings form Brazil are being, or are likely to be, sold in the United States at less than fair value.

If our investigation proceeds normally, we will make our preliminary determination by January 7, 1986.

Scope of Investigation

The products covered by this investigation are certain malleable cast iron pipe fittings, advanced in condition by operations or processes subsequent to the casting process other than with grooves, or if not advanced, or cast iron other than alloy cast iron, as provided for in items 610.7000 and 610.7400 of the Tariff Schedules of the United States Annotated (TSUSA).

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivilege and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 16, 1985, whether there is a reasonable

indictation that imports of malleble iron pipe fittings from Brazil are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 20, 1985.

[FR Doc. 85-20392 Filed 8-26-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-507]

Malleable Iron Pipe Fittings From Korea; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether malleable iron pipe fittings from Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make it preliminary determination on or before September 16, 1985, and we will make ours on or before January 7, 1986.

EFFECTIVE DATE: August 27, 1985.

FOR FUTHER INFORMATION CONTACT: Arthur Simonetti; Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4198.

SUPPLEMENTARY INFORMATION:

The Petition

On July 31, 1985, we received a petition in proper form filed by the Cast Iron Pipe Fittings Committee, an *ad hoc* organization of domestic manufacturers of malleable iron pipe fittings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. United States price was derived from two sources, offers for sale by Korean manufacturers to U.S. manufacturers and offers for sale by U.S. distributors of Korean fittings. For the first source, petitioner used price quotes per ton of iron pipe fittings and converted this to a per piece price for ½ inch black ell and ½ inch galvanized ell. The per ton quote was assumed to be FOB. Also used were CIF price offers for ½ inch black ell and ½ inch galvanized ell with deductions for ocean freight and insurance. The second source was a U.S. price list for Korean fittings with discounts based on specific offers for sale. Petitioner also made deductions for distributor markup, freight and insurance, import duty, and U.S. inland freight.

Petitioner was unable to obtain home market or third country price data and therefore calculated foreign market value on the basis of costs of production as reported to the petitioner by a U.S. producer with adjustments for cost differences in certain production inputs in Korea. Petitioner added the statutory minimums of ten percent of the costs for general expenses and eight percent for profit. Packing costs were added and were based on actual expenses of a U.S. producer. Using these figures, petitioner alleges dumping margins ranging from 41.9 percent to 109 percent when offers by Korean manufacturers are the basis for U.S. price and dumping margins ranging from 51.2 percent to 123.3 percent when U.S. prices are derived from U.S. distributors of Korean fittings.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on malleable iron pipe fittings from Korea and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investgation to determine whether malleable iron pipe fittings from Korea are being, or are likely to be, sold in the United States at less than fair value.

If our investigation proceeds normally, we will make our preliminary determination by January 7, 1986.

Scope of Investigation

The products covered by this investigation are certain malleable cast iron pipe fittings, advanced in condition by operations or processes subsequent to the casting process other than with grooves, or if not advanced, of cast iron other than alloy cast iron, as provided for in items 610.7000 and 610.7400 of the Tariff Schedules of the United States Annotated (TSUSA).

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 16, 1985, whether there is a reasonable indication that imports of malleable iron pipe fittings from Korea are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 20, 1985.

[FR Doc. 85-20393 Filed 8-26-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-506, A-583-507]

Malleable and Nonmalleable Cast Iron Pipe Fittings From Taiwan; Initiation of Antidumping Duty Investigations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of petitions filed in proper form with the United States Department of Commerce, we are initiating antidumping duty investigations to determine whether malleable and nonmalleable cast iron pipe fittings (pipe fittings) from Taiwan are being, or are likely to be, sold in the United States at less then fair value. The malleable pipe fittings petition also

contains an allegation of sales at less than the cost of production, as well as an allegation of critical circumstances. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If these investigations proceed normally, the ITC will make its preliminary determination on or before September 16, 1985, and we will make ours on or before January 7, 1986.

EFFECTIVE DATE: August 27, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur J. Simonetti; Office of Investigations, Import Administration, International Trade Administration, U.S Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–4198.

SUPPLEMENTARY INFORMATION:

The Petitions

On July 31, 1985, we received petitions in proper form filed by the Cast Iron Pipe Fittings Committee. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitions alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material unjury, to a United States industry. The malleable pipe fittings petition also alleges that sales of the subject merchandise are being made at less than the cost of production, and that critical circumstances exist.

In the case of malleable iron pipe fittings, the petitioner based the United States price on two types of information relating to the U.S. prices. The first is based on unsolicited direct sales offers by two Taiwanese producers. Deductions were made for list price discounts, U.S. Customs duties, ocean freight and insurance. The second type of information is based on the sales offers made by U.S. distributors of Taiwanese malleable pipe fittings. Deductions were made for list price discounts, distributor markup, U.S. inland freight, U.S. Customs duties, ocean freight and insurance. The petitioner based forgeign market value of malleble iron pipe fittings on home market prices in Taiwan which they adjusted for discounts. They also calculated foreign market value based on U.S. production and packing costs, adjusted for known differences in corresponding Taiwanese inputs, as well as the statutory minimums for general expenses and profit. The petitioner also alleges that sales of malleable iron pipe fittings in Taiwan are being made at less than the cost of production. This allegation is based on a comparison of information developed regarding the costs of producing malleable iron pipe fittings in Taiwan to net home market prices. The petitioner also alleges that critical circumstances exist.

Based on the comparison of these values, petitioner alleges dumping margins of between 39% and 217%. The petitioner based the United States price for nonmalleable iron pipe fittings on an offer made by a U.S. distributor of Taiwanese nonmalleable pipe fittings. Deductions were made for the distributor markup and for ocean freight and insurance. Foreign market value of nonmalleable iron pipe fittings is based upon U.S. production and packing costs, adjusted for known differences in Taiwanese costs, as well as the statutory minimums for general expenses and profit.

Based on the comparison of these values, petitioner alleges dumping margins of between 12% and 18.9%.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petitions on malleable and nonmalleable cast iron pipe fittings from Taiwan and have found that they meet the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether malleable and nonmalleable pipe fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value. In the case of malleable pipe fittings, we will also determine whether there are sales at less than the cost of production. If our investigations proceed normally we will make our preliminary determinations by January 7, 1986.

Scope of Investigations

The products covered by these investigations are certain malleable cast iron pipe fittings and certain nonmalleable cast iron pipe fittings. Malleable pipe fittings are advanced in condition by operations or processes subsequent to the casting process other than with grooves, or if not advanced, of cast iron other than alloy cast iron, as provided for in items 610.7000 and 610.7400 of the *Tariff Schedules of the United States Annotated* (TSUSA). Nonmalleable pipe fittings are certain cast iron pipe fittings, not malleable, not grooved, of cast iron other than alloy cast iron and other than for use with cast iron soil pipe, as provided for in items 610.6240 and 610.6500 of the TSUSA.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of malleable pipe fittings from Taiwan. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information eitehr publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 16, 1985, whether there is a reasonable indication that imports of malleable and nonmalleable iron pipe fittings from Taiwan are causing material injury, or threaten material injury, to a United States industry. If its determinations are negative, the investigations will terminate; otherwise, they will proceed according to statutory procedures.

Gilbert B. Kaplan,

Acting Deput Assistant Secretary for Import Administration.

August 20, 1985.

[FR Doc. 85–20394 Filed 8–26–85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Certain Carpet Nails; Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply

determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to certain small machine-quality carpet nails used in the manufacture of tackless stips for the installation of carpet.

EFFECTIVE DATE: Comments must be submitted no later than September 6, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW, Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW, Washington, DC 20230, Room 3709, (202) 377–1102.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. " . . . determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category . . ."

We have received a short supply request for the following types and sizes of nails:

(1) Pin Nails, bright finished, conforming to AISI standards C 1010 or C 1008, in the following dimensions: (a) 1 9/32 inch in length, 16½ gauge, with a head size of ⅛ inch; and (b) ½ inch length, 16½ gauge, with a head size of ⅛ inch.

(2) Ring Shank Nails, bright finished, conforming to AISI standards C 1010 or C 1008, in the following dimensions: ¾ inch in length 14½ gauge, with a head size of 9/32 inch.

(3) Temper Hardened Concrete Nails, bright finished, conforming to AISI standards C 1040 or C 1045, in the following dimensions: (a) 1 1/16 inch in length, 12 gauge, with a head size of 7/32 inch; and (b) 1 1/64 inch in length, 10 gauge, with a head size of 5/16 inch.

These products are used in the manufacture of tackless strips for the installation of carpet.

Parties interested in commenting on any of these products should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so lable the business proprietary portion of the submission and also include with it a submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Dated: August 20, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–20425 Filed 8–26–85; 8:45 am]

BILLING CODE 3510–DS–M

Short Supply Review on Certain Stainless Steel Wire, Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to certain stainless steel wire in coil form used in the manufacture of tape guide pins for video tape cassettes.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW, Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW, Washington, DC 20230, Room 3709, (202) 377–1102.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. " . . . determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category . . . "

We have received a short supply request for stainless steel wire in coil form, conforming to AISI standard 303, with diameters ranging from .0945 to .0955 inch and .1025 to .1035 inch.

These products are used in the manufacture of tape guide pins for video tape cassettes.

Parties interested in commenting on these products should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also include with it a submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Dated: August 20, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–20426 Filed 8–26–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico and South Atlantic Fishery Management Councils, Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Councils will convene public meetings as follows:

Gulf of Mexico and South Atlantic Fishery Management Councils' Spiny Lobster Advisory Panel Members

The above councils will convene their Spiny Lobster Advisory Panel members, September 5, 1985, from 8 a.m. to 5 p.m., at the Marathon Inn, Mile Marker 54, U.S. Highway 1, Marathon, FL, to: (1) Review Council activity on the Spiny Lobster Fishery Management Plan (FMP), (2) review the Florida Department of Natural Resource's research on alternative baits and escape gaps, (3) review limited entry options for the lobster fishery, and (4) review proposed changes in spiny lobster regulations.

Gulf of Mexico Fishery Management Council and its Committees

The above Council will convene to: Discuss the Gulf of Mexico butterfish fishery, (2) review the response to the Inspector General's report, (3) consider establishing a Council liaison office in Washington, D.C., (4) discuss NMFS/NOAA action on the Mackerel FMP amendment, and (5) discuss the status report on the Shrimp and Swordfish FMPs.

The Council meeting will convene at 8 a.m., September 11, 1985, and recess at approximately 5 p.m.; reconvene on September 12, at 8 a.m. and adjourn at approximately noon. The Council's Committee meetings will be held September 9–10, 1985. All public meetings will take place at the Le Pavillon Hotel, Poydras at Baronne, New Orleans, LA. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone (813) 228–2815.

Dated: August 21, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–20411 Filed 8–26–85; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council, Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee will convene a public meeting, August 27, 1985, at the Best Western Airport Inn, Philadelphia International Airport, Philadelphia, PA (telephone: 215–365–7000), to discuss the surf clam and ocean quahog fishery, formulation of a fisheries management primer, as well as other fishery management matters. For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302)–674–2331.

Dated: August 21, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–20412 Filed 8–26–85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Calcol, Inc.

The National Technical Information Service, (NTIS), U.S. Department of Commerce, intends to grant to Calcol, Inc., having a place of business in Cleveland, Ohio, an exclusive license to manufacture, use and sell products embodied on the invention entitled "Synthesis of Methotrexate" U.S. Patent No. 4,080,325 and on the invention "Synthetic Vinblastine and Vincristine Derivatives" U.S. Patent No. 4,144,237; and a license to all of NTIS' rights in the patented invention entitled "Enzyme Resistant Opiate Pentapeptides," U.S. Patent No. 4,371,463. The patent rights in these inventions have been or will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other material relating to the proposed licenses must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, Department of Commerce, National Technical Information Service.

[FR Doc. 85–20406 Filed 8–26–85; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Proposed Amendments Relating to the Government National Mortgage Association–II Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has submitted a proposal to replace the current procedure for delivery of the underlying instrument with a cash settlement mechanism for the Government National Mortgage Association–II ("GNMA–II") futures contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposed cash settlement mechanism is of major economic significance and that, accordingly, publication of that proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before September 26, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CBT GNMA–II contract.

SUPPLEMENTARY INFORMATION: The CBT is proposing to amend its GNMA–II futures contract. The CBT has proposed to replace the current physical delivery procedure for the GNMA–II contract with a cash settlement mechanism. The Exchange has also proposed to change the last trading day from the eighth business day prior to the last business day of the delivery month to two business days prior to the third Wednesday of the delivery month. Under the proposed amendments, the contract name would change from its current title to "Government National Mortgage Association (GNMA) futures contract." The Exchange submits that a cash settlement delivery system would ensure that the GNMA futures contract tracks current production GNMA certificates, which would enable cash market participants to hedge their interest-rate risks. Further, the CBT maintains that the proposed change to cash settlement would eliminate concerns about deliverable supply, providing an uncomplicated delivery mechanism which would be practical for all cash and futures market participants. In addition, the Exchange states that a cash settled contract would improve the liquidity of the GNMA contract throughout the delivery month.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the CBT concerning cash settlement procedures for its GNMA–II futures contract is of major economic significance because of the potential effect on the hedging utility and pricing of the contract. Accordingly, the principal amendments being proposed by the CBT, which would replace current contract specifications, are printed below:

* * * * *

2009.01 Last Day of Trading—The last day of trading GNMA futures contracts shall be the second business day preceding the third Wednesday of the delivery month. If the third Wednesday is not a Federal Reserve Bank of New York business day, the last day of trading shall be two business days preceding the first business day immediately preceding the third Wednesday of the month. Any contracts remaining open must be settled as provided in Regulation 2042.01 after trading in such contracts has ceased.

* * * * *

2036.01 Standards—

(1) The contract grade shall be a value equal to $1000.00 times the GNMA Survey Price on the last day of trading. Deliveries shall be settled through normal variation margin procedures on the basis of the Survey Price, which is the average price of GNMAs with the Designated Coupon and GNMAs with a coupon which is next lowest to the Designated Coupon divided by their respective conversion factors.

The "Designated Coupon" shall be a National Coupon determined in accordance with section (3) of this Regulation. "National Coupons" shall be coupons at which major GNMA productions occurs; National Coupons shall be at .5% intervals below 15% and at 1% intervals above 15%. (A list of National Coupons is contained in Appendix 20A.) The Board reserves the right to increase the number of coupons eligible to be National Coupons, should market conditions warrant.

The "Survey Price" shall be determined on the basis of a survey of dealers conducted in accordance with section (5) of this Regulation. The conversion factor for any GNMA coupon shall be the price at which it would have the equivalent yield of an 8% GNMA ($1 face value) when calculated at par (7.955%) according to GNMA yield tables prepared by the Financial Publishing Company of Boston, Massachusetts (rounded to four decimal places), assuming a 30 year mortgage prepaid in 12 years.

(2) The Association shall select at random 15 reference dealers from a list of no fewer than 20 participating GNMA dealers for each coupon survey and each price survey. If a surveyed dealer fails to provide price quotations or coupon information in a timely manner the Association shall replace that dealer with another dealer randomly selected from the list of reference dealers. Reference dealers shall be major GNMA dealers designated at the beginning of every year by the Board or Committee authorized by the Board.

(3) The Association shall conduct a survey of the reference dealers at 2:00 p.m. Chicago time on the first business day 30 calendar days prior to the last day of trading in the delivery months in the March quarterly cycle to determine the Designated Coupon. The GNMA Designated Coupon shall be that GNMA National Coupon which a majority of the 15 surveyed GNMA dealers specify as the highest GNMA coupon trading at or below 100 (par) on the bid side as determined by the survey conducted by the Board of Trade. The Designated Coupon in effect for any delivery month shall be the most recent Designated Coupon determined at least 30 days prior to settlement in such a survey.

The results of the survey which determines the Designated Coupon and the GNMA coupon which is next lowest to the Designated Coupon shall be released by the Board of Trade after 3:00 p.m. Chicago time on the day of the coupon survey.

(4) On the last day of trading the Association shall conduct a price survey at the close, 1:00 p.m. Chicago time. The Association shall randomly select 15 reference dealers and request a bid price quotation for the Designated Coupon and a bid price quotation for the GNMA with a National Coupon which is the next lowest to the Designated Coupon. From these quotations, the Association shall compute an average (rounded to the nearest 1/32) for both the Designated Coupon and the GNMA National Coupon which is next lowest to the Designated Coupon. The average price for each coupon shall include the middle nine quotations, and not include the three highest or the three lowest price quotations.

(5) The GNMA Survey Price shall be the average (rounded to the nearest 1/32 of the one point) of the converted average prices of the Designated Coupon GNMA and the GNMA coupon which is the next lowest National Coupon. The converted average price of each of the GNMA coupons divided by its respective conversion factor, rounded to the nearest 1/32 of one point. The final Survey Price shall be released as soon as practical the last day of trading.

(6) Requests for bid price quotations and coupon information shall be for GNMAs which have been originated no earlier than 12 months prior to the day the price is quoted. The price quotations shall be for good delivery of $1,000,000 of GNMAs, comprised of a maximum of three pools, with no pool in an amount less than $25,000.

Dealer bid side price quotations shall be for single-family, level-payment Mortgage-Backed certificates guaranteed for the timely payment of principal and interest by the Government National Mortgage Association as described in the Standard prospectus form HUD–1717, commonly known as Modified Pass-Through Certificates.

After two consecutive delivery months for which a survey of dealers shows GNMAs described in the standard prospectus form HUD–11717 (GNMA–II) to be at parity with GNMAs (HUD–1717), GNMA settlement may be based on the price of GNMA–IIs, at the discretion of the Board.

No bid price quotation shall be for GNMA securities including FHA–VA Builder Operative Loans (builder loans) issued as of April 16, 1980, nor shall any quotation include GNMA Buy-Down Mortgage Pools issued pursuant to HUD–1717.

2042.01 Deliveries on Futures Contracts—Delivery against the GNMA futures contract must be made through the Clearing House. Delivery under these regulations shall be on delivery day and shall be accomplished by cash settlement as hereinafter provided.

The Clearing House shall advise clearing members holding open positions in the GNMA futures contract deliverable in the current month of the final settlement price after the GNMA price survey is performed on the last day of trading. Clearing members shall then make payment to and receive payment through the Clearing House in accordance with normal variation settlement procedures on the last day of trading or as soon as practical thereafter, based on a settlement price equal to the GNMA Survey Price times $1,000.

2046.01 Date of Delivery—Settlement shall be the last day of trading.

* * * * *

The proposed amendments to the GNMA–II futures contract would become effective immediately after Commission approval for all contract months subsequently listed by the Exchange for trading, but would not be applicable to currently listed months.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., (202) 254–7227.

Other materials submitted by the CBT in support of the proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests

for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by September 26, 1985.

Issued in Washington, D.C. on August 22, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-20435 Filed 8-26-85; 8:45 am]

BILLING CODE 6351-01-M

Exchange Proposal to Trade Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions for the application of the Coffee, Sugar and Cocoa Exchange, Inc. for trading commodity options on cocoa futures contracts.

SUMMARY: The Coffee, Sugar and Cocoa Exchange, Inc. ("CSCE") has submitted an application to trade options on cocoa futures contracts under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comment on the proposal is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before September 26, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CSCE cocoa option contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for option trading (46 FR 54500 (November 3, 1981)).[1] Initially, the pilot program provided that each board of trade would be approved for trading in no more than one futures option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as contract markets for up to five options on certain futures contracts (49 FR 33641 (August 24, 1984)).[2] The CSCE has been designated as a contract market in options on sugar No. 11 futures contracts.

CSCE has applied for contract market designation, pursuant to section 4c(c) of the Commodity Exchange Act, 7 U.S.C. 6c(c) (1982) ("Act"), and Commission Regulation 33.5, to trade options on cocoa futures contracts.

A copy of the terms and conditions of the proposed CSCE option on cocoa futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by CSCE in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed option contract, or with respect to other materials submitted by CSCE in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by September 26, 1985.

[1] The commodities which are eligible for the initial pilot program are commodities which are not enumerated in section 2(a)(1)(A) of the Commodity Exchange Act. The enumerated commodities are generally agricultural products which are produced in this country. Cocoa is not an enumerated commodity.

[2] In addition, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agricultural futures contracts in addition to the five permissible option designations noted above (49 FR 2752 (January 23, 1984)).

Issued in Washington, D.C. on August 22, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-20436 Filed 8-26-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

KN Energy, Inc. v. Joe Gray et al.

[Docket No. GP85-33-000]

August 20, 1985.

KN Energy, Inc. (KN) is suing nine natural gas producers for charging it prices prior to January 1, 1985, allegedly in excess of those permitted under Title I of the Natural Gas Policy Act of 1978 (NGPA). KN purchased natural gas from these producers pursuant to 1977 and 1978 contracts which allowed the producers to charge the maximum prices permitted under the NGPA. However, these contracts also contained take-or-pay clauses requiring KN to pay for a certain quantity of gas each year even if KN failed to take that amount. The contracts permitted KN to take delivery of previously purchased gas at any time during the remainder of the contract. By the time the contract gas was deregulated on January 1, 1985, KN had made $3.2 million in unrecouped take-or-pay prepayments.

KN argues that, as a practical matter, it can recoup none of these prepayments. KN asserts that the prepayments therefore exceed the maximum lawful prices under the NGPA. KN contends that the NGPA provides for maximum lawful prices for *delivered* gas. According to KN, if a purchaser is required to prepay for gas which it will never be able to receive, then such prepayments constitute additional compensation to the producers for those volumes of gas which were both sold and delivered to KN. When this additional compensation is added to the prices KN paid for the delivered gas, the total exceeds the maximum lawful prices permitted under the NGPA. KN contents that such an overcharge constitutes a violation of NGPA section 504(a)(1).

Any person who desires to be heard or to make protest to the complaint should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of

Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1985)). All protests filed will be considered but will not make the protestants parties to the proceeding. KN states that a copy of the complaint was served on each of the respondents; respondents answers to the complaint shall be due within 30 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20415 Filed 8-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI78-80-001, et al.]

Merger and Request for Redesignation of Rate Schedules; Pennzoil Producing Co. (Successor to Pennzoil Oil & Gas, Inc.)

August 20, 1985.

Take notice that on August 14, 1985, Pennzoil Producing Company (Pennzoil), of P. O. Box 2967, Houston, Texas 77252-2967, filed an application pursuant to § 154.92(d) of the Commission's Regulations, requesting authorization to continue the sales of natural gas in interstate commerce previously made by Pennzoil Oil & Gas, Inc. (POGI).

On and effective June 30, 1985, POGI was merged into Pennzoil pursuant to the terms of that certain Agreement and Plan of Merger of even date therewith by certification by the Secretary of State of Delaware authenticating such merger. Pennzoil and POGI are both affiliates of Pennzoil Company, a large producer of natural gas.

Pennzoil requests Commission authorization to continue the service previously rendered by POGI under the permanent certificates of public convenience and necessity granted in the docket numbers listed and described in Exhibit "B" attached hereto. As to the subject dockets, Pennzoil assumes all of the obligations of POGI, contractual or otherwise, and Pennzoil understands that these gas sales will be subject to the same terms and conditions applicable to the certificates previously issued to POGI.

Pennzoil respectfully requests that Commission authorization be granted effective as of June 30, 1985, the date of merger, thereby enabling Pennzoil to succeed to their interests of POGI. Pennzoil further requests that POGI's rate schedules be redesignated as those of Pennzoil. Accordingly, Pennzoil is filing contemporaneously herewith a summary in accordance with § 250.8 of the Commission's Regulations, as required by § 154.92(d), for each rate schedule involved in the merger listed in Exhibit "B" attached hereto.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 4, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT B

POGI's rate schedule No.	FERC docket No.	Purchaser	Location of sale (offshore block)
1	CI78-80	Sea Robin Pipline Company	Eugene Island 339.
2	CI78-81	....do	Eugene Island 296.
3	CI78-82	....do	East Cameron 270.
4	CI78-83	United Gas Pipe Line Company	West Cameron 587
5	CI78-84	....do	Main Pass 140.
6	CI78-85	....do	West Cameron 522.
7	CI78-87	....do	West Cameron 533.
8	CI78-88	Sea Robin Pipeline Company	Do.
9	CI78-90	....do	West Cameron 532.
10	CI78-96	United Gas Pipe Line Company	East Cameron 335.
11	CI78-89	Sea Robin Pipeline Company	Do.
12	CI78-91	....do	East Cameron 334.
13	CI78-92	....do	South Marsh Island 126.
14	CI78-93 (CI84-126)	Southern Natural Gas Company	West Cameron 586.
15	CI78-93 (CI84-126)	United Gas Pipe Line Company	Do.
16	CI78-93 (CI84-126)	....do	Do.
17	CI78-93 (CI84-126)	Southern Natural Gas Company	Vermilion 226.
18	CI78-93 (CI84-126)	United Gas Pipe Line Company	Do.
19	CI78-94	Sea Robin Pipeline Company	South Marsh Island 125.
20	CI78-95	....do	South Marsh Island 127.
28	CI78-93 (CI84-126)	United Gas Pipe Line Company	Eugene Island 298.
29	CI78-93 (CI84-126)	Southern Natural Gas Company	Do.
31	CI79-273	United Gas Pipe Line Company	High Island 340.
32	CI79-275	....do	High Island 327
33	CI79-276	....do	High Island 332.
34	CI79-277	....do	High Island 339.
35	CI79-429	United Gas Pipe Line Company and Southern Natural Gas Co	West Cameron 352.
38	CI79-536	United Gas Pipe Line Company	High Island 279.
39	CI79-567	....do	High Island 474.
40	CI79-568	....do	High Island 475.
41	CI79-569	....do	High Island 469.
42	CI79-569	....do	High Island 358.
43	CI79-569	....do	High Island 278.
44	CI79-570	....do	High Island 355.
45	CI79-580	....do	Main Pass 72 & 74.
46	CI79-585	....do	Main Pass 73.
47	CI79-588	....do	Main Pass 72.
48	CI79-590	....do	South Pass 78.
49	CI80-50	ANR Pipeline Company	High Island 273.
50	CI80-441	United Gas Pipe Line Company	High Island 328.
51	CI80-444	....do	High Island 555.

EXHIBIT B—Continued

PDG/'s new schedule No.	FERC docket No.	Purchaser	Location of sale (offshore block)
52	CI81-461	ANR Pipeline Company	High Island [illegible].
53	CI82-131	United Gas Pipe Line Company	South Pass 57
54	CI82-147	do	East Cameron 237
55	CI82-231	do	High Island 499.
56	CI82-226	do	High Island 570.
57	CI82-227	do	High Island 545, 546 547 and 548.
58	[illegible]	United Gas Pipe Line Company	High Island 563 and 564.
59	[illegible]	ANR Pipeline Company	High Island 351 and [illegible].
60	CI84-454	United Gas Pipe Line Company	High Island 356.
61	CI85-247	Texas Gas Transmission Corp.	Engene Island 337
Awaiting designation [1]	CI77-702 *et al* (C178-96)	Sea Robin Pipeline Company	Eugene Island 261, 312, and 333; West Cameron 563, 609, and 617.
Do.	CI77-702 *et al* CI78-498 and CI78-500)	United Gas Pipe Line Company	High Island 520 and 323.

[1] Prior to Commission acceptance and approval of Stipulation and Agreement (Order issued January 28, 1983, in Docket No. CI77-702 *et al*), these were separate sales under Rate Schedule Nos. 21 through 27 (West Cameron 563, 609, and 617 and Eugene Island 261, 262, 312, and 333, respectively) and Rate Schedule Nos. 36 (High Island 520) and 37 (High Island 323). As part of the settlement of these proceedings, the originally filed contracts were replaced by two contracts; i.e., a single contract covering the above-listed West Cameron and Eugene Island blocks, excepting Eugene Island 262, which was deleted because no sales had occurred and the lease had been relinquished January 31, 1982, and a single contract covering High Island 520 and 323. The Commission has not yet issued new rate schedule numbers accurately reflecting the coverage of the contracts as certificated.

Note regarding Rate Schedule No. 30: Rate Schedule No. 30 does not appear in the above list because no certificate of public convenience and necessity was issued by the Commission. No gas sales occurred, and the lease was relinquished January 31, 1978.

[FR Doc. 85-20416 Filed 8-26-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP84-462-003, et al.]

Natural Gas Certificate Filings; ANR Pipeline Company, et al.

August 20, 1985.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP84-462-003]

Take notice that on July 19, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-462-003 a petition to amend the order issued of April 3, 1985, in Docket No. CP84-462-000 and CP84-462-001 issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Bridgeline Gas Distribution Company (Bridgeline) to an additional delivery point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it is currently authorized to transport up to 20,000 Mcf of natural gas per day on a firm basis for Bridgeline to Columbia Gulf Transmission Company and Riverway Gas Pipeline Company redelivery points. Petitioner states that on January 17, 1985, it executed with Bridgeline the third amendment to the transportation agreement dated July 19, 1983. It is stated that the amendment provides for the addition of a delivery point at Petitioner's Patterson Station in St. Mary Parish, Louisiana, where petitioner would tender the gas to Texas Gas Transmission Corporation (Texas Gas) for Bridgeline's account. The amendment further provides that Petitioner would retain 2.9 percent of all gas received and transported for Bridgeline's account as compensation for its fuel use, it is stated.

Petitioner requests authority to implement changes in receipt and delivery points in providing the service on behalf of Bridgeline consistent with any future amendments to the July 19, 1983, Transportation Agreement. Any changes in receipt or delivery points would be reported annually by Petitioner in a tariff sheet filing in Petitioner's Rate Schedule X-149 on or before January 31 of the year following the change in service, it is stated.

Comment date: September 10, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Consolidated Gas Transmission Corporation

[Docket No CP85-756-000]

Take notice that on August 2, 1985, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85-756-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale to and transportation of natural gas in interstate commerce for Baltimore Gas and Electric Company (BG&E) and Washington Gas Light Company (WGL) and the construction and operation of minor delivery facilities necessary to render those services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to sell natural gas, on a firm basis, to BG&E and WGL, both non-customers of Applicant, of up to a maximum daily quantity (MDQ) of 60,000 dt equivalent of natural gas per day to each, subject to a fifty percent minimum annual commodity bill. Additionally, it is indicated that, on any day when BG&E and WGL purchase less than the MDQ, they could request Applicant to render firm transportation service up to the MDQ level, and receive corresponding minimum bill credits. Applicant states that the services requested are to commence April 1, 1987, and continue for a primary term of 20 years. Further, it is indicated that upon written notice to Applicant, not later than December 31, 1990, both BG&E and WGL could each elect to increase their firm service MDQ from 60,000 to 100,000 dt.

Applicant states that it has entered into a precedent agreement dated July 31, 1985, with BG&E and WGL to which is attached a *pro forma* copy of a natural gas service agreement. It is indicated that Applicant and each customer would enter into a separate natural gas service agreement in substantially similar form, upon the receipt of the necessary regulatory authorizations and the fulfillment of other conditions precedent stated therein.

For the requested firm sales, Applicant proposes to charge BG&E and WGL for rate set forth in Rate Schedule RQ (RQ rate) of its FERC Gas Tariff,

Original Volume No. 1. For the requested firm transportation services, Applicant proposes to charge BG&E and WGL the non-gas portion of the commodity component of its RQ rate, currently 12.91 cents per dt, plus a reimbursement for the fuel used in rendering the transportation service and the GRI surcharge. Also, it is indicated that the source of the gas to be sold to BG&E and WGL would be from Applicant's general system supply and would be used by BG&E and WGL as part of their general system supplies to meet the existing and future needs of their customers.

Applicant states that the proposed transportation service is designed to provide BG&E and WGL with the flexibility to purchase competitively-priced supplies of natural gas from diverse sources and have those supplies delivered to their market areas. For this reason, Applicant states that the firm transportation does not have fixed receipt points. Thus, Applicant requests blanket authorization to use existing interconnections between its system and the facilities of other companies to receive natural gas for the account of BG&E and WGL for firm transportation service, and to construct and operate new receipt points of interconnection in the future, if and as they are determined to be necessary.

Applicant proposes to deliver all gas sold and transported for BG&E and WGL at an interconnection to be established on Line No. PL–1 near the community of Dickerson in Montgomery County, Maryland. Applicant states that Consolidated System LNG Company currently owns Line No. PL–1, a 109.4-mile, 30-inch pipeline between Leesburg in Loudoun County, Virginia, and Perulack, in Juniata County, Pennsylvania. Applicant further states that an application would be filed in the near future seeking Commission authorization for Applicant to intergrate Line No. PL-1 into its transmission system. It is indicated that Line No. PL–1 is not directly conncected to Applicant's transmission system, but is indirectly linked by interconnection with Texas Eastern Transmission Corporation (TETCO). Applicant states that TETCO has agreed to render firm transportation service for Applicant from an existing interconnection of their facilities in southwestern Pennsylvania to Perulack and that TETCO would file in the near future for certificate authorization to rendor this service and to construct and operate the necessary pipeline looping facilities.

Applicant requests authorization to construct and operate the necessary tap, valves, measuring, and regulating facilities to enable it to interconnect Line No. PL–1 at a site near the community of Dickerson in Montgomery County, Maryland, with pipeline facilities to be constructed by BG&E and WGL. Applicant states that the estimated cost of the proposed facilities is $810,000, exclusive of filing fees, which would be financed from funds to be obtained from Applicant's parent, Consolidated Natural Gas Company, or from funds on hand. Applicant estimates that approximately eight weeks would be required to complete the proposed construction activities.

Applicant states that the proposed services are new market opportunities for Applicant which would benefit its existing customers. It is indicated that the proposed service would enable Applicant to increase through-put on its existing system and spread fixed costs over increased sales and transportation quantities.

Comment date: September 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP85–757–000]

Take notice that on August 5, 1985, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85–757–000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing natural gas service under a revised service agreement with the Suburban Fuel Gas, Inc. (Suburban), an existing wholesale customer of Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states it proposes to enter into a revised service agreement with Suburban effectuating an increase in its contract demand under Rate Schedule G of 420 dt equivalent of gas per day from 6,580 dt equivalent per day to 7,000 dt equivalent per day in Zone 4. The proposed effective date is November 1, 1985.

The revised service agreement requested by Suburban would be pursuant to the provisions of Applicant's FERC Gas Tariff, Original Volume No. 1. Applicant avers that the proposal would have no significant impact on either its gas supply or operations.

Comment date: September 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–771–000]

Take notice that on August 9, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85–771–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Hercules Incorporated (Shipper), which is being represented by the City of Covington, Georgia (Covington), as agent, under the certificate issued in Docket No. CP82–426–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to transport up to 1,100 dt equivalent of natural gas per day for Shipper until October 31, 1985. Shipper would purchase gas from Transco Energy Marketing Company. Transco would receive the gas at (1) the existing interconnection with GHR Transmission Corporation (GHR) in the Aqua Dulce Field, Nueces County, Texas, (2) the existing interconnection with GHR at Miranda Prospect, Duval County, Texas, (3) the existing interconnection with Valero Transmission Company (Valero) in La Salle County, Texas, and (4) the tailgate of the Katy Exxon Gas Plant in Waller County, Texas. Transco would transport and deliver an equivalent quantity, less gas retained for compressor fuel and line loss, to existing points of delivery to Covington, in Walton County, Georgia. In turn, Covington would redeliver the natural gas to Shipper's Oxford plant in Covington, Georgia, for use as boiler fuel. Transco states that it commenced this transportation service on June 4, 1985, under the automatic authorization of Section 157.209 of the Regulations and that existing facilities were utilized.

Transco indicates that it would charge Shipper 40.61 cents for each dt equivalent of natural gas delivered to Covington which is in accordance with Transco's Rate Schedule T–II. The proposed charge includes a Gas Research Institute surcharge, it is stated.

Transco also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Shipper. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Transco would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would

only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 4, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket No. CP85-773-000]

Take notice that on August 9, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85-773-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Heinz, U.S.A., a division of H.J. Heinz Company (Heinz), under the authorization issued in Docket No. CP83-508-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitable proposes to transport on a peak day 2,500 dt equivalent, on an average day 2,500 dt equivalent, and on an annual basis 490,000 dt equivalent of natural gas for use as boiler fuel, the steam from which is a process use by Heinz, at its plant in Pittsburgh, Pennsylvania. The natural gas to be transported would be purchased from Kepco, Inc. (Kepco). Equitable would receive the gas at existing delivery points with Kepco in Ritchie, Doddridge and Tyler Counties, West Virginia, and would redeliver it into its distribution system at the outlet side of Equitable's Harston Compression Station near Finleyville, Washington County, Pennsylvania, for delivery to Heinz.

Equitable states that it would charge Heinz the transportation rate of 15.5 cents per Mcf, as provided in its Rate Schedule TS-1, FERC Gas Tariff, Second Revised Volume No. 1. Equitable further states that its allowance for transportation shrinkage would be 2 percent.

Equitable also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply. The Harston Compressor Station is the only delivery point that Equitable can make deliveries in the market area. Equitable will file a report providing certain information with regard to the addition or deletion of sources of gas as further detail in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 4, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the Procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20418 Filed 8-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP83-39-007, et al.]

Natural Gas Certificate Filings; Equitable Gas Company, et al.

Take notice that the following filings have been made with the Commission:

1. Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket No. CP83-39-007]

August 14, 1985.

Take notice that on July 26, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP83-39-007 pursuant to section 7 of the Natural Gas Act a petition to amend the Commission's orders issued November 30, 1982, and November 30, 1984, in Docket Nos. CP83-39-000 and CP83-39-002 so as to authorize Equitable to modify certain conditions of the transportation of natural gas agreement for Eastern American Energy Corporation (Eastern American), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Equitable states that a supplemental transportation agreement entered into between it and Eastern American revises the parties' currently effective transportation agreement as follows:

(1) Increase the amount of transportation capacity available to Eastern American by Equitable to a total of 8,000 Mcf of natural gas per day (Mcfd) on a firm basis and 4,000 Mcfd on a best-efforts basis. Equitable states that no new facilities would be necessary in order to transport the increased capacity proposed herein.

(2) All volumes delivered to Equitable by Eastern American for transportation would be redelivered in the same month or as soon as possible thereafter. It is stated that the currently effective transportation agreement provides for redelivery by Equitable in the second month after deliveries from Eastern American are received.

(3) Equitable proposes to retain the currently effective contract term for those transportation volumes previously certificated (5,000 Mcfd firm and 2,000

Mcfd best-efforts). For the additional volumes for which authorization is requested herein, the contract term would be three years from the date of initial deliveries and year to year thereafter.

(4) Interest payments in the amount of 1.5 percent per month would be provided for in the event Eastern American failed to pay for transportation service as provided in the contract.

(5) Balancing of over or underdeliveries by Eastern American after the termination of the contract would occur by Equitable purchasing overdeliveries by Eastern American or, in the event of underdeliveries, by Eastern American continuing deliveries until in balance with Equitable's redeliveries made during the term of the agreement.

(6) Increased flexibility in assignment of the agreement to successors in interest of either party would be provided herein.

Comment date: September 4, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP85-732-000]

August 15, 1985.

Take notice that on July 24, 1985, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-732-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Warner Gear, Div. of Borg-Warner Automotive, Inc. (Shipper), a qualified end-user, under the certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Applicant states that pursuant to a transportation agreement dated May 20, 1985, among Applicant, Shipper and Indiana Gas Company (Indiana Gas), it would receive a peak-day transportation quantity of up to 2,000 Mcf of natural gas on an interruptible basis at existing points of interconnection between Applicant and EnTrade Corporation's designee in Weld County, Colorado. Applicant proposes to transport and redeliver such gas, less a four percent reduction for fuel, to Indiana Gas in Grant County, Indiana. Indiana Gas in turn would make ultimate delivery to Shipper for boiler fuel and heat-treating steel at its facilities in Muncie, Indiana. Applicant would neither construct nor add to its existing facilities to provide this service.

Applicant would transport gas under its Rate Schedule OST at an initial rate of 42 cents per Mcf and a GRI surcharge of 1.24 cents per Mcf.

Applicant advises that the transportation service commenced on June 1, 1985, for a term of 120 days. The term of authorization herein sought is from the end of the 120-day period until the earlier of (1) eighteen months from the effective date of the agreement, (2) termination of authorization as provided by Subpart F of 18 CFR Part 157, or (3) termination of the agreement by either of the parties.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market area. Applicant would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date; September 30, 1985, in accordance with Standard Paragraph G at the end of the notice.

Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket CP855-772-000]

August 16, 1985.

Take notice that on August 9, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85-772-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Koppers Company, Inc. (Koppers), under the authorization issued in Docket No. CP83-508-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitable proposes to transport on a peak day 1,500 dt equivalent, on an average day 1,500 dt equivalent, and on an annual basis 282,000 dt equivalent of natural gas for use as boiler fuel by Koppers in its facility at Bridgeville, Pennsylvania. The natural gas to be transported would be purchased from Kepco, Inc, (Kepco). Equitable would receive the gas at existing delivery points with Kepco in Ritchie, Doddridge and Tyler Counties, West Virginia, and would redeliver it into its distribution system at the outlet side of Equitable's Harston Compression Station near Finleyville, Washington County, Pennsylvania, for delivery to Koppers.

Equitable would charge Koppers the transportation rate of 15.5 cents per Mcf, as provided in its Rate Schedule TS-1, FERC Gas Tariff, Second Revised Volume No, 1. Equitable further states that its allowance for transportation shrinkage would be 2 percent.

Equitable also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply. The Harston Commpressor Station is the only delivery point that Equitable can make deliveries in the market area. Equitable will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: September 30, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP84-605-001]

August 16, 1985.

Take notice that on July 19, 1985, K N Energy, Inc. (K N), Post Office Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP84-605-001 an amendment to the pending application for a certificate of public convenience and necessity filed on July 26, 1984, in Docket No. CP84-605-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

By the pending application in Docket No. CP84-605-000 authorization is requested for the off-system sale of 15,000 Mcf of natural gas per day to Western Gas Corporation (Western), for resale to Western's existing customers. It is stated that the gas would be sold to Western at the applicable rate under K N's Rate Schedule CD-1 of K N's FERC Gas Tariff, Third Revised Volume No. 1.

In Docket No. CP84-605-001, K N seeks authorization to make the proposed sale to Western under K N's newly-filed Rate Schedule SF-1 in lieu of its Rate Schedule CD-1 It is stated that Rate Schedule SF-1 applies to wholesale customers, such as Western,

which are not directly connected to K N's interstate pipeline system.

K N states that Western currently sells a portion of its intrastate gas supply to end-users for electric generation and boiler fuel purposes. It is also stated that under the proposed sale Western would purchase gas from K N to supplement its general system supply, and a portion of said gas would perhaps be resold and delivered by Western to boiler fuel and electric generation customers, along with Western's sale and delivery of other commingled gas from Western's intrastate gas supply sources. It is explained that in K N's FERC Gas Tariff General Terms and Conditions § 13.b (1) and (2) impose limitations on making new or additional sales for certain end users, including boiler fuel use. Section 13.b(2)(b) specifically prohibits new sales for electric generation purposes, except for certain high priority electric generation fuel standby service. K N requests that a waiver of Section 13.b(1) and (2) of its tariff be granted in order for K N to make the proposed sale to Western as proposed in Docket No. CP84-605-000.

Comment date: September 6, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP85-708-000 and CP83-350-001]

August 16, 1985.

Take notice that on July 16, 1985, Nothern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-708-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and appurtenant facilities in Refugio County, Texas, and in Docket No. CP83-350-001 a petition to amend the order issued October 31, 1983, in Docket No. CP83-350-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize an increase in the firm transportation quantity and two additional redelivery points from Northern to Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application and petition to amend which are on file with the Commission and open to public inspection.

In Docket No. CP85-708-000, Northern proposes to construct and operate approximately 2.5 miles of 24-inch pipeline with associated metering and appurtenances extending from an existing interconnection between the pipeline facilities of Northern and United Gas Pipe Line Company near McFadden, Refugio County, Texas, to a proposed interconnection with Natural's 26-inch pipeline located adjacent to State Highway 239 in the James Power-James Hewitson Survey, Refugio County, Texas. In Docket No. CP83-350-001 Northern proposes to utilize the proposed interconnection and an existing interconnection between the Matagorda Offshore Pipeline System and Florida Gas Transmission Company in Refugio County, Texas, as additional points of redelivery of transportation volumes to Natural. In addition, Northern proposes to increase the firm transportation quantity of service for Natural's account for its presently authorized level of 13,000 Mcf of gas per day to 21,000 Mcf per day.

The cost of the facilities proposed by Northern are estimated to be $1,875,000. For the amended transportation service Northern proposes to charge Natural a monthly transportation charge, based on the cost of service of the facilities, of $120,341 for the firm service and 18.84 cents per Mcf for volumes delivered in excess of the firm quality.

Comment date: September 6, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-730-000]

August 16, 1985.

Take notice that on July 23, 1985, Nothern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-708-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of an additional 200 Mcf of natural gas per day to Wisconsin Southern Gas Company (Wisconsin Southern), all as more fully set forth in the application which is on file with the Commssion and open to public inspection.

Northern proposes to sell an additional 200 Mcf of natural gas per day to Wisconsin Southern, an existing utility customer, under Northern's Rate Schedule SS-1. It is stated that the proposed increase is necessary to accommodate the addition of a firm industrial process load at the 3M Company plant located in Prairie du Chien, Wisconsin. It is further stated that no additional facilities are required to be constructed to accommodate the increased delivery of natural gas to Wisconsin Southern.

Comment date: September 6, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Northwest Central Pipeline Corporation

[Docket No. CP85-758-000]

August 20, 1985.

Take notice that on August 6, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-758-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon in place approximately 300 feet of 2-inch lateral line and reclaim measuring and appurtenant facilties serving BAM Energy Thrall Pump Station in Greenwood County, Kansas, and to abandon the transportation of gas through said facilities under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central states that BAM Energy has requested that the facilities be reclaimed as BAM has converted to a new source of gas.

Comment date: October 4, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP85-746-000]

August 16, 1985.

Take notice that on July 31, 1985, Southern Natural Gas Company (Applicant), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP85-746-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Arco Oil and Gas Company, Division of Atlantic Richfield Corporation (Arco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to transport on an interruptible basis up to 3 billion Btu of gas per day. Applicant states that Arco would deliver the gas to be transported to Applicant at the existing interconnection between the facilities of Arco and Applicant located on the production platform owned and operated by Arco in South Pass Area Block 60, offshore Louisiana. Applicant would, by displacement, redeliver the gas, less reduction for shrinkage, fuel

loss, company-use and unaccounted-for gas, to Arco at the existing point of interconnection between the measurement facilities of Applicant and Arco located on Phillips Petroleum Company's Eloi Bay platform in Chandeleur Sound Area Block 49, offshore Louisiana.

It is stated that Arco would use the gas as a means to operate its enhanced oil recovery project thereby increasing domestic oil production.

Applicant also states that Arco would pay Applicant a transportation charge of 28.9 cents per million Btu.

It is indicated that the proposed service is for a primary term of 5 years.

Comment date: September 6, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85–766–000]

August 16, 1985.

Take notice that on August 7, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85–766–000 a request pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Graham Oil and Gas, Ltd. (Graham), under the certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 2,000 Mcf of natural gas per day for Graham until October 31, 1985. Tennessee states that if purchases certain quantities of gas produced by Graham in Little Lake Field (Little Lake) in Jefferson Davis Parish, Louisiana, and in Atchafalaya Bay Field (Atchafalaya) in St. Mary Parish, Louisiana. Graham has requested Tennessee to release certain volumes of gas produced in Atchafalaya and to transport and deliver said released volumes to Little Lake for Graham's use in gas-lift operations, it is stated.

Tennessee states that it would charge Graham 7.02 cents per Mcf of gas delivered in accordance with Tennessee's Rate Schedule ITEU and would retain 0.9 percent of the gas received from Graham for system fuel and uses and lost and unaccounted-for volumes. Tennessee would also collect the Gas Research Institute surcharge of 1.25 cents per Mcf of gas delivered.

Tennessee also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Graham. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points to Graham. Tennessee would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

No new facilities are required to provide this transportation and no intermediaries are involved in the transportation between Graham and Tennessee, it is stated.

Comment date: September 30, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. Transwestern Pipeline Company

[Docket No. CP85–441–001]

August 16, 1985.

Take notice that on July 29, 1985, Transwestern Pipeline Company 8(Transwestern), 1200 Travis, Houston, Texas 77002, filed in Docket No. CP85–441–001 an amendment to the application filed in Docket No. CP85–441–000 pursuant to section 7(c) of the Natural Gas Act to request authorization to commence service under Rate Schedule SG–1 To Wiley Reynolds & Sons and to acquire certain facilities, all as more fully set forth in the amendment to application which is on file with the Commission and open for public inspection.

In Docket No. CP85–441–000 Transwestern proposed to abandon service under Rate Schedule RW–1 to its customer, Great Plains Gas Company (Great Plains), and to continue serving the existing authorized irrigation and agricultural use customers of Great Plains under direct sales arrangements.

Transwestern now requests certificate authorization to install and operate a meter station, to operate an existing sales tap and to commence natural gas sales service to Wiley Reynolds & Sons under its Rate Schedule SG–1. Wiley Reynolds & Sons is an existing irrigation and agricultural use customer of Great Plains. It is asserted that through Wiley Reynolds & Sons, Great Plains has been providing natural gas service to a residential subdivision north of Pampa, Texas, in Gray County. It is further asserted that since Transwestern's Rate Schedule RW–1 does not permit such residential sales, and since Transwestern is requesting permission and approval for abandonment of service to Great Plains, Transwestern now proposes to sell gas to Wiley Reynolds & Sons to serve this residential subdivision pursuant to its Rate Schedule SG–1.

Transwestern further requests authorization to acquire existing facilities of Great Plains in those instances where such acquisition would facilitate or make more economic the continuation of service to the irrigation and agricultural use customers of Great Plains under direct sale arrangements, as proposed in Docket No. CP85–441–000.

Comment date: September 6, 1985, in accordance with the first subparagraph of Standard F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of

the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20419 Filed 8-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-477-001]

Order Accepting for Filing and Suspending Rates, Noting Interventions, Denying Motion for Rejection, Denying Request for Waiver, and Establishing Hearing and Price Squeeze Procedures; Southwestern Public Service Co.

Issued: August 20, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

On May 1, 1985, as completed on June 21, 1985, Southwestern Public Service Company (SPS) tendered for filing a proposed two-step increase in rates to eighteen full requirements customers and five partial requirements municipal customers.[1] By letter dated June 12, 1985, the Commission's Office of Electric Power Regulation (OEPR) advised SPS that its filing was deficient because it: (1) Included accumulated deferred income tax credits (ADITC) in the equity component of its capital structure; (2) used the investment tax credit (ITC) amortization as a revenue credit rather than a direct credit in the income tax allowance; (3) violated the fuel clause regulations by providing for full recovery of the cost of power purchased under a five year contract; and (4) included an automatic adjustment clause mechanism which flows through to the customers only 75% of the margin (sales revenue less fuel costs) for off-system sales and retains 25% for the stockholders. In response to OEPR's deficiency letter, SPS submitted for filing, on June 21, 1985, revised rates and cost of service statements reflecting OEPR's directives. The revised Phase I rates, identified as Phase I (A) rates, would increase jurisdictional revenues by approximately $1.6 million (1.0%) for the twelve month test period ending June 30, 1986. The revised Phase II rates, referred to as Phase II(A) rates, would further increase revenues by approximately $4.3 million, for a total increase of $5.9 million (3.15%). SPS requests waiver of the notice requirements to permit a July 1, 1985, effective date for the Phase I(A) rates and a July 2, 1985, effective date for the Phase II(A) rates. In the event that the Phase I(A) rates are suspended for five months, SPS requests that they be deemed withdrawn. In its June 21, 1985, revised filing SPS also submitted alternative Phase I and Phase II rates reflecting certain cost treatments and rate components which OEPR directed SPS to exclude; SPS seeks a ruling by the Commission as to these alternative rates.

Notice of SPS's filing was published in the **Federal Register**,[2] with comments due, after extension, on or before May 24, 1985. On May 24, 1985, Texas-New Mexico Power Company (TNP) filed a motion to intervene which raises no substantive issues. On July 19, 1985, TNP filed an answer to SPS's June 21, 1985, filing, asking that the Commission deny SPS's request for waiver of the notice requirements.

On May 24, 1985, the Municipals[3] filed a motion to intervene and motion to reject SPS's filing, or, in the alternative, to suspend the filing. The Municipals request that the filing be declared deficient because it fails to substantially comply with the Commission's regulations. In support of a maximum suspension, the Municipals raise a variety of cost of service issues, including: (1) Return on common equity; (2) inclusion of ADITC in capital structure; (3) alleged overstatement of the unfunded deferred tax liability; (4) cash working capital; (5) change in the production plant depreciation rate; and (6) the flowthrough of revenue credits to stockholders. The Municipals also object to: (1) An unexplained change in the billing demand provision in Schedule A of the partial requirements rate schedule; (2) a proposed tax adjustment clause which does not specify that implementation requires a filing with the Commission; and (3) a restriction on the use of power in SPS's current contract with the City of Lubbock.

On May 24, 1985, SPS's full requirements cooperative customers (Cooperatives) filed a motion to intervene, motion for summary disposition, request for maximum suspension, and motion to institute price squeeze procedures. The Cooperatives request that the Commission summarily order SPS to exclude ADITC from the common equity component of its capital structure and to normalize ITCs in accordance with Commission precedent. In support of a maximum suspension, the Cooperatives raise many of the same cost of service issues as the Municipals, as well as additional issues.[4] The Cooperatives also allege that the rate increase proposed by SPS will result in a price squeeze.

On June 10, 1985, SPS filed an answer to the motions of the Municipals and the Cooperatives. SPS requests that the Commission: (1) Grant the motions to intervene; (2) deny the Municipals' request for rejection; (3) deny the Cooperatives' request for summary disposition of the ADITC issue; and (4) deny the Cooperatives' request for the institution of price squeeze procedures. In support, SPS disputes the allegations raised in the Municipals' and Cooperatives' pleadings.

On August 5, 1985, the Cooperatives filed a motion in support of one of the Company's proposed alternative rate treatments. Specifically, the Cooperatives support SPS's request that the Commission waive its fuel clause regulations to permit the full recovery of costs associated with the purchase of power from Public Service Company of New Mexico (PNM) over a five year period. On August 9, 1985, the Municipals filed a response to the Cooperatives' motion in support of waiver, requesting that the Commission deny the Cooperatives' motion.

On August 6, 1985, the Municipals filed a response opposing SPS's request for waiver of the notice requirements. The Municipals also oppose the Company's alternative proposals as to the PNM power purchase and the margin for off-system sales.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make TNP,

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[1] *See* Attachment for effected customers and rate schedule attachments.

[2] 50 FR 19,227 (1985).

[3] The Cities of Lubbock, Brownfield, Floydada, and Tulia, Texas.

[4] The issues raised include: (1) The allegedly excessive increase in general plant; (2) inclusion of experimental slurry pipeline costs as a research, development, and demonstration expense; (3) administrative and general expenses; (4) regulatory expense; (5) use of the average of beginning and ending plant balances in calculating depreciation expenses; (6) use of an inflated negative salvage value for gas-fired and coal-fired production plants; and (7) allocation of SPS's off-system sales margin on the basis of energy usage.

the Municipals, and the Cooperatives parties to this proceeding.

We find that SPS's submittal, as completed on June 21, 1985, substantially complies with the Commission's filing requirements. Therefore, we shall deny the Municipals' motion to reject.

As noted above, SPS has submitted alternative Phase I and Phase II rates which reflect cost treatments and rate components which OEPR's deficiency letter directed SPS to exclude. SPS requests a Commission ruling on these rates. For the reasons discussed below, we find SPS's proposed cost treatments and rate components improper. Consequently, we shall reject SPS's alternative rates.

ADITC

SPS proposes to retain ADITC in the equity component of its capital structure. The issue of SPS's treatment of ADITC for ratemaking purposes was resolved by the Commission in *Southwestern Public Service Co.*, Opinion No. 162, 22 FERC ¶ 61,341 (1983).[5] In that decision, we directed SPS to exclude the ADITC associated with both wholesale and retail service from the common equity component of its capital structure. In a subsequent rate case (Docket No. ER84–604–000), the Commission summarily decided the ADITC issue and directed SPS to file revised rates excluding ADITC from its capital structure. 29 FERC ¶ 61,056; *reh'g denied* 29 FERC ¶ 61,279 (1984); *clarified*, 31 FERC ¶ 61,247; *reh'g of clarification denied*, 32 FERC ¶ 61,082 (1985).[6] The Commission's policy on this issue is clear, and SPS's proposed treatment of ADITC in its alternative rates is improper.

ITC Amortization

SPS proposed to reflect the test year ITC amortization as a revenue credit rather than as a direct credit to the income tax allowance. In Opinion No. 162, the Commission directed SPS to use the normalization method to reflect ITC in its wholesale cost of service. As explained in that opinion, under the normalization method, the ITC is credited to the cost of service over the life of the facility that generated the ITC by means of a credit against the utility's Federal income tax allowance. In compliance with Opinion No. 162, SPS properly reflected the test year ITC amortization as a direct reduction to income taxes. SPS alleges that this method reduces the cost of service more than ratably, and that the Commission has never addressed this issue.

SPS's argument is devoid of merit. To understand this issue, it is only necessary to consider the effect of income taxes on the revenue requirement. Assuming a 50% tax rate for simplicity, it is readily apparent that, in order to achieve $1 of earnings, one must generate $2 in revenues. Of the $2 in revenues, $1 goes to taxes and $1 remains for the investor. Conversely, for every $1 in tax savings, there is a $2 reduction in the revenue requirement. The normalization method adopted by the Commission properly reduces the revenue requirement by $2 for every $1 in tax savings. SPS effectively challenges this equation, alleging that the revenue requirement should only be reduced by the $1 in tax savings.

Notwithstanding SPS' assertion that no other utility has raised this argument before the Commission, we are hard pressed to accept SPS' suggestion that the matter is somehow novel or unanswered, particularly in view of the facts that (1) SPS has addressed this precise computational issue on appeal to the Tenth Circuit of the Commission's suspension order in Docket No. ER84–604–000,[7] and (2) SPS, in its compliance filing following Opinion No. 162, reflected the specific tax calculations we are herein prescribing. Further, it should not be surprising that the issue has not been discussed at length in prior orders since the normalization method not only has been consistently required by the Commission, but also has been consistently *implemented* by utilities, including SPS.

We note that we have recently advised SPS in our July 19, 1985 order in Docket Nos. ER84–604–005 and ER84–604–006, that the company's course of conduct regarding the investment tax credit issue came "perilously close to an abuse of the Commission's processes." We further stated that, in the event SPS submitted rates which did not reflect our precedent on this issue, the company's submittals may be rejected as patently deficient. We repeat these observations with regard to SPS's present filing.[8]

The PNM Purchase

SPS proposes to recover in full through the fuel adjustment clause the cost of energy (energy charge and reservation charge) purchased from PNM under a five year agreement. Section 35.14 of the Commission's regulations permits recovery through the fuel clause the full cost of energy for all economy purchases of one year or less. However, SPS has agreed to purchase energy from PNM over a five year period. SPS requests waiver of the regulation on the grounds that a similar proposal is included in the pending settlement in Docket ER84–604–000 and will probably be reflected in any settlement in the present docket.[9] SPS states that failure to grant waiver will result in administrative costs for billing during the interim period between settlements. We do not believe that potential settlement positions or limited stipulations in prior dockets constitute good cause for waiver of our fuel clause regulations particularly in light of one customer's objections to such a waiver. Consequently, we shall deny SPS's request for waiver.

Revenue Credit Adjustment Clause

SPS proposes to flow through to its customers 75% of the margin for off-system sales and to retain 25% for the stockholders. SPS has styled its request as one for waiver of the fuel clause regulations. In fact, SPS is requesting waive of the notice and review provisions of section 205 of the Federal Power Act to implement an automatic adjustment clause that reflects a single component of its cost of service, *viz.*, revenue credits. Such clauses are generally permitted by the Commission only in limited situations, none of which is present in this docket.[10] While a similar revenue credit adjustment mechanism was approved in *Public Service Co. of New Mexico*, Opinion No. 203, 25 FERC ¶ 61,469 (1983), it is part of a novel and limited experimental program. We note that the question of how the benefits of these transactions should be allocated between ratepayers and shareholders is under consideration in a better forum in a recently-initiated Notice of Inquiry. *See Regulation of Electricity Sales-for-Resale and Transmission Services (Phase I)*, 50 FR

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[5] *Appeal pending sub nom., Southwestern Public Service Co.* v. *FERC*, No. 83–1759 (10th Cir., filed June 22, 1983).

[6] *Appeal pending sub nom., Southwestern Public Service Co.* v. *FERC*, No. 84–1421 (10th Cir., filed Jan. 15, 1985).

[7] *See* section 313(b), Federal Power Act, 16 U.S.C. 8251(b), which provides that no objection can be considered by a reviewing court without first having been urged before the Commission.

[8] The Cooperatives, as noted, requested summary disposition with respect to the inclusion of ADITC in common equity and the normalization of ITC. The Cooperative's notion is mooted by SPS's revised filing.

[9] No settlement agreement has been filed in Docket No. ER84–604–000 at this time. However, the parties to the proceeding have stipulated on the record that they will agree to SPS's treatment of the PNM purchase. This stipulation is expressly limited to the locked-in period covered by Docket No. ER84–604–000.

[10] *See Sierra Pacific Power Co.*, 31 FERC ¶ 61,244 (1985).

23445 (June 4, 1985). Accordingly, we shall reject this aspect of SPS's proposed alternative rates as well.

Our preliminary review of SPS's filing indicates that the proposed Phase I(A) and Phase II (A) rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we shall accept SPS's submittal for filing and suspend the rates as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our preliminary examination indicates that both the Phase I(A) and Phase II(A) rates may be substantially excessive.

As noted above, SPS requests waiver of the notice requirement to permit July 1 and July 2, 1985, effective dates for the Phase I and Phase II rates. These are the dates proposed in the original filing. SPS states that the initial filing gave timely notice to all customers of a rate increase. However, a new filing date was assigned when the filing was completed on June 21, 1985. The Commission's regulations require a sixty day notice to all parties of the rate that is finally proposed, not a deficient rate. We find that SPS has not shown good cause for waiver of the notice requirements and shall deny SPS's request. Accordingly, we shall suspend the Phase II(A) rates for five months, to become effective, five months from sixty days after filing, on January 21, 1986, subject to refund. We shall deem withdrawn the proposed Phase I(A) rates, as requested by SPS.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Co.*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the Cooperatives.

Finally, we note that SPS has included a tax adjustment clause as part of its revised rate schedules. Implementation of this clause constitutes a change in rates and requires a timely filing pursuant to Part 35 of the Commission's regulations.

The Commission Orders:

(A) The Municipals' motion to reject SPS' filing is hereby denied.

(B) SPS's request for waiver of the notice requirements is hereby denied.

(C) The Commission hereby rejects the four alternative rate proposals submitted by SPS in its June 21, 1985, filing.

(D) SPS's Phase II(A) rates are accepted for filing and suspended for five months from 60 days after completion of filing, to become effective on January 21, 1986, subject to refund. The Phase I(A) rates are deemed withdrawn.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of SPS's rates.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in section 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) Docket No. ER85-477-001 is hereby terminated and the evidentiary proceeding ordered herein is designated as Docket No. ER85-477-002.

(J) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

SOUTHWESTERN PUBLIC SERVICE COMPANY, DOCKET NO. E85-477-000

(Rate Schedule Designations)

Supplement No.	Rate schedule FERC No.	Supersedes supplement No.	Other party
	Phase II(A) *Full Requirement*		
5	[illegible]	4	Bailey County Electric Cooperative, Inc.
5	97	4	Central Valley Electric Cooperative, Inc.
5	[illegible]	4	Deaf Smith Electric Cooperative, Inc.
5	[illegible]	4	Farmers Electric Cooperative, Inc.
5	00	4	Greenbelt Electric Cooperative, Inc.
5	91	4	Lamb County Electric Cooperative, Inc.
5	103	4	Lea County Electric Cooperative, Inc.
5	[illegible]	4	Lighthouse Electric Cooperative, Inc.
5	[illegible]	4	Lyntegar Electric Cooperative, Inc.
5	105	4	Midwest Electric Cooperative, Inc.
5	[illegible]	4	North Plains Electric Cooperative, Inc.
5	[illegible]	4	Norfolk Electric Cooperative, Inc.
5	[illegible]	4	Rita Blanca Electric Cooperative, Inc.
5	95	4	Roosevelt County Electric Cooperative, Inc.
5	96	4	South Plains Electric Cooperative, Inc.
5	97	4	Swisher Electric Cooperative, Inc.
11	75	10	Texas-New Mexico Power Company
5	[illegible]	4	Tri-County Electric Cooperative, Inc.
	Partial Requirements		
10	[illegible]	9	Brownfield, Texas.
10	83	9	Floydada, Texas.
8	[illegible]	7	Lubbock Power and Light Company.
8	101	7	Tulia, Texas.
5	107	4	Texas-New Mexico Power Company.

[FR Doc. 85-20417 Filed 8-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-634-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; J.A. Trent Associates, Inc., et al.

August 19, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. J.A. Trent & Associates, Inc.

[Docket No. QF85-634-000]

On August 1, 1985, J.A. Trent Associates, Inc. (Applicant), of 1014 Broadway, Suite A, El Cajon, California 92021 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located at 10501 Wilshire Boulevard, Los Angeles, California 90025 and consists, in part, of a Waukesha 2476-GU reciprocating engine, a Kato generator, and heat recovery equipment. The electric power production capacity of the facility is 200 kW. The primary source of energy is natural gas.

2. The Episcopal Home

[Docket No. QF85-629-000]

On August 1, 1985, The Episcopal Home (Applicant), of 1428 South Marengo Avenue, Alhambra, California 91803, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located at 1428 South Marengo Avenue, Alhambra, California 91803 and consists, in part, of a Waukesha 2776-GU reciprocating Engine, a Kato generator and heat recovery equipment. The electric power production capacity of the facility is 200 kW. The primary source of energy is natural gas.

3. Bonneville-West Corporation

[Docket No. QF85-635-000]

On August 1, 1985, Bonneville-West Corporation (Applicant), of 200 East South Temple, Suite 300, Salt Lake City, Utah 84111, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located at 2035 West Adams Boulevard, Los Angeles, California 90018 and consists, in part, of a Waukesha 2476-GU reciprocating engine, a Kato generator, and heat recovery equipment. The electric production capacity is 200 kW. The primary source of energy is natural gas.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20420 Filed 8-26-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Applications for Exception; Cases Filed; Week of August 2 Through August 9, 1985

During the Week of August 2 through August 9, 1985, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals, of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 19, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 2 through August 9, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 5, 1985	Canal Refining Company, Washington, DC	HRD-0290, HRH-0290	Motion for discovery & request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Canal Refining Company in response to the Proposed Remedial Order (Case No. HRO-0290) issued to the firm.
Do.	Eastern Oil Company, Washington, DC	HEA-0013	Appeal of an order for disposition. If granted: The July 22, 1985, Order for Disposition of Refunds issued to eastern Oil Company by the Economic Regulatory Administration would be rescinded.
Do.	Economic Regulatory Administration, Washington, DC	HRR-0110	Request for modification/rescission. If granted: The February 20, 1980 Decision and Order (Case No. BRW-0003 *et al.*) finalizing Remedial Orders issued to five gasoline retailers would be modified.
Do.	Murphy Oil Corporation, Washington, DC	HRZ-0266	Interlocutory order. If granted: The March 20, 1985 Economic Regulatory Administration Motion to Dismiss Delay Defenses (Case No. HRZ-0265) would be stricken from the record in the Murphy Oil Corporation Proposed Order of Disallowance proceeding (Case No. BRO-0984).
Aug. 6, 1985	Larco/U.S. Oil Company, Washington, DC	HFD-0286	Motion for discovery. If granted: Discovery would be granted to U.S. Oil Company in connection with the Little America Refining Company Subpart V refund proceeding (Case No. HFF-0215).
Do	Shell Oil Company, Washington, DC	HRD-288	Motion for discovery. If granted: Discovery would be granted to Shell Oil Company in connection with the Statement of Objections submitted in response to the February 15, 1985, Proposed Remedial Order (Case No. HRO-0278) issued to the firm.
Aug. 8, 1985	Economic Regulatory Administration, Washington, DC	HRR-0111	Request for modification/rescission. If granted: The July 25, 1985 Remedial Order issued to Doma Corporation (Case No. HRO-0209) would be modified in certain respects.
Aug. 9, 1985	John H. Hnatio, Mr. Airy, MD	HFA-0304	Appeal of an information request denial. If granted: The July 18, 1985, Freedom of Information Request Denial issued by the Freedom of Information & Privacy Acts Activities Branch would be rescinded and John H. Hnatio would receive information within the DOE regarding himself.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 2 through August 9, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Do	Peter Almquist, Cambridge, MA	HEA-0003	Appeal of an information request denial. If granted: The Freedom of Information Request Denial issued by the Office of Classification would be rescinded and Peter Almquist would receive access to material regarding Soviet defense management.

REFUND APPLICATION RECEIVED

[Week of August 2 to August 9, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Feb. 12, 1985	Union Texas/Read Distributing Co.	RF140-28.
May 2, 1985	Union Texas/Campbell Oil Company.	RF140-27
May 3, 1985	Union Texas//Fuller Oil Company.	RF140-29.
May 6, 1985	Union Texas/Empire, Inc.	RF140-31.
July 22, 1985	Ideal Gas/Economy Gas Co., Inc.	RF185-1.
July 29, 1985	Union Texas/Graf Petroleum.	RF140-31.
July 30, 1985	Amoco/Nat'l Helium, Perry Gas, Pennzoil/Indiana	RQ-21-221, RQ3-333, RQ183-333, RQ10-334.
Do	Palo Pinto/Indiana	RM5-8.
Aug. 5, 1985	Field/Farr Better Service	RF173-4.
Do	F.O. Fletcher/Armstrong Fuel	RF172-8.
Do	St. James/Hopedale Coal & Ice Co.	RF180-14.
Do	Nelson/Downing Oil Company.	RF141-13.
Do	Aminoil/Poe's Rural & City Gas Co. Inc.	RF139-79.
Do	Armour/E-Z Serve, Inc.	RF187-2.
Do	Gulf/Beacon Automatic Heating Service.	RF40-3040.
Do	Cibro/Vijax Fuel Corporation.	RF184-1.
Do	Thompson/Bridge's Shell	RF185-1.
Aug. 6, 1985	Aminoil/Knudsen Oil & Feed.	RF139-80.
Aug. 7, 1985	Armour/Southland Corporation.	RF187-3.
Do	Aminoil/Kyger, Inc.	RF139-81.
Aug. 8, 1985	St. James/Atlantic Coal & Oil Co.	RF180-15.
Do	Boswell/Andy Suchko Oil Company.	RF179-3.
Do	Aminoil/Charlie's Gas Service, Inc.	RF139-84.
Do	Aminoil/National Gas Distributors.	RF139-83.
Do	Aminoil/Commonwealth Petroleum Co.	RF139-82.
Do	Aminoil/Price Brothers Gas Co., Inc.	RF139-85.
Aug. 9, 1985	Arida Chemical/Saunders Leasing Systems.	RF153-18.
Do	F.O. Fletcher/Gene Peters	RF172-9.
Do	APCO/Wood Oil Company	RF83-148.
Do	F.O. Fletcher/Jackson Oil, Inc.	RF172-10.
Do	Champlain/Clarence Kennedy.	RF187-1.

[FR Doc. 85-20465 Filed 8-26-85; 8:45]

BILLING CODE 6450-01-M

Objections to Proposed Remedial Orders Filed; Week of August 5 Through August 9, 1985

During the week of August 5 through August 9, 1985, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 16, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Oklahoma Refining Company, Oklahoma City, OK; HRO-0302, Crude oil

On August 6, 1985, Oklahoma Refining Company, P.O. Box 26386, Oklahoma City, Oklahoma 73126 filed a Notice of Objection to a Proposed Remedial Order which the DOE Washington, D.C. Office of Enforcement issued to the firm on June 25, 1985. In the PRO the Office of Enforcement found that during February through December 1980, the firm failed to fully satisfy its Entitlements purchase obligations, in violation of 10 CFR 211.67.

According to the PRO the Entitlements violations resulted in $12,360,914 of overcharges plus interest.

Tonkawa Refining Company, Oklahoma City, OK; HRO-0301

On August 5, 1985, Tonkawa Refining Company P.O. Box 26490, Oklahoma City, Oklahoma 73126 filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to the firm on May 31, 1985.

In the PRO the Dallas District found that during the period January to December 1980, Tonkawa failed to fully satisfy its Entitlements purchased obligations, in violation of 10 CFR 211.67.

According to the PRO the Entitlements violations resulted in $18,634,038 of overcharges plus interest.

[FR Doc. 85-20466 Filed 8-26-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $38,000 obtained as a result of a consent order which the DOE entered into with Midway Oil Company, a reseller-retailer of petroleum products located in Rock Island, Illinois. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 30585. All comments should conspicuously display a reference to case number HEF-0129.

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $38,000 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Midway Oil Company. The funds were provided to the DOE by Midway to

settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period November 1, 1973, through October 31, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 10 first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Midway or to submit a statement verifying that it purchases motor gasoline from Midway and is willing to rely on the date in the audit files. Certain firms will also be required to make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW, Washington, DC 20585.

Dated: August 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 15, 1985.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Midway Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF–0129.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Midway Oil Company (Midway).

I. Background

Midway is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Rock Island, Illinois. Based on an audit of Midway's records, ERA issued a Proposed Remedial Order (PRO) to the firm which charged that Midway had violated the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The PRO alleged that between November 1, 1973, and October 31, 1974, Midway committed pricing violations amounting to $108,294.32 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Midway and the DOE regarding the firm's sales of motor gasoline during the period covered by the PRO, Midway and the DOE entered into a consent order on August 31, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Midway does not admit that it violated the regulations.

The consent order required Midway to deposit $38,000 into an interest-bearing escrow account for ultimate distribution by the DOE. Midway remitted this sum on June 23, 1981, in advance of the effective date of the consent order.[1] This decision concerns the distribution of the funds in the escrow account, including accrued interest.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of motor gasoline who may have been injured by Midway's pricing practices between November 1, 1973 and October 31, 1974. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A Refunds to Identified Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where many of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of Midway, 10 first purchasers were identified as having allegedly been overcharged. ERA also alleged overcharges to customers who were not identified. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/ City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution

[1] As of July 31, 1985, the escrow account contained $58,327.28 inclusing accrued interest.

plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit, other customers who can show injury, and downstream customers of either type of firm. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, with the share of the settlement allotted to each by ERA, are listed in the Appendix.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit file provides, we also propose the adoption of presumptions to be used in determining the level of a purchaser's injury. We propose to use these two methods to distribute the funds in the escrow account. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking relatively small refunds were injured by the pricing practices of the company from which they purchased products. In addition, we are making a proposed finding that end users suffered injury. Also, we plan to use a volumetric presumption for certain claimants.

There are a variety of reasons for adopting the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Other refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach.

Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.; Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record indicates that nine of the identified firms are eligible for small refunds. The one firm whose potential refund falls above the threshold purchased 20 percent more fuel than the second-largest firm and over twice as much fuel as any other identified purchaser.

A reseller or retailer which claims a refund in excess of $5,000 will be required to provide detailed documentation of its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[3]

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) *(PVM); see also Texas Oil & Gas Corp.*, 12 DOE at 88,208, and cases cited therein. We therefore propose that end users of motor gasoline sold by Midway be required to document only their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Midway's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their applications a full

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[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we propose to distribute a portion of the escrow funds to those firms listed in the Appendix.[3] Refunds will be authorized for those firms in the amounts indicated, plus accrued interest to the date they receive refunds, provided they make any necessary showing of injury.[4] However, no addresses are available for four of those firms and we therefore are unable to contact these firms directly. In an attempt to locate these firms, we will provide Midway and various petroleum dealers associations with copies of this Proposed Decision and will publish a notice in the **Federal Register**. Information regarding the identity and location of each of these firms will be accepted for a period of 90 days following the date of publication of notice in the **Federal Register** of a final Decision and Order in this proceeding.[5]

B. Refunds to Other Purchasers

There were also some first purchasers who were not identified by the ERA audit. These firms, and downstream purchasers, may have been injured as a result of Midway's pricing practices. If so, they would be entitled to a portion of the consent order funds provided by Midway. To help potential claimants not identified by ERA decide whether to apply for a refund, we propose to use a volumetric presumption. Under this procedure, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of fuel purchased by the claimant.[6] The volumetric refund amount is the average per gallon refund, and in this case equals .001866 per gallon.[7] Potential applicants who were not identified by the ERA audit may use this figure to estimate the refunds to which they may be entitled. The volumetric presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Standard Oil Co. (Indiana)/Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). The presumption and finding noted in Section A above apply also to applications submitted by claimants not identified by ERA. If valid claims exceed the funds available in the escrow account, all refunds will be reduced by a pro rata amount. Actual refunds will be determined after analyzing all appropriate claims.

C. Applications for Refund

In order to receive a refund, each claimant identified by ERA will be required to submit either a schedule of its monthly purchases of motor gasoline from Midway or a statement verifying that it purchased motor gasoline from Midway and is willing to rely on the data in the audit file. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audits underlying these proceedings. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of motor gasoline from Midway. If they claim injury at a level greater than the volumetric level, they must document this injury. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, section 210, actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

D. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any funds remaining in the escrow account until the initial stage of the refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Midway Oil Company pursuant to the consent order executed on August 31, 1981, will be distributed in accordance with the foregoing decision.

APPENDIX—MIDWAY OIL COMPANY

First purchaser	Share of settlement[1]
Mr. Doyle Rinehard, Credit Island Zephyr, 2080 West River Drive, Davenport, Iowa 52802	$1,256.57
Mr. Don Giammetta, Fred's 66 Wrecker Service, 7627 NW Boulevard, Davenport, Iowa 52804	843.56
Hamer Alignment, 6 E. Benton Street, Iowa City, Iowa 52240	[illegible]
Jim's 67, 1131 Feno Drive, Bettendorf, Iowa 52722	743.56
Jim's Zephyr	1,270.57
John's Service	[illegible]
Mr. Howard Manery, Manery's North Star, 819 Bruce Avenue, Milan, Illinois 61264	[illegible]
Mr. Charles Sonneville, Sonneville Service, 1419 Lincoln Road, Bettendorf, Iowa 52722	402.48
Washam's Zephyr	[illegible]
Young's 44th Street Zephyr	[illegible]

[1] Not including accrued interest.

[FR Doc. 85-20467 Filed 8-26-85; 8:45 am]

BILLING CODE 6450-01-M

[3] Purchasers identified in the ERA audit as having allegedly been overcharged may submit information to show that they should receive refunds larger than those indicated.

[4] The share of the Midway escrow fund allocated to each firm listed in the Appendix represents 35 percent of the amount each was allegedly overcharged. This allocation is consistent with the terms of the consent order, which settled for 35 percent of the total amount of alleged overcharges.

[5] If we are unable to locate a particular firm listed in the Appendix, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

[6] A volumetric approach is particularly appropriate in special refund proceedings in which the DOE is unable to identify readily persons who may be eligible to receive refunds. It has proved to be an administratively efficient method for determining what portion of the available settlement funds should be awarded to each successful claimant. It also serves as a useful approximation of injury for those claimants who are unable to quantify their injury.

[7] This figure is obtained by dividing the $21,240.19 not allotted to identified purchasers by the 11,383,163 gallons of motor gasoline sold to purchasers not identified by ERA.

Western Area Power Administration

Colorado River Storage Project Power Resources; Availability of Report to Congress

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of Availability of Report to Congress on Colorado River Storage Project Power Resources and the Financial Support of Authorized Projects in the Upper Colorado River Basin States.

SUMMARY: Title I, section 108 of the Hoover Power Plant of 1984 (Pub. L. 98–381) requires within one year of enactment of the act, the Secretary of Energy, acting through the Western Area Power Administration (Western), report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, on all Colorado River Storage Project (CRSP) power resources which may be used to financially support the development of authorized projects in the States of the Upper Division of the Colorado River: Colorado, New Mexico, Utah, and Wyoming.

Accordingly, a report was transmitted to the Committees by the Secretary of Energy on August 14, 1985. The report, which contains information gathered by Western in cooperation with the Bureau of Reclamation, identifies the available Colorado River Storage Project power resources and authorized projects, explores methods for developing additional revenues, and identifies methods of obtaining capital for construction of authorized projects.

The report is available upon request. Interested parties may contact Mr. Gordon Freeny, Director, Division of Power Resources, at the address shown below.

ADDRESS: Inquiries shall be directed to: Mr. Gordon B. Freeny, Code A6300, Director, Division of Power Resources, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1606.

Issued in Washington, DC, August 20, 1985.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaision.

[FR Doc. 85–20472 Filed 8–26–85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities Under OMB Review

August 21, 1985.

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Peacock, FCC, (202) 632–7513.

OMB No.: 3060–0020
Title: Application for Ground Station Authorization in the Aviation Services
Form No.: FCC 406

The approval on FCC 406 has been extended through 8/31/88. The May 1984 edition with an OMB expiration date of 9/30/85 will remain in use until updated forms are available.

OMB No.: 3060–0054
Title: Application for Exemption from Ship Radio Station Requirements
Form No.: FCC 820

The approval on FCC 820 has been extended through 8–31–88. The October 1982 edition with an OMB expiration date of 9/30/85 will remain in use until updated forms are available.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–20383 Filed 8–26–85; 8:45 am]

BILLING CODE 6712-01-M

Bott Broadcasting Co., et al.; Hearing Designation Order

In the matter of applications of: Joanna Glinter, Smithville, Missouri, Req: 760 kHz, 0.5 kW, D, MM Docket No. 85–246, File No. BP–841023AB; Bott Broadcasting Company, Overland Park, Kansas, Req: 760 kHz, 1 kW, DA–D, File No. BP–841231AJ; Nadine Marie Bohan, Smithville, Missouri, Req: 760 kHz, 0.5 kW, D, File No. BP–841231AL. For Construction Permit.

Adopted: August 9, 1985.
Released: August 19, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for new AM broadcast stations.

2. *The Joanna Glinter proposal.* The Commission has not yet received Federal Aviation Administration clearance for the antenna tower proposed by Ms. Glinter. Hence, an appropriate issue will be specified.

3. Additionally, the environmental narrative statement submitted by Mr. Glinter, as required by § 1.1311 of the Commission's Rules, fails to state the zoning classification of the proposed site or whether the proposal is a source of local controversy on environemental grounds in the community.

4. Consequently, the applicant will be required to file within 30 days of the release of this Order an amended environemntal narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

5. *The Bott Broadcasting Company proposal.* To avoid violation of our multiple ownership rule (§ 73.3555), the applicant has agreed to divest ownership of station KCCV, Independence, Missouri, should the instant application be granted. An appropriate condition will be specified.

6. *The Nadine Marie Bohan proposal.* The applicant indicates that photographs of the proposed transmitter site will be furnished. We have no evidence that this amendment has been filed, however. To remedy this deficiency, Ms. Bohan will be required to file an appropriate amendment with the presiding Administrative Law Judge.

7. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As one of the proposals is for a different community, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

8. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the

height and location of the antenna tower proposed by Joanna Glinter.

2. If a final environmental impact statement is issued with respect to Joanna Glinter which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1.1319 of the Commission's Rules, and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

3. To determine: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio services.

4. To determine, in the event it be concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would on a comparative basis best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that the Federal Aviation Administration is made a party to the proceeding.

10. It is further ordered, that § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Joanna Glinter shall submit the amended environmental narrative required by § 1.1311 of the Rules to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

11. It is further ordered, that in the event of a grant of the Bott Broadcasting Company application, the construction permit shall be conditioned as follows:

Prior to commencement of operation of the station authorized herein, permittee shall certify to the Commission that it has divested all interests in station KCCV, Independence, Missouri.

12. It is further ordered, that Nadine Marie Bohan file photographs of the proposed transmitter site with the presiding Administrative Law Judge within 30 days of the release of this Order.

13. It is further ordered, that in addition to the copy served on the Chief, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW, Washington, DC 20554.

14. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

15. It is further ordered, that pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85–20384 Filed 8–26–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Bank of Virginia Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) or the board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank of Virginia Company*, Richmond, Virginia; to acquire 100 percent of the voting shares of Union Trust Bancorp, Baltimore, Maryland.

Bank of Virginia Company has also applied to acquire Landmark Financial Services, Inc., Silver Spring, Maryland, thereby engaging in the activity of making installment loans to individuals for personal, family or household purposes; purchasing sales finance contracts executed in connection with the sale of personal, family or household goods or services; acting as agent or underwriter in the sale of credit life and credit accident and health insurance directly related to its making mortgage loans secured in whole or in part by mortgages or other liens on real estate; and acting as agent in the sale of insruance limited to assuring repayment of the outstanding balance on an extension of credit by a finance company in the event of loss or damage to any property used as collateral for such extension of credit, and provided such extension of credit does not exceed the limits set forth in section 4(c)(8)(B) of the Act.

Board of Governors of the Federal Reserve System, August 21, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–20387 Filed 8–26–85; 8:45 am]

BILLING CODE 6210–01–M

Citicorp, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* directly or indirectly through any of its existing subsidiaries or any subsidiaries yet to be formed, in the provision to others of data processing and data transmission services; facilities (including data processing and data transmission hardware, software, documentation or operating personnel); data bases; or access to such services, facilities; or data bases by any technological means.

2. *Citicorp*, New York, New York; to engage *de novo* directly or indirectly through any of its existing subsidiaries or any subsidiaries yet to be formed, in the provision of management consulting advice to nonaffiliated bank and nonbank depository institutions including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks and industrial loan companies.

Board of Governors of the Federal Reserve System, August 21, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20388 Filed 8-26-85; 8:45 am]

BILLING CODE 6210-01-M

MCorp and MCorp Financial, Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85-16571), published at page 28472 of the issue for Friday, July 12, 1985. MCorp, Dallas, Texas and MCorp Financial, Inc., Wilmington, Delaware propose to acquire the network consultants component of The General Electric Information Services Company Division of General Electric Company.

Board of Governors of the Federal Reserve System, August 21, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20389 Filed 8-26-85; 8:45 am]

BILLING CODE 6210-01-M

New Bedford Community Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 18, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *New Bedfore Community Bancorp*, New Bedford, Massachusetts; to become a bank holding company by acquiring at least 62.8 percent of the voting shares of Luzo Bank and Trust Company, New Bedford, Massachusetts. Comments on this application must be received not later than September 15, 1985.

B. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Commercial Bancshares, Inc.*, Jersey City, New Jersey; to acquire 100 percent of the voting shares of Edgewater National Bank, Englewood Cliffs, New Jersey. Comments on this application must be received not later than September 15, 1985.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South Lasalle Stree, Chicago, Illinois [illegible]

1. *HCB Financial Corp.*, Hastings, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of the Hastings City Bank, Hastings, Michigan.

2. *First Geneva Banqueshares, Inc.*, Geneva, Illinois; to become a bank holding company by acquiring at least 66.66 percent of the voting shares of the First National Bank of Geneva, Geneva, Illinois.

3. *Windsor Bancshares, Inc.*, Windsor, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Windsor State Bank, Windsor, Illinois.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166;

1. *Kennett Bancshares. Inc.*, Kennett, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Kennett National Bank, Kennett, Missouri.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American Bancorp of Edmond, Inc.*, Edmond, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of American Bank and Trust, Edmond, Oklahoma.

Comments on this application must be received not later than September 19, 1985.

2. *Commercial Landmark Corporation,* Muskogee, Oklahoma; to acquire 89.1 percent of the voting shares of Sequoyah State Bank of Muldrow, Inc., Muldrow, Oklahoma. Comments on this application must be received not later than September 19, 1985.

3. *Firstbank Holding Company of Colorado,* Denver, Colorado; to acquire 100 percent of the voting shares of Firstbank at 88th/Wadsworth, N.A., Westminster, Colorado (in organization), and Firstbank of Cherry Creek, N.A., Denver, Colorado (in organization). Comments on this application must be received not later than September 19, 1985.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Liberty Bay Financial Corporation,* Poulsbo, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of North Sound Bank, Poulsbo, Washington (formerly Bank of Poulsbo).

Board of Governors of the Federal Reserve System, August 21, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30390 Filed 8-26-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Telecommunications Standards; Coding and Modulation Requirements for 4,800 Bit/second Modems; Proposed Revision

AGENCY: Office of Information Resources Managment, General Services Administration.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on a Federal Telecommunications Standard (FED-STD) proposed for revision. FED-STD 1006, "Telecommunications: Coding and Modulation Requirements for 4,800 Bit/second Modems" will carry the new designation FED-STD 1006A upon approval of the revision.

DATE: Comments are due November 25, 1985.

ADDRESS: Send comments to National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunications standards for NCS interoperability and the computercommunication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Request for copies of the December 21, 1984 draft of FED-STD 1006A should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dated: August 1, 1985.

Francis A. McDonough,

Acting Assistant Administrator, Office of Information Resources Management.

[FR Doc. 85-20400 Filed 8-26-85; 8:45 am]

BILLING CODE 6820-25-M

Agency Information Collection Under Review by the Office of Management and Budget; Termination Liability Schedule—GSAR PT 549

AGENCY: Office of Policy and Management Systems, GSA.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to review an existing collection in use without a control number.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of Acquisition Policy (202-523-4754).

SUPPLEMENTARY INFORMATION:

a. *Purpose.* The inclusion of a termination liability provision in telecommunications contracts helps to ensure better rates and lowers Government costs.

b. *Annual reporting burden.* Respondents and responses 120, hours 300.

c. *Copies of proposal.* Copies may be obtained from the Directives and Reports Management Branch (ATRAI), Room 3013, GS Building, Washington, DC 20405 (202-566-0666).

Dated: August 20, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85-20450 Filed 8-26-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory bodies scheduled to assemble during the month of September 1985.

National Advisory Mental Health Council

September 9-10; 9:30 a.m.
Parklawn Building
Conference Rooms G & H
5600 Fishers Lane
Rockville, Maryland 20857
Open—September 9; 9:30 a.m.-12 noon,
September 10; 9:30 a.m.-2:30 p.m.
Closed—Otherwise
Contact: Helen W. Garrett
Parklawn Building, Room 17C-26
Rockville, Maryland 20857, (301) 443-4333

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Agenda: From 9:30 a.m.-12:00 noon, September 9, the meeting will be open for discussion of NIMH policy issues and will include current administrative, legislative, and program developments.

On September 10, the meeting will be open for a discussion of research on schizophrenia. Attendance by the public for the open session will be limited to space available. Otherwise, the Council will conduct a final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Mental Health Small Grant Review Committee

September 12–14; 1:30 p.m.
The Canterbury Hotel
1733 N Street, NW.
Washington, D.C. 20036
Open—September 12; 1:30–2:00 p.m.,
September 14; 9:30–10:30 a.m.
Closed—Otherwise
Contact: Barbara McCracken
Parklawn Building, Room 9–95
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–4843

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

Agenda: From 1:30–2:00 p.m., September 12, and from 9:30–10:30 a.m., September 14, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

National Advisory Council on Drug Abuse

September 17–18; 9:00 a.m.
National Institutes of Health
9000 Rockville Pike
Building 31C, Conference Room 8
Bethesda, Maryland 20205
Open—September 17; 9:00 a.m.–12 noon.
September 18; 9:00 a.m.–5:00 p.m.
Closed—Otherwise
Contact: Sheila Gardner
Parklawn Building, Room 10A–37
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–6720

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the effectient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Agenda: From 9:00 a.m-12 noon, September 17, and from 9:00 a.m.-5:00 p.m., September 18, the meeting will be open for discussion of administrative announcements, program development and policy issues. Otherwise, the Council will be performing final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Apendix I).

National Advisory Council on Alcohol Abuse and Alcoholism

September 19–20; 10:30 a.m.
North Auditorum
Health and Human Services Building
330 Independence Avenue, SW.
Washington, D.C. 20201
Open—September 19; 10:30–3:30 p.m.
Closed—Otherwise
Contact: James Vaughan
Parklawn Building, Room 16C–20
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–4375

Purpose: The Council advises the Secretary, Department of Health and Human Services, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: On September 19, 10:30 a.m.-3:30 p.m., the open session will be devoted to general business of the Council and a discussion of current budget, legislative and program activities. From 3:30 p.m.-adjournment, the closed session will be devoted to a discussion of the Board of Scientific Counselors' report on the intramural research program. On September 20, from 9:00 a.m.-adjournment, the session will be closed and the Council will conduct a final review of grant applications for Federal assistance and this session will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contract listed above. Summaries of the meetings and roster of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375, NIDA: Ms. Sheila Gradner, Executive Secretary, National Advisory Council on Drug Abuse, Room 10A–37, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6720: NIMH: Ms. Helen Garrett, Committee Management Officer, Room 17C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: August 21, 1985.

Robin I. Kawazoe,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–20424 Filed 8–26–85; 8:45 am]
BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 78P–0419 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Carter for Devices and Radiological Health (CDRH) for 10 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide entertainment of general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm.

4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 10 organizations listed in the table below a variance from the requirements of the performance standard for laser products (21 CFR 1040.11(c)).

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dats specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification lable required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the table below, and the effective date of the variance also appearing in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date, termination date
78P–0419 (Amendment)	Blue Lightning Laser Light Show, 2300 St. Francis Drive, Palo Alto, CA 94303.	Laser light shows assembled and produced by Blue Lightning Laser Light Show incorporating Blue Lightning laser projectors Models HS–1, [illegible]PF–1, CH–1, S.S. 4000, S.S. 4001, and/or S.S. 4000a.	May 30, 1985 to Dec. 18, 1986.
79P–0055 (Amendment)	Audio-Visual Imagineering, Inc., 7953 Twist Lane, Springfield, VA 22153.	Audio-Visual Imagineering AVI Laser Projection System Model Series S or B and shows produced, assembled, and operated by Audio-Visual Imagineering which incorporate these laser projection systems.	May 20, 1985 to May 19, 1987.
83P–0078 (Amendment and extension).	Lazarus Productions, 2821 Ninth Street, Berkeley, CA 94710.	Laser light show incorporating the Macron Beam I Laser Projector assembled and produced by Lazarus Productions.	June 12, 1985 to Mar. 17, 1987.
84V–0159	Ad Laser, Inc., 310 Via Vera Cruz, San Marcos, CA [illegible]	Model ALS–5100 Graphic Work Station incorporating Class IIIb helium-neon or argon lasers.	May 20, 1985 to May 20, 1987.
85V–0003	Rockne Krebs, P.O. Box 658, 1428 U Street NW., Washington, DC 20009.	"Suites of Light—Laser Dance" laser light show and the incorporated Class IV laser projector assembled and produced by Rockne Krebs in collaboration with other artists.	June 4, 1985 to June 4, 1987.
85V–0079	Noble Planetarium, Fort Worth Museum of Science and History, 1501 Montgomery Street, Fort Worth, TX 76107.	Fort Worth Museum of Science and History "Laser Magic" laser light show using the Projected Imagery Model MC–3 laser light show projector.	May 9, 1985 to May [illegible], 1986.
85V–0189	Computer Graphics, 1331 East McDowell Road, Phoenix, AZ 85006.	Laser light shows and projection systems assembled and produced by Computer Graphics incorporating Laser Media's Stingray projector or Laser Systems Development Corporation's X–Y scanners.	June 24, 1985 to June 24, 1987.
85V–0239	Laser Dreams, 7667 Bodega Avenue, Sebastopol, CA 95472.	Laser Dreams laser light shows incorporating the Laser Dream Machine Model 1 laser projector with argon, helium-neon, and/or helium-cadmium lasers.	May 30, 1985 to May 30, 1987.
85V–0284	Starlasers, 5021 Balfour Lane, Woodland Hills, CA 91364.	Class IV Starlight Series One laser projectors and laser light shows assembled and produced by Starlasers incorporating these projectors.	June 20, 1985 to June 20, 1987.
85V–0287	CENTRAK Corp., Park Place, Suite 319, Hudson, OH 44236.	Laser light shows and the incorporated Class IIIb or Class IV argon, laypton, and/or helium-neon laser projectors manufactured, assembled, and produced by CENTRAK Corp.	June 14, 1985 to June 14, 1987.

In accordance with §1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: August 20, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–20377 Filed 8–26–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket Nos. 80P–0137 et al.]

Availability of Approved Variances for Sunlamp Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for sunlamp products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for certain specified sunlamps and sunlamp products manufactured or imported by six organizations. The intended use of the products is to produce ultraviolet radiation for tanning the skin.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted each of the six organizations listed in the table below a variance from certain requirements of the performance standard for sunlamp products (21 CFR 1040.20). Approval has been granted for the listed products to vary as specified from that portion of

§ 1040.20(c)(2)(ii) requiring the maximum timer interval for a sunlamp product to be 10 minutes or less. All other provisions of § 1040.20 remain applicable to the listed sunlamp products and ultraviolet lamps.

Each of the variances for the nominally ultraviolet-A (UVA) sunlamp products permits the listed manufacturer or importer to introduce into commerce sunlamp products that have less than 5 percent of their ultraviolet radiation at wavelengths shorter than 320 nanometers. CDRH's experience with this kind of sunlamp product indicates that the relatively lengthy exposure recommended by the manufacturer does not result in severe, acute skin burns or corneal injury. Therefore, the time interval requirement of § 1040.20(c)(2)(ii) is not appropriate for these UVA products. Even though the skin hazard is reduced, there is still a need to wear protective eyewear to eliminate the unnecessary risk of harm to chemically sensitized lenses, of cornea damage, and of long-term development of lens opacities.

CDRH has determined that suitable or alternate means of radiation protection are provided by (1) constraints on the physical and optical design of the products and (2) warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, CDRH approved the requested variances by a letter to each manufacturer or importer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer or importer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Sunlamp product	Effective date, termination date
80P-0137 (Amendment)	Sun Industries, Inc., 5700 Krueger Drive, P.O. Box 2026, Jonesboro, AR 72402.	UVA sunlamp products manufactured or imported by Sun Industries, Inc	May 8, 1985 to Mar. 17, 1986.
85V-0190	Oakport International, Inc., 1990 Creekside Lane, P.O. Box 5372, Boise, ID 83705.	UVA sunlamp products manufactured by Van Esch Van Metaal BV and imported by Oakport International, Inc.	June 20, 1985 to June 20, 1990.
85V-0143	Trade Services International, Inc., 1155 West 4720 South, Salt Lake City, UT 84104.	UVA sunlamp products manufactured by Trade Services International, Inc.	June 11, 1985 to June 11, 1990.
85V-0203	Interlab (Electromechanical), 24 Helenslea Avenue, London, NW11 8 ND, England.	UVA sunlamp products manufactured by Portasun Limited	June 21, 1985 to June 21, 1990.
85V-0229	Electrolux—Kern GmbH, c/o Domestic Sales Corp., 2320 Industrial Parkway, P.O. Box 490, Elkhart, IN 46515.	UVA sunlamp products manufactured by Electrolux—Kern GmbH	June 26, 1985 to June 26, 1990.
85V-0251	North American Electronics, Inc., 5475 Crestview, Memphis, Tennessee 38134.	UVA sunlamp products manufactured by North American Electronics, Inc.	June 21, 1985 to June 21, 1990.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: August 20, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-20373 Filed 8-26-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85C-0327]

Ethicon, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ethicon, Inc., has filed a petition proposing that the color additive regulations be amended by increasing the organic chlorine content specification for the color additive [phthalocyaninato(2–)] copper used to color sutures and contact lenses.

FOR FURTHER INFORMATION CONTACT: Lester Borodinsky, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402–403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 5C0192) has been filed by Ethicon, Inc., Somerville, NJ 08876–0151, proposing that § 74.3045 *[Phthalocyaninato(2–)] copper* (21 CFR 74.3045) be amended by increasing the organic chlorine content specification for the color additive [phthalocyaninato (2–)] copper used to color sutures and contact lenses.

The agency has determined under 21 CFR 25.24(a)(9) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assesment nor an environmental impact statement is required.

Dated: August 20, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-20375 Filed 8-26-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85G-0335]

Kyowa Hakko Kogyo Co., Ltd.; Filing of Petition for Affirmation for GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 5G0301) has been filed on behalf of Kyowa Hakko Kogyo Co., Ltd., Tokyo, Japan, proposing that enzyme-modified lecithin is generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by October 28, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9403.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348 (b)(5))) and the regulations for affirmation of GRAS status in §170.35 (21 CFR 170.35), notice is given that a petition (GRASP 5G0301) has been filed on behalf of Kyowa Hakko Kogyo Co., Ltd., Tokyo, Japan, proposing that enzyme-modified lecithin is GRAS as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in §170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Interested persons may, on or before October 28, 1985, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether this substance is or is not GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 15, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-20372 Filed 8-26-85; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Detroit District Office, chaired by Alan L. Hoeting, District Director. The topic to be discussed is Food Quackery.

Date: Wednesday, September 4, 1985, 9:30 a.m.

Address: George Potter Larrick Bldg., Conference Room, 1506 East Jefferson St., Detroit, MI 48207.

For further information contact: Evelyn DeNike, Consumer Affairs Officer, Food and Drug Administration, 1506 East Jefferson St., Detroit, MI 48207, 313-226-6260.

St. Louis Station, chaired by Raymond K. Hedblad, Station Chief. The topic to be discussed is Sulfites.

Date: Thursday, September 19, 1985, 1:30 p.m. to 3:30 p.m.

Address: FDA Conference Room, 808 North Collins St., Laclede's Landing, St. Louis, MO 63102.

For further information contact: Mary-Margaret Richardson, Consumer Affairs Officer, Food and Drug Administration, 808 North Collins St., St. Louis, MO 63102, 314-425-5021.

Los Angeles District Office, chaired by Abraham I. Kleks, District Director. The topics to be discussed are: Health Fraud, An Update; and In Vitro Diagnostics.

Date: Thursday, September 26, 1985, 10 a.m. to 12 m.

Address: Food and Drug Administration, District Office, 1521 West Pico Blvd., Los Angeles, CA 90015.

For further information contact: Gordon L. Scott, Consumer Affairs Officer, Food and Drug Administration, 1521 West Pico Blvd., Los Angeles, CA 90015, 213-894-4395.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 20, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-20378 Filed 8-26-85; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 47 FR 34643, August 10, 1982) is amended to place the Food and Drug Administration's (FDA) public education activities in a separate organization and to increase the visibility of the component performing public affairs functions. FDA proposes to establish an Office of Public Affairs (OPA). This Office will be created by transferring functions from the current Office of Legislation and Information (OLI) to the New OPA and retitling OLI as the Office of Legislative Affairs with the remaining OLI functions.

Section HF-B, Organization and Functions is amended as follows:

1. Delete paragraph (d), *Office of Legislation and Information (HFAD)* and insert new paragraph (d), *Office of Legislative Affairs (HFAD)* reading as follows:

(d) *Office of Legislative Affairs (HFAD).* Advises and assists the Commissioner and other key officials concerning legislative needs and pending legislation and oversight activities which affect FDA.

Serves as the focal point for overall legislative liaison activities within FDA and between FDA, the Department, PHS, and other agencies; and analyzes the legislative needs of FDA and drafts or develops legislative proposals, position papers, and Departmental reports on proposed legislation for approval by the Commissioner.

Advises and assists Members of Congress and congressional committees and staffs, in consultation with the Office of the Secretary, on Agency actions, policies, and issues related to legislation which may affect FDA.

2. Insert a new paragraph (e), *Office of Public Affairs (HFAJ)* reading as follows:

(e) *Office of Public Affairs (HFAJ).* Advises and assists the Commissioner and other key officials on all public information programs; acts as the focal point for disseminating news on FDA activities and as a liaison with PHS and the Department on pubic information programs.

Plans, develops, implements, and monitors policy and programs on Agency media relations and consumer information and education programs conducted through the media, FDA's consumer affairs officers, and other communications sources.

Plans, develops, produces, and publishes Agency publications and graphic arts materials.

Coordinates Agency implementation of the Freedom of Information (FOI) Act and the Privacy Act. Processes requests for information under FOI. Executes FOI denial authority for the Agency.

Dated: August 20, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-20431 Filed 8-26-85; 8:45 am]

BILLING CODE 4153-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Sections SK.00, SK.10, and SK.20 of the SSA statement as most recently published in the **Federal Register** on August 14, 1981 (46 FR 41215–17), describes the mission, organization and functions of the Office of Refugee Resettlement (ORR). Notice is given that Part S is being amended to reflect the following changes in the organization and functions of ORR. First, the Office of Public Affairs is being abolished. Second, the Division of Resettlement is being abolished. Third, the Division of Special Operations is being abolished. Fourth, the Florida Office, as an outstationed component of headquarters, is being established. This Office will exercise, for the State of Florida, those duties and responsibilities normally exercised by regional offices (ROs) of ORR. It will also provide informational and referral services to refugees, service providers and State agencies in the State of Florida. Fifth, some changes are being made in the functions of the Division of Financial Management and Administration, as indicated in the revised functional statement. Sixth, some changes are being made in the functions of the Division of Operations, as indicated in the revised functional statement. Lastly, some changes are being made in both the organization and functions of the ROs of ORR. The ten standard ROs will be reduced to seven, with the Region I Office assuming all functions of the Region II Office; the Region VIII Office assuming all functions of the Region VII Office; and the Region IV Office assuming all functions of the Region III Office. A single representative will remain in each abolished RO to perform, as an outstationed employee of the consolidated office, certain contact and coordinating responsibilities for the State in which the representative is stationed. Changes in the functions of the ROs are reflected in the revised functional statement.

The amendments are as follows:

Sec. SK.10 *Office of Refugee Resettlement*—(Organization)

Delete: *Office of Public Affairs* ( )

Delete: *Division of Resettlement* ( )

Delete: *Division of Special Operations* ( )

Add: *Florida Office* ( )

Sec. SK.20 *Office of Refugee Resettlement*—(Function)

Delete: 2. Office of Public Affairs ( )

Redesignate: 3. as 2. and revised to read:

2. *Division of Financial Management and Administration* ( ):

Formulates estimates for refugee and entrant program and administrative budgets. Supervises the preparation of budget briefing materials for budget presentation. Performs budget execution responsibilities which include: reviewing the budget approved by the Congress; recommending a financial plan for its execution; making funds and personnel allocations to ORR headquarters and regional offices (ROs) within guidelines of the approved financial plan; maintaining budgetary controls to ensure observance of established ceiling on both funds and personnel and monitoring compliance therewith and preparing requests for apportionment of appropriated funds.

Is responsible for control of funds for grants to States and other participating organizations and control of the Federal refugee and entrant program administrative budgets. Provides administrative support and services to ORR headquarters. Coordinates ORR's RO reviews of grantee financial management under the State-administered refugee and entrant programs and trains regional staff to meet their financial monitoring responsibilities. Provides advice and assistance on grant and financial management issues to the ROs and State agencies.

Provides centralized management and administration of ORR categorical grant programs. Ensures that the solicitation, review, award and administration of categorical grants conforms with applicable statutes, regulations and policies in financial and administrative areas. Serves as the only official ORR receipt point for all categorical grant applications, as well as categorical and State-administered financial status submissions and program progress reports.

Redesignate: 4. as 3. and revise to read:

3. *Division of Operations* ( ): Provides direction for the operation and implementation of the ORR refugee and entrant domestic assistance programs. Has overall technical assistance and monitoring responsibility for the State-administered domestic assistance programs and develops guidance and procedures for the implementation of these responsibilities. Designs strategies for providing technical assistance to State and local agencies, refugee/entrant self-help groups and voluntary agencies. Recommends, to the Director, service priorities to be initiated as demonstration or pilot projects designed to promote the self-sufficiency and social/economic integration of refugees/entrants. Oversees the progammatic implementation of grants and contracts associated with national and regional discretionary activity.

Has responsibility for implementing and monitoring other domestic assistance and service initiatives undertaken by ORR, such as the voluntary agency program, targeted assistance, alternative resettlement strategies and other activities as specified by the Director or required by Congressional mandate.

Plans and guides an ongoiong monitoring program carried out through ORR's field operations, trains regional and field staff to carry out their monitoring responsibilities and reviews and assesses performance of field operations in carrying out monitoring requirements. Provides direction to the field in reviewing and approving State plans, and monitors State systems to ensure compliance with ORR policies with respect to cash and medical assistance and social services programs. Has overall management responsibility for field operations, including regional and Florida Offices.

Redesignate: 5. as 4.

4. *Division of Policy and Analysis* ( )

Delete: 6. *Division of Resettlement* ( )

Delete: 7. *Division of Special Operations* ( )

Redesignate: 8. as 5. and revise to read:

5. *Regional Office of Refugee Resettlement* ( ): (Located at seven geographical locations throughout the United States.) Provide supervision and technical direction for the refugee and entrant programs carried out by State agencies responsible for refugee/entrant domestic assistance programs; and in accordance with direction and guidance provided by the national office, establish regional program priorities, supply oversight and guidance to regional operations staff and coordinate State and, where necessary, local resettlement activity to ensure compliance with national resettlement policy. Participate in meetings with public and private agencies involved with refugee resettlement and facilitate communication and information exchange among key actions in State and local resettlement programs. Act as primary contact with State and local governments, voluntary resettlement agencies and refugee self-help groups in the region.

Periodically, assess quality of State and local resettlement services and advise headquarters of State and local resettlement problems and appropriate corrective action. Serve as focal point for information and advice to headquarters in the formulation and implementation of national resettlement policy. Assist States in the development of State plans and review same to ensure that national policy requirements are observed and that domestic assistance resources are being effectively deployed to serve refugees. In carrying out this function: (a) Provide technical assistance to State social service agencies and monitor State agency service delivery systems to assure compliance with Federal policy and effective use of social services in meeting the needs of refugees and entrants in the region; (b) periodically review State program operations to ensure that Federal funds are being used effectively; (c) facilitate coordination between refugee specific services and other Federal programs which are relevant to refugee/entrant needs; (d) perform financial reviews of State-administered program and recommend to headquarters any corrective action required and (e) exercise overall financial management responsibility for ORR in the region in accordance with nationally prescribed policies and procedures. Assist national office with policy formulation and program implementation and carry out oversight for such special national initiatives as targeted assistance, placement policy and quarterly consultations. Generally, act on behalf of the Director of ORR on all matters and issues requiring ORR leadership and direction in the field.

Add: 6. *Florida Office* ( )

6. *Florida Office* ( ): As an outstationed headquarters component, provides information and referral services, consistent with available resources, to refugees/entrants, service providers and State agencies in the State of Florida. In addition, carries out those ORR duties and responsibilities outlined above under Regional Office of Refugee Resettlement with respect to the State of Florida.

Dated: August 13, 1985.

Nelson Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 85-20422 Filed 8-26-85; 8:45 am]

BILLING CODE 4130-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D-85-802; FR-2145]

Redelegation of Authority for the Housing Development Grant Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of Redelegation of Authority.

SUMMARY: Assistant Secretary for Housing—Federal Housing Commissioner is redelegating to the Deputy Assistant Secretary for Multifamily Housing Programs specific responsibility and authority with respect to the Housing Development Grant Program, authorized under section 17 of the U.S. Housing Act of 1937, (42 U.S.C. 1437o).

EFFECTIVE DATE: August 22, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Housing Development Grant Divisions, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6142 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 301 of the Housing and Urban Rural Recovery Act of 1983 amended the U.S. Housing Act of 1937 by adding section 17 which, among other matters, provides the Secretary of Housing and Urban Development with the authority to make development grants for the new construction or substantial rehabilitation of residential rental housing in accordance with the requirements set forth in that section. Grants are to be made to eligible grantees on the basis of applications submitted to and approved by the Secretary in accordance with statutory criteria and regulations prescribed by the Secretary. On December 6, 1984 (49 FR 47656), the Secretary delegated all his authority under section 17 to the Assistant Secretary for Housing—Federal Housing Commissioner. That delegation also authorized the Assistant Secretary to redelegate the authority granted, except the authority to issue rules and regulations, to other employees of the Department. The Assistant Secretary for Housing—Federal Housing Commissioner is exercising the authority to redelegate specific authority under section 17 to the Deputy Assistant Secretary for Multifamily Housing Programs as follows:

Section A. Authority Redelegated

The Deputy Assistant Secretary for Multifamily Housing Programs shall exercise all the power and authority of the Assistant Secretary for Housing—Federal Housing Commissioner with respect to the Housing Development Grant Program, pursuant to section 17 of the U.S. Housing Act of 1937, except for the authority to issue rules and regulations, to make program and project funding decisions, to make project termination or cancellation decisions and to waive program requirements. This authority shall include but not be limited to execution of project grant agreements.

Section B. Authority to Redelegate

The Deputy Assistant Secretary for Multifamily Housing Programs may designate the Director for the Office of Elderly and Assisted Housing to exercise, in the absence of the Deputy Assistant Secretary for Multifamily Housing Programs, the power and authority delegated by Section A, including execution of project-specific grant agreements.

Authority: Sec. 17, U.S. Housing Act of 1937, (42 U.S.C. 1437o); section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Dated: August 22, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-20414 Filed 8-26-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Ordinance Providing for the Introduction, Use and Distribution of Alcoholic Beverages; Sault Ste. Marie Tribe of Chippewa Indians

August 12, 1985.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 4-15-85 was duly adopted by the Sault Ste. Marie Board of Directors on April 15, 1985. Resolution No. 4-15-85 provides for the introduction, use and distribution of alcoholic beverages within the areas of Indian country under the jurisdiction

of the Sault Ste. Marie Tribe of Chippewa Indians.

The ordinance reads as follows:

James S. Bregman,

Acting Deputy Assistant Secretary—Indian Affairs.

Resolution 4-15-85

Liquor Control Ordinance

Whereas, the Sault Ste. Marie Tribe of Chippewa Indians is a federally recognized tribe organized under section 16 of the Reorganization Act [sic] of June 18, 1934, (25 U.S.C. 461) et seq.; and

Whereas, the Tribe is authorized under tribal and Federal law to regulate the possession and sale of liquor and alcoholic beverages within its reservation.

Whereas, the Tribe wishes to provide for the licensing and regulation of the liquor by means of the attached Tribe Liquor Control Ordinance. Now Therefore, Be It Resolved that the Board of Directors of the Sault Ste. Marie Tribe of Chippewa Indians hereby adopt the attached Sault Ste. Marie Tribe of Chippewa Indians Liquor Control Ordinance and submit the same to Michigan Agency, Bureau of Indian Affairs for appropriate federal approval.

Certification

We, the udersigned, as Chairman and Secretary of the Sault Ste. Marie Tribe of Chippewa Indians, hereby certify that the Board of Directors is composed of 13 members, of whom 9 members, constituting a quorum were present at a meeting thereof duly called, noticed, convened and held on the 15th day of April, 1985, affirmative vote of 8 members for, and 0 against, and 1 abstaining; and that said resolution has not been recinded [sic] or amended in any way.

Joseph K. Lumsden,

Chairman, The Sault Ste. Marie Tribe of Chippewa Indians.

Barbara Pine,

Secretary, The Sault Ste. Marie Tribe of Chippewa Indians.

The Sault Ste. Marie Tribal Liquor Control Ordinance

Be it ordained by the Board of Directors of the Sault Ste. Marie Tribe of Chippewa Indians:

1.1 *Title*—This Ordinance shall be known as the Saute Ste. Marie Tribal Liquor Control Ordinance.

1.2 *Authority*—This Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 588 [sic, 586], 18 U.S.C. 1161) which provides that federal Indian liquor laws shall be inapplicable to any act or transaction within any area of Indian country provided such act or transaction [sic, is in conformity both with the laws of the State in which such act or transaction] occurs and with an ordinance duly adopted by the Tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior and published in the **Federal Register**.

1.3 *Purpose*—The purpose of this Ordinance is to regulate and control the possession and sale of liquor on the Sault Ste. Marie Tribe of Chippewa Indians Reservation. The enactment of tribal ordinance governing liquor possession and sales on the Reservation will increase the ability of the tribal government to control Reservation liquor distribution and possession, and at same time will provide an important source of revenue for the continued operation and strengthing of a tribal government and the delivery of tribal government services.

1.4 *Effective Date*—This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

1.5 *Abrogation and Greater Restrictions*—Where the ordinance imposes greater restrictions than those contained in other tribal ordinances controlling the possession and sale of liquor, the provisions of this ordinance shall govern.

1.6 *Interpretation*—In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the tribe and shall not be deemed a limitation or repeal of any other tribal power or authority.

1.7 *Severability and Non-Liability*—If any section, provision or portion of this ordinance is adjudged unconstitional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby. The Tribe assets there is no liability on the part of the Sault Ste. Marie Tribe of Chippewa Indians, its agencies or employees for damages that may occur as a result of reliance upon, and conformance with this ordinance.

1.8 All other ordinances or parts of ordinances of the Tribe inconsistent or conflicting with this ordinance, to the extent of the inconsistency only, are hereby repealed.

1.9 *Relation to Other Laws*—All acts and transactions under this ordinance shall be in conformity with this ordinance and in conformity with the laws of the State of Michigan as that term is used in 18 U.S.C. 1161.

1.10 *Violation*—The introduction, purchase sale or dealing in liquor, other than when done pursuant to license under this ordinance, is prohibited and is a violation of tribal law. The federal Indian liquor laws are intended to remain applicable to any act or transaction which is not authorized by this ordinance. Violations of this ordinance by any person shall be subject to federal prosecution as well as to legal action in accordance with tribal law.

1.11 This ordinance is adopted pursuant to the authority contained in Article VII, section 1(g) of the Tribal Constitution.

Section 2.0—Definitions

2.10 *General Definitions*—For the purposes of this ordinance, the following definitions shall be used. Words used in the present tense include the future; The singular includes the plural; and the plural includes the singular. The word "shall" is mandatory and the word "may" is permissive.

2.20 *Specific Words and Phrases*

2.21 *"Intoxicating Liquors."*—All ardent, spirituous, distilled, or vinous liquids, or compounds, whether medicated, proprietary, patented or not and by whatever name called containing one-half percent or more alcohol by volume, which are fit for use for beverage purposes, but shall not include beer or wine.

2.22(a) *"Beer"*—Means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract hops and pure barley malt or other wholesome grain or cereal in pure water included ale, stourt [sic, stout], and porter.

2.22(b) *"Wine"—Means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccarine substances may have been added before, during, or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines spirits, such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.*

2.23 *"Sale" and "Sell"*—Include the exchange, barter, traffic, donation, with or without consideration in addition to the selling, supplying or distributing, by any means whatsoever, or [sic, of] intoxicating liquors or beer or wine by any person to any person or corporation; and, also includes a sale or selling within an area or tribal jurisdiction to a foreign consignee or his agent.

2.24 *"Class A Retailer License"*—Shall mean the granting of authority to sell beer or wine only to be consumed on the premises where sold.

2.25 *"Class B Retailers License"*—Shall mean the granting of authority to sell beer or wine only to be consumed away from the premises where sold.

2.26 *"Class A Retail Intoxicating Liquor License"*—Shall mean granting authority to sell, deal and traffic in intoxicating liquors only in original packages or containers and to be consumed off the premises so licensed.

2.27 *"Class B Retail Intoxicating Liquor License"*—Shall mean the granting of authority to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed and not in the original package or container.

2.28 *"Temporary License"*—Shall mean a license for a term of no more than 7 days of any of the types defined in 2.24, 2.25, and 2.27.

2.29 *"Package"*—Means the original container or receptacle used for holding intoxicating liquor or fermented malt beverages.

2.30 *"Council"*—Means the Sault Ste. Marie Chippewa Tribal Board of Directors.

2.31 *"Reservation"*—Means the Sault Ste. Marie Tribe of Chippewa Indians.

3.0 Sovereign Immunity

3.10 Nothing in this ordinance is intended nor shall be construed as a waiver of the sovereign immunity of the Chippewa Indians. No employee or agent of the Tribe shall be authorized nor shall he and [sic] she attempt to waive the immunity of the Tribe.

4.0 Liquor Licenses and Fees

4.10 The Tribal Council may issue to an applicant any one or combination of the following licenses: Class A Retailers License; Class B Retailers License; Class A Retail Intoxicating Liquor License; Class Be [sic, B] Retail Intoxicating Liquor License, and a temporary license of any of the above types. The fee for any of the above license[s] with the exception of the temporary license shall be—— for one license and —— for two or more licenses. The fee for a temporary license shall be ——.

5.0 Liquor Licenses

Issuance, Refusal, Suspension, Cancellation, Condtions and Restrictions.

5.10 Issuance

5.11 The Tribal Council shall, in its discretion, determine how many liquor licenses it shall issue or have outstanding in any one year.

5.12 Application for all licenses shall be submitted in the prescribed form to the Tribal Council or its authorized employees. The Tribal Council shall designate a committee to review and recommended to the Tribal Council whether the license shall be issued.

5.13 At a minimum, the application for any liquor license authorized by this ordinance must be in writing, setting forth the following information: applicant's name, address, age and tribal affiliation (if any); type(s) of license(s) desired; a legal action description of the land where the licensed activity will take place; prior liquor licenses held; prior felony convictions; owner of land and premise where the licensed activity will take place.

5.14 An application for a liquor license must be accompanied by a nonreturnable application fee of $25.00. There shall be no application fee for a temporary license.

5.15 The Tribal Council has complete discretion in the granting or denial of all licenses.

5.16 All new license requests will be acted upon by the Tribal Council within 45 days from the time when the application and fee were submitted to the Tribal Council.

5.17 For the purposes of considering an application for a license under this ordinance, the Tribal Council may cause an inspection of the premises to be made, and may require [sic] into all matters in connection with the construction and operation of the premises.

5.18 Every license shall be issued in the name of the applicant and no license shall be transferable, no shall the holder thereof allow any other person to use the license or permit.

5.19 Every licensee shall post and keep its license in a conspicuous place on the premises.

5.20 Inspection

5.21 All licensed premises used in the storage or sale of intoxicating liquor or fermented malt beverages, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business shall at all times be open to inspection by any tribal or federal inspector or tribal or federal police officer.

5.22 Every person, being on any such premises and having charge thereof, who refuses or fails to admit a tribal or federal inspector or tribal or federal police officer demanding to enter therein in pursuance of this section in the execution of his duty, or who obstructs or attempts to obstruct the entry of such inspector or officer, shall therey be deemed to have violated this ordinance.

5.30 Suspension and Cancellation

5.31 The Tribal Council may, for violation of this ordinance, issue a suspension or cancellation order of any license issued pursuant to this ordinance and all rights of the licensee to keep or sell thereunder shall be suspended or terminated as the case may be.

5.32 Procedure—At least ten (10) days prior to the effective date of the order to cancel or suspend, the Tribal Council shall provide written notice of such cancellation or suspension by certified mail, return receipt requested to the licensee at the address shown on the application. A licensee who receives a written notice of suspension or cancellation shall have the right prior to the suspension or cancellation date to request a hearing by the Tribal Council by sending written notice by certified mail with return receipt to the Tribal Chairperson at the Sault Ste. Marie Tribe Office at 206 Greenough Street, Sault Ste. Marie, Michigan 49783 within the ten (10) day period between notice of the cancellation or suspension order. Upon receipt of the request for hearing, the Tribal Council shall not suspend or cancel the license pending the completion of the hearing. The Tribal Chairperson shall set a date for said hearing which shall be held within thirty (30) days of receipt of the licensee's request for a hearing. The council may affirm or revise in whole or part its decision to cancel or suspend said license or permit after said hearing and its decision shall be final.

5.33 Upon suspension or cancellation of a license, the licensee shall forthwith deliver the license to the Tribal Council and cease all activities formerly conducted pursuant to the terms of the license. Where the license has been suspended, the Tribal Council shall return the license to the licensee at the expiration or termination of the period of suspension.

5.34 Licenses may be suspended by the Tribal Council for a period not to exceed 60 days.

5.35 The Tribal Council may reject any application for license renewal for any violation of this ordinance resulting in a suspension or revocation of said permit.

5.40 *Expiration of Licenses*

5.41 Unless sooner cancelled, every license issued by the Tribal Council shall expire at midnight on the 31st day of December.

5.50 Renewal

5.51 Applications for license renewals for the next calendar year must be submitted to the Tribal Council on or before November 15 of the preceding year. Applications for renewals shall contain the same information required for new licenses. The Tribal Council will act on all

renewal applications on or before December 15.

5.52 The Tribal Council shall not be liable for any losses incurred by the licensee resulting from cancellation, suspension or non-renewal of a license.

6.0 Illegal Activities

6.10 State laws relative to the hours to which sales are permitted shall apply to all establishments licensed under this ordinance.

6.20 All sales shall be prohibited to any person known or believed to be intoxicated.

6.30 All sales shall be prohibited to any person under the age of twenty-one (21). All sales shall be prohibited to individuals known or believed to be purchasing on behalf of any person under the age of twenty-one (21). Any person may be required to present Michigan identification card which shows correct age and bears the holder's signature.

6.40 Where a liquor license is required by this ordinance, all sales of intoxicating liquor and fermented malt beverages within the exterior boundaries of the Sault Ste. Marie Indian Reservation without a license issued pursuant to this ordinance are illegal.

7.0 Contraband-seizure and Forfeiture

7.10 All intoxicating liquor and fermented malt beverages within the Indian Reservation held, owned, or possessed by a person who is operating in violation of any provision(s) of this ordinance is hereby declared to be contraband. The Tribal Council may issue a request to proper federal authorities requesting the enforcement of Federal Liquor Laws including seizure of contraband liquor and fermented malt beverages.

8.0 Violations-remedies

8.10 Any person found to have violated this ordinance or any lawful rule or regulation made pursuant thereto shall be liable for a civil remedial fine not exceed [sic] five hundred dollars ($500.00).

8.20 Consistent with *United States* v. *Wheeler*, 435 U.S. 313 (1978), nothing shall prevent both federal and tribal jurisdiction to enforce this ordinance.

8.30 Nothing in this ordinance shall be construed to exercise tribal jurisdiction over non-Indians to an extent inconsistant [sic] with the decision in *Oliphant* v. *Suquamish* 435 U.S. 191 (1978).

9.0 Regulations

9.10 The Tribal Council shall have the authority to adopt and enforce rules and regulations to implement this ordinance and further the purposes thereof. This section grants the Tribal Council the authority to revise license fees when necessary.

10.0 Amendment

10.10 This ordinance may be amended by a majority vote of the Tribal Council and approved by the Secretary of the Interior.

[FR Doc. 85-20401 filed 8-26-85; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

Motor Vehicles; Emergency Limitation of Off-Road Travel Within Wilderness Study Areas (WSA) in Hidalgo, Grant and Luna Counties, NM

AGENCY: Bureau of Land Management (BLM), Las Cruces District, New Mexico, Interior.

ACTION: Off-Road Vehicles on WSAs.

DATE: August 4, 1985.

ADDRESS: Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005, (505) 525-8228.

Notice is hereby given that effective immediately all vehicles are limited to travel only on existing roads and ways within the following WSAs: Cowboy Spring, NM-030-007; Gila Lower Box, NM-030-023; Blue Creek, NM-030-026; Cooke's Range, NM-030-031; Florida Mountains, NM-030-034; Big Hatchet Mountains, NM-030-035; Alamo Hueco Mountains, NM-030-038; and Cedar Mountains; NM-030-042.

The purpose of this designation is to prevent impairment of the existing wilderness values within these WSAs which will be caused by off-road travel.

The authority for this closure is 43 CFR 8341.2. This designation will remain in effect until Congress releases these areas from wilderness consideration.

H. James Fox,

District Manger.

[FR Doc. 85-20405 Filed 8-26-85; 8:45 am]
BILLING CODE 4310-FB-M

Wyoming; Worland District Advisory Council Meeting

AGENCY: Bureau of Land Management, Worland District Office, Worland, Wyoming, Interior.

ACTION: Meeting of the Worland District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 91-463, 94-579, and 95-514, and 43 CFR Part 1780, that a meeting of the Worland District Advisory Council will be held on September 24, 1985.

The topic of the meeting is the Washakie Resource Management Plan (RMP). The entire meeting will be devoted to a tour of a portion of the Washakie Resource Area. The purpose of the tour is to visit areas on the West Slope of the Bighorn Mountains where there are representative examples of conflicts discussed in the Washakie RMP.

The tour will leave from the office of the District Ranger, U.S. Forest Service, Paint Rock Ranger District, 1220 North 8th, Greybull, Wyoming, at 7:30 a.m., on Tuesday, September 24, 1985. The tour will return to Greybull at about 5:30 p.m. In case of inclement weather, the tour will be rescheduled for Thursday, September 26, 1985. All other arrangements will remain unchanged.

The meeting is open to the public. Persons attending the meeting must provide their own transportation and lunch. Because travel will be on unimproved roads, a four-wheel drive or high clearance two-wheel drive vehicle will be needed.

DATE: Tuesday, September 24, 1985, 7:30 a.m. (Alternate date: Thursday, September 26, 1985, 7:30 a.m.).

Location: Meet at the Office of the District Ranger, U.S. Forest Service, Paint Rock Ranger District, 1220 North 8th, Greybull, Wyoming.

FOR FURTHER INFORMATION CONTACT: David Stout, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, Telephone: (307) 347-9871.

Chester E. Conard,

District Manager.

[FR Doc. 85-20454 Filed 8-26-85; 8:45 am]
BILLING CODE 4310-22-M

[AA-8448-A, AA-8448-B]

Alaska Native Claims Selection; Leisnoi, Inc.

In accordance with the Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Leisnoi, Inc. for approximately 3,647.88 acres. The lands

involved are within the vicinity of Woody Island, Alaska.

Seward Meridian, Alaska

T. 27 S., R. 18 W.
T. 28 S., R. 18 W.
T. 27 S., R. 19 W.
T. 28 S., R. 19 W.
T. 29 S., R. 21 W.

A notice of the decision will be published once a week for four (4) consecutive weeks in the **Kodiak Daily Mirror.** Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 26, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–20428 Filed 8–26–85; 8:45 am]

BILLING CODE 4310–JA–M

[AA–8448–B]

Alaska Native Claims Selection; Leisnoi, Inc.

In accordance with the Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Leisnoi, Inc. for approximately 42,175.11 acres. The lands involved are within the vicinity of Woody Island, Alaska.

Seward Meridian, Alaska

T. 29 S., R. 18 W.
T. 30 S., R. 19 W.
T. 29 S., R. 19 W.
T. 30 S., R. 19 W.
T. 29 S., R. 20 W.
T. 30 S., R. 20 W.
T. 29 S., R. 21 W.
T. 30 S., R. 21 W.

A notice of the decision will be published once a week for four (4) consecutive weeks in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 26, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–20429 Filed 8–26–85; 8:45 am]

BILLING CODE 4310–JA–M

Minerals Management Service

Alaska Outer Continental Shelf; Availability of the Environmental Assessment for the Modification of the Aleutian Island Deferral Alternative, Oil and Gas Lease Sale 89, St. George Basin, AK

The regulations, 40 CFR 1502.9(c)(1), for implementing the National Environmental Policy Act, as amended, require that a Federal agency "shall prepare supplements to either the draft or final environmental impact statements (EIS's) if: (i) The Agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

The alternative selected for the Proposed Notice of Sale for proposed Sale 89, St. George Basin, was not specifically identified in the final environmental impact statement (EIS) for this sale. This alternative (Alternative VII) would defer the offering of 984 blocks. This includes all but 49 blocks in the Aleutian Island alternative VI. An environmental assessment (EA) has been prepared which analyzes the effects of Alternative VII in comparison with the proposal, Alternative I.

The Minerals Management Services has reviewed the information in the EA and the information in the final EIS for this proposed sale and determined that a supplemental EIS is not required. Copies of the EA may be obtained by written request to Minerals Management Service, Ofshore Environmental Assessment Division, Room 2528, MS–644, 18th and C Streets, NW., Washington, D.C. 20240, or by telephone request to Richard Miller, Minerals Management Service, Environmental Evaluation Branch, (202) 343–6264.

Dated: August 22, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85–20427 Filed 8–26–85; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Alabama, et al.; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 17, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 11, 1985.

Patrick Andrus,

Acting Chief of Registration, National Register.

ALABAMA

Houston County

Ashford, *Alabama Midland Railway Depot,* Midland St.

Montgomery County

Montgomery, *Cloverdale Historic District,* Roughly bounded by Norman Bridge & Cloverdale Rd., Fairview & Felder Aves. and Boultier St.

Randolph County

Roanoke, *Roanoke Downtown Historic District,* Roughly bounded by White, Main, West Point, La Monte, Chestnut & Louina Sts.

ARIZONA

Maricopa County

Phoenix, *Security Building,* 234 N. Central

ARKANSAS

Garland County

Couchwood (The Arkansas Sculptures of Dionicio Rodriguez TR)
Little Switzerland (The Arkansas Sculptures of Dionicio Rodriguez TR)

Pulaski County

Crestview Park (The Arkansas Sculptures of Dionicio Rodriguez TR)

Lakewood Park (The Arkansas Sculptures of Dionicio Rodriguez TR)
Pugh, T. R., Memorial Park (The Arkansas Sculptures of Dionicio Rodriguez TR)

Stone County

Big Springs, *Anderson, George, House (Stone County MRA)*, W of Big Springs
Big Springs, *Avey, John, Barn (Stone County MRA)*, Off AR 66
Big Springs, *Gammill, Orvall, Barn (Stone County MRA)*, NW of Big Springs
Eact Richwoods, *Mabry, H. S., Barn (Stone County MRA)*, Near Johnson Creek
Marcella vicinity, *Taylor-Stokes House (Stone County MRA)*, Off AR 14
Marcella, *Abernathy, Jessie, House (Stone County MRA)*, Off AR 14
Marcella, *Doughtery, H. J., House (Stone County MRA)*, AR 14
Marcella, *Hess, Binks, House and Barn (Stone County MRA)*, Off AR 14
Marcella, *Hess, Thomas M., House (Stone County MRA)*, Off AR 14
Marcella, *Marcella Church & School (Stone County MRA)*, AR 14
Marcella, *Martin, Owen, House (Stone County MRA)*, AR 14
Melrose, *Gray, Walter, House (Stone County MRA)*, Off AR 14
Mountain View vicinity, *Clark-King House (Stone County MRA)*, NE of Mountain View
Mountain View vicinity, *McCarn, Noah, House (Stone County MRA)*, AR 5
Mountain View, *Brewer's Mill (Stone County MRA)*, AR 66
Mountain View, *Brewer, A. B., Building (Stone County MRA)*, AR 66
Mountain View, *Brewer, John F., House (Stone County MRA)*, AR 9
Mountain View, *Case, C. B., Motor Co. Building (Stone County MRA)*, AR 66
Mountain View, *Commercial Hotel (Stone County MRA)*, Off AR 66
Mountain View, *Dew Drop Inn (Stone County MRA)*, Off AR 66
Mountain View, *Farmers and Merchants Bank (Stone County MRA)*, AR 66
Mountain View, *Lackey General Merchandise and Warehouse (Stone County MRA)*, AR 66
Mountain View, *Lancaster, John L., House (Stone County MRA)*, Off AR 66
Mountain View, *Smith, C. L., & Son General Store (Stone County MRA)*, AR 66
Mountain, View, *Stegall General Store (Stone County MRA)*, AR 66
Mountain View, *Stone County Recorder Building (Stone County MRA)*, Off AR 66
Newnata, Anderson, *Clarence, Barn (Stone County MRA)*, AR 66
Old Lexington, *Guffey Joe, House (Stone County MRA)*, AR 110
Onia vicinity, *Bluff Springs Church and School (Stone County MRA)*, 3.5 miles W of Onia
Onia vicinity, *Roasting Ear Church and School (Stone County MRA)*, NE of Onia
Optimus vicinity, *Jeffery, Miles, Barn (Stone County MRA)*, Off AR 5
Pleasant Grove vicinity, *Davis Barn (Stone County MRA)*, W of Pleasant Grove
Pleasant Grove vicinity, *Ford, Zachariah, House (Stone County MRA)*, Near White River
Pleasant Grove, *Bettis, John, House (Stone County MRA)*, AR 14
Pleasant Grove, *Copeland, Henry, House (Stone County MRA)*, AR 14
Round Bottom, *Dillard, William, Homestead (Stone County MRA)*, Near White River
Round Bottom, *Lancaster, Fred, Barn (Stone County MRA)*, Near White River
St. James, Pruitt, *Pinkey, Barn (Stone County MRA)*, AR 14
Timbo vicinity, *Copeland, Wesley, House (Stone County MRA)*, SE of Timbo
Timbo, *Morris, Jim, Barn (Stone County MRA)*, AR 66
Turkey Creek, *Turkey Creek School (Stone County MRA)*, AR 9
West Richwoods, *Brown, Samuel, House (Stone County MRA)*, Off AR 9
West Richwoods, *West Richwoods Church & School (Stone County MRA)*, AR 9

CALIFORNIA

Alameda County

Pleasanton, *Kottinger, John W., Adobe Barn*, 200 Ray St.

Los Angeles County

Los Angeles, *Angelus Mesa Branch (Los Angeles Branch Library System TR)*, 2700 W. Fifty-second St.
Los Angeles, *Cahuenga Branch (Los Angeles Branch Library System TR)*, 4591 W. Santa Monica Blvd.
Los Angeles, *Dana, Richard Henry, Branch (Los Angeles Branch Library System TR)*, 3320 Pepper St.
Los Angeles, *De Neve, Felipe, Branch (Los Angeles Branch Library System TR)*, 2820 W. Sixth St.
Los Angeles, *Eagle Rock Branch Library (Los Angeles Branch Library System TR)*, 2224 Colorado Blvd.
Los Angeles, *Fremont, John C., Branch (Los Angeles Branch Library System TR)*, 6121 Melrose Ave.
Los Angeles, *Irving, Washington, Branch (Los Angeles Branch Library System TR)*, 1803 S. Arlington Ave.
Los Angeles, *Jackson, Helen Hunt, Branch (Los Angeles Branch Library System TR)*, 2330 Naomi St.
Los Angeles, *Jefferson Branch (Los Angeles Branch Library System TR)*, 2211 W. Jefferson Blvd.
Los Angeles, *Lincoln Heights Branch (Los Angeles Branch Library System TR)*, 2530 Workman St.
Los Angeles, *Malabar Branch (Los Angeles Branch Library System TR)*, 2801 Wabash Ave.
Los Angeles, *Memorial Branch (Los Angeles Branch Library System TR)*, 4845 W. Olympic Blvd.
Los Angeles, *Moneta Branch (Los Angeles Branch Library System TR)*, 4255 S. Olive St.
Los Angeles, *Muir, John, Branch (Los Angeles Branch Library System TR)*, 1005 W. Sixty-Fourth St.
Los Angeles, *North Hollywood Branch (Los Angeles Branch Library System TR)*, 5211 N. Tujunga Ave.
Los Angeles, *Stevenson, Robert Louis, Branch (Los Angeles Branch Library System TR)*, 803 Spence St.
Los Angeles, *Van Nuys Branch (Los Angeles Branch Library System TR)*, 14553 Sylvan Way
Los Angeles, *Venice Branch (Los Angeles Branch Library System TR)*, 610 California Ave.
Los Angeles, *Vermont Square Branch (Los Angeles Branch Library System TR)*, 1201 W. Forty-eighth St.
Los Angeles, *Wilmington Branch (Los Angeles Branch Library System TR)*, 309 W. Opp St.
Los Angeles, *Wilshire Branch (Los Angeles Branch Library System TR)*, 149 N. St. Andrews Pl.
Pasadena, *Culbertson, Cordelia A., House*, 1188 Hillcrest Ave.

Marin County

Sausalito, *Griswold House*, 639 Main St.

Monterey County

Big Sur vicinity, *Post, Joseph W., House*, CA 1.

Napa County

Napa, *Gordon Building*, 1130 First St.

Nevada County

Nevada City, *Nevada Brewery*, 107 Sacrameto St.
Nevada City, *Nevada City Downtown Historic District*, Roughly bounded by Spring, Bridge, Commercial, York, Washington, Coyote, and Main Sts.

Orange County

Irvine, *Irvine Bean and Growers Association Building*, 14972 Sand Canyon Ave.

San Francisco County

San Francisco, *House at 584 Page Street*, 584 Page St.

COLORADO

Denver County

Denver, *Country Club Historic District (Boundary Increase)*, Between Downing & University, E. 4th Ave. and N. of Alameda Ave.

CONNECTICUT

Fairfield County

Ridgefield, *Hugh Cain Fulling Mill and Elias Glover Woolen Mill Archaeological Site*, US 7

New Haven County

New Haven, *Hillhouse Avenue Historic District*, Bounded by Sachem, Temple, Trumbull, and Prospect Sts., Whitney and Hillhouse Aves. & RR tracks
New Haven, *Howard Avenue Historic District*, Properties along Howard Ave. between Interstate 95 and Cassius St.
New Haven, *Orange Street Historic District*, Roughly bounded by Whitney Ave., State, Eagle & Trumbull Sts.
New Haven, *Pinto, William, House*, 275 Orange St.
New Haven, *Trowbridge Square Historic District*, Roughly bounded by Columbus & Howard Aves., Loop Rd., Liberty St. & RR tracks

Windham County

Willimantic, *Willimantic Armory*, Pleasant St.

FLORIDA

Hillsborough County

Tampa, *Tampania House*, 4611 N. A St.

Sarasota County

Sarasota, *Whitfield, J. G., Estate*, 2704 Bayshore Dr.

GEORGIA

Banks County

Commerce vicinity, *Hebron Church, Cemetery, and Academy*, CR 3
Maysville, *Maysville Historic District*, Along E. Main, W. Main and Homer Sts.

Jackson County

Maysville, *Maysville Historic District*, Along E. Main, W. Main, and Homer Sts.

IDAHO

Bannock County

Pocatello, *Rice-Packard House*, 454 N. Hayes Ave.

Blaine County

Hailey, *Werthheimer Building*, 101 S Main St.

Custer County

Stanley vicinity, *Day, Ivan W., House*, Boise Meridian

Gooding County

Gooding, *Kelly's Hotel*, 112 Main

Kootenai County

Athol vicinity, *Cedar Mountain School (Kootanai County Rurals Schools TR)*, Parks & Lewellyn Creek Rd.
Bayview, *Bayview School II (Kootanai County Rural Schools TR)*, Careywood Rd.
Camb Mivoden vicinity, *East Hayden Lake School II (Kootanai County Rural Schools TR)*, Hayden Lake Rd.
Coeur D'Alene vicinity, *Prairie School II (Kootanai, County Rural Schools TR)*, Prairie Ave.
Hayden Lake vicinity, *Thunborg, Jacob and Cristina, House*, Chicken Point
Lane, *Lane School II (Kootanai County Rural Schools TR)*, Lanz Rd.
McGuire, *McGuires School (Kootanai County Rural Schools TR)*, Corbin Rd. & Old HW 10
Medimont vicinity, *Cave Lake School (Kooanai County Rural Schools TR)*, ID 3
Medimont vicinity, *Indian Springs School II (Kootanai County Rural Schools TR)*, ID 3
Pleasant View vicinity, *Pleasant View School II (Kootanai County Rural Schools TR)*, Pleasant View Rd.
Post Falls, vicinity, *Cougar Gulch School III (Kootanai County Rural Schools TR)*, Cougar Gulch Rd.
Rockford Bay vicinity, *Bellgrove School II (Kootanai County Rural Schools TR)*, Hamaker Rd.
Rose Lake, *Rose Lake School II (Kootanai County Rural Schools TR)*,Queen St. & ID 3
Silver Sands Beach vicinity, *Upper Twin Lakes School (Kootanai County Rural Schools TR)*, Twin Lakes Rd.

Owyhee County

Camas and Pole Creeks Archaeological District,

Twin Falls County

Buhl, *Hotel Buhl*, 1004 Main St.

Valley County

Thunder City vicinity, *Braddock Gold Mining and Milling Company Log Building and Forge Ruins*, Off Pack Trail near Suicide Rock

INDIANA

Gibson County

Weber Village Archaeological Site (12 Gi 13),

Marion County

Indianapolis, *Edwards-Aufderheide House*, 157 E. 71st St.

Montgomery County

Crawfordsville vicinity, *McClelland-Layne House*, 602 Cherry St.

Orange County

Paoli, *Lindley, Thomas Elwood, House*, Willow Creek Rd.

Posey County

Ashworth Archaelological Site (12 Po 7), Hovey Lake Archaeological District,
Mt. Vernon, *I.O.O.F. and Barker Buildings*, 402—406 Main St.

Putnam County

Greencastle vicinity, *Stoner, Lycurgus, House*, Manhattan Rd.

White County

Monticello, *South Grade School Building*, 565 S. Main St.

KENTUCKY

Franklin County

Archeological Site 15 FR 368,

MAINE

Androscroggin County

Mechanic Falls, *Seaverns, George, House*, 8 High St.

Cumberland County

Cundy's Harbor vicinity, *Union Hotel*, Cundy's Harbor Rd.

Penobscot County

Crono, *Old Fire Engine House*, N. Main St.

MARYLAND

Anne Arundel County

Millersville vicinity, *Rising Sun Farm*, 1090 Generals' HW

Baltimore (Independent city)

Fifth Regiment Armor (Maryland National Guard Armories TR), 219–247 W. Hoffman St.
Schuler, Hans, Studio and Residence, 5 E. Lafayette Ave.
Schwartze Mansion, 4206 Euclid Ave.

Baltimore County

Catonsville vicinity, *The Wilderness*, 2 Thistle Rd.
Monkton vicinity, *Corbett Historic District*, 1615—1827 Corbett Rd. & 16200—16225 Corbett Village Ln.
Pikesville, *Pikesville Armory (Maryland National Guard Armories TR)*, 610 Reisterstown Rd.
Towson, *Towson Academy (Maryland National Guard Armories TR)*, Washington St. & Chesapeake Ave.

Caroline County

Denton, *Denton Armory (Maryland National Guard Armories TR)*, *Maple Ave. & Randolph St.*

Carroll County

Sykesville, *Sykesville Historic District*, Main St., Springfield, Norwood & Mellor Avea.
Uniontown, *Uniontown Historic District*, Uniontown & Trevanion Rd.

Cecil County

Elkton, *Elkton Armory (Maryland National Guard Armories TR)*, Railroad Ave. & Bow St.

Frederick County

Frederick vicinity, *Widrick, George, House*, Ballenger Creek Pk.
Frederick, *Frederick Armory (Maryland National Guard Armories TR)*, Bentz & Second Sts.

Harford County

Bel Air, *Bel Air Armory (Maryland National Guard Armories TR)*, N. Main St.

Kent County

Chestertown, *Chestertown Armory (Maryland National Guard Armories TR)*, Quaker Neck Rd.

Queen Anne's County

Centreville, *Centreville Armory (Maryland National Guard Armories TR)*, S. Commerce St.
Church Hill vicinity, *Bishopton*, Pinder Hill Rd.

Somerset County

Crisfield vicinity, *Nelson Homestead*, Cash Corner & Hopewell-Bedsworth Rds.
Crisfield, *Crisfield Armory (Maryland National Guard Armories TR)*, Main St. Extended
Manokin vicinity, *Maddox, George, Farm*, River Rd.

Washington County

Hagerstown, *Hagerstown Armory (Maryland National Guard Armories TR)*, 328 N. Potomac St.

MASSACHUSETTS

Essex County

Peabody, *Washington Street Historic District*, Washington, Main Holtoe and Sewall Sts.

Middlesex County

Cambridge, *Reversible Collar Company Building (Cambridge MRA)*, 25–27 Mt. Auburn & 10–12 Arrow Sts.

MICHIGAN

Alger County

Munising vicinity, *Grand Island North Light Station*, Grand Island

Berrien County

Niles, *Old U.S. Post Office*, 322 E. Main St.

Cass County

Edwardsburg, *Mason District Number 6 Schoolhouse*, 17049 US 12

Gratiot County

Conservation Part Site (20GR33)
Holiday Park Site (20GR91)

Kalamazoo County

Kalamazoo, *Portage Street Fire Station*, 1249 Portage St.

Kent County

Grand Rapids, *Paddock, Augustus, House*, 1033 Lake Dr. SE

Livingston County

Brighton vicinity, *Westphal, August, Farmstead*, 6430 Brighton Rd.

Oakland County

Birmingtham, *Grand Trunk Western Railroad Birmingham Depot*, 245 S. Eton St.

St. Joseph County

Constantine, *Constantine Historic Commercial District*, Washington St. between Second and Water & Water St. between White Pigeon and 125 W. Water

Wayne County

Detroit, *River Place Complex*, Bounded by Joseph Campau Ave., Wight St., and McDougal Ave.

MONTANA

Cascade County

Great Falls, *Roberts Building*, 520–26 Central Ave.

Missoula County

Missoula, *Herzog, J.M. House*, 1210 Toole Ave.
Missoula, *Prescott, Clarence R., House*, University of Montana

NEBRASKA

Custer County

Broken Bow, *Arrow Hotel*, 509 S. Ninth Ave.

Dawes County

Crawford, *Co-operative Block Building*, 435–445 Second

Dodge County

Fremont, *Bullock, Samuel, House*, 508 W. Military Ave.

Hall County

Grand Island, *Glade—Donald House*, 1004 W. Divison

Hamilton County

Aurora, *Royal Highlanders Building*, 1235 M St.

Jefferson County

Fairbury, *Fairbury Public-Carnegie Library*, 601 Seventh St.

Kearney County

Minden, *Thorne, W.T., Building*, Fifth St.

Lancaster County

Lincoln, *St. Charles Apartments*, 4717 Baldwin Ave.

Platte County

Hill-Rupp Site

Red Willow County

McCook, *McCook Public-Carnegie Library*, 423 Norris Ave.

Saline County

Friend, *Kiddle, Richard R., House*, 819 Eighth St.

NEVADA

Carson City (Independent City)
Smaill, David, House, 313 W. Ann St.

NEW HAMPSHIRE

Belknap County

Belmont, *Belmont Public Library*, Main St.
Laconia, *Evangelical Baptist Church*, Veterans Sq.
Laconia, *Gale Memorial Library*, 695 Main St.

Carroll County

Effingham, *Lord's Hill Historic District*, NH 153, Plantation & Hobbs Rds.

Coos County

Crawford House Artist's Studio

Grafton County

Lebanon, *Colburn Park Historic District*, N, S, E & W. Park Sts., Campbell School & Bank Sts. and Lebanon Mall
Lebanon, *Stone Arch Underpass*, Glen Rd.

Hillsborough County

Manchester, *St. George's School and Convent*, 12 Orange St.

Merrimack County

Hill vicinity, *Hill Center Church*, Hill Center Rd.
New London, *Whipple, Dr. Solomon M., House*, Main St.
Pembroke, *Pembroke Mill*, 100 Main St.

Rockingham County

Exeter, *Moses-Kent House*, 1 Pine St.

NEW JERSEY

Bergen County

Oradell, *Cooper, Thunise & Richard, House*, 608–610 Brookside Ave.

Hudson County

Hoboken, *Keuffel and Esser Manufacturing Complex*, 3rd, Grand & Adams Sts.

NEW MEXICO

San Miguel County

Las Vegas, *AT & SF Roundhouse (Las Vegas New Mexico MRA)*, NE of Grand Ave.
Las Vegas, *Acequia Madre (Las Vegas New Mexico MRA)*, Roughly from Gallinas River to intersection of S. Pacific & US 85
Las Vegas, *Angel, Arturo, House (Las Vegas New Mexico MRA)*, 926 S. Pacific
Las Vegas, *Arthur, Charles and Lewis, E. N., House (Las Vegas New Mexico MRA)*, Douglas Ave.
Las Vegas, *Baca-Korte House (Las Vegas New Mexico MRA)*, 615 S. Pacific
Las Vegas, *Blattman, Henry, House (Las Vegas New Mexico MRA)*, 1710 8th
Las Vegas, *Building at 1202 9th Street (Las Vegas New Mexico MRA)*, 1202 9th St.
Las Vegas, *Building at 1214 Bridge (Las Vegas New Mexico MRA)*, 1214 Bridge
Las Vegas, *Building at 1406 Romero (Las Vegas New Mexico MRA)*, 1406 Romero
Las Vegas, *Building at 2005 Montezuma (Las Vegas New Mexico MRA)*, 2005 Montezuma
Las Vegas, *Clevenger, Lowery, House (Las Vegas New Mexico MRA)*, 1013 2nd
Las Vegas, *Cook, James, House (Las Vegas New Mexico MRA)*, 1017 11th
Las Vegas, *Eldorado Hotel (Las Vegas New Mexico MRA)*, 514 Grand
Las Vegas, *First Baptist Church (Las Vegas New Mexico MRA)*, 700 University
Las Vegas, *Gatignole, Eugenio, House (Las Vegas New Mexico MRA)*, 1114 S. Gonzales
Las Vegas, *Herrera, Esperansa, House (Las Vegas New Mexico MRA)*, 2231 Church
Las Vegas, *House at 1007 11th Street (Las Vegas New Mexico MRA)*, 1007 11th St.
Las Vegas, *House at 1025 Railroad (Las Vegas New Mexico MRA)*, 1025 Railroad
Las Vegas, *House at 1114 10th (Las Vegas New Mexico MRA)*, 1114 10th
Las Vegas, *House at 1116 Columbia (Las Vegas New Mexico MRA)*, 1116 Columbia
Las Vegas, *House at 119 Railroad (Las Vegas New Mexico MRA)*, 119 Railroad
Las Vegas, *House at 12 Grand (Las Vegas New Mexico MRA)*, 12 Grand
Las Vegas, *House at 1221 San Francisco (Las Vegas New Mexico MRA)*, 1221 San Francisco
Las Vegas, *House at 1513 8th (Las Vegas New Mexico MRA)*, 1513 8th
Las Vegas, *House at 16 Grand (Las Vegas New Mexico MRA)*, 16 Grand
Las Vegas, *House at 1616 8th (Las Vegas New Mexico MRA)*, 1616 8th
Las Vegas, *House at 1717 8th (Las Vegas New Mexico MRA)*, 1717 8th
Las Vegas, *House at 2203 New Mexico (Las Vegas New Mexico MRA)*, 2203 New Mexico
Las Vegas, *House at 2501 Taos Alley (Las Vegas New Mexico MRA)*, 2501 Taos Alley
Las Vegas, *House at 309 Railroad (Las Vegas New Mexico MRA)*, 309 Railroad
Las Vegas, *House at 312 Tecolote (Las Vegas New Mexico MRA)*, 312 Tecolote
Las Vegas, *House at 508 University (Las Vegas New Mexico MRA)*, 508 University
Las Vegas, *House at 514 University (Las Vegas New Mexico MRA)*, 514 University
Las Vegas, *House at 521 S. Pacific (Las Vegas New Mexico MRA)*, 521 S. Pacific
Las Vegas, *House at 613 Mora (Las Vegas New Mexico MRA)*, 613 Mora
Las Vegas, *House at 618 Mora (Las Vegas New Mexico MRA)*, 618 Mora
Las Vegas, *House at 733 Railroad (Las Vegas New Mexico MRA)*, 733 Railroad

Las Vegas, *House at 800 Pecos (Las Vegas New Mexico MRA)*, 800 Pecos
Las Vegas, *House at 810 Douglas (Las Vegas New Mexico MRA)*, 810 Douglas
Las Vegas, *House at 812 Douglas (Las Vegas New Mexico MRA)*, 812 Douglas
Las Vegas, *House at 814 Douglas (Las Vegas New Mexico MRA)*, 814 Douglas
Las Vegas, *House at 818 Douglas (Las Vegas New Mexico MRA)*, 818 Douglas
Las Vegas, *House at 821 12th (Las Vegas New Mexico MRA)*, 821 12th
Las Vegas, *House at 822 Douglas (Las Vegas New Mexico MRA)*, 822 Douglas
Las Vegas, *House at 913 2nd (Las Vegas New Mexico MRA)*, 913 2nd
Las Vegas, *House at 915 2nd (Las Vegas New Mexico MRA)*, 915 2nd
Las Vegas, *House at 919 2nd (Las Vegas New Mexico MRA)*, 919 2nd
Las Vegas, *House at 919 Railroad (Las Vegas New Mexico MRA)*, 919 Railroad
Las Vegas, *House at 921 Chavez (Las Vegas New Mexico MRA)*, 921 Chavez
Las Vegas, *House at 921 S. Pacific (Las Vegas New Mexico MRA)*, 921 S. Pacific
Las Vegas, *House at 931 Prince (Las Vegas New Mexico MRA)*, 931 Prince
Las Vegas, *House at 933 12th (Las Vegas New Mexico MRA)*, 933 12th
Las Vegas, *Ilfeld, Charles, Memorial Chapel & Masonic Cemetery (Las Vegas New Mexico MRA)*, Colonias & Romero
Las Vegas, *Johnsen House (Las Vegas New Mexico MRA)*, 1523 8th
Las Vegas, *Johnsen Mortuary (Las Vegas New Mexico MRA)*, 801 Douglas
Las Vegas, *Las Vegas Iron Works (Las Vegas New Mexico MRA)*, Off NM 65/104
Las Vegas, *Las Vegas Railroad and Power Company Building (Las Vegas New Mexico MRA)*, 12th and San Francisco
Las Vegas, *Lincoln Park Historic District (Boundary Increase) (Las Vegas New Mexico MRA)*, Roughly bounded by Douglas & Grand Aves. and Gallinas & 12th Sts.
Las Vegas, *Martinez, Jose Orlando, House (Las Vegas New Mexico MRA)*, 1041 5th St.
Las Vegas, *Nolan House (Las Vegas New Mexico MRA)*, 110 10th St.
Las Vegas, *Old Las Vegas Post Office (Las Vegas New Mexico MRA)*, 901 Douglas
Las Vegas, *Pimter O'Neil Rooming House (Las Vegas New Mexico MRA)*, 313 Railroad
Las Vegas, *Romero, Canuto, House (Las Vegas New Mexico MRA)*, SW of Mills Ave.
Las Vegas, *Salazar, Vidal and Elisa, House (Las Vegas New Mexico MRA)*, 824 Railroad
Las Vegas, *Schmitt-Laemmle House (Las Vegas New Mexico MRA)*, 1106 Columbia
Las Vegas, *Serna-Blanchard House (Las Vegas New Mexico MRA)*, 2203 N. Gonzalez
Las Vegas, *Shawn-Guerin House (Las Vegas New Mexico MRA)*, 140 Delgado
Las Vegas, *St. Anthony's Hospital Annex (Las Vegas New Mexico MRA)*, 700 Friedman
Las Vegas, *Sundt, M. M., House (Las Vegas New Mexico MRA)*, 1007 8th
Las Vegas, *Taichert Building (Las Vegas New Mexico MRA)*, 1201 National
Las Vegas, *Taichert Warehouse (Las Vegas New Mexico MRA)*, 623 12th
Las Vegas, *Truder Park (Las Vegas New Mexico MRA)*, Roughly bounded by 2nd, Washington & Grand
Las Vegas, *Trujillo-Gonzales House (Las Vegas New Mexico MRA)*, 935 New Mexico
Las Vegas, *Ward, C. W. G., House (Las Vegas New Mexico MRA)*, 1301 8th

NEW YORK

Allegany County

Alfred, *Chapel Hall*, Alfred University

Chenango County

Oxford, *Oxford Village Historic District*, Roughly Washington Ave., State St., Chenango River, Merchant & Green Sts., Washington Park, Albany & Pleasant Sts.

Columbia County

Linlithgo, *Livingston Memorial Church and Burial Ground*, CR 10 & Wire Rd.
New Concord, *Knollcroft*, CR 9

Fulton County

Gloversville, *Downtown Gloversville Historic District*, Roughly bounded by Spring, Prospect, E. Fulton, S & M Main & Elm Sts.

Jefferson County

Cape Vincent, *Anthony, Levi, Building (Cape Vincent Town and Village MRA)*, Broadway
Cape Vincent, *Aubertine Building (Cape Vincent Town and Village MRA)*, Broadway
Cape Vincent, *Borland, John, House (Cape Vincent Town and Village MRA)*, Market St.
Cape Vincent, *Broadway Historic District (Cape Vincent Town and Village MRA)*, St. Lawrence River, W. edge of Village of Cape Vincent, on Broadway & Tibbets Point
Cape Vincent, *Buckley, James, House (Cape Vincent Town and Village MRA)*, Joseph St.
Cape Vincent, *Burnham, E. K., House (Cape Vincent Town and Village MRA)*, 585 Broadway
Cape Vincent, *Chevalier, Xavier, House (Cape Vincent Town and Village MRA)*, Gosier Rd.
Cape Vincent, *Cocaigne, Nicholas, House (Cape Vincent Town and Village MRA)*, Favret Rd.
Cape Vincent, *Dezengremel, Remy, House (Cape Vincent Town and Village MRA)*, Rosiere Rd.
Cape Vincent, *Docteur, Joseph, House (Cape Vincent Town and Village MRA)*, Rosiere Rd.
Cape Vincent, *Duvillard Mill (Cape Vincent Town and Village MRA)*, Broadway
Cape Vincent, *Dyer, Reuter, House (Cape Vincent Town and Village MRA)*, Rosiere Rd.
Cape Vincent, *Galband du Fort, Jean Philippe, House (Cape Vincent Town and Village MRA)*, James St.
Cape Vincent, *General Sacket House (Cape Vincent Town and Village MRA)*, 4407 James St.
Cape Vincent, *Glen Building (Cape Vincent Town and Village MRA)*, Broadway
Cape Vincent, *Johnson House (Cape Vincent Town and Village MRA)*, Tibbetts Point Rd
Cape Vincent, *Lewis House (Cape Vincent Town and Village MRA)*, Market St.
Cape Vincent, *Peugnet, Captain Louis, House (Cape Vincent Town and Village MRA)*, Tibbetts Point Rd.
Cape Vincent, Renolds, George, House (Cape Vincent Town and Village MRA), River Rd.
Cape Vincent, *Roxy Hotel (Cape Vincent Town and Village MRA)*, 310 Broadway
Cape Vincent, *Sacket, Cornelius, House (Cape Vincent Town and Village MRA)*, 571 Broadway
Cape Vincent, *St. John's Episcopal Church (Cape Vincent Town and Village MRA)*, Market St.
Cape Vincent, *St. Vincent of Paul Catholic Church (Cape Vincent Town and Village MRA)*, Kanady St.
Cape Vincent, *Starkey, Otis, House (Cape Vincent Town and Village MRA)*, Point St.
Cape Vincent, *Union Meeting House (Cape Vincent Town and Village MRA)*, Millens Bay Rd.
Cape Vincent, *Vautrin, Claude, House (Cape Vincent Town and Village MRA)*, Mason Rd.
Cape Vincent, *Wilson, Warren, House (Cape Vincent Town and Village MRA)*, Favret Rd.
Clayton, *Clayton Historic District*, 203—215 & 200—328 James St., 500—544 & 507—537 Riverside Dr.

Kings County

Brooklyn, *Lefferts-Laidlaw House*, 136 Clinton Ave.
Brooklyn, *Public Bath No. 7*, 227—231 Fourth Ave.

Madison County

Morrisville, *First National Bank of Morrisville, Main St.*

Monroe County

Rochester, *House at 235—237 Reynolds Street*, 235—237 Reynolds St.
Rochester, *O'Kane Market and O'Kane Building*, 104—108 Bartlett St. & 230—255 Reynolds St.
Sibleyville, *Sibley, Hiram, Homestead*, 29 Sibley Rd.

New York County

New York, *Buildings*, 336, 338 & 340 W. 23rd St.
New York, *Minton's Playhouse*, 206—210 W. One Hundred Eighteenth St.
New York, *Sutton Place Historic District*, 1—21 Sutton Pl. & 4—16 Sutton Sq.

Oneida County

Utica, *New Century Club*, 253 Genesee St.

Onondaga County

Syracuse, *North Salina Street Historic District*, 517—519 to 947—951 & 522—524 to 850—854 N. Salina St., 1121 N. Townsend St. & 504—518 Prospect Ave.

Orange County

Newburgh, *East Inc Historic District*, Roughly bounded by Robinson Ave., LeRoy Pl., Water St., Bay View Terr., Monument & Renwick Sts.

Saratoga County

Saratoga Springs, *Saratoga Spa State Park District*, US 9 & NY 50.

Schenectady County

Schenectady, *Hotel Van Curler*, 78 *Washington Ave.*

Suffolk County

Huntington, *Bay Crest Historic District (Huntington Town MRA)*, Beech Ave., Valley Rd., Woodside & Valley Drs.
Huntington, *Baylis, M., House (Huntington Town MRA)*, 530 Sweet Hollow Rd.
Huntington, *Beaux Arts Park Historic District (Huntington Town MRA)*, Locust Ln., Upper & Lower Drs.
Huntington, *Bethel AME Church and Manse (Huntington Town MRA)*, 291, Park Ave.
Huntington, *Bowes House (Huntington Town MRA)*, 15 Harbor Hill Dr.
Huntington, *Brown, George McKesson, Estate—Coindre Hall (Huntington Town MRA)*, Brown's Rd.
Huntington. *Brush, George No. House (Huntington Town MRA). 311 Greenlawn Rd.*
Huntington, *Brush Farmstead (Huntington Town MRA)*, 344 Greenlawn Rd.
Huntington, *Buffett, Eliphas, House (Huntington Town MRA)*, 159 W. Roques Path
Huntington, *Buffett, Joseph, House (Huntington Town MRA)*, 169 W. Rogues Path
Huntington, *Bumpstead, John, House (Huntington Town MRA)*, 473 Woodbury Rd.
Huntington, *Burr, Carll S., Mansion (Huntington Town MRA)*, 304 Burr Rd.
Huntington, *Burr, Carll, Jr., House (Huntington Town MRA)*, 293 Burr Rd.
Huntington, *Carll House (Huntington Town MRA)*, 380 Deer Park Rd.
Huntington, *Carll House (Huntington Town MRA)*, 79 Wall St.
Huntington, *Carll, Ezra, Homestead (Huntington Town MRA)*, 49 Milville Rd.
Huntington, *Chichester's Inn (Huntington Town MRA)*, 97 Chichester Rd.
Huntington, *Cold Spring Harbor Library (Huntington Town MRA)*, 1 Shore Rd.
Huntington, *Commack Methodist Church and Cemetery (Huntington Town MRA)*, 486 Townline Rd.
Huntington, *Conklin, David, House (Huntington Town MRA)*, 2 High St.
Huntington, *Delameter—Bevin Mansion (Huntington Town MRA)*, Bevin Ln.
Huntington, *Donnell, Harry E., House (Huntington Town MRA)*, 71 Locust Ln.
Huntington, *Dowden Tannery (Huntington Town MRA)*, 210 W. Roques Path
Huntington, *East Shore Road Historic District (Huntington Town MRA)*, East Shore Rd.
Huntington, *Everit, John, House (Huntington Town MRA)*, 130 Old Country Rd.
Huntington, *Felix, N.J., House (Huntington Town MRA)*, 235 Asharoken Ave.
Huntington, *Geoghagen, Charles, House (Huntington Town MRA)*, 9 Harbor Hill Dr.
Huntington, *Gilsey Mansion (Huntington Town MRA)*, 36 Browns Rd.
Huntington, *Goose Hill Road Historic District (Huntington Town MRA)*, Goose Hill Rd.
Huntington, *Green, John, House (Huntington Town MRA)*, 167 E. Shore Rd.
Huntington, *Halsey Estate—Tallwood (Huntington Town MRA)*, Sweet Hollow Rd.
Huntington, *Harbor Road Historic District (Huntington Town MRA)*, Harbor Rd.
Huntington, *Harned, John, House (Huntington Town MRA)*, 28 Little Neck Rd.
Huntington, *Harrison, Wallace K., Estate (Huntington Town MRA)*, 140 Round Swamp Rd.
Huntington, *Heckscher Park (Huntington Town MRA)*, Bounded by Madison St., Sabbath Day Path, Main St. & Prince Ave.
Huntington, *Hewlett House (Huntington Town MRA)*, 559 Woodbury Rd.
Huntington, *House (Huntington Town MRA)*, 244 Park Ave.
Huntington, *House (Huntington Town MRA)*, 200 Bay Ave.
Huntington, *Hubbs—Burr House (Huntington Town MRA)*, 303 Burr Rd.
Huntington, *Ireland—Gardiner Farm (Huntington Town MRA)*, 863 Lake Rd.
Huntington, *Jarvis—Fleet House (Huntington Town MRA)*, 138 Cove Rd.
Huntington, *Kane, John P., Mansion (Huntington Town MRA)*, 37 Kanes Ln.
Huntington, *Kennan, A. P. W., House (Huntington Town MRA)*, Sydney Rd.
Huntington, *Ketchum, B., House (Huntington Town MRA)*, 237 Middleville Rd.
Huntington, *Lewis, E. G., House (Huntington Town MRA)*, Waterside Rd.
Huntington, *Losee, Isaac, House (Huntington Town MRA)*, 289 Park Ave.
Huntington, *Main Street Historic District (Huntington Town MRA)*, Main St.
Huntington, *O'Donohue, C. A., House (Huntington Town MRA)*, 158 Shore Rd.
Huntington, *Oakley, John, House (Huntington Town MRA)*, Sweet Hollow Rd.
Huntington, *Old First Church (Huntington Town MRA)*, 126 Main St.
Huntington, *Old Town Green Historic District (Huntington Town MRA)*, Park Ave.
Huntington, *Old Town Hall Historic District (Huntington Town MRA)*, Main St. & Nassau Rd.
Huntington, *Potter— Williams House (Huntington Town MRA)*, 165 Wall St.
Huntington, *Prime House (Huntington Town MRA)*, 35 Prime Ave.
Huntington, *Prime—Octagon House (Huntington Town MRA)*, 41 Prime Ave.
Huntington, *Remp, Michael, (Huntington Town MRA)*, 42 Godfrey Ln.
Huntington, *Robb, J. T., House # 1 (Huntington Town MRA)*, Sydney Rd.
Huntington, *Robb, J. T., House # 2 (Huntington Town MRA)*, 23 Sydney Rd.
Huntington, *Robinson House (Huntington Town MRA)*, 347 Greenlawn Rd.
Huntington, *Rogers House (Huntington Town MRA)*, 136 Spring Rd.
Huntington, *Rogers, John, House (Huntington Town MRA)*, 627 Half Hollow Rd.
Huntington, *Sammis, Silas, House (Huntington Town MRA)*, 302 W. Neck Rd.
Huntington, *Seaman Farm (Huntington Town MRA)*, 1378 Carlls Straight Path.
Huntington, *Shore Road Historic District (Huntington Town MRA)*, Shore Rd.
Huntington, *Skidmore House (Huntington Town MRA)*, Woodhull Rd.
Huntington, *Smith, Daniel, House (Huntington Town MRA)*, 117 W. Shore Rd.
Huntington, *Smith, Henry, Farmstead (Huntington Town MRA)*, 900 Park Ave.
Huntington, *Smith, Jacob, House (Huntington Town MRA)*, High Hold Dr.
Huntington, *Sweet Hollow Presbyterian Church Parsonage (Huntington Town MRA)*, 152 Old Country Rd.
Huntington, *Titus—Bunce House (Huntington Town MRA)*, 7 Goose Hill Rd.
Huntington, *Townsend, Henry, House (Huntington Town MRA)*, 231 W. Neck Rd.
Huntington, *Valentine, Philip, House (Huntington Town MRA)*, 195 Pidgeon Hill Rd.
Huntington, *Van Iderstine, Charles, Mansion (Huntington Town MRA)*, Idle Day Dr.
Huntington, *Vanderbilt, William K., (Huntington Town MRA)*, Little Neck Rd.
Huntington, *Velzer, N., House and Caretaker's cottage (Huntington Town MRA)*, 22 Fort Salonga Rd.
Huntington, *Weeks, Charles M., House (Huntington Town MRA)*, 76 Mill Ln.
Huntington, *West Neck Road Historic District (Huntington Town MRA)*, West Neck Rd.
Huntington, *Whitman, Joseph, House (Huntington Town MRA)*, 365 W. Hills Rd.
Huntington, *Whitman, Walt, House (Huntington Town MRA)*, 246 Walt Whitman.
Huntington, *Whitman—Place House (Huntington Town MRA)*, 69 Chichester Rd.
Huntington, *Wiggins—Rolph House (Huntington Town MRA)*, 518 Park Ave.
Huntington, *Williams, Henry, House (Huntington Town MRA)*, 43 Mill Ln.
Huntington, *Wood, Harry, House (Huntington Town MRA)*, 481 W. Main St.
Huntington, *Wood, John, House (Huntington Town MRA)*, 121 McKay Rd.
Huntington, *Wood, William Wooden, House (Huntington Town MRA)*, 90 Preston St.
Huntington, *Woodhull, Charles, House (Huntington Town MRA)*, 70 Main St.

Ulster County

Lew Beach vicinity, *Beaverkill Valley Inn*, Beaverkill Rd.

Westchester County

Pound Ridge, *Pound Ridge Historic District*, Roughly Pound Ridge, Old Stone Hill & Salem Rds., Trinity Pass & Westchester Ave.
Yonkers, *Copcutt, John, Mansion*, 239 Nepperhan Ave.

NORTH CAROLINA

Buncombe County

Asheville, *Oteen Veterans Administration Hospital Historic District*, N side US 70

Burke County

Morganton, *Tate, Franklin Pierce, House*, 410 W. Union St.

Durham County

Durham, *Clevelend Street District (Durham MRA)*, Roughly Cleveland St. between Seminary & Gray Aves.& Mallard St.
Durham, *Holloway Street District (Durham MRA)*, Roughly bounded by Holloway,

Railroad & Liberty Sts., Peachtree Pl. & Dillard St.

Wilkes County

Ronda vicinity, *Claymont Hill*, W side of SR 2303 along Ronda-Clingman Rd.

OHIO

Fayette County

Washington Court House, *Washington Court House Commercial Historic District*, Roughly bounded by N. North, East, Hinde & Market Sts.

OKLAHOMA

Carter County

Wilson vicinity, *Healdton Oil Field Bunk House*, N. of Wilson

Pontotoc County

Ada vicinity, *Mijo Camp Industrial District*, N. side of Pontotoc Cty. Rd. # 148

Pottawatomie County

Shawnee, *Billington Building*, 23 E. Ninth
Shawnee, *Douglas, H.T., Mansion and Garage*, 100 E. Federal

Seminole County

Wewoka, *Wewoka Switch and Side Tracks*, OK 56

PENNSYLVANIA

Montgomery County

Ambler vicinity, *Gwynedd Hall*, 1244 Meetinghouse Rd.

RHODE ISLAND

Kent County

Carbuncle Hill Archaeological District

Providence County

Breezy Hill Site (RI–957)
Double L Site (RI–958)
McGonagle Site (RI–1227)
Millrace Site (RI–1039)
Moswansicut Pond Site (RI–960)

Washington County

Fernwood Cemetery

SOUTH CAROLINA

Allendale County

Allendale Chert Quarries Archeological District

Charleston County

McClellanville vicinity, *Laurel Hill*, Off U.S. 17

Greenville County

Greenville, *Imperial Hotel (Greenville MRA)*, 201 W. Washington St.

Greenwood County

Greenwood vicinity, *Barratt House*, SC 67 & Bryan Dorn Rd.

Orangeburg County

Orangeburg, *Amelia Street Historic District (Orangeburg MRA)*, Amelia St. between Treadwell St. & Summers Ave.
Orangeburg, *Briggmann, F.H.W., House (Orangeburg MRA)*, 156 Amelia St.
Orangeburg, *Claflin College Historic District (Orangeburg MRA)*, On a portion of Claflin College campus.
Orangeburg, *Dixie Library Building (Orangeburg MRA)*, Bull St.
Orangeburg, *Dukes Gymnasium (Orangeburg MRA)*, South Carolina State College campus.
Orangeburg, *East Russell Street Area Historic District (Orangeburg MRA)*, Along sections of E. Russell St. between Watson & Clarendon Sts. and along portion of Oakland Pl., Dickson & Whitman Sts.
Orangeburg, *Ellis Avenue Historic District (Orangeburg MRA)*, Along portion of Ellis Ave. between Summers Ave & Wilson St.
Orangeburg, *Enterprise Cotton Mills Building (Orangeburg MRA)*, U.S. 21
Orangeburg, *Fordham, Major John Hammond, House (Orangeburg MRA)*, 415 Boulevard
Orangeburg, *Hodge Hall (Orangeburg MRA)*, South Carolina State College campus.
Orangeburg, *Hotel Eutaw (Orangeburg MRA)*, Russell & Centre Sts.
Orangeburg, *Lowman Hall, South Carolina State College (Orangeburg MRA)*, South Carolina State College campus.
Orangeburg, *Mt. Pisgah Baptist Church (Orangeburg MRA)*, 310 Green
Orangeburg, *Orangeburg County Fair Main Exhibit Building (Orangeburg MRA)*, U.S. 21
Orangeburg, *Orangeburg Downtown Historic District (Orangeburg MRA)* Russell, Broughton, Middleton, Church, Meeting, St. John, Hampton, and Amelia Sts. around public square
Orangeburg, *Treadwell Street Historic District (Orangeburg MRA)*, Along portions of Treadwell & Amelia Sts.
Orangeburg, *Whiteman Street Area Historic District (Orangeaburg MRA)*, Along sections of Whiteman, Elliot, and E. Russell Sts.
Orangeburg, *Williams Chapel A.M.E. Church (Orangeburg MRA)*, 1908 Glover St.

York County

Fort Mill vicinity, *Springfield Plantation House*, US 21
Fort Mill vicinity, *White, William Elliott, House*, N. White St.
Fort Mill, *White, John M., House*, White & Skipper Sts.

TEXAS

Bexar County

San Antonio, *Prospect Hill Missionary Baptist Church*, 1601 Buena Vista

Travis County

Austin, *Bailetti House (East Austin MRA)*, 1006 Waller St.
Austin, *Barnes, Charles W., House (East Austin MRA)*, 1105 E. 12th St.
Austin, *Briones, G. P., House (East Austin MRA)*, 1204 E. 7th St.
Austin, *City Cemetery (East Austin MRA)*, 16th & Navasota
Austin, *Community Center (East Austin MRA)*, 1192 Angelina St.
Austin, *Haehnel Building (East Austin MRA)*, 1101 E. 11th St.
Austin, *House at 1170 San Bernard Street (East Austin MRA)*, 1170 San Bernard St.
Austin, *House at 1202 Garden Street (East Austin MRA)*, 1202 Garden St.
Austin, *House at 1400 Canterbury Street (East Austin MRA)*, 1400 Canterbury St.
Austin, *Irvin, Robert, House (East Austin MRA)*, 1008 E. 9th St.
Austin, *Jobe, Phillip W., House (East Austin MRA)*, 1113 E. 9th St.
Austin, *Johnson, C.E., House (East Austin MRA)*, 1022 E. 7th St.
Austin, *Maddox, John W., House (East Austin MRA)*, 1115 E. 3rd St.
Austin, *Moreland, Charles B., House (East Austin MRA)*, 1301 E. 1st St.
Austin, *Peterson, George A., House (East Austin MRA)*, 1012 E. 8th St.
Austin, *Polhemus, Joseph O., House (East Austin MRA)*, 912 E. 2nd St.
Austin, *Rainey Street Historic District (East Austin MRA)*, 70–97 Rainey St.
Austin, *Robinson-Macken House*, 702 Rio Grande St.
Austin, *Shotgun at 1206 Canterbury Street (East Austin MRA)*, 1206 Canterbury St.
Austin, *Shotguns at 1203–1205 Bob Harrison (East Austin MRA)*, 1203–1205 Bob Harrison
Austin, *Southgate-Lewis House (East Austin MRA)*, 1501 E. 12th St.
Austin, *State Cemetery of Texas (East Austin MRA)*, 901 Navasota St.
Austin, *Swedish Hill Historic District (East Austin MRA)*, 900–1000 blks. of E. 14th St. & 900 blk. of E. 15th.
Austin, *Wesley United Methodist Church (East Austin MRA)*, 1164 San Bernard St.
Austin, *Willow-Spence Streets Historic District (East Austin MRA)*, Portions of Willow, Spence, Canterbury, San Marcos & Waller Sts.

Uvalde County

Fort Inge Archeological Site (41UV75)

VIRGINIA

Richmond (Independent City)

Fan Area Historic District, Roughly bounded by N. Harrison, W. Main, W. Grace & N. Mulberry Sts.

WEST VIRGINIA

Lewis County

Weston, *Weston Downtown Historic District*, Parts of Main, Center & Court Aves., Second & Third Sts.

WISCONSIN

Dane County

Madison, *Old U.S. Forest Products Laboratory*, 1509 University Ave., University of Wisconsin campus
Stoughton, *South School*, 1009 Summit Ave.

Milwaukee County

Fox Point, *Meyer, Starke, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 7896 N. Club Circle
Milwaukee, *American System Built Homes-Burnham Street District*, W. Burnham St.
Milwaukee, *Fiebing, Otto F., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 302 N. Hawley Rd.

Milwaukee, *Hoelz, Alfred M., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 49—51 Frederick Ave.
Shorewood, *Bossert, Thomas, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 2614 E. Menlo Blvd.
Shorewood, *Cords, Erwin, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 1913 E. Olive St.
Shorewood, *Hatch, Seneca W. & Bertha, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 3821 N. Prospect Ave.
Shorewood, *Meyer, Henry A., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 3559 N. Summit Ave.
Shorewood, *Morgan, George E., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 4448 N. Maryland Ave.
Wauwatosa, *Davis, H. R., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 6839 Cedar St.
Wauwatosa, *Fiebing, J. H., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 7707 Stickney
Wauwatosa, *George, Warren B., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 7105 Grand Pkwy.
Wauwatosa, *Hopkins, Willis, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 325 Glenview
Wauwatosa, *Norton, Pearl C., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 2021 Church St.
Whitefish Bay, *Arndt, Rufus, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 4524 N. Cramer St.
Whitefish Bay, *Barfield-Staples House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 5461–5463 Danbury Rd.
Whitefish Bay, *Gabel, George, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 4600 N. Cramer St.
Whitefish Bay, *Grant, Paul S., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 984 E. Circle Dr.
Whitefish Bay, *Hardie, Harrison, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 4540 N. Cramer St.
Whitefish Bay, *Hatch, Horace W., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 739 E. Beaumont
Whitefish Bay, *Jenkins, Halbert D., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 1028 E. Lexington Blvd.
Whitefish Bay, *McEwens, John F., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 829 E. Lake Forest
Whitefish Bay, *Sperling, Frederick, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 1016 E. Lexington Blvd.
Whitefish Bay, *Van Altena, William, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 1916 E. Glendale
Whitefish Bay, *Van Devan, G. B., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 4601 N. Murray Ave.
Whitefish Bay, *Williams, Frank J., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 912 E. Lexington Blvd.

Outagamie County

Appleton, *Masonic Temple*, 330 E. College Ave.

Price County

Park Falls, *Flambeau Paper Company Office Building*, 200 N. First Ave.
Prentice, *Prentice Co-operative Creamery Company*, 700 Main St.

Winnebago County

Oshkosh, *Orville Beach Memorial Manual Training School*, 240 Algoma Blvd.

[FR Doc. 85–20444 Filed 8–26–85; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Extension of Comment Period on Scope of Issues To Be Analyzed in a Draft Environmental Impact Statement and a Preliminary Regulatory Impact Analysis on the Proposed Rule Defining the Applicability of the Prohibitions in Section 522 to Underground Coal Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Extension of comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) will accept written comments until September 10, 1985, on the scope of the environmental impact statement (EIS) and the regulatory impact analysis (RIA) on the proposed rule defining the applicability of the prohibitions in section 522 to underground coal mining.

DATES: OSM will accept written comments on the scope of the EIS and RIA until 4 p.m. eastern daylight time on September 10, 1985.

ADDRESSES: Hand-deliver written comments to the Office of Surface Mining, Division of Permit and Environment Analysis, Room 5121, 1100 L Street, NW., Washington, D.C.; or mail them to the Office of Surface Mining, Division of Permit and Environment Analysis, Room 5121–L, U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Anna May Orellana at the Washington, D.C., address listed above (telephone: 202–343–5143).

SUPPLEMENTARY INFORMATION: In the June 19, 1985, **Federal Register** (50 FR 25473), OSM published a notice of intent to prepare an EIS and RIA on the applicability of the prohibitions in section 522(e) (4) and (5) of the Surface Mining Control and Reclamation Act (the Act) to underground mining. OSM stated that written comments would be accepted on the scoping of the EIS and the RIA until 4 p.m. eastern daylight time on August 27, 1985. OSM has now decided to extend the period for acceptance of comments on the scope of these documents until September 10, 1985.

Dated: August 21, 1985.

Len Richeson,

Acting Assistant Director, Technical Services and Research.

[FR Doc. 85–20395 Filed 8–26–85; 8:45 am]
BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–18 (Sub-76X)]

The Chesapeake & Ohio Railway Co.; Abandonment in Raleigh County, WV; Exemption

The Chesapeake and Ohio Railway Company (C&O) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights*, to abandon approximately 1.22 miles of rail line, C&O's Glade Creek and Raleigh Subdivision, from Valuation Station 0+00 (milepost 0.00) at Blue Jay Junction to Valuation Station 103+40 (milepost 1.22) near Glen Morgan (end of line), in Raleigh County, WV.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that no overhead traffice moves over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 26, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by September 6, 1985 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 16, 1985; with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Rene J. Gunning, Suite 2204, 100 North Charles St., Baltimore, MD 21201
Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101

If the notice of exempt contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 14, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-20453 Filed 8-26-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Consent Decrees Pursuant to Clean Air Act; United States v. Monsanto Co. and U.S. Dismantling & Equipment Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 9, 1985 proposed Consent Decrees in *United States* v. *Monsanto Company and U.S. Dismantling and Equipment Corporation*, Civil Action No. PCA 85-4093-RV were lodged with the United States District Court for the Northern District of Florida. The proposed Consent Decrees concern an action under the Clean Air Act (the "Act") for civil penalties and injunctive relief for alleged violations of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR Part 61, Subpart A and sections 112(c), 112(e) and 114(a)(1)(b) of the Act. The defendants are Monsanto Company, owner of the Pensacola, Florida facility, and U.S. Dismantling and Equipment Corporation, the party performing the demolition under contract with Monsanto. The proposed Consent Decrees require Monsanto to pay a civil penalty of $15,000 and the contractor to pay a $5,000 civil penalty. In addition, the Consent Decree with U.S. Dismantling and Equipment Corporation also requires full compliance with the Asbestos NESHAP in any future demolitions and renovations during the one (1) year term of the decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Washington, DC 20530, and should refer to *United States* v. *Monsanto Company and U.S. Dismantling & Equipment Corporation*, D.J. Ref. 90-5-2-1-1-785.

The proposed Consent Decrees may be examined at the office of the United States Attorney, Northern District of Florida, 100 North Palafox Street, Room 307, Pensacola, Florida 32501, and at the Region IV Office of the U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed Consent Decrees may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street & Pennsylvania Avenue, NW., Washington, DC 20530. Copies of both proposed Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-20398 Filed 8-26-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N 1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, DC 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Collection of Information in Current Rules

Occupational Safety and Health Administration
Powered Platforms for Exterior Maintenance
OSHA 201
On occasion
Businesses or other for profit; small businesses or organizations 19,500 respondents; 243,750 hours, 0 forms

OSHA is requiring this information to be collected by employers for determining the cumulative maintenance status of a powered platform and for taking the necessary preventive action to assure employee safety.

Occupational Safety and Health Administration
Records of Inspection of Running Ropes on Cranes and Derricks
OSHA 209, 212, 213
Recordkeeping
Businesses or other for profit; small businesses or organizations 780,000 responses; 390,000 hours; 0 forms

OSHA requires a record of periodic thorough inspection of running ropes on cranes, mobile cranes, and derricks. The inspections are to determine the condition of the wire ropes to prevent injury due to rope failure during use.

Occupational Safety and Health Administration
Inspection Report (Critical Components for Cranes)
OSHA 231
Recordkeeping
Businesses or other for profit; small businesses or organizations
110,000 responses; 660,000 hours; 0 forms

The employer is required to record the condition of items critical to the continued safe use of mobile cranes observed during monthly inspections. Use of the records to determine service and maintenance schedules ensures a safer workplace.

Occupational Safety and Health Administration
Hoist Inspection Record
OSHA 232
Recordkeeping
Businesses or other for profit; small businesses or organizations
1,200 respondents; 9,600 hours; 0 forms

Records of inspections and test of hoist facility are required to ensure corrective procedures in a timely manner to minimize hazards to employees while in, on, or around the hoist and its proximity.

Occuational Safety and Health Administration
Electrical Component Inspection (explosives haulage trucks used underground)
OSHA 236
Recordkeeping
Businesses or other for profit; small businesses or organizations
1 respondent; 8 hours; 0 forms

A record of electrical system checks on explosive haulage trucks is required to ensure elimination of ignition sources that would cause fires or explosions when employees are underground.

Reinstatement

Occupational Safety and Health Administration
Manlifts
1218–0055; OSHA 200
On occasion
Businesses or other for profit; small businesses or organizations 3,000 respondents; 52,500 hours; 0 forms

OSHA is requiring this information to be collected by employers for determining the cumulative maintenance status of a manlift and for taking the necessary preventive action to assure employee safety.

Signed at Washington, DC, this 22nd day of August 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–20477 Filed 8–26–85; 8:45 am]

BILLING CODE 4510-26-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; American Standard, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 6, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 6, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 19th day of August 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Standard, Inc. (workers)	New Orleans, LA	8/12/85	8/5/85	TA-W-16,278	Bowls & tanks.
Anchor Hocking, Plant No. 42 (Co.)	Lancaster, OH	8/9/85	8/6/85	TA-W-16,279	Warehousing.
Bow Age, Inc. (ILGWU)	East Newark, NJ	8/5/85	8/1/85	TA-W-16,280	Childrens apparel.
Cisco Casuals (ACTWU)	New York, NY	4/29/85	4/24/85	TA-W-16,281	Sportswear.
Eaton Corporation (USWA)	Salem, VA	7/25/85	7/19/85	TA-W-16,282	Lift truck components.
Homestake Mining Co. (workers)	Grants, NM	8/5/85	8/2/85	TA-W-16,283	Uranium ore mining & milling.
LTV Steel Company, Sinter Plant (USWA)	Youngstown, OH	8/9/85	8/5/85	TA-W-16,284	Sinter for blast furnace.
Patapsco & Back Rivers Railroad Co. (United Transportation Union).	Sparrows Point, MD	8/12/85	8/6/85	TA-W-16,285	Transporting steel & steel products.
Pettibone Corp. (International Association of Machinists)	Rome, NY	8/12/85	8/7/85	TA-W-16,286	Hydraulic rough terrain cranes, pedestal mounted cranes, railroad specialty cranes.
Powder Metal Products, Inc. (IUE)	St. Marys, PA	8/8/85	8/6/85	TA-W-16,287	Powder metal parts.
U.S. Steel Corp., National Works (USWA)	McKeesport, PA	8/5/85	8/1/85	TA-W-16,288	Steel pipe, oil country goods, line pipe, drill pipe, casing, tubing.
American Dade (workers)	Miami, FL	7/31/85	7/26/85	TA-W-16,289	Chemical reagents, blood serums, instruments for blood analysis.
AMP, Inc. (workers)	Roanoke, VA	8/12/85	8/5/85	TA-W-16,290	Computer connectors.
B.F. Goodrich Distribution Center (workers)	Columbus, OH	8/6/85	8/1/85	TA-W-16,291	Conveyor belting, rubber products, hoses, sheet rubber v belts.
Forster Manufacturing Co., Inc. (workers)	Strong, ME	7/30/85	7/25/85	TA-W-16,292	Clothes pins, plastic tableware, toothpicks.
Do.	East Wilton, ME	7/30/85	7/25/85	TA-W-16,293	Do.
Do.	Straton, ME	7/30/85	7/25/85	TA-W-16,294	Do.
Do.	Wilton, ME	7/30/85	7/25/85	TA-W-16,295	Do.
Oneida, Ltd. (workers)	Sherrill, NY	8/1/85	7/26/85	TA-W-16,296	Stainless steel flatware.
Do.	do	8/1/85	7/26/85	TA-W-16,297	Do.
Do.	Oneida, NY	8/1/85	7/26/85	TA-W-16,298	Hollowware products, flatware products, silver & stainless steel.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Quitex Co., Inc. (workers)	Brooklyn, NY	8/5/85	7/29/85	TA-W-16,299	Childrens wear.
Seatt Corp. (company)	Downers Grove, IL	8/9/85	8/5/85	TA-W-16,300	Rechargeable flashlights.
Carlin Manufacturing Co., Inc. (workers)	Hazleton, PA	8/12/85	8/6/85	TA-W-16,301	Ladies sportswear.
Carter Automotive Products Corp. (workers)	Lafayette, TN	8/12/85	8/6/85	TA-W-16,302	Automotive component fuel pumps, water pumps, control solenoids.
(The) Fenton Art Glass Ware (workers)	Williamstown, WV	8/8/85	8/5/85	TA-W-16,303	Decorative gift glassware, china, novelty items, gift items.
Fermon Tanning Corp. (company)	Peabody, MA	8/12/85	8/8/85	TA-W-16,304	Split cowhide.
LaBelle Processing Co. (UMWA)	McMurray, PA	8/12/85	8/6/85	TA-W-16,305	Metallurgical coal.
Maple Tree, Inc. (company)	Maplesville, AL	8/8/85	7/30/85	TA-W-16,306	Ladies polyester blouses, skirts & pants.
Potlatch Corp. Jaype Unit (IWA)	Pierce, ID	8/12/85	8/8/85	TA-W-16,307	Finished plywood.
Potlatch Corp., Clearwater Unit (IWA)	Headquarters, ID	8/12/85	8/8/85	TA-W-16,308	Logging.
Do.	Lewston, ID	8/12/85	8/8/85	TA-W-16,309	Finished lumber.
Texas City Refining (workers)	Texas City, TX	8/13/85	7/15/85	TA-W-16,310	Gasoline, heating fuel (diesel fuel).
Vesta Mining Co. (UMWA)	McMurray, PA	8/12/85	8/6/85	TA-W-16,311	Mining coal.
Atlas Crankshaft Corp. (UAW)	Fostoria, OH	8/12/85	7/31/85	TA-W-16,312	Components for diesel engines.
AT&T Information Systems (IBEW)	Shreveport, LA	8/8/85	7/29/85	TA-W-16,313	Telephones.
Beckman Industrial (workers)	Fullerton, CA	8/13/85	7/23/85	TA-W-16,314	Resistor networks, ceramic resistors, potentiometers and diodes.
E.W. Bowman, Inc. (USWA)	Uniontown, PA	8/12/85	8/7/85	TA-W-16,315	Annealing lehrs.
Funfootwear Co (ACTWAU)	Hazleton, PA	8/9/85	8/1/85	TA-W-16,316	Plastic sandals, boots.
Goodyear Atomic Corp. (company)	Piketon, OH	8/12/85	8/8/85	TA-W-16,317	Enriched uranium services.
Heath Company (USWA)	Benton Harbor, MI	8/5/85	8/1/85	TA-W-16,318	Heath electronic kits, personal computers.
Picker International (workers)	Highland Heights, OH	8/12/85	8/7/85	TA-W-16,319	Cat scanners.
Racal-Milgo, Inc. (workers)	Ft. Lauderdale, FL	8/12/85	7/29/85	TA-W-16,320	Modems & multiplex.
Standard Plastics Products, Inc. (ILGPNWU)	Edison, NJ	8/9/85	7/29/85	TA-W-16,321	Toys (Plastics).
Wayne Floral Co., Inc. (company)	Newark, NJ	8/9/85	8/5/85	TA-W-16,322	Potted plants & cut flowers.
A.P. Green Refractories Co. (Aluminum Brick & Glass Wkrs of Amer.).	Massillon, OH	8/15/85	8/10/85	TA-W-16,323	High temperature fire brick.

[FR Doc. 85–20474 Filed 8–26–85; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–14,557]

Oak Communications Systems, Elkhorn, WI; Revised Determination

On June 3, 1985, the Department reopened an investigation on the basis of additional information provided by former employees of Oak Communications Systems, Elkhorn, Wisconsin. The Department of Labor's Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance was published in the **Federal Register** on December 13, 1983 (48 FR 55526).

Upon reopening the investigation, the Department found that activities relating to the production of cable TV decoders continued beyond March 1, 1983 into the fourth quarter of 1983.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with decoders for cable TV produced at Oak Communications Systems, Elkhorn, Wisconsin contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Oak Communications Systems, Elkhorn, Wisconsin engaged in employment related to the production of decoders for cable TV at Oak Communications Systems, Elkhorn, Wisconsin who became totally or partially separated from employment on or after September 1, 1982 and before December 31, 1983 are eligible to apply for adjustment assistance benefits under Section 223 of the Trade Act of 1984.

I further determine that all workers of Oak Communications Systems, Elkhorn, Wisconsin engaged in employment related to the production of head end equipment and decoders for satellite TV are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of August 1985.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85–20475 Filed 8–26–85; 8:45 am]
BILLING CODE 4510–30–M

Revised Final Program Year (PY) 1985 Allotments for Basic Labor Exchange Activities Under the Wagner-Peyser Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces revised final allotments for PY 1985 (July 1, 1985 through June 30, 1986) for basic labor exchange activities authorized under section 7 (a) and (b) of the Wagner-Peyser Act, as amended by Pub. L. 97–300.

FOR FURTHER INFORMATION CONTACT: Richard C. Gilliland, Director, United States Employment Service (Attention: TEES) 601 D Street, NW., Washington, DC 20213. 202–376–6750.

SUPPLEMENTARY INFORMATION: In February 1985 the Department of Labor submitted to Congress a proposal requesting a $37,000,000 reduction in PY 1985 allotments for employment service activities. Congress subsequently rejected the proposal in the FY 1985 Supplemental Appropriations Bill.

The amount of funds now available for distribution in PY 1985 is $777,398,000 of which $14,000,000 is being withheld to finance postage expenses associated with public employment service business. These allotments are distributed in accord with criteria established in section 6 of the Act.

The funding methodology is unchanged from that used for the final PY 1985 allotments published in the **Federal Register** on May 21, 1985.

Further information regarding the allocation methodology is available upon request.

Signed at Washington, DC on August 22, 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

BILLING CODE 4510–30–M

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION 8/13/85
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
REVISED FINAL PY 1985 WAGNER-PEYSER ALLOTMENTS TO STATES

	BASIC FORMULA	3% DISTRIBUTION			TOTAL ALLOTMENT***
		STEP 1*	STEP 2**	TOTAL	
ALABAMA	12,366,823	0	0	0	12,366,823
ALASKA	7,244,045	1,054,457	0	1,054,457	8,298,502
ARIZONA	7,574,869	0	468,789	468,789	8,043,658
ARKANSAS	7,453,716	0	752,588	752,588	8,206,304
CALIFORNIA	75,240,001	0	0	0	75,240,001
COLORADO	9,319,730	0	0	0	9,319,730
CONNECTICUT	8,686,623	0	435,774	435,774	9,122,397
DELAWARE	2,068,178	0	64,126	64,126	2,132,304
DIST OF COLUMBIA	5,545,809	0	559,950	559,950	6,105,759
FLORIDA	28,753,577	0	0	0	28,753,577
GEORGIA	15,348,585	0	0	0	15,348,585
HAWAII	2,967,432	0	299,616	299,616	3,267,048
IDAHO	6,035,577	878,550	0	878,550	6,914,127
ILLINOIS	35,678,714	0	0	0	35,678,714
INDIANA	16,373,725	0	0	0	16,373,725
IOWA	9,470,007	0	956,168	956,168	10,426,175
KANSAS	6,423,210	0	104,705	104,705	6,527,915
KENTUCKY	11,020,703	0	0	0	11,020,703
LOUISIANA	12,795,130	0	0	0	12,795,130
MAINE	3,589,301	522,465	0	522,465	4,111,766
MARYLAND	12,116,632	0	0	0	12,116,632
MASSACHUSETTS	15,967,625	0	0	0	15,967,625
MICHIGAN	30,101,604	0	0	0	30,101,604
MINNESOTA	12,575,684	0	0	0	12,575,684
MISSISSIPPI	8,220,846	0	830,043	830,043	9,050,889
MISSOURI	13,980,241	0	0	0	13,980,241
MONTANA	4,932,305	717,956	0	717,956	5,650,261
NEBRASKA	5,927,660	862,842	0	862,842	6,790,502
NEVADA	4,794,720	697,928	0	697,928	5,492,648
NEW HAMPSHIRE	2,651,042	0	0	0	2,651,042
NEW JERSEY	21,441,444	0	0	0	21,441,444
NEW MEXICO	5,534,912	805,673	0	805,673	6,340,585
NEW YORK	57,143,645	0	5,769,682	5,769,682	62,913,327
NORTH CAROLINA	17,452,783	0	0	0	17,452,783
NORTH DAKOTA	5,022,562	731,093	0	731,093	5,753,655
OHIO	32,880,053	0	0	0	32,880,053
OKLAHOMA	13,065,462	0	1,319,193	1,319,193	14,384,655
OREGON	9,145,278	0	923,381	923,381	10,068,659
PENNSYLVANIA	34,899,263	0	0	0	34,899,263
PUERTO RICO	8,970,784	0	0	0	8,970,784
RHODE ISLAND	2,750,810	0	277,744	277,744	3,028,554
SOUTH CAROLINA	8,645,268	0	0	0	8,645,268
SOUTH DAKOTA	4,642,002	675,699	0	675,699	5,317,701
TENNESSEE	13,823,364	0	0	0	13,823,364
TEXAS	43,507,202	0	618,422	618,422	44,125,624
UTAH	10,152,622	1,477,836	0	1,477,836	11,630,458
VERMONT	2,174,580	316,536	0	316,536	2,491,116
VIRGINIA	15,075,687	0	0	0	15,075,687
WASHINGTON	13,251,148	0	0	0	13,251,148
WEST VIRGINIA	6,086,634	0	0	0	6,086,634
WISCONSIN	14,144,054	0	256,484	256,484	14,400,538
WYOMING	3,601,490	524,240	0	524,240	4,125,730
FORMULA TOTAL	738,635,161	9,265,275	13,636,665	22,901,940	761,537,101
GUAM	357,211	0	0	0	357,211
VIRGIN ISLANDS	1,503,688	0	0	0	1,503,688
NATIONAL TOTAL	740,496,060	9,265,275	13,636,665	22,901,940	763,398,000

* - FUNDS ARE ALLOCATED TO THE 12 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1984 TO THE PY 1985 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1984 RELATIVE SHARE.

** - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 15 STATES LOSING IN RELATIVE SHARE FROM PY 1984 TO THE PY 1985 BASIC FORMULA AMOUNT.

*** - HOLD-HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

[FR Doc. 85-20476 Filed 8-26-85; 8:45 am]
BILLING CODE 4510-30-C

Occupational Safety and Health Administration

Nevada State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the **Federal Register** (39 FR 1008) of the approval of the Nevada plan and the adoption of Subpart W to Part 1952 of Title 29 containing the decision. The Nevada plan provides for the adoption of Federal standards as State standards by reference.

By letter dated June 13, 1985, from Michael Tyler to Ray Owen and incorporated as part of the plan, the State submitted State standard revisions identical to 29 CFR Part 1910, Subpart T, Commercial Diving Operations (50 FR 1046) and 29 CFR 1910.1047, occupational exposure to Ethylene Oxide (50 FR 9800). These standards are contained in the Department of Occupational Safety and Health, Standards for General Industry, and were promulgated by resolution adopted by the Department of Occupational Safety and Health pursuant to Nevada Occupational Safety and Health Act.

2. *Decision.* Having reviewed the State submission in comparison with Federal standards, it has been detemined that the standards are identical to the Federal standards and accordingly should be approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102; and Director, Department of Occupational Safety and Health, 1370 South Curry Street, Carson City, Nevada 89710, and Directorate of Federal Compliance and State Programs, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Nevada State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective August 27, 1985.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California, this 10th day of July, 1985.

Russell B. Swanson,

Regional Administrator.

[FR Doc. 85–20479 Filed 8–26–85; 8:45]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New and revision.

2. The title of the information collection: 10 CFR Part 72—Licensing requirements for the storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI)

3. The form number if applicable: Not applicable.

4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses would be required every 20 years for an Independent Spent Fuel Storage Facility (ISFSI) and every 40 years for a Monitored Retrievable Storage installation (MRS).

5. Who will be required or asked to report: Licensees and applicants for a license to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and the Department of Energy for licenses to receive, transfer, package and possess power reactor spent fuel, high-level waste, and other radio-active materials associated with spent fuel and high-level waste storage in an MRS.

6. An estimate of the number of responses: 10.

7. An estimate of the total number of hours needed to complete the requirement or request: 18,255.

8. An indication of whether section 3504(h), Pub. L. 95–511 applies: Not applicable.

9. Abstract: NRC regulations in 10 CFR Part 72 establish requirements, procedures, and criteria for the issuance of licenses to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage, in an indpendent spent fuel storage installation (ISFSI).

NRC is also proposing a rule which would extend the scope of 10 CFR Part 72 to include regulatory requirements needed for NRC licensing of a facility provided for in the Nuclear Waste Policy Act of 1982, section 141, called a Monitored Retrievable Storage Installation (MRS).

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 21st day of August 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director Office of Administration.

[FR Doc. 85–20468 Filed 8–26–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–409]

Dairyland Power Cooperative, (La Crosse Boiling Water Reactor); Exemption

I

Dairyland Power Cooperative (the licensee) is the holder of Provisional Operating License No. DPR–45 which authorizes the operation of the La

Crosse Boiling Water Reactor (the facility) at the steady-state power levels not in excess of 165 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Vernon County, Wisconsin. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 50.71(e)(3)(ii) of 10 CFR Part 50 requires that those plants initially subject to the NRC's systematic evaluation program (SEP) must file a complete updated Final Safety Analysis Report (FSAR) within 24 months after receipt of notification that SEP has been completed. By letter dated July 20, 1983, the staff informed Dairyland Power Cooperative that SEP has been completed for the La Crosse Boiling Water Reactor (LACBWR) and that, pursuant to 10 CFR 50.71(e)(3), the licensees was required to file an updated FSAR. By letter dated July 12, 1983, the licensee requested an exemption to defer submittal of the update FSAR for 60 days.

The final report, "Integrated Plant Safety Assessment, Systematic Evaluation Program" for the La Crosse Boiling Water Reactor, NUREG–0827, had several open item that required further evaluation and plant modifications. The licensee's July 12, 1985 letter states that these changes required the full-time utilization of LACBWR's small engineering staff and that the majority of the design changes were completed during the refueling outage in March-April 1985. Since that time, the LACBWR staff has been engaged in conducting the engineering review of the updated FSAR. The licensee indicated that it needs an additional 60 days to complete the activities associated with submitting the update FSAR.

The NRC staff considered safety aspects of the requested exemption from the update FSAP submittal date. The proposed exemption affects only the required date for updating the FSAR and does not affect the risk of facility accidents. Thus, the granting of the requested exemption will have no significant impact on plant safety.

III

The public interest will be served by granting the exemption since the licensee used its personnel to complete other work of higher safety significance sooner than would be the case if personnel were diverted to update the FSAP.

Based on its review, the staff concludes that issuance of this exemption will have no significant effect on plant safety. Further, this action is in the public interest and good cause has been shown to support the exemption. Therefore, a 60-day exemption from the date of issuance of this exemption is being granted for the submittal of an updated FSAR for the La Crosse Boiling Water Reactor.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (50 FR 33656, August 20, 1985).

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following temporary exemption from compliance with § 50.71(e)(3).

An undated FSAR containing those original pages of the FSAR that are still applicable plus new replacement pages shall be filed on or before a date 60 days from the date of issuance of this exemption. This updated FSAR shall bring the FSAR up to date as of a maximum of 6 months prior to the date of filing the uipdated FSAP, with subsequent revisions no less frequently than annually thereafter.

Dated at Bethesda, Maryland, this 21st day of August 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85–20469 Filed 8–26–85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Reactor Operations; Rescheduling of Meeting

The **Federal Register** published on Friday, August 16, 1985 (50 FR 33135) contained notice of a meeting of the ACRS Subcommittee on Reactor Operations to be held on September 9, 1985 *has been changed to Tuesday, September 10, 1985, 1:00 p.m., Room 1046, 1717 H Street, NW, Washington, DC.* All other items remain the same as previously published.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: August 21, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–20470 Filed 8–26–85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

OFPP Policy Letter 85–1—Federal Acquisition Regulation System

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

ACTION: Final Policy Letter.

SUMMARY: This Policy Letter is issued to implement certain authorities and responsibilities of the Office of Federal Procurement Policy contained in Pub. L 93–400 as amended by Pub. L. 96–83 and Pub. L. 98–191 concerning the definition and maintenance of the single system of simplified Government-wide procurement regulations.

DATE: The effective date of this Policy Letter is October 1, 1985.

FOR FURTHER INFORMATION CONTACT: William Maraist, Office of Federal Procurement Policy, OMB, 726 Jackson Place, NW, Washington, DC 20503, (202–395–3300).

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy Act (Pub. L. 93–400 as amended by Pub. L. 96–83 and Pub. L. 98–191) provides, in part, the following:

Section 4. As used in this Act—(4) the term "single system of Government-wide procurement regulations" means (A) a single Government-wide procurement regulation issued and maintained jointly by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. . . . and (B) agency acquisition regulations implementing and supplementing the Government-wide procurement regulation. . . .

Section 6(a). The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies.

Section 6(d). The functions of the Administrator shall include—(1) providing leadership and ensuring action by the executive agencies in the establishment,

development and maintenance of the single system of simplified Government-wide procurement regulations and resolving differences among the executive agencies in the development of simplified Government-wide procurement regulations, procedures and forms.

Section 6(b). In any instance in which the Administrator determines that the DOD, NASA and the GSA are unable to agree on or fail to issue Government-wide regulations, procedures and forms in a timely manner, the Administrator may. . . . prescribe Government-wide regulations, procedures and forms which shall be followed by executive agencies. . . .

This Policy Letter (a) designates the Federal Acquisition Regulations System as the single system of Government-wide procurement regulations referred to in the OFPP Act; (b) requires certain information flow in the FAR System; (c) requires that issues on which DOD, GSA and NASA are unable to agree be referred to the Administrator for resolution; and (d) requires that decisions not to develop FAR coverage on issues affecting members of both the Defense Acquisition Regulatory Council and the Civil Agency Acquisition Council (leaving such issues to be covered in agency supplementing regulations) shall be referred to the Administrator. It is intended to implement the regulatory role assigned to OFPP by Pub. L. 98–191—that is, to resolve disputes and to be in a position to issue regulations if regulations are not timely under the FAR. It is not intended to implement OMB's rescission authority which will be the subject of a subsequent issuance.

A draft policy letter was published in the **Federal Register** on July 6, 1984 (49 FR 27863) for public and Federal agency review and comment. A public meeting for the purpose of providing an opportunity for interested parties to present their views in person was held on August 2, 1984.

Comments received were very diverse and not susceptible to summarization; however, they fell in three categories. First, those from the private sector were very supportive of a strong OFPP regulatory role giving suggested changes to strengthen the policy letter. Most of these recommendations went beyond the required regulatory role specified in Pub. L. 98–191. Other suggested changes that clarified the policy letter were adopted. Second, a group of executive agencies and industry associations supported the policy letter without comment or stated that they had no objection. Third, some agencies commented, either in writing or in subsequent meetings, that the policy letter was either unnecessary or intruded on the regulatory authority of DOD, GSA and NASA with respect to the FAR. The policy letter was narrowly drafted to implement the statutory responsibilities for procurement regulations assigned to OFPP by Pub. L. 98–191.

All comments received were carefully considered in drafting the following policy letter.

Dated: August 19, 1985.

William J. Maraist,

Acting Associate Administrator for Policy Development.

OFPP Policy Letter 85–1

To the Heads of Executive Departments and Establishments

Subject: Federal Acquisition Regulations System

1. *Purpose.* The purpose of this Policy Letter is to implement certain requirements of the Office of Federal Procurement Policy Act (the Act) (Pub. L. 93–400 as amended, 41 U.S.C. 401 et seq.) concerning the definition and maintenance of the single system of simplified Government-wide procurement regulations. It also rescinds and replaces Policy Letter 80–5, dated July 10, 1980. It does not address OMB's rescission authority which will be the subject of a subsequent issuance.

2. *Authority.* This Policy Letter is issued pursuant to section 6 of the Office of Federal Procurement Policy Act, 41 U.S.C. 405.

3. *Background.* Pub. L. 93–400, (August 30, 1974) which established the Office of Federal Procurement Policy, required the Administrator to establish a system of coordinated and, to the extent feasible, uniform procurement regulations for the executive agencies. In January 1978, with the cooperation of the Department of Defense (DOD) and General Services Administration (GSA), the Administrator launched the Federal Acquisition Regulation (FAR) project. On July 10, 1980, OFPP issued Policy Letter 80–5 which initiated the FAR System. On March 17, 1982, Executive Order 12352 directed that DOD, GSA and the National Aeronautics and Space Administration (NASA) continue their joint efforts to consolidate their common procurement regulations into a single simplified FAR by the end of calendar year 1982. On September 19, 1983, the FAR was published in the **Federal Register** under the regulatory authority of GSA, DOD, and NASA, with an effective date of April 1, 1984.

Part 1 of the FAR, which formalized the FAR System, provides for the operation, and maintenance of the FAR system. A Memorandum of Understanding for FAR Maintenance was approved by the Deputy Under Secretary of Defense (Acquisition Management), the Assistant Administrator for Acquisition Policy of GSA, and the Assistant Administrator for Procurement of NASA on February 21, 1984, which included procedures for recommending FAR changes, establishing FAR cases, processing FAR cases and for resolving disagreements.

The Office of Federal Procurement Policy Act Amendments of 1983 (Pub. L. 98–191), requires that policies prescribed by the Administrator be implemented in the single system of Government-wide procurement regulations. It also requires that the Administrator provide leadership, ensure action, and resolve differences among the executive agencies in the maintenance of the single regulation. In any instance in which the Administrator is notified that DOD, GSA, and NASA are unable to agree on or fail to issue Government-wide regulations in a timely manner, the Administrator may, under the Act, and with due regard to applicable laws and the program activities of the executive agencies, prescribe Government-wide regulations which must be consistent with the policies and functions set forth in Pub. L. 98–191.

4. *Single System of Government-Wide Procurement Regulations.* The Federal Acquisition Regulations System is the single system of Government-wide procurement regulations defined in Section 4(4) of the Act. The FAR System includes the FAR and agency acquisition regulations, including those issued by suborganizations, which implement or supplement the FAR. However, the FAR System does not include agency and suborganization regulations covering internal operating procedures that have no significant impact on the contractor, e.g., designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements.

Each agency, based on its unique structure, shall determine to which organizational level its suborganizations have authority to issue regulations implementing or supplementing higher-level agency FAR supplements. Such determination shall be provided to the Administrator and made a part of the Agency's implementation of Part 1 of the FAR. DOD, GSA, and NASA shall be responsible for ensuring that agency implementing and supplementing regulations are reviewed for compliance with the FAR System requirements.

5. *Information on FAR Maintenance.* For the purpose of keeping OFPP informed of the content of the FAR System, each executive department and agency shall provide a copy of its FAR

implementing and supplementing regulations to OFPP.

Once every three months, the Civilian Agency Acquisition and Defense Acquisition Regulatory Councils each shall provide OFPP a list of all open CAAC, DAR and FAR cases. The lists shall include the case numbers; the originator; the subject matter of the case; the date received or originated; and the date and nature of disposition. The FAR Secretariat shall also provide OFPP: (a) A copy of all proposed and final FAR changes as soon as practicable; and (b) upon request, a copy of the initiating document of any assigned FAR case or other proposed FAR change.

6. *OFPP Resolution of Differences.* When the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council cannot agree on the resolution of a proposed FAR change, the matter shall be forwarded to the Deputy Under Secretary of Defense for Acquisition Management, DOD; the Assistant Administrator for Acquisition Policy, GSA; and the Assistant Administrator for Procurement, NASA for resolution. DOD, GSA and NASA shall notify OFPP if they are unable to agree within 15 days of the referral. If, for any reason, an agreement cannot be reached within 30 days following the date of the notice, the matter shall be deemed a disagreement in accordance with Pub. L. 98–191, and shall be referred promptly to the Administrator for resolution. All such referrals shall be accompanied by an issue paper containing a description of the proposed FAR change and the relevant positions of all executive agencies and other interested parties that have expressed a position in writing to the Councils on the proposed FAR change. Any decision not to develop FAR coverage on a proposed FAR change affecting members of both councils, with the intention that such proposed FAR change is to be covered differently in agency implementing or supplementing regulations, shall be referred promptly, with supporting rationale, to the Administrator, who will determine within five working days after receipt of such referral whether the decision conforms to the Federal Acquisition Regulations System maintenance concept.

7. *OFPP Issuance of Regulations.* When the Administrator considers that a particular proposed FAR change is not being resolved in a timely manner, the Administrator, after consultation with DOD, GSA and NASA, shall give notice and specify a time in which a decision must be reached regarding issuance of regulations. Following such notice and time allotted for issuance of regulations, the Administrator may determine that DOD, GSA and NASA have failed to issue Government-wide regulations in a timely manner and may prescribe regulations, which shall be forwarded to DOD, GSA, and NASA for timely publication in the applicable part of the FAR. OFPP development of any regulations will follow the requirements of Sec. 302(a) of Pub. L. 98–577 (41 U.S.C. 420) on public participation.

8. *Effective Date.* This Policy Letter will be effective October 1, 1985.

9. *Concurrence.* This Policy Letter has the concurrence of the Director of the Office of Management and Budget.

William E. Mathis,

Acting Administrator.

[FR Doc. 85–20404 Filed 8–26–85; 8:45 am]

BILLING CODE 3110-01-M

PENSION BENEFIT GUARANTY CORPORATION

Multiemployer Pension Plans; Effect of Withdrawal Following Sale of Assets

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: This notice advises employers, multiemployer plan sponsors, and other interested persons that the Pension Benefit Guaranty Corporation is no longer considering the issuance of an interpretation concerning the effect that a sale of assets meeting the requirements of section 4204 of ERISA has on subsequent withdrawals.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; 202–254–4860 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 15, 1985 the Pension Benefit Guaranty Corporation (PBGC) published in the **Federal Register** a notice soliciting public comment concerning the effect that a sale of assets has on certain subsequent plan determinations with respect to the withdrawal of the seller (50 FR 2116). The PBGC was particularly interested in receiving comments on methods for giving credit to a withdrawing employer for a prior sale of assets that met the requirements of section 4204(a)(1) of the Employee Retirement Income Security Act. This notice was issued partly in response to questions raised by the PBGC's May 12, 1983 Opinion Letter (Opinion Letter 83–10). That opinion letter stated that if a selling employer had previously sold assets in compliance with section 4204, then that seller was entitled to be given credit when facing liability for a subsequent withdrawal. The PBGC's purpose in soliciting comments was to obtain the public's input for an interpretation that the agency expected to publish in the near future.

The PBGC has reviewed the nine submissions received in response to the **Federal Register** notice. These submissions provide opinions and substantive comments on the differing effects that a withdrawal following a sale of assets has on an employer's withdrawal liability. However, in light of the complexity of these issues and the varied situations in which they arise, the PBGC now believes that disputes relating to these matters are best addressed individually by arbitration subject to review in the courts. See, *e.g.*, Kroger Co. and Southern California Food Workers Pension Fund, 6 EBC 1345 (1985) (Nagle, Arb.). The PBGC is, therefore, no longer considering publishing the interpretation of section 4204 contemplated by the **Federal Register** notice of January 15, 1985.

Issued at Washington, D.C., on this 22nd day of August 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–20471 Filed 8–26–85; 8:45 am]

BILLING CODE 7708-01-M

POSTAL RATE COMMISSION

[Docket No. C85–1]

Complaint of Advo-System, Inc.; Filing of Settlement Agreement in Docket No. C85–1 Complaint of Advo-System, Inc.

August 22, 1985.

The Commission hereby gives notice that the Director of the Office of the Consumer Advocate, who was named settlement coordinator in this proceeding, has filed with the Commission a document entitled "Stipulation and Agreement." In his transmittal letter, the Director noted that the agreement has been negotiated by a number of parties in the case, including the complainant and the respondent. He also said:

Although this agreement is not a unanimous one, the signatories believe that it can be the basis for a recommended decision to the Governors by the Commission, after an

appropriate opportunity for comment by all parties.

Transmittal Letter From Stephen A. Gold Dated August 20, 1985

This notice serves only to indicate that the filing has been made; the Commission anticipates shortly issuing an appropriate order governing subsequent procedures.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 85–20455 Filed 8–26–85; 8:45 am]

BILLING CODE 7715-01-M

[Docket No. A85–23; Order No. 626]

Pacific House, California 95725 (George R. Steele, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: August 22, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket Number: A85–23.

Name of Affected Post Office: Pacific House, California 95725.

Name(s) of Petitioner(s): George R. Steele.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: August 19, 1985.

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A)).

2. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate isssue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 3, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

APPENDIX

Aug. 19, 1985	Filing of Petition.
Aug. 22, 1985	Notice and Order of Filing of Appeal.
Sept. 13, 1985	Last day of filing of petitions to intervene (*See* 39 CFR 3001.111(b)).
Sept. 23, 1985	Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001.115 (a) and (b)).
Oct. 15, 1985	Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).
Oct. 30, 1985	(1) Petitioner's Reply Brief should Petitioner choose to file one (*see* 39 CFR 3001.115(d)).
Nov. 6, 1985	(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument (*see* 39 CFR 3001.116).
Dec. 17, 1985	Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 85–20457 Filed 8–26–85; 8:45 am]

BILLING CODE 7715-01-M

[Docket No. A85–24; Order No. 623]

Whitestone, Georgia 30186 (John L. Payne, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: August 21, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket Number: A85–24.

Name of Affected Post Office: Whitestone, Georgia 30186.

Name(s) of Petitioner(s): John L. Payne, Petitioner.

Type of Determination: Closing.

Date of Filing of Appeal Papers: August 19, 1985.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule (39 U.S.C. 404(b)(5)) the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

(B) The record in this appeal shall be filed by September 3, 1985.

By the Commission.

Charles L. Clapp,

Secretary.

APPENDIX

Aug. 19, 1985	Filing of Petition.
Aug. 21, 1985	Notice and Order of Filing of Appeal.
Sept. 13, 1985	Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
Sept. 23, 1985	Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b)).
Oct. 15, 1985	Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).
Oct. 30, 1985	(1) Petitioner's Reply Brief should Petitioner choose to file one (*see* 39 CFR 3001.115(d)).
Nov. 6, 1985	(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument (*see* 39 CFR 3001.116).
Dec. 17, 1985	Expiration of 120-day decisional shedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 85–20456 Filed 8–26–85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMMISSION

[File No. 1–2743]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; CF&I Steel Corp.

August 21, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the common stock ($5.00 Par Value) of CF&I Steel Corporation ("Company") from listing and registration on the Pacific Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

CF&I Steel Corporation states that it wants to delist from the Pacific Stock Exchange, Inc. in order to list the Company's common stock on NASDAQ.

Any interested person may, on or before September 12, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The

Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20480 Filed 8-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14689; 811-3620]

Fir Tree International Fund, Inc.; Application for an Order Delaring That Applicant Has Ceased to be an Investment Company

August 21, 1985.

Notice is hereby given that Fir Tree International Fund, Inc., ("Applicant"), c/o Mengel and Company, Inc., One Rockefeller Plaza, Third Floor, New York, New York 10020, registered as an open-end, divesified management investment company under the Investment Company Act of 1940 ("Act"), filed an application on March 27, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that it has ceased to be an investment company and terminating Applicant's registration under the Act. All interested persons are referred to the applicaton on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and regulations thereunder for the text of the applicable provisions.

Applicant states that it is a Maryland corporation that registered under the Act with the Commission and filed a registration statement pursuant to the Securities Act of 1933 on December 12, 1982. Applicant commended offering its shares on October 13, 1983. Applicant states that when it began offering its shares to the public, Mengel and Company, Inc., was intended to be the exclusive distributor of Applicant's shares, and that Fir Tree Advisers, Inc. ("Adviser"), pursuant to an agreement ("Agreement"), would be the adviser to Applicant. Due to a lack of success in distribution efforts, Adviser absorbed a significant amount of Applicant's expenses.

According to the application, in August 1984, Adviser entered into an agreement to act as investment adviser with F T International Trust ("FT Trust") and informed Applicant's Board of Directors ("Board") that Adviser intended to terminate the Agreement. The Board, by reason of Adviser's decision to terminate the Agreement, and because no shares of Applicant had been sold since July 31, 1984, determined to suspend further sales of Applicant's shares.

Applicant states that as of December 3, 1984, all shareholders of Applicant, other than Adviser, had redeemed their shares. To obtain the funds needed to pay redeeming shareholders, Applicant states that it sold most of its portfolio securities on November 30, 1984, to FT Trust, in accordance with Board Procedures adopted to ensure compliance with Rule 17a-7 under the Act. Applicant states that all expenses accrued prior to December 3, 1984, during the winding up of Applicant's affairs, were borne by Adviser, and that no brokerage commissions or other remuneration (except customary transfer fees) was paid in connection with the sale of the portfolio securities.

According to the application, Adviser intends to redeem its shares following receipt by Applicant of outstanding foreign tax claims and dividends and the termination of Applicant's registration under the Act. Applicant states that: Applicant is not now engaged, and does not propose to engage, in any business activities other than winding up its affairs; Applicant has no outstanding debts or liabilities; and, Applicant has not made any distributions to shareholders other than pursuant to redemption requests. Applicant states it possesses approximately $93,000 in assets, representing the investment of Adviser in Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 85-20481 Filed 8-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14690 (File No. 812-6093)]

The Piedmont Income Fund, Inc.; Notice of Application

August 21, 1985.

Notice is hereby given that The Piedmont Income Fund, Inc. (the "Applicant), 1150 Connecticut Ave., NW., Suite 705, Washington, D.C. 20036, filed an application on April 16, 1985, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), for an order amending a previous order (Investment Company Act Release No. 14239, November 16, 1984) ("Previous Order"). The Previous Order exempted Applicant from the provisions of sections 18(f)(1) and 17(f) of the Act to the extent necessary to permit Applicant to invest in options on stock indexes, stock index futures contracts and options on stock index futures contracts. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below. Such persons are also referred to the Act for the text of the provisions which are relevant to a consideration of the application.

According to the application, Applicant is a diversified, open-end management investment company. Applicant's investment objective is to realize income by investing in stocks of large, established domestic corporations that have a history of yielding higher than average dividends. Applicant's shares will be sold only to corporate investors and it will endeavor to derive as much of its income as possible from dividends of "qualifying domestic companies" in order to maximize the percentage of its distributions of net investment income that will qualify for the 85 percent dividends received deduction for its shareholders. Applicant intends to hedge its securities holdings by selling exchange-traded call options on its portfolio stocks and by selling futures contracts on stock indexes where there is some correlation between the stocks comprising the index and the stocks in its portfolio. As a further hedge against declines in the value of its portfolio, Applicant may purchase put options and/or write call options on stock indexes and puchase

put options and/or write call options on stock index futures contracts that are traded on a U.S. stock exchange or board of trade and engage in closing transactions to terminate existing options positions.

In its application for the Previous Order, Applicant represented that, among other limitations, "[t]he aggregate market value at the time of sale of all open futures contracts sold by the Fund, together with the aggregate market value of all futures contracts with respect to which the Fund is either a writer or a holder of options will not exceed 33⅓% of the Fund's net assets."

Applicant desires to eliminate the one-third limitation described above. Instead, Applicant will agree not to maintain open short positions in stock index futures contracts, call options written on stock index futures, and call options written on stock indexes if, in the aggregate, the value of the open positions (marked to market) exceeds the current market value of its securities portfolio plus or minus the unrealized gain or loss on those open positions, adjusted for the historical volatility relationship between the portfolio and the index contracts (*i.e.*, the Beta volatility factor). To the extent Applicant has written call options on specific securities in its portfolio, the value of those securities will be deducted from the current market value of the securities portfolio. If this limitation should be exceeded at any time, Applicant will take prompt action to close out the appropriate number of open short positions to bring its open stock futures and options positions within this limitation.

Applicant states that it believes that the restrictions on its trading in index contracts and options are consistent with the underlying purposes of section 18(f)(1), and prevent Applicant from becoming excessively leveraged. Applicant also believes that its transactions in index contracts and options, limited as described above, do not give rise to the speculative abuses which section 18(f)(1) was designed to prevent.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary

[FR Doc. 85-20482 Filed 8-26-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

August 21, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

American General Corporation
$2.64 Cumulative Preferred Series D (File No. 7-8554)
American Stores Company
$4.375 Convertible Preferred Series A (File No. 7-8555)
Anheuser-Busch Company
3.60 Convertible Preferred Series A (File No. 7-8556)
CIGNA Corporation
$2.75 Cumulative Convertible Preferred Series B (File No. 7-8557)
LTV Corporation
$3.06 Cumulative Convertible Preferred Series B (File No. 7-8558)
LTV Corporation
$5.25 Cumulative Convertible Preferred Series D (File No. 7-8559)
LTV Corporation
$1.25 Convertible Preferred Series D (File No. 7-8560)
Orion Pictures Corporation
Convertible Exchange Preferred Class E (File No. 7-8561)
Occidental Petroleum
Convertible Exchange Preferred Series J. (File No. 7-8562)
Paine Webber Group, Inc.
$2.25 Convertible Exchange Preferred (File No. 7-8563)
Trans World Airlines, Inc.
$2.25 Cumulative Convertible Preferred Series B (File No. 7-8564)
United Technologies Cp.
$2.25 Cumulative Convertible Exchange Preferred Series D (File No. 7-8565)
U.S. Steel Corporation
Cumulative Convertible Exchange Preferred Series C (File No. 7-8566)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 12, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20485 Filed 8-26-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 21, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Crane Company (Delaware)
Common Stock, $6.25 Par Value (File No. 7-8567)
Cilcorp, Inc. (Holding Company)
Common Stock, No Par Value (File No. 7-8568)
Alaska Air Group, Inc. (Delaware) (Holding Company)
Common Stock, $1.00 Par Value (File No. 7-8569)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transactions reporting system.

Interested persons are invited to submit on or before September 12, 1985, written data, views and arguments concerning the above-referenced

application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20486 Filed 8-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22334; File No. SR-CBOE-85-35]

Self-Regulatory Organizations; Proposed Rule Change; Chicago Board Options Exchange, Inc.; Relating to Corrections to Erroneous RAES Prints

Pursuant to section 19(b)(1) of the Securities Exchanges Act of 1934, 15 U.S.C. 78s.(b)(1), notice is hereby given that on *August 9, 1985* the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The Exchange submits as a rule filing the following memorandum:

To: All Members
From OEX Floor Procedure Committee
Re: *Corrections to Erroneous RAES Prints*

The OEX Floor Procedure Committee has been asked for a statement of its position regarding RAES-executed trades at mistakenly reported quotes. Given the size of the OEX crowd, the number of quote reporters in the crowd and frequency with which quotes in more than one series are updated, it is possible for a quote reporter to misinterpret what he or she hears and thus incorrectly report a market quote. While the erroneous quote may appear on the screen for only a few seconds, a moment is all that is necessary for a RAES trades to be executed at the incorrect price. The OEX Floor Procedure Committee has determined that a RAES-executed trade at an erroneous quote should be treated simply as a trade reported at an erroneous price. Thus, the price of the RAES trade should be adjusted to accurately reflect the market quote at the time of the execution. This treatment will guarantee public customers and market makers alike the full benefit of the RAES system, namely, prompt and certain fills at prevailing market quotes.

The question of whether a particular RAES trade was executed at an erroneous price is important not only to the market maker and public customer who were parties to the trade, but to others as well, including floor brokers and member firms, whose customer orders may appear to have been "printed through" by the RAES trade even though such orders were being diligently represented in the trading crowd. For this reason, the OEX Floor Procedure Committee believe that the decision whether a particular RAES order was filed at an incorrect price should be left to two floor officials. In making their determination, the floor officials should consider such factors as: (1) The length of time the allegedly incorrect quote was displayed; (2) whether any non-RAES trades were effected at the same price as the RAES transaction; and (3) whether any members of the trading crowd were aware of orders actively being represented in the crowd that appear to have been "printed through" by the RAES trade.

In the event that the incorrect fill on RAES is detected during the trade day, the following procedures should be followed. The market maker, floor broker or order book official who first notices the print outside prevailing market quotes should promptly notify the post supervisor or RAES supervisor, who will then examine the MDR to determine whether the print was generated by a RAES trade. If it was, then two floor officials should promptly be paged. The floor officials should then attempt to verify that the RAES order was in fact filled at an erroneous price. In reaching their decision, the floor officials should, as necessary: (1) Consult with the floor broker, market maker or order book official who first noticed the questionable print; (2) examine the MDR to ascertain the period of time during which the challenged quote was displayed; (3) inquire of others in the trading crowd whether any actively represented orders were printed through by the RAES trade; and (4) examine the hard card pertaining to any order that allegedly was printed-through to verify that the order was present in the crowd sufficiently in advance of the RAES trade to have been actively represented. If the floor officials satisfy themselves that the RAES order was filled at an erroneous price, they should order the trade price adjusted. The post supervisor or RAES supervisor should then notify the parties to the RAES trade that the trade at the originally reported price has been cancelled and that the trade should be reported for trade match at the adjusted price.

The procedure outlined above should also be followed in the event that the reported error is not detected until after the RAES trade has cleared. The floor broker, market maker or order book official who first learns of the incorrectly reported RAES trade should notify the post supervisor of RAES supervisor, who should then consult the MDR to determine whether the RAES trade was in fact executed at what appears to be an erroneous market quote. After this preliminary inquiry, the post supervisor of RAES supervisor should summon two floor officials. Proceeding in the manner set forth above, the floor officials should then decide whether the RAES-executed transaction was incorrectly reported. If it was, then the post supervisor or RAES supervisor should promptly notify the parties to the trade and their respective clearing firms. Thereafter, the price at which the options were traded should be adjusted on an "as of" basis.

Because the problem of incorrectly reported RAES trades ordinarily can be expected to arise from Exchange errors, the OEX Floor Procedure Committee is of the opinion that the Exchange should reimburse the party to the RAES trade who is adversely affected by the price adjustment that will result when the price report is corrected. For example, a public customer who was first notified that this market order to sell was filled at two and an eighth only to learn later that the correct price was two and a sixteenth, should be compensated by the Exchange for the difference. Similarly, the market maker on the RAES system who receives a fill report indicating that he has purchased a ten lot at two and an eighth should be reimbursed by the Exchange if the price report is deemed to be erroneous and an adjustment is made reflecting that the trade occurred at two and three sixteenths.

Questions concerning this matter should be directed to David C. Bohan, Attorney at (312) 786-7502.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to formalize the procedure whereby price adjustments are made in transactions effected over the Exchange's Retail Automated Execution System ("RAES"). The RAES system is described in detail in numerous prior rule filings, most recently SR–CBOE–85–32. RAES began as a pilot on February 1, 1985 and has continued, in pilot status, since that date. In SR–CBOE–85–32 the Exchange has sought Commission approval to establish RAES as a permanent feature of the Exchange.

Since its inception, RAES has proven to be an efficient tool for the expeditious processing of public customer market orders to purchase or sell S&P 100 Index ("OEX") option contracts in lots of ten or less. It is possible, however, that a RAES trade will be executed at a price that does not represent the actual current market quote. Because RAES executions are based upon displayed market quotes, an erroneous displayed quote may result in a RAES execution at an inaccurate price.

The Exchange has determined to establish a standard procedure that will govern price adjustments where a RAES execution is established to have been not based on an accurate market quote display.

The procedure allows anyone, including market-makers, floor brokers and order book officials, to bring to the attention of a designated Exchange employee, either the OFX Post Supervisor or the RAES Supervisor, the RAES trade that is claimed to have been executed at an incorrect price. The Exchange employee will then make a preliminary determination as to whether the facts and circumstances surrounding the trade tend to support the claim that an error occurred. If they do, two floor officials will then be paged. The floor officials will conduct a brief and informal inquiry in an effort to decide whether a price adjustment is warranted. As necessary, the floor officials will consult relevant Market-Data retrieval listings showing the length of time the allegedly incorrect quote appeared on the screen as well as actual participants in the trading crowd. If the floor officials are satisfied that the RAES trade was in error, the parties to the trade will promptly be notified and will be instructed to report the trade for clearing purposes at the adjusted price. If the error is not discovered before the trade is cleard, the price adjustment will be made on an "as of" basis. In any case, the Exchange will reimburse the party to the trade adversely affected by the price adjustment.

The procedure established by the OEX Floor Procedure Committee enables all market participants to use the RAES system confident that they will not be disadvantaged by an error. By reserving to floor officials the authority to order a price adjustment, the procedure ensures fair review of claims of errors.

The proposed rule change is consistent with the Securities Exchange Act of 1934 and in particular seciton 6(b)(5) thereof in that it serves to protect investors and the public interest by providing for price adjustments to RAES trades executed at mistakenly reported quotes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the proteciton of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 17, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 19, 1985.

[FR Doc. 85–20483 Filed 8–26–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22342; File No. SR–Phlx–85–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change; Philadelphia Stock Exchange, Inc.

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted on June 27, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to delete from Exchange Rule 1014, Commentary .14 the requirement that a Registered Options Trader ("ROT") must spend 50% of the business days on the trading floor of the Exchange. The rule formerly required that to meet the percentage requirement of the rule, a member registered as a ROT must spend, for each business day that such member is present, a substantial portion of that business day on the Phlx option floor.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release

(Securities Exchange Act Release No. 22220, July 10, 1985) and by publication in the **Federal Register** (50 FR 29036, July 17, 1985). no comments were received with respect to the proposed rule change.

In its filing with the Commission, the Exchange stated that the attendance requirement discussed above was adopted in 1978 in an attempt to make Phlx options markets deeper, more liquid and more competitive. The Exchange stated that, since this time, the liquidity and activity on the options floor has so grown that the attendance requirement is no longer necessary.

The Commisson finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Phlx and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 21, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20484 Filed 8-26-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund 22 of its 41 Small Business Development Centers (SBDC's) during fiscal year 1986. It should be noted that fiscal year 1986 funding is contingent upon legislative appropriation of the SBDC program. The SBDC's intended to be refunded are located in the following states: Arkansas; the District of Columbia; Florida; Georgia; Illinois; Indiana; Kansas; Louisiana; Maine; Minnesota; Nebraska; New Hampshire; New Jersey; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee; Utah; Washington; and Wisconsin. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDC's to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through December 16, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416 Phone: 653-6768.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of presently existent Small Business Development Centers (SBDC's) for refunding. Also, published herewith is an annotated program announcement describing SBDC program in detail.

This notice is being published four months in advance of the date of refunding of these existent SBDC's. Relevant information identifying these SBDC's and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 110 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 110-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: August 21, 1985.

James C. Sanders,

Administrator.

Addresses of Relevant SBDC Directors

Mr. Paul McGinnis, State Director, University of Arkansas, New Business Building, 33rd & University Avenue, Little Rock, Arkansas 72204, (501) 371-5381

Ms. Nancy Flake, SBDC Director, Howard University, 6th and Fairmount St., NW., Room 128, Washington, D.C. 20059, (202) 636-5150

Mr. Gregory Higgins, State Director, University of West Florida, 627 University Office Boulevard, Pensacola, Florida 32504, (904) 478-2820

Dr. Frank Hoy, State Director, University of Georgia, Brooks Hall, Room 348, Athens, Georgia 30602, (404) 542-5760

Mr. Jeffrey J. Mitchell, State Director, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, Illinois 62701, (217) 785-6174

Mr. John E. Evans, State Director, Indiana Chamber of Commerce, One North Capitol, Suite 200, Indianapolis, Indiana 46204, (317) 634-6407

Ms. Susan K. Osborne-Howes, State Director, Wichita State University, College of Business Administration, 1845 Fairmount, Wichita, Kansas 67208, (316) 689-3193

Mr. John Baker, State Director, Northeast Louisiana University, Administration 2-123, Monroe, Louisiana 71209, (318) 342-2464

Mr. Warren Purdy, State Director, University of Southern Maine, 246 Deering Avenue, Portland, Maine 04102, (207) 780-4423

Mr. Jerry Cartwright, State Director, College of St. Thomas, 2115 Summit Avenue, St. Paul, Minnesota 55105, (612) 647-5840

Mr. Robert Bernier, State Director, University of Nebraska at Omaha, Peter Kiewit Center, Omaha, Nebraska 68182, (402) 554-2521

Mr. Craig R. Seymour, State Director, University of New Hampshire,

McConnell Hall, Durham, New Hampshire 03824, (603) 862–3558

Ms. Adele Kaplan, State Director, Rutgers University, Ackerson Hall—3rd Floor, 180 University Street, Newark, New Jersey 07102, (201) 648–5950

Mr. Sandy Cutler, State Director, Lane Community College, Downtown Center, 1059 Willamette Street, Eugene, Oregon 97401, (503) 687–9125 or 687–9144

Ms. Susan Garber, State Director, University of Pennsylvania, The Wharton School, 3201 Steinberg Hall—Dietrich Hall/CC, Philadelphia, Pennsylvania 19104, (215) 898–1219

Mr. W. F. Littlejohn, State Director, University of South Carolina, College of Business Administration, Columbia, South Carolina 29208, (803) 777–4907

Dr. Leonard Rosser, State Director, Memphis State University, Fogelman College of Business and Economics, Memphis, Tennessee 38152, (901) 454–2500

Mr. Ed Owens, State Director, Washington State University, College of Business and Economics, Pullman, Washington 99164, (509) 335–1576

Mr. Douglas Jobling, State Director, Bryant College, Smithfield, Rhode Island 02917, (401) 232–6000

Mr. Donald Greenfield, State Director, University of South Dakota, Business Research Bureau, School of Business, Vermillion, South Dakota 57069

Mr. Kumen Davis, State Director, University of Utah, 420 Chipeta Way, Suite 110, Salt Lake City, Utah 84108, (801) 581–4869

Dr. Robert Pricer, State Director, University of Wisconsin, 609 State Street, 2nd Floor, Madison, Wisconsin 53703, (608) 263–7794

[FR Doc. 85–20421 Filed 8–26–85; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 02/02–0439]

United Jersey Venture Capital, Inc.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations govering small business investment companies (13 CFR 107.102 (1985)) under the name of United Jersey Venture Capital, Inc. (the Applicant), 301 Carnegie Center, P.O. Box 2066, Princeton, New Jersey 08540 for the license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and sole stockholders of the Applicant are as follows:

Name and address	Title or relationship
Stephen H. Paneyko, 301 Carnegie Center, P.O. Box 2066, Princeton, NJ 08540.	President and Director.
Daniel J. Haughton II, 301 Carnegie Center, P.O. Box 2066, Princeton, NJ 08540.	Vice President and Director.
Peter D. Holstead, 301 Carnegie Center, P.O. Box 2066, Princeton, NJ 08540.	Vice President.
Robert J. Peters, 25 East Salem Street, Hackensack, NJ 07602.	Dir.
Robert A. Bonelli, 301 Carnegie Center, P.O. Box 2066, Princeton, NJ 08540.	Dir.
Richard F. Ober, Jr., 301 Carnegie Center, P.O. Box 2066, Princeton, NJ 08540.	Secretary and Director.
William J. Healy, 301 Carnegie Center, P.O. Box 2066, Princeton, NJ 08540.	Treasurer.
United Jersey Banks, 301 Carnegie Center, P.O. Box 2066, Princeton, NJ 08540.	100% Shareholder.

United Jersey Banks is a registered bank holding company which, at December 31, 1984, had six commercial bank subsidiaries. There are no 10 percent or more shareholders of United Jersey Banks.

The Applicant will begin operations with a capitalization of $1,000,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA in writing relevant comments on the proposed licensing of this company. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in the Princeton, New Jersey area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: August 20, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–20458 Filed 8–26–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0433]

Raybar Small Business Investment Corp.; License Surrender

Notice is hereby given that Raybar Small Business Investment Corporation, 255 West Spring Valley Avenue, Maywood, New Jersey 07607, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958 (the Act). Raybar Small Business Investment Corporation was licensed on February 26, 1982.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on July 31, 1985, and accordingly all rights and privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 20, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–20460 Filed 8–26–85; 8:45]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/877]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Friday, September 20, 1985 at 2:15 p.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 3:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in March 1985, the announcement of gifts, loans, and financial contributions from December 31, 1984 to June 1, 1985, and a report on the latest architectural project on the 7th floor.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, September 16, 1985, telephone (202) 632–0298 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: August 19, 1985.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 85-20385 Filed 8-26-85; 8:45 am]

BILLING CODE 4710-39-M

[Public Notice CM-8/876]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Rescheduling of Meeting

The meeting of Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), originally scheduled for September 4, 1985 as published in the **Federal Register** August 16, 1985, page 33143, has been rescheduled owing to unforeseen conflicts in meeting dates affecting many participants. Study Group C will now meet on September 17, 1985 at 9:00 a.m. in Room 1107, Department of State, 2210 C Street, NW., Washington, DC.

The purpose of this meeting is to consider contributions to October meetings of CCITT Study Group XI Working Parties.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, DC, telephone (202) 632-5832. All attendees must use the C Street entrance to the building.

Dated: August 21, 1985.

Earl S. Barbely,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 85-20386 Filed 8-26-85; 8:45]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 43006]

Pan Aviation Fitness Investigation; Cancellation of Hearing

Notice is hereby given that the hearing noticed to be held in the above-entitled matter on September 4, 1985, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street, SW., Washington, D.C. 20590, before the undersigned administrative law judge is cancelled.

Dated at Washington, D.C., August 21, 1985.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 85-20487 Filed 8-26-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-85-22]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: September 17, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 21, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
[illegible]	Lewis County, WA, Sheriff's Office	14 CFR 91.79(c)	To allow petitioner to operate a public aircraft closer than 500 feet to persons, vessels, vehicles, or structures for the purpose of Search and Rescue operations.
24704	United Technologies Corporation	14 CFR 91.83(c)(1)	To permit petitioner to have lower alternate weather minimums for helicopters.
24681	Omniflight Offshore, Inc.	14 CFR 43.3(g)	To permit pilots of petitioner to remove, check, and reinstall cowlings and replenish hydraulic fluids on its Bell 206 helicopters.
22192	Richmor Aviation, Inc.	14 CFR 141.91(a)	Extension of Exemption 3398 to permit petitioner to conduct flight training and instruction in its approved courses of training at its satellite bases located at Ballston Spa, New York; Scotia, New York; and Poughkeepsie, New York, provided the facilities continue to be available to the chief instructor.
24693	Fairchild Aircraft Corporation	14 CFR 135.157(b)(2)	To permit petitioner and any other similarly situated operator of SA226-TC, SA227-AC, and SA227-TC aircraft to operate those aircraft under the oxygen quantity requirements of § 121.133(e)(1) & (2).
24633	Hercules Flight Training Center	14 CFR 61.56 & 61.157	To permit petitioner to use the L-382 flight simulator to accomplish certain training and checking requirements.
23647	Embry-Riddle Aeronautical University	14 CFR 141.65	To allow petitioner to recommend graduates of its approved certification courses for flight instructor certificates and ratings without taking the Federal Aviation Administration's flight or written test, or both, in accordance with the provisions of Subpart D of Part 141, subject to certain conditions and limitations.
[illegible]	Chaparral Airlines	14 CFR 135.157(b)	To permit petitioner to operate a Grumann Gulfstream aircraft up to 25,000 feet mean sea level without complying with the passenger oxygen dispensing requirements.
[illegible]	Contirlental Aviation Services	14 CFR 135.89(b)(3)	To allow petitioner to fly aircraft above 35,000 feet without either pilot wearing an oxygen mask.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
[illegible]	Republic Airlines	14 CFR 121.433, 121.441, & Appendix F to Part 121.	To permit petitioner to (1) combine recurrent simulator training and proficiency checks for pilots in command into one annual simulator training and proficiency check session; (2) conduct proficiency checks designed for a particular crew position, aircraft type, and line operation; and (3) conduct the line check required at 6-months intervals.
[illegible]	Japan Air Lines	14 CFR Portions of Parts 21 & 91	To allow petitioner to operate three leased U.S.-registered Boeing 747 aircraft using a Federal Aviation Administration (FAA)-approved minimum equipment list and an FAA-approved continuous airworthiness maintenance and inspection program.
23447	Amway Corporation	14 CFR 21.181	To allow petitioner to operate certain aircraft using a Federal Aviation Administration (FAA)-approved minimum equipment list.
23743	Swissair	14 CFR Portions of Parts 21 & 91	To allow petitioner to operate two leased U.S.-registered Boeing 747 aircraft using a Federal Aviation Administration (FAA)-approved minimum equipment list and an FAA-approved continuous airworthiness maintenance and inspection program.
24728	Black & Decker Manufacturing Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24731	General Dynamics	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
[illegible]	Atlantic Aviation Corporation	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of minimum equipment list.
24739	Wayfarer Ketch Corp.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of minimum equipment list.
24737	Ingersoll Publications Company	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of minimum equipment list.
24721	Massey Coal Services Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of minimum equipment list.
24725	[illegible]	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of minimum equipment list.
[illegible]	Texasgulf, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of minimum equipment list.
24771	W. H. Brady Company	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of minimum equipment list.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
24368–1	Minerve	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC–8–62–F aircraft until hush kits are installed. Denied July 16, 1985.
24257–1	[illegible]	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. Denied July 16, 1985.
24338–1	Air Transport Int'l Inc.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. Denied July 29, 1985.
24639	Florida West Airlines, Inc.	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707–300 until hush kits are installed. Granted July 26, 1985.
21635	Airborne Express, Inc.	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: DC 9–14: N925AX, N901AX; DC–9–15: N926AX, N902AX, N927AX, N903AX; DC–9–31: N906AX, N904AX, N907AX, N905AX; N908AX, N928AX; DC–9–32: N900AX; DC–9–33F: N931AX; SE210: N901MW. Granted July 25, 1985.
23757	Evergreen State Balloon Co.	14 CFR 101.13(a)(4)	To allow relief from the prohibiton in conducting moored balloon operations within 5 miles of an airport. Denied June 6, 1985
24326	Hawaiian Airlines, Inc.	14 CFR 91.303	To amend Exemption 4218E, to allow petitioner to operate two Stage 1 DC–8 aircraft at additional airports. Granted July 29, 1985.
[illegible]	Zantop Int'l Airlines, Inc.	14 CFR 91.303	To extend the Janubry 1, 1985, noise level compliance date. Granted Aug. 1, 1985.
22872	Air Transport Assoc. of America	14 CFR Portions of 61.157(a), 121:424 (a) & (b), Part 61 Appendix A, & Part 121 Appendix E.	Extension of Exemption 3653B to allow member carriers to permit the actual static airplane preflight inspection training and checking requirements for a pilot candidate for a rating in a two-member flightcrew airplane to be accomplished by using an advanced and approved pictorial means. Granted July 25, 1985.
23956–1	Worldwide Airlines, Inc.	14 CFR 91.303	To allow petitioner to operate at least two Stage 1 Boeing–707–331B aircraft until hush kits are installed. Partial Grant Aug. 2, 1985.
24186–1	Arrow Air Inc.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. Granted Aug. 2 [illegible].
23992–1	Tradewinds Airways	14 CFR 91.303	To allow petitioner to operate Stage 1 Boeing 707 aircraft in scheduled and charter cargo service to the United States until hush kits are installed. Partial Grant Aug. 2, 1985.
17324	Gulf Air Company	14 CFR Portions of Part 21	Extension of Exemption 2468 to allow petitioer to operate two leased U.S.-registered L–1011 aircraft, N92TA and N92TB, using a Federal Aviation Administration (FAA)-approved continuous maintenance program. Granted July 3, 1985.
23845	Buckeye Cellulose Corp.	14 CFR 21.181	To extend the July 31, 1985, termination date of Exemption 3634. That exemption allows petitioner to operate a Cessna 500 aircraft utilizing the provisions of a minimum equipment list. Granted July 26, 1985.
24164	Royale Airlines	14 CFR 135.157(b)(2)(ii)	To permit petitioner to operate the nine Grumman Gulfstream (G–159) airliner aircraft, N715RA, N716RA, N717RA, N718RA, N719RA, N721RA, N722RA, N723RA, and N724RA, up to 23,000 feet mean sea level (MSL) without complying with the passenger oxygen dispensing requirements in its air carrier passenger-carrying operations. Partial Grant July 25, 1985.
24672	Trinidad & Tobago Airways Corporation	14 CFR 21.181	To permit petitioner to operate an MD–82 type airplane of U.S. registry (N9602F) leased from United Airlines Leasing, Inc. To allow petitioner to operate the aircraft using the Frontier Airlines, Inc. (FAL), Federal Aviation Administration (FAA)-approved minumum equipment list (MEL) and continuous airworthiness training program (CAMP). Granted June 28, 1985.
24453	Mid Pacific Airlines, Inc.	14 CFR 11.53	Extension of Exemption 4270 to permit petitioner to use certain Fokker F–28 pilot flight instructors and simulator instructor's initial cadre of F–28 pilots. Granted June 28, 1985.
23565	Cigna Service Co.	14 CFR 21.181	To extend the June 30 termination date of Exemption 3600 and amend the exemption to add an aircraft. Exemption 3600 allows petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. Granted July 28, 1985.
[illegible]	Sierra Academy of Aeronautics	14 CFR Portions of Appendix C, Section [illegible].	Extension of Exemption 3564 to allow petitioner to continue to conduct a Federal Aviation Administration (FAA) test program for flight engineer applicants who do not possess at least a commercial pilot certificate with an instrument rating to reduce the required 5 hours of flight training in an airplane and by incorporating static ground training in airplanes, subject to certain conditions and limitations. Partial Grant June 28, 1985.
22270	Executive Air Fleet Corporation	14 CFR 135.25(b) & (c)	Extension of Exemption 3438A to allow petitioner to operate under Part 135 without having the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in petitioner's operations specifications, subject to certain conditions and limitations. Granted undated.

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
24547	United States Parachute Association	14 CFR 105.43	To allow foreign participants to use parachutes which do not meet the parachute equipment and packing requirements of § 105.43 in the U.S. National Skydiving Championship to be held at Muskogee, Oklahoma, during the period of June 20 through July 17, 1985. Granted June 20, 1985.
24642	Eastern Air Lines Incorporated	14 CFR 121.411(a) &(1), (a)(2), (a)(3), and (a)(6); 121.411 (b); and 121.411(b); and 121.413 (b), (c), and (d).	To permit petitioner to use certain qualified McDonnell Douglas Airport Corp. DC-10-30 (DC-10) pilots and flight engineers from Canadian Pacific Airlines (CPAir) to train petitioner's initial cadre of pilots and flight engineers in the DC-10 type airplane without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements Subpart N Appendix H of Part 121 of the FAR. Partial Grant June 18, 1985.
24316	FMC Corportation	14 CFR 21.181	To allow the operation of DA-50B aircraft utilizing the provisions of a minimum equipment list. Granted June 5, 1985.
24505	Wayne Eggleston	14 CFR 121.383(c)	To allow petitioner to serve as a pilot in Part 121 operations after reaching his 60th birthday. Denied June 11, 1985.
23448	Coastal Aviation Services, Inc.	14 CFR 135.261(b)	To extend the termination date of Exemption 3727. To permit petitioner to operate a helicopter in a hospital emergency medical evacuation service from the Tallahassee Memorial Regional Medical Center located in Tallahassee, Florida, without complying with the duty time limitations. Granted June 11, 1985.
24404	Wolfe Industries Aviation	14 CFR 21.181	To allow petitioner to operate a Beech King Air airplane utilizing the provisions of a minimum equipment list. Granted June 3, 1985.
24640	Eagle Helicopters	14 CFR 135.261	To permit petitioner to assign a flight crewmember, and to permit a flight crewmember to accept an assignment, for duty during flight time without that assignment providing for at least 10 consecutive hours of rest during the 24 hour period preceding the planned completion of the assignment in a helicopter emergency medical evacuation service. Granted May 31, 1985.
24243	Sundstrand Corp.	14 CFR 21.181	To allow petitioner to operate Cessna 560 aircraft utilizing the provisions of a minimum equipment list. Granted June 3, 1985.
19475	Flightsafety Int'l	14 CFR 61.63(d)(2) &(3); 61.157(d)(1) & (e)(1); 121.407(a)(1)(i); & portions of Appendix A to Part 61 & Appendix H to Part 121.	To amend Exemption 2854B and extend its termination date to permit the inflight requirements of Appendix A of Part 61 of the FAR to be accomplished in an approved simulator without meeting the certificate holding requirement. To permit petitioner to use instructors or check airmen who have not been employed by petitioner for at least 1 year in the capacity of an instructor, airmen, pilot in command, or second in command of an airplane of the same group in which they are instructing or checking and without its instructors or check airmen participating in an approved line flying program or approved line observation program. Granted June 18, 1985.
24661	National Soaring Foundation & Soaring Society of America.	14 CFR 61.3 & 91.27	To allow certain foreign glider pilots and gliders to participate in the 19th National Standard Soaring Championship at Hobbs, New Mexico, July 2 through July 11, 1985, and two practice days, June 30 and July 1, 1985. To allow foreign glider pilots and gliders to participate without complying with the pilot certification and airworthiness requirements of those sections. Partial Grant July 3, 1985.
24537	Woodrow M. Nesbitt	14 CFR 61.161(b)	To allow Petitioner to apply for an airline transport pilot certificate (ATCP) with a rotorcraft category rating without meeting the, at least 1,200 hours of flight time within the preceding 8 years requirement. Granted June 28, 1985.
24408	Dan River, Inc.	14 CFR 21.181	To allow petitioner to operate a Beech King Air 200 airplane utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24468	Nekoosa Papers, Inc.	14 CFR 21.181	To allow petitioner to operate a DH-125 aircraft utilizing the provisions of a minimum equipment List. Granted July 22, 1985.
24559	Fort Howard Paper Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24555	Rich Products Corp.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24470	Farm & Home Savings Association	14 CFR 21.181	To allow petitioner to operate a Falcon 20 aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24562	Bristol-Myers Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24487	AT&T Resource Management	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24492	Harrah's Hotels & Casinos	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24475	Rinker Materials Corp.	14 CFR 21.181	To allow petitioner to operate Beech King Air 200 aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24489	New York State Dept. of Environmental Conservation	14 CFR 21.181	To allow petitioner to operate a King Air 200 aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24474	B. F. Goodrich Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24503	Digital Switch Corp.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
24485	National Medical Enterprises	14 CFR 21.181	To allow petitioner to operate Falcon 10 and Falcon 50 aircraft utilizing the provisions of a minimum equipment list. Granted July 22, 1985.
20048	Chalk's International Airlines	14 CFR 135.75(a)	To allow petitioner to conduct day visual flight rules (VFR) operations in Grumman G-73 Mallard airplanes without having approved airborne radar equipment installed in the airplanes. Granted July 23, 1985.
24098	Alaska Helicopters, Inc.	14 CFR 121.652(a)	To permit petitioner to operate BV-234 type helicopters under Part 135 and certain sections of Part 121 in lieu of Part 121 of the Federal Aviation Regulations (FAR). To permit certain pilot employees of petitioner to credit pilot in command (PIC) flight time acquired in operations conducted under Part 91 of the FAR in a civil BV-234 helicopter for up to 50 percent of the 100 hours of PIC experience required. Granted July 15, 1985.
17324	Gulf Air Company	14 CFR Parts 21, 61, 63, and 121	To permit petitioner to continue to operate certain U.S.-registered L-1011 airplanes using a master minimum equipment list and a continuous airworthiness maintenance program as provided by the previous issuances of Exemption No. 2468. Granted June 28, 1985.
22635	Sierra Academy of Aeronautics	14 CFR Portions of Part 63	To extend Exemption 3564, as amended which terminates on June 30, 1985 which allows petitioner to conduct a Federal Aviation Administration (FAA) test program for flight engineer applicants who do not possess at least a commercial pilot certificate with an instrument rating, to reduce the required 5 hours of flight training in an airplane and by incorporating static ground training in an airplane subject to certain conditions and limitations. Partial Grant June 28, 1985.
24537	Woodrow M. Nesbitt	14 CFR 61.161(b)	To permit petitioner to apply for an airline transport pilot certificate (ATCP) with a rotocraft category rating without meeting the requirement that petitioner have at least 1,200 hours of flight time within the preceding 8 years. Granted June 28, 1985.
24377	Pittsburg & Shawmut Coal Company	14 CFR 21.181	To allow petitioner to operate a Citation II aircraft utilizing the provisions of a minimum equipment list. Granted June 27, 1985.

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
23565	CIGNA Service Company	14 CFR 21.181	To allow petitioner to operate an additional airplane, a Grumman Gulfstream G-159, Serial Number 162, using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). Granted June 28, 1985.
24425	Pan American World	14 CFR 121.411 and 121.413	To permit petitioner to use Aeroformation instructor pilots to train petitioner's initial cadre of A310-222 pilots. Granted June 28, 1985.
24453	Mid Pacific Airlines	14 CFR 121.411(a)	To permit petitioner to use certain Fokker F-28 pilot flight instructors and simulator instructors to train petitioner's inital cadre of F-28 pilots. Granted June 28, 1985.
21792	Aeronaves de Mexico, S.A.	14 CFR 21.181	To extend the June 30 termination date of Exemption 3266, as amended. It would allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. Granted June 28, 1985.
23725	Purolator Courier Corp.	14 CFR 121.3(e), 135.5	To allow petitioner to operate as a domestic air carrier by using aircraft chartered from operators who are certified by the FAA under the terms of air charter agreements which provide operational control of the aircraft by the certificated charter operator. To permit petitioner to engage in air transportation without its own air carrier operating certificate in accordance with appropriate operations specifications, subject to certain conditions and limitations. Granted July 15, 1985.

[FR Doc. 85-20473 Filed 8-26-85; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 21, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Office listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0415
Form Number: IRS Form W-4P
Type of Review: Extension
Title: Withholding Certificate for Pension or Annuity Payments

OMB Number: None
Form Number: IRS Form 1120-IC-DISC, Schedules K, and Schedule P
Type of Review: New
Title: Interest Charge Domestic International Sales Corporation Return—1985, and its related Schedules K and P

OMB Number: None
Form Number: IRS Form 8404
Type of Review: New
Title: Computation of Interest-Charge on DISC-Related Deferred Tax Liability

OMB Number: 1545-0717
Form Number: IRS Forms W-4S
Type of Review: Extension
Title: Request for Federal Income Tax Withholding from Sick Pay

OMB Number: 1545-0892
Form Number: IRS Form 8300
Type of Review: Revision
Title: Report of Cash Payments Over $10,000 Received in a Trade or Business

OMB Number: 1545-0121
Form Number: IRS Form 1116
Type of Review: Revision
Title: Computation of Foreign Tax Credit - Individual, Fiduciary, or Nonresident Alien Individual
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Comptroller of the Currency

OMB Number: 1557-0012
Form Number: OCC Form 7030-01
Type of Review: Extension
Title: Application to Establish a Federal Branch or Agency

OMB Number: 1557-1065
Form Number: Schedule EC—Large Bank and Schedule EC—Small Bank
Type of Review: Revision
Title: Special Energy Call Report
Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB Number: 1515-0099
Form Number: None
Type of Review: Extension
Title: Foreign Shipper's Declaration

OMB Number: 1515-0108
Form Number: None
Type of Review: Extension
Title: Declaration by Person Abroad Who Received and is Returning Merchandise to the U.S.

OMB Number: 1515-0047
Form Number: Customs Form 5523
Type of Review: Revision
Title: Invoice Details for Footwear

OMB Number: 1515-0104
Form Number: None
Type of Review: Extension
Title: Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes
Clearance Officer: Vince Olive (202) 566-9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, NW., Washington, D.C. 20229.
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Carole Hutchinson,
Departmental Reports Management Office.

[FR Doc. 85-20488 Filed 8-26-85; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 166
Tuesday, August 27, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FARM CREDIT ADMINISTRATION

Federal Farm Credit Board; Special Meeting

DATES AND TIMES: The special meeting is scheduled as follows: Wednesday, September 4—8:30 a.m. to 4:30 p.m.

ADDRESS: Federal Farm Credit Board Special Meeting, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703–883–4010).

SUPPLEMENTARY INFORMATION: A special meeting of the Federal Board has been called and will be held on September 4, 1985. The matters to be considered at the special meeting are:

Wednesday, September 4

*1. Executive Session
2. Proposed Regulations—System Loss Sharing
**3. Reports and Recommendations for Supervisory Actions and Legislative Proposals
(a) Contingency Plans for System Financial Assistance
(b) Farm Credit Administration Powers, Authorities, and Structure
4. CEO Salary—Farm Credit Corporation of America

* This session of the meeting will be closed to the public pursuant to the exemptions set forth in 5 U.S.C. §§ 552b(c) (2) and (8).

** This session of the meeting will be closed to the public pursuant to the exemptions set forth in 5 U.S.C. §§ 552b(c) (8) and (9).

Dated: August 23, 1985.

Donald E. Wilkinson,

Governor.

[FR Doc. 85–20578 Filed 8–23–85; 12:01 pm]

BILLING CODE 6705–01–M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 22, 1985.

TIME AND DATE: 10:00 a.m., Thursday, August 29, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

2. Gary Goff v. Youghiogheny & Ohio Coal Company, Docket No. LAKE 84–86–D. (Issues include whether the administrative law judge erred in dismissing the miner's discrimination complaint on the grounds that the miner should have proceeded under the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR § 2706.150(a)(3) and § 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85–20568 Filed 8–23–85; 3:49 pm]

BILLING CODE 6735–01–M

3

LEGAL SERVICES CORPORATION

Committee on the Provisions for the Delivery of Legal Services

TIME AND DATE: Meeting will commence at 9:00 a.m. Thursday, September 5, 1985 and continue until 11:30 a.m.

PLACE: Twin Bridges Marriott, Commonwealth II Room, 333 Jefferson Davis Highway, Arlington, Virginia 22202.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—June 28, 1985
3. Case Service Reporting (CSR) System
4. Report from the Office of Field Services—Law School Civil Clinical Project
5. Discussion of Partial Fee Payment Concept

CONTACT PERSON FOR MORE INFORMATION: Dan Rathbun, Office of Field Services, (202) 272–4060.

Date issued: August 23, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85–20502 Filed 8–23–85; 11:32 am]

BILLING CODE 6820–35–M

4

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting Tentative Agenda

TIME AND DATE: Meeting will commence at 8:00 a.m., Friday, September 6, 1985, and continue until all official business is completed.

PLACE: Twin Bridges Marriott, Commonwealth II Room, 333 Jefferson Davis Highway, Arlington, Virginia 22202.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—August 1, 1985
3. Lobbying—45 CFR Part 1612
—Outside witnesses
—Report from the Office of Compliance and Review
—Report from the Office of General Counsel
—Public comment
4. Questioned costs—Proposed 45 CFR Part 1630
—Report from the Office of Monitoring, Audit and Compliance
—Report from the Office of General Counsel
—Public comment
5. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272–4040.

Date issued: August 23, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85–20503 Filed 8–23–85; 11:33 am]

BILLING CODE 6820–35–M

5

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: An executive session will be held at 7:30 p.m., Wednesday, September 4, 1985. The public portion of the meeting will commence at 11:00 a.m.,

Friday, September 6, 1985, and continue until all official business is completed.

PLACE: Twin Bridges Marriott, Commonwealth II Room, 333 Jefferson Davis Highway, Arlington, Virginia 22202.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5 (a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Personal and Personnel Matters (Closed)
2. Litigation and Investigation matters (Closed)
3. Approval of Agenda
4. Approval of Minutes—August 2, 1985
5. Report of the President
6. Report of the Operations and Regulations Committee
7. Discussion and Action on the Recommendations of the Provisions for the Delivery of Legal Services Committee
   —Law School Civil Clinical Projects
8. Discussion and Action on the Recommendations of the Committee on Audit and Appropriations
   —1986 Refunding Applications
   —1986 State Support Funding Formula
   —Reallocation of FY '85 Funds

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272–4040.

Date issued: August 23, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85–20504 Filed 8–23–85; 11:33 am]

BILLING CODE 6420-35-M

6

LEGAL SERVICES CORPORATION

Committee on Audit and Appropriations

TIME AND DATE: Meeting will commence at 1:30 p.m., Thursday, September 5, 1985, and continue until all official business is completed.

PLACE: Twin Bridges Marriott, Commonwealth II Room, 333 Jefferson Davis Highway, Arlington, Virginia 22202.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Draft Minutes—August 1, 1985
3. Audit and Accounting Guide Report
4. National Support Survey Report
5. Review of Refunding Application Forms
6. State Support Funding Formula
7. Third Quarter Budget Review

CONTACT PERSON FOR MORE INFORMATION: Joel Thimell, Executive Office, (202) 272–4040.

Date issued: August 23, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85–20505 Filed 8–23–85; 11:34 am]

BILLING CODE 6820-35-M

7

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9 a.m., Wednesday, September 4, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW, Washington D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Hazardous Materials Accident Report:* Overturn of a Tractor-Semitrailer Transportating Torpedoes, Denver, Colorado, August 1, 1984.
2. *Hazardous Materials Release:* Missouri Pacific Railroad Company, North Little Rock, Arkansas, Railroad Yard, December 31, 1984.
3. Report Summarizing NTSB's Child Passenger Safety Symposium.
4. *Proposed Letter of Recommendation* Concerning Collection of Data on Use and Misuse of Child Restraints.
5. *Aviation Safety Report:* General Aviation Crashworthiness Project: Phase Three—Acceleration Loads and Velocity Changes of Survivable General Aviation Accidents.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa.

Catherine T. Kaputa,

Federal Register Liaison Officer.

August 22, 1985.

[FR Doc. 85–20512 Filed 8–23–85; 11:51 am]

BILLING CODE 7533-01-M

8

TENNESSEE VALLEY AUTHORITY

TIME AND DATE: 10:15 a.m. (EDT), Thursday, August 29, 1985.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on July 24, 1985.

Action Items

Old Business

1. Final rate review.

New Business

B—Purchase Awards

B1. Requisition 97—Spot Coal for Johnsonville Steam Plant.

C—Power Items

C1. Letter Agreement with the Department of the Air Force amending power contract covering power supply to Arnold Engineering Development Center (TV–59316A).

D—Personnel Items

D1. Renewal of personal services contract with Hartford Steam Boiler Inspection and Insurance Company, Hartford, Connecticut, for performance of authorized inspection services at TVA nuclear plant sites, requested by the Division of Construction.

D2. Personal Services Contract with Dick Anderson Travel Services, Inc., Winston-Salem, North Carolina, for provision of travel services to TVA, requested by the Division of Property and Services.

* D3. Relocation incentive arrangement.

E—Real Property Transactions

E1. Abandonment of certain rights affecting 0.31 acre of Chickamauga Reservoir Land located in Rhea County, Tennessee—Tract Nos. XCR–169 and CR–1571.

F—Unclassified

* F1. Contract No. TV–67525A between TVA and the Commonwealth of Kentucky for a continuing effort to provide economic development technical advice and assistance to Kentucky communities in the Tennessee Valley region.

F2. Supplement No. 3 to Agreement No. TV–61962A with Tennessee State University, Nashville State Technical Institute, and the State of Tennessee Board of Regents for construction, operational, and training expenses at the Industrial Training Center at Cockrill Bend.

F3. Agreement No. TV–67619A with Nashville State Technical Institute and Tennessee State University covering arrangements for cooperation in an advanced technology demonstration program.

F4. Cooperative agreement among TVA, Agricultural Stabilization and Conservation Service, and Soil Conservation Service covering arrangements for a project to demonstrate the use of animal waste management systems to improve water quality (TV–66539A).

F5. Supplement to Letter Agreement No. TV–59841A with RECRA Research, Inc., covering arrangements for stream gage monitoring activities to be performed by TVA.

* Item approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: August 22, 1985.

W.F. Willis,

General Manager.

[FR Doc. 85–20521 Filed 8–23–85; 12:08 pm]

BILLING CODE 8120-01-M

federal register

Tuesday
August 27, 1985

Part II

Environmental Protection Agency

40 CFR Parts 85 and 86

Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines; Amendment to Certain Regulations To Require Assertion of any Business Confidentiality Claim Under the Freedom of Information Act at Time of Submittal of Information; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 86

[FRL-2862-4]

Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines; Amendment to Certain Regulations To Require Assertion of any Business Confidentiality Claim Under the Freedom of Information Act at Time of Submittal of Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule adds a provision to certain subparts of 40 CFR Parts 85 and 86, which rquire businesses to submit information to EPA's Manufacturers Operations Division (MOD). This provision will require businesses to identify information as confidential at the time it is submitted to EPA, if they wish to exempt it from disclosure under the Freedom of Information Act. Failure to assert a business confidentiality claim as outlined in this final rule will permit EPA, consistent with its regulations at 40 CFR Part 2, Subpart B, to release the information without further notice to the submitter.

EFFECTIVE DATE: These regulations are effective September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bergovoy, Manufacturers Operation Division (EN-340-F), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Phone: (202) 382-2522.

SUPPLEMENTARY INFORMATION: Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), exempts trade secrets and confidential business information from the FOIA's general disclosure requirement. EPA's implementing regulations at 40 CFR Part 2, Subpart B, permit submitters of business information to clearly identify those documents or portions thereof for which they wish to assert a confidentiality claim, by placing on the information a stamp, cover sheet, or other suitable form of notice employing such language as "trade secret", "proprietary", or "company confidential." However, even if the business fails to assert its claim at the time of submittal, if EPA wishes to disclose the information it is still required under 40 CFR 2.204(c)(2) to contact the business whenever it appears that the business might be expected to assert a confidentiality claim if it knew EPA proposed to disclose the information and EPA has not previously given the business the notice described in 40 CFR 2.203(a).

This contact requirement has proved extremely burdensome to MOD, which receives a great volume of business information that subsequently is requested under the FOIA. MOD must expend substantial resources each year contacting submitters to find out whether they wish to claim confidentiality for information they provided EPA. Sometimes a long period of time has elapsed since the information was submitted, and as a result, MOD has difficulty locating the submitter or the submitter is not certain what information is being discussed and must be sent a duplicate. In the absence of a requirement that confidentiality claims be asserted at the time information is submitted, EPA often must contact the submitter of the information even to respond to FOIA requesters who are seeking only those portions of the information for which confidentiality has not been claimed.

Under 40 CFR 2.203(c) and 2.204(c)(2)(i)(A), EPA can bypass the contact requirement by including certain statements with its request for information. Pursuant to these provisions, some subparts of EPA regulations which require businesses to submit information to MOD will now include provisions which state that a business must identify clearly all items claimed confidential at the time of submittal. Failure to do so at the time of submittal will permit EPA to make the information available to the public without further notice to the submitting business. This requirement will be inserted in 40 CFR Part 84, Subparts P (Importation of Motor Vehicles and Motor Vehicle Engines, R (Exclusion and Exemption of Motor Vehicles and Motor Vehicle Engines), S (Recall Regulations), T (Emission Defect Reporting Requirements) and V (Performance Warranty and Voluntary Aftermarket Part Certification Program); and Part 86, Subparts G (Selective Enforcement Auditing of Light-Duty Vehicles), K (Selective Enforcement Auditing of Heavy-Duty Engines), and L (Nonconformance Penalties for Heavy-Duty Engines and Vehicles). While not required, it is recommended that a submitter asserting a confidentality claim also send EPA a "sanitized" copy of its submission from which all confidential information has been deleted. This will reduce the chance that EPA, in preparing a sanitized copy for release to FOIA requesters, might inadvertently failed to delete all information claimed confidential. EPA will assume that documents sanitized by a submitter accurately delete the information the submitter claims confidential.

Legal Authority

5 U.S.C. 301, 552, and 553. Sections 208, 301, and 307 of the Clean Air Act as amended (42 U.S.C. 7542, 7601, 7607).

Public Participation

The Agency finds that good cause exists for making this rule effective without a prior notice of proposed rulemaking. As discussed above, the existing FOIA regulations allow the Agency to release, without further notice, business information which has not been marked confidential at the time of submittal if the Agency has provided the business with appropriate notice that such claims must be made at the time the information is submitted. Since these amendments merely implement long-standing regulations which passed through notice and comment already (*see* 40 FR 21987 (May 20, 1975); 41 FR 36902 (Sept. 1, 1976)), impose no significant burden on submitters, and relieve EPA of substantial administrative burdens, it would be unnecessary and contrary to the public interest to require prior notice and comment in this case. 5 U.S.C. 553(b)(3)(B). In addition, since these amendments are merely procedural (implementing existing FOIA regulations), prior notice and comment are unnecessary. 5 U.S.C. 553(b)(3)(A).

Administrative Designation

Under Executive Order 12291, EPA must submit a Regulatory Impact Analysis for all "major" rules. This regulation is not "major" because it will not have an annual effect on the economy of more than $100 million and it will have no significant adverse effects on competition, productivity, investment, employment, or innovation. Therefore, a Regulatory Impact Analysis will not be prepared.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket cited above.

This rule does not come under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because it makes no independent request or requirement to collect information. It merely gives submitters the option to make certain notations when they submit information which is requested or required by previously promulgated regulations.

Effect on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis of any final rule unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. This final rule slightly modifies existing regulations and imposes an insubstantial new requirement on submitters of business information. Therefore, I hereby certify, pursuant to 5 U.S.C. 605(b), that this rule will not have a significant adverse impact on a substantial number of small entities. Accordingly, the Agency has not prepared a regulatory flexibility analysis to accompany this rule.

Judicial Review

This regulation is a nationally applicable regulation promulgated under the Clean Air Act. Accordingly, under section 307(b)(1) of the Clean Air Act, any judicial review must be sought in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed October 28, 1985. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by submitters of business information.

List of Subjects

40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 15, 1985.

Lee M. Thomas,

Administrator.

For the reasons set forth in this preamble, Parts 85 and 86 of Title 40, Code of Federal Regulations are amended as follows:

PART 85—[AMENDED]

1. The authority citation for Parts 85 and 86 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 553; Clean Air Act 208, 301, and 307, as amended, 42 U.S.C. 7542, 7601, 7607.

2. By adding a new § 85.1510 to read as follows:

§ 85.1510 Treatment of confidential information.

(a) Any importer or consignee, laboratory or modifier may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, an importer, consignee, laboratory, or modifier must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

3. By adding § 85.1712 to subpart R to read as follows:

§ 85.1712 Treatment of confidential information.

(a) Any person or manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a person or manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of it submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to ths subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

4. By adding § 85.1808 to Subpart S to read as follows:

§ 85.1808 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a person or manufacturer must indicate clearly the items of information claimed confidential by marking, circling bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to ths subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

5. By adding § 85.1909, to Subpart T to read as follows:

§ 85.1909 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted all confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

6. By adding § 85.2123 to Subpart V to read as follows:

§ 85.2123 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information shall be deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted all confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

PART 86—[AMENDED]

1. By adding § 86.615 to read as follows:

§ 86.615 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

2. By adding § 86.1015, to Subpart K to read as follows:

§ 86.1015 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

3. By adding a new § 86.1116–87, to Subpart C to read as follows:

§ 86.1116–87 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release

nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

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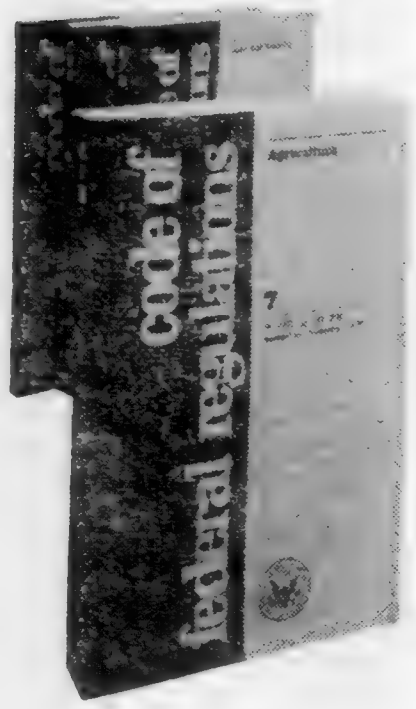
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Revenue Sharing Office

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Environmental Protection Agency

Chemicals
Environmental Protection Agency

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Reporting and Recordkeeping Requirements
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Trade Practices
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

Special Salary Rate Schedules for Recruitment and Retention

Correction

In FR Doc. 85–19504, beginning on page 32839, in the issue of Thursday, August 15, 1985, make the following corrections:

On page 32842:

1. In the second column, in § 530.306(a)(1), seventh line, "fix this" should read "fix the".

2. In the third column:

a. In § 530.306(a)(3), the first line should read: "(3) When a special salary rate schedule";

b. In § 530.306(b)(1)(ii), the sixth line should read: "employee's rate of basic pay at the higher of the two".

BILLING CODE 1505–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 404, 408, 409, 411, 413, and 439

[Docket No. 2645S]

Crop Insurance Regulations; Various Crops

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Eastern and Western U.S. Apple, Arizona-California Citrus, Almond, Grape, and Texas Citrus Crop Insurance Regulations, effective for the 1985 crop year only, by changing the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the Actuarial Tables for such crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES:

Effective date: August 28, 1985.

Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than October 28, 1985, to be sure of consideration.

ADDRESS: Written comment on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 16 of the policy for each of the crops affected provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to the volume of work involved in making changes on the Actuarial Table for each crop insured in each county where such insurance is offered requries that in the counties where changes in the contract must be on file by August 31, 1985, the date must be extended to September 30, 1985, effective for the 1985 crop year only (1986 year for Texas Citrus).

FCIC is currently reviewing all the actuarial tables for the regulations referenced herein to determine whether the premium rates or the price elections offered under each crop insurance policy are consistent with sound actuarial principles and if not to make adjustments where necessary. This is an annual review conducted on all crops. The amount of work involved appears to be such that completion of these reviews will not be made prior to the date for filing such actuarial data in the service offices for the crops and counties involved unless the filing date is extended.

The crop insurance regulations affected by this rule are:

Citation	Crop
7 CFR Part 404	Western U.S. Apple.
7 CFR Part 408	Eastern U.S. Apple.
7 CFR Part 409	Arizona-California Citrus.
7 CFR Part 411	Grape.
7 CFR Part 413	Texas Citrus.
7 CFR Part 439	Almond.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. A

large number of changes in the Actuarial Tables for the crop insurance policies affected by this rule for the 1986 crop year in the case of apples, Arizona-California Citrus, grapes, and almonds, and for the 1987 crop year for Texas citrus. Without these changes, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these actuarial changes will not permit filing of these actuarial tables in the counties by the present contract date of August 31. There is not sufficient time to provide for public comment and implement these changes prior to August 31. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended from August 31, 1985 until September 30, 1985, and made effective for the 1985 crop year only (1986 crop year for Texas Citrus).

The changes in the actuarial tables for the crops affected by this rule may be beneficial in some instances and detrimental in others. All policyholders should be aware of the changes in the actuarial table affecting their individual crop insurance contract, and of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register.** This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

Any comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Parts 404, 408, 409, 411, 413, and 439

Crop insurance, Western U.S. Apple, Eastern U.S. Apple, Arizona-California Citrus, Grape, Texas Citrus, Almond.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Western U.S. Apple, Eastern U.S. Apple, Arizona-California Citrus, Grape, Texas Citrus, and Almond Crop Insurance Regulations (7 CFR Parts 404, 408, 409, 411, 413, and 439 respectively), effective for the 1985 crop year (1986 crop year for Texas Citrus) only, in the following instances:

1. The Authority Citation for 7 CFR Parts, 404, 408, 409, 411, 413, and 439 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

PART 404—[AMENDED]

2. 7 CFR 404.7(d)16, 408.7(d)16, 409.7(d)16, and 439.7(d)16 are revised to read as follows:

* * * * *

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date except that, for the 1985 crop year only, all contract changes will be available at your service office by September 30. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

PART 411—[AMENDED]

3. 7 CFR 411.7(d)16 is revised to read as follows:

§ 411.7 [Amended]

* * * * *

(d) * * *

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date for counties with a November 20 or December 10 cancellation date except that, for the 1985 crop year only, all contract changes will be available at your service office by September 30, 1985, and by October 31 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 413—[AMENDED]

4.7 CFR 413.7(d)16 is revised to read as follows:

§ 413.7 [Amended]

* * * * *

(d) * * *

16.Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date except that, for the 1986 crop year only, all contract changes will be available at your service office by September 30. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

Done in Washington, D.C., on August 1, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–20595, Filed 8–27–85; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y. Docket No. R–0549]

Bank Holding Companies and Change in Bank Control; Application Required for Relocation of Subsidiary Bank to Another State

Correction

In FR Doc. 85–20030 beginning on page 33913 in the issue of Thursday, August 22, 1985, make the following corrections:

§225.144 [Corrected]

1. On page 33913, third column, the footnote to §225.144(a) was omitted and should be added as follows at the bottom of the column:

[1] A bank holding company's home state under the BHC Act is that state in which the total deposits of its banking subsidiaries were largest on the day the company became a bank holding company or on July 1, 1966, whichever date is later. 12 U.S.C. 1842(d).

2. On the same page, same column, in §225.144(b), first time, "BCH" should read "BHC".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9134]

Southwest Sunsites, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires Porter Realty, Inc. and Irvin Porter, among other things, to cease, in connection with the advertising, sale of land or inducement of payments for land, representing that the purchase of any land is a sound

financial investment; involves little monetary risk; is a way to achieve financial security; and will result in economic benefit to the purchaser stemming from an increase in the value of the land as a result of mineral rights, exploration, profitable resale or as a hedge against inflation. Respondents are prohibited from representing that any land is currently usable as a homesite, farm or ranch, unless that land is immediately usable for the cited purpose without any substantial improvement or development by the purchasers; and from misrepresenting in any manner the cost of obtaining or availability of electric power, telephone service, potable water, sewage disposal, or any utility; and any interest in land by respondents or others. Respondents are further required to prepare a "Fact Sheet" containing specified information and to distribute a copy to all purchasers in a prescribed manner. Advertisements, promotional materials and sale presentations must include statements warning that investment is risky and that prospective buyers should consult a qualified professional before purchasing; and that substantial expenditures may be necessary to make lots suitable for use. Contracts must contain a seven-day right-to-cancel provision and a disclosure that refunds will be made within 30 days after the seller receives a cancellation notice. Additionally, respondents are required to provide consumers with cancellation forms; honor all valid cancellation requests; and make refunds in a timely manner. The order further requires that sales representatives receive a copy of the order; that respondents institute a surveillance program designed to reveal those who fail to comply with the provisions of the order and discontinue dealing with any person who engages in any prohibited act or practice more than once.

DATE: Complaint issued April 29, 1980. Order issued Aug. 9, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Gary D. Kennedy, Dallas Regional Office, Federal Trade Commission, 8303 Elmbrook Dr., Dallas, TX 75247. (214) 729–7053.

SUPPLEMENTARY INFORMATION: On Thursday, May 16, 1985, there was published in the **Federal Register**, 50 FR 20432, a proposed consent agreement with analysis In the Matter of Southwest Sunsites, Inc., Green Valley Acres, Inc., Green Valley Acres, Inc. II, corporations, and Sydney Gross and Edwin Kritzler, individually and as officers or former officers of said corporations, Porter Realty, Inc., a corporation, and Irvin Porter, individually and as an officer or former officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.35 Condition of goods; § 13.55 Demand, business or opportunity; § 13.60 Earnings and profits; § 13.90 History of product or offering; § 13.143 Opportunities; § 13.155 Prices; § 13.160 Promotional sales plans; § 13.195 Safety; 13.195–30 Investment; § 13.205 Scientific or other relevant facts; § 13.285 Value. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–45 Maintain records; 13.533–55 Refunds, rebates, and/or credit; 13.533–65 Renegotiation and/or amendment of contracts. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1595 Condition of goods; § 13.1610 Demand for or business opportunities; § 13.1615 Earnings and profits; § 13.1650 History of product; § 13.1697 Opportunities in product or service; § 13.1715 Quality; § 13.1725 Refunds; § 13.1740 Scientific or other relevant facts; § 13.1775 Value.—Prices: § 13.1778 Additional costs unmentioned. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1854 History of product; § 13.1863 Limitations or product; § 13.1882 Prices; 13.1882–10 Additional prices unmentioned; § 13.1886 Quality, grade or type; § 13.1889 Risk of loss; § 13.1892 Sales contract, right-to-cancel provisions; § 13.1895 Scientific or other relevant facts. Subpart—Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.1935 Earnings and profits; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Land sales, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–20516 Filed 8–27–85; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–3160]

Wein Products, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires four California firms and two individuals engaged in the advertising, sale and distribution of "DECIMATE", an ultrasonic pest control product, among other things, to cease representing that DECIMATE or any other ultrasonic pest control product will eliminate cockroaches, rats, mice, or other such pests from a home or place of business; will eliminate them within a specified period of time; will protect a home or place of business from rodent and insect infestations or cause any area to be free of such pests; and will serve as an effective alternative to the use of conventional pest control products. The firms are also barred from making any performance or effectiveness claims for ultrasonic pest control devices unless they possess and rely upon proper substantiating evidence when making those claims.

DATE: Complaint and order issued Aug. 13, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Harrison J. Sheppard, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, CA 94102. (415) 556–1270.

SUPPLEMENTARY INFORMATION: On Monday, June 3, 1985, there was published in the **Federal Register**, 50 FR 23313, *correction*, 50 FR 24206, a proposed consent agreement with analysis In the Matter of Wein Products, Inc., a corporation; El Mar Trading Corporation, a corporation; El Mar Corporation, a corporation; Stanley Weinberg, and Allen Schor, individually and as officers and directors of the corporation(s), for the purpose of soliciting public comment. Interested

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

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parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.20 Comparative data or merits; § 13.170 Qualities or properties of product or service; 13.170–46 Insecticidal or repellant; 13.170–80 Rodenticidal; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Ultrasonic pest control devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–20500 Filed 8–27–85; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–012; A–4–FRL–2888–2]

Alabama; Approval and Promulgation of Implementation Plans; Approval of Air Permit Requirements Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Alabama Department of Environmental Management (ADEM) submitted revisions to its air permit requirements to EPA, Region IV, on March 28, 1985. These revisions replace the present permits with one air permit, clarify the conditions which subject the air permit to revocation, and allow the Director of ADEM to delegate to the local air pollution control agencies the authority to issue air permits. EPA is today approving these revisions.

EFFECTIVE DATE: This action will be effective on October 28, 1985, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kelly McCarty of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109.

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Library, Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20005

FOR FURTHER INFORMATION CONTACT: Ms. Kelly McCarty, Air Management Branch, EPA Region IV, at the above address, and phone 404/881–3286, or FTS 257–3286.

SUPPLEMENTARY INFORMATION: On February 19, 1985, the ADEM submitted revisions to its State Implementation Plan (SIP) for air permit requirements. These revisions to Chapter 16 of the Air Division Regulations accomplished the following: (1) Replaced the present permits to construct, temporary permits, and permits to operate with one air permit, and, (2) clarified the conditions which subject the air permit to revocation.

All the various air permits have been consolidated into one air permit issued prior to construction. Authorization from the Director must be obtained in order to begin operation. The air permit authorizing construction is good for two years, at which time, if construction has not begun, the air permit and application will be cancelled.

Prior to this revision, there was no section in Alabama's Air Division Regulations which delineated the conditions under which a permit is subject to revocation. A new section 16.2.4, "Revocation of Air Permits", has now been added. These conditions include:

- Failure to comply with any conditions of the permit;
- Failure to notify the Director prior to operation;
- Failure to establish and maintain required records;
- Failure to allow employees of the Department access;
- Failure to comply with any provisions of any applicable Department Administrative order;
- Failure to comply with the rules and regulations of the Department; or
- For any other cause that a hearing establishes that continuation of the permit is inconsistent with the purpose of the Alabama Air Pollution Control Act or regulations under it.

On March 28, 1985, the ADEM submitted an additional revision to its (SIP) for air permit requirements. This revision allowed the Director of ADEM to delegate authority to the local air pollution control agencies to issue air permits. Delegation of this authority is subject to several requirements. These are:

- The local agency must adopt regulations to ensure that the permit applicant is subject to all the requirements contained in ADEM's regulations.
- The local agency must adopt regulations to allow the Director of ADEM the opportunity to review the permit application, the analysis of the permit, and proposed permit conditions at least 10 days prior to permit issuance.
- The local agency must demonstrate that it has the necessary manpower and technical expertise to implement the requirements of the regulations.
- The local agency must adopt regulations which require them to provide the Director of ADEM a copy of preliminary determinations and public comment notices for all permits issued at the same time the notice is forwarded for publication.

These revisions also allow the Director of ADEM to revoke this delegation, in whole or part, if he determines that the local agency is ineffectively implementing the requirements, or if the local agency's procedures for implementing the requirements are inadequate. The Director of ADEM still has the authority to revoke any permit he deems to be inadequate. All permits issued by local agency are enforceable by the ADEM.

Previously, the permit application was submitted to the local agency, reviewed, and the analysis sent to ADEM for final

approval for both minor and major sources. Signatures from both the local agency and ADEM had to be on the permit for it to be considered enforceable.

Final Action

EPA has reviewed these revisions to the Alabama SIP and is approving them as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn, and two subsequent notices will be published before the effective date. One notice will withdraw the final action, and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 1985. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2).)

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (see 46 FR 8709.)

Incorporation by reference of the Alabama State Implementation Plan was approved by the Director of the **Federal Register** on July 1, 1982.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Dated: August 20, 1985.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart B—Alabama

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 5250 is amended by adding paragraph (c)(39) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(39) Changes to air permit requirements, submitted on February 19, 1985, and on March 28, 1985, by the Alabama Department of Environmental Management (ADEM).

(i) Incorporation by reference.

(A) Amendment to ADEM Air Rules & Regulations Chapter 16.1, submitted on March 28, 1985, and State-adopted on March 13, 1985. Allows delegation of permitting authority to locals.

(B) Amendment to ADEM Air Rules & Regulations Chapter 16.1, 16.2, 16.3, and 16.4, submitted on February 19, 1985, and State-adopted on February 13, 1985. Consolidates Permit to Construct, Operate and Temporary Permit, into one Air Permit.

(ii) Additional Information.

(A) None.

[FR Doc. 85–20478 Filed 8–27–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 712

[OPTS–620048; FRL 2861–8(a)]

Chemical Information Rules; Additional Automatic Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the Toxic Substances Control Act section 8(a) Preliminary Assessment Information rule (40 CFR Part 712). The rule formerly provided that only those chemical substances, mixtures and categories of chemicals designated by the Interagency Testing Committee (ITC) for testing consideration by the EPA within 12 months would be added to § 712.30 without separate proposal and comment. The designated substances were listed by the Agency at the same time the ITC report was published. This amendment extends the automatic reporting provision to include those chemical substances, mixtures and categories of chemicals recommended by the ITC but not designated for action by the Agency within 12 months.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this regulation shall be promulgated for purposes of judicial review at 1 p.m. Eastern daylight time on September 11, 1985. This regulation shall become effective on October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460. Toll free: (800–424–9065). In Washington, DC: (554–1404). Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070–0054.

I. Introduction

The Preliminary Assessment Information rule, issued by EPA and published in the **Federal Register** of June 22, 1982 (47 FR 26992), requires chemical manufacturers and importers to complete EPA Form No. 7710–35 on selected chemicals, mixtures and categories of chemicals and to submit the reports to the Agency. The rule is contained in 40 CFR Part 712. Form No. 7710–35 requires that manufacturers and importers report general production, use, and exposure information on chemicals listed in 40 CFR 712.30. The Agency amended this rule, as published in the **Federal Register** of May 11, 1983 (48 FR 21294), to provide for the addition to the rule's reporting requirements, without additional proposal and comment, of those chemical substances, mixtures and categories of chemicals designated for 12-month Agency response by the Interagency Testing Committee. Upon receipt of each ITC report, the Agency issues a regulation adding the substances to 40 CFR 712.30 and requiring the submission of EPA Form No. 7710–35 on the designated substances. Manufacturers and importers must report within 90 days of the publication of each regulation.

This rule provides that chemical substances, mixtures and categories of chemicals recommended by the ITC but not designated for 12-month response are also subject to the Preliminary Assessment Information rule without individual proposal and comment. It was proposed in the **Federal Register** of November 19, 1984 (49 FR 45598).

Comments which were received on the proposed rule are discussed in Unit IV of this final rule. These comments also apply to the automatic reporting requirements for non-designated ITC recommendations which are being promulgated by the Agency elsewhere in today's **Federal Register**, under the TSCA section 8(d) Health and Safety Data Reporting rule. Under that rule, persons are required to submit unpublished health and safety studies

on chemical substances and mixtures which are listed in 40 CFR 716.17.

II. Need For Automatic Reporting

Within 1 year after the ITC designates a chemical substance, mixture or category of chemicals for testing consideration, EPA must initiate rulemaking to require testing under section 4 of TSCA or state in the **Federal Register** its reasons for not initiating rulemaking. The Agency needs preliminary assessment information to supplement available data for evaluating the need and basis for requiring additional testing. Further, this information is needed by the Agency in evaluating existing or future test data on the chemical. It provides a preliminary basis for evaluating the likelihood that human or environmental exposures may achieve levels found to cause adverse effects in tests.

The Agency needs the preliminary assessment information quickly for designated substances in order to meet the statutorily mandated 12-month decision point. For this reason, the Agency issued the amendment, which was published in the **Federal Register** of May 11, 1983 (48 FR 21294), providing for addition to the rule without individual proposal and comment of all chemical substances, mixtures and categories of chemicals designated by the ITC for 12-month response by the Agency.

During the later stages of development of that amendment, the ITC in its Eleventh Report added to its priority list six substances but did not designate them for EPA response within 1 year. This was the first time the ITC had recommended substances without designating them for a 12-month response period. The previously proposed amendment for automatic reporting on designated substances did discuss the possibility of automatic reporting for substances recommended but not designated for 12-month response. EPA is now promulgating an amendment to the rule which would require automatic reporting on recommended (nondesignated) substances.

The Agency believes that automatic addition of ITC chemical substances, mixtures and categories of chemicals that are recommended but not designated by the ITC to the Preliminary Assessment Information rule will benefit both industry and EPA and will provide valuable information to the Agency in a timely manner.

III. Rationale for Automatic Reporting

A. Efficiency

In the past, the ITC has issued its reports containing designated substances on a regular and predictable time schedule which allows companies to plan their reporting activities for certain times of the year. Similarly, EPA can plan resource allocations for the processing and analysis of these reports when they are received.

When non-designated chemicals were included in ITC reports along with designated chemicals, reporting by companies to the Agency may not have occurred at the same time, if EPA decided to propose reporting requirements for these substances, receive comment, and then promulgate a separate rule amendment. That is, at the time the ITC issued a report, the Agency would simultaneously add the designated chemicals to the final 8(a) rule, but only propose the non-designated chemicals for reporting. Thus, for one ITC report which contained both designated and non-designated chemicals, industry reported at two different times, coincident with the ITC report publication for the designated chemicals and later for the non-designated chemicals. Since the Preliminary Assessment Information rule asks for the most current data when reporting, if a manufacturer decided to collect data for both the designated and non-designated chemicals at the same time, there was a possibility that the information on non-designated chemicals could be outdated by the time reporting was required for those chemicals. Assuming that the ITC continued to recommend designated and non-designated chemicals twice a year, industry would have to plan for four data collection and reporting periods per year.

Reporting on designated and non-designated chemicals at the same time may save companies some start-up costs. Fixed costs are estimated to account for approximately half of the reporting cost for companies submitting Preliminary Assessment Information Reports (EPA Form No. 7710–35). (See preamble to the Preliminary Assessment Information rule, 47 FR 26992). One part of these fixed costs is associated with the time a company must allot for determining whether it produces a listed chemical and at which site. Some large companies which produce many products have indicated to the Agency that this search for production records accounted for a large part of their costs in reporting. Those companies, and others like them, will save money by collecting and reporting information to the Agency on both designated and non-designated chemicals at the same time.

Another part of this fixed cost is the time and effort needed for companies to familiarize those personnel who will complete the form with the requirements of the rule. If companies reported at different times for designated and non-designated chemicals, they might have been unable to assign the same person to reporting activities for each amendment. Thus, the cost for instructing a new person might have been incurred for companies which had to report twice, rather than once, for a given ITC report.

The ITC's Tenth and Eleventh Reports (47 FR 22585 and 47 FR 54626) have already produced a situation of separate reporting on both nondesignated and designated substances from the same category. While not a case of simultaneous listing by the ITC of related designated and non-designated chemicals, this example is illustrative of the potential impacts of separate reporting schedules for two related chemicals or groups of chemicals. In its Tenth Report, the ITC designated, 1,2,4-trimethylbenzene, while in its Eleventh Report the ITC recommended but did not designate mixed trimethylbenzenes, 1,2,3-trimethylbenzene, and 1,3,5-trimethylbenzene. Of the three domestic manufacturers of these substances (as determined from the TSCA Inventory), one manufacturer produced three of the substances (one designated and two non-designated), the second company manufactured two of the substances (one designated and one non-designated), and the remaining manufacturer produced only the designated member. Thus, for the first two companies, reporting at different times of the year eliminated the efficiencies of reporting on the designated and non-designated substances at the same time, which will be facilitated by this rule.

The requirement for automatic reporting on both designated and non-designated ITC substances will also be a more efficient use of Agency resources. With automatic reporting on non-designated substances, the Agency is relieved of the additional cost associated with four additional rulemakings per year (two for proposals and two for final amendments adding these chemicals to the Preliminary Assessment Information rule). The savings to the Agency is estimated to be about $40,000.

B. Concurrent Analysis

In some cases, the Agency will be considering designated and non-

designated members of a category concurrently. When the Agency is evaluating data on these related substances, it will need information on all of the substances, whether or not they have been designated by the ITC. The Agency believes that it would be inefficient to conduct separate testing needs, evaluations and rulemakings on different chemically related substances that in all likelihood pose similar testing issues. Therefore, to make the best use of its resources, EPA prefers to consider designated and non-designated substances together. Simultaneous reporting on designated and non-designated substances recommended in the same ITC Report will facilitate this.

C. Opportunity for Withdrawing Chemicals

Although this regulation does not provide for notice and comment on the addition of ITC-recommended chemicals to the rule, the regulation does amend the rule to allow persons to submit requests for the removal of specific chemicals. A person choosing to submit a request for the removal of a chemical added through the automatic mechanism should promptly submit to the Agency his or her reasons for that removal. The chemical may then be withdrawn from the rule at the Agency's discretion, for good cause. The Agency will issue a rule amendment for publication in the **Federal Register** when withdrawing a chemical from the rule. This amendment will remove the chemical from the reporting requirements of 40 CFR 712.30 and provide the reasons for that removal. Such a provision is in effect currently for ITC-designated chemicals added to the rule using the automatic mechanism; this amendment extends that procedure to ITC-recommended chemicals.

Further, EPA's experience with both the section 8(a) and 8(d) rules has shown that, despite adding many chemicals to the rules in the past (section 8(a) 47 FR 27013, section 8(d) 47 FR 38780), very few of the comments received by the Agency directly questioned the appropriateness of a particular substance being added to the rule. None of these comments subsequently led to the exclusion of an ITC chemical from the rule.

Finally, because of the ITC's chemical selection process, there is little likelihood that a substance will be recommended for testing that is no longer manufactured or imported, or has not been for many years, or is manufactured solely for use as a pesticide, food, or drug. Thus, the necessity of removing chemicals from the rule for any of the above reasons will be remote.

In conclusion, EPA believes that amending the Preliminary Assessment Information rule to provide for automatic reporting on chemicals recommended but not designated by the ITC:

1. Will lead to an improved system of gathering information needed to evaluate such recommendations and the risks posed by those chemicals.
2. Will reduce reporting costs for industry and processing costs for the Agency.
3. Will still permit subject companies the opportunity to convince the Agency that reporting on particular chemicals may not be necessary.

IV. Comments on Proposed Rule

During the 60-day comment period following publication of the proposed rule in the **Federal Register** of November 19, 1984, (49 FR 45598), EPA received comments from a total of four companies and industry groups. All those who commented expressed support for the basic concept of the rule but recommended changes in procedures.

Comment 1. Extend to 30 days the 14-day time period for companies to submit information showing why a given substance should not be added to the reporting rule. This was requested by three of the four who commented.

Response. EPA disagrees with this comment. The 14-day period was chosen so that EPA would have sufficient time to review a request and, if necessary, issue a **Federal Register** notice removing the chemical from the rule before the rule became effective on the 30th day. Also, as a result of the ITC screening process, industry is aware of the chemicals being considered by the ITC for potential inclusion in their listings at least 1 year before the final list is published and thus has ample time to compile relevant information on a chemical which they feel should not require reporting.

Comment 2. Consider modifications to the ITC process for listing recommended and designated chemicals.

Response. EPA does not have the authority to make changes in the procedures followed by the ITC for listing chemicals. All suggested changes would have to be considered and acted upon by the ITC.

Comment 3. Modify the final section 8(a) rule to clarify that the 50-chemical limit includes both designated and recommended substances.

Response. EPA agrees with this comment and has changed the wording of the 8(a) rule to be consistent with that of the 8(d) rule. However, it should be noted that this limit can be exceeded to add designated chemicals, mixtures, and categories of chemicals, but not recommended substances. Also, the 50-chemical limit in 1 year pertains only to new ITC designations or recommendations. The cumulative list may be much longer than 50 chemicals.

Comment 4. Identify each member within a category as a distinct chemical and thus subject to the 50-chemical limit.

Response. EPA disagrees and will continue to count a chemical category as one distinct chemical entry for purposes of responding to ITC recommendations. Section 4(e)(1)(A) of TSCA provides the ITC with the option of setting forth their list ". . . either by individual substance or mixture or by groups of substances or mixtures . . . ."

As discussed in Unit V of this preamble, OMB, during its review of the proposed additional automatic reporting, suggested a numerical limit on the number of recommended chemicals, mixtures and categories of chemicals on which automatic reporting would be required under sections 8(a) and 8(d) in any 1 year. OMB agreed to counting each category as one entry against the 50-chemical limit because this method of counting has been utilized previously, both by the ITC and by EPA.

EPA has established, in this rule, a process by which persons may submit requests for the removal of specific chemicals within 14 days after the date of publication of the notice adding the chemical to the section 8(a) Preliminary Assessment Information Rule. In cases where the ITC has designated or recommended an overly broad or ill-defined category, this appeal process could be utilized.

All the above comments and responses apply also to the amendment to the Health and Safety Data Reporting rule, published elsewhere in today's **Federal Register.**

V. Chemical Limit

The Office of Management and Budget (OMB), during its review of the proposed rule under Executive Order 12291 and the Paperwork Reduction Act, suggested that the Agency put a numerical limit on the number of recommended substances, mixtures, and categories of chemicals on which automatic reporting would be required under sections 8(a) and 8(d) in any 1 year. EPA agreed to propose for public comment such a numerical limit since EPA's capacity for evaluating candidates for the initiation of test rules is limited. If that limit is exceeded, the

Agency will be unable to proceed with its evaluation of testing candidates in a timely manner. Further, with such a backlog, information collected by EPA under sections 8(a) and 8(b) on those additional chemicals may go unused. This would result in an unnecessary reporting burden for the public and would be "of no practical utility" to the Agency, thus violating the Paperwork Reduction Act's standards for information collection.

Section 4(e)(1)(A) of TSCA permits the ITC to designate for EPA's response within 1 year no more than 50 of its recommendations at any one time. This limit was set by Congress in recognition of the excessive burden that adding too many chemicals would place on both EPA and the public. Thus, a limit of 50 ITC-recommended substances, mixtures or categories per year for automatic reporting under sections 8(a) and 8(d) appears to be reasonable and consistent with the statutory intent. This limit could be exceeded if necessary to obtain automatic reporting on all designated chemicals, but automatic reporting will be required on recommended chemicals only to the extent that the total number of designated and non-designated ITC recommendations does not exceed 50 in any year.

In the event that the total number of ITC-designated and non-designated recommendations exceeds 50 in a given year, EPA could still require reporting on all of them. All of the designated chemicals could be listed for automatic reporting. The Agency could require automatic reporting on the recommended chemicals until the overall limit of 50 was reached; it could require reporting on the remainder by notice and comment rulemaking if it believes it can effectively and promptly evaluate the reported data.

EPA has included language in § 712.1 of this rule limiting automatic reporting to 50 substances, mixtures, or categories per year.

VI. Who Must Report

Persons subject to the Preliminary Assessment Information rule are specified in 40 CFR 712.20 and 712.25. Additional descriptions were published in the **Federal Register** of June 22, 1982 (47 FR 26992).

Generally, a manufacturer (or an importer) must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each listed substance he/she manufactures. If he/she manufactures a chemical at more than one site, he/she would submit a form for each site.

A manufacturer or importer is exempt from reporting if he/she qualifies as a small business by meeting the following two criteria during the reporting period: Total annual parent company sales below $40 million, and total production below 45,400 kilograms of the listed chemical at this site. Also, companies with total annual sales below $4 million are exempt from reporting regardless of how much of the chemical is manufactured, as published in the **Federal Register** of November 16, 1984 (49 FR 45425). The Agency will periodically change the dollar values in this generic standard, if necessary, to reflect inflation.

VII. Release of Aggregate Data

For this amendment, the Agency will follow the procedures for release of aggregate data and exemption requests from release of aggregate statistics described in the Rule Related Notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). As described in that notice, the Agency must receive a request for an exemption from release of aggregate data no later than the end of the reporting period.

VIII. Economic Impact

The economic analysis of this rule is based largely on methods and data developed for the original section 8(a) Preliminary Assessment Information rule.

Firms will incur fixed and variable costs to comply with this proposed amendment. Fixed costs (costs of becoming familiar with the regulation and identifying which chemicals to report) are estimated at $617 per plant site. Variable costs (costs of completing the form, certification requirements, etc.) are estimated at $739 per report. These estimates are higher than the original costs developed for the Final Preliminary Assessment Information Rule. This increase reflects price inflation (27 percent) as measured by the GNP Deflator from 1980 to the fourth quarter of 1984.

The reporting burden expressed in hours is estimated to be 18 hours per site (fixed) and 16 hours per report (variable).

The total cost will be determined by the number of companies and plant sites involved. It is assumed that only one report will be filled per site.

While this amendment may cause certain companies to incur additional costs, it may also reduce the costs to others. For example, firms may have to incur the fixed costs ($617) only once instead of twice (once for the designated chemicals and once for the recommended ones). Of course, they will incur additional costs if they have to report on the recommended chemicals.

Small manufacturers (those with parent company sales of $4 million or less, or production/importation of a listed chemical of 100,000 pounds or less at a plant site and parent company sales of $40 million or less) are exempt from the reporting requirements.

IX. Public Record

The public record for this rulemaking is a continuation of the record (OPTS–82004) for the Preliminary Assessment Information rule published in the June 22, 1982, issue of the **Federal Register** (47 FR 26992). All documents, including the index to this public record, are available for inspection in the OPTS Reading Room from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays, in Rm. E–107, 401 M St. SW., Washington, DC 20460. This record includes basic information considered by the Agency in developing this rule.

1. All comments on the proposed amendment.

2. All relevant support documents and studies.

3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.

5. Any factual information considered by the Agency in developing the rule.

6. Reports Impact Analysis for 40 CFR Part 712 and this rulemaking.

7. Tenth through Fifteenth Reports of the Interagency Testing Committee (ITC); Tenth Report (47 FR 22585), Eleventh Report (47 FR 54626), Twelfth Report (48 FR 24443), Thirteenth Report (48 FR 55674), Fourteenth Report (49 FR 22389) and Fifteenth Report (49 FR 46931).

EPA requests that, between the date of this notice and the effective date of this rule, persons identify and report any perceived errors or omissions in the record.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it does not have an effect of $100 million or more on the economy.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This amendment will not have a significant economic impact on small entities. Consistent with the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, small manufacturers have been defined and excluded from manufacturer reporting requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control Number 2070–0054.

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, and Reporting and recordkeeping requirements.

Dated: August 20, 1985.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Part 712 is amended as follows:

PART 712—[AMENDED]

1. The authority citation for Part 712 continues to read as follows:

Authority: 15 U.S.C. 2607.

2. In § 712.1 by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 712.1 Scope and compliance.

* * * * *

(b) Chemical substances, mixtures, and categories of substances or mixtures which have been recommended by the Interagency Testing Committee for testing consideration by the Agency but not designated for Agency response within 12 months, will be added to § 712.30 using the procedure specified in § 712.30(c) only to the extent that the total number of designated and recommended chemicals has not exceeded 50 in any 1 year. Additional recommended but not designated chemicals may be added after proposal, and consideration of public comment.

3. In § 712.30 by revising paragraph (c) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(c) Chemical substances, mixtures, and categories of substances or mixtures that have been added by the Interagency Testing Committee, established under section 4(e) of TSCA, to the section 4(e) Priority List, for testing consideration by the Agency, will be added to this section 30 days after EPA issues for publication in the **Federal Register** a rule amendment listing these chemical substances, mixtures and categories. A Preliminary Assessment Information—Manufacturer's Report must be submitted for each chemical substance and mixture within 60 days after the effective date of the listing. At the discretion of the Assistant Administrator for Pesticides and Toxic Substances, a listed substance, mixture or category may be withdrawn, for good cause, from the rule's reporting requirements prior to the effective date. Any information submitted showing why a substance, mixture or category should be removed from the rule must be received by EPA within 14 days after the date of publication of the notice under this paragraph. If a substance, mixture or category is removed, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment. Any information submitted must be addressed to: Document Control Officer, Office of Pesticides and Toxic Substances, (TS–793), Environmental Protection Agency, 401 M Street, SW., Washington D.C. 20460, ATTN: 8(a) Auto-ITC.

* * * * *

[FR Doc. 85–20549 Filed 8–27–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 716

[OPTS–84010A; FRL 2881–8(b)]

Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the automatic reporting provision of the Health and Safety Data Reporting rule under section 8(d) of the Toxic Substances Control Act (TSCA). The amendment changes 40 CFR 716.18(b) to require, without separate proposal and comment, reporting of unpublished health and safety studies on chemicals recommended for testing consideration by the Interagency Testing Committee (ITC) but not designated for action by EPA within 12 months. Two other amendments are also included. One allows for the removal of ITC-recommended chemicals by the Assistant Administrator for Pesticides and Toxic Substances before the effective date of an amendment adding ITC-recommended chemcials to the section 8(d) rule. The other amendment modifies the procedures for requesting reporting deadline extensions.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this regulation shall be promulgated for purposes of judicial review at 1 p.m. Eastern daylight time on September 11, 1985. This regulation shall become effective on October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M Street SW., Washington, D.C. 20460. Toll free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the USA: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA issued a rule under section 8(d) of TSCA (40 CFR Part 716, Subpart A), published in the **Federal Register** of September 2, 1982 (47 FR 38780), which requires persons to submit unpublished health and safety studies on chemicals listed in § 716.17. The Agency will use the studies to support its investigations of the risks posed by chemicals, and, in particular, to support its decisions whether to require industry to test chemicals under section 4 of TSCA.

Persons who have manufactured, imported or processed; are manufacturing, importing or processing; have proposed to manufacture, import or process; or will propose to manufacture, import or process the listed chemicals may be subject to the reporting requirements of the Health and Safety Data Reporting Rule. EPA advises these persons to refer to 40 CFR Part 716 for complete information on required submissions.

The September 2, 1982 rule required reporting on chemicals recommended for testing by the Interagency Testing Committee in its First through Fifth Reports, and on a few other chemicals which were being reviewed by EPA. The Agency also included in that rule a provision for automatically adding to the rule chemcials recommended for testing by the ITC and designated for 12-month Agency response. Thus, very time the ITC designates a substance in one of its reports, the Agency will automatically add the substances to § 716.17(b) of the rule and require reporting within 90 days. Non-ITC

chemicals are added to the rule after a notice of proposed amendment of § 716.17 is published in the Federal Register. There will be a 30-day public comment period on the notice; after consideration of the comments, a final amendment will identify the substances and mixtures added.

EPA also proposed to amend § 716.17 by adding the chemicals designated for priority testing by the ITC in its Sixth through Tenth Reports (47 FR 38780). On March 30, 1983 (48 FR 13178) the final amendment adding these chemicals to the rule was published in the Federal Register.

Subsequent to publication of the original 8(d) rule, the Agency has used the automatic reporting provision described above to add chemicals designated by the ITC in its Eleventh, Twelfth, Thirteenth, Fourteenth, and Fifteenth Reports (47 FR 54626, 48 FR 24443, 48 FR 55674, 49 FR 22389, 49 FR 46931).

In addition to the chemicals designated by the ITC in its Eleventh Report, the ITC also added to its priority list six substances which it did not designate for EPA response within 1 year. This was the first time the ITC had recommended substances without designating them for a 12-month response period. Subsequently, one chemical recommended but not designated for a 12-month response was included in the Fourteenth Report of the ITC. Although the language in § 716.18(b) does not specifically limit the Agency to including only designated substances, EPA proposed for public comment an amendment requiring the automatic reporting on recommended (non-designated) substances, as published in the Federal Register of November 19, 1984 (49 FR 45602). The comments received on that proposed rule are addressed in the document cited in Unit III of this final rule.

The Agency believes that the automatic addition to the section 8(d) rule of chemical substances and mixtures that are recommended but not designated by the ITC will benefit both industry and EPA and will provide valuable information to the Agency in a more timely manner.

Elsewhere in today's Federal Register, the Agency is also promulgating similar automatic reporting requirements for non-designated ITC recommendations under the TSCA section 8(a) Preliminary Assessment Information rule. Under that rule, persons are required to report general production, use, and exposure information to the Agency on chemicals listed in § 712.30.

This rule was proposed in the Federal Register of November 19, 1984, (49 FR 45598).

II. Rationale for Automatic Reporting

A. Efficiency

In the past, the ITC has issued its reports containing designated substances on a regular and predictable time schedule which allowed companies to plan their reporting activities for certain times of the year. Similarly, EPA plans resource allocations for the processing and analysis of these reports when they are received.

When non-designated chemicals are included in ITC reports along with designated chemicals, reporting by companies to the Agency will not occur at the same time if EPA proposes reporting requirements for the non-designated substances, receives comment, and then promulgates a separate rule amendment adding these chemicals. That is, at the time the ITC issued a report, the Agency would simultaneously add the designated chemicals to the final 8(d) rule, but only propose the non-designated chemicals for reporting. Thus, for one ITC report which contained both designated and non-designated chemicals, industry has been required to report at two different times, coincident with the ITC report publication for the designated chemicals and later for the non-designated chemicals. Some companies may not have searched for studies on non-designated chemicals at the time the ITC recommended them because there was a chance that the Agency might never require reporting on them. Assuming that the ITC continued to recommend designated and non-designated chemicals twice a year, industry would have to plan for four file searches and reporting periods per year.

The ITC's Tenth and Eleventh Reports (47 FR 22585 and 47 FR 54626) have already produced a situation of separate reporting on both non-designated and designated substances from the same category. While not a case of simultaneous listing by the ITC of related designated and non-designated chemicals, this example is illustrative of the potential impacts of separate reporting schedules for two related chemicals or groups of chemicals. In its Tenth Report, the ITC designated 1,2,4-trimethylbenzene, while in its Eleventh Report the ITC recommended but did not designate mixed trimethyl-benzenes, 1,2,3-trimethylbenzene, and 1,3,5-trimethylbenzene. The section 8(d) reporting requirement for 1,2,4-trimethylbenzene became effective on March 30, 1983 (48 FR 13178) while that for the other non-designated trimethylbenzene became effective on January 13, 1984 (49 FR 1696). Of the three domestic manufacturers of these substances (as determined from the TSCA Inventory), one manufacturer produced three of the substances (one designated and two non-designated), the second company manufactured two of the substances (one designated and one non-designated), and the remaining manufacturer produced only the designated member. Thus, for the first two companies, reporting at different times of the year eliminated the efficiencies of reporting on the designated and non-designated substances at the same time, as will be facilitated by this rule.

Furthermore, the Agency believes that requiring automatic reporting on ITC non-designated chemicals is justified from an efficiency (resource) standpoint for both Government and industry. Respondents to the section 8(d) rule generally consist of a core group of companies that are large and are actively engaged in testing the chemicals they manufacture or process. Also, many of these companies have established procedures for responding to future additions of chemicals to the rule which usually occurs twice per year, approximately May and November. EPA believes that it would be less efficient for such companies to conduct four file searches per year instead of the two under the automatic provision. As will be discussed below, EPA would prefer not to promulgate each section 8(d) amendment for non-designated chemicals long after receipt of the ITC report because of the long delay in receiving studies essential to its assessment process.

B. Concurrent Analysis

In some cases, the Agency will be considering designated and non-designated members of a category concurrently. When the Agency is evaluating data on these related substances it will need information on all of the substances, whether or not they have been designated by the ITC. The Agency believes that it would be inefficient to conduct separate testing needs, evaluations and rulemakings on different chemically related substances that in all likelihood pose similar testing issues. Therefore, to make the best use of its resources, EPA prefers to consider designated and non-designated substances together. Simultaneous reporting on designated and non-designated chemicals recommended in the same ITC Report will facilitate this.

C. Opportunity for Withdrawing Chemicals

Although this regulation does not provide for notice and comment on the addition of ITC-recommended chemicals to the rule, it will amend the rule to allow persons to submit requests for the removal of specific chemicals. A person choosing to submit a request for the removal of a chemical added through the automatic mechanism should promptly submit to the Agency his or her reasons for that removal. The chemical may then be withdrawn from the rule at the Agency's discretion, for good cause. The Agency will issue a rule amendment for publication in the **Federal Register** when withdrawing a chemical from the rule. This amendment will remove the chemical from the reporting requirements of the rule and provide the reasons for that removal.

Some possible reasons for removal could include: (1) The chemical is no longer manufactured and has not been for the last 5 years; (2) it is used entirely as a food, drug, or pesticide; or (3) some other factor exists that would clearly warrant the removal of the chemical from the rule. Any information submitted must be received by EPA within 14 days after the date of publication in the **Federal Register** of the amendment adding the chemical to the 8(d) rule. Based on the submitted information, the Assistant Administrator for Pesticides and Toxic Substances cold revoke the reporting requirement for that chemical at his or her discretion. If a chemical is removed, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment. This notice will explain why the chemical was removed.

Further, because of the ITC's chemical selection process, there is little likelihood that a chemical will be recommended for testing that is no longer manufactured or imported, or has not been for many years, or is manufactured solely for use as a pesticide, food or drug. Thus, the necessity of removing chemicals from the rule for any of the above reasons will be extremely remote.

In conclusion, EPA believes that amending the section 8(d) rule to provide for automatic reporting on chemicals recommended but not designated by the ITC:

1. Will lead to an improved system of gathering information needed to evaluate such recommendations and the risks posed by those chemicals.

2. Will reduce reporting costs for industry and processing costs for the Agency.

3. Will still permit subject companies the opportunity to convince the Agency that reporting on particular chemicals may not be necessary.

III. Public Comment

The comments received on the amendment to the TSCA section 8(a) Preliminary Assessment Information Rule (PAIR) to require automatic reporting on chemicals recommended by the ITC, but not designated for action by EPA within 12 months, apply also to this rule and are discussed in the notice to amend the PAIR rule, found elsewhere in today's **Federal Register.**

IV. Chemical Limit

The Office of Management and Budget (OMB) during its review of the proposed rule under Executive Order 12291 and the Paperwork Reduction Act, suggested that the Agency put a numerical limit on the number of recommended substances, mixtures and categories of chemicals that would be subject to automatic reporting under sections 8(a) and 8(d) in any one year. EPA agreed to propose for public comment such a numerical limit since EPA's capacity for evaluating candidates for the initiation of test rules is limited. If that limit is exceeded, the Agency will be unable to proceed with its evaluation of testing candidates in a timely manner. Further, with such a backlog, information collected by EPA under sections 8(a) and 8(d) on those additional chemicals may go unused. This would result in an unnecessary reporting burden for the public and would be "of no practical utility" to the Agency, thus violating the Paperwork Reduction Act's standards for information collection.

Section 4(e)(1)(A) of TSCA permits the ITC to designate for EPA's response within 1 year no more than 50 of its recommendations at any one time. This limit was set by Congress in recognition of the excessive burden that adding too many chemicals would place on both EPA and the public. Thus, a limit of 50 ITC-recommended substances, mixtures or categories per year for automatic reporting under sections 8(a) and 8(d) appears to be reasonable and consistent with the statutory intent. This limit could be exceeded if necessary to obtain automatic reporting on all designated chemicals, but automatic reporting will be required on recommended chemicals only to the extent that the total number of designated and non-designated ITC recommendations does not exceed 50 in any year.

In the event that the total number of ITC-designated and non-designated recommendations exceeds 50 in a given year, EPA could still require reporting on all of them. All of the designated chemicals could be listed for automatic reporting. The Agency could require automatic reporting on the recommended chemicals until the overall limit of 50 was reached; it could require reporting on the remainder by notice and comment rulemaking if it believes it can effectively and promptly evaluate the reported data.

EPA has included language in § 716.1 of this rule limiting the number of chemicals subject to automatic reporting.

V. Additional Amendment

The Agency is also amending the section 8(d) rule by modifying § 716.14(c). This section provides for extensions to reporting deadlines. The section has been changed to require that extension requests must be postmarked on or before 40 days after the effective date of the listing of a chemical in § 716.17. EPA believes that this change is needed so that EPA will have adequate time to process the requests and notify the requester of the Agency's decision. Also, the extension requests must be addressed to the Office Director, Office of Toxic Substances, who will grant or deny the requests.

VI. Who Must Report

Persons subject to the section 8(d) Health and Safety Data Reporting rule are specified in 40 CFR 716.4(b). Additional descriptions were published in the **Federal Register** of September 2, 1982 (47 FR 38780).

Generally, a person who manufactures or processes a chemical or designated mixture listed in § 716.17 at the time it is listed, or who has done so during the previous 10 years, must comply with this rule.

VII. Confidentiality

Health and safety information about a chemical that has been offered for commercial distribution or is subject to testing under section 4 or notice under section 5 can be withheld from disclosure only if certain criteria are met. EPA advises persons wishing to assert a business confidentiality claim on any part of the submitted material to refer to 40 CFR Part 716.

VIII. Economic Impact

Companies that may be subject to this rule must perform a number of functions to determine whether in fact they are in possession of studies and to provide them to EPA. Once the firm determines whether it is subject to the rule, it must conduct a file search to determine what, if any, studies are in its possession.

When studies are located, costs will be incurred to copy the studies, make lists of studies in progress or known to but not in the possession of the respondent, and to review the studies for confidential information.

The basic methodology used in this analysis is the same as that used in the "Reports Impact Analysis for the Health and Safety Data Reporting Rule, Office of Toxic Substances, EPA, September 1982." Assumptions regarding the number and length of reports submitted per 8(d) reporting rule are based on data from previous 8(d) rule submissions. Hourly wage rates used to develop the cost estimates were updated to fourth quarter 1984 levels based on an adjustment using the GNP price deflator.

The exact cost for each amendment (adding chemicals to the list of those which require reporting) will depend on the number of chemicals being added, and the number of manufacturers and plant sites involved. The steps performed by each company (to comply with the rule) and their unit costs per firm are estimated to be:

Initial corporate review	$152
File search	669
Title listing	19
Photocopying	113
Managerial review	836
Ongoing reporting	304
Total	2,093

While this proposed amendment to the rule may impose additional reporting costs on companies, it may also reduce the total cost to some others. For example, a firm could do a file search at the same time for both the designated and the recommended chemicals at the same cost as for a search done for the designated chemicals only. Of course the company will incur additional reporting costs if they have data on the recommended chemicals.

EPA does not expect that the proposed amendment will result in a significant impact on a substantial number of small businesses. In a study of submitters reporting under the model 8(d) rule, it was found that only one of over 30 reporting companies was below $100 million in sales. It is expected that the proposed amendment will not affect this distribution.

IX. Public Record

EPA has established a public record (docket number OPTS-84010) for this rulemaking document which, along with a complete index, is available for inspection in Rm. E-107, 401 M Street SW., Washington, D.C., 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. The record includes the following categories of information.

1. Health and Safety Study Reporting Regulations (40 CFR Part 716), Public Record, Docket No. 084003.

2. Reports Impact Analysis for 40 CFR Part 716 and this rulemaking.

3. Tenth through Fifteenth Reports of the Intergency Testing Committee (ITC); Tenth Report (47 FR 22585), Eleventh Report (47 FR 54626), Twelfth Report (48 FR 24443), Thirteenth Report (48 FR 55674), Fourteenth Report (49 FR 22389), and Fifteenth Report (49 FR 46931).

EPA requests that, between the date of this notice and the effective date of this rule, persons identify and report any perceived errors or omissions in the record.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a Regulatory Impact Analysis. EPA has determined that these amendments are not major because they do not have an effect of $100 million or more on the economy. They are expected to decrease the annual cost of compliance. They do not have a significant effect on competition, cost, or prices.

These amendments were submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

These amendments will not have a significant economic impact on a substantial number of small entities. They do not affect the size of the potential universe of respondents. The effects on small entities of reporting under the section 8(d) rule were discussed in the preamble to the September 2, 1982 rule.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0004.

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements.

Dated: August 20, 1985.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Part 716 is amended as follows:

PART 716—[AMENDED]

1. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607.

2. In § 716.1 by redesignating existing paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 716.1 Scope and compliance.

* * * * *

(b) Chemical substances, mixtures, and categories of chemicals, which have been recommended by the Interagency Testing Committee for testing consideration by the Agency but not designated for Agency response within 12 months, will be added to § 716.17 as specified in § 716.18(b) only to the extent that the total number of designated and recommended substances, mixtures and categories of chemicals has not exceeded 50 in any 1 year. Additional recommended but not designated chemicals may be added after proposal, and consideration of public comment.

* * * * *

3. In § 716.14, by revising paragraph (c) to read as follows:

§ 716.14 Reporting schedule.

* * * * *

(c) Respondents who cannot meet a deadline under this section may apply for a reasonable extension of time. Requests for extensions must be addressed to: Director, Office of Toxic Substances (TS-792), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Attn: Section 8(d) extension. Extension requests must be postmarked on or before 40 days after the effective date of the listing of a substance or mixture in § 716.17. The Office Director will grant or deny extension requests.

4. In § 716.18, by revising paragraph (b), and adding paragraph (c) to read as follows:

§ 716.18 Additions to lists of chemicals and mixtures to which this subpart applies.

* * * * *

(b) Except as provided in paragraph (c) of this section, chemical substances, mixtures and categories of chemicals that have been added to the TSCA section 4(e) Priority List by the Interagency Testing Committee, established under section 4 of TSCA,

will be added to § 716.17 30 days after publication of a notice to that effect in the **Federal Register.**

(c) Prior to the effective date of an amendment under paragraph (b) of this section, the Assistant Administrator for Pesticides and Toxic Substances may for good cause withdraw a chemical substance, mixture or category of chemicals from § 716.17. Any information submitted showing why a chemical should be withdrawn from § 716.17 must be received by EPA within 14 days after the date of publication of the notice under paragraph (b) of this section. If a chemical substance, mixture or category of chemicals is withdrawn, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment under paragraph (b) of this section. Any information submitted must be addressed to: Document Control Officer, Office of Pesticides and Toxic Substances, (TS–793), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, ATTN: 8(d) Auto-ITC.

[FR Doc. 85–20548 Filed 8–27–85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 79–184; FCC 85–456]

Authorization of CC Facilities To Meet North Atlantic Telecommunications Needs During the 1985–1995 Period

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: This report and order sets forth the Commission's policy for the distribution of circuits among available North Atlantic facilities during the 1986–1991 period. The policy adopted by the Commission specifies that no distribution guidelines are imposed on circuits used for the provision of record services, circuits used by new entrants for the provision of any service and circuits used to provide international message telephone service by any carriers other than AT&T. AT&T is permitted, but not required, during the 1986–1988 period to increase, without de-loading either transmission medium, the number of its message telephone and 800 Service-Overseas circuits it places on either cable or satellite facilities by 2 percent per year up to a limit of placing 60 percent of such circuits on either transmission medium. The Commission will review, prior to year-end 1988, the loading guidelines for AT&T to determine what, if any, methodology should be utilized after 1988.

EFFECTIVE DATE: August 28, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Gosse, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632–4047.

SUPPLEMENTARY INFORMATION: The second notice of proposed rulemaking in this proceeding was published on May 6, 1985. (50 FR 19050). The third notice of inquiry was published in August 9, 1984 (49 FR 31926).

Second Report and Order

In the matter of inquiry into the policies to be followed in the authorization of Common Carrier Facilities to meet North Atlantic telecommunications needs during the 1985–1995 period, CC Docket No. 79–184.

Adopted: August 7, 1985. Released: August 22, 1985.

By the Commission.

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I. Introduction

1. On April 22, 1985, we released a Second Notice of Proposed Rulemaking (NPRM) in this proceeding setting forth our tentative conclusions regarding the loading of satellite and submarine cable facilities used for the provision of international services in the North Atlantic region during the 1986–1991 period.[1] In response to our NPRM, we have received comments from the American Telephone and Telegraph Company (AT&T), the Communications Satellite Corporation (Comsat), GTE Sprint Communications Corporation (GTE Sprint), Hawaiian Telephone Company (Hawaiian), ITT World Communications Inc. (ITTWC), MCI International, Inc. (MCII), RCA Global Communications, Inc. (RCAGC), Satellite Business Systems (SBS), The Western Union Telegraph Company (WUT), Fedex International Transmission Corporation (Fedex), the National Telecommunications and Information Administration (NTIA) and Aeronautical Radio, Inc. (ARINC).[2] Reply comments were filed by AT&T, Comsat, GTE Sprint and NTIA.

2. In this Report and Order we affirm, in part, the tentative conclusions presented in the NPRM regarding the loading of facilities used for the provision of international services in the North Atlantic region for the 1986–1991 period between the United States and the CEPT entities.[3] Specifically, we conclude that circuits used for the provision of international record services, circuits used by new entrants,and circuits used to provide message telephone service by all international carriers other than AT&T should not be subjected to circuit distribution guidelines or loading requirements. We further conclude that AT&T should be permitted, but not required, to increase the number of message telephone circuits it places on either cable or satellite facilities by 2 percent per year for three years (1986–1988). Prior to the end of this three year period we will review the loading question to determine what, if any,

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[1] Inquiry into the Policies to be followed in the Authorization of Common Carrier Facilities to Meet North Atlantic Telecommunication Needs During the 1985–1995 Period, FCC 85–178, ——FCC ——(1985). We had previously adopted a Notice of Inquiry on this matter as well. FCC 84–351, released August 3, 1984.

[2] ARINC is a joint venture of the U.S. air transport industry organized for the purpose of providing the communications requirements of its member airlines on a not-for-profit basis.

[3] CEPT is the Conference Europeenne des Administrations des Postes et des Telecommunications, an organization of the postal and telecommunications entities of 26 European nations. Because the provision of international services is a joint undertaking between sovereign states or their carriers, the development of loading guidelines for the 1986–1991 period has been the subject of much discussion in recent meetings of the North Atlantic Consultative Process. The reports of the Working Group (January, 1985) and Senior Level (May, 1985) meetings have been included in the docket, and the views and requirements of our foreign partners have been considered throughout this proceeding.

methodology should be utilized after 1988 in the North Atlantic region for circuits used by AT&T to provide IMTS. Below we: (a) Summarize the Third Notice of Inquiry and the filings submitted therein; (b) describe the Second Notice of Proposed Rulemaking; (c) outline the comments and reply comments filed in response to the Second Notice of Proposed Rulemaking; and (d) present the views of the CEPT entities. We thereafter analyze the record and reach the conclusions indicated above.

A. Third Notice of Inquiry

3. We initiated this proceeding on August 3, 1984 with the release of our Third Notice of Inquiry (NOI). We there noted that the circuit distribution guidelines currently in force for the North Atlantic region were developed in Docket No. 18875.[4] Under these guidelines, AT&T is generally required to distribute circuits used for the provision of U.S.-CEPT message telephone service in accordance with the balanced loading methodology.[5] Circuits used for the provision of U.S.-CEPT record services (*e.g.* leased-channel, telex, public message, Datel, etc.) are not subject to any distribution guidelines. Because the current guidelines extend only until the end of 1985, we indicated in the NOI that there was a need to develop circuit distribution guidelines for the post-1985 period at this time.

4. In our NOI we identified essentially three policy options we could follow in fashioning circuit distribution guidelines for the 1986–1991 period and requested interested persons to comment on these options. The first such option was to continue to use the balanced loading methodology as the basis for circuit distribution guidelines. The second option identified was to remove ourselves immediately from circuit distribution decisions, leaving the matter entirely to the discretion of the U.S. carriers and their CEPT correspondents. The third option we identified was to develop new circuit distribution guidelines based on a methodology which would increase carrier flexibility and discretion and reduce Commission involvement in loading decisions, but which would allow us to retain sufficient authority to assure that user interests were protected.

5. In response to the NOI pleadings were submitted by AT&T, Comsat, GTE Service Corporation (on behalf of Hawaiian), GTE Sprint, ITTWC, RCAGC, TRT Telecommunications Corporation, NTIA, ARINC and SBS. These parties generally favored continuing the exemption from loading guidelines for suppliers of record services, new entrants and suppliers of international message toll service other than AT&T. As to a methodology for AT&T's international message telephone service (IMTS), Comsat argued in favor of continuing a balanced loading approach, AT&T argued in favor of a more flexible approach which would permit it to place approximately 85 percent of all traffic growth on cable, and most other carriers advocated a middle course: moving away from balanced loading and permitting AT&T some additional flexibility.[6]

B. Second Notice of Proposed Rulemaking

6. In the NPRM we stated that it is our goal to rely on market forces to establish the optimal mix of services, rates and facilities. We also stated that market forces could be employed to encourage the efficient use of existing facilities and the development and deployment of the most efficient facilities in the future. We recognized, however, that the market is not now sufficiently competitive and that certain facility biases presently exist. We therefore tentatively concluded that it would not serve the public interest to remove ourselves immediately from circuit distribution decisions with respect to all circuits.

7. In the NPRM we indicated that the three loading methodologies identified in the Notice of Inquiry—balanced loading, immediate removal and increased flexibility—could be considered for the four types of circuit use—record services, record or voice services provided by new entrants, voice services provided by all carriers other than AT&T and IMTS provided by AT&T. In considering these methodologies for these circuit uses we indicated that where a market mechanism existed or where the relative number of circuits involved was not great our inclination would be to give carriers absolute flexibility and not to impose any loading requirements. Of course, where market forces would not act to produce the most efficient mix and use of facilities, we would prescribe guidelines. We indicated our particular concern that AT&T's preference for cables, as a cable equipment manufacturer and rate base regulated carrier, could lead that carrier to employ cable facilities even if satellite facilities were more cost effective. We also estimated the impact on Comsat and INTELSAT of each loading proposal (employing an IMTS traffic forecast supplied by AT&T),[7] analyzed the market and reached certain tentative conclusions.

8. *Record Services.* With respect to circuits used for the provision of U.S.-CEPT record services, we tentatively concluded in our NPRM that such circuits should continue to be exempted from the imposition of any circuit distribution guidelines.[8] First, we noted that the number of circuits used for record services on North Atlantic routes

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[4] *See* Future Licensing of Overseas Communications Facilities, 73 FCC 2d 326 (1979). *See also* Overseas Communications 71 FCC 2d 71 (1979).

[5] The balanced routing (or balanced loading) methodology distributes circuits among facilities with unused capacity in a manner which, to the extent possible, seeks to place equal numbers of circuits on all transmission systems between the United States and a given country. When one cable or satellite transmission system reaches the limit of its capacity, it falls out of the loading pattern and subsequent growth traffic is equally distributed among the remaining facilities with unused capacity. When a new satellite or cable facility is introduced into service, all additional growth circuits are placed on that facility until it carries as many circuits as the other balanced systems.

[6] AT&T's approach would permit it to load traffic growth on cable in a manner to increase total traffic carried on cable facilities by three percent per year for four years. At the end of the four year period, Commission involvement in loading decisions would terminate. In comparison to AT&T's approach, the other proposals, except for Comsat's request to retain balanced loading and NTIA's proposal to implement a cost based methodology derived from comparing cable and satellite revenue requirements, generally called for a lower percentage of total traffic being routed over cable facilities and a longer period of Commission oversight. The basis for these phase-in proposals by the other interested parties is their concern over the availability of cable circuits for their use and the level of satellite usage charges if AT&T could freely load its traffic on cable facilities.

In a joint submission to the January 8–11, 1985 meeting of the North Atlantic Consultative Working Group, AT&T and Comsat proposed a more broadly stated version of the AT&T circuit distribution proposal. They proposed that AT&T be permitted, but not required, to increase the number of U.S.-CEPT message telephone circuits it places on either cable or satellite facilities by an agreed-to percent per year up to placing a maximum of 60 percent of such circuits on either transmission medium. Neither the annual percentage increase which should be allowed nor the period of years over which such guidelines should extend were addressed in the joint submission.

[7] We compared in our NPRM the revenues which Comsat and INTELSAT would receive under the various proposed guidelines. We calculated revenues for the six year planning period employing balanced loading as well as guidelines permitting annual increases of 2, 2.5 and 3 percent in the number of circuits AT&T could place on cable circuits with a maximum limit of placing 60 percent of such circuits on cable facilities. We also calculated revenues employing AT&T's proposal.

[8] In 1979 we found in Docket 18875 that circuits used for the provision of U.S.-CEPT record services should be exempted from circuit distribution guidelines. *See* Policies for Overseas Communications Facilities, 73 FCC 2d 326 (1979) and Overseas Communications, 71 FCC 2d 71 (1979).

was relatively small [9] and, thus, could have little effect on the overall use of cable and satellite facilities. Second, we indicated that approximately 87 percent of the circuits used for record services are used to provide leased channel service and that leased channel customers often have a specific need for and the ability to designate either a cable or satellite circuit. Third, we noted that leased channels and switched record services are offered by multiple record carriers, none of which appeared to have a dominant market share. We therefore tentatively concluded that there continued to be a viable marketplace mechanism for the distribution of circuits used for leased channels and switched record services between cable and satellite facilities. We also observed that this marketplace mechanism would be strengthened by recent events such as the advent of INTELSAT Business Services and our recent decisions permitting competitive earth station services and allowing Comsat to provide INTELSAT space segment capacity directly to users.

9. We specifically stated that our tentative conclusion to continue to exempt circuits used to provide U.S.-CEPT record services from circuit distribution guidelines was intended to apply to all such circuits, including those used by AT&T for such services. We stated that leased channels provided by AT&T are subject to the same marketplace distribution mechanism as those of the other carriers providing that service. In addition, we noted that at year end 1984, AT&T provided only 90 (6.2 percent) of the approximately 1442 voice grade leased channels in service between the U.S. and CEPT countries. In view of these factors, we found no reason for imposing greater restrictions upon AT&T's distribution of circuits used to provide leased channels than upon such circuits of the other carriers.

10. *New Entrants.* We also tentatively concluded that the exemption from distribution guidelines should be extended to circuits used by new entrants for the provision of any service and to circuits used for the provision of IMTS by all carriers other than AT&T. We noted with respect to circuits used for record services by new entrants that such circuits would be subject to the same marketplace distribution mechanism as the circuits used by existing carriers for the provision of those services. Further, new entrants would, at least initially, account for a relatively small portion of the total number of circuits used for the provision of record services and, consequently, would have little effect on the overall use of cable and satellite transmission mediums.

11. We indicated that although new entrants into the IMTS market such as MCII and GTE Sprint could be expected to use more circuits than new entrants which provide only record services, new entrants into the IMTS market are likely to use a considerably smaller number of circuits for the provision of that service than AT&T. We also noted that competitors to AT&T would have a substantial incentive to efficiently route their traffic and that loading flexibility could assist their ability to acquire operating agreements. Thus, we tentatively concluded that exempting circuits used by new entrants providing U.S.-CEPT message telephone service would have a relatively small effect on the overall use of cable and satellite transmission facilities. Similarly, we tentatively concluded that the comparatively few circuits used by existing providers of U.S.-CEPT message telephone service other than AT&T, such as entities with regional monopolies like the Hawaiian Telephone Company, make it unlikely that exempting those circuits from distribution guidelines would have a significant effect on the distribution of circuits between the cable and satellite transmission mediums.

12. *AT&T's IMTS Circuits.* As to AT&T's loading of IMTS circuits, we noted AT&T's position in the market, the large number of circuits used for that service, the entry only recently of competitive carriers into this market, AT&T's preference for cable facilities and the short period of time that Comsat has been free to enter this market, and tentatively concluded that this market is not yet sufficiently competitive to permit us to withdraw immediately from decisions pertaining to the distribution of AT&T's U.S.-CEPT message telephone service circuits. We observed that, as of year-end 1984, 12,965 or 88.7 percent of the 14,617 circuits in use for U.S.-CEPT services were used for the provision of message telephone service. Of these 12,965 circuits used to provide message telephone service, 12,944 or 99.8 percent were used by AT&T. We noted that since users of message telephone service do not have the ability to select whether their calls will be routed by cable or satellite, AT&T's distribution of its message telephone circuits in large measure determines the relative use of cable and satellite circuit facilities.

13. In addressing the guidelines which should be applied to AT&T's U.S.-CEPT message telephone circuits for the 1986–1991 period, we considered several options: (a) Continuing balanced loading; (b) adopting a revenue requirement comparison methodology proposed by NTIA; (c) adopting a multi-tier scheme which would permit AT&T greater flexibility as its competitors acquired IMTS operating agreements; and (d) adopting guidelines which would permit AT&T an annual increase in loading flexibility. We tentatively concluded that the balanced loading methodology should not continue to be used as the basis for such guidelines. We recognized that the balanced loading methodology continued to offer service reliability advantages. However, we felt that use of that methodology would not provide appropriate incentives to stimulate increased competition in the provision of U.S.-CEPT message telephone service and for AT&T, Comsat and INTELSAT to build and operate efficient, low-cost facilities.

14. We also tentatively concluded that a proposal submitted by NTIA to distribute AT&T's message telephone circuits in inverse proportion to the annual revenue requirements for the cable and satellite transmission mediums was not sufficiently well defined to permit its adoption as the basis for 1986–1991 guidelines at this time. We requested further definition of and comments on the NTIA proposal and indicated that we were not precluding its eventual adoption.

15. We also considered, but did not propose to adopt, a multi-tiered circuit distribution methodology which would more directly relate relaxation of facilities loading guidelines to the entry of multiple providers of message telephone service into the market on a country-by-country basis. While not desiring to impose unilaterally a loading approach, we recognized that such a methodology would provide a clear incentive for foreign administrations to enter into operating agreements with additional IMTS providers. We also recognized that the acquisition of operating agreements and the development of competition was an important long term objective of the Commission. In order to stimulate comments and facilitate analysis, we requested interested parties to comment on a two-tiered methodology under which AT&T would be permitted to increase its loading flexibility on either cable or satellite facilities by 1 percent per year to all CEPT countries. This would constitute the first tier. In the second tier, AT&T would be permitted

[9] At year-end 1984, of the approximately 14,617 voice circuits used to provide U.S.-CEPT communications services, only approximately 1,652 circuits were used for the provision of record services.

to increase its loading flexibility on either cable or satellite facilities by 3 percent per year to countries where multiple providers of message telephone service had obtained operating agreements and competition in the provision of that service was developing. Under this scenario, no upper limit would be imposed on the flexibility which could be attained in the second tier.

16. We tentatively concluded that AT&T's proposed guidelines which contemplated our removal from circuit distribution decisions at the end of 1989 would not provide a transitional period of sufficient length to offset existing biases or to permit the development of a marketplace mechanism for the cost-effective distribution of its U.S.-CEPT message telephone circuits. We also expressed our concern that the fact that only 15 percent of the expected growth circuits would be placed on satellite facilities during the 1986–1991 period under AT&T's proposed guidelines could place undue upward pressure on Comsat's and INTELSAT's rates which could inhibit the development of intermodal competition between the cable and satellite transmission mediums.[10]

17. We noted the lead times required for major facility procurements and indicated that satellite transmission facilities which will be used for North Atlantic services during the 1986–1991 period are already in service or have been procured under binding contracts. Consequently, INTELSAT's capital costs for these facilities are relatively fixed and its ability to plan future facility capacity to respond to AT&T's loading proposal was limited. We also noted that the carriers had reduced their forecast of the circuits required in 1990 by approximately 26 percent from the level they forecast in 1980 (the forecast on which we relied in developing our guidelines for the TAT–8 cable and the INTELSAT VI satellites) and that recent technological developments may significantly increase the capacity of both the TAT–8 cable and the INTELSAT satellites. As a result of these factors, we felt that AT&T's proposed guidelines, by placing only 15 percent of growth circuits on satellite facilities, would place a disproportionate share of the burden of excess capacity on INTELSAT and inhibit the development of intermodal competition.

18. After reviewing various phase-in proposals which would give AT&T additional flexibility, and balancing a desire to spur intermodal competition, to promote the efficient use of facilities and to respond to the preferences of our foreign counterparts with the realities of the marketplace and our obligations to INTELSAT, we tentatively concluded that during the 1986–1991 period AT&T should be permitted an annual 2 percent increase in the number of U.S.-CEPT message telephone circuits it can place on either cable or satellite facilities up to placing a maximum of 60 percent of such circuits on either transmission medium. We calculated, using the most recent traffic forecast and existing rates, that this approach would allow AT&T to place approximately 67.2 percent of its growth circuits on cable facilities during the 1986–1991 period and would reduce Comsat's and INTELSAT's revenues by approximately $90.1 million and $66.3 million, respectively, from the level which could be expected if we continue to use the balanced loading methodology as the basis for circuit distribution guidelines. We tentatively concluded that this reduction in revenues would not place undue upward pressure on Comsat and INTELSAT rates but would provide a strong incentive for Comsat to enter the U.S.-CEPT message telephone market, to compete vigorously for IMTS traffic and to spur INTELSAT to greater construction and operational efficiencies. We also felt that these guidelines should permit AT&T sufficient flexibility and substantially respond to the desires of the CEPT administrations.

C. Comments and Reply Comments

19. *Guidelines for Record Circuits, Circuits Used by New Entrants for All U.S.-CEPT Services, and Circuits Used for U.S.-CEPT Message Telephone Service by All Carriers Other Than AT&T.* With the exception of ITTWC and WUT, all of those filing comments support our tentative conclusion not to apply loading restrictions to circuits used to provide U.S.-CEPT record services. No one opposes extending that policy to circuits used by new entrants for either record services or message telephone service and to all existing providers of U.S.-CEPT message telephone service other than AT&T. The commenting parties generally agree with our analysis that providers of record services, new entrants and IMTS providers other than AT&T employ relatively few circuits and, thus, will not significantly affect overall use of cable and satellite facilities. A number of the parties also note the competitiveness of the record services market and indicate that many leased channel customers request specifically either cable or satellite circuits and have the ability to chose between the two transmission mediums to satisfy their particular leased channel needs.

20. ITTWC and WUT disagree with our tentative conclusion not to prescribe a distribution methodology for record circuits only to the extent that we would extend the exemption to AT&T's record circuits. These two carriers argue that although AT&T now has a small share of the record services market, it has the power to increase that share through offering service at significantly lower rates than other providers, subsidized by its message telephone service revenues. WUT notes that AT&T has substantial idle cable capacity and will have more once TAT–8 is introduced, thus giving AT&T the incentive to increase its record services market share through unfair pricing actions as a way to use cable circuits. WUT is also concerned that AT&T could use up its remaining TAT–7 circuits, thus depriving others, including its competitors, of access to cable circuits until TAT–8 is introduced.

21. ITTWC expresses its concern that AT&T will base its rates for competitive, leased chanel service only on new cable facilities which have lower per circuit costs while allocating older cable facilities with higher per circuits cost to non-competitive message telephone service. ITTWC indicates that such a manipulation of costs would permit AT&T to unfairly price its leased channel service below that of its competitors who are employing circuits from all cables and do not have the ability to place competitive services on new (cheaper) facilities and a monopoly service (IMTS) on older (more expensive) facilities. ITTWC asserts that AT&T has already followed such a pattern for U.S. Mainland-Hawaii and U.S.-CEPT leased channel circuits. ITTWC therefore suggests that the Commission require AT&T to segregate its facilities and costs on a country and facility basis into two discrete categories (message telephone service and non-message telephone service), which contain an appropriate mix of new and old capacity. In response, AT&T stated that circuits would be made available to other carriers and

[10] Assuming constant Comsat and INTELSAT rates, our analysis indicated that adoption of the AT&T proposed guidelines would result in Comsat and INTELSAT receiving appruximately $218.2 million and $160.6 million less revenue, respectively, during the 1986–1991 period than they would receive if the balanced loading methodology was continued as the basis for circuit distribution guidelines during that period. Our analysis also disclosed that adoption of AT&T's proposed guidelines would result in 21,113 or 85.0 percent of the 24,853 growth circuits projected to be required during the 1986–1991 period being placed on cable facilities.

indicated that the remaining points were tariff rather than loading issues.

22. *AT&T U.S.-CEPT Message Telephone Circuits.* None of the comments to our NPRM, like those to the NOI, advocated that we should remove ourselves immediately from decisions affecting the distribution of AT&T's U.S.-CEPT IMTS circuits. However, there is a wide range of views as to the methodology which should be used for those circuits for the 1986–1991 period. MCII, SBS, WUT and ARINC support our tentative conclusion to permit AT&T to increase the number of circuits it places on either cable or satellite facilities by 2 per cent per year for six years up to a limit of placing 60 per cent of its U.S.-CEPT message telephone circuits on either transmission medium.[11] NTIA supports use of this methodology for only two years as a transition mechanism to its methodology which would distribute such circuits in inverse proportion to the annual per circuit revenue requirements for cable and satellite facilities.[12] RCAGC requests us to employ an equitable loading methodology for AT&T during the 1986–1991 period because of AT&T's dominance in the message telephone service market. While not proposing a specific guideline, we note that in response to the NOI RCAGC indicated that equitable loading was not necessarily the same as balanced loading.

23. Comsat, GTE Sprint, ARINC, ITTWC, MCII, RCAGC, SBS and WUT all note AT&T's dominance of the U.S.-CEPT message telephone market and AT&T's position as user of approximately 90% of all North Atlantic circuitry. In the face of such dominance, these entities argue that one cannot now reasonably characterize the U.S.-CEPT message telephone market as competitive.[13] They also state that permitting AT&T total loading flexibility would adversely affect the supply of cable circuits and lead to unreasonable increases in satellite rates.

24. Comsat argues that the current balanced loading methodology remains the best loading criterion, giving service reliability benefits and apportioning the risk of excess capacity evenly, and asks that we reverse our tentative conclusion not to rely upon it. Failing that, however, Comsat states that the proposed 2 per cent guideline represent a "judicious compromise" which will apportion the risk of excess capacity more evenly among Comsat/INTELSAT and AT&T, while assuring that Comsat and INTELSAT are not severely adversely affected.

25. Comsat also reminds us that our calculation under the two percent guideline which indicated that Comsat would receive at least 33% of the growth traffic is valid only if AT&T's U.S.-CEPT message telephone circuits grow at the 17.3 per cent annual rate forecasted by AT&T. Comsat states that during the 1980–1984 period, AT&T's actual North Atlantic circuit growth rate achieved 17.3 per cent only in 1981. Growth rates for 1982, 1983 and 1984 were 8.9, 8.3 and 16.4 per cent, respectively. Should AT&T achieve only a 10 per cent growth of U.S.-CEPT message telephone circuits during the 1986–1991 period, Comsat calculates that the 2 per cent circuit distribution guidelines would result in 75 per cent of those circuits being placed on cable facilities (and the three per cent guidelines would place 91 per cent of these circuits on cable facilities). Comsat asserts that these results may not be reasonable.

26. AT&T supports adoption of its proposal to phase-in increased flexibility at a rate of 3 per cent per year over four years (1986–1989) with total deregulation of loading thereafter. AT&T opposes the two per cent methodology because it believes that methodology does not give it enough flexibility and, by continuing to promise Comsat a substantial share of traffic, does not give Comsat the proper incentive to compete for IMTS traffic.

27. AT&T also asserts that the U.S.-CEPT message telephone market is already significantly competitive, noting that MCI operates or has operating agreements with a number of European countries, which account for more than 50 per cent of U.S.-CEPT message telephone market. AT&T also notes that MCI has recently filed an application requesting authority to lease by 1987 more than 2000 satellite circuits and states that MCI has repeatedly predicted that it will serve more than 80 per cent of the international direct dial market by the end of this year. AT&T further states that GTE Sprint is providing message telephone service to the United Kingdom and has announced it will provide such service with France and Spain. Given these factors, AT&T asserts that there is no need to deny the flexibility it seeks through adoption of its proposed 3 per cent guidelines.

28. AT&T also contends that the analysis used in our NPRM signficantly overstates the effect of AT&T 's proposal on Comsat's revenues. AT&T asserts that its proposal will not reduce the existing revenues of either Comsat or INTELSAT. To the contrary, according to AT&T, their revenues will be increased as AT&T proposes to increase its satellite circuit use throughout the 1986–1991 period.[14] AT&T argues that a four year, 3 per cent transition plan with a 60 per cent cap is a moderate, manageable adjustment in facilities utilization. AT&T states that its proposed guidelines are more likely to provide increased competition between cable and satellite facilities ". . . thereby for the first time introducing a measure of marketplace discipline on INTELSAT's construction and use of satellite facilities which is long overdue."

29. Finally, AT&T states that we should not prescribe any circuit distribution guidelines which extend beyond 1989. AT&T believes that the entire international marketplace will be transformed by that time by the introduction of the TAT–8 optical fiber cable system, an increasing number of new digital services, the possible introduction of non-carrier facilities by Tel-Optik Limited, Orion Satellite Corporation and other entities, and by increased competition in the provision of U.S.-CEPT message telephone service.

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[11] MCII states that the 2 percent methodology provides AT&T with a considerable measure of increased flexibility and strikes a "reasoned and pragmatic balance." SBS finds the 2 percent methodology to be a "fair compromise." WUT views our proposal as a "appropriate balance" between permitting greater flexibility and protecting other carriers. ARINC characterizes the 2 percent proposal as an excellent first step.

[12] NTIA asserts that the two percent guidelines for which we have expressed a tentative preference do not provide sufficient competitive incentives for the long term. It argues that unless a circuit distribution method is implemented which ensures that additional traffic is directed to the more cost effective facility, the party providing the lowest cost circuits will not necessarily be the one to gain market share. NTIA contends that, under the two percent guideline, a party with high cost circuits is still guaranteed 40 percent of the market and, therefore, may have little incentive to lower costs or rates. Moreover, if the market should not be sufficiently competitive by year-end 1991 to permit our withdrawal from circuit distribution decisions, in NTIA's view, adoption of our tentatively preferred guidelines would simply exchange one arbitrary methodology for an equally arbitrary 60/40 allocation.

[13] Comsat emphasizes that it is now preparing to enter the U.S.-CEPT message telephone market and asserts that it intends to become an important competitor. However, it argues that because it has no operating agreements and must start with a customer base of zero, it is unlikely to attract a large enough market share in the next few years to replace the circuits AT&T would divert to cable under its proposed 3 percent methodology. Comsat also urges that we bear in mind that our *Authorized User III* decision, which permits Comsat's entry into the message telephone service market, remains under the cloud of pending court proceedings.

[14] While AT&T does state that total satellite circuits used would increase and that total revenues flowing to INTELSAT and Comsat would increase, it does not express a view on the impact of its proposal on either entity's rates or revenue requirement per circuit used.

These factors, together with the growing competition in the U.S. domestic telecommunications market, suggest to AT&T an environment which is far too volatile and unpredictable for the Commission to undertake the prescription of long range circuit distribution guidelines. Thus, while AT&T continues to believe the international marketplace will justify the removal of all loading restrictions at year-end 1989 and urges adoption of its 3 per cent proposal, it suggests adoption of any methodology only through 1989. AT&T states that if at the end of 1989 we are not satisfied that marketplace conditions then warrant our complete forbearance from circuit distribution decisions, we could adopt further transitional steps such as maintaining a 60 per cent limitation on the loading of either cable or satellite facilities for 1990 and 1991.

30. *The NTIA Proposal.* NTIA advocates, as it did in response to the NOI, the adoption of a loading methodology which would distribute AT&T's U.S.-CEPT message telephone circuits between the cable and satellite transmission mediums in inverse proportion to the annual per circuit revenue requirements for each of these transmission mediums. NTIA states that its proposal will promote intermodal (cable/satellite) competition by allocating to the more efficent medium a greater traffic share. By rewarding efficiency (or a willingness by AT&T or Comsat to accept a lower revenue requirement) NTIA anticipates lower rates for users, the introduction of new services and technologies, the retirement of inefficient facilities and lower operational costs. NTIA recognizes, however, that a number of aspects of its proposal have yet to be defined and developed. While it believes that its proposal can be successfully developed, it recognizes that this process will be difficult and require time. Therefore, as indicated above, NTIA suggests that we adopt our tentatively preferred 2 per cent guidelines for a two year transitional period during which work on the NTIA proposal can be completed, thus allowing it to be used as the basis for circuit distribution guidelines after 1987.

31. In response to concerns raised relating to acceptance of its proposal by foreign administrations, NTIA states that the circuit distribution preferences of the carriers' foreign correspondents must be accommodated to a reasonable degree. It believes that its proposed methodology can be constructed to take into account the operational (*i.e.*, diversity, redundancy, service quality and restoration) concerns of the foreign administrations.

32. Most of the parties, including AT&T and Comsat, oppose the NTIA proposal. They argue that it is likely to be controversial and operationally unsound, require unending Commission regulatory oversight, delay development of a marketplace mechanism, and complicate the facilities planning process. These respondents also note that the development of the regional cable and satellite revenue requirements on which the NTIA proposal depends will be difficult and the results uncertain.[15]

33. *The Multi-Tiered Circuit Distribution Proposal.* Of the parties commenting on the two-tiered circuit distribution methodology on which we requested comments, only GTE Sprint and ITTWC viewed that methodology favorably. GTE Sprint believes that adoption of a multi-tiered circuit distribution methodology would further our goal of increasing competition in the provision of international message telephone service by giving foreign telecommunications entities an incentive to enter into operating agreements with GTE Sprint and other U.S. voice carriers.

34. GTE Sprint proposed that we adopt a multi-tiered methodology which would permit AT&T to increase the number of circuits it places on either cable or satellite facilities by 2 per cent per year, with an upper limit of 60 per cent, to those countries which enter into additional operating agreements with AT&T's major competitors for IMTS.[16] For circuits AT&T uses to provide message telephone service to countries which do not enter into operating agreements with AT&T's major IMTS competitors, AT&T would be permitted to increase the number of such circuits it places on either cable or satellite facilities by 1 per cent per year. GTE Sprint further asserts that circuits used by AT&T for the provision of 800 Service-Overseas should be subjected to the circuit distribution guidelines adopted for IMTS. GTE Sprint states that demand for this AT&T service is growing and it expects it to become an important segment of AT&T's switched voice service.

35. ITTWC states it believes the multi-tiered circuit distribution methodology may have merit for IMTS circuits. It states that the flexibility (upper limit) allowed for message telephone circuits to countries with small traffic volumes should not exceed 3 per cent per year while the flexibility (upper limit) for such circuits used to countries with large traffic volumes should not exceed 2 per cent per year. ITTWC advocates that the degree of market penetration by new entrants be used as the trigger mechanism for permitting AT&T the greater degree of flexibility in its distribution of message telephone circuits.

36. AT&T characterizes the two-tier methodology as "unworkable" and likely to lead to unfair consequences, particularly to countries whose traffic volumes are small and which have less incentive to deal with multiple U.S. carriers. AT&T further argues that this methodology would be inconsistent with the spirit of cooperation and comity which now marks international communications and the facilities planning process. AT&T further states that this proposal could be counterproductive by hardening opposition to competition within CEPT.

37. Comsat also opposes adoption of the two-tier methodology because, in its view, Comsat would bear the total burden of new entrants obtaining operating agreements. In short, the new entrants would not be subject to loading requirements and AT&T would be permitted to increase the number of its message telephone circuits to those countries it places on cable. Comsat also argues that the two-tier methodology suffers from severe definitional problems such as determining how many agreements or the degree of competition which would trigger greater flexibility for AT&T. Comsat states that resolving these questions is likely to be controversial and require significant Commission regulatory oversight. Comsat also argues that the objective of having multiple providers of message telephone service obtain operating agreements raises foreign policy issues which should not be mixed with circuit distribution issues.

38. MCII, as well as Comsat, stresses that the existence of multiple suppliers in a particular market does not necessarily equate to effective competition and that it is the latter result which is important. MCII does not believe that adoption of a multi-tier circuit distribution proposal will hasten competitive entity, an objective it believes should be resolved by negotiation between the involved U.S.

[15] Comsat in particular opposes NTIA's methodology which it views as deficient for not taking into account excess satellite capacity employed by all carriers for restoration purposes, for ignoring significant transiting costs incurred by users of cable circuits, and for requiring the disclosure of Comsat's prices but not those of its competitors.

[16] GTE Sprint asserts that, currently, itself and MCI must be considered as such major competitors. It notes that we could also adopt standards for designating other carriers as major competitors.

carrier and its potential overseas correspondent.

D. The CEPT View

39. We indicated in the NPRM the view of the CEPT entities expressed at the January 8–11, 1985 meeting of the North Atlantic Consultative Working Group that circuit distribution decisions should be left solely to the telecommunications entities which have invested in the cable and satellite facilities used to provide service. The CEPT entities indicated they oppose the use of any rigid distribution formulas and support a flexible circuit distribution methodology based entirely upon bilateral discussions between correspondent pairs.

40. The Summary Report of the Senior Level meeting of the North Atlantic Consultative Process held on May 21–22, 1985 indicates that CEPT is not satisfied with the tentative conclusions set forth in our NPRM. However, the CEPT representatives did emphasize that a move away from balanced loading was a step in the right direction. In CEPT's view, a better compromise could be to increase the 2 per cent annual increase in AT&T's flexibility to distribute its U.S.-CEPT message telephone circuits and to shorten the period of application of our tentatively preferred guidelines. The CEPT entities stated that they have an interest in both the cable and satellite transmission mediums but that for heavy traffic routes it may become more economic to use optical fiber submarine cables rather than satellites.

II. Discussion

41. Upon review of the record in this proceeding, we conclude that the guidelines for U.S. carrier distribution of circuits among available North Atlantic facilities during the 1986–1991 period should be as follows:

a. No circuit distribution guidelines are imposed on circuits used for the provision of U.S.-CEPT record services by any U.S. carrier, including AT&T;

b. No circuit distribution guidelines are imposed on circuits used to provide any U.S.-CEPT service, including message telephone service, by any new entrant;

c. No circuit distribution guidelines are imposed on circuits used for the provision of U.S.-CEPT message telephone service by any U.S. carrier, other than AT&T;

d. Using the cable/satellite distribution of AT&T's U.S.-CEPT message telephone circuits existing at year-end 1985 as a base, AT&T shall be permitted, but not required, during the 1986–1988 period to increase, without de-loading either transmission medium, the number of its U.S.-CEPT message telephone and 800 service-overseas circuits it places on either cable or satellite facilities by 2 per cent per year;

e. AT&T shall observe the 2 per cent annual cumulative limitation for the CEPT countries as a whole and need not observe this limitation on a country-by-country basis;

f. The Commission will review, prior to year-end 1988, the loading guidelines prescribed here for circuits used by AT&T to provide IMTS to determine what, if any, methodology should be utilized after 1988; and

g. The Commission retains jurisdiction to re-evaluate these guidelines, either on its own motion or on the request of an interested party, at any time during the 1986–1991 period should changes in marketplace conditions or other factors warrant such re-examination.

A. Circuits Used for U.S.-CEPT Record Services

42. We here affirm the tentative conclusion we reached in our NPRM that circuits used for the provision of U.S-CEPT record services should continue to be exempted from the imposition of circuit distribution guidelines. As set forth in our description of responses to the NPRM, none of the responding parties objected to this tentative conclusion, except for its application to AT&T. As we noted in our NPRM, voice circuits used for the provision of U.S.-CEPT record services comprise less than 12 percent of the total number of voice circuits used for the provision of U.S.-CEPT telecommunications services at the end of 1984. Thus, the distribution of U.S.-CEPT record circuits can have little effect on the overall use of North Atlantic cable and satellite facilities.

43. In addition, approximately 87 percent of the voice circuits used to provide U.S.-CEPT record service are used to provide leased channels. Customers for leased channels often specify use of either a cable or satellite circuit to best satisfy their specific leased channel requirement. Those customers have the ability to select from among multiple carriers and to select between transmission mediums to satisfy their needs. Customers utilizing switched record services also have the ability to select from among multiple suppliers those services. Thus, for both switched record services and leased channels, there continues to be a viable marketplace mechanism for the distribution of record circuits between the cable and satellite transmission mediums.[17]

44. We also adopt our tentative conclusion that circuits used by AT&T for the provision of U.S.-CEPT record services should be exempted from circuit distribution guidelines. Neither WUT nor ITTWC—the parties who questioned this tentative conclusion due to circuit availability and predatory pricing concerns—takes issue with our NPRM findings that AT&T has only a small percent of the leased channel market and that AT&T's provision of leased channels is subject to the same marketplace distribution mechanisms as that of other carriers. Further, with respect to the potential that AT&T will use the exemption of its record circuits from loading restrictions as a means to exhaust its spare TAT-7 capacity and deny circuits in that cable to other carriers, we note that in our decision authorizing the U.S. carriers to participate in the construction and operation of the TAT-7 cable we retained jurisdiction to reallocate circuits in that cable as the public interest may require.[18] We also find that WUT's and ITTWC's concerns over the potential for AT&T to engage in improper pricing of record services are more appropriately raised in the relevant tariff proceedings and in our recently initiated International

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[17] As we noted in our NPRM, this marketplace circuit distribution mechanism will be further enhanced by several recent events. These include the introduction of INTELSAT Business Service (IBS) which will provide users with an additional choice of service and may increase competition in the international leased channel market. In addition, because we have authorized a number of entities to provide IBS and many of these entities have no ownership interest in cable facilities, IBS may introduce additional price competition between cable and satellite facilities. Price competition should also be stimulated by our decision in *Earth Station Ownership* to allow competitive earth station services and our decision in *Authorized User II* to allow Comsat to provide space segment directly to users and to enter the end-to-end market through a separate subsidiary.

[18] *See AT&T Co., 73 FCC 2d 248, 268 (1979). We also specifically conditioned this authorization to require AT&T to:*

(1) . . . make available at the request of the Commission, interests in TAT–7 circuits to present and future carriers who secure operating agreements with foreign telecommunications entitites which call for the use of such facilities; and

(2) . . . make available at the request of the Commission, half interests in circuits to non-CEPT points to the U.S. international record carriers should they require such circuits to fulfill requests for all cable routing to such points.

We believe these provisions are adequate to assure the availability of TAT–7 circuits to other U.S. carriers and need not be supplemented by placing restrictions on the distribution of AT&T's circuits used for the provision of U.S.-CEPT record services

Competitive Carrier docket.[19] Imposition of restrictions on the distribution of AT&T's record circuits would be neither a fully effective method for preventing possible AT&T tariff abuses nor provide a useful mechanism for correcting any such abuse which might occur.

B. Circuits Used by New Entrants To Provide all U.S.-CEPT Services, Including Message Telephone Service

45. We find that we should adopt, as a part of our North Atlantic Region circuit distribution guidelines for the 1986–1991 period, our tentative conclusion that circuits used by new entrants for the provision of all U.S.-CEPT services, including message telephone service, should be exempted from circuit distribution guidelines. As we noted in our NPRM, customers for some record services have the ability to choose either satellite or cable facilities and circuits used by new entrants to provide record services will be subject to the same marketplace distribution mechanism as the record services of the existing carriers. Moreover, since the distribution of the relatively small number of circuits currently used to provide record services has little effect on overall cable/satellite use, the few circuits new providers of those services are likely to use initially will have an even smaller effect on such overall use.

46. New entrants providing U.S.-CEPT message telephone service can be expected to use more circuits than new providers of record services. Nevertheless, it is likely that the new IMTS providers will initially use few circuits compared to the number used by AT&T for that service. Thus, these new entrants are also likely to have little effect on the overall use of cable and satellite facilities in the North Atlantic Region. We also noted in our NPRM that the initial use of relatively few circuits by new message telephone service providers may require that they have greater flexibility in choosing their transmission facilities in order to permit them to handle technical considerations such as avoiding double satellite hops. We believe that this exemption may facilitate, within limits, the acquisition of operating agreements (if foreign correspondents have facility preferences) and promote the development of competition in the provision of IMTS. In view of the foregoing, and noting that none of the parties responding to our NPRM espoused a contrary view, we find that no circuit distribution guidelines should be imposed on circuits used by new entrants for any U.S.-CEPT service, including message telephone service.

C. Circuits Used for the Provision of U.S.-CEPT Message Telephone Service by All Carriers Other than AT&T

47. None of the respondents to our NPRM advocated that U.S.-CEPT message telephone circuits of carriers other than AT&T be subjected to loading restrictions. As of year-end 1984, only a small number of circuits were used to provide that service by any carrier other than AT&T. Consequently, the distribution of these other carriers' U.S.-CEPT message telephone circuits will not have a significant effect on the overall use of North Atlantic cable and satellite facilities. Therefore, we adopt our tentative conclusion that such circuits should be exempted from ciricuit distribution restrictions.

D. AT&T's U.S.-CEPT Message Telephone Circuits

48. Need for and Period of Guidelines. As was the case with the responses to our Third Notice of Inquiry, none of the respondents to our NPRM took the position that the U.S.-CEPT message telephone service market is now sufficiently competitive to warrant our total removal from circuit distribution decisions at the end of 1985. That is, the market is not now sufficiently competitive to assure that loading decisions are based on the price and availability of a particular facility rather than on some other, non-marketplace factors. All of the NPRM respondents recognize that AT&T is the major provider of U.S.-CEPT message telephone service. Our analysis indicates that as of year-end 1984, AT&T employed approximately 89 percent of all circuits in service between the U.S. and CEPT and 99.8 percent of all circuits used for IMTS between the U.S. and CEPT. In addition to its market position, AT&T can be expected to prefer cable use as a cable manufacturer and as a rate base regulated carrier. Quite clearly, it is the distribution of AT&T's U.S.-CEPT message telephone circuits which, in large measure, determines the overall use and availability of the cable and satellite facilities used to provide U.S.-CEPT services, the levels of revenues of both Comsat and INTELSAT, and the rates charged by these entities. This is particularly true when substantial excess capacity exists.

49. The recent entry of additional providers of U.S.-CEPT message telephone service, such as GTE Sprint and MCI, and the proposed entry of additional entities such as Comsat, can be expected to effect a change in the U.S.-CEPT message telephone market. AT&T's share of this market may decline and a viable marketplace mechanism for the cost-effective distribution of circuits used for IMTS may develop. However, it is clear that these changes will not progress sufficiently by year-end 1985 to warrant our removal from decisions concerning the distribution of AT&T's U.S.-CEPT message telephone circuits immediately at that time. Indeed, even AT&T does not advocate that we remove ourselves from those decisions until year-end 1989. Consequently, we affirm our tentative finding that the U.S.-CEPT message telephone service market is not yet sufficiently competitive to permit us to withdraw from decisions concerning the distribution of AT&T circuits used to provide that service.

50. AT&T suggests that we not specify any circuit distribution guideline which extends beyond 1989. Most other parties suggest guidelines which would extend beyond that date. We believe that establishing a fixed date for the termination of loading guidelines which does not take into account the development of competition in the provision of IMTS is not in the public interest. We cannot now be certain that by year-end 1989 competition in the provision of U.S.-CEPT message telephone service will have increased enough to provide an effective marketplace mechanism for the cost-efficient distribution of circuits used for that service and to offset existing biases. While we do recognize that other carriers are entering the U.S.-CEPT message telephone service market, we also recognize that the pace of competitive marketplace development is not fully predictable. The international telecommunications market is entering a transition period in which we should retain the ability to quickly modify either the methodology or period as circumstances warrant. It is not impossible that service and facility competition in the North Atlantic Region could develop more rapidly than we previously anticipated and that such developments could quicken the establishment of a marketplace mechanism for the distribution of circuits. We therefore will not adopt our tentative conclusion to utilize a methodology for six years. We view that period as simply being too long. Instead, we will prescribe a methodology's use for three years (1986–1988). Prior to year-end 1988 we shall review the development of competition in the provision of U.S.-CEPT IMTS and prescribe appropriate loading

[19] International Competitive Carrier Policies, CC Docket No. 85–107, Notice of Proposed Rulemaking, FCC 85–177 (released April 19, 1985).

guidelines, if any, for the post-1988 period. We shall also specifically retain jurisdiction to review at any time during the 1986–1991 period, either on our own motion or on the request of an interested party, the circuit distirbution guidelines we here adopt for all circuits and to alter those guidelines as the then existing marketplace conditions warrant.[20] These conditions would include the development of competition as well as the effects of regulating loading on the price of satellite circuits and on the level and mix of investment in international facilities.

51. *The Balanced Loading Methodology.* As argued by Comsat and noted by us in our NPRM, adoption of balanced loading as the basis for circuit distribution guidelines would continue to provide service reliability benefits such as reducing to a minimum the number of circuits interrupted upon failure of a major transmission facility. It also provides a predictable and automatic technique by which to handle deviations of actual demand from forecasted traffic levels. Under AT&T's most recent forecast of U.S.-CEPT message telephone circuits requirements for the 1986–1991 period, continued use of the balanced loading methodology as the basis for circuit distribution guidelines would result in approximately 48.2 percent of all the additional circuits AT&T requires during that period being placed on satellite facilities. For the 1986–1988 period, the balanced loading methodology would result in a smaller percent of growth traffic being placed on satellite facilities, depending on the exact ready for service date of TAT–8. We are not persuaded that guidelines which guarantee Comsat and INTELSAT approximately one-half of AT&T's growth circuits provide a strong enough incentive for Comsat vigorously to pursue entry into the U.S.-CEPT message telephone market or to compete for the placement on satellite facilities of the circuits used by providers of that service. We also believe that the guaranteed placement on satellite facilities of such a large percentage of AT&T's U.S.-CEPT message telephone circuits would not provide a sufficiently strong incentive to INTELSAT to operate and price its capacity competitively. We also are concerned that the nearly equal distribution of these circuits over the 1986–1991 period would not provide strong incentives for Comsat, INTELSAT or AT&T to plan, build and operate efficient, cost effective facilities for the post-1991 period. These factors continue to convince us that continued use of the balanced loading methodology will not foster the transition of the U.S.-CEPT message telephone market from a regulated environment to one subject to marketplace forces. Therefore, we affirm our tentative conclusion that the balanced loading methodology should not be adopted as the basis for 1986–1988 circuit distribution guidelines.

52. *The NTIA Cost-Based Circuit Distribution Method.* While NTIA continues to advocate the use of its cost-based circuit distribution methodology, it, like the other parties commenting on that proposal, now recognizes that the current state of development of its proposal does not permit us to adopt it at this time. Thus, NTIA now proposes that we adopt the 2 percent guidelines we tentatively prefer for two years as a mechanism to permit development of and transition to the NTIA proposal at the end of 1987.

53. As we indicated in our NPRM, we believe that the NTIA proposal could provide a number of advantages such as encouraging the development of an unbiased market for cable and satellite circuits and resulting in the least-cost combination of cable and satellite facilities capable of satisfying demand for service at adequate levels of service quality. However, we also retain our concern that the NTIA proposal is not fully defined, that it could require a substantial and continued level of regulatory intervention in circuit distribution decisions, and that the annual recalculation of per circuit revenue requirements and circuit distributions called for by this approach could complicate facilities planning by the carriers, their correspondents, Comsat and INTELSAT. We also noted the lack of support that this proposal received from our foreign counterparts.

54. Under these circumstances, we cannot conclude that NTIA's still not fully defined proposal should be adopted at either year-end 1985 or year-end 1987 as the basis for circuit distributions. The NTIA proposal (or any other circuit distribution proposal) could not be adopted until it is fully defined and evaluated. Since we have indicated our intention to review the circuit distribution guidelines for the post-1988 period, NTIA may have a further opportunity to develop its methodology.

55. *The Multi-Tier Circuit Distribution Proposal.* We also conclude that we should not now adopt a multi-tiered circuit distribution methodology. While this methodology does emphasize the importance we place on the acquisition of operating agreements by additional U.S. carriers for IMTS, a multi-tier approach is more complex and would require more regulatory intervention than would the 2 percent methodology for which we expressed a tentative preference. As we suggested in our NPRM, and as is recognized by a number of the commentors, the multi-tier proposal also requires further consideration of questions such as those concerning the treatment to be accorded message telephone circuits used to countries with small traffic volumes which might find interconnection with multiple U.S. IMTS providers uneconomical and the definition of circumstances under which the provision of message telephone service to a given country should be deemed sufficiently competitive to warrant permitting the higher degree of loading flexibility for AT&T message telephone circuits.[21] We also note that this proposal received limited support from U.S. carriers and was opposed by our carriers' foreign correspondents.

56. While we do not believe that implementation of a two-tier methodology would be unduly difficult, we conclude that a multi-tier methodology is currently not the best approach for loading AT&T's U.S.-CEPT IMTS circuits. We particularly note that U.S. IMTS providers other than AT&T have successfully negotiated operating agreements to provide service to the largest market (the U.K.) and have obtained operating agreements or are negotiating agreements with other administrations (Belgium, Sweden,

[20] As we indicated in our NPRM, we shall also soon begin to examine the facilities requirements and options available during the 1992–1995 portion of the current planning period and examine the effect of various potential circuit distributions for that period. While we gather the information for that process, we will monitor the development of competition in the provision of U.S.-CEPT message telephone service and the development of a marketplace mechanism for the cost-effective distribution of circuits. A variety of factors, including the extent to which effective competition develops will determine how much we need to involve ourselves in developing formal guidelines for the construction of facilities and the distribution of circuits for the remaining portion of the planning period. We also recongize that there may be a parallel between the development of competition so as to establish an effective marketplace mechanism for the distribution of circuits and the development of competition which we are analyzing in our International Competitive Carrier proceeding.

[21] As to countries with small IMTS traffic volumes, at least two options exist. One solution would be simply to exempt those countries from any methodology or to move them into the higher tier. The other solution would be to apply the methodology with no exceptions. The trigger mechanism could be any one of several: acquisition of a certain number of operating agreements; the acquisition of operating agreements by certain competitors to AT&T; the operation of a certain number of percentage of circuits by AT&T's competitors; or a finding of nondominance for AT&T in our International Competitive Carrier proceeding.

Denmark, France, Italy, Spain and Portugal). Nevertheless, since we will review our circuit distribution guidelines before the end 1988, the multi-tiered circuit distribution proposal may be studied further.

57. *The Phase-In Proposals.* We analyzed in the NPRM the traffic and revenue impact on both Comsat and INTELSAT of the various phase-in methodologies. We made calculations for the 1986–1991 period employing AT&T's proposal as well as 2, 2.5 and 3 percent annual increases (with a 60 per cent cap) in flexibility for AT&T and compared them with calculations employing balanced loading. Based on an August 31, 1984 forecast submitted by AT&T, we calculated that AT&T's proposal would permit it to route approximately 85 per cent of all traffic growth over cable and that the other approaches (*i.e.* 2.0, 2.5 and 3.0 per cent annual increases with a 60 per cent cap for the 1986–1991 period) would permit AT&T to route approximately 67 per cent of all traffic growth over cable.[22] If demand fell short of the forecast, then the percentage of growth traffic which AT&T could route over cable under any of these phase-in guidelines would increase. If demand exceeded the forecast, then additional growth traffic would be routed over satellite and cable facilities. We calculated, making certain assumptions as to long term rates and activation dates, the financial impact of these proposals on both Comsat and INTELSAT. As compared to balanced loading, we indicated that Comsat would receive $90.12 million, $117.99 million, $134.22 million and $218.19 million less revenues under the 2 per cent, 2.5 per cent, 3.0 per cent and AT&T proposals, respectively. As compared to balanced loading, INTELSAT would receive $66.32 million, $86.82 million, $98.77 million and $160.55 million less under these same four approaches.[23]

58. We also evaluated in the NPRM the competitiveness of the international IMTS market and the existence of certain biases. As indicated above, we tentatively concluded that the provision of IMTS was not subject to significant competitive forces and that a marketplace mechanism for the distribution of circuits did not now exist. We therefore tentatively concluded in the NPRM that AT&T's proposal would be too severe and that permitting AT&T two per cent annual flexibility for six years might better balance the various financial and competitive factors.

59. AT&T criticizes our analysis in two respects. First, AT&T asserts that the method we used to calculate revenue loss or shortfall assumes all satellite circuits added in a given year are activated on the first day of the year. AT&T argues that this methodology inflates the effect of the various phase-in guideline on Comsat's revenues because the activation of satellite circuits historically is distributed throughout the year. AT&T suggests that we should utilize a methodology which more closely reflects the usual pattern of satellite circuit activations.

60. AT&T also argues that the assumption used in our analysis that Comsat's tariff rate for satellite voice circuits will remain at the current level throughout the 1986–1991 period is unrealistic. AT&T asserts that rate reductions by Comsat and INTELSAT have been the historic pattern and are made more likely ". . . in the face of the increasing competition—both from possible 'private' and common carrier cable systems and from competing satellite systems." Therefore, AT&T concludes that the assumption that Comsat rates will remain at current levels throughout the 1986–1991 inflates our calculation of the effect on Comsat's revenues of the various flexibility phase-in circuit distribution methodologies.

61. While AT&T has employed the identical methodology it now criticizes for calculating revenues, we agree that a methodology which averages circuit activations over the course of a year would result in more accurate revenue calculations.[24] However, we cannot accept the suggestion that we assume lower space segment charges for calculating a revenue differential. First, AT&T has provided no forecast, loading, or revenue requirement data supporting the use of a lower space segment charge. Further, while technology may indeed drive down construction costs on a per circuit basis, the revenue requirement for each circuit used may actually increase as the expensive INTELSAT VI series of satellites is procured and the degree of loading flexibility given to AT&T increases.[25]

62. We have redone the calculations we performed in our NPRM using the satellite circuit activation method suggested by AT&T for calculating revenues but retaining the assumption that Comsat's tariff rate and INTELSAT's unit charges for satellite voice circuits would remain the same throughout the 1986–1991 period.[26] (Because of inflation that will occur over this period, holding rates constant does result in a price reduction in 1985 dollars.) Using the same traffic forecast employed in the NPRM, our calculations indicate that during the 1986–1991 period Comsat and INTELSAT, respectively, would receive approximately $167.19 million and $123.3 million less if the AT&T 3 percent proposal is adopted than they would if the balanced loading methodology was continued. The equivalent revenue amounts for Comsat and INTELSAT calculated in our NPRM were $218.18 million and $160.55 million, respectively. Performing the same calculation for the 2 percent guidelines for which we have expressed our tentative preference, we find that Comsat and INTELSAT, respectively, would receive approximately $67.37 million and $49.58 million less revenues if the 2 percent guidelines are adopted compared to the revenues they would receive if the balanced loading guidelines were continued. The equivalent revenue figures as calculated in our NPRM were approximately $90.12 million and $66.32 million for Comsat and INTELSAT, respectively.

63. Using the most recent forecast, which reflects a lower traffic growth rate, the difference in terms of revenue between balanced loading and the various phase-in proposals would

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[22] While a cap would equalize the total number of circuits placed over cable, the different rates at which the cap was reached would impact satellite revenues in distinct fashions.

[23] Of course, to the extent that Comsat and INTELSAT have fixed revenue requirements, a revenue shortfall could be partially or fully offset by rate increases. To the extent that these figures represent revenue differences rather than actual revenue requirement shortfalls, the impact may be to slow the rate of rate decreases. Depending on world-wide traffic growth and loading, INTELSAT Signatory ownership shares, revenue requirements, capital costs and expenses, the rate impact on either Comsat or INTELSAT could be substantial.

[24] In its attachment 2 of its November 2, 1984 Final Comments in this docket, AT&T sets forth for the 1986–1989 period its calculation of Comsat's global satellite voice circuit revenues assuming continuation of the balanced loading circuit distribution for the U.S.-CEPT message telephone circuits, Comsat's global revenues for satellite voice circuits assuming adoption of AT&T's proposed three percent guidelines for U.S.-CEPT message telephone circuits and the yearly difference between these two revenue calculations. AT&T's calculations in this case assumed that all satellite circuits added during a given year are activated on January 1st.

[25] Even if AT&T's methodology would route enough traffic over satellite to permit a lowering of Comsat's per circuit space segment rate, we note that an even greater percentage of traffic routed over satellite would ordinarily lead to even lower satellite rates. That is, as a rate base regulated entity with a certain revenue requirement, Comsat's per circuit space segment rate would generally increase if fewer satellite circuits are leased and generally decrease if most satellite circuits are leased.

[26] Although we have prescribed a methodology for only three years (1986–1988), for ease of comparison with the NPRM and the filings of the parties our calculations cover both the six years (1986–1991) of the planning period and the three years (1986–1988) that the prescribed methodology will be utilized.

decrease. Our calculations disclose that during the 1986–1991 period Comsat and INTELSAT, respectively, would receive approximately $135.71 million and $99.86 million less revenues if the AT&T proposed 3 percent guidelines were adopted than they would receive if the use of the balanced loading methodology was continued. We calculate the reduction in revenues from balanced loading levels which would occur if the 2 percent guidelines were adopted as approximately $59.73 million and $43.95 million for Comsat and INTELSAT respectively. The details of these calculations and the distributions on which they are based, are set forth in Appendix 1 attached to this Report and Order.[27] These calculations in short form, are as follows:

REVENUE REDUCTION TABLE

[Dollars in millions]

	Comsat	Intelsat	Comsat	Intelsat
Assumptions.	AT&T 3 percent plan.	AT&T 3 percent plan.	2 percent plan.	2 percent plan.
NPRM	$218	$161	$90	$56
NPRM but averaged activations.	$167	$123	$67	$50
NPRM but averaged activations and new forecast.	$136	$100	$60	$44

64. While these modifications to our calculations indicate less of a difference between the balanced loading and various phase-in approaches, they are still substantial. For the 1986–1988 period for which we are adopting guidelines, we now calculate that adoption of AT&T's 3 percent proposal would result in approximately $25 million and $18 million less revenues for Comsat and INTELSAT, respectively, than these entities would receive if the balanced loading methodology continued to be used. Adoption of the 2 percent guidelines for this three year period would result in approximately $14 million and $10 million less revenue for Comsat and INTELSAT, respectively than they would receive under balanced loading guidelines.[28] Most importantly, the above calculations do not alter the characteristics of the present market. AT&T continues to be the major user of all circuits, the major user of circuits for IMTS and an entity with a clear and understandable preference for cable facilities. Competition in the provision of IMTS is only now developing and a marketplace mechanism for the efficient use of circuitry does not now exist. Further, Comsat and INTELSAT continue to rely on AT&T for a significant portion of their traffic and revenues, and have relatively fixed investments and revenue requirements for the 1986–1991 period. The $135.71 million and $99.86 million reduction in the revenues Comsat and INTELSAT would receive under AT&T's proposed 3 percent guidelines, as compared to their revenues from a balanced loading distribution, is less than the differential we calculated in our NPRM using AT&T's earlier, higher forecast and a different methodology for calculating satellite activations. Nevertheless, these figures would be a significant reduction in the revenues of these entities and represent reductions greater than those we found "acceptable" in the NPRM. Moreover, as Comsat states, the fact that the lower traffic forecast reduces the revenue differential between the balanced loading methodology and AT&T's proposed 3 percent guidelines benefits neither Comsat nor INTELSAT. To the contrary, the revenues these entities will now receive under any particular loading methodology will be less because they will be handling less traffic. We find that AT&T's proposed guidelines for the 1986–1991 period, which would place approximately 62 percent of the additional U.S.-CEPT message telephone circuits on cable facilities while placing only 18 percent of such circuits on satellite facilities, would apportion too great a percentage of growth traffic to one medium under the present market conditions.[29]

We reach the same conclusion for the use of AT&T's proposed guidelines for the 1986–1988 period as this proposal would place over seventy percent of growth traffic on cable facilities.

65. We further conclude that the approximately $14 million and $10 million reduction in the revenues Comsat and INTELSAT, respectively, will receive in the 1986–1988 period under the 2 percent guidelines compared to the revenues they would receive under balanced loading guidelines, coupled with the adverse revenue effects of a lower traffic forecast, will provide a strong incentive for Comsat to enter the U.S.-CEPT message telephone market and for INTELSAT and Comsat to work toward developing a more cost effective satellite system. However, we do not believe these revenue reductions will place undue pressure on Comsat or INTELSAT rates. Since the 2 percent guidelines permit AT&T to place up to 63.31 percent of the additional circuits it projects it will require during the 1986–1988 period on either cable or satellite facilities, we believe that these guidelines provide AT&T with sufficient flexibility.

66. The calculations in paragraphs 62–65 assumed a constant INTELSAT

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[27] As we recognized in footnote 34 of our NPRM, a number of factors could alter the results of our revenue analysis. These include changes in AT&T's traffic forecast, changes in Comsat's or INTELSAT's rates, and the degree to which TDMA/DSI equipment is used in the provision of AT&T's U.S.–CEPT message telephone service since the tariff and INTELSAT unit charge is lower for derived circuits than for FDMA circuits.

[28] The reduction in Comsat and INTELSAT revenues under the AT&T 3 percent guidelines and the 2 percent guidelines compared to the revenues these entities would receive under balanced loading are less for the three year 1986–1988 period than for the entire six year 1986–1991 period. The range of percentage increase in Comsat's per circuit space segment revenue requirements is likewise smaller for the three year 1986–1988 period than for the full six year 1986–1991 period. This is, of course, to be expected for a number of reasons. The first, and most obvious, reason is that where, as here, we have three circuit distribution methodologies which result in satellite facilities loading which diverges each year, the effect on satellite circuit providers' revenues and on the per circuit revenue requirements for space segment will be less for a three year period than for the full six year period. Moreover, since the three year period with which we are here concerned is the initial period of implementation for new circuit guidelines, it is also the period during which the AT&T 3 percent guidelines and the 2 percent guidelines diverge the least. Consequently, the difference in the effects of these two methodologies on satellite circuit revenues and per circuit space segment revenue requirements compared to balanced loading will be the least during this period.

In addition, the fact that the balanced loading methodology permits all traffic to be loaded on the TAT–8 cable entering service in 1988 until that transmission path is carrying the same number of circuits as existing transmission paths with available capacity significantly reduces the difference in the effect of the AT&T 3 percent guidelines and the 2 percent guideline on satellite circuit revenues and per circuit revenue requirements for space segment when compared with balanced loading. As may be noted from the table set forth as Appendix 1, the balanced loading guidelines would permit more circuits to be placed on cable facilities during 1988 than either the 2 percent guidelines or AT&T's proposed 3 percent guidelines. Indeed, at year-end 1988, balanced loading guidelines would result in the activation of approximately 56 more cable circuits than could be activated under the 2 percent guidelines. However, this does not mean that adoption of the 2 percent guidelines will result in less cable use and more satellite use over the 1986–1988 period. To the contrary, during this three year period the balanced loading methodology would result in 27,965.5 circuit years of satellite use while the 2 percent guidelines and AT&T's 3 percent guidelines would result in 26,897 and 26,043 circuits years of satellite use, respectively.

[29] The circuit distribution based on AT&T's proposed 3 percent guidelines and its earlier, higher traffic forecast would have placed 85 percent of all growth circuits on cable facilities. In its current distribution based on a smaller traffic forecast, AT&T projects activating 274 and 458 satellite circuits in 1990 and 1991, respectively, as compared to 12 and 15 satellite circuits for these two years under its previous distribution based on a large traffic forecast. This modification results in the 18 percent figure.

utilization charge of $390 per circuit per month and a constant bundled Comsat rate of $1060 per circuit per month. The focus was on quatifying the impact of various loading methodologies on INTELSAT and Comsat. By holding rates to carriers and users constant, there was, in a sense, no impact on these entities. However, as a rate base regulated entity with a relatively fixed investment for the 1986–1991 period, it may not be appropriate to assume that Comsat's rates to carriers and users will not change depending on the loading methodology employed. Similarly, INTELSAT has a relatively fixed investment for the 1986–1991 period and pays its signatories, pursuant to Articles 4 and 8 of the INTELSAT Operating Agreement, a return on their investments (currently 14 percent). Thus it also may be inappropriate to assume that INTELSAT's utilization charge will remain constant under all loading methodologies. We now therefore consider the impact of the various loading methodologies on Comsat's rates and specifically on Comsat's unbundled space segment charge.[30] While AT&T's total revenue requirement and rates may not be measurably affected by changes in Comsat's rates, users and other carriers will be more demonstrably impacted and the development of intermodal competition could be adversely affected.

67. We conclude from our analysis that the reduction in the number of leased satellite circuits resulting from AT&T's proposal would place a degree of upward pressure on space segment rates which is inconsistent with the public interest.[31] We also conclude that, on balance, a 2 percent per year approach would not place undue pressure on Comsat's space segment rates. In estimating what Comsat's space segment rates would be under the 2 percent, AT&T 3 percent and balanced loading methodologies proposed in this docket for the 1986–1991 period we have employed AT&T's traffic forecast and assumed various revenue requirement levels. Because additional cable systems and loading proposals are being considered in the Pacific and Caribbean planning dockets our analysis has isolated the space segment capacity used to provide U.S.-CEPT IMTS and the revenue requirement which corresponds to this capacity. While we recognize that any analysis which employs what might be an overly optimistic traffic forecast, which makes assumptions as to Comsat's future space segment revenue requirements, and which attempts to estimate a regional rather than a global space segment rate can be criticized, we believe that the trends developed by such an analysis are valid and useful. We have charted the three loading methodologies for the 1986–1991 period with space segment revenue requirements ranging from $165 million to $265 million.[32] We have calculated that 83.47 percent of Comsat's total space segment revenue requirement is allocated to voice circuit leases (the remaining 16.53 percent of Comsat's space segment revenue requirement is allocated to transponder leases and other services) and that 42.44 percent of all IMTS voice circuits leased by Comsat are to AT&T for U.S.-CEPT IMTS. Using these two percentages, AT&T's forecast and the various revenue requirements we can derive Comsat's U.S.-CEPT IMTS circuit rates for the 1986–1991 period for any loading methodology.[33] It is self evident that Comsat's space segment rates will decline the most (or increase the least) the lower the revenue requirement and the higher the satellite usage. Similarly, Comsat's space segment rates will decline the least (or increase the most) the greater the revenue requirement and the lower the satellite usage.

68. As shown in Table 2 of Appendix 2, our analysis indicates that, as compared to balanced loading, AT&T's proposed 3 percent guidelines would result in per circuit space segment rates which range for the 1986–1988 period which range from *6.76* percent to *7.11* percent higher. (For the entire 1986–1991 period this range would be from 13.90 to 15.69 percent higher). As compared to balanced loading, our tentatively preferred 2 percent guidelines would result in per circuit space segment rates for the 1986–1988 period from *3.72* percent to *3.86* percent higher. (For the entire 1986–1991 period this range would be from 5.61 to 6.06 percent higher). Our analysis also indicates that the balanced loading and 2 percent circuit distribution methodologies produce space segment per circuit rates which are lower than the existing space segment charge under all revenue requirement assumptions. On the other hand, if the revenue requirement increases by $20 million per year then AT&T's proposal would result in space segment rate increases each year within the planning period. Of course, the rate decrease will be the greatest under balanced loading and the least under AT&T's 3 percent guidelines.

69. This analysis tends to confirm the conclusions drawn from our other analysis that adoption of AT&T's proposed 3 percent guidelines could place undue upward pressure on the rates for satellite circuits. The approximately 7 percent higher per circuit revenue requirements produced by the AT&T proposal, when compared to the balanced loading methodology, and the potential that the AT&T proposed guidelines could actually lead to higher space segment rates if Comsat's actual total space segment revenue requirements increase to a level near our upper limit assumption leads us to conclude that the AT&T proposal may hinder rather than foster the development of intermodal competition.

70. In view of the foregoing, we conclude that AT&T's proposed 3 percent guidelines are too severe and that the 2 percent guidelines we tentatively prefer will better balance the various financial and competitive factors. Nothing presented in the comments filed in response to our NPRM persuades us that the 2 percent guidelines are not the most appropriate of the transitional mechanisms which we have examined. Therefore, we conclude that we should affirm our tentative conclusions that, using the cable-satellite distribution of AT&T's U.S.-CEPT message telephone circuits existing at the end of 1985 as a base, AT&T should be permitted, but not required, to increase the number of its U.S.-CEPT message telephone circuits it places on either cable or satellite facilities by 2 percent per year. Because we have analyzed the traffic, revenue and rate implications of the various proposals over a three year period, we shall permit AT&T to carry-over, but not borrow, unused flexibility. Thus, the two

[30] We do not attempt here to calculate future INTELSAT utilization charges.

[31] Because INTELSAT will be using either existing satellites or satellites which are already being procured pursuant to binding contracts to provide service during the 1986–1991 period, its facilities costs are basically fixed for that period. INTELSAT can only recover its revenue requirements for its fixed investment from revenues generated by circuits used to provide service. Consequently, the lower forecast, by reducing the number of circuits AT&T and other carriers will employ, will place upward pressure on INTELSAT's rates. Comsat may experience the same upward pressure on its rates to satisfy its revenue requirements. If Comsat's rates increase, than AT&T's expenses (specifically satellite lease charges paid to Comsat) may also increase, exerting an upward pressure on AT&T's rates to users.

[32] The $165 million space segment revenue requirement figure is found in Comsat's June 5, 1985 tariff transmittal No. 565. The upper limit and numbers in between were derived simply by adding to Comsat's space segment revenue requirement $10 million, $15 million or $20 million per year for the 1986–1991 period. Past investment patterns and our general knowledge of INTELSAT's future procurement plans would indicate that it is likely that Comsat's investments and expenses will generate an annual revenue requirement within this range.

[33] The full results of these calculations as well as the methodology used are found in Appendix 2.

percent per year guidelines shall be cumulative.[34]

71. *Treatment of AT&T Circuits Used For Its 800 Service-Overseas.* We agree with GTE Sprint's contention that circuits used by AT&T for the provision of its 800 Service-Overseas should be subjected to the circuit distribution guidelines we are here adopting. The circuits used to provide 800 Service-Overseas are part of the switched voice network used by AT&T to provide U.S.-CEPT message telephone service. Consequently, the same considerations should apply to circuits used for both of these services. Therefore, we conclude that the circuits used by AT&T to provide its 800 Service-Overseas should be subjected to the same circuit distribution guidelines as its circuits used for the provision of U.S.-CEPT message telephone service. Circuits used by AT&T to provide 800 Service-Overseas shall therefore be aggregated with IMTS circuits for loading purposes.

E. ARINC Whole Circuit Proposal

72. We need to address one final issue. In response to the NOI, ARINC proposed that we explore the possibility of restructuring the ownership arrangements for international submarine cables. (U.S. entities and foreign correspondents own undivided half interests in circuits.) ARINC requested us to change cable ownership to an arrangement where U.S. entities and their correspondents would each separately purchase their own whole circuits (the whole-circuit policy). We note that ARINC first raised its whole circuit-ownership argument in connection with our consideration of the U.S. carriers' application for authorization to construct the TAT–8 cable. File No. I–T–C–84–072. ARINC requested us to condition our grant of authority upon the carriers' agreeing to modify the TAT–8 agreement to require whole-circuit ownership. We denied ARINC's request as having been presented too late in the TAT–8 proceeding and suggested that it might better pursue the question in the facilities planning process, particularly the North Atlantic Consultative Process. *See* FCC 84–240 para. 51, note 21.

73. In the NPRM, we tentatively concluded that ARINC's proposal that we require ownership in TAT–8 and future cables to be on a whole-circuit basis should not be considered in this phase of this docket. We stated that ARINC's proposal was not germane to the question of the circuit-distribution guidelines which should be adopted for use in the post-1985 period and that those guidelines would not affect ARINC's proposal. We indicated that ARINC's proposal, if adopted, would effect major changes in the present structure of international facilities ownership and in the established operating relationships between the U.S. carriers and their overseas correspondents. We also noted that ARINC raised its request at a meeting of the North Atlantic Consultative Process and that is the proper forum in which to address ARINC's proposal.[35]

74. In response to the NPRM, ARINC reiterated its whole circuit ownership proposal and argued that this issue should be resolved in a policy proceeding rather than in the consultative process. We affirm our tentative conclusion that the issue is not germane to the limited question of circuit distributions. We will consider this issue in the subsequent phase of this docket. See paragraph 50, n. 20.[36]

III. Ordering Clauses

75. Accordingly, it is ordered, pursuant to section 4(i), 4(j), 201–205, 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 214, 403 (1976) that the circuit distribution guidelines for the 1986–1991 period set forth above ARE ADOPTED.

76. Pursuant to Section 605(b) of the Regulatory Flexibility Act 5 U.S.C. 605, it is certified, that sections 603 and 604 of the Act do not apply because the circuit distribution policies adopted herein is a rule of particular applicability to the American Telephone and Telegraph Company and is, hence, not subject to the Regulatory Flexibility Act.

77. It is further ordered, that AT&T shall file by September 20, 1985, a regional circuit distribution plan for the 1986–1988 period for its U.S.-CEPT message telephone circuits based upon its most recent traffic forecast which complies with the circuit distribution guidelines set forth herein. The U.S. TAT–8 co-owners shall also file, consistent with paragraph 87 of our TAT–8 order, country-by-country loading plans for the TAT–8 facility for 1988.[37] Each carrier shall further retain comprehensive information demonstrating the implementation of its circuit distribution plan on a country-by-country basis.[38]

78. It is further ordered, that this rulemaking phase of CC Docket No. 79–184 is terminated.

79. It is further ordered that the Secretary of the Commission shall cause this Second Report and Order to be published in the Federal Register and shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

Secretary.

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[34] Because we are adopting a two percent methodology for only three years, we need not address the issue of a 60/40 cap. That is, there will be no cap.

[35] The CEPT entities did not support this proposal, expressing satisfaction with existing ownership arrangements.

[36] We also note that non-carrier ownership of submarine cable circuits is tentatively proposed in our Notice of Proposed Rulemaking in International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grant of IRUs in International Facilities and Assignment of Data Network Identification Codes, CC Docket No. 83–1230, Notice of Proposed Rulemaking, FCC 85–369 (released August —, 1985).

[37] *See* AT&T *et al.*, FCC 84–240 (released June 8, 1984). This filing will obviate the need for separate Section 214 applications for circuit activations consistent with the carriers' loading plans. Activations not consistent with the submitted plans would require separate authorization.

[38] Such data may be requested by the Commission during its consideration of future loading policies.

APPENDIX 1

COMPARISON OF THE APPLICATION OF CIRCUIT DISTRIBUTION GUIDELINES TO AT&T'S U.S.-CEPT MTS TRAFFIC

YEAR	1986		1987		1988		1989		1990		1991		
AT&T FORECAST/Nov. 84	17010		19540		22933		26785		31295		36583		
BALANCED LOADING													
	C	S	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	48.8	51.2	47.3	52.7	54.5	45.5	54.7	45.3	52.9	47.1	50.8	49.2	
No. of Cable/Sat. Cir.	8303	8707	9252	10288	12491	10442	14647	12138	16566	14729	18587	17996	
No. of Cable/Sat. Cir. Added	1004	1208	949	1581	3239	154	2156	1696	1919	2591	2021	3267	
AT&T PROPOSAL													
	C	S	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	51.0	49.0	53.9	46.1	57.0	43.0	60.0	40.0	64.9	35.1	68.7	31.3	
No. of Cable/Sat. Cir.	8671	8339	10529	9011	13069	9864	16078	10707	20314	10981	25144	11439	
No. of Cable/Sat. Cir. Added	1372	817	1858	672	2540	853	3009	843	4236	274	4830	458	
Sat. Cir. Year Difference Compared to Balanced Loading		-172.5		-822.5		-927.5		-1004.5		-2589.5		-5152.5	TOTAL -10669
Revenue Difference Compared to Balanced Loading COMSAT		-$2.19M		-$10.46M		-11.8M		-$12.78M		-$32.94M		-$65.54M	-$135.71M
INTELSAT		-$1.61M		-$7.70M		-8.68M		-$9.40M		-$24.24M		-$48.23M	-$99.86M

2 PERCENT INCREASED FLEXIBILITY PER YEAR — 60 PERCENT MAXIMUM

	C	S	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	50.0	50.0	52.0	48.0	54.2	45.8	56.1	43.9	58.0	42.0	60.0	40.0	
No. of Cable/Sat. Cir.	8504	8506	10159	9381	12435	10498	15025	11760	18163	13132	21948	14635	
No. of Cable/Sat. Cir. Added	1205	984	1655	875	2276	1117	2590	1262	3138	1372	3785	1503	
Sat. Cir. Year Difference Compared to Balanced Loading		-89		-554		-425.5		-161		-987.5		-2479	TOTAL -4696
Revenue Difference Compared to Balanced Loading COMSAT		-$1.13M		-$7.05M		-$5.41M		-$2.05M		-$12.56M		-$31.53M	-$59.73M
INTELSAT		-$0.83M		-$5.19M		-$3.98M		-$1.51M		-9.24M		-$23.20M	-$43.95M

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COMPARISON OF THE APPLICATION OF CIRCUIT DISTRIBUTION GUIDELINES TO AT&T'S U.S.-CEPT MTS TRAFFIC

YEAR	1986		1987		1988		1989		1990		1991		
AT&T FORECAST/Nov. 84	17010		19540		22933		26785		31295		36583		
2.5 PERCENT INCREASED FLEXIBILITY PER YEAR — 60 PERCENT MAXIMUM													
	C	S	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	50.5	49.5	53.0	47.0	55.5	44.5	58.0	42.0	60.0	40.0	60.0	40.0	
No. of Cable/Sat. Cir.	8590	8420	10356	9184	12728	10205	15535	11250	18784	12511	21948	14635	
No. of Cable/Sat. Cir. Added	1291	898	1766	764	2372	1021	2807	1045	3249	1261	3164	2124	
Sat. Cir. Year Difference Compared to Balanced Loading		-132		-695.5		-670.5		-562.5		-1553		-2789.5	TOTAL -6403
Revenue Difference Compared to Balanced Loading													
COMSAT		-$1.68M		-$8.85M		-$8.53M		-$7.16M		-$19.75M		-$35.48M	-$81.45M
INTELSAT		-$1.24M		-$6.51M		-$6.28M		-$5.27M		-$14.54M		-$26.11M	-$59.95M

3 PERCENT INCREASED FLEXIBILITY PER YEAR — 60 PERCENT MAXIMUM													
	C	S	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	51.0	49.0	53.9	46.1	57.0	43.0	60.0	40.0	60.0	40.0	60.0	40.0	
No. of Cable/Sat. Cir.	8671	8339	10529	9011	13069	9864	16078	10707	18784	12511	21948	14635	
No. of Cable/Sat. Cir. Added	1372	817	1858	672	2540	853	3009	843	2706	1804	3164	2124	
Sat. Cir. Year Difference Compared to Balanced Loading		-172.5		-822.5		-927.5		-1004.5		-1824.5		-2789.5	TOTAL -7541
Revenue Difference Compared to Balanced Loading													
COMSAT		-$2.19M		-$10.46M		-$11.8M		-$12.78M		-$23.21M		-$35.48M	-$95.92M
INTELSAT		-$1.61M		-$7.70M		-$8.68M		-9.40M		-$17.08M		-$26.11M	-$70.58M

Appendix 2—Analysis of Effect of Loading Methodologies on Requirements for Satellite Circuits

Our analysis takes as a starting point the approximately $165 million Comsat projects as its total revenue requirements for INTELSAT space segment capacity during the mid-1985 to mid-1986 period in its Tariff Transmittal No. 656 filed on June 5, 1985.[39] We first determined the percentage of the $165 million total space segment revenue requirements which should be attributed to the space segment used to provide international satellite voice circuits to be 83.47 percent.[40] We then isolated the portion of Comsat's total space segment revenue requirements attributable to satellite circuits leased by AT&T to provide U.S.-CEPT message telephone service. We found that approximately 42.44 percent of all IMTS voice circuits leased by Comsat are to AT&T for U.S.-CEPT IMOTS. Multiplying these two percentages together we calculated that 35.42 percent of the $165 million total space segment revenue requirements (or $58,443,000) should be attributed to satellite circuits used by AT&T to provide U.S.-CEPT message telephone services.[41]

In order to determine the effect of the three loading methodologies on Comsat's monthly per circuit space segment rate throughout the 1986–1991 period, we multiplied Comsat's total space segment revenue requirements for each year by 35.42 percent and divided the result by the number of satellite circuits years, AT&T would use under each methodology and then divided that annual figure by 12. Because we do not have detailed projections of Comsat's total space segment revenue requirements for any year other than mid-1985 through mid-1986, we performed this calculation using a range of assumed total revenue requirements. As a lower limit, we assumed that Comsat's total space segment revenue requirements would remain fixed at the $165 million level set forth in Tariff Transmittal 565 throughout the 1986–1991 period. As an upper limit, we assumed that Comsat's total space segment revenue requirements would increase at a rate of $20 million per year from the 1986 level of $165 million. We also performed the analysis for assumptions of $10 million and $15 million annual increase in Comsat's total space segment revenue requirements. Table 1 displays the total space segment revenue requirements investigated for each year during the 1986–1991 period, the satellite circuit-years used in our calculations for each of the loading methodologies, and the resulting Comsat monthly per circuit revenue requirements derived. Table 2 displays the Comsat monthly per circuit space segment rates for each of the three loading methodologies resulting from each Comsat total space segment revenue requirement assumption as well as the average monthly per circuit revenue requirement over the six year period for each of the loading methodologies.[42]

Comsat provided to all areas of the world at the end of 1986. This calculation indicated that 42.44 percent of all satellite voice circuits used by U.S. carriers at year-end 1984 were used by AT&T for the provision of U.S.-CEPT message telephone service. Thus, we determined that percent of Comsat's total space segment revenue requirements attributable to AT&T's use of satellite circuits to provide U.S.-CEPT message telephone service to be:

$$X=(17{,}523\times\$655\times12/165{,}000{,}000)\times.4244$$
$$X=.8347\times.4244$$
$$X=.3542$$

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[39] Our use of information from this tariff filing should not be construed as a decision on the merits of that filing.

[40] We derived this percentage by multiplying the 17,523 voice circuits Comsat projects in Tariff Transmittal No. 565 it will have in service at year-end 1985 by Comsat's current annual charge for the space segment of a satellite voice circuit ($655 × 12) and dividing the result by the $165 million total revenue space segment revenue requirement. This results in 83.47 percent of Comsat's $165 million total space segment revenue requirement being attributed to the provision of satellite voice circuits.

[41] In order to isolate the percentage of Comsat's total space segment revenue requirements attributable to AT&T's use of satellite voice circuits for the provision of U.S.-CEPT message telephone service, we divided the number of satellite voice circuits so used by AT&T at the end of 1984 by the total number of satellite voice circuits Comsat provided to all areas of the world at the end of 1986. This calculation indicated that 42.44 percent of all satellite voice circuits used by U.S. carriers at year-end 1984 were used by AT&T for the provision of U.S.-CEPT message telephone service. Thus, we determined that percent of Comsat's total space segment revenue requirements attributable to AT&T's use of satellite circuits to provide U.S.-CEPT message telephone service to be:

$$X=(17{,}523\times\$655\times12/165{,}000{,}000)\times.4244$$
$$X=.8347\times.4244$$
$$X=.3542$$

[42] We wish to emphasize that, while we believe that this analysis is a valuable indicator of the trends in per circuit revenue requirements adoption of each of these circuit distribution methodologies would produce, the analysis should not be taken as an accurate predictor of specific per circuit revenue requirements for satellite circuits in a given year. The lack of specific information on Comsat's total space segment revenue requirements for the 1987–1991 period required us to examine a range of assumptions concerning Comsat's total space segment revenue requirements. While we believe it is reasonable to assume that Comsat's actual total space segment revenue requirements are likely to fall within this range, given factors such as the timetables for procurement of satellites and the launch of satellites during this period, it is not likely that Comsat's total space segment revenue requirements will vary as linearly as they do under our assumptions. It must also be noted that our analysis isolates the Comsat's per circuit revenue requirements for U.S.-CEPT message telephone service. This was done in recognition of the potential that the ongoing planning proceedings for Pacific and Caribbean/South America facilities could result in circuit distribution guidelines which differ from those adopted for the North Atlantic region. Thus, actual per circuit revenue requirements in a given year could vary from those projected by our analysis.

TABLE 1

Calculation of Comsat Monthly Per Circuit Revenue Requirements

Year	Total Space Segment Revenue Requirement	Balance	Loading	2 Percent		AT&T 3 Percent	
		Circuit Years	Per-Circuit Revenue Requirement	Circuit Years	Per-Circuit Revenue Requirement	Circuit Years	Per-Circuit Revenue Requirement
1986	165M	8103	601	8014	608	7930.5	614
1987	165M	9497.5	513	8943.5	545	8675	561
	175		544		578		596
	180		559		594		613
	185		575		611		630
1988	165	10365	470	9939.5	490	9437.5	516
	185		527		549		579
	195		555		579		610
	205		584		609		641
1989	165	11290	431	11129	438	10285.5	474
	195		510		517		560
	210		549		557		603
	225		588		597		646
1990	165	13433.5	363	12 446	391	10844	449
	205		451		486		558
	225		494		534		613
	245		538		581		667
1991	165	16362.5	298	13883.5	351	11210	435
	215		388		457		566
	240		433		510		632
	265		478		563		698

TABLE 2

Comsat Monthly Circuit Revenue Requirements Comparison

	Annual Revenue Requirements Increase From $165M in 1986											
	$165M + 0/Year			$165M + $10M/Year			$165M + $15M/Year			$165M + $20M/Year		
	BL	2%	AT&T	BL	2%	AT&T	BL	2%	AT&T	BL	2%	AT&T
1986	601	608	614	601	608	614	601	608	614	601	608	614
87	513	545	561	544	578	596	559	594	613	575	611	630
88	470	490	516	527	549	579	555	579	610	584	609	641
89	431	438	474	510	517	560	549	557	603	588	597	646
90	363	391	449	451	486	558	494	534	613	538	581	667
91	298	351	435	388	457	566	433	510	632	478	563	698
Total	2676	2823	3049	3021	3195	3473	3191	3382	3685	3364	3569	3896
Average Monthly Revenue Require. Per Ckt.	446	471	508	504	533	579	532	564	614	561	595	649
% Diff. Compared to Balanced Loading	-	+5.61	+13.90	-	+5.75	+14.88	-	+6.02	+15.41	-	+6.06	+15.69
1986-88 Sub Total	1584	1643	1691	1672	1735	1789	1715	1781	1837	1760	1828	1885
Average Montly Revenue Require. Per Ckt.	528	548	564	557	578	596	572	594	612	587	609	628
% Diff. Compared to Balanced Loading	-	+3.72	+6.76	-	+3.76	+6.99	-	+3.84	+7.11	-	+3.86	+7.10

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 542

[Docket No. T85-01; Notice 2]

Procedures for Selection of Covered Vehicles; Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule is issued under Title VI of the Motor Vehicle Information and Cost Savings Act. It sets forth the procedures to be followed when determining which passenger motor vehicle lines introduced on or after January 1, 1983, are to be covered under the proposed vehicle theft prevention standard. That standard would require the marking of major component parts on all cars in lines subject to its requirements. Under these procedures, the manufacturer will apply the relevant criteria in preparing its views as to which of its lines should be selected as high theft lines for purposes of the theft prevention standard. The manufacturer would submit its views to the agency, together with the facts it considered and the supporting rationales for those views. NHTSA will consider these submissions and inform the manufacturer of its agreement with the manufacturer's views or of its preliminary determination that different lines should be selected. If the manufacturer does not request reconsideration of the preliminary determination, it automatically becomes the final determination. If the manufacturer does request reconsideration, it must provide the facts and arguments underlying its objections. NHTSA considers the request for reconsideration and promptly issues its final determination.

DATE: This rule is effective on and after November 1, 1985.

Note.—This rule refers to the appendices to Part 541, which is the proposed vehicle theft prevention standard. The notice of proposed rulemaking to establish Part 541 was published at 50 FR 19728, May 10, 1985. NHTSA anticipates a final rule for Part 541 will be published before this rule becomes effective. If that final rule has not been published by the date this rule is scheduled to become effective, the agency will publish a notice delaying the effective date for this rule.

ADDRESS: Any petitions for reconsideration of this rule must be received by NHTSA no later than September 27, 1985, and should be addressed to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Title VI requires NHTSA, by delegation from the Secretary of Transportation, to promulgate a vehicle theft prevention standard mandating a marking system for the major component parts of high theft lines. To implement the mandate of the Theft Act, NHTSA must divide each manufacturer's fleet of passenger motor vehicles into different "lines". A "line" is a group of vehicles sold with the same nameplate, such as Mustang, Camaro, or Aries. The agency must then select those lines which are "high theft lines" and, therefore, subject to the marking requirements of the theft prevention standard.

Section 603(a)(1) of the Cost Savings Act (15 U.S.C. 2023(a)(1)) specifies three different groups of lines that are designated as high theft lines for purposes of the theft prevention standard. The groupings are as follows:

(1) Existing lines that are determined on the basis of actual theft data to have a theft rate exceeding the median theft rate for all new passenger motor vehicles in 1983 and 1984 are high theft lines under the provisions of section 603(a)(1)(A). "Existing lines" are those lines introduced before January 1, 1983. (This date is predicated on promulgation of the final rule establishing the theft prevention standard in 1985.)

(2) Lines introduced on or after January 1, 1983, that are likely to have a theft rate exceeding the median theft rate are high theft lines under the provisions of section 603(a)(1)(B).

(3) Lines whose theft rate is or is likely to be below the median theft rate, but whose major component parts are interchangeable with a majority of the major component parts of a line that is subject to the theft prevention standard under section 603(a)(1) (A) or (B), are high theft lines under the provisions of section 603(a)(1)(C). However, car lines whose theft rate is or is likely to be below the median theft rate will not be treated as high theft lines pursuant to this third grouping if such low theft or likely low theft lines account for greater than 90 percent of total production of all lines containing such interchangeable parts, section 603(a)(1)(C) (i) and (ii).

Section 603(a)(3) of the Cost Savings Act specifies that not more than a total of 14 of a manufacturer's lines introduced before the effective date of the standard can be selected under the first two groups listed above. The 14 line total does not include any of those lines selected as high theft lines under the third group listed above; i.e., car lines which have interchangeable parts with high theft lines.

Section 603(a)(2) of the Cost Savings Act states that the selection of lines as high theft lines subject to the requirements of the theft prevention standard should be accomplished by agreement between the manufacturer and NHTSA, if possible. However, that section also states that the agency must unilaterally select the subject lines if no agreement is reached. In the event that no agreement is reached between the agency and the manufacturer, this section requires NHTS to make the selections on a preliminary basis and give the manufacturer an opportunity to comment on those selections.

The Notice of Proposed Rulemaking

To carry out these statutory mandates, NHTSA published a notice of proposed rulemaking (NPRM) at 50 FR 25603, June 20, 1985. That notice proposed the procedures which the manufacturers and this agency would follow in attempting to agree on the lines to be selected for coverage by the theft prevention standard for all lines introduced after January 1, 1983. The NPRM stated that the selection of lines introduced before January 1, 1983, that have a theft rate exceeding the median theft rate for all new passenger motor vehicles in 1983 and 1984 was being handled in a separate action. A notice setting forth data on passenger motor vehicle thefts in 1983 and 1984 for review and comment was published at 50 FR 18708, May 2, 1985. The agency will soon publish a notice setting forth its final version of the 1983 and 1984 theft data. That notice will provide the basis for selecting high theft lines from lines introduced before January 1, 1983. However, the procedures set forth in this rule will be followed by NHTSA and the manufacturers in making all other selections of high theft lines under the provisions of the Theft Act.

The NPRM also proposed the procedures that would be followed in

applying the 14 line limitation set forth in section 603(a)(3) of the Cost Savings Act. Finally, the NPRM set forth the rights manufacturers would have if they disagreed with the agency's preliminary determination that a specific line should be selected as a high theft line.

It was emphasized that this rulemaking action was simply a procedural adjunct to the theft prevention standard. This rule does not set forth any substantive requirements or restrictions, nor does it actually select any car lines as high theft lines. It merely sets forth the procedures to be followed in determining which of a vehicle manufacturer's lines will be subject to the marking requirements of the theft prevention standard.

The NPRM proposed two sets of procedures for the selection of high theft lines. The first set, contained in §§ 542.1, 542.2, and 542.3, would be used to select the high theft lines from existing lines and new lines introduced on or after January 1, 1983, but before the effective date of the theft prevention standard. The second set, contained in §§ 542.4 and 542.5, would be used to select the high theft lines from all new lines introduced after the effective date of the standard.

Under each of the proposed procedures, the manufacturer would apply the relevant criteria to its currently produced or planned vehicle lines, and submit its views and supporting analysis to NHTSA as to which of its lines should be selected as high theft lines, together with the factual information considered by the manufacturer in reaching its conclusions. The agency would then promptly review the manufacturer's submissions, determine whether it agreed or disagreed with the manufacturer's proposed classification of its lines, and notify the manufacturer in writing of the agency's preliminary determination as to which of its vehicle lines should be selected as high theft lines. The manufacturer would have the right to request agency reconsideration of any preliminary determination to which the manufacturer objected. If the manufacturer did not request reconsideration of a preliminary determination, it would automatically become the agency's final determination. If the manufacturer did request a reconsideration of a preliminary determination, it would have to include all the facts and arguments underlying its objection to the agency's preliminary determination. NHTSA would promptly consider the facts and arguments and notify the manufacturer of its final determination. Should the manufacturer disagree with the final agency determination, regardless of whether the manufacturer has sought reconsideration, it has the right to seek judicial review of the agency determination, as specified in section 610 of the Cost Savings Act (15 U.S.C. 2030).

NHTSA believes that the proposed procedures were simple, straightforward, and compatible with both the timing allowed by the Theft Act for completing the selection of high theft lines and the Theft Act's directive that this selection should be accomplished by agreement between the manufacturer and NHTSA if possible. The NPRM was consciously structured so that the manufacturers and agency would have every opportunity to understand the other's position and agree on the proper selections.

The NPRM noted that section 603(c) of the Cost Savings Act (15 U.S.C. 2023(c)) directs NHTSA to, by rule, require each manufacturer to provide information necessary to select the high theft lines and major parts to be covered by the theft prevention standard. This rule does not *require* the manufacturers to provide any information; it merely sets forth the procedures to be followed by those manufacturers which choose to provide the information and to participate in the selection process. There are no penalties imposed for the failure of a manufacturer to provide the information. This approach was chosen because NHTSA then and now anticipates that the manufacturers will be forthcoming and cooperative in providing the agency with the views and supporting analyses specified in this rule. If, of course, the agency does not receive or otherwise obtain the necessary information on which to base its selections, the agency will propose changes to this rule to specifically require such information.

The Comments and Changes to the Proposed Procedures

Five comments on the NPRM had been received by the agency as of the comment closing date and were considered in developing this final rule. The commenters were all automobile manufacturers, and were generally supportive of the proposed procedures. However, the comments did raise some further issues and request some changes to the proposed procedures. The most significant issues raised in the comments are discussed below.

A. General Comments

1. *Timing.* All of the commenters noted the tight time frames in the propose schedules for both the manufacturers and the agency to complete necessary steps in the selection process. The commenters acknowledged, however, that the tight time frames were imposed by the Theft Act and that they would probably be able to comply with the various dates, assuming that NHTSA is able to meet the statutory deadline for publishing the final rule establishing the theft prevention standard and that there are no serious disagreements as to the lines selected for coverage under that standard.

The agency agrees that the time frames are very tight, but it cannot expand them. The agency intends to meet all the statutory deadlines imposed by the Theft Act and believes that the procedures set forth in this rule will enable the agency, and those manufacturers which submit the necessary information, to agree in most cases on those lines which should be selected for coverage under the theft prevention standard.

Volkswagen (VW) stated that the vehicle manufacturers could not make their submissions under these procedures until the final theft data notice had been published. VW stated that the agency had not yet indicated which source of theft data was going to be used, and repeated its comment to the theft data notice that there were errors in some of the figures and that corrections of those errors would result in a reshuffling of the order of the vehicle theft rates. In conclusion, VW stated that its views as to whether a line introduced after January 1, 1983, should be selected as a high theft line "would likely be influenced by the placement of its predecessor in the earlier list."

NHTSA agrees that the classification of the predecessor line as either a high or low theft line is an important criterion in determining whether a new line should be selected as a likely high theft line. That is why this fact was one of the six criteria proposed in Appendix C of Part 541 for determining whether a new line should be selected as a high theft line. However, it is only one of the six criteria. VW can prepare its views applying the other five criteria, and prepare alternative views on this criterion. This will ensure that NHTSA has received VW's views and that those views reflect VW's belief as to whether the new line should be selected as a likely high theft line, regardless of how the predecessor line is classified in the final theft data notice.

VW further stated that it could not make its submission under this procedural rule until it could obtain vehicle recovery information. The vehicle recovery rate was only proposed

as a criterion for determining whether new lines should be selected as high theft lines in § 542.2. That section will be used to limit, to a total of 14, the number of lines introduced by an individual manufacturer before the effective date of the theft prevention standard that will be selected for coverage by the theft prevention standard. VW does not have more than 14 lines, so this section does not apply to it. All of the other sections of this proposed rule will apply to VW, but none of those sections proposed using vehicle recovery rate as a criterion for the selection of a new line as a high theft line. Accordingly, the agency does not believe that VW needs vehicle recovery data to prepare its submission under this procedural rule.

2. *Definition of "Line".* Several of the commenters disagreed with the agency's proposal to use the same definition of line which was set forth in the proposed vehicle theft standard. General Motors (GM), Chrysler, and BMW all urged the agency to define "line" identically to the way in which that term is defined in 49 CFR Part 565, for the purposes of the vehicle identification number (VIN). The proposed definition of "line" set forth for these procedures and the theft prevention standard incorporates the definition of that term in the Theft Act, supplemented by interpretive examples so that the application of the term "line" under the Theft Act will be as close as possible to the application of the term "line" set forth by the Environmental Protection Agency (EPA) under Title V of the Cost Savings Act. This approach was taken because section 603(b)(1) requires that the theft rate for various lines be calculated using "the production volume of all passenger motor vehicles of that line (*as reported to the EPA under Title V of this Act*) . . ." (emphasis added). In order to use the EPA production data, NHTSA must apply the term "line" in a manner as similar as is possible to that used by the EPA under Title V. Hence, the agency is constrained by Title VI of the Cost Savings Act from simply applying the term "line" in precisely the same way as it has for the purposes of the National Traffic and Motor Vehicle Safety Act (the Safety Act), under 49 CFR 565.

However, NHTSA would like to note that the slightly differing language in the definitions of "line" for purposes of the Theft Act and the Safety Act has not resulted in any manufacturer's fleet of vehicles being grouped into different sets of "lines" for purposes of the different Acts. That is, the agency's grouping of a manufacturer's vehicles into lines thus far for the purposes of the Theft Act has been identical to what that grouping would have been if it were made for purposes of the Safety Act. None of the commenters that urged the agency to adopt identical definitions explained any practical difference which has resulted from the slightly differing wording in the two definitions. Further, the agency does not believe that a situation will arise where a manufacturer's vehicles would be grouped into two different sets of lines for purposes of the Theft Act and the Safety Act.

3. *Definition of "Interchangeable Part".* The NPRM proposed that these procedures would use the same definition for "interchangeable part" as was proposed for the theft prevention standard. To wit, an interchangeable part is "a passenger motor vehicle major part that is sufficiently similar in size and shape to a major part of another car line so that it would be used to replace the major part on a vehicle in that other car line, with no modification to the vehicle other than to the interior or exterior trim."

GM argued that the proposed definition was overly inclusive, and stated that there is no evidence to suggest that thieves would spend the time and money to replace all of the interior trim on a door, for instance, so that it could be used as a replacement part for a different car line. Based on this assertion, GM suggested that the definition of interchangeable part be modified to include only those parts that could be used to replace a major part in another car line with no modifications other than to medallions, molding, or paint.

This final rule does not adopt GM's suggested change. While conceding that there is no evidence to establish conclusively that thieves will make these modifications, the agency concludes that the available evidence strongly suggests that chop shops would make the modifications. The agency must, of course, exercise its judgment based on the available evidence. Police agency comments have consistently referred to the growing sophistication and skill of chop shop operators, which would certainly indicate that the ability exists to change the interior trim of a major part. A chop shop which spent the time and money to change the interior trim of a Chevrolet door, for example, so that it would appear to be an Oldsmobile door could still make a substantial profit on that stolen door, particularly considering the relative price of a new door compared with the interior trim for that door. This would give chop shop operators a motive for changing the interior trim package.

Congress stated that the Theft Act was intended to "decrease the ease with which certain stolen vehicles and their major parts can be fenced", H. Rept. 98–1087, 98th Cong., 2d Sess., at 2 (1984; hereinafter "H. Rept.") and "to make theft more risky" especially for chop shops, H. Rept. at 5. NHTSA must determine which approach better effectuates that intent. The approach suggested by GM simply assumes that thieves would not make this effort, and does nothing to make it more risky or decrease the ease with which that part could be fenced. The proposed definition would require the marking of parts which, with relatively simple and inexpensive modifications, can be fitted onto vehicles in high theft lines. Marking such parts would decrease the ease with which they could be fenced and make thefts of those parts more risky. Given the proliferation of chop shop operations and the large profits which can be made in such illegal operations, both of which were noted in the legislative history of the Theft Act, the agency has determined that it would be inappropriate to adopt the more restrictive definition of "interchangeable part" suggested by GM.

4. *Annual Updates of the Listing of Selected Lines.* The NPRM indicated that the list of those lines which have been selected as high theft lines would be updated annually. The listing of those lines will appear in Appendix A of Part 541, the vehicle theft prevention standard. Chrysler supported the proposal, but Ford suggested that the updating be done every six months, so that law enforcement agencies would be up to date on those vehicles which should be marked. Under the proposed procedures for selecting high theft lines, the final selection for new lines introduced in the 1988 and subsequent model years will be completed no later than 13 months before the new lines are introduced. Thus, no matter when a new line will be introduced, there will be at least one annual update published between the final selection of a new line as a likely high theft line, and its introduction. The only time when there could be a gap would be in the 1987 model year, the first model year in which vehicles in high theft lines would be required to be marked. If there is a time when a line selected as a high theft line would not be listed as such, the agency can, of course, publish a special update to the list. Hence, it does not appear necessary to make a regular updating of this list more frequently than annually.

Both Ford and GM asked that new lines not be listed in Appendix A immediately upon their selection as high theft lines. Ford asked that the listing be postponed until the manufacturer has actually started production of vehicles in that new line, while GM asked that the listing be postponed until the manufacturer has made the vehicle's nameplate public. NHTSA agrees with the implicit point made by GM that there is no reason for the agency to announce a new line's nameplate before the manufacturer does so. However, the Ford suggestion would in almost every instance mean that NHTSA would be withholding information long after the manufacturer itself had made the information public, and there would no longer be a reason for withholding such information. Therefore, the agency will not publicly disclose the name of new lines before the manufacturer itself announces that name. If the manufacturer chooses to delay that announcement until the actual start of production, the agency will not disclose the nameplate prior to that announcement. If that line is selected as a likely high theft line and if vehicles in that line will be introduced before the next regularly scheduled annual update of the listing of new lines selected as high theft lines will be published, NHTSA will make a special update to the listing after the manufacturer's announcement of the nameplate for the line.

5. *Adequacy of Confidentiality Procedures.* The NPRM specifically sought comments on the sufficiency of NHTSA's current procedures for handling confidential information (49 CFR Part 512) to protect the confidential information it may receive from the manufacturers in connection with the selection process. Chrysler specifically stated that the procedures in Part 512 are adequate, and GM did likewise, but with the caveat that no outside contractors employed by NHTSA should be given access to information provided to the agency by manufacturers during the selection process. The agency will not use outside contractors for the selection process, nor does it anticipate that it will make available to outside contractors any information obtained during the selection process. However, NHTSA cannot state that it will never make any information obtained during the selection process available to outside contractors. If such a disclosure must be made, NHTSA will follow appropriate procedures to ensure that the contractor does not disclose the information to other parties.

B. Comments on Specific Sections of the Proposed Rule

1. *Section 542.1: Procedures for selecting pre-standard new lines that are likely to have high theft rates.*

The NPRM proposed that the manufacturers would apply the criteria set forth in Appendix C of Part 541 (the proposed vehicle theft prevention standard) to each line introduced between January 1, 1983, and the effective date. Briefly, the criteria of Appendix C are:

(a) Price;

(b) Vehicle image;

(c) Lines with which the line in question is intended to be competitive;

(d) Line or lines that the new line replaces;

(e) Presence or absence of any new theft prevention devices;

(f) Any available theft data for lines already introduced.

GM commented that the agency should adopt some weighting of each of these criteria, so that the process of selecting a line as a high theft line would be more objectively defined. GM did not suggest how this might be done with the currently available data. NHTSA agrees that ideally there would be sufficient data available so that each of these criteria could be assigned a certain number of points and specify that any line which earned x or more points would be selected as a high theft line. Unfortunately, such a system is simply not possible with the current data.

As noted in the NPRM, these judgments of likely high theft lines are partially subjective judgments. NHTSA concurs with GM's statement that neither price nor vehicle image alone can be strictly correlated to vehicle theft rates. However, NHTSA believe that the six criteria set forth in Appendix C considered together do form an objective basis for predicting if a new line is likely to be a high theft line. If manufacturers in their submissions explain their positions in detail and provide data for each of these criteria, NHTSA anticipates that the question of whether a vehicle should or should not be selected as a high theft line will be fairly simple to answer in most cases. The agency intends to give a full explanation of the bases for its conclusions to the manufacturer in the preliminary and final determinations. If a manufacturer believes that the agency has acted arbitrarily or purely subjectively, the manufacturer has a right to seek judicial review of the selection.

2. *Section 542.2: Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.*

Section 603(a)(3) of the Cost Savings Act establishes a limit of 14 on the combined total of lines introduced before the effective date of the theft prevention standard that may be selected for coverage under that standard because of actual or likely high theft rates. This proposed section provided procedures for implementing that limit.

Under the proposed procedures, each manufacturer producing a total of more than 14 lines that either exceed the median theft rate or are likely to be high theft lines would evaluate and rank those lines in accordance with the extent to which they satisfy the criteria set forth in Appendix B of Part 541, the proposed vehicle theft prevention standard. Those criteria are:

(a) The closeness of the line's theft rate to the median theft rate;

(b) The approximate production volume of vehicles in the line during the next model year;

(c) The likelihood of significant design changes to the line;

(d) The rate at which stolen vehicles in the line are recovered with all parts intact;

(e) The plans for installation of an original equipment anti-theft device in the line, which satisfies the requirements of section 605 of the Cost Savings Act; and

(f) The number of other lines having parts interchangeable with those of that line and the production volumes of those lines.

The manufacturer would then submit its rankings and evaluations to NHTSA, together with the factual information it considered in reaching its rankings.

Again in commenting on this proposed procedure, GM stated that the criteria should be weighted, and again did not suggest how this might be done. The agency's response is the same as that made when GM raised this point in commenting on § 542.1.

GM went on to object strongly to the agency's proposed inclusion of a manufacturer's plans for installing a satisfactory original equipment anti-theft device as one of the criteria for determining which of its lines should be marked. GM stated that this objection would particularly apply if such plans would reduce the chances that that line would be among those selected as one of the 14 to be marked. To explain this objection, GM stated that it believed that "the statutory option of using an approved theft deterrent system was intended to exempt lines which were

otherwise identified as having to meet the standard."

The agency proposed this criterion in Appendix B of Part 541 because of its belief that Congress intended lines with actual or likely high theft rates to either be marked, in accordance with the requirements of the theft prevention standard, or to be equipped with anti-theft devices. However, further examination of this issue has convinced the agency that its proposed course of action should not be adopted in a final rule.

Under the proposed criterion, a manufacturer's plans to install an original equipment anti-theft device in a line could have resulted in that line being excluded from the list of 14 lines to be marked. Thus, the manufacturer would have lost the opportunity under the exemption provision to be permitted to install such devices instead of marking the parts of that line. Congress clearly indicated that it was willing to give these devices the opportunity to be proven as effective as parts marking in deterring vehicles thefts (H. Rept. at 17). The agency has re-examined the proposed criterion and determined that it would have the inadvertent effect of denying manufacturers the opportunity Congress intended. We believe that GM's reading of the statute better effectuates congressional intent and is therefore adopted. Thus, in order to provide this opportunity, NHTSA must permit manufacturers to install such devices on vehicles in lines which would otherwise be required to have their major parts marked.

Accordingly, NHTSA will not consider plans to install an original equipment anti-theft device as a factor militating against the inclusion of that line in the 14 lines chosen for coverage by the theft prevention standard. Further, the final rule setting forth the theft prevention standard will not list this criterion in Appendix B.

3. *Section 542.3: Procedures for selection of pre-standard low theft lines with a majority of major parts interchangeable with those of a high theft line.*

The NPRM proposed that manufacturers would submit their views on whether their lines with theft rates likely to be below the median theft rate had a majority of major parts interchangeable with those of any of the manufacturer's high theft lines, together with the supporting rationales for those views. NHTSA stated in the NPRM that it anticipated that the statement of views and supporting rationales would take the following form. The manufacturers would submit a listing of the number and identity of the major parts which are incorporated in each line believed by the manufacturer to have an actual or likely low theft rate, and which are interchangeable with the major parts of those of its lines believed by the manufacturer to have an actual or likely high theft rate. The manufacturer would then calculate whether low theft lines with a majority of major parts interchangeable with those of a high theft line accounted for more than 90 percent of the total production of the lines with interchangeable parts.

Ford commented that manufacturers should not be expected to list each of its car lines with actual or likely low theft rates and show how many and which of its major parts are interchangeable with those on its likely or actual high theft lines. Instead Ford suggested that the manufacturers should simply be expected to list each of the low theft lines with fewer than eight interchangeable major parts, identify those low theft lines with eight or more interchangeable major parts, and state whether those latter low theft lines constituted more or less than 90 percent of the total production of all lines containing such interchangeable parts.

NHTSA gave serious thought to proposing a procedure similar to that suggested by Ford in its comments. However, the agency ultimately decided to propose the more detailed procedures set forth in the NPRM. The reasoning was as follows: the manufacturers would have to make the detailed analysis set forth in the proposed procedures to be able to make the simple statements suggested by Ford. Hence, the only additional task associated with the more detailed procedures would be that of transcribing the analysis onto paper. This is a minimal task compared with generating the analysis. Further, the detailed listing proposed in the NPRM would help to facilitate agreements between the agency and the individual manufacturer. Both parties would have clearer understanding of the identity of the major parts which the other party believed should or should not be treated as interchangeable. The manufacturer would provide its version of this listing in its submission and the agency would provide its version in its preliminary determination. Any disagreement would therefore be clearly and quickly focused on particular parts, thereby facilitating reaching agreement as to whether the parts really were interchangeable. Since these more detailed explanations would facilitate an expeditious reaching of agreements while imposing only a very minor burden on the manfacturer, the agency decided that the more detailed explanations should be specified in these procedures.

Ford went on to comment that, if the agency decided to adopt the proposed procedures, it should limit the issue of interchangeability to "covered major parts", which term is defined in section 601(6) of the Cost Savings Act as "any major part selected . . . for coverage by the vehicle theft prevention standard issued under section 602." Ford noted that the term "major part" as defined in section 601(7) of the Cost Savings Act includes both covered major parts (those which are required to be marked on high theft lines by the theft prevention standard) and other major parts, which will not be required to be marked by the theft prevention standard.

NHTSA agrees with Ford's comment, and did not intend to suggest that manufacturers should provide interchangeability information on major parts which are not covered major parts. To clarify this intent, this final rule has been changed from the proposed language to refer to covered major parts in both this section and § 542.5.

VW stated that it was not clear if only the interchangeable parts on low theft lines had to be marked or all covered parts, including those which were not interchangeable with any on the high theft line had to be marked. VW further asked if, assuming that all covered parts had to be marked on certain low theft lines, the replacement parts for the non-interchangeable parts had to be marked.

To answer VW's questions, both the original equipment and replacement covered major parts must be marked on those low theft lines that have a majority of covered major parts interchangeable with those of a high theft line, without regard to whether the particular covered major part is itself interchangeable. Congress determined that, although certain vehicles are not themselves from a high theft line, the high degree of interchangeability of their parts with those of a high theft line would make these otherwise low theft vehicles likely targets for car thieves. As likely targets for car thieves, Congress determined that *all* covered major parts on these vehicles should be marked, not just those which were interchangeable with the covered major parts of the high theft line. This will serve as an additional deterrent to the theft of these vehicles. To express these determinations, Congress specified that vehicles in low theft rate lines with a majority of covered major parts interchangeable with those of an actual or likely high theft line are considered high theft lines; section 603(a)(1)(C) of the Cost Savings Act. Section 602(a)

specifies that the theft prevention standard shall require marking of covered major parts that are installed by manufacturers in high theft lines and marking of the major replacement parts for the covered major parts. These provisions make clear that *all* covered major parts on lines selected as high theft lines under section 603 must be marked. Similarly, *all* major replacement parts for the covered major parts of high theft lines selected under section 603 must be marked.

VW also commented on the agency's example showing that a manufacturer's "b" line, a low theft line, had a majority of covered major parts interchangeable with both the "x" and "y" lines, which are both high theft lines. NHTSA stated in the NPRM preamble that the manufacturer would have to determine if total production of the b line accounted for more than 90 percent of the b, x, and y lines combined. VW stated its understanding that the manufacturer would have to make two determinations. First, the manufacturer would determine if b line production accounted for more than 90 percent of the total production of the b and x lines, and then it would determine if b line production accounted for more than 90 percent of the total production of the b and y lines. VW's understanding is correct. The use of the singular "line" in section 603(a)(1)(C)(ii), when referring to high theft lines with covered major parts interchangeable with low theft lines, is in contrast to the use of the plural "lines", when referring to low theft lines with those interchangeable parts throughout the rest of section 603(a)(1)(C). This shows an intent to make the determinations in the manner stated by VW.

Chrysler responded to the agency's proposed means of determining if engines and transmissions should be considered interchangeable between lines. The NPRM proposed that, if an engine or transmission is offered as standard or optional equipment on two or more lines, the engine or transmission should be considered interchangeable among those lines. Chrysler argued that this position was "an arbitrary declaration of complete interchangeability [which] overlooks the above described relatively complex modifications and/or related component installations that would be required to make these assemblies operable." NHTSA agrees that modifications to such parts as fuel lines, wiring harnesses, throttle linkages, electronic engine controls, and emissions controls might well be necessary to substitute a different engine or transmission, and that these modifications are relatively complex. However, all available evidence (specifically the transcript of the public meeting on December 6 and 7, 1984 and agency meetings with police and insurance organizations) indicates that chop shops are relatively sophisticated operations capable of making these modifications. In this case, a few hundred dollars worth of work would allow these shops to install a stolen component worth several thousand dollars. Given this potentially large profit after performing this work and the expressed intent of the Theft Act to impede the operations of chop shops, NHTSA is adopting its proposed interchangeability criteria for engines and transmissions as best effectuating the purposes of the Theft Act.

GM questioned the agency's stated intent to consult current auto parts data publications as an aid in determining interchangeability of parts. Examples of such publications are "The Hollander", Auto-Truck Interchange Edition, Hollander Publishing Co., Inc., Minnetonka, Minnesota, and "Mitchell's Manual", Cordura Publications, San Diego, California. GM stated that it knew of no basis on which to conclude that these publications would be an effective reference for use in determining interchangeability for purposes of the theft prevention standard. Further, GM stated that, since neither the government nor manufacturers control the content of these publications, GM was concerned that they might not be appropriate for use in connection with the theft prevention standard.

NHTSA did not state that these publications would be used as the final arbiter of whether or not parts are interchangeable; it stated only that it would consult these publications. These publications are used daily by repair shops to decide which parts can be used to replace damaged parts. The credibility of these publications depends on their designations of interchangeability being accurate. NHTSA believes that consulting these publications as the best available independent source of interchangeability is proper for the purposes of the theft prevention standard, and hereby announces its intention to do so.

4. *Section 542.4: Procedures for the Selection of New Lines Introduced On or After the Effective Date of the Standard That are Likely to Have High Theft Rates.*

The NPRM proposed that these procedures would be very similar to those proposed under § 542.1, except that the agency would have 90 days to issue its preliminary determination after the manufacturer submitted its views and that the manufacturer would have the right to request a meeting with the agency to further amplify its views during this 90 day period. A special schedule was set out for new lines to be introduced in the 1987 model year because of the time constraints. That special schedule would ensure that final determinations for all new lines to be introduced in the 1987 model year would be made by March 1, 1986.

Both VW and GM stated in their comments that this section would not give them enough leadtime although it would satisfy the statutorily mandated six months of leadtime. VW stated that the agency should allow itself only 30 days to consider the manufacturer's submission before issuing its preliminary determination. VW's argument was that if a 30 day period was sufficient for the purposes of §§ 542.1, 542.2, and 542.3, it should also be sufficient for this section and 542.5. GM stated that it was going to make its submission for its new line to be introduced in the 1987 model year concurrently with its submissions under § 542.1, 542.2, and 542.3 by July 24. GM expressed its hope that this would allow the agency to issue its preliminary determinations under this section concurrently with those under the previous sections, that is, by August 24, 1985.

The agency has carefully considered these comments in the context of both this section and § 542.5. The NPRM explained the agency's belief that the 90 day period between its receipt of the manufacturer's submission and its issuance of a preliminary determination would facilitate agreements on the appropriate selections. The increased opportunity for meetings and detailed analysis of the manufacturer's submission by the agency should ensure that both parties fully understand the other's position. That understanding should, in turn, lead to more agreements during the selections process.

However, for the 1987 model year, the agency believes that the need to ensure adequate leadtime to the manufacturers outweighs the interest in facilitating agreements. Therefore, NHTSA is amending the proposed procedures to specify that the agency will issue its preliminary determination to the manufacturer no later than 30 days after receiving the manufacturer's submission under this section and § 542.5. This change will ensure that manufacturers will have the same leadtime for their new 1987 lines as they will have for

their pre-1987 lines. NHTSA would like to note that it is not changing the date by which it will provide those manufacturers who do not make submissions under this section with the agency's unilateral preliminary determinations. The proposed December 31, 1985 date is adopted in this final rule for such manufacturers.

In the case of the 1988 and subsequent model years, NHTSA is adopting the proposed 90 day period for considering manufacturer's submissions before issuing its preliminary determinations, for the reasons set forth in the NPRM. There will be no leadtime concern in these model years because, even allowing the 90 day period, a final determination for each new line must be made 13 months before the new line is introduced. No manufacturer or any other commenter to Theft Act rulemakings has suggested that a 13 month leadtime is inadequate.

5. *Section 542.5: Procedures for selecting post-standard low theft new lines with a majority of major parts interchangeable with those of a high theft line.*

These proposed procedures were very similar to those set forth in § 542.3, but with a 90 day period for the agency to consider the manufacturer's submission before issuing a preliminary determination and with the manufacturers having the right to request a meeting during this 90 day period. The proposed 90 day period has been shortened to 30 days for the 1987 model year in this final rule for the reasons set forth above in the discussion of § 542.4, and appropriate reference to "covered major parts" have been added, per the explanation in the discussion of § 542.3 above. In all other respects, this rule is adopted as proposed.

GM commented that this section should be deleted from the procedures, because this section is "inappropriate at this time." GM argued that such provisions should only be added if and when a relationship is established between thefts or theft rates and interchangeability. This comment ignores the express language of the Theft Act. Section 603(a)(1)(C) explicitly designates as high theft lines subject to the theft-prevention standard those lines introduced after the effective date of the theft prevention standard with likely low theft rates, but when have a majority of covered major parts interchangeable with those of a line with actual or likely high theft rates. Section 603(a)(2) specifies that the specific lines which are to be subject to the standard may be selected by agreement between the manufacturer and the agency. These provisions expressly require this agency to have § 542.5 in these procedures.

Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers

Because this rulemaking is procedural, merely facilitating the implementation of the substantive provision of Part 541, the agency has determined that this rulemaking is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, this rule does not require manufacturers to participate in the selection process and specifies no penalties for not doing so. It merely sets forth the procedures which will be followed by the agency and may be followed by the manufacturers during the selection process. Accordingly, a full regulatory evaluation has not been prepared for Part 542. A full regulatory evaluation was prepared for the proposed theft prevention standard in Part 541. NHTSA believes that the rulemaking does not affect the impacts described in the Part 541 preliminary regulatory evaluation.

B. Small Business Impacts

The agency also has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Since the rule is procedural and does not impose any substantive requirements, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule and determined that this rule will not have a significant impact on the quality of the human environment.

D. Paperwork Reduction Act

The procedures in this rule for manufacturers to submit their views and data to NHTSA as a part of the selection process are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, this rule is being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the Federal Register when OMB makes its decision on this request.

List of Subjects in 49 CFR Part 542

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by adding a new Part 542 to read as follows:

PART 542—PROCEDURES FOR SELECTING LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

Sec.

542.1 Procedures for selecting pre-standard new lines that are likely to have high theft rates.
542.2 Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.
542.3 Procedures for selecting pre-standard low theft lines with a majority of major parts that are interchangeable with those of a high theft line.
542.4 Procedures for selecting post-standard new lines that are likely to have high theft rates.
542.5 Procedures for selecting post-standard low theft new lines with a majority of major parts interchangeable with those of a high theft line.

Authority: 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

§ 542.1 Procedures for selecting pre-standard new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any pre-standard new lines are lines likely to have high theft rates.

(b) *Application.* These procedures apply to each manufacturer that has introduced or will introduce a new line into commerce in the United States after January 1, 1983, and before [the effective date of the standard, 49 CFR Part 541], and to each of those lines.

(c) *Procedures.* (1) Each manufacturer uses the criteria in Appendix C of Part 541 of this chapter to evaluate each new line and to identify those lines the manufacturer believes are likely to have a theft rate exceeding the median theft rate.

(2) The manufacturer submits its evaluations and identifications made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and identifications, to NHTSA by September 3, 1985.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or by August 24, 1985, whichever is sooner,

the agency considers that submission, if any, independently evaluates each new line using the criteria in Appendix C of Part 541 of this chapter, and, on a preliminary basis, determines whether those new lines should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) of this section become final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations by October 24, 1985, and informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.2 Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in implementing the 14 line limit applicable to certain groups of high theft lines in the initial year of the theft prevention standard.

(b) *Application.* These procedures apply to each manufacturer that produces more than 14 lines that have been or will be introduced into commerce in the United States before [the effective date of standard, 49 CFR Part 541] and that have been listed in Appendix A of Part 541 of this chapter or have been identified by the manufacturer or preliminarily determined by the agency to be high theft lines under § 542.1, and to each of those lines.

(c) *Procedures.* (1) Each manufacturer evaluates each of its lines in accordance with the criteria in Appendix B of Part 541 of this chapter and ranks the lines based on the extent to which they satisfy those criteria.

(2) Each manufacturer submits its evaluations and rankings made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and rankings, to NHTSA by September 3, 1985.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, independently evaluates each of the manufacturer's lines using the criteria in Appendix B of Part 541 and, on a preliminary basis, determines which 14 lines should be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and rankings, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider its preliminary ranking under paragraph (c)(3) of this section of any of the highest 14 ranked lines. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section informing it of the agency's evaluations and preliminary rankings. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary rankings. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary rankings of the 14 highest ranked lines under paragraph (c)(3) becomes final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final rankings by October 24, 1985, and informs the manufacturer by letter of those rankings and its response to the request for reconsideration.

§ 542.3 Procedures for selecting pre-standard low theft lines with a majority of major parts that are interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in the determination of whether any pre-standard lines with low theft rates have major parts interchangeable with a majority of the covered major parts of a line with an actual or likely high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States before [the effective date of the standard, 49 CFR Part 541] and that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily determined by the agency to be a high theft line under § 542.1, and

(ii) At least one line that has been or will be introduced into commerce in the United States before that date and that is below the median theft rate; and

(2) Each of those sub-median rate lines.

(c) *Procedures.* (1) For each of its lines with a theft rate below the median rate, each manufacturer identifies how many and which of the major parts of that line are interchangeable with the covered major parts of any other of its lines that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily determined by the agency to be a high theft line under § 542.1.

(2) If the manufacturer concludes that one or more lines with a sub-median theft rate has major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer decides whether all the vehicles of those lines with sub-median theft rates and interchangeable parts account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its identifications and conclusions made under paragraphs (c) (1) and (2) of this section, together with the facts and data underlying those identifications and conclusions, to NHTSA by September 3, 1985.

(4) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of those determinations, together with the bases for the determinations, including the factual information considered by the agency.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4)

informing it of the agency's preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations under paragraph (c)(4) becomes final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes it final determinations by October 24, 1985, and informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.4 Procedures for selecting post-standard new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any post-standard line is likely to have a theft rate above the median rate.

(b) *Application.* These procedures apply to each manufacturer which plans to introduce a new line into commerce in the United States on or after [the effective date of the standard, 49 CFR Part 541], and to each of those lines.

(c) *Procedures.* (1) Each manufacturer uses the criteria in Appendix C of Part 541 of this chapter to evaluate each new line and to conclude whether the manufacturer believes that new line is likely to have a theft rate exceeding the median theft rate.

(2) The manufacturer submits its evaluations and conclusions made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and conclusions, to the NHTSA not more than 24 months before the introduction of each new line and not less than 18 months before that date for new lines to be introduced in the 1988 or subsequent model years. For new lines to be introduced in the 1987 model year, the manufacturer makes this submission not later than October 1, 1985. The manufacturer may request a meeting with the agency during this period to further explain the bases for its evaluations and conclusions.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than December 31, 1985, in the case of new lines introduced in the 1987 model year, and within 90 days after its receipt of the manufacturer's submission under paragraph (a)(2) of this section, or not later than 15 months before the introduction of each new line, in the case of new lines to be introduced in the 1988 or subsequent model years, whichever is sooner, the agency considers that submission, if any, independently evaluates each new line using the criteria in Appendix C of Part 541 of this chapter and, on a preliminary basis, determines whether the new line should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) becomes final 45 days after the agency sends the letter specified in paragraph (c)(3) unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations within 30 days of its receipt of the request for the 1987 model year and within 60 days of its receipt of the request for the 1988 and subsequent model years. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.5 Procedures for selecting post-standard, low theft, new lines with a majority of major parts interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in the determinations of whether any post-standard lines that will be likely to have a low theft rate have major parts interchangeable with a majority of the covered major parts of a line having or likely to have a high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States and that has been listed in Appendix A of Part 541 of this chapter or has been identified by the manufacturer or preliminarily or finally determined by NHTSA to be a high theft line under § 542.1 or § 542.4, and

(b) At least one line that will be introduced into commerce in the United States on or after the [effective date of the standard, 49 CFR Part 541] and that the manufacturer identifies as likely to have a theft rate below the median theft rate; and

(2) Each of those likely sub-median rate lines.

(c) *Procedures.* (1) For each new line that a manufacturer identifies under Appendix G as likely to have a theft rate below the median rate, the manufacturer identifies how many and which of the major parts of that line will be interchangeable with the covered major parts of any other of its lines that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily or finally determined by the agency to be a high theft line under § 542.1 or § 542.4.

(2) If the manufacturer concludes that a new line with a likely sub-median theft rate will have major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer determines whether all the vehicles of those lines with likely sub-median theft rates and interchangeable parts will account for more than 90% of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its evaluations and identifications made under paragraphs (c) (1) and (2) of this section, together with the factual information underlying those evaluations and identifications, to NHTSA not more than 24 months before introduction of the new line and not less than 18 months before that date for new lines to be introduced in the 1988 or subsequent model years. For new lines to be introduced in the 1987 model year, the manufacturer makes this submission not later than October 1, 1985. During this period, the manufacturer may request a meeting with the agency to

further explain the bases for its evaluations and conclusions.

(4) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, or not later than December 31, 1985, in the case of new lines to be introduced in the 1987 model year, and within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than 15 months before the introduction of each new line, in the case of new lines to be introduced in the 1988 or subsequent model years, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with likely sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's preliminary determinations, together with the factual information considered by the agency in making them.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) informing it of the agency's preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations made under paragraph (c)(4) becomes final 45 days after the agency sends the letter specified in that paragraph unless a request for reconsideration of it has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes it final determinations within 30 days of its receipt of the request for the 1987 model year and within 60 days of its receipt of the request for the 1988 and subsequent model years. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

Issued on August 21, 1985.

Diane K. Steed,

Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 50587-5133]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement conservation and management measures as prescribed in Amendment I (amendment) to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This final rule provides for measures designed (1) to maintain more effectively the landings and productivity of each user group to the maximum extent possible; (2) to restore the overfished stock of Gulf king mackerel; and (3) to prevent overfishing of king and Spanish mackerel, and cobia. The intended effect is to rebuild and maintain all stocks at a maximum sustainable yield (MSY) level.

EFFECTIVE DATE: September 22, 1985.

ADDRESSES: Copies of the final supplemental regulatory impact review/regulatory flexibility analysis are available from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), approved the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) on April 1, 1982, and the Secretary of Commerce (Secretary) implemented final regulations on February 4, 1983 (48 FR 5272), under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). This final rule implements the amendment to the FMP which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). The FMP manages the coastal migratory pelagic fishery throughout the fishery conservation zone (FCZ) off the South Atlantic coastal states from the Virginia-North Carolina border south and through the Gulf of Mexico to the Texas-Mexico border. The rule applies only to this area. The management unit for the FMP consists of Spanish mackerel, king mackerel, and cobia. Dolphin, bluefish (Gulf of Mexico only), little tunny and cero mackerel are minor species in the fishery, and data collection requirements of the FMP apply only to these seven species. The preamble to the proposed rulemaking for the amendment contained a description of recent data and analyses which indicate there are two migratory groups of king mackerel and that these should be treated as separate stocks for management purposes. In addition, allocations by user groups, quotas, bag limits, statistical reporting, optimum yield, and a flexible management system were discussed in detail. These discussions are not repeated here.

Comments and Responses

Forty-five comments on the proposed rule were received from 18 commenters. Commenters included State marine resource agencies, commercial fishing organizations, the Gulf and South Atlantic Fishery Management Councils, a recreational fishing organization, and fishermen.

Inconsistency With National Standards

A recreational fishing organization stated that the objective of stabilizing yield at MSY inconsistent with national standard 1. NOAA does not agree. The long-term goal of optimum yield is to achieve MSY as is stated in the definition of the word "optimum" in the Magnuson Act (section 3(XVIII)(B)) and to prevent overfishing, which is the primary objective of national standard 1. Therefore, no change is made in the final rule.

The same recreational fishing organization stated that the rule is inconsistent with national standard 2 because the best scientific information available was not used. NOAA does not agree. All of the best scientific information available, including the catch records identified by the organization, was factored into the scientific assessments. Therefore, no change is made in the final rule.

This recreational fishing organization also stated that the rule is inconsistent with national standard 4 because of the differences in catch reduction among user groups. NOAA does not agree. The percentage reduction in the commercial catch is smaller than the recreational reduction because the Councils took into account the sale of king mackerel by recreational fishermen and thus transferred 2 percent of the recreational allocation to the commercial quota. Therefore, no change is made in the final rule.

The same recreational fishing organization stated that the rule deprives the Secretary of Commerce from approving or rejecting Council plans. NOAA does not agree. The Secretary has delegated authority to the Regional Director to serve as his designee therefore the Secretary is not denied access to the approval process. In addition, the Regional Director may not act arbitrarily if he should deem it appropriate to reject the Council's recommendations made under § 642.27. To reject a recommendation, the Regional Director must find that the recommendation is inconsistent with the objectives of the FMP, the Magnuson Act or other applicable law. Further, the rejection must be supported in writing. Paragraph § 642.27(d) has been modified to clarify this requirement.

Boundaries for King Mackerel Stocks

A commercial fishermen's non-profit corporation requested that the winter boundary between the Gulf and Atlantic king mackerel stocks be moved to the Volusia/Brevard County, Florida line and one individual recommended a move to Cape Canaveral. The Volusia/Flager County, Florida line was established based on the best tagging and stock assessment data available. NOAA is currently conducting additional tagging studies to better determine distribution of the two stocks of king mackerel. Therefore, NOAA is implementing the Volusia/Flager location for the line of separation in the final rule until new data indicate that the issue should be readdressed by the councils.

Quotas and Allocations

A recreational fishing organization stated that the number of fish killed and lost by purse seine operations should be counted against the commercial quota. NOAA points out that the amendment establishes a quota for purse seines for the purpose of studying the impacts. The study will be completed on April 30, 1986. Once the study results are available the Councils will readdress the purse seine issue.

A major fishery organization and a commercial non-profit corporation commented that the division of the commercial quota between Florida commercial fishermen and Louisiana commercial fishermen is unfair. A member of the Florida Marine Fisheries Commission expressed concern with the allocation between Louisiana and Florida fishermen but in general agreed with it. NOAA shares this concern and agrees that from a historical perspective Florida fishermen will suffer a greater percentage of the reduced catch. Nevertheless, NOAA believes it is the Council's prerogative to distribute the allocations so that one geographical area does not take a disproportionate share of the catch. It should also be noted that the western geographical area includes Alabama, Mississippi and Texas in addition to Louisiana. From the perspective that Florida will get 69 percent of the allocation and the western area 31 percent, the allocation does not appear to be unfair to Florida fishermen. Therefore, the measure is implemented in the final rule as proposed.

A non-profit commercial fishing corporation expressed concern over the ratio of recreational and commercial harvest of king mackeral and requested that this be monitored. They were primarily concerned with the sale of recreationally caught fish which are counted against the commercial quota. The harvest of both groups and other issues will be monitored by NMFS through the FMP's permit and statistics programs. Should the monitoring program indicate the need to readdress the allocations, they may be modified by FMP amendment. Therefore, NOAA has made no change in the final rule.

A recreational fishing organization stated the rule discriminates against consumers because the netters will take such large quantities in a short period of time that consumers use will be restricted to frozen products. NOAA does not agree. Netting occurs primarily in the winter months on the southeast coast of Florida. The amendment will not change this pattern. Best available data shows that netters take about 44 percent of the commercial catch, yet only 15 percent goes to the frozen market. No change is made in the final rule because there is no evidence that net catches will increase under this amendment, thus the amount going to the freezer should not increase.

The State of Florida commented that total allowable catch (TAC) for Spanish mackerel was too high and, along with a recreational fishing organization, commented that a recent assessment by Florida's Department of Natural Resources shows that the Spanish mackerel stock is declining. NOAA concludes that TAC was set based on the best scientific information available at the time the amendment was prepared. Any necessary changes in TAC based on more recent information can be made under provisions set forth in § 642.27 of the rule.

The State of Florida further commented that the TAC for king mackerel should be near 11 million pounds. NOAA does not agree. Although a TAC of 11 million pounds would rebuild the stock more quickly, the Councils chose the higher range based on lessening the socio-economic impacts while simultaneously protecting and rebuilding the stock. Therefore, TAC is set as proposed.

A recreational fishing organization stated that enforcement costs are too low. NOAA's reassessment of the costs showed they were too low. Revised estimates are $80,000 if the States adopt compatible regulations. Without compatible State regulations, the regulations would be extremely expensive to enforce.

Closing of Fishing

One individual recommended a two year moratorium on commercial and recreational fishing for king and Spanish mackerel. Another suggested a five year moratorium on net fishing. One sport fishing association and four individuals recommended eliminating fishing with gill nets and purse seines along with the use of spotter planes. The State of Florida and one commerical fishing organization sugested the prohibition of purse seines. The State of Florida also suggested banning the use of roller rigs and deep gill nets in the Spanish mackerel fishery. Two commenters suggested prohibiting all commerical fishing for king mackerel. While data indicate the need for management of the mackerel stocks, there is no justification for implementing such severe measures that would be economically devastating for the commerical fishing industry or that would deny recreational fishermen access to the resource.

Information is being gathered on purse seines through the use of observers authorized under the FMP. This study will terminate in the spring of 1986. When the study data as well as information from other studies become available necessary modification to the FMP will be considered. However, because of the lack of justification NOAA is not implementing the commenters' recommendations in the final rule.

Bag Limit

A suggestion was received from one individual recommending a change of the king mackerel bag limit of two fish per person per trip to two fish per person per day. This requirement was considered but abandoned since it is impossible to enforce bag limits on a daily basis because of the question of when a fishing day starts or ends. Therefore, NOAA has made no change in the "per trip" requirements.

One commenter expressed concern for king mackerel caught and released after a bag limit is taken. He was concerned with the possible damaging effects of some types of hooks and caught fish being susceptible to predators due to exhaustion. NOAA is aware of the potential for these problems, however, it is also the intent of the measure to discourage fishermen from continuing to fish in areas where mackerel are abundant and/or modify their gear after they have taken their limit. Therefore, NOAA has made no change in the final rule.

One commenter suggested a bag limit of 5 fish because fishermen were going to continue fishing after catching 2 fish and the caught fish would die anyway due to exhaustion and hook damage. NOAA does not agree with an increase in bag limits because the best scientific information available suggests a 2 fish bag limit is necessary to rebuild the stock. As previously mentioned the intent of this measure is to discourage fishing after the bag limit is reached so that fish are not unnecessarily killed. Therefore, the two fish per person per trip is implemented as proposed.

Equitable Treatment for Commercial and Recreational Fishermen

One individual questioned whether restrictions were being implemented for commercial fishing. The final rule contains the following measures which directly affect commercial fishing for king mackerel: (1) Requirement of a permit (Gulf only), (2) reporting requirements, (3) identification requirements for a vessel, (4) annual allocations (including a purse seine quota), and (5) size limits for Spanish mackerel and cobia. No changes have been made in these measures in the final rule as the result of this comment.

A major fishery organization commented that the variable allocation formula will guarantee that the recreational sector will get increasingly more of future allocations while the commercial sector will get less. Conversely, a recreational organization commented that the future allocation formula discriminated against recreational fishermen. NOAA agrees that the allocation formula does not provide fair and equitable treatment among user groups and is therefore inconsistent with national standard 4. The formula for modification of future allocations has been disapproved and the allocations are fixed in the final rule for both migratory groups at the ratios set forth in the amendment for the first year. Future changes in allocations may be made only by plan amendment.

A member of the Florida Marine Fisheries Commission agreed with the charterboat bag limit. A major fishing association commented that charterboat captains will suffer more economic loss than anyone else. NOAA shares this concern and agrees that from a perspective of vessel catches, charterboat catches will be reduced by a larger percentage than private boats. However, from a perspective of individual fishermen, anglers aboard charterboats are entitled to 3 fish per trip (excluding captain and crew) which is an advantage over anglers on private boats. While this may be viewed as unfair from the perspective of the anglers aboard private boats, NOAA believes this is an appropriate socio-economic consideration given the importance of the charterboat industry to coastal economies. Therefore, this measure is implemented as proposed.

Fishing Permits

One commenter questioned the fairness of the requirement that at least ten percent of an individual's income must be from fishing during the preceding year in order to qualify for a permit. He was concerned that retired persons on pensions and/or social security would be denied a permit because their income from commercial fishing would be less than 10 percent of their total income. The criteria for this requirement states "that at least 10 percent of his or her *earned* income (§ 642.4(b)(6)) was derived from commercial fishing". The reference to "earned income" excludes income from pensions and/or social security in making the determination of 10 percent. Therefore NOAA has made no change to this requirement in the final rule.

One commenter recommended a 2-year moratorium on fishing followed by a requirement for permits for which a fee would be charged. He suggested these monies be used for enforcement purposes. The Magnuson Act prohibits charging fees for permits in excess of the administrative costs of issuing the permit. The $10 charge at § 642.4(e) is based upon administrative cost estimates from States that issue and charge for licenses or permits. Because of this limitation NOAA may not collect funds for enforcement purposes, and therefore no change is made in the final rule.

The South Atlantic and Gulf of Mexico Fishery Management Councils recommended that § 642.4(b)(6) be revised to state that earned income was derived from commercial fishing during the previous calendar year rather than the 3 preceding years as published in the proposed rule. NOAA concurs with this recommendation since the 3-year requirement was published in error. The final rule is revised to reflect this change.

The South Atlantic Fishery Management Council (SAFMC) stated it did not approve assessing a fee for any permit under § 642.4(e). No change has been made in the final rule because the SAFMC approved the amendment which allows for an administrative fee up to $10. NMFS, however, does not plan to charge a fee during the initial years of the amendment.

Owners or operators of commercial vessels fishing for Gulf migratory group king mackerel are required to have aboard the vessels a permit issued under § 642.4 during the initial fishing season for that group (September 22, 1985 through June 30, 1986). Applications for permits will be accepted by the Regional Director through November 29, 1985.

Mandatory Reporting

The Texas Parks and Wildlife Department objected to mandatory reporting by recreational fishermen. The mandatory reporting requirements for private recreational fishing vessels have been placed in reserve and will not be implemented until NMFS Southeast Fisheries Center determines the exact data requirements and develops a system to collect the data. Data being collected by the State of Texas will be considered in that determination.

Approval/Disapproval of the Amendment

A Florida sportsfishing club favored approval of the amendment with no changes. A major fishing organization recommended rejecting the amendment and implementing emergency regulations because of discrimination against commercial fishermen. NOAA does not agree because, except for the variable allocation formula which was disapproved, the amendment contains measures that are necessary to protect and rebuild the stock and simultaneously ensure fair and equitable treatment for all user groups. Emergency regulations would be effective for only 90 days with possible extension to 180 days. This would not be sufficient time to protect adequately the stocks since the emergency regulations would expire at the height of the fishing season. Therefore, NOAA implements the FMP amendment, with the exception of the variable allocation program.

Changes From the Proposed Rule

Section 642.4

Paragraph (a) was revised by adding the words "unless they will charter only in the Atlantic migratory group area." to clarify that a charter vessel which fishes in an area occupied by the Gulf group does not qualify for a permit.

In response to the Councils' recommendation and because of an error the time period required for qualifying for a permit is changed from three years to one year in paragraph (b)(6).

A new paragraph titled (j) *Alteration.* is added.

A new paragraph titled (k) *Replacement.* is added.

Section 642.5

Paragraph (d) *Recreational fishing vessels* is reserved in the final rule until more exact information is required than is currently obtained under the NMFS Marine Recreational Fishery Statistics Survey.

Section 642.7

In the final rule paragraph (13) is deleted to eliminate duplication with paragraph (22). Paragraphs (14) through (27) are renumbered (13) through (26).

Section 642.27

In paragraphs (c) and (d) the word "regulations" is removed and the words "draft notice action" inserted for clarification.

In paragraph (d) the wording "written reasons will be provided to the Councils for the rejection and" is inserted between the words "recommendations. existing" for clarification.

The allocation formula in the proposed rule has been disapproved by NOAA, therefore, paragraph (f)(3) is deleted from the final rule and former paragraph (f)(4) in renumbered (f)(3).

Section 642.28

In paragraph (a)(1) the words "captain and" are inserted between the words "vessel crew" in two places for clarification of FMP intent.

Classification

The Regional Director determined that the amendment is necessary for the conservation and management of the coastal migratory pelagic resources of the Gulf of Mexico and the South Atlantic, and that it is consistent with the Magnuson Act and other applicable law except for the variable allocation formula.

The Councils prepared a final supplemental environmental impact statement for this amendment that was filed on August 2, 1985, with the Environmental Protection Agency.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. Summary published at 50 FR 24244, June 10, 1985. However, the enforcement costs in the Summary are revised from the estimate of $40,000 with comparable State regulations and $64,000 without such regulations to $60,000 with State regulations and being extremely costly without comparable regulations.

The Councils prepared a final regulatory flexibility analysis which describes the effects this rule will have on small entities. A copy of this analysis may be obtained from the address listed above.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information, except for recreational fishermen, has been approved by the Office of Management and Budget, OMB control numbers 0648–0097; –0016, and –0159. When mandatory reporting by selected recreational fisherman is required, an additional request will be submitted to OMB.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 22, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Services.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In Part 642, the Table of Contents is amended by revising the headings for § 642.5 from "Recordkeeping and reporting requirements [Reserved]" to read "Reporting requirements", and for § 642.6 from "Vessel identification [Reserved]" to "Vessel identification" and by adding under Subpart B three new section designations to read as follows:

Subpart B—Management Measures

Sec

* * * * *

642.27 Stock assessment procedures.
642.28 Bag and possession limits.
642.29 Area and time separation.

3. Section 642.2 is amended by adding the words ", or designee" to the end of the definition for Center Director, by changing the phase "U.S. harvested fish" to "U.S.-harvested fish" throughout Part 642, and adding in alphabetical order the new definitions "Acceptable biological catch", "Allocation", "Charter Vessel", "Migratory group", "Species", "Statistical area", "Total allowable catch", "Total length", and "Trip", to read as follows:

§ 642.2 Definitions.

* * * * *

Acceptable biological catch (ABC) means a range of harvest levels computed from stock assessment parameters that sets forth the levels of harvest which can be taken from a stock or migratory group while maintaining the stock at or near maximum sustainable yield. ABC may vary due to fluctuating recruitment, fluctuating abundance, and intensity of fishing effort.

Allocation means that portion or percentage of the total allowable catch of a stock or migratory group of fish which is allocated to a specific user group for harvest during a fishing year. Harvest levels may be limited to an allocation by specifying harvest quotas or by specifying nonquota restrictions such as bag limits, etc.

* * * * *

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee.

Charter vessel crew means those individuals, including the licensed vessel captain, who receive monetary or other compensation from the vessel owner or from the passengers who are engaged in fishing from the vessel as anglers.

* * * * *

Migratory group means a group of fish that may or may not be a separate genetic stock but which for management purposes may be treated as a separate stock. (See Figure 2 and § 642.29 for geographical and seasonal boundaries

between migratory groups of king mackerel.)

* * * * *

Species refers to the specific scientific name for each fish identified under the definition of *coastal migratory pelagic fish.*

Statistical area means one or more of the statistical grids depicted in Figure 3.

Total allowable catch (TAC) means the maximum permissible level of annual harvest specified for a stock or migratory group after consideration of the biological, economic, and social factors with such level being specified from within the range of acceptable biological catch.

Total length means the distance from the tip of the head to the tip of the tail (caudal fin) while the fish is laying on its side normally extended.

Trip means a fishing trip regardless of number of days duration which begins with departure from a dock, berth, beach, seawall, or ramp and which terminates with return to a dock, berth, beach, seawall, or ramp.

* * * * *

4. Section 642.4 is revised in its entirety to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability.* Owners or operators of fishing vessels which fish for Gulf migratory group king mackerel under the commercial quotas are required to obtain an annual vessel permit. Owners or operators of charter vessels and headboats are excluded from eligibility for a vessel permit unless they will charter only in the Atlantic migratory group area.

(b) *Application for permits.* An application for a permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director or his designee within 60 days prior to July 1 of each year. Owners or operators of newly registered or documented vessels may submit an application at any time during a fishing year provided it is received by the Regional Director within 60 days after registration or documentation. In cases of demonstrated hardship the Regional Director may accept applications at other times. Permit applicants must provide the following information:

(1) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel;

(2) Name of vessel;

(3) The vessel's official number;

(4) Home port or principal port of landing, gross tonnage, radio call sign and length of vessel;

(5) Approximate fish hold capacity of the vessel;

(6) A sworn statement by the owner or operator certifying that at least 10 percent of his or her earned income was derived from commercial fishing during the preceeding calendar year (January 1 through December 31), and that the vessel for which the permit is intended will not be operated as a charter vessel in an area in which the Gulf migratory group of king mackerel is occurring; and

(7) Any other information concerning vessel, gear characteristics and fishing area requested by the Regional Director.

(c) *Proof of certification.* The Regional Director or his designee may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(6) before a permit is issued or to substantiate why such a permit should not be revoked under paragraph (i).

(d) *Issuance.* The Regional Director or his designee will issue a permit to the applicant only during May and June of each year. The Regional Director will issue permits to newly registered or documented vessels, or cases of demonstrated hardship at other times, as found at paragraph (b) of this section. Until the permit is received, fishermen must comply with the bag limit under §642.28.

(e) *Fees.* A fee may be assessed for any permit issued under this section. The cost of the permit, if any, will be posted on the application from and will be limited to the administrative cost of issuing the permit which may not exceed $10.00.

(f) *Duration.* A permit is valid only for the duration of the year for which it is issued (July 1—June 30) unless revoked or suspended pursuant to Subpart D of 15 CFR Part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. New owners purchasing a permitted vessel to fish under the Gulf migratory group quota must comply with the provisions of paragraph (b) of this section. The application must be accompanied by an executed (signed) bill of sale. New owners who have purchased a permitted vessel may fish with the preceeding owner's permit until a new permit has been issued, but for a period not to exceed 60 days from date of purchase.

(h) *Display.* A permit issued under this section must be carried aboard the fishing vessel, and the vessel must be identified as provided for in § 642.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(i) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this section.

(j) *Alteration.* Any permit which is altered, erased, or mutilated is invalid.

(k) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(Approved by the Office of Management and Budget under control number 0648-0097)

5. A new § 642.5 is added to read as follows:

§ 642.5 Reporting requirements.

(a) *Commercial vessel owners and operators.* Any person who owns or operates a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter, or that fishes under a permit required in § 642.4, in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and who is selected to report must provide the following information regarding any fishing trip to the Center Director:

(1) Name or official number of vessel;

(2) Poundage of catch of any coastal migratory pelagic fish as defined by species;

(3) Depth fished and information regarding fishing location that is specific enough to enable the Center Director to ascertain the statistical area fished (see Figure 3);

(4) Amount and person to whom sold, bartered, or traded;

(5) Number, size and type of gear; and

(6) Period (hours or days) of fishing.

(b) *Charter vessel owners and operators.* Any person who owns or operates a charter vessel that fishes for or lands coastal migratory pelagic fish in the Gulf of Mexico FCZ or South Atlantic FCZ or adjoining State waters, and who is selected to report must maintain a daily fishing record on forms provided by the Center Director. These forms must be submitted to the Center Director weekly. Information to be included in the forms must include:

(1) Name or official number of vessel;

(2) Operator's Coast Guard license number;

(3) Date of trip;

(4) Number of fishermen on trip;

(5) Area fished;

(6) Fishing methods and type of gear;

(7) Hours fished;

(8) Species targeted; and

(9) Number and estimated weight of fish caught by species.

(c) *Dealers and processors.* Any person who receives coastal migratory pelagic fish or parts thereof by way of purchase, barter, trade, or sale from a

fishing vessel or person that fishes for, or lands said fish, or parts thereof in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and who is selected to report, must provide the following information to the Center Director at monthly intervals, or more frequently if requested, and on forms provided by the Center Director:

(1) Dealers or processors name and address;

(2) County where fish were landed;

(3) Total poundage of each species received during that month, or other requested interval;

(4) Average monthly price paid for each species; and

(5) Proportion of total poundage landed by each gear type.

(d) *Recreational fishing vessels.* [Reserved]

(e) Any owner or operator of commercial, charter, or recreational vessels, and dealers or processors may be required upon request to make such fish or parts thereof available for inspection by the Center Director for the collection of additional information or for inspection by an authorized officer.

(Approved by the Office of Management and Budget under control numbers 0648–0016 and –0159)

6. A new § 642.6 is added to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in commercial fishing for Gulf migratory group king mackerel under a quota and the permit specified in § 642.4 must—

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

7. Section 642.7 is amended by revising the introductory text and designating it as paragraph (a), redesignating existing paragraphs (a) through (m) as (1) through (13), revising paragraph (6), removing old paragraph (13), adding new paragraphs (13) through (26), and adding a new paragraph (b) to read as follows:

§ 642.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

* * * * *

(6) Fish for king and Spanish mackerel using a purse seine, except in compliance with § 642.24 (b) and (c);

* * * * *

(13) Fail to transfer or to display a permit as provided for in § 642.4 (g) and (h);

(14) Falsify or fail to report information required to be submitted by § 642.4 and § 642.5;

(15) Fail to make fish available for inspection as required by § 642.5(e);

(16) Falsify or fail to display the official vessel identification number or comply with other provisions for vessel identification as specified in § 642.6;

(17) Purchase, sell, barter, trade, or accept in trade, king mackerel, harvested in the FCZ from a specific migratory group or specific allocation zone or by purse seine gear, for the remainder of that fishing year specified in § 642.20, after the quota for that migratory group or allocation zone, or purse seine gear as specified in § 642.21 (a) or (b) has been reached and closure as specified in § 642.22 has been invoked (Table 2). (This prohibition does not apply to trade in king mackerel harvested, landed and bartered, traded or sold prior to the closure and held in cold storage by dealers and processors);

(18) Fish for, retain, or have in possession in the FCZ aboard a vessel permitted under §642.4 king mackerel from a migratory group or allocation zone after the quota for that migratory group or allocation zone specified in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22 (Table 2);

(19) Fish for king or Spanish mackerel in the FCZ with purse seines after the quotas specified in § 642.21 (b) and (d) have been reached and closure has been invoked as specified in § 642.22 (Table 2);

(20) Fish for or have in possession onboard Spanish mackerel in or from the FCZ or purchase, sell, barter, trade or accept in trade, Spanish mackerel after the total allowable catch specified in § 642.21(c) is reached and closure has been invoked as specified in § 642.22 (Table 2);

(21) Land, consume at sea, sell, or have in possession at sea or time of landing, Gulf migratory group king mackerel harvested from the FCZ in excess of the bag limits specified in § 642.28, except as provided for under § 642.21;

(22) Fish for king mackerel from the Gulf migratory group in the FCZ as defined in § 642.29 under the quotas specified in § 642.21(a) without a permit as specified in § 642.4;

(23) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(24) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken coastal migratory pelagic fish or the final disposition of such coastal migratory pelagic fish through the sale of the coastal migratory pelagic fish;

(25) Land king mackerel from the Gulf migratory group in other than an identifiable form as specified in § 642.28(b); or

(26) Land Spanish mackerel and cobia without the head and fins intact as required by § 642.23(c).

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

8. Section 642.20 is revised in its entirety to read as follows:

§ 642.20 Seasons.

The fishing year for the Gulf migratory group of king mackerel for the commercial quota including purse seines begins at 0001 hours July 1 and ends at 2400 hours on June 30, local time (see Figure 2). The fishing year for the Atlantic migratory group of king mackerel begins at 0001 hours on April 1 and end at 2400 hours on March 31, local time. The purse seine quotas for king mackerel begin at 0001 hours on July 1 and end at 2400 hours on June 30, local time. The fishing year for all other coastal migratory pelagic fish begins at 0001 hours on January 1 and ends at 2400 hours on December 31, local time (Table 1).

9. Section 642.21 is revised in its entirety to read as follows:

§ 642.21 Quotas

(a) *Commercial quotas for king mackerel.* The initial commercial allocation for the Gulf migratory group of king mackerel is 4.552 million pounds per fishing year. This allocation is

divided into quotas as follows: (1) 2.940 million pounds for the eastern allocation zone; (2) 1.328 million pounds for the western allocation zone; and (3) 0.284 million pounds for purse seines (see Figure 2 and paragraph (e) of this section for description of allocation zones). The commercial allocation for the Atlantic migratory group of king mackerel is 4.382 million pounds per fishing year. A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Purse seine quota for king mackerel.* The harvest of king mackerel by purse seines from the Gulf migratory group is limited to 284,000 pounds each fishing year. The total harvest of king mackerel by purse seines from the Atlantic Ocean is limited to 400,000 pounds each fishing year. King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraph (a) of this section (Table 2).

(c) *Spanish mackerel.* The TAC of Spanish mackerel is 27 million pounds per fishing year in aggregate for all user groups (Table 2).

(d) *Purse seine quota for Spanish mackerel.* The harvest of Spanish mackerel by purse seines is limited to 300,000 pounds in the Gulf of Mexico and to 300,000 pounds in the Atlantic Ocean per fishing year. Spanish mackerel harvested by purse seines are included in the TAC specified in paragraph (c) of this section (Table 2).

(e) *Geographic boundaries and allocation zones.* The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and 83° W. longitude, proceeds north to 24°35' N. latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland. The boundary between eastern and western zones established for commercial allocation of the Gulf migratory group of king mackerel is a line beginning at the boundary between the States of Alabama and Florida (30°16'53" N. latitude and 87°31'06" W. longitude) and running directly south to its intersection with the outer limit of the FCZ (Figure 2).

10. Section 642.22 is revised in its entirety to read as follows:

§ 642.22 Closures.

The Secretary, by publication of a notice in the **Federal Register**, will close the king or Spanish mackerel fishery to fishing in the FCZ for a particular gear type, allocation zone, or user group when the quota for that gear type, allocation zone, or user group under § 642.21 has been reached or is projected to be reached (Table 2). The notice of closure for quotas specified under § 642.21 will also provide notice that the purchase, barter, trade, and sale of king or Spanish mackerel taken from the FCZ after the closure for the migratory group or allocation zone affected is prohibited for the remainder of that fishing year. This prohibition does not apply to trade in Spanish or king mackerel harvested, landed, and bartered, traded or sold prior to the closure and held in cold storage by dealers or processors.

11. In § 642.23, paragraphs (a)(1) and (b) are revised and a new paragraph (c) is added to read as follows:

§ 642.23 Size restrictions.

(a) *Spanish mackerel—(1) Minimum size.* The minimum size for the possession of Spanish mackerel in or taken from the FCZ is 12 inches (fork length) or 14 inches (total length) for both recreational or commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

* * * * *

(b) *Cobia.* The minimum size limit for the possession of cobia in or taken from the FCZ is 33 inches (fork length) or 37 inches (total length).

(c) All Spanish mackerel and cobia must be landed with the head and fins intact.

12. In § 642.24, paragraph (b)(1)(i) is revised and a new paragraph (c) is added to read as follows:

§ 642.24 Vessel, gear, and equipment limitations.

* * * * *

(b)(1) * * *

(i) at least 30 days in advance of the beginning of the fishing year, or

* * * * *

(c) *Purse seine catch allowance and exclusions.* A vessel with a purse seine abroad will not be considered as fishing for king or Spanish mackerel for the purposes of paragraph (b) of this section and will not be considered in violation of a purse seine closure affected in accordance with § 642.22 provided the catch of king mackerel or Spanish mackerel does not exceed one or ten percent, respectively, by weight or number (whichever is less) of the catch of all fish abroad the vessel. Such king and Spanish mackerel must be reported in accordance with paragraph (b)(3) of this section and will be counted in the quotas provided for under § 642.21 and subject to the probihition on sale provided for under § 642.22.

13. A new § 642.27 is added to read as follows:

§ 642.27 Stock assessment procedures.

(a) The Councils will appoint an assessment group (Group) that will assess the condition of each stock of king and Spanish mackerel in the management unit on an annual basis. The Group will present a report of its assessment and recommendations to the Councils.

(b) The Councils will consider the report and recommendations of the Group and hold public hearings at a time and place of the Councils' choosing to discuss the Group's report. The Councils will convene an Advisory Panel and may convene the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, Councils will make findings on the need for changes.

(c) If changes are needed in MSYs, TACs, bag limits, quotas, or permits, the Councils will advise the Regional Director in writing of their recommendations, accompanied by the Group's report, relevant background material, and public comment. This report will be submitted each year by such date as agreed upon by the Councils.

(d) The Regional Director will review the Councils' recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejects the recommendations, he will provide written reasons to the Councils for the rejection and existing regulations will remain in effect until the issue is resolved.

(e) If the Regional Director concurs that the Councils' recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director will recommend that the Secretary publish notice in the **Federal Register** of any preliminary changes prior to the appropriate fishing year. A 15-day period for public comment will be afforded. After consideration of public comments, the Secretary may publish notice in the **Federal Register** of any final changes for that fishing year.

(f) Appropriate adjustments which may be implemented by the Secretary by notice in the **Federal Register** are:

(1) Adjustment of the point estimates of MSY for mackerel within the following ranges:

(i) King mackerel—21.9 million pounds to 35.2 million pounds.

(ii) Spanish mackerel—13.5 million pounds to 49.1 million pounds.

(2) Setting TACs for each stock or group of fish which should be managed separately, as identified in the FMP. The TAC may be increased, not to exceed 30

percent annually when warranted by new information. Any number of increases may be made so long as they do not exceed 30 percent in any one year and provided that no TAC will exceed the best point estimate of MSY by more than ten percent. Downward adjustments of any percentage are allowed in order to protect the stock and prevent overfishing. Reductions or increases in allocations as a result of changes in the TAC are to be as equitable as may be practicable utilizing similar percentage changes to all participants in a fishery. (Changes in bag limit cannot always accommodate the exact desired level of change.)

(3) Implementing or modifying quotas, bag limits, or permits as necessary to limit the catch of each user group to its allocation.

14. A new § 642.28 is added to read as follows:

§ 642.28 Bag and possession limits.

(a) *Recreational allocation bag limit.* Persons who fish for king mackerel from the Gulf migratory group (see Figure 2) in the FCZ (except those fishing under the permit and quotas specified in § 642.4, § 642.21 and § 642.24(c)) are limited to the following:

(1) Possessing three (3) king mackerel per person per trip, excluding the vessel captain and crew or possessing two (2) king mackerel per person per trip, including the vessel captain and crew, whichever is the greater, when fishing from a charter vessel.

(2) Possessing two (2) king mackerel per person per trip when fishing from other vessels;

(b) All king mackerel from the Gulf migratory group must be landed in an identifiable form as to number and species (with the understanding that head and tail can be removed).

(c) After a closure under § 642.22 is invoked for a migratory group or allocation zone specified in § 642.21 vessels permitted under § 642.4 may not fish for Gulf migratory king mackerel under the bag limit specified under paragraph (a) of this section nor can persons fishing under the bag limit sell their fish.

15. A new § 642.29 is added to read as follows:

§ 642.29 Area and time separation.

(a) *Summer separation.* During the summer period (April 1 through October 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25° 48′ N. latitude) to the outer limit of the FCZ (Figure 2).

(b) *Winter separation.* During the winter period (November 1 through March 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29° 25′ N. latitude) to the outer limit of the FCZ (Figure 2).

TABLE 1.—FISHING SEASONS FOR COASTAL MIGRATORY PELAGIC FISH IN THE FCZ

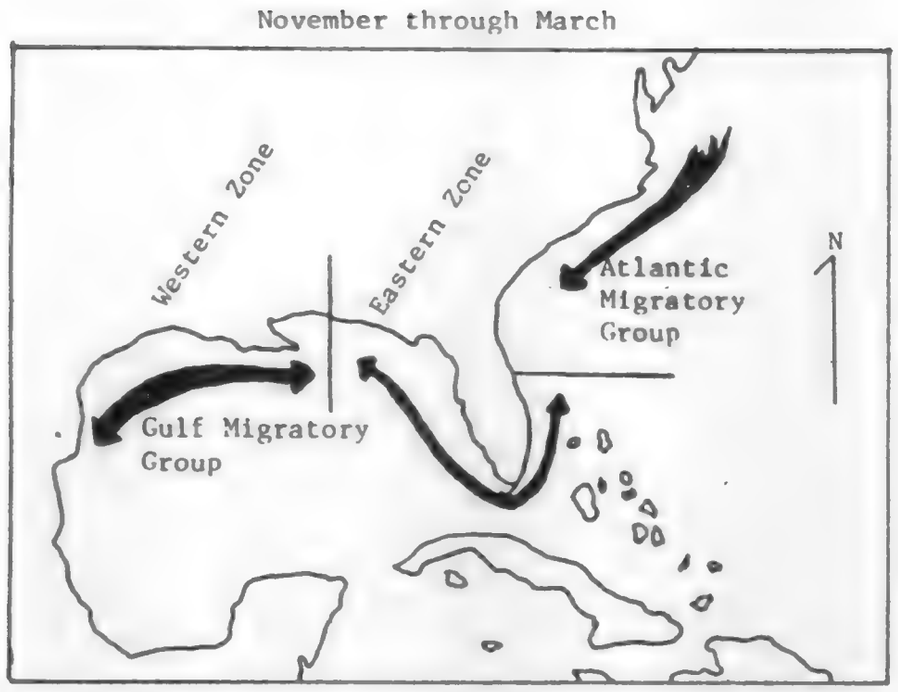
Type	Begins—	Ends—
King mackerel:		
Gulf migratory group	0001 hours July 1.	[illegible] hours June 30.
Atlantic migratory group	0001 hours Apr. 1.	[illegible] hours Mar. 31.
Purse seine quotas	0001 hours July 1.	[illegible] hours June 30.
Other fish and fishing:		
All other fishing	0001 hours Jan. 1.	[illegible] hours Dec. 31

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES [1]

Migratory group(s)	Fishing year	Gear	Allocation zone	Initial year quota/ TAC (million pounds)	Prohibition on sale and/or catch invoked when—
King Mackerel:					
Atlantic	1 Apr.–31 Mar.	All types	Entire range [2]	[illegible]	Sales from migratory group are projected to reach quota.
Gulf	1 July–30 June	All types	Entire range [2]	4.552	Sales from migratory group are projected to reach quota.
Gulf	1 July–30 June	All types	Western zone [3]	1.328	Sales from allocation zone are projected to reach quota.
Gulf	1 July–30 June	All types	Eastern zone [3]	2.940	Sales from allocation zone are projected to reach quota.
Gulf	1 July–30 June	P.S.[5]	Entire range [2]	[illegible]	Landings from migratory group are projected to reach quota.
G.A.[6]	1 July–30 June	P.S.[5]	Atlantic Ocean [4]	[illegible]	Landings from migratory group are projected to reach quota.
Spanish mackerel	1 Jan.–31 Dec.	All types	G.A.[6]	[illegible]	When landings are projected to reach TAC.
	1 Jan.–31 Dec.	P.S.[5]	Atlantic Ocean	0.300	When landings are projected to reach quota.
	1 Jan.–31 Dec.	P.S.[5]	Gulf of Mexico	0.300	When landings are projected to reach quota.

[1] See Figure 2 for delineation of migratory group ranges and allocation zones.
[2] The range of migratory groups varies by season (§ 642.29)—See Figure 2.
[3] See Figure 2 and § 642.21(e).
[4] See § 642.21(e).
[5] Purse Seines.
[6] Gulf & Atlantic.

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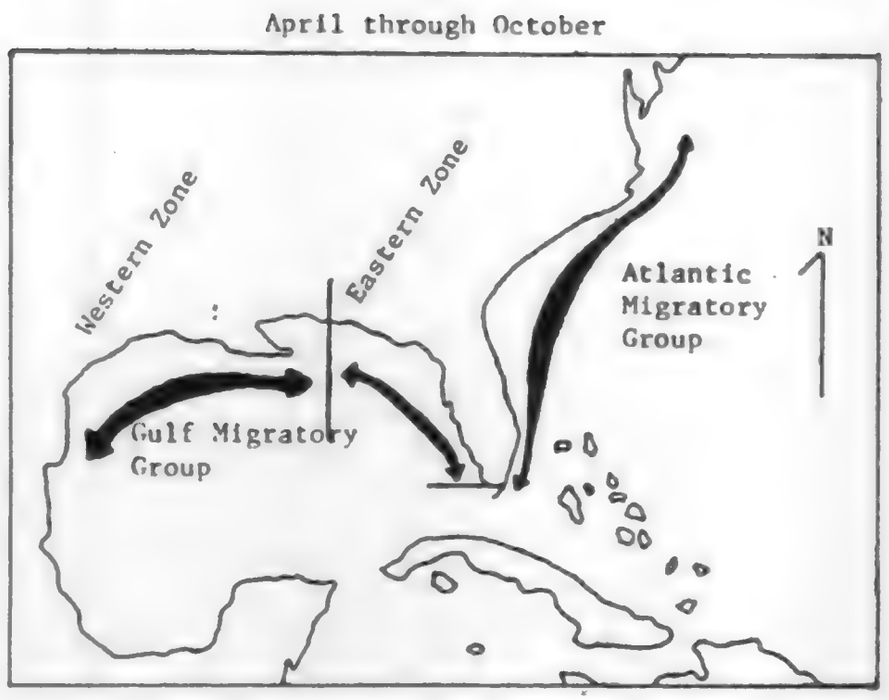
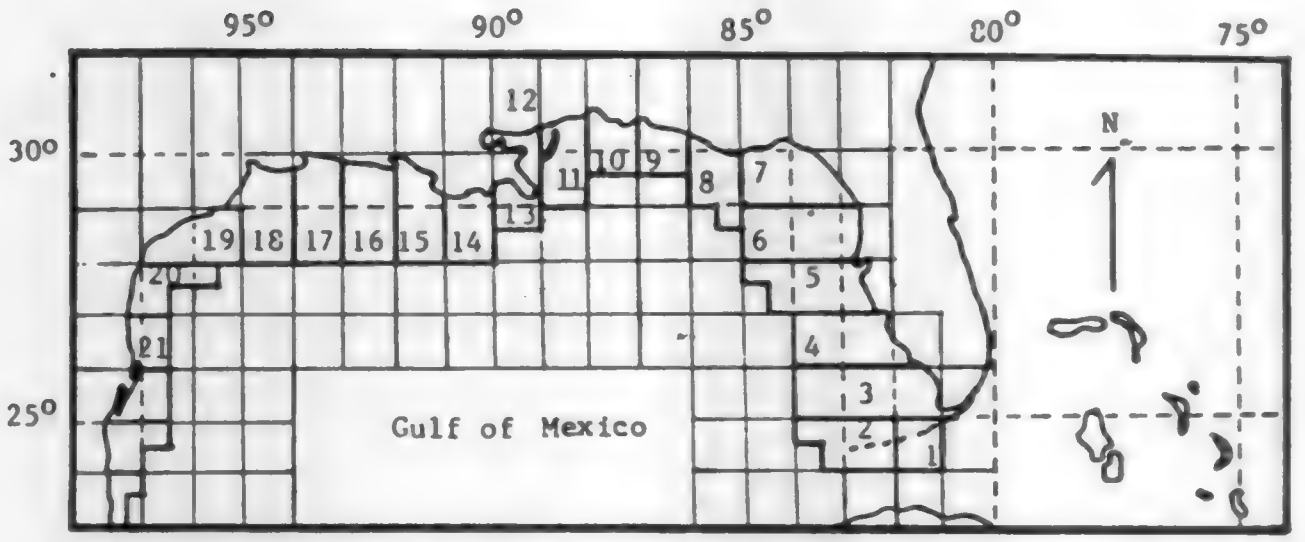
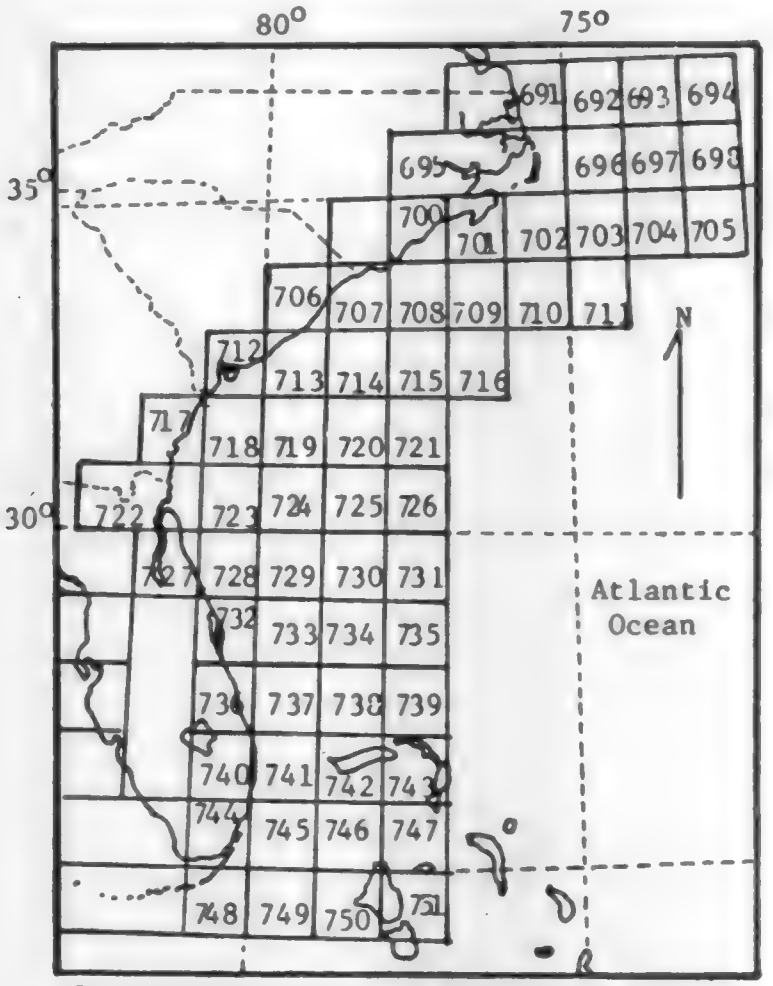


Figure 2. Range of Gulf and Atlantic migratory groups of king mackerel during winter and summer periods and commercial allocation zones for Gulf group king mackerel.

Figure 3. Statistical Grids for Reporting the Harvest of Coastal Migratory Pelagic Fish.



Statistical Grids in the Gulf of Mexico



Statistical Grids in the South Atlantic

[FR Doc. 85-20543 Filed 8-23-85; 2:50 pm]
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50 CFR Part 669

[Docket No. 50586-5132]

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The rule (1) establishes criteria for the construction of fish traps; (2) requires owner identification and marking of gear and boats; (3) prohibits the hauling of or tampering with another person's traps without the owner's written consent; (4) prohibits the use of poisons, drugs, other chemicals, and explosives for the taking of reef fish; (5) establishes a minimum size limit on the harvest of yellowtail snapper and Nassau grouper; and (6) establishes a closed season for the taking of Nassau grouper. The intent of the regulations is to rebuild declining reef fish species in the fishery and reduce conflicts among fishermen.

EFFECTIVE DATE: This rule is effective September 22, 1985, except for § 669.24 (a)(1) which becomes effective September 22, 1986.

ADDRESS: A copy of the combined final regulatory flexibility analysis/regulatory impact review may be obtained from Donald W. Geagan, Southeast Region, National Marine Fisheries Service (NMFS), 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTRACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Caribbean Fishery Management Council (Council), under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). The proposed rule to implement the FMP was published on June 10, 1985 (50 FR 24251) and comments were invited through July 20, 1985. This final rule implements the FMP.

The preamble to the proposed rule contained background information on the fishery, its economic value, condition of the stocks, and harvesting practices within the commercial and recreational sectors. Also discussed in detail were major problems in the fishery (i.e., declining catch per unit of effort by fish traps—the most abundant gear in the fishery, declines in the average size of yellowtail snapper and Nassau grouper in the landings, and problems associated with ciguatera poisioning and fragmented jurisdiction over the stocks involved). These discussions are not repeated here.

Comments and Responses

A total of six written responses were received from commercial fishermen. Although certain of the comments contained in these responses were in support of the proposed rule, some suggested that certain measures should be even more stringent than proposed. One commenter indicated that prohibitions against the use of explosives and chemicals should apply to marine waters in general, while another commenter suggested that minimum size restrictions should be applied to all species in the shallow-water reef fish fishery.

Generally, the prohibition against the use of drugs, poisons, other chemicals, and explosives for taking shallow-water reef fish would also afford protection to other species that live in association with the reef community; however, management measures must be restricted to the management unit addressed by the FMP. Regarding the application of minimum size limitations to all species in the management unit, the fishery will be monitored after the FMP is implemented and appropriate restrictions will be recommended for other species when data are supplied that indicate such actions are warranted. Comments in opposition to the proposed regulations are discussed by category as follows:

1. Size Limits and Seasonal Closures

Three respondents recommended that alternatives (such as providing training to pursue deep-water or pelagic fishery resources or by providing some form of monetary compensation) be offered to fishermen to offset the negative economic impacts they will suffer when the management program is implemented—especially the proposed minimum size limits and seasonal closures. In that regard, the regulations provide an incremental approach to the minimum size limits for yellowtail snapper and Nassau grouper wherein the attainment of optimum reproductive sizes will be phased-in over a period of years to minimize any social and economic disruption associated with these measures. The FMP thoroughly evaluated these impacts and estimated that the minimum size restrictions coupled with the three-month closed season for Nassau grouper each year will result in a net loss of $165,000 the first year and $80,000 the second year. After the second year, however, there will be a gross gain to the fishermen that will amount to an estimated $5.0 million over a period of ten years. Moreover, there are no provisions in the Magnuson Act that would authorize such compensation or training programs to alleviate these short-term impacts resulting from management.

Another commenter indicated that undersized fish in traps would die as a result of pressure changes when traps are retrieved from deepwater, and since these fish would be illegal to retain they would be wasted. While the condition of fishes taken at the bottom and brought to the surface undoubtedly will vary with depth of capture, preliminary evidence from studies conducted by NMFS on red snapper indicates a relatively high rate of survival—89 percent for those taken at a depth of 100 feet. The few fishes that were lost during those studies were attributed to hook damage. Although there is no direct evidence on survival for yellowtail snapper and Nassau grouper, it is conceivable that even higher survival rates may be obtained as most would be taken by traps rather than hook-and-line. Hopefully, fishermen taking large numbers of undersized fish would shift their effort to areas where larger fish are more abundant.

One commenter noted that yellowtail snapper commence reproducing before they reach eight inches and that the initial size limit should be smaller. Although some yellowtail snapper may reproduce at a smaller size, data indicate that optimum production occurs at twelve inches. Establishing a lower initial minimum size would only serve to delay the restoration of the stock along with the associated economic gains.

Another commenter suggested that the three-month seasonable closure for Nassau grouper be reduced to 30 days per year to lessen the economic impacts on fishermen. Spawning aggregations of Nassau grouper occur in the management area from January through April of each year and, according to public testimony, these aggregations have diminished considerably over recent years. Prohibiting the retention of Nassau grouper during three fourths of the spawning season already represents a concession of 25 percent but this, coupled with the incremental size limit, is believed to be a reasonable and prudent approach to stock recovery. Any further shortening of the closed season would defer the advantages of the management program and could lead to the collapse of the Nassau grouper stock. Therefore, NOAA is implementing the size limits and seasonable closure as proposed.

2. Habitat

One respondent stressed the importance of a program for protecting mangrove habitat which is essential to the development of numerous commercial species. NOAA agrees that the conservation of mangrove areas is very important to the development of commercial fishes and recreational species as well; however, the management program implemented by these regulations is restricted to the fishery conservation zone.

3. Gear Conflicts

One other commenter indicated that there is a problem with the theft of traps, especially in the Virgin Islands. The regulations at § 669.22 specify that traps may be tended or pulled only by persons aboard the trap owner's vessel, or from another vessel only if such vessel has aboard written consent of the trap owner. This constraint, in conjunction with vessel and gear identification requirements, is implemented to alleviate the trap theft problem.

Classification

The Regional Director determined that the FMP is necessary for the conservation and management of the shallow-water reef fish fishery of Puerto Rico and the U.S. Virgin Islands, and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared a final environmental impact statement for this FMP; a notice of availability was published on July 19, 1985; 50 FR 29480.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. Summary published at 50 FR 24251, June 10, 1985.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Summary published at 50 FR 24251. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0097.

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 669

Fisheries, Fishing.

Dated: August 22, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, Chapter VI of 50 CFR is amended by adding a new Part 669 to read as follows:

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

Sec.

669.1 Purpose and scope.
669.2 Definitions.
669.3 Relationship to other laws
669.4 Permits.
669.5 Reporting and recordkeeping requirements (Reserved).
669.6 Vessel and gear identification.
669.7 Prohibitions.
669.8 Facilitation of enforcement.
669.9 Penalties.

Subpart B—Management Measures

669.20 Fishing year.
669.21 Closed seasons.
669.22 Harvest limitations.
669.23 Size limitations.
669.24 Gear limitations.
669.25 Specifically authorized activities.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 669.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

(b) This part regulates fishing for shallow-water reef fish within the Atlantic Ocean and Caribbean Sea portions of the fishery conservation zone (FCZ) adjacent to the State waters of Puerto Rico and the U.S. Virgin Islands.

§ 669.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Fish in the shallow-water reef fish fishery means any of the following species:

Squirrelfishes—Holocentridae

Squirrelfish, *Holocentrus ascensionis*
Longspine squirrelfish, *Holocentrus rufus*

Groupers—Serranidae

Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Nassau grouper, *Epinephelus striatus*
Yellowfin grouper, *Mycteroperca venenosa*

Jacks—Carangidae

Yellow Jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Bar jack, *Caranx ruber*

Snappers—Lutjanidae

Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Mangrove snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogani*
Lane snapper, *Lutjanus synagris*
Yellowtail snapper, *Ocyurus chrysurus*

Grunts—Haemulidae

Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
French grunt, *Haemulon flavolineatum*
White grunt, *Haemulon plumieri*
Bluestriped grunt, *Haemulon sciurus*

Porgies—Sparidae

Sea bream, *Archosargus rhomboidalis*
Jolthead porgy, *Calamus bajonado*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*

Goatfishes—Mullidae

Yellow goatfish, *Mulloidichthys martinicus*
Spotted goatfish, *Pseudupeneus maculatus*

Butterflyfishes—Chaetodontidae

Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*

Angelfishes—Pomacanthidae

Queen angelfish, *Holacanthus ciliaris*
Rock beauty, *Holacanthus tricolor*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

Wrasses—Labridae

Spanish hogfish, *Bodianus rufus*
Puddingwife, *Halichoeres radiatus*
Pearly razorfish, *Hemipteronotus novacula*

Hogfish, *Lachnolaimus maximus*

Parrotfishes—Scaridae

Midnight parrotfish, *Scarus coelestinus*
Blue parrotfish, *Scarus coeruleus*
Striped parrotfish, *Scarus croicensis*
Rainbow parrotfish, *Scarus guacamaia*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Redband parrotfish, *Sparisoma aurofrenatum*
Redtail parrotfish, *Sparisoma chrysopterum*
Stoplight parrotfish, *Sparisoma viride*

Surgeonfishes—Acanthruidae

Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Blue tang, *Acanthurus coeruleus*

Leatherjackets—Balistidae

Queen triggerfish, *Balistes vetula*
Ocean triggerfish, *Canthidermis sufflamen*
Black durgon, *Melichthys niger*
Sargassum triggerfish, *Xanthichthys ringens*

Boxfishes—Ostraciidae

Spotted truckfish, *Lactophrys bicaudalis*
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*

Fish trap or trap means any trap and the component parts (including the lines and buoys) thereof used for taking finfish, regardless of the construction material.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of the Commonwealth of Puerto Rico and the U.S. Virgin Islands to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator with respect to any vessel, means the master or other individual onboard and in charge of that vessel.

Owner with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, or a designee, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813–893–3141.

Secretary means the Secretary of Commerce, or a designee.

State means the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

Total length means the greatest possible length of a fish with the mouth of the fish closed and the caudal fin (tail) squeezed together to give the greatest over-all measurement (Figure 1).

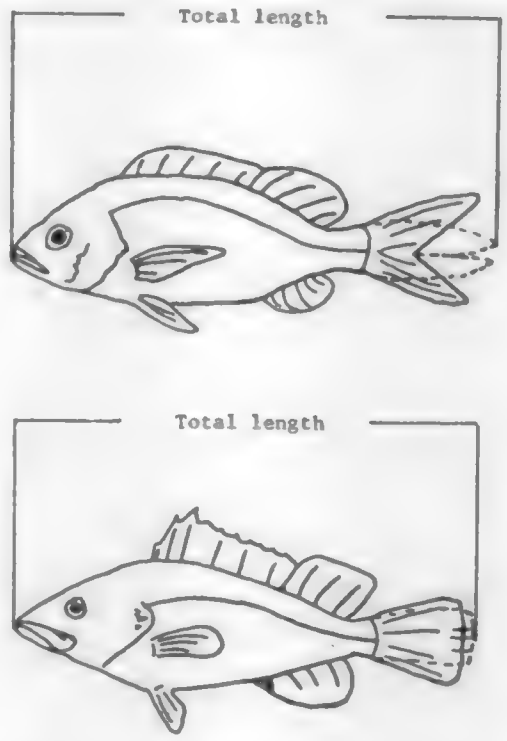


Figure 1. Measurement of total length for fishes with a forked tail, yellowtail snapper (top) and with a rounded tail, Nassau grouper (bottom).

U.S. fish processors means facilities located within the United States and vessels of the United States, used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 669.3 Relationship to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection, issuance of permits, and enforcement may be performed by

authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 669.4 Permits

No permits are required for fishing vessels engaged in the shallow-water reef fish fishery within the FCZ (see vessel and gear identification requirements in § 669.6).

§ 669.5 Reporting and recordkeeping requirements. [Reserved].

§ 669.6 Vessel and gear identification.

(a) *Applicability.* A vessel in the commercial shallow-water reef fish fishery fishing with traps in the FCZ must obtain an identification number and color code issued by the Regional Director unless the vessel possesses a valid identification number and color code issued by the Government of Puerto Rico or the Government of the U.S. Virgin Islands.

(b) *Application to the Regional Director.* (1) An application for an identification number and color code must be submitted to the Regional Director 45 days prior to the date on which the applicant desires receipt.

(2) Each application must contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name and length of the vessel;

(iii) The vessel's official number; and

(iv) The vessel's radio call sign.

(c) *Vessel identification.* Each fishing vessel must display the identification number and color code issued to the vessel by the Regional Director or State on the port and starboard sides of the deckhouse or hull. In addition, each vessel over 25 feet long must display its identification number and color code on an appropriate weather deck. All identification numbers and color codes must be displayed permanently and conspicuously so as to be readily identifiable from the air and water. The number must contrast with the background and be in block Arabic numerals at least 18 inches high for vessels over 65 feet long, as least 10 inches high for vessels over 25 feet long, and at least 3 inches high for vessels 25 feet long or less. The color code representation must be in the form of a circle not less than 18 inches in diameter or a strip not less than 18 inches high and 18 inches long for vessels over 65 feet long; a circle not less than 10 inches in diameter or a strip not less than 10 inches high and 18 inches long for vessels over 25 feet long; and a circle not less than 3 inches in diameter or a strip not less than 3 inches high and 10 inches long for vessels 25 feet long or less.

(d) *Duties of operator.* The operator of each fishing vessel subject to this part must:

(1) Keep the identification number and color code clearly legible and in good repair.

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or anything else aboard obstructs the view of the identification number and color code from an enforcement vessel or aircraft.

(e) *Gear identification.* (1) All traps and buoys used in the shallow-water reef fish fishery must be marked and identified as follows:

(i) Buoys affixed to traps must bear the number and color code specified for the vessel. The identification number must be legible and at least 3 inches high on each buoy.

(ii) Traps must bear the number specified for the vessel. The number must be legible and at least 3 inches high, or as high as the widest available space if such space is less than 3 inches wide. As an alternative, the number may be stamped on a plate of non-corrosive metal or plastic and securely affixed to the trap.

(2) Traps and buoys for shallow-water reef fish fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to shallow-water reef fish traps which are lost or sold if the owner of such traps reports in writing the loss or sale within 15 days to the Regional Director. The report must specify the number of traps lost or sold, the color code and the identification number.

(3) Unmarked shallow-water reef fish traps deployed in the FCZ at any time are illegal gear and may be disposed of in any appropriate manner by the Secretary or an authorized officer. Lines and buoys are considered part of the trap. If owners of the unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

(Approved by the Office of Management and Budget under control number 0648–0097.)

§ 669.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fish with traps for shallow-water reef fish in the FCZ without an identification number and color code as required by § 669.6;

(2) Falsify or fail to affix and maintain gear and vessel markings as required by § 669.6;

(3) Possess in, or harvest from the FCZ Nassau grouper during the closed fishing season specified in § 669.21;

(4) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another person's fish traps except as provided in § 669.22;

(5) Possess in, or harvest from the FCZ yellowtail snapper less than the minimum size limit specified in § 669.23(a);

(6) Possess in, or harvest from the FCZ Nassau grouper less than the minimum size limit specified in § 669.23(b);

(7) Possess in the FCZ or land any shallow-water reef fish harvested in the FCZ without head and fins intact as specified in § 669.23(d);

(8) Possess or use fish traps in the FCZ with a mesh size smaller than the size limit specified under §669.24(a)(1);

(9) Possess, or use fish traps in the FCZ without a degradable panel or degradable door fastening as specified in § 669.24(a) (2) and (3);

(10) Fish for shallow-water reef fish in the FCZ with explosives, including powerheads, as specified in § 669.24(b)(1);

(11) Fish for shallow-water reef fish in the FCZ with drugs, poisons or other chemicals as specified in § 669.24(b)(2);

(12) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any shallow-water reef fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(13) Fail to comply immediately with enforcement and boarding procedures specified in § 669.8;

(14) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purpose of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(15) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection under the Magnuson Act;

(16) Interfere with, delay, obstruct or prevent by any means a lawful investigation or search in the process of enforcing this part;

(17) Interfere with, obstruct, delay, or in any other manner prevent the seizure of illegally taken shallow-water reef fish or the final disposition of such shallow-water reef fish through the sale of the shallow-water reef fish;

(18) Resist a lawful arrest for any act prohibited by this part;

(19) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that

such other person has committed any act prohibited by this part; and

(20) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested shallow-water reef fish to any foreign fishing vessel, while such foreign vessel is in the FCZ unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of the U.S.-harvested fish of the species concerned.

(b) It is unlawful to violate any other provisions of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

§ 669.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable) and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHF–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.–.–) [1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.–.–.– –.–.–.– –) means "you should proceed at slow speed, a boat is coming to you." The signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (...– –.–...– –) means "you should stop or heave to: I am going to board you."

(4) "L" (.–..) means "you should stop your vessel instantly."

§ 669.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, and to 50 CFR Part 621, and 15 CFR Part 904 (Civil Procedures), and other applicable law.

[1] Period (.) means a short flash of light, and Dash (–) means a long flash of light.

Subpart B—Management Measures

§ 669.20 Fishing year.

The fishing year for the shallow-water reef fish fishery begins on January 1 and ends on December 31.

§ 669.21 Closed seasons.

The fishing season for Nassau grouper in the FCZ is closed from 0001 hours January 1 through 2400 hours March 31. Nassau grouper taken during this period must be returned to the sea immediately with a minimum amount of harm.

§ 669.22 Harvest limitations.

Fish traps may be tended or pulled only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has onboard written consent of the fish trap owner, or if the fish trap owner is aboard and has documentation verifying the identification number and color code. Owner's letter of consent must specify effective time period, and trap owner's vessel identification number and color code.

§ 669.23 Size limitations.

(a) The minimum size limit for the harvest or possession of yellowtail snapper in the FCZ is 8 inches total length. Effective September 22, 1986, the minimum size of yellowtail snapper will be increased to 9 inches. On each September 22 the minimum size will be increased one inch until reaching a minimum size of 12 inches total length on September 22, 1989.

(b) The minimum size limit for the harvest or possession of Nassau grouper in the FCZ is 12 inches total length. Effective September 22, 1986, the minimum size of Nassau grouper will be increased to 13 inches. On each September 22 the minimum size will be increased one inch until reaching a minimum size of 24 inches total length on September 22, 1997.

(c) Undersized yellowtail snapper and Nassau grouper must be returned to the water immediately and with minimum harm.

(d) All shallow-water reef fish harvested in the FCZ and subject to minimum size limits specified in this section must be landed with the head, fins, and tail intact.

§ 669.24 Gear limitations.

(a)(1) Effective September 22, 1986, fish traps must have a minimum mesh size of 1¼ inches in the smallest dimension of the mesh opening.

(2) Fish traps must have on the sides or top, a degradable panel or degradable door fastening made of any material listed in paragraph (a)(3) of this section.

The panel and door opening must not be smaller than either of the entry ports or funnel opening of the trap.

(3) Degradable material must be untreated fiber of biological origin, not more than three millimeters (approximately ⅛") maximum diameter, including but not limited to tyre palm, hemp, jute, cotton, wool, or silk, or non-galvanized black iron wire not more than 1.59 millimeters (approximately one-sixteenth inch) in diameter; that is, 16 gauge wire.

(b)(1) Explosives, including powerheads, may not be used to fish for shallow-water reef fish in the FCZ.

(2) Poisons, drugs, and other chemicals may not be used to fish for shallow-water reef fish in the FCZ.

§ 669.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

[FR Doc. 85-20544 Filed 8-23-85; 3:05 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 167
Wednesday, August 28, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

Correction

In FR Doc. 85–18908 beginning on page 32207 in the issue of Friday, August 9, 1985, make the following corrections:

1. On page 32207, in the third column, in § 890.503(c)(1), in the twenty-first line, "Amount" should read "Amounts".

2. On page 32208, in the first column, in § 890.503(c)(2), in the last line, "OMP" should read "OPM".

3. On page 32208, in the first column, in § 890.503(c)(3), in the eleventh line, "for" should read "from"; in the ninth line from the end of the paragraph, "amount" should read "amounts".

4. Also on page 32208, in the first column, in § 890.503(c)(5), in the eighth line, "Amount" should read "Amounts."

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 2697S]

General Administrative Regulations—Appeal Procedure

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule; Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on Tuesday, August 13, 1985, at 50 FR 32576, issuing a new Subpart J of Part 400 in Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure. These regulations as published contained an error of omission in the section dealing with the right of appeal. This notice is published to correct that error.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

1. The authority citation for 7 CFR Part 400, Subpart J continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. FR Doc. 85–19177, appearing at 50 FR 32576, August 13, 1985, is corrected on page 32577 by amending § 400.92(b) to read as follows:

(b) Any person whose claim for indemnity under insurance obtained pursuant to this Part has been denied;

Done in Washington, DC, on August 20, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–20594 Filed 8–27–85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 451

[Docket No. 2383S]

Canning and Processing Peach Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Supplemental Notice of Proposed Policy Rulemaking and Extension of Comment Period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith issues this supplemental notice of proposed policy rulemaking for the purpose of soliciting public comment on a change in its proposed canning and processing peach crop insurance policy which deletes the provision for division of land in the definition of "unit."

FCIC is taking action to delete the provision allowing the division of units from all crop insurance policies, except small grains, effective for the 1986 crop year. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provisions.

DATES: Comment Date: Written comments, data, and opinions on this supplemental notice of proposed policy rulemaking must be submitted not later than September 27, 1985 to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review data established for these regulations is May 15, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that his action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility

Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, February 26, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 7787, proposing to issue a new Part 451 in Chapter IV of Title 7 of the Code of Federal Regulations (7 CFR Part 451), prescribing provisions for insuring canning and processing peaches. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule. No comments were received.

FCIC is taking action to delete the provision allowing the division of units from all crop insurance policies, except small grains, effective for the 1986 crop year. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

FCIC herewith solicits public comment for 30 days on its proposal to delete this provision from the proposed canning and processing peach crop insurance policy provisions. Written comments received pursuant to this notice will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 451

Crop insurance, Canning and processing peaches.

Supplemental Notice of Proposed Policy Rulemaking and Extension of Comment Period

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation makes a change in the proposed Canning and Processing Peach Crop Insurance Regulations published at 50 FR 7787 on February 26, 1985, as follows:

1. The Authority citation for 7 CFR Part 451 is:

Authority: Secs 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. Section 17.1 of Canning and Processing Peach Crop Insurance Policy set forth in §451.7(d) of the proposed Federal Crop Insurance Corporation regulation published at 50 FR 7790 is revised to read as follows:

17. Meaning of terms.

* * * * *

1. "Unit" means all insurable acreage of peaches in the county located on contiguous land on the date insurance attaches for the crop year:

(1) in which you have a 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the canning and processing peaches on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

* * * * *

Done in Washington, D.C., on May 9, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–20593 Filed 8–27–85; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 21

[Docket No. 85–14]

Reports of Suspected Crimes

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to eliminate Interpretive Ruling § 7.5225 (12 CFR 7.5225) regarding reports by a national bank in the event of known or suspected crimes and replace it with a regulation that amends the requirements of the ruling. The proposed rule references a new report form, eliminates a requirement to send a report to the bank's bonding company, and extends the time for filing reports of mysterious disappearances. The current reporting system (§ 7.5225) is unduly burdensome on banks and has limited practical utility to the government agencies involved. The proposed rule is intended to make report filing more efficient for the banks and more useful for law enforcement agencies in identifying patterns of criminal activity and apprehending persons who commit crimes involving national banks. The proposed rule also clarifies the responsibilities of national banks in reporting and maintaining records of known or suspected crimes.

DATES: Comments must be received on or before October 28, 1985.

ADDRESSES: Comments should be directed to: Docket No. 85–14, Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219, Attention: Lynnette Carter. Comments will be available for public inspection and photocopying at the same location.

The collection of information requirements contained in the proposed rule have been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h). Comments specifically addressing those information collection requirements should be submitted to: Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20500, Attention: Desk Officer for the Office of the Comptroller of the Currency; and should also be directed to this Office at the above address.

FOR FURTHER INFORMATION CONTACT: Jane Rasmussen, Attorney, Enforcement and Compliance Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 447–1618.

SUPPLEMENTARY INFORMATION:

Background

The OCC is charged with safeguarding the safety and soundness of national banks and is responsible for ensuring that national banks apprise law enforcement authorities of any potential violations of criminal statuts. Employee fraud, abusive insider transactions, check kiting schemes, and the like, can be serious threats to a bank's security and undermine the confidence and trust that individuals and businesses place in the banking industry. The OCC's primary concerns are losses sufficient in size or number to impact the safety and soundness of the bank, crimes committed by bank officials, and the adequacy of the bank's security systems and internal controls. The law enforcement community is concerned with receiving prompt reports with sufficient information to determine whether the matter warrants investigation and prosecution.

A Working Group was formed in December 1984 to address problems and promote cooperation toward the goal of improving the federal government's response to white collar crime in federally-regulated financial institutions. The Working Group is composed of senior officials of the financial institution regulatory agencies and the Justice Department. Among the

recommendations of the Working Group to improve the referral system for suspected bank fraud was the use of a uniform Criminal Referral Form for use by all federally-insured financial institutions and the regulatory agencies.

Purpose

This notice of proposed rulemaking is part of an effort by the OCC, in cooperation with the other federal financial institution regulatory agencies and the Department of Justice, to enhance the effectiveness of methods of discovering and prosecuting fraud and other crime in financial institutions. The goal of this rulemaking is to enhance the information quality of criminal referrals, thereby making the referrals more useful, and to provide a standard format. These changes will facilitate the assessment and investigation of possible criminal matters, aid in the identification of patterns of criminal misconduct, and improve the OCC's ability to track the disposition of criminal referrals.

Current Requirements

The OCC's § 7.5225, which is proposed to be removed, requires that a national bank make an immediate written report to the OCC, to the United States Attorney, the Federal Bureau of Investigation, and to the bank's bonding company when known or suspected thefts, embezzlements, check-kiting operations, misappropriations or other defalcations or other criminal violations involving bank personnel or bank funds occur. Reports of mysterious disappearances of bank funds of $1,000 or more are also required. A bank is required to include the identities of persons suspected and the reasons for suspicion in the report. No standard format is prescribed and the quality and amount of information reported has varied widely. These differences and shortcomings have hampered the agencies in their law enforcement efforts.

OCC Proposal

Proposed § 21.11 requires that a national bank submit a Criminal Referral Form upon the occurrence or discovery of any known or suspected theft, embezzlement, check-kiting operation, misappropriation or other defalcation involving bank personnel or bank funds, and any other suspected criminal violation. Mysterious disappearances or unexplained shortages of bank funds or other assets of $1,000 or more need not be reported if they are due to errors which have been discovered and corrected within seven business days. The seven-day deadline allows the bank sufficient time to resolve most shortages, thereby eliminating unnecessary reporting.

The Criminal Referral Form has two formats—a short form (CC–8010–08) and a long form (CC–8010–09). It is estimated that the short form will be used for 95% of the reports submitted.

The short form requires a bank to report the basic facts of the suspected crime: the approximate date and dollar amount of loss, the type of crime (embezzlement, check kiting, etc.), a brief summary of the violation, the identity of any person suspected, and the location of the offices to which the report is being sent. An expanded and more detailed report (the "long form") is required when the amount exceeds $10,000, or for any loss involving a bank insider (i.e., executive officer, director, or principal shareholder).

Failure to file reports required by the proposed rule could form the basis for civil money penalties against the bank, its officers, and its directors.

If a question exists as to whether to report an incident, the OCC recommends that a report be submitted. For example, a customer's pattern of cash deposits of just under $10,000 would not trigger the currency reporting requirements of 31 CFR Part 103, yet may indicate the existence of a money-laundering operation. Additionally, banks are free to report any potential violation, regardless of amount, either to federal, state or local authorities, whenever a violation of federal or state law is suspected.

Banks are also encouraged to telephone the appropriate authorities in situations which dictate an immediate notification, such as when a witness or evidence is likely to disappear. In such cases, the referral is to be documented by completion of the referral form.

The proposed rule provides for an exception to the reporting requirements for robberies, burglaries, and non-employee larcenies. This exception is provided because of an existing recordkeeping requirement in § 21.5(c). Under 21.5(c), a national bank is required to maintain a record of each robbery, burglary, or non-employee larceny committed or attempted at any of its banking offices. The record may be a copy of a police, insurance or similar report, or the bank's own record. Nothing contained in the proposed rule is intended to alter or eliminate the recordkeeping requirements of § 21.5(c).

Prior to October 6, 1981, § 21.5 also required a national bank to report each such instance to the OCC on Form CC–9030–02. This reporting requirement was eliminated because the limited benefits obtained from such reports did not justify the reporting burden on banks. 46 FR 49104 [October 6, 1981]. A national bank continues to be under an obligation to report robberies, burglaries, and larcenies to the appropriate law enforcement authorities.

How the Proposed Rule Differs From Current Procedurs

National banks already report suspected crimes pursuant to § 7.5225. Proposed §21.11 requires the use of a criminal referral form and provides a uniform method for reporting. It is estimated that the short form will take less time to complete than preparing an original letter in each case. While the long form calls for more information than formerly was required for insider crimes and for crimes involving amounts of $10,000 or more, recent statistics gathered by the OCC indicate that only about 4% of the reported crimes involved more than $10,000, and that a very small proportion involved insiders. Further, a bank usually needs to gather such information in order to make an insurance claim, or in due course to prepare for prosecution.

This proposed rule eliminates the requirement that a bank send a report to its bonding company. These reports are a matter of the contractual agreement between the bank and the bonding company.

This proposed rule allows banks up to seven days to investigate and resolve mysterious disappearances and unexplained shortages before they are reported. Mysterious disappearances and unexplained shortages are frequently caused by clerical errors which are discovered and corrected. If the bank's investigation reveals that criminal activity was involved, then the incident must be reported even if it has been corrected.

The title of proposed §21.11 differs from that of § 7.5225 (removal proposed). The title "Defalcations by Employees" has been changed to "Reports of Suspected Crimes." The former title was too limited since activities which involve bank funds, such as check kiting operations, are embraced by the regulation whether perpetrated by outsiders or bank employees.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354m, 5 U.S.C. 601) it is certified that this notice of proposed rulemaking, if adopted as a final rule, will not have a

significant economic impact on a substantial number of small entities.

Executive Order 12291

The OCC has determined that this proposed rule is not a "major rule" and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Parts 7 and 21

National banks, Criminal referrals, Insider abuse, Theft, Embezzlement, Check kiting, Defalcations.

Authority and Issuance

For the reasons set out in the preamble, Parts 7 and 21 of Chapter I of Title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 7—[AMENDED]

1. The authority citation for 12 CFR Part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*

§ 7.5225 [Removed]

2. Part 7 is amended by removing § 7.5225.

PART 21—[AMENDED]

3. The authority citation for 12 CFR Part 21 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 1818, as amended, and 1881–1884.

4. The title of Part 21 is revised to read as follows:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES AND REPORTS OF CRIMES AND SUSPECTED CRIMES

5. Sections 21.0 through 21.7 are designated "Subpart A—Minimum Security Devices and Procedures".

6. The title of § 21.0 is revised to read as follows:

* * * * *

§ 21.0 Purpose and scope of Subpart A.

7. New Subpart B consisting of § 21.11 is added to read as follows:

Subpart B—Reports of Crimes and Suspected Crimes

§ 21.11 Reports of Suspected Crimes.

(a) *Purpose.* This subpart applies to known or suspected crimes against national banks. This subpart ensures that the appropriate parties are notified when unexplained losses and known or suspected criminal acts are discovered. Based on these reports, OCC maintains a data base for monitoring the types and extent of crimes against banks.

(b) *Report required.* A national bank shall file Criminal Referral Form CC–8010–08 or CC–8010–09 in accordance with the instructions on the form. Copies are sent to the OCC District Administrator for the bank's district, the nearest office of the FBI, and the U.S. Attorney for the bank's district. A report is required in case of:

(1) Any known or suspected theft, embezzlement, check kiting operation, misapplication, or other defalcation involving bank personnel or bank funds in any amount.

(2) Any known or suspected criminal violation of any section of the United States Code or applicable state statutes involving the affairs of the bank.

(3) Any mysterious disappearance or unexplained shortage of bank funds or other assets of $1,000 or more which is not located by the bank within seven business days.

(c) *Exemptions.* Robberies, burglaries, and nonemployee larcenies which are explicitly covered by the recordkeeping requirements of § 21.5(c) are exempt from the reporting requirements of this section.

(d) *Notification to Board of Directors.* The chief executive or other appropriate bank officer shall notify the board of directors not later than at their next meeting, of the filing of any report hereunder.

(e) *Penalty.* Failure to file reports may subject the bank, its officers and directors to civil money penalties.

Dated: July 23, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85–20448 Filed 8–27–85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–ANM–15]

Proposed Alteration of VOR Federal Airways V–269 and V–357; Oregon

Correction

In FR Doc. 85–19667, beginning on page 33352 in the issue of Monday, August 19, 1985, make the following correction:

On page 33353, second column, in amendatory instruction 2, "Section 71.23" should have read "Section 71.123".

BILLING CODE 4910-01-M

14 CFR Parts 71 and 73

[Airspace Docket No. 84–ANM–26]

Proposed Establishment of Restricted Area R–6714E; Yakima, WA

Correction

In FR Doc. 85–19670, beginning on page 33356, in the issue of Monday, August 19, 1985, make the following corrections:

On page 33356:

1. In the second column, in the heading, the Airspace Docket number should have read as set forth in the heading of this document.

2. In the third column, in the fifth line, "No. 85–" should read "No. 84–".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 842 3048]

Federated Department Stores, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Cincinnati, Ohio retailer and its division operating 14 department stores in Texas (Foley's), among other things, to inform rejected credit applicants if it used information from credit reporting agencies as a basis for denying credit, and the name and address of the credit reporting agencies used. The agreement would require respondents to comply with the provisions of the Fair Credit Reporting Act, and is binding on all of Federated's divisions. Additionally, Foley's would be required to review all credit applications rejected between January 1983 and February 1985 and send appropriate FCRA notices to all consumers who did not receive them.

DATE: Comments must be received on or before October 28, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kristen L. Malmberg, Dallas Regional Office, Federal Trade Commission, 8303 Elmbrock Dr., Dallas, TX 75247. (214) 767–7050.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Consumer credit, Trade practices.

Before Federal Trade Commission

[File No. 842-3048]

Agreement Containing Consent Order to Cease and Desist

In the Matter of FEDERATED DEPARTMENT STORES, INC., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Federated Department Stores, Inc., a corporation, and it now appearing that Federated Department Stores, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Federated Department Stores, Inc., by its duly authorized officer, and its attorney, and counsel for the Federated Trade Commission that:

1. Proposed respondent Federated Department Stores, Inc. is a corporation, organized, existing and doing business under and by virture of the laws of the State of Delaware, with its office and principal place of business located at Seven W. Seventh Street, Cincinnati, Ohio 45202. Foley's is a division of proposed respondent. Foley's principal office and place of business is located at 1110 Main Street, Houston, Texas 77002.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondent, and the proceeding is in the public interest.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to settle or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim it may have under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission, pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions: For the purpose of this order the following definitions are applicable:

A. The term "consumer," "consumer report," "consumer reporting agency," and "person" shall be defined as provided in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

B. The term "no file response" shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given credit applicant indicating that the consumer reporting agency has no credit history information in its files under the name and/or other identifiers supplied by respondent.

C. The term "information" shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency reflecting slowly paid or delinquent credit obligations, garnishment, attachment, foreclosure, repossession, bankruptcy, suits or judgments, inquiries from creditors, an insufficient number of accounts reported, the absence or presence of certain types of credit accounts, the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit or insufficient positive information to meet such criteria.

I

It is hereby ordered that respondent Federated Department Stores, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any application by a consumer for credit that is primarily for personal, family or household purposes, do forthwith cease and desist from:

1. Failing, whenever such credit is denied wholly or partly or the charge for such credit is increased wholly or partly because of any information contained in a consumer report from one or more consumer reporting agencies (including

a "no-file response"), to disclose to the applicant a) that the adverse action was based wholly or partly on information contained in such consumer report or reports and b) the name and address of each consumer reporting agency that made such a report as required by section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

2. Failing to review each application for consumer credit as to which Foley's took adverse action between January 1, 1983, and February 4, 1985, to identify each of those applications as to which such adverse action was taken based wholly or partly upon information obtained from a consumer reporting agency.

3. Failing, within ninety (90) days of the date of service of this Order, for each application identified according to paragraph 2 above, to send, as specified herein, the applicant a copy of the letter attached hereto as Appendix A or B, as applicable, and described herein. The letter shall be on Foley's letterhead and shall show the name and address of the applicant as shown on the application and the date of mailing. The letter shall disclose the name and address of the cosumer reporting agency or agencies supplying the report(s) containing the information on which the adverse action was based. A letter need not be sent to any applicant whose application was identified pursuant to paragraph 2 of this Order, if the application file clearly shows that Foley's has previously sent the applicant an adverse action notification that complied in all respects with the provisions of paragraph 1 of this Order, nor to any applicant who subsequent to the adverse action on such application was granted credit by Foley's. Nothing in this Order shall prohibit respondent from adding a paragraph to Appendices A and B that resolicits the previously rejected applicants if, preceding such paragraph, respondents insert the following language: "You may want to check your file at the credit bureau mentioned above to make sure it is accurate and complete before reapplying."

II

It is further ordered that respondent shall maintain for at least three (3) years, and upon request make available to the Federal Trade Commission for inspection and copying, documents that will demonstrate compliance with the requirement of this Order, except that consumer application files need only be kept for the period required by § 202.12 of Regulation B. 12 CFR 202.12. Such documents include, but are not limited to all credit evaluation criteria instructions given to employees regarding compliance with the provisions of the Order, any notices provided to consumers pursuant to any provision of this Order, and the complete application file to which they relate.

III

It is further ordered that respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order. This provision shall remain in effect for a period of four (4) years from the date of this Order.

IV

It is further ordered that Foley's shall deliver a copy of this Order to cease and desist to all present employees engaged in reviewing or evaluating consumer reports in connection with applications for credit to be used for personal, family or household purposes, or engaged in preparing of furnishing notices to consumers as required by this Order. In addition, respondent shall deliver a copy of this Order to all present and future credit managers of each division, at least once per year, for a period of four (4) years from the date of this Order.

V

It is further ordered that the respondents herein shall within one hundred fifty (150) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Appendix A

Dear Customer: Our records show that Foley's denied your application for consumer credit sometimes after January 1, 1983. The Fair Credit Reporting Act gives persons denied consumer credit the right to be informed at the time credit is denied whether the denial was based on information supplied by a consumer reporting agency and, if so, the name and address of such agency. Credit Reports provide a variety of information to creditors, including information about how many and what type of credit accounts you have.

Consistent with an agreement we have made with the Federal Trade Commission, we have reviewed your application file. Our records show that we may not have informed you that we obtained a credit report in which we were advised by the consumer reporting agency that it showed no credit history for you. The consumer reporting agency from which we obtained the report is:

_____

(Name of Consumer Reporting Agency)

_____

(Street Address)

If you want more information about the federal credit laws, write the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.

Appendix B

Dear Customer: Our records show that Foley's denied your application for consumer credit sometime after January 1, 1983. The Fair Credit Reporting Act gives persons denied Consumer credit the right to be informed at the time credit is denied whether the denial was based on information supplied by a consumer reporting agency and, if so, the name and address of such agency. Credit reports provide a variety of information to creditors, including information about how many and what type of credit accounts you have.

Consistent with an agreement we have made with the Federal Trade Commission, we have reviewed your application file. Our records show that we may not have informed you that your Foley's application was denied wholly or in part because of your information contained in a credit report. The consumer reporting agency (or agencies) that furnished the report is (are) identified below:

_____

(Name of Consumer Reporting Agency)

_____

(Street Address)

If you want more information about the federal credit laws, write the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Federated Department Stores, Inc. (Federated), 7 West Seventh Street, Cincinnati, Ohio.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that Federated, through its Foley's division, violated section 615(a) of the Fair Credit Reporting Act by failing to advise certain rejected applicants of the name and address of consumer reporting agencies that furnished reports on these applications. The applicants who were denied credit, but were not given the

required FCRA notice, fall into of two classes described below:

1. The applicants were denied credit by Foley's and the denial was based in whole or in part on a no credit file report furnished by a consumer reporting agency; or

2. The applicants were denied credit by Foley's and the denial was based in whole or in part on information contained from more than one consumer reporting agency.

To remedy the alleged FCRA violations, the proposed consent agreement requires that a letter be sent to those rejected applicants falling into the above classes who applied during the time period from January 1, 1983, until February 4, 1985. This letter will advise each rejected applicant of the name and address of each particular consumer reporting agency which supplied the information. Further, Federated Department Stores, Inc. will be enjoined from future violations of section 615(a) of the Fair Credit Reporting Act.

The intent of the proposed consent order is to remedy past violations and to prevent future violations of the Act.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-20517 Filed 8-27-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Subpart L—Resources and Exclusions; Exclusion of Underpayments From Resources

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The proposed regulation reflects the provisions of section 2614 of Pub. L. 98-369, the Deficit Reduction Act of 1984, which amended section 1613(a) of the Social Security Act (the Act). Section 2614 provides for the excluding title XVI and title II retroactive payments from resources for 6 months following the month of receipt. A written notice of the 6-month exclusion limitation must be sent to the recipient at the same time as the retroactive payment.

DATES: We are inviting public comments on this Notice of Proposed Rulemaking. If we receive your comments no later than October 28, 1985, they will be considered in developing the final regulation.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7463.

SUPPLEMENTARY INFORMATION: Section 1613(a) of the Act specifies a list of exclusions to be used in determining the resources of an individual (and eligible spouse, if any). The existing regulations are silent concerning the exclusion of retroactive payments. Operating instructions interpreting the Act provided that, prior to October 1, 1984, the effective date of section 2614 of Pub. L. 98-369, retroactive Supplemental Security Income (SSI) payments were not counted as resources for 3 months following the month of receipt. Retroactive title II payments resulting from the Secretary's April 13, 1984, decision to suspend the continuing disability review process were not counted as resources for 3 months following the month of receipt.

Section 2614 of Pub. L. 98-369 adds a resource exclusion to section 1613(a) of the Act. Effective October 1, 1984 the amount of any title XVI or title II underpayment due for one or more prior months is excluded from resources for 6 months following the month of receipt. (It is our practice to use the term "retroactive payment" for the types of underpayments addressed by this amendment. Under our current regulations at 20 CFR 416.536, and for purposes of this exclusion, "underpayments" include federally administered State supplementary payments.) The exclusion applies to retroactive payments received by an individual (and spouse, if any) and by any other person whose resources are deemed to the individual. A written notice of the 6-month exclusion limitation will be given to the recipient when the payment is made.

The 6-month exclusion applies only to the funds from the title II or title XVI retroactive payment. The exclusion gives recipients time to use the funds from past benefits due to pay bills which may have accumulated because the recipient had no means with which to discharge his or her financial obligations. Once the money from the retroactive payment is spent, the exclusion no longer applies to items purchased with the money unless those items are otherwise excluded, even if the 6-month period has not yet expired. As long as funds from the retroactive payment are not spent, they are excluded for the full 6-month period.

To be consistent with the treatment of other excluded funds, we are requiring that money from the retroactive payment be kept identifiable from other resources. If the retroactive payment funds cannot be distinguished from other resources, they will be counted toward the nonexcludable resources limit as described in § 416.1205.

This proposed regulation adds 20 CFR 416.1233 to reflect the new exclusion from resources. We also added a reference to 20 CFR 416.1233 to the list of exclusions from resources found in 20 CFR 416.1210.

Regulatory Procedures

Executive Order 12291

This proposed regulation has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation because it will not have an annual effect on the economy of $100 million and will not cause increases in costs or prices. Therefore, a regulatory impact analysis is not required. We estimate that the program costs of implementing section 2614 of Pub. L. 98-369 will be less than $1 million per year and the administrative costs will be insignificant.

Regulatory Flexibility Act

We certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities because this rule affects only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This proposed regulation imposes no additional reporting or recordkeeping

requirements requiring the Office of Management and Budget clearance.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program.)

Dated: April 2, 1985.

Martha A McSteen,

Acting Commissioner of Social Security.

Approved: July 24, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart L of Part 416 continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f) and 1631(d) of the Social Security Act, as amended; 49 Stat. 647, as amended; 86 Stat. 1465, 1466, 1468, 1470, and 1473; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f) and 1383(d), unless otherwise noted.

2. In § 416.1210, the introductory text of the section is set out for the convenience of the reader and a new paragraph (m) is added to read as follows:

§ 416.1210 Exclusions from resources; general.

In determining the resources of an individual (and spouse, if any) the following items shall be excluded:

* * * * *

(m) Title XVI or title II retroactive payments as provided in § 416.1233.

3. Section 416.1233 is added to read as follows:

§ 416.1233 Exclusion of underpayments from resources.

In determining the resources of an individual (and spouse, if any), we will exclude from resources for 6 months following the month of receipt any title XVI retroactive payment that meets the definition of "underpayment" in § 416.536 of this part, or title II retroactive payment, which is due for 1 or more prior months and is received on or after October 1, 1984. This exclusion also applies to the resources of any other person whose resources are deemed to the individual (or spouse). This exclusion applies only to the funds from the title XVI or title II retroactive payment. Once the money from the retroactive payment is spent, the exclusion no longer applies to items purchased with the money unless those itmes are otherwise excluded under this part, even if the 6-month period has not expired. As long as funds from the retroactive payment are not spent, they are excluded for the full 6-month period. Money from the retroactive payment must be identifiable from other resources. If the funds from the retroactive payment are commingled with other funds so as to lose their identify, the retroactive payment funds will be counted toward the nonexcludable resources limit as described in §416.1205. We will give a written notice of the 6-month exclusion limitation to the recipient when we make the payment.

[FR Doc. 85-20545 Filed 8-27-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Alaska Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Alaska to amend its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed program amendment consists of proposed provisions to implement a blaster training, examination and certification program as required by 30 CFR Part 850.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on September 27, 1985 will not necessarily be considered. A public hearing on the proposal will be held on September 23, 1985 at the location listed below under **"SUPPLEMENTARY INFORMATION"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. Gene Filer, Acting Director, OSM Casper Field Office, by 4:00 p.m. on September 12, 1985. If no one has contacted Mr. Filer to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Filer, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. Gene Filer, Acting Director, Casper Field Office, Office of Surface Mining and Reclamation and Enforcement, Freden Building, 935 Pendall Boulevard, P.O. Box 1420, Mills, Wyoming 82644.

The public hearing, if requested will be at 1:00 p.m. at the Alaska Department of Natural Resources, Division of Mining, Frontier Building, Room 1360, 3601 "C" Street, Anchorage, Alaska 99503. See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Alaska program amendment and administrative record on the Alaska program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Filer, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644; Telephone (307) 261-5824.

SUPPLEMENTARY INFORMATION: Copies of the Alaska program amendment, the Alaska program and the administrative record on the Alaska program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holiday;

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240.

Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendall Boulevard, Mills, Wyoming 82644.

Alaska Department of Natural Resources, Division of Mining, Pouch 7-016, Anchorage, Alaska 999510

The Alaska program was approved by the Secretary of the Interior on May 2, 1983, **Federal Register** (48 FR 12274). On May 28, 1985, the State of Alaska submitted to OSM, for informal review, a draft blaster certification amendment

to its approved permanent regulatory program. Alaska, on August 1, 1985, notified OSM that the informal draft submission was to be considered as Alaska's formal blaster certification program amendment submission. The proposed program amendment is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. The proposed amendment consists of proposed regulations governing the standards for certification of blasters and material addressing proposed training and certification programs available for individuals interested in becoming certified blasters. A discussion of each area of concern is provided in an outline which follows the Federal regulations at 30 CFR Parts 816, 817, (use of explosives) and 850 (blaster certification) as published in the March 4, 1983 **Federal Register** (48 FR 9486). In accordance with the provisions of 30 CFR 732.17, OSM is seeking comments from the public on the adequacy of the proposed program amendment. If the proposed amendment is found by the Director to be in accordance with SMCRA and no less effective than the Federal regulations, the amendment will be approved and codified at 30 CFR Part 902 as part of the approved Alaska program.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 902

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: August 23, 1985.

Brent Wahlquist,

Acting Director, Office of Surface Mining.

[FR Doc. 85–20519 Filed 8–27–85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–011; A–4–FRL–2888–5]

North Carolina; Approval and Promulgation of Implementation Plans Malfunction Regulation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In response to EPA's request that states define their policy for handling excess emissions during periods of equipment malfunction, startup and shutdown, North Carolina has adopted a new regulation 15 NCAC 2D.0535. EPA is proposing to approve the major part of this regulation which deals with excess emissions during equipment malfunctions. The approvable portion of the rule (15 NCAC 2D.0535(a)-(f)), was submitted to EPA on January 24, 1983, and is consistent with EPA's policy on excess emissions caused by malfunctioning equipment. Paragraph (g) of the rule deals specifically with startups and shutdowns and was submitted to EPA on April 17, 1984. EPA is proposing to disapprove 2D.0535(g) because it is inconsistent with EPA's policy on excess emissions during periods of startup and shutdown. EPA is also proposing to approve the repeal of 2D.0904 which covered malfunctions, breakdowns and upsets for VOC sources. The essence of this rule has been incorporated into the new malfunction regulation. The effect of the portion of the new regulation concerning malfunctions will be to require sources in the State to report excess emissions to the State agency and provide a demonstration that those exceedances could not have been avoided. In the event an adequate justification is not submitted, the excursions will be treated as violations of the State Implementation Plan (SIP) and enforcement action could ensue.

DATES: To be considered, comments must be submitted by September 27, 1985.

ADDRESSES: Written comments should be addressed to Janet Hayward of EPA Region IV's Air Management Branch (see Regional IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Division of Environmental Management, North Carolina Department of Natural Resources & Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Management Branch at the above address and telephone 404/881–3286 (FTS 257–3286).

SUPPLEMENTARY INFORMATION: Occasionally air pollution sources may experience excessive emissions due to unforeseen malfunctions, equipment breakdowns, or routine maintenance, startups and shutdowns. EPA recognizes that some types of exceedances are unavoidable and has adopted a policy which permits states to use enforcement discretion and to excuse excess emissions if they occurred under certain circumstances. Memoranda from former Assistant Administrator Kathleen Bennett to the Regional Administrators, dated September 28, 1982, and February 15, 1983, describe that policy as well as the rationale behind it. The policy permits the exercise of enforcement discretion with respect to excess emissions during malfunctions, provided the source adequately shows that the criteria specified in the policy have been satisfied. The policy also provides that excess emissions during startup and shutdown be treated as violations, unless the source adequately shows that the excess emissions could not have been prevented through careful planning and design, and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury or severe property damage.

Submittal and Regulatory History

In response to EPA's request that the State define its policy for handling excess emissions, North Carolina has developed a new regulation titled 15 NCAC 2D.0535—*Malfunction, Startup and Shutdown.* This rule was submitted

to EPA for approval on January 24, 1983. At that time North Carolina also requested that EPA approve the repeal of regulation 2D.0904 (Malfunctions, Breakdowns and Upsets for VOC sources) which would be superseded by the new malfunction rule.

On December 21, 1983 (48 FR 56412), EPA proposed to disapprove the entire regulation because paragraph (g) was not consistent with EPA's "Policy on Excess Emissions During Startup, Shutdown, Maintenance and Malfunction." (See memorandum from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation to Regional Administrators I–X, dated February 15, 1983.) Paragraph (g) dealt solely with excess emissions during periods of startup and shutdown and stated that those emissions would not be considered violations. This automatic exemption was clearly unacceptable to EPA.

Because North Carolina desired to have a fully approvable regulation, they developed alternative language to address emissions during startups and shutdowns. A revised version of paragraph (g) was adopted by the Environmental Management Commission and submitted to EPA for approval on April 17, 1984. This new paragraph superseded the original version previously submitted on January 24, 1983.

The revised paragraph (g) continued to provide automatic exemptions for emissions excursions that occurred during startup and shutdown. The rule labeled excess emissions as violations only if the source could not demonstrate that the emissions were unavoidable when requested to do so. Exceedances were not required to be reported, however, so unless the director was notified, he would not request a demonstration. EPA feels this language would provide for automatic exemptions in an unlimited number of cases.

EPA communicated this position to North Carolina and the State indicated they would again attempt to revise paragraph (g) to satisfy EPA's concerns. For this reason, action on 2D.0535 was deferred in the October 17, 1984, notice of proposed rulemaking (49 FR 40607).

On October 4, 1984, North Carolina sent a letter to EPA which stated that they would not further revise their malfunction rule. The State felt that changing their startup and shutdown provisions to make them acceptable to EPA, would render them unmanageable at the state level. Therefore, the State asked that EPA reverse its original proposed disapproval of the entire regulation. If EPA could not approve the regulation as a whole, North Carolina requested that EPA approve all of 2D.0535 with the exception of paragraph (g).

Severability.

EPA has determined that 2D.0535(g) is severable from the remainder of the rule, because it is completely independent of paragraphs (a)–(f).

Public Comment

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Interested parties may submit written comments to the address listed above. Since EPA has previously proposed action on this regulation, several comments have already been received. All comments submitted during the present comment period, as well as those already received, will be considered in conjunction with the final rulemaking.

Proposed Action

EPA has reconsidered its original proposed disapproval of 2D.0535. The Agency believes that paragraphs (a) through (f) of the malfunction rule are largely consistent with EPA's excess emissions policy. Therefore, EPA is proposing to approve 2D.0535(a)–(f) as submitted on January 24, 1983. It should be noted that EPA is not proposing approval in advance any determination made by the State under paragraph (c), that a source's excess emissions were in fact unavoidable and excusable under the State's rule, but rather is proposing approval only of the procedures and criteria in paragraph (c). Thus, EPA would retain its authority to independently determine whether an enforcement action is appropriate in any particular case. EPA is also proposing to approve the repeal of 2D.0904 which is replaced by the new regulation.

EPA maintains its position on the unapprovability of 2D.0535 (g) and is proposing to disapprove only paragraph (g) of the regulation, which was submitted on April 17, 1984.

It should be noted that SIPs are not required to have provisions specifying how a state may exercise its enforcement discretion with respect to excess emissions during malfunctions and startups and shutdowns.

Further details supporting EPA action on North Carolina's malfunction rule are discussed in the technical support document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709.) EPA's disapproval of 2D.0535 (g) will not have a significant economic impact because it will simply maintain the status quo.

Under Executive Order 12291, today's action is not 'major'. It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: June 27, 1985.

Sanford W. Harvey, Jr.,

Acting Regional Administrator.

[FR Doc. 85–20576 Filed 8–27–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Fire Suppression Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: FEMA has determined that certain administrative changes should be made in the Fire Suppression Assistance regulations under section 417 of the Disaster Relief Act of 1974, Pub. L. 93–288. The changes are intended to clarify some provisions in existing regulations and add other provisions to update the regulations.

DATE: Comments due date October 28, 1985.

ADDRESS: Send comments to Rule Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Gene Morath, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW, Washington, DC 20472, Telephone (202) 646–3683.

SUPPLEMENTARY INFORMATION: The changes are, essentially, administrative in nature designed to (1) eliminate the requirement for an annual update of the FEMA-State Agreement for Fire Suppression Assistance (section 101), (2) retitle the Reimbursement section (104) to read Cost Eligibility and clarify portions of the cost eligibility section, (3) allow the use of reasonable State equipment rates instead of requiring the use of FEMA rates [section 104(b)], (4) comply with the Single Audit Act of 1984, Pub. L. 98–502 [section 105(d)], and (5) add a new section (103) entitled

"Grant Administration" applicable to the administration of fire suppression assistance grants.

Environmental Considerations

FEMA regulations at 44 CFR Part 10, Environmental Conservations, which implement the National Environmental Policy Act (NEPA) regulations, sets forth the determination that Fire Suppression Assistance authorized under section 417 of the Disaster Relief Act of 1974, 42 USG 5187 is entitled to a categorical NEPA exclusion. See 44 CFR 10.8(c)(3)(vii)(F). In addition, 44 CFR 10.8(c)(2)(i) states that the preparation of regulations, manuals, and other guidance related to an action which qualifies for categorical exclusion are also categorical exclusions. Thus, the preparation of an environmental assessment for the issuance of these regulations is not required.

Executive Order 12291, "Federal Regulations

This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

The information collection require contained in this rule has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has been assigned OMB control number 3067–0066.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grants programs Housing and Community Development.

Accordingly, Chapter 1 of Title 44, Code of Federal Regulations is proposed to be amended by revising subpart G to Part 205 to read as follows:

PART 205—[AMENDED]

* * * * *

Subpart G—Fire Suppression Assistance

Sec.

205.100 General.
205.101 FEMA-State agreements.
205.102 Request for assistance.
205.103 Providing assistance.
205.104 Cost Eligibility.
205.105 Grant administration.

Authority: 42 U.S.C. 5201 Reorganization Plan No. 3 of 1978, and E.O. 12148.

Subpart G—Fire Suppression Assistance

§ 205.100 General.

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 205.101 FEMA-State agreements.

Federal assistance under section 417 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

§ 205.102 Request for assistance.

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a telephone request to the Regional Director, promptly followed by a confirming telegram or letter.

(Approved by the Office of Management and Budget under the Control Numbers 3067–0066.)

§ 205.103 Providing assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal firefighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Director for approval.

§ 205.104 Cost eligibility.

(a) To be eligible under a FEMA grant, costs must meet the following general criteria:

(1) Be necessary and reasonable for proper and efficient administration of the approved work, be allocable thereto under these regulations, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

(2) Be authorized or not prohibited under State or local laws or regulations.

(3) Conform to any limitations or exclusions set forth in these regulations, Federal laws, or other governing limitations as to types or amounts of cost items.

(4) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

(5) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(6) Not be allocable to or included as a cost of any other federally financed program.

(7) Be net of all applicable credits which offset or reduce otherwise eligible cost, including discounts, insurance recoveries, and salvage.

(b) Eligible State costs are reimbursed in accordance with the terms and provisions of the Agreement. Only certain costs incurred in fire suppression operations are eligible for reimbursement. The following paragraphs describe those specific items which are clearly eligible or clearly ineligible.

(1) Eligible costs of the State consist of the following costs reasonably and directly related to fire suppression:

(i) All compensation for employees, except as noted under paragraph (b)(2)(i) of this section, directly engaged in authorized fire suppression activities. Included are field support personnel, such as cooks, guards, timekeepers, and supply personnel.

(ii) Travel and per diem costs for employees directly engaged in fire suppression activities.

(iii) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(iv) Cost for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.

(v) Cost of use of privately owned equipment based on the rental rate: Provided such costs are comparable to the going rate for the same or similar equipment in the locality, as determined by the Regional Director.

(vi) Cost to the State for use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State.

(vii) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.

(viii) Repair and reconditioning costs of tools and equipment used in eligible fire suppression activities.

(ix) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.

(x) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(xi) Mobilization and demobolization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.

(xii) Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing an approved incident fire.

(xiii) State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis. This provision is an exception to normal FEMA policy under the Disaster Relief Act of 1974 and is intended to accommodate only those rare instances that involve State fire suppression of Section 417 incident fires involving commingled Federal/State and privately owned forest or grassland.

(2) Costs that are ineligible for reimbursement are:

(i) Any clerical or overhead costs other than field administration and supervision [see paragraph (b)(1)(i)].

(ii) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(iii) any costs not incurred during the incident period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

(iv) State costs for suppressing a fire on commingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR Part 151).

(3) In those instances in which assistance under section 417 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility criteria established in this section.

§ 205.105 Grant Administration.

(a) Project administration including audit shall be in accordance with applicable portions of Subpart H, 44 CFR 205. All grants for fire suppression assistance shall be approved as categorical grants.

(b) Each claim for reimbursement shall be supported by auditable documentation and shall include a program review and a certification by the State that the assistance and costs claimed are eligible under these regulations.

(c) In those instances in which reimbursement includes State fire suppression assistance on commingled State and Federal lands (section 205.104[b](1)(xiii)], the Regional Director shall coordinate with other Federal programs to preclude any duplication of payments. See 44 CFR Part 151.

(d) Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98–502.

(e) Payment is made to the State for its actual eligible costs, subject to verification, as necessary, by Federal review, inspection and audit.

(f) A State may appeal a determination by the Regional Director on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 205.120.

Dated: July 31, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85–20492 Filed 8–27–85; 8:45 am]

BILLING CODE 6718–31–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 83–1230; FCC 85–369]

International Communications Policies

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission is issuing proposed policies with respect to three issues involving the implementation of its Second Computer Inquiry in the international market: (1) Requests for designation of enhanced-service providers as recognized private operating agencies (RPOAs); (2) acquisition by users of indefeasible rights of user (IRUs) in submarine telephone cables; and (3) assignment of data network identification codes (DNICs) to United States data networks.

The three proposed policies are promulgated as a result of comments and proposals filed in response to the Commission's Notice of Inquiry in CC Docket No. 83–1230. That proceeding was instituted to develop policies to facilitate the extension of the Commission's Second Computer Inquiry into the international market.

DATES: Comments on the proposed policies are due on or before September 27, 1985, and reply comments are due on or before October 18, 1985.

ADDRESS: Pleadings on those issues should be submitted to: The Secretary, Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John F. Copes, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 63

International information Services Radio, Radio.

Notice of Proposed Rulemaking

In the Matter of International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes CC Docket No. 83–1230).

Adopted: July 12, 1985.
Released: August 19, 1985.

By the Commission.

This document is a summary of the full notice released by, and available from, the Commission.

1. By Notice of Inquiry (Notice) released December 22, 1983, 95 FCC 2d 627 (1983), we initiated this proceeding to develop policies and procedures to accommodate emerging competition in the international communications and information-services markets. More specifically, we requested comment from interested persons on three issues: (a) The need for policies governing conferral of recognized private operating agency (RPOA) status upon enhanced-service providers; (b) the desirability of a policy allowing enhanced-service providers and other non-carriers to acquire indefeasible rights of user (IRUs) in submarine cables; and (c) the need for a formal procedure governing the grant of data network identification codes (DNICs). In our Notice we discussed a number of potential benefits and detriments relating to each of the issues, requesting comment whether to adopt a formal policy with respect to

each issue and solicited suggestions as to appropriate procedures to implement such policies.

I. Issues

2. *RPA Status.* The issue with respect to RPOA status is whether enhanced-service providers are eligible to be designated as RPOAs. The ITU Convention defines an RPOA as "[a]ny private operating agency . . . which operates a public correspondence . . . service and upon which the obligations provided for in Article 44 of the Convention are imposed by the member in whose territory the head office of the agency is situated. . . ." International Telecommunication Union, International Telecommunication Convention, Annex 2, p. 149 (Edition Nairobi, 1982) [hereinafter cited as ITU Convention]. The Convention defines "private operating agency" as "[a]ny individual or company or corporation . . . which operates a telecommunication installation intended for an international telecommunication service or capable of causing harmful interference with such a service." *Id.* The issue arises because, under *Computer II,* we do not license or regulate providers of enhanced services. Some overseas administrations have indicated uncertainty whether the U.S. government "recognizes" such unlicensed enhanced-service providers, within the meaning of the Convention, and whether it will require such entities to obey the ITU Convention and regulations. As a result, foreign administrations are sometimes reluctant to enter into operating agreements with U.S. enhanced-service providers.

3. *Non-carrier Access to Transmission Facilities.* The issue with respect to non-carrier ownership of IRUs is whether we have the power to force carriers to sell IRUs to their customers. Nothing in the Communications Act bars IRU ownership of cables by non-carriers. The carrier owners of the cables, however, argue that we may not, under the Fifth Amendment to the U.S. Constitution, force them to sell IRUs to non-carriers. Allowing non-carriers cable IRUs would be consistent with our pro-competitive policies and could yield a number of public-interest benefits. For example, non-carrier IRUs could allow users to lower their costs for communications and give them greater service flexibility. We also, however, identified a number of potential drawbacks to a policy of non-carrier IRUs. Most particularly, we indicated that we must assure that allowing enhanced-service providers to own IRUs would not deprive us of any necessary control over use of such IRUs.

4. *DNICs.* The DNIC is a four-digit number used under CCITT Recommendation X.121 to identify particular public data networks and to route data traffic to subscribers attached to such networks. The first three digits of a DNIC constitute the Data Country Code (DCC) which identifies the region of the world and country in which the network is located. The first digit of the DCC indicates the region as numbered by the CCITT (the United States is in Region 3 which covers North America and the Caribbean basin). The next two digits of the DCC identify countries within the region (the United States has been assigned seven DCCs from 310–316). The fourth or last digit of the DNIC is known as the network identifier and indicates a particular network within a country identified by the DCC. Because all DCCs in the North American/Caribbean region must begin with the number 3, only 100 are available for use for all countries therein. Because the DNIC consists of only four digits and because the number of DCCs available for U.S. use is limited, it is likely that there will not be enough DNICs to allow us to assign a separate DNIC to every U.S. network with a need for one. As a result, we observed in our Notice that we might now plan for some way to deal with this potential scarcity so that we could assure that DNIC assignments best serve the public interest.

5. In the United States responsibility to administer the X.121 (DNIC) numbering plan resides ultimately with the Department of State as the U.S. Signatory to the Convention, but the Department has delegated the Commission authority to make specific DNIC assignments. In carrying out that function, we have assigned 36 DNICs on a "first-come, first-served basis" to carrier and enhanced-service-provider networks which originate and terminate international data traffic. In view of the potential scarcity, we questioned the continued viability of such a policy and sought alternatives. We also recommended one possible alternative: a "marketplace" allocation methodology based on either a lottery or an auction, which would operate without the need for Commission action.

II. Discussion

6. We tentatively conclude that the public interest will be served by a liberal policy of granting RPOA status to enhanced-service providers, a policy requiring carriers to sell non-carrier entities IRUs in the carriers' submarine cables, and adoption of a formal DNIC-assignment process which would rely upon shared DNICs.

7. *RPOA Status.* We believe that a policy permitting eligible enhanced-service providers to be designated as RPOAs may assist them in obtaining operating agreements from overseas administrations. Enhanced-service providers could generally meet the standards in the definition of an RPOA. The use of the term "public correspondence" in the definition of RPOA does not require that the entity be a "common carrier" or that it hold out service to the public indiscriminately. Rather, public correspondence is used as a synonym for "telecommunications services" to distinguish message services offered to the public—*i.e.,* the kinds of services offered by an administration—from "data processing"—which is not construed as a public offering. An entity eligible for RPOA status is, therefore, an entity which offers a message service to the public; whether the provider is licensed as a common carrier or is an unlicensed enhanced-service provider. The enhanced services under U.S. law which the ITU would treat as message services include packet switching, code and protocol conversion or other services which act upon the form but not the content of the subscriber's information, and electronic mail or other "store and forward" services.

8. RPOA designation is not required to assure compliance with the ITU Convention and regulations. The United States, as a signatory to the ITU Convention, has undertaken under Article 44 to assure that no U.S. citizen or resident acts in any way which would violate the rights of other signatories to the convention. However, if U.S. enhanced-service providers believe that obtaining designation as an RPOA would assist them in obtaining operating agreements, we have no objection to extending RPOA status to enhanced-service providers. Our only concern is that we do not wish an RPOA-certification process to become a substitute for common-carrier licensing or otherwise to impede the development of competition.

9. We find no express requirement in the Convention for a mandatory certification of enhanced-service providers as RPOAs. Enhanced-service providers who seek to operate internationally must first obtain an operating agreement. If an overseas administration is content to deal with a U.S. enhanced-service provider, without formal RPOA accreditation, we see no reason ourselves to require it. Rather, it is we tentatively conclude that it is sufficient to make RPOA status easily available to any enhanced-service

provider which seeks it. We also conclude that RPOA certification does not require the RPOA to join the CCITT. The only requirement in the Convention is that, if the RPOA elects to join the CCITT, that it pay its share of the costs thereof.

10. We also believe that there is no need for an elaborate RPOA-certification process. Rather, we propose to recommend to the Department of State that those seeking RPOA status be required to file an application with the Commission, patterned on § 63.03 of our Rules and Regulations, 47 CFR 63.03 (1984). Such an application would require the applicant to provide information relevant to RPOA certification: The applicant's name and place of incorporation, the nature of the service for which RPOA designation is sought, a statement that the applicant will offer the service internationally, a statement of its awareness of its obligations to obey the ITU regulations and Commission policies, and a certification that it will honor those obligations. Attached to this Notice of Proposed Rulemaking is a proposed rule setting forth the limited filing requirements for RPOA designation.

11. Upon the filing of the proposed application, we would review the submitted information. Notice to the public of the filing would be given in the Common Carrier Bureau's weekly notice of international applications filed, but we do not contemplate entertaining formal comments or petitions to deny. Persons who question whether the applicant is, in fact, offering a "public correspondence" may communicate their concerns informally by letter. Our staff would prepare a recommendation to the Department of State, which would then issue an appropriate document.

12. *Non-carrier IRUs.* We believe the allowing enhanced-service providers and other users to acquire IRUs in submarine cables will lower costs to users without adversely affecting the availability or quality of service to others, the viability of the carriers or our ability to control the use of the facilities.[1] As a result, we tentatively conclude that we should adopt a policy allowing voluntary sales to users of IRUs in unused capacity in submarine cables and to require sales of such IRUs if the carriers to not agree to do so.

13. The Fifth Amendment permits the government to take property so long as the person from whom the property is taken receives "just compensation" and so long as the taking is for a valid "public use." We would require users to reimburse AT&T or other carrier sellers fully and fairly for the reasonable value of all IRUs they are required to sell. The sale of IRUs to users required by our proposed policy would constitute a valid public use. Modern courts give a broad reading to the term "public use." The U.S. Supreme Court, in *Hawaii Housing Authority v. Midkiff,* 104 S. Ct. 2321 (1984), held that the government has power to take property even if it ultimately inures to the benefit of a private interest so long as the taking is in furtherance of a valid public purpose. We conclude that the benefits of allowing non-carrier users to own their own transmission facilities would constitute a sufficient public purpose to justify mandatory sales of IRUs.[2]

14. The primary benefit we see from non-carrier IRUs is that the purchase of IRUs could allow users to reduce their cost of communications services and give them greater flexibility in tailoring their communications to their needs. Additionally, we believe that our policy could benefit even users who elect to continue to use carrier leased-channel service by exerting a downward pressure on leased-channel rates. Enhanced-service providers would especially benefit, since IRU ownership would guarantee them favorable access to facilities and allow them to pass their reduced facilities costs on to their users.

15. We also believe that requiring the carriers to sell IRUs to users would not threaten the viability of any carrier or otherwise adversely affect users. Our proposed policy would affect only the carriers' leased-channel services. A reduction in leased-channel revenues would not affect the costs or revenues of MTS, telex, or other services.

16. The potential detriments to carriers of requiring private IRU sales are also likely to be minor. To the extent the carriers' existing leased-channel customers elect to acquire IRUs the carriers' leased-channel revenues could be reduced.[3] The effect of such a reduction, however, is not likely to be of sufficient magnitude as to threaten the continued viability of the carriers or their ability to offer good-quality, economical service to their remaining customers. Leased-channel service represents less than 20 percent of the carriers' total international revenues and less than 10 percent of all curcuits in use. Even the loss of a substantial number of its leased-channel customers, would not threaten any carrier's existence. Furthermore, requiring sales of IRUs would increase neither the carriers' capital costs nor their operating expenses. The carriers would continue to receive monthly contributions from users who elect to acquire IRUs to cover the users' ratable shares of cable operating and maintenance expenses. Finally, the carriers will receive compensation from users for every IRU the carriers sell and can invest that payment in other activities. As a result, we believe that the net effect of our proposed policy on carriers is likely to be relatively minor and that it would be more than balanced by the benefit to users of increased choice.

17. We believe it clear that sales of IRUs would not deprive us of the authority to assure compliance with international regulations. We retain ample jurisdiction over cable IRUs and their operation by users under Title I of the Communications Act. Since cable circuits are now owned in undivided half interests by a U.S. entity (carrier) and an overseas administration, both parties must agree to any transfer of an IRU. As a result, we propose to make a sale of an IRU conditional upon the U.S. entity's obtaining agreement from the overseas entity. To assist the U.S. entity in obtaining such agreement we shall make clear in authorizing private IRUs that we retain full control to assure that the U.S. entity obeys all international regulations.

18. We have recently sought to introduce facilities competition. *See Tel-Optik, Ltd.,* FCC 85-99,—FCC 2d— (released April 5, 1985). If and when such alternative, non-common-carrier cable systems are introduced, users will have an alternative to the common-carrier cables and it may be less appropriate to require involuntary sales of IRUs. However, since we do not now know whether those systems will in fact be built, we must go forward with our policy proposal now. We shall, however, review the entire IRU-sales issue in no

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[1] We here consider only the ability of users to acquire IRUs. We shall consider the issue of whether such users should be allowed in future cables to particiate as full owners at such time as we next consider an application for construction of a cable in which a non-carrier seeks ownership.

[2] We note that, in authorizing the TAT-8 cable we expressly conditioned our grant upon the possibility that we might decide to allow non-carrier IRUs. The cable participants have accepted that condition and have thus acceded to our right to order sales of circuits in that cable.

[3] It is also certain that requiring sales of private IRUs would in fact cause AT&T or other carriers to lose substantial numbers of their leased-channel customers. Purchasing an IRU would require the customer to enter into a long-term arrangement, under which it is obligated to contribute its ratable share of annual maintenance and operating expenses for the life of the cable, and to run the risk that its needs for communications might change before the end of the cable life. If the carriers price their leased-channel service attractively, many customers may elect to continue to take service from the carriers.

more than two years from the adoption of a final policy in this proceeding.

19. *DNICs.* We tentatively conclude that we develop policies to cope with the likely scarcity of DNICs. important function of the DNIC is routing. In a world of interconnected, automated data networks, it is vital to have a simple device for routing traffic from network to network. The routing function the DNIC performs is needed whether the traffic to be routed is domestic or international, particularly in a country such as the United States which has a competitive domestic communications market and a strong preference for customer routing. As a result, any DNIC-assignment plan we adopt as a result of this proceeding must permit the selection of all overseas and domestic interexchange networks needed to route a call from the origination to the called party. Not every network, however, needs its own DNIC—only those which operate their own overseas facilities and interact with overseas administrations. This is because Recommendation X.121 specifies that international routing must be accomplished by use of a DNIC (we cannot require an overseas administration to read more than the DNIC). Other networks can rely upon the DNIC of the network or networks with which they interconnect or share a DNIC. In either case, identification and routing can be accomplished through a DNIC and information contained in the subscriber's data number. U.S. switches can be programmed to route traffic solely from the information in the data number.

20. When multiple U.S. networks share a DNIC, since every such network does not interconnect with every other U.S. network, "routing ambiguities" can occur in which routing information in the four-digit DNIC is not sufficient to identify and allow switching of traffic to a particular network using the DNIC. As a result, attempts by an overseas PIT to make traffic to a U.S. network will fall, but not without first having tied up the administration's domestic network, the international networks of two nations and the domestic network of the United States, depriving other users of the use of the networks and failing to generate revenues. Thus, while we believe that a plan under which most destination and interexchange networks share a DNIC or DNICs (leaving individual DNICs for U.S. overseas networks) is the best longterm solution to the shortage of DNICs, we also believe that any such plan must be structured to eliminate or minimize routing ambiguities. This, in turn, seems to be possible only if every network sharing a DNIC is interconnected with each other and with every U.S. overseas network that serves any network using that DNIC.

Options

21. We put out for comment six particular proposals for a DNIC-assignment procedure.

Option 1

22. *First-Come, First-Served.* One approach would be to continue, as we have in the past, to assign DNICs on a first-come, first-served basis. Such an approach would certainly be fair and easy to administer by both the Department of State and this Commission. The problem is that this approach may, in the not-too-distant future, cause a shortage of DNICs. the only course we could follow in such an event would be to reallocate a DNIC from one entity to another, if the latter could demonstrate a greater need. Our experience has shown us that such a process is likely to be complicated and contentious. Thus, although we agree with the parties that we have the power to reassign DNICs, our experience indicates that such an undertaking would be difficult. Rather, we think the better course would be to seek a DNIC-allocation procedure which would avoid running out of DNICs.

Option 2

23. *Marketplace procedures.* Another approach, relying upon an auction or lottery to determine DNIC assignments, would also meet most of the objectives of the data numbering plan. Such an approach would be fair, since it would substitute objective price criteria for subjective comparative-worth criteria, and would assure that DNICs go to those who have the most need of them. A market approach would also be easy to administer. After the initial assignment the market would operate independently. Once the initial assignment of DNICs has been made by auction or lottery, data-network operators who need a DNIC would be free to negotiate with DNIC holders and to buy one. The DNIC is a business tool and of use only to an entity which can use it to serve customers and earn a profit. The more customers a network serves, or the more profit the operator believes it can use the DNIC to generate, the more the operator would be willing to pay for it. As a result, under a market approach, DNICs would go to those who have the most customers or those who can make the best economic use of them.[4] The market approach, however, cannot increase the number of DNICs available or assure that everyone who needs a DNIC can get one. Even under a market approach, some networks may be forced to negotiate arrangements to share DNICs. Because all U.S. networks are not interconnected, without preplanning, the market approach would not guarantee the absence of routing ambiguities.

Option 3

24. *National DNIC.* Another potential solution to the shortage of DNICs would be the creation of an alternative, "national DNIC," with significance only within the United States, to supplement the DNICs assigned under Recommendation X.121. A "national DNIC" would be a four-digit number beginning with 0, 1, 8 or 9, the digits not used for DNICs under X.121. Such a national DNIC could be used for routing purposes in the RPOA-selection field for networks who operate solely within the United States.[5] However, since overseas switches would not recognize the national DNIC, they could not use it to route traffic to U.S. networks. As a result, a purely domestic network operator which later decided to begin terminating international traffic, might at that time be required to acquire an X.121 DNIC and to renumber all their subscriber terminals. Further, because of the lack of nationwide interconnection, use of the national DNIC could still allow routing ambiguities to occur.

Options 4 and 5

25. *Shared DNICs.* Another way we might assure everyone access to a DNIC would be to require networks to share one or more X.121 DNICs. Two such sharing schemes have been proposed: the proposal by the United States Telephone Association (USTA) for one shared nationwide DNIC and the proposal made separately by several of the regional BOCs for several shared regional DNICs.

26. *The USTA Proposal (Option 4).* The USTA proposes that all operators of

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[4] To prevent clear abuses, we would limit participants in the auction or lottery to those who are at that time good-faith providers of data networks. To prevent hoarding or trafficking in DNICs, we could limit any one entity to one DNIC.

[5] A national DNIC would consist of a four-digit number, beginning with 0, 1, 8, or 9. These numbers were selected because Recommendation X.121 does not use them. A four-digit number beginning with one of those digits could perform the Domestic DNIC routing function (U.S. switches would be programmed to recognize them) and would not interfere with overseas administrations (their switches simply would not recognize DNICs beginning with 0, 1, 8 or 9 and would ignore them). National DNICs would free up X.121 DNICs for assignment to those networks which operate with overseas networks and receive traffic routed by those overseas networks.

local telephone exchange networks who offer data services share one DNIC. Differentiation of the particular networks would be accomplished by a private network identification code (PNIC)—the first six of the ten digits which follow the DNIC in creating the international data number. The customer would be identified by the last four digits of the data number.

27. Routing from overseas would be performed by use of the U.S. overseas carrier's DNIC. Routing in the United States would be accomplished by programming U.S. switches to read the PNIC. The first three digits of the PNIC would be analogized to the three-digit area code under the North American Numbering Plan for telephony. The second three digits would be analogous to the three-digit central-office codes. The last four-digit group would be analogized to the subscriber code in telephony. Indeed, the North American numbering plan could be adapted to data communications. Such an approach already well understood and could, thus, be easily implemented for data services. USTA volunteers to administer the shared DNIC and to assign PNICs.

28. The USTA proposal, however, does have some limitations. For example, since overseas routing is solely by DNIC, unless all networks sharing the DNIC are interconnected with each other, or with every interexchange carrier with overseas connections, routing ambiguities will occur. Further, the regional Bell Operating Companies (RBOCs) argue that the use of one nationwide DNIC would not give any routing information in the DNIC. As a result, all routing functions would have to be accomplished by the PNIC—a fact which the RBOCs assert would place a significant burden on the interexchange carriers because it would require them to inlcude a detailed routing table in all of their service nodes and to incur as a significant cost. The RBOCs also argue that use of one, nationwide DNIC would limit to 65,535 the number of closed user groups (CUGs) which could be accommodated in all packet networks combined. The RBOCs find this an uncomfortably small number, which they believe might be exhausted quickly. The RBOCs also believe that the use of one DNIC may result in exhaustion of available DNPA and DCO assignments (the first six digits of the data number) are require the Commission to add new DNICs. Requiring customers and service providers to change DNICs after they have planned and implemented their networks would be disruptive and costly process.

Option 5

29. *The RBOC Proposal.* Some of the RBOCs argue that each will need its own DNIC, but that they are willing to share the DNIC with other networks. The RBOCs, thus, argue for a regional rather than a nationwide, shared, DNIC: each network sharing the regional DNIC would be assigned a six-digit PNIC composed of a three-digit area code and a three-digit central-office code. The RBOCs state that they would be willing to administer the shared DNIC and assign the PNICs for their areas. We agree that a regional approach would likely yield benefits and that it may be superior to a single, nationwide DNIC. The RBOC approach would also conserve DNICs. Thr RBOC proposal, however, would not eliminate the problem of routing ambiguities. Because overseas routing is by DNIC, the RBOC approach would still require every exchange network sharing a regional DNIC to interconnect with each other. The RBOC approach would reduce the number of required connections (and expenditures). It should be noted, however, that each of the RBOC territories encompasses several states and a variety of LATAs. There may still be a large number of networks which must interconnect. On the whole, however, it appears to us that the RBOC approach is more flexible than the shared USTA DNIC proposal and that it represents a workable solution. We invite further comment on the benefits and limitations of the regional-DNIC approach, particularly on how it could be administered so as to minimize or eliminate routing ambiguities.

Option 6

30. *Integrated Numbering Plan.* The weakness in all of the options we have considered is that they could create routing ambiguities. Short of assigning a DNIC to every destination and interexchange network, which appears not to be possible, the only way to avoid ambiguities would be to require every network to interconnect with each other. The main difficulty in avoiding routing ambiguities through universal interconnection is the expense of the required interconnections. The RBOC proposal for seven regional and one nationwide DNIC would ease the problem somewhat by reducing the number of interconnections required and the length of required connecting facilities. A larger number of regional DNICs, with correspondingly smaller geographic areas, might improve the situation even more. One such approach would be assign a DNIC to each of the RBOC LATAs. Under such an approach, all private and public destination data networks within the LATA would share the LATA DNIC. Domestic interexchange networks which do not interact with overseas administrations can rely for routing upon programming U.S. switches to read the PNIC or through use of a national DNIC. The use of the national DNIC would permit identification of up to 4,000 different inter-exchange networks without reducing the supply of available X.121 DNICs.

31. The use of a DNIC for every LATA will not, however, prevent routing ambiguities. That is, even with 164 DNICs, there must still be interconnection so that every interexchange carrier that serves a given LATA can deliver the traffic to every network in that LATA. The relatively small geographical area of a LATA should reduce the number of entities sharing any one DNIC, and thus the number of entities with which a particular network must interconnect. It should also reduce the cost of interconnection by reducing the length of any required interconnection facilities.[6]

32. Each of the options we have considered has its own features and will, to a greater or lesser degree, provide for workable traffic routing. We thus solicit comments from interested persons on any of the options. However, in the interest of DNIC conservation, we incline toward one of the plans for sharing DNICs, such as the USTA, RBOC or integrated numbering plan. Moreover, because we believe that the existence of routing ambiguities is likely to be a significant problem, which must be avoided, and that the only solution to it is a rather extensive program of interconnection, Option 6 (the integrated numbering plan) may be the best solution overall. We do not by expressing our preference wish to limit parties to this rulemaking. They are free to address any or all of the options and to suggest others as well.

Administration of Numbering Plans

33. Because all of the proposals which call for sharing DNICs will require potentially competitive networks to work together, the question of administration is of great importance. We have already discussed USTA's

[6] It should be noted that entities which operate in more than one LATA need not effect interconnections in all of them. So long as the particular network is connected somewhere in the United States to a network with overseas facilities, the destination network can rely upon the interconnection and its national DNIC for routing to its subscribers.

offer to administer a shared-DNIC scheme, as well as the RBOC offer to administer a regional DNIC approach. Another potential administrator which has been proposed is Bell Communications Research (Bellcore). Bellcore now administers the North American Numbering Plan for telephony and would certainly have the expertise necessary for assigning PNICs under a variety of shared-DNIC approaches. However, because providers of data services will have overlapping service areas and, thus, will compete for the same customers, administration of a data-service numbering plan will likely be more complicated (and more susceptible to controversy) than the telephone-service numbering plan. Yet another candidate for administrator would be the Exchange Carrier Standards Association (ECSA) or some other body sanctioned by the American National Standards Institute (ANSI). ECSA, or one of its "T1" telecommunications technical subcommittees, appears to be particularly a good choice for administrator. The ECSA is impartial, expert, represents a wise variety of interests. Thus, we tentatively conclude that we should assign the administration of a DNIC-sharing plan to ECSA. The United States government is obligated to assure that DNIC assignments are in accordance with its agreements in the ITU and to oversee the administration of a numbering plan.

III. Regulatory Flexibility Act—Initial Analysis

34. Pursuant to Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1980), the following is an initial analysis of the impact of this proposed rulemaking:

A. Reason for Action

35. *RPOA Status.* Because overseas administrations are concerned that unlicensed, U.S. enhanced-service providers may not be obligated to obey the ITU Convention and Regulations, some administrations have been reluctant to enter into operating agreements with U.S. enhanced-service providers. To assist such enhanced-service providers in obtaining agreements, we are proposing a simple application procedure for those seeking RPOA status which will give such enhanced-service providers U.S. governmental recognition and affirmatively place upon them the obligations of all U.S. communications entities operating internationally to obey the Convention and Regulations.

36. *Non-carried IRUs.* Because the ownership of circuits in submarine cables can allow certain users of international communications services to achieve maximum service flexibility, assure the satisfaction of their communications needs on a long-term basis and potentially to reduce their cost for service, we are proposing a policy of allowing enhanced-service providers and other users to acquire IRUs in such cables and requiring the owners of those cables to make IRUs available to users. The proposal would extend to international common-carrier submarine cables policy of non-carrier ownership the Commission has already adopted with respect to domestic satellite facilities, domestic terrestrial cable facilities and international non-common-carrier submarine cables.

37. *DNIC Assignemnt.* Since the number of U.S. data networks who have a need to route data traffic to and from other U.S. domestic and international networks, and who thus could benefit from access to a DNIC, is likely to exceed the number of DNICs available for United States use, we are proposing a DNIC-assignment plan which will provide for various networks to share a DNIC or DNICs, thus conserving scarce codes and assuming the widest possible access to a code.

B. The Objective

38. To encourage greater flexibility and customer choice in the satisfaction of their communications needs so as to apply a downward pressure on the costs and charges for international communications and information services.

C. Legal Basis

39. Authority for these policies is premised upon 47 U.S.C. 154(i), 201–205, 214 and 403 (1976).

D. Description of Potential Impact and Number of Small Entities Affected

40. The proposed policies are unlikely to have a significant impact upon a sustantial number of entities who would constitute "small businesses" under section 601(3) of the Regulatory Flexibility Act, or "small entities" within the meaning of section 3 of the Small Business Act.

41. *RPOA Status.* Most existing enhanced-service providers are affiliates of large corporations. The proposal would, however, assist any potential enhanced-service providers who would constitute a small business who may wish to offer international service.

42. *Non-carrier IRUs.* Most users of international private-line services, the ones most likely to acquire IRUs, are large corporations or U.S. governmental entities. However, allowing users to acquire IRUs in submarine cable facilities will assist even small entities in arranging their communications needs.

43. *DNIC Assignments.* Most of the common carriers, enhanced-service providers and operators of private data networks who would seek DNIC assignments are large corporations. The purpose of the DNIC-assignment plan is to make it easy for any entity with a need for a DNIC to have access to one, either individually or shared.

E. Record Keeping and Other Compliance Requirements

44. The proposals would impose no new reporting requirements. Implementation of the RPOA status application procedure would require applicants to file a more formal application than they now do. Implementation of the non-carrier IRU policy will require the carrier owners of the cables to calculate a price for an IRU and to file an application under 47 U.S.C. 214 for authority to transfer the IRUs from common-carrier use. Potential non-carrier purchasers of IRUs in cables would be required to provide the Commission with a copy of an operating agreement with an overseas administration and a statement that the administration consents to the sale. Implementation of the DNIC-assignment procedure will require the designation of an administrator to supervise assignments of DNICs and PNICs. Applicants for DNICs or PNICs will continue to file an application.

F. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

45. None.

G. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objectives

46. The proposals do not increase regulatory burdens upon small entities. Rather, they were designed to minimize regulatory burdens on users, large or small.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

The Federal Communications Commission is proposing to amend 47 CFR Part 63, as follows:

1. The authority citation for Part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154.

2. Sections 63.701 and 63.702 are proposed to be added as follows:

§ 63.701 Contents of application.

Except as otherwise provided in this part, any party requesting designation as a Recognized Private Operating Agency within the meaning of the International Telecommunication Convention shall request such designation by filing an original and two copies of an application stating the nature of the service to be provided and a statement that the applicant is aware of its obligation under Article 44 of the Convention to obey all international regulations promulgated under the Convention to which the United States is a Signatory and its pledge that it will in fact honor those regulations. Such statement must include the following information where applicable:

(a) The name and address of each applicant;

(b) The Government, State, or Territory under the laws of which each corporate applicant is organized;

(c) The name, title and post office address of the officer of a corporate applicant, or representative of a non-corporate applicant, to whom correspondence concerning the application is to be addressed;

(d) A statement whether the applicant is a carrier subject to section 214 of the Communications Act, an operator of broadcast or other radio facilities, licensed under Title 3 of the Act, capable of causing harmful inteference with the radio transmissions of other countries, or a non-carrier provider of services classed as "enhanced" under § 64.702(a).

(e) A statement that the services for which designation as a recognized private operating agency is sought will be extended to a point outside the United States or are capable of causing harmful interference of other radio transmission and a statement of the nature of the services to be provided;

(f) A statement setting forth the points between which the services are to be provided; and

(g) A statement as to whether covered services are provided by facilities owned by the applicant, by facilities leased from another entity, or other arrangement and a description of the arrangement.

§ 63.702 Form.

Application under § 63.701 shall be submitted in the form specified in § 63.53 for applications under section 214 of the Communications Act.

[FR Doc. 85-20562 Filed 8-27-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-255; RM-4982]

FM Broadcast Station in Oswego, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 244A to Oswego, New York, as that community's second local FM allotment at the request of William Kirkpatrick.

DATES: Comments must be filed on or before October 17, 1985, and reply comments on or before November 1, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rulemaking

In the matter of amendment of §73.202(b), table of allotments, FM broadcast stations (Oswego, New York); MM Docket No. 85-255, RM-4982.

Adopted: August 13, 1985.
Released: August 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by William Kirkpatrick ("petitioner") requesting the allocation of Channel 244A to Oswego, New York, as that community's second local commercial FM channel. The petitioner states that he will apply for the channel, if allocated.

2. Oswego currently receives local service from noncommercial educational Station WRVO and commercial Station WSGO-FM, Channel 288A. Channel 244A can be allocated in compliance with the Commission's mileage separation requirements if the transmitter is sited at least 7.1 miles (11.4 kilometers) east to avoid a short-spacing to Station WCMF, Rochester, New York. This site restriction requires that the transmitter be located beyond the distance for which we could assume that a city grade signal could be provided to the entire community. Therefore, we request that the petitioner furnish us with a study showing that a site is available from which a Channel 244A operation could provide the required 70 dBu signal over Oswego in its entirety.

3. Oswego is located within 320 kilometers (200 miles) of the U.S.-Canadian border. Therefore, the concurrence of the Canadian Government must be received before the channel can be allocated.

PART 73—[AMENDED]

§73.202 [Amended]

4. We believe the public interest would be served by proposing the allocation, as it could provide Oswego with its second local commercial FM service. Accordingly, we propose to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Oswego, New York	[illegible]	244A, 288A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before October 17, 1985, and reply comments on or before November 1, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: William Kirkpatrick, P.O. Box 1306, Ridgewood, New Jersey 07451 (petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-

6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes and *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-20558 Filed 8-27-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-254; RM-4990]

FM Broadcast Station in Aiken, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of FM Channel 258C2 for Channel 257A at Aiken, South Carolina, at the request of Aiken Radio, Incorporated.

DATES: Comments must be filed on or before October 17, 1985, and reply comments on or before November 1, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Lester K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

Amendment of § 73.202(b), table of allotments, FM broadcast stations (Aiken, South Carolina); MM Docket No. 85-254, RM-4990.

Adopted: August 13, 1985.
Released: August 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the petition of Aiken Radio, Inc. ("petitioner"), licensee of Station WNEZ(FM), Aiken, South Carolina, requesting the substitution of FM Channel 258C2 for its Channel 257A, and the modification of its license to specify operation on the higher powered frequency. Aiken currently receives local FM service from Station WNEZ(FM) and Station WJFX, Channel 240A.

2. Petitioner states that Aiken has a population of 14,978 persons [1] and is the seat of Aiken County (population 105,625). It claims that the allotment of the higher powered frequency would result in the dramatic improvement of service by Station WNEZ to both Aiken and the surrounding area. This expanded coverage could provide essential weather information to outlying farms and rural areas, according to the petitioner, as well as providing service to travelers along Interstate 20 between Columbia, South Carolina, and Augusta, Georgia.

3. We believe the proposal warrents consideration in view of the expressed need for a wide coverage area FM

[1] Population figures are taken from the 1980 U.S. Census; unless otherwise noted.

station. A staff engineering study shows that Channel 258C2 can be allocated to Aiken in compliance with the Commission's minimum distance separation requirements if the transmitter is restricted to an area at least 22.8 kilometers (14.2 miles) northwest to avoid short-spacing to Station WDMC–FM, Douglas, Georgia, and to the construction permit of Barnacle Broadcasting Ltd. for Channel 259 at Port Royal, South Carolina.[2]

4. In view of the above, we will propose to modify the license of Station WNEZ(FM), as requested by the petitioner. However, in conformity with Commission precedent, as expressed *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976), should another interest in the allotment be shown, the modification could not be made unless an additional equivalent channel is available in the community to accommodate any other expressions of interest. See, *Modification of FM and TV Station Licenses*, 56 R.R. 2d 1253 (1984).

PART 73—[AMENDED]

§ 73.202 [Amended]

5. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Aiken, South Carolina	240A, 257A	240A, 258C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before October 17, 1985, and reply comments on or before November 1, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner as follows: Gary S. Smithwick, Esq., Keith & Smithwick, 1320 Westgate Drive, Winston-Salem, North Carolina 27103 (Counsel to petitioner).

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceedings, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.410 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference

[2] Channel 259 was allocated to Beaufort, South Carolina by *Report and Order*, Docket 80–204, 46 FR 14017 (1981). Beaufort County Broadcasting Company has filed an appeal with the U.S. Court of Appeals for the District of Columbia Circuit of the Commission's denial of its application for use of Channel 259 at Beaufort and the grant of Barnacle Broadcasting's application for use of the channel at Port Royal, South Carolina. Should the channel ultimately be licensed to Beaufort, Channel 259C2 could not be used at Aiken as the communities are only 176 kilometers apart instead of the required 186 kilometers for first adjacent Class C and C2 stations.

Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-20559 Filed 8-27-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-252; RM-5011]

FM Broadcast Station in Neillsville, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 224A to Neillsville, Wisconsin, as that community's second FM allocation, at the request of Foster Broadcasting.

DATES: Comments must be filed on or before October 17, 1985, and reply comments on or before November 1, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of: amendment of § 73.202(b), table of allotments, FM broadcast stations. (Neillsville, Wisconsin), MM Docket No. 85-252 RM-5011.

Adopted: August 13, 1985.
Released August 26, 1985.

By the Chief, Policy and Rules Divisions.

1. A petition for rule making was filed by Foster Broadcasting ("petitioner"), proposing the allotment of channel 224A to Neillsville, Wisconsin, as that community's second FM service. Petitioner has expressed an intention to apply for the channel.

2. The channel can be allotted in compliance with the Commission's minimum distance separation requirements, with a site restriction of 1.1 kilometers (0.7 miles) north of Neillsville to avoid a short spacing to Station WIZM-FM, Channel 227, at La Crosse, Wisconsin.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the fact that the proposed allotment could provide a second FM broadcast service to Neillsville, Wisconsin, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	[illegible]	[illegible]
Neillsville, Wisconsin	[illegible]	[illegible]

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comment on or before October 17 1985, and reply comment on or before November 1, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Mr. Mark Foster, Foster Broadcasting, 10002 Hewitt Street, Neillsville, Wisconsin 54456.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comment even if it only resubmits or incorporates by reference its former pleadings. It should also restate it present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in the *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available or examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, D.C.

[FR Doc. 85-20560 Filed 8-27-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-253; RM-4980]

FM Broadcast in Sturtevant, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Sentry Broadcasting, Inc., proposes the allocation of Channel 284A to Sturtevant, Wisconsin, as that community's first FM channel.

DATES: Comments must be filed on or before October 17, 1985, and reply comments on or before November 1, 1985.

ADDRESS: Federal Communications Commission, Washington, D,C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Sturtevant, Wisconsin), MM Docket No. 85-253; RM-4980.

Adopted: August 13, 1985.
Released: August 26, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Sentry Broadcasting, Inc., ("petitioner") seeking the allotment of Channel 284A to Sturtevant, Wisconsin, as that community's first FM channel. Petitioner states its intention to apply for the channel, if allotted.

2. The channel can be allotted in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules, with a site restriction of 5.8 kilometers (3.6 miles) north of the city. The site restriction is necessary, in order to avoid short spacing to Station WCSJ (Channel 284) at Morris, Illinois.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the fact that Sturtevant could receive a first FM channel, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	[illegible]	Proposed
Sturtevant, Wisconsin		284A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before October 17, 1985, and reply comments on or before November 1, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Julian P. Freret, Booth, Freret & Imlay, 1920 N Street NW.—Suite 520, Washington, D.C. 20036.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in

initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. it should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-20561 Filed 8-27-85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 334; (Sub-6)]

Review of Car Hire Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: The Commission is extending the due date for filing comments on its Advance Notice of Proposed Rulemaking in this proceeding which was initiated to review the regulation of railroad car-hire charges. This extension is in response to a petition seeking an extension of time for filing comments.

DATE: Initial comments are due by October 28, 1985; reply comments are due by January 8, 1986.

ADDRESS: Send comments to: (Please refer to Ex Parte No. 334 (Sub-No. 6) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking published April 29, 1985 (50 FR 16724) established due dates of June 28 and August 27, 1985, respectively, for the filing of initial and reply comments in this proceeding. In response to a joint petition filed June 11, 1985, by the American Short Line Railroad Association, BRAE Corporation, and Itel Rail Corporation, a 60-day extension of those dates was granted. Thus, the date for filing comments was extended to August 27, 1985, and for replies to October 28, 1985. In a joint petition filed August 12, 1985, Consolidated Rail Corporation and the CSX Railroads now seek a second 60-day extension of time for filing comments. Under the petition, reply comments would be due on December 27, 1985. Because experience shows that due dates around holiday periods can rarely be held to a firm schedule, the date for reply comments is set as January 8, 1986.

Because of the complex issues, a second extension is warranted. This will enable all parties to better define their positions, and thus produce a better ultimate disposition of this proceeding in a manner which will promote the public interest.

Decided: August 16, 1985.

By the Commission, Malcolm M.B. Sterrett, Acting Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-20451 Filed 8-27-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards School Bus Body Joint Strength

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition filed by Wayne Corporation for rulemaking to amend Motor Vehicle Safety Standard No. 221 *School bus body joint strength.* Perceiving what appeared to it to be deficiencies in the standard, the Indiana-based school bus manufacturer asked that dynamic tests involving a contoured moving barrier and a pole simulator be substituted for the existing static tensile test of 8-inch segments cut randomly from joints. The agency denies Wayne's petition in this notice because it disagrees with the petitioner's criticims of the standard and believes that a dynamic test would create additional expense for manufacturers with no discernable improvement in school bus safety.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Williams, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C. 20590 (202 426-2264).

SUPPLEMENTARY INFORMATION: This notice denies a petition for rulemaking filed by Wayne Corporation of Richmond, Indiana, a school bus manufacturer. The petitioner alleged the existence of "problems" under Federal Motor Vehicle Safety Standard No. 221 *School bus body joint strength* due to "faulty test procedures" which "have been very costly and time consuming to Wayne and the industry". It attributed this to a "lack of correlation between the test procedures, the realities of school bus construction, and crash environment", and concluded that the

test procedure must be changed by a rulemaking.

The criticisms of the standard were as follows. First, Wayne alleged that the test procedure of paragraph S6 of the Standard was not practicable in light of the realities of school bus construction. This is a tensile test in which a test specimen is cut from the body consisting of any randomly selected 8-inch segment of a joint. In Wayne's view, the procedure fails to take into account the fact that in many cases one or both of the constituent body panels are curved and therefore are straightened in the process of being tested which has the effect of weakening the joint. In addition, the procedure does not make allowance for the testing of compound joints, those that are not only curved but on different panels and in complex configurations. Wayne further alleged that the integrity of a joint may be compromised in the process of extracting a specimen from a bus body.

In Wayne's opinion, the procedure does not meet the need for motor vehicle safety. The procedure covers only the tensile strength "of a very small body segment" and does not test torque, shear or bending strengths and therefore can not determine the extent to which a bus could resist a crash. In addition, the failure to test joints as they are situated in a bus body is not realistic because it does not test joints "in the manner in which they are designed to bear stress or withstand impact in an accident situation". Further, the procedure fails to take into account the speed, mass, direction of an opposing vehicle in an accident or if not a vehicle, the shape and rigidity of an object with which the bus collides. The petitioner argued that the present standard could actually derogate from safety in that additional rivets inserted to insure compliance could weaken the panel so that in a crash the panel would rip along the line of its rivet holes, in the manner in which stamps are separated along their perforation lines.

Petitioner also believes that the standard does not provide objective criteria, specifically that the definition of "body panel joint" creates ambiguities, and that the industry is unable to understand the agency's rationale for excluding certain interior joints from compliance such as cove and aisle moldings. Test instructions are also alleged to be unclear, such as S6.3.2's directive that the testing machine's grips be adjusted so that the joint under load will be in stress "approximately perpendicular" to the joint; the quoted phrase is cited as an example of ambiguity.

Because of this, Wayne recommended adopting a test procedure under which a fully loaded bus would be subjected to impacts by a moving barrier and pole simulator. The intrusion of body components and panels into the occupant space would be measured to determine compliance.

NHTSA has reviewed these arguments, concluded that they are without substantive merit and that the suggested dynamic tests for buses are both arbitrary and impracticable as well as inconclusive, absent frequency of exposure and injury data with which to quantify their benefits. It has denied the petition.

About 6 months prior to receipt of the Wayne petition, NHTSA conducted tests on two school buses (not manufactured by Wayne) in support of an investigation of an apparent non-compliance with FMVSS No. 221. The tests included a test specimen (in accordance with S6.1.3 of Standard No. 221) that was removed from the roof of a school bus and tested according to S6.5. The specimen was selected so that it maintained its roof curvature and was instrumented with nine strain gauges. The purpose of the test was to measure the strain distribution across the 8-inch joint width at the center of the specimen when pulled with flat end clamps and curved end clamps to show that: (a) Stress distribution at the joint under load will be "approximately perpendicular" to the joint of S6.3.2 and (b) stress distribution at the joint under load is not significantly affected by the use of flat or curved end clamps. A basic statistical analysis of the data showed there is no significant difference in strain distribution with a 90 percent probability of being correct. There have been no curved joints, other than ceiling joints, tested by NHTSA and the agency has concluded that the criticism is immaterial. To be sure, compound joints do present a different problem, but no noncompliances of compound joints have been noted.

In preparation of test samples, NHTSA routinely, as standard practice, removes oversize portions of the bus body and the final test specimen is trimmed from this segment, reducing the possibility of damaging the test joint through heat or vibration. NHTSA therefore cannot accept as valid the criticism that it has been negligent in preparation of test specimens.

NHTSA considered the petitioner's argument that the standard's tensile test did not meet the need for motor vehicle safety. In establishing the standard, the agency made the judgment that the overall strength of the school bus body could be best improved by requiring a minimum strength of body joints. Tensile strength is measured by opposing forces that seek to separate the joint, and is the method specified by S6.3 for compliance testing. It represents the crash force that tends to pull apart a joint, and it is relatively easily tested. Presumably other forces occur in school bus crashes, but NHTSA knows of no test procedure with repeatable results by which resistance to these forces can be judged; however, it seems logical to assume that in many cases an improvement in a joint fastening system to improve tensile strength would also improve other stress tolerances. The tensile test is based on ASTM standards, and is used in many other industries to measure the quality of sheet metal joints.

Wayne has commented that the samples chosen for testing may be unrepresentative because of their location and size and eccentricities of loading. Because the standard provides for testing of any randomly selected 8-inch segment of a joint larger than 8 inches without specifying the location of the sample, except to forbid the bisection of a discrete fastener, it is theoretically possible that the sample selected may contain fasteners or fastening materials that are not typical of the joint either in quantity or distribution. However, the agency has not found practical differences between the strength of tested segments and the apparent strength of overall joints from which test segments have been taken. The agency believes that this issue can be addressed by considering whether clarifying amendments or interpretations may be appropriate to assure that the selection of samples and test procedures continue to measure compliance with the standard's tensile strength requirement fairly. Petitioner has not presented evidence indicating that this issue is important enough to justify rescission of this regulation and substitution of an impractical and expensive dynamic test.

Nor does NHTSA agree that Standard No. 221 may derogate from safety. As a practical matter, the agency sees no evidence of any change in the thickness of structural panels of buses built before or after the standard was effective. As for the standard's alleged ambiguity, the agency provided extensive interpretations between 1976 and 1978 to schoolbus manufacturers on the standard's coverage. Virtually no interpretations have been required since 1980, leading NHTSA to conclude that the coverage of the standard is well understood by industry. Although the

standard does contain the unquantified phrase "approximately perpendicular" in its test procedure, its published Laboratory Procedures require that the axis of a test specimen in all planes coincide with the center line of the heads of the testing machine so that bending stresses are not introduced. Strain measurements are made on a special test specimen to determine the axial strain gradient produced at the joint location between the center and edges of the specimen by the clamping/loading technique. At that point, the maximum differences in measured strain near the strain limit of the specimen are determined. On school buses tested in 1977 and 1978 the differences in measured strain were 10%. This was an inconsequential difference because all joint failures occurred at margins far greater than 10%. On buses tested in 1979 and subsequent years, however, this margin has purposely been narrowed to 3% as a closer approximation to perpendicular.

NHTSA therefore found the criticisms of Standard No. 221 insufficient to justify a conclusion that ameliorative rulemaking was required. As for the merits of a dynamic test, NHTSA notes that Wayne's suggested procedure was based upon the Vehicle Equipment Safety Commission's proposed Standard 13. When that proposed standard was revised in 1978 the dynamic tests outlined therein were abandoned as impracticable, and the VESC adopted the requirements of Standard No. 221 by reference in its Standard VESC–6 and VESC–10 covering large and small school buses respectively. The costs of conducting dynamic tests would be substantial without any evidence of a quantifiable increase in the level of safety. A dynamic test procedure could result in school bus manufacturers having to revise their manufacturing methods, procedures, and the like at significant expense without corresponding increase in safety benefits.

In consideration of the foregoing, at the conclusion of the technical review the agency has determined that there is no reasonable possibility that the order requested in the petition would be issued at the conclusion of the rulemaking proceeding, and the petition by Wayne Corporation for rulemaking to amend Standard No. 221 is hereby denied.

(Secs. 103, 119, 124, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407, 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8))

Issued on August 23, 1985.

Barry Felrice,
Associate Administrator for Rulemaking.

[FR Doc. 85–20533 Filed 8–23–85; 1:26 pm]
BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1150

[Ex Parte No. 392 (Sub-1)]

Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption and Rules.

SUMMARY: The Commission proposes to exempt, under 49 U.S.C. 10505, acquisitions and operations under 49 U.S.C. 10901 (see 49 CFR 1150.1). This exemption would also include: (1) Acquisition of trackage rights governed by 10901; (2) acquisition by a noncarrier of rail property that would be operated by a third party; (3) operation by a new carrier of rail property acquired by a third party; and (4) a change in operators on the line. This exemption would not apply when a Class I railroad abandons a line and a Class I railroad then acquires the line in a proposal that would result in a major market extention as defined at 49 CFR 1180.3(c). The regulations at 49 CFR Part 1150 would be amended and a Subpart D, *Exempt Transactions*, would be added. This expands a proposal filed by Anacostia & Pacific Corp. (APC) seeking exemption for noncarrier acquisitions and operations, where the noncarrier would be Class III carrier after completion of the transaction. We invite comment on both APC's exemption request and the expanded exemption proposal.

DATES: An original and 15 copies of comments should be filed by September 27, 1985.

ADDRESS: Comments referring to Ex Parte No. 392 (Sub-No. 1) should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2229, Interestate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

List of Subjects in 49 CFR Part 1150

Administrative practice and procedure, Railroads.

Decided: August 16, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Simmons concurred in the issuance of the notice. Commissioner Lamboley concurred in the notice.

James H. Bayne.
Secretary.

Appendix

Title 49, Subtitle B, Chapter X, Part

1150 of the Code of Federal Regulations will be amended by adding a new Subpart D to read as follows:

PART 1150—[AMENDED]

1. The authority citation for Part 1150 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10326, 10901, 10903, and 10505; 5 U.S.C. 553 and 559.

2. New Subpart D is added as follows:

Subpart D—Exempt Transactions

Sec.
1150.31 Scope of exemption.
1150.32 Procedures and relevant dates.
1150.33 Information to be contained in notice.
1150.34 Format for caption summary.

Subpart D—Exempt Transactions

§ 1150.31 Scope of exemption.

This exemption applies to all acquisitions and operations under section 10901 (See § 1150.1, *supra*). This exemption also includes: (a) Acquisition of trackage rights governed by 10901; (b) acquisition by a noncarrier of rail property that would be operated by a third party; (c) operation by a new carrier of rail property acquired by a third party; and (d) a change in operators on the line. This exemption does not apply when a Class I railroad abandons a line and a Class I railroad then acquires the line in a proposal that would result in a major market extension as defined at 49 CFR 1180.3(c).

§ 1150.32 Procedures and relevant dates.

(a) To qualify for this exemption, applicant must file a verified notice providing details about the transaction, and a brief caption summary, conforming to the format in § 1150.34, for publication in the **Federal Register**.

(b) Before filing the notice, applicant must obtain a docket number from the Commission's Office of Secretary. The exemption will be effective 7 days after the notice is filed. Notice will be published in the **Federal Register** within 30 days of the filing. A change in operators would follow the provisions at 49 CFR 1150.24, and notice must be given to shippers.

§ 1150.33 Information to be contained in notice.

(a) The full name and address of the applicant.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

(d) The operator of the property;

(e) A brief summary of the proposed transaction, including (1) the name and address of the railroad transferring the subject property, (2) the proposed time schedule for consummation of the transaction, (3) the mile-posts of the subject property including any branch lines and (4) the total route miles being acquired;

(f) A brief description of the amount and type of traffic expected to be handled on the line;

(g) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties and States; and

(h) The amount of projected revenues that will be generated in the first year by operations on the property to be acquired.

§ 1150.34 Format for caption summary.

The document submitted as a caption summary must be submitted in the following form:

Interstate Commerce Commission

Notice of Exemption

Finance Docket No.

(Name of entity acquiring—EXEMPTION or operating the line, or both). (The transaction—acquisition or operation, or both). (The transferor)

(Name of entity acquiring or operating the line, or both) has filed a notice of exemption to (The transaction, acquisition or operation, or both) a line of (The transferor)'s between (Describe the line).

The notice is filed under 49 CFR 1150.31. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

[FR Doc. 85–20523 Filed 8–27–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672 and 675

[Docket Nos. 50720–5120 and 50834–5034]

Groundfish of the Gulf of Alaska and Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rules; correction.

SUMMARY: This document corrects the Paperwork Reduction Act statement in the regulatory text of the proposed rules to implement Amendment 14 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, published July 26, 1985, 50 FR 30481, and Amendment 9 to the Fishery Management Plan for the Groundfish of the Bering Sea and Aleutian Islands Area, published August 16, 1985, 50 FR 33080.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, 907–586–7229, concerning Amendment 14, Groundfish of the Gulf of Alaska; and Janet E. Smoker, 907–586–7230, concerning Amendment 9, Groundfish of the Bering Sea and Aleutian Islands Area.

The following corrections are made: (1) Groundfish of the Gulf of Alaska, FR Doc. 85–17826 (July 26, 1985), on page 30486, column 3, paragraph 3 is deleted and (2) Groundfish of the Bering Sea and Aleutian Islands Area, FR Doc. 85–19656 (August 16, 1985), on page 33082, column 2, paragraph 2 is deleted. In place of the deleted paragraphs, the following paragraph is inserted: "This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the PRA. Comments should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for NOAA."

(16 U.S.C. 1801 *et seq.*)

Dated: August 23, 1985.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85–20569 Filed 8–27–85; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 50, No. 167
Wednesday, August 28, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 23, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service
Federal State Agreement
FNS 74
Annually
State or local governments; 82 responses; 28 hours; not applicable under 3504(h).
Albert V. Perna (703) 756–3600

- Food and Nutrition Service
National Commodity Processing Program for Processing UDSA Donated Food
FNS 513, 516 and 519
Monthly; Annually
Businesses or other for-profit; 27,050 responses; 5,275 hours; not applicable under 3504(h)
Alberta C. Frost (703) 756–3585

- Rural Electrification Administration
Rating Summary of Operations and Maintenance (REA Electric System)
REA 300
On occasion
Small businesses or organizations; 331 responses; 1,324 hours; not applicable under 3504(h)
Archie Cain (202) 382–9082

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 85–20578 Filed 8–27–85; 8:45 am]
BILLING CODE 3410–01–M

Soil Conservation Service

Smyth County Landfill Critical Area Treatment RC&D Measure, VA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Smyth County Landfill Critical Area Treatment RC&D Measure, Smyth County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804–771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for erosion and sediment damage reduction to the Smyth County Public Service Authority Landfill and consists of 500 feet of diversion and the establishment of seven (7) acres of grasses and legumes on their property. The planned work will include 500 feet of grass-lined diversion and the shaping, seeding and mulching of the seven (7) acre site.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basis data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of federally assisted programs and projects is applicable)

Dated: August 12, 1985.

Manly S. Wilder,
State Conservationist.

[FR Doc. 85–20575, Filed 8–27–85; 8:45 am]
BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Louisiana Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory

Committee to the Commission will convene at 1:00 p.m. and adjoun at 5:00 p.m. on September 20, 1985, at the Sheraton-New Orleans, 500 Canal Street, Bonnie Burn Room, New Orleans, Louisiana. The purpose of the meeting is to discuss project and monitoring activity, a report on school desegregation, and administrative concerns.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael Fontham, or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229–5570, (TDD 512/229–5580).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–20598 Filed 8–27–85; 8:45 am]

BILLING CODE 6335–01–M

Montana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 1:00 p.m. on September 21, 1985, at the Fort Belknap Roller Rink, Fort Belknap Agency, Montana. The purpose of the meeting is to receive information from community representatives on Indian-school board representation, relations, and policy.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lawrence D. Huss or William Muldrow, Acting Director of the Rocky Mountain Regional Office, at (303) 844–2211, (TDD 303/844–3031).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–20599 Filed 8–27–85; 8:45 am]

BILLING CODE 6335–01–M

Oklahoma Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on September 27, 1985, at the Sheraton Inn-Skyline East, 1333 E. Skelly Drive, Council Room, Tulsa, Oklahoma. The purpose of the meeting is to plan future SAC projects and activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles L. Fagin, or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229–5570, (TDD 512/229–5580).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–20600 Filed 8–27–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Review Scheduled for the Proposed Weeks Bay (Alabama) National Estuarine Sanctuary Management Plan

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS,) National Oceanic and Atmospheric Administration (NOAA), Commerce.

SUMMARY: The Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA) U.S. Department of Commerce, in compliance with 15 CFR § 921.21(f) announces that the State of Alabama will hold a public meeting for the purpose of discussing the proposed Final Sanctuary Management Plan prepared for the proposed Weeks Bay National Estuarine Sanctuary. The meeting will be held on August 29, 1985 at 7:00 P.M. in the City Council Chambers, Fairhope Municipal Complex, Fairhope, Alabama.

As part of the procedures leading to the designation of the Sanctuary, the State of Alabama must submit the proposed final management plan to NOAA for its review and approval. Copies of the plan are available upon request from the Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Montgomery, Alabama 36105.

FOR FURTHER INFORMATION CONTACT: Kelvin Char, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 3300 Whitehaven Street, NW., Washington, DC 20235, 202/634–4236.

(Federal Domestic Assistance Catalog No. 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: August 23, 1985.

James P. Blizzard,

Acting Director, Office of Ocean and Resource Management.

[FR Doc. 85–20597 Filed 8–27–85; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals; Issuance of Permit; John D. Hall; Modification

Pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR 216), Scientific Research Permit No. 506 issued to Dr. John Hall, Solace Enterprises, P.O. Box 4885, Anchorage, Alaska 99510 on June 13, 1985 (50 FR 25733 July 21, 1985), is modified as follows:

Section B.2 is deleted and replaced by:

2. "The Holder shall exercise caution when approaching animals, approach no closer than 25 meters, retreat to a greater distance when harassment occurs, and avoid repeated harassment of individual animals."

This modification becomes effective upon publication in the **Federal Register**.

Dated: August 21, 1985.

Richard B. Roe,

Acting Assistant Administrator for Fisheries.

[FR Doc. 85–20547 Filed 8–27–85; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton and Man-Made Fiber Textile Products From the People's Republic of China

August 22, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive

published below to the Commissioner of Customs to be effective on August 22, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive establishing import limits for specified categories of cotton and man-made fiber textile products, including Categories 340 (men's and boys' woven cotton shirts), 342 (women's, girls' and infants cotton skirts), and 635 (women's, girls' and infants' man-made fiber coats), produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1985, was published in the **Federal Register** on December 28, 1984 (49 FR 50432). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, the Government of the People's Republic of China has notified the Government of the United States of its intention to use flexibility in the form of swing to be applied to the current-year limits for these categories. The limit for Category 340 is being increased from 638,223 dozen to 670,134 dozen. The limits for Categories 342 and 635 are being reduced to 144,157 dozen and 394,159 dozen, respectively, to account for the increase applied to Category 340.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and the Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 22, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 24, 1984 from the Chairman, Committee for the Implementation of Textile Agreements, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1985.

Effective on August 22, 1985, the directive of December 24, 1984 is hereby further amended to adjust the previously established restraint limits for Categories 340, 342 and 635 to the following, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended: [1]

Category	[redacted] 12-mo limit [1] (dozen)
340	670,134
342	144,157
635	[redacted]

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 85–20580 Filed 8–27–85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

August 22, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 28, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On July 11, 1985 a notice was published in the **Federal Register** (50 FR 28242) which announced that, on May 31, 1985, the Government of the United States had requested consultations with the Government of Malaysia concerning imports of women's, girls' and infants' trousers of man-made fibers in Category 648. The letter of July 8, 1985 to the Commissioner of Customs which followed that notice established an import level of 104,949 dozen for man-made fiber textile products in Category 648, produced or manufactured in Malaysia and exported during the sixty-day period which began on May 31, 1985 and extended through July 29, 1985. This level was established under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5, 1980 and February 27, 1981, as amended and extended, between the Governments of the United States and Malaysia.

A new bilateral agreement was effected by exchange of notes between the two governments, dated July 1, and 11, 1985. The new agreement which dates from January 1, 1985 and extends through December 31, 1989, includes a consultation provision calling for a ninety-day period during which the two governments will attempt to reach agreement on a mutually satisfactory solution concerning imports in any category not subject to a specific limit which threaten to impede the orderly development of trade between the two countries. In accordance with the terms of the new agreement, the letter published below to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements cancels the letter of July 8, 1985 and establishes a level of 122,400 dozen for the ninety-day period which began on May 31, 1985 and extends through August 28, 1985 for goods in Category 648 exported during that period. It also establishes a prorated twelve-month specific limit of 143,765 dozen for man-made fiber textile products in Category 648, exported during the period beginning on August 29, 1985 and extending through December 31, 1985. In the event the limit established for the ninety-day period is exceeded, such excess amounts will be charged to the level established for the subsequent period.

If a different solution is reached in consultations, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by a square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 22, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This letter cancels and supersedes the letter of July 8, 1985 which directed you to prohibit entry of man-made fiber textile products in Category 648, produced or manufactured in Malaysia and exported during the sixty-day period which began on May 31, 1985 and extended through July 29, 1985.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 28, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 648 produced or manufactured in Malaysia and exported during the period which began on May 31, 1985 and extends through August 28, 1985, in excess of 122,440 dozen.[1]

You are further directed, effective on August 29, 1985, to prohibit entry for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 648, produced or manufactured in Malaysia and exported during the period beginning on August 29, 1985 and extending through December 31, 1985 in excess of 143,765 dozen. Textile products in Category 648, exported during the ninety-day period which began on May 31, 1985 and which are in excess of the level established for that period shall be charged to the prorated twelve-month level beginning on August 29, 1985.

Textile products in Category 648 which have been exported to the United States prior to May 31, 1985 shall not be subject to this directive.

Textile products in Category 648 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

[1] The limit has not been adjusted to reflect any imports exported after May 30, 1985.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-20581 Filed 8-27-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Levels for Certain Cotton Textile Products Produced or Manufactured in Taiwan

August 23, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 29, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On July 18, 1985 a notice was published in the **Federal Register** (50 FR 29248) announcing that, in June 1985, the American Institute in Taiwan (AIT), under the terms of the agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan, had requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of terry and other pile towels in Category 363 and luggage in Category 369pt (only T.S.U.S.A. numbers 706.3200, 706.3650, and 706.4111), among other categories. Consultations were held July 22-24, 1985, but no agreement was reached on mutually satisfactory levels for these categories. The United States Government has decided, therefore, as provided in the agreement to establish levels for goods exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. The level for Category 363 will be 11,821,532 numbers and for Category 369pt., 2,151,242 pounds.

No charges have been made to these levels to account for any goods exported during 1985. Such adjustments will be made as the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 23, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 21, 1984, which established limits for certain categories, produced or manufactured in Taiwan and exported during 1985.

Effective on August 29, 1985, the directive of December 21, 1984 is hereby amended to include the following levels for cotton textile products in Categories 363 and 369pt.[1]

Category [1]	12-mo restraint level [1]
363 (numbers)	11,821,532
369 pt. (lb)	2,151,242

[1] Import charges from January 1-May 31, 1985 for Category 363 are 3,545,881 numbers; for Category 369pt. they are 734,646-pounds.

Textile products in Categories 363 and 369pt. which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Categories 363 and 369pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-20582 Filed 8-27-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Performance of Registration Functions by National Futures Association

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order authorizing National Futures Association (NFA) to perform additional portions of the registration functions of the Commodity

[1] In Category 369 only T.S.U.S.A. number 706.3200, 706.3650, 706.4111.

Futures Trade Commission (Commission) applicable to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, and their respective associated persons.

SUMMARY: The Commission is authorizing NFA to deny, condition, suspend, restrict or revoke the registration of any person applying for registration or registered as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or an associated person of such entities. All such adverse registration actions by NFA must be taken in accordance with the standards established in the Commodity Exchange Act, Commission interpretive statements, and relevant case law and with rules that comport with the procedures and safeguards established in the Commission's regulations thereunder. This Order does not authorize NFA to accept or act upon requests for exemption or withdrawal from registration or to render "no-action" operations or interpretations with respect to applicable registration requirements.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Authorizing the Performance of Registration Functions

I. Authority and Background

Pursuant to section 8a(10) of the Commodity Exchange Act (Act), the Commodity Futures Trading Commission (Commission) previously has issued Orders authorizing National Futures Association (NFA) to perform various portions of the Commission's registration functions and responsibilities under the Act.[1] In particular, on August 1, 1983, NFA assumed responsibilities for processing and granting applications for initial and renewal registrations of introducing brokers and their associated persons.[2] Subsequently, on December 3, 1984 NFA assumed such responsibilities from the Commission with respect to the registration of futures commission merchants, commodity pool operators, commodity trading advisors, and associated persons of such registrants.[3]

Section 17(*o*)(2) of the Act permits NFA, in performing Commission registration functions, to be authorized to deny, condition, suspend, restrict or revoke any registration, subject to Commission review.[4] However, the Commission has heretofore expressly not authorized NFA to take any such adverse registration action. In withholding the ability to take adverse actions from the scope of registration functions transferred to NFA, the Commission indicated that, among other things, it would first be necessary for the Commission to adopt its own regulations and procedures to govern Commission review of any adverse NFA determinations concerning Commission registrations.[5]

In order to process applications for registration, NFA must conduct investigations as appropriate to determine whether an applicant, registrant or principal thereof may be subject to a statutory disqualification.[6] To date, NFA has not been permitted to take any final action with respect to any person that appears to be subject to a statutory disqualification, however.[7] Rather, except in such limited circumstances as specified by the Commission or authorized staff, NFA has been required to forward to the Commission the entire registration file (or such portion as the Commission or its staff may request) of each such person for Commission review and determination.

II. NFA Rules: Initial Determinations

On August 21, 1985 the Commission approved rules adopted by NFA, pursuant to which NFA shall conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any applicant for registration or registrant who may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act and for whom NFA has been authorized to perform the Commission's registration functions.[8] The procedures embodied in these NFA rules closely parallel those specified by the Commission in Subpart C of Part 3 of its regulations.[9] Notably, NFA adopted the Commission's standards defining the scope of evidence that may be presented by the applicant or registrant to challenge allegations of statutory disqualification, as well as the standards to be followed by the party reviewing the matter and making determinations. Where NFA has adopted procedures that modify those prescribed for comparable Commission proceedings, the Commission believes that the modifications are appropriate and consistent with the requirements of the Act and the Commission's regulations and will not adversely affect the rights of applicants and registrants who become subject to proceedings and orders under NFA's procedures.

NFA's rules governing proceedings to deny, condition, suspend, restrict or revoke registrations under the Act, as such rules are currently adopted and approved, are specified in an appendix to this Order. NFA shall ensure that its rules in this regard remain consistent with provisions of the Act and the Commission's regulations thereunder as presently established and as may be amended hereafter. In this regard, NFA shall also implement such additional procedures as necessary or appropriate (and acceptable to the Commission) to ensure that investigations, proceedings and actions taken pursuant to the authority conferred by this Order are conducted in a timely manner and consistent with the procedures and safeguards established in the Act and Commission rules and orders thereunder.

III. Commission Rules: Review

In addition to providing that NFA may issue final orders affecting the registration of persons for which it is performing registration functions, section 17(*o*)(2) of the Act specifies that persons against whom NFA takes such adverse actions have the right to petition the Commission to review the NFA decisions. In its discretion, or on its

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[1] Pursuant to section 8a(10) of the Act, the Commission may authorize any person to perform any portion of the registration functions under the Act in accordance with rules, notwithstanding any other provision of law, submitted by the person to the Commission and subject to the provisions of the Act applicable to registrations granted by the Commission. 7 U.S.C. 12a(10) (1982). *See* 48 FR 15940 (April 13, 1983); 48 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 49 FR 8226 (March 5, 1984); and 49 FR 39593 (October 9, 1984).

[2] 48 FR 35158 (August 3, 1983).

[3] 49 FR 39593 (October 9, 1984); 49 FR 45418 (November 16, 1984).

[4] 7 U.S.C. 21(*o*)(2) (1982).

[5] 48 FR 35158, 35159 (August 3, 1983); *see also* 49 FR 39593, 39594–95 (October 9, 1984).

[6] 49 FR 39593, 39594 (October 9, 1984).

[7] NFA has, however, been permitted routinely to notify applicants, registrants and principals thereof of deficiencies in their applications and to deem applications withdrawn when such deficiencies are not corrected within a reasonable time. *Id.*, n. 11.

[8] NFA Bylaw 305, Schedule A, Sections I(c) and I(d).

[9] 17 CFR Part 3, Subpart C (1985).

own initiative, the Commission may grant or decline review.

In order to implement these provisions of section 17(*o*)(2), the Commission has published for comment a new Subpart F of Part 3 of the Commission's regulations to govern Commission review of any proceeding conducted by NFA, pursuant to delegated authority, to deny, condition, suspend, restrict or revoke registations under the Act.[10] Upon proper consideration of the comments received thereon, the Commission intends to adopt and implement final rules prior to the time NFA will be able to issue a final order in any such proceeding.

IV. Related Requirements: Recordkeeping

In performing the additional registration functions of the Commission pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it, and in the manner prescribed, by the Commission in existing or future Orders or regulations. Such requirements concern, among other things, the maintenance of records and access thereto by the Commission and others. NFA shall implement such additional procedures (or modify existing procedures) as necessary and acceptable to the Commission to ensure the security and integrity of records of investigations, proceedings and actions taken pursuant to the authority conferred by this Order; to facilitate prompt access to these records by the Commission and its staff, particularly as described in other Commission Orders or rules, including Subpart F of Part 3 of the Commission's regulations as may be promulgated; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission Orders or rules and to keep logs as required by the Commission concerning disclosures of nonpublic information; and otherwise to safeguard the confidentiality of the records.

In addition, NFA shall maintain a system to track all fitness investigations and adverse action proceedings. The system with respect to fitness investigations shall, at a minimum, identify the applicant or registrant involved, type of registration involved, nature of the apparent deficiencies or potential disqualifications, reasons that open cases remain pending, age of pending cases, and dispositions. With respect to adverse action proceedings, the system shall, at a minimum, identify the applicant or registrant involved, type of registration involved, nature of the apparent disqualifications (including statutory citation), type of action sought, status and age of open proceedings, and final disposition. NFA shall at no charge provide the Commission, periodically or at the request of the Commission or its staff, with reports on the fitness investigations and adverse action proceedings undertaken by NFA, including, but not limited to, statistical summaries.

V. Conclusion and Order

The Commission has determined, in accordance with its authority under sections 8a(10) and 17(*o*)(2) of the Act, to authorize NFA as of September 30, 1985, to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any person applying for registration or registered as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or associated person of such categories of registrants, who is or may be subject to a statutory disqualification from registration under sections 8a(2) through 8a(4) of the Act. This Commission determination is based upon the congressional intent that NFA assume responsibility under the Act to deny, condition, suspend, restrict or revoke registrations of persons in the course of NFA's performance of Commission registration functions under the Act; NFA's representations with respect to adoption and implementation of rules, standards and procedures to be followed in administering these additional functions consistent with the Act, the Commission's regulations and interpretive statements thereunder and relevant case law; and the Commission's forthcoming adoption of its own rules to govern review of adverse registration actions taken by NFA. This Order does not, however, authorize NFA to accept or act upon requests for exemption or withdrawal from registration[11] or to render "no-action" opinions or interpretations with respect to applicable registration requirements.

Issued by the Commission on August 22, 1985, in Washington, D.C.

Jean A. Webb,

Secretary of the Commission.

[10] 50 FRR 32737 (August 14, 1985).

[11] *See* Commission Regulation 3.33, 17 CFR 3.33 (1985).

Appendix

National Futures Association Bylaws 305, Schedule A, Section I(d): Proceedings To Deny, Condition, Suspend, Restrict or Revoke Registration

Bylaw 305. Registration and Proficiency Requirements.

* * * * *

Schedule A

* * * * *

I. Registration

(d) Proceedings to Deny, Conditions, Suspend, Restrict or Revoke Registration.

(1) Service.

(A) For purposes of any proceeding to deny, condition, suspend, restrict or revoke registration, service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested, properly addressed to the applicant or registrant at the address shown on the application or any amendment thereto. Service will be complete upon mailing.

(B) A copy of any notice served in accordance with paragraph 1(A) shall also be served upon:

(i) Any registrant sponsoring the applicant or registrant pursuant to CFTC Regulation 3.12 or 3.16 if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

(ii) Any futures commission merchant which has entered into a guarantee agreement pursuant to CFTC Regulation 1.10(j) with an applicant or registrant applying for registration or registered as an introducing broker.

(C) Documents served by an applicant or registrant upon the Secretary under this Section shall be considered served or filed only upon actual receipt at the offices of National Futures Association, 200 W. Madison Street, Chicago, Illinois 60606.

(2) Withdrawal of application for registration.

(A) Notice. Whenever information comes to the attention of NFA that an applicant for initial registration in any capacity may be found subject to a statutory disqualification under section 8a(2), 8a(3) or 8a(4) of the Act, the Director of Compliance or the Director's designee may serve written notice upon the applicant, which shall specify the statutory disqualifications to which the applicant may be subject and notify the applicant that:

(i) The information, if true, is a basis upon which the applicant's registration may be denied;

(ii) Unless the applicant voluntarily withdraws the application, it may be necessary to institute the denial procedures described in the following paragraphs; and

(iii) If the applicant does not confirm in writing that the applicant wishes to have the application given further consideration, the application will be deemed to have been withdrawn.

(B) The applicant must serve the written confirmation referred to in paragraph 2(A)(iii) upon the Secretary within twenty days after the date the Notice is served.

(3) Notice of Intent to Deny, Condition, Suspend, Restrict or Revoke Registration.

(A) Notice of Intent. On the basis of information obtained, NFA may at any time serve a Notice of Intent upon any person required to register under the Act pursuant to Section I(a) of this Schedule A that:

(i) NFA alleges and is prepared to prove that the applicant or registrant is subject to one or more of the statutory disqualifications set forth in section 8a(2), 8a(3) or 8a(4) of the Act;

(ii) The allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be denied, conditioned, suspended, restricted or revoked (if the Notice of Intent proposes conditioning or restricting registration, the Notice shall specify the conditions or restrictions); and

(iii) The applicant or registrant is entitled to have the President consider written evidence of the type set forth in paragraph 3(B) in determining whether the applicant or registrant is subject to such statutory disqualification.

(B) Scope of Written Submission. If the statutory disqualification alleged is set forth in Section 8a(2) of the Act, the scope of the applicant's or registrant's written submission shall be limited to challenging the accuracy of the allegations set forth in the Notice of Intent, including evidence as to (1) the applicant's or registrant's identity, (2) the existence of a clerical error in any record documenting the statutory disqualification, (3) the nature or date of the statutory disqualification, (4) the post-conviction modification of any record of conviction or (5) the favorable disposition of any appeal. If the statutory disqualification alleged is set forth in section 8a(3) or 8a(4) of the Act, the scope of the applicant's or registrant's written submission shall be limited to the information set forth above and the type of information set forth in paragraph 6(D). Such written submission must be served upon the Secretary within twenty days after the date of service of the Notice of Intent upon the applicant or registrant.

(C) The Notice of Intent shall inform the applicant or registrant of the procedures which will be followed if no written submission is made in accordance with paragraph 3(B).

(4) Authority to Deny Registration Pursuant to Section 8a(2) of the Act.

(a) Reply. If an applicant who has received a Notice of Intent to deny registration based on a statutory disqualification set forth in Section 8a(2) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of the receipt of such submission submit to the President and serve upon the applicant a written reply.

(B) Determination. After the receipt of the applicant's written submission and any reply thereto, the President shall determine whether the applicant is subject to a statutory disqualification under Section 8a(2) of the Act. Such determination shall be based upon the application, the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submission filed by the applicant, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Order. Within 30 days after receipt of the applicant's written submission and any reply thereto, the President shall issue an order granting or denying registration.

(5) Default of Applicant—8a(2) Denial.

(A) If an applicant for registration who has received a Notice of Intent to deny registration based on a statutory disqualification set forth in section 8a(2) of the Act fails to make a timely written submission in accordance with paragraph 3(B):

(i) The applicant will be deemed to have waived the right to submit evidence in writing on all issues, and the facts stated in the Notice of Intent shall be deemed true for the purpose of finding that the applicant is subject to a statutory disqualification under section 8a(2) of the Act; and

(ii) Twenty days after the date the Notice of Intent to deny is served upon the applicant, such Notice shall become a final order of NFA denying registration. NFA shall serve written confirmation upon the applicant that registration has been denied.

(B) Vacating the order. An applicant for registration against whom an order referred to in paragraph 5(A)(ii) was issued may file a petition and supporting affidavit with the Secretary if the Notice of Intent under paragraph 3 was not timely received by the applicant. Upon receipt of the petition, the order shall be vacated, and NFA shall serve upon the applicant a copy of the Notice of Intent required under paragraph 3. The procedures set forth in this paragraph 5(B) shall be available only once to an applicant.

(6) Authority to Suspend and Revoke Registration Pursuant to Section 8a(2) of the Act.

(A) Reply. If a registrant who has received a Notice of Intent to suspend or revoke registration based on a statutory disqualification set forth in section 8a(2) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of receipt of such submission submit to the President and serve upon the registrant a reply.

(B) Determination. After the receipt of the registrant's written submission and any reply thereto, or if no written submission is made, the President shall determine whether the registrant is subject to a statutory disqualification. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submission, if any, filed by the registrant in response thereto, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Suspension and order to show cause. (i) If the President determines that the registrant is not subject to a statutory disqualification, the President shall issue an order to that effect.

(ii) If the President determines that the registrant is subject to a statutory disqualification, the President shall issue an interim order suspending registration and requiring the registrant to show cause to the Membership Committee or its designated Subcommittee within twenty days of the date of the interim order why, notwithstanding the existence of the statutory disqualification, the registration should not be revoked. The registration shall be suspended effective five days after the interim order is served upon the registrant, and such suspension shall remain in effect until a final order with respect to the order to show cause has been issued: *Provided that*, if the sole basis upon which the registrant is subject to a statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the

temporary order, judgment or decree shall have expired: *Provided, however, that* in no event shall the registrant be suspended for a period to exceed six months.

(D) Registrant's Response. Within twenty days of the date of the order to show cause, the registrant may file with the Membership Committee or its designated Subcommittee a written response which may include briefs, affidavits and supporting memorandums, but in any event shall be limited in content to:

(i) Evidence, not previously set forth in any written submission filed under paragraph 3(B), challenging the accuracy of the allegations establishing the statutory disqualification;

(ii) The existence of any facts which constitute a clear and compelling showing that, notwithstanding the existence of the statutory disqualification, the continued registration would be in the public interest; or

(iii) In the case of an associated person, written confirmation by the registrant's sponsor that, notwithstanding the existence of the statutory disqualification, the sponsor is willing to supervise the activities of the registrant subject to such restrictions as the Membership Committee or its designated Subcommittee shall impose: *Provided that,* with respect to such sponsor: (1) An adjudicatory proceeding brought by or before the Commission pursuant to the provisions of sections 6(b), 6(c), 6d or 8a of the Act is not pending, and (2) in the case of a sponsor which is a futures commission merchant, the sponsor is not subject to the reporting requirements of CFTC Regulation 1.12(b).

(E) Reply. Within ten days after receipt of the registrant's response, the Director of Compliance may submit to the Membership Committee or its designated Subcommittee and serve upon the registrant a reply.

(F) Oral hearings. Oral hearings shall not be granted except under extraordinary circumstances and upon written request to the Membership Committee or its designated Subcommittee. Such request shall include the issues to be addressed, the evidence to be adduced and showing of compelling need. If the Membership Committee or its designated Subcommittee determines to grant a request for an oral hearing, the hearing shall be conducted pursuant to paragraph 9 as the Membership Committee or its designated Subcommittee deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(G) Order. Within 30 days of the receipt of a registrant's response to the order to show cause, and any reply thereto, the Membership Committee or its designated Subcommittee shall, upon consideration of the record as a whole, make a finding as to whether the registrant has shown cause why the registration should not be suspended or revoked and shall issue an order accordingly. If the Membership Committee or its designated Subcommittee, on the basis of the showing described in paragraph 6(D)(ii), finds that, notwithstanding the existence of the statutory disqualification, the registration should not be revoked, the Committee may issue an order further suspending the registrant for a period not to exceed six months. In the case of an associated person the order may further restrict the registration of the registrant.

(H) Notwithstanding the sponsor's written confirmation under paragraph 6(C)(iii), the Membership Committee or its designated Subcommittee may issue an order revoking or further suspending for a period not to exceed six months the registration of an associated person and, in any event, may not issue an order restricting such registration if:

(i) The associated person is subject to a statutory disqualification under section 8a(2) of the Act as a result of conviction of a felony or misdemeanor under Section 9 of the Act; or

(ii) The associated person has been the subject of more than one proceeding in which findings of fact constituting a statutory disqualification under section 8a(2) of the Act have been entered against the associated person; or

(iii) The associated person is subject to an adjudicatory proceeding brought by or before the Commission pursuant to the provision of section 6(b), 6(c), 6d or 8a of the Act; or

(iv) The associated person was previously granted a conditional or restricted registration and was found to have failed to conform to such condition or restriction; or

(v) The associated person willfully made any materially false or misleading statement or willfully omitted to state any material facts in any written submissions filed under this section as to any facts which would constitute statutory disqualifications under section 8a(2) of the Act; or

(vi) The registrant with whom the associated person is associated willfully made false or misleading statements of material fact in the confirmation referred to in paragraph 6(D)(iii) or willfully failed to state any material facts which were required to be stated therein.

(I) Default. (i) If the registrant fails to file a timely response to the order to show cause, the registrant shall be deemed in default. The President shall thereafter, upon a finding that service was effected, enter an order revoking, restricting or further suspending the registration. Such finding shall be based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the Notice of Intent in accordance with paragraph 3(B) and any written reply thereto submitted by the Director of Compliance.

(ii) If the President issues an order under paragraph 6(I)(i) revoking, restricting or further suspending registration, the registrant may file a petition and supporting affidavit with the Secretary setting forth the reasons why the registrant failed to file a response to the order to show cause. Such petition must be accompanied by the registrant's response. Upon receipt of the petition, the President may, for good cause, shown, vacate the order.

(7) Proceedings under Section 8a(2)(E) of the Act.

NFA will not initiate a proceeding based on a statutory disqualification set forth in section 8a(2)(E) of the Act, if respondent superior is the sole basis upon which the registrant may be found subject to such statutory disqualification.

(8) Authority to Deny, Condition, Suspend, Restrict or Revoke Registration Pursuant to Sections 8a(3) and 8a(4) of the Act.

(A) Reply. If an applicant or registrant who has received a Notice of Intent to deny, condition, suspend, restrict or revoke registration based on a statutory disqualification set forth in sections 8a(3) or 8a(4) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of receipt of such submission submit to the President and serve upon the applicant or registrant a reply.

(B) Determination. After receipt of the applicant's or registrant's written submissions and any reply thereto, or if no written submission is made, the President shall determine whether the applicant or registrant has shown why the registration should not be denied, conditioned, suspended, restricted or revoked. Such determination shall be based upon the evidence of the statutory

disqualification, the Notice of Intent with proof of service, the written submissions, if any, filed by the applicant or registrant in response thereto, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Notice of determination. (i) If the President determines that registration should be denied, conditioned, suspended, restricted or revoked, the President shall notify the applicant or registrant and shall inform the applicant or registrant of the right to request a hearing before the Membership Committee or its designated Subcommittee.

(ii) If the President determines that registration should not be denied, conditioned, suspended, restricted or revoked, the President shall issue an order to that effect.

(D) Right to a Hearing. A hearing before the Membership Committee or its designated Subcommittee may be obtained by filing a written request with the Secretary within ten days of the date of service of the Notice of the President's Determination.

(E) Waiver of a Hearing. If no request for a hearing is received by NFA within 10 days after the Notice of the President's determination has been served, the right to a hearing shall be deemed to have been waived and the President shall, upon consideration of the record as a whole, make a finding as to whether the registration should be denied, conditioned, suspended, restricted or revoked and shall issue an order accordingly.

(F) Request for a Hearing. If an applicant or registrant makes a timely request for a hearing on the question of whether the applicant or registrant is subject to a statutory disqualification under section 8a(3) or 8a(4) of the Act, or whether notwithstanding the existence of the statutory disqualification, registration should nevertheless be granted or should not be conditioned, suspended, restricted or revoked, a hearing shall thereafter be conducted in accordance with the procedures set forth in paragraph 9 as the Membership Committee or its designated Subcommittee deems appropriate. For purposes of the hearing, the Notice of Intent given in accordance with paragraph 3 shall be treated as a duly authorized complaint by the President seeking the relief specified therein, and the request for hearing shall be threated as an answer.

(G) Order. Within 30 days of the date of the conclusion of the hearing, the Membership Committee or its designated Subcommittee shall make a finding as to whether the applicant has shown that registration should not be denied or conditioned or whether the registrant has shown that the registration should not be suspended, restricted or revoked and shall issue an order accordingly.

(9) Hearing Procedures.

If an applicant or registrant requests a hearing before the Membership Committee or its designated Subcommittee a record of the hearing shall be kept. At such a hearing the applicant or registrant may be represented by counsel, submit evidence, call and examine witnesses, examine the evidence upon which the President made a determination and at the discretion of the Membership Committee or its designated Subcommittee, present oral or written argument.

(10) Orders.

(A) Any order issued by the President, the Membership Committee or its designated Subcommittee under this section (except an interim order suspending registration pursuant to paragraph 6(C)(ii)) shall become a final order of NFA on the date it is served upon the applicant or registrant. A copy of each final order issued by NFA shall be served upon the Commission at the same time it is served upon the applicant or registrant.

(B) Any final order of NFA which denies, conditions, suspends, restricts or revokes registration shall inform the applicant or registrant of the right to petition the Commission for review under Section 17(o) of the Act and applicable Commission regulations.

(C)(i) Any final order of NFA denying registration shall remain in effect pending any review initiated or granted by the Commission.

(ii) Any final order of NFA suspending, restricting or revoking registration shall become effective 15 days after service on the registrant unless within that time a petition for review by the Commission is filed in accordance with Commission Regulations, or the Commission initiates review.

(iii) Any final order of NFA granting or conditioning registration shall become effective 30 days after service on the applicant unless the Commission otherwise directs. Prior to such effective date, registration shall not be granted.

[FR Doc. 85-20522 Filed 8-27-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD-University Forum Working Group on Export Controls; Advisory Committee; Meeting

Summary: The Working Group on Export Controls of the DoD-University Forum will meet in open session on September 13, 1985, from 10:00 a.m. until 2:00 p.m., at the Sheraton Grand Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001-1527.

The mission of the DoD-University Forum Working Group on Exports Controls is to assess the impact on universities of proposed international export controls.

The meeting is scheduled to discuss development of procedures for complying with draft national policy statement on Dissemination of Scientific and Technical Information, the potential for controls on access to supercomputers, on biotechnology, and on research performed under the Strategic Defense Initiative. The members will also be brought up to date on the activities of groups working in related areas.

Public attendance will be accommodated as space permits. Public attendees are requested to telephone Mr. Frank Sobieszczyk of the DoD Office of Research and Laboratory Management, (202) 694-0205 by close of business, September 11, 1985, to be advised of the meeting room and seating accommodations.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 23, 1985.

[FR Doc. 85-20524 Filed 8-27-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent to Prepare an Environmental Impact Statement; Westover AFB, MA

The Air Force plans to prepare an environmental impact statement on a proposal to replace 16 C-130E aircraft at Westover AFB, MA with eight C-5A aircraft. Also, to be included is an alternate proposal to increase the number of C-5A aircraft to 16.

With the proposed action, the mission of the 439 Tactical Airlift Wing (TAW) would change to a strategic mission. The 439 MAW would still recruit, organize, and train Air Force reservists while maintaining operationally ready aircraft, crews, and support personnel. In terms of aircraft flying activity, the current

number of local sorties of 30 per week would decrease to nine per week for the proposed eight C–5As. The annual flying hours (currently 6,460 for the C–130s) would be 4,065 for eight C–5As and 7,640 for 16 C–5As.

This proposed new mission would require an increase in support manpower, both full time and reserve personnel. An increase of approximately 460 full time (Air Reserve Technicians and civilians) and approximately 515 reservists would be required to support eight C–5As. To support the 16 C–5As would require an increase of approximately 700 full time and 1,400 reserve personnel.

To support the proposed mission new construction valued at approximately $40 million will be required at Westover AFB.

The Air Force will conduct a public scoping process. Individuals, organizations, and agencies may provide topics for analysis at the address below. A public scoping meeting is scheduled to be held in late September 1985 on or near Westover AFB MA. The date, time, and location will be announced through the Westover AFB Public Affairs Office.

Correspondence and items for consideration in the preparation of the environmental impact statement should be addressed to: Headquarters, Air Force Reserve/DEPV, ATTN: Ms Joan Lang, Robins Air Force Base Georgia 31098–6001.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–20537 Filed 8–27–85; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Application Notice Establishing Closing Dates for Transmittal of Certain Fiscal Year 1986 Noncompeting Continuation Awards; Correction

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: An application notice establishing closing dates for the transmittal of applications for noncompeting continuations for certain Fiscal Year 1986 Special Education and Rehabilitative Services programs was published on July 22, 1985 at 50 FR 29721–29733. In that notice, an error was made in the dates by which the State Single Points of Contact must mail their comments under the State's Intergovernmental Review Process to the Secretary of Education, as required by Executive Order 12372. *There are no changes in the closing dates for the transmittal of applications.*

The correct dates for transmittal of State Review Process comments are listed by the Catalog of Federal Domestic Assistance (CFDA) Number below:

84.158F (on page 29723)—October 30, 1985
84.158H (on page 29724)—November 14, 1985
84.024B–B (on page 29724)—November 14, 1985
84.158B (on page 29726)—November 25, 1985
84.024B–A (on page 29727)—January 27, 1986
84.158D (on page 29727)—February 14, 1986
84.025B (on page 29728)—February 26, 1986
84.078D (on page 29731)—April 14, 1986
84.024F (on page 29732)—May 30, 1986

FOR FURTHER INFORMATION CONTACT: Ms. Mary A Smith, Division of Regulations Management, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 2134, FOB–6), Washington, DC 20202. Telephone: (202) 245–7091.

(20 U.S.C. 1422, 1423, 1424a, 1425)

Dated: August 22, 1985.

Joan Standlee,

Acting Assistant Secretary for Special Education and Rehabilitation Services.

[FR Doc. 85–20497 Filed 8–27–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Issue a Grant With Restricted Eligibility

Summary

The Department of Energy announces that, pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant award to the United Negro College Fund to demonstrate a method for assisting predominantly Black, low resource institutions in obtaining alternative funding sources to undertake major capital intensive, retrofit projects which would lower their operating costs and reduce energy consumption. United Negro College Fund (UNCF) has been asked to submit a proposal under DE–FG01–85CE64859. This effort is estimated at $286,636.

Background

There are currently 43 United Negro College Fund member colleges and universities in the United States. Each of the institutions, principally located in the Southeast, serves a largely low-income population. Students of UNCF institutions are less able than many others to absorb increases in tuition costs. Energy costs, nationwide, have increased greatly over the past decade and UNCF college tuitions have been unable to keep pace with rising operating costs.

UNCF schools must continually seek ways to curb costs. Utility bills are among their largest operating expense item and are clearly the fastest growing cost. As a result, these schools are highly motivated to use whatever means available to encourage energy conservation, but are uncertain about how to pursue it.

The funding provide by DOE will be used by the UNCF to review the energy consumption patterns of all of its member colleges and universities, to develop detailed energy efficiency management plans for four institutions selected to be demonstration sites, to monitor implementation, and to prepare a final report which, among other things, will discuss how best to expand this approach to energy savings to other low resource schools.

Eligibility for this project is being restricted to the United Negro Fund's Research Department because it is the most comprehensive source of data on Black colleges and universities in the United States, and it enjoys a unique relationship with its member institutions of higher education. Specifically, it is nationally recognized as the chief vehicle for raising funds and securing public support for these colleges and universities, and over the many years that the organization has served in this role, the Fund has been an essential link between these institutions and the Federal Government. Furthermore, no other organization in the Nation has this degree of acceptance by a large group of low resource schools, a factor essential to the successful conclusion of this project.

The outcome of this project will also provide significant lessons for any number of smaller, low-resource institutions including church affiliated primary schools, inner-city public schools, and others. The potential fuel savings in substantial. Without this project, the experience and knowledge necessary to benefit from energy efficiency will not be enhanced in these institutions, and without this project, the opportunities available through these demonstrated approaches will not be accepted by, and thus not available to, the most needy institutions.

Scope of Project

The proposed project will focus on developing an Energy Management Program designed for private educational institutions with limited resources, developing criteria and procedures for identifying qualified energy service companies to engage in shared savings agreements and assisting four specific institutions by selecting energy service companies to demonstrate the viability of such an agreement. This effort is intended to be completed no later than September 1987.

For further information contact: Ms. Rosemarie H. Marshall, MA–453.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–1688.

Issued in Washington, D.C. on August 20, 1985.

Edward T. Lovett,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 85–20551 Filed 8–27–85; 8:45 am]

BILLING CODE 6450–01–M

Intent To Renew a Cooperative Agreement

Summary

The Department of Energy announces that, pursuant to the 10 CFR 600.7(b), it is restricting eligibility for the award of additional effort under existing Cooperative Agreement No. DE–FC01–84CE76246 to Midwest Research Institute (MRI), who is currently evaluating the biochemical effects of human body fluids exposed to uniform 60-Hz electric and magnetic fields. This additional effort is expected to be approximately $400,000 per year for three additional years. MRI has been asked to submit a proposal for this additional work under DE–FC01–85CE76246.

Project Scope

The purpose of this effort is to continue research into the effects on humans exposed to 60Hz electric and/or magnetic fields by extracting blood samples and collecting body fluids for analysis before, during and after exposure and where necessary, extend research for statistical accuracy. Eligibility for award of this additional effort is being limited at this time to MRI because the MRI, under contract to the New York State Department of Health, has constructed the only U.S. facility for the controlled and safe exposure of humans to 60Hz fields.

For further information contact: Ms. Rosemarie H. Marshall, MA–453.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252–1688.

Issued in Washington, DC. on August 20, 1985.

Edward T. Lovett,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 85–20554 Filed 8–27–85; 8:45 am]

BILLING CODE 6450–01–M

San Francisco Operations Office; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy, San Francisco Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The Department of Energy, San Francisco Operations Office, announces that it intends to award a grant to the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), Atlanta, GA, in the amount of $150,000, for "Active Solar Technology Transfer". Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), DOE/SAN has determined that eligibility for this grant award shall be limited to ASHRAE.

Grant Number: DE–FG03–85SF15754.

Scope of Project: ASHRAE proposes to continue technology transfer activities in the Solar Buildings area, including the development and dissemination of appropriate engineering and applications documentation and development and adoption of engineering standards based on Government-sponsored research. This effort is expected to ensure a maximum utilization of the technology evolving from the Government research programs. Specifically, this activity is expected to result in the formulation and preparation of manuals, handbooks, computer data bases or other useful engineering tools. Also, background data is expected to be made available for the design, operation and/or maintenance of active solar systems.

FOR FURTHER INFORMATION CONTACT: Jeff Mark, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, August 13, 1985.

R.A. Du Val,

Manager.

[FR Doc. 85–20553 Filed 8–27–85; 8:45 am]

BILLING CODE 6450–01–M

San Francisco Operations Office; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy, San Francisco Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The Department of Energy, San Francisco Operations Office, announces that it intends to award a grant to the University of Chicago, Chicago, IL, in the amount of $220,858, for "Advanced Tubular Concentrator". Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), DOE/SAN has determined that eligibility for this grant award shall be limited to the University of Chicago.

Grant Number: DE–FG03–85SF15753

Scope of Project: The University of Chicago proposes to perform research in the area of advanced, non-tracking, evacuated tubular collectors, in four areas:

(1) The exploration of advanced optical design methods for the efficient collection of solar radiation at high temperature operation;

(2) The exploration of thermal; design configurations;

(3) The development of analytical methods to assist other researchers in subsequent R&D activities;

(4) Studies to explore alternate design configurations.

This research is expected to directly support other industrial research and will result in optimize analytical designs, design tools and direct assistance by University of Chicago staff to the engineering development of commercial designs.

FOR FURTHER INFORMATION CONTACT: Jeff Mark, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, August 13, 1985.

R.A Du Val,

Manager.

[FR Doc. 85–20555 Filed 8–27–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Pre-Freshman Engineering Program (PREP)

AGENCY: Office of Energy Research.

ACTION: Program Solicitation Announcement.

SUMMARY: The purpose of this notice is to announce the availability of the PREP solicitation, to identify the institutions which will be eligible for this grant program, and to inform potential

applicants of the closing date and location for submission of applications for awards under this program.

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to: Mr. J.D. Burleson, Contracting Officer; Procurement and Contracts Division; Oak Ridge Operations; Department of Energy; Oak Ridge, Tennessee 37831; Telephone Number: (615) 576-0794.

Background

The Department of Energy (DOE) is concerned with the supply of science and engineering professionals to perform its research and development mission and is authorized in the Energy Reorganization Act of 1974 to "assure an adequate supply of manpower for the accomplishment of energy research and development programs by sponsoring and assisting in education and training activities in postsecondary institutions, vocational schools, and other institutions. . . ." Individuals with engineering training will continue to play critically important roles in the Nation's overall energy programs. Specifically, DOE's concern is based on the consideration that the future supply of engineering manpower is threatened by two factors: fewer students are enrolling in science and mathematics courses in high school and fewer students are available to join the science and engineering pool due to declining birth rates. Students who have completed the ninth grade in high school often decide not to take another science or mathematics course. Once the traditional math/science sequence is disrupted, it is too late for students to meet the minimum requirements for admission to college and university engineering programs. The primary purpose of PREP will be to alleviate these projected manpower shortages in engineering by preparing and guiding high school students in the selection of college-preparatory courses in science and mathematics.

In the past twelve years, one hundred and sixty-one PREP projects have been funded. These projects have reached over ten thousand socially or economically disadvantaged high school students. Pending Congressional action, DOE intends to commit about $300,000 for the Pre-Freshman Engineering Program for fiscal year 1986. DOE invites all qualified universities (see following section) to write for a copy of its Pre-Freshman Engineering Program solicitation, DOE-ER-0171/1, Notice of Program Announcement Number DE-PS05-86ER75209.

Eligibility and Limitations

The overall intent of the program is to increase the number of engineers who graduate from college. Since PREP is designed to accomplish this purpose by preparing high school students for, and guiding them in, the selection of college-preparatory courses in science and mathematics, institutions which offer engineering-degree programs are deemed most qualified. Accordingly, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), applications will be accepted only from institutions which grant engineering degrees at the baccalaureate level or from institutions which have formal dual-degree pre-engineering programs with institutions granting engineering degrees at the baccalaureate level. (If applying under the latter category, specific information should be given regarding the formal dual-degree program.)

Other institutions interested in participating in PREP may do so through cooperative projects with engineering degree-granting institutions (in this case, the applications must be submitted by the engineering degree-granting institution).

Application Forms

Program solicitations are expected to be ready for mailing by August 30, 1985. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation. Copies of this solicitation may be obtained by writing to: Division of University and Industry Programs, ER-44, Office of Field Operations Management, Office of Energy Research, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone Number: (202) 252-1634.

Closing Date for Submission of Applications.

To be eligible, applications must be received by the Department of Energy at the Washington, DC address in the preceding paragraph by 4:30 p.m., October 30, 1985.

(Catalog of Federal Domestic Assistance No. 81.047, Pre-Freshman Engineering Program)

Issued in Washington, DC, on August 14, 1985.

Alvin W. Trivelpiece,

Director, Office of Energy Research.

[FR Doc. 85-20550 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85-16-NG]

Natural Gas Imports and Great Lakes Gas Transmission Co.; Application To Amend Import Authorization

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application to Amend Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 19, 1985, of the application of Great Lakes Gas Transmission Company (Great Lakes) to amend its authorization to import Canadian natural gas. The amendment for which Great Lakes seeks approval would permit Great Lakes to continue to receive natural gas from TransCanada Pipelines Limited (TransCanada) at a pressure of not less than 750 pounds per square inch (psig), and continue to pay TransCanada a compression service charge pursuant to a "delivery pressure agreement" dated July 1, 1975, as amended. Great Lakes requests that the ERA extend the term of the agreement with TransCanada for a five-year period from October 31, 1985, to October 31, 1990, if ERA does not approve extension of its agreement on an indefinite year-to-year basis. Further, Great Lakes requests that the authorization apply to all volumes of Canadian natural gas for which Great Lakes has authorization from the ERA or the Federal Power Commission (FPC) to import or to transport for the account of others, or for which such authorizations may be granted during the term of the new five-year authorization.

Great Lakes also requests that the ERA process its application under the shortened proceedings prescribed in 10 CFR 590.316 of its Rules and Regulations.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to invervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on September 27, 1985.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000

Indpendence Avenue, SW., Washington, D.C. 20585, (202) 252–9590

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: Great Lakes, a Delaware Corporation whose principal place of business is Detroit, Michigan, is presently authorized to purchase approximately 120,763 MMcf of natural gas annually from TransCanada at a point on the United States-Canadian international boundary, near Emerson, Manitoba (Emerson interconnection) for resale in the United States and for compressor fuel and other company uses. Great lakes is authorized to transport approximately 301,125 MMcf of natural gas annually for the account of TransCanada, Texas Eastern Transmission Company, Tennessee Gas Pipeline Company, a division of Tenneco, Inc., and ANR Pipeline Company, from the Emerson interconnection to various delivery points on Great Lakes' pipeline system. Great Lakes is also authorized to transport gas from the Emerson interconnection on behalf of Northern Natural Gas Company, a division of InterNorth, Inc.

Great Lakes originally was authorized to import natural gas into the United States from Canada at a pressure of 550 psig, pursuant to FPC orders issued on June 20, 1967 (Docket No. CP66–110), April 30, 1970 (Docket Nos. CP70–19 and CP70–100), and June 1, 1971 (Docket No. CP71–222).

In these original authorizations the FPC found that the Great Lakes system required pressurization of the gas to 750 psig and assumed that the pressurization would be accomplished after the gas was imported, with compressor capacity to be built by Great Lakes. However, TransCanada and Great Lakes entered into an agreement whereby Great Lakes would pay TransCanada an additional charge for pressurization service so that the gas would be delivered to Great Lakes at 750 psig. By orders issued on march 25, 1971, April 24, 1972, and on October 24, 1975, in the above-referenced dockets and in Docket Nos. CP71–223 and CP71–299, the FPC amended Great Lakes' import authorizations to permit importation of gas at the higher pressure and payment to TransCanada for the pressurization service, in lieu of installation of new compression equipment by Great Lakes.

In issuing its October 24, 1975, order, the FPC concluded that the lower cost resulting from the pressurization contract with TransCanada, as amended, justified the granting of Great Lakes' request to continue payment to TransCanada for pressurization, through October 31, 1980. The FPC also again concluded the delivery at 750 psig was necessary for Great Lakes to meet the delivery requirements of its customers.

On April 10, 1980, Great Lakes filed an application with the ERA, pursuant to section 3 of the Natural Gas Act, requesting that the ERA amend the previous authorization granted by the FPC relating to its service agreement with TransCanada. In considering previous FPC orders and the substantial cost savings demonstrated by Great Lakes, the ERA approved extension of the amending agreement for five years, until October 31, 1985, by issuance of DOE/ERA Opinion and Order No. 22 (Order No. 22) on October 22, 1980 (1 ERA 70,521).

In its application now before the ERA, Great Lakes states that it has reevaluated the relative costs of constructing its own compression facilities versus the cost of continued compression service by TransCanada and finds that it would required a 24,000 horsepower compressor unit to produce the requisite line pressure, at a cost of 2.53¢ per Mcf, compared to the present TransCanada charge of 0.794¢ per Mcf. According to Great Lakes, at an annual throughput of approximately 391,855 MMcf, its customers would save approximately $6.80 million annually if the gas is compressed by TransCanada. The cost of installing and operating a compressor unit and gas aftercooler was compared with current compression charge of 0.20¢ (Canadian) per Mcf, plus an additional charge calculated by multiplying .0025 times 105 percent of the price in ¢ (Canadian) per Mcf under TransCanada's Manitoba Zone Rate Schedule calculated at 100 percent load factor. Great Lakes contends that the inclusion of the Manitoba Zone Rate Clause in this formula, under which only about .3% of an increase in the Manitoba Zone Rates would be added to the compressor charge, was deemed necessary to protect TransCanada against any future changes in price of gas purchased by TransCanada to be used as compressor fuel.

Great Lakes' Agreement with TransCanada remains in effect until October 31, 1985, after which time the agreement remains in effect on a year-to-year basis, unless cancelled by either party upon eighteen months written notice. Great Lakes requests the ERA to grant an authorization that would permit it to receive all gas from TransCanada for an open-ended period as provided for in the amended agreement. If the ERA isues an order with a termination date, Great Lakes requests that the authorization be for an additional five-year term ending October 31, 1990.

Great Lakes maintains it does not have the ability to install compressors before the curent authorization expires, and requests that the ERA issue an emergency interim order if a final order has not been issued by October 31, 1985, to allow it to continue to receive all gas from TransCanada at a pressure of 750 psig.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–033–B, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed not later than 4:30 p.m., September 27, 1985.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on

the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provided notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses, filed by parties pursuant to this notice, in accorance with 10 CFR 590.316.

A copy of Great Lakes' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–033–B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 22, 1985.

James W. Workman,

Director, Office of Fuels Program, Economic Regulatory Administration.

[FR Doc. 85–20584 Filed 8–27–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Period of July 1 Through August 2, 1985

During the period of July 1 through August 2, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: August 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Farmers Union Co-op Oil Association, Howells, Nebraska, HEE–0157, Gasoline

Farmers Union Co-op Oil Association (Farmers) filed an Application for Exception from the provisions of an Energy Information Administration reporting requirement. The exception request, if granted, would relieve Farmers of obligation to submit Form EIA–782B, entitled "Resellers/Retailers" Monthly Petroleum Product Sales Report." On August 2, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

[FR Doc. 85–20587 Filed 8–27–85; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed; Week of July 19 Through July 26, 1985

During the Week of July 19 through July 26, 1985, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 19 through July 26, 1985]

Date	Name and location of applicant	Case No.	Type of Submission
July 23, 1985	Department of the Interior, Washington, D.C	HED–0284	Motion for discovery. If granted: Discovery would be granted to Department of the Interior in connection with its Application for Exception (Case No. HEE–0083).
July 25, 1985	Economic Regulatory Administration, Washington, D.C	HER–0108	Request for modification/rescission. If granted: The April 20, 1978 Decision and Order issued to Eason Oil Company (Case No. DXE–0921) would be modified regarding the firm's non-product cost increases and the amount of exception relief would be reduced accordingly.
July 25, 1985	Gulf Oil Corporation, Washington, D.C	HEF–0590	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V in connection with a June 14, 1985 Consent Order entered into with the Gulf Oil Corporation.
July 26, 1985	Cities Service Oil & Gas Corporation, Washington, D.C	HRD–0285 and HRH–[illegible]5	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing convened in connection with the Statement of Objections submitted by Cities Service Oil & Gas Corporation in response to the Proposed Remedial Order (Case No. HRO–0285) issued to the firm.
July 26, 1985	Petrade International, Inc., Washington, D.C	HRR–0109	Request for modification/rescission. If granted: The December 6, 1983 Decision and Order (Case No. HRJ–0043) issued to the Economic Regulatory Administration/REB Petroleum, Inc. would be modified to permit Petrade International, Inc. use of those exhibits released under the Protective Order.

REFUND APPLICATIONS RECEIVED

[Week of July 19 to July 26, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/22/85	Receive Orders/Amber Refining	RF171-5
7/17/85	Boswell/Universal Supply & Equipment Company	RF179-1
7/22/85	McCarty/Ottawa Oil Company	RF143-15
7/22/85	McCarty/Mid-Wood, Inc	RF143-14
7/22/85	Arkla Chemcal/Arkansas Cement Corp	RF153-16
7/22/85	Arkansas Louisiana/Arkansas Cement Corporation	RF154-4
7/22/85	McCarty/Hertz Corporation	RF143-16
7/22/85	Point Landing/Internation Trading & Transportation Ltd	RF122-9
7/22/85	McCarty/Madison Landmark, Inc	RF143-17
7/22/85	Nielson/Fiscal Oil Company, Inc	RF141-11
7/22/85	LARCO/Central Distributing Co., Inc	RF112-168
7/17/85	St. James/J.L. Janney Coal Company	RF180-1
7/19/85	St. James/Dannis K. Burke, Inc	RF180-2
7/22/85	St. James/Cleghorn, Oil, Inc	RF180-3
7/22/85	St. James/Manbeck Dredging Company	RF180-4
7/15/85	Amnoil/Miller's Bottled Gas, Inc	RF139-[illegible]
7/22/85	St. James/Clyde W. Billman	RF180-[illegible]
7/23/85	F.O. Fletcher/Schroeder Fuel Co	RF172-5
7/23/85	Red Triangle/James F Crowell	RF178-3
7/23/85	Red Triangle/Hensley's Used Cars	RF178-2
7/23/85	Arkla Chemcal/Coca Cola Bottling Company	RF153-17
7/24/85	Red Triangle/Ben M. Vallee	RF178-4
7/25/85	McCarty/Clark Landmark, Inc	RF143-18
7/25/85	Windham/Ohio	RQ43-206
7/25/85	Colne/Nevada	RQ2-218
7/24/85	Receive Orders/Pennsylvania Company	RF171-6
7/26/85	National Helium/West Virginia	RQ3-219
Pennzoil/West Virginia	RQ10-220	
7/26/85	McCarty/Minster Oil Company	RF143-19
7/26/85	Amnoil/Dave Propane	RF139-[illegible]
7/26/85	Amnoil/Fulton Hydro Gas Company	RF139-49
7/26/85	Amnoil/Central Propane Service, Inc	RF139-50
7/26/85	Amnoil/Bechtol Gas Service	RF139-51

[FR Doc. 85-20585 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of July 26 Through August 2, 1985

During the Week of July 26 through August 2, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 26 through Aug. 2, 1985]

Date	Name and location of applicant	Case No.	Type of submission
July 29, 1985	Southwestern States Management Corp./Kenneth Walker, Abilene, Texas.	HRZ-0263	Interlocutory order. If granted: The Proposed Remedial Order (Case No. HRO-0258) issued jointly to Southwestern States Management Corporation and Kenneth Walker would be amended to withdraw allegations relating to the firm and Mr. Walker's liability.
July 30, 1985	Atlantic Richfield Company, Washington, DC	HEF-0591	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the June 27, 1985 Consent Order entered into with the Atlantic Richfield Company.
July 31, 1985	Economic Regulatory Administration, Washington, DC	HRZ-0265	Interlocutory order. Certain portions of the Statement of Objections submitted by Murphy Oil Corporation in response to a Proposed Order of Disallowance (Case No. BRO-0984) which are based upon "delay theories" would be dismissed.
July 31, 1985	Murphy Oil Corporation, Washington, DC	HRZ-0264	Interlocutory order. If granted. Portions of the Economic Regulatory Administration's Response to Murphy Oil Company's Supplemental Statement of Objections to the Proposed Order of Disallowance would be stricken from the record in the proceeding (Case No. BRO-0984)
August 1, 1985	Louisiana Crude Oil & Gas Co., Inc., New Orleans, Louisiana	HEA-0012	Appeal of an order for disposition of refunds. If granted: The July 1, 1985 Order for Disposition of Refunds issued to Eastern Oil Company by the Economic Regulatory Administration would be rescinded.

REFUND APPLICATIONS RECEIVED

[Week of July 26 to August 2, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/29/85	Bayou State/Ida Gasoline	RF117-15
7/29/85	LARCO/Blue & White Transport, Inc	RF112-169

REFUND APPLICATIONS RECEIVED—Continued

[Week of July 26 to August 2, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/29/85	St. James/Brockton Nightingale Oil	RF180-7
7/29/85	St. James/Wildcat Petroleum Corp	RF180-8
7/29/85	McCarty/Agri-Urban, Inc	RF140-20
7/29/85	APCO/K.C. Jeffries Oil Company	RF80-128
7/29/85	F.O. Fletcher/West Fuel Company	RF172-8
7/29/85	Red Triangle/Al's Gulf Service	RF178-5
7/29/85	Aminoil/Bil-Mar Foods, Inc	RF139-53
7/30/85	Nielsen/Berger Oil Company	RF141-12
7/30/85	Aminoil/Modern LP Gas Company	RF139-54
7/29/85	Aminoil/Miller LP Gas Service	RF139-55
7/30/85	Gulf/Greg Achtor	RF40-[illegible]
7/30/85	Gulf/Flatley Oil Company	RF40-[illegible]
2/19/85	Moore Terminal/Dixie Oil of Tennessee	RF181-1
7/30/85	Receive Orders/Kern Oil & Refining Company	RF171-7
7/30/85	Receive Orders/USA Petroleum Corp	RF171-8
7/31/85	Red Triangle/Black's Gulf	RF178-4
7/31/85	St. James/Curtis Oil Co., Inc	RF180-9
7/31/85	St. James/Town River Oil Company	RF180-6
7/31/85	Aminoil/Tanks Trucks, Inc	RF139-56
7/30/85	APCO/Lincoln Smith	RF63-129
7/31/85	St. James/C.J. Thibodeaux & Co	RF180-10
7/31/85	Receive Orders/Pioneer Refining Ltd	RF171-10
7/31/85	Receive Orders/Beacon Oil Company	RF171-9
7/31/85	Receive Orders/Morgan Products, Inc	RF171-11
7/31/85	Receive Orders/Southern Oil Company	RF171-12
7/31/85	Aminoil/Avon LP Gas Company	RF139-57
8/1/85	Husky/Nevada	RF161-4
8/1/85	Fields/Kar Kwik, Inc	RF173-2
8/1/85	Inland/Kellett Oil Company	RF178-3
8/1/85	Ayers/Elvins "66" Service	RF177-2
8/1/85	Receive Orders/Navajo Refining Co	RF171-13
8/1/85	Receive Orders/Plateau, Inc	RF171-14
8/1/85	Receive Orders/Little America Refining Company	RF171-16
8/1/85	Receive Orders/Placid Refining Co	RF171-15
8/1/85	Amoco/Duponty Brothers	RF21-12397
8/1/85	Boswell/Barton Brands, Inc	RF179-2
8/1/85	Husky/Dallas & Mavis Forwarding Co., Inc	RF161-5
8/1/85	St. James/Elman Fuel Co	RF180-11
8/2/85	St. James/Parker Fuel Co	RF16-12
8/2/85	St. James/Needham Oil Company	RF180-13
8/2/85	Red Triangle/Angelina Hernandez	RF178-7
8/2/85	F.O. Flecther/Roger Malfait	RF172-7
8/2/85	Aminoil/Hayes-Albion Corp	RF139-58
8/1/85	Southern Union/Chevron, USA, Inc	RF182-1
8/2/85	Arkansas Chemical/Yellow Cab Co	RF154-6

[FR Doc. 85-20586 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to eligible claimants a total of $2,404,055 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with Beacon Oil Company. The funds are being held in escrow following settlement of all claims and disputes arising from an audit by the Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed on or before September 27, 1985 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case numbers HEF-0203.

FOR FURTHER INFORMATION CONTACT: Geoffrey D. Stein, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order tentatively establishes procedures to distribute to eligible claimants $2,404,055 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Beacon Oil Company (Beacon) on December 17, 1979. The funds were provided to the DOE by the firm in order to settle all claims which the Economic Regulatory Administration could have pursued under the DOE price and allocation regulations relating to transactions by Beacon involving the production, refining, and marketing of petroleum products during the period August 19, 1973 through March 31, 1975 (the consent order period).

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively fomulated to distribute the contents of the escrow accounts funded by Beacon. The DOE has tentatively decided that Applications for Refund should be accepted from firms and individuals who purchased refined petroleum products from Beacon during the consent order period. The Proposed Decision and Order provides that in order to be entitled to receive any portion of the settlement funds, a purchaser must furnish the DOE with evidence which demonstrates that the claimant was injured by the alleged unlawful prices for covered products charged by Beacon. This evidence includes specific documentation concerning the date, place, price, and volume of product purchases, whether the increased costs were absorbed by the claimant or passed through to other

purchasers, and the extent of any injury alleged to have been suffered.

The Proposed Decision and Order also refers to the distribution in a second-stage proceeding of any funds remaining after all valid claims are paid. The DOE solicits comments on any proposals that claimants may suggest for this second-stage distribution.

Until final procedures are adopted, no claims for refunds will be accepted. Applications for Refund, therefore, should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Dated: August 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

August 21, 1985.

Name of Case: Beacon Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF-0203.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of enforcement proceedings involving alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with Beacon Oil Company (Beacon). Under the terms of the consent order, Beacon agreed to refund a total of $6,800,000, including payments to the DOE, in settlement of all civil and administrative claims by the DOE relating to Beacon's compliance with the federal petroleum price regulations applicable to refiners of petroleum products during the period from August 19, 1973 through March 31, 1975 (the consent order period).

I. Background

Beacon was a "refiner" of petroleum products as that term was defined in 10 CFR 212.31. During the consent order period, Beacon was engaged in the production, refining, and marketing of products covered by the federal petroleum price regulations set forth in 6 CFR Part 150 and 10 CFR Part 212. The ERA audited Beacon to determine the firm's compliance with these regulations. In the course of the audit process, Beacon entered into a consent order with the DOE, whereby the firm agreed to refund a total of $6.8 million to various parties to resolve all issues regarding Beacon's application of the regulations during the consent order period. Notice of this proposed consent order was published for public comment at 44 FR 58950 (1979). Claims and comments were filed by approximately 100 interested parties. The proposed consent order was adopted without modification as a final order of the DOE on December 17, 1979. 44 FR 73139 (1979).

The consent order set forth different methods for refunding the settlement funds to various categories of Beacon customers. Beacon paid refunds to ultimate consumers either directly by check or by issuing credit memoranda to be applied against future purchases from Beacon. The firm also instituted a price rollback through its company-operated service stations to effect refunds to end-users. To customers other than ultimate consumers, Beacon paid refunds either by issuing credit against future purchases or by making payments to the DOE for appropriate distribution. In the latter category, Beacon paid a total of $2,297,505 into an escrow account administered by the DOE. In addition, the consent order stipulated that if petroleum products were decontrolled, Beacon would pay any remaining unpaid credit or price rollback amounts into the DOE escrow account. After deregulation occurred on January 28, 1981, *see* Executive Order 12287, 46 Fed. Reg. 9909 (January 30, 1981), Beacon paid a total of $106,550 to the DOE to cover the portion of credit payments and price rollbacks to certain customers which were planned but never instituted. Therefore, this ERA Petition to OHA pertains to Beacon's total payment to escrow of $2,404,055, plus accumulated interest (hereinafter referred to as the consent order fund). [1]

II. Jurisdiction To Fashion Refund Procedures

The Subpart V process may be used in situations where the DOE is unable to readily identify the persons who may be eligible to receive refunds as a result of enforcement proceedings or to readily ascertain the amount that such persons should receive. 10 CFR 205.280. Subpart V authorizes the OHA, upon request by an appropriate DOE enforcement official, to fashion special procedures to distribute moneys obtained as part of a settlement agreement. 10 CFR 205.281-.282. After reviewing the record in this proceeding, we have determined that the implementation of Subpart V procedures is appropriate. As noted in the consent order itself, there is a significant degree of difficulty in identifying the purchasers who may have been injured by Beacon's pricing practices. Consent Order at 3. In addition, the alleged overcharges were associated with the price methodology of a refiner, so that any impact likely was spread throughout a broad range of customers. Furthermore, for a large portion of the consent order fund, it is difficult to ascertain the proper amount of refunds to identifiable injured parties. Therefore, the provisions of Subpart V provide a very useful mechanism for refunding money to parties likely to have been injured by the alleged violations. Accordingly, the OHA has decided to exercise jurisdiction over the funds received by the DOE pursuant to the Beacon consent order.

III. Proposed Refund Procedures

A. Refunds to Identifiable Purchasers

During the first stage in the refund process, the consent order funds should be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Beacon's alleged overcharges in sales of covered products. The claims procedures we propose to implement are set forth below. In addition, as in many prior special refund cases, we propose adoption of certain persumptions. First, we will tentatively adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Beacon during the consent order period. We therefore propose to calculate refunds based on a per-gallon, volumetric refund amount. Second, we will propose a presumption of injury with respect to small claims.

[1] The Beacon escrow account contained $4,120,305.54 as of June 30, 1985.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in these cases will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider refund applications in the most efficient way possible in view of the limited resources available.

A claimant will be eligible to receive a refund equal to the documented number of gallons bought from Beacon during the consent order period, multiplied by a volumetric percentage. This percentage is computed by dividing the total amount of consent order funds by the total number of gallons of covered products sold by Beacon during the consent order period. Based on information from the Beacon audit files, we estimate that Beacon sold 446,571,042 gallons of covered products during the consent order period. This figure results in a volumetric refund amount of $.005383 per gallon ($2,404,055 of consent order funds divided by 446,571,042 gallons sold). In addition, the interest which has accrued on the consent order funds will be applied to each paid refund on a pro rata basis. Finally, we intend to set a minimum refund amount for potential claimants. In prior refund cases, we have not granted refunds for less than $15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,214 (1982). We will utilize the same minimum refund in the present case.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by Beacon were spread equally over all gallons of product marketed by the firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered disproportionate injury as a result of Beacon's pricing practices during the consent order period. Any such purchaser may file a refund application for an amount greater than that calculated using the volumetric presumption, provided that the claimant documants the disproportionate impact of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

We proppse that reseller and retailer purchasers of Beacon products seeking refunds totalling $5,000 or less based on the volumetric presumption will not be required to provide a detailed demonstration of injury resulting from the alleged overcharges. The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the consent order is based on a number of considerations. *see, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factural information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a reseller or retailer claimant seeking a volumetric refund will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the consent order period is many years past and the cost of compiling sufficient data is probably quite high, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein.

A reseller or retailer which claims a total refund in excess of $5,000 will be required to document its injury. While there are a variety of means by which a claimant can make such a showing, a firm is generally required to show that market conditions would not permit it to pass through the increased costs associated with the alleged overcharges. In addition, a reseller or retailer of petroleum products must show that that it maintained a "bank" of unrecovered costs, in order to demonstrate that it did not subsequently recover these costs by increasing its prices. *See, e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). If actual, contemporaneously calculated cost banks are not available due to specific circumstances, we will accept other types of information which conclusively prove the existence of cost banks during the consent order period. For example, monthly profit margin data may in some cases demonstrate the existence of cost banks. *See Husky Oil Company*, 13 DOE ¶ 85,045 (1985); *Bayou State Oil Corporation*, 12 DOE ¶ 85,197 (1985).[2]

The consent order stipulated that all ultimate consumers or end-users who purchased products directly from Beacon during the consent order period would receive refunds either by direct payment or by credit issued against future purchases. Based on information in the Beacon audit file, we believe that almost all refunds to these end-users have been paid fully in accordance with the consent order and that other than unpaid credit amounts due to two ultimate consumers, the consent order funds pertain only to products sold to purchasers who were not ultimate consumers purchasing directly from

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[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,398 (1981).

Beacon.[3] However, we propose to accept claims from other end-users of Beacon products who demonstrate conclusively that they were customers during the consent order period but did not receive refunds pursuant to the consent order. Specifically, this category of purchaser may include ultimate consumers who bought Beacon products from resellers. Any such claimant need only document its purchase volumes in order to make a sufficient showing that it was injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that downstream end-user purchasers of a consent order firm's petroleum products need only document their purchase volumes in order to make a sufficient showing that they were injured by the alleged overcharges.

In addition, refund applications from firms regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that the firm absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of the alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they are allowed to charge their customers. Refunds to agricultural cooperatives will likewise directly influence the prices charged to member customers. Consequently, these firms too need only document their purchase volumes from Beacon to make an adequate showing of injury. *See Office of Special Counsel*, 9 DOE ¶82,538. However, along with their applications these firms should provide a full, detailed explanation of the manner in which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund.

As in previous cases, we propose that there is a class of potential claimants who may be presumed to have suffered no injury from the alleged overcharges. Those parties are firms that made spot purchases of Beacon petroleum products.[4] *See Office of Special Counsel*, 10 DOE ¶85,048 (1982); *Office of Enforcement*, 8 DOE ¶82,597 (1981) (hereinafter cited as *Vickers*). As we stated in *Vickers*:

> [T]hese customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase to their own customers.

8 DOE at 85,396–97. We believe that the same rationale applies in this case. Consequently, we propose to establish a rebuttable presumption that spot purchasers were not injured by the pricing practices resolved in the consent orders. Thus, a spot purchaser claimant will be required to submit additional evidence sufficient to establish that it was unable to recover the prices it paid to Beacon.

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. Applications should provide all relevant information necessary to establish a claim in accordance with the presumptions outlined above, including, where necessary, specific documentation concerning the date, place, price, and volume of product purchased, the retention of increased costs, and the extent of any injury alleged. Detailed procedures for filing applications will be provided in a final Decision and Order. *See Vickers*. Before disposing of any of the consent order funds, we intend to publicize widely the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, notice will be provided in publications in the areas of California in which Beacon marketed its products during the consent order period. Purchasers of covered products who filed claims in response to the original consent order notice in the **Federal Register** will be informed of these refund procedures by mail. As a final matter, we note that refund applications filed on behalf of groups of claimants identifying themselves as adversely affected purchasers also will be considered. Such applications will be evaluated on a case-by-case basis.

B. Distribution of the Remainder of the Consent Order Fund

After all meritorious claimants have received an appropriate refund, it is possible that the consent order funds may not be exhausted. Any remaining funds should be distributed during a second stage of the refund process in furtherance of the goals set forth in the DOE's enabling legislation and implementing regulations. However, any consideration of the second-stage procedure at this point in time involves a number of uncertainties. As was noted in *Vickers*:

> [Such] a step would be difficult to justify before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme.

8 DOE at 85,397. We will consider any comments received regarding second-stage alternatives and then issue a final Decision and Order establishing procedures for the first stage. In that decision, we will summarize and address briefly the comments received concerning second-stage procedures, and will solicit another round of comments on the distribution of the funds that may remain after payment of claims in the first stage. In this way, we will have adequate opportunity to consider the outstanding issues before reaching a final decision on the second stage.

It is therefore ordered that:

The funds remitted to the Department of Energy by Beacon Oil Company

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[3] The two ultimate consumers whose credit memoranda were not fully paid off by Beacon when deregulation occurred on January 28, 1981, were Harris Feeding Company ($314 outstanding credit) and Vie Del Company ($805 outstanding credit). These firms did receive most of the credit refunds due them pursuant to the consent order, and we propose that each be eligible to receive a refund equal to its outstanding credit amount, instead of a refund based on the volumetric method. Each firm need only submit proof of participation in the credit program to apply for its remaining refund, since, as is discussed *infra*, we find that ultimate consumers were injured by the alleged overcharges.

[4] We will except from this principle cooperative organizations which made spot purchases of products from Beacon and resold these products to their members. In the past, we have treated refund applications by cooperatives as applications made on behalf of their members, who, as ultimate consumers, were not in a position to pass along increased costs. Similarly, any refund received by a cooperative would presumably be passed on to its members, in the form of either a price reduction or a distribution of surplus income. Office of Special Counsel, 9 DOE ¶82,538 (1982) at 85,203. *See, e.g.*, Anadarko Production Co./Cities Service Co., 12 DOE ¶85,060 (1984). Cooperative purchasers therefore will be presumed to have been injured in spot purchases of Beacon products when these products were resold to members. Cooperatives in this category will be eligible to apply for refunds. These firms must explain in their refund applications the manner in which any refunds will be distributed to members.

pursuant to the consent order finalized on December 17, 1979, will be distributed in accordance with the foregoing Decision.

[FR Doc. 85–20588 Filed 8–27–85; 8:45 am]
BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order With Marathon Petroleum Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of proposed Consent Order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Marathon Petroleum Company ("Marathon"). The agreement proposes to resolve matters relating to Marathon's compliance with the Federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. ERA has assessed the effects of Marathon's alleged regulatory violations resolved by this proposed agreement, and has determined that the maximum amount Marathon could have overcharged is approximately $13.5 million. This amount, plus an additional amount for interest, represents Marathon's maximum liability if the government ultimately were to prevail in litigating all of the issues resolved by this Consent Order. Marathon disputes ERA's allegations of regulatory violations and denies any overcharge liability.

ERA is proposing that Marathon's possible liability for overcharges and interest be settled for $20 million. The settlement reflects the negotiated compromises present in every settlement, including assessments of litigation risks in the signficant areas of dispute between ERA and Marathon.

Within thirty days of the effective date of the Consent Order, Marathon will pay $20 million, plus interest from the date the Consent Order was executed by DOE. ERA will then petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V. In that proceeding, any person who claims to have suffered injury from Marathon's alleged overcharges would have the opportunity to submit a claim to OHA.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice and should be addressed to: Marathon Consent Order Comments, RG–13, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

Following this comment period, on September 30, 1985, at 10:00 a.m. at the Department of Energy Auditorium, Room GE–086, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, ERA will conduct a public hearing to provide interested persons an additional opportunity to present comments, information and recommendations as to whether the settlement should be finalized by DOE.

Requests to make presentations must be received in writing by 5:00 p.m., September 30, 1985 and should be marked "Requests to Make Oral Comments" and forwarded to the same address indicated for written comments.

The request should identify the person (with address and telephone number) who wishes to make a presentation and the amount of time desired. Presentations should be limited to 15 minutes. Persons wishing to participate in the hearing who have not scheduled time will be allowed to make presentations following those who have been scheduled.

ERA will consider the comments, information and recommendations received from the public in finally evaluating the proposed settlement. This will result in one of the following courses of action: rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the Federal Register, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Meyer Magence, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–4945.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Results of the Audit
  A. Areas of Dispute
  B. Determination of Maximum Overcharge Liability
III. Determination of Reasonable Settlement Amount
IV. Terms and Conditions of the Consent Order
V. Resolution of Litigation Matters

I. Introduction

Marathon is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order (January 1, 1973 through January 27, 1981), Marathon engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids and natural gas liquid products.

ERA conducted an intensified audit of Marathon's compliance for the period beginning in 1973 to the date when federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287). During this audit, ERA identified areas in the pricing and sales of crude oil and refined petroleum products in which it believes that Marathon had failed to comply with the requirements of the federal price and allocation regulations. A number of issues arose which involved Marathon's accounting procedures in which ERA disagreed with Marathon's calculation of the amounts of increased costs which were incurred and eligible for recovery through product price increases. These apparent cost errors are not the same as, and do not necessarily translate into, overcharge liabilities.

The regulations governing the pricing of refined petroleum products were complex. The starting point for determining the maximum lawful sales price in any month for products covered by the regulations ("covered products") was the refiner's May 15, 1973 selling prices to its various classes of purchaser. A refiner was permitted to increase those prices only to the extent necessary to recover specified categories of cost increases incurred as compared to those costs incurred in the month of May, 1973. For example, refiners could recover increased costs of acquiring crude oil and refined products ("product costs"); and their labor, marketing, manufacturing and interest costs ("non-product costs").

If a refiner failed to fully recover the cost increases incurred in the preceding month, it could "bank" those unrecovered costs for recovery (subject to certain limitations) in succeeding months. The regulations required refiners to allocate those recoverable costs to product categories, and provided some discretion to refiners to reallocate those costs among product groups.

Having specified the amount of increased costs eligible for recovery, the extent to which unrecouped "banked"

costs could be recovered, and the allocation of those increased costs to product categories, the regulations thereby enabled refiners to calculate the maximum amount of increased costs eligible for recovery in each month. Thus, each month a refiner calculated its maximum lawful sales price for each covered product to each class of purchaser, which was the sum of its May 15, 1973 price, the current amount of increased costs, and the amount of banked costs not previously recovered in its sales. A refiner could recover its increased costs by increasing its prices by any amount up to levels at which the full amount of recoverable increased costs would be recovered in the form of increased prices. A refiner infrequently charged the price it calculated to be its maximum lawful price. As a consequence, an error made in cost calculations for a particular month did not usually result in overcharges to purchasers but rather would have reduced the refiner's claimed cost banks in subsequent months.

It is the actual overcharges that represent the dollar amount of refund liability under the refiner pricing rules. The fact that the accounting for a particular transaction was not in total conformity with the regulation did not necessarily mean that the refiner received more for its products than it was permitted to charge or that the customer suffered an overcharge. Overcharges by a refiner are limited to the amounts that such refiner received from its customers in excess of the refiner's correctly determined maximum lawful prices.

In the case of Marathon, for the issues covered by this proposed settlement, ERA calculated that the alleged refund amounts related to sales of refined products total $8.1 million. In addition, ERA preliminarily determined that Marathon may be liable for a maximum of $5.4 million in crude oil overcharges. Marathon's potential refund liability, therefore, is believed by ERA to total $13.5 million, plus the interest which could be assessed on that amount.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with establishing the alleged overcharges, and considering the factual veracity and appropriate settlement compromises related to the many issues.

The settlement calls for Marathon to pay $20 million (plus interest from the date of execution by DOE) to discharge in full its obligations under the price and allocation regulations, except for those matters excluded from the agreement. Under the terms of the proposed Consent Order, the ERA would petition the OHA to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V.

II. Results of the Audit

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit, the nature of the alleged regulatory violations, and the "banks" of costs that Marathon was entitled to recover in previous months but did not. ERA also considered the extent to which these banks were available to offset the alleged cost and recovery violations and thus prevent the occurrence of overcharges on refined products. The alleged crude oil overcharges were separately considered by ERA in its assessment of the total settlement value.

During the Marathon negotiations, ERA examined all the alleged regulatory violations and the amount of costs it determined Marathon should be allowed in the calculation of the company's maximum lawful prices and total overcharge exposure. In the enforcement documents filed by the ERA, improper cost calculations totalling $286 million are alleged against Marathon. The company presented information relevant to its calculations of increased costs and selling prices, which enabled ERA to make adjustments and corrections accruing both to the detriment and the benefit of Marathon. For settlement purposes, ERA determined that Marathon's allegedly improper cost calculations totalled $290 million. ERA determined that if it were successful on all of these costs and recovery issues, Marathon would be liable for $8.1 million in overcharges on refined products plus interest on that amount. In addition Marathon's maximum liability for crude oil overcharges would be $5.4 million plus interest.

A. Areas of Dispute

The two major areas of dispute between ERA and Marathon concern alleged errors in its calculations of maximum lawful prices for crude oil produced by Marathon, and alleged overstatements of increased costs and/or understated recoveries of such costs which would affect the calculated maximum legal prices for refined products.

1. Crude Oil Overcharge Dispute

Excluded from the terms of the settlement are the crude oil overcharges for properties and issues pending or arising out of the Stripper Well Exemption Litigation. The remaining crude oil overcharge disputes, which are resolved by the Consent Order, include the application of incorrect posted prices and improper computation of base production control levels. These issues, which OHA addressed in a recent Remedial Order, involved $5.4 million plus interest.[1]

2. Cost and Recovery Disputes

As previously indicated, ERA has initiated enforcement proceedings against Marathon alleging cost and recovery adjustments of $286 million. These claims include alleged overstatements of increased product costs for crude oil and natural gas liquids, alleged overstatements of increased no-product costs and alleged understatements of costs recovered.

Based upon adjustments and corrections of its audit data, ERA has determined that these violations would be resolved by a refund of $8.1 million plus interest.

a. Product Cost Disputes. ERA has estimated that violations totalling $110 million in overstated increased crude oil costs and $8 million in overstated increasd purchased product costs relating primarily to NGL's were committed by Marathon. These alleged cost calculation errors include inter-affiliate transfer prices for foreign crude oil; improper determination of marine transportation costs; failure to use consistent accounting methods for calculating increased crude oil costs; overstatement of increased costs due to the inclusion of unrecouped June and July 1973 costs; inclusion of imputed interest costs for two vessels used to transport crude oil; and, cost overstatements attributable to an improper methodology in acounting for intrafirm transfers of NGL's and to errors made in calculating the firm's increased costs of shrinkage associated with Marathon's natural gas liquids extraction operations.

b. Non-product Cost Disputes. ERA estimates the overstated increased nonproduct costs by Marathon totalled $71 million. The areas of dispute include: failure to properly calculate marketing costs; failure to apply the marketing cost cents per gallon limitations; improperly netting nonproduct cost decreases; and, erroneous duplicate inclusion of certain additive cost increases.

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[1] This amount represents the approximately $3.4 million Marathon was ordered to refund in the Remedial Order proceeding before OHA (12 DOE ¶83,010 (June 22, 1984); 12 DOE ¶82,525 (Aug. 3, 1984); 12 DOE ¶83,032 (Feb. 22, 1985)) which is presently on appeal to FERC (R084–14–000; R085–8–000), plus $2 million in possible violations associated with the self-audit issues which are currently stayed by OHA in DRO–0195.

c. Cost Recovery Disputes. ERA has alleged that Marathon did not fully comply with the equal application rule; failed to pass through equal increased cost increments at its company operated service stations; and failed to compute sufficient cost recoveries for benzene and toluene. In addition, Marathon has challenged regulatory restrictions on some of its credit and billing practices. These issues were estimated to total $100 million in recovery adjustments or, as explained below, $60 million plus a separate refund of $812,000 and interest.

B. Determination of Maximum Overcharge Liability

ERA calculated the amount of overcharges for which Marathon might be liable. ERA's calculations of available costs were compared to costs actually recovered by Marathon in its sales of its products. This comparison yielded the information necessary to determine the maximum refined product overcharge liability.

Under the regulations, a refiner was permitted to "bank" any increased costs in a given month that it was permitted to recover in its product prices but did not. Costs could be "banked" and used, subject to certain limitations, in later months in pricing products. At the conclusion of the period of regulatory controls, Marathon had accumulated a claimed "bank" in excess of $400 million in unrecovered increased costs.

However, based upon a monthly calculation in which ERA effected $250 million in adjustments to Marathon's claimed costs and recoveries during the 88-month period of price controls, ERA determined that success on all of those costs and recovery disputes would result in overcharges of $7.3 million and a reduction of $243 million to Marathon's claimed banks. One issue involving Marathon's unequal price increases at some of its company operated service stations, which previously had been alleged as a $36 million adjustment to increased cost recoveries, was assessed as a direct cash liability by measuring the amount of refunds necessary to equalize Marathon's cost passthrough to its service station customers at the lowest level. The direct refund amounts so measured on a monthly basis was $812,000 and that amount added to the $7.3 million of calculated overcharges yields Marathon's maximum overcharge liability of $8.1 million for refined products.

In addition to the $8.1 million of possible overcharge liability for refined product sales, ERA determined that Marathon's maximum overcharge liability for the crude oil pricing issues resolved by the Consent Order is $5.4 million. Thus, Marathon's maximum overcharge liability, excluding interest, for the matters resolved by this Consent Order total approximately $13.5 million.

III. Determination of Reasonable Settlement Amount

In determining a reasonable settlement amount, ERA reviewed its maximum overcharge determinations totalling $13.5 million. This amount is based on audit samples, extimates, projections and extrapolations and represents the maximum recovery, excluding interest, that could result if all issues resolved by this settlement were adjudicated in ERA's favor. The inherent risks in litigation make such an outcome unlikely. In determining an appropriate compromise of Marathon's maximum overcharge liability, ERA considered the probabilities of success on the issues important for purposes of proving overcharges. In assessing the issues, ERA found that several significantly affected the amount of Marathon's overcharge liability even when all other issues are considered in the government's favor, and that others would merely affect the amount of banks claimed by Marathon.

The necessity for the government to prevail in litigation on all of the significant issues in order to achieve the maximum overcharge recovery from Marathon was an important consideration in ERA's preliminary determination that Marathon's agreement to pay $20 million is in the public interest. Furthermore, that analysis presupposes that the government will prevail in litigating all other disputes.

In arriving at an overall judgment, in addition to the analysis of litigation risks, ERA took into account such factors as the interest which could be added to possible adjudicated refund amounts, the number and complexity of the legal and factual issues, the time and expense required for the government to fully litigate every issue, as well as the operative principle necessary for a successful settlement between capable adversaries—mutual recognition by the parties of the need to reasonably compromise their respective interests and expectations. Based on all of these considerations, ERA concludes that the resolution of these matters for $20 million is an appropriate settlement.

IV. Terms and Conditions of the Consent Order

Within thirty days of the effective date of the Consent Order, Marathon will pay the principal amount of $20 million, plus interest, to DOE. If the settlement is not made final by November 21, 1985, Marathon may withdraw from the proposed agreement. If the Consent Order is made final, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Marathon provide necessary information to OHA.

Unless specifically excluded, Marathon and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Marathon, or of Marathon or the DOE to take action against any other party.

Several matters are excluded from the settlement. The proposed Order does not resolve:

(a) The issues or claims pending or arising out of the subject matter now before the courts in *Marathon Oil Company* v. *FEA*, Civil Action No. *78–1357* (D.Kan.), consolidated in *In Re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D.Kan.);

(b) The issues or claims pending or arising out of the subject matter now before the courts in *Exxon, et al.* v. *DOE and 341 Tract Unit of the Citronelle Field*, C.A. No. 81–25, *et al.* (D.Del.), and before the OHA in *In Re 341 Tract Unit of the Citronelle Field*, Case Nos. BEN–0078, *et al.*;

(d) Any obligation or right to sell entitlements which may be imposed or made available to Marathon should the entitlements notice of January 1981 be published or any obligation to buy or sell entitlements which may be imposed on Marathon pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as a result of the granting of exception relief by the Office of Hearings and Appeals;

(e) Any entitlement obligations or reporting requirements which may be imposed either pursuant to future modification of the requirements of the entitlements program (10 CFR 211.67 *et seq.*) by the DOE on its own initiative, or at the direction of a final judgment of a court of competent jurisdiction;

(f) The issues or claims pending or arising out of the alleged class of purchaser violation in OHA Case No.

HRO–0024 concerning Growmark, Inc. (formerly F.S. Services, Inc.);[2]

(g) Marathon's rights concerning claims under 10 CFR Part 205, Subpart V, or its claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations by third parties, including Marathon's claim for a refund in *United States* v. *Exxon*, Civil Action No. 78–1035 (D.D.C.)

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against Marathon.

V. Resolution of Litigation Matters

The proposed settlement resolves a number of enforcement matters that are being litgated by Marathon and DOE. This involves administrative and judicial litigation and includes the following cases:

Administration Litigation

Proposed Remedial Orders:
OHA Case NO: HRO–0024 [3]
OHA Case No: HRO–0025
OHA Case No: HRO–0026
OHA Case No: DRO–0195 [4]
Proposed Orders of Disallowance:
OHA Case No: BRO–0983
OHA Case No: HRO–0242
Remedial Orders:
OHA Case No: BRO–1295, FERC Case No: R085–19–000
OHA Case No: DRO–0195, FERC Case No: R084–14–000 [5]; FERC Case No: R085–8–000

Judicial Litigation

Marathon Petroleum Company v. *FEA, et al.*, Civil Action No. CA 74–316 (N.D. Ohio, Western Div.) Marathon as a Plaintiff in *Mobil Oil Corporation* v. *DOE, et al.*, Civil Action No. 79–CV–11 (N.D.N.Y.).

Submission of written comments: The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to the address noted above, and to appear at a public hearing, beginning at 10:00 a.m. on September 30, 1985. All comments received by the thirtieth day following publication of this notice in the **Federal Register**, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received and the comments at the hearing, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f). Issued in Washington, D.C., on August 22, 1985.

M.C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[Case No. RMNA0001]

Consent Order with Marathon Petroleum Company

I. Introduction

101. This Consent Order is entered into between Marathon Petroleum Company (formerly known as Marathon Oil Company) and the United States Department of Energy. Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Marathon, as hereinafter defined, relating to Marathon's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by Sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners, including Marathon, with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212 and 213, and rules, ruling, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order, except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Marathon" shall include, besides Marathon Petroleum Company, its parent, Marathon Oil Company (formerly known as USS Holdings Company), as well as its and their affiliates, subsidiaries, and predecessors but only for the acts of such companies

[2] All other issues in this case would be resolved by the proposed settlement.

[3] The issues or claims pending or arising out of the alleged class of purchaser violation concerning Growmark, Inc., would be excluded by the proposed Consent Order.

[4] A portion of the PRO relating to unaudited properties was stayed before OHA. This matter is resolved by the Consent Order. For the remainder of the issues in this case, OHA issued a Remedial Order and some of these matters are also settled by the proposed agreement with Marathon.

[5] Issues involving the counting of injection wells on certain properties which have been joined in this case are not resolved by the proposed settlement.

while they were subsidiaries or affiliates of Marathon, Marathon's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise, and except as provided in Article IV, *infra*, directors, officers and employees of Marathon.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Marathon was a "refiner" and a "producer" of crude oil as those terms are defined in the federal petroleum price and allocation regulations, and was subject to the jurisdiction of the DOE. During the period covered by this Consent Order, Marathon engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, propane, and other refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products.

302. In 1973, the DOE began an audit to determine Marathon's compliance with the federal petroleum price and allocation regulations. In 1977, pursuant to the mandate of the Secretary of Energy, OSC continued the audit on an intensified basis. The audit encompassed an examination of Marathon's policies and procedures pertaining to, and Marathon's compliance with, specific federal petroleum price and allocation regulations.

303. As part of its audit, the DOE examined Marathon's books and records relating to Marathon's compliance with the federal petroleum price and allocation regulations and the reporting requirements incidental to those regulations. In addition, at the DOE's request, Marathon prepared and submitted to the auditors a substantial number of specific responses to audit inquiries not necessarily limited to, or readily available from, individual books or records.

304. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Marathon's application of the federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Marathon, including the issuance of letters, Notices of Probable Violation, Notices of Proposed Disallowance, Proposed Remedial Orders, Proposed Orders of Disallowance and Remedial Orders. Marathon maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Marathon disagree in several respects concerning the proper application of the federal petroleum price and allocation regulations to Marathon's activities with respect to the matters covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the negotiation process. However, in order to avoid the expense of protracted, complex litigation and disruption of its orderly business functions, Marathon has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

Terms and Conditions

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which might have been sought by the DOE against Marathon for such matters under 10 CFR 205.199I or otherwise, Marathon shall pay twenty million dollars ($20,000,000), plus interest accruing at the rate specified in paragraph 404 between the date of execution by DOE of this Consent Order and the date of payment, pursuant to paragraph 402, to be disbursed as provided in paragraph 403.

402. Marathon agrees to pay twenty million dollars ($20,000,000) plus interest accrued for the period described in paragraph 401, to DOE within thirty (30) days of the effective date of this Consent Order.

403. OSC and Marathon agree that OSC will petition DOE's Office of Hearings and Appeals (OHA) to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the amount specified in paragraph 402.

404. Interest shall be deemed to be earned from the date of execution by DOE of this Consent Order at an interest rate reflecting the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Thereafter, the interest deemed to be earned shall be revised to reflect the average price bid at the auction of 13-week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The revised interest rate will apply on the first day after the relevant auction, and will continue to apply until and including the day of the next relevant auction. Upon each quarterly revision of the interest rate or upon payment to DOE, the interest earned since the date of execution of this Consent Order by DOE in the case of the first such quarterly revision or in the case of payment to DOE before such quarterly revision or since the immediately preceding quarterly revision in all other cases shall be computed and added to the balance at the end of the computation period. The interest for the computation period shall be computed at a rate equal to the annual coupon equivalent for the 13-week U.S. Treasury Bill auction average bid price at the auction governing the interest rate for the computation period times a fraction the numerator of which shall be the number of calendar days in the computation period and the denominator of which shall be 365. Interest shall be deemed earned as of 2:00 P.M. Daylight Savings Time.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Marathon regarding Marathon's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Proposed Order of Disallowance, Remedial Order, action in court or otherwise, are resolved and extinguished as to Marathon by this Consent Order, except that this Consent Order does not cover or affect:

(a) The issues or claims now pending or arising out of the subject matter now before the courts in *Marathon Oil Company* v. *FEA*, Civil Action No. 78–1357 (D. Kan.), consolidated in *In Re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.);

(b) The issues or claims pending or arising out of the subject matter now before the courts in *Exxon, et al.* v. *DOE and 341 Tract Unit of the Citronelle Field*, C.A. No. 81–25, *et al.* (D. Del.), and before OHA in *In Re Three Forty One*

(341) Tract Unit of the Citronelle Field, OHA Case Nos. BEN–0078, *et al.;*

(c) The issues or claims pending or arising out of the subject matter now before the courts in *Marathon Oil Company* v. *DOE,* Civil Action No. 81–634 (N.D. Ohio, Western Div.), and in *Texaco* v. *DOE,* Civil Action No. 84–391 (D. Del.), *American Petrofina* v. *DOE,* Civil Action No. 84–410 (D. Del.), and *Pennzoil* v. *DOE,* Civil Action No. 84–456 (D. Del.).

(d) Marathon's rights in all regards concerning claims under 10 CFR Part 205, Subpart V, or its claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations by third parties, including, without limitation, Marathon's claim for a refund in *United States* v. *Exxon,* Civil Action No. 78–1035 (D.D.C.);

(e) The issues or claims pending or arising out of the alleged class of purchaser violation in OHA Case No. HRO–0024 concerning Growmark, Inc. (formerly F.S. Services, Inc.).

(f) Any obligation or right to sell entitlements which may be imposed or made available to Marathon should the entitlements notice of January, 1981 be published or any obligation to buy or sell entitlements which may be imposed on Marathon pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as a result of the granting of exception relief by the Office of Hearings and Appeals;

(g) Any entitlements obligations or reporting requirements which may be imposed either pursuant to future modification of the requirements of the entitlements program (10 CFR 211.67 *et seq.*) by the DOE on its own initiative, or at the direction of a final judgment of a court of competent jurisdiction.

502. (a) Except as otherwise provided herein, compliance by Marathon with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Marathon, except as to those matters excluded by paragraph 501, the DOE hereby releases Marathon completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or may otherwise be able to assert against Marathon before or after the date of this Consent Order, for alleged violations of the federal petroleum price and allocation regulations, with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Marathon or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Marathon or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Marathon has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Marathon in derogation of this Consent Order.

(b) Nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations. The DOE also reserves the right to initiate and prosecute enforcement actions against any party other than Marathon for noncompliance with the federal petroleum price and allocation regulations, including, for example, suits against operators for overcharges for crude oil when Marathon is a working interest or royalty interest owner in such crude oil production. However, if Marathon was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any party for non-compliance with the federal petroleum price and allocation regulations during such period relative to such property, except to the extent such party received its interest from such property in kind. Marathon and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Marathon's activities as a working interest or royalty interest owner on properties on which it is not the operator. Furthermore, Marathon and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other party for violations on properties of which (but only for the times during which) Marathon is or was a working interest or royalty interest owner (and not the operator or affect any rights or obligations between Marathon and such working interest or royalty interest owners. Except for the matters excluded by this paragraph and paragraph 501, the DOE agrees that this Consent Order settles and finally resolves all aspects of Marathon's liability to the DOE under the federal petroleum price and allocation regulations in its capacity as a producer, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property.

(c) Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action, or against any civil action brought by any purchaser or covered products from Marathon, or against any civil action brought by an agency of the United States other than by the DOE under (i) Section 210 of the Economic Stabilization Act of (ii) any statute or regulations other than the federal petroleum price and allocation regulations. However, the DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by this Consent Order; provided that nothing in the Consent Order precludes the DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Finally, except as herein specifically provided, this Consent Order does not affect or prejudice any private action brought by a third party against Marathon, or by Marathon against any third parties, including an action for contribution; nor may this Consent Order be used to establish, enlarge, or abridge the rights of third parties seeking contribution from Marathon, or the rights of Marathon to seek contribution from third parties. Nothing herein shall preclude Marathon from asserting any legal or factual position or argument in any action brought against Marathon by any third party under section 210 of the Economic Stabilization Act, the federal petroleum price and allocation regulations or any other statute, rule, regulation or order.

(d) Marathon expressly agrees that in consideration for the DOE's performance under the Consent Order, Marathon releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities or causes of action that Marathon has asserted or may otherwise be able to assert against the DOE under the federal petroleum price and allocation regulations, except for matters specifically excluded from this Consent Order.

503. Marathon and the DOE agree to stipulate to the dismissal with prejudice of *Marathon Petroleum Company* v.

FEA, et al., Civil Action No. CA74–316 (N.D. Ohio, Western Div.). Within fifteen (15) days after the effective date of this Consent Order, Marathon will execute and deliver to the DOE a stipulation in the form attached hereto as Exhibit A.

504. Marathon and the DOE agree to stipulate to the dismissal with prejudice of Marathon as a plaintiff in *Mobil Oil Corporations, et al.* v. *DOE, et al.*, Civil Action No. 79–CV–11 (N.D.N.Y.). Within fifteen (15) days after the effective date of this Consent Order, Marathon will execute and deliver to the DOE a stipulation in the form attached hereto as Exhibit B.

505. Within thirty (30) days after the effective date of this Consent Order, the DOE and Marathon will file or cause to be filed appropriate pleadings to dismiss with prejudice all proceedings against Marathon or commenced by Marathon covered by this Consent Order then pending before the DOE's OHA or on appeal from OHA to the Federal Energy Regulatory Commission, except as follows:

(a) In Case No. DRO–0195, with respect to the following properties and the issues excluded by paragraph 501(a), *supra*, the Proposed Remedial Order will be dismissed without prejudice: Grass Creek Frontier Unit, and Haynesville Pettit Lime Unit; and

(b) In Case No. HRO–0024, with respect to the issues excluded by paragraph 501(e), the Proposed Remedial Order will not be dismissed and this Consent Order shall not affect the position of either party or constitute a waiver of any defense or position with respect to such issues.

506. Execution of this Consent Order constitutes neither an admission by Marathon nor a finding by the DOE of any violation by Marathon of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE expressly agrees that it will not seek any such civil penalties. None of the payments or expenditures made by Marathon pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures. Payments made by Marathon pursuant to this Consent Order are attributable only to the matters resolved by this Consent Order which do not include any willful violation of federal petroleum price and allocation regulations.

507. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Marathon, but only if Marathon has concealed facts relating to such violations. The DOE and Marathon also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

Reporting, Recordkeeping

VI. Requirements and Confidentiality

601. Marathon shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 402, Marathon shall also maintain sales volume data and customers' names and addresses regarding its initial sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until six months after the date of completion of payment to DOE of the amount set forth in paragraph 402, unless DOE notifies Marathon in writing that this period is extended, in which case Marathon shall maintain such information until the end of the extension. If requested, Marathon shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 402 of this Consent Order, Marathon is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order, and Marathon will not be subject to any report orders, subpoenas, or other administrative discovery by DOE relating to Marathon's compliance with the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order for the period covered by this Consent Order; provided, however, that Marathon will not invoke this Consent Order as a defense to report orders, subpoenas and other administrative discovery it may receive regarding other firms subject to DOE's information gathering and reporting authority.

602. The DOE will treat the sensitive commercial and financial information provided by Marathon pursuant to negotiations which were conducted with respect to the settlement agreed to in this Consent Order or obtained by DOE in its audit of Marathon and related to matters covered by this Consent Order, as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Marathon with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Marathon's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Marathon may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Marathon and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Marathon (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. Consistent with its Departmental policy, the DOE will undertake the defense of the Consent Order as finalized, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Marathon agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Marathon hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that its proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments to DOE and to appear at a public hearing conducted by ERA. The DOE will consider all written comments and the statements made at the hearing to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Marathon, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Marathon, Marathon reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to the DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Marathon, hereby agree to and accept on behalf of Marathon the foregoing Consent Order.

G.N. Nicholson,

Marathon Petroleum Company.

Dated: July 24, 1985.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing consent Order.

Milton C. Lorenz,

Special Counsel, Department of Energy.

Dated: June 6, 1985.

Exhibit A In the United States District Court for the Northern District of Ohio

[Civil Action No. 74–316]

Marathon Petroleum Company Plaintiff, **v.** *Federal Energy Administration, et al.,* Defendants.

Stipulation of Dismissal

Plaintiff, Marathon Petroleum Company ("Marathon") and the defendants, the Department of Energy, et al. ("DOE"), the successor agency to the Federal Energy Administration, hereby stipulate as follows:

1. Marathon and DOE have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Marathon and DOE hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

Marathon Petroleum Company

By:

Attorneys for Plaintiffs.

United States Department of Energy

By:

Dennis G. Linder,

Director, Federal Programs Branch, Department of Justice, Washington, D.C. 20530.

Attorneys for Defendants.

This ——— day of ————, 1985, the foregoing Stipulation is approved, and

It is so ordered.

United States District Judge.

Exhibit B In the United States District Court for the Northern District of New York

[Civil Action No. 79–CV–11]

Mobil Oil Corporation, et al., Plaintiff, v. *Department of Energy, et al.,* Defendants.

Stipulation of Dismissal

Plaintiff, Marathon Petroleum Company ("Marathon") and the defendants, the Department of Energy, et al. ("DOE"), hereby stipulate as follows:

1. Marathon and DOE have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Marathon and DOE hereby stipulate that, as between Marathon and DOE only, the instant action be dismissed with prejudice, each party to bear its own costs.

Marathon Petroleum Company

By:

Attorneys for Plaintiffs.

United States Department of Energy

By:

Dennis G. Linder,

Director, Federal Programs Branch, Department of Justice, Washington, D.C. 20530.

Attorneys for Defendants.

This ——— day of ————, 1985, the foregoing Stipulation is approved, and

It is so ordered.

United States District Judge.

[FR Doc. 85–20583 Filed 8–27–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OP–66122; FRL–2887–7]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

EFFECTIVE DATE: September 27, 1985.

ADDRESS: By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4

p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lela Sykes, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: RM. 718C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No	Product name	Registrant	Date registered
241-66	Thimet® LC-8 Systemic Insecticide	American Cyanamid Co., Agricultural Research Ctr., P.O. Box 400, Princeton, NJ 08540.	Nov. 17, 1961.
241-102	Thimet® 600 Systemic Insecticide	do	June 8, 1964
241-141	Thimet® LC-87 Systemic Insecticide	do	Dec. 22, 1965.
241-166	5-10-5 Fertilizer Thimet® Soil and Systemic Insecticide	do	Sept. 23, 1966.
241-167	5-10-5 Fertilizer and Thimet® Soil and Systemic Insecticide	do	Oct. 5, 1966.
241-196	Fertilizer and Thimet® Soil and Systemic Insecticide (Phorate 20%)	do	Mar. 1, 1968.
241-197	Fertilizer and Thimet® Soil and Insecticide Corn	do	Apr. 1, 1968.
241-209	Thimet® Liquid Concentrate Systemic Insecticide	do	Nov 13, 1967.
241-223	Biothin® 6E	do	Nov 24, 1972.
241-226	18-46-0 Fertilizer and Thimet® Soil and Systemic Insecticide	do	May 19, 1972.
241-227	0-46-0 Fertilizer and Thimet® Soil and Systemic Insecticide	do	Do.
241-228	11-48-0 Fertilizer and Thimet® Soil and Systemic Insecticide	do	Do.
241-255	Nem-A-Tak 2L Nematicide	do	Sept. 28, 1981.
241-258	Thimet® 15-G Rice Insecticide	do	May 15, 1981.
241-263	Nem-A-Tak 4L Nematicide Insecticide	do	Sept. 28, 1981.
279-108	Niagara Ground Bluestone	FMC Corporation, Agricultural Chemical Div., 2000 Market St., Philadelphia, PA 19103.	Jan. 3, 1967.
279-153	Niagara New Cucurbit Dust	do	Apr. 12, 1948.
279-423	Copper Compound No. 53	do	Mar. 17, 1949.
279-505	Niagara Powdered Bluestone	do	May 26, 1950.
279-617	Thiodan Pyrenone Fly Spray	do	Dec. 14, 1951.
279-1257	Niagara Thiodan 4 Dust Insecticide	do	Mar. 3, 1958.
279-1266	Copper Zinc Dust	do	Apr. 2, 1958.
279-1344	Niagara Thiodan 3 Dust	do	Aug. 4, 1958.
279-1382	Thiodan 50 Base	do	Mar. 2, 1959.
279-1394	Trithion 4.0 Miscible	do	May 30, 1958.
279-1405	Thiodan 3 Dust	do	Apr. 21, 1959.
279-1437	Trithion Sulfur 3-50 Dust	do	June 18, 1959.
279-2021	Sulfur 50 DX Dust	do	Feb. 27, 1963.
279-2095	Thiram 75 WP	do	Jan. 27, 1964.
279-2109	Niagara Thiodan 3 Granular	do	Mar. 12, 1964.
279-2299	Thiodan 5 Dust	do	Oct. 1, 1965.
279-2544	Niagara Penta Concentrate 40	do	May 4, 1967.
279-2574	Methyl Parathion 15 Thiodan 25 WP	do	July 7, 1967.
279-2700	Thiodan Miscible with Pyrenone Insecticide	do	Nov. 28, 1968.
279-2722	Copper 6 Lime Dust	do	June 4, 1969.
279-2858	New Prime Tobacco Spray	do	June 8, 1971.
279-2675	Furadan 75 Wettable Powder	do	Mar. 7, 1972.
279-2941	Copper Zinc Sulfate	do	July 17, 1974.
352-291	Manzate D Fungicide	E.I. Dupont de Nemours and Co., Agricultural Chemicals Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898.	July 5, 1983.
352-306	Manzate T Maneb Fungicide	do	July 6, 1984.
352-423	Manzate Flowable Fungicide with Zinc	do	Sept. 22, 1982.
359-360	ChipCal Granular	Rhone-Poulenc, Inc, Agricultural Div., P.O. Box 125, Monmouth Junction, NJ 08852.	Jan. 15, 1982.
359-536	Chipman Meta-A-Pellet	do	Feb. 17, 1964.
400-214	De Pester Tedion E-1	Uniroyal Chemical, Division of Uniroyal, Inc., 74 Amity Road, Bethany, CT 06525.	Mar. 29, 1963.
400-227	Methoxychlor Dust #5	do	May 24, 1965.
400-256	Du-Nema G-15	do	Mar. 18, 1965.
400-264	De Pester Tedion 3% Dust	do	May 17, 1968.
400-265	De Pester Tedion Sulfur 4-25	do	May 22, 1968.
400-266	De Pester Guthion-Sulfur 3-30	do	May 28, 1968.
400-272	De Pester Tedion-Dibrom-Sulfur 2-4-20	do	July 30, 1968.
400-275	De Pester Guthion 3 Dust	do	Sept. 16, 1968.
400-279	Bactur Dust Insecticide	do	Nov. 4, 1968.
400-293	De Pester Tedion W-50 A Wettable Powder	do	Nov. 10, 1970.
464-368	Dursban M Insecticide	Dow Chemical Co., P.O. Box 1706, Midland, MI 48640	May 19, 1960.
464-396	Dursban IG	do	June 29, 1971.
464-447	Lorsban 2E	do	Oct. 4, 1974.
464-450	Dursban 24E Insecticide Concentrate	do	Oct. 25, 1974.
464-483	Dow Simazine 80W Herbicide	do	Jan. 11, 1974.
464-489	Chloropyrifos 50P Insecticide Concentrate	do	Mar. 13, 1974.
464-501	Dow Lorsban 25-SL Wettable Powder	do	June 20, 1975.
464-521	Chloropyrifos Special Mixture #1	do	July 2, 1975.
464-553	FA-5 Insecticide	do	Dec. 12, 1979.
464-575	Dursban 5G	do	Mar. 18, 1982.
476-914	Pyrenone 1.27-.13 Bm Spray	Stauffer Chemical Co., Labeling and Registration Dept., 1200 S. 47th St., Richmond, CA 94804.	May 7, 1956.
476-2017	Tedion 4 Flowable	do	July 8, 1968
539-65	Sears Insect Dust Containing Rotenone	Sears, Roebuck and Co., Sears Tower, Dept. 766-68th Floor, Chicago, IL 60684.	Feb. 23, 1955.
539-76	Sears Fruit Spray	do	Feb 21, 1950.
539-97	Sears 50% Malathion Spray	do	Feb 3, 1955
539-236	Sears Lawn Renovator and Grass and Weed Killer	do	Apr. 24, 1968
539-259	Sears Pre-emerge Crabgrass Killer and Fertilizer 10-6-4	do	Sept. 20, 1969.
539-283	Garden Dust Insecticide, Fungicide	do	Apr. 22, 1974.
655-71	Prentox® 5% Emulsifiable Concentrate	Prentiss Drug and Chemical Co., Inc., CB 2000, 21 Vernon St., Floral Park, NY 11001.	Aug. 17, 1954.
655-83	Prentox® Malathion 90	do	May 18, 1955.
655-88	Prentox® Pyrethrum-Sodium Fluoride Powder	do	Aug. 18, 1955.
655-282	Prentox® 10% Pyrethrum Extract	do	May 27, 1966

Registration No	Product name	Registrant	Date registered
[illegible]	Prentox' Warfann Concentrate Rax Powder w/Malathion	....do	Oct. 26, 1966.
[illegible]	Prentox' Permacide Concentrate DFS	....do	Apr. 13, 1967.
655-367	Prentox' Pyronyl Crop Spray	....do	Jan. 14, 1970
[illegible]	Prentox' Methoxychlor 50W	....do	Feb. 2, 1970.
655-375	Prentox' Intermediate DC-100	....do	July 13, 1970.
[illegible]	Prentox' Grain Protectant Concentrate	....do	Feb. 25, 1971.
[illegible]	Prentox' Intermediate Concentrate PYB-100	....do	July 31, 1972.
655-478	Prentox' MCPP-Tech	....do	Apr. 17, 1973.
1183-12	Corvel Flyte Spray	Corvel Division, Eli Lilly and Co., P.O. Box 618, Indianapolis, IN 46206	Dec. 17, 1965.
1471-31	Greenfield Rose and Flower Spray	Elanco Products Division, 740 S. Alabama St., Indianapolis, IN 46285	Oct. 18, 1962.
1471-34	Dymid 80W	....do	Dec. 20, 1962.
1471-42	Greenfield Dichondra Weed Control	....do	May 31, 1968.
1471-43	Dymid 5G	....do	July 23, 1964.
1471-47	Dymid 50W	....do	Nov. 18, 1964.
1471-48	Greenfield Rose and Ornamental Disease Control	....do	Dec. 10, 1964.
1471-51	Elanco Dymid D Liquid Dispersion	....do	Mar. 24, 1965.
1471-54	Tutane Carbonated	....do	Sept. 20, 1965.
1471-76	Diphenamid Technical 98%	....do	Mar. 29, 1972.
1471-91	Frucote	....do	Nov. 2, 1972.
2995-6	Bingman's Ciodrin Livestock Spray Emulsifrable Concentrate	Bingman Labs, Inc., P.O. Box 88, Sarahsville, OH 43779	July 27, 1967.
3635-77	Oxford Bacto-phene Hospital Disinfectant	Oxford Chemicals, Inc., P.O. Box 80202, Atlanta, GA 30366	Dec. 19, 1963.
3635-129	Ophene 15	....do	June 19, 1972
3640-73	Diazinon Ant and Roach Residual Bomb	Stearns Chemical Corp., 4200 Sycamore Ave., Madison, WI 53704	May 28, 1974.
3743-180	Royal Brand 50% Sevin Dust Base	Southern Agricultural Chemicals, Inc., P.O. Box 527, King Street, SC 29556	Jan. 17, 1967.
4822-50	Johnson's New Formula Crew	S. C. Johnson and Son, Inc., Racine, WI 53401	Apr 28, 1964.
4823-14	Nelco Pine Odor Disinfectant-Deodorant Cleanser	Maintenance Supply Service, P.O. Box 498, Huntersville, NC 28078	Aug. 11, 1971.
5535-13	Gro-Well Flower and Rose Spray	J and L Adikes, Inc., 182-12 93rd Ave., Jamaica, NY 11423	Nov. 22, 1957.
5535-35	Gro-Well Pre-Vent	....do	Feb. 1, 1961.
5535-49	Gro-Well Ren-O-Vate	....do	Mar. 13, 1964
5535-60	Gro-Well Ren-O-Vate (Dry)	....do	Jan. 27, 1967
5535-78	Gro-Well Pre-Vent Pre-Emergent Crabgrass Control with Fertilizer	....do	Apr. 19, 1971
5535-79	Gro-Well Home and Garden Spray	....do	Mar. 7, 1973.
5535-93	Gro-Well Wasp and Hornet Spray	....do	July 5, 1974.
5535-95	Gro-Well Patio Fogger	....do	Jan. 24, 1973.
5778-23	Super Chinch Trithion Dust	Gro Chemical Co., 3530 NW. 31st St., Miami, FL 33142	Jan. 17, 1968.
6294-4	Comet Insecticide Spray AA-1	Comet Mfg. Corp., 1381 Dalon Road, NE, Atlanta, GA 30306	Feb. 18, 1959.
6294-14	Cattle Spray	....do	July 29, 1966.
6294-20	Comocide 999 Insect Spray	....do	July 18, 1966.
6735-141	Tide Special Pest Mix Household Insecticide Spray	Tide Products, Inc., P.O. Box 1020, 800 N. Closner St., Edinburg, TX 78539	July 9, 1968.
6735-143	Tide Trithion 4E	....do	Aug. 5, 1968.
6735-165	Trithion 3 Dust	....do	Apr. 12, 1971.
6735-208	Tide Big "D"	....do	Jan. 6, 1975.
6993-34	Germains Dichondra and Ornamental Weed Control	Germains, Inc., 4820 East 50th St., Los Angeles, CA 90058	Nov. 17, 1969.
6993-38	Germains Rose and Flower Dust	....do	May 3, 1971.
7173-104	Chemper's Trichlorfon 80% Soluble Powder	Chemper Products, Division of Lipha Chemicals, Inc., 660 Madison Ave., New York, NY 10021.	Sept. 13, 1972
8220-1	Pemco Algo	Lambert Kay, Division of Carter-Wallace, Inc., P.O. Box 416, Cranbury, NJ 08512.	Feb. 17, 1971.
8220-12	Lambert-Kay Dri Brite	....do	July 7, 1971.
8660-1	Sta-Green Pre-Emergence Crabgrass Killer	Sta-Green Plant Food Co., Sylacauga, AL 35150	Oct. 8, 1964.
10185-4	Dale's Hog and Cattle Oil	Dale's Machine Co., Inc., 225 W. Grant St., Thorntown, IN 46071	Jan. 30, 1973.
13344-2	Crabgrass Preventer Plus	Target Stores, Inc., 777 Nicollet Mall, Minneapolis, MN 55402	Feb. 10, 1975.
32259-4	Woodlast Clear Wood Preservative	Hoboken Paints, 40 Industrial Road, Lodi, NJ 07644	Mar. 19, 1982.
41848-1	Smith Algaecide	Smith Engineering, Inc., 125 Columbia Court, Jonathon Industrial Ctr., Chaska, MN 55318.	May 21, 1981.

The Agency has agreed that each cancellation shall be effective [September 27, 1985. Unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue until the supply is exhausted, or for one year from the effective date of cancellation. Other persons may continue to sell and distribute these products until the supply is exhausted. Continued sale and use of such existing stocks has been determined to be in accordance with the provisions of FIFRA and must be consistent with the label and labeling approved by EPA. Production of these products after the effective date of cancellation is prohibited and would be a violation of FIFRA.

Requests that the registration of these products be continued may be submitted in triplicate to the Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66122]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136d.

Dated: August 15, 1985.

Steve Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-20307 Filed 8-27-85; 8:45 am]

BILLING CODE [illegible]

[OPP-40006B; FRL-2887-8]

Intent To Approve Revised Department of Defense Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve Federal agency certification plan.

SUMMARY: EPA approved the Department of Defense plan to certify its employees as pesticide applicators, as published in the **Federal Register** of June 13, 1978 (43 FR 25468). Notice is hereby given of the intention of the EPA Administrator to approve a revised

Department of Defense Pesticide Applicator Certification Plan (DOD Plan). The existing DOD Plan will remain in effect pending approval of the revised DOD Plan. The DOD Plan was revised to expand and update policies and procedures as dictated by changes in laws, regulations, and the needs of the military services. A summary of the revised DOD Plan appears below. Interested persons are invited to comment.

DATE: Comments should be submitted on or before September 27, 1985.

ADDRESSES: Submit three copies of comments, identified by the document control number "OPP–40006B," by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

See **"SUPPLEMENTARY INFORMATION"** for the locations where the DOD Plan is available for inspection.

FOR FURTHER INFORMATION CONTACT: John MacDonald, Policy and Grants Division, Office of Compliance Monitoring (EN–342), Environmental Protection Agency, Rm. M–2510, 401 M St., SW., Washington, DC 20460, (202–382–7846).

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense, Deputy Assistant Secretary of Defense (Installations), Armed Forces Pest Management Board (AFPMB) was designed as the lead agency responsible for the program's development, implementation and coordination.

In its coordination capacity the AFPMB serves as counsultant body to the cooperating military services on pest management programs, provides liaison with other Federal and State agencies in these matters, and provides guidance for the cooperating agencies on standards for pesticide applicator competency levels. This DOD Plan applies to all the Military Departments (including their National Guard and reserve components), the organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

Federal employees are considered by EPA to be commercial applicators. The Department of Defense has proposed certification for its employees in 1 or more of the 10 commercial categories defined in 40 CFR 171.3 plus an additional proposed category defined as Aerial Applicator Pest Control. These are the categories in the existing, EPA-approved, DOD Plan.

Department of Defense will certify its employees to apply pesticides on Department of Defense property. In the infrequent instances when Department of Defense employees will be applying pesticides on other property, they will work under the supervision of appropriately certified State or Federal personnel.

The revised DOD Plan will, like the existing DOD Plan, consist of a training phase and a certification phase. While not all categories of applicators must undergo training, if they meet specified criteria, all must be examined for competency. Prior to certification all applicators must pass a written examination and demonstrate on-the-job competency. Samples of written test questions are included in the DOD Plan.

The DOD Plan allows for the inclusion of more stringent substantive State standards. In instances where a State decides its substantive standard is more stringent than or is additional to standards established in the DOD Plan, it may notify the Department of Defense and request compliance. The request will be immediately forwarded to the Administrator, EPA. As soon as possible thereafter, the Department of Defense will forward its opinion as to whether the standard is substantive or administrative in nature. In cases of disagreement between the State and the Department of Defense, the DOD Plan proposes mediation by the Administrator, EPA.

Those certifications issued under the existing DOD Plan will remain valid until their expiration date. The revised DOD Plan, like the existing DOD Plan, will certify applicators for a period not to exceed 3 years. The DOD Plan cites Department of Defense Directives that require the cooperating agencies to conduct periodic programs to assure that applicators continue to meet the requirements of changing technology. Annual inspections of installation pest control activities will be performed by professional pest management personnel at which time competency of certified employees will be evaluated and recommendations for early recertification will be made as required.

Each certified applicator will be issued a certificate and wallet-size identification card to be carried when applying pesticides or supervising their application. These documents will identify the certified applicator, the categories in which he or she is certified, the date of issuance, expiration date, and issuing authority. An example of this document is contained in the DOD Plan.

Pesticides classified for restricted use will be applied either by a certified applicator or by a competent applicator under the direct supervision of a certified applicator. The revised DOD Plan's direct supervision requirement exceeds the requirement of 40 CFR 171.6 and the existing DOD Plan's requirement. The revised DOD Plan requires supervision that includes being at the specific location where the work is conducted and maintaining a line-of-sight view of the work performed.

The revised DOD Plan contains authority to deny, suspend, or revoke certification for falsification of a record, misuse of a pesticide, or other violations of FIFRA. The revised DOD Plan outlines the procedures for conducting such actions.

Records on the kinds, amounts, uses, dates, and places of restricted use pesticide applications will be maintained for no less than 2 years at the installation conducting the pesticide application. Such records will be available through the installation commanding officer to appropriate Federal and State officials upon request.

Employees of commercial firms contracted to apply restricted use pesticides at Department of Defense installations must be certified by the appropriate State or EPA authority. The Department of Defense will cooperate with a State or EPA in any subsequent investigation or actions.

Annual reports containing the information outlined at 40 CFR 171.7(d) and other information requested by the EPA Administrator will be submitted. The annual reports will be based on activities conducted during the Federal fiscal year.

Copies of the DOD Plan are available for inspection at the following locations:

1. Armed Forces Pest Management Board, Forest Glen Section, Walter

Reed Army Medical Center (WRAMC), Washington, D.C. 20307–5001.

2. Environmental Protection Agency, Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.
3. Environmental Protection Agency, Region I, John F. Kennedy Building, Boston, MA 02203.
4. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278.
5. Environmental Protection Agency, Region III, Curtis Building, 841 Chestnut St., Philadelphia, PA 19107.
6. Environmental Protection Agency, Region IV, 345 Courtland St., NE., Atlanta, GA 30365.
7. Environmental Protection Agency, Region V, Pesticides Branch, 230 South Dearborn St., Chicago, IL 60604.
8. Environmental Protection Agency, Region VI, 1201 Elm St., First International Building, Dallas, TX 75270.
9. Environmental Protection Agency, Region VII, 726 Minnesota Ave., Kansas City, KS 66101.
10. Environmental Protection Agency, Region VIII, One Denver Place, Suite 1300, 999 18th Ave., Denver, CO 80202–2413.
11. Environmental Protection Agency, Region IX, 215 Fremont St., San Francisco, CA 94105.
12. Environmental Protection Agency, Region X, 1200 Sixth Ave., Seattle, WA 98101.

The DOD Plan is also available for inspection at selected Department of Defense installations throughout the country. Interested persons desiring the location of the installation in their State should contact the Armed Forces Pest Management Control Board at the address given above or telephone Captain Larry Lewis, U.S.N. (202–427–5191).

Dated: August 15, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–20306 Filed 8–27–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Interagency Committee on Dam Safety (ICODS); Charter and Operating Rules

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Publication of the Charter and Operating Rules of the Interagency Committee on Dam Safety.

SUMMARY: The Federal Emergency Management Agency is providing notice of the publication of the formal charter and operating rules of the Interagency Committee on Dam Safety (ICODS). The purpose of ICODS is to coordinate policies for and provide guidance to all participants of the National Dam Safety Program.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Bivins, Acting Chief, Program Development Branch, Earthquakes and Natural Hazards Programs Division, Washington, DC 20472, (202) 646–2817.

SUPPLEMENTARY INFORMATION: The National Dam Safety Program was established October 4, 1979, when the President instructed the heads of each Federal agency responsible for any aspect of dam safety to adopt the Federal Guidelines for Dam Safety. This coincided with the formation of the Federal Emergency Management Agency (FEMA), by Executive Order 12148, and the agencies were directed to report their progress in implementing the guidelines to the Director of FEMA. The executive order and Presidential directive designated FEMA as the lead agency for efforts to enhance the safety of dams. To fulfill its reponsibilities FEMA requested the formation of the Interagency Committee on Dam Safety (ICODS) to encourage the establishment and maintenance of effective Federal and State dam safety programs. ICODS represent 9 Federal departments and agencies. They are: The Departments of Agriculture, Army, Interior, and Labor; Nuclear Regulatory Commission; U.S. Section, International Boundary and Water Commission; Federal Energy Regulatory Commission; Tennessee Valley Authority; and FEMA (Chair).

ICODS provides a permanent forum for member agencies to coordinate interagency activities and to identify, discuss, and recommend solutions to institutional, managerial, technical, legislative, and policy issues which affect national dam safety. ICODS has been active on several fronts since its formation and it is now considered appropriate to formally announce its Charter and Operating Rules and its objectives, mission and oversight role for the National Dam Safety Program. Set forth below is the Charter and Operating Rules for the Interagency Committee on Dam Safety originally adopted at the April 24, 1980 organizational meeting.

Dated: August 20, 1985.

Richard W. Krimm,

Assistant Associate Director, Office of Natural and Technological Hazards Programs.

Interagency Committee on Dam Safety (ICODS) Charter and Operating Rules

I. Preamble

The need for positive action and leadership to assure safe dams has been clearly established through direction of the President, by the actions of Federal agencies, State governments, professional societies and engineers involved with dams, and by the concerns expressed by the public.

It is necessary that Federal agencies having an involvement with dams coordinate their activities to assure optimum use of agency resources in the establishment of principles and guidance that will lead to safer dams. These agencies also have a responsibility to provide leadership so others might benefit from the skills, experience, and programs of the Federal establishment. The Interagency Committee on Dam Safety (ICODS) provides the framework for meeting these objectives. The members will individually carry ICODS decisions and recommendations that impact on policy and legislative matters to their respective agencies for appropriate action.

ICODS considers a dam to be as defined in the *Federal Guidelines for Dam Safety.*

II. Purpose

The purpose of ICODS is to encourage the establishment and maintenance of effective Federal and State programs, policies, and guidelines intended to enhance dam safety for the protection of human life and property. This is achieved through coordination and information exchange among agencies sharing common problems and having responsibilities for any aspect of dam safety (e.g., planning, design, construction, operation, emergency actions, inspections, maintenance, regulation or licensing, technical or financial assistance, research, data collection, and ultimate disposition). Such coordination is not limited to Federal dam safety matters as State and local issues may provide a need for technology exchange. ICODS will provide a permanent forum for these organizations to advise the Federal Emergency Management Agency (FEMA) in its role of coordinating interagency activities and to identify, discuss, and make recommendations on institutional, managerial, technical,

legislative, and policy issues which affect national dam safety.

III. Organization

A. Membership

The members are to be one representative designated from each of the following Federal Departments/Agencies: Agriculture; Army; Interior; Labor; Federal Energy Regulatory Commission; U.S. Section, International Boundary and Water Commission; Nuclear Regulatory Commission; Tennessee Valley Authority; and Federal Emergency Management Agency.

B. Chair

The FEMA member will serve as designated Chair. In the absence of the designated FEMA member, a representative of a member Federal Department/Agency will be named by FEMA to act as Chair. At the discretion of the Chair, others may participate in ICODS meetings and subcommittee activities.

C. Subcommittees

ICODS will establish necessary subcommittees to fulfill its purpose. A member of ICODS will be named by the Chair as contact person for each subcommittee. Subcommittees, their memberships, chairmanships, and assignments will be approved by ICODS.

D. Meetings

The Chair will call meetings as needed. A minimum of one meeting per calendar quarter will be scheduled.

E. Voting and Rules

Each member of ICODS shall have one vote. Each subcommittee member shall have one vote on their subcommittee. A member may designate an alternate to vote in his or her absence. Every effort will be made to arrive at a consensus. Robert's Rules of Order will be followed.

F. Funding

Each agency will be responsible for supporting its representatives. Any cost for consultants, printing, etc., will be mutually agreed upon prior to commitment.

IV. Amending Charter and Operating Rules

Amendments may be made to the Charter and Operating Rules, the members desiring, by a two-thirds vote of the membership.

Amended————————.

(Originally adopted by Interagency Committee on Dam Safety at the April 24, 1980, organizational meeting, Washington, DC.

[FR Doc. 85-20296 Filed 8-27-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003753-004.

Title: Baltimore Terminal Agreement.

Parties:

Maryland Port Administration (MPA)

ITO Corporation of Baltimore (ITO)

Synopsis: Under this agreement the MPA requests an amendment to its current lease with ITO for use of the South Locust Point Marine Terminal under revised leased terms until its expiration on April 30, 1986. MPA will receive all dockage and wharfage fees assessed by ITO at the terminal in lieu of current provisions. Such dockage and wharfage shall be as set forth in the current MPA terminal services tariff. The parties have requested a shortened review period for the agreement.

Agreement No.: 213-010601-003.

Title: Neptune Orient Lines, Ltd. (NOL), Orient Overseas Container Line, Inc. (OOCL) and Kawasaki Kisen Kaisha, Ltd. (K-Line) Sailing Agreement.

Parties:

Neptune Orient Lines, Ltd.

Orient Overseas Container Line, Inc.

Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed amendment would modify the agreement to (1) add Kawasaki Kisen Kaisha, Ltd. as a party to the agreement in the Atlantic Service only; (2) enlarge the geographic scope to include transshipment to and from ports and points in Bangladesh, Macao, Brunei Darussalam, Papua New Guinea, New Zealand and utilize Long Beach, California as a port for both services; (3) increase the NOL and OOCL maximum fleet from 17 to 23 vessels but reduce the minimum TEU requirement for each vessel, including the two vessels to be introduced into the Atlantic Coast Service by K-Line, to 1250 TEU's from the current 1500 TEU's. It would provide that K-Line will not be allowed to participate in nor be a party to any arrangement between NOL and OOCL and ocean common carriers regarding the Pacific Coast Service. It would also restate the agreement to conform with the Commission's format, organization and content requirements and would make certain administrative changes.

Agreement No.: 224-010807.

Title: Long Beach Terminal Agreement.

Parties:

The City of Long Beach (City)

Moller Steamship Company, Inc. (Moller)

Synopsis: The agreement provides that the City will assign to Moller the remainder of terminal areas at Berths 243-244, Pier J, within the Port of Long Beach. The premises are to be used to conduct a full marine terminal operation. The agreement is for an initial term of five years with Moller having the right to extend the term for up to 3 additional periods of 5 years each. The compensation in the terminal agreement is based on a percentage of dockage and wharfage revenues, subject to payment of a guaranteed annual minimum compensation.

Agreement No.: 222-010808.

Title: Long Beach Terminal Equipment Agreement.

Parties:

City of Long Beach (City)

Moller Steamship Company, Inc. (Moller)

Synopsis: The agreement provides for the preferential assignment by the City to Moller of two existing cranes at Berths 243-244, Pier J, Port of Long Beach, plus an additional crane to be purchased by the City. The compensation is a fixed annual amount based on a percentage of the purchase price. The agreement is for an initial term of 5 years with Moller having the right to extend the term for up to 3 additional periods of 5 years each.

Agreement No.: 224-010809.

Title: Tampa Terminal Agreement.

Parties:

Tampa Port Authority (Authority)

Holland America Westours, Inc. (Holland America)

Synopsis: This agreement provides for the granting by the Authority to Holland America of a non-exclusive preferential use passenger terminal facility at Berth 202, Tampa, Florida. The agreement will become effective upon the

determination of its effective date by the Commission. The term of the agreement shall be for five years. Upon the effective date determined by the Commission, this agreement will cancel and supersede Agreement No. T–4060, approved by the Commission on November 15, 1982.

Agreement No.: 224–010810.
Title: Portland Terminal Agreement.
Parties:
The Port of Portland (Port)
Pacific Molasses Company (PMC)
Synopsis: The agreement provides that PMC will lease a 2.54 acre liquid bulk facility from the Port for the purpose of handling the movement of bulk liquids in waterborne commerce. The term of the agreement will be for ten years, with an option to extend the term for an additional ten years providing PMC removes the obsolete tanks and constructs replacement tanks of equivalent storage capacity on the premises. The agreement becomes effective on the first day of the month following the date that the Commission designates as its effective date.

By Order of the Federal Maritime Commission.

Dated: August 22, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20489 Filed 8–27–85; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; RNA Shipping Co. et al.; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Rosa N. Aviles dba RNA Shipping Co., 670 84th Street, Brooklyn, NY 11228

Crown Shipping (USA) Inc., 1909 East Ashley Avenue, Folly Beach, SC 29439. Officers: Neil Roger Hardman, President/Director, Ernest Krautwald, Executive Vice President/Director, Kjeld Jepsen, Executive Vice President/Director.

Dated: August 23, 1985.

By the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20526 Filed 8–27–85; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Pouch Forwarding Corp. et al.; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1676
Name: Pouch Forwarding Corporation
Address: One Edgewater Plaza, P.O. Box R, Staten Island, NY 10305
Date Revoked: August 1, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2564
Name: Cargo World Incorporated
Address: 4284 Lockfield, #130, Houston, TX 77092
Date Revoked: August 7, 1985
Reason: Failed to maintain a valid surety bond

License Number: 1310
Name: Neptune World Wide Moving, Inc.
Address: 55 Weyman Ave., New Rochelle, NY 10805
Date Revoked: August 7, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2485
Name: Amcorp Shipping, Inc.
Address: 76 Beaver Street, 24th Fl., New York, NY 10005
Date Revoked: August 10, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2803
Name: Pacific Western Shipping Company
Address: 1221 Third Street, Oakland, CA 94623
Date Revoked: August 16, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2520
Name: Metropolitan Forwarders, Inc.
Address: 3340 N.W. 78th, Miami, FL 33122
Date Revoked: August 18, 1985
Reason: Failed to maintain a valid surety bond

Eugene P. Stakem,

Deputy Director, Bureau of Tariffs.

[FR Doc. 85–20525 Filed 8–27–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Franklin Capital Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 19, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Franklin Capital Corporation,* Wilmette, Illinois; to acquire 100 percent of the voting shares of First Security Bank, Addison, Illinois.

2. *First National Bancorp of Cullom, Inc.,* Cullom, Illinois; to become a bank holding company by acquiring at least 82 percent of the voting shares of The First National Bank of Cullom, Cullom, Illinois.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198.

1. *Applewood Bankcorp, Inc.,* Wheat Ridge, Colorado; to acquire 100 percent of the voting shares of Jefferson Bank South, Lakewood, Colorado.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *RepublicBank Corporation,* Dallas, Texas; to acquire 100 percent of the voting shares of RepublicBank Preston

North, N.A., Plano, Texas, a *de novo* bank.

2. *Rio Grande Financial Corporation*, Brownsville, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of NTL Bank of Commerce of Brownsville, Brownsville, Texas.

Board of Governors of the Federal Reserve System, August 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–20527 Filed 8–27–85; 8:45 am]

BILLING CODE 6210–01–M

Norbanc Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 17, 1985.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *NorBanc Group, Inc.*, Pine River, Minnesota; to acquire certain assets and assume certain liabilities of Backus State Agency, Inc., Backus, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to section 4(C)(8)C)(i) of the Act. These activities would be conducted in Cass and Crow Wing Counties in Minnesota.

2. *NorBanc Group, Inc.*, Pine River, Minnesota; to acquire Cass Insurance Services, Inc., Backus, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to section 4(C)(8)(C)(i) of the Act. These activities would be conducted in Cass and Crow Wing Counties in Minnesota.

Board of Governors of the Federal Reserve System, August 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–20528 Filed 8–27–85; 8:45 am]

BILLING CODE 6210–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

Privacy Act of 1974; Amendment of Notices of Systems of Records

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Amendment of Notices of Systems of Records Justice/FCSC–1 Through 34 for: (1) Recent Judicial Interpretation of the Privacy Act; and (2) Redesignation of System Manager.

SUMMARY: The Foreign Claims Settlement (FCSC) hereby amends its notices of records systems designated "Justice/FCSC–1 through Justice/FCSC–34" in accordance with the Privacy Act Guidance-Update issued by the Office of Management and Budget on May 24, 1985. This amendment is to conform the language regarding "routine uses" in the FCSC's prior Privacy Act notices to limit disclosures of information in the course of litigation to records which have been determined by the FCSC to be relevant and necessary to the litigation and to cases where such disclosures have been determined by the FCSC to be a use compatible with the purpose for which the records were collected.

The FCSC also hereby designates its Administrative Office as the system manager for all of its systems of records.

EFFECTIVE DATE: Date of Publication.

FOR FURTHER INFORMATION CONTACT: David H. Rogers, General Counsel, Foreign Claims Settlement Commission, 1111–20th Street NW., Washington, DC 20579. Telephone No. (202) 653–5883.

Systems Names

Bulgaria, Claims Against (1st Program)—Justice/FCSC–1
Bulgaria, Claims Against (2nd Program)—Justice/FCSC–2
Certifications of Awards—Justice/FCSC–3
China, Claims Against Communist—Justice/FCSC–4
Civilian Internees (Vietnam)—Justice/FCSC–5
Correspondence (General)—Justice/FCSC–6
Correspondence (Inquiries Concerning Claims in Foreign Countries)—Justice/FCSC–7
Cuba, Claims Against—Justice/FCSC–8
Czechoslovakia, Claims Against—Justice/FCSC–9
East Germany, Registration of Claims Against—Justice/FCSC–10
Federal Republic of Germany, Questionnaire Inquires from—Justice/FCSC–11
Payroll Records—Justice/FCSC–12
General Personnel Records—Justice/FCSC–13
General Financial Records—Justice/FCSC–14
Hungary, Claims Against (1st Program)—Justice/FCSC–15
Hungary, Claims Against (2nd Program)—Justice/FCSC–16
Indexes of Claimants (Alphabetical)—Justice/FCSC–17
Italy, Claims Against (1st Program)—Justice/FCSC–18
Italy, Claims Against (2nd Program)—Justice/FCSC–19
Micronesia, Claims Arising in—Justice/FCSC–20
Panama, Claims Against—Justice/FCSC–21
Poland, Registration of Claims—Justice/FCSC–22
Poland, Claims Against—Justice/FCSC–23
Prisoners of War (Pueblo)—Justice/FCSC–24
Prisoners of War (Vietnam)—Justice/FCSC–25
Rosters of Prisoners of War and Civilian Internees—Justice/FCSC–26
Romania, Claims Against (1st Program)—Justice/FCSC–27
Romania, Claims Against (2nd Program—Justice/FCSC–28
Soviet Union, Claims Against—Justice/FCSC–29
Yugoslavia, Claims Against (1st Program)—Justice/FCSC–30
Yugoslavia, Claims Against (2nd Program)—Justice/FCSC–31
German Democratic Republic, Claims Against—Justice/FCSC–32
General War Claims Program, Claims Filed in—Justice/FCSC–33
Vietnam, Claims for Losses Against—Justice/FCSC–34

(1). The Foreign Claims Settlement Commission of the United States hereby amends each of the previously published notices of the above 34 systems of

records by inserting the following language at the end of the "ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES": element of such notices as follows:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

* * * * *

(2). The Foreign Claims Settlement Commission of the United States also hereby amends each of the previously published notices of the above 34 systems of record by deleting in each "SYSTEM MANAGER(S) AND ADDRESS" element the words "Executive Director or Office of the Executive Director" and inserting in place thereof, "Administrative Office".

Dated at Washington, D.C., on August 20, 1985.

Bohdan A. Futey,

Chairman.

[FR Doc. 85-20506 Filed 8-27-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that the organizational meeting of the President's Commission on Americans Outdoors will be held at 9:00 a.m., September 13, 1985, in Room 2856, National Geographic Society building, 1146 16th Street, NW, Washington, DC 20036.

The proposed agenda is to define the purpose of the Commission, to select an Executive Director, to establish a plan of organization and a preliminary schedule of meetings.

This meeting will be open to the public.

Further information concerning this meeting may be obtained from Victor H. Ashe, Interim Executive Director, Room 3142, U.S. Department of the Interior, 18th and C Streets, NW, Washington, DC 20240. Telephone Number: (202) 343-4905.

Dated: August 21, 1985.

Victor H. Ashe,

Interim Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 85-20546 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-70-M

Fish and Wildlife Service

Receipt of Applications for Marine Mammal Permit

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.),* the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

File No. PRT 697747

Applicant: Name: Dr. David S. Bruce, Wheaton College Biology Dept., Wheaton, IL.

Type of Permit: Scientific Research.

Name and Number of Animals: Polar bear (*Ursus maritimus*) 4.

Summary of Activity to be Authorized: The applicant proposes to import four 20-cc blood plasma samples; two to be taken from a pair of winter adult bears and two to be taken from a pair of summer adult bears. The bears will have been previously immobilized by a Canadian research team. The blood is requested for the purpose of researching whether denning winter polar bears are or are not true hibernators.

Source of Marine Mammals for Display: Churchill, Manitoba, Canada.

Period of Activity: 1 year.

File No. PRT 696107

Applicant: Name: California Department of Fish and Game, Sacramento, CA.

Type of Permit: Scientific Research.

Name and Number of Animals: California sea otter (*Enhydra lutris*), up to 200.

Summary of Activity to be Authorized: The applicant proposes to capture, anesthetize, tag, extract premolar and release 100 otters and herd approximately 75 otters. The purpose of the activity is to develop and refine capture techniques and identification methods to influence the distribution of sea otters without capturing (i.e., herding).

Source of Marine Mammals for Research: Coastal Waters of California.

Period of Activity: Through December 31, 1987.

Concurrent with the publication of this notice in the **Federal Register,** the Federal Wildlife Permit Office is forwarding copies of these applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on these applications should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above applications are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: August 23, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-20566 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Species; Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-698233

Applicant: U.S. Fish & Wildlife Service, Jackson, MS

The applicant requests a permit to trap and relocate Perdido Key beach mice (Peromyscus polionotus tryssillepsis), for the purpose of enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: August 22, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-20565 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Oregon/Idaho Wilderness Inventory Reevaluation

The Interior Board of Land Appeals (IBLA 82-1284) has directed the Bureau of Land Management to reevaluate the decision not to designate the Oregon and Idaho wilderness inventory unit OR-3-194A/ID-16-48A as a wilderness study area. Specifically, the IBLA decision requires BLM to reconsider and document the following point:

> Failure to provide adequate justification for the determination that the area was lacking wilderness characteristics.

The following constitutes the reevaluation in accordance with the IBLA decision:

Reevaluation for Naturalness

Intrusions within the unit include approximately 15 miles of bladed fenceline, 5 miles of unbladed fenceline, 2 wells with windmills, 20 reservoirs, 48 miles of ways, 11 miles of bladed stateline, and 1 dirt airstrip.

The bladed fenceline bisects the unit approximately in half from north to south. The unbladed fenceline branches off the bladed fenceline near the unit's center and exits near the northwest corner. Both fencelines are substantially unnoticeable due to the flatness of terrain and vegetative screening provided by sagebrush. The blade scar is regenerating as a result of invading sagebrush.

The windmills located at Stoney Corral and Tent Creek are both substantially unnoticeable. The windmill at Tent Creek lies at the bottom of a small canyon and is screened under the canyon rim. The windmill at Stoney Corral is situated against a rim and also screened.

Randomly dispersed throughout the unit are 20 reservoirs and stock water ponds. Individually they are substantially unnoticeable due to their small size in relation to the large size of the unit. The excavated fills are partially stabilized by vegetation, which blends into surrounding flats. The wide distribution of reservoirs and low frequency of contact (averaging over three miles apart) result in their cumulative impact also being substantially unnoticeable.

In the southeastern corner of the unit, the ways and their close proximity to one another, the dirt airstrip, plus a large reservoir in Tent Creek, cause a substantially noticeable cumulative impact that one cannot avoid coming into contact with. The concentration of these intrusions near a boundary road adds to the possibility of users noticing the developments.

Because of their concentration, only the intrusions in the southeastern 4,800 acres of the unit are substantially noticeable to a casual observer. The remaining 99,600 acres of the unit are natural in character. In this larger area, the location, number, and relative distribution of imprints of man, combined with topographic and vegetative screening, make the intrusions substantially unnoticeable.

Reevaluation for Solitude

Low vegetation can provide excellent screening on flat terrain if the area involved is large enough to provide distance for other visitors or external influences to blend or disappear into the landscape. When combined with the slightly undulating terrain found in this large unit, the knee- to waist-high sagebrush provides sufficient screening between users. Not only does the low vegetation provide screening, it also provides a sense of remoteness and vastness, adding to the solitude of the unit.

There is little pronounced topographic screening, slightly undulating terrain, and an occasional small canyon. The unit is roughly triangular with the bulk of the unit over ten miles wide. This distance is significantly more than necessary for a reasonable number of visitor groups or limited external influences to blend or disappear into the landscape. The lack of distinct topographic or vegetative features also eliminates the potential for concentration of visitor use in any one portion of the unit. Because of the shape and large size of the unit, the screening ability of low vegetation, and the sense of vastness, the opportunities for solitude are outstanding.

Reevaluation for Primitive and Unconfined Recreation

The unit lacks exceptional scenery and a diversity of land forms that would result in a moderate to strong attraction for any type of primitive recreation activity.

Backpacking or horseback riding across the unit would be a monotonous experience. There are no unique photographic opportunities. Hunting opportunities are limited due to low game populations. There is a minimal challenge attached to any of these activities.

The lack of scenic quality and diversity of land forms render the opportunities for primitive and unconfined recreation less than outstanding.

Recommendation

Reevaluation of this unit following IBLA's decision indicates that the imprints of man are indeed substantially unnoticeable except for intrusions found on 4,800 acres in the southwest corner of the unit. Vegetative screening coupled with the size and vastness of the unit provides outstanding opportunities for solitude. Therefore, it is the decision that 99,600 acres (65,200 acres in Oregon and 34,400 acres in Idaho) should be designated a wilderness study area and that 4,800 acres in Idaho should be dropped from further consideration as wilderness. Any person adversely affected by this decision may appeal to the Interior Board of Land Appeals as specified in the 43 Code of Federal Regulations (CFR) Part 4.

Jimmie A. Buxton,

Acting Deputy State Director for Renewable Resources.

[FR Doc. 85-20529 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-GG-M

[A-18970]

Conveyance of Public Land; Reconveyed Land Opened to Entry; Arizona

August 19, 1985.

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 206 of the Federal

Land Policy and Management Act of 1976 in exchange for privately owned land. The land transferred to private ownership is described as:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 21 W.,
Sec. 30, Lots 2, 3, 4, NW¼SE¼NW¼, N½ SW¼SE¼NW¼.

Comprising 134.96 acres in Mohave County.

Land acquired by the United States is described as:

Gila and Salt River Meridian, Arizona

T. 26 N., R. 14 W.,
Sec. 19, SE¼ (that portion lying southeast of a diagonal line drawn from the northeast corner to the southwest corner of said section);
T. 25 N., R. 15 W.,
Sec. 1, Lots 1 to 4, inclusive, S½N½, S½;
T. 18 N., R. 16 W.,
Sec. 25, Lots 1 and 2;
Sec. 27, N½.

Comprising 1,348.59 acres in Mohave County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and acquisition of private land by the Federal Government.

The land acquired by the Federal Government in this exchange will be open to entry under the general land laws, at 9 a.m. on September 23, 1985. The mineral estate is owned by the Santa Fe Pacific Railroad Company.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–20507 Filed 8–27–85; 8:45 am]

BILLING CODE 4310-32-M

[A–18971]

Conveyance of Public Land; Reconveyed Land Opened to Entry; Arizona

August 19, 1985.

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976 in exchange for privately owned land. The land transferred to private ownership is described as:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 21 W.,
Sec. 30, S½SW¼SE¼NW¼, N½NW¼ NE¼SW¼.

Comprising 10 acres in Mohave County.

Land acquired by the United States is described as:

Gila and Salt River Meridian, Arizona

T. 18 N., R. 16 W.,
Sec. 11, SW¼SW¼NW¼, W½SE¼SW¼ NW¼,
Sec. 15, N½NE¼, E½SE¼NW¼, SW¼ SE¼NW¼, E½NE¼SW¼, E½NW¼ SW¼,
Sec. 17, E½NE¼SE¼.

Comprising 185 acres in Mohave County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and acquisition of private land by the Federal Government.

The land acquired by the Federal Government in this exchange will be open to entry under the general land laws, at 9 a.m. on September 27, 1985. The mineral estate is owned by the Santa Fe Pacific Railroad Company.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–20508 Filed 8–27–85; 8:45 am]

BILLING CODE 4310-32-M

[U–52873]

Realty Action; Sale of Public Lands in Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as N½NE¼NE¼NE¼ Section 25 (containing 5 acres) and SE¼SE¼ NE¼SE¼, W½SE¼NE¼SE¼, SW¼ NE¼SE¼, Section 24, (containing 17.5 acres), all T. 41 S. R. 8 W SLB&M, Utah is proposed for direct non-competitive sale to Fern Hansen Morrison Jensen at the fair market value of $1,900.00. It is also proposed to sell 25 acres of public land described as SE¼SE¼NW¼SE¼, E½NE¼ SW¼SE¼, SW¼NE¼SW¼ SE¼, SE¼SW¼SE¼, E½SW¼SW¼ SE¼, Section 24 T. 41 S., R. 8 W. SLB&M Utah by competitive bidding at no less than fair market value of $2,000.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments will be accepted until October 15, 1985. The sale will be held on October 30, 1985 at 10:00 A.M.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Kanab Area Office, 318 North First East, Kanab, Utah 84741, (801) 644–2672. Comments should also be sent to the same address. The sale will be held in the Kanab Area Office, BLM, 318 North First East, Kanab, Utah 84741.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.D. 945.

3. Title transfer will be subject to valid existing rights.

4. If the public lands are not sold pursuant to this notice they will remain available for sale on a continuing basis until sold.

Any comments received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Dated: August 16, 1985.

Morgan S. Jensen,

District Manager.

[FR Doc. 85–20509 Filed 8–27–85; 8:45 am]

BILLING CODE 4310-DQ-M

[U–53694]

Realty Action for Lands in Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This a Notice of a direct sale of 40 acres of public land in Tooele County, in accordance with existing law.

DATE: The date of the sale is October 22, 1985.

ADDRESS: Comments concerning the sale will be accepted for a period of 45 days from the date of this notice by the: District Manager, Salt Lake District, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, Pony Express Realty Specialist, (801) 524–6792.

SUPPLEMENTARY INFORMATION: The following described public land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) of FLPMA:.

Legal Description and Acreage

T. 5 S., R. 5 W., SLB+M, Section 8, SE¼NE¼—40 acres

The land is being offered by direct sale to Globe Investment Company, also referred to as the Company in this Notice, at the appraised fair market value. The lands are being offered for sale to serve the public objective of economic development and community expansion. Authorizing the farming of these lands will enhance Globe Investment Company's adjoining farm operation. The objective could not be achieved on other public land such as a parcel that was noncontiguous. The parcel does not possess more important public values than economic development since livestock grazing is the present and projected use of the land. The tract is no larger than necessary to support a family-sized farm.

A direct sale to Globe Investment Company will recognize a preference to the Company as a user with existing improvements and as an adjoining landowner, as set forth in FLPMA.

The sale is consistent with the Bureau of Land Management's planning system and with Tooele County planning and zoning.

The public lands will be sold on the 22nd day of October, 1985. Terms and conditions applicable to the sale are:

1. The sale of these lands is subject to all valid existing rights.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. All minerals are reserved to the United States.

4. Federal law requires that the buyer be a U.S. citizen or a corporation subject to the laws of any state of the United States. Proof of this requirement shall be presented by the Company on the date of the sale.

The designated purchaser, Globe Investment Company, will be required to submit a nonrefundable deposit of one-tenth of the full price on the sale date, October 22, 1985, by certified check. The remainder of the full price shall be paid within 180 days of the sale date. Failure to pay the full price within 180 days shall disqualify the Company as the designated purchaser and the deposit shall be forfeited and disposed of as other receipts of sale. The lands may then be offered on a competitive bidding basis, with details of such a sale to be set forth in a subsequent notice.

Detailed information concerning the sale including the planning documents and environmental assessment is available for review at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

John H. Stephenson,

Acting Salt Lake District Manager.

[FR Doc. 85-20510 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-DQ-M

[OR 5435 (WA)]

Realty Action; Washington; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed classification and patent under the Recreation and Public Purposes (R&PP) Act.

SUMMARY: This notice corrects and supercedes a notice recently published in the **Federal Register.**

The following land on John's Island, San Juan County, Washington, has been examined and classified suitable for lease or sale under the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Willamette Meridian, Washington

T. 37 N., R. 4 W.
Sec. 25, Lot 1.
Encompassing 4.30 acres.

The Washington State Parks and Recreation Commission has submitted application to patent the above land for public recreation purposes compatible with retention of the land's scenery and natural characteristics.

The land lacks national significance and is not essential to any Bureau of Land Management Program.

The proposed use is consistent with local land use planning.

The proposed action will have no significant effects on the environment.

Patenting this land to Washington State will serve important public objectives by providing public recreation compatible with retention of the land in a natural condition.

DATES: For a period of thirty days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, East 4217 Main Avenue, Spokane, Washington 99202. Additional information concerning this proposal is available for review at the above office.

Any adverse comments will be evaluated by the State Director, who may vacate or modify this action and issue a final determination. In the absence of any action by the State Director, this action will become the final decision of this Department.

Joseph K. Buesing,

District Manager.

[FR Doc. 85-20511 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-23-M

[N-12906]

Order Providing for Opening of Lands; Nevada; Correction

August 16, 1985.

In FR Doc 84-28889 issued on Friday, November 2, 1984, second column, line 8 under (N-12906) should read W½NE¼, NW¼SE¼.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 85-20571 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Development Operations Coordination Document; Mobil Oil Exploration and Producing Southeast Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Oil Exploration and Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 078, Block 51, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City Louisiana.

DATE: The subject DOCD was deemed submitted on August 16, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS

Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 19, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-20513 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Seagull Energy E&P Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Seagull Energy E&P Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-3991, Block 45, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 19, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301, North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 20, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-20514 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Texaco USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2680, Block 138, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 16, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerials Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 19, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-20515 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Central Valley Project, California; Transfer of Administrative Jurisdiction of Land; Sugar Pine Reservoir, Auburn-Folsom South Unit

In accord with an agreement between the Bureau of Reclamation and the USDA Forest Service, dated June 11, 1985, and by virtue of the authority vested in the Secretary of the Interior by section 7(c) of the Act of July 9, 1965, (79 stat. 217), and his delegation of authority to the Commissioner of Reclamation dated February 25, 1966, published March 4, 1966, (31 FR 3426), jurisdiction over the following described lands, aggregating some 699.26 acres which lie within or adjacent to the Tahoe National Forest, and that were acquired by the Bureau of Reclamation in the development of the Sugar Pine Reservoir, Auburn-Folsom South Unit, Central Valley Project, are hereby transferred to the Secretary of Agriculture for recreational and other National Forest System purposes.

Mount Diablo Meridian

Acquired Lands

T. 15 N., R. 10 E., MDM
Sec. 13, S½ SW¼NE¼, SE¼NE¼, S½SW¼SW¼E½SW¼, N½NW¼ SE¼.
T. 15 N., R. 10 E., MDM
Sec. 24, N½NW¼, E½.
T. 15 N., R. 11 E., MDM
Sec. 18, S½ Lot 1, Lot 2, NE¼NW¼, N½ SE¼NW¼.

Pursuant to said section 7(c) of the aforesaid Act of July 9, 1965, the above lands shall become National Forest lands provided that all lands and waters within the Sugar Pine Reservoir area needed or used for the operation of the Central Valley Project or for any other Reclamation purposes shall continue to be administered by the Commissioner of Reclamation to the extent that he determines to be necessary for such operation.

Dated: August 22, 1985.

Clifford I. Barrett,

Acting Commissioner.

[FR Doc. 85-20535 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB-33 (Sub-No. 35X); AB-35 (Sub-No. 9X)]

Union Pacific Railroad Co.; Discontinuance of Service in Clark County, NV, and Los Angeles & Salt Lake Railroad Co.; Abandonment in Clark County, NV; Exemption

Union Pacific Railroad Company (UP) and the Los Angeles & Salt Lake Railroad Company (LA&SL) filed a notice of exemption under 49 CFR Part 1152 Subpart F–*Exempt Abandonments*. The line involved is a portion of the Boulder City Branch, extending from milepost 10.85 near Henderson to the end at milepost 22.36 near Boulder City, a distance of approximately 11.51 miles in Clark County, NV. UP will discontinue service and LA&SL will abandon the line.

UP and LA&SL have certified: (1) That no local traffic has moved over the line for at least 2 years, (2) the line does not handle overhead traffic, and (3) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period preceding this notice. The Public Service Commission or equivalent agency in the State of Nevada has been notified. See *Exemption of Out of Service Rail Lines*, 336 I.C.C. 885 (1983).

While the facts in this matter depart somewhat from those ordinarily involved in a Subpart F abandonment exemption, we nevertheless believe that our prior review and approval is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a. No local traffic has moved over the line for at least 2 years, but UP and LA&SL anticipate the future movement of approximately 10 shipments of transformers from Indiana, which will terminate on the line near Boulder City. These movements will commence in August and be completed in October, 1985. Petitioners maintain that they are "one-time, nonrecurring movements." Applicants have agreed with the shipper to continue operations over the line to provide service for these transformers.

In exempting the abandonment of rail lines that have been out of service for at least two or more years, we found that abandonment of those lines would have no impact on interstate commerce and no competitive or operational impact. *Exemption of Out of Service Rail Lines, supra*. The abandonment of the line involved here, considering that no traffic has been generated on the line for the past two years and the only shipments that will move are non-recurring and limited in number, will similarly have no impact on interstate commerce or have a competitive or operational impact.

In these unique circumstances, we conclude, therefore, that the proposal qualifies for exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*.

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on September 27, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by September 6, 1985 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 17, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Any petitions filed regarding AB–33 (Sub-No. 35X) should be marked "See AB–33 (Sub-No. 35X)." A copy of any petition filed with the Commission must be sent to UP and LA&SL's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 19, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Strenio dissented on grounds that it is more appropriate to treat applicant's request as a regular petition for exemption rather than as a class exemption. Commissioner Simmons did not participate in this proceeding. Chairman Taylor was absent and did not participate in the disposition of this matter.

James H. Bayne,

Secretary.

[FR Doc. 85–20596 Filed 8–27–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Crime Victim Compensation Grants; Program Guideline

AGENCY: Office of Justice Programs, Justice.

ACTION: Final Guideline.

SUMMARY: The Office of Justice Programs is publishing a final guideline to implement the crime victim compensation grant provisions of the Victims of Crime Act of 1984.

EFFECTIVE DATE: August 28, 1985.

FOR FURTHER INFORMATION CONTACT: Charles M. Hollis (202) 724–5947.

SUPPLEMENTARY INFORMATION: On March 13, 1985, the Office of Justice Programs (OJP) published in the **Federal Register** a Notice of Program Guideline for crime victim compensation grants. 50 FR 10119. The guideline implements the crime victim compensation grant provisions of the Victims of Crime Act of 1984, Pub. L. 98–473, Title II, Chap. XIV, 42 U.S.C. 10601, et seq., which was signed into law by President Reagan on October 12, 1984.

The Act authorizes the Attorney General to make annual grants from a Crime Victims Fund in the United States Treasury. Fifty percent of the amount in the Fund is allocated for grants to State crime victim compensation programs. Funds permitting, compensation programs will receive 35% of their prior year's victim compensation awards. The remaining 50% of the Fund is allocated for grants to the States for crime victim assistance programs. The Attorney General may take up to 5% of the Fund from the portion allocated for victim assistance grants and expend it for the purpose of providing services to victims of Federal crimes.

In addition to written comments on the guideline, OJP solicited and received oral comments at four regional meetings attended by representatives of crime victim compensation boards, other units of State and local government, and victims assistance organizations. All of these comments were considered by OJP in preparing the final guideline. An analysis of the comments received, and our response to them is set forth below.

1. Mental Health Counseling

Of the 25 comments received on the guideline, 20 responded to our invitation for comment on the proposed definition of "mental health counseling and care." Among those commenting on the definition were six State victim compensation boards, the American Psychiatric Association, the American Psychological Association, and a variety of victim service providers.

Several commenters criticized the portion of the definition requiring that counseling be provided "by a person who meets such standards as may be set by the State" for mental health counseling. The thrust of their criticism

was that physicians, psychiatrists, and other licensed mental health professionals should be specifically identified in the guideline as persons who must be included among any State's list of acceptable mental health counselors.

After careful consideration of these comments, we believe that the proposed language should be retained in the final definition. The primary reason for our conclusion is that the State is the appropriate level of government to make this determination. The State, not the Federal government, must be responsible for determining what qualifications are necessary to provide mental health counseling to those victimized within its borders. Some States may feel that only those persons who meet the State's licensing requirements for physicians or psychiatrists are capable of providing quality mental health care; some may feel that only persons who have received specific training in counseling crime victims or who have a certain amount of experience or formal education in the field are capable.

These fundamental issues must be weighed and resolved in the context of each State's needs and resources. It would, in our view, be highly inappropriate for the Federal Government to impose a blanket requirement on all States without any knowledge of whether that requirement would actually be helping or hurting crime victims in a particular State. The State is best equipped, e.g., to evaluate whether its medical licensing requirements assure quality mental health care for crime victims, to determine what standards should be established to assure the availability of quality counseling to all segments of the community and all locations in the State, and to assess the financial impact of alternative standards on both crime victims and the State. For these reasons, no change has been made in this portion of the proposed definition.

Several commenters also responded to our request for comment on how to best assure that grant funds are not used to subsidize mental health counseling for problems unrelated to the victimization incident, e.g., family problems existing prior to the incident. These commenters cautioned that, particularly in child abuse and spouse abuse cases, the underlying family problems are directly connected to the victimization episode, and that subsequent counseling must often address those pre-existing problems as well as the criminal incident. We have not amended the proposed definition to require States to cover such preexisting problems in any particular manner, but wish to highlight the issue for States' consideration in framing their mental health counseling rules. The final guideline permits States to compensate victims for problems pre-existing the victimization incident and to receive Federal assistance of up to 35% of the cost of whatever mental health care compensation they choose to extend to such victims.

One other set of comments warrants discussion. A number of writers recommended that crime victims be permitted to receive mental health counseling compensation regardless of whether they suffered a physical injury as a result of the crime. OJP believes that this too is clearly an issue best left to the individual States for resolution. The State must be permitted to decide whether the potentially substantial cost of providing mental health care benefits to crime victims who have not suffered physical injury outweighs the sometimes urgent need of those victims for counseling, or vice versa. Because this problem has its most direct and substantial impact on the State, the Federal government should leave the State to choose its own course on the basis of its own needs and resources.

2. Application Requirements

A. FFY 1985 Grants

At the regional conferences, substantial discussion was devoted to the Act's requirement that grant funds be obligated by the end of the Federal fiscal year following the year of award. Because of this requirement, some attendees felt that their States would be well advised to defer their grant applications until early FFY 86 so as to have almost two full years to obligate the funds. This issue was not addressed in the proposed guideline.

To fully inform State decisionmakers of the ramifications of this issue, a new section IIB. has been added to the final guideline explaining the "year plus one" rule and its impact on the States. The new section also sets an FY 1985 compensation grant application deadline of October 1, 1985. Receipt of applications by that date will permit OJP to make final calculations of each State's compensation and victim assistance grants without the need for later setoffs or other financial adjustments.

Two other changes in the FFY 1985 application provisions were made at the suggestion of commenters. One compensation board official observed that, in his State, only the Secretary of State could certify copies of statutes, and recommended adding that official to the list of appropriate certifying officers. That suggestion was accepted as was the suggestion made by two commenters that the victim compensation guideline use the same language to explain the nonsupplementation clause as was used in the proposed victim assistance guideline. As a result, a sentence emphasizing that Federal funds should be used to enhance or expand State compensation programs has been added to the final guideline.

B. Future Fiscal Year Grants

Several comments focused on the proposed guideline's implementation of the Act's requirement that recipient programs promote victim cooperation with law enforcement. The proposed guideline would have required the States to "at a minimum, require a victim to report the crime to the appropriate criminal justice agency and assist in the identification of the suspect." The commenters observed that some victims decline to do so out of fear for their own personal safety, or are simply unable to do so for serious health reasons. To accommodate this concern, OJP has added a sentence to section IIIC. of the guideline allowing a State, if it wishes, to permit an uncooperative victim to receive benefits if he or she can "convincingly demonstrate that the failure to cooperate was due to a compelling health or safety reason."

In addition, section IIIA. was amended by changing the description of the fundamental criterion of eligibility from an "operational State-administered" compensation program to "an operational State" compensation program. This change was made at the suggestion of a State whose compensation program is established by State law but actually administered at the district level.

3. Financial Requirements

The proposed guideline would have limited allowable costs under the compensation grant to medical expenses (including mental health counseling), lost wages, and funeral expenses. The payment of these costs is a criterion of eligibility under the Act, but the Act does not limit the use of grant funds to strictly those benefits. The statute simply requires that grant funds be used only "for awards of compensation." Section 1403(a)(1). Accordingly, Section IVB. of the guideline has been amended to permit grant funds to be used for the payment of any crime victim compensation authorized under State law, except property damage.

Although the use of grant funds for property damage payments is not expressly precluded by the Act, OJP is precluding their use for that purpose as a matter of policy. This restriction is consistent with the Act's prohibition on including property damage payments in the amount to be used in calculating the amount of the grant to the compensation program. Both prohibitions are intended to discourage the use of compensation funds for that purpose and to encourage their use for other, more critically needed benefits.

4. Reporting Requirements

The final guideline substantially changes the reporting requirements set forth in section VI of the proposed guideline. First, although only an annual report will be required for FY 1986 activities, the final guideline requires submission of semiannual reports for FY 1987. In addition, the report form will solicit more statistical information about the State compensation program than was contemplated in the proposed guideline.

The primary reason for these changes is the need to provide a comprehensive report to Congress in 1987 on the cumulative results of the Victims Act grant programs. OJP does not anticipate that the changes will create significant new burdens for the States. Our review of the annual reports submitted by State compensation programs indicated that most States are collecting much of the basic information that would be required in compiling the compensation information being requested in the final guideline.

A third change in the final guideline eliminates the requirement that recipient programs submit information concerning benefit claims, awards, and denials by race, color, national origin, religion, handicap, and sex. Programs are still required to maintain this information but need not submit it as part of the performance report.

The House Select Committee on Aging suggested that we also require recipients to maintain information by age. Their recommendation was based on their concern that the Federal government be able to adequately measure the special needs of elderly crime victims. OJP agrees, not only because more information is needed about the criminal victimization of the elderly but about the victimization of children as well. Accordingly, programs will also be required to maintain information concerning benefit claims, awards, and denials by age.

5. Grandfather Clause

One commenter requested that OJP clarify the date triggering the State's obligation to conform its compensation legislation to the requirements of the Act. Section I of the final guideline has accordingly been revised to clarify that a State must enact necessary amendments to its legislation one regular legislative session after the date the first grant to that State is made.

6. Audit Provisions

Section IV C. of the guideline has been substantially revised to reflect the promulgation of new OMB Circular No. A-128 ("Audits of State and Local Governments") on April 12, 1985. A sentence has also been added to section IV B. explaining that the Victims of Crime Act prohibits the use of compensation grant funds for the payment of audit costs.

This guideline does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, because the guideline will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these rules on such entities is required by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

A projected state-by-state distribution of FY 1985 victim compensation and victim assistance grants is also appended to the guideline.

The final crime victim compensation grant guideline is, accordingly, revised to read as follows:

Guideline for Crime Victim Compensation Grants

I. Overview of the Statute

The Act provides that, funds permitting, the Attorney General will make an annual grant to an eligible crime victim compensation program in an amount equal to 35% of the amount paid from State funds by the program as compensation to victims of crime (excluding amounts paid to compensate victims for property damage) during the preceding fiscal year. Section 1403(a)(1). If the amount of money in the Fund is insufficient to award each State 35% of its prior year compensation payouts, all States will be awarded the same percentage of their prior year payouts out of available funds. Section 1403(a)(2). For purposes of the victim compensation provisions of the Act, "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States. Section 1403(d)(4).

Section 1403 of the Act prescribes the conditions and eligibility criteria related to crime victim compensation grants. Section 1403(c), of the Act, however, is a "grandfather" clause that, in effect, permits each State with a compensation program that was awarding benefits in Federal fiscal year (FFY) 1984 to receive a grant during FY 1985 even if the program does not conform to the Act's criteria. The clause allows a State one regular legislative session after the date the first grant to that State is made to conform its laws to the Act. States not in compliance with the Act at the time subsequent grants are made will be ineligible for those grants.

II. Program Requirements for FY 1985 Grants

A. Application Contents

In order to be eligible for awards under the Act in FY 1985 the program need only provide evidence that it was "in effect" on the date the first grants are to be made. This will require submission of only the following information and assurance:

(1) A statement certified by the chief executive of the State of the total amount of money spent by the program for crime victim compensation awards in the preceding Federal fiscal year (October 1, 1983–September 30, 1984);

(2) The amount of such compensation paid for "property damage";

(3) The total amount and each source of revenue for the program in FY 1984;

(4) A certified copy of the State statute or other legal authority establishing the program; and

(5) An assurance that funds received under the Act will not be used to supplant State funds otherwise available for crime victim compensation.

For the purpose of requirement (1), the amount to be certified is only the amount actually spent by the program to compensate victims of crime in Federal FY 1984. Amounts expended for administration of the program or other types of victim assistance are to be excluded, as are amounts appropriated or collected for the purpose of victim compensation which were not expended.

For the purpose of requirement (2), the term "property damage" is defined by the act to exclude damage to prosthetic devices and dental devices. Therefore, States may include payments made for damage to those devices in the amount

reported under requirement (1) as compensation to victims of crime. Compensation paid to reimburse crime victims for damages to, or loss of, any other real or personal property must be reported under requirement (2).

For the purpose of requirement (4), certification may be effected by the chief executive, the State Attorney General, the Secretary of State, or the clerk of the State legislature.

With respect to requirement (5), the Act prohibits States from using the Federal funds made available under the Act to supplant State funds otherwise available from crime victim compensation. Section 1403(b)(3). This prohibition, however, is one of the statutory eligibility criteria rendered inapplicable to FY 1985 compensation grants by the "grandfather" clause found in Section 1403(c) of the Act. Nevertheless, OJP is adopting the nonsupplantation clause as a statement of policy applicable to FY 1985 grants.

The nonsupplantation provision is fundamentally intended to assure that the States use the Federal funds provided under the Act to augment, not replace, otherwise available State funding for victim compensation. Federal funds should be used to enhance compensation benefits or expand program coverage, not simply substitute for previously available State monies. The States may not decrease their financial commitment to crime victim compensation solely because they are receiving Federal funds for the same purpose.

The requested information and assurance may be provided in a letter attached to Standard Form 424, "Application for Federal Assistance". Eligible programs must also provide the information and assurances explained in the Civil Rights and Financial sections of the Guideline below (See Sections IV and V).

B. Date of Application

Section 1402(e) of the Act permits a State to obligate its grant funds at any time during the Federal fiscal year (FFY) of award and the following FFY. Funds that are not obligated at the end of the following FFY must be returned to the general fund of the United States Treasury. Accordingly, grant funds awarded in FFY 1985, i.e., before October 1, 1985, must be obligated by the State by September 30, 1986. Grant funds awarded in FFY 1986, i.e., on or after October 1, 1985, must be obligated by September 30, 1987. In deciding when to submit their applications, therefore, the States should balance their need for the grant funds as soon as possible against their need for a longer time to obligate the funds.

Applications for FY 1985 grants must be received by OJP no later than October 1, 1985.

III. Program Requirements: Future Fiscal Year Grants

After FY 1985, State crime victim compensation programs must meet the statutory criteria set forth below:

"A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if—

"(1) Such program is operated by a State and offers compensation to victims of crime and survivors of victims of crime for—

"(A) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

"(B) Loss of wages attributable to a physical injury resulting from a compensable crime; and

"(C) Funeral expenses attributable to a death resulting from a compensable crime;

"(2) Such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

"(3) Such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

"(4) Such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

"(5) Such program provides compensation to victims of crimes occurring within such State that would be compensable crimes, but for the fact that such crimes are subject to Federal jurisdiction, on the same basis that such program provides compensation to victims of compensable crimes; and

"(6) Such program provides such other information and assurances related to the purposes of this section as the Attorney General may reasonably require." Section 1403(b).

The Act defines certain terms used in section 1403(b) as follows:

"(1) The term 'property damage' does not include damage to prosthetic devices or dental devices;

"(2) The term 'medical expenses' includes, to the extent provided under the eligible crime victim compensation program, expenses for dental services and devices and prosthetic devices and for services rendered in accordance with a method of healing recognized by the law of the State;

"(3) The term 'compensable crime' means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program; and

"(4) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States." Section 1403(d).

A. Eligible Program Generally

The fundamental criterion of eligibility is an operational State crime victim compensation program. Although an authorized program that has not actually paid out compensation benefits would be technically eligible under subsection 1403(b)(1), the program would not be entitled to any Federal funds because it had not awarded any benefits that the Federal government could match (up to 35%) under subsection 1403(a)(1). Federal funds may not be used as "start-up" funds for a new State program.

B. Compensation Criteria (Sec. 1403(b)(1))

The Act requires as a condition of eligibility that a crime victim compensation program offer compensation for crime-related medical expenses (including mental health counseling and care), lost wages, and funeral expenses. This criterion does not require the payment of all these expenses without limitation; rather, it requires that the State offer compensation in each area, subject to such limitations and conditions as the State deems appropriate.

"Mental health counseling and care" means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is required to alleviate psychological trauma resulting from a compensable crime. Such intervention must be provided by a person who meets such standards as may be set by the State for victim mental health counseling and care.

C. Cooperation With Law Enforcement (Sec. 1403(b)(2))

This criterion requires that a State program promote victim cooperation with the reasonable requests of law enforcement authorities. The States may impose such reasonable requirements as they see fit, but must, at a minimum, require a victim to report the crime to the appropriate criminal justice agency and assist in the indentification of the suspect. A State, if it wishes, may permit an uncooperative victim to receive benefits only if the victim can convincingly demonstrate that the failure to cooperate was due to a compelling health or safety reason.

D. Nonsupplantation (Sec. 1403(b)(3))

As noted under Section II above, this criterion requires the State to certify that the Federal funds received under the Act will not supplant State funds otherwise available for victim compensation. The discussion of the nonsupplantation provision under

Section II is applicable in full to post-FY 1985 grants.

E. Nondiscrimination Against Nonresidents (Sec. 1403(b)(4))

This provision is intended to assure that nonresidents of a State who are victimized in a State that has an eligible compensation program are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the State. The maintenance of reciprocal agreements with certain other State, or foreign compensation programs will not suffice to meet this criterion. Eligibility for Federal funding will require the program to extend its coverage to all nonresidents victimized in the State.

F. Coverage of Victims of Federal Crimes (Sec. 1403(b)(5))

This criterion will require States to compensate victims of crimes committed within their borders that are subject to exclusively Federal reservation inside the State must be afforded the same benefits that would be available to her if the rape were committed elsewhere in the State.

G. Other Information and Assurances (Sec. 1403(b)(6))

Pursuant to this subsection, the Department of Justice may make reasonable requests for other information and assurances pertinent to the statute, e.g., the civil rights, financial, and program information requested below. This criterion will not be used to impose substantive conditions or requirements on State compensation programs. The information and assurances requested under this provision will be only those needed to effectively administer the program or to prepare the statutorily-required report to Congress on the Act's effectiveness. See section 1407(b).

IV. Financial Requirements

A. Payment of Grant Funds

1. *Annual Requirement Under $120,000.* Grantees whose annual fund requirement is less than $120,000 will receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a REQUEST FOR ADVANCE OR REIMBURSEMENT, H–3 Report (Form 7160/3) by the grantor agency, a voucher and a schedule for payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance and mailing of the check directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly.

2. *Annual Requirement Over $120,000.* Grantees whose annual fund requirement exceeds $120,000 generally receive Federal funds by utilizing the "Letter of Credit" procedures. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients.

3. *Check Issuance.* All checks drawn for the payment of fund requests, either under the "Check Issued" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and not by the grantor agency.

4. *Termination of Advance Funding.* If a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, the grantor agency may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee will then be made by the direct Treasury check method to reimburse the grantee for actual cash disbursements. It is essential that grantee organizations maintain a minimal amount of cash on hand and that drawdowns of cash are made only when necessary for disbursement.

B. Cost Allowability

The only costs allowable under crime victim compensation grants are compensation payments to victims of compensable crimes. These may include payments for medical expenses, including expenses for mental health counseling and care; lost wages; funeral expenses; loss of support; child care expenses; and any other cost payable as crime victim compensation under State law, except payments for property damage.

Amounts expended for administration of the program (including the performance of audits under section IV C. below) are not allowable costs. Although under OMB Circular No. A–128, audit costs are generally allowable charges under Federal grants, the Victims of Crime Act expressly states that crime victim compensation grant funds may be used "only for awards of compensation." Sec. 1403(a)(1).

C. Financial Status Report

A Financial Status Report (Form H–1) is required for all grants. This report shall be submitted by the grantee within 45 days after the end of the calendar quarter. Final reports are due 90 days after the end date of the grant. Failure to comply with this requirement may result in administrative action such as the withholding of payments, cancellation of a Letter of Credit, or noncertification of new grant awards. In lieu of using the standard H–1 Report, grantees may satisfy the financial reporting requirements by completing an H–1 turnaround document. This document is a facsimile of the H–1 extracted from the grantor agency's computer files and sent directly to each grantee. Pertinent information such as grantee name and address, grant number and the previously submitted financial information (if any) is printed on the form by the computer.

D. Audit Responsibilitures

Pursuant to Office of Management and Budget Circular A–128, "Audits of State and Local Governments", grantees, subgrantees and subrecipients have the responsibility to provide for an audit of their activities. These audits shall be made annually, unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Grantees, as well as their subgrantees, contractors or other organizations under cooperative agreements or purchase of service contracts are to arrange for examinations in the form of independent audits in conformance with OMB Circular A–128. These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

The required audits are to be performed on an organization-wide basis as opposed to a grant-by-grant basis. The audit reports must include:

(1) The auditor's report on financial statements of the recipient organization, and a schedule of financial assistance, showing the total expenditures for each Federal assistance program;

(2) The auditor's report on compliance containing: (A) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements; (B) a negative assurance of those items not tested, and a summary of all instances of noncompliance; and (C) the auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with applicable laws and regulations. It must

also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of that evaluation.

E. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

(1) Financial statements of the government, department, agency, or establishment that present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each Federal assistance program.

F. Audit Implementation

Grantees are required to specify their arrangement for complying with the provision of OMB Circular A–128 and include in their grant application, to the extent possible, the following information:

(1) The identity of the organization that will conduct the audit;

(2) Approximate timing of when the audit will be performed;

(3) Audit coverage to be provided. Where the audit will not provide the coverage requirements as specified previously, the audit policy or procedure must describe the specific arrangements for obtaining audit services that will meet the requirements;

(4) An identification of the audit standards, if any, with which the grantees will not comply;

(5) Receipt and appropriate distribution of the resultant audit report; and

(6) Audit resolution policies and procedures to be followed in resolving the audit report.

G. Fund Suspension or Termination

If, after notice and opportunity for a hearing, OJP finds that a State has failed to substantially comply with the Victims of Crime Act or any implementing regulations or guidelines, OJP must suspend or terminate funding to the State, or take other appropriate action. Only States may request a hearing; subgrantees in the State may not.

H. Grant Application

The "Application for Federal Assistance" (Standard form 424, (4000/3)) should be used in the formal application for crime victim compensation projects. Only the face sheet of the application form need to submitted. An original and two copies are required.

V. Civil Rights

A. General

The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, color, religion, national origin, handicap, or sex. Section 1407(e). Recipients of funds under the Act are also subject to Title VI of the Civil Rights Act of 1964, 42 US.C. 2000d (prohibiting discrimination in Federally-funded programs on the basis of race, color, or national origin), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 U.S.C. 6101, et seq., and the Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts. C, D, and G.

B. Required Assurances and Information

To be eligible for funding under the Act, a crime victim compensation program must submit the following assurances and information:

(1) An assurance that the program will comply with all applicable nondiscrimination requirements;

(2) An assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, sex, handicap, or age against the program, the program will forward a copy of the finding to the OJP Office of Civil Rights Compliance (OCRC); and

(3) The name of a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCRC.

Recipient programs must also maintain information on victim claims, awards, and denials by race, sex, national origin, handicap, and age.

VI. Reporting Requirements

A crime victim compensation program receiving funds under the Act will be required to submit an annual performance report to OJP on the effect the Federal funds have had on the program in FY 1986. Semi-annual performance reports will be required for FY 1987. OJP will prepare a form for the reports that will solicit the required information in the most convenient manner possible. The FY 1986 performance report is due November 1, 1986. The FY 1987 reports will be due May 1, 1987 (for the October 1, 1986–March 31, 1987 reporting period) and November 1, 1987 (for the April 1, 1987–September 30, 1987 reporting period).

Each program will be asked to provide the following information for the applicable period:

1. Copies of any amendments to the State victim compensation statute and regulations indicating the changes made in the program since the receipt of funds under the Act, e.g., higher benefit limits, modified eligibility criteria;

2. The amount and each source of revenue for the program;

3. Claim statistics, e.g., the total number of claims, awards, denials, and pending claims, and the total amount of awards;

4. Claim analysis, i.e., average awards; the number and total amount of awards; the number and amount of awards for Federal victims and non-resident victims; the number and amount of awards by type of crime; and the number and amount of awards by type of expenses, i.e., medical, mental health counseling, dental, funeral, etc.

5. Analysis of mental health counseling awards by type of provider, e.g., psychiatrist, psychologist, rape crisis center, community mental health center; number and amount of awards; and duration of awards.

6. Referral sources to the compensation program.

Proposed reporting forms will be distributed to recipient programs for comment prior to adoption of a final form.

Lois Haight Herrington,

Assistant Attorney General, Office of Justice Programs.

Set forth below is OJP's estimated projection of fund distribution from the Crime Victims Fund for FY 1985. The projection is based on an estimated $60 million being available for distribution to the States. Actual receipts in the Fund through July 1985 total approximately $58 million. The $60 million estimate is, therefore, a conservative one and reflects a 5% deduction from the total

receipts for the Federal Crime Victim Assistance program described in Section 1404(c) of the Victims of Crime Act. Final figures for FY 1985 will be known by mid-October and disseminated to the States as soon as possible thereafter.

If a State wishes to project the size of its victim assistance grant based on a different amount in the Fund, it should (1) subtract $28,829,000 from the amount of the Fund, (2) multiply the remainder by its percentage of U.S. population (Column 4), and if it is one of the 50 States, District of Columbia or Puerto Rico, add $100,000.

Please review the compensation figures for your state. If you have any questions, please contact Charles Hollis, Program Manager at 202/724–5947.

PROJECTED DISTRIBUTION OF CRIME VICTIMS FUND (FY 1985)

[illegible]	Compensation		Population		Assistance award	Total
	1984 payments	1985 award	Number	Percent		
Alabama		0	3,990,000	1.66371	$519,500	$519,000
Alaska	$ [illegible]	$283,000	500,000	0.20849	165,000	448,000
Arizona		0	3,053,000	1.27301	397,000	397,000
Arkansas		0	2,349,000	0.97946	306,000	306,000
California	14,813,000	5,185,000	25,622,000	10.68363	3,430,000	8,615,000
Colorado	1,349,885	472,000	3,178,000	1.32513	513,000	985,000
Connecticut	1,262,798	442,000	3,154,000	1.31513	510,000	952,000
Delaware	350,001	123,000	613,000	0.25560	180,000	303,000
District of Columbia	243,308	85,000	623,000	0.25977	181,000	266,000
Florida	4,264,544	1,493,000	10,976,000	4.57667	1,527,000	3,020,000
Georgia		0	5,837,000	2.43386	859,000	859,000
Hawaii	427,501	150,000	1,039,000	0.43323	235,000	385,000
Idaho		0	1,001,000	0.41739	230,000	230,000
Illinois	3,547,277	1,242,000	11,511,000	4.79975	1,596,000	2,838,000
Indiana	334,514	117,000	5,498,000	2.29251	815,000	932,000
Iowa	162,179	57,000	2,910,000	1.21339	478,000	535,000
Kansas	331,739	116,000	2,438,000	1.01658	417,000	533,000
Kentucky	609,056	213,000	3,723,000	1.55238	584,000	797,000
Louisiana	220,243	77,000	4,462,000	1.86052	680,000	757,000
Maine		0	1,156,000	0.48202	250,000	250,000
Maryland	1,337,284	468,000	4,349,000	1.81341	665,000	1,133,000
Massachusetts	1,106,437	387,000	5,798,000	2.41760	854,000	1,241,000
Michigan	1,997,546	699,000	9,075,000	3.78401	1,279,000	1,978,000
Minnesota	543,378	190,000	4,162,000	1.73543	641,000	831,000
Mississippi		0	2,598,000	1.08329	436,000	436,000
Missouri	761,150	266,000	5,008,000	2.08818	751,000	1,017,000
Montana	189,981	129,000	824,000	0.34358	207,000	336,000
Nebraska	87,505	31,000	1,606,000	0.66966	309,000	340,000
Nevada	301,662	106,000	911,000	0.37986	218,000	324,000
New Hampshire		0	977,000	0.40738	227,000	227,000
New Jersey	3,550,515	1,243,000	7,515,000	3.13354	1,077,000	2,320,000
New Mexico	184,813	65,000	1,424,000	0.59377	285,000	350,000
New York	6,954,524	2,434,000	17,735,000	7.39450	2,405,000	4,839,000
North Carolina	0	0	6,165,000	2.57063	901,000	901,000
North Dakota	92,722	32,000	656,000	0.28604	189,000	221,000
Ohio	6,769,527	2,369,000	10,752,000	4.48327	1,497,000	3,866,000
Oklahoma	535,565	187,000	3,298,000	1.37517	529,000	716,000
Oregon	744,708	261,000	2,674,000	1.11498	448,000	709,000
Pennsylvania	2,536,555	888,000	11,901,000	4.96237	1,647,000	2,535,000
Rhode Island	350,411	123,000	962,000	0.40113	225,000	348,000
South Carolina	492,931	173,000	3,300,000	1.37600	529,000	702,000
South Dakota		0	706,000	0.29438	192,000	192,000
Tennessee	1,412,931	495,000	4,717,000	1.96785	713,000	1,208,000
Texas	4,205,691	1,472,000	15,989,000	6.67095	2,178,000	3,650,000
Utah		0	1,652,000	0.68884	315,000	315,000
Vermont		0	530,000	0.22099	169,000	169,000
Virginia	530,634	186,000	5,636,000	2.35005	833,000	1,019,000
Washington	2,770,437	970,000	4,349,000	1.81341	665,000	1,635,000
West Virginia	150,396	53,000	1,952,000	0.81393	354,000	407,000
Wisconsin	815,065	285,000	4,766,000	1.98728	719,000	1,004,000
Wyoming		0	511,000	0.21307	166,000	166,000
Puerto Rico		0	3,267,000	1.36224	525,000	525,000
Virgin Islands	175,809	62,000	103,800	0.04328	13,000	75,000
Guam		0	116,400	0.04854	15,000	15,000
Am. Samoa		0	34,500	0.01439	4,000	4,000
N. Mariana Is.	0	0	18,200	0.00759	2,000	2,000
Trust Territories		0	124,000	0.05170	16,000	16,000
Total	67,504,583	23,629,000	239,824,900	100.00000	36,371,000	60,000,000

Population and award figures rounded to nearest thousand. Column 1—FY 1984 qualifying victim compensation payments. Column 2—FY 1985 award based on 35% of Column 1. Column 3—State population estimates based on Bureau of Census' most recent reports. Column 4.—Each state's percentage of the United States and Territories population. Column 5.—Amounts based on $100,000 base for 50 states, District of Columbia and Puerto Rico: balance spread using state percentage of United States population. Column 6—Total of Column 2 and 5.

[FR Doc. 85–20567 Filed 8–27–85; 8:45 am]

BILLING CODE 4410–18–M

Bureau of Prisons

Announcements of Grants, Services, and Training; Annual Program Schedule FY 1986

AGENCY: Bureau of Prisons; Justice.

ACTION: Notice.

SUMMARY: The National Institute of Corrections, U.S. Department of Justice, has published its Annual Program Plan/Training Schedule for Fiscal Year 1986. The document describes the grant monies and services available beginning October 1, 1985, as well as training that will be provided at the Institute's National Academy of Corrections. Eligibility criteria for participation in the training sessions and an application form are included.

Those interested in obtaining a copy of the Annual Program Plan/Training Schedule may contact the National Institute of Corrections, 320 First Street, NW, Washington, DC 20534 (telephone 202–724–8449) or its Academy or Jail Center, 1790 30th Street, Boulder, CO 80301 (telephone 303–497–6060 or 6700).

Dated: August 21, 1985.

Raymond C. Brown,

Director, National Institute of Corrections.

[FR Doc. 85–20572 Filed 8–27–85; 8:45 am]

BILLING CODE 4410–36–M

New Award Under the Competitive Program Offering; Model Architectural Plans for Small Jails; Application

AGENCY: Bureau of Prisons; Justice.

ACTION: Application Notice for Competitive Program Offering on Model Architectural Plans for Small Jails.

SUMMARY: The National Institute of Corrections, U.S. Department of Justice, is soliciting proposals to conduct the second-year, final part of a project entitled, "Model Architectural Plans for Small Jails." The $150,000 effort will involve analysis of detailed data collected from nearly 500 small jails constructed over the past 10 years as well as data collected from 30 site visits to a sampling of those jails.

Using that data, the award recipient will develop prototypical architectural plans for a 20-bed jail and a 40-bed jail. A companion design guide, including schematics and discussions of all related architectural, management, and operational elements, will be developed and prepared in camera-ready form.

The award will be made as a cooperative agreement, as there will be significant federal involvement in the review and development of the project elements. One award of up to $150,000 will be made. Applicants must have architectural experience, as well as expertise in jail planning, design, and construction. Applications must be received by October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mike O'Toole, National Institute of Corrections Jail Center, 1790 30th Street, Suite 440, Boulder, Colorado 80301; telephone 303–497–6700.

Dated: August 21, 1985.

Raymond C. Brown;

Director, National Institute of Corrections.

[FR Doc. 85–20573 Filed 8–27–85; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Office of Federal Contact Compliance Programs

William B. Reily & Co., Inc., d/b/a/ Luzianne Blue Plate Foods; Debarment

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Debarment, William B. Reily & Co., Inc. d/b/a/ Luzianne Blue Plate Foods.

SUMMARY: This notice advises of the debarment of William B. Reily & Co., Inc. d/b/a/ Luzianne Blue Plate Foods as an eligible bidder on Government contracts and subcontracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Charles Pugh, Deputy Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–3416, Washington, D.C. 20210 (202–523–9475).

SUPPLEMENTARY INFORMATION: On May 28, 1985, pursuant to 41 CFR 60–30.32(c), Administrative Law Judge E. Earl Thomas issued a final administrative Decision and Order: (1) Finding William B. Reily & Co., Inc. d/b/a/ Luzianne Blue Plate Foods in violation of Executive Order 11246, as amended, and the implementing regulations; (2) cancelling all Federal Contracts and subcontracts and all federally-assisted construction contracts and subcontracts of William B. Reily & Co., Inc.; and (3) declaring William B. Reily & Co., Inc. and its successors ineligible for the award of any Government contracts or subcontracts and ineligible for extensions or other modifications of any existing Government contract or subcontract. A copy of the Decision and Order is attached.

The debarment from future Government contracts and subcontracts and from extensions or other modifications of existing contracts is effective immediately, and applies to William B. Reily & Co. Inc., its successors, officers, agents, servants, employees, and attorneys, and to those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. That part of the order cancelling existing contracts will not become effective until the relevant contracting agencies have been consulted as required by Section 209(a)(5) of Executive Order 11246, as amended by Executive Order 12086.

Signed August 21, 1985, Washington, D.C.

William E. Brock,

Secretary of Labor.

Decision and Order

In the Matter of *The Department of Labor, The Office of Fair Contract Compliance Programs* v. *William B. Reily & Co., Inc. d/b/a Luzianne Blue Plate Foods,* Case No. 85–OFC–5.

This proceeding arises under Executive Order No. 11246 (30 FR 12319) as amended by Executive Order No. 11375 (32 FR 14303) and the regulations issued pursuant thereto at 41 CFR Part 60.

On January 23, 1985 the Department of Labor (DOL) filed a Complaint in this matter which alleged that the Defendant was a government contractor subject to the above-cited Order and regulations and was in breach of its government contract due to its failure to develop a written affirmative action program as required by 41 CFR 60–2.1. The Complaint states that the DOL sought voluntary compliance through conciliatory efforts but was unsuccessful. The Complaint specifically invoked the Expedited Hearing procedures available under 41 CFR 60–30.31 to 60–30.37. A Notice of Docketing was issued on February 26, 1985. The Defendant has not filed an Answer to date.

On April 26, 1985 the DOL filed a "Motion for Relief Pursuant to 41 CFR 60–30.6 and 60–30.32(c)." Under 60–30.6 the failure to file an Answer within 20 days of service of the complaint shall constitute an admission of each allegation contained in the Complaint. Under 41 CFR 60–30.32(c) such failure to answer also constitutes a waiver of hearing. That section further provides that:

> If a hearing is not requested or is waived within 25 days of the complaint's filing, the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint and shall order the appropriate sanctions and/or penalties sought in the complaint. 41 CFR 60–30.32(c).

By operation of 41 CFR 60–30.6 and 60–30.32(c) the Defendant is found to have waived his opportunity for a hearing, and is deemed to have admitted the allegations contained in the Complaint.

Accordingly, I hereby adopt the material facts set out in the Complaint (attached hereto) as my findings of fact and conclude that the Defendant is currently in violation of Executive Order No. 11246 and its regulations with regard to affirmative action plans. In light of the Defendant's disregard for the Executive Order and the regulations incorporated into his contract with the Federal government, I order the following relief:

1. All of defendant's federal and federally-assisted contracts and subcontracts are cancelled;

2. Defendant and its successors shall be ineligible for the award of any contracts or subcontracts funded in whole or in part with federal funds; and

3. Defendant shall be ineligible for extensions or other modifications of any existing government contract or subcontracts.

This relief is to be in effect until such time as the Defendant has satisfied the Director of OFCCP that it is in compliance with the provisions of Executive Order 11246 and the rules and regulations issued thereunder.

Dated: May 28, 1985.

E. Earl Thomas,

Deputy Chief Judge.

Office of Administrative Law Judges

The Department of Labor, OFCCP, Plaintiff, v. *William B. Reily & Co., Inc. d/b/a Luzianne Blue Plate Foods, Defendant,*

Case No. ———.

Complaint

The United States Department of Labor, by its attorneys, alleges:

1. This action is brought by the Department of Labor, OFCCP, to enforce the contractual obligations imposed by Executive Order 11246 (30 FR 12319), as amended by Executive Order No. 11375 (32 FR 14303) [hereinafter Executive Order 11246].

2. This tribunal has jurisdiction of this action under Sections 208 and 209 of Executive Order 11246, 41 CFR 60–1.26, and 41 CFR part 60–30.

3. This action is brought under the *Expedited Hearing Procedures,* 41 CFR 60–30.31–37 and the hearing is subject to

the expedited hearing procedure. 41 CFR 60–30.32.

4. Defendant, William B. Reily Co., Inc., is a corporation and at all times hereinafter mentioned, has done business as Luzianne Blue Plate Foods and has maintained and continues to maintain a place of business and employment at 640 Magazine, New Orleans, Louisiana.

5. Defendant is a Government contractor within the meaning of Executive Order 11246, and is now, and at all material times has been, subject to the contractual obligations imposed on Government contractors and subcontractors by Executive Order 11246 and the Executive Orders which preceded it, inlcuidng Executive Order 10925, and the implementing regulations issued thereunder.

6. Section 201 of Executive Order 11246 vests primary responsibility for administration of Part II of Executive Order 11246, which is entitled "Nondiscrimination in Employment by Government Contractors," in the United States Secretary of Labor (hereinafter the Secretary of Labor). In addition, Section 201 empowers the Secretary of Labor to "adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purpose" of Executive Order 11246. Pursuant to that authority, the Secretary of Labor has promulgated implementing regulations which are published in Title 41, Code of Federal Regulations, Chapter 60 (hereinafter 41 CFR 60–1 *et seq.*).

7. Pursuant to 41 CFR 60–1.4(e) of the Secretary of Labor's regulations, the following provisions are considered to be a part of every contract and subcontract required by Executive Order 11246, and its implementing regulations, to include such provisions:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action, shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. In his regulations implementing Executive Order 11246, the Secretary of Labor has provided that every Government contractor who has 50 or more employees and a contract or subcontractor of more than $50,000 per year with the United States must develop a written affirmative action program for each of its establishments (41 CFR 60–2.1).

9. Defendant has, and at all material times hereto has had, more than 50 employees and a Government contract of $50,000 or more.

10. Defendant is subject to the Executive Order and the Secretary of Labor's implementing regulations including, *inter alia,* 41 CFR Part 60–2, 41 CFR Part 60–3, and 41 CFR Part 60–20

11. During the period since November, 1981, defendant has failed to adopt and implement an affirmative action compliance program (hereinafter AAP) for its New Orleans, Louisiana establishment as required by 41 CFR Part 60–2.

12. The acts and practices described in paragraph 11 above violates Executive Order 11246, as amended, and the regulations issued pursuant thereto, and therefore violate defendant's contractual obligations to the Federal Government.

13. Upon identifying the violation at the facility, efforts were made by the Office of Federal Contracts Compliance to secure, through conciliation and persuasion, voluntary compliance by defendant with Executive Order 11246 and the rules, regulations and other promulgated thereunder. Those efforts were unsuccessful.

14. Unless restrainted by order of this Court, defendant will continue to violate the obligations imposed upon it by Executive Order 11246.

Wherefore, plaintiff prays for an order pursuant to 41 CFR 60–30.35 preliminarily and permanently enjoining the defendant, its officers, agents, employees, successors, and all persons in active concert or participation with them, from failing and refusing to comply with the requirements of Executive Order 11246 and the regulations issued pursuant thereto, and for an order requiring the defendant to develop and implement a written affirmative action program in conformance with Executive Order 11246 and the regulations.

Plaintiff further prays for a recommended decision pursuant to 41 CFR 60–30.35 and 41 CFR 60–30.30 providing that all of defendant's Federal and Federally-assisted contracts and subcontracts be cancelled, and that defendant and its successors shall be ineligible for the award of any contracts or subcontracts funded in whole or in part with Federal Funds, and shall be ineligible for extensions or other modifications of any existing

Government contracts and subcontracts, until defendant has satisfied the Director of OFCCP that defendant is in compliance with the provisions of Executive Order 11246, and the rules, regulations and orders issued thereunder and for such additional relief as justice may require.

Address: U.S. Department of Labor, Office of the Solicitor, 555 Griffin Square, Suite 501, Dallas, Texas 75202. Telephone: 214/767–4902. SOL Case No. 21475.

Francis X. Lilly,
Solicitor of Labor.

James E. White,
Regional Solicitor.

Heriberto De Leon,
Counsel for Employment Standards.

By Max A. Wernick, *Attorney.*

Attorneys for the Department of Labor, OFCCP, Plaintiff.

Certificate of Service

I, Max A. Wernick, one of the attorneys for the plaintiff, do hereby certify that I have served a true and correct copy of the foregoing complaint upon the defendant, by depositing same in the U.S. mail on the eighteenth day of January, 1985, addressed to the following:

Mr. William B. Reily III, President, 640 Magazine, New Orleans, Louisiana 70130.

Mr. Andrew P. Carter, Monroe & Lehman, Whitney Building, New Orleans, Louisiana 70130.

Max A. Wernick,
Attorney.

Service Sheet

Case Name: DOL, OFFCP v. William B. Reily & Co., Inc.

Case No.: 85–OFC–5.

Title of Document: Decision and Order.

A copy of the above document was sent to the following:

Sheila Smith,
Clerk-Typist.

Francis X. Lily, Solicitor of Labor, U.S. Department of Labor, Office of the Solicitor, Rm. S–2002, FPB, 200 Constitution Avenue, NW, Washington, DC 20210

David O. William, Office of Special Counsel, U.S. Department of Labor/ETA, Rm. 1500, 601 D Street, NW, Washington, DC 20213

Office of Federal Contract, Compliance Programs, U.S. Department of Labor, Rm. C–3325, 200 Constitution Ave., NW, Washington, DC 20210

Mr. William B. Reily III, President, 640 Magazine, New Orleans, LA 70130

Mr. Andrew P. Carter, Monroe & Lehman, Whitney Building, New Orleans, LA 70130

Max A. Wernick, Office of the Solicitor, 555 Griffin Square Building, Dallas, TX 75202

James E. White, Regional Solicitor, 555 Griffin Square Bldg., Suite 707, Griffin and Young Sts., Dallas, TX 75202.

[FR Doc. 85–20496 Filed 8–27–85; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85–54]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by September 9, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Michael Weinstein, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl Steinmetz, NASA Agency Clearance Officer, (202) 453–2941.

Reports

Title: DOD Industrial Plant Equipment Requisition (NASA Use).

OMB Number: 2700–0021.

Type of Request: Extension.

Frequency of Report: On occasion.

Type of Respondent: Businesses or other for-profit, non-profit institutions, small businesses or organizations.

Annual Responses: 200.

Annual Burden Hours: 44.

Abstract-Need/Uses: Before NASA contractors acquire new equipment under NASA contracts, they must check for availability of the equipment within NASA. Rather than creating a new government form, DD Form 1419 is used as an application by a contractor to obtain government equipment.

L.W. Vogel,
Director, Logistics Management and Information Programs Division.

August 9, 1985.

[FR Doc. 85–20490 Filed 8–27–85; 8:45 am]

BILLING CODE 7510–01–M

[Notice 85–55]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the National Commission on Space (NCS).

DATE AND TIME: September 17–18, 1985, 8 a.m. to 5:15 p.m. each day.

ADDRESS: Comptroller of Currency, Conference Center, 490 L'Enfant Plaza East, SW., Room 3-b (third floor), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mrs. Mechthild E. "Mitzi" Peterson, National Commission on Space, Suite 3212, 490 L'Enfant Plaza East, SW., Washington, DC 20024 (202/453–8685).

SUPPLEMENTARY INFORMATION: The National Commission on Space was established to study existing and proposed U.S. space activities; formulate an agenda for the U.S. civilian space program; and identify long-range goals, opportunities, and policy options for civilian space activity for the next 20 years. The Commission, chaired by Dr. Thomas O. Paine, consists of 15 voting members. The meeting will be open to the public up to the seating capacity of the room (approximately 80 persons including Commission members and other participants).

Type of meeting: Open.

Agenda

September 17, 1985

8 a.m.—Opening Remarks.
8:15 a.m.—Commercial Space Activities.
11:15 a.m.—Phobos/Deimos Mission.
1 p.m.—Lunar Settlement Working Group.
3 p.m.—Life in 21st Century.
5:15 p.m.—Adjourn.

September 18, 1985

8 a.m.—Presentations by Aerospace Companies:
- Inner Solar System Space Infrastructure.
- Earth to Low Earth Orbit Transportation Cost Reduction.
- International Competition and Cooperation.

3:15 p.m.—Committee Discussion.
5:15 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

August 21, 1985.

[FR Doc. 85-20491 Filed 8-27-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Presenters Section) to the National Council on the Arts will be held on Tuesday, Wednesday and Thursday, September 17-19, 1985 from 9:00 a.m.-6:00 p.m. and on Friday, September 20, 1985 from 9:00 a.m.-3:30 p.m. in room 714 of the Nancy Hanks Center of the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, D.C.

A portion of this meeting will be open to the public on Friday, September 20, 1985 from 10:00 a.m.-3:30 p.m. to discuss the Five Year Plan, Guidelines and Grant Levels.

The remaining sessions of this meeting on September 17-19, 1985 from 9:00 a.m.-6:00 p.m. and September 20, 1985 from 9:00-10:00 a.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sections will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

August 23, 1985.

[FR Doc. 85-20698 Filed 8-26-85; 3:57 pm]

BILLING CODE 7537-01-M

Iner-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Presenting Organizations Section) to the National Council on the Arts will be held on Wednesday, September 18, 1985 from 9:00 a.m.-8:00 p.m., Thursday, September 19, 1985 from 8:30 a.m.-8:00 p.m., Friday, September 20, 1985 from 8:30 a.m.-6:30 p.m., Saturday, September 21, 1985 from 8:30 a.m.-7:30 p.m. and on Sunday, September 22, 1985 from 8:30 a.m.-3:00 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on Sunday, September 22, 1985 from 9:00 a.m.-1:00 p.m. to discuss guidelines, the Five Year Plan and other policy issues.

The remaining sessions of this meeting on September 18, 1985 from 9:00 a.m.-8:00 p.m. September 19, 1985 from 8:30 a.m.-8:00 p.m., September 20, 1985 from 8:30 a.m.-6:30 p.m., September 21, 1985 from 8:30 a.m.-7:30 p.m. and September 22, 1985 from 8:30 a.m.-9:00 a.m. and 1:00-3:00 p.m. are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowmen for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations.

August 23, 1985.

[FR Doc. 85-20699, Filed 8-26-85; 3:57 pm]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

SUPPLEMENTARY INFORMATION: On July 15th and July 18th, 1985, the National Science Foundation published a notice in the Federal Register of permit applications received. On August 19, 1985 permits were issued to: Arthur L. DeVries, Philip R. Kyle, David F. Parmelee, Donald B. Siniff, Wayne Z. Trivelpiece.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 85-20574 Filed 8-27-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-352]

Philadelphia Electric Co. (Limerick Generating Station, Unit 1); Rescission of Order

On August 16, 1985, the Director of the Office of Nuclear Reactor Regulation issued an "Order Suspending Operation Above 5 Percent Power" applicable to the Limerick Generating Station, Unit 1. The Order was based on a stay issued on August 15, 1985, by the United States Court of Appeals for the Third Circuit. The court stayed the Commission's Order of August 8, 1985, which authorized issuance of a full power license, License No. NPF-39, for Limerick Unit 1. The Director's Order suspended operation of the facility

above 5% of rated power to effectuate the court's stay of operations under the new license. The Director's Order stated that the suspension of operation above 5% of rated power would be rescinded upon action by the court to lift its stay.

On August 21, 1985, the court lifted its stay. Accordingly, the "Order Suspending Operation Above 5 Percent Power" issued by the Director of Nuclear Reactor Regulation on August 16, 1985, is hereby *rescinded.*

Dated at Bethesda, Maryland this 21st day of August 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-20590 Filed 8-27-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 12–14, 1985, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on August 21, 1985.

The agenda for the subject meeting will be as follows:

Thursday, September 12, 1985

8:30 A.M.–8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.–10:45 A.M.: Reactor Operations (Open)—The members will hear reports from representatives of the NRC Staff and will discuss recent operating events and incidents at nuclear power plants.

10:45 A.M.–12:30 P.M. and 1:30 P.M.–3:15 P.M.: General Electric Standardized Safety Analysis Report (Open/Closed)—The members will hear the report of its subcommittee regarding the request for Final Design Approval for this standardized nuclear island. Members of the NRC Staff and representatives of the Applicant will make presentations and repond to questions regarding this project.

Portions of this session will be closed as required to discuss Proprietary Information applicable to this project and detailed security provisions for this type of facility.

3:15 P.M.–4:30 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the report of its subcommittee regarding proposed changes in emergency core cooling requirements in nuclear plants and proposed changes in NRC Regulatory Guide 1.82, Revision 1 regarding containment sump performance in nuclear plants. Representatives of the NRC Staff will take part in this discussion as appropriate.

4:30 P.M.–5:30 P.M.: Primary System Integrity (Open)—The Committee will hear and discuss the report of its subcommittee regarding proposed changes in 10 CFR Part 50, Appendix A. General Design Criteria–4, Environmental and Missile Design Bases, regarding the criteria for main primary coolant piping failures in water-cooled nuclear power plants. Representatives of the NRC Staff will participate, as appropriate.

5:30 P.M.–6:00 P.M.: Items for Meeting with NRC Commissioners (Open)—The members will discuss proposed ACRS comments with respect to topics to be discussed with the NRC Commissioners including: ACRS participation in NRC regulation of the DOE program for management and disposal of high-level civilian radioactive wastes; the NRC Severe Accident Policy Statement; and the need for human factors research in the NRC safety research program.

6:00 P.M.–6:30 P.M.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

Friday, September 13, 1985

8:30 A.M.–10:30 A.M.: ACRS Effectiveness (Open)—The Committee will hear and discuss the report of its Panel on ACRS Effectiveness regarding the conduct and scope of ACRS activities.

10:30 A.M.–12:00 Noon: Meeting with NRC Commissioners (Open)—The members will meet with the NRC Commissioners to discuss the topics noted above.

12:00 Noon–1:00 P.M.: Reorganization of the NRC Office of Nuclear Regulation (Open)—The members will hear a briefing from the Director, NRR regarding the recent reorganization of the Office of Nuclear Reactor Regulation.

2:00 P.M.–4:00 P.M.: Selection of Nuclear Power Plant Personnel (Open)—The members will hear and discuss reports from invited experts regarding the use of natural aptitude testing in selection of nuclear power plant personnel.

4:00 P.M.–6:00 P.M.: River Bend Nuclear Plant (Open)—The members will continue their review of the River Bend operating license application. Representatives of the NRC Staff and the licensee will also make presentations and participate in the discussion to the degree considered appropriate.

Saturday, September 14, 1985

8:30 A.M.–12:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding items considered during this meeting. In addition, the members will consider a proposed report regarding the application of PRAs to nuclear power plants.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the matters being discussed, and detailed security provisions for the GESSAR II plant design.

1:30 P.M.–4:00 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the activities of designated ACRS subcommittees with respect to safety related issues and the regulatory process including physical protection of fuel containing HEU at nonpower reactors; Regulatory Guide 1.99, Rev. 2, Effects of Residual Elements on Predicted Radiation Damage to Reactor Vessel Materials; and ACRS Procedures and Practices including the recommendations of the Panel on ACRS Effectiveness.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 1984 (49 FR 193). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that approximate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.

F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)], and detailed security information [5 U.S.C. 552b(c)(3)].

Further information regading topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m. EDT.

Dated: August 23, 1985.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 85–20591 Filed 8–27–85; 8:45 am]

BILLING CODE 7590–01–M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on August 14, 1985 (50 FR 32787), through August 19, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By September 27, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearng conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held

would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: October 24, 1984, as supplemented February 27, 1985 and July 8, 1985.

Description of amendment request: This proposed action was noticed on March 27, 1985 (50 FR 12139). However, on July 8, 1985 additional information was provided and a new section 3.6.1.3. action statement b. The proposed amendments would change the Limiting Condition for Operation (LCO), the Surveillance Requirements and the associated bases for Specification 3/4.6.1.3, Primary Containment Air Locks, to specifically address the air lock door interlocks. Additionally, the Technical Specifications will be reformatted to more closely follow the guidance of the NUREG–0123, Standard Technical Specifications.

The current Specification does not specifically address an inoperable door interlock in the LCO. As such, it could be interpreted that an inoperable door interlock falls outside the "degraded mode" permitted by paragraph 3.6.1.3(a) and (b). Were that to be the interpretation, this interlock would fall under Paragraph 3.6.1.3(c) which directs the plant to be in hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours. CP&L has concluded that this was not the intent of the Specification, since an inoperative door lock is clearly of a similar nature as the "degraded mode" permitted by paragraphs 3.6.1.3(a) and (b).

The amendments, therefore, proposed that the action described for an inoperable air lock door is sufficient to compensate for an inoperable door interlock. The current Technical Specification requires that the operation of the air lock door interlock be verified every six months. This verification presents the following problems:

(1) The interlock surveillance is performed independently of the air lock operability requirements.

(2) The interlock surveillance cannot be performed when the unit is at power with the drywell inerted, as the drywell is inaccessible.

(3) A low power drywell entry just to perform the interlock surveillance would present an unnecessary safety hazard and increase radiation exposure to personnel performing the test.

The proposed revision requiring verification after each entry (except during periods of multiple entries where it is tested at least every 72 hours) will present the following resolutions:

(1) The interlock surveillance will be added to the air lock surveillance requirements by adding a new section B. Thus, the two surveillances will be performed simultaneously, ensuring that the interlock is operable whenever the air lock is required to be operable.

(2) The surveillances will be performed with the unit in cold shutdown and prior to entering operational conditions 1, 2, or 3. The above surveillance requirement is in the Brunswick pre-startup checklist and in the drywell closure checklist. After the surveillance requirement is satisfactorily completed, access to the drywell is secured. This will ensure air lock and interlock operability in operational conditions 1, 2, or 3 and until another drywell entry is made. Whenever the drywell is entered, the surveillance requirement must be repeated prior to drywell closure.

(3) With the surveillance being performed simultaneously in cold shutdown, an additional drywell entry is not necessary. This will, therefore, reduce personnel exposure to radiation and prevent an additional safety hazard.

(4) The increased surveillance on the interlock will result in an increased level of confidence in the interlock's operability. Additionally, the Specification is being reformatted to be consistent with NUREG–0123, the Standard Technical Specifications for General Electric Boiling Water Reactors.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: (i) A purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; and (ii) a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications.

The proposed change pertaining to the reformatting of the Specification is purely an administrative change as in example (i). The proposed revision requiring verification after air lock entry

(except during periods of multiple entries where it will be tested at least every 72 hours) constitutes additional controls not presently included in the Technical Specifications, and is, therefore, encompassed by example (ii). In addition, the change regarding the inoperable door interlock is also an additional control not presently included and, therefore, is compassed by example (ii). Thus, the proposed changes discussed in this request are either administrative changes or constitute additional controls not presently included in the Specification and, therefore, conform to examples for which no significant hazards considerations exist.

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards considerations exist, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power and Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: July 1, 1985.

Description of amendment request: The proposed amendment would revise the K(z) curves of the Technical Specificiations Figure 3.10–3 to preclude potential power penalties later in core life.

Basis for proposed no significant hazards consideration determination: The cycle 10 core reload incorporated flux reduction attributes to satisfy PTS requirements for the reactor vessel. Because of this the previous K(z) curve could not be supported and a new curve was conservably calculated for cycle 10 until the conservatism could be later removed by detailed reanalyses of the large and small break LOCA.

The proposed K(z) curve in conjunction with an F_q limit of 2.32 provides reasonable assurance of compliance with the limits of 10 CFR 50.46. Exxon Nuclear large break loss of coolant accident (LOCA) calculations for HBR2 predict a peak cladding temperature of 2042 °F for a center peaked power shape with a maximum F_q of 2.32. The proposed K(z) axial distribution is idential to the previously accepted K(z) curve which was based on calculations performed by Westinghouse (prior to cycle 10). Recent large break LOCA calculations submitted to the NRC by Exxon Nuclear for 14 x 14 and 15 x 15 fuel rod arrays demonstrated that the predicted Exxon Nuclear fueld peak cladding temperature was within ±50 °F of that for other fuel types similar to the Westinghouse 15 × 15 design.

However, the small break LOCA part of the K(z) curve will be based on the previously accepted Westinghouse analysis (WFLASH). Carolina Power & Light Company is participating in the WOG effort to resolve TMI Items II.K.3.30 and II.K.3.31 using the NOTRUMP Generic Analysis. This portion of the curve is primarily dependent on the system response and the linear heat rate and, therefore, the analysis is applicable.

Since: (1) The peak cladding temperature for Exxon Nuclear fuel should be within 50 °F of the Westinghouse fuel peak cladding temperature, (2) for Exxon Nuclear fuel the peak cladding temperature is 2042 °F for a center peaked power distribution at an F_q of 2.32, and (3) the previous small break LOCA analysis is applicable; we believe there is reasonable assurance that the 10 CFR 40.46 limit on peak cladding temperature of 2200 °F will be met by Exxon Nuclear fuel with the proposed K(z) curve.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (vi) of an amendment likely to involve no significant hazards consideration relates to changes which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan."

The proposed change to the Technical Specification is directly related to this example in that the limits of 10 CFR 50.46 will continue to be satisfied with the change and that the change is supported by refined analyses. Therefore, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Commonwealth Edison Company, Docket No. 50–373, La Salle County Station Unit 1, La Salle County, Illinois

Date of amendment request: July 15, 1985.

Description of amendment request: The proposed amendment to operating License NPF–11 would revise the La Salle Unit 1 Technical Specifications to reflect the alternative logic modification of the automatic depressurization system (ADS) as required by License Condition 2.C.(30))(1)(b). This requirement is described in Supplement 5 to the La Salle Safety Evaluation Report which indicated that the proposed modifications would be acceptable, following: (1) Approval by the NRC staff of the detailed logic implementation, (2) the submittal of a plant specific analysis to justify the bypass timer setting, (3) the submittal of Technical Specifications for the use of the bypass timer and manual inhibit switch, (4) modification of plant emergency procedures to address the use of the inhibit switch, and (5) completion of the modifications prior to startup after the first refueling.

The above items are addressed in this proposed amendment and this modification will be incorporated at the first refueling outrage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequenses of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendments will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the revised ADS logic does not affect automatic depressurization for events where high drywell pressure occurs. This modification automates the function of reactor vessel blowdown for events where high drywell pressure does

not occur. Under these conditions, manual operation of the ADS system is called for by the emergency operating procedures and was assumed in Chapter 15 of the Final Safety Analysis Report.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because automatic depressurization is analyzed and required for events where high pressure coolant sources are unavailable and reactor vessel level is low. This change only automates what were previously manual operator actions.

(3) Involve a significant reduction in the margin of safety because the upgraded logic provides additional margin of safety for events where high drywell pressure does not occur while still providing the same level of protection for events where high drywell pressure does occur.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, D.C. 20036.

NRC Branch Chief: W.R. Butler.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: July 10, 1985 as amended August 1, 1985.

Description of amendment request: The requested license amendment would modify the plant Technical Specification by incorporating requirements which restrict the volume of flammable liquids in the control room to no greater than one pint. If it becomes necessary to introduce quantities of flammable liquids in excess of one pint written permission is obtained from the Supervising Control Operator or Shift Supervisor and a dedicated fire watch is assigned to the activity to ensure that the flammable liquied would not threaten the safe shutdown capability.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples of actions not likely to involve signficant hazards considerations is example (ii) which is a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications.

The Staff has reviewed the licensee's amendment request to add requirements for limiting the volume of flammable liquids in the control room to no greater than one pint and concluded that it falls within the envelope of example (ii) because the proposed amendment would result in an additional administrative limitation or control not presently included in the technical specifications.

Based on the above, the staff therefore proposes to determine that this amendment request involves a no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Branch Chief: John A. Zwolinski.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut, and Northeast Nuclear Energy Company, et al., Docket Nos. 50–245 and 50–336, Millstone Nuclear Power Station, Unit Nos. 1 and 2, New London County, Connecticut

Date of amendment request: July 9, 1985.

Description of amendment request: The proposed amendments to the Operating Licenses would add subparagraph 6.2.2.g to the Technical Specifications. These proposed changes provide that administrative procedures be developed and implemented to limit the working hours of unit staff who perform safety-related functions. These proposed procedures will follow the general guidance of the NRC Policy Statement on working hours as stated in Generic Letter No. 82–12.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for making a no significant hazards consideration determination (48 FR 14870). Example (ii) of this guidance states that a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement, would not likely constitute a significant hazard. The proposed changes fall within the envelope of item (ii), since they increase the level of assurance that safety related functions will be performed properly by virture of limiting the working hours and thus reducing possible fatigue of unit staff who perform these functions.

Accordingly, the staff proposed to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room locations: Russell Library, 123 Broad Street, Middletown, Connecticut 06457 (Haddam Neck) and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut (Millstone Units 1 and 2).

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chiefs: John A. Zwolinski (Haddam Neck and Millstone Unit 1) and Edward J. Butcher, Acting (Millstone Unit 1) and Edward J. Butcher, Acting (Millstone Unit 2).

Consolidated Edison Company of New York, Docket Nos. 50–003 and 50–247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of amendment request: June 18, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications for Indian Point, Units 1 and 2 to incorporate administrative changes to the Facility Organization. The proposed amendment would also revise the Indian Point Nuclear Generating Unit No. 2 Technical Specifications to: (1) Limit overtime for critical shift job positions, (2) change the composition of the Station Nuclear Safety Committee (SNSC), (3) change the audit frequency of the Emergency Preparedness Program and Safeguards Contingency Plan, (4) provide for the reporting of relief and safety valve challenges (5) conform the provisions regarding the Monthly Operating Report to those of the Standard Technical Specifications and (6) clarify the record retention requirements.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations, 10 CFR 50.92 (48 FR 14870), the proposed revisions to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident previously evaluated, or involve a significant reduction in margin of safety. The proposed changes would reflect: (1) Organizational change (2) overtime limits for critical job positions (3) Station Nuclear Safety Committee (SNSC) membership changes (4) more

frequent auditing of the Emergency Plan and Security Plan (5) reporting requirement for relief and Pressurizer Safety Valve challenges and (6) record retention clarification. The licensee's submittal contains evaluations containing the following conclusions. The organization changes will not reduce the effectiveness of the facility organization nor would the changes decrease the required qualification of personnel. The overtime limits for critical positions constitutes an additional limitation and control not presently included in the Technical Specification but, implemented for some time through administrative controls. The changes to the SNSC membership will not reduce the effectiveness of the committee nor would the changes decrease the qualifications of the members. The change in frequency of the Emergency and Security Plan audits is to conform to the regulations of 10 CFR 50.54(t) and 10 CFR 73.40(d) and is conservative. The reporting of relief and safety valve challenges constitutes an additional limitation and restriction not presently included in the Technical Specifications and conforms the specification to the Standard Technical Specification. The clarification of record retention requirements is purely administrative in nature and achieves consistency in the technical specifications.

The staff expects to agree with the licensee's conclusions. Therefore, the staff proposes to determine that the requested action would involve no significant hazards considerations.

Local Public Document Room location: White Plains Public Library, 100 Maritine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: July 31, 1985.

Description of amendment request: The proposed amendment would revise the Indian Point 2 Technical Specifications to permit a one-time extension of the surveillance interval limits for various systems and components so the surveillance tests for the applicable systems and components can be performed during the 1986 refueling outage. Issuance of the proposed Technical Specifications would avoid a plant shutdown of approximately five weeks to perform the surveillance tests. The licensee proposes to perform the affected surveillance tests during the upcoming refueling maintenance outage presently scheduled to commence in the first quarter of 1986.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations 10 CFR 50.92 (48 FR 14871), the proposed one-time revision to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any previously evaluated, or involve a significant reduction in margin of safety. The licensee's submittal contains an evaluation of the effects of permitting a one-time revision to the Technical Specifications. The results of the evaluation indicated that the quality of the systems and components and their ability to perform will be maintained during the extension period to that level currently provided by the Technical Sepcifications for a maximum surveillance interval. It is expected that our final evaluation will agree with the license's conclusions.

Therefore, the staff proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 6, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications to delete Specifications 5.3.A.2 and 5.3.A.4 which specifically describe the reactor core design for the initial core. Additionally, the proposed amendment would revise the references of Technical Specification 5.3 to reflect the proper sections of the updated Final Safety Evaluation Report (FSAR) and to delete the Fuel Densification Report, which is now referenced in the updated FSAR.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations 10 CFR 50.92 (48 FR 14871), the proposed revisions to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any previously evaluated, or involve a significant reduction in margin of safety. The licensee's submittal contains an evaluation concluding that the deletion of Technical Specifications 5.3.A.2 and 5.3.A.4 would have no effect on the present or future with regard to reactor core design because the Specifications contain historical information only. The staff expects to agree with the licensee's conclusions. The revisions to the Specification 5.3 references are purely administrative to achieve consistency between the updated FSAR and the Technical Specifications.

Therefore the staff proposes to determine that the amendment does not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 6, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specification 3.8.A.1 to include a provision for utilizing a temporary closure plate in place of the equipment door during refueling. The proposed change is being requested to improve the efficiency of the refueling work. The temporary closure door will provide penetrations for temporary services which will enable many maintenance activities to be performed while maintaining integrity during core alterations of fuel movement.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations, 10 CFR 50.92 (48 FR 14871), the proposed revisions to the Technical Specifications will not involve

a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident previously evaluated or involve a significant reduction in margin of safety. The licensee's submittal contains an evaluation of the effects of utilizing a temporary closure plate in place of the equipment door during refueling. The evaluation concludes that the closure plate will perform all required functions, i.e., provide additional margin for a fuel handling accident by restricting direct communication with the environment and provide a seismic envelope to restrict the potential escape of radioactivity resulting from seismic events during refueling. It is expected that our final evaluation will agree with the licensee's conclusions.

Therefore the staff proposed to determine that the amendment does not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: July 30, 1985.

Description of amendment request: Proposed amendment to License DPR–20 to delete Technical Specification requirement for High Pressure Safety Injection (HPSI) Flow monitoring instruments.

Basis for proposed no significant hazards consideration determination: The HPSI flow instruments, one in each of the four injection lines to each reactor coolant loop, are monitoring instruments only and provide no actuation function. Their inoperability does not affect the operability of the HPSI. These instruments only provide confirmation of flow which can be determined by other means. Therefore, deletion of the requirement for operability of these instruments would not affect the probability or consequences of an accident previously analyzed. These instruments are not used in any way to provide a safety margin for reactor operation, accidents, or transients. Therefore, no reduction in a safety margin results from their deletion. Operation of the plant for normal operation or in response to transients or accidents is unchanged and therefore a new or different kind of accident from those previously evaluated is not created. The results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. In this case, the subject flow instruments are not included in the Standard Technical Specifications which are identified in Chapter 16 of the Standard Review Plan. Also, these instruments are not required in any of the other Combustion Engineering Plants. Therefore, the staff proposes to determine that the proposed change would not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: John A. Zwolinski.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: June 25, 1985.

Description of amendment request: This submittal modifies a pending request for amendment dated December 19, 1983 with regard to Technical Specification 4.1.6 which concerned plant shutdown in case of site flooding. The December 19, 1983 request was noticed in the **Federal Register** on March 22, 1984 (49 FR 10733). This proposed amendment would add a requirement that specifies a lower flood level than previously proposed at which the plant must be shut down.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change that constitutes an additional restriction or control not presently included in the Technical Specifications.

The above proposed change resulted from the Systematic Evaluation Program (SEP) review of the La Crosse Boiling Water Reactor. The basis for this change is contained in the La Crosse Integrated Plant Safety Assessment Report NUREG–0827. The change would add a requirement that specifies the flood level at which the plant must be shut down; thus, it introduces an additional restriction or control which does not currently exist. The staff proposes to conclude that the proposed change would be encompassed within example (ii) and, therefore, would involve a no significant hazards consideration determination.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for licensee: O.S. Heistand, Jr., Esquire, Morgan, Lewis & Brockius, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 7, 1984, as amended April 9, 1985.

Description of amendment request: The proposed amendments would change the Technical Specifications to add limiting conditions for operation, surveillance requirements and bases for the Standby Shutdown System (SSS) and associated components.

Specifically, Technical Specification 3.7.14 would require that the SSS be operable in Modes 1, 2, and 3. Table 3.7–8 would identify minimum SSS instruments to be those which sense reactor coolant pressure, pressurizer level, steam generator level, incore - temperature and standby makeup pump flow, and would also identify the readout location (Standby Shutdown Facility Control Panel) and minimum channels (one) required to be operable. Table 3.7–8 would designate the minimum equipment to be: (1) The diesel generator and associated switchgear; (2) the diesel starting 24-volt battery bank and charger; (3) standby makeup pump and water supply; (4) 250/125 volt battery bank, associated charger, and associated switchgear; (5) steam turbine driven auxiliary feedwater pump; and (6) solenoid "c" to valve SA 48 ABC. Table 3.7–8 would also identify the location of this equipment. An appropriate action statement in the event that less than the minimum SSS equipment in Table 3.7–8 should be OPERABLE and surveillance specifications for each of these minimum SSS equipment would be added by the proposed amendment.

Specification Table 4.7–2 would require channel checks (except for standby makeup pump flow which would not be applicable) each month and channel calibrations each refueling outage for instruments used to determine reactor coolant pressure, pressurizer level, steam generator level, incore temperature and standby makeup pump flow.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these examples, (ii), involving no significant hazards considerations is "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." The current Technical Specifications do not include operability nor surveillance requirements for the Standby Shutdown System. Therefore the proposed amendment matches the example. Accordingly, the Commission proposes to determine that the change does not involve significant hazards considerations.

Local Public Document Room Location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 10, 1984.

Description of amendment request: The amendments would modify Technical Specification 6.2.2.f with respect to the specified objectives on normal working hours of unit staff who perform safety-related functions. The modifications would substitute a 12-hour day with alternating 48-hour and 36-hour work week in place of the 8-hour day, 40-hour week. For those occasions which require substantial amounts of overtime or during extended periods of shutdown for refueling, major maintenance or major plant modifications, the specified guidelines on the maximum number of working hours recommended on a temporary basis for any 48-hour period would be increased 4 hours (i.e., from no more than 24 hours to no more than 28 hours). The corresponding guideline of not more than 16 hours any 24-hour period and not more than 72 hours for any 7-day period would not be changed by the proposed amendments.

Basis for proposed no significant hazards consideration determination: The licensee states that the change from an 8 to a 12-hour shift has been found to be more efficient, to reduce shift turnover from 3 to 2 per day, and has the advantage of worker transfer continuity (i.e., an individual worker transfers the duties to the person from whom he or she had taken over the duties 12 hours earlier). The licensee finds this continuity enhances familiarity with the ongoing operations for the shift workers, results in enhanced safety and improved work quality, and enhances the effective management of shift turnovers. This observation by the licensee is consistent with our experience with other operating nuclear power plants utilizing a 12-hour shift. The change to allow an individual to work 28 hours in a 48-hour period provides flexibility for those occasions when an individual works 16 hours, takes a 12-hour break, and returns for a normal 12-hour shift (i.e., the change allows this individual to compete that normal shift).

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the Commission has reviewed the licensee's request for the above amendments and finds that the proposed changes deal only with the establishment of administrative objectives for working hours of unit staff. Because the changes do not affect any equipment, operating procedure, or safety analysis, the Commission has determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to find that the amendments would not involve a significant hazards consideration.

Local Public Document Room Location: Atkins Library, University of Norh Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina, 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 17, 1985.

Description of amendment request: The proposed changes would eliminate ambiguities in two surveillance requirements in the Technical Specifications for Radwaste Treatment Systems by more clearly indicating that the requirements for dose projections are intended only with respect to untreated releases. Specifically, Surveillance Specification 4.11.1.3.1 would be changed to reflect that dose projections are not required for liquid effluents which have been processed by the Liquid Radwaste Treatment System prior to being discharged. Similarly, the proposed amendment would clarify Surveillance Specification 4.11.2.4 to reflect that dose projections are not required for gaseous effluents which have been processed by the Gaseous Radwaste Treatment System prior to being released.

Basic for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions which involve no significant hazards consideration include (i) a purely administrative change to the technical specification. The clarification sought by the proposed amendments in consistent with the Commission's original intent to require dose projection due to liquid or gaseous releases only when untreated effluents are to be discharged, and with the intent of the Commission's model Radiological Effluent Techncial Specifications (RETS) for PWRs, NUREG–0472, Revision 2, February 1, 1980. Thus, this proposed action is purely administrative and fits the example. The Commission, therefore, proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 9, 1985.

Description of amendment request: The proposed amendments would revise a Technical Specification surveillance requirement which is part of an augmented inservice inspection program for snubbers. The change would affect

the second of three sampling plan options available for functional tests of snubbers. This second sampling plan is defined by Specification 4.7.8.e(2) and requires that a representative sample of snubbers be tested each refueling in accordance with Specification Figure 4.7–1. Figure 4.7–1 provides the acceptance criteria method for the functional test results and donates a "reject" regional and a "continue testing" region. If at any time the plotted test results fall within this 'reject" region, then all snubbers are to be functionally tested. Surveillance requirement 4.7.8.e(2) and its accompanying Figure 4.7–1 would be changed to delete the "reject' region on Figure 4.7–1, to substitute an expanded "continue testing" region, and to clarify the manner in which test results are to be plotted on Figure 4.7–1. The test results should be plotted sequentially in the order of sample assignment (i.e., each snubber should be plotted by its order in the random sample assignment, not by the order of testing). References to the "reject" region in the text of Specification 4.7.8.e(2) and bases ¾.7.8 would be deleted. Bases ¾.7.8 would also be supplemented by a footnote to note that if testing continues to between 100–200 snubbers (or 1–2 weeks) and still the "accept" region for Figure 4.7–1 has not been reached, then the actual percent of population quality (the ratio of total number of failed snubbers to the cumulative number of snubbers tested) should be used to prepare for extended or 100% testing.

Basis for proposed no significantt hazards considertion determination: McGuire Technical Specification 3.7.8 requires that all safety related snubbers be operable for specified operating modes and would not be changed by the proposed amendment. Only the surveillance requirement by which each snubber is to be demonstrated operable, in part by functional testing of a representative sample of snubbers each refueling, would be changed, and then only with respect to the second of three available sample plans designated by Specification 4.7.8.e.

Under Specification 4.7.8.e(2), a representative sample of snubbers, beginning with an initial selection of at least 37 snubbers, is functionally tested in accordance with a graph (Specification Figure 4.7–1) of "C", the total number of snubbers found not meeting the acceptance requirements of Specification 4.7.8f (i.e., failure), versus "N", the cumulative number of snubbers tested. The existing graph denotes three separate regions designated "accept," "continue testing" and "reject." The "accept" and "continue testing" regions are separated by a curve, $C=0.055N-2.007$; the "continue testing' and "reject" regions are presently separated by a curve, $C=0.055N+2.007$. To apply the graph, test results are plotted on Figure 4.7–1. Under the existing Technical Specifications, if at any time the point plotted falls in the "reject" region all snubbers are to be functinonally tested. If at any time the point plotted falls in the "accept" region, testing of snubbers may be terminated. When the point plotted lies in the "continue testing" region, additional snubbers are to be tested until the point falls in the "accept" region or the "reject" region, or all the required snubbers have been tested. Deletion of the "reject" region, as proposed, effectively changes that region of the graph to a "continue testing" region. Therefore, snubbers would continue to be tested until the plotted point falls in the "accept" region or until all the required snubbers have been tested.

Statistical studies within the licensee's submittal of April 9, 1985, and within a draft document by a task force of the Operations and Maintenance Group (OM–4) of the ASME Committee, "Examination and Performance Testing of Nuclear Power Plant Dynamic Restraints (Snubbers)" (ANSI/ASME OM4–1985) demonstrate that the proposed deletion of the "reject" region would not have a significant adverse effect on the effectiveness of the sampling plan. The Commission's preliminary review of these documents supports this conclusion. This revised plotting sequence is a more appropriate method for implementing the sampling plan.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and has determined that should this request be implemented, it would not; (1) Involve a significant increase in the probability of an accident previously evaluated or (2) create the possibility of a new or different kind of accident from any accident previously evaluated. This conclusion is reached because snubbers are required to be operable to ensure that structural integrity (of both the reactor coolant system and all other safety-related systems) is maintained during and following a seismic or other event initiating dynamic loads and can have no effect on cause mechanisms, and because only surveillance requirements are affected and not the limiting condition for operation. Although the proposed amendment do not involve changes in surveillance frequency nor operating conditions, they do involve changes in surveillance methods and acceptance criteria. However, the statistical studies indicate that while the probability of false acceptance of a bad population under the proposed amendments is real, it is negligible. Consequently, the staff has also determined that the proposed amendments, if implemented, would not (3) involve a significant reduction in a margin of safety or a significant increase in the consequences of an accident previously evaluated. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte, (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: May 20, 1985.

Description of amendment request: This amendment would modify the Technical Specifications (TSs) to delete the requirements that a summary technical report of the secondary containment intergrated leak rate test be submitted within three months of the conduct of that test and that a report of the primary coolant leakage into the drywell be submitted every five years.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is Example (i), an amendment involving a purely administrative change to Technical Specifications. TSs exist for both maintaining secondary containment integrity and maintaining limits on reactor coolant leakage into the drywell. Neither the Hatch Unit 2 or the BWR 4 Standard Technical Specifications contain requirements for submittal of these reports and the

deletion of these reports is a change to achieve consistency in the TSs. Further, there is no definition or requirement in the Hatch Unit 1 TSs of what should be in a five-year report on primary coolant leakage into the drywell. These reporting requirements are administrative in nature and their removal is a purely administrative change. Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: July 26, 1985.

Description of amendment request: The amendment revises the TSs for Hatch Unit 1 to add a specification and table addressing component cyclic and transient limits and to correct the table number in TS 6.10.2.e to reference the newly added table.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 fR 14870). One of the exampels (ii) of actions involving no significant hazards considerations relates to a change which constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. Another example (i) relates to a purely administrative change to the Technical Specifications. The proposed addition of the specification on cyclic and transient limits constitutes an additional limitation and fits example (ii) above. The proposed correction of the table number fits example (i) above. The Commission therefore proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corportion, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: August 2, 1985.

Description of amendment request: The amendment revises the TSs for Hatch Unit 2 to correct and clarify the hydrogen recombiner heater testing requirements of TS 4.6.6.2.b.4 by changing the word "phase" to "element" and changing the test value of 100×10^6 ohms to 1.0×10^6 ohms.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (i) of actions involving no significant hazards considerations relates to a purely administrative change to Technical Specifications. This change clarifies the fact that the vendor recommended heater to ground resistance reading of $1.0 \times 10_8$ ohms is unique to the heater elements. The present value of $100 \times 10_8$ ohms only applies to the resistance of cabling to ground, and as such, is not solely applicable to overall element integrity. This change is an administrative change similar to the example. The Commission therefore proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW. Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 19, 1985.

Description of amendment request: Requests approval of changes to the Appendix A Technical Specifications (TS) pertaining to the Post Accident Sampling System. These changes are to Section 6, Administrative Controls, and implicitly to the Table of Contents of the TS.

Basis for proposed no significant hazards consideration determination: On November 1, 1983, the staff issued Generic Letter (GL) 83–36, "NUREG–0737 Technical Specifications," which included guidance on technical specifications on the Post-Accident Sampling System (PASS), NUREG–0737 Item II.B.3. By letter dated June 19, 1985, the licensee has proposed changes to the TS which are new requirements pertaining to the PASS. These requested changes are to section 6, Administrative Controls, and implicitly to the Table of Contents identifying the new subsection of the TS. The proposed changes are to incorporate the guidance given in GL 83–36 into the TS.

The requested changes to the TS are an additional requirement not currently in the TS. Therefore, these requested changes are encompassed by the Commission's example (ii), provided in 48 FR 14870, of actions not likely to involve significant hazards considerations. Therefore, the staff proposes to determine that the requested action involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW. Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: July 22, 1985.

Description of amendment request: Requests approval of a change to the Appendix A Technical Specifications (TS) which is a new requirement pertaining to limiting overtime of station personnel. This change is to Section 6.2, Organization, Administrative Controls, of the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the TS. On January 10, 1983, the staff issued Generic Letter 83–02, "NUREG–0737 Technical Specifications," which included guidance on TS on NUREG–0737 Item I.A.1.3, Limit Overtime. The licensee (GPU Nuclear Corporation) responded

to GL 83–02 but did not submit TS to limit overtime. The staff reviewed the licensee's justification for not submitting TS to limit overtime and concluded that it did not meet the staff's interpretation of the Commission's policy in this area. The staff by letter dated May 30, 1985, requested that the licensee submit TS to limit overtime.

The licensee has proposed changes to the TS to incorporate the guidance in GL 83–02 on NUREG–0737 Item I.A.1.3 into the TS. The proposed change to the TS is an additional requirement not currently in the TS. Therefore, this proposed change is encompassed by the Commission's example (ii) and the staff proposes to determine that the requested action involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 31, 1985.

Description of amendment request: On June 4, 1984, the NRC issued a Safety Evaluation Report which supported exemptions to certain requirements of 10 CFR Part 50, Appendix R, Fire Protection Requirements, for Three Mile Island Unit 1. This requested Technical Specification change updates Table 3.18–1, Fire Detection Instruments, to include three locations where fire detection instrumentation has been added as a result of NRC acceptance of the exemption requests.

Basis for proposed no significant hazards consideration determination: The proposed amendment is in the same category as Example (ii) of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870) in that the change constitutes an additional control not presently included in the Technical Specifications. The addition of the fire detection instrumentation in the three locations will provide increased assurance that a fire will be detected at an early stage before significant damage has occurred. Therefore, the amendment is considered not to involve significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: May 8, 1985, as supplemented May 29, 1985.

Description of amendment request: The proposed amendments would permit operation after approval of changes to the plant's Technical Specifications (TS) that would assure compliance with Appendix I, 10 CFR Part 50, and 10 CFR 50.36a and 50.34a. These proposed TS are intended to ensure that releases of radioactive material to unrestricted areas during normal operation remain as low as is reasonably achievable. Specifically, the proposed TS define limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. These proposed TS would also incorporate into the TS the bases that support the operation and surveillance requirements.

Basis for proposed no significant hazards consideration determination: This proposed amendment falls into two categories for which the Commission (48 FR 14870) has provided examples of amendments not likely to involve significant hazards considerations. The Commission's examples include: (ii) A change that constitutes an additional restriction or control not presently in the TS and (vii) a change to make a license conform to changes in regulations. The new waste management requirements constitute additional limitations not currently in the TS (example (ii)). In addition, this proposed amendment has been put forward in response to the revised Appendix I to 10 CFR Part 50, making it a change in the TS to conform to changes in regulations (example (vii)). Therefore, the Commission proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: Edward J. Butcher, Acting.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: June 14, 1985 as supplemented August 7, 1985.

Description of amendment request: This proposed amendments provides Technical Specifications changes needed to support Cycle 9 operation of the Maine Yankee plant. This proposed amendment would: (1) Modify the Technical Specifications to reflect Cycle 9 power distributions, insertion limits, and peaking factors; (2) reflect the required fuel centerline design limit for each fuel type; (3) reflect replacement of part strength Control Element Assemblies (CEAs) with full strength CEAs; and (4) describe maximum reactor inlet temperature used in modified safety analyses.

Basis for proposed no significant hazards consideration determination: As discussed in *Maine Yankee Cycle 9 Core Performance Analysis* dated April 1985 (YAEC–1479), the fresh fuel assemblies used in Cycle 9 design are being manufactured by Combustion Engineering and are not significantly different than those previously used at Maine Yankee. This fuel design has been found acceptable to NRC in previous reload cores at Maine Yankee and at other facilities. The acceptance criteria for the Technical Specifications associated with the Cycle 9 design are the same as the acceptance criteria for the current Technical Specifications. The analytical methods used to demonstrate conformance of the Cycle 9 design have been previously found acceptable by the NRC except for minor modifications in methods employed for control element assembly (CEA) ejection and steam line break analyses. The methods used to analyze these events have been previously submitted to the NRC. The staff has recently approved the use of the modified method for CEA ejection analysis. The review of the steam line break methods analysis is near completion and its final approval will be required prior to the final issuance of the Cycle 9 Technical Specifications. The same methods have been previously applied by Yankee Atomic Electric Company on the Yankee plant in Rowe, Massachusetts.

Additional changes for Cycle 9 include the replacement of part-strength CEAs with full strength CEAs in the

non-scrammable locations in CEA bank 5 and an increase in the maximum allowable core inlet temperature from 550 °F to 552 °F. Both of these changes are evaluated in detail in the *Maine Yankee Cycle 9 Core Performance Analysis* dated April 1985.

As shown in the analysis, the changes associated with Cycle 9 do not affect the probability of an accident previously evaluated in the Maine Yankee Final Safety Analysis Report (FSAR). The effect of Cycle 9 operation on the consequences of accidents previously evaluated in the Maine Yankee FSAR is presented in the *Maine Yankee Cycle 9 Core Performance Analysis.* As shown in that analysis, the consequences of accidents previously evaluated have not significantly increased and continue to be well within applicable acceptance criteria.

The changes associated with Cycle 9 have been evaluated by the licensee and the staff agrees with the licensee's conclusion that the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The margin of safety of the Cycle 9 design is evaluated in the *Maine Yankee Cycle 9 Core Performance Analysis.* The thermal, thermal-hydraulic and physics characteristics of Cycle 9 are not significantly different from previous reload cores and thus the Cycle 9 design does not involve a significant reduction in a margin of safety.

In summary, the *Maine Yankee Cycle 9 Core Performance Analysis* does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. Therefore we propose to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: Edward J. Butcher, Acting.

Mississippi Power & Light Company, Middle South Energy, Inc., Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: July 12, 1985, as amended August 12, 1985.

Description of amendment request: The amendment would make five changes to the Technical Specifications as follows: (1) Figure 6.2.2–1, "Unit Organization" would be revised by replacing the Radiation Control Supervisor with two new supervisors—Radiation Control Supervisor, Operations, and Radiation Control Supervisor, Technical Support. (2) Table 3.8.4.2–1 "Primary Containment Penetration Conductor Overcurrent Protective Devices" would be revised by adding two circuit breakers for equipment needed to improve a ventilation system for a reactor water sample station inside containment. (3) Technical Specification 4.1.3.3, "Control Rod Scram Accumulators" would be revised by eliminating the upper limit of the setpoint on the low pressure alarm. (4) Table 3.3.7.9–1 "Fire Detection Instrumentation would be revised by adding four fire protection zones in the control building and their associated surveillance requirements. (5) Technical Specification 4.8.1.1.2, "Electrical Power Systems—AC Sources," would be revised by adding surveillance requirements for the automatic bypass of the diesel generator ground overcurrent trip upon receipt of an ECCS actuation signal.

Basis for proposed no significant hazards consideration: Change (1) is proposed to provide increased overview of radiological activities. The responsibilities of the current Radiation Control Supervisor would be divided between two new supervisors. The Radiation Control Supervisor, Operations would be responsible for radiological aspects of plant maintenance and operations activities. The Radiation Control Supervisor, Technical Support would be responsible for health physics support activities including dosimetry, radwaste, emergency planning, and radiation protection equipment. Both new supervisors would be qualified in and with requirements specified in the Final Safety Analysis Report, section 13. Because this change would not affect plant equipment design, safety criteria or safety analyses, would not change reponsibilities for supervision of radiation control, and would increase the overview of radiological aspects of plant operation and maintenance by using two qualified supervisors in place of one, this change does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, nor does it involve a significant reduction in a margin of safety.

Change (2) is proposed as the result of a design change to decrease airborne radioactive contamination at a reactor water sample station inside containment. A heater and fan would be added to the ventilation system at the sample station to improve filter efficiency. Circuit breakers would be included in the electrical circuits for the fan and the heater as overcurrent protection for the conductors which penetrate the containment. The breakers are designed and would be installed in accord with NRC regulatory requirements and industry codes and standards. Because the change merely adds two circuit breakers of a type already in use in the facility and which will be designed and installed in accordance with applicable regulatory requirements, and the change does not affect safety criteria or analyses, change (2) does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, nor does it involve a significant reduction in a margin of safety.

Change (3) is proposed to eliminate actuation of the low pressure alarm for the scram accumulators because of instrument drift in the conservative direction (higher actual pressure). The present setpoint is 1520+30−0 psig. The purpose of the low pressure set point is to ensure the minimum pressure in the accumulator necessary to scram the control rods.

Operation to date has resulted in spurious alarms due to drift of more than +30 psi between surveillance tests. The change would eliminate any upper limit on the setpoint, resulting in an alarm only if pressure was less than the setpoint value. Because safety equipment design, safety criteria or safety analyses are not affected, change (3) does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated. Since the safety function to actuate an alarm if accumulator pressure decreased below 1520 psig would not be changed, change (3) does not involve a significant reduction in a margin of safety.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. Changes (4) and (5) are similar to this example. Change (4) would add surveillance requirements to the Technical

Specifications for fire detection instruments in Unit 2 areas of the control building which contain safe shutdown electrical cables for Unit 1. Change (5) would add surveillance requirements for a safety related bypass of an operational related trip used to protect the diesel generator from ground overcurrent.

Accordingly, for the reasons cited above, the Commission proposes to determine that these five changes do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Elinor G. Adensam.

Mississippi Power & Light Company, South Mississippi Electric Power Association, Middle South Energy, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 12, 1985.

Description of amendment request: The amendment would make three changes in the Technical Specifications: (1) Change the names of two valves listed in Table 3.3.7.4–1 "Remote Shutdown Systems Controls" and four valves listed in Table 3.6.4–1, "Containment and Drywell Isolation Valves"; (2) designate a different valve in the residual heat removal (RHR) to reactor head spray line as reactor coolant system pressure isolation valve (Table 3.4.3.2–1) and as containment isolation valve (Table 3.6.4–1) and make associated changes in the listing of primary containment penetration conductor overcurrent protective devices (Table 3.8.4.1–1), and motor-operated valve thermal overload protection (Table 3.8.4.2–1), and; (3) add specifications in Table 3.3.3–1, "Emergency Core Cooling System (ECCS) Actuation Instrumentation" to incorporate interlock instrumentation which is designed to prevent inadvertent overpressurization of low design pressure emergency core cooling systems by the reactor coolant systems, and make associated changes in Table 3.3.3–3 "ECCS Response Times", Table 4.3.3.1–1, "ECCS Acutation Instrumentation Surveillance Requirements", Surveillance Requirement 4.4.3.2.2 "Reactor Coolant System Operational Leakage", Table 3.4.3.2–2 "Reactor Coolant System Interface Valves Pressure Monitors-Alarm", and Table 3.4.3.2–3 "Reactor Coolant System Interface Valves Pressure Interlocks".

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples (i) is a purely administrative change to Technical Specifications. Change (1) is similar to this example in that it is a change in nomenclature of valves to be consistent with plant nomenclature. Change (2) the designation of valve E12–F394 to serve as the inboard containment isolation valve, is an operational enhancement which would allow local leak rate testing of the inboard isolation valve without removing the drywell head and insulation. This change would reduce radiation exposure of personnel since the leak rate testing could be accomplished in a shorter time period. The previously designated valve, E51–F066, would be deleted from the list of containment isolation valves. Use of valve E12–F394 as the isolation valve also eliminates valve E12–F344 as a potential leakage path from the drywell so that valve E12–F344 would also be deleted from the list of containment and drywell isolation valves. Valve E12–F394 and the associated power and control circuits in the RHR to reactor head spray line where designed and installed in accordance with applicable industry and regulatory codes and standards and the GGNS quality assurance program. Therefore, the change is consistent with the licensing basis and the safety analyses. Because change (2) does not affect the isolation safety function, safety criteria or safety analysis and it would decrease personnel radiation exposure, this change does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, nor does it involve a significant reduction in a margin of safety. Change (3), the addition of Technical Specifications for interlock instrumentation on pressure isolation valves, is needed to implement a design change required by a license condition. The present compensatory requirement for leak tests of LPCS and LPCI check valves would be deleted. The design change would result in an increase of 51 °F in calculated peak cladding temperature to 2149 °F during a postulated loss of coolant accident because of a longer time required for LPCS and LPCI injection valves to open. The calculated peak cladding temperature of 2149 ° is still below the limiting 2200 °F required by 10 CFR 50.46, so the safety margin is not affected. The design change will be performed in accordance with appropriate regulatory and industry codes and standards, the GGNS quality assurance program, and applicable requirements of the GGNS FSAR. Therefore, the design change would be consistent with the licensing basis. Because change (3) will add requirements not presently included in the Technical Specifications which more than offset the removal of the compensatory leak test requirement, and because the change would result in the performance of the ECCS safety function without affecting the safety margin, this change does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, nor does it involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell, and Reynolds, 1200 17th Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Elinor G. Adensam.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 15, 1985, as supplemented by submittal dated July 11, 1985.

Description of amendment request: The original amendment request of May 15, 1985 was initially noticed on July 17, 1985 (50 FR 29012), and was submitted in response to NRC Generic Letter (GL) 84–15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," dated July 2, 1984. In this Generic Letter, the NRC staff identified cold fast starts of diesel generators as contributing to premature diesel engine degredation due to unnecessary wear. The NRC has concluded that the frequency of diesel generator fast start tests from ambient conditions should be reduced. Accordingly, the licensee, in the May 15, 1985 submittal, proposed to reduce the number of diesel generator tests required by Technical Specifications when the other diesel

generator is determined to be inoperable. The current Technical Specifications require a diesel generator to be tested immediately and daily thereafter when the other diesel generator is determined to be inoperable. The original amendment request would have retained the requirement for an immediate test but deleted the requirement for subsequent daily test starts. After discussions with the NRC staff, the licensee, by letter dated July 11, 1985, submitted a revision which would retain the requirement for an immediate diesel generator test and add a requirement for subsequent tests every three days thereafter.

Basis for proposed no significant hazards consideration determination: The licensee submittal of May 15, 1985 provided an evaluation of the initially proposed change and a basis for a proposed no significant hazards consideration determination. The revision submitted by letter dated July 11, 1985 represents a more stringent limitation than that initially proposed and is encompassed by the May 15, 1985 evaluation. The licensee has stated that the proposed change does not delete diesel generator operability requirements when one diesel generator is determined to be inoperable. Diesel generator fast start operability is still present to mitigate the consequence of a large loss of coolant accident coincident with a loss of offsite power. Diesel generator operabillity will still be demonstrated by monthly routine tests and immediately and every three days after one diesel generator is determined to be inoperable. The NRC staff has determined that excessive diesel generator testing contributes to premature engine degradation and that an overall improvement in reliability and availability can be gained by eliminating excessive fast starts. The licensee has stated that the proposed change that reduces the frequency of diesel generator testing is consistent with the objectives expressed in GL 84–15 and may therefore result in enhanced reliability.

Based on the above, the staff concludes that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because, although some diesel generator tests would be eliminated, operability is still demonstrated by other required surveillance tests. The reduced number of fast starts may, in fact, increase the probability of diesel generator availability in the event of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation and no physical modifications are required to be performed to the plant.

(3) Involve a significant reduction in the margin of safety. It is anticipated that any reduction in the margin of safety would be insignificant since the purpose of the proposed change is to conform to the NRC guidelines of GL 84–15. The recommendations in GL84–15 were promulgated to increase diesel generator reliability and thereby cause an increase in the overall margin of safety in the plant.

Based on the above evaluation, the staff finds that the criteria for a no significant hazards consideration determination, as set forth in 10 CFR 50.92(c), are met. The staff has, therefore, made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Branch Chief: Domenic B. Vassallo.

Pennsylvania Power & Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 24, 1985.

Description of amendment request: Effective January 1, 1984, the requirements contained in 10 CFR 50.72 and 10 CFR 50.73 replaced all existing requirements for licensees to report "Reportable Occurrences" as defined in individual plant Technical Specifications. The licensee has proposed to delete Action b in Section 3.3.7.9, "Fire Detection Instrumentation" of the Technical Specifications. Action b of Section 3.3.7.9 requires that the licensee:

> Restore the minimum number of instrument(s) to OPERABLE status within 14 days or, in lieu of any other report required by specification 6.9.1, prepare and submit a Special Report to the Commission pursuant to Specification 6.9.2 within 30 days outlining the action taken, the cause of the inoperability and the plans and schedule for restoring the instrument(s) to OPERABLE status.

This Technical Specification requires the licensee to restore instruments within 14 days or submit a special report. Based on the January 1, 1984 NRC rule change the reporting requirement is no longer applicable and neither are the references to 6.9.1 or 6.9.2 applicable since the appropriate sections pertaining to reporting requirements have already been deleted in accordance with this rule change. The requirement to restore the instruments is also no longer applicable since the Technical Specification as presently written does not require the licensee to restore the instruments within a specified length of time if a special report is submitted. The deletion of action b in its entirety poses no additional safety hazard since a fire watch must be established to inspect the zone(s) containing the inoperable instrument(s) within one hour. This requirement is specified in Action a of section 3.3.7.9. The deletion of Action b is merely the deletion of a reporting requirement because without a reporting requirement the restoration of inoperable instruments has no basis since it was the Licensee's option not to restore the instrumentation within a specified time but instead file a report. This proposed change is consistent with the January 1, 1984 NRC rule change.

Basis for Proposed No Significant Hazards Consideration Determination: The licensee in his letter dated June 24, 1985, stated that the proposed change does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in margin of safety. The NRC staff agrees with the licensee's evaluation in this regard and proposes to find that the change to the Technical Specifications does not involve a significant hazards consideration. The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration, example (vii) is a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The proposed change is encompassed by this example and therefore the NRC staff proposes to find that this change does not involve a significant hazards consideration.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: W. Butler.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: April 26, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to delete the requirement for demonstrating operability of the emergency diesel generators when the following systems are declared inoperable: Core Spray; Low Pressure Coolant Injection (LPCI) mode of the Residual Heat Removal (RHR) System, and Containment Cooling. The proposed amendment would also remove the diesel generators from the Limiting Conditions for Operation (LCO) for these systems when these systems are declared inoperable. In addition, the proposed revisions would change the diesel generator testing frequency from "once every 8 hours" to "once every 24 hours" when reserve power is unavailable from one or both off-site sources or, when one of the diesel generators is declared inoperable. The proposed amendment also contains several editorial changes.

Basis for proposed no significant hazards consideration determination: The proposed amendment was submitted in response to NRC Generic Letter (GL) 84–15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," dated July 2, 1984. In this generic letter, the NRC staff identified cold fast starts of diesel generator sets as contributing to premature diesel engine degradation due to unnecessary wear. The NRC has concluded that the frequency of diesel generator fast start tests from ambient conditions should be reduced. Specifically, GL 84–15 states the NRC position that requirements for testing diesel generators while emergency core cooling equipment is inoperable be deleted from Technical Specifications. Accordingly, the licensee proposed to delete from the FitzPatrick TS, requirements for diesel generator testing when it is determined that a core spray subsystem, residual heat removal pump, low pressure coolant injection subsystem, or containment cooling subsystem is inoperable.

The change in diesel generator testing frequency from once in 8 hours to once in 24 hours when reserve power is unavailable from one or both offsite sources or, when one of the diesel generators is declared inoperable, has been proposed by the licensee to further reduce the number of cold fast starts. Testing every 8 hours under these circumstances would not result in increased availability of the diesels. The FitzPatrick diesels have been shown to have a high reliability factor (two diesels have a factor of 1.0 and the other two diesels have a factor of 0.99). These factors have been determined in acordance with Regulatory Guide 1.108 "Periodic Testing of Diesel Generator units used as On-site Electric Power System of Nuclear Power Plants." Repeated testing at frequent intervals would have a detrimental effect on the engines, resulting in possible decreased availability.

Based on the above, the staff concludes that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because, although some diesel generator tests would be eliminated, operability is still demonstrated by other required surveillance tests. The reduced number of fast starts may, in fact, increase diesel generator availability in the event of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes introduce no new mode of plant operation or plant physical modifications.

(3) Involve a significant reduction in the margin of safety because the purpose of the proposed changes is to conform to the guidelines of GL 85–15, the recommendations of which were promulgated to increase diesel generator reliability and thereby cause an increase in the overall margin of safety.

Based on the above evaluation, the staff finds that the criteria for a no significant hazards consideration determination, as set forth in 10 CFR 50.92(c), are met. The staff has, therefore, made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Domenic B. Vassallo.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: April 7, 1981, as supplemented and revised November 14, 1983, and April 9, 1985.

Description of amendment request: This amendment would make changes to the Technical Specifications by adding to the list of required snubbers, providing surveillance requirements including frequency and acceptance criteria, and providing limiting conditions for operation for the facility should snubbers be inoperable. These changes were proposed to incorporate the provisions of the model Technical Specifications transmitted to all power reactor licensees in a letter dated November 20, 1980.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: ". . . (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; for example, a more stringent surveillance requirement." The changes proposed in the application for amendment are encompassed by this example in that the proposed change would add Limiting Conditions for Operation and surveillance requirements on existing and newly installed snubbers, and is thus similar to the example described above.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards considerations.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Southern California Edison Company, et al., Docket No. 50–362, San Onofre Nuclear Generating Station, Unit 3, San Diego County, California

Date of amendment request: May 9, 1985 (reference PCN–163).

Description of amendment: The proposed changes would revise San Onofre Unit 3 Technical Specifications 3.1.2.7, 3.1.2.8, and Bases 3/4.1.2. Technical Specifications 3.1.2.7 and 3.1.2.8 require borated water source operability and specify volume, temperature and boron concentration requirements which assure that sufficient negative reactivity control is available during each mode of facility operation. These technical specifications define the minimum boric acid tank water volume and temperature required as a function of the boric acid concentration. The proposed change increases the boric acid storage tank water volume specified by Technical Specification 3.1.2.7, consistent with the revised safety analysis associated with plant refueling and cycle 2 operation. In addition, the proposed change decreases the boric acid storage tank water volume/concentration specified in Technical Specification 3.1.2.8, but nevertheless maintains the reactivity control required for cycle 2 operation, as is demonstrated by the cycle 2 safety analysis.

Bases for Proposed no Significant Hazards Consideration Determination: The proposed changes to Technical Specifications 3.1.2.7 and 3.1.2.8 are similar to Example (iii) of 48 FR 14870, in that they result from a nuclear reactor core reloading where no significant changes have been made to the boration source acceptance criteria of the technical specifications, or to the analytical methodology used to demonstrate conformance to these criteria.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: May 17, 1985.

Description of amendment request: The purpose of the proposed amendment request is for deletion of the requirements for resistance testing of certain fuses whose function is to provide containment penetration conductor overcurrent protection, and deletion of the list of containment penetration conductor overcurrent protective devices (circuit breakers and fuses) from the technical specifications.

Basis for proposed no significant hazards consideration determination: The technical specifications currently require that, among other things, all containment penetration conductor overcurrent protection fuses shall be demonstrated operable at least once per 18 months by selecting and functionally testing a representative sample (10%) of each type of fuse on a rotating basis. The license amendment application addresses the fact that resistance checking of fuses only generates data that is not indicative of performance, and that routine removal of fuses for testing can result in damaging of the fuse holder and contact points. Based on these considerations, and the fact that the licensee proposes to establish a fuse inspection and maintenance program in lieu of field testing by resistance, the deletion of the requirements for resistance checking of these fuses will not involve a significant increase in the probability of fuse failure. Since the proposed deletion of field testing by resistance will not impact fuse integrity, will not affect the method of plant operation, and will not affect equipment important to safe operation, the proposed amendment does not create the possibility of a new and different accident from any previously evaluated. Since the resistance checking of fuses only generates data that is not indicative of performance, and the fact that resistance checking will be replaced by an inspection and maintenance program, the deletion of the requirements for resistance checking of these fuses will not significantly reduce any margins of safety.

The technical specifications also list the containment penetration conductor overcurrent protective devices (circuit breakers and fuses). The license amendment application also addresses the fact that the deletion of this list from the technical specifications shall in no way degrade compliance with the operability of the containment penetration conductor overcurrent protective devices since it is proposed that the list of these devices will be maintained in the appropriate plant procedures. However, maintaining the list in the procedures instead of in the technical specifications will allow the licensee to have the flexibility in the future to change the list as needed without requesting a technical specification change. Examples of such changes are the addition or deletion of circuits (and breakers) or the changing of a circuit to require a larger or a smaller breaker, as a result of a design change in the plant. On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. This part of the amendment request is similar to the example of a purely administrative change to the technical specifications. The list of containment electrical penetration protective devices will be administratively maintained at the plant rather than in the technical specifications, and this will in no way degrade compliance with the operability requirements of these devices.

Based on the foregoing, the requested amendment does not present a significant hazard.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: B.J. Youngblood.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: July 12, 1985.

Description of amendment requests: This amendment would delete the surveillance requirements on the Boron Injection Tank Level Instruments in Table 4.1 of the Technical Specifications. These surveillance requirements were removed from the Technical Specifications in Amendment Nos. 95 and 94 (dated February 24, 1984) to Operating Licenses Nos. DPR–32 and DPR–37, respectively, but were inadvertently included in Technical Specification Amendment Nos. 97 and 96 on Table 4.1–1 (dated June 19, 1984). This amendment would remove the surveillance requirement from the text previously deleted by Amendment Nos. 95 and 94.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing examples (48 FR

14870). One of the examples of actions not likely to involve a significant hazards consideration (Example i) states: "A purely administrative change to technical specifications: for example . . . correction of an error, or a change in nomenclature." The proposed change is similar to the example in that it is a correction of an error. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Washington Public Power Supply System, Docket No. 50–397, WNP–2 Richland, Washington

Date of amendment request: May 16, 1985.

Description of amendment request: This proposed amendment would revise the Technical Specifications for the Washington Public Power Supply System, Nuclear Plant No. 2 (WNP 2). The proposed revision, if approved, will change the Surveillance Requirement 4.8.1.1.2 and modify the minimum allowable voltage band on auto starting of Diesel Generators DG–1 and DG–2 making it consistent with the output breaker closure permissive setpoint.

As presently stated, the WNP–2 Technical Specification potentially allows the establishment of a condition that could preclude operation of the Diesel Generators unless additional operator action is taken. Design of the Division 1 and 2 generator output breakers will not allow closure of the breaker until the voltage is within 94% of rated voltage. The rated voltage is 4160 VAC and 94% of this value is 3910 VAC. The Technical Specifications, as currently written, require that the voltage must be 4160±420 VAC which is the range 3740 to 4580 VAC. When the voltage is in the lower part of this range, 3470 to 3910 VAC, it is within the current specification but too low to allow closure of the breaker. The minimum permissible voltage should be 3910 VAC. Thus, the voltage range on starting should be specified 4160+420, −250 VAC for DG–1 and DG–2. No change is necessary for DG–3.

The Supply System has reviewed this proposed change per 10 CFR 50.59 and determined that no unreviewed safety questions will result from this amendment. The staff concurs in that determination.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The example involving no significant hazards consideration include "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement." The proposed Technical Specifications amendment will impose a more stringent surveillance requirement and eliminate a potential possibility that the Diesel Generators 1 and 2 will fail to provide power when required. Because the amendment will result in an improvement of plant safety and because the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds Esquire, Bishop, Cook, Liberman, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Walter R. Butler.

Washington Public Power Supply System, Docket No. 50–397, WNP–2 Richland, Washington

Date of amendment request: July 9, 1985.

Description of amendment request: This proposed amendment would revise the Technical Specifications for the Washington Public Power Supply System, Nuclear Plant No. 2 (WNP–2). The proposed revision, if approved, would amend Administrative Controls, section 6.2.3, of the Technical Specifications to alter and make more flexible the composition of the Nuclear Safety Assurance Group (NSAG).

The Technical Specification 6.2.3.2 as presently written reads,

> The NSAG shall be composed of a least five, dedicated, full-time engineers, a minimum of three located on site and two at the home office. Each shall have a bachelor's degree in engineering or related science and at least 2 years professional level experience in his field, at least 1 year of which experience shall be in the nuclear field.

The Supply System proposes to modify the first sentence so as to *allow* one or two members of the NSAG to be located at the home office without *requiring* such location for precisely two of the group. In addition, this amendmend will correct a typographical error in a previously granted amendment, Amendment No. 11.

The Supply System has reviewed this change per 10 CFR 50.59 and determined that no unreviewed safety questions will result from this amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The example involving no significant hazard consideration include (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature. Although not precisely in accord with the specific examples cited, the change in the requirement for the location of each member of the NSAG is a purely administration detail consistent with the intent of the Commission's guidance, and the Technical Specifications and it is without safety significance. The error correction is precisely a cited example. Therefore the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists. Accordingly the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds Esquire, Bishop, Cook, Liberman, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Walter R. Butler.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 11, 1985.

Description of amendment request: License amendment would provide consistency between 10 CFR Part 50 Appendix J and Kewaunee Technical Specifications (TS) in regard to containment air lock testing and provide the air lock between-the-seal pressure in this TS.

Basis for proposed no signficant hazard consideration determination: The Commission has provided guidance for the application of the standard in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards consideration. An example of an action involving no significant hazards consideration is a change that relates to (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. That portion of the change which added a between-the-seals pressure to the TS served to make the TS as consistent with 10 CFR Part 50 Appendix J section III.D.2.(b)(iii). Therefore, the change provided for consistency in the TS a encompassed by example (i).

The remaining portion of the TS change, maintaining containment integrity after air lock doors are opened, involved changing the TS to agree with the requirements of 10 CFR Part 50 Appendix J in regard to requiring leak testing within three days of being opened. Therefore, the change provided for consistency in the TS as encompassed by example (i).

Since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determinatin that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the folllowing amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.21(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of application for amendment: March 24, 1985.

Brief description of amendment: The amendment deleted all the radiological parts of Appendix B to the Facility Operating License (Environmental Technical Specifications).

Date of issuance: August 9, 1985.

Effective date: August 9, 1985.

Amendment No.: 68.

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20969 at 20970).

The Commission's related evaluation of the amendment is contained in a letter dated August 9, 1985.

No significant hazards consideration comments received. No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of applications for amendment: October 16, 1984 and November 9, 1984 as modified February 8, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to reflect changes in the reporting requirements outlined in 10 CFR 50.72 and 50.73 and the guidance provided in our Generic Letter 83-43. It also modifies the administrative section of the Technical Specifications to recognize changes in title, plant organization, and the Operating Review Committee membership and responsibilities.

Date of issuance: August 14, 1985.

Effective date: August 14, 1985.

Amendment No.: 88.

Facility Operating License No. DPR-35. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 23, 1985 (50 FR 3048 and 50 FR 3049) Subsequent to the initial notice in the **Federal Register**, the Boston Edison Company, by letter dated February 8, 1985, provided Technical Specification pages which more closely follow the wording of the Standard Technical Specifications. These modifications do not change the substance of the amendment. An additional change was proposed in the letter, relative to review of the Fire Protection Plan, which is not included in this amendment and will be resubmitted by Boston Edision. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, North Street, Plymouth, Masachusetts 02360.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: April 9, 1985.

Brief description of amendment: The amendments change the Technical Specifications (TS) to permit loading of up to four fuel bundles around each source range monitor, if needed, in order to obtain the required minimum count rate.

Date of issuance: August 6, 1985.

Effective date: August 6, 1985.

Amendment Nos.: 89 and 114.

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 21, 1985 (50 FR 20971).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: May 18, 1983.

Brief description of amendment: The amendment revises the Technical Specifications to delete section 6.14, "Environmental Qualification," and to remove the reference to section 6.14 from the records section of the technical specification. The current requirements for environmental qualification are contained in 10 CFR 50.49.

Date of issuance: August 12, 1985.

Effective date: August 12, 1985.

Amendment No. 64.

Facility Operating License No. DPR–61. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 21, 1985 (50 FR 20973). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: September 5, 1984.

Brief description of amendments: The amendments revise the Technical Specifications to add leak rate limits and test requirements for the automatic depressurization system.

Date of issuance: August 5, 1985.

Effecitve date: August 5, 1985.

Amendments Nos.: 111 and 50.

Facility Operating Licenses Nos. DPR–57 and NPF–5. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 21, 1984 (49 FR 45951).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: November 19, 1984.

Brief description of amendments: The amendments modify the Technical Specification Limiting Conditions for Operation and Surveillance Requirements relating to snubbers.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendments Nos.: 112 and 51.

Facility Operating Licenses Nos. DPR–57 and NPF–5. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 7987).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 29, 1982 supplemented by letters dated April 18, 1983, November 29, 1983 and February 12, 1985.

Brief description of amendments: This amendment made editorial changes to accurately describe reactor trip system instrumentation. By letter dated February 12, 1985, the licensee withdrew other proposed changes to update organization charts and position titles, duties, and committee assignments of plant personnel. The latter changes are the subject of separate proposed license amendments; see 50 FR 7991 issed February 27, 1985.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendments Nos.: 85 and 71.

Facilities Operating License Nos. DPR–58 and DPR–74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 22, 1983 (48 FR 28580).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: December 17, 1984, supplemented by letter dated June 4, 1985.

Brief description of amendments: The amendment changes the Technical Specifications to update the offsite organization chart, and organization and responsibilities of the Plant Nuclear Safety Review Committee (PNSRC) and the Nuclear Safety and Design Review Committee (NSDRC), to update the reporting requirements addressed by the recent revision to 10 CFR 50.73, to revise the containment isolation value listing, to correct an error in one reference to the battery electrolyte temperature for surveillance, and to make a number of editorial changes. Proposed changes by the licensee to delete the offsite committee's review of the meeting minutes of the onsite committee and to add a provision to allow committee changes without prior NRC review and approval are still under discussion with the licensee.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendment Nos.: 87 and 73.

Facilities Operating License Nos. DPR–58 and DPR–74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 7991).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: May 10, 1985, supplemented by letter dated June 20, 1985.

Brief description of amendments: The amendments revise the Technical

Specifications relating to the electrical power systems and in response to the NRC Generic Letter No. 83–28, add surveillance requirements to periodically test the undervoltage trip attachments and shunt trip attachments. The changes to the electrical power system more precisely identify the required battery banks, define the full electrolyte level as up to the bottom of the maximum level indication mark, define shutdown for battery service tests to be MODES 5 and 6, for Unit 1 eliminate a surveillance pertaining to battery recharging time to be consistent with the Unit 2 requirements, eliminate the battery service test if a performance discharge test is performed, delete a footnote which designates when AC power sources are turned off or on, and as a result of a design change in the critical reactor instrumentation distribution design, deleted references to tie breakers and standby circuits to connect battery trains.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendments Nos.: 86 and 72.

Facilities Operating License Nos. DPR–58 and DPR–74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1985 (50 FR 27506).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Mississippi Power & Light Company, Middle South Energy, Inc., Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 15, 1985.

Brief description of amendment: The amendment modifies the Technical Specifications to implement a reorganization of the Personnel Department.

Date of issuance: August 7, 1985.

Effective date: August 7, 1985.

Amendment No. 3.

Facility Operating License No. NPF–29. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1985 (50 FR 27506).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–245 and 50–336, Millstone Nuclear Power Station, Unit No. 1 and Unit No. 2, New London County, Connecticut

Date of application for amendment: May 18, 1983.

Brief description of amendment: The amendment revised the Technical Specifications to delete section 6.13, "Environmental Qualification"; to renumber the following sections in the Technical Specifications; and to remove a reference to the deleted section from the Records section of the respective plant technical specifications. The current requirements for environmental qualification are contained in 10 CFR 50.49.

Date of issuance: August 12, 1985.

Effective date: August 12, 1985.

Amendments Nos. 105 and 103.

Provisional Operating License No. DPR–21 and Facility Operating License No. DPR–65: These amendments revised the Technical Specifications for Millstone Unit 1 and Unit 2.

Date of initial notices in **Federal Register:** May 21, 1985 (50 FR 20984) and June 4, 1985 (50 FR 23548).

The Commission's related evaluation of the amendments is contained in Safety Evaluations dated August 12, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: March 15, 1985.

Brief description of amendment: The amendments remove the Training Supervisor from the Facility Organization Charts, Figure 6.2.2, of the Millstone 1 and 2 technical specifications. The Training Supervisor now reports to the corporate Director of Nuclear Training. This change is the result of the implementation of a corporate Nuclear Training Department and is part of a consolidation of nuclear training responsibility under the corporate Director of Nuclear Training.

Date of issuance: August 6, 1985.

Effective date: August 6, 1985.

Amendment No.: 104 and 102.

Provisional Operating License No. DPR–21 and Facility Operating License No. DPR–65. These amendments revised the Appendix A Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16007).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: March 28, March 29 (3) and April 4, 1985.

Brief description of amendment: These amendments change the Technical Specifications to: (1) Delete a reference to a Station Emergency Procedure with minor changes in wording; (2) delete specific footnotes for Cycle 5 refueling and operations; (3) add a footnote to delete a requirement for containment atmosphere particulate and gaseous radiation monitors to be in operation during Type "A" integrated leak rate testing; (4) revise a surveillance requirement to make Diesel Generator Testing consistent with requirements of Generic Letter 83–30; and (5) revise a surveillance requirement to delete the physical description of trisodium phosphate dodecahydrate.

Date of issuance: August 2, 1985.

Effective date: August 2, 1985.

Amendment No.: 101.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (FR 50 20969 at 20984) (3 notices) and June 4, 1985 (50 FR 23543 at 23549) (2 notices).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: February 22, 1985.

Brief description of amendment: The amendment changes the Technical Specifications to revise the function and membership of the Safety Review Committee and clarify the responsibility of the Plant Operating Review Committee.

Date of issuance: August 9, 1985.

Effective date: August 9, 1985.

Amendment No.: 94.

Facility Operating License No. DPR–59. Amendment revised the Technical Specifications.

Date of intital notice in **Federal Register:** April 23, 1985 (50 FR 16010).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: October 31, 1984.

Brief description of amendment: The amendment modifies the function and membership of the Safety Review Committee (SRC) of the Power Authority of the State of New York for Indian Point 3.

Date of issuance: August 8, 1985.

Effective date: August 8, 1985.

Amendment No.: 60.

Facilities Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of intital notice in **Federal Register:** December 31, 1984 (49 FR 25371).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Southern California Edison Company, Docket No. 50–206, San Onofre Nuclear Generating Station, Unit No. 1, Diego County, California

Date of application for amendment: December 13, 1984, as supplemented January 16, 1985 and revised April 10, 1985.

Brief description of amendment: This amendment: (1) Modifies portions of the Radiological Effluent Technical Specifications that were issued by Amendment 79 to the license, (2) updates former Section 5.8 of the enviromnental Technical Specifications (TS) and redesignates this section as Section 6.19 of the Appendix A TS, and (3) deletes the remaining portion of the Appendix B TS.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendment No.: 90.

Provisional Operating License No. DPR–13: Amendment revised the Technical Specifications and the license.

Date of intital notice in **Federal Register:** May 21, 1985 (50 FR 20990).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: San Clemente Public Library, 242 Avenida Del Mar, San Clemente, California 92672.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: December 13, 1984.

Brief description of amendment: The amendments change the Technical Specifications to delete certain review requirements of the Plant Operations Review Committee.

Date of issuance: August 9, 1985.

Effective date: 90 days from the date of issuance.

Amendment Nos.: 120, 115 and 91.

Facility Operating License Nos. DRP–33, DRP–52 and DRP–68. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12164).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 30, 1985.

Brief description of amendment: Revises Administrative Controls Technical Specifications.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendment No. 65.

Facility Operating License No. DRP–43: Amendment revised the Technical Specifications.

Date of intitial notice in **Federal Register:** July 3, 1985 (50 FR 27511).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Wisconsin, Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any rquired hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need to be prepared for these amendments. If the Commission has prepared and environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By September 27, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determnation that the amendment involves no significant hazards consideratio, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) (342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Arizona Public Service Company, et al., Docket No. STN 50–528, Palo Verde Nuclear Generating Station, Unit No. 1, Maricopa County, Arizona

Date of application for amendment: July 12, 1985.

Brief descriptionof amendment: This amendment authorized a one time only change in Technical Specification 3.4.5.2, Action Statement b, to allow an additional 72 hours in hot standby before proceeding to cold shutdown. This additional time was requested to determine the pathway of leakage under conditions of temperature and pressure more conducive to detection.

Date of Issuance: August 5, 1985.

Effective Date: July 12, 1985.

Amendment No.: I.

Facility Operating License No.: NPF–41.

Amendment revised the Technical Specifications.

Press release issued requesting comments as to proposed no significant hazards Consideration No.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated August 5, 1985.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Indiana and Michigan Electric Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: July 18, 1985 and July 19, 1985, as supplemented by letter dated July 3, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to reflect revised heatup and cooldown, and low temperature (cold) overpressure protection through twelve effective full power years of reactor operation.

Date of issuance: August 9, 1985.

Effective date: August 9, 1985.

Amendment No.: 88.

Facility Operating License No. DPR–58. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. FRN 50 30319 dated July 25, 1985.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated August 9, 1985.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Bethesda, Maryland, this 22nd day of August 1985.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Acting Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 85–20592 Filed 8–27–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 373]

Commonwealth Edison Co.; Consideration of Issuance of Amendments to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing (La Salle County Station, Unit 1); Correction

AGENCY: Nuclear Regulatory Commission.

ACTION. Correction.

SUMMARY: This document corrects the data that the License may file a request for a hearing with respect to the issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene.

SUPPLEMENTARY INFORMATION: In FR Doc. 85–20143 appearing on page 33875 in the issue of Wednesday, August 21, 1985, make the following correction:

Page 33876, middle column, second full paragraph, change the comment expiration date to September 20, 1985.

Approved: August 23, 1985.

Andrew Bates,

Acting Secretary.

[FR Doc. 85–20589 filed 8–27–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14691; 812–6172]

Merrill Lynch Multi-State Tax-Exempt Series Trust; Notice of Application for Exemptive Order Relating to Contingent Deferred Sales Charge

August 22, 1985.

Notice is hereby giving that Merrill Lynch Multi-State Tax-Exempt Series Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on August 7, 1985, requesting an order of the Commission pursuant to section 6(c) of the Act, exempting Applicant (which currently has one portfolio, Merrill Lynch New York Municipal Bond Fund ("Fund")) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the Trust to assess a contingent deferred sales charge ("CDSC") on certain redemptions of the Fund's shares, as described below, and to permit the Trust to waive the CDSC in certain cases. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below, and to the Act for the text of the applicable statutory provisions.

According to the application, Applicant is organized as a Massachusetts business trust. Fund Asset Management, Inc., a wholly-owned subsidiary of Merrill Lynch Asset Management, Inc., is the adviser to the Fund, while Merrill Lynch Funds Distributor, Inc., also a wholly-owned subsidiary of Merrill Lynch Asset Management, Inc., is the principal underwriter for the Fund ("Distributor").

Applicant proposes to offer the Fund's shares without an initial sales charge so that investors will have the entire amount of their purchase payments fully invested when made. However, Applicant also proposes to pay to the Distributor of the Fund's shares a CDSC from the proceeds of certain redemptions of it shares. Applicant states that in no event could the amount of such charges, in the aggregate, exceed 4% of the aggregate purchase made by an investor.

Applicant represents that the CDSC will not be imposed on the redemptions of Fund shares that were purchased more than four years prior to redemption or which were derived from the reinvestment of distributions. Also, with respect to shares purchased during the preceding four years, no CDSC will be imposed on amounts representing capital appreciation. Applicant states that for purposes of determining whether a CDSC will be imposed, it will be assumed that a redemption, applies first to shares purchased more than four years prior to the redemption, then to shares derived from the reinvestment of distributions, and, finally, to shares purchased less than four years prior to the redemption. Where a CDSC is imposed, the amount of the charge will depend upon the number of years elapsed since the investor made the purchase payment from which an amount is being redeemed. The first year after purchase, the charge will be four percent of the amount redeemed. Thereafter, the charge will decrease one percent annually until the expiration of five years, at which time no charge will be imposed. Applicant states that, in determining the rate of any applicable CDSC, it will be assumed that a redemption is made of Fund shares held by the investor for the longest period of time within the applicable four-year period.

Applicant proposes to finance the Fund's distribution expenses pursuant to a plan adopted under Rule 12b–1 under the Act ("Plan"). Under the proposed Plan, the Fund will pay an annual fee to the Distributor in order to defray certain costs incurred in connection with the offering of the Fund's shares. Applicant's distribution fee will be calculated on the basis of .50% per annum of the average daily net assets of the Fund.

As noted above, Applicant proposes to waive the CDSC on any redemption following the death or disability of a

shareholder. An individual will be considered disabled for this purpose if he meets the definition thereof set forth in section 72(m)(7) of the Code. Applicant states that the waiver is applicable where the decedent or disabled person is either an individual shareholder or owns the shares with his or her spouse as a joint tenant with right of survivorship, and where the redemption is made within one year of the death or initial determination of disability.

Applicant also proposes to waive the CDSC when a total or partial redemption is made in connection with certain distributions from IRA's or other qualified retirement plans. It is proposed that the charge be waived for any redemption in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59–½. The charge would also be waived on any redemption which results from the tax-free return of an excess contribution pursuant to section 408(d)(4) of the Code, or from the death or disability of the employee.

Applicant submits that the exemptions it has requested are appropriate and in the public interest, consistent with the protection of investors and the purposes fairly intended by the Act. Applicant further submits that waiver of the contingent deferred sales charge under the above-described circumstances will not harm Applicant or its remaining shareholders or purchasers. Additionally, Applicant represents that it will fully disclose the waiver provision in the Fund's prospectus. Applicant therefore, requests that the Commission issue an order under section 6(c) as requested. Applicant further requests that, to the extent it organizes further series utilizing a contingent deferred sales charge similar to that of the Fund, such future series be covered by the requested order.

Notice is further given that any interested person wishing to request a hearing on the Application may, not later than September 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the Application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–20530 Filed 8–27–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22343; File No. SR–Phlx–85–24]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to Foreign Currency

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 9, 1985 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX") proposes the following amendments to its rules:

1025(a)–(e) No change.

1025(f) An individual who is subject to the regulatory jurisdiction of this Exchange shall not, from any place of business located in the United States effect on an exchange in a foreign country any transaction in foreign currency option contracts. This rule shall not prohibit any transaction permissible under Section 4c of the Commodity Exchange Act and the regulations thereunder.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

This rule change is being proposed in conjunction with the application of the Options Clearing Corporation ("OCC") to amend its rules to implement an agreement between PHLX, OCC and the London Stock Exchange ("LSE"). This agreement provides for the trading of fungible currency option contracts by PHLX and LSE, to be commonly cleared by and settled through OCC. The instant rule proposal requires that individuals within PHLX's regulatory jurisdiction not effect from any place of business located in this country, a transaction on a foreign exchange in foreign currency options. In proposing this rule, the PHLX states its intention that its agreement with LSE and OCC does not alter its membership's obligations with respect to Section 4c of the Commodity Exchange Act.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received by the PHLX concerning the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 18, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20532 Filed 8-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22349; File No. SR-ODD-85-1]

Self-Regulatory Organizations; Trans Canada Options, Inc., the Toronto Stock Exchange, the Montreal Exchange, and the Vancouver Stock Exchange; Order Granting Approvals to Proposed Amendments to Option Disclosure Document

On August 1, 1985, Trans Canada Options Inc., ("TCO"), the Toronto, Montreal and Vancouver Stock Exchanges ("Exchanges") submitted amended copies of an options disclosure document to the Commission pursuant to Rule 9b-1 of the Securities Exchange Act of 1934 ("Act"). The disclosure document discusses the risks and uses of Canadian exchange-traded put and call options available to United States investors. On October 2, 1984, the Commission approved the use and distribution of a disclosure document which discusses the risks and uses of options on equity securities.[1] In connection with the Exchanges' intention to expand the classes of options available to United States investors, the disclosure document is now being amended to include a discussion of the risks and uses of Canadian exchange-traded index and bond options. Currently, TCO is offering options on three separate series of Government of Canada bonds traded on two of the Exchanges. In addition, two of the Exchanges trade options on stock indexes.

Rule 9b-1 provides that an options market must file five preliminary copies of an options disclosure document with the Commission at least 60 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors. This provision is intended to permit the Commission either to accelerate or extend the time period before definitive copies of a disclosure document may be distributed to the public.

The Commission has reviewed the amended disclosure document, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the disclosure document as of the date of this order.[2]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 21, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20531 Filed 8-27-85; 8:45 am]

BILLING CODE 8010-01

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2194, Amdt. #1]

Pennsylvania; Declaration of Disaster Loan Area

The above numbered Declaration (50 FR 30555) is hereby amended to include the East Deer Township and Borough of Tarentum in Allegheny County. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on September 19, 1985, and for economic injury until the close of business on April 19, 1986.

Dated: August 21, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

James C. Sanders,

Administrator.

[FR Doc. 85-20459 Filed 8-27-85; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Amendment of Notice Regarding Public Hearings

The purpose of this notice is to amend the notice of August 7, 1985 (50 FR 31943) concerning hearings pursuant to the general review of the U.S. Generalized System of Preferences and the acceptance for review of requests for waiver of competitive need limits.

Section I(1) of the August 7 notice stated that the deadline for submission of rebuttal briefs is December 15, 1985. As December 15 falls on a Sunday, rebuttal briefs will be accepted through December 16, 1985.

Section I(2)(C) of the August 7 notice incorrectly stated that determinations relating to section 504(d) of the Trade Act of 1974, as amended, would be announced no later than January 4, 1987 and take effect on July 1, 1987. The notice should have stated that any changes in GSP eligibility relating to determinations under section 504(d) will be announced on or about April 1, 1986 and take effect on July 1, 1986.

Section II of the August 7 notice incorrectly identified case numbers GR-W-267 (TSUS 771-45) and GR-W-272 (TSUS 772.3195) as having been accepted for review. Neither case has been accepted for review.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85-20494 Filed 8-27-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application for an All-Cargo Air Service Certificate

In accordance with Part 291 (14 CFR Part 291) of the Department's Economic Regulations, notice is hereby given that the Department of Transportation has received an application, Docket 43270, from Direct Air Aviation Services, Inc., 712 South Victory Boulevard, Burbank, California, 91502 for an all-cargo air service certificate to provide domestic cargo transportation.

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[1] Securities Exchange Act Release No. 21365 (October 2, 1984), 49 FR 39400 (October 5, 1984).

[2] Rule 9b-1 provides that the use of an options disclosure document shall not be permitted unless the options class to which the document relates is the subject of an effective registration statement on Form S-20 under the Securities Act of 1933. On April 17, 1985, the Commission, pursuant to delegated authority, declared effective Post-Effective Amendment No. 5 to TCO's Form S-20 registration statement covering the options described in the Listed Canadian Options Disclosure Document. *See* File No. 2-69458.

Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer to this application within twenty-one (21) days after publication of this notice in the **Federal Register**. An executed original and six copies of such answer shall be addressed to Docket 43270, Documentary Services Division, Room 4107, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Department's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Dated: August 23, 1985.

Paul L. Gretch,

Director, Office of Aviation Operations.

[FR Doc 85-20534 Filed 8-27-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Department Circular; Public Debt Series No. 28-85]

Treasury Notes of November 15, 1990; Series M-1990

Washington, August 21, 1985.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,250,000,000 of United States securities, designated Treasury Notes of November 15, 1990, Series M-1990 (CUSIP No. 912827 SR 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may also be issued at the average price of Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 3, 1985, and will accrue interest from that date, payable on a semiannual basis on May 15, 1986, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations govening United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a latter date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, August 28, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 27, 1985, and received no later than Tuesday, September 3, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commerical banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amont offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the prive equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of

price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, September 3, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 29, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, September 3, 1985. When payment has been submitted with the tender and the purchase price of the Notes alloted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be regisered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to 'The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying numaber as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitve form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-20520 Filed 8-27-85 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 26-85]

Treasury Notes, Series Y-1987

Washington, August 22, 1985

The Secretary announced on August 21, 1985, that the interest rate on the notes designated Series Y-1987, described in Department Circular—Public Debt Series—No. 26-85 dated August 15, 1985, will be 8⅞ percent. Interest on the notes will be payable at the rate of 8⅞ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-20536 Filed 8-27-85; 8:45 am]

BILLING CODE 4810-40-M

Iran-U.S. Claims Tribunal; Amendment of June 7, 1982 Directive License to the Federal Reserve Bank of New York, Relating to the Payment of Awards Rendered

August 21, 1985.

The Department of the Treasury today issued an amendment to the June 7, 1982 Directive License to the Federal Reserve Bank of New York (the "Fed") relating to the payment of awards rendered by the Iran-United States Claims Tribunal (the "Tribunal"). The Directive License, which was published at 47 FR 25243 (June 10, 1982), instructed the Fed to deduct two percent from amounts received in satisfaction of awards rendered by the Tribunal in favor of U.S. claimants, to pay the two percent to the Treasury to the credit of miscellaneous receipts, and to pay the balance of amounts so received to the claiments designated by the awards.

On July 31, 1985, Congress passed, and on August 16, 1985, the President signed, the Foreign Relations Authorization Act for Fiscal Years 1986 and 1987, Pub. L. 99-13, title V of which deals with claims against Iran. Section 502 of this legislation directs the New York Fed to deduct one and one-half percent from the first $5 million awarded on each claim, and one percent from any amount over $5 million, as reimbursement to the United States Government for expenses incurred in connection with the arbitration of claims of U.S. nationals against Iran before the Tribunal and the maintenance of the

Security Account established pursuant to the Declarations of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981. The Treasury Department has amended the Directive License to make it consistant with this legislation.

By its terms, section 502 is effective as of June 7, 1982, the date of the Directive License. Consequently, the Treasury Department will be refunding to those claimants that have received awards paid from the Security Account the difference between the two percent already deducted and the one and one-half/one percent fee specified in section 502 of Pub. L. 99–93. There is no need for claimants to file any request for a refund. The Treasury Department will be making these refunds automatically and expeditiously.

TO: Federal Reserve Bank of New York,
Fiscal Agent of the United States

The June 7, 1982 Directive License (47 FR 25243, June 10, 1082), providing for deductions from awards rendered by the Iran-U.S. Claims Tribunal and payment of awards to U.S. claimants is hereby amended as follows:

1. In the Preamble, delete "the authority of the Independent Office Appropriations Act (31 U.S.C. 483(a))".

2. Delete numbered Paragraphs 1, 2 and 3 and insert in lieu thereof:

As amounts are received from the Security Account provided for in the Declaration of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981, for the execution of arbitral awards, including interest thereon, by the Iran United States Claims Tribunal (the "Tribunal") in favor of United States claimants, to pay the balance of such amounts, immediately following deduction pursuant to section 502 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. 99–93 ("Section 502"), to the U.S. Claimants designated by the awards as recipients, without further deduction or alteration of the amounts.

3. Add at the end of the Directive License:

In making the deductions specified in section 502, FRBNY shall apply the formula set forth in Section 502 to the aggregate amount awarded under each enumerated claim before the Tribunal. Where the Tribunal renders more than one award in one enumerated claim, FRBNY shall aggregate those awards in calculating the deduction under section 502. Where the Tribunal renders one award covering more than one enumerated claim without specifying the amount awarded in each enumerated claim, FRBNY shall calculate the fee based on the total amount awarded. Where, however, the Tribunal renders an award covering more than one enumerated claim and specifies the amounts awarded with respect to each of the enumerated claims covered by the award, such amounts shall not be aggregated and FRBNY shall calculate the fee separately for each such amount.

Treasury Department.

Dated: August 21, 1985.

John M. Walker, Jr.,

Assistant Secretary, (Enforcement and Operations).

[FR Doc. 85–20556 Filed 8–27–85; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that such a submission has been made. USIA is requesting approval of an information collection requiring the submission of concept papers by the public for conducting a program of instruction for Afghan citizens in the development of independent media services.

DATE: Comments must be received by September 20, 1985.

Copies: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485–8676. And OMB review: Michael Weinstein, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395–4814.

SUPPLEMENTARY INFORMATION: Title: "Request for Concept Papers—Afghan Media Project." The Congress, in the 1985 Supplemental Appropriations Act, has authorized funds for use by USIA in promoting an independent media service for the people of Afghanistan, and the training of Afghans in the media and media-related professions. The Congress also requires a report by USIA within 60 days of enactment regarding the obligation of funds for this program.

Dated: August 22, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85–21493 Filed 8–27–85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a revision and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 28, 1985.

Dated: August 23, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Revision

1. Department of Veterans Benefits
2. Request for Verification of Employment
3. VA Form 26–8497
4. On occasion
5. Businesses or other for-profit
6. 275,000 responses
7. 45,833 hours
8. Not applicable

[FR Doc. 85–20564 Filed 8–27–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 167
Wednesday, August 28, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:00 p.m. on Friday, August 23, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available for the payment of insured deposits made in The Bank of Bronson, Bronson, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Friday, August 23, 1985.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 23, 1985.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-20630 Filed 8-26-85; 12:08 pm]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, September 3, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20602 Filed 8-26-85; 8:45 am]

BILLING CODE 6210-01-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-37]

TIME AND DATE: 2:00 p.m., Wednesday, September 11, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
5. Investigation No. 701-TA-257 (Preliminary) (Groundfish from Canada)—briefing and vote.
6. Investigations Nos. 731-TA-278/281 (Preliminary) (Certain cast-iron pipe fittings from Brazil, Korea, and Taiwan)—Briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20603 Filed 8-26-85; 9:01 am]

BILLING CODE 7035-02-M

4

LEGAL SERVICES CORPORATION

(Board of Directors)

Tentative Meeting Schedule

SUMMARY: This notice sets fourth revisions in the tentative schedule of meetings of the Board of Directors of the Legal Services Corporation through December 1985 published in the **Federal Register** April 5, 1985. This schedule is tentative and subject to change. Formal notice as required by the Government in the Sunshine Act (5 U.S.C. 552b) will be published in the **Federal Register** no less than seven days prior to a meeting.

September 5-6
Washington, D.C.
October 10-11
Gilford, New Hampshire
November 7-8
El Paso, Texas
December 12-13
Santa Ana, California

FOR FURTHER INFORMATION CONTACT: Dennis Daugherty, Acting Secretary, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005. (202/272-4040).

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is a District of Columbia nonprofit corporation created and funded by Congress pursuant to the Legal Services Corporation Act as amended, 42 U.S.C. 2996. The Board of Directors has established three standing committees. The three standing committees are those on Audit and Appropriations, Operations and Regulations, and Provisions for the Delivery of Legal Services. Meetings of committees of the board will usually be scheduled during the time periods set aside for Board business on this tentative schedule, but additional meetings may be scheduled as necessary. This schedule is a tentative one and is subject to change. It is being published for the convenience of the public and not pursuant to statutory requirement.

Date issued: August 23, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-20631 Filed 8-26-85; 12:14 pm]

BILLING CODE 6820-35-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 26, September 2, 9, and 16, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 26

No Commission Meetings

Week of September 2—Tentative

Tuesday, September 3

2:00 p.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

Wednesday, September 4

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Continuation of 7/23 Discussion on Threat Level and Physical Security (Closed—Ex. 1)

Thursday, September 5

10:00 a.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 6

9:30 a.m.
Oral Presentations on Timing of DOE's Preliminary Determination on Suitability of Sites for Development as Repositories (Public Meeting)

Week of September 9—Tentative

Tuesday, September 10

10:00 a.m.
Discussion and Oral Presentations on Uranium Mill Tailings Regulations (Public Meeting) (tentative)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, September 11

1:30 p.m.
Discussion of Proposed Station Blackout Rule (Public Meeting)

3:00 p.m.
Discussion of Plant Issues with Regional Administrators (Public Meeting)

Thursday, September 12

2:00 p.m.
Staff Briefing on TVA (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 13

10:30 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

Week of September 16—Tentative

Tuesday, September 17

2:00 p.m.
Status of Progress on Environmental Qualification of Electrical Equipment (Public Meeting)

Wednesday, September 18

9:00 a.m.
Continuation of 7/24 Briefing on Davis-Besse (Public Meeting)

10:30 a.m.
Status of Interpretation of Appendix R—Fire Protection (Public Meeting)

Thursday, September 19

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Dated: August 22, 1985.

Julia Corrado,

Office of the Secretary.

[FR Doc. 85-20695 Filed 8-26-85; 3:43 pm]

BILLING CODE 7590-01-M

6

POSTAL SERVICE

(Board of Governors)

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Thursday, September 5, 1985, in Washington, D.C., and at 8:30 a.m., on Friday, September 6, 1985, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington D.C. As indicated in the following paragraph, the September 5 meeting is closed to public observation. The September 6 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245-3734.

By telephone vote on August 23 and 26, 1985, a majority of the Members contacted and voting, the Board voted to take up at a meeting closed to the public on September 5, 1985, the following item:

(1) Discussion of personnel matters.

The Board of Governors determined that, pursuant to section 552b(c)(6) of Title 5, United States Code, and section 7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest does not require the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of Title 39, code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(6) of Title 5, United States Code, and section 7.3(f) of Title 39, Code of Federal Regulations.

Agenda

Thursday Session—September 5, 1985–1:00 p.m. (Closed)

1. Discussion of personnel matters.

Friday Session—September 6, 1985–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 5–6, 1985.
2. Remarks of the Postmaster General.
3. USPS Tentative Budget Program.
   (Mr. Cummings, Senior Assistant Postmaster General, Finance Group, will present the Postal Service's tentative budget program for fiscal year 1986.)
4. Board of Governors Operating Budget, FY [illegible].
   (Mr. Harris, Secretary for the Board, will present a proposed operating budget for the Board of Governors for fiscal year 1986.)
5. Postal Rate Commission Budget.
   (Under the Postal Reorganization Act, the Postal Rate Commission periodically prepares and submits to the Postal Service a budget of the Commission's expenses. The budget is to be considered approved as submitted if the Governors of the Postal Service do not act to adjust it by unanimous written decision. This matter is included on the agenda to give the Governors an opportunity to act on the Commission's budget.)
6. Consideration of Proposed Board Resolutions:
   a. Borrowing in FY 85.
   b. Cooperation with the Postal Rate Commission.
   c. FY 86 Preferred Mail Rates.
7. Update on International Mail.

(Mr. Duka, Assistant Postmaster General, International Postal Affairs Department, will report on international mail operations.)

8. Capital investments:
   a. Computerized On-Site Data Entry Systems (CODES).
   b. Aurora, Illinois (New Main Post Office and Vehicle Maintenance Facility.)
   c. Five- and Seven-ton Cargo Vans.
9. Report of the Regional Postmaster General.
   (Mr. Horgan, Regional Postmaster General, will report on postal conditions in the Eastern Region.)
10. Briefing on the Safety Program.
   (Mr. Howard, Director, Office of Safety and Health, will report on the Postal Service's Safety Program.)
11. Consideration of Tentative Agenda for the September 30-October 1, 1985, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 85-20674 Filed 8-26-85; 2:44 p.m.]

BILLING CODE 7710-12-M

federal register

Wednesday
August 28, 1985

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 611
Foreign Fishing; Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41049-5104]

Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS revises the general regulations governing foreign fishing within the fishery conservation zone (FCZ), 50 CFR Part 611, Subparts A and B. This action is necessary because the regulations no longer reflect current and projected operations of the fisheries; enforcement efforts are detecting an increasing number of sophisticated and severe violations of the regulations; and amendments have made the regulations disjointed, contradictory, and increasingly difficult to use. The revision will bring the regulations in line with current practices in the fisheries, reduce illegal fishing and associated losses of resources and revenue, and simplify and improve the utility of the regulations.

EFFECTIVE DATE: October 28, 1985, with the following exceptions, which will become effective January 1, 1986:

In § 611.5(c)(1)(ii) and (iii) and (c)(2)(ii), and (iii), the requirement for deployed gear to have "a light visible for two miles in good visibility, and a radio buoy;"

All of § 611.6(b) [the old § 611.6(e) remains in effect until superseded by this regulation];

All of § 611.6(d)(3) [The old § 611.6(c)(3) remains in effect until superseded by this regulation]; and

All of § 611.9 [The old § 611.9 (a) through (d), (h) and (i) and Appendix III to § 611.9 remain in effect until superseded by this regulation].

ADDRESS: Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: LCDR William D. Chappell, USCG, or Alfred J. Bilik, at 202-634-7432.

SUPPLEMENTARY INFORMATION: NMFS revises Subparts A and B of the foreign fishing regulations issued under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.)* (Magnuson Act). The revision updates the regulations to reflect changes in the Magnuson Act, including the requirements for 100 percent observer coverage aboard foreign fishing vessels (FFV's); meets enforcement needs for preventing or curtailing sophisticated violations of the regulations; reflects the shift in foreign activity from directed fishing towards joint ventures with U.S. fishing vessels; conforms more closely to foreign fishing operations; clarifies existing regulations and practices; and eliminates redundancies.

This revision reorganizes almost every section of the two affected subparts. Some sections are moved and others consolidated or deleted. One section is added. Along with substantive changes, the reorganization makes the regulations more usable by putting related provisions together and making headings more descriptive. Subparts A and B serve as the foundation upon which to build management measures contained in the subsequent subparts. Redundant requirements contained in those subparts are deleted or revised by a companion technical amendment. A distribution table is included to enable cross-referencing from the current regulations.

Background

Proposed rules were published at 49 FR 50498 on December 28, 1984. This action incorporates final regulations on 1985 poundage fees published at 50 FR 460 on January 4, 1985, and 1985 permit fees published at 50 FR 8335 on March 1, 1985. It also incorporates final regulations on a supplementary observer program published at 50 FR 8131, on February 28, 1985. Interim regulations requiring payment of financial assurances under certain conditions were published at 49 FR 14356 on April 11, 1984, and are included. These interim rules are published here in final form.

Public Law 97-453 amended the Magnuson Act to allow recreational fishing by foreign vessels which are not operated for profit within the FCZ. This action defines recreational fishing for the purposes of this part, and adds a section which exempts foreign recreational fishing from Federal permit procedures and other foreign fishing regulations. Foreign recreational fishing vessels must conform with other Federal regulations and with State regulations governing recreational fishing as though they were domestic vessels.

NMFS has observed an increase in the number of serious, systematic violations of these regulations over the last several years. The presumed motives for these violations are to catch quantities of fish in excess of the allocations without having the fishery closed, and to avoid paying poundage fees, which have increased more than 250 percent since 1980, on the excess catch.

In calendar year 1983 enforcement personnel documented 54 infractions of the reporting requirements and 87 infractions of recordkeeping requirements. Violations of these regulations resulted in the seizure of six FFV's. In calendar year 1984, enforcement personnel documented 103 infractions of the reporting requirements, and 56 infractions of the recordkeeping requirements. These categories of infractions are most often associated with "under logging" violations. The violations consist of falsely representing the amount of catch by failing to log the catch, logging more valuable species as less valuable ones, or using an incorrect product recovery rate to compare the product in the vessel's holds to the amount of whole fish reported caught, thus making the catch seem smaller than it actually was; transferring fish to another vessel and recording nothing or only part of it; or some combination of the above. These violations may involve conspiracy among several vessels and companies and falsification of or failure to make required reports. In one case involving numerous vessels over a two-year period more than 4,000 metric tons of catch went unrecorded, resulting in a loss to the United States of almost $100,000 in poundage fees.

These regulations are designed to prevent or reduce the potential damage of these systematic "underlogging" violations. In doing so the regulations specify responsible parties, tighten and specify new reporting requirements, and make logkeeping requirements more explicit. These regulations have the additional benefit of making the job easier for enforcement personnel by consolidating and standardizing information requirements which will reduce boarding time per vessel and allow more boardings for any given length of time.

Since the last complete revision of these regulations, the foreign fishing activity in the FCZ has shifted significantly from directed fishing for allocations to joint ventures assisting U.S. fishing vessels by processing and transporting their catch. In 1984, joint ventures in the FCZ accounted for a catch of 665,000 metric tons, a tenfold increase from 1980 and equivalent to 48 percent of the foreign catch. Because joint ventures are becoming the predominant foreign fishing activity within the FCZ, and have already become so in the Northwest Atlantic fishery and the Pacific Coast groundfish fishery, these rules address joint ventures specifically. Specific conditions and restrictions for joint venture permits are codified in the regulations. Other procedures which have become industry practice by mutual agreement between fishing vessel operators and NMFS are also codified to provide clear and firm

guidance to foreign joint venture fishermen and to provide for the enforcement of these practices.

These rules also clarify Agency practice and procedures for restricting certain foreign fishing permits for the national defense or security when such interests could be significantly impaired unless the permits were so restricted.

The rules conform with present FFV operations as much as possible, consistent with management requirements. The required information is similar if not identical to records currently kept by FFV's. This has minimized recordkeeping on the part of foreign fishing vessel owners and operators without compromising the information requirements needed to ensure complete and accurate reporting of catch.

NMFS revised these regulations to be more readable and to be more useful to foreign fishermen and enforcement personnel. They are generally written in the active voice, and specify the person or level which NMFS expects to complete the requirement. The regulations consolidate and expand the appendices at the end of Subpart A for the convenience of the user. Unnecessary provisions within the regulations and provisions of specific fisheries which are redundant due to their incorporation as general regulations and references to the subparts revised in these regulations are deleted by a companion technical amendment.

The definition of "fishing" in § 611.2 has been changed from the proposed definition by reinserting the phrase used in the current regulations, "fish over which the United States exercises exclusive fishery management authority." The U.S. asserts jurisdiction over support activities conducted in the FCZ only if the supported harvest activity involves fish under U.S. management authority. Because transfers of fish in the FCZ—though the fish may have been taken elsewhere—have occasionally created enforcement problems, § 611.3(a)(1)(ii) has been added. That paragraph states a rebuttable presumption that fish on board a vessel conducting fish transfer operations in the FCZ are fish over which the U.S. exercises exclusive fishery management authority. Thus vessels involved in transfer activities in the FCZ are required to have a permit issued under § 611.3, unless they can prove the fish were taken outside the FCZ. A definition of "fish over which the United States exercises exclusive fishery management authority" has also been added to § 611.2.

Changes from the current 50 CFR Part 611 are discussed below. NMFS has made editorial changes reflecting spelling, punctuation, and nomenclature throughout the regulations which are not identified specifically.

Comments

NMFS received comments from 20 individuals and organizations. The following summarizes the comments received and NMFS' response to these comments.

Comments 1: Most commenters requested that the revised regulations not be implemented until January 1, 1986, the next fishing year for most fisheries and the beginning of the next permit year. One commenter requested that the final regulations be published not later than September 1985 (a minimum of two months prior to their implementation). The reasons for requesting delayed effectiveness included:

1. The time required for fishermen to become familiar with the revisions;
2. The time necessary to prepare and learn to use the new types of logbooks;
3. The time required to obtain new pilot ladders where FFV's are not already equipped with one meeting the standards;
4. The time required to obtain and install required communications equipment and modify equipment for new radio frequencies; and
5. An allowance for incorporating any changes to the regulations necessitated by revisions to the Magnuson Act, due for re-authorization this year.

Response: The comments are adopted in part. The majority of these regulations are effective 60 days after publication to allow sufficient time for translation and transmittal to the foreign fishing fleets. The provisions which require revised recordkeeping, specific equipment, or equipment modifications are effective January 1, 1986. The action was not delayed to await the re-authorization of the Magnuson Act because of the desire to make the regulations, especially the ones affecting observers and reports, effective as soon as possible for safety and enforcement reasons, and because the changes in the Magnuson Act during re-authorization are not expected to substantially change the methods of regulating foreign fishing. Publishing the regulations now also allows foreign fishermen adequate time to prepare logbooks and install equipment before they are required in the next permit year.

Comment 2: It is not altogether clear what latitude the Regions have in deviating from Subpart A. We hope that, as in the past, we may refine requirements to meet the needs of our particular fisheries.

Response: The regulations of Subpart A are meant to be the minimum requirements for FFV's fishing within the FCZ. Subparts C through G are meant to be used by the NMFS Regions and the Regional Fishery Management Councils to implement Preliminary Management Plans and Fishery Management Plans and modify Subpart A to reflect the needs of each particular fishery. These modifications may change or be more or less restrictive than Subpart A, as necessary to manage the fishery.

Comment 3: Are vessels which have been exempted from certain reporting requirements under Subpart D, § 611.61(e)(2) required to submit the new reports?

Response: Vessels which report under the requirements of Subpart D § 611.61(e)(2) will continue to report under the same exemptions. Technical amendments implementing the changes to Subpart A in the other subparts are limited to revising the references, deleting redundant requirements now included in Subpart A, and moving fishery-specific provisions to the appropriate subpart.

Section 611.2

Comment 4: The definition of the term "Exclusive Economic Zone" (EEZ) should be deleted since the term EEZ is not used in the Magnuson Act or elsewhere in the text of the foreign fishing regulations.

Response: The definition of the term EEZ is retained to allow for cross-referencing to the Governing International Fishery Agreements (GIFA's), which nations must have prior to obtaining fishing permits for their vessels, and which contain the general conditions governing fishing off the United States.

Comment 5: The term "joint venture" is broadly and adequately defined in the first sentence of the definition. The second sentence, while it does in fact reflect present circumstances, is superfluous to the definition.

Response: NMFS agrees the first sentence alone gives an adequate definition. However, the second sentence is retained as an example of the most common type of joint venture.

Comment 6: The definition of "prohibited species" in § 611.2 should match that of § 611.11(c).

Response: The definition is revised to include species caught or received in excess of an allocation or authorization as prohibited species.

Comment 7: The definition of "processing" should be revised to clearly allow a vessel to process fish for itself.

Response: The definition is revised.

Comment 8: The definition of "recreational fishing" was the subject of two comments. The first suggested that the term "FFV" be changed to "foreign vessel." The second suggested that the definition, as stated, might mean that the activities of scientific research vessels would fall under the definition of recreational fishing.

Response: The proposal to substitute the term "foreign vessel" for "FFV" is accepted. Scientific research is not fishing according to the definition of fishing in these regulations; moreover, scientific research is now specifically excluded from the definition.

Comment 9: Several commenters expressed concern that harassment of observers was difficult to define or determine, particularly because of differences in cultures. One commenter recommended a definition for sexual harassment to clarify what constitutes that form of harassment.

Response: The definition is substantially adopted. The key word in the definition is "unwelcome", which is simply communicated and clear to all cultures.

Section 611.3

Comment 10: Several comments on § 611.3(b) expressed concern that owners and operators would be held responsible for unauthorized criminal acts committed by their employees. Commenters suggested several remedies, from removal of the paragraph to limiting owners and operators to strictly civil responsibility.

Response: NMFS does not intend nor does U.S. law allow for holding employers criminally responsible for unauthorized criminal acts of their employees. However, owners and operators continue to be civilly responsible for their FFV's while in the FCZ, as required by the Magnuson Act and the GIFA signed by their nation and the United States, which controls foreign access to the FCZ for fishing. The paragraph is revised to clearly limit owners and operators to civil responsibility for actions of their agents and employees. Owners and operators remain responsible for their own actions, which may result in criminal prosecution under the Magnuson Act.

Comment 11: The definition of "activity code 4" is unclear. It should be amended to include the language now found in the regulations because activity codes 1 through 3 do not specifically refer to receipt of U.S.-harvested fish and may cause uncertainty in the future.

Response: The activity codes are unchanged; however, the definitions of processing, scouting, and support now contain specific references to assisting U.S. fishing vessels.

Comment 12: The language at the end of the first sentence of § 611.3(c) that reads "as modified by regulations of this part, and by the conditions and restrictions attached to the permit" should be deleted. This language is unclear, and does not indicate what is modified.

Response: Paragraphs (c) and (e)(vi) have been revised by adding references to what "conditions and restrictions" and "additional restrictions" might contain. The language makes it clear that a permit may be modified.

Comment 13: Section 611.3(d) should be eliminated. Frequently there is a need to substitute different vessels at the last minute, and the requirement of filing a new application for the substituted vessel would be burdensome.

Response: Requiring substitute vessels to go through the normal application process is not new; only the requirement to pay the application fee is new. The change reflects the fact that it costs as much to process a substitute application as an original application. The Regional Fishery Management Councils generally require only notification of substitute vessel applications rather than a complete review. Paragraphs (d)(1) and (d)(4) have been revised to more clearly reflect this process. NMFS expects this process to take less than a week for routine substitutions.

Comment 14: A new paragraph should be added under § 611.3(e)(1) which would require the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) to determine that the FFV applying for a permit has no history of violating provisions of fishery management plans.

Response: The comment is not adopted. While violation history may be considered in the permit approval process, decisions concerning individual permit approvals/disapprovals have customarily been made under the provisions of 15 CFR Part 904 as a form of sanction (see § 611.3(i)). These decisions are generally made in response to the violations, rather than later during the permit approval process.

Comment 15: Paragraph (e)(1)(ii) of § 611.3 should be revised to reflect the scope of the Secretary's authority in imposing financial assurances.

Response: The paragraph is revised to clarify that § 611.22 governs the determination and imposition of all fees, surcharges and financial assurances.

Comment 16: If the blank forms referred to in § 611.3(e)(2) are not available, may the previous year's forms be modified as an interim measure? Additional restrictions to permits should also be distributed in time to be able to transmit them to the FFV's by the opening of the fishing season.

Response: Paragraph (e)(2) is modified to authorize the Assistant Administrator to allow for use of old permit forms at his discretion. NMFS anticipates continued problems with timely distribution of additional restrictions due to the short time period available to evaluate applications and the extensive reviews required by the Councils and the NMFS regions. Telex or facsimile copies of the additional restrictions are acceptable as attachments to the permit form.

Comment 17: In § 611.3(e)(3)(ii) "authorized fisheries" should read "permitted fisheries" to reduce confusion with "authorized species" in joint ventures. A new paragraph (v) should be added which requires a permit to contain such specific permitting information as is required by the regulations of a fishery management plan regulating the authorized fishery or a fishery for prohibited species which are taken as bycatch in the authorized fishery.

Response: "Authorized fisheries" is changed to "permitted fisheries" in § 611.3(e)(3)(ii). A new § 611.3(e)(3)(v) is unnecessary since regulations for the specific fishery or additional restrictions appended to the permit could cover any additional required information.

Comment 18: The second sentence of § 611.3(i) should be amended to clarify that due process is required before imposing sanctions on permits.

Response: Section 611.3(i) is revised to clearly identify that 15 CFR Part 904 is used in permit suspension and revocation.

Comment 19: Several commenters objected to the shortening of the comment period and deletion of the hearing provisions regarding permit modifications contained in the old § 611.3(i). They felt these actions would be a violation of due process, and impossible to meet, given translation and transmittal time constraints. One commenter felt the provision could be construed as an erosion of the procedural rights of permit holders under 15 CFR 904.300, Subpart D.

Response: The current procedures are retained in part. Publication in the **Federal Register** and a 30-day comment period are retained for written comments on proposed additional restrictions for permit holders, other

interested parties, and the public. The opportunity for an informal hearing is not retained, because neither the Administrative Procedure Act nor the Magnuson Act requires such a hearing for permit modifications, and the provision has never been used.

Comment 20: Does the 15-day deadline on submitting changes to application information required by § 611.3(k) begin on the date of the change, or the day immediately after the event occurred? Please clarify what NMFS deems to be a change in ownership. For example, if a vessel is jointly owned by several owners, would sale of a minority owner's interest to the remaining owners constitute a "change in ownership" within the meaning of § 611.3(k)?

Response: The calculation of the 15 calendar-day requirement does begin with the day after the change, as suggested. Paragraph (k)(1) has been revised to reflect the change. In determining ownership, NMFS is primarily interested in those individuals or companies who are actually controlling the FFV. NMFS considers the owner of an FFV to be the person (or company) owning more than 50 percent of the vessel or, in the case of several owners with no person owning more than 50 percent, the person owning the largest percentage of the vessel. Charterers and operating companies controlling the vessel are considered equal in liability to owners for the purpose of reporting changes in charters and operations agreements.

Section 611.4

Comment 21: The proposed § 611.4 imposes serious communications burdens upon FFV's especially those operating in the FCZ off Alaska. It would drastically increase the number and type of telegraph and radio communications as compared with present requirements. Because of problems entirely beyond the control of foreign fishing vessels, it is not possible to meet these requirements. Some of the problems follow:

a. Coast Guard communications facilities in Alaska are inadequate to handle the increased radio traffic and stringent time requirements required by the proposed regulations.

b. The radio operators of many small fishing vessels have not obtained radio licenses for such international communications as communications between commercial facilities in the United States and foreign fishing vessels.

c. Many small fishing vessels are equipped with only limited communications facilities which would be inadequate to reach the Kodiak Communications Facility from some portions of the operating areas if the proposed regulations are implemented as drafted.

d. Due to environmental conditions off Alaska, especially in the summer and during daylight, communications with the Coast Guard communications facility in Kodiak are difficult.

e. At certain times, the very volume of communications to the Kodiak Coast Guard Communications Facility has made it impossible to transmit on a timely basis. While foreign fishing vessels are attempting to transmit these messages, they cannot conduct other radio communications of importance to their fishing operations, such as receiving weather forecasts, home office facsimile communications, or essential operating communications with other foreign vessels.

f. Emergency communications involving ship safety, such as sudden shifts of weather and sea conditions, rightfully have priority over routine operational communications. During these times, radio frequency 500 KHZ becomes unavailable to other foreign fishing vessels for many hours at a time.

g. Most fishing vessels have only a single radio operator onboard. This further reduces their ability to transmit required messages at all times. If the new regulations are implemented, the workload for compliance will increase so substantially that it will be virtually impossible for these radio operators to conduct other necessary radio communications beyond those specifically required by § 611.4.

h. The number and quantity of messages required by the existing regulations have increased year by year. Current reporting requirements include action reports, weekly observer reports, reports on observer embarkation and debarkation, and other reports. Since 1983, a weekly report on PSC catch has been added to the weekly observer report. The implementation of 100 percent observer coverage has also substantially increased the radio transmission requirements.

i. As the number and quantity of messages have increased year by year, the number of misreceived and mistransmitted radio messages by U.S. communication facilities have also increased, requiring foreign vessels to retransmit messages.

Response: The final regulations represent the minimum reporting requirements which NMFS considers necessary to manage the foreign fisheries in an environment where some foreign fishermen have consistently used the previous reporting requirements to avoid boardings and audits of their records disclosing amounts of fish they have on board. NMFS has also tried to minimize the impact of these regulations on fishing operations by relaxing some restrictions included in the proposed rules.

Regarding the problems with communications off Alaska, the facilities at Coast Guard Communications Station Kodiak are adequate for the use for which they were intended, namely, to handle emergency communications with all vessels and Coast Guard and NMFS routine communications with foreign fishing vessels regarding observers and other enforcement and management matters. Communications Station Kodiak is not now and has never been considered to be the sole avenue of communications between FFV's and the Coast Guard and NMFS in Alaska in competition with commercial facilities there and elsewhere. The Coast Guard and NMFS prefer that reports be made via commercial facilities wherever possible, particularly due to the environmental conditions and high traffic load. However, to reduce the traffic through Kodiak, § 611.4(b) is revised to allow the alternate use of other Coast Guard Communications facilities when necessary.

There are currently at least seven commercial stations in the U.S. and Canada that are capable of conducting communications with foreign vessels and retransmitting information to NMFS and the Coast Guard using either 500 KHZ or Telex. There are additional facilities in the FFV's home countries and elsewhere.

NMFS understands increased license, personnel, and radio equipment requirements, if necessary, represent an increase in the cost of doing business in the U.S. FCZ. NMFS considers such cost necessary to adequately manage the foreign fisheries. NMFS has tried to minimize the impacts by reducing time constraints in some cases and allowing for combined reports wherever possible. However, NMFS considers FFV's fishing independently within the U.S. FCZ to be conducting an international voyage, and capable of communicating with commercial U.S. communications facilities as well as U.S. government facilities. The legislatively mandated 100 percent observer coverage, with the attendant increase in message traffic, report transmittal, and port calls, makes these requirements even more necessary.

Comment 22: The reporting requirements of § 611.4 should not apply to the Northwest Atlantic Fishery, since

existing regulations in § 611.50 have already established extremely severe restrictions for that fishery which have made efficient fishing operations difficult.

Response: The reporting requirements, as presented in this final rule, are appropriate for the Northwest Atlantic Fishery. They are tailored to accommodate joint ventures, which represent the large majority of foreign fishing effort in that fishery. Joint ventures are not limited to the "fishing windows" restricting directed fishing; therefore new recordkeeping and reporting areas needed to be established. The new requirements reflect the additional restrictions currently attached to joint venture permits.

Comment 23: Foreign fishing vessel operators have no control over the delivery of messages, as required by § 611.4(b), once they are transmitted off the FFV. The requirement to assure delivery of BEGIN and CEASE messages should be dropped. Reports should be considered delivered when they are transmitted to any U.S. communications facility.

Response: The Coast Guard and NMFS have determined time of delivery to be when the message is receipted for by a Coast Guard communications facility or when delivered to the appropriate Coast Guard or NMFS office via Telex. Since Coast Guard and NMFS offices have 24-hour automatic Telex receivers, the time of transmittal of the Telex is essentially the time of delivery. Commercial radio facilities, which forward messages via Telex or other means, advertise and may guarantee time of delivery of messages once delivered to their facility. The FFV operator has the responsibility to transmit reports, by whatever means, so that they are delivered on time. NMFS realizes that a report may be misplaced and not forwarded by a servicing communications facility in a timely manner, or that it might be garbled in retransmission. In these rare circumstances NMFS will consider the situation as mitigating circumstances in determining any appropriate legal action.

Comment 24: The requirement to use Telex or radiotelegraphy is burdensome and may require vessels to install radiotelegraphy equipment and add a radio operator to the crew.

Response: FFV operators are not required to transmit reports via Telex or radiotelegraphy unless their vessel is equipped to do so. However, voice reports to the Coast Guard or NMFS must be in English (see § 611.4(b)). Voice reports are not encouraged because of their susceptibility to garbles in transmission. Reports may be transmitted to the designated representative by voice for retransmittal via Telex.

Comment 25: It is unclear in § 611.4 (b) and (g) who are the actual recipients of the reports. You should develop a table to show where each report should go.

Response: The second and third sentences of § 611.4(b) and Table 2 to Appendix A have been revised and a new Table added to Appendix A to clarify the addresses of reports.

Comment 26: The use of Telex as prescribed in § 611.4(b) is neither appropriate nor practical in many cases. The Telex message must be sent from the FFV to a radio communication station in the home country, and from there to the individual company which operates that vessel. There may be additional need for inquiry between the FFV and the company before the messages can then be transmitted to the United States. It will take at least two days to accomplish the transmission, more when weekends are involved, and even more if the particular companies are located far from large cities.

Response: The above method, although cumbersome, is certainly adequate for the transmittal of weekly reports, which are due four or more days after the end of the week. It seems that FFV operators who are authorized by their company to transmit information directly to the Coast Guard could also be authorized to transmit to a radio communication station in the home country for retransmittal to the Coast Guard and NMFS via Telex. If the FFV operator wanted to send the information in code, such as the results of a transfer, it could be encoded on the FFV, transmitted to a shore station for forwarding to the company representative or the nation's designated representative, who could then decode it and retransmit it to the Coast Guard and NMFS via Telex. Because transmittal and receipt of Telex messages are essentially instantaneous, such a system avoids a possible ten-hour delay in transmittal of the message through Coast Guard Communications Station Kodiak, as mentioned in the comments.

Comment 27: Activity reports required under § 611.4(c) should include a confirmation code at the end to ensure accurate transmission of the message.

Response: The comment is accepted and incorporated as part of the instructions on completing vessel activity reports in Appendix B to Subpart A. While it will increase the length of messages, it will reduce the time required for transmission, especially for radiotelegraph messages, by reducing the number of errors requiring the retransmittal of a message.

Comment 28: Several commenters requested the deletion of the 48-hour advance delivery requirement for BEGIN and CEASE reports under § 611.4(c) and a return to the 24-hour advance delivery requirement for a variety of reasons related to FFV operations and equipment.

Response: The circumstances generating the proposal for a 48-hour advance report no longer exist; BEGIN and CEASE reports are still required within 24 hours of transmittal. The advent of full observer coverage has stopped a practice by some FFV's of avoiding boardings by shifting out of an area whenever an enforcement unit appeared in the area. Observer coverage has reduced their opportunity to underlog their catch, and routine reports by observers have more accurately established the positions for subsequent boardings prior to those FFV's departures from the FCZ.

Comment 29: An arrival message ten days in advance of an FFV's entry into the FCZ, included in previous drafts of the proposed regulations, would help to ensure that an observer would be available, and would avoid unnecessary expense in travel money if the ship was either delayed or canceled. The required effort plans would not alleviate the need for this type of message.

Response: The effort plan required by § 611.8(b) requires notification of any variation over five days. This, plus informal notification of arrivals by designated representatives, should provide sufficient advance notice of FFV arrivals to place observers on them expeditiously. If it does not, NMFS will reconsider the requirement for an arrival message specifying only the day and place of entry of the FFC into the FCZ.

Comment 30: Section 611.4 should indicate what vessel reports are required for fishing vessels entering the FCZ from the high seas to participate in joint ventures in internal waters or for fishing vessels engaging in fishing immediately after joint venture activities in the FCZ or internal waters. The section does not clearly state when the message must be sent.

Response: The DEPART report described at § 611.4(c)(2) has been revised to include joint ventures in internal waters as a reason for a temporary departure from the FCZ and to clarify when it must be sent. An FFV which begins a joint venture in internal waters without first fishing in the FCZ would not be required to send any reports. An FFV subsequently beginning fishing in the FCZ must submit a BEGIN

report as though the FFV were first entering the FCZ.

Comment 31: Change § 611.4(c)(4) to allow an FFV to shift fishing areas even though a consolidated SHIFT report for fishing along a boundary area has already been submitted for that day.

Response: The comment is incorporated in § 611.4(c)(4). The intent of the revision is to allow some flexibility in reporting for FFV's fishing along fishing area boundaries, not to limit their ability to shift fishing areas.

Comment 32: If the JV OPS messages of § 611.4(c)(5) are not received, is directed foreign fishing assumed, even though the FFV is not permitted for directed fishing?

Response: NMFS considers an FFV which has not submitted a START JV OPS report to be engaged in, processing for, or supporting directed foreign fishing, as allowed by its permit. An FFV which will be used exclusively in a joint venture must still submit JV OPS messages prior to and after conducting those operations, as well as the other reports. This information is critical to the management of the fisheries in determining daily catch rates for particular species, especially those incidental catch species with very low quotas.

Comment 33: Both CHANGE reports required under § 611.4(c)(10) and CANCEL reports required under § 611.4(c)(11) require transmission and delivery prior to the date and time of the event in the original message. This requirement is impractical and should be eliminated. Even if the communications channels were adequate to handle this traffic, often changes in plans must be made at the very last minute, and there is no reasonable opportunity to notify U.S. authorities in advance. The CHANGE report should be made applicable to all reports within § 611.4.

Response: CHANGE reports have been revised to allow for submission of reports under the same time constraints as the original report. CANCEL reports have been revised to require only transmittal of the report prior to the date and time of the reported event. Changes to reports after the event may be considered a violation, to prevent FFV operators from submitting revised reports just prior to boardings in an attempt to justify illegally caught fish on board. If legitimate errors in reports are discovered, FFV operators should still submit CHANGE reports to preclude more serious violations. NMFS will consider mitigating circumstances, such as errors in transmission or addition, in the submission of late reports. Section 611.4(f) has been revised to provide a method of correcting weekly reports.

Comment 34: The time limit for transmitting the OFFLOADED report under § 611.4(c)(7) should be increased from 12 hours to 24 hours after the transfer or to 12 hours after the end of the day (GMT), since communication congestion with the Coast Guard in Kodiak and static problems frequently prevent more timely reporting. The OFFLOADED report should be simplified to transmit only the following six product lines of fish products transferred: (1) Canned product, (2) fish meal, (3) fish oil, (4) frozen surimi, (5) frozen otoshimi, and (6) products other than items (1) to (5) above; because the specific fish products produced by a vessel are proprietary information and the burden of transmitting large amounts of telegraphic information would be eased. The RECEIVED report is redundant and should be deleted to reduce message traffic.

Response: The comments, if implemented, would defeat the purpose of the required reports, which is to put both the offloading and receiving vessels on record in a timely manner as to what was transferred. Under previously existing regulations, FFV's could offload the round weight equivalent of more product than was claimed in the vessel's records. The support vessel would accept the product and either underlog it or log its actual weight, but in either case go elsewhere or depart the FCZ before enforcement units could verify the catches. Twelve hours is sufficient time for an FFV's crew to determine the product transferred and send in a message, since good seamanship as well as good business practices dictate that the FFV operator know what is in his vessel's holds. If the information is considered proprietary, the FFV operator has the opportunity to use methods other than radiotelegraph through Kodiak. The six product lines suggested in the comment are inadequate, particularly because they do not break down the various types of dressed and filleted fish, which have widely varying product recovery rates, making comparisons of actual weight and products on board with the appropriate messages impossible. The RECEIVED report performs the function of verification of the OFFLOADED message and prevents the excuse that one or the other vessel erroneously recorded the transfer.

Comment 35: Section 611.4(c)(6) should be amended to allow for greater leeway in reporting the position of a transfer and to allow the report to be transmitted after the transfer takes place, due to problems in accurately determining where the transfer will take place, based on drift of the vessels, sea conditions, and the harvestability of particular species.

Response: TRANSFER reports require only that the report be transmitted prior to beginning the operation. There is no specified time frame as to how far in advance the FFV operator must make the report. FFV operators control fishing operations and may advance or retard transfer operations and the attendant messages at their discretion. FFV drift may be stopped by anchoring in shallow water and can sometimes be slowed by use of engines. High seas will prohibit transfers. To avoid the complications of weather and sea conditions, the paragraph is revised to define a transfer operation as beginning when the first product is moved from one FFV to another. This will allow the vessels to meet and make all preparations for a transfer prior to sending a report. NMFS requires the support vessel to submit the TRANSFER report because it routinely has more powerful and extensive communications facilities.

Comment 36: The time and position requirements for submitting CHANGE reports and the criteria for determining a violation of activity reports are too stringent and impractical from an operational standpoint.

Response: NMFS considers it incumbent on foreign fishermen to accurately report their activities. The criteria specified in § 611.4(c)(10) and § 611.4(d) are currently used in determining whether a particular FFV activity report was submitted in violation of § 611.4. The current regulations allow no leeway in either time or position of activity reports. All independently operating foreign fishing vessels use either satellite navigation or LORAN C electronic navigation system, or both, with position accuracies to within one-half nautical mile or one-quarter nautical mile respectively. FFV's may easily navigate to a position within a circle 10 nautical miles in diameter. Experienced navigators can generally estimate the speed of advance of their vessel in steady sailing and time of arrival at a specific point to within one hour several days in advance. Because the advance notice required by the BEGIN and CEASE messages now remains at 24 hours, FFV operators can easily arrive at a specific position within four hours before or after an estimated time of arrival. Because navigators are inherently cautious and tend to underestimate their vessel's speed of advance to allow for weather, etc., the most common occurrence will be an early arrival at a position given in a

BEGIN report. This situation could normally be remedied by slowing the speed of advance to arrive within the time constraints or loitering in the area for a few hours. Accurate estimates of time should not be a problem for other reports due to the short distances involved. NMFS will consider circumstances beyond the control of the FFV operator, such as unexpected storms or major mechanical breakdowns, in determining the seriousness of a violation.

Comment 37: The requirement of reporting the disposition of U.S.-harvested fish received in a joint venture operation should be deleted from the RECREP report required by § 611.4(f)(3). This deletion would simplify the weekly report and relieve the work of radio operators.

Response: The requirement has been modified. The amount of catch discarded by FFV's in joint ventures in the Pacific Coast groundfish fishery is necessary for management of that fishery and will be retained in Subpart E. The disposition of any fish return to U.S. fishermen is needed to ensure that fish are not counted against a foreign nation's allocation or authorized joint venture amount.

Comment 38: Are fish caught by U.S. harvesting vessels in a joint venture but discarded prior to receipt by the FFV considered a part of the joint venture processing (JVP) amount authorized to the joint venture?

Response: NMFS considers those discards as part of domestic annual harvest (DAH) but not part of JVP or any amount authorized a joint venture. Only domestic regulations could regulate the discards by U.S. vessels.

Comment 39: FFV operators submitting weekly receipt reports for FFV's in joint ventures off Alaska are required by their permit restrictions to submit them by Wednesday following the end of the reporting weeks, as opposed to Friday for other vessels off Alaska. This is difficult due to transmission difficulties.

Response: NMFS considers weekly catch and receipt reports critical in managing the fisheries off Alaska, particularly with regard to keeping track of the incidental and prohibited species received in joint ventures, due to the very small amounts allowed. The Wednesday deadline must remain and is added to § 611.4(g).

Comment 40: A table listing the type of report (vessel activity report, weekly catch report, etc.) and final destination (NMFS Regional Director, NMFS Center Director, or Coast Guard commander) would be helpful.

Response: Appendix A has been amended by revising Table 2 and adding an additional Table 4 to indicate disposition of reports and other submissions to the U.S. government.

Section 611.5

Comment 41: As written, this section would allow vessels not actually fishing to display improper navigation lights. We recommend deleting "engaged in fishing" from the first sentence.

Response: This proposal is adopted, requiring FFV's to display proper navigation lights while operating within the jurisdiction of these regulations.

Comment 42: Several commenters suggested changes to § 611.5(c) to clarify the requirements. One requested that "vessel identification" be defined. Another suggested that a provision might be needed to indicate that lights on deployed gear be lit and functioning to comply with the regulations. The term "net codends" was recommended to be changed to "trawl codends" to conform with accepted terminology. Net (or thrawl) codends were recommended to be described positively as continuously attached gear to remove any doubts as to their status.

Response: The comments are generally accepted. "Vessel indentification" is referenced to its description in § 611.3(a). "Net codends" are now termed "trawl codends" and considered to be continuously attached gear and exempt from marking requirements. Lights on deployed gear which are unlit or not functioning properly (such as being underwater) will not be visible for two miles and are therefore in violation, making further elaboration in the regulations unnecessary.

Comment 43: Section § 611.5(c) (1) and (2) should be modified to delete the requirements of identifying gear with a pole and flag and a radar reflector, to allow instead marking of longline gear with a large, clearly painted buoy, a light, and a radio buoy.

Response: The comment is adopted. More restrictive gear identification requirements may be required for specific fisheries in Subparts C through G of this part.

Comment 44: Section 611.5(c)(3) should be reworded to state that abandoned or seized private property must be disposed of in accordance with applicable Federal Regulations, to prevent any inference that private property would be disposed of without due process.

Response: The comment is adopted.

Section 611.6

Comment 45: The inclusion of the phrase "or any person aboard any FFV subject to this part" in § 611.6(a)(1) should be modified. As written, it would require even the least experienced seaman aboard a vessel to comply with instructions and signals to stop the vessel and to maneuver it to a specified location. This could be dangerous. The regulation should be reworded to make it clear that only those persons aboard the vessel who are qualified and authorized to maneuver it are required to do so.

Response: The regulation remains as proposed. The commenter assumes that enforcement personnel will give inappropriate instructions to junior members of an FFV's crew. NMFS and Coast Guard policy for all communications with an FFV and in boardings is to deal directly with the FFV's master and fishing manager whenever possible. It is also NMFS and Coast Guard policy and the practice of FFV's to have one of the ship's officers or other responsible person accompany the boarding party for all inspections. In the worst case, when enforcement personnel instruct a person to do something which that person is unqualified or unauthorized by the FFV operator to do, the person may "immediately comply with instructions" by explaining the situation and relaying the instructions to the appropriate person. The regulation now requires that persons other than the FFV operator facilitate the boarding, rather than act uncooperatively, as has been the case in some instances.

Comment 46: We recommend deleting "assigned an IRCS" from § 611.6(b)(1) since many smaller catcher vessels are not assigned an IRCS, and thus would not be required to fulfill the requirement for a radio.

Response: The regulations have been revised to reflect the comment.

Comment 47: The radiotelephone requirements in § 611.6(b)(2) should be deleted, because certain foreign fishing vessels may not be able to comply with the requirement for radiotelephone frequencies due to national regulations.

Response: The regulations remain as proposed. The specific frequencies required are international ship-to-shore frequencies, calling, or distress frequencies required of vessels with those installations. Working frequencies in Appendix A are ship-to-shore international-use frequencies. Because routine communications should not be conducted on calling or distress frequencies, it is mandatory that all

FFV's have working frequencies available consistent with their equipment requirements. If listed frequencies are not available due to national regulations, the FFV operator must identify acceptable alternate frequencies.

Comment 48: Catcher vessels operating in the vicinity of motherships (processing vessels) in mothership fishing operations should be exempted from the requirements of § 611.6(b)(1) that they be equipped with certain radiotelephone equipment and that they monitor channel 16. The motherships monitor these channels on behalf of the related catcher vessels and transmit all required messages to the catcher vessels. Therefore there is no need for this requirement to apply to these catcher vessels.

Response: A new paragraph (b)(4) has been added to § 611.6 to exempt auxiliary vessels such as kawasaki boats and other small tenders from radio requirements. Larger catcher boats must have a VHF–FM radio and continuously monitor channel 16, but are exempt from the long-range radio required by § 611.6(b)(3). The VHF–FM radio is required primarily for communications between the FFV and enforcement vessels during boarding operations and for on-scene communications with an enforcement aircraft. Because the larger catcher vessels operate out of sight of the mothership and sometimes out of VHF–FM range, a VHF–FM installation must be on each catcher vessel. Because communications are anticipated to be very short range (five to ten nautical miles), the VHF–FM radio does not have to be elaborate.

Comment 49: The radiotelegraphy requirements in § 611.6(b) are not feasible since many vessels no longer use this equipment. The requirements should be deleted or modified to allow appropriate officials to waive certain requirements or allow substitution of other communications systems.

Response: The comment is adopted in part, to allow for variations in communications needs among the fisheries. A new § 611.6(b)(5) allows the Regional Director, in consultation with the appropriate Coast Guard commander, to exempt certain FFV's from the radio requirements. The regulations contained within Subparts C through G of this part may also modify these requirements.

Comment 50: Paragraph (c)(2) of § 611.6 does not enforce all of the communications procedures required by paragraph (c)(1) of the section. Paragraph (c)(2) should be revised to include all the communications procedures.

Response: The comment is not adopted. Paragraph (c)(1) is permissive, in that it includes a listing of possible communication methods which may be infinite when "other appropriate means" are considered. Paragraph (c)(2) specifies those methods which an FFV operator must know and be ready to respond to. An enforcement unit using methods in addition to those required simply reinforces the instructions for the FFV to stop or maneuver and provides additional evidence if the FFV does not respond.

Comment 51: The regulation referenced in § 611.6(c)(2) is inappropriate because it would make failure to understand a command or instantaneously comply with a command to stop a criminal offense. There is a large difference between refusing a boarding (criminal offense) and failure to facilitate a boarding (civil violation).

Response: The reference is deleted. Depending on the circumstances involved, not responding to instructions to stop for a boarding may be determined to be either a criminal or a civil violation.

Comment 52: Section 611.6(d)(2) should be modified to add the following language before the semicolon: "unless immediate stopping of a vessel would impair the safety of that vessel." Often it would be very dangerous to stop immediately if, for example, the vessel were then engaged in actual trawling operations.

Response: The comment is adopted and similar language is added to the paragraph.

Comment 53: The requirements for providing a safe boarding ladder should be modified so that national standards which are essentially equivalent to SOLAS standards can be used to certify a boarding ladder. We request explicit acknowledgement that Japan Industrial Standard (JIS) ladders would be an adequate substitute for those that meet SOLAS standards.

Response: Section 611.6(d)(3) is amended to allow a substantially equivalent national standard to be substituted for SOLAS boarding ladder standards. The Assistant Administrator and the Coast Guard have determined that the construction requirements of Japan Industrial Standard (JIS) pilot ladders are substantially equivalent to the SOLAS pilot ladder requirements, and that properly constructed, maintained, and deployed JIS pilot ladders will be considered safe pilot ladders for purposes of the requirements of the foreign fishing regulations.

Comment 54: Synthetic fiber side ropes should be allowed to be substituted for manila side ropes in pilot ladders. These synthetic materials are less likely to deteriorate in the constantly damp conditions aboard small FFV's.

Response: The comment is adopted and § 611.6(d)(3)(iv) is amended to allow the use of equivalent, synthetic fiber side ropes.

Comment 55: Section 611.6(e)(1) was the subject of two opposed comments.

(a) Section 611.6(e)(1) should be revised to use "prepared or stored" as clearer than "kept" and to include personal quarters and areas within personal quarters as specific areas to which authorized officers are allowed access.

(b) The requirements of § 611.6(e) appear to exceed the permissible limits of administrative searches under the Fourth Amendment of the United States Constitution. The regulation should be rewritten to set out explicit restraints upon these warrantless searches.

Response: NMFS adopts comment (a) and rejects comment (b). NMFS considers the provisions of the Magnuson Act to be sufficiently broad to allow for the type of administrative search described in the regulation. The construction and usage of fishing vessels is such that living quarters, especially officers' staterooms, are often used as offices or for storage of records. Personal quarters so used are within the permissible scope of administrative searches of fishing vessels.

Comment 56: Those records which FFV operators must provide to authorized officers should be specified in greater detail.

Response: The comment is adopted and additional examples of records are added to § 611.6(e)(2). The change may avert problems in the future.

Comment 57: The requirements of § 611.6(f) may result in unsafe conditions by placing strict requirements on the storage of equipment and materials within the ship's holds. The regulation should be modified to allow non-fish products to be stored wherever necessary to maintain the stability of the vessel.

Response: The regulation is amended to allow for stowage of non-fish products under fish or fish products for safety reasons.

Section 611.7

Comment 58: The prohibitions of § 611.7 reference violations of various combinations of the Magnuson Act, this part, any other regulation or permit issued under the Magnuson Act, etc.

These references should be as consistent as possible.

Response: The prohibitions have been revised to reflect that they are applicable to violations of the Magnuson Act, the applicable GIFA, 50 CFR Part 611 (this part), or any permit issued under this part. Reference to "other regulations under the Magnuson Act" is deleted because there are no other Magnuson Act regulations directly affecting foreign fishing.

Comment 59: Section 611.7(a)(6) needs clarification. We assume that it was intended to apply to investigations and searches conducted on board vessels. If not, this provision could be interpreted to deem it a violation if a defendant in an enforcement action were to raise legitimate objections to what they believe to be illegal, unconstitutional or improper investigative demands made by the government side in the course of contesting an enforcement proceeding.

Response: The wording of the paragraph is revised to reflect that it is a violation to interfere with any Magnuson Act investigation, wherever conducted. If the subject of the boarding, investigation, or search feels it was conducted illegally, the subject may seek judicial relief, but may not interfere with an ongoing boarding or other enforcement action.

Comment 60: Section 611.7(a)(12) should be modified to recognize that harmless or innocent errors in completing permit applications and permit forms will be made, and should be tolerated.

Response: NMFS recognizes that inadvertent errors will be made, and will consider the seriousness of the error, any steps taken by the nation or the owner to correct the problem, and any other mitigating circumstances prior to initiating any penalty actions. Nevertheless, the FFV owner and operator remain liable for their actions or inactions.

Comment 61: Sections 611.7(a) (15) through (17) are overly broad and constitute an overreaction to a number of isolated incidents over the years. We are concerned that the authority of the observers has been and will be extensively expanded, while many of the observers are improperly trained and frequently their behavior is far from ideal and even clearly inappropriate. Before attempting to charge foreign vessels with violations of the specific prohibitions, NMFS should first prepare and disclose appropriate standards of conduct for observers so that observers will neither abuse their authority nor attempt to step beyond the bounds of their authority. Proper standards and adequate training of observers are absolutely essential.

Response: The regulations remain unchanged. These paragraphs are long-needed clarifications to the former regulations prohibiting crew members from interfering with the observers' sampling procedures. In the Alaska and Pacific Coast fisheries alone, observers have documented in extensive reports and affidavits 112 separate cases of interference with observer sampling methods in the last two years. NMFS feels that these are deliberate attempts to bias the observers' sampling data which are used to determine when a particular nation has reached its quota of a species or species group in an area. Over the years, NMFS has provided information to the national representatives or the fishing associations regarding these situations and very little has been accomplished to rectify the problem.

NMFS agrees that adequate training of observers is essential. NMFS also feels that the current training system is adequate and getting better. Observers are hired primarily because of their biological- or fisheries-related background. They then go through an intensive two-and-a-half-week course before being sent out to sea. The approved standards of conduct, sampling techniques, foreign customs, and fishing regulations for FFV's are clearly presented in the observer training manual and in training. Although NMFS has given foreign representatives every opportunity to report on the actions of fishery observers, we have received very few reports of inappropriate behavior.

Comment 62: In § 611.7(a)(15), the phrase "contrary to the observer's instructions" should be deleted or revised to make it clear that the assumption is that the observer will sample the catch unless the observer has notified the master or other person in charge of the operation that he or she will not sample the catch.

Response: The comment is adopted. Section 611.8(c)(8) has also been revised to reflect this.

Comment 63: The prohibition in § 611.7(a)(17) regarding sexual harassment should be deleted because the application of this regulation may be influenced by the subjectivity of the observer. This is particularly true for violations by foreign personnel, because the regulation does not adequately recognize cultural differences.

Response: As stated in the proposed regulations, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made on a case-by-case basis. In such cases, as in all violations, the defense will have ample opportunity to present its view of the circumstances. Differing customs will be taken into consideration. The types of offenses that NMFS anticipates prosecuting are those serious actions which are offensive in all of the cultures involved. These regulations are patterned after existing regulations which have withstood litigation. An authorized officer or observer should be treated with respect as a representative of the U.S. government.

Comment 64: The requirements of § 611.7(a)(20) are unclear. There is a danger that this provision could be invoked against a foreign fishing vessel owner or operator when there is a legitimate dispute concerning the right of the Government to require that a particular record or report be submitted to it.

Reponse: If an FFV owner or operator considers the requirement to have or submit particular records to be illegal, he may seek judicial relief (see the response to comments on § 611.7(a)(6)).

Comment 65: A prohibition should be added to ensure that foreign vessels engaged in recreational fishing comply with FMP regulations and the laws of the states in which they fish.

Response: The amendment to the Magnuson Act allowing foreign recreational fishing inside State waters conditions that fishing on compliance with State laws and regulations. Noncompliance would bring the vessel within the prohibitions of section 307(2)(A); and additional prohibition here is unnecessary.

Comment 66: Section 611.7(a)(27) should be deleted, as it is a catch-all which is subject to potential abuse by an overzealous enforcement officer. When read literally with other prohibitions, this paragraph is unclear, such as the "attempt to" . . . "fail to provide assistance to an observer".

Response: The paragraph is retained. This prohibition is necessary to prevent persons caught committing a violation from claiming that no violation existed because it was never consumated. Because violations of this paragraph must document intent as opposed to fact, NMFS will initiate actions only when the situation is well documented. Mitigating circumstances will also be considered.

Section 611.8

Comment 67: Several comments addressed observer policy and training. While these subjects are generally

outside the scope of this action, the specific questions raised will be discussed here. The comments have been forwarded to appropriate NMFS headquarters personnel and to the Regional and Center Directors involved.

One commenter requested a statement from NMFS that the policy of the U.S. Government is that observers perform their duties in an expeditious way and in such a manner as not to hinder the operations of the foreign vessel or cause spoilage of its catch. Another commenter requested that observers be required to report suspected violations to a responsible officer of the FFV.

Response: Observers are instructed to minimize their intrusion in the FFV's operations. However, varying sampling techniques and other requirements may be more or less intrusive on fishing operations. Depending on the assignment, the observer may have little latitude in the procedures he or she must follow.

Observers are instructed to discuss any suspected or obvious violations observed with the master of the FFV. They are also required to report this information upon their return to port, if not sooner, depending on the gravity of the violation. Because the observer is not an authorized officer, all discussions are cautionary and the FFV operator may not understand that a violation report could result. Observers will assist the FFV operator in interpreting the foreign fishing regulations or be able to get clarification from higher U.S. authorities; but, because they are not authorized officers, they may not have a complete knowledge of the regulations.

Comment 68: Several commenters objected to the language regarding the assignment of "one or more" observers to any foreign fishing vessel.

Response: The language published as a final rule implementing the supplementary observer program (50 FR 8134, February 28, 1985) is retained.

The wording in the proposed regulations was intended for clarification purposes. NMFS observer programs have placed multiple observers aboard vessels in the past, both before and since the Magnuson Act was implemented. The legality of placing more than one observer aboard FFV's was challenged in 1983 when two observers were placed aboard joint-venture processing vessels fishing in the Shelikof Straits fishery. The NOAA General Counsel determined that "NMFS may require the stationing of more than one observer aboard a single foreign fishing vessel, if necessary and appropriate, to carry out the purposes of the Magnuson Act."

NMFS does not routinely place more than one observer aboard an FFV unless it is a large processing vessel operating with a catching vessel fleet, it is operating in a fishery of critical interest with regard to catches (e.g. the Shelikof Straits fishery), it is transporting an observer to another FFV, or it is hosting an observer trainee. In the latter two cases, the cost of the observers is included in the program overhead and not charged to a specific vessel.

Comment 69: Several commenters requested that § 611.8(b)(2) include provisions which would allow the Regional or Center Director to waive observer requirements.

Response: The language published as a final rule implementing the supplementary observer program is retained. Section 611.8(a) includes a reference to section 201(i)(2) of the Magnuson Act, which specifies those conditions under which the Regional Director may waive the observer requirement. The last sentence of § 611.8(b)(2) includes a statement that the Regional or Center Director may waive the observer requirement. Section 201(i)(2) of the Magnuson Act allows waiver of the observer requirement if:

(1) In a situation where a fleet of harvesting vessels transfers its catch to a processing vessel with an observer aboard, management objectives will be achieved by observers placed on only part of the harvesting fleet;

(2) It is impractical to assign an observer to the FFV because of brevity of the FFV's operating period;

(3) The FFV's facilities of quartering an observer are inadequate or unsafe; or

(4) An observer is not available for reasons beyond the control of the Secretary (Regional or Center Director). Regional and Center Directors will waive the observer requirements only under the most extenuating circumstances.

Comment 70: Several commenters requested clarification of the "upon demand" and "free access" provisions of paragraphs (c)(3) through (c)(5) concerning communication, navigation, and other FFV facilities and spaces to indicate that observer authority is limited to the duly authorized and appropriate duties of the observers and to require instructions given by qualified officers or other personnel of the FFV prior to use of equipment. Their concerns were to ensure that observers use their authority for official duties only, and to protect the safety of the observer and sensitive electronic equipment and machinery on the FFV.

Response: NMFS recognizes the concerns of foreign fishermen that observers may overstep their authority or damage equipment. FFV owners and operators are encouraged to report any such instances to the appropriate Regional or Center Director. However, NMFS has received very few reports of such incidents in the past and considers observer training adequate to preclude them from happening except in very isolated cases. In particular, observers are instructed not to use an FFV's equipment until instructed in its use. The regulations remain as proposed due to the large number of past instances were observers have been denied the use of, or access to, equipment and vessel spaces necessary to the accomplishment of the observer's duties. FFV operators and crews who have fully cooperated with observers in the past will be unaffected by these regulations, because instructions to observers will not be liberalized. Observers are a valuable asset to an FFV operator in the case of an emergency. The observer can communicate quickly and clearly over the radiotelephone, helping to provide an early resolution to any problem.

Comment 71: Two comments requested that the proposed requirements of § 611.8(d)(1) be relaxed to allow observer transfers at night.

Response: The comments are accepted in part. While NMFS agrees that transfers of observers via small boat or raft have been carried out without incident at night in the past, the practice is too hazardous to continue. Nighttime transfers are especially hazardous of Alaska, where weather is severe. While NMFS considers that all transfers at night should be avoided because a person falling overboard would be difficult to find and rescue, transfers between vessels nested together via gangway, rope ladder, or basket are allowed.

Section 611.9

Comment 72: One commenter requested that NMFS authorize the use of alternative formats for the daily fishing log, daily consolidated log and daily joint venture log (Appendices I, J and K). The commenter requested that NMFS specifically allow formats for each logbook that may vary depending on the type of fishery, such as longlining, independent trawling, mothership operations, and individual company operations, provided that all of the requirements of each log are met. The commenter also recommended several editorial changes to make the required logs easier to use by foreign fishermen.

Response: The comments are substantially adopted. A new paragraph is added to § 611.9 and the rest of the section is amended to allow the

appropriate Regional Director to accept alternative log formats for each fishery from each nation.

Comment 73: Several commenters felt that the requirements of § 611.9(a) to maintain the last three year's logs onboard was burdensome, particularly due to lack of space on the FFV.

Response: The requirement to maintain the logs from the three previous years is retained. However, this regulation will be effective only for those records produced or maintained after December 31, 1985. Therefore, it will not be until 1989 that records for the last three years (i.e., three previous years plus the current year) will be required to be aboard FFV's. The records should take up approximately one desk drawer of storage space at that point.

Comment 74: Several commenters were concerned that, as drafted, § 611.9(a)(4) requires the owner-operator to supply any information NMFS may request, limited only to information related to fulfillment of the purpose of the Magnuson Act. This is very broad authority and they felt it shoud be limited to reasonable information related to the enforcement, conservation and management of the resources. As drafted, they felt it could be subject to abuse, particularly for obtaining proprietary commercial information which could work to the detriment of foreign fishermen with respect to competition in their own country and internationally.

Response: The regulation has been revised to limit the Assistant Administrator to information requested for purposes of fishery conservation, management, and enforcement.

Comment 75: The transfer log requirements of § 611.9(c) should be revised to include transfers outside the FCZ to allow for reconciliation with the product on board. It should include "any fish or fishery product including quantities transferred or offloaded outside the FCZ."

Response: The comment is adopted.

Comment 76: Section 611.9(d)(2) should be modified to allow those FFV's equipped with processing facilities, but which do not utilize these facilities and deliver their catch to processing vessels, to be exempt from logkeeping requirements other than SECTION ONE—EFFORT of the daily fishing log.

Response: Appropriate changes have been made to effect the proposed change.

Comment 77: Section 611.9(e)(1)(i) should be modified so that that section must be completed "beginning with the first day the vessel started fishing operations in the FCZ" rather than "beginning with the first day the vessel entered the FCZ."

Response: The regulations have been modified to reflect the comment.

Comment 78: Section 611.9(e)(1)(vii) should be modified to require the operator's signature rather than the master's signature. Both fleet commanders and fishing managers are actually in charge of foreign fishing vessels and are responsible for the fishing operations. The master may not be the appropriate person in many cases.

Response: Section 611.9(e)(1)(vii) is modified to allow either the master or the operator to sign the log, provided the title is given following the signature.

Comment 79: Please clarify the terms "when the trawl or set was completed", "the time the gear was set", "the position of the set", "the course of the set", and "the duration of the set", as required by the daily fishing log at § 611.9(e)(2).

Response: To reduce redundancy and aid in the utility of the regulations, the exact descriptions are in paragraph B of Appendix I to Subpart A. The terms have been revised to be more specific.

Comment 80: FFV's should log their trawls consecutively from the first set of the calendar year.

Response: This comment is adopted for both the daily fishing log and the daily joint venture log, and appropriate changes have been made.

Comment 81: Log requirements §§ 611.9 (e)(3)(iv), (g)(3)(iv) and (i)(3)(iv) for catches of marine mammals should be adjusted to list the condition of the animals as they are released as well as when they are caught.

Response: The regulations are amended to record the condition of the marine mammal when released. The condition codes used also indicate the animal's status when caught.

Comment 82: The regulations should require incidental species catch to be logged in the catch section of the logs to the nearest 0.01 mt, since in certain fisheries there is a very limited allowable catch of incidental species.

Response: The imposition of these more restrictive log requirements is more appropriately included within the regulations for the various fisheries in Subparts C through G.

Comment 83: Weekly Telex reports require information by fishing area which is not easily derived from the logs. It would assist foreign fishermen in complying with the regulations, as well as enhancing enforcement, if space were made available in the logs for this information.

Response: This comment correctly points out the need for an additional section in the logs for daily catch by area. The regulations have been amended and a section has been added to Appendices I, J, and K to reflect this.

Comment 84: Section 611.9(e)(5)(ii) should stipulate how often the product recovery rate is to be computed.

Response: The regulation requires a daily product recovery rate (PRR). Appendices are revised to reflect this. While PRR's are not necessarily required to be computed daily, the daily PRR logged will be verified by observers and boarding parties and used in verifying the product aboard the FFV.

Comment 85: Section 611.9(g)(3) should be amended to delete the requirement of recording the daily disposition of prohibited species from each catcher vessel, as all prohibited species are always discarded as early as possible. Alternatively, that section could be clarified to require that the daily disposition be included in column "D", the cumulative disposition column.

Response: The section is amended to correspond closely to the same portion of the daily fishing log.

Comment 86: In a mothership trawl operation or in joint venture operations it should be permissible to maintain fishing logs by entering the fishing area and date where and when a codend was received by the mothership, instead of the fishing area and date the fish was caught by the catcher vessels.

Response: Mothership operators are required to log the date and location when and where the fish were caught by the catcher vessel. Otherwise it is impossible to correlate catch and effort data. Operators of FFV's engaged in joint ventures with U.S. harvesting vessels, on the other hand, are required to log only the date and location of the transfer of the codend, because these regulations do not control domestic fishing vessels.

Comment 87: Several commenters were concerned that the catch data by trawl and codend receipt in the daily fishing log and joint venture logs, respectively, would be only an estimate and incompatible with observer data and production data. One commenter felt that catch estimates by species within four hours would lead to estimated catches by trawl or receipts by codend at variance from the actual amounts and species composition based on calculations once the fish are in the fish bins. There was also a lot of confusion as to what portion of the logs should be filled out within what time frame.

Response: To alleviate the problem of estimating catches, a new column is added to the daily fishing log and daily

joint venture log, requiring an estimate of the total weight of the catch or codend receipt within two hours of the haul or receipt. This will provide sufficient time for the FFV operator to make an on-deck estimate. The final breakdown of each trawl, set, or receipt by species composition is now required 12 hours after the haul or receipt time, to allow for an accurate determination of the contents of each trawl set or codend.

Comment 88: Section 611.9(j)(2) should be amended by deleting the reference to "reasonable allowances for water added" in entries for product weights, and deleting the sentence limiting ice glazing allowances to 5 percent of the unit weight. Product recovery rates are normally determined before the fish product is glazed. Further, the glaze on processed products frequently exceeds five percent, depending on the kinds of products.

Response: The regulation remains unchanged. Boarding parties cannot take inventories and weight representative samples of product on board to determine the accuracy of an FFV's logs if that FFV's product weights and round weights are based on samples of product taken prior to glazing. The PRR will be different due to the glazing. PRR tests run by NMFS have found no fisheries product with more than five percent water, and NMFS does not understand why an FFV operator would have any excess water weight, since it would reduce the amount of salable product able to be stored aboard.

Section 611.10

Comment 89: Section 611.10(a) specifies that catching operations may be conducted "as specified by the regulations of the fishery in which the FFV is engaged *and as modified by the FFV's permit.*" This language appears to permit a disguised amendment of FMP implementing regulations through the permit process. There is no legal basis for such a subversion of the regular amendment process. This section should clarify that the above language is intended merely to permit minor modifications to relieve technical or operational problems.

Response: No change to the regulation is necessary. The permit restrictions the Assistant Administrator may make for conservation and management of the fishery, as described at § 611.3(l), often contain restrictions affecting catching, joint venture operations, and the other elements of fishing. Where necessary, these restrictions may include modifications other than for technical or operational problems.

Comment 90: Section 611.10 is unclear concerning a number of points. First, it is unclear whether joint venture vessels may conduct scouting, processing, or support activities. Second, a literal interpretation of the regulations suggests that fish processing in connection with a joint venture would require that the nation have a directed allocation and be engaged in catching operations. Finally, what role may support vessels from third countries play in transporting fish or supplies?

Response: Section 611.10 has been revised to eliminate the confusion surrounding the cases cited above. FFV's permitted in a joint venture may scout for, process for, and support U.S. harvesting vessels. No allocations to the nation are necessary. A properly permitted FFV from a third country may support the FFV (including transporting U.S.-harvested fish), but may not directly support U.S. harvesting vessels.

Section 611.11

Comment 91: One commenter objected to the prohibited species regulations, because they do not prohibit or command foreign fleets to avoid all take of prohibited species, as a violation of the Magnuson Act.

Response: The proposed and final regulations concerning foreign catches of prohibited species are essentially unchanged from those published in 1977 to implement the Magnuson Act. The only time an FFV may retain prohibited species even temporarily (except to allow sampling by an observer) is when a specific fishery permits an FFV engaged in a joint venture to return U.S.-harvested prohibited species back to the U.S. vessel. Specific measures within Subparts C through G minimize the catch of prohibited species by FFV's, as well as subsequent mortality due to handling.

Comment 92: Section 611.11 should list the prohibited species which must be logged.

Response: Prohibited species are specified by fishery in Subparts C through G.

Comment 93: A second sentence should be inserted in § 611.11(b) requiring the release of prohibited species in longline fisheries by cutting the line at the hook without removing the prohibited species from the water.

Response: The procedures are specified in Subparts D and F for the billfish and sharks fisheries. Because those regulations are unchanged by this action, no change to § 611.11 is necessary.

Comment 94: We recommend removing the words "immediately with a minimum of injury" from § 611.11(b) since almost all fish which are returned to the sea are killed by the pressures induced by the trawl nets.

Response: NMFS retains the phrase "immediately with a minimum of injury" with respect to discards of prohibited species. Because the intent of the regulation is to reduce prohibited species catch to an absolute minimum, NMFS is prepared to accept some loss in efficiency by FFV's due to the time required to sort and discard prohibited species expeditiously. This provides a strong incentive to those vessels not to fish in areas of high concentration of prohibited species. While most finfish are dead or dying when discarded, some species such as crabs have a good chance of survial if returned immediately. NMFS will continue to consider mitigating circumstances due to the type of operations being conducted by the FFV in evaluating any reports of violation of this regulation.

Section 611.12

Comment 95: Section § 611.12(c) should be revised to limit dumping of fishing gear and other articles to that material which interferes with fishing by the vessel (debris in the trawling grounds) as opposed to that which interferes with vessels (a navigation problem). Turtles should be protected from entanglement.

Response: NMFS considers dumping of material which interferes with the navigation of a fishing vessel essentially equivalent to interfering with fishing by that vessel. The term "fish" as used in these regulations includes marine turtles, ensuring that they are protected under these regulations. No change is necessary to the regulations.

Section 611.13

Comment 96: Foreign governments or their representatives, not NMFS, should be responsible for initiating reconsideration of discrepancies between catch reports submitted by observers and foreign fishing vessels.

Response: Section 611.13(d) is revised to indicate that if NMFS estimates of catch or other values made during the season differ from a nation's estimate, it is the designated representative's responsibility to initiate efforts to resolve the differences with NMFS.

Comment 97: One commenter made several recommendations regarding the applicability of these regulations to foreign fishing vessels recreationally fishing. The commenter pointed out that foreign recreational fishing vessels would still be required to make reports and keep records like any other FFV. Their status regarding State license

requirements and other State or Federal law was also unclear.

Response: Foreign recreational fishing vessels were considered as being exempt from all the foreign fishing regulations other than §§ 611.1, 611.2, 611.6(a), 611.7 (as applicable), and 611.15. NMFS has revised §§ 611.1, 611.2, and 611.15 to more clearly describe what regulations apply to a foreign recreational fishing vessel. Foreign recreational fishing vessels must allow boardings to determine their status as recreational fishing vessels under these regulations, but other provisions do not apply. Foreign recreational fishing vessels are considered equivalent to U.S. recreational fishing vessels and must comply with the same licensing and other regulatory requirements required of U.S. vessels.

Section 611.16

Comment 98: We recommend an additional paragraph be added to indicate that fishing vessel operators should be aware that specific fishing gear prohibitions apply to Federal marine sanctuaries and coral habitats of particular concern (HAPC).

Response: Section 611.16 is meant to serve as a reference to laws which may impact fishment but generally have no relation to fishing. The concerns expressed above can be better addressed it they are included elsewhere in this part. The Regional Fishery Management Councils are authorized by Title III of the Marine Sanctuaries, Protection and Research Act, newly amended by Pub. L. 98–498, and the Magnuson Act to draft regulations governing fishing within Marine Sanctuaries and Coral HAPC's. In this case the appropriate changes could be made to Subpart D, § 611.60 of this part.

Appendices and Subpart B

Comment 99: Foreign fishing "windows" off the east coast should be eliminated because 100 percent observer coverage and refinements in the reporting requirements have removed the need to keep the FFV's in a limited area to facilitate enforcement. Moreover, the requirement is a burdensome and costly impediment to foreign fishing operations.

Response: The regulations concerning fishing windows are moved to Subpart C by the companion technical amendment to this document. Because they are incorporated into the Interim Groundfish Fishery Management Plan, an amendment to that plan would be necessary to revise the regulations.

Comment 100: Figure 2 of Appendix C should delineate areas closed to longlining (Area 11) and locations of marine sanctuaries and coral habitats of particular concern.

Response: The Appendix was meant only to describe fishing areas for reporting purposes. The locations of marine sanctuaries and coral habitats of particular concern, as well as specific closed areas, would be better addressed in the regulations for the specific fisheries (see comment on § 611.16).

Comment 101: Catch disposition should not be included in the weekly catch reports. If such a requirement is deemed necessary by the regions, they may formulate a local requirement.

Response: The comment is adopted. Only fish returned to a U.S. harvesting vessel by an FFV in a joint venture must be reported separately, to ensure that those fish are not counted against the amount the FFV is authorized to retain.

Financial Assurances

This rule makes final, as a necessary part of this action, an interim rule published on April 11, 1984, at 49 FR 14356. NOAA requested public comments on the interim rule until May 29, 1984, and made the rule effective on May 11, 1984. The interim rule allowed the Secretary to require payments of financial assurances before issuing foreign fishing permits and provided that the Secretary may restrict the effective periods of foreign fishing permits to periods less than the balance of the calendar year from the date of issuance. To date, no financial assurances have been required since the interim rule took effect.

Comments were received from four sources. The relevant issues raised in these comments are addressed below.

Comment 102: The rule requiring financial assurances infringes on existing extradition treaties and national policies, would intrude on the sovereignty of a nation by requiring local enforcement of a U.S. judgment, and violates the constitutional rights of foreign nationals.

Response: The interim rule does not affect existing extradition treaties or policies, a nation's sovereignty, or constitutional rights of foreign nationals. It does affect the eligibility of a foreign national or all vessels of a foreign nation to receive permits and engage in fishing in the FCZ of the United States. It is a mechanism whereby a nation may provide the opportunity for its vessel owners to reenter the U.S. fisheries after assuring the U.S. government that judgments or penalties against vessels of that country will be settled or charges answered. On the other hand, if a nation elects not to establish required assurances, the text of § 611.22(e) provides the Secretary sufficient latitude to consider issuing permits for vessels of owners or operators who cooperate in enforcement of the U.S. fishery laws while denying permits for vessels of owners or operators who do not comply. The Magnuson Act makes clear that a vessel owner or operator does not have a constitutional or indefinite right to receive a permit. Requiring financial assurances is not a form of permit sanction under section 204(b)(12) of the Act. Rather, it is the establishment of a necessary condition under section 204(b)(7). This rule does not force a nation to extradite a national or place the United States in a position of interfering with a nation's sovereignty in order to receive a permit but only to guarantee that enforcement responsibilities will be met.

Comment 103: One comment considered financial assurances unnecessary, because a U.S. judgment could be enforced in the courts of that country.

Response: Section 611.22(e)(4) takes this possibility into account.

Comment 104: The interim rule is in conflict with, and encompasses enforcement provisions which range beyond, the terms of GIFA's. It is an unauthorized unilateral amendment of the GIFAs by the Secretary of Commerce.

Response: This comment is a restatement of a comment made on the proposed rule upon which the interim rule is based. NOAA addressed that comment at 49 FR 14356. Each country which is a party to a GIFA agrees to take the necessary measures to assist in the enforcement of U.S. fishery laws and to ensure that its people and vessels adhere to authorizations of the permits. Requiring financial assurances when serious enforcement concerns are evident is easily consistent with the agreement made by the country with the United States. NOAA does not view this as an amendment of existing GIFAs.

Comment 105: NOAA should certify the vessels of certain countries which meet the criteria for requiring financial assurances, and by this means identify the vessels of the remaining countries as vessels not subject to financial assurance requirements.

Response: NOAA does not see merit in this suggestion. A certification process merely introduces additional procedures to implement the certification when criteria already exist under this interim rule to identify the areas or countries of serious enforcement concerns. The specific exemption suggested by the commenting country to exempt its vessels could

unnecessarily restrict the United States in settling a current and long-standing enforcement problem with that same country involving penalties assessed against a number of unpermitted fishing vessels. This would make the rule ineffective.

Comment 106: A nation and the innocent vessel owners or operators of that nation should not be accountable for establishing assurances.

Response: The interim rule seeks to correct several continuing enforcement problems. Clearly, when a nation submits an application on behalf of a foreign owner or operator whose compliance record fits the criteria described in § 611.22(e) (1), (3), or (4), that nation presumably has the option of requiring the vessel owner or operator to provide the assurance before submitting an application. This may be done without placing an undue burden on innocent vessel owners or operators or the nation itself. If, however, that vessel owner or operator declines to provide the assurances and declines to have his vessel(s) fish in the FCZ, or if his vessels conduct unauthorized fishing described in § 611.22(e)(2), the Secretary may require an assurance to be provided by the nation or all the owners or operators of vessels which may not have engaged in illegal fishing. This is the situation addressed in the second paragraph of NOAA's reply to the sixth comment in 49 FR 14356. In that reply, NOAA contends that a nation is responsible for all vessels which may fish with or without permits in U.S. waters. Furthermore, each nation must appoint an agent to accept legal process against all vessels of that nation which fish under the exclusive management authority of the United States. If the nation believes it unfair to have assurances provided by owners or operators of vessels which were not involved in the actions precipitating the imposition of a financial assurance requirement, NOAA believes that most nations have alternate means for ensuring that the guilty vessel owners or operators do not jeopardize operations of other vessel owners or operators. It is not NOAA's intent to force a nation to abrogate existing extradition treaties or policies or to affect a nation's sovereignty, but only to consider the application of financial assurances after all other means, including the civil procedures of 15 CFR 904, have been exhausted.

Comment 107: Financial assurances are unnecessary because the United States has other remedies against vessels violating the Magnuson Act, including (a) Issuance of a citation; (b) assessment of a civil penalty; (c) judicial forfeiture of the vessel and its catch; and (d) criminal prosecution of the owner or operator.

Response: If these remedies were adequate to deter unpermitted vessels from fishing in the FCZ, NOAA would not have proposed the financial assurances provisions: (a) A citation (or written warning) is clearly an insufficient deterent against unpermitted fishing, which is one of the most serious violations of the Magnuson Act. (b) A civil penalty cannot be collected against a company with no assets in the United States, unless a court in the foreign country will enforce a U.S. judgment. Civil penalties assessed against a number of nationals of one of the commenting countries have remained uncollected for several years. (c) Judicial forfeiture of vessel and catch is possible only when the vessel is seized. Most violations by unpermitted vessels are detected by overflights; by the time an enforcement vessel reaches the scene, the fishing vessel has left the FCZ. (d) Criminal prosecutions are likewise dependent on jurisdictions over the person of the owner or operator.

Comment 108: The interim rule does not specify the legal process by which assurances would be required.

Response: Assurances would be required if the Secretary determined it necessary under the criteria listed in § 611.22(e). The assurances (such as a letter of credit) would be drawn against when an official of the Department of Commerce certified that a civil penalty assessed according to the provisions of 15 CFR Part 904 was final and unpaid; or that a summons in a Federal criminal case has remained unanswered; or that a criminal penalty was final and unpaid.

Comment 109: Criteria should be included to determine if assurances should be required by the Secretary and to determine the level of such assurances.

Response: Criteria are included in § 611.22(e) to determine whether the Secretary may require financial assurance and, absent convincing arguments to the contrary, NOAA believes they are appropriate to determine when an assurance might be required. Moreover, the amounts of assessed penalties and costs to the U.S. Government represent reasonable guidelines for establishing levels at which assurances would be required.

Section-by-Section Analysis

A section-by-section analysis of the changes to these regulations was provided in the proposed rule. Changes to the proposed rule were discussed above. You may obtain a section-by-section analysis of the changes from the old to the new regulations from NMFS at the address listed above.

A disposition of the old Subparts A and B is described in the Distribution Table located at the end of this preamble. Compare the specific paragraphs affected for the exact changes.

Classification

The Assistant Administrator for Fisheries determined that this rule is necessary for the conservation and management of the foreign fisheries and that it is consistent with the Magnuson Act and other applicable law.

Because this action makes changes only to the methods of regulating foreign fishing and not their actual operation, it is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary of this determination was published at 49 FR 50498 on December 28, 1984.

NMFS prepared a regulatory impact review which concludes that this rule will have the economic effects summarized at 49 FR 50498 on December 28, 1984. You may obtain a copy of this review from NMFS at the address listed above.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. A summary of the reasons was published at 49 FR 50498 on December 28, 1984.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0089 for foreign fishing vessel permit applications and OMB Control Number 0648–0075 for foreign fishing vessel reports.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Recordkeeping and reporting requirements.

Dated: August 20, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Services.

DISTRIBUTION TABLE

Old section	New section
Subpart A—General	
§ 611.1	§ 611.1.
§ 611.2 Definitions included unless otherwise noted	§ 611.2 Definitions undesignated and alphabetized.
§ 611.2(a) "Act"	*Magnuson Act.*
§ 611.2(f) "Billfish"	Unnecessary.
§ 611.2(g) "Continental Shelf"	Unnecessary.
§ 611.2(j) "Directed fishery"	611.2 *Directed fishing.*
§ 611.2(l) "Existing International Fishery Agreement"	Unnecessary.
§ 611.2(n) "Fish over which the United States exercises exclusive management authority"	Unnecessary.
§ 611.2(q) "Fishery resource"	Unnecessary.
§ 611.2(r)(1)	§ 611.2 *Fishing or to fish* includes, scouting, processing and support.
§ 611.2(r)(2)	§ 611.2 *Scouting.*
§ 611.2(r)(3)(i)	§ 611.2 *Processing.*
§ 611.2(r)(3)(ii)	§ 611.2 *Support.*
§ 611.2(r)(3)(iii)	§ 611.2 *Support.*
§ 611.2(y) "Incidental catch"	Unnecessary.
§ 611.2(ff) "Vessel day"	Unnecessary.
§ 611.3(a)	§ 611.3(a)(1).
§ 611.3(b)	§ 611.3(a)(2).
§ 611.3(c)	§ 611.3(e).
§ 611.3(d)	§ 611.3(e)(1).
§ 611.3(e)	§ 611.3(d).
§ 611.3(f) introductory language	Unnecessary.
§ 611.3(f)(1)	§ 611.3(e)(2).
§ 611.3(f)(2) first sentence	§ 611.3(e)(1).
§ 611.3(f)(2) second sentence	§ 611.3(f).
§ 611.3(f)(2) third sentence	§ 611.3(g).
§ 611.3(f)(2) fourth and fifth sentences	§ 611.3(e)(4).
§ 611.3(f)(2) sixth sentence	Unnecessary.
§ 611.3(f)(3) introductory language	§ 611.3(h).
§ 611.3(f)(3)(i)	§ 611.3(e)(3).
§ 611.3(f)(3)(ii)	§ 611.3(h).
§ 611.3(f)(4) modifications included as part of completed form	§ 611.3(e)(3)(iv).
§ 611.3(f)(5) except "or modification"	§ 611.3(e)(2).
§ 611.3(f)(5) "(or modification)" only	§ 611.3(k)(5).
§ 611.3(g)	§ 611.3(i).
§ 611.3(h)	§ 611.3(a)(3).
§ 611.3(i) introductory language	§ 611.3(j)(1).
§ 611.3(i)(1)	Unnecessary
§ 611.3(i)(2) first sentence	§ 611.3(f)(1).
§ 611.3(i)(2) second sentence	§ 611.3(f)(2).
§ 611.3(i)(2)(i)	§ 611.3(f)(3).
§ 611.3(i)(2)(ii)(A)	§ 611.3(i)(3).
§ 611.3(i)(2)(ii)(B)	Unnecessary.
§ 611.3(i)(2)(iii)	§ 611.3(f)(3).
§ 611.3(i)(2)(iv)	Unnecessary
§ 611.3(i)(2)(v)	Unnecessary.
§ 611.3(i)(2)(vi)	§ 611.3(f)(5).
§ 611.3(i)(2)(vii)	§ 611.3(f)(2).
§ 611.3(i)(3) first sentence	§ 611.3(k)(1).
§ 611.3(i)(3) last two sentences	§ 611.3(k)(2).
§ 611.3(i)(4)	§ 611.3(k)(3).
§ 611.3(i)(5)	§ 611.3(k)(4).
§ 611.4(a) introductory language	§ 611.4(a).
§ 611.4(a)(1)	§ 611.4(c)(1).
§ 611.4(a)(2)	§ 611.4(c)(2).
§ 611.4(a)(3)	§ 611.4(c)(3).
§ 611.4(a)(4)	§ 611.4(c)(4).
§ 611.4(a)(5)	§ 611.4(c)(9).
§ 611.4(b)	§ 611.4(b).
§ 611.4(c) *"transmitted"* and *"delivered"* explained	§ 611.4(b).
§ 611.4(c) first sentence	§ 611.4(c)(1) and § 611.4(c)(9).
§ 611.4(c) second sentence except phrase beginning, "except . . ."	§ 611.4 (c)(2) through (vii).
§ 611.4(c) phrase beginning "except . . ."	§ 611.4(c)(4).

DISTRIBUTION TABLE—Continued

Old section	New section
§ 611.4(d) first sentence	§ 611.4(c) introductory paragraph.
§ 611.4(d) second and third sentences	§ 611.4 (c)(1) through (c)(iii) specify requirements.
§ 611.4(d) example	Appendix B.1.
§ 611.4(e) first paragraph	§ 611.4(e).
§ 611.4(e) example	Appendix B.12.
§ 611.5(a)(1)	§ 611.5(a)(1).
§ 611.5(a)(2)	§ 611.5(a)(2).
§ 611.5(b)	§ 611.5(a)(3).
§ 611.5(c)	§ 611.5(d).
§ 611.5(d)	§ 611.5(b).
§ 611.5(e)	§ 611.5(c)(1).
§ 611.5(g)	§ 611.6(a)(1).
§ 611.6(b) introductory paragraph	§ 611.6(c)(1).
§ 611.6(b)(1)	§ 611.6(c)(1)(iv).
§ 611.6(b)(2)	§ 611.6(c)(1)(iii).
§ 611.6(b)(3)	§ 611.6(c)(1)(ii).
§ 611.6(d)	§ 611.6(c)(1)(i).
§ 611.6(e)	§ 611.6(d).
§ 611.6(f)	Unnecessary.
§ 611.6(e)	§ 611.6(b)(2).
§ 611.6(f)	§ 611.6(a)(2).
§ 611.7(a) introductory language	§ 611.7(a).
§ 611.7(a)(1)	§ 611.7(a)(26).
§ 611.7(a)(2)	§ 611.7(a)(10).
§ 611.7(a)(3)	§ 611.7(a)(11).
§ 611.7(a)(4)	§ 611.7(a)(2).
§ 611.7(a)(5)	§ 611.7(a)(3).
§ 611.7(a)(6)	§ 611.7(a)(4).
§ 611.7(a)(7)	§ 611.7(a)(1).
§ 611.7(a)(8)	§ 611.7(a)(5).
§ 611.7(b)	§ 611.7(b).
§ 611.7(c)	§ 611.7(c).
§ 611.8(a) first sentence	§ 611.8(a).
§ 611.8(a) second sentence	§ 611.8(c) introductory wording.
§ 611.8(b)	§ 611.8(b).
§ 611.8(c)(1)	§ 611.8(c)(1).
§ 611.8(c)(2)	§ 611.8(c)(2).
§ 611.8(c)(3)	§ 611.8(c)(3).
§ 611.8(c)(4)	§ 611.8(c)(4).
§ 611.8(c)(5)	§ 611.8(c)(9).
§ 611.8(d)	§ 611.7(a)(14).
§ 611.8(e)	§ 611.8(d)(2).
§ 611.8(f)	§ 611.8(e).
§ 611.8(g)	§ 611.8(f).
§ 611.8(h)	§ 611.8(g).
§ 611.8(i)	§ 611.8(h).
§ 611.8(j)	§ 611.8(i).
§ 611.8(k)	§ 611.8(j).
§ 611.9(a)	§ 611.9(a) introductory paragraph.
§ 611.9(b)	§ 611.9(c).
§ 611.9(c)	§ 611.9(b).
§ 611.9(d)	§ 611.9(d) See also § 611.9 (f) through (h).
§ 611.9(d)(1) first sentence except "in English."	§ 611.9(d)(1).
§ 611.9(d)(1) "in English"	§ 611.9(a)(1).
§ 611.9(d)(1) second sentence	§ 611.9(e)(4) (iii).
§ 611.9(d)(1) third sentence	§ 611.9(a)(2).
§ 611.9(d)(1) fourth sentence	§ 611.9(d)(1).
§ 611.9(d)(2) introductory language	§ 611.9(e).
§ 611.9(d)(2)(i)	§ 611.9(e)(1) (iii) and (iv).
§ 611.9(d)(2)(ii)	§ 611.9(e)(1)(v).
§ 611.9(d)(2)(iii)	§ 611.9(e)(1)(ii).
§ 611.9(d)(2)(iv)	§ 611.9(e)(4)(i).
§ 611.9(d)(2)(v)	§ 611.9(e)(2)(ii).
§ 611.9(d)(2)(vi)	§ 611.9(e)(4)(iii).
§ 611.9(d)(2)(vii)	§ 611.9(e)(4)(ii).
§ 611.9(d)(2)(viii)	§ 611.9(e)(4)(ii).
§ 611.9(d)(3) first sentence	§ 611.9(e) introductory paragraph.
§ 611.9(d)(3) second sentence	§ 611.9(j).
§ 611.9(d)(3) third sentence	§ 611.9(e)(3)(ii).
§ 611.9(d)(4)	Unnecessary.
§ 611.9(g)(1) "Each foreign nation shall submit through the designated representative"	§ 611.4(f)(1).
§ 611.9(g)(1) rest of paragraph	§ 611.4(f)(4)(i).
§ 611.9(g)(2)	§ 611.4(f)(4)(ii) and Appendix H.
§ 611.9(g)(3)	§ 611.4(f)(4)(iii).
§ 611.9(g)(4)	§ 611.4(g) and Appendix H.
§ 611.9(g)(5)	Unnecessary.
§ 611.9(h)	§ 611.9(a)(4).
§ 611.9(i) introductory	Unnecessary.

DISTRIBUTION TABLE—Continued

Old section	New section
§ 611.9(i)(1)	§ 611.9(a) introductory paragraph.
§ 611.9(i)(2)	§ 611.9(a)(1).
§ 611.9 Appendix I	Appendix D.
§ 611.9 Appendix II	Appendix C.
§ 611.9 Appendix III	Appendices I, J, and K.
§ 611.9 Appendix IV	Appendix F.
§ 611.9 Appendix V	Appendix G.
§ 611.9 Appendix VI	Appendix H.
§ 611.10(a)	§ 611.2 *Processing* and *Support.*
§ 611.10(b)	§ 611.10 (c) and (d).
§ 611.10(c)	§ 611.10 (c) and (d).
§ 611.11(a)	§ 611.12 (a)(1).
§ 611.11(b)	§ 611.12 (a)(2).
§ 611.11(c)	§ 611.12 (b) introductory paragraph.
§ 611.11(d)	Unnecessary.
§ 611.12	Unused in the subpart.
§ 611.13(a)	§ 611.11(a).
§ 611.13(b)	§ 611.11(b).
§ 611.13(c)	§ 611.11(d).
§ 611.14(a)	§ 611.10(a).
§ 611.14(b)	§ 611.11(c).
§ 611.15(a) introductory paragraph	§ 611.13(a) introductory paragraph.
§ 611.15(a)(1)	§ 611.13(a)(1).
§ 611.15(a)(2)	§ 611.13(a)(1).
§ 611.15(a)(3)	§ 611.13(a)(2).
§ 611.15(a)(4)	§ 611.13(a)(2).
§ 611.15(a)(5)	Unused.
§ 611.15(a)(6)	§ 611.13(a)(3).
§ 611.15(a)(7)	§ 611.13(a)(3).
§ 611.15(a)(8)	§ 611.13(a)(4).
§ 611.15(b)	§ 611.13(d).
§ 611.15(c) introductory language	§ 611.13(c) heading.
§ 611.15(c)(1)	Obsolete.
§ 611.15(c)(2) first sentence	§ 611.13(c)(1).
§ 611.15(c)(2) rest of paragraph	§ 611.13(c)(2).
§ 611.15(d)	§ 611.13(e).
§ 611.16(a) except "including abandoned fishing gear"	§ 611.13(c)(1)
§ 611.16(a) "including abandoned fishing gear"	§ 611.12(c)(2).
§ 611.16(b) introductory paragraph	§ 611.12(c)(3).
§ 611.16(b)(1)	§ 611.12(b)(1).
§ 611.16(b)(2)	§ 611.12(b)(2).
§ 611.16(b)(3)	§ 611.12(b)(3).
§ 611.16(b)(4)	§ 611.12(b)(4).
§ 611.16(c)	§ 611.12(c)(2).
§ 611.17(a)	§ 611.14(a).
§ 611.17(b)	§ 611.14(b)
§ 611.18	§ 611.16.
Subpart B—Surpluses	
§ 611.20	§ 611.20.
§ 611.21(a)	§ 611.21(a).
§ 611.21(b)(1)	§ 611.8(b).
§ 611.21(b)(2)	§ 611.8(b)(1)
§ 611.21(b)(3)	Obsolete.
§ 611.22(a) introductory language	Unnecessary.
§ 611.22(a)(1)(i)	§ 611.22(a).
§ 611.22(a)(1)(ii)	Obsolete.
§ 611.22(a)(1)(iii)	Obsolete.
§ 611.22(a)(2)(i)	§ 611.22(b)(1).
§ 611.22(a)(2)(ii)	§ 611.22(b)(2).
§ 611.22(a)(2)(iii)	§ 611.22(b)(3).
§ 611.22(b)	§ 611.22(c).
§ 611.22(c)	§ 611.22(d).
§ 611.22(d)	§ 611.22(e).
§ 611.22 Table I	§ 611.22 Table I.

For the reasons set out in the preamble, Part 611 of Title 50, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801, et seq.

2. Part 611 is amended by revising subparts A and B to read as follows:

PART 611—FOREIGN FISHING

Subpart A—General

Sec.

611.1 Purpose and scope.
611.2 Definitions.
611.3 Vessel permits.
611.4 Vessel reports.
611.5 Vessel and gear identification.
611.6 Facilitation of enforcement.
611.7 Prohibitions.
611.8 Observers.
611.9 Recordkeeping.
611.10 Fishing operations.
611.11 Prohibited species.
611.12 Gear avoidance and disposal.
611.13 Fishery closure procedures.
611.14 Scientific research.
611.15 Recreational fishing.
611.16 Relation to other laws.
Appendix A to Subpart A—Addresses, areas of responsibility and communications
Appendix B to Subpart A—Vessel activity reports
Appendix C to Subpart A—Fishing areas
Appendix D to Subpart A—Species codes
Appendix E to Subpart A—Fishery product codes
Appendix F to Subpart A—Weekly catch report
Appendix G to Subpart A—Weekly joint venture receipts report
Appendix H to Subpart A—Weekly marine mammal report
Appendix I to Subpart A—Daily fishing log
Appendix J to Subpart A—Daily consolidated log
Appendix K to Subpart A—Daily joint venture log

Subpart B—Surpluses

611.20 Total allowable level of foreign fishing (TALFF).
611.21 Allocations.
611.22 Fee schedule.

* * * * *

Subpart A—General

§ 611.1 Purpose and scope.

(a) This part governs all foreign fishing over which the United States exercises exclusive fishery management authority under the Magnuson Fishery Conservation and Management Act. Foreign vessels which are not operated for profit and are conducting recreational fishing only must comply with the provisions of this section, § 611.2, § 611.6(a)(1), applicable portions of § 611.7, and § 611.15.

(b) For additional provisions governing the Japanese harvest of salmonids, see the International Convention for the High Seas Fisheries of the North Pacific Ocean (TIAS 2786, as amended in 1962, TIAS 5385 and in 1978, TIAS 9242).

(c) Other U.S. laws and regulations apply to foreign vessels fishing in the U.S. FCZ, such as the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, and 50 CFR Part 216).

§ 611.2 Definitions.

In addition to the definitions contained in the Magnuson Act, and unless the context requires otherwise, in this Part 611, the terms used have the following meaning (some definitions in the Magnuson Act have been repeated here to aid fishermen in understanding the regulations):

Agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner and/or operator of a vessel operating under a permit and of any other vessel of that nation fishing subject to the jurisdiction of the United States. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with such process.

Allocated species means any species or species group allocated to a foreign nation under § 611.21 for catching by vessels of that nation.

Anadromous species means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters, including but not limited to—

King salmon *(Oncorhynchus tshawytscha)*
Pink salmon *(Oncorhynchus gorbuscha)*
Chum salmon *(Oncorhynchus keta)*
Sockeye salmon *(Oncorhynchus nerka)*
Silver salmon *(Oncorhynchus kisutch)*
Rainbow (Steelhead) trout *(Salmo gairdneri)*
Atlantic salmon *(Salmo salar)*
Striped bass *(Morone saxatilis)*

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA) or a designee.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to enforce the Magnuson Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Authorized species means any species or species group which a foreign vessel is authorized to retain in a joint venture by a permit issued under activity code 4 as described by § 611.3(c).

Center Director means the Director of one of the four NMFS Fisheries Centers described in Table 1 of Appendix A to this subpart or a designee.

Coast Guard Commander means one of the commanding officers of the Coast Guard units specified in Table 1 of Appendix A to this subpart or a designee.

Continental shelf fishery resources (CSFR) means the following plus any species added by the Secretary under section 3(4) of the Magnuson Act:

Coelenterata

Bamboo coral (*Acanella* spp.)
Black coral (*Antipathes* spp.)
Gold coral (*Callogorgia* spp.)
Precious red coral (*Corallium* spp.)
Bamboo coral (*Keratoisis* spp.)
Gold coral (*Parazoanthus* spp.)

Crustacea

Tanner crab (*Chionoecetes tanneri*)
Tanner crab (*Chionoecetes opilio*)
Tanner crab (*Chionoecetes angulatus*)
Tanner crab (*Chionoecetes bairdi*)
King crab (*Paralithodes camtschatica*)
King crab (*Paralithodes platypus*)
King crab (*Paralithodes brevipes*)
Lobster (*Homarus americanus*)
Dungeness crab (*Cancer magister*)
California king crab (*Paralithodes californiensis*)
California king crab (*Paralithodes rathbuni*)
Golden king crab (*Lithodes aequispinus*)
Northern stone crab (*Lithodes maja*)
Stone crab (*Menippe mercenaria*)
Deep-sea red crab (*Geryon quinquedens*)

Mollusks

Red abalone (*Haliotis rufescens*)
Pink abalone (*Haliotis corrugata*)
Japanese abalone (*Haliotis kamtschatkana*)
Queen conch (*Strombus gigas*)
Surf clam (*Spisula solidissima*)
Ocean quahog (*Arctica islandica*)

Sponges

Glove sponge (*Spongia cheiris*)
Sheepswool sponge (*Hippiospongia lachne*)
Grass sponge (*Spongia graminea*)
Yellow sponge (*Spongia barbera*)

Council means any of the Regional Fishery Management Councils established under the Magnuson Act.

Designated representative means the person appointed by a foreign nation and maintained within the United States who is responsible for transmitting information to and submitting reports from vessels of that nation and establishing observer transfer arrangements for vessels in both directed and joint venture activities.

Directed fishing means any fishing by the vessels of a foreign nation for allocations of fish granted that nation under § 611.21.

Discard or *discarded* means to release or return fish to the sea, whether or not such fish are brought fully aboard a fishing vessel.

Exclusive economic zone (EEZ), with respect to U.S. fisheries, is deemed to

have the same meaning as the fishery conservation zone (FCZ).

Fish (when used as a noun) includes finfish, elasmobranches, mollusks, crustaceans, and all other forms of marine animal or plant life, except marine mammals, birds, and highly migratory species.

Fish (when used as a verb) means to engage in "fishing," as defined below.

Fish over which the United States exercises exclusive fishery management authority means—

(a) All fish within the fishery conservation zone;

(b) All anadromous species beyond the fishery conservation zone, except when they are within any foreign nation's territorial sea or fishery conservation zone (or equivalent), to the extent that such sea or zone is recognized by the United States; and

(c) All Continental shelf fishery resources beyond the fishery conservation zone.

Fishery means—

(a) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics, or method of catch; or

(b) Any fishing for such stocks.

Fishery conservation zone (FCZ) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing or *to fish* means any activity, other than scientific research, which does, is intended to, or can reasonably be expected to result in catching or removing from the water fish over which the United States exercises exclusive fishery management authority. Fishing also includes the acts of scouting, processing and support.

Fishing vessel means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for, fishing.

Foreign fishing means fishing by a foreign fishing vessel.

Foreign fishing vessel (FFV) means any fishing vessel other than a vessel of the United States, except those foreign vessels engaged in recreational fishing, as defined in this section.

Gear conflict means any incident at sea involving one or more fishing vessels (a) in which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and (b) which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

Governing International Fishery Agreement (GIFA) means an agreement between the United States and a foreign nation or nations under Section 201(c) of the Magnuson Act.

Greenwich mean time (GMT) means the local mean time at Greenwich, England. All times in this part are GMT unless otherwise specified.

Highly migratory species means the species of tuna which in the course of their life cycle spawn and migrate over great distances of the ocean, including, but not limited to—

Albacore *(Thunnus alalunga)*
Bigeye tuna *(Thunnus obsesus)*
Bluefin tuna *(Thunnus thynnus)*
Skipjack tuna *(Euthynnus pelamis)*
Southern bluefin tuna *(Thunnus maccoyii)*
Yellowfin tuna *(Thunnus albacares)*

International radio call sign (IRCS) means the unique radio identifier assigned a vessel by the appropriate authority of the flag state.

Joint venture means any operation by a foreign vessel assisting fishing by U.S. fishing vessels, including catching, scouting, processing and/or support. (A joint venture generally entails a foreign vessel processing fish received from U.S. fishing vessels and conducting associated support activities.)

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

NMFS means National Marine Fisheries Service, NOAA.

NOAA means the National Oceanic and Atmospheric Administration, Department of Commerce.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Optimum yield (OY) means the amount of fish—

(a) Which will provide the greatest overall benefit to the United States, with particular reference to food production and recreational opportunities; and

(b) Which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

Owner, with respect to any vessel, means any person who owns that vessel or any charterer, whether bareboat, time, or voyage; and any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

Processing means any operation by an FFV to receive fish from foreign or U.S. fishing vessels and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the FFV's behalf or to assist other foreign or U.S. fishing vessels.

Product recovery rate (PRR) means a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

Prohibited species, with respect to any vessel, means any species of fish which that vessel is not specifically allocated or authorized to retain, including fish caught or received in excess of any allocation or authorization.

Recreational fishing means any fishing from a foreign vessel not operated for profit and not operated for the purpose of scientific research. It may not involve the sale, barter, or trade of part or all of the catch (see § 611.15).

Regional Director means the Director of one of the five NMFS regions described in Table 1 of Appendix A to this subpart or a designee.

Round weight means the weight of the whole fish.

Scouting means any operation by a vessel exploring (on the behalf of an FFV or U.S. fishing vessel) for the presence of fish by visual, acoustic, or other means which do not involve the catching of fish.

Secretary means the Secretary of Commerce or a designee.

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

Support means any operation by a vessel assisting fishing by foreign or U.S. fishing vessels, including—

(a) Transferring or transporting fish or fish products; or

(b) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the

United States within any fishery for which a fishery management plan prepared under Title III of the Magnuson Act or a preliminary fishery management plan prepared under section 201(h) of the Magnuson Act has been implemented.

U.S. observer or *observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract, or certified as a supplementary observer by NMFS.

Vessel of the United States or *U.S. vessel* means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*), and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 and used exclusively for pleasure.

§ 611.3 Vessel permits.

(a) *General.* (1)(i) Each FFV fishing under the Magnuson Act must have on board a completed permit form for a permit issued under this section, unless it is engaged only in recreational fishing.

(ii) It is a rebuttable presumption that fish or fish products on board a vessel conducting fish transfer operations within the FCZ or within the boundaries of any State are fish over which the United States exercises exclusive fishery management authority, so that an FFV engaged in such transfer activity at sea is "fishing under the Magnuson Act."

(2) The Secretary of State may issue annual registration permits for FFV's fishing under the International Convention for the High Seas Fisheries of the North Pacific Ocean (TIAS 2786; amended in 1962, TIAS 5385; and in 1978, TIAS 9242) upon application from the foreign nations.

(3) Permits issued under this section do not authorize FFV's or persons to harass, capture, or kill marine mammals. No marine mammal may be taken in the course of fishing unless that vessel has on board a marine mammal certificate of inclusion issued under a general permit under the Marine Mammal Protection Act. Application procedures for permits to take marine mammals incidential to commercial fishing operations are contained in 50 CFR 216.24.

(b) *Responsibility of owners and operators.* The owners and operators of each FFV are jointly and severally responsible for compliance with the Magnuson Act, the applicable GIFA, this part, and any permit issued under the Magnuson Act and this part. The owners and operators of each FFV bear civil responsibility for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or even forbidden by the employer or principal, and regardless of knowledge concerning the occurrence.

(c) *Activity codes.* Permits to fish under a GIFA may be issued by the Assistant Administrator for the activities described below, but the permits may be modified by regulations of this part, and by the conditions and restrictions attached to the permit (see paragraphs (e)(v) and (l) of this section). The Assistant Administrator may issue a permit for one of the activity codes 1, 2, or 3. The Assistant Administrator will issue a permit with the additional activity code 4 for FFV's authorized to assist U.S. fishing vessels in a joint venture. The activity codes are described as follows:

Activity code 1—Catching, scouting, processing and support.

Activity code 2—Processing, scouting and support.

Activity code 3—Support.

Activity code 4—Assisting U.S. fishing vessels as allowed by the other assigned code (joint venture).

(d) *Application.* (1) Applications for FFV permits must be submitted by each foreign nation to the Department of State. Application forms are available from OES/OFA, Department of State, Washington, D.C. 20520. The applicant should allow 90 days for review and comment by the public, involved governmental agencies, and appropriate Fishery Management Councils, and for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 611.22.

(2) Applicants must provide complete and accurate information requested on the permit application form.

(3) Applicants for FFV's that will support U.S. vessels in joint ventures (activity code 4) must provide the additional information specified by the permit application form.

(4) Each foreign nation may substitute one FFV for another by submitting a new vessel information form and a short explanation of the reason for the substitution to the Department of State. Each substitution is considered a new application and a new application fee must be paid. NMFS will promptly process an application for a vessel replacing a permitted FFV that is disabled or decommissioned, once the Department of State has notified the appropriate Council(s) of the substituted application.

(e) Issuance. (1) Permits may be issued to an FFV by the Assistant Administrator through the Department of State after—

(i) The Assistant Administrator determines that the fishing described in the application will meet the requirements of the Magnuson Act and approves the permit application;

(ii) The foreign nation has paid the fees, including any surcharge fees; and provided any assurances required by the Secretary in accordance with the provisions of § 611.22;

(iii) The foreign nation has appointed an agent;

(iv) The foreign nation has identified a designated representative; and

(v) The general "conditions and restrictions" of receiving permits, as required by section 204(b)(7) of the Magnuson Act, and any "additional restrictions" attached to the permit for the conservation and management of fishery resources or to prevent significant impairment of the national defense or security interests, have been accepted by the nation issuing the FFV's documents.

(2) The Assistant Administrator will distribute blank permit forms to the designated representative while the application is being processed. The designated representative must ensure that each FFV receives a permit form and must accurately transmit the permit form and the contents of the permit to the FFV when it is issued. The Assistant Administrator may authorize the modification and use of the previous year's permit forms to be used on an interim basis in place of the current year's permit forms if the current forms were not made available to the designated representatives for timely distribution. The FFV owner or operator must accurately complete the permit form prior to fishing in the FCZ.

(3) A completed permit form must contain—

(i) The name and IRCS of the FFV and its permit number;

(ii) The permitted fisheries and activity codes;

(iii) The date of issuance and expiration date, if other than December 31; and

(iv) All conditions and restrictions, and any additional restrictions and technical modifications appended to the permit.

(4) Permits are not issued for boats which are launched from larger vessels. Any enforcement action which results from the activities of a launched boat will be taken against the permitted vessel.

(f) *Duration.* A permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended or the

nation issuing the FFV's documents does not accept amendments to the permit made by the Assistant Adminstrator in accordance with the procedures of paragraph (l). The permit will be valid for no longer than the calendar year in which it was issued.

(g) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the FFV to which it is issued.

(h) *Display.* Each FFV operator must have a properly completed permit form available on board the FFV when engaged in fishing activities and must produce it at the request of an authorized officer or observer.

(i) *Suspension and revocation.* NMFS may apply sanctions to an FFV's permit by revoking, suspending, or imposing additional permit restrictions on the permit under Title 15 CFR Part 904 if the vessel is involved in the commission of any violation of the Magnuson Act, the GIFA, or this part; if an agent and a designated representative are not maintained in the United States; if a civil penalty or criminal fine imposed under the Magnuson Act has become overdue; or as otherwise specified in the Magnuson Act.

(j) *Fees.* Permit application fees are described at § 611.22.

(k) *Change in application information.* (1) The foreign nation must report in writing any change in the information supplied under paragraph (d) of this section to the Assistant Administrator within 15 calendar days after the date of the change. Failure to report a change in the ownership from that described in the current application within the specified time frame voids the permit, and all penalties involved will accrue to the previous owner.

(2) The Assistant Administrator may make technical modifications or changes in the permit application requested or reported by a nation, such as a change in radio call sign, processing equipment, or tonnage, which will be effective immediately.

(3) If, in the opinion of the Assistant Administrator, a permit change requested by a nation could significantly affect the status of any fishery resource, such request will be processed as an application for a new permit under this section.

(4) The Assistant Administrator will notify the designated representative of any revision which must be made on the permit form as the result of a permit change.

(5) The vessel owner or operator must record the modification on the permit form.

(l) *Permit amendments.* (1) The Assistant Administrator may amend a permit by adding "additional restrictions" for the conservation and management of fishery resources covered by the permit, or for the national defense or security if the Assistant Administrator determines that such interests would be significantly impaired without such restrictions. Compliance with the added "additional restrictions" is a condition of the permit. Violations of added "additional restrictions" will be treated as violations of this part.

(2) The Assistant Administrator may make proposed "additional restrictions" effective immediately, if necessary, to prevent substantial harm to a fishery resource of the United States, to allow for the continuation of ongoing fishing operations, or to allow for fishing to begin at the normal time for opening of the fishery.

(3) The Assistant Administrator will send proposed "additional restrictions" to each nation whose vessels are affected (via the Secretary of State), to the appropriate Councils, and to the Commandant of the Coast Guard. The Assistant Administrator will, at the same time, publish a notice of any significant proposed "additional restrictions" in the **Federal Register**. The notice will include a summary of the reasons underlying the proposal, and the reasons that any proposed "additional restrictions" are made effective immediately.

(4) The nation whose vessels are involved, the owners of the affected vessels, their representatives, the agencies specified in paragraph (i)(3) of this section, and the public may submit written comments on the proposed "additional restrictions" within 30 days after publication in the **Federal Register**.

(5) The Assistant Administrator will make a final decision regarding the proposed "additional restrictions" as soon as practicable after the end of the comment period. The Assistant Administrator will provide the final "additional restrictions" to the nation whose vessels are affected (via the Secretary of State) according to the procedures of paragraph (e) of this section. The Assistant Administrator will include with the final "additional restrictions" to the nation, a response to comments submitted.

(6) "Additional restrictions" may be modified by following the procedures of paragraphs (l)(2) through (l)(5) of this section.

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§ 611.4 Vessel reports.

(a) The operator of each FFV must report the FFV's activities within the FCZ to the Coast Guard and NMFS as specified in this section.

(b) All reports required by this section must be in English and in the formats specified in the appendices. Reports should be delivered by private or commercial communications facilities to the appropriate Coast Guard commander, who will relay them to NMFS. Weekly reports may also be delivered directly to the appropriate NMFS Region or Center (Tables 1 and 2 of Appendix A to this subpart). (The required reports may be delivered to the closest Coast Guard communication station as indicated in Table 3 of Appendix A or other Coast Guard communication station *only if* adequate private or commercial communications facilities have not been successfully contacted.) Radio reports must be made via radiotelegraphy or Telex where available. In this section, a message is considered *transmitted* when its receipt is acknowledged by a communications facility and considered *delivered* upon its receipt by the offices of the appropriate Coast Guard commander, NMFS Regional Office, or NMFS Center identified in Appendix A. Reports required by this section may be submitted by the vessel's designated representative; however, the operator of the FFV is responsible for the correct and timely filing of all required reports.

(c) *Activity reports.* The operator of each FFV must report the FFV's movements and activities before or upon the event as specified in this paragraph and as illustrated in Appendix B to this subpart (EXCEPTION: § 611.81(d)). Each FFV report must contain the following information: The message identifier "VESREP" to indicate it is a vessel activity report, FFV name, international radio call sign (IRCS), date (month and day based on GMT), time (hour and minute GMT), position (latitude and longitude to the nearest degree and minute) where required, area (use fishing area code from Appendix C to this subpart) where required, the appropriate action code, confirmation codes where required, and the other information specified in paragraphs (c)(1) through (c)(11) of this section.

(1) *BEGIN.* Each operator must specify the date, time, position and area the FFV will actually BEGIN fishing in the FCZ and the species (by species code from Appendix D to this subpart), product (by product code from Appendix E to this subpart), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on

board when entering the FCZ (action code BEGIN). The message must be *delivered* at least 24 hours before the vessel begins to fish.

(2) *DEPART.* Each operator must specify the date, time, position, and area the FFV will DEPART the FCZ to embark or debark an observer, to visit a U.S. port, to conduct a joint centure in internal waters, or to otherwise temporarily leave an authorized fishing area but not depart the seaward limit of the FCZ (action code DEPART). The message must be *transmitted* before the FFV departs the present fishing area and *delivered* within 24 hours of its transmittal.

(3) *RETURN.* Each operator must specify the date, time, position, and area the FFV will RETURN to the FCZ following a temporary departure, and the species (by species code from Appendix D to this subpart), product (by product code from Appendix E to this subpart), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board which were received in a joint venture in internal waters (action code RETURN). The message must be *transmitted* before returning to the FCZ and *delivered* within 24 hours of its transmittal.

(4) *SHIFT.* Each operator must report each SHIFT in fishing area (as shown in Appendix C to this subpart) by specifying the date, time, and position the FFV will start fishing, and the new area (action code SHIFT). The message must be *transmitted* before leaving the original area and *delivered* within 24 hours of its transmittal. If a foreign vessel operates within 20 nautical miles of a fishing area boundary, its operator may submit in one message the shift reports for all fishing area shifts occurring during one fishing day (0001–2400 GMT). This message must be transmitted prior to the last shift expected to be made in the day and *delivered* within 24 hours of its transmittal.

(5) *JV OPS.* Each operator must specify the date, time, position, and area at which the FFV will START joint venture operations (action code START JV OPS) or END joint venture operations (action code END JV OPS). These reports must be made in addition to other activity reports made under this section. Each message must be *transmitted* before the event and *delivered* within 24 hours of its transmittal.

(6) *TRANSFER.* The operator of each FFV which anticipates a support operation in which the FFV will receive fish or fisheries product must specify the date, time, position, and area the FFV will conduct the TRANSFER and the name and IRCS of the other FFV involved (action code TRANSFER). The message must be *transmitted* prior to the transfer and *delivered* within 24 hours of its transmittal. The movement of raw fish from a catching vessel or U.S. fishing vessel to a processing vessel and the return of nets or codends is not considered a transfer.

(7) *OFFLOADED.* Each operator must specify the date, time, position and area the FFV OFFLOADED fish or fisheries products TO another FFV in a transfer, the other FFV's name, IRCS, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) offloaded (action code OFFLOADED TO). The message must be *transmitted* within 12 hours after the transfer is completed and *delivered* within 24 hours of its transmittal and before the FFV ceases fishing in the FCA.

(8) *RECEIVED.* Each operator must specify the date, time, position, and area the vessel RECEIVED fish or fisheries products FROM another FFV in a transfer, the other FFV's name, IRCS, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) received (action code RECEIVED FROM). The message must be *transmitted* within 12 hours after the transfer is completed and *delivered* within 24 hours of its transmittal and before the FFV ceases fishing in the FCZ.

(9) *CEASE.* Each operator must specify the date, time, position, and area the FFV will CEASE fishing in order to leave the FCZ (action code CEASE). The message must be *delivered* at least 24 hours before the FFV's departure.

(10) *CHANGE.* Each operator must report any CHANGE TO the FFV's operations if the position or time of an event specified in an activity report will vary more than five nautical miles or four hours from that previously reported, by sending a revised message inserting the word "CHANGE" in front of the previous report, repeating the name, IRCS, date, and time of the previous report, adding the word "TO" and the complete revised text of the new report (action code CHANGE TO). Changes to reports specifying an early beginning of fishing by an FFV or other changes to reports of paragraphs (c)(1) through (c)(9) must be transmitted and delivered as if the CHANGE report was the original message.

(11) *CANCEL.* Each operator wishing to CANCEL a previous report may do so by sending a revised message, and inserting the word "CANCEL" in front of the previous report's vessel name, IRCS, date, time and action code canceled (action code CANCEL). The message must be transmitted and delivered prior to the date and time of the event in the original message.

(d) The operator of an FFV will be in violation of paragraphs (c)(1) through (c)(9) of this section if the FFV does not pass within five nautical miles of the position given in the report within four hours of the time given in the report.

(e) The notices required by this section may be provided for individual or groups of FFV's (on a vessel-by-vessel basis) by fleet commanders or other authorized persons. An FFV operator may retransmit reports on the behalf of another FFV, if authorized by that FFV's operator. This does not relieve the individual vessel operator of the responsibility of filing required reports. In these cases, the message format in Appendix B of this subpart should be modified so that each line of text under "VESREP" is a separate vessel report.

(f) *Weekly reports.* (1) The operator of each FFV in the FCZ must submit appropriate weekly reports through the nation's designated representative. The report must arrive at the address and time specified in paragraph (g) of this section. The reports may be sent by Telex, but a completed copy of the report form (see Appendices F, G, and H to the subpart) must be mailed or hand delivered to confirm the Telex. Designated representatives may include more than one vessel report in a Telex message, if the information is submitted on a vessel-by-vessel basis. Requests for corrections to previous reports must be submitted through the nation's designated representative and mailed or hand-delivered, together with a written explanation of the reasons for the errors. The appropriate Regional or Center Director may accept or reject any correction and initiate any appropriate civil penalty actions.

(2) *Weekly catch report (CATREP).* (i) The operator of each FFV must submit a weekly catch report stating any catch (activity code 1) in round weight of each species or species group allocated to that nation by area and days fished in each area for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged (see Subpart C through G of this part). Foreign vessels delivering unsorted, unprocessed fish to a processing vessel are not required to submit CATREP's, if

that processing vessel (activity code 2) submits consolidated CATREP's for all fish received during each weekly period. No report is required for FFV's which do not catch or receive foreign-caught fish during the reporting period.

(ii) Appendix F to this subpart contains the instructions and form to submit a CATREP.

(3) *Weekly receipts report (RECREP).* (i) The operator of each FFV must submit a weekly report stating any receipts of U.S.-harvested fish in a joint venture (activity code 4) for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged (see Subparts C through G of this part), for each fishing area by authorized or prohibited species or species group; days fish received; round weight retained or returned to the U.S. fishing vessel; number of codends received; and number of vessels transferring codends. The report must also include the names of U.S. fishing vessels transferring codends during the week. No report is required for FFV's which do not receive any U.S.-harvested fish during the reporting period.

(ii) Appendix G to this subpart contains the instructions and form to submit a RECREP.

(4) *Marine mammal report (MAMREP).* (i) The operator of each FFV must submit a weekly report stating any incidental catch or receipt of marine mammals (activity codes 1 or 2 and/or 4), the geographical position caught, the condition of the animal, number caught (if more than one of the same species and condition), and nationality of the catching vessel for the period Sunday through Saturday, GMT, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part). Foreign catching vessels delivering unsorted, inprocessed fish to processing vessel are not required to submit MAMREP's provided that the processing or factory vessel (activity code 2) submits consolidated MAMREP's for all fish received during each weekly period. FFV's receiving U.S.-harvested fish in a joint venture (activity code 4) must submit consolidated reports for U.S. vessels operating in the joint venture. No report is requirled for FFV's which do not catch or receive marine mammals during the reporting period.

(ii) Appendix H to this subpart contains the instructions and form to submit a MAMREP.

(g) *Submission instructions for weekly reports.* The designated representative for each FFV must submit weekly reports in the prescribed format to the appropriate Regional or Center Director of NMFS by 1900 GMT on the Wednesday following the end of the reporting period. For fisheries off Alaska, weekly reports, other than weekly receipts reports (RECREP's), must be received by 1900 GMT on the Friday following the end of the reporting period. For fisheries off Alaska, weekly receipts reports (RECREP's) must be received by 19 GMT on the Wednesday following the end of the reporting period. However, by agreement with the appropriate Director, the designated representative may submit weekly reports to some other facility of NMFS (See Table 2 to Appendix A to this subpart).

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§ 611.5 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each FFV assigned an international radio call sign (IRCS) must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement vessel, and on an appropriate weather deck so it is visible from the air.

(2) The operator of each FFV not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix. (For example, JCZM–1, JCZM–2, etc. would be displayed on small trawlers not assigned an IRCS operating with a mother ship whose IRCS is JCZM; JANP–1 would be displayed by a pair trawler not assigned an IRCS operating with a trawler whose IRCS is JANP.)

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the FFV in block roman alphabet letters and arabic numerals at least one meter in height for FFV's over 20 meters in length, and at least one-half meter in height for all other FFV's.

(b) *Navigational lights and shapes.* Each FFV must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the FFV is engaged (as described at 33 CFR Part 81).

(c) *Gear identification.* (1) The operator of each FFV must ensure that all deployed fishing gear which is not physically and continuously attached to an FFV: (i) is clearly marked at the surface with a buoy displaying the vessel identification of the FFV (see paragraph (a) of this section) to which the gear belongs, (ii) has attached a light visible for two miles at night in good visibility, and (iii) has a radio buoy.

Trawl codends passed from one vessel to another are considered continuously attached gear and are not required to be marked.

(2) The operator of each FFV must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with: (i) a buoy displaying the vessel identification of the FFV to which the gear belongs (see paragraph (a) of this section, (ii) a light visible for two miles at night in good visibility, and (iii) a radio buoy.

Additional requirements may be specified in Subparts C through G for the fishery in which the vessel is engaged.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable Federal regulations by any authorized officer.

(d) *Maintenance.* The operator of each FFV must—

(1) Keep the vessel and gear identification clearly legible and in good repair;

(2) Ensure that nothing on the FFV obstructs the view of the markings from an enforcement vessel or aircraft; and

(3) Ensure that the proper navigational lights and shapes are displayed for the FFV's activity and are properly functioning.

§ 611.6 Facilitation of enforcement.

(a) *General.* (1) The owner, operator, or any person aboard any FFV subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the FFV; to move the FFV to a specified location; and to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and fish and fish products on board for purposes of enforcing the Magnuson Act and this part.

(2) The operator of each FFV must provide vessel position or other information when requested by NMFS or the Coast Guard within the time specified in the request.

(b) *Communications equipment.* (1) Each FFV must be equipped with a VHF–FM radiotelephone station located so that it may be operated from the wheelhouse. Each operator must maintain a continous listening watch on channel 16 (156.8 mHz).

(2) Each FFV must be equipped with a radiotelegraph station capable of communicating via 500 kHz radiotelegraph and at least one working frequency between 405 kHz and 535

kHz, and a radiotelephone station capable of communicating via 2182 kHz radiotelephony and at least one set of working frequencies identified in Table 3 to Appendix A of this subpart appropriate to the fishery in which the FFV is operating. Each operator must monitor and be ready to communicate via 500 kHz radiotelegraph and 2182 kHz radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) FFV's that are not equipped with processing facilities and that deliver all catches to a foreign processing vessel are exempt from the requirements of paragraph (b)(2) of this section.

(4) FFV's with no IRCS which do not catch fish and are used as auxiliary vessels to handle codends, nets, equipment, or passengers for a processing vessel are exempt from the requirements of paragraph (b)(1) and (b)(2) of this section.

(5) The appropriate Regional Director, with the agreement of the appropriate Coast Guard commander, may, upon request by a foreign nation, accept alternatives to the radio requirements of this section to certain FFV's or types or FFV operating in a fishery, provided they are adequate for the communications needs of the fishery.

(c) *Communications procedures.* (1) Upon being approached by a Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of any FFV subject to this part must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF–FM radiotelephone, 2182 kHz radiotelephone, 500 kHZ radiotelegraph, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or other appropriate means. The following signals extracted from the International Code of Signals are among those which may be used.

(i) "AA, AA, AA, etc." which is the call for an unknown station. The signaled vessel should respond by identifying itself or by illuminating the vessel identification required by § 611.5 of this part;

(ii) "RY–CY" meaning "You should proceed at slow speed, a boat is coming to you";

(iii) "SQ3" meaning "You should stop or heave to; I am going to board you"; and

(iv) "L" meaning "You should stop your vessel instantly."

(2) Failure of an FFV's operator to stop the vessel when directed to do so by an authorized officer using VHF–FM radiotelphone (channel 16), 2182 kHz radiotelephone (where required), 500 kHz radiotelegraph (where required), message block from an aircraft, flashing light signal, flaghoist, or loudhailer constitutes a violation of this part.

(3) The operator of or any person aboard an FFV who does not understand a signal from an enforcement unit and who is unable to obtain clarification by radiotelephone or other means must consider the signal to be a command to stop the FFV instantly.

(d) *Boarding.* The operator of an FFV signaled for boarding must—

(1) Monitor 2182 kHz radiotelephone and 500 kHz radiotelegraph (if equipped) and channel 16 (156.8 mHz) VHF–FM radiotelephone;

(2) Stop immediately and lay to or maneuver in such a way as to maintain the safety of the FFV and facilitate boarding by the authorized officer and the boarding party or an observer;

(3) Provide the authorized officer, boarding party, or observer a safe pilot ladder. The operator must ensure the pilot ladder is securely attached to the FFV and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), or a substantially equivalent national standard approved by letter from the Assistant Administrator, with agreement with the Coast Guard. Safe pilot ladder standards are summarized below:

(i) The ladder must be of a single length of not more than 9 meters (30 feet), capable of reaching the water from the point of access to the FFV, accounting for all conditions of loading and trim of the FFV and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 meters (30 feet), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be—

(A) Of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;

(B) Not less than 480 millimeters (19 inches) long, 115 millimeters (4½ inches) wide, and 25 millimeters (1 inch) in depth, excluding any non-slip device; and

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 millimeters (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder.

(iv) The side ropes of the ladder must consist of two uncovered manila ropes not less than 60 millimeters (2¼ inches) in circumference on each side (or synthetic ropes of equivalent size and equivalent or greater strength). Each rope must be continuous with no joints below top step.

(v) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.80 meters (5 feet 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between any batten and the next must not exceed 9 steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the FFV not less than 0.70 meter (2 feet 3 inches) nor more than 0.80 meter (2 feet 7 inches) apart, not less than 40 millimeters (2½ inches) in diameter, and must extend not less than 1.20 meters (3 feet 11 inches) above the top of the bulwark.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope, safety line and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owner and operator of each FFV must provide authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to, personal quarters and areas within personal quarters.

(2) The owner and operator of each FFV must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to, production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Product storage.* The operator of each permitted FFV storing fish or fish products in a storage space must ensure that all non-fish product items are neither stowed beneath nor covered by fish products, unless required to maintain the stability and safety of the vessel. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of the vessel or crew or for storage of the product. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

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§ 611.7 Prohibitions.

(a) It is unlawful for any person to do the following:

(1) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(2) Refuse to allow an authorized officer to board an FFV for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, the applicable GIFA, this part, or any other permit issued under this part;

(3) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(5) Interfere with, delay, or prevent by any means the apprehension or arrest of another person with the knowledge that such other person has committed any act prohibited by the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(6) Interfere with, obstruct, delay, oppose, impede, intimidate, or prevent by any means any boarding, investigation or search, wherever conducted, in the process of enforcing the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(7) Engage in any fishing activity for which the FFV does not have a permit as required under § 611.3;

(8) Engage in any fishing activity within the FCZ without a U.S. observer aboard the FFV, unless the requirement has been waived by the appropriate Regional Director;

(9) Retain or attempt to retain, within the FCZ, directly or indirectly, any U.S.-harvested fish, unless the FFV has a permit for activity code 4 which authorizes the receipt of that species of U.S.-harvested fish;

(10) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under this part;

(11) Violate any provision of the applicable GIFA;

(12) Falsely or incorrectly complete (including by omission) a permit application or permit form as specified in §§ 611.3 (d) and (k);

(13) Fail to report to the Assistant Administrator within 15 days any change in the information contained in the permit application for a FFV, as specified in § 611.3(k);

(14) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard an FFV under this part;

(15) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch prior to sampling, unless the observer has stated that sampling will not occur; or tampering with, destroying, or discarding an observer's collected samples, equipment, records, photographic film, papers, or effects without the express consent of the observer;

(16) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties;

(17) Harass an authorized officer or observer (including sexual harassment) by conduct which has the purpose or effect of unreasonably interfering with the observer's work performance, or which creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis;

(18) Fail to provide the required assistance to an observer as described at §§ 611.8 (c) and (d);

(19) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of the FFV or its gear as required by this part.

(20) Falsify or fail to make, keep, maintain, or submit any record or report required by this part;

(21) Fail to return to the sea or fail to otherwise treat prohibited species as required by this part;

(22) Fail to report or falsely report any gear conflict;

(23) Fail to report or falsely report any loss, jettisoning, or abandonment of fishing gear or other article into the FCZ which might interfere with fishing, obstruct fishing gear or vessels, or cause damage to any fishery resource or marine mammals;

(24) Continue activity codes 1 through 4 after those activity codes have been canceled under § 611.13;

(25) Violate any provisions of Subparts C through G of this part;

(26) Violate any provision of this part, the Magnuson Act, the applicable GIFA, any notice issued under this part or any permit issued under this part; or

(27) Attempt to do any of the foregoing.

(b) It is unlawful for any FFV, and for the owner or operator of any FFV except an FFV engaged only in recreational fishing, to fish—

(1) Within the boundaries of any State, unless the fishing is authorized by the Governor of that State as permitted by section 306(c) of the Magnuson Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that State; or

(2) Within the FCZ, or for any anadromous species or continental shelf fishery resources beyond the FCZ, unless the fishing is authorized by, and conducted in accordance with, a valid permit issued under § 611.3 or by the Secretary of State under the International Convention for the High Seas Fisheries of the North Pacific Ocean.

§ 611.8 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson Act, the appropriate Regional or Center Director (See Table 2 to Appendix A to this subpart) may assign U.S. observers to FFV's. Except as provided for in section 201(i)(2) of the Magnuson Act, no FFV may conduct fishing operations within the FCZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wishing to fish within the FCZ will submit to the appropriate Regional Director or Center Director; and also to the Chief, Office of

Enforcement, National Marine Fisheries Service, Washington, D.C. 20235, ATTN: F/M5 (see Table 4 to Appendix A to this subpart), a schedule of fishing effort 30 days prior to the beginning of each quarter. A quarter is a time period of three consecutive months beginning January 1, April 1, July 1, and October 1 of each year. The schedule will contain the name and IRCS of each FFV intending to fish within the FCZ during the upcoming quarter, and each FFV's expected date of arrival and expected date of departure.

(1) The appropriate Regional or Center Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the FCZ for FFV's listed in the effort plan required by this section.

(2) If an arrival date of an FFV will vary more than five days from the date listed in the quarterly schedule, the appropriate Regional or Center Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional or Center Director.

(c) *Assistance to observers.* To assist the observer in the accomplishment of his or her assigned duties, the owner and operator of an FFV to which an observer is assigned must—

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the FFV which are equivalent to those provided to the officers of that vessel;

(2) Cause the FFV to proceed to such places and at such times as may be designated by the appropriate Regional or Center Director for the purpose of embarking and debarking the observer;

(3) Allow the observer to use the FFV's communications equipment and personnel upon demand for the transmission and receipt of messages;

(4) Allow the observer access to and use of the FFV's navigation equipment and personnel upon demand to determine the vessel's position;

(5) Allow the observer free and unobstructed access to the FFV's bridge, trawl, or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process weigh, or store fish or fish products at any time;

(6) Allow the observer to inspect and copy the FFV's daily log, communications log, transfer log, and any other log, document, notice, or record required by these regulations;

(7) Provide the observer copies of any records required by these regulations upon demand;

(8) Notify the observer at least 15 minutes before fish are brought aboard or fish or fish products are transferred from the FFV to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified; and

(9) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(d) *Observer transfers.* (1) The operator of the FFV must ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved. The FFV operator must provide the observer three hours advance notice of at-sea transfers, so that the observer may collect personal belongings, equipment, and scientific samples.

(2) The FFV's involved must provide a safe pilot ladder and conduct the transfer according to the procedures of § 611.6(d) to ensure the safety of the observer during the transfer.

(3) An experienced crew member must assist the observer in the small boat or raft in which the transfer is made.

(e) *Supplementary observers.* In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional or Center Director will assign a supplementary observer to that vessel. The costs of supplementary observers will be paid for by the owners and operators of foreign fishing vessels as provided for in paragraph (h) of this section.

(f) *Supplementary observer authority and duties.* (1) A supplementary observer aboard a foreign fishing vessel has the same authority and must be treated in all respects as an observer who is employed by NMFS either directly or under contract.

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional or Center Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(g) *Supplementary observer payment.*—(1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the costs of supplementary observer coverage. Payment must be made to the contractor supplying supplementary observer coverage either by letter of credit or certified check drawn on a Federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 611.22(b)(2)(ii) of these regulations. Billing schedules will be specified by the terms of the contract between NOAA and the contractors beginning in FY 1986. During FY 1985, the billing schedule will be determined by the Assistant Administrator to ensure sufficient funding for the program. Billings for supplementary observer coverage will be approved by the appropriate Regional or Center Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country except as provided for by the Assistant Administrator. All bills must be paid within ten working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordance with paragraph (g)(4) of this section and § 611.22(b)(3) of these regulations.

(2) *Contractor costs.* The costs charged for supplementary observer coverage to the owners and operators of foreign fishing vessels may not exceed the costs charged to NMFS for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels and additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NMFS. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following:

(i) Salary and benefits, including overtime, for supplementary observers;

(ii) The costs of post-certification training required by paragraph (i) (2) of this section;

(iii) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from where the trip began. For the purposes of these regulations, the appropriate Regional or Center Director

will designate posts of duty for supplementary observers;

(iv) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by NMFS officials; and

(v) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *NMFS costs.* The owners and operators of foreign fishing vessels must also pay to NMFS as part of the surcharge required by Section 201(i)(4) of the Magnuson, the following costs:

(i) The costs of certifying applicants for the position of supplementary observer;

(ii) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional or Center Director according to the requirements of the fishery to which the supplementary observer will be deployed;

(iii)The costs associated with communications with supplementary observers for transmission of data and routine messages;

(iv) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data;

(v) The costs for data editing and entry;

(vi) Any costs incurred by NMFS to train, deploy or debrief a supplementary observer; and

(vii) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation.* Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels, or kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NMFS.

(h) *Supplementary observer contractors.*—(1) *Contractor eligibility.* Supplementary observers will be obtained by NMFS from persons or firms having established contracts to provide NMFS with observers. In the event no such contract is in place, NMFS will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following:

(i) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services;

(ii) All application information for persons whom the contractor desires to employ as certified supplementary observers;

(iii) Billing schedules and billings to the owners and operators of foreign fishing vessels for further transmission to the designated representative of the appropriate foreign nation; and

(iv) All data on costs.

(i) *Supplementary observers—certification, training.*

(1) *Certification.* The appropriate Regional or Center Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(i) The candidate is a citizen or national of the United States.

(ii) The candidate has education or experience equivalent to the education or experience required of persons used as observers by NMFS as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed. Documentation of U.S. citizenship or nationality, and education or experience will be provided from personal qualification statements on file with NMFS contractors who provide supplementary observer services, and will not require the submission of additional information to NMFS.

(2) *Training.* Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional or Center Director as equivalent to that received by persons used as observers by the NMFS as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(ii) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202–735 (as provided by the contractor).

(j) *Supplementary observer certification suspension or revocation.*

(1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(i) A supplementary observer fails to perform the duties specified as provided for by paragraph (g)(2) of this section.

(ii) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202–735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following:

(i) Boarding inspection reports by authorized officers of the U.S. Coast Guard or NMFS, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(ii) An analysis by the NMFS of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of supplementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer in writing of the Assistant Administrator's intent to suspend or revoke certification, and the reasons therefor, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an informal fact-finding inquiry and prepare a report and recommendations.

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§ 611.9 Recordkeeping.

(a) *General.* The owner and operator of each FFV must maintain timely and accurate records required by this section as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part).

(1) The owner and operator of each FFV must maintain all required records in English, based on Greenwich mean time (GMT) unless otherwise specified in the regulation, and make them immediately available for inspection upon the request of an authorized officer or observer.

(2) The owner and operator of each FFV must retain all required records on board the FFV whenever it is in the FCZ

for three years after the end of the permit period.

(3) The owner and operator of each FFV must retain the required records and make them available for inspection upon the request of an authorized officer at any time during the three years after the end of the permit period, whether or not such records are on board the vessel.

(4) The owner and operator of each FFV must provide to the Assistant Administrator, in the form and at the times prescribed, any other information requested that the Assistant Administrator determines is necessary to fulfill the fishery conservation, management and enforcement purposes of the Magnuson Act.

(b) *Communications log.* The owner and operator of each FFV must record, in a separate communications log at the time of transmittal, the time and content of each notification made under § 611.4.

(c) *Transfer log.* Except for the transfer of unsorted, unprocessed fish via codend from a catching vessel to a processing vessel (activity code 2 or 4), the owner and operator of each FFV must record, in a separate transfer log, each transfer or receipt of any fish or fishery product, including quantities transferred or offloaded outside the FCZ. The operator must record in the log within twelve hours of the completion of the transfer:

(1) The time and date (GMT) and location (in geographic coordinates) the transfer began and was completed;

(2) The product weight, by species and product (use species and product codes from Appendices D and E of this subpart), of all fish transferred to the nearest hundredth of a metric ton (0.01 mt); and

(3) The name, IRCS, and permit number of both the FFV offloading the fish and the FFV receiving the fish.

(d) *Daily fishing log.* (1) The owner or operator of each FFV authorized to catch fish (activity code 1) must maintain a daily fishing log of the effort, catch and production of the FFV, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). The operator must maintain on a daily and cumulative basis for the permit period a separate log for each fishery (see Table 2 to Appendix A to this subpart) in which the FFV is engaged according to this section and in the format specified in Appendix I to this subpart or other format authorized under paragraph (k) of this section. Daily effort entries are required for each day the vessel conducts fishing operations within the FCZ. Daily entries are not required whenever the FFV is in port or engaged in a joint venture in the internal waters of a State. Each page of log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

(2) The owner or operator of each FFV authorized to catch fish (activity code 1) and which delivers all catches to a processing vessel, must maintain only SECTION ONE-EFFORT, of the daily fishing log, provided the processing vessel maintains a daily consolidated fishing log as described in paragraphs (f) and (g) of this section.

(e) *Daily fishing log—contents.* The daily fishing log must contain the following information, as modified by paragraph (d)(2) of this section and the fishery in which the FFV is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix I to this subpart or other format authorized under paragraph (k) of this section.

(1) SECTION ONE-EFFORT must contain on a daily basis—

(i) A consecutive page number beginning with the first day the vessel started fishing operations within the FCZ and continuing throughout the log;

(ii) The date (based on (GMT);

(iii) The FFV's name;

(iv) The FFV's IRCS;

(v) The FFV's U.S. permit number;

(vi) The FFV's noon (1200 (GMT) position in geographic coordinates; and

(vii) The master or operator's signature or title.

(2) SECTION ONE-EFFORT must contain for each trawl or set, as appropriate to the gear type employed—

(i) The consecutive trawl or set number, beginning with the first set of the calendar year;

(ii) The fishing area in which the trawl or set was completed;

(iii) The gear type;

(iv) The time the gear was set;

(v) The position of the set;

(vi) The course of the set;

(vii) The sea depth;

(viii) The depth of the set;

(ix) The duration of the set;

(x) The hauling time;

(xi) The position of the haul;

(xii) The number of pots or longline units (where applicable);

(xiii) The average number of hooks per longline unit (where applicable);

(xiv) The trawl speed (where applicable);

(xv) The mesh size of the trawl's codend (where applicable); and

(xvi) The estimated total weight of the catch for the trawl of set, to at least the nearest metric ton round weight.

(3) SECTION TWO–CATCH must contain for each trawl or set—

(i) The consecutive set or trawl number from SECTION ONE;

(ii) The catch of each allocated species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iii) The prohibited species catch to at least the nearest tenth of a metric ton (0.1 mt) round weight or by number, as required by the regulations for the fishery in which the FFV is engaged; and

(iv) The species code of each marine mammal caught and its condition when released.

(4) SECTION TWO–CATCH must contain on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups caught;

(ii) For each allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily catch by fishing area; the daily catch for all fishing areas; and the cumulative total catch;

(iii) For the total catch of allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, daily total catch by fishing area, daily total catch for all fishing areas, and cumulative total catch; and

(iv) The catch by fishing area, daily total, and cumulative total of each prohibited species.

(5) SECTION THREE–PRODUCTION must contain on a daily basis for each allocated species caught and product produced—

(i) The product by species code and product type;

(ii) The daily product recovery rate of each species and product;

(iii) The daily total product produced by species to at least the nearest hundredth of a metric ton (0.1 mt);

(iv) The cumulative total of each product to at least the nearest hundredth of a metric ton (0.01 mt);

(v) The cumulative amount of product transferred;

(vi) The balance of product remaining aboard the FFV;

(vii) The total daily amount, cumulative amount, transferred product and balance of frozen product aboard the FFV to the nearest hundreth of a metric ton (0.01 mt); and

(viii) Transferred amount and balance of fishmeal and fish oil aboard to at least the nearest hundredth of a metric ton (0.01 mt).

(f) *Daily consolidated fishing log.* The owner or operator of each FFV which receives unsorted, unprocessed fish from foreign catching vessels (activity

code 2) for processing must maintain a daily consolidated fishing log of the effort, catch and production of its associated foreign catching vessels and the processing vessel, as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). This log is separate and in addition to any log required by paragraphs (d) and (e) of this section. The owner or operator must maintain a separate log for each fishery in which the FFV is engaged (see Table 2 of Appendix A to this subpart) on a daily and cumulative basis for the permit period according to this section and in the format specified specified in Appendix J to this subpart or other format authorized by paragraph (k) of this section. Each page of the log may contain entries pertaining to only one day's fishing operations.

(g) *Daily consolidated fishing log—contents.* Daily consolidated fishing logs must contain the following information, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix J to this subpart of other format authorized under paragraph (k) of this section.

(1) SECTION ONE–EFFORT must contain on a daily basis that information required in paragraph (e)(1) of this section.

(2) SECTION TWO-CATCH must contain for each foreign catching vessel on a daily basis and by area—

(i) The name and IRCS of the foreign catching vessel;

(ii) The fishing area number from which the fish were caught (Where the foreign catching vessel caught fish in more than one area, a daily entry for each area must be made);

(iii) The receipts of each allocated species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iv) The receipts of each prohibited species and species group to at least the nearest tenth of a metric ton (0.1 mt) round weight, or by number, as required by the fishery in which the FFV is engaged; and

(v) The species code of each marine mammal received and its condition when released.

(3) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups received;

(ii) For each allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily receipts by fishing area; the daily catch for all fishing areas; and the cumulative total catch;

(iii) For the total receipts of allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, daily total receipts by fishing area, daily total receipts for all fishing areas, and cumulative total receipts; and

(iv) The receipts by fishing area, daily total and cumulative total of each prohibited species.

(4) SECTION THREE-PRODUCTION must contain on a daily basis for each allocated species received and product produced that information required in paragraph (e)(5) of this section.

(h) *Daily joint venture log.* The operator of each FFV which receives U.S.-harvested fish from U.S. fishing vessels in a joint venture (activity code 4) must maintain a daily joint venture log of the effort, catch and production of its associated U.S. fishing vessels and the processing vessel as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). This log is separate and in addition to any log required by paragraphs (d) and (f) of this section. The operator must maintain a separate log for each fishery in which the FFV is engaged on a daily and cumulative basis according to this section and in the format specified in Appendix K to this subpart or other format authorized under paragraph (k) of this section. Receipts of fish caught outside the FCZ must be included. Each page of the log may contain entries pertaining to only one day's fishing operations.

(i) *Daily joint venture log—contents.* Daily joint venture logs must contain the following information, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix K of this subpart or other format authorized under paragraph (k) of this section.

(1) SECTION ONE–EFFORT must contain on a daily basis that information required in paragraph (e)(1) of this section.

(2) SECTION ONE-EFFORT must contain for each receipt of a codend—

(i) The consecutive codend number, beginning with the first codend received for the calendar year;

(ii) The name of the U.S. fishing vessel the codend was received from;

(iii) The fishing area where the codend was received;

(iv) The time the codend was received;

(v) The position the codend was received; and

(vi) The estimated weight of the codend to at least the nearest metric ton round weight.

(3) SECTION TWO-CATCH must contain for each codend received—

(i) The consecutive codend number from SECTION ONE;

(ii) The receipts of each authorized species or species group and its disposition, either processed for human consumption, used for fishmeal, discarded, or returned to the U.S. fishing vessel, to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iii) The estimated receipts of each prohibited species or species group and its disposition, either discarded or returned to the U.S. fishing vessel if authorized in the fishery in which the U.S. vessel is engaged, to at least the nearest tenth of a metric ton (0.1 mt) round weight; and

(iv) The species code of each marine mammal received and its condition when released.

(4) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes of all authorized or prohibited species or species groups received;

(ii) The daily disposition, as described in paragraph (i)(3)(ii) of this section, daily total, and cumulative total receipts of each authorized species or species groups;

(iii) The daily disposition, daily total and cumulative total receipts of all authorized species or species groups; and

(iv) The daily and cumulative total receipts of prohibited species groups and their disposition as described in paragraph (i)(3)(iii).

(5) SECTION THREE—PRODUCTION must contain on a daily basis for each authorized species or species group received and product produced that information required in paragraph (e)(5) of this section.

(j) *Daily log maintenance.* The logs required by paragraphs (e) through (i) of this section must be maintained separately for each fishery in Subparts C through G (see Table 2 to Appendix A to this subpart).

(1) The effort section (all of SECTION ONE) of the daily logs must be updated within two hours of the hauling or receipt time. The catch or receipt by trawl or set (SECTION TWO) must be entered within 12 hours of the hauling or receipt time. The daily and cumulative total catch or receipts (SECTION TWO) and the production portion (SECTION THREE) of the log must be updated within 12 hours of the end of the day on which the catch was taken. The date of

catch is the day and time (GMT) the gear is hauled.

(2) Entries for total daily and cumulative catch or receipt weights (disposition "C"or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for daily and cumulative weights of discarded or returned fish (disposition "D" or "R") must be based on the most accurate method available to the vessel, either actual count, scale round weight, or estimated deck weights. Entries for product weights must be based on the number of production units (pans, boxes, blocks, trays, cans, or bags) and the average weight of the production unit, with reasonable allowances for water added. Allowances for water added cannot exceed five percent of the unit weight. Product weights cannot be based on the commercial or arbitrary wholesale weight of the product, but must be based on the total actual weight of the product as determined by representative samples.

(3) The owner or operator must make all entries in indelible ink with corrections to be accomplished by lining out and rewriting rather than erasure.

(k) *Alternative log formats.* As an alternative to the use of the specific formats described in Appendices I, J, and K to this subpart, a nation may submit a proposed log format for FFV's of that nation for a general type of fishery operation in a fishery (i.e. joint venture operations) to the appropriate Regional Director and the Coast Guard commander (see Appendix A to this subpart). With the agreement of the Coast Guard commander, the Regional Director may authorize the use of that log format for vessels of the requesting nation.

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§ 611.10 Fishing operations.

(a) *Catching.* Each FFV authorized for activity code 1 may catch fish. An FFV may retain its catch of any species or species group for which there is an unfilled national allocation. All fish caught will be counted against the national allocation, even if the fish are discarded, unless exempted by the regulations of the fishery in which the FFV is engaged (see Subparts C through G of this part). Catching operations may be conducted as specified by the regulations of the fishery in which the FFV is engaged and as modified by the FFV's permit.

(b) *Scouting.* Each FFV authorized for activity code 1 or 2 may scout for fish. Scouting may only be conducted whenever and wherever catching operations for FFV's of that nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under activity code 4, and under such other circumstances as may be designated in these regulations or the permit.

(c) *Processing.* Each FFV with activity code 1 or 2 may process fish. Processing may only be conducted whenever and wherever catching operations for FFV's of that nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under activity code 4, and under such other circumstances as may be designated in these regulations or the permit.

(d) *Support.* Each FFV with activity code 1, 2, or 3 may support other permitted FFV's. Support operations may be conducted whenever and wherever catching or processing for the FFV's being supported are permitted, and under such other circumstances as may be designated in these regulations or the permit.

(e) *Joint ventures.* Each FFV with activity code 4 in addition to activity codes 1 or 2 may also conduct operations with U.S. fishing vessels. These joint venture operations with U.S. fishing vessels may be conducted throughout the FCZ, and under such other circumstances as may be designated in these regulations or the permit. FFV's with activity code 4 may continue operations assisting U.S. fishing vessels despite closures under § 611.13(a).

(f) Each FFV authorized by the Governor of a State under Section 306(c) of the Magnuson Act may engage in processing and support of U.S. fishing vessels within the internal waters of that State, in compliance with terms and conditions set by the authorizing Governor.

§ 611.11 Prohibited species.

(a) The owner or operator of each FFV must minimize its catch or receipt of prohibited species.

(b) After allowing for sampling by an observer (if any), the owner or operator of each FFV must sort its catch of fish received as soon as possible and return all prohibited species and species parts to the sea inmediately with a minimum of injury, regardless of condition, unless a different procedure is specified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). All prohibited species must be recorded in the daily fishing log and other fishing logs as specified by the regulations for the fishery in which the FFV is engaged.

(c) All species of fish which an FFV has not been specifically allocated or authorized under this part to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species.

(d) It is a rebuttable presumption that any prohibited species or species part found on board an FFV was caught and retained in violation of this secton.

§ 611.12 Gear avoidance and disposal.

(a) *Vessel and gear avoidance.* (1) FFV's arriving on fishing grounds where fishing vessels are already fishing or have set their gear for that purpose must ascertain the position and extent of gear already placed in the sea and must not place themselves or their fishing gear so as to interfere with or obstruct fishing operations already in progress. Vessels using mobile gear must avoid fixed fishing gear.

(2) The opeator of each FFV must maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing as required by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part).

(b) *Gear conflicts.* The operator of each FFV which is involved in a conflict or which retrieves the gear of another vessel must immediately notify the appropriate Coast Guard commander identified in Appendix A to this subpart and request disposal instructions. Each report must include:

(1) The name of the reporting vessel;

(2) A description of the incident and articles retrieved including the amount, type of gear, condition, and identification markings;

(3) The location of the incident; and

(4) The date and time of the incident.

(c) *Disposal of fishing gear and other articles.* (1) The operator of an FFV in the FCZ may not dump overboard, jettison or otherwise discard any article or substance which may interfere with other fishing vessels or gear, or which may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate Goast Guard commander or other authorized officer. These articles and substances include but are not limited to fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in an FFV's gear.

(2) The operator of an FFV may not abandon fishing gear into the FCZ.

(3) If these articles or substances are encountered, or in the event of accidental or emergency placement into the FCZ, the vessel operator must immediately report the incident to the appraopriate Coast Guard Commander indicated in Appendix A to this subpart, and give the information required in paragraph (b) of this section.

(Approved by the Office of Management and Budget under OMB control number 0648-0075)

§ 611.13 Fishery closure procedures.

(a) Activity codes 1 and 2 for a fishery are automatically canceled in the following cases unless otherwise specified by Subparts C through G to this part when—

(1) The optimum yield for any allocated species or species group has been reached in that fishery;

(2) The total allowable level of foreign fishing or catch allowance for any allocated species or species group has been reached in that fishery;

(3) The foreign nation's allocation for any allocated species or species group has been reached; or

(4) The letter of credit required in § 611.22(b)(2) is not established and maintained.

(b) Activity code 4 is automatically canceled when—

(1) The optimum yield for a species with a joint venture processing (JVP) amount is reached;

(2) The JVP amount for a species or species group is reached; or,

(3) The letter of credit required in § 611.22(b)(2) is not established and maintained.

(c) *Notification.* (1) The Regional Director is authorized to close a fishery on behalf of the Assistant Administrator. The Regional Director will notify each FFV's designated representative of closures.

(2) If possible, notice will be given 48 hours before the closure. However, each nation and the owners and operators of all FFV's of that nation are responsible for ending fishing operations when an allocation is reached.

(d) *Catch reconciliation.* Vessel activity reports, U.S. surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determination listed in paragraphs (a) and (b) of this section. If NMFS estimates of catch or other values made during the season differ from those reported by the foreign fleets, efforts may be initiated by the designated representative of each nation to resolve such differences with NMFS. If, however, differences still persist after such efforts have been made, NMFS estimates will be the basis for decisions and will prevail.

(e) *Duration.* Any closure under this section will remain in effect until an applicable new or increased allocation or JVP becomes available or the letter of credit required by § 611.22(b)(2) is reestablished.

§ 611.14 Scientific research.

(a) The term "scientific research" contained in paragraph (r) of § 611.2 may include certain fishing activities such as the catching, taking, or harvesting of fish in commerical quantities, or the use of gear capable of catching, taking, or harvesting fish in commerial quantities, or fishing in areas, at times, for species, and with gear, any of which may not be otherwise authorized, if such activities are carried out in full cooperation with the United States.

(b) For the purpose of gathering additional management information, the Center Director may authorize limited "scientific research" as described in paragraph (a) of this section under terms and conditions to be specified by the Center Director.

§ 611.15 Recreational fishing.

(a) Foreign vessels conducting recreational fishing must comply only with this section, § 611.1, § 611.2, § 611.6(a)(1), and § 611.7 (as applicable). Such vessels may conduct recreational fishing within the FCZ and within the boundaries of a State. Any fish caught may not be sold, bartered, or traded.

(b) The owners or operator and any other person on board any foreign vessel conducting recreational fishing must comply with any federal laws or regulations applicable to the domestic fishery while in the FCZ and any State laws or regulations applicable while in State waters.

§ 611.16 Relation to other laws.

(a) Persons affected by these rules should be aware that other Federal and State statutes may apply to their activities.

(b) Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws which implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid, or when out of order, or broken.

Appendix A to Subpart A—Addresses, Areas of Responsibility and Communications

TABLE 1.—ADDRESSES

NMFS regional directors	NMFS center directors	U.S. Coast Guard commanders
Director, Northeast Region, National Marine Fisheries Service, NOAA, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930, Telex No.: 940007, Telephone: (617) 281-[illegible]	Director, Northeast Fisheries Center, National Marine Fisheries Service, NOAA, Woods Hole, Massachusetts 02543, Telephone: (617) 548-5123.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, N.Y. 10004, Telex No.: 126831, Telephone: (212) 668-7677.
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702, Telephone: (813) 893-3141.	Director, Southeast Fisheries Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, Florida 33149, Telephone: (305) 361-4284.	As above.
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Seattle, Washington 98115, Telex No.: 9104442788, Telephone: (206) 526-6150.	Director, Northwest and Alaska Fisheries Ctr, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Bldg. 4, Seattle, Washington 98115, Telex No.: 329422, Telephone: (206) 526-4000.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, California 94501, Telex No.: 172343, Telephone: (415) 437-3700.
Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801, Telex No.: 09945-377, Telephone: (907) 586-7221.	Director, Northwest and Alaska Fisheries Ctr, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Bldg. 4, Seattle, Washington 98115, Telex No.: 329422, Telephone: (206) 526-4000.	Commander, Seventeenth Coast Guard District, P.O. Box 3-5000, Juneau, Alaska 99801, Telex No.: 45305, Telephone: (907) 586-7200, After hours: (907) 586-7340.

TABLE 1.—ADDRESSES—Continued

NMFS regional directors	NMFS center directors	U.S. Coast Guard commanders
Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731, Telephone: (213) 548–2575.	Director, Southwest Fisheries Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, California 92038, Telephone: (619) 453–2820.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Boulevard, Honolulu, Hawaii 96813, Telex No.: 392401, Telephone: (808) 546–7597.

TABLE 2.—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES

Area of responsibility	Fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean north of Cape Hatteras	Northwest Atlantic Ocean Fishery, including the Hake Fishery.	Director, Northeast Region Director, Northeast Center	Commander, Atlantic Area.
Atlantic Ocean south of Cape Hatteras	Atlantic Billfish and Sharks Fishery Royal Red Shrimp Fishery	Director, Southeast Region	Commander, Atlantic Area.
Gulf of Mexico Caribbean Sea		Director, Southeast Center	
Pacific Ocean off the States of California, Oregon, and Washington.	Pacific Coast Groundfish Fishery	Director, Northwest Region Director, Northwest and Alaska Center	Commander, Pacific Area.
North Pacific Ocean and Bering Sea off Alaska.	Gulf of Alaska Groundfish Fishery	Director, Alaska Region	Commander, Seventeenth Coast Guard District.
	Bering Sea and Aleutian Islands Groundfish Fishery. Snail Fishery	Directory, Northwest and Alaska Centers	
Pacific Ocean off Hawaii and other U.S. insular possessions in the Central and Western Pacific.	Seamount Groundfish Fishery	Director, Southwest Region	Commander, Fourteenth.
	Pacific Billfish, Oceanic Sharks, Wahoo, and Mahimahi Fishery. Precious Coral Fishery	Director, Southwest Center	Coast Guard District.

TABLE 3.—U.S. COAST GUARD COMMUNICATIONS STATIONS AND FREQUENCIES

U.S. Coast Guard Communications Station	IRCS	Radiotelegraphy			Radiotelephone	
		kHz	mHz	Time[1]	Channel[2]	EMT time
Boston	NMF	500		All	B	All.
Portsmouth	NMN	500	8, 12	All	A	0200–1200.
			16	HJ	B, C	All.
					D	1200–0200 (On request).
Miami	NMA	500		All	B	All.
San Juan	NMR	500	8, 12	All	None	
			16	HJ		
New Orleans	NMG	500		All	A	0200–1200.
					B, C	All.
					D	1200–0200.
					E	(On request).
San Francisco	NMC	500	8	All	A, B, C	All.
			6	HN	D	0200–2400.
			16	HJ	E	(On request).
Honolulu	NMO	500	8, 12	All	A, B, C	All.
			22	HJ	D, E	(On request).
Guam	NRV	500		All	None	
			8, 12	HN		
Kodiak	NOJ	500		All	B	All.
					A, C, D, and E	(On Request).

[1] HJ means 2 hours after sunrise until 2 hours before sunset, local time. HN means 2 hours before sunset until 2 hours after sunrise, local time.
[2] Carrier frequencies of duplex, high-frequency single-sideband channels are:

Letter	Shore transmit	Ship transmit
A	4428.7	4134.3
B	8506.4	8200.0
C	6765.4	6241.5
D	13113.2	12342.4
E	17307.3	16534.4

TABLE 4. ADDRESSES FOR REPORTS AND SUBMITTALS

Fishery	Permit applications § 611.3(d)	Activity reports § 611.4(c)	Weekly reports § 611.4(f)	Effort plan § 611.8(b)	Gear conflicts § 611.12(b)	Permit fees, poundage fees, surcharges, and observer fees § 611.22
Northwest Atlantic Ocean Fishery, including the Hake Fishery.	DOS	CG Atlantic Area, NMFS–NER.	NMFS–NER NMFS–NER	NMFS–NER, Attn: Observer Program, NMFS–F/M5.	CG Atlantic Area	NMFS–F/M12.
Atlantic Billfish and Sharks Fishery	DOS	CG Atlantic Area	NMFS–SER	NMFS–SER NMFS–F/M5	CG Atlantic Area	NMFS–F/M12.
Royal Red Shrimp Fishery		NMFS–SER				
Pacific Coast Groundfish Fishery	DOS	CG Pacific Area, NMFS–NWR.	NMFS–NWC	NMFS–NWC NMFS–F/M5	CG Pacific Area	NMFS–F/M12.
Gulf of Alaska Groundfish Fishery Bering Sea and Aleutian Islands Groundfish Fishery	DOS	CG Dist. 17 NMFS–AKR	NMFS–AKR	NMFS–NWC NMFS–F/M5	CG Dist. 17	NMFS–F/M12.

TABLE 4. ADDRESSES FOR REPORTS AND SUBMITTALS—Continued

Fishery	Permit applications § 611.3(d)	Activity reports § 611.4(c)	Weekly reports § 611.4(f)	Effort plan § 611.8(b)	Gear conflicts § 611.12(b)	Permit fees, poundage fees, surcharges, and observer fees § 611.22
Snail Fishery						
Seamount Groundfish Fishery	DOS	CG Dist. 14	NMFS–SWR	NMFS–SWR	CG Dist. 14	NMFS–F/M12
Pacific Billfish, Oceanic Sharks, Wahoo and Mahimahi Fishery.		NMFS–SWR		NMFS–F/M5		
Precious Coral Fishery						

ABBREVIATIONS:
DOS—Department of State, OES/OFA, Washington, D.C. 20520.
NMFS:
—F/M5—Chief, Office of Enforcement, National Marine Fisheries Service, 3300 Whitehaven St., Washington, D.C. 20235, ATTN: F/M5.
—F/M12—Chief, Fees, Permits, and Regulations Division, National Marine Fisheries Service, 3300 Whitehaven St., NW., Washington, D.C. 20235, ATTN: F/M12.
—NER—Director, Northeast Region (see Table 1).
—SER—Director, Southeast Region (see Table 1).
—NWR—Director, Northwest Region (see Table 1).
—NWC—Director, Northwest and Alaska Fisheries Center (see Table 1)
—AKR—Director, Alaska Region (see Table 1).
—SWR—Director, Southwest Region (see Table 1).
CG Atlantic Area—Commander, Atlantic Area (see Table 1).
CG Pacific Area—Commander, Pacific Area (see Table 1).
CG Dist. 17—Commander, Seventeenth Coast Guard District (see Table 1).
CG Dist. 14—Commander, Fourteenth Coast Guard District (see Table 1).

Appendix B to Subpart A—Vessel Activity Reports

1. Activity Report Format

A. "From" line: Name of the FFV and its IRCS.

B. "To" line: Include appropriate Coast Guard commander and NMFS region as addressees.

C. Date: Expressed numerically as month and day, based on GMT (two digits each), followed by letter "D" and a confirmation code (A 2 digit sum of the 4 digits in the date. A sum of less than 10 must be preceded by a 0).

D. Time: Expressed in GMT followed by the letter "Z" (or other time zone description required by the fishery) and a confirmation code (2 digit sum of 4 digit time).

E. Latitude: To the nearest minute (4 digits) followed by the letter "N" and confirmation code (2 digit sum of 4 digit latitude number).

F. Longitude: To the nearest minute (4 or 5 digits) followed by the letter "E" or "W" (as appropriate for longitude) and confirmation code (2 digit sum of digits in longitude).

G. Area Codes: See Appendix C.

H. Species Codes: See Appendix D.

I. Product: Fish or fisheries product expressed in metric tons (to at least the nearest tenth or hundredth of a metric ton, as appropriate).

J. Fishery Product Code: From Appendix E, followed by a confirmation code (2 digit sum of the digits in the Species Code (if appropriate to the product) and the digits in the Product).

K. The general format of messages appears as follows (CC means confirmation code):

From: (FFV name, IRCS)
To: (Coast Guard Commander, City, State)
(NMFS Region, City, State)

VESREP

(FFV name)/(IRCS)/(DATE)D(CC)/(TIME)Z(CC)/(LATITUDE)N(CC)/(LONGITUDE) (E or W) (CC)/(AREA CODE)/(ACTION CODE)//

L. The general format for a report concerning Product would appear as follows (CC means confirmation code).

(SPECIES CODE)/(PRODUCT) (PRODUCT CODE) (CC)//(SPECIES CODE)/(PRODUCT) (PRODUCT-CODE) (CC)// etc.

2. *BEGIN report.* Begin reports must be delivered to the appropriate Coast Guard commander no later than 24 hours before fishing.

Example: The stern trawler NAVIS, LTUX, will begin fishing on March 11 at 1320 GMT, at position 59°30′ N. latitude, 142°30′ W. longitude, in the Yakutat fishing area (code 64) of the Gulf of Alaska. There are 105.5 metric tons of headed and gutted (use product code HG from Appendix E to this subpart) Alaska pollock (use species code 701 from Appendix D to this subpart), 53.0 metric tons headed and gutted (code HG) Pacific cod (code 702) and 35.0 metric tons of fish meal (code M) on board. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT,
JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU,
ALASKA

VESREP

NAVIS/LTUX/0311D05/1320Z06/5930N17/14230W10/BEGIN//
PRODUCT ABOARD/701/105.5HG19//702/53.0HG17//35.0M08//

If no product was aboard the PRODUCT ABOARD line could be omitted.

3. *DEPART report.* Depart reports must be transmitted before departure and delivered within 24 hours of transmittal.

Example: The stern trawler NAVIS, LTUX, will depart the FCZ at position 45°15′ N. latitude, 124°20′ W. longitude on July 11 at 1800 GMT in the Columbia fishing area (code 71) in the Northeast Pacific Ocean, to make a port call. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA,
ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE,
WASHINGTON

VESREP

NAVIS/LTUX/0711D09/1800Z09/4515N15/12420W09/71/DEPART//

4. *RETURN report.* Return reports must be transmitted before the returning to the grounds and delivered within 24 hours of transmittal.

Example: The stern trawler NAVIS, LTUX, will return from a port call to the FCZ on July 14 at 2230 GMT at position 44°45′ N. latitude, 124°33′ W. longitude in the Columbia area (code 71). The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA,
ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE,
WASHINGTON

VESREP

NAVIS/LTUX/0714D12/2230Z07/4445N17/12433W13/71/RETURN//

5. *SHIFT report.* Shift reports must be transmitted before leaving the original fishing area and delivered within 24 hours of transmittal. If an FFV is fishing within 20 nautical miles either side of a boundary the message must be transmitted before the last shift in fishing areas expected for that day, include all the day's shifts, and be delivered within 24 hours of its transmittal.

A. Example of standard SHIFT report. The longline vessel CABLE, EXRC, fishing in the Atlantic billfish and sharks fishery is shifting areas to Atlantic area 16. The vessel will begin fishing in area 16 on December 3 at 1000 GMT at position 36°35′ N. latitude, 73°25′ W. longitude. The required message would be transmitted as follows:

From: F/V CABLE, EXRC
To: COAST GUARD ATLANTIC AREA,
NEW YORK, NEW YORK
NORTHEAST REGION, NMFS,
GLOUCESTER, MASSACHUSETTS

VESREP

CABLE/EXRC/1203D06/1000Z01/3635N17/7325W17/16/SHIFT//

B. Example of SHIFT report when the FFV fishes on a boundary. The stern trawler NAVIS, LTUX, is fishing in area 22 in the Northwest Atlantic Ocean fishery. The vessel will begin fishing in area 23 on October 15 at 1115 GMT at position 39°01′ N. latitude, 73°10′ W. longitude. At 1720 GMT the vessel again

SHIFTS to area 22 at position 38°59′ N. latitude, 73°07′ W. longitude. The vessel will remain within 20 nautical miles of the boundary. The required report would be transmitted as follows before the last EXPECTED SHIFT of the day:

From: F/V NAVIS, LTUX
To: COAST GUARD ATLANTIC AREA, NEW YORK, NEW YORK
NORTHEAST REGION, NMFS, GLOUCESTER, MASSACHUSETTS

VESREP

NAVIS/LTUX/1015D07/1115Z08/3901N113/7310W11/23/SHIFT//
NAVIS/LTUX/1015D07/1720Z10/3859N25/7307W17/22/SHIFT//

6. *JV OPS reports.* Reports of starting or ending joint venture receipts and operations must be transmitted before the event and delivered within 24 hours of their transmittal. They are in addition to the requirements of other activity reports.

Example: The stern trawler NAVIS, LTUX, will begin joint venture receipts or processing on July 9, 1983, at 1320 GMT at position 43°40′ N. latitude, 124°30′ W. longitude in the Columbia area (code 71): The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON

VESREP

NAVIS/LTUX/0709D16/1320Z06/4340N11/12430W10/71/START JV OPS//

7. *TRANSFER reports.* Transfer reports must be transmitted prior to the transfer and delivered within 24 hours of transmittal.

Example: The refrigerated transport vessel SOPOV, LJUJ, will conduct a transfer with the stern trawler NAVIS, LTUX, on July 22 at 1900 GMT in position 58°30′ N. latitude, 175°10′ W. longitude in Bering Sea area 52 (code 52). The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

SOPOV/LJUJ/0722D11/1900Z10/5830N16/17510W14/52//

TRANSFER/NAVIS/LTUX//

8. *OFFLOADED report.* Offloaded-to reports must be transmitted within 12 hours of the completion of the transfer and delivered before the FFV ceases fishing in the FCZ and within 24 hours of transmittal.

Example. The stern trawler NAVIS, LTUX, completed transfer operations with: the refrigerated transport vessel SOPOV, LJUJ, at 0900 GMT on July 24 at position 58°30′ N. latitude, 175°10′ W. longitude, in Bering Sea Area 52 (code 52). NAVIS transferred 130.10 metric tons of headed and gutted (code HG) Alaska pollock (code 701), 15.75 metric tons of headed and gutted (code HG) Pacific cod (code 702), 5.63 metric tons of pollock roe (codes 701 and R respectively) and 5.10 metric tons of fish meal (code M). The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0724D13/0900Z09/5830N16/17510W14/52//
OFFLOADED TO/SOPOV/LJUJ//
701/130.10HG13//702/15.75HG27//701/5.63R22//5.10M06//

9. *RECEIVED report.* Received-from reports must be transmitted within 12 hours of the completion of the transfer and delivered before the FFV ceases fishing in the FCZ and within 24 hours of transmittal. More than one operation may be reported in one report, provided the above time constraints are met for all operations.

Example: The refrigerated transport vessel SOPOV, LJUJ, completed transfer operations with the stern trawler, NAVIS, LTUX, at 0900 GMT on July 24 at position 58°30′ N. latitude, 175°10′ W. longitude, in Bering Sea Area 52 (code 52). NAVIS transferred 130.00 metric tons of headed and gutted (code HG) Alaska pollock (code 701), 15.75 metric tons of headed and gutted (code HG) Pacific cod (code 702), 5.63 metric tons of pollock roe (codes 701 and R respectively) and 5.10 metric tons of fish meal (code M). The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA,
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

SOPOV/LJUJ/0724D13/0900Z09/5830N16/17510W14/52//
Received from/NAVIS/LTUX//
701/130.00HG12//702/15.75HG22/701/5.63R19//5.1M06//

10. *CEASE report.* Cease reports must be delivered 24 hours before ceasing fishing and departing the FCZ.

Example: The stern trawler NAVIS, LTUX, will cease fishing on July 8 at 1215 GMT at position 57°30′ N. latitude, 168°30′ W. longitude in Bering Sea Area 51 (code 51.) The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA,
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0708D15/1215Z09/5730N15/16830W18/51/CEASE//

11. *CHANGE report.* Change reports must be transmitted and delivered as though they were the original message.

Example: The stern trawler NAVIS, LTUX, was to have begun fishing on March 11 at 1320 GMT at position 59°30′ N. latitude, 142°30′ W. longitude in the Yakutat fishing area of the Gulf of Alaska. Bad weather delayed arrival on the fishing grounds until 1800 GMT on March 12. Since the delay is longer than four hours, a CHANGE report must be sent. Because the message is considered as though it were an original BEGIN report the message must be delivered 24 hours in advance, or before 1800 GMT on March 11. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA,
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

CHANGE/NAVIS/LTUX/0311D05/1320Z06/TO//

NAVIS/LTUX/0312D06/1800Z09/5930N17/14230W10/64/BEGIN//

12. *CANCEL report.* Cancel reports must be transmitted and delivered prior to the time and date of the event in the original message.

Example: The stern trawler NAVIS, LTUX, was to have begun fishing on March 11 at 1320 GMT at position 59°30′ N. latitude, 142°30′ W. longitude in the Yakutat fishing area of the Gulf of Alaska and had sent the appropriate BEGIN message. The vessel has had mechanical problems and must return home before entering the FCZ. The required CANCEL message would be transmitted as follows:

From: F/VNAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA,
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

CANCEL/NAVIS/LTUX/0311D05/1320Z06/BEGIN//

13. *Group reports.* A fleet commander or other authorized person may send in reports for several vessels. An FFV operator submitting a report on behalf of another FFV is assumed to have the authorization to do so.

Example: The refrigerated transport vessel SOPOV, LJUJ, with a fleet commander on board, wishes to report for three stern trawlers in the fleet. The stern trawler NAVIS, LTUX, will begin fishing at 59°30′ N. latitude, 142°30′ W. longitude, in Yakutat fishing area (code 64) on March 11 at 1320 GMT. The stern trawler FISKVOL, LBEV, will temporarily depart the fishing grounds at 58°05′ N. latitude, 149°50′ W. longitude in the Kodiak fishing area (code 63) on March 12 at 1200 GMT to embark an observer. The stern trawler ALEXANDROV, LXDV, will cease fishing at 54°40′ N. latitude, 157°15′ W. longitude in the Chirikof fishing area (code 62) on March 13 at 0800 GMT to return to its home port. The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0311D05/1320Z06/5930N17/14230W10/64/BEGIN//
FISKVOL/LBEV/0312D06/1200Z03/5805N18/14950W19/63/DEPART//

ALEXANDROV/LXDV/0313D07/0800Z08/
5440N13/15715W19/62/CEASE//

Since the illustrated group report contains notice of the beginning of fishing at 1320 GMT on March 11, the message must be delivered to the 17th Coast Guard District Commander not later than 1320 GMT, March 10.

Appendix C to Subpart A—Fishing Areas

A. Northwest Atlantic Ocean and Hake Fisheries (Figures 1a and 1b.)

1. For the purposes of § 611.4(c) of this part, fishing areas in the Northwest Atlantic are the areas shown in Figure 1a and described below.

Area code, name, and description

21. Atlantic Area 21, Atlantic FCZ between 35°00′ N. latitude and 37°00′ N. latitude
22. Atlantic Area 22, Atlantic FCZ between 37°00′ N. latitude and 39°00′ N. latitude
23. Atlantic Area 23, Atlantic FCZ north of 39°00′ N. latitude and west of 71°40′ W. longitude
24. Atlantic Area 24, Atlantic FCZ enclosed by a line connecting the following points in the order listed—

Point No.	Latitude	Longitude
1	Shore	71°40′ W.
2	39°00′ N	71°40′ W.
3	39°00′ N	70°00′ W.
4	Cape Cod	70°00′ W.

25. Atlantic Area 25, Atlantic FCZ between 39°00′ N. latitude and 42°20′ N. latitude and east of 70°00′ W. longitude
26. Atlantic Area 26, Atlantic FCZ north and west of Cape Code and a line connecting the following points in the order listed—

Point No.	Latitude	Longitude
1	Cape Cod	70°00′ W.
2	42°20′ N	70°00′ W.
3	42°20′ N	The eastward limit of the EEZ.

2. For the purposes of § 611.4(f) and § 611.9, fishing areas in the Northwest Atlantic are the NMFS "Three digit statistical areas" described in Figure 2b.

BILLING CODE 3510-22-M

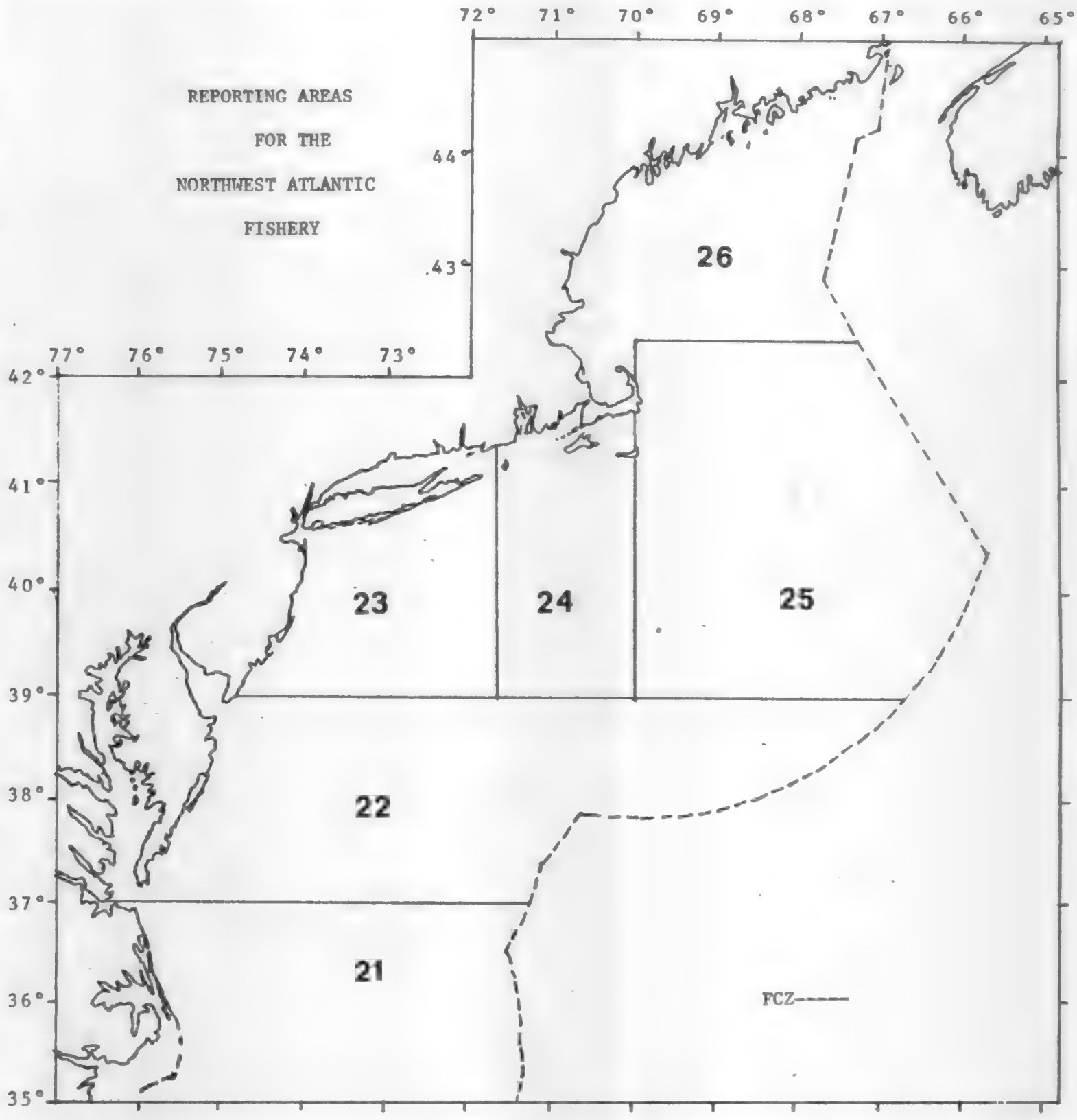


Figure 1a. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(c) (Activity Reports).

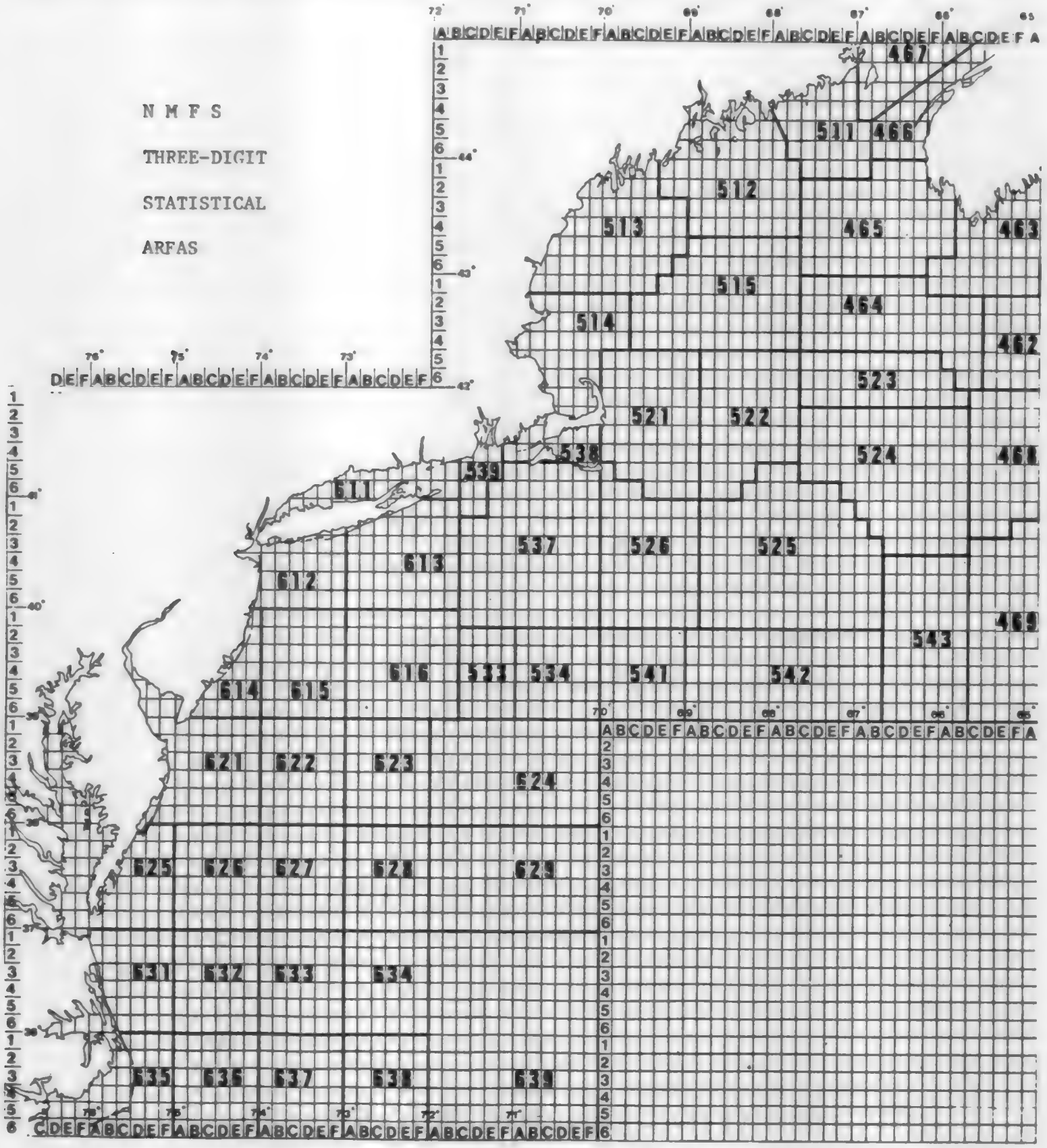


Figure 1b. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(f) (Weekly reports) and 50 CFR 611.9 (Recordkeeping).

BILLING CODE 3510-22-C

B. Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries (Figure 2.)

Area code, Name and description

11, Caribbean Area 11, Virgin Islands. The FCZ off Puerto Rico and the U.S

12, Gulf of Mexico, Area 12. The FCZ in the Gulf of Mexico west of 93°00′ W. longitude

13, Gulf of Mexico, Area 13. The FCZ in the Gulf of Mexico east of 93°00′ W. longitude and west of 88°00′ W. longitude

14, Gulf of Mexico, Area 14. The FCZ in the Gulf of Mexico east of of 88°00′ W. longitude and FCZ in the Atlantic Ocean south of 25°18′ N. latitude

15, Atlantic Area 15. The FCZ in the Atlantic Ocean north of 25°18′ N. latitude and south of 36°30′ N. latitude

16, Atlantic Area 16. The FCZ in the Atlantic Ocean north of 36°30′ N. latitude and south of 41°00′ N. latitude

17, Atlantic Area 17. The FCZ in the Atlantic Ocean north of 41°00′ N. latitude

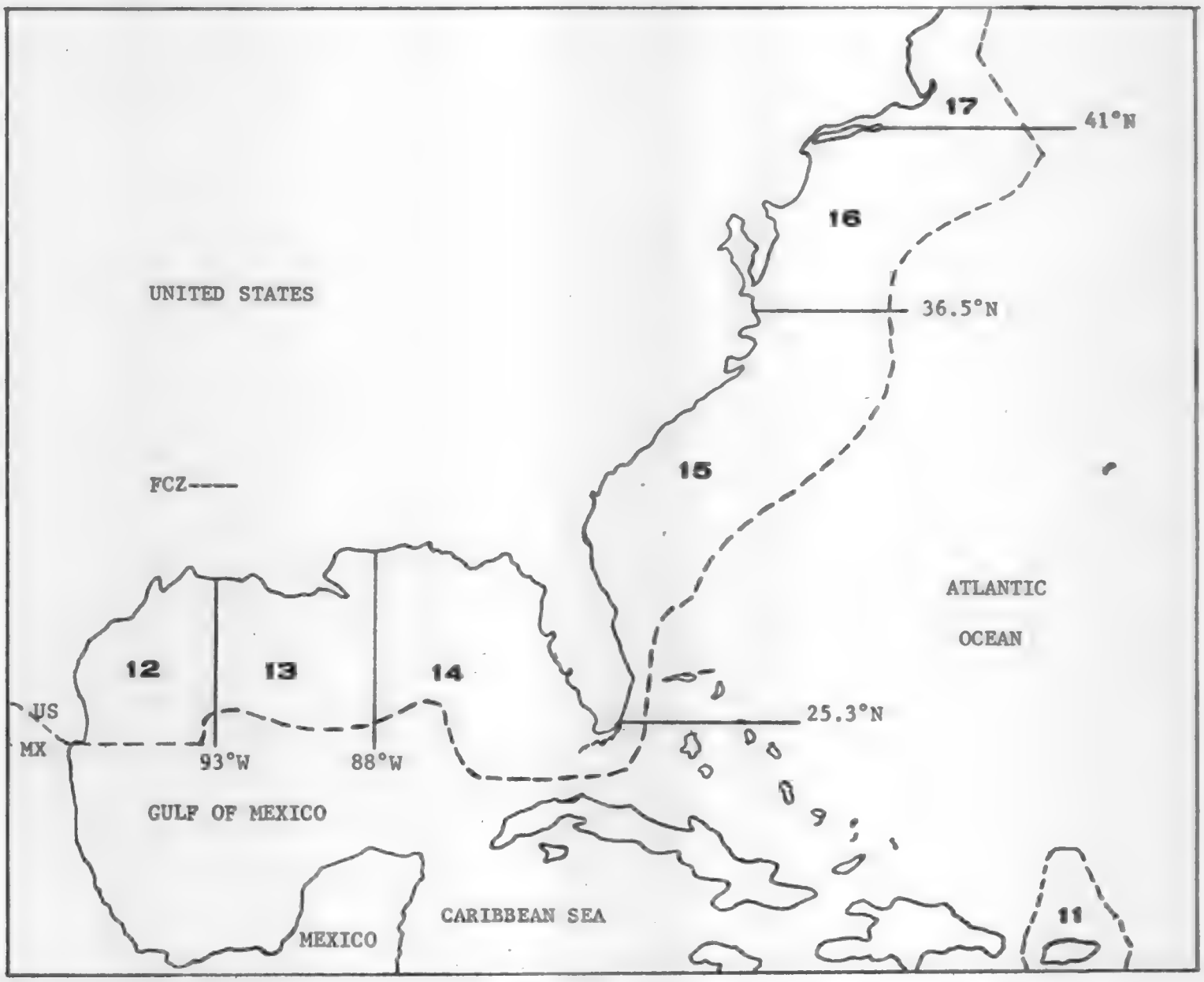


Figure 2. to Appendix C: Fishing Areas for the Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries.

C. Pacific Coast Groundfish and Pacific Billfish and Sharks Fisheries (Figure 3.)

Area code, name and description

67. Vancouver. The FCZ of the North Pacific Ocean off Washington north of 47°30′ N. latitude

71. Columbia. The FCZ of the North Pacific Ocean off Washington and Oregon south of 47°30′ N. latitude and north of 43°00′ N. latitude

72. Eureka. The FCZ of the North Pacific Ocean off Oregon and California south of 43°00′ N. latitude and north of 40°30′ N. latitude

73. Monterey. The FCZ of the North Pacific Ocean off California south of 40°30′ N. latitude and north of 36°00′ N. latitude

74. Conception. The FCZ of the North Pacific Ocean off California south of 36°00′ N. latitude

BILLING CODE 3510-22-M

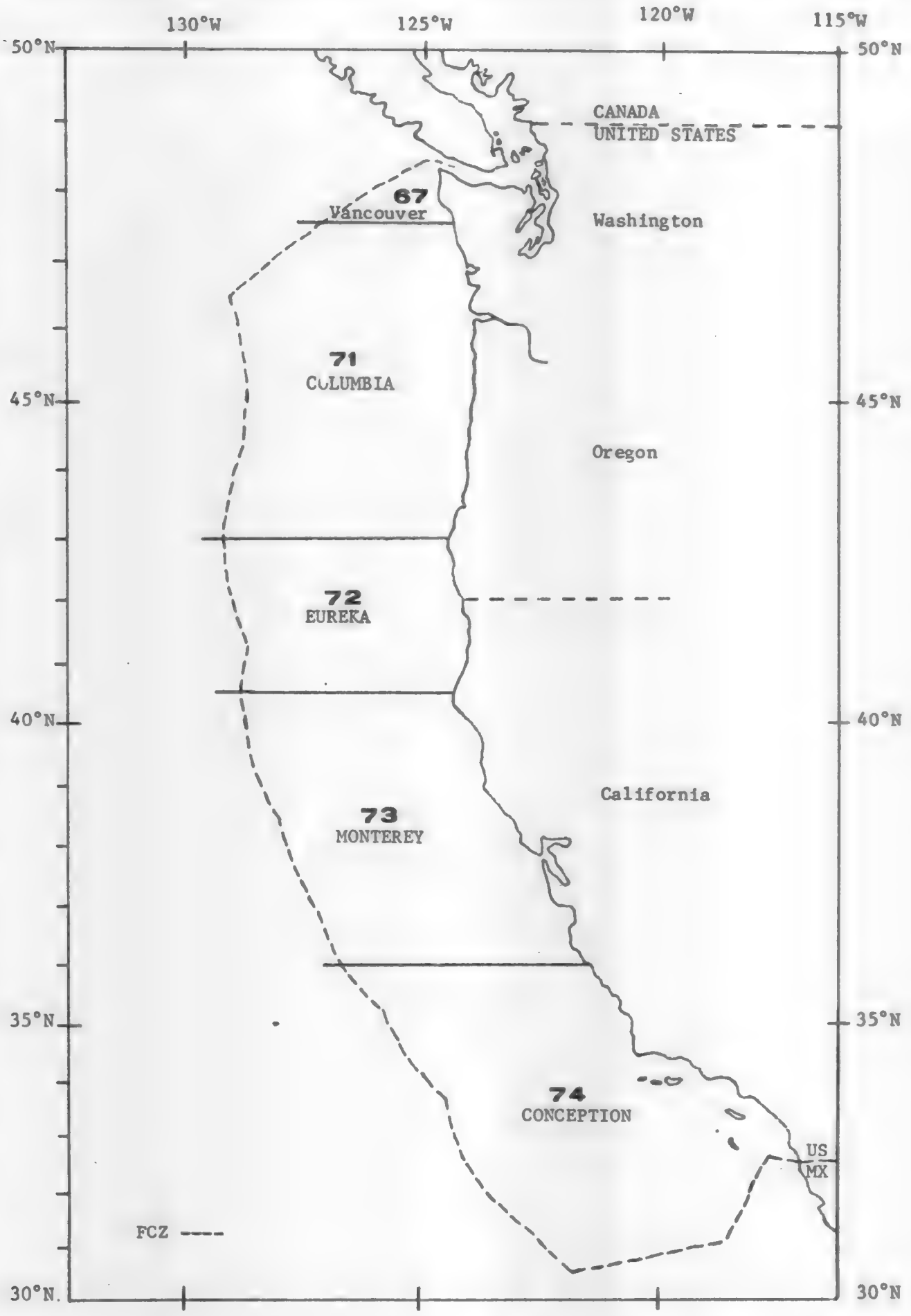


Figure 3. to Appendix C: Fishing Areas for the Pacific Coast Groundfish and the Pacific Billfish and Sharks Fisheries.

D. Seamount Groundfish, Pacific Billfish and Sharks, and Precious Coral Fisheries

Area code, name, and description

81. Hawaii and Midway Islands. The FCZ at the Pacific Ocean off the Hawaiian and Midway Islands
82. Guam and Northern Mariana Islands. The FCZ of the Western Pacific Ocean off Guam and the Northern Mariana Islands
83. American Samoa. The FCZ of the South Pacific Ocean off American Samoa
84. Johnston Atoll. The FCZ off Johnston Atoll
85. Howland and Baker Islands. The FCZ of the Pacific Ocean off Howland and Baker Islands
86. Kingman Reef and Palmyra Atoll. The FCZ of the North Pacific Ocean off Kingman Reef and Palmyra Atoll
87. Jarvis Island. The FCZ of the Pacific Ocean off Jarvis Island.
88. Wake Island. The FCZ of the North Pacific Ocean off Wake Island

E. Gulf of Alaska Groundfish Fishery (Figure 4.)

Area Code, name and description

61. Shumagin. The FCZ of the Gulf of Alaska east of 170°00′ W. longitude and west of 159°00′ W. longitude
62. Chirikof. The FCZ of the Gulf of Alaska east of 159°00′ W. longitude and west of 154°00′ W. longitude
63. Kodiak. The FCZ of the Gulf of Alaska east of 154°00′ W. longitude and west of 147°00′ W. longitude
64. Yakutat. The FCZ of the Gulf of Alaska east of 147°00′ W. longitude and west of 137°00′ W. longitude
65. Southeastern. The FCZ of the Gulf of Alaska east of 137°00′ W. longitude and north of 54°30′ N. latitude
66. Charlotte. The FCZ of the North Pacific Ocean off Alaska south of 54°30′ N. latitude

F. Bering Sea and Aleutian Islands Groundfish and Snail Fisheries (Figure 4.)

Area code, name and description

50. Bering Sea Area 50. For the purposes of § 611.4(c) only, and for the period September 1 through April 30 GMT, an area described by rhumb lines connecting the following points in the order listed

Point No.	Latitude	Longitude
1	58°00′ N.	175°00′ W.
2	58°00′ N.	172°00′ W.
3	59°30′ N.	172°00′ W.
4	59°30′ N.	175°00′ W.
5	58°00′ N.	175°00′ W.

51. Bering Sea Area 51. The FCZ of the Bering Sea north of the Aleutian Islands and east of 170°00″ W. longitude
52. Bering Sea Area 52. The FCZ of the Bering Sea north of the 55°00′ N. latitude, east of 180° longitude and west of 170°00′ W. longitude.
53. Bering Sea Area 53. The FCZ of the Bering Sea north of the 55°00′ N. latitude, east of the U.S.-Russian convention line of 1867, and west of 170°00′ W. longitude
54. Bering Sea Area 54. The FCZ of the Bering Sea and North Pacific Ocean off Alaska south of 55°00′ N. latitude, east of the U.S.-Russian Convention Line of 1867 and west of 170°00′ W. longitude

BILLING CODE 3510-22-M

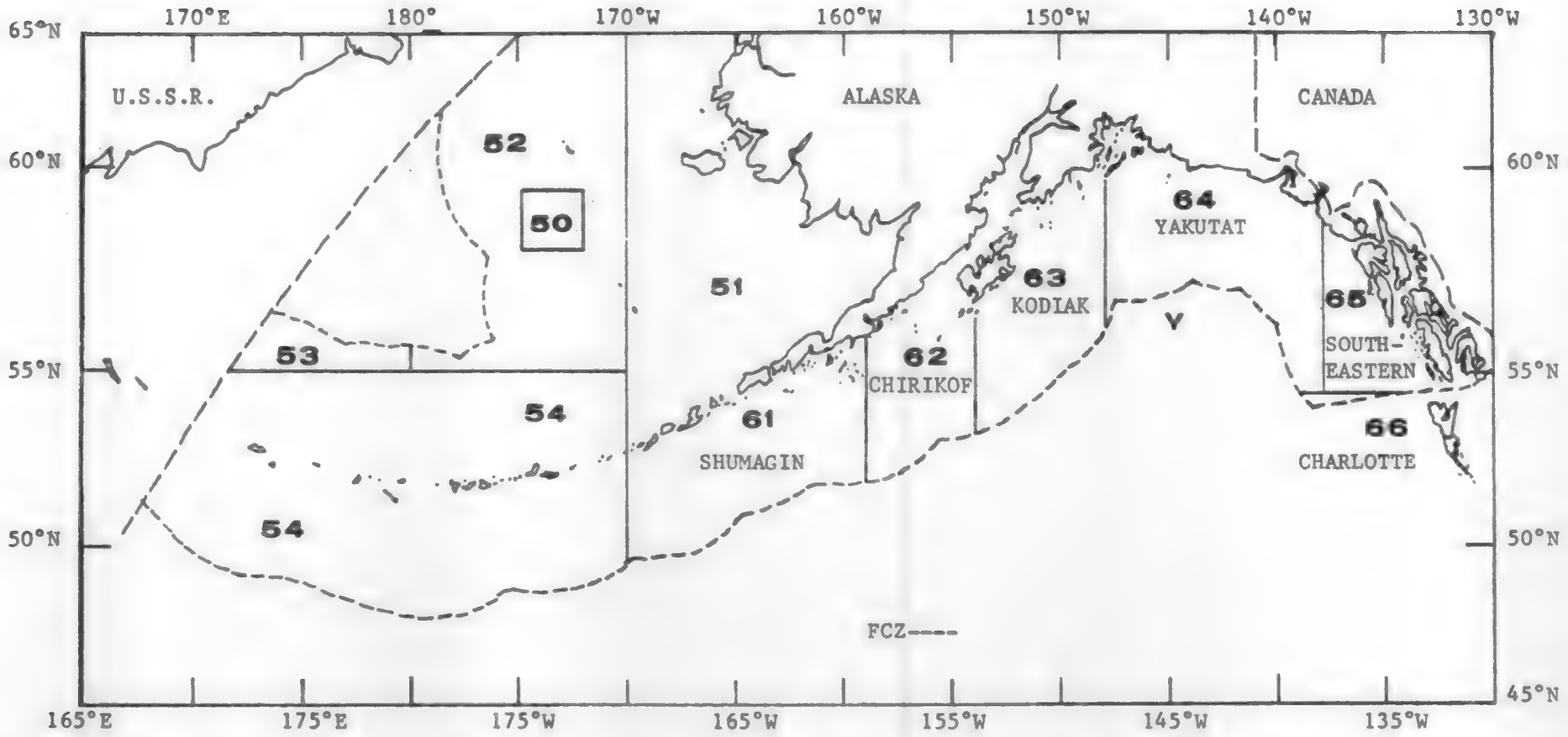


Figure 4. to Appendix C: Fishing Areas for the Gulf of Alaska Groundfish, Bering Sea and Aleutian Islands Groundfish, and Snail Fisheries.

Appendix D to Subpart A—Species Codes

Code	Common name [1]	Scientific name
	A. Atlantic Ocean and Gulf of Mexico Fishes	
	Finfish	
101	Cod, Atlantic	*Gadus morhua.*
102	Haddock	*Melanogrammus aeglefinus.*
103	Redfish	*Sebastes marinus.*
104	Hake, silver	*Merluccius bilinearis.*
105	Hake, red	*Urophycis chuss.*
106	Pollock	*Pollachius virens.*
116	Flounder, yellowtail	*Limanda ferruginea.*
176	Scup	*Stenotomus chrysops.*
182	Tilefish	*Lopholatilus chamaeleonticeps.*
202	Herring, Atlantic	*Harengus harengus.*
204	Mackerel, Atlantic	*Scomber scombrus.*
206	Great barracuda	*Sphyraena barracuda.*
212	Butterfish	*Peprilus triacanthus.*
216	Menhaden, Atlantic	*Brevoortia tyrannus.*
228	Bluefish	*Pomatomus saltatrix.*
237	Pompano dolphin	*Coryphaena equiselis.*
238	Dolphin (mahimahi)	*Coryphaena hippurus.*
240	Mackerel, king	*Scomberomorus cavalla.*
252	Sailfish	*Istiophorus platypterus.*
254	Longbill spearfish	*Tetrapturus pfluegeri.*
255	Wahoo	*Acanthocybium solanderi.*
256	Marlin, white	*Tetrapturus albidus.*
260	Marlin, blue	*Makaira nigricans.*
264	Swordfish	*Xiphias gladius.*
309	Herring, river (includes blueback herring, alewife, and hickory shad).	*Alosa pseudoharengus, Alosa aestivalis,* and *Alosa mediocris.*
310	Shad, American	*Alosa sapidissima.*
314	Croaker, Atlantic	*Micropogonias undulatus.*
318	Salmon, Atlantic	*Salmo salar.*
332	Bass, black sea	*Centropristis striata.*
401	Striped bass	*Morone saxatilis.*
414	Spot	*Leiostomus xanthurus.*
419	Weakfish	*Cynoscion regalis.*
462	Porbeagle shark	*Lamna nasus.*
463	Longfin mako shark	*Isurus paucus.*
464	Shortfin mako shark	*Isurus oxyrinchus.*
465	Blue shark	*Prionace glauca.*
469	Sharks (NS)	Squaliformes.
480	Finfishes (NS) (includes dogfish and non-bilocated squid).	Osteichthyes, squalidae, and sepioid and teuthoid squids.
	Invertebrates	
502	Squid, long-finned	*Loligo pealei.*
504	Squid, short-finned	*Illex illecebrosus.*
509	Squid (NS) (See code 499—other finfish).	Sepioid and teuthoid squids.
519	Crabs, marine (NS)	
522	Lobster, northern	*Homarus americanus.*
630	Royal red shrimp	*Hymenopenaeus robustus.*
667	Shrimp (NS)	
699	Invertebrates, marine (NS).	
	B. Pacific Ocean Fishes	
	Finfish	
120	Flatfishes (NS)	Pleuronectiformes.
200	Pelagic Armorhead	*Pentaceros richardsoni*
201	Alfonsin	*Beryx splendens.*
207	Atka mackerel	*Pleurogrammus monopterygius.*
208	Jack mackerel	*Trachurus symmetricus.*
209	Pacific herring	*Clupea harengus pallasi.*
210	Salmonids (NS)	Salmonidae.
237	Pompano dolphin (mahimahi).	*Coryphaena equisetis.*
238	Dolphin (mahimahi)	*Coryphaena hippurus.*
252	Sailfish	*Istiophorus platypterus.*
253	Black marlin	*Makaira indica.*
255	Wahoo	*Acanthocybium solanderi.*
260	Marlin, blue	*Makaira nigricans.*
261	Striped marlin	*Tetrapturus audax.*
262	Shortbill spearfish	*Tetrapturus angustirostris.*
290	Requiem sharks (NS)	Carcharhinidae.
294	Broadbill swordfish	*Xiphias gladius.*
295	Thresher sharks (NS)	Alopiidae.
296	Mackerel sharks (NS)	Lamnidae.
297	Hammerhead sharks (NS).	Sphyrnidae.
429	Sharks (NS)	Squaliformes.
499	Other species (NS)	See Subparts E, F, and G.
500	Non-specified species (NS).	See Subpart G.
701	Pollock (walleye, Alaska)	*Theragra chalcogramma.*
702	Pacific cod	*Gadus macrocephalus.*
703	Sablefish (black cod)	*Anoplopoma fimbria.*
704	Pacific whiting (hake)	*Merluccius productus.*
720	Yellowfin sole	*Limanda aspera.*
722	Pacific halibut	*Hippoglossus stenolepis.*
737	Turbot (includes arrowtooth flounder, Greenland halibut and Kamchatka flounder).	(*Atheresthes stomias, Reinhardtius hippoglossoides,* and *Pleuronichthys evermanni*).
780	Pacific ocean perch [2]	*Sebastes alutus.*
800	Shortbelly rockfish	*Sebastes jordani.*
804	Idiot rockfish	*Sebastolobus* spp.
849	Rockfish (NS)	Scorpaenidae.
	Invertebrates	
505	Korean horsehair crab	*Erimacrus isenbeckii.*
507	Lyre crab	*Hyas lyratus.*
509	Squid (NS)	Sepioid and teuthoid squids.
527	Black coral (NS)	*Antipathes* spp.
529	Clams (NS)	
539	Scallops (NS)	Pectinidae.
673	Snail (NS)	Gastropoda.
675	King crab	*Paralithodes* spp.
678	Tanner crab (NS) (Snow)	*Chionoecetes* spp.
682	Corals (NS)	
690	Dungeness crab	*Cancer magister.*
697	Shrimp (NS)	
	C. Marine Mammals	
915	Whale, beluga	*Delphinapterus leucas.*
910	Whale, false killer	*Pseudorca crassidens.*
914	Dolphin, rough-toothed	*Steno bredanensis.*
930	Dolphin, Atlantic white-sided.	*Lagenorhynchus acutus.*
938	Dolphin, Pacific white-sided.	*Lagenorhynchus obliquidens.*
940	Dolphin, common	*Delphinus delphis.*
941	Dolphin, bottlenosed	*Tursiops truncatus.*
942	Dolphin, Risso's (grampus).	*Grampus griseus.*
943	Dolphin, spotted	*Stenella attenuata.*
944	Dolphin, spinner	*Stenella longirostris.*
946	Dolphin, northern right-whale.	*Lissodelphis borealis.*
947	Porpoise, harbor	*Phocoena phocoena.*
948	Porpoise, Dall's	*Phocoenoides dalli.*
955	Sea lion, northern	*Eumetopias jubatus.*
958	Sea lion, California	*Zalophus californianus.*
959	Seal, northern fur	*Callorhinus ursinus.*
960	Walrus	*Odobenus rosmarus.*
967	Seal, harbor	*Phoca vitulina.*
968	Seal, ribbon	*Phoca fasciata.*
976	Seal, gray	*Halichoerus grypus.*
981	Seal, northern elephant	*Mirounga angustirostris.*
990	Sea otter	*Enhydra lutris.*
992	Whale, pilot (NS)	*Globicephala* spp.
993	Whale, baleen (NS)	Mysticeti.
994	Whale, toothed (NS)	Odontoceti.
995	Seal (NS)	Other Phocidae.
996	Sea lion (NS)	Otariidae.
998	Porpoise (NS)	Other Phocoenidae.
999	Dolphin (NS)	Delphinidae.
	D. Other Species	
069	Sea turtle (NS)	

[1] (NS) means non-specific as to species. This code must be used for all species of this species group unless a more specific code exists.

[2] Pacific ocean perch in the Alaska fisheries (Subpart G) includes the additional species of red rockfish—

Northern rockfish (*ebastes polyspinas*), Rougheye rockfish (*Sebastes aleutianus*), Shortraker rockfish (*Sebastes borealis*), and Sharpchin rockfish (*Sebastes zacentrus*).

Appendix E to Subpart A—Fishery Product Codes

Fishery product	Code
Canned meat	CN
Fillets, with skin/two per fish	F
Fillets, without skin/two per fish	FN
Fillet, one-piece (butterfly) with skin	FB
Fillet, one-piece (butterfly), without skin	FBN
Fish meal	M
Fish oil	FO
Flounder steaks—diagonal cut from midsection of fish.	S
Flounder pieces—punched or stamped from mid-section of fish.	ST
Gutted only	G
Gutted and gilled	GG
Headed only	H
Headed and gutted	HG
Headed, gutted, and tails removed	HGT
Heads, separate from remainder of fish	HDS
Intestinal organs separate from remainder of fish	IO
Other product (specify)	O
Otoshimi: Frozen minced fish product (Japan)	OS
Pectoral collars separate from remainder of fish	P
Roe separate from remainder of fish	R
Skate wings	SW
Squid or octopus, beak removed	BSQ
Squid or octopus mantles	MSQ
Squid or octopus tentacles	TSQ
Surimi: Frozen minced fish product (Japan)	SU
Tara Shiniku: Frozen minced fish product (Japan)	TS
Tucza: heads, guts, fins, tail, and portions of belly flap removed (Poland).	TU
Whole fish	W

Appendix F to Subpart A—Weekly Catch Report

A. Report Form Entries

1. Page numbering: Number each page in sequence and the total number of pages in each submission. For example, the pages of a report for the catches of three vessels would be numbered "Page 1 of 3", Page 2 of 3", and "Page 3 of 3."

2. Vessel name: Enter the vessel name as shown on the permit, flush left, up to 20 characters.

3. IRCS: Enter the vessel's international radio call sign, up to eight characters.

4. Permit number: Enter the current permit number (without hyphens).

5. Week ending date: Enter the month and day on which the weekly reporting period ended. A reporting period begins on Sunday at 0001 hours GMT (except during the first week of each year when it begins on January 1) and ends on Saturday at 2400 hours, GMT (except during the last week of each year when it ends on December 31). Following month/day figure, insert the letter "D" and a confirmation code (2 digit sum of the 4 digits in month/day figure).

For example, for the report period ending on Saturday, April 9, 1983, enter: 0409D13.

6. Area code: Enter the code from Appendix C to this subpart, for each area in which the vessel fished during the reporting period.

7. Days fished: Enter the number of days during which fishing gear was placed in the water in each fishing area duing the reporting period.

8. Species: Enter the code from Appendix D to this subpart for each allocated species caught during the reporting period and the code for each prohibited species caught as required by the fishery in which the FFV is

engaged (see Subparts C through G of this part).

9. Catch: Enter the round weight, to the nearest tenth of a metric ton (0.1 mt) by species and area of allocated species caught or received from catching vessels during the reporting period, regardless of whether retained or discarded, and the catch of prohibited species as required by the fishery in which the FFV is engaged (see Subparts C through G of this part). Entries containing catch weights of fish used for human consumption or used for fish meal (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries containing catch weights of discarded fish (disposition "D") must be based on the most accurate method available, either scale round weights, estimated deck weights, or number, as required by the fishery. Following the catch figure, insert the letter "D" and a confirmation code (2 digit sum of the digits in the species code and catch figure).

10. Designated representative: Enter the name of the designated representative who is responsible for submitting reports for the foreign nation.

11. Date: Enter the date the report is submitted to the NMFS by the designated representative.

B. Telex Reports

1. To ensure receipt of the Weekly Catch Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message, provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identifier "CATREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Catch Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number/(Week ending date)D(confirmation code-CC)//
Area/Days fished//
Species/(Catch)P(CC)//Species/(Catch)P(CC)//etc.//
Area/Days fished//
Species/(Catch)P(CC)//Species/(Catch)P(CC)//etc.//

C. Example

1. The stern trawler NAVIS, LTUX, permit number LT–83–0001–A, entered the fishery conservation zone on Sunday, March 13, 1983, began fishing in the Yakutat area (code 64) of the Gulf of Alaska on March 15, and continued fishing in that area the morning of March 16. The afternoon of March 16 the vessel shifted to the Kodiak area (code 63), began fishing that evening, and continued fishing through Saturday, March 19, 1983. (Note that March 16 counts as a day fished in *both* area 64 and area 63). In the Yakutat area the vessel caught 121.6 tons of pollock (code 701), 17.8 tons of Pacific ocean perch (code 780), and 8.0 tons of Atka mackerel (code 207). In the Kodiak area the vessel caught 23.4 tons of pollock, 23.7 tons of Pacific ocean perch, 86.4 tons of Atka mackerel, and 0.4 tons of sablefish (code 703).

2. The text of the Telex report would appear as follows:

CATREP
NAVIS/LTUX/LT830001A/0319D13//
64/2//
701/121.6P18//780/17.8P31//207/8.0P17//
63/4//
701/23.4P17//780/23.7P27//207/86.4P27//703/0.4P14//

3. The completed form would appear as follows:

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY CATCH REPORT

Page _____ of _____

VESSEL NAME

/ /

PERMIT NUMBER

/ / / / / / / / / /

IRCS

/ / / / / / /

WEEK ENDING MONTH/DAY

/ / / / /

AREA CODES	DAYS FISHED	SPECIES CODES												

DESIGNATED REPRESENTATIVE _____ DATE _____

BILLING CODE 3510-22-C

Figure 1. to Appendix F

Appendix G to Subpart A—Weekly Joint Venture Receipts Report

A. Report From Entries

1. Page numbering, vessel name, IRCS, permit number, week ending date, area code, designated representative, and date must be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix F paragraphs A, 1–6, 10 and 11.

2. Vessels delivering (V): Enter the number of U.S. vessels which transferred codends in each area during the reporting period.

3. Codends received (T): Enter the number of codends received from U.S. vessels which were caught in that area.

4. Species: Enter the code from Appendix D to this subpart of each authorized or prohibited species or species group received during the reporting period.

5. Amounts received: Enter the round weight, to the nearest tenth of a metric ton (0.1 mt), by species and area, of species received from vessels of the U.S. during the reporting period and as required by the regulations of the fishery in which the FFV is engaged (see Subparts C through G of this part). After the amount, enter the letter "P" to indicate the final disposition of the receipts as: processed, frozen, eaten by the crew, or otherwise used for human consumption (disposition C), whether or not part of the catch went to fishmeal or oil; used for fishmeal (disposition M); or discarded (disposition D). Enter the letter "R" to indicate the receipts which were subsequently returned to the U.S. vessel (disposition R), when allowed by the fishery in which the FFV is engaged. Entries containing receipt weights (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for discards or returns (disposition "D" or "R") must be based on the most accurate method available to the vessel, either scale round weight, estimated deck weight, or number, as required by the fishery. After the code letter, enter a confirmation code (2 digit sum of the digits in species code and amounts received figure).

6. Participating vessels: Enter the names of U.S. vessels transferring codends to the FFV during the reporting period.

B. Telex Reports

1. To ensure receipt of the Weekly Joint Venture Receipts Report on time, Telex reports may be used. If a Telex report is submited, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message, provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identifier "RECREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Joint Venture Receipt Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number/(Week ending date)D(confirmation code)//Area//
Species/(Amount received) (Disposition "P" or "R") (confirmation code)/Species/(Amount received) (Disposition) (confirmation code)//etc.//
Number of vessels transferring codends//Codends transferred//Area//
Species/(Amount received) (Disposition) (confirmation code)//Species/(Amount received) (Disposition) (confirmation code)//etc.//
Number of vessels transferring codends//Codends transferred//
Name of participating vessel//Name of participating vessel//etc.//

C. Example

1. The stern trawler NAVIS, LTUX, operating under permit number LT–83–0001–A which authorizes the receipt of U.S. harvested Alaska pollock and other associated species in the Bering Sea and Aleutian Islands groundfish fishery, received 26 codends from the U.S. vessesl LUCKY, MARY J, EMILY J, and LINDA C in the Bering Sea area 52 from June 5 through June 8, 1983, containing the following species and amounts: Alaska pollock (code 701), 156.3 mt; rockfishes (code 849), 0.2 mt; Pacific cod (code 702), 27.0 mt; turbot (code 737), 5.0 mt; and other species (code 499 4.9 mt. The codends also contained 25 salmon, a prohibited species required to be logged by number in the Bering Sea and Aleutian Islands groundfish fishery (see § 611.92). On June 8, NAVIS shifted its area of operations and received 20 codends from the U.S. vessels, MARY J, EMILY J, and LINDA C in Bering Sea area 54 from June 8 through June 11. NAVIS received the following species and amounts: Alaska pollock (code 701), 75.4 mt; rockfishes (code 849), 3.1 mt; Pacific cod (code 702), 30.2 mt; turbot (code 737), 7.5 mt; and other species (code 499), 7.1 mt. The codends contained 15 salmon and 20 halibut, both prohibited species required to be logged by number in the fishery.

2. The text of the Telex report would appear as follows:

RECREP
NAVIS/LTUX/LT830001A/061D08//
52/4//
701/156.3P23//849/0.2P23//702/27.0P18//
737.5.0P22//499/4.9P35//
210/25P10//V4//T26//
54/4//
701/75.4P24//849/3.1P25//702/30.2P14//737/
7.5P29//499/7.1P30//
210/15P10//722/20P13//V3//T20//
LUCKY//MARY J//EMILY J//LINDA C//

The completed form would appear as follows:

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY JOINT VENTURE RECEIPTS REPORT

Page_____of_____

VESSEL NAME

/ /

PERMIT NUMBER

/ / / / / / / / / /

IRCS

/ / / / / / /

WEEK ENDING
MONTH/DAY

/ / / / /

AREA CODE	DAYS FISH REC'D	VSLS DEL'D	CODENDS REC'D	SPECIES CODES								

PARTICIPATING VESSELS

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

DESIGNATED REPRESENTATIVE _____ DATE _____

Figure 1. to Appendix G

BILLING CODE 3510-22-C

Appendix H to Subpart A—Weekly Marine Mammal Report

A. Report Form Entries

1. Page numbering, vessel name, IRCS, permit number, designated representative, and date must be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix F, paragraphs A, 1–4, 10, and 11.

2. For each mammal caught enter—

a. Date caught. Enter the month and day e.g., for May 6, 1983, enter: 0506;

b. Latitude and longitude to the nearest degree;

c. Species code from Appendix D to this subpart;

d. Status code as follows: 1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured; and

e. Number of mammals caught where two or more of the same species and status were caught together.

f. Flag or nation of registry of vessel that caught the marine mammal.

B. Telex Reports

1. To ensure receipt of the Weekly Marine Mammal Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identified "MAMREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Marine Mammal Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number//
Date/Latitude/Longitude/Species/Condition/Number caught/Flag of vessel catching mammal//
Date/Latitude/Longitude/Species/Condition/Number caught/Flag of vessel catching mammal//

C. Example

1. The stern trawler NAVIS, LTUX, permit number LT–83–0001–A, began fishing in the Bering Sea Area 52 on April 27, 1983. No marine mammals were taken incidental to fishing activities until May 15 when two harbor seals (code 967) were taken at 56°10′ N. latitude, 171°25′ W. longitude. One was killed during retrieval of the trawl and the other was uninjured. On May 17, at 56°35′ N. latitude, 171°40′ W. longitude, a northern sea lion (code 955) was injured during capture by a U.S. vessel delivering its catch to the NAVIS.

2. The text of the Telex report would appear as follows:

MAMREP

NAVIS/LTUX/LT830001A//
0515/56N/171W/967/1/1/LT//
0515/56N/171W/967/4/1/LT//
0517/57N/172W/955/2/1/US//

3. The completed form would appear as follows:

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY MARINE MAMMAL REPORT

Page_____of_____

VESSEL NAME

/ /

PERMIT NUMBER / / / / / / / / / / /

IRCS / / / / / / /

MONTH/DAY / / / / /

CONDITION CODES
1. KILLED DURING CAPTURE
2. INJURED DURING CAPTURE
3. DEAD BEFORE CAPTURE (DECOMPOSED)
4. UNINJURED

RECORD THE CATCH OF INDIVIDUAL ANIMALS UNLESS TWO OR MORE WERE TAKEN TOGETHER AND WERE IN THE SAME CONDITION

DATE (MM/DD)	LATITUDE (DEGREES)	LONGITUDE (DEGREE)	SPECIES CODE	STATUS CODE	NUMBER	FLAG

DESIGNATED REPRESENTATIVE _____ DATE _____

BILLING CODE 3510-22-C

Figure 1. to Appendix H

Appendix I to Subpart A—Daily Fishing Log

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

2. Each day's entries must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Format entries

1. Section One—Effort (to be completed within 2 hours after the beginning of the day or 2 hours after the hauling time, as appropriate):

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign or other vessel identification as required by 50 CFR 611.5(a)(2).

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude to the nearest 0.1 of a minute) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

(h) Trawl or set number: Enter consecutive numbers for each trawl or set made, beginning with the first trawl or set completed in the current calendar year.

(i) Fishing area number: Enter the code number (from Appendix C to this subpart) of the fishing area where each trawl or set was completed.

(j) Gear type: Enter the abbreviation for type of gear used as described below.

Gear type	Standard abbreviation
Bottom otter trawl (side)	OTB–1
Bottom otter trawl (stern)	OTB–2
Off-bottom otter trawl (see § 611.50(c)(5) for definition of this gear).	OTB–3
Midwater otter trawl (side)	OTM–1
Midwater otter trawl (stern)	OTM–2
Bottom pair trawl	PTB
Midwater pair trawl	PTM
Purse seine	PS
Gillnets (set)	GNS
Gillnets (drift)	GND
Gillnets (fixed)	GNF
Longlines (set)	LLS
Longlines (drift)	LLD
Traps or Pots	FIX
Danish seine	DS
Miscellaneous gears (other than above)	MIS

(k) Set time: Enter the time based on GMT at which each set or trawl began. For trawls, this is the time of the net first reaches the fishing level and the winches stop paying out cable. For longline, pot, and gillnet vessls, this is the time the first section of gear is placed in the water.

(l) Set position: Enter the geographic coordinates (latitude/longitude) where each trawl or set began. For trawls, this is the position at which the net reaches the fishing level and the winches stop paying out cable. For longline, pot, and gillnet vessels, this is the position where the first section of gear is placed in the water.

(m) Course of set: Enter the vessel's course (degrees true) at the set time at which each trawl or set began.

(n) Sea depth: Enter the average sea depth in meters.

(o) Depth of set: Enter the average depth in meters at which the gear was set or towed.

(p) Duration of set: Enter the elapsed time in minutes from the set time to the hauling time of each set or trawl.

(q) Hauling time: Enter the ending time based on GMT when each trawl or set was hauled. For trawls this is the time the net begins to be hauled up. For longline, pot, and gillnet vessels, this is the time that retrieval of the gear is complete.

(r) Hauling position: Enter the geographic coordinates (latitude/longitude) at which the set or trawl was hauled. For trawls this is the position at which the net begins to be hauled up. For longline, pot, and gillnet vessels this is the position of the last section or end of the gear.

(s) No. of pots or longline units: For longline or gillnet vessels only, enter the number of longline or gillnet units (specify the length in fathoms per unit). For pot vessels only, enter the number of pots set.

(t) No. of hooks per longline unit: For longline vessels only, enter the average number of hooks per unit of groundline.

(u) Trawl speed: For trawlers only, enter the average speed to the nearest tenth of a knot at which the gear was towed.

(v) Net mesh size: Enter the millimeter mesh size of the cod end (trawlers) or gillnet (measured when wet after stretching, from the inside of one knot to the inside of the opposing knot).

(w) Estimated haul weight: Enter the estimated total weight of the catch for the trawl or set to at least the nearest metric ton round weight.

2. Section Two—Catch (to be completed within 12 hours after the end of the trawl or set or within 12 hours after the end of the day, as appropriate):

(a) Species: Enter the species code for each species caught for which there is an applicable national allocation, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart.

(b) Set/trawl number: Enter the number corresponding with sets or trawls listed in Section One.

(c) Catch: Enter the catch by species and by trawl or set, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Enter zero (0) if there was no catch of a listed species.

(d) Daily disposition: For each species, specify the daily disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal; enter under "M" the weight of whole fish which are processed for fishmeal or oil; and enter under "D" the round weight of whole fish which are discarded. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(e) Area total: Enter the total daily catch by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(f) Daily total: Enter the total daily catch by species, to at least the nearest 0.1 mt round weight.

(g) Cumulative total: Enter the cumulative total catch by species, to at least the nearest 0.1 mt round weight.

(h) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(i) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of all prohibited species discarded from each set or trawl as required by the fishery in which the FFV is engaged (see Subparts C through G of this part). Enter the daily and cumulative total for each prohibited species.

(j) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals caught (if more than one of the same species and condition), and condition code (1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each species caught for which there is a national allocation.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily fishing log form is illustrated below.

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY FISHING LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year Month Day	VESSEL NAME	IRCS	U.S. PERMIT NUMBER	NOON POSITION Latitude Longitude	NOON WEATHER	WIND DIRECTION FORCE	WEATHER	BARO METER	SEA CONDITION	AIR WATER TEMPERATURE	MASTER OR OPERATOR

TRAWL OR SET NO	FISHING AREA NO	GEAR TYPE	SET TIME (G M T)	SET POSITION	COURSE OF SET	SEA DEPTH (METERS)	DEPTH OF SET (METERS)	DURATION OF SET (MINUTES)	HAULING TIME (GMT)	HAULING POSITION	NO OF POTS OR LONGLINE UNITS	NO OF HOOKS PER LONGLINE UNIT	TRAWL SPEED	TRAWL MESH SIZE COD END	

U.S. INSPECTION	REMARKS:
OFFICER:	
DATE:	

Figure 1a. to Appendix I: Daily Fis

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION TWO - CATCH

SPECIES / VESSEL															PROHIBITED SPECIES				MARINE MAMMALS		
																			SPECIES CODE	NUMBER	STATUS CODE
														TOTAL CATCH DAILY TOTAL	TOTAL CATCH CUM. TOTAL						
DAILY DISPOSITION	C																				
	M																				
	D																				
AREA TOTAL																					
DAILY TOTAL																					
CUMULATIVE TOTAL																					

SECTION THREE - PRODUCTION

FROZEN PRODUCT																			MEAL AND OIL		
SPECIES / PRODUCT																		TOTAL FROZEN PRODUCT		MEAL	OIL
PRE'S																			DAILY TOTAL		
DAILY TOTAL																			CUM TOTAL		
CUMULATIVE TOTAL																			AMOUNT TRANSFERRED		
AMOUNT TRANSFERRED																			BALANCE		
BALANCE																					

Figure 1b. to Appendix I: Daily Fishing Log

BILLING CODE 3510-22-C

Appendix J to Subpart A—Daily Consolidated Log

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing operations. Only one day's entries may be made on each page of the log.

2. Each page must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Form Entries

1. Section One—Effort (to be completed within 2 hours of the beginning of the day):

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign.

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

2. Section Two—Catch (to be completed within 12 hours after the end of the day):

(a) Vessel/IRCS: Enter the name of the foreign catching vessel transferring codends to the foreign processing vessel and its IRCS or other required vessel identification.

(b) Species: Enter the species code for each species caught for which there is an applicable national allocation, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart.

(c) Fishing area: Enter the fishing area, using the code from Appendix C to this subpart, where the fish were caught. If a catching vessel catches fish in more than one area, a separate line entry must be made for each area.

(d) Catch: Enter the catch by species of each catching vessel in that area during the day, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Enter zero (0) if there was no catch of a listed species.

(e) Daily disposition: For each species, specify the daily disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal or oil; enter under "M" the round weight of whole fish which are processed for fishmeal or oil; enter under "D" the round weight of whole fish which are discarded. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(f) Area total: Enter the total daily catch by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(g) Daily total: Enter the total daily catch by species, to at least the nearest 0.1 mt round weight.

(h) Cumulative total: Enter the cumulative total catch by species, to at least the nearest 0.1 mt round weight.

(i) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(j) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of prohibited species received from each harvesting vessel as required by the fishery in which the FFV is engaged. Enter the daily and cumulative total for each prohibited species.

(k) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals received (if more than one of the same species and condition), condition code (1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each species caught for which there is a national allocation.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of catch product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily consolidated log form is illustrated below:

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY CONSOLIDATED LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year/Month/Day	VESSEL NAME	IRCS	U.S. PERMIT NUMBER	NOON POSITION Latitude	Longitude	NOON WEATHER	WIND DIRECTION/FORCE	WEATHER	BAROMETER	SEA CONDITION	AIR/WATER TEMPERATURE	MASTER

SECTION TWO - CATCH

VESSEL IRCS / SPECIES AREA															PROHIBITED SPECIES				MARINE MAMMALS		
																			SPECIES CODE	NUMBER	STATUS CODE

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION THREE - PRODUCTION

FROZEN PRODUCT																			MEAL AND OIL		
SPECIES / PRODUCT																		TOTAL FROZEN PRODUCT		MEAL	OIL
PRR'S																			DAILY TOTAL		
DAILY TOTAL																			CUM. TOTAL		
CUMULATIVE TOTAL																			AMOUNT TRANS-FERRED		
AMOUNT TRANSFERRED																			BALANCE		
BALANCE																					

U.S. INSPECTION	REMARKS:
OFFICER:	
DATE:	

Figure 1b. to Appendix J: Daily Consolidated Log.

BILLING CODE 3510-22-C

Appendix K to Subpart A—Daily Joint Venture Log

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing.

2. Each day's entries must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Form Entries

1. Section one—Effort (to be completed within 2 hours after the beginning of the day or within 2 hours after the receipt time, as appropriate);

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign.

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

(h) Codend No.: Enter consecutive numbers for each codend received, beginning with the first codend received in the current calendar year.

(i) Vessel: Enter the name of the U.S. fishing vessel the codend was received from.

(j) Fishing area number: Enter the code number (from Appendix C to this subpart) of the fishing area where the codend was received.

(k) Receipt time: Enter the time based on GMT when the codend was received.

(l) Receipt position: Enter the geographic coordinates (latitude/longitude) where the codend was received.

(m) Codend weight: Enter the estimated total weight of the codends to at least the nearest metric ton round weight.

2. Section Two—Catch (to be completed within 12 hours after the codend was received or within 12 hours after the end of the day, as appropriate):

(a) Species: Enter the species code for each species received which the FFV is authorized to retain, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart. Use another column for the same species if there is more than one disposition of the receipt. (See paragraph (d) below).

(b) Codend No.: Enter the number corresponding with the receipts listed in Section One.

(c) Catch: Enter the receipts in each codend by species, disposition, and receipt, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Disposition is indicated by adding a letter code as described in paragraph (f) below. Enter zero (0) if there was no catch of a listed species.

(d) Daily Disposition: For each species, specify the disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of the fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal or oil; enter under "M" the round weight of whole fish which are processed for fishmeal or oil; enter under "D" the round weight of fish which are discarded; and enter "R" for the round weight of fish returned to the U.S. vessel, if allowed in the fishery. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(e) Area total: Enter the total daily receipts by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(f) Daily total: Enter the total daily receipts by species, to at least the nearest 0.1 mt round weight.

(g) Cumulative total: Enter the cumulative total receipts by species, to at least the nearest 0.1 mt round weight.

(h) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, D, and R) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, D, and R).

(i) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of all prohibited species received from each harvesting vessel, as required by the fishery in which the FFV is engaged. Enter the daily and cumulative total for each prohibited species.

(j) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals received (if more than one of the same species and condition), and condition code (1—killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident and harvesting vessel.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each authorized species which the FFV receives.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily joint venture log form is illustrated below:

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY JOINT VENTURE LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year Month Day	VESSEL NAME	IRCS	U.S. PERMIT NUMBER	NOON POSITION Latitude Longitude	NOON WEATHER	WIND DIRECTION / FORCE	WEATHER	BARO METER	SEA CONDITION	AIR / WATER TEMPERATURE	MASTER

COUNTRY NO	U.S. VESSEL NAME	FISHING AREA NO	RECEIPT TIME (GMT)	RECEIPT POSITION	ESTIMATED RECEIPT WEIGHT

REMARKS

U.S. INSPECTION

OFFICER: DATE:

REMARKS:

Figure 1a to Appendix K: Daily Joint Venture Log.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION TWO - CATCH

SPECIES / CODED NO.															PROHIBITED SPECIES				MARINE MAMMALS		
																			SPECIES CODE	NUMBER	STATUS CODE

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

BILLING CODE 3510-22-C

SECTION THREE - PRODUCTION

	FROZEN PRODUCT																		MEAL AND OIL		
SPECIES / PRODUCT																		TOTAL FROZEN PRODUCT		MEAL	OIL
FISH																			DAILY TOTAL		
DAILY TOTAL																			CUM. TOTAL		
CUMULATIVE TOTAL																			AMOUNT TRANSFERRED		
AMOUNT TRANSFERRED																			BALANCE		
BALANCE																					

Figure 1c. to Appendix K: Daily Joint Venture Log.

Subpart B—Surpluses

§ 611.20 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the optimum yield (OY) of such fishery which will not be caught by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF's at the beginning of the relevant fishing year will be published as a notice in the **Federal Register**. Adjustments to those numbers will be published as notices in the **Federal Register** upon occasion or as directed by regulations implementing fishery management plans. For current apportionments, contact the appropriate Regional Director or the Office of Fisheries Management, F/M1, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235.

§ 611.21 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of fish species and species groups. The Secretary of State officially notifies each foreign nation of its allocation. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels is upon the foreign nation and the owner or operator of the FFV.

§ 611.22 Fee schedule.

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $101 per vessel, plus the surcharge, if required under paragraph (c) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA", must be sent to Division Chief, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Room 414, Washington, DC 20235. The permit fee payment must be accompanied by a list of the vessels for which payment is made.

(b) *Poundage fees.*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (c) of this section.

SPECIES AND POUNDAGE FEE

[Dollars per metric ton, unless otherwise noted]

Species	Poundage
Atlantic and Gulf Fisheries	
1. Butterfish	[illegible]
2. Hake, red	[illegible]
3. Hake, silver	102
4. Herring, river	46
5. Mackerel, Atlantic	[illegible]
6. Other finfish, Atlantic	[illegible]
7. Squid, *Illex*	57
8. Squid, *Loligo*	114
9. Atlantic Shark	110
10. Shrimp, royal red	(1)
Alaska Fisheries	
11. Pollock, Alaska	32
12. Cod, Pacific	73
13. Pacific ocean perch	[illegible]
14. Other rockfish (Alaska)	94
15. Mackerel, Atka	52
16. Squid, Pacific	59
17. Flatfish, Gulf of Alaska and Bering Sea and Aleutian Islands	[illegible]
18. Sablefish, Gulf of Alaska	[illegible]
Bering Sea and Aleutian Islands	[illegible]
19. Other species	[illegible]
20. Snails	[illegible]
Pacific Fisheries	
21. Whiting, Pacific	[illegible]
22. Sablefish	143
23. Pacific ocean perch	124
24. Other rockfish	119
25. Flounders	155
26. Mackerel, jack	55
27. Other species	154
Western Pacific Fisheries	
28. Coral	[illegible] 53
29. Seamount groundfish	103
30. Dolphin fish	1,428
31. Wahoo	571
32. Sharks, Pacific	[illegible]
33. Striped marlin	[illegible]
34. Pacific billfish	514
35. Pacific swordfish	514

[illegible] Reserved.
[illegible] Dollars per kilogram.

(2) *Method of payment of poundage fees, surcharges and observer fees.* If a nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocations at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the surcharges and observer fees required by paragraphs (c) and (d) of this section. The L/C must—

(i) Be irrevocable;

(ii) Be with a bank subscribing to ICC Pub. 290;

(iii) Designate "Department of Commerce, NOAA" as beneficiary;

(iv) Allow partial withdrawals; and

(v) Be confirmed by a U.S. bank.

The customer must pay all commissions, Telex, and service charges. No fishing will be allowed until the letter of credit is established, and authorized written notice of its issuance is provided to the Assistant Administrator at the address in paragraph (a) of this section.

(3) *Assessment of poundage fees.* Poundage fees will be assessed quarterly for the actual catch during January through March, April through June, July through September, and October through December. The appropriate Regional Director will reconcile catch figures with each country following the procedures of §611.13(d). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the Regional Director will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Director during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(c) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraphs (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed to maintain capitalization of the fund. The Assistant Administrator has waived the surcharge for 1985 fees.

(d) *Observer fees.* The Assistant Administrator will notify the owners or operators of FFV's of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for repayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a letter of credit as prescribed in § 611.22(b)(2). During the fiscal year, payment will be withdrawn from the letter of credit as required to cover anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile any differences between the estimated cost and actual costs of observer coverage within 90 days after the end of the fiscal year.

(e) *Financial assurances.* A foreign nation, or the owners and operators of certain vessels of that foreign nation, may be required by the Secretary to

provide financial assurances. Such assurances may be required if—

(1) Civil and criminal penalties assessed against fishing vessels of the nation have not effectively deterred violations;

(2) Vessels of that nation have engaged in fishing in the FCZ without proper authorization to conduct such activities;

(3) The nation's vessel owners have refused to answer administrative charges or summons to appear in court; or

(4) Enforcement of Magnuson Act civil or criminal judgments in the courts of a foreign nation is unattainable.

The level of financial assurances will be guided by the level of penalties assessed and costs to the U.S. government.

[FR Doc. 85-20320 Filed 8-22-85; 2:41 pm]

BILLING CODE 3510-22-M

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50 CFR Part 611

[Docket No. 41049-5104]

Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NOAA issues this final rule implementing technical amendments to the final regulations for foreign fishing. These technical amendments revise references, delete redundant regulations, and make minor format changes to the foreign fishing regulations applying to specific foreign fisheries. The revisions are necessary to reflect changes in the general foreign fishing regulations (published elsewhere within this issue). The intended effect is to make the foreign fishing regulations internally consistent.

EFFECTIVE DATE: October 28, 1985, with exception of the revision to § 611.50(e)(1), which is effective January 1, 1986.

ADDRESS: Fees, Permits, and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202-634-6432.

SUPPLEMENTARY INFORMATION: This action makes technical amendments to Subparts C through G of Part 611 of Title 50 of the Code of Federal Regulations concerning foreign fishing. These amendments were discussed in a proposed rule published at 49 FR 50498 on December 28, 1984. The final rule is published elsewhere within this **Federal Register**. That final rule revises Subparts A and B and requires these technical amendments to Subparts C through G to maintain internal consistency within the foreign fishing regulations. The amendments made by this rule do not have any substantive impact on any information collections currently approved by the Office of Management and Budget.

Other Matters

This action is taken under the authority of 50 CFR Part 611 and the proposed rule published at 49 FR 50498 on December 28, 1984, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign regulations, Recordkeeping and reporting requirements.

Dated: August 20, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 611—[AMENDED]

1. The authority citations following all the sections for 50 CFR Part 611 are removed and the authority citation for 50 CFR Part 611 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

Subpart C—Atlantic Ocean

2. In Subpart C, § 611.50 is amended by revising paragraphs (b)(2)(i), and (e)(1), removing paragraphs (e)(1)(i) through (e)(1)(ix), and adding a new Figure 1 to follow paragraph (b)(2)(ii) to read as follows:

§ 611.50 Northeast Atlantic Ocean Fishery

* * * * *

(b) * * *

(2) *Activities allowed.* (i) Vessels subject to this action which fish with trawl gear may fish only within the trawling areas, during the seasons, and with the methods specified in Figure 1 and Table 1 of this section. Vessels subject to this action which fish with any other gear need not comply with the area, season, or method limitations specified in Figure 1 or Table 1 of this section.

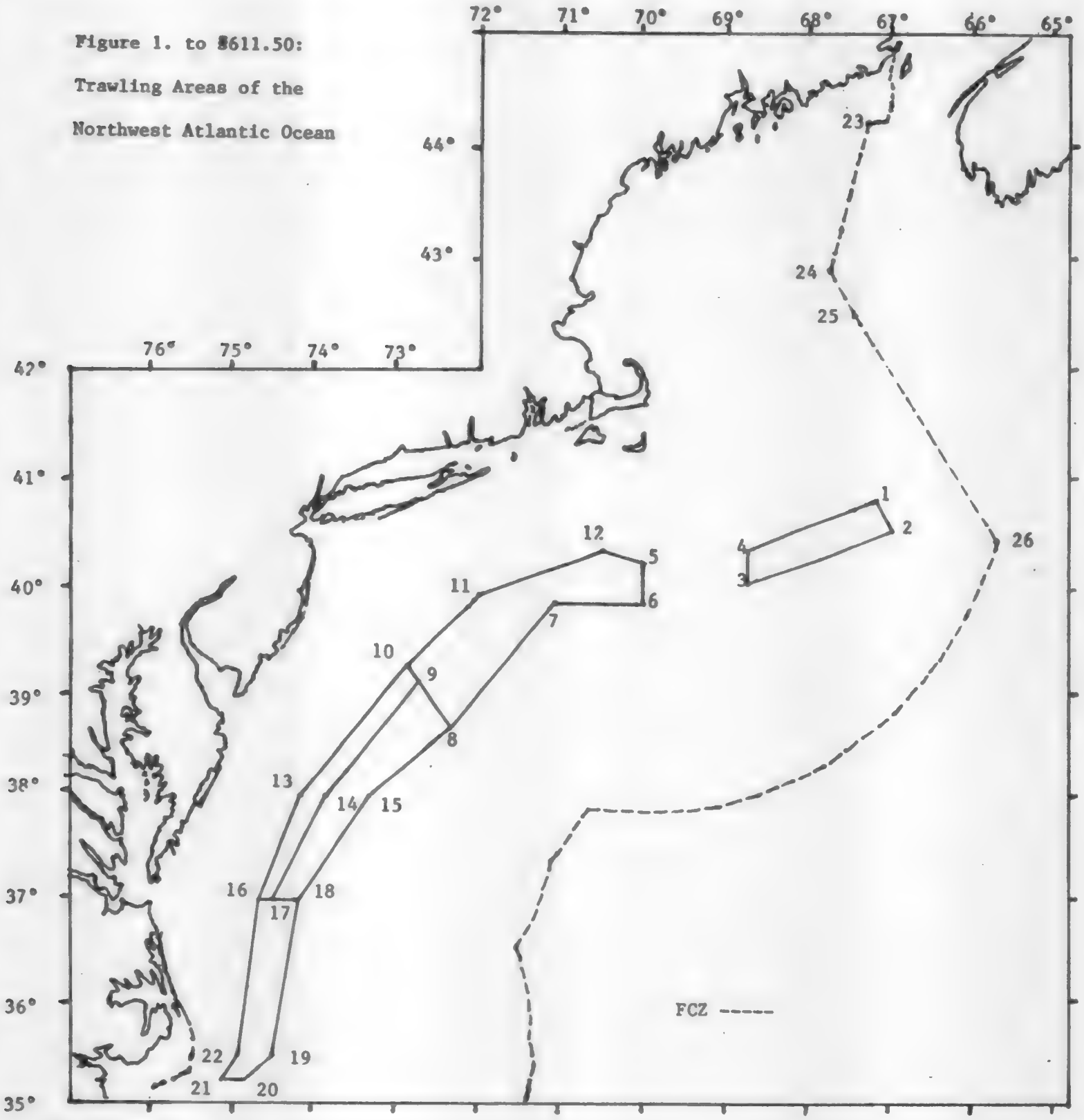
(ii) * * *

BILLING CODE 3510-22-M

Figure 1. to §611.50:

Trawling Areas of the

Northwest Atlantic Ocean



BILLING CODE 3510-22-C

1. 40°47′ N., 67°11′ W.
2. 40°30′ N., 67°00′ W.
3. 40°01′ N., 68°45′ W.
4. 40°20′ N., 68°45′ W.
5. 40°13′ N., 70°00′ W.
6. 39°50′ N., 70°00′ W.
7. 39°50′ N., 71°05′ W.
8. 38°40′ N., 72°30′ W.
9. 39°07′ N., 72°44′ W.
10. 39°16′ N., 72°50′ W.
11. 39°56′ N., 72°00′ W.
12. 40°20′ N., 70°30′ W.
13. 38°00′ N., 74°10′ W.
14. 38°00′ N., 73°53′ W.
15. 38°00′ N., 73°20′ W.
16. 37°00′ N., 74°40′ W.
17. 37°00′ N., 74°30′ W.
18. 37°00′ N., 74°10′ W.
19. 35°30′ N., 74°30′ W.
20. 35°13′ N., 74°50′ W.
21. 35°13′ N., 75°06′ W.
22. 35°30′ N., 74°55′ W.
23. 44°11′12″ N., 67°16′46″ W.
24. 42°53′14″ N., 67°44′35″ W.
25. 42°31′08″ N., 67°28′05″ W.
26. 40°27′05″ N., 65°41′59″ W.

* * * * *

(e) * * *

(1) *Fishing log.* The operator of each FFV which engages in fishing must maintain a record of all catches of allocated, authorized, or prohibited species to the nearest tenth of a metric ton (0.1 mt).

* * * * *

§ 611.50 [Amended]

3. In addition to the amendments set forth above, § 611.50 is amended as follows:

a. In § 611.50(b)(4)(ii), the words "all billfish" are removed and replaced by "all marlin, all spearfish, sailfish, swordfish."

b. In § 611.50(b)(5)(i), in the second sentence, the parenthetical phrase "(as defined in § 611.12(r)(1))" is removed and replaced by "other than scouting, processing, or support."

c. In § 611.50, Table I, footnote [1], the reference to "Figure 1 to Appendix II of § 611.9" is removed and replaced with "Figure 1 of this section," and in the last line of the footnote section of Table I, the reference to "§ 611.15" is removed and replaced with "§ 611.13."

Subpart D—Atlantic, Caribbean, and Gulf of Mexico

4. In Subpart D, § 611.60 is amended by adding paragraph (a)(3) to read:

§ 611.60 General provisions.

(a) * * *

(3) The term *billfish* or *billfishes* as used in this subpart means all species of marlin, spearfish, sailfish and swordfish.

* * * * *

§ 611.60 [Amended]

5. In addition to the amendment set forth above, in § 611.60(c)(2), the reference to "§ 611.13(c)" is removed and replaced with "§ 611.11(d)."

§ 611.61 [Amended]

6. Subpart D, § 611.61 is amended as follows:

a. In § 611.61(b)(1), the reference to "§ 611.15 (a)(1) through (a)(7)" is removed and replaced by "§ 611.13 (a)(1) through (a)(3)."

b. In § 611.61(c), the reference to "§ 611.13(b)" in the introductory text is removed and replaced by "§ 611.11(b)."

c. In § 611.61, (e)(2) the reference to "§ 611.9 (d) and (e)" is removed and replaced by "§ 611.9(d) and § 611.4(f)(2)," and the reference to "§ 611.9 (f) and (g)," is removed and replaced by "§ 611.4 (f)(3) and (f)(4)."

Subpart E—Northeast Pacific Ocean

7. In Subpart E, § 611.70 is amended by removing and reserving paragraphs (j)(1), (j)(2) and (j)(3) and revising paragraph (j)(8) to read as follows:

§ 611.70 Pacific coast groundfish fishery.

* * * * *

(j) *Reports and recordkeeping.* (1)–(3) [Reserved]

* * * * *

(8) *Weekly reports by FFV's.* Any weekly catch report (CATREP) submitted under § 611.4(f)(2) or weekly joint venture receipts report (RECREP) submitted under § 611.4(f)(3) must state if it pertains to a directed species other than Pacific whiting by following the word "CATREP" or "RECREP" with the name of the directed species. If more than one directed fishery is conducted in the same week, a separate CATREP or RECREP must be submitted for each species.

* * * * *

§ 611.70 [Amended]

8. In addition to the amendments set forth above, Subpart E, § 611.70 is amended to read as follows:

a. In § 611.70(j)(9), the reference to "§ 611.9" is removed and replaced by "§ 611.4."

b. In § 611.70(j)(9)(i), the reference to "§ 611.9(e)" is removed and replaced by "§ 611.9(f)(2)" and the words "§ 611.9(f) "Weekly Reports of U.S.-Harvested Fish" " are removed and replaced by "§ 611.4(f)(3) "Weekly Joint Venture Receipts Report." "

Subpart F—Western Pacific Ocean

9. In Subpart F, § 611.80 is amended by revising paragraphs (f)(1)(i) and (f)(1)(ii) to read as follows:

§ 611.80 Seamount groundfish fishery.

* * * * *

(f) * * *

(1) *Fishing log.* (i) Each FFV which conducts fishing operations must maintain and submit a fishing log which contains the data required by § 611.9 (d) and (e).

(ii) In addition to the catch of allocated species, the log must contain the approximate weight (in kilograms) by genus, of the incidental catch of the prohibited species corals designated by the definitions of Continental Shelf fisheries resources in § 611.2 of this part.

* * * * *

10. In Subpart F, § 611.81 is amended by revising paragraph (e)(3) to read as follows:

§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.

* * * * *

(e) * * *

(3) *Quarterly marine mammal report.* Each operator of an FFV which fishes under this section must submit, through the designated representative, the marine mammal report required by § 611.4(f)(4) on a quarterly basis in lieu of weekly reports.

* * * * *

11. In addition to the amendments set forth above, Subpart F, § 611.81 is amended to read as follows:

a. In § 611.81(c)(4), the reference to "§ 611.13(c)" is removed and replaced by "§ 611.11(d)."

b. In § 611.81 (d)(2) and (e)(1)(iii), the references to "Appendix II to § 611.9" are removed and are replaced by "Appendix C to Subpart A."

c. In § 611.81 (d)(3)(ii), the references to "Table I of § 611.4" is removed and replaced by "Appendix A to Subpart A."

d. In § 611.18(e), the references to "§ 611.9 (d), (e), and (g)" are removed and are replaced by "§ 611.4 (f)(2) and (f)(4) and § 611.9 (d) and (e)."

e. In § 611.81 (e)(2), the words "foreign nation whose vessels fish under this section shall submit" are removed and are replaced by "operator of an FFV which fishes under this section must submit."

§ 611.82 [Amended]

12. In Subpart F, § 611.82(i) is amended by removing in the second sentence the words "daily cumulative catch log" and inserting in their place "daily fishing log."

Subpart G—North Pacific Ocean and Bering Sea

13. In Subpart G, § 611.90 is amended by revising paragraph (e)(2), removing paragraph (f)(1), redesignating paragraph (f)(2) as (f)(1) and revising the newly redesignated paragraph (f)(1), redesignating paragraph (f)(3) as (f)(2), and removing in the second sentence of the newly redesignated paragraph (f)(2) the references to "§§ 611.9(b), 611.9(d)(1), and 611.9(d)(2)" and replacing this reference with "611.9 (b) and (c)" as follows:

§ 611.90 General provisions.

* * * * *

(e) * * *

(2) In the Gulf of Alaska groundfish fishery and the Bering Sea groundfish fishery, the owner and operator of each FFV must record and report, in addition to allocated and authorized species, the prohibited species salmonids (species code 210) and halibut (species code 722) which are discarded, in terms of the number of fish. In the Bering Sea groundfish fishery the owner and operator of each FFV must record and report additionally, the prohibited species herring (species code 209) which are discarded, to the nearest tenth of a metric ton (0.1 mt).

(f) *Initial Inspection.* (1) An FFV reporting fish or fish products aboard in a BEGIN report required by § 611.4(c)(1) may be inspected prior to fishing within the FCZ. If the FFV will be inspected, notice of an inspection will be sent to the FFV within 24 hours after the transmission of the BEGIN report. Each FFV that will be inspected must not harvest or process fish in the FCZ until the inspection is completed by an authorized officer. If notice of an inspection is not sent to the FFV within 24 hours after transmission of the BEGIN report, the FFV may begin to harvest or process fish.

* * * * *

§ 611.92 [Amended]

14. In Subpart G, § 611.92 is amended by removing the fourth sentence in paragraph (b)(1) and replacing it with "Taking of salmonids and halibut must be recorded and reported by number of fish according to § 611.90(e)(2)."

§ 611.93 [Amended]

15. In Subpart G, § 611.93 is amended to read as follows:

a. In § 611.93(a)(1), the words "See § 611.9, Appendix II, Figure 2" are removed and replaced with the words "See Appendix C to Subpart A, Figure 4."

b. In § 611.93(c)(2)(ii)(E)(1)(i), the terms "fishing area I" and "fishing areas II" in the first sentence are removed and replaced by "fishing area 51" and "fishing area 52" respectively and the last sentence beginning "Fishing areas I and II . . ." is removed and replaced by "Fishing areas 51 and 52 are described in Appendix C to Subpart A, paragraph C. and Figure 4".

c. In § 611.93(d)(1), the reference to "50 CFR 611.4" is removed and replaced with "§ 611.4(c)," and the last sentence, which reads "(See § 611.9, Appendix II, Figure 2)" is removed and replaced with "(See Appendix C to Subpart A, Figure 4)."

d. In § 611.93(d)(2)(i), the reference "§ 611.9" is removed and replaced by "§ 611.90(e)(2)."

e. In § 61.93(d)(2)(ii)(A) the reference to "§ 611.9(d)(1)" is removed and replaced by "§ 611.90(d)(1)."

f. In § 611.93(d)(2)(ii)(C) the reference to "611.9, Appendix IV, D." is removed and replaced by "§ 611.4(g)."

16. In addition to the amendments set forth above, 50 CFR Part 611, a. Subparts C, D, F and G are amended by removing the references to "50 CFR 611.9" or "§ 611.9" and inserting in their place, the reference "§§ 611.4 and 611.9" in the following places:

1. 50 CFR 611.50(e)
2. 50 CFR 611.61(e)(1)
3. 50 CFR 611.80(f)
4. 50 CFR 611.82(i)
5. 50 CFR 611.92 (c)(2)(i)(D) and (h)
6. 50 CFR 611.93 (d)(2)(i) and (d)(2)(ii)(A)

b. Subparts C and D are amended by removing the references to "Appendix I to § 611.9" and inserting in their place, the reference "Appendix D to Subpart A" in the following places:

1. 50 CFR 611.50(e)(2)(ii) A.7.
2. 50 CFR 611.61(e)(1)(i)(C)

c. Subparts C and D are amended by removing the references to "§ 611.11" and inserting in their place "§ 611.12" in the following places:

1. 50 CFR 611.50(d)(1)
2. 50 CFR 611.61(f)(1)

d. Subparts C through G are amended by removing the references to "§ 611.13" and inserting in their place "§ 611.11" in the following places:

1. 50 CFR 611.50(b)(6)
2. 50 CFR 611.60(c)(1)
3. 50 CFR 611.70(k)
4. 50 CFR 611.80(c)
5. 50 CFR 611.81(c)(2)
6. 50 CFR 611.82(e)
7. 50 CFR 611.92 (b)(1), (c)(1)(i) and (c)(2)(i)(D)

e. Subparts C, F, and G are amended by removing the references to "611.15" or "§ 611.15(b)" and inserting in their place "§ 611.13" in the following places:

1. 50 CFR 611.50(b)(5)(ii)
2. 50 CFR 611.81 (b)(5)(ii) and (b)(5)(iv)
3. 50 CFR 611.82(d)
4. 50 CFR 611.90(b)

f. Subpart G is amended by removing the references to "§ 611.9" and inserting in their place "§§ 611.9 and 611.90(e)(2)" in the following places:

1. 50 CFR 611.92, Table 1, Footnote 1
2. 50 CFR 611.93, Table 1, Footnote 1

g. Subpart G is amended by removing the references to "§ 611.15(c)" and inserting in their place "§ 611.13(c)" in the following places:

1. 50 CFR 611.92 (c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(ii), and (c)(2)(iii)
2. 50 CFR 611.93 (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv)

[FR Doc. 85-20321 Filed 8-22-85; 2:42 pm]
BILLING CODE 3510-22-M

Federal Register

Wednesday
August 28, 1985

Part III

Department of Education

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages; Notices

DEPARTMENT OF EDUCATION

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages; Proposed Annual Funding Priorities, Required Activities, and Restriction on Use of Funds

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education (the Secretary), under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, proposes annual funding priorities for nationally significant project grants. The Secretary proposes to reserve funds under this program for projects designed to enhance the professional status and improve the skills and qualifications of teachers, and to improve the quality of instruction in mathematics, science, computer learning, and foreign languages at the elementary and secondary school levels.

This notice supersedes the notice of proposed funding priorities published in the **Federal Register** on January 22, 1985 (50 FR 2848).

DATE: Comments must be received on or before September 27, 1985.

ADDRESS: Comments should be addressed to the Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4010, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Patricia Alexander, Office of the Secretary, at the above address. Telephone: (202) 472–1762.

SUPPLEMENTARY INFORMATION:

Program Information

The Education for Economic Security Act (EESA), Pub. L. 98–377, was enacted "to improve the quality of mathematics and science teaching and instruction in the United States."

Section 212 of Title II of the EESA addresses the importance of mathematics, science, computer, and foreign language competency by authorizing the Secretary to make grants to State and local educational agencies, institutions of higher education, and nonprofit organizations, including museums, libraries, educational television stations, and professional mathematics, science and engineering societies and associations, for projects designed to have nationwide impact in these critical areas.

Funding Priorities

To address the need to improve the quality of teaching and instruction in mathematics, science, computer learning, and foreign languages, the Secretary proposes to reserve funds under this program for projects that enhance the professionalism and improve the qualifications of teachers, and that improve instruction in mathematics, science, computer learning, and critical foreign languages.

The Secretary further proposes to limit these priorities to activities that affect elementary and secondary education.

The Secretary is particularly interested in projects of national significance that can be demonstrated successfully in an individual school or school district. Statewide or regional projects are also welcome.

1. Improving the Quality of Teaching

The Secretary expects to award ten to fifteen grants for projects that offer bold approaches to recruiting, in-service training, retraining, and retaining elementary and secondary teachers in the fields of mathematics, science, computer learning, and critical foreign languages.

The Secretary is particularly interested in projects that:

- Provide opportunities to upgrade and enhance the knowledge and skills of teachers currently in the classroom;
- Provide opportunities to recruit and train otherwise well-qualified individuals who lack teaching certification or pedagogical preparation in these subjects; or
- Establish procedures to recognize and reward outstanding teachers.

Activities

Project activities may include, but are not limited to:

- The development of innovative approaches to recruiting qualified content specialists from such sources as corporations, businesses, college faculties, government agencies, research facilities, college graduates who lack pedagogical training, and the increasing pool of retired professionals, through such means as sabbaticals, exchange programs, accelerated training programs, and alternative certification programs.
- The development of programs that recognize and reward outstanding teachers in mathematics, science, computer learning, and foreign languages by providing them with research opportunities, sabbaticals, advanced training in their fields, or other means of conferring increased status, new responsibility, and greater financial remuneration.
- The establishment of collaborative partnerships between State and local educational agencies, colleges and universities, museums, and other nonprofit organizations to develop innovative teacher training programs.

The above examples are meant to illustrate the types of activities the Secretary is interested in supporting. Applicants are encouraged to submit proposals that expand upon, combine, or consider ideas other than these examples.

It is expected that awards under this priority will range from $50,000 to $150,000 each. Applicants may apply for funding for a project that is up to 18 months in duration.

2. Improving the Quality of Instruction

The Secretary expects to award ten to fifteen grants for projects that develop approaches to strengthening and improving the content and coherence of the school curriculum in mathematics, science, computer learning, and critical foreign languages, and to upgrading and enhancing instructional materials (including textbooks, and computer software) in the four subject areas.

The Secretary is particularly interested in projects that:

- Determine the extent to which textbooks and other instructional materials include the most important and up-to-date knowledge available;
- Evaluate the curriculum, course content, and graduation requirements to determine whether they ensure that students will be knowledgeable in mathematics, science, computer learning, and foreign languages, and that high aptitude students have access to especially challenging courses; or
- Develop new instructional approaches that promise to improve teaching and increase learning. (Please note: The Secretary discourages the use of these funds for the development of instructional materials).

Activities

Project activities may include, but are not limited to:

- The establishment of partnerships between individual schools, State and local educational agencies, colleges and universities, musuems, libraries, and other nonprofit organizations to develop innovative approaches to upgrading instructional methods materials.
- The development of activities or programs by museums, libraries, and other eligible non-profit organizations that provide alternative or supplementary instruction to students and/or teachers in mathematics, science, computer learning, and foreign languages.

• The systematic review of textbooks and other instructional materials to identify specific weaknesses such as limited coverage of important topics, inadequate scholarship, poor writing, or a lack of challenging material.

• The development of guidelines to be used by teachers, parents and education groups in reviewing textbooks and other instructional materials.

• The development of guidelines or criteria that can be used by schools and school boards in reviewing and establishing curricula in mathematics, science, computer learning, and languages.

The above examples are meant to illustrate the types of activities the Secretary is interested in supporting. Applicants are encouraged to submit proposals that expand upon, combine, or consider ideas other than these examples.

It is expected that awards under this priority will range from $50,000 to $150,000 each. Applicants may apply for funding for a project that is up to 18 months in duration.

Competitive Preference

Section 212(b)(1) of the EESA requires the Secretary to give special consideration to local educational agencies (LEAs), or consortia of LEAs, proposing to establish or improve magnet school programs for gifted and talented students, and applicants proposing to provide special services to historically underserved and underrepresented populations in the fields of mathematics and science.

Therefore, the Secretary proposes to give a competitive preference of up to ten additional points to those applicants whose projects, under either of the proposed annual funding priorities, address one or both of the above areas of special consideration.

Required Activities

The Secretary proposes to require, as a condition for funding under both priorities, that applicants agree to:

(a) Where appropriate, develop models for improving the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages; and

(b) Provide a final case study of the project that is suitable for widespread distribution and possible utilization by individual schools, school districts, or education policy-makers.

Restriction on Use of Funds

Under 34 CFR Part 755, the Secretary may restrict the amount of grant funds used under this program to purchase equipment. For the purposes of this competition, the Secretary proposes that no more than ten percent of the grant funds may be used to purchase equipment.

However, this restriction does not apply to the acquisition of laboratory supplies (e.g., chemicals for chemistry labs), provided that the costs of these supplies are reasonable and are necessary to carry out the project's objectives and activities.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities, required activities, and restriction on the use of funds. Written comments and recommendations may be sent to the address listed at the beginning of this document. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4010, 400 Maryland Avenue, SW., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 3972)

(Catalog of Federal Domestic Assistance Number 84.168, Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages.)

Dated: August 27, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-19076 Filed 8-27-85; 8:45 am]

BILLING CODE 4000-01-M

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages; Application Notice for New Awards

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education (the Secretary), under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, announces a grant competition and invites applications for nationally significant projects designed to improve the quality of teaching and instruction in mathematics, science, computer learning, and critical foreign languages at the elementary and secondary school levels.

Closing Date for Transmittal of Applications

Applications for a grant must be mailed or hand delivered on or before October 29, 1985.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.168), 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Regional Office Building 3, Room 3633, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

Section 212, Title II of the Education for Economic Security Act (EESA), Pub. L. 98-377 (20 U.S.C. 3972), authorizes the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages.

A notice of proposed annual funding priorities for this program is published in this issue of the **Federal Register**.

Eligible Applicants

Under § 755.2 of the regulations, the Secretary may award nationally significant project grants to State

educational agencies, local educational agencies, institutions of higher education, and nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations.

Selection Criteria

(a) In evaluating applications, the Secretary uses the selection criteria contained in § 755.31 of the regulations. The maximum possible number of points for all the criteria is 85, and the value assigned for each criterion is as follows:

(1) Plan of operation. (15 points)

(2) Quality of key personnel. (10 points)

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (5 points)

(5) Adequacy of resources. (5 points)

(6) Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages. (20 points)

(7) National significance. (15 points)

(8) Applicant's commitment and capacity. (10 points)

(b) Furthermore, § 755.30 of the regulations authorizes the Secretary to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. The Secretary will distribute these additional points as follows:

Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages. Ten (10) additional points will be added to this criterion for a possible total of 30 points.

National significance. Five (5) additional points will be added to this criterion for a possible total of 20 points.

Length of Awards

Projects supported under this program will be for a period of up to 18 months in duration.

Available Funds

It is estimated that a total of 20 to 30 awards will be made for $50,000 to $150,000 each. The Secretary encourages applicants to propose projects that show a thorough knowledge of previous work in the area of the project and its relationship to the proposed project, and that use existing materials to the fullest extent possible. Also, because of the limited available resources, the Secretary encourages applicants to propose projects that would use the funds awarded for this competition to supplement other sources of funding.

The above estimate assumes that applications of satisfactory quality will be received. This estimate does not bind the Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms

Application forms and program information packages may be obtained by writing to the Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4181, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 15 pages in length and the total application not exceed 20 pages in length. The Secretary further urges that applicants not submit information that is not requested.

The Secretary requires an applicant to submit an original and two copies of its application to the Application Control Center. (The application form is approved by the Office of Management and Budget under control number 1880–0511.)

Applicable Regulations

The following regulations apply to this program:

(a) The regulations for the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages in 34 CFR Part 755, published June 24, 1985 (50 FR 25972).

(b) Any final annual priorities adopted by the Secretary. A notice of proposed annual funding priorities for the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages is published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed funding priorities. If any substantive changes are made in the final funding priorities that would affect the content of applications, applicants will be given an opportunity to revise or resubmit their applications.

(c) The Education Department General Administrative Regulations (EDGAR) (34 CFR Part 74, 75, 77, and 78).

(d) The List of Critical Foreign Languages published on August 2, 1985 (50 FR 31412).

FOR FURTHER INFORMATION CONTACT:

For further information contact Patricia Alexander, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4010, Washington, DC 20202. Telephone Number: (202) 472–1762.

(20 U.S.C. 3972)

(Catalog of Federal Domestic Assistance Number 84.168, the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages)

Dated: August 22, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–20495 Filed 8–27–85; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Wednesday
August 28, 1985

Part IV

Department of Energy

Office of Conservation and Renewable Energy

Industrial Energy Conservation Program; Exempt Corporations and Adequate Reporting Programs; Notices

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Docket No. CAS-RM-80-304]

Industrial Energy Conservation Program; Exempt Corporations and Adequate Reporting Programs

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Notice of Exempt Corporations and Adequate Reporting Programs.

SUMMARY: As an annual part of the Department of Energy's (DOE) Industrial Energy Conservation Program, DOE is exempting certain corporations from the requirement of filing corporate energy consumption reporting forms directly with DOE and is determining as adequate certain industrial reporting programs for third party sponsor reporting. This notice is required pursuant to section 376(g)(1) of the Energy Policy and Conservation Act (EPCA) and DOE's regulation set forth at 10 CFR Part 445, Subpart D. DOE compiled this list based on submissions filed by corporations and third party sponsors in accordance with 10 CFR 445.34 and 445.35. The deadline for these filings was February 28, 1985. These procedures, which allow identified corporations to be exempted from filing energy data directly with DOE, assist in maintaining the confidentiality of consumption information and reduce the reporting burden for corporations. Parentheses with the word "partial" follow any corporation which reports less than its total energy data in a particular 2-digit SIC code through the program sponsor under which it is listed. The corporation reports the rest of its efficiency data through another sponsor or directly to DOE. The exempt corporations and the respective sponsors of adequate reporting programs are listed alphabetically by industry in the appendix to this notice.

FOR FURTHER INFORMATION CONTACT:

William B. Williams, Office of Industrial Programs, CE-12, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2090

Joshua P. Smith, Office of General Counsel, GC-12, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9507

Issued in Washington, D.C., August 8, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

EXEMPT CORPORATIONS AND SPONSORS OF ADEQUATE REPORTING PROGRAMS

SIC 20—Food and Kindred Products

American Bakers Association

Campbell Soup Company (partial)
Campbell Taggart, Inc.
Consolidated Foods Corporation (partial)
Flowers Industries Inc.
G. Heileman Brewing Company, Inc. (partial)
ITT Continental Baking Company Inc. (partial)
Interstate Brands Corporation

American Feed Manufacturers Association

Bell Grain
Bell Mining
Cargill Inc.
Central Soya Company Inc. (partial)
Gold Kist Inc.
Land O'Lakes, Inc. (partial)
Moorman Manufacturing Company
Quincy Soy Bean Company
Ralston Purina Company (partial)

American Frozen Food Institute

Campbell Soup Company (partial)
J.R. Simplot Company

American Meat Institute

Beatrice Foods Company (partial)
Consolidated Foods Corporation (partial)
Farmland Industries Inc.
FDL Foods, Inc.
George A. Hormel & Company
IBP Inc.
Oscar Mayer & Company
Rath Packing Company
Swift and Company
Swift Independent Packing Company
Wilson Foods Corporation

Biscuit & Crocker Manufacturers Association

Keebler Company
Lance, Inc.
Nabisco Brands, Inc. (partial)
Sunshine Biscuits, Inc.

Chemical Manufacturers Association

National Distillers Products Company

Corn Refiners Association

A.E. Staley Manufacturing Company (partial)
American Maize-Products Company
CPC International Inc.
Grain Processing Corporation
Hubinger Company
National Starch & Chemical Corporation
Univar Corporation

Grocery Manufacturers of America, Inc.

A.E. Staley Manufacturing Company (partial)
American Home Products Corporation
Amstar Corporation
Anderson Clayton & Company
Archer Daniels Midland Company (partial)
Basic American Foods
Beatrice Foods Company (partial)
Borden Inc. (partial)
Carnation Company
Central Soya Company, Inc. (partial)
Chesebrough-Ponds Inc.
Coca-Cola Company
Consolidated Foods Corporation (partial)
General Foods Corporation
General Mills Inc.
H.J. Heinz Company (partial)
Hershey Foods Corporation
Kellogg Company
Kraft Inc.
Mars Inc.
Nabisco Brands, Inc. (partial)
Pepsico Inc.
Pet Inc.
Peter Paul Cadbury, Inc.
Pillsbury Company
Procter & Gamble Company
Quaker Oats Company
Ralston Purina Company (partial)
R.T. French Company
Thomas J. Lipton Inc.
Universal Foods Corporation

National Food Processors Association

Castle & Cooke Inc.
Curtice-Burns Inc.
Del Monte Corporation
Gerber Products Company
H.J. Heinz Company (partial)
Hunt Wesson (partial)
Sunkist Growers Inc.
Tri/Valley Growers Inc.

Pharmaceutical Manufacturers Association

Eli Lilly and Company

U.S. Beet Sugar Association

Amalgamated Sugar Company
American Crystal Sugar Company
Great Western Sugar Company
Holly Sugar Corporation
Michigan Sugar Company
Minn-Dak Farmers Cooperative
Monitor Sugar Company
Southern Minnesota Sugar Cooperative
Union Sugar Company

U.S. Brewers Association

Adolph Coors Company
Anheuser-Busch Inc. (partial)
Archer Daniels Midland Company (partial)
Froedtert Malt Corporation
Ladish Malting Company
Miller Brewing Company
Olympia Brewing Company
Pabst Brewing Company
The Stroh Companies Inc.

U.S. Cane Sugar Refiners Association

California & Hawaiian Sugar Company
Colonial Sugars Inc.
Georgia Sugar Refinery
Imperial Sugar Company
Refined Sugars Inc.
Revere Sugar Corporation
Savannah Foods & Industries Inc. (partial)
Supreme Sugar Company, Inc.

SIC 22—Textile Mill Products

American Textile Manufacturers Institute

Avondale Mills Inc.
Bibb Company
Burlington Industries Inc.
Clinton Mills Inc.
Coats & Clark Inc.
Colgate-Palmolive Company

Collins & Aikman Corporation
Cone Mills Corporation
Cranston Print Works Company
Crompton Company Inc.
Dan River Inc.
Dixie Yarns Inc.
Fieldcrest Mills Inc.
Goodyear Tire & Rubber Company
Graniteville Company
Greenwood Mills Inc.
J.P. Stevens & Company Inc.
Johnson & Johnson
Kimberly-Clark Corporation
M. Lowenstein & Sons Inc.
Milliken & Company
Northwest Industries Inc.
Reeves Brothers Inc.
Riegel Textile Corporation
Sayles Biltmore Bleacheries Inc.
Spartan Mills Inc.
Sperry and Hutchinson Company (partial)
Springs Industries Inc.
Standard-Coosa-Thatcher Company
Thomaston Mills Inc.
Ti-Caro Inc.
United Merchants & Manufacturers Inc.
West Point-Pepperell Inc.

Carpet & Rug Institute

Bigelow-Sanford Inc.
Mohasco Corporation
Shaw Industries Inc.
Standard Oil Company (Indiana)
World Carpets Inc.

SIC 24—Lumber and Wood Products

National Forest Products Association

Abitibi-Price Corporation
Boise Cascade Corporation
Champion International Corporation
Georgia-Pacific Corporation
Louisiana-Pacific Corporation
Masonite Corporation
Potlach Corporation
Weyerhaeuser Company
Willamette Industries Inc.

SIC 126—Paper and Allied Products

American Paper Institute

Abitibi-Price Southern Corporation
Alabama River Pulp Company Inc.
Appleton Papers Inc.
Arcata National Corporation
Bell Fibre Products Corporation
Blandin Paper Company
Boise Cascade Corporation
Bowater Incorporated
Caraustar Industries Company
Champion International Corporation
Chesapeake Corporation
Consolidated Packaging Corporation
Consolidated Papers Inc.
Continental Forest Industries Inc.
Crown Zellerbach Corporation
Deerfield Specialty Papers, Inc.
Dennison Manufacturing Company
Dexter Corporation
Eastex
Eddy Paper Company Limited
Erving Paper Mills Inc.
Federal Paper Board Company Inc.
Finch Pruyn & Company Inc.
Fort Howard Paper Company
Fraser Paper Limited
GAF Corporation
Garden State Paper Company Inc.
Georgia-Pacific Corporation
Gilman Paper Company
Great Northern Nekoosa Corporation
Green Bay Packaging Inc.
Gulf States Paper Corporation
Hammermill Paper Company
Hearst Corporation
International Paper Company
International Telephone & Telegraph Corporation
James River Corporation of Virginia
Jefferson Smurfit Corporation
Kimberly-Clark Corporation
Longview Fibre Company
Macmillan Bloedel Inc.
Marcal Paper Mills Inc.
Mead Corporation
Menasha Corporation
Mobil Oil Corporation (partial)
Mosinee Paper Corporation
Newark Group
Newton Falls Paper Mill Inc.
Olin Corporation
Owens-Illinois Inc.
PH Glatfelter Company
Penntech Papers Inc.
Pentair Industries Inc.
Philip Morris Inc.
Pope and Talbot Inc.
Potlach Corporation
Procter & Gamble Company
Rhinelander Paper Company
Scott Paper Company
Simpson Timber Company
Sonoco Products Company
Southeast Paper Manufacturing Company
Southwest Forest Industries
St. Joe Paper Company
Stone Container Corporation
Technographics Inc.
Temple-Inland Inc.
Tenneco Inc.
Times Mirror Company
Union Camp Corporation
Virginia Fibre Corporation
Wausau Paper Mills Company
Weston Paper & Manufacturing Company
Westvaco Corporation
Weyerhaeuser Company
Willamette Industries Inc.

Chemical Manufacturers Association

Minnesota Mining & Manufacturing Company
Mobil Chemical Company

Glass—Pressed and Blown (Battelle Institute)

Owens-Corning Fiberglas

SIC 28—Chemicals and Allied Products

Aluminum Association

Aluminum Company of America
Reynolds Metals Company

American Feed Manufacturers Association

Cargill Inc.

Chemical Manufacturers Association

Air Products & Chemicals Inc.
Airco Inc.
Akzona Inc.
Allied Corporation
American Can Company
American Cyanamid Company
American Hoechst Corporation
Arizona Chemical Company
Ashland Oil Inc.
Atlantic Richfield Company
Avtex Fibers Inc.
B.F. Goodrich Company
Badische Corporation
BASF Wyandotte Corporation
Baxter Travenol Laboratories, Inc.
Big Three Industries Inc.
Borden Inc.
Borg-Warner Corporation
Buffalo Color Corporation
Cabot Corporation
Carus Chemical Company Inc.
Celanese Corporation
Chemplex Corporation
Chemtech Industries Inc.
Chevron Chemical Company
CIBA-GEIGY Corporation
Columbia Nitrogen Corporation
Conoco Inc.
Crompton & Knowles Corporation
Corpus Christi Petrochemical Company
CPC International Inc.
Diamond Crystal Salt Company
Diamond Shamrock Corporation
Dow Chemical Company
Dow Corning Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
El Paso Products Company
Emery Industries
Essex Chemical Corporation
Ethyl Corporation
Exxon Corporation
Firestone Tire & Rubber Company
First Mississippi Corporation
FMC Corporation
Freeport Minerals Company
GAF Corporation
Georgia-Pacific Corporation
Goodyear Tire & Rubber Company
Great Lakes Chemical Corporation
Greyhound Corporation
Gulf Oil Corporation
Harshaw/Filtrol Partnership
Henkel Corporation
Hercules Inc.
ICI Americas Inc.
International Minerals & Chemicals Corporation (partial)
Inter North Inc.
Kaiser Aluminum & Chemical Corporation
Kay-Fries Inc.
Kerr-McGee Corporation
Koppers Company Inc.
LCP Chemicals & Plastics, Inc.
Lever Brothers Company
Lubrizol Corporation
Mallinckrodt Inc.
Merichem Company
Minnesota Mining & Manufacturing Company
Mobay Chemical Corporation
Mobil Oil Corporation
Monsanto Company
Morton Thiokol, Inc.
Nalco Chemical Company
National Distillers & Chemical Corporation
National Starch & Chemical Corporation
Neville Chemical Company
Occidental Chemical Corporation
Olin Corporation
Pennwalt Corporation
Pfizer, Inc.
Phillips Petroleum Company

Pilot Chemical Company
Polysar Gulf Coast, Inc.
PPG Industries, Inc.
PQ Corporation
Procter & Gamble Company
Reilly Tar & Chemical Corporation
Rohm and Haas Company
Shell Oil Company
Shepherd Chemical Company
Sherex Chemical Company Inc.
Sohio Chemical Company
Soltex Polymer Corporation
Standard Chlorine of Delaware, Inc.
Standard Oil Company (Indiana)
Stauffer Chemical Company
Sun Olin Chemical Company
Tenneco Inc.
Texaco Inc.
Texasgulf, Inc.
Union Carbide Corporation
Uniroyal Inc.
United States Borax & Chemical Corporation
United States Industrial Chemicals Corporation
United States Steel Corporation (partial)
Upjohn Company (partial)
Velsicol Chemical Corporation
Vertax Inc. (partial)
Virginia Chemicals Inc.
Vulcan Materials Company
W.R. Grace & Company
Westvaco Corporation
Witco Chemical Corporation

Fertilizer Institute

Atlas Powder Company
Beker Industries Corporation
CF Industries Inc.
Cominco America Inc.
Estech Inc.
Farmland Industries Inc. (partial)
First Mississippi Corporation
Gardinier Inc.
Green Valley Chemical Company
Hawkeye Chemical Company
International Minerals & Chemical Corporation (partial)
J.R. Simplot Company
Mississippi Chemical Corporation
Occidental Petroleum Corporation (partial)
Reichhold Chemicals Inc. (partial)
Terra Chemicals International Inc.
Union Oil Company of California
United States Steel Corporation (partial)
Williams Companies
Wycon Chemical Company

Pharmaceutical Manufacturers Association

Abbott Laboratories
American Home Products Corporation (partial)
Beecham Laboratories
Eli Lilly & Company
Hoffman-La Roche Inc.
Johnson & Johnson
Merck & Company Inc.
Organon Inc.
Schering-Plough Corporation
Squibb Corporation
Upjohn Company (partial)
Warner-Lambert Company

SIC 29—Petroleum and Coal Products

American Petroleum Institute

Agway Inc.
Amber Refining
American Petrofina Inc.
Asamera Oil Inc.
Ashland Oil Inc.
Atlantic Richfield Company
Beacon Oil Company
Champlin Petroleum Company
Charter International Oil Company
Clark Oil & Refining Corporation
Coastal Corporation
Conoco Inc.
CRA Inc.
Crown Central Petroleum Corporation
Diamond Shamrock Corporation
Dorchester Refining Company
Exxon Corporation
Farmers Union Central Exchange Inc.
Fletcher Oil & Refining Company
Getty Oil Company
Gulf Oil Corporation
Hunt Oil Company
Husky Oil Company
Indiana Farm Bureau Cooperative Association
Kerr-McGee Corporation
Koch Industries Inc.
Marathon Oil Company
Mobil Oil Corporation
Murphy Oil Corporation
National Cooperative Refinery Association, Inc.
Pacific Resources Inc.
Pennzoil Company
Phillips Petroleum Company
Placid Refining Company
Quaker State Oil Refining Corporation
Rock Island Refining Corporation
Shell Oil Company
Sinclair Oil Corporation
Southern Union Refining Company
Southland Oil Company
Standard Oil Company (Indiana)
Standard Oil Company (Ohio)
Standard Oil Company of California
Sun Company Inc.
Tenneco Inc.
Tesoro Petroleum Corporation
Texaco Inc.
Texas Eastern Transmission Corporation
Tosco Corporation
Total Petroleum Inc.
Union Oil Company of California
USA Petroleum Corporation
U.S. Oil and Refining Company
Witco Chemical Corporation

Chemical Manufacturers Association

GAF Corporation
Great Lakes Carbon Corporation
Koppers Company Inc.

Glass—Pressed and Blown (Battelle Institute)

Owens-Corning Fiberglas Corporation

SIC 30—Rubber and Miscellaneous Plastic Products

Chemical Manufacturers Association

American Cyanamid Company
Dart Industries Inc.
Ethyl Corporation
Exxon Corporation
Minnesota Mining & Manufacturing Company
Union Carbide Corporation
W.R. Grace & Company

Pharmaceutical Manufacturers Association

Baxter-Travenol Laboratories

Rubber Manufacturers Association

Ames Rubber Corporation
Armstrong Rubber Company
B.F. Goodrich Company
Carlisle Corporation
Cooper Tire & Rubber Company
Dayco Corporation
Dunlop Tire & Rubber Corporation
Firestone Tire & Rubber Company
Gates Rubber Company
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Owens-Illinois Inc.
Teledyne Monarch Rubber Company
Uniroyal Inc.

SIC 32—Stone, Clay and Glass Products

Brick Institute of America

Belden Brick Company
Bickerstaff Clay Products Company Inc.
Boren Clay Products Company
Delta Brick & Tile Company, Inc.
General Dynamics Corporation (partial)
General Shale Products Corporation
Glen-Gery Corporation
Justin Industries Inc.
Maryland Clay Products, Inc.
Merry Companies, Inc.
Ochs Brick & Tile Company
Pine Hall Brick & Pipe Company
Richards Brick Company
Robinson Brick & Tile Company
Victor Cushwa & Sons, Inc.

Chemical Manufacturers Association

GAF Corporation
Minnesota Mining & Manufacturing Company
Vulcan Materials Company

Glass—Flat (Eugene L. Stewart)

AFG Industries Inc.
Ford Motor Company
Guardian Industries Corporation
Libbey-Owens-Ford Company
PPG Industries Inc.

Glass—Pressed and Blown (Battelle Institute)

Anchor Hocking Corporation (partial)
CertainTeed Corporation
Corning Glass Works (partial)
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc. (partial)

Gypsum Association

Comtar Industries, Inc. (partial) †
Genstar Gypsum Products Company
Georgia-Pacific Corporation
Jim Walter Corporation (partial)
National Gypsum Company (partial)
Pacific Coast Building Products Company (partial)
United States Gypsum Company (partial)

National Lime Association

Ash Grove Cement Company (partial)
Bethlehem Steel Corporation (partial)
Can-Am Corporation
Cutler-Magner Company
Detroit Lime Company
Dravo Lime Company
General Dynamics Corporation (partial)
National Lime & Stone Company
Pete Lien & Sons
Rockwell Lime Company

St. Clair Lime Company
Steetley Resources, Inc.
Tenn-Luttrell Lime Companies
United States Gypsum Company (partial)
Vulcan Materials Company (partial)
Warner Company

Portland Cement Association

Aetna Cement Corporation
Alamo Cement Company
Arkansas Cement Corporation
Ash Grove Cement Company (partial)
Atlantic Cement Company Inc.
Blue Circle Industries
California Portland Cement Company
Capitol Aggregates Inc.
Centex Corporation
Cianbro Corporation
Columbia Cement Corporation
Coplay Cement Manufacturing Company
Davenport Cement Company
Dundee Cement Company
General Portland Inc.
Genstar Cement & Lime Company
Gifford-Hill Portland Cement Company
Ideal Basic Industries
Kaiser Cement Corporation
Keystone Portland Cement Company
Lehigh Portland Cement Company (partial)
Lone Star Industries Inc.
Louisville Cement Company
Medusa Corporation
Missouri Portland Cement Company
Monarch Cement Company
Monolith Portland Cement Company
Moore McCormack Cement, Inc.
National Cement Company
Northwestern State Portland Cement Company
Rinker Portland Cement Corporation
River Cement Company
South Dakota Cement Company
Southwestern Portland Cement Company
Texas Industries Inc. (partial)

Refractories Institute

Allied Chemical Corporation (partial)
Combustion Engineering Inc. (partial)
Corning Glass Works (partial)
Dresser Industries Inc. (partial)
Kaiser Aluminum & Chemical Corporation (partial)
Martin Marietta Corporation (partial)
Norton Company (partial)
United States Gypsum Company (partial)

Tile Council of America

American Olean Tile Company

SIC 33—Primary Metal Industries

Aluminum Association

Alcan Aluminum Corporation
Alumax
Aluminum Company of America
American Can Company
Atlantic Richfield Company (partial)
Cabot Corporation
Consolidated Aluminum Corporation
Ethyl Corporation
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
National Steel Corporation (partial)
Noranda Aluminum Inc.
Ormet Corporation
Pechiney Ugine Kuhlmann Corporation (partial)
Revere Copper and Brass Inc. (partial)
Reynolds Metals Company
Southwire Company

American Die Casting Institute

Hayes-Albion Corporation (partial)

American Foundrymen's Society

American Cast Iron Pipe Company
Amcast Industrial Corporation
Grede Foundries Inc.
Mead Corporation
Teledyne Inc. (partial)
United States Pipe Company

American Iron & Steel Institute

A. Finkl & Sons Company
Atlantic Steel Company
Armco Inc.
Babcock & Wilcox
Bethlehem Steel Corporation
Cargill, Inc.
Carpenter Technology Corporation
Colt Industries Inc.
Cyclops Corporation
Eastmet Corporation
Florida Steel Corporation
Inland Steel Company
Jones & Laughlin Steel Corporation
Keystone Consolidated Industries Inc.
Loan Star Steel Company
Lukens Steel Corporation
National Steel Corporation (partial)
Northwest Steel Rolling Mills Inc.
Northwestern Steel & Wire Company
Republic Steel Corporation
Sharon Steel Corporation
Teledyne Inc. (partial)
Timken Company
United States Steel Corporation
Washington Steel Corporation
Wheeling Pittsburgh Steel Corporation

American Mining Congress

Amax Inc.
Asarco Inc.
Inspiration Consolidated Copper Company
Kennecott Corporation (partial)
Louisiana Land & Exploration Company (partial)
Marmon Group Inc.
Newmont Mining Corporation (partial)
Phelps Dodge Corporation (partial)
St. Joe Minerals Corporation

Chemical Manufacturers Association

Dow Chemical Company

Construction Industry Manufacturers Association

J.I. Case—Tenneco Inc.

Copper & Brass Fabricators Council

Atlantic Richfield Company (partial)
Century Brass Products Inc.
Chicago Extruded Metals Company
Copper Range Company
Extruded Metals
Kennecott Corporation (partial)
Marmon Group Inc.
National Distillers & Chemical Corporation
Olin Corporation
Phelps Dodge Corporation (partial)
Revere Copper & Brass Inc. (partial)

SIC 34—Fabricated Metal Products

Aluminum Association

Aluminum Company of America
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
Reynolds Metals Company

American Boiler Manufacturers Association

Combustion Engineering Inc.
McDermott Inc.

Can Manufacturers Institute

American Can Company
Campbell Soup Company
Continental Group Inc.
Crown Cork & Seal Company Inc.
Miller Brewing Company
National Can Corporation
Stroh Brewery Company

Chemical Manufacturers Association

E.I. du Pont de Nemours & Company

SIC 35—Machinery, Except Electrical

Air Conditioning & Refrigeration Institute

Emerson Electric Company
Honeywell Inc.
Hussman Refrigeration Company
Johnson Controls Inc.
Sundstrand Corporation
Trane Company

Computer & Business Equipment Manufacturers Association

Control Data Corporation
Digital Equipment Corporation
International Business Machines Corporation
Sperry UNIVAC Corporation
TRW Inc.
Xerox Corporation

Construction Industry Manufacturers Association

Bucyrus-Erie Company
Clark Equipment Company
Cummins Engine Company Inc.
FMC Corporation
Ford Motor Company
Harnischfeger Corporation
Ingersoll-Rand Company
J.I. Case—Tenneco Inc.

SIC 36—Electric, Electronic Equipment

Chemical Manufacturers Association

Great Lakes Carbon Corporation
Minnesota Mining & Manufacturing Company

National Electrical Manufacturers Association

Airco Inc.
Allied Corporation
Emerson Electric Company
Harvey Hubbell Inc.
Johnson Controls Inc.
Reliance Electric Company
Square D Company
Union Carbide Corporation

SIC 37—Transportation Equipment

Aerospace Industries Association of America

Boeing Company
General Dynamics Corporation (partial)
Grumman Corporation
Hughes Aircraft Corporation

Lockheed Corporation
LTV Aerospace and Defense Company
Martin Marietta Corporation
McDonnell Douglas Corporation
Morton Thiokol Corporation
Northrop Corporation
Textron Inc.
TRW Inc.

Chemical Manufacturers Association

Hercules Incorporated
Tenneco Inc.

Motor Vehicle Manufacturers Association

American Motors Corporation
Chrysler Corporation
Ford Motor Company (SIC Code 33, Recovered Materials)
General Motors Corporation (SIC Code 30, 33, Recovered Materials)

SIC 38—Instruments and Related Products

Chemical Manufacturers Association

Eastman Kodak Company
Minnesota Mining & Manufacturing Company

Pharmaceutical Manufacturers Association

G.D. Searle & Company
Johnson & Johnson

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Part V

Department of Health and Human Services

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Listing of Impairments—Mental Disorders; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Listing of Impairments—Mental Disorders

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These amendments revise the medical evaluation criteria for mental disorders for the disability programs in title II and title XVI of the Social Security Act. No revisions have been made to these criteria since 1979. The revisions reflect advances in medical treatment and in methods of evaluating certain mental impairments, and will provide up-to-date medical criteria for use in the evaluation of disability claims based on mental disorders. The regulations are mandated by section 5 of Pub. L. 98–460.

DATES: These regulations are effective August 28, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301–594–7415.

SUPPLEMENTARY INFORMATION: On June 7, 1983, the Secretary announced a top-to-bottom review of all disability program policies and procedures in consultation with appropriate subject-matter experts to assure that disability rules accurately and fairly carry out the intent of the Social Security Act and also reflect the latest advances in diagnosis, evaluation and treatment of disability causing impairments. Particular attention was given to updating and refining the disability eligibility criteria for mental disorders. Because of extensive concern about the evaluation of claims involving mental impairments, the Secretary announced the temporary exemption of about two-thirds or about 135,000 of these cases from continuing disability reviews until current rules could be reviewed and revised as needed.

Pub. L. 98–460 (section 5) requires the Secretary of Health and Human Services (HHS) to revise the rules used for the evaluation of mental impairments. In compliance with this law, we published a Notice of Proposed Rulemaking in the **Federal Register** (50 FR 4948) on February 4, 1985. Interested persons, organizations, and groups were invited to submit data, views or arguments pertaining to the proposed amendments within a period of 45 days from the date of publication of the notice. The comment period ended on March 21, 1985. After carefully considering all the comments submitted, the proposed amendments are being adopted with some modifications, which will be explained later in this preamble. We will also reply to the issues raised in the comments we received.

We are publishing final regulations to be effective for 3 years. The dynamic nature of the diagnosis, evaluation and treatment of the mental disease process requires that the rules in this area be periodically revised and updated. We intend to carefully monitor these regulations over a 3-year period to ensure that they fulfill congressional intent by providing for ongoing evaluation of the medical evaluation criteria. Therefore, 3 years after publication of final rules, these regulations will cease to be effective unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period.

The revision of the Listing of Impairments relating to mental disorders is but one element in an extensive plan for assuring fair and accurate evaluation of claims for disability benefits by those with mental impairments. Work is also being done to assure that severe impairments, but ones of less than listing-level severity, will be realistically reviewed in relationship to a person's ability to work. This step of the evaluation process requires a residual functional capacity (RFC) determination, and numerous activities are underway to assure that this part of the process is effective.

It is important to emphasize that not only in preparing these revisions but also in drawing up an overall mental impairment evaluation improvement plan, SSA has consulted with leading experts in the field of mental impairments from the American Psychiatric Association, the American Psychological Association and other professionals.

To provide an ongoing review and evaluation of mental impairment adjudication, SSA has entered into a contract with the American Psychiatric Association to provide for such an ongoing review of both the validity and reliability of disability evaluation criteria.

Explanation of Revisions

The revisions serve several purposes. The medical terms used to describe the major mental disorders and their characteristics and symptoms have been updated to conform to the nomenclature currently used by psychiatrists and other mental health professionals. Terminology of this type in the listings is based on that used in the third revision of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM III) published by the American Psychiatric Association. This edition, published in 1980 and now widely used by psychiatrists, psychologists and other mental health professionals, gives a common basis for communication, which is particularly important in evaluating medical reports used in determining disability.

The listings are also more specifically related to different types of mental disorders. Thus, fewer conditions are included under the same listing, resulting in an increase in the number of listings from four to eight. Because of the diversity of mental disorders, it was still necessary to group some disorders under a single listing. However, in the listings the organization of mental disorders is based on the third revision of the DSM III which provides a more realistic organization in terms of the common characteristics of the mental disorders that are evaluated under a particular listing.

The revisions also reflect evolving medical knowledge of the characteristics of mental disorders and their treatment and management. (Since the body of knowledge on mental disorders is constantly evolving, SSA will provide for the ongoing evaluation of the medical evaluation criteria for mental disorders to ensure that the criteria reflect the most up-to-date knowledge on those disorders.)

One of the major changes is in Listing 12.03 where language has been added to ensure that the chronic schizophrenic individual who may have his or her symptoms attenuated by treatment but who still cannot work because of more subtle manifestations of his or her disorder will now meet the severity of the revised listing. This had been the major area of criticism and a principal area of deficiency in the former regulations. Other minor changes occur in the Organic Mental Disorders listing, where language has been added to better measure intellectual loss; the Anxiety-Related Disorders listing, where specific language has been added to cover agoraphobia (12.06C); the Somatoform Disorders (12.07) and Personality Disorders (12.08) listings, where language has been added to give a more accurate description of these conditions based on the DSM III.

The following is a summary of the listings we are adopting in these final rules.

12.00 Preface

We are making several significant additions to the preface to the mental disorders listings. In 12.00A (*Introduction*) of the preface, we explain the basic approach used in the listings that follow. In this introduction, we explain that in most of the listings we use a dual approach, by dividing listings into two paragraphs, with the A paragraph describing the characteristics necessary to establish the presence of the mental disorder and the B paragraph describing the restrictions and limitations of function resulting from the disorder. In 12.00A, we also are providing a definition of "residual functional capacity" and are explaining how the concept applies in evaluating mental impairments.

In 12.00B (*Need for Medical Evidence*) of the preface, we describe the need for objective evidence for the evaluation of mental disorders. Although we are not making any substantial change in this area, we explain how clinical signs, symptoms and laboratory findings are used together in the evaluation of mental impairments. (Also, see 20 CFR sections 404.1528, 404.1529, 416.928, and 416.929.)

In 12.00C (*Assessment of Severity*) of the preface, we describe in detail the multiple factors in the paragraph B criteria of most of the mental disorders listings. (Similar factors are in paragraph C as well as paragraph B in two of the mental disorders listings, 12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders and* 12.06 *Anxiety Related Disorders.*) Two of these descriptions—involving activities of daily living and social functioning—are similar to descriptions in the previous listings for mental disorders. The others—involving concentration and task performance, and deterioration under work-like conditions—are not directly related to criteria contained in the prior listings for mental disorders. However, they are being included on the basis of the recommendations of mental health professionals, who consider them particularly important as work related characteristics affected by mental disorders. It should also be noted that, although the criteria in paragraph B are identical for several mental disorders listings, the number of items required under paragraph B in order to meet particular listings varies. (The selection of the number which must be met is based on the current evaluation of their effect on the functional ability to work. As additional experience is gained, the number of items required under paragraph B could change.)

In 12.00D (*Documentation*) of the preface, we discuss the evidence needed to document mental impairments. The new material stresses that at any one time during the course of a mental disorder an individual may appear to be relatively free of the characteristics of the disorder. Therefore, it is important to obtain evidence of the person's condition over the course of the mental illness. In 12.00D we discuss the importance of work attempts and circumstances surrounding termination of the work effort. We also discuss the use of psychological testing.

(Also, see 20 CFR 404.1512 through 404.1518 and 416.912 through 416.918.)

For inclusion in 12.00E, (*Chronic Mental Impairments*) we are adding new material explaining that, rather than placing undue reliance on the findings obtained on any single examination, it is important to evaluate the total treatment history of persons with chronic mental impairments.

In 12.00F (*Effects of Structured Settings*) and 12.00G (*Effects of Medication*) of the preface, we are adding new material relating to chronic mental disorders. We explain that evaluation of mental disorders must include consideration of the fact that medication, hositalization, or other highly structured living arrangements may minimize the overt indications of severe chronic mental disorders. In 12.00G we also acknowledge that medications may sometimes produce side-effects that add to the work-related limitations resulting from a mental disorder.

We are providing a brief discussion of the effects of current medical treatment for inclusion in 12.00H (*Effect of Treatment*).

The explanation of the special technique contained in 12.00I (*Technique for Application of the Mental Disorders Listing*) of the Notice of Proposed Rulemaking is now contained in the new §§ 404.1520a and 416.920a. As indicated in the title of the proposed 12.00I, the technique was designed to assist in application of the mental disorders listings. However, the scope of the technique is not limited to applying these listings. It is also for the purpose of assisting in the overall evaluation of disability due to mental impairments, as discussed in §§ 404.1520 and 416.920. For that reason, the discussion of the technique is now contained in the new §§ 404.1520a and 416.920a.

Explanation of Change for New Regulations §§ 404.1520a and 416.920a

We are introducing a procedure to assist in the evaluation of mental impairments. This procedure is to be followed by us at each administrative level of review. The procedure will assist us in (1) identifying additional evidence necessary for the determination of impairment severity, (2) considering and evaluating aspects of the mental disorder(s) relevant to your ability to work, and (3) organizing and presenting the findings in a clear, concise, and consistent manner.

A copy of the document which we are using to apply this technique is attached to this preamble.

12.01 Category of Impairments-Mental

12.02 Organic Mental Disorders

We are expanding paragraph A of the previous listing 12.02 to include four additional factors that are characteristic of organic mental disorders. In paragraph B, we are retaining from the prior listing the restrictions related to daily activities and an impaired ability to relate to other people. However, we have reworded the statement on an impaired ability to relate to other people to reflect difficulties in the total area of social functioning. We are adding two new items, 12.02B3 and 4, because severe organic mental disorders often result in deficiencies of concentration and many persons with these conditions experience a marked worsening of symptons when faced with stress. We are eliminating one requirement in the current listing—deterioration of personal habits. This characteristic is not always apparent in persons with severe organic mental disorders.

12.03 Schizophrenic, Paranoid and Other Psychotic Disorders

In this listing we are grouping psychotic conditions that are more closely related than in the current listing. We are moving affective disorders to a new separate listing, which follows this one. In paragraph A, we are retaining the three characteristics of these disorders contained in the prior listing—hallucinations, delusions, and illogical association of ideas. However, the concept of illogical association of ideas is being incorporated in 12.03A3 in association with other signs of disrupted thought. We are listing other characteristics of disorganized thought and behavior in 12.03A2 and 3. We are also including consideration of observed emotional changes that are often present in these disorders. We are revising

paragraph B in the manner previously described for listing 12.02. In paragraph C, we are adding new evaluation considerations that recognize that the more obvious symptoms of these disorders are often lessened by medication or support from mental health facilities or other sources. Individuals who have a medically documented history of one or more episodes of acute symptoms, signs and functional limitations described in paragraphs A and B, may have a remission either induced by treatment or by living in a supportive environment (such as a supervised group home). Many such individuals remain disabled because they experience a return of symptoms and signs when they encounter stressful circumstances or when they leave the supportive environment of the supervised living situation or sheltered work.

12.04 Affective Disorders

In the previous organization of the mental disorders listings, affective disorders were included as mood disorders with other functional psychotic disorders such as schizophrenias and paranoid states under the same listing. The new listing relates exclusively to affective disorders. In paragraph A of the listing, we describe the characteristics of affective disorders in much greater detail than they were described in the prior listing for functional psychotic disorders in 12.03. We are revising paragraph B in the manner previously described for listing 12.02.

12.05 Mental Retardation and Autism

In the previous organization of the mental disorders listings, listing 12.05 dealt solely with mental retardation. The new listing now relates also to autism. It was recognized that since autism was not covered by any of the mental disorders listings, confusion may result in application of the listings to autistic individuals. Therefore, autism is now specifically addressed in listing 12.05.

Paragraph A of both the prior and the new listing provides for the evaluation of persons who are so profoundly retarded that they cannot undergo psychological testing. The paragraph has been condensed to focus more directly on the absence of basic self-help skills that are most indicative of profound retardation that precludes psychological testing. Paragraph B, C, and D pertain to evaluation using psychological testing. These paragraphs specify that the lowest of the three scores derived from tests is to be used. However, this is not a new principle because it was found in the preface (paragraph 12.00B4) to the previous listing. Paragraph D also contains criteria to address autistic individuals whose general intellectual functioning is less diminished.

12.06 Anxiety Related Disorders

In the previous organization of the mental disorders listings, anxiety disorders were grouped in listing 12.04 with other similar functional nonpsychotic disorders. Now listing 12.06 exclusively covers disorders related to anxiety. Paragraphs 1, 2 and 4 of 12.06A of this listing are similar to the criteria in the prior 12.04 listing. A new paragraph 3 of 12.06A gives significance to frequent panic attacks. A new paragraph 5 of 12.06A provides for the inclusion of anxiety disorders resulting from traumatic experiences. The criteria we are including in paragraph B are the same as the paragraph B criteria in listing 12.02. In the new 12.06C, we recognize that confinement to the home characterizes a severe anxiety disorder. In listing 12.06, paragraph C serves as an option that can be used in lieu of paragraph B.

12.07 Somatoform Disorders

Somatoform disorders were previously evaluated along with other functional nonpsychotic disorders such as neurotic disorders, personality disorders, and alcohol addiction and drug addiction disorders under the former listing 12.04. The new 12.07 listing relates specifically to somatoform disorders. In 12.07A we are adding two characteristic patterns of these disorders to the one now in 12.04A6 of the former mental disorders listings. Paragraph B includes the same evaluation criteria found in paragraph B of listing 12.02 but three of the four criteria requirements must be met.

12.08 Personality Disorders

Personality disorders were previously evaluated along with other functional nonpsychotic disorders such as psychophysiologic disorders, neurotic disorders, and alcohol addiction and drug addiction disorders under listing 12.04. The new listing 12.08 exclusively covers personality disorders. In paragraph A of the listing we are retaining the two characteristics of personality disorders that were found in 12.04A7 of the prior listing. In 12.08A3 through 6 of the listing we are adding other descriptions that are characteristic of personality disorders. Paragraph B contains the same criteria included under paragraph B in listing 12.02; but in evaluating personality disorders under listing 12.08, at least three of the criteria requirements under paragraph B must be met.

12.09 Substance Addiction Disorders

We are adding a new listing that relates to addiction to alcohol or other drugs and to other substances that affect the central nervous system. However, the listing itself only serves as a reference listing by indicating which of the other listed impairments must be used to evaluate the behavior or physical changes resulting from the regular use of substances. (For example, should an individual with a substance addiction disorder experience seizures as a result of that disorder, either listing 11.02 (Epilepsy—major motor seizures) or listing 11.03 (Epilepsy—minor motor seizures) should be used for the evaluation of the substance addiction disorder.)

Substance addiction disorders continue to be regarded as medically determinable impairments, if substantiated on the basis of medically acceptable signs, symptoms, and laboratory findings.

Severe substance addiction disorders alone can be disabling and do not require other impairment involvement. Such was the case under the former listings where substance addiction disorders were evaluated under the criteria for functional nonpsychotic disorders (former listing 12.04). Under the revised listings, this continues to be the case. Revised listings 12.06 and 12.08 are two of the new listings which were created to address impairments formerly evaluated under listing 12.04. These listings are shown as reference listings under listing 12.09. Thus, if reference listing 12.06 or 12.08 are met or equaled on the basis of a substance addiction disorder, disability would be found without the consideration of other impairment involvement.

Frequently, however, there are many medical signs, symptoms, and findings of other impairments present which are aspects of, or which coexist with, substance addiction disorders. For example, findings associated with organic mental disorders (listing 12.02), depressive syndrome (listing 12.04), peripheral neuropathies (listing 11.14), liver damage (listing 5.05), gastritis (listing 5.04), pancreatitis (listing 5.08), and seizures (listings 11.02 or 11.03) sometimes are present of coexist with substance addiction disorders. Therefore, these listings are included as reference listings under listing 12.09 since the appearance of signs or symptoms contained in those listings suggest a number of possible directions

or considerations for further development and evaluation.

Public Comments

Subsequent to the publication of the Notice of Proposed Rulemaking in the **Federal Register** (50 FR 4948) on February 4, 1985, we mailed copies to organizations, associations, and other professionals whose responsibilities and interests require them to have some expertise in the evaluation of mental impairments. We also sent copies to State agencies, national organizations and other parties interested in the administration of the title II and title XVI disability programs. As part of our outreach efforts, we invited comments from State disability determination services, national organizations representing the mentally ill, advocates of the mentally ill, and service providers. We also invited comments from various health and medical associations as well as from law and legal service organizations. We received close to 1,000 letters containing comments pertaining to changes which we had proposed. Some commenters addressed a large number of issues pertaining to changes involving many different mental disorders listings. The majority of comments were from organizations and groups which represented people interested in specific mental impairments. Many were from sources with specialized backgrounds in psychiatry, psychology, and other specialties involving mental health. Many of the comments we received concerned the specific evaluation criteria for particular mental disorders such as autism, mental retardation, substance addiction disorders, and that due to traumatic brain injuries. Other comments questioned the reasons for not including other mental disorders in the Listing of Impairments.

We have carefully considered all the comments and have adopted some of the recommendations.

The comments concerning traumatic brain injuries and autism indicated that the proposed rules failed to specifically address these conditions and requested that specific criteria for these impairments be added to the proposed rules. For the reasons stated in our responses to these comments in the preamble, specific criteria have been added to listing 12.05 for autism, but specific criteria were not added for traumatic brain injuries. We believe that listing 12.02 (Organic Mental Disorders) provides adequate criteria for the evaluation of traumatic brain injuries when the effects of such injuries are mental. We do recognize, however, that those injuries sometimes present unique problems in evaluating them. Therefore, we have added a statement to 12.00D to caution that special care should be exercised in evaluating traumatic brain injuries in view of certain subtle findings associated with such injuries.

The comments on mental retardation objected to the proposed criteria on two basic points: (1) The use of outdated terminology, and (2) the manner in which disability is determined for individuals with an IQ of 60 to 69 inclusive. We are making modifications in this final regulation which address both of these points.

The comments on substance addition disorders objected to the proposed listing (12.09) and basically endorsed the recommendations of the special work group, which were not adopted by us. In response to these comments, we are restating the position we took in the preamble to the proposed rules—i.e., we are not adopting the work group's recommendation pending further study to measure its reliability in determining disability due to substance addiction. A special panel of experts has already been convened for that purpose.

Other significant changes include modifications to both the prefatory material to the listings and the listings themselves. The modifications to the prefatory material serve to clarify the following: the purpose of the paragraph "A" criteria found in most of the listings, the meaning of the word "marked," the use of neuropsychological testing, and the technique for application of the mental disorders listings. The modifications to the listings both clarify and expand the signs, symptoms, or laboratory findings used to medically substantiate a disorder for purposes of the listings (the "A" criteria) and clarify the criteria used to determine listings-level impairment severity (the "B" and "C" criteria).

In reviewing and analyzing the public comments to determine changes that were warranted on the basis of these comments, HHS was again assisted by the work group of experts who helped in the development of the proposed regulations.

The major objections to the regulations are discussed in this preamble. Some of these objections were repeatedly made; others were only made by one or two members of the public.

The changes we have made on the basis of public comments are identified in the following discussion of issues which were raised in the comments. Except for those comments pertaining to the mental disorder listings in general, we discuss these comments under the appropriate mental disorder listing or the introductory material pertaining to the comment.

A number of the comments that were received pertain to Social Security matters which are not within the purview of the proposed regulations. These comments have been referred to the appropriate components of the Social Security administration for consideration and reply and are not, therefore, addressed in this preamble.

Many of the written comments we received necessarily had to be condensed, summarized, or paraphrased. However, we attempted to express everyone's views adequately and to respond to the issues raised.

12.00A Introduction

Comment: One commenter suggested specifying whether residual functional capacity (RFC) is a negative or positive determination, that is, whether RFC is what the individual can do in spite of his or her impairment or what the individual cannot do in spite of his or her impairment.

Response: The definition of RFC in the listings is quite specific and stated in positive terms, that is, RFC is the work-related abilities an individual retains in spite of his or her medical impairments.

Comment: One commenter indicated that the introduction of functional criteria into the listings creates problems. The commenter felt that the addition of work related functions to the listings shifted the responsibility for determining the capacity to work from the examiner to the physician. The commenter also believes this will require work evaluations in all cases.

Response: We do not perceive the introduction of functional criteria into the listings as a cause for restricting the role of the disability examiner. The issue of disability is decided jointly by the physician and the disability examiner, and, therefore, the disability examiner participates in all decisions. In reference to the second point, we believe that work evaluations should not be requested except in those cases where evidence available for multiple sources other than work evaluations is not adequately determinative of the degree of limitation imposed by the impairment on the individual's ability to function.

Comment: One commenter suggested that in view of the decisions in *Mental Health Association of Minnesota* v. *Schweiker* and *City of New York* v. *Heckler*, which prohibit disability determinations based on the Listings alone, the additional factors concerning work functioning required in the RFC stage be spelled out. The commenter

believes that the inclusion of work-related functional restrictions in the listings may cause the adjudicator to overlook RFC evaluation and medical/vocational allowances.

Response: We fully agree that the determination of RFC is an independent step in the sequential evaluation of disability. These rules, however, are primarily concerned with the Listings and, thus, need only state, as they do, that the determination of RFC is crucial if the person does not meet or equal the Listings. There is no intent to circumvent either the court orders or the remainder of the sequential evaluation process.

Comment: One commenter suggested that RFC evaluations should not be done for individuals who have severe mental impairments unless they use work evidence or work evaluations based upon at least 8 hours of observation.

Response: There are other sources of information which can be relevant in RFC determinations. It would be inappropriate to limit the evidence necessary for the determination of RFC to work evaluations, since in many instances, other sources of evidence permit such determinations to be made.

Comment: One commenter felt the requirement in the first paragraph in 12.00A which says that an individual's limitation resulting from his or her impairment must have lasted or is expected to last for a continuous period of at least 12 months was too harsh. The commenter felt that there are some severe impairments that only last 6 to 9 months in duration.

Response: We agree that there are some severe impairments of duration less than 12 months. However, the Social Security Act in sections 216(i)(1), 223(d)(1)(A), and 1614(a)(3)(A) specifies that to meet the definition of disability, an individual's impairment must have lasted or can be expected to last for a continuous period of not less than 12 months. The requirement in 12.00A cited by this commenter is consistent with the law.

Comment: One commenter objected to the second sentence of the fourth paragraph in 12.00A of the proposed rules which related to the inability to work on the basis of the need for excessive supervision to perform routine repetitive tasks and the inability for acceptable social interaction in a normal work setting. The commenter indicated that the sentence was not an accurate depiction of the severity level expressed in the listed impairments. The commenter also pointed out that the word "equaling" was omitted from the first sentence in that paragraph.

Response: The intent of that sentence was only to serve as a general statement of the severity level already depicted by the Listings. To prevent any misapplication of the Listings, that sentence has been deleted. We have also added the word "equaling" to the first sentence of that paragraph to make the thought complete.

Comment: One commenter objected to the statement in the second paragraph A (third septence) that "[T]he restriction listed in paragraph B and C must be the direct result of the mental disorder which is manifested by the clinical findings outlined in paragraph A." The commenter suggests that demonstrating this causal relationship is difficult and, in any event, is unnecessary according to the Listings themselves.

Response: We agree, and therefore, have deleted the word "direct" from the sentence. The revised sentence still requires that the mental impairment be the cause the work-related functional restrictions but does not require direct evidence of such causality. We believe that a reasonable assumption of causality could be made where a serious medically determinable mental impairment is present and the severe functional restrictions required in the B and C criteria are met.

Comment: Several commenters questioned the accuracy of the parenthetical statement contained in the last paragraph of 12.00A which discusses the non applicability of residual functional capacity (RFC) to certain claims categories (i.e., disabled title XVI children below age 18, widows, widowers, and surviving divorced wives). Some commenters felt that statement was inaccurate since they felt RFC was used in determining medical equivalence for those claims categories in certain circumstances. One commenter questioned what is meant by the statement that "RFC is used in most claims."

Response: The statement in question is correct. RFC does not apply to the claims categories cited. We agree that the statement that "RFC is used in most claims" is somewhat ambiguous. Therefore, to clarify its intended meaning, we have revised that statement to "RFC may be applicable in most claims." Concerning the use of RFC in determining medical equivalence, an individual's RFC is not a basis for making that determination. The manner in which medical equivalence is determined is discussed in § 404.1526 and 416.926.

12.00B Need for Medical Evidence

Comment: Several commenters indicated that in 12.00B, a statement is made that certain signs are typically assessed by a psychiatrist or psychologist. These commenters questioned whether psychiatrists and clinical psychologists are capable of assessing organic mental disorders, and if so, then behavioral neurologists should be permitted to make those assessments.

Response: Certainly psychiatrists and psychologists frequently evaluate patients suffering organic mental disorders including trauma victims, but they are not the only medical professionals that do so. It is recognized that behavioral neurologists have expertise in these areas and, where they are treating sources, certainly their records and evaluation should be sought. The listings cannot be a compendium of all medical professionals who see, treat, or help the mentally ill, but there is no intent to exclude any of the mental health care professionals as sources of evidence.

Comment: One commenter questioned whether other mental health professionals have specific roles defined, and suggested that psychological testing be the preferred method of examination for a consultative examination.

Response: The medical professional responsible for the case assessment has available the accumulated relevant information and can best determine the extent to which additional evidence is essential, how it should be secured and from whom. The designation of all such sources and methods would excessively encumber the regulations, and to identify some may tend to cause use of these to the exclusion of others. Concerning the use of psychological testing in consultative examinations, we believe such testing is necessary when indicated by the other evidence. However, to require such testing in all cases would be inappropriate.

Comment: Several commenters felt that medical professionals other than psychiatrists and psychologists are valuable sources of evidence.

Response: As indicated in the prior response, there is no intent to exclude any medical professionals as sources of evidence.

12.00C Assessment of Severity

Comment: One commenter stated that the Listings should stand independent of vocational factors, and should be based on nonwork-related factors. Otherwise, this commenter believes that part B of the listings would be contrary to the sequential evaluation process in the vocational or work-related limitations are considered rather than criteria based strictly on medical factors.

Response: The inclusion of more specific work-related limitations in part B of the revised listing was undertaken in order to give greater emphasis to work-related limitations in the adjudication of mental impairment claims. If the criteria B1 (activities of daily living) and B2 (social functioning) are sufficiently limited, a finding that the claimant meets or equals the listings without the need for development of more specific work-related findings can result under certain listings. The remainder of the sequential evaluation process, however, continues to be mandatory in all cases where it is concluded that the listings are not met or equaled. The mental RFC criteria are refinements of the part B criteria and are more specifically work-related.

Comment: Several commenters stated that the B1 and B2 criteria (activities of daily living and social functioning, respectively) common to most of the listings are not good predictors of an individual's ability to work.

Response: Research literature indicates that a person's ability to function in one environment (e.g., a community setting) is not predictive of a person's ability to function in a different type of environment (e.g., a work setting). On the other hand, studies do indicate that a significant predictor of future work performance is a person's ability to "get along" or function socially with others. The activities of daily living criteria (B1) incorporate more issues than in the former listings (see 12.00C1). The social functioning criteria (B2) give clearer emphasis to the ability to "get along" (see 12.00C2) as emphasized by criteria found in the literature.

The B2 criteria (social functioning), B3 criteria (concentration and task persistence) and B4 criteria (deterioration and decompensation) were intended to be work-related. It is accepted that there is little support for a direct relationship between appropriate and competent behavior in daily activities and the capacity to work in mentally impaired people. The intent of keeping the activities of daily living criteria was to have criteria for the evaluation of impairment severity which do not necessitate developing more specific work-related limitations. A finding of relationship between the B criteria and the ability to work is a much more important principle in mental RFC assessment than in the description of listings level severity.

Comment: One commenter indicated that the inability to perform any one of the activities described in the section on activities of daily living (12.00C1) should be sufficient to meet the listings.

Response: It is not the number of restricted activities that is important to the evaluation of impairment severity, but the overall degree of restriction and combination of restriction that is important.

Comment: One commenter indicated that recreational activities and leisure behavior should be included in the assessment of impairment severity.

Response: Recreational activities and leisure behavior are included in an assessment of activities of daily living. These activities must be evaluated in terms of their independence, appropriateness and effectiveness.

Comment: One commenter indicated that a deficit in any one area in the narrative description on social functioning (12.00C2) should be sufficient for an individual to meet the listings.

Response: It is not the number of social functions that are limited that is important to the assessment of impairment severity, but the overall degree to which social functioning is restricted and the combination of restrictions.

Comment: One commenter believed that with respect to language in the B criteria, the former language "seriously impaired ability to relate to other people" was more appropriate than "marked difficulties in maintaining social functioning," since the latter does not convey the work-related nature of the functional limitation.

Response: The description of "social functioning" found in 12.00C2 of the revised listings is much more detailed than is found in the description of "relating to other people" found in the former listings. The last sentence in 12.002C2 describes the assessment of social functioning in work situations. We believe that conclusions can be reached with regard to these abilities based on an assessment of experience in prior work situations, if applicable.

Comment: One commenter recommended that we change "concentration and task persistence" to "concentration or task persistence."

Response: Concentration and task persistence go together, in that both are evaluated on the basis of performance in adequately completing any given task. We do not believe they should be separated.

Comment: One commenter indicated that we should specify that concentration and task persistence need to be sustained over an 8 hour day.

Response: This concept is covered in the first sentence of the paragraph describing concentration and task persistence (12.00C3). The extent to which a claimant may be capable of sustained performance should be discussed as a mental RFC issue.

Comment: One commenter recommended that the criteria used to assess an individual's restriction of concentration and task persistence should read: An inability to complete tasks on time or properly in work settings or elsewhere due to limitations in affective or cognitive functioning.

Response: This is implied by the revised criteria. More refined measures of performance in work or work-like settings are included in the mental RFC assessment. Specific clinical findings need not be included in the B criteria.

Comment: One commenter recommended that the term "task persistence" should be changed to "task performance."

Response: We believe this would be inappropriate, since the performance of tasks is used to evaluate both concentration and task persistence, not just persistence.

Comment: One commenter recommended that the B3 criterion should be written to parallel B1 and B2, e.g., "marked difficulty in performing tasks."

Response: The B3 criterion specifying the difficulty encountered by individuals who have concentration difficulties in the timely completion of tasks is more specific and work-related than the general term "marked difficulties" and is, therefore, preferred.

Comment: One commenter stated that the proposed "B4" criterion which is common to most of the listings (i.e., repeated episodes of deterioration or decompensation in work or work-like situations which cause the individual to withdraw from that situation and/or to experience exacerbation of signs and symptoms), imposes additional and circular criteria to requirements in B1, B2, and B3.

Response: We do not believe the B4 criterion is circular. The criterion may be met by a return of signs, symptoms, findings and functional limitations listed in paragraph A and B1, B2, or B3, not all of which may meet listing-level severity. In this way the episodic (recurrent) nature of mental disorders and limitations is recognized as a major factor in mental impairment. For example, a claimant alleging impairment due to schizophrenia repeatedly may hallucinate, have marked difficulty concentrating, and totally withdraw socially in work or work-like settings. The claimant hallucinates and has marked difficulty only when stressed in work-like settings. On a routine basis, activities of daily living and

concentration and task persistence are not limited. On the other hand, the claimant has marked and persistent difficulties with social functioning at listing-level severity. The repeated deterioration and decompensation accompanied by marked difficulties in social functioning would render an individual unable to perform SGA in most circumstances. However, the claimant would not meet the listing in this case if the B4 criterion were eliminated.

Comment: One commenter indicated that the B4 criterion should be amended to read: Inability to respond successfully to work pressure.

Response: The concept recommended by this commenter is difficult to ascertain and measure. Furthermore, the recommended change would be a criterion for assessing severity which is less than that intended by the listings.

Comment: One commenter recommended that the language in the B4 criterion should be altered to reflect that repeated episodes of deterioration in work settings do not always result in withdrawal or exacerbation of signs and symptoms.

Response: In cases where there is no withdrawal or exacerbation of signs and symptoms, the impaired functioning that is work-related would be assessed under mental RFC. This listings level criterion is intended to reflect a higher level of severity.

Comment: One commenter recommended that the word "marked" as used in the B criteria be defined to convey the degree to which a particular restriction hampers an individual's ability to work.

Response: The intent of "marked" as found in the B criteria is to be a measure of functional restriction. The degree of restriction must be such that it would clearly interfere with the capacity to perform substantial gainful activity. The degree of restriction is defined as more than moderate but less than extreme or total (see 12.00C).

Comment: A number of commenters recommended modifications to the manner in which impairment severity is assessed by the "B" criteria. Some recommended that an individual should be found disabled if one of the B criteria is satisfied. Others recommended that specific combinations of two of the criteria should be sufficient to determine an individual disabled. And others recommended that the required number of "B" criteria be the same for all listings.

Response: Although some individuals meeting one of the B criteria alone may be too impaired to perform SGA, many others would not be disabled. One B criterion, alone, was regarded as an inappropriate standard for listing-level severity. Individuals who meet only one of the B criteria could still qualify for disability on the basis of their RFC and vocational factors. On the other hand, it is believed that a standard of four out of four of the B criteria is too stringent, going far beyond the severity level needed to presume the inability to work. With regard to disorders that are typically more severe (listings 12.02 through 12.06), we believe that two of the four B criteria must be met. With regard to the less severe disorders (listings 12.07 and 12.08), we believe that three of the four criteria must be met.

Comment: Several commenters stated that the reference to measuring concentration and task persistence over a work day in terms of the "ability to follow and understand simple story lines or news items on television or radio" is not valid and should be deleted.

Response: We agree that these factors are not related to job functions, and the phrase has been deleted.

Comment: Several commenters requested that an explicit warning be added to 12.00C3 to indicate that mental status or psychological testing alone should not be relied upon to accurately describe concentration or long-term persistence. Also, it was requested that the reference to the use of serial sevens testing to test concentration be deleted since that testing is not a valid measure of concentration.

Response: We agree with the commenters concerning their first point and have added the warning as requested. As to the second point, we did not delete the reference to the use of serial sevens testing to test concentration. On mental status examination concentration is assessed by tasks such as having the individual subtract serial sevens from 100.

Comment: One commenter recommended that the paragraph B3 criterion common to most of the listings which is used to describe the functional restrictions in the area of concentration and task persistence be modified to read: "Deficiencies of concentration and persistence resulting in frequent failure to complete tasks in a timely and accurate manner."

Response: We have modified the criterion as recommended except for the addition of the words "and accurate." "Accuracy" is rather nonspecific; it is believed that "timeliness" is a better concept. If the work is inaccurate, presumably it would have to be redone or the individual will require excessive supervision or review. In such cases, productivity and timeliness will be reduced and the criterion met. Accuracy tolerances are variable in different industries, and therefore, difficult to evaluate.

Comment: One commenter felt that the word "marked" as used in the B1 and B2 criteria common to most of the listings was ambiguous. Another commenter felt it should be defined to convey the degree to which a particular restriction hampers an individual's ability to work. A large number of commenters indicated that it should be clarified to stress that the assessment of an individual's functional restriction is not merely based upon the number of restricted activities (see 12.00C1 and 2), but the degree of restriction is important.

Response: For the reasons given by these commenters, we have added language to 12.00C to clarify the meaning of marked.

Comment: One commenter criticized the "B" criteria common to most of the listings since factors other than medical, such as vocational, were included.

Response: The B criteria do not include vocational factors, such as age, education, and past work experience. As a vocational factor, past work experience has a specific meaning which is the advantage gained from specific jobs in terms of skills, job knowledge, familiarity with work aids, or specific work environments. As used in the B4 criterion, "work or work-like settings" refer to deterioration under the stress of work related to attendance, punctuality, interaction with supervisors and coworkers, and production standards. The concepts are entirely different.

Comment: One commenter indicated that the discussion of the assessment of task persistence in work evaluations in 12.00C3 is incorrectly characterized as "concentration" assessment.

Response: For the reason stated by the commenter, that section has been modified as follows: "in work evaluations, concentration and task persistence are assessed through performance on such tasks as . . . ."

Comment: A number of commenters recommended changes to the paragraph B criteria common to most of the listings.

Response: Some of these recommendations were made with respect to a particular listing and have been responded to in the section that addresses comments on that listing. Mostly, however, these recommendations were editorial in nature, and we did not find that the recommended language warranted adoption. Other recommendations altered the severity level of the

functional restriction to the point where we felt it no longer represented a degree incompatible with the ability to work, and, therefore, were not adopted.

Comment: Several commenters indicated that since 12.00C2 calls for documentation of social strengths with specific examples, it would not be possible for the State agency evaluators to assess social functioning without conducting face-to-face interviews.

Response: The factors to be considered when assessing social functioning can be evaluated without the need for the disability evaluator to conduct a face-to-face interview. Generally, the record contains adequate information for the assessment of social functioning, and if not, such evidence can be obtained.

12.00D Documentation

Comment: One commenter presented a series of questions about workshops, which included: when to use them, logistical problems in arranging work evaluations, concerns about processing time and cost, and finally, some perceived problems in the use of workshop information in view of the fact that poor performance may be related to a lack of motivation or other factors not related to the impairment.

Response: There is no intent in 12.00D to establish criteria for the ordering and use of workshop evaluations. Workshops are simply listed as one of a number of acceptable sources of evidence. We realize that use of workshop evaluations may increase processing time and costs. However, if information from a workshop is necessary for resolution of a case, then it should be obtained. A workshop evaluation is, of course, not necessary if other evidence adequately resolves the issue of disability.

Proper documentation of a workshop evaluation includes the observations of a qualified work evaluator covering the observed behaviors and reasons for lack of success in the tasks and skills tested. Such observations should be sufficient to resolve issues related to effort and motivation.

Comment: One commenter points out that in his opinion there is an overreliance on WAIS IQ testing because identical WAIS scores may have different meanings, and the WAIS may not be appropriate to assess diffuse trauma or frontal lobe pathology.

Response: Section 12.00D states that the ". . . WAIS should be administered and interpreted by a psychologist or psychiatrist qualified to perform such evaluations." Such a requirement is the best safeguard available against improper interpretation of the data. With regard to the assessment of diffuse brain trauma or frontal lobe pathology, section 12.00D discusses the use of specialized neuropsychological tests for these disorders.

Comment: Several commenters feel that the statement in 12.00D which states that activities of daily living or social functioning may be in conflict with the clinical pictures otherwise observed or described is erroneous and undermines the importance of other than medical evidence. Furthermore, it is felt that if further evidence is needed to resolve such conflicts, it should be a workshop evaluation.

Response: The interpretation of these commenters goes beyond the language in this section and assumes that conflict means that there is functional restriction in the absence of signs and symptoms. This is not the intent of this section. In several other sections, it is made clear that signs and symptoms need not be currently severe for there to be severe, listing level functional restriction. However, we believe that resolution of real conflicts in evidence is imperative. For example, daily activities may be shown as unrestricted, but the clinical picture may show a very severe impairment which would be inconsistent with such function and which could not be explained by lapse of time or other conclusive finding. Such conflicts must be resolved.

Comment: One commenter stated that SSI applicants may not be able to afford the sophisticated psychological testing mentioned in section 12.00D and states that public health services, clinics, etc., do not provide such evidence. The commenter suggests that a system for providing such services is needed if the intent of the section is to be met.

Response: Applicants for SSI benefits have the responsibility to identify sources of medical evidence in support of their claims. However, when treating source evidence is insufficient to resolve the issues in the case, we obtain the necessary examination at no cost to the applicant.

Comment: One commenter indicates that there are several limitations to the use of medical evidence to resolve the issue of whether an individual can work and points out the advantages of workshop evaluations for this purpose.

Response: In these regulations and in the Notice published in the Federal Register (50 FR 9770) on March 11, 1985, we acknowledge the utility of workshop evaluations in cases involving mental impairments. We obtain reports from such evaluations whenever they are available and purchase such evaluations when appropriate. This evidence is used in conjunction with the medical evidence from all sources to evaluate disability. We do not agree that the only value of medical reports is to provide diagnostic impressions. Records from treating sources who have seen the patient over a substantial period are frequently very valuable in resolving many issues involved in disability determinations.

Comment: One commenter suggests that we define the frequently used words "medical evidence" so that it is clear that they do not exclusively refer to physicians' records.

Response: Acceptable sources of medical evidence are defined elsewhere in the disability regulations (see § 404.1513). We do not agree that medical evidence refers to sources other than that provided by these acceptable sources.

This regulation makes clear in several places, specifically 12.00D, that nonmedical sources of evidence are valuable in assessing impairment severity and residual functional capacity.

Comment: One commenter stated that it is not possible to establish equivalence of scores on different IQ tests.

Response: The language in 12.00D suggests comparing percentile of population rather than IQ score. If the normative samples on some tests are not sufficient to reliably use percentile data, then two alternatives are possible: (1) We can retest using the WAIS, or (2) we can rely on the total evidentiary record including a description of how the individual functions and whatever test data is available to decide the case as interpreted by the program psychiatrist or psychologist.

Comment: Several commenters indicated that performance on IQ tests does not provide useful data about an individual's ability to perform work tasks in other settings. Therefore, they recommend that such reference by deleted from the fifth paragraph of 12.00D.

Response: For the reason stated by the commenters, such reference has been deleted from 12.00D.

Comment: Several commenters indicated that the WAIS is not the most commonly used measure of intellectual ability, rather the WAIS–R is and should be cited instead.

Response: We agree with this statement. Therefore, the words "perhaps currently the most widely used measure of intellectual ability in adults" have been deleted. It was decided, however, to use the WAIS as generic for the various scales, rather than limiting the selection to one test, the WAIS–R.

Comment: A number of other commenters recommended editorial changes to 12.00D for purposes of clarification or requested that clarification of certain issues in 12.00D be provided.

Response: We have reviewed all of these requests in light of what other commenters favorably said about 12.00D and the changes made to 12.00D as a result of public comments and we believe that further modifications to 12.00D are unwarranted.

12.00E Chronic Mental Impairments

Comment: One commenter indicated that in section 12.00E it should be stated that a decision relying on a single examination to describe sustained ability to function should say why such a conclusion is proper.

Response: Situations in which we must rely on one examination should be very rare. In those situations, the information from such an examination could be supplemented by lay evidence from the claimant or family or other third party sources.

Comment: One commenter recommended that in 12.00E we define "sustained ability to function" by adding at the end of the phrase "in an eight hour day in the workplace."

Response: In 12.00E "sustained" refers to establishing baseline function for chronic mentally impaired individuals over time based on a longitudinal history of their illnesses rather than relating sustainability to a particular time context (e.g., an 8 hour day). The concept of sustained activity over a normal work day is considered in the B3 criterion, the 12.03C1 criterion, and the definition of residual functional capacity.

12.00F Effects of Structured Settings

Comment: One commenter disagrees with the concept in 12.00F that "people who can cope with a sheltered daily life could deteriorate under the stress of working." He states that work is very important to the rehabilitation of mentally ill people, and that Social Security benefits can be destructive because they remove the incentive to work and give the "patient's symptoms an unusual value."

Response: We do not intend for the new mental listings to extend benefits to those who are able to work. The point of section 12.00F is that an individual's ability to function well in a highly structured environment with minimal mental demands does not necessarily indicate that he or she could function outside of such a setting. The ability to handle the demands of work outside of a structured setting must be evaluated.

Comment: One commenter recommended emphasizing the fact that claims determination must be based on the total evidence rather than just one positive report.

Response: This was done in sections 12.00D and 12.00E of the proposed rules and is also contained in those sections of these final rules.

Comment: One commenter suggested that SSA reemphasize the fact that medication and a structured environment can greatly decrease symptoms, and in such cases, assessment as to the functioning of individuals without the supportive environment or therapy should be made.

Response: The purpose of 12.00F and 12.00G is to stress the importance of considering the effect of medication and a structured environment in determining disability. 12.00F states that evaluations must consider the ability of individuals in highly structured settings to function outside such settings. However, we would never interfere with a treatment plan and expose an individual to stress that might cause deterioration in order to evaluate a claim for benefits.

Comment: Several commenters suggested including the family residence as an example of structured settings, since families often provide a highly structured and supportive environment. One of these commenters stated that therapeutic outpatient programs provide a highly structured and supportive environment to individuals living alone. He recommended that 12.00F reflect the fact that programs of structure and support are often provided in the least restrictive environment.

Response: We do not intend the two examples cited in 12.00F to be exclusionary; there are a number of other settings, including the family home, where structural and supportive care limit mental demands. To prevent any interpretation, however, that the two examples cited are exclusionary, the following phrase has been added to the sentence citing the examples: "or other environment that provides similar structure." We opted, however, not to include families specifically in the list of examples. We do not believe that families can be assumed to provide the psychosocial support, crisis intervention, and medication that the other mental health care facilities do, although some families may provide such a structure. The language does permit use of the family care situation if the family can demonstrate that it meets the stated criteria.

12.00G Effects of Medication

Comment: One commenter indicated that the second paragraph of 12.00G suggests that medication side effects should be considered a part of the RFC assessment if the listings are not met or equaled. This commenter believes this is an inaccurate statement of the law, since the assessment of RFC is one way to assess equivalent impairment severity.

Response: 12.00G states that "Such side effects (of medication) must be considered in evaluating overall impairment severity." This obviously includes impairments which meet or equal a listing. The section then goes on to say that where the combined effect of the side effects of medication and the impairment fall short of listing level severity, then all limitations including the side effects of medication must be considered in assessing RFC. Nothing in the section prohibits considering functional restrictions imposed by either impairment or medication in determining whether or not the listing is met or equaled. We believe the opposite is the case. Paragraph 12.00G, as written, specifically requires consideration of all restrictions in deciding severity.

12.00H Effect of Treatment

Comment: One commenter believes that the term "premorbid status" in 12.00H is inappropriate because for many forms of mental illness there is no clear start or onset. The commenter believes that the use of the term in listing 12.02, Organic Mental Disorders, may be appropriate, but its use in 12.00H is not.

Response: The intent of the language in 12.00H is to view the history of the impairment in light of appropriate therapeutic interventions. In most Social Security disability cases, there is a point at which the individual, his family, or other concerned individuals sought aid because it was recognized that the disabled individual could not work. For others, there is a clear demarcation in terms of the first psychotic episode or acute depression. The comments of this commenter are, of course, correct for many seemingly lifelong impairments such as personality disorders and early onset psychosis. Nevertheless, the concept of comparing restoration of function following treatment against a baseline of premorbid function is a useful concept in disability evaluation.

12.00I Technique for Reviewing the Evidence in Mental Disorders Claims To Determine Level of Impairment Severity

Comment: One commenter indicated that the rating scales in the technique discussed in 12.00I which are used to

assist in determining listings-level impairment severity appear to resurrect the Psychiatric Review Form (PRF) and the problems inherent in that form, i.e., scales used to rate impairment severity. Other commenters questioned the need for the other points on the rating scales which are less than listings-level severity.

Response: The technique described in 12.00I of the proposed rules has an entirely different conceptualization from the PRF, a form which was used on a voluntary basis. One purpose of the new technique is to correct problems that occurred with misapplication of the PRF (e.g., to prevent the misbelief that if an individual neither meets nor equals a listed mental impairment, it can then be presumed the individual can engage in substantial gainful activity).

The purpose of including other points on the rating scale of less than listings-level severity is to place the point representing listings-level severity into proper perspective. (It is for this reason that we have added another point to the scales above the point representing listing level severity.)

Although these scales are useful in determining listings-level severity, their use is not restricted to that. These scales also assist in concluding when an impairment is not severe and when an RFC assessment is necessary. Therefore, since the technique does more than just assist in determining listings-level severity, we have removed the discussion of the technique from 12.00I and have placed it in new §§ 404.1520a and 416.920a which deal with a more general use of the technique—i.e., as an assistive device for the evaluation of disability due to mental impairments.

Comment: Numerous commenters indicated that at the hearings level a medical advisor would have to be utilized in the vast majority of cases to assist in application of the technique discussed in 12.00I.

Therefore, some of these commenters felt that this would abrogate the decision-making responsibilities of the administrative law judge. They felt that this would cause delays in case processing should the services of the medical advisor not be readily available.

Response: We have examined the proposed rules in 12.00I in light of these comments and concur with the concerns of these commenters. Therefore, the discussion of the technique has been modified to indicate that the use of medical advisors is on an as needed basis. The role of the medical advisor at the hearings level remains advisory only—the use of a medical advisor in no way abrogates the decision-making responsibility of the administrative law judge.

Comment: Numerous commenters questioned the need for the remand procedure discussed in 12.00I, and recommended its deletion. The commenters were concerned that undue delay in rendering disability decisions would be encountered.

Response: We believe the remand procedure is consistent with current practice at the hearings level. We believe it is a valuable tool, especially if the services of a medical advisor are unavailable to the administrative law judge. As indicated in the proposed rules, the use of the remand procedure is discretionary. Based upon our past experience with the need to remand cases, undue delay should not occur in the disability decision-making process.

Comment: Several commenters indicated that the standard document itemizing the steps of the technique discussed in 12.00I should be completed by the individual's treating physician/psychologist rather than the disability evaluator, since the treating physician/psychologist has a better knowledge of the individual's history.

Response: We recognize that the treating physician/psychologist may have a better knowledge of the individual's history. However, the purpose of the technique is to assist the disability evaluator in organizing and evaluating all of the findings in a case, which may come from many sources, to ensure fair and equitable disability determinations. Since such determinations are not done by the individual's treating physician/psychologist, it would be inappropriate to have them complete the standard document.

Comment: A number of commenters indicated that if a medical advisor is used in accordance with the proper rules in 12.00I, such advisor should have certain qualifications (e.g., be a psychiatrist or psychologist).

Response: If the services of a medical advisor are necessary in a mental impairment case, our standard procedure is to make every reasonable effort to obtain the services of a qualified medical professional in the field of mental health. We are making a concerted effort to insure that the services of these professionals are available when needed.

12.02 Organic Mental Disorders

Comment: Several commenters recommended that 12.02A7 not limit the neuropsychological testing to the Luria-Nebraska or Halstead-Reitan batteries. These batteries are criticized for their length, specialized training needed, and cost. It was also indicated that "dementia" is inappropriate as used in 12.02A7.

Response: The use of dementia in 12.02A7, which deals with cognitive deficiencies, was inappropriate and has been deleted. The point with regard to limiting the type of neuropsychological testing to the Luria-Nebraska or Halstead-Reitan is also well taken. Paragraph A7 has been modified to indicate ". . . overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska or Halstead-Reitan . . . . ." Concerning the length, specialized training, and cost of the Luria-Nebraska and the Halstead-Reitan, we realize that these are things that would adversely impact on processing time and administrative costs if these instruments were used in all cases. However, it was never intended that these instruments be used in the evaluation of every organic mental disorder. Rather they would be used if submitted as evidence of record or they would be purchased in special circumstances.

Comment: One commenter indicated that the paragraph A criteria in 12.02 are not specific to organic mental disorders, while other findings which are specific, such as aphasia, are not included.

Response: The definition of organic mental disorders that follows the diagnostic category title must be satisfied so at the outset we have established that we are dealing with pathology that has an organic base. Thus, inclusion of Part A findings such as affective changes that are found in organic patients but may not be diagnostic of organicity in and of themselves is appropriate.

At the same time, no effort was made to provide an exhaustive list of all possible signs and symptoms of the mental illness in Part A as this would make the listing too voluminous for practical use.

To emphasize the fact that the definition of the various mental disorders must be satisfied first before applying the remaining criteria of those categories, we have removed the parentheses from around these definitions.

Comment: One commenter stated that personality changes (12.02A4) are different from other criteria and cannot be obtained from a physician who would not know the individual's premorbid personality state.

Response: A careful medical history and observation of the individual over time should put the physician or psychologist in a position to comment

on this criterion. There is, of course, nothing wrong with developing lay evidence which bears upon this issue. However, we do not see the 12.02A4 criterion as essentially different from the other criteria, and it may take a physician's or psychologist's interpretation to say which changes are meaningful as all individuals change over time.

Comment: Several commenters questioned what the relevance was of the 15 point IQ drop in 12.02A7.

Response: This drop is one standard deviation, and for those individuals where we have previous IQ scores for comparison, this clearly represents a significant change. The number of times this criterion can be applied may be limited because of the lack of availability to previous scores, but it is a useful and measurable criterion where the data for comparison exists.

Comment: A larger number of commenters indicated that the problems and clinical manifestations of the brain injured are unique, and, therefore, traumatic brain injury should be a separate category in the listings. These commenters believe that a separate listing should address the subtle long term cognitive deficits which may require neuropsychological evaluation. These commenters also believe specific mention should be made of behavioral neurologists and other specialists in this field who are better able to evaluate such impairments than are psychiatrists or psychologists.

Response: Traumatic brain injuries can affect individuals in various ways, such as neurological and mental, and it is the effects of the injury that we evaluate. In other words, to determine whether an individual with a traumatic brain injury can work, we evaluate the effects of the injury rather than the cause of the injury. Should a traumatic brain injury affect an individual mentally, that individual would be evaluated under the criteria for organic mental disorders (listing 12.02). Should the effects of the injury be neurological, the individual would be evaluated under the appropriate neurological listing (i.e., 11.02, 11.03, or 11.04).

The purpose of listing 12.02, as well as all of the other listings, is to serve as a medical standard for evaluating disability. That is, the listings permit us to conclude an individual is disabled based upon medical evidence alone without the need to consider other factors, such as age, education, or past work experience. The listings achieve this by describing impairments which are considered severe enough to prevent a person from being able to work. For individuals with a traumatic brain injury which has affected them mentally, we believe that listing 12.02 correctly identifies those individuals who should be allowed on the basis of medical factors alone.

In the event that a traumatically brain injured individual does not meet or equal a listing within one of the body systems affected by the injury, but yet the impairment significantly limits the individual's mental ability to do basic work activities, we then determine what the individual can still do despite his or her impairment (see the fifth paragraph of 12.00A). It is at this step that every aspect of the impairment must be considered in terms of how it impacts on the individual's ability to work.

In regard to the use of behavioral neurologists and other specialists to evaluate these injuries, we do not exclude the use of those specialists. If such specialists are sources of record, we will utilize their reports, and if they are not sources of record but their expertise is needed, we will obtain it.

We do recognize, however, that mental impairment due to traumatic brain injury is sometimes difficult to assess, especially in view of the subtle findings sometimes associated with that injury. In those circumstances, neuropsychological testing may be useful in determining these subtle brain function deficiencies. Therefore, we have added a statement in the fifth paragraph of 12.00D to emphasize the usefulness of such testing.

In view of the unique evaluation problems of traumatic brain injuries, we are initiating a special study to ensure that these rules as well as the other rules serve as valid measures of disability due to such injury. This study will be conducted with the assistance of appropriate experts in the health care field familiar with the unique problems of traumatic brain injury.

Comment: A large number of commenters indicated that autism and other related conditions are not covered by any of the proposed listings, and therefore, that would result in confusion of application of the listings to autistic persons. These commenters recommend that autism be addressed in both listing 12.02 (Organic Mental Disorders) and listing 12.05 (Mental Retardation).

Response: We agree that it would be useful to specifically address autism in the listings. However, we believe the most appropriate place to do so is listing 12.05. According to information from the National Society for Children and Adults with Autism, the vast majority of cases of autism should be able to be adjudicated under those criteria since the vast majority of autistic individuals have below average IQs. For the smaller population of autistic individuals who do not have below average IQs, gross deficits of social and communicative skills are often evidenced. Therefore, we have added language to 12.05D (formerly 12.05C in the proposed regulations) to address such individuals.

Comment: Several commenters requested that specific criteria for the evaluation of Alzheimer's disease be provided.

Response: Listing 12.02 (Organic Mental Disorders) contains criteria adequate for the evaluation of Alzheimer's disease.

12.03 Schizophrenic, Paranoid and Other Psychotic Disorders

Comment: One commenter indicated that the criteria in paragraph A of listing 12.03 are not sufficient to conclude a diagnosis of schizophrenia.

Response: Specific signs and symptoms under any of the listings 12.02 through 12.09 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. In the Notice of Proposed Rulemaking, the description of the disorder was the parenthetical material that immediately followed the listing title. We have removed the parentheses from that material to emphasize the fact that the part A requirements should only be considered after the description of the mental disorder is satisfied. Language to this effect has been added to the second paragraph of 12.00A to clarify this point.

Comment: One commenter indicated that it was unclear as to how the requirements of listing 12.03 were satisfied, i.e., what combination of paragraphs A, B, and C would satisfy the requirements of the listing.

Response: We believe the combination of the paragraphs within listing 12.03 which satisfy the listing are clearly stated in that listing, i.e., when the requirements in A and B are satisfied, or when the requirements in C alone are satisfied.

Comment: Several commenters indicated that paragraph C2 in Listing 12.03, which describes current history of 2 or more years of inability to function outside a highly supportive living situation, is in conflict with the 12-month duration requirement of the disability program.

Response: A possible result of making paragraph C only of 12-months' duration is to create confusion because paragraph C applies only when the acute component of the condition has been present but due to the use of medication of psychosocial support the symptoms and signs have been

attenuated. The usual slumbering condition after one or more episodes of acute symptoms that limit the ability to function should be differentiated from the acute psychotic episode. Therefore, to make it different, the time condition of 2 or more years should be kept.

The 2-year requirement taken from DSM III and placed in criterion C2 is a test of severity not duration and can only be applied retroactively. The 12-month duration requirement is in the law and cannot be modified by the regulatory process.

Comment: Several commenters questioned what the difference was between the B4 and C1 criteria in listing 12.03.

Response: The language in the two paragraphs is similar except that in B4, deterioration takes place only under stress, such as might be encountered in competitive employment. In C1, the individual has had a past history of acute decompensation and now has his or her symptoms attenuated by medication or a psychosocial support system. The deterioration here would occur with an increase in mental demands, not necessary only the stress of employment. The difference is one of degree and this criterion is for a specific class or chronically ill psychotic individuals who no longer show obvious signs and symptoms. The language in C1 was modified to clarify this distinction.

Comment. A number of commenters found the C1 criterion in listing 12.03 confusing, and indicated that the standard requiring increased use of mental health services may not be appropriate.

Response: We believe that the revision to the C1 criterion, as discussed in the response preceding this response, will address these commenters' concerns.

Comment. One commenter indicated that the phrase in paragraph C2 of Listing 12.03 "inability to function" should be defined.

Response: It seems clear that the "inability to function" is indicative of decompensation and a continuous need for structured living when such psychosocial support is removed.

12.04 Affective Disorders

Comment: One commenter suggested that 12.04A1 may be difficult to document because it requires the presence of four symptoms.

Response: The requirement of multiple symptoms as evidence of depression is well established. Paragraph A1 in 12.04 is consistent with that practice.

Comment. Two commenters suggested that the number of criteria for depression syndrome under 12.04A1 be three rather than four in order to be consistent with dysthymic syndrome as defined in DSM–III.

Response: The requirement for meeting four of the criteria in 12.04A1 is an intentional compromise between usual standards for dysthymic and major depression. We do not believe this requirement will disadvantage severely impaired individuals who would have the functional restriction in paragraph B, as such individual would clearly be unable to work.

Comment: One commenter suggested that the number of criteria for manic syndrome under 12.04A2 should be two rather than three.

Response: The regulatory criteria for manic syndrome requiring three medical findings is consistent with current diagnostic practice.

Comment: One commenter suggested adding "more talkative" as a criterion for manic syndrome under 12.04A2.

Response: Criterion 12.04A2b "Pressure of speech" addresses this same issue and is more consistent with diagnostic practice. If this additional and duplicative element were included, pressure of speech would be given double weight.

Comment: One commenter said that section 12.04B4 fails to consider claimants who are vulnerable to repeated acute episodes if exposed to stressful environments.

Response: The B4 criterion deals with individuals who experience decompensation and exacerbation of signs and symptoms under the stress of work or work-like settings. Individuals who decompensate under nonspecific stressful situations should satisfy the other B criteria. The specific language in B4 is meant to cover those individuals who decompensate only when mental demands are increased such as is required in a work situation.

Comment: Two commenters suggested that the criteria of 12.03C be added to 12.04. One said this change was needed for claimants with schizoaffective disorders. The other commenter felt that the criteria of 12.03C were applicable to all claimants with affective disorders.

Response: Concerning the first point, schizoaffective disorders should be evaluated under 12.03. Concerning the second point, we judged that the characteristically progressive nature of schizophrenic disorders is fundamentally different from the characteristically intermittent and remitting nature of affective disorders. We concluded that the criteria of 12.03C would not mean that an individual with an affective disorder could not reasonably be expected to engage in gainful work activity. This is, however, an area where further research and clinical experience may be expected to provide useful information.

Comment: One commenter recommended that "pervasive loss of interest in almost all activities" be added to the paragraph A criteria for the depressive syndrome.

Response: We believe that this recommendation has merit and is, therefore, being adopted. Paragraph 12.04A1a has been changed to read "a. Anhedonia or pervasive loss of interest in almost all activities; or."

12.04 Mental Retardation

Comment: Several commenters recommended a change of wording in the description of "mental retardation" in listing 12.05 to better reflect professionally-accepted terms.

Response: While we intended our definition to be descriptive rather than technical in its wording, we accept the commenters' suggested wording in principle as having specific and precise meaning to mental retardation professionals. However, we slightly modified the suggested wording in the interest of clarity.

Comment: Several commenters suggested problems with the use of specific IQ scores in establishing listing-level severity for mental retardation. It was noted that the scores referenced (59 and below, 60 to 69) apparently are those achieved on the WAIS. It was suggested that our requirement (in 12.00D) to determine "comparable scores" achieved on other standardized IQ tests was problematic since no recognized comparison chart exists, nor has one been prepared by us for use by disability examiners. To help eliminate this chance variation, it was suggested that a greater range of acceptable scores be given, or that there be a requirement that more than one IQ test be administered. It was further suggested that IQ scores achieved by the same individual on various tests (e.g., WAIS, WAIS–R, Stanford Binet), even though they would indicate the approximate same level of mental retardation, varied considerably in numerical value.

Response: While we agree in principle with these commenters, there are inherent difficulties in the use of severity levels other than obtained IQ scores, and certainly validity problems in requiring that an individual retake an IQ test. One possibility would be to require that the obtained IQ score be two or three standard deviations below the tests' established norms. This would be technically more correct, but practically not meaningful to most

nonprofessionals who use these regulations.

To help resolve the problems in the real differences across test scores, we plan to study this issue further. In the meantime, we have chosen to revise the wording of the proposed rule to reflect our reliance on the WAIS.

Comment: Several commenters suggested that paragraph A of listing 12.05 be changed from ". . . failure to develop even the most primitive self-help skills . . . and requiring custodial care" to "dependence on others for personal needs . . . and inability to follow directions. . . ." The commenters point out that even the most profoundly retarded individuals develop some self-help skills although they may require help to make such activity meaningful and to avoid accidents.

Response: We accepted this suggested wording. It does not alter our intended meaning, but uses terms which are considered more technically correct in the mental retardation field.

Comment: Several commenters expressed the following concerns about paragraph C of listing 12.05: The requirement for specific functional limitations (i.e., 12.05C 1 through 4) beyond meeting established IQ score levels makes this listing more difficult to achieve than other listings; the types of functional limitations specified are not appropriate for the mentally retarded; and the requirement that two of the functional limitations be present in order to meet or equal the listing severity level is too stringent.

Response: Our process of determining the number of the stated four functional limitations that must be present was based on professional advice and consideration of the degree of severity required to preclude work. We continue to believe that two of the functional limitations should be required since that reflects impairment severity that would preclude work. If there is a separate mental impairment, the case can be considered under the multiple impairment criterion which was added to the listing (12.05C). If we determine disability on the basis of behavioral and functional limitations related directly to the mental retardation syndrome, then it is believed the stricter criterion is justified and equivalent to the requirements for other impairments.

With regard to the commenters' assertion that the types of functional limitations specified are not appropriate for evaluation of the mentally retarded, one specific suggestion was to add a reference to "pace" of work in 12.05C, relating to failure to complete tasks due to deficiencies in concentration or persistence. Since the pace of work is a salient point in determining whether a mentally retarded individual can function acceptably in a work setting, we have accepted this suggestion. We believe this addition is also applicable for the other listing categories, and have added it to all those categories (i.e., the B3 criterion).

Another suggestion was to alter the wording of 12.05C4 to take into account the behavioral aspects of mental retardation. We believe this suggestion has merit, not only for listing 12.05 but for all the listings. Therefore, we have added language to the listings (the C4 criterion in 12.05 and the B4 criterion in the other listings) to address the behavior aspects of mental disorders.

Comment: Several commenters suggested that we add a new paragraph to 12.05 which would reinstate a section of the former mental retardation listing (12.05C). That section refers to a combination of mental retardation and other physical or mental impairments leading to disability. It is asserted that this wording would be valuable in the determination of disability for those individuals whose mental retardation level would not be sufficient, alone, to establish the sufficient severity level, but who have other impairments which lead to disability.

Response: When we determined to drop that section from the proposed rule, we sought to replace it with the severity indices in the proposed 12.05C. We agree, however, that not specifically mentioning the combination of mental retardation with other mental/physical impairments may be problematic. Therefore, we have included a specific paragraph to 12.05 (paragraph C) to address a combination of mental retardation with another mental or physical impairment. The proposed paragraph C has been relettered as paragraph D.

Comment: Several commenters recommended the addition of a paragraph to the preface of the listings which would separately address mental retardation. These commenters believe this is necessary since there are differences between mental retardation and the other listed mental disorders categories.

Response: We believe that adequate guidance is already given in the revised listings as to the correct application of the mental retardation listing, and, therefore, further guidance in the prefactory material is unnecessary. Furthermore, we believe that the medical consultants reviewing the evidence for purposes of the disability determination are aware of the differences between mental retardation and the other listed mental disorders categories.

Comment: A large number of commenters indicated that autism and other related conditions are not covered by any of the proposed listings, and therefore, that would result in confusion in application of the listings to autistic persons. These commenters recommend that autism be addressed in both listing 12.02 (Organic Mental Disorders) and listing 12.05 (Mental Retardation).

Response: We opted to place autism in the same listing as mental retardation as both are developmental disabilities and the vast majority of austistic people have subnormal scores on intelligence testing. It is true that perhaps as many as 15 percent of the autistic people do not have these reduced IQ's but they do have communications disorders, problems in social relationships, bizarre movements and perseveration that characterize the illness. Language has been added to paragraph D to address autistic individuals who do not have reduced IQ's. We revised the title of listing 12.05 to read "Mental Retardation and Autism" and added a description of the findings necessary to establish autism.

Comment: One commenter recommended that a criterion be added to listing 12.05 to address individuals who have IQ's in the range of 70 to 79.

Response: We believe that disability for individuals with IQ's in the range of 70 to 79 is more appropriately determined when the individual's RFC and vocational factors are considered.

12.06 Anxiety Related Disorders

Comment: Several commenters requested better definitions and examples of terms in the paragraph A criteria in 12.06 such as "apprehensive expectations," "motor tensions," "autonomic hyperactivity," and "vigilance and scanning."

Response: These terms are in general use in the mental health field and are defined and used in DSM–III. We do not believe such definitions belong in the listings themselves.

Comment: One commenter suggested that it would be hard to rule out malingering in professed phobias and panic disorders.

Response: Distinguishing malingering from actual anxiety disorders is always difficult when based on symptom reports by the claimant alone. That is why, throughout our disability determination process, signs are necessary to substantiate a claim. In the case of a phobic disorder avoidant behavior must be observed and documented, and of course, must

produce marked limitations in functioning before the listing could be met or equaled. In the case of panic disorders, we would expect documentation of the objective physical, as well as the subjective mental, manifestations of panic (e.g., sweating and/or tachycardia).

Comment: Two commenters criticized the paragraph C criterion in listing 12.06 of "complete inability to function independently" as too stringent on the basis that it requires a "vegetative state" and goes beyond the work-related limitations intended by the statute.

Response: On balance, most commenters agreed with the NPRM on this issue. We did not mean that a finding of function requires a "vegetative state." The issue is one of independence.

12.07 Somatoform Disorders

Comment: A number of commenters requested that "pain" be included as a criterion in paragraph A of listing 12.07.

Response: As indicated in the proposed rules, we are deferring the inclusion of "pain" as a criterion in paragraph A of 12.07 until additional study can be done concerning pain and its disabling effects. A Commission on the Evaluation of Pain is serving as the basis for this study.

Comment: Several commenters requested that we eliminate the phrases "of several years duration" and "beginning before age 30" from paragraph A of listing 12.07 since they do not understand the relevance of them.

Response: These criteria are consistent with current medical practice in establishing the presence of somatoform disorders, and, therefore, are being retained.

12.08 Personality Disorders

Comment: One commenter indicated that 12.08 could be interpreted more "liberally" than other sections of the listings.

Response: No indication of how this could be interpreted more liberally was given. We do not agree since the proposal requires three of the B criteria rather than the two B criteria required for most other listings.

Comment: Several commenters suggested that items B3 and B4 could only be documented based on past work history and this will frequently be unavailable because the claimant has not worked.

Response: Neither B3 nor B4 requires documentation based on actual work. B3 requires documentation of deficiencies of concentration and persistence resulting in frequent failure to complete tasks in work settings or elsewhere. The B4 criterion requires episodes of deterioration or decompensation in work or work-like situations. Documentation for B3 and B4 may be obtained based on findings derived from usual or customary activities in which the claimant has been involved. Documentation would also be available from specific clinical and laboratory findings such as a psychiatric or psychological examination, psychological testing, and work sampling evaluations.

Comment: Several commenters indicated that only two of the four B criteria should be required for listing 12.08 since that would be sufficient to determine an individual is unable to work. Otherwise, listing 12.08 would be more strict than the other listings.

Response: Personality disorders (as well as somatoform disorders in 12.07) are believed to be inherently less disabling than mental disorders such as psychotic disorders. In addition, there are inherent problems in assessing issues such as the role of motivation in determining the severity of personality disorders. For these reasons, more stringent criteria have been proposed to meet this listing. Individuals with personality disorders which are more than not severe but do not meet or equal the listings would still have a detailed RFC completed which would lead to a finding of disability in appropriate cases.

Comment: One commenter suggested that subsection C of listing 12.03 should be added to section 12.08 for personality disorders. Other commenters recommended that paragraph C should apply to all listings.

Response: Personality disorders are characterized by inflexible and maladaptive behavior manifested in an individual's long term functioning rather than being limited to discrete episodes of illness. Subsection C of 12.03 was intended to be used for individuals who have illnesses which are more episodic in nature and tenuously controlled with medications and/or psychosocial support. For this reason, 12.03 would not customarily be applicable to personality disorders. If the rare instance ever occurred where subsection C of 12.03 might be applicable, the concept of "equals" should be considered. Similar reasoning is applicable for not adding paragraph C to the other listings.

Comment: One commenter suggested that 12.08A omits signs and symptoms of histrionic and narcissistic personality disorders and that a criterion should be included for identity disturbances and chronic feelings of emptiness which characterizes a borderline personality disorder.

Response: The paragraph A criteria in 12.08 are not intended to be a comprehensive diagnostic list. In rare instances where criteria other than that of 12.08A would be used to medically substantiate a personality disorder, then the use of the concept of "equals" should be considered.

Comment: Several commenters indicated that certain signs or symptoms listed in the paragraph A criteria of listing 12.08 were very similar or the same as the paragraph A criteria of other listings. This would lead to problems in deciding which listing to use. It could also result in different decisions depending on which listing is used.

Response: The intention of the paragraph A criteria is to substantiate the presence of the mental disorder. Specific signs and symptoms under listings 12.02 through 12.09 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments must be analyzed or reviewed under the mental disorder category(ies) which is supported by the individual's clinical findings. For example, while seclusiveness and isolation may not always refer to separable or distinct attributes, the individual's condition should be adjudicated under the mental disorder category for which the signs and symptoms are considered clinically characteristic or diagnostic. We have added language to the second paragraph of 12.00A to clarify this.

Comment: One commenter recommended adding a statement to the listings to indicate that an impairment should not be analyzed under listing 12.08 if it can be adjudicated under any other listing.

Response: As discussed in the response prior to this response, impairments must be analyzed or reviewed under the mental disorder category(ies) which is supported by the clinical findings.

12.09 Substance Addiction Disorders

Comment: A number of commenters agree that there is a need for a separate discrete listing for substance addiction disorders; however, they believe that the reference listing substituted by us for the listing developed by the work group is inadequate.

Response: As indicated in the proposed rules, we agree that new developments in medical research provide some support for the work group's proposed listing. However, we

believe that the work group's proposed listing must be subjected to further study and analysis before considering its adoption as part of the listings.

General Comments

Comment: Several commenters indicated that for the sake of consistent application of the revised listings, it is essential for adequate training to be provided to the users of the revised listings. In addition, some commenters felt that the medical community must be informed of the changes.

Response: A campaign has been undertaken to inform the medical community of the revisions. In addition, adequate training will be provided on the revised listings.

Comment: One commenter called to our attention a number of typographical errors that appeared in the proposed rules and requested that corrective action be taken.

Response: We thank this commenter for calling those errors to our attention, and we have taken measures to correct those errors.

Comment: One commenter noted that we have entered into a contract with the American Psychiatric Association to provide for an ongoing review of the revised listings. The commenter urged us to consider contracting with other organizations having specialized areas of expertise, e.g., mental retardation, so that a more comprehensive review of the revised listings could be done.

Response: We will consider contracting with other expert groups for future evaluations of the mental listings.

Comment: Several commenters questioned the need for the 3 year sunset provision in the proposed rules. Some question the need for one at all, while others felt that the time period should be extended.

Response: During this 3 year period, we will carefully monitor the regulations to ensure an ongoing evaluation of the medical evaluation criteria. Periodic updating and revisions in this area are needed because of the dynamic nature of the diagnoses, evaluation and treatment of the mental disease process.

Comment: Several commenters indicated that the listings categories should have been expanded even further than the eight categories in the proposed rules in order to address particular aspects of categories not listed, such as borderline personality disorders and ecological mental illness. Another commenter recommended that we add a statement to discuss how an impairment should be evaluated if it is not one of the eight listed categories.

Response: Because of the diversity of mental disorders, it was necessary to group some disorders under a single listing. The organization of the revised listings is based on input from leading experts in the field of mental health and on the third revision of the DSM III which provides a realistic organization in terms of the common characteristics of the mental disorders that are evaluated under a particular listing. If an impairment is not listed, it can be evaluated in accordance with the "medical equivalence" concept (see regulations 404.1526 and 416.926).

In the case of borderline personality disorders, it is a difficult differential diagnosis which is sometimes classified under personality disorders and sometimes under schizoaffective schizophrenia. Depending on the presentation of the individual and the judgment of the physician, either the 12.03 or 12.08 criteria might be applied.

Concerning ecological mental illnesses, such illnesses have not been specifically included in the listings since there is no broad clinical acceptance of such illnesses. Claims on the basis of ecological illnesses would be handled under the medical equivalence concept.

Comment: Several commenters indicated that the proposed rules failed to address the childhood mental listings. Another commenter indicated that these rules failed to address those individuals who are physically disabled.

Response: Concerning the childhood mental listings, they are currently being analyzed with the intent of revising them. Proposed revisions to the childhood mental listings will be published in the **Federal Register** as proposed rules to permit the public to comment on them. Concerning the evaluation of individuals with physical impairments, these rules were not intended for that purpose. Evaluation of physical impairments is achieved through the nonmental sections of the Listing of Impairments.

Comment: Several commenters indicated that the new listings require more evidence, and thus will adversely impact processing time. These commenters indicated that some administrative procedure such as "medical hold" would help ensure compliance.

Response: We have a responsibility to make fair, accurate, and prompt decisions for those individuals who seek benefits. We realize that these listings and other initiatives require more, different, and better documentation, but we can only speculate as to what effect these changes may have on processing time. All cases must be well documented before a decision is made. At the same time, we will not retreat from our goal and responsibility to provide prompt decisions.

Comment: A number of commenters requested that various terms contained in the proposed rules be defined.

Response: To the extent possible, this has been done, e.g., "marked" has been clarified in 12.00C. However, further clarification of most terms was found unnecessary, since the terms were either defined in standard medical dictionaries or elsewhere in our materials.

Comment: A number of commenters have recommended various modifications or additions to the proposed criteria which are used to medically substantiate an impairment for purposes of evaluation under the listings (the paragraph A criteria).

Response: Some of these recommendations have been responded to under the mental disorder listing addressed by the recommendations. Those that were not specifically addressed were not adopted. That is not to say that the recommended criteria could not be used to medically substantiate a mental disorder impairment. Some of the recommended criteria could be used for that purpose under the medical equivalence concept. However, most of the recommended criteria were unique or uncommon and would be more appropriately a consideration under the medical equivalence concept.

Additional Changes

We expanded the list of criteria in paragraph A of Listing 12.04 (affective disorders) to incorporate another criterion that can be used to medically substantiate a depressive or manic syndrome. The criterion is "hallucinations, delusions, or paranoid thinking." We believe this criterion is as equally valid in medically substantiating a depressive or manic syndrome as the criteria contained in the proposed rules.

The criterion in paragraph A3 of listing 12.04 (affective disorders) has been reworded in order to clarify that the bipolar syndrome must have a history of a full symptomatic picture of both manic and depressive syndromes. However, it needs only be currently characterized by either of these syndromes.

We grouped the "e" through "i" criteria in paragraph A2 of listing 12.07 (Somatoform Disorders) so that they appear in a more logical way. As proposed, those criteria appeared as "e. psychogenic seizures; or f. Coordination disturbance; or g. Akinesia; or h. Dyskinesia; or i. Anesthesia." Those criteria now appear as follows; "e. Movement and its control (e.g.,

coordination disturbance, psychogenic seizures, akinesia, dyskinesia); or f. Sensation (e.g., diminished or heightened)."

We revised the disorders cross referenced in paragraph A of 12.09 (Substance Addiction Disorders) from "Chronic brain damage" to "Organic mental disorders," since, "Organic mental disorders" (Listing 12.02) is the name of the disorders being cross referenced.

Executive Order 12291: These regulations are not expected to produce significant additional program costs when compared to those which would be incurred under prior regulations. They will not affect the economy by $100 million or more yearly and will not increase costs or prices significantly for any segment of the population or otherwise meet the criteria for a major rule as specified in Executive Order 12291. Therefore, we have determined that a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations do not have a significant economic impact on a substantial number of small entities because they affect only individuals.

Paperwork Reduction Act

Under Pub. L. 96–511 (the Paperwork Reduction Act of 1980), we are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. Sections 404.1520a and 416.920a of this rule provide for the preparation of a standard document as a part of the procedure for evaluating mental impairments. At the initial and reconsideration levels of adjudication, the document is completed by a medical consultant who is generally in the employ of a State disability determination services that makes disability determinations for us.

OMB has determined that this constitutes an information collection requirement that is subject to review and approval under the Paperwork Reduction Act. When the Notice of Proposed Rulemaking was published, the public was invited to submit comments on the use of the document to the Office of Information and Regulatory Affairs, OMB. No comments were received, and the requirement has been cleared by OMB (0960–0413).

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, Survivors and disability insurance.

Dated: June 19, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: July 29, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

BILLING CODE 4190-11-M

PSYCHIATRIC REVIEW TECHNIQUE FORM

Name	SSN

Assessment is For: ☐ Current Evaluation ☐ 12 Mo. After Onset: _____

☐ Date Last Insured: _____ ☐ Other: _____ to _____

Reviewer's Signature	Date

I. MEDICAL SUMMARY

A. Medical Disposition(s):

1. ☐ No Medically Determinable Impairment
2. ☐ Impairment(s) Not Severe
3. ☐ Meets Listing _____ (Cite Listing and subsection)
4. ☐ Equals Listing _____ (Cite Listing and subsection)
5. ☐ Impairment Severe But Not Expected To Last 12 Months
6. ☐ RFC Assessment Necessary (i.e., a severe impairment is present which does not meet or equal a listed impairment)
7. ☐ Referral To Another Medical Specialty (necessary when there is a coexisting nonmental impairment) (Except for OHA reviewers.)
8. ☐ Insufficient Medical Evidence (i.e., a programmatic documentation deficiency is present) (Except for OHA reviewers.)

B. Category(ies) Upon Which the Medical Disposition(s) is Based:

1. ☐ 12.02 Organic Mental Disorders
2. ☐ 12.03 Schizophrenic, Paranoid and other Psychotic Disorders
3. ☐ 12.04 Affective Disorders
4. ☐ 12.05 Mental Retardation and Autism
5. ☐ 12.06 Anxiety Related Disorders
6. ☐ 12.07 Somatoform Disorders
7. ☐ 12.08 Personality Disorders
8. ☐ 12.09 Substance Addiction Disorders

II. Reviewer's Notes (Except OHA reviewers. OHA reviewers should record the subject information in the body and findings of their decision.):
A. Record below the pertinent signs, symptoms, findings, functional limitations, and the effects of treatment contained in the case, B. Remarks (any information the reviewer may wish to communicate which is not covered elsewhere in form, e.g., duration situations).

III. Documentation of Factors that Evidence the Disorder (Comment on each broad category of disorder.)

A. 12.02 Organic Mental Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Psychological or behavioral abnormalities associated with a dysfunction of the brain . . . . as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Disorientation to time and place
2. ☐ ☐ ☐ Memory Impairment
3. ☐ ☐ ☐ Perceptual or thinking disturbances
4. ☐ ☐ ☐ Change in personality
5. ☐ ☐ ☐ Disturbance in mood
6. ☐ ☐ ☐ Emotional lability and impairment in impulse control
7. ☐ ☐ ☐ Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.
8. ☐ ☐ ☐ Other _____

B. 12.03 Schizophrenic, Paranoid and Other Psychotic Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Psychotic features and deterioration that are persistent (continuous or intermittent), as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Delusions or hallucinations

2. ☐ ☐ ☐ Catatonic or other grossly disorganized behavior

3. ☐ ☐ ☐ Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:

   a. ☐ Blunt affect, or

   b. ☐ Flat affect, or

   c. ☐ Inappropriate affect

4. ☐ ☐ ☐ Emotional withdrawal and/or isolation

5. ☐ ☐ ☐ Other _____

C. 12.04 Affective Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Disturbance of mood, accompanied by a full or partial manic or depressive syndrome, as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Depressive syndrome characterized by at least four of the following:

   a. ☐ Anhedonia or pervasive loss of interest in almost all activities, or

   b. ☐ Appetite disturbance with change in weight, or

   c. ☐ Sleep disturbance, or

   d. ☐ Psychomotor agitation or retardation, or

   e. ☐ Decreased energy, or

   f. ☐ Feelings of guilt or worthlessness, or

   g. ☐ Difficulty concentrating or thinking, or

   h. ☐ Thoughts of suicide, or

   i. ☐ Hallucinations, delusions, or paranoid thinking.

2. ☐ ☐ ☐ Manic syndrome characterized by at least three of the following:

   a. ☐ Hyperactivity, or

   b. ☐ Pressures of speech, or

   c. ☐ Flight of ideas, or

   d. ☐ Inflated self-esteem, or

   e. ☐ Decreased need for sleep, or

   f. ☐ Easy distractability, or

   g. ☐ Involvement in activities that have a high probability of painful consequences which are not recognized, or

   h. ☐ Hallucinations, delusions, or paranoid thinking.

3. ☐ ☐ ☐ Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes).

4. ☐ ☐ ☐ Other _____

D. 12.05 Mental Retardation and Autism

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22) or pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period, as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded.*

2. ☐ ☐ ☐ A valid verbal, performance, or full scale I.Q. of 59 or less.*

3. ☐ ☐ ☐ A valid verbal, performance, or full scale I.Q. of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function.*

4. ☐ ☐ ☐ A valid verbal, performance, or full scale IQ of 60 to 69 inclusive or in the case of autism, gross deficits of social and communicative skills.*

5. ☐ ☐ ☐ Other _____

*NOTE: Items 1, 2, 3, and 4 correspond to Listings 12.05A, 12.05B, 12.05C, and 12.05D, respectively.

E. 12.06 Anxiety Related Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Anxiety as the predominant disturbance or anxiety experienced in the attempt to master symptoms, as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Generalized persistent anxiety acompanied by three of the following:

   a. ☐ Motor tension, or

   b. ☐ Autonomic hyperactivity, or

   c. ☐ Apprehensive expectation, or

   d. ☐ Vigilance and scanning

2. ☐ ☐ ☐ A persistent irrational fear of a specific object, activity or situation which results in a compelling desire to avoid the dreaded object, activity, or situation

3. ☐ ☐ ☐ Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror, and sense of impending doom occurring on the average of at least once a week

4. ☐ ☐ ☐ Recurrent obsessions or compulsions which are a source of marked distress

5. ☐ ☐ ☐ Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress

6. ☐ ☐ ☐ Other _____

F. 12.07 Somatoform Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms, as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ A history of multiple physical symptoms of several years duration beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly

2. ☐ ☐ ☐ Persistent nonorganic disturbance of one of the following:

   a. ☐ Vision, or

   b. ☐ Speech, or

   c. ☐ Hearing, or

   d. ☐ Use of a limb, or

   e. ☐ Movement and its control (e.g., coordination disturbances, psychogenic seizures, akinesia, dyskinesia), or

   f. ☐ Sensation (e.g., diminished or heightened)

3. ☐ ☐ ☐ Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury

4. ☐ ☐ ☐ Other _____

G. 12.08 Personality Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Inflexible and maladaptive personality traits which cause either significant impairment in social or occupational functioning or subjective distress, as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Seclusiveness or autistic thinking

2. ☐ ☐ ☐ Pathologically inappropriate suspiciousness or hostility

3. ☐ ☐ ☐ Oddities of thought, perception, speech and behavior

4. ☐ ☐ ☐ Persistent disturbances of mood or affect

5. ☐ ☐ ☐ Pathological dependence, passivity, or aggressivity

6. ☐ ☐ ☐ Intense and unstable interpersonal relationships and impulsive and damaging behavior

7. ☐ ☐ ☐ Other _____

H. 12.09 Substance Addiction Disorders: Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

Present - Absent - Insufficient Evidence

☐ ☐ ☐

If present, evaluate under one or more of the most closely applicable listings:

1. ☐ Listing 12.02 - Organic mental disorders*
2. ☐ Listing 12.04 - Affective disorders*
3. ☐ Listing 12.06 - Anxiety disorders*
4. ☐ Listing 12.08 - Personality disorders*
5. ☐ Listing 11.14 - Peripheral neuropathies*
6. ☐ Listing 5.05 - Liver damage*
7. ☐ Listing 5.04 - Gastritis*
8. ☐ Listing 5.08 - Pancreatitis*
9. ☐ Listing 11.02 or 11.03 - Seizures*
10. ☐ Other _____

*NOTE: Items 1, 2, 3, 4, 5, 6, 7, 8, and 9 correspond to Listings 12.09A, 12.09B, 12.09C, 12.09D, 12.09E, 12.09F, 12.09G, 12.09H, and 12.09I, respectively. If items 1, 2, 3, or 4 are checked, only the numbered items in subsections IIIA, IIIC, IIIE, or IIIG of the form need be checked. The first two blocks under the disorder heading in those subsections need not be checked.

IV. Rating of Impairment Severity

A. "B" Criteria of the Listings

Indicate to what degree the following functional limitations (which are found in paragraph B of listings 12.02-12.04 and 12.06-12.08 and paragraph D of 12.05) exist as a result of the individual's mental disorder(s).

Note: Items 3 and 4 below are more than measures of frequency. Describe in part II of this form (Reviewer's Notes) the duration and effects of the deficiencies (item 3) or episodes (item 4). Please read carefully the instructions for the completion of this section.

Specify the listing(s) (i.e., 12.02 through 12.09) under which the items below are being rated _____.

FUNCTIONAL LIMITATION	DEGREE OF LIMITATION					
1. Restriction of Activities of Daily Living	None ☐	Slight ☐	Moderate ☐	Marked* ☐	Extreme ☐	Insufficient Evidence ☐
2. Difficulties in Maintaining Social Functioning	None ☐	Slight ☐	Moderate ☐	Marked* ☐	Extreme ☐	Insufficient Evidence ☐
3. Deficiencies of Concentration, Persistence or Pace Resulting in Failure to Complete Tasks in a timely Manner (in work settings or elsewhere)	Never ☐	Seldom ☐	Often ☐	Frequent* ☐	Constant ☐	Insufficient Evidence ☐
4. Episodes of Deterioration or Decompensation in Work or Work-Like Settings Which Cause the Individual to Withdraw from that Situation or to Experience Exacerbation of Signs and Symptoms (which may Include Deterioration of Adaptive Behaviors)	Never ☐	Once or Twice ☐	Repeated* (three or more) ☐	Continual ☐		Insufficient Evidence ☐

B. Summary of Functional Limitation Rating for "B" Criteria

Indicate the number of the above functional limitations manifested at the degree of limitation that satisfies the listings. ☐ (The number in the box must be at least 2 to satisfy the requirements of paragraph B in Listings 12.02, 12.03, 12.04, and 12.06 and paragraph D in 12.05; and at least 3 to satisfy the requirements in paragraph B in Listings 12.07 and 12.08.)

* Degree of limitation that satisfies the Listings; Extreme, Constant and Continual also satisfy that requirement.

C. "C" Criteria of the Listings

1. If 12.03 Disorder (Schizophrenic, etc.) and in Full or Partial Remission

Note: Item b. below is more than a measure of frequency. Describe in part II of this form (Reviewer's Notes) the duration and effects of the episodes. Please read carefully the instructions for the completion of this section.

	Present	Absent	Insufficient Evidence	
a.	☐	☐	☐	Medically documented history of one or more episodes of acute symptoms, signs and functional limitations which at the time met the requirements in A and B of 12.03, although these symptoms or signs are currently attenuated by medication or psychosocial support.
b.	☐	☐	☐	Repeated episodes of deterioration or decompensation in situations which cause the individual to withdraw from that situation or to experience exacerbation of signs or symptoms (which may include deterioration of adaptive behaviors).
c.	☐	☐	☐	Documented current history of two or more years of inability to function outside of a highly supportive living situation.

(For the requirements in paragraph C of 12.03 to be satisfied, either a. and b. or a. and c. must be checked as present.)

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2. If 12.06 Disorder (Anxiety Related)

Present	Absent	Insufficient Evidence	
☐	☐	☐	Symptoms resulting in <u>complete</u> inability to function independently outside the area of one's home.

(If present is checked, the requirements in paragraph C of 12.06 are satisfied.)

BILLING CODE 4150-11-C

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950——)

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

Subpart P—Determining Disability and Blindness

1. The authority citation for Subpart P continues to read as follows:

Authority: Secs. 202, 205, 216, 221, 222, 223, 225 and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 68 Stat. 1080, 1081 and 1082 as amended, 70 Stat. 815 and 817, as amended, 49 Stat. 647, as amended (42 U.S.C. 402, 405, 416, 421, 422, 423, 425 and 1302).

2. A new § 404.1520a is added to read as follows:

§ 404.1520a. Evaluation of mental impairments.

(a) *General.* The steps outlined in § 404.1520 apply to the evaluation of physical and mental impairments. In addition, in evaluating the severity of mental impairments, a special procedure must be followed by us at each administrative level of review. Following this procedure will assist us in:

(1) Identifying additional evidence necessary for the determination of impairment severity;

(2) Considering and evaluating aspects of the mental disorder(s) relevant to your ability to work; and

(3) Organizing and presenting the findings in a clear, concise, and consistent manner.

(b) *Use of the procedure to record pertinent findings and rate the degree of functional loss.*

(1) This procedure requires us to record the pertinent signs, symptoms, findings, functional limitations, and effects of treatment contained in your case record. This will assist us in determining if a mental impairment(s) exists. Whether or not a mental impairment(s) exists is decided in the same way the question of a physical impairment is decided, i.e., the evidence must be carefully reviewed and conclusions supported by it. The mental status examination and psychiatric history will ordinarily provide the needed information. (See § 404.1508) for further information about what is needed to show an impairment.)

(2) If we determine that a mental impairment(s) exists, this procedure then requires us to indicate whether certain medical findings which have been found especially relevant to the ability to work are present or absent.

(3) The procedure then requires us to rate the degree of functional loss resulting from the impairment(s). Four areas of function considered by us as essential to work have been identified, and the degree of functional loss in those areas must be rated on a scale that ranges from no limitation to a level of severity which is incompatible with the ability to perform those work-related functions. For the first two areas (activities of daily living and social functioning), the rating of limitation must be done based upon the following five point scale: none, slight, moderate, marked, and extreme. For the third area (concentration, persistence, or pace) the following five point scale must be used: never, seldom, often, frequent, and constant. For the fourth area (deterioration or decompensation in work or work-like settings), the following four point scale must be used: never, once or twice, repeated (three or more), and continual. The last two points for each of these scales represent a degree of limitation which is incompatible with the ability to perform the work-related function.

(c) *Use of the procedure to evaluate mental impairments.* Following the rating of the degree of functional loss resulting from the impairment, we must then determine the severity of the mental impairment(s).

(1) If the four areas considered by us as essential to work have been rated to indicate a degree of limitation as "none" or "slight" in the first and second areas, "never" or "seldom" in the third area, and "never" in the fourth area, we can generally conclude that the impairment is not severe, unless the evidence otherwise indicates there is significant limitation of your mental ability to do basic work activities (see § 404.1521).

(2) If your mental impairment(s) is severe, we must then determine if it meets or equals a listed mental disorder. This is done by comparing our prior conclusions based on this procedure (i.e., the presence of certain medical findings considered by us as especially relevant to your ability to work and our rating of functional loss resulting from the mental impairment(s)) against the paragraph A and B criteria of the appropriate listed mental disorder(s). If we determine that paragraph C criteria will be used in lieu of paragraph B criteria (see listings 12.03 and 12.06), we will, by following this procedure, indicate on the document whether the evidence is sufficient to establish the presence or absence of the criteria. (See paragraph (d) of this section).

(3) If you have a severe impairment(s), but the impairment(s) neither meets nor equals the listings, we must then do a residual functional capacity assessment, unless you are claiming benefits as a disabled widow(er) or surviving divorced spouse.

(4) At all adjudicative levels we must, in each case, incorporate the pertinent findings and conclusions based on this procedure in our decision rationale. Our rationale must show the significant history, including examination, laboratory findings, and functional limitations that we considered in reaching conclusions about the severity of the mental impairment(s).

(d) *Preparation of the document.* A standard document outlining the steps of this procedure must be completed by us in each case at the initial, reconsideration, administrative law judge hearing, and Appeals Council levels (when the Appeals Council issues a decision).

(1) At the initial and reconsideration levels the standard document must be completed and signed by our medical consultant. At the administrative law judge hearing level, several options are available:

(i) The administrative law judge may complete the document without the assistance of a medical advisor;

(ii) The administrative law judge may call a medical advisor for assistance in preparing the document; or

(iii) Where new evidence is received that is not merely cumulative of evidence already in your case file or where the issue of a mental impairment arises for the first time at the administrative law judge hearing level, the administrative law judge may decide to remand the case to the State agency for completion of the document and a new determination. Remand may also be made in situations where the services of a medical advisor are determined necessary but unavailable to the administrative law judge. In such circumstances, however, a remand may ordinarily be made only once.

(2) For all cases involving mental disorders at the administrative law judge hearing or Appeals Council levels, the standard document will be appended to the decision.

(Approved by the Office of Management & Budget under control number 0960–0413)

3. Part A of Appendix 1 (Listing of Impairments) of Subpart P is amended by revising 12.00, Mental Disorder, to read as follows:

Appendix 1—Listing of Impairments

Part A

Criteria applicable to individuals age 18 and over and to children under age 18 if the disease processes have a similar effect on adults and younger persons.

* * * * *

12.00 Mental Disorders

The mental disorders listings in 12.00 of the Listing of Impairments will only be effective for 3 years unless extended by the Secretary or revised and promulgated again. Consequently, these listings will no longer be effective on August 28, 1988.

A. *Introduction:* The evaluation of disability on the basis of mental disorders requires the documentation of a medically determinable impairment(s) as well as consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. The listings for mental disorders are arranged in eight diagnostic categories: organic mental disorders (12.02); schizophrenic, paranoid and other psychotic disorders (12.03); affective disorders (12.04); mental retardation and autism (12.05); anxiety related disorders (12.06); somatoform disorders (12.07); personality disorders (12.08); and substance addiction disorders (12.09). Each diagnostic group, except listings 12.05 and 12.09, consists of a set of clinical findings (paragraph A criteria), one or more of which must be met, and which, if met, lead to a test of functional restrictions (paragraph B criteria), two or three of which must also be met. There are additional considerations (paragraph C criteria) in listings 12.03 and 12.06, discussed therein.

The purpose of including the criteria in paragraph A of the listings for mental disorders is to medically substantiate the presence of a mental disorder. Specific signs and symptoms under any of the listings 12.02 through 12.09 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) which is supported by the individual's clinical findings.

The purpose of including the criteria in paragraphs B and C of the listings for mental disorders is to describe those functional limitations associated with mental disorders which are incompatible with the ability to work. The restrictions listed in paragraphs B and C must be the result of the mental disorder which is manifested by the clinical findings outlined in paragraph A. The criteria included in paragraphs B and C of the listings for mental disorders have been chosen because they represent functional areas deemed essential to work. An individual who is severely limited in these areas as the result of an impairment identified in paragraph A is presumed to be unable to work.

The structure of the listing for substance addiction disorders, listing 12.09, is different from that for the other mental disorder listings. Listing 12.09 is structured as a reference listing; that is, it will only serve to indicate which of the other listed mental or physical impairments must be used to evaluate the behavioral or physical changes resulting from regular use of addictive substances.

The listings for mental disorders are so constructed that an individual meeting or equaling the criteria could not reasonably be expected to engage in gainful work activity.

Individuals who have an impairment with a level of severity which does not meet the criteria of the listings for mental disorders may or may not have the residual functional capacity (RFC) which would enable them to engage in substantial gainful work activity. The determination of mental RFC is crucial to the evaluation of an individual's capacity to engage in substantial gainful work activity when the criteria of the listings for mental disorders are not met or equaled but the impairment is nevertheless severe.

RFC may be defined as a multidimensional description of the work-related abilities which an individual retains in spite of medical impairments. RFC complements the criteria in paragraphs B and C of the listings for mental disorders by requiring consideration of an expanded list of work-related capacities which may be impaired by mental disorder when the impairment is severe but does not meet or equal a listed mental disorder. (While RFC may be applicable in most claims, the law specifies that it does not apply to the following special claims categories: disabled title XVI children below age 18, widows, widowers and surviving divorced wives. The impairment(s) of these categories must meet or equal a listed impairment for the individual to be eligible for benefits based on disability.)

B. *Need for Medical Evidence:* The existence of a medically determinable impairment of the required duration must be established by medical evidence consisting of clinical signs, symptoms and/or laboratory or psychological test findings. These findings may be intermittent or persistent depending on the nature of the disorder. Clinical signs are medically demonstrable phenomena which reflect specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality. These signs are typically assessed by a psychiatrist or psychologist and/or documented by psychological tests. Symptoms are complaints presented by the individual. Signs and symptoms generally cluster together to constitute recognizable clinical syndromes (mental disorders). Both symptoms and signs which are part of any diagnosed mental disorder must be considered in evaluating severity.

C. *Assessment of Severity:* For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph B of the listings for mental disorders (descriptions of restrictions of activities of daily living; social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work). Where "marked" is used as a standard for measuring the degree of limitation, it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively. Four areas are considered.

1. *Activities of daily living* including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. In the context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness and effectiveness. It is necessary to define the extent to which the individual is capable of initiating and participating in activities independent of supervision or direction.

"Marked" is not the number of activities which are restricted but the overall degree of restriction or combination of restrictions which must be judged. For example, a person who is able to cook and clean might still have marked restrictions of daily activities if the person were too fearful to leave the immediate environment of home and neighborhood, hampering the person's ability to obtain treatment or to travel away from the immediate living environment.

2. *Social functioning* refers to an individual's capacity to interact appropriately and communicate effectively with other individuals. Social functioning includes the ability to get along with others, e.g., family members, friends, neighbors, grocery clerks, landlords, bus drivers, etc. Impaired social functioning may be demonstrated by a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, social isolation, etc. Strength in social functioning may be documented by an individual's ability to initiate social contacts with others, communicate clearly with others, interact and actively participate in group activities, etc. Cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity also need to be considered. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority, e.g., supervisors, or cooperative behaviors involving coworkers.

"Marked" is not the number of areas in which social functioning is impaired, but the overall degree of interference in a particular area or combination of areas of functioning. For example, a person who is highly antagonistic, uncooperative or hostile but is tolerated by local storekeepers may nevertheless have marked restrictions in social functioning because that behavior is not acceptable in other social contexts.

3. *Concentration, persistence and pace* refer to the ability to sustain focused attention sufficiently long to permit the timely completion of tasks commonly found in work settings. In activities of daily living, concentration may be reflected in terms of ability to complete tasks in everyday household routines. Deficiencies in concentration, persistence and pace are best observed in work and work-like settings. Major impairment in this area can often be

assessed through direct psychiatric examination and/or psychological testing, although mental status examination or psychological test data alone should not be used to accurately describe concentration and sustained ability to adequately perform work-like tasks. On mental status examinations, concentration is assessed by tasks such as having the individual subtract serial sevens from 100. In psychological tests of intelligence or memory, concentration is assessed through tasks requiring short-term memory or through tasks that must be completed within established time limits. In work evaluations, concentration persistence, and pace are assessed through such tasks as filing index cards, locating telephone numbers, or disassembling and reassembling objects. Strengths and weaknesses in areas of concentration can be discussed in terms of frequency of errors, time it takes to complete the task, and extent to which assistance is required to complete the task.

4. *Deterioration or decompensation in work or work-like settings* refers to repeated failure to adapt to stressful circumstances which cause the individual either to withdraw from that situation or to experience exacerbation of signs and symptoms (i.e., decompensation) with an accommpanying difficulty in maintaining activities of daily living, social relationships, and/or maintaining concentration, peristance, or pace (i.e., deterioration which may include deterioriation of adaptive behaviors). Stresses common to the work environment include decisions, attendance, schedules, completing tasks, interactions with supervisors, interactions with peers, etc.

D. *Documentation:* The presence of a mental disorder should be documented primarily on the basis of reports from individual providers, such as psychiatrists and psychologists, and facilities such as hospitals and clinics. Adequate descriptions of functional limitations must be obtained from these or other sources which may include programs and facilities where the individual has been observed over a considerable period of time.

Information from both medical and nonmedical sources may be used to obtain detailed descriptions of the individual's activities of daily living; social functioning; concentration, persistance and pace; or ability to tolerate increased mental demands (stress). This information can be provided by programs such as community mental health centers, day care centers, sheltered workshops, etc. It can also be provided by others, including family members, who have knowledge of the individual's functioning. In some cases descriptions of activities of daily living or social functioning given by individuals or treating sources may be insufficiently detailed and/or may be in conflict with the clinical picture otherwise observed or described in the examinations or reports. It is necessary to resolve any inconsistencies or gaps that may exist in order to obtain a proper understanding of the individual's functional restrictions.

An individual's level of functioning may vary considerably over time. The level of functioning at a specific time may seem relatively adequate or, conversely, rather poor. Proper evaluation of the impairment must take any variations in level of functioning into account in arriving at a determination of impairment severity over time. Thus, it is vital to obtain evidence from relevant sources over a sufficiently long period prior to the date of adjudication in order to establish the individual's impairment severity. This evidence should include treatment notes, hospital discharge summaries, and work evaluation or rehabilitation progress notes if these are available.

Some individuals may have attempted to work or may actually have worked during the period of time pertinent to the determination of disability. This may have been an independent attempt at work, or it may have been in conjunction with a community mental health or other sheltered program which may have been of either short or long duration. Information concerning the individual's behavior during any attempt to work and the circumstances surrounding termination of the work effort are particularly useful in determining the individual's ability or inability to function in a work setting.

The results of well-standardized psychological tests such as the Wechsler Adult Intelligence Scale (WAIS), the Minnesota Multiphasic Personality Inventory (MMPI), the Rorschach, and the Thematic Apperception Test (TAT), may be useful in establishing the existence of a mental disorder. For example, the WAIS is useful in establishing mental retardation, and the MMPI, Rorschach, and TAT may provide data supporting several other diagnoses. Broad-based neuropsychological assessments using, for example, the Halstead-Reitan or the Luria-Nebraska batteries may be useful in determining brain function deficiencies, particularly in cases involving subtle findings such as may be seen in traumatic brain injury. In addition, the process of taking a standardized test requires concentration, persistence and pace; performance on such tests may provide useful data. Test results should, therefore, include both the objective data and a narrative description of clinical findings. Narrative reports of intellectual assessment should include a discussion of whether or not obtained IQ scores are considered valid and consistent with the individual's developmental history and degree of functional restriction.

In cases involving impaired intellectual functioning, a standardized intelligence test, e.g., the WAIS, should be administered and interpreted by a psychologist or psychaitrist qualified by training and experience to perform such an evaluation. In special circumstances, nonverbal measures, such as the Raven Progressive Matrices, the Leiter international scale, or the Arthur adaptation of the Leiter may be substituted.

Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. In this connection, it must be noted that on the WAIS, for example, IQs of 69 and below are characteristic of approximately the lowest 2 percent of the general population. In instances where other tests are administered, it would be necessary to convert the IQ to the corresponding percentile rank in the general population in order to determine the actual degree of impairment reflected by those IQ scores.

In cases where more than one IQ is customarily derived from the test administered, i.e., where verbal, performance, and full-scale IQs are provided as on the WAIS, the lowest of these is used in conjunction with listing 12.05.

In cases where the nature of the individual's intellectual impairment is such that standard intelligence tests, as described above, are precluded, medical reports specifically describing the level of intellectual, social, and physical function should be obtained. Actual observations by Social Security Administration or State agency personnel, reports from educational institutions and information furnished by public welfare agencies or other reliable objective sources should be considered as additional evidence.

E. *Chronic Mental Impairments:* Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. Individuals with chronic psychotic disorders commonly have their lives structured in such a way as to minimize stress and reduce their signs and symptoms. Such individuals may be much more impaired for work than their signs and symptoms would indicate. The results of a single examination may not adequately describe these individuals' sustained ability to function. It is, therefore, vital to review all pertinent information relative to the individual's condition, especially at times of increased stress. It is mandatory to attempt to obtain adequate descriptive information from all sources which have treated the individual either currently or in the time period relevant to the decision.

F. *Effects of Structured Settings:* Particularly in cases involving chronic mental disorders, overt symptomatology may be controlled or attenuated by psychosocial factors such as placement in a hospital, board and care facility, or other environment that provides similar structure. Highly structured and supportive settings may greatly reduce the mental demands placed on an individual. With lowered mental demands, overt signs and symptoms of the underlying mental disorder may be minimized. At the same time, however, the individual's ability to function outside of such a structured and/or supportive setting may not have changed. An evaluation of individuals whose symptomatology is controlled or attenuated by psychosocial factors must consider the ability of the individual to function outside of such highly structured settings. (For these reasons the paragraph C criteria were added to Listings 12.03 and 12.06.)

G. *Effects of Medication:* Attention must be given to the effect of medication on the individual's signs, symptoms and ability to function. While psychotropic medications may control certain primary manifestations of a mental disorder, e.g., hallucinations, such treatment may or may not affect the functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the

psychotropic medications, particular attention must be focused on the functional restrictions which may persist. These functional restrictions are also to be used as the measure of impairment severity. (See the paragraph C criteria in Listings 12.03 and 12.06.)

Neuroleptics, the medicines used in the treatment of some mental illnesses, may cause drowsiness, blunted effect, or other side effects involving other body systems. Such side effects must be considered in evaluating overall impairment severity. Where adverse effects of medications contribute to the impairment severity and the impairment does not meet or equal the listings but is nonetheless severe, such adverse effects must be considered in the assessment of the mental residual functional capacity.

H. *Effect of Treatment:* It must be remembered that with adequate treatment some individuals suffering with chronic mental disorders not only have their symptoms and signs ameliorated but also return to a level of function close to that of their premorbid status. Our discussion here in 12.00H has been designed to reflect the fact that present day treatment of a mentally impaired individual may or may not assist in the achievement of an adequate level of adaptation required in the work place. (See the paragraph C criteria in Listings 12.03 and 12.06.)

I. *Technique for Reviewing the Evidence in Mental Disorders Claims to Determine Level of Impairment Severity:* A special technique has been developed to ensure that all evidence needed for the evaluation of impairment severity in claims involving mental impairment is obtained, considered and properly evaluated. This technique, which is used in connection with the sequential evaluation process, is explained in § 404.1520a and § 416.920a.

12.01 Category of Impairments-Mental

12.02 *Organic Mental Disorders*: Psychological or behavorial abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. Disorientation to time and place; or
2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
4. Change in personality; or
5. Disturbance in mood; or
6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders*: Characterized by the onset of pyschotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
   a. Blunt affect; or
   b. Flat affect; or
   c. Inappropriate affect;

OR

4. Emotional withdrawal and/or isolation:

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

OR

C. Medically documented history of one or more episodes of actute symptoms, signs and functional limitations which at the time met the requirements in A and B of this listing, although these symptoms or signs are currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of deterioration or decompensation in situations which cause the individual to withdraw from that situation or to expefience exacerbation of signs or symptoms (which may include deterioration of adaptive behaviors); or
2. Documented current history of two or more years of inability to function outside of a highly supportive living situation.

12.04 *Affective Disorders:* Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
   a. Anhedonia or pervasive loss of interest in almost all activites; or
   b. Appetite disturbance with change in weight; or
   c. Sleep disturbance; or
   d. Psychomotor agitation or retardation; or
   e. Decreased energy; or
   f. Feelings of guilt or worthlessness; or
   g. Difficulty concentrating or thinking; or
   h. Thoughts of suicide; or
   i. Hallucinations, delusions or paranoid thinking; or
2. Manic syndrome characterized by at least three of the following:
   a. Hyperactivity; or
   b. Pressure of speech; or
   c. Flight of ideas; or
   d. Inflated self-esteem; or
   e. Decreased need for sleep; or
   f. Easy distractability; or
   g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
   h. Hallucinations, delusions or paranoid thinking;

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.05 *Mental Retardation and Autism:* Mental retardation refers to a significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22). (Note: The scores specified below refer to those obtained on the WAIS, and are used only for reference purposes.

Scores obtained on other standardized and individually administered tests are acceptable, but the numerical values obtained must indicate a similar level of intellectual functioning.) Autism is a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 to 69 inclusive or in the case of autism, gross deficits of social and communicative skills with two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.06 *Anxiety Related Disorders:* In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

a. Motor tension; or

b. Autonomic hyperactivity; or

c. Apprehensive expectation; or

d. Vigilance and scanning;

or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-liked settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

OR

C. Resulting in complete inability to function independently outside the area of one's home.

12.07 *Somatoform Disorders:* Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented by evidence of one of the following:

1. A history of multiple physical symptoms of several years duration, beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly; or

2. Persistent nonorganic disturbance of one of the following:

a. Vision; or

b. Speech; or

c. Hearing; or

d. Use of a limb; or

e. Movement and its control (e.g., coordination disturbance, psychogenic seizures, akinesia, dyskinesia; or

f. Sensation (e.g., diminished or heightened).

3. Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury;

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behavior).

12.08 *Personality Disorders:* A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or

2. Pathologically inappropriate suspiciousness or hostility; or

3. Oddities of thought, perception, speech and behavior; or

4. Persistent disturbances of mood or affect; or

5. Pathological dependence, passivity, or aggressivity; or

6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.09 *Substance Addiction Disorders:* Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

The required level of severity for these disorders is met when the requirements in any of the following (A through I) are satisfied.

A. Organic mental disorders. Evaluate under 12.02.

B. Depressive syndrome. Evaluate under 12.04

C. Anxiety disorders. Evaluate under 12.06.

D. Personality disorders. Evaluate under 12.08.

E. Peripheral neuropathies. Evaluate under 11.14.

F. Liver damage. Evaluate under 5.05.

G. Gastritis. Evaluate under 5.04.

H. Pancreatitis. Evaluate under 5.04.

I. Seizures. Evaluate under 11.02 or 11.03.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, Part 416, Subpart I, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

Subpart I—Determining Disability and Blindness

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act; 49 Stat. 647, as amended, 86 Stat. 1471, as amended by 88 Stat. 52, 86 Stat. 1475, 86 Stat. 1478; 42 U.S.C. 1302, 1382c, 1383, and 1383b; unless otherwise noted.

2. A new § 416.920a is added to read as follows:

§ 416.920a Evaluation of mental impairments.

(a) *General.* The steps outlined in § 416.920 apply to the evaluation of physical and mental impairments. In addition, in evaluating the severity of mental impairments, a special procedure must be followed by us at each administrative level of review. Following this procedure will assist us in:

(1) Identifying additional evidence necessary for the determination of impairment severity;

(2) Considering and evaluating aspects of the mental disorder(s) relevant to your ability to work; and

(3) Organizing and presenting the findings in a clear, concise, and consistent manner.

(b) *Use of the procedure to record pertinent findings and rate the degree of functional loss.*

(1) This procedure requires us to record the pertinent signs, symptoms, findings, functional limitations, and effects of treatment contained in your case record. This will assist us in determining if a mental impairment(s) exists. Whether or not a mental impairment(s) exists is decided in the same way the question of a physical impairmant is decided, i.e., the evidence must be carefully reviewed and conclusions supported by it. The mental status examination and psychiatric history will ordinarily provide the needed information. (See § 416.908 for further information about what is needed to show an impairment.)

(2) If we determine that a mental impairment(s) exists, this procedure then requires us to indicate whether certain medical findings which have been found especially relevant to the ability to work are present or absent.

(3) The procedure then requires us to rate the degree of functional loss resulting from the impairment(s). Four areas of function considered by us as essential to work have been identified, and the degree of functional loss in those areas must be rated on a scale that ranges from no limitation to a level of severity which is incompatible with the ability to perform those work-related functions. For the first two areas (activities of daily living and social functioning), the rating of limitation must be done based upon the following five point scale: none, slight, moderate, marked, and extreme. For the third area (concentration, persistence or pace) the following five point scale must be used: never, seldom, often, frequent, and constant. For the fourth area (deterioration or decompensation in work or work-like settings), the following four point scale must be used: never, once or twice, repeated (three or more), and continual. The last two points for each of these scales represents a degree of limitation which is incompatible with the ability to perform the work-related function.

(c) *Use of the procedure to evaluate mental impairments.* Following the rating of the degree of functional loss resulting from the impairment, we must then determine the severity of the mental impairment(s).

(1) If the four areas considered by us as essential to work have been rated to indicate a degree of limitation as "none" or "slight" in the first and second areas, "never" or "seldom" in the third area, and "never" in the fourth area, we can generally conclude that the impairment is not severe, unless the evidence otherwise indicates there is significant limitation of your mental ability to do basic work activities (see § 416.921).

(2) If your mental impairment(s) is severe, we must then determine if it meets or equals a listed mental disorder. This is done by comparing our prior conclusions based on this procedure (i.e., the presence of certain medical findings considered by us as especially relevant to your ability to work and our rating of functional loss resulting from the mental impairment(s)) against the paragraph A and B criteria of the appropriate listed mental disorder(s). If we determine that paragraph C criteria will be used in lieu of paragraph B criteria (see listings 12.03 and 12.06), we will, by following this procedure, indicate on the document whether the evidence is sufficient to establish the presence or absence of the criteria. (See paragraph (d) of this section).

(3) If you have a severe impairment(s) but the impairment(s) neither meets nor equals the listings, we must then do a residual functional capacity assessment, unless you are claiming benefits as a disabled child.

(4) At all adjudicative levels we must, in each case, incorporate the pertinent findings and conclusions based on this procedure in our decision rationale. Our rationale must show the significant history, including examination, laboratory findings, and functional limitations that we considered in reaching conclusions about the severity of the mental impairment(s).

(d) *Preparation of the document.* A standard document outlining the steps of this procedure must be completed by us in each case at the initial, reconsideration, administrative law judge hearing, and Appeals Council levels (when the Appeals Council issues a decision).

(1) At the initial and reconsideration levels the standard document must be completed and signed by our medical consultant. At the administrative law judge hearing level, several options are available:

(i) The administrative law judge may complete the document without the assistance of a medical advisor;

(ii) The administrative law judge may call a medical advisor for assistance in preparing the document; or

(iii) Where new evidence is received that is not merely cumulative of evidence already in your case file or where the issue of a mental impairment arises for the first time at the administrative law judge hearing level, the administrative law judge may decide to remand the case to the State agency for completion of the document and a new determination. Remand may also be made in situations where the services of a medical advisor are determined necessary but unavailable to the administrative law judge. In such circumstances, however, a remand may ordinarily be made only once.

(2) For all cases involving mental disorders at the administrative law judge hearing or Appeals Council levels, the standard document will be appended to the decision.

(Approved by the Office of Management & Budget under control number 0960–0413)

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Wednesday
August 28, 1985

Part VI

Department of the Treasury

Office of Revenue Sharing

31 CFR Part 51

Financial Assistance to Local Governments; Audit Requirements; Interim Rule

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Financial Assistance to Local Governments; Audit Requirements

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Interim rule.

SUMMARY: The Single Audit Act of 1984 (Pub. L. 98–502), which establishes uniform audit requirements for State and local governments receiving Federal financial assistance, was signed by the President on October 19, 1984. The interim rule makes the necessary changes in the Revenue Sharing regulations to conform to the requirements of the Single Audit Act.

DATES: Effective August 28, 1985.

Written comments must be received on or before October 28, 1985.

ADDRESSES: Send comments to Chief Counsel for Revenue Sharing, Office of Revenue Sharing, Treasury Department, Washington, D.C. 20226.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Chief Counsel or James C. Harmon, Attorney-Advisor, Office of Chief Counsel for Revenue Sharing, Washington, D.C. 20226 Telephone: (202) 634–5182.

SUPPLEMENTARY INFORMATION:

Background

The Single Audit Act of 1984 (the "Act") has as its primary goal the improvement of audits of Federal aid programs. The Act requires State or local governments which receive $100,000 or more a year in Federal funds to have an audit made for that year. The Act also provides that State or local governments receiving Federal financial assistance which is equal to or in excess of $25,000 but less than $100,000 a year shall have an option of filing audits in accordance with the Single Audit Act or in accordance with the Federal laws and regulations governing the programs in which the State or local governments participate.

The following changes must be made to the Revenue Sharing regulations to effectuate compliance with the Single Audit Act of 1984 and the implementing OMB Circular A–128:

The first amendment inserts the words "qualifications and" prior to the word "independence" in § 51.100(f) of the regulations. This change is necessary to ensure that all auditors performing audits of local governments which receive Federal financial assistance meet both the independence and qualifications standards as set forth in *Standards for Audit of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General.

The second change adds paragraph (g), which defines the Single Audit Act, to § 51.100 of the regulations.

The third amendment redesignates § 51.102(a)(2) as §§ 51.102 (a)(2) and (a)(3). This amendment is necessary because the Single Audit Act requires local governments receiving $100,000 or more in Federal financial assistance in a fiscal year to file audits in accordance with the Act.

The fourth amendment redesignates § 51.102(a)(3) as § 51.102(a)(4). Section 51.102(a)(4) changes the period of time that a recipient government has to file an audit with the Director. Currently, a recipient government has eight months from the end of the fiscal year audited to file its audit. Pursuant to § 51.102(a)(4), the recipient government must submit audits within thirty (30) days after completion of the audit, but no later than one year from the end of the fiscal year audited.

The fifth amendment deletes the substance of the current § 51.102(a)(4). The reference to the OMB Compliance Supplement contained in current § 51.102(a)(4) is now referenced in § 51.102(a)(3) of the revised regulations.

The sixth amendment adds to § 51.102(b) the language making available to recipient governments which receive between $25,000 and $100,000 in Federal financial assistance the election to perform audits in accordance with the Single Audit Act.

The seventh amendment provides the basis for granting waivers and the procedure for requesting waivers with respect to § 51.102(a)(2). This amendment also provides that § 51.100 (e) and (f) respectively, are to be referred to in defining an independent audit agency.

The eighth amendment adds to § 51.104 language to make audits of secondary recipients conform to the single audit.

The ninth amendment deletes § 51.105 and replaces it with language which explains the single audit.

The tenth amendment inserts language in § 51.107(a)(3) to indicate that financial statements prepared in accordance with generally accepted accounting principles (GAAP) must use Statements 3 and 7 and Interpretation 7 as issued by the National Council on Governmental Accounting (NCGA) in defining the entity to be examined. Those recipient governments whose financial statements are prepared in accordance with a comprehensive basis of accounting other than GAAP are to continue to use the definition of entity provided by the Bureau of the Census.

The eleventh amendment is to § 51.108(a) and changes the period of time that a recipient government has to make a completed audit report available for public inspection. Currently, the recipient government shall make the audit report available for public inspection within thirty (30) days after the audit is completed. Pursuant to § 51.108(a) of the revised regulations, the recipient government must make the audit reports available for public inspection within thirty (30) days after the audit is completed and received by the recipient government.

The twelfth amendment makes the following additions to § 51.108(d):

- Language which states that a recipient government shall keep the audit workpapers longer than 3 years if so notified in writing by the Director;
- Language which makes audit workpapers available upon request to the Director and the Comptroller General at the completion of the audit; and
- Language which provides that recipient governments which have their audits performed by independent public accountants must notify those accountants of the requirement of retention of audit workpapers.

The thirteenth and final amendment adds paragraph (c) to § 51.109. Subsection (c) provides for the enforcement of the reporting requirements for those recipient governments filing audits in accordance with the Single Audit Act.

Need for Immediate Guidance

The changes that have been are necessary to comply with the Single Audit Act of 1984 and the implementing OMB Circular A–128. This interim rule is needed to provide immediate guidance to units of local government and the public. Accordingly, it is impractical to issue these interim regulations in accordance with the notice and public comment procedures of 5 U.S.C. 553(b), or subject to the effective date limitations of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Since no notice in proposed rulemaking is required for interim rules the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply.

Executive Order 12291—"Federal Regulation"

The interim rule does not constitute a "major rule" within the meaning of section 1(b) of Executive Order 12291, entitled "Federal Regulation." A regulatory analysis is not required.

List of Subjects in 31 CFR Part 51

Accounting, Administrative practice and procedure, Civil rights, Handicapped, Aged, Indians, Revenue Sharing, Reporting and recordkeeping requirements.

Authority

The interim rule is issued under the authority of the Revenue Sharing Act (31 U.S.C. 6701 through 6724) and Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342) as amended by Treasury Department Order No. 103–1 dated March 18, 1982.

31 CFR Part 51, is, therefore, amended in the manner set forth below.

Dated: June 7, 1985.

Michael F. Hill,

Director, Office of Revenue Sharing.

PART 51—FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

1. Section 51.100 is amended by revising paragraph (f) and adding a new paragraph (g) to read as follows:

§51.100 Definitions.

* * * * *

(f) "*Independent audit*" means an audit conducted in a manner consistent with the qualifications and independence requirements specified in the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, issued by the Comptroller General of the United States.

(g) "*Single Audit Act*" means the application of uniform audit requirements for State and local governments as provided for by the Single Audit Act of 1984, Pub. L. 98–502 (31 U.S.C. 7501–07) and the implementing OMB Circular A–128, which appears as Appendix A to this subpart.

2. Section 51.102 is amended by revising paragraphs (a) (2), (3), and (4), (b) and the parenthetical text which follows the section to read as follows:

§ 51.102 Auditing and evaluation.

(a) *Audit requirement.* * * *

(2) A government which receives entitlement funds which are equal to or in excess of $25,000 but less than $100,000 in each of three consecutive fiscal years, shall have an audit made in accordance with paragraph (a) (1) of this section not less often than once every three years. The required audit would be conducted for any one of three consecutive years in which the entitlement funds were received.

(3) A government which receives $100,000 or more in a fiscal year shall have an audit made for each such fiscal year in accordance with the requirements of the Single Audit Act under §51.105 except that if the government establishes to the satisfaction of the Director that it is required by its constitution or statutes, administrative rules, regulations, guidelines, standards, or policies to conduct its audits on a biennial basis, then such audits may be made on a biennial basis. Audits conducted on a biennial basis shall cover both years within the biennial period. The OMB Compliance Supplement may be used by auditors as a guide in the performance of the compliance aspects of audits required under this section.

(4) Audits conducted to comply with the provisions of paragraph (a) (2) of this section shall be submitted to the Director within thirty (30) days after completion of the audit, but no later than one year from the end of the fiscal year audited.

(b) *Election by recipient government.* (1) A recipient government that receives entitlement funds which are equal to or in excess of $25,000 but less than $100,000 in any fiscal year shall have the option of:

(i) Having an audit made for such fiscal year in accordance with the requirements of the Single Audit Act under § 51.105 of this subpart; or

(ii) Complying with the requirements of § 51.102(a) (2) of this subpart.

(2) A recipient government may elect to have the requirements of paragraph (a) of this section not applicable to that government upon certifying to the Director that the audits are conducted in compliance with State or local law and meet the following requirements:

(i) The performance of the audits of the financial statements are independent as defined in § 51.100(f);

(ii) The audits of the recipient governments are conducted in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States;

(iii) The audits will be conducted at least as often as would be required by paragraph (a)(2) of this section; and

(iv) A compliance audit and an auditor's report on the study and evaluation of the internal accounting controls, as well as a financial audit are conducted.

* * * * *

(Information collection requirements in paragraph (a) (4) approved by the Office of Management and Budget under control number 1505–0038, and in paragraph (b)(2)(iv) under control number 1505–0086).

* * * * *

3. Section 51.103 and the parenthetical text which follows it, is revised to read as follows:

§ 51.103 Waiver of audit requirements.

(a) *Basis for granting waiver.* The Director may waive the provisions of §51.102(a)(2) for any recipient government which makes application for such a waiver for any fiscal period upon determining that:

(1) The accounts of such government are not auditable and the government is making substantial progress toward making its accounts auditable; or

(2) The government has been audited by a State audit agency which does not follow generally accepted government auditing standards or which is not independent as defined in §51.100 (e) and (f) respectively, and

which is demonstrating progress toward taking the necessary corrective action.

(b) *Procedure for requesting waiver.* (1) The chief executive officer of the recipient government shall apply to the Director in writing for the waiver and provide the following information:

(i) If the waiver is requested due to unaudibility of government financial accounts, an assurance that in the course of determining compliance with §51.102(a)(2), the independent auditor rendered an opinion that part or all of the financial accounts are not auditable. The waiver request shall further clearly set forth the arrangements which have been made or steps taken toward making such financial accounts auditable.

(ii) If the waiver is requested pursuant to paragraph (a)(2), an assurance that the State audit agency is demonstrating progress toward performing audits in accordance with generally accepted government auditing standards or becoming independent. The waiver request shall further clearly set forth the arrangements which have been made or steps taken toward establishing the use of generally accepted government auditing standards or achieving independence.

(2) The Director shall determine whether the recipient government or the State audit agency is making substantial progress towards taking the necessary corrective action.

(Information collection requirements in paragraph (b)(1) approved by the Office of Management and Budget under control number 1505–0086)

4. Section 51.104 is revised to read as follows:

§51.104 Audits of secondary recipients.

(a) *In general.* Each local government which provides $25,000 or more of Federal financial assistance to a secondary recipient (subrecipient) in any fiscal year shall be responsible for the audit of any entitlement funds transferred to the secondary recipient.

(b) *Responsibility of primary recipient government.* The primary recipient government shall:

(1) Determine whether the secondary recipient has met the audit requirements of § 51.102(a) or OMB's Circular A–110 for universities, hospitals or other nonprofit organizations;

(2) Determine whether the secondary recipient has expended the funds provided in accordance with the Act and its implementing regulations. This may be accomplished by reviewing the audit report of the secondary recipient or through other means (e.g., program reviews) if the secondary recipient has not yet conducted such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with the Act and regulations;

(4) Consider whether secondary recipient audits necessitate adjustment of the primary recipient's own records; and

(5) Require each secondary recipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this section.

5. Section 51.105 is revised to read as follows:

§ 51.105 Reliance upon audits under other Federal laws.

The Single Audit Act requires all States and local governments receiving $100,000 or more in Federal financial assistance for any of its fiscal years beginning after December 31, 1984, to conduct an annual audit made in accordance with the requirements of the Single Audit Act unless the State or local government is permitted to conduct its audits biennially by reason of administrative rules, regulations, guidelines, standards or policies. However, after December 31, 1986, any State or local government that conducts its audits biennially must conduct such audits annually unless such State or local government codifies a requirement for biennial audits in its constitution or statutes before January 1, 1987. Audits conducted on a biennial basis shall cover both years within the biennial period. An audit performed under the Single Audit Act shall be submitted to the Office of Revenue Sharing within thirty (30) days after completion of the audit, but no later than one year from the end of the fiscal year audited.

6. Section 51.107(a)(3) is revised to read as follows:

§ 51.107 Scope of audits.

(a) *In general.* * * *

(3) Audits pursuant to § 51.102(a)(2) for which reporting is said to be in accordance with generally accepted accounting principles (GAAP) must be guided in defining the entity by the National Council on Governmental Accounting's Statements 3 and 7 and Interpretation 7. (These pronouncements are considered as continuing in force by the recently established Governmental Accounting Standards Board, which is the successor organization to the National Council on Governmental Accounting). Those governments whose financial statements are prepared in accordance with a comprehensive basis of accounting other than GAAP should continue to use the definition provided by the Bureau of the Census which includes a unit as part of the entity if the Bureau has classified the unit as being dependent for general statistical purposes upon the recipient government. The classification of governments is contained in "The Census of Governments, Governmental Organization (Vol. 1)," published by the Bureau of the Census every five years and updated on a current basis to reflect significant changes occurring between censuses.

* * * * *

7. Section 51.108 (a) and (d) are revised to read as follows. The parenthetical text at the end of § 51.108(d) has already been codified in the CFR and is shown here only for the convenience of the user.

§ 51.108 Public inspection, retention and submission of audit reports and workpapers.

(a) *Public inspection.* A copy of the audit report under §§ 51.102(a)(2) and 51.105 shall be made available to any person for a period of three years. Within thirty (30) days after the audit is completed and received by the recipient, the report shall be placed at the principal office of the recipient government for public inspection during normal business hours. Where feasible, local public libraries and other public buildings should be used also. If the recipient government has no principal office, the audit report shall be made available for public inspection at a public place or places within the political boundaries of the recipient government to satisfy the requirements of this subsection.

* * * * *

(d) *Retention of audit workpapers.* Audit workpapers and related reports shall be retained for three years from the date of the audit report described in paragraph (a), unless the auditor is notified in writing by the Director to extend the retention period. Audit workpapers shall be made available upon request to the Director and the Comptroller General or to their representatives at the completion of the audit. Recipient governments whose audits are performed by independent public accountants, not in their employ, may meet the requirement of this section by informing the firm or individual of this requirement and encouraging them to comply.

(Information collection requirements in paragraphs (a) and (b) approved by the Office of Management and Budget under control number 1505–0086 and in paragraphs (c) and (d) under control number 1505–0038)

8. A new paragraph (c) is added to § 51.109 to read as follows:

§ 51.109 Procedures for effecting compliance.

* * * * *

(c) *Compliance with reporting requirements under the Single Audit Act.* Pursuant to section 7504 of the Single Audit Act, if a recipient government fails to comply with the audit reporting requirements of § 51.102(a)(3), enforcement shall be by the cognizant agency that has been designated by the Office of Management and Budget. If the Office of Revenue Sharing is not the cognizant agency designated by the Office of Management and Budget, the Director shall cooperate with the agency that has been so designated by the Office of Management and Budget.

9. Subpart F of Part 51 is amended by adding Appendix A to read as follows:

Appendix A to Subpart F—OMB Circular A–128, Audits of State and Local Governments

BILLING CODE 4810-26-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A–128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–

502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A–102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments," and Attachment F of Circular A–102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a

schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A–87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A–102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A–102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial

Management Division, Office of Management and Budget, telephone number 202/395–3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,

Director.

Attachment—Circular A–128

Definition of Major Program as Provided in Pub. L. 98–502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Diversion Limitation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes for the months of September 1985 through March 1986 the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the Nebraska-Western Iowa order. The revision is made in response to a request by a cooperative association representing a substantial number of producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Temporary Revision of Diversion Limitation Percentages: Issued August 2, 1985; published August 9, 1985 (50 FR 32227).

William T. Manley, Deputy Administrator, Agricultrual Marketing Service, has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision is issued pursuant to the provisions of the Agricultrual Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (50 FR 32227) concerning a proposed increase in the amount of milk that may be moved directly from producer farms to nonpool manufacturing plants for the months of September 1985 through March 1986. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 16, 1985.

Statement of Consideration

After consideration of all relevant material, data, views and arguments filed and other available information, it is hereby found and determined that, for the months of September 1985 through March 1986, the diversion limitation percentage as set forth in § 1065.13(d) should be increased from the present 40 percent to 60 percent.

Pursuant to the provisions of § 1065.13(d), the diversion limitation percentages set forth in § 1065.13(d) (2) and (3), respectively, may be increased or decreased up to 20 percentage points during any month. Such changes may be made to encourage additional needed milk shipments to pool distributing plants or to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc., a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of September 1985 through March 1986, the percentage of allowable diversions be increased 20 percentage points.

The basis of the cooperative's request is that for the period in question, the order provisions require more milk to move through pool plants than is necessary to meet the fluid, or bottling, requirements of the market. The cooperative cited improved milk quality as a result of less pumping and more economic hauling as the benefits to be gained from the proposed temporary relaxation. According to the cooperative, the financial status of its producer members may be jeopardized unless the more economic hauling practices resulting from increased diversion allowances can be adopted.

The cooperative also stated that diversion percentages should be the reciprocal of supply plant shipping percentages in order to allow the maximum amount of milk to move directly to manufacturing plants. The 60-percent diversion limit for September through March 1986 will complement the 40-percent supply plant shipping requirement for the same period.

The temporary revision was supported also in comments filed by the National Farmers' Organization, Inc., a dairy farmer cooperative that also represents producers.

Without the temporary revision, milk of some dairy farmers would first have to be received at a pool plant to qualify it for pooling rather than being shipped directly from the farm to nonpool manufacturing plants for surplus use. These requirements would result in costly and inefficient movements of milk. It is concluded that the relaxation of the diversion limits by 20 percentage points for the months of September through March 1986 will prevent uneconomic movements of milk through pool plants merely for the purpose of qualifying it as producer milk under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September 1985 through March 1986;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

§ 1065.13 [Amended]

It is therefore ordered, that in paragraphs (d) (2) and (3) of § 1065.13, the provision "40 percent" is revised to "60 percent" for the months of September 1985 through March 1986.

The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Effective date: August 29, 1985.

Signed at Washington, D.C., on: August 23, 1985.

W.H. Blanchard,

Acting Director, Dairy Division.

[FR Doc. 85–20577 Filed 8–28–85; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 506a

[No. 85–745]

Definitive-Form Securities

Dated: August 21, 1985.

AGENCY: Federal Home Loan Bank Board ("Board").

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is amending 12 CFR 506a to permit the issuance of Federal Home Loan Bank ("Bank") securities in printed or engraved ("definitive") form, rather than book-entry form, to the extent expressly permitted by the terms of the securities. Currently, Part 506a requires that Bank securities be issued in book-entry form unless specifically excepted by the regulations. The amendment also includes conforming changes pertaining to the conversion, withdrawal, and delivery provisions of Part 506a.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Attorney, Office of General Counsel, (202–377–6455), Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Although the Board is amending Part 506a to facilitate the issuance of definitive Bank securities, the Board reaffirms its policy adopted in 1977 of requiring the issuance of Bank securities in book-entry form to the extent feasible. 42 FR 56316 (October 25, 1977). The Board's experience has confirmed its initial views that issuance in book-entry form benefits investors, the Board, and the financial community by (1) reducing the risk of loss due to theft, mishandling and counterfeiting; (2) decreasing the cost of issuing, storing and delivering physical certificates; and (3) minimizing the paperwork created by the growing volume of public debt transactions. The Board's views are confirmed by the recent decisions of the Treasury to issue Treasury notes and bonds solely in book-entry form commencing in 1986, *see* U.S. Department of the Treasury, Press Release (Feb. 22, 1985), and of the Federal Home Loan Mortgage Corporation to issue mortgage-backed securities solely in book-entry form, *see* 1 CFR 462 (1985).

However, the Board must have the flexibility to issue Bank securities in definitive form if circumstances warrant. For example, on December 4, 1984, the Board amended Part 506a to permit the issuance in definitive form of registered securities targeted to markets outside the United States. 49 FR 48177 (December 11, 1984). This amendment was designed, in accordance with revised Treasury regulations, to facilitate sale in the Eurodollar market of Bank securities not subject to the 30-percent withholding tax on the payment of U.S.-source interest to foreign investors and foreign corporations.

Rather than amending Part 506a each time that a new type of Bank security requires issuance in definitive form, the Board, as requested by the Banks, is amending Part 506a to authorize the issuance of Bank securities in definitive form to the extent expressly permitted by the terms of the securities. This allows deletion of a list of exceptions to the book-entry rule, including issuance of registered securities targeted to markets outside the United States and of consolidated discount notes. The Board will continue to restrict the issuance of definitive-form securities by ensuring that the terms of Bank securities permit issuance in definitive form only to the extent necessitated by the particular factual circumstances. Furthermore, although the terms of such securities permit issuance in definitive form, the terms do not prohibit issuance in, or conversion to, book-entry form. In fact, it is the Board's understanding that most institutional holdings of registered securities targeted to markets outside the United States are maintained in book-entry form. The Board is also making conforming changes to the conversion, withdrawal, and delivery provisions of Part 506a.

The Board finds that observance of the notice and comment procedures prescribed by 5 U.S.C. 553(b) and 12 CFR 508.12 and 508.13, and delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14, is unnecessary for the following reasons: (1) The amendments are minor and conforming in nature, and (2) the revisions relate to internal agency procedures regarding securities issuance by the Banks.

List of Subjects in 12 CFR Part 506a

Federal home loan banks, Savings and loan associations.

Accordingly, the Board hereby amends Part 506a of Subchapter A of Chapter V, Title 12 of the *Code of Federal Regulations,* as set forth below.

SUBCHAPTER A—GENERAL

PART 506a—BOOK-ENTRY PROCEDURES FOR FEDERAL HOME LOAN BANK SECURITIES

1. The authority citation for 12 CFR Part 506a will continue to read:

Authority: Sec. 11, 47 Stat. 733, as amended; Sec. 17, 47 Stat. 736, as amended, 12 U.S.C. 1431, 1437; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1947 Supp.

PART 506a—[AMENDED]

2. Delete the phrase "Federal home loan bank(s)" whenever it appears in Part 506a and substitute the phrase "Federal Home Loan Bank(s)".

§ 506a.1 [Amended]

3. Amend § 506a.1(c) by removing the phrase "or" before the phrase "registered" and by inserting before the final period at the end thereof, the following: ", or other Federal Home Loan Bank securities, to the extent that their terms expressly permit issuance in definitive form".

§ 506a.2 [Amended]

4. Amend § 506a.2(b) by removing the phrase "registered securities targeted to markets outside the United States, to the extent permitted by the terms of the securities" and by substituting the phrase "other Federal Home Loan Bank securities, to the extent that their terms expressly permit issuance in definitive form".

§ 506a.4 [Amended]

5. Amend § 506a.4(d) by removing the phrase "registered securities targeted to markets outside the United States, to the extent permitted by the terms of the securities" and by substituting the phrase "other Federal Home Loan Bank securities, to the extent that their terms expressly permit issuance and delivery in definitive form".

§ 506a.5 [Amended]

6. Amend § 506a.5(a) by removing from the first sentence thereof the phrase "registered securities targeted to

markets outside the United States," and by substituting the phrase "other Federal Home Loan Bank securities, to the extent that their terms expressly permit withdrawal in definitive form,"; and by amending the second sentence thereof by removing the phrase "registered securities targeted to markets outside the United States in definitive form if not" and substituting the phrase "any Federal Home Loan Bank securities in definitive form, if not expressly".

§ 506a.6 [Amended]

7. Amend § 506a.6 by removing from the second sentence thereof the phrase "registered securities issued in definitive form targeted to markets outside the United States, or Federal Home Loan Bank consolidated discount notes," and substituting the phrase, "or other Federal Home Loan Bank securities, to the extent expressly permitted by their terms,".

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-20657 Filed 8-28-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM 79-14]

Natural Gas Policy Act; Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: September 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street N.E., Washington, DC 20426, (202) 357-8500.

Issued: August 23, 1985.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of September 1985 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to September 1985 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1984]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	$2.283	$2.291	[illegible]	$2.307	$2.315	[illegible]	$2.331	[illegible]	$2.345	[illegible]	[illegible]	[illegible]
NGPA section 102 threshold	[illegible]	[illegible]	3.632	3.656	[illegible]	3.705	3.730	3.752	3.774	[illegible]	3.621	[illegible]
NGPA section 109 threshold	[illegible]	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421	2.428	[illegible]	2.444
130 pct of No. 2 fuel oil in New York City threshold	7.730	7.570	7.570	8.550	8.590	7.670	7.930	7.740	7.650	[illegible]	[illegible]	[illegible]

[Calendar year 1985]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.			
Incremental pricing threshold	$2.373	$2.378	$2.383	[illegible]	[illegible]	$2.410	$2.421	$2.427	[illegible]			
NGPA section 102 threshold	[illegible]	3.890	3.911	3.932	[illegible]	3.992	4.022	4.045	4.068			
NGPA section 109 threshold	2.452	2.457	[illegible]	2.467	2.478	[illegible]	[illegible]	[illegible]	2.512			
130 pct of No. 2 fuel oil in New York City threshold	7.170	7.310	[illegible]	[illegible]	7.210	7.120	7.400	7.000	6.520			

[FR Doc. 85-20634 Filed 8-28-85; 8:45 am]

BILLING CODE 8717-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-208; Correction]

Retention of Firearms Transaction Records

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision); Correction.

SUMMARY: This document corrects a section number cited in FR Doc. 85-15529, published in the Federal Register on June 28, 1985, at 50 FR 26702, which changed the retention period for most firearms licensee records.

FOR FURTHER INFORMATION CONTACT: J. Barry Fields, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7591).

SUPPLEMENTARY INFORMATION:

Paragraph 1. The table of sections in 27 CFR Part 178 was amended (50 FR 26703) by adding a new entry. This new entry should be § 178.129, not § 178.128.

Paragraph 2. The revised §178.121(a) (50 FR 26703) refers to a new § 178.128: this reference should be § 178.129, not § 178.128.

Paragraph 3. The new section added (50 FR 26704) should be § 178.129, not § 178.128.

Signed: August 21, 1985.

W.T. Drake,

Acting Director.

[FR Doc. 85-20692 Filed 8-28-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program; Preemption and Supersession of Certain Provisions of State Law

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM) Interior.

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 948 to preempt and supersede certain provisions of Article Three of Chapter 22A of the Code of West Virginia, which article is part of the West Virginia Energy Act (WVEA) and the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These provisions involve the exclusion of support facilities from the definition of surface-mining operations, the establishment of special requirements for surface-mining operations two acres or smaller in size, final bond release requirements, the Commissioner's authority to grant variances from performance standards, limits on an operator's liability for injuries sustained by citizens accompanying inspectors, and the Commissioner's authority to issue permits to applicants in violation of Federal laws or the environmental laws of other States

This action is being taken because the Director has determined that these provisions are inconsistent with the requirements of SMCRA. The Director's determination is based on the reasons cited in Findings 4, 5, 6, 7, 8 and 10 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 **Federal Register** (50 FR 28316–28324).

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

On April 12, 1985, the West Virginia legislature adopted a bill known as the West Virginia Energy Act, which the Governor signed into law on May 3, 1985. The Act repealed the West Virginia Surface Coal Mining and Reclamation Act and incorporated it into the WVEA in a somewhat altered fashion. On July 11, 1985, the Director approved the WVEA as an amendment to the West Virginia program, with the exception of six provisions found to be inconsistent with SMCRA (50 FR 28316–28324). By separate notice on the same date, the Director proposed to preempt and supersede these six provisions and invited comment on this proposal (50 FR 28343–28345). Detailed background on the actions announced in this document can be found in the two **Federal Register** notices referenced above.

II. Director's Findings and Decision

1. Support Facilities

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede specific wording in WVEA section 22A–3–3(2), which is part of the definition of "surface-mining operations." The complete text reads as follows:

(2) The areas upon which the above activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities: Provided, That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting subject to section seven of this article: Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas.

The specific wording being preempted and superseded is:

Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas.

The Director is taking this action because he has determined that this provision is inconsistent with section 701(28)(B) of SMCRA, based on the reasons cited in Finding 4 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 **Federal Register** (50 FR 28318).

2. Special Requirements for Mines Not Exceeding Two Acres

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede, in part, specific wording in WVEA section 22A–3–9a(a)(8), which sets bonding requirements for surface-mining operations affecting two acres or less. The complete text of WVEA section 22A–3–9a(a)(8) reads as follows:

(8) A bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the director and in the minimum amount of five thousand dollars per acre, for a maximum disturbance of two acres, exclusive of roadways and temporary spoil placement. The bond shall be payable to the State of West Virginia and conditioned that the applicant shall complete regrading to approximate original contour and revegetation of all disturbed areas; and

The specific wording being preempted and superseded in part is the phrase "exclusive of roadways and temporary spoil placement."

The Director is taking this action because, to the extent that this language could be interpreted as allowing operations affecting in excess of two acres to qualify for the special requirements, this provision is inconsistent with section 528(2) of SMCRA and is less effective than the definition of "affected area" at 30 CFR 701.5. The Director's determination is based on the reasons cited in Finding 5 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 **Federal Register** (50 FR 28318–28319). The Director recognizes West Virginia's authority to establish whatever bonding requirements it chooses for operations affecting two acres or less; the

preemption and supersession only prohibit the use of bonded area criteria to determine the size of the affected area as well.

3. Final Bond Release Requirements

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede specific wording in WVEA section 22A–3–23(c)(3), which in certain circumstances would permit final bond release prior to attainment of revegetation in accordance with the approved reclamation plan. The complete text of WVEA section 22A–3–23(c)(3) reads as follows:

(3) When the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section twelve of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan: Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

The specific wording being preempted and superseded is:

Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

The Director is taking this action because he has determined that this provision is inconsistent with section 519(c)(3) of SMCRA, based on the reasons cited in Finding 6 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 **Federal Register** (50 FR 28319).

4. Variances From Performance Standards

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede WVEA section 22A–3–12(e), which grants the Commissioner authority to allow variances from performance standards, in its entirety. The complete text being preempted and superseded reads as follows:

(e) The commissioner may permit variances from the requirements of this section: Provided, That the watershed control of the area is improved: Provided, however, That complete backfilling with spoil material shall be required to completely cover the highwall, which material will maintain stability following mining and reclamation.

The Director is taking this action because he has determined that this provision is inconsistent with section 515(e) of SMCRA, based on the reasons cited in Finding 7 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 **Federal Register** (50 FR 28319).

5. Operator Liability Limits

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede specific wording in WVEA section 22A–3–15(g), which limits operator liability for injuries suffered by citizens accompanying inspectors on inspections. The complete text of WVEA section 22A–3–15(g) reads as follows:

(g) Whenever on the basis of available information, including reliable information from any person, the commissioner has cause to believe that any person is in violation of this article, any permit condition or any regulation promulgated under this article, the commissioner shall immediately order State inspection of the surface-mining operation at which the alleged violation is occurring unless the information is available as a result of a prior State inspection. The commissioner shall notify any person who supplied such reliable information when the State inspection will be carried out. Such person may accompany the inspector during the inspection: Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip. Any such person accompanying an inspector on an inspection shall be responsible for supplying any safety equipment required for his use.

The specific wording being preempted and superseded is:

Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip.

The Director is taking this action because he has determined that this provision is inconsistent with section 521(a)(1) of SMCRA, based on the reasons cited in Finding 8 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 **Federal Register** (50 FR 28319). The Director previously set aside an identical provision in section 20–6–15(g) of the now-repealed West Virginia Surface Coal Mining and Reclamation Act as being inconsistent with section 521(a)(1) of SMCRA (49 FR 1489–1490, January 12, 1984).

6. Permit Issuance to Persons in Violation of Federal Laws or Environmental Laws in Other States

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a) the Director has decided to preempt and supersede specific wording in WVEA section 22A–3–18(c), which governs permit issuance to persons with outstanding violations or patterns of violations. The complete text of WVEA section 22A–3–18(c) reads as follows:

(c) Where information available to the department indicates that any surface-mining operation located in the State of West Virginia, owned or controlled by the applicant, is currently in violation of this article or other environmental laws or regulations, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the commissioner or the department or agency which has jurisdiction over the violation, and no permit may be issued to any applicant after a finding by the commissioner, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstration pattern of willful violations of this article of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article: Provided, That if the commissioner finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, he shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the commissioner and based upon a petition for reinstatement, permits may be issued to any applicant if, after the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited shall have paid into the special reclamation fund any additional sum of money determined by the commissioner to be adequate to reclaim the disturbed area, and the commissioner is satisfied that the petitioner will comply with this article.

The specific wording being preempted and superseded is the phrase "located in the State of West Virginia" in the first clause and the phrase "of this article" following "demonstrated pattern of willful violations."

The Director is taking this action because he has determined that these phrases render the State law inconsistent with section 510(c) of SMCRA, based on the reasons cited in Finding 10 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July

11, 1985 Federal Register (50 FR 28319–28320).

III. Effect of Director's Decision

Because 30 CFR 732.17(g) provides that no changes to State laws or regulations shall take effect for purposes of a State program until approved as an amendment, it is generally not necessary to use the preemption and supersession provisions of 30 CFR 730.11(a) and section 505(b) of SMCRA. However, in this case the State of West Virginia enacted legislation repealing the West Virginia Surface Coal Mining and Reclamation Act and is replacing it with the West Virginia Energy Act without a provision clearly specifying that program changes would not take effect until approved by OSM.

Therefore, to remove any ambiguity regarding the status of those provisions which the Director found inconsistent with SMCRA and less effective than the Federal regulations, the Director, pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), is preempting, superseding and setting aside six provisions of State law, as discussed in the section of this notice entitled "Director's Findings and Decision." This action clarifies that those provisions cannot be implemented or enforced by any party.

IV. Public Comment

No objections to or comments on this action were received during the public comment period, which closed on August 12, 1985.

V. Procedural Requirements

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 23, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq).

2. 30 CFR 948.13 is revised to read as follows:

§ 948.13 State statutory and regulatory provisions set aside.

(a) The following wording in section 22A–3–3(w)(2) of the Code of West Virginia is inconsistent with section 701(28)(B) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply [illegible]

(b) Section 22A–3–9a(a)(8) of the Code of West Virginia is inconsistent with section 528(2) of the Surface Mining Control and Reclamation Act of 1977 and less effective than the definition of "affected area" at 30 CFR 701.5. This provision is hereby set aside to the extent that it could be interpreted as excluding roadways and temporary spoil placement sites from the area considered to be affected for purposes of determining eligibility for the special regulatory program governing operations two acres or smaller in size.

(c) The following wording in section 22A–3–23(c)(3) of the Code of West Virginia is inconsistent with section 519(c)(3) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

(d) Section 22A–3–12(e) of the Code of West Virginia is inconsistent with section 515(e) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside in its entirety.

(e) The following wording in section 22A–3–15(g) of the Code of West Virginia is inconsistent with section 521(a)(1) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip.

(f) The following italicized wording in section 22A–3–18(c) of the Code of West Virginia is inconsistent with section 510(c) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

(c) Where information available to the department indicates that any surface-mining operation *located in the State of West Virginia*, owned or controlled by the applicant, is currently in violation of this article or other environmental laws or regulations, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the commissioner or the department or agency which has jurisdiction over the violation, and no permit may be issued to any applicant after a finding by the commissioner, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations *of this article* of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article: Provided, That if the commissioner finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, he shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the commissioner and based upon a petition for reinstatement, permits may be issued to any applicant if, after the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited shall have paid into the special reclamation fund any additional sum of money determined by the commissioner to be adequate to reclaim the disturbed area, and

the commissioner is satisfied that the petitioner will comply with this article.

[FR Doc. 85-20635 Filed 8-28-85; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 85-39]

Special Local Regulations; Charleston Sternwheel Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Mile 58.0 to 61.0, Kanawha River. The "Charleston Sternwheel Regatta", an approved marine event, will be held on August 31 thru September 1, 1985, at Charleston, West Virginia. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 11:00 a.m. on August 31, and terminate at 10:30 p.m. on September 1, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Kanawha River between miles 58.0 and 61.0 during the "Charleston Sternwheel Regatta", August 31 and September 1, 1985. This event will consist of rowing races, an innertube race, jet ski competition, canoe races, sky diving, sternwheel races, towboat races, a towboat shoving contest and a fireworks display, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was not received until July 5, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, project officer, Boating Technical Branch, and LT. R.E. Kilroy, USCG, project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In Part 100, a new temporary § 100.35-0239 is added, to read as follows:

§ 100.35-0239 Kanawha River, mile 58.0 through 61.0.

(a) *Regulated Area.* The area between Mile 58.0 and 61.0 Kanawha River is designated the regata area, and may be closed to commercial and recreational navigation or mooring between the hours of 11:00 a.m. on August 31, and 10:30 p.m. on September 1, 1985. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed Four (4) hours in duration. Marines will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35-0239 will be effective from 11:00 a.m. on August 31, and terminate at 10:30 p.m. on September 1, 1985. (local time).

Dated: August 16, 1985.

R.J. Collins,

Captain, U.S. Coast Guard Acting Commander, Second Coast Guard District.

[FR Doc. 85-20666 Filed 8-28-85; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD2 85-42]

Special Local Regulations; Lawrenceville Community Day Festival

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Mile 3.0 to 4.0,

Allegheny River. The "Lawrenceville Community Day Festival", an approved marine event, will be held on August 31, 1985, at Pittsburgh, Pennsylvania. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 1:00 p.m. on August 31, and terminate at 5:00 p.m. on August 31, 1985. All times listed are local time.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Allegheny River between miles 3.0 and 4.0 during the "Lawrenceville Community Day Festival", August 31, 1985. This event will consist of pleasure boat races, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was not received until August 5, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaulation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, project officer, Boating Technical Branch, and LT. R.E. Kilroy, USCG, project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In part 100, a new temporary § 100.35–0242 is added, to read as follows:

§ 100.35–0242, Allegheny River, mile 3.0 through 4.0.

(a) *Regulated Area.* The area between Mile 3.0 and 4.0 Allegheny River is designated the regatta area, and may be closed to commercial and recreational navigation or mooring between the hours of 1:00 p.m. and 5:00 p.m. on August 31, 1985. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed three (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall service as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in explusion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0242 will be effective from 1:00 p.m. on August 31, and terminate at 5:00 p.m. on August 31, 1985. (local time.)

Dated: August 16, 1985.

R.J. Collins,

Captain, U.S. Coast Guard, Acting Commander, Second Coast Guard District.

[FR Doc. 85–20667 Filed 8–28–85; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Modification of the Special Regulations for the Grizzly Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service issues an emergency rule modifying the special regulations that allow hunting of the threatened grizzly bear in northwestern Montana. This rule is applicable only to the 1985 hunting season, but the Service intends to issue new permanent regulations that will cover subsequent seasons. Available data indicate that grizzly bears in certain areas are declining and should not be hunted, but that increasing grizzly numbers in other areas are leading to bear-human interactions that pose a risk to the grizzly population in those areas. Therefore, an adjustment of hunting area boundaries and quotas is required for conservation purposes. For 1985, grizzly hunting in northwestern Montana will cease altogether once the total number of bears killed outside of Glacier National Park, from all causes,

reaches 15, or once the number of female grizzlies killed reaches 6.

DATES: This emergency rule is effective on August 29, 1985, and expires on April 28, 1986.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Region 6 office, 134 Union Boulevard, Fourth Floor, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Mr. Galen Buterbaugh, Regional Director, U.S. Fish and Wildlife Service, 134 Union Boulevard, P.O. Box 25486, DFC, Denver, Colorado 80225 (303/236–7920 or FTS 776–7920).

SUPPLEMENTARY INFORMATION: The grizzly bear (*Ursus arctos*) originally occurred throughout western North America, from Alaska to central Mexico. Its populations in the conterminous United States are now apparently restricted to northeastern Washington, northern and eastern Idaho, western Montana, and northwestern Wyoming. Fewer than 1,000 individuals are thought to survive in these areas, most of them in northwestern Montana. In the Federal Register of July 28, 1975, (40 FR 31734–31736), the Service determined threatened status for the grizzly in the conterminous U.S., pursuant to the Endangered Species Act of 1973. Simultaneously, special regulations were issued, which, among other things, provided for hunting of the grizzly in the Flathead National Forest, the Bob Marshall Wilderness Area, and the Mission Mountains Primitive Area (now Mission Mountains Wilderness Area) of northwestern Montana. Such hunting was to cease, once the number of grizzly bears killed throughout northwestern Montana during any one year, from all causes, reached 25. Subsequently, the known grizzly kill in this area has averaged 20 per year, including an average annual hunting kill of 10.6. Prior to 1975, the average annual grizzly mortality was 28 (Montana Department of Fish, Wildlife and Parks 1985).

The largest grizzly population in northwestern Montana, and in the conterminous United States, is that of the Northern Continental Divide Ecosystem (NCDE). This ecosystem comprises Glacier National Park; the Flathead and adjoining portions of the Helena, Kootenai, Lewis and Clark, and Lolo National Forests (including the Bob Marshall, Great Bear, Mission Mountains, and Scapegoat Wilderness Areas); and some adjacent Bureau of Land Management, State, private, and Indian reservation lands. Based on a number of recent studies, the Montana Department of Fish, Wildlife and Parks (1985) has estimated the grizzly population of the NCDE to contain 580 individuals, of which 387 are found outside of Glacier National Park. The Service is using this estimate in the formulation of this rule. In the remainder of northwestern Montana, there may be no more than a dozen individual bears.

The status of the grizzly varies from place to place within the NCDE. Studies undertaken in various parts of the NCDE indicate that the number of grizzlies is stable or increasing in some areas, but is decreasing in others (Aune and Stivers 1982, Aune *et al.* 1984, Claar 1985, Mace and Jonkel 1980, Martinka 1974, McClellan 1984, Servheen 1981). In particular, the studies indicate that numbers in the Mission Mountains are currently declining. It is thus evident that the original special regulations, which provided for grizzly bear hunting in most of the NCDE and a total kill of 25 bears throughout northwestern Montana, need to be revised in order to ensure the conservation of the species in all areas where it occurs.

A different situation exists along the Rocky Mountain front in the eastern part of the NCDE. The 1975 special regulations did not provide for hunting in the east front area beyond the boundaries of the Flathead National Forest and the Bob Marshall Wilderness Area. More grizzlies are now evident in some places along the front, and they are moving down onto private lands. This movement may be attributable to one or a combination of factors, such as climatic change, loss of previously utilized habitat, or an actual increase in the size of the overall bear population and consequent dispersal. In any case, the grizzlies in this area are preying on livestock and destroying property, and are a possible threat to human safety. Such difficulties are leading to confrontations between people and bears that may result in the destruction of the latter. Live-trapping and relocation of bears has met with only limited success. Moreover, the processes of trapping, immobilizing, handling, and relocating (usually by helicopter) pose considerable risks to the bears themselves. In 1985, as of July 23, six grizzlies have been captured in such control measures in the Choteau area of the Rocky Mountain east front; two of these animals died as a result of this action, one was placed in a zoo, and three were released in other parts of the NCDE. Only a single grizzly was removed by control operations in the Choteau area from 1980 to 1984. The 1985 loss represents a new and serious escalation of bear-human conflicts along the east front. Present indications are that such problems will continue to intensify and that currently available control measures are not adequate.

Because of the two different critical situations described above—the decline of the grizzly population in the Mission Mountains and the escalation of bear-human conflicts on the eastern front of the Rocky Mountains—the Service considers that there is an emergency posing a significant risk to the well-being of the grizzly. Section 4(b)(7) of the Act provides for the issuance of regulations in response to such emergencies. Modification of the special regulations dealing with hunting of the grizzly is needed immediately, because the 1985 hunting season will begin in less than a month. There is no time to issue an ordinary proposed rule, allow for the required 60-day public comment period, and then prepare and publish a permanent final rule. An emergency rule is therefore necessary.

In accordance with section 4(d) of the Act, special regulations on threatened species must be "necessary and advisable to provide for the conservation of such species." Section 3(3) defines conservation, essentially, as measures that are beneficial to the species, and contribute to its recovery and ultimate removal from the List of Endangered and Threatened Wildlife. Special regulations for the grizzly bear, therefore, must be beneficial to the species and be aimed at the particular factors that threaten the species.

In its original determination of threatened status for the grizzly, on July 28, 1975, the Service determined that strictly controlled hunting would be a necessary element for the conservation program for the grizzly. The Service continues to hold that regulated hunting is necessary and advisable for the conservation of the grizzly in northwestern Montana, and considers that such hunting should now be applicable in portions of the Rocky Mountain east front. Such hunting would tend to eliminate those bears that are unwary of humans and thus most likely to come into conflict with people. It would also help to cause remaining bears to be more fearful of people. This last point is supported by the studies of Elgmork (1978) and Mysterud (1977), who provided evidence that brown bear populations, long-exposed to human exploitation, did exhibit wariness, and by the work of Herrero (1985), who reported that bear-human confrontations are associated more frequently with unhunted, rather than hunted, bear populations. To help reduce the further escalation of problems on the east front, and in other areas, sport hunting also should

continue in the Flathead National Forest (except that portion including the Mission Mountains) and the Bob Marshall Wilderness Area, and should be extended into the adjoining Scapegoat Wilderness Area.

The Montana Department of Fish, Wildlife and Parks (1985), in developing its proposed levels of hunting, and female quotas, reviewed data from several studies and determined that the average annual human-induced mortality allowable to maintain a stable population was 7.5 percent. However, in order to achieve recovery of the bear in the NCDE, the conservation program must be geared toward establishing increasing populations instead of just maintaining stability. For the fall of 1985, hunting of the grizzly in the designated parts of the NCDE will cease once 15 grizzly bears have been killed during calendar year 1985, from all causes, in all of northwestern Montana, exclusive of Glacier National Park. This figure is based on the judgment that with an estimated 387 grizzlies in the NCDE, outside of Glacier National Park, an annual human-induced mortality of 6 percent can occur and the population can still experience a general increase in numbers. Six percent of 387 is approximately 23 bears, but it is also estimated, based on recovery of dead radio-collared grizzlies, that there is an estimated illegal kill of 8 bears each year in the NCDE (Montana Department of Fish, Wildlife and Parks 1985). Therefore, the allowable known kill in the area is 15.

The 15 bears that may be killed during calendar year 1985 will include not more than 6 females. This figure is based on records indicating that annual mortality from hunting, from 1967 to 1984, averaged 40 percent female, and the presumption that a greater rate of female mortality would be damaging to a grizzly population (Montana Department of Fish, Wildlife and Parks 1985). In addition, no more than 2 females may be killed in any one of the following areas: (1) The Flathead National Forest outside of the Bob Marshall Wilderness Area, (2) the Bob Marshall and Scapegoat Wilderness Areas, and (3) the remaining portion of the NCDE that is open to hunting. If 2 females are killed during calendar year 1985 in any one of these areas, all grizzly hunting will be prohibited in that area for the remainder of the year. There will be no hunting of grizzlies accompanied by young in any part of northwestern Montana, because such grizzlies would in all likelihood be females.

The portion of northwestern Montana that will be open to hunting during the fall 1985 season is being adjusted to account for the problems discussed above. If not contrary to State laws and regulations, and if the quotas described above have not been reached, grizzly hunting will be allowed in the Flathead National Forest, except for the portion west of State Highway 83 (which includes the Mission Mountains); in the Bob Marshall and Scapegoat Wilderness Areas; and in an additional area of Rocky Mountain east front, which includes a portion of the Lewis and Clark National Forest and adjacent lands to the east of the Bob Marshall Wilderness Area, to the south of Birch Creek, to the north of Sun River, and to the west of U.S. Highways 89 and 287. There will continue to be no grizzly hunting on the east front to the north of Birch Creek (the Badger-Two Medicine area), and in all other areas not specifically delineated in the regulations.

The limits and areas described above will remain in effect until April 28, 1986 or until new permanent regulations on the grizzly become effective, whichever comes first. If by April 28, 1986, new permanent regulations have not become effective, the original grizzly regulations, as were in effect until August 29, 1985, will again become effective. It is, however, the intent of the Service to coordinate and work closely with the Montana Department of Fish, Wildlife and Parks, and other involved parties, to analyze all available grizzly bear management data, and to subsequently propose and issue new permanent grizzly regulations, before the expiration of this emergency rule.

References

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Mace, R.D. and C. Jonkel. 1980. Ackamina-Kishinena grizzly project. *In* Jonkel, C (ed.). Annual Report 5, Border Grizzly Project, University of Montana, Missoula, pp. 9–48.

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Montana Department of Fish, Wildlife and Parks. 1985. Preliminary draft grizzly bear programmatic environmental impact statement. Helena, 278 pp.

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Servheen, C. 1981. Grizzly Bear ecology and management in the Mission Mountains, Montana. Ph.D. Dissertation, University of Montana, Missoula, 138 pp.

Authors

The primary authors of this rule are Dr. Christopher Servheen, U.S. Fish and Wildlife Service, HS 105D, University of Montana, Missoula, Montana 59812 (406/329–3223); and Jane P. Roybal, U.S. Fish and Wildlife Service, 134 Union Boulevard, Lakewood, Colorado 80225 (303/236–7398 or FTS 776–7398).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, until April 28, 1986, Part 17, Subchapter B of Chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 83–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.40(b)(1)(i)(E) is revised to read as follows:

§17.40 Special rules—Mammals.

* * * * *

(b)(1)(i) * * *

* * * * *

(E) *Northwestern Montana.* If it is not contrary to the laws and regulations of the State of Montana, a person may hunt grizzly bears, if such bears are not accompanied by young, in the Flathead National Forest, except that portion of the Forest west of State Highway 83; in the Bob Marshall and Scapegoat Wilderness Areas; and in that portion of the Lewis and Clark National Forest and adjoining lands of the eastern front of the Rocky Mountains with the following boundary: beginning at Badger Pass on the northern boundary of the Bob Marshall Wilderness Area, thence northeastward along a straight line to the head of the North Fork of Birch Creek, thence eastward along said Fork to Swift Dam, thence eastward along

Birch Creek to U.S. Highway 89, thence southward along U.S. Highway 89 to Choteau, thence southward along U.S. Highway 287 to the Sun River, thence westward along the Sun River to the eastern boundary of the Bob Marshall Wilderness Area, thence northward along said boundary to the point of beginning: *Provided*, That if in the calendar year 1985, 15 grizzly bears or 6 female grizzly bears have already been killed, for whatever reason, in that part of Montana, exclusive of Glacier National Park, which is bounded on the north by the United States-Canada Border, on the east by U.S. Highway 91, on the south by U.S. Highway 12, and on the west by the Montana-Idaho State line, the Director of the Montana Department of Fish, Wildlife and Parks shall post and publish a notice prohibiting such hunting, and any such hunting for the remainder of 1985 shall be unlawful: *Provided further*, That if in the calendar year 1985, 2 female grizzly bears have already been killed, for whatever reason, in the Flathead National Forest outside of the Bob Marshall Wilderness Area, or in the Bob Marshall and Scapegoat Wilderness Areas, or in that portion of the Lewis and Clark National Forest and adjoining lands of the eastern front of the Rocky Mountains with a boundary as described above, the Director of the Montana Department of Fish, Wildlife and Parks shall post and publish a notice prohibiting such hunting in the area where the 2 female grizzly bears have been killed, and any such hunting in this area for the remainder of 1985 shall be unlawful: *Provided further*, That any taking of a grizzly bear, for whatever reason, in the above-described portion of Montana shall be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 28006, Washington, D.C. 20005, and to the Montana Department of Fish, Wildlife and Parks, within 5 days after the taking occurs, except that any taking on an Indian reservation within the above-described area shall be so reported only to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 28006, Washington, D.C. 20005.

* * * * *

Dated: August 26, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-20769 Filed 8-27-85; 12:02 pm]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 50694-5094]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of opening.

SUMMARY: NOAA issues this notice opening specific parts of the fishery conservation zone (FCZ) off southeast Alaska to commercial fishing for chinook salmon for 39 hours. This action is necessary to allow fishermen in southeast Alaska more time to harvest chinook salmon and complements similar actions taken by the State of Alaska for the salmon fisheries in its waters. The intended effect is to provide fishermen the opportunity to harvest the number of chinook salmon authorized by the Pacific Salmon Treaty.

DATES: This notice is effective at 0001 hours Alaska Daylight Time (ADT), August 25, 1985, through 1500 hours ADT on August 26, 1985. Public comments on this notice are invited until September 26, 1985.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 30-day comment period, the data upon which this notice is based will be available for public inspection during business hours (0800 to 1630 ADT Monday through Friday) at the NMFS Alaska Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS) 907-586-7229.

SUPPLEMENTARY INFORMATION: Salmon fishing in the FCZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

On July 23, 1985, the Secretary of Commerce (Secretary) closed the chinook salmon fishery in the FCZ off Alaska because statistics on the actual harvests of chinook salmon and forecasts of future catches indicated that the limit of 263,000 chinook salmon set by the U.S.-Canada Pacific salmon treaty would be reached (50 FR 30427, July 26, 1985). The notice closing the chinook fishery stated that if the actual total harvest fell short of 263,000, then the troll fishery would be reopened to harvest the remainder.

As of August 20, 1985, the estimated chinook salmon harvest in southeast Alaska by all fisheries amounted to 253,000. Of this total, the troll fishery harvested about 200,000; the seine fishery, 20,000; the gillnet fishery, 11,000; and the sport fishery, 22,000. Thus, the harvest to date falls short of the limit set by the treaty by approximately 10,000 chinook salmon.

In May 1985, the Alaska Board of Fisheries (Board) set guidelines for the harvests of chinook salmon by the various southeast Alaska fisheries. These guidelines were rough goals, not fixed quotas. The Board suggested that the treaty limit of 263,000 chinook salmon should be divided so that the gillent fisheries could harvest about 10,000; the seine fisheries, 10,000; the sport fisheries, 22,000; and the troll fisheries, 221,000. By August 10, 1985 the seine harvest of chinook of approximately 20,000 was well above the average of recent years and above the guideline suggested by the Board, so the Alaska Department of Fish and Game (ADF&G) issued a rule that the seiners could no longer retain chinook salmon. The gillnet fishery and the sport fishery have harvested close to the guidelines set by the Board; only the troll catch of about 200,000 was below the harvest guideline. The ADF&G, therefore, decided that the amount of the treaty limit still remaining by August 25, 1985, should go to the troll fishery.

To keep low the incidental catch of undersized chinook salmon, the ADF&G and the Secretary have decided to keep closed the areas that were closed to all salmon fishing on July 23, 1985 (50 FR 30427); for the U.S. FCZ off Alaska, only a small area known as the Outer Fairweather Grounds will be closed.

On August 15, 1985, in conjunction with similar action by the State of Alaska, the Secretary closed the U.S. FCZ off Alaska to all commercial troll salmon fishing for 10 days (50 FR 33346, August 19, 1985). The troll fishery was scheduled to reopen on August 25, 1985 for all salmon species but chinook. Because analyses of the harvests to date reveal that some more chinook may be harvested, this notice allows trollers to resume harvesting chinook as well as the other species.

Based on the number of boats expected to resume fishing and an allowable harvest of less than 10,000

chinook, and because of the logistics of unloading chinook after the chinook fishery closes, the ADF&G and the Secretary have decided that chinook may be harvested only during the first 39 hours after the fishery reopens on August 25, 1985; i.e., from 0001 hours on August 25, until 1500 hours on August 26. When this chinook harvesting period ends at 1500 hours on August 26, 1985, trollers may continue to harvest other salmon species after they have unloaded any chinook salmon they have on board.

After the actual chinook harvest from this fishery has been tabulated and the remaining harvests by the gillnet and sport fisheries have been forecasted, if the total chinook harvest is still short of the limit, then another short period for harvesting chinook will be granted the trollers before the season closes on September 20, 1985.

Section 674.23(a) of the regulations implementing the FMP provides that the Secretary may modify the time and area limitations governing the fishery whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(a) The effect of overall fishing effort within any part of the management area;

(b) Catch per unit of effort and rate of harvest;

(c) Relative abundance of salmon stocks within the management area;

(d) Condition of salmon stocks throughout their ranges; and

(e) Any other factors relevant to the conservation of salmon.

Having reviewed evidence of the 1985 chinook harvest to date, the Secretary has determined that the effect of overall fishing effort in the FCZ, the catch per unit of effort and rate of harvest there, and the apparent relative abundance of chinook stocks within the FCZ portion of the management area indicate that the condition of chinook stocks is substantially different from the condition anticipated in the FMP. The Secretary has also found that this difference reasonably requires a modification of time or area limitations to manage the chinook fishery adequately. Therefore, the Secretary implements the 39-hour opening of the chinook fishery prescribed by this action.

This notice will become effective after it has been filed for public inspection with the Office of the Federal Register and the chinook fishery opening has been publicized for 48 hours through procedures of ADF&G.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the chinook harvest in southeastern Alaska will fall short of the salmon treaty limit unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c).

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Reporting and recordkeeping requirements.

Authority: (16 U.S.C. 1801 *et seq.*)

Dated: August 26, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-20708 Filed 8-26-85; 4:45 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 168
Thursday, August 29, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 275, and 276

[Amdt No. 266]

Food Stamp Program; Performance Reporting System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rule contains proposed regulations for the Food Stamp Program to implement various changes to the requirements that State agencies and the Food and Nutrition Service (FNS) must meet regarding administration, conducting management evaluation (ME) reviews data analysis and evaluation, corrective action, and reporting as part of the Performance Reporting System (PRS). The Department is proposing these changes based on its experience administering the PRS. The result of implementing these changes will be to simplify the PRS and reduce workloads and costs. Several changes are also being proposed to the Quality Control (QC) System.

DATE: Comments on this proposed rulemaking must be received on or before October 28, 1985 to be assured of consideration.

ADDRESS: Comments should be submitted to Susan McAndrew, Chief, Program Design and Rulemaking Branch, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, VA 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday), at 3101 Park Center Drive, Alexandria, VA, room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Keith Spinner, Supervisor, State Agency Management and Control Section, at the above address, or by telephone at (703) 756–3431.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Fedeal, State, or local government agencies, or geographic regions. Because this rule would not affect the business community, it would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of the Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials

Regulatory Flexibility Act

This rule was also reviewed with regard to the requirements of Pub. L. 96–354, and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that it will not have a significant economic impact on a substantial number of small entities. The rule proposes to implement various changes to simplify the PRS. State agencies should experience a reduction in workloads and costs.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Background

The Food Stamp Act of 1977 (Pub. L. 95–113, enacted on September 29, 1977) provides the Department authority to establish standards for the efficient and effective administration of the Food Stamp Progam by State agencies. Further, the Act requires the State agencies to submit regular reports specifying the administrative actions the State agencies propose to implement in order to meet these standards. On March 11, 1980, the Department issued final rules (at 45 FR 15884) which established the requirements that State agencies needed to meet regarding administration, conducting ME reviews, data analysis and evaluation, corrective action, and reporting as part of the PRS. In addition, the March 11, 1980, final rules established the requirements for Federal monitoring and determining State's program performance. On November 21, 1980, the Department issued final rules (at 45 FR 77258) that set forth the types of sanctions the Food and Nutrition Service may impose to enforce compliance with the Food Stamp Act, regulations, and State Plans of Operation.

The Department and the State agencies have had four years of experience conducting reviews and planning and initiating corrective action under these regulations. During this period of time the Department's Office of the Inspector General (OIG) and the General Accounting Office (GAO) have conducted audits of the management evaluation and corrective action processes. Both the OIG and the GAO have made recommendations to improve and update the processes.

In December 1981, a Regulatory Review Task Force met to consider possible improvements to the regulations. A major concern about the current regulations raised during the meeting was that the requirements were unnecessarily resource intensive. Further, resources were being devoted where they were not needed; and as a result, State agencies could not do in-depth reviews where needed. States were frequently able to identify problems with fewer casefile or other record reviews than currently required. Also, other methods were available,

such as ADP techniques, observation, and discussion, which could be used to detect problems more readily and efficiently. States were also monitoring project areas which historically did not have serious program deficiencies on a more frequent than deserved basis, due to the regulatory structure. States were also finding it difficult to do more than cursory reviews in order to cover the totality of program areas that the regulations require be reviewed. FNS Regional Offices experienced similar difficulties in conducting their reviews.

For two years FNS has been testing targeting of ME reviews. State agencies were granted waivers of certain program review requirements provided they could justify the need or the desirability of such a waiver. Areas in which waivers were allowed included frequency of reviews, reviews of subunits, review procedures, and review coverage. As part of the targeting process FNS established certain priority areas for review coverage. The Regional Offices also targeted their reviews of State agencies based on national priorities and knowledge of State agency problems.

As a result of these experiences we have determined that a number of changes are needed in order to direct resources to the areas where the greatest need for monitoring and/or corrective action exists. Therefore, we are proposing to target the review process. In addition, we are proposing to remove certain requirements, such as those concerning methods of review, from the regulations. FNS would still provide technical assistance on review methods, however, through the FNS Handbook 312, State Management Evaluation Handbook. Thus, States will have greater flexibility in the review process. Finally, it is proposed that prior FNS approval of the corrective action process will no longer be required, rather States will be held responsible for operating the program in accordance with the Food Stamp Act, the regulations, and the FNS-approved State Plans of Operation. These proposed changes are discussed in greater detail below.

FNS Monitoring

Currently, Federal monitoring requirements include, but are not limited to, a review of the State agency's administration of the Food Stamp Program, the State agency operations review (SAOR), a review of the State's Performance Reporting System, and an assessment of corrective action. Each of these reviews is to be done annually.

The SAOR is a review by the Regional Office of all functions performed at the State agency level. We are proposing to delete the requirement that all functions be reviewed. Instead, specific areas will be designated each year by the FNS National Office based on a determination of Agency priorities. The FNS Regional Offices may also review additional areas based on their knowledge of State agency weaknesses and problems. Regional Offices were expending large amounts of staff time and money conducting on-site SAORs that covered all program areas. The Regional Offices were only able to do cursory reviews in many instances. Therefore, we initiated a test of targeting specific program areas for review. For Fiscal Year 1985, the priority program areas include: Corrective action planning, implementation, and evaluation; claims establishment, collection, and reporting requirements (including wage match followup); intentional program violation requirements; issuance reporting and reconciliation requirements; and issuance system requirements. We have found such targeting to be an effective method of monitoring that uses resources as advantageously as possible. FNS also has the ability to analyze many State activities through reports provided by States to FNS. For example, States submit regular reports on claims establishment and collection, disqualification, and mail issuance losses. From these reports, we can get indicators of potential performance problems which can then be further investigated.

The PRS requirements have been in effect for more than four years. During that time FNS has been able to develop a base knowledge of each State agency's PRS. Based on our experience we have determined that it is no longer necessary to conduct annual reviews of each State's PRS. Therefore, we are proposing to conduct biennial reviews.A biennial review will allow us to continue to ascertain whether a State's system is functioning properly while utilizing resources more efficiently. We are also changing the name of this review from PRS to Management Evaluation System (MES) to reflect that only the ME and data analysis functions are reviewed. Quality control and corrective action are assessed separately.

FNS will continue to assess annually each State's corrective action process because of the importance of corrective action in reducing and eliminating waste. However, on-site visits of selected corrective actions will no longer be required semiannually, but only on an as needed basis when other methods are not available. The Department does not believe that mandating semi-annual on-site visits to monitor unspecified corrective actions enhances the corrective action process. On-site visits should be scheduled when there is no other way to ascertain whether corrective actions are being implemented timely or are effective.

PRS Coordinator

Currently each State agency is required to have a full-time PRS coordinator, unless an exception is granted by FNS. That coordinator is responsible for ensuring that all components of the PRS are accomplished. These components include data collection through ME and QC; analysis and evaluation of data from all sources; corrective action planning, implementation, and monitoring; and reporting to FNS on program performance. The State agency is also required to designate an organizational entity within the State structure that can ensure that corrective action is effected. These mandates were predicated upon the assumption that the PRS components would function as a unit. We are aware that in some States ME and QC functions are handled by different organizational units. The PRS coordinator may only be responsible for ME, data analysis, and/or corrective action processes under such a structure. We are concerned that the PRS system is not functioning as originally conceived. Therefore, the Department is seeking comments on how State agencies perceive the PRS structure and the role of the PRS coordinator. We have not proposed any changes to the role of the coordinator in this rulemaking. We will consider the comments received in determining whether to modify the role of the coordinator.

Management Evaluation Reviews

Currently, State agencies are required to conduct reviews once annually for large project areas, once every two years for medium project areas, and once every three years for small project areas. Additional reviews of small project areas are also required if the proportion of small project areas exceeds 70 percent of all project areas. In this rulemaking we are proposing to maintain these requirements except that we are proposing to delete the additional reviews where the number of small project areas exceeds 70 percent. In addition if a triennial review is sufficient in most instances, it should be sufficient in all, unless a known problem requires more frequent visits.

We are also proposing to allow States to use a different review schedule,

provided that FNS approves the alternate schedule and provided that all project areas are reviewed at least once every three years. We will not be authorizing a reduced commitment by a State agency to the ME process.The Department expects any State agency (which obtains approval for an alternate schedule) to maintain its current level of effort and commitment to the ME process. The alternate review schedule is intended to provide States with flexibility to dedicate resources to those areas most prone to problems. Currently 14 State agencies are using an alternate schedule approved under the targeting test. In order to obtain approval for an alternate schedule, a State agency will have to document that a project area review othewise required is unnecessary because the project area is known to be performing adequately. Examples of such documentation would include (as appropriate) duplicate participation data, duplicate ATP and mail issuance losses, claims collection activities, Quality Control data, fair hearing decision, timeliness of application processing and expedited service, training schedules, and civil rights complaints. The State would also need to include copies of the most recent ME reports and corrective action plans for those counties. FNS shall determine whether an alternate schedule will be approved. Further, FNS may approve an alternate schedule in whole or in part. Until a State agency receives approval for an alternate schedule, it shall continue to conduct reviews according to the standard schedule.

During ME reviews, State agencies are required to review project area sub-units that have food stamp functional responsibilities. These include certification and issuance offices, data management units, bulk storage points, and reporting points. Currently, the regulations specify how many sub-units of each type will be reviewed during a project area review. We are proposing to change the requirement to allow State agencies to select a representative number of each type of sub-unit. The ME review plans must identify how many sub-units will be selected and what criteria will be used to determine a representative number. FNS will monitor the States' sub-unit selection process as well as the States' findings during its MES review. Allowing States to determine the number of sub-units and the selection process will increase the States' ability to focus on suspected problem areas. States which choose to use the ME process to meet their regulatory responsibility to review all issuance offices and bulk storage points every three years will continue to be allowed to do so.

State agencies are currently required to review all program areas during each review. As discussed previously, reviewing all program areas during each review has resulted in a lot of unnecessary work with limited results. FNS has been testing targeting of reviews to specific program areas for two years. For Fiscal Year 1985, States are required to review the same areas as those listed above for the Regional Offices. Twenty State agencies currently have targeting waivers authorizing redirected program area review efforts. Results of the targeting test indicate that States are able to perform more in-depth reviews as a result of the targeting. The purpose of ME reviews is to identify problems so that they can be corrected. By conducting more in-depth reviews State agencies would be more likely to determine the cause of a problem, thereby facilitating corrective action. Therefore, we are proposing to delete the requirement that all program areas be reviewed. Each year FNS will determine what program areas must be reviewed at a minimum and will notify the States of those areas at least 60 days before the beginning of each annual review period. However, FNS may add additional areas during the annual review period if it deems necessary.

The Department is proposing to delete specific review procedures and methods from the regulations. As discussed earlier, specific review procedures and methods will be in the FNS Handbook 312, State Management Evaluation Handbook. The Handbook will provide technical guidance to the State agencies. Changing review procedures from requirements to guidance is not a reflection of FNS disinterest in the quality of States' reviews. By taking the specificity out of the regulations, the States will be given greater flexibility where they have the expertise. Further, there has been a significant increase in the automation of all aspects of program operations in many States. Therefore, there are additional ways of monitoring available to the States. FNS will also provide additional guidance on performing reviews upon request. States will be required in the project area review plans to identify the methods that will be used to review each of the targeted program areas. FNS will monitor this during its MES reviews.

Data Analysis

We are proposing to delete the requirements (1) that State agencies use error-prone profiles (if available) and QC findings in project areas with caseloads of 35,000 households and (2) that management information sources are listed. These requirements are unnecessary as States are already required to use all available management information sources.

Corrective Action

State agencies are currently required to implement corrective action on all identified deficiencies. State agencies are required to operate the program in accordance with the Food Stamp Act, regulations, and FNS-approved State Plans of Operation. Therefore, States will continue to be required to correct all known deficiencies. We are proposing to modify this section of the regulations to eliminate examples of deficiencies requiring preventive corrective action. Also, the current regulations require corrective action of any Statewide trend. Although we are not proposing to change the definition of a statewide trend at this time, the Department is seeking comments on what constitutes a statewide trend. Currently there are two criteria for determining whether a deficiency constitutes a statewide trend: (1) The deficiency occurs in a significant number (usually 25 percent) of a State's project areas and (2) that some action by the State is needed to correct the deficiency. States are required to review all data sources at least semiannually to determine whether there are any deficiences that meet the two criteria. GAO, in its audit of the corrective action process, recommended that considering dollar losses or percent of affected cases in some situations would be more appropriate than percent of project areas. FNS would like to have additional viewpoints on what constitutes a statewide trend. These comments will be considered when the final regulation is developed.

Although the sanction process is a significant incentive to correct deficiencies which result in high QC error rates, the Department believes that the corrective action planning process plays an important role in reducing QC errors. Therefore, we are continuing to require that QC errors be addressed through this process. Modifications to the requirements have been made to reflect the recent changes in the QC system.

If a State does not operate the program correctly, FNS has the option of initiating the warning process in Part 276 and potentially disallowing funds. FNS thus has sufficient means to induce States to correct known deficiencies. Therefore, the Department is proposing to delete the requirement that FNS approve States' corrective action plans.

However, States should be aware that inclusion of a deficiency in the corrective action plan may not be sufficient to prevent a warning being issued or funds being suspended or disallowed. FNS will make such determinations based on the extent of the deficiency, the adequacy of corrective action, the length of time that the deficiency has existed, and previous performance by the State in correcting deficiencies. States would still be required to submit the plan to FNS as required by the Food Stamp Act. Information in the plan would be used by FNS in its evaluation of a State's performance.

The Department is proposing to require States to submit a single open-ended corrective action plan with periodic updates that include deletions, additions, and modifications. Comments are being solicited on how frequently such updates should be submitted. The Department is considering either quarterly for semiannual updates. This should reduce the flow of paper while ensuring that FNS be kept apprised of the status of a State's operations.

Reporting

Under these proposed regulations State agencies shall submit ME review schedules such that they are received by FNS no later than August 1, 1986. The initial corrective action plan must be submitted within 90 days of publication of the final regulations. After the initial submission, the periodic updates must be submitted. As discussed above, FNS is seeking comments on how often these updates should be submitted.

Quality Control

Currently the regulations require FNS to validate States' active case error rates. However, no identifiable need to validate the active case error rate has been established. The payment error rate is the rate that is used to determine whether a State agency may qualify for enhanced funding or be liable. The active case error rate is not used by FNS for any purpose at this time. Therefore, we are proposing to delete the requirement in § 275.3(c) that FNS validate the active case error rate. If it becomes necessary the deletion of the requirement would not preclude FNS from validating the active case error rate for any State(s).

The Department is also proposing to add a statement to § 275.3(c) to provide for FNS validation reviews against the Food Stamp Program standards established in the Food Stamp Act and the regulations, taking into account any FNS authorized waivers to deviate from specific regulatory provisions. This provision is already in § 275.10 Scope and Purpose and was discussed in the preamble of the final rule on February 17, 1984 at 49 FR 6294. The provision is being placed in § 275.3(c) solely to emphasize that Federal rereviews will meet the same standards as State reviews. Federal rereviews will be conducted using the regulations regardless of whether a State agency has timely implemented a regulation or policy, unless a waiver concerning such implementation has been granted to State agency.

The Department is also proposing to require that a State agency determine a household ineligible if the household refuses to cooperate with a Federal QC reviewer. Currently, a household which refuses to cooperate with a State QC reviewer is to be determined ineligible, but there is not penalty for refusing to cooperate with a Federal QC reviewer. The Federal reviewers will be required to use the same procedures that the State agency must use in determining refusal to cooperate.

In the February 17, 1984, final rulemaking, the Department did not exclude negative disaster cases from the QC negative universe although active disaster cases were excluded. This omission was an oversight which we are proposing to correct in this rule. The Department has never intended that negative disaster cases be reviewed by QC while active cases be monitored through other procedures.

We are also proposing to change the dates that State agencies must submit the forms FNS–248, Status of Sample Selection and Completion, and FNS–247, Statistical Summary of Sample Distribution. State agencies are currently required to submit these reports such that they are received by FNS no later than 95 days after end of the sample month or annual review period (as appropriate). This has proven to be infeasible. The FNS–248 and FNS–247 reports are hard copy reports which are completed based on summaries of individual cases. State agencies have 95 days to complete individual cases and submit the findings to FNS. Findings are submitted via the Integrated Quality Control System computers. Thus State agencies may work on Cases right up to and including the 95th day. State agencies cannot submit accurate FNS–248 and FNS–247 reports timely if cases are not completed until the 95th day. We are primarily concerned that States complete individual cases and that submitted reports are accurate. Therefore, we are proposing to allow State agencies 105 days to submit these reports. However, State agencies will still be required to submit findings on individual cases within 95 days. This will ensure that State agencies have the maximum amount of time to complete individual cases and to prepare accurate reports.

An interim rulemaking published on July 29, 1983, at 48 FR 34650 stated that the nagative case error rate had to be less than the national weighted mean negative case error rate for the period of enhanced funding. In the February 17, 1984, rulemaking at 49 FR 6293, the Department stated that the final rule was changed to say that in order to be eligible for enhanced funding, a State agency's negative case error rate must be less than the national weighted mean nagative case error rate for the prior fiscal year. Section 275.25(d)(2) of the final regulations provides that enhanced funding will be given if the negative case error rate is less than the national weighted mean negative case error rate for the applicable period. However, it does not define the applicable period. Therefore, we are proposing to revise this section of the regulation to specify that the State's negative case error rate must be less than the national weighted mean negative case error rate for the prior fiscal year.

Finally, in the February 17, 1984, final rulemaking, in § 275.25(d)(2) the Department stated that a State agency would be eligible for enhanced funding if the State's combined official payment error rate and underissuance error rate was five percent or less for an annual review period. The Food Stamp Act, as amended, mandates combined error rates of less than five percent (7 U.S.C. 2025(c)(1)). The July 29, 1982, interim rulemaking and the preamble of the February 17, 1984, final rulemaking both provide for combined error rates of less than five percent. The provision "five percent or less" in § 275.25(d)(2) was an inadvertent error made by the Department during the development of the final rule. Therefore, we are proposing to correct the provision to read "Less than five percent."

We are also proposing several corrections to delete references to outreach and FNS-approved State manuals.

Implementation

The Department is proposing to require State agencies to implement these changes to the PRS beginning October 1, 1986.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs,

Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Penalties.

Accordingly, Parts 272, 273, 275, and 276 are proposed to be amended as follows:

1. The authority citation for Parts 272, 273, 275, and 276 is revised to read:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1 the first sentence in paragraph (d)(1) and paragraph (d)(2) are revised and a new paragraph (g)(71) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(d) *Information Available to the Public.* (1) Federal regulations, Federal procedures embodied in FNS notices and policy memos, State Plans of Operation, and corrective action plans shall be available upon request for examination by members of the public during office hours at the State agency headquarters as well as at FNS Regional and National offices. * * *

(2) Copies of regulations, plans of operation State manuals, State corrective action plans, and Federal procedures may be obtained from FNS in accordance with Part 295 of this chapter.

* * * * *

(g) *Implementation.* * * *

(71) *Amendment 266.* The provisions contained in Amendment 266 are effective October 1, 1986.

§ 272.2 [Amended]

3. In § 272.2 the eighth sentence is removed from paragraph (a)(2).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.2 [Amended]

4. In § 273.2, paragraph (d)(2) is amended by adding the words "§ 275.3(c)(5) or" before the words "§ 275.12(g)(1)(ii)" and paragraph (f)(3)(ii) is amended by removing the words "in accordance with § 275.15(a)(2)" from the first sentence.

PART 275—PERFORMANCE REPORTING SYSTEM

5. In § 275.1, the parenthetical expression "(of which the State corrective action plan is a part)" is removed from the last sentence in paragraph (a) and paragraph (b) is revised. The revision to paragraph (b) reads as follows:

§ 275.1 General scope and purpose.

* * * * *

(b) The Food Stamp Act authorizes the Secretary to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the program. The Act further authorizes the Secretary to increase the share to 60 percent of all administrative costs for State agencies whose combined payment error rate and underissuance error rate is, as determined by quality control, less than five percent and whose negative case error rate is less than the national weighted mean negative case error rate for the prior fiscal year. Those State agencies whose combined payment and underissuance error rates are five percent or more are required to specify and carry out the corrective action which they propose to take to reduce errors. "Quality Control" means monitoring in an effort to reduce the rate of errors in determining basic eligibility and benefit levels.

6. In § 275.3, the introductory paragraph is revised. Paragraphs (a), (b), and (d) are revised. Introductory paragraph (c) is revised, the title and introductory paragraph of (c)(1) are revised, paragraph (c)(2) is removed, paragraphs (c)(3), (c)(4), and (c)(5) are redesignated as (c)(2), (c)(3), and (c)(4), respectively, and a new paragraph (c)(5) is added. The revisions read as follows:

§ 275.3 Federal monitoring.

The Food and Nutrition Service shall conduct the following reviews discribed below in this section to determine whether a State agency is operating the Food Stamp Program and the Performance Reporting System in accordance with program requirements. The Federal reviewer may consolidate the scheduling and conducting of these reviews to reduce the frequency of entry into the State agency. FNS Regional Offices will conduct additional reviews to examine State agency and project area operations, as considered necessary to determine compliance with program requirements. FNS shall notify the State of any deficiencies detected in program or system operations. The State agency shall develop corrective action addressing all deficiencies detected in either program or system operations and shall notify FNS of the planned corrective actions in the next scheduled periodic update ot its State corrective action plan as required in § 275.17.

(a) *Reviews of State Agency's Administration/Operation of the Food Stamp Program.* FNS shall conduct an annual review of certain functions performed at the State agency level in the administration/operation of the program. FNS will designate specific areas required to be reviewed each fiscal year.

(b) *Reviews of State Agency's Management Evaluation System.* FNS will review each State agency's management evaluation system on a biennial basis; however, FNS may review a State agency's management evaluation system on a more frequent basis if a review reveals noncompliance with program requirements. The review will include but not be limited to a determination of whether or not the State is complying with FNS regulations, an assessment of the State's methods and procedures for conducting ME reviews, and an assessment of the data collected by the State in conducting the reviews.

(c) *Validation of State Agency Error Rates.* FNS shall validate each State agency's payment error rate and underissuance error rate, as described in § 275.25(c), during each annual quality control review period. Federal validation reviews shall be conducted by reviewing against the Food Stamp Act and the regulations, taking into account any FNS authorized waivers to deviate from specific regulatory provisions. FNS shall validate the State agency's negative case error rate, as described in § 275.25(d), only when the State agency's payment and underissuance error rates for an annual review period appear to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b)(2), and its reported negative case error rate for that period is less than the national weighted mean negative case error rate for the prior fiscal year. Any deficiencies detected in a State agency's QC system shall be included in the State agency's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.25(e)(8).

(1) *Payment Error Rate.* The validation review of each State's agency's payment error rate shall consist of the following actions: * * *

* * * * *

(5) *Household cooperation.* A household is required to cooperate with a Federal QC reviewer. Refusal to cooperate shall result in termination of the household. The Federal reviewer shall follow the procedures in § 275.12(g)(1)(ii) in order to determine whether a household is refusing to cooperate with the Federal QC reviewer. If the Federal reviewer determines that the household has refused to cooperate, as opposed to failed to cooperate, the household shall be reported to the State agency for termination.

(d) *Assessment of Corrective Action.* (1) FNS will conduct a comprehensive annual assessment of a State's corrective action process by compiling all information relative to that State's corrective action efforts, including the State agency's system for data analysis and evaluation. The purpose of this assessment and review is to determine if: Identified deficiencies are analyzed in terms of causes and magnitude and are properly included in either the State or Project Area/Management Unit corrective action plan, the State agency is implementing corrective actions according to the appropriate plan, target completion dates for reduction or elimination of deficiencies are being met, and corrective actions are effective. In addition, FNS will examine the State's corrective action monitoring and evaluative efforts. The assessment of corrective action will be conducted at the State agency, project area, and local level offices, as necessary.

(2) In addition, FNS will conduct on-site reviews of selected corrective actions as frequently as considered necessary to ensure that States are implementing proposed corrective actions within the timeframes specified in the State and/or Project Area/Management Unit corrective action plans and to determine the effectiveness of the corrective action. The on-site reviews will provide States and FNS with a mechanism for early detection of problems in the corrective action process to minimize losses to the program, participants, or potential participants.

7. In § 275.5, paragraph (b) is revised and paragraph (c) is removed. The revision reads as follows:

§ 275.5 Scope and purpose.

* * * * *

(b) *Frequency of review.* (1) State agencies shall conduct a review once a year for large project area/management units, once every two years for medium project areas, and once every three years for all small project areas, unless an alternate schedule is approved by FNS. The most current and accurate information on active monthly caseload available at the time the review schedule is developed shall be used to determine project area size.

(2) A request for an alternate review schedule shall be submitted in writing with a proposed schedule and justification. In any alternate schedule, each project area must be reviewed at least once every three years. Approval of an alternate schedule is dependent upon a State's justifying that the project areas that will be reviewed less frequently than required in paragraph (b)(1) of this section are performing adequately and that previous reviews indicate few problems or that known problems have been corrected (copies of the most recent project area ME reviews and corrective action plans must be included). The State must also indicate how the resources that would otherwise be used in conducting these reviews will be used in the ME or corrective action process. FNS retains the authority for approving any alternate schedule and may approve a schedule in whole or in part. Until FNS approval of an alternate schedule is obtained, the State agency shall conduct reviews in accordance with paragraph (b)(1) of this section.

(3) FNS may require the State agency to conduct additional on-site reviews when a serious problem is detected in a project area which could result in a substantial dollar or service loss.

(4) States shall also establish a system for monitoring those project areas' operations which experience a significant influx of migratory workers during such migrations. This requirement may be satisfied by either scheduling ME reviews to coincide with such migrations or by conducting special reviews. As part of the review the State shall contact local migrant councils, advocate groups, or other organizations in the project area to ensure that migrants are receiving the required service.

(c) [Removed]

§ 275.6 [Amended]

8. In § 275.6, paragraph (a) is amended by removing "or sampling requirements" in the last sentence.

9. In § 275.7 paragraphs (b) and (e) are revised and (f) is removed. The revised paragraphs read as follows:

§ 275.7 Selection of sub-units for review.

* * * * *

(b) *Reviewing Issuance Offices and Bulk Storage Points.* As required in § 274.1(c)(2) of this chapter, State agencies must conduct on-site reviews of each bulk storage point and coupon issuer at least once every 3 years. This review requirement may be satisfied through the ME review system.

* * * * *

(e) *Selection of Sub-units for Review.* State agencies shall select a representative number of sub-units of each category for on-site review in order to determine a project area's compliance with program standards.

(f) [Removed]

10. Section 275.8 is revised to read as follows:

§ 275.8 Review coverage.

During each review period, State agencies shall review the areas of program operation specified by FNS. FNS will notify the States of the minimum program areas to be reviewed at least 60 days before the beginning of each annual review period. FNS may add additional areas during the review period if deemed necessary. State agencies shall be responsible for reviewing each program requirement based upon the provisions of the regulations governing the Food Stamp Program and the FNS-approved Plan of Operation. If FNS approves a State's request for a waiver from a program requirement, any different policy approved by FNS would also be reviewed. When, in the course of a review, a project area is found to be out of compliance with a given program requirement, the State shall identify the specifics of the problem including: The extent of the deficiency, the cause of the deficiency, and as applicable, the specific procedural requirements the project area is misapplying.

11. In § 275.9, paragraphs (a), (b), and (c) are revised, paragraphs (d), (e), and (f) are removed, and paragraph (g) is redesignated as paragraph (d) and introductory paragraph (d) is amended by removing the words "to be approved by FNS,". The revised paragraphs (a), (b), and (c) read as follows:

§ 275.9 Review process.

(a) *Review procedures.* State agencies shall review the program requirements specified for review in § 275.8 of this part using procedures that are adequate to identify problems and the causes of those problems. As each project area's operational structure will differ, States shall review each program requirement applicable to the project area in a manner which will best measure the project area's compliance with each program requirement.

(b) *ME review plan.* (1) State agencies shall develop a review plan prior to each ME review. This review plan shall specify whether the project area is large, medium, or small and shall contain:

(i) Identification of the project area to be reviewed, program areas to be reviewed, the dates the review will be conducted, and the period of time that the review will cover;

(ii) Information secured from the project area regarding its caseload and organization;

(iii) Identification of the certification offices, issuance offices, bulk storage points, reporting points, and data management units selected for review and the techniques used to select them;

(iv) Identification of whether the State is using the ME review to monitor coupon issuers and bulk storage points as discussed § 275.7(b) of this part; and

(v) A description of the review method(s) the State agency plans to use for each program area being reviewed.

(2) ME review plans shall be maintained in an orderly fashion and be made available to FNS upon request.

(c) *Review methods.* (1) State agencies shall determine the method of reviewing the program requirements associated with each program area. For some areas of program operation it may be necessary to use more than one method of review to determine if the project area is in compliance with program requirements. The procedures used shall be adequate to identify any problems and the cause of those problems. The Regional Office shall assess the adequacy of the procedures during its review of the State's Management Evaluation System.

(2) State agencies shall ensure that the method used to review a program requirement does not bias the review findings. Bias can be introduced through leading questions, incomplete reviews, incorrect sampling techniques, etc.

The new paragraph (ii) reads as follows:

* * * * *

(d)–(f) [Removed]

12. In § 275.11 paragraph (f)(2) is amended by redesignating paragraphs (ii) and (iii) as (iii) and (iv), respectively and by adding a new paragraph (ii).

§ 275.11 Sampling.

* * * * *

(f) *Sample Universe.* * * *

(2) *Negative Cases.* * * *

(ii) A household denied food stamps under a disaster certification authorized by FNS;

* * * * *

§ 275.15 [Amended]

13. In § 275.15, paragraph (a)(1) is redesignated as (a), paragraphs (a)(2) and (a)(3) are removed, paragraph (d) is removed, and paragraphs (e), (f), and (g) are redesignated as (d), (e), and (f) respectively.

14. In § 275.16, paragraphs (b) and (d) are revised to read as follows:

§ 275.16 Corrective action planning.

* * * * *

(b) The State agency and project area(s)/management unit(s), as appropriate, shall implement corrective action on all identified deficiencies. There are two kinds of corrective action: Remedial, by which past errors in individual cases are rectified through issuance of retroactive benefits, sending claim determinations, etc., and preventive, by which patterns of deficiencies are corrected in such a way that they do not recur. Most planning will involve the latter kind. In planning corrective action, the State agency shall determine if correction of the deficiency requires action by the State agency, the project area/management unit, or the combined efforts of both. Deficiencies requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s) in the planning, development, and implementation of corrective action are those which:

(1) Result from State agency causal factors;

(2) Constitute a Statewide trend (States shall review all data sources at least semiannually to identify any patterns of deficiencies which might constitute a Statewide trend. When the State determines that during the period being reviewed a deficiency has been occurring in significant number (usually 25 percent) of the State's total project areas/management units or of the local certification or issuance offices if the State has only one FNS designated project area, the State shall determine whether some action by the State is needed to correct the deficiency. If the deficiency meets the criteria, the State agency shall include consolidated corrective action at the State level in the State corrective action plan. The deficiency shall remain in the State corrective action plan until such time as the consolidated corrective action has been completed and the deficiency has been eliminated.);

(3) Are the causes for combined payment and underissuance error rates of five percent or more for any reporting period (actions to correct errors in individual cases, however, shall not be submitted as part of the State corrective action plan);

(4) Are the causes of other errors/deficiencies detected through quality control, including error rates of 1 percent or more in negative cases (actions to correct errors in individual cases, however, shall not be submitted as part of the State corrective action plan);

(5) Are identified by FNS reviews or USDA audits or investigations at the State agency or project area level (except deficiencies in isolated cases as indicated by FNS);

(6) Are patterns of errors identified in large project area/management units (isolated occurrences of errors as determined by the State shall be excluded); or

(7) Result from 5 percent or more of the State's QC sample being coded "not complete" as defined in § 275.12(g)(1) of this part. This standard shall apply separately to both active and negative samples.

* * * * *

(d) In planning corrective action, the State shall coordinate actions in the areas of data analysis, policy development, quality control, program evaluation, operations, administrative cost management, civil rights, and training to develop appropriate and effective corrective action measures.

15. In § 275.17, paragraph (a) is revised and new paragraphs (c) and (d) are added to read as follows:

§ 275.17 State corrective action plan.

(a) State agencies shall prepare a corrective action plan addressing those deficiencies specified in § 275.16(d) of this part requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s). This corrective action plan is an open-ended plan and shall remain in effect until all deficiencies in program operations have been reduced substantially or eliminated. The State agency shall provide periodic updates which contain:

(1) Any additional deficiencies identified which require incorporation into the State corrective action plan;

(2) Documentation that a deficiency has been corrected and is therefore being removed from the plan; and

(3) Any changes to planned corrective actions for previously reported deficiencies.

* * * * *

(c) FNS will provide technical assistance in developing corrective action plans when requested by State agencies.

(d) State agencies will be held accountable for the efficient and effective operation of all areas of the program. FNS is not precluded from issuing a warning as specified in Part 276 because a deficiency is included in the State corrective action plan.

16. Section 275.20 is revised in its entirety to read to follows:

§ 275.20 ME review reports.

(a) Each State agency shall submit to the appropriate FNS Regional Office

review schedules for performance of ME reviews, which shall reflect review activity beginning October 1, 1986. Each schedule shall identify the project areas/management units in each classification and list each project area to be reviewed by month or by quarter.

(b) Each State agency shall submit its initial review schedule to the appropriate FNS Regional Office, and the schedule must be received by the Regional Office no later than August 1, 1986. Subsequent schedules must be received by the Regional Office 60 days prior to the date a current schedule becomes obsolete. These schedules must ensure that all project areas/management units will be reviewed within the required time limits. A State agency may submit an alternate review schedule at any time. The alternate schedule shall not be effective until approved by FNS in accordance with § 275.5(b)(2).

(c) States shall notify the appropriate FNS Regional Office of all changes in review schedules.

§ 275.21 [Amended]

17. In § 275.21 paragraphs (c) and (d) are amended by replacing "95" with "105".

18. Section 272.22 is revised to read as follows:

§ 275.22 State corrective action plans.

The first State corrective action plan prepared in accordance with the new regulations shall be submitted to FNS so that it is received within 90 days of publication of these regulations as final Rules. Periodic updates shall be submitted as required by FNS. The State corrective action plan and all subsequent amendments shall be signed by either the State Welfare Commissioner or a designated official who has the authority to effect corrective action.

§ 275.25 [Amended]

19. In § 275.25, the words "FNS-approved State manuals" are removed from paragraph (a)(1). The words "active case error rate," are removed from paragraph (d)(1)(i). Finally, in paragraph (d)(2), the words "five percent or less" are replaced with the words "less than five percent" and the words "applicable to the period of enhanced funding" are replaced with the words "for the prior fiscal year".

PART 276—[AMENDED]

§ 276.4 [Amended]

20. In § 276.4, the third sentence in the introductory paragraph of (d) and the second sentence in (d)(2) are amended by replacing the words "an FNS-approved" with the word "a".

Dated: August 22, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-20636 Filed 8-28-85; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Extension of comment period for notice of proposed rulemaking.

SUMMARY: The Service has extended from September 3, 1985 to October 3, 1985 the deadline for submitting comments on the amendments the Service proposed on July 2, 1985 at 50 FR 27289. The proposed amendment to § 103.2(b)(2) would incorporate a provision allowing the withholding of information relating to a pending civil or criminal investigation or if disclosure would compromise a confidential informant. The Service has extended the deadline to allow the public additional opportunity to comment.

DATE: Comments are now due on or before October 3, 1985.

ADDRESS: Please submit written comments in duplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Service has extended the deadline for submitting comments from September 3, 1985 to October 3, 1985 to allow the public additional opportunity to comment on proposed amendments published on July 2, 1985 (50 FR 27289). This proposed revision to § 103.2(b)(2) would allow the Service to withhold disclosure of records of proceedings when disclosure would damage pending civil or criminal investigations or betray confidential informants. Additionally, this amendment would require consent of classifying authority prior to release of classified information.

Dated: August 26, 1985.

Maurice C. Inman,

General Counsel, Immigration and Naturalization Service.

[FR Doc. 85-20673 Filed 8-28-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 309 and 310

[Docket No. 84-014E]

Sulfonamide Residues in Swine

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of intent to institute proposed rulemaking; extension of comment period.

SUMMARY: On May 20, 1985, the Food Safety and Inspection Service (FSIS) published a notice of intent to institute proposed rulemaking to implement inplant analytical procedures for the detection of sulfonamide residues in swine. FSIS has been rquested to extend the comment period to allow more time for reviewing the notice. FSIS is hereby extending the comment period for 60 days.

DATE: Comments must be received on or before October 29, 1985.

ADDRESS: Written comments to: Policy Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. John E. Spaulding, Director, Residue Evaluation and Planning Division, Science Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2807.

SUPPLEMENTARY INFORMATION: On May 20, 1985, FSIS published in the **Federal Register** (50 FR 20796) a notice of intent to institute proposed rulemaking to implement a stringent control program employing inplant analytical procedures to reduce the incidence of violative sulfonamide residues in swine. Interested persons were given until August 30, 1985, to comment on this notice. FSIS has been requested to extend the comment period to allow time for additional study of the notice by affected persons In view of the importance of this notice, FSIS is interested in receiving additional data

and has decided to extend the comment period until October 29, 1985.

Done at Washington, DC, on: August 23, 1985.

L.L. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 85-20893 Filed 8-28-85; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-74-AD]

Airworthiness Directives: Avions Marcel Dassault-Breguet Aviation Falcon 10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the installation of brackets on the left-hand and right-hand rudder servo actuator pressure reducer on certain Falcon 10 airplanes to prevent improper installation of the hydraulic lines. This action also proposes to add identification marks to the hydraulic lines to prevent improper installation. Improper installation of hydraulic lines in one system and a failure of the other hydraulic system could result in a hazardous condition if an engine failed during takeoff.

DATES: Comments must be received by October 21, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-74-AD, 17900 Pacific Highway South, C-68966, Seattle, WA 98168. The applicable service information may be obtained from the AMD-BA Representative, c/o F.J.C., Teterboro Airport, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-74-AD, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

Discussion

The French Direction Generale de l'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on certain Avions Marcel Dassault-Breguet (AMD) Falcon 10 airplanes. One case of improper installation of hydraulic lines on the rudder servo actuator has been reported. The pressure reducer had been installed upside down and the Number 2 system pressure and return lines were switched. This blocked pressure to the corresponding barrel of the rudder servo actuator, resulting in a hidden failure of the rudder system. Loss of the other hydraulic system, in conjunction with loss of an engine during takeoff, could result in a hazardous condition. To ensure the system is properly installed, the DGAC, on June 24, 1983, required that the system be modified in accordance with AMD-BA Service Bulletin F10-27-028 (0237).

This airplane model is manufactured in France and type certified in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 158 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $18,960.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, AMD Model Falcon 10 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation: Applies to AMD Falcon 10 series airplanes, serial numbers 1 thru 196 inclusive, and 198 thru 201 inclusive, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To ensure the proper installation of the rudder servo actuator hydraulic lines, accomplish the following, unless already accomplished:

A. Modify the rudder servo actuator system in accordance with AMD-BA Service Bulletin F10-27-028 (0237) dated June 24, 1983.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager,

Standardization Branch, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to AMD–BA Representative, c/o F.J.C., Teterboro Airport, New Jersey 07608. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, WA, or 9010 East Marginal Way South, Seattle, WA.

Issued in Seattle, Washington, on August 22, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–20607 Filed 8–28–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–ANM–27]

Proposed Alteration of Helena Control Zone, Helena, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the status of the Helena Control Zone from full-time to part-time. The National Weather Service in Helena has modified its hours of operation and weather observations are not available from 0000 to 0400. Consequently, the control zone no longer qualifies to be operated on a full-time basis.

DATES: Comments must be received on or before October 28, 1985.

ADDRESSES: Send comment on the proposal to: Manager, Airspace & Procedures, Branch, ANM–530, Federal Aviation Administration, Docket No. 85–ANM–27, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM–530, Federal Aviation Administration, Docket No. 85–ANM–27, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The telephone number is (206) 431–2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in tha proposed rulemaking by submitting such written data, views, or arguments at they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to achnowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on whch the following statement is made: "Comments to Airspace Docket No. 85–ANM–27". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule.

The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & Procedures Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR art 71) to change the status of the Helena Control Zone from full-time to part-time. The National Weather Service in Helena has modified its hours of operation and weather observations are not available from 0000 to 0400.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act

List of Subjects in CFR Part 71

Control zones/aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); (14 CFR 11.69).

2. By amending § 71.171 as follows:

Helena, Montana, Control Zone—(Amended)

Add the following statement to the present description:

This control zone is effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on August 8, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–20606 Filed 8–28–85; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW-FRL-2889-9]

Water Quality Standards for Surface Waters of the State of Idaho; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Correction of proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) published a proposed rule on August 20, 1985 (50 FR 33672) to establish certain water quality standards for the State of Idaho. That proposed rulemaking contained several errors which are corrected herein.

DATES: Comments on the proposed rule must be submitted on or before November 18, 1985.

ADDRESSES: Written comments should be sent to: David K. Sabock, Criteria and Standards Division (WH-585), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David K. Sabock, (202) 245-3042.

SUPPLEMENTARY INFORMATION: EPA's proposed rulemaking of certain water quality standards for the State of Idaho contained several errors which are corrected herein. All of the page numbers cited in the corrections are for the notice of proposed rulemaking beginning at 50 FR 33672.

(1) *Page 33673.* The 26th line under Section C. Proposed Actions, in the middle column, should read, ". . . explained in § C.2."

(2) *Page 33674.* Under "d. Basis for Proposed Rule" in the 29th line in the 3rd column, the citation to the Idaho water quality standards should be "§ 1-2100.03."

(3) *Page 33676.* The eighth line in the 3rd column under Section 3.a. State Adopted Criterion, the correct paragraph in the Idaho regulation is .01.

(4) *Page 33677.* The second and third lines under c. Contents of Proposed Rule, in the first column, should refer to Idaho's regulation as "§ 1-2300.01."

(5) *Page 33678.* In the first column under Section F. Public Hearings, delete last sentence which reads, "Moreover, the hearing record will be kept open at least 45 days after a Notice of Availability of the final ammonia criteria guidance is published in the **Federal Register.**" (The Notice has already appeared as noted on Page 33676.)

(6) *Page 33678.* Under Section G. Availability of the Record, it is noted that certain materials will be made available at certain public libraries in the State of Idaho. The Public Library at Twin Falls, Idaho, should have been included in the list.

(7) *Page 33678.* The signs in the equations for un-ionized ammonia in § 131.34(b)(1) (i) and (ii) are printed in such small print that they may be incorrectly interpreted. For example, in the exponent of each equation, the sign immediately in front of TCAL, T, and pH, in each case is a minus sign (−). Other omissions also occurred. Therefore, the correct equations are as follows:

§ 131.34 [Corrected]

In section 131.34(b)(1)(i), the one-hour average concentration of un-ionized ammonia (in mg/l NH_3) does not exceed the numerical value given by 0.52/FT/FPH/2, where:

$$FT = 10^{0.03(20-TCAP)}; \quad TCAP \leq T \leq 30°C$$

$$FT = 10^{0.03(20-T)}; \quad 0°C \leq T \leq TCAP$$

$$FPH = 1 \quad ; \ 8 \leq pH \leq 9$$

$$FPH = \frac{1 + 10^{7.4-pH}}{1.25} \quad ; \ 6.5 \leq pH \leq 8$$

TCAP = 20°C; Salmonids or other sensitive coldwater species present

TCAP = 25°C; Salmonids and other sensitive coldwater species absent

In section 131.34(b)(1)(ii), the 4-day average concentration of un-ionized ammonia (in mg/l NH_3) does not exceed the numerical value given by 0.80/FT/FPH/RATIO, where FT and FPH are as above and:

$$Ratio = 16 \ ; \ 7.7 \leq pH \leq 9$$

$$Ratio = 24 \times \frac{10^{7.7-pH}}{1 + 10^{7.4-pH}} \ ; \ 6.5 \leq pH \leq 7.7$$

TCAP = 15°C; Salmonids or other sensitive coldwater species present

TCAP = 20°C; Salmonids and other sensitive coldwater species absent

(8) *Page 33680.* Under § 131.34(c), paragraphs (1), (2), and (3) should not have been included. The correct language is that preceding paragraphs (1), (2), and (3) which reads as follows:

"(c) The exemption of dams and hydroelectric generating facilities from the Idaho antidegradation requirements is suspended. Therefore, the following from § 1-2300.01 of the Idaho Water Quality Standards adopted by the State on January 8, 1980, is null and void: 'Except as noted in Manual § 1-2300.07 and for dams and hydroelectric generating facilities,'."

Dated: August 26, 1985.

Henry L. Longest, II,

Acting Assistant Administrator for Water.

[FR Doc. 85-20805 Filed 8-28-85; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1630

Procedures for Resolving Questioned Costs

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: On August 1, 1985, the Operations and Regulations Committee of the Board of Directors of the Legal Services Corporation began considering a proposed new rule setting forth revised procedures for resolving questioned costs. At the conclusion of the meeting the Committee voted that the proposed regulation be published for comment in the **Federal Register** with certain changes that had been dictated into the record during the Committee's discussion.

The resolution of questioned costs is currently governed by LSC Instruction 83–8, which became effective on November 23, 1983. The procedure set forth in Instruction 83–8 takes roughly nine months but the actual time that elapses in following through the procedure is frequently much longer because of some of the more cumbersome cases and because of the requirement that the Grants and Budget Unit (GBU) consult with the other offices at the Corporation headquarters before making its determinations.

The proposed Part 1630 is intended to streamline the procedure with regard to questioned costs and to set forth the criteria the Corporation will use in determining whether or not costs are ineligible. The process set forth in the regulation is designed to take a maximum of 210 days or about 7 months. The core of Part 1630 is § 1630.2, the definition section, which includes a definition of an "ineligible cost." The rest of the proposed regulation set forth the four stages at which the Corporation would take action on costs: (1) Determining whether a cost should be questioned (§ 1630.3); (2) determining whether a cost should be disallowed (§ 1630.4); (3) determining how to resolve the disallowed cost (§ 1630.5); and (4) deciding appeals of the resolution of the cost (§ 1630.6). After each but the fourth stage, a recipient would have 30 days to appeal the Corporation's decision. The Corporation would in turn have 45 days to respond to the recipient's appeal. The President would decide an appeal at the fourth stage within 30 days (§ 1630.6).

Currently the staff of the Corporation is working to refine the language in the proposed regulations, and drafts of the proposal will be considered at the September 6, 1985 and October 3, 1985 meetings of the Committee on Operations and Regulations.

DATE: Comments must be received on or before September 30, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street NW., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting General Counsel, (202) 272–4010.

SUPPLEMENTARY INFORMATION: On August 1, 1985 the Operations and Regulations Committee of the Board of Directors of the Legal Services Corporation began considering a proposed new rule setting forth revised procedures for resolving questioned costs. At the conclusion of the meeting the Committee voted that the proposed regulation be published for comment in the **Federal Register** with certain changes that had been dictated into the record during the Committee's discussion.

Resolving questioned costs incurred by recipients falls squarely within the mandate given the Legal Services Corporation to provide economical and effective legal assistance to eligible clients, and to insure compliance with the Legal Services Corporation Act, and the regulations, rules and guidelines promulgated by the Corporation.

The resolution of questioned costs is currently governed by LSC Instruction 83–8, which became effective on November 23, 1983. At present monitoring offices submit recommendations on questioned costs to the Grants and Budget Unit (GBU) of the Office of Field Services (OFS). The manager of GBU then makes a determination on whether or not to disallow the cost. If GBU disallows a cost, the monitoring office must then submit to GBU a recommendation on whether to recover funds from the recipient. GBU makes a decision on this recommendation after consultation with the Director of OFS, with the Audit Division, with the Office of the Comptroller, and with the Office of the General Counsel. The procedure set forth in Instruction 83–8 takes roughly nine months but the actual elapsed time is frequently much longer because of some of the more cumbersome cases and because of the requirement that GBU consult with the other offices at the Corporation headquarters before making its determinations.

The proposed Part 1630 is intended to streamline the procedure with regard to questioned costs and to set forth the criteria the Corporation will use in determining whether or not costs are ineligible. the process set out in the regulation is designed to take a maximum of 210 days or about 7 months. The core of Part 1630 is § 1630.2, the definition section, which includes a definition of an "ineligible cost." The rest of the proposed regulation sets forth the four stages at which the Corporation would take action on costs: (1) Determining whether a cost should be questioned (§ 1630.3); (2) determining whether a cost should be disallowed (§ 1630.4); (3) determining how to resolve the disallowed cost (§ 1630.5); and (4) deciding appeals of the resolution of the cost (§ 1630.6). After each but the fourth stage, a recipient would have 30 days to appeal the Corporation's decision. The Corporation would in turn have 45 days to respond to the recipient's appeal. The President would decided an appeal at the fourth stage within 30 days (§ 1630.6).

Section 1630.1 states that the purpose of the regulation is to provide a full, fair, impartial, timely and flexible process for reviewing questioned costs. It also distinguishes recovery of questioned costs by the Corporation from termination of financial assistance.

Section 1630.2, the definition section, is the substantive provision of the regulation. It defines four kinds of costs: "questioned costs" (§ 1630.2(a)); "ineligible costs" (§ 1630.2(b)); "allowed costs" (§ 1630.2(c)); and "disallowed costs" (§ 1630.2(d)). "Ineligible costs" are essentially charges to a recipient's funds that the recipient should not have incurred. When the Corporation has reason to believe that a charge may be ineligible, it can be declared a "questioned cost". In resolving questioned costs, the Corporation either allows or disallows the charges to the recipients funds. The operative provision of §1630.2 is the definition of ineligible costs in paragraph (b). Ineligible costs include charges to recipient's funds that violate the LSC Act or other provision of the law, LSC rules, regulations, or guidelines, or the terms of a recipient's grant or contract agreement; charges that are not adequately supported by documentation or other satisfactory evidence; charges that are unnecessary or unreasonable; consultant contracts in excess of certain amounts; certain large expenditures incurred without the prior written approval of the Corporation; and costs incurred pursuant to subgrants that have not been approved by the Corporation.

Section 1630.3 sets forth the procedure for notifying a recipient that a cost is questioned. The Corporation must notify the recipient in writing stating the dollar amount of the cost and the reasons for

questioning it, the recipient must respond, if it desires to do so, within 30 days and the response must be in writing. Should it fail to respond, the cost will be automatically disallowed. Section 1630.3 also provides that, to obtain relevant information while investigating a questioned cost, the Corporation may contact any party it deems necessary.

Section 1630.4 provides that the Corporation in turn has 45 days to respond after it receives a written response to its notice of questioned costs. It may either allow or disallow the cost or it may inform the recipient that additional time is needed before a decision can be made.

Section 1630.5 sets out the options available to the Corporation once it has disallowed a cost. The usual remedy is for the Corporation to recover the funds in the form either of a cash reimbursement or a reduction in future grant checks. Recovery of funds in these ways may not always be appropriate, however. Therefore the regulation gives a recipient thirty days from the time the Corporation sends it a notice that a cost has been disallowed to respond and show why the Corporation should not use the normal methods of recovering disallowed costs. If the recipient can make the necessary showing, two other options are available: The Corporation may recover less than the total amount of the disallowed cost or it may accept the recipient's demonstration that it has reimbursed its LSC fund from a funding source from which the original expenditure could have been made without violation of section 1010(c) of the Act. The Corporation has 45 days from the time of the recipient's response to determine how to resolve a disallowed cost under this section. Paragraph (c) provides that whenever the Corporation disallows a cost it shall also take steps to prevent the recurrence of such costs. As provided in paragraph (d), recipients will be held responsible for the actions of subrecipients when a disallowed cost arises from expenditures incurred under a subgrant of LSC funds.

Section 1630.6 sets out the process for appealing the resolution of a disallowed cost. Again the recipient has 30 days from the time it receives notice of the Corporation's decision in which to appeal. The President of the Corporation, in turn, has 30 days to issue a decision adopting, modifying or reversing the resolution of the disallowed questioned cost.

Section 1630.7 provides that, if warranted, the Corporation may extend any period of time provided in the regulation.

Section 1630.8 establishes that notice to a recipient means notice to the chairperson of its governing body and to its director.

Currently the staff of the Corporation is working to refine the language in the proposed regulation, and drafts of the proposal will be considered at the September 6, 1985, and October 3, 1985, meetings of the Committee on Operations and Regulations. The Committee has already directed that the staff consider making certain changes. Section 1630.2(b)(5)(i) of the proposal, for instance, requires written approval from the Corporation before a recipient may purchase equipment or non-expendable personal property having a single-item or combined purchase price in excess of $5,000. At the August 1, 1985 meeting of the Committee, it was suggested that $5,000 is too low of a ceiling and that staff should determine whether the bulk of the costs that Regional Offices are now questioning fall in the low dollar range, for example between $5,000 and $10,000. Should that prove to be the case, the Committee plans to raise the ceiling in order to avoid having a large number of reasonable investments questioned. It was also suggested that staff should delineate the criteria to be used under § 1630.5 in determining how to resolve disallowed costs.

List of Subjects in 45 CFR Part 1630

Legal services, Questioned costs.

For the reasons stated in the preamble, notice is given of consideration by the Committee on Operations and Regulations to propose to add 45 CFR Part 1630 as follows:

PART 1630—PROCEDURES FOR RESOLVING QUESTIONED COSTS

Sec.

1630.1 Purpose.
1630.2 Definitions.
1630.3 Investigation of questioned costs.
1630.4 Decision process.
1630.5 Resolution of disallowed questioned costs.
1630.6 Appeal process.
1630.7 Time extension.
1630.8 Notice.

Authority: Secs. 1006(b) (1), (2), (3), and (5), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1010(c), 1011 Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b) (1), (2), (3), and (5), 2996f(a) (1), (3), and (9), 996f(d), 2996g(e), 2996i(c), 2996j).

§ 1630.1 Purpose.

This part is intended to provide a full, fair, impartial, timely and flexibile process for the review of questioned costs incurred by recipients of Legal Services Corporation (LSC) grant or contract funds and to delineate options for the resolution of any costs that may be disallowed as a result of the review. Recovery of questioned costs under this section is not to be construed as a termination of financial assistance under Part 1606 of these regulations or a denial of refunding under Part 1625 of these regulations.

§ 1630.2 Definitions.

(a) A "questioned cost" is a charge to a recipient's funds which has been identified by the Corporation as requiring further inspection and, which after an investigation, could be determined to be ineligible.

(b) An "ineligible cost" is any of the following:

(1) A cost specifically prohibited by the Act or other provision of law, by LSC rules, regulations, or guidelines, or by the terms of a recipient's grant or contract agreement;

(2) A cost which is not adequately supported by vendor's invoices, payroll records, or other documents and for the propriety of which the Corporation finds no other satisfactory evidence;

(3) A cost that is unnecessary for the effective operation of a recipient's program or that is unreasonable in that it does not reflect the actions of a prudent person after considering the circumstances at the time the cost was incurred.

(4) A consultant contract in excess of $2,500.00 or consultant fee in excess of $261.00 per eight-hour day or $35.00 per hour.

(5) The following costs if incurred without the prior written approval of the Corporation:

(i) A purchase of equipment or non-expendable personal property having a single-item or combined purchase price in excess of $5,000.00 "Combined purchase price" means the total cost of all the components of a system, such as a computer or telephone system, in which each component is an integral part;

(ii) A purchase of real property;

(iii) A lease of equipment or non-expendable personal property in cases where the single-item or combined purchase price would exceed $5,000.00;

(6) Costs charged to funds covered by provisions of the LSC Act or other acts of Congress and incurred pursuant to a subgrant that has not been approved by the Corporation in accordance with Part 1627 of these regulations.

(c) An "allowed cost" is a questioned cost that, after investigation, the Corporation has determined to be an eligible charge to a recipient's funds.

(d) A "disallowed cost" is a questioned cost that the Corporation has determined to be ineligible.

§ 1630.3 Investigation of questioned costs.

(a) When it questions a cost incurred by a recipient, the Corporation shall notify the recipient in writing stating the dollar amount of the cost and the reasons for questioning it.

(b) Within thirty days (30) after a recipient has received notice from the Corporation that a cost has been questioned, it may respond in writing to show why the cost should be allowed. If the recipient fails to respond within the time prescribed by this section, the cost shall be disallowed.

(c) To obtain relevant information while investigating a questioned cost, the Corproation may contact any party it deems necessary.

§ 1630.4 Decision process.

Within forty five (45) days of receiving the recipient's written response to the notice of questioned costs, the Corporation shall issue a determination that the cost has been allowed or disallowed or inform the recipient that additional time is needed before a decision can be made.

§ 1630.5 Resolution of disallowed questioned costs.

(a) Within thirty (30) days after receipt of notice from the Corporation that a questioned cost has been disallowed, the recipient may respond in writing to show why the Corporation should not recover, in the form of either a cash reimbursement to the Corporation or a reduction in future grant checks, the amount of the disallowed cost, including additional income derived from activities supported or assets purchased by means of the disallowed cost such as interest income, attorneys fees, and proceeds from the sale of property. If the recipient fails to respond within the time prescribed by this section, the Corporation shall recover an amount not to exceed the total disallowed cost and any additional income in one of the forms described above.

(b) In the event that the recipient has demonstrated pursuant to paragraph (a) of this section that resolution in the form of cash reimbursement or reduction in future grant checks is inappropriate, the Corporation, within forty five (45) days after it receives the recipient's written response, may resolve the disallowed cost by—

(1) Recovering less than the total amount of the disallowed cost through cash reiburement or reduction of the amount of monthly grant checks; or

(2) Accepting the recipient's demonstration that it has reimbursed its LSC fund from a funding source from which the original expenditure could have been made without a violation of sec. 1010(c) of the Act (42 U.S.C. 2996i(c)).

(c) In all cases in which a cost has been disallowed by the Corporation, the Corporation shall require that the recipient take the action needed to prevent the recurrence of ineligible costs including, if necessary, the implementation of organizational or personnel changes or the development and implementation of a plan, approved by the recipient's governing body, to prevent a recurrence of the activity that gave rise to such disallowed costs. In cases of serious financial mismanagement, fraud, or defalcation of funds, the Corporation shall take action to terminate financial assistance under Part 1606 of these regulations or to deny refunding under Part 1625 of these regulations.

(d) When a disallowed cost arises from expenditures incurred under a subgrant of LSC funds, the recipient will be held responsible for the actions of the subrecipient and be subject to all remedies available under this Part.

§ 1630.6 Appeal process.

(a) Within thirty (30) days after it receives notice that the Corporation has determined to resolve the disallowed cost as described under § 1630.5, a recipient may file a written notice of appeal with the President of the Corporation stating in detail the reasons for which it requests review.

(b) Within thirty (30) after receipt of the written notice of appeal, the President shall either adopt, modify, or reverse the resolution of the disallowed questioned cost.

(c) The decision of the President with respect to the disallowed questioned cost shall become final upon receipt by the recipient of written notice of the decision.

§ 1630.7 Time extension.

Any period of time provided in this Part may be extented by the Corporation if warranted.

§ 1630.8 Notice.

A notice required to be sent to a recipient under this Part shall be sent to the chairperson of its governing body and to its director.

Dated: August 26, 1985.

Richard N. Bagenstos,

Acting General Counsel.

[FR Doc. 85-20709 Filed 8-28-85; 8:45 am]

BILLING CODE 6820-05-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-15)]

Revision of Abandonment Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Under 49 U.S.C. 10904(c)(3), an initial decision in an investigated railroad abandonment proceeding becomes the final decision of the Commission 30 days after it is issued unless, during the interim, the Commission decides to hear appeals. Under current regulations, any appeal from an initial decision in an investigated proceeding must be filed no later than 20 days after the date the initial decision is served. This gives the Commission at least 10 days to decide whether to exercise its discretion and hear the appeal.

On its own motion, the Commission proposes to amend its rules to require that parties exhaust their administrative remedies in investigated abandonment proceedings by filing appeals to initial decisions within the specified time before taking the decision to court. This requirement would allow the agency to correct any errors prior to the initial decision becoming final by operation of law.

DATES: Comments are due by September 30, 1985.

FOR FURTHER INFORMATION CONTACT:

Wayne A. Michel, 202-275-7657;

or

Louis E. Gitomer, 202-275-7245.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10904(c)(3), an initial decision in an investigated abandonment proceeding becomes the final decision of the Commission 30 days after it is issued unless, during the interim, the Commission decides to hear appeals. Under the Commission's regulations at 49 CFR. 1152.25(e)(3)(i), any appeal from an initial decision in an investigated proceeding must be filed no later than 20 days after the date the initial decision is served. This gives the Commission at least 10 days to decide whether to exercise its discretion and hear the appeal. *See* 49 CFR 1152.25(e)(3)(ii).

We propose to amend our rules to require that parties exhaust their administrative remedies in investigated abandonment proceedings by filing appeals to initial decisions within the specified time before taking the decision to court. This requirement satisfies one of the fundamental reasons for the exhaustion doctrine—to allow the agency to correct its own mistakes. A similar requirement already applies in non-abandonment cases. 49 CFR 1115.6. The Commission's discretion whether to hear an appeal remains; the proposed rule merely allows the Commission an opportunity to correct any errors prior to the initial decision becoming final by operation of law.

We invite public comment on our proposed revision to the abandonment regulations. After considering all the comments, we shall issue a final decision.

List of Subjects in 49 CFR Part 1152

Administrative Practice and Procedure, Railroads.

Decided: By the Commission, chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Baine,

Secretary.

Appendix

We propose to amend Title 49 of the Code of Federal Regulations as follows:

PART 1152—[AMENDED]

1. The individual authority citations following §§ 1152.1, .2, .10, .12, .13, .20, .21, .22, .23, .24, .25, .26, .27, .28, .30, .32, .33, .34, .35, .36, and .50 and following the Appendix to Part 1152 are removed and the authority for Part 1152 is revised to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 31 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

2. Section 1152.25 would be amended by adding a new paragraph (e)(3)(iii) to read as follows:

§ 1152.25 [Amended]

* * * * *

(e) * * *

(iii) In order to exhaust its administrative remedies, a party must file an appeal under paragraph (e)(3)(i) of this section before going to court.

* * * * *

[FR Doc. 85-20704 Filed 8-28-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Ch. VI

Fishery Management Plan For The Striped Bass Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic, New England, and South Atlantic Fishery Management Councils will hold public hearings to allow for input on the Fishery Management Plan for the Striped Bass Fishery (FMP).

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates and locations of the hearings. All hearings will begin at 7:00 p.m. local time and will be taped recorded with the tapes filed as the official transcript of the hearing. Written comments will be accepted until October 4, 1985.

ADDRESS: Send comments to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901. See **"SUPPLEMENTARY INFORMATION"** for location of the hearings.

FOR FURTHER INFORMATION CONTACT: John C. Bryson (Executive Director), 302-674-2331.

SUPPLEMENTARY INFORMATION: The management unit of this FMP is coastal migratory Atlantic striped bass throughout their range on the Atlantic coast from Maine through North Carolina, including the fishery conservation zone (FCZ), territorial sea, and internal waters.

The objectives of the FMP are: (1) Assure that the FCZ fishery, at a minimum, is consistent with the complements the Atlantic States Marine Fisheries Commission (ASMFC) plan for striped bass; (2) insure that the FCZ fishery contributes proportionately to: (a) Achieving and maintaining a spawning stock sufficient to prevent the possibility of recruitment failure, and (b) reducing variation in annual abundance available for harvest; and (3) induce the affected ASMFC member states to implement the ASMFC Striped Bass Plan to the fullest extent possible.

The recommended management measures are:

1. A minimum size limit of either 26" total length (TL) (24" fork length (FL)), or 24" TL (22" FL) for striped bass which may be changed by the Regional Director to conform with such minimum size limit as may be adopted by the ASMFC as an amendment to the ASMFC Striped Bass Management Plan and implemented by a majority of the states in the management unit of this FMP. The reason for the two minimum size alternatives is to allow the FMP to proceed through hearings while the ASMFC has an opportunity to consider the question of total length versus fork length measurements. The ASMFC plan currently contains a 24" TL minimum size limit recomendation. Some of the states have 24" TL minimum size limits and others have 24" FL minimum size limits.

2. A maximum size limit of 40" TL (38" FL), with an exception of one fish per person per day. This measure will expire when the Maryland striped bass young of the year index reaches a three-year moving average of 8.0 unless a majority of the states have adopted the measure prior to that time.

3. A prohibition of taking (catching and retaining) striped bass in the FCZ between October 1 and May 31. This measure will expire when the Maryland striped bass young of the year index reaches a three-year moving average of 8.0 unless a majority of the states have adopted the measure prior to that time.

4. The Regional Director, in consultation with the Councils, may cooperate in Federal and State striped bass research by waiving the seasonal closure and size limit provisions of the FMP as appropriate.

5. No foreign fishing vessel will conduct a fishery for or retain any striped bass.

The dates and locations of the public hearings are scheduled as follows:

September 9, 1985—
- North Carolina Marine Resources Center, P.O. Box 699, Manteo, NC
- Holiday Inn, Exit 72, LI Expressway and Rt. 25, Riverhead, NY

September 10, 1985—
- Quality Inn Lake Wright, 6280 Northampton Blvd., Norford, VA
- Holiday Inn, 173 Sunrise Hwy., Rockville Center, NY

September 11, 1985—
- Sheraton Salisbury Inn, 300 S. Salisbury Blvd., Salisbury, MD

September 23, 1985—
- Dutch Inn, Great Island Rd., Galilee, RI
- Cape May County Extension Office, Dennisville Rd., Cape May Court House, NJ

September 24, 1985—
- Town Hall, 28 Federal St., Burnswick, ME
- Holiday Inn, Rt. 36, West Long Branch, NJ

September 25, 1985—
The Other Side Restaurant, 421 Bridge Rd., Salisbury, MA
September 26, 1985—
Sheraton Regal, Rt. 132 and Bearse's Way, Hyannis, MA
September 27, 1985—
Howard Johnson's Motor Lodge Exit 90 off I–95, Mystic, CT

Dated: August 23, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–20717 Filed 8–28–85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 168
Thursday, August 29, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development; Meeting

Notice is hereby given that the USDA Agribusiness Promotion Council, advisory committee to the Secretary of Agriculture on matters pertaining to the Caribbean Basin, will meet September 16, 1985 from 2:00 p.m. to 5:00 p.m. in the Board Room of the Executive Offices of the International Trade Mart, Suite 2900, 2 Canal Street, New Orleans, Louisiana. The agenda will consist of background briefings, exchange of ideas and planning committee activities. The meeting will be open to the public. From 8:45 to 10:00 p.m. The Promotion Council will attend a dinner with the Secretary. Written statements may be submitted to Joan S. Wallace, Administrator, USDA/OICD, Room 3047–South Building, Washington, D.C. 20250–4300 until September 12, 1985.

Joan S. Wallace,

Administrator.

[FR Doc. 85–20700 Filed 8–28–85; 8:45 am]

BILLING CODE 3410–DP–M

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Council meeting:

Name: National Advisory Council on Maternal, Infant and Fetal Nutrition.

Date, time and place:

Orientation for New Members: September 24, 1985; 1:00 p.m., Food and Nutrition Service, 3101 Park Center Drive, 4th Floor, Alexandria, Virginia 22302

Council Meeting: September 25–27, 1985; 9:00 a.m., Ramada Inn-Seminary Road, 4641 Kenmore Avenue, Alexandria, Virginia [illegible]

Purpose of Meeting: The Council will continue its study of the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

Agenda: The orientation for new members (and other Council members wishing to attend) on September 24, 1985 will consist of briefings on the operation of WIC and CSFP. No recommendations or Council business will be conducted at this session. At the Council meeting on September 25–27, 1985 the members will discuss a wide range of matters concerning these two programs.

The orientation for new members and the meeting of the Council are open to the public. Members of the public may participate, as time permits.

Persons wishing additional information about this meeting should contact Lynn Jordan, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. Telephone: (703) 756–3730.

Dated: August 15, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85–20694 Filed 8–28–85; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–005]

Deformed Steel Bars for Concrete Reinforcement From South Africa; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On July 3, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on deformed steel bars for concrete reinforcement from South Africa and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. We received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the Department's notification, the revocation will apply to all rebars entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Williams or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 27476) the preliminary results of its changed circumstances administrative review of the countervailing duty order on deformed steel bars for concrete reinforcement ("rebars") from South Africa (47 FR 47900, October 28, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of South African rebars. Such merchandise is currently classifiable under items 606.7900 and 606.8100 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Final Results of the Review and Revocation

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments.

As a result of our review, we determine that the domestic interested parties are not longer interested in continuation of the countervailing duty order on rebars from South Africa and that the order should be revoked on this basis.

Therefore, we are revoking the order on rebars from South Africa effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn

from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of rebars from South Africa which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption before October 1, 1984 in a separate review, if one is requested.

This administrative review, revocation, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 23, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-20624 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DS-M

Technical Regulations Subcommittee of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Technical Regulations Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held September 25, 1985, at 9:30 a.m., the Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, D.C. The Technical Regulations Subcommittee was formed to recommend proposed changes in the level of export controls for various commodities and technologies in the computer peripheral area.

This will be the first meeting of the CPTAC since the enactment of the Export Administration Amendments Act of 1985. The Act provides for annual review of the list and prompt revisions as may be necessary after each review. Before beginning each annual review, notice shall be made in the **Federal Register**, with opportunity during the review for comment and the submission of data by interested parties. This data is to include the availability from sources outside the United States of goods and technology comparable to those subject to export controls. This meeting will receive such comments, especially with a view to developing an annual plan by October, 1985. The controls affected will be for multilateral, unilateral, and for special (bulk) licensing.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Additional proposals for decontrol from the public.
4. Discussion of January 1985 computer peripheral control limits.
5. Discussion of Committee recommendations for both East/West (Part 399.1) multilateral controls and West/West (Part 373) unilateral controls.
6. DOC guidance on desired role of PTAC in software issues.
7. ECCN 1565 advisory notes.
8. Action items underway.
9. Action items due at next meeting.

Executive Session

10. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10 (d) of the Federal Advisory Committee Act, as amended by section 5 (c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department to Commerce, Telephone: 202-377-4217. For further information or copies of the minutes call (202) 377-2583.

Dated: August 26, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-20703 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DT-M

[C-580-504]

Extension of the Deadline for Final Countervailing Duty Determination; Offshore Platform Jackets and Piles From Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers, the Department of Commerce is extending the deadline for its final determination in the countervailing duty investigation of offshore platform jackets and piles from Korea to correspond to the date of the final determinations in the antidumping investigations of the same product from Korea and Japan, pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). In keeping with Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), the Department will terminate the suspension of liquidation in the countervailing duty investigation 120 days after the date of publication of the preliminary determination in this case.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Marty Martin or Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 377-3464 or 377-0187.

SUPPLEMENTARY INFORMATION:

Case Histories

On April 19, 1985, we received antidumping and countervailing duty petitions filed by the Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers against offshore platform jackets and piles from Korea. We also

received an antidumping petition against the same product from Japan.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petitions alleged that imports of offshore platform jackets and piles from Korea and Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure or threaten material injury to a U.S. industry.

In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Korea of offshore platform jackets and piles directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petitons contained sufficient grounds on which to initiate antidumping investigations, and on May 9, 1985, we initiated such and countervailing duty investigations (50 FR 20254, 50 FR 20252, and 50 FR 20253). On July 15, 1985, we issued an affirmative preliminary determination in the countervailing duty investigation (50 FR 29461). Preliminary determinations in the antidumping investigations will be made on or before September 28, 1985.

On July 25, 1985, the petitioners filed a request for an extension of the deadline date for the final determination in the countervailing duty investigation of offshore platform jackets and piles from Korea to correspond with the date of the final determination in the antidumping investigations of the same products.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671(a)(1)). Pursuant to this provision, the Department is granting an extension of the deadline for the final determination in the countervailing duty investigation of offshore platform jackets and piles from Korea to December 10, 1985, the current deadline for the final determinations in the antidumping investigations. To comply with the requirements of Article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on November 16, 1985, which is 120 days from the date of publication of the preliminary determination in this case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after November 16, 1985. The suspension of liquidation will not be resumed unless and until a final affirmative ITC determination is published in this case. We will also direct the U.S. Customs Service to hold any entries suspended prior to November 16, 1985, until the conclusion of this investigation.

The public hearing in the countervailing duty investigation, which we announced would be held on September 4, 1985, is postponed and will now be held at 10:00 a.m. on November 6, 1985, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, NW., Washington D.C. 20230.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 22, 1985.

[FR Doc. 85-20625 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DS-M

Foreign Availability Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Foreign Availability Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held September 25, 1985, 1:00 p.m., the Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, D.C. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

Agenda

1. Opening remarks by the sub-committee chairman.

2. Presentation of papers or comments by the public.

3. OEA review of progress on our proposal for decontrol of floppy disk media.

4. OEA summary of all items proposed for decontrol.

5. Discussion on additional items for decontrol by all members.

6. Report on claims of Winchester disks.

7. Action items underway.

8. Action items due at next meeting.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for pubic inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: August 26, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 20702 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DT-M

[A-351-409 and A-351-410]

Hydrogenated Castor Oil and 12-Hydroxystearic Acid From Brazil; Postponement of Final Antidumping Determinations

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The final antidumping determinations involving hydrogenated castor oil and 12-hydroxystearic acid from Brazil are being postponed until not later than December 14, 1985.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230: telephone (202) 377-1766.

SUPPLEMENTARY INFORMATION: On January 17, 1985, we announced the initiation of antidumping investigations to determine whether hydrogenated castor oil and 12-hydroxystearic acid from Brazil were being, or were likely to be, sold in the United States at less than fair value.

At the request of the petitioner our preliminary determinations in those cases were postponed from June 5, 1985, until July 25, 1985. On August 1, 1985, we published affirmative preliminary determinations in those cases.

Both respondents in these investigations, Sanbra S.A. and Braswey S.A., who account for a significant volume of the exports of the products to the United States, have requested that final determinations be postponed until 135 days after the preliminary determinations in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). Pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended, if exporters who account for a significant portion of the merchandise which is the subject of the investigation properly request an extension of the final determination following a preliminary affirmative determination, we are required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue final determinations in these cases not later than December 14, 1985. The date of the public hearing has also been changed to October 25, 1985, at 10:00 a.m. in room 3708 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230. Pre-hearing briefs must be received by October 18, 1985.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 23, 1985.

[FR Doc. 85-20710 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-009]

Steel Pipes and Tubes From South Africa; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Terminate Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to terminate suspended countervailing duty investigation.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty case on steel pipes and tubes from South Africa. The review covers the period from October 1, 1983.

The petitioner in this proceeding has notified the Department that it is no longer interested in the countervailing duty case. This affirmative statement of no interest provides a reasonable basis for the Department to terminate the suspended investigation. Therefore, we intend to terminate the suspended investigation. The termination will apply to all steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after October 1, 1983. Interested parties are invited to comment on these preliminary results and tentative determination to terminate.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1983, the Department of Commerce, ("the Department") published in the **Federal Register** (48 FR 24407) a notice of suspension of countervailing duty investigation on steel pipes and tubes from South Africa.

In a letter dated July 19, 1985, the Committee on Pipe and Tube Imports, the petitioner in this proceeding, informed the Department that it was no longer interested in the case and stated its support of termination of the suspended investigation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may terminate a suspended countervailing duty investigation that is no longer of interest to domestic interested parties.

Scope of Review

Imports covered by the review are shipments of South African steel pipes and tubes. Such merchandise is currently classificable under items 610.3000, 610.3100, 610.3205, 610.3208, 610.3209, 610.3212, 610.3213, 610.3216, 610.3219, 610.3221, 610.3227, 610.3231, 610.3233, 610.3234, 610.3241, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3500, 610.3600, 610.3925, 610.3935, 610.3945, 610.3955, 610.4025, 610.4035, 610.4045, 610.4055, 610.4225, 610.4235, 610.4245, 610.4255, 610.4325, 610.4335, 610.4345, 610.4355, 610.4500, 610.4600, 610.4800, 610.4920, 610.4925, 610.4928, 610.4931, 610.4933, 610.4936, 610.4942, 610.4944, 610.4946, 610.4948, 610.4951, 610.4953, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.4976, 610.5130, 610.5160, 610.5202, 610.5204, 610.5206, 610.5209, 610.5211, 610.5214, 610.5216, 610.5221, 610.5222, 610.5226, 610.5229, 610.5230, 610.5231, 610.5234, 610.5236, 610.5240, 610.5242, 610.5243, and 610.5244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1983.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested party's affirmative statement of no interest in continuation of the countervailing duty case on steel pipes and tubes from South Africa provides a reasonable basis for termination of the suspended investigation.

Therefore, we tentatively determine to terminate the suspended investigation on this product effective October 1, 1983. The current requirements of the agreement suspending the investigation will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to terminate within 30 days of publication and may

request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on termination, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to terminate, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 23, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-20716 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Foreign fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19910, 302/674-2331

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809/753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK 99510, 907/271-4000

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368

For further information contact John D. Kelly (Fees, Permits and Regulations Division, 202-634-7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1985 have been received between July 17, 1985 and August 21, 1985, from the Government(s), shown below.

Dated: August 23, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic.
SMT	Seamount Groundfish	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
4	"Joint venture" in support of U.S. vessels.

Nation, vessel name, and vessel type	Application No.	Fishery	Activity
Government of the People's Republic of China			
Geng Hai, Factory Trawler.	CH-85-0001	GOA	1(4)
Yan Yuen I, Factory Trawler.	CH-85-0002	GOA	1(4)
Kai Chuang, Factory Trawler.	CH-85-0003	GOA	1(4)
The Government of Japan			
Asama Maru, Cargo Transport.	JA-85-0126	BSA, GOA, NWA, SNA	3
East Wind, Cargo Transport.	JA-85-0131	BSA, GOA, NWA, SNA	3
Hamanasu, Cargo Transport.	JA-85-0128	BSA, GOA, NWA, SNA	3
Ikoma Maru, Cargo Transport.	JA-85-0127	BSA, GOA, NWA, SNA	3
North Wind, Cargo Transport.	JA-85-0125	BSA, GOA, NWA, SNA	3
Punente, Cargo Transport.	JA-85-0132	BSA, GOA, NWA, SNA	3
Sun Beauty, Cargo Transport.	JA-85-0129	BSA, GOA, NWA, SNA	3
Sun Field, Cargo Transport.	JA-85-0130	BSA, GOA, NWA, SNA	3
Suzuran, Cargo Transport.	JA-85-0124	BSA, GOA, NWA, SNA	3

Joint Venture: The People's Republic of China—The Government of the People's Republic China has submitted applications for three (3) vessels to engage in joint venture activities in the GOA fisheries. They have requested 6100 mt pollock, 600 mt yellowfin sole, 300 mt Pacific cod. The American partner is Pacific Rim Ventures, Ltd., 717 K Street, Suite 201, Anchorage, Alaska 99501. The operation is proposed to be conducted from October-December 1985.

[FR Doc. 85-20633 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration Peformance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRB's). The NOAA PRB's are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the

appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonsues and amounts, and initial recommendations for potential rank awards. The appointment of these members to the NOAA PRB's will be for periods of 12 months service beginning August 31, 1985.

DATE: The effective date of service of appointees to the NOAA Performance Review Board is August 31, 1985.

FOR FURTHER INFORMATION CONTACT: Susan Johnson, Chief, Personnel Division, National Capital Administrative Support Center, NOAA, 11400 Rockville Pike, Rockville, Maryland 20852, (301) 443–6667.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the NOAA PRB's (NOAA officials unless otherwise identified) are set forth below:

Richard M. Hadsell, Director, Regional Administrative Support Center Operations Office
Curtis T. Hill, Director, Mountain Administrative Support Center
Leo E. Palensky, Director, National Capital Administrative Support Center
Kelly C. Sandy, Director, Western Administrative Support Center
Robert S. Smith, Director, Eastern Administrative Support Center
Byron K. Burton, Director, Office of Congressional Affairs
John J. Carey, Director, Office of Budget and Finance
Kathleen J. Charles, Deputy Director, Office of Budget and Finance
Timothy R. Keeney, Deputy General Counsel for Policy, Research, Services and Coastal Zone
Augustine J. LaCovey, Director, Office of Public Affairs
Robert J. McManus, General Counsel
Izadore Barrett, Director, Southwest Fisheries Center, National Marine Fisheries Service
Carmen J. Blondin, Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service
Samuel McKeen, Chief, Management and Budget Staff, National Marine Fisheries Service
Richard B. Roe, Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service
Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service
Bernard H. Chovitz, Chief Geodesist, Office of Charting and Geodetic Services, National Ocean Service
Bruce C. Douglas, Chief, Geodetic Research and Development Laboratory, Office of Charting and Geodetic Services, National Ocean Service
Charles N. Ehler, Chief, Ocean Resources Assessment Division, National Ocean Service
Andrew Robertson, Director, National Marine Pollutions Program Office, National Ocean Service
Peter L. Tweedt, Director, Ocean and Coastal Resource Management Office, Natonal Ocean Service
Paul M. Wolff, Assistant Administrator for Ocean Services and Coastal Zone Management
William P. Bishop, Deputy Assistant Administrator for Satellites, National Environmental Satellite, Data, and Information Service
Michael A. Chinnery, Director, National Geophysical Data Center, National Environmental Satellite, Data, and Information Service
Kenneth D. Hadeen Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service
Russell Koffler, Director, Office of Satellite Data Processing and Distribution, National Environmental Satellite, Data, and Information Service
Richard P. Augulis, Director, Eastern Region, National Weather Service
Louis J. Boezi, Chief, Advanced Systems Laboratory, National Weather Service
Robert A. Clark, Director, Office of Hydrology, National Weather Service
Anthony F. Durham, Director, NEXRAD Joint Systems Program, National Weather Service
Neil L. Frank, Director, National Hurricane Center, National Weather Service
Elbert W. Friday, Deputy Director, National Weather Service
Richard E. Hallgren, Assistant Administrator for Weather Services
Ray E. Jensen, Director, Southern Region, National Weather Service
Frederick P. Ostby, Director, National Severe Storms Forecast Center, National Weather Service
Robert B. Wassall, Director, Central Region, National Weather Service
Eugene J. Aubert, Director, Great Lakes Environmental Research Laboratory, Office of Oceanic and Atmospheric Research
Eddie Bernard, Director, Pacific Marine Environmental Laboratory, Office of Oceanic and Atmospheric Research
Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research
Kirk Bryan, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratory, Office of Oceanic and Atmospheric Research
Eldon E. Ferguson, Director, Aeronomy Laboratory, Office of Oceanic and Atmospheric Research
Alan R. Thomas, Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research
David R. Alexander, Director, SES and Executive Resources, Office of Human Resources Management, Environmental Protection Agency
Peter A. Bracken, Director, Mission Operations and Data Systems, NASA, Goddard Space Flight Center
Claude C. Gravatt, Jr., Deputy Director, Programs, National Measurement Laboratory, National Bureau of Standards
Harriett G. Jenkins, Assistant Administrator for Equal Opportunity Programs, National Aeronautics & Space Administration
Franklin Martin, Director of Space and Earth Sciences Directorate, NASA, Goddard Space Flight Center
Joe Mass, Associate Administrator, Small Business Administration
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Bureau of Standards
Rupert B. Southard, Chief, National Mapping Division, United States Geological Survey

Dated: August 22, 1985.

Anthony J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 85–20629 Filed 8–28–85; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

August 28, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 30, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

In June 17, 1985, a notice was published in the **Federal Register** (50 FR 25114), which established an import restraint limit of 403,109 dozen for man-

made fiber underwear in Category 652, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on May 30, 1985 and extends through August 27, 1985. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the twelve-month period immediately following the ninety-day consultation period to 1,235,609 dozen.

No solution has been reached in consultations on a mutually satisfactory limit. The United States Government has decided, therefore, to control imports in category 652, exported during the twelve-month period beginning on August 28, 1985 at the level described above. The United States remains committeed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limit established for the ninety-day period has been exceeded, such excess amount, if allowed to enter, will be charged to the level established for the designated twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709),as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754),November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 26, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1954), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 30, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 652, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on August 28, 1985 and extending through August 27, 1986, in excess of 1,235,609 dozen.[1]

Textile products in Category 652 which are in excess of the ninety-day limit previously established shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commission of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-20701 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The restraint limit has not been adjusted to account for any imports exported after May 29, 1985.

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a) and 41 CFR 101-6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Second Floor Large Meeting Room at the Offices of Goldman, Sachs & Co. located at 85 Broad Street, New York, New York 10004, on Friday, September 20, 1985, beginning at 9:30 a.m. and lasting until 3:30 p.m. The agenda will consist of:

1. Discussions concerning off-exchange trading of derivative financial products, including comments from exchanges and large financial institutions.

2. Discussion concerning the purpose and nature of the Commission's hedging definition and its applicability to financial futures and options, if time permits.

3. Other Committee business:

a. Discussion of agenda items and scheduling for future Committee meetings.

b. Any other business which may properly come before the Committee.

The purpose of this meeting is to solicit the views of the Committee on the above listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on financial products issues. The purposes and objectives of the Advisory Committee are more fully set forth at 50 FR 21332 (May 23, 1985).

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Robert R. Davis, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commission Financial Products Advisory Committee c/o Robert T. Bernat or Becky J. Baker, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, to be received prior to the date of the meeting. Members of the public who wish to make oral statements should also inform Mr. Bernat or Ms. Baker in writing at the above address at least three days prior to the meeting. Provision will be made, if time permits, for an oral presentation of reasonable duration.

Issued in Washington, D.C. the 26th day of August, 1985 by the Commission.

Lynn K. Gilbert.

Deputy Secretary of the Commission.

[FR Doc. 85-20676 Filed 8-28-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 22, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Enhanced Non-Nuclear Munition Storage will meet September 25–26, 1985, from 9:00 a.m. to 5:00 p.m. each day, at The Pentagon, Room 5D982, Washington, DC.

The purpose of this meeting is to review information previously presented to the Committee and to draft a final report.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–20623 Filed 8–28–85; 8:45 am]

BILLING CODE 3910–01–M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS); Construction of a Confined Disposal Facility (CDF) for Dredge Material at Toledo, OH

AGENCY: U.S. Army Engineer District, Buffalo, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. *Description of Action.* The proposed action would involve the construction of a Confined Disposal Facility (CDF) about 200 acres in size. The CDF would be constructed by enclosing an area of Maumee Bay with a stone protected dike. The purpose of the action is create additional confined dredged material capacity for polluted sediments which are dredged annually from the Federal Navigation Channel in the Maumee River and Bay at Toledo, OH. It is anticipated that the existing CDF will be filled in 3 to 6 years. The purpose of the Draft Environmental Impact Statement is to address the environmental impacts associated with the construction, siting and operation of the facility.

2. *Alternatives.* A wide range of alternatives will be addressed in the Draft EIS. The alternatives presently being considered include the construction of a facility adjacent to the existing facility, construction of a new facility in various locations within the bay; the construction of a facility which will provide additional benefits such as shore protection; upland disposal; reuse of existing facilities and the "no action" alternative.

3. *Scoping Process.* Considerable agency and public coordination has been performed prior to the preparation of the Draft EIS. Additional coordination will be accomplished during preparation of the Draft and Final EIS. The participation of concerned Federal, State, and local agencies, and other interested private organizations and parties is invited. Significant issues to be analyzed in the Draft EIS include the environmental impacts associated with the siting of a Confined Disposal Facility and the feasibility of reuse of the material.

4. *Scoping Meeting.* No scoping meeting is currently scheduled.

5. *Availability.* The Draft EIS is scheduled to be available for review in December, 1985.

ADDRESS: Questions about the proposed action and Draft EIS can be addressed to the District Commander, Attn: Mr. William F. MacDonald, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, New York 14207, telephone (716) 876–5454, extension 2175, or FTS 473–2175.

Dated: August 21, 1985.

Daniel R. Clark,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 85–20721 Filed 8–28–85; 8:45 am]

BILLING CODE 3710–GP–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Marathon Petroleum Co.; Correction

AGENCY: Department of Energy.

ACTION: Proposed Consent Order Correction.

SUMMARY: This document corrects an inadvertent omission in the Notice of Proposed Consent Order with Marathon Petroleum Company, which appeared at pages 34901 in the **Federal Register** of Wednesday, August 28, 1985, (50 FR 34901).

FOR FURTHER INFORMATION CONTACT: Meyer Magence, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–4945.

The following correction is made at page 34903, column 3, of the Notice of Proposed Consent Order appearing in the **Federal Register** on August 28, 1985 (50 FR 34901):

Under section IV "Terms and Conditions of the Consent Order," following subparagraph (b), the following subparagraph is added:

(c) the issues or claims pending or arising out of the subject matter now before the courts in *Marathon Oil Company* v. *DOE*, Civil Action No. 81–634 (N.D. Ohio, Western Div.), and in *Texaco* v. *DOE.*, Civil Action No. 84–391 (D. Del.), *American Petrofina* v. *DOE*, Civil Action No. 84–410 (D. Del.) and *Pennszoil* v. *DOE*, Civil Action No. 84–456 (D. Del.);

Issued in Washington, D.C. on August 28, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85–20912 Filed 8–28–85; 11:57 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. SA85–41–000]

Mid-America Gas Line Corp.; Petition for Adjustment

August 23, 1985.

Take notice that on June 18, 1985, Mid-America Gas Line Corporation filed a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978, requesting an extension of time within which to make Btu refunds required pursuant to Commission Order Nos. 399, 399-A and 399-B.

Mid-America states that it will agree to have the purchaser, Northwest Central Pipeline Corporation, deduct 25 percent from Mid-America's monthly revenue check derived from its sales of gas at Meter Station No. 13283 until its Btu refund obligation, including accrued interest, is fully satisfied. Mid-America states that the payback period will be approximately seven months and will be completed by January 31, 1986. Mid-America indicates that the proposed schedule of payments will prevent it from suffering financial hardship.

The procedures applicable to the conduct of this proceeding are set forth in Rules 1101–1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20643 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–15–002]

Mid Louisiana Gas Co.; Compliance Filing

August 22, 1985.

Take notice that on August 14, 1985, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, Revised Fifty-Second Revised Sheet No. 3a and Fifth Revised Sheet No. 26a to become effective August 1, 1985. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 16, 1985.

Mid Louisiana states that the purpose of Revised Fifty-Second Revised Sheet No. 3a is to reflect the removal of concurrent exchange imbalances from the sales volumes utilized in computing Mid Louisiana's monthly Account No. 191 balances. This revision results in an increase of 4.47¢ per Mcf to Mid Louisiana's rates under Rate Schedules G–1, SG–1 and I–1. The purpose of Fifth Revised Sheet No. 26a is to reflect a change to the PGA clause of Mid Louisiana's FERC Gas Tariff to clarify that concurrent exchange imbalances are not to be included in the monthly computation of Account No. 191 balances.

Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 30, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20644 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–185–000]

MIGC, Inc.; Initial Rate Schedule Filing

August 23, 1985.

Take notice that MIGC, Inc., on August 16, 1985, tendered for filing initial Rate Schedule T–1 to its FERC Gas Tariff, Original Volume No. 1.

Rate Schedule T–1 is proposed as a generally applicable transportation tariff stating the rate to be charged for transportation provided by MIGC under 18 CFR 157.209 and 18 CFR Part 284 of the Commission's regulations. The proposed effective date for Rate Schedule T–1 is February 8, 1985.

Rate Schedule T–1 contains an initial rate of 63.42 cents per MMBtu which is applicant's system-wide transportation rate as filed in Docket No. RP84–15–000, and is subject to refund pending the outcome of that docket. Applicant's rate may change from time to time to reflect changes in applicant's cost of service or in the methodology used in the computation of its rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385–211). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20645 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–1–37–000, 001]

Northwest Pipeline Corp.; Change in Rates Pursuant to Purchased Gas Cost Adjustment

August 23, 1985.

Take notice that on August 15, 1985, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of: (1) reflecting changes in Northwest's estimated cost of purchased gas and (2) projecting incremental surcharges to be assessed Northwest's affected direct and sales for resale customers pursuant to Order 49.

The current PGA adjustment, for which notice is given herein, aggregates to an increase of .071¢ per therm in the commodity rate for all rate schedules affected by and subject to the PGA as set forth on Twenty-First Revised Sheet No. 10 (Consenting Parties) and Third Amended Substitute Nineteenth Revised Sheet No. 10 (Nonconsenting Parties). There is no change in the demand rates. The annual change in Northwest's rates is an increase of approximately $1,760,656. Northwest has requested an effective date of October 1, 1985.

Northwest also tendered for filing and acceptance Eleventh Revised Sheet No. 10–B setting forth revised projected incremental pricing surcharges to become effective October 1, 1985, as part of the instant filing.

A copy of this filing has been mailed to all parties of record in Docket No. RP72–154–000, upon all jurisdictional customers, and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before Sept. 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20646 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85-184-000]

Southern Natural Gas Co.; Petition

August 23, 1985.

Take notice that on August 14, 1985, Southern Natural Gas Company (Southern) filed a petition requesting authorization to implement a direct billing procedure for retroactive Order No. 94 costs in lieu of recovering such costs through its PGA mechanism.

Under the proposed procedure, Southern would direct bill each of its customers for its proportionate share of the Order No. 94 costs incurred by Southern during the period from July 25, 1980 through March 31, 1985, plus interest, based on the ratio of that customer's annual purchases from Southern to the total of all purchases from Southern during the same period. Customers would have the option of paying such amounts in a lump sum or in twelve equal monthly installments. Southern states that the special billing procedure in necessary to avoid undesirable market distortions and inequitable allocation of costs among Southern's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests must be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20647 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-39-000]

Natural Gas Policy Act; Petition to Reopen and Vacate Final Well Category Determinations and Request to Withdraw; Appalachian Energy, Inc.

August 23, 1985.

Commonwealth of Pennsylvania, Department of Environmental Resources, Section 102 Determinations, Appalachian Energy, Inc., Adrian Sorenson No. 1 Well, FERC JD No. 80-32779, Richard C. Farver No. 1 Well, FERC JD No. 80-45787, R. Marsh No. 1 Well, FERC JD No. 81-2011, R.K. Farver No. 1 Well, FERC JD No. 81-2012, A. Bishop No. 1 Well, FERC JD No. 81-2013, B. Wilson No. 1 Well, FERC JD No. 81-9684, W. Wilson No. 1 Well, FERC JD No. 81-10302, L. Meerdink No. 1 Well, FERC JD No. 81-19068, B. Warner No. 1 Well, FERC JD No. 81-21756, R. Warner, No. 1 Well, FERC JD No. 81-47187.

Take notice that on June 14, 1985, Appalachian Energy, Inc. (Appalachian) filed with the Commission pursuant to § 275.205 of the Commission's regulations a petition to reopen and vacate final well category determinations under section 102 of the Natural Gas Policy Act of 1978 (NGPA) for the wells listed in the caption of this notice, each of which is located in Erie County, Pennsylvania.[1] Appalachian also requests authorization to withdraw its applications for the determinations.

Appalachian filed its application to withdraw the NGPA section 102 determination for the subject wells in response to an audit by the Commission staff, indicating that each of the wells is located less than 2.5 miles from the nearest marker well.

The question of whether, refunds, plus interest calculated under § 154.102(c) of the regulations, will be required is a matter which will be considered by the Commission in ruling on the subject petition.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, not later than 30 days following publication of this notice in the **Federal Register.** All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20648 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

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[1] Notices of Pennsylvania's determinations were received for the Adrian Sorenson well on May 8, 1980; for the Richard C. Farver well on July 11, 1980; for the R. Marsh well on October 16, 1980; for the R.K. Farver well on October 16, 1980; for the A. Bishop well on October 16, 1980; for the B. Wilson well on December 22, 1980; for the W. Wilson well on December 29, 1980; for the L. Meerdink well on February 26, 1981; for the B. Warner well on March 12, 1981; and for the R. Warner well on August 27, 1981. No action was taken by the Commission with regard to these determinations and the determinations became final 45 days following notification pursuant to § 275.202(a) of the Commission's regulations.

[Docket No. RP85-183-000]

Algonquin Gas Transmission Co.; Petition for Authority to Flow Through Direct Billed Order No. 94 Costs

August 23, 1985.

Take notice that on August 14, 1985, Algonquin Gas Transmission Company ("Algonquin Gas") petitioned the Federal Energy Regulatory Commission ("Commission") for authority to flow through to its customers any direct billed charges that Algonquin Gas may be required to pay to its pipeline suppliers as a result of retroactive payments for production-related costs incurred by such suppliers. Algonquin Gas notes that its petition is made in light of the July 3, 1985 filing, in Docket No. RP85-170-000, by Texas Eastern Transmission Corporation ("Texas Eastern") of a petition for authority to direct bill Algonquin Gas (and others) certain Order No. 94 costs.

All as is more fully set forth in its petition, Algonquin Gas proposes to flow through charges from Texas Eastern based on its customers' actual purchases during the retroactive period under rate schedules where the gas supply comes from Texas Eastern. Algonquin Gas also proposes to permit its customers to elect a lump sum payment or twelve monthly installment payments, thus mirroring the options made available by Texas Eastern. Algonquin Gas requests any necessary waivers of the Commission's Regulations to effect the proposed flow through direct billing.

Algonquin Gas submits that its proposal will avoid raising current rates by inclusion of extraordinary costs in its purchased gas adjustments, and that the use of actual past purchases will more closely match cost incurrence with cost responsibility.

Algonquin Gas states that it has served copies of its petition upon all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20637 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-15-20-003]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 22, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on August 15, 1985 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Sixth Revised Sheet No. 211
Sixteenth Revised Sheet No. 213

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedules STB and S-IS the effect of changes in Texas Eastern Transmission Corporation's ("Texas Eastern") underlying Rate Schedule SS-II and ISS-III.

Algonquin Gas requests that the Commission accept the revised tariff sheets filed herein to be effective August 1, 1985, to coincide with the proposed effective date of Texas Eastern's changes.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules or Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 30, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20638 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-46-000]

Aubrey C. Black; Petition for Adjustment

August 22, 1985.

Take notice that on July 29, 1985, Aubrey C. Black filed with the Federal Energy Regulatory Commission a petition for relief under section 502(c) of the Natural Gas Policy Act of 1978. Mr. Black seeks relief from the refund requirements resulting from the Btu measurement adjustments established by Commission Order Nos. 399 and 399-A for gas sold to Trunkline Gas Company from the Lloyd Well No. 1 and the Carlisle Well No. 1, Ben Bolt Field, Jim Well County, Texas.

Mr. Black states that production from Carlisle Well No. 1 commenced May 1979 and was plugged and abandoned on December 23, 1981. Production from the Lloyd Well No. 1 commenced July 1980 and last production from the well was in February 1983. Since both wells are no longer producing, Mr. Black states that it will be impossible to obtain from the royalty interest owners and working interest owners their portion of the Btu refund from the wells. Mr. Black asserts that denial of relief would cause irreparable financial injury and hardship.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure (18 CFR 385.1101 *et seq.* (1984)). Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20639 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-5-32-000, 001]

Colorado Interstate Gas Co.; Proposed Change in Rates Under Purchased Gas Adjustment Clause Provision

August 23, 1985.

Take notice that Colorado Interstate Gas Company (CIG), on August 15, 1985, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective September 28, 1985. The date of September 28, 1985, is requested to allow the rates proposed herein to become effective coincident with those in Docket No. RP85-122-000, CIG's general rate filing. CIG requests waiver of its applicable tariff provisions to implement the September 28, 1985, effective date. The decreased jurisdictional cost to CIG of purchased gas proposed by the filing amounts to approximately $75.1 million below the rates which are proposed to become effective on September 28, 1985, in Docket No. RP85-122. Due to the absence of any projected maximum surcharge absorption capability on CIG's system, no reduction in CIG's Estimated Actual Cost of Purchased Gas for incremental pricing purposes is reflected in the filing.

Copies of this filing have been served upon the Company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20640 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-5-51-000, 001]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

August 23, 1985.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on August 19, 1985, tendered for filing Fifty-Third Revised Sheet No. 57 to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that the filing provides for a reduction, estimated at $2,138,000 on an annual basis, in the cost of gas resold by Great Lakes to Michigan Consolidated Gas Company (Mich Con) resulting from recent negotiations between Great Lakes and TransCanada PipeLines Limited ("TransCanada"), the sole supplier of natural gas to Great Lakes. The reduced

pricing applies to natural gas sold to Mich Con by Great Lakes in four small communities in Northern Michigan which are fully dependent on the Great Lakes' system for their natural gas requirements. All deliveries of gas to Mich Con, including those for which the price is being reduced herein, will continue to be made under Rate Schedule CQ–1 and, except for the reduced price for certain volumes, all other provisions of CQ–1 Rate Schedule would continue to apply with full force and effect to all volumes sold by Great Lakes to Mich Con. This reduction in the border price of Canadian gas has been negotiated to meet the competitive requirements of the respective markets being served.

Great Lakes has requested various waivers of the Commission's Regulations so as to permit the out-of-period PGA filing to become effective August 14, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20841 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES85–55–000]

Iowa Southern Utilities Co.; Application

August 22, 1985.

Take notice that on August 15, 1985, Iowa Southern Utilities Company filed an application, pursuant to section 204 of the Federal Power Act, seeking authorization, to negotiate the issuance of not more than $20 million of long-term notes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20842 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–21–002]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 26, 1985.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 20, 1985, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective as follows:

August 1, 1985

One hundredth Revised Sheet No. 16
Thirty-seventh Revised Sheet No. 64

September 1, 1985

One hundred and first Revised Sheet No. 16
Thirty-eighth Revised Sheet No. 64

Columbia states that the tariff sheets designated as One hundredth Revised Sheet No. 16 and Thirty-seventh Revised Sheet No. 64, proposed to be effective August 1, 1985, are being filed to comply with Article II of the Stipulation and Agreement (Stipulation) in Docket Nos. TA82–1–21–001, *et al.* Such Article provides that Columbia shall reflect during the Settlement Period the demand and commodity rate impact resulting from changes in its pipeline suppliers' rate designs as of the date the change is made effective by the supplier.

On July 31, 1985, Texas Eastern Transmission Corporation (Texas Eastern) filed revised rates effective August 1, 1985 in compliance with the Commission's Order on Rehearing issued July 12, 1985 in Docket Nos. RP85–35, *et al.* Such filing reflects Texas Eastern's implementation of a modified fixed variable rate design. Columbia states that it is making this filing to reflect Texas Eastern's change in rate design.

Columbia further states that the tariff sheets designated as One hundred and first Revised Sheet No. 16 and Thirty-eighth Revised Sheet No. 64, proposed to be effective September 1, 1985, are being filed to adjust its July 31, 1985 PGA filing in Docket No. TA85–2–21–000 to appropriately reflect the above-referenced rate impacts resulting from Texas Eastern's change in rate design.

Copies of the filing were served upon the Company's jurisdictional customers, interested state commissions and all parties in Docket Nos. TA82–1–21–001, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 3 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20680 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP79–23–025 and RP79–24–017]

Distrigas of Massachusetts Corp.; Filing

August 26, 1985.

Take notice that on August 20, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing Fourth Substitute Fifth Revised Sheet No. 17 to its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet is submitted pursuant to the mandate of the First Circuit Court of Appeals in *Distrigas of Massachusetts Corp.* v. *FERC*, 751 F.2d 20 (1984), and the Commission's "Order On Remand" issued July 23, 1985 in Docket Nos. RP79–23–023 and RP79–24–015 which effectuated the court's mandate.

Domac requests that the Commission order the following:

(1) Upon 30 days notice the tendered tariff sheet be made effective for the period July 5, 1979 through August 1, 1981.

(2) Due to the Commission's earlier refund orders in this instance, DOMAC overrefunded to its customers $1,468,769.68 plus interest. DOMAC requests the

Commission to direct each of its customers to make reimbursement to DOMAC on a lump sum basis, with interest as accrued to the date of reimbursement.

DOMAC states that a copy of its filing was mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20681 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7965-001]

Hydrowaltham; Surrender of Preliminary Permit

August 27, 1985.

Take notice that Hydrowaltham, Permittee for the Moody Street Project No. 7965 located on the Charles River in Middlesex and Norfolk Counties, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 7, 1984, and would have expired on November 30, 1985. The Permittee states that analysis of the Moody Street Project did not indicate feasibility for development.

The Permittee filed the request on June 20, 1985, and the preliminary permit for Project No. 7965 shall remain in effect through the thirtieth day after issuance of this notice unless that that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20682 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-189-000]

Midwestern Gas Transmission Co.; Tariff Filing

August 26, 1985.

Take notice that on August 21, 1985, Midwestern Gas Transmission Company (Midwestern) tendered for filing Second Revised Sheet Nos. 32 through 34 to Original Volume No. 1 of its FERC Gas Tariff to be effective on September 20, 1985.

Midwestern states that the purpose of these tariff sheets is to carry forward to Midwestern's customers the benefits of Tennessee Gas Pipeline Company's (Tennessee) transportation program in Article III of the Settlement Agreement (February 5, 1985) approved by the Commission in Docket Nos. RP83-8, *et al.* Specifically, the volume charge under Rate schedule IT-1 will be the commodity rate set forth on Midwestern's effective Tariff Sheet No. 5 applicable to the delivery point of the transported volumes provided the transported volumes are delivered to Midwestern by Tennessee on behalf of any Midwestern CD or SR customer pursuant to Tennessee's transportation program. The commodity rate is applicable to volumes transported by Midwestern which are within a customer's maximum contract quantity. Additionally, volumes transported at the commodity rate shall count in fulfilling that customer's minimum bill obligation under its CD Rate Schedule.

Midwestern further states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20684 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-188-000]

National Fuel Gas Supply Corp.; Petition for Authority to Institute Direct Billing Procedure for Retroactive Order No. 94 Payments

August 26, 1985.

Take notice that on August 21, 1985, National Fuel Gas Supply Corporation (National) filed a Petition for Authority To Institute Direct Billing Procedure for Retroactive Order No. 94 Payments. National states that it seeks authorization to bill customers directly for retroactive Order No. 94 costs because of what it states are inequities and undesirable market distortions inherent in recovering such costs through purchased gas adjustment (PGA) filings. As is more fully explained in the filing, National proposes to allocate retroactive Order No. 94 costs based upon each customer's share of National's total sales for the production period over which the Order No. 94 obligation arose and to directly bill the resulting amounts, including paid and accrued interest. National states that its direct billing proposal will most closely approximate the cost assignment that would have occurred had the payments been made at the same time as the gas purchases to which they relate.

National requests waiver of the Commission's regulations and of its tariff, to the extent necessary, to permit the direct billing procedure.

National states that it has served a copy of the Petition on its customers, interested state commissions and others.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-20685 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-187-000]

Northwest Pipeline Corp.; Change in Gathering Rates

August 26, 1985.

Take notice that on August 20, 1985, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheet.

Eighth Revised Sheet No. 2-B

Such tariff change is for the purpose of reflecting a reduction in Area Gathering Rates applicable to gathering services performed in the Big Piney, San Juan, and Piceance Basin gathering systems.

Northwest has requested an effective date of September 1, 1985 for the above referenced tariff sheet.

A copy of this filing has been mailed to all jurisdictional and affected gathering customers and all affected state regualtory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20686 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP76-492-036 and CP85-282-000]

Penn-York Energy Corp. and National Fuel Gas Supply Corp.; On-site Inspection

August 22, 1985.

Take notice that on September 11, 1985, members of the Commission's Environmental Evaluation Branch (staff) will conduct an on-site inspection of Penn-York Energy Corporation's (Penn-York) East Independence, West Independence and Beech Hill storage fields, located within the townships of Andover, Independence and Willing, and southeast of Wellsville, Allegany County, New York. In addition, staff will inspect Penn-York's brine storage facilities and the sites for new storage-related facilities proposed by Penn-York in Docket No. CP85-282-000.

Interested individuals, and state and local agencies are invited to attend the inspection; however, such attendance will not confer party status. Any individual seeking to be a party to the proceeding must file a motion to intervene under Rule 214(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

For further information contact John Leiss, Office of Pipeline and Producer Regulation, Environmental Evaluation Branch, RC-853, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-9041.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20687 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6702-006]

Superior Oil Co.; Surrender of Preliminary Permit

August 27, 1985.

Take notice that Superior Oil Company, Permittee for the East Fork of South Fork Salmon River Project, FERC No. 6702, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6702 was issued on October 24, 1983, and would have expired September 30, 1986. The project would have been located on the East Fork of South Fork Salmon River in Valley County, Idaho, within the Payette National Forest.

The Permittee filed the request on July 12, 1985, and the preliminary permit for Project No. 6702 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20688 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP74-41-037, et al.]

Texas Eastern Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

August 26, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before September 4, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
7/8/85	Texas Eastern Transmission Corp.	RP74-41-037	Report.
7/22/85	Gas Gathering Corp.	TA85-1-13-030	Do
7/29/85	Natural Gas Pipeline Co. of America	RP85-152-001	Btu [1].
7/30/85	Texas Gas Transmission Corp.	RP85-84-002	Btu [1].
7/30/85	Algonquin Gas Transmission Co.	RP72-110-039	Report.
8/1/85	Stingray Pipeline Co.	RP85-16-002	Do.
8/2/85	Locust Ridge Gas Gathering Co.	RP85-86-007	Do.
8/2/85	East Tennessee Natural Gas Co.	RP85-148-004	Do.
8/5/85	ANR Pipeline Co	RP85-36-003	Do.
8/5/85	Alabama-Tennessee Natural Gas Co.	RP85-117-001	Btu [1].
8/8/85	Granite State Gas Transmission, Inc.	RP85-118-001	Btu [1].
8/8/85	Texas Eastern Transmission Corp.	RP85-143-002	Btu [1].
8/12/85	South Georgia Natural Gas Co.	RP84-16-003	Report.
8/14/85	Raton Natural Gas Co.	RP85-158-000	Do.

[1] Indicates Btu Measurement Refund.

[FR Doc. 85-20689 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01

[Docket Nos. QF85-11-001, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; AES Shady Point, et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. AES Shady Point

[Docket No. QF85-11-001]

August 23, 1985.

On August 2, 1985, AES Shady Point (Applicant) of 1925 North Lynn Street, Suite 1200, Arlington, Virginia 22209 submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. Supplement information was filed on August 7, 1985 to complete application.

The topping-cycle cogeneration facility will be located in Panama, Oklahoma. The primary energy source will be coal. The net electric power production capacity will be 295.3 megawatts. The facility will consist of coal fired fluidized bed boilers and a steam turbine generator. A portion of the steam will be extracted for process use. Installation of the facility will begin in January 1990.

2. Milstar Manufacturing Corporation

[Docket No. QF84-38-001]

August 22, 1985.

On August 12, 1985, Milstar Manufacturing Corporation (Applicant) of 1045 Sixth Avenue, New York, New York 10018, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The hydroelectric facility is located on the Kennebec River near the Town of Waterville in Kennebec County, Maine. The Applicant propose to increase the power production capacity of the facility to 6,550 kW from 4,800 kW with the addition of a 1,750 kW generator. Additionally, the Applicant proposess to modify the ownership by selling an undivided one-half interest in the facility to Kennebec Hydro Resources, Inc., a wholly-owned subsidiary of Central Maine Power Company. All other information provided in the original application remains unchanged.

3. Native Sun/Carew

[Docket No. QF85-631-000]

August 23, 1985.

On August 2, 1985, Native Sun/Carew (Applicant), of 110 Escondido Avenue, Suite 103, Vista, California 92083 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in Carlsbad, California. The primary energy source is solar light. The potential electric power production capacity is 224 kilowatts.

4. Continental Energy Associates

[Docket No. QF83-413-001 [1]]

August 22, 1985.

On July 31, 1985, Continental Energy Associates (Applicant), submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the coal gasification plant in the Humboldt Industrial Park, Hazleton, Pennsylvania. The facility will consist, in part, of up to four engine/generator units and a waste heat recovery boiler. The primary source of energy is synthetic coal gas. The electric power production capacity is 28 MW. The thermal energy output of the facility, in the form of steam and hot water will be available for sale to industry and for process and heating use in the coal gasification plant.

5. Energy Capital Corporation

[Docket No. QF85-642-000]

August 23, 1985.

On August 5, 1985, Energy Capital Corporation (Applicant), of 280 Newport Center Drive, Suite 210, Newport Beach, California 92660 submitted for filing an application for certification of facility as a qualifying small power production a facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in Kern County, California in the Tehachapi Mountains. The primary energy source is wind. The facility will have a potential installation of 70 wind turbines rated 200 kilowatts each with a total capacity of 14 megawatts.

6. Santa Maria Associates, Utah

[Docket No. QF85-644-000]

August 23, 1985.

On August 12, 1985, Santa Maria Associates, Utah (Applicant) of 200 East South Temple, Suite 300, Salt Lake City, Utah 84111, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility is located at 732 South Hanson Way, Santa Maria, California. The facility consists, in part, of a General Electric Allison Model 571 K gas turbine/generator, a back pressure steam turbine/generator, a condensing steam turbine/generator, a heat recovery steam generator, a gas fired duct burner, and a cooling tower. The electric power production capacity of the facility is 7483 kW. The useful thermal energy will be used for food processing and the operation of an ammonia absorbtion refrigeration system. The primary source of energy is natural gas.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20690 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8996-000]

Donald K. Lee; Availability of Environmental Assessment and Finding of No Significant Impact

August 27, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for exemption from licensing listed below and has assessed the environmental impacts of the proposed development.

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[1] The Federal Energy Regulatory Commission issued an order on February 6, 1985 certifying this facility as a cogeneration facility with an electric power production capacity of 8.8 MW. The order was issued to the owner of record on this date (2/6/85), Hitec Gasification Company of 87 Elm Street, Cohasset, Massachusetts 02025.

EXEMPTIONS

Project No.	Project name	State	Water body	Nearest town	Applicant
[illegible]	Bluff Springs	CA	Bluff Springs Creek	Manton	Donald K. Lee.

An environmental assessment (EA) was prepared for the above proposed project. Based on an independent analysis of the above action as set forth in the EA, the Commission's staff concludes that this project would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

Copies of the EA are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20683 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OMS-FRL-2888-9]

Final Agency Actions Regarding the Motor Vehicle Provisions of the Clean Air Act.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Mobile Source Final Agency Actions.

SUMMARY: This notice announces final EPA actions taken in conjunction with its mobile source program. With the exception of the final actions taken with respect to Albert Mardikian Engineering Inc. (AME) of Costa Mesa, California and to Mardikian Automotive Research and Development, (MARD), of Houston, Texas, persons disagreeing with these final actions may petition the United States Court of Appeals for the District of Columbia Circuit for review of these actions. Persons disagreeing with the final actions taken with respect to AME in its petition for reconsideration, may petition the United States Court of Appeals for the Ninth Circuit. Persons disagreeing with the final action taken with regard to MARD and its test results may petition the United States Court of Appeals for the Fifth Circuit for review of this decision. Failure to petition for review of these actions on or before October 28, 1985 will preclude a challenge later in an EPA enforcement action.

FOR FURTHER INFORMATION CONTACT: Cynthia Garrett McKnight, Manufacturers Operations Division, (EN-340F), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2521.

SUPPLEMENTARY INFORMATION: EPA has determined that all of the actions summarized below are final. Where possible, the specific date on which the action became final is specified.

Under section 307(b)(1) of the Clean Air Act (Act), EPA has determined that except for the AME and the MARD decisions, these actions are of nationwide scope and effect. Accordingly, judicial review of these actions is available *only* by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit on or before October 28, 1985. EPA has determined that both the AME and the MARD decisions are locally or regionally applicable. Accordingly, judicial review of the AME decision is available only by filing a petition for review in the United States Court of Appeals for the Ninth Circuit and judicial review of the MARD decision is available only by filing a petition for review in the United States Court of Appeals for the Fifth Circuit. The petition for review should be filed on or before October 28, 1985. Under section 307 (b)(2) of the Act, these final actions and the bases for them which are the subject of today's notice, may not be challenged later in civil or criminal proceedings brought by EPA to enforce these actions.

The following EPA actions regarding motor vehicles have become final:

1. On June 13, 1984, the Administrator notified General Motors Corporation (GM) that he had found that 1980 GM vehicles of engine family 04E2A (3.8 liter engine only) failed to comply with the applicable federal emission standard for NO_x. Under 40 CFR 85.1807, a manufacturer who disagrees with the administrator's finding of nonconformity may file a request for a public hearing with the Administrator within 45 days after receipt of the Administrator's notification of nonconformity. GM has not made a request for a public hearing within the allotted 45 days and, therefore, the Administrator's finding of nonconformity became final on July 28, 1984.

2. On May 21, 1985, the Administrator denied the petition of Mercedes-Benz of North America, Inc. (MBNA) to suspend the imports regulations found at 40 CFR 85.1501 *et seq.* MBNA contended that the current imports regulatory program is inconsistent with the act because MBNA believes that many vehicles brought into the United States under this program are improperly modified and do not comply with emission standards.

The Administrator, however, decided that immediate suspension of the imports regulations would not be an appropriate action at this time. Therefore, the Administrator's decision denying MBNA's petition for suspension of the imports regulations became final on May 21, 1985.

3. On March 13, 1985, the Administrator denied the petition of Mercedes-Benz of North America Inc. (MBNA), to reconsider a previous decision granting Revere Classics a waiver of the oxides of nitrogen standard. Section 202(b)(6)(B) of the Act provides that, on petition of a manufacturer, the Administrator may waive the 1.0 g/mi NO_x standard to a level not to exceed 1.5 g/mi for any class or category of diesel-powered light-duty vehicles and engines manufactured during the four model-year period beginning with model year 1981. The Administrator's decision became final on March 13, 1985.

4. On September 28, 1984, the Director of the Manufacturers Operations Division, Office of Mobile Sources, decided that certain test packets submitted by Mardikian Automotive Research and Development (MARD) of Houston, Texas contained photographic discrepancies or duplicative photographs were unreliable and would be rejected. These test packets were submitted in support of the admission of imported nonconforming vehicles. Further, it was decided that all other MARD test packets held pending this decision would be processed by the Agency and, where appropriate, the Agency woud issue release recommendations to U.S. Customs for those vehicles. This decision became final on September 28, 1984.

5. On January 29, 1985, the Assistant Administrator for Air and Radiation denied the petition of Albert Mardikian Engineering Inc. (AME) of Costa Mesa, California, for reconsideration of his March 15, 1984 decision. That decision concerned the finding that test results from AME's Costa Mesa laboratory were generally unreliable and lacked integrity and would not be accepted to support the admission of imported nonconforming vehicles. (*See* 49 CFR

22707 (May 31, 1984.)] The Assistant Administrator's decision denying AME's request for reconsideration became final on January 29, 1985.

6. On July 1, 1985, the Assistant Administrator for Air and Radiation decided that the California Air Resources Board (CARB) does not require a waiver of federal preemption pursuant to section 209(b) of the Act to enforce sections 43150 through 43155 of the California Health and Safety Code. The Assistant Administrator found that since California has received waivers of federal preemption for its motor vehicle emission standards and certification procedures, it is therefore free to set conditions precedent to registration, titling and sale of motor vehicles without the necessity of a separate waiver determination. The Assistant Administrator found that these particular sections of California's statute are conditions precedent since they impose conditions upon which the sale, titling or registration of new motor vehicles in California is contingent (i.e. new motor vehicles must be certified to meet California's standards before they are used or sold in the state.)

Moreover, the Assistant Administrator found that section 43156 of the California Health and Safety Code, defining the term "new motor vehicle," does not require a waiver of federal preemption. Section 209(b) only requires a waiver determination for California's new standards and enforcement procedures but not for the definition of terms used in its statute.

Finally, the Assistant Administrator decided that by waiving federal preemption under section 209(b) for California's new motor vehicle certification program, EPA has waived federal preemption for California's determination that importers for resale are precluded from certifying new motor vehicles under California law. The Assistant Administrator's decision became final on July 1, 1985.

7. On June 28, 1985, the Assistant Administrator for Air and Radiation denied a request for a public hearing and comment period pursuant to section 209(b) of the Act submitted by the Automobile Importers Compliance Assocation (AICA). AICA requested EPA to hold a hearing and to provide an opportunity for public comment to consider what AICA termed as California's request for a waiver of Federal preemption to enforce sections 43150 through 43156 of the California Health and Safety Code. Since the Assistant Administrator decided that California did not require a waiver to enforce these sections of its statute (*see* Item 6 above), he decided that AICA's characterization of California's request was inaccurate and therefore, no section 209(b) hearing was found to be necessary. The Assistant Administrator's decision became final on June 28, 1985.

Dated: August 23, 1985.

Richard D. Wilson,

Director, Office of Mobile Sources.

[FR Doc. 85-20672 Filed 8-28-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No: 85-757]

Finance Subsidiaries of Federal Associations

August 26, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new information collection request, "Finance Subsidiaries of Federal Associations", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below:

Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Joseph Longino, Office of the General Counsel. Phone: 202-377-6446.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-20659 Filed 8-28-85; 8:45 am]

BILLING CODE 6720-01-M

[No: 85-756]

Industry Conflict of Interest Regulations

August 26, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new information collection request, "Industry Conflict of Interest Regulations", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the Federal Register. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below:

Director, Information Services Section, Office of Secretariat,
Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552,
Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Rosemary Stewart, Office of the General Counsel. Phone: 202-377-6437.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-20658 Filed 8-28-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal

Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010485–011.

Title: United States Atlantic & Gulf Ports/Italy, France and Spain Freight Conference.

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Line
Farrell Lines, Inc.
"Italia" Societa di Navigazione, S.p.A.
Lykes Bros. Steamship Corp.
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would permit any member to withdraw from the conference, without penalty, on one day's notice, until September 17, 1985. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: August 26, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20691 Filed 8–28–85; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Society Expeditions Cruises, Inc.,
Adventurer Cruises, Inc. and Discoverer Reederei GmbH & Co. KG
c/o Society Expeditions Cruises, Inc., 723 Broadway East, Seattle, Washington 98102.

Dated: August 26, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20690 Filed 8–28–85; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Society Expeditions Cruises, Inc.,
Adventurer Cruises, Inc. and Discoverer Reederei GmbH & Co. KG
c/o Society Expeditions Cruises, Inc., 723 Broadway East, Seattle, Washington 98102.

Dated: August 26, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20697 Filed 8–28–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Brunswick Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 20, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Brunswick Bancorp,* New Brunswick, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Brunswick Bank & Trust Company, Manalapan Township, New Jersey. Comments on this application must be received not later than September 19, 1985.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Irwin Union Corporation,* Columbus, Indiana; to acquire 100 percent of the voting shares of IUC Holding, Inc., Columbus, Indiana, thereby indirectly acquiring Midwest National Bank, Indianapolis, Indiana.

2. *IUC Holding, Inc.,* Columbus, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Midwest National Bank, Indianapolis, Indiana.

Board of Governors of the Federal Reserve System, August 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–20620 Filed 8–28–85; 8:45 am]

BILLING CODE 6210–01–M

MCorp and MCorp Financial, Inc.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 20, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp*, Dallas, Texas and *MCorp Financial, Inc.*, Wilmington, Delaware; to acquire Ohio Valley Data Control, Inc., Belpre, Ohio, and thereby engage in providing to others financially related data processing and data transmission services, facilities, and data bases, or access to them pursuant to § 225.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, August 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–20621 Filed 8–28–85; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics Subcommittee on Policy and Direction; Meeting

Pursuant to the Federal Advisory Act (Pub L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Policy and Directon established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Friday, September 27, 1985 from 9:00 a.m. to 5:00 p.m. in Room 303–305–A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will meet to discuss possible alternative agendas for the National Committee on Vital and Health Statistics and to consider different operational structures to address those agendas.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Jack Anderson, National Center for Health Statistics, Room 2–28, Center Buildings, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Dated: August 12, 1985.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 85–20668 Filed 8–28–85; 8:45 am]

BILLING CODE 4160–17–M

Public Health Service

Delegation of Authority; Alcohol, Drug Abuse, and Mental Health Administration

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services on July 5, 1985, to the Assistant Secretary for Health, the Acting Assistant Secretary for Health has delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, with authority to redelegate, the authorities delegated to the Assistant Secretary for Health under Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.), as amended, concerning the administration and coordination of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse.

The above delegation became effective on August 7, 1985.

Dated: August 7, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85–20669 Filed 8–28–85; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Minerals Management; Coal Leases Held for Ten Years; Guidelines

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final guidelines.

SUMMARY: This Notice sets forth guidelines for the Department of the Interior's administration of section 2(a)(2)(A) of the Act of February 25, 1920 (otherwise known as the Mineral Leasing Act (MLA)), as amended (30 U.S.C. 201(a)(2)(A)). Section 2(a)(2)(A) provides that no onshore Federal lease may be issued under MLA to any entity that holds, and has held for 10 years, a Federal coal lease that is not producing in commercial quantities. These guidelines will be used by Bureau of Land Management personnel in order to determine whether a Federal coal lessee, or any affiliate, is in compliance with the requirements of section 2(a)(2)(A) of MLA, when such Federal coal lessee or affiliate seeks to qualify for any onshore Federal lease to be issued pursuant to MLA on or after August 4, 1986. The guidelines address the several instances where the holder of a Federal coal lease can qualify for any onshore Federal lease to be issued pursuant to MLA by satisfying the section 2(a)(2)(A) of MLA requirements for Federal coal leases.

EFFECTIVE DATE: August 29, 1985.

ADDRESS: Department of the Interior, Bureau of Land Management (660), 18th and C Streets NW., Room 3411, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer or Allen B. Agnew, (202) 343–7722.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management published draft guidelines on February 15, 1985 (50 FR 6398). Comments were invited for 60 days, ending April 16, 1985. In response to requests from the public for a 30 day extension, the comment period was extended on April 12, 1985 (50 FR 14460), to May 13, 1985. 21 comments were received. The comments are addressed below; the text of the guidelines has been changed as appropriate.

In general, comments addressed ten specific areas: applicability of section 2(a)(2)(A); minerals prohibited from issuance; Federal coal leases required to be held after being mined out; failure of logical mining units; definition of commercial quantities; *force majeure* suspensions; relinquishments; assignments; affiliates; and guidelines vs. regulations. Following general discussion of the guidelines below, the general and specific comments received on the ten specific areas are addressed.

General Discussion

Section 3 of the Federal Coal Leasing Amendments Act of 1976, as amended (FCLAA), added paragraph 2(a)(2)(A) to MLA. This amendment states that any entity that holds and has held a Federal coal lease for 10 years, when such entity is not, except as provided in section 7(b) of MLA, producing coal from the lease deposits in commercial quantities, cannot be issued a Federal lease pursuant to MLA on or after August 4, 1986. Section 7(b) provides that each Federal coal lease must satisfy the requirements of diligent development and continued operation. The following discussion addresses the reason for

publication of guidelines and the major issues concerning section 2(a)(2)(A).

1. One primary reason for the publication of these guidelines is to ensure uniform and consistent implementation of the producing in "commercial quantities" requirement of section 2(a)(2)(A). The determination of compliance with producing in commercial quantities requires a timeframe during which that production must occur. These guidelines set out a framework for the Bureau of Land Management (BLM) Field Offices to implement the current regulatory definition of commercial quantities (1 percent of the recoverable coal reserves) for section 2(a)(2)(A) purposes.

2. Section 2(a)(2)(A) applies, for all practical purposes, only to the holders of Federal coal leases issued prior to enactment of FCLAA (August 4, 1976). "New" Federal coal leases, those issued (or otherwise made subject to amended MLA) after FCLAA's enactment, terminate after 10 years if they are not in production, so the prohibition of section 2(a)(2)(A) on holding a Federal coal lease for 10 years and not producing cannot occur.

3. Section 2(a)(2)(A) is a "qualification" provision, affecting an entity's ability to acquire new Federal leases, rather than a "diligence" provision. It is not to be equated with amended section 7(a) of MLA, which provides for producing at the end of 10 years, nor with amended section 7(b) of MLA, which provides for diligent development and continued operation. Diligence relates to the obligation to develop a specific Federal coal lease or lose the Federal coal lease. The diligence clock is tied to the date that the Federal coal lease is readjusted (20 years after issuance), or otherwise made subject to amended MLA. The diligence production clock is independent of the section 2(a)(2)(A) 10-year Federal coal lease-holding clock. If a Federal coal lessee does not seek to qualify for new Federal leases (but decides rather to hold those Federal coal leases it currently holds), section 2(a)(2)(A) does not compel that Federal coal lessee to do anything. Production from "old" Federal coal leases is required only at or prior to the time that that entity seeks to qualify to be issued another Federal lease on or after August 4, 1986.

4. The guidelines state that *production is required* at the time that qualifications for a Federal lease issuance are being determined. The production requirement is intended to ensure that no Federal coal lease that "meets" section 2(a)(2)(A) is being held for speculative purposes.

5. The section 2(a)(2)(A) leasing prohibition is not limited only to Federal coal leasing. Where a Federal coal lessee is in violation of section 2(a)(2)(A), the Secretary may not issue that Federal coal lessee, or any affiliate, *any* new Federal leases under MLA for coal or other minerals, such as onshore oil and gas. See Solicitor's Opinion M–36951 interpreting section 3 (February 12, 1985) at pp. 11–13. The Department of the Interior's (DOI's) position regarding the scope of section 2(a)(2)(A) is currently in litigation in the case of *Conoco, Inc.* v. *Hodel*, Civil No. 85–277 (D. Del. filed May 10, 1985). Plaintiffs in this case have moved for summary judgment, arguing that the section 2(a)(2)(A) leasing prohibition affects only a violating Federal coal lessee's qualifications to obtain new Federal *coal* leases, not other MLA Federal leases such as for onshore oil and gas. Pending resolution of this lawsuit, DOI will stand by its original interpretation.

General Comments

Two comments received on the draft guidelines stated that the publication of guidelines is a major Federal action and requires publication of an environmental impact statement. The DOI has taken the position that preparation of guidelines is subject to a categorical exclusion (46 FR 7485) from environmental impact statement requirements. One comment further stated that the guidelines changes the existing regulatory definitions of commercial quantities (43 CFR 3480.0–5(a)(6)), continued operation year (43 CFR 3480.0–5(a)(9)), diligent development (43 CFR 3480.0–5(a)(12)), and diligent development period (43 CFR 3480.0–5(a)(13)(i)(B), as well as the requirement at 43 CFR 3483.1(a)(2) that once a Federal coal lease has achieved diligent development it is thereafter subject to continued operation.

The guidelines do not alter or redefine any existing rule (see *General Discussion* items 1 and 3 above). The BLM is however considering revising the existing 43 CFR Group 3400 rules. These guidelines provide criteria to BLM Field Offices to aid them in determining compliance by a Federal coal lessee, or any affiliate, with section 2(a)(2)(A) as well as the implementing rules. Such rules: (1) Bar issuance of a Federal lease or transfer of a Federal coal lease to a party not producing in commercial quantities in 10 years unless advance royalty payments are being made as authorized; and (2) define commercial quantities as 1 percent of recoverable coal reserves (see 43 CFR 3472.1–2(e) and 43 CFR 3480.0–5(a)(6)). The criteria that the guidelines set out for BLM Field Officials to determine compliance with these rules is developed below.

These comments also stated that the guidelines alter the application or definition of diligence as applied to Federal coal leases subject to amended MLA by issuance, readjustment or other action after August 4, 1976. This is not the case. Accordingly, these comments were rejected.

One comment stated that reserves should be defined by U.S. Geological Survey/Bureau of Mines criteria (i.e., measured, indicated, and inferred reserves/resources). These guidelines implement the existing rules, and therefore cannot redefine the terms currently used in the rules: "coal reserve base;" "minable reserves;" and "recoverable coal reserves" (see 43 CFR 3480.0–5).

As stated in the preamble to the July 30, 1982, coal operating rules, then codified at 30 CFR Part 211 (47 FR 33154, 33156): "[t]he terms 'measured, indicated, and inferred' . . . were considered to be confusing and overly inclusive." Therefore, BLM "has deleted these terms from the definitions . . . ." Please note that 30 CFR Part 211 was recodified at 43 CFR Part 3480. Accordingly, this comment was not accepted.

One comment stated that in at least three areas the draft guidelines were in direct conflict with either the statute or the existing rules, as well as the discussion of the statute and existing rules contained in Solicitor's Opinion M–36951. First, the comment stated that diligent development and continued operation (section 7(b) of MLA) apply to all Federal coal leases due to the express exception in section 2(a)(2)(A). Second, the comment stated that the regulatory diligent development period for Federal coal leases issued prior to August 4, 1976, is equivalent to the section 2(a)(2)(A) 10-year holding period. Third, the comment stated that the use of floating 10-year brackets for determining compliance with the section 2(a)(2)(A) continuing production obligation is not allowed, based on the first two statements.

The arguments did not persuade DOI to reconsider the analysis and conclusions in Solicitor's Opinion M–36951. Section 2(a)(2)(A)'s relevant part states:

> when such entity *is not*, except as provided in section 7(b) of this Act, *producing coal* from the lease deposits in commercial quantities . . . . 30 U.S.C. 201(a)(2)(A) (1982) (Emphasis added.)

The express exception reference to "section 7(b)" can only be inferred to

state that if a Federal coal lease is subject to amended MLA "diligence," the section 2(a)(2)(A) production requirement is relieved simultaneously with the relief of the amended section 7(b) production requirement, when such relief is granted in accordance with the amended section 7(b) conditions for relief. The section 7(b) production requirement can be relieved by *force majeure* suspension or by payment of advance royalty *in lieu* of continued operation, consistent with amended section 7(*b*)'s limitations (i.e., not less than the production royalty that would have been paid and not for more than 10 years). The section 7(b) of MLA conditions of diligent development and continued operation attach to a Federal coal lease only after it becomes subject to amended MLA "diligence" provisions (see Solicitor's Opinion M–36939, September 17, 1981).

This does *not* mean that unreadjusted Pre-FCLAA Federal coal leases are *not* subject to conditions of diligent development and continued operation. The original section 7 of MLA, which had no subsection (b), did require Federal coal lease-specific diligence requirements, and pre-FCLAA Federal coal leases were issued subject to those conditions, as implemented in the minimum production or comparable Federal coal lease clause. It means only that the amended section 7(*b*) is not applicable to these pre-FCLAA Federal coal leases.

The DOI is not persuaded by this comment that Congress intended amended section 7(a) to be prospective (in its produce-in-10-years and royalty provisions) but that amended section 7(b) be retroactive. Congress never distinguished among the subsections of amended section 7 in discussing its prospective application. Congress recognized the dual production obligations of section 2(a)(2)(A) and section 7(b) by including the express exception-of-production language to state that a Federal coal lease, whose continued operation production obligation under section 7(b) was suspended, would also have its production obligation for section 2(a)(2)(A) suspended. Until a Federal coal lease becomes subject to amended MLA "diligence," its only production obligations, if any, are those established in the pre-FCLAA Federal coal lease terms. After a Federal coal lease becomes subject to amended MLA "diligence," section 7(b) applies. In either case section 2(a)(2)(A) also applies to lease qualifications.

The diligent development period for pre-FCLAA Federal coal leases is not equivalent to the section 2(a)(2)(A) 10-year holding period. Congress did not impose the 10-year Federal coal lease-termination date (section 7(a)) on Federal coal leases until they become subject to amended MLA "diligence." Until so subject, the preconditions are "holds . . . and has held" and when . . . not . . . producing . . . in commercial quantities." The only time-element guidance provided by Congress that could limit either precondition was the combined (holds and has held) "period of ten years." In addition, "periods of time prior to August 4, 1976, shall not be counted." 30 U.S.C. 201(a)(2)(A) (1982).

Regarding Federal coal leases that are *not yet subject to amended MLA*, BLM has adopted 10 years as an appropriate *maximum* time over which production can be credited toward the producing-in-commercial-quantities obligation. The Federal coal lease holding period for the section 2(a)(2)(A) prohibition, however, is independent of the timeframe over which production will be measured. The period over which commercial quantities will be measured is not tied to August 4, 1976. Neither the law nor the rules prescribe such a timeframe. The beginning of the production bracket may begin as late as the date that coal is first produced on or after August 4, 1976. (See the *General Discussion* preceding this section regarding the results of failure to commence producing-in-commercial-quantities.) BLM has concluded, after examining the comments and considering alternative ways of determining commercial quantities, that a 10-year period for determining commercial quantities should be a *maximum* and may not be used in all cases. The Authorized Officer's examination includes review of the approved mine plan or production scenarios based on existing contracts and such things as the phase of the operation (e.g., start-up vs. ongoing), to determine what is a commercial level or rate of production, and to determine the appropriate time period during which a Federal coal lease must be producing in commercial quantities (1 percent). The time period will then be set at less than 10 years in cases where that more closely approximates what is "commercial" given the reality of the operation. For example, the timeframe might more appropriately range from 3 years (similar to the regulatory 3-year timeframe for production to satisfy continued operation) to 5 years (reflecting the duration of permits approved pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA)). After determining the appropriate timeframe over which to measure *producing in commercial quantities*, the Authorized Officer will assign that timeframe to each individual operating Federal coal lease that is not yet subject to amended MLA. This timeframe may be adjusted, at the discretion of the Authorized Officer, to reflect changing conditions. As an example, for an operation that moves from its initial start-up phase into an ongoing operation phase, the Authorized Officer may determine that the assigned timeframe should be of a shorter duration.

Once the Federal coal lease becomes *subject to amended MLA*, the governing timeframe is the 10-year diligent development period or the continued operation year; although, regardless of timeframe, the Federal coal lessee is qualified only *as long as production is occurring* or the amended MLA production requirements are relieved pursuant to section 7(b). This is because, for pre-FCLAA Federal coal leases that have been readjusted (or otherwise made subject to amended MLA), nonproduction during the 10-year diligent development period would also be nonproduction for section 2(a)(2)(A) purposes. This applies regardless of the section 2(a)(2)(A) commercial quantities timeframe that the Authorized Officer had assigned to the Federal coal lease prior to its becoming subject to amended MLA. Therefore, the Federal coal lessee, or any affiliate, would be disqualified under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986, if its Federal coal leases are *not producing in commercial quantities.*

In all cases, the operative *quantity* to use in determining whether a Federal coal lease is producing in commercial quantities is 1 percent, as that is currently prescribed by rule. The draft guidelines proposed a 10-year "floating" bracket as a time period for producing in commercial quantities for section 2(a)(2)(A) purposes; however, the time period in the guidelines is to be determined at the Authorized Officer's discretion with the facts of the operation in mind. This change from the draft guidelines has several beneficial effects. First, it responds to the general criticism that 10 years is too long—too lenient—a period for measuring production, given that the period does not begin on August 4, 1976. Second, it allows operations to be judged more case-by-case to arrive at time periods relevant to what is a "commercial" operation in a given situation. In this respect, this change also responds to the criticism that the proposal was itself a rule—binding the

Federal coal lessees and the discretion of BLM Field Officials under a 1 percent rule that left the BLM Field Officials with some discretion in adjudicating Federal coal lessees' status—adopted without proper procedures. Third, the initial actions of BLM Field Officials in determining time periods for measuring 1 percent production will give BLM the proper information necessary to determine whether the 1 percent rule should be changed, or whether a fixed time period should be established by rule to go along with any fixed-percent amount.

Specific Comments

1. *Applicability of section 2(a)(2)(A).* Two comments stated that because FCLAA was prospective, section 2(a)(2)(A) could not apply to pre-FCLAA Federal coal leases until their first readjustment after FCLAA was enacted. The BLM agrees that FCLAA diligence (amended Section 7 of MLA) is prospective and only applies to pre-FCLAA Federal coal leases at the time they are readjusted (or otherwise made subject to amended MLA) after FCLAA. However, section 2(a)(2)(A) is a lessee-qualification, not a Federal coal lease-diligence, provision. The legislative history clearly shows that section 2(a)(2)(A) was designed specifically to apply pressure on the holders of pre-FCLAA Federal coal leases to develop. Consistent with that purpose, Congress started the clock on the holding prohibition with the date of FCLAA enactment (August 4, 1976). These comments were rejected.

Two comments stated that since readjustment constitutes issuance of a new Federal coal lease, the section 2(a)(2)(A) 10-year holding clock started over at the time of each post-FCLAA readjustment. Section 2(a)(2)(A) states "holds . . . *and* has held." (Emphasis added.) Further, section 2(a)(2)(A) states that "periods of time prior to August 4, 1976, shall not be counted." (See 30 U.S.C. 201 (a)(2)(A) (1982).) It does not continue the statement with "and periods of time on or after August 4, 1976, and prior to the subsequent readjustment after that date shall not be counted." The requirement is to hold and have held during any period after August 4, 1976. The "holding" clock began on August 4, 1976, and is not interrupted by readjustment. Finally, readjustment is not *issuance* of a new Federal coal lease. A brief comparison of lease "renewals" under MLA (as with sodium—see 30 U.S.C. 262, construed in Solicitor's Opinion M–36943, 89 I.D. 173 (1982)), and lease "readjustments" under MLA (as with coal and potash—see 30 U.S.C. 207, 283, construed in Solicitor's Opinion M–36939, 88 I.D. 1003 (1981)), clarifies why readjustments are unlike, and do not constitute, a new Federal lease issuance. These comments were rejected.

2. *Minerals prohibited from issuance.* One comment stated that the prohibition should apply to all minerals, not only onshore but also offshore. The Act in question, MLA, is limited by its own terms, even with its amendments, to the following onshore Federal mineral commodities: coal; gilsonite, including all vein-type, solid hydrocarbons; oil and gas, including tar sands; oil shale; phosphate; potash; sodium; and sulphur. See 30 U.S.C. 181. This comment was rejected.

One comment stated that section 2(a)(2)(A) prohibition should only apply to the issuance of Federal coal leases. As discussed in Solicitor's Opinion M–36951, had section 2(a)(2)(A) only prohibited the issuance of Federal coal leases, it would not have stated: "The Secretary shall not issue a lease or leases under the terms of this Act . . .." (90 Stat. 1083, codified by substituting "chapter" for "Act" at 30 U.S.C. 201 (a)(2)(A) (1976)). Even as codified, the entire MLA is embraced in the prohibition. This conclusion of the Solicitor's Opinion has been challenged in *Conoco, Inc.* v. *Hodel,* Civil No. 85–277 (D. Del. filed May 10, 1985). Briefing is nearly completed in that case.

One comment questioned whether section 2(a)(2)(A) would prohibit the issuance of Federal coal leases, which are issued pursuant to pending Federal coal preference right lease applications (PRLA's), to an entity in violation of section 2(a)(2)(A) provisions. The DOI is studying the issue of whether Federal leases prohibited from being issued includes Federal coal PRLA's pending on the date of enactment of FCLAA, Federal coal PRLA's submitted on the basis of findings as the result of prospecting permits that were reinstated after enactment of FCLAA, and PRLA's for other minerals under MLA. This subject is not addressed in the guidelines, pending DOI resolution of the issue.

3. *Federal coal leases required to be held after being mined out.* Three comments stated that where Federal coal leases are required to be held (for reclamation purposes) for either 5 or 10 years after the Federal coal lease is mined out, they should not subject the Federal coal lessee to the section 2(a)(2)(A) prohibition against acquiring Federal leases. With respect to Federal coal leases that *are subject to amended MLA "diligence,"* this is one of several sections of the existing 43 CFR Group 3400 rules that may be revised (however, see the last paragraph of the section "3." discussion regarding section 7(a)). The current regulatory definition of continued operation and the regulatory language regarding payment of advance royalty *in lieu* of the continued operation production obligation will also be examined. The regulatory review effort is currently scheduled to commence during the latter part of FY 1985, with completion during FY 1986. However, as the rules are currently written, Federal coal leases that *are subject to amended MLA "diligence"* and that are held for any reason after being mined out *may* prohibit the Federal coal lessee from Federal lease issuance. Until the promulgation of corrective rules, such situations will be assessed on a case-by-case basis. These comments will be considered in the forthcoming regulatory review effort.

For Federal coal leases *not yet subject to amended MLA "diligence"* that have been mined out and are being held for any reason (e.g., reclamation), such a problem does not exist in the current regulatory language. Under the current regulatory language, Federal coal leases *not yet subject to amended MLA "diligence"* that have been mined out have no remaining recoverable coal reserves; therefore, the requirement to produce "commercial quantities" (1 percent of the recoverable coal reserves) is not applicable. If the Authorized Officer determines that such a Federal coal lease has zero recoverable reserves remaining, the Federal coal lease would not jeopardize the Federal coal lessee, or any affiliate, regarding his qualifications under section 2(a)(2)(A). The guidelines have been revised to incorporate this policy regarding Federal coal leases not yet subject to amended MLA "diligence."

Two comments stated that where a Federal coal lease was mined out but the Federal coal lessee was required to retain it (e.g., for reclamation), formation of a logical mining unit (LMU) was not feasible because the mined-out reserves would automatically be included in the LMU recoverable coal reserves for LMU diligence. This section of the existing 43 CFR Group 3400 rules is being reviewed for possible revision. Such situations will be assessed on a case-by-case basis at this time. These comments will be considered in the forthcoming regulatory review effort.

Because of the 1982 regulatory diligence system that retained the concept of defining continued operation in terms of commercial quantities, if a Federal coal lease has been mined out but is required to be held for such

purposes as reclamation, the Federal coal lessee must pay an advance royalty which could never be recouped by production. Under the 1982 regulatory diligence system, the Federal coal lessee would have no relief from an advance royalty payment obligation. The forthcoming regulatory review effort will examine this issue further. Although this problem might be capable of being resolved by LMU formation, if LMU formation is not possible, one specific aspect can only be cured by legislative change. Amended section 7(a) states that a Federal coal lease lasts as long after 20 years as coal is *produced annually in commercial quantities*. As currently written, if a Federal coal lease were mined out and had been subject to amended MLA for at least 20 years, the Federal coal lease could no longer *last*, regardless for whatever purpose the Federal coal lessee may wish to hold the Federal coal lease past that time. The DOI cannot amend this legislative requirement by rulemaking.

4. *Failure of LMU's.* Two comments stated that failure of an LMU should not retrigger the section 2(a)(2)(A), 10-year holding period from the point at which it was suspended by inclusion in a producing LMU. The comments continued that, otherwise, this could jeopardize Federal leases acquired during the existence of the LMU. One comment stated that the section 2(a)(2)(A) prohibition should begin anew upon LMU failure. As stated in the draft guidelines, and retained in these guidelines: Any *previous* or any *subsequent* failure to comply with section 2(a)(2)(A) does *not* negate a Federal coal lessee, or any affiliate, from qualifying for another Federal lease issuance. *However*, at the time that qualifications for a Federal lease issuance on or after August 4, 1986, are being determined, the Federal coal lessee, or any affiliate, must be in full compliance with section 2(a)(2)(A). Any Federal coal lessee, or any affiliate, must satisfy section 2(a)(2)(A) *at the time* that qualifications are being determined. There is no provision in section 2(a)(2)(A) that mandates retroactive or future punishment because that Federal coal lessee, or any affiliate, failed to satisfy section 2(a)(2)(A) at another time. Therefore, any such Federal leases acquired in compliance with applicable Federal statutes and rules or regulations during the existence of the LMU would not be jeopardized by subsequent failure of the LMU.

Section 2(a)(2)(A) is retriggered by failure of an LMU. It is also retriggered by an LMU that stops producing, *provided that* the LMU is in its LMU-specific diligent development period. The section 2(a)(2)(A) a 10-year *holding period* is not suspended by LMU formation or superseded by LMU production. Rather, producition from any where within the LMU satisfies the section 2(a)(2)(A) requirement of producing in commercial quantities for each Federal coal lease contained in the LMU. This comment was rejected in part and accepted in part.

5. *Definition of commercial quantities.* This section of the existing 43 CFR Group 3400 rules has been identified by BLM as requiring additional study and consideration for revision, especially as it relates to amended section 7 diligence and to section 2(a)(2)(A). Comments were specifically requested on the concept of the definition of producing in commercial quantities. In the 1982 regulatory diligence system, BLM defined both diligent development and continued operation in terms of commercial quantities, with separate, specified timeframes (roughly equating the amended section 7(*b*) obligations with the amended section 7(*a*) obligations), and defined commercial quantities to be 1 percent of the recoverable coal reserves. The preamble to the 1982 rulemaking states that this definition applies for both section 2(a)(2)(A) purposes, although without any specified timeframe, as well as for Federal coal lease diligence on post-FCLAA Federal coal leases (amended section 7 of MLA).

Three comments stated that producing in commercial quantities should be defined as a bona fide sales contract plus sufficient production to show existence of a vialble operation. Three other comments would extend this proposed alternative to include also investment in facilities without requiring production. One comment stated that producing in commercial quantities should be defined as acquisition of a bona fide sales contract *and* 1 percent over a 10-year bracket. Acquisition of a bona fide sales contract and investment in facilities could be indicative of commercial production; these concepts will be considered in the forthcoming regulatory review effort.

Three comments stated that producing in commercial quantities should require production of 1 percent by August 4, 1986, and 1 percent annually thereafter, regardless of who holds the Federal coal lease. These comments ignore the operation of the statutory language in instances when an entity acquired a pre-FCLAA Federal coal lease after August 4, 1976 (e.g., by arm's-length assignment), as late as 1984 for example. Such an entity should not be required to produce 1 percent of the recoverable coal reserves within 2 years from the date of acquisition. This would be an onerous burden on the entity that was acquiring the Federal coal lease.

As stated previously, section 2(a)(2)(A) is a lessee-qualification, not a Federal coal lease-diligence, provision. Even for Federal coal lessees who have held their Federal coal leases for 10 years, DOI declines to implement the system suggested (i.e., 1 percent by August 4, 1986, and 1 percent annually thereafter, regardless of who holds the Federal coal lease). Those Federal coal lessees who do not seek Federal oil and gas or other Federal coal leases are under no compulsion to develop or relinquish by August 4, 1986, and presumably have been planning and seeking to develop, consistent with their specific Federal coal lease development obligations. Those Federal coal lessees may have appropriately planned not to begin producing until after August 4, 1986, knowing the consequences. That entity's only compulsion to develop comes from the amended section 7 "diligence" obligations of the Federal coal leases it holds, which may not require production until after 1986—most likely whenever 10 years after the first, post-August 4, 1976, Federal coal lease readjustment occurs. The DOI does not find it appropriate to state in 1985 that these Federal coal lessees should be obligated to produce 1 percent by August 4, 1986, to satisfy section 2(a)(2)(A), nor does DOI believe that section 2(a)(2)(A)compels this result. While this is one way readers of the 1982 rules' preamble may have interpreted the statement that 1 percent was the definition of commercial quantities for section 2(a)(2)(A) purposes, it was not then DOI's intent and is not now, in examining the comments on the draft guidelines, the appropriate response in implementing section 2(a)(2)(A). This suggested interpretation was rejected.

Two comments stated that producing in commercial quantities should only be 1 percent over 10 years (i.e., the "floating" 10-year bracket approach proposed in the draft guidelines). The BLM agrees with this interpretation, except that 10 years will serve as a maximum, not a fixed, timeframe, allowing for the Authorized Officer's discretion as discussed in the last two paragraphs in the *General Comments* above.

One comment stated that the 10-year bracket must be the 10-year holding period, not the date that production first commences after August 4, 1976. Again,

section 2(a)(2)(A) is a lessee-qualification, not Federal coal lease-diligence, provision. Section 2(a)(2)(A) states that when an entity is not producing coal in commercial quantities, the Federal coal lessee, or any affiliate, must be disqualified, if the Federal coal lessee has held the Federal coal lease for 10 years. The intent of Congress in enacting section 2(a)(2)(A) was to discourage speculation in the coal industry. As stated previously, if an entity does not seek to qualify for new Federal leases (but decides rather to hold those Federal coal leases it currently holds), section 2(a)(2)(A) does not compel that entity to do anything. Production from such Federal coal leases that the Federal coal lessee desires to retgain is required only at or prior to the time that that entity seeks to qualify for another Federal lease issuance. This suggested interpretation was rejected.

One comment stated that producing in commercial quantities should be defined as payment of any production royalty, thus showing commercial production. Another comment stated that the definition should be based on the commercial nature of the coal operation. These comments will be considered in the forthcoming regulatory review effort.

Two comments stated that compliance with all Federal coal lease terms and conditions should be sufficient to show producing in commercial quantities. The inherent problem in this position is that such compliance can exist without production, or even without an installed mine, until the running of the post-FCLAA readjustment diligence clock or enforcement of unreadjusted Federal coal leases' minimum production clauses would require production. See Solicitor's Opinion M–36951, pp. 14–18, entitled: "A. *What is the status of pre-FCLAA leases where the lessee is not in violation of its 'diligence' requirements?*" These comments were rejected.

6. *Force majeure* suspensions. Three comments stated that the lack of a market should constitute *force majeure* suspension. The preamble to the July 30, 1982, rules stated that this would be contrary to MLA. DOI's response to public comments discussed in that preamble agreed that normal business risks are not justification for suspensions or extensions. With respect to extensions, section 7(b) states, in part, that Federal coal leases are subject to the conditions of diligent development and continued operation except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. Section 7(b) states further that the "Secretary * * *, upon determining that the public interest will be served thereby, may suspend the condition of continued operation." In the 1982 preamble, "lack of market" was not considered to constitute *force majeure* under section 7(b). As stated earlier in this preamble, section 2(a)(2)(A) may be relieved by the *force majeure* provision of section 7(b) *only after* the Federal coal lease becomes subject to amended MLA "diligence."

DOI's current interpretation of the section 7(b) *force majeure* provision is fully consistent with numerous court decisions construing *force majeure* provisions in private coal leases. See 4 *American Law of Mining* § 132.061, n. 13 (2nd ed. 1984) (citing numerous cases). For example, in *Bennett v. Howard*, 195 S.W. 117 (Ky. 1917), the Court rejected an argument that market conditions were encompassed by a *force majeure* provision allowing a lessee certain relief in cases of "strikes or other unavoidable casualties." The Court said: "It is a matter of common knowledge that the coal market may be good at one time and bad at another. Such changes in the market are but ordinary incidents of business, and may be expected to occur at any time. * * * The word 'casualty' . . . in ordinary usage is applied to accidents which happen suddenly and unexpectedly, and not in the usual course of events. * * * [A] bad market is in no sense an unavoidable casualty . . ." 195 S.W. at 119.

A Federal coal lease may receive a *force majeure* suspension for such conditions as a "lack of market" *only if* such a term is included as an express Federal coal lease term, as is the case for several pre-FCLAA Federal coal leases that are not yet subject to amended MLA "diligence." However, such a *force majeure* suspension does *not* toll the running of the section 2(a)(2)(A) clock. These comments were rejected.

7. *Relinquishment.* Three comments stated that Federal coal lessees should have the right to relinquish Federal coal leases. In an April 13, 1984, letter to the Senate, DOI states:

> We are not aware of any case where a lessee had a problem with relinquishment. The provision of the MLA authorizing the relinquishment of Federal coal leases (30 U.S.C. 187) gives the Secretary discretion in accepting them. The coal regulations implementing this discretion provide that the relinquishment will not be accepted if it would "impair the public interest" (43 CFR 3452.1–3). Under this rule, if DOI verifies that no surface disturbance has occurred on the Federal coal lease, and the rental account is in good standing, BLM accepts the relinquishment. This is true whether or not an operation and reclamation plan has been submitted. * * * [W]e only need to ensure that DOI can verify that coal production or significant surface disturbance has not occurred.

If no significant surface disturbance has occurred and the royalty management account and rental account are in good standing, then BLM would accept relinquishment of Federal coal leases.

Three comments stated that BLM must set fixed Federal coal lease relinquishment processing deadlines by rule so that section 2(a)(2)(A) is not triggered. The comments stated further that if there is an outstanding reclamation obligation or if a royalty account is not in good standing, BLM should accept the relinquishment if the Federal coal lessee establishes an escrow account, posts a bond, or by other means. One comment stated further that the rules should place a 90-day time limit on BLM for processing relinquishments and one comment carried the proposed suggestion further by stating that the rule must define "in the public interest" for processing relinquishments. As stated in the draft guidelines, and retained in these guidelines, rules will be developed to protect the priority of noncompetitive oil and gas lease-applicants and to prevent adverse action on other mineral lease and LMU applications, and assignment and relinquishment approval requests, where BLM is unable to act upon nonproducing Federal coal lease assignments, relinquishments, or LMU's within a specific period of time that will be established in the rules. This will include mineral lease and LMU applications, and assignment and relinquishment approval requests, pending on August 4, 1986. The guidelines are not intended to amend or replace existing rules, and do not. These comments will be considered in the forthcoming regulatory review effort.

8. *Assignments.* In considering questions related to Federal coal lease assignments, DOI has clarified several matters about holding a Federal coal lease and the 10-year period. First, any holder of record title, even if less than 50 percent or not in control of the Federal coal *lease*, "holds" for section 2(a)(2)(A) purposes. Lack of control is relevant in defining affiliates of the Federal coal lessees, but not in identifying who holds the Federal coal lease itself. An assignment of a 50 percent, undivided interest in a Federal coal lease may start a new clock for the new 50-percent holder, but the holder of the other 50 percent continues under his pre-existing clock. Second, where a Federal coal

lease is assigned by a parent corporation to a subsidiary after August 4, 1976, if the Federal coal lease is not producing in commercial quantities, that new Federal coal lessee cannot qualify on or after August 4, 1986, *as long as the parent corporation remains in control.* This is because Federal lease issuance to the subsidiary would be barred by the parent corporation's 10-year clock and ensuing prohibition. Similarly, a new parent corporation, upon acquiring control of a Federal coal lessee corporation, would be governed by the Federal coal lessee's original 10-year clock. Thus, that new parent corporation cannot qualify on or after August 4, 1986, as long as the subsidiary it controls remains in violation of section 2(a)(2)(A).

One comment stated that BLM should reject assignments of all Federal minerals, onshore and offshore, regardless of the mineral involved. DOI does not believe it is appropriate to extend the section 2(a)(2)A) sanction beyond MLA. Further, DOI does not believe it is appropriate to extend the section 2(a)(2)(A) sanction on assignments beyond Federal coal. This comment was rejected. Two comments stated that Federal coal lease assignments are not Federal coal lease issuances and therefore shoild not be prohibited because that would hinder development and lessen competition. These comments were rejected because such a change would require a rule change; however, the comments will be considered in the forthcoming regulatory review effort. It should be noted that the rule prohibiting approval of Fedeal coal lease assignments after August 4, 1986, to section 2(a)(2)(A) disqualified-entities was adopted in July 1982.

One comment stated that only assignments of Federal noncoal leases should be allowed. However, the comment also carried the qualification that, if assignments of Federal coal leases are allowed, upon reassignment of a Federal coal lease to a previous assignor, the previous assignor should be charged with his previous holding period of the reassigned Federal coal lease. BLM agrees with the latter part of this suggestion. The wording of section 2(a)(2)(A) states that a Federal coal lessee must hold *and have held* a nonproducing Federal coal lease for 10 years before the Federal coal lessee, or any affiliate, is prohibited from being issued Federal leases under section 2(a)(2)(A). The legislative history shows that when Congress added that language to MLA, it was specifically inserted as an antispeculation-in-the-coal-market provision. Were BLM to allow arm's-length assignments from one entity to another and back again without adding the previous and subsequent holding periods for section 2(a)(2)(A) purposes, the intent of Congress would be compromised. The guidelines state that, if a Federal coal lease is once again held by a subsequent reassignment, any prior holding period of that Federal coal lease is additive for the Federal coal lessee. However, if a Federal coal lease has been assigned arm's-length, the original Federal coal lease has no control over that Federal coal lease unless it is again held by reassignment. Therefore, the assigning Federal coal lessee cannot be charged with a holding period during a time when that Federal coal lessee has no control over (i.e., is not holding) the Federal coal lease.

By way of explanation, Entity A and Entity B (not related by legal or actual control) each hold a 50 percent interest in Federal coal lease "A–123," issued to them jointly prior to August 4, 1976. In 1982, the two entities make a partial assignment (50 percent of the acreage of Federal coal lease "A–123" to Entity C (not related to either Entity A or Entity B by legal or actual control). The partial assignment interest of the Federal coal lease acreage results in a new serial number "A–456" for that portion of Federal coal lease "A–123" that Entity C now holds (43 CFR 3453.2–5) (1984). Entities A and B each now hold a 50 percent interest in the remaining Federal coal lease "A–123;" Entity C now holds a 100 percent interest in Federal coal lease "A–456."

In 1985, Entity B assigns all of its interest in Federal coal lease "A–123" to Entity A. Entity A now holds a 100 percent interest in Federal coal lease "A–123;" Entity B does not hold any interest in either Federal coal lease; Entity C still holds a 100 percent interest in Federal coal lease "A–456." In 1987, Entity C assigns 100 percent of Federal coal lease "A–456" to Entity B. Entity A still holds 100 percent of Federal coal lease "A–123;" Entity B now holds 100 percent of Federal coal lease "A–456;" and Entity C does not hold any interest in either Federal coal lease.

In 1989, what is the status of each entity's section 2(a)(2)(A) 10-year holding period? Entity A has held an interest in Federal coal lease "A–123" for 13 years (1976–1989); Entity C *held,* but does not currently *hold,* and interest in "A–456" for 5 years (1982–1987); Entity B holds and has held an interest in Federal coal lease "A–123" (and split-off "A–456") for a total of 11 years (1976–1985 as "A–123," and 1987–1989 as "A–456"). The creation of a new serial number ("A–456") in 1982 did not constitute creation of a new Fedeal coal lease for purposes of the section 2(a)(2)(A) 10-year holding period. The only time after August 4, 1976, that Entity B did not hold any interest was between 1985 and 1987.

It should be noted that Entity C could buy the remaining Federal coal lease "A–123" without any additive holding period because Entity C had never held any portion of Federal coal lease "A–123" prior to creation of Federal coal lease "A–456." *For Entity C only* in this example, Federal coal leases "A–123" and "A–456" are separate and distinct for the purposes of the section 2(a)(2)(A) holding period.

The situation is different for a Federal coal lease that is included in an LMU that subsequently fails. This is because, even though the Federal coal lease is included in an LMU, the Federal coal lessee still has control of the Federal coal lease. Therefore, the Federal coal lease-holding clock continues while the Federal coal lease is included in an LMU. The LMU's failure simply has the Federal coal lease's status considered by itself again, but is in no way comparable to a partial assignment.

Three comments stated that only bona fide, arm's-length assignments of Federal coal leases should be allowed (i.e., that BLM should never approve assignments of Federal coal leases from one entity to another entity where the two entities are related by legal or actual control). BLM disagrees with this position. If there is not a bona fide, arm's-length assignment (e.g., assignment of a partial interest or assignment to an affiliate), then the assignor is likely still in jeopardy of the Federal coal lease-holder's noncompliance with section 2(a)(2)(A). The assignor is still subject to the section 2(a)(2)(A) prohibition if the assignee is an affiliated company under section 2(a)(2)(A), which is the classic non-arm's-length assignment, or if the assignor still "holds" the Federal coal lease under a right-of-repurchase option or similar method of indirect holding. While BLM cannot allow such assignments to favorably adjust the calculation of section 2(a)(2)(A) provisions, BLM does not believe that all factors that may be a part of an assignment decision should actually be prejudged and therefore preclude such assignments.

Conversely, a "right-of-first-refusal" to repurchase by the seller does *not* constitute a method of direct or indirect holding of a Federal coal lease. For example, a "right-of-first-refusal" allows an entity to exercise an option to reacquire an asset, but leaves the

original buyer fully in control regarding whether the property will be resold. If Entity A assigns a Federal coal lease arm's-length to Entity B and if Entity C wishes to "buy" that Federal coal lease by assignment, Entity A's "right-of-first-refusal" would only allow it to reacquire the Federal coal lease if Entity B chose to sell and if Entity A could match Entity C's offer.

Whether an assignment is bona fide, arm's-length, or of a partial interest to an entity not controlled by or under common control with the assignor, a new 10-year holding period attaches to the assignee. These comments were rejected.

9. *Affiliates.* One comment stated that fixed-percentage ownership for joint ventures, mergers, corporate takeovers, minority shareholdings, and others should not be used as criteria for determining the identity of affiliates. One comment stated that BLM should implement an "element of control," not numerical restraint (i.e., stock ownership) using "established legal principles." BLM agrees with these comments.

One comment questioned: If Entity A holds a controlling interest in both Company B and Company C, and if both Company B and Company C are "totally unrelated," does Company B noncompliance prevent Company C from obtaining another Federal lease? The answer is yes. Section 2(a)(2)(A) applies to an entity, or any affiliate. Therefore, since both Companies are under common control by Entity A, Company B noncompliance will prevent not only Company C, but also Entity A, from obtaining another Federal lease. Companies B and C are simply not "totally unrelated" for purposes of section 2(a)(2)(A).

As an example of "totally unrelated," Entity A is issued Federal coal lease "B–123" in 1972. The Federal coal lease "B–123" has never produced. Entity B is not related to Entity A by legal or actual control. Entity C is a wholly owned subsidiary of Entity B. Entity C is issued Federal coal lease "B–456" in 1984. As of August 4, 1986, Entity A is prohibited under section 1(a)(2)(A) from being issued another Federal lease because Federal coal lease "B–123" (that Entity A holds and has held for at least 10 years since August 4, 1976) has never produced and is not producing in commercial quantities. However, Entity C and, by corporate relationship, Entity B are not yet subject to such a prohibition because they have only held Federal coal lease "B–456" for 1 year. In 1988, Entity A acquires Entity C from Entity B in a corporate takeover (Federal coal lease "B–123" has never produced and is still not producing in commercial quantities). Section 2(a)(2)(A) does not prohibit *acquisition* of Federal leases by corporate takeover of the Federal coal lessee. Therefore, although Entity A is prohibited from being *issued* a new Federal lease at this time, Entity A is not prohibited under section 2(a)(2)(A) from *acquiring* Entity C's Federal coal lease "B–456" because the corporate takeover involves "totally unrelated" entities. Such a corporate takeover acquisition of a Federal coal lease does not constitute an *assignment;* it is only a change in corporate stock ownership of the continuing same Federal coal lease. The same logic would apply to *any* Federal lease to be issued under MLA on or after August 4, 1986. And Entity C is not also disqualified due to its affiliation with Entity A.

One comment questioned: How can a second corporation prove the first corporation's compliance if the second has no access/legal right to the first company's books? BLM believes that a parent corporation would compel separate corporations it *controls* to share information necessary for each to determine its own compliance with Federal law. And, in fact, this could be one of the principal determinants of "control."

One comment stated that BLM should require lessee certification of compliance with section 2(a)(2)(A) at the time the entity wishes to qualify for a Federal lease on or after August 4, 1986. One comment questioned: If a Federal coal lessee is determined to be ineligible by BLM, what must he do to confirm that he is once again eligible? Will there be a list? If not, how can a Federal coal lessee, or any affiliate, determine whether to pursue Federal lease issuance if there is a question regarding his eligibility? Other comments stated that such qualifications should be determined on a case-by-case basis: (a) Using no established formula (three comments); (b) using something similar to the 10 percent stock-ownership rule (one comment); or (c) using the following definition (two comments):

(1) A corporation is a subsidiary of another corporation when more than 50 percent of its voting securities is held directly or indirectly by such other corporation;

(2) A corporation is an affiliate of another corporation when more than 50 percent of the voting securities of each such corporation is held directly or indirectly by another person, corporation, or entity; or

(3) The Secretary may determine that in the absence of legal control through stock ownership a person, association, or corporation is under the actual control of another person, association, or corporation.

The DOI believes this is useful and summarizes relevant, well-accepted principles that the Secretary will apply in making determinations of section 2(a)(2)(A) applicability to related corporate entities; therefore, BLM has included a slightly modified version of it in the guidelines. BLM has determined that it is appropriate to supplement the guidelines by briefly discussing how section 2(a)(2)(A) applies to corporate mergers and acquisitions. This supplemental information is contained in Appendix C of the guidelines.

In response to these comments, BLM agrees that, unless the express wording of section 2(a)(2)(A) is repealed and replaced with other provisions, on or after August 4, 1986, qualifications will have to be known or determined at the time of each Federal lease issuance under MLA. This would require a change in regulations for existing lessee-certification statements (e.g., 43 CFR 3472.2–2(f) for coal, 43 CFR 3102.5 for oil and gas) and necessitate the development of procedures and standards for BLM to apply generically. Further, BLM will establish a method by which a company which is uncertain about its status can certify that it is or is not "controlled by [or] under common control with" another entity. However, BLM believes that the guidelines for implementing section 2(a)(2)(A) should not be delayed pending the establishment of such a monitoring system.

10. *Guidelines* vs. *regulations.* Seven comments stated that the guidelines must be published as rules. One comment stated that after the guidelines have been published in final form, they should be formalized in rulemaking. BLM believes it necessary to publish guidelines now that will aid BLM Field Offices in determining compliance with section 2(a)(2)(A) and the interrelationships with other MLA provisions for Federal coal leases, as currently codified at 43 CFR Group 3400. In addition, BLM believes it necessary to consider revisions to the existing rules as discussed in this SUPPLEMENTARY INFORMATION. During the forthcoming regulatory review effort, interpretations of the phrase "producing in commercial quantities," as set forth in these guidelines (as well as public comments received on the draft guidelines), will be re-examined.

One comment stated that if guidelines are published, they must contain a justification statement as to why they are not being published as rules. The guidelines are meant to serve solely as

an aid to BLM Field Offices in determining compliance with section 2(a)(2)(A) on or after August 4, 1986, and do not amend, or redefine, any of the existing rules at 43 CFR Group 3400. In many respects, the guidelines simply state BLM's position on legal and interpretive questions under the statute. In other respects, they preserve BLM Field Office discretion under existing rules (e.g., to make factual determinations on what is a reasonable period for producing 1 percent of the recoverable coal reserves for a specific operation, consistent with BLM's policy statements contained in the guidelines). Even if these guidelines still appear to be rules to these commenters, BLM points out that they were adopted only after notice and comment, and are published in the **Federal Register** thus complying with these provisions of the Administrative Procedure Act. The guidelines advise BLM Field Offices how to implement the existing rules, and various parts of the section of law not treated in those rules.

One final comment stated that BLM should ignore guidelines and support section 2(a)(2)(A) repeal, because the 1982 rules are still the subject of a civil suit. The publication of the guidelines in no way compromises BLM's 1982 Federal coal rules. The 1982 rules that relate to section 2(a)(2)(A) discussed above are not at issue in the pending civil suit, although that suit does challenge aspects of the rules governing "diligence" for pre-FCLAA Federal coal leases. The guidelines are not inconsistent with that 1982 rulemaking. This comment was rejected.

These guidelines were formulated in light of comments received on the draft guidelines and informal advice rendered by Solicitor's Office staff, and are consistent with the conclusions in Solicitor's Opinion M–36951 (February 12, 1985).

The primary author of these guidelines is Allen B. Agnew, Branch of Technical Support, Solid Mineral Operations Division, Bureau of Land Management (BLM), assisted by other BLM field and headquarters personnel and the Office of the Solicitor, Department of the Interior. The guidelines are set forth below.

Dated: August 22, 1985.

James M. Parker,

Acting Director, Bureau of Land Management.

COMMERCIAL QUANTITIES FOR SECTION 2(a)(2)(A) OF THE MINERAL LEASING ACT (MLA) (SECTION 3 OF THE FEDERAL COAL LEASING AMENDMENTS ACT) GUIDELINES FOR IMPLEMENTATION

Introduction

ON OR AFTER AUGUST 4, 1986, IF A FEDERAL COAL LEASE, THAT HAS BEEN HELD BY THE CURRENT FEDERAL COAL LESSEE FOR AT LEAST 10 YEARS, IS *NOT PRODUCING IN COMMERCIAL QUANTITIES* OR *NOT UNDER A SUSPENSION*, THE *FEDERAL COAL LESSEE, OR ANY AFFILIATE, CANNOT QUALIFY* UNDER SECTION 2(a)(2)(A) FOR A NEW ONSHORE FEDERAL LEASE ISSUED PURSUANT TO MLA.

Section 2(a)(2)(A) of MLA, as amended, can be satisfied by *producing coal in commercial quantities* on the date that qualifications are being determined for a new Federal lease issuance for the three major classes of Federal coal leases: (1) Subject to the 1982 regulatory diligence system, and producing; (2) not subject to the 1982 regulatory diligence system, and producing; and (3) included in a logical mining unit (LMU) which is producing. In order to take into account the differences in the first two types of Federal coal leases, the guidelines treat them somewhat differently, as is developed below.

Section 2(a)(2)(A)'s prohibition is also avoided by certain other circumstances, such as: (1) Approved arm's-length transfer (e.g., assignment) of Federal coal lease(s), thus the assignor no longer "holds . . . and has held"; (2) approved relinquishment, thus the Federal coal lessee no longer "holds . . . and has held"; (3) approved *force majeure* suspension (strikes, the elements, or casualties not attributable to the Federal coal lessee), thus the production obligation is suspended; (4) amended section 7 advance royalty [1] paid *in lieu* of continued operation, thus satisfying the production obligation; and (5) Section 39 (30 U.S.C. 209) suspension (in the interest of conservation, as determined by the Secretary), thus the production obligation is suspended.

A detailed discussion of these concepts follows.

[1] Amended section 7 advance royalty vs. pre-August 4, 1976, Federal coal lease-stipulated advance royalty is discussed under the section of these guidelines entitled "Payment of Advance Royalty *in lieu* of Continued Operation."

Background

Section 3 of the Federal Coal Leasing Amendments Act (FCLAA) added section 2(a)(2)(A), among others, to MLA. Section 2(a)(2)(A) states, in part, that "[t]he *Secretary shall not issue a lease* or leases . . . *to any person*, association, corporation . . . *where* any *such entity holds a lease* or leases issued by the United States *to coal deposits and has held such lease* or leases *for* a period of *ten years when such entity is not*, except as provided for in section 7(b) of this Act, *producing coal from the lease* deposits *in commercial quantities.*" (Emphasis added.) Departmental analysis of section 2(a)(2)(A) resulted in the following distinct questions about the "producing in commercial quantities" obligation: What is the commercial quantities amount; over what time period must that production have occurred; what are the recoverable coal reserves for the purposes of this section of MLA; what can a Federal coal lessee do to satisfy this requirement; what constitutes an affiliate for purposes of section 2(a)(2)(A); and for which mineral commodities can a Federal coal lessee, or any affiliate, be prohibited from obtaining a Federal lease for his failure to satisfy section 2(a)(2)(A)?

Producing in Commercial Quantities: Section 2(a)(2)(A) vs. Section 7 of MLA

The term "commercial quantities" is used in three places in the Federal coal leasing statutes—twice in Section 7(a) regarding individual Federal coal lease diligence and once in section 2(a)(2)(A). In implementing FCLAA, the Department of the Interior (DOI) has, since 1976, defined by rule diligent development (required by Section 7(b) of MLA) to conform with the producing-in-commercial-quantities-at-the-end-of-10-years obligation in section 7(a), and has related continued operation (also required by section 7(b)) to the lease-lasts-as-long-as-coal-is-produced-annually-in-commercial-quantities obligation of section 7(a).[2] Thus, the definitions of diligent development and continued operation use the term "commercial quantities." The Secretary of the Interior stated that the 1982

[2] With respect to a Federal coal lease that achieves diligent development in five years, for example, and then proceeds to continued operation status, the continued operation definition conforms with the section 7(a) at-the-end-of-10-years obligation as well.

regulatory diligence system definition of commercial quantities—being 1 percent of the recoverable coal reserves—applies for both section 2(a)(2)(A) and section 7, in the preamble to the July 30, 1982, 30 CFR Part 211 (recodified at 43 CFR Part 3480) rules, which because effective on August 30, 1982. The 43 CFR Part 3480 rules then defined, differently for each, the time period in which the 1 percent is measured for both diligent development and continued operation purposes, but failed to define the commercial quantities time period for section 2(a)(2)(A) purposes. Lack of guidance on the time period in which the producing in commercial quantities requirement is measured for section 2(a)(2)(A) has caused Federal coal lessees great uncertainty, especially as they examined their 1982–1983 election possibility under the 1982 rules and as they contemplate their ability to obtain Federal leases on or after August 4, 1986.

See Appendix A for definitions of advance royalty, commercial quantities, continued operation, diligent development, Federal lease issuance, producing, and 1982 regulatory diligence system. See Appendix B for a listing of Federal onshore mineral commodities that are prohibited from being issued to any entity, or any affiliate, that cannot satisfy the obligations of section 2(a)(2)(A) at the time that qualifications are being determined for a Federal lease issuance on or after August 4, 1986. See Appendix C for a generic discussion of affiliates.

Section 2(a)(2)(A) Requirements

The word "producing" implies a continuing obligation on the part of the Federal coal lessee. The Bureau of Land Management (BLM) has determined that the continuing obligation means that if a Federal lease is to be issued at a given time, in order to determine whether a potential bidder is qualified under section 2(a)(2)(A), BLM will look at all of the Federal coal lessee's, or any affiliate's, Federal coal leases at that time and determine if all of the Federal coal leases that the Federal coal lessee, or any affiliate, holds and has held for at least 10 years are *producing in commercial quantities*, as measured over a certain time period. If each such Federal coal lease is *producing in commercial quantities* in that certain time period, the Federal coal lessee is satisfying section 2(a)(2)(A) and that Federal coal lessee, or any affiliate, may be issued another Federal lease. Section 2(a)(2)(A) requires that the Federal coal lease must have been held by the current Federal coal lease holder for 10 years before the prohibition attaches. Section 2(a)(2)(A) also states that, in computing the 10-year period, periods of time preceding August 4, 1976, shall not be included.

The Federal coal lease holding period, however, is independent of the timeframe over which production will be measured for section 2(a)(2)(A). The period over which commercial quantities is measured is not tied to August 4, 1976. Neither the law nor the rules prescribe such a timeframe. For Federal coal leases not yet readjusted (or otherwise made subject to FCLAA) after August 4, 1976, the beginning of the production bracket may begin as late as the date that coal is first produced on or after August 4, 1976. BLM has determined that 10 years is appropriately set as the maximum time over which production can be credited toward the producing-in-commercial-quantities obligation of Section 2(a)(2)(A).

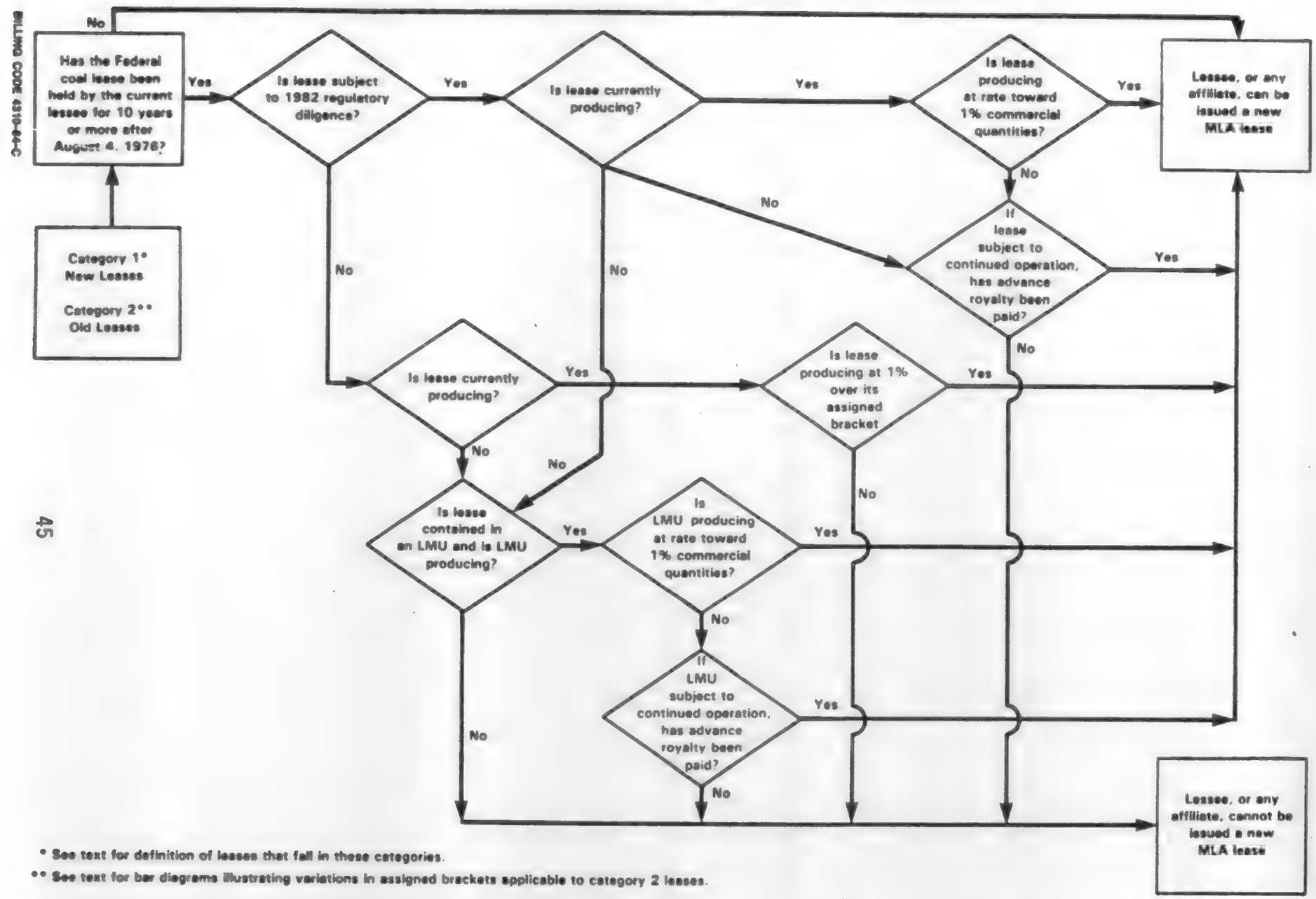
Regarding Federal coal leases that are *not yet subject to amended MLA*, BLM has adopted 10 years as an appropriate maximum time for determining commercial quantities under section 2(a)(2)(A); however, 10 years should not be used for all such Federal coal leases. Therefore, 10 years is the maximum time period that can be assigned by the Authorized Officer (AO), defined at 43 CFR 3400.0–5(b), to a Federal coal lease as a bracket during which the AO makes his determination whether the Federal coal lease is *producing in commercial quantities*. The AO should examine the approved mine plan or production scenarios based on existing contracts, keeping in mind a margin for error to account for such things as the phase of the operation (e.g., start-up vs. ongoing) and other related factors, to determine what is a commercial level or rate of production, and thus what an appropriate time period is in which commercial quantities must be produced. The time period should then be set at less than 10 years in cases where that more closely approximates what is "commercial" given the reality of the operation. For example, the timeframe might more appropriately range from 3 years (similar to the regulatory 3-year timeframe for measuring production for maintaining continued operation) to 5 years (reflecting the duration of mining permits approved pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA)). After determining the appropriate timeframe over which to measure *producing in commercial quantities*, the AO should assign that timeframe to each individual Federal coal lease that is not yet subject to amended MLA. Of course, this timeframe may be adjusted, at the AO's discretion to reflect changing conditions; for example, for an operation that moves from its initial start-up phase into an ongoing operation phase, the AO may determine that the assigned timeframe should be of a shorter duration.

Once the Federal coal lease becomes subject to amended MLA, the governing timeframe is the 10-year diligent development period or the continued operation year *as long as* production is occurring or the amended MLA production requirements are relieved pursuant to section 7(b) (i.e., *force majeure* suspensions or payment of advance royalty *in lieu* of continued operation). This is because, for pre-FC LAA Federal coal leases that have been readjusted (or otherwise made subject to amended MLA), nonproduction during the 10-year diligent development period would also be nonproduction for section 2(a)(2)(A) purposes, regardless of the timeframe assigned to the Federal coal lease prior to its becoming subject to amended MLA. Therefore, the Federal Coal lessee, or any affiliate, would not be qualified under section 2(a0(2)(A) to be issued a Federal lease on or after August 4, 1986, due to *not producing in commercial quantities*.

In all cases, the operative *quantity* to use in determining whether a Federal coal lease is producing in commercial quantities is 1 percent, as that is, per the Secretary of the Interior's 1982 preamble statement, prescribed by rule unless and until changed. The assigned bracket for pre-FCLAA Federal coal leases not yet readjusted (or otherwise made subject to FCLAA), however, is to be determined at the AO's discretion with the facts of the operation in mind.

Figure 1 gives a schematic presentation of the various paths leading to the determination of qualifications for a Federal lease issuance on or after August 4, 1986, as related to section 2(a)(2)(A). The purpose of Figure 1 is to diagram the text of these guidelines. There are instances when the diagram is not applicable (e.g., where a Federal coal lease is under a section 39 (30 U.S.C. 209) suspension). These exceptions are discussed later in this text.

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* See text for definition of leases that fall in these categories.

** See text for bar diagrams illustrating variations in assigned brackets applicable to category 2 leases.

Figure 1—Schematic Diagram Of How Coal Production Satisfies Section 2(a)(2)(A) Of The Mineral Leasing Act Of 1920 (Section 3 Of The Federal Coal Leasing Amendments Act Of 1976)

Examples of start/end times for assigned brackets follow the discussion of Federal coal leases not subject to the 1982 regulatory diligence system. The question of *producing in commercial quantities*, at the time that qualifications for Federal lease issuance are being determined, must be addressed using the bracket assigned by the AO. BLM has determined that the recoverable coal reserves are those in existence at the beginning of the assigned bracket in question, as is further explained below. Therefore, at the time that qualifications for a Federal lease issuance are being determined, each Federal coal lease of each Federal coal lessee, or any affiliate, wishing to qualify for a Federal lease issuance on or after August 4, 1986, must be looked at individually:

1. Has the Federal coal lessee, or any affiliate, individually held a Federal coal lease for a combined period of at least 10 years since August 4, 1976, and still hold it? *If* the answer is *no*, the Federal coal lessee, or any affiliate *is qualified* under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986. *If* the answer is *yes*, go to number 2 below.

2. Is that Federal coal lease producing, contained in a producing LMU, or suspended from producing under section 7(b) of MLA by either *force majeure* or payment of advance royalty *in lieu* of continued operation or suspended from producing under section 39 of MLA in the interest of conservation? *If* the answer is *no*, the Federal coal lessee, or any affiliate *is not qualified* under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986. *If* the answer is *yes*, the Federal coal lessee, or any affiliate, *is qualified* under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986.

The following discussion addresses how, at the time qualifications for a new Federal lease are being determined, section 2(a)(2)(A) affects Federal coal leases in the following three categories: (1) Subject to the 1982 regulatory diligence system; (2) not subject to the 1982 regulatory diligence system; or (3) contained in producing LMU's.

Category 1: Federal Coal Leases Subject to the 1982 Regulatory Diligence System

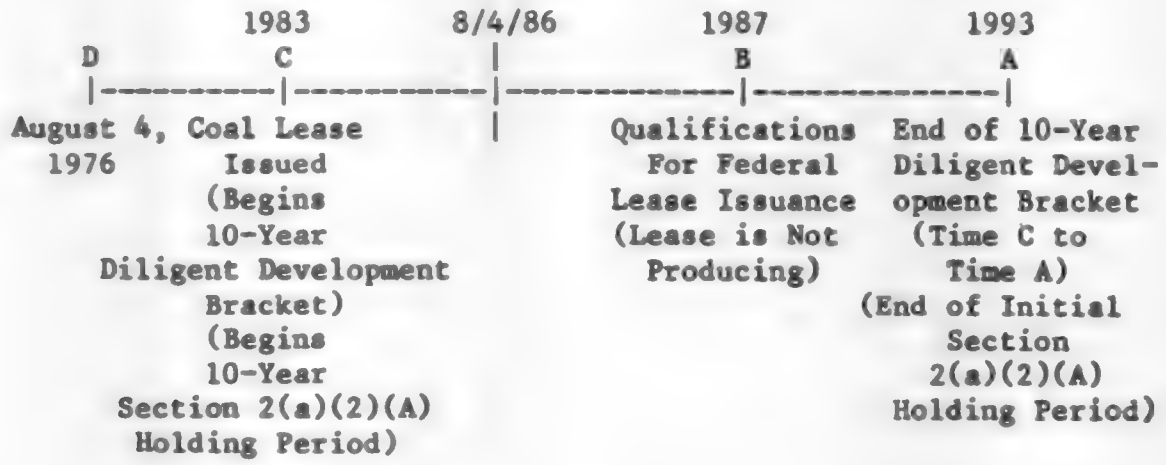
Is the Federal coal lease subject to the 1982 regulatory diligence system at the time qualifications for a new Federal lease issuance are being determined? There are six types of circumstances under which a Federal coal lease becomes subject to the 1982 regulatory diligence system:

1. Federal coal lease issuance after August 4, 1976;
2. Federal coal lease readjustment after August 4, 1976;
3. Modification (the noncompetitive *addition* of acreage or Federal coal to a Federal coal lease under MLA, 30 U.S.C. 203) after August 4, 1976.
4. Revision (Federal coal lessee execution of revised Federal coal lease diligence provisions at the request of DOI) during 1980;
5. BLM-approved election filed between August 1982 and August 1983 to be subject to the 1982 regulatory diligence system; or
6. Inclusion of a Federal coal lesae in an LMU.

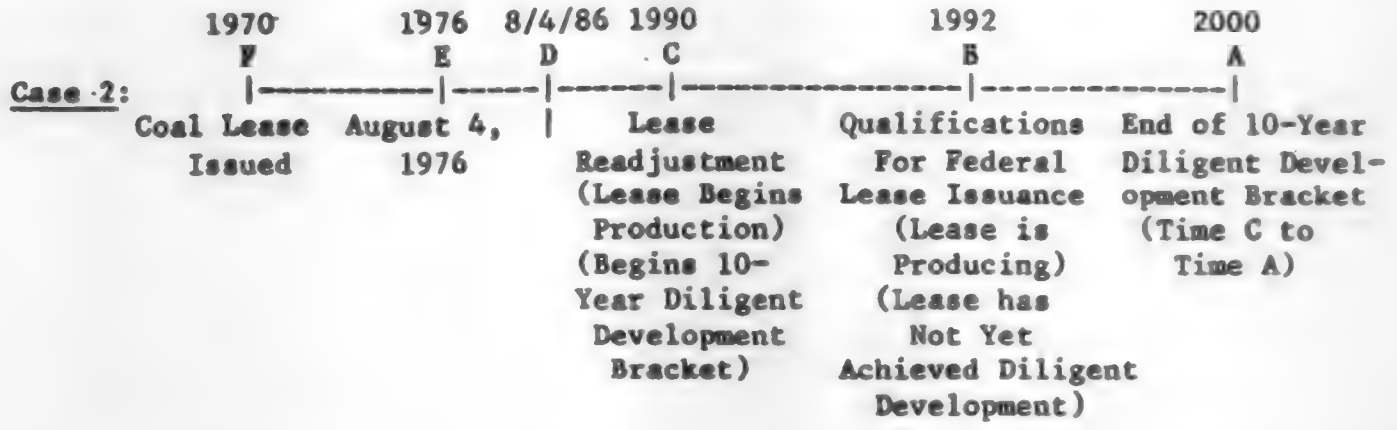
Once the Federal coal lease becomes subject to amended MLA diligence, the governing timeframe is the 10-year diligent development period or the continued operation year *as long as* production is occurring or the amended MLA production requirements are relieved pursuant to section 7(b) (i.e., *force majeure* suspensions or payment of advance royalty *in lieu* of continued operation). This is because, for pre-FCLAA Federal coal leases that have been held for at least 10 years and have been readjusted (or otherwise made subject to FCLAA), nonproduction during the 10-year diligent development period would also be nonproduction for section 2(a)(2)(A) purposes, regardless of the timeframe assigned to the Federal coal lease prior to its becoming subject to amended MLA diligence.

If the Federal coal lease is one that was issued after August 4, 1976, the Federal coal lease is subject to diligent development and has 10 years within which to produce commercial quantities, or the Federal coal lease may be lost. If the Federal coal lease falls within one of the other five types of circumstances listed above (i.e., other than issuance after August 4, 1976), has the Federal coal lease been held by the current Federal coal lessee for 10 years or more at the time qualifications for a new Federal lease issuance are being determined? If the current Federal coal lessee has not held the Federal coal lease for 10 years or more, the Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986. See also the discussion on assignments in the section entitled "EXCEPTIONS."

If the Federal coal lease has been held for 10 years or more by the current Federal coal lessee, can the AO determine that the Federal coal lease or LMU is currently *producing in commercial quantities?* If so, the production is being credited toward the production requirements of the 1982 regulatory diligence system and, therefore, this specific Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued another Federal lease. See the diagrams below concerning Category 1 Federal coal leases.



Case 1 includes *only* those Category 1 Federal coal leases issued on or after August 4, 1976. The Case 1 Federal coal lease has 10 years from time C to produce 1 percent of the recoverable coal reserves in existence at time C. At time B, since the Federal coal lease is still in its diligent development period and only has been held for 4 years, it does not have to be producing at time B in order to allow the Federal coal lessee, or any affiliate, to qualify under section 2(a)(2)(A) for another Federal lease issuance.



Case 2 includes all other Category 1 Federal coal leases *except* those issued on or after August 4, 1976. Between time D and time C, if the Federal coal lease was *not producing*, that Federal coal lease would prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for a Federal lease issuance between time D and time C. Any time of nonproduction between time D and time A also prohibits the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued a Federal lease at the time that the Federal coal lease is nonproducing. Upon becoming a Category 1 Federal coal lease (e.g., by readjustment on or after August 4, 1976) and prior to time A, the applicable timeframe for "producing in commercial quantities" is the 10-year diligent development period. The Case 2 Federal coal lease has 10 years from time C to produce 1 percent of the recoverable coal reserves in existence at time C in order to achieve diligent development. However, to be in compliance with section 2(a)(2)(A), the Federal coal lease must be producing in commercial quantities any time on or after August 4, 1986 (i.e., on or after time D), if the Federal coal lessee, or any affiliate, wishes to qualify for a new Federal lease. *Even though the Federal coal lease is in its 10-year diligent development period until time A and in compliance with its Federal coal lease-specific "diligence," it must be producing in commercial quantities at time B* (i.e., producing at a rate that will achieve diligent development by time A) *in order to allow the Federal coal lessee, or any affiliate, to qualify under section 2(a)(2)(A) for another Federal lease issuance.* Otherwise, if the current Federal coal lessee has held the Federal coal lease for 10 years, the Federal coal lease would have been held for 10 years and *not producing in commercial quantities.* However, see also the discussions of suspensions in the section entitled "EXCEPTIONS."

Discussion: Category 1 Federal Coal Leases

For both Case 1 and Case 2, Category 1 Federal coal leases, after diligent development is achieved (which may occur as late as time A), the Federal coal lease is subject to continued operation. If the Federal coal lease is satisfying the continued operation requirement by production or by payment of advance royalty, the Federal coal lessee, or any affiliate, is not prohibited by section 2(a)(2)(A) from qualifying for another Federal lease issuance at time A or any time thereafter. Where the Federal coal leases are not maintaining continued operation by production or by payment of advance royalty *in lieu* of continued operation, the Federal coal lease would be subject to cancellation. However, see also the discussion of suspensions in the section entitled "EXCEPTIONS."

For Federal coal leases issued after August 4, 1976, if the Federal coal lease has been held for 10 years and has not produced commercial quantities, the Federal coal lease would be lost for failure to achieve diligent development. If such a Federal coal lease is lost, that Federal coal lease could not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued another Federal lease because the Federal coal lease would no longer exist. If that Federal coal lease has achieved diligent development, then it is subject to the condition of continued operation. As long as the Federal coal lessee satisfies continued operation by production or by payment of advance royalty, that Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued another Federal lease. If the Federal local lessee does *not* satisfy continued operation by production or by payment of advance royalty, that Federal coal lease is subject to cancellation. After such a Federal coal lease is cancelled, that Federal coal lease could not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued another Federal lease because the offending Federal coal lease would no longer exist.

For the other five types of circumstances (i.e., all other Category 1 Federal coal leases *except* those issued on or after August 4, 1976), the Federal coal leases are also subject to the 1982 regulatory diligence system. Once Federal coal leases are subject to the 1982 regulatory diligence system, any subsequent production is credited toward diligent development or continued operation. Since the production is being credited toward diligent development or continued operation, if the Federal coal lease is *producing in commercial quantities* on the date of determinaton of qualifications for Federal lease issuance, the Federal coal lease or LMU is in compliance with section 2(a)(2)(A). Therefore, the Federal coal lease would

not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986.

Note.—If there is an LMU, any production after the effective date of the LMU approval is credited toward all *Federal* coal leases contained in that LMU, regardless whether the production is from Federal or non-Federal coal. Since the production is being credited toward diligent development or continued operation for the LMU, if the LMU is *producing in commercial quantities* on the date that qualifications for a Federal lease issuance are being determined on or after August 4, 1986, all of the Federal coal leases contained in the LMU are in compliance with section 2(a)(2)(A). Therefore, the Federal coal lease(s) contained in a producing LMU would not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986.

If a Federal coal lease, that otherwise is subject to the section 2(a)(2)(A) prohibition, is included in an LMU and that LMU stops productions (i.e., nonproduction occurring while the LMU is in its specific diligent development period and no advance royalty can be being paid *in lieu* of production), that Federal coal lease, looked at individually in its nonproducing status, would prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued another Federal lease on or after August 4, 1986. Although, in this example, the LMU would be in compliance with its approval stipulations and the 1982 regulatory diligence system, the Federal coal lease is not protected by inclusion in an LMU if that LMU *is not producing.*

Note.—For Federal coal leases in Category 1, the recoverable coal reserves for section 2(a)(2)(A) commercial quantities are those remaining at the time the Federal coal lease becomes subject to the 1982 regulatory diligence system. Under the 1982 regulatory diligence system, the recoverable coal reserves figure cannot decrease due to any production after the initial estimate is made. However, if new information is obtained (e.g., a previously undiscovered fault that makes some of the coal unrecoverable), the recoverable coal reserves may be revised by the AO pursuant to 43 CFR 3482.2(a)(3).

Category 2: Federal Coal Leases Not Subject to the 1982 Regulatory Diligence System

If the Federal coal lease is not subject to the 1982 regulatory diligence system at the time qualifications are being determined for a Federal lease issuance on or after August 4, 1986, has the Federal coal lease been held by the current Federal coal lessee for 10 years or more? If the current Federal coal lessee has not held the Federal coal lease for 10 years or more, the Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986. However, see also the discussion on assignments in the section entitled "EXCEPTIONS."

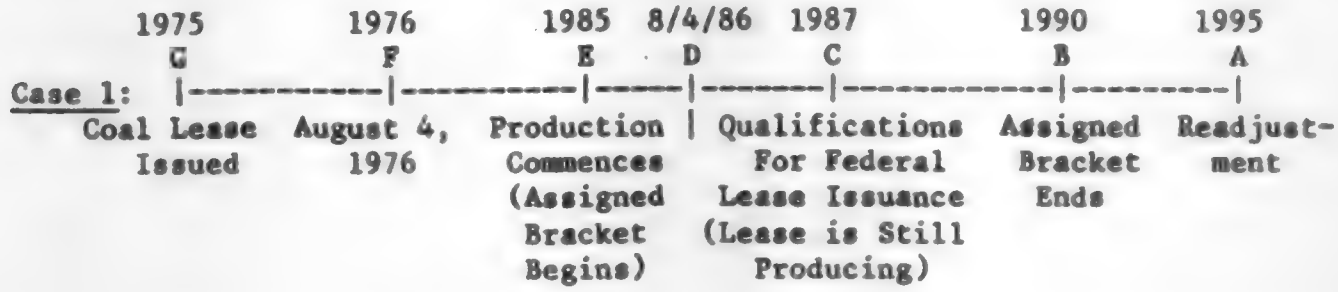
The 10-year period for determining commercial quantities under section 2(a)(2)(A) should not be used for all Federal coal leases not yet subject to FCLAA. The 10 years is the maximum time period that can be assigned by the AO to a Federal coal lease as a bracket during which the AO makes his determination whether the Federal coal lease is *producing in commercial quantities.* The AO should examine the approved mine plan or production scenarios based on existing contracts, keeping in mind a margin for error to account for such things as the phase of the operation (e.g., start-up vs. ongoing) and other related factors, to determine what is a commercial level or rate of production, and thus what an appropriate time period is in which commercial quantities must be being produced. The time period should then be set at less than 10 years in cases where that more closely approximates what is "commercial" given the reality of the operation. For example, the timeframe might more appropriately range from 3 years (similar to the regulatory 3-year timeframe for maintaining continued operation) to 5 years (reflecting the duration of permits approved pursuant to SMCRA). After determining the appropriate timeframe over which to measure *producing in commercial quantities,* the AO should assign that timeframe to each individual Federal coal lease that is not yet subject to amended MLA. Of course, this timeframe may be adjusted, at the AO's discretion, to reflect changing conditions; for example, for an operation that moves from its initial start-up phase into an ongoing operation phase, the AO may determine that the assigned timeframe should be of a shorter duration.

For Category 2 Federal coal leases, the date that Federal coal is first produced on or after August 4, 1976, begins the assigned timeframe (bracket) When a Category 2 Federal coal lease reaches the end of its assigned timeframe, the beginning of the assigned timeframe moves forward in time as the Federal coal lease ages. This imposes two criteria that must be met to satisfy producing in commercial quantities for Category 2 Federal coal leases that have reached the end of their first assigned bracket—*has produced 1 percent* during the assigned bracket *and is currently producing.* For example, a Federal coal lease was issued in 1975. The Federal coal lease begins producing in 1984. In 1986, the AO assigns a 5-year bracket to the Federal coal lease. The beginning of the assigned bracket is 1984 and the end of the assigned bracket is 1989. Between 1986 and 1989, if the Federal coal lease is producing, that production is being credited toward the 1 percent requirement over the 5-year assigned bracket. In 1989, the Federal coal lease must have produced 1 percent of the recoverable coal reserves (in existence when production began in 1984) between 1984 and 1989 and still be producing. In 1990, the Federal coal lease must have produced 1 percent of the recoverable coal reserves in existence 5 years prior to that date (i.e., 1985), and still be producing; and so forth until the Federal coal lease becomes a Category 1 Federal coal lease or until the AO assigns a different bracket (see the previous paragraph regarding adjusting Category 2 assigned timeframe (brackets)).

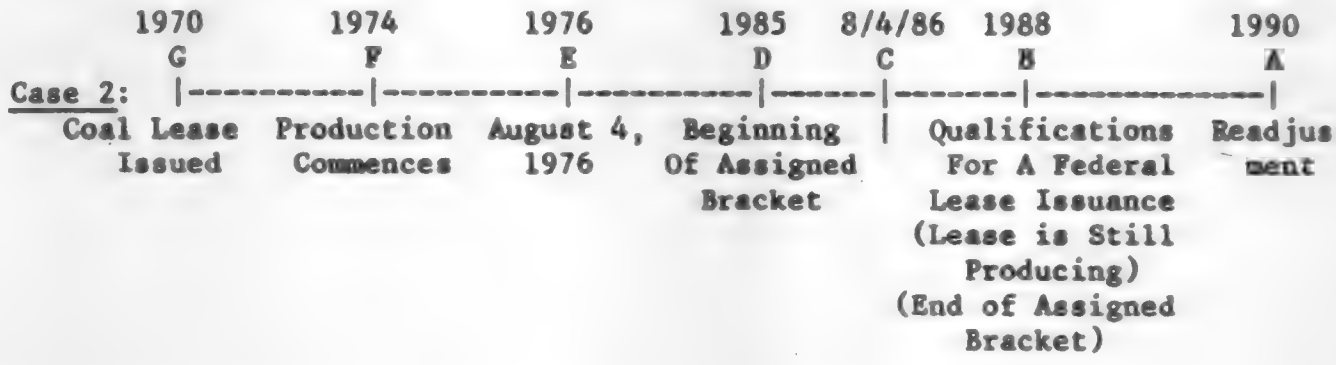
Note.—Once the Federal coal lease becomes subject to amended MLA (i.e., switches over from a Category 2 Federal coal lease to a Category 1 Federal coal lease), the governing timeframe is the 10-year diligent development period or the continued operation year *as long as* production is occurring or the amended MLA production requirements are relieved pursuant to section 7(b) (i.e., *force majeure* suspensions or payment of advance royalty *in lieu* of continued operation). This is because, for pre-FCLAA Federal coal leases that have been readjusted (or otherwise made subject to FCLAA), nonproduction during the 10-year diligent development period would also be nonproduction for section 2(a)(2)(A) purposes, regardless of the timeframe assigned to the Federal coal lease prior to its becoming subject to amended MLA. Therefore, the Federal coal lessee, or any affiliate, would not be qualified under section 2(a)(2)(A) to be issued a Federal lease on or after August 4, 1986, due to *not producing in commercial quantities.*

If the Federal coal lease has been held for 10 years or more by the current Federal coal lessee, can the AO determine that the Federal coal lease is currently *producing in commercial quantities* in the bracket assigned to it? If the AO determines that the Federal coal lease is *producing in commercial quantities* in the bracket assigned to it, the Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued other Federal leases. If the AO determines that the Federal coal lease is not *producing in commercial quantities* in the bracket assigned to it, then that Federal coal lease disqualifies the Federal coal lessee, or any affiliate,

under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986. See the following diagrams concerning Category 2 brackets.



For Case 1, the Federal coal lease has been assigned a 5-year bracket by the AO, beginning at time E, to produce 1 percent of the recoverable coal reserves in existence at time E. At time C, since the Federal coal lease is *producing in commercial quantities* using the quantity of recoverable coal reserves in existence at time E for the computation, the Federal coal lessee, or any affiliate, qualifies under section 2(a)(2)(A) for another Federal lease issuance at time C. For Case 1, if the Federal coal lese is not *producing in commercial quantities* at any time between time D and time A, the Federal coal lessee, or any affiliate, is not qualified under section 2(a)(2)(A) to be issued a Federal lease during that time of *not producing in commercial quantities, regardless* of the amount of production between time E and the date the Federal coal lease *stops producing in commercial quantities.*



For Case 2, the Federal coal lease has been assigned a 3-year bracket by the AO. Time B determines the *end* of the assigned bracket relevant here because a Federal lease is to be issued at time B which is after August 4, 1986. The assigned bracket within which the Federal coal lease must be *producing in commercial quantities* can start *no earlier* than 10 years prior to the date that qualifications are being determind for the Federal lease issuance. In this case, because the AO has determined that the applicable bracket to be assigned to this Federal coal lease is no longer than 3 years, the beginning of the assigned bracket in which the Federal coal lease must be *producing in commercial quantities* cannot occur more than 3 years prior to the date that qualifications for another Federal lease issuance are being determined (time B). If the Federal coal lease produced 1 percent of the recoverable coal reserves (in existence at time D) from time D to time B, *and* if the Federal coal lease is still producing at time B, the Federal coal lessee, or any affiliate, qualifies under section 2(a)(2)(A) for a Federal lease issuance at time B.

For Case 2, if the Federal coal lease is *not producing in commercial quantities* at any time between time C and time A, the Federal coal lessee, or any affiliate, is not qualified under section 2(a)(2)(A) to be issued a Federal lease during that time of *not producing in commercial quantities, regardless* of the amount of production between time D and the date the Federal coal lease *stops producing in commercial quantities.* The following serves to depict the severity of the section 2(a)(2)(A) prohibition in such instances.

For example, between time D and time B, the Federal coal lessee could have produced 90 percent of the recoverable coal reserves in existence at time D. However, if at time B the Federal coal lease is not *producing in commercial quantities,* the Federal coal lessee, or any affiliate, is not qualified under section 2(a)(2)(A) to be issued another Federal lease. Section 2(a)(2)(A) is *first contingent* upon what is occurring on the date that qualifications are being determined for a Federal lease issuance on or after August 4, 1986. Therefore, if the Federal coal lease is not producing at time B, previous production history cannot be considered.

General Discussion: Category 2 Federal Coal Leases

At the time that qualifications for a Federal lease issuance are being determined, if the Federal coal lease is a Category 2 Federal coal lease, the assigned bracket begins on the date that coal is first produced from the Federal coal lease on or after August 4, 1976

(Case 1), or the number of years the AO assigned as a producing-in-commercial-quantities bracket to the Federal coal lease prior to the time that qualifications are being determined (Case 2), which ever is most recent. It is important to note that for Case 2 the assigned brackets depend on the date that qualifications for a Federal lease issuance are being determined. For example, if there were to be another Federal lease issuance in 1992, the Case 2 assigned brcket would have to begin no earlier than 1989.

Note.—Under the 1982 regulatory diligence system, at the time that a Federal coal lease is readjusted (or otherwise made subject to amended MLA), thus becoming a Category 1 Federal coal lease, the recoverable coal reserves are established as the basis for commmercial quantities for the satisfaction of diligent development and/or continued operation; that amount does not decrease with production after a Federal coal lease becomes a Category 1 Federal coal lease.

For Category 2 Federal coal leases, the *recoverable coal reserves decrease with production until* the Federal coal lease becomes a Category 1 Federal coal lease. Because of this, *the commercial quantities amount also decreases with production until* the Federal coal lease becomes a Category 1 coal lease. Therefore, for Federal coal leases issued prior to August 4, 1976, that are not in Category 1, the recoverable coal reserves are those estimated by the AO to have existed on the *date that Federal coal was first produced* from the Federal coal lease on or after August 4, 1976 (Case 1), or at *the beginning of the assigned bracket prior to the date that qualifications* for a Federal lease issuance *are being determined* (Case 2), whichever is most recent. For section 2(a)(2)(A) purposes, the *producing-in-commercial-quantities* requirement must be based on the recoverable coal reserves remaining on the date that is *no earlier than* 10 years prior to the date that qualifications for a Federal lease issuance are being determined. Therefore, for Case 2, if there were to be another Federal lease issuance in 1992, the *production of 1 percent* of the recoverable coal reserves *in the assigned bracket and* the *producing-in-commercial-quantities* requirements would be based on the recoverable coal reserves remaining in 1989, not those in existence in 1985.

Note.—Mobile Federal coal lease w23929 is considered to be a Category 2 Federal coal lease until its readjustment in 1991. This is because the Federal coal lease is subject to its terms, as well as the *Mobil* v. *Andrus* litigation settlement stipulation, and will not be subject to the 1982 regulatory diligence system until its readjustment in 1991.

Discussion: Category 2 Federal Coal Leases Resulting From Exchanges Authorized or Mandated by Congress

There have been several Congressionally authorized or mandated Federal coal lease exchanges: Pub. L. 95–87, August 3, 1977 (SMCRA alluvial valley floor exchanges); Pub. L. 95–554, October 30, 1978 (I–90 exchanges); Pub. L. 96–401, October 9, 1980 (Northern Cheyenne exchanges); and Pub. L. 96–475, October 19, 1980 (Bisti exchange), among others. In the I–90 and Bisti cases, Congress directed that the exchange Federal coal leases contain the "same terms" as the Federal coal lease of which all or a portion thereof was relinquished. For example, under Pub. L. 95–554 (I–90), Exxon Coal USA, Inc. relinquished part of Federal coal lease w5035 in exchange for Federal coal leases w83394 and w83395. Although w83394 and w83395 were issued on January 28, 1983, both Federal coal leases have the "same terms," and thus the same effective date, as w5035 (i.e., December 1, 1967). Although, on paper, the Federal coal leases appear to have been in effect since 1967, Exxon Coal USA, Inc. only "has held" w83394 and w83395 since 1983. Therefore, the section 2(a)(2)(A) 10-year prohibition on these two Federal coal leases will not be a factor in determining qualifications for Federal lease issuance until January 28, 1993. Of these three Federal coal leases, only w5035 would have carried such a possible prohibiton, effective August 4, 1986, had not Exxon Coal USA, Inc. divested itself of w5035 in an arm's-length assignment approved by BLM on October 1, 1983.

Note.—The readjustment of all three Federal coal leases in 1987 will not affect the section 2(a)(2)(A) 10-year holding period, as the readjustment 10-year clocks (amended Section 7 of MLA) are wholly independent from the section 2(a)(2)(A) 10-year holding period before qualifications must be determined. This type of exchange Federal coal lease falls within Category 2 until the effective date of the first post-August 4, 1976, Federal coal lease readjustment, or modification that adds Federal recoverable coal reserves or acreage, whichever occurs first.

This issue arises only with Federal (non-Indian) coal leases resulting from Congressionally authorized or mandated exchanges, and whose terms are those of the Federal coal lease of which all or a portion thereof was relinquished (i.e., the terms regarding the original Federal coal lease issuance and next readjustment anniversary date).

Federal coal leases resulting from the other listed exchange authorities, such as those mandated by Pub. L. 96–401 (Northern Cheyenne), are issued with no retroactive effective date (e.g., Federal coal lease w80954, North Duck Nest Creek, which was effective October 1, 1982), and this question does not arise. For this type of exchange Federal coal lease, both the section 2(a)(2)(A) 10-year holding period and the amended section 7 10-year diligent development clock run simultaneously. This type of exchange Federal coal lease falls within Category 1, as the Federal coal lease is effective after August 4, 1976.

Category 3: Federal Coal Leases Contained in a Producing LMU

If a Federal coal lease is *not producing in commercial quantities* at the time that qualifications for a Federal lease issuance on or after August 4, 1986, are being determined, and that Federal coal lease is contained in an LMU, has the Federal coal lease been held for 10 years or more by the current Federal coal lessee? If the current Federal coal lessee has not held the Federal coal lease for 10 years or more, the Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for another Federal lease issuance. If the Federal coal lease has been held for 10 years or more by the current Federal coal lessee, can the AO determine that the LMU is currently *producing in commercial quantities?* Section 2(d) of amended MLA states that production from anywhere within an LMU may be credited toward the production obligations for all Federal coal leases in the LMU. If the LMU is *producing in commercial quantities,* the production is being credited toward the commercial quantities requirement of the 1982 regulatory diligence system for the LMU. Such LMU production is also credited for purposes of meeting the commercial quantities requirement of section 2(a)(2)(A) for all Federal coal leases within the LMU. Therefore, any nonproducing Federal coal lease contained in a *producing* LMU does not prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for another Federal lease issuance.

General Discussion: Category 3 Federal Coal Leases

See the Category 1 Discussion regarding Federal and non-Federal coal production within an LMU and Federal coal leases contained in *nonproducing* LMU's.

Exceptions

In certain instances, a Federal coal lessee, or any affiliate, can qualify under section 2(a)(2)(A) for another Federal

lease issuance because the Federal coal lease is relieved of a production requirement or because the Federal coal lessee no longer holds the Federal coal lease. For example, where Federal coal leases are required to be held (for reclamation purposes) for either 5 or 10 years after the Federal coal lease is mined out, they *should not* subject the Federal coal lessee to the section 2(a)(2)(A) prohibition against acquiring Federal leases.

With respect to Federal coal leases that *are subject to amended MLA "diligence,"* however, this is one of several sections of the existing 43 CFR Group 3400 rules that BLM has identified as requiring revision; this is due to the current regulatory definition of continued operation and the regulatory language regarding payment of advance royalty *in lieu* of the continued operation production obligation. That regulatory revision effort is currently scheduled to commence during the latter part of FY 1985, with completion during FY 1986. However, as the rules are currently written, Federal coal leases that *are subject to amended MLA "diligence"* and that are held for any reason after being mined out *may* prohibit the Federal coal lessee from Federal lease issuance. For example, by defining continued operation in terms of commercial quantities (1 percent of the recoverable coal reserves), the Federal coal lessee, pursuant to the 1982 regulatory diligence system, must pay an advance royalty which could never be recouped by production; this holds true even if the Federal coal lease has been mined out. Under the 1982 regulatory diligence system, the Federal coal lessee would have no relief from a payment obligation. Until the promulgation of corrective-rules, such situations will be assessed on a case-by-case basis.

For Federal coal leases, *not yet subject to amended MLA "diligence,"* that have been mined out and are being held for any reason (e.g., reclamation), such a problem does not exist in the current regulatory language. 43 CFR 3472.1–2(e) (1984) states that the prohibition attaches to Federal coal leases from which coal is not being produced in commercial quantities, as that term is defined by rule. Commercial quantities is defined by rule to be 1 percent of the recoverable coal reserves. Obviously, under the current regulatory language, Federal coal leases, *not yet subject to amended MLA "diligence,"* that have been mined out have no remaining recoverable coal reserves. If the AO determines this to be the case, then such Federal coal leases would not jeopardize the Federal coal lessee, or any affiliate, regarding his qualifications under section 2(a)(2)(A).

The following discussion addresses five other instances expressly allowed by amended MLA.

Force Majeure Suspensions

A Federal coal lease (Category 1) or the Federal coal leases in an LMU (Categories 1 and 3) can be relieved of the section 2(a)(2)(A) prohibition under the statutory "except as provided in section 7(b) of this Act" clause. After a Federal coal lease or LMU is subject to either diligent development or continued operation, section 2(a)(2)(A) may be satisfied by *force majeure* suspension (strikes, the elements, or casualties not attributable to the Federal coal lessee), if approved by the Secretary. If, at the time of Federal lease issuance on or after August 4, 1986, a Federal coal lease or LMU is under a *force majeure* suspension, it is relieved of the requirement to produce commercial quantities. Since there is no production obligation, the Federal coal lease or LMU does not prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986. However, under the 1982 regulatory diligence system (i.e., the current rules), a *force majeure* suspension does not extend the 10-year diligent development period; it only suspends the production obligation.

Category 2 Federal coal leases, however, are not subject to amended Section 7(b) of MLA; therefore, section 2(a)(2)(A)'s exception does not apply to them. Thus, even if a *force majeure* suspension can be granted by the Secretary under a lease-specific, *force majeure* Federal coal lease term, it will not relieve the Federal coal lessee, or any affiliate, of the section 2(a)(2)(A) obligation. Although there is no production obligation, the *Federal coal lease does prohibit the federal coal lessee,* or any affiliate, *from qualifying* under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986.

Payment of Advance Royalty in lieu of Continued Operation

As discussed in Category 1, once a Federal coal lease, which is subject to the 1982 regulatory diligence system, or LMU is subject to the condition of continued operation, the production obligation may be relieved by the payment of advance royalty *in lieu* of production to maintain continued operation. As long as the Federal coal lessee is paying advance royalty, the Federal coal lease does not have to be producing and, therefore, the Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986.

Note.—The payment of advance royalty *in lieu* of continued operation only applies to federal coal leases that are subject to the 1982 regulatory diligence system or to LMU's. Payments made *in lieu* of actual production under the minimum production clause of a Federal coal lease (issued prior to August 4, 1976, and not yet subject to the 1982 regulatory diligence system after August 4, 1976) are not advance royalty for the purposes of suspending the *producing-in-commercial-quantities* requirement of section 2(a)(2)(A).

Section 39 (30 U.S.C. 209) Suspensions

If any Federal coal lease or LMU (Category 1, 2, or 3) is under a section 39 (30 U.S.C. 209) suspension (in the interest of conservation), as approved by the Secretary, the Federal coal lessee has no beneficial use of the Federal coal lease or LMU by statute, except to meet obligations such as to maintain mine openings and equipment, and to satisfy the reclamation obligations pursuant to SMCRA. Since such a federal coal lease or LMU has no production obligation and no *right* to produce (because the Section 39 suspension has temporarily: stopped the section 2(a)(2)(A) bracket assigned by the AO; suspended the section 2(a)(2)(A) holding requirement; and, if applicable, suspended the amended Section 7 requirement to maintain continued operation), the Federal coal lease or LMU does not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued other Federal leases. It should be noted that when the Section 39 suspension terminates, the section 2(a)(2)(A) bracket assigned by the AO and, if applicable, the time remaining to satisfy the production obligation for diligent development or continued operation, resumes from the point at which it was stopped. It should be further noted that under the 1982 regulatory diligence system (i.e., the current rules), a section 39 suspension does *not* extend the 10-year diligent development period which applies to federal coal leases subject to amended section 7 of MLA.

Federal Coal Lease Assignments/ Reassignments

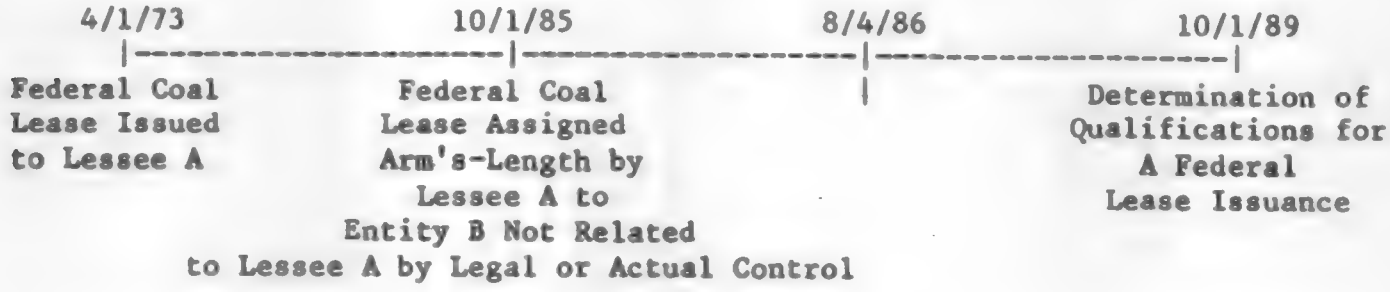
Consideration of questions related to assignments requires the following clarification of several matters about holding a Federal coal lease and the 10-year period. First, any holder of record title, even if less than 50 percent or not in control of the Federal coal *lease,* "holds" for section 2(a)(2)(A) purposes.

Lack of control is relevant in defining affiliates of Federal coal lessees, but not who holds the Federal coal lease itself. An assignment of a 50 percent, undivided interest in a Federal coal lease may start a new clock for the new 50-percent holder, but the holder of the other 50 percent continues under his pre-existing clock. Second, where a Federal coal lease is assigned by a parent corporation to a subsidiary after August 4, 1976, absent the Federal coal lease producing in commercial quantities, that new Federal coal lessee cannot qualify on or after August 4, 1986, as long as the parent corporation remains in control. This is because Federal lease issuance to the subsidiary would be barred by the parent corporation's prohibition. Similarly, a new parent corporation, upon acquiring control of a Federal coal lessee corporation, cannot qualify on or after August 4, 1986, as long as the subsidiary it controls remains in violation of section 2(a)(2)(A).

If a Federal coal lessee transfers the holding of a Federal coal lease via an arm's-length assignment, approved by the AO after his determination that the assignment is for 100 percent of the Federal coal lease or 100 percent of a portion of the Federal coal lease, the effective date of the approval of the assignment begins a new section 2(a)(2)(A) 10-year holding period for the assignee. That is, the 10-year holding period is Federal coal *lease-holder-specific* for each Federal coal lease.

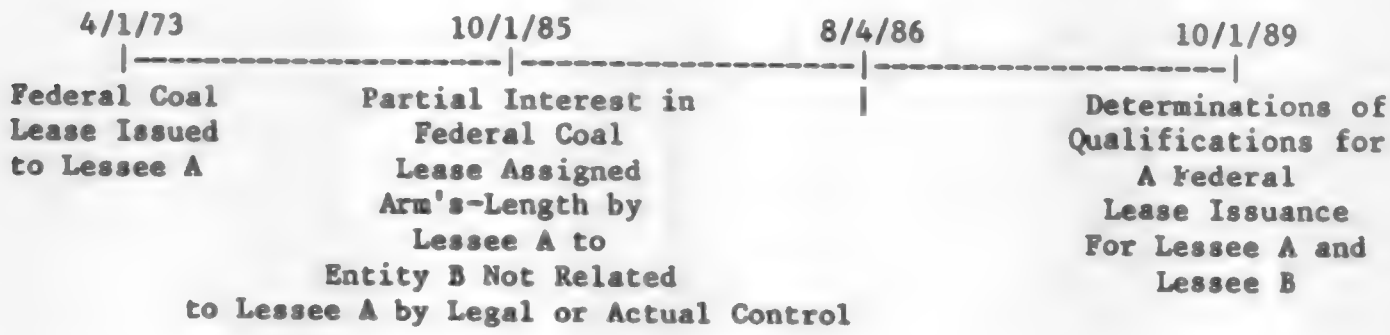
[Note.—The diligent development and continued operation requirements are Federal coal *lease-specific* or, if applicable, *LMU-specific*; they are *not* Federal coal *lease-holder-specific*.

See the diagram and discussion below.



The Federal coal lease was issued to Federal coal lessee A on April 1, 1973, and there has been no production from that Federal coal lease. This is the only Federal coal lease that Federal coal lessee A holds. On October 1, 1985, Federal coal lessee A assigns 100 percent interest in that Federal coal lease to Entity B, who is not related to Federal coal lessee A by legal or actual control, and this is the only Federal coal lease that Entity B holds. Entity B then wants to qualify for a Federal lease issuance on or after August 4, 1986. Assume that the date that qualifications for Federal lease issuance are being determined is October 1, 1989. Since Entity B has only held this nonproducing Federal coal lease for 4 years after August 4, 1976, Entity B does not have any problem with the section 2(a)(2)(A) prohibition of holding such a Federal coal lease for 10 years at the time that qualifications for the October 1, 1989, Federal lease issuance are being determined. Since the Federal coal lease was the only Federal coal lease that Federal coal lessee A had held, Federal coal lessee A also does not have any problem with the section 2(a)(2)(A) prohibition of holding such a Federal coal lease for 10 years because Federal coal lessee A no longer holds any portion of, or any interest in, the Federal coal lease.

If a *partial acreage assignment* is made, or the assignment of an undivided interest, the *assignee may not have a problem* of being prohibited under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986. That is, the assignor's and the assignee's status must be determined independently (see the discussion following the diagram below).



The Federal coal lease was issued to Federal coal lessee A on April 1, 1973, and there has been no production from that Federal coal lease. On October 1, 1985, Federal coal lessee A assigns an undivided interest in that Federal coal lease (less than 100 percent) to Entity B, who is not related to Federal coal lessee A by legal or actual control, and Federal coal lessee A retains the remaining interest in the Federal coal lease. This Federal coal lease is the only Federal coal lease in which Entity B holds any interest. On October 1, 1989, qualifications for a Federal lease issuance are being determined. *Federal coal lessee A*, having held the Federal coal lease (or portion of, or interest in,

the Federal coal lease) for 13 years after August 4, 1976, *cannot qualify under section 2(a)(2)(A) because the Federal coal lease is not producing in commercial quantities.* However, Entity B can qualify under section 2(a)(2)(A) for the Federal lease issuance because Entity B has only held its portion of the Federal coal lease for 4 years after August 4, 1976.

If an assignment of a partial interest results in the creation of a new Federal coal lease, the same logic applies. That is, the section 2(a)(2)(A) 10-year holding period is Federal coal lease-holder-specific.

Note.—By rule (43 CFR 3453.3–1(a)(8)) (1982), a Federal coal lessee, or any affiliate, cannot be assigned any or all of a Federal coal lease on or after August 4, 1986, if that Federal coal lessee, or any affiliate, "holds . . . and has held" a nonproducing Federal coal lease for 10 years or more after August 4, 1976. However, such a Federal coal lessee, or any affiliate, is not prohibited by statute or rule from obtaining approval for a modification to add acreage and/or recoverable coal reserves to Federal coal leases that would otherwise disqualify that Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986. This is because modification is *not* a Federal lease issuance, and although BLM has discretion not to modify leases, such a prohibition could result in bypass situations in many instances. However, it should be noted that a Federal coal lease modification to an unreadjusted Federal coal lease that was issued prior to August 4, 1976, results in that Federal coal lease falling under Category 1, whereas, prior to such a modification, that Federal coal lease would have fallen under Category 2.

Section 2(a)(2)(A) states that a Federal coal lessee must hold *and have held* a nonproducing Federal coal lease for 10 years before the Federal coal lessee, or any affiliate, is prohibited under section 2(a)(2)(A) from being issued Federal leases. The legislative history shows that when Congress added that language to MLA, it was specifically inserted as an antispeculation-in-the-coal-market provision. Were BLM to allow arm's-length assignments from one entity to another and back again, solely in an attempt to retrigger a new section 2(a)(2)(A), 10-year holding period, the intent of Congress would be compromised. Therefore, any *prior holding period* of a specific Federal coal lease *attaches to the prior Federal coal lease-holder if the Federal coal lease is once again held by the prior Federal coal lessee by its reassignment.* That is, the *"has held"* provision of section 2(a)(2)(A) *is additive for each time that an* individual *entity holds any portion* of, or interest in, *a Federal coal lease* on or after August 4, 1976. If a Federal coal lease has been assigned arm's-length, the Federal coal lessee has no control over that Federal coal lease until the Federal coal lessee receives it again by its reassignment. The first Federal coal lessee cannot be charged with a holding period during a time when that Federal coal lessee has no control over the Federal coal lease.

Federal Coal Lease Relinquishments

If a Federal coal lessee with only one Federal coal lease has held that Federal coal lease for 10 years or more after August 4, 1976, the Federal coal lease is relinquished in accordance with 43 CFR 3452.1, and the relinquishment is effective *prior to* the time that qualifications for a Federal lease issuance are being determined, that Federal coal lessee, or any affiliate, does not have any problem with the section 2(a)(2)(A) prohibition of holding such a Federal coal lease for 10 years. This is due to the dual requirement of section 2(a)(2)(A) which states, in part, "holds . . . *and has held.*" *(Emphasis added.) Since the Federal coal lessee no longer holds the Federal coal lease, the "has held" provision of section 2(a)(2)(A) is not a factor at the time that qualifications are being determined for a Federal lease issuance on or after August 4, 1986.*

General Statement on Federal Coal Lease Assignments, Relinquishments, and LMU Applications

Rules will be developed to protect the priority of noncompetitive oil and gas lease-applicants and prevent adverse action on other mineral lease and LMU applications, and assignment and relinquishment approval requests, where BLM is unable to act upon nonproducing Federal coal lease assignments, relinquishments, or LMU's within a specific period of time that will be established in the rules. This will include mineral lease and LMU applications, and assignment and relinquishment approval requests, *pending on August 4, 1986.*

Summary

In determining whether a Federal coal lessee, or any affiliate, can qualify under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986, each of the Federal coal leases or LMU's that that Federal coal lessee, or any affiliate, holds and has held for at least 10 years must be assessed individually for compliance. Individually, the Federal coal leases, or LMU's containing such Federal coal leases, must satisfy the *producing-in-commercial quantities* requirements, with the exceptions discussed above.

Any *previous* or any *subsequent* failure to comply with section 2(a)(2)(A) does *not* negate a Federal coal lessee, or any affiliate, from qualifying for another Federal lease issuance, *Provided That,* at the time that qualifications for a Federal lease issuance on or after August 4, 1986, are being determined, the Federal coal lessee, or any affiliate, is in full compliance with section 2(a)(2)(A). Any Federal coal lessee, or any affiliate, must satisfy section 2(a)(2)(A) *at the time* that qualifications are being determined. There is no provision in section 2(a)(2)(A) that mandates retroactive or future punishment because that Federal coal lessee, or any affiliate, failed to satisfy section 2(a)(2)(A) at another time.

For example, if a nonproducing Category 2 Federal coal lease, that has been held by the current Federal coal lessee for at least 10 years after August 4, 1976, is contained in a producing LMU, and the Federal coal lessee is issued another Federal lease at that time; any subsequent failure to comply with section 2(a)(2)(A) would not negate that Federal lease that was issued to that Federal coal lessee. Any subsequent failure to comply with section 2(a)(2)(A) would only disqualify the Federal coal lessee, or any affiliate, from being issued Federal leases at the subsequent time of noncompliance.

ON OR AFTER AUGUST 4, 1986, IF A FEDERAL COAL LEASE, THAT HAS BEEN HELD BY THE CURRENT FEDERAL COAL LESSEE FOR AT LEAST 10 YEARS, IS *NOT PRODUCING IN COMMERCIAL QUANTITIES* OR *NOT UNDER A SUSPENSION,* THE *FEDERAL COAL LESSEE, OR ANY AFFILIATE, CANNOT QUALIFY* UNDER SECTION 2(a)(2)(A) FOR A NEW ONSHORE FEDERAL LEASE ISSUED PURSUANT TO MLA.

Appendix A—Definitions

Advance Royalty: A payment made *in lieu* of actual production to meet the continued operation obligation under amended section 7(b) of MLA for a Federal coal lease, when authorized by BLM. Payments made under the minimum production clause *in lieu* of actual production (from a Federal coal lease issued prior to August 4, 1976, and not yet subject to the 1982 regulatory diligence system) to meet the minimum production/minimum royalty lease-specific Federal coal lease term are not advance royalty for the purposes of suspending the *producing-in-commercial-quantities* requirement of section 2(a)(2)(A) of MLA.

Commercial Quantities: One percent of the recoverable coal reserves or LMU recoverable coal reserves.

Continued Operation: Production of not less than commercial quantities of the recoverable coal reserves in each of the first 2 continued operation years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable coal reserves per continued operation year thereafter, computed on a 3-year basis consisting of the continued operation year in question and the 2 preceding continued operation years.

Continued Operation Year: The 12-month period beginning with the commencement of the first royalty reporting period following the date that diligent development is achieved and each 12-month period thereafter, except as suspended in accordance with the 1982 regulatory diligence system.

Diligent Development: Production of recoverable coal reserves in commercial quantities prior to the end of 10 years from the date that the Federal coal lease is first subject to the 1982 regulatory diligence system. See the LMU Application and Processing Guidelines for the start and end dates of the diligent development period for LMU's.

Federal Lease Issuance: Receipt *at issuance* of a whole or undivided interest in any onshore Federal lease issued pursuant to MLA, as amended, and, by rule, receipt *at assignment* of a whole or undivided interest in a Federal coal lease. The term "Federal Lease Issuance" does *not* include modifications to existing Federal coal leases.

Producing: For purposes of section 2(a)(2)(A), producing means actually severing coal, or operating an ongoing mining operation in a commercially reasonable manner without coal severance occurring on a given day (e.g., for such reasons as dragline moving, overburden removal, sale from stockpiles, or repair of equipment). An ongoing mining operation may be processing, loading or transporting mined Federal coal (for an LMU, either Federal or non-Federal coal) from point of severance to point of sale and be treated as "producing" for this purpose without continuous actual severance of Federal coal (for an LMU, either Federal or non-Federal coal).

1982 Regulatory Diligence System: The 43 CFR Part 3480 rules, effective on August 30, 1982, which implement the section 7 diligence provisions of MLA, as amended by FCLAA on August 4, 1976, as amended.

Appendix B

Federal Onshore Mineral Commodities, Leasable Pursuant to MLA, that are Prohibited from being Issued to any Entity that Cannot Satisfy the Obligations of Section 2(a)(2)(A) of MLA (Section 3 of FCLAA) at the Time that Qualifications are being Determined for a Federal Lease Issuance on or after August 4, 1986.

Coal
Gilsonite, including All Vein-Type, Solid Hydrocarbons
Onshore Oil & Gas, including Tar Sands
Oil Shale
Phosphate
Potash
Sodium
Sulphur

Appendix C—Discussion of Affiliates

Under section 2(a)(2)(A), the Secretary, subject to certain exceptions, may not issue a Federal lease "to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity . . ." has held a Federal coal lease for a period of 10 years and the entity is not producing coal from that Federal coal lease.

The legislative history and administrative interpretation of Section 11 of FCLAA are particularly relevant in interpreting section 2(a)(2)(A) of MLA, because the language used in both Sections is identical. The legislative history of section 11 states, in part, that "[t]he purpose . . . of this language is to assure that the restrictions . . . are not circumvented by the formation of holding companies, or other devices of corporate organization." H.R. Rep. No. 94-687, 94th Cong., 1st Sess. 25 (1975) It is apparent from the plain language of section 2(a)(2)(A) and the legislative history of section 11 that "control" is the key concept through which ownership of a Federal coal lease will be attributed to related corporate entities. The phrase "controlled by or under common control with such person, association, or corporation" modifies the words "subsidiary," "affiliate," and "persons." Therefore, when a chain of corporate ownership is involved, the question is whether a given corporation is "controlled by or under common control with" a related corporation. If there is sufficient control of a corporation by another corporation, related corporations in the corporate chain will be charged with ownership of the Federal coal lease. This analysis is consistent with DOI's established interpretation of section 11. See 46 FR 61390, 61403 (1981). The question of whether a particular entity is "controlled by or under common control with" another entity for section 2(a)(2)(A) purposes will have to be determined on a case-by-case basis at the time that qualifications are being determined for a Federal lease issuance on or after August 4, 1986. However, DOI believes that the following principles should guide these determinations:

(1) A corporation is a subsidiary under legal control of another corporation when more than 50 percent of its voting securities is held directly or indirectly by such other corporation.

(2) A corporation is an affiliate under legal control of another corporation when more than 50 percent of the voting securities of each such corporation is held directly or indirectly by another person, corporation, or entity; or

(3) The Secretary may determine that in the absence of legal control through stock ownership a person, association, or corporation is under the actual control of another person, association, or corporation.

Actual control of a corporation will often exist without ownership of a majority of the corporation's voting stock. Ownership of less than 50 percent may provide actual control where stock ownership is widely dispersed. These determinations will necessarily have to be made on a case-by-case basis.

Generally, the application of section 2(a)(2)(A) to a Federal coal lease holding entity will not be affected by a corporate reorganization of the entity. This is true even if the reorganized entity is renamed. In addition, if a Federal coal lessee in violation is acquired by a corporation resulting in a parent-subsidiary structure, the section 2(a)(2)(A) violation will automatically run to the parent corporation. This is because the section 2(a)(2)(A) leasing prohibition runs up and down a chain of corporate ownership. That is, a parent's violation is charged to a controlled subsidiary and a subsidiary's violation is charged to a controlling parent, as well as to any other subsidiary commonly controlled by that parent.

The guidelines do not currently speak to partners of partnership Federal coal lessees, and venturers in joint-venture Federal coal lessees. BLM currently intends to implement ownership/control/affiliation concepts with respect to such entities in a manner consistent with the Office of Surface Mining's rules for control-responsibility of noncorporate business entities. These rules were proposed April 5, 1985 (50 FR 13724), and BLM awaits the final

rulemaking before issuing supplemental guidelines on this issue.

[FR Doc. 85-20609 Filed 8-28-85; 8:45 am]
BILLING CODE 4310-84-M

Minerals Management; Logical Mining Unit Application and Processing; Guidelines

AGENCY: Bureau of Land Management, Interior..

ACTION: Notice of Final Guidelines.

SUMMARY: This notice sets forth guidelines for the Department of Interior's administration of section 2(d) of the Act of February 25, 1920, (otherwise known as the Mineral Leasing Act (MLA)). These guidelines will be used by Bureau of Land Management personnel in order to process logical mining unit (LMU) applications, develop stipulations, ensure public participation, and monitor operator compliance of an approved LMU.

EFFECTIVE DATE: August 29, 1985.

ADDRESS: Department of the Interior, Bureau of Land Management (660), 18th and C Streets, NW, Room 3411, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer or Allen B. Agnew, (202) 343-7722, or William C. Stringer, (202) 343-7753.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management published draft guidelines on April 11, 1985 (50 FR 14303). Comments were invited for 60 days, ending June 10, 1985. As a result of publication of the draft guidelines, 15 comments were received. The comments are addressed below; the text of the guidelines has been changed as appropriate.

In general, comments addressed eight specific topics: the effect of LMU formation on the requirements of section 2(a)(2)(A) of MLA; diligent development and continued operation requirements; effective control of lands within an LMU; single operator/single operation requirement; 40-year mine-out requirement; contiguity requirement; effective date of approval; and resource recovery and protection plan submittal requirement. Following the *General Discussion*, the comments received on the specific topics are addressed.

General Discussion

Section 5 of the Federal Coal Leasing Amendments Act of 1976, as amended (FCLAA), added paragraph 2(d) to MLA. This amendment states that the Secretary, upon determining that maximum economic recovery of Federal coal will be achieved, may approve the consolidation of Federal coal leases in an LMU.

An LMU may contain one or more Federal coal leases, and may include non-Federal coal. Federal coal leases issued prior to enactment of FCLAA may only be included in an LMU with the consent of all lessees whose Federal coal leases will be included in the LMU. If requested by a person having a direct interest that is or may be adversely affected; a public hearing must be held prior to LMU approval.

All lands in an LMU must be under the effective control of a single operator, be able to be developed and operated as a single operation, and be contiguous. No LMU may contain more than 25,000 acres.

An approved LMU is subject to the diligence requirements of section 7 of MLA—diligent development, continued operation, and resource recover and protection plan submittal. Formation of an LMU allows production of coal from anywhere within the boundaries of the LMU to be construed as occurring on all Federal coal leases in the approved LMU. However, the entire LMU recoverable coal reserves must be mined out within 40 years.

These guidelines provide a background and general discussion of the provisions of MLA and set forth the formation criteria, application requirements, consultation and public participation requirements, and approval stipulations. The guidelines also discuss how the section 7 of MLA diligence requirements of individual Federal coal leases do or do not govern the diligence requirements imposed on the LMU. The guidelines further discuss modifications and adjustments to aproved LMU's, how an LMU may fail and the results of the failure on the individual Federal coal leases contained therein, and how the Department of the Interior intends to monitor the diligence requirements on both a lease-specific and LMU basis.

General Comments

One comment stated that formation of an LMU is a new and separate Federal action requiring a new and separate environmental review. The Department of the Interior has taken the position that the determination and designation of an LMU is categorically excluded (46 FR 7485-7486, 516 DM 6, Appendix 2, section 2.4(B)(1)(g)) from preparation of an environmental impact statement. A statement to this effect has been included in the guidelines as an insert in the notice of availability.

Several comments stated that the guidelines should address the effects of LMU formation and failure or termination on the requirements of section 2(a)(2)(A) of MLA. The LMU guidelines address only the implementation of Section 2(d) of MLA, as codified at 43 CFR 3487. The Department of the Interior has developed separate guidelines for implementation of section 2(a)(2)(A); the effects of the section 2(a)(2)(A) lessee-qualification prohibition on Federal coal leases included in an approved LMU are addressed therein.

Two comments stated that many of LMU application requirements are duplicative of the requirements for a permit application package under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The comments suggest that an LMU applicant be authorized to incorporate, by reference, existing information the LMU application. The guidelines do not require that the LMU applicant recreate existing documents solely to conform to the application format. Information contained in a SMCRA permit application may be extracted and submitted, as appropriate, to satisfy the LMU application requirements with little or no modification.

Specific Comments

1. *Sections 7(a) and 7(b) of MLA.* Many comments were received on the various aspects of diligent development and continued operation. The guidelines do not alter any aspect of the provisions of diligent development or continued operation as provided by statute or rule. The regulatory requirements for diligent development and continued operation will be examined during a forthcoming regulatory revision and these comments will be considered at that time.

2. *Resource Recovery and Protection Plan (R2P2).* Several comments pointed out an apparent discrepancy between the draft guidelines and the rules regarding the 3-year submittal requirement for an R2P2 on an LMU. The guidelines are not inconsistent with the rules by basing the requirement for R2P2 submittal on the effective date of post-FCLAA leases. The rules state, in part, that the R2P2 must be submitted "within 3 years from the effective date of LMU approval * * *." The Office of the Solicitor has interpreted this to mean that 3 years is the maximum time period allowed for submittal for the R2P2; however, a shorter timeframe must be established in certain circumstances, as discussed in the guidelines.

3. *Effective control of LMU lands.* Several comments stated that the requirement for "effective control" of lands within an LMU is tantamount to requiring surface owner consent. The

guidelines specifically state that "effective control" is not related to surface owner consent provisions. The requirement for "effective control" of all lands within the LMU ensures that all recoverable coal reserves within the LMU can be mined. Failure to require "effective control" prior to LMU approval could result in a situation where Federal coal resources would be bypassed with no chance of recovery in the future. In draft, these guidelines addressed "effective control" with respect to SMCRA. Upon reconsideration, the Department of the Interior has determined that these guidelines are not the appropriate place to discuss this subject. As a result, this reference has been removed.

4. *40-year mine out.* Several comments stated that the guidelines should not indicate that annual production from an LMU would have to average 2½ percent in order to achieve mine-out in 40 years. The intent of the guidelines was to point out that in order to achieve mine-out of the LMU recoverable reserves by the 40th year, an *average* annual production of 2½ percent would be necessary. In order to avoid confusion, this statement has been removed from the guidelines.

5. *Contiguity.* Several comments stated that the meaning of the term "legal subdivision" for purposes of satisfying the contiguity requirement is unclear. One comment further stated that in some cases rights-of-ways may be necessary to satisfy the contiguity requirement. The term "legal subdivision" applies to any parcel of land which is described by a legal survey. In most cases, the smallest "legal subdivision" in the western United States is 10 acres. However, it is not uncommon to find surveyed lots which are either less than 10 acres or are of irregular shapes which do not lend themselves to description in terms of a standard rectangular subdivision (e.g., NW ¼ NW ¼ SW ¼, Section 2). The Department of the Interior has determined that a right-of-way may not be used to satisfy the requirement for contiguity between two or more noncontiguous coal leases. On the other hand, a right-of-way or physical discontinuity does not destroy existing contiguity.

6. *Consultation.* Several comments stated that ample opportunity for consultation should be provided prior to and during the development of the LMU stipulations as well as providing for adjustments and modifications to existing LMU's based on changed conditions or new information obtained after approval. The consultation/public participation phase allows ample opportunity for applicant input to the development of LMU stipulations. In addition, the Authorized Officer may modify stipulations as necessary at any time, based on new information and consultation with the LMU operator.

7. *Non-Federal coal reserves.* One comment stated that non-Federal coal reserves should only be considered in determining the LMU recoverable coal reserves for the purpose of establishing the diligent development and continued operation requirements. The stipulations developed for an LMU must contain non-Federal reserves for purposes of diligent development and continued operation as stated. In addition, the stipulations must require production figures for non-Federal leases so that the statutory and regulatory provisions governing the Federal coal leases in the LMU can be enforced. With this exception, the Department of the Interior does not intend to include non-Federal coal lands in its Inspection and Enforcement program.

8. *Effective approval date.* Several comments stated that the establishment of an effective date for LMU approval which is retroactive to the date of submittal of the LMU application could be inconsistent with the current rules. The guidelines are not inconsistent with the rules by allowing the effective date of LMU approval to be no earlier than the date that the Authorized Officer receives an LMU application in accordance with 43 CFR 3487 (1984). The effective approval date for an LMU may be established at any time between the dates of application submittal and application approval based on consultation with the LMU applicant, as stated in the guidelines.

9. *Rent and royalty.* Several comments stated that inclusion in an LMU should not affect any of the lease-specific terms and conditions of those Federal coal leases not otherwise subject to the provisions of section 7 of MLA. The guidelines clearly state that the rental and royalty *rates* of existing leases are not modified by inclusion in an LMU. However, lease-specific diligence terms and conditions are superseded by the LMU diligence stipulations which are governed by Section 7 of MLA.

10. *Single Operation.* Several comments stated that for purposes of an LMU, maximum flexibility should be provided in defining "single operation." The guidelines allow for the Authorized Officer's discretion by not establishing definitive qualification criteria. The Department of the Interior is well aware of the various complexities associated with large mining operations and, as such, the determination will be made on a case-by-case basis by the Authorized Officer.

11. *Directed LMU Formation.* Two comments stated that the authority of the Authorized Officer to direct formation of an LMU is overly broad and of questionable legality. One comment further stated that unrequested LMU formation may adversely affect the operators economic minability, diligence requirements, and others. Section 2(d)(6) of MLA states that the Secretary, by regulation, may require a lessee to form an LMU and may provide for determination of participating acreage within an LMU. The guidelines do not imply that the Authorized Officer is encouraged to initiate LMU formation as a matter of course. The same requirements for LMU formation apply regardless of whether the operator or the Authorized Officer initiates the action. This being the case, the proposed LMU would have to be developed in an economical manner with due regard to conservation of the resource. If formation of an LMU can be shown to achieve increased conservation of the Federal resource without undue hardship to the operator, the Authorized Officer may so order. The operator, of course, may appeal this action.

12. *Termination.* Two comments stated that the guidelines incorrectly state that "an LMU which does not achieve diligent development will be automatically terminated by law." The comments further stated that termination is an administrative decision based on whether diligent development has been achieved. The Department of the Interior agrees with this comment and the guidelines have been changed accordingly. To avoid confusion, the term "cancellation," as it applies to the approved LMU, has been replaced with "termination." Failure of the LMU to comply with its stipulations subjects the LMU to termination by administrative decision. Cancellation procedures apply to individual Federal coal leases and must be pursued in a court of competent jurisdiction.

The final guidelines were formulated in light of informal advice rendered by Solicitor's Office staff.

The primary authors of these guidelines are Allen B. Agnew and William C. Stringer, Branch of Technical Support, Solid Mineral Operations Division, Bureau of Land Management (BLM), assisted by other BLM field and headquarters personnel and the Office of the Solicitor, Department of the Interior.

The guidelines are set forth below.

Dated: August 22, 1985.

James M. Parker,

Acting Director, Bureau of Land Management.

LMU Application and Processing Guidelines

I. Background

Section 5 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), added Section 2(d) to the Mineral Leasing Act of 1920 (MLA), which provides the legislative framework for logical mining units (LMU's). The implementing rules at 43 CFR Part 3480, which were published in the Federal Register on July 30, 1982 (effective August 30, 1982), provide LMU description and establishment criteria. The Authorized Officer (AO), defined at 43 CFR 3400.0–5(b),[1] may approve an LMU application submitted by an operator/lessee or may direct that an LMU be established. The Bureau of Land Management (BLM) State Director is the AO for the purposes of denying, approving, modifying, or terminating the LMU.

Although the Secretary, through the AO, has discretion to order LMU formation, it is not the policy of BLM to order LMU formation. Such an order would only be given when maximum economic recovery (MER) of the coal deposits would be increased in accordance with section 2(d)(1) of MLA. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal, may be diminished by creation of other separate Federal leases or LMU's, or may be diminished by the relinquishment of recoverable coal reserves and/or acreage. Federal coal lease segregation, which results in the assignment of new lease serial numbers for the segregated portion of the original Federal coal leases do *not* constitute Federal coal lease readjustments.

See Appendix A for example notification letters to affected parties during the public participation phase of LMU approval. See Appendix B for an example notification letter to the LMU applicant and containing an example of LMU approval stipulations. See Appendix C for a discussion of notifications to lessees regarding, and the monitoring of, diligent development and continued operation for both Federal coal leases and LMU's. All data regarding LMU application, processing and monitoring, 3-year resource recovery and protection plan submittals, diligent development, continued operation, advance royalty and others for Federal coal leases and for LMU's must be entered and maintained up-to-date in the appropriate Solid Leasable Minerals System (SLMS) data bases.

II. General Discussion

The purpose of these guidelines is to set forth the requirements and conditions that must be satisfied to enable an LMU to be approvable. The guidelines do not alter any aspect of the AO's discretionary authority in acting on LMU applications, which is set forth in the 43 CFR Part 3480 rules.

"Federal coal leases" means Federal coal leases on public or acquired lands *only*. *"Non-Federal* leases" includes Indian tribal, Indian allotted, fee/private, and State coal. This is an extremely important distinction for the following reason. Production from anywhere (Federal or non-Federal coal) within the LMU is construed as occurring on all *Federal* coal leases within the LMU. However, the reverse is not true. Federal production within an LMU is *not* construed as occurring on any *non-Federal* coal leases within the LMU. For example, if an Indian coal lease, the lease form of which states that the lease lasts as long as production continues, is contained in an LMU, production from *other* non-Federal coal or from Federal coal does *not* satisfy the Indian, lease-specific production requirement, unless the Indian lease document so specifies.

Federal coal leases have diligence provisions that are lease-specific. The diligence provisions for LMU's are LMU-specific. When a Federal coal lease is included in an LMU, both types of diligence run *simultaneously*. However, in essence, LMU-specific diligence takes precedence over lease-specific diligence, as long as that Federal coal lease is contained in an approved LMU. In other words, LMU diligence *supersedes*, but *does not suspend*, lease-specific diligence requirements. As long as all LMU approval conditions/stipulations, including diligence, are complied with, *an individual Federal coal lease contained in an approved LMU is not in noncompliance with lease-specific diligence requirements.*

Diligence is based on recoverable coal reserves, as determined by the AO. The standards for coal reserve base, minable reserve base, recoverable coal reserves, and MER are defined in the rules at 3480.0–5. The regulatory criteria may be adapted locally to determine the recoverable coal reserves.

Therefore, a narrative of the coal reserve base, minable reserve base, and recoverable coal reserves, by bed, will be required in the LMU application, in addition to a narrative regarding *any* Federal coal that the operator proposes to not mine or to render unminable. Such coal may either be required to be mined as a condition of LMU approval, may be assigned to another lessee upon approval by the AO, may be relinquished if authorized by the AO, may be segregated into another Federal coal lease or into another LMU, or may be retained in the LMU if such coal could not be mined (e.g. that portion of the coal reserve base that could be economically mined by any entity or operation).

A Federal coal lease, or LMU, *must* produce commercial quantites of coal prior to the end of 10 years, or the Federal coal lease or LMU *shall be terminated*. There is no statutory or regulatory relief from this provison. Nothing prohibits LMU formation just prior to the end of the first 10-year period that a Federal coal lease is individually subject to diligence.

Since production from anywhere within an LMU is deemed to have occurred on all *Federal* local leases within the LMU, as long as criteria for LMU approval are adhered to, that Federal coal lease is not in jeopardy. But, if LMU diligent development is not satisfied, the LMU is terminated; then, the Federal coal leases must be assessed individually for compliance with MLA. Upon LMU failure, if a specific Federal coal lease would have not achieved lease-specific diligent development within its initial 10-year period, that Federal coal lease shall *also* be terminated.

The commerical quantities (by rule, 1 percent of the LMU recoverable coal reserves) for diligent development and continued operation is the *minimum* required to satisfy the LMU diligence provisions. However, in order to achieve the LMU 40-year recoverable coal reserves exhaustion requirement, the operator will have to supply a prodution schedule as part of the LMU application showing that the 40-year mine out will be achieved.

Once the LMU is subject to continued operation, annual production *cannot be less than* 1 percent annually or based on a 3-year rolling average; otherwise, advance royalty will be due.

Note.—There is a limitation on the number of years that advance royalty can be paid for an LMU. See section VII.G. regarding Advance Royalty.

If an LMU application shows that there are more than 40 years of reserves, then some land/coal must either be relinquished, assigned out from the LMU, made part of another LMU, or

[1] Hereafter, all "3400 . . . ." citations refer to "43 CFR," unless otherwise stated or unless referring to a complete Group or Part at 43 CFR.

segregated from the LMU into another separate Federal coal lease. Once a Federal coal lease is segregated and assigned a new lease number, it remains a separate and distinct entity. If an LMU were to fail and if the lessee(s) wished to have the segregated Federal coal leases recombined, there is no appropriate authority at 43 CFR Group 3400 to consolidate the segregated Federal coal leases back into the original Federal coal lease by administrative decision.

If the LMU application shows that the coal will be mined within 40 years, *and* if the operator fails to achieve that 40-year mine out, the LMU is subject to termination by administrative decision. There is no relief from the 40-year mine-out provision. In fact, 40-years is actually a maximum. The Secretary has discretion to impose shorter mine-out timeframes. However, Department policy (as codified at 3487) is to allow the full 40-year mine-out period for any approved LMU.

If a Federal coal lease has no production during the life-of-the-mine for the LMU, and if the 40-year LMU mine-out provision is violated, the LMU must be terminated by administrative decision and the Federal coal lease reverts to its individual, lease-specific diligence requirements. Since there had been no production, the Federal coal lease would be terminated. This is because that Federal coal lease, individually, would never have achieved its own diligent development by production of commerical quantities of the lease-specific recoverable coal reserves prior to the end of the lease-specific diligent development period. Other ramifications on specific Federal coal leases when an LMU fails are discussed in Appendix C.

All *lands* within the LMU must be under the effective control of a single operator. This requirement is *not* related to the "surface owner consent" requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) or the surface-owner consultation process at 43 CFR Part 3420. Where there is non-Federal land and/or non-Federal coal to be included in the LMU, the public participation procedures require that all surface owners and all coal owners, if other than the Federal Government, be notified. In addition, to demonstrate effective control, the LMU application must contain a narrative of agreements with the surface *and* coal owners, if other than the Federal Government. If necessary, hard copies of those executed agreements may have to be provided; for example, the agreements may be required to be produced as the result of a public hearing, if one is held.

An LMU approval is an agreement between the Federal Government and a non-Federal entity. Failure by the non-Federal entity to comply with that agreement constitutes a breach. Therefore, LMU termination is an administrative action, not a judicial action. LMU's may be terminated by administrative decision, for just cause, stating the cause of the termination.

III. LMU Formation Criteria

The application for an LMU or modification to an approved LMU must satisfy certain statutory and regulatory criterial. The AO, except for good cause stated in a decision disapproving the LMU application, shall approve an LMU *if* the LMU application satisfies *all* of the following:

1. Within the proposed LMU boundary, the LMU recoverable coal reserves must be *capable of being developed in an efficient, economical and orderly manner as unit*, with due regard to conservation of the recoverable coal reserves and other resources.

2. The LMU *may consist of one or more Federal coal leases and* may include *intervening or adjacent lands* in which the United States does not own the coal.

3. All lands and coal in the LMU shall be under the *effective control of a single operator.*

4. All lands must be *able to be developed and operated as a single operation.* A single operation may include a series of excavations.

5. All lands within the LMU *must be contiguous* (i.e., have at least one point in common, including cornering tracts). Intervening physical separations such as burn or outcrop lines and intervening legal separations such as right-of-way do not destroy contiguity, as long as the legal subdivisions have at least one point in common.

6. Mining *operations must achieve MER of the Federal recoverable coal reserves* within the LMU.

7. If portions of a single Federal coal lease are to be included in more than one LMU, that Federal coal lease shall be segregated into two or more Federal coal leases. The segregated portions of the Federal coal leases are each assigned new serial numbers. The assignment of new serial numbers does *not* constitute a lease readjustment.

8. If only a portion of a Federal coal lease is to be included in an LMU, the remaining land shall be segregated into another Federal coal lease.

9. The operator may apply to relinquish any portion of a Federal coal lease, segregated under item 7 or 8 above, in accordance with 3452.1, or may assign any portion of such a Federal coal lease in accordance with 3453.

10. The LMU cannot exceed 25,000 acres, including both Federal and non-Federal lands.

11. The operator must agree to the LMU stipulations.

IV. LMU Application requirements

Five copies of the LMU application must be submitted to the AO. The resource recovery and protection plan (R2P2),[8] of R2P2 modification if there is a currently approved R2P2 for at least one of the Federal coal leases, will have to contain all of the requirements of 3482.1(c) for the life-of-the-mine for the LMU. (See section VII.A. regarding *Resource Recovery and Protection Plan* submittals for LMU's on which there is an already approved R2P2 or, for non-Federal coal, an already approved SMCRA permit.) Therefore, only information sufficient to determine satisfaction of the LMU FORMATION CRITERIA needs to be submitted in the LMU application. The LMU application must contain a *narrative* that covers the following:

1. Name and address of the *designated operator* of the LMU [3487.1(c)(1)]:

- This is very important, as more than one operator/lessee may want its Federal coal lease(s) included in the LMU.

2. A listing of the Federal coal lease serial numbers, a description of the land and all coal beds (including thickness and quality) within the boundary of the LMU, and an identification of those coal beds proposed to be mined and those coal beds proposed to be excluded from any Federal coal lease which would be a part of the LMU [3487.1(c)(2)]:

- The listing of all Federal coal lease serial numbers must include the name and address of all lessees with Federal coal leases proposed to be included in the LMU.
- As stated in the July 30, 1982, preamble to the 43 CFR Part 3480 rules, the rules are intended to require the operator to demonstrate his *right to enter and mine all recoverable coal reserves* contained in the proposed LMU. The legal description of all lands (Federal and non-Federal) within the proposed LMU boundary is required on

[8] Hereafter, R2P2 means the plan of operations submitted pursuant to MLA, in accordance with 3482.1(b) of the 1982 regulatory diligence system, or the "mine plan" approved for Federal coal leases prior to the 1982 rulemaking.

a lease-by-lease basis. For the Federal portion, it most probably will be the legal land discription contained in each Federal coal lease form. For non-Federal portions, the legal land description should be on a surface-owner-specific and, if applicable, coal-owner-specific basis. The requirement of a description on a surface-owner-specific basis is necessary for two reasons. First, all lands within the LMU must be under the *effective control of a single operator.* (See item 3 below.) Second, all surface and coal owners must be notified of the proposed LMU action pursuant to public participation procedures. Where the non-Federal coal owners are different from the surface owners, the legal land description is also required or that coal on a coal-owner-specific basis. The name and address of the surface and coal owners, if other than the Federal Government, must be included with the legal land description.

These requirements are not be to be confused with the *"surface owner consent"* provisions of SMCRA or the surface owner consultation process at 43 CFR Part 3420.

• A narrative describing the *surface and underground coal reserve base, minable reserve base,* and *recoverable coal reserves, by bed,* of *all* coal (Federal and non-Federal) within the proposed LMU boundary.

• A narrative describing and justifying that part of the *Federal coal reserve base* that the applicant intends to exclude (segregate) from the LMU, to relinquish, to assign, to not mine, or to render unminable. Representative cross-section are recommended; but, they are not required unless the AO deems their submittal to be necessary in order to determine whether relinquishment would be in the public interest or that MER would not be achieved by exclusion or relinquishment, or to determine which coal will have to be segregated into another Federal coal lease(s) or LMU(s) by the exclusion [see 3487.1(f)(3), concerning segregations and relinquishment].

If a portion of the Federal coal reserve base contains coal that is not recoverable (e.g., could not be recovered economically by any entity or any operation), that coal does *not* fall in the category of "not to mine, or to render unminable" for the purposes of segregation into another Federal coal lease(s) or LMU(s).

Note—"Unmined or rendered-unminable" includes coal proposed to be: (a) not mined; (b) rendered unminable; (c) assigned to another entity and not included in the LMU; (d) relinquished; or (e) segregated into another Federal coal lease or LMU.

Otherwise, the situation could result where the lessee would hold a Federal coal lease, by segregation, from which no Federal coal could be mined.

3. Documents and related information showing all lands are under the *effective control of a single operator* and capable of being *mined as a single operation* [3487.1(c)(3)]:

• A narrative of any necessary surface owner agreements and their effective dates for *all* lands (surface owners and coal owners, if other than the Federal Government) within the proposed LMU boundary is sufficient. If the surface of a Federal coal lease is private or if there is non-Federal coal, the narrative can state, for example: "On August 1, 1980, [LMU applicant] executed a surface-owner agreement [or lease, right-of-way, or other similar agreement] with [non-Federal entity], the surface owner [coal owner (if appropriate)] for the right to mine or develop the coal contained in the following described lands [coal (if appropriate)]:" followed by a legal description of the surface or coal, as appropriate; if the legal description is the same as described in item 2, a cross-reference to the appropriate legal description is sufficient.

• Since all surface owners and all coal owners, other than the Federal Government, must be notified individually during the public participation procedures, a narrative of effective control of the surface and of the right to enter and mine *all* recoverable coal reserves is all that is needed here. If a surface or coal owner protests the LMU formation or if a public hearing is required, documentation of the effective control by the operator/lessee will have to be produced at that time.

• If more than one Federal coal lessee wants Federal coal leases combined to form an LMU, then the lessees must execute an agreement that a single designated operator has effective control of *all* the land and coal within the proposed LMU boundaries. The LMU must be under the effective control of a single operator; however, two or more Federal coal lessees may execute an agreement resulting in a joint partnership or consortium. In such an event, that partnership or consortium could be the designated operator if the executed agreement(s) so states.

• If any conditions exist that cause the land in the proposed LMU to *not* constitute a *single operation,* the proposed LMU must be reconfigured so that the LMU would constitute a *single operation.* Otherwise, the LMU cannot be approved. The ultimate determination as to whether the LMU will be mined as a single operation must be made by the AO. The following examples are provided for discussion purposes only, and are not intended to set forth the sole criteria for what constitutes a single operation:

a. If coal from a single mine on the LMU is marketed through more than one separate and distinct loadout facility, each of which has its own support facilities, that most probably would constitute a single operation and would not prohibit LMU approval.

b. If the coal to be mined from two different parts of the LMU were to go to market through separate and distinct loadout facilities, each having its own support facilities, that could constitute two different operations and not allow the LMU to be approved.

c. If two mines are "related" but have separate and distinct loadout facilities and markets, they might constitute a single operation (e.g., where the existence and sequencing of two mines are dependent on each other, such as two underground mines separated vertically, but not horizontally; see 3484.1(c)(4) concerning multiple coal-bed mining).

4. Sufficient data to allow MER determination for the Federal recoverable coal reserves [3487.1(c)(4)]:

• See item 2 above regarding narrative requirements and apply them in the same manner to any coal bed, or portion thereof, proposed to not be mined or to be rendered unminable. Sufficient information concerning the non-Federal coal must be provided to allow the AO to determine that MER of the Federal recoverble coal reserves will be achieved. For this part of the application, the narrative must be in sufficient detail to justify the unmined or rendered-unminable portion.

5. Any other information required [3487.1(c)(5)]:

• In order to be able to develop the LMU stipulations, the AO may need to ask for a narrative of a preliminary schedule that would show the intent of the LMU applicant to satisfy the diligent development and continued operation requirements to be imposed on the LMU [3487.1(e)(2)], as well as the 40-year mine out requirement [3487.1(e)(6)].

• These should be simple narratives, because the R2P2, or R2P2 modification, for the LMU will have to contain all of the requirements of 3482.1(c) for the life-of-the-mine for the LUM, and will have to show a life-of-the-mine schedule for a 40-year mine out. The estimates of the *recoverable coal reserves* will be subject to revision only as new information becomes available. That information may come from exploration

drilling prior to submittal of the R2P2, or R2P2 modification, for the LMU or prior to submittal of the permit application package, or from new information obtained during the mining operation such as a previously undiscovered fault that causes some of the LMU recoverable coal reserves to be rendered unminable. Once mining commences, the AO, through inspection and enforcement/production verification of the LMU, may determine that the recovery factor is greater or lesser than originally planned. In such an event, the LMU recoverable coal reserves estimate and LMU commercial quantities requirement would be revised accordingly.

6. Confidential information [3487.1(c)(6)]:

• Treat such information in accordance with the provisions at 3481.3.

V. Consultation/Public Participation

1. Prior to approval of an LMU, the AO must consult with the LMU applicant concerning any *Federal* recoverable coal reserves that the LMU applicant either wishes to not mine, to render unminable, to assign, to relinquish or to segregate into another Federal coal lease or LMU. The AO must also consult with the LMU applicant about proposed LMU stipulations that will supersede the lease-specific diligence provisions for the duration of the LMU, in order to allow consistent application of the LMU diligence provisions (i.e., R2P2 submittal for the LMU, 40-year LMU recoverable coal reserves exhaustion requirement, diligent development, continued operation, advance royalty, and Federal rental and royalty collection requirements) [3487.1(d)(1)].

2. The public participation procedures at 3481.2, must be completed *prior to* LMU approval [3487.1(d)(2)]. The consultation with the LMU applicant, as discussed above, may be done prior to *or* concurrently with the public participation procedures. Assuming the LMU application is in an approvable form, the following must be done to satisfy the public participation procedures.

• The LMU application or modification must be made available for public inspection in the office of the AO, with the exceptions of the confidential information, which is handled in accordance with the provisions at 3481.3.

• The AO must post a notice of availability at his office and mail a notice of availability (*certified, return receipt requested*) to:

a. All surface and all coal owners, if other than the Federal Government, within the boundary of the proposed LMU.

b. All appropriate State and Federal Agencies (e.g., if only Federal coal and Federal surface is involved, it is only necessary to notify the Office of Surface Mining (OSM) or, if applicable, State Regulatory Authority and the Surface Management Agency, if other than BLM; however, if non-Federal coal or non-Federal surface is involved, it is necessary to notify the surface or coal owners and appropriate State Agencies, in addition to OSM).

c. The clerk or other appropriate officer in the County or Counties in which the proposed LMU would be located.

d. A local newspaper(s) of general circulation in the locality of the proposed LMU for publication at least once a week for two consecutive weeks.

• If the AO receives a written request for a public hearing from any person having a direct interest which is or may be affected adversely by the approval of the LMU, a public hearing must be held. However, the written request for such a hearing must be received within 30 days from the date of the *first newspaper publication of the notice of proposed decision.* A complete transcript must be made available to the public at the BLM office that held the hearing. Copies of the transcript must be furnished *at cost* to anyone interested.

• The AO must consider all relevant testimony presented at the public hearing in determining whether to approve the LMU.

• Prior to final approval of an LMU, the proposed decision must also be published in a local newspaper(s) of general circulation in the locality of the proposed LMU at least once a week for two consecutive weeks. This notice of proposed decision may be published concurrently with the notice of availability.

Note.—The example notice in Appendix A–2 incorporates both the notice of availability and the notice of proposed decision.

In either event, the LMU *cannot* be approved *before* 30 days, from the date of the *first* newspaper publication of the notice of proposed decision, has expired.

Although an LMU may not be approved prior to 30 days after the first newspaper publication of the notice of proposed decision, the *effective date* of LMU approval can be established by the AO within the timeframe bounded by: (1) the date that the AO receives an application for LMU approval; and (2) the date that the AO approves the LMU. The effective date of the LMU approval must be determined by the AO in consultation with the LMU applicant [3487.1(a), revised 1985].

Note.—The words contained in the brackets in Appendices A and B are the alternative phrasing that should be used, depending on the specifics of the application, for either an LMU or LMU modification.

VI. LMU Approval Stipulations

Prior to LMU approval, the AO must transmit the LMU stipulations to the LMU applicant. Appendix B–1 is an example of such notification. The letter transmitting the LMU stipulations to the LMU applicant must contain a narrative of the criteria the AO used to determine compliance with the LMU FORMATION CRITERIA. The approval date for an LMU must be at least 30 days *after* the first newspaper publication of the notice of proposed decision. (See the previous discussion regarding the *effective date* of that approval.) If a public hearing is requested, the date of the LMU approval will be dependent on the results of that hearing. For example, if the result of the hearing is to proceed with the LMU approval, the approval date could be 30 days after the first newspaper publication of the notice of proposed decision (i.e., backdated from the date of the hearing). If the results show that the LMU should only be approved with special stipulations, the approval date could be the date that the LMU applicant concurs with the special stipulations following the hearing. The LMU approval stipulations must contain the following:

1. R2P2, or R2P2 modification, for the LMU must be submitted not later than 3 years from the effective date of the most recent Federal coal lease that is subject to the 1982 regulatory diligence system prior to LMU approval. The R2P2, or R2P2 modification, for the LMU must contain all the information required by 3482.1(c) for the life-of-the-mine for all Federal and non-Federal lands/coal within the LMU.

• The LMU operator has 3 years from the effective date of the most recent Federal coal lease, which is subject to the 1982 regulatory diligence system prior to LMU approval, to submit either an R2P2 for the entire LMU or a modification to the existing R2P2 that will cover the entire LMU. This applies only if there is an approved R2P2 for at least one of the Federal coal leases to be included in the LMU and, *on the date of LMU approval,* there is *no production* occurring from anywhere within the LMU. See section VII.A. regarding *Resource Recovery and Protection Plan* submittal where there are ongoing

mining operations at the time of LMU approval.

2. A schedule for achieving diligent development and maintaining continued operation for the LMU.

3. Reporting periods for rental and royalty payments for Federal coal leases within the LMU must be exactly the same. This provision applies to the LMU. However, although the Federal coal lease rental and royalty *rates* are not changed by LMU formation, lease-specific rentals are not allowed to be credited against lease-specific production and royalty payments must be made on a monthly basis as long as the Federal coal leases are contained in the approved LMU. These conditions are made a part of the LMU-specific diligence stipulations; the lease-specific terms and conditions shall not be so amended.

4. The superseding, *for the duration of the LMU,* of Federal lease diligence terms and conditions for the individual Federal coal leases within the LMU, in order to be consistent with the LMU diligence stipulations. This provision applies to the LMU; the Federal coal lease terms and conditions shall not be so amended or altered by adjudicative action at the time of LMU approval. Federal *royalty rates* will not be changed by LMU formation.

• As Federal coal lease readjustments occur while the Federal coal leases are in the LMU, the royalty rates and other lease-specific terms and conditions will be changed in accordance with applicable rules. A readjustment of a Federal coal lease contained in an approved LMU does not change the approval stipulations or conditions of the LMU.

5. Estimates of the Federal and non-Federal recoverable coal reserves using data acquired by generally acceptable exploration methods.

• These estimates, determined by the AO are subject to revision at the time of R2P2 submittal for the LMU, or based on new information [see 3482.2(c)].

6. Beginning the 40-year LMU recoverable coal reserves exhaustion requirement on the *date that coal is first produced* on or after the effective date of LMU approval. This is determined during the first royalty reporting period following that date, regardless whether the production occurs from Federal or non-Federal recoverable coal reserves.

If coal is being produced from anywhere within the LMU boundary on the date of LMU approval, the 40-year clock begins on the effective date of LMU approval [3487.1(e)(6)].

Section 2(d)(4) of MLA states: "The Secretary *may amend* the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit." (Emphasis added) The rules at 3475.6(b) state: "When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with *or are superseded* by the requirements imposed on the LMU of which it has become a part." (Emphasis added.) The rules at 3487.1(e)(4) provide for "[t]he revision . . . of terms and conditions of the individual Federal leases included in the LMU . . . [by amendment of the Federal coal lease terms] so that they are consistent with the stipulations of the LMU." The LMU approval stipulations apply to all Federal and non-Federal coal and land contained in the approved LMU. The LMU approval stipulations "amend" the lease-specific diligence provisions by *superseding,* but *not suspending,* the lease-specific diligence provisions for the life-of-the-LMU. If the LMU were to fail for whatever reason, the individual, lease-specific diligence provisions would apply to the Federal coal leases as if they had never been included in an LMU.

VII. Diligence for LMU operations

Any Federal coal lease included in an LMU shall be subject to the diligent development and continued operation requirements imposed on the LMU *in lieu* of those diligent development and continued operation requirements that would apply to the Federal coal lease individually [3483.1(c)]. See also the Appendix C entitled "Notification to Lessees Regarding, and the Monitoring of, Diligent Development and Continued Operation."

Following are five methods by which a Federal coal lease becomes "subject to diligence," [8] as currently implemented by the 1982 regulatory diligence system, *without* LUM formation:

1. Issuance after August 4, 1976;
2. Readjustment after August 4, 1976;
3. Modification (to *add* acreage and/or recoverable coal reserves) after August 4, 1976;
4. Revision to the Federal coal lease form, to include diligence provisions, at the request of the Department of the Interior in 1980; or,
5. Election in August 1982, to have a Federal coal lease(s) be subject to the 1982 regulatory diligence system (43 CFR Part 3480) *in lieu* of the Federal coal lease terms regarding minimum production and minimum royalty.

If production has occurred from any of these Federal coal leases, after the date they became "subject to diligence" and prior to their inclusion in LMU, then the LMU diligent development must be credited with that production. Such production can be credited *only* toward the LMU diligent development requirement [3482.2(a)(3)]. If the total credit exceeds 1 percent of the LMY recoverable coal reserves, the LMU diligent development is deemed to have been achieved on the effective date of the LMU approval. Thereafter, the LMU is subject to continued operation, beginning the first LMU royalty reporting period following the effective date of the LMU approval.

A. Resource Recovery and Protection Plan

The R2P2 for the LMU is due within 3 years from the effective date of the most recent (recent is relative to date of LMU approval) Federal coal lease that is "subject to diligence" prior to LMU approval. If the LMU contains at least one Federal coal lease that is *not* "subject to diligence," and if there is no production occurring within the LMU boundary on the date of LMU approval, the R2P2 for the LMU is due within 3 years from the effective date of LMU approval. If there is an approved R2P2 for at least one of the Federal coal leases to be included in the LMU, and if there is no production occurring within the LMU boundary on the date of LMU approval, the LMU operator has 3 years from the effective date of the most recent Federal coal lease or, if applicable, 3 years from the effective date of LMU approval (see the preceding discussion) to submit either an R2P2 for the life-of-the-mine for the LMU, or a modification to the existing R2P2 that will cover the life-of-the-mine for the LMU.

The 3-year R2P2 submittal timeframe for the LMU stops at the end of the 3-year anniversary of the most recent (recent is relative to LMU approval) Federal coal lease that became "subject to diligence" prior to LMU formation. However, if the LMU contains at least one Federal coal lease that is not "subject to diligence" prior to LMU formation, the 3-year R2P2 submittal timeframe stops 3 years from the effective date of the LMU approval, *with*

[8] Technically, all Federal coal leases are subject to some form of diligence. For example, for Federal coal leases issued prior to August 4, 1976, the Federal coal lease terms regarding minimum production/minimum royalty are a form of diligence. Therefore, "subject to diligence" means only those Federal coal leases that are subject to the 1982 regulatory diligence system which implements the diligence provisions of MLA, as amended by FCLAA in 1976.

two exceptions. First, where the Federal coal lease that would control the 3-year timeframe is older than 3 years at the time of LMU application, the R2P2 for the entire LMU must be submitted with the LMU application. This is because if the Federal coal lease's 3-year timeframe were to govern, there would be a situation where the R2P2 for the LMU would have had to have been approved prior to the LMU application being submitted for approval. *Second,* and more importantly, if there are *ongoing mining operations on Federal or non-Federal coal* at the time of LMU approval, the R2P2 for the entire LMU must be submitted with the LMU application. This is because any production from anywhere within the LMC is applied toward the diligence obligations for the entire LMU. Therefore, in such an instance, the R2P2 for the LMU must be approved at the same time that the LMU is approved.

1. For *nonproducing* LMU's containing *at least one* Federal coal lease issued prior to August 4, 1976, that is not "subject to diligence" prior to LMU approval:

Example "a":
Lease "A" effective: March 1, 1971
Lease "B" Effective: February 1, 1981
Lease "C" effective: January 2, 1982
LMU approved containing leases "A", "B", and "C": March 30, 1983
R2P2 for LMU due not later than: March 30, 1986
Example "b":
Lease "D" effective: April 9, 1957
Lease "E" effective: June 12, 1964
Lease "D" readjusted: April 9, 1977
Lease "F" effective: January 15, 1981
LMU approved containing leases "D", "E", and "F": May 10, 1983
[Lease "E" readjusted: June 12, 1984]
R2P2 for LMU due not later than: May 10, 1986

2. For *nonproducing* LMU's containing *only* Federal coal leases that are "subject to diligence" prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains *no* Federal coal leases that are *not* "subject to diligence"):

Example "a":
Lease "A" effective: July 7, 1977
Lease "B" effective: August 8, 1978
Lease "C" effective: September 9, 1982
LMU approved containing leases "A", "B", and "C": April 1, 1983
R2P2 for LMU due not later than: September 9, 1985
Example "b":
Lease "D" effective: June 6, 1960
Lease "E" effective: May 5, 1979
Lease "D" readjusted: June 6, 1980
Lease "F" effective: October 10, 1982
LMU approved containing leases "D", "E", and "F": April 2, 1983
R2P2 for LMU due not later than: October 10, 1985

3. For *nonproducing* LMU's containing *only* Federal coal leases that have been "subject to diligence" for *more than 3 years* prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains no Federal coal leases that are *not* "subject to diligence"):

Example:
Lease "A" effective: July 7, 1977
Lease "B" effective: August 8, 1978
Lease "C" effective: September 9, 1982
LMU approved containing leases "A", "B", and "C": April 1, 1986
R2P2 for LMU due at the time of submittal of the LMU application.
R2P2 for LMU approved: April 1, 1986

4. For LMU's containing either a *producing* Federal coal lease or *producing* non-Federal coal, the R2P2 *must be submitted at the time of LMU application.* The LMU cannot be approved without a simultaneous approval of the R2P2.

B. Diligent Development

"One percent of the total LMU recoverable coal reserves (i.e., Federal and non-Federal) contained in the approved LMU must be produced prior to the end of the LMU diligent development period." [3480.0–5(a)(13)].

The total LMU recoverable coal reserves figure (from which the 1 percent LMU commercial quantities requirement is derived) is that number estimated by the AO as of the date of approval of the R2P2 submitted for all Federal and non-Federal coal included in the LMU [3487.1(e)(1)]. However, if there are ongoing mining operations under a previously approved R2P2 and SMCRA permit on either Federal or non-Federal coal, the estimate of the LMU recoverable coal reserves must be made at the time of LMU approval, based on information submitted in the LMU application and R2P2 for the life-of-the-mine for the LMU so that LMU commercial quantities production requirements can be determined.

Any adjustment to the LMU recoverable coal reserves may be accomplished by the AO after consultation with the operator/lessee. If the LMU recoverable coal reserves are adjusted during the 10-year, LMU diligent development period, based on new information or LMU modification, the 1 percent LMU recoverable coal reserves production requirement to achieve diligent development must also be adjusted and will be effective *immediately.*

C. Production Crediting

The total LMU recoverable coal reserves figure at the time of LMU approval includes the recoverable coal reserves from Federal lands and non-Federal lands, and any production credited toward Federal coal lease diligent development *prior to* inclusion in the LMU. The timeframes, from which the LMU recoverable coal reserves are estimated, follow:

1. All non-Federal recoverable coal reserves at the time of LMU formation;

2. All Federal recoverable coal reserves remaining at the time of LMU formation for Federal coal leases not yet "subject to diligence;"

3. All Federal recoverable coal reserves determined by the AO (for Federal coal leases "subject to diligence") to have been in existence *on the effective date that each of those Federal coal leases became "subject to diligence," not* only those recoverable coal reserves remaining at the time of LMU formation; and,

4. All Federal coal, produced after August 4, 1976, that the operator/lessee has requested to be credited toward Federal coal *lease* diligent development *prior to* LMU formation (i.e., *prior production* credits).

Any *prior production* credited, at the lessee's request, toward diligent development for a Federal coal lease *prior to* inclusion of that Federal coal lease in an LMU, must also be credited toward diligent development for the LMU [3482.2(a)(3)].

A request to credit prior production for a Federal coal lease contained in an approved LMU, *cannot* be accepted while that Federal coal lease is contained in the LMU. *Prior-production* crediting is only allowed toward lease-specific diligent development [3483.5 (d) and (e)]. Once a Federal coal lease is included in an LMU, the LMU-specific diligence requirements supersede the lease-specific diligence requirements.

D. Federal Coal Lease vs. LMU Production Credits

Under 3483.5 (a), (b), and (c), any *production occurring after* a Federal coal lease is "subject to diligence" is credited toward diligent development for the Federal coal lease. If that Federal coal lease is included in an LMU, any production credited toward lease-specific diligent development and/or continued operation prior to LMU formation is credited toward LMU-specific diligent development. Any production from a Federal coal lease after it is included in an approved LMU is credited toward *both* lease-specific

and LMU-specific diligent development and/or continued operation, if the Federal coal leases individually are "subject to diligence."

If a Federal coal lease is not "subject to diligence," production is only credited toward the LMU-specific diligent development and/or continued operation. After that Federal coal lease becomes "subject to diligence," production is also credited toward the lease-specific diligent development and/or continued operation. Once the lease-specific or, if in an LMU, the LMU-specific diligent development is achieved, the Federal coal lease or LMU is subject to its specific continued operation requirement.

Both 3483.5 (d) and (e) allow for *prior-production* credits for Federal coal leases. Those prior-production credits, by rule, can only be applied toward *lease-specific* diligent development. Once a Federal coal lease is included in an LMU, the LMU-specific diligence requirements supersede the lease-specific diligence requirements. Therefore, in accordance with 3483.5(g), *no prior-production* credits can be applied to a Federal coal lease or LMU *while that Federal coal lease is contained in an approved LMU.*

If production to achieve diligent development is occurring from non-Federal recoverable coal reserves contained in the LMU, then the AO must require the submittal of certified production reports and maps for non-Federal as well as Federal portions of the LMU. Since production from non-Federal coal would be used to satisfy a Federal requirement imposed on the LMU, Secton 2(d) of MLA allows the AO to require submittal of such information. Also, since non-Federal production is being used to satisfy a Federal requirement imposed on the LMU, the AO must verify the non-Federal production as part of his inspection and enforcement responsibilities. This requirement is addressed in Appendix B–2, LMU Approval Stipulations, under item 1. "Supervision."

E. Diligent Development Period Start Dates

For LMU's containing *only* Federal coal leases that are "subject to diligence" prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains *no* Federal coal leases that are *not* "subject to diligence"):

The LMU diligent development period begins on the effective date that the most recent (recent is relative to date of LMU approval) Federal coal lease became "subject to diligence" prior to LMU approval [3480.0–5(a)(ii)(B)].

Example "a":
Lease "A" effective: July 1977
Lease "B" effective: August 8, 1978
Lease "C" effective: September 9, 1979
LMU approved containing leases "A", "B", and "C": April 1, 1983
LMU diligent development period begins: September 9, 1979
Latest date to achieve LMU diligent development: September 9, 1989

Example "b":
Lease "D" effective: June 6, 1980
Lease "E" effective: May 5, 1979
Lease "D" readjusted: June 6, 1980
Lease "F" effective: October 10, 1982
LMU approved containing leases "D", "E", and "F": April 2, 1983
LMU diligent development period begins: October 10, 1982
[Lease "D" readjusted: June 6, 1990]
Latest date to achieve LMU diligent development: October 10, 1992

For LMU's containing *at least one* Federal coal lease issued prior to August 4, 1976, that is not "subject to diligence" prior to LMU approval:

The LMU diligent development period begins on the effective date of LMU approval (regardless whether the LMU also contains at least one Federal coal lease that is "subject to diligence" *prior to* LMU approval) [3480.0–5(a)(14)(ii)(A)].

Example "a":
Lease "A" effective: March 1, 1971
Lease "B" effective: February 1, 1981
Lease "C" effective: January 2, 1982
LMU approved containing leases "A", "B", and "C": March 30, 1983
LMU diligent development period begins: March 30, 1983
[Lease "A" readjusted: March 1, 1991]
Latest date to achieve LMU diligent development: March 30, 1993

Example "b":
Lease "D" effective: April 9, 1957
Lease "E" effective: June 12, 1964
Lease "D" readjusted: April 9, 1977
Lease "F" effective: January 15, 1981
LMU approved containing leases "D", "E", and "F": May 10, 1983
LMU diligent development period begins: May 10, 1983
[Lease "E" readjusted: June 12, 1984]
[Lease "D" readjusted: April 9, 1987]
Latest date to achieve LMU diligent development: May 10, 1993

In the preceding example, the governing Federal coal lease is Lease "E". Therefore, the LMU diligent development period begins on the date of LMU approval. The LMU diligent development period stops at the end of the royalty reporting period in which production of 1 percent of the LMU recoverable coal reserves is achieved, or at the end of the 10-year diligent development period for the LMU, whichever comes first. A pre-August 4, 1976, Federal coal lease that is not "subject to diligence" *prior to* LMU approval does *not* affect the lease-specific diligence provisions of any other Federal coal lease contained in the approved LMU. LMU diligence *supersedes* lease-specific diligence, it does *not suspend* lease-specific diligence. See the discussion below regarding LMU failure and Appendix C.

Failure to achieve LMU diligent development results in the LMU being terminated. At that time, the Federal coal lease(s) reverts to its individual Federal coal lease diligence terms that would otherwise have governed the Federal coal lease had it not been included in an LMU.

Example:
Federal coal lease "A" effective: April 1, 1984
Federal coal lease "B" effective: June 18, 1986
LMU approved containing leases "A" and "B": July 15, 1988
LMU fails, for whatever reason: July 15, 1993
Latest date for Federal coal lease "A" to achieve diligent development: April 1, 1994
Latest date for Federal coal lease "B" to achieve diligent development: June 18, 1996

• Even though Federal coal leases "A" and "B" were contained in the LMU for 5 years, the 10-year, lease-specific diligent development periods for Federal coal leases "A" and "B" were not suspended, they were just superseded. Federal coal leases "A" and "B" must achieve diligent development by April 1, 1994, and June 18, 1996, respectively, or they will be terminated.

F. Continued Operation

"Once the operator/lessee of a Federal coal lease or LMU has achieved diligent development, the operator/lessee shall maintain continued operation on the Federal lease or LMU for every continued operation year thereafter, except as provided in 3483.3." [3483.1(a)(2)].

1. The first LMU continued operation year begins on the first day of the royalty reporting period immediately following the royalty reporting period in which LMU diligent development was achieved. A continued operation year ends on the last day of the royalty reporting period that completes the 12-month period.

2. A least 1 percent of the *total* LMU recoverable coal reserves (Federal *and* non-Federal) must be produced *each* continued operation year for the first 2 continued operation years following the

achievement of diligent development. Thereafter, 1 percent of the LMU recoverable coal reserves must be produced for each following continued operation year, averaged on 3-year intervals (i.e., the continued operation year in question, averaged with the two preceding continued operation years).

If the LMU recoverable coal reserves are adjusted during the course of any continued operation year, based on new information or LMU modification, the 1 percent LMU recoverable coal reserves production requirement to maintain continued operation must also be adjusted and will be effective *beginning the next continued operation year.*

G. Advance Royalty

Advance royalty, accepted *in lieu* of continued operation for an LMU, is paid in an amount equivalent to the production royalty that would be owed on 1 percent of the *Federal* LMU recoverable coal reserves. For LMU's, the advance royalty rate is 8 percent if the Federal LMU recoverable coal reserves will be mined only by underground mining methods. The advance royalty rate is 12½ percent if the Federal LMU recoverable coal reserves would be mined only by other methods or a combination of methods [3483.4(c)].

If some production has occurred, but that production is insufficient to maintain continued operation, then advance royalty must be paid. The amount of the advance royalty is assessed on the *difference* between the coal actually produced and the production that would have been required to maintain continued operation.

If an operator knows that, in the forthcoming operation year, he will not produce the required 1 percent, the operator must apply to the AO for approval to pay advance royalty for that year [3483.4(a)]. Such request must be made no later than 30 days after the beginning of that continued operation year [3483.4(b)].

If an operator requests authorization *later than* 30 days after the beginning of that continued operation year, the AO *may* condition his approval of the advance royalty payment on the payment of a late-payment charge on the amount of the advance royalty due [3483.4(b)]. The provision allows for those instances where the operator is producing but, for whatever reason, fails to produce the required 1 percent of the LMU recoverable coal reserves during a continued operation year. The late payment charge, if required, shall be calculated by the Minerals Management Service in accordance with 30 CFR 218.200.

Production from anywhere within an LMU is construed as occurring on all Federal coal leases within the LMU; *this does not apply vice versa.* Therefore, if *LMU* continued operation is not met, some advance royalty is due, prorated against the amount of Federal vs. non-Federal recoverable coal reserves in the LMU, regardless whether production was greater than 1 percent of the Federal portion of that LMU. The LMU ADVANCED ROYALTY FORMULA, based on such prorating, was developed to determine the amount of advance royalty due (se VII.H. below).

For example, if an LMU contains Federal recoverable coal reserves of 25 million tons and non-Federal recoverable coal reserves of 75 million tons, the 1 percent commercial quantities requirement is 1 million tons; however, the advance royalty is based on only 250,000 tons. If during a continued operation year only 500,000 tons were produced, the LMU continued operation requirement would not have been met. Therefore, advance royalty is due. Again, LMU advance royalty is based only on the *Federal* portion of the total LMU recoverable coal reserves.

H. Amount of Advance Royalty Due

As with nonproducing Federal coal leases, nonproducing LMU's can satisfy the condition of continued operation by payment of advance royalty *either:* (1) During the continued operation year in question or, (2) averaged over a 3-year period (the continued operation year in question plus the 2 preceding continued operation years). As long as the condition of continued operation is being satisfied by payment of advance royalty in *either* instance, the LMU is in compliance with the condition of continued operation.

In order to determine the amount of LMU advance royalty due, use the following:

1. Was 1 percent produced during the continued operation year?
   a. Yes, no advance royalty due.
   b. No, go to 2.
2. Was 3 percent or more produced during the continued operation year plus the 2 preceding continued operation years, thereby satisfying the regulatory 3-year rolling average provision?
   a. Yes, no advance royalty due.
   b. No, advance royalty *is* due.

For the first 2 LMU continued operation years, *advance royalty is paid on* 1 percent of the *Federal LMU* recoverable coal *reserves prorated against* the *total LMU* recoverable coal *reserves.* Thereafter, advance royalty is paid on 1 percent of the prorated Federal LMU recoverable coal reserves for the continued operation year in question *or* 3 percent of the prorated Federal LMU recoverable coal reserves for the continued operation year plus 2 preceding continued operation years, *whichever is less.*

If the LMU is in one of its first 2 continued operation years, advance royalty must be paid for the continued operation year in question. The following formula shows how that calculation must be made. The formula incorporates the concept that, for LMU's, advance royalty is only owed on the prorated *Federal* portion of the total LMU recoverable coal reserves.

LMU Advance Royalty Formula

$$ARD = [COYR - COYP] \times \frac{ARB}{COYR} \times ARR \times UV$$

Where

ARD = Advance Royalty Due
COYR = Continued Operation Year *Production Requirement* (i.e., 1 percent of *total recoverable coal reserves,* Federal plus non-Federal, in LMU)
COYP = *Total LMU Production Achieved,* Federal plus non-Federal, During Continued Operation Year
ARB = Advanced Royalty Base (i.e., 1 percent of *Federal recoverable coal reserves,* in LMU)
ARR = LMU Advance Royalty Rate (e.g., 12½ percent, or 8 percent, as applicable)
UV = Unit Value (determined under 3485.2(g))

Note.—COYR and ARB are equal *only if* the LMU contains no non-Federal coal. The ARB and COYP are LMU-specific regardless from which coal the conditions were being satisfied. If the LMU is in the 3-year rolling average for continued operation, a determination must be made as to whether the LMU produced 1 percent in the continued operation year in question *or* 3 percent during the continued operation year in question plus the 2 preceding continued operation years.

To determine the amount of advance royalty due for an LMU, compare the *total tons* that should have been produced to maintain continued operation for the year in question with the *total tons* that should have been produced to maintain continued operation for the 3-year period consisting of the continued operation

year in question plus the 2 preceding continued operation years. The LMU advance royalty due will be assessed on the lesser of the two amounts. After determining which of the two is the lesser *total tons* that would satisfy either condition of continued operation, use the LMU ADVANCE ROYALTY FORMULA to determine the amount due.

If the 3-year rolling average results in the lesser *total tons* the LMU ADVANCE ROYALTY FORMULA term "[COYR—COYP]" is calculated as follows:

COYR=3 Continued Operation Years' *Production Requirement* (i.e., 3 percent of *total recoverable coal reserves*, Federal plus non-Federal, in LMU)

COYP=*Total LMU Production Achieved*, Federal plus non-Federal, During the Continued Operation Year *plus* the 2 Preceding Continued Operation Years

The rest of the LUM ADVANCE ROYALTY FORMULA remains unchanged.

The following shows one example of how the LMU ADVANCE ROYALTY FORMULA can be used to determine the amount of advance royalty due.

Example: Assume the total LMU recoverable coal reserves are 100,000,000 tons and the total Federal recoverable coal reserves are 75,000,000 tons. The 1 percent commercial quantities requirement is 1,000,000 tons. The LMU has achieved diligent development.

Continued Operation Year (COY)	1	2	3	4	5	6	7	8	9
Recoverable Coal Reserves Produced (Million Tons)	1.0	1.0	5.0	0.0	0.5	1.8	0.8	0.2	0.3
Production on which Advance Royalty Due (Million Tons)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.7

Is advance royalty due and, if so, on what percent of the Federal recoverable coal reserves is the advance royalty to be paid?

COY–1: 1,000,000 tons produced, no advance royalty due.

COY–2: 1,000,000 tons produced, no advance royalty due.

COY–3: 5,000,000 tons produced, no advance royalty due.

COY–4: 0 tons produced, is advance royalty due?

COY–2+COY–3+COY–4=6,000,000 tons.

Therefore, the LMU has produced more than 3,000,000 tons over the 3 years in question; no advance royalty due.

COY–5: 500,000 tons produced, is advance royalty due?

COY–3+COY–4+COY–5=5,500,000 tons.

Therefore, the LMU has produced more than 3,000,000 tons over the 3 years in question; no advance royalty due.

COY–6: 1,800,000 tons produced, no advance royalty due.

COY–7: 800,000 tons produced, is advance royalty due?

COY–5+COY–6+COY–7=3,100,000 tons.

Therefore, the LMU has produced more than 3,000,000 tons over the 3 years in question; no advance royalty due.

COY–8: 200,000 tons produced, is advance royalty due?

COY–6 production is less than 1,000,000 tons.
COY–6+COY–7+COY–8=2,800,000 tons.

Therefore, the LMU has also not produced more than 3,000,000 tons over the 3 years in question; on what amount of production is advance royalty due.

COY–8: 1.0–0.2=800,000 tons.
COY–6/COY–7/COY–8:
3,000,000−2,800,000=200,000 tons.

Advance royalty must be paid on *200,000* tons, times the Advance Royalty Base, divided by *1,000,000* tons. This is the *lesser amount* required to satisfy either condition of continued operation.

$$ARD=[COYR—COYP]\times\frac{ARB}{COYR}\times ARR\times UV$$

Because the *3-year rolling average concept applies* for COY–8, [COYR—COYP]=[3,000,000 tons—2,800,000 tons]=*200,000 tons*

COYR=1,000,000 tons
ARB=0.01 × 75,000,000 tons=750,000 tons

Therefore:

$$ARD=[200{,}000\text{ tons}]\times\frac{750{,}000\text{ tons}}{1{,}000{,}000\text{ tons}}\times ARR\times UV$$

COY–9: 300,000 tons produced, is advance royalty due?

COY–9 production is less than 1,000,000 tons. COY–7 + COY–8 + COY–9 = 1,300,000 tons.

Therefore, the LMU has also not produced more than 3,000,000 tons over the 3 years in question; on what amount of production is advance royalty due?

COY–9: 1,000,000–300,000 = 700,000 tons.
COY–7/COY–8/COY–9: 3,000,000–1,300,000 = 1,700,000 tons. Advance royalty must be paid on *700,000* tons, times the Advance Royalty Base divided by *1,000,000* tons. This is the *lesser amount* required to satisfy either condition of continued operation.

$$ARD = [COYR - COYP] \times \frac{ARB}{COYR} \times ARR \times UV$$

Because the *continued operation year in question applies* for COY–9, [COYR—COYP] = [1,000,000 tons—300,000 tons] = *700,000 tons.*

COYR = 1,000,000 tons
ARB = 0.01 × 75,000 tons = 750,000 tons

Therefore:

$$ARD = [700{,}000 \text{ tons}] \times \frac{750{,}000 \text{ tons}}{1{,}000{,}000 \text{ tons}} \times ARR \times UV$$

I. Number of Times Advance Royalty May Be Paid for LMU's

Advance royalty can only be paid a total of 10 times. This is true regardless whether it is being paid *in lieu* of lease-specific or LMU-specific continued operation. However, the number of years for which LMU advance royalty may be paid is governed by the Federal coal lease that has paid advance royalty for the *fewest* years prior to LMU approval.

Example "a": LMU formed containing two Federal coal leases that are "subject to diligence." One of the Federal coal leases has paid advance royalty twice, the other has not paid advance royalty. How many times may advance royalty be paid for the LMU? *Ten.* This is because LMU diligence requirements supersede lease-specific diligence requirements for the duration of the LMU. Since one Federal coal lease has not paid advance royalty prior to LMU formation, it can have advance royalty paid for it ten times. Therefore, so can the LMU.

Example "b": LMU formed containing two Federal coal leases that are "subject to diligence." One of the Federal coal leases has paid advance royalty three times, the other has paid four times. How many times may advance royalty be paid for the LMU? *Seven.* This is because LMU diligence requirements supersede lease-specific diligence requirements for the duration of the LMU. The Federal coal lease with the fewest number of advance royalty payments dictates the number of times that advance royalty may be paid for the LMU.

Example "c": LMU formed containing two Federal coal leases; one is "subject to diligence," the other is not "subject to diligence." The one that is "subject to diligence" has paid advance royalty ten times. How many times may advance royalty be paid for the LMU? *Ten.* This is because LMU diligence requirements supersede lease-specific diligence requirements for the duration of the LMU. The Federal coal lease that is not "subject to diligence" has never had the option to pay advance royalty *in lieu* of continued operation; therefore, the LMU has the full ten times that advance royalty may be paid *in lieu* of LMU continued operation.

The *date* that the Federal coal leases, individually, became "subject to diligence" prior to LMU formation *does not affect* the number of times that advance royalty may be paid for an LMU.

J. Initial 20–Year Period Available for Payment of Advance Royalty for LMU's

Advance royalty can *only* be paid during the initial 20-year period that a Federal coal lease is "subject to diligence." This limitation carries over to LMU's, where the LMU 20-year period is dictated by the most recent (recent is relative to LMU approval) Federal coal lease that is "subject to diligence" prior to LMU formation. The end of this initial 20-year period available for the payment of advance royalty is dictated by the fact that a Federal coal lease is effective "... for twenty years and for so long thereafter as coal is produced annually in commercial quantities ...." 30 U.S.C. 207(a). Therefore, no advance royalty can be paid after the initial 20-year period has expired. Similarly, advance royalty paid during that initial 20-year period cannot be credited against production royalty after that initial 20-year period has expired.

The initial 20-year period for each individual Federal coal lease starts on the effective date that the Federal coal lease becomes "subject to diligence." The most recent (recent is relative to LMU approval) date of all Federal coal leases contained in the LMU dictates how many years of an initial 20-year period are left for the LMU.

1. For LMU's containing *only* Federal coal leases that are "subject to diligence" prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains *no* Federal coal leases that are *not* "subject to diligence"):

Example "a":

Lease "A" effective and begins its initial 20-year period: July 7, 1977
Lease "B" effective and begins its initial 20-year period: August 8, 1978
Lease "C" effective and begins its initial 20-year period: September 9, 1982
LMU approved containing leases "A", "B", and "C": April 1, 1983
LMU initial 20-year period begins:
September 9, 1982
[Lease "A" readjusted: July 7, 1997]
[Lease "B" readjusted: August 8, 1998]
[Lease "C" readjusted: September 9, 2002]
LMU initial 20-year period ends:
September 9, 2002

Example "b":

Lease "D" effective: June 6, 1960
Lease "E" effective and begins its initial 20-year period: May 5, 1979
Lease "D" readjusted and begins its initial 20-year period: June 6, 1980
Lease "F" effective and begins its initial 20-year period: October 10, 1982
LMU approved containing leases "D", "E", and "F": April 2, 1983
LMU initial 20-year period begins:
October 10, 1982
[Lease "D" readjusted again: June 6, 1990]
[Lease "E" readjusted: May 5, 1999]
[Lease "D" readjusted again: June 6, 2000]
[Lease "F" readjusted: October 10, 2002]
LMU initial 20-year period ends:
October 10, 2002

2. For LMU's containing *at least one* Federal coal lease issued prior to August

4, 1976, that is not "subject to diligence" prior to LMU approval:

Example "a":

Lease "A" effective: March 1, 1971
Lease "B" effective and begins its initial 20-year period: February 1, 1981
Lease "C" effective and begins its initial 20-year period: January 2, 1982
LMU approved containing leases "A", "B", and "C": March 30, 1983
LMU initial 20-year period begins: March 30, 1983
[Lease "A" readjusted and begins its initial 20-year period: March 1, 1991]
[Lease "B" readjusted: February 1, 2001]
[Lease "A" readjusted again: March 1, 2001]
[Lease "C" readjusted: January 2, 2002]
LMU initial 20-year period ends: March 30, 2003

Example "b":

Lease "D" effective: April 9, 1957
Lease "E" effective: June 12, 1964
Lease "D" readjusted and begins its initial 20-year period: April 9, 1977
Lease "F" effective and begins its initial 20-year period: January 15, 1981
LMU approved containing leases "D", "E", and "F": May 10, 1983
LMU initial 20-year period begins: May 10, 1983
[Lease "E" readjusted and begins its initial 20-year period: June 12, 1984]
[Lease "D" readjusted again: April 9, 1987]
[Lease "E" readjusted again: June 12, 1994]
[Lease "D" readjusted again: April 9, 1997]
[Lease "F" readjusted: January 15, 2001]
LMU initial 20-year period ends: May 10, 2003

VIII. LMU Modifications and Adjustments

The boundaries of an LMU may be modified upon application by the operator/lessee and approval by the AO, or the AO may direct that the LMU be modified. The AO may adjust the estimate of LMU recoverable coal reserves either upward or downward, based on new information such as a previously undetected fault that renders some of the LMU recoverable coal reserves unminable. An LMU may be enlarged by the addition of other Federal coal leases, with interests in non-Federal coal, or both; and, the LMU boundaries may also be enlarged as a result of the enlargement of a Federal coal lease. The LMU may be diminished by the deletion (e.g., assignment or relinquishment) of other Federal coal leases, deletion of non-Federal coal, or both; and, the LMU may be diminished as a result of the diminishment of a Federal coal lease (e.g., partial assignment).

Based on new information, any adjustment to the LMU recoverable coal reserves may be accomplished by the AO after consultation with the operator/lessee. For example, if development drilling shows that the initial LMU recoverable coal reserves estimate was too small, as verified by the responsible mining engineer, the AO shall notify the LMU operator of the revised LMU recoverable coal reserves estimate and the revised LMU commercial quantities requirements. These data must also be updated in the SLMS LMU data base. The LMU recoverable coal reserves, upon which the 1 percent commercial quantities requirement is based, *cannot decrease due to production* from the LMU.

If the LMU recoverable coal reserves are adjusted, based on new information or LMU modification, prior to the LMU achieving diligent development, the 1 percent LMU commercial quantities requirement must also be adjusted, effective on the date of the adjustment or LMU modification. However, the LMU 10-year diligent development period is *not* extended by an LMU modification.

If unmined LMU recoverable coal reserves are *decreased* by the adjustment or modification, the LMU may already have produced 1 percent of the new LMU recoverable coal reserves figure; thus, the LMU would be deemed to have achieved diligent development on the effective date of the adjustment or modification. In this case, the first continued operation year would begin on the first LMU royalty reporting period following the effective date of the adjustment or modification. See also the discussion on DILIGENCE FOR LMU OPERATIONS.

The 40-year LMU recoverable coal reserves exhaustion date, that has already been determined due to the commencement of production from the approved LMU, cannot be extended due to the subsequent enlargement or diminishment of the LMU recoverable coal reserves [3487.1(g)(4)], or based on new information that results in the revision of the LMU recoverable coal reserves. For example, were an LMU to be approved that contained the original LMU and other lands, the new LMU would still have the same 40-year mine-out requirement date as the original LMU. If land and/or recoverable coal reserves are added or deleted from the LMU, the 40-year requirement is unaffected. The effect of adding or deleting recoverable coal reserves is the adjustment of the LMU recoverable coal reserves and the LMU commercial quantities requirement for LMU-specific diligent development and continued operation.

IX. LMU Failure/Termination

An LMU may fail for various reasons. An LMU may be terminated by administrative decision, for just cause, stating the cause of the termination.

The several reasons that an LMU may fail include, but are not limited to:

1. Failure to comply with LMU approval stipulations;
2. Failure to submit the R2P2 or modification to an approved R2P2, for the LMU within the applicable 3-year time period;
3. Failure to achieve diligent development within the 10-year LMU diligent development period;
4. Failure to maintain LMU continued operation or, *in lieu* thereof, to pay advance royalty;
5. Failure to achieve the LMU, 40-year recoverable coal reserves mine out; and,
6. For other reasons (e.g., failure to pay rental or royalty, or failure to comply with a notice of noncompliance).

There are several factors that must be considered on a lease-specific basis when an LMU fails, including, but not limited to:

1. The diligence provisions for each Federal coal lease apply as if the LMU never existed. This is because the LMU diligence *superseded, but did not suspend,* the lease-specific diligence. Thus, in effect, it is necessary to now "look back" to see whether the Federal coal leases individually have been satisfying their lease-specific diligence obligations:
   a. The Federal coal lease must achieve diligent development within 10 years from the date it is "subject to diligence" or it is terminated.
   b. After diligent development is achieved, the Federal coal lease must maintain continued operation.
2. Advance royalty must be paid *in lieu* of continued operation when there is less than 1 percent of the Federal coal lease's recoverable coal reserves produced in the first 2 continued operation years and, thereafter, on a 3-year rolling average.
   a. Advance royalty can only be paid *in lieu* of continued operation for a total of 10 continued operation years.
   b. Advance royalty can only be paid *in lieu* of continued operation during the initial 20-year period that the Federal

coal lease is "subject to diligence" after August 4, 1976.

For the duration of an LMU, lease-specific diligence provisions still apply to the Federal coal leases contained in the LMU. These provisions must be monitored in the Solid Leasable Minerals System *in addition to* the LMU-specific diligence provisions. LMU-specific diligence *supersedes*, but does *not suspend*, the lease-specific diligence. That is, the diligence clocks and requirements run simultaneously while the Federal coal leases are included in the LMU; but, the LMU clocks and requirements take precedence over the Federal coal lease clocks and requirements. Upon LMU failure, the compliance with lease-specific diligence will determine what, if any, administrative actions must be taken against the individual Federal coal leases.

Note.—Noncompliance/nonconformance with lease-specific diligence is *not* a factor that requires correction as long as that Federal coal lease is included in an LMU and the LMU operations are in compliance with *all* LMU-specific conditions (e.g., approval stipulations, LMU-specific diligence).

Note.—Any potential or prospective LMU failure or termination must be coordinated by the AO with WO-660.

The following discussion addresses several examples of what can happen if an LMU fails; the discussion is not meant to be exhaustive or complete. The examples are solely to demonstrate some scenarios that could happen.

Example 1: *Diligent Development Period*

Sequence of Events

Lease "a" effective: January 1, 1960.
Lease "b" effective: January 1, 1978.
Lease "a" readjusted: January 1, 1980.
LMU formed January 1, 1986. Neither Lease "a" nor Lease "b" has ever produced. Lease "a" controls the LMU 10-year diligent development period. Therefore, the LMU must achieve diligent development by January 1, 1990.
LMU fails on January 1, 1989, for refusal to submit maps or to report non-Federal LMU production. There has been no Federal LMU production.
State Director issues Decision terminating the LMU.

Question: What is the effect on each Federal coal lease?

Federal coal lease "a" is unaffected at this time. It has until January 1, 1990, to achieve its diligent development.
Federal coal lease "b" is terminated for failure to achieve its diligent development by January 1, 1988.

EXAMPLE 2: *Federal Coal Leases Individually Not Subject to Diligence Prior to LMU Formation.*

Sequence of Events

Lease "a" effective: January 1, 1975.
LMU formed January 1, 1988; LMU also contains non-Federal coal.
LMU achieves diligent development January 1, 1990.
LMU advance royalty paid for 3 years, then LMU fails on January 1, 1993, because the LMU operator refuses to produce or pay additional advance royalty.
State Director issues Decision terminating the LMU.

Question: What is the effect on the Federal coal lease?

Individually, Federal coal lease "a" is not "subject to diligence" until readjustment on January 1, 1995. Therefore, *no* advance royalty can be applied toward Federal coal lease "a" *individually*. As of January 1, 1995, Federal coal lease "a" would have 10 years to achieve diligent development. Federal coal lease "a" also has an initial 20-year period beginning on January 1, 1995, during which, once subject to continued operation, advance royalty could be paid up to a maximum of 10 years. This is because Federal coal lease "a", individually, is not "subject to diligence" until January 1, 1995; therefore, advance royalty paid for the LMU does not count as advance royalty paid for Federal coal lease "a".

EXAMPLE 3: *Initial 20-Year Period*
Sequence of Events

Lease "a" issued: January 1, 1978.
Lease "b" issued: January 1, 1984.
Lease "a" achieves diligent development on January 1, 1988.
[Lease "a" readjusted: January 1, 1998]
Lease "b" achieves diligent development on January 1, 1994.
[Lease "b" readjusted: January 1, 2004]
Leases "a" and "b" maintain continued operation through production.
LMU formed on January 1, 1996.
[Lease "a" readjusted again: January 1, 2008]
LMU achieves diligent development on January 1, 1999.
LMU pays advance royalty for 3 years and on January 1, 2002, LMU fails for refusal to pay advance royalty.
State Director issues Decision terminating the LMU.

Question: What is the effect on each Federal coal lease?

Federal coal lease "a" *must* be cancelled. Its initial 20-year period that it is subject to diligence ended January 1, 1998. Advance royalty paid for an LMU is counted as one year for which advance royalty is paid for *all* Federal coal leases in the LMU that are "subject to diligence," or after a Federal coal lease becomes "subject to diligence" after LMU approval. Since advance royalty was paid after the Federal coal lease "a" initial 20-year period, when the LMU fails the Federal coal lease is in noncompliance with the law and must be cancelled.

Federal coal lease "b" is currently unaffected. Its initial 20-year period ends on January 1, 2004. Therefore, Federal coal lease "b" is still in its initial 20-year period, has had advance royalty paid for 3 years, and has 2 continued operation years more during which the lessee may request to pay advance royalty *in lieu* of continued operation.

EXAMPLE 4: *Number of Advance Royalty Payments.*

Sequence of Events

Lease "a" effective: January 1, 1975.
Lease "b" effective: January 1, 1978.
Lease "c" effective: January 1, 1981.
LMU formed January 1, 1994. As of this date, Federal coal lease "a" is still under its 1975 terms and has never produced. Federal coal lease "b" has achieved diligent development and paid advance royalty for 8 years. Federal coal lease "c" has achieved diligent development and paid advance royalty for 3 years. After the LMU achieves diligent development, Federal coal lease "c" controls the LMU for purposes of advance royalty; therefore, the LMU has only 7 years during which advance royalty may be paid *in lieu* of LMU continued operation. LMU 10-year diligent development period begins on effective date of LMU approval as Federal coal lease "a" controls because Federal coal lease "a" is not yet "subject to diligence." Assume that production credited toward LMU diligent development, due to production from Federal coal leases "b" and "c," equals 1 percent of the total LMU recoverable coal reserves.
LMU status on January 1, 1994: LMU diligent development achieved January 1, 1994. LMU is subject to continued operation. Lease "a" readjusted on January 1, 1995. LMU pays advance royalty for 3 years, then fails on January 1, 1997, for refusal to produce or to pay further advance royalty.

Note.—There was *no* production during the life of the LMU.

State Director issues Decision terminating the LMU.

Question: What is the effect on each Federal coal lease?

Federal coal lease "a" is unaffected. It is begining the third year of its lease-specific diligent development period, and has until January 1, 2005, to achieve diligent development.

Federal coal lease "b" *must* be cancelled by State Director Decision. Advance royalty can only be accepted for 10 years for any Federal coal lease. As long as the Federal coal lease was in the LMU, the LMU-diligence superseded the Federal coal lease diligence. Upon LMU failure, Federal coal lease "b" has now paid advance royalty for 11 total years which is a violation of the law. There is no other recourse but to cancel Federal coal lease "b."

Federal coal lease "c" is unaffected. Federal coal lease "c" has now paid advance royalty for a total of 6 years. Federal coal lease "c" is in its appropriate continued operation year and must comply with the lease-specific diligence requirements.

Example 5: *Production Credits Sequence of Events*

Lease effective: January 1, 1960.

Produces 0.6% of recoverable coal reserves, *in existence on August 4, 1976,* between August 4, 1976, and January 1, 1980.

Lease readjusted on January 1, 1980. "Subject to diligence."

Produces 0.8% of recoverable coal reserves, *in existence on January 1, 1980,* between January 1, 1980, and January 1, 1983.

Lease included in LMU on January 1, 1983. LMU also contains non-Federal coal.

LMU fails on January 1, 1993, for failure to achieve diligent development.

During the LMU, only non-Federal coal was produced.

State Director issues Decision terminating the LMU.

Question: What is the effect on each Federal coal lease?

Lessee immediately requests to credit production between 1976 and 1980 toward Federal coal lease diligent development, thus achieving a total greater than 1 percent of the recoverable coal reserves in existence in 1980 *plus* 1 percent of the production credited between 1976 and 1980.

The Federal coal lease is deemed to have achieved Federal coal lease diligent development on January 1, 1990 (the end of the lease-specific, 10-year diligent development period). However, it is now January 1, 1993. If the lessee so requests, and if the AO so authorizes, the lessee may then pay 3 years of advance royalty bringing the Federal coal lease into compliance with the lease-specific diligence provisions. [NOTE: The initial 20-year period for the Federal coal lease began on January 1, 1980. Therefore, the lessee has until December 31, 1999, to exercise the option to pay advance royalty *in lieu* of the lease-specific continued operation, as long as the number of payments does not exceed ten (see item number 3. above).] January 1, 1993, status: Federal coal lease beginning its fourth continued operation year. Federal coal lease has paid 3 of the 10 years of advance royalty to which it is entitled.

X. General Statement on Processing LMU Applications

As stated in the Department's Guidelines on Section 2(a)(2)(A) of MLA, BLM in the revision of the 43 CFR 3480 rules will provide for the timely processing of ". . . LMU's within a specific period of time that will be established in the rules."

Appendix A–1

[EXAMPLE NOTIFICATION LETTER TO NON-FEDERAL SURFACE, OR]

[NON–FEDERAL COAL, OWNER]

[MUST BE MAILED *CERTIFIED, RETURN RECEIPT REQUESTED*]

[Surface Owner]
[Address]

Dear Mr./Ms. _____:

Enclosed is a copy of a public notice of availability and public notice of proposed decision for a logical mining unit (LMU) [modification (if appropriate)] for [insert the number of] Federal coal leases [and private and/or State lands and/or Indian lands (if there are any non-Federal lands to be included in the LMU)], part of which you are the surface [and/or coal (if appropriate)] owner. The LMU applicant has informed us that he has an agreement in the form of [insert the type of agreement; e.g., legal document, copy of a letter of agreement between the LMU applicant and the surface and/or coal owner] providing him effective control of the lands [and coal (if appropriate)] within the proposed LMU [modification (if appropriate)] boundaries. The lands stated to be covered by the agreement are contained in the public notice of availability.

If you have any comments concerning the approval of this LMU application [modification to the approved LMU (if appropriate)], please inform this office within 30 days from receipt of this letter.

Sincerely yours,
[Authorized Officer]
Enclosure

[Notice of Availability and Notice of Proposed Decision]

Appendix A–2

[EXAMPLE NOTICE INCORPORATING BOTH THE NOTICE OF AVAILABILITY]

[AND NOTICE OF PROPOSED DECISION]

NOTICE OF AVAILABILITY

APPLICATION FOR LOGICAL MINING UNIT [MODIFICATION (if appropriate)] APPROVAL [AND PROPOSED EFFECTIVE DATE OF APPROVAL (if both Notices are submitted concurrently, as in this example)].

The [insert the appropriate name of the] Office of the Bureau of Land Management has received an application from [insert the name and address of the LMU applicant] for a logical mining unit (LMU) [modification of an approved LMU (if appropriate)] in accordance with 43 CFR 3487. The application for the proposed LMU [modification (if appropriate)] is available for review at [insert the address of the responsible BLM Office].

The proposed LMU [modification (if appropriate)] contains lands from [insert the number of] Federal coal leases [and non-Federal lands (if appropriate)]. The descriptions of the lands contained within each Federal coal lease [and other lands (if appropriate)] and which are to form the LMU [modification (if appropriate)] are as follows:

FEDERAL COAL

LEASE NUMBER: ACREAGE
LAND DESCRIPTION
in Principle Meridian/]
[Township/Range/Section/]
[Lot or, if appropriate,]
[Latitude/Longitude/]
[Metes/Bounds]

NON-FEDERAL

LANDS: ACREAGE [description, as above]
TOTAL ACREAGE: [Sum of the above]

NOTICE OF PROPOSED DECISION

The [insert the appropriate name of the] Office of the Bureau of Land Management has received an application from [insert the name and address of the LMU applicant] for a logical mining unit (LMU) [modification of an approved LMU (if appropriate)] in accordance with 43 CFR 3487. The approval of this application is proposed to be effective [insert the date of the LMU application or other date, as appropriate (see Section V regarding effective date).

Any comments concerning the approval of this LMU application [modification (if appropriate)] should be sent, within 14 day of this notice, to:
[Originating BLM Office]
[Address]

Appendix A–3

[EXAMPLE NOTIFICATION LETTER TO FEDERAL OR STATE AGENCY]

[MUST BE MAILED *CERTIFIED, RETURN RECEIPT REQUESTED*]

[Federal (or State) Agency]
[Address]
Dear Mr./Ms. _____:

Enclosed is a copy of a public notice of availability and public notice of proposed decision for a logical mining unit (LMU) [modification (if appropriate)] for [insert the number of] Federal coal leases [and non-Federal lands (if appropriate), located in [State name(s)].

According to 43 CFR 3487, a notice of availability for any proposed LMU or proposed modification to an approved LMU shall be sent to appropriate Federal and State Agencies. If you have any questions regarding this LMU application [proposed modification to the approved LMU (if appropriate)], please telephone [name of the Authorized Officer] directly at [commercial telephone number], FTS _____.

If you have any comments on this LMU application [proposed modification to the approved LMU (if appropriate)], please send them to [originating BLM Office address] within 14 days.

Sincerely yours,
[Authorized Officer]
Enclosure
[Notice of Availability and Notice of Proposed Decision]

Appendix A–4

[EXAMPLE NOTIFICATION LETTER TO COUNTY CLERK]

[MUST BE MAILED *CERTIFIED, RETURN RECEIPT REQUESTED*]

[Name]

County Clerk, [Name of] County

[Address]

Dear Mr./Mrs. _____:

Enclosed is a copy of a public notice of availability and public notice of proposed decision for a logical mining unit (LMU) [modification (if appropriate)] for [insert the number of] Federal coal leases [and non-Federal lands (if appropriate)], part [all (if appropriate)] of which is located in [name of] County.

According to 43 CFR 3481.2, a notice of availability for any proposed LMU or proposed modification to an approved LMU shall be posted for public viewing in appropriate County Offices in the County or Counties in which the proposed LMU [modification (if appropriate)] is located.

Please post a copy of this letter and notices in your office for 30 days, beginning upon receipt of this letter.

If you have any questions regarding this LMU application [proposed modification to the approved LMU (if appropriate)] please contact [name of the Authorized Officer] on [commercial telephone number]. If you have any comments on this LMU application [proposed modification to the approved LMU (if appropriate)], please send them to [originating BLM Office address] within 14 days.

Thank you for your time and consideration.

Sincerely yours,
[Authorized Officer]
Enclosure
[Notice of Availability and Notice of Proposed Decision]

Appendix A–5

[EXAMPLE NOTIFICATION LETTER TO NEWSPAPER]

[MUST BE MAILED *CERTIFIED, RETURN RECEIPT REQUESTED*]

Publisher: [Name of] Newspaper
[Address]
Dear Sir or Madam:

Enclosed are three copies of the *Advertising Order*, Form SF–1143. Public Voucher for Advertising appears on the reverse of the *Advertising Order* and should be used by you for the purpose of settling accounts for amounts due.

To facilitate the settling of accounts, please furnish a copy of each publication to the above address, attention: [Name of Authorized Officer]. Include with this published copy all charges for publication. These charges should be placed on the Public Voucher form, as stated on the form.

Failure to comply with the above requirements may prevent or delay the settlement of your account.

Thank you for your time and consideration.

Sincerely yours,
[Authorized Officer]
Enclosures
[Advertising Order]
[Notice of Availability and Notice of Proposed Decision]

Appendix B–1

[NOTIFICATION, TO LMU APPLICANTS, OF LMU APPROVAL STIPULATIONS]

[AND REQUEST FOR LMU APPLICANT ACCEPTANCE]

[MUST BE MAILED *CERTIFIED, RETURN RECEIPT REQUESTED*]

In Reply Refer To:
[Appropriate Code]
[List of Federal]
[Coal Lease Serial]
[Number(s)]
[LMU Applicant Name and Address]
Dear Mr./Ms. _____:

We have completed our review of your logical mining unit (LMU) application [application to modify your logical mining unit (LMU) (if appropriate)], and have determined that it is in conformance with the basic approval criteria for LMU's. This determination is based on the following:

1. The LMU recoverable coal reserves are capable of being developed in an efficient, economical and orderly manner as a unit, with due regard to conservation of the recoverable coal reserves and other resources. [Insert a statement listing or discussing the criteria the AO used to arrive at this conclusion; e.g., "This statement is based on review by the responsible mining engineer of the LMU application and proposed sequencing and scheduling of development."]

2. All lands in the LMU are under the effective control of a single operator. [Insert justification statement; for example, cite the agreement of, or designtion statement for, the designated operator and include the designated operator's name.]

3. All lands within the LMU will be developed and operated as a single operation. [Insert justification statement.]

4. All lands within the LMU boundaries are contiguous. [Insert justification statement; e.g., "A review of the legal land-descriptions for all land and coal shows that the lands and coal have at least one point in common."]

5. Mining operations will achieve maximum economic recovery of the Federal recoverable coal reserves within the LMU. [Insert brief justification statement.]

6. No Federal coal leases to be included in this LMU are included in another LMU. [Otherwise, the AO must segregate such Federal coal leases into two or more Federal coal leases.]

7. The *total* acreage of the proposed LMU does not exceed 25,000 acres.

[Insert justification statement in the same format as in number 4. above.]

8. [If only a portion of a Federal coal lease is to be included in the LMU, a statement must be made that the remaining land must be segregated into another Federal coal lease or that the operator may apply to relinquish the remaining land in accordance with 43 CFR 3452.1, or may apply to assign the remaining land in accordance with 43 CFR 3453.]

Enclosed are two copies of the stipulations of approval for your LMU application [application to modify your approved LMU (if appropriate)]. If we'd not receive a response from you within 30 days of your receipt of this letter, we will assume that you no longer want to have the LMU formed [modified (if appropriate)], and the Federal coal leases [existing LMU (if appropriate)] will remain subject to their [its (if appropriate)] individual Federal coal lease [LMU (If appropriate)] terms. If you concur with the stipulations, please sign and date both copies and return one original to this office. The LMU [modification (if appropriate)] will be effective on [insert the date that is no earlier than the date the AO received the LMU application and no later than the date of approval, as determined in consultation with the LMU applicant], unless a public hearing is requested. If a public hearing is requested, the date of LMU approval [approval of the LMU modification (if appropriate)] will be dependent on the results of that hearing. If you have any questions, please contact [Name of Authorized Officer] of this Office at [insert commercial telephone number].

Sincerely,
[State Director]
Enclosure: 2 copies of [Name] Logical Mining Unit Stipulations

[Note.—The *name* of the LMU should be the mine name to be] associated with the] [LMU. If there is no mine name, use another identifier that would] [enable the name of the LMU to be distinctive. This is necessary] [because an operator may have two LMU's near each other. This is *not*] [the LMU *number*, which is assigned by WO–660 in the Solid Leasable] [Minerals System data base.

Appendix B–2

[Name (see Note at end of this Appendix)]

_____ LOGICAL MINING UNIT

(I.D. Number. See SLMS LMU Data Base Element Instructions)

DO SO

The Mineral Leasing Act of February 25, 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, authorizes the consolidation of coal leases into a logical mining unit. A logical mining unit (LMU) is an area of land in which the coal resources can be developed in an efficient, economical and orderly manner as a unit with due regard to conservation of coal resources and other resources.

As a result of an application for an LMU designation filed by_____, the _____ LMU is approved effective _____ and provides as follows:

1. UNIT AREA. The area specified on the map attached hereto marked Exhibit A is hereby designated the LMU area, containing _____ acres described as follows:

The unit includes the following coal leases described in Exhibit B attached hereto:

(List all Federal and non-Federal leases)

2. UNIT OPERATOR. (name and address) is hereby designated as Unit Operator.

3. STIPULATIONS. As a consideration to the approval of this LMU, the operator/lessee consents to the following stipulations which make all Federal leases within the LMU subject to uniform requirements for submittal of resource recovery and protection plan, LMU recoverable coal reserves exhaustion, diligent development, continued operation, maximum economic recovery, advance royalty, and royalty reporting periods (but not royalty rates). As of the effective date of this LMU, the diligence terms and conditions of the Federal leases are subject to or are superseded by the diligence requirements imposed on the LMU.

a. *SUPERVISION:* The District Manager located at Bureau of Land Management, [insert appropriate office address], is responsible for the review and approval of exploration plans, and operations, and modifications thereto, prior to the commencement of mining operations within a permit area approved pursuant to the Surface Mining Control and Reclamation Act of 1977. That District Manager is also responsible for review and approval of resource recovery and protection plans and modifications thereto. That District Manager is also responsible for inspection and enforcement, including production verification, of such operations and all lands and all coal within the logical mining unit (LMU) and for implementing all other applicable provisions of the 43 CFR Group 3400 rules.

b. *RESOURCE RECOVERY AND PROTECTION PLAN:* In accordance with the requirements of 43 CFR 3482.1(b), [insert name of LMU applicant] shall submit a resource recovery and protection plan (R2P2) to the District Manager no later than [insert the date that is 3 years from the effective date that the most recent Federal coal lease became "subject to diligence" prior to the proposed effective date of the LMU approval (or, if the LMU will contain at least one Federal coal lease that is not "subject to diligence" prior to LMU approval, insert the date that is 3 years from the proposed effective date of the LMU approval). See the guidelines—VII.A.3. for an exception that requires the R2P2 to be submitted prior to LMU approval; that R2P2 must be approved at the time of LMU approved.]. The R2P2 must contain all the requirements of 43 CFR 3482.1(c) for the life-of-the-mine for the LMU. If there is a previously approved R2P2 for at least one Federal coal lease contined in the LMU, [insert name of LMU applicant] may opt to submit an R2P2 for the entire LMU or submit a modification to the existing R2P2 to enable it to cover the life-of-the-mine for the LMU. If [insert name of LMU applicant] decides to modify the existing R2P2, such modification shall be submitted to the District Manager within 3 years from the date listed above. If production is occurring from anywhere within the LMU, the R2P2 must be submitted for approval prior to approval of the LMU; that R2P2 must be approvable and be approved at the time the LMU is approved.

c. *DILIGENT DEVELOPMENT AND CONTINUED OPERATION:* Pursuant to 43 CFR 3480.0–5(a)(13)(ii)[(A)], the diligent development period for the LMU begins on the effective date of LMU approval [[OR] (B), the diligent development period for the LMU began on [insert the effective date that the most recent Federal coal lease became "subject to diligence" prior to the effective date of LMU approval—

Note.—Paragraph (A) applies if at least one of the Federal coal leases to be included in the LMU was issued prior to August 4, 1976, and is not yet "subject to diligence." Paragraph (B) applies in all other cases.]]. Therefore, the LMU must have production of commercial quantities before [insert the date that is 10 years from the effective date of the 10-year diligent development period as stated in the previous sentence.] [Name of LMU applicant] must mine [insert 1 percent of the estimated *total* Federal and non-Federal recoverable coal reserves] from anywhere within the LMU to achieve diligent development and, thereafter, to maintain continued operation or request to be allowed to pay advance royalty in lieu of continued operation.

d. *ADVANCE ROYALTY:* The number of years for which advance royalty may be paid *in lieu* of continued operation is

[insert the maximum number of years that is left for the Federal coal leases considered individually (see section VII. I. of these guidelines)]. Advance royalty may be paid *in lieu* of continued operation only until [insert the date that is 20 years from the date that the most recent Federal coal lease became "subject to diligence" (see section VII. J. of these guidelines)]. No advance royalty paid prior to that date may be credited against production royalty after that date.

e. *REPORTING PERIOD:* The rental amount for each Federal coal lease is to be prorated to the effective date of the LMU. Thereafter, the LMU rentals for all Federal coal leases within the LMU will be due in lump sum on each annual anniversary of the effective date of LMU approval. Upon approval and for the duration of this LMU, no Federal rentals may be credited against production royalties for any Federal coal lease contained in the LMU, the Federal coal lease terms of which allowed for such credits prior to the effective date of the LMU.

Royalties for Federal recoverable coal reserves produced within the LMU will be paid in lump sum, identified by individual Federal coal lease on the Coal Production and Royalty Reporting Form 9–373A.

Note.—[When Royalty Management of the Minerals Management Service obtains approval for a new form and number, this title and number must be changed to reflect that new form.] every royalty reporting period. The LMU royalty reporting period will be on a monthly basis beginning the royalty reporting period after the date that coal is first produced from the LMU, following the effective date of LMU approval. If coal is being produced on the effective date of LMU approval, the first royalty reporting period will begin the first day of the month following the effective date of the LMU approval. Since all production within an LMU is credited to the entire LMU, a certified record of all non-Federal LMU coal production must be provided to the District Manager on an annual basis. Progress maps and reports required by 43 CFR 3482.3 shall show *all* Federal *and* non-Federal production from anywhere within the LMU.

f. *RECOVERABLE COAL RESERVES EXHAUSTION:* The 40-year LMU recoverable coal reserves exhaustion period commences the date that coal is first produced from the LMU, following the effective date of LMU approval. If there is production occurring within the LMU on the effective date of LMU approval, the 40-year clock begins on the effective date of LMU approval.

g. *OTHER:* If the LMU, of which this [these (if appropriate)] Federal coal lease is [leases are (if appropriate)] a part, fails for whatever reason, the Federal coal lease[s] will automatically be subject to the diligence provisions that otherwise would have applied had the Federal coal lease[s] not been included in an LMU.

_____

Company or Lessee Name

By _____

(Signature of Lessee)

_____

(Title)

_____

(Date)

_____

Company or Lessee Name

By _____

(Signature of Lessee)

_____

(Title)

_____

(Date)

_____

Unit Operator

By _____

(Signature of Unit Operator)

_____

(Title)

_____

(Date)

_____

(Date)

[Note.—The *name* of the LMU should be the mine name to be associated with the] [LMU. If there is no mine name, use another identifier that would] [enable the name of the LMU to be distinctive. This is necessary] [because an operator may have two LMU's near each other. This is *not*] [the LMU *number*, which is assigned by WO–660 in the Solid Leasable] [Minerals System data base.]

[Special Note.—If these are LMU *Modification* Stipulations, stipulation 1] [should be repeated from the original LMU approval] [stipulations; stipulation 2 must be revised to state that the] [approved R2P2 must be modified within 3 years of the] [effective date of the modification to address the modified] [area, or modified prior to commencement of mining operations] [in the modified area, whichever occurs first; and stipulation] [3 should state that the original LMU approval stipulations] [are not altered by the approval of the modification.]

_____ LMU

EXHIBIT B

FEDERAL LEASES:
Serial Number:
Lease Effective Date:
Lessee:
Description of Land Committed:
Acres:
PRIVATE LEASES:
Lease No. or Other ID:
Lease Date:
Lessor:
Lessee:
Description of Land Committed:
Acres:

NOTIFICATION TO LESSEES REGARDING, AND THE MONITORING OF, DILIGENT DEVELOPMENT AND CONTINUED OPERATION

Due to the consequences of failing to achieve diligent development and to maintain continued operation, the importance of complete and accurate records should enforcement action be required, and to ensure nationwide consistency, the procedures set forth below are to be implemented immediately for Federal coal leases "subject to diligence" and for LMU's.

Notification Procedures (On a lease-by-lease basis, for Federal coal leases "subject to diligence", and on an LMU-by-LMU basis)

1. Initially notify each Federal coal lessee and, beginning on the date of the first diligent development year following the date of LMU approval (not following the effective date of that approval), each LMU designated operator (as well as the entity that applied, and subsequently received approval, for the LMU) of:

a. Date the diligent development period begins or began.

b. Date by which diligent development must be achieved.

c. Recoverable coal reserves estimate.

d. Commercial quantities requirement.

e. Beginning on the effective date of LMU approval, a certified record of non-Federal coal production must be submitted each year that the LMU is subject to diligent development.

2. At the completion of *each* diligent development, notify each lessee and each designated LMU operator (as well as the entity that applied, and subsequently received approval, for the LMU) of the remaining tonnage that must be produced to achieve diligent development.

3. Upon the achievement of diligent development, confirm in writing that diligent development has been achieved for the Federal coal lease or LMU. The confirmation must include:

a. The date of the royalty reporting period *during* which diligent development was achieved.

b. The date that the Federal coal lease or LMU is subject to continued operation (i.e., the beginning date of the royalty reporting period following the royalty reporting period during which diligent development was achieved).

c. The 12-month period which defines the continued operation year.

d. The tonnage that must be produced to maintain continued operation. Also, specify that this tonnage is required each of the first 2 continued operation

years and on a 3-year average thereafter.

e. The fact that advance royalty may only be accepted *in lieu* of continued operation upon application to and approval by the AO. When applications to pay advance royalty are made after the thirtieth calendar day of the continued operation year, acceptance may be conditioned on the assessment of a late payment charge.

f. Beginning on the effective date that the LMU is first subject to continued operation (see 3.b. above), the annual reporting date for non-Federal coal production shifts from the effective date of LMU approval to the beginning of each continued operation year.

4. At the end of any continued operation year during which continued operation was *not* maintained:

a. Issue a notice of noncompliance for failure to meet the continued operation requirement, and that failure to apply to pay advance royalty may result in Federal coal lease cancellation. For details on notices of noncompliance, see 3486.3.

5. Where advance royalty is paid for a continued operation year where continued operation was *not* met, notify the Federal coal lessee or designated LMU operator (as well as the entity that applied, and subsequently received approval, for the LMU) that the advance royalty payment counts against the total of 10 years for which it can be paid. Specify the total number of years advance royalty has been paid to date *in lieu* of continued operation and the total number of remaining continued operation years for which the lessee or LMU operator has the option to apply to pay advance royalty.

6. Where advance royalty is paid for a continued operation year and continued operation subsequently *is* met, notify the Federal coal lessee or designated LMU operator (as well as the entity that applied, and subsequently received approval, for the LMU) that the advance royalty payment *is not* counted against the total of 10 years for which it can be paid.

7. Upon approval of a revision of recoverable coal reserves based on new information, reissue the initial notification to reflect the AO's approval of the revision, with the revised commercial quantities requirement.

Note. If the revision occurs while the Federal coal lease or LMU is subject to diligent development, the revised commercial quantities requirement is effective immediately. If the revision occurs while the Federal coal lease or LMU is subject to continued operation, the revised commercial quantities requirement is effective on the beginning of the *following* continued operation year. In either case, the revision of recoverable coal reserves must be determined in consultation with the LMU applicant.

Special Note. Notifications for LMU's shall break down the production and recoverable coal reserves by Federal and non-Federal. *Note:* The term "Federal" includes only Federal recoverable coal reserves that are either "public" or "acquired." The term "non-Federal" includes recoverable coal reserves that are "fee" (sometimes referred to as "private"), "State," "Indian tribal," and "Indian allotted." These categories must also be separately broken down.

Monitoring Diligent Development and Continued Operation

On a lease-by-lease basis, for Federal coal leases that are "subject to diligence," and on an LMU-by-LMU basis, the diligent development, continued operation, commercial quantities, advance royalty, and LMU data elements *must be maintained* continuously up-to-date in the Solid Leasable Minerals System (SLMS) data base.

[FR Doc. 85-20610 Filed 8-28-85; 8:45 am]
BILLING CODE 4310-84-M

Arizona, Safford District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, September 20, 1985; 9:00 a.m.

ADDRESS: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463 and 94-579. The agenda for the meeting will include:

1. Field Tour to Bonita Creek.
2. Update on Grazing Fee Study.
3. Update on Land Exchange.
4. BLM Management Update.
5. Business from the floor.

Board members will meet at the BLM Office, 425 E. 4th Street, Safford, Arizona at 9:00 a.m. From here we will depart via BLM-provided vehicles for the field tour. Members of the public may accompany the tour but must provide their own transportation.

It is expected the Board members will return to the Safford District Office at approximately 1:00 p.m. for lunch. The meeting will reconvene at 2:00 p.m. and continue with the agenda.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 2:00 p.m. and 3:00 p.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, September 19, 1985.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: August 20, 1985.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 85-20652 Filed 8-28-85; 8:45 am]
BILLING CODE 4310-32-M

Coal Lease Application C-40672; Colorado; Public Hearing, Availability of Environmental Assessment, and Request for Public Comment

The Department of the Interior, Bureau of Land Management, Colorado State Office, Denver, Colorado, hereby gives notice that a public hearing will be held on October 1, 1985, at 7:00 p.m. in the Yampa Valley Electric Building, 32-10th Street, Steamboat Springs, Colorado. This emergency maintenance application has been made by Getty Minerals Marketing, Inc., to the United States to offer for lease the Wolf Creek and Wadge coal seams in the lands referred to as the Little Middle Creek Tract. The purpose of the hearing is to obtain public comments on the Environmental Assessment and on the following items: (1) The method of mining to be employed to obtain maximum economic recovery of the coal, (2) the impact that mining the coal in the proposed leasehold may have on the area, and (3) methods of determining the fair market value of the coal to be offered. Written requests to testify orally at the October 1, 1985, public hearing should be received at the Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, prior to the close of business October 1, 1985. People who indicate they wish to testify when they check in at the hearing may have an opportunity if time is available.

Both oral and written comments will be received at the public hearing, but speakers will be limited to a maximum of three to five minutes each depending

on the number of persons desiring to comment. The time limitation will be strictly enforced, but the complete text of prepared speeches may be filed with the presiding officer at the hearing, whether or not the speaker has been able to finish oral delivery in the allotted minutes. Written comments regarding the Environmental Assessment may also be submitted to the Craig Distict Office at the above address, prior to close of business on October 8, 1985.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resources. Public comments will be utilized in establishing fair market value for the coal resources in the described lands. Comments should address specific factors related to fair market value including, but not limited to: the extent and quality of the coal resources, the price that the mined coal would bring in the market place, the cost of producing the coal, the interest rate at which anticipated income streams would be discounted, depreciation and other accounting factors, and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms and conditions, may also be submitted. The comments will be considered in the final determination of fair market value. Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Comments on fair market value should be sent to the State Director (CO–920), Bureau of Land Management, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205, and arrive no later than October 8, 1985.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The 2,011.47 acres included in the enviromental analysis are described as follows:

Little Middle Creek Area

T. 4 N., R. 86 W., 6th. P.M.
Sec. 19: Lots 11, 12, 13, and 14;
Sec. 30: Lots 3 and 4.
T. 4 N., R. 87 W., 6th. P.M.
Sec. 23: S½S½NE¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, SW¼SW¼NE¼, SE¼NE¼, SE¼NE¼SW¼, E½SE¼SW¼, SE¼;
Sec. 24: S½S½NW¼NW¼, SW¼NW¼, S½S½NE¼SW¼, NW¼SW¼, S½D½, S½N½NE¼SE¼, S½NE¼SE¼, S½D½NW¼SE¼;
Sec. 25: N½N½, N½N½SW¼NE¼, N½N½SE¼NE¼, N½SW¼NW¼, N½N½SE¼NW¼;
Sec. 26: N½NE¼NE¼, SE¼NE¼NE¼, N½NW¼NE¼, NE¼SE¼NE¼, NE¼NE¼NW¼.

This land described contains 1045.90 acres.

Fish Creek Area

T. 4 N., R. 87 W., 6th. P.M.
Sec. 12: Lots 1, 2, 3, S½.
T. 5 N., R. 87 W., 6th. P.M.
Sec. 36: Lots 1, 2, 3, 4, 11, 12, W½NE¼, NW¼.

This land described contains 965.57 acres.

The draft Environmental Assessment is available for review in the Craig District Office. Single copies are available from that office upon request.

A copy of the draft Environmental Assessment, the case file and the comments submitted by the public on fair market value, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, Bureau of Land Management, at the above shown address.

Richard E. Richards,

Acting Chief, Mineral Leasing Section.

[FR Doc. 85–20626 Filed 8–28–85; 8:45 am]

BILLING CODE 4310-JB-M

Arizona Strip District Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Advisory Board will meet Thursday, September 19, 1985 at 10:00 a.m. Primary purpose of the meeting is to review the draft management plan for the Paria Canyon-Vermilion Cliffs Wilderness Area.

DATE: September 19, 1985.

ADDRESS: Sugar Loaf Restaurant, 290 East St. George Blvd., St. George, Utah.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 196 East Tabernacle, St. George, Utah 84770, (801) 673–3545.

SUPPLEMENTARY INFORMATION: The agenda will also include a review of the prescribed burn program and planned range improvement projects. The meeting is open to the public. Interested persons may make oral statements to the Board at 10:30 a.m. or file written statements by September 16 for the Board's consideration.

Dated: August 20, 1985.

G. William Lamb,

District Manager.

[FR Doc. 85–20628 Filed 8–28–85; 8:45 am]

BILLING CODE 4310-84-M

[Alaska AA–48398–N]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48398–N has been received covering the following lands:

Copper River Meridian, Alaska

T. 14 N., R. 3 W.,
Sec. 34, SW¼ NE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from January 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48398–N as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1985, subject to the terms and conditions cited above.

Dated: August 21, 1985.

Kay F. Kletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 85–20650 Filed 8–28–85; 8:45 am]

BILLING CODE 4310-JA-M

[Alaska AA–48558–AF]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48558–AF has been received covering the following lands:

Copper River Meridian, Alaska

T. 7 S., R. 1 W.,
Sec. 25, NW¼.
(160 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5

per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1984, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48558–AF as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1984, subject to the terms and conditions cited above.

Dated: August 21, 1985.

Kay F. Kletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 85–20651 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–JA–M

Sodium Lease Sale; Wyoming

Correction

In FR Doc. 85–18391, appearing on page 31435, in the issue of Friday, August 2, 1985, make the following correction:

In the second column, in the legal description of **Tract 1**, T. 21 N, R. 108 W, 6th P.M., WY, Sec. 30, remove the comma separating "E½" and "W½" at the end of that line.

BILLING CODE 1505–01–M

[N–16385, N–12906, Nev–062283, CC–021027]

Order Providing for Opening of Lands; Nevada; Correction

August 21, 1985.

In FR Doc. 84–28889 appearing on page 44154 in the issue of Friday, November 2, 1984, the first paragraph in the third column should read as follows:

The minerals in the lands described in T. 30 N., R. 57 E; T. 35 N., R. 60 E; T. 34 N., R. 61 E., are in private ownership. The minerals in the lands described in T. 34 N., R., 63 E. were reconveyed to the United States.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 85–20723 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–HC–M

[OR–39055]

Proposed Withdrawal and Reservation of Lands and Opportunity for Public Meeting; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Correction.

SUMMARY: This document corrects the following in a notice that appeared on pages 30240 and 30241 in the **Federal Register** of Wednesday, July 24, 1985, as Document 85–17597:

Details

The second line under **SUPPLEMENTARY INFORMATION** should read "27, 1985, an application was filed by the . . .:"

The first line in the last paragraph under **SUPPLEMENTARY INFORMATION** should read: "For a period of two years from the date . . . ."

Dated: August 21, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–20724 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–33–M

[OR–37402(WASH)]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army proposes that a land withdrawal for the Fort Lewis Military Reservation continue for an additional 50 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION: The Department of the Army proposes that the existing land withdrawal made by Executive Order 6628 of March 5, 1934, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located on Short Island in American Lake within Fort Lewis, approximately nine miles south of Tacoma, and contains 0.29 acre within Section 20, T. 19 N., R. 2 E., W.M., Pierce County, Washington.

The purpose of the withdrawal is to protect a portion of the Fort Lewis Military Reservation. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal. The 0.29 acre referred to by this notice is public domain land. The Department of the Army also has jurisdiction over approximately 100,000 acres of adjacent acquired lands which are not affected by this notice.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 21, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–20725 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–33–M

[W–71429, W–71430, W–71431]

Proposed Continuation of Reclamation Withdrawal; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that 1,281.75 acres withdrawn for the Glendo Unit, Pick-Sloan Missouri Basin Project continue until December 31, 2058 A.D. The lands will remain closed to surface entry and mining, but have been and will remain open to mineral leasing except for 160 acres which were reconveyed to the United States with no mineral interest.

DATE: Comments should be received by November 27, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, 307–772–2089.

The Bureau of Reclamation proposes

that the existing withdrawals made by Secretarial Order of March 17, 1947, Bureau of Land Management Order of June 6, 1956, Public Land Order 4981 of December 24, 1970, be continued until December 31, 2058 A.D., pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Sixth Principal Meridian

T. 29 N., R. 67 W.,
Sec. 7, lots 5, 8.
T. 30 N., R. 67 W.,
Sec. 18, lot 2 (prev. described as SW¼NW¼).
T. 29 N., R. 68 W.,
Sec. 1, lot 5;
Sec. 2, SE¼SE¼;
Sec. 11, N½NE¼;
Sec. 12, lot 1;
Sec. 22, N½NW¼;
Sec. 23, SW¼NE¼, SE¼NW¼, NE¼SW¼;
Sec. 24, NE¼, NE¼NW¼, N½SW¼, SE¼SW¼, SE¼.
T. 30 N., R. 68 W.,
Sec. 8, NE¼SW¼;
Sec. 10, E½NW¼, N½SE¼;
Sec. 23, NW¼NE¼;
Sec. 26, lots 1,2.

The area described contains 1,281.75 acres in Platte County.

The purpose of the withdrawal is to protect the facilities of the dam, reservoir and spillway associated with the Missouri Basin Reclamation Project. The withdrawal segregates the lands from the operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawals may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Hillary A. Oden,
State Director.

[FR Doc. 85-20722 Filed 8-28-85; 8:45 am]
BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document; Walter Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2537, Block 265, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on August 22, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 23, 1985.

John L. Rankin,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-20653 Filed 8-28-85; 8:45 am]
BILLING CODE 4310-MR-M

INTERNATIONAL JOINT COMMISSION—UNITED STATES AND CANADA

Application of the State of Washington Concerning Order of Approval of December 9, 1982 for Regulating the Levels of Osoyoos Lake in the Province of British Columbia and the State of Washington; Public Hearings

Notice is hereby given that the International Joint Commission will hold public hearings at the times and places listed below regarding an Application from the State of Washington, seeking an amendment to the Commission's Order of Approval of December, 1982 for construction of new control works for regulating the levels of Osoyoos Lake in the Province of British Columbia and the State of Washington. The State of Washington wants approval to redesign and construct the control works about 2700 feet downstream from the location specified in the 1982 Order of Approval. It also wants the time for construction extended and to change the requirements for relocation of Tonasket Creek.

The Commission will be considering the Application pursuant to its continuing jurisdiction in this matter and responsibilities under Articles IV and VIII of the Boundary Waters Treaty of 1909.

The 1982 Order of Approval was issued in response to an application from the State of Washington for new control works to replace Zosel Dam. Information currently available for public scrutiny at the Oroville city hall and Osoyoos municipal office includes maps and drawings concerning the proposed changes.

Dated: August 21, 1985.

Louise L. Cox,
Acting Secretary, United States Section.

The Public Hearings will allow the Commission the opportunity to hear presentations of all interested parties. At the hearings opportunity will be given to anyone, whether on his own behalf or in a representative capacity, to offer relevant information to assist the Commission in disposing of this matter. While not mandatory, written statements are desirable to supplement oral testimony and to ensure accuracy of the report. When a written statement is presented, 30 copies, if possible, should be provided for distribution to the news media and for Commission purposes.

Time and Places of Hearings

September 19, 1985, 9:30 a.m., Old Oroville Depot, Oroville, Washington

September 10, 1985, 2:30 p.m., Osoyoos, Community Hall, Osoyoos, B.C.

D.G. Chance, Secretary, Canadian Section, International Joint Commission, 100 Metcalfe Street, 18th floor, Ottawa, Ontario. K1P 5M1

D.A. LaRoche, Secretary, United States Section, International Joint Commission, 2001 "S" Street, N.W., Washington, D.C. 20440 USA

[FR Doc. 85-20622 Filed 8-28-85; 8:45 am]

BILLING CODE 4710-14-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-212]

Certain Convertible Rowing Exercisers; Commission Determination Not To Review Initial Determination Finding Respondent in Default and Imposing Procedural Sanctions

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) finding a respondent in default and imposing procedural sanctions.

SUMMARY: Notice is hereby given that the Commission has determined not to review an ID of the presiding administrative law judge (ALJ) that finds respondent Pan's World in default and imposes procedural sanctions.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493.

SUPPLEMENTARY INFORMATION: By Order No. 13, respondent Pan's World was ordered by the ALJ to comply with discovery requests. By Order No. 25, Pan's World was ordered to show cause why it should not be held in default. Pan's World did not respond to either order. On July 24, 1985, the ALJ issued an ID (Order No. 43) finding Pan's World in default. The ALJ also ordered that (1) Pan's World has waived its right to appear in the investigation, (2) no party is required to serve documents on Pan's World, and (3) Pan's World has waived the right to contest the allegations at issue. No petition for review was filed, nor were comments on the ID received from any Government agency.

By order of the Commission.

Issued: August 19, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20611 Filed 8-28-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-215]

Certain Double-Sided Floppy Disk Drives and Components Thereof; Commission Decision Not To Review Initial Determination Terminating Two Respondents on the Basis of a Settlement Agreement and a License Agreement

AGENCY: International Trade Commission.

ACTION: Termination of two respondents, Sony Corporation and Sony Corporation of America, on the basis of a joint settlement and a license agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 20) terminating respondents Sony Corporation and Sony Corporation of America (the Sony respondents) in the above-captioned investigation on the basis of a joint settlement and a license agreement.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

SUPPLEMENTARY INFORMATION: On July 8, 1985, complainant Tandon Corporation and respondents Sony Corporation and Sony Corporation of America filed a joint motion to terminate this investigation as to respondents Sony Corporation and Sony Corporation of America on the basis of a joint settlement agreement and a license agreement. On July 19, 1985, the administrative law judge issued an ID terminating the Sony respondents based on the joint settlement agreement and the license agreement. The Commission investigative attorney filed a response supporting the motion. No petitions for review of the ID or comments from other Government agencies or the public were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 210.51 and 210.53).

Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Issued: August 20, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20612 Filed 8-28-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-75]

Certain Large Video Matrix Display System and Components Thereof; Commission Decision To Review Initial Determination, Affirm the Administrative Law Judge, and Terminate Investigation

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review a portion of the presiding administrative law judge's (ALJ) initial determination (ID) that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The Commission determined to review and affirm that portion of the ID finding U.S. Letters Patent 3,941,926 unenforceable. The Commission has determined not to review the remainder of the ID. Thus, the Commission has concluded that there is no violation of section 337 and has terminated this investigation.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and in §§ 210.53-210.56 of the Commission's rules of Practice and Procedure, 49 FR 46123; to be codified at 19 CFR 210.53-210.56.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of General Counsel, U.S. International Trade Commission, telephone 202-523-0189.

SUPPLEMENTARY INFORMATION: On October 25, 1979, Stewart-Warner Corp. (Stewart-Warner), of Chicago, Illinois, filed a complaint with the Commission alleging a violation of section 337 in the importation and sale of certain large video matrix display systems manufactured by SSIH Equipment SA (SSIH) of Bienne, Switzerland through the alleged infringement of claims of U.S. Letters Patent Nos. 3,594,762 ('762 patent), 3,941,926 ('926 patent), and 4,000,335 ('335).

On June 1, 1981, the Commission determined that there was a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain large video matrix display systems and components thereof (scoreboards), which infringe claims of the '720, '926 and/or '335 patents. The Commission issued an order excluding the infringing merchandise and components thereof manufactured by respondent SSIH Equipment SA of Bienne, Switzerland from entry into the United States for the remaining terms of the patents, except under license from the patent owner. 46

FR 32694. On August 10, 1981, the Commission modified its exclusion order so that it was effective solely against articles infringing the claims of the '762 patent. 46 FR 4317. The Commission acted in recognition of a Federal district court decision that the '926 and '335 patents were invalid. Stewart-Warner Corp. v. City of Pontiac, 213 USPQ 453 (E.D. Mich. 1981). The Commission's determination and the modified exclusion order became final on August 10, 1981.

Respondent SSIH appealed the Commission's determination to the U.S. Court of Customs and Patent Appeals, one of the predecessor courts to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On July 15, 1983, the Federal Circuit decided to reverse the Commission's determination in part, vacate the exclusion order, and remand the case to the Commission for reconsideration of the issues of infringement of the '762 patent, injury, and public interest consistent with the Court's opinion. *See* SSIH Equipment SA v. USITC, 718 F.2d 365 (Fed. Cir. 1983).

Pursuant to the Federal Circuit's order, the Commission remanded this investigation to the ALJ for an ID on the issues of infringement of claim 12 of the '762 patent and injury to the domestic industry.

Concurrent, with SSIH's appeal of the Commission's determination to the Federal Circuit, complainant Stewart Warner appealed the Federal district court's decision concerning the '335 and '926 patents to the U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit). On appeal, the Sixth Circuit upheld the district court's finding that the '335 patent was invalid, but reversed the district court's findings concerning anticipation of the '926 patent. The Sixth Circuit then remanded the case to the Federal district court for consideration of whether the '926 patent was invalid as obvious under 35 U.S.C. 103. *See* Stewart-Warner Corp. v. City of Pontiac, 717 F.2d 269 (6th Cir. 1982).

Upon consideration of the Sixth Circuit's decision and requests by both of the parties to this investigation, the Commission determined to modify its Action and Order of September 16, 1983, and to remand to the ALJ the additional issue of alleged inequitable conduct in the prosecution of all three patents and enforceability of the '762 and '926 patents. 46 FR 53188.

On March 9, 1984, the district court found that the '926 patent was obvious under 36 U.S.C. 103. Stewart-Warner then appealed that decision to the Federal Circuit.

On June 13, 1984, the ALJ issued an ID finding that (1) SSIH's system did not infringe the '762 patent, (2) there was no inequitable conduct in the prosecution of the '762 patent, (3) there was inequitable conduct in the prosecution of the '335 patent, (4) by operation of law, the inequitable conduct with regard to the prosecution of the '335 patent rendered the closely related '926 patent unenforceable, and (5) the effect of the imports was to substantially injure the relevant domestic industry. On August 5, 1984, the Commission decided not to review that portion of the ID pertaining to the '762 patent and suspended the remainder of the investigation until thirty days after the Federal Circuit issued its decision on the appeal from the district court's decision on remand. 49 FR 32691 (1984).

On July 18, 1985, the Federal Circuit issued its decision reversing the district court on the issue of obviousness. Thus, the '926 patent is valid.

Notice of the suspension of this investigation and the schedule for future Commission action was published in the **Federal Register** of August 15, 1984. 49 FR 321679 (1984).

Copies of the public version of the ID and all other non-confidential documents filed in connection with this investigation will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. Interntional Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: August 19, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–20613 Filed 8–28–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–253 (Final)]

Certain Welded Carbon Steel Pipes and Tubes From Venezuela

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–253 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishement of an industry in the United States is materially retarded, by reason of imports from Venezuela of certain circular welded carbon steel line pipes and tubes,[1] which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before October 21, 1985, and the Commission will make its final injury determination by an administrative deadline of November 29, 1985. The statutory deadline for this investigation is December 10, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: August 13, 1985.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–523–4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain circular welded carbon steel line pipes and tubes from Venezuela are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 28, 1985, by the Committee on Pipe and Tube Imports. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of the course of that investigation, determined that there was

[1] For purposes of this investigation, the term "certain circular welded carbon steel line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in outside diameter, conforming to API specifications for line pipe, provided for in items 610.3208 and 610.3209 of the Tariff Schedules of the United States Annotated (1985) (TSUSA).

a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 16167, April 24, 1985).

Participation in the Investigation.

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on October 8, 1985, pursuant to § 201.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation begining at 10:00 a.m. on October 29, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 15, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:00 a.m. on October 18, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 22, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing 207.22). Posthearing briefs must conform with the provisions of section § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 5, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 5, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 am. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR § 207.20).

Issued: August 23, 1985.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20616 Filed 8-28-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-201]

Certain Products With "Gremlin" Character Depictions; Commission Determination To Review an Initial Determination, Affirm the Determination To Declare the Investigation More Complicated, and Extend the Deadline for Completion of the Investigation by One Month

AGENCY: International Trade Commission.

ACTION: Review of initial determination, affirm the determination to declare the investigation "more complicated", reverse the determination to extend the deadline for completion of the investigation by six months, and extend the deadline by one month.

SUMMARY: The Commission has determined to review the presiding administrative law judge (ALJ's) initial determination (ID), and to affirm the determination to declare the above-captioned investigation "more complicated" pursuant to 19 U.S.C. 1337(b)(1). The Commission, however, determined to reverse the ALJ's determination to extend the deadline for completion of the investigation by six months and, instead, to extend the deadline by one month, i.e., from November 15, 1985, to December 16, 1985.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0490.

SUPPLEMENTARY INFORMATION:

Background

The investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation or sale of certain products with "Gremlin" character depictions. The proceedings were instituted on the basis of a complaint filed by Warner Bros. Inc. (Warner) alleging infringement of three copyrights owned by Warner. (*See* 49 FR 34422 (August 30, 1984).)

On April 26, 1985, Warner moved to declare this investigation more complicated. Before the ALJ could rule on the motion, the Court of Appeals for the Federal Circuit (CAFC) on April 29, 1985, issued a temporary stay of the proceedings. The temporary stay was vacated on July 15, 1985. Subsequently, on July 26, 1985, the ALJ issued his ID granting Warner's motion to declare the investigation "more complicated."

Reasons for Determination

The Commission has determined that this investigation should be designated "more complicated" because of the complex nature of the definition of the domestic industry, including the number of different products involed, and the difficulty in obtaining information regarding production and marketing from numerous licensees on the condition of the domestic industry.

The Commission, however, has determined to extend the deadline for completion of the investigation by one month, not six months. Section 337 investigations are to be conducted expeditiously. The Commission believes that an additional period of one month is sufficient to conduct any additional discovery and complete and record in this investigation.

Public Inspection

The ID and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20435, telephone 203–523–0471.

Issued: August 19, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–20614 Filed 8–28–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 104–TA–26]

Termination of Additional Portions of the Investigation Regarding the Sugar Content of Certain Articles From Australia

AGENCY: International Trade Commission.

ACTION: Termination of additional portions of a review investigation under section 104(b) of the Trade Agreements Act of 1979, concerning the *Sugar Content of Certain Articles from Australia.*

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin, Esq., (202–523–0421), Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: On September 9, 1982, the International Trade Commission received a request from the Government of Australia under section 104(b) of the Trade Agreements Act of 1979 seeking a review of the outstanding countervailing duty order on the sugar content of certain articles from Australia. On May 30, 1985, the Commission published a notice in the **Federal Register** instituting a review investigation (Inv. No. 104–TA–26) of that outstanding countervailing duty order (50 FR 23006). On June 4, 1985, the Commission published a notice in the **Federal Register** requesting public comment on the proposed termination of all or part of investigation No. 104–TAA–26 (50 FR 23533). That notice stated that, in the absence of an expression of interest by interested parties representing an industry producing all or some of the subject products, the Commission may terminate the investigation as to those products.

During the public comment period, expressions of interest were filed by interested parties representing industries producing canned pears, canned peaches, canned fruit mixtures, and semi-processed confectionery containing chocolate or cocoa as provided for in TSUSa item numbers 156.24, 156.3045, 156.3050, 156.3065, and 156.47. An expression of interest was also filed by the Apricot Producers of California, but it was subsequently withdrawn. No other comments were received. Accordingly, the Commission determined to continue its review investigation, but to narrow the scope of that investigation to canned pears, canned peaches, canned fruit mixtures, and semi-processed confectionery containing chocolate or cocoa as provided for in TSUSA items listed above. The investigation was, therefore, terminated as to all other products covered by the outstanding countervailing duty order with a finding that no domestic industry would be materially injured or threatened with material injury, nor would the establishment of a domestic industry be materially retarded, by reason of the revocation of the countervailing duty order.

Subsequently, the expression of interest regarding semi-processed confectionery containing chocolate or cocoa as provided for in TSUSA item numbers 156.25, 156.3045, 156.3050, 156.3065, and 156.47 was withdrawn. Accordingly the Commission has determined to further narrow its review investigation to canned pears, canned peaches, and canned fruit mixtures. The investigation as to semi-processed confectionery has, therefore, been terminated with a finding that no domestic industry would be materially injured or threatened with material injury, nor would the establishment of a domestic industry be materially retarded, by reason of the revocation of the countervailing duty order regarding semi-processed confectionery. Accordingly, the Commission is requesting that the Department of Commerce revoke the countervailing duty order as to those products.

Issued: August 22, 1985.

By order of the Commission.

Kenneth R. Mason.

Secretary.

[FR Doc. 85–20615 Filed 8–28–85; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30679]

Burlington Northern Railroad Co.; Construction Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Burlington Northern Railroad Company from the provisions of 49 U.S.C. 10901, to construct a 6.4 mile line of railroad between Moore, MT and Sipple, MT, subject to environmental conditions.

DATES: This decision is effective on August 29, 1985. Petitions to reopen must be filed by September 18, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30679 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Arthur R. Zaegel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Ft. Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 22, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Sterrett did not participate in the disposition of this proceeding. Chairman

Taylor was absent and did not participate in this decision.

James H. Bayne,

Secretary.

[FR Doc. 85-20705 Filed 8-28-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; (Sub-152X)]

Seaboard System, Railroad, Inc.; Abandonment Exemption; Campbell County, KY, and Hamilton County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Seaboard System Railroad, Inc., of 1.56 miles of its Newport Branch between valuation station 5896+66 at Newport, KY, and valuation station 3979+39 near Cincinnati, OH, in Campbell County, KY, and Hamilton, County, OH, subject to standard labor protective conditions.

DATES: This exemption will be effective on September 30, 1985. Petitions to stay must be filed by September 9, 1985, and petitions for reconsideration must be filed by September 18, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 152X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 22, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Sterrett did not participate. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85-20706 Filed 8-28-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-84)]

Southern Pacific Transportation Co.; Abandonment; Modoc County, CA and Lake County, OR; Findings

The Commission has found that the public convenience and necessity permit Southern Pacific Transportation Company to abandon its 54.45 mile rail line between Alturas, CA (milepost 458.60) and Lakeview, OR (milepost 513.05) in Modoc County, CA and Lake County, OR. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". An offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-20707 Filed 8-28-85; 8:45 am]

BILLING CODE 7035-01-M

LEGAL SERVICES CORPORATION

Announcement of Availability of Funds for State Support in the State of Louisiana

AGENCY: Legal Services Corporation.

ACTION: Notice.

The Legal Services Corporation (LSC) announces the availability of state support grant funds for the State of Louisiana. The current recipient, Southeast Louisiana Legal Services Corporation, in Hammond, Louisiana, has notified LSC that it desires to relinquish its grant as soon as a replacement recipient can be found. State support grant funds are used within a state to assist Legal Services programs and clients by providing and maintaining resource materials, newsletters, mailings, and technical assistance; litigation through co-counsel, counsel and amicus; legislative and administrative representation; and coordination and communication with Legal Services programs, clients, client groups, and other organizations representing poor people. The annualized level of Legal Services Corporation funding for state support in Louisiana in 1985 is $151,674.

FOR FURTHER INFORMATION CONTACT: Gail D. Francis, Manager, Grants and Budget Unit, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C., 20005; (202) 272-4080. Interested parties should notify LSC within forty-five (45) days from publication of this announcement.

Dated: August 27, 1985.

Peter Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85-20670 Filed 8-28-85; 8:45 am]

BILLING CODE 8820-35-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Office for Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office for Partnership Advisory Panel (Locals Test Program Section) to the National Council on the Arts will be held on Wednesday and Thrusday, September 18-19, 1985 from 9:30 am-4:30 pm and Friday, September 20, 1985 from 9:30 am-1:00 pm in Room 730 of the Nancy Hanks Center in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on Friday, September 20, 1985 from 9:30 am-1:00 pm to discuss a report on rural arts, guidelines and other policy issues.

The remaining sessions of this meeting on September 18-19, 1985 9:30 am-4:30 pm are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained for Mr.

John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

August 23, 1985.

[FR Doc. 85–20677 Filed 8–28–85; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Playwrights/Translators Section) to the National Council on the Arts will be held on Wednesday, September 18, 1985 from 9:00am–5:30pm in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

August 23, 1985.

[FR Doc. 85–20678 Filed 8–28–85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 212, 1800 G Street NW., Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson or Ms. Patricia Bond at the above address or (202) 357–7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

John H. Moore, Deputy Director, Chairperson

Jeff Fenstermacher, Assistant Director for Administration, Executive Secretary

Rotating Membership

Judith Sunley, Deputy Director, Division of Mathematical Sciences, Directorate for Mathematical and Physical Sciences

Carl W. Hall, Deputy Assistant Director for Engineering, Directorate for Engineering

James F. Hays, Director, Division of Earth Sciences, Directorate for Astronomical, Atmospheric, Earth and Ocean Sciences

William L. Stewart, Deputy Director, Division of Science Resources Studies, Directorate for Scientific, Technological and International Affairs

Alan I. Leshner, Deputy Director, Division of Behavioral and Neural Sciences, Directorate for Biological, Behavioral and Social Sciences

Robert F. Watson, Head, Office of College Science Instrumentation, Directorate for Science and Engineering Education

James M. McCullough, Executive Assistant to Director, Office of Legislative and Public Affairs, Office of the Director

Dated: August 26, 1985.

Margaret L. Windus,

Director, Division of Personnel and Management.

[FR Doc. 85–20619 Filed 8–28–85; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Entry Into Force of U.S.-Israel Free Trade Area Agreement

August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Alexander H. Platt, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C., telephone (202) 395–6951.

The Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the "Agreement") was signed in Washington on April 22, 1985. Article 22 of the Agreement provides for its entry into force on the date on which both Parties to the Agreement have provided written notification to each other that domestic legal procedures necessary for implementation have been completed. The United States of America provided such written notification on June 12, 1985 and the Government of Israel on August 19, 1985. Therefore, the Agreement entered into force for both the United States of America and Israel on August 19, 1985.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 85–20679 Filed 8–28–85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Application of Village Aviation, Inc., d/b/a Camai Air for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (Order 85–8–72) Docket 42860.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Village Aviation, Inc., d/b/a Camai Air fit, awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections shall do so no later than September 13, 1985; answers to objections shall be filed no later than September 23, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 42860 and addressed to the Documentary Services Division, U.S. Department of Transportoin, 400 Seventh Street SW., Room 4107, Washington, D.C. 20590, and should be

served upon the persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Betsy L. Wolf, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street SW., Room 4116, Washington, D.C. 20590, (202) 426–2912.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–8–72 is available from our Documentary Services Division at the address above. Persons outside the metropolitan area may send a postcard request for Order 85–8–72 to that address.

Dated: August 23, 1985.

Jeffrey Shane,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–20718 Filed 8–28–85; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Flight Service Station at Milwaukee, WI; Notice of Closing

Notice is hereby given that on or about August 18, 1985, the Flight Service Station of Milwaukee, Wisconsin, will be closed. Services to the general public of Milwaukee, Wisconsin Flight Plan Area, formerly provided by this office, will be provided by the Flight Service Station in Green Bay, Wisconsin. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Des Plaines, Illinois, on August 19, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85–20606 Filed 8–28–85; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Executive Committee to be held on September 20, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks, (2) Approval of Minutes of Meeting Held on July 19, 1985; (3) Chairman's Report on RTCA Administration and Activities; (4) Special Committee Activities Report for July and August 1985; (5) Approval of RTCA CY1986 Budget and Tentative CY1987 Budget; (6) Consideration of Special Committee 149 Report on Minimum Operational Performance Standards for Airborne Distance Measuring Equipment (DME); (7) Consideration of Change 2 to RTCA Document DO–185, "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems (TCAS) Airborne Equipment"; (8) Consideration of Change 2 to RTCA Document DO–181m "Minimum Operation Performance Standards for Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/Mode S) Airborne Equipment"; (9) Consideration of Proposals to Establish New Special Committees; and (10) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on August 22, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–20605 Filed 8–28–85; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 151—Airborne Microwave Landing System Area Navigation Equipment; Meeting.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Airborne Microwave Landing System (MLS) Area Navigation Equipment to be held on September 25–27, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Ninth Meeting Held on June 5–7, 1985; (3) Review and Discuss Special Committee 137 (Airborne Area Navigation Systems), Special Committee 149 (Airborne Distance Measuring Equipment) and the European Organization for Civil Aviation Electronics (WG–27) Activities; (4) Briefing and Discussion of Activities Related to Helicopter Operational Tests of Computer Centerline Approaches using Offset Azimuth; (5) Reports of Working Group Activities; (6) Review of Draft Committee Report on Minimum Operational Performance Standards for Airborne MLS Area Navigation Equipment; (7) Working Groups Meet in Separate Sessions; (8) Committee Meeting in Plenary Session; (9) Assignment of Tasks; and (10) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on August 21, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–20604 Filed 8–28–85; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–773]

Moore McCormack Bulk Transport, Inc.; Application for a Waiver To Permit Prospective Domestic Operation of Vessels Owned by a Company Affiliated With a Subsidized Operator

Notice is hereby given that Moore McCormack Bulk Transport, Inc. (MMB) by letter dated August 12, 1985, has applied to the Maritime Administration for permission under section 805(a) of the Merchant Marine Act, 1936, as amended (Act), to be affiliated with a company operating in the domestic trades. MMB has proposed with the affiliate will own, operate and/or charter one or two of the tanker vessels named MORMACSTAR, MORMACSUN and MORMACSKY (Vessels) currently subject to Operating-Differential Subsidy Agreement, Contract No. MA/MSB–295 (ODS Contract).

MMB plans to have the construction-differential subsidy (CDS) with respect to the Vessels repaid pursuant to the recently promulgated CDS repayment regulations, 46 CFR Part 276.3, in order

that the domestic trading restrictions to which they are now subject may be lifted. Permission is required for the operator of such Vessel(s) to be affiliated with the operator of any subsidized Vessel(s) subject to the ODS Contract.

Upon repayment of the CDS for any of the Vessels, MMB intends to transfer the bareboat charters and operation of such Vessel to a separate affiliated company, Moore McCormack Marine Enterprises, Inc. (Enterprises) which will operate the Vessel in the domestic trade. It is also possible that Enterprises will purchase the Vessel(s) for Wilmington Trust Company, the owner trustee, and cancel the bareboat charter(s).

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in MMB's request and desiring to submit comments concerning the request must by 5:00 PM on September 16, 1985, file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Dated: August 23, 1985.

Georgia P. Stamas,

Secretary.

[FR Doc. 85-20671 Filed 8-28-85; 8:45 am]

BILLING CODE [illegible]

National Highway Traffic Safety Administration

National Driver Register Advisory Committee; Public Meeting; Correction

In FR Doc. 82-20249 published on page 34227 of the issue for Friday, August 23, 1985, the room number of the meeting is corrected to read room 4200.

Issued in Washington, D.C. on August 23, 1985.

Carole S. Guzzetta,

Director, Executive Secretariat.

[FR Doc. 85-20617 Filed 8-28-85; 8:45 am]

BILLING CODE 4910-59-M

1977-85 Wayne School Buses; Public Hearing Rescheduled

The National Highway Traffic Safety Administration has rescheduled for October 1, 1985, a public hearing originally scheduled for September 4, 1985, at which the Wayne Corporation will be afforded an opportunity to present data, views, and arguments relating to an initial determination of noncompliance with Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength,* in the 1977-85 Wayne school buses. Notice of the initial determination of noncompliance and the original scheduling of the hearing appeared in the **Federal Register** on August 13, 1985 (FR 32671).

The rescheduling of the hearing responds to a petition for additional time in which to prepare for the hearing made by Wayne Corporation in a letter of August 16, 1985. Wayne represented that it would be unable to present a full statement of its position on September 4, 1985, because it would have inadequate time to analyze the information upon which the agency based its initial determination of noncompliance, as the months of August and September are traditionally the time that the corporation completes its manufacture and delivery of school buses on order for the school year that begins in September 1985; and the original date would be unduly burdensome for its personnel.

The agency believes that the public interest will best be served by a brief postponement of the hearing. Allowing Wayne additional time to make a complete presentation at the time of their hearing will facilitate the ability of the public to obtain a clear understanding of Wayne's position in this matter. The agency believes that a brief postponement will not significantly compromise the public's interest in safety.

Therefore, in light of the foregoing, the public hearing relating to the intitial determination on noncompliance with Standard No. 221 in the 1977-85 Wayne school buses will be held at 10:00 a.m. on October 1, 1985, in Room 2230, Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, D.C. 20590.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Gail Willis, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6113, 400 Seventh Street SW., Washington, D.C. 20590, telephone 202-426-2832, before close of business on September 24, 1985.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590.

Issued on August 23, 1985.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 85-20618 Filed 8-28-85; 11:42 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Advisory Committee to the National Center for State and Local Law Enforcement Training Meeting

Name: Advisory Committee to the National Center for State and Local Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for the meeting includes opening remarks by the Director of FLETC and Committee Co-Chairman; administrative matters; summary of training activities; program development status; new training concepts for consideration; and new business.

DATE: September 10-11, 1985; 9:00 a.m.-5:00 p.m.

ADDRESS: Building 262, Room N-5; Federal Law Enforcement Training Center, Glynco, Georgia 31524.

E.T. Stevenson,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-20649 Filed 8-28-85; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administraion has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 26, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Extension

1. Department of Veterans Benefits
2. Compliance Report of Proprietary Institutions
3. VA Form 27–4274
4. On occasion
5. Small Businesses for profit
6. 359 responses
7. 359 hours
8. Not applicable.

[FR Doc. 85–20660 Filed 8–28–85; 8:45 am]

BILLING CODE 8320–01–M

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Old Colony Inn, 1st and N. Washington Street, Alexandria, Virginia, 22313, on November 13 and 14, 1985. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8 a.m., on November 13, and 14, to discuss the general status of the program. To asure adequate accommodations, those who plan to attend should contact Dr. Ping C. Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202–389–3702), prior to November 9, 1985.

The meeting will be closed from 8 a.m. to 5 p.m. on November 13, and from 8 a.m. to 12 noon on November 14, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92–463, as amended by section 5(c) of Pub. L. 94–409, and subsection (c)(6) and (c)(9)(B) of § 552b, title 5, United States Code. During its portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: August 21, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–20661 Filed 8–28–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 168
Thursday, August 29, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY CREDIT CORPORATION

TIME AND DATE: 3:00 p.m., September 6, 1985.

PLACE: Room 104A-Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: George E. Rippel, Deputy Secretary, Commodity Credit Corporation, Room 5714 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, D.C. 20013; telephone (202) 447-4785.

Dated: August 26, 1985.

George E. Rippel,

Deputy Secretary, Commodity Credit Corporation.

[FR Doc. 85-20760 Filed 8-27-85; 11:34 am]

BILLING CODE 3410-05-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Monday, August 26, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Georgetown Savings Bank, an operating noninsured savings bank located at 7 North Street, Georgetown, Massachusetts, for Federal deposit insurance.

Application of National Bank of Commerce, Memphis, Tennessee, for consent to purchase certain assets of and assume the liability to pay deposits made in the Germantown, Tennessee, Branch, and the Raleigh and Whitehaven Branches located in Memphis, Tennessee, of Home Federal Savings and Loan Association of Memphis, Memphis, Tennessee, a non-FDIC-insured institution.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,305-NR
Penn Square Bank, National Association, Oklahoma City, Oklahoma

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: August 26, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-20751 Filed 8-27-85; 11:14 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, September 3, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities and to establish one branch:

The Bank of Massachusetts, Chelsea, Massachusetts, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in Social Services Credit Union, Boston, Massachusetts, a non-FDIC-insured institution, and for consent to establish the sole office of Social Services Credit Union as a branch of the Bank of Massachusetts.

Application for consent to purchase assets and assume liabilities and establish two branches:

Mid-State Bank and Trust Company, Altoona, Pennsylvania, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in the New Enterprise Bank, New Enterprise, Pennsylvania, and to establish the two offices of the New Enterprise Bank as branches of Mid-State Bank and Trust Company.

Application for consent to consolidate and establish seven branches:

Northampton Institution for Savings, Northampton, Massachusetts, an insured mutual savings bank, for consent to consolidate, under its charter and with the title "Heritage/NIS Bank for Savings," with Heritage Bank for Savings, Amherst, Massachusetts, and for consent to establish the seven offices of Heritage Bank for Savings as branches of the resultant bank.

Memorandum and resolution re: Notice of application of Cape Cod Bank and Trust Company, Hyannis, Massachusetts to withdraw securities from listing with the Boston Stock Exchange.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,299-SR
The Citizens State Bank Viola, Kansas
Case No. 46,300-SR
Franklin Bank Houston, Texas
Case No. 46,301-L
The First National Bank of Midland Midland, Texas

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC

Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: August 27, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–20795 Filed 8–27–85; 2:53 pm]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 522b), notice is hereby given that at 2:30 p.m. on Tuesday, September 3, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act' (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Request for reconsideration of a previous denial of an application for Federal deposit insurance:

Anchor Thrift & Loan Association, an operating noninsured industrial bank located at 1029 Pacific Coast Highway, Seal Beach, California.

Recommendation regarding the liquidation of bank's assets acquired by the Corporation its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,836–L (Amendment)
The First National Bank of Midland, Midland, Texas

Personnal actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, ets.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation , at (202) 389–4425.

Dated: August 27, 1985.

Federl Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–20796 Filed 8–27–85; 2:52 pm]

BILLING CODE 6714–01–M

5

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, September 5, 1985.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Insurance Fund Report.
4. Proposed Rule: Credit Union Service Organizations, Part 701.27, NCUA Rules and Regulations.
5. Proposed Revision to Part 748, NCUA Rules and Regulations, Report of Crime and Catastrophic Acts.
6. Operating Income for Calendar Year 1986.

RECESS: 10:20 a.m.

TIME AND DATE: 10:30 a.m., Thursday, September 5, 1985.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Central Liquidity Facility Lines of Credit for State Credit Union Share Insurance Corporations. Closed pursuant to exemption (8).
3. Special Assistance to Prevent Liquidation Under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Administrative Action Under Section 116(3)(b) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Appeal of Preliminary Share Insurance Determination. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. Appeal of Government Priority Claim Determination. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
7. Reports to the Board. Closed pursuant to exemptions (8) and (9)(A)(ii).
8. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–20794 Filed 8–27–85; 2:40 pm]

BILLING CODE 7535–01–M

6

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–85–10]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 33888, August 21, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, August 27, 1985.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Borad required changing the date of this meeting to Thursday, August 29, in order to obtain a quorum and that no earlier announcement was possible.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa.

Catherine T. Kaputa.

Alternate Federal Register Liaison Officer.

June 13, 1985.

[FR Doc. 85–20820 Filed 8–27–85; 3:52 pm]

BILLING CODE 7533–01–M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 3, 1985.

A closed meeting will be held on Wednesday, September 4, 1985, at 2:30

p.m. Open meetings will be held on Thursday, September 5, 1985, at 9:30 a.m. and on Wednesday, September 11, 1985, at 9:30 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, September 4, 1985, at 2:30 p.m., will be:

Withdrawal of authorization for administrative proceeding of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive action.

The subject matter of the open meetings scheduled for Thursday, September 5, 1985, and Wednesday, September 11, 1985 from 9:30 a.m. to 5:00 p.m., will be:

The Commission will meet with representatives of the legal, financial, and business communities to discuss major issues of mutual interest and concern, including, but not limited to, tender offer regulation, internationalization of the securities markets, currency and interest rate swaps, and new financial products and services. For further information please contact Alan L. Dye at (202) 272-2014.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alan L. Dye at (202) 272-2014.

John Wheeler,

Secretary.

August 27, 1985.

[FR Doc. 85-20826 Filed 8-27-85; 4:01 pm]

BILLING CODE 8010-01-M

federal register

Thursday
August 29, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Certification of Student Recreational, Recreational, Student Private, and Private Pilots; Proposed Rule

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
14 CFR Part 61
[Docket No. 24695; Notice No. 85-13A]

Certification of Student Recreational, Recreational, Student Private, and Private Pilots

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces the extension of the comment period for Notice of Proposed Rulemaking No. 85-13, which invites comments relative to amending the regulations to establish recreational pilot certificates, introduce new concepts in pilot certification, add a 2-hour annual training requirement for recreational and private pilots, and establish annual review and recent flight experience requirements for recreational and private pilots with less than 400 hours of flight time. The intent of this proposal is to introduce training techniques that involve a more basic approach to flight fundmentals as well as training and testing to a standard in lieu of traditional aeronautical experience requirements. This extension is necessary to afford all interested parties an opportunity to present their views on the proposed rulemaking.

DATE: Comments must be received on or before October 24, 1985.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention, Rules Docket (AGC-204), Docket No. 24695, 800 Independence Avenue SW., Washington, DC 20591; or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, DC 20591. All comments must be marked: Docket No. 24695. Comments may be inspected in Room 916 weekdays, except Federal holidays between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: James F. Byers, Certification Branch, AFO-840, General Aviation and Commercial Division, Office of Flight Operations, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 426-8196.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking action by submitting written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the address indicated above. All communications received on or before the closing date for comments will be considered by the Administrator before taking final action on this proposed rulemaking. The proposals contained in Notice 85-13 may be changed in light of comments received. All comments submitted will be available in the rules docket for examination by interested parties both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24695." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of Notice 85-13 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify Notice 85-13.

Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On June 25, 1985, the FAA published Notice 85-13 (50 FR 26286), which provided for a 90-day comment period, closing on September 24, 1985. In that notice, the FAA proposed many changes that would have considerable effect on recreational and private pilots. It proposed to amend the regulations to establish a new kind of pilot certificate, a recreational pilot certificate. The notice proposed changes in the process by which private pilots must quality for pilot certificates. The notice also proposed increased periodic training requirements and review requirements for private pilots. The intent of this proposal is to introduce training techniques that involve a more basic approach to flight fundamentals as well as training to a standard in lieu of traditional experience requirements.

The FAA invited interested persons to submit comments and suggestions as to future action regarding this rulemaking. Since Notice 85-13 was published, several requests have been received for extension of the comment period from persons wishing more time in which to study the proposal and to prepare comments.

This is one of the largest single proposals affecting general aviation pilots issued by the FAA in years. The FAA considers it vital to obtain the comments of all interested persons concerning the potential safety and economic impact of the proposal and to obtain suggestions for improving it.

The proposal has received intense interest from the general aviation community. One large organization requested 500 additional copies to distribute among its membership.

Conclusion

This document extends the comment period on an NPRM to afford the public and industry with additional time in which to review and respond to this notice. For reasons discussed in Notice 85-13, the FAA has determined the notice involves a proposed regulation which is considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and that the notice is not major as defined in Executive Order 12291. In addition, for the above reasons, the FAA certifies that the regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Extension of Comment Period

A major general aviation organization with more than 100,000 members and representing a category of pilots who would be most affected by the proposed rule change to Part 61 has requested that the FAA extend the comment period to allow its members and affected pilots to become familiar with the proposal.

The FAA has become aware that many individuals in industry have not received this notice and may not have had an opportunity to comment on its contents within the original comment period. The FAA recognizes that disseminating material such as Notice 85-13 to all interested persons takes time. In addition, it takes time to fully analyze the proposals so that all potential problem areas are identified and brought to the agency's attention. For this reason, the FAA does not wish to unduly rush this important process.

In consideration of the above, the FAA concludes that the comment period should be extended. Accordingly, the comment period for Notice 85-13 is extended to October 24, 1985.

List of Subjects in 14 CFR Part 61

Aviation safety, Student private pilots, Private pilots, Eligibility requirements, Aeronautical knowledge, Operational experience, Cross country flight privileges, Limitations.

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

Issued in Washington, DC, on August 26, 1985.

William T. Brennan,

Acting Director of Flight Operations.

[FR Doc. 85-20632 Filed 8-28-85; 12:26 pm]
BILLING CODE 4910-13-M

Federal Register

Thursday
August 29, 1985

Part III

Environmental Protection Agency

40 CFR Part 761

Response to Exemption Petitions; Proposed Rule and Response to Ward Transformer Company Petition for Exemption; Denial of Exemption Petition

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-66008C; TSH FRL 2889-3]

Response to Exemption Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This rule proposes action on 22 petitions for exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. In this rule, EPA proposes to: grant eight individual exemption petitions; grant a class exemption including six individual exemption petitions; deny six individual exemption petitions; and dismiss two individual exemption petitions.

DATES: An informal hearing, if requested, will be held in Washington, D.C. approximately October 28, 1985. The exact time and location of the hearing will be available by calling EPA's TSCA Assistance Office listed under "**FOR FURTHER INFORMATION CONTACT.**" Comments on the proposed rule and requests to participate in the informal hearing must be submitted by October 15, 1985. Reply comments made in response to issues raised at the hearing must be submitted no later than 1 week after the date of that hearing.

See Unit I of **SUPPLEMENTARY INFORMATION** for EPA's procedures for conducting rulemaking on these exemption petitions.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to:

Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room E-209, 401 M St., SW., Washington, DC 20460.

Comments should include the docket number OPTS-66008C. Comments received on this proposed rule will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107 at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M St., SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

Copies of this proposed rule and its support documents can be obtained from the TSCA Assistance Office listed above.

SUPPLEMENTARY INFORMATION:

I. Comments and Rulemaking Procedures

A. Confidential Business Information

EPA encourages the submission of nonconfidential information. However, commenters who believe that they can state their position only by using information claimed confidential may submit it in accordance with the requirements of 40 CFR 750.16 (for manufacturing exemptions) and 40 CFR 750.36 (for processing and distribution in commerce exemptions). Commenters who submit confidential information must, at the same time, submit a nonconfidential summary of the information claimed to be confidential for inclusion in the public record. Please mark information claimed confidential "CONFIDENTIAL" and send it via certified mail to the Document Control Officer (see address listed under "**ADDRESS**"). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. Information not marked "CONFIDENTIAL" will be placed in the public record and may be disclosed publicly by EPA without prior notice.

B. Hearing

EPA will conduct the hearing in accordance with EPA's "Procedures for Conducting Rulemaking Under section 6 of the Toxic Substances Control Act" under 40 CFR Part 750. Persons who want to participate in the informal hearing must write to EPA's TSCA Assistance Office (see address under "**FOR FURTHER INFORMATION CONTACT**"). All requests to participate must include an outline of topics to be addressed, the amount of time requested for the opening statement, and the names of participants. The informal hearing is meant to provide an opportunity for petitioners and other interested parties to present additional information or to discuss new issues, not to repeat information already presented in written comments.

II. Background

A. Statutory Authority

Section 6(e) of the Toxic Substances Control Act (TSCA) 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

EPA's Interim Procedural Rules for PCB Manufacturing Exemptions describe the required content of manufacturing exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the **Federal Register** of November 1, 1978 (43 FR 50905) and are codified at 40 CFR 750.10 through 750.21.

EPA's Interim Procedural Rules for Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the **Federal Register** of May 31, 1979 (44 FR 31560) and are codified at 40 CFR 750.30 through 750.41.

B. History of This Rulemaking

In the **Federal Register** of July 10, 1984 (49 FR 28172), EPA promulgated the final PCBs Exclusions, Exemptions, and Use Authorizations Rule (hereinafter referred to as the Uncontrolled PCB Rule) addressing the manufacture, processing, distribution in commerce, and use of certain inadvertently generated and recycled PCBs in low level concentrations. That rule amends the PCB rule published in the **Federal Register** of October 21, 1982 (47 FR 46980) (the Closed and Controlled Waste Manufacturing Processes Rule) by excluding additional processes from regulation.

In the same issue of the **Federal Register**, the Final PCB Exemptions Rule (49 FR 28154) acted on 109 of the pending exemption petitions and deferred action on the Ward Transformer petition and on 49 petitions for exemption to manufacture, process, and distribute in commerce inadvertently generated PCBs. EPA believed that many petitions may have been made unnecessary by the Uncontrolled PCBs Rule. A notice of final action addressing the Ward

Transformer petition is published elsewhere in this issue of the **Federal Register.**

In the July 10, 1984 proposed rule-related notice (49 FR 28203), EPA requested that the 49 petitioners affected by the Uncontrolled PCB Rule evaluate that rule and determine whether they still need an exemption. Any petitioner still needing an exemption was to submit written comments renewing its petition by October 1, 1984. EPA stated that the Agency would issue a notice of proposed rulemaking on renewed petitions. Eight of the 49 petitions were renewed. The other 41 petitioners either withdrew their petitions or failed to renew their petitions by the end of the comment period.

After promulgation of the Final PCB Exemptions Rule, EPA received and accepted for consideration 14 new exemption petitions. Thus, this rule proposes action on 22 petitions for exemption from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. The November 1, 1983 Proposed PCB Exemptions rule describes in detail the history of PCB regulations. Specific PCB regulations and their history are discussed in later units of this rule where applicable to the disposition of exemption petitions.

C. Effect of This Rule on Previous Policy Statements

In the **Federal Register** of January 2, 1979 (44 FR 108), EPA announced that petitioners who had previously filed manufacturing exemption petitions could continue the activities for which they sought exemption until EPA acted on their petitions. In the **Federal Register** of March 5, 1980 (45 FR 14247), EPA extended this policy to allow all petitioners to continue the activities for which they sought exemption until EPA acted on their petitions, as long as activities were underway before January 1, 1979 (for manufacturing) or July 1, 1979 (for processing and distribution in commerce).

The following exemption petitions are for activities which were not underway prior to the appropriate dates: the Mobay petition to distribute in commerce or export PCBs; the Dainichiseika petition to export PCBs; the Supelco petition to export PCBs; the Radian petition to export PCBs; and the ALCOA petitions to distribute in commerce, import and export PCBs. Petitioners have not been allowed to pursue PCB activities under those petitions until EPA takes final action.

Once EPA has acted to grant or deny an exemption petition, EPA's policy of permitting activities to continue will become unnecessary. In the final PCB Exemptions Rule published in the **Federal Register** of July 10, 1984 (49 FR 28154), EPA revoked the policy for those pre-1979 petitions on which final action was taken. EPA will revoke the policy for all exemption petitions included in this rulemaking as of the effective date of the final rule.

A petitioner whose exemption is granted will be allowed to manufacture, process or distribute in commerce PCBs only for the period of time granted in the final rule. When the exemption expires, a petitioner will not be permitted to engage in such activities, even if it renews its exemption request, until EPA has acted on that request. This limitation does not apply to manufacturers, processors, and distributors of PCBs in "small quantities for research and development" for whom EPA is proposing to grant exemption in Unit V.D of this proposed rule.

EPA will continue its policy of requiring petitioners who file late exemption petitions to show "good cause" why EPA should accept the petition as described in the notice published in the **Federal Register** of March 5, 1980 (45 FR 14247). New exemption petitions submitted by petitioners denied exemptions in this rulemaking will be considered as late petitions.

III. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits to society from granting an exemption. Specifically, EPA considers the following factors:

1. The effect of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment.

2. The benefits to society of granting an exemption and the reasonably ascertainable economic consequences of denying an exemption petition.

These are essentially the same factors that EPA considers under TSCA section 6(c) in deciding whether a chemical substance or mixture presents an unreasonble risk of injury to health or the environment under TSCA section 6(a), and in evaluating uses of PCBs under TSCA section 6(e).

A. Effects on Human Health and the Environment

In deciding whether to grant an exemption, EPA considers the effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment. The effects of PCBs are described in various documents that are part of the rulemaking record for the PCB Ban Rule published in the **Federal Register** of May 31, 1979 (44 FR 31514). Before the proposed PCB Exemption Rule was published, EPA evaluated this information along with new information submitted to the Agency and other recent literature. The results are presented in EPA's "Response to Comments on the Health Effects of PCBs" (August 19, 1982). During the proposed PCB Exemptions Rule, two commenters presented additional information on the adverse health effects of PCBs. EPA evaluated this information as well as other recent literature, and has determined that none of the information submitted changes EPA's conclusions about the health effects of PCBs. The results are presented in EPA's "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984) and "Response to Comments on the Uncontrolled PCB Rule" (June 1984). All of these documents are included in the rulemaking record and are summarized below. Copies of these documents are available from EPA's TSCA Assistance Office (see address listed under **FOR FURTHER INFORMATION CONTACT**).

1. *Health effects.* EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, circulate throughout the body, and be stored in the fatty tissue.

Available animal studies indicate an oncogenic potential, the degree to which would depend on exposure. Available epidemiologic data are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiological research is needed to correlate human and animal data, but EPA finds no evidence to suggest that the animal data would not predict an oncogenic potential in humans.

In addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available

human data indicate that prenatal exposure to PCBs can result in various degrees of developmental toxic effects. Postnatal effects have been demonstrated in immature animals, following exposure to PCBs prenatally and via breast milk.

In some cases chloracne may occur in humans exposed to PCBs. Severe cases of chloracne are painful and disfiguring, and symptoms may persist for an extended time. Although the effects of chloracne are reversible, EPA considers these effects to be significant.

2. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known and decompose very slowly once they are in the environment. They remain in the environment and are taken up and stored in the fatty tissue of organisms. EPA has concluded that PCBs can be concentrated in fresh water and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of food sources containing PCBs. Available data show that PCBs affect the productivity of phytoplankton and the composition of phytoplankton communities; cause deleterious effects on environmentally important freshwater invertebrates; and impair reproductive success in birds and mammals.

PCBs also are toxic to mammals at very low exposure levels. The survival rate and reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs have also been demonstrated.

3. *Risks.* Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, there is the potential for reproductive effects, developmental toxicity, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

Minimizing exposure to PCBs should minimize any potential risk. EPA takes exposure into consideration in evaluating exemption petitions.

B. Benefits and Costs

The benefits to society of granting an exemption and the reasonably ascertainable costs of denying a petition vary depending on the petitioner and the activity for which exemption is requested. EPA has taken the benefits and costs into consideration when evaluating each exemption petition. The specific benefits and costs of denying each petition are discussed in later units of this proposed rule.

IV. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs before EPA can grant an exemption. EPA considers several factors in determining whether a petitioner has made good faith efforts. For each exemption petition, EPA considers the kind of exemption which the petitioner is requesting, whether substitutes exist, and whether the petitioner expended time and money to develop or search for a substitute. In each case the burden is on the petitioner to show specifically what it does to substitute non-PCBs for PCBs or to show why it does not seek to substitute non-PCBs for PCBs. EPA's evaluation of each petitioner's attempt to demonstrate a good faith effort is discussed in later units of this proposed rule.

V. Disposition of Exemption Petitions

A. Inadvertently Generated PCBs

The Uncontrolled PCB Rule excluded from the prohibition on the manufacture, processing, distribution in commerce, and use of PCBs those PCBs inadvertently generated in an "excluded manufacturing process." An "excluded manufacturing process" as defined at 40 CFR 761.3 is a manufacturing process or importation in which the concentration of inadvertently generated PCBs in the product is limited to an annual average of less than 25 ppm, with a 50 ppm maximum, except that the concentration of inadvertently generated PCBs in the components of detergent bars must be less than 5 ppm. Limits are also placed on the concentration of PCBs discharged to air and water from an excluded manufacturing site.

The following eight petitions for exemption to manufacture, process, and distribute in commerce inadvertently generated PCBs above allowable concentation levels for "excluded manufacturing processes" were renewed. EPA is proposing to dismiss two of these exemption petitions, grant three exemptions, and deny three exemption petitions.

1. *Reed Plastics, and U.S. Printing Ink Corporation.* EPA received two petitions from processors of pigments containing inadvertently generated PCBs. Reed Plastics (Reed), Holden, MA 01520, and U.S. Printing Ink Corporation (USPI), East Rutherford, NJ 07073, each petitioned for individual exemption to process pigments containing PCBs at concentrations greater than regulatory limits. These companies currently have to inventories of pigment containing PCBs above regulatory limits. However, they requested exemption to process pigments containing PCBs above regulatory limits in the event that their suppliers exceed regulatory limits. EPA proposes to dismiss both the Reed and USPI petitions. Processors, distributors, and users of inadvertently generated PCBs do not need exemptions, for the reasons discussed below.

The Uncontrolled PCB Rule published in the **Federal Register** of July 10, 1984 (49 FR 28172), placed limits on the concentration of PCBs leaving the site of processes which generate PCBs as inadvertent byproducts. EPA also placed limits on the concentration of inadvertently generated PCBs in products imported into the United States. The processing, distribution in commerce, and use of products of "excluded manufacturing processes" are excluded from the prohibitions on the processing, distribution in commerce, and use of PCBs. Thus, the intent of the Uncontrolled PCB Rule is to limit the addition of PCBs into the environment by regulating the concentration of inadvertently generated PCBs in products at the point where the PCBs are introduced into commerce.

Processors and distributors of products containing inadvertently generated PCBs have the responsibility of determining that their suppliers' processes qualify as "excluded manufacturing processes," or that their suppliers have exemptions to manufacture or import, and distribute PCBs over regulatory limits. However, manufacturer or importer cannot assign its duty to comply with limits on the concentration of PCBs in products. Thus, EPA will not accept for consideration exemption petitions from processors and distributors of inadvertently generated PCBs except where the petition is for an exemption to process or distribute inadvertently generated PCBs in inventories accumulated prior to the effective date of the Uncontrolled PCB Rule (October 1, 1984).

In considering petitions for exemption to manufacture, import, or distribute in commerce inventories of inadvertently generated PCBs above allowable levels, EPA will evaluate the exposures and risks associated with the further processing, distribution and use of the PCBs. EPA considered such exposure issues when it established average and maximum concentration levels for inadvertently generated PCBs at the point of their introduction into

commerce, and excluded the further processing, distribution and use of those PCBs in the Uncontrolled PCB Rule.

2. *Aluminum Company of America (ALCOA).* The Aluminum Company of America, Pittsburgh, PA 15219, renewed its petitions for exemption (a) to manufacture anhydrous aluminum chloride ($AlCl_3$) contaminated with inadvertently generated decachlorobiphenyl above allowable levels; and (b) to distribute in commerce $AlCl_3$ containing inadvertently generated PCBs above allowable levels.

ALCOA's Anderson County Works produces $AlCl_3$ and converts 90 percent of the $AlCl_3$ to aluminum metal. According to information provided by ALCOA, there are no PCBs in the aluminum metal and all PCBs are concentrated in process wastes which are disposed of in accordance with EPA regulations. Thus, the 90 percent of the $AlCl_3$ which is converted to metallic aluminum is part of an "excluded manufacturing process" since EPA considers a manufacturing process to be all of a series of unit operations at one site resulting in the production of a product. Thus, ALCOA does not need an exemption to manufacture $AlCl_3$ for use in the production of aluminum metal.

Of the $AlCl_3$ produced by ALCOA, 10 percent is not converted to aluminum metal. ALCOA petitioned for exemptions to manufacture and distribute in commerce that 10 percent of $AlCl_3$ as a product as well as the substantial amount of $AlCl_3$ in inventory which will be distributed in commerce if an exemption is granted. Although the Anderson County Works is currently not in operation, the petitioner requested that it be allowed to manufacture and distribute in commerce 10 percent of its $AlCl_3$ production capacity as a product in the event that the plant is to be reopened within the exemption period. The existing inventory $AlCl_3$ will be distributed in commerce, should the exemptions be granted, whether or not the plant is reopened.

EPA proposes to deny both of the ALCOA exemption petitions because granting the exemptions would result in an unreasonable risk of injury to health or the environment and because the petitioner has failed to demonstrate good faith efforts. ALCOA provided no information on the downstream uses of the $AlCl_3$ although ALCOA did state that customers have been notified of the PCB content in the $AlCl_3$. EPA has received information indicating that $AlCl_3$ is commonly used in the manufacture of products such as deodorants, blood coagulants and dermatological antacids. EPA has concluded that the use of $AlCl_3$ containing PCBs over regulatory limits in such products would result in some additional risk of consumer exposure to PCBs.

Furthermore, the amount of existing inventory which would be distributed in commerce for these uses under an exemption is large. Several times the amount of ALCOA's existing inventory would be distributed in commerce under an exemption if the plant were to become operational for a substantial portion of the 1-year exemption period.

ALCOA estimated that the economic consequences of denying the petitions would involve the costs of shutdown of the plant, the resulting loss of employment in the area, and the cost of conversion to a conventional metallic aluminum production process. EPA does not consider it reasonable to include in the estimated costs of denial the cost of shutting down a plant which is (i) currently not in operation, and (ii) primarily involved in an "excluded manufacturing process" which will not be affected by denial of the petitions.

EPA has estimated the economic impact of denial of the petitions, assuming that the plant will be operational for the entire exemption period. EPA estimated the worst-case incremental cost of denying the petitions, assuming that ALCOA must shut down 10 percent of its $AlCl_3$ production capacity, to be in the range of $28,926 to $31,519 per lb of PCBs prevented from distribution in commerce. Should ALCOA be able to convert all of the $AlCl_3$ to aluminum metal, EPA estimated the costs of denying the petitions to be $2,985 to $2,995 per lb of PCBs prevented from distribution, plus the costs of any necessary modifications to the process. EPA believes the actual cost per lb of PCBs will be closer to the lower-cost-estimate.

EPA has determined that the potential risks posed by the large amount of PCBs which would be distributed in commerce under an exemption, the high concentrations of PCBs in the $AlCl_3$, and the use of the $AlCl_3$ in dermatological products outweigh the relatively low incremental costs of denying the ALCOA exemption petitions.

Although the proposed denial of ALCOA's petitions is based on EPA's conclusion that granting the exemptions would result in an unreasonable risk, EPA has also concluded that the Agency can not make a determination of good faith efforts on the part of the petitioner. Although ALCOA has indicated that it has conducted research and development to reduce the PCB concentration in the $AlCl_3$, ALCOA has provided no information on the amount of time or money expended in these efforts. The information submitted by ALCOA over the past 5 years shows no significant reduction in the level of PCBs in the $AlCl_3$. Additionally, there are alternative supplies of $AlCl_3$ which do not contain PCBs above regulatory limits.

3. *American Hoechst Corporation (Hoechst).* The American Hoechst Corporation, Somerville, NJ 08876, renewed its petitions for exemption (a) to import diarylide pigment containing inadvertently generated PCBs over allowable levels, and (b) to distribute in commerce pigment containing PCBs above regulatory limits. EPA proposes to grant for a period of 1 year both of the Hoechst petitions because granting an exemption would not result in an unreasonable risk of injury to health or the environment, and the petitioner has demonstrated good faith efforts. EPA proposes, as a condition of the exemption, a requirement that Hoechst notify its customers that the concentration of PCBs in the pigment may exceed the regulatory maximum of 50 ppm.

a. *Unreasonable risk finding.* The concentrations of PCBs in the pigment, submitted as proprietary information, are only slightly above the regulatory limits. The total amount of PCBs imported and distributed in commerce would be less than 2.5 lbs during the exemption period. The pigment would be distributed in commerce for use as a colorant in automotive paints, plastics, and wallpaper. EPA has previously determined that pigments generally compose no more than 20 percent of final products.

American Hoechst estimated the reasonably ascertainable costs of denial to be equal to the lost value of potential sales of the imported pigment. Based on information submitted by Hoechst, EPA has determined that the costs of denial of the petitions will be substantial given the small quantity of PCBs involved. The incremental costs of denying the petitions are estimated to be in the range of $160,000 to $580,000 per lb of PCBs in the pigments, less the acquisition cost of the pigment. EPA believes the actual incremental costs to fall in the high end of the range, less acquisition costs, because of the low concentration of PCBs involved. In addition, denial of the petition may result in societal costs due to the use of inferior pigments.

b. *Good faith efforts finding.* American Hoechst has demonstrated good faith efforts (i) to develop a substitute for the pigment, and (ii) to reduce the concentration of PCBs in the

pigment. Since the submission of its original 1978 petition, Hoechst has expended substantial sums in the search for a substitute and in research to reduce the PCB concentration in the pigment. Hoechst maintains that it has thus far found no adequate substitutes. Information submitted by Hoechst since 1978 indicates that the concentration of PCBs in the product has decreased over that time. In proposing to grant the Hoechst exemption petitions, EPA presumes the petitioner's continued good faith efforts. If Hoechst is granted an exemption in the final rule, Hoechst will have a substantial burden of proof should it apply for renewal at the end of the exemption period.

4. *Dainichiseika Color & Chemicals America, Incorporated.* Dainichiseika Color and Chemicals America (Dainichiseika), Clifton, NJ 07012, imported phthalocyanine blue crude from Taiwan in 1982 under a petition for exemption to import crude colorants containing PCBs at concentrations of 50 ppm or greater. EPA policy allowed the petitioner to continue activities until EPA acted on that petition. (See Unit II.C of his preamble.) Before EPA acted, Dainichiseika's U.S. customer withdrew its petition for exemption to process and distribute pigments containing greater than 50 ppm PCBs, leaving Dainichiseika without a domestic buyer.

Dainichiseika withdrew its pending petition for exemption to import PCBs and renewed its exemption petition to distribute its remaining inventory of 62,400 lbs of blue crude containing inadvertently generated PCBs at 80 ppm. The petitioner also requested that should EPA deny its petition for exemption to distribute the crude within the U.S., EPA consider a new Dainichiseika petition for exemption to (a) export the PCBs to a foreign buyer, or (b) reexport the PCBs to the original manufacturer in Taiwan.

EPA proposes to grant Dainichiseika a 1-year exemption to distribute in commerce its existing inventory of 62,400 lbs of phthalocyanine crude contaminated with PCBs at 80 ppm, provided that Dainichiseika notifies its customers of the PCB concentration in the crude. In proposing to grant the exemption, EPA has determined that no unreasonable risk of injury to health or the environment will result, and that the petitioner has demonstrated good faith efforts to comply with the letter and spirit of the PCB regulations.

In proposing to grant the Dainichiseika petition to distribute in commerce its existing inventory of blue crude containing 80 ppm PCBs, EPA also proposes to exempt from the prohibitions on the processing, distribution in commerce and use of PCBs, the further processing and distribution in commerce of these PCBs. Accordingly processors and distributors of Dainichiseika's inventory of phthalocyanine blue crude would not have to apply for exemptions.

a. *Unreasonable risk finding.* In making the unreasonable risk finding for this petition, EPA has considered the exposures and associated risks involved in the further processing, distribution in commerce and use of the pigment. EPA previously considered these exposure issues when it excluded certain post manufacture activities involving inadvertently generated PCBs from the section 6(e) prohibitions (see Unit V.A.1).

The exposures, and associated risks involved in the distribution in commerce of this crude, as well as the further processing, distribution in commerce and use of the crude are estimated to be on the same order of magnitude as the concentration levels allowed for "excluded manufacturing processes" in the Uncontrolled PCB Rule. The crude will be processed into pigment for use in the manufacture of plastics, paints and printing inks. The rulemaking record in that rule shows that downstream processing of pigments results in the reduction of PCB concentration in consumer products. Pigments generally compose no more than 20 percent of the final paint and printing ink products, and no more than 2 percent of final plastic products. The total amount of PCBs that will be distributed in commerce under this exemption is less than 5 lbs.

Granting this exemption is consistent with the purpose of the Uncontrolled PCB Rule which is to limit the addition of PCBs into the environment by regulating the concentration of inadvertently generated PCBs in products at the point where the PCBs are introduced into commerce. No additional PCBs will be generated and introduced into commerce if this petition is granted. Less than 5 lbs of already existing PCBs will be distributed in commerce under this exemption.

EPA has determined that no unreasonable risk will result from the distribution in commerce of Dainichiseika's inventory of 62,400 lbs of phthalocyanine blue crude containing 80 ppm PCBs, or from the further processing, distribution in commerce and use of this pigment. These determinations are consistent with the unreasonable risk determination made in issuing the Uncontrolled PCB Rule. The economic consequences of denying the Dainichiseika petition, including the lost sale value of the pigment and the costs of disposal in accordance with EPA regulations at 40 CFR 761.60, would be in the range of $141,024 to $162,864.

b. *Good faith efforts finding.* The petitioner imported the pigment under an exemption petition with the reasonable expectation that its U.S. customer could and would legally process and distribute the pigment. Dainichiseika no longer intends to import pigments containing inadvertently generated PCBs above the levels established in the Uncontrolled PCB Rule. The exemption provision at section 6(e)(3)(B) was intended to allow additional time for businesses to comply with PCB regulations under TSCA section 6(e). EPA concludes that Dainichiseika has made and is making good faith efforts to comply with the PCB regulations.

The good faith efforts finding relies heavily on the fact that EPA policy allowed the petitioner to import the existing inventory under a pending petition, as well as the petitioner's intent to comply with EPA regulations issued since the import of the PCBs. Due to these circumstances, EPA is proposing to grant a 1-time exemption, after finding that the concentrations and quantity of PCBs in the blue crude will not pose an unreasonable risk. EPA does not anticipate that any similar exemption petitions will be filed. Any person or company filing a new exemption petition to distribute in commerce inadvertently generated PCBs over regulatory limits will have a substantial burden of proof in demonstrating good faith efforts within the historical context of the PCB regulations.

5. *Mobay Chemicals Corporation.* Mobay (previously Harmon Colors Corporation), Union, NJ 07083, petitioned for exemption to distribute in commerce its inventory of phthalocyanine pigment containing inadvertently generated PCBs at 150 to 210 ppm. The import of pigments containing greater than 50 ppm PCBs was prohibited at that time. Mobay contends that it had previously obtained assurances from the supplier that the pigment would not be contaminated above the 50 ppm cutoff level. Mobay then submitted a new petiton for exemption to distribute in commerce its inventory of this pigment. Mobay requested that, should EPA deny its petition for exemption to distribute in commerce its inventory within the United States, it be granted a 1-time exemption to return the pigments to the original manufacturer in Germany.

EPA proposes to deny the Mobay petition for exemption to distribute in

commerce pigment containing inadvertently generated PCBs above allowable levels, as well as the alternate petition for exemption to reexport the pigment to the original manufacturer in Germany. The Agency can not make the necessary findings of "no unreasonable risk" and "good faith efforts" for either the distribution in commerce petition or the reexport request.

In evaluating this petition, EPA has carefully considered the statutory requirements for evaluation of exemption petitions, Agency policy on exemption petitions for export of PCBs, and what impact the economic consequences of private business transactions should have on Agency decisions concerning exemption petitions. EPA has determined that the Agency will only consider terms of business agreements insofar as they clarify the circumstances involved. It is not the Agency's role to take action merely to redress the economic consequences of business decisions made by petitioners. Any proposed or final action on PCB exemption petitions. must be based on the requirements for exercising the Agency's statutory authority to grant exemption petitions as discussed in Units II, III, and IV of this preamble. Furthermore, Agency action on PCB exemption petitions must be consistent with prior policies on exemption petitions, until and unless those policies are changed or amended.

a. *Distribution in commerce.* EPA proposes to deny the Mobay petition for exemption to distribute in commerce its inventory of pigment containing PCBs over allowable levels because the Agency cannot find that the petitioner has made "good faith efforts" to comply with the limits on inadvertently generated PCBs. The pigments contained PCBs well over the 50 ppm level in effect at the time and the petitioner did not have an exemption to import PCBs above allowable concentration levels. Importers of PCB products are responsible for complying with the PCB regulations.

While the proposed denial is based primarily on the petitioners failure to demonstrate "good faith efforts," the Agency also can not make a finding of "no unreasonable risk." While only a small amount of PCBs would be distributed in commerce under the exemption, the concentrations of PCBs in the pigment are an order of magnitude higher than levels established in the Uncontrolled PCB Rule. EPA estimates that the exposures associated with the distribution in commerce, as well as further processing and use, of the pigment may pose an unreasonable risk of injury to health or the environment. While the possibility of additional risk is high the economic consequences of denying the petition are relatively low. Denial of the petition will result in costs to Mobay of disposing of the pigment in accordance with the regulations at 40 CFR 761.60. Based or proprietary information submitted by the petitioner, EPA estimated the economic consequences of denying the petition to be in the range of $74,524 to $306,000 per lb of PCBs. However, EPA concludes that the cost of denying the petitions will be on the low end of the range because of the relatively high concentration of PCBs in the pigment. Further, the bulk of the cost estimate reflects the lost sale value of the pigment, which is a cost resulting from the business transaction between Mobay and its supplier rather than the consequence of the proposed denial or of a change in the regulatory status of the PCBs.

b. *Export.* In considering Mobay's request for an alternate exemption to distribute in commerce PCBs for purposes of reexport to the foreign manufacturer, EPA considered whether the return of PCBs to a manufacturer constitutes export, and should be treated in accordance with EPA policy on exemption petitions for export of PCBs. In a policy published in the **Federal Register** of May 1, 1980 (45 FR 29115), EPA specified what petitioners who want to export PCBs must demonstrate to meet the statutory requirements of section 6(e)(3)(B) of TSCA:

i. EPA will not grant an exemption unless the nation to which export is destined has proper facilities for ultimate disposal.

ii. EPA will not grant an exemption for an export for a use which is not authorized within the United States.

iii. In the context of export, good faith efforts to find a substitute means that the burden is on the petitioner to show that there are no substitutes for the PCBs, produced either by the petitioner or a competitor, and that the petitioner proves it has expended time and money searching for a substitute.

Based on consideration of EPA's intent in issuing the above policy, the Agency has determined that petitions for exemption to reexport to a foreign supplier should be evaluated by the same criteria as petitions for exemption to export PCBs for distribution in commerce and use. The Agency treats petitions for export of PCBs more stringently than petitions for exemption to distribute the PCBs within the United States because EPA will have no control over the distribution, use, and disposal of PCBs once the PCBs have been exported. Whether exported to a foreign customer, or reexported to a foreign supplier, the concern over the ultimate distribution, use and disposal of PCBs remains.

Pigments containing greater than the maximum concentration of 50 ppm are not authorized for use within the United States. The Agency does not know of, and the petitioner has not demonstrated, the existence of proper PCB disposal facilities within Germany. The petitioner did not legally import the PCBs into the United States. In accordance with the discussion of good faith efforts above, EPA must place the responsibility for compliance with import regulations on the importer. The petitioners have, thus, failed to demonstrate "no unreasonable risk" and "good faith efforts" in accordance with the policy for EPA evaluation of exemption petitions to export PCBs.

B. Processing, Distribution in Commerce, Import, and Export of Equipment Containing PCBs, and Equipment Contaminated With PCBs

EPA received from the Aluminum Company of America (ALCOA) three petitions for exemption to (1) process and distribute in commerce within the U.S. hydraulic and heat transfer systems containing PCBs and other equipment contaminated with PCBs; (2) export hydraulic and heat transfer systems containing PCBs and other equipment contaminated with PCBs; and (3) import hydraulic and heat transfer systems containing PCBs, and other equipment contaminated with PCBs. EPA proposes to deny all three ALCOA petitions. The factors EPA considered in evaluating the ALCOA exemption petitions, and EPA's statutory findings on these petitions are discussed below by category of equipment.

1. *ALCOA heat transfer and hydraulic systems.* On May 31, 1979, the Agency authorized the non-totally enclosed use of PCBs at concentrations above 50 ppm in heat transfer and hydraulic systems. A condition of the use authorization was that all systems that ever contained PCBs at concentrations above 50 ppm were to be tested, flushed, and refilled with fluid containing less than 50 ppm PCBs at least annually until the PCB concentration in the system fell below 50 ppm. All heat transfer and hydraulic systems were to have less than 50 ppm PCBs by July 1, 1984. In the **Federal Register** of July 10, 1984 (49 FR 28172), EPA continued the use authorization for heat transfer and hydraulic systems containing less than 50 ppm PCBs. EPA

did not authorize the continued use of hydraulic systems containing 50 ppm PCBs or greater.

ALCOA has undetermined quantities of heat transfer and hydraulic systems placed in storage for salvage prior to July 1, 1979. Many of these systems contain greater than 50 ppm PCBs, some greater than 1,000 ppm PCBs. ALCOA also owns an undetermined quantity of heat transfer and hydraulic systems currently in operation containing less than 50 ppm PCBs. ALCOA requested exemptions to distribute in commerce, export, and import these systems as salvage.

ALCOA intends to drain all systems containing between 50 and 1,000 ppm PCBs prior to sale. Equipment with greater than 1,000 ppm PCBs will also be flushed with a non-PCB solvent. Outside surfaces of all equipment will be scraped, and steam or solvent cleaned. These activities are authorized under 40 CFR 761.60 for heat transfer and hydraulic systems prior to disposal, or for servicing and maintenance by the owner, but not for purposes of processing these systems for distribution in commerce, export, or import.

EPA has concluded that the petitioner has failed to demonstrate good faith efforts in its handling of heat transfer and hydraulic equipment containing PCBs. EPA is particularly concerned about the equipment placed in storage prior to July 1, 1979. Most of this equipment contains PCBs at 50 ppm or greater, with some containing more than 1,000 ppm PCBs. If this equipment was placed in storage for disposal, 40 CFR 761.65(a) required disposal of the equipment before July 1, 1984. If the equipment was placed in storage for reuse, the systems should all contain less than 50 ppm PCBs if ALCOA was in compliance with the conditions of the use authorization.

Furthermore, EPA has concluded that granting exemptions to ALCOA to process, distribute in commerce, import, and export the heat transfer and hydraulic systems would pose an unreasonable risk of injury to health or the environment due to the high concentrations of PCBs involved and the normal leaks and spills associated with the handling of this equipment. Without specific information on the concentrations of PCBs, the number of systems, or on the amount of PCB waste that would be generated during the exemption period, EPA cannot estimate the costs of denying the ALCOA petitions. Thus, EPA cannot make the statutory finding that granting there exemptions would not result in an unreasonable risk.

2. *ALCOA equipment contaminated with PCBs.* Under current EPA regulations and policies, no non-PCB equipment or material contaminated with PCBs may be processed, distributed in commerce, or used. However, EPA recognizes the tremendous economic and societal costs or requiring the disposal of all equipment and materials contaminated with PCBs. Therefore, EPA maintained the policy of allowing the owners of such items to work with the EPA Regional Offices in decontaminating the equipment or materials. When the Regional Office determines the decontamination to be adequate, the items are allowed to be used and distributed in commerce. EPA is currently drafting a national clean-up policy to provide a framework for consistent Regional clean-up efforts.

ALCOA has undermined quantities and types of non-PCB equipment which are contaminated with PCBs, and anticipates that additional equipment may be found to be contaminated with PCBs during the exemption period. ALCOA requests exemptions to process, distribute in commerce, export, and import this equipment after decontamination to 50 $\mu g/100\ cm^2$. ALCOA has provided little or no information on the types and quantities of equipment contaminated with PCBs and the levels at which the equipment is contaminated. After additional communications with the petitioner, EPA concluded that the petitioner itself has no real knowledge of the magnitude of the contamination problem. Without more specific information, EPA cannot determine reasonably ascertainable costs of denying an exemption to sell this equipment. Therefore, EPA cannot find that granting exemptions to distribute, export, and import this equipment will pose an unreasonable risk of injury to health and the environment.

EPA also finds that the petitioner has not demonstrated good cause for requesting an exemption to distribute equipment contaminated with PCBs when there exists an alternative mechanism for the petitioner to decontaminate the equipment and receive approval for the sale of that equipment. The petitioner did comment that without an exemption, it would be forced to deal with authorities in several different Regions. As indicated above, EPA is developing a national clean-up policy to standardize the policies of the Regions as much as possible. Even in the absence of a national policy, EPA cannot fully evaluate blanket exemption petitions for activities involving contaminated equipment under the section 6(e)(3)(B) exemptions process.

3. *Benefits and costs.* ALCOA estimated the reasonably ascertainable costs of denying the petitions based on past sales of salvage equipment. ALCOA's petitions stated that the value of equipment sold for reuse in 1982–83 totalled $2.5 million. ALCOA estimated that the value of salvage equipment sold for reuse in the first 10 months of 1984 totalled $3.5 million. EPA cannot reasonably estimate the economic consequences to ALCOA of denying the petitions without information on the types of equipment involved, the quantity of equipment involved, and the proportion of ALCOA's business which would be derived from the sales of PCB and PCB-contaminated equipment during the exemption period. Given adequate information, EPA would calculate the economic costs of denial as the sales value of the equipment less the costs to ALCOA of processing the equipment and disposing of the PCB and PCB-contaminated fluids and other wastes. A reasonable estimate of the cost of denial would be further mitigated should the petitioner be able to decontaminate the equipment to the satisfaction of the appropriate EPA Regional Offices and obtain permission to sell the equipment.

Thus, EPA has concluded that the costs of denial are not likely to be of such a magnitude to outweigh the potential risk of injury to health and the environment which would result from granting the petitions.

C. Research and Development

In the **Federal Register** of July 10, 1984, (49 FR 28193), EPA authorized indefinitely the use of PCBs in "small quantities for research and development." "Small quantities for research and development" is defined at 40 CFR 761.3 as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product." EPA concluded that authorizing this use of PCBs does not present an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the availability of substitutes; and the economic impact of various regulatory options.

In the Final PCB Exemptions Rule (49 FR 28154) EPA determined that there are no substitutes for PCBs for the continuation of important health, environmental, and analytical research, and that substitutes for PCBs in such applications will not be developed in the future. In this regard, there is a unique need for exemptions to manufacture, process, distribute in commerce, and export PCBs in small quantities for research and development. EPA determined that the manufacture, processing, distribution in commerce, export, and use of PCBs in small quantities for research and development will not pose an unreasonable risk of injury to health or the environment because of the small quantities involved and the procedures used to minimize human and environmental exposure to PCBs.

Based upon these prior EPA conclusions and specific information submitted by petitioners, EPA proposes to grant three individual exemptions to manufacture PCBs in small quantities for research and development, two individual exemptions to export PCBs in small quantities for research and development, and a class exemption for processors and distributors of PCBs in small quantities for research and development.

In general, the goal of section 6(e) is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. EPA believes that this goal does not apply to critical health, environmental, and scientific research on PCBs. In fact, PCBs will always be needed to ensure that the goal of TSCA section 6(e) is being met. In the Final PCB Exemptions Rule, EPA stated that the exemptions granted in that Rule for the manufacture, processing, distribution in commerce, and export of PCBs in small quantities for research and development would be automatically renewed at the end of each year unless the petitioner changes the quantity of PCBs or manner of manufacturing, processing, distributing in commerce, or exporting PCBs.

EPA intends to continue this policy. EPA would also automatically renew the manufacturing and export petitions which it proposes below to grant unless the petitioner notifies EPA of a change in the quantity of PCBs manufactured or exported, or in the manner of manufacturing or exporting the PCBs. Each year, EPA would automatically renew the class exemption for processing and distributing PCBs in commerce in small quantities for research and development until such time as EPA receives information affecting EPA's conclusion that granting the exemption will not result in an unreasonable risk of injury to health or the environment. EPA would also reserve the authority to exclude any processor or distributor from the class exemption upon determining that maintaining its exemption will pose an unreasonable risk of injury to health or the environment. Any changes in the disposition of individual exemptions, the class exemption, or exemptions for individuals within the class exemption would be published in a notice of proposed rulemaking. The petitioner would be allowed to continue its activities until a final rule is promulgated.

1. *Manufacture and export.* EPA received three petitions for exemption to manufacture small quantities of PCBs for research and development and two petitions for exemption to export small quantities of PCBs for research and development.

The Midwest Research Institute, Kansas City, MO 64110, the Radian Corporation, Austin TX 78766, and Wellington Science USA, College Station, TX 77840, petitioned for exemptions to manufacture PCBs in small quantities for research and development. Two of these petitioners want to manufacture less than 100 grams of PCBs per year. Radian Corporation will manufacture less than 500 grams in 1 year. EPA proposes to grant all three petitions for exemption to manufacture PCBs in small quantities for research and development based on the determinations discussed below in Units V.C.1.a and V.C.1.b.

The Radian Corporation and Supelco, Inc., Bellefonte, PA 16823, petitioned for exemptions to export PCBs in small quantities for research and development. Radian will export less than 500 grams of PCBs in 1 year. Supelco will export less than 5 grams of PCBs in 1 year. EPA proposes to grant both petitions for exemption to export PCBs in small quantities for research and development for reasons discussed below.

In Unit V.B.3 of this proposed rule, EPA described the Agency's criteria for the statutory determination of no unreasonable risk for exemption petitions to export PCBs. EPA treats petitions for exemption to export PCBs more stringently than petitions for exemption to distribute PCBs in commerce within the United States because EPA will have no control over the distribution, use, and disposal of the PCBs once the PCBs have been exported. Those concerns are mitigated in the export of PCBs for research and development by the viscosity, quantity, and packaging of the PCBs as well as the careful handling of the PCBs by trained personnel.

a. *Unreasonable risk finding.* EPA concluded that granting exemptions to manufacture and export PCBs in small quantities for research and development would not present an unreasonable risk of injury to health or the environment. All of these petitioners want to manufacture or export less than 500 grams of PCBs. The PCBs are manufactured using laboratory practices that are designed to minimize human and environmental exposure to hazardous substances. The risk of exposure to PCBs during the storage and shipment of PCBs is small because the PCBs are packaged in hermetically sealed containers, and are properly marked with warning labels. The risk of exposure to humans and the environment in the ultimate use of these PCBs is minimized by the small quantities of PCBs used in each application, the viscosity of the PCBs, and the careful handling procedures typical of laboratory work. Finally, granting these exemptions will benefit society by allowing important health, environmental, and analytical research to continue.

b. *Good faith efforts finding.* EPA determined in the Final PCB Exemptions Rule that the good faith efforts finding is not relevant to petitions to manufacture or export PCBs in small quantities for research and development because there are no substitutes for PCBs in health and environmental research. Pure PCBs are needed for this research because commercial PCBs contain a mixture of isomers and contaminants which may adversely effect experimental results.

2. *Processing and distribution in commerce.* EPA received six petitions for exemptions to process and distribute in commerce PCBs in small quantities for research and development. In addition, EPA received comments on the need for a class exemption to process and distribute PCBs in small quantities for research and development.

EPA proposes to grant a class exemption for the processing and distribution in commerce of PCBs in small quantities for research and development. The class exemption will include all persons or business entities which process and distribute in commerce PCBs in accordance with the definition of "small quantities for research and development" as specified at 40 CFR 761.3. EPA proposes to place the following terms and conditions on the class exemption: (a) That all

processors and distributors maintain records of their PCB activities for a period of 5 years; and (b) that any person or company which expects to process or distribute in commerce 100 grams (.22 lb) or more PCBs for research and development in 1 year report to EPA and identify the sites of PCB activities and the quantity of PCBs to be processes or distributed in commerce.

The following six companies which submitted individual petitions for exemption to process and distribute in commerce PCBs in small quantities for research and development would be included in the class exemption: Alltech Applied Sciences; Midwest Research Institute; Pathfinder Laboratories; Radian Corporation; Supelco Incorporated; and Wellington Sciences USA. EPA would reserve the right to exclude any individual from the class petition by rulemaking.

EPA has determined that there is a unique need for exemptions to process and distribute in commerce PCBs in small quantities for research and development. EPA believes that this need can best be met by granting a class exemption to all processors and distributors of PCBs in small quantities for research and development. Based on information submitted in, and pertaining to, petitions for processing and distribution in commerce of PCBs in small quantities for research and development, EPA has concluded that all processing and distribution in commerce exemption petitions would be granted provided that the definition of "small quantities for research and development" is met.

Because of the nature of research and development activities, the absence of a class exemption causes special difficulties, and places substantial burdens on EPA as well as on processors and distributors. EPA has determined that petitions to process and distribute in commerce PCBs in small quantities for research and development which provide sufficient data on handling procedures would be granted by EPA. This proposed class petition would eliminate the unnecessary use of resources in filing, evaluating and acting on those petitions.

EPA is proposing the reporting requirement on processors and distributors of 100 grams or more PCBs to ensure that unreasonable risks to health or the environment will not be posed by commercial processors and distributors handling large quantities of PCBs per year. However, EPA is not proposing to place a reporting requirement on processors and distributors handling less than 100 grams per year because the Agency has concluded that the lack of a reporting requirement does not pose an unreasonable risk in situations such as those discussed below.

Many users of PCBs who wish to return analytical standards to the supplier because of over-shipment or the delivery of incorrect standards, must petition for exemption and wait for a minimum of 1 year due to the lengthy exemption process, or dispose of the PCBs. These standards, if returned, can be used by another company. EPA has also received comments indicating that if used standards could be returned to processors (repackaged in hermetically sealed containers of a volume of no more than 5 ml), many could be reprocessed under controlled conditions and reused. Thus, this class exemption would potentially reduce the need to manufacture and dispose of PCBs used in research and development.

In addition, many users of PCBs in research and development are involved, in the course of their work, in activities technically classified as processing and distribution in commerce. These users are currently processing and distributing in commerce, without an exemption, under the assumption that these activities are functions of use and thus authorized as use.

a. *Unreasonable risk finding.* EPA has previously determined that the processing and distribution of PCBs in small quantities for research and development do not pose unreasonable risk of injury to health and the environment. Most of the processors and distributors included in this exemption would be handling less than 100 grams of PCBs per year. Commercial distributors of analytical standards for research and development who would process 100 grams or more of PCBs in one year would be required to report to EPA. The PCBs will be processed using laboratory standards designed to minimize human and environmental exposure to hazardous substances. They will be packaged and distributed in hermetically sealed containers in quantities no larger than 5 ml.

Granting the exemption will benefit society by allowing health, environmental and analytical research to continue. Granting the exemption will encourage the recycling and reuse of CBs in controlled laboratory settings and discourage manufacture and import of PCBs for research and development. Furthermore, substantial numbers of petitions for exemption which would otherwise be filed, processed, and ultimately granted, will be avoided by granting the class exemption. EPA has estimated the incremental costs of filing one exemption petition to be $17,383. The incremental cost to EPA of processing an exemption petition is estimated to be $7,742.

b. *Good faith efforts finding.* EPA has determined that the good faith efforts finding is not relevant here, because there are no substitutes for PCBs in health and environmental research. Pure PCBs are needed for this research because commercial PCBs contain a mixture of isomers and contaminants which may adversely affect experimental results.

VI. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and therefore subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this proposed rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order because (a) the annual effect on the economy will be an order of magnitude less than $100 million; (b) it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and (c) it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

Although this proposed rule is not a major rule, EPA has assessed the economic impact of the rule using guidance in the Executive Order to the extent possible. This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

VII. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with any rulemaking for which EPA must issue a general notice of proposed rulemaking. The initial regulatory flexibility analysis must describe the effect of a rule on small business entities.

Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA proposes to deny no exemption petitions submitted by small businesses. Therefore, in accordance with section

605(b) of the Act and the authority delegated to me to act on petitions submitted under TSCA section 6(e)(3)(B), I certify that this rule will not have a significant impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Information Collection Request document (ICR #0857) has been prepared by EPA and a copy may be obtained from: Control Officer, Information Management Branch; EPA; 401 M St., S.W. (PM–223); Washington, D.C. 20460 or by calling (202) 382–2742. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, N.W., Washington, D.C. 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB comments or public comments on the information collection request.

IX. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted in docket number OPTS–66001 (manufacturing exemptions) and OPTS–66002 (processing and distribution in commerce exemptions) was consolidated into docket number OPTS–66008. Information and comments submitted in response to the July 10, 1984 proposed rule related notice (49 FR 28203) were filed in docket number OPTS–66008B.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents which constitutes the record of this proposed rulemaking. A supplementary list or lists may be published any time on or before the date the final rule is issued. However, public comments, the transcript of the rulemaking hearing, or submissions made at the rulemaking hearing or in connection with it will not be listed, because these documents are exempt from **Federal Register** listing under section 19(a)(3). However, these documents will be included in the public record, and a full list of these materials will be available upon request from EPA's TSCA Assistance Office listed under FOR FURTHER INFORMATION CONTACT.

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS–66005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions," Docket No. OPTS–66001, 44 FR 31564, May 31, 1979.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS–62015, 47 FR 37342, August 25, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS–62017, 47 FR 46980, October 21, 1982.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS–62020, 48 FR 124, January 3, 1983.

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Response to Individual and Class Petitions for Exemptions," Docket No. OPTS–66008A, 49 FR 28154, July 10, 1984.

(8) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations," Docket No. OPTS–62032A, 49 FR 28172, July 10, 1984.

(9) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions: Use in Microscopy and Research and Development," Docket No. OPTS–62031A, 49 FR 28193, July 10, 1984.

B. Federal Register Notices

(10) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs); Ban Exemption."

(11) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Policy for Implementation and Enforcement."

(12) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyls (PCBs) Processing and Distribution in Commerce Prohibitions."

(13) 44 FR 31564, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions."

(14) 44 FR 42727, July 20, 1979, USEPA, "Proposed Rulemaking for Polychlorinated Biphenyls (PCBs); Manufacturing Exemptions; Notice of Receipt of Additional Manufacturing Petitions and Extension of Reply Comment Period."

(15) 45 FR 14247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on All Future Exemption Petitions."

(16) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Expiration of Open Border Policy for PCB Disposal."

(17) 48 FR 50486, November 1, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rule," Docket No. OPTS 66008.

(18) 48 FR 52402, November 17, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Microscopy and Research and Development; Proposed Rule," Docket No. OPTS–62031.

(19) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations; Proposed Rule," Docket No. OPTS–62032.

(20) 49 FR 28203, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Request for Additional Comments on Certain Individual and Class Petitions for Exemption," Docket No. OPTS–66008B.

(21) 49 FR 39966, October 11, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Transformers; Proposed Rule," Docket No. 62035A.

C. Support Documents

(22) USEPA, OPTS, EED, "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984).

(23) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (April 1984).

(24) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (May 1985).

(25) USEPA, OPTS, HERD, "Response to Comments on the Health Effects of PCBs" (August 1982).

(26) USEPA, OPTS, "Support Document/Voluntary Environmental Impact Statement and PCB Manufacturing, Processing, Distribution in Commerce, and Use in Ban Regulation: Economic Impact Analysis" (April 1979).

D. Other References

(27) Manufacturing Exemption Petitions and Related Communications in Docket No. OPTS–66001.

(28) Processing and Distribution in Commerce Exemption Petitions and Related Communications in Docket No. OPTS–66002.

(29) PCB Exemption Petitions, Additional Data and Related Communications in Docket No. OPTS–[illegible]

List of Subjects in 40 CFR Part 761

Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: August 16, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

Therefore, it is proposed that 40 CFR Part 761 be amended as follows:

1. The authority citation for Part 761 continues to read as follows:

PART 761—[AMENDED]

Authority: 15 U.S.C. 2605, 2607, and 2611.

2. In § 761.80 by adding paragraphs (f) (4), (5), and (6), (m) (5) and (6), and (o), (p), and (q), and revising paragraphs (g) and (n) to read as follows:

§ 761.80 Manufacturing, processing, and distribution in commerce exemptions.

* * * * *

(f) * * *

(4) Midwest Research Institute, Kansas City, MO 64110 (ME–3.1).

(5) Radian Corp., Austin, TX 78766 (ME–81.2).

(6) Wellington Sciences USA, College Station, TX 77840 (ME–104.1).

(g) The Administrator grants a class exemption to all processors and distributors of PCBs in small quantities for research and development provided that the following conditions are met:

(1) All processors and distributors must maintain records of their PCB activities for a period of 5 years.

(2) Any person or company which expects to process or distribute in commerce 100 grams (.22 lb) or more PCBs in 1 year must report to EPA identifying the sites of PCB activities and the quantity of PCBs to be processed or distributed in commerce.

* * * * *

(m) * * *

(5) Supelco, Inc., Bellefonte, PA 16823–0048 (PDE–41.2).

(6) Radian Corp., Austin, TX 78766 (PDE–182.1).

(n) The 1-year exemption granted to petitioners in paragraphs (f), (l), and (m) of this section shall be renewed automatically unless a petitioner notifies EPA of any increase in the amount of PCBs to be manufactured, imported, or exported or any change in the manner of manufacture, import, or export of PCBs. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, issue a proposed rule for public comment, and issue either a final rule granting the exemption or a notice denying the exemption. Until EPA acts on the petition, the petitioner will be allowed to continue the activities for which it requests exemption.

(o) The 1-year class exemption granted to all processors and distributors of PCBs in small quantities for research and development in paragraph (g) of this section shall be renewed automatically unless information is submitted affecting EPA's conclusion that the class exemption, or the activities of any individual or company included in the exemption, will not pose an unreasonable risk of injury to health or the environment. EPA will evaluate the information, issue a proposed rule for public comment, and issue a final rule affecting the class exemption or individuals or companies included in the class exemption. Until EPA issues a final rule, individuals and companies included in the class exemption will be allowed to continue processing and distributing PCBs in small quantities for research and development.

(p) The Administrator grants the following petitioners an exemption for 1 year to import inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes" at § 761.3:

(1) American Hoechst Corp., Somerville, NJ 08876 (ME–5).

(i) The exemption is limited to the pigment specified in the American Hoechst petition.

(ii) [Reserved]

(2) [Reserved]

(q) The Administrator grants the following petitioners, and their customers, an exemption for 1 year to process and distribute in commerce inadvertently generated PCBs at concentration above those specified for "excluded manufacturing processes" at § 761.3 provided that the conditions for each exemption are met:

(1) American Hoechst Corp., Somerville, NJ 08876 (PDE–13).

(i) The petitioner must notify customers that the product may contain PCBs over the 50 ppm maximum concentration level for inadvertently generated PCBs.

(ii) The exemption is limited to the pigment specified in the American Hoechst petition.

(2) Dainichiseika Color & Chemicals America, Inc., Clifton, NJ 07012 (PDE–58).

(i) The petitioners must notify customers that the product contains PCBs over the 50 ppm maximum concentration level for inadvertently generated PCBs.

(ii) The exemption is limited to the 62,400 lbs of phthalocyanine blue crude in Dainichiseika's inventory.

[FR Doc. 85–20662 Filed 8–28–85; 8:45 am]

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40 CFR Part 761

[OPTS–66003D; TSH FRL 2864–4]

Response to Ward Transformer Company Petition for Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of Exemption Petition.

SUMMARY: In this notice of denial, EPA is denying the Ward Transformer Company, Incorporated, petition for an exemption to buy and sell used PCB-contaminated transformers.

DATE: This petition denial shall become effective on August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M St., SW., Washington, DC 20460. Toll free: (800–424–9065). In Washington, DC (554–1404). Outside the USA: (Operator–202–554–1404).

Copies of this rule and its support documents can be obtained from the TSCA Assistance Office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the

processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

EPA's Interim Procedural Rules for Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the **Federal Register** of May 31, 1979 (44 FR 31560) under 40 CFR 750.30 through 750.41.

B. History of this Rulemaking

In the **Federal Register** of January 2, 1979 (44 FR 108), EPA announced that petitioners who had previously filed manufacturing exemption petitions could continue the activities for which they sought exemption until EPA acted on their petitions. In the **Federal Register** of March 5, 1980 (45 FR 14247), EPA extended this policy to allow all petitioners to continue the activities for which they sought exemption until EPA acted on their petitions, as long as activities were underway before January 1, 1979 (for manufacturing) or July 1, 1979 (for processing and distribution in commerce). Ward Transformer Company, Inc. (hereafter, Ward Transformer) has been allowed to continue buying and selling PCB-contaminated transformers until the issuance of this final rule.

In the proposed PCB Exemptions Rule published in the **Federal Register** of November 1, 1983 (48 FR 50468), EPA proposed to deny the Ward Transformer petition for exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers.

On July 10, 1984, EPA issued, as published in the **Federal Register** (49 FR 28154), the Final PCB Exemptions Rule acting on 109 petitions for exemption from the prohibition on the manufacture, processing and distribution in commerce of PCBs. That rule also deferred action on 50 exemption petitions, including the Ward Transformer petition. In the same issue of the **Federal Register** EPA issued a proposed rule-related notice soliciting comments on Ward Transformer petitions and the 49 other petitions on which action was deferred. A proposed rule addressing those 49 petitions and 14 new exemption petitions is published elsewhere in this issue of the **Federal Register.**

In the proposed rule-related notice published in the **Federal Register** of July 10, 1984 (49 FR 28203), EPA raised a new issue about whether granting the Ward Transformer petition would result in an unreasonable risk to health or the environment and requested comments by August 23, 1984. This issue and the comments are discussed in detail in Unit V of this decision.

EPA stated in the July 10, 1984 proposed rule-related notice that the Agency would issue a final decision to grant or deny the Ward Transformer petition upon evaluation of the comments and allowed the petitioner to continue buying and selling used PCB-contaminated transformers until this decision. In the interest of fairness, EPA stated in the proposed rule-related notice that should EPA grant Ward Transformer's petition, the exemption would expire on the same day (August 22, 1985) as the exemptions granted to other petitioners in the July 10, 1984 final PCB Exemptions Rule.

EPA is now denying Ward Transformer's petition for an exemption. Ward Transformer must, on the effective date of this decision cease all activities for which exemption is denied. Of course, Ward Transformer may submit a new exemption petition. The March 5, 1980 policy statement also announced EPA's intention to require petitioners who file late petitions (after January 1, 1979, for manufacturing, and July 1, 1979 for processing and distribution in commerce) to show "good cause" why EPA should accept the petition for consideration. Should Ward Transformer submit a new exemption petition, it will be required to show "good cause" in accordance with that policy on late petitions. Ward Transformer will not be permitted to continue activities under a new petition until EPA acts on the exemption request.

II. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits to society from granting an exemption. Specifically EPA considers the following factors:

1. The effect of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment.

2. The benefits to society of granting an exemption and the reasonably ascertainable economic consequences of denying an exemption petition.

These are essentially the same factors that EPA considers under TSCA section 6(c) in deciding whether a chemical substance or mixture presents an unreasonable risk of injury to health or the environment under TSCA section 6(a), and in evaluating uses of PCBs under TSCA section 6(e).

EPA's conclusions on the health effects and environmental effects of PCBs which are discussed in detail in the proposed PCB Exemptions Rule published elsewhere in this issue of the **Federal Register** are also applicable here.

III. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs before EPA grants an exemption. EPA considers several factors in determining whether a petitioner has made good faith efforts. For each exemption petition, EPA considers the kind of exemption which the petitioner is requesting, whether substitutes exist, and whether the petitioner expended time and money to develop or search for a substitute. In each case the burden is on the petitioner to show specifically what it does to substitute non-PCBs for PCBs or to show why it does not seek to substitute non-PCBs for PCBs. EPA's denial of the Ward Transformer Co., Inc. petition is not based on Ward Transformer's failure to meet the good faith efforts criteria.

IV. Ward Transformer

Ward Transformer Co., Inc., Raleigh, NC 27622 (PDE–294), submitted a petition for exemption to process and distribute in commerce PCBs in buying and selling used PCB-contaminated transformers (i.e., containing PCBs at concentrations of 50 ppm (parts per million) or more but less than 500 ppm). Since the requested exemption is for an activity which was underway prior to July 1, 1979, the petitioner has been

allowed to continue the activities for which it requested exemption until EPA acts on the petition, in accordance with the EPA policy described in Unit II.B of this decision.

The petitioner is engaged in the following activities for which an exemption is required: (1) Buying and selling PCB-contaminated transformers; and (2) buying PCB-contaminated transforms, introducing non-PCB (containing less than 50 ppm PCBs) fluid into these transformers, and then selling them before they have been reclassified as non-PCB transformers in accordance with the provisions of 40 CFR 761.30(a)(2)(v). The petitioner needs an exemption because it is distributing in commerce PCBs, as defined in section 3(4) of TSCA and 40 CFR 761.3. Although EPA has previously stated that PCBs can be distributed in commerce in transformers without an exemption under specified conditions, Ward Transformer cannot meet those conditions because it is buying PCB-contaminated transformers for resale prior to reclassification as non-PCB transformers.

A. Background

EPA originally proposed to deny Ward Transformer's exemption petition because the petitioner did not show that granting an exemption would not result in an unreasonable risk of exposure to humans or the environment. EPA determined that granting an exemption would result in some additional risk of exposure to humans or the environment due to the normal leaks and spills in handling liquid PCBs and transformers containing PCBs.

During the comment period on the proposed rule, EPA received comments from Ward Transformer. EPA also received comments from the Electrical Apparatus Servicing Association (EASA) in support of a class petition including Ward Transformer and 284 other companies EASA represents. Both Ward Transformer and EASA also participated in the hearing on the November 1, 1983 Proposed PCB Exemptions Rule.

Both Ward Transformer and EASA commented at the hearing that it would be prohibitively expensive and not technically feasible to reclassify PCB-contaminated transformers to non-PCB transformers by energizing and placing them "in service" for 90 days before selling them.

Ward Transformer further commented that (1) granting an exemption would not result in an unreasonable risk of injury to health or the environment because Ward Transformer's storage and handling procedures for PCB fluids meet all applicable disposal and storage for disposal requirements; (2) Ward uses only non-PCB fluid (less than 50 ppm) to refill the transformers that it buys and sells; (3) denying an exemption would cause Ward Transformer to go out of business since buying and selling used transformers represented 33 percent of its business in 1982, and 30 percent of its business in 1983.

In considering Ward Transformer's petition for exemption, EPA was aware that Robert Ward, Jr., an officer of Ward Transformer, was convicted of knowingly or willfully causing the unlawful disposal of PCBs. Ward Transformer was the only EASA company known to have been convicted of such a violation. Throughout the original PCB Exemptions rulemaking, neither EPA nor Ward Transformer raised the issue of Mr. Ward's PCB-related conviction as a factor in deciding whether to grant an exemption to Ward Transformer. EPA did not raise the issue as a determining factor because the case remained in litigation. However, in developing the July 10, 1984 Final PCB Exemptions Rule, EPA determined that in the absence of information to the contrary Mr. Ward's conduct creates cause for concern that granting an exemption to Ward Transformer may result in an unreasonable risk of injury to health or the environment.

In the July 10, 1984 Final PCB Exemptions Rule, EPA granted, in part, the EASA class petition to distribute in commerce PCBs in buying and selling used transformers. EPA granted the class exemption to all other members of EASA and deferred action on the Ward Transformer petition.

In the July 10, 1984 proposed rule-related notice, EPA requested comments on the Ward Transformer petition by August 23, 1984. EPA stated in that notice that Ward Transformer could allay EPA's concern that granting the Ward Transformer petition could result in an unreasonable risk of injury to health or the environment by submitting clear and convincing evidence to the contrary.

In particular, EPA requested information on the following:

1. A description of the methods Ward Transformer uses to protect workers during the buying, servicing, and selling of PCB transformers and PCB-contaminated transformers.

2. Records of the amount of PCB-fluid and PCB-contaminated fluid Ward Transformer collected and disposed of since July 1, 1982.

3. Records of the PCB disposal sites and the owners and operators of those sites where Ward Transformer disposed of PCB fluid and PCB-contaminated fluid since July 1, 1982.

4. Records of how many PCB transformers and PCB-contaminated transformers Ward Transformer purchased and from whom since July 1, 1982.

5. Records of how many PCB transformers and PCB-contaminated transformers Ward Transformer has sold and to whom since July 1, 1982.

6. The amount of Ward Transformer's total sales (in dollars) since July 1, 1982.

7. The reasonably ascertainable loss of sales (in dollars) if EPA were to deny an exemption to buy and sell used PCB-contaminated transformers.

In addition, EPA requested that Ward Transformer provide an affirmation that it has acted since July 1, 1982, in a manner that indicates good faith compliance with all applicable Federal, State, and local laws and regulations for the protection of human health or the environment.

During the comment period on the proposed rule-related notice, Ward Transformer submitted the following response to the specific information requested above:

1. Workers are protected through the proper handling and storage of PCB-contaminated transformers and PCB-contaminated fluids. PCB-contaminated fluids are stored in a yard with a complete retaining wall. When the transformers are serviced all fluids are pumped in a totally enclosed manner.

2. Ward Transformer has accumulated 18,000 to 20,000 gallons of PCB-contaminated fluid which is being stored in bulk storage containers for reuse after treatment to reduce the PCB concentration in the fluid to below 50 ppm. The collection and storage of the PCB-contaminated fluid began before July 1, 1982. Since July 1, 1982, no PCB fluid has been collected. On December 22, 1983, Ward Transformer contracted for the disposal of 1,815 gallons of PCB fluid collected prior to July 1, ,982, and 1,265 gallons of PCB-contaminated solids.

3. Ward Transformer submitted a copy of the contractual agreement for disposal of the 1,815 gallons of PCB fluid and 1,265 gallons of PCB-contaminated solids.

4,5. Records of transformers bought and sold by Ward Transformer since July 1, 1982 were provided and will be discussed elsewhere in this notice when applicable.

6,7. Since July 1, 1982, Ward Transformer's total transformer sales amounted to $3,608,180. The sale of PCB-contaminated transformers accounted for $980,225, or 27 percent, of the total

sales. Ward Transformer anticipates the economic costs of denial of the petition to have an impact on approximately 27 percent of transformer sales in the future.

An affirmation that Ward Transformer has, since July 1, 1982, "met or exceeded all required environmental standards" was provided by Robert Ward III, who succeeded Robert Ward Jr. as president of Ward Transformer after the latter's criminal conviction under TSCA section 16(b) in 1982.

B. Petition Denied

EPA is denying the Ward Transformer petition for exemption to process and distribute in commerce PCBs in buying and selling used PCB-contaminated transformers. EPA evaluated the information submitted by the petitioner in response to the proposed rule-related notice and determined that Ward Transformer has failed to provide clear and convincing evidence that granting the exemption would not result in an unreasonable risk of injury to health or the environment.

The information submitted by the petitioner reguarding the storage and disposal of PCB and PCB-contaminated fluids since July 1, 1982, cause EPA to question Ward Transformer's compliance with storage for disposal requirements under 40 CFR 761.65(a). Since Ward Transformer would handle, store and dispose of PCB-contaminated fluid if the exemption were granted, the petitioner's compliance with disposal and storage for disposal regulations is a significant factor in determining whether granting the exemption will result in an unreasonable risk of injury to health or the environment. In particular, EPA is concerned by the following information submitted by the petitioner:

1. 1,815 gallons of PCB fluid placed in storage for disposal prior to July 1, 1982, were not contracted for disposal until December, 1983. EPA asked Ward Transformer when disposal of the PCB fluid actually occurred. Ward Transformer replied that the PCB fluid was disposed of in the spring of 1984. EPA regulations on the storage of PCBs for disposal at 40 CFR 761.65(a) require that all items stored for disposal prior to January 1, 1983 be disposed of before January 1, 1984.

2. While Ward Transformer maintains that it does not and will not use PCB-contaminated fluid in servicing transformers, it has collected and placed in storage, prior to and since July 1, 1982, 18,000 to 20,000 gallons of PCB-contaminated fluid which it maintains is being stored for reuse after treatment to reduce the PCB concentration in the fluid to below 50 ppm. EPA requested clarification from the petitioner of the apparent inconsistency between its assertion that PCB-contaminated fluid will not be used while at the same time it is storing 18,000 to 20,000 gallons of PCB-contaminate fluid for reuse. EPA also cautioned the petitioner that if the fluid is treated, under 40 CFR 761.60(e) it must be treated to reduce the PCB concentration to below 2 ppm by an EPA-approved disposal method and that such treatment constitutes the disposal of PCBs. Treatment of the PCBs to reduce the PCB concentration to below 50 ppm but above 2 ppm, or treatment by a non-approved method or disposer not permitted by EPA would be considered to be illegal dilution of PCBs. Ward Transformer replied that it plans to contract with an EPA-approved disposer to reduce the concentration of PCBs in the fluid to below 2 ppm and will not use the fluid until such treatment occurs. However, Ward Transformer continues to maintain that the fluid is being stored for reuse and that the storage of the PCB-contaminated fluid need not meet the requirements for storage for disposal. EPA has determined that since the petitioner states that the PCB-contaminated fluid is being stored for treatment to below 2 ppm and since such treatment constitutes the disposal of PCBs, the storage of the PCB-contaminate fluid is subject to storage for disposal requirements. The continued storage of the PCB-contaminated fluid in bulk storage tanks beginning before July 1, 1982, is not in compliance with the requirement that all PCBs stored prior to Junuary 1, 1983, be disposed of by January 1, 1984.

Further, in telephone communications with Ward Transformer's counsel, EPA was informed that an additional 4,600 gallons of PCB-fluid, collected and stored for disposal prior to July 1, 1982, was disposed of on March 18, 1985. This storage of PCB fluid also fails to comply with the requirement that all PCBs stored prior to January 1, 1983 be disposed of before January 1, 1984.

The Agency cannot determine that granting an exemption to Ward Tranformer would not result in an unreasonable risk of injury to health or the environment. While Ward Transformer will not be using PCB or PCB-contaminated fluid in servicing transformers, the petitioner would handle, store and dispose of PCB-contaminated fluid collected in servicing transformers under an exemption. Failure to comply with PCB storage requirements increases the risk of exposure to humans and the environment. The information provided by the petitioner indicates a continuing failure to act in good faith compliance with applicable regulations on the storage of PCBs for disposal.

The cost of denying Ward Transformer's petition for an exemption to buy and sell used PCB-contaminated transformers would be equal to the lost value of future sales of PCB-contaminated transformers which are currently in inventory and which Ward would have purchased for resale in the exemption period. The cost of denying the petition does not include the cost of disposal of PCB-contaminated fluid in storage or PCB-contaminated transformers in inventory. Since Ward Transformer drains all PCB-contaminated transformers prior to resale and does not reuse PCB-contaminated transformers, the petitioner would have disposed of PCB-contaminated fluid even if an exemption were granted. The disposal of drained PCB-contaminated transformers is not regulated.

Ward Transformer's estimate of the economic consequences of the petition's denial is based on its sales in the period between July 1, 1982 and August 13, 1984. During that period, the Ward's total sales of transformers amounted to $3,608,180. The sale of 157 PCB-contaminated transformers accounted for $980,225, or 27 percent, of total sales. Ward Transformer maintains that denial of its petition would have an impact on a similar proportion of its business in the future and that such a loss would endanger the viability of the company.

Ward Transformer has not provided sufficient information on its existing inventory of PCB-contaminated transformers, or on the price of used transformers for EPA to quantify the costs of denying its petition. However, EPA believes that the costs of denial will be significantly lower than the estimate supplied by Ward Transformer for the following reasons:

a. In the period between July 1, 1982 and August 13, 1984, Ward Transformer decreased its inventory of PCB-contaminated transformers by selling 157 while purchasing only 61.

b. The cost to Ward Transformer of buying used PCB-contaminated transformers is probably a significant percentage of the price at which it sells those transformers.

c. Information supplied by the petitioner shows that since July 1, 1982, the buying and selling of PCB-contaminated tranformers have declined, both in the number of transformers bought and sold and as a percentage of Ward Transformer's buying and selling activities.

d. While Ward Transformer has been permitted to continue buying and selling PCB-contaminated transformers until EPA acts on its petition, the exemption, if granted, would have expired on August 22, 1985 for reasons discussed in Unit II.C of this notice.

EPA has concluded that the costs of denying the Ward Transformer petition are not sufficient to outweigh the potential risks of injury to health or the environment which would result from granting the exemption. Therefore, EPA is unable to make the statutory finding of no unreasonable risk, and cannot grant an exemption under the provisions of TSCA section 6(e)(3)(B).

V. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted in docket number OPTS–66001 (manufacturing exemptions) and OPTS–66002 (processing and distribution in commerce exemptions) were consolidated into docket number OPTS–66008. Information and comments submitted in response to the July 10, 1984 proposed rule-related notice (49 FR 28203) were filed in docket number OPTS–66008B.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is publishing the following list of documents which constitutes the record of this decision to deny the Ward Transformer exemption petition. Public comments, the transcript of the rulemaking hearing, and submissions made at the rulemaking hearing or in connection with it are not listed because these documents are exempt from **Federal Register** listing under section 19(a)(3). However, these documents are included in the public record, and a full list of these materials is available on request from EPA's TSCA Assistance Office listed under **FOR FURTHER INFORMATION CONTACT.**

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS–66005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS–62015, 47 FR 37342, August 25, 1982.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS–62020, 48 FR 124, January 3, 1983.

(5) "Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Response to Individual and Class Petitions for Exemptions," Docket No. OPTS–66008A, 49 FR 28154, July 10, 1984.

(6) "Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions, and Use Prohibitions; Exclusions, Exemptions, and Use Authorization," Docket No. OPTS–62032A, 49 FR 28172, July 10, 1984.

B. Federal Register Notices

(7) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs); Ban Exemption."

(8) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Policy for Implementation and Enforcement."

(9) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyls (PCBs) Processing and Distribution in Commerce Prohibitions."

(10) 45 FR 14247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on all Future Exemption Petitions."

(11) 48 FR 50486, November 1, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rule," Docket No. OPTS 66008.

(12) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations; Proposed Rule," Docket No. OPTS–62032.

(13) 49 FR 28203, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Request for Additional Comments on Certain Individual and Class Petition for Exemption," Docket No. OPTS–66008B.

(14) 49 FR 39966, October 11, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Transformers; Proposed Rule," Docket No. 62035A.

C. Support Documents

(15) USEPA, OPTS, EED, "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984).

(16) USEPA, OPTS, ETD, "PCB Exemption Petition Economic Impact Analysis" (April 1984).

(17) USEPA, OPTS, ETD, "Ward Transformer Exemption Petition Economic Impact Analysis" (May 1985).

(18) USEPA, OPTS, HERD, "Response to Comments on the Health Effects of PCBs" (August 1982).

(19) USEPA, OTS, "Support Document/Voluntary Environmental Impact Statement and PCB Manufacturing, Processing, Distribution in Commerce, and Use in Ban Regulation: Economic Impact Analysis" (April 1979).

D. Other Support Documents

(20) Processing and Distribution in Commerce Exemption Petitions and Related Communication in Docket No. OPTS–66002.

(21) Ward Transformer Petition, Additional Data and Related Communications in Docket No. OPTS–66008B.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is a "major rule" and therefore subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this action is not a "major rule" as that term is defined in section 1(b) of the Executive Order because (1) the annual effect on the economy will be orders of magnitude less than $100 million, (2) it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region, and (3) it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

Although this action is not a major rule, EPA has analyzed the economic impact to the extent possible. This final decision was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

VII. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibilty Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexbility analysis in connection with any rulemaking for

which EPA must issue for publication a general notice of proposed rulemaking. The initial regulatory flexibility analysis must describe the effect of a rule on small business entities.

Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

Ward Transformer Co., Inc. is the only small business entity affected by this denial of petition. Ward Transformer estimated the reasonably ascertainable costs of the petition's denial to be $980,225, or 27 percent of their total annual transformer sales. However, EPA believes the costs of denial to be significantly less than that estimate because buying and selling used PCB-contaminated transformers is decreasing as a percentage of Ward Transformer's total business, and because an exemption, if granted, would have expired on August 22, 1985. EPA's conclusions on the economic consequences of denying the Ward Transformer petition are discussed in detail in Unit IV.

Therefore, in accordance with section 605(b) of the Act and authority delegated to me to act on petitions submitted under TSCA section 6(e)(3)(B), I certify that this action will not have a significant impact on a substantial number of small entities.

EPA further notes that section 606 of the Act states that the requirements of section 603 do not alter in any manner standards otherwise applicable by law to Agency action. In general, the manufacture, processing, and distribution in commerce of PCBs are prohibited by section 6(e)(3)(A) of TSCA and the PCB regulations under 40 CFR Part 761. Section 6(e)(3)(B) permits the EPA to grant exemptions from these prohibitions, if the Administrator finds that a petitioner has shown that granting an exemption will not result in an unreasonable risk of injury to health or the environment and that it has made good faith efforts to develop substitutes for PCBs. Both small and large companies must meet the same statutory standard. Thus, even if EPA believed that it was economically or socially desirable policy to grant an exemption to a small business, it could do so only if the small business met the requirements set forth in TSCA.

Accordingly, the Ward Transformer Company, Incorporated, petition for an exemption to buy and sell used PCB-contaminated transformers is denied.

(15 U.S.C. 2606(e))

Dated: August 16, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-20663 Filed 8-28-85; 8:45 am]

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Federal Register

Thursday
August 29, 1985

Part IV

Environmental Protection Agency

40 CFR Part 122

National Pollutant Discharge Elimination System Permit Regulations; Modification of Application Deadline for Storm Water Point Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[OW-FRL-2871-9]

National Pollutant Discharge Elimination System Permit Regulations; Modification of Application Deadline for Storm Water Point Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 26, 1984, the Environmental Protection Agency published final regulations (49 FR 37998) that addressed several issues concerning the National Pollutant Discharge Elimination System (NPDES) program administered under the Clean Water Act. One aspect of those amended rules concerned the regulation of point source discharges of storm water. The final rule defined the scope of NPDES permit program coverage of storm water discharges and adopted a two-tiered application process for storm water point sources.

The final storm water regulations generated considerable post-promulgation comment. The major concerns raised were the difficulty of complying with the April 26, 1985 deadline for application submittals due to winter weather conditions and the size of the task of identifying, sampling and testing storm water point sources.

In response to these concerns, on March 7, 1985 (50 FR 9362), EPA proposed two changes in the application process, neither of which affected the substantive coverage of the September 26 regulation. First, EPA proposed to extend the deadline for submission of NPDES applications for all storm water point sources to December 31, 1985. This final rule extends that deadline to December 31, 1987 for Group I point sources and June 30, 1989 for Group II point sources. Second, EPA proposed to modify certain testing requirements for Group I storm water point sources. This final rule does not address this issue, which was the subject of a recent **Federal Register** Notice.

DATES: This regulation is effective August 29, 1985.

In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), these regulations shall be considered final agency action for purposes of judicial review at 1:00 p.m. eastern time on September 12, 1985. Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

In order to assist EPA to correct any typographical errors, incorrect cross references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulations may be submitted on or before October 28, 1985. The effective date of these regulations will not be delayed by consideration of such comments.

ADDRESS: Comments of a technical and nonsubstantive nature should be addressed to: Cathy O'Connell, Permit Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Tom Laverty, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D.C. 20460. Telephone (202) 426-7035.

SUPPLEMENTARY INFORMATION:

I. Background

The appropriate means of regulating storm water discharges has been a major issue for over 12 years. Storm water regulation has been the subject of a number of **Federal Register** documents. This Preamble addresses only the issue subject to today's action: the deadline for submitting applications for storm water permits. For more detailed background and discussion on storm water regulation in general, see 44 FR 32854 (July 7, 1979), 45 FR 33290 (May 19, 1980), 45 FR 52073 (November 18, 1982), 49 FR 37998 (September 26, 1984), and 50 FR 9362 (March 7, 1985).

The September 1984 rule set out two categories of storm water point sources with different application requirements for each. Group I storm water dischargers are those subject to effluent limitations guidelines, located in an industrial plant or plant associated area, or designated by the Director. All other storm water point sources are classified as Group II. The September 1984 regulations set a deadline of six months from their effective date for submission of all storm water permit applications. (Due to a technical error, the rule as published stated that March 26, 1985 was the deadline. However, the preamble stated that these applications were not required until six months after the effective date of the rule, April 26, 1985, and this was the correct deadline for submission of applications under the September 1984 regulation. A technical correction to the regulations recognizing the April 26, 1985 deadline was published in the **Federal Register** on February 19, 1985 [50 FR 6939])

II. Reaction to the September 1984 Rule

The September 1984 rule produced considerable post-promulgation comment on all of the central issues concerning storm water regulation. With respect to the deadline for submission of permit applications, various industries and trade associations claimed that the April 26 application deadline would be impossible for many dischargers to meet. One reason given was that many dischargers were located in areas where testing during the winter months would not be feasible. It was also argued that the intermittent and unpredictable nature of storm water dischargers would result in difficult and time-consuming data gathering because laboratories doing the sampling would have to be on stand-by waiting for a representative rainfall event to test the discharge, and the regulation did not provide sufficient time to undertake this effort.

Some commenters asserted that six months was an insufficient amount of time to locate, identify, sample and test the thousands of storm water point sources which were estimated to exist. They also argued that the magnitude of the task for permit authorities meant that the data would be stale by the time permits were to be issued. Finally, some dischargers claimed that there would be insufficient laboratory facilities to do the required analysis within so short a time period. The September 1984 rule also generated comment from environmental groups, who expressed reservations that any change or delay would exacerbate EPA's failure to regulate this source of pollutants.

III. The March 1985 Proposal

After considering all these comments EPA proposed to extend the application deadline from April 26, 1985 to December 31, 1985 for all storm water dischargers. The Agency also specifically asked for comments on whether to postpone the application deadline for Group II storm water point sources another year, until December 31, 1986, in order to allow EPA and the NPDES States to initially focus their efforts on the Group I point sources, which are more likely to be environmentally significant. The Agency acknowledged that the magnitude of

post-promulgation comments indicated data collection and analysis by April 26, 1985 would be difficult and perhaps impossible for some dischargers.

IV. Summary of Comments

EPA received approximately 130 comments on the proposed rule, many of which commented directly on the deadline issue.

One commenter opposed any extension of the deadline. This commenter noted that storm water point source dischargers have been required for ten years to obtain NPDES permits, and that further postponement of application requirements was therefore unreasonable. This commenter also asserted that there was little basis for the claim that inadequate laboratory capacity was a problem which would justify an extension. In addition, the commenter stated that resource problems experienced by permit writing authorities would not be solved by an extension. Finally, this commenter stated that it was important for application data to be submitted soon, even where the permit writing authority might not be able to act on it promptly, since such data could nonetheless be available for citizens groups which may choose to file a citizen suit enforcement action. Another commenter, while not responding directly to the deadline issue, stated its belief that storm water dischargers were a significant source of pollution requiring an active and strong regulatory and enforcement program.

The Agency agrees that an effective, manageable and environmentally sound program for regulation of storm water dischargers is necessary. These commenters are also correct in their statement that storm water point source dischargers have required NPDES permits for some years. Although some dischargers have already applied for and received permits for storm water discharges, the vast majority of such dischargers have not applied for permits. However, there has been some uncertainty in recent years concerning permit application requirements, particularly in those States in which EPA administers the NPDES program. Moreover, some owners and operators have hundreds of potential point sources which can require considerable time to identify, analyze, and submit applications. This creates a tremendous practical problem for the hundreds of thousands of unpermitted storm water discharges, regardless of whether laboratory capacity is a problem for any particular discharger. The Agency's and the public's interest in a sound storm water program and the development of a useful data base on these sources is best served by establishing an application deadline which will allow sufficient time to gather, analyze, and submit meaningful applications. Moreover, postponement of the deadline clearly would not preclude requiring a permit application or issuance of a permit in the interim on a case-by-case basis as appropriate if a problem is identified. Finally, citizens remain free to initiate private enforcement actions, and to bring to the attention of permit writing authorities any specific situation that warrants review.

The overwhelming majority of comments supported some sort of extension of the application deadline. Over 100 comments supported extending the deadline for Group I dischargers until at least December 31, 1985 and approximately 65 supported extending the deadline for Group II dischargers until at least December 31, 1986.

Commenters supporting extension of the deadline cited many of the same reasons as in the post-promulgation comments and noted in the proposal, including: (1) The large number of sources involved; (2) the extensive time and resources necessary to identify sources and gather and analyze data; (3) the desire to avoid submitting data which might become "stale" before permit writers could act thus necessitating additional duplicative testing at the same time of permit issuance; (4) the current uncertainty as to what information must be submitted in an application; (5) the need for sufficient time after issuance of final substantive application requirements to conduct the work needed; (6) the resources involved in preparing applications; (7) the problems posed by unpredictable weather conditions in gathering data; and (8) the need for adequate time to obtain necessary laboratory resources.

More specifically, a number of commenters supporting the proposed extension for Group I dischargers suggested that a longer extension would be appropriate unless final application requirements and/or more detailed guidance were forthcoming in the near future. One of these commenters requested the maximum period possible after issuance of a final rule; another suggested a minimum of one year after issuance of a final rule. A third, a municipality, suggested a deadline of 1990.

Several comments received from States expressed concerns about the State's ability to process the thousands of applications which would be received in the relatively near future. Similarly, commenters urged that deadlines realistically reflect the ability of EPA and NPDES States to process applications.

With respect to the deadline for Group II dischargers, as noted above, there was strong support for deadline extension. Many commenters noted the need to deal first with Group I dischargers, which appear to be more environmentally significant. These commenters feared that permit writing authorities would be flooded with applications that could not be processed in a timely manner. Commenters believed that it would take years to identify all Group II sources, and to gather, analyze, and submit the information. Finally, these commenters expressed the belief that final application requirements and further guidance were needed before proceeding further. On the basis of these beliefs, one State commenter suggested that the deadline for Group II applications be set at least one year after the deadline for Group I applications; another stated that as much as five years would be necessary to complete Group II applications; a third commenter suggested postponing the Group II deadline indefinitely.

V. Agency Action

EPA is persuaded that the comments make a strong case for an extension of the application deadline. An extension of the deadline will give those storm water point source dischargers in States where EPA is the permitting authority additional time to identify their sources, gather and analyze required data, and prepare applications. Many factors have contributed to difficulties in complying with the existing April 26, 1985 deadline for application submission. These included the task of identifying the large number of storm water point source discharges covered by the regulation, determining which Category (Group I or II) each fits within, collecting necessary data, including toxic testing where required, seasonal factors which prohibited sampling in some locales during the winter months, and the fact that the intermittent nature of storm water discharges complicates the ability to gather representative samples. Further, the uncertainty surrounding the precise application requirements has been heightened by EPA's March 7, proposal to change both the existing deadline for applications and the specific requirements defining the information which must be submitted with such applications.

For these reasons EPA has determined that dischargers should be given additional time to submit applications.

In the March 7, **Federal Register** notice EPA proposed to extend the deadline for submission of applications until December 31, 1985 for Group I and suggested the possibility of delaying submission of Group II applications until 1 year beyond that. These dates were chosen because EPA believed at that time that final regulations identifying the information which would be required of applicants would soon be in place and that applicants would, therefore, be able to conduct necessary sampling during the summer and fall months and prepare complete permit applications by the end of this year. However, the substantive requirements proposed on March 7 are not yet published in final form.

The Agency is currently reconsidering the type and amount of substantive information which must be submitted in an application. As a result of comments received on the March 7 proposal and further consideration of the issue by the Agency, this aspect of the March 7 proposal has been renoticed to allow additional public comment. The notice specifically sought comment on a more effective administrative process that is also less burdensome to the regulated community. Thus, as with the proposed deadlines, EPA is today establishing new deadlines for submission which take into account the time necessary to issue final regulations establishing substantive application requirements and the time needed to gather and analyze data and prepare an application once these requirements are established. Today's final rule extends the deadline for submission of applications by Group I dischargers to December 31, 1987. This new deadline should allow sufficient time for additional public comment and final issuance of substantive requirements, and also will provide additional time for applicants to identify and categorize their sources of discharge, gather and analyze data, and prepare applications. This added time should help eliminate the difficulties in complying with current deadlines.

This new deadline also responds to commenters' concerns that the deadline more realistically reflect the permit writing authorities' ability to process applications. As EPA has indicated on numerous occasions in past Federal Register notices, neither EPA nor the States are currently able to process promptly the large number of permit applications which are expected to be filed for storm water discharges. EPA and many States are still working to reduce and eliminate the current permit issuance backlog for major industrial facilities, which has resulted from many factors, including the complex nature of developing permits limitations to control toxic pollutants, as well as the lack, until recently, of national effluent limitation guidelines establishing BAT requirements. The next priority for EPA and State permit writers will be to address the backlog of significant minor dischargers, especially those causing water quality problems. Although an extension of the deadline will not eliminate the fact the permit issuing authorities will still receive a large number of lower priority permit applications at one time (just later, as pointed out by one commenter), it is more likely that the permit backlog problems associated with BAT limitations will have been reduced by that time. In addition, this extension will provide sufficient time for EPA to prepare guidance on questions concerning various aspects of storm water regulation. The added time also will allow EPA and the permit writing authorities to develop a realistic strategy for the issuance of storm water permits. For example, model general permit terms may be developed by then, and additional States may have established authority to issue general permits. Finally, the new deadline may minimize the potential of stale data.

EPA believes that a two-phased application approach calling for information to be submitted from Group I in advance of that for Group II is the more reasonable and realistic means of gathering useful information in a time frame that is manageable for the regulated community and the permitting agencies. This responds to the previously identified problems with preparing storm water applications as they relate to Group II sources and allows priority to be given to the sources which are expected to pose the more significant environmental problems. Thus, the deadline for submission of applications from Group II storm water dischargers is June 30, 1989.

Although these deadlines are later than those proposed, they are consistent with the purposes of that proposal and with the numerous comments which urged an orderly application process with due attention to priorities and with EPA's stated purposes to develop more realistic deadlines which respond to the identified difficulties with preparing storm water applications. The deadlines also acknowledge that revised substantive requirements are not yet promulgated.

It should be re-emphasized that these deadline extensions do not relieve point source dischargers from the requirement to obtain NPDES permits. EPA regional offices have been directed to respond to inquiries and petitions concerning specific storm water discharges which may pose problems. The extension does not preclude issuance of permits where a problem is identified, nor does it affect citizens rights under section 505 of the Act. States authorized to administer the NPDES program remain free to require permit applications at earlier dates.

VI. Recent Related Developments

Persons interested in the appropriate means to regulate storm water dischargers should be aware that the issue is receiving renewed attention by Congress. On June 13, 1985, the Senate passed an amendment to the CWA which would, if enacted, affect regulation of Group II dischargers. Essentially, the amendment would remove the requirement for Group II dischargers to obtain permits until 1992. The Administrator would be required to prepare and submit to Congress a study on the nature and extent of pollutants in Group II discharges before this date. Subsequently, EPA would be required to submit a report to Congress setting forth procedures and methods to control storm water dischargers "to the extent necessary to attain and maintain water quality standards." On July 23, 1985, the House of Representatives also passed an amendment that would affect EPA's regulation of storm water discharges.

Although these changes are not yet part of the applicable law, it appears that Congress will continue to review the issue of storm water regulation. Interested persons should be aware that future Congressional action could alter the Agency's authority and strategy for regulating storm water dischargers.

VII. Effective Date

Section 553(d) of the Administrative Procedure Act (APA) generally requires publication of a substantive rule not less than 30 days before its effective date. The APA also recognizes an exemption to this requirement, and authorizes an Agency to make a final rule effective immediately upon promulgation if the rule "grants or recognizes an exemption or relieves a restriction". EPA believes this rule "relieves a restriction" in that it extends a regulatory deadline which has already passed. Accordingly, this rule is effective today.

VIII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments generally make the regulations more flexible and less

burdensome for affected parties. These regulations do not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute major rulemakings. This regulation was submitted to OMB for review.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's amendments to the regulations generally make the regulations more flexible and less burdensome for permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Reporting and Recordkeeping requirements. Water pollution control.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: August 21, 1985.

Lee M. Thomas,

Administrator.

PART 122—EPA ADMINISTERED PERMITS PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart B—Permit Application and Special NPDES Program Requirements

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.21 is amended by revising paragraph (c)(2) to read as follows:

§ 122.21 Application for a permit (applicable to State NPDES programs, see § 123.25)

* * * * *

(c) * * *

(2) Any existing Group I storm water discharge (as defined in § 122.26(b)(2)) that does not have an effective permit shall submit an application by December 31, 1987. Any existing Group II storm water discharge (as defined in § 122.26(b)(3)) that does not have an effective permit shall submit an application by June 30, 1989. Any discharger designated under § 122.26(c) shall submit an application within 6 months of notification of its designation.

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[FR Doc. 85-20654 Filed 8-28-85: 8:45 am]

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Presidential Documents

Title 3—

The President

Memorandum of August 28, 1985

Nonrubber Footwear Import Relief Determination

Memorandum for the United States Trade Representative

Pursuant to Section 202(b)(1) of the Trade Act of 1974 (P.L. 93–618; 19 U.S.C. 2252(b)(1)), I have determined the action I will take with respect to the report of the United States International Trade Commission (ITC), transmitted to me on July 1, 1985, concerning imports of nonrubber footwear. This investigation covered items 700.05 through 700.45, inclusive, 700.56, 700.72 through 700.83 inclusive, and 700.95 of the Tariff Schedules of the United States.

While the escape clause provisions of the Trade Act of 1974 require the ITC to determine the question of whether a domestic industry has been seriously injured as a result of increased imports, I am charged with the responsibility of determining whether the provision of import relief to the domestic industry is in the national economic interest. After considering all relevant aspects of the case, including those set forth in Section 202(c) of the Trade Act of 1974, I have determined that granting import relief would not be in the national economic interest. I believe my decision today will promote our national economic interest by encouraging an open, nondiscriminatory and fair world economic system, a system in which jobs are created and prosperity grows through increased productivity and competitiveness in an open market. My decision is based on the following reasons:

First, import relief would place a costly and unjustifiable burden on U.S. consumers and the U.S. economy. The Council of Economic Advisers estimates that the global quota remedy recommended by the ITC would create between 13,000 to 22,000 jobs with an average annual wage of $14,000. However, the cost to consumers to create these jobs would be $26,300 per job, amounting to a total cost which could be as high as $2.9 billion over the next 5 years. Moreover, these jobs would not provide permanent employment and would be likely only to last during the 5-year relief period.

Second, import relief would result in serious damage to U.S. trade in two ways. If the ITC global remedy were imposed U.S. trade would stand to suffer as much as $2.1 billion in trade damage either through compensatory tariff reductions or retaliatory actions by foreign suppliers. This would mean a loss of U.S. jobs and a reduction in U.S. exports. U.S. trade would also suffer because of the adverse impact import relief would have on major foreign suppliers, such as Brazil, who are heavily indebted and highly dependent on footwear exports. Import relief would lessen the ability of these foreign footwear suppliers to import goods from the United States and thus cause an additional decline in U.S. exports.

Third, I do not believe that providing relief in this case would promote industry adjustment to increased import competition. While imports of nonrubber footwear have increased rapidly over the last 12 months, I believe that the industry has been and is in the process of successfully adjusting to increased import competition. An industry that was once characterized by many small firms with limited manufacturing capability, has now emerged as an industry led by larger, more efficient producers who have invested in state of the art manufacturing equipment, diversified into profitable retail operations, and filled out their product lines with imports to respond to rapidly changing consumer taste.

In order to address the difficult problems faced by workers in the industry, I have directed the Secretary of Labor to work with State and local officials to develop a retraining and relocation assistance program specifically designed to aid workers in the nonrubber footwear industry. Appropriate programs of the Job Training Partnership Act are to be used to the fullest extent possible under U.S. law.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, August 28, 1985.

[FR Doc. 85-20945
Filed 8-29-85; 3:06 pm]
Billing code 3195-01-M

Editorial note: For the President's statement and the text of a message to the Congress, dated Aug. 28, on nonrubber footwear import relief, see the *Weekly Compilation of Presidential Documents* (vol. 21, no. 35).

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 5

[Docket No. 85-15]

Rules, Policies and Procedures for Corporate Activities; National Bankers' Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is providing guidelines for organizing groups seeking approval to organize nationally chartered bankers' banks. These guidelines are needed as a result of Section 404 of the Garn-St Germain Depository Institutions Act of 1982 which authorizes the Office to charter bankers' banks. This final rule provides prospective national bankers' bank organizers with information concerning the procedure to establish a nationally chartered bankers' bank.

EFFECTIVE DATE: August 30, 1985.

ADDRESS: Office of the Comptroller of the Currency, Washington, D.C. 20219.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Director, Licensing Policy and Systems, Bank Organization and Structure, (202) 447-1184, or Richard Cleva, Attorney, Legal Advisory Services, (202) 447-1880.

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this final rule is to clarify procedures and policies applicable to chartering a national bankers' bank.

Background

The final rule provides prospective organizers of national bankers' banks with information concerning the application process and applicable laws and regulations. This rulemaking is necessitated by section 404 of the Garn-St Germain Depository Institutions Act of 1982 (Act) which authorizes the Office to charter bankers' banks.

Section 404 of the Act authorized the Comptroller to charter national bankers' banks, *i.e.*, national banks which are owned exclusively by other depository institutions (except for directors' qualifying shares) and are organized to engage exclusively in providing services for other depository institutions, their officers, directors, and employees. Except for this restriction on those for whom services may be provided and except for waivers as discussed below, under the statute a national bankers' bank has the same rights and powers and is subject to the same limitations that would apply under the national banking laws to a national bank.

The Act provides that a national bankers' bank is:

> Subject to such rules, regulations, and orders as the Comptroller deems appropriate, and except as otherwise specifically provided in such rules, regulations, or orders, shall be vested with or subject to the same rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the national banking laws to a national bank.

12 U.S.C. 27(b)(2).

The Office has interpreted the statute and the legislative history of the statute to mean that the Comptroller has discretion in applying statutes and regulations to national bankers' banks. The Senate Report stated that "statutory restrictions applicable to other national banks may be waived if incompatible with the operation of a bankers' bank." S. Rep. 97-537, 97th Cong., 1st Sess. 27 (Sept. 3, 1982), *reprinted at* 1982 U.S. Code Cong. & Ad. News 3081.

Thus, the Comptroller may rule on requests from nationally chartered bankers' banks for waiver of specific statutes and regulations. For example, in previous particular cases the Comptroller has waived the requirements that organizers be natural persons (12 U.S.C. 21), the geographic residency requirements of directors (12 U.S.C. 72), and cumulative voting requirements (12 U.S.C. 61).

Comments Received and Office Response

On January 28, 1983, the Office published an advance notice of proposed rulemaking (48 FR 3624) seeking comment on the standards and procedures appropriate for chartering and regulating national bankers' banks. Five comments were received in response to the advance notice. The comments are summarized as follows.

Flexibility: There was general agreement among the commenters that the Office should provide maximum flexibility for national bankers' banks to compete fully in the provision of correspondent banking services. Commenters also urged the Office to minimize the regulatory requirements imposed on national bankers' banks by providing broad exemptions in the organization and operation of national bankers' banks.

The Office agrees that national bankers' banks should be provided maximum flexibility to compete fully in the correspondent banking services market, and has structured this final rule to provide such flexibility. Applicants should file an application as required in § 5.20 and, at the time the application is filed, request exemption from organizational requirements or waiver of statutory requirements which in their opinion may impede the bankers' bank's ability to compete and provide desired services to its market. Each waiver request must be supported by adequate justification and legal analysis.

Services permitted: Three commenters were opposed to enumeration of the specific services permitted. One commenter was in favor of enumerating only traditional correspondent activities. Two commenters favored the enumeration of activities specifically prohibited for national bankers' banks.

To provide organizers of national bankers' banks the flexibility to structure innovative proposals, the Office will not enumerate permissible or prohibited activities. Organizing groups shall list the anticipated activities of the proposed national bankers' bank in the application. Except for the statutory restriction on those for whom services may be provided, national bankers' banks are authorized under the Act to engage in the same activities as other national banks.

Capital Requirements: Four commenters believe that existing capital requirements should be waived or liberalized for national bankers' banks. Decreased risk in activities undertaken and the peculiar nature of balance sheet items (e.g., inflated federal funds balances) due to the unique operating characteristics of bankers' banks were cited as reasons supporting decreased capital requirements.

The Office recognizes the inherent difference in the balance sheets of national bankers' banks and other national banks but does not consider the blanket establishment of a different capital requirement for national bankers' banks a viable option. On a case-by-case basis the Office will review requests by national bankers' banks under the waiver authority discussed above and make individual determinations as to whether the facts as presented by the applicant support a different capital requirement.

Office Action

At the present time within the industry, the development of the role of bankers' banks is still in the early stages. Accordingly, based on its experience so far, the Office believes it is premature to determine on a general basis what requirements are appropriate, or which organizational, statutory, or regulatory requirements should be waived, for such banks. Therefore, the Office has decided to issue a policy statement at this time which only will set forth application procedures and reiterate applicable statute law. After further experience, the Office may issue more detailed regulations if the need arises. This statement advises organizers that the Office will accept applications for the establishment of a national bankers' bank on the same application form and under the same procedure used to establish a national bank. National bankers' bank organizers are also advised to follow those other regulations and procedures applicable to national banks.

This final rule merely reiterates the statutory provisions, states general agency policy, and refers applicants to the proper established procedure to follow. Accordingly, further public notice and comment in addition to that received regarding the advance notice of proposed rulemaking is unnecessary due to the nonsubstantive nature of this rulemaking. For the same reasons, this rule is effective immediately. See 5 U.S.C. 553 (b)(3)(A) and (d)(2).

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612) it is certified that this final rule is advisory in nature and does not have a significant economic impact on a substantial number of small entities. The effect of this final rule is expected to be beneficial rather than adverse, and small entities are generally expected to share the benefits as well as larger institutions.

Executive Order 12291

This rule is not classified as a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

The information collection contained in this final rule have been approved by the Office of Management and Budget under Control Number 1557-0014.

List of Subjects in 12 CFR Part 5

National banks, National bankers' banks, Bankers' banks.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, Part 5 of Chapter I of Title 12 of the Code of Federal Regulations is amended as set forth below.

PART 5—[AMENDED]

1. The authority citation for 12 CFR Part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. A new § 5.27 is added to Subpart B to read as follows:

§ 5.27 Organization of a national bankers' bank.

(a) *Authority.* 12 U.S.C. 1 *et seq.*, 21a, 22, 24, 26, 27, 93a, 1814(b) and 1816.

(b) *Scope.* This section applies to applications to organize a national bankers' bank.

(c) *Definition.* For the purposes of this Part, a national bankers' bank is a national bank which is owned exclusively by other depository institutions (except for directors' qualifying shares) and is organized to engage exclusively in providing services for other depository institutions and their officers, directors and employees.

(d) *Ownership of national bankers' banks.* A national bank's power to invest in bankers' banks, whether state chartered or nationally chartered, is governed by 12 U.S.C. 24(7). However, ownership of national bankers' banks by depository institutions other than national banks is subject to ownership limitations and statutory conditions prescribed by the owning institutions' primary regulator.

(e) *Procedures.*—(1) *Application.* An organizing group desiring to establish a national bankers' bank shall file an application in accordance with this section and § 5.20. The application process for a national bankers' bank is similar to existing application procedures for a national bank. The Office will follow the procedures and policies stated in § 5.20 of this Part. Organizing groups shall also list the anticipated activities of the proposed national bankers' bank in the application.

(2) *Waiver requests.* The organizers of a proposed national bankers' bank may request waiver of those organizational requirements, statutory requirements or regulatory requirements which may impede the proposed national bankers' bank's ability to compete or to provide desired services to its market. A request for waiver should be submitted with the application and must be supported by adequate justification and legal analysis. Requests for waivers may also be made by a national bankers' bank already in operation.

(f) *Forms.*

CC 7020-01: Application and Instructions to Organize a National Bank
CC 7020-20: Organization Certificate
CC 7020-25: Joint Oath of Interim Directors
CC 7020-26: Oath of Interim Directors
CC 7020-27: List of Interim Directors
CC 7020-29: Sample Subscription Offer
CC 7029-04: Sample Articles of Association
CC 7029-06: Joint Oath of National Bank Directors
CC 7029-07: Oath of National Bank Director
CC7029-08: List of National Bank Directors.

(Approved by the Office of Management and Budget under Control Number 1557-0014)

Dated: July 12, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85-20759 Filed 8-29-85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24758; Amdt. No. 1302]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrent preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Aviation safety, Approaches, Standard instrument.

Issued in Washington, D.C. on August 23, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citiation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

2. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

. . . *Effective November 21, 1985*

Norman, OK—David Jay Perry, VOR/DME-A, Orig, CANCELLED
Norman, OK—David Jay Perry, VOR/DME-A, Orig

. . . *Effective October 24, 1985*

Griffith, IN—Griffith, VOR RWY 8, Amdt. 4

Abbeville, LA—Abbeville Muni, VOR/DME-B, Amdt. 1
Barnesville, OH—Barnesville-Bradfield, VOR RWY 27, Amdt. 8
Woodsfield, OH—Monroe County, VOR/DME RWY 25, Amdt. 4

. . . *Effective August 8, 1985*

Hilo, HI—General Lyman Field, VOR/DME or TACAN-A, Amdt. 5
Hilo, HI—General Lyman Field, VOR RWY 26, Amdt. 6
Hilo, HI—General Lyman Field, VOR/DME or TACAN RWY 26, Amdt. 3

. . . *Effective August 8, 1985*

Santa Ana, CA—John Wayne Airport-Orange County, VOR RWY 19R Amdt. 22

3. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

. . . *Effective October 24, 1985*

Corpus Christi, TX—Corpus Christi Intl, LOC RWY 31, Amdt. 2

. . . *Effective September 26, 1985*

Beaumont-Port Arthur, TX—Jefferson County, LOC BC RWY 30, Amdt. 18

4. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

. . . *Effective Nobember 21, 1985*

Clinton, OK—Clinton Muni, NDB RWY 35, Amdt. 4
El Reno, OK—Mustang Field, NDB RWY 35, Amdt. 1
Mooreland, OK—Mooreland Muni, NDB RWY 17, Amdt. 2
Weatherford, OK—Thomas P. Stafford, NDB RWY 17, Amdt. 1

. . . *Effective October 24, 1985*

Alturas, CA—Alturas Municipal, NDB RWY 31, Amdt. 1
York, NE—York Muni, NDB RWY 17, Orig.
York, NE—York Muni, NDB RWY 35, Orig.
Cadiz, OH—Harrison County, NDB RWY 13, Amdt. 3
Carollton, OH—Carroll County-Tolson, NDB RWY 25, Amdt. 3
Corpus Christi, TX—Corpus Christi Intl, NDB RWY 13, Amdt. 22
Amery, WI—Amery Muni, NDB RWY 18, Amdt. 1
Osceola, WI—L. O. Simenstad Muni, NDB RWY 28, Amdt. 7
Watertown, WI—Watertown Muni, NDB RWY 5, Orig.
Watertown, WI—Watertown Muni, NDB RWY 23, Amdt. 2

. . . *Effective September 26, 1985*

Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 9L, Amdt. 6
Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 27R, Amdt. 5
Washington, GA—Washington-Wilkes County, NDB RWY 13, Orig.
Beaumont-Port Arthur, TX—Jefferson County, NDB RWY 12, Amdt. 17

5. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

. . . *Effective October 24, 1985*

Corpus Christi, TX—Corpus Christi Intl, ILS RWY 13, Amdt. 23
Corpus Christi, TX—Corpus Christi Intl, ILS RWY 35, Amdt. 8

. . . *Effective September 26, 1985*

Atlanta, GA—The William B. Hartsfield Atlanta Intl, ILS RWY 9L, Amdt. 4
Atlanta, GA—The William B. Hartsfield Atlanta Intl, ILS RWY 27R, Amdt. 2
Beaumont-Port Arthur, TX—Jefferson County, ILS RWY 12, Amdt. 21

. . . *Effective August 13, 1985*

Baltimore, MD—Baltimore-Washington Intl, ILS RWY 10, Amdt. 11
Baltimore, MD—Baltimore-Washington Intl, ILS RWY 28, Amdt. 6

. . . *Effective August 8, 1985*

Hilo, HI—General Lyman Field, ILS RWY 26, Amdt. 10

6. By amending § 97.31 RADAR SIAPs identified as follows:

. . . *Effective October 24, 1985*

Colorado Springs, CO—City of Colorado Springs Muni, Radar-1, Amdt. 16 CANCELLED

[FR Doc. 85-20793 Filed 8-29-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 923 and 930

[Docket No. 40565-5108]

Coastal Zone Management: Federal Consistency Regulations; Final Rule

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration is amending existing regulations, and associated comments, to exclude Outer Continental Shelf (OCS) oil and gas lease sales from the Federal consistency requirements of Section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended (CZMA). This rulemaking is required to conform current Federal regulations to the January 11, 1984, ruling of the U.S. Supreme Court in *Secretary of the Interior et al.* v. *California et al.* The Notice of Proposed Rulemaking was published on January 28, 1985 (50 FR 3798).

EFFECTIVE DATE: November 9, 1985.

FOR FURTHER INFORMATION CONTACT: Nan Evans, Senior Policy Analyst, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235 (202) 634-4249.

SUPPLEMENTARY INFORMATION:

A. Authority

This notice of rulemaking is issued under the authority of section 317 of the CZMA (Pub. L. 92-583, as amended).

B. General Background

The Coastal Zone Management Act of 1972 (CZMA, Pub. L. 92-583, as amended) requires each Federal agency conducting or supporting activities directly affecting the coastal zone to conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state coastal zone management programs (Section 307(c)(1)). National Oceanic and Atmospheric Administration (NOAA) regulations implementing this section are found at 15 CFR Part 930 Subpart C. The CZMA also requires that federally licensed or permitted activities affecting land or water uses in the coastal zone, including activities described in detail in Outer Continental Shelf (OCS) exploration, development and production plans, be conducted in a manner consistent with federally approved state coastal management programs (Section 307(c)(3)(A) and (B)). NOAA regulations implementing these sections are found at 15 CFR Part 930 Subparts D and E. Section 307(d) of the CZMA requires that Federal assistance be granted to state and local governments for activities affecting the coastal zone only when such activities are consistent with federally approved coastal zone management programs. NOAA regulations implementing this section are found at 15 CFR 930 Subpart F. NOAA's current regulations interpreting section 307 were promulgated in 1979 (44 FR 37142-37161, June 25, 1979).

On January 11, 1984, the United States Supreme Court issued its decision in *Secretary of the Interior et al.* v. *California et al.* (464 U.S. 312, 104 S. Ct. 656, 52 U.S.L.W. 4063). The Court held that the sale of Outer Continental Shelf (OCS) oil and gas leases is not an activity "directly affecting" the coastal zone within the meaning of Section 307(c)(1) of the CZMA and, therefore, a determination of consistency with approved state coastal management programs is not required before such sale is held.

In an Advance Notice of Proposed Rulemaking (ANPR) issued on June 1, 1984 (49 FR 22825), NOAA announced its intent to review the existing regulations implementing the CZMA to determine which regulations needed to be revised

as a result of the U.S. Supreme Court decision. NOAA also announced that it would consider whether new or additional regulations applicable to the Federal consistency provisions of section 307 of the CZMA were necessary. NOAA provided a 90-day public comment period on the ANPR. NOAA also held eight regional meetings to discuss the issues raised in the ANPR and to gather information.

NOAA published a Notice of Proposed Rulemaking (NPR) on January 28, 1985 (50 FR 3798–3801) limiting the regulatory changes to those changes clearly necessitated by the Supreme Court's decision. The proposed changes specifically excluded OCS oil and gas lease sales from the uses subject to management by state coastal zone management programs and from the Federal consistency provisions of section 307(c)(1). The proposed rule was developed after an analysis of the questions asked in the ANPR and the public comments on a number of regulatory issues. These issues were summarized in the NPR.

C. Final Rulemaking

NOAA is issuing a final rule limited to those changes clearly necessitated by the Supreme Court's decision. The final rule excludes OCS oil and gas lease sales from the uses subject to management by state coastal zone management programs and from the Federal consistency provisions of section 307(c)(1) of the CZMA. The final rule is substantively unchanged from the proposed rule. No new information or alternative solutions were presented in comments on the NPR which resulted in the need for NOAA to revise the substance of the proposed rule. Most commenters supported the narrow scope of the proposed rulemaking. One commenter suggested that the term "lease sales" be substituted for the term "leasing activities" in the proposed rule. The final rule uses the phrase "OCS oil and gas lease sale activities" to more precisely reflect the Supreme Court's holding. In response to comments from the Department of the Interior, NOAA has revised 15 CFR 923.11(c)(2)(ii) of the final rule to provide additional clarification that OCS oil and gas lease sale activities are not development activities within the meaning of the CZMA or the Outer Continental Shelf Lands Act (OCSLA). Also, NOAA revised the proposed rule at 15 CFR 930.33(c) by adding a new subsection (2) to state more precisely that OCS oil and gas lease sales are not Federal activities directly affecting the coastal zone and, therefore, are not subject to the provisions of Section 307(c)(1) of the CZMA.

While the final rule excludes the sale of oil and gas leases on the Outer Continental Shelf (OCS) from the consistency process, affected coastal states and local governments are still able to consult with the Department of the Interior under section 19 of the OCSLA. Also, under section 307(c)(3)(B) of the CZMA, the states can review the consistency of OCS exploration, development and production plans which affect land and water uses in the coastal zone. Federal agencies must continue to review their activities, other than OCS oil and gas lease sales, on a case-by-case basis to determine whether they directly affect the coastal zone within the meaning of section 307(c)(1). If a Federal agency concludes that a proposed activity does directly affect the coastal zone, the Federal agency must provide a consistency determination to the affected state(s) and must conduct the activity in a manner which is consistent to the maximum extent practicable with approved state coastal zone management programs.

This rulemaking coordinates NOAA's rulemaking efforts with the Federal Consistency Study (see below) by making the minimum necessary changes to the regulations while awaiting the results of the Study. Following completion of the Federal Consistency Study, NOAA will determine whether further regulatory changes are required.

Although a 1980 amendment to the CZMA provided a procedure for Congressional disapproval of rules proposed under CZMA authorities, the Supreme Court has since held that such disapproval procedures are unconstitutional (*INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983)). NOAA will follow the ruling in *INS* v. *Chadha* in this final rulemaking and treat the Congressional disapproval procedure as a "report and wait" provision. This final rule therefore will be effective 60 calendar days from September 9, 1985, when both Houses of Congress resume the first session of the 99th Congress following the scheduled August recess. If Congress is not in session for 60 continuous calendar days from September 9 (excluding any adjournment of less than 6 days in the House of Representatives), NOAA will issue a technical amendment to clarify the effective date of this final regulation.

D. Public Comments

Most commenters on the Notice of Proposed Rulemaking (NPR) supported the narrow scope of NOAA's proposed rule. Commenters opposing NOAA's proposed rule were divided into two groups. One group opposed the Supreme Court's decision and argued that OCS oil and gas lease sales should be subject to the Federal consistency requirements of section 307(c)(1). The other group supported the Supreme Court's decision and argued for a broader rulemaking which would exclude activities other than OCS oil and gas lease sales from the Federal consistency requirements and/or which would address other issues in the consistency process. The rationale for limiting the rule to excluding OCS oil and gas lease sales from the uses subject to management by state coastal zone management programs and from the Federal consistency requirements of section 307(c)(1) is discussed above.

Fishery management plans prepared under the Magnuson Fishery Conservation and Management Act are one example of a Federal activity which, according to some commenters, should be excluded from the Federal consistency requirements of section 307. NOAA is responsible for the administration of the CZMA and the Magnuson Act. NOAA policy, as discussed in Administrator's Letter No. 37 of November 1982, is that the CZMA and the Magnuson Act are fundamentally compatible and should be administered in a manner to give maximum effect to both laws. NOAA will continue to determine, on a case-by-case basis, whether proposed fishery management plans directly affect the coastal zone and, if so, will assure that such plans are consistent to the maximum extent practicable with approved state coastal zone management programs.

Most of the comments received on the proposed rule addressed subjects which had been previously raised in response to the ANPR. (See the NPR at 50 FR 3799–3800 for a synopsis of these issues). NOAA is continuing to study these issues as part of the Federal Consistency Study (see below). NOAA will continue monitoring the implementation of the Federal consistency requirements and is deferring, for the present, any further rulemaking.

A few comments were received which raised additional issues. These additional comments are addressed below.

Relying on the Supreme Court's decision, as well as other arguments, the General Services Administration (GSA) requested that the regulations at 15 CFR 930.31 be changed to remove GSA's real property disposals from the definition of activities directly affecting the coastal

zone. Like issues raised by other commenters, NOAA will examine in the Federal Consistency Study the applicability of the Federal consistency provisions to GSA's real property disposals. In the interim, the NOAA regulations require that GSA continue to examine, on a case-by-case basis, the disposal of Federal surplus real property to determine whether the proposed action directly affects the coastal zone and, if so, to follow the provisions of section 307(c)(1) and the implementing regulations.

A few commenters urged NOAA to clarify further that the Federal agency, not the state, makes the initial determination regarding whether an activity "directly affects" the coastal zone and is subject to the requirements of section 307(c)(1). NOAA concludes that the regulations at 15 CFR 930.33(a) are sufficiently clear on this point and that no changes are necessary at this time.

A number of industry representatives suggested that NOAA amend the regulatory definition of Federal activities subject to the section 307(c)(1) requirements at 15 CFR 930.31 to exclude OCS oil and gas lease sales, as well as OCS exploration, development and production plans. NOAA observes that the Supreme Court held that OCS lease sales were not Federal activities which directly affected the coastal zone within the meaning of section 307(c)(1). The Supreme Court decision did not change the requirement that federally licensed and permitted activities which affect land or water uses in the coastal zone and are described in detail in OCS exploration, development and production plans prepared under the OCSLA are subject to section 307(c)(3)(B). Therefore, NOAA defines the recommendation to amend 15 CFR 930.31. Moreover, this amendment is not required since NOAA has made editorial changes to the proposed rule at 15 CFR 930.33 to clarify further that OCS oil and gas lease sale activities do not directly affect the coastal zone and, therefore, are, not subject to the consistency requirements of section 307(c)(1).

A few commenters contended that the states often violate the provisions of section 307(e) and thereby diminish Federal agency jurisdiction and responsibility. The second paragraph of 15 CFR 930.32(a) states the relationship between section 307(c)(1) and section 307(e). NOAA is deferring any conclusion on the merits of this contention until completion of further monitoring and analysis, including completion of the Federal Consistency Study.

Comments by the Northwest Office of the Friends of the Earth included a petition to NOAA under the Administration Procedure Act to amend 15 CFR 930.32 by adding a new subsection stating: "A state coastal zone management program cannot bind a Federal agency to be positively consistent with its provisions. A state coastal zone management program provides to the state only a negative (or veto) consistency to the maximum extent practicable." Although the commenter does not state any reason for its request, NOAA denies this petition because the regulations at 15 CFR 930.39(d) already authorize Federal agencies conducting activities directly affecting the coastal zone to impose stricter standards than are required by state coastal zone management programs. Moreover, while sections 307(c) (1), (2), (3), and (d) of the CZMA require Federal consistency with an approved state program, section 307(e) preserves to each Federal agency its responsibility for carrying out its own mission requirements. The regulatory history of the Federal consistency provisions indicates NOAA's longstanding policy that there is no "positive" consistency requirement for Federal activities. NOAA has recognized that, while a proposed activity may be consistent with a state program, the Federal agency may modify or abandon the activity based on its obligations under Federal law despite the state's consistency concurrence.

E. Federal Consistency Study

In recognition of the need for a comprehensive review of the Federal consistency process, NOAA initiated a Federal Consistency Study to create an information base documenting the experiences of states, Federal agencies, industry, and public interest groups in implementing the Federal consistency provisions. A notice of availability of the Draft Study was published on May 1, 1985 (50 FR 18546). The public comment period is scheduled to close on August 31, 1985.

The issues raised in comments on the ANPR and the NPR are included in the issues being examined in the Federal Consistency Study. The Draft Study indicates that the Federal consistency process, in general, is working well, but that there are opportunities for increasing the effectiveness and efficiency of the Federal consistency process. Upon completion of this Study, NOAA will review the need for further rulemaking. NOAA will continue to monitor and evaluate the implementation of state coastal management programs and recommend appropriate improvements.

F. Other Actions Associated with the Rulemaking

(1) Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major because they will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The final regulations revise existing regulations to comport with the Supreme Court's decision in *Secretary of the Interior et al.* v. *California et al.*, (cited above) which excluded OCS oil and gas lease sales from the Federal consistency review provisions of section 307(c)(1) of the CZMA. The regulations will not result in any direct economic or environmental effect nor will they lead to any major indirect economic or environmental impacts.

(2) Regulatory Flexibility Act Analysis (Pub. L. 96-354)

A Regulatory Flexibility Analysis is not required for these final rules. The General Counsel of the Department of Commerce has certified to the Small Business Administration that the final rules will not have a significant impact on a substantial number of small entities because the final rules only eliminate OCS oil and gas lease sales from the consistency review provisions of the CZMA. The final rules will have no effect on small businesses and negligible effect on local units of government who participate in consistency reviews only through the states.

(3) Paper Work Reduction Act of 1980 (Pub. L. 96-511)

These final rules do not contain an information collection requirement subject to the Paper Work Reduction Act of 1980.

(4) National Environmental Policy Act

NOAA has concluded that publication of the final regulations does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an

environmental impact statement is not required.

G. Modification To Comment on 930.33(c) Published at 44 FR 37146–3714

Outer Continental Shelf oil and gas lease sales do not "directly affect" the coastal zone, and therefore, are not subject to the Federal consistency provisions of this part. However, since subsequent exploration, development and production activities which affect the coastal zone are subject to the Federal consistency provisions of section 307(c)(3)(B), Federal agencies and private parties are strongly encouraged to ensure in advance, through early collaboration with state agencies, that activities to be conducted after the lease sale stage can proceed harmoniously with state coastal management programs.

List of Subjects in 15 CFR Parts 923 and 930

Coastal zone, Outer Continental Shelf, Oil and gas reserves, Intergovernmental relations.

PART 923—[AMENDED]

15 CFR Part 923 is amended as follows:

1. The authority citation for Part 923 continues to read as follows:

Authority: Sec. 317, Pub. L. 92–583, as amended (16 U.S.C. 1451 et seq.).

2. Section 923.11 is amended by revising (c)(2)(ii) to read as follows:

§ 923.11 Uses subject to management.

* * * * *

(c) * * *

(2) * * *

(ii) Industrial developments, such as tank farms and refineries, power plants, manufacturing complexes, industrial parks, onshore and offshore port facilities, mineral and sand extraction operations, liquified natural gas (LNG) facilities, petrochemical plants, and Outer Continental Shelf (OCS) development. (OCS oil and gas lease sale activities do not involve development activities and are not subject to the Federal consistency requirements of section 307(c)(1)).

* * * * *

PART 930—[AMENDED]

15 CFR Part 930 is amended as follows:

1. The authority citation for Part 930 continues to read as follows:

Authority: Sec. 317, Pub. L. 92–583, as amended (16 U.S.C. 1451 et seq.).

2. Part 930.33 paragraph (c) is revised to read as follows:

§ 930.33 Identifying Federal activities directly affecting the coastal zone.

* * * * *

(c)(1) Federal activities outside of the coastal zone, as defined in Section 304(1) of the Act, are subject to Federal agency review to determine whether they directly affect the coastal zone.

(2) OCS oil and gas lease sale activities conducted pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*) are not Federal activities which directly affect the coastal zone within the meaning of Section 307(c)(1) of the Act, and, therefore, are not subject to review under this Subpart.

* * * * *

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management)

Dated: August 22, 1985.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 85–20579 Filed 8–29–85; 8:45 am]

BILLING CODE 3510-08-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Order Extending Contract Market Designations

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission is publishing the text of an Order in which it has extended the contract market designations of various boards of trade for the trading of options on futures contracts and physical commodities under the first of its options pilot programs. The option contracts so affected do not involve the domestic agricultural commodities specifically enumerated in section 2(a)(1)(A) of the Commodity Exchange Act.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission ("Commission") is today publishing elsewhere in the Federal Register proposed rules which, if adopted, would modify in certain respects the Commission's pilot program for the trading, on domestic exchanges, of options on futures contracts and physical commodities not involving the domestic agricultural commodities set forth in section 2(a)(1)(A) of the Commodity Exchange Act ("Act"). The first contract market designations under that pilot program became effective on October 1, 1982 and, absent further action by the Commission, will terminate on October 1, 1985. *See* Commission regulation 33.5(c), 17 CFR 33.5(c). Thus, among the rules today being proposed by the Commission is an amendment to § 33.5(c) which would eliminate the existing three-year limit on the first of the Commission's option pilot programs. Pending a final determination on the duration and terms of that pilot program, however, the Commission believes it is appropriate to extend the contract market designations which have already been granted under the pilot program so that option trading can continue without interruption. The Commission has, therefore, issued an Order which will allow the contract markets which have been designated for the trading of options on commodities other than those which are specifically enumerated in section 2(a)(1)(A) of the Act to continue to trade such option contracts pending further Order, or rule or regulation, of the Commission. The full text of the Commission's Order is set forth below.[1]

In the Matter of Amex Commodities Corporation, Chicago Board of Trade, Chicago Mercantile Exchange, Coffee, Sugar & Cocoa Exchange, Inc., Commodity Exchange, Inc., Kansas City Board of Trade, MidAmerica Commodity Exchange, New York Futures Exchange, Inc., and Philadelphia Board of Trade, Inc.

Order Extending Contract Market Designations

The Amex Commodities Corporation, Chicago Board of Trade, Chicago Mercantile Exchange, Coffee, Sugar & Cocoa Exchange, Inc., Commodity Exchange, Inc., Kansas City Board of Trade, MidAmerica Commodity Exchange, New York Futures Exchange, Inc., and Philadelphia Board of Trade, Inc., having applied for designation as contract markets for the trading of commodity options pursuant to section 4c(c) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6c(c), have been so designated on the dates and for the

[1] The Commission's separate pilot program for the trading of options on futures contracts involving the enumerated domestic agricultural commodities is not scheduled to expire until October 20, 1987 and is unaffected by the actions now being taken by the Commission. *See* 49 FR 2752 (January 17, 1984); 50 FR 14718, 14719 (April 15, 1985).

commodity options set forth in the Appendix to this Order. Absent further Order, or rule or regulation, of the Commission, each of those Orders of Designation will cease to be effective on and after October 1, 1985. The Commission has now determined to extend each such Order of Designation until further notice in order to provide for uninterrupted trading in the above-referenced option contracts pending a final determination on the duration of the Commission's option pilot program and as to whether further amendments to the Commission's option regulations would be appropriate. Therefore, it is hereby ordered that, under section 4c(c) of the Act, the designation of Amex Commodities Corporation, Chicago Board of Trade, Chicago Mercantile Exchange, Coffee, Sugar & Cocoa Exchange, Inc., Commodity Exchange, Inc., Kansas City Board of Trade, MidAmerica Commodity Exchange, New York Futures Exchange, Inc., and Philadelphia Board of Trade, Inc. as contract markets for the commodity options set forth in the Appendix to this Order shall hereafter remain in effect absent further Order, or rule or regulation, of the Commission.

Issued in Washington, DC, this 21st day of August 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

APPENDIX TO ORDER EXTENDING CONTRACT MARKET DESIGNATIONS

Board of Trade	Underlying futures contract or physical commodity	Date of original designation
Amex Commodities Corp.	Gold bullion	Feb. 15, 1985.
Chicago Board of Trade.	U.S. Treasury bond futures.	Aug. 31, 1982.
	Silver futures	Feb. 12, 1985.
	Long-term U.S. Treasury note futures.	Apr. 23, 1985.
Chicago Mercantile Exchange.	Standard & Poors 500-stock price index futures.	Jan. 6, 1983.
	Deutschemark futures.	Dec. 13, 1983.
	British pound futures.	Feb. 22, 1985.
	Swiss franc futures	Do.
	Three-Month Eurodollar futures.	Mar. 19, 1985.
Coffee, Sugar, & Cocoa Exchange, Inc.	Sugar No. 11 futures.	Aug. 31, 1982.
Commodity Exchange, Inc.	Gold futures	Do.
	Silver futures	Aug. 21, 1984.
Kansas City Board of Trade.	Value line average index futures.	Jan. 13, 1983.
MidAmerica Commodity Exchange.	Gold futures	Aug. 31, 1982.
New York Futures Exchange, Inc.	NYSE composite stock index futures.	Jan. 6, 1983.
Philadelphia Board of Trade, Inc.	Eurodollar time deposits.	May 9, 1985.

* * * * *

Issued in Washington, D.C. this 21st day of August 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-20499 Filed 8-29-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Feed Specialties Co., Inc., providing for the manufacture of premixes containing 20 or 40 grams per pound each of tylosin and sulfamethazine, in addition to currently approved 5- and 10-gram-per-pound premixes, used to make finished swine feeds.

EFFECTIVE DATE: August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Feed Specialties Co., Inc., 1877 NE 58th Ave., Des Moines, IA 50313, is sponsor of supplemental NADA 107-957 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of premixes containing 20 or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to subsequently make finished swine feeds. The firm currently holds approval for manufacturing 5- and 10-gram-per-pound premixes. All finished feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

2. In § 558.630 *Tylosin and sulfamethazine* in paragraph (b)(8) by removing "017274"; and in paragraph (b)(10) by inserting numerically "017274."

Dated: August 20, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-20732 Filed 8-29-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R-85-1224; FR-2079]

Section 8 Fair Market Rents for New Construction and Substantial Rehabilitation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: Section 8(c)(1) of the U.S. Housing Act of 1937 requires HUD to establish Fair Market Rents (FMRs) and to publish these FMRs at least annually in the **Federal Register.** HUD published that last annual revision of the FMRs for New Construction and Substantial Rehabilitation on April 26, 1985 as an interim rule effective on June 4, 1985. This rule adopts the interim rule as final and makes changes in the Fair Market Rent levels in several areas in response to comments received on the interim rule.

EFFECTIVE DATE: October 3, 1985.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, D.C. 20410–8000, (202) 426–7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 26, 1985, HUD published in the **Federal Register** (50 FR 16612) an interim rule constituting its latest annual revision of the Section 8 Fair Market Rents (FMRs) applicable to New Construction and Substantial Rehabilitation for all market areas, as required by section 8(c)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437(c)(1)). The interim rule solicited public comments on the FMR schedules for a 30-day period ending May 28, 1985. HUD received eight comments from the public and seven from HUD Field Offices during the comment period.

Since HUD wished to make the revised FMRs effective as soon as possible after the close of the comment period, it made the rule effective June 4, 1985 for all market areas stating its intention to continue with its evaluation of all comments received and then to publish any needed revisions of the FMR schedules for particular market areas at a future date. Each public comment was forwarded to the Technical Support Division at Headquarters for review. It was determined that the documentation submitted warranted changes in the FMR schedules within selected market areas. Accordingly, this rule makes revisions to the FMR schedules which have been suggested by both the public commenters and the HUD Field Offices as described below.

First, since any proposal for housing for the elderly includes a requirement for a minimum of 25 percent zero-bedroom units, zero-bedroom (efficiency) unit FMRs have been added to the schedules for 18 market areas which did not previously contain them. Second, FMR schedules were raised in response to market studies submitted for the Detroit and Flint, Michigan market areas, the Denver, Colorado market area, Cheyenne, Wyoming market area, the Dubuque and Waterloo, Iowa market areas, Pittsburgh, Altoona, Erie and Johnstown, Pennsylvania market areas, and the Safford, Arizona market area. Third, the seven market areas within the Columbus, Ohio Office jurisdiction were inadvertently omitted from the publication of the interim rule on April 26, 1985 in the **Federal Register.** In order to correct this omission, the FMR schedules for these seven market areas have been included in this final rule.

In all, this final rule modifies the FMR schedules for the following 36 market areas: Pennsylvania, market areas of Pittsburgh, Altoona, Erie and Johnstown; Ohio, market areas of Columbus, Athens, Lima, Newark, Sidney, Springfield and Zanesville; Indiana, market areas of Indianapolis, Evansville, Bloomington, Fort Wayne, Gary, Hammond, Lafayette, South Bend and Terre Haute; Arizona, market area of Safford; Nebraska, market areas of Omaha, Grand Island, Lincoln, Norfolk, North Platte and Scotts Bluff; Michigan, market areas of Detroit and Flint; Iowa, market areas of Dubuque and Waterloo; Colorado, market area of Denver; Wyoming, market area of Cheyenne; and Texas, market areas of Abilene, El Paso and Odessa.

Proposals involving combinations of structural types and unit sizes for which FMRs are not provided or are not in effect may not be approved until the applicable FMRs have been published and have become effective.

The Department also received comments requesting the combining of certain market areas. Since FMRs for New Construction and Substantial Rehabilitation are based on the public housing prototype cost areas, the Department cannot implement these suggestions in this rule. However, the comments have been forwarded to the appropriate personnel in the Field Offices for consideration for future implementation.

Fair Market Rent schedules in effect on the date that the proposal or application for Section 202/Section 8 assistance is accepted for processing by HUD (or, in the case of assistance under 24 CFR Part 884, by FmHA, and by the State Agency in the case of assistance under 24 CFR Part 883) shall apply, except as follows:

1. For all projects where the FMRs are revised upward after the date that a processing stage is completed, the revised FMRs shall apply to all subsequent processing in reviewing contract rents and utilities (unless the borrower agrees at the fund reservation stage to limit the rents to 110 percent of the FMRs in effect at that time in accordance with negotiated bid procedures). The decision concerning appropriate FMRs to use in project processing shall be based upon an entire schedule, rather than selectively choosing the highest unit rents from the currently effective FMR schedule or a previously published schedule for that area.

2. For all projects where the Fair Market Rents are revised downward after the completion date of a processing stage, the applicable FMR shall be the higher of:

(a) The FMR set forth in Schedule A of Part 888 as revised or added by this rule, or

(b) The FMR set forth in the schedule published on February 8, 1984 (49 FR 4892) or any interim revision of that schedule.

HUD regulations in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, provide for categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusion set forth in § 50.20(l), no environmental finding is needed for this rule and none has been prepared.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation, issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as item 126 in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286, 17317), under Executive Order 12291 and the Regulatory Flexibility Act.

As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the changes made by this rule will have an

effect on developers of Section 8 projects, some of whom may constitute small entities, it is not expected that the economic impact on them will be substantial.

The Catalog of Federal Domestic Assistance Program number and title is 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 888

Rent subsidies, Grant programs—housing and community development.

Accordingly, the Interim Rule published on April 26, 1985 at 50 FR 16612 is adopted as final without change, except as indicated in the schedule of rents that appears below.

Authority: Sec. 8(c)(1) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(c)(1); sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: August 26, 1985.

Janet Hale,

Acting General Deputy, Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program)

These Fair Market Rents have been trended ahead to October 1, 1986, to update the current Fair Market Rent schedules which these revised schedules replace.

Note.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for appropriate size units, not to exceed 2 bedrooms for the elderly, multiplied by 1.05; (2) congregate housing dwelling units are the same as for noncongregate units; (3) single room occupancy dwelling units (applicable only for Substantial Rehabilitation projects) are 75 percent of those for zero bedroom units of the same structural type; (4) living units in a group home (each composed of a bedroom plus a proportionate part of common living space which is ordinarily included in a living unit) are those for zero bedroom or one bedroom units of the walk-up structural type (or, if the group home contains an elevator, of the elevator 2–4 story structural type). In group homes, one bedroom Fair Market Rents may be applied only when the bedroom space plus the proportionate part of the common space is at least 450 square feet; (5) manufactured homes (unit and space) shall be 95 percent of the rents for detached units of the appropriate bedroom size (except that where a manufactured home Fair Market Rent is given on the schedule for the area, the amount on the schedule shall be the Fair Market Rent); and (6) manufactured home spaces in recently constructed or substantially rehabilitated manufactured home parks shall be the Fair Market Rents for spaces published for the Existing Housing Program under Schedule D, multiplied by 1.25.

All rents computed in accordance with this note or with established procedures for exception rents, shall be rounded down to the nearest whole dollar.

BILLING CODE 4210-27-M

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

PITTSBURGH, PENNSYLVANIA AREA OFFICE

MARKET: PITTSBURGH

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			622	691	809
SEMI-DETACHED/ROW		533	592	667	788
WALKUP	394	469	564	667	788
ELEVATOR 2-4 STY	483	548	622		
ELEVATOR 5+ STY	498	564	662		
MANUFACTURED HOME					

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: ERIE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			582	651	761
SEMI-DETACHED/ROW		504	554	628	725
WALKUP	339	419	491	570	638
ELEVATOR 2-4 STY	473	535	618		
ELEVATOR 5+ STY	494	565	655		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: ALTOONA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			518	628	747
SEMI-DETACHED/ROW		424	503	590	711
WALKUP	334	412	503	590	684
ELEVATOR 2-4 STY	473	538	561		
ELEVATOR 5+ STY	483	546	597		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: JOHNSTOWN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			529	630	748
SEMI-DETACHED/ROW		424	508	583	705
WALKUP	337	416	500	575	656
ELEVATOR 2-4 STY	439	472	566		
ELEVATOR 5+ STY	448	507	596		

EFFECTIVE DATE 100184
TRENDED DATE 100186

REGION 5

DETROIT, MICHIGAN AREA OFFICE

MARKET: DETROIT

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			635	688	803
SEMI-DETACHED/ROW		481	511	599	693
WALKUP	317	397	466	552	642
ELEVATOR 2-4 STY	349	431	484		
ELEVATOR 5+ STY	354	461	555		
MANUFACTURED HOME					

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: FLINT

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			565	673	755
SEMI-DETACHED/ROW		364	454	588	616
WALKUP	312	351	489	536	618
ELEVATOR 2-4 STY	312	368	433		
ELEVATOR 5+ STY	324	430	508		

EFFECTIVE DATE 100184
TRENDED DATE 100186

INDIANAPOLIS, INDIANA AREA OFFICE

MARKET: INDIANAPOLIS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			571	636	787
SEMI-DETACHED/ROW	368	486	485	562	685
WALKUP	333	374	447	518	538
ELEVATOR 2-4 STY	368	397	474		
ELEVATOR 5+ STY	453	501	588		
MANUFACTURED HOME					

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: BLOOMINGTON

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			542	607	677
SEMI-DETACHED/ROW	358	385	459	521	567
WALKUP	315	357	425	482	534
ELEVATOR 2-4 STY	349	374	453		
ELEVATOR 5+ STY	434	482	578		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: EVANSVILLE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			528	593	668
SEMI-DETACHED/ROW	349	398	466	534	595
WALKUP	311	353	425	482	532
ELEVATOR 2-4 STY	347	376	453		
ELEVATOR 5+ STY	428	478	554		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: FORT WAYNE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			535	597	666
SEMI-DETACHED/ROW	344	384	459	589	568
WALKUP	312	352	418	468	515
ELEVATOR 2-4 STY	345	374	445		
ELEVATOR 5+ STY	432	478	559		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: HAMMOND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			584	653	711
SEMI-DETACHED/ROW	484	444	520	583	658
WALKUP	364	413	481	548	584
ELEVATOR 2-4 STY	405	435	506		
ELEVATOR 5+ STY	474	532	613		
MANUFACTURED HOME					

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: LAFAYETTE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			564	632	677
SEMI-DETACHED/ROW	368	401	469	536	605
WALKUP	326	367	434	498	548
ELEVATOR 2-4 STY	359	389	462		
ELEVATOR 5+ STY	449	498	582		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: SOUTH BEND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			558	627	701
SEMI-DETACHED/ROW	362	415	482	558	628
WALKUP	324	368	432	488	538
ELEVATOR 2-4 STY	362	392	461		
ELEVATOR 5+ STY	443	501	580		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: TERRE HAUTE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			558	627	702
SEMI-DETACHED/ROW	368	399	478	541	609
WALKUP	322	366	440	503	557
ELEVATOR 2-4 STY	357	388	468		
ELEVATOR 5+ STY	436	487	575		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: GARY

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			584	643	709
SEMI-DETACHED/ROW	484	444	512	583	658
WALKUP	364	413	481	548	584
ELEVATOR 2-4 STY	405	435	506		
ELEVATOR 5+ STY	461	511	582		
MANUFACTURED HOME					

EFFECTIVE DATE 100184
TRENDED DATE 100186

COLUMBUS, OHIO AREA OFFICE

MARKET: COLUMBUS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			677	756	783
SEMI-DETACHED/ROW		382	454	511	559
WALKUP	302	371	432	493	557
ELEVATOR 2-4 STY	336	418	488		
ELEVATOR 5+ STY	466	575	687		
MANUFACTURED HOME					

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: ATHENS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			658	718	748
SEMI-DETACHED/ROW		365	448	494	546
WALKUP	294	359	415	482	546
ELEVATOR 2-4 STY	324	398	471		
ELEVATOR 5+ STY	454	566	705		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: LIMA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			658	718	748
SEMI-DETACHED/ROW		365	448	494	546
WALKUP	294	359	415	482	546
ELEVATOR 2-4 STY	324	398	471		
ELEVATOR 5+ STY	454	566	705		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: NEWARK

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			658	718	748
SEMI-DETACHED/ROW		365	448	494	546
WALKUP	294	359	415	482	546
ELEVATOR 2-4 STY	324	398	471		
ELEVATOR 5+ STY	454	566	705		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: SPRINGFIELD

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			658	718	748
SEMI-DETACHED/ROW		365	448	494	546
WALKUP	294	359	415	482	546
ELEVATOR 2-4 STY	324	398	471		
ELEVATOR 5+ STY	454	566	705		
MANUFACTURED HOME					

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: SIDNEY

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			658	718	748
SEMI-DETACHED/ROW		365	448	494	546
WALKUP	294	359	415	482	546
ELEVATOR 2-4 STY	324	398	471		
ELEVATOR 5+ STY	454	566	705		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: ZANESVILLE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			658	718	748
SEMI-DETACHED/ROW		365	448	494	546
WALKUP	294	359	415	482	546
ELEVATOR 2-4 STY	324	398	471		
ELEVATOR 5+ STY	454	566	705		

EFFECTIVE DATE 100184
TRENDED DATE 100186

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

DALLAS, TEXAS AREA OFFICE

MARKET: EL PASO

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			471	545	611
SEMI-DETACHED/ROW	382	339	429	505	571
WALKUP	266	318	406	469	547
ELEVATOR 2-4 STY	278	350	441		
ELEVATOR 5+ STY	391	469	585		
MANUFACTURED HOME					

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: ABILENE

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
		539	657	727
369	378	469	553	644
292	347	449	515	598
384	383	482		
428	515	680		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: ODESSA

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
		463	709	774
331	358	488	592	692
367	389	379	558	641
282	363	425		
419	468	622		

EFFECTIVE DATE 100184
TRENDED DATE 100186

REGION 7

OMAHA, NEBRASKA AREA OFFICE

MARKET: OMAHA

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	328	361	463	527	588
WALKUP	281	339	418	517	546
ELEVATOR 2-4 STY	288	381	458		
ELEVATOR 5+ STY	316	394	474		
MANUFACTURED HOME					

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: GRAND ISLAND

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
318	359	454	521	574
281	338	418	517	563
288	376	458		
319	394	474		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: LINCOLN

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
345	355	449	515	567
288	339	418	518	562
288	383	458		
328	394	474		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: NORFOLK

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
318	359	454	521	574
281	338	418	517	563
288	376	458		
319	394	474		

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: NORTH PLATTE

NUMBER OF BEDROOMS				
STRUCTURE TYPE -0-	-1-	-2-	-3-	-4+
DETACHED				
SEMI-DETACHED/ROW 292	331	419	481	538
WALKUP 263	328	386	479	521
ELEVATOR 2-4 STY 275	348	438		
ELEVATOR 5+ STY 295	372	458		
MANUFACTURED HOME				

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: SCOTTS BLUFF

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
318	353	447	512	564
288	344	418	518	561
292	370	467		
314	397	487		

EFFECTIVE DATE 100184
TRENDED DATE 100186

DES MOINES, IOWA SERVICE OFFICE

MARKET: DUBUQUE

NUMBER OF BEDROOMS				
STRUCTURE TYPE -0-	-1-	-2-	-3-	-4+
DETACHED			593	683	783
SEMI-DETACHED/ROW		455	515	576	661
WALKUP 325	349	411	505	561
ELEVATOR 2-4 STY 392	437	513		
ELEVATOR 5+ STY 422	474	561		
MANUFACTURED HOME				

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: WATERLOO

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
		594	683	783
	441	513	576	661
325	352	413	505	561
392	438	513		
422	474	561		

EFFECTIVE DATE 100184
TRENDED DATE 100186

REGION 8

DENVER, COLORADO REGIONAL:AREA OFFICE

MARKET: DENVER, CO

NUMBER OF BEDROOMS				
STRUCTURE TYPE -0-	-1-	-2-	-3-	-4+
DETACHED			683	812	985
SEMI-DETACHED/ROW 436	489	576	695	782
WALKUP 353	413	462	603	684
ELEVATOR 2-4 STY 369	421	534		
ELEVATOR 5+ STY 468	471	595		
MANUFACTURED HOME				

EFFECTIVE DATE 100184
TRENDED DATE 100186

MARKET: CHEYENNE, WY

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
		549	662	745
325	371	447	555	627
298	341	412	511	584
358	408	493		
382	433	519		

EFFECTIVE DATE 100184
TRENDED DATE 100186

REGION 9

PHOENIX, ARIZONA SERVICE OFFICE

MARKET: SAFFORD

NUMBER OF BEDROOMS				
STRUCTURE TYPE -0-	-1-	-2-	-3-	-4+
DETACHED			469	569	668
SEMI-DETACHED/ROW 319	378	442	536	628
WALKUP 299	353	429	505	559
ELEVATOR 2-4 STY 326	388	456		
ELEVATOR 5+ STY				
MANUFACTURED HOME				

EFFECTIVE DATE 100184
TRENDED DATE 100186

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SELECTIVE SERVICE SYSTEM

32 CFR Part 1699

Enforcement of Nondiscrimination on the Basis of Handicap in Selective Service System Programs

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: This regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Selective Service System.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, D.C. 20435, Phone 202–724–1167. TDD Phone 202–724–0408.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Selective Service System.

The proposed rule was published in the **Federal Register** on May 1, 1984 (49 FR 18550). The period for receiving public comment expired August 28, 1984.

Six comments were received, all from State or National interest organizations, and none from individuals. Two letters of comment, each from a different source, were identical in content. The majority of comments were of a general nature, addressing the concept of the regulations, with a few exceptions which addressed specific sections.

The text of the final rule is identical to the text of the proposed rule except as indicated below. Revisions made reflect changes that are consistent with the final regulation published by the Department of Justice to implement section 504 in the programs and activities conducted by that agency. The revisions were made because the Department of Justice's final rule addresses all the issues raised by comments submitted to the Selective Service System, and because the Selective Service System intends to avoid standards under the Rehabilitation Act that conflict with other executive agencies.

Section-by-Section Analysis of Revised Sections

Section 1699.110 Self-evaluation.

The provision that the Agency shall provide an opportunity to interested persons to participate in the self-evaluation process by submitting comments (both oral and written) has been added. The requirement that the agency maintain a file of the list of interested persons consulted has been eliminated.

Section 1699.130 General prohibitions against discrimination.

The prohibition found in § 1699.130(b)(6) concerning licensing and certification programs has been added.

Section 1699.150 Program accessibility: Existing facilities.

The requirement that the Agency develop the transition plan with the assistance of interested persons has been modified to provide such persons an opportunity to participate in the development of the transition plan by submitted comments (both oral and written).

Section 1699.160 Communications.

The Notice requirement that the Agency take appropriate steps to provide handicapped persons with information regarding their section 504 Rights under the Agency's programs or activities is established in § 1699.111. Because § 1699.111 encompasses the requirements of proposed § 1699.160(d), this latter paragraph has been deleted as duplicative.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 180 Comp., p. 298) and distributed to Executive agencies on April 15, 1983.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 29867, 3 CFR 1978 Comp., 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp. p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section 504 requires that regulations that apply to the programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The System has today submitted this regulation to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor pursuant to the terms of section 504. The regulation will become effective on September 30, 1985.

List of Subjects in 32 CFR Part 1699

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Thomas K. Turnage,

Director of Selective Service.

August 27, 1985.

Part 1699 is added to 32 CFR Chapter XVI as follows:

PART 1699—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY SELECTIVE SERVICE SYSTEM

Sec.

1699.101 Purpose.
1699.102 Application.
1699.103 Definitions.
1699.104–1699.109 [Reserved]
1699.110 Self-evaluation.
1699.111 Notice.
1699.112–1699.129 [Reserved]
1699.130 General prohibitions against discrimination.
1699.131–1699.139 [Reserved]
1699.140 Employment.
1699.141–1699.148 [Reserved]
1699.149 Program accessibility: Discrimination prohibited.
1699.150 Program accessibility: Existing facilities.
1699.151 Program accessibility: New construction and alterations.
1699.152–1699.159 [Reserved]
1699.160 Communications.
1699.161–1699.169 [Reserved]
1699.170 Compliance procedures.
1699.171–1699.999 [Reserved]

Authority: 29 U.S.C. 794.

§ 1699.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1699.102 Application.

This part applies to all programs or activities conducted by the agency

§ 1699.103 Definitions.

For purposes of this part, the term—

"Agency" means the Selective Service System.

"Assistant Attorney General" means the Assistant Attorney General, Civil

Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such disease and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (l) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to a ıy agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 1699.104–1699.109 [Reserved]

§ 1699.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1699.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and its regulation.

§§ 1699.112–1699.129 [Reserved]

§ 1699.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or

service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped person is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1699.131–1699.139 [Reserved]

§ 1699.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1699.141–1699.148 [Reserved]

§ 1699.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1699.150, no qualified handicapped persons shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subject to discrimination under any program or activity conducted by the agency.

§ 1699.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1699.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignments of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4141–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date

of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, at the time, identify steps that will be taken during each year of the transition period; and

(4) Indicate the officials responsible for implementation of the plan.

§ 1699.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handcapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 14–19.607, apply to buildings covered by this section.

§§ 1699.152–1699.159 [Reserved]

§ 1699.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aid where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's), or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1699.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1699.161–1699.169 [Reserved]

§ 1699.170 Compliance procedure.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Associate Director for Administration.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible and usable to handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusion of law;

(2) A description of a remedy of each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1699.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director of Selective Service.

(j) The agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 1699.171–1699.999 [Reserved]

[FR Doc. 85–20633 Filed 8–29–85; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 61

Procedures for Approved State and Local Government Historic Preservation Programs

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: These final rules present the requirements for approval of State and local historic preservation programs participating in the national preservation program as specified in the National Historic Preservation Act, as amended in 1980 ("the Act"). These rules are necessary in order to implement procedures for: (1) The approval of State programs; (2) the certification of local governments when there is no approved State historic preservation program; and (3) funding Certified Local Governments (CLGs) when there is no approved State historic preservation program. The intended effect of this rulemaking is to meet the requirements of the Act by providing the procedures and standards for the evaluations of State historic preservation programs and by noting the policy to be followed in the national CLG program in States without approved State historic preservation programs.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Hardy L. Pearce, Chief, Survey and Planning Branch, Interagency Resources Division, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, D.C. 20013–7127. Telephone Number: (202–343–9505).

SUPPLEMENTARY INFORMATION: This rulemaking was necessitated by enactment of the National Historic Preservation Act Amendments of 1980, Pub. L. 96–515, on December 12, 1980.

Section 101(b)(2) of the Act requires the Secretary of the Interior (Secretary) to conduct performance evaluations of State historic preservation programs. These rules provide the procedures and standards for these evaluations.

These sections of 36 CFR Part 61, which were reserved when other sections of Part 61 were published in final on April 13, 1984, were proposed on May 14, 1984. Sections of Part 61 already in effect establish procedures for approval of State historic preservation programs; procedures for Historic Preservation Fund (HPF) matching grants-in-aid to approved State programs; a process by which local governments will be certified to participate formally in the National historic preservation program; and procedures for the transfer of a portion of each State's annual HPF grant to Certified Local Governments. Upon the effective date of the sections of Part 61 published herein, the entire 36 CFR Part 61 shall be in effect.

The Secretary will evaluate each State program for compliance with 36 CFR Part 61 and other program requirements. The program evaluations will be conducted every second or third fiscal year. They will be rigorous with respect to assessing States' performance under the requirements of the Act. The State programs will be selectively examined to the depth of existing regulations and standards pertinent to each requirement but only to the extent these were in effect during the performance period being evaluated. The Secretary will verify the accuracy of required periodic State reports used in meeting governmentwide requirements of OMB Circular A–102, in allocating grant funds, and in reporting on the status of the national historic preservation program; provide States with an analysis of program strengths and weaknesses; and, initiate a periodic program approval process based upon State compliance with statutory program responsibility and implementation of Federal administrative controls.

As required by section 101(c)(1) of the National Historic Preservation Act, as amended, States with approved historic preservation programs are required to develop procedures for the certification of local governments and for the transfer of funds to local governments.

The Secretary also is required by the Act to issue rules for the certification of local governments in States that do not have an approved historic preservation program. These rules, which were proposed on May 14, 1984, are herein issued as final.

When there is no approved State program, the Secretary will certify local governments directly. The Secretary will base the review of applications from local governments wishing to become certified upon the requirements for local government certification contained in 36 CFR Part 61.

The Secretary will ensure that, to the extent feasible, there is consistency and continuity in the CLG program of a State that does not have an approved program. Therefore, if a now disapproved State program had an approved local government certification process and had already certified local governments, the Secretary will consider that process in his review of any application for local government certification from within that State.

Under section 101(c)(1) of the Act, the Secretary also is required to issue rules for the transfer of funds to local governments. When there is no approved State program, the Secretary will directly administer the transfer of funds to CLGs. The Secretary will base the review of applications from local governments wishing to receive funding upon the requirements set forth in § 61.7.

Comments and Response to Comments on the May 14, 1984, Publication of Proposed Rules

Section 61.4 Approved state programs.

Section 61.4 (c)(2)(i): Three comments were received on this section. One commentor suggested that "the Secretary will evaluate each State for compliance with 36 CFR 61" may be interpreted more narrowly than intended. As the proposed rule notes, all aspects of each State Historic Preservation Program are subject to review including, for example, aspects regulated by OMB circular and Treasury requirements. The commentor, therefore, recommended that the first sentence be revised as follows: "The Secretary will evaluate each State program for compliance with the Act and other applicable laws and regulations." The suggestion was adopted to more accurately reflect the general categories of activities subject to review by the National Park Service.

Another commentor suggested that the word "immediately" be dropped in the second sentence because it does not qualitatively add to the meaning of the sentence and implies an unrealistic degree of precision in scheduling reviews. Because the important concept is that State program evaluations occur every two or three years, the word "immediately" has been dropped as unnecessarily inflexible.

Two people suggested that the word "selectively" be inserted in the fourth sentence prior to "examined". We agree with the suggestion. Even though, in order to ascertain the status of State programs, all categories listed in § 61.4 (c)(2)(ii) will be examined and each aspect of State operations must be subject to examination, no single review will be equally detailed on all aspects of State operations. A sampling method based on random selection, results of previous reviews, and as indicated by other sources of information, is equally effective (as a 100% examination) in determining the status of a State program but is less costly.

Section 61.4 (c)(2)(ii): A commentor suggested that "Tax Act" be added to the list of categories of activities for

evaluation. We do not agree. Preservation Tax Incentives are not applicable to all States by law (e.g., the Virgin Islands) and participation by other States is voluntary pursuant to 36 CFR Part 67; therefore, it cannot be listed as a separate category. However, because tax incentive activities are eligible costs for State programs, such activities are subject to review and approval as part of the Secretary's evaluation.

Section 61.4(c)(2): A commentor proposed that the National Park Service publish in the **Federal Register** a notice announcing planned State program reviews and soliciting public comments on the State programs, and a second notice announcing the availability of National Park Service results after the visit. **Federal Register** notices to the public would be an unduly burdensome requirement. However, the idea of providing a standard method for public involvement in State program review is a good one. Accordingly, a procedure for doing this has been added to the *National Register Programs Manual* (NPS Guideline 49), which implements 36 CFR Part 61. As a result of the suggestion, a procedure was adopted for notifying a cross-section of the State's preservation constituency by a Statewide newsletter or similar State government publication with extensive distribution. The notice must invite public comments on the State's performance in implementing the Act and other laws and regulations. Copies of the National Park Service State evaluation report are sent to commentors.

Approved Local Programs (§ 61.5) and Transfer for Grants to Certified Local Governments (§ 61.7)

One comment was made concerning procedures in the Certified Local Government (CLG) program in instances when there is no approved State program. The commentor suggests that "language be used to clarify that any previously approved State procedures may be used, but only to the extent feasible, to preclude the implication that [the Secretary] must adhere to these procedures when it may be neither desirable or administratively feasible to do so." We agree with both points made and have modified the final rule to allow for as much consistency within State CLG programs as is feasible given the absence of an approved State historic preservation program.

Revisions

After consideration and review, the National Park Service has made the following revisions to 36 CFR Part 61. A few editorial changes have also been made.

Section 61.4(c)(2)(i): The first sentence has been revised by dropping, "36 CFR Part 61" and language has been added as follows, "the Act and other applicable laws and regulations".

Section 61.4(c)(2)(i): The word "immediately" has been dropped in the second sentence.

Section 61.4(c)(2)(i): The word "selectively" has been added in the fourth sentence.

Section 61.5(n)(4): A new paragraph was added to indicate that, to the extent feasible, the Secretary will be consistent with previously approved State certification procedures when reviewing certification applications from local governments in States without approved State historic preservation programs.

Section 61.7(q): Two new sentences were added to indicate that, to the extent feasible, the Secretary will be consistent with previously approved State CLG allocation procedures when reviewing applications for funding from CLGs in States without approved State historic preservation programs.

Classification

In accordance with Executive Order 12291, the Department of the Interior has determined that these rules are not major. In accordance with the Regulatory Flexibility Act, the Department of the Interior has determined that these rules will not have a significant economic effect on a substantial number of small entities. The information collection requirements contained in this part have been approved and assigned clearance number *1024–0038* by the Office of Management and Budget under 44 U.S.C. 3501 *et set.*

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not not significantly impact the environment. Because these rules have to do with procedural aspects of State and local historic preservation programs and have no impact on the environment, an Environmental Impact Statement is not required.

List of Subjects in 36 CFR Part 61

Grant programs, Natural resources, Historic preservation.

The originators of these procedures are Theodore Pochter, Preservation Planner, and John W. Renaud, Historian, Interagency Resources Division, National Park Service (202/343–9505).

Dated: June 25, 1985.

Susan E. Recce,

Acting Assistant Secretary, Fish and Wildlife and Parks.

PART 61—PROCEDURES FOR APPROVED STATE AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

In consideration of the foregoing, 36 CFR Part 61 is amended as follows:

1. The authority citation for Part 61 continues to read as follows:

Authority: National Historic Preservation Act of 1966, as amended 16 U.S.C. 470 *et seq.*

2. Section 61.4(c)(2) is amended by revising the heading and by adding paragraphs (c)(2)(i)–(v) to read as follows:

§ 61.4 Approved state programs.

* * * * *

(c) * * *

(2) *Procedures for Review and Approval of State Historic Preservation Programs.* (i) The Secretary will evaluate each State program for compliance with the requirements of the Act and other applicable laws and regulations. The program evaluation process will be conducted after the end of every second or third fiscal year. It will be rigorous with respect to assessing the State's performance of the requirements in the Act. The State programs will be selectively examined to the depth of existing regulations and standards pertinent to each requirement but only to the extent these were in effect during the performance period being evaluated. The Secretary will verify the accuracy of required periodic State reports used in allocating grant funds and in reporting on the status of the national historic preservation program and provide States with analyses of program strengths and weaknesses.

(ii) The categories of activities to be evaluated are:

(A) Requirements of the Act.

(*1*) Legal authority and designation of the State Historic Preservation Officer.

(*2*) State Staff Qualifications and Composition.

(*3*) State Review Board Qualifications and Composition.

(*4*) Historic Preservation Fund Grant Management.

(*5*) Comprehensive Historic Preservation Planning.

(*6*) Survey and Inventory.

(*7*) National Register.

(*8*) Public Participation.

(*9*) Technical Assistance to Governmental Agencies.

(*10*) Review and Compliance.

(*11*) Public Education.

(*12*) Certification Assistance to Local Governments.

(B) Conditions and other requirements as specified in *The National Register Programs Manual* (NPS Guideline 49).

(C) Annual Historic Preservation Fund grant applications.

(D) OMB circular and Treasury requirements.

(E) Appropriate implementing regulations.

(iii) The Secretary will use a combination of on-site and off-site inquiries to perform the evaluation. To achieve uniformity of review and comprehensive coverage of the approval criteria, the following questions will generally form the basis for verifying State activities for each of the requirements:

(A) Is there an adequate system or process in place for the requirement?

(B) Is the system or process being used such that a minimal level of activity for each requirement can be demonstrated?

(C) Have all conditions of any grant awards been met?

(D) Are the data contained in the previous year's End-of-Year Report accurate?

(iv) Approval Method.

(A) States meeting all requirements in the review will receive immediate official notice that their approved status is continued.

(B) States not meeting all requirements will receive immediate notice of deficiencies along with recommendations on how to correct them. The Secretary will defer making a decision on program approval for up to a 4 month period during which time technical assistance in correcting the problems will be offered. States must either correct cited deficiencies, or provide an acceptable justification for requiring additional time and a plan and timetable for correcting deficiencies. During this period, States have the opportunity to appeal to the Secretary any findings and recommendations.

(C) States successfully resolving deficiencies will receive notice from the Secretary that their approved status is continued. Once approved status is renewed, States will not be reviewed until the next regular evaluation period, although evaluations may be conducted more often in individual States if the Secretary deems this necessary. The Secretary may disapprove a State program as a result of any such evaluation subject to the provisions of Sec. 61.4(c)(2)(iv) (A), (B), and (D).

(D) States will be "disapproved" only when, after the expiration of the specified period, they are officially notified that their approved status is removed for failure to correct cited deficiencies. The Secretary will then initiate financial suspension and other actions in accordance with administrative guidelines specified in *The National Register Programs Manual* (NPS Guideline 49).

(v) Instructions on carrying out the evaluation process are provided in *The National Register Programs Manual* (NPS Guideline 49).

* * * * *

3. Section 61.5(n) is revised to read as follows:

§ 61.5 Approved local programs.

* * * * *

(n) *Procedures for direct certification by the Secretary where there is no approved State program.* (1) When there is no approved State program, local governments wishing to be certified must apply directly to the Secretary.

(2) The application must demonstrate that the local government meets the specifications for certification set forth in paragraph (c) of this section.

(3) The Secretary shall review certification applications under this subsection and take action within 90 days of receipt.

(4) To the extent feasible, the Secretary will ensure that there is consistency and continuity in the CLG program of a State that does not have an approved historic preservation program. Therefore, if a now disapproved State program had an approved local government certification process and had already certified local governments, the Secretary will consider the process in his review of any applications for local govenment certification from within the State.

3. Section 61.7(q) is revised to read as follows:

§ 61.7 Transfer of grants to certified local governments.

* * * * *

(q) Where there is no approved State program, the method for allocating funds will be determined by the Secretary in accordance with the procedures set forth for States in this section. To the extent feasible, there should be consistency and continuity in funding allocation policy of the CLG program of a State that does not have an approved historic preservation program. Therefore, if a now disapproved State program had an approved allocation process, the Secretary will consider it in the review of any application for funding from CLGs within that State.

[FR Doc. 85–20785 Filed 8–29–85; 8:45 am]

BILLING CODE 4315-70-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6675]

Suspension of Community Eligibility; Illinois et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street, Southwest, FEMA—Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable

floodplain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the Federal Register.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Region V					
Illinois					
Gallatin	Equality, village of	170244E	July 2, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Mar. 22, 1974 and Mar. 26, 1976	Sept. 4, 1985.
Monroe	Fults, village of	170511C	June 26, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 17, 1973, Jan. 30, 1976 and July 13, 1979.	Do.
Randolph	Kaskaskia, village of	170736B	Dec. 27, 1973, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 17, 1973	Do.
Gallatin	Old Shawneetown, Village of	170247B	July 26, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 17, 1973 and Apr. 16, 1976	Do.
LaSalle	Ottawa, city of	170405B	Apr. 23, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Apr. 5, 1974 and Jan. 3, 1975	Do.
Monroe	Valmeyer, village of	170780C	Apr. 15, 1974, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Mar. 29, 1974, June 4, 1976 and Feb. 16, 1979.	Do.
Ohio: Medina	Wadsworth, city of	390396B	July 1, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Mar. 1, 1974 and June 4, 1976	Do.
Wisconsin: Lincoln	Tomahawk, city of	550256B	Nov. 29, 1974, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.		Sept. 4, 1985.
Region I—Minimal Conversions					
Maine:					
Oxford	Byron, town of	230330A	July 15, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 6, 1974	Sept. 4, 1985.
Aroostook	Chapman, town of	230015A	Apr. 20, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Mar. 26, 1976	Do.
Washington	Columbia Falls, town of	230308B	May. 4, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Apr. 16, 1975 and Jan. 14, 1977	Do.
Oxford	Greenwood, town of	230332A	June 24, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Feb. 21, 1975	Do.
Somerset	Embden, town of	230359B	Aug. 11, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Feb. 21, 1975 and Oct. 22, 1976	Do.
Oxford	Hanover, town of	230338A	Aug. 11, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 24, 1976	Do.
Somerset	Smithfield, town of	230370B	Mar. 17, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Jan. 24, 1975 and Sept. 24, 1976	Do.
do	Roxbury, town of	230181A	Oct. 24, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Feb. 14, 1975	Do.
Hancock	Sullivan, town of	230295A	Apr. 15, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Mar. 14, 1975	Do.
Vermont:					
Windham	Brookline, town of	500280A	Aug. 11, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 6, 1974	Do.
do	Halifax, town of	500281A	Mar. 3, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Jan. 31, 1975	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Region II					
New York: Madison	Lincoln, town of	360405B	Sept. 10, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Apr. 12, 1974 and Apr. 23, 1976	Do.
Region III					
Pennsylvania:					
Cambria	Allegheny, township of	422065A	Aug. 26, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Jan. 24, 1975	Do.
Chester	East Nottingham, township of	421462B	Feb. 9, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Sept. 13, 1974 and Nov. 28, 1975	Do.
Somerset	Jenner, township of	422051B	Feb. 18, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Jan. 24, 1975 and Nov. 23, 1979	Do.
Monroe	Tunkhannock, township of	421666B	Apr. 23, 1980, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Jan. 31, 1975 and June 20, 1980	Do.
Region IV—Minimal Conversions					
Alabama:					
Conecuh	Evergreen, city of	010051A	Sept. 3, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Aug. 8, 1975	Do.
Clarke	Grove Hill, town of	010039A	June 3, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Apr. 25, 1975	Do.
Kentucky: Montgomery	Mt. Sterling, city of	210234B	Apr. 3, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	May 10, 1974 and Apr. 9, 1976	Do.
Region V					
Illinois:					
Effingham	Altamont, city of	170226C	Jan. 28, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Mar. 22, 1974, June 11, 1976 and June 22, 1979.	Do.
Grundy	Carbon Hill, village of	170257B	Aug. 21, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Mar. 8, 1974 and Oct. 17, 1975	Do.
Clinton	Carlyle, city of	170047E	Sept. 8, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 7, 1973 and Jan. 23, 1976	Do.
Vermilion	Catlin, village of	170661E	Aug. 21, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	June 28, 1974 and Feb. 20, 1976	Do.
Tazewell	DeLavan, city of	170646B	June 10, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	May 24, 1974 and Dec. 5, 1974	Do.
McHenry	Lakewood, village of	170808B	Mar. 25, 1974, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Oct. 18, 1974 and May 14, 1976	Do.
Sangamon	Loami, village of	170795B	July 29, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Mar. 28, 1974 and Dec. 12, 1975	Do.
LaSalle	Oglesby, city of	170404B	July 2, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	May 24, 1974 and July 16, 1976	Do.
Richland	Olney, city of	170581D	July 18, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Feb. 22, 1974, Mar. 28, 1976, June 25, 1976 and Sept. 24, 1976.	Do.
Bureau	Princeton, city of	170014B	Mar. 24, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	June 7, 1974 and July 30, 1976	Do.
Knox	Watago, village of	170354C	July 15, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	July 7, 1974, May 28, 1976 and June 22, 1979.	Do.
Indiana: Kosciusko	Wiona Lake, town of	180124B	Oct. 14, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	May 3, 1974 and Apr. 30, 1976	Do.
Michigan: Washtenaw	Augusta, township of	260027B	Aug. 12, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Apr. 15, 1977	Do.
Minnesota: Carlton	Barnum, city of	270040B	Aug. 20, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Aug. 23, 1974 and Apr. 11, 1975	Do.
Ohio: Greene	Yellow Springs, village of	390640B	July 31, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Oct. 18, 1975 and Aug. 1, 1975	Do.
Wisconsin:					
Clark	Loyal, city of	550052B	Aug. 22, 1974, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	May 17, 1974 and Apr. 9, 1976	Do.
Walworth	Genoa City, village of	550465B	Mar. 5, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Jan. 9, 1974 and May 15, 1976	Do.
Clark	Greenwood, city of	550051C	Nov. 11, 1974, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Jan. 9, 1974, Apr. 23, 1976 and Mar. 30, 1979.	Do.
Shawano	Bowler, village of	550415B	July 21, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Nov. 30, 1973 and May 28, 1976	Do.
Columbia	Fall River, village of	550060B	Apr. 17, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Apr. 15, 1974 and June 4, 1976	Do.
Sauk	Lake Delton, village of	550394C	Feb. 19, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 17, 1973, Apr. 30, 1976 and July 23, 1976.	Do.
Waupaca	Iola, village of	550497B	Sept. 29, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	June 7, 1974 and May 14, 1976	Do.
Fond Du Lac	Fairwater, village of	550136D	Apr. 30, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Nov. 8, 1974	Do.
Region VII					
Iowa:					
Cedar	Bennett, city of	190061A	Apr. 24, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 27, 1974	Do.
Tama	Gladbrook, city of	190516A	June 30, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	July 25, 1974	Do.
Pottawattamie	Carson, city of	190234B	July 29, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Aug. 8, 1974 and Jan. 16, 1976	Do.
Harrison	Persia, city of	190150A	Apr. 6, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 13, 1974	Do.
Mills	Silver City, city of	190207B	Jan. 2, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Nov. 8, 1974 and Mar. 19, 1976	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Cedar	Tipton, city of	190057B	July 2, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Mar. 29, 1974 and Aug. 13, 1976	Do.
Tama	Traer, city of	190066A	Oct. 28, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Sept. 19, 1975	Do.
Harrison	Woodbine, city of	190152B	May 29, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	June 28, 1974 and Jan. 16, 1976	Do.
Kansas:					
Hodgeman	Hanston, city of	200178A	Oct. 9, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 27, 1974	Do.
Meade	Meade, city of	200219B	Apr. 1, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Feb. 1, 1974 and Oct. 10, 1975	Do.
Hodgeman	Jetmore, city of	200129B	Aug. 1, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Mar. 1, 1974 and Aug. 20, 1976	Do.
Missouri:					
Worth	Denver, village of	290430A	Jan. 25, 1977, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Nov. 22, 1974	Do.
Camden	Macks Creek, village of	290054B	Aug. 25, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Oct. 18, 1974 and Nov. 28, 1975	Do.
Washington	Potosi, city of	290447B	Aug. 7, 1974, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Dec. 28, 1973 and Dec. 26, 1975	Do.
Newton	Saginaw, village of	290486B	Sept. 2, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Aug. 30, 1974 and June 4, 1976	Do.
Mississippi	Bertrand, city of	290153B	May 8, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Apr. 12, 1974 and Nov. 7, 1975	Do.
Nebraska: Otoe	Unadilla, village of	310168B	Sept. 16, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Aug. 23, 1974 and Nov. 14, 1975	Do.
Region VIII					
South Dakota: Moody	Unincorporated areas	460226B	Sept. 12, 1974, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Apr. 15, 1977	Do.
Region X					
California: Inyo	Unincorporated areas	060073B	Dec. 19, 1975, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Jan 10, 1975 and Jan 10, 1978	Do.
Nevada: Humboldt	Winnemucca, city of	320012A	Apr. 9, 1984, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.	Apr. 23, 1976	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.

Code for reading 4th column:
Emerg.—Emergency.
Reg.—Regular.
Susp.—Suspension.

Jeffrey S. Bragg,
Administrator, Federal Insurance Administration.

[FR Doc. 85-20746 Filed 8-29-85; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 5

[CGD 82-002]

Actions Against Seamen's Licenses, Certificates or Documents

Correction

In FR Doc. 85-18810, beginning on page 32179, in the issue of Friday, August 9, 1985, make the following corrections:

1. On page 32181, third column, *Section 5.201(5.10-1)*, fifth line, "state the" should read "state that".

2. On page 32182, first column, *Section 5.515(5.20-30)*, fourth line, "not" should read "no".

3. On page 32183, third column, fourteenth line from the bottom of the page, "understand that" should read "understand than".

4. On page 32188, second column, **SUBPART G,** § 5.401(a), second line, "then" should read "than".

5. On page 32193:

a. In the first column, § 5.571(b), twelfth line, "person" should read "personal".

b. In the second column, **SUBPART I,** § 5.601(b), second line, "stay in" should read "stay an".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service; Memorandum Opinion and Order

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order.

SUMMARY: This action assigns orbital locations to each of the domestic satellites authorized to be launched, including previously authorized satellites and satellites newly authorized by individual orders adopted on July 25, 1985. This action was prompted by the Commission's *1983 Processing Order*, 93 FCC 2d 1260 (1983), which established a procedure for the filing of satellite applications to be considered in the next processing group.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Cecily C. Holiday, Fern J. Jarmulnek or Rosalee C. Gorman, Satellite Radio Branch, (202) 634-1624.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 25

Satellite radio communication, Satellites.

Memorandum Opinion and Order

In the matter of Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service.

Adopted: July 25, 1985.
Released: August 27, 1985.

By the Commission.

I. Summary

1. By separate orders adopted today,[1] we are authorizing the construction of 23

[1] *See* Alascom, Inc., FCC 85-404; American Satellite Company, FCC 85-405; Comsat General

Continued

additional domestic fixed-satellites and the launch of 20 additional domestic-fixed satelites to be placed in 22 orbital locations. In addition, we are authorizing the construction and launch of 3 replacement satellites.[3] These newly authorized in-orbit satellites will constitute a substantial increase by 1990 in the domestic satellite capacity that will be available to users. To accommodate this growth, we are now implementing the reduced orbital spacing criteria that were adopted in 1983[3] in the 4/6 GHz bands, and continuing to apply these criteria in the 12/14 GHz bands. The purpose of this order is to assign an orbital location to each of the domestic satellites authorized to be launched.[4]

II. Background

2. In our *1983 Orbit Assignment Order*[5] we adopted a tentative plan of orbital assignments intended to govern the positioning of all authorized domestic satellites until the next group of domestic fixed-satellite applications was processed and authorizations granted. We emphasized in both the *1983 Orbit Assignment Order* and the individual authorizations that all assigned orbital locations were temporary and subject to change by summary order of the Commission.[6] Concurrent with the grant of these assignments, the Commission determined that 2° spacing was feasible in both the 4/6 and 12/14 GHz bands. Uniform 2° spacing at 12/14 GHz was implemented immediately, while an average spacing of 2.5° at 4/6 GHz was adopted as a transition mechanism.[7] This was possible because all qualified applicants could then be accommodated with these larger spacings. Operators were placed on notice, however, that uniform 2° separations at 4/6 GHz were to be implemented within the next few years when necessary to accommodate increased demand for satellite services.[8] Today, this demand and the number of qualified applicants proposing to provide these services require moving to a uniform 2° spacing environment. Because satellites authorized today may not be launched for several years, some licensees will be required to operate at 2° spacing sooner than others. However, in order to accommodate the maximum number of satellites feasible with current technology, we are adopting an orbit assignment order based on uniform 2° spacing at both 4/6 GHz and 12/14 GHz.

3. Our previous orbital assignment orders have summarized the policies and procedures applied in assigning orbital locations to domestic satellites.[9] We have consistently held that applicants' requests for particular orbital locations do not limit our flexibility to assign orbital locations that best serve the public interest.[10] As we have stated, any variations in the characteristics of different orbital locations in the same portion of the geostationary orbital arc are not significant; nor do requests by different applicants for the same orbital location give rise to comparative hearing rights.[11] In general, assignments of orbital locations balance applicants' requests with several competing factors. These include the volume and distribution of traffic requirements, contraints imposed by satellite design, plans of other countries for their satellites, and equitable treatment of existing and new domestic satellite operators. Additionally, when possible, we seek to minimize the number of relocations of in-orbit satellites and the resulting disruption of service to domestic satellite users.

4. This process has allowed the authorization of new domestic satellite facilities without the cost or delays associated with comparative hearings. We recognize that it is impossible to satisfy fully the preferences of each applicant. The best that can be expected from any approach is a practical accommodation of the interests of the parties, without compromising our ultimate objective of ensuring that the public is served in a timely and efficient manner. The orbital assignment plan adopted in this order is a reasonable exercise of our administrative discretion to resolve these concerns.[12]

III. Discussion

A. General Approach

5. The following table summarizes the number of orbital locations previously assigned and today authorized to each qualified domestic satellite licensee.[13] These applicants were found to satisfy the Commission's rules governing financial qualifications and the number of orbital locations to be assigned to domestic satellite applicants adopted today in a companion *Report and Order*.[14]

Company name	Numbers of orbital locations (authorized) by Frequency band (GHz)					
	Previous		Additional		Total	
	4 to 6	12 to 14	4 to 6	12 to 14	4 to 6	12 to 14
Alascom	1		1		2	
Am. Sat. Co. (H)	2	2	1	1	3	3
AT&T (CGC)	4				4	
Comsat				2		2
Fed. Ex.				2		2
Ford (H)			2	2	2	2
GTE					4	4
a. GSAT		2		[1] 1		
b. Spacenet (H)	2	3	1	[1] 1		
Hughes	2		1	2	3	2
Martin Marietta				2		2
RCA	4	3	1		7	3
SBS		5		1		6
Western Union	4		(*)	[2] 2	4	2
Total	22	15	7	15	29	30

(H)—Hybrid
[1] GSAT and Spacenet are being given one additional orbital location at 12/14 GHz.
[2] *See Western Union Authorization Order*, FCC 85-423

As in our previous assignment orders, the orbital assignments we are making here will form the basis for conducting the necessary international frequency coordination procedures.

6. We will assign orbital locations today between 62° and 146° West

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Corporation, FCC 85-409; Federal Express Corporation, FCC 85-412; Ford Aerospace Satellite Satellite Services Corporation, FCC 85-413; GTE Satellite Corporation/GTE Spacenet Corporation, FCC 85-414; Hughes Communications Galaxy, Inc., FCC 85-415; Martin Marietta Communications Systems, Inc., FCC 85-416; RCA American Communications, Inc., FCC 85-419; Satellite Business Systems, FCC 85-420; The Western Union Telegraph Company, FCC 85-423.

[3] In addition, one applicant has been given the option of constructing and launching two of its four requested satellites, including one replacement satellite.

[4] Licensing of Space Stations in the Domestic Fixed-Satellite Service, 54 Rad. Reg. 2d 577, 589 (P&F) (1983) (hereinafter *Reduced Orbital Spacing*).

[5] We also identify in the Appendix several unassigned orbital locations. They will be available for assignment to qualified applicants in future proceedings.

[6] Domestic Fixed-Satellite Service, 94 FCC 2d 129 (1983), *recon.* FCC 84-32 (February 2, 1984), *further recon.* FCC 84-181 (May 15, 1984) (hereinafter *1983 Orbit Assignment Order*). Petitions for further reconsideration of the *1983 Orbit Assignment Order* have been filed by several parties. Our decision in this order renders these petitions moot and they will therefore be dismissed.

[7] *Id.* at 140.

[8] While we decided that 2° orbital spacing was the appropriate long term objective at 4/6 GHz, we decided to delay implementation in order to minimize the costs involved in upgrading or replacing existing antennas.

[9] *1983 Orbit Assignment Order, supra* note 5, at 131.

[10] *Id.*; Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 84 FCC 2d 584 (1981) (hereinafter *1980 Assignment Order*).

[11] *1983 Orbit Assignment Order, supra* note 5, at 130.

[12] *Id.* at 130-131. We therefore reject SBS's contention that a comparative hearing should be afforded to all applicants requesting the 101° West Longitude (W.L.) location. *See also* Western Union Telegraph Company, 47 FCC 2d 274 (1974).

[13] *See, e.g., United States* v. *FCC*, 652 F. 2d 72 (D.C. Cir. 1980).

[14] *Supra* note 1.

[15] Licensing of Space Stations in the Domestic Fixed-Satellite Service, FCC 85-395.

Longitude (W.L.) at 4/6 GHz,[15] and between 62° and 136° W.L. at 12/14 GHz.[16] A few locations have been specifically identified as "unassigned" in the Appendix and may be assigned at a later date. In the central portion of this arc, agreements have been reached among the Administrations of Canada, Mexico and the United States on the placement of Canadian and Mexican domestic satellites. The requirement to accommodate these other satellites divides the usable orbital arc into an eastern sector and a western sector for domestic satellites of the United States.

7. In assigning orbital locations to the newly authorized domestic satellites, we begin with our 1983 decision to adopt orbital spacing criteria of 2° in both the 4/6 GHz and 12/14 GHz bands.[17] The progress made to date by our industry advisory group on reduced orbital spacing[18] indicates that uniform 2° spacings can be routinely implemented by the time the new satellites are placed into service. Assignments at 4/6 GHz will provide for adjacent satellites to be cross-polarized.[19] While a cross-polarized assignment plan will necessitate some relocations of in-orbit satellites, we will minimize the number of relocations of in-orbit satellites, as well as the number of reassignments to satellites assigned an orbital location but not yet launched. These considerations will be balanced with our policy of affording new entrants at least one initial orbital location in the portion of the orbital arc that allows 50-state coverage.

B. Available Orbital Assignments at 4/6 GHz

8. In *Reduced Orbital Spacing*, the Commission recognized that uniform 2° orbital spacings at 4/6 GHz would require adjacent satellites to be cross-polarized. However, our *1983 Orbital Assignment Order* provided transitional orbital separations of 3° and 2.5° at 4/6 GHz to allow time for ground equipment, particularly earth station antennas with good off-axis cross-polarization isolation, to become widely available. We also intended to provide time for an industry advisory committee to develop recommendations for the numerous technical details that should be addressed to ensure that operations of satellites at 2° orbital separations will be conducted as efficiently as possible. Because requirements have grown to the point where uniform 2° orbital separations are now required to be implemented in the 4/6 GHz bands, the orbital assignments being made today in these bands will require the cross-polarization of adjacent satellites. While there are differences in the designs of certain satellites,[20] we will treat each 4/6 GHz space station as falling into one of two groups, each with a standard transponder which is cross-polarized with respect to the other.[21] To the extent that any particular satellite does not conform to the standard transponder frequency plan, the space station licensee shall be responsible for performing any necessary coordination with other space station licensees to ensure that operation of its satellite will not cause unacceptable interference to adjacent satellites.

9. For the purposes of identifying available orbital locations under a uniform 2° spacing criteria at 4/6 GHz, we will establish 120° W.L. and 101° W.L. as endpoints of the orbital arc available for assignment to U.S. domestic satellites. We can then generally assume that orbital locations spaced at 2° intervals to the west of 120° W.L. and to the east of 101° W.L. are available for assignment.[22] The limits of these arcs are determined by visibility constraints.[23]

10. Once a sense of polarization is selected for the 101° W.L. and 120° W.L. locations at 4/6 GHz, the polarizations for the other assignments are automatically determined since they must alternate to provide the necessary cross-polarization isolation. Thus, we will select one of two possible orbital structures for the western arc sector and one of two possible structures for the eastern sector based on the polarization plan chosen for the 120° W.L. location and the polarization plan chosen for the 101° W.L. location. We will choose those structures that minimize the overall amount of relocation of in-orbit satellites from the orbital assignments contained in the *1983 Orbit Assignment Order*.

11. In the western sector, if the satellite to be located at 120° W.L. were to have vertical polarization, the amount of in-orbit relocations would total 9.5° or 10.5°, with the largest single satellite move being 3.5 or 6.°[24] On the other hand, if horizontal polarization were chosen, the total amount of relocations is reduced to 7.5°, with the largest relocation being 2°. Thus a horizontal polarization will be selected for the 120° W.L. location at 4/6 GHz.[25]

12. A similar analysis for the eastern arc sector results in the choice of vertical polarization for the satellite located at 101° W.L. In this case, two orbital assignments between 101° W.L. and 75° W.L. remain unchanged, the largest change is 2.5° and a total of 7.5° in relocations is required. This is compared to the choice of horizontal polarization for the 101° W.L. location, which requires a largest relocation of 3 to 5°, a total of 11° of relocations, and leaves no orbital assignments unchanged.

13. Several adjustments to uniform 2° separations between 4/6 GHz orbital assignments are needed to provide 1° of satellite separation between U.S. and certain South American satellites. We find these adjustments necessary to fulfill our long-standing commitment to accommodate the requirements of other countries through the international

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[15] Orbital locations between about 53° and 143° W.L. generally provide an earth station elevation angle of at least 5° throughout the contiguous states.

[16] Orbital locations between about 60° and 135° W.L. provide a minimum 10° earth station elevation angle throughout the contiguous states. This higher elevation angle is desirable at 12/14 GHz to reduce the impact of increased propagation impairments at these higher frequencies.

[17] *Reduced Orbital Spacing, supra* note 3. While we have yet to consider in detail the orbital separations to be used in the 18/30 GHz bands, we shall apply a 2° spacing policy in the higher bands on an interim basis.

[18] Establishment of an Advisory Committee on Implementation of Reduced Orbit Spacing Between Domestic Fixed-Satellites, FCC 84-488 (released January 15, 1985).

[19] *See Reduced Orbital Spacing, supra* note 3, at paras. 32–36, *reconsideration*, FCC 84-487, at para. 6 (released January 9, 1985).

[20] For example, one satellite has a number of wideband 72 MHz transponders. Another satellite design uses the same polarization for both uplink and downlink transmissions rather than the usual design of using opposite polarizations for uplinks and downlinks.

[21] The standard transponder plan consists of 24 transponders with a bandwidth of 36 MHz each. The polarization plan of a satellite is determined by the downlink polarization of the 36 MHz transponder centered at 3720 MHz. *See, e.g., Reduced Orbital Spacing, supra* note 3, at Appendix ■

[22] Orbital locations between 104.5° W.L. and 117.5° W.L. are used by Canadian and Mexican satellites in both the 4/6 GHz and 12/14 GHz bands. However, the orbital locations of 105° W.L. and 1030 W.L. are available for U.S. domestic satellites in the 12/14 GHz bands.

[23] We have previously indicated that coverage of the 48 contiguous states is available from orbital locations between about 53° W.L. and 143° W.L., although propagation conditions at 12/14 GHz may reduce the desirable portion of this arc to between about 60° W.L. to 135° W.L. *1983 Orbit Assignment Order* at notes 11 and 12. However, orbital locations outside these portions of the orbital arc are still usable to provide domestic satellite services.

[24] The principal difficulty with this alternative arises from the fact that the two easternmost in-orbit satellites, Spacenet-1 and Westar-5, both have horizontal polarizations. The choice of vertical polarization for the 120° W.L. location requires one of them to be moved a relatively long distance to the next available horizontally polarized location.

[25] This alternative also retains the currently assigned location for the unlaunched ASC-2 and permits a longer period of time for in-orbit satellites to continue operations at their currently occupied locations.

coordination process.[26] Based on available information, a 1° separation for satellites serving the northern part of South America, i.e., Brazil and Colombia, should be sufficient to complete international frequency coordination successfully.[27] As a result, 3° separations are provided between 79° W.L. and 76° W.L., between 72° W.L. and 69° W.L., and between 67° and 64° W.L.

14. To summarize, we have identified a set of orbital locations at uniform 2° intervals with alternating polarizations at contiguous locations.[28] The orbital locations specified in the *1983 Orbital Assignment Order* are adjusted to conform to the new structure of orbital assignments, with required relocations of in-orbit satellites minimized on an overall basis. The remaining unassigned orbital locations at 4/6 GHz are available to accommodate the new in-orbit satellites we are authorizing today.

C. Available Orbital Assignments at 12/14 GHz

15. The 12/14 GHz orbital assignments made in our *1983 Orbital Assignment Order* were based on uniform 2° orbital separations.[29] These assignments coincide with the orbital locations that are available at uniform 2° intervals beginning at 120° W.L. and proceeding westward, and at uniform 2° intervals beginning at 105° W.L. and proceeding eastward. Apart from potential problems in accommodating hybrid 4/6 GHz and 12/14 GHz space stations, relocation of in-orbit 12/14 GHz satellites is neither necessary nor desirable. Thus, we will generally retain the 12/14 GHz orbital assignments specified in the *1983 Orbital Assignment Order,* and the unassigned orbital locations at uniform 2° intervals are available for assignment to the satellites being authorized today.

D. Hybrid Orbital Assignments

16. Under conditions of uniform 2° orbital separations, available orbital assignments generally overlap in the 4/6 GHz and 12/14 GHz bands.[30] However, hybrid satellites operating at both 4/6 GHz and 12/14 GHz still pose significant difficulties in making orbital assignments today. We have previously discussed the difficulties that arise when orbital spacings differ in the two sets of bands.[31] While our decision to implement uniform 2° spacings eliminates this problem, a new difficulty arises in accommodating hybrid satellites. The orbital location assigned to a hybrid satellite must be compatible with the space station polarization at 4/6 GHz while the orbital location must also be unoccupied at 12/14 GHz. This difficulty is compounded by the fact that seven of the nine hybrid satellites authorized today are designed with a horizontal polarization at 4/6 GHz, while only two are designed with a vertical polarization. Because all in-orbit hybrids are horizontally polarized and concentrated in the central portion of the orbital arc, the only horizontally polarized hybrid orbital locations usable for U.S. service and available for assignment are at the edges of the orbital arc.

E. 1985 Orbital Assignments

17. Attached is the new set of orbital assignments. After adjusting the 1983 orbit assignments to the uniform 2° spacing criteria and accommodating hybrid satellites as described above, the remaining locations are assigned to the newly authorized satellites. In general, each new entrant is assigned one of the locations capable of 50-state coverage as its first assignment, particularly where new 12/14 GHz entrants propose Alaskan and Hawaiian coverage. Second assignments to new entrants and third assignments to currently authorized operators are generally in the next most desirable available locations, with remaining expansion satellites assigned the remaining locations. As a result, it has generally not been possible to accommodate applicants' requests for the assignment of contiguous locations. Finally, at 12/14 GHz we have attempted, consistent with other considerations, to group together the highest e.i.r.p. spot beam satellites, as well as the lowest e.i.r.p. coverage satellites, to minimize potential interference.

IV. Implementation

18. At 4/6 GHz, more orbital locations are available than authorized satellites. Thus, we will continue to delay the implementation of uniform 2° separations in this band in the orbital arc between 120° W.L. and 134° W.L. In *Reduced Orbital Spacing* and the *1983 Orbital Assignment Order,* we recognized the desirability of retaining existing spacings for a longer period of time to allow users to more fully amortize their ground equipment and upgrade it for operations at 2° spacings.[32] However, we restate our intention to implement 2° separations when it becomes necessary to accommodate new satellites in the future, and the assignments listed in the Appendix are based on uniform 2° spacings. However, licensees may continue to operate at the locations specified in the *1983 Assignment Order* until it is necessary to move the satellite to its assigned location to accommodate another satellite.

19. In developing this plan of current orbital assignments, we do not intend to preclude operators from identifying alternatives. For example, if an operator is required to relocate an in-orbit satellite because it is incompatible with the polarization assigned to the location, it may wish to replace that satellite with one that is compatible with the assigned polarization plan adopted. Alternatively, frequency coordination may allow co-polarized satellites to operate at 2° separations. We will entertain requests for changes in the assignments made today if they are consistent with the basic structure of the assignment plan, and are agreed to by all, or at least most, of the satellite operators affected by the change. If all operators do not agree, the burden is on the operator proposing the change to demonstrate that its alternative is preferable to the adopted plan. Any alternative orbital arrangement must be presented to the Commission for approval within 30 days of the release of this order. In any event, we expect all operators to cooperate fully in the course of implementing this plan. All satellite operators are also required to coordinate their orbital maneuvers with other affected satellite operators. If particular problems cannot be resolved by the parties, they may be brought to the Commission for resolution.

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[26] *See, e.g., Reduced Orbital Spacing, supra* note 3; *1980 Assignment Order, supra* note 9.

[27] We recognize that several additional South American satellites have recently been advance published by the International Frequency Registration Board. However, the service areas of the systems and U.S. domestic satellites are separated widely enough that coordination of these satellites should be possible with satellite separations of 1° or less.

[28] We note that polarizations do not have to alternate when orbital separations greater than 2° are provided at 4/6 GHz. Because a greater number of horizontally polarized satellites have to be accommodated in the orbital assignments being made today, additional 4/6 satellites will generally have to be vertically polarized in the future.

[29] At 12/14 GHz, the implementation of 2° orbital spacings did not depend on adjacent satellites being cross-polarized.

[30] Because of the need to provide 1° separations between U.S. and certain South American satellites, available orbital locations at 12/14 GHz between 77° W.L. and 71° W.L. do not coincide with available orbital locations at 4/6 GHz. *See* paragraph 13, *supra.*

[31] *1980 Assignment Order, supra* note 9, at 607

[32] This issue was commented on by several parties in this proceeding who argued for further delay in implementing uniform 2° separations.

V. Conclusion

20. We find, upon review of the applications and record before us, that the public interest, convenience and necessity will be served by the adoption of the orbital location assignments specified in the Appendix.

21. Accordingly, it is ordered that the orbital locations specified in the Appendix is adopted and the grantees of these space station authorizations shall promptly undertake all actions as are necessary to implement this orbital location plan, including coordination with other satellite operators, in accordance with the policies, terms, conditions and procedures specified above.

22. It is further ordered that the orbital location assignments specified in *Domestic Fixed-Satellite Service,* 94 FCC 2d 129 (1983), *recon.* FCC 84–32 (February 2, 1984), *further recon.* FCC 84–181 (May 15, 1984), ARE MODIFIED in accordance with the orbital location assignment plan as specified.

23. It is further ordered that the temporary assignment of any orbital location is subject to change by summary order of the Commission on 30 days notice and does not confer any permanent right to the use of the orbit or spectrum. Such a change may be ordered *inter alia* to implement uniform 2° separations, or to implement any of the objectives or policies set forth in today's *Report and Order* in CC Docket No. 85–135, FCC 85–395, or this decision. No space station authorization, nor any right granted by such authorization, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, or by transfer of control of any corporation holding the authorization, to any person, except upon application to the Commission and upon a finding by the Commission that the public interest, convenience, and necessity will be served thereby.

24. It is further ordered that the Secretary of the Federal Communications Commission shall cause this order to be published in the **Federal Register.**

25. It further ordered that these orbital assignments are effective immediately upon adoption.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

ORBITAL ASSIGNMENTS

Degrees west longitude		Gigahertz
146	Aurora–1	4/6
144	Westar–7	4/6
142	Aurora–1	4/6
140	Galaxy–4	4/6
139	Satcom–1R	4/6
136	Spacenet–4/GSTAR–3	4/6/12/14
134	Unassigned–vertical	4/6
134	Comsat General–B	12/14
132	Galaxy–1	4/6
132	Westar–B	12/14
130	Satcom–3R	4/6
130	Galaxy–B	12/14
128	ASC–2	4/6/12/14
126	Telstar–1	4/6
126	Martin Marietta–B	12/14
124	Westar–5	4/6
124	Fedex–B	12/14
122	Unassigned–vertical	4/6
122	SBS–5	12/14
120	Spacenet–1	4/6/12/14
105	GSTAR	12/14
103	GSTAR	12/14
101	Ford–1	4/6/12/14
99	Westar–4	4/6
99	SBS–1	4/6
97	Telstar–2	4/6
97	SBS–2	12/14
95	Galaxy–3	4/6
95	SBS–3	12/14
93	Ford–2	4/6/12/14
91	Westar–3/6S	4/6
91	SBS–4	12/14
89	Unassigned–vertical	4/6
89	Unassigned	12/14
87	Spacenet–3	4/6/12/14
85	Telstar–3	4/6
85	RCA–A	12/14
83	ASC–2	4/6/12/14
81	Satcom–4	4/6
81	RCA–B	12/14
79	Westar–3	4/6
79	Martin Marietta–A	12/14
77	Fedex–A	12/14
76	Comstar	4/6
75	Comsat General–A	12/14
74	Galaxy–2	4/6
73	Westar–A	12/14
72	Satcom–2R	4/6
71	Galaxy–A	12/14
69	Spacenet–2	4/6/12/14
67	Satcom–6	4/6
67	RCA–C	12/14
64	ASC–3/4	4/6/12/14
62	Satcom–7	4/6
62	SBS–6	12/14

[FR Doc. 85–20727 Filed 8–29–85; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–54; RM–4862]

TV Broadcast Station in Duncan, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 40 to Duncan, Oklahoma, as that community's first local television service, at the request of #52 Broadcasting Group, Inc.

EFFECTIVE DATE: October 2, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Duncan, Oklahoma), MM Docket No. 85–54, RM–4862.

Adopted: August 13, 1985.
Released: August 26, 1985.

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making,* 50 FR 9070, published March 6, 1985, proposing the assignment of UHF TV Channel 40 to Duncan, Oklahoma, as that community's first local television service, at the request of #52 Broadcasting Group, Inc. ("petitioner"). The petitioner filed comments reiterating its intention to apply for the channel, if assigned. No other comments were received.

2. We believe the public interest would be served by assigning the channel, as proposed. Channel 40 can be assigned in conformance with the Commission's minimum distance separation requirements and provide Duncan with its first local television service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, it is ordered, That effective October 2, 1985, the Television Table of Assignments, § 73.606(b) of the rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Duncan, Oklahoma	40+

3. It is further ordered, That this proceeding IS TERMINATED.

4. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–20728 Filed 8–29–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 40]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to Petitions for Reconsideration.

SUMMARY: On July 11, 1984, the Secretary of Transportation issued a final rule requiring automatic occupant protection in all passenger cars based on a phased-in schedule beginning on September 1, 1986, with full implementation being required by September 1, 1989, unless, before April 1, 1989, states covering two-thirds of the population of the United States have enacted mandatory safety belt use laws meeting specified criteria, with such laws becoming effective by September 1, 1989. Subsequently, sixteen interested parties filed petitions for reconsideration of the final rule. This final rule responds to the issues raised in those petitions.

EFFECTIVE DATE: The amendment made by this final rule will become effective on: October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Felrice, Associate Administrator for Rulemaking, Room 5401, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone (202) 426–1810.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1984 (49 FR 28962), the Secretary of Transportation issued a final rule requiring automatic occupant protection in all passenger cars based on a phased-in schedule beginning on September 1, 1986, with full implementation being required by September 1, 1989, unless, before April 1, 1989, states covering two-thirds of the population of the United States have enacted mandatory safety belt use laws (MULs) meeting specified criteria, with such laws becoming effective by September 1, 1989.

More specifically, the rule requires:

- Front outboard seating positions in passenger cars manufactured on or after September 1, 1986, for sale in the United States, will have to be equipped with automatic restraints based on the following schedule:
- Ten percent of all cars manufactured on or after September 1, 1986.
- Twenty-five percent of all cars manufactured on or after September 1, 1987.
- Forty percent of all cars manufactured on or after September 1, 1988.
- One hundred percent of all cars manufactured on or after September 1, 1989.
- During the phase-in period, each car that is manufactured with a system that provides automatic protection to the driver without automatic belts will be given an extra credit equal to one-half car toward meeting the percentage requirement.
- The requirement for automatic restraints will be rescinded if MULs meeting specified conditions are passed by a sufficient number of states before April 1, 1989, to cover two-thirds of the population of the United States.

Sixteen interested parties subsequently petitioned for reconsideration of the standard. The issues raised by the petitioners and the agency's response are discussed below.

Rescind the Standard

One petitioner asked the agency to reconsider the decision not to rescind the automatic restraint requirements of Standard No. 208. He argued that the Secretary's decision was apparently based on belief that rescission was not a possible result under the Supreme Court decision in *Motor Vehicle Manufacturer's Association* v. *State Farm Mutual Automobile Insurance Co.* (State Farm). The petitioner further argued that the record in the Standard No. 208 proceeding in fact supports rescission. In particular, the petitioner argued that the rulemaking record shows that air bag technology is not an effective automatic restraint alternative. Quoting from portions of the July 1984 final decision, the petitioner specifically argued that air bag systems require the use of a lap belt and do not provide protection at less than 10–12 mph, the disposal problem related to the gas generation agent in air bag systems needs more action, air bag systems may cause injury to out-of-position occupants, the cost of air bag systems is a major disadvantage, and the use of air bag systems in small cars requires more leadtime. The petitioner concluded that few manufacturers will use air bag systems, thus leaving automatic belts as the only automatic restraint alternative. As to automatic belts, the petitioner argued that the record does not show that detachable automatic belts would increase usage. The petitioner specifically argued that there has been no showing that the combination of motorist inertia and automatic belts will increase belt usage.

NHTSA's position is that the *State Farm* decision allows the agency to make a reasoned choice between rescinding or retaining the standard. However, the agency stated in the July 1984 final rule, and still believes, that the rulemaking record does not justify rescission—unless there is a very substantial increase in the use of manual safety belts in the future. The data set forth in the July 1984 final rule demonstrate the dramatic reductions in deaths and injuries that widespread usage of the safety belt systems would achieve. Thus, if two-thirds or more of the American people are covered by mandatory use laws, that would increase usage of safety belts, the need for an automatic occupant restraint requirement would be obviated and the rule would be rescinded.

The agency believes that the rulemaking record, taken as a whole, shows that air bag systems are an effective automatic restraint technology. The discussion in the final rule concerning the need to use a safety belt with an air bag system and the ability of such systems to provide protection at low speeds concerned the relative advantages and disadvantages of different restraint technologies. As noted in that discussion, air bag systems have an advantage over other occupant restraints in that they ensure a usage rate of nearly 100 percent for both drivers and passengers. Even without use of a lap belt, an air bag system will offer protection; however, to equal the effectiveness of a manual lap-shoulder belt, air bag systems must be used with a lap belt.

Likewise, while air bag systems do not inflate in low speed crashes, other standards, such as those on energy-absorbing steering columns and instrument panel padding, ensure that occupants will still be provided with protection in low speed collisions. In addition, research data indicate that air bag systems will provide protection at higher speeds than safety belts.

As to potential problems with the disposal of the gas generator, the July 1984 final rule pointed out that as long as appropriate procedures are followed by vehicle recyclers and scrappers, disposal should not pose a problem. Subsequent to issuance of the rule, the agency has had discussions with recyclers and scrappers concerning the joint NHTSA-General Services Administration air bag fleet demonstration program to discuss safe and reasonable disposal procedures. We believe that this effort will lead to further improvements in the safe disposal of the chemical agents in air bag systems.

The July final rule acknowledged concerns about the effects of air bag systems on out-of-position occupants; however, it also explained that technical solutions are available to address the out-of-position occupant problem. The final rule also acknowledged the higher costs of air bag systems in comparison to automatic belts; the high cost of replacing an air bag system, which could lead to its not being replaced after deployment; public uncertainty and concern associated with air bag systems; and the longer leadtime needed for air bag systems, particularly in small cars. It was a balancing of those factors, plus the factors discussed above, that led to the decision that air bag systems should not be mandated for all cars. However, as discussed in the final rule, the agency believes that air bag systems are an effective restraint technology which, along with other types of automatic restraint technology will provide demonstrable safety benefits. The provision in the final rule providing manufacturers that use non-belt automatic restraints with extra credit in complying with the phase-in requirements was intended to encourage alternative technologies, including enhanced availability of air bag systems.

As to detachable automatic belts, as discussed in the July 1984 final rule, the agency cannot project either widespread usage for detachable automatic belts or a widespread refusal to use such systems. As discussed by the Supreme Court in the *State Farm* decision, it is reasonable to expect that inertia will work to increase usage, since once an automatic belt is connected, it continues to function automatically until it is disconnected. However, using even the lowest level of the range for the effectiveness of automatic belts and a very little increase in usage (only a 7½ percentage point increase), automatic belts will result in a significant incremental annual reduction in deaths and injuries.

For the above reasons, the agency concluded in July 1984 that automatic restraint systems are reasonable in cost, feasible, and practicable, and the potential benefits in lives saved and injuries reduced in severity are substantial. At that time, the agency stated that rescission, in the absence of a substantial increase in manual belt usage, has not been justified. Since the petitioner has not provided any new data to support rescission, the petition is denied.

Require Automatic Restraints

Several petitioners urged the agency to reconsider the decision to rescind the automatic restraint requirements if two-thirds of the population of the United States is covered by State MULs. They urged the agency to retain the automatic restraint requirement, regardless of what action the States take in adopting MULs.

The petitioners have offered no new evidence to justify modifying the July 11 final rule. As explained in that rule, the Secretary determined that if enough people are covered by State mandatory belt use laws, usage rates will be sufficiently high so that the additional requirement for automatic restraints should not be required. The evidence from Canada and other countries with MULs supports the conclusion that state belt use laws will bring higher usage rates and immediate and inexpensive benefits. The petitioners' requests to mandate automatic restraints even if two-thirds of the population is covered by MULs is therefore denied.

Phase-In Requirements

A number of petitioners asked for several modifications of the phase-in requirements of the standard. Each of the modifications sought by the petitioners is addressed in the following discussions.

Change September 1st Effective Date

One modification was to change the September 1 effective date used for each part of the phase-in. The petitioners argued that they would be precluded from applying any portion of their vehicles produced prior to that date to meet the required percentage of automatic restraint equipped cars. The agency has already, in effect, proposed to grant a portion of the petitioners' request in another notice (Docket 74–14; Notice 38; 50 FR 14602) issued on Standard No. 208. The agency proposal would not change the September 1 effective date, but it does propose that manufacturers be allowed to count any automatic restraint vehicle produced during the one year preceding the first year of the phase-in. In addition, the agency proposes, in Notice 38, to permit manufacturers which exceed the minimum percentage phase-in requirements in the first or second years to count those extra vehicles toward meeting the requirement in the second or third year.

Several petitioners sought a change in the provision of the final rule specifying that the computation of the minimum vehicle production to be equipped with automatic restraints must be based on the average of the production for the three preceding model years. The petitioners argued that if car sales were to drop drastically during the phase-in period, then the number of vehicles that they would have to equip with automatic restraints based on their prior three year sales volume would be a significantly greater percentage of their actual production than intended by the final rule. The agency has already responded to this request in Notice 38 by proposing to adopt an alternative that would permit a manufacturer to equip the required percentage of its vehicles with automatic restraints based on its actual production of passenger cars during each affected year.

Manufactured for Sale in U.S.

Several petitioners asked the agency to amend the rule to clarify that the rule applies only to cars manufactured for sale in the United States. As discussed in the preamble to the final rule, the determination of the base years' production figures and the calculation of the number of vehicles that must comply with the percentage phase-in requirements of the standard is to be based on vehicles manufactured for sale in the United States. Since all of the agency's safety standards apply only to vehicles manufactured for sale in the United States, the agency does not believe that an amendment to the rule is necessary. Nevertheless, today's preamble should serve as the clarification requested; that the rule applies only to vehicles manufactured for sale in the United States.

Carry-Forward/Carry-Back

A number of petitioners urged the agency to provide manufacturers more flexibility in meeting the phase-in requirements. They proposed that manufacturers be able to carry-forward credits for the number of automatic-restraint equipped vehicles they produce in excess of the required percentage. One petitioner also asked that manufacturers be permitted to carry-

back credits earned in the second and third year to the first year.

The agency agrees that it would be appropriate to permit manufacturers that exceed the minimum percentage phase-in requirements in earlier years to count those extra vehicles toward meeting the minimum percentage requirements of later years and has proposed such a carry-forward credit in Notice 38. Such a credit would encourage early introduction of larger numbers of automatic restraints and provide increased safety to the public and flexibility for manufacturers. The agency has decided to deny requests for any carry-back credits because their use would delay the safety benefits of the rule and undermine the purpose of the phase-in, which is to introduce automatic restraints on a prompt and orderly basis.

Definition of Manufacturer

Several petitioners asked the agency to further define the term "manufacturer." The agency has responded to this request in Notice 38 by proposing to permit manufacturers to determine, by contract, which of them will count passenger cars as its own for the purposes of meeting the percentage goals set forth in the phase-in. Notice 38 proposes two rules of attribution in the absence of such a contract. First, a passenger car which is imported for purposes of resale would be attributed to the importer. Second, a passenger car manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, would be attributed to the manufacturer which markets the vehicle. Readers are referred to Notice 38 for a more detailed discussion of the proposed attribution rules.

Credits for Non-Belt Technology

The July 11 final rule provided that manufacturers that used non-belt technology, such as air bags or passive interiors, to meet the automatic restraint requirement for the driver's seating position and any type of automatic restraint at the passenger's seating position during the phase-in period, would receive additional credit. For each car in which they use a non-belt system, they will receive credit for an extra one-half car toward meeting their percentage requirement. One petitioner said that the text of the rule does not achieve the agency's intention, as stated in the July 1984 final rule, to encourage the use of automatic restraints other than automatic belts, since the rule precludes giving the additional credit for a system that requires the use of a safety belt, whether automatic or manual, to enable the non-belt technology to provide full protection. That petitioner pointed out that all current air bag systems must also use safety belts for full protection; belts are permitted by the standard to be used as an alternative to the use of automatic restraints to meet the lateral and rollover tests. It was not the agency's intention to deny the extra credits to air bag or other systems that also use such safety belt systems to ensure protection in other than frontal crashes. Therefore, the agency is amending the rule to ensure that those systems are eligible for the additional credit.

The agency was also petitioned for another modification to the credit provision. It was asked that manufacturers be allowed, during the phase-in, to receive a one vehicle credit for vehicles which are equipped with non-belt technology at the driver's position and manual safety belts at the front outboard position. The petitioner argued that this would encourage manufacturers to produce driver-side air bag systems or other non-belt system technology sooner than if they had to complete development of passenger-side automatic restraint systems as well, significantly advancing the Secretary's goal in this regard.

The agency has decided to modify the credit provision as requested by the petitioners. The purpose of the phase-in period is to provide a rapid introduction of the lifesaving benefits of automatic restraints and to facilitate the earliest possible introduction of such restraints to permit the public to become familiar with their operation and benefits. The purpose of the credit provision is to encourage the production of a wide variety of such restraints especially in the early years. The agency believes that permitting manufacturers to receive a 1.0 car credit for driver-only non-belt systems with manual belts on the passenger side will encourage the introduction of non-belt technologies into passenger cars, earlier than would otherwise occur.

The agency is aware that one company is currently offering driver side air bags to the public. Other manufacturers have indicated that they may offer driver-side air bags to the public within the next few years. The agency is aware neither of any manufacturers that currently plan to offer a passenger-side air bag system nor of any firm plans for other types of non-belt automatic protection on the passenger side of vehicles. The longer leadtime estimated in the Final Rule to be required for non-belt automatic protection on the passenger side, coupled with the advanced stage of design of vehicles that will be available at the early stage of the phase-in period, mitigates against such full-front non-belt protection being available. Increasing public awareness of the benefits of a variety of automatic protection techniques is one of the primary objectives of the phase-in and credit provisions. Achieving this objective will depend, therefore, on the availability of an adequate number of cars equipped with non-belt protection of the driver's side. We now believe that there are a number of factors that might discourage manufacturers from making such equipment available in significant numbers.

Under the current rule, cars equipped with non-belt driver's side automatic protection would qualify for credit only if passive protection were made available on the passenger side. As noted above, such protection is most likely to be provided by automatic belts. Some models in which driver's side air bags are being considered by manufacturers, however, are at an advanced stage of design. It is unlikely the redesign required to equip these cars with automatic belts will be undertaken. Even if these cars could be modified to incorporate automatic belts, manufacturers would be faced with a complex, and expensive, marketing task. Not only would they have to convince customers of the safety and utility of automatic belts, but they must also perform this task for the more expensive air bag. Unwillingness on the part of manufacturers to assume this added task may create a serious disincentive to the prompt offering of air bag technology.

Alternatively, these manufacturers considering driver-side air bags might also elect to meet phase-in requirements by producing sufficient number of automatic belt equipped cars. Under these circumstances, it is likely that the marketing efforts of the manufacturers during the phase-in will concentrate on marketing the automatic belts, possibly to the detriment of the public's acceptance of the driver-side air bags. As the agency learned in recent research studying the marketing efforts used by General Motors to sell its air bag equipped cars in the mid-1970's effective, affirmative marketing of an air bag system is essential to overcome consumer concerns about such things as the fear of inadvertent deployment, price and post-crash replacement cost. ("A Retrospective Analysis of the General Motors Air Cushion Restraint System Marketing Effort, 1974 to 1976") If cars equipped with driver-only air

bags do not count toward compliance with the phase-in, the manufacturers will have less incentive to market the air bags aggressively, and these circumstances may even lead to decisions to drop the early offering of air bags. The agency's goal of encouraging significant public exposure to alternative protection technologies may not be realized. Therefore, the agency has determined that permitting manufacturers to receive a 1.0 car credit during the phase-in by installing driver-only non-belt automatic protection systems in their vehicles will encourage earlier introduction of alternative automatic protection technologies, wider public availability of such technologies, and more effective marketing of such technologies than would be achieved by the original decision. The final rule is amended to permit such vehicles to be counted toward the phase-in requirements.

The agency has fully considered the safety implication of this amendment. An important safety consideration is the number of occupants at the risk of injury at each seating position, not just the number of seating positions that are covered by the automatic restraint requirement. Accident data, presented in the agency's Final Regulatory Impact Analysis, show that there are approximately 2½ to 3 times as many driver injuries and fatalities as there are to front right seat passengers. Therefore, the agency believes that it is reasonable to encourage manufacturers to provide automatic restraint protection as soon as possible to the driver—the person who is most at risk.

Convertibles

Several petitioners asked that convertibles be exempted from the automatic restraint requirements. They argued, for example, that the installation of automatic lap and shoulder belts is not feasible in convertibles, thus air bag systems must be used in those cars. The result, according to the petitioners, is a design standard for convertibles. They also stated that an exemption would be appropriate since convertibles are already exempt from the requirement in Standard No. 208 that all front outboard seating positions have lap and shoulder belts. The agency has already responded to these petitions in Notice 36 by proposing that manufacturers have the option of installing manual lap belts instead of automatic restraints in convertibles. Readers are referred to Notice 36 for a more detailed discussion of the petitions and the reasons for the agency's proposed alternative requirements for convertibles.

Oblique Crash Test

A number of petitioners requested the agency to delete the oblique barrier crash test of Standard No. 208. They argued, among other things, that the test is unnecessary since it generates a lower crash pulse than the frontal crash test. As discussed in detail in Notice 38, the agency is also concerned that the oblique test may not be necessary and has therefore requested commenters to provide additional data on the safety and cost effects of deleting the tests. Readers are referred to Notice 38 for a more detailed discussion of the issues involved in the proposed deletion of the oblique test.

Leadtime

One petitioner requested a change in the two year leadtime for the automatic restraint standard. Citing the table on leadtime requirements included with the July 11 final rule, the petitioner argued that only one manufacturer, Renault, has said that it can comply in 24 months. The table showed that most companies have said they needed at least 30 to 48 months. The petitioner asked for the leadtime to be extended.

The table cited by the petitioner reflects the leadtime required by a manufacturer to equip its entire fleet with automatic restraints. The agency agrees that a longer leadtime would be necessary if the automatic restraint requirement were simultaneously applied to the entire vehicle fleet. The final rule, however, phases-in the automatic restraint requirement so that only a portion of a manufacturer's fleet must be equipped initially. Based on a study of current automatic restraint equipped vehicles and manufacturers' comments, the agency has determined that automatic belt system can be added on to existing vehicle designs with approximately 24 months of leadtime. The manufacturers generally agreed with that estimate. For example, GM said that leadtime for models for which detachable belts had previously been designed would be 21 months and Ford said that a driver side air bag system could be in production for some of its cars within the allotted leadtime. The agency therefore does not believe that additional leadtime is necessary for the percentage requirements during the phase-in period and the petition is denied.

AIA raised a separate leadtime issue. It said that the July 1984 final rule identified a number of issues, primarily related to test procedures, that would be the subject of further rulemaking. AIA argued that the implementation schedule for automatic restraints should not begin until those issues are resolved. Any changes due to the unresolved issues are not expected to increase leadtime and, indeed, should relieve some burdens associated with preparing for compliance. At this time, the agency believes that the resolution of the remaining issues, which does not involve the imposition of more stringent performance requirements, should be accomplished shortly and therefore is denying AIA's petition.

Repeatability

One petitioner raised arguments about the repeatability of the test procedures used in Standard No. 208 compliance testing. The petitioner's fundamental argument is that the agency's Repeatability Test Program found what the petitioner says is an unacceptable level of variability in the test results and thus, the petitioner argues, the agency has failed to demonstrate that the test procedures can be reproduced, car-to-car and test site-to-test site. The petitioner noted that for a manufacturer to certify its vehicles, it must meet maximum limits for each of eight separate requirements: HIC for driver and passenger dummy heads, "g" loads for driver and passenger chests; and femur loads for each dummy's right and left leg. Because of the test variability, the petitioner said that it cannot confidently predict that its vehicles will comply with the standard. It urged the agency to develop an alternative method of determining compliance with the standard.

The petitioner did not, however, provide any new data which demonstrate that the crash test procedures and the test dummy pose significant repeatability problems. More importantly, the petitioner did not provide new data indicating that the test procedure and the dummy are incapable of measuring compliance with Standard No. 208.

The agency believes that the test procedure, test dummy, and test instrumentation are repeatable within the statutory requirements of objectivity and practicability. The agency does recognize that because of the complexity of the requirements of Standard No. 208, manufacturers are concerned about certifying compliance with each of the requirements of the standard. To address this concern, the agency has proposed in Notice 36 that the rule be amended to state that a vehicle shall not be deemed in noncompliance if its manufacturer establishes that it did not have reason to know in the exercise of due care that the vehicle is not in conformity with the standard.

Comfort and Convenience

Several petitioners asked the agency to answer promptly the pending petitions for reconsideration of the comfort and convenience requirements of Standard No. 208. The agency has already issued a separate notice (Docket 74–14, Notice 37; 50 FR 14580) proposing changes to the comfort and convenience requirements in response to the petitions for reconsideration. Readers are referred to that notice for a detailed discussion of the proposed revisions.

Judicial Review

One petitioner asked the agency to clarify the extent to which a challenge to the legality of the final rule must be made now, rather than when the Secretary makes a determination that two-thirds of the U.S. population is covered by a mandatory belt use law. The reviewability of the final rule and any subsequent agency action is a matter for the courts, not the agency, to decide.

Mandatory Seat Belt Use Law Criteria

A number of petitioners sought reconsideration of the minimum criteria for mandatory safety belt use laws. The agency is still considering the issues raised in those petitions and will respond to them at a later date.

Corrections

MVMA pointed out two miner errors in the text of the final rule. First, in section 4.1.2 of the rule, the word "before" should be used instead of the word "after." Likewise in section 4.1.2.2(b), the word "outboard" is misspelled. Both of those errors are corrected by this notice.

In addition, the agency wants to clarify a conflict between the preamble to the MUL provisions of the final rule and the text of the final rule's provisions on MULs. The preamble to the rule stated that one of the minimum criteria for a MUL was that each front outboard occupant of a passenger car be required to wear a safety belt. The text of the final rule provides that each front seat occupant, which would include the outboard and the center seating positions, would have to be covered by a MUL. The text of the final rule, requiring a MUL to cover all the front seating positions, is the correct version.

Cost and Benefits

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. A Preliminary Regulatory Evaluation has been prepared on the changes proposed in Notice 38 and discussed in this notice. A copy of that evaluation is available for public inspection and copying in the agency's docket section. The agency has determined that the economic and other effects of the rulemaking action in this notice are so minimal that a full regulatory evaluation is not required. The changes adopted in this action concern minor adjustments to the phase-in requirements, which will give manufacturers more flexibility without imposing any economic costs.

Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Few, if any motor vehicle manufacturers would qualify as small entities. The suppliers of webbing and other manual or automatic restraint components will not likely be significantly affected, since this notice is not making a change in the performance requirements of the standard. Small organizations and governmental units will not be significantly affected since there are no price increases associated with this action.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, § 571.208, Occupant Crash Protection, of Part 571 of Title 49 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. Section 4.1.3.4 is revised to read as follows:

S4.1.3.4 For the purposes of calculating the numbers of cars manufactured under S4.1.3.1.2, S4.1.3.2.2, or S4.1.3.3.2 to comply with S4.1.2.1:

(a) Each car whose driver's seating position will comply with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose front right seating position will comply with the requirements of S4.1.2.1(a) is counted as 1.5 vehicles.

(b) Each car whose driver's seating position will comply with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose front right seating position is equipped with a Type 2 seat belt is counted as a vehicle conforming to S4.1.2.1.

3. The first sentence of section 4.1.2 is revised to read as follows:

S4.1.2 Passenger cars manufactured on or after September 1, 1973, and before September 1, 1986. Each passenger car manufactured on or after September 1, 1973, and before September 1, 1986, shall meet the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3. * * *

4. Section 4.1.2.2(b) is amended to change the word "outbord" to the word "outboard."

Issued on August 27, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85–20745 Filed 8–27–85; 11:50 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 50, No. 169
Friday, August 30, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Docket No. AO-144-A14-R01]

Lemons Grown in California and Arizona; Extension of Time for Filing of Exceptions to Recommended Decision

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions.

SUMMARY: This extension of time is necessary to allow interested persons additional opportunity to prepare and file exemptions to the recommended decision with respect to proposed amendments of the California-Arizona lemon marketing order.

DATE: The date by which written exceptions must be postmarked is extended to October 7, 1985.

ADDRESS: Interested persons may send written exceptions to the Hearing Clerk, Room 1077-South Building, U.S. Department of Agriculture, Washington, DC 20250, where they will be available for inspection during business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, USDA, AMS, Washington, DC 20250, telephone 202 447-5975.

SUPPLEMENTARY INFORMATION: Notice was given of the filing with the Hearing Clerk of a recommended decision with respect to proposed further amendment of Marketing Order No. 910, as amended, regulating the handling of lemons grown in California and Arizona, and of an opportunity to file written exceptions thereto in the August 7, 1985, issue of the **Federal Register** (50 FR 31850).

The recommended decision gave interested persons an opportunity to file written exceptions until September 6, 1985. Two requests for extension of the comment period were filed; on request was for at least 30 days, and the other request was for an additional 60 days. After considering the various factors involved in this matter, it is determined that an additional 30-day extension of the comment period is sufficient and will not unnecessarily prolong the rulemaking proceeding. Therefore, the time for the filing of exceptions is extended to October 7, 1985.

List of Subjects in 7 CFR Part 910:

Marketing agreements and orders, California, Arizona, Lemons.

Dated: August 27, 1985.

James C. Handley,

Administrator.

[FR Doc. 85-20846 Filed 8-29-85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Reg. K; Docket No. R-0550]

Regulation K; International Banking Operations; Restriction on Affiliate Transactions of Edge Corporations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed change to Subpart A of Regulation K, the Board's regulation on international banking operations. The Board proposes to restrict affiliate transactions of Edge corporations that are not subsidiaries of insured banks in order to help ensure the safe and sound operation of Edge corporations.

DATE: Written comments must be received on or before October 28, 1985.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to the C Street entrance, 20th & C Streets, NW., Washington, D.C., between the hours of 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Doc. No. R-0550. All comments received will be available for inspection in room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Ricki Rhodarmer Tigert, Assistant General Counsel (202/452-3428); Kathleen M. O'Day, Senior Counsel (202/452-3786), Legal Division; Frederick R. Dahl, Associate Director (202/452-2726); James S. Keller, Manager, International Banking Applications (202/452-2523), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System; or Joy W. O'Connell, Telecommunication Device for the Deaf (202/452-3244).

SUPPLEMENTARY INFORMATION: Edge corporations are specialized banking companies that are chartered by the Board to engage in international banking or financial operations (12 U.S.C. 611 *et seq.*). Edge corporations may not engage in activities in the United States except as may be incidental to foreign business. Until recently, these organizations were held, almost without exception, by U.S. banks, and in every case by a U.S. banking organization that is subject to federal banking supervision. Since 1978, however, foreign banks have been authorized by law to acquire Edge corporations with the prior approval of the Board. Nonbank companies in the United States have also recently acquired existing Edge corporations.

In light of the increase in the number of owners of Edge corporations that are not subject to federal banking supervision, the Board has become concerned about the potential for adverse effects that might result from such affiliations. These adverse effects include potential conflicts of interest, undue concentration of resources, impairment of the ability of an Edge corporation to be an impartial arbiter of credit, and other safety and soundness concerns. Of particular concern is the issue of affiliate lending. The Board has not previously placed restrictions on loans and extensions of credit by Edge corporations to affiliates because, as noted, Edge corporations have generally been held by U.S. banking organizations that themselves are restricted in their activities and are subject to supervision. Indeed, most Edge corporations are subsidiaries of U.S. insured banks and are indirectly subject to the restrictions imposed by section 23A of the Federal Reserve Act (12 U.S.C. 371c) restricting transactions with affiliates.

Nonbank owners of the Edge corporations are not subject to the supervisory authority of the Federal Reserve Board. As a result, they may engage, to an unlimited degree, in activities that are not permissible for banking organizations. Because an Edge corporation that is not owned by an insured bank is not itself subject to the restrictions on transactions with affiliates imposed by section 23A of the Federal Reserve Act, a nonbank-owned Edge corporation may lend 10 percent of its capital and surplus to any number of its affiliates, none of which is regulated by banking authorities and a number of which may engage in a broad range of nonbanking activities. Because affiliation with a nonbank company could create pressures to lend to affiliates regardless of creditworthiness and thus undermine the safety and soundness of the Edge corporation, the Board is proposing to prohibit all lending to affiliates by Edge corporations that are not subsidiaries of U.S. insured banks.

The proposal is designed to preserve the safety and soundness of Edge corporations, entities for which the Board has exclusive supervisory responsibility. the proposal would also result in more equitable treatment for all categories of owners of Edge corporations [1] because all Edge corporations would be subject to some level of restriction on affiliate lending.

The Board is requesting comment on (1) the effect of the proposal, if any, on the operations of existing Edge corporations, including the lending transactions with affiliates that may be hindered, and, in particular, how it would affect the operations of Edge corporations controlled by foreign banks; (2) whether any exceptions or exemptions are appropriate to the prohibition on affiliate lending, specifically (i) how such exemptions would address the concerns about the potential for conflicts of interest and safety and soundness that prompted the Board to propose the prohibition on affiliate lending and (ii) whether there should be exemptions for Edge corporations that are owned by companies that only conduct activities permitted to bank holding companies; and any other comments that would be useful in the Board's consideration of the issue.

List of Subjects in 12 CFR Part 211

Banks, Banking, Federal Reserve System, Foreign banking, Investments, Reporting and recordkeeping requirements, Export trading companies, Allocated transfer risk reserve, Reporting and disclosure of international assets, Accounting for fees on international loans.

[1] These include U.S. insured banks, U.S. bank holding companies, foreign banks, and U.S. nonbank companies.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that the rule adopted will not have a significant economic impact on a substantial number of small entities.

PART 211—[AMENDED]

The Board proposes to amend 12 CFR Part 211 as follows:

1. The authority citation for Part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 211 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*); International Lending Supervision Act (12 U.S.C. 3901 *et seq.*).

2. In Part 211, it is proposed that § 211.8(d) be added to read as follows:

§ 211.8 Lending limits and capital requirements.

(d) *Transactions with affiliates.* An Edge corporation that is not a subsidiary of an insured bank in the United States may not engage in lending transactions with any affiliate of the corporation. For purposes of this subsection, "affiliate" shall have the meaning set forth in section 23A of the Federal Reserve Act (12 U.S.C. 371c) as if the Edge corporation were a member bank.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20733 Filed 8-29-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 85-754]

FSLIC Insurance Premiums

August 23, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing to amend its regulations to provide a procedure for the payment of premiums for insurance on a semiannual basis.

DATE: Comments must be received by September 27, 1985.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Public comments received on this proposal will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, Office of General Counsel, (202) 377-6428; Nancy M. Stiles, Associate General Counsel, (202) 377-6436; William Boyer, Deputy Director, Office of Administration, (202) 377-6666, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to section 404(b)(1) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(b)(1), as implemented by § 563.15(a) of the Regulations of the FSLIC ("Insurance Regulations"), 12 CFR 563.15(a) (1985), each institution whose accounts are insured in the Federal Savings and Loan Insurance Corporation ("insured institution") must pay "a premium for insurance equal to one-twelfth of one percent of the total amount of all accounts of the insured members of such institution." The statute provides that the first such premium is to be paid by each institution at the time a certificate of insurance is issued by the Corporation to such institution pursuant to § 403 of the NHA, 12 U.S.C. 1726, and subsequent premiums are to be paid annually. Section 404(b)(1) of the NHA further provides that "under regulations prescribed by the Corporation such premium may be paid semiannually."

The losses sustained by the insurance reserves of the Corporation in recent years have caused the Board, as operating head of the Corporation, to explore various methods of ensuring an appropriate flow of various collections to the insurance reserves. One method available to the Board, under existing statutory authority, is through the assessment of additional insurance premiums to meet losses and expenses of the Corporation pursuant to 404(c) of the NHA, 12 U.S.C. 1727(c). The Board has implemented such assessment authority through Resolution No. 85-142, dated February 22, 1985, and Resolution No. 85-437, dated June 5, 1985. An additional way to improve the flow of premiums, by improving the process of premium assessment and collection,

would be to provide for payment of regular premiums on a semiannual basis rather than on the annual basis currently being used. The Board today is preparing to adopt this approach.

Current Procedure

Currently, each insured institution is billed on the anniversary date of the issuance of its certificate of insurance for a premium equal to one-twelfth of one percent of the total amount of all accounts of the insured members of such institution, determined on the basis of the most recent report filed by such institution with the Board as of its anniversary date. Since an insured institution now pays no further regular premiums until its next anniversary date, under the current system there is no mechanism by which growth in accounts during the year, and consequent growth in the insurance risk of the Corporation, may be compensated for by any corresponding growth in the insurance reserves nor is there a way to reflect reduced account-risk exposure for institutions whose deposit base has decreased, perhaps because of a change in liability mix.

Proposed Procedure

The procedure proposed by the Board contemplates payment of regular premiums for insurance on a semiannual basis as follows. Each insured institution would be billed on the anniversary of the issuance of its certificate of insurance for an amount equal to one-twelfth of one percent of the total amount of all accounts of the insured members of such institution, determined on the basis of the most recent monthly or quarterly report filed by such institution with the Board as of the anniversary date. Six months after its anniversary date, each institution would either be billed for a premium in an amount equal to one-twelfth of one percent of the increase in the reported total amount of all accounts of the insured members of such institution, or given a credit for such institution's next anniversary billing in an amount equal to one-twelfth of one percent of the decrease in the reported total amount of all accounts of the insured members of such institution. Both the semi-annual premium and credit would be determined on the basis of the most recent monthly or quarterly report filed by such institution with the Board as of such semiannual date.

The provisions of section 404(h) make it clear that the premium year of each insured institution begins on the anniversary of the issuance of a certificate of insurance. Congress requires payment of a premium annually, but has permitted the FSLIC to prescribe regulations providing for semiannual payment. The legislative history of section 404 does not suggest any limitations to the broad scope of regulatory authority or to the flexibility permitted to the Corporation in determining the way in which premium payments shall be made, pursuant to its regulations. Under the proposed procedures, the amount of the annual premium of any institution will not exceed one twelfth of one percent of its accounts for any single year, but the use of a semiannual "catchup" payment or credit will bring premium payments closer to the actual growth or decline in an institution's accounts measured over a shorter, semiannual period.

Initial Regulatory Flexibility Analysis.

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small institutions to which the proposed rule would apply.* The proposed rule would apply to all institutions the accounts of which are insured by the FSLIC,

3. *Impact of the proposed rule on small institutions.* The proposed rule would not have a disproportionate impact on small institutions, since the cost of premiums assessed and credits given pursuant to the proposed rule would continue to be a function of the amount of an institution's accounts. Further, the proposal would not involve any significant new reporting or compliance costs that could impose a disproportionate burden on small institutions.

4. *Overlapping or conflicting Federal rules.* There are no known Federal rules that may duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* There are no alternatives that would have less impact on small institutions, consistent with the intended result and existing statutory requirements concerning the assessment of premiums.

The Board has determined to provide less than a sixty day comment period because (1) a thirty day period is fully adequate for comment on a proposal of this nature and (2) the public and the Board would be better served by prompt consideration of this proposal in the immediate future so that the Board's necessary financial and supervisory planning may proceed without undue delay.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Savings and loan association.

Accordingly, the Board hereby proposes to amend Part 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority for 12 CFR part 563 would continue to read as follows:

Authority: Secs. 401–405, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728); Reorg. Plan No. 3 of 1947, 3 CFR 1943–1948 Comp., p. 1071.

2. Amend § 563.15 by redesignating existing paragraphs (a), (b), and (c) as (b), (c), and (d), respectively; adding a new paragraph (a); and revising newly designated paragraph (b); as follows:

§ 563.15 Insurance premiums

(a) *Definitions.* For purposes of this section:

(1) "Annual payment date" means the date on which a certificate of insurance is issued by the Corporation to an institution, and each anniversary of the issuance of such certificate.

(2) "Semiannual payment date" means a date six months after an insured institution's annual payment date.

(b) *General provisions.* (1) Pursuant to section 404(b) of the NHA, except as provided in paragraph (c) of this section, each institution whose application for insurance is approved by the Corporation shall pay to the Corporation as follows:

(i) On each annual payment date, each insured institution shall pay an amount equal to one-twelfth of one percent of the total amount of all accounts (except note accounts) of the insured members of such institution.

(ii) On each semiannual payment date, each insured institution shall pay, or receive credit against its next annual payment for, an amount equal to one-twelfth of one percent of the amount by which the total amount of all accounts (except note accounts) of the insured members of such institution, is more or less than the total amount of all accounts (except note accounts) of the insured members of such institution as determined for assessment of the immediately preceding annual payment.

(2) The amount of the premium to be paid by each insured institution on each annual payment date, and the amount of the premium to be paid by, or the credit

to be provided for, each insured institution on each semiannual payment date, shall be determined on the basis of the most recent report filed by such institution with the Corporation as of each such payment date; but any insured institution that has not filed such a report within 60 days of any annual payment date or semiannual payment date shall provide more recent information if requested to do so by the Corporation. Any amount contained in any such report covering interest accrued, but not due and payable, or dividends declared, but not due and distributable, as of any annual payment date or semiannual payment date will not be included by the Corporation in the computation of either premiums due on such annual payment date or semiannual payment date, or credits given on such semiannual payment date. For purposes of this section, the total amount of a tax and loan account, a United States Treasury General Account, and a United States Treasury Time Deposit-Open Account shall be the average daily balance in such account since the institution's last annual or semiannual payment date, whichever is more recent, unless the account has been established after such date, in which case the average shall be calculated from the date of establishment of such account.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-20861 Filed 8-29-85; 8:45 am]

BILLING CODE 6720-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Requirements of Chain Saws and Their Components and Replacement Parts; Termination of Proceeding To Develop a Consumer Product Safety Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Termination of rulemaking proceeding.

SUMMARY: The Commission terminates the proceeding it had instituted to develop a consumer product safety standard for chain saws and their components and replacement parts. The proceeding is being terminated because an effective voluntary standard addressing rotational kickback of chain saws has been developed that is expected to be universally adopted by the chain saw industry.

DATE: The termination is effective September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Blechschmidt, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

A chain saw is a familiar wood-cutting tool in which a number of cutting elements are linked into a chain that is driven around the outer edge of a guide bar by a powerhead that incorporates a gasoline engine or electric motor.

In 1978, approximately 100,000 persons required medical attention after they were injured by chain saws. An estimated 23,000 of these injuries occurred when the user experienced a phenomenon known as "kickback," which is a sudden and potentially violent rearward and/or upward movement of the chain saw that can be caused by interference with the movement of the chain. This sudden and often unexpected kickback can propel the moving saw chain into contact with the operator, often with serious results. The great majority of kickback accidents are believed to be caused by the chain striking wood or another object in the upper quadrant of the tip of the bar. This type of kickback is caused by a tendency for the chain to catch or dig into the wood as the chain links travel around the radius at the end of the bar. Since this type of kickback causes a rotational movement of the chain saw, it is often referred to as rotational kickback.

A number of devices have been developed in attempts to reduce the risk of kickback occurring or to reduce the likelihood of injury if it occurs. For example, one way to help prevent nose-tip kickback is to provide a guard to cover the chain at the upper quadrant of the tip of the blade, thereby protecting the chain from contact in this area.

Another mechanism that may provide protection is a chain brake intended to stop the chain when kickback occurs. Some chain brakes are designed to be actuated by contact of the operator's hand with a hand guard as the saw rotates or moves back, while other types of chain brakes are designed to be actuated automatically by an intertial sensing device.

There also are features that can be provided in the design of the saw chain or guide bar that will reduce the amount of energy the chain saw will develop during kickback. There are a number of chain designs intended to reduce the degree of kickback that can occur when contact takes place at the tip of the bar. A cutting link of a saw chain usually includes a "depth gauge" which partially shields the cutting element so it will not dig in too deeply. Chain designs used to minimize kickback include (1) guard links to partially shield the depth gauge and cutting element, (2) modification of the shape or contour of the depth gauge, (3) modification of the overall shape and dimensioning of the cutter, and (4) combinations of the above. It has also been found that reducing the radius of curvature at the end of the guide bar will reduce the energy developed during rotational kickback.

By a letter dated March 21, 1977, John Purtle, Esq., of Batesville, Arkansas, petitioned the Commission (Petition CP 77-10) to begin proceedings under section 7 of the Consumer Product Safety Act (CPSA) to develop a mandatory consumer product safety standard to "minimize and prevent chain saw kickback." Mr. Purtle suggested that every chain saw incorporate "a chain saw brake, a nose-tip guard, a kill switch or other safety device."

While the Commission's staff was evaluating this petition, the Chain Saw Manufacturers Association (CSMA), now the Portable Power Equipment Manufacturers Association (PPEMA), recommended that the petition be denied on the ground that a mandatory standard was not needed because the industry was taking significant voluntary steps to address the chain saw kickback hazard.

In December, 1977, CSMA proposed a joint 18-month effort with the Commission to develop a voluntary performance standard.

Subsequently, the Commission denied petition CP 77-10 (43 FR 26103; June 16, 1978) and, later the same month, formally agreed to participate with CSMA in a joint effort to develop a voluntary performance standard to reduce chain saw kickback injuries.

On December 21, 1978, CSMA submitted a draft standard to the Commission. That standard provided for a specified test apparatus to measure the maximum energy generated at the tip of the chain bar at the initial moment of kickback. The 1978 draft standard proposed a computer model to translate the maximum energy measurement into the angle that the saw would rotate toward an operator. In making this translation, the model used (1) the energy measurement, (2) information decribing certain key characteristics of

the saw being tested, (3) rules for converting the measured total energy into horizontal, vertical, and rotational energy components, and (4) formulas intended to describe the influence of the operator's hands on the handles during kickback. The result was a "Derived Angle of Rotation," which would be compared to acceptance criteria to determine whether the saw met or failed the requirements.

The Commission's preliminary evaluation of CSMA's draft standard and rationale left serious doubts that the standard as submitted would adequately reduce injuries associated with chain saw kickback. Perhaps the most significant of these doubts were caused by the lack of data on how well the angle of rotation calculated by the computer program would correlate to actual situations where a chain saw was tested for kickback while being held by a user and on whether the test procedure was reproducible and repeatable. Because of the doubts about the effectiveness of the standard submitted by CSMA, the Commission decided to begin a proceeding to develop a chain saw standard itself. As provided in section 9 of the Consumer Product Safety Act as it existed at that time, the Commission published a **Federal Register** notice announcing its determination to develop a standard itself and requesting public comment on the determination. 45 FR 62392; September 18, 1980. After considering the 36 comments received on that notice, the Commission commenced the proceeding to develop a standard by publishing a Notice of Proceeding in the **Federal Register** of May 11, 1981. 46 FR 26202.

In August of 1981, the Omnibus Budget Reconciliation Act of 1981 amended the Consumer Product Safety Act to require that a proceeding to develop a consumer product safety rule be commenced by publication of an advance notice of proposed rulemaking ("ANPR"), which differed from the previously-required Notice of Proceeding. Therefore, the Commission, on May 5, 1982, published an ANPR addressing chain saw kickback and withdrew the Notice of Proceeding. 47 FR 19369. The ANPR addressed rotational kickback from both electric and gasoline-powered chain saws.

In the meantime, CSMA had continued to develop the draft voluntary standard that it had previously submitted to the Commission. In December of 1981, CSMA submitted an improved version of this standard to the Commission and to the American National Standards Institute (ANSI). This 1981 version of the standard contained a completely new computer program for calculating the kickback angle.

ANSI began the process of reviewing the CSMA standard for consideration as an amendment to ANSI's voluntary standard for chain saws that was then in effect. In the ANPR published on May 5, 1982, the Commission acknowleged the progress that had been made toward developing a voluntary standard and affirmed that the Commission's staff had been directed to participate in the ANSI review process.

Since publication of the ANPR, the Commission's staff has continued to participate in industry's effort to upgrade its voluntary standard to address chain saw kickback. The Commission staff's effort has contributed to several significant changes in the original kickback standard submitted to ANSI by CSMA. On May 20, 1985, the ANSI B175 Committee submitted the standard it has developed to ANSI's Board of Standards Review for its review and approval. The Board's approval became final on July 18, 1985.

B. Statutory Framework for Consumer Product Safety Standards

Section 9 of the Consumer Product Safety Act (the "CPSA"), 15 U.S.C. 2058, as amended, incorporates procedures that favor voluntary standards under certain defined circumstances where the voluntary standard will adequately reduce the risk and it is expected that substantial compliance with the voluntary standard will be achieved. Under the procedures established by section 9 of the CPSA, a proceeding for the development of a consumer product safety rule is commenced by the publication in the **Federal Register** of an advance notice of proposed rulemaking ("ANPR") which shall:

1. Identify the product and the risk of injury;

2. Include a summary of each of the regulatory alternatives under consideration (including voluntary standards);

3. Include information with respect to any relevant existing standard and a summary of the reasons the Commission believes preliminarily that such standard does not adequately reduce the risk;

4. Invite interested persons to submit comments on the risk of injury and on possible alternatives for addressing the risk;

5. Invite persons to submit all or part of an existing standard as a proposed consumer product safety standard; and

6. Invite persons to submit a statement of intention, and a plan, to modify or develop a voluntary consumer product safety standard to address the risk.

If the Commission determines that an existing standard submitted to it in response to the ANPR would adequately reduce the risk, it may publish such standard as a proposed consumer product safety rule. On the other hand, if the Commission determines that a plan to develop a voluntary standard, submitted to it in response to the ANPR, will result in a voluntary standard that will adequately reduce the risk and that it is likely that there will be substantial compliance with such voluntary standard, the Commission is required to terminate the rulemaking proceeding.

Before the Commission may publish a proposed mandatory safety rule, it must prepare a preliminary regulatory analysis containing:

1. A preliminary description of the potential benefits and costs of the rule.

2. A discussion of the reasons any standard submitted to the Commission in response to the ANPR was not published by the Commission as a proposed rule;

3. A discussion of the reasons for the Commission's determination that any plan to develop a voluntary standard, submitted in response to the ANPR, would not, within a reasonable time, be likely to result in the development of a voluntary standard that would adequately reduce the risk; and

4. A description of any reasonable alternatives to the proposed rule and a summary of their costs and benefits, together with a brief explanation of why such alternatives should not be published as a proposed rule.

With regard to a risk that is addressed by a voluntary standard that has been adopted and implemented by persons that would be subject to a Commission rule concerning the same risk of injury, the Commission may not issue a final mandatory standard unless it finds that compliance with the voluntary standard is not likely to result in the adequate reduction of the risk or that it is unlikely that there will be substantial compliance with the voluntary standard.

Among the other findings the Commission is required to make before it can issue a final safety standard for a product are: That the rule is reasonably necessary to reduce an unreasonable risk; that the rule is in the public interest; that the benefits of the rule bear a reasonable relationship to its costs; and that the rule imposes the least burdensome requirement that adequately reduces the risk.

Thus, it can be seen that the Commission's enabling legislation embodies a strong preference for voluntary standards in those instances where the voluntary standard can be expected to adequately reduce the risk. In fact, at two points in the statutory procedures described above, the Commission is required to terminate a proceeding in favor of voluntary standards activities that apparently will adequately reduce the risk of injury associated with the product in question.

C. The ANSI Kickback Standard

The kickback standard developed by ANSI, with the participation of industry and the Commission's staff, establishes a 45 degree maximum Computed Kickback Angle or Chain Stop Angle for gasoline-powered chain saws below 3.8 cubic inch displacement (c.i.d.). It requires all saws below 3.8 c.i.d. to have at least two separate features to reduce the risk of injury from kickback, such as a bar-tip guard, chain brake, low- or reduced-kickback saw chain, reduced-kickback guide bar, or other feature demonstrated to reduce significantly the risk of injury from kickback. In addition, among other provisions, the standard:

—Requires all chain saws to have a hand guard;
—Requires chain saws 3.8 c.i.d. and above that do not meet the 45 degree acceptance criteria to be equipped with a feature to reduce the risk of injury from kickback, such as a bar tip guard, chain brake, etc.;
—Defines performance requirements for replacement saw chain and defines low-kickback saw chain;
—Establishes label requirements for power heads and replacement saw chain; and
—Requires owners' manuals to contain improved safety instructions.

The Commission's staff has evaluated the computer program in the ANSI standard and concluded that the computer program provides a reasonable means to predict the "Computed Kickback Angle" and that the computer model can substitute for hand-held tests as a means to determine the kickback capability of a saw. See "Evaluation of the Chain Saw 'Kickback' Computer Program," Lynda Santelli, February 1985.

The ANSI standard applies only to gasoline-powered chains saws, and the data available to the Commission indicate that about 10 percent of chain saws sold are powered by electric motors. However, the Commission concludes that the safety features required by the ANSI standard will be incorporated in electric chain saws as well. Underwriters Laboratory ("UL") has indicated that it will issue a new standard for electric chain saws, UL 1662, to adopt the requirements that are in the ANSI standard for gasoline-powered saws. UL expects that work on UL 1662 will be completed by January 1986. In the discussions in this notice concerning the effectiveness of the ANSI standard, however, it is assumed that such devices have not been incorporated in electric chain saws.

Based on the kickback performance of chain saws currently on the market that comply with the proposed ANSI standard and on the Commission's staff's analysis of injury data, the staff estimates that there might be a 70–80 percent reduction in rotational kickback injuries with chain saws that comply with the ANSI standard, compared to chain saws that do not provide the elements of kickback protection that are required by the ANSI standard. These CPSC staff estimates of the injury reduction that can be expected from the ANSI standard were arrived at in the following manner. The Commission's staff examined reports of a number of actual incidents where rotational kickback injuries occurred, to determine the angle that saws had to kick back to produce the injuries. From these data, the staff estimated that a hand guard plus the 45-degree limitation in the ANSI standard might have prevented about 67 percent of the injuries in the sample of injuries studied. However, since some of the saws that are being manufactured in compliance with the ANSI standard produce kickback angles of less than 45 degrees, the Commission's staff also computed the percentage of injuries that might be reduced if chain saws were limited to maximum kickback angles of 35, 25, or 15 degrees. The staff concluded that these lower kickback angles would reduce injuries by about 73, 81, and 87 percent, respectively. After considering these latter figures, the Commission's staff concluded that the ANSI standard might reduce rotational kickback injuries by 70–80 percent. For a more detailed explanation of the basis for the Commission's estimates of the effectiveness of the ANSI standard, see "Chain Saw Rotational Kickback Injuries—A Baseline Study and Evaluation of the Revised ANSI B175 Standard (1985)," Rae Newman and Leonard Schachter, September 1984, and "Potential Effectiveness of the Rotational Kickback Amendment to the Voluntary Chain Saw Standard (ANSI B175, Revised 1985)," Rae Newman, February 14, 1985.

The Commission's staff has also estimated that the kickback standard may increase the average price of chain saws by about $5 per saw, or less than two percent of the average price of a chain saw. It may also increase the average price of a loop of replacement chain by about two dollars, or 10 percent of the average price of a replacement chain. The staff estimates that the standard's benefits from injury reduction will exceed the costs even when the lives expected to be saved by the safety features of the standard are not taken into consideration. (The staff estimates that about ten deaths per year would be avoided if all of the chain saws currently used by consumers conformed to the ANSI kickback standard.) For a more detailed discussion of the economic ramifications of the ANSI standard, see "Preliminary Economic Assessment of the Chain Saw Standard," Gregory Rodgers, March 1985.

The Commission also believes that virtually all of the gasoline-powered chain saws sold in the United States will conform to the ANSI kickback standard. This prediction is based largely on the fact that the manufacturers of chain saws voting for the standard on the ANSI B175 committee account for over 90 percent of the chain saws shipped in the United States. In addition, several small manufacturers that are not members of the ANSI committee have indicated that they already conform or intend to conform to the standard. Further, the five major saw chain manufacturers, which account for over 90 percent of the original equipment and replacement saw chain sold in the United States, have saw chain in production that is expected to be designated "low-kickback" chain under the criteria established by the standard. Lastly, the Commission has not been informed by any chain saw manufacturer that it does not intend to comply with the standard.

For more information concerning the background of this proceeding and the issues involved in it, see the previously published ANPR and Notice of Proceeding and the staff's "Briefing Package on Termination of the Proceeding to Develop a Consumer Product Safety Rule for Chain Saws," July 1985. Copies of these and other relevant documents can be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6800.

D. Comments on the ANPR

The Commission received 28 comments on the ANPR. In the discussion below, the Commission addresses the comments that raised significant issues relevant to the

Commission's determination to defer to the ANSI standard and to terminate its rulemaking proceeding.

Opinions About a Mandatory Standard

Several of the comments expressed approval of the possibility of issuing a mandatory rule addressing chain saw kickback. A number of other comments expressly or impliedly opposed a mandatory standard. Where the commenters gave specific reasons for their opinions, the reasons and the Commission's reaction to them are discussed under the particular topics noted below.

Professional Saws

Two of the commenters indicated that they believed that the Commission should not regulate chain saws used by professionals. The stated reason was that the cutting performance of such saws should not be reduced.

The issue of whether it was feasible to exempt chain saws intended for the use of professionals from the scope of the standard was considered by the participants in the development of the ANSI standard. This consideration was at least part of the basis for the limitation of the scope of the standard's performance requirements to saws below 3.8 cubic inch displacement (c.i.d.), since professionals could be expected to comprise a larger portion of the users of such large saws than of the smaller saws more typically used by consumers. In addition, it was recognized that professionals also use many of the same models of chain saws that consumers use. During development of the ANSI standard, it was decided that it was not feasible for the seller of a chain saw to determine who might be a professional user. Therefore, the ANSI standard does not specifically exempt "professional" saws under 3.8 c.i.d. from the standard's requirements. However, the standard does allow the sale of saw chain that is not of the low-or reduced-kickback types and the sale of other chain saw components that are not specifically designed to reduce kickback. Therefore, a professional (or other) user who wishes to do so may obtain (either by purchase or by substitution of components) a chain saw that does not incorporate any particular safety features that are perceived as detracting from the performance of the saw. Thus, the ANSI standard addresses the concerns raised by these commenters about reducing the performance of saws used by professionals.

Performance of Chain Saws

In a related comment, a commenter contended that purchasers would not buy chain saws that incorporated features that detracted from the performance of the chain saw. In considering this commnent, it should be kept in mine that none of the requirements of the ANSI standard requires that performance be reduced. In addition, the use of low- or reduced-kickback chains and guide bars is not expected to greatly decrease the cutting efficiency of the chain saws using such devices. In any event, manufacturers are in the best position to judge whether any performance penalty associated with their antikickback devices is warranted in view of alternative ways to comply with the ANSI standard. Lastly, since the performance requirements of the ANSI standard are applicable to the majority of chain saws suitable for consumer use, the limited alternatives should make it unlikely that consumers will forego the purchase of a chain saw as the result of any perception that the performance of the device is not optimum.

Particular Features of Chain Saws

A number of comments concerned particular features of chain saws. These comments are discussed below.

1. *Chain.* One comment suggested that low-kickback chain should be required for chain saws (along with low-kickback guide bars). The intent of this suggestion, however, is addressed by the performance requirement of the standard that limits the tendency of the chain saw to rotate during kickback or that stops movement of the chain before a 45 degree rotation is achieved. The goal of this commenter's suggestion is also furthered by the standard's requirement that at least two features must be provided to address the risk of kickback.

During the development of the standard, it was decided that the standard should be as performance-oriented as possible in order to minimize any additional burden on manufacturers and to encourage continued development of safety features across a wide variety of technical approaches to the problem of kickback. For these reasons, no particular safety feature other than a handguard is required by the standard. As a practical matter, however, the Commission believes that virtually all chain saw manufacturers will use low- or reduced-kickback chain as one of the two features to address kickback that are required by the standard.

2. *Guide bars.* See the discussion in the preceding paragraph.

3. *Chain brakes.* Several comments addressed the subject of chain brakes. One comment expressed concern that any standard that was developed might not include a chain brake as one of the ways the standard would provide for the reduction of kickback injuries. This commenter was concerned that such a standard would discourage the use of a safety feature that could address modes of injury other than just rotational kickback.

Another commenter stated that, in his view, the state of the art of chain brakes had not advanced to the point that chain brakes should be relied on as the sole means to address the kickback hazard.

The concern raised by the first of these commenters is addressed by the provision of the standard permitting a "stopped chain" method of complying with the standard. The second commenter's concern is addressed by the standard's permitting numerous other ways to comply and, particularly, by the requirement that at least two separate features be provided to protect against kickback.

Another commenter suggested that chain brakes should be required. However, the data available to the Commission do not clearly establish the efficacy of chain brakes as a generic device for protection against rotational kickback injuries. Thus, the data currently available do not seem to support this commenter's suggestion. However, chain brakes meeting the performance requirements of the ANSI standard are allowed as means for reducing kickback under the standard.

On the other hand, the protection to be provided by chain brakes complying with the standard's "stopped chain" requirements would not exceed the protection provided by the requirement of the standard that rotation during kickback be limited to 45 degrees. Thus, a requirement that favors chain brakes over other alternatives as a means of combating rotational kickback would not appear to be justified.

The ANSI committee has indicated that it will address chain saw injuries other than those from rotational kickback in the future. The Committee has established a goal of December 1986 to develop requirements covering these other injuries. The Commission expects that the efficacy of chain brakes to address some of these other types of injuries will be examined during that effort.

Also, see the discussion below concerning two-handed operation for an

additional comment related to chain brakes.

4. *Chain guards.* One commenter stated that guards, which could cover the length of the guide bar and could therefore protect the user from contact with the chain during kickback, should be required. The ANSI standard does not adopt this suggestion, although effective guards would be an acceptable way to comply with the standard's requirement for an additional feature "to reduce the risk of injury from kickback."

In the Commission's view, the standard's approach to kickback protection is superior to single requirement for a guard. The presence of a chain guard that would effectively protect the user from kickback injury could prevent the use of the saw in certain ways, such as where it was desired to cut using the top of the bar. In addition, depending on the design, the use of the guards may involve significant increases in the cost and weight of the saw. For these reasons, it is unlikely that the Commission would have included a requirement for guards, other than a hand guard, had the Commission proceeded to develop a mandatory standard.

5. *Tip guards.* As discussed above, rotational kickback can be prevented by installing a guard at the tip of the guide bar to prevent contact with the chain at the point most likely to cause kickback. However, the presence of a tip guard can prevent the saw from being used for boring cuts or for work that is larger than the length of the guide bar. One commenter noted such practical disadvantages to the presence of a tip guard as one reason why the tip guard should not be relied on as the sole means of kickback protection. This commenter also noted that there can be no assurance that a removable tip guard will be in place when a kickback incident occurs.

Although a tip guard, when in place, can provide virtually complete protection against rotational kickback, the standard does not require its use for the reasons noted by this commenter. Furthermore, saws equipped with a removable bar tip guard must have the guard removed when being tested to determine the energy generated during kickback under the standard. However, because of the high degree of protection available to those consumers who do use a tip guard, the Commission agrees with allowing the tip guard to be one of the required two separate features to reduce the risk of injury from kickback.

6. *Handle position.* One commenter noted the undesirability of having handles that are too close together or too far forward. These factors, which could decrease the resistance of a saw to rotation during kickback, are accounted for in the computer program that predicts the angle through which the saw would rotate as the result of the energy produced in the kickback test apparatus. Thus, this commenter's concern is addressed by the standard.

7. *Bow bars.* One commenter suggested that bow-type guide bars shoud not be allowed because of their allegedly strong kickback characteristics. Bow guide bars are considered to be professional cutting tools and are not addressed in the standard. Similarly, the Commission could not regulate these products by a mandatory standard unless it could be shown that bow guide bars are used more than occasionally by consumers, among other necessary findings.

8. *Two-handed operation.* One comment suggested that there should be a requirement that chain saws have a device that woud require two-handed operation by activating a chain brake when either hand is not in place. While this may be a useful feature to protect against other types of injury associated with one-handed operation, the data available to the Commission do not show that one-handed operation is connected with a significant number of rotational kickback injuries. Accordingly, the Commission does not believe that a requirement that would impose the extra cost, weight, and complexity of such a device would be justified in the context of a proceeding to develop a standard to address rotational kickback. However, as discussed above in the response to comments on chain bracks, the ANSI committee will be addressing injuries other than those from rotational kickback in the future.

9. *Throttle locks.* A commenter suggested that the use of throttle locks, that enable the saw's chain to rotate without the trigger being continuously depressed, should be prohibited. However, the Commission has no data showing that the presence of such a control has contributed significantly to rotational kickback incidents. Whether such a control contributes to other accident scenarios can be examined in the effort that the ANSI committee will take to address injuries other than those caused by rotational kickback.

Service and Maintenance

One commenter noted that safety features that are difficult to maintain can add to the user's risk. Accordingly, the commenter suggested that chain saws should be sold only by dealers who are qualified to service them. In response to this comment, the Commission notes that it does not have the statutory authority to require what the comment suggests. Furthermore, there appear to be few data showing any connection between injury rates and improperly operating or maintained chain saws. In any event, however, the fact that the standard requires the provision of two features to protect against kickback should minimize the effect of any degradation of protection due to lack of, or improperly performed, maintenance.

Education

By far the largest number of commenters pointed out the value of education of the user as a means to reduce kickback injuries. Some of these comments suggested that user education should be the only step taken to address this hazard. Other commenters suggested user education in combination with other remedial steps.

The Commission agrees that consumer education is a critical part of any effort to reduce kickback injuries. The standard addresses this area by requiring labeling of the chain saw powerhead and of replacement chain. Also, extensive instructions for safe operation are required to be included in the owners manual supplied by the chain saw manufacturer. These types of labeling, warnings, and instructions constitute the only types of consumer education that the Commission could require if it proceeded to develop a mandatory rule. However, the Commission will continue to encourage manufacturers of these products to offer additional safety training for purchasers of their products, as some manufacturers, distributors, or retailers now provide.

Voluntary standard

Several commenters urged the Commission to cooperate in the development or adoption of a voluntary standard as the most appropriate way to address the risks from rotational kickback of chain saws.

Some of these commenters urged the pursuit of a voluntary standard because of what they viewed as inherent disadvantages of a mandatory standard. While the Commission would agree with many of the perceived disadvantages of mandatory regulation where, as here, there is an adequate voluntary standard developed that is expected to be substantially complied with by the affected industry, it should be noted that where such conditions do not exist, fulfillment of the Commission's statutory responsibility to reduce unreasonable risks of injury in consumer products

may, in other contexts, require the development and issuance of mandatory regulations.

One chain saw manufacturer, while also opposing mandatory standards, contended that voluntary standards present many of the same disadvantages. In this manufacturer's view, these disadvantages included inhibiting research and development of other ways to reduce the hazard because manufacturers would have a tendency merely to go along with whatever provisions are developed for the standard rather than seeking independent and innovative new solutions. While the relevance of this manufacturer's view for future action by the Commission is obscure, the Commission does not believe that considerations of this nature are significant with respect to the ANSI standard that has been developed to address rotational kickback. First, there has been no indication that the manufacturers involved in the development of the ANSI standard have behaved in the manner speculated by this commenter. In any event, the ANSI standard is a performance-oriented standard that will allow the use of practically any effective solution now in existence or that could reasonably be expected to be developed in the future, either to comply with the rotation limits of the standard or as the second feature to reduce the risk of kickback that the standard requires. Accordingly, the Commission cannot conclude that the ANSI standard will have a chilling effect on the continued development of ways to further reduce the risk of kickback.

This manufacturer also contends that standards, voluntary or mandatory, may prevent consumers from recovering judgments against defendants in product liability cases where the product in question complies with the standard. While the fact that a product complies with a standard may be admissible in some jurisdictions on the questions of whether the product is defective or the manufacturer was negligent, it is but one piece of evidence to be considered. The Commission believes that it is better to take reasonable steps to insure that products are reasonably safe in the first place than to rely solely on the fear of manufacturers of product liability verdicts to provide safe products. Certainly, this view was embodied by Congress in the legislation which created and empowers the Commission.

Comparative Test Data

One comment suggests that, in addition to issuing a mandatory standard, the Commission should make public comparative test data on the relative propensity of various chain saw models to kick back. The Commission does not believe that obtaining and releasing such information would be appropriate. The testing program that would be necessary to ensure that the information given out by the Commission was accurate, current, and fair to all manufacturers, as required by section 6(b) of the Consumer Product Safety Act, 15 U.S.C. 2055(b), would produce a drain on the Commission's resources that would not be commensurate with any benefit that might result from dissemination of the results.

The Commission does intend, however, to test chain saws manufactured after the adoption of the ANSI standard to determine that manufacturers are complying with the provisions of the standard. Where chain saws are found to be out of compliance, the Commission will take appropriate corrective action in cases where there appears to be a substantial risk of injury to the public as a result of the failure to comply with the voluntary safety standards. Such corrective action could, in an appropriate case, include notification of the public concerning the risk associated with the product in question.

CPSC Injury Data

Two comments, one from an industry trade association and one from a chain saw manufacturer, criticized the injury data relied on by the Commission in the ANPR to describe the risk of injury associated with chain saws and to estimate the expected benefits from adoption of the CSMA standard that had been proposed at the time of the ANPR.

One objection articulated in these comments is that the CPSC injury data were not limited to chain saws that were currently on the market and that already incorporated many of the safety features that would be encompassed by any mandatory or voluntary standard to be adopted. However, data collected since the publication of the ANPR have provided a comprehensive analysis of chain saws on the market in 1981 and 1982. The results of that analysis are in agreement with the analysis of older saws discussed in the ANPR.

In determining its final estimates of the effectiveness of the ANSI standard, the Commission staff relied on chain saw injury surveys conducted in October 1981 and October 1982 and on an exposure survey conducted in 1982. The results of these evaluations are contained in "Chain Saw Rotational Kickback Injuries: A Baseline Study and Evaluation of the Revised ANSI B175 Standard (1985)," September 1984, Rae Newman and Leonard Schacter, and in "Potential Effectiveness of the Rotational Kickback Amendment to the Voluntary Chain Saw Standard (ANSI B175, Revised 1985)" February 14, 1985, Rae Newman. These recent data were used by the Commission in making its determination that the ANSI standard will adequately reduce the risk of rotational kickback, and, as mentioned above, these current data do not yield results greatly different from the results based on the data that were available when the ANPR was published.

One of these comments also included a copy of a report that contained a number of criticisms of the data used by the Commission in its ANPR on chain saws. The Commission staff has responded to these criticisms in a 25-page report entitled "Review and Comment on the Paper Entitled *Audit and Critique of Selected Data Developed and Used by the Consumer Product Safety Commission in Its ANPR on Chain Saws,*" August 1982, Kenneth W. Haase, Thomas Hopper, Rae Newman, and Eliane V. Soley-Smith. The staff determined that all of the findings in the report submitted by this commenter were unfounded and based either on faulty statistical knowledge or a misunderstanding of the data systems under review. Copies of this Commission staff report can be obtained from the Office of the Secretary of the Commision.

Characterization of the Risk of Kickback

Some commenters characterized the risk of kickback injury in terms that implied that the risk was not significant and did not warrant regulation or other changes in the product. For example, some comments characterized kickback as "misuse," as not a problem, as an inherent risk of chain saw operation, or as caused by "foolish" operators. However, the estimated 22,000 rotational kickback injuries that occur each year, and the 70–80 percent of these that the Commission estimates can be prevented by the ANSI standard, demonstrate that the injuries are neither unavoidable nor acceptable and that they can be reduced at reasonable cost without an unreasonable reduction in the availability or utility of the products. Thus, while the Commission is not proceeding to issue a mandatory standard for chain saw kickback, it applauds the industry for its responsible effort to ensure that its products are as safe as reasonably possible.

E. Conclusion

For the reasons given above, the Commission has determined that the risk of injury from rotational kickback presented by chain saws can be effectively reduced by compliance with the kickback amendment of the ANSI B175.1 Chain Saw Standard and that there will be a very high degree of compliance with the amended standard's provisions. Therefore, the Commission has determined that it can rely on the voluntary ANSI B175.1 standard to reduce the risk of injury from rotational kickback. Accordingly, the Commission terminates the proceeding to develop a consumer product safety rule that was commenced by the advance notice of proposed rulemaking that was published on May 5, 1982. However, the Commission intends to continue to monitor chain saw injuries and compliance with the voluntary standard to ensure that the risk of injury from rotational kickback is adequately reduced.

Dated: August 27, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-20852 Filed 8-29-85; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, 16, 21 and 33

Domestic Exchange-Traded Commodity Options; Revisions to Pilot Programs for Non-Agricultural Options Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: In late 1981 the Commission published final rules governing a three-year pilot program for exchange-traded commodity options. Option trading began on October 1, 1982 following the designation of the first option contract markets. That three-year pilot program therefore is currently scheduled to expire on October 1, 1985. The Commission is reevaluating the option rules and requesting comment on proposed rule changes, including whether to make permanent exchange trading of options on non-agricultural futures contracts or to retain the program's current pilot status.

DATE: Comments must be received on or before October 15, 1985.

ADDRESS: Comments should make reference to "Revisions to Pilot Program for Non-Agricultural Options" and should be sent to the Commodity Futures Trading Commission, 2033 K St., NW., Washington, D.C. Attn.: Secretariat.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, at the above address, Telephone (202) 254-6990; or Kenneth M. Rosenzweig, Associate Director, Division of Trading and Markets, at the above address, Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Background

On November 3, 1981, the Commission published final rules establishing a strictly controlled, three-year pilot program to permit exchange-traded commodity options. 46 FR 54500. The establishment of such a program was the culmination of a long history of Commission efforts to provide for the trading of commodity options in a regulated environment.

Prior to the Commission's 1978 ban on option trading and the 1982 initiation of the pilot program, there were significant difficulties associated with the trading of commodity options. In addition, exchange trading of options on those domestic agricultural commodities regulated under the Commodity Exchange Act ("Act") were prohibited by Congress in 1936 as a result of excessive price movements and severe disruptions in the futures markets attributed to speculative trading in options.[1]

By way of background, massive frauds in the off-exchange offer and sale of options on those commodities not regulated under the Act occurred in the late 1960's and early 1970's. Those frauds were part of the impetus behind the creation of the Commission. Accordingly, the Congress granted the new Commission broad power over option transactions in the previously unregulated commodities.[2] Because of continued abuses in the offer and sale of such off-exchange options, however, effective June 1, 1978, the Commission suspended the offer or sale of all commodity options in the United States. 43 FR 16153 (April 17, 1978). The Congress codified that suspension as part of the 1978 amendments to the Act, but granted the Commission authority to establish a pilot program to permit the trading of such commodity options. Pub. L. No. 95-405, Section 3, 92 Stat. 867; 7 U.S.C. 6c(c) (1982).

In light of these prior abuses in option trading, the Commission reasoned that greater protections for public customers could be provided if the trading of options took place on regulated exchanges. Accordingly, the pilot program for exchange-traded options was based:

> on the assumption of direct and primary regulatory responsibilities by the contract markets for the participation of their member firms. Indeed, the pilot program places significantly greater self-regulatory duties and responsibilities on boards of trade than is presently the case for futures trading, particularly with respect to the protection of the public from sales practice abuses. . . . It is only by placing these regulatory responsiblities on the exchanges that the Commission believes it can presently assure that sufficient regulatory resources will be deployed to prevent a recurrence of the abuses which have characterized commodity options in the past.

46 FR 54502.

The Commission's program to permit the trading of commodity options has resulted in their phased introduction. The initial option rules permitted one option on a commodity futures contract other than on a domestic agricultural commodity to be traded on each exchange. 46 FR 54530. Subsequently, the Commission adopted rules also permitting the trading of one option per exchange on a physical commodity. 47 FR 56996 (Dec. 22, 1982). The pilot program was then modified by permitting two options per exchange whether on futures or physicals. 48 FR 41575 (Sept. 16, 1983). On August 24, 1984, the permitted number of options on futures contracts was expanded from two to five options per exchange, although the previous limit on the number of options on a physical commodity was retained. 49 FR 33641. In addition, following the repeal by Congress of the 1936 statutory ban on options involving domestic agricultural commodities, a separate three-year pilot program for the trading of options on those commodities was adopted on January 23, 1984. 49 FR 2752. This pilot program provided that each exchange

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[1] Act of June 15, 1936, ch. 545, section 5, 49 Stat. 1484. See, e.g., Hearings on H.R. 8829 Before the House Committee on Agriculture, 73rd Cong., 2d Sess. 10 (1934) (statement of J. M. Mehl, Assistant Chief, Grain Futures Administration, United States Department of Agriculture); 80 Cong. Rec. 7853-54 (1936) (remarks of Senator Pope).

[2] Commodity Futures Trading Commission Act of 1974, Pub. L. 93-463, section 402(c), 88 Stat. 1412-13 (codified at 7 U.S.C. 6c(b)). See, e.g., 120 Cong. Rec. S34997 (daily ed. Oct. 10, 1974) (remarks of Senator Talmadge); Hearings on the review of the Commodity Exchange Act Before the House Committee on Agriculture, 93rd Cong., 1st Sess. 11 (1973) (statement of Rep. Smith); H.R. Rep. No. 93-975, 93rd Cong., 2d Sess. 37-39, 48-50 (1974).

could be designated for two options on domestic agricultural futures contracts.[3]

With each major expansion of the program, the Commission has justified to the Congress its ability to regulate the trading of exchange-traded commodity options. Major interim evaluations of the pilot option programs were made at the time that the non-agricultural options pilot program was expanded from one option on a futures contract and one on a physical commodity per exchange to two options of any kind, when this program was expanded from two to five options per exchange, and at the time the pilot program for options on domestic agricultural futures contracts was initiated. These interim reports to the Congress noted that few regulatory problems had arisen with respect to the trading of these options. In particular, the Commission noted in its reports to the Congress that it appeared that the exchanges were discharging their responsibilities under the program adequately and that there were no customer complaints of the type which formerly had characterized options trading. Moreover, the Commission had noticed no adverse effects on the underlying futures markets resulting from the option program.

That is not to say, however, that no problems have been identified during the pilot program. Subsequent to those interim reports, in March 1985, Volume Investors Corporation, a clearing member of the Comex Clearing Association, defaulted to the association as a result of three of its customers not meeting margin calls on their uncovered short option positions in the Comex gold option contract. The Commission has reviewed the events that led up to this default and has prepared a separate report on the issues raised by that default. In the interim, Commission staff wrote to each exchange trading options concerning the elements of its financial surveillance program to assure that adequate programs are in place for the assessment of the risks of option positions concentrations and, in particular, uncovered option positions.

In this connection, by separate **Federal Register** notices, the Commission proposed additional capital rules and a guideline with respect to option margins and is requesting comment on potential means for addressing certain of the problems which occurred during the liquidation of Volume Investors' option position. 50 FR 31612; 50 FR 31623; 50 FR 31625 (August 5, 1985). In addition, the Commission is today proposing additional rules and rule amendments which are intended to strengthen further the financial integrity of the options and futures markets. It is expected that after the conclusion of the comment process these proposals will lead to rules and procedures which, if adopted and effectively implemented, will reduce significantly the exposure of the marketplace and customers to losses due to a trader's default.

The Commission also has begun an evaluation of its over-all experience with option trading and has reviewed its regulations governing such trading. Based upon this analysis, and the comments elicited in response to this Notice of Proposed Rulemaking, the Commission will determine whether or not the pilot nature of the program should be terminated and whether any regulatory changes governing the trading of such options should be made.[4] Alternately, the Commission is requesting comment on whether, if the pilot nature of the program is maintained, exchanges should be permitted to trade more than five options on non-agricultural futures contracts.[5]

Changes in the existing rules are being proposed in the following areas: definition of hedging, participation of commercial interests in developing option contracts, definition of deep-out-of-the-money options, the underlying futures volume criterion for initial designation, delisting criteria based on the volume in the underlying futures and in the option contracts, reporting requirements, the requirement for exchange conduct of market-wide surveys, the filing of promotional material, customer complaints, and disciplinary actions with the exchanges, certain financial safeguards, and disclosure rules. As proposed, these regulatory changes also would apply to option trading on domestic agricultural futures contracts. The Commission is seeking comment on whether these proposed changes should apply to trading in such options on domestic agricultural futures contracts.

II. Amendments to Existing Regulations

A. The Pilot Nature of the Program

As adopted, the pilot option program contemplated that the Commission would designate a limited number of option contract markets for a three-year period after which it would determine whether or not those designations should become permanent. Accordingly, Commission Rule 33.5(c), 17 CFR 33.5(c), provides that the effective period for designation of commodity options shall not exceed three years from the effective date of the designation. In addition, Commission Rule 33.4(a)(6), 17 CFR 33.4(a)(6), limits the number of commodity options which may be traded on an exchange.

In light of the experience with the pilot option program, including the apparent use of these markets for risk shifting by commercial users, and the recently proposed capital and margin rules the Commission is requesting comment on deletion of the three-year limitation for designation and the limitation on the number of options on futures contracts on commodities other than domestic agricultural commodities permitted on each exchange. In addition, the Commission is proposing to remove the expiration date that presently exists for options on physicals (but, as discussed above, intends to continue the numerical limits on options on physicals). Insofar as the individual Orders of designation for existing option contracts have a specified termination date, the Commission would propose to amend § 33.5(c) to make possible the granting of permanent designations. Alternately, if the Commission determines that the pilot nature of the option program should be maintained, the Commission will extend the length of the temporary period of designation and will consider increasing the number of options on non-agricultural futures contracts permitted to be traded on an exchange. The Commission seeks comment on this alternative approach as well as the appropriate number of non-agricultural options for an extended pilot program.

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[3] It should be noted that the Commission has received two currently pending petitions for rulemaking to expand the number of options permitted on domestic agricultural futures contracts from two to five per exchange. On April 15, 1985, the Commission requested public comment on such an expansion of the pilot program for options on domestic agricultural commodities. 50 FR 14718. The period for public comment on this proposal ended on June 14, 1985, and the Commission is reviewing the comments it received.

[4] By letter dated July 10, 1985, the Futures Industry Association ("FIA") provided the Commission with certain suggestions as to how the Commission's pilot program regulations could be modified. The Commission's present proposal already addresses a number of these matters and the Commission will consider the FIA letter to be a comment on its proposal.

[5] The Commission is not contemplating increasing the number of options on physical commodities for which an exchange may be designated as a contract market because the first option on a physical commodity was designated only on February 12, 1985 and began trading on April 20, 1985. Permission to trade additional options on physicals will be considered by the Commission at a later time.

Moreover, although these proposed rule changes will generally apply to the pilot program for the trading of options on futures contracts in domestic agricultural commodities, trading in such options only began in October 1984. Accordingly, the Commission will consider the possible termination of that pilot program at a later time.

B. Definition of Bona Fide Hedging

Options are not currently included within the definition of hedging under Commission Rule 1.3(z). At the time that the initial option rules were adopted, the Commission was concerned that the use of options to shift risk might not fit fully within the definition of "hedging" as it applied to futures contracts. Accordingly, the option rules convey this risk-shifting concept through the use of other terms. For example, in Commission Rule 1.61(b)(2), 17 CFR 1.61(b)(2), the term "economically appropriate to the reduction of risk in the conduct and management of a commercial enterprise" is used with respect to option contracts. In addition, in Commission Rule 33.6(c), 17 CFR 33.6(c), this concept is conveyed by the terms "for other than speculative purposes by producers, processors, merchants or commercial users engaged in handling or utilizing the commodity. . . ."

After gaining experience with the trading of options under these rules, the Commission believes that the application of the term "hedging" to these *bona fide* risk-shifting activities is appropriate. For example, in writing their rules governing speculative position limits for option positions, the exchanges have uniformly adopted by direct reference, or by use of equivalent language, the Commission's general definition of "hedging" (Commission Rule 1.3(z)(1), 17 CFR 1.3(z)(1)). This application of the Commission's definition apparently has had no adverse effects.

Moreover, the uniform use of the term "hedging" with respect to both options and futures trading would simplify the option regulations. In this connection, for example, the Rule 33.4(a)(5)(i), 17 CFR 33.4(a)(5)(i), designation requirement that a proposed option contract market demonstrate that it is likely to serve an economic purpose would be interpreted identically to the economic purpose test for futures designation—*i.e.*, that the proposed instrument be used on more than an occasional basis for hedging or price basing.

The Commission, therefore, is proposing to amend Commission Rule 1.3(z)(1) to include within the general definition of hedging certain option transactions and to amend those Commission rules, including in particular Commission Rules 1.46 and 1.61,[6] 17 CFR 1.46, 1.61, which refer to the concept of hedging with options but which do not use that term.

The Commission notes, however, that the remainder of the Commission's definition of hedging, the specific, enumerated examples found in Commission Rule 1.3(z)(2) and (3), applies only to those futures contracts governed by direct Federal speculative limits and therefore does not apply to options. Accordingly, whether particular types of option transactions should be classified as hedging under Commission Rule 1.3(z) must be determined on a case-by-case basis by applying only the general definition. Nevertheless, the Commission notes that generally option grantors cannot meet the Commission's definition of hedging and that this proposed amendment is not intended to imply that covering speculative futures (or options) with options (or futures) positions can be considered hedging within the meaning of Commission Rule 1.3(z)(1).

C. Designation Criteria

Commission Rule 33.4 provides several criteria which must be met in order to be designated as an option contract market. The Commission has reviewed these criteria in light of its experience and is of the opinion that two of these can now be eliminated and that others should be modified.

1. Participation of Commercial Interests

First, the Commission is proposing to delete the requirement in Commission Rule 33.4(a)(5)(ii) that an exchange applying for designation demonstrate that commercial interests have participated in formulating the option contract. This requirement was necessary initially in light of the lack of any commodity option trading on exchanges when the pilot program began. The provision ensured that exchanges would seek a wide spectrum of expertise in constructing their first option contracts. After gaining experience in the pilot program many, if not all, exchanges have expertise with options sufficient so that a separate provision requiring involvement by commercial interests is unnecessary. Of course, exchanges may wish to continue including commercial interests when formulating new option contracts as a matter of their own policy.

2. Definition of Deep-Outs

One of the concerns in option trading before the advent of the Commission's program for exchange-traded options was in connection with the offer and sale of options which were deep-out-of-the-money. These are options in which the strike price is significantly above, in the case of a call, or significantly below, in the case of a put, the current price of the underlying futures contract. In addition, the premium for these options is relatively inexpensive, but the likelihood of such options' becoming profitable is remote. However, grantors of such options may face substantial liability if there are sudden, adverse movements in the price of the underlying commodity.

Accordingly, as part of the pilot program the Commission required that exchanges have rules to identify and to govern deep-out-of-the money options. Commission Rule 33.4(d)(2), 17 CFR 33.4(d)(2). In addition, as part of their sales practices audits, contract markets are required to ascertain whether the offer or sale by futures commission merchants ("FCMs") of such deep-out-of-the money options is consistent with exchange rules. Commission Rule 33.4(c), 17 CFR 33.4(c). Finally, the required disclosure document informs the customer of the risks associated with deep-out-of-the money options. Commission Rule 33.7(b), 17 CFR 33.7(b).

The Commission maintains its belief that the offer and sale of such options is an area of potenital abuse which must be carefully monitored. In particular, the offer and sale of deep-out-of-the-money options poses financial risks as well as raising issues concerning customer protection. The Commission believes that these issues are most effectively addressed by the recently proposed net capital and other financial rules and by greater emphasis on front office audits. For example, under the proposed guideline on option margins, margin is expected to be assessed on all option positions, including those that are deep-out-of-the-money.

The Commission is therefore proposing to eliminate the requirement in Commission Rule 33.4(b)(2) that exchanges have rules identifying deep-out-of-the-money options, since in many applications such specific definitions tend to be less encompassing and appropriate than a case-by-case evaluation of particular option series. However, the Commission would maintain the requirement that exchanges, as part of their sales practice audits, review their member's offer and sale of options with low premiums and strike prices considerably away from the money. A pattern of such trading would be considered an abusive sales practice. Thus, rather than relying on

[6] The Commission also is proposing to delete from Commission Rule 1.61 the provision for the application of that rule to then-existing contract markets which had no speculative position limits. This provision is no longer needed because the phase-in period for such speculative position limits has passed.

rules specifically defining and governing deep-out-of-the-money options, exchanges would be required to conduct sales practice audits pursuant to more general rules, such as those which require their members to observe high standards of commercial honor and just and equitable principles of trade, regarding the relative appropriateness or inappropriateness of the particular series of options offered or sold. Thus, the Commission is not proposing to delete from Commission Rule 33.4(c) the existing requirement that the Exchanges' sales practice audit programs include provisions for the review of member FCMs' sales of deep-out-of-the-money options.

Separately, the Commisison notes that Commission Rule 33.4(b)(11), 17 CFR 33.4 (b)(11), already requires each board of trade applying for designation as a contract market for the trading of commodity options to "[e]stablish appropriate criteria which are reasonably designed to secure performance, upon exercise, of the option contracts." Although the Commission has indicated that this rule is intended "particularly" to assure performance by grantors of call options on physicals, the rule applies equally to all exchange-traded options transactions. 47 FR 28401, 28404 (June 30, 1982). Thus, while the potential financial problems that may arise for grantors of deep-out-of-the-money options when there are sudden market moves are addressed in the proposed financial rules recently published in the **Federal Register**, the Commission reminds the self-regulatory organizations of their existing obligations under Commission regulations with respect to performance of options contracts.

3. Volume of the Underlying Futures Market

In adopting the initial rules for the pilot program, the Commission established a requirement that options could be designed only on futures contracts having a specified trading volume. That specified volume was an average of at least one thousand contracts per week in all contract months during the preceding twelve months, or a sufficiently liquid cash and future market to prevent option trading from disrupting those markets.

The Commission has reviewed this issue and is concerned that an initial volume of one thousand contracts per week generally may not be adequate to ensure that a trader would be able to exercise an option into a sufficiently liquid market so that the resulting futures position could be offset without suffering a substantial loss of the option's true economic value. In addition, the Commission is concerned that large positions resulting from option exercises into futures markets trading an average of one thousand contracts per week might have an adverse effect on the underlying futures market. Further, because all of the options so far designated have had average volumes far in excess of the 1,000 contract per week level, the Commision has no firm evidence that trading at such levels would not exhibit the above weaknesses. Accordingly, if the current limitation on the number of contracts permitted per exchange is removed or expanded, a higher volume level appears necessary to ensure that options will be traded only on those contract markets which can best support such a derivative market.

In light of these concerns, the Commisison is proposing to raise the volume level of the underlying futures market necessary for designation of an option on that futures contract and to delete the alternative test which permits a demonstration of sufficient liquidity in the underlying cash and futures markets to prevent disruption of those markets. The Commission believes that the alternative test does not address adequately the ability of a trader to offset a position in the underlying futures market upon exercise and thus realize the option's full ecomonic value. With the ending of the pilot program and the associated limitations on the number of options permitted, the Commission believes that a more objective liquidity test is necessary to ensure that options are designated only on those futures markets which will not be adversely affected by option trading.[7]

The Commission has reviewed the recent data for trading volume for all designated contract markets. Those contract markets designated to date for inclusion in the pilot program for options on futures generally have exhibited trading volume far in excess of the average 1,000 weekly level. Indeed, all except one of the designated contracts have average volumes at least in the range of 5,000 contracts per week. From the Commission's data it appears that the 3,000 contract level separates low volume futures contracts from the higher volume contracts comparable to those now included in the pilot program. Accordingly, the commision is proposing an average weekly volume of 3,000 contracts in the underlying futures contract for designation of options on futures.

[7] Of course, in the unique circumstance, as with any Commision rule, a board of trade could petition the Commission for relief from this particular requirement.

D. Delisting Criteria

In light of the limited number of designations under the pilot program and their temporary nature, an automatic delisting procedure was unnecessary. Such an automatic delisting procedure would have halted trading in any options on a futures contract where the futures contract failed to maintain the requisite volume level or for any option market that itself failed to trade over a specified volume for a period of time. With permanent designations permitted, however, it is more likely that an underlying futures market may not continue to meet the requisite volume criteria or that trading in an option contract market may cease.

1. Underlying Futures Market

Although an underlying futures contract initially must meet the volume requirement for designation of an option, every futures contract may not continue to exhibit sufficient liquidity to support option trading. In those cases, where the objective criterion for continued trading is no longer being met, an automatic procedure to bring trading to an orderly halt is appropriate.

Commission Rule 5.4, as proposed, requires that where the total trading volume for all trading months in the underlying future falls below an average of 1,000 contracts per week for the preceding six months, no new option expirations may be listed for trading. However, new strike prices could be added, as specified in exchange rules, to the remaining expirations as they trade out. In such cases where the listing of additional option expiration has been suspended, expirations could be added only when trading volume in the underlying futures contract were to rise above an average of 2,000 contracts per week for a period of three months.[8]

The level at which options are subject to the delisting rule is proposed to be set at the 1,000 contract per week level, which is the current designation requirement. The Commission believes that this 1,000 contract per week requierment is the minimum acceptable level, below which the individual trader and the underlying futures market may be adversely affected by the existence of a derivative market. Setting the delisting level lower than the proposed

[8] The objective volume criterion should be computed by averaging together the total weekly volumes over a six or three month period, as appropriate. Accordingly, although some weeks may fall below the required volme level, the average weekly volume may meet this requirement.

volume level required for initial designation is appropriate in light of the disruption which otherwise might be caused by the required cessation of trading due to minor fluctuations in volumes. Thus, where a futures market meets the initial designation criterion, the lower delisting volume level assures that any disruption of trading will occur only where the reduced volume is simply not a minor, temporary decrease in volume relating to specific market conditions, but a generalized reduction in trading volume. This is particularly true in light of the method of calculation which permits the averaging of weekly volume levels. Similarly, the higher level needed to resume trading which has been suspended, an average volume of two thousand contracts per week, will also help to assure that the increase in volume is sufficiently high that the trading volume is unlikely immediately to fall back below the delisting level.

2. Option Market

In addition to the possibility that the underlying futures contract may fail to continue to trade at the prescribed level, a designated option market may cease to trade or it may trade at chronically low levels. Commission Rule 5.2 provides a delisting mechanism for futures contracts which become dormant, and Rule 5.3 sets forth a special reporting requirement for futures contracts which trade at chronically low volumes. Option contracts were not included under Rules 5.2 and 5.3 during the pilot program because those rules provide for grace periods of three years from the time of initial designation before having an effect on the listing or trading of contracts. Thus, in anticipation of permanent option designations, the Commission is now proposing delisting requirements for option markets which are analogous to those which apply to futures contracts.

The rationale for delisting criteria with respect to futures contracts is that contract terms and conditions may become out-dated once trading has ceased in a contract and that an opportunity for reassessment of such a contract is necessary before trading is resumed. 47 FR 29515, 29517 (July 7, 1982). Similarly, with respect to low-volume futures contracts, the Commission was concerned that chronically low trading volumes might indicate failure of such contracts to attract commercial participants and thus to fulfill an economic purpose, and that such markets exhibited a heightened susceptibility to trading abuses. *ID.* at 29520.

In light to these concerns, the Commission is proposing an amendment to Commission Rule 5.2 to require that option markets in which no trading has occurred for all expiration months listed for trading for a period of six months shall be deemed dormant within the meaning of Commission Rule 5.2. The Commission is also proposing that the three-year grace period for newly designated contract markets also apply to options. With regard to all existing options, the three-year grace period would be counted from the date of initial designation but in no case would the grace period be less than six months from the effective date of the final rule.[9]

Unlike low-volume futures contracts, reports for option contracts which exhibit chronically low trading volumes are not being proposed. These reports for futures contracts having a volume of less than 1,000 contracts per month require, among other information, identification of commercial participants in the market and a statement explaining additional surveillance procedures instituted to monitor trade practices. However, special reports of commercial participation are unnecessary for options because information regarding all commercial participants in the option markets is already provided by the exchanges under Commission Rule 16.04. Morever, contract markets are expected as a matter of diligent self-regulation to institute adequate surveillance procedures for all contract markets and to increase such efforts where appropriate.

E. Reporting Requirements

The Commission is proposing to amend Rule 16.01 to require that where a delta factor is used for margining positions, for evaluating compliance with speculative position limits or for evaluating the financial exposure of its members, the exchange report the delta factor to the Commission on a daily basis in machine readable form. Such information was not required under the initial rules because delta systems were introduced by certain exchanges as part of their speculative limit and margining rules as the pilot program progressed. Moreover, the Commission finds that the use of deltas is important in its general surveillance of the markets and that the Commission should know the particular delta factors used by each exchange which trades options. Such information is similar to that otherwise required under Rule 16.01 and is important to the financial operations of the option market, as well as to inter-and intra-market relationships. In view of this, the Commission also is proposing that this information be made available to the public in printed form on a daily basis.

The Commission is proposing two amendments to rule 16.02. These proposed changes to Rule 16.02 will provide the Commission and the exchanges with specific, additional information necessary for the conduct of market surveillance. First, the Commission is proposing to amend Rule 16.02 to require that reportable positions in each option expiration be reported by strike price. Each exchange that has been designated by the Commission as a contact market in options has adopted speculative position limit rules which allow exemptions for certain "riskless positions" (*i.e.*, conversions, reverse conversions, boxes, etc.). In order to determine whether such an exemption is justified, data must be examined by option expiration month and strike price. Under existing Commission Rule 16.02, exchanges currently provide these data only for the option which is next to expire or which will expire within six weeks. However, position data by strike price is necessary for all expirations to check for compliance with exchange speculative position limits.

Moreover, certain exchange have adopted a delta system for purposes of exchange speculative position limits. For those exchanges, the Commission is proposing the additional requirement under Rule 16.02 that the relevant position information also be provided in hard copy form on a delta-equivalent basis in a form and manner approved by the Director of the Division of Economic Analysis. This reporting procedure is already being used by those contract markets currently having such a delta system. This proposal therefore merely would codify existing practice.

In addition, the Commission has not found it effective to use Commission Rule 16.05 which requires exchanges to conduct market-wide surveys. Rather,

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[9] The Commission also is proposing to delete from Commission Rule 5.2 (c) the requirement that the exchange rule or resolution to resume trading be approved by the Commission within thirty days, unless the exchange is notified otherwise. Although the Commission will continue to endeavor to review these exchange rules on an expedited basis, the specific time limit in the rule is no longer needed.

Subsequent to the adoption of Commission Rule 5.2(c), the Futures Trading Act of 1982 amended the Act to include a statutory deadline of 180 days for Commission review of exchange rule amendments. In addition, the Commission has virtually eliminated its backlog of exchange rules to be reviewed. Accordingly, expeditions treatment of these submissions is likely without a separate time limit, and the existing rule created the need for additional procedures to extend the time limit if it were necessary to publish the proposal in the **Federal Register**. Thus, deleting this provision will streamline the Commission's review procedures without an affect on the timeliness of Commission considereation of exchange proposals to resume trading in a dormant contract.

the Commission has itself conducted such surveys in order to ensure better the timeliness and integrity of the survey process. In this respect, the Commission sees little benefit to maintaining the requirement that the contract markets conduct such surveys if the Commission itself can obtain most of this information in machine readable form directly from the FCMs. It should be noted that receipt of most of this information in machine readable form will yield the Commission savings similar to those garnered by requiring the exchanges to gather all of such information and also provide the Commission with the ability to verify directly the survey results. On the other hand, there will not be a net increase in information that FCMs are required to provide because, in the absence of a Commission-conducted special call, the exchanges would be gathering the same informatin from the FCMs. Accordingly, the Commission is proposing to delete Commission Rule 16.05 and to amend Commission Rule 21.02a so that most of the special call information on options which was required under Commission Rule 16.05 will be provided by the FCMs in machine readable form directly to the Commission, whether or not for purposes of sample surveys.

The Commission has previously adopted Rule 21.02a, 49 FR 1335 (January 11, 1984), providing that special calls for population data be provided in machine readable form in order that more extensive information could be collected on a sample of the population. This regulation includes a format for reporting certain information in machine readable form. This enables FCMs to develop computer programs to answer a special call and to be assured that subsequent requests for information will use the same format. Reporting in machine readable form provides a savings for both the reporting entities and for the Commission.

Under Commission Rule 21.02a as proposed, the Commission would call for certain information in machine readable form whether or not on a sample or a population-wide basis. Thus, the Commission could pre-select the sample and obtain the necessary information in one call, rather than in a two-step process. The Commission's experience with obtaining machine readable responses to both types of special calls—population and sample—on a voluntary basis has been good. It is anticipated that although total enumerations of the market would be permitted under the rule as proposed, the use of survey techniques would be encouraged.

It should be noted that the Commission is requiring FCMs to provide a machine readable response only for that information which is currently required to be reported in machine readable form.[10] Additional information which generally is not now carried in the FCMs' ADP systems, such as the type of account, the commercial or non-commercial classification, and for options, the occupation code of the trader, will continue to be subject to special call under Commission Rule 21.02.[11] Commission Rule 21.02 does not provide for a specific reporting medium. Thus, information required under Commission Rule 21.02 can be reported either manually or in machine readable form. Of course, the Commission would encourage FCMs voluntarily to report all required information in machine readable form.[12]

F. Changes in Sales Practice Program Requirements

The Commission also is proposing to amend Commission Rule 33.4, 17 CFR 33.4, to eliminate certain essentially repetitious filings which futures commission merchants and introducing brokers are currently required to make under certain provisions of the pilot program regulations. In particular, Commission Rules 33.4(b)(4) and 33.4(b)(6) respectively require FCMs which are members of an exchange which has been designated as a contract market for option trading to file with that exchange virtually all option customer complaints, regardless of whether the underlying conduct even involves that particular exchange, as well as notice of any disciplinary action taken against the FCM or any of its associated persons by any other self-regulatory organization. Commission Rule 33.4(b)(8) similarly requires FCMs "to submit to the board of trade all promotional material pertaining to option trading on that board of trade," even where that material has been submitted to other exchanges where the FCM is also a member, including the FCM's designated self-regulatory organization.

These provisions were adopted by the Commission at a time when an FCM could solicit or accept orders from option customers only for commodity options traded on those exchanges where the FCM was itself a member and were intended to ensure that each of the contract markets would receive information sufficient to enable them to conduct sales practice audits of their member firms. *See* 46 FR 54500, 54502–03; 48 FR 4650 (February 2, 1983). The contract markets and National Futures Association ("NFA") have since entered into joint audit agreements which, in effect, extend the sales practice audit requirements of the Commission's option regulations to all FCMs which engage in the solicitation or acceptance of option customers' orders. *See generally* 48 FR 9682, 9683 (March 8, 1983).[13] The Commission therefore believes that it is no longer necessary to require that all customer complaints, promotional material and notices of disciplinary action be filed with any exchange of which an FCM happens to be a member and is, accordingly, proposing to amend its regulations to provide explicitly that these materials need be supplied routinely only to an FCM's (or introducing broker's) designated self-regulatory organization ("DSRO"). The Commission's proposal is, of course, predicated upon the assumption that the DSRO which is in receipt of such information will not only act promptly upon any evidence that one of its members may be in violation of applicable rules but also that the DSRO will expeditiously share that information with the other exchanges of which an FCM or introducing broker may be a member and with NFA so that

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[10] Accordingly, the ADP format remains the same as currently set forth with the exception of four technical corrections.

[11] Paragraph (d) of Commission Rule 21.02 requires that respondents to a Commission call provide the name, address the principal business or occupation of each account. 17 CFR 21.02(d) (1984). The Commission is not proposing to amend this paragraph specifically to set forth in the regulation that occupation codes for option traders be provided in any Commission call. However, the Commission anticipates that when issuing calls under Commission Rule 21.02 for information on option positions it will include in the call a requirement that respondents identify the principal business or occupation of traders in accordance with the list of occupational codes that the Commission from time to time publishes.

[12] The Commission also is proposing to amend Rules 21.02 and 21.02a by clarifying that where positions are carried for an originating futures commission merchant on a fully disclosed basis by another futures commission merchant, the originating futures commission merchant is not to report the positions. This proposed revision codifies current practice.

[13] By comparison, while the Commission's option regulations also permit an introducing broker to solicit and accept option customers' orders where a self-regulatory organization has assumed responsibility for the option sales practices of that introducing broker (*see* § 33.3(b)(1)(ii)), not all introducing brokers are so authorized at this time. *See* Division of Trading and Markets Interpretive Letter 85–1, Comm. Fut. L. Rep. (CCH) ¶ 22,473. The Coffee, Sugar & Cocoa Exchange, Inc. ("CSC") has since joined the inter-exchange agreement described in that Interpretive Letter, and its option contract (as well as any introducing broker guaranteed by a CSC-member FCM) now has the same status as the option contracts (and guaranteed introducing brokers) of the other exchanges described in that Interpretive Letter.

those organizations can also take whatever action may be appropriate under their rules.

The Commission is separately proposing to eliminate the requirement that FCMs and introducing brokers make and file with the Exchanges and NFA a record of oral complaints where the complaint could result in an adjustment to an option customer's account of $1,000 or more. The Commission has observed little evidence of oral customer complaints of the type contemplated by the rule and thus believes that the elimination of this requirement will not materially diminish the special customer protections afforded by the pilot program.[14]

The Commission also is proposing to amend the option disclosure requirements contained in Commission Rule 33.7, 17 CFR 33.7 in order to clarify further the extent to which the terms and conditions of the futures contract or physical commodity underlying an option must be discussed in the required disclosure statement. Specifically, paragraph (2) of the disclosure statement (§ 33.7(b)(2) of the regulations) currently provides that an FCM or introducing broker is required to provide "a description of . . . [t]he futures contract or the physical commodity which is the subject of the option . . . [and the] quantity of the underlying futures contact or underlying physical commodity. . . ." As a result, when these requirements first became effective, FCMs and introducing brokers endeavored to provide prospective option customers with a comprehensive and detailed listing of the terms and conditions of all of the options (and their corresponding underlyng futures contracts) that had thus far been designated by the Commission for trading.

The Commission soon recognized, however, that insofar as the regulation was being interpreted to require the dissemination to all existing and prospective option customers of the terms and conditions of all new option contracts as well as of every amendment to the terms and conditions of either existing options or their underlying futures contracts, the regulations was creating significant operational and compliance burdens. The Commission accordingly clarified those requirements by reiterating its intention that the terms and conditions of these contracts need not be disclosed to a potential option customer in advance of a decision to trade and that the requirements of its regulation would be satisfied if an FCM or introducing broker provided "the specific details of a particular option contract intended to be purchased or sold by a customer . . . prior to the entry of the first order for such contract." 49 FR 44891, 44893 (November 13, 1984).

The Commission is aware, however, that many FCMs and introducing brokers have chosen to continue to provide *all* terms and conditions to existing and prospective option customers in recognition of the difficulties inherent in assuring that individual customers have received the particularized disclosures that would otherwise be necessary every time an option customer chose to trade a new option contract.

The Commission has, therefore, further evaluated the utility and effectiveness of this portion of its disclosure requirements. In particular, the Commission recognizes that the information which is disclosed under this portion of its regulations is freely available upon request by an interested customer from any FCM, introducing broker, or the exchange on which the option is traded. Moreover, the Commission does not otherwise deem it necessary to require FCMs and introducing brokers routinely to disclose the terms and conditions of *futures* contracts which, as the option contracts they underlie, are also freely available to interested customers. The Commission is, therefore, proposing to amend § 33.7(b)(2) of its regulations to require an FCM or introducing broker instead to identfiy the futures or physical commodity which may be purchased or sold upon exercise of an option or, if applicable, whether exercise of the option will be settled in cash. The Commission believes that such a requirement should be sufficient to identify for potential option customers the underlying instrument upon which the option premium will be based as well as any unique or atypical attributes of a particular contract of which an option customer should be aware. The Commission is nonetheless interested in obtaining specific information and comments on how FCMs and introducing brokers currently fulfill their disclosure obligations to option customers with respect to the required description of exchange-traded options and their underlying futures contracts and physical commodities and, in particular what other alternatives may exist to the Commission's proposal.[15]

Finally, the Commission is proposing to expand the discussion in Commission Rule 33.7 of two items: the effect of limit moves in certain underlying futures and the nature of overnight risk of commodity price change to those who have exercised options. The additional disclosure of the effects of limit moves would clarify that price limits in certain underlying futures may not exist in the associated option and, as a result of this, there may be instances when an option may experience greater price change than its underlying futures contract. The disclosure also indicates that those obtaining positions in the underlying future as a result of option exercise may not be able to offset that position if there is a halt in trading due to a limit price change in the future.

The disclosure of exercise risk would clarify the trader's possible exposure to price change in the underlying future or physical commodity which may occur before the position resulting from option exercise can be offset. For example, the risk of a significant difference between the closing futures price on the day of exercise and the opening price the next trading day may make a profitable exercise of an option unprofitable. Also, in options on physicals that are cash settled, the difference in the cash settlement price for the underlying physical from that which prevailed at the time of option exercise may result in an unforeseen loss if cover activities are not undertaken.

G. Financial Requirements

The Commission has recently proposed capital rule amendments, margin guidelines, and related proposals in response to the failure of Volume

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[14] The Commission has previously authorized the contract markets and NFA to delegate within a joint audit plan the responsibility for the review of promotional material. 49 FR 28806 (July 17, 1984). For these purposes, an introducing broker's designated self-regulatory organization would be deemed to be NFA except where the introducing broker is guaranteed by an FCM whose designated self-regulatory organization is one of the contract markets, in which case the introducing broker's DSRO would be that contract market.

[15] Thus, this change, if adopted by the Commission, would not in any way modify an FCM's or introducing broker's obligation to: acquaint itself sufficiently with the personal circumstances of each option customer to determine what further facts, explanations and disclosures are needed in order for that particular option customer to make an informed decision whether to trade options. The procedures to be followed by the prudent FCM [or introducing broker] to make an inquiry into an option customer's sophistication for purposes of determining to what extent risk disclosure above and beyond the disclosure statement itself might be avisable.

46 FR 5400, 54507 (November 3, 1981).

Similarly, this change would not in any way affect an FCM's or introducing broker's duty under Commission Rule 33.7(f) to "disclose all material information to existing or prospective option customers even if the information is not specifically required" by the Commission's option disclosure rule.

Investors Corporation. 50 FR 31612; 50 FR 31623; 50 FR 31625 (August 5, 1985). In addition, the Commission is now proposing to strengthen further its financial early warning system for FCMs. Specifically, the Commission believes that the problems at Volume Investors might have been detected earlier, and perhaps mitigated, had immediate notice of very substantial margin calls made by Volume to a group of accounts under common financial control been given to exchange or Commission personnel. The Commission believes that, in a similar situation, where an account is undermargined by such a magnitude that a default thereon would cause the FCM to be undercapitalized, the DSRO and the Commission should be made aware of the undermargined status as soon as possible and has proposed a rule which would address such a situation.[16]

This proposed rule would apply generally to individual accounts unless there were a group of accounts which was dependent on one person's financial resources. The rule would not otherwise apply, however, to all of a firm's accounts on a cumulative basis. The proposed amendment to Rule 1.12, a proposed new paragraph (f)(3), is in keeping with the overall goal of the financial early warning system which is, as the Commission has stated on several occasions, to afford the Commission and the appropriate industry self-regulatory organizations advance notice of an FCM's problems to allow the necessary protective action to be taken to insure the safety of the FCM itself, the FCM's customer funds and the integrity of the marketplace.

Proposed Rule 1.12(f)(3) would require an FCM to give notice to its designated self-regulatory organization and the Commission when it determines an account to be undermargined by an amount which exceeds its excess adjusted net capital. This notice is to be given immediately upon making the determination of the undermargined amount.

An immediate telephone call would be encouraged, followed by telegraphic notice. The DSRO and the Commission can then heighten their surveillance of the firm and be prepared to take appropriate action if there is a default which would cause the FCM to be undercapitalized. The proposed rule would apply individually to all accounts carried by the FCM. The proposal also provides, however, that if any person has an interest of 10 percent or more in ownership or equity in, or guarantees, more than one account, or guarantees an account in addition to his own account, the undermargined amounts of such accounts must be combined and notice must be given to the DSRO and the Commission if the undermargined amounts exceed the firm's excess adjusted net capital. The Commission wishes to emphasize that its proposal is designed to allow protective action to be taken, and should not cause a firm to delay issuing a margin call. The Commission also wishes to emphasize, however, that the triggering event would be the determination of undermargined status, not the issuance of a margin call and thus, an FCM could not circumvent the rule merely by postponing the issuance of a call.

In its letter of July 19, 1985, the Futures Industry Association requests that the Commission eliminate or modify the safety factor charge (or "haircut") set forth in Commission Rule 1.17(c)(5)(iii), which requires an FCM to deduct four percent of the market value of exchange-traded commodity options granted (sold) by option customers from the FCM's net capital in computing its adjusted net capital. In support of this position, FIA states that the risks of short option positions are no greater than futures positions and should be accorded the same treatment. The Commission notes that FIA made the same argument when the Commission proposed Rule 1.17(c)(5)(iii) [17] and the Commission rejected it at that time. Nothing that has happened in the last three years has indicated to the Commission that the capital requirements for an FCM based on the size of the short customer option position which it is carrying should be decreased; on the contrary the recent financial failure of Volume Investors Corporation would appear to suggest precisely the opposite.

Further, the Commission notes that the September 1982 capital rule amendments,[18] including Rule 1.17(c)(5)(iii), provide for equivalent treatment of future and short options positions in that the impact on an FCM's excess adjusted net capital will be the same in both instances, four percent of the margin required under rules of the applicable board of trade. If the FIA's suggestion were adopted, options would not be given preferential treatment over futures. The contract markets have generally established option customer margin levels for granted options of an amount equal to the underlying futures contract margin level plus the market value of the option. If this results in a higher required margin for a short option position than for a short or long futures position, this is the result of the fact that the contract markets have established different margin requirements for such positions based on their assessment of the risks involved.[19]

The Commission's September 1982 capital rule amendments prevented the imposition of an additional financial burden on an FCM for carrying long option customer positions (which are essentially riskless since the option premium is to be paid in full at the outset) and instead placed any such additional capital requirement on an FCM carrying a riskier granted (short) option customer positions. Because Division of Trading and Markets Financial and Segregation Interpretation No. 8 [20] established greater FCM segregation requirements for a long option customer position than for a short option customer position—with the market value of purchased options included in, and the market value of granted options excluded from, segregation requirements—the capital rule amendments were necessary to reflect more accurately the risks to an FCM carrying an option position.[21] Thus, the Commission continues to believe that there should be no capital impact on an FCM for a purchased (long) customer option, since there is no margining of the premium, but that the capital impact for a granted customer option should be the same as for any other margined position, such as a long or short futures position, which is four percent of the margin amount. The FIA has advanced no new arguments which would convince the Commission otherwise.

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[16] The Commission believes that an adequate program of financial surveillance can, in certain circumstances, depend upon the ability of the contract markets and their associated clearing organizations to obtain intra-day position information. In this regard, the Commission anticipates that the enhancements to exchange operations that would likely result if the Commission's "audit trail" proposal (49 FR 50190 (December 27, 1984)) were to be adopted would also materially improve the exchanges' ability to obtain position information on an intra-day basis.

[17] 47 FR 30261 (July 13, 1982).

[18] 47 FR 41513 (September 21, 1982).

[19] FIA also makes reference to combined short option/futures positions. To the extent such combination positions are deemed to be less risky and have lower margin requirements, this will be reflected in the FCM's capital requirements.

[20] 1 Comm. Fut. L. Rep. (CCH) ¶7118 (August 12, 1982).

[21] Detailed discussions of the mechanics of the September 1982 capital rule changes are set forth in the releases containing the proposed and final rule and in Interpretation No. 8, all cited above. *See also* CFTC Form 1–FR, Schedule of Segregation Requirements and Funds in Segregation, 1 Comm. Fut. L. Rep. (CCH) ¶3506, at 3579–3.

H. Request for Comments

The Commission also requests that commentors suggest any other changes to the options rules that their past experience with option trading would indicate are appropriate. In particular, the Commission is interested in learning whether additional or different customer protection rules are advisable, whether any of the protections now offered could be achieved as well with reduced regulatory burdens, and whether commentors agree that the overall options experience supports making the program permanent.[22]

III. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that agencies, in proposing rules, consider the impact of these rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules would permit and govern the trading of options on various contract markets and therefore, if promulgated, would not have significant economic impact on a substantial number of small entities. Accordingly, for the above reason and pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman, on behalf of Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comments from any firms or other persons which believe the promulgation of these rule amendments might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Commission has submitted to the Director of the Office of Management and Budget ("OMB") pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35), an expanation and details of the information collections required under these proposed rules. Because these rules amend existing rules which already have been assigned an OMB control number, the Commission assumes that the amended rules will be assigned the same OMB control number. Interested members of the public may obtain a complete copy of the information collection proposal relating to the proposed rules contained herein by contacting Joseph Salazar at (202) 254–9735. Persons wishing to comment on the Paperwork Reduction Act implications of these proposals are asked to send a copy of their comments to Mr. Salazar at the Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, and to the OMB desk officer for the agency, Katie Lewin, Office of Management and Budget, Washington, D.C. 20503 (202) 395–4814.

List of Subjects

17 CFR Part 1

Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 5

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 16

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 21

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 33

Commodity exchange, Commodity exchange designation procedures, Commodity exchange rules, Commodity futures, Commodity options, Customer protection, Contract markets, Disclosure requirements, Financial rules, Fraud, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and in particular, sections 2(a)(1)(A), 4c(b), 4c(c), 4c(d), 5, 5a, 6 and 8a thereof, 7 U.S.C. 2, 4, 6c(a), 6c(b), 6c(c), 6c(d), 7, 7a, 8 and 12a, the Commission hereby proposes to amend Chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 is proposed to be revised as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 12a, 13a, 13a–1, 19, and 21, unless otherwise noted.

2. Section 1.3 is proposed to be amended by revising paragraphs (z)(1) introductory text, (z)(1)(iii) and the undesignated text at the end of (z)(1) to read as follows:

§ 1.3 Definitions.

* * * * *

(z) *Bona fide hedging transactions and positions.*—(1) *General definition.* Bona fide hedging transactions and positions shall mean transactions or positions in a contract for future delivery on any contract market, or in a commodity option, where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:

* * * * *

(iii) The potential change in the value of services which a person provides, purchases, or anticipates providing or purchasing.

Notwithstanding the foregoing, no transactions or positions shall be classified as bona fide hedging unless their purpose is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices and, for transactions or positions on contract markets subject to trading and position limits in effect pursuant to section 4a of the Act, unless the provisions of paragraphs (z) (2) and (3) of this section and §§ 1.47 and 1.48 of the regulations have been satisfied.

* * * * *

3. Section 1.12 is proposed to be amended by adding paragraph (f)(3) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

[22] In this connection, the Futures Industry Association has suggested in its letter of July 19, 1985 that much of the information now contained in the Options Disclosure Statement provided in accordance with Commission Rule 33.7 could be "imparted in a more meaningful manner," thereby increasing the usefulness of that document. The Commission has been willing in the past to modify the Disclosure Statement in order to simplify the disclosures required under Rule 33.7 where those modifications have not diminished the effectiveness and usefulness of the required disclosures. *See, e.g.*, 46 FR 56998, 57000–01 (December 22, 1982); 49 FR 44891, 44893 (November 13, 1984). The Commission is, therefore, willing to consider particularized suggestions as to how the Options Disclosure Statement can be further improved. The Commission asks that persons responding to this portion of the Commission's proposal address, among other items, changes and improvements to the Commission's disclosure requirements that were suggested during the Commission's 1982 reauthorization hearings. *See, e.g.*, SEC/CFTC Jurisdictional Issues and Oversight: Hearings on H.R. 5447, H.R. 5515, and H.R. 6156 Before the Subcommittee on Telecommunications, Consumer Protection, and Finance and the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce (Part 1), 97th Cong., 2d Sess. 377–80, 419–20 (1982).

(f) * * *

(3) Whenever a registered futures commission merchant determines that an account which it is carrying is undermargined by an amount which exceeds the futures commission merchant's excess adjusted net capital determined in accordance with § 1.17, the futures commission merchant must give immediate telegraphic notice of such a determination to the designated self-regulatory organization and the principal office of the Commission at Washington, DC. This paragraph (f)(3) shall apply to any account carried by the futures commission merchant, whether a customer, noncustomer, omnibus or proprietary account. For purposes of this paragraph (f)(3), if any person has an interest of 10 percent or more in ownership or equity in, or guarantees, more than one account, or has guaranteed an account in addition to his own account, all such accounts shall be combined.

* * * * *

4. Section 1.46 is proposed to be amended by revising paragraph (d)(1) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

* * * * *

(d) * * *

(1) Purchases or sales of commodity options constituting "bona fide hedging transactions" pursuant to rules of the contract market which have been adopted in accordance with the requirements of § 1.61(b) and approved by the Commission pursuant to section 5a(12) of th Act; *Provided,* that no contract market or futures commission merchant shall permit such option positions to be offset other than by open and competitive execution in the trading pit or ring provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity option.

* * * * *

5. Section 1.61 is proposed to be amended by revising paragraphs (b)(2) and (c) to read as follows:

§ 1.61 Speculative position limits.

* * * * *

(b) * * *

(2) No bylaw, rule, regulation or resolution adopted pursuant to paragraph (b)(1) of this section shall apply to positions held by commercial interests in the underlying commodity which are determined by a contract market in accordance with § 1.3(z)(1) of this chapter; *Provided,* that the contract market may limit bona fide hedging positions which it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(c) *Time of filing.* Boards of trade seeking designation as a contract market in options or futures shall submit rules, bylaws, regulations or resolutions pursuant to this section with their application for designation.

* * * * *

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

6. The authority citation for Part 5 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 7, 7a, 8 and 12a(5), unless otherwise noted.

7. Section 5.2 is proposed to be revised to read as follows:

§ 5.2 Dormant contracts.

(a) *Definitions.* For purposes of this section:

(1) The term "dormant contract market" means any commodity futures or option contract market:

(i) In which no trading has occurred in any future or option expiration for a period of six complete calendar months; or

(ii) Which has been certified by a futures contract market to the Commission to be a dormant contract market.

(b) *Listing of additional futures trading months or option expirations.* No dormant contract market may list additional months or expirations for trading, or otherwise permit trading to recommence in such a dormant contract market, until such time as the Commission approves, pursuant to section 5a(12) of the Act and § 1.41(b) of these regulations, the bylaw, rule, regulation or resolution of the contract market submitted to the Commission pursuant to paragraph (c) of this section.

(c) *Bylaws, rule, regulation or resolution to list additional trading months or expirations.* (1) Any bylaw, rule, regulation or resolution of a contract market to list additional trading months or expirations in a dormant contract market or to otherwise recommence trading in such a contract market shall be submitted to the Commission under section 5a(12) of the Act and § 1.41(b) of these regulations.

(2) Each submission shall include the information required to be submitted pursuant to § 1.41(b) of these regulations, and also shall:

(i) Clearly designate the submission as filed pursuant to Commission Rule 5.2.

(ii) Contain an economic justification for the listing of additional months or expirations in the dormant contract market, which shall include an explanation of those economic conditions which have changed subsequent to the time the contract became dormant and an explanation of how any new terms and conditions which are now being proposed by the contract market, or which have been proposed for an option market's underlying futures contract market, would make it reasonable to expect that the futures or option contract will be used on more than an occasional basis for hedging or price basing.

(d) *Exemptions.* No contract market shall be considered dormant until the end of thirty-six (36) complete calendar months:

(1) Following designation;

(2) Following notice to the contract market that the Commission has reviewed the economic purpose and the terms and conditions of the contract and has determined in its discretion to permit this exemption; or

(3) Following Commission approval of the contract market bylaw, rule, regulation, or resolution submitted pursuant to paragraph (c) of this section; *Provided, however,* that for option contract markets, in no event shall this period be less than six months from the effective date of this amendment to this section.

8. Part 5 is proposed to be amended by adding a new section 5.4 to read as follows:

§ 5.4 Delisting criteria for options.

For options on a designated futures contract market, where the trading volume of the underlying futures contract market falls below an average of 1,000 contracts per week for all trading months listed during the preceding six month period, no new expiration months may be listed for trading. New expiration months may be added in accordance with rules of the contract market when trading volume in the underlying designated futures contract market rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

PART 16—REPORTS BY CONTRACTS MARKETS

9. The authority citation for Part 16 is revised to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6g, 6i, 7, and 12a, unless otherwise noted.

10. Section 16.01 is proposed to be amended by revising paragraphs (a)(5) and (a)(6), adding (a)(7) and revising the

undesignated text at the end of (a) to read as follows:

§ 16.01 Trading volume, open contracts and prices.

(a) * * *

(5) The total number of option contracts exercised;

(6) The total number of option contracts that expired unexercised; and

(7) The option delta, where a delta system is used.

This information shall be made readily available to the news media and the general public in printed form and without charge at the office and trading floor of the contract market no later than the business day following the day for which publication is made.

* * * * *

11. Section 16.02 is proposed to be amended by revising paragraphs (a) introductory text, (a)(1)(i) (A), (B) and (C), removing (a)(1)(i) (D) and (E), revising (a)(1)(ii) (A) through (D), removing (a)(1)(ii)(E), and by adding paragraph (a)(1)(iv) to read as follows:

§ 16.02. Large option trader reports.

(a) *Information required.* Each contract market shall submit to the Commission a weekly report for options on futures and for options on physicals that are settled in cash and, unless otherwise determined by the Commission, a daily report on all other options on physicals, containing the following information for each option trader controlling a reportable option position.

(1)(i) * * *

(A) All reportable positions by expiration month and by strike price;

(B) The total reportable position controlled by the option trader by expiration month, regardless of strike prices; and

(C) The total reportable position controlled by the option trader in all option expiration dates, regardless of strike prices.

(ii) * * *

(A) All reportable positions by expiration month and by strike price;

(B) The total reportable position controlled by the option trader by expiration month regardless of strike prices;

(C) The total reportable position controlled by the option trader in all option expiration dates, regardless of strike prices; and

(D) The number of contracts exercised.

* * * * *

(iv) For those option contract markets which have adopted an option delta system for purposes of enforcing exchange speculative position limits pursuant to §§ 1.41 and 1.61 of this Chapter, the information required by paragraph (a) of this section shall also be submitted in hard copy form on a delta-equivalent basis in a form and manner approved by the Director of Economic Analysis.

* * * * *

§ 16.05 [Removed]

12. Part 16 is proposed to be amended by removing and reserving § 16.05.

PART 21—SPECIAL CALLS

13. The authority citation for Part 21 is proposed to be added and reads as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6a, 6c, 6g, 6i, 6n, 7, 12a, and 19 (1982).

14. Section 21.02 is proposed to be amended by revising the introductory paragraph as follows:

§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers.

Upon special call by the Commission for information relating to futures and/or option positions held or introduced on the dates specified in the call, each futures commission merchant, member of a contract market, introducing broker, or foreign broker, and, in addition, for options information, each contract market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures and/or option positions, except for accounts carried on a fully disclosed basis by another futures commission merchant, as may be specified in the call:

* * * * *

15. Section 21.02a is proposed to be amended by revising the section heading and revising paragraphs (a) introductory text, (b)(3), (b)(4)(iv) and (b)(4)(x) as follows. The introductory text of (b)(4) is shown for the convenience of the reader.

§ 21.02a Special calls for machine readable information.

(a) Upon special call by the Commission for information relating to futures and/or option positions held on the dates specified in the call, each futures commission merchant, member of a contract market and foreign broker shall furnish to the Commission in accordance with paragraph (b) below the following information concerning accounts of traders owning or controlling such futures and/or option position, except for accounts carried by another futures commission merchant on a fully disclosed basis, as may be specified in the call:

(b) * * *

(3) The required record description is as follows:

```
01  O-T-400A.
    05  O-T-Record-Type, PIC X(4) Value
        400A.
    05  O-T-Report-Date, PIC X(6).
    05  O-T-Reporting-Firm-Name, PIC X(55).
    05  Filler, PIC X(7).
    05  O-T-Sequence, PIC 9(8).
01  O-T-410B.
    05  O-T-Record-Type, PIC X(4) Value 410B.
    05  O-T-Account-Number, PIC X(48).
    05  Filler, PIC X(20).
    05  O-T-Sequence, PIC 9(8).
01  O-T-411C.
    05  O-T-Record-Type, PIC X(4) Value
        411C.
    05  O-T-Account-Name-Street-Address,
        PIC X(68).
    05  O-T-Sequence, PIC 9(8).
01  O-T-520E.
    05  O-T-Record-Type, PIC X(4) Value 520E.
    05  O-T-Commodity-ID, PIC X(6).
    05  O-T-Delivery-or-Expiration-Month, PIC
        X(4).
    05  O-T-Put-or-Call-Option, PIC X.
    05  O-T-Strike-Price, PIC 9(8).
    05  O-T-Open-Long-Position, PIC 9(8).
    05  O-T-Open-Short-Position, PIC X(8).
    05  Filler, PIC X(33).
    05  O-T-Sequence, PIC 9(8).
```

(4) Field Definitions. Field definitions for each record are as follows:

* * * * *

(iv) *Account Number.* A unique identifier for each account reported to the Commission under the 21.02a call. This can be any sequence of alphanumeric characters not to exceed 48 characters which are left justified in the field.

* * * * *

(x) *Open Long (Short) Positions.* Total number of long (short) contracts in the commodity specified in the call that are open on the firm's books for a particular account as of the end of the trading day specified in the call. The field should be zero filled with right justified integers from 0 to 99999999.

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

16. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a-1, 13b, 19, and 21 unless otherwise noted.

17. Section 33.4 is proposed to be amended by removing and reserving paragraph (a)(5)(ii), revising paragraphs (a)(5)(iii) and (a)(6)(ii), removing and reserving paragraph (b)(2), and revising paragraphs (b) (4) introductory text,

(b)(4)(i), (b)(4)(iii), (b)(6) and (b)(8) to read as follows:

§ 33.4 Designation as a contract market for the trading of commodity options.

* * * * *

(a) * * *

(5) * * *

(ii) [Reserved]

(iii) For options on futures contracts, the volume of trading in all contract months for future delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for contract market designation; and

* * * * *

(6) * * *

(ii) For commodities not specifically enumerated in section 2(a)(1)(A) of the Act, is not designated as a contract market for more than one other option on a physical.

(b) * * *

(2) [Reserved]

* * * * *

(4) Require, with respect to all written option customer complaints, that each member futures commission merchant which engages in the offer or sale of commodity options regulated under this Part:

(i) Retain all such complaints;

* * * * *

(iii) Immediately send a copy of any such complaint to the member's designated self-regulatory organization and, upon final disposition thereof, immediately send a copy of the record of such disposition to the member's designated self-regulatory organization.

* * * * *

(6) Require each member futures commission merchant which engages in the offer or sale of option contracts regulated under this Part to give to the member's designated self-regulatory organization prompt notice of any disciplinary action taken against the futures commission merchant or any of its associated persons by the Commission or by another self-regulatory organization.

* * * * *

(8) Require each member futures commission merchant which engages in the offer or sale of option contracts regulated under this Part promptly to submit to the member's designated self-regulatory organization all promotional material (as defined in § 33.1). Such promotional material must be promptly reviewed by the designated self-regulatory organization to determine that such material is not fraudulent.

* * * * *

18. Section 33.5 is proposed to be amended by revising paragrpah (c) to read as follows:

§ 33.5 Application for designation as a contract market for the trading of commodity options.

* * * * *

(c) For options on a futures contract on a commodity specifically enumerated in section 2(a)(1)(A) of the Act, the effective period for designation as a contract market for a particular commodity option under this Part shall be for a period not to exceed three years from the effective date of the designation, or such shorter period as the Commission may specify at the time the designation is granted, and in any event shall be of no further force or effect should the Commission, by rule or regulation, repeal the provisions of this Part under which such designation is granted. Except as may be specifically authorized by the Commission, no board of trade which has been designated as a contract market for the trading of commodity options may authorize or allow the trading of any commodity option which will expire after the termination of the effective period of such designation or where the delivery month of the futures contract underlying such option is later than the termination of the effective period of such designation or where the delivery month for the underlying futures contract has not been enlisted.

19. Section 33.7 is proposed to be amended by revising paragraphs (b)(2) introductory text and (b)(2)(i), by removing and reserving paragraph (b)(2)(ii) and by revising paragraphs (b)(3) and (b)(5) to read as follows:

§ 33.7 Disclosure.

* * * * *

(b) * * *

(2) *Description of commodity options.* Prior to entering into any transaction involving a commodity option, an individual should thoroughly understand the nature and type of option involved and the underlying futures contract or physical commodity. The futures commission merchant or introducing broker is required to provide, and the individual contemplating an option transaction should obtain:

(i) An indentification of the futures contract or physical commodity underlying the option which may be purchased or sold upon exercise of the option or, if applicable, whether exercise of the option will be settled in cash;

(ii) [Reserved]

* * * * *

(3) *The mechanics of option trading.* Before entering into any exchange-traded option transaction, an individual should obtain a description of how commodity options are traded.

Option customers should clearly understand that there is no guarantee that option positions may be offset by either a closing purchase or closing sale transaction on an exchange. In this circumstance, option grantors could be subject to the full risk of their positions until the option position expires, and the purchaser of a profitable option might have to exercise the option to realize a profit.

For an option on a futures contract, an individual should clearly understand the realtionship between exchange rules governing option transactions and exchange rules governing the underlying futures contract. For example, an individual should understand what action, if any, the exchange will take in the option market if trading in the underlying futures market is restricted or the futures prices have made a "limit move."

The individual should understand that the option may not be subject to daily price fluctuation limits while the underlying future may have such limits, and, as a result, normal pricing relationships between options and the underlying future may not exist when the future is trading at its price limit. Also, underlying futures positions resulting from exercise of options may not be capable of being offset if the underlying future is at a price limit.

* * * * *

(5) *Profit potential of an option position.* An option customer should carefully calculate the price which the underlying futures contract or underlying physical commodity would have to reach for the option position to beome profitable. This price would include the amount by which the underlying futures contract or underlying physical commodity would have to rise above of fall below the strike price to cover the sum of the premium and all other costs incurred in entering into and exercising or closing (offsetting) the commodity option position.

Also, an option customer should be aware of the risk that the futures price prevailing at the opening of the next trading day may be substantially different from the futures price which prevailed when the option was exercised. Similarly, for options on physicals that are cash settled, the physicals price prevailing at the time the option is exercised may differ substantially from the cash settlement price that is determined at a later time. Thus, if a customer does not cover the position against the possibility of underlying commodity price change, the realized price upon option exercise may differ substantially from that which existed at the time of exercise.

* * * * *

Issued in Washington, D.C. on August 22, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-20498, Filed 8-29-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 84N-0101]

New Drug and Antibiotic Application Review; Proposed User Charge; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to November 4, 1985, the comment period for the proposed rule that would impose user charges to recover the cost of reviewing new drug and antibiotic applications for marketing and certain supplemental applications. FDA is taking this action in response to requests that the original 30-day comment period be extended.

DATE: Comments by November 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eileen R. Hodkinson, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 6, 1985 (50 FR 31726), FDA proposed to amend its regulations governing the approval for marketing of new drugs and antibiotic drugs for human use by initiating a program that would impose charges upon a person (the applicant) who seeks FDA's approval for marketing a new drug or antibiotic drug for human use and who seeks FDA's approval to make certain changes in the labeling of an approved new drug or antibiotic drug. In that notice, public comments were requested by September 5, 1985.

In response to the proposal, FDA has received requests from two pharmaceutical trade associations and the U.S. Small Business Administration asking for an extension of the comment period. These parties claimed that an extended comment period was needed to evaluate the proposal more fully.

The agency has reviewed these requests and agrees that a 60-day extension of the comment period to November 4, 1985, would be in the public interest. Accordingly, the comment period for submissions by interested persons is extended to November 4, 1985.

Interested persons may, on or before November 4, 1985, submit to the Dockets Management Branch (address above) written comments on the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 27, 1985.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 85-20897 Filed 8-28-85; 10:27 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-85-1247; FR-2109]

Use of Materials Bulletin No. 38i—HUD Building Product Standards and Certification Program for the Grademarking of Lumber

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Proposed rule.

SUMMARY: This rule would adopt as part of HUD's Minimum Property Standards (MPS), a Use of Materials Bulletin (UM) that references a standard issued by the U.S. Department of Commerce, National Bureau of Standards, for the grademarking of lumber. It would also supplement HUD's Building Product Standard and Certification Program by requiring that certain additional information be included on the label or grademark.

DATE: Comments due: October 29, 1985.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410-5000. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie H. Breden, Office of Manufactured Housing and Regulatory Functions, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410-8000; telephone (202) 755-5929. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In response to industry request, HUD is proposing new grademarks for lumber and finger jointed lumber. In doing so, the Department follows the provisions of 24 CFR 200.935 regarding administrator qualifications and procedures under the HUD Building Product Standards and Certification Program, and the Technical Suitability of Products Program, HUD Handbook 4950.1, REV-1. This proposed rule would augment labeling requirements of § 200.935(d)(6) to include:

1. The registered symbol which identifies the grading agency;
2. Species or species combination;
3. Grade;
4. Identification of applicable grading rules when not indicated by the species identification or agency symbol;
5. Mill or grader;
6. For members which are less than five inches nominal thickness, whether the lumber was green or dry at the time of dressing; and
7. Finger joints present.

Because these added requirements only relate to this particular certification program, they are set out in a new § 200.943, and not as amendments to the existing § 200.935. Thus, § 200.943 augments § 200.935; it would not supplant it. The Department originally initiated this Use of Materials Bulletin because of complaints about lumber concerning dimensional variability, use of green lumber, and counterfeiting of grade marks. Fraudulent stamps on lumber were being used to indicate compliance to a standard when, in fact, the lumber did not comply with the standard. In addition, the counterfeit marks were misleading builders who were using design criteria with regard to safety considerations.

A soft wood lumber standard was developed by the national Bureau of Standards in 1969 after a request by a subcommittee of the House of Representatives' Select Committee on Small Business. This standard, which related the moisture content of wood to the dimensions of lumber, was referenced in the original Use of Materials Bulletin UM 38, along with a list of grade marking organizations acceptable to HUD. The proposed UM 38i references a new revised standard and also provides for procedures and

tests for finger jointed lumber as well as listing the current accepted grade marking organizations.

The Department is not considering whether to revise and update the current Use of Materials Bulletin for the grade marking of lumber. However, in conformance with the general deregulatory policies of this Administration, the Department is seeking information concerning any possible consequences, should the Department choose some other possible option—one of which would be to eliminate UM 38. We request that industry, consumers, and other members of the public comment concerning whether it would be appropriate to eliminate all standards relating to lumber and that such commenters suggest other alternatives available to the Department.

The primary purpose of this proposed rule is to insure that the specified grade of lumber gets to the job site and that the product continues to conform to the existing standard. For lumber procedures, the program removes the likelihood of unfair competition based on spurious claims and promotes a fair and equitable basis for marking lumber, while allowing consumers the ability to make value judgments by providing accurate information about the product. The Department seeks comments on whether these objectives will be met.

Section 200.943 embodies the substance of UM 38i and, therefore, the text is not set forth. However, a copy of UM 38i is available for public inspection during regular business hours in the Office of Manufactured Housing and Regulatory Functions, Room 9151, and in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, Washington, D.C. 20410–5000.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undesigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. UM 38i adopts a product standard that is nationally recognized throughout the affected industry and will not create a burden on manufacturers currently meeting the standard.

This rule was listed as Item No. 19 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17287, 50 FR 17298) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs, Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, and Incorporation by reference.

PART 200—INTRODUCTION

Accordingly, 24 CFR Part 200 is proposed to be amended as follows:

1. The Authority citation for 24 CFR Part 200 Part 200 is proposed to be revised to read as set forth below, and any authority citation following any section in Part 200 is proposed to be removed.

Authority: Titles I and II of the National Housing Act, (12 U.S.C. 1701 thru 1715z–18); Section 7(d) Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. A new § 200.943 is proposed to be added, to read as follows:

§ 200.943 Supplementary Specific Procedural Requirements Under HUD Building Product Standards and Certification Program for the Grademarking of Lumber.

(a) *Applicable Standards.* (1) Lumber shall be grademarked in accordance with the following standard:

U.S. Department of Commerce Voluntary Product Standard PS 20–70 "American Softwood Lumber Standard"

(2) This Standard has been approved by the Director of the Federal Register for incorporation by reference. It is available from the National Bureau of Standards, Gaithersburg, Maryland 20143. The Standard is also available for inspection at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

(b) *Labeling or Marking.* (1) Under the procedures set forth in § 200.935(d)(6), concerning labeling or marking of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard is required on the certification label issued by the administrator to the manufacturer. However, in the case of grademarking of lumber, the following information shall be included on the certification label or mark:

(i) The registered symbol which identifies the grading agency;

(ii) Species or species combination;

(iii) Grade;

(iv) Identification of applicable grading rules when not indicated by the species identification or agency symbol;

(v) Mill or grader;

(vi) For members which are less than 5" nominal thickness, indication that the lumber was green or dry at the time of dressing; and

(vii) Finger jointed where applicable.

(2) The certification mark shall be affixed to each piece of lumber.

(c) *Periodic Tests and Quality Control Inspections.* Periodic tests and quality control inspections shall be carried out by the Board of Review of the American Lumber Standards Committee as defined in PS 20–70.

Dated: August 14, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85–20743 Filed 8–29–85; 8:45 am]

BILLING CODE 4210–37–M

POSTAL SERVICE

39 CFR Part 10

Proposed Express Mail International Service to Iceland

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Pursuant to an agreement with the postal administration of Iceland, the Postal Service intends to begin Express Mail International Service with Iceland at postage rates indicated in the tables below. The proposed

service is scheduled to begin on November 7, 1985.

DATE: Comments must be received on or before October 3, 1985.

ADDRESS: Written comments should be directed to the General Manager, Rate Development Division, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260–5350. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8620, 475 L'Enfant Plaza West SW., Washington, D.C. 20260–5350.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, [202] 245–4414.

SUPPLEMENTARY INFORMATION: The International Mail Manual is incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1. Additions to the manual concerning the proposed new services, including the rate tables reproduced below, will be made in due course. Accordingly, although 39 U.S.C. 407 does not require advance notice and the opportunity for submission of comments on international service, and the provisions of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553) do not apply (39 U.S.C. 310) [a], the Postal Service invities interested persons to submit written data, views or arguments concerning the proposed Express Mail International Service to Iceland at the rates indicated in the table below.

List of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 407, 408.

ICELAND—EXPRESS MAIL INTERNATIONAL SERVICE

Custom Designed Service [1] [2] Up to and including		On Demand Service [3] Up to and including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	35.60	2	27.60
3	40.80	3	32.80
4	45.70	4	37.70
5	50.60	5	42.60
6	55.50	6	47.50
7	60.40	7	52.40
8	65.30	8	57.30
9	70.20	9	62.20
10	75.10	10	67.10
11	80.00	11	72.00
12	84.90	12	76.90
13	89.80	13	81.80
14	94.70	14	86.70
15	99.60	15	91.60
16	104.50	16	96.50
17	109.40	17	101.40

ICELAND—EXPRESS MAIL INTERNATIONAL SERVICE—Continued

Custom Designed Service [1] [2] Up to and including		On Demand Service [3] Up to and including	
Pounds	Rate	Pounds	Rate
18	114.30	18	106.30
19	119.20	19	111.20
20	124.10	20	116.10
21	129.00	21	121.00
22	133.90	22	125.90
23	138.80	23	130.80
24	143.70	24	135.70
25	148.60	25	140.60
26	153.50	26	145.50
27	158.40	27	150.40
28	163.30	28	155.30
29	168.20	29	160.20
30	173.10	30	165.10
31	178.00	31	170.00
32	182.90	32	174.90
33	187.80	33	179.80
34	192.70	34	184.70
35	197.60	35	189.60
36	202.50	36	194.50
37	207.40	37	199.40
38	212.30	38	204.30
39	217.20	39	209.20
40	222.10	40	214.10
41	227.00	41	219.00
42	231.90	42	223.90
43	236.80	43	228.80
44	241.70	44	233.70

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and international Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

An appropriate amendment to 39 CFR 10.3 to reflect these changes will be published when the final rule is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85–20786 Filed 8–29–85; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[SWH–FRL 2891–8]

Notification Requirements for Owners of Underground Storage Tanks

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On May 28, 1985 (50 FR 21772), EPA proposed notification requirements for owners of underground storage tanks under Section 9002 of the Resource Conservation and Recovery Act, as amended. The proposed rulemaking also prescribed two notification forms to be used by owners of underground storage tanks that are subject to the Section 9002 notification provisions. In response to public comment, EPA has developed a notification form that has been reformatted for clarity and usability. This form will be available for public viewing, and comments are solicited from the public within the next two weeks.

DATE: Comments must be received on or before September 13, 1985.

ADDRESS: Comments should be addressed to the Docket Clerk, Attention: Docket Number 9002, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Copies of the reformatted notification form and materials relevant to this rulemaking are available for viewing at the EPA Library Public Information Reference Unit (Room 2904) and the Underground Storage Tank docket (Room S–212C), both located at 401 M Street SW., Washington, D.C.

This information is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. The revised notification form is also available for viewing at all Regional Office Libraries, Monday through Friday during the hours of 9:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (202) 382–3000 in Washington, D.C., or Virginia Carelick, Office of Solid Waste (WH 565A), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382–7925.

SUPPLEMENTARY INFORMATION: Section 9002 of Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires owners of underground tanks that store, or have stored, petroleum or hazardous substances to notify designated State or local agencies of the existence of their tanks. Section 9002 also requires EPA, in consultation with State and local officials, to prescribe a notification form and the information it must contain by November 8, 1985.

EPA proposed two notification forms in the **Federal Register** on May 28, 1985. The Agency requested comments on the proposed rulemaking by July 15, 1985. In response to comments, EPA has developed a notification form that has been reformatted and plans to do sample testing of the form within the next two weeks. The formatting takes two forms and combines them into one. There are no substantive changes in the information required in the form. EPA has decided to reopen the comment period (on the notification form only) for two weeks to give all members of the public adequate time to review and comment fully on the revised form.

Dated: August 28, 1985.
Jack W. McGraw,
Deputy Assistant Administrator.

[FR Doc. 85-20920 Filed 8-29-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 84-533; 84-193]

Rules To Implement Section 504 of the Rehabilitation Act of 1973

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposed regulation provides for the enforcement of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Federal Communications Commission.

DATES: To be assured of consideration, comments must be in writing and must be received on or before November 18, 1985 and reply comments on or before December 18, 1985.

Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Office of the Secretary, Federal Communications Commission, located at 1919 M Street NW., Washington, DC 20554.

Comments received will be available for public inspection in the Public Reference Room of the Federal Communications Commission. Copies of this Notice are available on tape for those with impaired vision and may be obtained from the Consumer Assistance Office at the above address.

FOR FURTHER INFORMATION CONTACT:

Sharon B. Kelley, Office of General Counsel, (202) 632-6990.
Consumer Assistance Office, Office of Public Affairs, (202) 632-6999 (TDD), (202) 632-7260 (VOICE).

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal Employment Opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Notice of Proposed Rule Making

In the matter of amendment of part 1 of the Commission's rules to implement section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Gen. Docket No. 84-533.

Adopted: May 7, 1984.[1]
Released: August 19, 1985.
By the Commission:

1. This *Notice of Proposed Rule Making* commences a proceeding directed at promulgating rules to implement section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. Members of the public are requested to comment on all aspects of this proposal.[2]

2. As originally enacted in 1973, Section 504 of the Rehabilitation Act prohibited discrimination on the basis of handicap in federally assisted programs.[3] The Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 extended the nondiscrimination mandate of Section 504 to programs and activities conducted by agencies of the Federal Government and the United States Postal Service.[4]

3. Under Executive Order 12250,[5] the Attorney General has authority to coordinate the implementation and enforcement of various nondiscrimination statutes, including Section 504. To assist agencies in developing rules to implement the 1978 Amendments, the Department of Justice drafted a prototype regulation which was distributed to affected agencies on April 15, 1983.[6] As authorized by Executive Order 12067,[7] the Equal Employment Opportunity Commission has also reviewed this prototype. The rules that we propose to adopt are contained in *Appendix A* attached hereto and are an adaptation of the Department of Justice prototype. *Appendix A* also contains a section-by-section analysis of the proposed rules. Briefly, the rules prohibit discrimination on the basis of handicap in programs or activities conducted by the Federal Communications Commission in five major categories: (1) Employment; (2) facilities; (3) procurement; (4) agency processes; and (5) licensing policies.

4. Authority for the rule making proposed herein is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

5. Pursuant to Section 605 of the Regulatory Flexibility Act, § 601 *et seq.*, the Commission certifies that the action proposed will not have a significant impact on a substantial number of small entities. The proposal imposes no obligations or requirements upon private entities but places substantive obligations upon the Federal Communications Commission to prohibit discrimination on the basis of handicap in programs or activities it conducts.

6. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are not permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the time a *Public Notice* is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final *Order* disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments pleadings and formal

[1] Subsequent to its adoption by the Commission, this *Notice of Proposed Rule Making* was forwarded to the Department of Justice for review in accordance with Executive Order 12250. *See* discussion in ¶ 3, *infra*. Public release of this document was therefore held in abeyance pending completion of the Department's review. *See* Letter of July 22, 1985 from William Bradford Reynolds, Assistant Attorney General, Department of Justice to Jack D. Smith, General Counsel, Federal Communications Commission.

[2] Although certain aspects of this proposal are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, we have decided to exercise our discretionary authority and solicit comments from the public on all aspects of this proposal.

[3] It should be noted that in *Community Television of Southern California* v. *Gottfried*, 103 S. Ct. 885, 892 (1983), the Supreme Court held that the Federal Communications Commission is not a funding agency and therefore has no responsibility to enforce the Section 504 nondiscrimination mandate with respect to federally assisted programs.

[4] Pub. L. No. 95-602, Section 119, 92 Stat. 2982 (1978). Although the Federal Communications Commission is an independent regulatory agency, it appears from the legislative history of the 1978 Amendment that Congress intended that all federal agencies should have the same Section 504 nondiscrimination obligations as recipients of federal financial assistance. Thus, the Federal Communications Commission falls within the scope of agencies affected by this statute. *See* 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords, the sponsor); 124 Cong. Rec. E 2668, E 2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas) *id.* at 38,552 (remarks of Rep. Sarasin). Nevertheless, it should be clearly understood that the programs or activities of entities that are licensed or certified by the Commission are not covered by these proposed regulations.

[5] 45 FR 72995, 3 CFR, 1980 Comp., p. 298.

[6] This prototype generally parallels those nondiscrimination obligations established by federal regulation for programs or activities receiving federal financial assistance. *See* 28 CFR Part 41 (Section 504 coordination regulation for federally assisted programs).

[7] 43 FR 28967, 3 CFR, 1978 Comp., p. 206.

oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments must prepare a written summary of that presentation; on the day of oral presentation that written summary must be served on the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally,* § 1.1241 and 1.1243 of the Commission's Rules and Regulations, 47 CFR 1.11241 and 1.1243.

7. Pursuant to applicable procedures set out in §§ 1.4 and 1.415 of the Commission's Rules and Regulations, 47 CFR 1.4 and 1.415, interested parties may file comments on or before November 18, 1985 and reply comments on or before December 18, 1985.[8] All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

8. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and 5 copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished to the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C. Copies of this *Notice* will be available on tape for those with impaired vision and may be obtained from the Consumer Assistance Office at the above address.

9. It is ordered that the Secretary shall cause a copy of this *Notice* to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this *Notice* to be published in the **Federal Register.**

10. For further information on this proceeding, contact Sharon B. Kelley, Office of General Counsel, (202) 632–6990 or the Consumer Assistance Office, Office of Congressional and Public Affairs, (202) 632–6999 (TDD) or (202) 632–7260 (VOICE).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[8] Under § 1.46(b) of the Commission's rules an extension of time will be granted upon a showing of good cause. 47 CFR 1.46(b).

Appendix A

Background

The purpose of this proposed rule is to provide for the enforcement of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Federal Communications Commission. As amended by the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*

(29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the Commission, as set forth in this proposed rule, are identical, for the most part, to those established by federal regulations for programs or activities receiving federal financial assistance. *See* 28 CFR Part 41 (Section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 Amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same Section 504 obligations as recipients of federal financial assistance. 124 Cong. Rec. 13901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E 2668, E 2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13897 (remarks of Rep. Brademas); *id.* at 38552 (remarks of Rep. Sarasin).

Section-By-Section Analysis

Section 1.1801 Purpose.

Section 1.1801 states the purpose of the proposed rule, which is to effectuate, section 119 of the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 1.1802 Application.

The proposed regulation applies to all programs or activities conducted by the Federal Communications Commission to the extent authorized by law and consistent with the Commission's law enforcement responsibilities. The programs or activities of entities that are licensed or certified by the Federal Communications Commission are not covered by these proposed regulations.

Section 1.1803 Definitions.

"Commission." For purposes of this regulation "Commission" means the Federal Communications Commission.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Commission's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 1.1860(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the Commission to determine the beginning of its obligation to investigate a complaint (*see* § 1.1870(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as

used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the Commission regardless of whether the facility in which they are conducted is owned, leased or used on some other basis by the Commission. The term "facility" is used in §§ 1.1849, 1.1850 and 1.1870(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Managing Director." "Managing Director" refers to the Managing Director, Federal Communications Commission.

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in (*Southeastern Community College* v. *Davis*, 422, U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the Commission. The Commission is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Commission does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The Commission has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alternation, the Commission must follow the procedures established in §§ 1.1850(a) and 1.1860(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Managing Director in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Managing Director determines that an action would result in a fundamental alteration, the Commission must consider options that would enable the handicapped person to achieve the purpose of the program but would not result in such an alteration.

For programs of activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to service (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "Section 504" applies only to programs or activities conducted by the Commission.

Section 1.1810 Self-evaluation.

The Commission shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 1.1811 Notice.

Section 1.1811 requires the Commission to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Commission's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 1.1830 General prohibitions against discrimination.

Section 1.1830 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 1.1830 establish the general principles for analyzing whether any particular action of the Commission violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the Commission has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 1.1830. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The Commission may not refuse to provide a handicapped person with an equal opportunity to participate

in or benefit from its programs simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (sections 1.1849–1.1851) and communications (section 1.1860) are specific applications of this principle.

Despite the mandate of paragraph (d) that the Commission administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the Commission to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the Commission's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the Commission from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the Commission from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Commission from utilizing criteria or methods of administration that deny handicapped persons access to the Commission's programs or activities. The phrase "criteria or methods of administration" refers to official written Commission policies and the actual practices of the Commission. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enuniciated in § 1.1830(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the Commission. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the Commission, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the Commission from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 1.1803). For example, the Commission must comply with this requirement when establishing the format for the testing of individuals applying for licenses in the Amateur Radio Service. In that case, the Commission must ensure that the tests that it administers do not discriminate against qualified handicapped persons in an impermissible manner.

In addition, the Commission may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive Order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 1.1840 Employment.

Section 1.1840 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with Section 501 of the Rehabilitation Act of 1973, (29 U.S.C. 791), Congress intended Section 504 to cover the employment practices of Executive agencies. The Court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981).

Consistent with that decision, this section provides that the standards, requirements and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 1.1870(b) of this regulation specifies that the Commission will use existing EEOC procedures to resolve allegations of employment discrimination. Article 35, section 2 E of the Basic Negotiated Agreement Between the Federal Communications Commission and National Treasury Employees Union (effective June 22, 1982) also provides employees with the option of initiating a grievance. Since Subchapter III of the Civil Service Reform Act of 1978, 5 U.S.C. 7121(d), prohibits Federal employees from pursuing both their statutory right and collective bargaining rights to remedy alleged employment discrimination, the employee may either initiate a grievance or process a complaint in accordance with 29 CFR Part 1613, whichever they prefer. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes government wide standards on nondiscrimination in employment on the basis of handicap.

Section 1.1849 Program accessibility: Discrimination prohibited.

Section 1.1849 states the general nondiscrimination principle underlying the program accessibility requirements of § 1.1850 and 1.1851.

Section 1.1850 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–41.58), with certain modifications. Thus § 1.1850 requires that the Commission's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the Commission is not required to make each of its existing facilities accessible (§ 1.1850(a)(1)). However, § 1.1850, unlike 28 CFR 41.56–41.57, places explicit limits on the Commission's obligation to ensure program accessibility (section 1.1850(a)(2)).

Paragraph (a)(2), generally codifies recent case law that defines the scope of the Commission's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Commission is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 1.1860(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is an effort to conform the Commission's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter the Commission's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the Commission of all obligations to handicapped persons. Although the Commission is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 1.1850(a) would in most cases not result in undue financial and administrative burdens on the Commission. In determining whether financial and administrative burdens are undue, all Commission resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 1.1850(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Commission. The decision that compliance would result in such alteration or burdens must be made by the Managing Director and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Managing Director's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1.1870.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Commission shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the Commission's program accessible. The Commission may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the Commission must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 1.1851 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 1.1851 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607 (1982). This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the

standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the Commission after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 1.1850.

Section 1.1860 Communications.

Section 1.1860 requires the Commission to take appropriate steps to ensure effective communication with personnel of other federal entities, applicants, particpants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 1.1860(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits, of, the Commission's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the Commission (section 1.1860(a)(1)(i)). The Commission shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 1.1860(d). That paragraph limits the obligation of the Commission to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see* preamble to § 1.1850(a)(2), *supra*). Unless not required by § 1.1860(d), the Commission shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 1.1860 would in most cases not result in undue financial and administrative burdens on the Commission. In determining whether financial and administrative burdens are undue, all Commission resources available for use in the funding and operation of the conducted program or acitvity should be considered. The burden or proving that compliance with § 1.1860 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Commission. The decision that compliance would result in such alteration or burdens must be made by th`Managing Director and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Managing Director's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1.1870.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaird person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) where the hearing impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Commission intends to make clear to the public (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the Commission's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The Commission shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Commission. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the Commission may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Commission need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (section § 1.1860(a)(i)(ii)). For example, the Commission need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the Commission to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the Comission to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 1.1870 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this Section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the Commission will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The Commission will designate an official responsible for coordinating implementation of this section (section 1.1870(c)). The Commission is required to accept and investigate all complete complaints (section 1.1870(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (section 1.1870(e)).

Paragraph (f) requires the Commission to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or Section 502 was designed, constructed, or altered in a manner that does not provide ready access to and use by handicapped persons.

Paragraph (g) requires the Commission to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (section 1.1870(g)). On appeal within the Commission shall be provided (section 1.1870(i)). The appeal will not be heard by the same person who made the intitial determination of compliance or noncompliance (section 1.1870(i)).

Paragraph (l) permits the Commission to delegate its authority for investigating complaints to other federal agencies. However, the statutory obligation of the Commission to make a final determination of compliance or noncompliance may not be delegated.

Proposed Rules

PART 1—[AMENDED]

Part 1 of Title 47 of the Code of Federal Regulations is amended by adding a Subpart N to read as follows:

Subpart N—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Communications Commission

Sec.

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Authority: 29 U.S.C. 794

Subpart N—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Communications Commission

§ 1.1801 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service. The FCC intends to comply fully with section 504 of the Rehabilitation Act of 1973, as amended, insofar as compliance is within the FCC's authority and does not interfere with the FCC's law enforcement responsibilities in a manner not intended by section 504.

§ 1.1802 Application.

To the extent authorized by law, this part applies to all programs or activities conducted by the Federal Communications Commission. The programs or activities of entities that are licensed or certified by the Federal Communications Commission are not covered by these proposed regulations.

§ 1.1803 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Commission" means Federal Communications Commission.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Commission's actions in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped persons" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) "Physical or mental impairment" includes—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(b) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Commission as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by the Commission as having such an impairment.

"Qualified handicapped person" means—

(a) With respect to any Commission program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Commission can demonstrate would result in a fundamental alteration in its nature; and

(b) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§ 1.1804–1.1809 [Reserved]

1.1810 Self-evaluation.

(a) The Commission shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the

Commission shall proceed to make the necessary modifications.

(b) The Commission shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 1.1811 Notice.

The Commission shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Commission, and make such information available to them in such manner as the Managing Director finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 1.1812–1.1829 [Reserved]

§ 1.1830 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity conducted by the Commission.

(b) (1) The Commission, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to particpate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Commission may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissably separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangments, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to dscrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The Commission may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Commission establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Commission are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not, prohibited by this part.

(d) The Commission shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 1.1831–1.1839 [Reserved]

§ 1.1840 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, as well as the procedures set forth in the Basic Negotiations Agreement Between the Federal Communications Commisison and National Treasury Employees Union (effective June 22, 1982) and Subchapter III of the Civil Service Reform Act of 1978, 5 U.S.C. 7121(d), shall apply to employment in federally conducted programs or activities.

§ 1.1841–1.1848 [Reserved]

§ 1.1849 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1.1850 no qualified handicapped person shall, because the Commission's facilities are inaccessible to or unusable by handicapped persons, be denied the benfits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

§ 1.1850 Program accessibility: Existing facilities.

(a) *General.* The Commission shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 1.1850(a) would result

insuch alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Managing Director after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Commisison shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this Section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The Commission is not required to make structural changes in existing facilities where other methods are effective in achiving compliance with this Section. The Commission, in making alterations to existing buildings, shall meet acessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this Section, the Commission shall give priority to those methods that offer programs and activities to qualified bandicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission shall comply with the obligations established under this Section within sixty (60) days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three (3) years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission shall develop, within six (6) months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this Section and if the time period of the transition plan is longer than one (1) year, identify steps that will be taken each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 1.1851 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements and standards of the Architectural Barriers Act, 42 U.S.C. 4151–4157, as established in 41 CFR 101–19.600 to 101–19.607 (1982), apply to buildings covered by this Section.

§ 1.1852–1.1859 [Reserved]

§ 1.1860 Communications.

(a) The Commission shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other federal entities, and members of the public.

(1) The Commission shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Commission.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The Commission need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Commission communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunications systems shall be used.

(b) The Commission shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Commission shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities to the extent required by law. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This Section does not require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 1.1860 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Managing Director after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this Section would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 1.1861.1–1869 [Reserved]

§ 1.1870 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Commission.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Handicapped Coordinator, Office of Managing Director, Federal Communications Commission.

(d) The Commission shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within one hundred eighty (180) days of the alleged act of discrimination. The Commission may extend this time period for good cause.

(e) If the Commission receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Commission shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within one hundred eighty (180) days of the receipt of a complete complaint for which it has jurisdiction, the Commission shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within ninety (90) days of receipt from the Commission of the letter required by § 1.1870(g). The Commission may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

(j) The Commission shall notify the complainant of the results of the appeal within sixty-(60) days of the receipt of the request. If the Commission determines that it needs additional information from the complainant, it shall have sixty (60) days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Commission may delegate its authority for conducting complaint investigations to other federal agencies, except that the authority for making the final determination may not be delegated.

§ 1.1871–1.1899 [Reserved]

[FR Doc. 85–20365 Filed 8–29–85; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Critical Habitat for the Key Largo Woodrat and Cotton Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of comment period.

SUMMARY: The Service gives notice that the comment period on the proposal to designate critical habitat for the Key Largo woodrat and Key Largo cotton mouse is reopened. Both of these federally-listed endangered species are restricted to Key Largo, Monroe County, Florida. The extended comment period will allow interested parties sufficient time to present their information.

DATES: The comment period reopens on August 30, 1985. Comments must be received by November 1, 1985.

ADDRESS: Comments and materials should be sent to the Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (904/791–2580; FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Key Largo woodrat (*Neotoma floridana smalli*) and the Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) are small mammals native to the tropical hardwood forests of Key Largo, Monroe County, Florida. The range of both species on Key Largo has been reduced by commercial and residential development, and projected future development jeopardizes much of the remaining habitat of these rodents.

In the **Federal Register** of September 21, 1983 (48 FR 43040), the Service issued an emergency rule determining endangered status for the Key Largo woodrat and cotton mouse, pursuant to the Endangered Species Act of 1973, as amended. The emergency designation expired on May 18, 1984. On February 9, 1984 (49 FR 4951), the Service proposed endangered status and critical habitat for both species under the usual procedures of the Act. A public hearing on the proposal was held April 24, 1984, in Tavernier, Monroe County, Florida. On August 31, 1984 (49 FR 34504), the Service published a final rule determining endangered status for the Key Largo woodrat and cotton mouse. The critical habitat designation was deleted from the final rule to expedite the listing process, as provided for by section 4(b)(6)(C) of the Act, as amended in 1982. Section 4(b)(6)(C) requires, however, that critical habitat be designated within 2 years of its proposal, if not designated concurrently with the final regulation listing the species.

On July 20, 1984, Mr. Lindell Marsh, an attorney representing several landowners on North Key Largo, requested the Service to attend a meeting to begin development of a habitat conservation plan (HCP) pursuant to section 10(a) of the Act. The purpose of the plan would be to resolve conflicts between development and endangered species on North Key Largo. Participants in the plan would include appropriate State and local agencies, landowners, and conservation groups. The approval of a permit pursuant to section 10(a) of the Act would allow incidental take of federally endangered species on North Key Largo, provided that such take was mitigated by conservation measures and would not appreciably reduce the likelihood of the survival and recovery of any such species in the wild. On November 21, 1984, the Service announced the proposed planning and reopened the comment period on the critical habitat proposal until May 8, 1985 (49 FR 45887).

Monroe County, Florida, within which Key Largo is located, is in the process of preparing a Comprehensive Plan for development of the County under the Florida Area of Critical State Concern process, Florida Statutes, Chapter 380. Any successful HCP for North Key Largo must be consistent with the requirements of the Monroe County Comprehensive Plan. In addition, Congress has allocated $98,000, to be matched with non-Federal funds, for the development of an HCP for North Key Largo. The Service has subsequently entered into a grant agreement with the Florida Department of Community Affairs (DCA) under which the County, in cooperation with the DCA, will prepare an HCP for North Key Largo. In

preparing the HCP, the County and its staff will work with the North Key Largo Habitat Conservation Plan Study Committee to explore the possibilities for allowing reasonable levels of development on North Key Largo, while meeting the goals of section 10(a), which include ensuring the long term conservation of any affected listed species. Pursuant to the FWS–DCA grant agreement, the County will prepare the EIS for the Service for the possible incidental take permit in conjunction with its preparation of the HCP.

Biological studies of the Key Largo woodrat and cotton mouse are being carried out in development of the HCP. Studies of the federally endangered Schaus swallowtail butterfly, funded by Florida's Nongame Wildlife Program, are also underway. A prototype HCP is scheduled for completion by September 21, 1985; information from the biological studies should also be available by that date.

In order to allow the above information to be considered in making a final decision regarding critical habitat, as required by Section 4(b)(2) of the Endangered Species Act, the FWS reopens the comment period. All interested parties, whether or not involved with the conservation plan, are invited to submit comments and substantive information concerning the impacts of critical habitat designation until November 1, 1985, to the FWS office in the **ADDRESSES** section.

Author

The primary author of this notice is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: August 22, 1985.

David B. Allen,

Acting Regional Director.

[FR Doc. 85–20675 Filed 8–29–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Findings on Two Petitions, and of Review of Two Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Petition findings and review.

SUMMARY: The Service announces finding that a petition requesting that those populations of the Lahontan cutthroat trout in the main stem of the Truckee River, and in Pyramid Lake, Nevada, be removed from the List of Endangered and Threatened Wildlife, and that a petition to determine endangered status for the Florida Keys marsh rabbit have presented substantial information indicating that such actions may be warranted. The Service announces reviews of the status of both of the involved species.

DATE: Relevant information or comments may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Associate Director—Federal Assistance (OES) Room 3024, Department of Interior, U.S. Fish and Wildlife service, Washington, D.C. 20240. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires the Service to make a finding on whether a petition to add a species to the Lists of Endangered and Threatened Wildlife and Plants, or to remove or reclassify a species, presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, such a finding is to be made within 90 days of receipt of the petition, and the finding is then to be promptly published in the **Federal Register.** If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. Recently, the Service received and made findings on the following two petitions.

1. A petition from Ms. Laura B. Ahearn of Lionel, Sawyer & Collins, Attorneys for the City of Reno and the City of Sparks, dated February 28, 1985, and received by the Service on March 19, 1985, requests that those populations of the Lahontan cutthroat trout (*Salmo clarki henshawi*) that occur in the main stem of the Truckee River and in Pyamid Lake, Nevada, be removed from the List of Endangered and Threatened Wildlife. The petition contains documentation suggesting that the numbers of this fish have increased substantially in recent years. The Service has made the finding that this petition does present substantial information indicating that the requested action may be warranted.

2. A petition from Ms. Joel L. Beardsley, Mariposa, RR 2 Box 441, Summerland Key, Florida 33042, dated April 11, 1985, and received by the Service on April 27, 1985, requests determination of endangered status for the Florida Keys marsh rabbit (*Sylvilagus palustris hefneri*). This mammal, which was named and described in 1984, is known to occur only in a few locations in the lower (or western) Florida Keys. The petition contains documentation suggesting that the marsh rabbit's restricted habitat is jeopardized by development, and that it has become very scarce in recent years. The Service has made the finding that this petition does present substantial information indicating that the requested action may be warranted.

As required in the case of a positive finding, the Service hereby initiates status reviews of the indicated populations of the Lahontan cutthroat trout and the of the Florida Keys marsh rabbit. The Service also plans to include the latter species in a forthcoming revised Review of Vertebrate Wildlife.

Section 4(b)(3)(B) of the Act requires that within 12 months of receipt of a petition found to present substantial information, a finding be made as to whether the petitioned action is not warranted, warranted, or warranted but precluded by other listing activity. All comments and information received in response to the status reviews of the indicated populations of the Lahontan cutthroat trout and of the Florida Keys marsh rabbit will be considered in making such findings regarding these species.

The authors of this notice are Ronald M. Nowak and James D. Williams, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

Authority

Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: August 22, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–20768 Filed 8–29–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 169
Friday, August 30, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Rescheduling of Meeting of the Agriculture Structure Planning Advisory Committee

On August 16, 1985, notice was published that the first meeting of the Agriculture Structure Planning Advisory Committee would be held on September 4–5, 1985, at the Shoreham Hotel in Washington, D.C. Notice is hereby given that the time and place of the meeting has been changed. The Committee will hold its first meeting on September 16–17, 1985, at the Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia. The meeting will begin at 8:00 a.m. and end at 5:30 p.m. on September 16 and begin at 8:00 a.m. and end at 4:30 p.m. on September 17.

Dated: August 28, 1985.

George Marienthal,

Deputy Assistant Secretary for Administration.

[FR Doc. 85–20754 Filed 7–29–85; 8:45 am]

BILLING CODE 3410-01-M

Federal Crop Insurance Corporation

[Doc. No. 2717S]

Board of Directors Meeting

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of meeting.

SUMMARY: The Board of Directors of the Federal Crop Insurance Corporation (FCIC) herewith gives notice of a meeting to be held on September 4–5, 1985, for the purpose of providing insurance industry and agricultural interests an informal hearing on two matters relating to FCIC's policies of crop insurance; the method of issuing crop insurance based on Actual Production History (APH) whereby crop insurance is based on the individual farmers proven historic production records, and the insurance unit as a means of identifying all of the insured crop grown within a county, with no further division.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

Date: September 4–5, 1985.

Place: Interstate Commerce Commission Building 12th and Constitution Avenue, NW., Washington, D.C. Hearing Room "B" (First Floor)

Time: 1:30 P.M. to 4:30 P.M., September 4. and 8:30 A.M. to 10:30 A.M., September 5.

SUBJECTS:

Crop Insurance based on Actual Production History (APH)

Unit determination as all insured crop grown within a county with no further unit division.

Done in Washington, D.C., on August 26, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–20832 Filed 8–29–85; 8:45 am]

BILLING CODE 3410-08-M

Federal Grain Inspection Service

Designation Renewal of Kansas State Grain Inspection Department (KS)

AGENCY: Federal Grain Inspection Service (FGIS) USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Kansas State Grain Inspection Department (Kansas), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: September 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Kansas designation terminates on August 31, 1985, and requested applications for official agency designation to provide official services within the specified geographic area in the March 1, 1985, **Federal Register** (50 FR 8351). Applications were to be postmarked by April 1, 1985. Kansas was the only applicant and applied for designation renewal.

FGIS announced the applicant name and requested comments on same in the May 1, 1985, **Federal Register** (50 FR 18542). Comments were to be postmarked by June 17, 1985; one was received from the Kansas Grain and Feed Dealers Association, a 900-member trade group, recommending the designation renewal of Kansas.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Kansas is able to provide official services in the geographic area for which FGIS is renewing its designation. Effective September 1, 1985, and terminating August 31, 1988, Kansas will provide official inspection services in its specified geographic area, which is the entire area previously described in the March 1 **Federal Register.**

A specified services point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the

following address: Kansas State Grain Inspection Department, 235 South Topeka Avenue, P.O. Box 1918, Topeka, KS 66601.

Dated: August 21, 1985.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–20753 Filed 8–29–85; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of Louisville Grain Inspection Services, Inc. (KY), Minot Grain Inspection Service, Inc. (ND), and Tri-State Grain Inspection Service, Inc. (OH)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Louisville Grain Inspection Services, Inc. (Louisville), Minot Grain Inspection Service, Inc. (Minot), and Tri-State Grain Inspection Service, Inc. (Tri-State), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: October 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Louisville's, Minot's, and Tri-State's designations terminate on September 30, 1985, and requested applications for official agency designation to provide official services within specified geographic areas in the April 1, 1985, **Federal Register** (50 FR 12842). Applications were to be postmarked by May 1, 1985. There were two applicants for the Louisville designation. Louisville Grain Inspection Services, Inc., applied for designation renewal and Grain Inspection Services of America (GISA), an unincorporated subsidiary of Woodson-Tenent Labqratories, Inc., Memphis, Tennessee, also applied for designation as the agency to provide official services in the geographic area presently assigned to Louisville. Minot and Tri-State were the the only applicants for their respective designations and each applied for designatioin renewal.

FGIS announced the applicant names and requested comments on same in the June 3, 1985, **Federal Register** (50 FR 23322). Comments were to be postmarked by July 18, 1985; three favorable comments were received recommending Louisville's designation renewal; no comments were received regarding GISA's application for designation or Minot's and Tri-State's designation renewals. Subsequent to the request for comments, GISA was determined to be not qualified as an applicant and was notified in writing as to the determination.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B, determined that Louisville, Minot, and Tri-State are able to provide official services in the geographic area for which FGIS is renewing their designation. Effective October 1, 1985, and terminating September 30, 1988, Louisville, Minot, and Tri-State will provide official inspection services in their specified geographic areas, which are the entire areas previously described in the April 1 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Louisville Grain Inspection Services, Inc., 1400 Oldham Street, P.O. Box 10115, Louisville, KY 40210

Minot Grain Inspection Service, Inc., 601 Third Avenue, S.W., Box B, Minot, ND 58701

Tri-State Grain Inspection Service, Inc., 3906 River Road, Cincinnati, OH 45204

Dated: August 21, 1985.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq*)

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–20755 Filed 8–29–85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Minnesota Department of Agriculture (MN) and Mississippi Department of Agriculture and Commerce (MS)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Minnesota Department of Agriculture (Minnesota), and Mississippi Department of Agriculture and Commerce (Mississippi).

DATE: Comments to be postmarked on or before October 15, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the July 1, 1985, **Federal Register** (50 FR 20734). Applications were to be postmarked by July 31, 1985. Minnesota and Mississippi were the only applicants, and each applied for designation renewal in the areas currently assigned to those agencies.

This notice provides interested persons the opportunity to present their

comments concerning the designation applicants. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Dated: August 21, 1985.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–20756 Filed 8–29–85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Provide Official Services in the Geographic Areas Currently Assigned to Frankfort Grain Inspection, Inc. (IN), Jinks Grain Weighing Service (IL), and Paris Illinois Grain Inspection (IL)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to each specified agency. The official agencies are the Frankfort Grain Inspection, Inc., Jinks Grain Weighing Service, and Paris Illinois Grain Inspection.

DATE: Applications to be postmarked on or before September 30, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Frankfort Grain Inspection, Inc. (Frankfort), R.R. #2, Frankfort, IN 46041, was designated under the Act as an official agency to provide inspection and weighing functions. Jinks Grain Weighing Service (Jinks), R.R. 1, Box 81, Homer, IL 61849, was designated under the Act as an official agency to provide weighing functions. Paris Illinois Grain Inspection (Paris), 1020 North Central Avenue, Paris, IL 61944, was designated under the Act as an official agency to provide inspection functions. Each agency was designated on March 1, 1983.

Each official agency's designation terminates on February 28, 1986. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Frankfort, in the State of Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern Fulton County line;

Bounded on the East by the eastern Fulton County line sough to State Route 19; State Route 19 south to State Route 114; State Route 114 southeast to the eastern Fulton and Miami County lines; the northern Grant County line east to County Highway 900E; County Highway 900E south to State Route 18; State Route 18 east to the Grant County line; the eastern and southern Grant County lines; the eastern Tipton County line; the eastern Hamilton County line south to State Route 32;

Bounded on the South by State Route 32 west to the Boone County line; the eastern and southern Boone County lines; the southern Montgomery County line; and

Bounded on the West by the western and northern Montgomery County lines; the western Clinton County line; the western Carroll County line north to State Route 25; State Route 25 northeast to Cass County; the western Cass and Fulton County lines.

Exceptions to the described geographic area are the following locations situated inside Frankfort's area which have been and will continue to be serviced by Titus Grain Inspection, Inc.:

1. The Andersons, Delphi, Carroll County;

2. Buckeye Feed and Supply Company, Leiters Ford, Fulton County;

3. Cargill, Inc., Linden, Montgomery County.

The geographic area presently assigned to Jinks, in the States of Illinois and Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the Iroquois County line east of Illinois State Route 1; Illinois State Route 1 south to U.S. Route 24; U.S. Route 24 east into Indiana, to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the southern Fountain County line; the Fountain County line west to Vermillion County (in Indiana); the eastern Vermillion County line south to U.S. Route 36;

Bounded on the South by U.S. Route 36 west into Illinois, to the Douglas County line; the eastern Douglas and Coles County lines; the southern Coles County line; and

Bounded on the West by the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line; a straight line running north and south from this point north to U.S. Route 136; U.S. Route 136 east to Interstate 57; Interstate 57 north to the Champaign County line; the northern Champaign County line; the western Vermillion (in Illinois) and Iroquois County lines.

The following locations, outside of the foregoing conteguous geographic area, are presently assigned to Jinks and are part of this geographic area assignment:

1. Multrie Grain Association, Cadwell, Moultrie County, Illinois;

2. Tabor and Company, Weedman Grain Company, and Pacific Grain Company, Farmer City, Dewitt County, Illinois;

3. Moultrie Grain Association, Lovington, Moultrie County, Illinois;

4. Monticello Grain Company, Monticello, Piatt County, Illinois;

5. Gillespie Grain Company, Pittwood, Iroquois County, Illinois.

Exceptions to the described geographic area are the following locations situated inside Jinks' area which have been and will continue to be serviced by the following official agencies:

Paris Illinois Grain Inpsection:

1. Miller Grain Company, Newman, Douglas County, Illinois;

2. Miller Grain Company, Oakland, Coles County, Illinois;

3. Cargill, Inc., Dana, Vermillion County, Indiana;

Schneider Inspection Service, Inc.:

Tidewater Grain Company, Ford Iroquois Supply and Service, and Summer Elevator, Sheldon, Iroquois County, Illinois.

Titus Grain Inspection:

1. Boswell Grain Company, Boswell, Benton County, Indiana;

2. Dunn Grain, Dunn, Benton County, Indiana;

3. York Richland Grain Elevator, Inc., Earl Park, Benton County, Indiana;

4. Raub Grain Company, Raub, Benton County, Indiana.

The geographic area presently assigned to Paris, in the States of Illinois and Indiana, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by U.S. Route 36 east across the Illinois-Indiana State line to the western Parke County line; the northern Parke and Putnam County lines;

Bounded on the East by the eastern Putnam, Owen, and Greene County lines;

Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(150) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the western Crawford County line; and

Bounded on the West by the western Crawford and Clark County lines; the western Edgar County line north to U.S. Route 36.

The following locations, outside of the foregoing contiguous geographic area, are presently assigned to Paris and are part of this geographic area assignment:

1. Miller Grain Company, Newman, Douglas County, Illinois;

2. Miller Grain Company, Oakland, Coles County, Illinois;

3. Cargill, Inc., Dana, Vermillion County, Indiana.

Interested parties, including Frankfort, Jinks, and Paris, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning March 1, 1986, and ending February 28, 1989. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in the geographic area.

Dated: August 21, 1985.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–20757 Filed 8–29–85; 8:45 am]

BILLING CODE 3410-EN-M

Designation of Hutchings, Inc., d.b.a. Denver Grain Inspection (CO)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: This notice announces the designation of Hutchings, Inc., doing business as Denver Grain Inspection (Hutchings), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: October 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services in the State of Colorado and portions of the States of Nebraska and Wyoming in the April 5, 1985, **Federal Register** (50 FR 13641). Applications were to be postmarked by May 6, 1985; Hutchings was the only applicant. Hutchings has been providing official inspection services in the area on an interim basis since April 1, 1985.

FGIS announced the applicant name and requested comments on same in the June 3, 1985, **Federal Register** (50 FR 23323). Comments were to be postmarked by July 18, 1985; none were received.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), determined that Hutchings is able to provide official services in the geographic area for which it is being designated. Effective October 1, 1985, and terminating August 31, 1988, Hutchings will provide official inspection services in its specified geographic area, which is the entire area previously described in the April 5 **Federal Register.**

A specified service point, for the purpose of theis notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address: Denver Grain Inspection, 6210 Brighton Blvd., Commerce City, CO 80022.

Dated: August 21, 1985.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–20758 Filed 8–29–85; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Surveys in Manufacturing Area; Consideration

Notice is hereby given that the Bureau of the Census is considering a proposal to initiate or to continue the annual surveys listed below for the year 1985 and for each year thereafter under the authority of Title 13, United States Code.

sections 131, 182, 224, and 225. These surveys, most of which have been conducted for many years, are significant in the manufacturing area. On the basis of information and recommendations received by the Bureau of the Census, the data have significant application to the needs of the public and industry and are not available from nongovernmental or other governmental sources.

The establishments covered by these surveys directly account for the bulk of all manufacturing employment. The information to be developed from these surveys is necessary for an adequate measurement of total industrial production. Government agencies need production data on these industries. Manufacturers in the industries involved, as well as their suppliers and customers and the general public, have requested such data in the interest of business efficiency and stability.

These surveys, if conducted, shall begin not earlier than 60 days after publication of this notice in the Federal Register.

Annual Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys. These surveys are arranged under major group headings based on the Standard Industrial Classification Manual (1972 edition) promulgated by the Office of Management and Budget for the use of Federal Government statistical agencies.

Major Group 20—Food and Kindred Products

Confectionery

Major Group 22—Testile Mill Products

Broadwoven fabrics finished
Narrow fabrics
Yarn production
Knit fabric production
Stocks of wool and related fibers

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Men's and boys' outerwear
Women's and children's outerwear
Underwear and nightwear
Gloves and mittens

Major Group 24—Lumber and Wood Products, Except Furniture

Hardwood polywood
Softwood plywood
Lumber production and mill stocks

Major Group 25—Furniture and Fixtures

Office furniture

Major Group 26—Paper and Allied Products

Selected office supplies and accessories
Pulp, paper, and board

Major Group 27—Printing, Publishing, and Allied Industries

Business forms, binders, carbon paper, and inked ribbon

Major Group 28—Chemicals and Allied Products

Industrial gases
Inorganic chemicals
Pharmaceutical preparations, except biologicals
Sulfuric acid
Paints, varnish, and lacquer

Major Group 29—Petroleum Refining and Related Industries

Asphalt and tar roofing and siding products

Major Group 30—Rubber and Miscellaneous Plastics Products

Rubber
Plastics bottles
Rubber and plastic hose and belting
Mechanical rubber goods

Major Group 31—Leather and Leather products

Footwear

Major Group 32—Stone, Clay, and Glass

Consumer, scientific technical, and industrial glassware
Fibrous glass

Major Group 33—Primary Metal Industries

Steel mill products
Insulated wire and cable
Magnesium mill products
Nonferrous castings
Ferrous castings

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

Selected heating equipment

Major Group 35—Machinery, Except Electrical

Internal combustion engines
Farm Machinery and lawn and garden equipment
Mining machinery and mineral processing equipment
Air-conditioning and refrigeration equipment, including warm air furnaces
Computers and office and accounting machines
Pumps and compressors
Selected industrial air pollution control equipment
Construction machinery
Anti-friction bearings
Fluid power products (including aerospace)
Coin-operated vending machines
Robots

Major Group 36—Electrical Machinery, Equipment, and Supplies

Radios, televisions, and phonographs
Motors and generators
Wiring devices and supplies
Switchgear, switchboard apparatus, relays, and industrial controls
Communication equipment
Semiconductors and printed circuit boards
Electromedical equipment
Electric housewares and fans
Electric lighting fixtures
Major household appliances
Transformers

Major Group 37—Transportation Equipment

Aircraft propellers
Aerospace orders

Major Group 38—Professional, Scientific, and Controlling Instruments; Photographic and Optical goods; Watches and Clocks

Selected instruments and related products

Major Group 39—Miscellaneous Manufacturing Industries

Pens, pencils, and marking devices

The following surveys represent an annual supplement of a monthly survey and will cover the same establishments canvassed monthly. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected monthly.

Major Group 32—Stone, Clay, and Glass

Glass containers
Refractories

The following list of surveys represents annual conterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

Major Group 20—Food and Kindred Products

Flour milling products

Major Group 22—Textile Mill Products

Broadwoven fabric (gray)
Consumption of wool and other fibers, and production of tops and noils
Carpet and rugs

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Sheets, pillowcases, and towels

Major Group 32—Stone, Clay, and Glass

Glass containers
Refractories
Clay construction products
Flat glass

Major Group 33—Primary Metal Industries

Inventories of steel mill shapes

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

Plumbing fixtures
Steel shipping drums and pails
Closures for containers

Major Group 35—Machinery, Except Electrical

Construction machinery
Metalworking machinery

Major Group 36—Electrical Machinery, Equipment, and Supplies

Fluorescent lamp ballasts
Electric lamps

Major Group 37—Transportation Equipment

New complete aircraft and aircraft engines, except military
Truck trailers

Annual Survey of Manufactures

The annual survey of manufactures collects industry statistics such as total value of shipments, employment, payroll, work hours, capital expenditures, cost of materials consumed, gross book value of assets, retirements, and depreciation of fixed assets, rental payments, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

Annual Survey of Research and Development

A survey of research and development (R&D) activities is conducted. The major data obtained in this survey will include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D, and, for comparative purposes, the total net sales and receipts and the total employment of the company.

Annual Survey of Shipments to Federal Government Agencies

A survey of shipments to the Federal Government is conducted to provide information on the effect of Federal procurement on selected industries by Federal Government agencies.

Annual Survey of Pollution Abatement Costs and Expenditures

The annual survey of pollution abatement expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities and quantities of pollutants abated.

Annual Survey of Plant Capacity

The annual survey of plant capacity obtains information such as the amount of time a plant is in operation; operating rates as related to prefered levels and practical capacity; the value of production and other statistics for actual, preferred, and practical capacity operating levels; and the reasons for operating at less than capacity.

Copies of the proposed forms are made available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject of these proposed surveys should be submitted in writing to the Director of the Bureau of the Census within 60 days after the date of this publication in order to receive consideration.

Dated: August 28, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-20772 Filed 8-29-85; 8:45 am]

BILLING CODE 3510-07-M

Defining Urbanized Areas Between Decennial Censuses

Introduction

Until now, decennial census results were the only basis for defining urbanized areas. The Census Bureau proposes to designate urbanized areas on the basis of local censuses conducted by this agency, usually at the request and expense of the local area. (See 15 CFR Part 50.10, Fee Structure for Special Population Censuses.) The purpose of defining urbanized areas between decennial censuses is to give areas that meet the criteria an opportunity to obtain the urbanized area designation without waiting until the next decennial census.

Comments relating to the proposal of the Census Bureau to designate urbanized areas between decennial censuses are welcome. The comment period will be open until September 30, 1985. Persons wishing to comment or obtain additional information should contact Mr. Robert W. Marx, Chief, Georgraphy Division, Bureau of the Census, U.S. Department of Commerce, Washington, D.C. 20233. The criteria for designating urbanized areas between 1980 and 1990 are consistent with those used for determining urbanized areas based on results from the 1980 Decennial Census.

Definition

The Census Bureau will use the following criteria to determine the eligibility for definition of an urbanized area.

An urbanized area comprises an incorporated place [1] and adjacent densely settled surrounding area that together have a minimum population of 50,000.[2] The densely settled surrounding area consists of:

1. Contiguous incorporated or census designated places having:

a. A population of 2,500 or more; or,

b. A population of less than 2,500 but having either a population density of 1,000 persons per square mile, closely settled area containing a minimum of 50 percent of the population, or a cluster of at least 100 housing units.

2. Contiguous unincorporated area that is connected by road and has a population density of at least 1,000 persons per square mile.[3]

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[1] In Hawaii and Puerto Rico, incorporated places do not exist in the sense of functioning local governmental units. In Hawaii, the Census Bureau uses census designated places in defining a central place and for applying urbanized area criteria. In Puerto Rico, the Census Bureau uses zonas urbanas and aldeas.

[2] The Census Bureau excludes from the urbanized area the rural portions of extended cities, as defined in the Census Bureau's extended city criteria. In addition, for an urbanized area to be recognized, it must include a population of at least 25,000 that does not reside on a military base.

[3] The Census Bureau Excludes the area of extensive nonresidential urban land uses, such as railroad yards, airports, factories, parks, golf courses, and cemeteries, in computing the population density.

3. Other continguous incorporated area with a density of less than 1,000 persons per square mile, provided that it:

a. Eliminates an enclave of less than 5 square miles that is surrounded by built-up area.

b. Closes an indentation in the boundary of the densely settled area that is no more than 1 mile across the open end and encompasses no more than 5 square miles.

c. Links an outlying area of qualifying density, provided that the outlying area is:

(1) Connected by road to, and is not more than 1½ miles from, the main body of the urbanized area; or is

(2) Separated from the main body of the urbanized area by water or other undevelopable area, is connected by road to the main body of the urbanized area, and is not more than 5 miles from the main body of the urbanized area.

4. Large concentrations of nonresidential urban area (such as parks, office areas, and major airports) that have at least one-quarter of their boundaries contiguous to the main body of the urbanized area.

Urbanized Area Titles

1. The Census Bureau will retain unchanged the titles of previously existing urbanized areas except for possible mergers and for those areas meeting titling criteria 4 and/or 5.

2. The Census Bureau will determine the titles of new urbanized areas qualifying as follows:

a. The title of the urbanized area always will include the name of the incorporated place with the largest population in the urbanized area.

b. The title of the urbanized area may include the names of up to two additional incorporated places, with eligibility determined as follows:

(1) Those with a population of at least 250,000.

(2) Those with a population of 15,000 to 250,000 provided that they are at least one-third the population of the largest place in the urbanized area.

3. Area titles that include the names of more than one incorporated place will start with the name of the largest and list the others in descending order of their population.

4. In addition to incorporated place names, the titles contain the name of each state into which the urbanized area extends. The first named state is the state in which the largest central city is located, with additional states named in the order of population size within the urbanized area.

5. The Census Bureau may use regional titles to identify urbanized areas with populations over 1 million, in which case only the largest city of the urbanized area is included in the title.

Urbanized Area Central Cities

The central cities of urbanized areas are those named in the titles except where the urbanized area title is a regional title. In such cases, the central cities are those that qualify under items 1 or 2 of the titling criteria.

Dated: August 28, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-20773 Filed 8-29-85; 8:45 am]

BILLING CODE 3510-07-M

[Case No. 669]

Anton Elzar et al.; Order Modifying Temporary Denial of Export Privileges

In the matter of: Anton Elzar, individually and doing business as DEVELOPMENT AND CONSULTANT ELZAR ECO AB; Grinnekullegatan 160, Goteborg, Sweden; Helmut Keck, individually and doing business as OTC MESS-UND VIDEOTEKNIK GmbH Eifferstra 598, Hamburg Federal Republic of Germany; Paul Nurminen OY, Posylank 2, Helsinki, Finland; and METAB, MELLEN TRADING AB Fridkullagatan 19 Goteborg, Sweden, Respondents.

By Order of July 11, 1985, 50 Fed. Reg. 29244 (July 18, 1985), John Nurminen Oy (Nurminen)[1], Pasilankatu 2, 00240 Helsinki 24, Finland, was temporarily denied, pursuant to § 388.19 of the Export Administration Regulations (15 CFR Parts 368–399 (1985)), all privileges of participating in any manner or capacity in the export or reexport of U.S.-origin commodities or technical data under the jurisdiction of the United States Department of Commerce (Department).

The Department and respondent Nurminen have moved jointly to modify the order temporarily denying export privileges (Order), by deleting Nurminen from the respondents named therein.

In support of their motion, the parties stated that Nurminen had provided information to the Department, the Nurminen had made certain representations to the Department, and that the Department had reviewed additional information newly available to it.

Based on the representations made by the Department and by Nurminen, I find that the requested motion is justified, and that granting it will not jeopardize the purposes of the Order.

[1] The Order inadvertently identified John Nurminen Oy as Paul Nurminen Oy and incorrectly listed the company's address as Posylank 2, Helsinki, Finland.

Accordingly, it is hereby Ordered:

That, effective immediately, the Order of July 11, 1985, is amended by deleting: John Nurminen Oy, Pasilankatu 2, 00240 Helsinki 24, Finland.

Which respondent was misidentified in the Order as: Paul Nurminen Oy, Posylank 2, Helsinki, Finland.

From the respondents named therein.

A copy of this amendment shall be delivered to Nurminen and shall be published in the Federal Register.

Dated: August 23, 1985, 2:50 pm E.D.T.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-20752 Filed 8-29-85; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[C-351-504]

Extension of the Deadline for Final Countervailing Duty Determination; Certain Heavy Iron Construction Castings from Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the Municipal Castings Fair Trade Council and its individually-named members, the Department of Commerce is extending the deadline for its final determination in the countervailing duty investigation of certain heavy iron construction castings from Brazil. Pursuant to section 703(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), this case deadline is being extended from October 21, 1985, to January 6, 1986, which corresponds to the date of the final determinations in the antidumping investigations of the same products from Brazil, Canada, India and the People's Republic of China. In keeping with Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), the Department will terminate the suspension of liquidation in the countervailing duty investigation 120 days after the date of publication of the preliminary determination in this case.

EFFECTIVE DATE: August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–3174 or 377–2438.

SUPPLEMENTARY INFORMATION:

Case Histories

On May 13, 1985, we received a countervailing duty petition filed by the Municipal Castings Fair Trade Council and its individually-named members against certain iron construction castings from Brazil. We also received antidumping petitions against the same products from Brazil, Canada, India and the People's Republic of China.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petitions alleged that imports of certain iron construction castings from Brazil, Canada, India and the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports cause or threaten material injury to a U.S. industry.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Brazil of certain iron construction castings directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports cause or threaten material injury to a U.S. industry.

We found that the petitions contained sufficient grounds on which to initiate antidumping and countervailing duty investigations, and on June 3, 1985, we initiated such investigations (50 FR 24269, 50 FR 24264, 50 FR 24008, 50 FR 24014 and 50 FR 24014). Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore we notified the ITC of our initiation. On June 27, 1985, the ITC preliminarily determined that there is a reasonable indication that imports of certain heavy iron construction castings from Brazil cause or threaten material injury to a U.S. industry (50 FR 27498). The ITC also determined that there is no reasonable indication that imports of certain light iron construction castings which were alleged to be subsidized by the government of Brazil cause or threaten material injury to a U.S. industry. Therefore, our countervailing duty investigation is limited to certain heavy iron construction castings, as defined in the "Scope of Investigation" section of our preliminary determination issued on August 6, 1985 (50 FR 32462), and we changed the title of the investigation accordingly.

On August 8, 1985, the petitioners filed a request for extension of the deadline date for the final determination in the countervailing duty investigation of certain heavy iron construction castings from Brazil to correspond with the date of the final determinations in the antidumping investigations of the same products.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, the Department is granting an extension of the deadline for the final determination in the countervailing duty investigation of certain heavy iron construction castings from Brazil from October 21, 1985, to January 6, 1986, the current deadline for the final determinations in the antidumping duty investigations. To comply with the requirements of Article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on December 10, 1985, which is 120 days from the date of publication of the preliminary determination in this case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after December 10, 1985. The suspension of liquidation will not be resumed unless and until a final affirmative ITC determination is published in this case. We will also direct the U.S. Customs Service to hold the entries suspended prior to December 10, 1985, until the conclusion of this investigation.

Public Comment

The public hearing in this case, originally scheduled for September 6, 1985, has been postponed and will be rescheduled if a request for a public hearing is received by the Department.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 23, 1985.

[FR Doc. 85–20825 Filed 8–29–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–122–507]

Initiation of Countervailing Duty Investigation; Certain Fresh Atlantic Groundfish from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether the producers or exporters in Canada of certain fresh Atlantic groundfish, as described in the "Scope of Investigation" section below, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) so that it may determine whether imports of the subject merchandise materially injure or threaten material injury to a U.S. industry. If our investigation proceeds normally, we will make our preliminary determination on or before October 29, 1985.

EFFECTIVE DATE: August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Telephone: (202) 377–0187 or 377–3464.

SUPPLEMENTARY INFORMATION:

Petition

On August 5, 1985, we received a petition from the North Atlantic Fisheries Task Force on behalf of the United States groundfish industry which harvests and produces for sale Atlantic groundfish in fresh form. The North Atlantic Fisheries Task Force is an unincorporated association representing fishermen, fishermen's cooperatives, and processors located in the northeastern United States. A majority of the members of the Task Force are producers, wholesalers, or trade or business associations of producers or wholesalers who produce or wholesale

fresh Atlantic groundfish. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters in Canada of fresh Atlantic groundfish receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Since Canada is a "country under the Agreement" within section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten injury to, the U.S. industry.

We have received telephone calls and telexes from certain domestic processors objecting to the petition. We have also received telexes from domestic processors and fishermen supporting this petition. Neither the Act nor the regulations require a petitioner to establish affirmatively that it has the majority support of a particular industry. Thus, the Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. We have not yet been able to assess the extent to which the opposition we have received to this petition contradicts petitioner's claims that it has filed "on behalf of" U.S. industries. We will continue to examine this question.

On August 20, 23, and 26, 1985, the government of Canada exercised its right to consultation pursuant to Article 3:1 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined this petition and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether the producers or exporters in Canada of certain fresh Atlantic groundfish, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before October 29, 1985.

Scope of Investigation

The products covered by this investigation are fesh whole and fresh fillets of Atlantic groundfish, including cod, haddock, pollack, hake, and flatfish (including flounder and sole). These species are generally referred to collectively as "groundfish" because they live on or near the seabed. The term "fresh" includes fish that are chilled, but excludes fish taht have been frozen. Whole fish include fish which are whole, or processed by removal of heads, viscera, fins, or any combination thereof, but not otherwise processed. Fillets (including fish steaks) include fish, other than frozen blocks, which are otherwise processed (whether or not heads, viscera, fins, scales, or any combination thereof have been removed). These products are currently provided for in items 110.1585, 110.1593, 110.3560, 110.5000, 110.5545, 110.5565, and 110.7033 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

Allegations of Subsidies

The petition alleges that producers or exporters in Canada of fresh Atlantic groundfish receive benefits which constitute subsidies. We are initiating on the following allegations:

A. Federal Programs

- Fishing Vessel Assistance Program
- Fisheries Improvement Loans Program
- Special Recovery Capital Projects Program
- Fishing Vessel Insurance Plan
- Import Duty Remission
- Unemployment Insurance Act of 1971
- Industrial and Regional Development Program
- Enterprise Development Program
- Investment Tax Credit
- Government Equity Infusions
- Program for Export Market Development
- Department of Fisheries and Oceans Marketing Services
- Assistance for the Construction of Icemaking and Fish Chilling Facilities
- Atlantic Fishery Management Program
- Federal Assistance for Bait

B. Joint Federal-Provincial Programs

- Economic and Regional Development Agreements Program
- Newfoundland and Labrador Development Corporation

C. Province of New Brunswick

- New Brunswick Fisheries Development Board
- The Fish Unloading Systems and Icemaking Facilities Board
- Fish Chilling Assistance Program
- Assistance for the Construction of Icemaking and Fish Chilling Facilities.
- Insurance Premium Prepayment Program
- Winterization of Fish Plants Program
- Marketing and Export Promotion

D. Province of Newfoundland

- Fishing Ships Bounty Program
- Fishing Vessel Assistance Plan
- Vessel Rebuilding Grant Program
- Loans and Loan Guarantees from the Newfoundland Fisheries Loan Board
- Newfoundland Bait Services Program
- Sales Tax Exemptions for Fishermen
- Newfoundland and Labrador Development Corporation
- Loan Deficiency Guarantee Program
- Secondary Processing Interest Subsidy Program
- Rural Development Loan Program
- Production Machinery and Processing Technology Program
- Market Development Information

E. Province of Nova Scotia

- Vessel Subsidy Plan
- Loans from the Nova Scotia Fisheries Loan Board
- Assistance from the Industrial Development Division
- Assistance for the Construction of Icemaking and Fish Chilling Facilities
- Gutting Machine Program
- Plant Development Program
- Marketing and Export Assistance

F. Province of Prince Edward Island

- Vessel Assistance Program
- The Near and Offshore Vessel Assistance Program
- Engine Conversion Program
- Commercial Fishermen's Investment Incentive Program
- Assistance for the Construction of Icemaking and Fish Chilling Facilities
- Fish Chilling Assistance Program
- Fisherman's Holding Unit Program
- Fish Box Pool Program

G. Province of Quebec

- Vessel Construction Assistance
- Gear Subsidy Program
- Insurance Premium Subsidy Program
- Technological Assistance Services for Business Program

We are not initiating on the following programs:

- *Shipbuilders Assistance Program*

This program grants to shipbuilding companies for vessels 75 feet or longer, built or converted in Canada. Grants are given both to fishing and other

commercial vessels which meet certain minimum weight requirements, depending on the vessel class. The grants are provided to the shipbuilders and not to the purchaser and, according to information in the petition, the program is designed to enable Canadian shipyards to offer internationally competitive prices and maintain economic viability. Petitioner has not provided us with any evidence that grants provided to shipbuilders confer benefits, directly or indirectly, to Canadian fishermen.

- *Capital Cost Allowance*

Revenue Canada permits taxpayers, in determining their taxable income, to deduct the capital cost of 37 specific classes of depreciable assets (including processing machinery and equipment and Canadian-built vessels). Petitioner alleges this program provides preferential treatment to fishermen. In *Certain Softwood Products from Canada* (48 FR 24159), we deterined that this program was not counteravailable because it was not limited to a specific industry, group of industries, or to companies in specific regions. Petitioner has not provided us with additional information or evidence of changed circumstances to cause us to reexamine this program at this time.

- *Tax Exemption on Fuel*

Canadian fishermen are exempt from both the federal gasoline sales taxes paid on gasoline purchases and from the federal excise tax on diesel fuel. In *Certain Softwood Products from Canada* (48 FR 24159), we determined that the fuel tax exemption was not counteravailable because it did not provide benefits to a specific industry or group of industries. Petitioner has not provided us with additional information or evidence of changed circumstances to cause us to reexamine this program at this time. We are, however, initiating an investigation on the sales tax exemption for fuel for fishermen under a program administered by the province of Newfoundland since we did not investigate fuel tax exemptions in that province in *Certain Softwood Products from Canada* and since petitioner has alleged that the Newfoundland program is specifically for fishermen.

- *Sales Tax Exemptions*

Petitioner alleges that fishermen may be exempted from paying certain federal sales taxes. Because the government of Canada does not limit sales tax exemptions to a specific industry, group of industries, or to companies in specific regions, we are not initiating an investigation of this program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 19, 1985, whether there is a reasonable indication that imports of certain fresh Atlantic groundfish from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 26, 1985.

[FR Doc. 85-20824 Filed 8-29-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-455-502]

Certain Steel Wire Nails from Poland; Termination of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated July 25, 1985, petitioners withdrew their antidumping duty petition, filed on June 5, 1985, on certain steel wire nails (wire nails) from Poland. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1756.

SUPPLEMENTARY INFORMATION:

Case History

On June 5, 1985, we received a petition from Atlantic Steel Company, Atlas Steel and Wire Corp., Continental Steel Corp., Davis Walker Corp., Dickerson Weatherproof Nail Co., Florida Wire and Fabric Co., Keystone Steel and Wire Co., Northwestern Steel and Wire Co., Virginia Wire and Nail Co., and Wire Products Co., on behalf of the U.S. industry producing steel wire nails.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on June 25, 1985 (50 FR 27475). On July 31, 1985, the ITC published in the **Federal Register** its preliminary determination that there was a reasonable indication that imports of wire nails from Poland materially njure, or threaten material injury to, a U.S. industry (50 FR 31057).

Scope of Investigation

The merchandise covered by the petition consists of one-piece steel wire nails from Poland as currently provided for in the *Tariff Schedules of the United States Annotated* under item numbers 646.25 and 646.26, and similar steel wire nails of one-piece construction, whether at, over or under .065 inch in diameter as currently provided for in item number 646.3040; two-piece steel wire nails provided for in item number 646.32; and steel wire nails lead heads provided for in item number 646.36.

Withdrawal of Petition

In a letter dated July 25, 1985, petitioners notified us that they were withdrawing their June 5, 1985, antidumping duty petition, and requested that the investigation be terminated (A copy of petitioners' letter is appended to this notice).

Under section 734(a) of the Tariff Act of 1939, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation and after assessing the public interest as required by the statute. This withdrawal is based on a bilateral arrangement with the Government of Poland to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners'

withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Gilbert B. Kaplan,

Action Deputy Assistant Secretary for Import Administration.

August 23, 1985.

Contains No Confidential Information, A–455–502, Total Number of Pages: 4

July 25, 1985.

Mr. Gilbert B. Kaplan,
Acting Deputy Assistant, Secretary for Import Administration, U.S. Department of Commerce, Washington, D.C. 20230

Attention: Central Records Unit, B–099

Re: Certain Steel Wire Nails from Poland; Investigation No. A–455–502

Dear Mr. Kaplan: We have been advised by the United States Trade Representative ("USTR") that an Arrangement concerning trade in certain steel products has been entered into between the governments of Poland and the United States. Pursuant to this Arrangement, the government of Poland has agreed to restrain exports of certain steel wire nails for the period of the Arrangement.

The Arrangement requires the withdrawal of the antidumping petitions described in paragraph 1 of Appendix A to the Arrangement, including the antidumping duty (A–455–502) petition filed on June 4, 1985 by Atlantic Steel Co., Atlas Steel & Wire Corp., Continental Steel Corp., Davis Walker Corp., Dickson Weatherproof Nail Co., Florida Wire & Fabric Co., Keystone Steel & Wire Co., Northwestern Steel & Wire Co., Virginia Wire & Nail Co., and Wire Products Co. concerning certain steel wire nails.

Based on the stated purposes of the President's Steel Program, it is the present expectation of the Petitioners that the export ceilings in the Arrangement with Poland will be the functional equivalent of a suspension of an investigation under Section 734(c) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979. This expectation assumes that the Arrangement, by removing "unfairly traded" Polish steel wire nails, will ameliorate the effect of less than fair value sales as alleged in the petition and ensures that there will be no undercutting of domestic price levels by the authorized imports of steel wire nails from Poland.

With the foregoing considerations in mind, and in reliance on the understandings and conditions expressly set forth herein, you are hereby notified that the Petitioners withdraw the antidumping duty petition described in paragraph 5 of Appendix A. Please be advised that this withdrawal is subject to the following conditions:

1. Published assurance that the Polish Arrangement is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications thereof by side letter or otherwise) that would revise, delay or impair the implementation of the specific restraints concerning steel wire nails.

2. The publication of this letter in the **Federal Register**, together with the termination notice and the assurances required as a condition to withdrawal.

3. Confirmation that the Arrangement with Poland is a "bilateral arrangement" within the meaning of section 804 of the Steel Import Stabilization Act of 1984 and that the President is authorized to enforce the Arrangement pursuant to section 805(a) of said Act. Pursuant to those provisions and the requirements in the terms of the Arrangement, Petitioners further understand that the United States will prohibit entry into this country of steel wire nails from Poland that (i) are not accompanied by an export certificate and (ii) are not consistent with the quantitative limitations specifically applicable to Poland as defined by the Arrangement.

Petitioners expect that the Arrangement with Poland will achieve the stated purpose of being an equivalent or better alternative to the antidumping investigation that is being withdrawn as a consequence of the entry in force of the Arrangement. For so long as this expectation is realized, Petitioners do not intend to file petitions seeking import relief with respect to steel wire nails from Poland during the period the Arrangement with Poland is effective. Should that expectation fail to be realized, then Petitioners will consider it their perogative to file such petitions as they may determine under the trade laws. In any event, Petitioners expressly do not waive any statutory right under the trade laws or take such other steps as may be provided by law.

Respectfully submitted,

David E. Birenbaum,

Counsel for Petitioners.

[FR Doc. 85–20823 Filed 8–29–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–307–505]

Carbon Steel Wire Rod From Venezuela; Termination of Antidumping Duty Investigation

August 27, 1985.

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated July 19, 1985, petitioners withdrew their antidumping duty petition, filed on April 8, 1985, on carbon steel wire rod (wire rod) from Venezuela. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur Simonetti, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–4198.

SUPPLEMENTARY INFORMATION:

Case History

On April 8, 1985, we received a petition from Atlantic Steel Company, Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, on behalf of the U.S. industry producing wire rod.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on April 29, 1985 (50 FR 18901). On May 15, 1985, the ITC found that there was a reasonable indication that imports of wire rod from Venezuela materially injure, or threaten material injury to, a United States industry.

Scope of Investigation

The product under investigation is carbon steel wire rod, a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Wire Rod is currently classifiable under item 607.17 of the *Tariff Schedules of the United States* (TSUS).

Withdrawal of Petition

In a letter dated July 19, 1985, petitioners notified us that they were withdrawing their April 8, 1985 petition, and requested that the investigation be terminated. A copy of petitioners' letter is appended to this notice. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on a bilateral arrangement with the Government of Venezuela to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to

terminate. For these reasons, we are terminating our investigation.

August 21, 1985

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

Contains No Confidential Information, Dockets C–307–506 and A–307–505, Page 1 of 4

July 19, 1985.

Mr. Gilbert B. Kaplan

Acting Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, Washington, DC 20230

Attention: Central Records Unit, Room B–099

Re: Carbon Steel Wire Rod from Venezuela; C–307–506 and A–307–505

Dear Mr. Kaplan: We have been advised by the United States Trade Representative ("USTR") that an Arrangement concerning trade in certain steel products has been entered into between the governments of Venezuela and the United States. Pursuant to this Arrangement, the government of Venezuela has agreed to restrain exports of carbon steel wire rod for the period of the Arrangement.

The Arrangement requires the withdrawal of the countervailing duty and antidumping petitions described in paragraph 1 of Appendix A to the Arrangement, including the countervailing duty (C–307–506) and antidumping duty (A–307–505) petitions filed on April 8, 1985, by Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company concerning carbon steel wire rod.

At present, the Department has reached a preliminary affirmative countervailing duty determination that carbon steel wire rod from Venezuela was subsidized during the period of investigation at a rate of 70.98 percent *ad valorem*. The antidumping order is due for decision on September 16, 1985. In these circumstances, Petitioners' reasonable expectation is that, should these investigations lead to final orders, there would be substantial relief provided in the form of countervailing and/or antidumping duties that would alleviate the conditions that led to Petitioners' allegations in the antidumping and countervailing duty petitions that unfairly traded wire rod from Venezuela was being sold at injuriously low prices.

Petitioners have demonstrated in numerous proceedings that even the smallest volumes of unfairly traded steel wire rod can have an injurious effect in the marketplace. Wire rod is fungible within grade and is generally sold through brokers to customers that have current and sophisticated market knowledge. A single ton of wire rod is often offered to numerous potential customers before a sale is made with the result that the offering price becomes the litmus for price formation. Therefore, volume reduction alone will not eliminate injurious effect. This was acknowledged by Ambassador Lighthizer in testimony before the House Committee on Energy and Commerce on March 19, 1985, when he stated that a "level playing field" requires that "unfairly traded steel [be] removed from the system."

Based on the stated purposes of the President's Steel Program, it is the present expectation of the Petitioners that the export ceilings in the Arrangement with Venezuela will be the functional equivalent of a suspension of an investigation under section 734(c) of the 1979 Trade Agreements Act. This expectation assumes that the Arrangement, by removing "unfairly traded" Venezuelan wire rod, will ameliorate the effect of subsidies and less than fair value sales as alleged in the petitions and ensure that there will be no undercutting of domestic price levels by the authorized imports of wire rod from Venezuela.

With the foregoing considerations in mind, and in reliance on the understandings and conditions expressly set forth herein, you are hereby notified that the Petitioners (i) withdraw the countervailing duty petition described in paragraph 1 of Appendix A to the Venezuelan Arrangement and (ii) withdraw the antidumping duty petition described in paragraph 1 of Appendix A. Please be advised that this withdrawal is subject to the following conditions:

1. Published assurance that the Venezuelan Arrangement is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications thereof by side letter or otherwise) that would revise, delay or impair the implementation of the specific restraints concerning wire rod. Petitioners also understand that the United States does not plan to agree to any modifications of the Arrangement (including increases in the annual export ceiling by reason of exception or otherwise) during its term that would change the Venezuelan obligations concerning wire rod adversely to the domestic industry.

2. The publication of this letter in the **Federal Register**, together with the termination notice and the assurances required as a condition to withdrawal.

3. Confirmation that the Arrangment with Venezuela is a "bilateral arrangement" within the meaning of section 804 of the Steel Import Stabilization Act of 1984 and that the President is authorized to enforce the Arrangement pursuant to section 805(a) of said Act. Pursuant to those provisions and the requirements in the terms of the Arrangement, Petitioners further understand that the United States will prohibit entry into this country of wire rod from Venezuela that (i) is not accompanied by an export certificate and (ii) is not issued consistent with the quantitative limitations specifically applicable to Venezuela as defined by the Arrangement.

Petitioners expect that the Arrangement with Venezuela will achieve the stated purpose of being an equivalent or better alternative to the countervailing duty and antidumping investigations that are being withdrawn as a consequence of the entry in force of the Arrangement. For so long as this expectation is realized, Petitioners do not intend to file petitions [as specified in paragraph 2(a)(3) of the Arrangment] seeking import relief with respect to wire rod from Venezuela during the period the Arrangement with Venezuela is effective. Should that expectation fail to be realized, then Petitioners will consider it their perogative to file such petitions as they may determine under the trade laws. In any event, Petitioners expressly do not waive any statutory right under the trade laws or to take such other steps as may be provided by law.

Respectfully submitted,

Charles Owen Verrill, Jr., Esq.

Wiley & Rein, 1776 K Street, NW., Washington, D.C. 20006 (202) 429–7000.

Counsel for Petitioners: Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., Raritan River Steel Co.

David E. Birenbaum, Esq.

Fried, Frank, Harris, Shriver & Jacobson, (A Partnership Including Professional Corporations) 600 New Hampshire Ave., NW., Washington, D.C. 20037 (202) 342–3500.

Counsel for Petitioner: Atlantic Steel Co.

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing letter was sent by first-class mail, postage prepaid, this 22nd day of July 1985, to the following addresses:

. William N. Walker, Esquire, David P. Houlihan, Esquire, Julie C. Mendoza, Esquire; Mudge, Rose, Guthrie, Alexander & Ferdon, 2121 K Street, NW., Washington, D.C. 20037.

Robert E. Nielsen

[FR Doc. 85–20821 Filed 8–29–85; 8:45 am]

BILLING CODE 3510-DS-M

[A–570–501]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China (PRC) Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from the respondent in this investigation to postpone the final determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final antidumping duty determination as to whether sales of natural bristle paint brushes and brush heads from the PRC have occurred at less than fair value until not later than December 16, 1985.

EFFECTIVE DATE: August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington D.C. 20230; telephone (202) 377–4136.

SUPPLEMENTARY INFORMATION: On March 11, 1985, we announced the initiation of an antidumping duty investigation to determine whether natural bristle paint brushes and brush heads from the PRC, are being, or are likely to be, sold in the United States at less than fair value (50 FR 10523). We issued our preliminary affirmative determination on July 29, 1985 (50 FR 31636). That notice stated that we would issue a final determination by October 14, 1985. On August 14, 1985, counsel for the sole respondent, the China National Native Produce and Animal By-Products Import-Export Corporation (the Animal-By-Products Corporation), requested that we extend the period for the final determination for 60 days until not later than the 135th day after publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. The Animal By-Products Corporation accounts for all exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than December 18, 1985.

This notice is published pursuant to section 735(d) of the Act.

Scope of Investigation

The products covered by this investigation are natural bristle paint brushes and brush heads as currently provided for in item 750.65 of the Tariff Schedules of the United States Annotated.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 23, 1985.

[FR Doc. 85–20822 Filed 8–29–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit to Dr. Thomas F. Albert

On July 15, 1985, notice was published in the **Federal Register** (50 FR 28604) that an application had bee filed by Dr. Thomas F. Albert, Senior Scientist, Department of Conservation & Environmental Protection, North Slope Borough, P.O. Box 69, Barrow, Alaska 99723, to take specimen materials from dead stranded or subsistence harvested bowhead whale (Balaena Mysticetus), gray whale (Eschrichtius robustus), beluga whale (Delphinapterus Leucas), bearded seal (Erignathus barbatus) and ringed seal (Phoca hispida).

Notice is hereby given that on August 23, 1985 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: August 27, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–20849 Filed 8–29–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit to LGL Limited, Environmental Research Associates

On June 21, 1985, notice was published in the **Federal Register** (50 FR 25734) that an application had been filed by the LGL Limited, Environmental Research Associates (P273C), 22 Fisher St., P.O. Box 280, King City, Ontario, LOG 1 KO, Canada, to take bowhead whales for scientific research.

Notice is hereby given that on August 23, 1985 as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: August 27, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Resource Management, National Marine Fisheries Service.

[FR Doc. 85–20850 Filed 8–29–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit to LGL Limited Environmental Research Associates

On June 21, 1985, notice was published in the **Federal Register** (50 FR 25734) that an application had been filed by the LGL Limited, Environmental Research Associates, P.O. Box, King City, Ontario, LOG 1KO, Canada, to take by harassment up to 400 bowhead whales (*Balaena mysticetus*) per year over a three year period for scientific research.

Notice is hereby given that on August 23, 1985 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be

consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

Dated: August 26, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries, Resource Management, National Marine Fisheries Service.

[FR Doc. 85–20851, Filed 8–29–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton, and Wool Apparel Products Produced or Manufactured in Macau

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 27, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated December 10, 1984 (49 FR 48594) established restraint limits of 13,462 dozen for cotton pajamas in Category 351 and 6,667 dozen for wool knit shirts and blouses in Category 438, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. In the letter to the Commissioner of Customs which follows this notice, these limits are being reduced to account for 1984 overshipments amounting to 1,263 dozen in Category 351 and 185 dozen in Category 438. The adjusted 1985 limit for Category 351 will be 12,199 dozen and for Category 438, 6,482 dozen for goods exported in 1985. These actions are taken in accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984 between the Government of the United States and Macau.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 10, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Macau.

Effective on August 27, 1985, you are directed to amend the directive of December 10, 1984 to reduce the restraint limits established for cotton and wool textile products in Categories 351 and 438 to the following:

Category	Adjusted 12-month limit [1] dozen
351	12,199
438	6,482

[1] The levels have not been adjusted to account for any imports exported after December 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–18375 Filed 8–29–85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1985 commodities and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: August 30, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 29, April 26, May 10 and June 7, 1985 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 12605, 50 FR 16532, 50 FR 19777 and 50 FR 24018) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

One comment was received in response to the notice proposing the addition to the Procurement List of the Eraser, Blackboard. The commenter, the current contractor, indicated that its contract represented 14% of the firm's total eraser sales. One comment was received in response to the notice proposing the addition to the Procurement List of the Gown, Operating, Surgical, NSN 6532–01–058–2520. The commenter indicated that his firm has been supplying this surgical operating gown to the Government since 1951 and has received six contracts for the gown in the last five years. The Committee considered the comments received as well as other pertinent information and determined that the addition of these commodities to the Procurement List would not cause severe impact on the current contractors.

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1985:

Commodities

Fitting Kit
4730-00-470-6625
Gown, Operating Surgical
6532-01-058-2520
6532-01-058-2519
6532-01-058-2523
Cabinet, Storage
7125-00-449-6862
Eraser, Blackboard
7510-00-244-9145
Line, Tent (Manila)
8340-00-252-2280
8340-00-252-2282
8340-00-252-2297
8340-00-252-2293

Services

Janitorial/Custodial
Army Materials and Mechanics Research Center Buildings 36, 37, 39, 43, 97, 131, 292, 311, 312, 313 only
Watertown, Massachusetts
Janitorial/Custodial
Building 1293
Hill Air Force Base, Utah

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

Accordingly, the following service is hereby deleted from Procurement List 1985: Repair and Maintenance of Electric Typewriters, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois.

E.R. Alley, Jr.,
Acting Executive Director.
[FR Doc. 85-20807 Filed 8-29-85; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped

Comments must be received on or before: October 2, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6 Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodities

Bag, Urine Collection
6530-01-074-6600
Paper, Teletypewriter, Roll
7530-00-142-9038
7530-00-935-4183
7530-00-171-9811
7530-00-285-3054
7530-00-286-5030
7530-00-019-7768
7530-00-019-7837
7530-00-019-7849
7530-00-019-7850
7530-00-019-8608
7530-00-019-8810
Strap, Webbing, Frame Attaching
8465-01-151-2891

Services

Commissary Shelf Stocking and Custodial
Rock Island Commissary
Rock Island, Illinois
Commissary Shelf Stocking and Custodial
Seneca Army Depot, New York
Janitorial/Custodial
Low Federal Buildings
Building A—120 Bernard Street
Building B—124 Bernard Street
Building C—100 W. Oglethorpe Avenue
Savannah, Georgia
Janitorial/Custodial
U.S. Department of Agriculture
National Finance Center
NASA Facility
13800 Old Gentilly Road
Building 350
New Orleans, Louisiana
Janitorial/Custodial
Building 2076 (second floor) and Building 2043 (second floor)
Marine Corps Development and Education Command
Quantico, Virginia
Janitorial/Custodial
Building 993, Dental Clinic
Naval Air Station, Whidbey Island, Washington
Janitorial/Custodial
1. Colville Ranger Office, 785 South Main Street, Colville, Washington
2. Computer Office Building, 695 South Main Street, Colville, Washington
3. Newport Administration Site, North Warren Avenue and Highway 20, Newport, Washington

Deletion

It is proposed to delete the following service from Procurement List 1985, October 19, 1984 (49 FR 41195):
Microfilming Contract Files, Department of the Navy, OICC Trident, Bremerton, Washington.

E.R. Alley, Jr.,
Acting Executive Director.
[FR Doc. 85-20807 Filed 8-29-85; 8:45 am]
BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of All-Terrain Vehicle (ATV) Consumer Exposure Survey

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3601 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a survey to determine consumer exposure to the hazards associated with the use of three- and four-wheeled All-Terrain Vehicles (ATVs). This exposure survey will seek information on the characteristics of ATV users, the types of ATVs in use, the amount of time ATVs are used and the various types of ATV usage.

Additional Details About the Requested Approval for Collection of Information

Agency Address: Consumer Product Safety Commission, 1111 18th Street, Washington, D.C. 20207.

Title of Information Collection: Survey to Determine Consumer

Exposure to Hazards Associated With the Use of All-Terrain Vehicles.

Type of Request: Approval of new plan.

Frequency of Collection: One time.

General Description of Respondents: Respondents owning ATVs will be selected from a national consumer panel consisting of households within the United States.

Estimated Number of Respondents: 960.

Estimated Number of Hours for All Respondents: 198 hours.

Comments: Comments on this request for approval for collection of information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395–7513. Copies of the request for approval of collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6629.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: August 27, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–20857 Filed 8–29–85; 8:45 am]

BILLING CODE 6355–01–M

Notification of Request for Extension of Approval of Information Collection Requirements; Labels and Instructions for Certain Coal and Wood Burning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted a request to the Office of Management and Budget for an extension through April 30, 1988, of its approval of collection of information requirements in 16 CFR Part 1406. That rule requires the manufacturers (including importers) of certain wood and coal burning appliances to provide safety labels on, and directions with, the products and to send copies of the labels and directions to the Commission. The manufacturers are also required to send the Commission an explanation of how the appropriate clearance distances stated on the labels and directions were determined. Since the requirement to submit information on clearances and copies of current materials to the Commission is already in effect, the future burden of this requirement applies only to manufacturers introducing new models or making changes to required information in previously submitted materials.

The purposes of these reporting requirements are to reduce the risks associated with the installation, operation, and maintenance of these appliances and to help determine the extent to which manufacturers are complying with 16 CFR Part 1406.

Information About the Requested Extension of Approval of Requirements for Collection of Information

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

Title of information collection: Coal and Wood Burning Appliances—Notification of Performance and Technical Data.

Type of request: Extension of approval.

Frequency of collection: One time, plus updates when new models are introduced or previously submitted materials are changed.

General description of respondents: Manufacturers and importers of coal and wood burning fireplace stoves, heaters, and similar appliances.

Estimated number of respondents: 20.

Estimated average number of hours per response: 3.

Estimated number of hours for all respondents: 60 per year.

Comments: Comments on this requested extension of approval of information collection requirements should be addressed to Andy Valez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone: (202) 395–7313. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Budget, Planning, and Program Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: August 27, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–20858 Filed 8–29–85; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD-University Forum, Working Group on Foreign Language and Area Studies; Advisory Committee Meeting

Summary: The Working Group on Foreign Language and Area Studies of the DoD-University Forum will meet in open session on September 16, 1985, from 10:00 a.m. until 4:00 p.m., at the Sheraton Grand Hotel, 525 New Jersey Avenue, NW., Washington, DC

The purpose of the meeting is to examine issues of common concern to the Department of Defense and the university community which affect the national resource base in language and area studies.

Public attendance will be accommodated as space permits. Public attendees are requested to telephone Jeanne Carney or Edward Blake in the DoD Office of Research and Laboratory Management on (202) 694–0205 before COB, September 12, 1985, to be advised of the meeting room and seating accommodations.

Dated: August 27, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–20770 Filed 8–29–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Traffic Management Command; Military Personal Property Symposium; Open Meeting

Announcement is made of a meeting of the Military Personal Property Symposium. This meeting will be held on 27 September 1985 at the Hyatt Regency-Crystal City Hotel, Crystal City, Arlington, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation (DOD 4500.34–R), and the handling of other matters of mutual interest concerning the Department of Defense Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0700–1530 hours. Topics to be

discussed should be received on or before 13 September 1985.

Joseph R. Marotta,

Colonel GS, Director of Personal Property.

[FR Doc. 85-20834 Filed 8-29-85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Privacy Act of 1974; Addition of System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of addition of systems of records.

SUMMARY: The Department of the Navy proposes to add three new systems of records in its inventory of systems of records subject to the Privacy Act of 1974.

DATES: The proposed action will be effective without further notice September 30, 1985, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the systems manager identified in the systems notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op-09B30), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 697-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93-579 were published in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22735), May 29, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 27, 1985.

SYSTEM NAME:

Navy/USMC Family Service Centers Volunteers.

SYSTEM LOCATION:

Navy Family Service Centers (FSCs) located at various Naval and Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who volunteers to assist at one of the Navy/USMC Family Service Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information such as name, home address, home telephone number, date of birth, age and number of children, experience, education, professional qualifications, interests, hobbies, assignments at the FSC, and any other information essential for placing the volunteer in the most appropriate position at the FSC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

To supervise the performance of individuals who have volunteered to assist in the Navy and Marine Corps Family Service Center (FSC) Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICE FOR STORING, RETRIEVING/ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name or skill of volunteer.

SAFEGUARDS:

Records are maintained in monitored or controlled areas accessible only to authorized personnel that are properly cleared and trained. Building/rooms locked outside regular working hours.

RETENTION AND DISPOSAL:

Records are retained for 15 years from the date the individual departs from the Center, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Family Support Program Division (NMPC-66), Human Resource Management Department, Naval Military Personnel Command, Washington, DC 20370.

NOTIFICATION PROCEDURE:

Written requests may be addressed to the Naval or Marine Corps activity concerned. Individuals should provide proof of identity, full name, dates of volunteer service, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information is obtained and periodically updated directly from the volunteer FSC employee.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N04064-1

SYSTEM NAME:

Naval Academy Laundry/Drycleaning Charge Account.

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, Annapolis, MD 21402-5052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have applied for a charge account with the Naval Academy Laundry and Drycleaning Plant.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW-USNA-DMH-4064/14 and includes applicant's name; SSN; rank (if applicable); branch of service; home and work addresses and telephone numbers. Information required to maintain the charge account records is obtained from and/or recorded on accounts receivable ledgers, journals, charge tickets and check listings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031; 44 U.S.C. 3101; Executive Order 9387.

PURPOSE(S):

To establish a charge account at the Naval Academy Laundry and Drycleaning Plant. Information will be used for billing purposes by the officials and employees of the Plant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICE FOR STORING, RETRIEVING/ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy and magnetic minicassette tape form.

RETRIEVABILITY:

Both hard copy and magnetic tape records are accessed alphabetically by name.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is routinely limited to the billing clerk processing the application and recording activity on the account. Records are secured within a locked office in a locked building on a military installation when not actually in use.

RETENTION AND DISPOSAL:

Hard copy records are retained in the current file area as long as the charge account is active. These records are then retired and kept in secured storage for two years and then destroyed. Cassette tape records are of two types, daily and journal (monthly recapitulation). These tapes are erased on a daily or monthly basis, respectively, during the preparation of the following day's or month's activity record.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, Annapolis, MD 21402–5052.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for the charge account, from daily laundry and drycleaning will-call tickets (charges for goods and services provided) and from records of payment by charge account holders (check listings).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N04064–2

SYSTEM NAME:

Retail Customer Claim Record.

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, Annapolis, MD 21402–5052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have filed claims against the Naval Academy Laundry and Drycleaning Plant and appropriation 17X4002 for cash or credit settlement for damage or lost articles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW–USNA–DMH–4064/15 and includes claimant's name; SSN; rank (if applicable); home and work addresses and telephone numbers; description, original cost and date of purchase of item(s) for which claim is filed, and circumstances of loss or extent of damage; claim number, disposition, and remarks by approving authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031; 44 U.S.C. 3101; Executive Order 9397.

PURPOSE(S):

Records are used by officials and employees of the Plant related to investigation of circumstances concerning a claim for cash or credit settlement for damaged or lost articles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy form.

RETRIEVABILITY:

Records are maintained in standard office files and may be accessed alphabetically or chronologically.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is limited to the official processing of the claim and the clerk who maintains the file and prepares the administrative paperwork. Records are secured within a locked office in a locked building on a military installation when not actually in use.

RETENTION AND DISPOSAL:

An individual's record is retained in the current file area for one calendar year after the close of the individual's claim. The record is then retired and kept in secured storage for one more year.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, Annapolis, MD 21402–5052.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies and from offices processing claims.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85–20719 Filed 8–29–85; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–2206–000]

Joseph K. Tannehill; Application

August 26, 1985.

Take notice that on August 15, 1985, Joseph K. Tannehill filed an application for approval under section 305(b) of the Federal Power Act, to hold concurrently the position of Director of Gulf Power Company and his present positions as president and chief executive officer of Stock Equipment Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20782 Filed 8-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-164-002, etc.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP80-164-002]

August 23, 1985.

Take notice that on July 26, 1985, ANR Pipeline Company (ANR), 500 Renaisance Center, Detroit, Michigan 48243, filed in Docket No. CP80-164-002 a petition to amend the order issued on April 18, 1980, in Docket No. CP80-164 issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act so as to add a new receipt point in the transportation of natural gas for United Gas Pipe Line Company (United), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it is currently authorized to transport up to 16,800 Mcf of natural gas per day on a firm basis for United from South Marsh Island Area block 137 (SMI 137) to the interconnection of Petitioner and United at Petitioner's Patterson station in St. Mary Parish, Louisiana. Petitioner states that due to the unitization of SMI blocks 136 and 137 an amendment to the transportation agreement dated December 11, 1979, was executed on October 8, 1984, adding a new receipt point in SMI 136. It is further stated that the potential exists for the acquisition of additional gas supplies by United which would require transportation from areas in proximity to SMI 136 and 137. The gas to be transported would not exceed the authorized 16,800 Mcf, it is stated.

Petitioner also requests blanket authorization to add or delete new points of receipt and/or delivery points, as such changes become necessary. It is stated that Petitioner would file appropirate tariff sheet filings to its Rate Schedule X-124 reflecting such changes no later than January 31 of the year following the change.

Comment date: September 13, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company

[Docket No. CP85-760-000]

August 22, 1985.

Take notice that on August 6, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, hereinafter referred to jointly as Applicants, filed in Docket No. CP85-760-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Allied Corporation (Allied) under their certificates issued in Docket Nos. CP-83-76-000 and CP83-496-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in their request on file with the Commission and open to public inspection.

Applicants propose to transport up to four billion Btu equivalent of natural gas per day on behalf of Allied through October 31, 1985, to Allied's Chesterfield, Virginia, plant to be used as boiler fuel. Columbia Gulf would receive the gas at existing points of receipt in Louisiana from United Gas Pipe Line Company and redeliver to Columbia Transmission which would redeliver to Commonwealth Gas Pipeline Corporation for redelivery to Commonwealth Gas Services, Inc., for ultimate delivery to Allied.

Applicants states that the gas to be transported has been flowing since March 1, 1985, pursuant to § 157.209 of the Commission's Regulations.

Columbia Gulf would charge one of the rates in its Rate Schedule T-2 for its transportation service: Offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and gas rfeceived from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within Commonwealth Gas Pipeline Corporation's total daily entitlement (TDE). However, Columbia Transmission states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky; and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky if the volumes are in excess of Commonwealth Gas Pipeline Corporation's TDE. Columbia Transmission would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission would collect the General R&D Funding Unit of the Gas Research Institute for all gas transported under the transportation arrangement.

Applicants also request flexible authority to add or delete receipt/delivery points associated with soruces of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 7, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. El Paso Natural Gas Company

[Docket No. CP85-765-000]

August 22, 1985.

Take notice that on August 7, 1985, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-765-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a sales meter station for the delivery of natural gas to Southwest Gas Corporation (Southwest)

for resale to consumers in the City of Phoenix, and environa, In Maricopa County, Arizona (Phoenix), under the certificate issued in Docket No. CP82–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that it was granted authorization, by order issued January 11, 1944, in Docket No. G–288, to sell natural gas to Central Arizona Light and Power Company, predecessor-in-interest to Arizona Public Service Company (APS), for resale to customers in Phoenix. It is stated that Applicant currently provides natural gas service to Southwest, as successor-in-interest to APS, pursuant to a service agreement (agreement) between Applicant and Southwest dated August 15, 1970.

It is indicated that Applicant has received a request from Southwest for natural gas service at a new point on Applicant's existing 16-inch Ocotillo power plant line in Maricopa County, Arizona. It is stated that the requested quantities of natural gas (up to 782 Mcf per day during the third year of service) would be used to serve additional residential and commercial space heating requirements of consumers in Phoenix. In order to provide this service, Applicant proposes to construct and operate a sales meter station consisting of one American 500B positive displacement meter and one 2⅝-inch tap and valve assembly, to be known as the Arizona meter station, on the Ocotillo power plant line. It is stated that the estimated cost of the facilities is $34,500.

Applicant states that the gas would be used to accommodate Priority 1 and 2(c) load growth requirements.

Comment date: October 7, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Mississippi River Transmission Corporation

[Docket No. CP85–733–000]

August 23, 1985.

Take notice that on July 24, 1985, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP85–733–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to increase its firm deliveries of natural gas to one of its direct sales customers, Mississippi Lime Company (MLC), by 3,200 Mcf of natural gas per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it presently supplies MLC a maximum daily volume of 4,300 Mcf of natural gas per day, pursuant to Commission orders issued on July 1, 1966, in Docket No. G–863 and on March 20, 1970, in Docket No. CP70–156. According to Applicant, MLC now seeks to increase the maximum daily volume that it receives in order to accommodate an expansion of its plant facility in Ste. Genevieve County, Missouri, which is scheduled for completion by mid-1986, and in order to meet a general increase in demand for MLC products.

Applicant says that it charges MLC for firm gas volumes a base price of $1.60 per Mcf plus adjustments made periodically to reflect the current cost of purchased gas.

Applicant further states that it would use only its existing facilities to deliver the proposed additional firm volumes to MLC.

Comment date: September 13, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85–775–000]

August 23, 1985.

Take notice that on August 12, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. [Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–775–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to implement adjustments to the firm entitlement of certain of Northern's market area utility customers as a result of the stipulation and agreement of settlement (stipulaltion and agreement) filed in resolution of issues in Docket Nos. RP82–71, TA83–1–59, TA84–1–59, and TA85–1–59, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that as part of the stipulation and agreement, Northern agreed to provide for a firm entitlement adjustment program which would be in effect through November 1986. Northern states that this program would allow each of its market area customers to reduce or realign its respective level of firm entitlement in the following manner:

(1) Effective March 27, 1985, November 27, 1985, and November 27, 1986, each of Northern's market area utility customers would be allowed to reduce its firm entitlement under the CD–1, CDO–1, or PL–1 Rate Schedules up to a maximum of 2 percent of its then currently effective firm entitlement (turnback program).

(2) Any customer not requesting a reduction in its currently effective firm entitlement or who only desires to reduce a portion of the 2 percent limit, may realign from CD–1, CDO–1 or PL–1 to SS–1 up to the maximum 2 percent limit or the balance of the 2 percent limit not reduced.

(3) If a customer does not reduce or realign up to the 2 percent limit in any year, a carryover of the unutilized portion of such 2 percent limit to a subsequent year will not be allowed. A customer would have the option to participate in all or any of the three phases of the turnback program.

Northern indicated that in Docket No. CP85–636–000, it filed an application to implement the first phase of the turnback program.

Northern states that as a result of the implementation of the firm entitlement adjustment program, it now seeks authority to realign and reduce 45,141 Mcf of gas per day of its market area system firm entitlement to be effective November 27, 1985. Northern indicates that the proposed reduction in firm entitlement is the net result of 50,320 Mcf of gas per day decrease in contract demand, 180 Mcf per day decrease in contract demand offsystem, 10,394 Mcf per day increase in seasonal service, and 5,035 Mcf per day decrease in pipe line service.

Northern states that it agreed to file a certificate application under section 7(c) of the Natural Gas Act on or before June 1, 1985, or as soon afterward as possible to implement the second phase of the turnback program to be effective November 27, 1985. Northern also states that no facility modifications are required to implement the proposed adjustments.

Northern also indicates that section VII of the stipulation and agreement provides that upon effectuation of a reduction in the firm entitlement of Northern's customers, each customer's additional demand quantities (ADQ's), as established in Northern's rate settlement in Docket No. RP82–71 and billed during the winter heating months of December through March, would be increased by an increment equal to the daily firm entitlement reduction (CD–1, CDO–1 or PL–1 reduction). Northern also states that this reduction would not apply to any realignment from those same rate schedules to Rate Schedule SS–1 and that through October 26, 1985, the volume to be utilized in computing

the minimum monthly bill volumes for the Rate Schedule PL–1 customers would remain at the level in effect on October 27, 1984.

In addition, Northern states that it would not request authority to adjust its demand rate as of the effective date of each phase in the turnback program but would recover its costs through Commission-approved tracking mechanisms. Finally, Northern indicates that in any general rate proceeding made prior to November 27, 1987, it would not be precluded from filing to recover any demand revenue shortfall resulting from the turnback program.

Comment date: September 13, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Northwest Central Pipeline Corporation

[Docket No. CP72–15–006]

August 23, 1985.

Take notice that on August 5, 1985, Northwest Central Pipeline Corporation (Northwest Central), P. O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP72–15–006 a petition to amend the Commission's order issued November 1, 1971, in Docket No. CP72–15, as amended,[1] pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Northwest Central seeks authorization to utilize the existing Jane, Missouri, exchange point not only as a delivery point from Northwest Central to Arkansas Louisiana Gas Company (Arkla) but also as a delivery point from Arkla to Northwest Central, so that Arkla would be authorized to deliver gas to Northwest Central at this point under its jurisdictional exchange Rate Schedule XE–34, as well as under its jurisdictional sale Rate Schedule X–8.

Northwest Central states that the instant proposal would benefit both parties since it would permit the Jane, Missouri, delivery point to be used as a delivery and balancing point for both parties.

Comment date: September 13, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] As amended by orders issued July 17, 1972 (48 FPC 102); April 20, 1973 (unreported); January 21, 1974 (51 FPC 298); January 9, 1975 (53 FPC 55); March 26, 1976; June 25, 1979; and April 28, 1982.

7. Southern Natural Gas Company

[Docket No. CP82–276–008]

August 23, 1985.

Take notice that on August 7, 1985, Southern Natural Gas Company (Southern), P. O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP82–276–008 a petition to amend the Commission's order issued July 15, 1982, in Docket No. CP82–276–000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas, from a new source of gas supply from offshore Louisiana, for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By Commission order issued July 15, 1982, in Docket No. CP82–276–000, Southern was authorized, among other things, to transport up to 45 billion Btu equivalent of natural gas per day for Transco from Mississippi Canyon Area Blocks 150, 151, 194 and 195, (Block 194 Field) offshore Loisiana, to an interconnection of Transco's facilities and Southern's 20-inch Duck Lake-Franklinton Pipeline in Livingston Parish, Louisiana. Southern rendered the subject transportation pursuant to an agreement dated February 24, 1982. By an amendment, dated November 9, 1984, to the agreement, Southern states it has agreed to transport gas purchased by Transco from Mississippi Canyon Area Block 20 in addition to the gas produced from the Block 194 Field. It is asserted that the receipt points and redelivery points, the quantity of gas transported and the rate charged for the transportation service would remain unchanged as originally set forth in the original gas transportation agreement.

Southern states that it currently transports Block 20 gas for Transco under the terms of a letter agreement dated November 9, 1984, pursuant to Southern's blanket certificate issued April 16, 1980, in Docket No. CP80–219–000. The self-implementing transportation service was reported to the Commission in Docket No. ST85–1218–000.

By the instant petition, Southern requests the Commission amend its order in Docket No. CP82–276–000, by authorizing the transportation of this new gas supply source, from Block 20 offshore, Louisiana, to be included in the gas volumes presently being transported for Transco.

Comment date: September 13, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20856 Filed 8-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-690-000, etc.]

Electric Rate and Corporate Regulation Filings; Commonwealth Edison Co. et al.

August 26, 1985.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER85-690-000]

Take notice that Commonwealth Edison Company, on August 14, 1985, tendered for filing proposed changes in its FERC Electric Tariff. The proposed changes revise the Electric Service Contract between Commonwealth Edison Company and the City of Naperville, Illinois, to provide a temporary point of electric supply to the City by the Company.

A copy of the filing has been served upon the City of Naperville, Illinois.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corporation

[Docket No. ER85-694-000]

Take notice that on August 15, 1985, Allegheny Power Service Corporation (APSC) on behalf of West Penn Power Company, tendered for filing Amendment No. 10 to its Interchange Agreement dated February 1, 1968 with Duquesne Light Company, West Penn Power Company Rate Schedule FPC No. 24. A Certficate of Concurrence by Duquesne Light Company was also filed. Amendment No. 10 terminates two interconnection points between the parties, clarifies the application of an exhibit to the Interchange Agreement, and amends two sections of the Short-Term Power and Energy to reflect Duquesne Light Company's application of an up to 10% energy adder. West Penn Power Company does not anticiapte any significant revenue effects as a result of Amendment No. 10.

Copies of this filing were served upon Duquesne Light Company and the Pennsylvania Public Utility Commission.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Power Service Corporation

[Docket No. ER85-696-000]

Take notice that on August 19, 1985, Allegheny Power Service Corporation (APSC) on behalf of West Penn Power Company, tendered for filing Amendment No. 11 to its Interchange Agreement dated February 1, 1968 with Duquesne Light Company, West Penn Power Company Rate Schedule FPC No. 24. A Certficate of Concurrence by Duquesne Light Company was also filed. Amendment No. 11 establishes two new interconnection points between the parties, institutes a new service at those points, places a $.002/kWh cap on West Penn Power Company's 10% adder to the out-of-pocket cost of providing Non-Displacement Operating Capacity and Energy, and applies Duquesne Light Company's up to 10% adder. West Penn Power Company does not anticipate any significant revenue effects as a result of Amendment No. 11.

Copies of this filing were served upon Duquesne Light Company and the Pennsylvania Public Utility Commission.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Columbus & Southern Ohio Electric Company

[Docket No. ER85-684-000]

Take notice that American Electric Power Service Corporation (AEP) on August 9, 1985 tendered for filing on behalf of its affiliate Columbus & Southern Ohio Electric Company (CSOE), Supplement No. 1 dated June 1, 1985 to the Agreement dated June 1, 1983 between CSOE and the City of Columbus, Ohio (Columbus). The Commission has previously designated the 1983 Agreement as CSOE's Rate schedule FERC No. 33.

Supplement No. 1 increases the transmission demand rate for Transmission Service from $1.50 per kilowatt per month to $2.00 per kilowatt per month when CSOE is the supplying party. This proposed rate for Transmission Service is the same as in other AEP filings presently on file with the Commission.

Copies of this filing were served upon Columbus and the Public Utilities Commission of Ohio.

It is requested that the Commission permit this Supplement to become effective immediately. This will allow AEP to charge similar rates to electric utility systems interconnected with AEP affiliated operating subsidiaries since the rates included in this filing would coincide with the rates previously filed and accepted for filing by the Commission.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Green Mountain Power Corporation

[Docket No. ER85-688-000]

Take notice that Green Mountain Power Corporation ("GMP") on August 15, 1985 tendered for filing as a rate schedule an executed agreement dated as of November 10, 1982, between GMP and Masschusetts Municipal Wholesale Electric Co. (MMWEC). The proposd rate schedule provides for the sale of interruptible energy by GMP to MMWEC.

GMP states that a copy of the filing was served on MMWEC and the Vermont Public Service Board.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Electric Company

[Docket No. ER85-685-000]

Take notice that on August 12, 1985 Commonwealth Electric Company ("Commonwealth") filed pursuant to section 205 of the Federal Power Act and the implementing provisions of § 35.13 of the Commission's Regulations, a proposed change in rate under its currently effective Rate Schedule FERC No. 34.

Said change in rate under Commonwealth's Rate Schedule FERC No. 34 has been computed according to the provisions of section 6(b) of its Rate Schedule FERC No. 34. Such change is proposed to become effective January 1, 1984, thereby superseding the 23 KV Wheeling Rate in effect during calendar 1983. Commonwealth has requested that the Commission's notice requirements be waived pursuant to § 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of January 1, 1984.

Copies of the filing have been served upon Edison Company and the Massachusetts Department of Public Utilities.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Holyoke Water Power Company, Holyoke Power and Electric Company

[Docket No. ER85-689-000]

Take notice that Holyoke Water Power Company ("HWP") on August 16, 1985, tendered for filing an amendment to its RESALE SERVICE RATE CD-1 with the City of Chicopee, Massachusetts Municipal Lighting Plant ("Chicopee"). In addition, take notice that Holyoke Power and Electric

Company ("HP&E") on the same day tendered for filing RESALE SERVICE RATE CD–2 which supersedes its FULL REQUIREMENTS RATE F–1 under which it presently provides firm wholesale electric service to the Town of South Hadley, Massachusetts Electric Light Department ("South Hadley"). HWP, and its wholly-owned subsidiary, HP&E, have requested that both rate schedule changes be treated on a consolidated basis.

HWP and HP&E state that the proposed rate schedule amendments are required because of the higher level of costs to be incurred by them due to the expected commercial operation on or about May 1, 1986 of the Millstone Unit 3 nuclear generating station in Waterford, Connecticut.

HWP and HP&E propose an effective date of October 15, 1985 (60 days after filing) for both sets of rate schedule changes. However, in order to synchronize the effectiveness of the filed changes with the expected commercial operation of Millstone Unit 3 on or about May 1, 1986, the companies request that the effectiveness of both filings be suspended until the later of a five-month suspension beyond the requested effective date or the commercial operation of Millstone Unit 3.

HWP and HP&E state that the proposed increases to Chicopee and South Hadley would increase total revenues from jurisdictional sales and service by $5,509,000 based on the 12 month period ending December 31, 1986 (Period II). After taking into account anticipated fuel savings which will result from replacing fossil-fired generation with nuclear-powered generation when Millstone Unit 3 enters commercial operation, the total revenue increases during Period II are estimated by HWP and HP&E to be $4,301,000 or 30.2% for the two customers.

The companies state that copies of the filings were served upon Chicopee, South Hadley and the Department of Public Utilities of Massachusetts.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Louisiana Power and Light Company

[Docket No. ER85–683–000]

Take notice that on August 9, 1985, Louisiana Power and Light Company tendered for filing six copies of an Electric System Interconnection Agreement between the City of Winfield Louisiana and Louisiana Power and Light Company (LP&L) dated August 2, 1985.

LP&L said this agreement supersedes LP&L Supplement No. 2 to Rate Schedule FERC No. 70 which was approved in FERC Docket No. ER84–464–000 and made effective on May 7, 1984.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER85–695–000]

Take notice that on August 16, 1985, Kansas City Power & Light Company ("KCPL") tendered for filing an initial rate schedule for System Participation Power Service provided to the City of Osawatomie, Kansas—service Schedule H–MPA (KCPL Rate Schedule FERC No. 77). KCPL states that the rates for the service covered by the above-mentioned schedule are similar to rates based upon KCPL's incremental energy cost.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER85–696–000]

Take notice that on August 16, 1985, Kansas City Power & Light Company ("KCPL") tendered for filing an initial rate schedule for System Capacity Power Service provided to the City of Independence, Missouri—service Schedule G–MPA–1 (KCPL Rate Schedule FPC No. 56). KCPL states that the rates for the service covered by the above-mentioned schedule are similar to rates based upon KCPL's incremental energy cost.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER85–697–000]

Take notice that Niagara Mohawk Power Corporation (Niagara), on August 15, 1985 tendered for filing as a rate schedule, an agreement between Niagara and the Power Authority of the State of New York (PASNY) dated May 29, 1985.

Niagara presently has on file an agreement with PASNY dated January 15, 1963. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 22. This new agreement is being transmitted as a supplement to the existing agreement.

The original January 15, 1963 agreement states that Niagara will provide backup power when requested by PASNY so that PASNY can maintain an uninterrupted supply of interruptible power and energy to its aluminum reduction customers in the St. Lawrence Area. Niagara will supply the energy at a power rate not to exceed 80,000 kilowatts at any time prior to January 1, 1993 and at the rate of 40,000 kilowatts for the remainder of the agreement when and if Niagara can supply the power and energy from its generating facilities, contract resources or its interconnections without necessitating an interruption to its customers. This supplement revises the rate for emergency power as provided for in terms of the original agreement. Niagara requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective as of September 1, 1985.

Copies of the filing were served upon the following:

Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Electric Power Company

[Docket No. ER85–692–000]

Take notice that Southwestern Electric Power Company ("SWEPCO") on August 16, 1985, tendered for filing rates applicable to service to Cajun Electric Power Cooperative, Inc. ("Cajun") for the period February 1, 1985 to December 31, 1985. Such rates were calculated pursuant to the Contract for Electric Service between SWEPCO and Cajun, FERC Rate Schedule No. 85. SWEPCO asks that the rates be made effective as of February 1, 1985 and, accordingly, requests waiver of the notice requirements under the Federal Power Act. Copies of the filing have been served on Cajun and on the Louisiana Public Service Commission.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

13. South Carolina Electric & Gas Company

[Docket No. ER85–686–000]

Take notice that South Carolina Electric & Gas Company on August 12, 1985, tendered for filing proposed cancellation of FERC Schedule No. 35 dated April 12, 1984, agreement between South Carolina Electric & Gas Company and Carolina Power & Light Company.

The cancellation is proposed to be effective 60 days after filing. South

Carolina Electric & Gas Company has sent copies of this filing to Carolina Power & Light Company.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

14. Southern California Edison Company

[Docket No. ER85-691-000]

Take notice that on August 14, 1985, Southern California Edison Company (Edison) tendered for filing a notice of change of rates for the purchase of Replacement Capacity by the Cities of Anaheim (Anaheim) and Riverside (Riverside) from Edison for San Onofre Nuclear Generating Station, Unit No. 2 (SONGS Unit No. 2), under the provisions of the following rate schedules:

	Rate [1]
City of Anaheim	85
City of Riverside	84

[1] Schedule FERC No.

Edison requests waiver of the Commission's prior notice requirement and an effective date of February 26, 1985, for these rate changes.

Comment date: September 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20855 Filed 8-29-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed Week of July 12 Through July 19, 1985

During the Week of July 12 through July 19, 1985, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 16, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 12 Through July 19, 1985]

Date	Name and location of applicant	Case No.	Type of submission
June 26, 1985	Gordon K. Walz, et al., Washington, DC	HRZ-0261	Interlocutory. If granted: The law firm of Chamberlain, Hrdlicka, White, Johnson and Williams, counsel for Revere Petroleum Corporation, would be disqualified form continuing to represent the original parties in connection with the Proposed Remedial Order issued to Revere Petroleum Corporation (Case No. HRO-0125).
July 15, 1985	San Antonio Light, San Antonio, TX	HFA-0301	Appeal of a Freedom of Information Request Denial. If granted: The June 17, 1985 Freedom of Information Request Denial issud by the DOE Executive Secretariat would be rescinded, and the San Antonio Light would receive access to documents relating to an explosion that occurred at Medina Air Force Base in San Antonio, Texas.
July 17, 1985	Revere Petroleum Corporation, Houston, TX	HRZ-0262	Interlocutory. If granted: Mr. William Mutryn and his law firm, Casson, Calligaro & Mutryn, common counsel for Gordon K. Walz, John K. Walz, John Woolsey, James J. Cross, Milton F. Walz and Corum Energy Corporation would be disqualified from continuing to represent the joined parties in connection with the Proposed Remedial Order issued to Revere Petroleum Corporation (Case No. HRO-0125).
July 18, 1985	Cities Service Oil & Gas Corporation, Washington, DC	HRS-0048	Request for Stay. If granted: All proceedings involving a Proposed Remedial Order issued to Cities Service Oil & Gas Corporation (Case No. HRO-0285) would be stayed pending a determination regarding the propriety of the counsel representing the firm in this matter.
Do	Pacific Lighting Energy Systems, Commerce, CA	HFA-0302	Appeal of a Freedom of Information Request Denial. If granted: Pacific Lighting Energy Systems would receive access to certain DOE documents which were withheld by the Assistant Secretary for Policy, Safety and the Environment.
July 19, 1985	Winston Refining Company, Washington, DC	HEF-0050	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with the December 20, 1983 Consent Order entered into with Winston Refining Company.

REFUND APPLICATIONS RECEIVED

[Week of July 12 to July 19, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
July 5, 1985	Inland/City of Fulton	RF176-1.
Do	F.O. Fletcher/Forsberg Heating Oils.	RF172-1.
July 8, 1985	Glaser/Arkansas Valley Co-op Assoc.	RF174-1.

REFUND APPLICATIONS RECEIVED—Continued

[Week of July 12 to July 19, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Do	Field/Vern's Midtown Amoco Service.	RF173-1.
Do	Receive Orders/ Commonwealth Oil Refining Co.	RF171-3.

REFUND APPLICATIONS RECEIVED—Continued

[Week of July 12 to July 19, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
July 9, 1985	Independent Oil/Deichler Tire Center.	RF175-1.
July 12, 1985	F.O. Fletcher/Thrifty Oil Host.	RF172-4.
July 15, 1985	Hertz/United Airlines	RF176-152

REFUND APPLICATIONS RECEIVED—Continued

[Week of July 12 to July 19, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Do.	McCarty/Clarke Landmark, Inc.	RF143-13.
Do.	Aminoil/Lutz LP gas Company.	RF139-40.
Do.	Aminoil/W. George Watkins.	RF139-41.
Do.	Aminoil/Lowe's Pellets & Grains, Inc.	RF139-42.
Do.	F.O. Fletcher/Save Way	RF172-2.
Do.	F.O. Fletcher/Vernon Pratt.	RF172-3.
Do.	Cosby-World Oil Co.	RF170-6.
Do.	Cosby-Auto Mat Oil Company.	RF170-5.
Do.	Ayers/Morrow Service Station.	RF177-1.
Do.	Aminoil/Baughman Tile Co., Inc.	RF139-45
July 16, 1985	Husky/Montana Petroleum Marketing Co., Inc.	RF161-3.
Do.	Aminoil/Terhune L.P. Gas Co.	RF139-43
Do.	Nielsen-Lueders Oil Company.	RF141-10
Do.	Red Triangle/Gennuso's Service.	RF178-1.
July 17, 1985	Aminoil/Tru-Gas of Florida, Inc.	RF139-44
Do.	Aminoil/L.H. Osting & Sons, Inc.	RF139-46.
July 18, 1985	Amoco/Kansas	RF221-2004.
Do.	Receive Orders/Gulf States Oil & Refining Company.	RF171-4.
July 19, 1985	LARCO/Reimann Oil Co., Inc.	RF112-167.
Do.	LARCO/Matthews, Inc.	RF112-166.
Do.	LARCO/Finest Oil Company.	RF112-165.
Do.	Aminoil/Wilder & Son, Inc.	RF139-47.

[FR Doc. 85-20774 Filed 8-29-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Budget Airport Associates, Inc. et al.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $72,235.09 (plus accrued interest) obtained as a result of four separate consent orders which the DOE entered into with Budget Airport Associates, Inc. (Case No. HEF-0044), Consolidated Leasing Corp. (Case No. HEF-0054), Grand Rent-A-Car Corp. (Case No. HEF-0083), and Traveler's Rental, Inc. (Case No. HEF-0182). The fund will be available to customers who purchased motor gasoline from one of the consent order firms during the applicable consent order period.

DATE AND ADDRESS: Applications for Refund of a portion of the consent order funds must be postmarked within 90 days of publication of this notice in the Federal Register and should be addressed to the applicable consent order fund and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All applications should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to four separate consent orders entered into by the DOE and Budget Airport Associates, Inc. d/b/a Budget Rent-A-Car, Consolidated Leasing Corp., Grand Rent-A-Car Corp., and Traveler's Rental, Inc. d/b/a Dollar Rent-A-Car. The consent orders settled possible pricing violations with respect to the firms' sales of motor gasoline to customers during the applicable consent order periods. The consent order periods and consent order amounts are set forth below:

Budget: 8/1/79-8/31/80—$13,688.26
CLC: 8/1/79-8/31/80—$16,500.00
Grand: 8/1/79-1/28/81—$34,177.86
Dollar: 8/1/79-5/31/80—$7,868.97

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order funds. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on December 4, 1984. 49 FR 48362 (December 12, 1984).

As the Decision and Order indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the Federal Register.

Applications will be accepted from customers who purchased motor gasoline from one of the consent order firms during the relevant consent order period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: August 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

August 20, 1985.

Names of Firms: Budget Airport Associates, Inc., Consolidated Leasing Corporation, Grand Rent-A-Car Corporation, Traveler's Rental, Inc.

Date of Filings: October 13, 1983.

Case Numbers: HEF-0044, HEF-0054, HEF-0083, HEF-0182.

Pursuant to the provisions of 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) in connection with consent orders entered into with four motor vehicle rental companies: Budget Airport Associates, Inc. d/b/a Budget Rent-A-Car (Budget), Consolidated Leasing Corp. (CLC), Grand Rent-A-Car (Grand), and Traveler's Rental, Inc. d/b/a Dollar Rent-A-Car (Dollar). [1] The Petition requests that the OHA formulate and implement procedures for the distribution of the funds received pursuant to the consent orders.

I. Background

Each of these companies is engaged in the business of renting motor vehicles. In the course of rental transactions, the firms levy a refueling charge when a customer returns a vehicle with less motor gasoline than when the vehicle was rented. According to the ERA, the firms were therefore "retailers" of motor gasoline as that term was defined in 10 CFR 212.31 and were subject to the DOE Mandatory Petroleum Price Regulations. ERA audits of the firms' operations revealed possible pricing violations of the regulations set forth in 10 CFR Part 212, Subpart F. In order to settle all claims and disputes between the firms and the DOE regarding their resale of motor gasoline during the audit periods from the audit locations, the firms entered into consent orders with the DOE. The consent orders refer to the ERA'S characterization of the firms as retailers and allegations of overcharges, and the firms' objections to the ERA's position on those issues, but note that the issues were not adjudicated. The

[1] The Budget, CLC, Grand, and Dollar consent orders were signed on July 7, 1981, March 16, 1981, March 13, 1981, and December 31, 1980 respectively.

audit periods (which are the same as the consent order periods), consent order amounts, and locations covered by the consent orders are set forth below:

Budget: 8/1/79–8/31/80—$13,688.26; L.A. Airport
CLC: 8/1/79–8/31/80—$16,500.00; L.A. Airport
Grand: 8/1/79–1/28/81—$34,177.86; L.A. Airport
Dollar: 8/1/79–5/31/80—$7,868.97; [3] Boston Airport

The ERA audits encompassed *only* the Los Angeles International Airport operations of Budget, CLC and Grand, and the Boston Logan Airport operations of Dollar.

On December 4, 1984, the OHA issued a Proposed Decision and Order (Proposed Decision) tentatively setting forth procedures to distribute refunds to parties who were injured by the firms' alleged violations in sales of motor gasoline during the consent order periods. 49 Fed. Reg. 48362 (December 12, 1984). In the Proposed Decision, we described a two-stage process for distribution of the funds made available pursuant to the consent orders. Specifically, we proposed to disburse funds in the first stage to eligible claimants who were injured by the firms' alleged overcharges. We stated that the money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process, and we pointed out that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

The purpose of this Decision is to establish procedures to be used for filing and processing claims in the first stage of this refund proceeding. This Decision sets forth the information that a purchaser of motor gasoline from one of the consent order firms should submit in order to establish eligibility for a portion of the consent order funds. We will not, however, determine procedures for the second stage of the refund process in this Decision. Our determination concerning the final disposition of remaining funds will necessarily depend on the size of the fund. *Marion Corp.*, 12 DOE ¶ 85,014 (1984) *(Marion)*. It would therefore be premature for us to address the issues raised by a commenter concerning the disposition of funds remaining after all the meritorious first stage claims have been paid.[3]

[3] Comments on the second-stage refund procedures were filed by the State of New Mexico. The State argues that any funds remaining in the consent order fund after refunds are distributed to meritorious claimants should be distributed to the states for use in energy-related projects.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as a part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). As we stated in the Proposed Decision, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the four consent order funds. We will therefore grant the ERA's petition and assume jurisdiction over these funds.

III. First-Stage Refund Procedures

As we indicated in the Proposed Decision, it is likely that all claimants in this proceeding will be consumers (end-users) of the motor gasoline which the consent order firms supplied. In view of the fact that the consent orders covered only the Los Angeles International Airport operations of Budget, CLC, and Grand, and the Boston Logan Airport operations of Dollar, only claimants who returned rental vehicles to those locations will be eligible for refunds in this proceeding.

In previous special refund proceedings, we have found that end-users did not pass through increased costs resulting from alleged overcharges and found that they therefore incurred injury as a result of purchases made from the consent order firm. *See Marion; Thornton Oil Corp.*, 12 DOE ¶ 80,105 (1984). Consistent with these precedents, we have determined that the vehicle rental customers who are eligible to apply in this proceeding were injured by any alleged overcharges which occurred. To be eligible for a refund, claimants must only document the specific quantities of motor gasoline for which they paid a refueling charge to the consent order firm during the applicable consent order period.[4]

In the Proposed Decision, we noted that many customers' receipts do not indicate the number of gallons purchased from the rental company, but instead merely state the dollar amount of the refueling fee. By dividing the total refueling dollar amount by the price per gallon, applicants will be able to calculate the gallonage which they purchased from the company. In the case of Dollar, the records indicate that during the period August 1, 1979 through November 21, 1979, the firm charged $1.09 per gallon. From November 22, 1979, through May 31, 1980, Dollar charged $1.30 per gallon. (These amounts were also used for a one gallon "top off" fee charged by Dollar to all customers. Claimants who paid this "top off" charge will also be eligible for a refund.)

In the cases of Budget, CLC, and Grand, however, we have no records that would indicate the prices charged by the firms. In the Proposed Decision, we proposed that customers of these rental companies use the price data that we have for Dollar to calculate their refueling gallonage. Since we have received no objection to this proposal, we will adopt it in this proceeding. We believe that the Dollar figure closely approximates the charges levied by other firms since not only were the business operations similiar, but also the consent order periods overlap. Therefore, applicants should apply the $1.09 per gallon amount on purchases made between August 1, 1979 and November 21, 1979, and the $1.30 per gallon amount for purchases made after November 21, 1979 through the period covered by the applicable consent order.

We will also adopt our proposal that refunds be calculated according to a volumetric method. Under this method, refunds will be computed by multiplying an applicant's total purchase volumes by a per gallon volumetric amount derived by dividing the applicable consent order firm's settlement amount by the total volume of motor gasoline sold by the firm during the consent order period. While we do not know the precise amount of motor gasoline sold by each of the rental companies from its audited location during the consent order period, each firm has provided a reasonable estimate of the volume of motor gasoline it sold. Based upon these figures, we have established a volumetric amount for each case.[5] The

[4] This showing will also be sufficient for any claimant who is a petroleum refiner or reseller and whose refund calculated under the volumetric presumption amounts established in this proceeding is $5,000 or less. *See The Hertz Corp./Conoco Inc.*, 13 DOE ¶85,041 at 88,097 n.1 (1985).

[5] Claimants may seek to establish that the volumetric refund presumption should not be applied in their cases. In order to do so, they must demonstrate that the alleged overcharges resolved by the consent order were disproportionately borne by them, resulting in a level of probable injury in excess of the volumetric presumption. *See Office of Special Counsel*, 10 DOE ¶85,048 at 88,199 (1982).

per gallon volumetric amount for each proceeding is set forth below:

Budget: $0.01239—($13,688.26 divided by 1,105,000)
CLC: $0.01269—($16,500.00 divided by 1,300,000)
Grand: $0.00774—($34,177.86 divided by 4,413,200)
Dollar: $0.03319—($7,868.97 divided by 237,070)

An eligible applicant will also receive a proportionate share of the interest which has accrued on the respective consent order fund since its remittance to the DOE.

We recognize that it is likely that many of the affected customers were individual motorists who purchased very small amounts of gasoline in isolated transactions. As a result, the amount of refunds to which most individual customers will be entitled will be very small. As in prior special refund cases, we will not approve refunds for less than $15.00 (the approximate cost to the government of issuing refund checks) because the cost to the public of issuing such small refunds exceeds the restitutionary benefits which may be achieved. *See e.g., Uban Oil Co.*, 9 DOE ¶82,541 at 85,225 (1982).

V. Application for Refund Procedures

We have determined that the procedures described above are the most equitable and efficacious for purposes of distributing the consent order funds. Accordingly, we shall now accept applications for refunds from customers who rented motor vehicles from one of the consent order frims and incurred refueling charges during the consent order period.

Each application should contain the following information:

1. The refund applicant's name and reference to the applicable case number: Budget, HEF–00444; Consolidated Leasing Corp., HEF–0054; Grand, HEF–0083; or Dollar, HEF–0182.

2. The name and telephone number of a person who may be contacted by this Office for additional information concerning the application.

3. The location where the rental transactions occurred.

4. The *total gallons* of motor gasoline for which a refund is claimed as a result of payment of refueling charges, including Dollar's "top off" charges.

5. If the total gallonage is extrapolated from refueling fees, indicate the total refueling charges incurred.

6. If an application is based upon estimates, indicate the method used to arrive at those estimates.

7. A brief explanation of the nature of the applicant's business and car rental usage, e.g., sales or field work, company car leasing arrangements. This information will help to support the number of rentals indicated in a refund application.

8. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. ¶ 1001.

All applications should be filed in duplicate and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All applications must be received within 90 days after publication of the Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the OHA. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by the Budget Airport Associates, Inc., Consolidated Leasing Corporation, Grand Rent-A-Car Corporation, and Traveler's Rental, Inc. may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: August 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85–20763 Filed 8–29–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures; Northeast Petroleum Industries

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for the disbursement of $322,748 obtained as a result of a consent order which the DOE entered into with Northeast Petroleum Industries, a reseller of petroleum products located in Chelsea, Massachusetts. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Northeast consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF–0137 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with §205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out forth below. The Decision relates to a consent order entered into by the DOE and Northeast Petroleum Industries, which settled possible pricing violations in Northeast's sales of residual fuel oil to its customers during the consent order period, November 1, 1973, through June 30, 1975. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Northeast consent order funds was issued on June 4, 1985. 50 FR 24,819 (June 13, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of the escrow account funded by Northeast pursuant to the consent order. The DOE has decided that a portion of the consent order funds should be distributed to two first purchasers which the DOE's audit of Northeast indicated may have been overcharged, provided each files an application for refund and demonstrates injury. Applications for refund will also be accepted from purchasers not identified by the DOE audit, as well as downstream customers of the identified purchasers. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged.

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased residual fuel oil from Northeast during the consent order period. Applications will be accepted provided they are filed in

duplicate and are received no later than 90 days after publication of this Decision and Order in the Federal Register. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: August 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

August 20, 1985.

Name of Firm: Northeast Petroleum Industries.

Date of Filing: October 13, 1983.

Case Number: HEF–0137.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA). The petition requests that the OHA formulate and implement procedures for the distribution of funds received in connection with a consent order that ERA entered into with Northeast Petroleum Industries (Northeast).

I. Background

Northeast is a "reseller" of "covered products" as those terms were defined in 10 CFR 212.31, and is located in Chelsea, Massachusetts. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum Price and Allocation Regulations with respect to sales of No. 6 residual fuel oil during the period November 1, 1973 through June 30, 1975 (audit period). In order to settle all claims and disputes between Northeast and the DOE regarding the firm's sales of No. 6 residual fuel during the audit period, Northeast and the DOE entered into a consent order on June 19, 1979. The consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Northeast does not admit that it committed any such violations. Finally, according to the Northeast consent order, the alleged overcharges affected two classes of customers, and separate processes were established by which Northeast would make refunds. Initially, Northeast agreed to refund $167,252, including interest, directly to two end-user customers.[1] In addition, the firm agreed to place $322,748, including interest to the date of deposit, into an escrow account for DOE to distribute to its other purchasers. The consent order funds were paid in full on April 30, 1982. This Decision concerns the distribution of the consent order funds that were deposited in the Northeast escrow account, plus accrued interest to date.[2]

On June 4, 1985, a Proposed Decision and Order (PD&O) was issued which set forth a tentative plan for the distribution of the Northeast consent order funds. The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we tentatively determined to rely, in part, on the information contained in the ERA audit files. The PD&O stated that this approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of the firm's products are identified in the audit file, *see, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under such circumstances, a more precise determination with respect to the identity of the parties allegedly overcharged in the first instance was possible. At the same time, we recognized that there may have been other purchasers not identified by the ERA audit who may have been injured as a result of Northeast's pricing practices during the audit period that would be entitled to a portion of the consent order funds. Therefore, procedures by which such purchasers could establish a refund claim in this proceeding were also proposed.

A copy of the PD&O was published in the Federal Register and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was sent to each purchaser identified in the ERA audit file.

II. Refund Procedures

The procedural regualtions of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

A. Refunds to Identified Purchasers

In the PD&O we stated that during the Northeast audit, two first purchasers were identified as having allegedly been overcharged. DOE audit files do not necessarily provide conclusive evidence as to the identity of possible refund recipients or the refund that may be appropriate. However, the information contained in the audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." *Marion* at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned either among the customers identified by the audit or to their downstream purchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984). The first purchasers identified by the audit, along with the share of settlement funds allotted to each by ERA, are listed in the Appendix.

Identification of first purchasers is only the initial step in the distribution process. We must also determine whether these first purchasers were actually injured, or whether any part of the alleged overcharges were passed on. As we stated in the PD&O, we will adopt certain presumptions in order to assist in determining a purchaser's level of injury. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[1] Our records show that these refunds were made to New England Power Service Company and Boston Edison Company.

[2] Northeast has also deposited funds into three other escrow accounts. One account represented alleged overcharges on motor gasoline during the period November 1, 1973 through April 30, 1974, and has already been distributed in first and second stage refund proceedings. *See* Northeast Petroleum Industries, 11 DOE ¶ 85,199 (1983). The two other accounts represent, respectively, Northeast's alleged overcharges on motor gasoline during the period May 1, 1974 through August 31, 1979, *see* Northeast Petroleum Industries, Case No. HEF–0138, and Northeast's alleged overcharges on crude oil and residual fuel oil during the period January 1, 1973 through January 28, 1981, *see* Northeast Petroleum Industries, Case No. HEF–0580. The procedures we are proposing below, however, apply only to the escrow account into which Northeast deposited the $322,748.

[i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). We will adopt presumptions in this case in order to permit claimants to participate in the refund process without disproportionate expense, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

As in previous special refund procedures, in this case we will adopt a presumption that claimants seeking small refunds were injured by Northeast's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed facutal information regarding the impact of alleged overcharges which took place many years ago. This procedure certainly can be time-consuming and expensive. In the case of small claims, the cost to the firm of gathering this factual information, and the cost to OHA of analyzing it, may exceed the expected refund amount. Failure to adopt simplified applicaiton procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows OHA to process a large number of routine refund claims quickly, and to use its limited resources more efficiently. Finally, these small claimants did purchase covered products from Northeast and were in the chain of distribution where the alleged overcharges occurred. Therefore, they were affected by the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit, and the OHA to analyze, detailed proof of what happened downstream of that initial impact.

Under the small claim presumption which we will adopt, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury if its refund claim is based on purchases below a threshold level. Other refund decisions have expressed the threshold either in terms of purchase volumes or dollar amounts. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In these cases, where the consent order fund is small, the refund amount is fairly low, and the time period of the consent order is many years past, establishing a threshold of $5,000 would be reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein.

The share of the escrow fund which the listed purchasers in the Appendix may receive represents 90 percent of the amount each was allegedly overcharged, and is consistent with the terms of the Northeast consent order, which settled for 90 percent of the total amount of alleged overcharges identified by the audit. In order to actually receive a refund each customer is required to file an application for refund. (*See* discussion *infra*).

However, since the refunds allotted to the Northeast's reseller customers exceed $5,000—and therefore are larger than a "small claim"—these firms are required to make a specific demonstration of injury prior to receiving the full refund allotted to them in the Appendix. As in previous special refund cases, these firms must show that they did not pass the effects of Northeast's alleged regulatory violations through to their own customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). While there are a variety of means by which they could make this showing, these firms should generally demonstrate that at the time they purchased Northeast's products, market conditions would not permit them to pass the alleged overcharged on to their own customers in the form of higher prices. In addition, the firms must show that they maintained a "bank" of unrecovered costs in order to demonstrate that they did not subsequently recover these costs by increasing their prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982). To the extent that the alleged overcharges were passed through, downstream customers of these first purchasers may be eligible to apply for refunds in this proceeding.

B. Refunds to Other Purchasers

There may also have been first purchasers other than those identified by the ERA audit, as well as subsequent repurchasers, who may have been injured by the alleged overcharges and who therefore could be entitled to a portion of the consent order funds. In light of this, we will contact Northeast and publish notice of this Decision and Order in the **Federal Register**, in an effort to reach these purchasers. We will accept information regarding the identity and present locations of these purchasers for a period of 90 days following publication in the **Federal Register** of notice of this final Decision and Order.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industy were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration; In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), and cases cited therein. We have concluded that end-users of Northeast petroleum products need only document their purchase volumes from Northeast to make a sufficient showing that they were injured by the alleged overcharges. As we indicated in the PD&O, if additional meritorious claims are filed, we will adjust the figures listed in the Appendix accordingly. Actual refunds will be determined only after analyzing all appropriate claims.[3]

[3] Purchasers identified in the ERA audit of Northeast as having allegedly been overcharged

Continued

Finally, as we indicated in the PD&O, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweights the modest benefits of restitution in those situations. *See, e.g., Uban, supra* at 85,225, *See also* 10 CFR 205.286(b).

III. Applications for Refund

We have concluded that the procedures described in the PD&O represent the best means available for distributing the Northeast consent order funds. No comments were received objecting to the refund procedures proposed in the PD&O. Accordingly, for the reasons stated in the PD&O we will implement these proposals. We shall now accept applications for refunds from customers who purchased No. 6 residual fuel oil from Northeast during the audit period. As proposed, the consent order funds will be distributed to the firms that the ERA alleged in its audit were overcharged by Northeast, provided each files an application, as well as to other eligible customers of Northeast who apply for a refund.

In order to receive a refund each claimant will be required to submit with its application, either a schedule of its monthly purchases of residual fuel oil from Northeast or a statement verifing that it purchased residual fuel oil from Northeast and is willing to rely on the data in the audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying these proceedings.

Purchasers not identified by the ERA audit will be required to provide specific information as to the date, place, and volume of products purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. A purchaser must indicate, as well, how it used the Northeast product, *i.e.*, whether it was a reseller or ultimate consumer. Each applicant must also state whether there has been a change in ownership of the firm since the audit period, and must provide the names and addresses of any other owners. If there had been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should refer to Case Number HEF–0137 (Northeast) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for refunds from the funds remitted to the Department of Energy by Northeast Petroleum Industries pursuant to the consent order executed on June 19, 1979, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

(3) This is a final order of the Department of Energy.

Dated: August 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix

NORTHEAST PETROLEUM INDUSTRIES, INC.

First purchaser	Portion of settlement amount *
Exxon Company, U.S.A.	$30,534
Atlantic Richfield Company	292,214

* Includes interest through Apr. 30, 1982.

[FR Doc. 85–20761 Filed 8–29–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures; VGS Corp./Southland Oil Co.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from VGS Corporation/ Southland Oil Company, Young Refining Corporation, and Macmillan Ring-Free Oil Co., Inc., in settlement of all issues regarding each firm's application of the federal petroleum price and allocation regulations.

DATE AND ADDRESS: Applications for refund must be postmarked by November 29, 1985, should conspicuously display a reference to case number HEF–0225 (VGS), HEF–0228 (Young), or HEF–0506 (Macmillan), and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Geoffrey D. Stein, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent orders between the DOE, VGS Corporation, Young Refining Corporation, and Macmillan Ring-Free Oil Co., Inc. (the consent order firms). The consent orders settled all disputes between the DOE and the consent order firms concerning possible violations of DOE price and allocation regulations with respect to each firm's sales of refined petroleum products to its customers in certain periods during the federal regulation of petroleum products.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by November 29, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

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may also submit information to show that they are entitled to larger refunds than those indicated in the Appendix. *See* Standard Oil Co. (Indiana)/Army & Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

Dated: August 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

August 21, 1985.

Names of Cases: VGS Corporation, Young Refining Corporation, Macmillan Ring-Free Oil Co., Inc.

Dates of Filing: October 13, 1983, October 13, 1983, July 25, 1984.

Case Numbers: HEF–0225, HEF–0228, HEF–0506.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of an enforcement proceeding involving alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA filed Petitions for the Implementation of Special Refund Procedures in connection with consent orders entered into with VGS Corporation (VGS), Young Refining Corporation (Young), and Macmillan Ring-Free Oil Co., Inc. (Macmillan) (hereinafter referred to collectively as the consent order firms).

I. Background

The consent order firms were "refiners" of petroleum products as that term was defined in 10 CFR 212.31. During the consent order period, the consent order firms engaged in the production, refining, and marketing of products covered by the federal petroleum price and allocation regulations set forth in 10 CFR Part 212. The ERA audited the consent order firms to determine their compliance with these regulations. During the course of the audit process, each firm entered into a consent order with the DOE, whereby the firm agreed to remit funds to the DOE to resolve all issues involving its compliance with the regulations during the consent order period.

VGS agreed to refund $1,010,000 to resolve all issues regarding its application of the price regulations during the period December 1, 1973 to January 27, 1981.[1] Notice of this proposed consent order was published for public comment at 46 FR 35963 (1981). Comments were filed by five interested parties.[2] This proposed consent order was adopted without modification as a final order of the DOE on September 1, 1981. 46 FR 43873 (1981).

Young agreed to refund $75,000 to resolve all issues regarding its application of the price regulations during the period August 19, 1973 to April 30, 1974. Notice of this proposed consent order was published for public comment at 46 FR 10976 (1981), and one comment was filed by Hercules Incorporated of Wilmington, Delaware. The consent order was subsequently adopted without modification as a final order of the DOE.

Macmillan agreed to refund $1,550,000 to resolve all issues regarding its application of the price and allocation regulations during the period August 19, 1973 to January 27, 1981. Notice of this proposed consent order was published for public comment at 47 FR 34182 (1982). Comments were received from several interested parties. The proposed consent order was adopted without modification as a final order of the DOE on November 4, 1982. 47 FR 50081 (1982). After the consent order was finalized, the ERA determined that $299,721 should be distributed from the Macmillan consent order fund to six end-user purchasers of "general refinery products".[3] ERA's Petition in the Macmillan proceeding covers the remaining $1,250,279 in the escrow account deposited with the DOE.

On April 17, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the funds that had been deposited with the DOE by the consent order firms. 50 FR 16132 (April 24, 1985). In the PD&O, we described a two-stage process for disbursing refunds. In the first stage, refunds would be made to identifiable purchasers of covered products who may have been injured by a consent order firm's pricing practices during the applicable consent order period. This decision describes the information that purchasers of a consent order firm's petroleum products should submit in order to demonstrate eligibility for a portion of the consent order funds. After these meritorious claims are paid, a second stage may become necessary if funds remain.

Comments were solicited regarding the proposed refund procedures outlined in the PD&O. Nine states, Southern California Edison Company, the Jackson, Mississippi Municipal Airport Authority, and Tenneco Oil Company filed comments in response to the PD&O.[4] These comments are discussed in the following presentation of the procedures we are adapting. In addition, each of the nine states commented on the distribution of residual funds in a second-stage proceeding. The formulation of procedures for the final disposition of any funds remaining after meritorious claims have been paid will necessarily depend on the size of the fund. *See Office of Enforcement,* 9 DOE ¶ 82,508 (1981). Accordingly, it would be premature for us to address at this time the issues raised by the states' comments concerning disposition of second-stage funds.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing plans to distribute funds received as a result of an enforcement proceeding. 10 CFP Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981), *and Office of Enforcement,* 8 DOE § 82,597 (1981).

A. Crude Oil Claims

The Macmillan consent order resolves the firm's alleged violations of both the petroleum price and allocation regulations. With regard to the allocation regulations, the consent order specifically settled alleged violations of the DOE Crude Oil Entitlements Program uncovered during the audit of Macmillan. In the PD&O, we proposed dividing the Macmillan consent order fund into two pools. We tentatively decided to set aside a pro rata portion of the consent order fund for claims filed by Entitlements Program participants and their downstream customers. We also stated that those funds would be

[1] VGS marketed all of its petroleum products under the name Southland Oil Company.

[2] The five VGS commenters were: Miller Transporters, Inc. of Jackson, Mississippi; the Jackson, Mississippi Municipal Airport Authority; the Mississippi State Highway Department; Mrs. Jessie C. Vaughan, Jr. of Yazoo City, Mississippi; and Mr. Travis Fitts of Kosciusko, Mississippi.

[3] The six end-user firms were: California-Portland; United States Defense Fuel Supply Center; General Carbon Company; Nevada Power Company; Salt River Project; and Southern California Edison Company. The "general refinery products" sold by Macmillan consisted of lube oils, residual fuel oil, naphtha, and jet fuel.

[4] Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia submitted comments as a group. Texas and Florida each filed separate comments.

distributed in accordance with the OHA's findings in the *Department of Energy Stripper Well Litigation* regarding the incidence of injury arising from crude oil overcharges. Since the PD&O was issued, however, the OHA has completed its fact-finding in the *Stripper Well* proceeding, and the Department of Energy has established its policy regarding the future distribution of funds received in settlement of alleged crude oil overcharges. 50 FR 27400 (July 2, 1985). In view of the DOE's recommendation that the overcharges in the *Stripper Well* proceeding would be best distributed on an indirect basis by the Congress of the United States, the OHA intends to place all crude oil funds received pursuant to Subpart V into an escrow account for similar indirect distribution. 50 FR at 27403. In accordance with this policy, a pro rata portion of the Macmillan consent order fund—$449,500 plus accrued interest—will be pooled with other crude oil consent order funds for future distribution.[6]

Tenneco Oil Company (Tenneco) filed comments requesting clarification of the scope of the Macmillan consent order regarding alleged crude oil violations. Specifically, Tenneco wishes to know whether the consent order covers crude oil transactions which may have occurred during the consent order period but before the Entitlements Program began in September 1974. In response to this inquiry we examined the Macmillan consent order and a previous Notice of Probable Violation issued by the ERA to Macmillan concerning alleged Entitlements Program violations. We have determined that Macmillan's alleged violations involved the firm's reporting of crude milk receipts and runs to stills as a refiner, and that the firm apparently did not engage in crude oil sales at any time during the consent order period. Furthermore, Tenneco has not suggested that it purchased crude oil from Macmillan during this period. We therefore do not expect to receive any claims in this proceeding relating to crude oil transactions which occurred prior to the onset of the Entitlement Program.

B. Refined Products Claims

The remaining $800,779 of the Macmillan consent order fund, as well as all of the VGS and Young consent order funds, relate to alleged violations of refined products pricing and allocation regulations. During the first stage in the refund process, consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by alleged overcharges in sales of covered products. As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by the consent order firms. We will therefore calculate refunds based on a per-gallon, volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions to be adopted in this case will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider refund applications in the most efficient way possible in view of the limited resources available.

A claimant will be eligible to receive a refund equal to the documented number of gallons of covered products it bought from a consent order firm during the applicable consent order period, multiplied by a volumetric percentage. This percentage is computed by dividing the amount of each consent order fund by the total number of gallons of covered products sold by each firm during the consent order period. The calculation of the volumetric percentage for the three consent order funds is presented in the following table:

Firm	Sales of covered products during consent order period (gallons)	Consent order funds for refined products claims	Volumetric refund amount
VGS	704,146,220	$1,010,000	$.001434
Young	11,105,970	75,000	.006753
Macmillan	1,159,432,400	800,779	.000690

In addition, interest which has accrued on the consent order funds will be applied to each paid refund on a pro rata basis.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered disproportionate injury as a result of a firm's pricing practices during the consent order period. Any such purchaser may file a refund application requesting an amount greater than that calculated using the volumetric presumption, provided that the claimant documents the disproportionate impact on it of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

In the PD&O, we tentatively determined that resellers and retailers seeking refunds totalling $5,000 or less under the volumetric presumption would not be required to demonstrate further any injury resulting from the alleged overcharges. The State of Texas filed comments opposing adoption of this presumption. Texas argues that the OHA would unjustly enrich small claimants by not requiring a showing of injury of all refund applicants, and it contends that first-stage refunds should be paid only to those parties who can prove that they did not pass on the alleged overcharges, regardless of the amount of the claim. We have considered this comment but remain convinced that the small-claims presumption is sound.

The adoption of a presumption of injury for smaller claims is based on a number of important considerations. First, because of the complexity of the pricing issues involved and the time elapsed since the alleged overcharges took place, attempts at restitution to deserving parties necessarily will be inexact. *See Citronelle-Mobile Gathering, Inc. v. Edwards*, 669 F.2d 717, 722–23 (TECA 1982). It is our experience in similar refund proceedings that the presumption of injury enables parties who likely were injured to claim refunds. We note that in past refund

[6] The Macmillan audit files indicate that 29 percent of Macmillan's total alleged overcharges related to alleged entitlements violations. Twenty-nine percent of the total $1,550,000 consent order fund equals $449,500.

proceedings the OHA has analyzed extensively the issue of cost absorption by smaller purchasers of petroleum products. *See, e.g., Economic Regulatory Administration: In the Matter of Standard Oil Company (Indiana),* 10 DOE ¶ 85,048 (1982) (*Amoco*) at 88,205–209. We have found that in cases of alleged overcharges by refiners such as these consent order firms, retailers were probably injured to some degree in that they were unable to pass along all cost increases to their customers. *Amoco* at 88,206. We cannot expect individual purchasers to be capable of producing similar findings, since our analysis was complex and involved data from many different sources. Along with these factors, we must also consider the concerns raised in the PD&O regarding the cost to each firm of gathering all the information necessary to prove injury and the cost to the OHA of analyzing it. In view of the conclusion that smaller claimants bore some impact of the alleged overcharges, and the fact that failure to allow simplified application procedures for small claims would deprive injured parties of the opportunity to receive refunds, we conclude that the small claims presumption should be adopted.

In the PD&O, we tentatively determined that although we would grant smaller refunds without requiring claimants to demonstrate injury, reseller and retailer claims above a certain level would be required to show that the firm was injured by the alleged overcharges. The Jackson, Mississippi Municipal Airport Authority (Authority) filed comments objecting to the requirement that larger claimants demonstrate injury. The Authority argues that it is unfair to require a detailed showing of injury for larger claims, since if a firm with relatively large purchases is presumed to have been injured in purchases up to a threshold amount, that firm must have been injured in its purchases above the threshold as well. The Authority further states that the injury requirement will force a firm to examine its records twice: first to determine the magnitude of its potential refund, and second to establish that it incurred injury if the potential refund is above the threshold level.

The Authority's comments do not convince us that we should pay all refund claims regardless of amount without requiring a showing of injury. As stated *Supra,* the presumption of injury for smaller claims is based on the likelihood that small resellers and retailers, many of whom are unable to prove injury individually, were nevertheless injured by the settled pricing practices. However, we have found that larger claimants are better equipped to prove injury because they generally have greater resources and more complete records. Furthermore, many claimants in past refund proceedings seeking refunds above the threshold have been unable to prove injury despite their attempts to do so. *See, e.g., Standard Oil Co. (Indiana)/ Ashland Oil, Inc.,* 13 DOE ¶ 85,018 (1985). This experience suggests that allowing claimants to receive large refunds based solely on their purchases, without requiring a detailed showing of injury, would potentially enrich these claimants far beyond the impact of the alleged overcharges.[6] We therefore have determined that claims above a threshold level must be accompanied by a detailed showing of injury, as outlined below.

Under the small claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In these cases, where the refund amounts are fairly low and the early months of the consent order periods are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.,* 11 DOE ¶ 85,226 (1984), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of means by which a claimant can make such a showing, a firm is generally required to show that market conditions would not permit it to pass through the increased costs associated with the alleged overcharges. In addition, a reseller or retailer of petroleum products must show that it maintained a "bank" of unrecovered costs, in order to demonstrate that it did not subsequently recover these costs by increasing its prices. *See, e.g., Triton Oil and Gas Corporation/Cities Service Company,* 12 DOE ¶ 85,107 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.,* 10 DOE ¶ 85,009 (1982). If actual, contemporaneously calculated cost banks are not available due to specific circumstances, we will accept other types of information which conclusively prove the existence of cost banks during the consent order period. For example, monthly profit margin data may in some cases demonstrate the existence of cost banks. *See, Husky Oil Company,* 13 DOE ¶ 85,045 (1985). We emphasize that the burden of proving the existence of cost banks rests with the claimant, regardless of what information is submitted.[7]

We find that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent orders. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.,* 10 DOE ¶ 85,072 (1983); *See also Texas Oil & Gas Corp.,* 12 DOE at 88,209 and cases cited therein. We have therefore concluded that downstream, end-user purchasers of a consent order firm's petroleum products need only document their purchase volumes in order to make a sufficient showing that they were injured by the alleged overcharges.

Southern California Edison Company (SCEC) filed comments concerning our statement in the PD&O that six ultimate consumers of Macmillan products, including SCEC, have already received refunds from the Macmillan consent order fund. SCEC states that contrary to the PD&O, it has not received any refunds based on its purchases from Macmillan. As detailed in the PD&O, the ERA excluded $299,721 from its Petition to the OHA for the implementation of Subpart V refund procedures with respect to the Macmillan consent order

[6] In addition, the Authority presents no evidence to support its contention that the proposed threshold will result in an increased cost to potential refund applicants. As discussed below, we consider the need to minimize the expense of applying for a refund as part of our determination on the proper threshold level.

[7] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Office of Enforcement, 8 DOE ¶ 82,597 (1981) at [illegible].

funds. *See VGS Corporation et al.*, Nos. HEF–0225 *et al.*, (April 17, 1985) (Proposed Decision) at 2. In the Petition, the ERA stated that this excluded amount would be refunded to six end-user customers. *See* note 3 *supra*. However, the PD&O incorrectly stated that these payments have already been made. We now understand that the ERA intends to pay refunds to the six end-users when Macmillan has completed its scheduled payments to the DOE escrow account in October 1986. *See* May 6, 1985 memorandum concerning telephone conversation between Wendy Clark, ERA, and Geoff Stein, OHA Staff Analyst. Since the ERA specifically excluded the funds earmarked for the six end-users from the Petition to the OHA, these firms are not eligible to apply for refunds in this proceeding based on their purchases of Macmillan's general refinery products. *See* note 3 *supra*. However, other end-users who purchased Macmillan products from resellers may be eligible to apply for refunds.

Refund applications from firms regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that the firm absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they are allowed to charge their customers. Refunds to agricultural cooperatives will likewise directly influence the prices charged to member customers. Consequently, these firms too need only document their purchase volumes from a consent order firm to make an adequate showing of injury. *See Office of Special Counsel*, 9 DOE ¶ 82,538. However, along with their applications these firms should provide a full, detailed explanation of the manner in which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund.

As in previous cases, we find that there is a class of potential claimants who may be presumed to have suffered no injury from the alleged overcharges. Those parties are firms that made spot purchases of a consent order firm's petroleum products.[8] *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in *Vickers:*

> [T]hese customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Vickers motor gasoline at increased prices unless they were able to pass thorugh the full amount of Vickers' quoted selling price at the time of purchase to their own customers.

8 DOE at 85,396–97. We believe that the same rationale applies in this case. Consequently, we will establish a rebuttable presumption that spot purchasers were not injured by the pricing practices resolved by the consent orders. Thus, a spot purchaser claimant will be required to submit additional evidence sufficient to establish that it was unable to recover the prices it paid to a consent order firm.

As in previous cases, we will set a minimum refund amount to potential claimants. In prior refund cases, we have not granted refunds for less than $15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. *See Amoco* at 88,214. We will utilize the same minimum refund amount in the present case.

III. Applications for Refund

After considering the comments received concerning the first-stage refund procedures tentatively adopted in the April 17, 1985 PD&O, we have concluded that the proposed procedures should be implemented, as outlined above. We shall now accept applications refunds from parties who purchased covered products from the consent order firms during the consent order period.

In order to receive a refund, each claimant must provide a monthly schedule of its volume of purchases from a consent order firm during the applicable consent order period. If no documentation of the number of gallons purchased is available, a claimant must submit a detailed estimate of its purchases. Each claimant must indicate its level in the consent order firms' chain of distribution, *e.g.*, ultimate consumer, reseller, etc. Each applicant must also state whether there has been a change in ownership of the firm during or since the consent order period, and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. If a reseller or retailer claims a refund in excess of $5,000, it must demonstrate that it was injured by the alleged overcharges by submitting the types of information outlined in Section II of this Decision.

All applications must be filed in duplicate and must be received within 90 days of publication of this Decision and Order in the **Federal Register**. A Copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the confidential information has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." (*See* 10 CFR 205.283(c); 18 U.S.C. § 1001. In addition, the applicant should provide the name and telephone number of a person who may be contacted by the OHA for additional information concerning the application.

Applications should refer to Case Number HEF–0225 (VGS), HEF–0278 (Young), or HEF–0506 (Macmillan), and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy pursuant to the VGS Corporation, Young Refining Corporation, and Macmillan Ring-Free Oil Co., Inc. consent orders may not be filed.

(2) All applications must be filed no later than 90 days after publication of

[8] We will except from this principle cooperative organizations which made spot purchases of products from the consent order firms and resold these products to their members. In the past, we have treated refund applications by cooperatives as applications made on behalf of their members, who, as ultimate consumers, were not in a position to pass along increased costs. Similarly, any refund received by a cooperative would presumably be passed on to its members, in the form of either a price reduction or a distribution of surplus income. Office of Special Counsel, 9 DOE ¶ 82,538 (1982) at 85,203. *See, e.g.*, Anadarko Production Co./Cities Service Co., 12 DOE ¶ 85,060 (1984). Cooperative purchasers therefore will be presumed to have been injured in spot purchases of a consent order firm's products when these products were resold to members. Cooperatives in this category will be eligible to apply for refunds. These firms must explain in their refund applications the manner in which any refunds will be distributed to members.

this Decision and Order in the **Federal Register**.

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: August 21, 1985.

[FR Doc. 85-20782 Filed 8-29-85; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures; REAPCO

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Proposed Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $125,000.00 (plus accrued interest) obtained as the result of a consent order between the DOE and Resources Extraction and Processing Company (REAPCO). The funds will be distributed to refund applicants who purchased natural gas liquids and natural gas liquid products from REAPCO during the settlement period (October 1, 1978 through January 28, 1981).

DATE AND ADDRESS: Comments must be filed in duplicate by [30 days from date of publication in the **Federal Register**] and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should display conspicuously a reference to Case No. HEF-0574.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute monies obtained from Resources Extraction and Processing Company (REAPCO). REAPCO, the operator and partial owner of the Bayou Vista Gas Plant in St. Mary Parish, Louisiana, entered into a Consent Order to settle possible pricing violations with respect to its sales of petroleum products from October 1, 1978 through January 28, 1981. Under the terms of the Consent Order, REAPCO has remitted $125,000.00 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

The DOE proposed that the REAPCO consent order fund be distributed in a two stage refund proceeding. The first stage will attempt to refund moneys to customers who can document their purchases of REAPCO products. The Proposed Decision and Order provides that the funds will be distributed to successful claimants based on the number of gallons of products which they purchased and the extent to which they can prove that they were injured by the alleged overcharges. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: August 22, 1985

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Proposed Special Refund Procedures

August 22, 1985.

Name of Case: Resources Extraction and Processing Company.

Date of Filing: March 19, 1985.

Case Number: HEF-0574.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

On March 19, 1985, the ERA requested that the OHA formulate and implement procedures to distribute funds which it received pursuant to a consent order with Resources Extraction and Processing Company (REAPCO). The Proposed Decision contains the procedures which the OHA has tentatively formulated to distribute that consent order fund.

I. Background

During the settlement period (October 1, 1978 through January 28, 1981) REAPCO operated and owned a partial interest in the Bayou Vista Gas Plant in St. Mary Parish, Louisiana. According to the record in this case, REAPCO's sales of products recovered at that plant were its only sales of regulated products. From October 1978 until July 1979, REAPCO sold natural gas liquids (NGL). In July 1979, REAPCO began to fractionate all of its NGL into natural gas liquid products (NGLPs) and, from that time onward, REAPCO sold NGLPs, including propane, butane, and natural gasoline.

On January 21, 1983, the ERA issued a Proposed Remedial Order (PRO) to REAPCO alleging that, from October 1978 through December 1980, REAPCO charged prices for NGL and NGLPs in excess of those permitted under the DOE regulations. In order to settle the claims made in the PRO and any other claims by the DOE which might have arisen from REAPCO's activities between October 1, 1978 and January 28, 1981, REAPCO and the DOE entered into a Consent Order on August 10, 1984. Pursuant to that Consent Order, REAPCO refunded the sum of $125,000.00 to the DOE.

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's petition to implement a Subpart V proceeding with respect to the REAPCO consent order fund and have determined that such a proceeding is appropriate in

this case. Accordingly, will grant the ERA's petition to implement a Subpart V proceeding and propose to utilize the procedures set forth in this Proposed Decision.

III. Proposed Refund Procedures

We propose to use a two stage process to distribute the consent order monies. The first stage will attempt to refund monies to those who purchased REAPCO products during the settlement period. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund. In addition, purchasers will be required to prove that they were injured by the alleged overcharges—i.e. that they did not pass any such overcharges on to their own customers.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). We will not determine second stage refund procedures at this time because such procedures will necessarily depend on the size of the fund remaining after first stage procedures are completed.

1. Refunds to Identifiable Purchasers

During the first stage of the refund process, we propose to distribute the REAPCO consent order fund to claimants who satisfactorily demonstrate that they were injured by REAPCO's alleged overcharges. According to REAPCO, it sold all of its products to one marketing company: Gas Producers Liquids. Telephone Conversation between Irene Bleiweiss, OHA Staff Attorney and Richard C. Green, Counsel for REAPCO (July 24, 1985). The audit file, which provided the basis for the PRO issued to REAPCO, indicates that Gas Producers Liquids sold a portion of the REAPCO products to Mobil. However, there may be additional indirect purchasers. We will accept applications from all parties who can demonstrate that they purchased products which originated with REAPCO.

In order to be eligible to receive a refund, claimants will have to file an application and, with three exceptions discussed later in this Proposed Decision, show the extent to which they have been injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order fund. While there are a variety of ways in which a showing of injury may be made, a reseller will generally be required to demonstrate that during the period covered by the Consent Order, it had "banks" or unrecovered product costs which were at least equal to the amount of the refund claimed, and that it did not pass these costs through to its own customers. A reseller might establish that it absorbed the alleged overcharges by showing, for example, that market conditions would not permit it to increase its prices to pass additional costs through to its own customers. Office of Enforcement, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982). If a reseller of REAPCO products passed the alleged overcharges through to its own customers, then these indirect customers will be entitled to a refund if they themselves can prove injury. Therefore, we will permit customers who indirectly purchased REAPCO products as well as those who purchased directly from REAPCO to file applications for refunds.

We propose to adopt three presumptions of injury which have been used in may previous special refund cases. First we will presume that end-users or ultimate consumers of REAPCO products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges. Second, we will presume that applicants who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Finally, we will not require a showing of injury from agricultural cooperatives which passed the alleged overcharges on to their end-user members, provided that these cooperatives comply with standards set forth later in the Proposed Decision. These presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to use its limited resources most effectively.

a. *End-Users.* We propose that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry will not be required to show injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Customers in this group might include, for example, businesses and individuals who purchased propane for heating purposes. The fuel costs of such end-users are only one, indistinguishable component of their prices for goods and services. Unlike regulated firms in the petroleum industry, other businesses were not subject to price controls during the consent order period and were not required to keep records. Thus, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum products and services would be beyond the scope of a refund proceeding. *Id.* Therefore, such end-users who document their purchase volumes of REAPCO products during the consent order period will be found to have made a sufficient showing of injury. On the other hand, refund applicants who were subject to the DOE regulatory program will be required to provide a detailed demonstration that they were injured, with the exception of those making small claims.

b. *Applicants Claiming a Refund of $5,000 or Less.* We recognize that making a showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of REAPCO products. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,115 (1984); *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,014 (1984). We propose to adopt such a procedure in this case. Therefore, we propose that any applicant claiming a refund of $5,000.00 or less need not make a detailed showing of injury in order to be eligible to receive a refund.

c. *Agricultural Cooperatives.* Agricultural cooperatives will not be required to show that they did not pass increased costs through to their customers. By its very nature, an agricultural cooperative would routinely pass through any overcharges to its member customers. Similarly, any refunds received by an agricultural cooperative would influence the prices charged to member customers. Therefore, we have held that agricultural cooperatives are not required to prove injury. *E.g., APCO Oil Corp.*, 12 DOE ¶ 85,144 (1985). Instead, an agricultural cooperative's refund application should explain fully the manner in which refunds will be passed through to its customers and how its members will be advised of the cooperative's receipt of the refund money. Sales by cooperatives to non-members, however, will be treated the same as sales by any other resellers.

d. *Spot Purchasers.* We also propose to adopt a rebuttable presumption that firms which made only spot purchases of REAPCO products have suffered no injury. Spot purchasers tend to have

considerable discretion in where and when to make purchases and would therefore not have made spot purchases of REAPCO's product at increased prices unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, in order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that they were unable to recover the prices they paid for REAPCO products.

2. Calculation of Refund Amounts

We propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of products which REAPCO sold. We have calculated a volumetric refund amount by dividing the consent order amount by the approximate number of gallons which REAPCO sold during the settlement period. Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus accrued interest.

We have tentatively set the REAPCO volumetric refund amount at $0.00095 per gallon. We derived this figure by dividing the consent order fund ($125,000.00) by an estimate of the number of gallons of products which REAPCO sold during the consent order period (130,895,607). Since a consent order is necessarily the result of compromise, the volumetric refund amount derived from that consent order settlement is also a compromise. The volumetric refund amount does not purport to calculate the exact amount that a customer may have been overcharged. Rather, it is a method by which we can estimate the portion of the consent order fund that should be allocated to a given purchaser. We recognize that a particular purchaser could have suffered a disproportionate share of the injury. Any purchaser who can make such a showing of disproportionate overcharge may file a refund application based on a claim that the prices he was charged were likely to have included alleged overcharges which were greater than the *pro rata* amount determined by the volumetric presumption.

We also recognize that, although REAPCO sold only NGL and NGLPs, the language of the Consent Order covers all products which the DOE regulated during the settlement period. Therefore, we will accept refund applications from anyone who claims to have purchased other covered products from REAPCO and will consider any such applications on a case-by-case basis. However, if we receive applications based on purchases of products other than NGL or NGLPs, it may become necessary to adjust the per gallon refund amount.

As in previous cases, we will establish a minimum refund amount of $15.00 for first-stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefit of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Before distributing any portion of the consent order fund, we intend to publicize the distribution process, to solicit comments on the proposed refund procedures, and to provide an opportunity for any affected party to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Decision and Order in the **Federal Register**. Applications for refunds should not be filed at this time. Detailed procedures for filing applications for refunds will be provided in a final Decision and Order.

It is therefore ordered that: The $125,000.00 refund amount obtained from Resources Extraction and Processing Company pursuant to the Consent Order entered into with the Department of Energy on August 10, 1984 will be distributed in accordance with the foregoing Proposed Decision.

[FR Doc. 85–20764 Filed 8–29–85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $29,673.56 obtained as a result of a consent order which the DOE entered into with Naphsol Refining Company, a reseller-retailer of petroleum products located in Muskegon, Michigan. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Naphsol consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF–0134 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 252–6602.

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the DOE and Naphsol Refining Company, which settled all claims and disputes between Naphsol and the DOE regarding the manner in which Naphsol applied the federal price and allocation regulations with respect to its sales of refined petroleum products during the period November 1, 1973, through March 31, 1975. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Naphsol consent order funds was issued on June 21, 1985. 50 FR 27,047 (July 1, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Naphsol pursuant to the consent order. The DOE has decided to accept Applications for Refund from firms and individuals who purchased motor gasoline, No. 1 fuel oil, or No. 2 fuel oil from Naphsol. In order to receive a refund, a claimant must furnish the DOE with evidence which demonstrates that it was injured by Naphsol's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased petroleum

products from Naphsol during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the Federal Register. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: August 23, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Naphsol Refining Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0134.

August 23, 1985.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Naphsol Refining Company (Naphsol).

I. Background

Naphsol is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Muskegon, Michigan. A DOE audit of Naphsol's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that between November 1, 1973, and March 31, 1975 (the audit period), Naphsol committed possible pricing violations amounting to $185,274.48 with respect to its sales of No. 1 fuel oil, No. 2 fuel oil, and motor gasoline.

Under the terms of the consent order, Naphsol was required to deposit $29,673.56 into an interest-bearing escrow account for ultimate distribution by the DOE. Naphsol remitted this sum on September 4, 1981.[1]

On June 21, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties who were injured by Naphsol's alleged violations in the sale of petroleum products. 50 FR 27,047 (July 1, 1985). In the PD&O, we described a two-stage process for distributing the Naphsol consent order funds. We proposed to disburse funds in the first stage to claimants who could demonstrate that they were adversely affected by Naphsol's alleged overcharges in the sale of motor gasoline, No. 1 fuel oil, or No. 2 fuel oil during the audit period. We also solicited comments regarding the disbursement of any funds remaining after all meritorious claimants had received appropriate refunds.

The purpose of this decision is the establishment of procedures to be used for filing claims in the first stage of the Naphsol refund process. Since no comments were received concerning first-stage procedures, we will employ the procedures suggested in the PD&O. Since our determination concerning the final disposition of any remaining funds will necessarily depend on the amount of money remaining in the escrow account, it would be premature for us to address the issues raised by commenters concerning a second-stage proceeding.[2] *See Office of Enforcement,* 9 DOE ¶ 82,508 (1981) (Coline).

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981), *and Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*).

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we will adopt a presumption that the alleged overcharges were dispersed evenly in all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we will adopt a presumption of injury with respect to small claims. Third, we will adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we find that end users of Naphsol products were injured by Naphsol's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co. Siouxland Propane Co.,* 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we are adopting, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Naphsol times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.0005036 per gallon.[3] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we will use is that claimants seeking small refunds were injured by Naphsol's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982).

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[1] As of July 31, 1985, the Naphsol escrow account contained $43,991.12, including accrued interest.

[2] Comments concerning the second stage were filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

[3] This figure is derived by dividing the $29,673.56 settlement amount by the 58,927,333 gallons of products sold by Naphsol during the consent order period.

Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.; Office of Special Counsel,* 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[4]

If a reseller or retailer made only spot purchases, we believe that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, firms which made only spot purchases from Naphsol will not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of No. 1 fuel oil, No. 2 fuel oil, or motor gasoline from Naphsol during the consent order period.

As noted above, we find that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement,* 10 DOE ¶ 85,072 (1983)(*PVM*); *see also Texas Oil & Gas Corp.,* 12 DOE at 88, 209, and cases cited therein.[5]

In addition, firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.,* public utilities, any overcharges incurred as a result of Naphsol's alleged violations of the DOE regulations would routinely be passed through to the firms' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we will add such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See e.g., Office of Special Counsel,* 9 DOE ¶ 82,539 (1982) (*Tenneco*); *and Office of Special Counsel,* 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.,* 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Naphsol consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased motor gasoline, No. 1 fuel oil, or No. 2 fuel oil from Naphsol between November 1, 1973, and March 31, 1975.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of monthly purchases from Naphsol;

(2) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(3) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must

[4] Resellers or retailers who claim refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 COE P 85,029 at 88,125 (1982)(Ada).

[5] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application form which the information has been deleted. All applications should refer to Case No. HEF-0134 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for refunds from the funds remitted to Department of Energy by Naphsol Refining Company pursuant to the consent order executed on August 31, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: August 23, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-20844 Filed 8-29-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59729; TSH-FRL 2869-2]

Certain Chemicals Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 (a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85-134, 85-135, 85-136, 85-137, 85-138 and 85-139—September 9, 1985.

Y 85-140—September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-134

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Water soluble acrylate random copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range., Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

Y 85-135

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Water soluble acrylate random copolymer.

Use/Production. (G) Open, non-dispersove use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

Y 85-136

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Water soluble acrylate random copolymer.

Use/Production. (G) Confidential. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

Y 85-137

Manufacturer. Confidential.

Chemical. (G) Cross-linked polymeric acrylic micro particles.

Use/Production. (S) Industrial thermosetting decorative and protective coatings. Prod. range. 285, 648-1, 142, 592 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: a total of 20 workers, only 2 people/da.

Environmental Release/Disposal. No release. Disposal by incineration.

Y 85-138

Manufacturer. Confidential.

Chemical. (G) Modified acrylate terpolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 85-139

Manufacturer. Confidential.

Chemical. (G) Polyurethane dispersion.

Use/Production. (S) Roofing top coat. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, 3 to 4 hrs.

Environmental Release/Disposal. 25 kg/da released to washout. Disposal by city sewer system.

Y 85-140

Manufacturer. NL Industries, Inc.

Chemical. (G) Water-based polyurethane elastomer.

Use/Production. (G) Open, non-dispersive manner. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: August 23, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-20864 Filed 8-29-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51586; TSH-FRL 2689-1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-eight PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-1358, P 85-1359 and 85-1360—November 12, 1985.

P 85-1361, 85-1362 and 85-1363, 85-1364, 85-1365, 85-1366 and 85-1367—November 13, 1985.

P 85-1368—November 16, 1985.

P 85-1369, 85-1370, 85-1371, 85-1372, 85-1373, 85-1374, 85-1375, 85-1376, 85-1377, and 85-1378—November 17, 1985.

P 85-1379, 85-1380, 85-1381, 85-1382, and 85-1383—November 18, 1985.

P 85-1384, and 85-1385—November 19, 1985.

Written comments by:

P 85-1358, 85-1359 and 85-1360—October 13, 1985.

P 85-1361, 85-1362, 85-1363, 85-1364, 85-1365, 85-1366 and 85-1367—October 14, 1985.

P 85-1368—October 17, 1985.

P 85-1369, 85-1370, 85-1371, 85-1372, 85-1373, 85-1374, 85-1375, 85-1376, 85-1377 and 85-1378—October 18, 1985.

P 85-1379, 85-1380, 85-1381, 85-1382 and 85-1383—October 19, 1985.

P 85-1384, and 85-1385—October 20, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51586]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-1358

Manufacturer. Confidential.

Chemical. (G) Aromatic acetamide.

Use/Production. (G) Contained use of PMN substance for polymer formulation. Prod. range. Confidential.

Toxicity Data. Acute oral: 4.6 g/kg; Acute dermal: >2.0 g/kg; Irritation: Eye—Slight; Inhalation: Slight irritational.

Exposure. Processing: dermal.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85-1359

Manufacturer. Confidential.

Chemical. (G) Further clarification needed before information can be released to the public files.

Use/Production. (G) Intermediate for electrical insulation coatings. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-1360

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Esterified polyamic acid.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-1361

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Titanium IV neoalkoxy trisneodecanoato.

Use/Production. (S) Industrial enhanced adhesion/dispersion of particulate in polymeric binder and enhanced adhesion of polymers/polymeric composites to solid surfaces. Prod. range. Confidential.

Toxicity Data. Acute oral: >5 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.5 to 20 kg/batch released to land. Disposal by chemical landfill.

P 85-1362

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Titanium IV neoalkoxy, tris dodecylbenzenesulfonato-O.

Use/Production. (S) Industrial enhanced adhesion/dispersion of particulate in polymeric binder and enhanced adhesion of polymers/polymer composites to solid surfaces. Prod. range. Confidential.

Toxicity Data. Acute oral: Male—1.9 g/kg, Female—1.7 g/kg, Total—1.7 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.5 to 20 kg/batch released to land. Disposal by chemical landfill.

P 85-1363

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Titanium IV neoalkoxy, tris (3-amino) phenylato.

Use/Production. (S) Industrial enhanced adhesion/dispersion of particulate in polymeric binder and enhanced adhesion of polymers/polymeric composites to solid surfaces. Prod. range. Confidential.

Toxicity Data. Acute oral: 3.0 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.2 to 20 kg/batch released to land. Disposal by chemical landfill.

P 85-1364

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Titanium IV neoalkoxy tris ethylenediaminoethanolato.

Use/Production. (S) Industrial enhanced adhesion/dispersion of particulate in polymeric binder and enhanced adhesion of polymers/polymeric composites to solid surfaces. Prod. range. Confidential.

Toxicity Data. Acute oral: 5 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.5 to 20 kg/batch released to land. Disposal by chemical landfill.

P 85–1365

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Titanium IV neoalkoxy, tris(diisooctyl) pyrophosphato-0.

Use/Production. Industrial enhanced adhesion/dispersion of particulate in polymeric binder and enhanced adhesion of polymers/polymeric composites to solid surfaces. Prod. range. Confidential.

Toxicity Data. Acute oral: >2.5–<5 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.2 to 20 kg/batch released to land. Disposal by chemical landfill.

P 85–1366

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Titanium IV neoalkoxy, tris dioctyl phosphato-0.

Use/Production. (S) Site limited and industrial polymeric composite modification and adhesion of polymers/polymeric composities to solid substrates. Prod. range. Confidential.

Toxicity Data. Acute oral: >5 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.2 to 20 kg/batch released to land. Disposal by chemical landfill.

P 85–1367

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Titanium IV neoalkoxy trioctyl.

Use/Production. (S) Site-limited conversion to organotitanium salts. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 3 workers/batch, up to 10 hrs/da.

Environmental Release/Disposal. 20 kg/batch released to land. Disposal by chemical landfill.

P 85–1368

Importer. Ricoh Corporation.

Chemical. (G) Alkyl benzoic acid metal complex.

Use/Import. (S) For copier toner electrostatically charged and developed for image transfer, then applied onto the surface of paper as image registration after fusing. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Use: dermal, a total of 1 worker within 1 minute of time.

Environmental Release/Disposal. Disposal by refuse.

P 85–1369

Manufacturer. Confidential.

Chemical. (G) Ethenyl silane ester.

Use/Production. (S) Modifier for polyolefin resins. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1370

Manufacturer. Confidential.

Chemical. (G) Alkyl(heterocyclicyl)phenylazohetero-monocyclicpolyone.

Use/Production. (S) Site-limited intermediate. Prod. Range. 9,100–12,600 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. Manfacturer: dermal and inhalation, a total of 6 workers, up to 2 hrs/da.

Environmental Release/Disposal. 5 to 10 lbs. released to water. Disposal by POTW.

P 85–1371

Importer. Confidential.

Chemical. (G) Alkyl-heterocyclicquinazalone.

Use/Import. (S) Industrial intermediate. Import range. 4,908–7,362 kg/yr.

Toxicity Data. Acute oral: Male and female—>5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. Import and use: dermal, a total of 2 workers, up to 3 hrs/da.

Environmental Release/Disposal. Release to water. Disposal by POTW.

P 85–1372

Importer. Confidential.

Chemical. (G) Substituted polyhydronaphthalenol.

Use/Import. (G) Ingredients for use in consumer products: highly dispersive use. Import range. 100–1000 kg/yr.

Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.

Exposure. Importer and use: a total of 6 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Confidential. Disposal by private water treatment plant.

P 85–1373

Manufacturer. Confidential.

Chemical. (S) 2-Hydroxyethyl trialkylacetate with carbon numbers of C_{11}–C_{15}.

Use/Production. (G) Chemical intermediate. Prod. range. Confidential.

Toxicity Data. Acute oral: 5 g/kg; Acute dermal: 3.16 g/kg; Irritation: Skin—Moderate, Eye—Irritant.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air and water. Disposal by secondary biological treatment.

P 85–1374

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Open use industrial paint product. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 55 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 5 to 88 kg/batch released to land. Disposal by incineration and landfill.

P 85–1375

Manufacturer. Confidential.

Chemical. (S) Polypropylene toluene sulfonate.

Use/Production. (S) Industrial enhanced oil recovery. Prod. range. Confidential.

Toxicity Data. Acute oral: Male—>5 g/kg, Female—4.4 g/kg; Acute dermal: >5 g/kg; Irritation: Skin—Practically non-irritant, Eye—Severe; Ames test: Non-mutagenic; LC_{50} 96 hr (Rainbow trout): 0.46 mg/L; LC_{50} 96 hr (Sheepshead minnow): 2.66 mg/L; Skin Sensitization: Very weak sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1376

Manufacturer. Confidential.

Chemical. (G) Polypropylene toluene.

Use/Production/Import. (S) Chemical intermediate. Prod. range. Confidential.

Toxicity Data. Acute oral: >500 mg/kg; Ames test: Non-mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

P 85–1377

Manufacturer. Confidential.

Chemical. (G) Alkyl fatty ester.

Use/Production. (G) Finishes, polishes, mold release agent. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1378

Importer. Boots Laboratories, Inc.
Chemical. Further clarification needed before information can be released to the public files.
Use/Import. (S) Industrial matrix for glass fabric laminates for PCB's and binder for moulding compounds (injection/compression moulding). Import range. Confidential.
Toxicity Data. Ames test: Non-mutagenic.
Exposure. Processing: dermal, a total of 4 workers, up to 2 hrs/da, up to 40 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air.

P 85–1379

Manufacturer. PMC Specialties Group, Inc.
Chemical. (G) Alkyl benzotriazole.
Use/Production. (S) Commercial metal corrosion inhibitor for copper and alloys. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1380

Manufacturer. Confidential.
Chemical. Further clarification needed before information can be released to the public files.
Use/Production. (G) Open, non-dispersive use. Prod. range. 3,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: a total of 4 workers, up to 1 hr/da, up to 4 da/yr.
Environmental Release/Disposal. 1 to 8 kg/batch released to land. Disposal by dumpsite.

P 85–1381

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Resin for printing inks. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacturer: dermal.
Environmental Release/Disposal. No release.

P 85–1382

Manufacturer. The Dow Chemical Company.
Chemical. Further clarification needed before information can be released to public files.
Use/Production. (S) Industrial graphite, glass and kevlar composites for aerospace applications and electrical laminates. Prod. range. Confidential.
Toxicity Data. Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. Manufacture: dermal, a total of 4 workers.
Environmental Release/Disposal. 2 kg/batch released to air with 1 kg/batch to land. Disposal by approved landfill.

P 85–1383

Manufacturer. The Dow Chemical Company.
Chemical. Further clarification needed before information can be released to the public files.
Use/Production. (S) Industrial graphite, glass and kevlar composites for aerospace applications and electrical laminates. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers.
Environmental Release/Disposal. 2 kg/batch released to air with 1 kg/batch to land. Disposal by approved landfill.

P 85–1384

Importer. Confidential.
Chemcial. (G) Butyltin carboxylate derivative.
Use/Import. (G) Stabilizer for PVC. Import range. Confidential.
Toxicity Data. Acute oral: Male—1,889 mg/kg, Female—2,365 mg/kg, Combined—2,119 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Corrosive.
Exposure. Processing: dermal, a total of 1 worker, 20 min/da, 200 da/yr.
Environmental Release/Disposal. No release.

P 85–1385

Importer. Confidential.
Chemcial. (G) Butyltinmercaptide.
Use/Import. (G) Stabilizer for PVC. Import range. Confidential.
Toxicity Data. Acute oral: Male—1,889 mg/kg, Female—2,365 mg/kg, Combined—2,119 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Corrosive.
Exposure. Processing: dermal, a total of 1 worker, up to 20 min/da, 200 da/yr.
Environmental Release/Disposal. No release.

Dated: August 26, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85–20685 Filed 8–29–85; 8:45 am]
BILLING CODE 6560–50–M

[ER–FRL–2888–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 12, 1985 through August 16, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–BPA–L08044–ID, Rating LO, Fall River-Lower Valley Transmission System Reinforcement, Stability, ID. SUMMARY: EPA believes the project impacts should be minimal if the proposed mitigation is implemented.

ERP No. DS–REA–J08013–CO, Rating LO, Hayden to Blue R. 345 kV Transmission Line Project, Blue R. to Gore Pass Portion Construction, Operation and Maintenance, CO. SUMMARY: EPA has no objections to the project as outlined in the DSupp. EIS and supports the adoption of the water quality, soil, and vegetations mitigation measures.

ERP No. D–SFW–C90011–NY, Rating LO, Honeoye Creek Wetland Expansion and Enhancement Project, NY. SUMMARY: EPA believes that the creation of additional wetlands will enhance fish and wildlife resources of the community's area and provide for increased public use and enjoyment of these resources. EPA suggested additional information regarding the upstream sewage treatment plant, construction specifications, and dredge and fill activities be included in the FEIS.

Final EISs

ERP No. F–COE–H36081–MO, Ste. Genevieve Flood Control Plan, Mississippi R., MO. SUMMARY: The FEIS adequately responded to EPA comments made on the DEIS.

ERP No. F–FHW–J40096–MT, Reserve St. Reconstruction, US 93 to S. Third St., Right-of-Way Acquisition and Improvements, MT. SUMMARY: EPA concludes that the project has no unacceptable impacts and could improve Missoula air quality by facilitating movement of vehicles through a presently congested area.

ERP No. F–NOA–E64010–00, Atlantic Swordfish Fishery Mgmt. Plan, ATL. SUMMARY: EPA's review concluded that the FEIS adequately addressed the concerns raised during review of the DEIS.

ERP No. F–SCS–F36150–IL, Lower Des Plaines Tributaries Watershed Multipurpose Plan, Improvements IL. SUMMARY: EPA's review of the FEIS did not identify any significant

environmental impacts requiring changes to the proposed project.

Dated: August 27, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-20854 Filed 8-29-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2888-7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environemental Impact Statements filed August 19, 1985 Through August 23, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850361, Final, COE, MS, Pearl River Basin Flood Control Plan, Hinds and Rankin Counties, Due: September 30, 1985, Contact: Glen Coffee (205) 690-2729.

EIS No. 850362, Final, AFS, AK, Situk River Wild and Scenic River Study, Designation or Nondesignation, Tongass Nat'l Forest, Due: September 30, 1985, Contact: Kenneth Roberts (907) 747-6671.

EIS No. 850363, Draft, COE, ND, Baldhill Dam and Lake Ashtabula Reservior, Dam Safety Protection Plan, Barnes County, Due: October 15, 1985, Contact: Gary Palesh (612) 725-7746.

EIS No. 850364, Draft, COE, ND, Lake Darling Dam Modifications, Lake Darling Flood Control Project, Souris River, Due: October 15, 1985, Contact: Wayne Knott (612) 725-7745.

EIS No. 850365, Final, FHW, WA, WA-2 and WA-28 Corridor Improvement, between Rocky Reach Dam and East Wenatchee Vicinity, Douglas County, Due: September 30, 1985, Contact: P.C. Gregson (206) 753-2120.

EIS No. 850366, Draft, COE, NJ, NY, Arthur Kill Channel Navigation Improvements, Howland Hook Marine Terminal, Deeping and Maintenance, Union Co., NJ and Richmond Co., NY, Due: October 15, 1985, Contact: Joseph Debler (212) 264-4663.

EIS No. 850367, Draft, FHW, NJ, US 206, (Section 5) improvement, CR-518 to Rts. 202, NJ 28, and US 206 Intersection/ Somerset Circle, Somerset County, Due: October 30, 1985, Contact: Andras Fekete (609) 292-6543.

Amended Notices

EIS No. 850359, Draft, AFS, UT, Manti-LaSal National Forest, Land and Resource Management Plan, Due: November 22, 1985, Published FR 8-23-85—Incorrect due date.

EIS No. 850227, Draft, FWS, NY, Honeoye Creek Wetland Expansion and Enhancement Project, Ontario County, Due: September 15, 1985, Published FR 6-14-85—Review extended.

Dated: August 27, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-20853 Filed 8-29-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00213; FRL-2891-2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review: a set of scientific issues being considered by the Agency in connection with the Special Review on captan; a set of scientific issues being considered in connection with the Special Review on daminozide; a final regulatory action on the non-wood uses of pentachlorophenol; and an addendum to the Pesticide Assessment Guidelines—Data Reporting.

DATES: The meeting will be held Thursday and Friday, September 26 and 27, 1985, from 8:30 a.m. to 5 p.m. each day.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gary, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766C), 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1117, Crystal Mall Building No. 2, Arlington, VA, (703-557-7096).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. A set of scientific issues in connection with the Agency's proposed regulatory decision on captan.

2. A set of scientific issues in connection with the Agency's proposed regulatory decision on daminozide.

3. A final reglatory action on the non-wood uses of pentachlorophenol as set forth in the Agency's Position Document 4. Although the SAP reviewed certain scientific issues connected with the non-wood uses of pentachlorophenol at its July 1985 meeting, since that time the Agency has decided to cancel additional registrations for these uses based on new information received in public comments on the Position Document 2/3.

4. An addendum to the Pesticides Assessment Guidelines-Data Reporting. To be considered are eight draft reporting guidances on: teratology, crop field trials, storage stability for residue samples, analytical method, rotational crops, and three avian studies) oral LD50, dietary LC50, and reproduction).

5. Completion of any unfinished business from previous Panel meetings.

6. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to item 1 may be obtained by contacting:

By mail: Bruce Kapner, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711I, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7400).

Copies of documents relating to item 2 may be obtained by contacting:

By mail: Joanna Dizikes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711C, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7400).

Copies of documents relating to item 3 may be obtained by contacting:

By mail: Spencer Duffy, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711B, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7400).

Copies of documents relating to item 4 may be obtained by contacting:

By mail: Elizabeth Leovey, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 805, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-0576).

Any member of the public wishing to submit written comments should contact Philip H. Gray, Jr. at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda.

Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. All statements will be made part of the record and will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summary no later than September 18, 1985, in order to ensure appropriate consideration by the Panel.

Dated: August 27, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-20921 Filed 8-29-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00216; PH-FRL 2891-7]

Administrator's Pesticide Advisory Committee; Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of subcommittee meeting.

SUMMARY: The Administrator's Pesticide Advisory Committee (APAC), Subcommitte on Labeling, will hold a meeting to finalize recommendations regarding how the Agency should utilize the various sources for information dissemination to increase the safe use and handling of pesticide products. This is the final meeting of the APAC Subcommittee and the meeting will be open to the public.

DATE: The meeting will take place on Tuesday, September 17, 1985, at 9:00 a.m. and adjourn by 5:00 p.m.

ADDRESS: The Subcommittee meeting will be held in: Room 1119, Crystal Mall #2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Betty Winter, Executive Secretary, Administrator's Pesticide Advisory Committee (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E638, 401 M Street SW., Washington, D.C. 20460 (202-382-2916).

SUPPLEMENTARY INFORMATION: The Subcommittee will finalize recommendations regarding how the Agency should utilize pesticide dealers, the extension service, certification and training courses, pesticide manufacturers, and the public and private school systems to better communicate information regarding the safe use and handling of pesticides. The Subcommittee will also formulate recommendations for how the Agency can improve pesticide labels. The meeting will be open to the public, and time will be set aside for public comments concerning agenda items. Any member of the public wishing to present an oral or written statement relative to the Subcommittee's topics of discussion for this meeting should contact the APAC Executive Secretary at the address or telephone number listed above. A complete agenda will be available at the meeting.

Dated: August 28, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-21002 Filed 8-29-85; 10:55 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Procurement; Commercial or Industrial Performance; Productivity Review List and Schedule

SUMMARY: In compliance with the Office of Management and Budget (OMB) Circular Number A-76, subject, "Performance of Commercial Activities," and its Supplement, Part I, Chapter 1, paragraph C1b, the Equal Employment Opportunity Commission hereby publishes its productivity review list and schedule (all located at the Headquarters, 2401 E Street, NW., Washington, DC) as follows:

Organization	Function	Review start date
Office of Management.	Real property plans, designs, and acquisitions.[1]	October 1985.
Do.	Automated data processing operations.[2]	Do.
Do.	Library services[1]	Do.
Do.	Records and forms analysis and design and office equipment evaluation operations[1].	Do.
Do.	Training operations.[2]	Do.

[1] Less than 10 FTEs.
[2] More than 10 FTEs.

This announcement is *not* a solicitation for bids but rather is an advance notification to alert interested persons and businesses of our plans. More specific information relating to this announcement will *not* be furnished until the solicitation for bids is synopsized in the Commercial Business Daily.

FOR FURTHER INFORMATION CONTACT: Robert P. Hill (202) 634-1395, Equal Employment Opportunity Commission, Office of Management, Performance Management Division, Room 225, 2401 E Street, NW., Washington, DC 20507.

John Seal,

Management Director.

[FR Doc. 85-20783 Filed 8-29-85; 8:45 am]

BILLING CODE 6000-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1531]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

August 12, 1985.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking procedings is published pursuant to CFR Sec. 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Corporate Ownership Reporting and Disclosure by Broadcast Licensees. (Docket No. 20521)

Amendment of §§ 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations. (Docket No. 20548)

Amendment of §§ 73.35, 73.240, 73.636 and 76.501 of the Commission's Rules relating to Multiple Ownership of AM, FM and Television Stations and CATV Systems. (BC Docket No. 78-239)

Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities. (MM Docket No. 83-46, RM's 3653, 3695 & 4045)

Filed by: Gary M. Epstein & James F. Rogers, Attorneys for Sovereign Ventures on 8-5-85.

Subject: Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Sheridan, Wyoming) (MM Docket No. 84-804, RM's 4789 & 4844)

Filed by: James L. Blair, Attorney for Rocky Mountain Communications Network, Inc. (formerly The Chrysostom Corporation) on 8-1-85.

Subject: Amendment of Part 74 of the Commission's Rules and Regulations in Regard to the Instructional Television Fixed Service. (MM Docket No. 83-523)

Filed by:
Shelby D. Green for Instructional Telecommunications Foundation, Inc., on 7-22-85.

Henry Goldberg & Jeffrey H. Olson, Attorneys for Wayne State University on 7–29–85.
Robert E. Kelly, Mary C. Albert & Timothy J. Fitzgibbon, Attorneys for Hispanic Information & Telecommunications Network, Inc., on 7–29–85.
Andrew Jay Schwartzman, Attorney for Media Access Project and Telecommunications Research and Action Center on 7–29–85.
Ernest T. Sanchez, Attorney for Greater Cleveland Hospital Association on 7–29–85.
Richard D. Marks, Todd D. Gray & Corinne M. Antley, Attorneys for Ana G. Mendez Educational Foundation, et al on 7–29–85.
Linda Flores, President for the Puerto Rican Legal Defense and Education Fund on 7–29–85.
Stephen R. Bell & Paul J. Sinderbrand, Attorneys for Microband Corporation of America on 7–29–85.
Steven A. Lerman & Jill Abeshouse Stem, Attorneys for Educational Broadcasting Corporation (WNET–TV) on 7–29–85.
Michael F. Sullivan, Assistant State Superintendent for Maryland State Department of Education on 7–29–85.
Arthur Stambler & Andrew Ritholz, Attorneys for the Network for Instructional T.V., Inc., on 7–29–85.
Irving Gastfreud, Attorney for The George Mason University Foundation, Inc. on 7–30–85.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–20729 Filed 8–29–85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Proposed New System of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed New System of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Emergency Management Agency gives notice of the proposed new system of records entitled "FEMA/NETC–6, Records of Alleged Misconduct of Students Attending Training Courses at the National Emergency Training Center.

A new system has been filed with the Office of Management and Budget, the Speaker of the House of Representatives, and the President of the Senate.

DATE: Comments must be received on or before 30 days from the date of this publication. The notice, including the routine uses, become effective 60 days from the date of this publication, without further notice, unless comments necessitate otherwise.

ADDRESS: Address comments to the Federal Emergency Management Agency, Attn. Docket Clerk, Office of General Counsel, Room 840, 500 C Street, SW., Washington, D.C. 20472. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday (except for legal holidays).

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, at (202) 646–3981.

SUPPLEMENTARY INFORMATION: The proposed system of records is needed to document and evaluate all circumstances which allege misconduct on the part of students attending training courses at the National Emergency Training Center. The information provided by the subject student and other sources will be used during the interview with the subject student prior to a decision being made as to whether such actions warrant dismissal from the National Emergency Training Center. As with any formal training institution, it is necessary to maintain an orderly and professional surrounding for all students. A "Report on New Systems" has been filed, concurrent with this publication, with Congress and the Office of Management and Budget.

Dated: August 9, 1985.

Robert Mahaffey,

Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/NETC–6

SYSTEM NAME:

Records of Alleged Misconduct of Students Attending Training Courses at the National Emergency Training Center.

SECURITY CLASSIFICATION:

Unclassifed.

SYSTEM LOCATION:

Federal Emergency Management Agency, National Emergency Training Center, Emmitsburg, Maryland 21727.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students attending training courses at the National Emerency Training Center who have been charged with alleged misconduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files may include statements from the student charged with alleged misconduct and witnesses; Security reports from Security Guards assigned to the National Emergency Training Center; police reports describing the alleged incident; and copy of student application records, FEMA Form 95–2, which contains the name, address, educational level, social security number, emergency management courses taken and where, emergency management organization and program affiliation, emergency managment title, emergency management telephone number and length of emergency management service, employer, business title and business telephone number; student travel authorization and voucher for partial expense and date and location of course; Student Expense files; completed Grant-in-aid forms; State recommendations; and attendance and progress reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 50 U.S.C. App. 2253, 2281; Reorganization Plan No. 3 of 1978, and E.O. 12148 and E.O. 12127.

PURPOSE(S):

For the purpose of evaluating the alleged misconduct to make an administrative decision as to whether the action warrants dismissal from participation in the training course at the National Emergency Training Center. Upon admission to the National Emergency Training Center, students are apprised that if they are sent home as a result of misconduct, they may not attend future training sessions for one (1) fiscal year following the current fiscal year in which the incident occurred.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A letter notifying the student's employer of the student's dismissal for reasons of misconduct is sent by the National Emergency Training Center. Upon request by the student's employer, information from and/or copies of the statements from the student sent home as a result of misconduct and witnesses, police reports, and security reports from security guards assigned to the National Emergency Training Center may be made available to the student's employer for the purpose of determining if disciplinary action is appropriate by the student's employing organization.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By name or social security number.

SAFEGUARDS:

Records are maintained in a locked container. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are retained for one fiscal year following the current fiscal year in which the incident occurred. Records are then destroyed by means of shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Training and Fire Programs Directorate, Federal Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written request should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individuals should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6.

RECORD SOURCE CATEGORIES:

Directly from the students, witnesses, State and local police departments, and derived from student application and academic records.

[FR Doc. 85-20359 Filed 8-29-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Alliance Federal Savings and Loan Association, Kenner, LA; Replacement of Conservator With Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board on August 23, 1985, replaced John J. Daly as conservator for Alliance Federal Savings and Loan Association, Kenner, Louisiana ("Association"), with the Federal Savings and Loan Insurance Corporation as sole receiver for the Association.

Dated: August 27, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85-20792 Filed 8-29-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-010811.

Title: "Peru Lines Service" a Joint Service Agreement by and between Naviera Neptuno, S.A. ("Neptuno") and Empresa Naviera Santa, S.A. ("Santa").

Parties: Naviera Neptuno, S.A. Empresa Naviera Santa, S.A.

Synopsis: The proposed agreement would establish a joint service arrangement between the parties in the trade between U.S. Atlantic and Gulf ports and inland points via such ports and ports and points in Peru, Chile, Bolivia, Mexico and other wayports. It would allow the parties the use of the trade name "Peru Lines Service"; to designate joint agents, coordinate management and issue joint bills of lading; and to share in revenues and expenses. It would also allow the parties to join or resign from any lawful conference in the trade, and publish their own tariff where the parties are not conference members.

By Order of the Federal Maritime Commission.

Dated: August 27, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-20863 Filed 8-29-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens State Bancorp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 20, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Citizens State Bancorp,* Cincinnati, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, Cincinnati, Ohio. Comments on this

application must be received not later than September 23, 1985.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.*, Hartselle, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Community Bank & Trust, Hartselle, Alabama.

2. *Hibernia Corporation*, New Orleans, Louisiana; to merge with Fidelity National Financial Corporation, Baton Rouge, Louisiana, thereby indirectly acquiring Fidelity National Bank of Baton Rouge, Baton Rouge, Louisiana.

Hibernia Corporation has also applied to acquire 24. 9 percent of the voting shares of Fidelity National Financial Corporation, Baton Rouge, Louisiana, thereby indirectly acquiring Fidelity National Bank of Baton Rouge, Baton Rouge, Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Farmers State Bancorp.*, College Corner, Ohio; to acquire 100 percent of the voting shares of State Bank of Carthage, Carthage, Indiana and the First National Bank of Mays, Mays, Indiana.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Grant County Bancorporation, Inc.*, Carson, North Dakota; to become a bank holding company by acquiring 99 percent of the voting shares of First Southwest Bank-Carson, Carson, North Dakota.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *LJT, Inc.*, Holdrege, Nebraska; to become a bank holding company by acquiring 34.79 percent of the voting shares of First Holdrege Banc Shares, Inc., Holdrege, Nebraska.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Huntsville Corporation*, Huntsville, Texas; to acquire 100 percent of the voting shares of First National Bank of Madisonville, Madisonville, Texas, a *de novo* bank.

2. *Gulfbanks, Inc.*, Corpus Christi, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of the following banks: CTRL National Gulfbank of Corpus Chrisiti, Corpus Christi, Texas; 1st National Bank of Corpus Christi, Corpus Christi, Texas; Southern National Bank of Corpus Christi, Corpus Christi, Texas; and Western National Bank of Corpus Christi, Corpus Christi, Texas. Comments on this application must be received not later than September 23, 1985.

Board of Governors of the Federal Reserve System, August 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20735 Filed 8-29-85; 8:45 am]

BILLING CODE 6210-01-M

Fidelcor, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to product benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania; to expand through its subsidiary, Latimer & Buck, Inc., Philadelphia, Pennsylvania, the geographic area in which the Applicant can undertake the following permissible non-banking activities: originating or acquiring or servicing, for the account of others, short-term or long-term extensions of credit or mortgages; holding for its own account, extensions of credit commonly associated with the financing of real estate; servicing real estate sale leaseback transactions; performing appraisals of real estate; and arranging equity financing. These activities would be expanded to include the entire United States of America.

2. *Fidelcor, Inc.*, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, Latimer & Buck, Inc., Philadelphia, Pennsylvania, an advisory company for a mortgage or real estate investment trust as permitted under Regulation Y, § 225.25(b)(4)(i).

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690.

1. *Associated Banc-Corp.*, Green Bay, Wisconsin; to acquire Associated Insurance Corporation, Phoenix, Arizona; and thereby engage in underwriting, reinsuring, offering credit life insurance and credit accident and health insurance on extensions of credit by Associated, Banc-Corp. and its subsidiaries, pursuant to section 4(c)(8)(A) of the Act.

Board of Governors of the Federal Reserve System, August 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20736 Filed 8-29-85; 8:45 am]

BILLING CODE 6210-01-M

First Exchange Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 1985.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Exchange Corp.*, Cape Girardeau, Missouri; to engage *de novo* through its wholly owned subsidary, Exchange Financial Services, Inc., Cape Girardeau, Missouri, in originating and selling real estate loans.

Board of Governors of the Federal Reserve System, August 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20737 Filed 8-29-85; 8:45 am]

BILLING CODE 6210-01

National Mercantile Bancorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under 225.23(a)(2) or (f)) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR § 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 20, 1985.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *National Mercantile Bancorp*, Los Angeles, California; to engage through its subsidiary, Media Funding Corporation, Beverly Hills, California, in joint venture activities (commercial finance lending to television, motion pictures, music and video producers with security for the repayment of such loans provided by a payment right under a distribution agreement). This application may also be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, August 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20738 Filed 8-29-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 16, 1985.

Health Care Financing Administration

Subject: Information Collection Requirements in the Home and Community Based Services Waiver Request—HCFA-8003—New.

Respondents: State/local governments.

Subject: Chronic Renal Disease Medical Evidence Report—HCFA-2728—Revision (0938-0046).

Respondents: Individuals or households, businesses or other for-profit institutions.

OMB Desk Officer: Fay S. Iudicello.

Office of the Secretary

Subject: The Preferred Provider Organization Study—New.

Respondents: Individuals.

OMB Desk Officer: Judy A. McIntosh.

Social Security Administration

Subject: Information Collection Requirements Contained in the Revised Regulation on Listing of Impairments-Mental Disclosures-20 CFR 404 Subpart P and 416 Subpart I—SSA-2506 BK—New.

Respondents: State Disability Determination Staffs.

OMB Desk Officer: Judy A. McIntosh.

Public Health Service

National Institutes of Health

Subject: Established Populations for Epidemiologic Studies of the Elderly, (Telephone Follow-up; Years 4 and 5)—New.

Respondents: Individuals or households.

Subject: Vitamin Supplements and Neural Tube Defects—New.

Respondents: Individuals or households.

Health Resources and Services Administration

Subject: Uncompensated Service Assurance Report—Revision (0915–0077).

Respondents: Health care facilities.

Centers for Disease Control

Subject: Regulation—42 CFR 5lb—Veneral Disease Program Grants—Extension (0920–0112).

Respondents: State/local governments, non-profit institutions.

OMB Desk Officer: Fay S. Iudicello.

Food and Drug Administration

Subject: Standards Survey—New.

Respondents: Voluntary standards organizations and professional societies that develop medical device standards.

OMB Desk Officer: Bruce Artim.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503; Attn: (name of OMB Desk Officer).

Dated: August 26, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–20788 Filed 8–29–85; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 85P–0399]

Canned Spinach Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Rogers Walla Walla, Inc., and Continental Can Co., Inc., to market test experimental packs of canned spinach containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than November 29, 1985.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporry permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Rogers Walla Walla, Inc., P.O. Box 998, Walla Walla, WA 99362, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004.

The permit covers limited interstate marketing tests of experimental packs of canned spinach. The test product deviates from the standard of identity for canned spinach (21 CFR 155.200) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.200 with the exception of this deviation.

The permit provides for the temporary marketing of a total of 400,000 cases of 4 container sizes, i.e., 300,000 cases of 8Z Tall cans, No. 303 cans, and No. 2½ cans, and 100,000 cases of No. 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Rogers Walla Walla, Inc., plant located in Walla Walla, WA.

The principal display panel of the label states the product name as "Sliced Spinach." Each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than November 29, 1985.

Dated: August 22, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–20731 Filed 8–29–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85P–0372]

Grated Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Great Lakes Cheese Co., Inc., to market test grated cheese containing powdered cellulose as an anticaking agent. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than November 29, 1985.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF–215), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0101.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Great Lakes Cheese Co., Inc., Newburg, OH 44065.

The permit covers limited interstate marketing tests of grated cheese that deviates from the standard of identity for grated cheeses (21 CFR 133.146). Powdered cellulose, an ingredient not currently permitted for use in grated cheese, will be used as an anticaking agent, either alone or in combination with other anticaking agents listed in § 133.146(b)(2) in an amount not to exceed 2 percent by weight of the finished food. The test product meets all requirements of § 133.146, with the exception of this deviation. The permit provides for the temporary marketing of 9 million pounds of grated cheese. The test product will be distributed in all 50 States.

The test product is to be manufactured at the Great Lakes Cheese Co., Inc., plant located in Newburg, OH.

The principal display panel of the label states the product's name. Each of the ingredients used in the food, including the powdered cellulose, is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than November 29, 1985.

Dated: August 22, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-20730 Filed 8-29-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85E-0296]

Determination of Regulatory Review Period for Purposes of Patent Extension; New Jersey Meniscal Bearing Knee Replacement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) has determined the regulatory review period for the New Jersey Meniscal Bearing Knee Replacement and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James C. Shehan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the New Jersey Meniscal Bearing Knee Replacement. This patented product, which consists of the Rotating Platform of the New Jersey Total Knee System (PM30055) and the Sliding Meniscal Bearing of the New Jersey Total Knee System (PM30055/S2), is indicated for cemented use in cases of osteoarthritis and rheumatoid arthritis. Based on this recent approval, DePuy, Inc., has applied for patent term restoration.

FDA has determined that the applicable regulatory review period for the New Jersey Meniscal Bearing Knee Replacement is 1,701 days. Of this time, 1,095 days occurred during the testing phase of the regulatory review period, while 606 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date a clinical investigation was begun: August 16, 1980.

The applicant claimed July 14, 1980, as the date which commenced the testing phase. FDA received the application for an investigational device exemption on July 17, 1980. Thirty days after this application was received, it was automatically approved under 21 CFR 812.30(a)(1) on August 16, 1980.

2. The date an application was initially submitted under section 515 of the Federal Food, Drug, and Cosmetic Act: August 16, 1983.

The applicant claimed that the premarket approval applications for the product (PM30055 and PM30055/S2) were submitted on August 12, 1983. However, FDA received the application on August 16, 1983.

3. The date the application was approved: April 12, 1985.

The applicant claimed that its product was approved on April 25, 1985. FDA has determined, however, that premarket approval application (PM30055) and its supplement (PM30055/S2), which cover both parts of the New Jersey Meniscal Bearing Knee Replacement, were approved on April 12, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 90 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 29, 1985, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interrested person may petition FDA, on or before February 26, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 98-857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the document number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 28,1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85-20936 Filed 8-29-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Redesignation of Illinois Health Service Areas 7 and 8

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: On July 25, 1985 a Notice was published in the **Federal Register** (50 FR 30301) annoucing the Secretary's decision to redesignate Illinois health service areas 7 and 8. The effective date was to have been September 13, 1985. Subsequent to that announcement an action was filed in the U.S. District Court, District of Columbia, seeking to have the Secretary's area redesignation decision set aside. In order to allow that litigation to proceed in an orderly manner, the Department has agreed to postpone the effective date until October 15, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Belin, Director, Division of Agency Operations and Management, OHP, BHMORD, 5600 Fishers Lane, Room 9A-19, Rockville, Maryland 20857, 301-443-6680.

Dated: August 27, 1985.

John H. Kelso,

Acting Administrator, HRSA.

[FR Doc. 85-20750 Filed 8-29-85; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute, Board of Scientific Counselors, Division of Cancer Prevention and Control; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 19-20, 1985, Conference Rooms 7 and 8, Sixth Floor C-Wing, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20205. This meeting will be open to the public on September 19 from 8:30 a.m. to 3:00 p.m. and on September 20 from 8:30 a.m. to adjournment to review programs and policies of the Division of Cancer Prevention and Control. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, a portion of the meeting will be closed to the public on September 19 from approximately 3:00 p.m. to recess for review, discussion and recommendations regarding the disposition of a cooperative agreement project. The discussion regarding the process of the review and subsequent recommendations could reveal personal information concerning individuals associated with the project, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Also reviewed during this closed session will be the results of the intramural research site visit of the Cancer Prevention Studies Branch. The site visit chairman will present the site visit report to the Board of Scientific Counselors.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301-496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Mr. J. Henry Montes, Executive Secretary, Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, Blair Building, Room 1A07, National Institutes of Health, Bethesda, Maryland 20205 (Telephone: 301-427-8630) will furnish substantive program information.

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-20797 Filed 8-29-85; 8:45 am]

BILLING CODE 4140-01-M

Developmental Therapeutics Contracts Review Committee; Meeting Cancellation

Notice of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institutes, National Institute of Health, September 13, 1985, Building 31, Conference Room 7, Bethesda, Maryland 20205, published in the **Federal Register**, (50 FR 28479) is hereby cancelled. For further information, please contact Dr. Kendall G. Powers, Executive Secretary, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7575).

Dated: August 19, 1985.

Thomas E. Malone, Ph.D.,

Deputy Director, NIH.

[FR Doc. 85-20798 Filed 8-29-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute, Board of Scientific Counselors; Division of Cancer Biology and Diagnosis; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCBD, National Cancer Institute, October 29, 1985, at the National Institutes of

Health, Building 31, Conference Room 7, Bethesda, Maryland. This meeting will be open to the public on October 29, from 8:30 a.m. to 3:00 p.m. for review of the DCBD Extramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 29, from 3:00 p.m. to adjournment, for the review, discussion, and evaluation of individual programs and projects conducted by DCBD, National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A–04, National Institutes of Health, Bethesda, Maryland 20205 (301/496–4345) will furnish substantive program information.

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–20799 Filed 8–29–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, October 21–23, 1985, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 8:30 a.m. on Monday, October 21 until approximately 4:00 p.m. and will again be open to the public from 8:30 a.m. on Tuesday, October 22 until 4:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 21 from 4:00 p.m. until recess, and again on October 22 from 4:00 p.m. until adjournment on October 23 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland 20205, (telephone: 301/496–5898) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No 13.866, Aging Research, National Institutes of Health)

Dated: August 9, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–20800 Filed 8–29–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; National Advisory Allergy and Infectious Diseases Council; Allergy and Immunology Subcommittee and Microbiology and Infectious Diseases Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 19–20, 1985, at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20205.

The meeting will be open to the public on September 19 from approximately 9:00 a.m. to 9:30 a.m. for opening remarks of the Institute Director and again from 1:30 p.m. to approximately 5:00 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program discussions will be on Asthma and Allergic Diseases; State of the Art Reviews. On September 20 of the meeting will be open to the public from approximately 8:30 a.m. to 9:30 a.m. for the reports of the Director of the Microbiology and Infectious Diseases Program and the Director of the Immunology, Allergic and Immunologic Diseases Program.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Allergy and Immunology Subcommittee and of the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for the review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 9:30 a.m. until approximately 12:30 p.m. on September 19. The meeting of the full Council will be closed from approximately 9:30 a.m. until adjournment on September 20 for the review, evaluation, and discussion of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Gwendolyn Trible, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–5717, will provide summaries of the meetings and rosters of the Council members as requested.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301) 496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 9, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–20801 Filed 8–29–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological and Communicative Disorders and Stroke; Meetings

Pursuant to Pub. Law 92–463, notice is hereby given of the meetings of the committees of the National Institute of Neurological and Communicative Disorders and Stroke.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice.

Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552(b)(4) and 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Advisory Neurological and Communicative Disorders and Stroke Council and Its Planning Subcommittee.

Dates: October 9–11, 1985.

Place: National Institute of Health; Building 31C, Conference Room 10; 9000 Rockville Pike; Bethesda, Maryland 20205.

Open: October 9, 1:00 p.m.—3:00 p.m. (Planning Subcommittee); October 10, 9:00 a.m.—2:00 p.m. (Council).

Agenda: To discuss program planning, program accomplishments, and special reports.

Closed: October 9, 3:00 p.m.—5:00 p.m. (Planning Subcommittee); October 10, 2:00 p.m.—4:00 p.m. (Council); October 11, 8:30 a.m.—adjournment (Council).

Closure Reason: For review of grant applications.

Executive Secretary: John C. Dalton, Ph.D., Director, NINCDS–EAP, Federal Building, Room 1016, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496–9248.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: October 18, 19, and 20, 1985.

Place: Grenelefe Hotel, 1011 S. Akard, Dallas, Texas 75215.

Open: October 18, 8:30 a.m.—9:00 a.m.

Closed: October 18, 9:00 a.m.—recess; October 19, 8:30 a.m.—recess; October 20, 8:00 a.m.—adjournment.

Closure Reason: To review grant applications.

Acting Executive Secretary: Dr. A. Beau White, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496–9223.

Name of Committee: Communicative Disorders Review Committee.

Dates: October 31—November 1, 1985.

Place: Ramada Inn, Bethesda, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: October 31, 8:00 a.m.—8:30 a.m.

Closed: October 31, 8:30 a.m.—recess; November 1, 8:00 a.m.—adjournment.

Closure Reason: To review grant applications.

Executive Secretary: Dr. Marilyn Semmes, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496–9223.

Name of Committee: Neurological Disorders Program Project Review A Committee

Dates: October 31, November 1 and 2, 1985.

Place: Ramada Inn, Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Open: October 31, 8;00 p.m.—8:30 p.m.

Closed: October 31, 8:30 p.m.—recess; November 1, 8:30 a.m.—recess; November 2, 8:30 a.m.—adjournment.

Closure Reason: To review grant applications.

Executive Secretary: Dr. Leon Jack Greenbaum, Jr., Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496–9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–20802 Filed 8–29–85; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for September through November 1985, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	September–November, 1985 Meetings	Time	Location
Allergy and Immunology, Dr. Eugene Zimmerman, Rm. 320, Tel. 301–496–7380	Oct. 17–19	8:30	Holiday Inn, Gaithersburg, MD.
Bactenology and Mycology-1, Dr. Milton Gordon, Rm. 304, Tel. 301–496–7340	Oct. 9–11	8:30	Holiday Inn, Georgetown, DC.
Bactenology and Mycology-2, Dr. William Branche, Jr., Rm. 306, Tel. 301–496–7681	Oct. 16–18	8:30	Holiday Inn, Georgetown, DC.
Behavioral Medicine, Dr. Joan Rittenhouse, Rm. 232, Tel. 301–496–7109	Oct. 9–11	9:00	Georgetown Hotel, Washington, DC.
Biochemical Endocnnology, Dr. Norman Gold, Rm. 226, Tel. 301–496–7430	Oct. 16–19	8:30	Holiday Inn, Bethesda, MD.
Biochemistry-1, Dr. Adolphus P. Toliver, Rm. 318B, Tel. 301–496–7516	Oct. 23–25	8:30	Westpark Hotel, Rosslyn, VA.
Biochemistry-2, Dr. Alex Liacouras, Rm. 318A, Tel. 301–496–7517	Oct. 17–19	8:30	Linden Hill Hotel, Bethesda, MD.
Bio-Organic and Natural Products Chemistry, Dr. Michael Rogers, Rm. 5, Tel. 301–496–7107.	Oct. 17–19	9:00	Holiday Inn, Georgetown, DC.
Biophysical Chemistry, Dr. John B. Wolff, Rm. 236B, Tel. 301–496–7070	Oct. 17–19	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301–496–7058	Sept 30–Oct. 3	9:00	Ramada Inn, Bethesda, MD.
Cardiovascular and Pulmonary, Dr. Anthony C. Chung, Rm. 2A–04, Tel. 301–496–7316	Oct. 9–11	8:30	Linden Hill Hotel, Bethesda, MD.
Cardiovascular and Renal, Dr. Rosemary Morris, Rm. 321, Tel. 301–496–7901	Oct. 21–23	8:30	Holiday Inn, Bethesda, MD.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301–496–7396	Oct. 9–11	8:30	Room 7, Bldg. 31C, Bethesda, MD.

Study section	September–November, 1985 Meetings	Time	Location
Cellular Biology and Physiology-2, Dr. Evelyn Horenstein, Rm. 308, Tel. 301-496-7861	Oct. 21-23	8:30	Linden Hill Hotel, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301-496-7079	Oct. 17-19	8:00	Ramada Inn, Bethesda, MD.
Diagnostic Radiology, Dr. Catherine Wingate, Rm. 219B, Tel. 301-496-7650	Oct. 23-25	8:30	Room A, Landow Bldg., Bethesda, MD.
Endocrinology, Dr. Harry Brodie, Rm. 333, Tel. 301-496-7346	Oct. 22-24	9:00	Ramada Inn, Bethesda, MD.
Epidemiology and Disease Control-1, Dr. Phyllis B. Eveleth, Rm. 203C, Tel. 301-496-7246	Oct. 15-17	8:30	Holiday Inn, Chevy Chase, MD.
Epidemiology and Disease Control-2, Dr. Ann Schluederberg, Rm. 203B, Tel. 301-496-7246	Oct. 15-17	8:30	Holiday Inn, Chevy Chase, MD.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 234, Tel. 301-496-7940	Oct. 15-17	8:00	Gramercy Inn, Washington, DC.
Experimental Immunology, Dr. David Lavrin, Rm. 222B, Tel. 301-496-7238	Oct. 16-18	9:00	Old Colony Inn, Alexandria, VA.
Experimental Therapeutics, Dr. Morris Kelsey, Rm. 221, Tel. 301-496-7597	Oct. 16-18	8:30	Holiday Inn, Bethesda, MD.
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301-496-7474	Oct. 21-23	8:30	Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A-1, Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797	Oct. 23-25	8:30	Room 10, Bldg. 31C, Bethesda, MD.
General Medicine A-2, Dr. Donna J. Dean, Rm. 354B, Tel. 301-496-7140	Oct. 23-25	8:30	Room 6, Bldg. 31C, Bethesda, MD.
General Medicinde B, Dr. Antonia Novello, Rm. 322 Tel. 301-496-7730	Oct. 23-25	8:30	Holiday Inn, Georgetown, DC.
Genetics, Dr. David Remondini, Rm. 349, Tel. 301-496-7271	Oct. 17-19	9:00	Room 8, Bldg. 31C, Bethesda, MD.
Hearing Research, Dr. Joseph Kimm, Rm. 225, Tel. 301-496-7494	Oct. 16-18	8:30	Georgetown Hotel, Washington, DC.
Hematology-1, Dr. Clark Lum, Rm. 355A, Tel. 301-496-7506	Oct. 17-19	8:00	Georgetown Inn, Washington, DC.
Hematology-2, Dr. Bruce Maurer, Rm. 355B, Tel. 301-496-7506	Oct. 9-11	8:00	Holiday Inn, Georgetown, DC.
Human Development and Aging-1, Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025	Oct. 23-25	9:00	State Plaza Hotel, Washington, DC.
Human Development and Aging-2, Dr. Samuel Rawlings, Rm. 305, Tel. 301-496-7640	Oct. 9-11	9:00	Wellington Hotel, Washington, DC.
Human Development and Aging-3, Dr. Susan C. Streufert, Rm. 203, Tel. 301-496-9403	Oct. 21-22	8:30	Highland Hotel, Washington, DC.
Human Embryology and Development, Dr. Arthur Hoversland, Rm. 319A, Tel. 301-496-7506	Oct. 22-25	8:00	Linden Hill Hotel, Bethesda, MD.
Immunobiology, Dr. William Stylos, Rm. 222A, Tel. 301-496-7780	Oct. 9-11	8:30	Holiday Inn, Bethesda, MD.
Immunological Sciences, Dr. Hugh Stamper, Rm. 233A, Tel. 301-496-7179	Oct. 16-18	8:30	Wellington Hotel, Washington, DC.
Mammalian Genetics, Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271	Oct. 24-26	8:30	Twin Bridges Marriott, Arlington, VA.
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 5, Tel. 301-496-7107	Oct. 23-25	9:00	Holiday Inn, Georgetown, DC.
Metabolism, Dr. Robert Leonard, Rm. 339A, Tel. 301-496-7091	Oct. 24-26	8:30	Room 6, Bldg. 31C, Bethesda, MD.
Metallobiochemistry, Dr. John A. Beisler, Rm. 310, Tel. 301-496-7733	Oct. 24-26	8:30	Holiday Inn, Bethesda, MD.
Microbial Physiology and Genetics-1, Dr. Martin Slater, Rm. 238, Tel. 301-496-7183	Oct. 23-25	8:30	Sherton-Potomac, Rockville, MD.
Microbial Physiology and Genetics-2, Dr. Gerald Liddel, Rm. 357, Tel. 301-496-7130	Oct. 23-25	8:30	Ramada Inn, Bethesda, MD.
Molecular and Cellular Biophysics, Dr. Patricia Strasi, Rm. 236A, Tel. 301-496-7060	Oct. 24-26	8:30	Sheraton-Potomac, Rockville, MD.
Molecular Biology, Dr. Donald Disque, Rm. 328, Tel. 301-496-7830	Oct. 17-19	8:30	Holiday Inn, Georgetown, DC.
Molecular Cytology, Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	Oct. 10-12	8:30	Wellington Hotel, Washington, DC.
Neurological Sciences-1, Dr. Allen C. Stoolmiller, Rm. 437B, Tel. 301-496-7280	Oct. 10-12	8:00	Holiday Inn, Bethesda, MD.
Neurological Sciences-2, Dr. Stephen Gobel, Rm. 154, Tel. 301-496-8808	Oct. 8-11	8:30	Holiday Inn, Bethesda, MD.
Neurology A, Dr. Catherine Woodbury, Rm. 326, Tel. 301-496-7095	Oct. 9-12	12:00 p.m.	Holiday Inn, Bethesda, MD.
Neurology B-1, Dr. Jo Ann McConnell, Rm. 152, Tel. 301-496-7846	Oct. 15-18	8:30	Governor's House, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 152, Tel. 301-496-7422	Oct. 1-4	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Neurology C, Dr. Kenneth Newrock, Rm. 154, Tel. 301-496-8808	Oct. 16-19	8:30	Linden Hill Hotel, Bethesda, MD.
Nutrition, Dr. John Schubert, Rm. 204, Tel. 301-496-7178	Oct. 23-25	8:30	Room 4, Bldg. 31A, Bethesda, MD.
Oral Biology and Medicine-1, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	Oct. 16-18	8:30	Sherton-Potomac, Rockville, MD.
Oral Biology and Medicine-2, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	Oct. 23-25	8:30	Linden Hill Hotel, Bethesda, MD.
Orthopedics and Musculoskeletal, Ms. Ileen Stewart, Rm. 350, Tel. 301-496-7581	Oct. 28-28	8:30	Room 10, Bldg. 31C, Bethesda, MD.
Pathobiochemistry, Dr. Sharon Johnson, Rm. A-28, Tel. 301-496-7820	Oct. 23-25	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Pathology A, Dr. John L. Meyer, Rm. 337, Tel. 301-496-7305	Oct. 16-18	8:00	Ramada Inn, Bethesda, MD.
Pathology B, Dr. Martin Padarathsingh, Rm. 352, Tel. 301-496-7244	Oct. 23-25	8:30	Holiday Inn, Georgetown, DC.
Pharamacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408	Oct. 15-17	8:30	Ramada Inn, Rockville, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 218B, Tel. 301-496-7120	Oct. 23-25	8:30	Marbury House, Georgetown, DC.
Physiological Chemistry, Dr. Stanley Burrous, Rm. 339B, Tel. 301-496-7837	Oct. 23-25	8.00	Holiday Inn, Chevy Chase, MD.
Physiology, Dr. Raymond Bahor, Rm. 209, Tel. 301-496-7878	Oct. 9-12	9:00	Wellington Hotel, Washington, DC.
Radiation, Dr. John Zimbrick, Rm. 219A, Tel. 301-496-7073	Oct. 28-30	9:00	Holiday Inn, Bethesda, MD.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318	Oct. 22-25	8:30	Holiday Inn, Bethesda, MD.
Respiratory and Applied Physiology, Dr. Herbert Yellin, Rm. 218A, Tel. 301-496-7320	Oct. 9-11	8:30	Linden Hill Hotel, Bethesda, MD.
Safety and Occupational Health, Dr. Richard Rhoden, Rm. 3A10, Tel. 301-496-8723	Oct. 30-Nov. 1	8:30	Colonial Manor, Rockville, MD.

Study section	September–November, 1985 Meetings	Time	Location
Sensory Disorders and Language, Dr. Michael Halasz, Rm. 3A-07, Tel. 301-496-7550	Oct. 30-Nov. 1	8:30	Capitol Holiday Inn, Washington, DC.
Social Sciences and Population, Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906	Oct. 10-12	9:00	Holiday Inn, Chevy Chase, MD.
Surgery and Bioengineering, Dr. Paul F. Parakkal, Rm. 303A, Tel. 301-496-7506	Oct. 21-23	8:00	Wellington Hotel, Washington, DC.
Surgery, Anesthesiology and Trauma, Dr. Keith Kraner, Rm. 319B, Tel. 301-496-7771	Oct. 10-11	8:30	Ramada Inn, Bethesda, MD.
Toxicology, Ms. Faye J. Calhoun, Rm. 205, Tel. 301-496-7570	Oct. 16-18	8:00	Holiday Inn, Georgetown, DC.
Tropical Medicine and Parasitology, Dr. Jean Hickman, Rm. 334, Tel. 301-496-1190	Oct. 14-16	8:00	Holiday Inn, Bethesda, MD.
Virology, Dr. Claire Winestock, Rm. 309, Tel. 301-496-7605	Oct. 10-12	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Visual Sciences A-1, Dr. Luigi Giacometti, Rm. 207, Tel. 301-496-7000	Oct. 23-25	9:00	Linden Hill Hotel, Bethesda, MD.
Visual Sciences A-2, Dr. Jane Hu, Rm. 439A, Tel. 301-496-7310	Oct. 16-19	8:30	Holiday Inn, Georgetown, DC.
Visual Sciences B, Dr. Earl Fisher, Jr., Rm. 325, Tel. 301-496-7251	Oct. 9-12	8:30	Wellington Hotel, Washington, DC.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-20803 Filed 8-29-85; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; National Institutes of Health

Notice is hereby given that program-level organizational changes occurring in the National Institutes of Health (NIH) will no longer be published in the **Federal Register.**

On July 23, 1984, authority to approve organizational changes at the program level (fourth echelon) was delegated from the Director, Office of Management, PHS, to the Director, NIH. This delegated authority also included the right of the Director, NIH, to determine whether or not to continue the publication of Program organizational changes at NIH. It has been determined that the cost savings for non-publication outweigh the benefits of publishing these changes.

Further information may be obtained from Mr. John J. Migliore, Chief, Management Analysis Branch, Division of Management Policy, Office of Administration, National Institutes of Health, Building 31, Room 3B19, 9000 Rockville Pike, Bethesda, MD 20892 (301–496–2461).

Dated: August 19, 1985.

James B. Wyngaarden, M.D.,

Director, NIH.

[FR Doc. 85-20804 Filed 8-29-85; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Health

National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Arthritis Advisory Board on September 6, 1985, 8:30 a.m. to 12:30 p.m. at the San Francisco Marriott, Fishermen's Wharf, San Francisco, CA. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the Hotel lobby.

Further information, times and meeting locations of the subcommittees may be obtained by contacting Mr. Raymond Kuehne, Executive Director. National Arthritis Advisory Board, P.O. Box 30174, Bethesda, Maryland 20205, (301) 496–6045. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Frank, Committee Management Office, NIADDK, National Institutes of Health, Room 9A47, Building 31A, Bethesda, Maryland, 20205, (301) 496–6917.

Dated: August 27, 1985.

J.E. Rall,

Acting Director, NIH.

[FR Doc. 85-20919 Filed 8-29-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision and Deletion of Notices of Systems of Records

This notice updates and revises the information which the Department of the Interior has published describing systems of records maintained which are subject to the requirements of section 3 of the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register.**

The system of records notice describing the Department's financial interest statements and Ethics Counselor decision records (OS–3), previously published on July 2, 1984 (49 FR 27215), is revised to add a reference to "Associate Ethics Counselors" in the system location description. The existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Also, the retention and disposal statements are amended to reference the National Archives and Records Administration (NARA) General Records Schedule as prescribed in the Assistant Archivist for Records Administration's memorandum to Agency Records Officers dated June 11, 1985.

The system of records notice describing records on Secretarial controlled correspondence (OS–20), previously published on April 11, 1977 (42 FR 19019), is revised to: (1) Clarify the existing routine disclosure for litigation purposes pursuant to the OMB guidelines referenced above; (2) clarify the existing routine disclosure statement regarding congressional inquiries; and (3) revise the retention and disposal statement pursuant to the NARA memorandum referenced above.

The notice titled "Emergency Loan Fund Committee Loan Records—Interior, Office of the Secretary–80", previously published on May 27, 1981

[46 FR 28522], is deleted from the Department's inventory of systems of records notices. The loan fund was discontinued on October 4, 1983, and the associated records are no longer maintained.

The two notices being revised (OS–3 and OS–20) are published in their entirety below. Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective August 30, 1985. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240.

Dated: August 22, 1985.

James P. Jadlos,

Acting Director, Office of Information Resources Management.

INTERIOR/OS–3

SYSTEM NAME:

Financial Interest Statements and Ethics Counselor Decisions—Interior, Office of the Secretary—

SYSTEM LOCATIONS:

(1) Office of the Assistant Secretary—Policy, Budget and Administration, Interior, 18th and C Street, N.W., Washington, D.C. 20240; (2) Bureau and Office of Ethics Counselors, Deputy Ethics Counselors, Associate Ethics Counselors, and Assistant Ethics Counselors. (A list may be obtained from the Deputy Agency Ethics Official, Office of the Assistant Secretary—Policy, Budget and Administration.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present or past Department employees required to file financial interests or disclosure statements as required by in 5 CFR Part 734, 43 CFR Part 20, or 30 CFR Part 706; and, present or past Department employees subjected to remedial or disciplinary action for conflicts of interest or other ethics violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains confidential statements of employment and financial interests (forms DI–212, DI–212A, DI–213, or DI–278) for present or past Interior Department employees required to file such statements. Contains Public Financial Disclosure Reports required by the Ethics in Government Act of 1978, as amended, (form SF–278) for present or past incumbents in position required to file such statements. Also contains records of conflict of interest decisions and appeals, analysis of financial holdings, employee statements, bureau or office comments, and supervisor comments on present or past employees, as requested by the bureau or office counselors or as needed by the Designated Agency Ethics Official.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. 7301; (2) 16 U.S.C. 1912; (3) 30 U.S.C. 1211; (4) 42 U.S.C. 6392; (5) 43 U.S.C. 1743; (6) 43 U.S.C. 1864; (7) Executive Order No. 11222, 18 U.S.C. 201 note; (8) 5 CFR Parts 734 and 736; and (9) 43 CFR Part 20.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are: (a) To review employee financial interests and determine employee compliance or non-compliance with applicable conflict of interest statutes and regulations, and to effect remedial and disciplinary action where non-compliance is ascertained; (b) to record in fact that the employee has been made aware of specifically directed legislation or regulations covering his organization and that he or she is in compliance with such specific legislation or regulations; (c) to provide the public with access to, and to adequately control access to, financial disclosure reports which must by statute be made available to the public; and (d) to provide an adequate system of records for Departmental auditors performing compliance audits within the Department.

Disclosure outside of the Department may be made: (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the disclosure is deemed by the Department of the Interior to be relevant or necessary to the litigation, and (c) the Department of the Interior determines that disclosure is compatible with the purpose for which the records were compiled; (2) to a Member of Congress from the record of an individual in response to an inquiry made at the request of that individual; (3) to federal, state, tribal, territorial or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit; (4) to a federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (5) to the Office of Personnel Management to perform oversight reviews; (6) to the public for only those records covered by specific statutes requiring their public disclosure; (7) to appropriate federal, state, tribal, territorial, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing, implementing, or administering a statute, rule, regulation, program, facility, order, lease, license, contract, grant, or other agreement; (8) to a federal, state, tribal, territorial, local or foreign agency, or an organization, or an individual when reasonably necessary to obtain information or assistance relating to an audit, investigation, trial, hearing, preparation for trial or hearing, or any other authorized activity or the Department; (9) to an appropriate federal, state, tribal, territorial, local, or foreign court or grand jury in accordance with established constitutional, substantive, or procedural law or practice; (10) to an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings; and (11) to a foreign government pursuant to an international treaty, convention, or executive agreement entered into by the United States.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

(1) For confidential statements of employment and financial interests, DI–212, DI–212A, and DI–213:

STORAGE:

Maintained in file folders, word processing equipment storage media, and computer disks and output.

RETRIEVABILITY:

For each bureau and office, information is filed alphabetically by position or employee name.

SAFEGUARDS:

Maintained in locked file cabinets in locked rooms; manual files, standard passworded filed on word processor, and software are accessible to authorized persons only. Access to computer files is restricted by the use of file passwords and file encryption.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with General Records Schedule No. 1, Item No. 25.

(2) For Public Disclosure Statements of Known Financial Interest, SF–278; and Confidential Supplement Form DI–278:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by bureau, alphabetically by employee name in the Office of the Assistant Secretary—Policy, Budget and Administration.

SAFEGUARDS:

Maintained in locked file cabinets or in locked rooms; manual files, standard passworded files and software are accessible to authorized persons only.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with General Records Schedule No. 1, Item No. 25.

SYSTEM MANAGER(S) AND ADDRESS:

Designated Agency Ethics Official, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

NOTIFICATION PROCEDURES:

Inquiries may be addressed to the System Manager identified above, or to the appropriate Bureau or Office Ethics Counselor. (A list of Ethics Counselors can be obtained from the System Manager.) (See 43 CFR 2.60 for procedures on making inquiries.)

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager, identified above, or to the appropriate Bureau or Office Ethics Counselor. (A list of Ethics Counselors can be obtained from the System Manager.) The request must be in writing and signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager or to the appropriate Bureau or Office Ethics Counselor. (A list may be obtained from the System Manager) and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Present Department employees who are, or past Department employees who were, required to file financial interest statements, and Department bureaus and offices.

INTERIOR/OS–20

SYSTEM NAME:

Secretarial Controlled Correspondence File—Interior, Office of the Secretary—20.

SYSTEM LOCATION:

Executive Secretariat, Office of the Under Secretary, U.S. Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have written to the Secretary of the Interior on official business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification of writer, subject, date and disposition of correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 43 U.S.C. 1457; 44 U.S.C. 3101; Reorganization Plan 3 of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to ascertain the status of correspondence to the Secretary of the Interior. Disclosures outside the Department of the Interior may be made: (1) To a Federal agency so that the agency may respond to an inquiry from the named individual, (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a part to litigation or anticipated litigation or has an interest in such litigation, and (b) the disclosure is deemed by the Department of the Interior to be relevant or necessary to the litigation, and (c) the Department of the Interior determines that disclosure is compatible with the purpose for which the records were compiled, (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license, and (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Binders (index file).

RETRIEVABILITY:

Indexed by name, number and subject.

SAFEGUARDS:

Records maintained in locked file in secure room Retention and disposal: In accordance with General Records Schedule No. 23, Item No. 3.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Secretary, Interior Building, Room 6221, 18th and C Streets, NW., Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the requester seeks information concerning his/her records is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURE:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom the record is maintained.

[FR Doc. 85–20860 Filed 8–29–85; 8:45 am]
BILLING CODE 4310–10–M

Bureau of Indian Affairs

Transfer of Federally-Owned Lands; Pueblo of San Felipe, NM

This notice is pulished in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. In the absence of the Assistant Secretary—Indian Affairs, 209 DM 8.3A authorizes the Deputy Assistant Secretary—Indian Affairs final approval authority.

On March 20, 1985, pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Public Law 93–599 dated January 2, 1975 (88 Stat. 1954), the below-described property and

improvements were transferred by the Director, Disposal Division, Fort Worth Regional Office, General Services Administration, to the Secretary of the Interior, without reimbursement, to be held in trust for the benefit and use of the Pueblo of San Felipe, New Mexico.

San Felipe Day School Site

The following described parcel of land in Sandoval County, New Mexico;

In the South ½ Section 19, Township 14 North, Range 5 East, New Mexico Principal Meridian, described as follows: From the northwest corner of the San Felipe Church, South 28° 23' West, 600 feet; thence South 61° 37' East, 600 feet to the west bank of the Rio Grande; and from said point 600 feet distant from said church as before described, thence South 28° 23' West, 400 feet; thence South 61° 37' East, 730 feet to the west bank of the Rio Grande, thence up said west bank to intersect the line run South 61° 37' East, from the point 600 feet distant from said church as before described, containing 6.10 acres, more or less.

This land, totaling 6.10 acres, is to be treated as and receive the same benefits and protection as other trust lands held for the benefit and use of the Pueblo of San Felipe. Appropriate notation will be made in the land records of the Bureau of Indian Affairs.

Dated: August 20, 1985.

John W. Fritz,

Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85-20813 Filed 8-29-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Richfield District Advisory Council Meeting and Tour

AGENCY: Bureau of Land Management.

ACTION: Richfield District Advisory Council Meeting and Tour.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-479 and 43 CFR Part 1780 that a Council Meeting will be held at the resource area office located in Hanksville, Utah, September 25, 1985 at 10:00 a.m. There will be a field trip in the Henry Mountains the following day.

Agenda items include:

1. Project work in Capitol Reef National Park.
2. Wild horse removal and adoption program.
3. Wildlife counts.
4. Summary of grasshopper and noxious weed spraying.
5. Recreation fee collection program.
6. Current update on Rangeland Policy.
7. Mt. Ellen road trespass decision.
8. Fremont River blasting trespass.
9. Proposed boundary adjustment on Piute Tribe land acquisition.
10. Status of Met Johnson Exchange.
11. Arrange next meeting.

The field trip in the Henry Mountains is open to the public. Those wishing to go on the field trip will need to provide their own transportation (four wheel drive vehicle required).

The business meeting is also open to the public. Interested persons may make oral statements to the Council from 1:00 p.m. to 2:00 p.m. September 25, 1985, or file written statements for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary of the Council Meeting will be maintained in the District Office and will be available for public inspection and reproduction 30 days following the meeting.

Donald L. Pendleton,

District Manager.

August 21, 1985.

[FR Doc. 85-20771 Filed 8-29-85; 8:45 am]

BILLING CODE 4310-DQ-M

[M 66461(ND)]

Coal Exploration License Application; North Dakota; Invitation

Members of the public are hereby invited to participate with The Falkirk Mining Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in McLean County, North Dakota:

T. 146 N., R. 87 W., 5th P.M.,
Sec. 24: SE¼.
160.00 acres.

Any party electing to participate in this exploration program shall notify, *in writing,* both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and The Falkirk Mining Company, 2000 Schafer Street, P.O. Box 2200, Bismarck, North Dakota 58502-2200. Such written notice must refer to serial number M 66461(ND) and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of the Notice in the Washburn Leader, whichever is later. This Notice will be published for two consecutive weeks in the Washburn Leader.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at this address.

Dated: August 22, 1985.

Marvin LeNoue,

Associate State Director, Montana State Office.

[FR Doc. 85-20779 Filed 8-29-85; 8:45 am]

BILLING CODE 4310-DN-M

Filing of Plat of Survey; New Mexico

August 19, 1985.

The plat of survey described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on August 19, 1985.

The surveys in Townships 23 North, Ranges 14, 15 and 16 West, and the dependent resurvey and subdivision of sections in Township 12 South, Range 26 East, New Mexico Principal Meridian, New Mexico.

These surveys were requested by the Bureau of Indian Affairs, Navajo Area Office, Windowrock, Arizona and the District Manager, Roswell District Office, Bureau of Land Management.

The plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-20780 Filed 8-29-85; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Acceptance of Bids for Duck Stamp Sheets

AGENCY: U.S. Fish and Wildlife Service

ACTION: Notice.

SUMMARY: Notice is given that the U.S. Fish and Wildlife Service will accept sealed bids for fifteen (15) sheets of 1984-85 Duck Stamps consisting of 120 stamps per sheet.

DATE: Bids will be accepted starting Sunday, September 1, 1985, and must be received no later than 4:00 p.m., Friday, November 1, 1985.

ADDRESS: U.S. Fish and Wildlife Service, Duck Stamp Sheets, P.O. Box 57020, Washington, D.C. 20037-0020.

FOR FURTHER INFORMATION CONTACT: Conley L. Moffett, Chief, Office of Public Use Management, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, D.C. 20240, (202) 653-2220, or Peter A. Anastasi, Office of Public

Use Management, 18th and C Streets, NW., Washington, D.C. 20240, (202) 343–5505.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service gives notice of its intention to accept sealed bids for fifteen (15) sheets of the 1984–85 50th Anniversary Migratory Bird Hunting and Conservation Stamp ("Duck Stamp"). Each sheet is numbered from 1 to 15 and contains four panels. Each panel is numbered and consists of thirty (30) stamps for a total of one hundred twenty (120) stamps per sheet. In addition, the words "1934–84 50th Anniversity" are printed in gold on the selvage of each panel.

Commencing Sunday, September 1, 1985, and until 4:00 p.m., Friday, November 1, 1985, the U.S. Fish and Wildlife Service will accept sealed bids for the Duck Stamp sheets under the following conditions:

1. Minimum bid per sheet $2,000.00.
2. Bidders limited to one (1) sheet.
3. Bids must be accompanied by a certified or cashier's check or money order in the full amount of the bid payable to "Migratory Bird Conservation Fund," and the bidders full name, address, and telephone number.
4. Bids must be accompanied by a stamped, self-addressed business envelope by which bidders will be notified of the results of the bidding and by which unsuccessful bidders' checks or money orders will be returned.
5. Bids must be mailed to the above Post Office Box and be received by 4:00 p.m., Friday, November 1, 1985.
6. Successful bidders must make their own arrangements with the U.S. Fish and Wildlife Service for delivery of sheets.

Bids will remain sealed until Monday, November 4, 1985, at 9:00 a.m., at which time, they will be opened in the Office of the Director, U.S. Fish and Wildlife Service. The highest bidder will be awarded sheet number 1, the second highest bidder will be awarded sheet number 2, and so forth until the fifteenth (15th) highest bidder is awarded sheet number 15. If there are identifical bids *that exceed* the number of sheets available, rebidding will be requested of those bidders for the remaining sheets. If there are identical bids that *do not exceed* the number of sheets available, sheet numbers will be awarded by drawing of random numbers.

These stamps were valid during the period July 1, 1984, through June 30, 1985, and each sheet had a face value of $900.00. Currently, they have no face value. Their value rests only in the fact that they are collector's items that and there are only fifteen (15) of these commemorative, uncut sheets in existence.

Results of the bidding will be announced at the 1985 Duck Stamp Contest on Wednesday, November 6, 1985, at 1:00 p.m., in the Department of the Interior Auditorium at 18th and C Streets, NW., Washington, D.C.

Dated: August 23, 1985.

Robert A. Jantzen,

Director—U.S. Fish and Wildlife Service.

[FR Doc. 85–20790 Filed 8–29–85; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and address of principal office: American Stores Company (Del.), P.O. Box 27447, 709 E. South Temple, Salt Lake City, UT 84127–0447.

2. Wholly owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Alpha Beta Company (Del.), 777 South Harbour Blvd., LaHabra, CA 90631
(ii) American Stores Buying Company (Del.), Post Office Box 30658, Salt Lake City, UT 84130
(iii) Acme Markets, Inc. (PA), 124 North 15th Street, Philadelphia, PA 19101
(iv) Jewel Companies, Inc. (N.Y.), 5725 N. East River Road, Chicago, IL 60631
Subsidiaries/Divisions of Jewel Companies, Inc.
(a) Buttrey Food Stores (Div.), 601 Sixth Street, SW., Great Falls, MT 59404
(b) Jewel Food Stores (Div.), 1955 West North Avenue, Melrose Park, IL 60160
(c) Osco Drug, Inc. (Ill), 1818 Swift Drive, Oak Brook, IL 60521
(d) Osco Drug of Michigan, Inc. (Mich.), 5725 N. East River Road, Chicago, IL 60631
(e) Osco Drug Northwest, Inc. (Del.), 601 South Sixth Street, SW., Great Falls, MT 59404
(f) Sav-On-Drugs, Inc. (Calif.), 1500 S. Anaheim Blvd., Anaheim, CA 92805
(g) Specialities, Inc. (Wisc.), 121 Industrial Drive, Beaver Dam, WI 53916
(h) Star Market Company (Div.), 625 Mt. Auburn Street, Cambridge, MA 02138
(i) White Hen Egg Farms, Inc. (Del.), 5725 N. East River Road, Chicago, IL 60631
(v) Skaggs Alpha Beta Company (Del.), 5201 Amelia Earhart Drive, Salt Lake City, UT 84116
(vi) Skaggs Companies, Inc. (Del.), Post Office Box 30658, Salt Lake City, UT 84130)
(vii) Skyline Distributors, Inc. (Del.), 1905 Horseshoe Road, Lancaster, PA 17601
(viii) Sunrich Mercantile Corp. (Calif.), 444 East Lambert Road, Fullerton, CA 92635

1. Parent corporation and address of principal office: Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(1) Norfolk and Western Railway Co., Virginia
(2) Chesapeake Western Railway, Virginia
(3) Lake Erie Dock Company, Delaware
(4) Lamberts Point Docks, Inc., Virginia
(5) The Nickel Plate Improvement Co., Inc., Indiana
(6) Pocahontas Development Corporation, Kentucky
(7) Pocahontas Land Corporation, Virginia
(8) The Scioto Valley and New England Railroad Co., Ohio
(9) Shenandoah-Virginia Corporation, Virginia
(10) The Toledo Belt Railway Co., Ohio
(11) Virginia Holding Corporation, Virginia
(12) Southern Railway Co., Virginia
(13) Airforce Pipeline, Inc., North Carolina
(14) The Alabama Great Southern Railroad Co., Alabama
(15) Arrowood-Southern Co., North Carolina
(16) Arrowood Southern Executive Park, Inc., North Carolina
(17) The Atlanta and Charlotte Air Line Railway Co., Georgia, North Carolina, South Carolina
(18) Atlanta Terminal Co., Georgia
(19) Atlantic and East Carolina Railway Co., North Carolina
(20) Birmingham Terminal Co., Alabama
(21) Blue Ridge Railway Co., South Carolina
(22) Camp Lejeune Railroad Co., North Carolina
(23) Carolina and Northwestern Railway Co., North Carolina, Virginia

(24) Central of Georgia Railroad Co., Georgia
(25) Charlotte-Southern Corporation, North Carolina
(26) Chattanooga Station Co., Tennessee
(27) Chattanooga Terminal Railway Co., Tennessee
(28) The Cincinnati, New Orleans and Texas Pacific Railway Co., Ohio
(29) Citico Realty Co., Virginia
(30) Danville and Western Railway Co., Virginia
(31) Durham and South Carolina Railroad Co., Georgia
(32) Elberton Southern Railway Co., Georgia
(33) The Georgia Midland Railway Co., Georgia
(34) The Georgia Northern Railway Co., Georgia
(35) Georgia Southern and Florida Railway Co., Georgia
(36) Interstate Railroad Co., Virginia
(37) Lenoir Car Works, Tennessee
(38) Live Oak, Perry and South Georgia Railway Co., Georgia
(39) Louisiana Southern Railway Co., Louisiana
(40) Memphis and Charleston Railway Co., Mississippi
(41) The National Investment Co., Connecticut
(42) New Orleans Terminal Co., Louisiana
(43) Norfolk Southern Industrial Development Corp., Virginia
(44) St. Johns River Terminal Co., Florida
(45) Southern Rail Terminals, Inc., Georgia
(46) Southern Rail Terminals of Alabama, Inc., Alabama
(47) Southern Rail Terminals of North Carolina, Inc., North Carolina
(48) Southern Railway-Carolina Division, South Carolina
(49) Southern Region Coal Transport, Inc., Alabama
(50) Southern Region Industrial Realty, Inc., Georgia
(51) Southern Region Materials Supply, Inc., Georgia
(52) Southern Region Motor Transport, Inc., Georgia
(53) Tennessee, Alabama & Georgia Railway Co., Delaware
(54) Tennessee Railway Co., Tennessee
(55) Terminal Properties, Inc., Alabama
(56) Transylvania Railroad Co., North Carolina
(57) Virginia and Southwestern Railway Co., Virginia
(58) North American Van Lines, Inc., Delaware
(59) A Three Rivers Forwarding, Inc., Indiana
(60) Agency Media Services, Inc., Indiana
(61) Almac Moving & Storage, Inc., Massachusetts
(62) Almac Moving & Storage of New Hampshire, New Hampshire
(63) Astro Express, Inc., Massachusetts
(64) City Storage & Transfer, Inc., Colorado
(65) EHT, Inc., Delaware
(66) Fleet Insurance Management, Inc., Indiana
(67) Great Falls North American, Inc., Montana
(68) NACAL, Inc., California
(69) NAVTRANS International Freight Forwarding, Inc., Indiana
(70) NorAm Forwarding, Inc., Indiana
(71) North American Distribution Systems, Inc., Indiana
(72) North American Forwarding, Inc., Indiana
(73) North American Moving & Storage, Inc., Indiana
(74) North American Properties, Inc., Indiana
(75) North American Van Lines of Texas, Inc., Texas
(76) Pioneer Freight, Inc., Oklahoma
(77) Relocation Management Systems, Inc., Delaware
(78) Rustalong Corporation, Arizona
(79) Transportation Collections, Inc., Indiana
(80) Triangle Fleet Service, Inc., Indiana
(81) Lamberts Point Bargo Co., Inc., Virginia
(82) Norfolk Southern Marine Services, Inc., Virginia
(83) NS Fiber Optics, Inc., Virginia
(84) NS Transportation Brokerage Corporation, Virginia
(85) NW Equipment Corporation, Delaware

1. *Parent Corporation and Address of Principal Office:* Sunrizon Homes, Inc., 1707. North Dallas Parkway, Suite 103, Dallas, Texas 75248.

2. *Wholly-Owned Subsidiaries Which Will Participate in the Operations and States of Incorporation:* (i) Sunrizon Transportation, Inc.—A Texas Corporation, 211 East Freeman, Suite 102, Duncanville, Texas 75116.

1—Parent corporation and address of principal office: Turner Furniture Companies, Inc., 220 East First Avenue, PO Box 907, Lexington, North Carolina 27293–0907.

2—Wholly-owned subsidiaries which will participate in the operations, and State of incorporation:

Jamestown Sterling Inc. (in DE), P.O. Box 610—Allen Street Extension, Jamestown, NY 17402–0610
DeVille Furniture Inc. (in DE), P.O. Box 2248, 915 Hwy 321, North, Hickory, NC 28601
Williams Furniture Inc. (in DE), P.O. Box 1489, 602 Fulton Street, Sumter, SC 29501
Union Furniture Inc. (in DE), 122 West George Street, Batesville, IN 47006
United Globe, Inc. (in DE), P.O. Box 907, Lexington, NC 27293–0907
Turner Furniture Transports, Inc. (in DE), 220 East First Avenue, Lexington, NC 27293–0907
Dunmore Furniture Inc. (in DE), P.O. Box 3740, 1859 Main Avenue SE., Hickory, NC 28603
State of Newburgh Inc. (in DE), 1–17 Wisner Avenue, Newburgh, NY 12550

James H. Bayne,

Secretary.

[FR Doc. 85–20830 Filed 8–29–85; 8:45 am]

BILLING CODE 7035–01–M

[I.C.C. Order No. P–87]

Rail Carriers; Union Pacific Railroad Co.; Passenger Train Operation

TO: Union Pacific Railroad Company

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Chicago, Illinois and San Francisco, California. The operation of these trains requires the use of tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks at Humboldt, Nevada, are temporarily out of service because of a derailment. An alternate route is available via the Union Pacific Railroad Company between Winnemucca, Nevada and Sacramento, California.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided July 24, 1985, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Union Pacific Railroad Company (UP), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Winnemucca, Nevada and a connection with Southern Pacific Transportation Company at Sacramento, California.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions

shall be, during the time this order remains in force, and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 6:25 a.m., EDT, August 9, 1985.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., EDT, August 9, 1985, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon The National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 9, 1985.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 85-20831 Filed 8-29-85; 8:45 am]

BILLING CODE 7035-01-M

Rail Carriers; Release of Waybill Data for Use by Michigan State University

The Commission has received a request from Michigan State University on behalf of one of its graduate students for permission to use the Commission's 1984 Waybill Sample for a dissertation on assigning railroad track costs to individual line segments. The specific data sought are rail carload terminations for shipments with origins or destinations in the State of Michigan, point locations, commodity designations, and nodes traversed. Information on rates charged is not necessary.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of the Office of Transporation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who filed objections will be timely notified of the Director's decision.

Contact: Elaine K. Kaiser, (202) 275-0907.

James H. Bayne,

Secretary.

[FR Doc. 85-20629 Filed 8-29-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment; United States of America v. The Mortgage Conference of New York, et al.

Notice is hereby given that The Mutual Life Insurance Company of New York ("MONY) and Guardian Life Insurance Company of America ("Guardian") have filed with the United States District Court for the Southern District of New York and joint motion to terminate the final judgment in *United States of America* v. *The Mortgage Conference of New York, et al.*, Civil No. 37-247; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment as to defendants MONY and Guardian, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on August 6, 1946) alleged a combination and conspiracy in restraint of trade and commerce in setting mortgage interest rates, mortgage payment schedules, and appraisal procedures in violation of section 1 of the Sherman Act, 15 U.S.C. 1. Specifically, the complaint described how by creating a trade association, The Mortgage Conference of New York ("The Mortgage Conference"), the defendants jointly set rental policies for mortgaged properties, exchanged weekly reports of new mortgage commitments, withheld financing for new construction that might lessen income from other mortgaged properties, and engaged in red-lining—jointly refusing on racial or ethnic grounds to grant mortgages in certain neighborhoods, regardless of the qualifications of the applicant or the property in question. The case was settled by entry of a consent decree. The judgment (entered on June 16, 1948) required the dissolution of the Mortgage Conference and enjoined the other defendants from jointly setting rates or terms of mortgages, exchanging information about pending applications, joint red-lining or otherwise refraining from competing in greater New York City, including the counties of New York, Bronx, Kings, Queens, Richmond, Westchester, and Nassau.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, the joint motion papers of MONY and Guardian, the stipulation containing the government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530 (telephone 202/633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, Foley Square, New York, New York 10007. Copies of any of the materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty (60) days, and will be filed with the court. Comments should be addressed to B. Barry Grossman, Chief, Special Regulated Industries Section, Antitrust Division,

Department of Justice, Washington, D.C. 20530 (telephone 202/724-6693).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-20570 Filed 8-29-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 85-25]

Antonio C. Camacho, M.D., Chicago, IL; Hearing

Notice is hereby given that on April 15, 1985, the Drug Enforcement Administration, Department of Justice, issued to Antonio C. Camacho, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AC5596424, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Thursday, September 12, 1985, in Courtroom 1690, U.S. Bankruptcy Court, Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois.

Dated: August 26, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-20608 Filed 8-29-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-32]

John Howard Hottinger, D.D.S., Capitola, CA; Hearing

Notice is hereby given that on June 4, 1985, the Drug Enforcement Administration, Department of Justice, issued to John Howard Hottinger, D.D.S., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AH1660821, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:00 a.m. on Tuesday, September 10, 1985, in Courtroom 18059, U.S. District Court, Federal Building, 450 Golden Gate Avenue, San Francisco, California.

Dated: August 20, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-20609 Filed 8-29-85; 8:45 am]

BILLING CODE 4410-09-M

Registration as Manufacturer of Controlled Substances; Marion Laboratories Inc.

By Notice dated May 14, 1985, and published in the **Federal Register** on May 17, 1985; (50 FR 20632), Marion Laboratories Inc., Analytical System Inc. Division, 23162 LaCadena Drive, Laguna Hills, California 92653, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below, exclusively for manufacturing reference standards.

Drug:	Schedule
Phencyclidine (7471)	II
1-piperidinocyclohexane-carbonitrile (PCC) (8603)	II
Benzoylecgonine (9187)	II

No comments or objectives have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 23, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-20610 Filed 8-29-85; 8:45 am]

BILLING CODE 4410-09-M

Registration as Manufacturer of Controlled Substances; Norac Co., Inc.

By Notice dated March 4, 1985, and published in the **Federal Register** on March 8, 1985; (50 FR 9527), Norac Company Inc., 405 South Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 22, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-20611 Filed 8-29-85; 8:45 am]

BILLING CODE 4410-09-M

Registration as Manufacturer of Controlled Substances; Sterling Drug, Inc.

By Notice dated May 20, 1985, and published in the **Federal Register** on June 4, 1985 (50 FR 23537), Sterling Drug, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pethidine (meperidine) (9230), a basic class controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 23, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-20612 Filed 8-29-85; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Advisory Board; Meeting

The Missing Children's Advisory Board will meet in Toledo, Ohio on October 4-6, 1985. The meeting will take place at the Hotel Sofitel, 2 Seagate, Toledo, Ohio 43666. The public is welcome to attend.

The Board will discuss its annual comprehensive plan and other issues related to missing and exploited children.

For further information, please contact Michelle Easton, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724–7655.

Dated: August 28, 1985.

Approved:

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85–20778 Filed 8–29–85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–16,125]

AMAX Chemical Corp., Carlsbad, NM; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was intiated on June 28, 1985 in response to a worker petition received on June 20, 1985, which was filed by the United Steelworkers of America, Local No. 181 on behalf of workers at Amax Chemical Corporation, Carlsbad, New Mexico.

An active certification covering the petitioning group of workers remains in effect (TA–W–14,770). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 22nd day of August 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–20819 Filed 8–29–85; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–16,182]

Joy-See Fashions Inc., Hialeah, FL; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 29, 1985 in response to a worker petition received on July 18, 1985 which was filed by workers on behalf of workers at Joy-See Fashions Incorporated, Hialeah, Florida.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 22nd day of August 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–20818 Filed 8–29–85; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–14,557]

Oak Communications Systems, Elkhorn, WI; Amended Revised Determination

On August 6, 1985, the Department issued a Notice of Revised Determination for former employees of Oak Communications Systems. Elkhorn, Wisconsin. The Revised Determination will be published shortly in the **Federal Register**. The initial Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance was published in the **Federal Register** on December 13, 1983 (48 FR 55526).

The Revised Determination issued on August 6, 1985 should have included the impact date of March 26, 1982 since layoffs that were found to be adversely affected by increased imports occurred several months prior to September 1, 1982 impact date. Imports of cable TV decoders increased substantially in the second and third quarters of 1982 compared to the same quarters of 1981.

Production, of cable TV decoders at Elkhorn, Wisconsin decreased sharply, in quantity, in the second and third quarters of 1982 compared to the immediately preceding quarters.

The intent of the certification for workers producing cable TV decoders at the Elkhorn, Wisconsin plant is to cover all workers who were affected by the decline in production of cable TV decoders which was related to the increase in imports of "like or directly competitive" articles. The notice of revised determination for former workers who produced cable TV decoders at the Elkhorn, Wisconsin plant of Oak Communications Systems, TA–W–14,557, therefore, is amended to include a new impact date of March 26, 1982.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with decoders for cable TV produced at Oak Communications Systems, Elkhorn, Wisconsin contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Oak Communications Systems, Elkhorn, Wisconsin engaged in employment related to the production of decoders for cable TV at Oak Communications Systems, Elkhorn, Wisconsin who became totally or partially separated from employment on or after March 26, 1982 and before December 31, 1983 are eligible to apply for adjustment assistance benefits under Section 223 of the Trade Act of 1984.

I further determine that all workers of Oak Communications Systems, Elkhorn, Wisconsin engaged in employment related to the production of head end equipment and decoders for satellite TV are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of August 1985.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85–20817 Filed 8–29–85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Committee Establishments

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the establishment of the Advisory Committees' listed below are necessary, appropriate, and are in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Names of Committees

- Advisory Committee for Engineering Science in Chemical, Biochemical and Thermal Engineering.
- Advisory Committee for Engineering Science in Mechanics, Structures and Materials Engineering.
- Advisory Committee for Engineering Science in Electrical, Communications and Systems Engineering.
- Advisory Committee for the Emerging Engineering Systems Section.
- Advisory Committee for the Critical Engineering Systems Section.

Purpose: The Committees will provide advice, recommendations, and oversight concerning the directions for and impact of Foundation-supported research and related activities in the Engineering field.

Effective Date and Duration: These establishments are effective upon filing the charters with the standing committees of Congress having legislative jurisdiction of the Foundation. These Committees will operate on a continuing basis subject to renewal every 2 years.

Balanced Membership: Membership of these Committees shall be fairly balanced in terms of the points of view represented and the Committees' functions. Members will be individuals eminent in their respective fields of endeavor or specification as related to the areas of interest in each Division. Due consideration will be given to achieving membership that reasonably represents public, private, and academic communities, women and minorities, the handicapped, and different geographical regions of the country.

Dated: August 27, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-20814 File 8-29-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 8, No. 1).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the first calendar quarter of 1985. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there was one abnormal occurrence at the nuclear power plants licensed to operate; the event involved a premature criticality during reactor startup. There were three abnormal occurrences at the other NRC licensees. Two events involved diagnostic medical misadministrations and the other event involved unlawful possession of radioactive material. There were four abnormal occurrences reported by an Agreement State (Texas). Three events involved radiation overexposures; the other event involved a well logging source which was apparently stolen, but later was recovered.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW, Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG-0090, Vol. 8, No. 1 (or any of the previous reports in this series), may be purchased by calling (202) 275-2060 or (202) 275-2171, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, MasterCard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC, August 26, 1985.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 85-20843 Filed 8-29-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp.; Withdrawal of Application for Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of GPU Nuclear Corporation (the licensee) to withdraw its September 25, 1984 application for amendment to Provisional Operating License No. DPR-16, issued to the licensee for operation of the Oyster Creek Nuclear Generating Station (OCNGS) located in Ocean County, New Jersey. Notice of consideration of issuance of this amendment was published in the **Federal Register** on October 24, 1984 (49 FR 42823).

The request proposed a change to § 4.5, Containment, Surveillance Requirements of the Appendix A Technical Specifications (TS). The change was to revise TS 4.5.F.1.b. to accommodate the inclusion of additional isolation valves under the type C testing requirement of Appendix J to 10 CFR Part 50 and to revise the acceptance criteria for all containment penetrations and isolation valves subject to Type B and Type C testing. Since receipt of the licensee's submittal, the staff has had discussions with the licensee on the proposed TS 4.5.F.1.b and the licensee has decided to submit a new proposed technical specification to the staff in this area.

In the staff's June/July Progress Review meeting with the licensee on July 31 and August 1, 1985, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw its September 25, 1984, application. The Commission has considered the licensee's request and has determined that permission to withdraw the September 25, 1984 application for amendment should be granted.

For further details with respect to this action, see: (1) The application for amendment dated September 25, 1984, (2) the licensee's request for withdrawal documented in the NRC staff's June/July Progress Review meeting summary dated August 22, 1985, and (3) our letter dated August 26, 1985. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the Ocean County Library, 101 Washington Street, Toms River, New Jersey.

Dated at Bethesda, Maryland, August 26, 1985.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 85-20842 File 8-29-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-14067]

Application and Opportunity for Hearing; Storage Equities, Inc.

August 23, 1985.

Notice is hereby given that Storage Equities, Inc., a California corporation ("Applicant") has filed an application

under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Trust Services of America, Inc., a California corporation ("TSA") (as successor trustee to First Interstate Bank of California, a California banking corporation), under an eighth supplement of an existing indenture qualified under the Act is not so likely to involved a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify TSA from acting as trustee under such eighth supplement.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety (90) days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding.

However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. TSA, as successor trustee, currently is acting as trustee under an indenture (the "Indenture") and several prior supplements thereto under which the Applicant is an obligor. The Indenture, dated as of August 9, 1983, is between Applicant and TSA and provides for the periodic issuance of secured notes in partial consideration for the purchase of property by Applicant. This indenture was filed as Exhibit 4.3 to Applicant's registration statement No. 2–80850 filed under the Securities Act of 1933, and has been qualified under the Trust Indenture Act in connection with a Form T–1 filing, File No. 22–12633.

Applicant has also entered into, and filed by way of post-effective amendments to the registration statement stated above, prior supplements under which TSA is a trustee. Applicant has issued several series of its secured notes under the prior supplements.

2. Applicant wishes TSA continue as Trustee under the eighth supplemental indenture executed July 10, 1985.

3. The Applicant is not in default in any respect under the Indenture or prior supplements thereto.

4. Each series of secured notes issued under the prior supplements are secured by separate and distinct assets of Applicant so that should TSA have occasion to proceed against the security under any series of notes, such action would not affect the security, or the use of any security, under any other series. Thus, the existence of the other trusteeships should not inhibit or discourage TSA's actions under any one series.

The Applicant has waived notice of hearing, hearing on the issues raised by its Application and all rights to specify procedures under Rule 8(b) of the Rules of Practice of the Securities and Exchange Commission in connection with this matter. For a more detailed statement of the matters of fact and law asserted, all persons are referred to said Application, File No. 22–14067, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than September 20, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said Application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing theron.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the Application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–20715 Filed 8–29–85; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–14137]

Application and Opportunity for Hearing; Storage Equities, Inc.

August 23, 1985.

Notice is hereby given that Storage Equities, Inc., a California corporation ("Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Trust Services of America, Inc., a California corporation ("TSA") (as successor trustee to First Interstate Bank of California, a California banking corporation), under a ninth supplement of an existing indenture qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify TSA from acting as trustee under such ninth supplement.

Section 3120(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety (90) days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding.

However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. TSA, as successor trustee, currently is acting as trustee under an indenture (the "Indenture") and several prior supplements thereto under which the Applicant is an obligor. the Indenture, dated as of August 9, 1983, is between Applicant and TSA and provides for the periodic issuance of secured notes in partial consideration for the purchase of property by Applicant. This indenture was filed as Exhibit 4.3 to Applicant's registration statement no. 2–80850 filed

under the Securities Act of 1933, and has been qualified under the Trust Indenture Act in connection with a Form T-1 filing, File No. 22-12633.

Applicant has also entered into, and filed by way of post-effective amendments to the registration statement stated above, prior supplements under which TSA is a trustee. Applicant has issued several series of its secured notes under the prior supplements.

2. Applicant wishes TSA to continue as Trustee under the ninth supplemental indenture executed July 10, 1985.

3. The Applicant is not in default in any respect under the Indenture or prior supplements thereto.

4. Each series of secured notes issued under the prior supplements are secured by separate and distinct assets of Applicant so that should TSA have occasion to proceed against the security under any series of notes, such action would not affect the security, or the use of any security, under any other series. Thus, the existence of other trusteeships should not inhibit or discourage TSA's actions under any one series.

The Applicant has waived notice of hearing, hearing on the issues raised by its Application and all rights to specify procedures under Rule 8(b) of the Rules of Practice of the Securities and Exchange Commission in connection with this matter. For a more detailed statement of the matters of fact and law asserted, all persons are referred to said Application, File No. 22-14087, whichis a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C., 20549.

Notice is further given that any interested person may, not later than September 20, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said Application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the Application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20714 Filed 8-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22351; SR-MSRB-84-13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board ("MSRB") has submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to change a reference in MSRB rule G-4 from Commission Rule 19d-3 to Commission Rule 19h-1(d). MSRB Rule G-4 establishes grounds for disqualification of municipal brokers or dealers, and procedures for requalification for purposes of MSRB rule G-2.

This proposed rule change has become effective, pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons submitting written comments should file six copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. References should be made to File No. SR-MSRB-84-13.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(12).

Dated: August 23, 1985.

Shirley E. Hollis,

Assistant Secretary

[FR Doc. 85-20765 Filed 8-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22354; File No. SR-OCC-85-13]

Self-Regulatory Organizations; the Options Clearing Corp.; Notice of Proposed Rule Change

Pursuant to section 19(b)(i) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(i), notice is hereby given that on August 9, 1985, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Introduction

The Philadelphia Stock Exchange, Inc. ("PHLX") has proposed to form a link with the London floor of The Stock Exchange of the United Kingdom and the Republic of Ireland (the "London Exchange") whereby foreign currency options that are presently traded on PHLX will also be traded on the London Exchange. Options of a given series would be fungible, regardless of the market in which the option was purchased or sold; and option positions acquired in one market could be liquidated in the other. These options ("International Foreign Currency" or "IFX" options) will be traded and cleared pursuant to an "International Market Agreement" among OCC, PHLX and the London Exchange (the "IMA"). Because OCC believes that similar agreements may in the future be reached among domestic options exchanges (the "Exchanges") and other foreign markets in both Europe and Asia, the proposed rule change is intended to establish a general system for the clearance of "international options" traded pursuant to such agreements.

International options will be traded through a separate system which will be in most respects the same as OCC's present system for clearing non-equity options. Becaause trading will be taking place (when Asian markets are added) virtually 24-hours per day, daily processing of trading activity in international options, calculation of margin requirements and assignment of exercise notices will have to be completed within a five-hour processing "window" between 3:00 p.m. and 8:00 p.m., Chicago time. This will permit Position Reports and other daily reports to be distributed to Clearing Members in Hong Kong, for example, prior to the beginning of the trading day there.

Issuance, clearance and settlement of "International options" would be in accordance with OCC's existing By-laws and Rules, as supplemented and modified by provisions applicable only to international options. The

relationship among OCC, PHLX and London Exchange would be governed by the IMA, the proposed form of which has been filed as a part of this proposed rule change. The proposed IMA contains many provisions analogous to the provisions of the Restated Participant Exchange Agreement (the "PEA"), which governs the relationship among OCC and the five Exchanges. The terms of the PEA would continue to be applicable to foreign currency options traded on PHLX, except to the extent inconsistent with the IMA.

In connection with the proposed clearance by OCC of options transactions effected on the London Exchange, OCC intends to form a relationship with the International Commodity Clearing House Limited ("ICCH") whereby ICCH will become an "associate clearinghouse" of OCC for the purpose of carrying the accounts of London-based securities firms that do not choose to become Clearing Members of OCC. ICCH would be treated under OCC's By-Laws and Rules as a Clearing Member for most purposes except that it would be required to meet financial and reporting requirements designed specifically for it.

The Proposed By-Law and Rule Changes

A. Definitions

OCCis proposing to amend section 1 of Article I of its By-Laws to add definitions of "international market", "international market agreement", "international transaction", and "international option". An "international market" is a securities exchange not within or subject to the jurisdiction of the United States. The term "international market agreement" is defined as an agreement between OCC and an international market pursuant to which OCC acts as the clearing agent with respect to options transactions effected on an international market. One or more Exchanges may, but need not be, parties to an international market agreement. An "international transaction" means an Exchange transaction effected either on an international market or on an Exchange pursuant to the provisions of an international market agreement. "International option" means an option issued by the Corporation as the result of an international transaction pursuant to an international market agreement. The definitions of the terms "Exchange rules," "Exchange member," and "Exchange transaction" are amended to include, respectively, the rules and members of, and transactions on, an international market.

The definitions of "class of options" contained in Article I of the By-Laws and in Article XV (which applies only to foreign currency options) are being amended to provide that all options issued as the result of international transactions pursuant to a particular international market agreement are deemed to be separate classes of options from options issued pursuant to any other international market agreement or any other options. The effect of this provision is to assure the non-fungibility of such options with other options.

Rule 101 is being amended to add a definition of "international office" as an office of OCC outside the United States through which Clearing Members may clear certain international transactions and conduct such other business with OCC as OCC may from time to time specify. The basic purpose of this amendment is to permit OCC to establish offices in cities outside the United States where international markets are located. Only international transactions may be cleared through such offices because various deadlines and the processing schedule applicable to other options will not accommodate trading in widely disparate time zones.

The new term "associate clearinghouse" is defined as a clearinghouse not located in the United States which is designated in an international market agreement as an associate clearinghouse.

The definition of "Market-Maker; Specialist" is amended to provide that, in respect of an international market, such terms shall mean such classes of persons as may be deemed to be Market-Makers or specialists pursuant to an international market agreement. The purpose of this provision is to allow persons performing functions analogous to those of Market-Makers on an international market to be treated as Market-Makers for purposes of maintaining Market-Maker accounts with their respective Clearing Members.

The "settlement time" is the time at which Clearing Members are required to make payment to OCC of any option premiums or margin payments due to OCC on each business day. The definition of "settlement time" is being amended to permit OCC to specify settlement times in respect of international transactions that are different from the settlement time applicable to other option transactions.

The term "business day" is being amended to provide for those occasions when holidays in the United States and in countries where an international office of the Clearing Corporation may be located do not coincide. The revised definition would permit OCC to treat such Days as business days for some purposes and not for others.

B. Article VI of the By-Laws: Clearance of Exchange Transactions

Certain sections of Article VI relating to the issuance of option contracts, reporting of matched trades, payment of premiums and exercise restrictions are being amended to apply to Exchange transactions occurring on an international market in precisely the same way that they apply to exchange transactions on one of the domestic options exchanges. Section 10 of Article VI relating to the terms of option contracts is being amended to provide that new series of international option contracts shall be opened for trading in accordance with the procedures set forth in an international market agreement. The procedures applicable to the opening of new series of international foreign currency options are described below.

OCC proposes to add a new section 20 to Article VI entitled "Clearance of International Transactions." The new section provides that international transactions shall be cleared in accordance with the By-Laws and Rules provided, however, that the time specified in the By-Laws and Rules for the delivery of reports and the payment of amounts due to or from Clearing Members in respect of international options cleared through an international office may be as determined by the Corporation from time to time upon prior notice to affected Clearing Members. It further provides that international transactions, positions in international option contracts, margin requirements arising therefrom, and exercises and assignments of exercise notices in respect of international option contracts shall be reported separately from transactions in respect of other options and that premium, margin and exercise settlements in respect of international options may be conducted separately from other settlements.

C. Miscellaneous Other Rules

Rule 204, 'Designation of Clearing Offices" is being amended to permit a Clearing Member to designate one or more international offices through which it may clear its international transactions. Rule 204 also provides that a Clearing Member that designates an international office shall clear all of its international transactions effected pursuant to a particular international market agreement through the same international office.

Rule 310 is being added to indicate that the financial requirements applicable to an associate clearinghouse are different from those applicable to other Clearing Members and shall be established pursuant to the international market agreement designating an entity as an associate clearinghouse. Rules 401 and 402 relating to the reporting of matched trades are being amended to apply to reporting of matched trades by an international market in exactly the same way as they apply to reporting of matched trades by the five domestic options exchanges.

Rule 601(e) is being amended to provide that a Clearing Member's long value credit in respect of international options will not reduce the required margin in respect of other options, and a Clearing Member's long value credit in respect of other options will not reduce its required margin in respect of international options. This same restriction on "crossover margin credit" exist now between stock and non-equity options, and the reason in both cases is that the options are processed through separate clearing systems and crossover marging is therefore not possible as a technical matter.

Rule 801, "exercise of options," is being amended to require that exercise notices in respect of international options must be tendered to OCC prior to 3:00 p.m. Central Time instead of 7:00 p.m. as is the case with other options. This earlier deadline is necessary because of the decreased amount of time available for processing exercise notices in respect of international options.

An interpretation is being added following Rule 604 to specify that common stocks may not be deposited in satisfaction of margin requirements in respect of positions arising from international transactions at the present time. For practical reasons, OCC has chosen to initiate the new clearing system for international options in a somewhat simplified form. Additional features such as the program necessary to accept deposits of common stocks may be added as OCC gains experience with the international system.

The International Market Agreement

The text of the proposed IMA among OCC, PHLX, and the London Exchange has been filed as a part of the proposed rule change. Following certain introductory material, definitions are set forth in section 1. Section 2 of the IMA provides that it is applicable to the issuance, clearance and settlement of international foreign currency options ("IFX options"). It provides that such options shall be issued and cleared by OCC in accordance with OCC's By-Laws and Rules applicable to international transactions and international options, and that the London Exchange shall have the rights and obligations of an international market under the By-Laws and Rules. Section 2 further provides that, as between OCC and PHLX the IMA supplements the PEA. Section 3 of the IMA gives PHLX the same right to open new series of IFX options it has under the PEA in respect of other options that are traded on PHLX. The London Exchange, however, may open only series of options that have been or are concurrently being opened on PHLX. Section 4 imposes on the London Exchange essentially the same obligations in respect of daily trade comparisons and reporting that are imposed on Exchanges in the PEA.

Sections 5, 6 and 7, which are essentially the same as the corresponding provisions of the PEA, set forth the basic obligations of OCC in clearing transactions reported by the London Exchange.

Section 8 requires the London Exchange to provide OCC with any information that OCC might be required to disclose to IFX options investors under applicable securities laws of the United States or other jurisdictions.

Section 9 expresses the agreement of OCC to establish and enforce margin requirements for its Clearing Members. The section is similar to provisions in the PEA, except that it contemplates that OCC may at some time in the future accept margin in the form of securities of foreign governments. The present proposed rule change does not amend OCC's By-Laws and Rules to permit OCC to accept margin in that form, and an additional filing on Form 19b–4 would be required when OCC determines to do so.

A London Clearing Member is defined in Section 1 as a Clearing Member that has designated OCC's London office as the office through which it will clear its transactions in IFX options. Section 10 specifies that OCC may establish separate qualifications and requirements applicable to some or all London Clearing Members. This provision recognizes that different London Clearing Members may be differently situated. Some may be broker-dealers, registered as such in the United States, that have chosen to clear IFX options in London. Others may be London firms not registered as broker-dealers in the United States. In general, London Clearing Members in the latter category will be required to meet the standards applicable to Foreign Clearing Members as set forth in Article V of the By-Laws.

Section 11 describes the qualifications and functions of ICCH, the "associate clearinghouse" authorized by OCC to clear transactions in IFX options of persons that are not Clearing Members. The associate clearinghouse acts in many respects as a Clearing Member of OCC except that it will be permitted, subject to applicable law, to carry all its positions in IFX options in one account, thereby permitting it to receive margin credit for long positions to the extent permitted by Rule 601 in respect of a firm lien or Market-Maker account. The associate clearinghouse, however, will be subject to financial requirements developed uniquely for it and may extend its own guarantee in respect of IFX options cleared through it. It will make clearing fund contributions in amounts calculated in the same way as for other Clearing Members.

Section 12 specifies that "jobbers" on the London Exchange shall be deemed to be Market-Makers under OCC's By-Laws and Rules. There is a strict separation of function on the London Exchange between jobbers, who trade only for their own accounts, have market-making responsibilities, and are prohibited from dealing with customers, and brokers, who act as agents on behalf of customers and are prohibited from trading for their own accounts. The effect of deeming jobbers to be Market-Makers is to permit the Clearing Members carrying the positions of jobbers to establish separate accounts for those positions under Section 3 of Article VI of the By-Laws, and thereby to reduce their net margin obligations under Rule 601.

Section 13 provides that premiums in respect of IFX options shall be quoted in United States dollars and that all settlements (other than the delivery of foreign currency) shall be in United States dollars. Section 14 provides that OCC will permit London Clearing Members to designate an OCC-approved London bank through which settlement with OCC will be conducted. Section 15 provides for notification and coordination of certain rule changes by PHLX and the London Exchange.

Section 16 requires PHLX and the London Exchange to provide volume forecasts in order to facilitate planning by OCC.

Sections 17, 18 and 19 relate to the authority and the obligation of OCC with respect to setting standards applicable to London Exchange Members in dealing with their customers. These sections are

essentially the same as the corresponding provisions of the PEA.

Section 20 permits the London Exchange to examine trade data and other records relating to positions and transactions in IFX options or relating to any Clearing Member that is a member of the London Exchange. The London Exchange may use such information in connection with its surveillance activities.

Section 21 requires the London Exchange to share certain information regarding the financial condition of Clearing Members with OCC. OCC requires such information in connection with its responsibility for monitoring the financial condition of its Clearing Members. The provisions of section 21 are essentially the same as the corresponding provisions of the PEA.

Section 22 provides for indemnification of OCC by PHLX and the London Exchange, and of PHLX and the London Exchange by OCC. The structure of the indemnification provisions is similar to the structure of the corresponding provisions in the PEA except that there is no cross-indemnification between the two markets and the indemnification of OCC by the markets includes any alleged violations by OCC of the securities laws of the United Kingdom so long as OCC is acting in accordance with its By-Laws and Rules. The remaining sections of the IMA relate to conditions to initiation of trading on the London Exchange, termination of the agreement, delivery of notices among the parties and miscellaneous matters such as choice of law provisions.

II.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide for the clearance of International Foreign Currency Options that are traded on PHLX and the London Exchange. The rule change provides a system for the trading of international options that will be applicable to options that may in the future be traded in other options markets outside the United States. OCC believes that this system is a significant step in the internationalization of the options markets and will be of benefit to investors both in the United States and elsewhere. Because international options will be cleared pursuant to the same basic rules and procedures applicable to existing options, the proposed rule change is consistent with the requirements of section 17A of the Securities Exchange Act of 1934, as amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Under the proposed rule change, IFX options traded on PHLX and the London Exchange pursuant to the IMA would not be fungible with options traded on other Exchanges, even if such options had terms identical to the terms of IFX options. Notwithstanding the foregoing, other Exchanges may trade options with terms identical to, and directly competitive with, IFX options; and such Exchanges may enter into international market agreements with one or more international markets for the trading of such options. It should also be noted that United States persons will be prohibited by provisions of the Commodity Exchange Act from trading in IFX options on the London Exchange. Investors having access to the London Exchange may therefore be able to respond to market movements by acquiring or liquidating positions in IFX options at times when PHLX is closed. Although it is possible that either of the foregoing factors may have a competitive effect in certain situations, OCC believes that the proposed rule changes would not place a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicition of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 20, 1985.

For the Commission by the Division of Market Regulation, prusuant to delegated authority.

Dated: August 23, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20766 Filed 8-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22352; File No. SR-PSE-85-20]

Self-Regulatory Organizations; Proposed Rule Change by The Pacific Stock Exchange, Inc. Relating to the Implementation and Procedures of the Establishment and Creation of Eleven New Specialist Ports Upon the Equity Trading Floors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(l)(1), notice is hereby given that on July 23, 1985, the Pacific Stock Exchange, Inc., filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule filing from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed plan to establish and create eleven new specialist posts on the Pacific Stock Exchange Equity Trading Floors is based on a plan for the creation of nine new posts which was approved by the Commission on December 18, 1984 in Release No.

21578.[1] The plan will provide for existing specialists to freeze a certain number of stocks based upon their specialist evaluations, with the new posts selecting fifteen stocks from a list of those submitted by the specialists on the Floor where the new specialist will be located.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed expansion plan corresponds to a plan utilized for the creation of nine new posts in the first quarter of 1985. This plan was contained in Release No. 21578 and was approved by the Commission on December 18, 1984. That plan was designated as Phase I of a plan to initiate twenty new specialist posts. This filing will initiate Phase II of that plan and will provide for the remaining eleven new expansion posts.

The procedures utilized in the development of Phase II will be the same as those utilizied in Phase I, as that system worked in an appropriate and fair manner.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were received following the April 29, 1985, announcement to members regarding the Phase II plan.

[1] *See* Securities Exchange Act Release No. 21578, 49 FR 50349 (December 27, 1984).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, at 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 20, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 23, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20767 Filed 8-29-85; 8:45 am]

BILLING CODE [illegible]

[Release No. IC-14693 (File No. 812-6131)]

Application and Opportunity for Hearing; Capital Realty Investors-V Limited Partnership

August 23, 1985.

Notice is hereby given that Capital Realty Investors-V Limited Partnership (the "Partnership"), a Maryland limited partnership, and its general partners, C.R.I., Inc. ("CRI"), William B. Dockser, Martin C. Schwartzberg, and H. William Willoughby (collectively, "General Partners", and together with the Partnership, "Applicants"), One Central Plaza, 11300 Rockville Pike, Rockville, Maryland 20852, filed an application on June 13, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Partnership from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, the Partnership intends to publicly offer 20,000 units of limited partnership interest at $1,000 per unit ("Units"). Applicants state that the Partnership will operate as a "two-tier" partnership, that is, the Partnership, as a limited partner, will invest in other limited partnerships ("Local Partnerships") which will own or lease and will operate apartment complexes most of which will receive or (at the time of the Partnership's investment, will be receiving) one or more forms of substantial federal, state or local government assistance, including government mortgage insurance. ("Government Enhanced Apartment Complexes.") Applicants state that such Government-Enhanced Apartment Complexes may or may not be classified as "low income housing" under the Internal Revenue Code of 1954, as amended. Applicants further state that the Partnership may also invest up to 20% of amounts invested in all Local Partnerships in Local Partnerships that own or lease and will operate conventional (non-government-enhanced) apartment complexes. Applicants represent that the Partnership may invest in certain limited partnerships that are general partners in a general partnership which owns or leases Government-Enhanced [or conventional apartment complexes.] Applicants state that an affiliate of CRI will be a Partner in each Local Partnership.

Applicants state that one category of Local Partnerships in which the Partnership intends to invest will own apartment complexes which have subsidies which are typically indirect in nature and are not directly funded by governmental entities but rather are funded through a partnership with the private sector. For example, Applicants state, section 244 of the National Housing Act provides for a coinsurance

program established to guarantee the continued availability of HUD mortgage insurance. Applicants state that mortgage insurance under this section is issued in connection with the refinancing of existing multifamily apartment complexes and provides for federal insurance of mortgages pursuant to a coinsurance contract with a private lender whereby the lender assumes a percentage of the risk of loss on the mortgage loans should the Local Partnership default on its loan. Applicants represent that this coinsurance is available for, among others, section 221(d)(4) insured and section 223(f) properties. Applicants further represent that the latter properties are not specifically designated as for the benefit of low and moderate income families, but are authorized under national housing laws for the preservation of existing housing and neighborhoods through moderate rehabilitation of property and improved maintenance.

Applicants state that other types of subsidy and assistance within this category would include financial benefits provided by a local community encouraging residential multifamily development, such as real estate tax abatement, or a substantially reduced charge for public services in lieu of real estate taxes, for the property. Applicants state that the Partnership also may invest in properties which have subsidies derived from the Housing and Urban Renewal Recovery Act of 1983. This subsidy program provides a "front end" grant from the federal government to a city, from which grant the city may make a grant or loan or provide interest reductions to entities which own residential multifamily properties ("HoDAG Program"). The HoDAG Program includes restrictions; which include targeting the funds to areas with "severe shortage of decent rental housing opportunities for families and individuals without otherwise reasonable and affordable housing alternatives in the private market".

Applicants represent that the Partnership is organized as a limited partnership because a limited partnership is the only form of organization which provides investors with both (1) the ability to claim on their individual tax returns the deductions, losses, credits, and other tax items arising from the Partnership's interests in Local Partnerships that own and operate the government-assisted and conventional apartment complexes and (2) liability limited to their capital investment.

Applicants state that any subscriptions for units of limited partnership interests must be approved by the Applicant, which approval shall be conditioned upon representations as to suitability of the investment for each subscriber, including representations that without regard to investment in the Partnership, each subscriber has either (1) a net worth (exclusive of home, home furnishings, and automobiles) of at least $50,000 and expects (i) (with respect to a married taxpayer filing a joint return) to have taxable income for the current year which will be at least $45,800 or (ii) (with respect to all other taxpayers excluding corporations) federal taxable income for the current year will be at least $34,100, and with respect to (i) and (ii) above, the subscriber must represent that for the two succeeding years, the subscriber's marginal federal income tax rate will be at least 38%, or (2) irrespective of annual federal taxable income, the subscriber has a net worth (exclusive of home, home furnishings, and automobiles) of at least $150,000 or is purchasing in a fiduciary capacity for a person or entity having such net worth and annual taxable income as set forth in clause (1) or such net worth as set forth in clause (2). Any prospective transferee of a Unit will be required to make similar representation in writing to the Partnership.

Applicants state that the General Partners will receive 1.51 percent of all items of the Partnerships profits and losses. Applicants further state that in addition to the 1.51 percent participation in the Partnerships profits and losses, the General Partners and their affiliates will receive certain fees for managing the conduct of the affairs of the Partnership and the Local Partnerships and the continuing operation of projects owned by the Local Partnerships. Applicants represent that all compensation to be paid the General Partners and their affiliates will be fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Applicants further represent that the Partnership believes such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various states that prescribe such guidelines, including, without limitation, the Statement of Policy adopted by the North American Securities Administrators Association, Inc. with respect to real estate programs. Applicants state that all compensation to be paid to the General Partners and their Affiliates will be specified in the Prospectus.

Applicants assert that the requested exemption is both necessary and appropriate in the public interest and would be consistent with the protection of investors and the purposes and policies underlying the Act. The application states that any of the net proceeds of the offering which the Partnership has not invested or committed to investment in Local Partnerships within 24 months from the date of the prospectus, except for amounts utilized to pay operating expenses and amounts set aside for reserves, will be returned by the Partnership to the Limited Partners without a reduction for any fees. The application also states that the Partnership will invest any net proceeds not immediately utilized to acquire Local Partnership interests or for other Partnership purposes (such as the establishment of a reserve equal to 5% of the Gross Proceeds), in United States government securities, including treasury bills, other United States government guaranteed obligations, certificates of deposit or bank time deposits, or tax-exempt notes or bonds with maturities not exceeding one year. It is asserted that the Partnership does not intend to trade in temporary investments and will not speculate in any of the temporary securities.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20711 Filed 8-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14392; 811-3485, 811-3679, 811-3680, 811-3681, and 811-3682]

Application and Opportunity for Hearing; Federal Life Money Market Fund, Inc., et al.

August 23, 1985.

Notice is hereby given that Federal Life Money Market Fund, Inc., Portfolio of Money Market Fund Shares, Inc., Portfolio of Income and Growth Fund Shares, Inc., Portfolio of Bond Fund Shares, Inc., and Portfolio of Mutual Fund Shares, Inc. ("Applicant"), 3750 West Deerfield Road, Riverwoods, Illinois 60015, underlying investment funds for Federal Life Variable Annuity Account C ("Account") and registered under the Investment Company Act of 1940 ("Act") as open-end, diversified management investment companies, filed applications on June 25, 1985, pursuant to section 8(f) of the Act, for an order of the Commission declaring that Applicants have ceased to be investment companies. All interested persons are referred to the applications on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the applicable provisions.

On June 10, 1982, Federal Life Money Market Fund, Inc. filed a notification of registration on Form N-8A and a registration statement on Form N-1. This registration statement became effective on September 2, 1982. Portfolio of Money Market Fund Shares, Inc., Portfolio of Income and Growth Fund Shares, Inc., Portfolio of Bond Fund Shares, Inc., and Portfolio of Mutual Fund Shares Inc. each filed a notification of registration on Form N-8A on March 8, 1983, and a registration statement on Form N-1. These registration statements became effective on June 8, 1983. Each Applicant was incorporated under the laws of the State of Maryland.

Applicants state they have never made, and do not intend to make, either directly or indirectly, a public offering of any of their securities, which would have been shares of beneficial interest funding variable annuity life insurance contracts ("contracts"). According to the applications, the Account is the sole shareholder of each of the Applicants, and on June 25, 1985, redeemed all but a minor number of shares in anticipation of the winding up of the affairs of the Applicants. Each Applicant currently has less than $10,000 invested in money market instruments, and has no debts or other liabilities outstanding other than normal organizational expenses, which will be paid by Federal Life Insurance Company. The Applicants are not party to any litigation or administrative proceedings. Applicants maintain that they are not engaged, nor do they propose to engage, in any business activities other than those necessary for the winding up of their affairs. On May 31, 1985, the board of directors of the Applicants authorized the filing of the applications.

Notice is further given that any interested person wishing to request a hearing on the applications may, not later than September 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the applications will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20712 Filed 8-29-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14000]

Application and Opportunity for Hearing; Phillips Petroleum Co.

August 23, 1985.

Notice is hereby given that Phillips Petroleum Company (the "Applicant" or the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (herein sometimes referred to as the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of J. Henry Schroder Bank & Trust Company ("Schroder"), a corporation duly organized and existing under the laws of the State of New York, under certain indentures of Phillips Petroleum Company, which were heretofore qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as trustee under any of such indentures.

The Company has issued and outstanding, as of June 24, 1985, the following debt securities secured by the following indentures, in each case, between the Company and Schroder, as trustee, all of which are the subject of this application:

(i) $112,230,000 principal amount of 7⅝% Sinking Fund Debentures Due 2001, under an Indenture dated March 15, 1971 (the "1971 Indenture");

(ii) $191,270,000 principal amount of 8⅞% Sinking Fund Debentures Due 2000, under an Indenture dated November 15, 1975 (the "1975 Indenture");

(iii) $200,000,000 principal amount of 12⅞% Notes Due September 1, 1992, under an Indenture dated August 1, 1982 (the "1982 Indenture");

(iv) $300,000,000 principal amount of 12¼% Sinking Fund Debentures Due 2012, under the 1982 Indenture;

(v) $250,000,000 principal amount of 11¼% Sinking Fund Debentures Due May 1, 2013, under the 1982 Indenture;

(vi) $2,104,820,000 principal amount of Floating Rate Senior Notes Due 1995, under an Indenture dated March 15, 1985 (the "March 1985 Indenture"); and

(vii) $1,306,440,000 principal amount of 13⅞% Senior Notes Due 1997, under the March 1985 Indenture.[1]

Bankers Trust Company (the "Resigning Trustee") as the original trustee, or assignee of the original trustee, under each of the 1971, 1975 and 1982 Indentures is resigning and the Company is duly appointing Schroder as successor trustee, which appointment Schroder is accepting, all pursuant to an Instrument of Resignation, Appointment and Acceptance dated June 24, 1985, among the Company, the Resigning Trustee and Schroder.

Section 310(b) of the Act (which is included in section 6.08 of the 1971, 1975, 1982 and March 1985 Indentures, collectively referred to herein as the "Indentures") provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (b)(1) of this section provides, with certain exceptions stated therein, that a trustee under a qualified indenture of a company shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under

[1] The Company and Schroder executed an Indenture dated February 15, 1985 and supplemented February 18, 1985, but no securities have been issued thereunder nor has such indenture been qualified under the Act.

which any other securities, or certificates of interest or participation in any other securities of such company are outstanding.

The present application, filed pursuant to clause (ii) of section 310(b)(1) of the Act (as set forth in section 6.08 of each of the Indentures), seeks to exclude the Indentures from the operation of Section 310(b)(1) of the Act.

The effect of the proviso contained in clause (ii) of section 310(b)(1) of the Act on the matter of the present application is such that the Indentures may be excluded from the operation of section 310(b)(1) of the Act if the Company shall have sustained the burden of proving, by this application to the Commission and after opportunity for hearing thereon, that the trusteeships of Schroder under the Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as trustee under any Indenture.

The Applicant alleges that:

(1) The Indentures are wholly unsecured and the debt securities secured by the Indentures rank *pari passu inter se*. The only material differences between the Indentures and the rights of the holders of the debt securities secured by the Indentures relate to aggregate principal amounts, dates of issue, certain financial covenants of the Company, Events of Default as defined in the Indentures, maturity and interest payment dates, interest rates, redemption prices and procedures, sinking fund provisons, and other provisions of a similar nature.

(2) No default has at any time existed under any Indenture.

(3) Such differences as exist among the Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as trustee under any one or more of the Indentures.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–14000, at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice Is Further Given that an order granting the application may be issued by the Commission any time on or after September 17, 1985, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended. Any interested person may, no later than September 17, 1985, at 5:30 P.M., Eastern Daylight Savings Time, in writing, submit to the Commission, his or her views or any additional facts bearing upon this application or the desirability of a hearing thereon or request notification if the Commission should order a hearing. Any such comments or requests should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application that he desires to controvert. At any time after such date, the Commission may issue an order granting the application, upon such terms and conditions as it may deem necessary or appropriate in the public interest or for the protection of investors unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–20713 Filed 8–29–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22356; File No. S7–820]

Joint Industry Plan; Receipt of an Amendment to the Options Price Reporting Authority Plan

On August 12, 1985, the participants in the Options Price Reporting Authority ("OPRA") submitted to the Commission, pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"), an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information" ("OPRA Plan").[1]

I. Description of the Amendment

The amendment to the OPRA Plan enlarges the category of persons eligible to become parties, heretofore limited to national securities exchanges, to include national securities associations. Conforming changes are made throughout he OPRA Plan to reflect this enlargement of eligibility for participation. In addition, "housekeeping" revisions are made to the list of parties set forth in Section I of the OPRA Plan.

The OPRA Plan participants indicate that these changes are necessary to accommodate the request of the National Association of Securities Dealers, Inc. ("NASD") to become a party to the OPRA Plan. The OPRA Plan participants also indicate that the NASD will be included as a party upon its completion of a separate application for participation.

II. Request for Comment

Pursuant to Rule 11Aa3–2(c)(3)(ii) under the Act, the amendment became effective upon filing with the Commission. The Commission, however, may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

In order to assist the Commission in determining whether to abrogate the amendment, interested persons are invited to submit their views to John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549, within 21 days from the date of publication of this notice in the **Federal Register**. The amendment to the OPRA notice in the **Federal Register**. The amendment to the OPRA Plan will be available for public inspection in the Commission's Public Reference Room. All communications should refer to File No. S7–820.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR § 200.30–(a)(27).

Dated: August 26, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–20841 Filed 8–29–85; 8:45 am]

BILLING CODE 8010–01–M

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[1] *See* Securities Exchange Act Release No. 17638 (March 18, 1981).

[Release No. 35–23802; 70–6925]

Central and South West Corp., West Texas Utilities Co.; Proposal to Issue Preferred Stock

August 23, 1985.

Central and South West Corporation, P.O. Box 220164, Dallas, TX 75222, a registered holding company, and its wholly owned subsidiary, West Texas

Utilities Company ("WTU"), 301 Cypress, Abilene, TX 79601, have filed an amendment to their application-declaration subject to sections 6(a), 7, 9(a), 10 and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50, 62 and 65 thereunder.

In the application-declaration WTU requested authority to issue and sell during the two year period prior to December 31, 1985 up to 300,000 shares, in one or more series, Preferred Stock, $100 par value ("Additional Preferred"), at not less than $100 per share nor more than $102.75 per share, with dividends to accrue thereon only from the date of issue. WTU still anticipates the need for such financing; however, due to its financing requirements, in light of the recent sale of $35 million in principal amount of its First Mortgage Bonds, Series L, and market conditions, it appears that WTU may not issue the Additional Preferred until the last quarter of 1985 or the first half of 1986. Therefore, WTU hereby requests authority to issue 300,000 shares of the Additional Preferred until June 30, 1986.

Depending upon market conditions, WTU requests the flexibility to either issue perpetual preferred or sinking fund preferred stock. If a sinking fund preferred stock is issued, WTU further requests that it be authorized to determine the size and timing of the sinking fund to be based on market conditions at the time of the issue. It is anticipated that the Additional Preferred will be redeemable at any time in whole or part provided that such redemption will not be allowed for a period of five years from issue if it is part of a refunding at an effective interest cost lower than that of the particular series of Additional Preferred. It is anticipated that dividend rates and commissions will be established pursuant to competitive billing. Unless the application-declaration is amended to provide for a negotiated public offering or private placement, WTU proposes, pursuant to Rule 50 under the Act to issue and sell the Additional Preferred.

The application-declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 16, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issue of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary

[FR Doc. 85-20635 Filed 8-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23803; 70-7140]

Columbia Gas System, Inc.; Proposal to Amend Supplemental Indenture

August 23, 1985.

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed a declaration with this Commission pursuant to section 6(a), 7(e), and 12(e) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 62 and 65 thereunder.

Columbia proposes to amend its Twenty-Ninth Supplemental Indenture ("Supplemental Indenture"), dated as of June 1, 1982, supplementing its indenture dated as of June 1, 1981 ("Indenture"). Debentures in the principal amount of $100 million at 15¾%, Series due June 1997 ("Debentures"), were issued pursuant to the Supplemental Indenture and approved by this Commission, HCAR No. 22498.

Columbia proposes to request the Trustee to execute a Thirtieth Supplemental Indenture to eliminate the current restriction on capital stock distributions in the Supplemental Indenture and replace it with the dividend restriction included in the Twenty-Eighth Supplemental Indenture, dated as of August 1, 1980 ("Twenty-Eight Supplemental Indenture"). This dividend restriction states that Columbia will not authorize or make any distribution on Capital stock if, after giving effect to such distribution, the cumulative aggregate amount of all distributions on capital stock subsequent to December 31, 1979, will exceed the amount of Columbia's net income available for dividends after December 31, 1979, plus $110,000,000, plus such additional amount as shall be authorized or approved by the Commission.

As a result of this modification, approximately $163 million of additional retained earnings would be made available for common and preferred stock dividends. Approximately $552 million of retained earnings will continue to be restricted.

As compensation to the holders of the Debentures, it is expected that the non-refundable period and/or the accelerated sinking fund option of Columbia's Indenture will be modified, which will lengthen the holding period of the Investor. It is also possible that Columbia may eliminate the Cash Call Redemption option until expiration of the applicable non-refunding period. Commission approval of an extension of the non-refundable provision for up to two years beyond the current five years is requested. The exact terms of the modifications will be the subject of a Rule 24 letter.

The Thirtieth Supplemental Indenture effecting the proposed change cannot be executed until Columbia delivers to the Trustee written consents of the holders of 66⅔% in aggregate principal amount of the debentures at the time outstanding under the Supplemental Indenture. Solicitation of such consents, it is proposed, will be undertaken through Salomon Brothers, acting as agent for Columbia.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 16, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified or any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20636 Filed 8-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23800; 70-7133]

Consolidated Natural Gas Co.; Proposed Revolving Credit Long-Term Bank Financing by Holding Company; Intrasystem Financing

August 23, 1985.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, has filed an application-declaration pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(2) thereunder.

By an order dated January 8, 1982 (HCAR No. 22362), the Commission authorized Consolidated to borrow up to $100,000,000 for periods not exceeding eight years pursuant to a revolving credit agreement with the Chase Manhattan Bank N.A. ("Chase"), acting for itself and as agent for other banks. Consolidated now proposes to enter into a new revolving credit agreement (the "Agreement") with Chase, acting for itself and as agent for other banks, in addition to that authorized in HCAR No. 22362. Under the terms of the new Agreement, the bank loans will be in the form of revolving credits, and may be converted in three-year term loans on December 31, 1990. During the revolving credit period, each bank will make loans to Consolidated from time to time through December 30, 1990, up to the maximum of its commitment under the Agreement. During that period, Consolidated may borrow, pay or prepay and reborrow up to each bank's commitment. In accord with the terms of the Agreement, Consolidated will have the rights at any time, upon notice to Chase, as Agent, to terminate or reduce the individual commitments of the banks.

Each loan during the revolving credit period will be evidenced by a Promissory Note. At the option of Consolidated, the interest rate will be (1) the prime commercials lending rate announced by Chase as in effect from time to time at its principal office in New York City, (2) the London Interbank Offered Rate ("LIBOR") as quoted by the London Office of Chase, or as specified, plus an increment of three-eights of one percent (0.375%) or, (3) the average of the bid rates quoted in the secondary market for Certifcates of Deposit of Chase as quoted from time to time by two recognized dealers ("CD Rate") plus an increment of one-half of one percent (0.500%) or (4) at a Composite Rate determined by negotiations between the individual participating banks and Consolidated.

The LIBOR and CD Rate will be adjusted, if applicable, by dividing the rate then effective by such factor as will satisfy reserve requirements of Chase and the banks as set forth by regulation of the board of Governors of the Federal Reserve System or other costs stipulated by the Board of Governors. Additionally, the CD Rate will be adjusted to reflect the cost of required deposit insurance.

Except for the Composite Rate, the rate of interest as quoted by Chase will include all cost plus any of the applicable above-mentioned increments. The Composite Rate will be as outlined above. Interest will be payable quarterly in arrears on March 31, June 30, and September 30 and December 31, or as specified, or at prepayment date, as the case may be. The floating Chase prime from time to time and any such change will be effective as to the revolving credit loans on the date of the change.

A commitment for of one-quarter of one percent(.250%) fee per annum will be charged on the unused portion of the revolving credit commitment commencing on the effective date of the Credit Agreement.

Under the terms of the Agreement, each bank agrees to make a three-year term loan to Consolidated on December 31, 1990 (the "Conversion Date"), in an amount not exceeding its commitment on the date of that loan. Each term loan will be evidenced by Consolidated's note, maturing in six equal semi-annual installments commencing June 30, 1991. In no event will the final maturity be later than December 31, 1993. Interest on each Term Note will be computered, at the option of Consolidated as follows: (1) prime commercial lending rate in effect from time to time at the principal office of Chase in New York City plus an increment of one-eighth of one percent (0.125%), (2) LIBOR adusted rate as quoted by the London Office of Chase plus an increment of one-half of one percent (0.500%), or (3) the average of the bid rates quoted in the secondary market for Certificates of Deposit of Chase as quoted from time to time by two recognized dealers ("CD Rate"), plus and increment of six-tenths of one percent (0.600%).

During the revolving credit period under consolidated's new Agreement with the Banks, as hereinabove described, Consolidated will make long-term nonnegotiable loans to subsidiary companies for capital expeditures. These loans will be evidence by long-term, nonnegotiated notes of the subsidiary companies maturing over a period of time to be determined by the officers of Consolidated, until such time as Consolidated sells debentures. These long-term, nonnegotiable notes will bear interest at a rate predicted on a substantially equal to the effective cost of money to Consolidated under Agreement until Consolidated sells its debentures. Thereafter, the notes will bear interest at a rate substantially equal to the effective cost of money through the sale of the debentures, and Consolidated will make additional long-term loans to its subsidiaries on the same basis as those previously made or in the form of revolving credit advances, upon letter agreement of note, payable to Consolidated on or before June 30, 1991. Following the conversion by Consolidated of its revolving credit loan into a term loan under the Credit Agreement, revolving credit advances to subsidiary companies will be converted into Term Notes of those subsidiary companies with maturities substantially the same as Consolidated's related term loan under the Credit Agreement.

The fees expenses incurred, or to be incurred in connection with the proposed transaction are estimated at $23,000. No state or federal commission other than this Commission, has jurisdiction over the proposed transaction.

The application-declaration is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing on it should submit their views in writing by September 16, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20637 Filed 8-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23801; 70-7139]

The Southern Company, et al.; Proposal to Issue Authorized But Unissued Common Stock

August 23, 1985.

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia, 30346, a registered holding company, its subsidiaries, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Company Service, Inc., Southern Electric Generating Company, and Southern Electrical International, Inc., have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

Southern proposes to issue up to a maximum of $5,000,000 in value of its authorized but unissued shares of common stock, par value $5 per share ("Additional Common Stock"), in order to provide common stock to fund The Employee Stock Ownership Plan of The Southern Company System ("Plan") for the Plan year 1984, including any reinvestment of cash dividends on such stock, by direct purchases of common stock from Southern. The exact number of shares to be issued by Southern will be determined, in each case by the aggregate amount of contributions to be invested by the trust established pursuant to the Plan ("Trust") in respect of the Plan year and the purchase price per share of Southern's common stock. Southern proposes to apply the proceeds it receives from the sale of the Additional Common Stock for further equity investments and for other corporate purposes. Southern anticipates that the contributions by the Employing Companies to the Trust will be made in cash. However, if a contribution consists of Additional Common Stock, the purchase price per share shall be the average of the closing prices of a share of Southern's common stock based on consolidated trading and reported by the New York Stock Exchange for the 20 consecutive trading days immediately preceding the date on which such shares are contributed to the Plan. The purchase price per share of Additional Common Stock acquired from Southern by the Trust with cash contributions shall be the fair market value as of the date of acquisition. Cash contributions to the Trust also may be invested in Southern's common stock through open market purchases or private purchases from parties other than Southern. The purchase price per share of common stock acquired in this manner shall not be greater than the last sale price or highest current independent bid price, whichever is higher, for a share determined on the basis of consolidated trading reported by the New York Stock Exchange plus an amount equal to the commission payable in a stock exchange transaction.

Under the Plan, the Trust is required to reinvest cash dividends on common stock allocated to a participant's account in additional shares of common stock, unless the participant elects to receive such cash dividends.

All costs of administration of the Plan and the Trust, in excess of those costs withheld from contributions or to be paid by the Trust, are paid by the Employing Companies.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 16, 1985 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20838 Filed 8-29-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

August 26, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Student Loan Marketing Association
Common Stock, $.50 Par Value (File No. 7-8570)
Placer Development, Ltd.
Common Stock, No Par Value (File No. 7-8571)
Club Med, Inc.
Common Stock, $1.00 Par Value (File No. 7-8572)
Republic New York, Corporation
Common Stock, $5.00 Par Value (File No. 7-8573)
Health Care Property Investors, Inc.
Common Stock, $1.00 Par Value (File No. 7-8574)
Vendo Company
Common Stock, $1.25 Par Value (File No. 7-8575)
Sysco Corporation
Common Stock, $1.00 Par Value (File No. 7-8576)
Perry Drug Stores, Inc.
Common Stock, $.05 Par Value (File No. 7-8577)
Mortgage Investment Plus, Inc.
Common Stock, $.01 Par Value (File No. 7-8578)
Inflight Services, Inc.
Common Stock, $.50 Par Value (File No. 7-8579)
Bolar Pharmaceutical Company, Inc.
Common Stock, $.01 Par Value (File No. 7-8580)
Central Louisiana Electric Corp.
Common Stock, $4.00 Par Value (File No. 7-8581)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 16, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-20840 Filed 8-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22350; File No. SR-CBOE-84-31]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to Foreign Currency Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 16, 1985 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission Amendment No. 2 to its proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the amended proposed rule change from interested persons.

I. Text of the Proposed Rule Change

This Amendment Number Two only shows changes to Amendment Number One, which was a restatement of the original filing. Additions are italicized and deletions are bracketed.

Days and Hours of Business

Rule 22.5. On the days that the Exchange is open for business, currency options normally shall be traded from 7:[3]*00* a.m. to 1:30 p.m. Central Standard or Daylight Time as appropriate.

Fractional Changes for Bids and Offers

Rule 22.7. Bids and offers shall be expressed as follows, unless the Floor Procedure sets a different fraction of a cent for a currency option contract of a particular series: British pound, ¢.05 or ¢.025; Canadian dollar, ¢.10; French franc, ¢.005; Japanese yen ¢.0001; Swiss franc, ¢.01 and West German mark, ¢.01.

Obligations of Market Makers

Rule 22.8. In supplementation of Rule 8.7, a Market Maker is expected to perform the following activities in the course of maintaining a fair and orderly market, *except that there is no one-point-rule requirement in foreign currency options, that is, 8.7(b)(ii) does not apply.*

no change to the five paragraphs on bid/ask differentials

The Floor Procedure Committee may establish differences other than the above for one or more series or classes of currency options. The bid-ask differentials stated above apply to [all but the longest term currency option series open for trading in each class] *series of less than nine months.* For [these] *all other* series, the bid-ask differential shall be twice the stated amount.

Post Coordinators [for Currency Options] and Trading Rotations

Rule 22.9. *(a) Post Coordinators.* Notwithstanding any provision in the Rules to te contrary, there shall be neither Board Brokers nor Order Book Officials for currency options, and there shall be no limit order book for currency options. *There shall be Post Coordinators who shall handle trading rotations.*

(b) Opening Rotations. The opening rotation in each series of each class of foreign currency options shall be overseen by the Post Coordinator and shall begin promptly at 7:00 a.m. Chicago time. Generally, the Post Coordinator or his representative shall open first those series of a class with respect to which the greatest buying and selling interest has been expressed (deferring opening relatively inactive series); provided, however, that more than one series and more than one class may be opened simultaneously. These procedures may be altered or supplemented by the Board (or the Committee designated by the Board).

(c) Closing Rotations. A closing rotation shall be employed for each series and class of currency options on the last business day prior to their expiration, starting at 1:30 p.m. Chicago time.

Margin Requirements

Rule 22.11. (a) and (b) no change

(c) Foreign currency option margin requirements may be satisfied by a deposit of cash, marginable securities or by presentation to the member organization carrying such customer's account of a letter of credit in a form satisfactory to, and issued by a bank or trust company approved by, the Exchange. Such a letter of credit: (i) shall contain the unqualified commitment of the issuer to pay to the member or participant organization a specified sum of money equal to or greater than the amount of margin due with respect to such option position, immediately upon demand at any time prior to the expiration of such letter of credit; (ii) shall be irrevocable; (iii) shall expire no earlier than the expiration of such option; and (iv) shall expire no later than eighteen (18) months from the date of its issuance. Such a letter of credit may serve as margin for more than one foreign currency option position written by the customer for whose account the letter of credit is issued, provided that the margin due with respect to each such option position does not, in the aggregate, exceed the sum specified in such letter of credit and provided that such letter expires no sooner than the most distant expiration date of any of the options with respect to which it is designed to serve as margin.

. . . Interpretations and Policies:

.01 For purposes of this Rule, all valuations shall be based on current market prices unless the specific provisions of the Rule otherwise provide.

.02 The Exchange may in its discretion approve a bank or trust company as an issuer of letters of credit if:

(a) U.S. Institutions:

(1) it is organized under the laws of the United States or a State thereof and is regulated and examined by federal or state authorities having regulatory authority over banks or trust companies; and

(2) it has, at the time of approval and continuously thereafter, shareholders' equity of $200,000,000 or more.

(b) Non-U.S. Institutions:

(1) it is organized under the laws of a country other than the United States and has a Federal or State Branch or Agency (as defined in the International Banking Act of 1978) located in the United States;

(2) it has, at the time of approval and continuously thereafter, shareholders' equity in excess of $200,000,000 (U.S.);

(3) its principal executive office is located in a country that (a) is rated "AAA" by Moody's Investor Service and/or Standard & Poor's; and

(4) (a) it has a "P-1" rating from Moody's Investor Service and/or an "A-1" rating from Standard & Poor's on its commercial paper or other short-term obligations, or

(b) in the event it has no rating on its commercial paper or other short-term obligations,

(i) any such commercial paper or short-term obligations issued by its parent or an affiliated entity has such a rating; or

(ii) any such commercial paper or short-term obligations issued by non-affiliated entities and supported or guaranteed by the institution has such a rating; or

(iii) the institution, its parent or any affiliated entity has a "Aaa" rating from Moody's Investor Service and/or an "AAA" rating from Standard & Poor's on its long-term obligations.

.04 Any letter of credit issued by a non-U.S. institution must be issued and payable at a Federal or State Branch or Agency thereof.

.05 The total amount of letters of credit issued by a U.S. or non-U.S. financial institution for the account of any one customer and outstanding at any one time shall not exceed 15% of the unimpaired capital and surplus of such institution and the total amount of letters of credit issued by a U.S. or non-U.S. financial institution naming any one member organization as beneficiary and outstanding at any one time shall not exceed 20% of the unimpaired capital and surplus of such institution.

.06 If the customer for whose account a letter is issued pursuant is itself a bank or trust company, such letter or credit shall be issued by another bank or trust company.

.07 The Exchange reserves the right in its sole discretion to refuse or revoke approval of any financial institution as an issuer of letters of credit at any time.

Foreign Currency Option Permits

Rule 22.13. The Exchange may issue up to 75 nontransferable, nonleasable currency option permits. Permits shall entitle holders to effect transactions in only currency options as market makers or floor brokers on the Exchange's trading floor. A permit holder cannot also be a clerk, a special member, a regular member with a floor function, or a bond permit holder. The Membership Committee (1) may give preference to traders and to firms that have experience in foreign-currency trading, (2) may limit the number of permits purchased by a single firm and (3) shall review all changes of nominees to insure that nominees are firm employees.

Permit holders shall be subject to all of the obligations of regular members under the rules and policies of the Exchange, including dues, fees (including application fees), other charges, and the member death benefit. They shall have no interest in the property and assets of the Exchange and shall have no right to vote, to petition, or to serve on any committee except as a nonmember of the Exchange.

Applications only shall be accepted until the close of business on the day before trading in currency options begins on the Exchange. Permits shall be effective for one year and can be renewed for a maximum duration of three years from the date of issuance at the following nonrefundable permit fees: first year—$10,000, second—$15,000 and third—$20,000. If a permit holder purchases a regular membership in the open market after 18 months (but before 3 years) as a permit holder, the Exchange will refund to him 50 percent of his paid-in permit fees; if such a regular membership is sold within six months of the date of purchase, the Exchange will deduct the full amount of the refund from the proceeds of the sale.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and the basis for the amended proposed rule change and discussed any comments it received on the amended rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purposes of this proposed Amendment Number Two are as follows. The opening of trading is changed from 7:30 a.m. Chicago time to 7:00 a.m. The fractional change for the British pound can be either ¢.05 or ¢.025, and the Exchange will announce well before the start of trading which will be used. If a change is to be made after trading begins, the Exchange will announce the change well in advance of its effective date. In addition, it is made clear that the one-point rule does not apply, and the bid-ask differentials apply to series of less than nine months and are doubled for all other series.

This Amendment also adds language concerning opening and closing trading rotations. The Exchange intends to open foreign currency options similarly to the way Treasury bond options are opened as approved by the Commission in Release Number 34–22144 concerning SR–CBOE–85–11. First, the Post Coordinator ordinarily will open within an options class those series with the nearest expirations that are at-the-money, first in-the-money and first out-of-the-money. The Post Coordinator will then open any other near term options within the class for which a broker requests a market. Next the Post Coordinator will open any longer-term series within the class for which a broker requests a market.

Series for which there was no buying or selling interest during opening rotation will be opened during the trading day in response to buying or selling interest, or forty minutes prior to the close, whichever is sooner. (Of course, in periods of unusual market activity, or when other extraordinary circumstances are present, the Post Coordinator is vested with discretion to open the inactive currency option series more immediately prior to the close of trading than forty minutes.) No quotations will be posted for series of currency options until they are opened for trading. Once a series is opened, however, current market quotations for such series will be maintained and disseminated.

Allowing letters of credit to satisfy the initial and maintenance margin requirements of foreign currency options alleviates many of the computational problems that have inhibited the entities that the product was designed for from participating in foreign currency option trading on a securities exchange.

The acceptance of letters of credit to meet foreign currency margin requirements is subject to a one year pilot program during which each member organization named as the beneficiary of a letter of credit issued must provide the Exchange with: (i) The name of the financial institution issuing the letter of credit; (ii) the name of the customer on whose behalf the letter of credit as issued; (iii) the sum of money specified in the letter; (iv) the expiration date of the letter; (v) the class and series of each option position to which such letter is to serve as margin; (vi) the transaction date of each such option position; and (vii) the margin due with respect to each such option position. Each member organization must also provide the Exchange with prompt notification of the withdrawal of any such letter of credit or the liquidation of any option position with respect to which such letter is intended to suffice as margin and of the assignment of an exercise notice to any such option position.

A member organization's ability to accept a letter of credit in satisfaction of the margin due with respect to a customer's foreign currency option position(s) shall continue for a period of one year from the effective date of Exchange Rule 22.11, unless sooner terminated pursuant to the second sentence hereof. During the one-year period subsequent to the effective date of Rule 22.11, the Exchange may, at any time, on its own initiative or at the direction of the Securities and Exchange Commission or the Board of Governors of the Federal Reserve System, suspend, terminate or otherwise modify a member organization's ability to accept a letter of credit in satisfaction of a customer's original margin obligations.

Finally, the Amendment adds an access plan, which plan was approved by a membership vote at a special meeting held beginning June 4, 1985. It should be noted that the months

available for trading will be the nearby two months and three further out months from the March cycle. For example, on September 24 when trading is scheduled to begin, the following months will be available: October, November, December, March and June. It also should be noted that sales personnel who conduct a public-customer business in foreign currency options must pass the Series 15 examination. Since the Series 15 examination presently does not cover European options or the size of the Exchange's currency option contracts, the Exchange will undertake to cover these subjects as part of its currency option education efforts.

The amended proposed rule change is consistent with the Securities Exchange Act of 1934 and in particular Section 6(b)(5) thereof in that it serves to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Amended Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 20, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 23, 1985.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 85-20839 Filed 8-29-85; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

FCA Investment Co.; Issuance of a License to Operate as a Small Business Investment Company

[License No. 06/06-0289]

On March 25, 1985, a notice was published in the Federal Register (50 FR 11779), stating that FCA Investment Company (FCA) located at 3000 Post Oak Boulevard, Houston, Texas 77056, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102(1985), for a license to operate as a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on April 24, 1985, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 06/06-0289 to FCA.

Dated: August 23, 1985.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 85-20749 Filed 8-29-85; 8:45 am]
BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will hold a public meeting at 9:00 a.m. until 5:00 p.m., Monday, September 9, 1985, at the Small Business Administration, 1441 L Street, NW., 2nd Floor Conference Room, Washington, DC 20416, to conduct a meeting of the Committee members to draft the first writing of the Committee's report to the President of the United States and the U.S. Congress on their activities during Fiscal Year 1985. The meeting will be open to the interested public, however, space is limited.

Persons wishing to obtain further information should contact Mrs. Maurine Fisher, Office of Private Industry Programs, Small Business Administration, Room 602, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6851.

Dated: August 23, 1985.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 85-20747 Filed 8-29-85; 8:45 am]
BILLING CODE 8025-01-M

Small Business Investment Companies; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securitites. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective *September 1, 1985*, and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is *10.345%* per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by Section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: August 23, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-20748 Filed 8-29-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/879]

Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas; Partially Closed Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that a meeting of the Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas will be held on October 9, 1985, from 9:30 a.m. to 5:00 p.m., and on October 10, 1985, from 9:30 a.m. to 12:00 p.m. and from 1:30 p.m. to 5:00 p.m. at the Woodward Room of the National Wildlife Federation, 1412 16th Street, NW., Washington, D.C.

The October 9 meeting and the morning session of the October 10 meeting will be open to the public, and the public may participate in the discussions subject to instructions of the Committee Chairman. Subjects to be discussed include: overview of U.S. preparations for the meeting of the Standing Committee on Research and Statistics (SCRS); review of research concerning tropical tunas and albacore; review of research concerning billfish; review of research concerning bluefin tuna; report of bluefin tuna fishery conducted in the U.S. EEZ and in the Canadian Zone; and estimates of Japanese harvest of tuna and billfish in the Atlantic U.S. EEZ.

The Advisory Committee will meet in closed session on the afternoon of October 10, 1985. At this session documents classified in accordance with Executive Order 12356 of April 2, 1982 will be circulated and discussed and matters will be considered which the public interest requires be withheld from disclosure. Accordingly, a determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, s.10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information should be directed to Barbara Rothschild, Office of International Fisheries Affairs, National Marine Fisheries Service, Department of Commerce. She may be reached by telephone on (202) 634-7257.

Dated: August 26, 1985.

Edward E. Wolfe,

Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 85-20816 Filed 8-29-85; 8:45 am]

BILLING CODE 4710-09-M

[Public Notice CM-8/878]

Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission; Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that a meeting of the Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission will be held on September 18, 1985 from 9:30 A.M. to 11:30 A.M. in the auditorium of the Southwest Fisheries Center of the National Marine Fisheries Service at 8604 La Jolla Shores Drive, La Jolla, California.

The meeting will be open to the public and the public may participate in the discussions subject to the instructions of the Committee Chairman. Subjects to be discussed include an evaluation of the 1985 fishery experience, a preliminary outlook for the 1986 fishery, and U.S. views on the IATTC management program.

Requests for further information on the meeting should be directed to Brian Hallman, OES/OFA, Room 5806, Department of State. He may be reached by telephone on (202) 632-1073.

Dated: August 26, 1985.

Edward E. Wolfe,

Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 85-20815 Filed 8-29-85; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended August 23, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Aug. 21, 1985	43382	Soundair Corporation, c/o L. Harvey Poe, Jr., 1701 Pennsylvania Avenue, NW., Washington, DC 20006. Application of Soundair Corporation pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to operate a class 9-2 International Regular Specific Point commercial air service to transport goods between Montreal, Quebec and Dayton, Ohio, using fixed wing aircraft in Group E, carrying goods on a year around basis. Answers may be filed by September 18, 1985.
Aug. 23, 1985	43368	Pan American World Airways, Inc., c/o David M. O'Connor, Suite 901, 1660 L Street, NW., Washington, DC 20036. Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests an amend its certificate of public convenience and necessity for Route 136 as follows: Segment 8 "Between the coterminal points Detroit, Mich., Washington, D.C., Baltimore, Md., Tampa and Miami—Ft. Lauderdale, Fla., New Orleans, La., New York, N.Y.—Newark, N.J. and San Juan, P.R., the intermediate points *Turks and Caicos Islands*; St. Maarten; St. Kitts; Grenada; St. Lucia; and Aruba; and the terminal point Curacao." (Proposed revisions underlined) Segment 10 "Between a point or points in the United States and a point or points in Antigua and Barbuda, Grenada, *the Turks and Caicos Islands*, the Netherlands Antilles, St. Christopher and Nevis and St. Lucia." (Proposed revisions underlined) Conforming Applications, Motions to Modify Scope and Answers may be filed by September 20, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-20776 Filed 8-29-85; 8:45 am]

BILLING CODE 4910-62-M

Proposed Revocation of The Domestic All-Cargo Certificate Issued to Michigan Peninsula Airways

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-8-74) Docket 43368.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the domestic all-cargo air service certificate issued to Michigan Peninsula Airways.

DATES: Persons wishing to file objection should do so no later than September 13, 1985.

ADDRESSES: Responses should be filed in Docket 43368 and addressed to the Office of Documentary Services, Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590 and should be served the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Joseph Brooks, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–8–74 is available for inspection at our Documentary Services Division at the above address.

Dated: August 26, 1985.

Jeffrey N. Shane,

Acting Assistant Secretary for Policy and International Affairs

[FR Doc. 85–20777 Filed 8–29–85; 8:45 am]

BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Colossal Statue of Ramses II; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the "Colossal Statue of Ramses II," imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement between the Egyptian Antiquities Organization and the City of Memphis. I also determine that the temporary exhibition or display of the listed exhibit objects in the City of Memphis during all or part of 1987 is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 26, 1985.

C. Normand Poirier,

Acting General Counsel and Congressional Liaison.

[FR Doc. 85–20647 Filed 8–29–85; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Art Nouveau Jewelry by Rene Lalique" (included in the list [1] filed as a part of this determination) imported from aboard for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the Calouste Gulbenkian Foundation and the International Exhibitions Foundation. I also determine that the temporary exhibition or display of the listed exhibit objects at the Walters Art Gallery, Baltimore, Maryland, beginning on or about November 19, 1985, to on or about January 5, 1986; the Virginia Museum, Richmond, Virginia, beginning on or about January 16, 1986, to on or about March 16, 1986; the Kimbell Art Museum, Fort Worth, Texas, beginning on or about March 29, 1986, to on or about June 8, 1986; and the Los Angeles County Museum of Art, Los Angeles, California, beginning on or about June 26, 1986, to on or about August 18, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 26, 1985.

C. Normand Poirier,

Acting General Counsel and Congressional Liaison.

[FR Doc. 85–20648 Filed 8–29–85; 8:45am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document

Sunshine Act Meetings

Federal Register
Vol. 50, No. 169
Friday, August 30, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Consumer Product Safety Commission	1
Federal Election Commission	2
Federal Reserve System	3
Legal Services Corporation	4, 5

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, September 5, 1985.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW. Washington, D.C.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:
Commission Procedures.

The Commission and staff will consider internal procedures relating to Commission decisionmaking.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Dated: August 27, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–20924 Filed 8–28–85; 1:06 pm]

BILLING CODE 6355–01–M

2

FEDERAL ELECTION COMMISSION

[Federal Register No. 85–18947]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 15, 1985, 10:00 a.m.

CHANGE IN MEETING: The open meeting scheduled for this date was canceled.

* * * * *

DATE AND TIME: Wednesday, September 4, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, September 5, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1985–21
  Lois Moore, on behalf of Consolidated Freightways, Inc.
Draft AO 1985–23
  Judah C. Sommer, Goldman, Sachs & Co. and GSMMI Holdings, Inc.
Reclassification—Printing Officer
Reclassification—Special Assistant to the Staff Director 1987 Budget Request
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 85–20898 Filed 8–28–85; 10:18 am]

BILLING CODE 6715–01–M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 4, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452 3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–20827 Filed 8–27–85; 4:14 pm.]

BILLING CODE 6210–01–M

4

LEGAL SERVICES CORPORATION

Committee on the Provisions for the Delivery of Legal Services Meeting
Amendment of Agenda

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published August 27, 1985, 85 FR 20502.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:00 a.m., Thursday, September 5, 1985.

EXPLANATION OF CHANGE: Item number three of the previously announced agenda, Case Service Reporting (CSR) System, will be amended to include a discussion of the goals and objectives of implementing performance measures as a potential component of a revised Case Service Reporting System.

CONTACT PERSON FOR MORE INFORMATION: Daniel M. Rathbun, Office of Field Services, (202) 272–4060.

Date issued: August 28, 1985.

D. Clifford Crook, III,

Assistant to the President, Chief-of-Staff.

[FR Doc. 85–20860 Filed 8–28–85; 9:39 am]

BILLING CODE 6820–35–M

5

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Amendment of Agenda.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published August 27, 1985, 50 FR 34793.

PREVIOUS ANNOUNCED TIME AND DATE OF MEETING: An executive session will be held at 7:30 p.m., Wednesday, September 4, 1985. The public portion of the meeting will commence at 11:00 a.m., Friday September 6, 1985, and continue until all official business is completed.

EXPLANATION OF CHANGE: Item number six of the previously announced agenda, Report of the Operations and Regulations Committee, will be amended to read as follows:

6. Discussion and Action on the Recommendations of the Committee on Operations and Regulations—45 CFR Part 1620.

CONTACT PERSON FOR MORE INFORMATION: Thomas A. Bovard, Office of the General Counsel, (202) 272–4010.

Date issued: August 29, 1985.

D. Clifford Crook, III,

Assistant to the President, Chief-of-Staff.

[FR Doc. 85–20996 Filed 8–29–85; 9:52 am]

BILLING CODE 6820–35–M

federal register

Friday
August 30, 1985

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules; teal in September, in the contiguous United States; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and special extended falconry seasons during 1985–86. The taking of these migratory birds is prohibited unless hunting seasons are specifically provided. The rules will permit the hunting of these species within specified periods of time beginning as early as September 1, as has been the case in past years.

DATE: Effective on August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Widlife Service, Department of the Interior, Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C., telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 14, 1985, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (50 FR 10276) a proposal to amend 50 CFR Part 20, with comment periods ending June 20, July 15, and August 19, (later extended to August 22) 1985, respectively, for the 1985–86 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico and the Virgin Islands; other early seasons; and late seasons. That document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 4, 1985, the Service published in the **Federal Register** (50 FR 23459) a second document consisting of a supplemental proposed rulemaking dealing with both the early and late-season frameworks. On July 5, 1985, the Service published for public comment in the **Federal Register** (50 FR 27638) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On July 26, 1985, the Service published in the **Federal Register** (50 FR 29706) a fourth document consisting of final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 13, 1985, the Service published a fifth document in the **Federal Register** (50 FR 32587) consisting of a proposed rulemaking dealing specifically with frameworks for late-season migratory bird hunting regulations. On August 21, 1985, the Service published a sixth document (50 FR 33737) consisting of a final rulemaking for the early-season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected early-season hunting dates, hours, areas and limits for the 1985–86 season. The final rule described here is the seventh in a series of proposed, supplemental and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens and purple gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and special extended falconry seasons.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Nontoxic Shot Regulations

On February 12, 1985, the Service published in the **Federal Register** (50 FR 5759) final rules describing nontoxic shot zones for waterfowl hunting. When eaten by waterfowl, spent lead pellets can have a toxic effect. Nontoxic shot zones reduce availability of lead pellets in selected waterfowl feeding areas. An amendment to the February 12, 1985, final rule, adding areas where nontoxic shot is required because lead shot used by waterfowl hunters in those areas poses a threat to bald eagles, was published in the **Federal Register** dated May 7, 1985 (50 FR 19178).

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] . . . by taken such action necessary to insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

Subsequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 18, 1985, the Acting Chief, Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 14, 1985, (at 50 FR 10282), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analsis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Authorship

The primary author of this rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated July 26, 1985, (at 50 FR 30425).

Regulations Promulgation

After analysis of migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the early proposals (50 FR 10276, March 14, 1985; 50 FR 23459, June 4, 1985; and 50 FR 27638, July 5, 1985), the Service published in the **Federal Register** on July 26, 1985, (50 FR 30424) final early season frameworks for Alaska, Puerto Rico, the Virgin Islands; and on August 21, 1985, (50 FR 33737) those for the contiguous United States and Hawaii. Copies of the final frameworks were also sent to the officials of the State conservation agencies and to conservation agency officials in Puerto Rico and the Virgin Islands who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 1, as has been the case in past years, and benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 14, June 4, and July 5, 1985, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

Accordingly, each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration have been given to all other relevant matters presented, certain section of Title 50, Chapter I, Subchapter B, Part 10, Subpart K, are amended as set forth below.

The rules that eventually will be promulgated for the 1985–86 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 704 et seq.) as amended.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712) unless otherwise noted.

2. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, the open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits, and areas for hunting the species designated in this section are prescribed as follows:

(a) *Puerto Rico.*

	Doves	Pigeons
Daily bag limit	10 singly or in the aggregate of all permitted species.	5
Possession limit	10 singly or in the aggregate of all permitted species.	5

Season dates: Sept. 7 to Nov. 5, 1985.
Shooting hours: One-half hour before sunrise to sunset daily.

Restrictions: Only the following species of doves and pigeons may be hunted during the open season: Zenaida dove (*Tortola cardosantera*); white-winged dove (*Tortola aliblance o cubanita*); mourning dove (*Tortola rabilarga o rabiche*); and scaly-naped pigeon (*Paloma turca o torcaz*).

Closed Areas

No season is prescribed for doves and pigeons on Mona Island in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

No season is prescribed for doves and pigeons in the Municipality of Culebra and on Desecheo Island.

No season is prescribed in the El Verde Closure Area consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1)

kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

No season is prescribed for doves and pigeons of any species in all of Cidra Municipality and in portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavata, west along the Rio Guavata, west along the Rio Guavata to Highway 1, southwest on Highway 1, to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning.

Check Commonwealth Regulations for Additional Restrictions

(b) *Puerto Rico.*

	Ducks	Coots	Common moorhens (gallinules)	Common snipe
Daily bag limits	6	Closed	6	6
Possession limits	8	Closed	12	12

Season dates: Nov. 9 to Dec. 10, 1985 and Feb. 1 to Feb. 23, 1986.
Shooting hours: One-half hour before sunrise until sunset daily.

Restrictions: No season is prescribed for waterfowl in the Municipality of Culebra and on Desecheo Island. The season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*); and purple gallinule (*Porphyrula martinica*).

Check Commonwealth Regulations for Additional Restrictions

Note.—Local names for game birds: Ruddy duck (*Oxyura jamaicensis*)—Pato rojo (protected); purple gallinule (*Porphyrula martinica*)—Gallareta azul (protected); and Puerto Rican plain pigeon (*Columbia inornata wetmorei*)—Paloma sabanera (protected).

(c) *Virgin Islands.*

	Zenaida dove	Scaly-naped pigeon	Ducks
Daily bag limits	10	5	4
Possession limits	10	5	8

Season dates:
Zenaida dove and scaly-naped pigeon: Sept. 1 through Oct. 30, 1985.
Ducks only: Dec. 14, 1985, through Jan. 31, 1986.
Shooting hours: One half-hour before sunrise until sunset daily.

Restrictions: No open season is prescribed for ground or quail dove, or other pigeons in the Virgin Islands. The season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*), and purple gallinule (*Porphyrula martinica*).

Check Commonwealth Regulations for Additional Restrictions! EXT. 005 ...TWO READINGS... (PART 0, RULES AND REGS) A46AD0 EARL DOUGLAS MARTIN SR. 61556 J.054–999 F.12 A46AD0.005 %118.0

Note.—Local names for game birds: Zenaida dove (*Zenaida aurita*)—mountain dove; bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected); ground dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected); and scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

3. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Shooting and hawking hours: One-half before sunrise to sunset daily.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Open Seasons—Ducks, Geese, Cranes and Common Snipe

Area	
Northern: State Game Mgmt. Units 11–13 and 17–26.	Sept. 1 to Dec. 16.
Gulf Coast: State Game Mgmt. Units 5–7, 9, 14–16, and Unimak Island.	Do.
Southeast: State Game Mgmt. Units 1–4.	Do.
Pribilof and Aleutian Islands: State Game Mgmt. Unit 10 except Unimak Island.	Oct. 8 to Jan. 22
Kodiak: State Game Mgmt. Unit 8.	Do.

DAILY BAG AND POSSESSION LIMITS

Area	Ducks [1]	Geese [2]	Emperor geese	Brant	Common snipe	Sandhill cranes
Northern	15–30	6–12	2–4	2–4	8–16	(3)
Gulf Coast	8–24	6–12	2–4	2–4	8–16	2–4
Southeast	7–21	6–12	2–4	2–4	8–16	2–4
Pribilof and Aleutian Islands	7–21	6–12	2–4	2–4	8–16	2–4
Kodiak	7–21	6–12	2–4	2–4	8–16	2–4

[1] In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers.
[2] No more than 4 daily, or 8 in possession may be any combination of Canada and/or white-fronted geese, provided that: in Units 1–9, 14–16 and 18, no more than 2 daily, or 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is prohibited from September 1 through September 14. In Unit 9(E), 10 (except Unimak Island) and 18, the taking of Canada geese is prohibited. In Unit 1(C), the taking of snow geese is prohibited.
[3] 2–4 in Unit 17; 3–6 in Units 11–13 and 18–26.

4. Section 20.103 is revised to read as follows:

§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Mourning Doves—Eastern Management Unit.*

In all States except Alabama, Illinois, Tennessee, and Michigan:	
Daily bag limit	12
Possession limit	24
In Illinois and Tennessee:	
Daily bag limit	15
Possession limit	30
In Alabama:	
Daily bag limit	15
Possession limit	15
In Michigan:	
Daily bag limit	6
Possession limit	12

Shooting and hawking hours: One-half hour before sunrise until sunset daily except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in:	
Alabama:	
North Zone: [1]	
12 noon to sunset.	Sept. 14.
One-half hour before sunrise to sunset.	Sept. 15 to Oct. 26 and Dec. 14 to Dec. 30.
South Zone: [1] 12 noon to sunset.	Oct. 5 to Dec. 3.
Connecticut	Closed.
Delaware (12 noon to sunset).	Sept. 7 to Sept. 28 and Oct. 14 to Oct. 26 and Dec. 9 to Jan. 11.
Florida: [2]	
12 noon to sunset	Oct. 5 to Oct 27.
One-half hour before sunrise to sunset.	Nov. 9 to Nov. 24 and Dec. 14 to Jan. 13.
Georgia:	
North Zone: [3]	
12 noon to sunset.	Sept. 7.
One-half hour before sunrise to sunset.	Sept. 8 to Oct. 6 and Nov. 28 to Dec. 1 and Dec. 7 to Jan. 11.
South Zone: [3]	
12 noon to sunset.	Sept. 28.
One-half hour before sunrise to sunset.	Sept. 29 to Oct. 27 to Nov. 28 and Dec. 1 and Dec. 7 to Jan. 11.
Illinois (12 noon to sunset.	Sept. 1 to Oct. 30.
Indiana (12 noon to sunset).	Sept. 1 to Oct. 30 and Nov. 28 to Dec. 7.
Kentucky:	
11 a.m. to sunset	Sept. 1 to Oct. 31.
Sunrise to sunset	Nov. 30 to Dec. 8.
Louisiana:	
North Zone: [4] 12 noon to sunset.	Sept. 1 to Sept. 8 and Oct. 19 to Dec. 1 and Dec. 14 to Dec. 31.
South Zone: [4] 12 noon to sunset.	Oct. 19 to Dec. 1 and Dec. 14 to Jan. 8.
Maine	Closed.
Maryland:	
12 noon to sunset	Sept. 2 to Oct. 26.
One-half hour before sunrise to sunset.	Nov. 15 to Nov. 23 and Dec. 23 to Dec. 28.
Massachusetts	Closed.
Michigan (one-half hour before sunrise to sunset):	
South of U.S. Highway 10.	Sept. 15 to Oct. 6.
Remainder of State	Closed.
Mississippi (One-half hour before sunrise to sunset).	Sept. 7 to Sept. 29 and Oct. 19 to Nov. 17 and Dec. 21 to Jan. 6.
New Hampshire	Closed.
New Jersey	Do.
New York	Do.
North Carolina (one-half hour before sunrise to sunset).	Sept. 2 to Oct. 9 and Nov. 25 to Nov. 30 and Dec. 21 to Jan. 15.
Ohio	Closed.
Pennsylvania:	
12 noon to sunset	Sept. 2 to Oct. 19.
One-half hour before sunrise to sunset.	Nov. 2 to Nov. 23.
Rhode Island:	
12 noon to sunset	Sept. 9 to Sept. 29.
Sunrise to sunset	Oct. 19. to Nov. 6 and Dec. 16 to Jan. 14.
South Carolina (one-half hour before sunrise to sunset).	Sept. 7 to Oct. 12 and Nov. 23 to Nov. 30 and Dec. 21 to Jan. 15.
Tennessee:	
12 noon to sunset	Sept. 1.
One-half hour before sunrise to sunset.	Sept. 2 to Sept. 29 and Oct. 12 to Oct. 19 and Dec. 14 to Jan. 5.
Vermont	Closed.
Virginia:	
12 noon to sunset	Sept. 2 to Oct. 26.
One-half hour before sunrise to sunset.	Dec. 23 to Jan. 4.
West Virginia:	
12 noon to sunset	Sept. 2 to Nov. 2.
One-half hour before sunrise to sunset.	Dec. 24 to Dec. 31.
Wisconsin	Closed.

[1] In Alabama the South Zone is defined as: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: remainder of the State.

[2] In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is 24 mourning and white-winged doves in the aggregate, of which not more than 8 may be white-winged doves.

[3] In Georgia, the North Zone is defined as that area lying north of a division line as follows: U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County, south along the western border of Jeff Davis County, east along the southern border to Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east to the eastern border of Tattnall County, north along the eastern boundary of Tattnall County, north along the western border of Evans County to Candler County, east along the northern border of Evans County to Bulloch County, north along the western border of Bulloch County to Highway 301, then northeast along Highway 301 to the South Carolina line.

[4] In Louisiana, the North Zone is defined as that area lying north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell, and Interstate Highway 10 from Slidell to the Mississippi State line. The South Zone consists of the remainder of Louisiana.

(b) *Mourning Doves—Central Management Unit.*

In Missouri:	
Daily bag limit	10
Possession limit	20
In Texas:	
Daily bag limit	12
Possession limit	24
In Arkansas, Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Wyoming, and Montana:	
Daily bag limit	15
Possession limit	30

Shooting and hawking hours: One-half hour before sunrise until sunset daily except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in:	
Arkansas	Sept. 1 to Sept. 30 and Dec. 14 to Jan. 12.
Colorado	Sept. 1 to Oct. 15.
Iowa	Closed.
Kansas	Sept. 1 to Oct. 30.
Minnesota	Closed.
Missouri	Sept. 1 to Nov. 9.
Montana	Sept. 7 to Nov. 5.
Nebraska	Sept. 1 to Oct. 30.
New Mexico [1]	Sept. 1 to Sept. 30 and Dec. 1 to Dec. 31.
North Dakota	Sept. 1 to Oct. 30.
Oklahoma	Do.
South Dakota	Sept. 1 to Sept. 30.
Texas: [2] [3]	
North Zone	Sept. 1 to Nov. 9.
Central Zone	Sept. 1 to Oct. 30 and Jan. 4 to Jan. 13.
South Zone	Sept. 20 to Nov. 12 and Jan. 4 to Jan. 19.
Wyoming	Sept. 1 to Oct. 15.

[1] In New Mexico, the daily bag limit is 15 and the possession limit is 30 white winged and mourning doves, singly or in the aggregate of these species.

[2] In Texas the three zones are North, South and Central as follows:

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along

Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 at Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Central Zone—That portion of the State lying between the North and South Zones.

[3] In Texas, the daily bag limit is 12 mourning, white-winged and white-tipped doves in the aggregate, of which no more than 2 can be white-winged doves and 2 can be white-tipped doves; and possession limit is 24, of which no more than 4 may be whitewings and 4 may be whitetips.

(c) *Mourning Doves—Western Management Unit.*

In Washington:	
Daily bag limit	10
Possession limit	20
In Arizona:	
Daily bag limit	12
Possesion limit	24
In California, Idaho, Nevada, Oregon, and Utah:	
Daily bag limit	15
Possession limit	30

Shooting and hawking hours: One-half hour before sunrise until sunset.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in:	
Arizona [1]	Sept. 1 to Sept. 22 and Nov. 23 to Jan. 5.
California [2]	Sept. 1 to Oct. 15 and Nov. 16 to Nov. 30.
Idaho	Sept. 1 to Oct. 30.
Nevada [2]	Do.
Oregon	Sept. 1 to Sept. 30.
Utah	Sept. 2 to Sept. 30.
Washington	Sept. 1 to Sept. 15.

[1] In Arizona during September 1 through 22 the daily bag limit is 12 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 24 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. During November 23 through January 5, the bag and possession limits are 12 and 24 mourning doves, respectively.

[2] In those counties of California (Imperial, Riverside, and San Bernardino) and Nevada (Clark and Nye) having a season on white-winged doves, the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves, singly or in the aggregate of these species; however, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

Notice.—Hawaii—Subject to the applicable provisions of the preceding sections of this part, mourning doves may be taken in accordance with the State regulations.

(d) *White-winged Doves.*

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in—	Season dates	Limits	
		Bag	Poss.
Arizona (Statewide)	Sept. 1 to Sept. 22	[1]6	[1]12
California:			
Counties of Imperial, Riverside, and San Bernardino.	Sept. 1 to Oct. 15 and Nov. 15 to Nov. 30.	[2]10	[2]20
Remainder of State	Closed		
Nevada:			
Counties of Clark and Nye.	Sept. 1 to Oct. 30	[2]10	[2]20
Remainder of State	Closed		
New Mexico	Sept. 1 to Sept. 30 and Dec. 1 to Dec. 30.	[3]15	[3]30
Texas:			
Special white-winged dove season	Closed		

See mourning dove regulations.

[1] In Arizona during September 1 through 22 the daily bag limit is 12 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 24 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves.

[2] In designated counties of California and Nevada, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species; however, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

[3] In New Mexico the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species.

(e) *Band-tailed Pigeons.*

Shooting and hawking hours: One-half hour before sunrise until sunset.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in—	Season dates	Limits	
		Bag	Poss.
Arizona [1]	Oct. 11 to Nov. 9	5	10
California:			
Counties of Alpine, Butte, Del Norte, Glen, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity.	Sept. 28 to Oct. 27	5	5
Remainder of State	Dec. 14 to Jan. 12	5	5
Colorado: In all lands west of U.S. Interstate 25 and Small Game Management Units 80, 81, 82 and 83.	Sept. 1 to Sept. 30	5	10
Nevada: [1] Carson City, churchill, Douglas, Humboldt, Lyon, Mineral, Pershing, Washoe, and Storey Counties only.	do	5	5
New Mexico:			
North Zone [2]	Sept. 1 to Sept. 30	5	10
South Zone [2]	Oct. 1 to Oct. 20	5	10
Oregon	Sept. 1 to Sept. 30	5	5
Utah	Sept. 2 to Sept. 30	5	10
Washington	Sept. 1 to Sept. 30	5	5

[1] Each hunter must have for Arizona a special bird permit stamp issued by the State and for Nevada a special permit issued by the State.

[2] In New Mexico the *North Zone* is defined as that area lying north and east of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The *South Zone* is defined as that area lying south and west of the North Zone.

5. Section 20.104 is revised to read as follows:

§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora and Virginia)	Rails (Clapper and King)	Woodcock	Common snipe
Daily bag limit	[1]25	See footnote [1]	[2]5	8
Possession limit	[1]25	do	[2]10	16

Shooting and hawking hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.
Check State regulations restrictions, including area descriptions.

Seasons in the Atlantic Flyway

Connecticut	Sept. 2 to Nov. 9	Sept. 2 to Nov. 9	Oct. 19 to Dec. 2	Oct. 19 to Dec. 2.
Delaware	do	do	Nov. 18 to Jan. 1	Nov. 18 to Jan. 31.
Florida	Sept. 1 to Nov. 9	Sept. 1 to Nov. 9	Dec. 14 to Jan. 27	Nov. 2 to Feb. 16.
Georgia	Sept. 14 to Nov. 22	Sept. 14 to Nov. 22	Nov. 30 to Jan. 13	Nov. 23 to Feb. 21.
Maine	Sept. 1 to Nov. 9	Closed	Oct. 1 to Nov. 14	Sept. 1 to Dec. 16.
Maryland	Sept. 2 to Nov. 9	Sept. 2 to Nov. 9	Oct. 21 to Dec. 4	Oct. 1 to Jan. 15.
Massachusetts	do	Closed	Delayed	Sept. 2 to Dec. 16.
New Hampshire	Closed	do	Oct. 1 to Nov. 14	Oct. 1 to Dec. 4.
New Jersey: [3]				
North Zone	Sept. 2 to Nov. 9	Sept. 2 to Nov. 9	Delayed	Delayed.
South Zone	do	do	do	Do.

	Rails (Sora and Virginia)	Rails (Clapper and King)	[illegible]	Common snipe
New York: [4]				
Long Island	Closed	Closed	Oct. 1 to Nov. 14	[illegible].
Remainder of State	Sept. 1 to Nov. 9	do	do	Sept. 1 to Dec. 16.
North Carolina	Sept. 23 to Nov. 30	Sept. 23 to Nov. 30	Nov. 23 to Jan. 6	Nov. 14 to Feb. 28.
Pennsylvania	Sept. 2 to Nov. 9	Closed	Oct. 19 to Nov. 9	Oct. 19 to Dec. 14.
Rhode Island	Sept. 15 to Nov. 23	Sept 15 to Nov. 23	Oct. 19 to Dec. 2	Sept. 15 to Dec. 7 and Dec. 16 to Jan. 7.
South Carolina	Sept. 13 to Oct. 18 and Nov. 11 to Dec. 14.	Sept. 13 to Oct. 18 and Nov. 11 to Dec. 14.	Nov. 28 to Jan. 11	Nov. 14 to Feb. 28.
Vermont	Sept. 28 to Dec. 6	Closed	Oct. 1 to Nov. 14	Sept 28 to Dec. 6.
Virginia	Sept. 9 to Nov. 16	Sept. 9 to Nov. 16	Oct. 26 to Nov. 19 and Dec. 25 to Jan. 15.	Oct. 17 to Jan. 31.
West Virginia	Sept. 2 to Nov. 9	Closed	Oct. 12 to Nov 23	Sept. 2 to Dec. 17.
[illegible] in the Mississippi Flyway				
Alabama [3]	Nov. 12 to Jan. 20	Nov. 12 to Jan. 20	Nov. 28 to Jan. 31	Nov. 14 to Feb. 28.
Arkansas	Sept. 1 to Nov. 9	Closed	Nov. 9 to Dec. 13 and Jan. 11 to Feb. 9.	Sept. 14 to Sept. 22 and Nov. 23 to Feb. 28.
Illinois [5]	do	do	Oct. 1 to Dec. 4	Sept. 7 to Dec. 22.
Indiana	do	do	Sept. 21 to Sept. 27 and Oct. 5 to Dec. 1.	Sept. 1 to Dec. 16.
Iowa [6]	Sept. 7 to Nov. 15	do	Sept. 14 to Nov. 17	Sept. 7 to Dec. 22.
Kentucky	Deferred	do	Oct. 1 to Dec. 4	Oct. 1 to Dec. 4.
Louisiana	Sept. 21 to Sept. 29 and Nov. 9 to Jan. 8.	Sept. 21 to Sept. 29 and Nov. 9 to Jan. 8.	Dec. 7 to Feb. 9	Nov. 9 to Feb. 23.
Michigan [7]	Sept. 15 to Nov. 14	closed	Sept. 15 to Nov. 14	Sept. 15 to Nov. 14.
Minnesota	Sept. 1 to Nov. 4	do	Sept. 1 to Nov. 4	Sept. 1 to Nov. 4.
Mississippi	Oct. 19 to Dec. 27	Oct. 19 to Dec. 27	Dec. 21 to Feb. 23	Nov. 9 to Feb. 23.
Missouri	Sept. 1 to Nov. 9	Closed	Oct. 15 to Dec. 18	Sept. 1 to Dec. 16.
Ohio	Sept. 2 to Nov. 9	do	Sept. 27 to Nov. 30	Sept. 2 to Nov. 30 and Dec. 9 to Dec. 25.
[illegible]	Deferred	do	Oct. 12 to Nov. 17 and Feb. 1 to Feb. 28.	Nov. 19 to Feb. 28.
Wisconsin	do	do	Sept. 14 to Nov. 17	[illegible]
Seasons in the Central Flyway				
Colorado [8]	Sept. 1 to Nov. 9	[illegible]	Closed	Sept. 1 to Dec. 1.
Kansas	Sept. 14 to Nov. 22	do	Oct. 1 to Dec. 4	Sept. 14 to Dec. 29.
Montana [8]	Closed	do	Closed	Deferred.
Nebraska [9]	Sept. 1 to Nov. 9	do	Sept. 15 to Nov. 18	Sept. 1 to Dec. 15.
New Mexico [8]	Sept. 7 to Nov. 15	do	Closed	Sept. 7 to Dec. 8.
North Dakota	Closed	do	do	Sept. 28 to Nov. 24.
Oklahoma	Sept. 1 to Nov. 9	do	Nov. 28 to Jan. 30	Oct. 20 to Feb. 3.
South Dakota [10]	Closed	do	Closed	Sept. 1 to Oct. 31.
Texas	Sept. 1 to Nov. 9	Sept. 1 to Nov. 9	Deferred	Deferred.
Wyoming [8]	Sept. 21 to Nov. 29	Closed	Closed.	Sept. 21 to Jan. 5.
Seasons in the Pacific Flyway				
Colorado [8]	Sept. 1 to Nov. 9	Closed	[illegible]	Sept. 1 to Dec. 1.
Montana [8]	Closed	do	do	Deferred.
New Mexico [8]	Sept. 7 to Nov. 15	do	do	Sept. 7 to Dec. 8.
Wyoming [8]	Sept. 21 to Nov. 29	do	do	Sept. 21 to Dec. 22.

[1] The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.
[2] In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.
[3] In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.
[4] For description of zones or management units within a State, see State regulations.
[5] In Alabama, the rail limits are 15 daily and 15 in possession.
[6] In Iowa, the rail limits are 15 daily and 25 in possession. Shooting hours are sunrise to sunset.
[7] See State regulations for listing of certain Great Lakes waters where the season is open concurrently with the duck season.
[8] The Central Flyway portion consists of: *Colorado* and *Wyoming*—the area lying east of the Continental Divide; *Montana*—the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; *New Mexico*—the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.
[9] In Nebraska, the rail limits are 10 daily and 20 in possession.
[10] In South Dakota, the snipe limits are 5 daily and 15 in possession.

NOTE.—Some States may select rail, woodcock, and snipe seasons at the time they select their duck seasons in August. Consult waterfowl regulations to be published later for information concerning these seasons.

NOTE.—No seasons are prescribed for woodcock. Snipe seasons have been deferred by all other States in the Pacific Flyway. Consult waterfowl regulations to be published later for information concerning the snipe season in Montana.

6. Section 20.105 is amended by revising paragraphs (a)–(c) and by amending paragraph (d) to read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and common moorhens and purple gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Sea Ducks.* (1) An open season for taking scoter, eider, and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1985, and January 20, 1986, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the Town of Riverhead to Red Cedar Point in the Town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina and Georgia; and in any

waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

(2) The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

(3) Shooting and hawking hours are one-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in:	
Connecticut	Sept. 20 to Jan. 4.
Delaware	Sept. 21 to Jan. 4.
Georgia	Deferred.
Maine	Oct. 1 to Jan. 15.
Maryland	Deferred.
Massachusetts	Do.
New Hampshire	Sept. 15 to Dec. 30.
New Jersey	Deferred.
New York (Long Island only).	Sept. 23 to Jan. 7.
North Carolina	Deferred.
Rhode Island	Do.
South Carolina	Do.
Virginia	Do.

(4) Notwithstanding the provisions of this Part 20, the shooting of *crippled* waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as being open to sea duck hunting.

Note.—States with deferred seasons may select sea duck seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(b) *Teal.* September season: An open season for teal ducks (blue-winged, green-winged, and cinnamon) is prescribed according to the following table in those areas which are described, delineated, and designated in the hunting regulations of the following States:

Daily bag limit	4
Possession limit	8

Shooting and hawking hours: Sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in the Mississippi Flyway:	
Alabama [1]	Sept. 14 to Sept. 22.
Arkansas	Sept. 14 to Sept. 22.
Illinois [2]	Sept. 7 to Sept. 15.
Indiana [3]	Do.
Louisiana	Sept. 21 to Sept. 29.
Mississippi	Sept. 14 to Sept 22.
Missouri	Do.
Ohio	Sept. 8 to Sept. 14.
Seasons in the Central Flyway:	
Colorado [4 5]	Sept. 7 to Sept. 15.
Kansas	Sept. 14 to Sept. 22.
New Mexico [5]	Sept. 7 to Sept. 15.
Oklahoma	Do.
Texas	Sept. 14 to Sept. 22.

[1] In Alabama, shooting hours in Mobile Delta north of the causeway and south of the L&N Railroad are sunrise to 12 noon.

[2] In Illinois the shooting hours are from 7 a.m.–4 p.m. local time by State regulation.

[3] In Indiana, the Kankakee and LaSalle Fish and Wildlife Areas, and portions of Atterbury, Hovey Lake, Jasper-Pulaski and Pigeon River Fish and Wildlife Areas are closed to teal hunting by State regulations.

[4] Only in Lake and Chaffee Counties, and that portion of Colorado east of U.S. Highway-Colorado State Highway 85 from the Wyoming State line to its intersection with U.S. Interstate Highway 25 to the New Mexico State line.

[5] Central Flyway portion only.

(c) *Common Moorhens and Purple Gallinules.*

Daily bag limit.	15 singly or in the aggregate of the two species.
Possession limit.	30 singly or in the aggregate of the two species.

Shooting and hawking hours: One-half hour before sunrise to sunset.

Check State Regulations for Additional Restrictions

Seasons in the Atlantic Flyway:	
Connecticut	Sept. 2 to Nov. 9.
Delaware	Do.
Florida [1]	Sept. 1 to Nov. 9.
Georgia	Oct. 4 to Oct. 6 and Nov. 28 to Nov. 30 and Dec. 7 to Jan. 19.
Maine	Sept. 1 to Nov. 9.
Maryland	Sept. 2 to Nov. 9.
Massachusetts	Deferred.
New Hampshire	Closed.
New Jersey	Sept. 2 to Nov. 9.
New York:	
Long Island	Closed.
Remainder of State	Sept. 1 to Nov. 9.
North Carolina	Sept. 23 to Nov. 30.
Pennsylvania	Sept. 2 to Nov. 9.
Rhode Island	Sept. 15 to Nov. 23.
South Carolina	Sept. 13 to Oct. 18 and Nov. 11 to Dec. 14.
Vermont	Sept. 28 to Dec. 6.
Virginia	Deferred.
West Virginia	Do.
Seasons in the Mississippi Flyway:	
Alabama [2]	Nov. 12 to Jan. 20.
Arkansa	Sept. 1 to Nov. 9.
Illinois	Closed.
Indiana	Sept. 1 to Nov. 9.
Iowa	Closed.
Kentucky	Deferred.
Louisiana	Sept. 21 to Sept. 29 and Nov. 9 to Jan. 6.
Michigan	Deferred.
Minnesota	Do.
Mississippi	Oct. 19 to Dec. 27.
Missouri	Closed.
Ohio	Sept. 2 to Nov. 9.
Tennessee	Deferred.
Wisconsin	Do.
Seasons in the Central Flyway:	
Colorado [3]	Closed.
Kansas	Do.
Montana [3]	Deferred.
Nebraska	Closed.
New Mexico [3]	Oct. 15 to Dec. 23.
North Dakota	Closed.
Oklahoma	Sept. 1 to Nov. 9.
South Dakota	Closed.
Texas	Sept. 1 to Nov. 9.
Wyoming [3]	Closed.
Seasons in the Pacific Flyway:	
All States and portions thereof.	Deferred.

[1] The season in Florida applies to the common moorhen only. There is no open season on the purple gallinule in Florida.

[2] In Alabama, the gallinule limits are 15 daily and 15 in possession.

[3] Seasons apply to Central Flyway portion of State only.

Note.—States with deferred seasons may select common moorhen and purple gallinule seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways.*

Atlantic Flyway

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season dates	Limits: Bag	Limits: Possession
* * * * *			
Florida:			
Ducks, no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.	Sept. 21 to Sept. 25.....	6	6
* * * * *			

Mississippi Flyway

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season dates	Limits: Bag	Limits: Possession
* * * * *			
Iowa:			
Ducks.....	Sept. 21 to Sept. 23....	(1)	(1)
* * * * *			
Kentucky:			
Ducks, no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.	Sept. 11 to Sept. 15....	4	8
* * * * *			
Tennessee:			
Ducks, no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.	Sept. 14 to Sept. 18....	4	8
* * * * *			

[1] Limits to conform to those set for the regular season.

* * * * *

7. Section 20.108 is amended by revising the Central and Pacific Flyways provisions to read as follows:

§ 20.108 Seasons, limits, and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes, and with shooting hours from one-half hour before sunrise until sunset in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley) the season has been deferred.

(b) In the New Mexico counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, the inclusive dates for the regular season are October 26, 1985, through January 26, 1986.

(c) In Oklahoma (that portion west of I–35) the season has been deferred.

(d) In Texas that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary the season has been deferred.

(e) In North Dakota, in Zone 1 (the area east of a line starting on the east shore of Lake Oahe at the South Dakota border, then north on this shore to Bismarck, then north on U.S. Highway 83 to Canada; and west of a line starting where ND No. 14 enters Canada, then south on ND No. 14 to U.S. Highway 83, then south on U.S. Highway 83 to South Dakota) the inclusive dates are Sept. 7–Nov. 3, 1985; in Zone 2 (that area east of Zone 1 and west of U.S. Highway 281) the inclusive dates are Sept. 7–Sept. 27, 1985.

(f) In Montana (the Central Flyway portion except that area south of I–95 and west of the Bighorn River), the season has been deferred.

(g) In South Dakota, the inclusive season dates are September 28 through November 3, 1985.

(h) In Wyoming, in Compbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive season dates are September 21 through November 17, 1985.

Each hunter particpating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting, a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to an authorized law enforcement official upon request.

Pacific Flyway: In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season has been deferred.

In Wyoming's sandhill crane-Canada goose hunt areas (Bear River drainage and Star Valley of Lincoln County), hunting is by State permit only with limits of 2 sandhill cranes and 3 Canada geese per season. The inclusive season dates are September 1–2; September 7–8; and September 14–15.

* * * * *

8. Section 20.109 is revised as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit.	3 singly or in the aggregate.
Possession limit.	6 singly or in the aggregate.

These limits apply during both regular hunting seasons and extended falconry seasons. Hawking hours: One-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Atlantic Flyway

Florida:	
Mourning doves and white-winged doves.	Sept. 28 to Dec. 6.
Woodcock.....	Oct. 26 to Dec. 9.
Snipe.....	Nov. 2 to Feb. 16.
Ducks, mergansers, and coots.	Oct. 6 to Nov. 22.
Common moorhens and rails.	Sept. 28 to Dec. 6.
Maryland:	
Mourning doves.....	Sept. 2 to Oct. 26 and Nov. 25 to Jan. 5.
Rails.....	Sept. 2 to Dec. 17.
Woodcock.....	Oct. 21 to Jan. 31.
Snipe.....	Oct. 1 to Jan. 15.
Common moorhens and purple gallinules.	Sept. 2 to Dec. 17.
Ducks, coots, geese.....	Deferred.
Pennsylvania:	
Mourning doves.....	Sept. 2 to Dec. 14.
Ducks, mergansers, coots and geese.	Oct. 6 to Jan. 13.
Virginia:	
Woodcock and snipe....	Oct. 17 to Jan. 31.

Mourning doves and rails.	Sept. 2 to Nov. 30 and Dec. 19 to Jan. 4.
Mississippi Flyway	
Illinois:	
Mourning doves, woodcock and rails.	Sept. 1 to Dec. 16.
Snipe	Sept. 7 to Dec. 22.
Teal	Sept. 7 to Sept. 15.
Ducks, mergansers, and coots.	Oct. 8 to Jan. 13.
Indiana:	
Woodcock	Sept. 1 to Sept. 20.
Mourning doves	Oct. 31 to Nov. 27.
Iowa:	
Rails	Sept. 7 to Nov. 15.
Snipe	Sept. 7 to Dec. 22.
Woodcock	Sept. 14 to Nov. 17.
Geese	Sept. 28 to Jan. 6.
Ducks and coots	Deferred.
Michigan:	
Woodcock, snipe, and rails.	Sept. 1 to Dec. 16.
Common moorhens, purple gallinules and geese.	Sept. 28 to Jan. 12.
Ducks	Deferred.
Minnesota:	
Woodcock, snipe, and rails.	Sept. 1 to Dec. 16.
Ducks, mergansers, coots, moorhens, purple gallinules and geese.	Deferred.
Mississippi:	
Ducks, mergansers and coots.	Nov. 2 to Dec. 13.
Mourning doves	Sept. 30 to Oct. 13 and Nov. 22 to Dec. 13.
Missouri: Mourning doves.	Sept. 1 to Dec. 16.
Wisconsin:	
Rails, woodcock, snipe, common moorhens and purple gallinules.	Do.
Ducks, mergansers, and coots.	Oct. 8 to Jan. 13.
Central Flyway	
New Mexico:[1]	
Mourning doves and white-winged doves.	Sept. 1 to Nov. 6 and Nov. 22 to Dec. 30.
Band-tailed pigeons	Sept. 1 to Nov. 30.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.	Oct. 13 to Jan. 27.
Ducks, mergansers and coots.	Oct. 15 to Jan. 13.
Common moorhens and purple gallinules.	Oct. 15 to Jan. 19.
Canada and white-fronted geese.	Do.
Snow, blue, and Ross' geese.	Nov. 15 to Feb. 28.
Texas:	
Mourning doves (statewide).	Sept. 1 to Nov. 30 and Jan. 4 to Jan. 19.
Rails, common moorhens and purple gallinules.	Sept. 1 to Dec. 16.
White-winged doves	Sept. 1 to Nov. 30 and Jan. 4 to Jan. 19.
Wyoming:	
Mourning doves	Sept. 1 to Oct. 15.
Snipe and rails	Sept. 21 to Nov. 29.
Pacific Flyway	
Idaho: Ducks and geese	Deferred.
New Mexico: [1]	
Mourning doves and white-winged doves.	Sept. 1 to Nov. 6 and Nov. 22 to Dec. 30.
Band-tailed pigeons	Sept. 1 to Nov. 30.
Ducks, mergansers and coots.	Oct. 8 to Jan. 13.
Geese	Oct. 5 to Jan. 19.
Common moorhens and purple gallinules.	Do.
Oregon: Mourning doves.	Sept. 1 to Dec. 16.
Utah: Mourning doves	Sept. 2 to Sept. 30.
Wyoming:	
Mourning doves	Sept. 1 to Oct. 15.
Snipe and rails	Sept. 21 to Nov. 29.

[1] In New Mexico, the aggregate bag and possession limits of all species are 3 and 6, respectively.

Note.—See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

Dated: August 21, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-20391 Filed 8-29-85; 8:45 am]

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federal register

Friday
August 30, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

Arkansas:
AR85–4030
AR85–4036

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA84–5022	Oct. 5, 1984.
Maryland: MD85–3041	July 26, 1985.
New Jersey: NJ85–3031	Aug. 2, 1985.
North Dakota: ND84–5032	Oct. 19, 1984.
Oregon: OR85–5030	June 28, 1985.
Pennsylvania:	
PA84–3035	Sept. 21, 1984.
PA84–3037	Oct. 5, 1984.
PA84–3049	Dec. 21, 1984.
PA85–3017	Apr. 5, 1985.
PA85–3037	Aug. 9, 1985.
Virginia:	
VA85–3020	Apr. 6, 1985.
VA84–3006	July 6, 1984.
VA85–3025	May 3, 1985.
Wisconsin:	
WI83–2078	Oct. 7, 1983.
WI84–5038	Oct. 19, 1984.

Supersedeas Decisions to General Wage Determination Decisions

Louisiana: LA84–4008 (LA85–4029)	Feb. 17, 1984.

Signed at Washington, D.C. this 23rd day of August 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

NEW DECISION

STATE: ARKANSAS COUNTY: WASHINGTON

DECISION NO. AR85-4036 DATE: Date of Publication

DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$9.00	
CARPENTERS	7.92	
CEMENT MASONS	7.67	
ELECTRICIANS	9.51	
GLAZIERS	7.60	
IRONWORKERS	6.87	
LABORERS (General)	5.23	
Mason Tenders	5.67	
Plasterers Tender	7.45	
PAINTERS	8.00	
PLASTERERS	11.22	
PLUMBER & PIPEFITTERS	11.46	1.14
ROOFERS	7.50	
SHEET METAL WORKERS	7.51	
TILE SETTERS	10.00	
TRUCK DRIVERS	6.05	12%
POWER EQUIPMENT OPERATORS:		
Asphalt Finishing	6.15	12%
Asphalt Pavers	6.05	12%
Asphalt Rakers	6.39	
Asphalt Dist. Operators	5.82	11%
Bulldozer Operator	5.95	16%
Backhoe Operator	6.65	
Crane Operator	6.87	
Roller Operator	6.52	
Motor Patrol Operator	6.88	
Foundation Drill Op.	7.29	
Scarpers	5.75	15%

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

NEW DECISION

STATE: ARKANSAS COUNTY: SEBASTIAN

DECISION NO. AR85-4030 DATE: Date of Publication

DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	$16.125	$2.95
BRICKLAYERS	13.50	.85
CARPENTERS	10.14	
Millwrights	12.29	1.59
CEMENT MASONS	12.75	.63
ELECTRICIANS	14.79	1.00+ 8.75%
Cable splicers	15.04	1.00+ 8.75%
GLAZIERS	8.63	
IRONWORKERS	10.48	1.51
LABORERS:		
Construction Laborers	6.51	.98
Mason Tenders	6.66	1.45
METAL BUILDING ASSEMBLER	7.67	.70
PAINTERS:		
Brush	7.92	
Spray	10.00	
PLASTERERS	14.20	
Plumbers & Pipefitters:		
Commercial buildings, schools, colleges, universities, motels, hotels, banks, all two (2) stories and under, shopping centers, super-markets, malls, fast foods, theater, and churches, warehouses, one (1) story, industrial maintenance, industrial plant modifications, hospitals and hospital additions, one (1) and two (2) stories.	11.00	1.65
All other work	13.56	1.69
ROOFERS	$11.91	$ .30
SHEET METAL WORKERS	12.58	2.02+ 3%
SPRINKLER FITTERS	14.57	3.38
TILE SETTERS	11.00	
TILE FINISHERS	7.00	
POWER EQUIPMENT OPERATORS:		
Backhoe	13.18	1.40
Bulldozer	12.56	1.40
Crane	13.00	
Scraper	12.56	1.40

Welders: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

	Basic Hourly Rates	Fringe Benefits
DECISION NO. CA84-5022 - Mod. #12 (49 FR 39416 - October 5, 1984) Alameda, Alpine, Amador, etc., Counties, California		
Change:		
Carpenters:		
Area 1:		
Carpenters	$21.21	$6.455
Hardwood Floorlayers; Power Saw Operators; Saw Filers; Shinglers; Steel Scaffold Erectors and Steel Shoring	21.36	6.455
Millwrights	22.11	7.855
Piledrivers; Bridge, Wharf and Dock Builders	19.38	9.715
Area 2:		
Carpenters	18.58	6.455
Hardwood Floorlayers; Power Saw Operator; Saw Filers; Shingler; Steel Scaffold Erectors and Steel Shoring	18.73	6.455
Millwrights	19.48	7.855
Piledriver; Bridge, Wharf and Dock Builders	19.38	9.715
Electricians:		
Area 10:		
Electrician	15.00	6.71+ I½
Cable Splicer	16.88	6.71+ I½
Residential Electrician	7.50	4.64+ 4%

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MD85-3041 MOD. #2 (50 FR 30587-July 25, 1985) ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND (Building and Heavy Construction). HARFORD & HOWARD COUNTIES, MARYLAND (Heavy Construction Only)		
CHANGE: CARPENTERS, SOFT FLOOR LAYERS, MILLWRIGHTS, PILEDRIVERS, DIVERS AND DIVER'S TENDERS		
Zone 1		
Divers	23.21	2.08
Diver's Tenders	14.15	2.08
Zone 2		
Carpenters, soft floor layers, resilient floor layers	14.00	2.92
Piledrivers	13.85	3.07
Diver's Tenders	13.85	3.07
Divers	28.75	3.07
Millwrights	14.28	3.27

	Basic Hourly Rates	Fringe Benefits
DECISION NO. OR85-5030 - Mod #2 (50 FR 26893 - June 28, 1985) Statewide Oregon		
CHANGE: LABORERS: (See Footnote "C" Groups 1 to 4 only)		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA84-3035 MOD. NO. 6 (49 FR 27243 - Sept. 21, 1984) Lackawanna, Susquehanna, Wayne & Wyoming Counties, Pennsylvania		
CHANGE:		
Ironworkers:		
Lackawanna, Wayne and Wyoming Counties:		
Structural & Ornamental	$17.75	4.80
Reinforcing	17.50	4.80
DECISION NO. PA84-3037 MOD. NO. 3 (49 FR 39436 - October 5, 1984) Lebanon, Lycoming, Northumberland, Schuylkill & Sullivan Counties, Pennsylvania		
CHANGE:		
Ironworkers:		
Zone 3		
Structural	17.75	4.80
Reinforcing	17.50	4.80
DECISION NO. PA84-3049 MOD. NO. 3 (49 FR 49825 - DEcember 21 1984) Luzerne County, Pennsylvania		
CHANGE:		
Ironworkers:		
Structural & Ornamental	17.75	4.80
Reinforcing	17.50	4.80

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA85-3017 MOD. NO. 2 (50 FR 13702 - April 5, 1985) Carbon, Monroe County including Tobyhanna Army Depot and Pike County, Pennsylvania		
CHANGE:		
Ironworkers:		
Structural & Ornamental	17.75	4.80
Reinforcing	17.50	4.80
DECISION NO. PA85-3037 MOD. NO. 1 (50 FR 32369 - August 9, 1985) Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming & York Counties, Pennsylvania		
CHANGE:		
Ironworkers:		
Columbia, Lackawanna, Luzerne, Sullivan, Wayne, Wyoming, Pike Cos., (Monroe County Tobyhanna Depot only)		
Structural & Ornamental	17.75	4.80
Reinforcing	17.50	4.80

DECISION NO. MJ85-3031
MOD. NO. 3
(50 FR 31459 - August 2, 1985)
Bergen, Essex, Hudson, (excluding Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians & Cable Splicers:		
Zone 3	$21.75	3.04+ 10%
Zone 8	21.45	3.04+ 10%
Zone 10	21.73	3.04+ 10%
Line Construction:		
Zone 5		
Linemen & Cable Splicer	21.45	3.00+ 10%
Groundman	18.50	3.00+ 10%

DECISION NO. ND84-5032 - Mod.#3
(49 FR 41136 - October 19, 1984)
Statewide, North Dakota

	Basic Hourly Rates	Fringe Benefits
Omit:		
All Heavy Construction Wage Rates and Classifications		
Change:		
Description of work to read:		
Highway Construction Projects		
Ironworkers, Structural Steel:		
Mercer County	$14.63	$3.19

DECISION NO. VA84-3006
MOD. #2
(49 FR 27878-July 6, 1984)
City of Newport News & (FORT EUSTIS)

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS	13.83	1.15+9%

DECISION NO. VA85-3025
MOD. #1
(50 FR 18966-May 3, 1985)
RADFORD ARMY AMMUNITION PLANT, VIRGINIA

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
SHEET METAL WORKERS	13.50	2.09

DECISION NO. VA85-3020-
MOD. #4
(50 FR 13706-April 6, 1985)
HENRICO AND THE Independent City of RICHMOND

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
[illegible]	14.03	3.30
ELECTRICIANS	14.70	13%&
ELEVATOR CONSTRUCTORS	11.99	3.29+ A&D
ELEVATOR CONSTRUCTORS HELPERS	9.09	3.29+ A&D
ELEVATOR CONSTRUCTORS HELPERS, PROBATIONARY	6.495	
LABORERS:		
Laborers	6.75	.71
Tenders (excluding brick masons tenders) Motorized Georgia Buggy Operators, Nozzlemen (Gunnite or Sandblasting), Concrete Saw Operator, Air Tool and Vibrator Operators	8.25	.71
Motor Mixers, Hod Carriers, Pipelayers, Caulkers, Marble and Tile and Terrazzo Setters Helpers	8.40	.71
Burners (wrecking)	8.50	.71
Floor, Base & Terrazzo Grinders	8.55	.71
Wagon Drill Air Tract	8.65	.71
Powdermen	8.90	.71
ROOFERS, Composition	8.50	

DECISION NO. WI84-5038
MOD. #3
((49 FR 41148-October 19, 1984)
Milwaukee, Ozaukee, Waukesha and Washington Counties Wisconsin

	Basic Hourly Rates	Fringe Benefits
OMIT:		
Communication Systems:		
Installer	$11.88	$3.59
Insulators	12.50	3.91
ADD:		
Communication Systems:		
Installer	11.88	3.59
Insulators	12.50	3.91

DECISION NO. WI83-2078
MOD. #4
(48 FR 45919-October 7, 1983)
Columbia, Dane Iowa and Sauk Counties, Wisconsin

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Roofers	$15.44	.40

SUPERSEDEAS DECISION

STATE: Louisiana PARISH: Calcasieu
DECISION NO.: LA85-4029 DATE: Date of Publication
Supersedes Decision No. LA84-4008, dated 2/17/84, in 49 FR 6205
DESCRIPTION OF WORK: Residential Projects consisting of single family homes & apartments up to & including 4 stories.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$19.145	2.335
BRICKLAYERS & STONEMASONS	11.01	2.32
CARPENTERS:		
Carpenters, piledriver-men & soft floor layers	10.72	1.60
Millwrights	15.46	.07
CEMENT MASONS	13.42	
ELECTRICIANS:		
New & old single or multiple family residence & apt. complex not to exceed 12 units, 2-story walk-ups	10.90	2.00+ 3-5/10%
Other work:		
Electricians	17.70	2.00+ 3-5/10%
Cable splicers	18.20	2.00+ 3-5/10%
ELEVATOR CONSTRUCTORS:		
Mechanics	14.87	3.29+a
Helpers	70%JR	3.29+a
Helpers (Prob.)	50%JR	
GLAZIERS	15.25	.02+b
IRONWORKERS	11.02	2.42
LABORERS	8.00	1.04
LATHERS	10.72	1.60
MARBLE & TERRAZZO WORKERS	11.01	2.32
PAINTERS:		
New Construction	12.45	.60
Maintenance	11.65	.60
PLASTERERS	14.20	
PLUMBERS & PIPEFITTERS	$12.46	3.00
POWER EQUIPMENT OPERATOR:		
GROUP 1	13.36	2.50
GROUP 2	9.25	2.50
GROUP 3	13.61	2.50
GROUP 4	13.86	2.50
GROUP 5	14.11	2.50
GROUP 6	14.36	2.50
GROUP 7	14.86	2.50
GROUP 8	8.59	2.50
ROOFERS:		
Roofers	12.90	.20
Roofer helpers remove old roofing, hustle material & cleanup under supervision of journeyman	8.10	.20
SHEET METAL WORKERS	17.28	3.12+3%
SPRINKLER FITTERS	15.07	3.23
TILE SETTERS	15.07	1.70
TRUCK DRIVERS	9.10	1.10
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

(8)

DECISION NO. LA85-4029 PAGE 2

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS & GLAZIERS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES FOR ELEVATOR CONSTRUCTORS & GLAZIERS
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate; Seven Paid Holidays A thru G
b - 5 days paid vacation; Paid Holidays A, C, D, E, G & Good Friday

POWER EQUIPMENT OPERATORS CLASSIFICATIONS DEFINITIONS
GROUP 1 - Crane, all types; derricks; deck winches (2); Hi-Ho & similar type equipment; three drum (or more) stabilizers; pulls, all types; concrete mixer 1 yd. & over; all pavers; ditching or trenching machines (track type); mechanics & equipment welders; well point systems; hoist, 2 drums or more; hoist, 1 drum, 40 vertical ft. or more; scrapers; bulldozers, rubber-tired or track, other than farm-type; scoopmobile; motor patrol; gradeall; roller on hot mix; asphalt paving machines; front end loaders, other than farm-type, one cubic yard or over; shovels & backhoes, all types & equivalent equipment; piledriver operator; side boom cats; boom truck; bush hog; cableways; cherry pickers (all types); dredges; foundation drill locomotives (all types); motorized street sweepers (self-propelled); push cat; test pump (internal combustion engine powered)
GROUP 2 - 2 drum & single drum stabilizers; front end loaders under 1 cubic yard; A-frame truck when handling steel or pipe; finishing machines (concrete); power subgraders; 2 tractors (crawler type); 1 drum hoist under 40 vertical ft.; fireman; concrete spreader; pugmill op.; bituminous distributor on surface treatment & equivalent equipment; bull floats & equivalent equipment; job greaseman; work boats, not requiring licensed ops.; inboard & outboard motored crew boats; concrete mixer under 1 yd.; spray curing machines; rollers on subgrade; 1 air compressor over 125 cu. ft.; form graders; asphalt finisher screedman; pump over 4 inches; scale ops; crusher ops.; concrete jointing machines; concrete saw; tack machines & equivalent equipment; pumpcrete; electric elevator (inside); oiler drivers; farm-type, rubber-tired tractor, with attachments, except backhoes; Kolum buff & similar equipment; fork lifts, 10 ton capacity & under; mechanic helper, batch plant op.; oiler on crane using air to drive piles, fireman operating steam valve, unit ops.; fireman; mixers (1 sack under); oiler; oiler-compressor op.; oiler-driver on motor crane; oiler-frieman; pump (under 3" suction); scale op.; water blast pump; welding machine
GROUP 3 - Op. on crane 60 to 99 tons; crane w/boom 100 ft. to 149 ft.
GROUP 4 - Op. on crane 100 to 125 tons; crane w/boom 150 ft. to 224 ft.
GROUP 5 - Op. on crane 126 to 200 tons
GROUP 6 - Op. on crane 201 to 300 tons; crane w/boom 225 ft. to 299 ft.
GROUP 7 - Op. on crane over 300 tons; crane w/boom 300 ft. & over
GROUP 8 - Oiler

(9)

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federal register

Friday
August 30, 1985

Part IV

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Final and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-2869-1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating the generic aspects of a nonconformance penalty (NCP) rule. The NCP will allow a manufacturer of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs) whose engines or vehicles fail to conform with certain applicable emission standards, but which do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. An "upper limit" is an emission level, established by regulation and appropriate to a specific pollutant, above which an HDE or HDV cannot be certified.

This rule specifies the criteria for the availability of NCPs, the method of establishing upper limits, a testing program called Production Compliance Auditing (PCA), a penalty formula to determine the dollar amount of the NCP and other general aspects of an NCP rule. Specific upper limits and penalty rates to be used in the penalty formula are proposed in a separate rulemaking published elsewhere in this issue.

This rule is the result of an innovative rulemaking process called Regulatory Negotiation, the concept of which is to allow the parties interested in or affected by the outcome of the rule an opportunity to participate in its development through face-to-face negotiations. This rule, which was proposed in 50 FR 9204 (March 6, 1985), is based upon the consensus that was reached during the Regulatory Negotiation process. This is EPA's first completed rulemaking under this new regulatory process.

Regulations affected by this rulemaking are codified in Subparts A, K and L of 40 CFR Part 86.

EFFECTIVE DATE: September 30, 1985.

ADDRESS: Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-85-02 at the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby/ Gallery 1, 401 M Street, S.W., Washington, D.C. 20460, and are available for review between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Montgomery or Mr. Claude Magnuson, Manufacturers Operations Division [EN-340F], Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 382-2487 or (202) 382-2547.

SUPPLEMENTARY INFORMATION

A. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for any class or category of heavy-duty vehicles or engines which exceeds a section 202(a) emissions standard, but does not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking. In placing section 206(g) in the Clean Air Act amendments of 1977, Congress intended NCPs as a response to perceived problems with technology-forcing heavy-duty emissions standards.[1] Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers (technological laggards) might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem; the laggards would have a temporary alternative to permit them to sell their engines or vehicles through payment of a penalty, yet leaders would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based, in part, on the amount of money the laggard and his customer saved from the nonconforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for heavy-duty vehicles (HDVs) and heavy-duty engines (HDEs), which are engines to be installed in heavy-duty vehicles. HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 6000 pounds gross vehicle weight (GVW). They include the part of the light-duty truck (LDT) class between 6001 and 8500 pounds GVW—the heavy light-duty trucks. The penalty may vary by pollutant and by class or category of vehicle or engine.

Section 206(g)(3) requires NCPs to be designed so as to:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove any competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. This emission level, the "compliance level," becomes the benchmark for warranty and recall liability; the manufacturer who elects to pay an NCP may be responsible for warranty or recall liability if its vehicle or engine exceeds the compliance level in-use. It would not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

However, if the emission level of a vehicle or engine exceeds the upper limit of nonconformity, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer.

B. Previous EPA Rulemakings Regarding Heavy-Duty Engine and Light-Duty Truck NCPs

NCPs were previously proposed by EPA in two separate rulemakings. An NCP system was first proposed when EPA proposed HC and CO standards for 1983 and later model year HDEs (44 FR 9464, February 13, 1979). A generic NCP formula was proposed, based on the marginal cost of bringing a "typical" HDE into compliance when its emissions are in the allowable range of nonconformity (not in excess of the upper limit). Also proposed was a system of Production Compliance Auditing (PCA) to measure the compliance levels of vehicles and engines which may qualify for NCPs. The notice stated that the proposed hydrocarbon (HC) and carbon monoxide (CO) emission standards for HDEs could probably be achieved by all manufacturers, so that upper limits would be set equal to the proposed standards, and NCPs would not be offered for those standards. A similar NCP/PCA system was outlined when EPA proposed HC and CO standards for 1983 and later model year LDTs (44 FR 40784, July 12, 1979), but again, specific NCPs were not proposed.

[1] The existence of NCPs, however, will not change the criteria under which the standards have been and will be set under section 202.

In adopting the final HC and CO standards for both HDEs and LDTs, EPA stated that NCPs would be offered as part of a separate rulemaking to provide for isolated instances where compliance was not achieved. However, in April, 1981, the Administration announced a number of regulatory relief initiatives aimed at reducing the impact of government regulations on the automotive industry. One element of this program included the proposed revision of HC and CO emission standards so that catalysts would not be required for heavy-duty gasoline engines. Thus, NCPs were not offered for the final standards, as revised in 1983 (48 FR 1413, 1424, January 12, 1983), since the Agency believed manufacturers could generally comply with the revised standards. However, recognizing that NCPs may be necessary for some future emissions standards, such as the oxides of nitrogen (NO_x) and particulate standards recently promulgated for 1988 and later model years (50 FR 10606, March 15, 1985), or for previously promulgated standards if future standards for other pollutants makes compliance with existing standards more difficult, EPA published the Notice of Proposed Rulemaking (NPRM) for this rule earlier this year (50 FR 9204, March 6, 1985).

C. Generic Rule

This rule is the culmination of the generic phase (Phase I) of the current NCP rulemaking. During this generic phase, EPA is promulgating regulations concerning when NCPs will be made available for emissions standards, how upper limits will be chosen, the general formula for calculating the penalties, and procedures for testing the degree of emissions nonconformity. This final rule adopts, in most respects, the proposed generic rule. In Phase II, EPA will apply the Phase I concepts to determine particular emissions standards for which NCPs will be available, specific upper limits, and numerical values for the variables in the penalty formula for particular subclasses of engines. Subsequent phases will repeat this process as necessary for other future standards.

Under the schedule set by a federal district court order in *Natural Resources Defense Council* v. *Ruckelshaus*, No. 84–758 (D.D.C. Sept. 14, 1984), EPA will publish this generic final rule and the Phase II NPRM by August 31, 1985, and the Phase II final rule by December 31, 1985.

D. Public Participation

This rule is a result of an innovative rulemaking process called regulatory negotiation, which allows the parties interested in or affected by the outcome of the proposed rule an opportunity to participate in the rule's development through face-to-face negotiations. This rule is based largely upon the consensus that was reached during the regulatory negotiation process prior to the proposal. This is EPA's first completed rulemaking under this new regulatory process.

Participants in the negotiations included heavy-duty vehicle and engine manufacturers, representatives of state air pollution control programs, an environmental organization, industry trade associations and EPA.

During the time that was available for public comment on the NPRM, a total of thirteen organizations presented written and/or oral comments. Seven were heavy-duty vehicle or engine manufacturers, three were industry trade associations, two were state air pollution control programs and one was an environmental organization.

Several of the participants in the negotiations commented that EPA should use the regulatory negotiation process for the Phase II NCP rulemaking. Due to the court-ordered deadline of August 31, 1985 for publication of the Phase II proposal, however, there is insufficient time to use the regulatory negotiation process.

E. Discussion of Final Rule and Comments

This final rule adopts most of the proposed provisions for the reasons stated in the NPRM. EPA will not discuss in this notice all of the provisions of the rule. Instead, EPA will discuss only the most significant provisions, or those that have been significantly revised or that were criticized in comments.

1. Availability Criteria

This generic rule imposes three conditions, as proposed, that must be met before NCPs will be made available: an emission standard must become more dificult to meet, either because the standard itself has become more stringent or because compliance with it has been made more difficult because of another standard which has become more stringent; EPA must find that substantial work is necessary to meet the standard; and EPA must determine that there is likely to be a technological laggard.

The possibility of a technological laggard is a key concept in the NCP availability scheme. Congress intended that EPA limit the availability of NCPs to situations where there are likely to be technological laggards. One purpose of section 206(g) was to avoid, at least temporarily, the problem of technological laggards being driven out of the market because of their inability to meet technology-forcing emissions standards. Thus, the existence of NCPs presupposes the existence of a potential laggard. If laggards are not anticipated, then an upper limit may be set equal to the standard and NCPs need not be offered.

The Engine Manufacturers Association (EMA) and Onan Corporation commented that EPA should accept a manufacturer's claim that it cannot comply as *prima facie* evidence that there is likely to be a technological laggard. Of course, when considering whether to make an NCP available, EPA intends to seek comments on the likelihood that there will be a laggard and will accord respect to a manufacturer's claim. However, as the Agency made clear during the negotiations, EPA does not have the burden of disproving the manufacturer's claim. The regulatory negotiation consensus document stated that an NCP will be made available only when "*EPA finds . . .* that there is likely to be a technological laggard" (emphasis added). Because the manufacturer has superior access to data for developmental emissions control technology, the Agency believes that it must be the manufacturer's responsibility to support any claim that there will be a technological laggard and not EPA's responsibility to disprove the manufacturer's claim. Accordingly, EPA chooses to adopt the provision as proposed, and reject the comments.

In the proposal, EPA requested comments on whether it could offer NCPs for evaporative emission standards for heavy-duty vehicles in excess of 8,500 pounds GVWR, without departing from the consensus agreement. All commenters stated that the EPA proposal was correct in making NCPs potentially available for these heavy-duty vehicles. Accordingly, this rule confirms that NCPs may be made available in the future for evaporative emissons from such vehicles.

Another issue raised in the NPRM was whether vehicles or engines which qualify as HDVs on the basis of vehicle frontal area greater than 45 square feet could qualify for NCPs, even though they are under 8,000 pounds GVWR. Onan Corporation stated that vehicles with greater than 45 square feet frontal area or engines to be installed in such vehicles should qualify for NCPs so that nonconforming engines could be installed in a greater range of vehicle chassis. However, EPA agrees with the

comment of the Manufacturers of Emission Controls Association (MECA), which stated that sections 202(b)(3)(C) and 206(g) of the Act require that a vehicle/engine combination must exceed 6,000 pounds GVWR to be considered heavy-duty and, thus, eligible for an NCP. Thus, NCPs will not be available for vehicles which exceed 45 square feet frontal area, but not 6,000 pounds GVWR.

Once EPA makes NCPs for a given pollutant available for any subclass or other group, they may be used by any manufacturer for its vehicles or engines in that category, with the exception of nonconforming vehicles or engines imported under 40 CFR Part 85, Subpart P. When a manufacturer decides to pay an NCP, no judgments will be made about whether the manufacturer is motivated by economic rather than technological reasons. The penalty formula, as discussed below, has been designed to remove the economic advantage for nonconformance and, by doing so, obviates the need for making difficult determinations of subjective intent.

If NCPs are appropriate, they will generally be made available concurrent with a promulgation or revision of emission standards. But as EPA stated in the NPRM, "when this is not feasible or appropriate, the NCPs will be published subsequent to the promulgation of the new standards." 50 FR 9204, 9206 (March 6, 1985).

Concerning availability of NCPs as a remedy for in-use nonconformities, EMA and General Motors Corporation (GM) protested the Agency's statement in the proposal that "NCPs are not available to a manufacturer in lieu of recalling engines or vehicles due to in-use nonconformities." Both argued that this issue is specific, not generic, and thus should be addressed in Phase II of the NCP rulemaking. Furthermore, they claimed that this statement in the Phase I NPRM was offered without adequate explanation. However, EPA repeatedly emphasized during the regulatory negotiation process that Congress clearly intended NCPs solely as a remedy for problems with obtaining or retaining certificates of conformity. In describing NCPs, section 206(g)(1) states that "a certificate of conformity . . . shall not be suspended or revoked" if a manufacturer pays NCPs on the nonconforming vehicles or engines. Similarly, the legislative history of section 206(g) only discusses NCPs as a means of avoiding denial, suspension, or revocation of a certificate of conformity, *See* H.R. Rep. No. 95–294 95th Cong., 1st Sess. 275–76 (1977); Conference Report, H.R. Rep. No. 95–564 95th Cong., 1st Sess. 163 (1977). A certificate of conformity only permits a manufacturer to put a vehicle or engine into the stream of commerce. See section 203(a)(1). Since an in-use problem would normally not affect the certificate of conformity, NCPs were not intended to be available to remedy in-use problems. Accordingly, EPA concludes that there is no authority under section 206(g) to offer NCPs for in-use vehicles and that this is clearly a generic issue appropriate for resolution in Phase I. For similar reasons, EPA will not permit NCPs for vehicles or engines produced prior to an SEA failure (*see infra*).

2. Upper Limits

An upper limit is an emission level, established by regulation and appropriate to a specific HDE or HDV pollutant, above which NCPs are not available and an HDE or HDV configuration cannot be certified or introduced into commerce. In effect, this limits the magnitude of the overall effect on air quality this might result from use of NCPs and, in all cases, prevents the introduction into commerce of grossly polluting engines or vehicles. Section 206(g)(2) of the Clean Air Act refers to the upper limit as a percentage above the emission standard, set by regulation, that corresponds to an emission level EPA determines to be "practicable."

EPA intends to set each upper limit at an emission level that should be achievable by all manufacturers, including technological laggards. EPA proposed that when an emission standard is changed and becomes more stringent than the prior emission standard, the upper limit for the new emission standard be the prior emission standard, when one existed. EPA requested comments on whether this should always be the case. The NPRM also proposed that in cases where there is no prior standard, the upper limit would be set by EPA through the rulemaking process.

Mack Trucks supported the concept that the prior emission standard, where there is one, should always be the upper limit. MECA commented that it is opposed to setting the upper limit above the old standard simply to facilitate the emissions averaging program.

Several manufacturers, however, commented that the upper limit for an emission standard should be the prior emission standard, except that it should not be more stringent than the corresponding upper limit (i.e., the family emission limit), if there is one, for emissions averaging purposes (e.g., for particulate emissions, 50 FR 10607). GM commented that it would be too confusing for a manufacturer to be potentially subject to different upper limits for the same pollutant in the NCP program and the emission averaging program.

The California Air Resources Board (CARB) commented that the upper limit for an unchanged emission standard that becomes more difficult to meet due to a change in another standard should not be the prior emission standard. CARB suggested that the upper limit in this situation should be determined by EPA based on the degree by which the unchanged emission standard has become more stringent.

EPA has considered all comments received on this issue and has decided that the upper limit for standards tightened either by regulation or by operation of another standard will be the prior emission standard, when one existed. When an emission standard is promulgated for a pollutant that had no prior emission standard, the upper limit will be determined by EPA through rulemaking. In the limited circumstances where a manufacturer participates in the emissions averaging program and carries over certification of an engine family from the prior model year, the upper limit for that engine family will be the family emission limit of the prior model year, provided that the family emission limit was above the prior emission standard.

EPA reached these decisions because it believes that if NCPs are available, a manufacturer should not be forced to immediately remove an HDE or HDV from the market when an emission standard becomes more stringent. Therefore, the upper limit for a standard should be set at a level that is reasonably achievable by all manufacturers with vehicles in the relevant class. For standards tightened by regulation, the prior emission standard or family emission limit, when it exists, represents such a level, since manufacturers certified their vehicles to that standard or limit in the past. For standards tightened by operation of another standard, the previous standard will not necessarily represent such a level, as manufacturers did not in the past have to meet the prior standard *and* the standard whose operation has tightened the current standard. However, EPA believes that in practice the prior standard should be achieveable in almost all cases and thus adopts the consensus approach to setting the upper limit for standards tightened by operation of another standard. As for identifying an upper limit more stringent than the prior standard, as suggested by CARB, EPA

believes that it would often be very difficult to identify such a limit that all manufacturers could meet, considering the number and variety of vehicle models potentially involved. Because of the administrative burden and risk of noncompliance associated with setting an upper limit somewhere below the previous standard, EPA rejects such an approach.

With the exception noted above for averaged engine families carried over into the current model year, EPA is uncertain how the NCP program and the emissions averaging program will relate. However, EPA at this time agrees in general with MECA's comment that the NCP upper limit should not be set above the prior emission standard simply to facilitate the combining of NCPs and emissions averaging. Moreover, EPA does not agree with GM's comment that being potentially subject to different upper limits for the same pollutant under these two programs would be too confusing for manufacturers. Therefore, the Agency has decided not to set the NCP upper limit at a level above the prior emission limit, except in the case of averaged engine families carried over into the current model year.

3. Implementation Scheme

a. Production Compliance Auditing

As proposed, before a manufacturer can pay an NCP for the introduction into commerce of nonconforming engines or vehicles, it would have to perform a Production Compliance Audit (PCA) to determine the emission levels that are being emitted by those production engines or vehicles. A manufacturer can elect to conduct a PCA following the failure of engines or vehicles to conform with emission requirements during certification testing or Selective Enforcement Audit (SEA) testing or following a production running change, provided that certain conditions, discussed below, are met.

The purpose of a PCA is to establish "compliance levels" for the pollutants for which the NCPs have been elected. The compliance level is somewhat analogous to the Acceptable Quality Level in EPA's existing production line SEA testing program (40 CFR Part 86, Subpart K). The compliance level is a value derived from the PCA test results and set so that 40 percent of the HDEs or HDVs tested have emission levels greater than that value; that is, the compliance level marks the 60th percentile of the emissions distribution of these HDEs or HDVs.[8]

As discussed previously, the PCA compliance level is used to determine the size of an NCP penalty and, if the vehicles are introduced into commerce and the penalty is paid, the compliance level becomes the level at which the manufacturer may incur warranty and recall liability for engines and vehicles which are subsequently found to exceed that level during their useful lives.[9] The compliance level is rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–69.

The PCA is also used to determine whether the emission levels for the pollutants for which the PCA was initiated are in excess of the associated upper limit. If a compliance level is determined to be in excess of the upper limit for the applicable emission standard, NCPs would not be available.

As proposed, EPA is promulgating three alternative sampling plans that would establish the compliance level(s) during PCA testing: the primary sampling plan and two optional reduced sampling plans.

The primary sampling plan is a non-parametric test (i.e., not dependent on emission distribution) which requires the testing of at least 24 engines or vehicles. The emission test results from the PCA are ranked in order from the lowest to the highest values, and the test result of the sequence number determined from Table 1 of Appendix XII of this rule becomes the compliance level. This test result approximates the 60th percentile points. This is a variation of the testing plan EPA proposed in 44 FR 9490 (February 13, 1979) and 44 FR 40826 (July 12, 1979).

EPA is also promulgating two optional sampling plans; the fixed reduced sampling plan and the sequential reduced sampling plan. These reduced sampling plans, which require fewer tests, are being promulgated to accommodate small volume manufacturers or manufacturers with high testing costs, although any manufacturer may use either of them. Each reduced sampling plan is a parametric test (i.e., assuming a normal emission distribution) with a sample size of less than 24 engines or vehicles. In both cases, the compliance level is equal to the value of $\bar{X}+Ks$, where $\bar{X}$ is the mean of a sample of emission test results, s is the sample standard deviation, and K is a factor that provides for the additional protection against underestimation required by EPA for a test sample size less than 24. The value of K depends upon the sample size and decreases, approaching a constant, as the sample size increases. Due to the smaller test sample and the assumption of a normal emission distribution, the reduced sampling plans are likely to result in a somewhat higher compliance level than the primary sampling plan. Thus, the reduced sampling plans give the manufacturer the option of a reduced testing burden at the expense of a penalty per engine that is likely to be higher than that determined using the primary sampling plan.

A manufacturer that elects to use the fixed reduced sampling plan has the option to choose a sample size between 3 and 23 engines or vehicles. However, that specific sample size must be selected prior to the start of testing. For values of K that correspond to a specific sample size using this sampling plan, see Table 2 of Appendix XII of the regulations.

A manufacturer that elects to use the sequential reduced sampling plan has the option to choose a sample size between 4 and 20 engines or vehicles, provided that the sample size is a multiple of 4 (i.e., 4, 8, 12, 16 or 20). After the manufacturer tests the engines or vehicles of the selected sample size and determines the compliance level, it has the option to continue testing, in multiples of 4 engines or vehicles up to the maximum sample size of 20, to revise the initially determined compliance level. For values of K that correspond to the five possible sample sizes using this sampling plan, see Table 3 of Appendix XII of the regulations.

As noted, a manufacturer has the option to choose any of the three sampling plans. EPA proposed that once PCA testing began, the manufacturer would not be able to change sampling plans. EPA requested comments on whether a manufacturer should be allowed the option of changing to the primary (non-parametric) sampling plan during the course of testing under either optional (parametric) sampling plan. Several manufacturers commented that they should be allowed this option because the primary sampling plan provides the most representative measure of the compliance level. EPA agrees with these comments and their

[8] Of course any individual HDEs or HDVs whose emissions during the PCA testing exceed the ultimate compliance level (the 60th percentile) would not be covered by a certificate and could not be sold until they are brought into conformity with the compliance level.

[9] In essence, the compliance level contained in the certificate under which such in-use engines or vehicles were sold is equivalent to an emission standard for those engines or vehicles. It will remain in effect during the entire useful lives of those engines or vehicles and be applicable to them for warranty and recall purposes, even though (as discussed below) another compliance level may be set subsequently for engines or vehicles of the same family produced later.

rationale and, accordingly, will allow this option.

One manufacturer commented that EPA should also allow a manufacturer to test engines/vehicles sequentially when using the fixed reduced sampling plan. EPA rejects this concept because it has already provided a sequential sampling plan and, by definition, the fixed reduced sampling plan is not valid when testing sequentially.

Following selection of the sampling plan, and of the specific sample size if a reduced sampling plan is elected, an appropriate sample of engines or vehicles is then drawn at random from the production line or storage lot and tested. The sample may be drawn all at one time, in groups, or as needed for testing provided that the testing requirements, as specified in these regulations, are satisfied.

Several manufacturers commented that they should be allowed the option to choose a compliance level higher than that calculated in the PCA so that they could mitigate their in-use liability (i.e., they would use a higher compliance level as a "cushion" in case production vehicles failed to meet the PCA level in-use). The Natural Resources Defense Council (NRDC) expressed opposition to this concept. EPA is also opposed to this concept and has not provided for it because it would allow the use of NCPs to reduce in-use liability and, as discussed previously, NCPs are not available as a remedy for in-use nonconformance. Furthermore, EPA is opposed to allowing emissions to exceed levels demonstrated to be achievable in the PCA.

Several manufacturers also commented that they should be allowed the option to forego PCA testing and choose the upper limit as the compliance level if certification or SEA test results show conformance with the upper limit. EPA will not allow this. The Clean Air Act requires that the NCP be based on production line testing, not solely on certification results. While SEA is a production line test, it would require more tests in an SEA to demonstrate conformance to the upper limit than is required in a PCA. Therefore, if enough tests were conducted to reach a decision during an SEA, a compliance level could be determined from the SEA data using one of three PCA sampling plans without further testing. The fixed reduced sampling plan only requires a minimun of three tests. In this manner, EPA is allowing manufacturers to use the SEA data to establish a compliance level.

A revised support document entitled "An Analytical Development of Sampling Plans for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles" is available in the Public Docket for this rulemaking. This document explains in greater detail the three PCA sampling plans.

b. Certification Failure

If an HDE or HDV manufacturer's certification test results exceed the emission standard for a particular pollutant, but do not exceed the upper limit associated with that pollutant, the manufacturer would have the following alternatives: remedy the nonconformity and seek certification, elect to pay an NCP, or not certify. If the manufacturer's certification test results are in excess of the upper limit, of course, no certificate would be offered and no NCP would be made available.

As proposed, if the manufacturer elects to pay an NCP and otherwise complies with the certification requirements, a qualified certificate will be offered to enable the manufacturer to introduce engines or vehicles into commerce while the manufacturer is expeditiously conducting PCA testing of those engines or vehicles. The qualified certificate will require payment of the NCP based on the result of PCA testing. It will also require an agreement by the holder of the certificate to recall all engines or vehicles that have been introduced into commerce under that certificate, without invoking the requirements of section 207(c) of the Clean Air Act, if the compliance level established during the PCA exceeds the upper limit. Failure of the manufacturer to implement the required recall or to pay the NCP in a timely manner (as discussed below), assuming the compliance level is below the upper limit, would result in voiding of the certificate for those specific engines or vehicles subject to nonpayment or to the recall. EMA commented that all qualifications, except the obligation to pay the NCP, should be removed from the certificate if the compliance level established during the PCA is below the upper limit. However, since the agreement to recall engines or vehicles would not be invoked in such a case, EPA does not believe that a new certificate need be issued.

EPA proposed that the qualified certificate would also require a manufacturer to agree to "any other terms and conditions the Administrator may require." Several manufacturers commented that EPA should not require such an agreement. EPA has decided to delete this requirement for an agreement under these Subpart L regulations, but points out that under existing certification regulations, 40 CFR 86.087–30, all certificates of conformity are issued "upon such terms as the [the Administrator] may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part." Thus, the proposed requirement has been deleted because EPA already has all the authority it needs to impose appropriate conditions.

EPA also proposed that the engine or vehicle configuration tested in the PCA be the one which was unable to conform with the emission standard during certification testing.

The PCA will be promptly initiated following the start of assembly line production of those engines or vehicles. Failure of a manufacturer to initiate the PCA as soon as practical could result in a suspension of the qualified certificate of conformity. The proposed regulatory language indicates that the manufacturer must initiate selection of engines or vehicles for PCA testing no later than five days after the start of assembly-line production, unless that period is extended by the Administrator. Onan Corporation commented that a manufacturer that depends on a contractor laboratory for PCA testing should be granted additional time, on request, to initiate the PCA. EPA does not believe that it is necessary to revise the proposed regulatory language, since it already allows the Administrator to delay the start of the PCA whenever circumstances make that appropriate. Thus, the proposed language has been incorporated in this rule.

In addition, as proposed, if as a result of the PCA the compliance level is determined to be at or below the standard, the NCP conditions contained in any qualified certificate will be inapplicable and no NCP will be paid.

c. SEA Failure

A manufacturer whose HDEs or HDVs fail an SEA with respect to a pollutant standard for which an upper limit has been provided, but do not fail with respect to that upper limit, has the following alternatives: remedy the nonconformity, elect to pay an NCP commensurate with the degree of the failure, or cease the introduction into commerce of the applicable engines or vehicles. EPA requested comments on whether a manufacturer that elects to pay an NCP should be required to continue SEA testing after a fail decision is reached with respect to the standard, if necessary to obtain enough data to determine whether a fail decision is also made with respect to the upper limit. Several manufacturers

commented that the continuation of the SEA should not be required because the PCA test procedures require a pass/fail determination with respect to the upper limit and requiring such a determination in the SEA would be redundant. GM also commented that a manufacturer should have the option to test, during the PCA, engines or vehicles selected but not tested in the SEA, as opposed to selecting a new sample from the production line. EPA agrees that requiring a pass/fail determination of the upper limit in both the SEA and the PCA would be redundant. Therefore, EPA will not require the continuation of a failed SEA so that a decision can be made with respect to the upper limit. Futhermore, EPA will allow a manufacturer to test in the PCA available SEA engines or vehicles not already tested in the SEA. Additional selection of engines or vehicles will be conducted during the PCA, if necessary, to allow the completion of testing.

A manufacturer could also be issued an SEA test order for a configuration for which an NCP has previously been assessed. If the SEA results in a fail decision with respect to the compliance level but not the associated upper limit, the manufacturer will be required to initiate a PCA to establish a new compliance level and NCP in order for that configuration to continue to be introduced into commerce. If the SEA results in a pass decision with respect to the emission standards, the manufacturer then could elect to perform a PCA to attempt to reduce or eliminate the penalty being paid.

GM commented that if a manufacturer passes an SEA with respect to the emission standards, the penalty being paid should automatically be eliminated without the need for a PCA to confirm the SEA results. EPA does not agree due to the relative "ease" by which an SEA can be passed. A manufacturer with 40 percent nonconformance has only a 5 percent chance of failing an SEA. Therefore, a manufacturer with significant nonconformance could manage to pass an SEA with respect to the standards, yet the results of the subsequent PCA could still be above the standard. EPA believes that since a PCA is required to establish an NCP, it should also be required to reduce or eliminate one. Thus, EPA's proposal on this matter remains unchanged.

If the SEA results in a fail decision with respect to the upper limit for that pollutant, no NCP will be available and the certificate for that configuration would be suspended not earlier than ten days from the date of the SEA failure, in accordance with 40 CFR 86.1012–84 of the SEA regulations. GM commented that a manufacturer should be allowed to request an NCP at any time (before a fail decision is reached) during an SEA. EPA cannot agree to this because, as discussed earlier in this preamble, NCPs are only available when a manufacturer has been shown, in fact, to be in nonconformance. Therefore, EPA will only allow a manufacturer to request an NCP following an SEA failure. A manufacturer could, however, concede an SEA failure and elect to pay an NCP.

A manufacturer that elects to pay an NCP after an SEA failure would be required to submit a written report to the Administrator within five days after completion of the SEA indicating that it does not intend to remedy the nonconformance on subsequently produced engines or vehicles and the date it intends to begin the PCA testing. EPA had proposed that the manufacturer include in the report the reason for the nonconformance. EMA commented that five days was not enough time to determine and report the reason for the nonconformance. EPA agrees with this comment and believes that the reason for the SEA failure is not essential for NCP purposes. Therefore, to reduce the reporting burden on the manufacturers, EPA will not require a manufacturer to report the reason for the nonconformance.

Failure to submit the report in the specified time period could result in the forfeiture of the NCP option. In accordance with the SEA regulations, this could result in the suspension of the certificate not earlier than ten days after the completion of the SEA.

As proposed, the configuration tested in the PCA will be the same configuration specified on the SEA test order. Failure to begin the PCA testing promptly after the manufacturer elects to pay an NCP could result in suspension of the certificate for the failed configuration. EPA would grant additional time to initiate the PCA if the production line that produces the NCP configuration were not operating.

All the SEA test results for the failed pollutants will be used as part of the PCA test sample. If a manufacturer elects the primary PCA sampling plan and there are 24 or more SEA test results, then no additional tests will be conducted to establish a compliance level during the PCA. A manufacturer that elects a reduced PCA sampling plan could not choose a sample size smaller than the number of engines or vehicles tested during the SEA, as all of the SEA test results will be used to establish the compliance level.

A manufacturer cannot pay an NCP for an individual nonconforming HDE or HDV discovered during SEA or PCA testing in lieu of bringing that engine or vehicle into conformance with the emission standard or compliance level, if applicable. The certificate of conformity covering an individual HDE or HDV whose final SEA or PCA test results, when adjusted by the emissions deterioration factor, exceed the specified emission standard, or compliance level ultimately established for that configuration, would be suspended for that HDE or HDV from the time that SEA or PCA testing is completed. Such a vehicle or engine would have to be brought into conformity with the emission standard, or applicable compliance level, before it could be distributed in commerce.

Several manufacturers commented that an engine or vehicle that exceeds the compliance level in SEA or PCA testing should not have to be brought into conformity. They commented that these engines or vehicles should not be considered to be in nonconformance and that payment of an NCP on them should be sufficient. EPA does not agree. For reasons discussed in detail in the NPRM, the compliance level is equivalent to an emission standard, and EPA cannot allow the sale of any engine or vehicle which has been shown to exceed its emission standard or compliance level. While EPA recognizes that approximately 40 percent of engines or vehicles theoretically may exceed the compliance level as a result of the PCA statistical method, EPA does not condone the sale of any engine or vehicle actually shown to be in nonconformance with the compliance level. Furthermore, under section 206(g)(4), the compliance level is the level at which the manufacturer incurs warranty and recall liability.

d. Production Running Change

As proposed, a manufacturer of HDEs or HDVs that elects to implement a running change on the assembly line, which it expects will cause emission levels to exceed a standard for which an NCP is available (but not the upper limit), may elect to conduct a PCA. Before implementing the running change, the manufacturer will have to submit a written report to EPA indicating the reason for the running change, the testing data and the date the manufacturer intends to begin the PCA testing. Several manufacturers commented that a manufacturer that is paying an NCP with respect to a previously established compliance level should be allowed to implement a

production running change that would reduce emissions without performing a PCA to establish a new compliance level. EPA agrees that changes that reduce emissions do not require a new PCA or compliance level as long as the manufacturer is required to pay the established NCP, and has provided for it in the regulations. EPA is allowing this so a manufacturer can avoid PCA testing costs, which may be higher than the amount that the penalty would be reduced.

As proposed, EPA will offer the manufacturer a qualified certificate to enable it to introduce engines or vehicles into commerce while the manufacturer is expeditiously conducting PCA testing of those engines or vehicles. The conditions in the certificate will be the same as those discussed earlier in the case of a certification failure. If the compliance level determined during the PCA is below the applicable standard, an NCP will not be established, or an existing NCP will be terminated, and the NCP qualification to pay the penalty will become inoperative.

e. Assessment and Payment of Penalty

In the case of a certification failure, EPA proposed that the NCP would be assessed against all HDEs or HDVs of the failed engine configuration(s) that are introduced into commerce since the beginning of the model year. Following a production running change that results in emission levels above the emission standard, or compliance level if applicable, the NCP would be assessed against all HDEs or HDVs of the new configuration introduced into commerce after the approved change is implemented. After an SEA failure, the NCP would be assessed against all those HDEs or HDVs of the nonconforming configuration introduced into commerce beginning 10 days after the completion of the SEA. This date was selected to coincide with the date in the SEA regulations for which a certificate of conformity may be suspended after failure to pass the SEA.

EMA and Volvo argued that all engines or vehicles produced prior to a failed SEA during the same model year should be eligible for NCPs. In the proposal, EPA precluded NCPs for most of these vehicles and engines because, as stated previously, NCPs cannot be used to remedy the nonconformities of in-use vehicles and engines. Since most vehicles and engines produced prior to an SEA have already passed into the stream of commerce, they would not be eligible for NCPs, and could be subject to recall and warranty under section 207 if they exceed the standard. However, consistent with that proposal, any vehicles or engines still in the hands of the manufacturer at least 10 days after completion of the SEA, even if produced prior to the failed SEA, would be eligible for NCPs. EMA argues that NCPs should be available for all pre-SEA vehicles, even those already in commerce, because section 206(g)(3)(E) requires NCPs to be set so as to "remove any competitive disadvantage to manufacturers whose engines or vehicles *achieve the required degree of emission reduction* . . . ." (emphasis added). EMA believes that a manufacturer who made a good faith effort to comply, but still failed an SEA, would be penalized in comparison to a manufacturer who made no such effort, failed during certification, and could then use NCPs for the full model year's production. Although it is questionable whether the first manufacturer would suffer any comparative disadvantage, it is ultimately irrelevant because a manufacturer who fails an SEA has not *achieved* the required degree of emission reduction. Thus, there is no statutory duty to protect it from any possible competitive disadvantage and EPA rejects EMA's suggestion.

As proposed, once an NCP is applied, it will continue to be assessed against each engine or vehicle produced for the rest of the model year unless the configuration or engine family is brought into conformance with applicable emission standards due to a production running change. If the NCP configuration is carried over during certification to a future model year, the amount of the penalty will increase according to the annual adjustment factor (see Section F of this preamble).

The regulations provide a payment schedule for the penalty, once assessed, based on calendar quarters. A manufacturer can request the establishment of a payment schedule based on other three-month periods or shorter intervals if approved by the Administrator. Failure to pay the penalty within the time limits established could result in a voiding of the certificate of conformity for those engines or vehicles for which the assessed penalty has not been paid.

The payee will be the United States Treasury and the payment will be sent to EPA's Manufacturers Operations Division along with a report from the manufacturer. The manufacturer's report and payment for all engines or vehicles produced during a calendar quarter will be due to EPA within 30 days after that calendar quarter ends. The manufacturer's report shall contain corporate identification, NCP engine or vehicle identification, certificate identification (number and date), NCP engine or vehicle quantities, and NCP payment calculations. The report will also have to contain an endorsement by a company representative acknowledging the penalties associated with violations of the requirements of the Clean Air Act and the regulations thereunder.

f. Request for Public Hearing

EMA and GM said that EPA should give a hearing right to a manufacturer whose PCA results exceed the upper limit. The proposal did not explicitly provide for a hearing in such a case. EPA has concluded that it is appropriate to grant a hearing if requested, to challenge all compliance levels, whether or not they exceed the upper limit. Under the final rule, the manufacturer may challenge any compliance level by written appeal to the Administrator or by public hearing.

If a manufacturer challenges a compliance level in excess of the upper limit, the Administrator still could suspend the certificate of conformity, pending the outcome of the manufacturer's challenge. This interim suspension is appropriate because of the possibility that the manufacturer could introduce into commerce, prior to the resolution of the manufacturer's challenge, vehicles or engines which actually exceed the upper limit.

The Agency has also made a few clarifications and technical changes in the hearing procedures. For instance, EPA is clarifying that a manufacturer can request a hearing under § 86.1115–87 pursuant to either 40 CFR §§ 86.087–30(e)(6)(i) or 86.087–30(e)(7). It must request the hearing within 15 days of the Administrator's notice of intent to suspend or void the certificate of conformity under § 86.087–30(e).

Also concerning time limits, EPA has lengthened the amount of time permitted for the Agency to commence a hearing, for the parties to submit proposed findings of facts and law, and for the administrative law judge to issue his opinion. In each case, the limit is now 30 days, allowing for a more realistic litigation schedule.

g. EPA Information

EPA will make available in years that NCPs are used by manufacturers the following information for subclasses of engines or vehicles for which NCPs have been used:

i. Estimated total emissions of the engines or vehicles as produced.

ii. Estimated total emissions of the engines or vehicles assuming that all met the standards.

iii. Estimated total emissions of the engines or vehicles assuming the old standard had been met.

iv. Total funds collected from NCPs.

EPA may separate the above information by state.

h. Other Implementation Aspects

Several provisions contained in the Subpart L regulations are being promulgated, as proposed, to make the NCP regulations consistent with the SEA regulations (Subparts G and K) for production line testing. These provisions are essentially identical and include:

Testing by the Administrator (§ 86.1107–87)
Maintenance of records (§ 86.1108–87)
Entry and access (§ 86.1109–87)
Sample selection (§ 86.1110–87)
Test procedures for PCA testing (§ 86.1111–87)

In reference to the "Maintenance of records" section, GM commented that a manufacturer should not be required to record the names of all personnel involved in the conduct of the PCA. EPA agrees that such detail is unnecessary and has modified this requirement in the final rule to require only that the names of supervisory personnel be recorded.

In addition, EPA is promulgating, as proposed, minor technical amendments to Subpart A (§ 86.085–22(e) and § 86.087–30(e)) to reference the Subpart L regulations. EPA is also promulgating, as proposed, minor technical amendments to Subpart K to allow SEAs to be conducted for engines or vehicles that have SEA liability with respect to a compliance level, as opposed to an emission standard, determined pursuant to Subpart L.

4. Other Public Comment

EPA received comments from Mack Trucks, MECA and NRDC on the relationship between the NCP program and the emissions averaging program. Mack Trucks and NRDC commented that both NCPs and emissions averaging should not be used by a manufacturer for the same engines or vehicles. MECA commented that if a manufacturer uses NCPs, it should be prohibited from using emissions averaging. While EPA views the relationship of these two programs as a generic issue, it is outside the scope of the present rulemaking action. EPA plans to examine this issue and address it in a subsequent rulemaking.

F. NCP Penalty Formula

As discussed above, the Clean Air Act sets three requirements for determining the amount of NCPs. First, the NCP is to remove any competitive disadvantage to manufacturers whose engines or vehicles conform to the relevant standard. Second, the penalty must take into account the extent to which actual emissions exceed a standard. Third, the NCP must be increased periodically to create incentives for conformance with the standards.

When EPA determines that NCPs will be available for a standard and specifies the HDE or HDV categories for which the NCP will be provided, a formula will be used to calculate the NCP for nonconforming engines or vehicles. These categories may comprise HDE or HDV subclasses, groups of subclasses, or subdivisions of subclasses. The basic form of the NCP formula will be the same for each HDE or HDV subclass and each pollutant, although the values of parameters in the formula may vary by engine and vehicle subclass and pollutant. There were very few comments on the proposed formula and this final rule adopts the proposal with no significant changes.

As proposed, the NCP formula will incorporate the following elements: (1) the compliance level determined in PCA testing, (2) penalty rates, expressed in dollars per unit of emissions, and (3) annual adjustment factors. Basing the penalty on the compliance level will insure that the NCP takes into account the extent to which actual emissions exceed the applicable standard. The penalty rate, because it is based on projected compliance costs, will remove the competitive advantage of not conforming by eliminating the cost savings associated with nonconformance. Annual adjustment factors will be used to increase the NCP from year to year to provide additional incentives for conformance and keep the penalty in current year dollars.

When a manufacturer elects to pay an NCP, the first step in determining the amount of the NCP will be to calculate the "initial penalty." The initial penalty is the penalty amount that would be paid if the nonconformity occurred in the first year that the penalty was available for a particular standard. To arrive at the penalty for the current year, the initial penalty is multiplied by the annual adjustment factors for each year since the first year the penalty was available. When payment of an NCP is elected in the first year in which the NCP is available, no annual adjustment factor is used in calculating the penalty amount for that year.

1. Penalty Rates

EPA will use a combination of a "marginal cost" approach and an "average cost" approach to set the penalty rates. Under a marginal cost approach, the penalty rate for each engine and vehicle category and pollutant combination would be the slope of the steepest segment of an estimated emission control cost curve for the category. The cost curve would depict the relationship between emission control cost and emission levels ranging from the upper limit down to the new standard for each pollutant. Its slope, the marginal cost, would be expressed in terms of cost per unit of emission reduction. If the marginal cost increased continuously as the emission level fell (as might be assumed in a simplified analysis), the steepest slope (greatest marginal cost) would be the slope of the curve at the new standard. However, since the relationship between emission control costs and emission rates (i.e., the marginal cost) may be discontinuous and "lumpy," the greatest marginal cost may instead occur elsewhere. For example, it may be associated with the addition of a significant emission control hardware item such as a catalyst or particulate trap.

Under an average cost approach, the penalty rate for each engine and vehicle category and pollutant combination would be based on an estimate for the category of the expected total incremental compliance cost per engine or vehicle for reducing emission levels from the upper limit to the new standard. The estimate used would be near the upper end of the range of the estimates of the cost of compliance among manufacturers. That total cost of compliance would then be divided by the emission reduction required to meet the new standard, resulting in a penalty rate equal to the average cost per unit of emissions reduction.

The initial penalty can be represented graphically by two linear segments as shown by the dashed lines in Figure 1. This form was chosen in order to satisfy two criteria simultaneously: (1) that the penalty rate near the new standard be steep enough to discourage voluntary noncompliance by manufacturers who are technologically able to conform, and (2) that the initial penalty faced by a technological laggard whose compliance level is significantly above the standard would not be substantially higher than the estimated total incremental cost of compliance with the new standard. Thus, for compliance levels that exceed but remain near the new emission standard, the penalty is based on an estimate of the 90th percentile marginal cost of compliance within the HDE or HDV category. EPA will first estimate the averge marginal cost of compliance

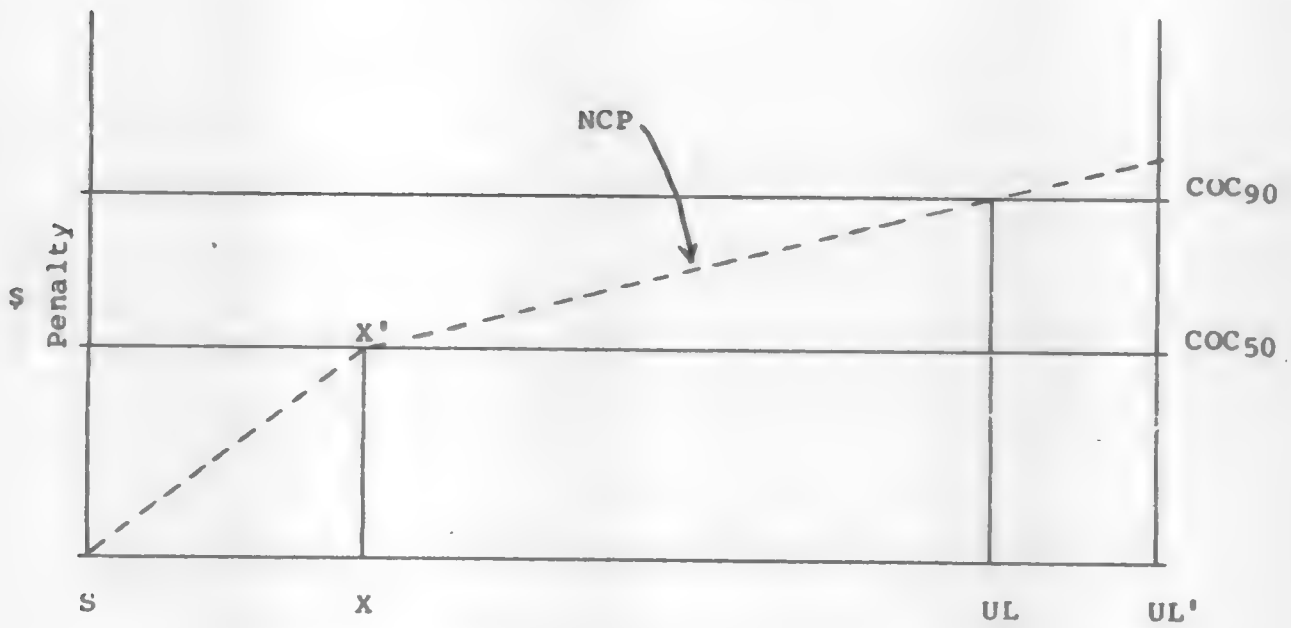
with the new standard for the category. EPA will then estimate the 90th percentile marginal cost by multiplying the average marginal cost by a factor, F. The 90th percentile is used in an effort to ensure that few manufacturers will use NCPs out of purely economic considerations. The value of F will be in the range of 1.1 to 1.3 and will be selected by EPA based on the best available cost data. Onan Corporation commented that the value of F should be presumptive at 1.1 unless statistically significant data justifies that it be set higher in the range. EPA has no basis to choose a presumptive value of 1.1, as opposed to any other value in the range, and will select a value in the range of 1.1 to 1.3.

As the compliance level increases above the standard (S in figure 1), the penalty increases at a constant rate up to the emission level (X) at which the penalty equals the estimated average total incremental cost of compliance (COC_{50}) for the category. The initial penalty then increases linearly at a constant rate from that point (X') to an amount at the upper limit (UL) equal to EPA's estimate of the 90th percentile total incremental cost of compliance (COC_{90}). However, where the upper limit is a prior emissions averaging family limit, as discussed in section E.2. of this preamble, the penalty will increase linearly at the same constant rate from COC_{90} (from the otherwise applicable upper limit, UL) to the value of the prior averaging family upper limit, UL'. In other words, in this case, UL and UL' will represent different values in Figures 1 and 2.

In evaluating the total and marginal costs of compliance with a particular standard under this approach, EPA will assess both manufacturers' and users' cost impacts. Manufacturers' costs include the incremental production costs involved in bringing an engine or vehicle into conformance with a standard and the additional warranty costs of keeping it there. The nonconforming manufacturer is avoiding these costs. EPA requested comments on what should be included in manufacturers' incremental production costs. Several manufacturers commented that engineering and development costs should be included in setting the penalty rates to prevent a nonconforming manufacturer that never spends these costs and elects to use NCPs from being placed at a competitive advantage. EPA agrees that such costs must be included in the NCP to protect against the possibility that some manufacturers might choose NCPs to avoid incurring such costs. As already discussed, EPA cannot allow a manufacturer that uses NCPs to gain a competitive advantage. General Motors commented, however, that a manufacturer in nonconformance has in all likelihood expended considerable engineering and development costs and should not have to pay these costs again in the form of an NCP. EPA agrees that a manufacturer should not be required to pay these costs twice. However, it would be difficult for EPA to be certain whether a manufacturer did indeed already spend these costs. Therefore, EPA will assume that a nonconforming manufacturer did not spend engineering and development costs, and they will be included in the NCP. However, EPA will include in the Phase II NCP NPRM a proposal that would allow a manufacturer that pays an NCP to be refunded a portion of the NCP if that manufacturer subsequently certifies the nonconforming configuration, thereby demonstrating that engineering and development costs were indeed expended.

Figure 1

Penalty vs. Compliance Level



Users' costs may include the present value of any fuel economy penalty, requirements for unleaded fuel, and changes in maintenance costs associated with operating a conforming engine or vehicle over its lifetime. To the extent that these cost impacts are known by potential buyers, a purchaser should be willing to pay more for an engine or vehicle with lower total user costs. Therefore, in order to remove a manufacturer's economic incentive for nonconformance and to prevent manufacturers of conforming engines or vehicles from being placed at a competitive disadvantage, the NCP must also reflect the user cost increase. Mack Truck commented that fuel economy penalties could be significant and should be included in the penalty calculations. EPA agrees and will include these penalties in the users' costs.

The data base used by EPA to establish the average cost of compliance and the penalty rate factors in a specific NCP rulemaking will be the cost data used by EPA in setting the emission standard for which the NCP will be available. However, when the rulemaking to establish a specific NCP occurs after the rulemaking to establish the standard, EPA could augment the data base used to establish the standard by including the best cost and emission performance data available to EPA during the specific NCP rulemaking.

Most cost analyses performed during the standard-setting process do not estimate the marginal cost of compliance. Doing so would require much more detailed knowledge of the emission control alternatives and costs facing manufacturers and the resulting impacts on the cost of ownership than is typically available. Therefore, it may not always be possible to use marginal costs exclusively. When use of marginal costs is not possible, EPA will estimate these marginal costs with the best available cost and emission performance data.

General Motors commented that if NCPs are determined by the Internal Revenue Service (IRS) not to be a tax deductible business operating expense, EPA should adjust the cost of compliance values since a manufacturer's compliance costs are ordinarily offset in part by tax deductions for such expenses. EPA has requested a ruling from the IRS on this matter. If the IRS rules that NCPs are tax deductible, EPA will use the cost of compliance values as described in this preamble; if they are not tax deductible, EPA will adjust the cost of compliance values.

2. Annual adjustments

Annual adjustment factors will be used to increase the amount of the nonconformance penalty from year to year, beginning with the second year that the NCP is available for a particular standard. The penalty per engine or vehicle in year n will be equal to the "initial penalty" multiplied by the cumulative product of the annual adjustment factors for years two through n. The annual adjustment factor will take into account inflation, the number of years the NCP has been available for the particular standard, and the fraction of subclass production for which NCPs have been assessed. The formula for the annual adjustment factor for year i (i>2) is as follows:

$$AAF_i = 1 + I_{i-1} + A_i \left[\frac{1}{1-(frac_{i-1})}\right]^i$$

$A^1 = 0.10$ for $i = 2$
$A^1 = 0.08$ for $i > 3$

In the formula, I_{i-1} is the rate of increase in an appropriate index of inflation during year i-1. EPA requested comments on which inflation index would be appropriate. Several manufacturers commented that the "overall consumer price index" should be used because it closely relates to customer costs. EPA has decided to use this index, but may address in a subsequent rulemaking action whether it would be more appropriate to use an inflation index more representative of the heavy-duty engine/vehicle industry (for example, the Bureau of Labor Statistics Fleet Activity Cost Index). The inflation increase is expressed as a decimal percentage (e.g., ten percent would be expressed as 0.10). The Inflation rate will be included in the formula to insure that each year's penalty reflects estimated increases in compliance costs as a result of inflation during the period when the NCP has been available.

The variable A_i is the usage adjustment factor, which affects the impact of the prior year's NCP usage on the size of the annual adjustment factor. The variable "frac $_{i-1}$" in the formula is the fraction of NCP usage for the previous year. It will be calculated separately for each category of engines or vehicles and is the ratio of (1) the total number of HDEs or HDVs for which an NCP will be paid in year i-1 to (2) the total number of HDEs or HDVs that will be introduced into commerce in year i-1. If $frac_{i-1}$ is greater than 0.05, $frac_{i-1}$ would be set equal to 0.50 in calculating AAF_i.

The formula for AFF_i is structured so that the penalty increases as $frac_{i-1}$ increases and, for any given value of $frac_{i-1}$, the increase in the penalty will be greater in later years than in the initial years of availability. This structure was chosen in order to provide adequate incentives for eventual compliance. If the initial penalty were so low that many engines or vehicles were produced under the NCP, a relatively high value of $frac_{i-1}$ will protect the environment by increasing the penalty substantially in the next year and creating greater incentives for conformance. If, on the other hand, NCP usage is low, the HDE or HDV catetory is protected by a much smaller annual increase in the penalty.

The NCP usage fraction for calculating the next year's penalty will include actual NCP usage through March 31 of the current model year and EPA's estimate of additional usage for the remainder of the current model year. Each previous year's usage fraction will be corrected to reflect actual year-end usage of NCP's and this corrected AAF will be used in establishing the NCP for future years. The correction of the previous year's annual adjustment factor will not affect the previous year's penalty. Thus, when the running product of the annual adjustment factor is calculated to determine an NCP for year n, AAF_n will be based on the projected value of $frac_{n-1}$ and all other AAF_i (for $i < n$) will be calculated using the final corrected values of $frac_{i-1}$.

3. NCP Formula

The complete NCP formula incorporates both the initial penalty and the annual adjustment factors. It is given below along with definitions for the variables. As discussed in the penalty rate section above, the initial penalty is decribed by two linear segments (Figure 1). A separate formula is used for each segment. As described for Case 1 and Case 2 below, the formula used depends on the value of the compliance level, CL, determined in PCA testing. Figure 2 illustrates the relationship between an initial penalty, NCP_1, and a subsequent year's penalty, NCP_n.

Case (1): If the compliance level (CL) is greater than S and less than or equal to X (e.g., point CL_1 in figure 2), then:

$$NCP_n = (PR_1)(CL - S)\left(\prod_{i=1}^{n} AAF_i\right)$$

where:

$PR_1 = (F)(MC_{90})$

Case (2): If the compliance level is greater than X and less than or equal to the upper limit as determined by § 86.1104–87 (e.g., point CL_2 in figure 2), then:

$$NCP_n = (COC_{90} + (PR_2)(CL - X))\left(\prod_{i=1}^{n} AAF_i\right)$$

where:

$$PR_2 = \frac{COC_{90} - COC_{50}}{UL - X}$$

In Case (1) or Case (2), AAF_i has the following values:

If $frac_{i-1} = 0$, then $AAF_i = 1 + I_{i-1}$

If $frac_{i-1} > 0$, then:

$$AAF_i = 1 + I_{i-1} + A_i \left[\frac{1}{1 - (frac_{i-1})}\right]$$

If $frac_{i-1} > 0.50$, then $frac_{i-1}$ would be set equal to 0.50.

In the first year, $AAF_1 = 1$

The terms in the above formulas have the following meanings and values:

NCP_n = NCP for year n for each engine or vehicle

CL = Compliance level for year n for applicable engines or vehicles

S = Emission standard

UL = Upper limit as determined by § 86.1104–87. Except, if the upper limit is determined by § 86.1104–87(c), the value of UL in case (2) will be the prior emission standard.

UL' = Upper limit as determined by § 86.1104–87(c). This value is not used in the above formulas.

X = Compliance level above the standard at which NCP_1 equals COC_{90}

$$X = \left[\frac{COC_{90}}{(F)(MC_{90})}\right] + S$$

PR_1 = Penalty rate for CL<X

PR_2 = Penalty rate for X < CL < applicable upper limit

$\prod_{i=1}^{n} AAF_i$ = Running Product, i.e., $(AAF_1)x(AAF_2)x..x(AAF_n)$

i = Index representing a year

n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass, i.e., n=1 for the first year that the NCP is available; . . . n=n for the nth year that the NCP is available

COC_{90} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit

COC_{90} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit

MC_{90} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3)

AAF_i = Annual adjustment factor in year i

$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (i–1)

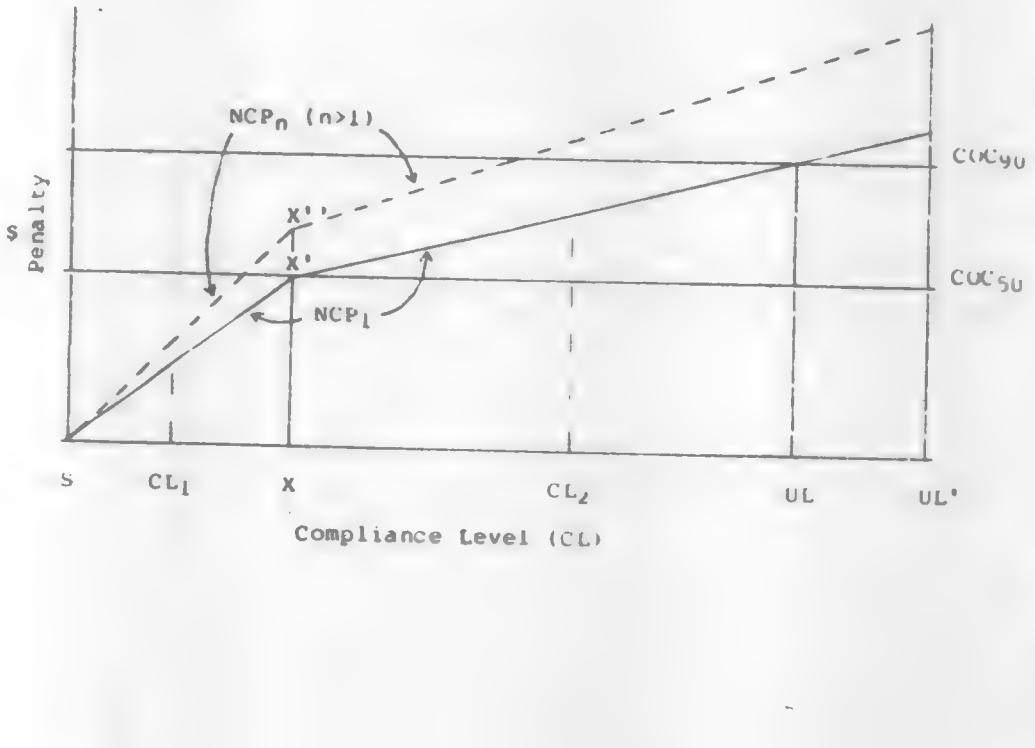
A_i = Usage adjustment factor in year i: $A_i = 0.10$ for i=2; $A_i = 0.08$ for i>2

I_i = Percentage increase in overall consumer price index in year i

Onan supported EPA's proposal to use average costs as opposed to 50th percentile costs in determining COC_{50}, MC_{90} and F. The final rule incorporates that proposal.

Figure 2

Penalty vs. Compliance Level



G. Administrative Designation

Under the criteria provided in Executive Order 12291, the Administrator has determined that this regulation is "non-major" and therefore not subject to the requirement of a Regulatory Impact Analysis. This determination is based on the following:

(1) The NCP program will not result in an annual adverse effect on the economy of $100 million or more. The NCP merely provides an economically reasonable alternative to other possible actions, at least as costly as NCPs, that may be utilized when a manufacturer is unable to comply with a standard. This concept is more fully discussed in the ECONOMIC IMPACT section.

(2) The NCP program will not result in adverse cost or price impacts (above those that would otherwise occur from compliance with the emission standards themselves).

(3) The NCP program provides manufacturers relief from the inability to market nonconforming HDEs or HDVs. Presently a manufacturer experiencing difficulty in certifying or producing HDEs or HDVs in conformance with emission standards, has only two alternatives: fix the nonconforming configuration or prevent the HDE or HDV's introduction into commerce. In some cases, a fix may not be readily available, and a manufacturer may have to prevent its introduction into commerce. NCPs provide relief from these disruptions. Therefore, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by Executive Order 12291, this Final Rulemaking has been reviewed by the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any written OMB comments and the EPA's response to those comments are available for inspection in the public docket for this rulemaking.

H. Economic Impact

Because of the optional nature of the use of NCPs, manufacturers have flexibility and will likely choose whether or not to use NCPs based on their capability to comply with emission standards. If no HDE or HDV manufacturers elects to use NCPs, these manufacturers or the users of their products will not incur any additional costs related to NCPs.

The existence of an NCP program may provide some direct cost savings to HDE or HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer which has difficulty certifying HDEs or HDVs in conformance with emission standards or which fails an SEA has only two alternatives: fix the nonconforming engines or vehicles, perhaps at prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and introduce into commerce a unit that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only course of action that would allow it to continue to introduce HDEs or HDVs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

I. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA cannot be sure to what extent NCPs will be used.

If no manufacturer elects to use NCPs, all HDEs and HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the rulemakings establishing the emission regulations will not be affected.

If some HDE and/or HDV manufacturers do elect to participate in the NCP program, some HDEs and/or HDVs will be introduced into commerce that will be emitting pollutants above applicable standards (as Congress contemplated when it mandated that EPA provide NCPs). The magnitude of this reduced environmental benefit is proportional to the number of HDEs and HDVs subject to NCPs and their degree of nonconformance. (Of course, the upper limits exclude gross emitters from being introduced into commerce.) EPA estimates that an NCP will not be used for more than ten percent of the HDE's and HDV's for which NCPs are provided in the first year that they are available and that they will be used by less than one percent in the third year. The long term environmental impact from NCP usage is expected to be relatively very small, if any, due to the relatively high penalty rates and the annual adjustment factor that rapidly increases those penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit refers not to an increase in emissions from current levels, but from levels that would otherwise occur from reduced emission standard without NCPs.

Because emission impacts are anticipated to be very small, if any, compared to the total emissions of HDEs and HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time, no specific air quality impact analysis has been made regarding this rule.

J. Compliance with Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether this regulation will have a significant economic impact on a substantial number of small business entities. None of the affected entitles could be classified as a small business. (Even if some were considered small, there would not be a substantial number of those.) Morever, as already discussed, the NCP program can be expected to have salutary effects on manufacturers. Thus, I certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

K. Information Collection Requirements

This rule (Phase I) requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. However, these requirements will not become effective until the Phase II NCP rulemaking. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, requires that reporting and recordkeeping requirements be approved by OMB before they are imposed on the public. The information collection requirements in this rule will be submitted to OMB under the Paperwork Reduction Act during the proposal for the Phase II NCP rulemaking, at which time EPA will better be able to predict the extent of NCP usage.

L. List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Air pollution control, Environmental protection, Gasoline, Motor vehicles.

Dated: August 23, 1985.

Lee M. Thomas,

Administrator.

PART 86—[AMENDED]

For the reasons set forth in the preamble, Part 86, Subparts A, K and L, Chapter I of Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 86 is revised to read as follows:

Authority: Secs. 206(g) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7525(g), 7601.

2. Paragraph (e)(3)(ii)(A) of § 86.085–22 of Subpart A is revised to read as follows:

§ 86.085–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification, Selective Enforcement Audit, and Production Compliance Audit, adequacy of limits, and physically adjustable ranges.

* * * * *

(e) * * *

(3) * * *

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under Subpart G, K or L (Selective Enforcement Audit and Production Compliance Audit) only the actual setting to which the parameter is adjusted during production.

* * * * *

3. The introductory text of paragraph (e), paragraphs (e)(1) (iii) through (vii), (e)(5), (e)(6)(i), and (e)(7) of § 86.087–30 of Subpart A are revised to read as follows:

§ 86.087–30 Certification.

* * * * *

(e) For light-duty trucks, heavy-duty engines, and heavy-duty vehicles

(1) * * *

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009 or § 86.1112–87; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009 or § 86.1112–87; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 or § 86.1109–87 and in a warrant or court order presented to the manufacturer or the party in charge of the facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in § 86.1006 or § 86.1109–87 because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, 86.1013, 86.1107(a), 86.1108–87, 86.1110–87, 86.1111–87, 86.1112–87 or § 86.1113–87.

* * * * *

(5) In any case in which certification of a light-duty truck, heavy-duty engine, or heavy-duty vehicle is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 or § 86.1109–87 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) * * *

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014 or § 86.1115–87, and

* * * * *

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014 or § 86.1115–87.

4. Section 86.1002–84 of Subpart K is amended by adding the following definition:

§ 86.1002–84 Definitions.

* * * * *

"Compliance level" means an emission level determined during a Production Compliance Audit pursuant to Subpart L of this Part.

* * * * *

5. Paragraph (b)(2) of § 86.1008–84 is revised to read as follows:

§ 86.1008–84 Test procedures.

* * * * *

(b) * * *

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit, and Production Compliance Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all

other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

* * * * *

6. Paragraph (d)(2) of § 86.1009–84 is revised to read as follows:

§ 86.1009–84 Calculation and reporting of test results.

* * * * *

(d) * * *

(2) The applicable standards or compliance levels against which the engines or vehicles were tested;

* * * * *

7. Paragraphs (b) and (c) of § 86.1010–84 are revised to read as follows:

§ 86.1010–84 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

* * * * *

(b) A failed engine or vehicle is one whose final deteriorated test results pursuant to paragraph 86.1009–84(c), for one or more of the applicable exhaust pollutants, exceed the applicable emission standard or compliance level.

(c) The manufacturer shall test heavy-duty engines or light-duty trucks comprising the test sample until a pass decision is reached for all pollutants, or a fail decision is reached for one pollutant. A pass decision is reached when the cumulative number of failed engines or vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the past decision number appropriate to the cumulative number of engines or vehicles tested. A fail decision is reached when the cumulative number of failed engines or vehicles for one or more pollutants is greater than or equal to the fail decision number appropriate to the cumulative number of engines or vehicles tested. The pass and fail decision numbers associated with the cumulative number of engines or vehicles tested are determined by using the tables in Appendix X of this part appropriate to the projected sales as made by the heavy-duty engine manufacturer in its Application for Certification or as made by the light-duty truck manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations. In the tables in Appendix X to this part, sampling plan "stage" refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made for a particular pollutant, the number of engines or vehicles whose final deteriorated test results exceed the emission standard or compliance level, if applicable, for that pollutant shall not be considered any further for the purposes of the audit.

* * * * *

8. Paragraphs (i)(1)(ii), (j)(2), (k)(2) and (m) of § 86.1012–84 are revised to read as follows:

§ 86.1012–84 Suspension and revocation of certificates of conformity.

* * * * *

(i) * * *

(1) * * *

(ii) Demonstrate that the engine or vehicle conforms to applicable standards or compliance levels by retesting the engine or vehicle in accordance with these regulations; and

* * * * *

(j) * * *

(2) Demonstrate that the engine or vehicle configuration for which the certificate of conformity has been suspended does in fact comply with these regulations by testing engines or vehicles selected from normal production runs of that engine or vehicle configuration, at the plant(s) or associated storage facilities specified by the Administrator, in accordance with the conditions specified in the initial test order. If the manufacturer elects to continue testing individual engines or vehicles after suspension of a certificate, the certificate is reinstated for any engine or vehicle actually determined to be in conformance with the applicable standards or compliance levels through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (h) of this section.

(k) * * *

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer shall demonstrate that the modified engine or vehicle configuration does in fact conform with these regulations by testing engines or vehicles selected from normal production runs of that modified engine or vehicle configuration in accordance with the conditions specified in the initial test order. This testing will be considered by the Administrator to satisfy the testing requirements of § 86.078–32 or § 86.079–33 if the Administrator has so notifed the manufacturer. If the subsequent audit results in passing of the audit at the level of the standards or compliance levels, if applicable, the Administrator shall reissue or amend the certificate, as the case may be, to include that configuration, provided that the manufacturer has satisfied the testing requirements of paragraph (k)(1) of this section. If the subsequent audit is failed, the revocation remains in effect. Any design change approvals under this subpart are limited to the configuration affected by the test order.

* * * * *

(m) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend, revoke or void a certificate of conformity under paragraph § 86.087–30(e), and prior to the commencement of a hearing under § 86.1014–84, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

* * * * *

9. Paragraphs (a) and (d)(2) of § 86.1014–84 are revised to read as follows:

§ 86.1014–84 Hearings on suspension, revocation and voiding of certificate of conformity.

(a) *Applicability.* The procedures prescribed by this section apply whenever a manufacturer requests a hearing pursuant to § 86.087–30 (e)(6)(i). § 86.087–30(e)(7), or § 86.1012–84(1).

* * * * *

(d) * * *

(2) In the case of a hearing requested under § 86.087–30(e)(6)(i), to challenge a proposed suspension of a certificate of conformity for the reasons specified in § 86.087–30(e)(1)(i) or (e)(1)(ii), when it clearly appears from the data and other information contained in the request for the hearing that there is no genuine and substantial question of fact with respect to the issue of whether the refusal to comply with the provisions of a test order or any other requirement of § 86.1003–84 was caused by conditions and circumstances outside the control of the manufacturer, the Administrator shall enter an order denying the request

for a hearing and suspending the certificate of conformity.

* * * * *

10. The table of contents of Subpart L is added as follows:

Subpart L—Nonconformance Penalties for Gasoline-Fueled and Diesel Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

Sec.
86.1101–87 Applicability.
86.1102–87 Definitions.
86.1103–87 Criteria for availability of nonconformance penalties.
86.1104–87 Determination of upper limits.
86.1105–87 [Reserved]
86.1106–87 Production Compliance Auditing.
86.1107–87 Testing by the Administrator.
86.1108–87 Maintenance of records.
86.1109–87 Entry and access.
86.1110–87 Sample selection.
86.1111–87 Test procedures for PCA testing.
86.1112–87 Determining the compliance level and reporting of test results.
86.1113–87 Calculation and payment of penalty.
86.1114–87 Suspension and voiding of certificates of conformity.
86.1115–87 Hearing procedures for nonconformance determinations and penalties.

11. Subpart L is added to read as follows:

Subpart L—Nonconformance Penalties for Gasoline-Fueled and Diesel Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

§ 86.1101–87 Applicability.

The provisions of this subpart are applicable for 1987 and later model year gasoline-fueled and diesel heavy-duty engines and heavy-duty vehicles. These vehicles include light-duty trucks rated in excess of 6,000 pounds gross vehicle weight.

§ 86.1102–87 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined herein have the meaning given then in the Act.

"Compliance level" means the deteriorated pollutant emissions level at the 60th percentile point for a population of heavy-duty engines or heavy-duty vehicles subject to Production Compliance Audit testing pursuant to the requirements of this subpart. A compliance level can only be determined for a pollutant for which an upper limit has been established in this subpart.

"Configuration" means a subdivision, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, or other parameters which may be designated by the Administrator, or a subclassification of light-duty truck engine family emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, rear axle ratio, or other parameters which may be designated by the Administrator.

"NCP" means a nonconformance penalty as described in section 206(g) of the Clean Air Act and in this subpart.

"PCA" means a Production Compliance Audit as described in § 86.1106–87 of this subpart.

"Subclass" means a classification of heavy-duty engines or heavy-duty vehicles based on such factors as gross vehicle weight rating, fuel usage, vehicle usage, engine horsepower or additional criteria that the Administrator shall apply. Subclasses include, but are not limited to:

Light-duty gasoline trucks (6,001–8,500 lb. GVW)
Light-duty diesel trucks (6,001–8,500 lb. GVW)
Light heavy-duty gasoline engines (for use in vehicles of 8,501–14,000 lb. GVW)
Heavy heavy-duty gasoline engines (for use in vehicles of 14,001 lb. and above GVW)
Light heavy-duty diesel engines (see § 86.085–2(a)(1))
Medium heavy-duty diesel engines (see § 86.085–2(a)(2))
Heavy heavy-duty diesel engines (see § 86.085–2(a)(3))

"Test Sample" means a group of heavy-duty engines or heavy-duty vehicles of the same configuration which have been selected to receive emission testing.

"Upper limit" means the emission level for a specific pollutant above which a certificate of conformity may not be issued or may be suspended or revoked.

§ 86.1103–86 Criteria for availability of nonconformance penalties.

(a) EPA shall establish for each subclass of heavy-duty engines and heavy-duty vehicles (other than motorcycles), an NCP for a motor vehicle pollutant, when any new or revised emission standard is more stringent than the previous standard for the pollutant, or when an existing standard for that pollutant becomes more difficult to achieve because of a new or revised standard, provided that EPA finds:

(1) That for such subclass of engines or vehicles, substantial work will be required to meet the standard for which the NCP is offered, and

(2) That there is likely to be a technological laggard.

(b) Substantial work, as used in paragraph (a)(1) of this section, means the application of technology not previously used in an engine or vehicle class or subclass, or the significant modification of existing technology or design parameters, needed to bring the vehicle or engine into compliance with either the more stringent new or revised standard or an existing standard which becomes more difficult to achieve because of a new or revised standard.

§ 86.1104–87 Determination of upper limits.

(a) The upper limit applicable to a pollutant emission standard for a subclass of heavy-duty engines or heavy-duty vehicles for which an NCP is established in accordance with § 86.1103–87, shall be the previous pollutant emission standard for that subclass.

(b) If no previous standard existed for the pollutant under paragraph (a), the upper limit will be developed by EPA during rulemaking.

(c) If a manufacturer participates in the emissions averaging program and carries over certification of an engine family from the prior model year, the upper limit for that engine family shall be the family emission limit of the prior model year, unless the family emission limit is less than the upper limit determined in paragraph (a).

§ 86.1105–87 [Reserved]

§ 86.1106–87 Production compliance auditing.

For a model year in which upper limits for heavy-duty engine or heavy-duty vehicle emission standards for one or more exhaust pollutants are specified in § 86.1105–87, a manufacturer may elect to conduct a Production Compliance Audit (PCA) for each engine or vehicle configuration satisfying the following conditions:

(a) Certification test results, pursuant to § 86.082–23, exceed the emission standard for a particular pollutant but do not exceed the upper limit established for that pollutant. In that event, the manufacturer will be offered a qualified certificate of conformity allowing for the introduction into commerce of the specified engine family, *provided that:*

(1) The manufacturer must agree to conduct a PCA of those engines or vehicles;

(2) PCA testing must be conducted on the same configuration tested in certification;

(3) The selection of engines or vehicles for PCA testing must be initiated no later than five (5) days after the start of assembly-line production of the specified engine or vehicle configuration, unless that period is extended by the Administrator;

(4) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle, unless the manufacturer successfully challenges the Administrator's determination of the compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the compliance level for the engine or vehicle configuration of (a)(2) exceeds the upper limit as determined by the PCA;

(5) If the compliance level determined in the PCA is below the emission standard, no NCP will be offered, and all appropriate qualifications will be removed from the qualified certificate of conformity.

(b) An engine or vehicle configuration fails a Selective Enforcement Audit (SEA) under subpart K of 40 CFR Part 86 with respect to the standard for a particular pollutant but does not fail with respect to the upper limit established for that pollutant, and no NCP has been previously assessed for that configuration, *provided that:*

(1) The manufacturer must submit a written report to the Administrator within five (5) days after failure to pass the audit containing the following:

(i) A statement that the manufacturer does not intend, at that time, to make any engine and/or emission control system design changes that may remedy the nonconformity; and

(ii) A request from the manufacturer to conduct the PCA, including the date the testing will begin;

(2) Failure to submit the report within five (5) days after the SEA failure will result in the forfeiture of the NCP option, unless a satisfactory justification for the delay is provided to the Administrator;

(3) The selection of any required engines or vehicles for PCA testing must be initiated no later than ten (10) days after the SEA failure unless extended by the Administrator; otherwise, the manufacturer may forfeit the option to elect an NCP;

(4) PCA testing must be conducted on the same configuration that failed the SEA;

(5) Test results from the SEA, together with any additional test results required during the PCA, will be used in establishing a compliance level for the configuration pursuant to § 86.1112–87(a); and

(6) The manufacturer, upon approval by the Administrator to conduct a PCA on a failed SEA engine or vehicle configuration, must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle introduced into commerce after the tenth day of the SEA failure, unless the manufacturer successfully challenges the Administrator's determination of the compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce after the tenth day of the SEA failure, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the compliance level of the engine or vehicle configuration exceeds the upper limit as determined by the PCA.

(c) An engine or vehicle configuration, for which an NCP has been previously assessed for a particular pollutant, either passes an SEA with respect to the particular pollutant standard, fails an SEA with respect to the particular pollutant standard but not the previous compliance level, or fails an SEA with respect to the previous compliance level but not the associated upper limit, *provided that:*

(1) The manufacturer must submit a written statement to the Administrator within five (5) days of the conclusion of the SEA requesting a PCA, including the date the PCA testing will begin; otherwise, the manufacturer forfeits the option to establish a new compliance level;

(2) The selection of any required engines or vehicles for PCA testing must be initiated no later than ten (10) days after the conclusion of the SEA unless the period is extended by the Administrator; otherwise, the manufacturer forfeits the option to establish a new compliance level;

(3) PCA testing must be conducted on the same configuration tested during the SEA, and all conditions in the SEA test order must apply to the PCA;

(4) Test results for the SEA, together with any additional test results required during the PCA, will be used in establishing a new compliance level for the configuration pursuant to § 86.1112–87(a);

(5) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle introduced into commerce after the tenth day of the conclusion of the SEA, unless the manufacturer successfully challenges the Administrator's determination of the compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce after the tenth day after the conclusion of the SEA, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the engine or vehicle configuration exceeds the upper limit as determined by the PCA;

(6) A previously assessed NCP will be terminated and no NCP will be established as a result of the new PCA if the compliance level is determined to be below the applicable emission standards.

(d) The implementation of a production running change that causes the emission level for a particular pollutant to be either above the emission standard but below the associated upper limit for a vehicle or engine configuration for which an NCP has not been previously assessed, or below the associated upper limit for a vehicle or engine configuration for which an NCP has been previously assessed, regardless of the previous compliance level. In that event, the manufacturer will be offered a qualified certificate of conformity allowing for the introduction into commerce of the engine or vehicle configuration resulting from the running change, *provided that:*

(1) The manufacturer must submit a written report to the Administrator outlining the reason for the running change and the date the manufacturer will begin PCA testing;

(2) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle, unless the manufacturer successfully challenges the Administrator's determination of compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the engine or vehicle configuration exceeds the upper limit as determined by the PCA;

(3) The selection of engines or vehicles for PCA testing must be initiated no later than five (5) days after the start of assembly line production of the engine or vehicle configuration resulting from the running change unless that period is extended by the Administrator; and

(4) If the compliance level is determined to be below the applicable emission standard, a previously

assessed NCP will be terminated, an NCP will not be established as a result of the PCA testing, and all qualifications will be removed from the qualified certificate of conformity.

(e) The following requirements are applicable to each PCA under this subpart.

(1) The manufacturer shall make the following documents available to EPA Enforcement Officers upon request:

(i) A properly filed and current application for certification, following the format prescribed by the EPA for the appropriate model year; and

(ii) A copy of the shop manual and dealer service bulletins for the configurations being tested.

(2) Only one mechanic at a time per engine or vehicle shall make authorized checks, adjustments, or repairs, unless a particular check, adjustment, or repair requires a second mechanic as indicated in the shop manual or dealer service bulletins.

(3) A mechanic shall not perform any check, adjustment, or repair without an Enforcement Officer present unless otherwise authorized.

(4) The manufacturer shall utilize only those tools and test equipment utilized by its dealers or those dealers using its engines when performing authorized checks, adjustments, or repairs.

§ 86.1107–87 Testing by the Administrator.

(a) The Administrator may require that engines or vehicles of a specified configuration be selected in a manner consistent with the requirements of § 86.1110–87 and submitted to him at such place as he may designate for the purpose of conducting emission tests in accordance with § 86.1111–87 to determine whether engines or vehicles manufactured by the manufacturer conform with the regulations of this subpart.

(b)(1) Whenever the Administrator conducts a test on a test engine or vehicle or the Administrator and manufacturer each conduct a test on the same test engine or vehicle, the results of the Administrator's test will comprise the official data for that engine or vehicle.

(2) Whenever the manufacturer conducts all tests on a test engine or vehicle, the manufacturer's test data will be accepted as the official data, provided that if the Administrator makes a determination based on testing under paragraph (a) of this section that there is a substantial lack of agreement between the manufacturer's test results and the Administrator's test results, no manufacturer's test data from the manufacturer's test facility will be accepted for purposes of this subpart.

(c) If the Administrator determines that testing conducted under paragraph (a) of this section demonstrates a lack of agreement under paragraph (b)(2) of this section, the Administrator shall:

(1) Notify the manufacturer in writing of his determination that the manufacturer's test facility is inappropriate for conducting the tests required by this subpart and the reasons therefore; and

(2) Reinstate any manufacturer's data only upon a showing by the manufacturer that the data acquired under paragraph (a) of this section was erroneous and the manufacturer's data was correct.

(d) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(2) of this section based on data or information which indicates that changes have been made to the test facility and that these changes have resolved the reasons for disqualification.

§ 86.1108–87 Maintenance of records.

(a) The manufacturer of any new gasoline-fueled or diesel heavy-duty engine or heavy-duty vehicle subject to any of the provisions of this subpart shall establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* A description of all equipment used to test engines or vehicles in accordance with § 86.1111–87, pursuant to PCA testing under this subpart, specifically:

(i) If testing heavy-duty gasoline engines, the equipment requirements specified in §§ 86.1306–84 and 86.1506–84 of this part.

(ii) If testing heavy-duty diesel engines, the equipment requirements specified in §§ 86.1306–84, 86.1506–84, 86.879–6, 86.879–8 and 86.879–9 of this part;

(iii) If testing light-duty gasoline-fueled trucks, the equipment requirements specified in §§ 86.106 (excluding all references to particulate emission testing) and 86.1506–84 of this part; and

(iv) If testing light-duty diesel trucks, the equipment requirements specified in § 86.106 (excluding all references to evaporative emission testing) of this part.

(2) *Individual records.* These records pertain to each Production Compliance Audit conducted pursuant to this subpart.

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on the engine or the number of miles on the vehicle when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the Production Compliance Audit;

(iv) A record and description of any repair performed, giving the date and time of the repair, the reason for it, the person authorizing it, and the names of all personnel involved in the supervision and performance of the repair;

(v) The date when the engine or vehicle was shipped from the assembly plant or associated storage facility and when it was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed by EPA directly), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, specifically—

(A) If testing heavy-duty gasoline engines, the record requirements specified in §§ 86.1342–84 and 86.1542–84 of this part;

(B) If testing heavy-duty diesel engines, the record requirements specified in §§ 86.1342–84, 86.1542–84, and 86.879–10; (§ 86.337–79 for Subpart D testing only).

(C) If testing light-duty gasoline fueled trucks, the record requirements specified in §§ 86.142 (excluding all references to diesel vehicles) and 86.1542–84; and

(D) If the testing light-duty diesel trucks, the record requirements specified in § 86.142; and

(vii) A brief description of any significant Production Compliance Audit events commencing with the test engine or vehicle selection process, but not described by any subparagraph under paragraph (a)(2) of this section, including such extraordinary events as engine damage during shipment or vehicle accident.

(3) The manufacturer shall record the test equipment description, pursuant to paragraph (a)(1) of this section, for each test cell that was used to perform emission testing under this subpart.

(b) The manufacturer shall retain all records required to be maintained under this subpart for a period of six (6) years after completion of all testing. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending upon the manufacturer's record retention procedure, provided that in every case all the information contained in the hard copy is retained.

§ 86.1109.87 Entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this subpart, EPA Enforcement Officers are authorized to enter any of the following

(during operating hours and upon presentation of credentials):

(1) Any facility where any engine or vehicle to be introduced into commerce or any emission related component is manufactured, assembled, or stored;

(2) Any facility where any tests conducted pursuant to a PCA request or any procedures or activities connected with these tests are or were performed;

(3) Any facility where any engine or vehicle which is being tested, was tested, or will be tested is present; and

(4) Any facility where any record or other document relating to any of the above is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA Enforcement Officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspects of engine or vehicle manufacture, assembly, storage, testing and other procedures, and the facilities in which these procedures are conducted.

(2) To inspect and monitor any aspect of engine or vehicle test procedures or activities, including, but not limited to, monitoring engine or vehicle selection, preparation, service or mileage accumulation, preconditioning, repairs, emission test cycles, and maintenance; and to verify calibration of test equipment;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection and testing of an engine or vehicle; and

(4) To inspect and photograph any part or aspect of any engine or vehicle and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA Enforcement Officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help them perform any function listed in this subpart and are authorized to request the manufacturer conducting the PCA to make arrangement with those in charge of a facility operated for its benefit to furnish reasonable assistance without cost to EPA, whether or not the manufacturer controls the facility.

(d) EPA Enforcement Officers are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers may proceed ex parte to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the manufacturer conducting the PCA or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(e) A manufacturer that conducts a PCA shall permit EPA Enforcement Officers who present a warrant or court order as described in paragraph (d) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The manufacturer shall cause those in charge of its facility or a facility operated for its benefit to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers may conduct activities related to entry and access as authorized in this section only upon the consent of the manufacturer or the party in charge of the facilities in question.

(f) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions in which local foreign law does not prohibit EPA Enforcement Officers from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

(h) For purposes of this section, the following definitions are applicable:

(1) "Presentation of Credentials" means display of the document designating a person as an EPA Enforcement Officer.

(2) Where engine or vehicle storage areas or facilities are concerned, "operating hours" means all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (h)(2) of this section are concerned, "operating hours" means all times during which an assembly line is in operation, engine or vehicle assembly is taking place, testing repair, service accumulation, preparation or compilation of records is taking place, or any other procedure or activity related to engine or vehicle manufacture, assembly or testing is being carried out in a facility.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and making personnel of the facility being inspected available during their working hours on an EPA Enforcement Officer's request to inform the EPA Enforcement Officer of how the facility operates and to answer his or her questions. Any employee whom an EPA Enforcement Officer requests the manufacturer to cause to appear for questioning will be entitled to be accompanied, represented and advised by counsel.

§ 86.1110–87 Sample selection.

(a) Engines or vehicles comprising a test sample which are required to be tested pursuant to a PCA in accordance with this subpart will be selected at the location and in the manner specified by EPA. If a manufacturer determines that the test engines or vehicles cannot be selected in the manner specified by EPA, an alternative selection procedure may be employed, provided that the manufacturer requests approval of the alternative procedure in advance of the start of test sample selection and that the Administrator approves the procedure.

(b) The manufacturer shall have assembled the test engines or vehicles of the configuration selected for testing using its normal mass production processes for engines or vehicles to be distributed into commerce. In the case of heavy-duty engines, if the test engines are selected at a location where they do not have their operational and emission control systems installed, EPA will specify the manner and location for selection of components to complete assembly of the engines. The manufacturer shall assemble these components onto the test engines using normal assembly and quality control procedures as documented by the manufacturer.

(c) No quality control, testing, or assembly procedures will be used on the completed test engine or vehicle or any portion thereof, including parts and subassemblies, that will not be used during the production and assembly of all other engines or vehicles of that configuration.

(d) The EPA Enforcement Officers may specify that they, rather than the manufacturer, will select the test engines or vehicles.

(e) The order in which test engines or vehicles are selected determines the order in which test results are to be used in applying the PCA testing plan in accordance with § 86.1112–87.

(f) The manufacturer shall keep on hand all engines or vehicles comprising the test sample until such time as a compliance level is determined in

accordance with § 86.1112–87(a) except that the manufacturer may ship any tested engine or vehicle which has not failed in accordance with § 86.1112–87(f)(1). However, once the manufacturer ships any test engine or vehicle, it relinquishes the prerogative to conduct retests as provided in § 86.1111–87(i).

§ 86.1111–87 Test procedures for PCA testing.

(a)(1) For heavy-duty engines, the prescribed test procedure for PCA testing is the Federal Test Procedure as described in Subparts N, I, and P of this part.

(2) For heavy-duty vehicles, the prescribed test procedure for PCA testing is described in Subpart M of this part.

(3) For light-duty trucks, the prescribed test procedure for PCA testing is the Federal Test Procedure as described in Subparts B and P of this part.

(4) When testing light-duty trucks, the following exceptions to the test procedures in Subpart B are applicable:

(i) The manufacturer may use gasoline test fuel meeting the specifications of paragraph (a) of § 86.113 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate midvolume of the fuel tank, as specified in paragraph (a) of § 86.131, and may drain the test fuel from other than the lowest point of the fuel tank, as specified in paragraph (b) of § 86.131, with the advance approval of the Administrator.

(iii) The manufacturer may perform additional preconditioning on PCA test vehicles other than the preconditioning specified in § 86.132 only if the additional preconditioning has been performed on certification test vehicles of the same configuration.

(iv) The manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in paragraph (a) of § 86.133.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph (e) of § 86.135, provided that the slave tires are the same size as the drive wheel tires.

(vi) The cold start exhaust emission test described in § 86.137 shall follow the heat build procedure described in § 86.133 by not more than one hour.

(vii) In performing exhaust sample analysis under § 86.140:

(A) When testing diesel vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and a minimum of 2 hours warm-up for the CO, CO_2 and NO_x analyzers. [Power is normally left on for infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position.]

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) The manufacturer need not comply with § 86.142, since the records required therein are provided under other provisions of this subpart.

(ix) In addition to the requirements of Subpart B of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5 ± 0.5 inches of water to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water in 5 minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph (d) of this section.

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion, or substitution, except to comply with paragraph (a)(4)(ii) of this section if approved in advance by the Administrator.

(b)(1) The manufacturer shall not adjust, repair, prepare, or modify the engines or vehicles selected for testing and shall not perform any emission tests on engines or vehicles selected for testing pursuant to a PCA request unless the adjustment, repair, preparation, modification, or tests are documented in the manufacturer's engine or vehicle assembly and inspection procedures and are actually performed on all engines or vehicles produced or unless these adjustments or tests are required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit and Production Compliance Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–2(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

(c) Prior to performing emission testing on a PCA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration tested during PCA. Prior to performing emission testing on a PCA test vehicle, the manufacturer may accumulate a number of miles equal to the greater of 4,000 miles or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration tested during PCA. Service or mileage accumulation may be performed in any manner the manufacturer desires.

(d) No maintenance shall be performed on test engines or vehicles after selection for testing nor will any test engine or vehicle substitution or replacement be allowed, unless

requested of and approved by the Administrator in advance of the performance of any maintenance or engine or vehicle substitution.

(e) The manufacturer shall expeditiously ship test engines or vehicles from the point of selection to the test facility or other location to meet any other requirements of this subpart. If the test facility is not located at or in close proximity to the point of selection, the manufacturer shall assure that test engines or vehicles arrive at the test facility within 24 hours of selection, except that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If an engine or vehicle cannot complete the service or mileage accumulation or emission tests because of engine or vehicle malfunction, the manufacturer may request that the Administrator authorize the repair of the engine or vehicle. If the engine or vehicle cannot be repaired expeditiously, EPA may delete it from the test sequence.

(g)(1) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of 30,000 or greater, as made in their respective Applications for Certification, shall complete emission testing at their testing facility on a minimum of two engines per 24 hour period, including voided tests.

(2) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of less than 30,000, as made in their respective Applications for Certification, Shall complete emission testing at one engine per 24 hour period, including voided tests.

(3) Light-duty truck manufacturers shall complete emission testing on a minimum of four vehicles per 24 hour period, including voided tests.

(4) The Administrator may approve a longer period of time for conducting emission tests based upon a request by a manufacturer accompanied by a satisfactory justification.

(h) The manufacturer shall perform test engine or vehicle selection, shipping, preparation, service or mileage accumulation, and testing in such a manner as to insure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any engines or vehicles tested during a Production Compliance Audit once a compliance level has been established in accordance with § 86.1112–87 based on the first test on each engine or vehicle. The Administrator may approve retesting at other times based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each engine or vehicle a total of three times. The manufacturer shall test each engine or vehicle the same number of times. The manufacturer may accumulate additional service or mileage before conducting a retest, subject to the provisions of paragraph (c) of this section.

§ 86.1112–87 Determining the compliance level and reporting of test results.

(a) A manufacturer that has elected to conduct a PCA in accordance with § 86.1106–87 may establish the compliance level for a pollutant for any engine or vehicle configuration by using the primary PCA sampling plan or either of two optional reduced PCA sampling plans (the fixed reduced sampling plan or the sequential reduced sampling plan) described below. A manufacturer that uses either of the two optional reduced PCA sampling plans may elect to continue testing and establish a compliance level under the primary PCA sampling plan.

(1) A manufacturer that elects to conduct a PCA for a pollutant using the primary PCA sampling plan shall:

(i) Conduct emission tests on 24 engines or vehicles in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated. If the PCA follows an SEA failure, the number of additional tests conducted shall be the difference between 24 and the number of engines or vehicles tested in the SEA. If 24 or more engines or vehicles were tested in the SEA, no additional tests shall be conducted; and

(ii) Rank the final deteriorated test results, as defined by paragraph (e) of this section, obtained for that pollutant in order from the lowest to the highest value. If the PCA follows an SEA failure, all SEA test results for that pollutant shall be included in this ranking.

(iii) The compliance level for that pollutant is the final deteriorated test result in the sequence determined from Table 1 of Appendix XII of these regulations.

(2) A manufacturer that elects to conduct a PCA for a pollutant using the fixed reduced PCA sampling plan shall:

(i) Select a sample size between 3 and 23 engines or vehicles. If the PCA follows an SEA failure, the sample size selected cannot be less than the number of engines or vehicles tested during the SEA; and

(ii) Conduct emission tests on the selected sample in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated.

(iii) The compliance level for the pollutant is the result of the following equation, using the test results obtained in (a)(2)(ii) and all SEA test results for that pollutant if the PCA follows an SEA failure:

$$CL = \bar{X} + Ks$$

where:

CL = The compliance level.

$\bar{X}$ = The mean of the final deteriorated test results, as defined by paragraph (e) of this section.

K = A value that depends on the size of the test sample. See Table 2 of Appendix XII of this part for the value of K that corresponds to the size of the test sample.

s = The sample standard deviation.

The compliance level is rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(3) A manufacturer that elects to conduct a PCA for a pollutant using the sequential reduced PCA sampling plan shall perform the following:

(i) Select a sample size of 4, 8, 12, 16 or 20 engines or vehicles. If the PCA follows an SEA failure, the sample size selected cannot be less than the number of engines or vehicles tested during the SEA.

(ii) Conduct emission tests on the selected sample in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated.

(iii) The compliance level for the pollutant is the result of the following equation, using the test results obtained in (a)(3)(ii) and all SEA test results for that pollutant if the PCA follows an SEA failure:

$$CL = \bar{X} + Ks$$

where:

CL = The compliance level.

$\bar{X}$ = The mean of the final deteriorated test results, as defined by paragraph (e) of this section.

K = A value that depends on the size of the test sample. See Table 3 of Appendix XII of this part for the value of K that corresponds to the size of the test sample.

s = The sample standard deviation.

The compliance level is rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(iv) After calculating a compliance level in accordance with (a)(3)(iii), a manufacturer may elect to increase the sample size by 4 engines or vehicles, or a multiple thereof, up to the maximum, including SEA engines or vehicles if any, of 20. Upon that election, the manufacturer shall add the additional engines or vehicles to the sample and perform (a)(3)(ii) and (a)(3)(iii). This election may be repeated if appropriate. A compliance level determined under

this election shall replace a previously determined compliance level.

(b) A fail decision is reached with respect to the upper limit when the compliance level determined in paragraph (a) of this section exceeds the applicable upper limit.

(c) Initial test results are calculated following the Federal Test Procedure specified in § 86.1111–87(a).

(d) Final test results are calculated by summing the initial test results derived in paragraph (c) of this section for each test engine or vehicle, dividing by the number of tests conducted on the engine or vehicle, and rounding in accordance with ASTM E29–67 to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(e) Final deteriorated test results. (1) The final deteriorated test results for each heavy-duty engine or light-duty truck tested according to Subparts B, I, N, or P of this part are calculated by applying the final test results by the appropriate deterioration factor, derived from the certification process for the engine family control system combination and model year for the selected configuration to which the test engine or vehicle belongs. If the deterioration factor computed during the certification process is multiplicative and it is less than one, that deterioration factor will be one. If the deterioration factor computed during the certification process is additive and it is less than zero, that deterioration factor will be zero.

(2) The final deteriorated test results are rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(f) A failed engine or vehicle is one whose final deteriorated test results, for one or more of the applicable exhaust pollutants, exceed:

(1) The applicable emission standard, or

(2) The compliance level established in paragraph (b) of this section.

(g) Within five working days after completion of PCA testing of all engines or vehicles, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) The applicable standards against which the engines or vehicles were tested;

(3) Deterioration factors for the engine family to which the selected configuration belongs;

(4) A description of the engine or vehicle and any emission-related component selection method used;

(5) For each test conducted:

(i) Test engine or vehicle description, including:

(A) Configuration and engine family identification,

(B) Year, make and build date,

(C) Engine or vehicle identification number, and

(D) Number of hours of service accumulated on engine or number of miles on vehicle prior to testing;

(ii) Location where service or mileage accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, initial test results before and after rounding, final test results and final deteriorated test results for all emission tests, whether valid or invalid, and the reason for invalidation, if applicable;

(iv) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test engine or vehicle and has not been reported pursuant to any other paragraph of this subpart and will not be performed on all other production engines or vehicles; and

(v) Any other information the Administrator may request relevant to the determination as to whether the new heavy-duty engines or heavy-duty vehicles being manufactured by the manufacturer do in fact conform with the regulations of this subpart; and

(6) The following statement and endorsement:

This report is submitted pursuant to section 206 of the Clean Air Act. This Production Compliance Audit was conducted in complete conformance with all applicable regulations under 40 CFR Part 86 et seq. All data and information reported herein is, to the best of

_____ —'s

(Company Name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

_____

(Authorized Company Representative)

§ 86.1113–87 Calculation and payment of penalty.

(a) The NCP for each engine or vehicle for which a compliance level has been determined under § 86.1112–87 is calculated according to the formula in paragraph (a)(1) or (a)(2) of this section depending on the value of the compliance level. Each formula contains an annual adjustment factor (AAF_i) which is defined in paragraph (a)(3) of this section. Other terms in the formulas are defined in paragraph (a)(4) of this section.

(1) If the compliance level (CL) is greater than the standard and less than or equal to X (e.g., point CL_1 in figure 1), then:

$$NCP_n = (PR_1)(CL - S)\left(\prod_{i=1}^{n} AAF_i\right)$$

where:

$PR_1 = (F)(MC_{oo})$

(2) If the compliance level is greater than X and less than or equal to the upper limit as determined by § 86.1104–87 (e.g., point CL_2 in figure 1), then:

$$NCP_n = (COC_{oo} + (PR_2)(CL - X))\left(\prod_{i=1}^{n} AAF_i\right)$$

where:

$$PR_2 = \frac{COC_{oo} - COC_{oo}}{UL - X}$$

(3) AAF_i has the following values:

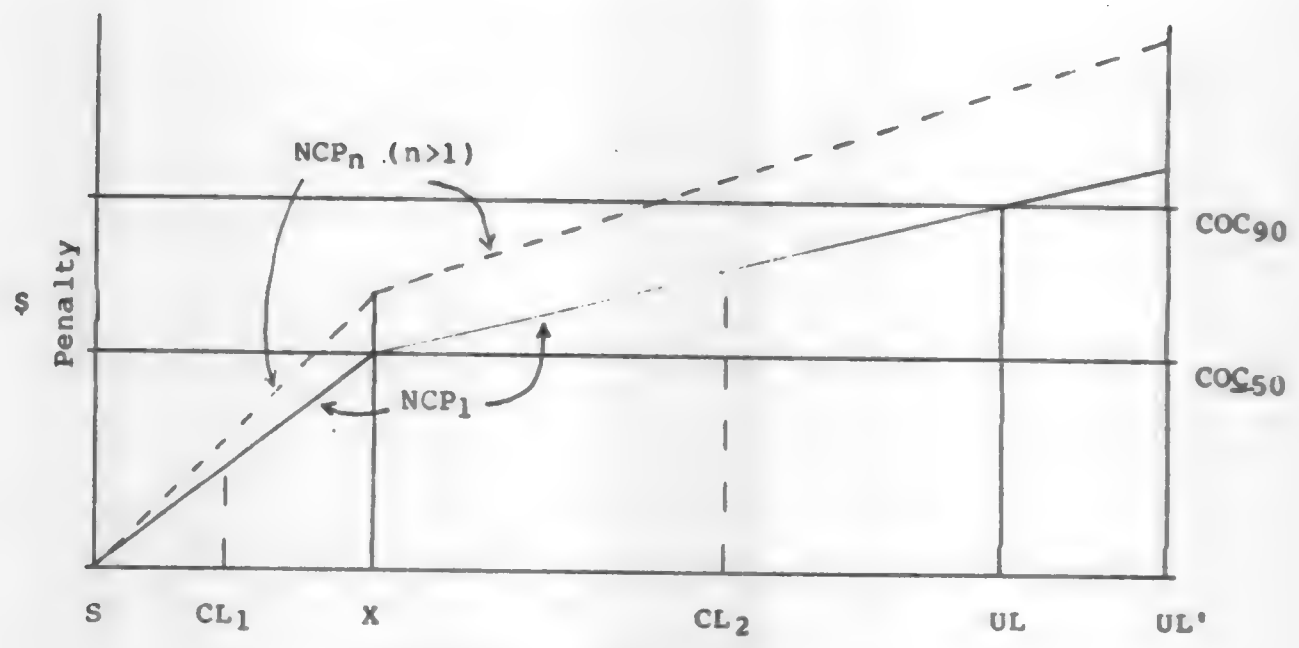
(i) If $frac_{i-1} = 0$, then $AAF_i = 1 + I_{i-1}$

(ii) If $frac_{i-1} > 0$, then:

$$AAF_i = 1 + I_{i-1} + A_i\left[\frac{1}{1 - (frac_{i-1})}\right]^i$$

Figure 1

Penalty vs. Compliance Level



If $frac_{i-1} > 0.50$, then $frac_{i-1}$ will be set equal to 0.50.

(iii) $AAF_1 = 1$

(iv) In calculating the NCP for year n, the value of $frac_{i-1}$ for i=n will include actual NCP usage through March 31 of model year n–1 and EPA's estimate of additional usage for the remainder of model year n–1. The value of $frac_{i-1}$ will be corrected to reflect actual year end usage of NCPs and a corrected AAF_i will be used to establish NCPs in future years. The correction of the previous year's AAF will not affect the previous year's penalty.

(4) The terms in the above formulas have the following meanings and values which may be determined separately for each subclass and pollutant for which an NCP is offered:

NCP_n = NCP for year n for each applicable engine or vehicle

CL = Compliance level for year n for applicable engines or vehicles

S = Emission standard

UL = Upper limit as determined by § 86.1104–87. Except, if the upper limit is determined by § 86.1104–87(c), the value of UL in paragraph (a)(2) of this section shall be the prior emission standard for that pollutant.

UL' = Upper limit as determined by § 86.1104–87(c). This value is not used in the above formulas.

X = Compliance level above the standard at which NCP_1 equals COC_{50}

$$X = \left(\frac{COC_{50}}{(F)(MC_{50})} \right) + S$$

PR_1 = Penalty rate when CL<X

PR_2 = Penalty rate when X<CL< applicable upper limit

$\prod_{i=1}^{n} AAF_i$ = Running product, i.e., $(AAF_1)x(AAF_2)x. .x(AAF_n)$

i = An index representing a year

n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass, i.e., n=1 for the first year that the NCP is available;. . . n=n for the nth year that the NCP is available

COC_{50} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit

COC_{90} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit

MC_{50} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3)

AAF_i = Annual adjustment factor for year i

$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (year i–1)

A_i = Usage adjustment factor in year i: $A_i = 0.10$ for i=2; $A_i = 0.08$ for i> 2

I_i = Percentage increase in overcome consumer price index in year i

(5) The values of COC_{50}, COC_{90}, MC_{50} and F will be determined for each applicable subclass by EPA based on the cost data used by EPA in setting the applicable emission standard. However, where the rulemaking to establish a specific NCP occurs after the rulemaking to establish the standard, EPA may

augment the data base used to establish the standard by including the best cost and emission performance data available to EPA during the specific NCP rulemaking.

(6) Any NCP calculated under paragraph (a) of this section will be rounded to the nearest dollar in accordance with ASTM E29–67.

(b) The NCP determined in paragraph (a) of this section is assessed against all those engines or vehicles of the nonconforming configuration or engine family produced at all assembly plants and distributed into commerce—

(1) Since the beginning of the model year in the case of a certification failure described by § 86.1106–87(a).

(2) Beginning ten days after an SEA failure described by § 86.1106–87 (b) or (c).

(3) Following implementation of a production running change described by § 86.1106–87(d).

(c) The NCP will continue to be assessed during the model year, until such time, if any, that the configuration or engine family is brought into conformance with applicable emission standards.

(d) A manufacturer may carry over an NCP from a model year to the next model year. There is no limit to the number of years that carryover can continue. The amount of the penalty will increase each year according to paragraph (a).

(e) The Administrator shall notify the manufacturer in writing of the nonconformance penalty established under paragraph (a) of this section after the completion of the PCA under § 86.1112–87.

(f) A manufacturer may request a hearing under § 86.1115–87 as to whether the compliance level (including a compliance level in excess of the upper limit) was determined in accordance with the procedures in § 86.1112–87(a) or whether the nonconformance penalty was calculated in accordance with the procedures in § 86.1113–87(a). If a nonconformance penalty has been established, such hearing must be requested within fifteen (15) days or such other period as may be allowed by the Administrator after the notification of the nonconformance penalty. If a manufacturer wishes to challenge a compliance level in excess of the upper limit, he must request a hearing within fifteen (15) days or such other period as may be allowed by the Administrator after the completion of the Production Compliance Audit.

(g)(1) The nonconformance penalty or penalties assessed under this subpart must be paid within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter. Payment must be made to the United States Treasury and delivered to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(2) The manufacturer shall provide the Administrator with the following information along with payment under (g)(1):

(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, certificate identification (number and date), and NCP payment calculations.

(ii) The following statement and endorsement:

This information is submitted pursuant to section 206 of the Clean Air Act. All information reported herein is, to the best of

_____—'s

(Company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

_____

(Authorized Company Representative)

(3) The Administrator may verify the production figures or other documentation submitted under paragraph (g)(2) of this section.

§ 86.1114–87 Suspension and voiding of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine or vehicle failing pursuant to paragraph (f) of § 86.1112–87 effective from the time that a fail decision is made for that engine or vehicle.

(b) Once a certificate has been suspended for a failed engine or vehicle as provided for in paragraph (a) of this section, the manufacturer shall take the following actions:

(1) Before the certificate is reinstated for that failed engine or vehicle,

(i) Remedy the nonconformity, and

(ii) Demonstrate that the engine or vehicle conforms to the applicable standards or compliance levels by retesting the engine or vehicle in accordance with these regulations; and

(2) Submit a written report to the Administrator within five working days after successful completion of testing on the failed engine or vehicle, which contains a description of the remedy and test results for each engine or vehicle in addition to other information that may be required by this regulation.

(c) The Administrator may suspend the certificate of conformity if the manufacturer, after electing to conduct a PCA, fails to adhere to the requirements stated in § 86.1106–87(b)(3), (b)(6)(iii), (c)(2), or (c)(5)(iii).

(d) The Administrator may suspend the qualified certificate of conformity issued under the conditions specified in § 86.1106–87 if the manufacturer fails to adhere to the requirements stated in § 86.1106–87(a)(3), (a)(4)(iii), (d)(2)(iii), or (d)(3).

(e) The Administrator may suspend the certificate of conformity or the qualified certificate of conformity if the compliance level as determined in § 86.1112–87(a) is in excess of the upper limit.

(f) The Administrator may void the certificate of conformity if the compliance level as determined in § 86.1112–87(a) is in excess of the upper limit and the manufacturer fails to recall any engines or vehicles introduced into commerce pursuant to § 86.1106–87(a)(4)(ii), (b)(6)(ii), (c)(5)(ii) or (d)(2)(ii).

(g) The Administrator may void the certificate of conformity for those engines or vehicles for which the manufacturer fails to meet the requirements of § 86.1106–87(a)(4)(i), (b)(6)(i), (c)(5)(i), or (d)(2)(i).

(h) The Administrator shall notify the manufacturer in writing of any suspension or voiding of a certificate of conformity in whole or in part, except as provided for in paragraph (a) of this section.

(i) A certificate of conformity suspended or voided under paragaphs (c), (d), (e), (f) or (g) of this section may be reinstated after a written request by the manufacturer and under such terms and conditions as the Administrator may require and after the manufacturer demonstrates compliance with applicable requirements.

(j) After the Administrator suspends or voids a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend or void a certificate of conformity under § 86.087–30(e), and prior to the commencement of a hearing, if any, under § 86.1115–87, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

§ 86.1115–87 Hearing procedures for nonconformance determinations and penalties.

(a) *Applicability.* The procedures prescribed by this section shall apply whenever a manufacturer requests a hearing pursuant to § 86.087–30(e)(6)(i), § 86.087–30(e)(7), or § 86.1113–87(f).

(b) *Definitions.* The following definitions shall be applicable to this section:

(1) "Hearing Clerk" shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) "Manufacturer" means a manufacturer contesting a compliance level or penalty determination sent to the manufacturer.

(3) "Party" means the Agency and the manufacturer.

(4) "Presiding Officer" shall mean an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR Part 930 as amended).

(5) "Judicial Officer" shall mean an officer or employee of the Agency appointed as a Judicial Officer by the Administrator pursuant to this section who shall meet the qualifications and perform functions as follows:

(i) *Officer.* There may be designated for purposes of this section one or more Judicial Officers. As work requires, there may be a Judicial Officer designated to act for the purposes of a particular case.

(ii) *Qualifications.* A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. Such Judicial Officer shall not be employed by the Office of Air and Radiation or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart.

(iii) *Functions.* The Administrator may consult with a Judicial Officer or delegate all or part of his authority to act in a given case under this section to a Judicial Officer, *provided* that this delegation shall not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) *Request for public hearing.* (1) A manufacturer may request a hearing pursuant to § 86.1113–87(f) if it disagrees with the Administrator's determination of compliance level or penalty calculation or both, or pursuant to §§ 86.085–30(e)(6)(i) or 86.085–30(e)(7) if it disagrees with the Administrator's proposed suspension or voiding of a certificate of conformity. Requests for such a hearing shall be filed no later than 15 days:

(i) After receipt of the Administrator's notification of NCP, if the compliance level is in the allowable range of non-conformity, or

(ii) After completion of the Production Compliance Audit, if the compliance level exceeds the upper limit, or

(iii) After receipt of the Administrator's notification of a proposed suspension or voiding of a certificate of conformity if the hearing is requested pursuant to §§ 86.085–30(e)(6)(i) or 86.085–30(e)(7), unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Manufacturers Operations Division and file two copies with the Hearing Clerk. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his discretion and for good cause shown, grant the manufacturer a hearing to contest the compliance level or penalty calculation.

(2) The request for a public hearing shall contain:

(i) A statement as to which vehicle or engine subclasses or configurations are to be the subject of the hearing;

(ii) A concise statement of the issues to be raised by the manufacturer at the hearing for each vehicle or engine subclass or configuration for which the manufacturer has requested the hearing. Provided, however, that in the case of a hearing requested under § 86.1113–87(f), the hearing shall be restricted to the following issues:

(A) Whether the compliance level was determined in accordance with the procedures in § 86.1112–87(a); or

(B) Whether the penalty was calculated in accordance with the procedures in § 86.1113–87(a).

(iii) A statement specifying reasons why the manufacturer believes it will prevail on the merits on each of the issues so raised; and

(iv) A summary of the evidence which supports the manufacturer's position on each of the issues so raised.

(3) A copy of all requests for public hearings shall be kept on file in the Office of the Hearing Clerk and shall be made available to the public during Agency business hours.

(d) *Summary decision.* (1) In the case of a hearing requested under § 86.1113–87(f) when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issues specified in § 86.1115–87(c)(2)(ii), the Administrator will enter an order denying the request for a hearing, and reaffirming the original compliance level determination or penalty calculation.

(2) Any order issued under paragraph (d)(1) of this section shall have the force and effect of a final decision of the Administrator, as issued pursuant to paragraph (v)(4) of this section.

(3) If the Administrator determines that a genuine and substantial question of fact does exist with respect to any of the issues referred to in paragraph (d)(1) of this section, he shall grant the request for a hearing and publish a notice of public hearing in accordance with paragraph (h) of this section.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section shall be filed with the Hearing Clerk. Filing shall be deemed timely if mailed, as determined by the postmark to the Hearing Clerk within the time allowed by this section. If filing is to be accomplished by mailing, the documents shall be sent to the address set forth in the notice of public hearing as described in paragraph (h) of this section.

(2) To the maximum extent possible, testimony shall be presented in written form. Copies of written testimony shall be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service shall be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Manufacturers Operations Division shall be sent by registered mail to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency (EN–340F), 401 M Street, S.W., Washington, D.C. 20460. Service by registered mail is complete upon mailing.

(f) *Time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included in computing any such period allowed for the filing of any document or paper, except that when such a period expires on a Saturday, Sunday, or Federal legal holiday, such period shall be extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, three days shall be added to the prescribed period.

(g)(1) *Consolidation.* The Administrator of the Presiding Officer in his discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(2) If a vehicle or engine is determined to be in nonconformity during certification testing under Subpart A of this part, then the manufacturer may wait to challenge the determination until after production compliance auditing and calculation of his penalty and may consolidate challenges to the determination of nonconformity and the compliance level determination or the penalty calculation, without losing any rights he would otherwise have had.

(3) If a vehicle or engine is determined to be in nonconformity during selective enforcement auditing under Subpart K of this part, then the manufacturer must wait to challenge the determination until after the compliance level determination and the penalty calculation, and must consolidate challenges to the determination of nonconformity and the compliance level determination or the calculation of the penalty.

(h) *Notice of public hearings.* (1) Notice of public hearing under this section shall be given by publication in the **Federal Register** and by such other means as the Administrator finds appropriate to provide notice to the public. To the extent possible, hearings under this section shall be scheduled to commence within 30 days of receipt of the application in paragraph (c) of this section.

(i) *Amicus curiae.* Persons not parties to the proceeding wishing to file briefs may do so by leave of the Presiding Officer granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable.

(j) *Presiding Officer.* The Presiding Officer shall have the duty to conduct a fair and impartial hearing in accordance with 5 U.S.C. §§ 554, 556 and 557 and to take all necessary action to avoid delay in the disposition of the proceedings and to maintain order. He shall have all power consistent with Agency rules and with the Administrative Procedure Act necessary to this end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and exclude irrelevant or repetitious material;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all procedural and other motions appropriate in such proceedings;

(6) To require the submission of direct testimony in written form with or without affidavit whenever, in the opinion of the Presiding Officer, oral testimony is not necessary for full and true disclosure of the facts;

(7) To enforce agreements and orders requiring access as authorized by law;

(8) To require the filing of briefs on any matter on which he is required to rule;

(9) To require any party or any witness, during the course of the hearing, to state his position on any issue;

(10) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(11) To make decisions or recommend decisions to resolve the disputed issues on the record of the hearing;

(12) To issue, upon good cause shown, protective orders as described in paragraph (n) of this section.

(k) *Conferences.* (1) At the discretion of the Presiding Officer, conferences may be held prior to or during any hearing. The Presiding Officer shall direct the Hearing Clerk to notify all parties of the time and location of such conference. At the discretion of the Presiding Officer, persons other than parties may attend. At a conference the Presiding Officer may:

(i) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party;

(ii) Set a hearing schedule for as many of the following as are deemed necessary by the Presiding Officer:

(A) Oral and written statements;

(B) Submission of written direct testimony as required or authorized by the Presiding Officer;

(C) Oral direct and cross-examination of a witness where necessary as prescribed in paragraph (p) of this section; and

(D) Oral argument, if appropriate.

(iii) Identify matters of which official notice may be taken;

(iv) Consider limitation of the number of expert and other witnesses;

(v) Consider the procedure to be followed at the hearing; and

(vi) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(2) The results of any conference including all stipulations shall, if not transcribed, be summarized in writing by the Presiding Officer and made part of the record.

(l) *Primary discovery (exchange of witness lists and documents).* (1) At a prehearing conference or within some reasonable time set by the Presiding Officer prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(2) The Presiding Officer, may upon motion by a party or other person, and for good cause shown, by order

(i) Restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness, and

(ii) Prescribe other appropriate measures to protect a witness. Any party affected by any such action shall have an adequate opportunity, once he learns the name of a witness and obtains the narrative summary of this expected testimony, to prepare for the presentation of this case.

(m) *Other discovery.* (1) Except as provided by paragraph (m)(1) of this section, further discovery under this paragraph shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not obtainable voluntarily; and

(iii) That such information has significant probative value. The Presiding Officer shall be guided by the procedures set forth in the Federal Rules of Civil Procedure, where practicable, and the precedents thereunder, except that no discovery shall be undertaken except upon order of the Presiding Officer or upon agreement of the parties.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is a substantial reason to believe that relevant and probative

evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order of discovery shall make a motion or motions therefor. Such a motion shall set forth:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(4) Failure to comply with an order issued pursuant to this paragraph may lead to the inference that the information to be discovered would be adverse to the person or party from whom the information was sought.

(n) *Protective orders, in camera proceedings.* (1) Upon motion by a party or by the person from whom discovery is sought, and upon a showing by the movant that the disclosure of the information to be discovered, or a particular part thereof (other than emission data), would result in methods or processes entitled to protection as trade secrets of the person being divulged, the Presiding Officer may enter a protective order with respect to such material. Any protective order shall contain such terms governing the treatment of the information as may be appropriate under the circumstances to prevent disclosure outside the hearing, *provided* that the order shall state that the material shall be filed separately from other evidence and exhibits in the hearing, Disclosure shall be limited to parties to the hearing, their counsel and relevant technical consultants, and authorized representatives of the United States concerned with carrying out the Act. Except in the case of the government, disclosure may be limited to counsel for parties who shall not disclose such information to the parties themselves. Except in the case of the government, disclosure to a party or his counsel shall be conditioned on execution of a sworn statement that no disclosure of the information will be made to persons not entitled to receive it under the terms of the protective order. (No such provision is necessary where government employees are concerned because disclosure by them is subject to the terms of 18 U.S.C. 1905.)

(2)(i) A party or person seeking a protective order may be permitted to make all or part of the required showing in camera. A record shall be made of such in camera proceedings. If the Presiding Officer enters a protective order following a showing in camera, the record of such showing shall be sealed and preserved and made available to the Agency or court in the event of appeal.

(ii) Attendance at any in camera proceeding may be limited to the Presiding Officer, representatives of the Agency, and the person or party seeking the protective order.

(3) Any party, subject to the terms and conditions of any protective order issued pursuant to paragraph (n)(1) of this section, that desires to make use of any in camera documents or testimony in the presentation of his case shall apply to the Presiding Officer by motion for permission to do so, and shall state the justification for the motion. The Presiding Officer, in granting any such motion, shall enter an order protecting the rights of the affected persons and parties as far as is practicable, and preventing unnecessary disclosure of such information and testimony concerning such information.

(4) In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony. This shall not preclude references in such proposed findings, briefs, or other papers marked "confidential," which shall become part of the in camera record.

(o) *Motions.* (1) All motions, except those made orally during the course of the hearing, shall be in writing and shall state with particularity the grounds therefore, shall set forth the relief or order sought, and shall be filed with the Hearing Clerk and served upon all parties.

(2) Within such time as may be fixed by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The motion shall, if requested by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, serve and file reply papers, within the time set by the request.

(3) The Presiding Officer shall rule upon all motions filed or made prior to the filing of his decision or accelerated decision, as appropriate. The Administrator of the judicial officer, as appropriate, shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer, the Administrator or the judicial officer, as appropriate, deems it necessary.

(p) *Evidence.* (1) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. Immaterial or irrelevent parts of an admissible document shall be segregated and excluded so far as practicable. Documents or parts thereof subject to a protective order under paragraph (n) of this section shall be segregated. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The Presiding Officer shall allow the parties to examine and cross-examine a witness to the extent that such examination and cross-examination is necessary for a full and true disclosure of the facts.

(3) Rulings of the Presiding Officer on the admissibility of evidence, the propriety of examination and cross-examination and other procedural matters shall appear in the record.

(4) Parties shall automatically be presumed to have taken exception to an adverse ruling.

(q) *Record.* (1) Hearings shall be stenographically reported and transcribed and the original transcripts shall be part of the record. Copies of the records shall be filed with the Hearing Clerk and made available during Agency business hours for public inspection. Any person who wants a copy of the record of the hearing or any part thereof, except as provided in paragraph (n) of this section, shall be entitled to the same upon payment of the cost thereof.

(2) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record.

(r) *Proposed findings, conclusions.* (1) Within 30 days of the close of the reception of evidence, or within such longer time as may be fixed by the Presiding Officer, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and a proposed order, together with reasons therefore and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

(2) The record shall show the Presiding Officer's ruling on the proposed findings and conclusions except when his order disposing of the

proceeding otherwise informs the parties of the action taken by him.

(s) *Decision of the Presiding Officer.* (1) Unless extended by the Administrator, the Presiding Officer shall issue and file with the Hearing Clerk his decision within 30 days after the period for filing proposed findings has expired, as provided for in paragraph (r) of this section.

(2) The Presiding Officer's decision shall become the decision of the Administrator (i) 10 days after issuance thereof, if no notice of intention to appeal as described in paragraph (t) of this section is filed, unless in the interim the Administrator shall have taken action to review or stay the effective date of the decision; or (ii) 5 days after expiration of the period allowed by paragraph (t)(1) of this section for perfection of an appeal, if a notice of intention to appeal is filed but the appeal is not perfected, unless within that 5 day period the Administrator shall have taken action to review or stay the effective date of the decision;

(3) The Presiding Officer's decision shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact or law presented on the record and an appropriate rule or order. Such decision shall be supported by substantial evidence and based upon a consideration of the whole record.

(4) At any time prior to the issuance of his decision, the Presiding Officer may reopen the proceeding for the reception of further evidence. Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the issuance of his decision.

(t) *Appeal from the decision of the Presiding Officer.* (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Administrator, *provided* that within 10 days after issuance of the Presiding Officer's decision such party files a notice of intention to appeal and an appeal brief within 20 days of such decision.

(2) When an appeal is taken from the decision of the Presiding Officer, any party may file a brief with respect to such appeal. The brief shall be filed within the same time limits as the appellant's brief.

(3) Any brief filed pursuant to this paragraph shall contain in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(ii) A specification of the issues intended to be appealed;

(iii) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and legal or other material relied upon; and

(iv) A proposed order for the Administrator's consideration if different from the order contained in the Presiding Officer's decision.

(4) No brief in excess of 15 pages shall be filed without leave of the Administrator.

(5) Oral argument will be allowed only in the discretion of the Administrator.

(u) *Review of the Presiding Officer's decision in absence of appeal.* (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (t) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Administrator.

(2) The Administrator, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to paragraph (t)(1) of this section, may, on his own motion, within 14 days after notice from the Hearing Clerk, review the decision of the Presiding Officer. Notice of the intention of the Administrator to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provisions for filing of briefs.

(v) *Decision of appeal or review.* (1) Upon appeal from or review of the Presiding Officer's decision, the Administrator shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and in addition shall, to the extent necessary or desirable, exercise all the powers which he could have exercised if he had presided at the hearing.

(2) In rendering his decision, the Administrator shall adopt, modify or set aside the findings, conclusions, and order contained in the decision of the Presiding Officer and shall set forth in his decision a statement of the reasons or bases for this action.

(3) In those cases where the Administrator believes that he should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Administrator, in his discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(4) Any decision rendered under this paragraph which completed disposition of a case shall be a final decision of the Administrator.

(w) *Reconsideration.* Any party may file with the Administrator a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. This petition must be filed within 20 days of the issuance of the Administrator's decision, and must be confined to new questions raised by the decision or final order and which the petitioner had no opportunity to argue before the Presiding Officer or the Administrator, unless otherwise specified by the Administrator. Subsequent to the expiration of the period for petitioning for reconsideration, the Administrator may, in his descretion and for good cause shown, grant the manufacturer a hearing to contest the compliance level or the penalty calculation, even though such issues may have been raised in the previous proceeding. Any party desiring to oppose such a petition, shall file an answer thereto within 10 days after the filing of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting such decision or order unless specifically so ordered by the Administrator.

(x) *Accelerated decision, dismissal.* (1) The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the manufacturer as to all or any part of the proceeding, without further hearing or upon such limited additional evidence such as affidavits as he may require, or dismiss any party with prejudice, for any of the following reasons:

(i) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(ii) The lack of any genuine issue of material fact, causing a party to be entitled to judgment as a matter of law; or

(iii) Such other and further reasons as are just, including specifically, failure to obey a procedural order of the Presiding Officer.

(2) If under this paragraph an accelerated decision is issued as to all the issues and claims joined in the proceeding, the decision shall be treated for the purposes of these procedures as the decision of the Presiding Officer, as provided in paragraph (s) of this section.

(3) If under this paragraph, judgment is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material

facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

(y) *Conclusion of hearing.* (1) If, after the expiration of the period for taking an appeal as provided by paragraph (t) of this section, no appeal has been taken from the Presiding Officer's decision, and after the expiration of the period for review by the Administrator on his own motion as provided for by paragraph (u) of this section, the Administrator does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraph (t) of this section, or if, in the absence of such appeal the Administrator moves to review the decision of the Presiding Officer pursuant to paragraph (u) of this section, the hearing will be deemed to have ended upon issuance of a final decision by the Administrator.

(z) *Judicial review.* (1) The Administrator hereby designates the General Counsel, Environmental Protection Agency, as the officer upon whom copies of any petition for judicial review shall be served. Such officer shall be responsible for filing in the court the record on which the order of the Administrator is based.

11. The table of contents of Part 86 is amended by adding the following appendix:

* * * * *

Appendix XII—Tables for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks.

12. Part 86 is amended by adding Appendix XII as follows:

Appendix XII—Tables for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

TABLE I.—COMPLIANCE LEVEL DETERMINATION USING THE PRIMARY PCA SAMPLING PLAN

PCA test sample size.[1]	Compliance level [2]
24	15
25	15
26	16
27	17
28	17
29	18
30	18
31	19
32	20
33	20
34	21
35	21
36	22
37	23
38	23
39	24
40	24
41	25
42	26
43	26
44	27
45	27
46	28
47	29
48	29
49	30
50	30
51	31
52	32
53	32
54	33
55	33
56	34
57	35
58	35
59	36
60	36

[1] Including the number of SEA tests if applicable.
[2] Is the test result of the sequence number: (The lowest test result is sequence No. 1).

TABLE 2.—VALUES OF K FOR THE REDUCED FIXED PCA SAMPLING PLAN

Sample size:	Value of K
3	[illegible]
4	1.114
5	[illegible]
6	0.764
7	0.674
8	0.606
9	0.553
10	0.513
11	0.478
12	0.448
13	0.422
14	0.399
15	0.379
16	0.360
17	0.345
18	0.329
19	0.314
20	0.301
21	0.289
22	0.277
23	0.266

TABLE 3.—VALUES OF K FOR THE REDUCED SEQUENTIAL PCA SAMPLING PLAN

Sample size:	Value of K
4	1.671
8	0.812
12	0.672
16	0.546
20	0.491

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-2871-4]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing that nonconformance penalties (NCPs) be made available for specific emission standards taking effect in model years 1987 and 1988. The availability of NCPs would allow a manufacturer of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs) whose engines or vehicles fail to conform with certain applicable emission standards, but which do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. An "upper limit" is an emission level, established by regulation and appropriate to a specific pollutant, above which an HDE or HDV could not be issued a certificate.

This notice proposes specific emission standards for which NCPs would be made available, as well as specific upper limits and penalty rates for those emission standards. It follows the generic NCP rule, published elsewhere in today's **Federal Register**, which established the criteria for the availability of NCPs, the method of establishing upper limits, a testing program called Production Compliance Auditing (PCA), a penalty formula to determine the dollar amount of the NCP, and other general aspects of an NCP rule. This notice also proposes a few general aspects of an NCP rule which were not fully addressed in the generic rule.

Regulations affected by this rulemaking are codified in Subpart L of 40 CFR Part 86.

DATES: *Public Hearing:* EPA will hold a public hearing on this notice on September 19, 1985 beginning at 9:00 a.m., provided that it is requested. Any person desiring to request the hearing must notify the Agency by September 9, 1985. If the hearing is not requested, it will be cancelled by a separate notice in the **Federal Register**. Requests for or questions about the hearing should be directed to the EPA contact person listed below. To the extent possible, any person desiring to participate in the hearing should, prior to the hearing, notify the EPA contact person of his or her intention and submit an outline of the points to be discussed and the time needed to discuss these points. Pursuant to section 307 of the Clean Air Act, the record of the hearing, if held, will be kept open for 30 days following its conclusion to provide an opportunity for submission of rebuttal and other information.

Public Comment: All comments should be received on or before September 30, 1985 or within 30 days following the conclusion of the public hearing, if held, whichever is later. If the hearing is not requested, it will be cancelled by a separate notice in the **Federal Register**.

ADDRESSES: The hearing will take place in the conference room at the EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105.

Send written comments to: Public Docket EN-85-02, Central Docket Section [A-130], Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460. If possible, a copy of the written comments should be submitted to the EPA contact person listed below.

Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-85-02 at the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby/Gallery 1, 401 M Street, SW., Washington, D.C. 20460, and are available for review between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Montgomery or Mr. Claude Magnuson, Manufacturers Operations Division [EN-340F], Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, telephone (202) 382-2487 or (202) 382-2547.

SUPPLEMENTARY INFORMATION

A. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for heavy-duty vehicles or engines which exceed a section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking. In placing section 206(g) in the Clean Air Act amendments of 1977, Congress intended NCPs as a response to perceived problems with technology-forcing heavy-duty emissions standards.* Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers (technological laggards) might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem; the laggards would have a temporary alternative to permit them to sell their engines or vehicles through payment of a penalty, yet leaders would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based, in part, on the amount of money the laggard and his customer saved from the nonconforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for heavy-duty vehicles (HDVs) and heavy-duty engines (HDEs), which are engines to be installed in heavy-duty vehicles. HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). They include the part of the light-duty truck (LDT) class between 6,001 and 8,500 pounds GVWR—the heavy light-duty trucks. The penalty may vary by pollutant and by class or category of vehicle or engine.

Section 206(g)(3) requires NCPs to be designed so as to:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove and competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. This emission level, the "compliance level," becomes the benchmark for warranty and recall liability; the manufacturer who elects the NCP may be responsible for warranty or recall liability if its vehicle or engine exceeds the compliance level in-use. It would not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

However, if the emission level of a vehicle or engine exceeds the upper

* The existence of NCPs, however, will not change the criteria under which the standards have been and will be set under section 202.

limit of nonconformity, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer.

B. Background

This notice of proposed rulemaking (NPRM) follows the recently completed generic phase (Phase I) of the NCP rulemaking published elsewhere in this issue. During the generic phase, EPA published regulations concerning when NCPs will be made available for emissions standards, how upper limits will be chosen, the general formula for calculating the penalties, and procedures for testing the degree of emissions nonconformity.

This proposal begins the second phase (Phase II) of the NCP rulemaking. EPA has applied the Phase I concepts and is proposing particular emissions standards for which NCPs will be available, the upper limits for those standards, and numerical values for the variables in the penalty rate formula for particular subclasses of engines. EPA is also proposing a few general aspects of an NCP rule which were not fully addressed in Phase I.

The U.S. District Court for the District of Columbia in *Natural Resources Defense Council* v. *Ruckelshaus*, No. 84–758 (D.D.C. Sept. 14, 1984), ordered EPA to publish the proposed rule for Phase II by August 31, 1985. Under the same court order, EPA must publish the final rule for Phase II by December 31, 1985.

C. Eligibility for Nonconformance Penalties

1. Review of NCP Eligibility Criteria

The Phase I NCP rulemaking established three "generic" criteria for determining the emission standards for which NCPs will be offered.

First, the emission standard in question must become significantly more difficult to meet. This criterion may be met when either the standard itself becomes more stringent or compliance with it is made more difficult because another standard has become more stringent. In the latter case, an NCP for either standard may be appropriate.

Second, substantial work must be required for compliance with the standard. "Substantial work" is defined as the application of technology not previously used in that vehicle/engine class or subclass or the significant modification of existing technology or design parameters needed to bring the vehicle or engine into compliance. Obviously, substantial effort would not be required if many manufacturers' vehicles/engines were already meeting the revised standard or could do so with relatively minor calibration changes or modifications.

Finally, EPA must determine that a technological laggard is likely to develop. A technological laggard is a manufacturer who cannot meet the particular emission standard due to technological (not economic) difficulties and who consequently might be forced out of the marketplace. EPA's determination will be based on an evaluation of the two criteria discussed above. However, even when these criteria are met, EPA may find that no technological laggard is likely. For example, a standard may become significantly more stringent and substantial effort might be required for compliance, but if that significant effort involves transfer of technology already well-developed for other vehicle classes, a technological laggard probably would not develop.

2. Review of Emission Standards for NCP Eligibility

This section of the preamble reviews the new and revised 1987 and 1988 heavy light-duty truck (HLDT) and heavy-duty engine (HDE) emission standards and indicates which of them EPA believes should be eligible for NCPs. Eligibility for NCPs is determined by evaluating the requirements of each new or revised standard against the criteria discussed above.

Seven new or revised standards effective in 1987 and 1988 are potentially eligible for NCPs. These are:

—1987 diesel HLDT (HLDDT) particulate standard: 0.26 grams per mile (g/mi)
—1987 gasoline-fueled light HDE (LHDGE) HC standard: 1.1 grams per brake horsepower-hour (g/BHP-hr)
—1987 LHDGE CO standard: 14.4 g/BHP-hr
—1988 HLDT NO_x standard: 1.7 g/mi
—1988 gasoline-fueled HDE (HDGE) NO_x standard: 6.0 g/BHP-hr
—1988 diesel HDE (HDDE) NO_x standard: 6.0 g/BHP-hr
—1988 HDDE Particulate standard: 0.60 g/BHP-hr

Eligibility for NCPs for longer term (1989 and later) standards will be determined in subsequent rulemaking(s).

a. 1987 HLDDT Particulate Standard

Tightening of the diesel HLDT (HLDDT) particulate standard from 0.60 g/mi to 0.26 g/mi results in a standard that is significantly more difficult to meet. EPA's technological feasibility analysis indicates that most manufacturers will have to use trap oxidizers on a significant percentage of their production vehicles (even assuming use of the averaging provisions of the new regulations) to comply with this standard. Use of trap oxidizers represents the application of new technology to HLDDTs and thus a technological laggard may exist. Although trap oxidizers have seen limited usage on one manufacturer's production vehicles designed to meet the 1985 California diesel light-duty vehicle particulate standard (0.4 g/mile), trap oxidizers have yet to be employed on any LDDTs and particularly on the heavier, potentially higher-emitting HLDDTs that are the subject of this rulemaking. Given the significant decrease in the 1987 HLDDT particulate standard and the likelihood that a new technology will be needed for HLDDTs to meet the standard, EPA believes it is appropriate to offer an NCP for the 1987 HLDDT particulate emission standard.

b. 1987 LHDGE HC/CO Standard

The more stringent standards for gasoline-fueled HDEs (HDGEs) in 1987 apply only to engines intended for use in vehicles rated between 8,501–14,000 lbs. GVWR, the light HDGEs (LHDGEs). Engines for the heavier weight class (above 14,000 lbs. GVWR) will continue to comply with the 1985 HC and CO standards of 1.9 and 37.1 g/BHP-hr, respectively, while LHDGE's will have to comply with lower HC and CO emission standards of 1.1 and 14.4 g/BHP-hr, respectively. The 1.1/14.4 g/BHP-hr HC/CO standards represent the 90 percent reduction from uncontrolled levels required by the Act and are considerably more difficult to meet than the 1985 standards. While one or two LHDGE families may be able to meet the 1987 standards in their present configurations, EPA expects that most if not all LHDGE families will add oxidation catalysts to meet the standards. Although this involves transfer of technology developed for LDVs and LDTs, it represents the first application of such technology to LHDGEs certified under transient operating conditions.**

While some LHDGEs may be able to directly apply LDT catalyst technology, EPA expects that there may be LHDGEs requiring unique catalyst designs. For example, manufacturers have expressed concern that the heavier vehicle weight,

** For several model years, one manufacturer has used a catalyst to meet the California HDE HC standard, but this was to be met in the steady state test instead of in the more demanding transient test cycle.

greater frontal area and more extreme overall operating conditions of some HDGEs may lead to catalyst durability problems due to potentially higher exhaust system temperatures.

Given that the 1987 LHDGE HC and CO standards represent significant reductions over 1985 levels and that the primary control technique (oxidation catalysts) has essentially not been used previously on LHDGEs, EPA believes a technological laggard may develop and proposes that NCPs be made available for the 1987 LHDGE HC and CO emission standards.

c. 1988 HLDT NO_x Standard

Reduction in the HLDT NO_x emission standard from the current 2.3 g/mi to 1.7 g/mi represents an approximately 25 percent increase in stringency.

However, EPA does not believe at this time that a technological laggard is likely to develop. In the Regulatory Impact Analysis (RIA) supporting the 1988 NO_x standard, EPA found that all current manufacturers of gasoline-fueled HLDTs (HLDGTs) are in compliance with a 1985 California NO_x standard that is slightly more stringent than the 1988 federal standard. California allows certification to a NO_x standard of 1.0 g/mi over 50,000 miles or 1.5 g/mi over 100,000 miles. These California HLDGTs use 3-way closed loop catalyst technology to achieve California NO_x certification levels below 1.0 g/mi over 50,000 miles. Given the California experience, no technological laggards among HLDGTs are likely.

The problem of compliance for diesel-fueled HLDTs (HLDDTs) is somewhat complicated by a stringent particulate standard. There is currently one HLDDT manufacturer affected, and this manufacturer's California versions have been certified for 1985 at NO_x levels of 1.3—1.7 g/mi using electronically controlled EGR systems, with particulate levels of 0.32 g/mi for both configurations tested. Application of trap oxidizers to achieve compliance with the particulate standard of 0.26 g/mi may indirectly affect NO_x controls, but probably not to an extent that compliance with the NO_x standard will be jeopardized.

EPA tentatively concludes that no technological laggards will likely develop in meeting the 1988 HLDT NO_x standard. Therefore, EPA proposes not to offer NCP's for the 1988 HLDT NO_x standard.

d. 1988 HDGE NO_x Standard

Although the NO_x standard for gasoline-fueled HDs (HDGEs) drops from the current level of 10.6 g/BHP-hr to 6.0 g/BHP-hr, the actual reductions required are substantially less. The highest 1985 NO_x certification level on HDGEs is about 8.5 g/BHP-hr and the mean is about 7.0 g/BHP-hr. EPA expects that manufacturers will utilize EGR and timing calibration changes and possibly some other engine modifications, rather than new technology, for compliance. In the RIA supporting the standard, EPA estimated that only about one-third of current models would require engine modifications, the remainder being able to achieve compliance through calibration changes.

Under the generic NCP rules, calibration changes do not qualify as "substantial work". On the other hand, engine modifications may require substantial effort on the part of some manufacturers. However, EPA does not now believe that any technological laggards are likely. Thus, EPA proposes not to offer NCPs for the 1988 HDGE NO_x standard.

e. 1988 HDDE Particulate Standard

Prior to the 1988 model year, diesel HDEs (HDDEs) have not been required to comply with a particulate standard. Thus, with the exception of the diesel smoke standards, HDDE particulate has essentially been uncontrolled. Taken alone, the fact that this is a new standard for HDDEs would not be adequate reason to make NCPs available. However, there are several other factors which must be considered.

First, coupled with the new standard is a new test procedure requiring the acquisition of several new equipment items and the development of expertise in running the procedure. Second, there are a large variety of engine designs in use with a variety of control techniques to be evaluated. In some cases these control techniques represent new technology for HDDEs. Given this variety of engine designs and the control techniques to consider, there is a possibility that in the near term a manufacturer may choose and develop an unsuccessful control strategy. These control technology considerations are exacerbated by the fact that a number of manufacturers have little particulate control experience. Finally, the control techniques used to meet the 1988 HDDE NO_x standard are likely to put upward pressure on particulate levels and make compliance with the particulate standard somewhat more difficult.

Given these considerations, EPA cannot at this time preclude the development of a technological laggard and therefore proposes that an NCP be made available for the 1988 HDDE particulate standard of 0.60 g/BHP-hr.

f. 1988 HDDE NO_x Standard

For the 1988 model year, the NO_x standard for HDDEs drops from 10.7 g/BHP-hr to 6.0 g/BHP-hr. For 1985, HDDE NO_x levels ranged from around 6.0 g/BHP-hr to 10.1 g/BHP-hr for federal families, with an average of about 8 g/BHP-hr. Thus, the reductions required range from 0 to 41 percent with an average of 20 percent. While these reductions are relatively large on a percentage basis, EPA does not expect new control technology will be needed to achieve these reductions. Indeed, 1985 California certification information indicates that many HDDE models can meet the 1988 Federal NO_x standard. However, in the past these models have not had to meet NO_x and particulate standards simultaneously. Some particulate control strategies may have an adverse effect on current NO_x levels, thus making compliance with the 1988 HDDE NO_x standard more difficult. Some NO_x control strategies may also adversely affect fuel consumption.

While EPA believes that most manufacturers will be able to meet both the NO_x and particulate standards in 1988, concerns about fuel consumption and the potential difficulties in meeting the particulate standard described above may lead to the development of a technological laggard for NO_x. Consequently, EPA proposes that an NCP be made available for the 1988 HDDE NO_x standard.

3. Interaction With Other Standards

As discussed above, emission control strategies sometimes exhibit various "tradeoffs", i.e., those strategies that decrease emissions of one pollutant may increase emissions of another pollutant. For example, modifications that reduce NO_x emissions may increase HC emissions in gasoline engines or HC and particulate emissions in diesel engines. This section reviews the 1987 and 1988 HLDT and HDE emission standards discussed above in terms of whether the trade-off effects of complying with them are significant enough to warrant offering NCPs for other standards.

a. 1987 HLDDT Particulate Standard

On some engine models, modifications used to reduce particulate emissions may increase HC or NO_x emissions. However, EPA expects that the primary means of achieving compliance with the particulate standard will be trap-oxidizers. After-treatment devices such as these should not significantly affect engine-out HC or NO_x emissions. Consequently, no major adverse effects due to emission trade-off effects appear likely, and EPA proposes not to offer

NCPs for the HC or NO_x emission standards in 1987 or for the 1988 HLDDT NO_x standard.

b. 1987 LHDGE HC/CO Standards

A possible interaction could occur because some control techniques used to meet more stringent HC/CO standards could result in an increase in NO_x emissions. EPA believes that this possibility is unlikely, however, because the primary means of achieving compliance with the more stringent HC/CO standards will be oxidation catalysts, which are after treatment devices. As such, they should have no significant negative effects on NO_x emissions. Thus, EPA does not now believe that the more stringent 1987 HC/CO emission standards will cause any NO_x compliance problems, and therefore proposes not to offer an NCP for the 1987 HDGE NO_x standard.

c. 1988 HLDT NO_x Standard

For the 1988 HLDT NO_x standard, the possible interactions are with HC emissions from HLDGTS and with HC and particulate emissions (discussed previously) from HLDDTs. Again, however, EPA believes that HLDT manufacturers will elect to utilize after-treatment devices and trade-off effects will thus not be significant.

HLDGT manufacturers are expected to use 3-way closed loop (3WCL) control systems, which control HC, CO and NO_x emissions, while HLDDT manufacturers are expected to use trap-oxidizers for particulate control. In the case of HLDGTs, the 3WCL systems reduce emission levels of all three major pollutants, so controlling NO_x should not increase HC levels. Therefore, EPA does not forsee any interaction problems for HLDGTs.

For HLDDTs, EPA does not anticipate that the trade-off effects of controlling NO_x will raise HC emissions significantly. In fact, some trap-oxidizer designs which will be used to meet the 1988 particulate standard will also reduce HC emissions slightly. The primary current HLDDT family, which is certified for sale in California at NO_x levels at or below the 1988 standard, exhibits HC certification levels of 0.21–0.22 g/mi, while the Federal HC standard is 0.80 g/mi. For these reasons, EPA does not expect any problems due to interaction of the standards for HLDDTs. Therefore, EPA proposes not to offer NCPs for 1988 HLDT HC emission standard.

d. 1988 LHDGE NO_x Standard

Although a more stringent 1988 LHDGE NO_x standard could theoretically make it more difficult for manufacturers to meet the 1987 and later model year LHDGE HC standard, EPA does not believe such problems will actually occur. Since after-treatment devices (oxidation catalysts) are expected to be the control technology used to meet the 1987 HC/CO standards, manufacturers will then have the flexibility to calibrate their engines for lower NO_x emissions. The RIA supporting the NO_x standard estimated that combining EGR with a small amount of timing retard would enable manufacturers to make the reductions in NO_x emissions required. Such modifications should not increase HC emissions beyond the control capabilities of typical oxidation catalysts. HC certification levels for 1987 LHDGEs equipped with catalysts are expected to be below the standard. EPA therefore expects no interaction problems for LHDEs due to the more stringent 1988 NO_x standards, and proposes not to offer NCPs for the LHDGE HC emission standard in 1988.

e. 1988 HHDGE NO_x Standard

Even though the 1988 HDGE HC standard does not change over 1985 levels for HHDGEs, it may be more difficult to meet in 1988 as a result of the increased stringency of the 1988 NO_x standard. While some of the NO_x control techniques for HDGEs outlined in the HDGE NO_x RIA may put upward pressure on HC emission levels, the RIA mentions several other modification and calibration changes which manufacturers can take to eliminate any such impact. This is demonstrated by the 1985 HDGE certification information for those engine families expected to be certified as HHDGEs. In two cases, these engines demonstrate both NO_x and HC levels below the 1988 standards, attributable to minor modifications and calibration changes. EPA believes that the remaining HHDGE families will be able to meet the 1988 NO_x standard without large effects on HC emissions levels by using similar minor modifications and calibrations, and therefore proposes not to make NCPs available for the 1988 HHDGE HC standard.

f. 1988 HDDE NO_x and Particulate Standards

In addition to the interaction between NO_x and particulate emissions which forms much of the basis for the NCPs that are proposed for the 1988 NO_x and particulate emission standards, there is also the possibility that reducing NO_x and particulate emissions will affect HC emission levels. However, EPA believes that compliance with the 1988 NO_x and particulate standards is likely to have little effect on HDDE HC levels. While some NO_x control strategies tend to increase HC emissions levels, particulate control techniques tend to decrease HC emissions. EPA also received no technically supportable comments in the NO_x/particulate standard rulemaking to indicate that compliance with the those standards would significantly increase HC emissions of HDDEs. Moreover, 1985 certification data indicate that many of the California versions of current engines are capable of meeting both the HC and NO_x standards. EPA does not believe that any significant problems will develop due to emission trade-off effects. Therefore, EPA proposes not to offer NCPs for the HDDE HC standard.

D. Upper Limits for NCPs

1. Introduction

An upper limit is an emission level above which heavy-duty vehicles or engines cannot be certified or introduced into commerce. As described in the NCP Phase I final rulemaking, upper limits are determined in two ways. (1) In most instances the previously applicable emission standard serves as the upper limit, e.g., for the 6.0 g/BHP-hr 1988 HDE NO_x standard, the previous standard of 10.7 g/BHP-hr serves as the upper limit. (2) In cases where there is no previous standard, EPA proposes the upper limit. The statutory provision governing upper limits (section 206(g)(2) of the Act as amended in 1977) provides that the upper limit shall be established as a percentage above the emission standard that corresponds to an emission level that is determined by EPA to be "practicable". Thus, the upper limit is to be set at an emission level above the emission standard which EPA believes is reasonably achievable and thus "practicable". Using these guidelines, EPA is proposing two alternative upper limits for the NCPs offered for the 0.60 g/BHP-hr 1988 model year HDDE particulate standard.

2. Proposed Upper Limit

EPA has considered two alternative approaches to setting a "practicable" upper limit for the HDDE particulate standard NCP and is proposing both for comment. The first approach is to establish a level that would achieve some reduction from uncontrolled emission levels, without making it unreasonably difficult for even a technological laggard to achieve the requisite levels. The second approach is simply to set a level equivalent to that from the highest-emitting current engine.

based on particulate emissions data currently available to EPA. Such an upper limit would be unlikely to force any possible technological laggard from the marketplace. In either case, one must consider current particulate emission levels of HDDEs, the relative degree of difficulty of achieving reductions, and the trade-off effects of NO_x/particulate controls at the 1988 emission standard levels in order to determine the practicable level for the upper limit. These considerations are discussed below.

a. HDDE Particulate Emission Rates

In order to characterize uncontrolled HDDE particulate emission rates at current NO_x emissions levels, EPA gathered data on 28 federal engine families from confidential submissions supplied by the five major domestic HDDE manufacturers. Although the sample was somewhat limited, constituting only about 40 percent of the 1985 HDDE families, these families represent over 80 percent of projected 1985 HDDE sales.

Figure 1 presents a distribution of the particulate emission rates for these families. Specific emission levels, manufacturer identification, or subclass-specific data have not been presented in order to avoid compromising the confidentiality of the data. The mean/median particulate emission level for these 28 families is approximately 0.5 g/BHP-hr at an average NO_x emission level of 7.5 g/BHP-hr. The worst case family particulate level was 0.82 g/BHP-hr at a NO_x level of 5.9 g/BHP-hr. It is very important to note that these emissions data are from relatively new engines and the levels do not reflect the effects of deterioration and other factors. Thus, the emission levels represent low mileage rates which are comparable to achievable target levels, rather than to possible certification levels.

b. Proposals for the Upper Limit

Based on a review of the data presented in Figure 1, EPA proposes an upper limit emission level for each of the alternative approaches outlined above. Under the first approach, an upper limit of 0.80 g/BHP-hr represents a level that would achieve some reduction in particulate emissions without making compliance unduly difficult for the technological laggard. Given variability effects of about ten percent and a full-life deterioration factor of 0.05 g/BHP-hr as described in the regulatory impact analysis (RIA) supporting the final rule for the 1988 particulate standard, achieving this upper limit would require target levels of 0.65–070 g/BHP-hr. This would necessitate reductions of 0.2 g/BHP-hr or less from approximately 18 percent of the sample engines. Under the second approach, an upper limit of 0.95 g/BHP-hr would allow the current worst-case engine, with a low mileage emission level of 0.82 to achieve compliance with the upper limit.

In determining a practicable upper limit, the trade-off effect of the lower 1988 NO_x standard must also be considered. As stated above, the mean NO_x level for the sample was 7.5 g/BHP-hr, also representing low mileage emission levels. Thus, on average, NO_x reductions of 2 to 2.5 g/BHP-hr would be needed to meet the target level for the 6.0 g/BHP-hr 1988 HDDE NO_x standard. While EPA expects that most manufacturers will be able to overcome the potentially adverse effects of the NO_x-particulate trade-off using the control approaches described in the RIA, this may be more difficult for the technological laggard and should be considered in the selection of the upper limit. The 0.95 g/BHP-hr limit would ensure that the effect of the NO_x-particulate trade-off would not force any engine family from the marketplace, however, there would be essentially no reduction in particulate emissions from current uncontrolled levels for those families certifying at the upper limit.

While neither of these proposed upper limits may appear to be overly stringent, it should be noted that as a percentage of the standard, they are much less generous than the comparable upper limits for NO_x and other standards eligible for NCPs. For example, the 0.80 gram upper limit for HDDE particulate exceeds the new standard by 33 percent, while the 0.95 gram upper limit exceeds the standard by 58 percent. By way of contrast, the HDDE NO_x upper limit exceeds the new standard by 78 percent.

In terms of applicability, EPA proposes that either of these upper limits would apply to all HDDEs, regardless of subclass. Separate upper limits for the three HDDE subclasses were considered, but sufficient particulate emissions data are presently not available for LHDDEs and MHDDEs to allow establishment of separate upper limits for the three subclasses. Moreover, the data that are available indicate that the higher emitting engines in each of the three subclasses have similar particulate levels. Thus, these limited data indicate that separate upper limits may not be necessary. For these reasons, it is proposed that only one upper limit be applicable for all HDDEs, unless additional emissions data become available which indicate that the HDDE subclasses should have separate upper limits.

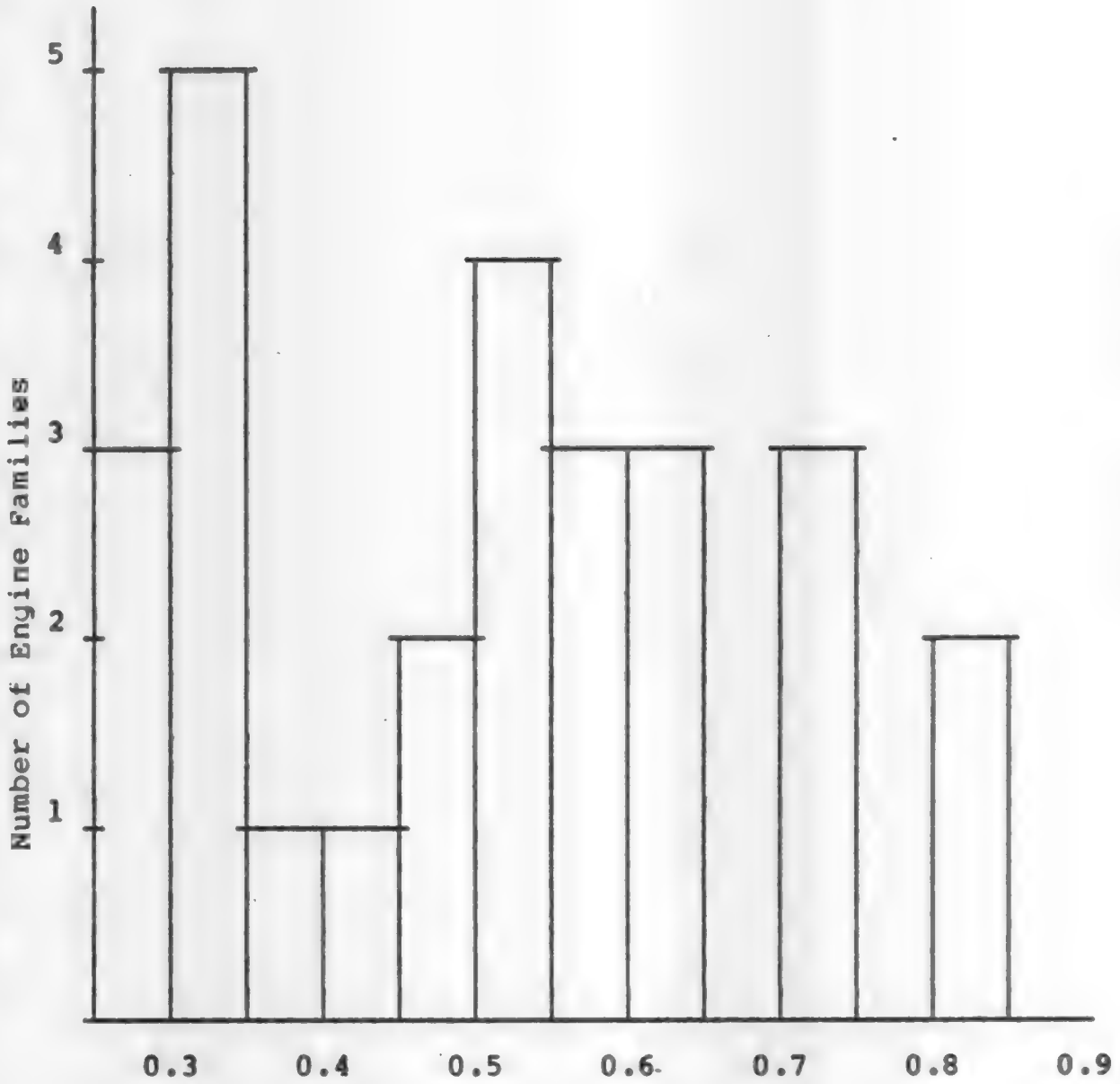
In conclusion, EPA invites comment on the particulate upper limit issue from manufacturers and other concerned parties. The Agency requests comments as to which of these approaches represents the better alternative and on the appropriateness of the levels proposed.

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Number of Engine Famil

Figure 1

HDDE Particulate Emission Data



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E. Penalty Rates

1. General Approach

For those standards for which EPA is proposing that NCPs be made available (the NCP standards), EPA is proposing values for the following parameters in the NCP formula for each standard: COC_{80}, COC_{90}, MC_{90}, and F. The NCP formula was promulgated in the Phase I final rule published elsewhere in this issue.

COC_{80} is an estimate of the industry-wide average incremental per engine or per vehicle cost associated with meeting the NCP standard for engines and vehicles in the NCP category. COC_{80} generally measures the difference between the cost of complying with the NCP standard and the cost of complying with the upper emissions limit for the NCP standard. In the case of the HDDE particulate standard, for which there is no prior emission standard, COC_{80} measures the difference between the cost of complying with the NCP standard and the cost of complying with uncontrolled HDDE particulate emission levels. COC_{80} is the sum of the manufacturer costs and owner costs associated with complying with the NCP standard.

The manufacturer cost component of COC_{80} represents the average per engine or per vehicle cost to manufacturers of engines complying with the NCP standard. It is derived from cost estimates prepared for analyses used in setting the NCP standard. When the cost estimates in the analyses are provided as retail price equivalents (RPEs), those costs have been reduced to eliminate manufacturer profit and dealer overhead and profit. Based on the formulas normally used by EPA in estimating RPEs, this adjustment is accomplished by dividing the RPE by 1.16 for LDDTs and by 1.10 for HDGEs and HDDEs.

Certification costs are not included in COC_{80}. Manufacturers will often incur certification costs even when NCPs are used, for instance when payment of NCPs is elected after a Selective Enforcement Audit (SEA) failure. In some cases they may carry over a prior year's certification results, thus delaying or avoiding certification procedures during the period the NCP is used. However, manufacturers using NCPs will incur the additional cost of PCA testing, which may be comparable to certification costs.

Owner costs include additional expenses for maintenance, parts replacement, and fuel that will be incurred throughout the useful life of the vehicle. These costs are also derived from analyses prepared in support of the NCP standard setting process and, as in the analyses, are discounted to the year of purchase using a 10 percent discount rate.

COC_{90} is an estimate of the 90th percentile incremental per engine or per vehicle cost associated with meeting the NCP standard within an NCP category. Thus, COC_{90} should be selected so that compliance costs exceed COC_{90} for only 10 percent of engines or vehicles in the NCP category. COC_{90}, like COC_{80}, includes both manufacturer and owner costs. These cost components are defined similarly to those for COC_{80} except that they are 90th percentile costs rather than average costs.

EPA has not been able to identify 90th percentile compliance costs with much precision. Most cost estimates developed in the standard setting process are averages or expected ranges of cost. The cost estimation process is not sufficiently detailed or precise to support development of the desired statistical distribution of costs. Thus, except where more detailed analysis was feasible, the high ends of the expected cost ranges have been used as the basis for COC_{90}. Due to the uncertainty involved in developing the COC_{90} values, EPA is requesting comments on whether it should limit the value of COC_{90} such that it does not exceed the value of COC_{80} by more than a factor of 1.3. A factor of 1.3 was selected because it is the same factor that is used to estimate COC_{90} from COC_{80}. EPA requests comments on whether 1.3 is an appropriate value. EPA is proposing both the estimated values of COC_{90} and those values limited such that they do not exceed COC_{80} by more than a factor of 1.3.

MC_{90} is the industry-wide average marginal cost of compliance with the NCP standard for engines and vehicles in the NP category. MC_{90} is measured in dollars per gram per brake horsepower hour for heavy-duty engines and vehicles and in dollars per gram per mile for light-duty trucks. MC_{90} measures the economic trade-off between emissions reduction and cost as certified emission levels are reduced from target levels needed to meet this upper emission limit associated with the NCP standard to target levels needed to meet the NCP standard itself. As with COC_{80} and COC_{90}, MC_{90} has both a manufacturer and an owner cost component.

Most cost analyses performed during the standard-setting process do not estimate the marginal cost of compliance. Doing so would require much more detailed knowledge of the emission control alternatives and costs facing manufacturers and the resulting impacts on the cost of ownership than is typically available. Marginal cost estimates have thus been obtained indirectly, from one of two sources. Current emission levels can be compared to emission levels under the new standard COC_{80} can be divided by the emission reduction required to determine the cost per unit (g/BHP-hr or g/mi.) of achieving compliance. In other cases, costs of ownership are expected to rise due to fuel economy reductions that sometimes accompany lower emission levels, and the marginal cost (rate of change) of fuel economy as a function of the emissions level can be estimated in the vicinity of the NCP standard.

F is a factor used to estimate MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines and vehicles in the NCP category. In the NCP formula, MC_{90} is the penalty rate for compliance levels near the standard. As defined in the NCP formula, $MC_{90} = F \times MC_{80}$. The Phase I final rule stated that the value of F would be in the range of 1.1 to 1.3. In cases where no reasonable estimate of MC_{90} can be made based on existing marginal cost data, EPA proposes a presumptive value of 1.2 for F.

The NCP Phase I final rule stated that the Consumer Price Index (CPI) would be used to adjust NCPs for inflation for the second and subsequent years that NCPs for the same standard are available. EPA proposes to use the CPI also to adjust the penalty parameters developed in this rule to dollars as of January of the calendar year preceding the model year in which the NCP is first available. The values of COC_{80}, COC_{90} and MC_{90} for each of the NCPs proposed in this NPRM have been calculated in December 1984 dollars. Thus, for example, the parameters in the formula for an NCP that is first available for the 1988 model year will be inflated values of the parameters developed below. The parameters will be inflated from December 1984 to January 1987 dollars using the CPI, and the resulting figures will be used to calculate NCPs in 1988.

2. Cost Assumptions

The following assumptions were made in order to account for emissions averaging and/or joint costs in the control of two or more pollutants.

The values of COC_{80}, COC_{90} and MC_{90} are estimated as if all engines or vehicles in the NCP category are required to meet the NCP standard, whether or not emissions averaging is allowed. Thus, no specific allowance is made for emissions averaging in this proposal.

The term "joint costs" is used to described the costs attributable to a

single control device or technique which simultaneously reduces emissions of two or more pollutants.

It also describes the cost of controlling one pollutant when the cost depends on the degree of control of another pollutant. Where joint cost issues arise in the calculation of the parameters for the NCP formula, the general approach has been to calculate the cost of compliance with the NCP standard on the assumption that all pollutants for which NCPs are not available are controlled to their respective standards. Where NCPs are available for two pollutants, the cost of compliance for each pollutant is based on the assumption that manufacturers intend to comply with each of the two NCP standards.

3. Parameter Values

The derivation of each of the proposed cost parameters is described in detail in a support document entitled "Development of Nonconformance Penalty Rates", which is available in the public docket for this rulemaking. The values of COC_{90} listed below are those estimated by EPA and they have not been limited to a percentage of COC_{60}.

a. Light-Duty Diesel Trucks

EPA proposes that the following values (in 1984 dollars) be used in the NCP formula for the 1987 0.26 gram per mile particulate standard for heavy light-duty diesel truck configurations in the 6,000 to 8,500 pound GVW range.

COC_{60} = $368
COC_{90} = $541
MC_{90} = $3200 per gram/mile
F = 1.2

b. Heavy-Duty Diesel Engines

The cost of meeting the 1988 HDDE NO_x and particulate standards varies significantly among engine families in the heavy-duty diesel engines class, and NCPs have therefore been set separately for the three HDDE subclasses: light HDDEs (LHDDEs), medium HDDEs (MHDDEs), and heavy HDDEs (HHDDEs).

NO_x

EPA proposes that the following values (in 1984 dollars) be used in the NCP formula for the 1988 6.0 g/BHP-hr HDDE NO_x standard for the three HDDE subclasses:

	LHDDE	MHDDE	HHDDE
COC_{60}	$18	$1,175	$1,340
COC_{90}	$41	$1,540	$1,980
MC_{90}	$40/g/BHP-hr	$870/g/BHP-hr	$1,750/g/BHP-hr
F	1.2	1.2	1.2

Particulate Standard

EPA proposes that the following values (1984 dollars) be used in the NCP formula for the 1988 0.60 g/BPH-hr HDDE particulate standard for the three HDDE subclasses:

	LHDDE	MHDDE	HHDDE
COC_{60}	$71	$84	[illegible]
COC_{90}	$83	$97	$101
MC_{90}	$340/g/BHP-hr	$382/g/BHP-hr	$725/g/BHP-hr
F	1.2	1.2	1.2

c. Heavy-Duty Gasoline Engines

EPA proposes that the following values (1984 dollars) be used in the NCP formulas for the 1987 LHDGE HC and CO emission standards of 1.1 g/BPH-hr and 14.4 g/BHP-hr, respectively.

	HC	CO
COC_{60}	$75	[illegible]
COC_{90}	$159	189
MC_{90}	$139/g/BHP-hr	9/g/BHP-hr
F	1.2	1.2

4. Alternative COC_{90} Values

The following values of COC_{90} were estimated using the same procedure as above but have been limited such that they do not exceed COC_{60} by more than a factor of 1.3. EPA requests comments on whether it should use these values or those estimated above.

	COC_{90}		COC_{90}		COC_{90}
1987 LDDT particulate	$478	1988 LHDDE Nox	$23	1988 LHDDE particulate	[illegible]
1987 HDGE HC	$98	1988 MHDDE NOx	$1,528	1988 MHDDE particulate	$97
1987 HDGE CO	$117	1988 HHDDE NOx	$1,742	1988 HHDDE particulate	$101

F. Penalty Calculation Example

Following is an example of how a penalty amount would be calculated for engines exceeding a standard based on a compliance level determined in a PCA. The Phase I regulations promulgated the method for determining the compliance level and a generic penalty formula to calculate the penalty. This Phase II NPRM proposes specific values for the cost parameters in the penalty formula so that a specific dollar penalty can be calculated.

The generic penalty formula promulgated in Phase I is expressed in two different forms, depending on the relationship of the value of the compliance level to the value of X for that pollutant. X is the emission level at which the penalty is equal to COC_{80}. In this example, which is set in the 1988 model year, the compliance level for a configuration of MHDDEs which is in nonconformance with the NOx standard is 7.5 g/BHP-hr. The proposed values of COC_{80}, MC_{80} and F, which are expressed in December 1984 dollars, would have to be adjusted by the consumer price index (CPI) to reflect August 1987 dollars. For the purpose of this example, the CPI is assumed to increase by 13 percent between December 1984 and January 1987. Therefore, the proposed values of COC_{80}, MC_{80} and F would be increased by 13 percent.

From Phase I, the value of X is calculated as follows:

$$X = \frac{COC_{80}}{F \times MC_{80}} + \text{the applicable emission standard}$$

Substituting the (adjusted) proposed values of COC_{80}, MC_{80} and F, the MHDDE NOx emission standard into the above equation results in the following:

$$X = \frac{\$1{,}328}{1.2 \times \$983/\text{g/BHP-hr}} + 6.0\ \text{g/BHP-hr} = 7.1\ \text{g/BHP-hr}$$

Since the compliance level (7.5 g/BHP-hr) is greater than the value of X (7.1 g/BHP-hr), the following NCP formula from Phase I is used to calculate the penalty:

$$NCP_n = (COC_{80} + (PR_2)(CL - X)) \left(\prod_{i=1}^{n} AAF_i \right)$$

where:

$$PR_2 = \frac{COC_{s0} - COC_{-s0}}{UL - X}$$

AAF_i has the following values:

If $frac_{i-1} = 0$, then $AAF_i = 1 + I_{i-1}$
If $frac_{i-1} > 0$, then:

$$AAF_i = 1 + I_{i-1} + A_i \left[\frac{1}{1 - (frac_{i-1})}\right]$$

If $frac_{i-1} > 0.50$, then $frac_{i-1}$ would be set equal to 0.50.
In the first year, $AAF_i = 1$.

The terms in the above formula have the following meanings and values:

NCP_n = NCP for year n for each engine or vehicle
CL = Compliance level for year n for applicable engines or vehicles
S = Emission Standard
UL = Upper Limit
PR_2 = Penalty rate for $X < CL \leq UL$

X = Compliance level above the standard at which NCP_1 equals COC_{s0}

$$X = \left(\frac{COC_{s0}}{(F)\,(MC_{s0})}\right) + S$$

AAF_i = Annual adjustment factor in year i

$\prod_{i=1}^{n} AAF_i$ = Running Product, i.e., $(AAF_1) \times (AAF_2) \times \ldots \times (AAF_n)$

i = index representing a year

n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass, i.e., n=1 for the first year that the NCP is available; . . . n=n for the nth year that the NCP is available

COC_{s0} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit

COC_{s0} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit

MC_{s0} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3)

$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (i-1)

A_i = Usage adjustment factor in year i: $A_i = 0.10$ for $i = 2$; $A_i = 0.06$ for $i > 2$

I_i = Percentage increase in overall consumer price index in year i

Since this is the first year that the NCP is available, the value of AAF_i is 1. Substituting this and the adjusted values of the other parameters in the NCP formula results in the following:

$$NCP_1 = \$1328 + \frac{\$1,740 = \$1,328}{10.7\ g/BHP\text{-}hr = 7.1\ g/BHP\text{-}hr} \times (7.5\ g/BHP\text{-}hr - 7.1\ g/BHP\text{-}hr) \times (1)$$
$$= \$1.374$$

The NCP for each engine introduced into commerce in the 1988 model year would be $1,374. If this manufacturer decided to carry-over this configuration to the next model year, the penalty of $1,374 would be multiplied by the AAF which incorporates inflation and the fraction of the industry that used an NCP for the MHDDE subclass for NOx in the first year. If we assume that the CPI increased by 6 percent between January 1987 and January 1988 and that the fraction of MHDDEs using an NCP for NOx in the 1988 model year was 25 percent, the value of AAF_2 would be calculated as follows:

$$AAF_2 = (1 + 0.06) + 0.06 \left(\frac{1}{1 \times 0.25}\right)^2$$
$$= 1.20$$

The NCP for each engine introduced into commerce in the 1989 model year (NCP_2) would be calculated as follows:

$NCP_2 = NCP_1 \times AAF_2$
$= \$1,374 \times 1.20$
$= \$1,649$

G. General NCP Provisions

This action also proposes a few general NCP provisions that were not fully addressed in the Phase I rulemaking. EPA is proposing that a manufacturer be required to place a lable on each engine/vehicle (or make an addition to the existing label) for which an NCP is paid. The manufacturer would be required to begin labeling production engines/vehicles within 10 days after completion of the PCA. The label would contain the applicable compliance level for that engine/vehicle at the time of its introduction into commerce. This would allow EPA to easily associate every individual engine/vehicle with its proper compliance level, even if the compliance level is changed part way through the model year. If a manufacturer introduces engines/vehicles into commerce prior to the compliance level determination for

that configuration, the manufacturer would be required to provide a label to each engine/vehicle owner (to be affixed to that engine/vehicle) containing the applicable compliance level. The manufacturer would be required to provide owners with the label within 30 days after completion of the PCA.

In the Phase I final rule, EPA stated that it had requested a ruling from the Internal Revenue Service (IRS) on whether NCPs would be a tax deductible business operating expense. EPA has not received a decision from the IRS; however, the penalty rates that EPA has proposed are based on the assumption that the NCP would be a tax deductible business operating expense. If the IRS decides otherwise, EPA will adjust the penalty rates to compensate for the non-deductibility of the NCP.

In the Phase I final rule, EPA stated that it had received comments on the relationship between NCPs and the emissions averaging program and that although the issue was a generic one, it was outside the scope of the Phase I rulemaking. Similiarly, for Phase II, EPA is proposing that manufacturers not be allowed to elect both NCPs and emissions averaging for use on the same engines/vehicles for the same pollutant. EPA is proposing that these two programs not be combined because of the short time frame available to proceed with these regulations and the added complexity associated with applying NCPs to engines/vehicles which are in nonconformance with an averaging engine family emission limit. The NCP penalty rates have been developed to account for nonconformance with the emission standard, not with an averaging engine family emission limit, which may be above or below the emission standard. Thus, as structured, the difference between the emission standard and the averaging engine family emission limit would cause the penalty rates developed in this rulemaking to be invalid. EPA plans to consider more specifically the technical and legal difficulties associated with incorporating NCPs into an averaging program in Phase III of the NCP rulemaking process.

EPA is also proposing to amend the administrative hearing procedures published in § 86.1115–87 during Phase I. Under the proposal, if a manufacturer elects an administrative hearing to contest an NCP assessment, EPA would collect interest on the challenged NCPs from the date the payments are originally due until the Presiding Officer or the Administrator delivers the Agency's final decision in the hearing. The NPRM for Phase I proposed requiring a manufacturer to place NCP amounts in escrow as a condition of obtaining a hearing, but EPA now believes that collecting interest on the final NCP amount is preferable.

The purpose of this provision is to recapture the economic benefit that a manufacturer gains by withholding NCP payments during an administrative hearing. This interest provision is supported by section 206(g)(3)(E) of the Clean Air Act, which requires that NCPs "shall remove *any* competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction . . ." (emphasis added). It is further supported by legislative history which makes clear Congress' fundamental concern that NCPs not help technological laggards at the expense of technological leaders. H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 275–76 (1977); Conference Report, H.R. Rep. No. 95–564, 95th Cong., 1st Sess. 163–64 (1977); 50 F.R. 9204, 9204 (March 6, 1985). A technological leader will suffer a competitive disadvantage if a laggard manufacturer has the use of his NCP payments for the duration of an administrative hearing. This provision removes the competitive disadvantage by imposing interest on the withheld NCP payments at rates representing a return on a secure, short-term investment. The purpose of this provision, like the purpose of the NCP concept itself, is not to penalize nonconforming manufacturers, but rather to *remove* a competitive penalty from conforming manufacturers.

Since manufacturers must make NCP payments each quarter, based on that quarter's production of nonconforming vehicles or engines, interest will be calculated on each quarterly payment from the date it is due until the date the Presiding Officer or the Administrator renders the Agency's final decision. (In case of conflict, the cut-off date for interest calculation is the date on which the Agency delivers its final opinion, not when the hearing is deemed final for purposes of § 86.1115–87(y).) The interest rate for any particular quarterly payment will be the discount rate at auction (as quoted by the Secretary of the Treasury) for the last auction of six-month United States Treasury bills settled immediately prior to the payment due date for that quarterly payment. This rate can be ascertained by calling the United States Department of the Treasury, Bureau of the Public Debt, at (202) 287–4113. For each quarterly payment outstanding on the date the Agency renders its final decision, the combined principal plus interest will be calculated according to the following formula:

$$QNCP(1+R)^{2n}$$

where:

QNCP = the quarterly NCP payment
R = the interest rate applicable to that quarter
n = the number of quarters for which the quarterly NCP payment is outstanding

A manufacturer who pursues an administrative hearing must still make quarterly submittals of the information required by § 86.1113–87(g)(3).

In the Phase I final rule, EPA stated that it would propose in this Phase II NPRM a proposal that would allow a manufacturer that pays an NCP to be refunded a portion of the NCP if that manufacturer subsequently certifies the nonconforming configuration in conformance with the applicable standards, thereby demonstrating that engineering and development costs were expended. EPA is proposing this because engineering and development costs are included in the NCP and EPA believes that a manufacturer that demonstrates that it has indeed expended these costs should be entitled to a monetary refund. In addition to certifying the nonconforming configuration in conformance with applicable standards, EPA would require the manufacturer to conduct a PCA of the new configuration. If the resulting compliance level is below the applicable standards, the manufacturer would be eligible for the refund.

In the Phase I final rule, EPA established a formula which determines the dollar amount of the NCP. As stated above, the NCP includes engineering and development costs. The final rule states that the NCP payment will be payable to the United States Treasury and the payment will be sent to the EPA's Manufacturers Operations Division. EPA is now proposing that the penalty calculated from the formula be divided into two components; the engineering and development component and the remaining component. The engineering and development portion of the NCP payment would be payable to EPA and the remaining portion of the NCP payment would be payable to the United States Treasury. Both payments would be sent to EPA's Manufacturers Operations Division. EPA would place the engineering and development amount into an escrow account so that it could potentially be refunded to the manufacturer.

To calculate the engineering and development portion of the NCP, the following factors would be multiplied by

the penalty calculated from the NCP formula: (These factors represent the percentage of the engineering and development costs in relationship to COC_{80}.)

1987 LDDT particulate: 0.11
1987 HDGE HC: 0.07
1987 HDGE CO: 0.06
1988 LHDDE NOx: 0.36
1988 MHDDE NOx: 0.02
1988 HHDDE NOx: 0.02
1988 LHDDE particulate: 0.64
1988 MHDDE particulate: 0.62
1988 HHDDE particulate: 0.60

For example, in section F of the preamble an example was given in which the penalty for a MHDDE in nonconformance with the NOx standard as calculated to be $1374 per engine in the 1988 model year. That penalty amount would be multiplied by the above factor of 0.02, resulting in an engineering and development component of $27 per engine.

EPA is not proposing that the entire engineering and development component of the NCP potentially be refunded. Since a manufacturer that is eligible for such a refund expended the engineering and development costs at a later date, EPA believes that it is appropriate to subtract from the entire component an amount which reflects the manufacturer's financial benefit of delaying these costs. EPA proposes that 10 percent compounded annually be subtracted from the engineering and development component refund. EPA also proposes that an additional portion of this component not be refunded to reflect the manufacturer's benefit of focusing its engineering and development efforts on the results already achieved by conforming manufacturers. EPA proposes that 20 percent annually be subtracted from the engineering and development component to relect this benefit, but requests comments on whether it is appropriate to do so, and if so whether 20 percent per year is an appropriate amount.

If both the time value of money and the value for the focusing of engineering and development efforts are subtracted from the engineering and development component, the following percentages of that component would not be refunded:

Model year	1	2	3	4
Time value of money (%)	10	21	[illegible]	40
Focusing of efforts (%)	20	[illegible]	[illegible]	[illegible]
Not refunding (%)	31	[illegible]	[illegible]	100

After the third model year, the manufacturer would no longer be eligible for a refund of engineering and development costs.

If only the time value of money is subtracted from the engineering and development component, the following percentages of that component would not be refunded:

Model year	1	2	3	4	5	6	7	8
Not refunded (%)	10	21	33	[illegible]	[illegible]	77	[illegible]	100

After the seventh model year, the manufacturer would no longer be eligible for a refund of engineering and development costs.

EPA would transfer funds to the United States Treasury when the manufacturer became ineligible for a refund of those funds.

H. Administrative Designation

Under Executive Order 12291, the Administrator has determined that this proposed regulation is not "major" and therefore not subject to the requirement that a Regulatory Impact Analysis be prepared. This determination is based on the following:

(1) The proposed NCP program will not result in an annual adverse effect on the economy of $100 million or more. NCPs merely provide an economically reasonable alternative to other possible actions, at least as costly as NCPs, that may be utilized when a manufacturer is unable to comply with a standard. This concept is more fully discussed in the Economic Impact section.

(2) The NCP program will not result in adverse cost or price impacts (above those that would otherwise occur from compliance with the emission standards themselves).

(3) The NCP program provides manufacturers with relief from the current prohibition against selling nonconforming HDEs or HDVs. Presently, a manufacturer experiencing difficulty in certifying or producing HDEs or HDVs in conformance with emission standards has only two alternatives: fix the nonconforming configuration or prevent its introduction into commerce. In some cases, a fix may not be readily available, and a manufacturer may have to prevent the HDE or HDV's introduction into commerce. NCPs provide relief from these disruptions. In addition, NCPs are calculated to deprive nonconforming manufacturers of any cost savings and competitive advantage stemming from nonconformance. Therefore, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by Executive Order 12291, this Notice of Proposed Rulemaking has been reviewed by the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any written OMB comments and EPA's response to those comments are available for inspection in the public docket for this rulemaking.

I. Economic Impact

Because the use of NCPs is optional, manufacturers have flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emission standards. If no HDE or HDV manufacturer elects to use NCPs, these manufacturers and the users of their products will not incur any additional costs related to NCPs.

The existence of an NCP program may provide some direct cost savings to HDE or HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer which has difficulty certifying HDEs or HDVs in conformance with emission standards or which fails an SEA has only two alternatives: fix the nonconforming engines or vehicles, perhaps at prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and introduce into commerce upon payment of a penalty a unit that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only way to continue to introduce HDEs or HDVs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

J. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA cannot be sure to what extent NCPs will be used.

If no manufacturer elects to use NCPs, all HDEs and HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the rulemakings establishing the emission regulations will not be affected.

If some manufacturers do elect to participate in the NCP program, some HDEs and/or HDVs will be introduced into commerce that will be emitting pollutants above applicable standards (as Congress contemplated when it mandated that EPA provide NCPs). The magnitude of this reduced environmental benefit is proportional to the number of HDEs and HDVs subject to NCPs and their degree of nonconformance. (Of course, the upper limits exclude gross emitters from being introduced into commerce.) EPA estimates that an NCP will not be used for more than ten percent of the HDE's and HDV's for which NCPs are provided in the first year that they are available and that they will be used for less than one percent in the third year. The long term environmental impact from NCP usage is expected to be relatively very small, if any, due to the relatively high penalty rates and the annual adjustment factor that rapidly increases those penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit refers not to an increase in emissions from current levels, but from levels that would otherwise occur from tightened emission standards without NCPs.

Because the emission impacts of the NCPs are anticipated to be very small, if any, compared to the total emissions of HDEs and HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time, no specific air quality impact analysis has been made regarding this proposal.

K. Compliance with Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Administrator is required to certify that this regulation will not have a significant economic impact on a substantial number of small business entities. None of the affected entities could be classified as a small business. Even if some were considered small, there would not be a substantial number of those. Moreover, as already discussed, the NCP program can be expected to have salutary effects on manufacturers. Thus, I certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

L. Information Collection Requirements

The proposed rule requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this proposed rule have been submitted to OMB. Comments on these requirements should be submitted to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection provisions.

M. List of Subjects in 40 CFR, Part 86:

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Air pollution control, Environmental protection, Gasoline, Motor vehicles.

Dated: August 23, 1985.

Lee M. Thomas,

Administrator.

PART 86—[AMENDED]

For the reasons set forth in the preamble, Part 86, Subparts A and L, Chapter I of Title 40, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for Part 86 would continue to read as follows:

Authority: Section 206(g) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7525(g), 7601.

2. Paragraph (h) of § 86.087–35 of Subpart A is proposed to be added as follows:

§ 86.087–35 Labeling.

* * * * *

(h)(1) Light-duty trucks and heavy-duty vehicles and engines for which nonconformance penalties are to be paid in accordance with § 86.1113–87(b) shall have the following information printed on the label required in paragraph (a) of this section or on a separate permanent legible label in the English language and located in proximity to the label required in paragraph (a) of this section. The manufacturer shall begin labeling production engines or vehicles within 10 days after the completion of the PCA.

(i) The statement: "The manufacturer of this engine/vehicle will pay a nonconformance penalty to be allowed to introduce it into commerce at an emission level higher than the applicable emission standard. The compliance level (or new emission standard) for this engine/vehicle is _____." (The manufacturer shall insert the applicable pollutant and compliance level calculated in accordance with § 86.1112–87(a)).

(2) If a manufacturer introduces an engine or vehicle into commerce prior to the compliance level determination of § 86.1112–87(a), it shall provide the engine or vehicle owner with a label as described above to be affixed in a location in proximity to the label required in paragraph (a) of this section within 30 days of the completion of the PCA.

3. § 86.1105–87 of Subpart L is proposed to be added as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

(a) Effective in the 1987 model year, NCPs will be available for the following emission standards:

(1) Diesel light-duty truck (rated in excess of 6000 pounds GVWR) particulate emission standard of 0.26 grams per vehicle mile.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(A) COC_{50}: $368;

(B) COC_{90}: $541;

(C) MC_{90}: $3200 per gram per vehicle mile; and

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(g): 0.11

(2) Gasoline-fueled heavy-duty engine hydrocarbon emission standard of 1.1 grams per brake horsepower-hour for engines intended for use in vehicles rated in excess of 14,000 pounds GVWR.

(i) The following values shall be used to calculate NCP in accordance with § 86.1113–87(a):

(A) COC_{50}: $75;

(B) COC_{90}: $159;

(C) MC_{90}: $139 per gram per brake horsepower-hour; and

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(g): 0.07

(3) Gasoline-fueled heavy-duty engine carbon monoxide emission standard of 14.4 grams per brake horsepower-hour for engines intended for use in vehicles rated in excess of 14,000 pounds GVWR.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(A) COC_{50}: $90;

(B) COC_{90}: $189;

(C) MC_{90}: $9 per gram per brake horsepower-hour; and

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(g): 0.06

(b) Effective in the 1988 model year, NCPs will be available for the following emission standards:

(1) Diesel heavy-duty engine oxides of nitrogen emission standard of 6.0 grams per brake horsepower-hour.

(i) For light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $18;

(2) COC_{90}: $41;

(3) MC_{50}: $40 per gram per brake horsepower-hour; and

(4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with §86.1113–87(g): 0.36

(ii) For medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $1,175;

(2) COC_{90}: $1,540;

(3) MC_{50}: $870 per gram per brake horsepower-hour; and

(4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with §86.1113–87(g): 0.02

(iii) For heavy heavy-duty diesel engines:

(A) The following value shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $1,340;

(2) COC_{90}: $1,980;

(3) MC_{50}: $1,750; and

(4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with §86.1113–87(g): 0.02

(2) Diesel heavy-duty engine particulate emission standard of 0.60 grams per brake horsepower-hour.

(i) For light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $70;

(2) COC_{90}: $83;

(3) MC_{50}: $340 per gram brake horsepower-hour;

(4) F: 1.2; and

(5) UL: 0.80 grams per brake horsepower-hour.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with §86.1113–87(g): 0.64

(ii) For medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $84;

(2) COC_{90}: $97;

(3) MC_{50}: $382 per gram per brake horsepower-hour;

(4) F: 1.2; and

(5) UL: 0.80 grams per brake horsepower-hour.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with §86.1113–87(g): 0.62

(iii) For heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $87;

(2) COC_{90}: $101;

(3) MC_{50}: $725 per gram per brake horsepower-hour;

(4) F: 1.2; and

(5) UL: 0.80 grams per brake horsepower-hour.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with §86.1113–87(g): 0.60

(c) The values of COC_{50}, COC_{90}, MC_{50}, in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index.

4. In § 86.1113–87 of subpart L paragraph (g) is revised and (h) is added to read as follows:

§ 86.1113–87 Calculation, payment and refund of penalty.

* * * * *

(g)(1) Except as provided in paragraph (g)(2) of this section, the nonconformance penalty or penalties assessed under this subpart must be paid by the quarterly due dates, i.e., within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter. The penalty amount will be divided into two components: the engineering and development component and the remaining component. The engineering and development component will be determined by multiplying the penalty amount by the factor for the appropriate subclass and pollutant in § 86.1105–87. Payment of the engineering and development penalty component must be made to EPA. Payment of the remaining penalty component must be made to the United States Treasury. Both payments must be delivered to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

(2) When a manufacturer has requested a hearing under § 86.1115–87, it must pay the nonconformance penalty, and any interest, within ten days after the Presiding Officer renders his decision, unless the manufacturer first files a notice of intention to appeal to the Administrator pursuant to § 86.1115–87(t)(1), or, if an appeal of the Presiding Officer's decision is taken, within ten days after the Administrator renders his decision, unless the manufacturer first files a petition for judicial review.

(3) A manufacturer making payment under paragraphs (g)(1) or (g)(2) of this section shall provide the Administrator with the following information by each quarterly due date:

(i) Corporate identification, identification and quantity of engineers or vehicles subject to the NCP, certificate identification (number and date), and NCP payment calculations, if applicable.

(ii) The following statement and endorsement: This information is submitted pursuant to section 206 of the Clean Air Act. All information reported herein is, to the best of

_____'s

(Company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

_____

(Authorized Company Representative)

For a manufacturer making payment under paragraph (g)(1) of this section, such information shall accompany payment.

(4) The Administrator may verify the production figures or other documentation submitted under paragraph (g)(3) of this section.

(h) A manufacturer that certifies the nonconforming configuration with applicable standards and performs a PCA in accordance with § 86.1112–87(a) that results in a compliance level below the applicable standard will receive a refund of a portion of the engineering and development penalty component of

paragraph (g)(1). The amount refunded will depend on which model year the certification and PCA take place and will be as follows:

(1) In the first model year that the NCP is available, 69 percent will be refunded.

(2) In the second model year that the NCP is available, 39 percent will be refunded.

(3) In the third model year that the NCP is available, 7 percent will be refunded.

(4) In the fourth and subsequent model years that the NCP is available, none of the engineering and development component will be refunded.

5. Paragraph (z) of § 86.1115–87 of Subpart L is proposed to be removed, and new paragraphs (z) and (aa) are proposed to be added to read as follows:

§ 86.1115–87 Hearing procedures for nonconformance determinations and penalties.

* * * * *

(z) *Interest on NCPs.* (1) Interest shall be assessed on any nonconformance penalty for which payment has been withheld pursuant to § 86.1113–87(g)(2). Interest shall be calculated form the due date for the first quarterly NCP payment, as determined under § 86.1113–87(g)(1), until the date on which the Presiding Officer or the Administrator renders the final decision of the Agency.

(2) The combined principal plus interest on each quarterly NCP payment withheld pursuant to § 86.1113–87(g)(2) shall be calculated according to the following formula:

$$QNCP(1+R)^{.25n}$$

where
QNCP = the quarterly NCP payment
R = the interest rate applicable to that quarter
n = the number of quarters for which the quarterly NCP payment is outstanding

(3) The number of quarters for which payment is outstanding for purposes of this paragraph shall be the number of quarterly NCP payment due dates, as determined under § 86.1113–87(g)(1), which have elapsed before the Presiding Officer or the Administrator renders the final decision of the Agency under this section.

(4) The interest rate applicable to a quarter for purposes of this paragraph shall be the coupon issue yield equivalent (as quoted by the Secretary of the Treasury) of the average accepted auction price for the last auction of twenty-six week United States Treasury bills settled immediately prior to the quarterly NCP payment due date on which the payment was originally due.

(aa) *Judicial review.* (1) The Administrator hereby designates the General Counsel of the Environmental Protection Agency as the officer upon whom any copies for judicial review shall be served. Such officer shall be responsible for filing in the court the record on which the order of the Administrator is based.

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Friday
August 30, 1985

Part V

Federal Communications Commission

General Fairness Doctrine Obligations of Broadcast Licensees

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 84-282; FCC 85-459]

General Fairness Doctrine Obligations of Broadcast Licensees

AGENCY: Federal Communications Commission.

ACTION: Report.

SUMMARY: The Commission undertook a comprehensive reexamination of the statutory, constitutional and policy implications underlying the fairness doctrine. In stark contravention of its purpose, the Commission determined that the fairness doctrine, in operation, inhibited the presentation of controversial issues of public importance. In light of the explosive growth in the number and types of information sources, the Commission also found that the fairness doctrine is not needed to assure that the public has access to the marketplace of ideas. As a consequence, the Commission concluded that the fairness doctrine as a matter of policy disserves the public interest. In addition, the Commission questioned whether the doctrine is consistent with the strictures of the First Amendment. Nonetheless, recognizing that there are viable arguments on both sides of the issue concerning whether or not the doctrine is codified, that various legislative proposals concerning the doctrine are before Congress and the Congress has expressed intense interest in the doctrine, the Commission chose not to eliminate or alter the fairness doctrine. The Commission decided that it would be appropriate to afford Congress the opportunity to review the doctrine in light of the record compiled in this proceeding.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Laurel R. Bergold, Robert E. Branson, David L. Donovan or Marcia C. Alterman, Legal Branch, Policy and Rules Division, Mass Media Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of inquiry into § 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees; Gen. Docket No. 84-282.

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Report; Proceeding Terminated

Adopted: August 7, 1985.
Released: August 23, 1985.

By the Commission: Chairman Fowler issuing a separate statement; Commissioner Quello concurring and issuing a statement; Commissioner Rivera not participating.

I. Introduction

1. Before the Commission for consideration are the matters raised by the *Notice of Inquiry* in the above-captioned proceeding [1] in which the Commission solicited comments on the statutory, constitutional, and policy implications underlying this fairness doctrine. Specifically, the Commission questioned whether the doctrine is constitutionally permissible under current marketplace conditions and First Amendment jurisprudence. Moreover, as a policy matter, the Commission inquired whether the doctrine remains necessary to further the governmental interest in an informed electorate and solicited comment on whether or not the doctrine, in operation, has an impermissible "chilling" effect on the free expression of ideas. Finally, the Commission queried whether the fairness doctrine is codified either by Section 315 or by the general public interest standard embodied in the Communications Act.

2. More than one hundred parties submitted formal comments and reply comments in this proceeding.[2] Many other persons participated in this proceeding through the submission of informal comments. In addition, the Commission, *en banc*, on February 7 and 8, 1985, heard oral presentations on the issues raised by the *Notice*.

3. The fairness doctrine, as developed by the Commission, imposes upon broadcasters a two-pronged obligation. Broadcast licensees are required to provide coverage of vitally important controversial issues of interest in the community served by the licensees and to provide a reasonable opportunity for the presentation of contrasting viewpoints on such issues.[3] An examination of the genesis of the fairness doctrine reveals an evolutionary process, spanning a considerable period of time, and marked by a considerable uncertainty as to the proper approaches to insure that licensees operate in the public interest.[4] This inquiry is a further step in a continuing process in evaluating the fairness doctrine.[5] In undertaking this

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[1] *Notice of Inquiry* in Gen. Docket No. 84-282, FCC 84-140, 49 FR 20317 (May 14, 1984) [hereinafter cited as "*Notice*"].

[2] A list of all the parties which filed formal comments and reply comments in this proceeding is contained in the attached Appendix.

[3] *Fairness Report* in Docket No. 19260, 48 FCC 2d 1 (1974), *recon. denied*, 58 FCC 2d 691 (1976), *aff'd sub nom. National Citizens Committee for Broadcasting* v. *FCC*, 567 F.2d 1095 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 926 (1978) ["hereinafter cited as "*1974 Fairness Report*"].

[4] For a detailed examination of the history of the fairness doctrine, *see Notice*, *supra* n.1.

[5] In light of the fact that "the weighing of policies under the 'public interest' standard is a task that Congress has delegated to the Commission in the first instance" *FCC* v. *National Citizens Committee*

[Continued]

reexamination, we will first determine the purposes underlying promulgation of the fairness doctrine and then assess, in light of current marketplace conditions, whether or not its retention is consistent with the public interest.

4. Our past judgment that the fairness doctrine comports with the public interest was predicted upon three factors. First, in light of the limited availability of broadcast frequencies and the resultant need for government licensing, we concluded that the licensee is a public fiduciary, obligated to present diverse viewpoints representative of the community at large. We determined that the need to effectuate the right of the viewing and listening public to suitable access to the marketplace of ideas justifies restrictions on the rights of broadcasters.[6] Second, we presumed that a governmentally imposed restriction on the content of programming is a viable mechanism—indeed the best mechanism—by which to vindicate this public interest.[7] Third, we determined, as a factual matter, that the fairness doctrine, in operation, has the effect of enhancing the flow of diverse viewpoints to the public.[8]

5. On the basis of the voluminous factual record compiled in this proceeding, our experience in administering the doctrine and our general expertise in broadcast regulation, we no longer believe that the fairness doctrine, as a matter of policy, serves the public interest. In making this determination, we do not question the interest of the listening and viewing public in obtaining access to diverse and antagonistic sources of information.[9] Rather, we conclude that the fairness doctrine is no longer a necessary or appropriate means by which to effectuate this interest. We believe that the interest of the public in viewpoint diversity is fully served by the multiplicity of voices in the marketplace today and that the intrusion by government into the content of programming occasioned by the enforcement of the doctrine unnecessarily restricts the journalistic freedom of broadcasters. Furthermore, we find that the fairness doctrine, in operation, actually inhibits the presentation of controversial issues of public importance to the detriment of the public and in degradation of the editorial prerogative of broadcast journalists.

6. We believe that the same factors which demonstrate that the fairness doctrine is no longer appropriate as a matter of policy also suggest that the doctrine may no longer be permissible as a matter of constitutional law. We recognize that the United States Supreme Court, in *Red Lion Broadcasting Co.* v. *FCC*[10] upheld the constitutionality of the fairness doctrine. But in the intervening sixteen years the information services marketplace has expanded markedly, thereby making it unnecessary to rely upon intrusive government regulation in order to assure that the public has access to the marketplace of ideas. In addition, the compelling evidence adduced in this proceeding demonstrates that the fairness doctrine, in operation, inhibits the presentation of controversial issues of public importance; this fact impels the dual conclusion that the doctrine impedes the public's access to the marketplace of ideas and poses an unwarranted intrusion upon the journalistic freedom of broadcasters.

7. While we are firmly convinced that the fairness doctrine, as a matter of policy, disserves the public interest, the issue as to whether or not Congress has empowered us to eliminate the doctrine is not one which is easily resolved. The fairness doctrine evolved as an administrative policy promulgated by the Commission pursuant to congressionally delegated power. While we do not believe that the fairness doctrine is a necessary component of the general "public interest" standard contained in the Communications Act,[11] the question of whether or not Congress in amending section 315 in 1959 codified the doctrine, thereby requiring us to retain it, is more problematic. In any event, the fairness doctrine has been a longstanding administrative policy and central tenent of broadcast regulation that Congress has chosen not to eliminate. Moreover, there are proposals pending before Congress to repeal the doctrine. As a consequence, we believe that it would be inappropriate at this time for us to either eliminate or significantly restrict the scope of the doctrine. Instead, we will afford Congress an opportunity to review the fairness doctrine in light of the evidence adduced in this proceeding.

II. The Constitutionality of the Fairness Doctrine Is Suspect

8. As we stated in the *Notice*,[12] the fairness doctrine, as a governmentally imposed regulation affecting the content of speech, has significant constitutional ramifications. Because "the 'public interest' standard necessarily invites reference to First Amendment principles," [13] it is appropriate for us to consider the constitutional implications of the doctrine.

9. The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open. . . ." [14] As Justice White noted in *Miami Herald* v. *Tornillo:*

> Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.[15]

10. The means chosen by the Founders to promote the free discussion of public issues was to prohibit the government from intruding into the marketplace of ideas. As the Supreme Court has stated, "the First Amendment does not speak equivocally. It prohibits any law 'abridging the freedom of speech, or of

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for Broadcasting, 436 U.S. 775, 810 (1978)], we have an affirmative duty periodically to reassess the wisdom of our rules, even those of long standing, and to determine whether or not they should be altered or even eliminated in light of changed circumstances. *See, e.g., NAACP* v. *FCC*, 682 F.2d 993 (D.C. Cir. 1982). The Supreme Court has recognized that "[r]egulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and for fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy." *American Trucking Association, Inc.* v. *Atchison, Topeka & Santa Fe Railway Co.*, 387 U.S. 397, 416, *reh. denied*, 389 U.S. 889 (1967). *See Motor Vehicle Manufacturers Association of the United States, Inc.* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983).

[6] We stated that it is necessary to vindicate:

> * * * the paramount right of the public in a free society to be informed and to have presented to it for acceptance or rejection the different attitude and viewpoints concerning these vital and often controversial issues which are held by the various groups which make up the community. It is this right of the public to be informed, rather than any right on the part of the Government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting.

Report of the Commission in Docket No. 8516, 13 FCC 1246, 1249 (1949) [hereinafter cited as "*1949 Fairness Report*"]. *See 1974 Fairness Report*, 48 FCC 2d at 2–3.

[7] *1974 Fairness Report*, 48 FCC 2d at 6.

[8] *Id.* at 7.

[9] As the Supreme Court has stated, "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison* v. *Louisiana*, 379 U.S. 64, 74–75 (1966).

[10] 395 U.S. 367 (1969).

[11] 47 U.S.C. 309 (1982).

[12] *See Notice, supra* n. 1 at ¶¶ 81–95.

[13] *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 94, 122 (1973). *See also American Security Council Education Foundation* v. *FCC*, 607 F. 2d 438, 443 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1013 (1980).

[14] *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270 (1964).

[15] 418 U.S. 241, 259 (1974), *quoting Mills* v. *Alabama*, 384 U.S. 214, 218–19 (1969) (White J., concurring).

the press.' " [16] The framers of the First Amendment proscribed the government from placing its official imprimatur on any particular viewpoint; they presumed that the marketplace of ideas would flourish best without the necessity or danger of governmental intervention.[17]

11. Under the First Amendment the expression of opinion on matters of public concern "is entitled to the most exacting degree of First Amendment protection." [18] As the United States Supreme Court has stated, the "[d]iscussion of public issues . . . are integral to the operation of the system of government established by our Constitution," [19] and, therefore, essential to an informed democratic citizenry.[20] In addition, as Justice Brennan has recently observed, a "general proscription against unnecessarily broad content-based regulation permeates First Amendment jurisprudence." [21]

12. The United States Supreme Court upheld the constitutionality of the fairness doctrine in *Red Lion Broadcasting Co,* v. *FCC,*[22] "despite the general [F]irst [A]mendment prohibition on government regulation of speech and press"[23] because the Court, at that time, perceived that the doctrine furthered "the paramount [F]irst [A]mendment right of viewers and listeners to receive 'suitable access to . . . ideas and experiences.'"[24] For several reasons, however, the Court's decision in *Red Lion,* was narrowly circumscribed. First, in its opinion, the Court expressly stated that its holding did not constitute approval of every aspect of the fairness doctrine.[25] Second, relying upon our representation that there was no validity to the contention that the fairness doctrine, in operation, lessens the coverage of controversial issues on the nation's airwaves,[26] the Court asserted that,

> If experience with the administration of these doctrines indicates that they have the net affect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications.[27]

Third, the Court's decision was necessarily premised upon the broadcasting marketplace as it existed more than sixteen years ago.[28]

13. As a consequence, serious questions regarding the constitutionality of the fairness doctrine continued in spite of the Supreme Court's decision in *Red Lion.* Indeed, as the United States Court of Appeals stated in referring to that decision:

> [d]espite this holding, important constitutional questions continue to haunt this area of the law. The doctrine and the rule do, after all, involve the Government to a significant degree in policing the content of communication . . . [and there are] abiding First Amendment difficulties. . . .[29]

14. Subsequent to *Red Lion,* the Court in *Miami Herald Publishing Co.* v. *Tornillo* [30] invalidated, on First Amendment grounds, a Florida statute which gave political candidates a right to reply to criticisms and attacks by a newspaper. In that case the Court, in a unanimous opinion, determined that the inevitable effect of a governmentally imposed right of reply requirement would be to reduce the amount of controversial issues of public importance presented in the press. The Court concluded that:

> Faced with the penalties that would accrue to any newspaper that published news or commentary arguably within the reach of the right-of-access statute, editors might well conclude that the safe course is to avoid controversy. Therefore, under the operation of the Florida statute, political and electoral coverage would be blunted or reduced. Government-enforced right of access inescapably "dampens the vigor and limits the variety of public debate."[31]

Indeed, the Court, in *Miami Herald,* intimated that the regulatory requirements that we impose may be even more inhibiting than those contained in the "right of reply" statute because print journalists are not subject to the finite technological limitations of time that confront a broadcaster. . . ."[32]

15. In *FCC* v. *League of Women Voters* [33] the Court has recently reaffirmed that the constitutional permissibility of the fairness doctrine is predicated upon a factual presumption that the doctrine has the effect of enhancing the coverage of controversial issues available to the viewing and listening public. Indeed, the Court stated that it would be obligated to reevaluate the constitutionality of the doctrine if the Commission demonstrated the falsity of this assumption.[34] In addition,

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[16] *Bridges* v. *California,* 314 U.S. 252, 283 (1941). As Justice Potter Stewart has stated: Those who wrote our First Amendment put their faith in the proposition that a free press is indispensable to a free society. They believed that "fairness" was too fragile to be left for a government bureaucracy to accomplish.

Columbia Broadcasting System, Inc., v. *Democratic National Committee,* 412 U.S. at 145 (Stewart H., concuring).

[17] The United States Supreme Court has stated that "in the realm of ideas [the Constitution] protects expression which is eloquent no less than that which is unconvincing." *Kingsley International Pictures Corp.* v. *Regents of the University of the State of New York,* 360 U.S. 684, 689 (1959).

[18] *FCC* v. *League of Women Voters of California,* —— U.S. ——, 104 S. Ct. 3106, 3115 (1984). *See First National Bank of Boston* v. *Bellotti,* 435 U.S. 765, 776–77, *reh. denied,* 438 U.S. 907 (1978); *Buckley* v. *Valeo,* 424 U.S. 1, 14 (1976).

[19] *Buckley* v. *Valeo,* 424 U.S. at 14.

[20] The United States Supreme Court has recently reaffirmed that: It is speech on " 'matters of public concern' " that is "at the heart of the First Amendment's protection." *First National Bank of Boston* v. *Bellotti,* 435 U.S. 765, 776 (1978), *quoting Thornhill* v. *Alabama,* 310 U.S. 88, 101 (1940). As we stated in *Connick* v. *Myers,* 461 U.S. 138, 145 (1983), . . . "the Court has frequently reaffirmed that speech on public issues occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to special protection. *NAACP* v. *Claiborne Hardware Co.,* 458 U.S. 886, 913 (1982); *Carey* v. *Brown,* 447 U.S. 445, 467 (1980)."

Dunn & Bradstreet, Inc. v. *Greenmoss Builders, Inc.,* —— U.S. ——, 53 U.S.L.W. 4866, 4869 (U.S. June 26, 1985) (No. 83–18).

[21] *Id.* at 4874 (Brennan, J., dissenting). *See also Banzhaf* v. *FCC,* 405 F. 2d 1082, 1100 (D.C. Cir. 1968), *cert. denied sub nom. American Broadcasting Companies* v. *FCC,* 396 U.S. 842 (1969) ("The First Amendment is unmistakably hostile to governmental controls over the content of the press").

[22] *Red Lion Broadcasting Co.* v. *FCC, supra* n.10.

[23] *American Security Council Education Foundation* v. *FCC,* 607 F.2d at 443–44.

[24] *Id., quoting Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. at 389–90 (ellipses in original).

[25] *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. at 396.

[26] In *Red Lion,* the Court stated that if broadcasters' . . . coverage of controversial public issues will be eliminated or at least rendered wholly ineffective [by the doctrine] [s]uch a result would indeed be a serious matter, for . . . the purposes of the doctrine would be stifled.

At this point, however, as the Federal Communications Commission has indicated, that possibility is at best speculative.

Id. at 393. *See also American Security Council Education Foundation* v. *FCC,* 607 F.2d at 444.

[27] *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. at 393. Similarly, the United States Court of Appeals has stated that "[i]f the fairness doctrine cannot withstand First Amendment scrutiny, the season is that to insure a balanced presentation of controversial issues may be to insure no presentation, or no vigorous presentation, at all." *Banzhaf* v. *FCC,* 405 F.2d at 1102–03.

[28] As the Supreme Court has recognized: Balancing the various First Amendment interests involved in the broadcast media and determining what best serves the public's right to be informed is a task of a great delicacy and difficulty. . . . The problems of regulation are rendered more difficult because the broadcast industry is dynamic in terms of technological change; solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence.

Columbia Broadcasting System, Inc. v. *Democratic National Committee,* 412 U.S. at 102.

[29] *Straus Communications, Inc.* v. *FCC,* 530 F.2d 1001, 1008 (D.C. Cir. 1976).

[30] *Miami Herald Publishing Co.* v. *Tornillo, supra* n.15.

[31] *Id* at 257, *quoting New York Times Co.* v. *Sullivan,* 376 U.S. at 279.

[32] *Id.* at 256–57.

[33] *FCC* v. *League of Women Voters of California, supra* n.18.

[34] The Court asserted that: As we recognized in *Red Lion,* however, were it to be shown by the Commission that the fairness doctrine "has the effect of reducing rather than enhancing" speech,

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the Court indicated that it may be willing to reassess the constitutional standards traditionally applied in broadcast regulation. The Court stated that:

> The prevailing rationale for broadcast regulation based upon spectrum scarcity has come under increasing criticism in recent years. Critics, including the incumbent Chairman of the FCC, charge that with the advent of cable and satellite television technology, communities now have access to such a wide variety of stations that the scarcity doctrine is obsolete. *See, e.g.*, Fowler & Brenner, A Marketplace Approach to Broadcast Regulation, 60 Tex. L. Rev. 207, 221–226 (1982). We are not prepared, however, to reconsider our longstanding approach without some signal from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required.[35]

Our reading of this language is that the decision in *Red Lion*, as well as the level of constitutional scrutiny applied to content regulation of broadcast speech, could change if the factual predicates which the Supreme Court relied upon in that case have changed. As a consequence, while we recognize that the Supreme Court's decision in *Red Lion* is controlling law unless the Court expressly states otherwise, we do not agree with the position of some commenters that the mere recitation of the Court's decision in *Red Lion* is sufficient to definitively resolve the complex constitutional issues presented by the doctrine.[36]

16. We now turn to identifying the standard of review appropriate to restraints on broadcast speech. In ascertaining whether or not a particular broadcast regulation comports with the First Amendment, the United States Supreme Court historically has applied standards which are different from those governing "the traditional free speech case." [37] Specifically, the Court has asserted that the utilization by the broadcast media of a public resource justifies the application of what it characterizes as "an unusual order of First Amendment values." [38] Under this bipartite standard, the interest of the public under the First Amendment is paramount.[39] The second part of this standard recognizes the substantial rights of broadcasters under the First Amendment.[40] As the Court has recently stated, "broadcasters are 'entitled under the First Amendment to exercise the widest journalistic freedom consistent with their public [duties].' " [41] Indeed, restrictions on the First Amendment rights of broadcasters are upheld only if these are found to be narrowly tailored regulations necessary to vindicate the public's paramount right to receive information essential to a functional democracy.[42] This standard of review appears to have left broadcast speech in a position of protection less favorable than the printed media. This dichotomy if vividly presented by comparing the *Red Lion* and *Miami Herald* cases, decided within five years of each other. Had the *Red Lion* court required of the Commission a showing of compelling state interest, as it required of the state of Florida in *Miami Herald*, it is doubtful that the fairness doctrine would have survived. But the *Red Lion* court found that scarcity and its effects had made a licensing scheme necessary and went on to conclude that that scheme afforded broadcasters a standard of review less protective than that accorded the print media.[43]

17. In light of the significant changes that have occurred in the communications marketplace, a number of commenters have taken the position that the application of a disparate First Amendment standard to cases involving broadcast journalists is no longer appropriate. These parties argue that the constitutionality of the fairness doctrine and other cases involving broadcast journalists should be evaluated under the general constitutional standards that apply to the print media.[44] We would agree that the courts may well be persuaded that the transformation in the communications marketplace justifies the adoption of a standard that accords the same degree of constitutional protection to broadcast journalists as currently applies to journalists of other media. We do not believe, however, that it is necessary or appropriate for us to make that determination in this proceeding.

18. Administrative agencies are not tasked with the duty to adjudicate the constitutionality of a federal statute.[45]

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we would then be *forced* to reconsider the constitutional basis of our decision in that case.

Id. at 3117 n.12, *quoting Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. at 393 (emphasis added).

[35] *Id.* at 3116 n.11. The United States Court of Appeals has also indicated that the proliferation of broadcast outlets may affect the extent to which the speech of broadcasters is protected by the First Amendment: [t]oday when the number of broadcast stations not only far exceeds the number when the Communications Act was adopted and the number when the *National Broadcasting Co.* case was decided and rivals and perhaps surpasses the number of newspapers and magazines in which political messages may effectively be carried, it seems unlikely that the First Amendment protections of broadcast political speech will contract further, and they may well expand.

Loveday v. *FCC*, 707 F.2d 1443, 1459 (D.C. Cir. 1983), *cert. denied*, 104 S.CT. 1907 (1984); *See also Banzhaf* v. *FCC*, *supra* n.21; *Quincy Cable, TV Inc.* v. *FCC*, No. 83–1283 (D.C. Cir. July 19, 1985).

[36] Similarly, we do not believe that the mere fact that the fairness doctrine is a regulation of long-standing makes it invulnerable to First Amendment challenge. The United States Court of Appeals has stated that: It may well be that some venerable FCC policies cannot withstand constitutional scrutiny in light of contemporary understanding of the First Amendment and the modern proliferation of broadcasting outlets. *Banzhaf* v. *FCC*, 405 F.2d at 1100.

[37] *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. at 101.

[38] *Id.*

[39] *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. at 390. Contrary to the position of some commenters (*See, e.g.*, Reply Comments of Ecumedia) the general public has no First Amendment right to speak on broadcast frequencies. *See, e.g., Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, *supra* n.13. The juxtaposing of speakers' and listeners' rights provides an important underpinning of the framework the Supreme Court has employed in analyzing constitutional constraints in the broadcast regulatory area. It suggests that some lessening of the rights of one group (speakers) is necessary to increase the rights of another (listeners and viewers). While such an analysis initially appears to provide a useful insight into why broadcast licensees receive differential treatment under the First Amendment, it conflicts fundamentally with what would appear to be the historic philosophy underlying the First Amendment. That is, that it is through the protection of the rights of speakers that the interest of society as a whole will best be protected.

[40] *See, e.g., Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, *supra* n.13; *League of Women Voters of California* v. *FCC*, 104 S.Ct. at 3116–17.

[41] *FCC* v. *League of Women Voters of California*, 104 S.Ct. at 3116–17, *quoting CBS, Inc.* v. *FCC*, 453 U.S. 395 (1981), *quoting Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. at 110.

[42] *Id.* at 3118.

[43] Although *Red Lion* was a unanimous decision, Justic William O. Douglas did not participate and four years later wrote "[m]y conclusion is that TV and radio stand in the same protected position under the First Amendment as do newspapers and magazines." *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. at 148. (Douglas, J., concurring). Justice Douglas added, "I did not participate in that decision [*Red Lion*] and, with all respect, would not support it. The Fairness Doctrine has no place in our First Amendment regime." *Id.* at 154. And compare: We have been beginning, so to speak, in the wrong corner. The question is not what does the need for licensing permit the Commission to do in the public interest; rather it is what does the mandate of the First Amendment inhibit the Commission from doing even though it is to license.

H. Kalven, Jr., "Broadcasting, Public Policy and the First Amendment," 10 J.L. & Econ. 15, 37 (1967).

[44] *See generally* ¶¶ 9–11, *supra*.

[45] As the United States Supreme Court has stated, "[a]djudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies." *Johnson* v. *Robison*, 415 U.S. 361, 368 (1974), quoting *Oestereich* v. *Selective Service Board*, 393 U.S. 233, 242 (1968) (Harlan, J., concurring in result). *Weinberger* v. *Salfi*, 422 U.S. 749, 765 (1975).

For the reasons set forth in detail below,[46] the issue as to whether or not the fairness doctrine is codified is not one which is susceptible of an easy resolution. Moreover, we are mindful that it is the province of the federal judiciary—and not this Commission—to interpret the Constitution.[47] We do not purport, therefore, to definitively resolve whether or not the fairness doctrine is constitutional. However, for several reasons we believe that it is appropriate for us to state our opinion on this issue. First, as noted above, constitutional considerations are an intergral component of the public interest standard and we believe that an evaluation of the constitutionality of the doctrine is necessary in order to make a meaningful evaluation as to whether or not retention of the doctrine is in the public interest. Second, as the expert administrative agency charged by the Congress with the day-to-day implementation of broadcast regulation, we believe that our opinions on these matters provide a unique perspective which may prove useful.[48] Third, as noted above, in upholding the constitutionality of the fairness doctrine in the *Red Lion* decision, the Supreme Court relied upon our representation that the fairness doctrine did not operate to inhibit the coverage of controversial issues of public importance; the evidence in this proceeding, however, compels the conclusion that this assumption is no longer valid.

19. We believe that there are serious questions raised with respect to the constitutionality of the fairness doctrine whether or not the Supreme Court chooses to continue to apply the less exacting standard which it has traditionally employed in assessing the constitutionality of broadcast regulation. As demonstrated *infra*, the compelling evidence in this proceeding demonstrates that the fairness doctrine, in operation, inhibits the presentation of controversial issues of public importance. As a consequence, even under a standard of review short of the strict scrutiny standard applied to test the constitutionality of restraints on the press, we believe that the fairness doctrine can no longer be justified on the grounds that it is necessary to promote the First Amendment rights of the viewing and listening public. Indeed, the chilling effect on the presentation of controversial issues of public importance resulting from our regulatory policies affirmatively disserves the interest of the public in obtaining access to diverse viewpoints. In addition, we believe that the fairness doctrine, as a regulation which directly affects the content of speech aired over broadcast frequencies, significantly impairs the journalistic freedom of broadcasters. As set forth in detail below, in light of the substantial increase in the number of types of information sources, we believe that the artificial mechanism of interjecting the government into an affirmative role of overseeing the content of speech is unnecessary to vindicate the interest of the public in obtaining access to the marketplace of ideas. Were the balance ours alone to strike, the fairness doctrine would thus fall short of promoting those interests necessary to uphold its constitutionality. And because the constitutionality of the fairness doctrine, in our view, is suspect under the less searching broadcast standard of review, *a fortiori*, it would prove constitutionally infirm under the more stringent First Amendment standard applicable in cases involving the print media.[49]

20. A number of commenters have argued that the limited availability of the electromagnetic spectrum is sufficient to justify the fairness doctrine. For example, the Media Access Project and the Telecommunications Research and Action Center ("MAP/TRAC") argue that:

> The most important justification for the fairness doctrine is that there are more individuals who want to broadcast than there are broadcast frequencies for the Commission to allocate. This continuing outstripping of supply by demand is the basis of the so-called "scarcity" rationale.[50]

While it is true that the limited availability of the electromagnetic spectrum may constitute a *per se* justification for certain types of government regulation, such as licensing, it does not follow that all other types of governmental regulation, particularly rules which affect the constitutionally sensitive area of content regulation, are similarly justified. As the United States Court of Appeals stated:

> First Amendment complaints against FCC regulation of content are not adequately answered by mere recitation of the technically imposed necessity for *some* regulation of broadcasting and the conclusory propositions that "the public owns the airwaves" and that a broadcast license is a "revocable privilege." [51]

21. In sum, while we recognize that the United States Supreme Court found that the fairness doctrine was constitutionally permissible sixteen years ago, we believe that the transformation of the broadcast marketplace and the compelling documentation of the "chilling effect" undermine the factual predicate of that decision. We will now specifically address the factors which, in our view, mandate a reassessment of our historical position that the fairness doctrine is consistent with the public interest.

III. A Number of Factors Justify a Reassessment of the Fairness Doctrine

A. The Need for and Costs of the Fairness Doctrine and Its Actual Effect on the Coverage of Controversial Issues of Public Importance

22. As we stated in our *Notice*, the purpose in instituting this inquiry was to undertake a "searching and comprehensive reexamination of the fairness doctrine. . . ." [52] This reappraisal will consist of three parts: an exploration as to whether the doctrine furthers or impedes the regulatory and constitutional objectives it seeks to promote, an assessment of the potential costs and other detriments which may arise from the operation of the doctrine and an evaluation as to whether or not the communications marketplace has undergone such a transformation that the doctrine is no longer warranted or supportable.

23. As we stated above, the historic justification of the retention of the fairness doctrine, as a matter of policy, has been that government regulation is necessary to assure access to the

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[46] *See* Section V, *infra*.

[47] *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 , (1803).

[48] The Supreme Court has stated that "in evaluating First Amendment claims . . . we must afford great weight to the . . . experience of the Commission." *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. at 102. Moreover, in *FCC* v. *League of Women Voters of California*, the Court indicated that it may reevaluate the standard utilized in First Amendment cases if, *inter alia*, the Commission provides it with a "signal" that technological advancements warrant such a reevaluation. *League of Women Voters*, 104 S. Ct. at 3116 n.11.

[49] Indeed, in light of the Supreme Court's decision in *Miami Herald Publishing Co.* v. *Tornillo*, *supra* n.15, it is clear that the fairness doctrine would not be constitutional were the Court to apply the general First Amendment standards governing the print media.

[50] "Comments of Media Access Project and Telecommunications Research and Action Center" at 61 [hereinafter cited as "MAP/TRAC Comments"].

[51] *Banzhaf* v. *FCC*, 405 F.2d at 1100 (emphasis in original) (footnotes omitted). Indeed, notwithstanding its express recognition of the limited availability of the electromagnetic spectrum in *FCC* v. *League of Women Voters of California*, the Court invalidated a statutory prohibition on editorializing by funded, non-commercial broadcast stations on the grounds that the statute violated the First Amendment rights of broadcasters. *FCC* v. *League of Women Voters of California*, *supra* n.18.

[52] *Notice*, *supra* n.1, at ¶ 4.

"widest possible dissemination of information from diverse and antagonistic sources," [53] to the listening and viewing public. While we have historically expressed our belief that the fairness doctrine, in operation, had the effect of expanding coverage of controversial issues on the nation's airwaves,[54] we have never specifically made an empirical assessment as to the efficacy of this chosen regulatory mechanism to promote access by the public to the marketplace of ideas. As a consequence, in this proceeding, we believe that it is essential to undertake a detailed evaluation as to whether or not the fairness doctrine in operation, enhances or inhibits the presentation of diverse views on public issues. In undertaking this evaluation, we will assess both the potential for the doctrine to chill the speech of broadcasters and review the actual evidence presented by the commenting parties to determine whether the fairness doctrine impedes or inhibits access by the public to the marketplace of ideas.

24. Because a meaningful evaluation of an administrative policy necessarily involves an assessment of regulatory burdens, we shall also evaluate the costs and other potential detriments directly and indirectly borne by broadcasters, the Commission and the public at large which arise from the operation of the fairness doctrine. These costs do not merely include financial expenses but may also involve a restriction of cherished First Amendment values and an increased danger of government abuse.

25. Finally, in our comprehensive reappraisal of the fairness doctrine, we shall determine whether active government intervention in this constitutionally sensitive area involving content regulation is necessary or appropriate in promoting access to the marketplace of ideas. In determining whether or not there is a need to retain the fairness doctrine, we shall initially assess the nature and scope of the relevant market and then evaluate the sufficiency of antagonistic viewpoints available to the public in that market. We are particularly interested in ascertaining whether there have been significant changes in the number and variety of information sources available to the public which would attenuate the need for an artificial regulatory mechanism to assure that the public has access to diverse viewpoints on controversial and important issues.

B. The Fairness Doctrine in Operation Lessens the Amount of Diverse Views Available to the Public

1. Broadcasters Perceive That the Fairness Doctrine Involves Significant Burdens

26. A licensee may be inhibited from presenting controversial issues of public importance by operation of the fairness doctrine even though the first prong of that doctrine affirmatively requires the licensee to broadcast such issues.[55] The reason underlying this apparent paradox is that the two parts of the fairness doctrine differ markedly in the scope of the controversial issues that they encompass, the ease by which a licensee can meet the requirements embodied in the two prongs and the degree to which the Commission, in the past, has taken affirmative action to enforce compliance with them.

27. It is well-established that a licensee, in complying with the first prong of the fairness doctrine, has broad discretion in determining the specific controversial issues of public importance that it chooses to present.[56] Indeed, in our *1974 Fairness Report*, we stated that "we have no intention of becoming involved in the selection of issues to be discussed, nor do we expect a broadcaster to cover each and every important issue which may arise in his community." [57] Rather, with respect to the affirmative obligation to cover controversial issues of public importance, "[a] presumption of compliance exists" [58] and only "in *rare instances*, where a licensee has failed to give coverage to an issue found to be of critical importance to its particular community, would questions be raised as to whether a licensee had fulfilled its fairness obligations." [59] Indeed, the United States Court of Appeals has characterized this requirement as one which is "not extensive and [can be] met by presenting a minimum of controversial subject matter." [60]

28. In contrast to the paucity of challenges under the first part of the fairness doctrine, "[t]he usual fairness complaint . . . concerns a claim that the licensee has presented one viewpoint on a 'controversial issue of public importance' and has failed to afford a 'reasonable opportunity for the presentation of contrasting viewpoints.'" [61] The responsive programming obligation embodied in the second prong of the fairness doctrine arises whenever the licensee airs any controversial issue of public importance, even in situations where the issue broadcast is not "so critical or of such great public importance" [62] to trigger a requirement under the first part of the fairness doctrine.[63] An overwhelming majority of the complaints we receive and virtually all our orders directing licensees to take corrective action to conform to the requirements of the fairness doctrine involve the second prong of that doctrine.[64]

29. As a result of the asymmetry between its two components, the fairness doctrine in its operation encourages broadcasters to air only the minimal amount of controversial issue programming sufficient to comply with the first prong. By restricting the amount

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[53] *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945); *1974 Fairness Report*, 48 FCC 2d at 3.

[54] *1974 Fairness Report*, 48 FCC 2d at 7. We have, however, always recognized the dangerous potential that the fairness doctrine, in operation, could have a "chilling effect" on the coverage of controversial issues of public importance. In fact, in the *1974 Fairness Report*, we stated that: There exists within the framework of fairness doctrine administration and enforcement the potential for undue governmental interference in the processes of broadcast journalism, and the concomitant diminution of the broadcaster's and the public's First Amendment interests.

Id. at 8. We have also indicated that if it were shown in actual operation that the doctrine either unnecessarily restricted the journalistic freedoms of broadcasters or impeded the right of the public to obtain access to diverse viewpoints on public issues, we would be compelled to reassess the policy. *See Notice of Inquiry* in Docket No. 19260, 30 FCC 2d 26, 28 (1971).

[55] Under the first prong of the fairness doctrine the licensee is required to provide coverage of controversial issues of vital importance to the community. *See, e.g., Friends of the Earth*, 24 FCC 2d 743, 750–51 (1970); *1974 Fairness Report*, 48 FCC 2d at 9–10; *Representative Patsy Mink*, 59 FCC 2d 987 (1976).

[56] *See, e.g., 1949 Fairness Report*, 13 FCC at 1251.

[57] *1974 Fairness Report*, 48 FCC 2d at 10.

[58] *Memorandum Opinion and Order* in BC Docket No. 78–60, 89 FCC 2d 916, 925 (1982) (emphasis added).

[59] *Brent Buell*, 97 FCC 2d 55, 57 (1984) (emphasis added). *See Memorandum Opinion and Order* in BC Docket No. 78–60, 89 FCC 2d at 925; *1974 Fairness Report*, 48 FCC 2d at 10. As the United States Court of Appeals has stated: "Throughout the history of fairness doctrine enforcement, much more attention has been given to th[e] second obligation—the provision of opposing points of view on controversial issues about which only one viewpoint has been broadcast—than to the first, namely, the affirmative obligation to provide coverage of controversial and important issues. The FCC has only once sustained a complaint relating to the part one obligation." *National Citizens Committee for Broadcasting* v. *FCC*, 567 F.2d 1095, 1100 n.13 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 926 (1978).

[60] *American Security Council Education Foundation* v. *FCC*, 607 F.2d at 444.

[61] *1974 Fairness Report*, 48 FCC 2d at 10.

[62] *Id.*

[63] As the Court of Appeals has stated: ". . . issues giving rise to the part two obligation would not necessarily be required to be covered under the first obligation; the threshold which triggers the second fairness obligation is lower than that which triggers the first." *National Citizens Committee for Broadcasting* v. *FCC*, 567 F.2d at 1100 n.13.

[64] *See generally* n. 59, *supra*.

and type of controversial programming aired, a broadcaster minimizes the potentially substantial burdens associated with the second prong of the doctrine while remaining in compliance with the strict letter of its regulatory obligations.[65] Therefore, despite the first prong obligation, in net effect the fairness doctrine often discourages the presentation of controversial issue programming.[66]

30. There are a variety of reasons why a broadcaster might be inhibited from providing comprehensive coverage of controversial issues of public importance by operation of the fairness doctrine. One reason is the fear of government sanction. Under our regulatory scheme, a broadcaster must obtain a license from the Commission prior to entry into the broadcast field.[67] Because broadcast licenses are granted only for limited periods of time, all broadcasters must periodically renew that license if they wish to remain in business.[68] Compliance with the fairness doctrine is an important consideration in our determination as to whether renewal of a broadcast license is in the public interest.[69] Indeed, we have characterized the "strict adherence to the fairness doctrine . . . as the *sine qua non* for grant of a renewal of license."[70]

31. Because a decision by this Commission to deny the renewal of a broadcast license is "a sanction of tremendous potency"[71] which can be triggered by a finding by this Commission that the licensee failed to comply with the fairness doctrine, a licensee has the incentive to avoid even the potential for such a determination.[72] Therefore, in order to attenuate the possibility that opponents, in a renewal proceeding, will challenge the manner in which a licensee provides balance with respect to the controversial issues it chooses to cover, a broadcaster may be inhibited from presenting controversial issue programming in excess of the minimum required to satisfy the first prong of the fairness doctrine.[73] As Chief Judge David Bazelon has stated, "[w]hen the right to continue to operate a lucrative broadcast facility turns on periodic government approval, even a governmental 'raised eyebrow' can send otherwise intrepid entrepreneurs running for the cover of conformity."[74]

32. While denial of a license renewal is the most severe sanction we can impose for failure to abide by the fairness doctrine,[75] it is not the only sanction.[76] Typically, upon a finding that a licensee has violated the fairness doctrine, we order the broadcaster to provide additional programming in order to redress the imbalance in time and frequency given to one side of a controversial issue.[77] Since broadcast time is a valuable resource, such a requirement imposes costs upon the licensee. In order to avoid these costs, a broadcaster may be inhibited from presenting more than a minimal amount of controversial issue programming.

33. The potential of a "chilling effect," however, is not restricted to the fear by a broadcaster that the Commission will find a violation of the fairness doctrine and impose sanctions on the licensee. A licensee may also be inhibited from presenting controversial issue programming by the fear of incurring the various expenses and other burdens which may arise in the context of fairness doctrine litigation regardless of whether or not it is ultimately found to be in violation of the doctrine.

34. As one broadcaster noted, licensees are "conscious of the probability that coverage of a highly controversial issue will trigger an avalanche of protests"[78] demanding air

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[65] One commentator has noted that:

> [L]icensees risk more by providing programming on controversial issues than by ignoring such issues; in only one case in the FCC's history has a complaint relating to the coverage requirement been resolved against a licensee. Hence, licensees are likely to assume that it is safer to ignore the coverage requirement than to risk balancing complaints. . . .
>
> [This] can only have the effect of encouraging licensees to avoid all but the most significant community concerns, discouraging the open debate of many important issues.

B. Chamberlin, "The FCC and the First Principle of the Fairness Doctrine: A History of Neglect and Distortion," 31 Fed. Comm. L.J. 361, 408–09 (1979) (footnotes omitted). *See also American Security Council Education Foundation* v. *FCC*, 607 F.2d at 459 n.5 (Bazelon, J., concurring).

[66] We do not believe that more stringent enforcement of the first prong would be an appropriate remedial response to the existence of a "chilling effect." Indeed, such an approach increases the severity of major detriments associated with the fairness doctrine. For example, contrary to the principles of the First Amendment, a stricter regulatory approach would increase the government's intrusion into the editorial decisionmaking process of broadcast journalists. It would enlarge the opportunity for governmental officials to abuse the doctrine for partisan political purposes. Were the chilling effect of the government sanction removed, the result might well be greater coverage of issues and thus more satisfaction of the policy behind the fairness doctrine's first prong. Moreover, a more stringent enforcement of first prong obligations would merely increase the economic costs that are borne both by broadcasters and the Commission.

[67] 47 U.S.C. 301 (1982).

[68] Section 307(c) of the Communications Act prohibits the Commission from granting a television license for a period exceeding five years or a radio license for a period in excess of seven years. 47 U.S.C. § 307(c) (1982).

[69] *See* 47 U.S.C. 309 (1982).

[70] *Committee for the Fair Broadcasting of Controversial Issues*, 25 FCC 2d 283, 292 (1970); *Office of Communication of the United Church of Christ* v. *FCC*, 359 F. 2d 994, 1008 (D.C. Cir. 1966) (Burger, C.J.). *See also 1974 Fairness Report*, 48 FCC 2d at 10.

[71] *Business Executives' Move for Vietnam Peace* v. *FCC*, 450 F.2d 642, 666 (D.C. Cir. 1971), *rev'd sub nom. Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 94 (1973) (McGowan, J., dissenting).

[72] As Judge Leventhal recognized, "[f]airness rulings raise the problem of a chilling effect on broadcast journalism; the licensee "faces the possibility that the [controversial programming] will haunt [its] renewal applications." *National Broadcasting Company, Inc.* v. *FCC*, 516 F.2d 1160 (D.C. Cir. 1975), *cert. denied*, 436 U.S. 926 (1976) (Leventhal, C.J. concurring in part and dissenting in part).

[73] The evidence of record from a fairness doctrine supporter demonstrates that organizations have effectively used the threat of license revocation in fairness doctrine negotiations in order to pressure broadcasters to give them air time for their specific programming. The Public Media Center ("PMC"), an organization which utilizes the fairness doctrine "to help various organizations secure air time for the expression of their views via the electronic media," ["Comments of the Public Media Center" at 1, n.1 (hereinafter cited as "PMC Comments")] has recounted one such instance in which an anti-nuclear coalition sought to obtain free advertising time from broadcast stations in order to present its views on a nuclear dumping controversy. PMC stated that: "COND [the anti-nuclear coalition] made it clear that a Petition to Deny License Renewal would be filed if the fairness doctrine question went unresolved. *While it's unlikely the FCC would pull a license solely because of a fairness violation, most stations will do everything they can to avoid any kind of license challenge.* The cost of fighting a Petition to Deny is, after all, much higher than the price of complying." *Id.* at 14. (emphasis added). Although the stations offered to present the anti-nuclear viewpoint by means of a talk show, the coalition took the position that this offer was insufficient; instead it demanded that the responsive programming requirement of the fairness doctrine be met by the broadcast of specific spot advertising prepared by them. *Id.* at 14. The stations ultimately acceded to the coalition's demand. As PMC admitted, it was "[t]he implied threat of a license renewal challenge [which] increased the stations' desire for a negotiated settlement." *Id.* at 15.

[74] D. Bazelon, "The First Amendment and the 'New Media'—New Directions in Regulating Telecommunications," 31 Fed. Comm. L.J. 201, 206 (1979).

[75] A number of parties disagree that the power of the Commission to refuse to renew a station license has an inhibiting effect because the exercise of this power is sparingly used. For example, MAP/TRAC contend that "[l]icensees do not lose licenses for violation of the fairness doctrine in the coverage of an issue and the Commission knows it." MAP/TRAC Comments, *supra* n.50 at 137. We disagree. First, contrary to MAP/TRAC's assertion, we have in fact denied a license renewal on the basis of a fairness doctrine violation. *Brandywine Main-Line Radio, Inc.* 24 FCC 2d 18 (1970), *Reconsideration denied*, 27 FCC 2d 565 (1971), *aff'd on other grounds*, 473 F.2d 16 (D.C. Cir. 1972), *cert. denied*, 412 U.S. 922 (1973). Second, while we perceive the denial of a license renewal to be an extreme remedy which should not be lightly assessed, in light of the severity of this sanction, we believe that its mere potential has an inhibiting effect.

[76] *See* ¶ 52, *infra*.

[77] *See, eg.*, Public Notice, "Controversial Issue Programming, Fairness Doctrine," FCC 63–734 (July 26, 1963), 25 RR 1899 (1963). *See generally Syracuse Peace Council*, FCC 84–516 (released December 20, 1984), 57 RR 2d 519 (1984).

[78] "Comments of Tribune Broadcasting Co." at 9 [hereinafter cited as "Tribune Comments"].

time for the presentation of opposing viewpoints. While most requests may be made in good faith, there is evidence that some complainants invoke a licensee's fairness doctrine obligations in an attempt either to pressure a broadcaster to censor specific programming [79] or to harass licensees into presenting a particular spokesman or broadcast.[80] Whether or not the requests are legitimate, a station nonetheless may incur additional personnel costs in negotiating with the group seeking responsive programming.

35. Broadcasters can also be deterred by the finanical costs involved in defending a fairness doctrine complaint. The record reflects that such costs can be substantial. For example, a fairness doctrine complaint was brought against KREM–TV, a television station in Spokane, Washington charging the station with unbalanced coverage of a bond issue for an international exposition entitled "Expo–74." [81] While the Commission ultimately made the determination that the licensee did not violate the fairness doctrine, the administrative process extended for more than 20 months.[82] The licensee incurred legal costs of at least $20,000 and other expenses, such as travel expenses, significantly added to that total.[83] As the total profits reported by all three Spokane television stations in 1972 were approximately $494,000,[84] the financial burden borne by the station in defending this single fairness doctrine complaint was considerable. Moreover, in addition to the legal costs and other out-of-pocket expenses incurred by the station, the licensee was further burdened by the dislocation of normal operational functions that necessarily resulted from the significant amount of time expended by high-level management and station employees with respect to this matter.[85]

36. Another example of the significant financial burdens which can result from fairness doctrine litigation is the NBC award-winning[86] documentary on abuses in the private pension industry entitled "Pensions: the Broken Promise." [87] Determining that the program presented one side of the controversial issue of the "performance and need for regulation of private pension plans," [88] the Commission found NBC was required to present contrasting viewpoints. While NBC was ultimately vindicated,[89] the administrative and judicial proceedings extended for four years and NBC incurred approximately $100,000 in legal costs in defense of the fairness doctrine complaint.[90]

37. Certain parties take issue with the contention that the fear of fairness doctrine litigation can have an inhibiting effect on the presentation of controversial issues of public importance.[91] In support of their

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[79] For example, PMC, a fairness doctrine supporter, describes a situation in which a coalition of organizations supporting legalized abortion invoked the fairness doctrine in their efforts to convince a Washington, D.C. television station, WJLA–TV, to cancel an anti-abortion film. PMC Comments, *supra* n.73 at 12. While the group was unsuccessful, in its comments PMC recounts several situations, which are described *infra* at ¶¶ 48–49, in which complainants did in fact dissuade broadcasters from airing advertisements supporting or opposing ballot propositions. Similarly, as described at ¶ 44, *infra*, the National Association of Broadcasters ("NAB") recounts an instance in which a member of a religious cult, threatening to file a fairness doctrine complaint, successfully demanded the station to cancel a series on the religious organization. "Comments of the National Association of Broadcasters", App. Vol., App. D at 2 (Example No. 1) [hereinafter cited as "NAB comments"].

[80] PMC describes the following situation in which an anti-nuclear group used the fairness doctrine to have its ballot propositions aired:

> Schwartzmán [a Washington, D.C. communications attorney] applied muscle in Washington.
>
> Inside forty-eight hours, every radio station had been contacted to find out which were running the industry ads. . . . [A] few refused to negotiate, claiming their news and public affairs coverage gave adequate balance.
>
> With Schwartzman's aid, a preliminary complaint was filed against the largest station by telegram on Thursday night.
>
> MNRC [the anti-nuclear group] also called the Chief of the FCC's fairness/political broadcast branch at home. On Friday morning, MNRC and the station's attorneys negotiated a settlement and the complaint was withdrawn.
>
> With this precedent, and more pressure from Schwartzman, every station that had carried the industry's ads was airing MNRC ads for free by Friday night.

PMC Comments, *supra* n.73 at 31. It is significant that PMC, in describing this scenario, does not dispute the stations' contention that they already were in compliance with the fairness doctrine by virtue of the fact that their news and public affairs programming provided adequate balance to the industry's advertisements. Rather, the objective of the anti-nuclear group, as expressed by PMC, was to have the stations broadcast their particular advertisements rather than to have the stations comply with the requirements of the fairness doctrine. It is also noteworthy that the complaint—which was withdrawn in less than one day—was filed against the "largest" station; the commenter did not state that the anti-nuclear coalition perceived that this station was in violation of the fairness doctrine. A number of other examples in which complainants invoked the fairness doctrine to demand that a licensee air a specific broadcast or present a specific spokesperson are described elsewhere in this *Report*. *See* ¶¶ 49–50, *infra*.

[81] *Sherwyn M. Heckt*, 40 FCC 2d 1150 (1973).

[82] The complaint was filed on September 8, 1971; the station responded on October 12, 1971, and the complainant replied seventeen days later. The licensee made further responses on December 2, 1971 and May 11, 1972. The Commission initiated a four-day field investigation on June 5, 1972. The Commission made an additional inquiry to the licensee on December 6, 1972 and the licensee responded on February 6, 1973. The Commission's staff issued a ruling vindicating the licensee on May 17, 1973. *Id.*

[83] *See* "Comments of Henry Geller and Donna Lampert," App. B at 2 [hereinafter cited as "Geller/Lampert Comments"]; "Comments of CBS, Inc." at 83 [hereinafter cited as "CBS Comments"]; "Comments of the Freedom of Expression Foundation" at 75 [hereinafter cited as "FEF Comments"]; NAB Comments, *supra* n.79 at 42.

[84] *See* Geller/Lampert Comments, *supra* n.83, App. B at 2; CBS Comments, *supra* n.83 at 84. Indeed, the station manager of KREM–TV testified that the fairness doctrine complaint resulted in a severe personal financial loss. *Freedom of Expression Act of 1983: Hearings Before the Senate Committee on Commerce, Science and Transportation*, 98th Cong., 2d Sess. 129, 227 (1984) [hereinafter cited as *"1983 Hearings"*].

[85] The President and Vice-President of KREM–TV devoted 80 hours to the fairness doctrine complaint. In addition, the station manager and six members of the news staff spent 207 hours and 194 hours, respectively, on this matter. *See* Geller/Lambert Comments, *supra* n.83, App. B at 2–3; NAB Comments, *supra* n.79 at 42 and App. Vol., App. D at 19 (Example No. 17); CBS Comments *supra* n.83 at 84, n.**. Additional time was incurred by secretarial or clerical employees.

[86] NBC received a Christopher Award, a National Headliner Award, an American Bar Association Award and the George Foster Peabody Award for its investigative documentary. "Comments of the National Broadcasting Co., Inc." at 16 [hereinafter cited as "NBC Comments"].

[87] *See, e.g., Notice, supra* n.1 at ¶¶ 73–75; NBC Comments, *supra* n.86 at 14–36; NAB Comments, *supra* n.79 App. Vol., App. D at 16 (Example No. 16).

[88] *Accuracy in Media, Inc. Against National Broadcasting Co.*, 44 FCC 2d 1027, 1043 (1973), *rev'd sub nom. National Broadcasting Co. v. FCC*, 516 F.2d 1101 (D.C. Cir. 1974), *reversal vacated and hearing en banc granted*, 516 F.2d 1155 (D.C. Cir.), *rehearing en banc vacated*, 516 F.2d 1158 (D.C. Cir. 1975), *second reversal vacated as moot and remanded with direction to vacate initial order and dismiss complaint*, 516 F.2d 1180 (D.C. Cir.), *cert. denied*, 424 U.S. 910 (1976). The Commission subsequently vacated its order and dismissed the case as moot. *Accuracy in Media, Inc. Against National Broadcasting Co.*, 58 FCC 2d 361 (1976).

[89] The United States Court of Appeals reversed the Commission's *Order* but that decision was in turn vacated because the passage of legislation on private pension plans had rendered the decision moot. *See* n.88, *supra*.

[90] A further example involves the series of editorials critical of the Mayor of Milwaukee, other government officials and the city management aired by WTMJ. The Mayor, Henry Maier, filed a complaint with the Commission on June 5, 1981, arguing, *inter alia*, that the station had violated the fairness doctrine. This complaint was denied by the Broadcast Bureau; application for review of this *Order* filed by the complainant was denied by the Commission and the United States Court of Appeals affirmed the Commission's *Order*. *Maier v. FCC*, 735 F.2d 220 (7th Cir. 1984). The administrative and judicial proceedings, however, extended for a period of three years. During the pendency of the appellate case, the Manager of Public Affairs of WTMJ, Mr. Ed Hinshaw, testified that defense of the fairness doctrine complaint had already caused the station to incur legal expenses in excess of $17,000. He also estimated that the management and staff time expended on the complaint to be more than two person months. *1983 Hearings*, *supra* n.84 at 146; NAB Comments, *supra* n.79 App. Vol., App. D at 21 (Example No. 18).

[91] "Reply Comments of Black Citizens for a Fair Media, Citizens Communications Center, League of United Latin American Citizens, National Association for the Advancement of Colored

position, these parties argue that the Commission requests broadcasters to respond to only a small number of the complaints it receives annually and, as a consequence, most broadcasters do not in fact incur such costs. The evidence of record in this proceeding, however, reflects that broadcasters are convinced that these costs can in fact be a significant inhibiting factor in the presentation of controversial issues.[92] Moreover, while it may be true that most broadcasters may not be confronted with actual fairness doctrine litigation, virtually all broadcasters do incur administrative and financial costs which result from presenting responsive programming and negotiating with complainants. Furthermore, in light of the fact that the costs involved in fairness doctrine cases which do proceed beyond the complaint stage can be prohibitively expensive, particularly to smaller stations, we believe that there is a substantial danger that many broadcasters are inhibited from providing controversial issues of public importance by operation of the fairness doctrine.

38. We also reject the contention that we should be unconcerned with the administrative and financial burdens that result from the fairness doctrine because they merely represent the cost of doing business. Indeed, the United States Supreme Court has recognized that financial considerations "may be markedly more inhibiting than the fear of prosecution under a criminal statute." [93] To the extent that the fear of incurring financial expenses discourages the presentation of controversial issues of public importance, important constitutional principles are thwarted; indeed such inhibition directly and adversely impacts upon "the principle [underlying the First Amendment] that debate on public issues should be uninhibited, robust and wide-open. . . ." [94]

39. In addition to the fear of incurring the administrative and financial costs attributable to fairness doctrine obligations, the mere accusation by a federal agency or even a complainant that a broadcast station has not abided by its responsibility to provide balanced coverage of controversial issues can have an inhibiting effect. A station is dependent upon the good will of its viewing or listening audience; as a consequence, a station has a positive incentive to avoid a charge which may have the effect of lowering its reputation in the community. Broadcasters are acutely aware of the harm which may result from even a frivolous charge that the station violated the fairness doctrine. For example, WINZ, a radio station in Miami, Florida, initiated a petition drive in conjunction with the Dade County Consumer Affair's Office that was designed to persuade the Florida Public Service Commission to reduce or reject a rate increase proposed by Florida Power and Light Company. Despite the fact that the radio station was ultimately vindicated of any wrongdoing by the Commission, the general manager of the station testified that:

> I feel that Florida Power & Light used the fairness doctrine to provide themselves with a way to create adverse publicity for WINZ. The simple fact that they accused us of violating this rule created the impression we were wrong in undertaking the issue, even if that wasn't the case. Often the accused party suffers, whether right or wrong, only because they have been accused.[95]

40. Similarly, Mr. Bos Johnson, News Director of WSAZ–TV in Huntington, West Virginia, recounted a situation in which his station was subject to a fairness doctrine complaint during negotiations for the transfer of that station. He stated that:

> It was a serious embarrassment to me professionally to feel responsible for the cost and effort of a Fairness Doctrine complaint in the midst of delicate business negotiations. And for the duration of those negotiations, while sitting at my desk working as a journalist, I was always aware of the large file containing information relating to the complaint.[96]

41. In sum, with the potential of government sanction; administrative, legal, and personnel expenses; and reputational costs, there is a significant danger that broadcasters will minimize their presentation of controversial issue programming in order to avoid the substantial dangers associated with the fairness doctrine. In the following section we shall evaluate the record evidence in order to ascertain whether or not broadcasters are in fact deterred from presenting controversial issue programming by operation of the fairness doctrine.

2. The Record Demonstrates that The Fairness Doctrine Causes Broadcasters To Restrict Their Coverage of Controversial Issues

42. The record reflects that, in operation, the fairness doctrine—in stark contravention of its purpose—operates as a pervasive [97] and significant impediment to the broadcasting of controversial issues of public importance.[98] In spite of the difficulty generally encountered in establishing a "chilling effect," [99] we

People, and National Association for Better Broadcasting" at 59 [hereinafter cited as "BCFM Reply Comments"]. For the reasons described above, we also reject the assertion of BCFM that the expenses incurred in responding to fairness doctrine complaints are not substantial. *Id.* at 59–60.

[92] *See, e.g.*, NAB Comments, *supra* n.79, App. Vol., App. D at 5, 7, 21–22, 25–26 (Example Nos. 4, 6, 18, 20).

[93] *New York Times Co.* v. *Sullivan*, 376 U.S. at 277.

[94] *Id.* at 270.

[95] *1983 Hearings*, *supra* n.84 at 29 (testimony of Stan Cohen). *See also* FEP Comments, *Supra* n.83 at 73–74; NAB Comments, *supra* n.79, App. Vol., App. D at 27–28 (Example No. 21). In addition to the damage to the reputation of the station, the stigma arising from an accusation that the station violated the fairness doctrine can have an adverse effect upon the station's employees. For example, Mr. Eugene Wilkin, the former general manager of KREM–TV in Spokane, Washington testified that the financial and emotional strain arising from an accusation that he violated the fairness doctrine was the main reason that he left broadcasting management, despite a career in that field spanning more than a decade. *See, e.g.*, FEP Comments, *supra* n.83 at 75–76; NAB Comments, *supra* n.70, App. Vol., App. D at 32–33 (Example No. 24).

[96] NAB Comments, *supra* n.83, App. Vol., App. D at 34 (Example No. 25).

[97] The record reflects that the chilling effect resulting from fairness doctrine obligation is widespread. A recent survey of broadcasters in the Houston area revealed that the majority of responding parties with opinions stated that they were personally aware of instances in which programming has been suppressed as a direct result of the inhibiting effect of the fairness doctrine. "Comments of the Society of Professional Journalists, Sigma Delta Chi and the Legal Foundation of America" at 5–6 [hereinafter cited as "Society of Professional Journalists' Comments"].

[98] In our *1974 Fairness Report* we rejected the arguments of some broadcasters that in operation the fairness doctrine inhibited the coverage of controversial issues of importance to the public. In that proceeding, we stated that we have seen "no credible evidence that our policies have in fact had 'the net effect of reducing rather than enhancing the volume and quality of coverage.' *1974 Fairness Report*, 48 FCC 2d at 8, *quoting Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. at 393. As set forth in this section, however, the substantial and significant evidence presented in this proceeding demonstrates the existence of a pervasive and substantial "chilling effect" on the presentation of controversial issues by broadcasters. As a consequence, we can no longer conclude that the fairness doctrine operates to enhance, in either quantitative or qualitative terms, the amount of controversial issue programming available to the public.

[99] The United States Court of Appeals has stated that: "Chilling effect is, by its very nature, difficult to establish in concrete and quantitative terms; the absence of any direct actions against individuals assertedly subject to a chill can be viewed as much as proof of the success of the chill as of evidence of the absence of any need for concern. To be sure, where actual instances of harrassment are established, or where past experience with similar regulation yields concrete evidence of a successful chill, the case is a stronger one. . . ." *Community-Service Broadcasting of Mid-America, Inc.* v. *FCC*, 593 F.2d 1102, 1118 (D.C. Cir. 1978).

find that the evidence of record mandates the conclusion that the requirement that broadcasters provide balance in their overall coverage of controversial public issues in fact makes them more timid than they would otherwise be in airing programming that involves such issues.[100] We recognize that the first prong of the fairness doctrine requires licensees to present controversial issues of public importance to their viewers and listeners; as a consequence, we do not believe that the fear of fairness doctrine obligations typically results in a systematic avoidance of all controversial issues by broadcasters.[101] The record reflects, however, that the intrusion by government into the editorial decisions of broadcast journalists occasioned by fairness doctrine requirements overall lessens the flow of diverse viewpoints to the public to the detriment of the broadcasters and the public alike.

43. Journalists who have worked in both the broadcast and print media have testified that the very existence of the fairness doctrine creates a climate of timidity and fear, unexperienced by print journalists, that is antithetical to journalistic freedom. The inhibitions resulting from the interjection of a ubiquitous and brooding governmental presence into the editorial decisionmaking process is vividly described by Mr. Dan Rather, Managing Editor and Anchor of CBS News, as follows:

> When I was a young reporter, I worked briefly for wire services, small radio stations, and newspapers, and I finally settled into a job at a large radio station owned by the Houston Chronicle. Almost immediately on starting work in that station's newsroom, I became aware of a concern which I had previously barely known existed—the FCC. The journalists at the Chronicle did not worry about it; those at the radio station did. Not only the station manager but the newspeople as well were very much aware of this Government presence looking over their shoulders. I can recall newsroom conversations about what the FCC implications of broadcasting a particular report would be. Once a newsperson has to stop and consider what a Government agency will think of something he or she wants to put on the air, and invaluable element of freedom has been lost.[102]

44. The record reflects that broadcasters from television network anchors to small radio station journalists perceive the fairness doctrine to operate as a demonstrable deterrent in the coverage of controversial issues. Indeed, the record is replete with descriptions from broadcasters who have candidly recounted specific instances in which they decided not to air controversial matters of public importance because such broadcasts might trigger fairness doctrine obligations. For example, fearing the imposition of onerous regulatory burdens, Meredith Corporation states that one of its stations elected not to air a paid program on the nuclear arms race.[103] As a result of this decision, the public was deprived of information on an important public issue. Similarly, Mr. J. T. Whitlock, the President and General Manager of the Lebanon-Springfield Broadcasting Company, testified that the fear of having to defend a fairness doctrine complaint was the reason that his station did not editorialize on an important local issue even though, in his editorial judgment, the situation ". . . cried for editorials by the station."[104]

45. As a further example, after work had begun in the preparation of a series on religious cults, the manager of a Southern California radio station decided that the series would not be broadcast. The decision to cancel this series was not based upon the editorial judgment of the broadcaster but rather upon an assessment of the legal and personnel costs associated with defending a possible fairness doctrine complaint.[105] Similarly, Mr. Paul Jenson,

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[100] One example of this "timid" approach is recounted by the station manager of the Cornhusker Television Corporation. With the exception of programming produced by the network, he states that it is standard practice for the station not to accept nationally produced programming which discusses controversial subjects: "The reason for this [policy] is although the producer says the program is objective in nature, we as licensees must be the sole judge of what is or is not controversial in order to act properly under the Fairness Doctrine. Also, is it true that what a producer in New York or Washington D.C. may consider objective, may not be defined in the same way in Nebraska because as you know viewpoints vary drastically from one section of the country to another. Therefore, there are probably some good Public Affairs programs which we have decided not to run because the Fairness Doctrine might come into play and we would not be prepared to give reasonable access to opposing viewpoints." NAB Comments, *supra* n.79, App. Vol., App. D at 38 (Example No. 27) (emphasis omitted). Notwithstanding the station manager's express representation that the avoidance of fairness doctrine obligation was the reason that the station rejected all non-network nationally-produced programming, BCFM nonetheless contends that this policy must be based on some other reason. BCFM argues that "if the station truly wished to avoid controversial subjects, it would review each program independently," whether or not it was locally or nationally produced. BCFM Reply Comments, *supra* n.91 at 65. BCFM's argument, however, ignores the fact that a station may wish to lessen the amount of controversial public issue programming in order to minimize the burdens associated with providing access to opposing viewpoints without totally eliminating such programming, particularly in light of the fact a total elimination would subject the station to charges that it violated the first prong on the fairness doctrine. Furthermore, as noted above, the station manager affirmatively stated that the reason that station adopted this policy was to minimize the regulatory burdens associated with the fairness doctrine.

[101] At least one broadcaster, however, has candidly admitted that "his news staff avoids controversial issues as a matter of routine because of the Fairness Doctrine." NAB Comments, *supra* n.79, App. D at 5 (Example No. 4).

[102] CBS Comments, *supra* n.83 at 72–73. Similar sentiments have been expressed by Mr. Bill Monroe, moderator and executive producer of the popular show "Meet the Press." He has stated that: "Some years ago as a young man I worked for a newspaper. I was very impressed with the spirit of independence on the part of the editors of the newspaper. They didn't care if something they put in the paper offended a major political figure. Later I went to a television station and slowly I discovered that the managers of the television station were a little afraid of government. They were timid, conscious of government looking over their shoulder in a way that the newspaper publisher and editor for whom I had worked had not been. I began to feel I was a little bit less than free, and it worried me." FEF Comments, *supra* n.83 at 69, *quoting* American Enterprise Institute Roundtable, *Freedom of the Press* (July 29 and 30, 1975) published by the American Enterprise Institute for Public Policy Research, Washington, D.C. (Statement of Bill Monroe before the National Press Club).

[103] "Meredith Corporation's Comments Regarding Notice of Inquiry" at 3. [hereinafter cited as "Meredith Comments"].

[104] NAB Comments, *supra* n.79, App. Vol., App. D at 29 (Example No. 22). BCFM contends that the decision not to editorialize "appears" to be based upon an incorrect perception that the "equal time" requirements of the political editorial rules are applicable in this situation. BCFM Reply Comments, *supra* n.91 at 69 n.32. *See* 47 CFR 73.1930 (1984). It also asserts that any fairness doctrine obligations incurred by the station in the broadcast of this editorial "would probably have been met by its news coverage." BCFM Reply Comments, *supra* n.91 at 69 n.32. In our view, both arguments are speculative. There is nothing in the example to suggest either that the concern of the broadcaster was based upon the requirements of the political editorial rule or that the station's news coverage would have provided opposing viewpoints sufficient to meet the requirements of the fairness doctrine.

[105] NAB Comments, *supra* n.79, App. Vol., Vol D at 2 (Example No. 1). Two parties contend that this example lends no support for the existence of a "chilling effect," but we believe that their arguments lack merit. Citing *Religion and Ethics Institute, Inc.*, 42 RR 2d 1957 (1978), a Broadcast Bureau decision, MAP/TRAC argue that "[t]he Commission has repeatedly held . . . that discussion of religious doctrine and related issues are matters of private, not public controversy, and do not involve application of the fairness doctrine" ("Reply Comments of Media Access Project and Telecommunications Research and Action Center" at 39 [hereinafter cited as "MAP/TRAC Reply Comments]); as a consequence, MAP/TRAC contend that it was not reasonable for the broadcasters to be concerned about potential fairness doctrine litigation. The assertion that we have held that issues concerning religious doctrine to be *per se* beyond the scope of the fairness doctrine, however, is clearly erroneous. In fact, even *Religion and Ethics Institute*—the case cited by MAP/TRAC—noted that some issues concerning religious doctrine "must be considered controversial and of importance to the community at large" (42 RR 2d at 1659), thereby triggering fairness doctrine obligations. Indeed, the Commission has long asserted that "[t]he fairness doctrine extends to all expressions of views on controversial issues of public importance, whether or not they [would] be

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the station manager of Cornhusker Television Corporation, asserted that the fear of fairness doctrine obligations precipitated his cancellation of a series of public announcements concerning inflation. Mr. Jenson testified that the only reason that these announcements were not aired was to avoid the presentation of opposing announcements mandated by the requirements of the fairness doctrine.[106] Another example in the record is the cancellation of a series on the B'nai B'rith by a Pennsylvania radio station. The series was not broadcast because the licensee felt that it could not afford the personnel time to respond to the complaints, the broadcast time to provide responsive programming or the potential legal fees resulting from complaints by perceived extremist groups.[107] In addition, a major Houston television station invited a former city official to address the issue of pay raises for police officers but, during the course of the interview, the former official also expressed his views on the issues of pay increases for firefighters and other municipal workers. Fearing to trigger additional fairness doctrine obligations, the station refused to air his views on these additional topics.[108]

46. Equally or perhaps even more disturbing than the self-censorship of individual broadcasts is the fact that the avoidance of fairness doctrine burdens has precipitated specific "policies" on the part of broadcast stations which have the direct effect of diminishing, on a routine basis, the amount of controversial material presented to the public on broadcast stations. For example, the owner of a broadcast station and two newspapers regularly prints editorials in his newspapers but, inhibited by regulatory restrictions, is reluctant to repeat the same editorials on his radio station.[109]

Similarly, the Meredith Corporation acknowledges that one of its television stations has chosen "not to editorialize on matters of public importance, because of its concern that it does not have the resources necessary to seek out and provide exposure to opposing viewpoints in all instances."[110] Unfortunately, the policies of these stations are not atypical. In fact, a survey conducted by NAB in 1982 found that only 45 percent of responding stations had presented editorials in the preceding two years.[111] Moreover, the record reflects that even stations which do elect to editorialize are inhibited by fairness doctrine requirements. According to Mr. Donald Gale, News Director of KSL–AM, the regulatory burdens associated with the fairness doctrine were a crucial factor in the decision of his station not to air "guest editorials."[112]

47. Policies of stations that restrict public issue programming are not limited to editorials; they extend to the airing of political advertisements.[113] For example, as a direct result of fairness doctrine obligations, CBS acknowledges that its owned and operated stations, as a general matter, limit the amount of time they will sell both to persons seeking to place advertisements relating to ballot propositions and to political parties attempting to purchase broadcast time outside of campaign periods. CBS states that many of the television stations in four of the five markets in which those stations operate also either refuse or severely limit the sale of time for ballot proposition advertising.[114] Ms. Harriet Kaplan, the Chief Executive Officer of Station WAYS and WROQ–FM in Charlotte, North Carolina states that as a result of the regulatory obligations associated with the fairness doctrine, "I do not even let our sales department pursue political advertising. It is handled by a separate person. . . ."[115] The President and General Manager of WNJR Radio in Union, New Jersey also testified that she is "inclined to steer away from [political advertisements] because of the [regulatory] problems."[116] Similarly, Ms. Karen Maas, Vice President and General Manager of KIUP–AM and KRSJ–FM in Durango, Colorado states that her stations "thinks twice" about covering state ballot and related political issues.[117]

48. Moreover, the evidence of the "chilling effect" of the fairness doctrine, as applied to political advertisements, is not limited to the statements of broadcasters. For example, in its comments the Glass Packaging Institute ("GPI"), a trade association of the container glass industry which supports the retention of the fairness doctrine,[118] recounts its difficulties in placing advertisements on ballot issues:

> When various coalitions of which GPI was a member have sought to buy broadcast time for the presentation of views on ballot initiatives, many broadcasters have refused to consider their proposals. This refusal generally was occasioned not by normal market forces or broadcaster bias, but by broadcaster's unwillingness to assume the financial cost of providing free response time,

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deemed religious views by some persons." *Brandywine Main-Line Radio, Inc.*, 27 FCC 2d 505, 570 (1971), *aff'd*, 473 F.2d 16 (D.C. Cir. 1972), *cert. denied*, 412 U.S. 922 (1973). Indeed, in *Brandywine*, we refused to renew the station's license on the basis, *inter alia*, that it had violated the fairness doctrine with respect to its religious programming. Therefore, the argument of MAP/TRAC that it was patently unreasonable in this situation for the broadcaster to be concerned about potential fairness doctrine litigation is without merit.

BCFM argues that the broadcaster's fear of incurring the legal and administrative costs in defending a fairness doctrine complaint is irrational. Therefore, it contends that the broadcaster was not reasonably inhibited by fairness doctrine obligations and, consequently, this example is not probative of a "chilling effect." BCFM Reply Comments, *supra* n.91 at 87. We have addressed the manner in which legal and administrative costs can result in a "chilling effect," *supra* at ¶¶ 35–39. We believe, therefore, that BCFM's assertion also is without merit.

[106] NAB Comments, *supra* n.79, App. Vol., App. D at 38–39 (Example No. 27). In an attempt to discredit this example, BCFM contends that the station manager was not reasonably inhibited by fairness doctrine obligations; it argues that no equal access for opposing views was required and contends that the station's obligation to provide reasonable access for opposing views "probably" would have been met by its news coverage. BCFM Reply Comments, *supra* n.91 at 88. BCFM provides no support for its assertion concerning the adequacy of the station's news coverage in meeting the station's fairness doctrine obligations on this issue. In any event, we have no basis for disregarding the station manager's explanation for the reason for the cancellation of the series.

[107] NAB Comments, *supra* n.79, App. Vol., App. D at 62 (Example No. 42). While acknowledging that this example "implies" that the broadcaster's cancellation was induced by the fairness doctrine, BCFM contends that the broadcaster's actual concern was to avoid harassment by extremist groups and that this concern would exist without regard to fairness doctrine obligations. BCFM Reply Comments, *supra* n.91 at 62–63 n.38. We disagree. While a station may have to incur personnel costs in order to respond generally to complaints by the public in the absence of the fairness doctrine, the number of complaints—and consequently the amount of personnel costs—are necessarily increased when a station is obligated to comply with the fairness doctrine; moreover, the costs resulting from a requirement to provide additional "balanced" programming and the costs incurred in defending broadcast decisions clearly are attributable directly to fairness doctrine obligations.

[108] Society of Professional Journalists' Comments, *supra* n.97 at 7–8.

[109] NAB Comments, *supra* n.79, App. Vol., App. D at 61 (Example No. 41). In its Reply Comments, MAP/TRAC characterize this example as "ignorant and meaningless" but provide no support for this pejorative appellation. MAP/TRAC Reply Comments, *supra* n. 105 at 29.

[110] Meredith Comments *supra* n.103 at 3. *See also* "Comments of Arizona Television Company."

[111] NAB Comments, *supra* n.79 at 38. Moreover, in it Comments NAB describes an informal survey conducted its the Northwest regional conference which found at least 95 percent of the broadcasters, inhibited by regulatory concerns, did not speak out on local issues. *Id.*, App. Vol., App. D at 52 (Statement of Rev. Jim Nicholls) at 52 (Example No. 36).

[112] *Id.*, App. Vol., App. D at 11 (Example No. 11).

[113] *See, e.g.*, FEF Comments, *supra* n.83 at 64–65.

[114] CBS Comments, *supra* n.83 at 77, n.*.

[115] 1983 Hearings, *supra* n.84 at 224.

[116] *Id.*

[117] NAB Comments, *supra* n.79, App. Vol., App. D at 8 (Example No. 7).

[118] The Glass Packaging Institute, however, has urged the Commission to modify the Cullman Doctrine. "Comments of the Glass Packaging Institute" at 13.

as required by *Cullman*. In other instances, the coalitions' requests were met not by a broadcaster refusal to sell time, but, instead, by a rate purposely inflated to cover the anticipated cost of free response time being demanded by the coalitions' opponents on the ballot proposals. The result of these factors was that the coalitions found themselves unable to purchase broadcast time within which to address ballot issues, either because of a broadcast licensee's refusal to sell time, or because the time costs were prohibitive, both obstacles being the result of the broadcasters' fear of resulting *Cullman* obligations.[119]

Similarly, in its comments, the National Rifle Association of America ("NRA"), an organization which has also urged the Commission to retain the fairness doctrine, documented its difficulties in placing advertisements on ballot propositions. Like the GPI, the NRA attributed the reluctance of broadcasters to accept these advertisements on the fact that their acceptance would subject broadcasters to the responsive requirements of the fairness doctrine.[120]

49. The most compelling evidence of the existence of a "chilling effect" with respect to ballot advertising is presented in the Comments of the Public Media Center ("PMC"), an organization which, as noted above,[121] is actively involved in prosecuting complaints under the fairness doctrine. In its Comments, PMC vividly illustrates the manner in which a complainant can successfully pressure broadcasters into refusing to sell advertising on ballot issues. For example, PMC recounts the tactics of a pro-bottle bill coalition as follows:

> Ads opposing the beverage deposit—sponsored by an industry front group . . . hit the air in early August. Within ten days, [the pro-bottle bill coalition] sent a letter to all 500 California stations asking for a 2 to 1 ratio in free spot time. *[The coalition] urged broadcasters to refuse to sell time and therefore avoid a fairness situation at all.*[122]

The majority of the California stations followed the coalition's exortation. Less than one-third of the stations contacted by the coalition sold ballot advertising to the industry group.[123]

50. Similarly, PMC describes the successful invocation of the fairness doctrine by anti-smoking group in order to pressure broadcasters into refusing to sell advertising time to their opponents. PMC recounts that the anti-smoking group:

> . . . mailed "pre-emptive" letters to every local broadcast station, remarking on the upcoming vote and asking to be notified as soon as the tobacco industry bought airtime. . . . *[T]en Miami stations, seeking to avoid [the group's] predictable demands, simply refused to sell time to the industry front.*[124]

As a consequence, the public was denied information on a matter of important local concern.

51. In addition to political advertisements, the record reflects that the onerous requirements associated with the fairness doctrine have resulted in the widespread practice of many broadcasters to refuse to air any public issue advertisements. For example, one broadcaster employed by a large television station states that his station and six others under common ownership have a "company policy" not to accept issue advertising.[125] A number of trade associations have also documented that broadcast licensees, inhibited by the requirements of the fairness doctrine, have refused to air issue-oriented advertisements. The comments of the American Association of Advertising Agencies are illustrative:

> Many large corporations, consistent with a special expertise or interest in a specific public policy or issue, occasionally approach the broadcast media seeking to purchase air time for dissemination of public interest advertisements. . . . [B]roadcast licensees have regularly rejected offers for such advertisements—*not* because of some defect in the ads themselves, but rather because the Fairness Doctrine requires broadcasters carrying paid public interest advertisements to carry opposing viewpoints as well—even if no one steps forward to pay for them.[126]

Similarly, the Association of National Advertisers, a trade association composed of companies which employ advertising in the marketing of goods and services to the public, documents that its members wish to present their views on issues of public controversy but are often "frustrated by rejections at the hands of broadcast licensees who claim that to accept such paid communications will subject them to onerous balancing obligations because of the Fairness Doctrine. . . ."[127]

52. The inhibiting effect of the fairness doctrine on the presentation of issue-oriented advertising is vividly illustrated in the comments of Mobil Corporation, another party who actively supports the retention of the fairness doctrine. Relying on its "considerable experience" in this area, Mobil recounts that it has been thwarted in its efforts to provide the public with its side of public issue as a result of "the broadcasters' outright refusal to permit the presentation of conflicting views on particular issues of public importance."[128] In stark contrast to this experience, Mobil states that the "print media has been willing to sell space for Mobil to present its views, and has never disagreed with the substance or placement of materials. . . ."[129] While Mobil itself does not attribute its difference in treatment to the regulatory burdens associated with complying with the requirements of the fairness doctrine, evidence in the record, which we find persuasive, indicates that the refusal of many broadcasters to air Mobil's advertisements was in fact based upon a concern that the commercial would trigger requests for the broadcast of responsive viewpoints under the fairness doctrine.[130]

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[119] *Id.* at 11–12. In *Cullman Broadcasting Co.*, 40 FCC 576 (1963), we stated that: "Where the licensee has chosen to broadcast a sponsored program which for the first time presents one side of a controversial issue, has not presented (or does not plan to present) contrasting viewpoints in other programming, and has been unable to obtain paid sponsorship for the appropriate presentation of the opposing viewpoint or viewpoints, he cannot reject a presentation otherwise suitable to the licensee — and *thus leave the public uninformed* — on the ground that he cannot obtain paid sponsorship for that presentation." *Id.* at 577 (emphasis in original).

[120] In its Comments, the NRA stated that: "In attempting to address controversial issues, including ballot propositions affecting the Second Amendment, *ad hoc* organizations formed by local firearms owners and other citizens often have been faced with a broadcast licensee who has elected to exercise its right to refuse all advocacy advertising. Invariably, this refusal is based . . . on an unwillingness of the broadcast licensee to risk the imposition of the financial penalty inherent in the *Cullman* obligation to invade its limited stock of commercial time in order to provide free response time to opponents on the issue." "Comments of the National Rifle Association of America" at 32–33.

[121] *See* n.73, *supra*.

[122] PMC Comments, *supra* n.73 at 28 (emphasis added).

[123] *See id.*

[124] *Id.* at 16–17 (emphasis added).

[125] NAB Comments, *supra* n.79, App. Vol., App. D at 11 (Example No. 10). Similarly, as noted by the United States Court of Appeals in *Maier* v. *FCC*, 735 F.2d 220, 234 n.19 (7th Cir. 1984), WTMJ–TV, a broadcast station in Milwaukee, Wisconsin has a "station policy that '[t]ime is not sold for the discussion of controversial issues.' "

[126] "Comments of the American Association of Advertising Agencies in Furtherance of the Commission's Inquiry to Support Repeal of the Fairness Doctrine" at 3–4 (emphasis in original). *See also* "Comments of the American Advertising Federation"; "Comments of the Association of National Advertisers Inc." [hereinafter cited as "ANA Comments"]. *See also* NAB Comments, *supra* n.79, App. Vol., App. D at 30–31 (Example No. 23).

[127] ANA Comments, *supra* n.126 at 2.

[128] "Comments of Mobil Corporation," at 3–4 [hereinafter cited as "Mobil Corp. Comments"].

[129] *Id.* at 4.

[130] NAB Comments, *supra* n.79, App. Vol., App. D at 60 (Example No. 40).

[131] *See, e.g., Brent Buell*, 97 FCC 2d 55, 57 (1984). As we stated in our *1974 Fairness Report*, "the usual fairness complaint does not involve an allegation that the licensee has not devoted sufficient time to the discussion of public issues." *1974 Fairness Report*, 48 FCC 2d at 10. Indeed, on only one occasion have we determined that the licensee acted unreasonably in failing to cover a specific controversial issue of paramount importance to the community. *Representative Patsy Mink*, 59 FCC 2d 987 (1976).

53. Further evidence of the demonstrable inhibiting effect of the fairness doctrine is documented by our own administrative decisions. Except in extremely rare situations, a licensee is not challenged under the fairness doctrine for a failure to air a specific controversial issue of importance to the community;[131] rather, the typical fairness doctrine case addresses whether the licensee provided overall balanced coverage with respect to those issues which, in its discretion, it chose to present. As a consequence, in those instances in which we determined that the licensee failed to broadcast a sufficient amount of responsive programming which is mandated under the second prong of the fairness doctrine, we have imposed sanctions—including the ultimate penalty of non-renewal—upon broadcasters who have actually provided large amounts of controversial issue programming. With respect to these broadcasters, the anomalous result of enforcing the second prong of the fairness doctrine is to inhibit or silence licensees who make significant contributions to the marketplace of ideas.[132]

54. *Brandywine-Main Line Radio Inc.*,[133] a case involving the license renewal of WXUR, is a vivid illustration of the way in which application of the fairness doctrine has operated to stifle controversial issue programming. The uncontroverted evidence of that case demonstrated that "controversial issue programming was a substantial part of WXUR's total programming"[134] during its term of license. The Commission also found that the station did provide some coverage of opposing viewpoints, but the Commission determined that the station did not satisfy the requirement of overall balance in its public issue programming, as "those holding viewpoints contrary to those of the moderator were forced to give their views in an antagonistic setting."[135] As a consequence, the Commission refused to renew the license of WXUR.

55. The Commission's decision in that case had the direct result of reducing the amount of controversial issue programming available to the public. Chief Judge David Bazelon, in dissent to the Court of Appeals' affirmance, stated that WXUR was:

> a radio station devoted to speaking out and stirring debate on controversial issues. The station . . . propogate[d] a viewpoint which was not being heard in the greater Philadelphia area. The record is clear that through its interview and call-in shows it did offer a variety of opinions on a broad range of public issues, and that it never refused to lend its broadcast facilities to spokesman of conflicting viewpoints. . . .
>
> The Commission's . . . decision, has removed WXUR from the air. This has deprived the listening public not only of a viewpoint but also of robust debate on innumerable controversial issues. It is beyond dispute that the public has lost access to information and ideas. This is not a loss to be taken lightly, however unpopular or disruptive we might judge these ideas to be.[136]

56. A number of parties characterize the statements made by broadcasters that document the existence of "chilling effect" as mere "self-serving" utterances to which the Commission should accord little probative value.[137] Because these broadcasters at most merely recount their "personal beliefs about the effect of the Doctrine on programming practices,"[138] these parties argue that their statements do not substantiate the proposition that the overall effect of the fairness doctrine is to inhibit the presentation of controversial issues of public importance.

57. We disagree. Because the existence of a "chilling effect" is a subjective perception, the statements of broadcasters who are personally subject to its requirements on a daily basis are able to present some of the best evidence on whether or not the doctrine, in operation, inhibits the presentation of controversial issues of public importance. We also believe that this evidence is more probative than the statements of persons who, by necessity, have to second-guess the broadcaster's state of mind.

58. In addition, we reject the proposition that the evidentiary value of these statements is undercut by their alleged "self serving" nature. A statement by a broadcaster that he or she is inhibited from presenting controversial issues of public importance is, in a very real sense, an admission against interest. Such a statement may constitute an acknowledgement that the broadcaster may not be abiding by the highest standards of professional journalism, thereby potentially diminishing his or her standing in the profession. In addition, it could create potential regulatory problems for the broadcaster.[139] Further, while it is true that these statements evidencing a "chilling effect" are "self-serving" in the sense that the broadcasters who made them have a direct interest in the outcome of this proceedings, the identical charge could be leveled against every statement of every commenting party. We have never held that the evidence of interested parties lack probity; indeed, were we to adopt such a rule it would be virtually impossible for us to come to any conclusions about any issues raised in this proceeding.

59. Some parties to this proceeding attempt to support the absence of a "chilling effect" by asserting that most

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[131] In making this assertion, we do not—and cannot—pass judgment on the wisdom or propriety of the viewpoints expressed. Indeed, the Commission may conclude that a licensee makes a significant contribution to the marketplace of ideas, even though the Commission—or a majority of the public—may disagree or even abhor the opinions expressed by the licensee. As the United States Supreme Court has stated, "it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas." *FCC* v. *Pacifica Foundation*, 438 U.S. 726, 745–46 (1978). The presentation of diverse viewpoints on controversial issues of public importance enables members of the public, rather than any governmental entity, to accept or reject the different attitudes and viewpoints; the exposure to the marketplace of ideas, therefore, provides the public with the means to understand the vital issues of the day.

[132] *Brandywine-Main Line Radio Inc., supra* n.75.

[134] *Id.*, 24 FCC 2d at 22. Indeed, the Initial Decision noted that:

> In the broad perspective of this record, it is almost inconceivable that any station could have broadcast more variegated opinions upon so many issues than WXUR. . . . The multitudinous seas of opinion were navigated in what seemed to be a breathtaking course and this, indeed, was a main cause of the station's difficulties—not that it was narrowly partisan but that it sought and received too much controversy.
>
> There is a strange irony in the fact that WXUR has attempted to do what broadcasters have been exorted to do and that is to offer vigorous discussion of controversial issues. *The station has, in fact, presented such discussion in about the same degree that most stations offer entertainment.*
>
> *Brandywine-Main Line Radio Inc.*, 24 FCC 2d 42, 130–131 (1970), *rev'd*, 24 FCC 2d 18 (1970), *recon. denied*, 27 FCC 2d 565 (1971), *off'd*, 473 F.2d 16 (D.C. Cir. 1972), *cert. denied*, 412 U.S. 922 (1973). (Initial Decision of Hearing Examiner H. Gifford Irion) (emphasis added).

[135] *Brandywine-Main Line Radio, Inc. v. FCC*, 473 F.2d 16, 70 (D.C. Cir. 1972), *cert. denied*, 412 U.S. 922 (1973) (Bazelon, C.J., dissenting) (emphasis omitted).

[137] *See, e.g.*, "Reply Comments of the American Civil Liberties Union" at 9 [hereinafter cited as "ACLU Reply Comments"]; MAP/TRAC Reply Comments, *supra* n.105 at 36.

[138] *See* ACLU Reply Comments, *supra* n.137 at 10.

[139] The United States Supreme Court has stated that "if present licensees should suddenly prove timorous [in presenting controversial issues of public importance], the Commission is not powerless [to redress the situation]." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. at 391. In light of this judicial warning, a licensee may believe it imprudent to acknowledge that it has in fact been timorous, thereby inviting potential regulatory litigation.

broadcasters either support the doctrine or at a minimum deny that it inhibits their speech.[140] We find this argument to be unpersuasive. Virtually all broadcasters or their trade associations which commented on this issue took the position that the fairness doctrine operates as a significant deterrent to the presentation of controversial issues of public importance.[141] There was only one broadcaster on the record of this proceeding which voiced its support for the fairness doctrine as a matter of policy.[142] Moreover, the second-hand accounts of support of the doctrine by broadcasters that are contained in the pleadings of some proponents of the doctrine are directly contradicted by the statements of the broadcasters themselves in this proceeding.[143] Furthermore, we do not believe that the isolated representations of some broadcasters to the effect that the doctrine does not have any effect on the type, frequency or duration of the controversial viewpoints they air are probative of an absence of chilling effect within the industry as a whole; the fact that some broadcasters may not be inhibited in the presentation of controversial issues of public importance does not prove that broadcasters in general are similarly uninhibited.

60. Some parties assert that any inhibiting effect of the fairness doctrine is not attributable to the actual requirements of the doctrine itself but rather to the misperception of broadcasters as to their precise obligations under the doctrine. These commenters contend that broadcasters are not inhibited by the fear of incurring fairness doctrine obligations unless regulatory requirements in fact attach to their programming.[144] However, broadcasters are not lawyers. A broadcaster may be uncertain as to the precise boundaries of our detailed and complex regulatory scheme[145] or may be uncertain as to whether he or she will be able to convince us, in the course of fairness doctrine litigation, that the station's overall programming complies with our regulatory requirements. As a consequence, a broadcaster, in order to avoid even the possibility of litigation, may be deterred from airing material even though the Commission, after hearing all the evidence, would have concluded that the program did not trigger fairness doctrine obligations.[146] Indeed, the uncertainty as to whether or not a broadcast contains information which rises to the level of a controversial issue of public importance may itself have an inhibiting effect.[147] In any event, it is the fact of deterrence—not whether or not the Commission, in making an adjudicatory determination on the substantive law would in fact find a fairness doctrine obligation—which is relevant in ascertaining the existence of a chilling effect. As the United States Court of Appeals stated:

> In seeking to identify the chilling effect . . . our ultimate concern is not so much with what government officials will actually do, but with how reasonable broadcasters will perceive regulations, and with the likelihood they will censor themselves to avoid official pressure and regulation.[148]

61. A number of commenters argue that there is no inhibiting effect because the Commission has been careful to administer the fairness doctrine in a manner which attenuates the regulatory burdens on broadcasters.[149] It is true that we have enforced the doctrine with a view toward minimizing editorial intrusion on broadcast journalists.[150] But

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[140] *See, e.g.*, BCFM Reply Comments, *supra* n.91 at 50–54; PMC Comments, *supra* n.73 at 7–9.

[141] *See, e.g.* "Comments [of National Radio Broadcasters Association] on Reassessment of the Fairness Doctrine," at 8; NAB Comments, *supra* n.79, App. Vol., App. D; "Joint Comments of Radio-Television News Directors Association" at 60–65; CBS Comments, *supra* n.83 at 70–96; NBC Comments, *supra* n.86 at 9–52; Tribune Comments, *supra* n.78 at 8.

[142] "Comments of Group W [Westinghouse Broadcasting & Cable Co.]" at 6–7 [hereinafter cited as "Group W Comments"].

[143] For example, in its Reply Comments, BCFM contends that it "is not the case" that "a majority of licensees, or at least the major networks, . . . oppose the [fairness] doctrine." BCFM Reply Comments, *supra* n.91 at 50. It states further that "NBC, CBS and ABC do not share NAB's view that the doctrine inhibits their speech." *Id.* at 50–51. Based upon the pleadings submitted by broadcasters in this proceeding, these representations appear erroneous. As noted above, the record reflects that the overwhelming majority of broadcasters participating in this inquiry oppose retention of the fairness doctrine. Moreover, with respect to the networks, NBC and CBS filed lengthy comments in this proceeding urging the Commission to eliminate the doctrine; one reason that these parties took this position was that they perceived the doctrine to have a chilling effect upon the speech of broadcasters. NBC Comments, *supra* n.86 at 8–9; CBS Comments, *supra* n.83 at 70–77. Furthermore, expressing the view that the total repeal of the fairness doctrine is a long term goal, ABC urged the Commission to adopt proposals for "major overhaul of the fairness doctrine" to "further enhance the First Amendment rights of broadcast journalists. "Reply Comments of American Broadcasting Companies, Inc." at 5. Indeed, BCFM actually characterizes ABC's proposals as designed "to exempt broadcasters from every meaningful obligation under the fairness doctrine. . . ." BCFM Reply Comments, *supra* n.91 at 74. It is clear, therefore, that the statement of the networks in the record of this proceeding are directly at odds with BCFM's representation that these parties support the fairness doctrine.

[144] *See, e.g.*, BCFM Reply Comments, *supra* n.91 at 66–69; MAP/TRAC Reply Comments, *supra* n.105 at 36–40.

[145] The regulatory requirements associated with the fairness doctrine are not as clear and unambiguous as the parties making this argument would have us believe. As noted in n.105 *supra*, BCFM argued that it was patently absurd for a broadcaster to decide not to air a series on religious cults on the basis that the series would trigger fairness doctrine obligations because religious matters are clearly beyond the scope of the fairness doctrine. Yet, contrary to BCFM's assertions, we have affirmatively stated that matters of religious doctrine, in appropriate circumstances, could precipitate fairness doctrine obligations. *See* n.105, *supra; Brandywine Main-Line Radio, Inc.*, 27 FCC 2d at 570.

[146] As the United States Supreme Court has stated: "The man who knows that he must bring forth proof and persuade another of the lawfulness of his conduct necessarily must steer far wider of the unlawful zone. . . . This is especially to be feared when the complexity of the proofs and the generality of the standards applied provide but shifting sands on which the litigant must maintain his position."

[147] We have traditionally recognized that: "One of the most difficult problems involved in the administration of the fairness doctrine is the determination of the *specific* issue or issues raised by a particular program. Those would seem to be a simple task, but in many cases it is not".

Speiser v. *Randall*, 357 U.S. 513, 526 (1958) (citation omitted). *See also New York Times Co.* v. *Sullivan*, 376 U.S. at 279. *See generally Central Intelligence Agency against American Broadcasting Companies, Inc.*, No. 1862 (released Jan. 10, 1985), *application for review denied*, FCC No. 85–374 (adopted July 12, 1985).

1974 Fairness Report, 48 FCC 2d at 12 (emphasis in original). As Chief Judge J. Skelly Wright of the United States Court of Appeals stated, "Issue ambiguity in the fairness doctrine context is a certainty to lessen the free flow of information favored by the First Amendment, and is therefore unacceptable." *American Security Council Education Foundation* v. *FCC*, 607 F.2d at 458 (J. Skelly Wright, C.J., concurring). In enforcing the fairness doctrine, we are required, *inter alia*, to determine whether or not issues are "publicly important," "controversial," etc. Because our experience indicates that identifying and characterizing issues is inherently subjective, issue ambiguity under the fairness doctrine scheme appears unavoidable.

[148] *Community-Service Broadcasting of Mid-America, Inc.* v. *FCC*, 593 F.2d at 1118.

[149] *See, e.g.*, Mobil Corp. Comments *supra* n.128 at 25–30; MAP/TRAC Comments *supra* n.80 at 128–133.

[150] *1974 Fairness Report*, *supra* n.3. Historically we have been concerned over the dangerous potential of the fairness doctrine to chill the speech of broadcasters. Consequently, in enforcing the doctrine we have adopted a number of procedural rules in an attempt to attenuate the intrusion on the editorial freedom of broadcast journalists. *Id.* For example, the Commission, as a condition precedent to filing a fairness doctrine complaint, requires a viewer or listener to first present his or her grievance to the broadcaster. *See, e.g., American Security Council Education Foundation* v. *FCC*, 607 F.2d at 445. We have also required a person filing a fairness doctrine complaint to establish a *prima facie* case. *See, e.g., Memorandum Opinion and Order on Reconsideration of the Fairness Doctrine Report* in Docket No. 19260 58 FCC 2d 691, 696 (1976), *Aff'd sub nom. National Citizens Committee for Broadcasting* v. *FCC*, 567 F.2d 1095 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 926 (1978). *American Security Council Education Foundation* v. *FCC* 607 F.2d at 447. In addition, in implementing the doctrine, we have traditionally accorded a significant amount of discretion to broadcasters in the selection of the issues, the manner of coverage, the appropriate spokespersons, and the amount of

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the record in this proceeding has convinced us that the fairness doctrine generally operates to inhibit the presentation of controversial issues of public importance on the airwaves. Because the inhibiting effect is an inevitable result of the substantive rule itself, even carefully crafted implementing mechanisms have not been successful in preventing the fairness doctrine from operating to deter broadcasters from airing important and controversial issues. The mere fact that a more intrusive implementing approach might result in even greater restrictions on the editorial discretion of broadcasters does not negate the existence of a demonstrable "chilling effect" under the present regulatory scheme.

62. Furthermore, noting that the Commission only forwards a small amount of complaints it receives to broadcasters for justification, several fairness doctrine proponents assert that Commission fails to enforce its rules and, consequently, broadcasters are not reasonably deterred from airing controversial issues of public importance by operation of the fairness doctrine. We disagree. While it is true that we do not often determine, after review of a fairness doctrine complaint, that it is appropriate for us to request the broadcaster to explain how its programming comports with the fairness doctrine,[151] this fact merely demonstrates that the vast majority of fairness doctrine complaints we receive lack colorable validity. Instead of the improper action ascribed by some commenters, we believe that the paucity of actionable fairness doctrine complaints is probative of the fact that most licensees comply with the fairness doctrine.

63. In addition, several supporters of the retention of the fairness doctrine argue that the record in this proceeding provides inadequate support of a "chilling effect" on the grounds that the NAB, in the appendix to its comments, "merely" provided 45 examples of the way in which the fairness doctrine chills broadcasters' speech. These parties contend that the allegedly small number of examples are "wholly insufficient to suggest that the fairness doctrine has any inherent chilling effect on broadcasters."[152]

64. We find that this contention lacks merit for several reasons. First, the evidentiary support for our conclusion concerning the existence of a "chilling effect" is based, *inter alia*, on the pleadings of numerous parties, including individual broadcasters, corporations, industry groups, trade associations, non-profit corporations as well as the comments of the NAB. Second, even if the evidence of record were limited to the 45 examples contained in the appendix to NAB's comments—which it is not—we do not believe that 45 examples of chill can be discounted on the grounds that they are merely isolated incidents that are unrepresentative of the industry as a whole. This is particularly true in light of the fact that, as noted above, an admission by a broadcaster that the fairness doctrine inhibits the presentation of controversial issues could be construed as involving a potential rule violation which broadcasters may be reluctant to acknowledge, especially in the record of the licensing regulatory agency.[153]

65. In addition, several parties challenge some of NAB's examples on the grounds that they involve application of the personal attack or political editorializing rule.[154] Noting that these specific applications of the fairness doctrine are the subject of a separate rulemaking,[155] they assert that these examples lack evidentiary value as to the "chilling effect" of the general fairness doctrine. To the contrary, we believe that examples of a "chilling effect" which involve application of the personal attack and political editorializing components of the fairness doctrine contained in the comments of NAB and other parties are probative of the general proposition that intrusive content-based regulation like the fairness doctrine and its ancilliary doctrines inhibit the presentation of controversial issues of public importance on broadcast frequencies.[156] In any event, while these examples do provide evidentiary support regarding the inhibiting effect of the doctrine, our conclusion as to the existence of a "chilling effect" is in no way dependent upon these examples.[157]

66. Finally, in its Reply Comments, the Media Access Project and the Telecommunications Research and Action Center ("MAP/TRAC") contend that many of the examples of "chilling effect" contained in the NAB's Comments are merely "recycled material" which is of little evidentiary value. In support of this contention, MAP/TRAC recount that a number of these examples have been the subject of published books and articles, Commission proceedings or congressional testimony. With respect to the examples derived from the congressional hearings, MAP/TRAC assert that Congress, by rejecting or failing to enact legislation, found these examples to be unpersuasive.

67. We disagree. In our own view, the probity of these examples is not diminished merely because they have been published, formed the factual basis of an administrative proceeding or presented to Congress. To the extent that any evidentiary relevance attaches to the fact that the contents of a pleading has formed the subject matter of testimony presented under oath to the Nation's lawmakers, this fact would appear to enhance rather than lessen its probative value. Furthermore, contrary to MAP/TRAC's suggestions, the mere fact that Congress chose not to enact

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time devoted to a specific matter. *See 1974 Fairness Report*, 48 FCC 2d at 18. *See also Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 40 FCC 598 (1984).

[151] *See, e.g., American Security Council Education Foundation v. FCC*, 607 F.2d at 447.

[152] MAP/TRAC Reply Comments, *supra* n.105 at 29. *See also* "Reply Comments of the United States Catholic Conference" at 8 [hereinafter cited as "USCC Reply Comments"].

[153] Contending that some of the examples cited by NAB are overly vague, anonymous, or otherwise fail to demonstrate that the fairness doctrine in actuality inhibits the presentation of controversial issues of public importance, certain parties argue that the Commission should accord little, if any, probative value to these examples. Contrary to this assertion, we believe that many of the examples contained in NAB's Comments provide substantial and convincing proof of the existence of a "chilling effect" and that the examples set forth by NAB are not so vague as to lack probative value. While some of the sources are unnamed, we note that the examples set forth by anonymous sources are similar to those which are attributed to specific broadcasters. Moreover, as noted above at ¶ 58 *supra*, there are legitimate reasons, unrelated to the probity of the representations, why some broadcasters may desire anonymity with respect to their statements that they were inhibited, by the fear of incurring fairness doctrine obligations, in their presentation of controversial issues of public importance. Furthermore, as noted in ¶ 64 *supra*, our concern is with the evidence contained in the record as a whole rather than with whether each example described by NAB contains specific evidentiary documentation of a "chilling effect."

[154] *See, e.g.*, MAP/TRAC Reply Comments, *supra* n.105 at 30; BCFM Reply Comments, *supra* n.91 at 68–69; ACLU Reply Comments, *supra*, n.137 at 10.

[155] *Notice of Proposed Rule Making* in Gen. Docket No. 83–484, FCC 83–218 (released June 14, 1983).

[156] *See, e.g.*, NAB Comments, *supra* n.79, App. Vol., App. D at 35–37, 40–41,. 46 and 62 (Example Nos. 26, 28, 31, and 42). *See also* "Comments of KIPR/95 FM"; "Comments of KGRL 940–AM Radio"; CBS Comments, *supra* n.83 at 77–78, n.*; FEF Comments, *supra* n.83 at 71–72, *citing Freedom of Expression Act of 1983: Hearings Before the Senate Committee on Commerce, Science & Transportation*, 98th Cong. 2d Sess. 125–126 (1984).

[157] In this regard, we note that none of the evidence of record demonstrating the existence of a "chilling effect" that is described in this section involves an application of the personal attack rule or the political editorializing rule.

legislation does not constitute an affirmative determination on the part of the governing legislative body that the examples lack probity.[158]

68. In sum, we find the evidence, derived from the record as a whole, leads us to conclude that the fairness doctrine chills speech. As a result of this finding alone we no longer believe that the fairness doctrine, as a matter of policy, furthers the public interest and we have substantial doubts that the fairness doctrine comports with the strictures of the First Amendment. Because the fairness doctrine inhibits the presentation of controversial and important issues, in operation, it actually disserves the purpose it was designed to achieve. In our view, an elimination of the doctrine would result in greater discussion of controversial and important public issues on broadcast facilities. While we believe that the existence of a "chilling effect" is sufficient to support our policy conclusion, it is not the only basis upon which we make this determination. In the following sections we shall discuss other detriments attributable to the fairness doctrine.

C. The Administration of the Fairness Doctrine Operates to Inhibit the Expression of Unorthodox Opinions

69. While the fairness doctrine has the laudatory purpose of encouraging the presentation of diverse viewpoints, we fear that in operation it may have the paradoxical effect of actually inhibiting the expression of a wide spectrum of opinion on controversial issues of public importance.[159] In this regard, our concern is that the administration of the fairness doctrine has unintentionally resulted in stifling viewpoints which may be unorthodox, unpopular or unestablished.

70. First, the requirement to present balanced programming under the second prong of the fairness doctrine is in itself a government regulation that inexorably favors orthodox viewpoints.[160] As we stated in our *1974 Fairness Report*, it is only "major" [161] or "significant" [162] opinions which are within the scope of the regulatory obligation to provide contrasting viewpoints. As a consequence, the fairness doctrine makes a regulatory distinction between two different categories of opinions: those which are "significant enough to warrant broadcast coverage [under the fairness doctrine]" [163] and opinions which do not rise to the level of a major viewpoint of sufficient public importance [164] that triggers responsive programming obligations. While the broadcaster in the first instance is responsible for evaluating the "viewpoints and shades of opinion which are to be presented," [165] we are obligated to review the reasonableness of the broadcaster's evaluation. As a consequence, the fairness doctrine in operation inextricably involves the Commission in the dangerous task of evaluating the merits of particular viewpoints. This evaluation has serious First Amendment ramifications. As the Supreme Court has stated:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . .[166]

71. Second, as Chief Judge David Bazelon has stated, our own administrative enforcement of the doctrine provides some support for the contention that some "controversial viewpoint[s] [are] being screened out in favor of the dreary blandness of a more acceptable opinion." [167] Broadcasters who have been denied or threatened with a denial of the renewal of their licenses due to fairness doctrine violations have generally not been those which have provided only minimal coverage of controversial and important public issues. Indeed, some licensees that we have not renewed or threatened with non-renewal have presented controversial issue programming far in excess of that aired by the typical licensee.[168] In a number of situations it was the licenses of broadcasters who aired opinions which many in society found to be abhorrent or extreme which were placed in jeopardy due to allegations of fairness doctrine violations.[169] In conclusion, we are extremely concerned over the potential of the fairness doctrine, in operation, to interject the government, even unintentionally, into the position of favoring one type of opinion over another.[170] To the extent that the

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[158] MAP/TRAC Reply Comments, *supra* n. 105 at 27–28.

[159] Governmental policy which has the effect of inhibiting the expression of specific points of view presents grave First Amendment concerns. As the United States Supreme Court has stated: "the fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection." *FCC* v. *Pacifica Foundation*, 438 U.S. at 745.

[160] Justice William Brennan has noted that the fairness doctrine may operate to disfavor viewpoints outside the mainstream of public opinion: "Under the Fairness Doctrine, a broadcaster is required to present only *"representative* community views and voices on controversial issues" of public importance. Thus, by definition, the Fairness Doctrine tends to perpetuate coverage of those "views and voices" that are already established, while failing to provide for exposure to the public to those "views and voices" that are novel, unorthodox or unrepresentative of prevailing opinion." *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 190 (1973), *quoting Democratic National Committee*, 25 FCC 2d 216, 222 (1970) (Brennan, J., dissenting) (emphasis in original).

[161] *1974 Fairness Report*, 48 FCC 2d at 15.

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] *Id.*

[166] *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 642 (1943).

[167] *Brandywine-Main Line Radio, Inc.*, v. *FCC*, 473 F.2d at 78 (Bazelon, C.J. dissenting).

[168] A discussion of our decision not to renew the license of WXUR on the basis, *inter alia*, of failing to comply with the fairness doctrine is described in detail at ¶¶ 54–55, *supra*. As noted below, in the name of the fairness doctrine we silenced WXUR, a station which had provided an enormous amount of controversial issue programming during its term of license. Similarly, in *Capitol Broadcasting Co.*, 2 RR 2d 1104 (1964), the Commission deferred action on the renewal applications of WRAL during a pendency of an inquiry into the station's compliance with the fairness doctrine notwithstanding the fact that the station's editorials, voiced by its Vice-President, Jesse Helms, presented views "on a *great number of controversial issues* of national and regional importance." *Id.* at 1108 (emphasis added.).

[169] *See, e.g., Lamar Life Broadcasting Co.*, 38 FCC 1143 (1965), *rev'd sub nom. Office of Communication of United Church of Christ* v. *FCC*, 359 F.2d 994 (D.C. Cir. 1966) (FCC refusal to grant a full term license to a station which espoused racially segregationist viewpoints); *Brandywine-Main Line Radio, Inc., supra* n.75 (FCC refusal to grant a license renewal to an evangelist station; the Hearing Examiner in *Brandywine* stated that the licensee's "style of presentation over the air—sometimes so racy as to make the gorge rise—was not what men of refined tastes would deem expedient. . . ." *Brandywine-Main Line Radio Inc.*, 24 FCC 2d at 130). *See also Trinity Methodist Church, South* v. *Federal Radio Commission*, 62 F.2d 850, 851 (D.C. Cir.), *cert. denied*, 284 U.S. 685 (1932) (Federal Radio Commission denied license renewal in a situation in which "the station had been used to attack a religious organization . . . [and where] the broadcasts [aired by the licensee] were sensational rather than instructive. . . .")

[170] In its Comments, the Office of Communication of the United Church of Christ—a party which intervened in opposition of a grant of renewal in the *Lamar Life* case—argues that in the 1960s extreme right wing broadcasters with odious racial and religious views gained an inordinate amount of influence in large sections of the country. Observing that these broadcasters were subject to fairness doctrine challenges, the United Church of Christ states that "[i]f the doctrine was successfully used to moderate abuses of that period, it served its purpose. . . ." "Comments of the Office of Communication of the United Church of Christ, the Unitarian Universalist Association, the Communication Commission of the National Council of the Churches of Christ in the U.S.A., Everett C. Parker and Al Swift" at 51 [hereinafter referred to as "UCC Comments"]. In our view, use of the fairness doctrine to suppress any point of view, however abhorrent, contravenes the purpose of the doctrine and raises serious constitutional implications.

doctrine has this effect it both disserves the interest of the public in an unencumbered marketplace of ideas and contravenes the fundamental purposes of the First Amendment.

D. In Operation the Fairness Doctrine Places the Government into the Intrusive and Constitutionally Disfavored Role of Scrutinizing Program Content

72. Although we have traditionally attempted to minimize our role in evaluating program content in administering the fairness doctrine,[171] the doctrine has the inexorable effect of interjecting the Commission into the editorial decisionmaking process.[172] In evaluating whether or not a broadcaster has met his or her balanced programming obligations under the fairness doctrine,[173] we are obligated to determine whether or not the broadcaster made a reasonable determination as to whether or not the programming presented controversial issues of public importance, and if so, we must assess whether or not the broadcaster provided reasonable opportunities for the presentation of contrasting viewpoints. In evaluating the adequacy of the responsive programming, we have had to draw conclusions as to the reasonableness of the selected program formats and spokespersons.

73. Moreover, in making these assessments, we must necessarily take into account the amount of time in which a specific viewpoint was broadcast. Our staff often performs this task by mechanistically weighing the minutes and even the seconds of time devoted to each expression of opinion.[174] In addition, we must assess the frequency of the broadcast and the degree of audience exposure. Further, because the opportunity to present responsive programming may lose its utility if the controversial issue of public importance triggering the obligation subsequently becomes moot, we must also make judgments as to the timeliness of the opportunity for the discussion of contrasting viewpoints. The minute and subjective scrutiny of program content resulting from the enforcement of the fairness doctrine is at odds with First Amendment principles.[175] For example, in *Miami Herald*, the United States Supreme Court expressed concern that a governmentally mandated right of reply statute applicable to newspapers constituted an unwarranted intrusion on the editorial freedoms of journalists

> because of its intrusion into the function of editors. A newspaper is more than a passive receptacle or conduit for news, comment and advertising. The choice of material to go into a newspaper, and the decisions made as to the limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of free press as they have evolved to this time.[176]

E. The Fairness Doctrine Creates the Opportunity For Intimidation of Broadcasters by Governmental Officials

74. Notwithstandig our recent efforts to reduce unnecessary regulatory burdens on licensees,[177] the broadcast industry is one which is characterized by pervasive regulation. The fact of this pervasive regulatory authority, including the intrusive power over program content occasioned by the fairness doctrine, provides governmental officials with the dangerous opportunity to abuse their position of power in an attempt either to stifle opinion with which they disagree or to coerce broadcasters to favor particular viewpoints which further partisan political objectives. In this regard, Chief Judge Bazelon has observed that "the potential to subject the 'fairness' theory to political abuse is inherent in the operation of the doctrine."[178]

75. Political officials have not been loathe to criticize the manner in which broadcasters have aired controversial matters of public concern [179] and at times the criticism has been accompained by overt pressure to influence the manner in which these issues are covered.[180] For example, a White House official during the Nixon Administration suggested to the President's Chief of Staff that the Administration respond to the alleged "unfair coverage" of the broadcast media by showing "favorites within the media," establishing "an official monitoring system through the FCC" and

> [I]t might be interesting for you to know the process that we go through here at the agency at the lower staff level before the Commissioners get [a case] for final decision. We . . . sit down with tape recordings [and] video tapes of . . . what has been broadcast on a specific station. We compare that to newspapers [and] other public statements that are made in the community. We try to make a decision as to whether the issue is controversial and whether it is of public importance in that community, which may be 2000 miles away. . . . [W]hen it comes down to the final analysis, we take out stop watches and we start counting [the] seconds and minutes that are devoted to one issue compared to [the] seconds and minutes devoted to the other side of that issue. . . . [I]n the final analysis we start giving our judgment as what words mean in the context of what was said on the air. What was the twist that was given that specific statement, or that commercial advertisement? Was it really pro-nuclear power or was it pro some other associated issue? Hearings on the Fairness Doctrine; Panel IV (Statement of James C. McKinney) (February 8, 1985).

[175] Justice William O. Douglas has expressed concern over the intrusive nature of the fairness doctrine:

> [T]he prospect of putting government in a position of control over publishers is to me an appalling one, even to the extent of the Fairness Doctrine. The struggle for liberty has been a struggle against Government. . . .
>
> The Court in today's decision by endorsing the Fairness Doctrine sanctions a federal saddle on broadcast licensees that is agreeable to the traditions of nations that never have known freedom of press and that is tolerable in countries that do not have a written constitution containing prohibitions as absolute as those in the First Amendment. *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. at 162–63 (Douglas J., concurring).

[176] *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. at 258.

[177] *See, e.g., Report and Order* in MM Docket No. 83–670, 98 FCC 2d 1076 (1984) [hereinafter cited as "*Television Deregulation*"]; *Report and Order* in MM Docket No. 84–13, FCC 84–156 (released May 9, 1984), 55 RR 2d 1389 (1984), *recon. denied*, FCC 85–225 (released May 8, 1985) (Elimination of Regional Concentration Rule) [hereinafter cited as "*Regional Concentration*"].

[178] *Brandywine-Main Line Radio, Inc.* v. *FCC*, 473 F.2d at 78 n.62 (Bazelon, C.J., dissenting).

[179] Chief Judge Bazelon has stated that: "In the past years, networks have come under repeated attacks from government spokesmen who did not like the way televison reported a variety of hot public issues. These attacks did not focus on inaccuracies but on the "bias" or lack of "fairness" in the presentataion". *Id.* at 78.

[180] An internal memorandum of one high level official of the Nixon Administration reveals that the President directed his staff on twenty-one occasions during a single thirty-day period to take "specific action relating to what could be considered unfair news coverage." Memorandum to H.R. Haldeman from Jeb S. Magruder. "The Shot-gun Versus the Rifle" (Oct. 17, 1969), *reprinted in* D. Bazelon, "FCC Regulation of the Telecommunications Press," 1975 Duke L.J. 213, 247–51 (1975).

[171] *See, e.g., 1974 Fairness Report* at 8. *See American Security Council Education Foundation* v. *FCC*, 607 F.2d at 445.

[172] *See Notice, supra* n.1 at ¶ 71.

[173] Both prongs of the fairness doctrine have the potential to interject the government into the decisionmaking process as to the content of programming. The first prong of the fairness doctrine sanctions governmental intrusion by enabling the Commission to prescribe directly the coverage of a specific controversial issue of public importance whether or not the broadcaster, in the exercise of his or her journalistic judgment, would choose to cover the issue. As noted *supra* at n.59, however, we impose affirmative programming obligations on broadcasters under the first part of the fairness doctrine only in very rare instances. Because it is the second prong of the doctrine that typically involves the government into the editorial decisionmaking process, this section will address the intrusion resulting from the enforcement of that prong of the doctrine.

[174] At the *en banc* hearing, James C. McKinney, Chief of the Mass Media Bureau, described the detailed scrutiny of program content that necessarily results from the enforcement of the fairness doctrine:

making "official complaints from the FCC." [181] The attempts to coerce broadcast journalists, moreover, have not been restricted to specific partisan viewpoints or politicians of a particular political party. As described in the *Notice*, a government official in another Administration was reported to state that the:

> massive strategy [of the Administration] was to use the fairness doctrine to challenge and harass the right-wing broadcasters and hope that the challenges would be so costly to them that they would be inhibited, and decide that it was too expensive to continue.[182]

We believe that the potential for the fairness doctrine to be abused in order to further partisan political purposes [183] has dangerous policy ramifications. As Justice William O. Douglas has stated: the regime of federal supervision under the Fairness Doctrine is contrary to our constitutional mandate and makes the broadcast licensee an easy victim of political pressures and reduces him to a timid or submissive segment of the press whose measure of the public interest will now be echos of the dominant political voice that emerges after every election.[184]

76. Several parties contend that we should not be concerned that the fairness doctrine has the potential to be used as a vehicle for governmental officials to improperly affect the viewpoints aired over broadcast frequencies because such governmental officials have other means, such as the license renewal process and Internal Revenue Service audits, by which to improperly attempt to exert control over broadcasters.[185] We disagree. While the commenters are correct in their assertion that governmental abuse may be effectuated by other mechanisms, we do not have plenary power to safeguard against all types of potential governmental abuse. Certainly the mere fact that alternative means of intimidation may be available does not provide justification for us to blithely ignore the fact that the fairness doctrine provides the dangerous potential for governmental abuse. As Chief Judge Bazelon has stated, "[w]ithout the FCC lever to manipulate, we could hope that there would be less chance that the licensees would be forced to kowtow to the wishes of an incumbent politician."[186]

F. The Fairness Doctrine Imposes Unnecessary Economic Costs Upon Broadcasters and the Commission.

77. In addition to the detriments described above, a further consequence of the fairness doctrine is the economic burdens imposed upon broadcasters and the Commission. As described above, the doctrine places significant economic costs upon a licensee. Such costs are incurred, for example, in negotiating with the public regarding responsive programming obligations, in defending fairness doctrine challenges in both administrative and judicial forums, in complying with the requirement to broadcast controversial issues of public importance, and in airing alternative viewpoints to these controversial issues.[187]

78. In addition to these economic burdens, the administration and enforcement of the doctrine imposes regulatory costs upon the Commission. We receive thousands of inquiries and complaints concerning the fairness doctrine annually,[188] each of which requires an individualized evaluation or response by our staff. In the course of assessing the merits of a complaint, the Commission's staff may seek further information from the complainant. If it determines that the complainant has established a *prima facie* case, the staff may request justification from the licensee, thereby precipitating potentially costly administrative litigation, which, when terminated, is subject to judicial review, with its attendant costs.[189] Contrary to the position of some commenters,[190] therefore, we do not believe that the economic burdens incurred by the Commission in administering the fairness doctrine are *de minimus*.

79. In evaluating the propriety of a policy, the costs associated with the rule are to be balanced against its benefits. As a consequence, the significant economic costs associated with the administration of the fairness doctrine are a necessary factor in a considered evaluation of whether or not retention of the fairness doctrine comports with the public interest. By this assertion we do not imply that the administrative costs standing alone would be sufficient to justify the elimination of the doctrine. To the contrary, these costs might be justified were it demonstrated that the doctrine increased the amount of controversial issue programming and that its retention was necessary to assure that the public had access to the marketplace of ideas. In a situation in which there are no counterveiling justifications, however, we believe that even a moderate amount of administrative costs may constitute substantial justification for the elimination of regulation. For example, we have recently stated that regulatory costs are a significant criterion in justifying repeal of a rule "especially when the other factors considered indicate that the need for the rule has been effectively eliminated and that the rule imposes significant costs on both the public and the broadcast industry." [191] We find that these factors

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[181] *Id.* at 248.

[182] *Notice, supra* n.1 at ¶78.

[183] Even where there has been no explicit threats by governmental officials, a mere perception that such abuse could occur may itself have an inhibiting effect. Broadcasters may be inhibited from airing viewpoints distasteful to those in power to avoid potential retaliation. As Chief Judge David Bazelon has observed: "The tremendous stakes in the highly concentrated television medium make the networks particularly sensitive to the prevailing political winds at the FCC, in Congress, and in the White House. And the government has fostered network sensitivity to government wishes by making clear that the failure to respond to the government's concept of appropriate program content would jeopardize the all-valuable license. I am reminded by one broadcaster who observed: 'We live or die . . . by the FCC gun.'" Bazelon, "First Amendment and the New Media," *supra* n.74 at 78 (ellipsis in original).

[184] *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. at 164–65 (Douglas, J., dissenting).

[185] *See, e.g.*, Geller/Lampert Comments, *supra* n.83 at 10–11 n.4.

[186] Bazelon, "FCC Regulation," *supra* n.180 at 239.

[187] *See* Section III, B.1, *supra*.

[188] For example, in 1984 our staff received 6,787 inquiries and complaints regarding the fairness doctrine.

[189] The United States Court of Appeals has recently determined that a complainant whose fairness doctrine claim is denied by the Commission has the right to seek judicial review (*Maier v. FCC, supra* n.125) and it is possible that this determination will increase the amount of appellate litigation, with its attendant costs, involving the fairness doctrine. Because appellate fairness doctrine litigation necessarily entails the involvement of Commission, the United States Department of Justice and the courts, the administrative expenses of each of these governmental agencies must be taken into account in assessing the economic burdens associated with the fairness doctrine.

[190] *See, e.g.*, MAP/TRAC Comments, *supra* n.59 at 134; "Comments of the American Civil Liberties Union" at 11 [hereinafter cited as "ACLU Comments"].

[191] *Memorandum Opinion and Order* in MM Docket No. 84–19 FCC 85–225 (released May 8, 1985) at ¶ 17. It is well-established that if the benefits of retaining a policy are minimal or non-existent, even a relatively small administrative burden may be sufficient to justify repeal. For example, in assessing whether or not to eliminate the regional concentration rule, one factor which we considered was the regulatory costs associated that rule. Finding that the administration of that rule had resulted in a staff analysis of 71 construction permits or assignment applications annually, we determined that "this expenditure of staff time . . . constitute[d] an appreciable burden on the Commission" (*id.*) despite the fact that there only were three reported cases involving the regional concentration rule over a two-year period. *Id.*

are applicable with respect to the fairness doctrine because, as discussed, the doctrine "chills" the broadcast of controversial issue programming and, as explained below, is not required to assure that the public has access to diverse viewpoints.

80. For the reasons set forth above, we find that the fairness doctrine, in operation, has the effect of inhibiting the presentation of controversial issues of public importance. We also believe that the doctrine operates to favor the expression of orthodox viewpoints and to require unwarranted scrutiny by the Commission into program content. In addition, we find it provides a vehicle by which governmental officials can intimidate broadcasters for partisan political purposes. Moreover, we determine that the doctrine, in operation, imposes significant economic costs upon the Commission and the broadcasting industry. As a consequence, on the basis of the record in this proceeding, we conclude that there are a number of significant detriments associated with the fairness doctrine. In the following section we will evaluate, in light of the current communications marketplace, whether or not there is any need for us to retain the doctrine.

G. Need for the Fairness Doctrine In Light of the Increase in the Amount and Type of Information Sources in the Marketplace

81. Our conclusions regarding the disutility of the fairness doctrine find further support by examining the current amount of diverse and antagonistic sources of information available in the marketplace. As we observed in the *Notice*, significant increases in the number and variety of information sources attenuates the need for a system of government imposed "fairness" with its corollary duty to discover and present controversial issues of public importance. The Commission's last assessment of the information marketplace, and its necessary relationship to the legal and policy underpinnings of the fairness doctrine, occurred in 1974. At that time the Commission concluded:

> The effective development of an electronic medium with an abundance of channels through the use of cable or otherwise is still very much a thing of the future. *For the present*, we do not believe that it would be appropriate—or even permissible—for a government agency charged with the allocation of the *channels now available* to ignore the legitimate First Amendment interests of the public. (*emphasis added*) [192]

[192] *1974 Fairness Report*, 48 FCC 2d at 6.

82. More than a decade has passed since this examination. During this time, we have witnessed explosive growth in various communications technologies. We find the information marketplace of today different from that which existed in 1974, as many of the "future" electronic technologies have now become contributors to the marketplace of ideas. As will be discussed below, the growth of traditional broadcast facilities, as well as the development of new electronic information technologies, provides the public with suitable access to the marketplace of ideas so as to render the fairness doctrine unnecessary. Moreover, we find that the dynamics of the information services marketplace overall insures that the public will be sufficiently exposed to controversial issues of public importance.[193] Accordingly, we no longer believe it appropriate to continue a system of government imposed obligations requiring licensees to discover and "fairly" address controversial issues of public importance. We believe that elimination of the fairness doctrine would not only promote discussion of such issues, but also pay greater fidelity to fundamental First Amendment values.[194]

83. Our analysis of the growth in the information services marketplace and the impact of this development on the underpinnings of the fairness doctrine shall begin with a discussion of the nature and scope of that market. We shall then evaluate the current status of this marketplace. Special emphasis will be given to the growth of information sources since the Supreme Court's decision in *Re Lion Broadcasting* and our previous evaluation of the communications marketplace in the *1974 Fairness Report*. As a final matter, we will address the availability of these information sources and the incentives to provide coverage to controversial issues of public importance.

1. Nature and Scope of the Information Services Marketplace

84. The Commission has previously addressed this specific issue in the context of a television station licensee's programming obligations. In our decision deregulating the programming guidelines for commercial television, we noted that the relevant information marketplace includes a variety of information sources such as cable television, Low Power Television (LPTV), Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), Satellite Master Antenna Service (SMATV), and other electronic technologies.[195] Moreover, the Commission, in formulating its policy concerning a licensee's responsibility to provide programming directed at children, stated that broadcasters could consider the programming alternatives available on both cable and public television in deciding how to meet their own nondelegable duty.[196] This policy was later affirmed by the United States Court of Appeals.[197]

85. The Commission has also addressed the issue of determining the relevant information marketplace in fashioning its rules regarding concentration of ownership. For example, we took particular note of the rise in the multiplicity of nonbroadcast media voices when eliminating the regional concentration of control rules.[198] More recently, the Commission addressed this issue in a proceeding revising its national multiple ownership rules.[199] In this context the Commission noted:

> The record in this proceeding supports the conclusion that the information market relevant to diversity includes not only TV and radio outlets, but cable, other video media and numerous print media as well. In the *Notice*, we took account of the fact that these other media compete with broadcast outlets for the time that citizens devote to acquiring the information they desire. That is cable, newspapers, magazines and periodicals are substitutes in the provision of such information.[200]

> That the various media are in fact information substitutes in the marketplace of ideas is further reflected in our local cable and television, newspaper and broadcast, radio and television cross-ownership rules.[201]

[193] *See WNCN Listener's Guild* v. FCC, 450 U.S. 582, 594 (1981); *Office of Communications of the United Church of Christ* v. *FCC*, 707 F.2d 1413 (D.C. Cir. 1983) [hereinafter cited as "*UCC* v. *FCC*"].

[194] *See FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. at 795. (the public interest necessarily invites reference to First Amendment principles).

[195] *Television Deregulation*, 98 FCC 2d at 1086 and 1138.

[196] *Report and Order* in MM Docket No. 19142, 98 FCC 2d 634 (1984), *aff'd sub nom. Action for Children's Television* v. *FCC*, 756 F.2d 899, 901 (D.C. Cir. 1985) (per curiam) [hereinafter cited as "*ACT* v. *FCC*"].

[197] *ACT* v. *FCC*, 756 F.2d at 901.

[198] *See Regional Concentration*, *supra* n.177.

[199] *Report and Order* in Gen. Docket No. 83-1009, FCC 84-350, 49 Fed. Reg. 31877 (August 9, 1984), *recon. granted in part, Memorandum Opinion and Order*, FCC 84-638, 50 Fed. Reg. 4666 (February 1, 1985), *appeal docketed sub nom. National Association of Black Owned Broadcasters* v. *FCC*, No. 85-1139 (D.C. Cir. filed March 4, 1985).

[200] *Id.* at 31880.

[201] *See* 47 C.F.R., § 73.3555(b) [one to a market]; 47 C.F.R. § 76.501 [co-located cable-broadcast TV cross-ownership]; and 47 C.F.R. § 73.3555(c) [co-located newspaper-broadcast cross-ownership.]

86. Against this background, the issue in this proceeding is whether or not there are inherent differences among various media outlets so as to prevent substitutability with respect to the presentation of controversial issues of public importance. We find nothing in this record which would cause us to arrive at a conclusion different from these prior decisions.[202] Accordingly, for the purpose of analyzing the fairness doctrine, we believe it is appropriate to consider traditional broadcast services, new electronic media and print as all part of the information services marketplace.

87. Several commenters argued that broadcasting, particularly television, is such a dominant information source that there are no other realistic information alternatives.[203] These commenters frequently point to studies indicating that television is both the primary and most believed source of information in the country.[204] We do not believe that the purported dominance of one media voice necessarily detracts from the significance of other voices with respect to the availability of antagonistic and diverse sources of information. The success of one particular medium in attracting large audiences does not necessarily provide an appropriate justification for imposing governmently mandated fairness. Moreover, the data do not suggest that other media voices are somehow unavailable. Studies demonstrating the alleged dominance of television broadcasting are based on data in which television was selected as one of several information sources used by the respondents.[205] Such data merely serve to demonstrate the interchangeability of information options.[206]

88. Similarly, we are not persuaded by those who argue that newspapers and broadcast facilities are in different information markets because newspapers must be read as opposed to television or radio which may be casually watched or monitored.[207] For the purposes of the policies adopted herein, we can find no important regulatory distinction in the fact that an individual watches television, listens to the radio or reads a newspaper. That individuals edit and process information from the various media using different senses or while performing different tasks does not suggest that the information sources exist in separate isolated corners within the marketplace of ideas. In this regard, we believe that our regulatory concerns are best limited to considerations involving the *availability* of information sources. Concerns involving the manner in which the individuals mentally process the information form these outlets generally should not be of regulatory significance.[208]

89. A related argument concerns the fact that broadcasting, unlike almost all other media sources, is subject to substantial and direct government regulation.[209] we do not believe that a system of government licensing affects the substitutability of information among the various media voices. While such a system may influence entry into the information services marketplace, a licensing scheme, in and of itself, does not provide a proper distinction for the purpose of assessing the impact of broadcasting as a diverse information voice.[210] Moreover, as we observed when adopting our co-located newspaper cross-ownership rules, nonregulated information sources may be considered in formulating Commission policy.

90. In addition, we do not believe that purported price differences among the various information sources necessarily place them in separate information markets. While programming from traditional advertiser based broadcast facilities has been considered a "zero priced good," there is no evidence in the record suggesting that the alleged price differentials between these facilities and other "pay" media are significant enough to preclude interchangeability among information systems.[211] Indeed, the monthly cost of a daily newspaper may be comparable to or even less than the monthly cost of basic cable service.

91. Several commenters suggested that newer technologies such as pay cable, STV, MDS, DBS are not adequate information substitutes with respect to the provision of issue related programming. As will be discussed *infra*, we believe there are sufficient incentives to insure the presentation of programming that addresses controversial issues of public importance. These incentives exist not only for traditional broadcast facilities, but also for the newer electronic technologies.[212]

92. In sum, we find the record in this proceeding supports the conclusion that the various print and electronic media exist in a widely diverse and competitive information marketplace. We now turn to a consideration of the current availability of these diverse media outlets.

2. Status of the Information Service Marketplace

93. As we observed in the *Notice*, there has been explosive growth in the communications marketplace since the

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[202] Indeed, as we will discuss, *infra*, growth in the television and radio services alone may obviate the need for the fairness doctrine. *See* ¶ 104, *infra*.

[203] *See, e.g.*, "Comments of General Motors Corporation, International Paper Company and Campbell-Ewaid Company on Notice of Inquiry" at 10, [hereinafter cited as "GM comments"]; "comments of the Democratic National Committee, Democratic Congressional Campaign Committee and Democratic Senatorial Campaign Committee at 7–8, [hereinafter cited as "DNC Comments"].

[204] Commenters generally cite to the *Roper Study* for the proposition that broadcasting, especially television, is the most utilized and the most believed source of news and informational programming. *See* The Roper Organization Inc., *"Public Attitudes Toward Television and Other Media in Time of Change"* May 1985 [hereinafter cited as the *"Roper Study"*].

[205] In this regard, the *Roper Study* acknowledges that multiple answers have been accepted when people have named more than one medium. *Id.* at 3.

[206] Indeed, it appears that reliance on a particular media voice may depend on the type of issue *e.g.*, national, local etc. For example, a recent study published by the American Society of Newspaper Editors found that 50 percent of the respondents trusted newspapers more than television in trying to understand a difficult local news story. Only 37 percent of all respondents said they would trust television more in understanding local news. *Editor and Publisher*, Apr. 13, 1985, at 9.

[207] *See* MAP/TRAC Comments, *supra* n.50 at 75.

[208] Furthermore, we disagree with MAP/TRAC's contention that television broadcasting is unique because it has a captive audience. *Id.* at 76 n.76. MAP/TRAC's own analysis regarding the ability to listen to broadcasting while resting, working or driving is inconsistent with the captive audience hypothesis. Moreover, reliance on the Supreme Court's decision in *FCC v. Pacifica Foundation*, 438 U.S. at 749, as evidence of the captive audience theory is misplaced. The Supreme Court has acknowledged that the decision is limited to situations involving children and indecent language. *See FCC v. League of Women Voters*, 104 S.Ct. at ¶118.

[209] *See, e.g.*, MAP/TRAC Comments, *supra* n.50 at 81.

[210] In this regard, we note that even assuming costs associated with the limitations of the Commission allocations scheme, the actual barriers to entry in terms of capital costs, may be lower for radio and television broadcasting than for daily newspapers. *See* Wirth, Michael, *Economic Barriers to Entry Daily Newspapers vs. Television Stations vs. radio Stations*, August 1984, *cited* in NAB Comments, *supra* n.79 App. Vol., App. C.

[211] We note that while there are no subscription fees for over-the-air broadcasting, there may be costs involved in viewing "free" over-the-air television. Such costs would take the form of opportunity costs lost while watching unwanted program material.

[212] *See* ¶¶ 129–131, *infra*. Some Commenters also argued that the newer electronic technologies will not provide coverage to local controversial issues. We find this argument unpersuasive. Existing fairness obligations regarding the coverage of controversial issues of public importance do not necessarily require that the issue be solely of local importance. In this regard, controversial issues confronting a particular community may be national in scope and may be sufficiently addressed by "national programming." Moreover, we note our prior decisions in which we observed that programming addressing local issues need not be produced at the local level. *See Television Deregulation*, 98 FCC 2d at 1085, *citing WPIX, Inc.*, 68 FCC 2d 381, 402 (1978)

inception of the fairness doctrine in 1949. Of particular significance is the development of the marketplace since the Supreme Court's decision in *Red Lion Broadcasting* in 1969 and our subsequent analysis of the market in the *1974 Fairness Report*.[213] In the following analysis, we will focus on the major participants in the information services marketplace: (a) over-the-air broadcasting, (b) substitute electronic technologies and (c) the print media.

(a) Broadcasting

94. The growth and development of radio broadcasting since the inception of the fairness doctrine has been dramatic. The total number of radio stations has increased by 280 percent since the *1949 Fairness Report*. Moreover, there has been a 48 percent increase in the number of radio stations since the Supreme Court's decision in *Red Lion* and a 30 percent increase since the Commission's *1974 Fairness Report*. During this period the most significant growth occurred in the FM service where there has been a 113 percent increase since *Red Lion* and a 60 percent increase since our *1974 Fairness Report*.

	Number of radio stations			
	[illegible]	[illegible]	1974	[illegible]
AM	1,877	4,265	4,407	4,787
FM	[illegible]	[illegible]	[illegible]	[illegible]
Total	[illegible]	[illegible]	7,501	[illegible]

SOURCE: 1949, 1969, 1974 (on-air stations) data from *Television and Cable Factbook*, Cable and Services Volume No. 52 (1984); 1985 data from FCC release No. 5080, June 11, 1985.

95. Of particular significane is the fact that the number of radio voices available in each local market has grown.[214] In this regard, we note that competition resulting from an increase in the number of radio outlets was the primary factor in our decision to deregulate the program guidelines, commercial limitations and formal ascertainment requirements for commercial radio.[215] Moreover, there has also been a fundamental change in the structure of the radio market. Once predominently an AM only service, radio is now composed of two very competitive services. For example, at the time of the *1974 Fairness Report* there were over a thousand more on-air AM stations than FM stations. Since that time, however, FM has eclipsed AM as the largest radio service. Because of its higher fidelity, the growth of FM constitutes a significant improvement in the quality of radio service to the public. The development of radio can also be seen in the diversity of its program distribution systems. At the present time, there are approximately 11 national radio networks and 90 regional radio networks.[216]

96. We also note that the number of radio outlets will continue to increase with the further development of spectrum efficient technologies. Recently, the Commission allocated 689 new FM channels and adopted new procedures to assist in the development of these allotements.[217] In addition, we have recently adopted new application procedures which are designed to streamline the processing of these new FM allotments as well as the existing 152 vacant FM allotments.[218] With respect of AM service, the Commission in 1980 acted to limit the protection from interference afforded Class I–A clear channel stations so as to increase spectrum availability for new AM radio services.[219] More recently, the Commission in various proceedings has adopted policies making more efficient use of existing spectrum as well as enlarging that portion of the spectrum available for AM broadcast use.[220]

97. Equally significant has been the dynamic growth of over-the-air television broadcasting. The statistics presented below show the development of this medium.

	Number of television stations			
	[illegible]	[illegible]	1974	[illegible]
VHF (Total)	51	577	605	654
Commercial	[illegible]	490	513	541
Educational	[illegible]	78	92	113
UHF (Total)	0	[illegible]	333	554
Commercial	0	163	184	[illegible]
Educational	0	97	149	185
Total	51	677	938	1,208

SOURCE: 1949, 1969 and 1974 (on-air stations) data from *Television Factbook*, Cable and Services Volume No. 52 (1984); 1985 data from FCC publication No. 5080 June 11, 1985.

98. As the above data demonstrate, there has been a 44.3 percent increase in the overall number of television stations since the Supreme Court's decision in *Red Lion Broadcasting*. This represents a 13.3 percent increase in VHF stations and dramatic 113 percent increase in UHF stations. Television growth since the Commission's *1974 Fairness Report* has also been significant, amounting to a 28 percent increase in the overall number of television stations with a 66.4 percent increase in UHF stations.

99. The continued growth in television broadcasting has led directly to an increase in signal availability in local markets.

	Stations receivable per TV household—number of stations receivable						
	1 to 4	5 to 6	7 to 8	9 to 10	11 to 14	15 to 19	20+
	In percentage						
1964	[illegible]	11	[illegible]	[illegible]	[illegible]	15	[illegible]
1972	17	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1984	41	33	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[1] 9+ stations
SOURCE: *Nielson Report on Television*, 1985 at 2.

[213] *See Red Lion Broadcasting Co.* v. *FCC*, *supra* n.10; *1974 Fairness Report*, *supra* n.3.

[214] Date submitted by NAB demonstrates that generally the growth of radio voices has generally occurred throughout the various radio markets. *See* NAB Comments, *supra* n.79 App. Vol., App. A at 19–63. These data confirm the Commission's previous conclusions regarding overall growth in radio markets. *See Inquiry and Notice of Proposed Rule Making* in BC Docket No. 79–219, 73 FCC 2d 457, 548–551 (1979).

[215] *Report and Order* in Docket No. 79–219, 84 FCC 2d 968 (1981), *recon. denied*, 87 FCC 2d 797 (1981), *rev's on other grounds sub nom. UCC* v. *FCC*, *supra n.193 (hereinafter cited as "Radio Deregulation")*.

[216] *Broadcasting/Cablecasting Yearbook*, (1985) at F1–61.

[217] *See Report and Order* in Docket No. 80–90, 53 FCC 2d 1550 (1983); *First Report and Order* in MM Docket No. 84–231, 50 Fed. Reg. 3514 (January 25, 1985); *Second Report and Order* in MM Docket No. 84–231, FCC 85–124 (released April 12, 1985).

[218] *See Universal Filing Period, Public Notice*, FCC No. 4699 (May 22, 1985). *See also, Report and Order* in MM Docket No. 84–750, FCC–125, 50 Fed. Reg. 19936 (May 13, 1985).

[219] *See Clear Channel Broadcasting in the AM Broadcast Band*, 78 FCC 1345 (1980), *recon. denied*, 83 FCC 2d 216 (1980), *aff'd sub nom. Loyola University* v. *FCC*, 670 F.2d 1222 (D.C. Cir. 1982).

[220] *See, e.g., Report and Order* in MM Docket No. 84–281, FCC 85–224 (released May 7, 1985) (foreign nightime AM clear channels); *Report and Order* in MM Docket No. 84–752, FCC 85–150 (released April 24, 1985) (AM rules and international agreements); *Notice of Proposed Rule Making* in MM Docket No. 85–39, FCC 85–75 (released March 12, 1985) (AM application criteria); *Second Notice of Inquiry* in Gen. Docket No. 84–647, FCC 84–644 (released January 11, 1985) (preparation for ITV conference); *Report and Order* in BC Docket 82–538, FCC 83–412, 48 Fed. Reg. 42944 (September 30, 1983), *recon. denied in part*, FCC 84–591 (released December 4, 1984) (AM daytime operations).

As of 1984, 98 percent of the television households received five or more television signals. This figure represents a significant increase in actual signal availability since 1972, where only 83 percent of the television households received five or more signals. The increase is even more dramatic compared to 1984 when only 59 percent of television households were capable of receiving 5 or more stations. Today, only 4 percent of the television households receive fewer than five signals. These statistics demonstrate a significant growth in signal availability throughtout the country. Of particular significance is the fact that these figures are based on over-the-air reception and do not include the enhanced signal availability achievable with cable television. The significance of cable televison as a factor in increasing the number of available signals will be discussed, *infra*. These data generally confirm statistics supplied by several commenters which demonstrate an increase in signal availability in both large and small markets.[221]

100. Increases in the number of outlets and signal availability does not necessarily provide a complete picture of the fundamental structural changes occurring in the television marketplace. For example, UHF television, once thought to have occupied second class status, is now a significant voice in the marketplace.[222] Indeed, the growth of this service—113 percent since *Red Lion*—is evidence of its economic viability. Concomitant with the growth in UHF stations has been the increased importance of independent television. As the Commission observed in its television deregulation decision, the growth of UHF independent television stations has added an important new voice in the information marketplace.[223] Since 1970, the number of independent television stations has grown from 90 to 214 stations, an increase of 107.7 percent.[224] Moreover, the growth in independent television stations has not been confined to a few large markets. As of 1984, independent stations were located in 98 different markets and reaching 82 percent of all television households.[225]

101. The impact of the rise of independent television stations can be seen in the steady decline of the network's audience share. As the Commission previously observed, the overall network audience share declined from 90 percent to 80 percent in 1983.[226] This trend continues as the overall network share dropped from 80 percent in 1983 to 76 percent in 1984.[227] In television households without cable television, the network share of the audience declined from 89 percent in 1983 to 85 percent in 1984. During this time period, non-network television usage in these households increased from 17 percent in 1983 to 21 percent in 1984. Moreover, non-network television stations were able to maintain their share of the television audience even in households subscribing to either pay cable or basic cable service.[228]

102. Further structural changes can be seen in the development of new program distribution systems among group owners.[229] We believe these alternative systems will not only provide new programming sources, but also enhance the economic viability of local independent television stations. Moreover, our recent modification to the national multiple ownership rules is expected to foster the development of these new systems, thereby enhancing diversity at the local level.[230] In this regard, the development of these stronger voices may facilitate the ability of these stations to address controversial issues of public importance.[231]

103. We also note that additional growth can be achieved by utilizing vacant allocations and improved spectrum efficient technologies. Currently, there are a total of 54 vacant VHF channels and 462 vacant UHF channels.[232] of these vacant allocations, 34 are commercial VHF channels and 109 commercial UHF channels. These vacancies appear in both large and small markets. For example, in the top 50 markets there are 32 commercial UHF vacancies. Moreover, 19 of these UHF vacancies are located within fifty-five miles of their respective titled ADI cities. There are also 20 noncommercial VHF vacancies and 353 noncommercial UHF vacancies available nationwide. In addition, the Commission and others have conducted several studies demonstrating the technology feasibility of various UHF improvements, including enhanced reception, thereby reducing the impact of the traditional UHF "taboos".[233] Such improvements have the potential of increasing the number of UHF stations available in each market. These technological improvements combined with the number of vacant channels suggest that there is sufficiently available spectrum to anticipate continued growth in the number of television broadcast facilities.

104. Given the significant development of both radio and television, we believe it is no longer necessary to utilize a mechanism of government imposed "fairness" in order to insure appropriate coverage of controversial issues of public importance. As the above data amply demonstrate, there are a sufficient number of over-the-air television and

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[221] A study of signal availability submitted by NAB generally confirms this conclusion. NAB examined the growth of television signals in large markets (AID 1–50), medium markets (AID 50–100) and small markets (AID 101+). Of particular interest is the increase in signal availability in small markets. Of the thirty-one small markets surveyed, seventeen had both an increase in signal avialability since 1974 and a projected increase by 1990. Four markets showed an increase in signal availability since 1074 but had no projected increases. Ten markets exhibited no growth in signal availability between 1974 and 1984. However, seven of these markets anticipated increases in signal availability by 1990. Only three markets exhibited both on growth between 1974–1984 and on projected growth. However, one of there markets had four available signals and the remaining two markets had achieved significant cable penetration. *See* NAB Comments, *supra* n.70 App. Vol., App. A at 48–63.

[222] We note that while there will always be physical differences between UHF and VHF services, these differences do not necessarily mean that UHF stations will not be a viable force in the television marketplace. *See Report and Order* in Gen. Docket No. 78–391, 90 FCC 2d 1121, 1124 (1982). Moreover, cable television has enhanced the ability to receive UHF stations thereby making it comparable to VHF television in markets that have been wired.

[223] *See Television Deregulation*, 98 FCC 2d at 1083 (1984).

[224] The growth in independent television stations has occurred primarily in the UHF television services. In 1970 there were 89 UHF independents compared to 155 in 1984. *Id.* at 1139 [1970 data]; Data for 1984 taken from *Broadcasting*, Jan. 7, 1985, at 82.

[225] *See Broadcasting*, Jan. 7, 1985, at 82.

[226] *Television Deregulation*, 98 FCC 2d at 1139.

[227] *Nielson Report on Television*, (1985) at 12.

[228] In households subscribing to pay cable services, the audience share of non-network stations increased from 16 percent in 1983 to 18 percent in 1984. During this same period the audience share of these stations remained stable—20 percent—for homes subscribing only to basic cable services. *Id.*

[229] For example, as of January 1985, Gannett Broadcasting Group, Hearst Broadcasting, Metromedia Inc, Storer Communications and Taft Broadcasting (prior to its merger with Gulf Broadcasting), representing 32 stations reaching 45 percent of television households had established a consortium to produce programmings. *See Broadcasting*, Jan. 7, 1985, at 86.

[230] *See Memorandum Opinion and Order*, 50 Fed. Reg. at 4670.

[231] We also note that the changes in the national multiple ownership rules will assist in the acquisition of those stations which were formerly devoted to subscription television. *Broadcasting*, Jan. 7, 1985, at 86 and 90.

[232] *Television Channel Utilization*, FCC No. 3723, Apr. 9, 1985.

[233] *See, e.g., Program to Improve Television Reception*, Georgia Institute of Technology, September 1980; J. B. O'Neil, *Television Receiver Noise Figure Study*, North Caroline State University, February 1980; A. Stillwell, and R. Wilmotte, *Spectrum Requirements of UHF Television with Current and Improved Tuning*, FCC Office of Plans and Policy, 1978.

radio voices to insure the presentation of diverse opinions on issues of public importance.[234] Our decision in this proceeding is guided to some extent by the underlying policies expressed in the radio and television deregulation proceedings.[235] In both decisions, the Commission found that the growth of the broadcast medium created sufficient economic incentives to attenuate the need for each licensee to provide "well balanced something for everyone programming." Similarly, we believe that the growth in both radio and television broadcasting provide reasonable assurance that a sufficient diversity of opinion on controversial issues of public importance will be provided in each broadcast market. In this regard, we note that even if there had been no increase in alternate electronic information sources, the growth and development of both the radio and television markets by themselves make the fairness doctrine an unnecessary regulatory mechanism.

(b) Substitute Electronic Technologies

105. In addition to traditional over-the-air television and radio broadcasting, we find that there exist numerous alternative electronic technologies making a significant contribution to the marketplace of ideas. The importance of these technologies, especially cable television, in the policy making context was recently recognized by the United States Circuit Court of Appeals.[236] We believe that in the context of this proceeding consideration should be given to the contributions of cable television, low power television (LPTV), multichannel multipoint distribution service (MMDS), video cassette recorder (VCR), satellite master antenna systems (SMATV) and other electronic media including recent advancements in satellite technology.

106. Universally recognized as a significant non-over-the-air electronic medium, cable television has developed from a means of improving reception into a major industry providing video programming. Early data show that in 1952, three years after the *1949 Fairness Report*, there were 70 operating cable systems with an estimated 14,000 subscribers.[237] At the time of the Supreme Court's decision in *Red Lion* there were 2,260 systems in operation with an estimated 3.6 million subscribers.[238] By the time of our *1974 Fairness Report*, there were 3,158 operating cable systems with a reported 8.7 million subscribers.[239] As of 1985 there are 6,600 operating cable systems in 18,500 communities with approximately 1,600 franchises that have been approved but not built.[240] According to recent A.C. Neilson estimates, U.S. cable households now number 38,673,270 placing national cable penetration at 43.3% of all television households.[241] In comparative terms, the number of cable systems in operation has increased 195 percent since *Red Lion* and 111 percent since the Commission's *1974 Fairness Report*. Growth in subscribership amounts to an astronomical 975 percent since the *Red Lion* decision and 345 percent increase since the *1974 Fairness Report*. Moreover, cable television will continue to expand in the future. According to a recent study by Arthur D. Little Inc., the number of cable subscribers will increase to 48 million by 1990.[242] In addition, industry revenue is expected to double from 8.4 billion in 1984 to 16.5 billion in 1990. During this period after tax revenues are expected to triple from $600 million in 1984 to 1.7 billion in 1990.[243]

107. The importance of cable's development, however, is not limited to increases in the number of systems. Indeed, there has been a significant change in the nature of cable service. For example, at the time of the *Red Lion* decision only 1 percent of all cable systems had the capacity to carry more than 12 channels.[244] As of April 1, 1984, 58 percent of the cable systems exceed 12 channels. Most importantly, however, systems limited to 12 channels or less comprise only 18.63 percent of total cable subscribers.[245] The significance of cable television is also demonstrated by its ability to increase the number of viewing options available to the public. The following table illustrates the importance of cable by comparing the number of stations receivable per television household to the number of channels receivable with cable television.

	Stations and channels receivable per TV household in 1984						
	1 to 4	5 to 6	7 to 8	9 to 10	11 to 14	15 to 18	20+
	In percentage						
Number of channels receivable (includes cable)	[illegible]	5	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Number of stations receivable (absent cable)	[illegible]	11	[illegible]	[illegible]	[illegible]	15	3

SOURCE: *Nielson Report on Television* (1985) at 2.

With the inclusion of cable television, the number of households capable of receiving more than six television signals increases from 85 percent of all television households to 92 percent of all television households. Similarly, the percentage of television households capable of receiving more than ten television signals increases from 42 percent to 74 percent. The most dramatic increase in signal availability appears in households receiving 20 or more signals. Absent cable, these households comprise only 3 percent of all television households as compared with 29 percent of all television households when cable is considered. The importance of increased channel capacity is enhanced by the ready availability of a wide variety of cable networks which provide a significant array of diverse programming. As one commenter has noted, there are approximately twenty-eight basic cable networks not including four super stations.[246] Many of these networks

[234] This diversity is illustrated further by the combined coverage of both television and radio signals. For example, in a separate proceeding CBS claims that its television station in New York City encompasses 196 radio stations within its Grade B Contour. Moreover, CBS asserts that its New York television station must compete with 278 radio stations which provide service to some portion of the area covered by its Grade B contour. *See* "CBS Reply Comments" filed with *In re Application of Turner Broadcasting System, Inc.*, File No. BTCCT-850418 *et al*, June 1985 at 60.

[235] *See Radio Deregulation, supra* n.215; *Television Deregulation, supra* n.177.

[236] *ACT v. FCC*, 756 F.2d at 901.

[237] *Television and cable Factbook*, Cable & Services Volume No. 52 (1984) at 1735.

[238] *Id.*

[239] *Id.*

[240] *Broadcasting/Cablecasting Yearbook*, (1985) at D–3.

[241] *Broadcasting*, June 17, 1985 at 10.

[242] *Prosperity for Cable TV: Outlook 1985–1990*, Arthur D. Little Inc., *cited* in *Broadcasting*, June 10, 1985 at 32. This may be a conservative estimate. As we have noted elsewhere, some analysts expect cable penetration to be 60 percent by 1990, reaching 58 million subscribers. *See Television Deregulation*, 98 FCC 2d at 1138. Another source has estimated that cable penetration will reach 54 percent by 1990. *Cablefile*, (1985) at III–26.

[243] *Id.*

[244] *Notice, supra* n.1 at ¶ 37 n.47 *citing* B.M. Compaine, C.H. Sterling, T. Gubeck and J.K. Noble, Jr., *Who Owns the Media* (2nd ed. 1982) at 416.

[245] *Television and Cable Factbook*, Cable & Services Volume No. 52, 1984 at 1726.

[246] *See* NAB Comments, *supra* n.79 App. Vol., App. A. at 4.

have highly specialized program formats including news channels such as the Cable News Network, the Financial News Network, and public affairs programming such as C-Span.[247] In addition, there are approximately 10 pay cable networks in operation.

108. Apart from the growth in the number of cable systems, we find that the pattern of development in small markets to be particularly relevant to the objectives of this proceeding. The record in this proceeding clearly demonstrates that cable services are an important media voice in small markets. Cable penetration rates in these markets are far in excess of the national average and significantly higher when compared with larger broadcast markets.[248] The high penetration levels in these small markets suggest that there is a significant degree of substitutability between cable and over-the-air television broadcasting.

109. We also note that the Cable Communications Policy Act of 1984 will play an important role in expediting further development of cable technology.[249] Congress intended to establish a national policy that encourages the growth and development of cable television as well as insuring that cable systems are responsive to the needs and interest of the local communities they serve.[250] Under the Act, a franchising authority is able to establish and designate channels for public, educational or government (PEG) use as well as commercial access channels for systems with 36 or more activated channels.[251]

110. Another developing voice in the information services market is Low Power Television (LPTV). These stations are over-the-air television broadcast facilities, generally limited to 10 watts for VHF and 1,000 watts for UHF stations. These facilities were nonexistent at the time of the *Red Lion* decision and our *1974 Fairness Report*. Stations of this power were translators, limited to the rebroadcast of signals from full service stations. In 1982, the Commission authorized these stations to originate programming.[252] There are currently 126 licensed low power UHF stations and 215 low power VHF stations.[253] It is predicted that this source will eventually add an additional 4000 television stations to the marketplace. Moreover, the most significant administrative problems inhibiting initial development of this new service have been rectified with the establishment of new processing procedures designed to expedite the development of this new medium.[254]

111. LPTV significantly expands the information marketplace. Allocation policies have emphasized placing these facilities in smaller markets where there are fewer over-the-air full service television facilities. With lower entry and operating costs, LPTV can be an important source of local programming in rural areas. In larger markets, LPTV will be able to target its audience to specific communities or ethnic groups.[255] A recent economic study provides some evidence that this service appears to be commercially viable in certain areas of the country.[256]

112. At the time of the *1974 Fairness Report*, multipoint distribution service (MDS) was just beginning to develop as a communications service. Used primarily to provide subscription programming via microwave transmissions, there were approximately 438,578 MDS subscribers out of a potential audience of 13.1 million at the end of 1984.[257] Confined to offering a single pay channel, MDS subscription declined slightly from 1983 levels.

113. Expectation of growth in MDS will likely involve the development of multichannel MDS systems. With the reallocation of 8 channels from Instructional Fixed Television Service, multichannel MDS will be able to offer multiple channels as opposed to a single viewing option.[258] Added to this are leases available from ITFS operators leading to MMDS systems of up to twenty two channels. As of February 1985, there were 16,499 applications on file with the Commission.[259] The advantage of this service is that construction costs and time delays are greatly reduced, relative to cable, since wiring to a headend is not necessary. Estimates of subscribership growth by 1990 range between 6 to 12 million subscribers.[260]

114. Satellite Master Antenna Systems (SMATV) are similar to cable systems except that they are built in individual apartment complexes, condominiums, hotels and trailer parks. These "private" cable systems did not exist at the time of the *Red Lion* decision or our *1974 Fairness Report*. The Commission's decision not to regulate these systems, coupled with preemption of state and local regulation, has facilitated the development of this service.[261] According to the National Satellite Cable Association about 600,000 to 800,000 homes have been wired with this service.[262] Because of lower capital and construction costs, SMATV systems have become increasingly popular in both rural and urban areas that are currently unserved by cable television.[263]

115. Sales of video cassette recorders continue to have a major impact on the information marketplace. As with many other new technologies, VCR's were not readily available at the time of the *1974 Fairness Report*. The impact of this technology on other electronic video technologies has been significant. By the end of 1985 it is estimated that there will be 23.3 million VCR homes representing 27.4 percent of all TV households.[264] A more recent study of VCR penetration reported that sales are running about one million a month and will reach critical mass penetration of one third of all homes by early 1986. According to the report the term "critical mass" is

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[247] Additional growth in cable networks can be expected. For example, the Discovery Channel recently commenced operation offering a basic cable service of educational, non-fiction, science and nature programming free to cable operators. *Multichannel News*, June 24, 1985 at 1.

[248] For example, an analysis of NAB's data concerning 31 of the smallest television markets (100+) reveals a combined average subscription rate of approximately 57 percent, almost fourteen percentage points higher than the national average. *See* NAB Comments, *supra* n.79 App. Vol., App. A.

[249] Cable Communications Policy Act of 1984, Pub. L. 98-549, 98 Stat. 2779 (1984).

[250] *See* House Committee on Energy and Commerce, H.R. Rep. No. 931, 98th Cong. 2d Sess. at 19 (1984); *See also Report and Order* in MM Docket No. 84-1296, FCC 85-179 (released Apr. 19, 1985) at ¶¶ 28-37

[251] *Id.* at 30.

[252] *See Report and Order*, in BC Docket No. 78-253, FCC 82-107, 47 Fed. Reg. 21468 (1982).

[253] FCC release No. 5080, June 11, 1985.

[254] *See Report and Order* in MM Docket No. 83-1350, FCC 84-492 (adopted October 18, 1984).

[255] *Legal Times*, Dec. 8, 1984, at 1; *Wall Street Journal*, Oct. 23, 1984, at 1.

[256] The study, conducted by Kompas Beil Associates, indicates that LPTV may already be a viable service in some areas. Of the stations initially responding to its survey, 16 stations were non-profit religious stations, 8 were operating as subscription television, 10 were operating as non-profit educational stations. Sixteen stations were operating on a commercial basis with fourteen of these stations reporting a profit. Two of the stations were temporarily off the air with copyright problems. *Videography*, Apr. 1985 at 72.

[257] Paul Kagen Associates, Inc., *Multicast Newsletter*, Apr. 17, 1985.

[258] *See Report and Order* in Gen. Docket 80-112, 94 FCC 2d 1203 (1983).

[259] *Broadcasting*, Feb. 11, 1985, at 56.

[260] *Television Deregulation*, 98 FCC 2d at 1140.

[261] *See Memorandum, Opinion Declaratory Ruling and Order* in CSR-2347, 95 FCC 2d 1223 (1983), *recon. denied*, FCC 84-206 (May 14, 1984), *affd. sub nom. New York State Commission on Cable Television* v *FCC*, 749 F.2d 805 (D.C. Cir. 1984).

[262] *New York Times*, Dec. 5, 1984, at 30. A more conservative estimate was provided by Paul Kagen Associates who estimated subscribership at 290,000. Paul Kagen Associates, *SMATV News*, Apr. 25, 1984.

[263] *New York Times*, Nov. 13, 1983, at 47; *See also New York Times*, Dec. 19, 1982, at 1.

[264] *Television/Radio Age*, May 27, 1985, at c7 (*citing* Paul Kagen Associates).

used to describe the penetration level that establishes the technology as a mass medium.[265] Further estimates place VCR usage at 67.9 million homes representing 68 percent of all television households by 1990.[266]

116. We take particular note of the development of video recordings as a means of disseminating issue related video programming.[267] We find this to be a significant development in the information marketplace. To the extent VCR's do not utilize spectrum, anyone who desires to communicate by television may do so by means of a VCR. In this regard, we agree with NBC that VCR's have the potential to become the "electronic handbills" or indeed even the electronic newspaper of the future.[268] Moreover, our own empirical analysis of the relationship between VCR's and television reveals that a VCR is both a substitute and a complement to over-the-air and cable television.[269] In other words, VCR's act not only as a means of time shifting programming, but also as an independent source of programming. Moreover, the ability to reschedule video programming gives viewers the opportunity to acquire additional information from other sources. By time shifting, viewers are able to reallocate their time so as to increase the number of potential viewing options.[270] We believe that the flexibility afforded the public by VCR's, represents an important qualitative development in the information services marketplace.

117. The above mentioned electronic technologies are the most prominent alternatives to over-the-air broadcasting in today's marketplace. There are other electronic services, however, that have the potential of becoming substitute information sources in the marketplace of ideas. We do not, however, find them to be significant contributors to the marketplace at this time.

118. The direct to home satellite services (DBS) is still in the beginning stages of development. Using the Ku satellite band, this service generally provides programming directly to households. Households using this service either rent or purchase a small one meter-earth station. The first direct broadcast satellite services was authorized by the Commission in 1982.[271] Of the eight original applicants, three have been granted orbital and channel assignments and launch authority. In 1984, the Commission granted six additional applications for DBS service.[272] One of these grantees has been given launch authority as well as its orbital and channel assignment. Currently, the Commission has pending before it six DBS applications seeking either to modify existing grants or apply for new allocations.[273] It appears, therefore that despite the recent setbacks, there is a continued interest in the development of DBS service.[274]

119. Another important element prompting the development of satellite direct service is the continued growth in the home earth station market. Latest reported data indicate that there are approximately one million existing earth stations and estimates of growth range between 40,000 to 80,000 per month.[275]

Moreover, the Cable Communications Policy Act of 1984, which clarified the legality of receiving satellite signals, may provide an additional spur to this already expanding market.[276] Because of the potentially enormous market, some traditional cable programmers have suggested scrambling their signals to provide a direct to home satellite service from their C band satellites.[277] Facilitating the development of this system is the oversupply of transponders which will lower the costs of transmission making this form of program particularly attractive.[278] While the development of a C-band direct system is still in the planning stage, there appears to be significant movement towards developing this service.[279]

120. Satellite technology has also played a significant role in enhancing existing information services. For example, satellites have allowed local television stations to increase their capability to gather news. Satellite news gathering (SNG) has become an important element in providing regional coverage.[280] In addition, satellite technology has become an important part of the syndication market.[281] The nationwide access afforded by this technology increases the opportunities for another source of programming through ad-hoc networking, thereby increasing viewpoint diversity in local markets.

121. An additional alternative technology is subscription television (STV). STV is a pay service that sends over-the-air television signals, in a scrambled mode, to its subscribers. The number of STV outlets has declined in recent years due primarily to increased cable penetration. As of June 30, 1984 there were approximately 701,042 STV subscribers and 19 STV channels operating in 17 markets.

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[265] *Broadcasting*, July 8, 1985, at 14 (*citing* a study conducted by Young & Rubicam USA).

[266] *Id.*

[267] *UCC* notes in its Comments that there are currently 72 titles considered public affair by the publishers. Similar categories such as "Civil Rights" (54 titles) and "Documentaries" are also included. *See* UCC Comments, *supra* n.170 at 3.

[268] *See* NBC Comments, *supra* n.86 at 88.

[269] J. Levy and P. Pitsch, *Statisical Evidence of Substitutability Among Video Delivery Systems*, FCC Office of Plans and Policy, April 1984. *See also* J. Levy and F. Setzer, *Measurement of Concentration in Home Video Markets*, FCC Office of Plans and Policy, December 23, 1982.

[270] According to Neilson data, 50 percent of all recordings are made with the television set turned off, 17 percent occurs while viewers are watching a different channel and 24 percent of viewers record from the channel they are watching. *Neilson Report on Television*, (1985) at 13.

[271] *See Direct Broadcast Satellite Services*, 90 FCC 2d 676 (1982) *recon. denied*, FCC 83-241, (released May 19, 1983), *rev'd, United States Satellite Broadcasting Company, Inc.* v *FCC*, 740 F.2d 1177 (D.C. Cir. 1984); *Satellite Television Corporation*, 91 FCC 2d 953 (1982); *CBS, Inc.*, 92 FCC 2d 64 (1982). *See also GTE Satellite Corporation*, 90 FCC 2d 1009 (1982) *recon. denied*, FCC 83-271 (released June 23, 1983). Of the eight original grantees, four were able to demonstrate due diligence in proceeding with the development of their respective DBS systems. *See CBS, Inc.*, FCC 84-477 (released October 10, 1984). Two of the parties failing to meet the due diligence requirements have re-applied to the Commission for DBS authorization.

[272] *See Satellite Syndicated Systems Inc.*, FCC 84-608 (released December 16, 1984).

[273] *See Public Notice* "DBS Applications Accepted for Filing" Rep. No. DBS 2-B (released April 4, 1985). Three of these applicants are existing grantees seeking additional channels. Two of the three applicants seeking new DBS authorization were previously granted such authority but failed previously to meet the Commission's due diligence requirements.

[274] Earlier this year, U.S.C.I. terminated service to its approximately 10,000 subscribers. *DBS Newsletter*, April 1985 at 1. This DBS service was not a Commission licensee but rather utilized Canada's Telesat Anik C-11 satellite. While this system did not prove to be a commercial success, it did demonstrate the technical feasibility of Ku band direct satellite service. *See Broadcasting*, July 8, 1985 at 52.

[275] *See Broadcasting*, July 8, 1985, at 52.

[276] Cable Communications Policy Act of 1984, Pub. L. 98-549, § 5(b), 98 Stat. 2779 (1984). This section amended section 705 of the Communications Act by allowing the reception of any satellite cable programming for private viewing if: (1) The programming involved is not encrypted and, (2) a marketing system has not been established.

[277] Descramblers for the reception of HBO, which scrambles part of its programming, are already being manufactured. Approximately 25,000 headend descramblers have been produced and parts have been ordered for 100,000 consumer units which will be distributed to wholesalers next fall. *See Broadcasting*, July 8, 1985, at 83.

[278] *Id.* at 46.

[279] *See Broadcasting*, July 1, 1985, at 87; *Broadcasting* July 8, 1985, at 52.

[280] *See Broadcasting*, July 8, 1985, at 60.

[281] *Id.* at 58. In this regard, we note that continued development of satellite technologies will facilitate the development of new program distribution systems. *See* ¶ 102, *supra*.

122. Additional information technologies are continuing to be developed. The Commission has recently authorized the use of FM Radio subcarriers.[282] Subcarriers may be utilized for a variety of different functions such as "radio talking books", commodities information, stock quotes and news. The Commission has also authorized the use of teletext by television licensees.[283] This system uses the vertical blanking interval for transmitting pages of text which are formatted on the users screen with the use of a decoder. Videotext is also a potential source of information. At the present time, this service has approximately 500,000 subscribers.[284] As a final matter home computer systems have played a significant role in adding to the information services marketplace. However, we do not find these services to be significant contributors to media diversity at this time.

(c) Print Media

123. As we observed in the *Notice* the overall number of broadcast facilities exceeds the total number of daily newspapers in the United States. This does not mean, however, that the print media is not a significant contributor to the information marketplace. As of 1984, there were 1,701 daily newspapers in the country.[285] During this period, average circulation increased to 62,544,503, an increase of 157,426 from 1983 levels.

124. In analyzing the information marketplace, however, we agree with those commenters who felt that the *Notice* gave insufficient consideration to the importance of other print sources such as weekly and even monthly newspapers and magazines. According to the *Notice*, the total number of periodicals has increased from 6,960 in 1950 to 10,688 in 1982. As commenters such as MAP and UCC point out, these newspapers are significant source of information, especially local information, which is available to consumers in each market.[286] The viability of newspapers as an important information source is further illustrated by the volume of advertising appearing in each medium. According to this criterion, advertising expenditures for newspapers exceeded both television and radio.[287] Moreover, the combined advertising revenues for newspapers and magazines were greater than the combined total for television and radio. We believe that these data provide important evidence relative to the strength of newspapers and magazines as significant contributors to the marketplace of ideas.

3. Availability in the Information Market

125. Several parties have argued that the increases in the number of information outlets do not necessarily attenuate the need for the fairness doctrine.[288] Specifically, these parties state that overall increases in information service outlets are not necessarily sufficient to provide each market with diverse and antagonistic sources of information. The argument is predicated on two assumptions. First it assumes that the growth of information sources nationwide has had no impact on local markets. Second it assumes that these sources will not provide coverage to controversial issues of public importance. As noted below, we find the data upon which these assertions are based, flawed, and we are not persuaded by the logic of the arguments.

126. On the record before us, we find that the nationwide development of these diverse information sources has had a direct impact on the availability of information in each media market. For example, even in small markets such as El Paso, Texas (ADI market No. 104), there are a significant number of media voices. According to data submitted by NAB, this market has seven television stations, twenty seven radio stations, two MDS channels, thirty thousand VCR's and cable penetration at 47 percent.[289] The most detailed refutation of this position appeared in a study conducted by Prof. Ralph Jennings.[290] The study sampled ten percent of the 3,926 communities in the United States which have at least one commercial or public radio station. It then inventoried each community's broadcast, newspaper, cable and multipoint distribution system and "examined the extent to which the communities share in the national communications wealth." We have carefully reviewed the data contained in the study and disagree with the methodology employed therein. At the outset, the study does not appear to provide a representative sampling of media markets throughout the United States. Rather, the study focuses primarily on small markets. Recognizing this problem, the study attempts to enlarge its sample by including 72 larger communities. However, the study itself recognizes that even with these communities the sample does not reflect the characteristics of the population as a whole.[291]

127. A second concern involves use of the "community" as the basic unit of analysis. The study assumes that a community is not being served unless a broadcast facility (or other information source) is located within the geographic boundaries of the community. As CBS correctly points out, the relevant inquiry is not what stations are licensed to a community, but rather what broadcast signals the community can actually receive.[292] In this regard, we note that the Commission has recognized that a broadcast licensee may serve communities which lie outside the strict geographic boundaries of its community of license.[293] Moreover, such methodology may underestimate the availability of broadcast facilities and other information services such as cable and local newspapers.[294]

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[282] *Report and Order* in BC Docket No. 82–536, FCC No. 83–1154, 48 Fed. Reg. 28445 (June 22, 1983); *Second Report and Order* in BC Docket No. 82–536, 97 FCC 2d 23 (1984), *recon. denied*, FCC 84–313, 98 FC 2d 433 (1984).

[283] *Report and Order* in MM Docket No. 81–741, 48 Fed. Reg. 27054 (June 13, 1983).

[284] *Broadcasting*, July 1, 1985, at 64.

[285] *Editor and Publisher Yearbook*, (1984) at VIII. The figures are based on 1983 data and represent a decline of 10 newspapers when compared with 1982 figures. However, this decline was due to the merger of 10 daily papers and therefor-, does not evidence a net decrease in the number of daily newspapers. During this period, 8 daily newspapers were discontinued but this was offset by new entries into the market. *Id.* at V.

[286] *See* MAP/TRAC Comments, *supra* n.50 at 86–90; UCC Comments, *supra* n.170 at 13.

[287] In 1983, the total advertising volume for the various media was approximately $20.1 million for newspapers, $16 million for television, $5.2 million for radio and $4.1 million for magazines. *Television and Cable Factbook*, Services Volume No. 52 (1984) at 14.

[288] *See, e.g.*, "Comments of Black Citizens for a Fair Media, Citizens Communication Center, League of United Latin American Citizens, National Association of Better Broadcasting [hereinafter cited as "BCFM Comments"]; UCC Comments, *supra* n.170.

[289] NAB Comments, *supra* n.79 App. Vol., App. A. at 49.

[290] R. Jennings, *Diversity of Communications Facilities in American Communities*, *cited* in UCC Comments, *supra* n.10 at App. B, and USCC Reply Comments, *supra* n.152 [hereinafter cited as "Jennings Study"].

[291] *Id.* at 10.

[292] "Reply Comments of CBS, Inc." at 22 [hereinafter cited as "CBS Reply Comments"].

[293] *See, e.g., Report and Order* in B.C. Docket No. 82–374, FCC 83–487, 54 RR 2d 1343 (1983), *recon. denied*, 56 RR 2d 797 (1984); *Report and Order* in B.C. Docket No. 82–320, 93 FCC 2d 436 (1983), *recon. denied*, FCC 84–335 (released July 31, 1984).

[294] The following example illustrates the potential problems inherent in the study's analysis. The study reports the following cities as not having cable television service in their community: Birch Tree, Missouri and Marshall, North Carolina. However, each of these towns is served by a cable system in which the corporate headquaters of the cable system is located outside of the community. *See Television and Cable Factbook*, Services Volume No. 52 (1984) at 997 and 1151. Similar concerns exist with respect to local newspapers. For example, the study reports that the town of Weston, Massachusetts did not have a local newspaper. However, the town is served by a weekly newspaper that covers local issues, but it is

128. On the record before us, we cannot find that there are a insufficient number of voices in local markets to warrant continuation of the fairness doctrine. As we observed previously, increases in signal availability from traditional broadcasting facilities—television and radio—by themselves attenuate the need for a government imposed obligation to provide coverage to controversial issues. The existence of a plethora of alternate electronic voices, as well as numerous locally oriented print voices, augments this argument. Further support for this conclusion can be found from the homogeneity of the various media systems. Thus, in communities with few television stations one can expect to find higher cable subscribership. For example, the Jennings study found that cable was available in 82 percent of the communities surveyed. Similarily, in large urban areas with no cable systems, there are generally numerous television outlets. Moreover, data submitted by NAB confirms fungibility of the various information service technologies.[295]

129. Several commenters have argued that absent the fairness doctrine there will be no incentive for broadcasters to provide coverage to controversial issues of public importance. These parties also assert that the new electronic technologies are unable to address these types of issues, particularly at the local level. We are not persuaded by these arguments.

130. We note that other information systems, such as the print media, devote a significant amount of time to controversial issues in the absence of a government imposed obligation to do so. For these media, the incentive to cover such issues is not the fear of government sanction, but rather economic necessity. Similar incentives exist for over-the-air broadcasting. Our experience with industry performance persuades us that radio and television broadcasters would be sufficiently motivated to provide coverage to controversial issues of public importance in the absense of fairness doctrine obligations. Indeed, assuming *arguendo* that television is the most relied upon information source, then there is a strong market incentive to cover such issues in response to the demand.[296] As we have observed in other proceedings, marketplace forces are the primary determinants of information oriented programming.[297] Moreover, given our previous analysis regarding the chilling effect of the fairness doctrine, we believe it reasonable to expect an increase in the coverage of these types of issues. In any event, there is no reason to believe that there will be a decline in the coverage of controversial issues of public importance.

131. Apart from the incentives of traditional broadcast facilities, we believe that other media systems will provide sufficient amounts of programming covering controversial issues of public importance. Cable television, for example, is already providing various informational programming such as CNN and the Financial News Network. Movever, many cable systems are originating their own programming and have local community access channels. Increased availablity of VCR's will also provide an important outlet for discussion of issues in each market. Most importantly, local newspapers will remain as an important source of locally oriented information.[298] All of these sources will make significant contributions to the marketplace of ideas.

H. The Fairness Doctrine Can Not Be Justified on the Basis That It Protects Either Broadcasters or the Public from Undue Influence

132. As noted above,[299] the Commission historically justified the retention of the fairness doctrine on the sole basis that affirmative regulatory intervention was necessary to vindicate the interest of the public in obtaining access to diverse viewpoints on controversial issues of public importance. Our evaluation of the fairness doctrine both in terms of its efficacy and its continued need in the communications marketplace today is based upon this expressed regulatory objective. Several participants in this proceeding, however, have argued that the retention of the doctrine furthers other regulatory goals. Specifically, these parties argue that there are legitimate "protective" functions which are promoted by the continued existence of the doctrine. In this section we will assess the merits of these arguments.

133. Several commenters contend that retention of the fairness doctrine is useful as a "protection against outside pressures" [300] by groups within the community which would otherwise exert undue influence on the editorial decisionmaking of broadcasters. Absent the fairness doctrine, these parties contend that broadcasters will simply "cave-in" to the pressures of advertisers,[301] political action committees,[302] or other powerful groups in the community [303] who do not wish

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published in a neighboring town. *See Wayland/Weston Town Crier* (Weston Edition), July 3, 1985 at 1.

[295] *See* NAB Comments, *supra* n.79 App. Vol., App. A at 48–63.

[296] Evidence of a marketplace demand for programming covering controversial issues of public importance can be seen in the employment patterns of news staffs after our television and radio deregulation decisions. A recent study of the effects of deregulation conducted by RTNDA found that: "[M]ost radio stations have not changed their news or public affairs staffing or programming as a result of deregulation. Most TV stations also plan to continue business as usual. News cutbacks have come mainly at radio stations in major markets where changes have drawn attention and accusations against deregulation. But while some news directors may have lost staff members because the FCC lifted its minimum requirements, other [sic] say they are doing a better job because of the greater freedom." *RTNDA Communicator*, May 1985 at 1.

[297] *See generally, Deregulation of Television, supra* n.177; *Deregulation of Radio, supra* n.215.

[298] In light of our conclusion that sufficient incentives exist to provide coverage to controversial issues among the traditional broadcast media, reliance on alternative electronic technology systems to provide coverage to such issues is not a necessary element in our decision. We note, however, that these information sources are significant contributors of issue oriented information. In this regard, their performance makes the elimination of the fairness doctrine even more compelling.

[299] *See* ¶¶ 4, 23, *supra*.

[300] "Comments of the United States Catholic Conference" at 19 [hereinafter cited as "USCC Comments"].

[301] *See, e.g., id;* DNC Comments, *supra* n.203 at 17; *See also* USCC Reply Comments, *supra* n.152 at 9.

Indeed, without providing any support for its assertions, the Democratic National Committee ("DNC") argues that "the potential fear [of broadcasters] of offending a power group in the community that buys advertisements was the reason the Fairness Doctrine was adopted in the first place." *Id.* at 17. As described above, the articulated reason for the establishment of the fairness doctrine was to further access by the public to diverse viewpoints on controversial issues of public importance. Our historic justification of this doctrine was not based upon an expressed concern that regulatory intervention was necessary to counterbalance the alleged influence exerted by advertisers—or any other group—on licensees with respect to their decisions concerning the broadcast of controversial issue programming.

[302] DNC Comments, *supra* n.203 at 15–16.

[303] The most expansive articulation of this argument was expressed by Ecumedia. In its Reply Comments, it stated that the fairness doctrine provided broadcast journalists with the means to deflect pressure exerted by "external sources including politicians, public officials, corporations, advertisers, organized community groups and outspoken individuals [as well as] [i]nternal pressure from station management or parent companies. "Reply Comments of Ecumedia," at 19. [hereinafter cited as "Ecumedia Reply Comments"].

to have particular contoversial viewpoints expressed.[304]

134. We take issue with the assumption that intrusive governmental regulation is necessary to "protect" broadcasters from groups which allegedly attempt to influence their programming decisions. The First Amendment forbids governmental intervention in order to "protect" print journalists and we believe that broadcast journalists are in no greater need of "protection" than their counterparts in the print media. We think it telling, in this regard, that broadcasters themselves are not seeking this protection. Moreover, the framework of broadcast regulation is predicated in large part upon reliance on the editorial discretion of broadcast journalists. As the Supreme Court has stated, the Communications Act "manifest[s] the intention of Congress to maintain a substantial measure of journalistic independence for the broadcast licensee."[305] Consequently, consistent with their public interest responsibilities, broadcasters are accorded wide discretion under the Communications Act with respect to their programming decisions.[306] We are not convinced that broadcasters have been unduly pressured by groups within the community in the past. Moreover, in our view, the speculative notion that, absent the fairness doctrine, they will be unable to resist undue pressure in the future is a wholly inadequate basis upon which to justify the continued existence of rules which intervene in the editorial decisionmaking process of broadcast journalists. Rather, we deem it appropriate to rely, as we have in the past, upon the good faith judgment of the licensee regarding the selection of programming material.[307]

135. In addition, several commenters, in support of the fairness doctrine, argue that the doctrine serves to safeguard the public against unwarranted influence by what they perceive as biased broadcast reporting.[308] Although the commenting parties differ among themselves in their perception of the bias to which they object,[309] they believe that retention of the fairness doctrine is appropriate to prevent broadcasters from presenting biased or one-sided programming. The argument apparently is predicated upon the presumption that the requirement to provide "balanced" controversial issue programming is not merely a means to assure access to the marketplace of ideas but is itself a valid regulatory objective.

136. Balance may be a laudable editorial goal, but there are grave dangers when the government tries to strike that balance. First, as we have just noted above, determining what constitutes balanced programming is a very subjective endeavor. Second, as we have described, having the government attempt to achieve balance by means of enforcing the fairness doctrine results in a chilling effect to the ultimate detriment of the listening public. Third, there are the inherent dangers of an arm of the federal government influencing the content of programming in an attempt to guarantee balance. Further, the First Amendment does not require and may well not permit a neat apportionment, dictated by the government, in the marketplace of ideas, with equal space assigned to every viewpoint. As the Supreme Court noted in *First National Bank* v. *Bellotti:*

> [T]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate. But if there be any danger that the people cannot evaluate the information and arguments advanced by appellants, it is a danger contemplated by the Framers of the First Amendment.[310]

The fact that a particular viewpoint may have the capability to be extremely influential or offensive does not mean that it is accorded a lesser degree of First Amendment protection than the expression of less influential or more reasonable opinions.[311] Therefore, we do not believe that the "protection" of the viewing and listening public against even allegedly one-sided presentations affords a justifiable basis for the retention of the fairness doctrine.[312]

I. Summary

137. We believe the fairness doctrine is an unnecessary and detrimental regulatory mechanism. While we recognize that the fairness doctrine has been a central tenet of broadcast regulation for more than fifty years, we believe that we have a statutorily mandated duty to reassess the propriety of even long standing policies in light of changes in the broadcast marketplace and evidence that the policy may not further the public interest. After careful evaluation of the evidence of record, our experience in enforcing the fairness doctrine, and fundamental constitutional principles, we find that the fairness doctrine disserves the public interest.

138. Three factors form the basis for this determination. First, in recent years there has been a significant increase in the number and types of information sources. As a consequence, we believe that the public has access to a multitude

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[304] For example, asserting that the fairness doctrine operates as an effective "insulating" mechanism, DNC argues that:

> The Fairness Doctrine actually protects a broadcaster who does not want to take this safe course of cozy relations with its community's financial elite . . .
>
> Many broadcasters go to great lengths to present issues of public importance and offer their audiences balanced coverage. For them, the Fairness Doctrine has been a valuable shield. When pressured by demands from established powers in its community to suppress coverage of an unpopular issue or to support their political points of view, a broadcaster today can simply point to his or her responsibilities under the Doctrine.

DNC Comments, *supra* n.203 at 18.

[305] *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. at 116. Indeed, the Supreme Court, in addressing the editorial discretion of broadcast journalists under the Communications Act, has recognized that "[f]or better or worse, editing is what editors are for; and editing is selection and choice of material." *Id.* at 124.

[306] The Court has asserted that: "In the delicate balancing historically followed in the regulation of broadcasting Congress and the Commission could appropriately conclude that the allocation of journalistic priorities should be concentrated in the licensee rather than diffused among many. This policy gives the public some assurance that the broadcaster will be answerable if he fails to meet its legitimate needs." *Id.* at 125.

[307] Reliance upon the editorial discretion of broadcast licensees also furthers First Amendment principles. As the United States Supreme Court has stated: "Indeed, if the public's interest in receiving a balanced presentation of views is to be fully served, we must *necessarily* rely in large part upon the editorial initiative and judgment of the broadcasters who bear the public trust." *FCC* v. *League of Women Voters of California*, 104 S.Ct. at 3117 (emphasis added).

[308] *See, e.g.*, "Comments of the American Legal Foundation" at 10–14 [hereinafter cited as "ALF Comments"].

[309] There appears to be a sharp divergence of opinion among the commenters making this argument as to the precise nature of the alleged "bias." For example, one party asserts that the bias of the broadcast media is liberal (*Id.* at 11); another participant argues that the media is biased "toward the business and commercial community." "Comments of the Maine Nuclear Referendum Committee" at 1. Still another commenter contends that the broadcast media unduly favors the views of the alleged "Zionist/Israeli lobby." Letter to the Chairman, Federal Communications Commission from Richard Hill and Donald W. Harris (Oct. 20, 1984).

[310] *First National Bank of Boston* v. *Bellotti*, 435 U.S. at 791–92.

[311] As the Supreme Court has asserted, "[t]he Constitution 'protects expression which is eloquent no less than that which is unconvincing.' " *Id.*, *quoting Kingsley International Pictures Corp.* v. *Regents*, 360 U.S. at 689.

[312] Justice Douglas has stated that: "The implication that the people of the country—except the proponents of the theory—are mere unthinking automatons manipulated by the media, without interests, conflicts, or prejudices is an assumption which I find quite maddening. The development of constitutional doctrine should not be based on such hysterical overestimation of media power and underestimation of the good sense of the American public." *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. at 152 n.3.

of viewpoints without the need or danger of regulatory intervention.

139. Second, the evidence in this proceeding demonstrates that the fairness doctrine in operation thwarts the laudatory purpose it is designed to promote. Instead of furthering the discussion of public issues, the fairness doctrine inhibits broadcasters from presenting controversial issues of public importance. As a consequence, broadcasters are burdened with counterproductive regulatory restraints and the public is deprived of a marketplace of ideas unencumbered by the hand of government.

140. Third, the restrictions on the journalistic freedoms of broadcasters resulting from enforcement of the fairness doctrine contravene fundamental constitutional principles, accord a dangerous opportunity for governmental abuse and impose unnecessary economic costs on both the broadcasters and the Commission. Finally, we believe the record in this proceeding raises significant issues regarding the constitutionality of the fairness doctrine in light of First Amendment concerns.

IV. Modifications Short of Repeal and Alternatives to Current Enforcement of the Fairness Doctrine

141. In addition to those comments which favored complete repeal or retention of the fairness doctrine, a number of proposals were offered to modify the doctrine's scope or otherwise limit its application.[313] For example, several commenters urged elimination of or limitation on the scope of the *Cullman* doctrine corollary to the fairness doctrine.[314] Specifically, ABC proposed that ballot proposition advertising and advertising by independent political committees should be exempted from the *Cullman* doctrine. In lieu of *Cullman*, ABC recommended an approach modeled on the Commission's *Zapple* doctrine,[315] under which reasonable amounts, but not free, response time would be required as a means of achieving the Commission's fairness objectives. It was also urged by some commenters that all advertising be exempted from application of the fairness doctrine. Additionally, a two year moratorium on enforcement of the fairness doctrine was proposed as a means of empirically evaluating the impact of the doctrine on broadcast speech.

142. Beyond the above suggestions, the record reflects a number of proposals which have been previously considered by the Commission in connection with its fairness doctrine requirements. In this regard, Henry Geller again recommended that the current contemporaneous, case-by-case review of fairness doctrine complaints should be abandoned in favor of examining fairness compliance solely at renewal. It was also proposed that broadcast licensees be permitted to satisfy their fairness doctrine obligations by providing on-air "access" time to the public.

143. While these various proposals may present possibilities in terms of reducing the intrusive impact of the fairness doctrine, we do not believe it is appropriate to consider them at this time, given our intention to defer action on the fairness doctrine generally, pending review of the record in this proceeding by Congress.

V. Agency Authority To Modify or Repeal the Fairness Doctrine

144. Given our policy conclusions as to the continued undesirability of the fairness doctrine, the question arises whether we have the authority to eliminate or substantially modify the fairness doctrine. In this regard, issues pertaining to our statutory authority were clearly raised in the *Notice*[316] and addressed by numerous commenting parties in this proceeding. As we observed in the *Notice*, we do not believe that Congress explicitly codified the fairness doctrine prior to the 1959 Amendments to the Communications Act. Nor do we find that the fairness doctrine necessarily inheres in the public interest standard of the Communications Act. The 1959 amendments to the Communications Act pose a more difficult question. For the reasons we have earlier stated, however, we need not reach this question.[317] Rather, we will afford Congress an opportunity to review the record adduced in this proceeding. In order to provide a full and complete record in connection with such review, we have set forth below the arguments in this proceeding with respect to codification of the fairness doctrine.

A. Pre-1959 Period

145. We begin our examination of the legal authority of the Commission to eliminate or modify the fairness doctrine in the period prior to the 1959 amendments to ascertain whether or not the doctrine was codified either explicitly within the Communications Act or implicitly as part of the general obligation of broadcasters to serve the public interest.[318] In this regard, we note at the outset that neither the Radio Act of 1927 nor the Communications Act of 1934 contained any explicit provisions indicating that Congress intended to mandate that broadcasters provide fairness in their coverage of controversial issues of public importance.

146. Indeed, in 1927 Congress specifically addressed the question of whether or not there was a need to statutorily require fairness in the discussion of controversial issues of public importance. When enacting Section 18 of the Radio Act of 1927,[319] the forerunner of Section 315 of the present Communications Act, Congress had before it in the House of Representatives language in the bill, H.R. 9971 of the 69th Congress, that would have required broadcasters to provide equal access to "both the proponents and opponents of all political questions or issues."[320] At the same time, the Senate was considering a provision recommended to it by its Commerce Committee which would have prohibited broadcasters from discriminating in the use of their facilities "for the discussion of any question affecting the public."[321] Neither of these provisions survived the House-Senate Conference. The Conferees rewrote the radio bill without the proposed fairness-type language.[322]

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[313] Several parties addressed elimination or retention of the Personal Attack Rule. However, as we stated in the *Notice* in this proceeding, our review here is limited to the fairness doctrine and does not include the Personal Attack Rule, which is the subject of a separate, pending proceeding. *Notice, supra* n.1 at ¶ 9 n.10 and *Repeal or Modification of the Personal Attack and Political Editorial Rules*, 48 Fed. Reg. 28295 (June 21, 1983).

[314] For a discussion of the *Cullman* doctrine and its evolution, see n.119 *supra*.

[315] *Nicholas Zapple*, 23 FCC 2d 707 (1970). The Zapple doctrine requires that if supporters, or spokesmen, for one political candidate appear on a broadcast station, supporters for opposing candidates must be afforded similar treatment. However, the doctrine only applies to major political parties during formal campaign periods and does not require the provision of free time.

[316] *See Notice, supra* n.1 at ¶ ¶ 96–120.

[317] *See* ¶ 7, *supra*.

[318] For a detailed examination of the pre-1959 period *See Staff Study of the House Committee on Interstate and Foreign Commerce, Legislative History of the Fairness Doctrine*, 90th Cong. 2d Sess. (Comm. Print. 1968) [hereinafter cited as "Manelli Report"].

[319] Section 18 of the Radio Act of 1927 read, in pertinent part: "If any licensee shall permit any person is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station. . . ." (44 Stat. 1170).

[320] 67 Cong. Rec. 5,560–61 (1926).

[321] S. Rep. No. 772, 69th Cong., 1st Sess. (1926).

[322] H.R. Rep. No. 1886, 69th Cong., 2d Sess. (1927).

Since there was no explanation in the Conference Report as to why the fairness-type language was excluded, we must conclude that Congress did not desire to explicitly mandate a fairness type obligation on broadcasters at that time.

147. Section 18 of the Radio Act of 1927 became Section 315 of the Communications Act of 1934. Yet, before it was enacted into law, attempts were made in the Senate to enlarge the scope of this section to impose a fairness standard on any discussion of public questions to be voted upon at an election. Specifically, the language proposed in the Senate would have required that:

> if any licensee shall permit any person to use a broadcasting station in support of or in opposition to any candidate for public office, or in the presentation of views on a public question to be voted upon at an election, he shall afford equal opportunity to an equal number of other persons to use such station in support of an opposing candidate for such public office, or to reply to a person who has used such broadcasting station in support of or in opposition to a candidate, or for the presentation of opposite views on such public questions. Furthermore, it shall be considered in the public interest for a licensee, so far as possible, to permit equal opportunity for the presentation of both sides of public questions.[323]

In the House, the Committee on Interstate and Foreign Commerce reported a substitute bill that did not contain the provision providing for "equal opportunity" in the discussion of public questions.[324] Minus the proposed fairness-type language, the Conference Committee incorporated Section 18 verbatim as Section 315 of the Communications Act of 1934.[325] Once again attempts to include fairness type language explicitly into the Communications Act had failed.

148. The 1952 amendments were the last revisions to Section 315 of the Communications Act prior to 1959. The 1952 Amendments to the Communications Act added another provision to section 315 which provided for uniformity of charges for political time vis-a-vis other uses. While in the House of Representatives, an amendment was offered to alter Section 315 to extend the "equal opportunity" provision to include statements made by authorized spokesmen of candidates,[326] this language was omitted from the bill be the Conferees.[327] Given these various attempts to legislatively mandate some form of fairness standard, it is apparent that, prior to 1959 at least, Congress had steadfastly refused to statutorily require broadcasters to provide fairness in the coverage of controversial questions and issues of public concern.

149. Despite the lack of legislative support for a mandatory fairness obligation, as evidenced in these early expressions of legislative intent by Congress in not explicitly codifying the fairness doctrine,[328] the Federal Radio Commission and later the Federal Communications Commission imposed fairness obligations upon broadcasters. As early as 1929, the Federal Radio Commission in *Great Lakes Broadcasting Co.*,[329] declared that "[i]n so far as a program consists of discussions of public questions, public interest requires ample play for the free and fair competition of opposing views, and the Commission believes that the principle applies . . . to all discussions of issues of importance to the public."[330] The Federal Communications Commission followed its predecessor by requiring that licensees cover both sides of controversial issues.[331] These decisions culminated in the issuance of the definitive statement of the fairness doctrine obligations for broadcasters. It was in the 1949 *Report of Editorializing by Broadcast Licensees*,[332] that the Commission fully set forth the two prong requirements of the fairness doctrine.

150. The fairness doctrine, as enunciated by the Commission in the *1949 Fairness Report*, was not developed pursuant to any specific command in the Act requiring that a broadcaster "devote a reasonable percentage of time to the coverage of controversial public issues" or that the broadcaster provide fairness in the coverage of such issues. Rather, it was promulgated pursuant to the "expansive" powers delegated by Congress under the Act in order that the Commission might regulate the "field of enterprise the dominant characteristic of which was the rapid pace of its unfolding."[333] In particular, the fairness doctrine developed under the general authority of the Commission to devise regulations to insure licensees broadcast in the "public interest, convenience, and necessity."[334] Based upon its perceptions of the communications field in 1949, the Commission determined that "the public interest requires that the licensee must operate on a basis of overall fairness, making his facilities available for the expression of contrasting views of all responsible elements in the community on the various issues which arise."[335] Thus, the Commission from the inception of the fairness doctrine has recognized that the sole statutory basis for the doctrine was the general duty of licensees to serve the public interest.[336]

151. Proponents of the fairness doctrine contend that the Commission can not eliminate the doctrine because it is an inherent and necessary element of the general pubic interest standard.[337]

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[323] *See* S. Rep. No. 781, 73d Cong., 2d. Sess. (1934). This same "fairness" type provision in H.R. 7716, had been introduced during the 72d Congress, H. Rep. No. 2106, 72d Cong., 2d Sess. 6 (1933). This bill was passed by Congress, but subjected to a pocket veto by President Hoover. *See Manelli Report, supra* n.318.

[324] H.R. Rep. No. 1850, 73d Cong., 2d Sess. (1934).

[325] *See* H.R. rep. No. 1918, 73d. Cong., 2d Sess. 49 (1934).

[326] 98 Cong. Rec. 7415 (1952).

[327] H.R. Rep. No. 2426, 82d Cong., 2d Sess. (1952). This omission was particularly relevant since by this time the Commission had developed the fairness doctrine pursuant to the public interest standard of the Communications Act.

[328] Indeed, as pointed out in the *Manelli Report, supra* n.318, some of the failures to enact fairness type legislation "cast serious doubts on the proposition that the Fairness Doctrine, at least in substance, is a necessary corollary of the 'public interest' standard contained in the Radio Act, and carried forward into the 1934 Communications Act." *Id.* The United States Supreme Court, however, has admonished that "unsuccessful attempts at legislation are not the best guides to legislative intent." *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. at 381 n.11.

[329] 3 FRC 32 (1929), *rev'd on other grounds*, 37 F.2d 993 (D.C. Cir.), *cert. dismissed*, 281 U.S. 706 (1930).

[330] *Id.* at 33.

[331] *See Young People's Association for the Propagation of the Gospel*, 6 FCC 178 (1938). Moreover, the Commission in *Mayflower Broadcasting Corp.*, 8 FCC 333 (1941), gave an even more expansive meaning to the public interest standard while at the same time giving a more restructive view of broadcasters' latitude under that standard. Specifically, the Commission determined that "as one licensed to operate in the public domain the licensee has assumed the obligation of presenting all sides of important public questions, fairly, objectively and without bias. . . . These requirements are inherent in the conception of public interest set up the Communications Act as the criterion of regulation." *Id.* at 340. While this decision was overturned because of its specific edict against editorializing by broadcasters, its interpretation of the public interest standard was carried forward in subsequent Commission cases.

[332] *See 1949 Fairness Report, supra* n.6.

[333] *National Broadcasting Company* v. *United States*, 319 U.S. at 219.

[334] *See* 47 U.S.C. 303, 307(a), 309(a), 310(d). According to the United States Supreme Court the public interest criterion "serves as a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy." *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940).

[335] 1949 Fairness Report, at 1250.

[336] *Id.* at 1254.

[337] *See, e.g.*, BCFM Comments, *supra* n.288 at 6–12; Geller/Lampert Comments, *supra* n.83 at 7–10; GM Comments, *supra* n.203 at 36–40; MAP/TRAC Comments, *supra* n.50 at 13–19; and Mobil Comments, *supra* n.128 at 12–17.

We believe, however, that the obligations of licensees under the public interest standard, including the fairness doctrine, were never meant to be unsusceptible to change. Nor do we conclude that the sole power to make such alterations in Commission policies promulgated pursuant to the general public interest standard rests with Congress. This conclusion is aptly supported by the United States Supreme Court which has long recognized that the public interest standard is not inflexible, but is subject to the "rapidly fluctuating factors characteristic of the evolution of broadcasting and of the corresponding requirement that the administrative process possess sufficient flexibility to adjust itself to these factors."[339] Over the years the Commission has often exercised its expert judgment and administrative experience to change policies once viewed by the Commission to be in the public interest. Given that the Commission is the expert agency in the field, courts have upheld the Commission's elimination of policies which were based solely on the public interest standard.[339] In so doing, the courts have generally relied heavily on the Commission's judgment regarding the best means to implement the broad public interest standard.[340] Indeed, the United States Supreme Court has posited that the Commission should not hesitate to abandon existing policies "[i]f time and changing circumstances reveal that the 'public interest' is not served by application of the regulations."[341]

152. As we have already determined, as detailed above, the fairness doctrine no longer serves the public interest. Accordingly, if the only statutory basis for the fairness doctrine was the general public interest standard, the Commission upon a rationally based and clearly articulated finding would possess sufficient authority to abolish the doctrine.

B. The 1959 Amendments to the Communications Act

153. In 1959 Congress once again amended section 315 of the Communications Act.[343] Primarily, the purpose of these amendments was to create an exemption from Section 315(a)'s equal opportunity requirement for certain types of news programs. After accomplishing its primary purpose in enacting the amendments, Congress set forth at the end of section 315(a) a new proviso which apparently references the general fairness doctrine. In the *Notice*,[343] we offered three possible scenarios as to the possible statutory implications of the language espoused in the 1959 Amendments to the Communications Act. One construction of the amendments is that they were an explicit codification of the fairness doctrine in its entirety. The second possible interpretation is that the 1959 amendments only codified the fairness doctrine with respect to the political broadcasting realm to ensure that the purposes of the equal opportunities requirements would not be defeated by abuse of the newly created exemptions. A final construction is that Congress at that time did not codify the fairness doctrine at all, but merely acknowledged and preserved the Commission's policy in this area without statutorily mandating its continuance.[344] According to the arguments of the different commenting parties, evidence supporting all three propositions can be found in the statutory language of Section 315, as amended in the 1959 amendment to the Communications Act, its legislative history, subsequent court and legislative interpretations, as well as our own past interpretations.

1. *The Statutory Language*

154. We begin with the language in the statute itself. In this regard, we note that the United States Supreme Court has specifically concluded that "in determining the scope of a statute, one is to look first at its language" and "[a]bsent a clearly expressed legislative intention to the contrary, that langauge must ordinarily be regarded as conclusive."[345] Of particular relevance to our inquiry is the last sentence of Section 315(a) which provides that:

> Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and *to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.*[346] (emphasis added)

Although this language appears clearly to reference the fairness doctrine obligation, its precise statutory implications are unclear. In this connection, several parties argued that this language could be read as a Congressional enactment of the fairness doctrine since its wording is quite similar to the language found in the second prong of the fairness doctrine as enunciated in the *1949 Fairness Report*. Contrarily, other comments took the position that Congress in amending Section 315 desired to make clear that it had not disturbed the Commission's fairness doctrine policy, but did not mandate its continuance. Major commenting parties have advanced strong arguments on both sides of this controversy as to the precise meaning to be accorded this language.[347] Commenters, such as the National Telecommunications and Information Administration (NTIA), assert that "[o]n its face section 315(a), as amended in 1959, indicates that Congress understood the Fairness Doctrine to be embodied in the Federal Communications Act."[348] Likewise, other proponents have found the language in the last sentence of section 315(a) to "plainly" mean that Congress intended to codify the fairness doctrine.[349]

155. On the other hand the RTNDA contends that "[o]n its face this language provides only that the amendments should not be construed to *relieve* broadcasters of fairness obligations; it neither states nor implies that Congress intended to change in any

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[338] *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. at 138.

[339] *See, e.g., FCC* v. *WNCN Listeners Guild, supra* n.193.

[340] *See, FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. at 810 and *FCC* v. *WNCN Listeners Guild, supra* n.193; *see also UCC* v. *FCC, supra* n.193 and *Chisholm* v. *FCC*, 538 F.2d 349, 357 (D.C. Cir. 1976).

[341] *National Broadcasting Co.* v. *United States*, 319 U.S. at 225.

[342] *See Act of September 14, 1959*, §1, P.L. 86–274, 73 Stat. 556, amending 47 U.S.C. § 315(a).

[343] *See Notice, supra* n.1 at ¶ 98.

[344] While different permutations of these constructions of the statutory implications of the 1959 amendments exist, we believe these three to be the most plausible.

[345] *North Dakota* v. *United States*, 460 U.S. 300, 312 (1983), *quoting Consumers Products Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). *See also United States* v. *Yermian*, 104 S. Ct. 2936 (1984) and *American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 68 (1982).

[346] 47 U.S.C. § 315(a) (1984).

[347] Some Commenters contend that the language in the last sentence of section 315(a) specifically addresses itself to fairness regarding "controversial issues" in general. *See, e.g.*, MAP/TRAC Comments, *supra* n.50 at 48. Other parties point out the Congress spoke in terms of the obligation as being "under this Act" this they contend provides support for the argument that the fairness doctrine is merely a Commission policy developed pursuant to delegated authority under the general public interest standard of the act and not to anything directly in the Act. *See, e.g.*, CBS Comments, *supra* n.83 at 110–111.

[348] "Comments of the National Telecommunications and Information Administration" at 5 [hereinafter cited as "NTIA Comments"].

[349] *See, e.g.*, MAP/TRAC Comments, *supra* n.50 at 31–34; Geller/Lampert Comments, *supra* n.83 at 4; and Ecumedia Reply Comments, *supra* n.39 at 7–9.

way the nature of the statutory authorization for the doctrine."[350] Moreover, opponents of the fairness doctrine argue that if Congress had intended this language to codify the fairness doctrine, it would have made its intent clear, as it has done in many other enactments.[351] Beause the "plain" language of the statute has been interpreted to stand for more than one proposition, we examined the legislative history of the 1959 amendments to ascertain congressional intent.[352]

2. Legislative History

156. Congress in the 1959 amendments to section 315 was responding in an expedited fashion to overturn the Commission's *Lar Daly* decision and avoid its possible ramifications.[353] In *Lar Daly*, the Commission had ruled that section 315's "equal opportunities" requirements applied to appearances of political candidates on newscasts.[354] Subsequently, broadcasters warned that if Congress did not act to correct this novel Commission interpretation of Section 315 the result might be a blackout of radio and televisison news coverage of political campaigns, including the upcoming national political conventions.[355] To prevent such an occurrence, Congress moved swiftly to enact legislation providing exemptions for news-type programming. Congress was mainly concerned with overturning the Commission's decision. Consequently, both the original bills drafted in the House of Represenatives and Senate dealt primarily with correcting through legislation the *Lar Daly* decision.[356] Accordingly, the legislative history lacks clear record evidence demonstrating a reasoned consideration of the fairness doctrine which would indicate an intent by Congress to codify the doctrine. While there does exist scattered references to the obligations of broadcasters under the public interest standard to present both sides of controversial public issues by some members of Congress, there was no significant discussion of the Commission's fairness doctrine.

157. However, the Senate Committee Report—probably in response to concerns voiced by the Commission and the Department of Justice—provided that:

> In recommending this legislation, the committee *does not diminish or affect in any way* Federal Communications Commission policy or existing law which holds that a licensee's statutory obligation to serve the public interest is to include the broad encompassing duty of providing a fair cross-section of opinion in the station's coverage of public affairs and matters of public controversy.[357] (emphasis added).

This language appears to suggest that the Senate Committee did not wish to abrogate the Commission's policy developed pursuant to the Commission's delegated authority under the general public interest standard of the Act. It is argued that this language implies that the Senate did not intend to change the broadcasters existing statutory obligation to provide fairness in the coverage of controversial issues of public importance. This does demonstrate that the Senate was ambivalent, at least initially, as to whether the fairness doctrine was a Commission policy that was grounded in the statutory obligation of broadcasters to serve the public interest. It may also suggest that Senate concerns focused primarily upon the doctrine's role in ensuring fair coverage of candidates should the "news" exemption to section 315 be enacted.

158. When the bill came up for debate in the Senate, a floor amendment was offered by Senator Proxmire. This amendment would have added to section 315 a new provision providing that:

> but nothing in this sentence shall be constructed as changing the basic intent of Congress with respect to the provisions of this Act, which recognizes that television and radio frequencies are in the public domain, that the license to operate in such frequencies requires operation in the public interest, and that in newscasts, news interviews, news documentaries, on-the-spot coverage of news events, . . . all sides of public controversies shall be given as equal an opportunity to be heard as is practically possible.[358]

Upon a recommendation by Senator Pastore the phrase "as equal an opportunity" found in the last part of the Proxmire amendment was revised to read "as fair an opportunity."[359] Senator Pastore in offering this alteration explained that this new language "merely expresses the philosophy that the media of radio and television are in the public domain, and that they must render, under the law, public service, and that wherever it is practical and possible the situation must bring to light all sides of a controversy in the public interest. . . ."[360] While Senator Pastore had referred to the Proxmire amendment as "surplusage,"[361] he nonetheless stated that he understood "the amendment to be a statement or codification of the standards of fairness . . ." and that the Commission was "obliged by existing law and policy to abide by the standards of fairness."[362] Thus, it appears that at least some of the Senators viewed the Proxmire amendment as an attempt to codify the fairness doctrine.[363]

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[350] RTNDA Comments, *supra* n.141 at 13. Similarly, NBC argues that this language was merely a "savings clause" in that Congress "left pre-existing law—the Commission's authority to interpret the 'public interest' standard of the Federal Communications Act—undisturbed." NBC Comments, *supra* n.86 at 102. *See, also* CBS Comments, *supra* n.83.

[351] *See* NBC Comments, *supra* n.86 at 105 (NBC points out that Congress made explicit the codification of a Commission policy when it enacted § 317 requiring the public announcement of any sponsorship of a political or other controversial broadcast.) *See, also* CBS Comments, *supra* n.83 at 111.

[352] As the United States Circuit Court of Appeals for the District of Columbia Circuit has stated, "[c]onstruing a statutory term, however, requires more than a superficial and isolated examination of the statute's plain words. Ascertaining congressional intent requires us to examine the 'context in which the words are set—the statute's purpose, structure, and history' . . ." *Multi-State Communications, Inc.* v. *FCC*, 728 F.2d 1519, 1522 (D.C.Cir. 1984) *quoting Natural Resources Defense Council, Inc.* v. *EPA*, 725 F.2d 761, 769 (D.C. Cir. 1984). *See also Viacom International, Inc.* v. *FCC*, 672 F.2d 1034, 1040 (2d Cir. 1982).

[353] *Lar Daly*, 28 FCC 715 (1959)

[354] *Id.*

[355] *See, e.g.*, 105 Cong. Rec. 14,447 (1959) (Remarks of Senator Hartke.)

[356] *See S. Rep. No. 562, 86th Cong., 1st Sess. (1959) and H.R. Rept. No. 802, 86th Cong., 1st Sess. (1959).*

[357] S. Rep. No. 562 at 13. The Senate Committee specifically included a letter from the Department of Justice suggesting that Congress in amending section 315 should not abolish fairness obligations. Specifically, the Department of Justice stated that "care should be taken lest present requirements of fair treatment of public issues be weakened." The Department added that "under existing law, the Commission has held that a licensee's statutory obligation to serve the public interest includes the broad all encompassing duty of providing a fair cross-section of opinion in the station's coverage of public affairs and other matters of controversy. This general fairness standard is presently applicable to political broadcasting not coming within the coverage of section 315." *Id.* at 19 (citations omitted).

[358] 105 Cong. Rec. 14,457 (1959). Senator Proxmire in offering his amendment stated that the purpose of the amendment was to put into the Act the declaration made on page 13 of the Committee Report and thus as a part of the statute make it binding. *Id.* While we believe the language found on page 13 of this Senate Committee Report, *supra* n.356, only sought to preserve the Commission's existing policy, the language proposed by Senator Proxmire appears to be more of an explicit codification of the fairness doctrine.

[359] *Id.*

[360] *Id.*

[361] Senator Pastore stated that he believed "we have already accomplished the purpose of the Senator's amendment. We have expressed it in the report." *Id.* at 14,457.

[362] 105 Cong. Rec. at 14,462.

[363] There is still some doubt as to whether the Proxmire amendment if enacted would have codified the fairness doctrine in its entirety, especially in light of the fact that the majority of what little debate there was on the amendment centered on questions relating to fairness in the political broadcasting realm. *See Notice, supra* n.1 at ¶ 110.

159. Unlike the Senate bill, the bill reported out of the House of Representatives dealt almost exclusively with correcting the situation brought about by the Commission's *Lar Daly* decision.[364] No specific amendment with respect to the general fairness doctrine was passed by the House of Representatives. The House members did, however, reject in a floor vote an amendment which would have required broadcasters to provide "equal opportunities" to opposing "representatives of any political or legislative philosoph[ies]."[365]

160. Because of differences in the bills reported out of the House of Representatives and Senate, the respective bills were sent to a House-Senate Conference.[366] Within this Conference, the language of the Proxmire Amendment was altered by the Conferees to its present form.[367] In the Conference Report [368] the Conferees, in referring to their inclusion of language which referenced the fairness doctrine, explained in a short statement that "there is nothing in this language which is inconsistent with the House substitute. It is a restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934." [369] Thus, there was no discussion in the Conference Report explaining why the Proxmire language was altered. Moreover, the Conference Report failed to explain whether the original intent of the Proxmire amendment had been retained in this new proviso. In this connection, we also note that the Conference Report explains that there was nothing in the language inconsistent with the House substitute. In light of the fact that the House bill did not contain any fairness language, the lack of a major discussion of the inclusion of fairness doctrine language suggests that this provision was not viewed as being controversial. However, we are not certain as to the reason this was not a controversial issue. In this regard, it appears that there are several plausible rationales for the lack of discussion on this provision in the Conference Report. First, it could be that Congress was merely making explicit what it already considered to be a statutory obligation under the public interest standard. Second, there is a possibility that because Congress was only preserving a Commission policy and not mandating its continuance there was no need for a discussion.[370] Further, if the provision was largely understood as intended only to ensure fair treatment of candidates in programming exempted from Section 315's equal opportunities provisions, there may have been general agreement that the proviso was desirable. Finally, it should be noted that, at the time, the fairness doctrine was enforced only at renewal, and some legislators believed it had little practical effect on licensees.[371]

161. In the post-Conference debates in both Houses, the Conferees in introducing the revised version of the bill made an effort to explain that the Proxmire amendment had been retained, at least in spirit. In particular, Representative Harris stated that:

> Now, just in case anybody in the broadcasting industry or in the Federal Communications Commission, or even a candidate himself, should get the idea that the reins are off; you can do what you want to, we have accepted in the Conference substitute a provision similar to what was referred to as the Proxmire amendment in the other body.[372]

Likewise, in the Senate debates, Senator Pastore pointed out that "while the House conferees found some fault with the so-called Proxmire amendment, we insisted it be retained in the bill, if with some slight modifications, because it was the one condition we could write into the law to make sure the Federal Communications Commission would give the matter the right interpretation." [373]

162. These statements may lend some support for the proposition that a byproduct of the 1959 Amendments was a codification of the fairness doctrine. In the House of Representatives, however, the dialogue between Representatives Avery and Harris lends support to the contrary position that Congress intended solely to preserve the fairness doctrine. Specifically, Representative Avery questioned whether or not the "standard of fairness still prevails in the basic Act irrespective of any changes that were made in section 315" and that "it applies not only to political candidates, but issues and editorializing by licensees as well."[374] In response, Representative Harris agreed that the standard remained and added that the conferees "discussed this particular item" and "agreed that the standard of fairness must prevail, and applies to the programs which will be exempted from the equal-time requirements of section 315." [375] As demonstrated by these discussions, the majority of the debate on the fairness doctrine in both Houses centered around assuring that despite the new amendment the doctrine remained in the context of political broadcasting. This is understandable since the reason for Congress' action was overturning the *Lar Daly* decision.

163. While this appears to have been the focus of most of the debates, in the Senate at least one Senator believed that the fairness doctrine was being codified in its entirety. Specifically, Senator Scott pointed out that:

> [w]e have maintained very carefully the spirit of the Proxmire amendment, and I ought to point out . . . that the phrase "to afford reasonable opportunity for the discussion of conflicting views on issues of public importance" does not refer merely to political discussions as such or to opposing views of political parties or of candidates. It is intended to encompass all legitimate areas of public importance which are controversial . . . and it is intended that no one point of view shall gain control over the airwaves to the exclusion of another point of view.[376]

Senator Case, however, did immediately afterwards endorse everything that Senator Scott stated and everything stated in the Conference Report.[377] None of the other Senators offered any remarks on the correctness of Senator Scott's statement.

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[364] However, it should be noted that in the House Committee debates there is evidence that members believed that broadcasters were already subject to a statutorily required fairness obligation. For example, Representative Cellar stated that: "broadcast licensees would continue to remain subject to their present statutory duty to operate in the public interest. Under this general, overall standard of licensee responsiblity, the Commission requires a licensee to be fair in the presentation of opposing views on controversial public issues." 105 Cong. Rec. 16,227 (1959).

[365] *Id.* at 16,245.

[366] H.R. Rep. No. 1069, 86th Cong., 1st Sess. (1959). The non-inclusion of any fairness doctrine language in the House of Representatives was not the sole difference between the two bills.

[367] The United States Supreme Court in *Red Lion Broadcasting Co.* v. *FCC*, *supra* n.10 in dictum stated that the original Proxmire language "constituted a positive statement of doctrine and was altered to the present merely approving language in the conference committee." *Id.* at 383–84 (footnote omitted) *See* ¶ 166, *infra*.

[368] H.R. Rep. No. 1069, 86th Cong., 1st Sess. (1959).

[369] *Id.* at 5.

[370] Parties, such as MAP/TRAC, have argued that this language proves that Congress intended to codify the fairness doctrine. *See* MAP/TRAC Comments, *supra* n.50 at 29–34. Other parties point out it is mere recognition of the Commission's policy pursuant to the public interest standard in the Act. *See* CBS Comments, *supra* n.83 at 111.

[371] *See Notice*, *supra* n.1 at ¶ 112.

[372] 105 Cong. Rec. 17,778 (1959). In addition, Representative Harris, stated that the Conferees "went further than that to be sure that there was no advantage taken by the broadcasting industry or anyone else and reaffirmed the 'standard of fairness' established under the Communications Act." *Id.*

[373] *Id.* at 17,830.

[374] *Id.* at 17,779.

[375] *Id.*

[376] *Id.* at 17,831.

[377] *Id.* at 17,832.

164. We also found other statements in the legislative history which suggested that some members did believe that the fairness doctrine should not be a mandatory obligation. In particular, we note the statement of Representative Brown who expressed regret that the final bill "does not go quite as far as I would like toward giving freedom of information over the radio and television such as is enjoyed by the press of the Nation." [378] While there are a few statements throughout the legislative history discussing the fairness obligation, there is no evidence that clearly demonstrates an intent by Congress to codify the doctrine. Although as NBC observes "[t]he legislative discussion of the fairness doctrine cannot achieve what the statutory language fails to do," [379] neither the statutory language nor the legislative history of section 315 provides a satisfactory answer to the question of congressional intent.

3. Judicial Interpretations of the 1959 Amendments

165. As CBS points out the question of whether or not Congress has enacted the fairness doctrine as a statutory mandate has never been directly considered by any court.[380] In *Red Lion Broadcasting Co.* v. *FCC*,[381] the United States Supreme Court in upholding the personal attack and political editorializing rules did however provide dictum pertaining to the statutory implications of the 1959 Amendments to the Communications Act. Proponents and opponents alike have cited the *Red Lion* decision as supporting their respective positions concerning the statutory nature of the fairness doctrine. While the Court did examine the legislative history of section 315, it failed to reach a clear conclusion as to whether the doctrine was codified. In this regard, we note that after citing the language at the end of section 315(a) the Court stated:

[t]his language makes it very plain that Congress, in 1959, announced that the phrase "public interest," which had been in the Act since 1927, imposed a duty on broadcasters to discuss both sides of controversial public issues.[382]

As proponents of the fairness doctrine contend this language suggests that the Court "viewed Congress' action as a codification of the FCC's interpretation that the fairness doctrine was an inextricable element of the 'public interest' section of the Act."[383] In addition, the *Red Lion* Court stated that "[h]ere, the Congress has not just kept its silence by refusing to overturn the administrative construction, but has ratified it with positive legislation."[384]

166. Although this language implies that the *Red Lion* Court believed the 1959 amendments to be an explicit codification of the fairness doctrine, other language found in the decision just as equally suggests that it was only codified with respect to the political broadcasting realm or not at all. In particular, the Court stated that Congress "knowingly preserved the FCC's complementary efforts." [385] In this connection, we note that preservation of a Commission policy indicates that it is not a mandatory obligation of broadcasters and does not foreclose our discretion to later reevaluate that policy. Moreover, the Court in referring to the Proxmire amendment states that:

[t]his amendment, which Senator Pastore, a manager of the bill and a ranking member of the Senate Committee, considered "rather surplusage," constituted a *positive statement of doctrine* and was altered to the present *merely approving language* in the Conference Committee. [386] (emphasis added).

Commenters who argue that the fairness doctrine is not statutory, contend that this language proves that the Court viewed the proviso as not mandating, but merely endorsing the Commission's then existing policy. [387] For example, CBS contends that the Court's analysis in *Red Lion* "made clear that the doctrine was not being displaced by the exemptions to the equal time provisions, it did not deprive the Commission of the power later to determine that the public interest would be better served by the doctrine's rescission."[388]

167. Four years later the United States Supreme Court in *Columbia Broadcasting System* v. *Democratic National Committee* [389] also in dictum addressed the statutory implications of the 1959 Amendments to the Communications Act. However, the Court once again used ambiguous terminology in referring to the fairness doctrine. Therein, the Court stated that "[i]n 1959, Congress amended § 315 of the Act to give *statutory approval* to the Fairness Doctrine." [390] Standing alone this language could suggest that the Court understood the 1959 amendments to codify the fairness doctrine. Contrarily, this same statement could stand for the proposition that Congress was recognizing and approving the doctrine, but not mandating its retention. Moreover, in the same footnote the Court while discussing Congress' enactment of section 312(a) states that "[t]his amendment essentially codified the Commission's prior interpretation of section 315(a) as requiring broadcasters to make time available to political candidates." [391] If the Court had meant to suggest that the fairness doctrine was codified, it could have stated that the fairness doctrine had been codified as it did in reference to section 312(a). We are not certain if the Court's choice of the term "statutory approval" was meant to suggest that the fairness doctrine is not statutory. Moreover, Justice William Brennan joined by Justice Thurgood Marshall in a dissenting statement determined that:

The statutory authority of the Commission to promulgate this doctrine and related regulations derives from the mandate to the "Commission from time to time, as public convenience, interest, or necessity requires," to promulgate "such rules and regulations and prescribe such restrictions and conditions . . . as may be necessary to carry out the provisions of [the Act] . . . " [392] (citations omitted)

That these Justices concluded that the "Fairness Doctrine was recognized and implicitly approved by Congress in the 1959 amendments to § 315 of the Act," [393] suggests, as evidenced by the above statement, that they did not necessarily view it as having been mandated by section 315 of the Act. We have no evidence as to whether the other Justices agreed with this interpretation.

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[378] *Id.* at 17,781.

[379] "Reply Comments of National Broadcasting Company, Inc." at 21. [hereinafter cited as "NBC Reply Comments"].

[380] *See* CBS Comments, *supra* n.86 at 124.

[381] 395 U.S. 367 (1969).

[382] *Id.* at 380.

[383] MAP/TRAC Comments, *supra* n.50 at 35–36. This proposition is supported by the Court's subsequent statement that the congressional action in 1959 was a vindication of the "FCC's general view that the fairness doctrine inhered in the public interest standard." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. at 380.

[384] *Id.* at 381–82 (footnote omitted). The NTIA cites *Black's Law Dictionary* for the proposition that "[r]atification means the adoption of the act of another as one's own act, with the resulting responsibility for the consequences of that act." Reply Comments of the National Telecommunications and Information Administration" at 14 [hereinafter cited as "NTIA Reply Comments"]. In light of the subsequent statements made in the *Red Lion* decision, we are not certain what the Court reference to the doctrine having been ratified meant.

[385] Red Lion Broadcasting Co. v. FCC, 395 U.S. at 385.

[386] Id. at 383–84 (citations omitted).

[387] See RTNDA Comments, *supra* n.141 at 21.

[388] See CBS Comments, *supra* n.83 at 125 (footnote omitted).

[389] 412 U.S. 94 (1973). (The Court upheld the Commission's determination that the public interest would not be served by requiring broadcasters to accept editorial advertisements).

[390] *Id.* at 113 n.12 (emphasis added).

[391] *Id.*

[392] *Id.* at 185 n.16. (Brennan, J., dissenting).

[393] *Id.* at 185 n.15. (citations omitted).

168. Because the United States Supreme Court so far has not given a definitive answer on whether or not the fairness doctrine has been explicitly codified into the Communications Act, we examined the cases in the United States Circuit Courts of Appeal. While some of these courts have, in passing, discussed the statutory nature of the fairness doctrine, none has specifically addressed in a reasoned decision the question of whether or not the fairness doctrine is codified. The Courts, which in dictum state that the fairness doctrine was codified in 1959, generally do not discuss the rationale behind their conclusions. Indeed, many of these Courts have adoped—without any discussion as to its correctness—the Commission's interpretation on whether or not the fairness doctrine was codified as part of the Communications Act.[394] Other Courts have relegated their discussion of the statutory nature of the fairness doctrine to a sentence or two in a footnote.[395]

169. At least one Court has specifically determined that the fairness doctrine has not been codified. The United States Circuit Court of Appeals for the First Circuit in *Public Interest Research Group* v. *FCC* [396] in upholding the Commission's determination that the fairness doctrine would only apply to commercial advertisement that spoke in an obvious and meaningful way to public issues stated, in dictum, that the "fairness doctrine is *not a creature of statute* but was evolved over the years by the Commission under the 'public interest' standard of the Communications Act." [397] Moreover, the Court declared that Congress only "acknowledged and generally endorsed the Commission's adoption of fairness standards." [398]

170. In *Strauss Communications, Inc.* v. *FCC*,[399] the court found that find that the fairness doctrine "received explicit statutory recognition in the 1959 amendments." [400] The precise ramifications of Congress giving "statutory recognition" are unclear. Moreover, the Court made this statement without any substantive discussion indicating its meaning.

4. Commission Interpretations of the 1959 Amendments

171. Although some Courts have relied upon Commission interpretation of the fairness doctrine's statutory nature, the Commission itself has not steadfastly found the doctrine to have been codified. Over the years, the Commission has reassessed the implications of the 1959 amendments to the Communications Act. While some Commission decisions have without much discussion assumed that Congress codified the doctrine in 1959,[401] other Commission determinations have found that Congress only "ratif[ied] the Commission's then-existing policy concerning application of the Fairness Doctrine to news broadcasts." [402] And still other Commission decisions have been ambivalent on whether the doctrine was codified.[403] Thus, the Commission has never definitively concluded that the fairness doctrine was codified in 1959.

5. Subsequent Congressional Interpretations of the 1959 Amendments

172. Finally, we examined subsequent statements by Congress, including the statements of key figures in the 1959 amendment to section 315, to ascertain Congressional views on the statutory nature of the fairness doctrine. Once again we discovered there was evidence both supporting the codification proposition and opposing it. We begin with those statements suggesting that Congress in 1959 codified the fairness doctrine. In particular, Senator Pastore during congressional hearings in 1963 on further amending the equal time provision, implied that section 315 codified the fairness doctrine and that if there were any changes made to section 315, "there ought to be a restatement on the fairness doctrine." [404] Moreover, Senators Pastore and Proxmire in a 1975 hearing on bills to eliminate the fairness doctrine, gave their beliefs that the doctrine had been codified in 1959. Specifically, in his opening statement, Senator Proxmire explained that:

> Although the fairness doctrine dates back to 1949 in a sophisticated form, it was not until 1959 that it was recognized in the United States Code. I had a hand in putting it there.[405]

This conclusion was expanded upon by Senator Pastore who simply stated "we codified [the fairness doctrine] in 1959." [406]

173. There also exists subsequent legislative statements suggesting that even Congress itself was not certain whether the fairness doctrine has been codified.[407] In this connection, we note that in 1968, less than ten years after the amendments to section 315, a study of the legislative history of the fairness doctrine was prepared for the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce,[408] (Manelli Report). The Manelli Report, after an exhaustive study of the legislative history, concluded that "the legislative history of the Communications Act with respect to the Fairness Doctrine does not establish whether the doctrine should properly be considered a part of the statute."[409] In addition, the Manelli Report contended that Congress "intended neither approval nor disapproval of it (fairness doctrine), but merely intended to ensure that Section 315 would not interfere with

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[394] *See, e.g., Green* v. *FCC*, 447 F.2d 323, 327 n. 6 (D.C. Cir. 1971) (the Court cited the FCC's ruling *In re Obligations of Broadcast Licensees Under the Fairness Doctrine*, 23 FCC 2d 27, 28 (1970) and *Brandywine–Mainline Radio, Inc.*, v. *FCC*, 473 F.2d 16 (D.C. Cir. 1972), *cert. denied* 412 U.S. 922 (1973) (The Court quoted the FCC's opinion in *Committee for the Fair Broadcasting of Controversial Issues*, 25 FCC 2d 283, 291 (1970). In this regard, we note that both of these Commission decisions cited by the courts found the fairness doctrine to have been codified in the 1959 Amendments.

[395] *See, e.g., Maier* v. *FCC*, 735 F.2d at 225 n. 5 and *Banzhaf* v. *FCC*, 405 F.2d at 1095 n. 49.

[396] 522 F.2d 1060 (1st Cir. 1975).

[397] *Id.* at 1066 (emphasis added). Complainants in this case had specifically argued that the fairness doctrine was codified. However, the court concluded that Congress had delegated under the general public interest standard the enforcement of the fairness doctrine.

[398] *Id.* (citations omitted).

[399] 530 F.2d 1001 (D.C. Cir. 1976).

[400] *Id.* at 1007 n.11. *See also American Security Council Education Foundation* v. *FCC*, 607 F.2d 438 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1013 (1980). The District of Columbia Circuit Court of Appeals therein stated that "[i]n 1959, Congress confirmed the Commission's view that the fairness doctrine was part of the public interest standard" *Id.* at 443 n.12.

[401] *See Study of Fairness Doctrine*, 30 FCC 2d 26, 26–27 (1971) and *1974 Fairness Report, supra* n.3. It should be once again pointed out that the *1949 Fairness Report, supra* at n.6., found the doctrine to be statutory solely under the general public interest standard.

[402] *Report and Order* in BC Docket No. 81–741, FCC 83–120, 53 RR 2d 1309 (1983). *See also Notice of Proposed Rule Making* in MM Docket No. 83–331, FCC 83–130 (released May 25, 1983). (Commission stated that Fairness Doctrine was "statutorily approved" by Congress). We also note that then Chairman Richard E. Wiley in a separate statement to the reconsideration of the *1974 Fairness Report* concluded that "The literal wording of the statute indicates only that the Commission's fairness policies were left undisturbed . . . ." *Memorandum Opinion and Order on Reconsideration of the Fairness Report*, 58 FCC 2d at 700 (separate statement of Chairman Wiley).

[403] *See Notice of Proposed Rule Making* in MM Docket No. 83–670, 94 FCC 2d 678, 706 n.50 (1983).

[404] *Equal Time: Hearings on S. 251, S. 252, S. 1696 and H.J. Res. 247 Before the Subcomm. on Communications of the Senate Comm. on Commerce*, 88th Cong., 1st Sess. 59 (1963). *See also* NTIA Comments, *supra* n.348 at 9.

[405] *Fairness Doctrine: Hearings on S. 2, S. 606 and S. 1178 Before the Subcomm. on Communications of the Senate Comm. on Commerce*, 94th Cong., 1st. Sess. 13 (1975).

[406] *Id.*

[407] *See, e.g., Notice supra* n.1 at § 111 n.157.

[408] *Manelli Report, supra* n.318.

[409] *Id.* at 28.

it."[410] The Senate also issued a staff study in 1968 which determined that "Section 315 is a congressional enactment and the 'fairness doctrine,' although a qualifying reference to it appears in section 315, is not."[411] However, it did find that the "public interest, convenience, and necessity, requires each broadcast licensee to devote a reasonable percentage of his broadcast time to the presentation of programs dealing with issues of interest in the community served by the particular station."[412]

174. As demonstrated by the conflicting evidence found in the record, reaching a conclusion as to whether or not Congress has mandated our retention of the fairness doctrine is a difficult determination. We believe it unnecessary, however, to reach a definitive conclusion on this matter given our determination to defer action concerning the fairness doctrine pending review by Congress of the record compiled in this proceeding.

VI. Conclusion

175. Based on the voluminous record compiled in this proceeding, our experience in administering the doctrine and our general expertise in broadcast regulation policy determinations, we believe that as a policy matter the fairness doctrine no longer serves the public interest. Moreover, the development of the information services marketplace makes unnecessary any governmentally imposed obligation to provide balanced coverage of controversial issues of public importance. Furthermore, we have found that far from serving its intended purpose, the doctrine has a chilling effect on broadcaster's speech. Accordingly, we have questioned the permissibility of the doctrine as a matter of both policy and constitutional law.

176. Notwithstanding these conclusions, we have decided not to eliminate the fairness doctrine at this time. The doctrine has been a longstanding administrative policy and a central tenet of broadcast regulation in which Congress has shown a strong although often ambivalent interest. Indeed, while Congress has not yet chosen to eliminate the doctrine legislatively, several members of Congress have recently sponsored bills seeking to abolish the fairness doctrine and its related policies.[413] Congress also has held hearings to determine whether or not it should enact legislation to eliminate the doctrine.[414] In addition, we recognize that the United States Supreme Court in *FCC* v. *League of Women Voters of >California* [415] has similarly demonstrated an interest in our examination of the constitutional and policy implications underlying the fairness doctrine. Because of the intense Congressional interest in the fairness doctrine and the pendency of legislative proposals, we have determined that it would be inappropriate at this time to eliminate the fairness doctrine. Given our decision to defer to Congress on this matter, we also believe that it would be inappropriate for us to act on the various proposals to modify or restrict the scope of the fairness doctrine. It is also important to emphasize that we will continue to administer and enforce the fairness doctrine obligations of broadcasters and to underscore our expectation that broadcast licensees will continue to satisfy these requirements.

177. Accordingly, it is ordered, that this proceeding is terminated.

178. It is further ordered, that the motions requesting acceptance of late-filed pleadings are granted.

179. It is further ordered, that the "Application for Review" filed by the Media Access Project is denied.

180. It is further ordered, that the Secretary shall cause this *Report* to be printed in the Federal Communications Commission Reports.

181. It is further ordered, that the Secretary shall forward copies of this *Report* to the appropriate Committees and Subcommittees of the House of Representatives and the Senate.

Federal Communications Commission.*

William J. Tricarico,

Secretary.

Appendix

Parties Submitting Formal Comments in Gen. Docket No. 84-282 [1]

Accuracy in Media
American Advertising Foundation
American Association of Advertising Agencies
American Broadcasting Co. ("ABC")
American Cancer Society
American Civil Liberties Union ("ACLU")
American Heart Association
American Jewish Committee
American Jewish Congress
American Legal Foundation ("ALF")
American Newspaper Publishers Association
Antidefamation League of the B'nai B'rith
Arizona Television Co.
Ashville Musicians and Artists for a Sane Environment
Association of National Advertisers
Black Citizens for a Fair Media/Citizens Communications Center/League of United Latin American Citizens/National Association of Better Broadcasting ("BCFM et al.")
CBS, Inc. ("CBS")
Committee for Community Access
Common Cause
Democratic National Committee
Eagle Forum
Elba Development Corp/Multimedia, Inc. and Providence Journal Co.
Forward Communications Co., et al.
Foundation for the Arts of Peace
Freedom of Expression Foundation ("FEF")
General Motors/International Paper Co./Campbell Ewald Co. ("General Motors et al.")
Henry Geller/Donna Lampert
Glass Packaging Institute
Robert C. Greene
KGRL 940 (Gar Capps)
KIPR 95.FM
KMAN (B. Thornton)
Pamela Magasich
Maine Nuclear Referendum Committee
Luther Martin
Media Action Project Telecommunications Research and Action Center ("MAP/TRAC")
Meredith Corp.
Midwest Family Group
Mobil Corp.
National Association of Broadcasters ("NAB")
National Broadcasting Co. ("NBC")
National Cable Television Association
National League of Cities
National Radio Broadcasters Association
National Rifle Association of America
National Telecommunications and Information Administration ("NTIA")

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[410] *Id.* at 29.

[411] *Staff Report of the Senate Committee on Commerce*, 90th. Cong., 2d Sess. 4 (Comm. Print. 1968).

[412] *Id.*

[413] *See, e.g.*, S. 1036, 99th Cong., 1st Sess. (1985); S. 22, 99th Cong., 1st Sess. (1985); H.R. 5585, 97th Cong., 2d Sess. (1982); and S. 22, 98th Cong., 1st Sess. (1983).

[414] *See, e.g., Freedom of Expression Act of 1983: Hearings on S. 1917 Before the Committee on Commerce, Science, and Transportation*, 98th Cong., 2d Sess. (1984). Senator Bob Packwood also requested that a staff report prepared by the National Telecommunications and Information Administration be printed for use by the Senate Committee on Commerce, Science, and Transportation. *Print and Electronic Media: The Case for First Amendment Parity Printed at the Direction of Senator Bob Packwood for the Committee on Commerce, Science, and Transportation*, 98th Cong., 1st. Sess. (1983). This study examined in detail whether there should be first amendment parity between the print and electronic media.

[415] 104 S.Ct. 3106 (1984). *See ¶ 15, supra.*

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* See attached statement of Commissioner Mark S. Fowler, Chairman and concurring statement of Commissioner James H. Quello.

[1] For purposes of compiling this list of parties filing comments and reply comments, a filing was considered "formal" if it included the correct docket number and the proper number of copies were submitted.

People for the American Way
Post-Newsweek
Public Broadcasting Service and National Association of Public Television Stations
Public Media Center
Radio Television News Director Association
Society of Professional Journalists
Tribune Broadcasting Co.
United States Catholic Conference
Office of Communications of the United Church of Christ
Westinghouse Broadcasting and Cable ("Group W")
Yes to Stop Calloway Committee

Parties Submitting Formal Reply Comments

Actors Equity Guild et al.
American Arab Anti-Discrimination Committee
ABC
ACLU
American Federation of Labor and Congress of Industrial Organizations
ALF Authors League of America
Byron Bailer
Toni Bean
BCFM, et al.
Eric Buchanan
Deborah Bynum
Laura Byrd
CBS
Center for Science in the Public Interest
Sharon Chambers
Choosing Our Future
Committee for Responsible Investment, Medical Mission Sisters
Department for Professional Employees, AFL-CIO
Ecumedia
Donise Edwards
Janis Ernst
Cheryl N. Freeman
FEF
Alyce F. Gaither
Henry Geller/Donna Lampert
General Motors et al.
Sidney Hall
John Harvey
Kentucky Fair Tax Coalition
Catherine LaMarr
Andrew Lee
Mark Loud
Shari Mauney
MAP/TRAC
NAB
National Bar Association/National Association for the Advancement of Colored People
NBC
National Coalition to Ban Handguns
NTIA
Kay Pierson
Robert Rivers
Rhonda Rhea
Rosemary Ryan, M.D. et al.
Safe Energy Alliance of Alabama
Jennifer Small
United States Catholic Conference
United States Public Interest and Research Group
Telecommunications Research and Action Center
Cheryl Thompson
Laurie Washington
Group W
Yvette Williams

August 7, 1985.

Statement of Mark S. Fowler, Chairman

Re: Fairness Doctrine Report

250 years ago this week, a publisher named John Peter Zenger was on trial. Zenger ran the Weekly Journal, a New York paper that had reprinted the letters of two Whig journalists who had argued in their essays for freedom of the press, that "freedom of speech is ever the symptom as well as the effect of good government." For this, and for being a critic of the British authorities, Zenger had been charged with seditious libel by the Governor General of New York. He spent almost a year in jail awaiting trial. Although he was surely guilty under the prevailing laws at the time, the jury acquitted Zenger.

The lessons of the Zenger trial have never been lost on the United States, nor on this Commission. Today's report is linked to this country's tradition of people to criticize their government without recrimination or licensing.

Justice William O. Douglas foreshadowed this viewpoint in his own repudiation of the Fairness Doctrine 12 years ago. He said: "The Court . . . by endorsing the Fairness Doctrine sanctions a federal saddle on broadcast licensees that is agreeable to the traditions of nations that never have known freedom of press and that is tolerable in countries that do not have a written constitution containing prohibitions as absolute as those in the First Amendment." [1]

This very week the British Broadcasting Corporation experienced a walk-out of its journalists. They did not strike over wages or seniority, but over the matter that concerns us today: their freedom of the broadcast press to cover a controversial issue of public importance in the manner they saw fit. Justice Douglas was right: There is a difference amongst the nations of this world that have a constitutional protection against restraints on press and those that, unhappily, do not.

So it is freedom, then, that is at the heart of this exemplary example of draftsmanship from the Mass Media Bureau. I have made the advancement of First Amendment rights an uppermost objective of my Chairmanship. I feel pride and satisfaction that we have a report that comprehensively reviews the operation and context of the Fairness Doctrine and considers the comments of all those who participated in our proceeding. It responds to the arguments of proponents and opponents of the Fairness Doctrine in a scholarly and responsible manner.

Today's report is an indictment of a misguided government policy. It is a recital of its shortcomings, both legal and practical. The First Amendment dictates: Choose between the right of the press to criticize freely and the authority of the government to channel that criticism. Today's order is a statement by this Commission that we should reverse course, and head ballistically toward liberty of the press for radio and television. Free speech and free government thrive together or they fail together. John Peter Zenger said that. William O. Douglas said that. And today, so do we.

August 7, 1985.

Concurring Statement of FCC Commissioner James H. Quello

In re: Inquiry into the General Fairness Doctrine Obligations of Broadcast Licensees.

This *Report* contains a very well reasoned and persuasive indictment of the fairness doctrine. It presents conclusive evidence that the doctrine is unnecessary and that it does not further its purpose of encouraging the presentation of controversial issues of public importance. The *Report* strongly documents its ultimate conclusion that the fairness doctrine does not serve the public interest, and I fully support that conclusion.

I wish to emphasize, however, my determination that this record compels the conclusion that Congress intended to codify the fairness doctrine as part of the 1959 amendments to the

[1] Columbia Broadcast System v. Democratic Nat'l Comm., 412 U.S. 94, 817–18 (1973) (concurring opinion).

Communications Act.[1] The Commission has long acquiesced in the view that the fairness doctrine was codified by these amendments,[2] and, thus, the burden of proof must rest with those who would urge that the agency itself has authority to eliminate the doctrine. In my view, nothing in the record contradicts the clear language of section 315(a) which states that licensees have an "obligation imposed upon them under [the Communications Act] to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." [3]

Since I believe that the doctrine has been codified, I concur in the decision to defer to Congress on this matter.

[FR Doc. 85-20563 Filed 8-29-85; 8:45 am]
BILLING CODE 6712-01-M

[1] *See* Act of September 14, 1959, Pub. L. 86-274, section 1, 73 Stat. 557 (amending 47 U.S.C. 315(a) (1952)).

[2] *See, e.g., Fairness Report*, 48 FCC 2d 1, 1 (1974).

[3] 47 U.S.C. 315(a) (1984).

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federal register

Friday
August 30, 1985

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 606 and 640

Current Good Manufacturing Practice for Blood and Blood Components; Uniform Blood Labeling; Final Rule

Guideline for the Uniform Labeling of Blood and Blood Components; Availability of Guideline; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 640

[Docket No. 80N-0120]

Current Good Manufacturing Practice for Blood and Blood Components; Uniform Blood Labeling

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the labeling requirements for any blood and blood component product that is collected or manufactured in a blood bank establishment to combine, simplify, and update the biologics regulations. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a final guideline "Guideline for the Uniform Labeling of Blood and Blood Components" that is consistent with this final rule. The guideline provides criteria for the printing and use of a standardized container label for each blood and blood component product.

EFFECTIVE DATE: September 2, 1986 for all affected products initially introduced or initially delivered for introduction into interstate commerce. The labeling for all blood components collected on or after this effective date shall comply with the requirements set forth in these regulations. FDA advises that licensed establishments may begin using labeling printed in accordance with these regulations and the guideline "Guideline for the Uniform Labeling of Blood and Blood Components" without its prior approval by FDA. Concurrent with its use, licensed establishments are required to submit to the Director, Offices of Biologics Research and Review (HFN-800), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, the revised labeling and instruction circular as an amendment to their product license(s). For additional information concerning the effective date, see the discussion under the heading "Paperwork Reduction Act of 1980" located at the end of the preamble.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 31, 1980 (45 FR 72416), FDA issued a proposed rule to amend the biologics regulations to revise and simplify the labeling requirements for any transfusible blood and blood component product that is collected or manufactured in a blood bank establishment and unifying these requirements under one set of regulations in §§ 606.120, 606.121, and 606.122 (21 CFR 606.120, 606.121, and 606.122). FDA believed that these proposed labeling requirements would: (1) Improve the eye-readability of the container label by limiting the amount of information required on the label; (2) provide for the use of a machine-readable code on the label; (3) unify all labeling requirements in one place in the current good manufacturing practices for blood and blood components regulations (21 CFR Part 606); and (4) encourage the use of uniform labels by all establishments engaged in the collection, processing, or labeling of blood and blood components.

I. Background

In the preamble to the October 31, 1980 proposed rule, FDA also announced the availability of a draft guideline entitled "Guidelines for the Uniform Labeling of Blood and Blood Components." The guideline provided specifications for a uniform blood label, consistent with the proposed rules, that was suitable for any blood establishment to use in labeling blood and blood components intended for transfusion. The uniform label was developed with the cooperation of the Committee for Commonality in Blood Banking Automation (CCBBA) of the American Blood Commission (ABC). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the final guideline based on the October 1980 draft guideline. The final guideline provides instructions for the printing and proper use of a uniform blood label consistent with the final regulations. Any changes in the final guideline are described in the notice announcing its availability.

FDA also published two other proposals in the **Federal Register** of October 31, 1980 (45 FR 72404) that are related to this final rule. The first of these proposals was intended to revise the proper names for many biological products, including the proper names for blood and blood components. In the **Federal Register** of January 28, 1985 (50 FR 4128), FDA published a final rule based on that proposal. The proper names for blood products used herein reflect the changes in names promulgated in that final rule.

In the second related proposal published in the **Federal Register** of October 31, 1980 (45 FR 72422), FDA proposed to revise certain requirements for the additional standards for human blood and blood products. FDA has withdrawn that proposed rule for reconsideration. See the **Federal Register** of July 22, 1983 (48 FR 33494). Because of that withdrawal, FDA is changing several labeling provisions of this final rule and is explaining these changes later in the preamble.

II. FDA's Response To Comments

FDA provided interested persons 60 days to submit written comments on the proposed rule concerning uniform blood labeling. In response to a request by a licensed manufacturer of blood components and blood derivatives, FDA extended the comment period another 60 days by a notice published in the **Federal Register** of December 9, 1980 (45 FR 81065). FDA received 54 letters of comment in response to the proposal, and most letters contained more than one comment. Most of the comments supported FDA's proposed actions. A summary of the comments and FDA's responses follow.

1. A comment noted that in proposed § 606.121(a), Source Plasma is exempt from the labeling requirements in § 606.121, but products such as Source Plasma Liquid or Source Plasma Salvaged are not mentioned. The comment asked whether these products also were exempt from the labeling requirements.

FDA advises that when a name of a biologic product is used in a regulation (excluding any modifiers or the identification of the anticoagulant), the requirement applies to all products using that name alone or together with any required modifiers in the product's proper name. See definition of "proper name" in 21 CFR 600.3(k). Thus, the exemption for Source Plasma in § 606.121 applies to all forms of Source Plasma—Source Plasma, Source Plasma Liquid, Source Plasma Salvaged, etc. If a requirement in the regulations for biologics does not apply to all products using a name, the requirement identifies the particular products to which it applies. FDA believes that it is unnecessary and cumbersome to list in the regulations the proper name of each product with each approved modifier.

2. One comment on proposed § 606.121(b) stated that the language used incorrectly implies that the only instance in which labels are permitted to be altered is where blood components are removed from the product. The comment suggested that the provision permit the revision of a label to indicate the proper name and other information to describe the "* * * contents

remaining in a container after processing."

FDA partially agrees with the comment. In certain cases, such as the deglycerolizing of red flood cells, no blood components are removed, but the unit may require relabeling. Accordingly, in the final rule FDA is revising § 606.121(b) to provide that the labeling shall not be removed, altered, or obscured except to indicate information required to identify accurately the contents of a container after blood components have been prepared from the unit. FDA believes that use of the word "processing" would not be appropriate, because the word is interpreted in the laboratory to include test performed on the blood , such as the test for hepatitis, that do not require changes in the container label.

3. A comment stated that the phrase "the label provided by the collection facility" in proposed § 606.121(b) implies that the collecting facility and initial processing facility always add a label to the collected unit. The comment noted that the manufacturer of the blood collection unit (blood bag) often provides preprinted labeling, and the collecting facility merely adds additional required information to that labeling during collection and processing.

FDA disagrees with the comment. Whether or not the blood container is prelabeled or partially or wholly labeled by the collecting facility, under this final rule the collecting (and processing) facility is responsible for the labeling used on the blood product, including the product label. Thus, for enforcement purposes, FDA considers that the collection facility provides the labeling used. Accordingly, the agency concludes that the reqirement is clear and correct, and FDA is issuing § 606.121(b) without change.

4. Four comments on proposed § 606.121 (b) and (c)(13)(iv) asked whether an additional unit number could be added to the label of a unit of blood by a receiving facility when the unit is received from another location. Two of these comments stated that renumbering of a unit of blood should be permitted. One comment asked for instructions on how to renumber a unit of blood if it is received from another facility.

FDA agrees that a second unit number may be added to the label of a unit of blood, although the agency discourages this practice. When two unit numbers are present on a container of blood, someone may not identify the product correctly, resulting in a transfusion error. Where adequate labeling controls are present, the receiving facility may add to a unit of blood a second unit number that is consistent with the receiving facility's numbering system. FDA recommends that the receiving facility place the added unit number on the label in a uniform location and suggests that the added unit number (or label) be placed in the space reserved for the optional collection date or directly above the original unit number. Under § 606.121(b), the added unit number shall not conceal the original unit number on the container.

5. One comment noted that there is no space on the uniform label for including the identification of more than one establishment when the blood is collected and processed by separate facilities.

FDA disagrees with the comment. The uniform label provides space to record the name and address of the facility that receives blood. The space is located on the uniform label directly below the space for recording the name and address of the collecting facility.

6. One comment on proposed § 606.121(c)(2) recommended that the facility's registration number be included on the label if the registration number is to serve as the encoded collection center identifier required by § 606.121(c)(13)(iii).

FDA agrees with the comment. The registration number, assigned to each location involved in the collection or processing of blood, should be included on the container label for the proper identification of the collecting establishment. Accordingly, in the final rule, FDA is amending § 606.121(c)(2) to require the inclusion on the label of the registration number of the collecting establishment. Many establishments have multiple locations for the collection of blood, each with a different registration number. FDA advises that such an establishment may select one registration number, preferably that of the primary locaton, for inclusion on the container label in eye-readable form and in encoded form as the collection center identifier. However, an establishment with multiple locations that uses one registration number on the container label for all locations is required to have adequate internal methods for determining the specific collection site of a unit of blood.

7. One comment on proposed § 606.121(c)(2) requested that FDA clarify the provision by stating that the license number should appear only on a licensed product.

FDA agrees with the comment. Section 351 of the Public Health Service Act (42 U.S.C. 262) requires that the license number of the manufacturer be marked on the label of a container of a licensed biological product. Conversely, the label of an unlicensed biological product must not be marked with a license number. Accordingly, in the final rule FDA is clarifying § 606.121(c)(2) to require that the license number of each manufacturer be included on the container label only for licensed products.

8. A comment asked that FDA clarify the discrepancy between proposed § 606.121(c)(3), which requires that the container label include the "donor, pool, or lot number" and current § 640.24(a) (21 CFR 640.24(a)), which states that platelets shall not be pooled during processing.

FDA disagrees with the comment. FDA believes that §§ 606.121(c)(3) and 640.24(a) are consistent. Section 606.121(c)(3) lists several possible alternatives for identifying a unit and relating it to the donor. Because platelets may not be pooled during processing, a pool number would not exist for such units and therefore could not be included on the container label. However, after preparation of individual platelet units is completed, units of platelets intended for a specific patient often are pooled by the transfusing facility. A pool number, relating the pooled platelets to the individual donor numbers comprising the pool, may then be assigned the pooled platelet product and included on its label.

9. Two comments on proposed § 606.121(c)(4) recommended that the expiration date indicate the month of expiration as well as the day and year.

FDA agrees with the comment. The word "month" was inadvertently omitted in the proposed rule. The final rule is amended accordingly.

10. Two comments on proposed § 606.121(c)(5) argued that because the majority of blood banks use only volunteer donors, the identification on the blood label of volunteer donors should not be required. The comments suggested that only paid donors be identified on the label, relieving the majority of blood banks from this labeling requirement.

FDA disagrees with the comments. In the Federal Register of January 13, 1978 (43 FR 2142), FDA promulgated the requirement that a donor classification statement be included on the label to protect the public health. FDA based its regulation on data showing that blood from paid donors generally presents a higher risk of transmitting hepatitis than blood from volunteer donors. At a June 1982 meeting, FDA's Blood Products Advisory Committee was asked to consider, among other things, FDA's donor classification requirements. The

Blood Products Advisory Committee recommended that the current donor classification requirements be retained without change. A number of States have enacted legislation that requires donor classification on blood labels, with specific labeling requirements varying from State to State. FDA is providing a uniform label for blood products shipped in interstate commerce and is protecting the public health by continuing to require a statement of donor classification on the label of each unit of blood.

11. One comment recommended that the definition of "paid donor" under proposed § 606.121(c)(5)(i) be revised to include a donor who receives nonmonetary payment.

FDA disagrees with the comment. FDA believes that the higher risk of posttransfusion hepatitis associated with blood from paid donors results primarily because direct monetary payment for blood attracts donations from persons from socioeconomic groups with prevalent transmissible hepatitis. When persons donating blood obtain nonmonetary long-term benefits that are not readily convertible to cash, such benefits provide incentives for persons from groups at low risk of hepatitis to donate blood, while such incentives are not as likely to attract persons from groups with a high risk of hepatitis. FDA continues to believe that a donor who receives nonmonetary long-term benefits is properly classified as a "volunteer donor." Accordingly, in the final rule FDA did not change the definitions of "paid donor" and "volunteer donor."

12. One comment on proposed § 606.121(c)(6), which concerns the accuracy of the label declaration of the volume of certain blood products, recommended that this proposed requirement be revised to permit use of a preprinted volume range on the label of Platelets.

FDA agrees with the comment. In a final rule promulgated on October 29, 1982 (47 FR 49017), FDA eliminated the volume limits formerly required on labels for Platelets and permitted the product to be resuspended in an appropriate volume of plasma. Because FDA now permits use on labels of an unspecified range of volumes for Platelets, it may not be possible to always achieve a Platelet volume accurate to within ±10 percent, as required in proposed § 606.121(c)(6). Therefore, in the final rule FDA is permitting a reasonable range of Platelet volumes on the label for the product. To date, on the uniform blood labels submitted to the agency for review and approval, industry has used a range of up to 20 milliliters (mL) for the preprinted volume range for Platelets, e.g., 45 mL to 65 mL. FDA will consider and approve other volume ranges for Platelets, provided that the labeled volume range is informative and consistent with current good manufacturing practices.

13. Two comments on § 606.121 (c)(8)(iii) and (d)(2) recommended that the statement "PROPERLY IDENTIFY INTENDED RECIPIENT" be of the most prominence on the label and the only label element printed in red. As a basis for this recommendation, the comment noted that a transfusion given to the wrong patient is the most common cause of an avoidable fatal reaction.

FDA disagrees with the recommendation. FDA recognizes that this labeling statement is important for the reason stated in the comment. On the uniform label presented in the final guideline, the statement "PROPERLY IDENTIFY INTENDED RECIPIENT" is printed all in capitals in 8-point size type and is one of three statements in red. The prototype label, modified to meet FDA requirements, was field tested by 16 blood banking establishments. The uniform label was found to be functional through field testing and through its voluntary use since the time of the proposed rule. As practical experience is gained through the label's use, FDA may revise the format of the uniform label to improve its utility. Until such experience clearly demonstrates the need for improvements, FDA intends to support, through regulations and the guideline, the use of the uniform label.

14. One comment on proposed § 606.121(c)(9) (redesignated as § 606.121(c)(9)(i) in the final rule) recommended that the required statement "This product may transmit the agent of hepatitis" be revised editorially to read: "This product may transmit one or more agents of hepatitis."

FDA agrees in part and disagrees in part with the comment. FDA agrees that the wording of the proposed statement was not precise. However, FDA disagrees that the exact suggested language be used. FDA believes that the suggested language is not broad enough in scope to meet current circumstances. Since the proposed rule was published, scientists have determined that human T-lymphotropic virus type III (HTLV–III), the suspected causative agent of acquired immunodeficiency syndrome (AIDS), may be transmitted by blood transfusion. Although blood establishments are now voluntarily testing blood for antibody to HTLV–III, FDA believes that the possibility of transmitting the causative agent of AIDS by blood transfusion will be reduced but not eliminated. Additionally, on rare occasions other infectious agents, such as cytomegalovirus or malaria, may be carried in blood. Accordingly, because infectious agents other than hepatitis may be carried in blood, FDA is amending the final rule in § 606.121(c)(9) to require that the container label include the cautionary statement "This product may transmit infectious agents."

15. One comment on proposed § 606.121(c)(9) (redesignated as § 606.121(c)(9)(i) in the final rule) recommended that the provision not apply to the labeling of products intended for autologous infusion.

FDA agrees with the comment. The labeling provisions necessary for blood intended for autologous infusion (return of blood by infusion to the original donor) are those that ensure that such blood is infused into the donor and not mistakenly used homologously. Many of the general labeling requirements, such as the volunteer donor statement, unexpected antibody information, and blood grouping information, are not necessary and may be omitted for blood intended solely for autologous use. However, as provided in § 606.121(i)(5), blood originally intended for autologous purposes is sometimes diverted for homologous use, in which case all labeling requirements for homologous transfusion must be met.

16. One comment on § 606.121(c)(10) asked whether the volume of source material should include the volume of anticoagulant. If the anticoagulant volume was not included, the comment contended that the provision would be inconsistent with § 606.121(c)(6). The comment also asked why a volume range (±10 percent) is permitted in paragraph (c)(6) and not in (c)(10).

FDA believes that § 606.121(c) (6) and (10) are consistent. Under § 606121(c)(6), FDA requires that the product label provide the user with a reasonably accurate statement of the total volume of the product, including the volume of anticoagulant. Under § 606.121(c)(10), FDA requires that the label for blood components include a statement of the name and volume of the source material. The statement of the source material volume will aid the user in estimating the final product's biological activity. Because the anticoagulant does not contribute directly to the final product's activity, FDA does not require that the anticoagulant volume be included as part of the source material volume. Often a blood facility will obtain source material from another facility for the manufacture of blood components. The receiving facility is not responsible for

confirming the accuracy of the volume statement on the label of the source material. Accordingly, FDA does not require the facility to assure that the statement of source material volume is within specific limits of accuracy.

17. One comment objected to the requirements of § 606.121(c)(12). The comment contended that there is one definitive report that clearly establishes the D^u antigen to be far less immunogenic than the $D(Rh_o)$ antigen and that the remaining examples of claimed Rh immunization by the D^u antigen are most questionable. In addition, the comment noted that there are several grades of D^u antigen which vary greatly in ease of detection and potential for acting as an immunogen. The comment recommended that blood found nonreactive by automated testing procedures or by manual methods using the indirect antiglobulin procedure be labeled as Rh negative.

FDA agrees with the comment, but finds revision of the regulations to be unnecessary. The regulation requires that a test for D^u antigen be performed if the test using Anti-D Blood Grouping Serum is negative; the method of testing for the D^u antigen is not specified. Both the indirect antiglobulin procedure and some automated testing procedures in current use have been found acceptable by the agency for detecting the D^u antigen, even though some of the weakest variants may not be detected by these methods. Licensed blood banks may incorporate any of the approved test methods by requesting an amendment to their product license. Labeling accompanying the various reagents and automated equipment indicates whether the product is suitable for detecting the D^u antigen.

18. Six comments on § 606.121(c)(12) argued that a label identifying the Rh group should not be required on Cryoprecipitated AHF or Plasma. The comments stated that the rare occasions in which transfusion with Rh-positive Plasma or Cryoprecipitated AHF causes Rh antibody production in Rh-negative recipients does not justify the additional expense of retaining additional labeling. Two comments noted that labeling these products with the Rh group could confuse an uninformed individual who may not know when matching of the Rh groups of the blood product and recipient is necessary.

FDA partially agrees with the comments. As stated in the preamble to the October 1980 proposal, some clinicians believe that only Rh negative units of Plasma should be used for transfusing certain patients, such as potentially child-bearing Rh negative females for whom the consequences of immunization are most serious. To omit the Rh group from the label would deprive the clinician of the information necessary to implement this option. Furthermore, the agency believes that only thoroughly trained personnel, acting in accordance with written standard operating procedures, should be given the responsibility of determining the appropriate handling and testing of blood products. Accordingly, the agency does not believe that the labeling of blood components with the Rh group will create confusion on the part of the individuals using the blood components.

FDA also proposed to require that the donor's Rh group be on the container label of Cryoprecipitated AHF. However, unlike Plasma, Cryoprecipitated AHF undergoes a second centrifugation during processing through which red blood cell fragments, containing the Rh antigen, are removed. FDA is not aware of a documented case of Cryoprecipitated AHF causing Rh antibody production in an Rh-negative recipient. Accordingly, FDA is amending § 606.121(c)(12) in the final rule to permit the omission of the Rh group on Cryoprecipitated AHF. FDA expects that many blood banks will continue to identify the Rh group on Cryoprecipitated AHF labels. On the uniform label, the ABO and Rh groups are printed on one labeling unit. To omit the Rh group, an establishment would have to purchase additional labels containing only the ABO group, thereby increasing its label inventory and labeling costs. Accordingly, FDA advises that establishments may continue to include the Rh group on Cryoprecipitated AHF labels to limit labeling costs and to provide maximum information to the using clinician.

19. Eleven comments on proposed § 606.121(c)(13) objected to the required inclusion of encoded information on the labels of transfusible blood and blood components. A variety of reasons were given for this objection, but the majority of comments said that the additional expense of encoded labels cannot be justified by any potential benefits, especially for those establishments that are not computerized to allow use of the machine-readable codes. Some of the comments expressed the belief that machine-readable encodement was useful only for those establishments extensively engaged in the interregional exchange of blood and blood components. Accordingly, many of the comments suggested that encoded information be prescribed only on an optional basis. One comment stated specifically that the encoded unit number should not be required on container labels. One comment from registered but unlicensed blood bank asked whether unlicensed establishments would be required to adopt the bar code system for blood labeling.

FDA agrees that it is unnecessary to require encoding. From the time the October 1980 proposed rule was published, FDA has encouraged the voluntary adoption of the uniform label, including bar coding. Currently, approximately two-thirds of the blood distributed in the United States is labeled with the bar-coded uniform label. Because of the benefits that may be derived from the use of computer technology, FDA believes that use of machine-readable symbols on blood labels will continue to expand whether or not FDA required their use.

The use of computer technology in blood banking will be of substantial benefit in reducing labeling and recording errors, providing a more efficient means of recording and storing information, controlling inventory and assisting in the interchange of blood among establishments. In addition, the use of a uniform label will reduce overall labeling costs in contrast to the expense of each establishment developing and printing its own customs labels. It is expected that blood establishments will be able to purchase the uniform label as a standard catalogue item from its hospital supply service. Large regional blood centers often supplement their blood inventories with blood collected and labeled at local blood banks within their region. Because of recordkeeping difficulties, computerized regional blood centers have found it impractical to include blood with unencoded labels in their inventories. If a significant percentage of blood in a center's region is unencoded and, therefore, unavailable to the center, the center's ability to efficiently supply a region's blood needs may be hindered, especially in an emergency situation. However, for those establishments that are not yet computerized and do not frequently exchange blood and blood components with computerized establishments, the direct benefit of including encoded information on the container label would be minimal. Upon reconsideration, FDA has determined that the voluntary adoption of encoded labeling is adequate to support the efficient use of blood resources by computerized facilities and it is unnecessary to require use of bar-coded blood labels at this time.

Accordingly, FDA is amending § 606.121(c)(13) in the final rule by removing the requirement that certain

information be encoded on the container label of blood and blood components. Instead, in § 606.121(c)(13), FDA is requiring that any machine-readable coding system used voluntarily for labeling blood and blood components be one approved for such use by the Director, Office of Biologics Research and Review.

20. Two comments on § 606.121(c)(13) argued that FDA has not adequately investigated the economic impact of the proposed regulations and that the information placed on file with Dockets Management Branch is inadequate to substantiate the economic effects of requiring encodement of information on the labels of blood and blood components.

FDA disagrees with the comment. FDA primarily based its economic assessment upon a cost comparison of the then current labeling and the uniform label, including bar codes, provided by a major blood banking organization. The costs were verified by data supplied by a printer of blood container labels. No specific data were received contradicting the estimates provided in FDA's economic assessment. FDA believes that the cost estimates provided in its economic assessment that accompanied the proposed rule were valid at that time. For its final rule, FDA has reassessed the economic impact, with the encoded uniform label serving as the basis for cost estimates, and an updated revised economic assessment is on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

21. Five comments on § 606.121(c)(13) agreed with the principle of encoding information on container labels; however, the comments recommended that a means of encodement be used that is readable both by the eye and machine. Four of the comments specifically recommended the use of the Optical Character Recognition (OCR) method of encoding information. One manufacturer of equipment compatible with the OCR system submitted extensive technical information on the OCR system. Another comment related the perceived merits of the OCR system in comparison with the bar-code method.

FDA cannot accept the OCR system as an alternative method for encoding information at this time. CCBBA considered a number of candidate symbol systems, including the OCR system, when selecting the CODABAR™ symbol as most appropriate for blood-banking automation. CCBBA's findings and recommendations on the symbol systems it reviewed are included as Volume III of its Final Report which is on file under Docket No. 80N–0120. In light of the comments and information received in response to the proposed rule, members of FDA and ABC again considered the merits of the OCR system compared with the CODABAR™ system. The review reaffirmed CCBBA's original finding that, based upon available data, the OCR system has several disadvantages and no significant advantage when compared with the use of its CODABAR™ system in a blood-bank setting. Of primary concern to FDA, the available data indicate that OCR symbols have a higher rate of substitution errors (errors related to unidentified misreads) than CODABAR™ symbols. Because such errors may not be identified, a labeling or transfusion error may result. FDA recognizes that the technology surrounding automated data processing is rapidly advancing and will continue to monitor alternative methods of encodement. FDA will consider data to support a change to the OCR system or other methodology at any time. If another system is found equal or superior to the current system, the Director, Office of Biologics Research and Review, may approve the candidate symbol as an alternative method of encoding information on the blood container label.

22. One comment on § 606.121(c)(13) stated that if labels containing the encoded Julian date were misprinted or misplaced, it would take 30 to 45 days to replace labeling containing bar-codes, during which time no products could be labeled.

FDA disagrees with the comment. The expiration date is not an encoded element of the uniform label and is written in the form of the day, month, and year of expiration. Julian dating, the system in which the days of the year are numbered sequentially from 1 to 365, may be used to identify the collection date of the blood unit. Use of the collection date is optional and, when used, may be presented in encoded and printed forms. It is expected that those establishments identifying the collection date on the label will use on-site bar-code printing equipment to print the bar-coded label upon demand. Accordingly, only blank collection date labels need be kept in stock by those establishments choosing to use this labeling element, and no problems in maintaining an adequate labeling inventory should result.

23. Two comments on § 606.121(c)(13)(ii) stated that identification of the type of anticoagulant should not be required on the label for frozen red blood cell products because the final product will be washed and the anticoagulant effectively removed.

FDA agrees with the comments. FDA is revising the provision in the final rule to indicate that it applies only to unfrozen red blood cell products. Similarly, FDA is revising the applicability of § 606.121(e)(2)(i) in the final rule.

24. One comment on § 606.121(c)(13)(ii) opposed the required inclusion of the type of anticoagulant on labels for Whole Blood and Red Blood Cells. The comment stated that this provision could cause problems for blood banks using more than one type of anticoagulant. The comment expressed the opinion that because the type of anticoagulant used does not affect the safety or effectiveness of the final products, this information may readily be omitted. As an alternative, the comment suggested that the information circular describe the anticoagulant solution used for each collected product.

FDA disagrees with the comment. The type of anticoagulant used is known to affect a product's physical properties, such as stability, and may influence decisions as to what blood components should be prepared. In a computerized system, expiration dates are set according to the anticoagulant and product bar code; to avoid mislabeling, the same information must appear below the bar code in eye-readable form. Although it is true that establishments using more than one type of anticoagulant will need to retain product labels for each anticoagulant, FDA does not find this an undue burden when necessary to assure the accurate identification and effective use of the product. Furthermore, FDA considers the anticoagulant to be an active ingredient of a blood product. In accordance with section 502(e)(1)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e)(1)(A)), information concerning each active ingredient must be provided on the container label of a drug product. Because biological products are also drugs and therefore subject to the act, section 502(e)(1)(A) requires that the labeling for Whole Blood and Red Blood Cells include the type of anticoagulant.

25. One comment on § 606.121(c)(13)(iii) argued that requiring the inclusion of the collection center identifier on the label will cause a serious labeling problem for establishments that have several collection sites and one centralized processing facility, all under a single

establishment license. The comment noted that a properly run establishment will have internal methods to determine the collection site of a unit of blood and only the identifier for the licensed establishment is necessary on the blood label.

FDA agrees with the comment. As stated above in paragraph 6 of this preamble, an establishment with multiple collection sites need select only one registration number, preferably that of the primary location, for inclusion on the container label in eye-readable form and, optionally, in encoded form as the collection center identifier. Establishments with multiple locations but using only one registration number on the label must have appropriate internal methods for determining the specific collection site of a unit of blood.

26. About 40 comments on § 606.121(d)(3) recommended that the color coding for differentiating ABO blood groups not be changed. Many of the comments argued that the current color codes have been in use for a number of years and to change them would cause confusion and possibly misidentification of the blood group. Further, the comments said that changing the color codes to be consistent with the colors used for blood grouping sera is unnecessary because different personnel are usually involved in handling each type of product and the discrepancy in color codes has not caused confusion in the past. Two comments requested clarification of the effective date for the change in color codes. Many of the comments stated that a 1-year transition period, during which color coding would not be permitted, was not long enough to prevent confusion and to dispose of the more stable blood components labeled with the old color codes.

FDA agrees with the comments. FDA is amending § 606.121(d)(3) in the final rule to prescribe the colors for designating the ABO blood group that are in current use and were formerly codified under § 640.7(d)(2). FDA proposed to change the prescribed colors designating ABO Blood groups in response to a suggestion by CCBBA that the colors be changed for consistency with those prescribed for Blood Grouping Sera in § 660.28(a)(1) (21 CFR 660.28(a)(1)). Considering the number of comments opposing the proposed change and the lack of supporting comments, FDA agrees that the color scheme should not be changed when the current scheme has functioned successfully for a number of years. Because the existing color scheme is being retained, FDA is deleting in the final rule the provision in proposed § 606.121(d)(5) for the effective date and transition period.

27. Two comments on § 606.121(d)(3) recommended that there be no color scheme for identifying ABO groups on the label.

FDA disagrees with the comments. The agency is aware that some persons involved in blood banking and blood transfusion do not support the use of color coding in designating the ABO group. However, many establishments use color coding so that persons at the transfusion site may conveniently reaffirm, even from a distance, that blood of the correct ABO group is being used. FDA is not aware of any data supporting either the required use or prohibition of ABO group color coding. Accordingly, FDA will continue to permit the optional use of color coding for identifying the ABO group of blood units.

28. One comment stated that it was unclear throughout the regulations whether the name of the anticoagulant should be considered as part of the proper name of the product. The comment suggested that, because additional new anticoagulants are continually being developed, it is unnecessary to list the anticoagulant names under § 606.121(e)(1)(ii). Accordingly, the comment suggested that § 606.121(e)(1)(ii) be revised to read: "The name of the anticoagulant shall be part of the proper name of the product, immediately preceding the term 'Whole Blood', and shall be expressed as set forth in the order approving the new anticoagulant."

FDA disagrees with the comment. The name of the anticoagulant is considered a modifier of the proper name. FDA is not aware of any regulation that implies that the anticoagulant name is part of the proper name of the blood product. FDA believes that the revision to § 606.121(e)(1)(ii) suggested in the comment is not as informative as the current wording, nor would it have the same effect. The nomenclature provided in the regulation is considerably revised from that formerly codified in labeling regulations for Whole Blood (Human) (21 CFR 640.7(b)(1)). Therefore, the suggested wording would be incorrect as it would suggest that the outdated names for anticoagulant should continue to be used. FDA does recognize that, as proposed, § 606.121(e)(1)(ii) would require amendment each time a new anticoagulant is approved. Accordingly, FDA is revising the final rule to permit the use of other anticoagulant names upon the approval of the Director, Office of Biologics Research and Review.

29. Two comments on § 606.121(e)(1)(iii) argued that there is no practical value for placing the name of an antibody on a Whole Blood container label. Rather, it is preferable to convert such units to Red Blood Cells. One of the comments asked whether the intent of this provision is to label the names of all unexpected antibodies or only the significant ones.

FDA disagrees with these comments. Although the agency agrees that often it is preferable to convert units of whole blood containing unexpected antibodies to red blood cells, there are occasions when units of whole blood containing unexpected antibodies must be transfused, such as when there are shortages of compatible blood. FDA believes such blood may safely be transfused, provided the blood is found compatible with that of the recipient. Accordingly, the blood should be labeled with any antibodies found to be present. FDA advises that the provision requires the listing of all unexpected antibodies found. However, FDA has consistently permitted the use of test methodology that can greatly minimize the number of insignificant antibodies detected. All unexpected antibodies identified should be listed so that those administering the blood may make the determination of which antibodies should be ignored for the individual recipient. In the October 31, 1980 proposal to revise the additional standards for Whole Blood, FDA proposed to require that Whole Blood from previously pregnant or transfused donors be tested for unexpected antibodies by a method that demonstrates significant alloantibodies. That proposed rule has been withdrawn (48 FR 33494; July 22, 1983). But FDA intends to repropose this requirement by separate rulemaking procedures. At present, the testing of blood from previously pregnant or transfused donors for unexpected antibodies is not explicitly required, but strongly recommended by FDA. Any unexpected antibodies found shall be listed on the container label, as prescribed in § 606.121 (e)(1)(ii), (2)(ii), and (4).

30. One comment on § 606.121 (e)(1)(iii) and (2)(ii) asked that the use of a special label or tie-tag be permitted for identifying unexpected antibodies. The comment noted that the number of units of blood that will have significant antibodies will be very small and tie-tags are less expensive, easier to apply, and easier to write on.

FDA accepts the comment. FDA supports the concept, developed by CCBBA and endorsed by the major blood banking organizations, that

standardized (uniform) container labeling should be used by blood banks for identifying all information. But the agency recognizes that for some establishments, especially those collecting and labeling a small number of units of blood each year, the use of tie-tags for specialized information may be more economical. Accordingly, FDA is amending the final rule by adding § 606.121(j) to permit the optional use of tie-tags for identifying unexpected antibodies. Provisions in proposed § 606.121 (h)(1) and (i)(2) that permit the use of tie-tags for conveying required information for blood shipped in an emergency and blood intended for autologous infusion are also combined under new § 606.121(j).

31. One comment on § 606.121(e)(3) stated that the provision implies that Platelets may be prepared in an open system; the comment asked that this provision be clarified.

FDA disagrees with the comment. Section 606.121(e)(3) does not permit the preparation of Platelets in an open system. The proposed rule listed the products, including Platelets and products prepared in an open system, that must have the hour, day, month, and year of expiration on the container label. The provision only pertains to expiration dating and does not imply that Platelets may be prepared in an open system.

32. One comment on § 606.121(e)(5) noted that the term "recovered plasma" is not defined in the regulations. The comment recommended that an official definition be included. Another comment contended that "recovered plasma" is not a proper name and it should be changed to "Salvaged Source Plasma."

FDA disagrees with the comments. Recovered plasma is plasma obtained as a byproduct of component preparation or recovered from outdated units of blood. Recovered plasma is used as a source material for a variety of injectable and noninjectable biological products. FDA routinely assigns a proper name to each licensed biological product. (See the definition of "proper name" under § 600.3(k) (21 CFR 600.3(k)).) (Because recovered plasma is not a licensed biologic, FDA sees no need to formally define the product or assign a proper name. "Recovered plasma" is the name adopted by the majority of the industry for identifying this material, and the regulations are worded consistently. Source Plasma Salvaged is a specific licensed product prepared only by pheresis; therefore, assigning the name "Salvaged Source Plasma" to an unlicensed product would be confusing.

33. One comment addressed § 606.121(e)(5), which prescribes three labeling requirements for the labels of recovered plasma. The comment stated that further definition is required to determine the circumstances under which each of the three labeling provisions would apply.

FDA believes the regulation is adequately clear to those facilities affected by its provisions; however, for the information of the reader, the circumstances for use of each labeling statement are explained below.

a. *Section 605.121(e)(5)(i).* This provision requires that all recovered plasma container labels include the date of collection of the oldest material in the container. The oldest material in the container is that prepared from whole blood collected on the earliest date.

b. *Section 606.121(e)(5)(ii).* Although recovered plasma may not be used for transfusion, it may serve as a source material for a variety of licensed and unlicensed biological products. Section 606.121(e)(5)(ii) prescribes labeling for such usage. Recovered plasma intended for use in manufacturing injectable products must be labeled with the statement "Caution: For Manufacturing Use Only." Recovered plasma intended for use in manufacturing noninjectable products must be labeled "Caution: For Use in Manufacturing Noninjectable Products Only."

c. *Section 606.121(e)(5)(iii).* This provision governs the use of recovered plasma that does not meet the requirements for use in licensable products. Recovered plasma can only be used in manufacturing a licensable product if plasma is in "short supply" and the recovered plasma is shipped under a "short supply agreement" as required by § 601.22. Section 606.121(e)(5)(iii) requires that plasma not shipped under a "short supply agreement" and therefore not usable in a licensed biological product be labeled "Not For Use in Products Subject to Licensure Under Section 351 of the Public Health Service Act."

34. One comment recommended that the requirements of § 606.121(f), which requires that blood and blood components unsuitable for transfusion be labeled "NOT FOR TRANSFUSION", apply only if the product is not labeled according to §606.121(e)(5)(ii) for noninjectable use only.

FDA agrees with the comment. Recovered plasma labeled in accordance with § 606.121(e)(5) would contain the statement "Caution: For Manufacturing Use Only" or "Caution: For Use in Manufacturing Noninjectable Products Only," and thus would not need to be labeled "Not For Transfusion." FDA has therefore modified § 606.121(f) to provide that it does not apply to recovered plasma labeled in accordance with § 606.121(e)(5).

35. One comment noted that no mention is made in the regulations of the use of a biohazard label for units of blood which are not intended for further manufacturing. The comment asked whether this omission meant that a biohazard label should not be used.

The use of a biohazard label is optional. A biohazard label is commonly used to identify contaminated units or units of blood known to be positive for an infectious agent, such as HBsAg. A recommended biohazard label is included in the guideline. The labeling regulations do not require the use of a biohazard label, although FDA encourages its use. FDA does require that contaminated units and HBsAg positive units not intended for further manufacture be segregated from transfusable units of blood and properly disposed of by autoclaving or incineration.

36. One comment on § 606.121(g) recommended that the labeling provisions for blood and blood components positive for HBsAg and intended for further manufacturing use be clarified beyond simply referencing § 610.40 (21 CFR 610.40).

FDA accepts the comment. Section 610.40 includes not only provisions for the proper labeling of HBsAg positive units but also requirements for testing the blood, conditions for the use of HBsAg positive units, and procedures for notifying the agency of the shipment of HBsAg positive blood. These requirements are necessary because HBsAg positive blood is a highly infectious agent and any person who comes into contact with the blood, due to mishandling or misuse of the blood, may contract hepatitis. Because of the importance of these requirements, the agency cautions that they should be viewed and understood as a unit. However, FDA agrees that an important objective of this rulemaking is to incorporate all requirements for the labeling of blood and blood components into one set of regulations. Accordingly, FDA is amending § 606.121(g) in the final rule to reiterate the labeling requirements specified in § 610.40 applicable to HBsAg reactive blood and blood components.

37. One comment on proposed § 606.121(h)(1) (combined into § 606.121(j) in the final rule) objected to the use of the term "tie-tag." The comment contended that this term implies that the only acceptable means

of attaching a tag to the container is by use of a string and that other better means of making the attachment are available.

FDA disagrees with the comment. The term "tie-tag" in these regulations is generically descriptive and does not imply any requirements relative to the means of attachment of the tag. Various plastic ties, similar to those used to attach price-tags to clothing articles, are used routinely. The agency cautions that the means of attachment should not pierce the blood container and should ensure continuous attachment under normal conditions of use.

38. One comment on proposed § 606.121 (h)(1) and (i)(1) (combined into § 606.121(j) in the final rule) asked why use of a tie-tag is allowed considering that special labels are available that can be securely attached to the container. The comment contended that the use of a tie-tag appears to compromise the special label concept.

While the agency agrees that the use of special labels is preferable, FDA does not intend to prohibit the use of tie-tags for conveying specialized information. Many establishments have been using tie-tags successfully for a considerable time to convey information that is needed infrequently or for information that may later be removed. Because of the anticipated infrequent use of tie-tags, FDA believes that the concept of providing all information on a uniform label to encourage the free exchange of blood is not compromised. The agency will continue to encourage the use of special labels by providing instructions for the content and format of special labels in the guideline.

39. One comment on proposed § 606.121(h)(2) contended that it would be advantageous to label blood intended for emergency release with the name of the intended recipient.

FDA agrees with the comment. Although the agency recommends that the name of the intended recipient should be omitted on the special label or tie-tag for emergency blood in most situations, FDA is deleting from the final regulations the requirement that the intended recipient's name be omitted from the label. Blood is labeled for emergency use when, because of the immediate need for the blood, one or more of the required tests on the blood cannot be completed before transfusion. When the crisis has passed, a unit of incompletely tested blood is less likely to be transfused if the intended recipient's name is not on the label. In addition, the attending clinician administering the blood is more likely to examine thoroughly the emergency blood label and identify what tests have not yet been completed and what extra precautions should be taken. However, FDA agrees there are some circumstances, such as when several patients are to receive emergency-released blood simultaneously, for which the inclusion of the recipient's name on the label may be appropriate.

40. One comment on § 606.121(i) stated that to ensure safe transfusions to patients receiving autologous units of blood (blood intended to be returned to the original donor by infusion), designation of the ABO and Rh_o(D) blood group may provide an additional precaution.

FDA believes that the regulations adequately respond to the comment. Section 606.121(i)(1) requires the identification of the patient on the special label for autologous blood, and the blood group of the patient may be used as part of that identification. FDA does not require the identification of the blood group on the label of autologous blood because blood returned to the original donor is assuredly blood group compatible. On the uniform label, the usual blood grouping label is not attached to blood intended for autologous purposes, thereby assuring that the autologous blood is not mistaken for blood intended for routine homologous transfusion purposes.

41. One comment on proposed § 606.121(i)(1)(ii) (redesignated as § 606.121(i)(2) in the final rule) argued that the date of donation is not valuable information on the label of a product for autologous transfusion and only the expiration date should be required on the label.

FDA disagrees with the comment. Usually blood is collected for autologous purposes when it is difficult or impossible to obtain suitable blood from homologous sources for transfusing a certain patient, for example, when the patient has a rare blood type. Because of limitations both on the amount of blood that can be collected from a patient and the collection frequency restrict the amount of fresh autologous blood available, it is occasionally necessary to transfuse autologous blood that may have marginally exceeded its expiration date. Also, to assure an adequate supply of fresh blood at the time it is needed, it is a recognized practice for the attending physician to reinfuse the oldest unit of autologously collected blood into the patient at the same time that two fresh units are collected. In either of the situations cited above, it is the age of the blood that is of the utmost importance, and this information is best conveyed by showing the date of collection on the label. Accordingly, the agency concludes that the date of collection is required on the label of autologous blood and the final rule so provides.

42. Two comments asked that proposed § 606.121(i)(2) (§ 606.121(i)(5) in the final rule) be revised to provide for the overlabeling or obliteration of special labels because it is often difficult to remove a well-adhered tape label.

FDA agrees with the comment. The agency considers overlabeling or obliteration (inking over a label statement) to be equivalent to removal of the label. For clarity, FDA is revising the regulation in the final rule to provide that the special label for blood intended for autologous purposes shall be removed or otherwise obscured if the unit is issued for homologous transfusion.

43. One comment recommended that the following statements be required on the label of all transfusable blood products: "Do Not Add Medication To This Blood"; "Infuse Through A Filter"; "Do Not Warm Except By Specifically Authorized Procedures"; and "Infuse Immediately; Do Not Store Outside Of The Blood Bank. Return Any Unused Portion To The Blood Bank Immediately". The comment contended that these labeling statements would help inform relatively untrained and unsupervised personnel who occasionally administer blood products, thereby avoiding some potential transfusion errors. Another comment stated that while cautions on a label may be disregarded or unread, statements on the label do have greater immediacy and are more likely to be read than those in a circular. This comment suggested no specific information for inclusion on the label.

FDA disagrees with the comments. One of the purposes of CCBBA's review of blood labeling and the proposed rules was to delete from the blood container label information that is not essential for the proper processing and administration of the product. FDA considers the suggested label statements in the comment to be educational and therefore unnecessary for adequately trained personnel. The agency believes that brief statements on the container label are inadequate for educating untrained personnel. Furthermore, untrained and unsupervised personnel should not be given the responsibility for administering blood and blood products. Persons administering blood should be properly trained and supervised and should be working under written standard operating procedures. FDA believes that the information given in the comment is better understood when given in the blood establishment's

training program by the trainee's supervisor. The written standard operating procedures and instruction circular can then serve to remind personnel of these procedures. FDA also disagrees with the comment that the instruction circular is unread. While it is often unnecessary to consult the instruction circular during the routine operation of a transfusion service, the circular is useful in providing necessary information when a question arises concerning characteristics of a blood product or its proper administration.

44. One comment suggested that the agency issue the labeling requirements as tentative final regulations and simultaneously issue a new draft guideline (presumably for further comment). At that time the agency could encourage voluntary compliance with either the tentative final regulations or the guideline. Subsequently, when final regulations and a final guideline are issued, establishments could continue to use labeling in compliance with the tentative final regulations or draft guideline until depleted. The comment contended that this means of implementation would allow for inconsistencies and questions to be resolved while holding down health care costs.

FDA believes that the procedures being used by the agency to promulgate its labeling regulations and make available its guidelines are consistent with the intent of the comment. By permitting the voluntary use of the uniform label since October 1980 when these labeling regulations were proposed and the draft guideline was made available, FDA effectively instituted a trial period. Only minor discrepancies between the proposed rule and the guideline were found during the trial period, and any discrepancies have been corrected.

45. One comment on § 606.122(c) objected to the required labeling statement "Do not add medications" because the addition of 0.9 percent Sodium Chloride Injection U.S.P. may be considered addition of a medication and yet may be appropriate.

FDA disagrees with the comment. While 0.9 percent Sodium Chloride Injection U.S.P. may be construed to be a medication in the broadest sense of the term, FDA believes that the statement "Do not add medications" will not cause misunderstanding. The addition of 0.9 percent Sodium Chloride Injection U.S.P. would be appropriate only for certain blood components and when its addition is appropriate its use is noted only in the sections of the instruction circular discussing the applicable blood components.

46. Two comments on § 606.122(d) requested that the term "known sensitizing substances" be further defined. One of the comments asked whether such substances include protein and cellular antigens, allergens, and drugs, or some other substances.

The provision was intended to apply to substances that may be used in the processing of certain blood components, such as hydroxyethyl starch, that are known to be potentially sensitizing. FDA has reconsidered this provision and finds that it is unclear, applies to only a few substances, and it overlaps proposed § 606.122(h), which would require the naming of any additives that still may be present in the product. Accordingly, in the final rule FDA is removing § 606.122(d) and redesignating paragraphs (e) through (o) as (d) through (n), respectively. Despite the deletion of this paragraph, FDA advises that the instruction circular must continue to note, when applicable, that a particular additive may be potentially sensitizing.

47. Two comments noted that § 606.122(f) (redesignated as § 606.122(e) in the final rule) requires a statement in the labeling instruction circular concerning the serologic test for syphilis while this statement is not in the example labeling included in the guideline.

A statement concerning the serologic test for syphilis is required in the instruction circular. The current American Association of Blood Banks/ American Red Cross instruction circular states "serologic test for syphilis may also have been performed, as required, and found to be negative." FDA finds that this wording complies with § 606.122(e).

48. One comment objected to the labeling statement required under proposed § 606.122(k). Proposed § 606.122(k) would have required that the instruction circular contain a statement that Whole Blood Platelets and/or Cryoprecipitate Removed should not be used for patients requiring, as applicable, platelets or antihemophilic factor. The comment stated that administration of Whole Blood Platelets and/or Cryoprecipitate Removed to patients requiring platelets or antihemophilic factor would be permitted if the product is not intended as a source of platelets or antihemophilic factor. The comment noted that the labeling requirement does not apply to older units of Whole Blood which would also be deficient in functional platelets and AHF.

FDA agrees with the comment. Accordingly, FDA is deleting proposed § 606.122(k) in the final rule. FDA also advises that, as announced in the "Changes in Proper Names" final rule, the proper name of a product where the cryoprecipitate has been removed shall be "Whole Blood Cryoprecipitate Removed" and the removal of platelets need not be noted on the label.

49. Four comments on § 606.122(l)(1) (redesignated as § 606.122(k)(1) in the final rule) recommended that the labeling suggest, but not require, the use of a suitable plasma volume expander if red blood cells are substituted for whole blood. The comments also noted that the use of a volume expander is proper only if additional volume is immediately necessary and that this is a decision that should be made by the attending physician. The comments noted that the provision incorrectly implies that the plasma volume expander should be added directly to the Red Blood Cells, a procedure that is contrary to currently accepted practice and to the labeling caution not to add medications. Three of the comments suggested that the labeling statements in proposed § 606.122(c), (l)(1), and (l)(2) be combined to read: "Instructions not to add medication to a unit of red blood cells except 0.9 percent Sodium Chloride Injection USP when indicated. Additional plasma volume expanders may be administered separately if necessary."

FDA agrees in part and disagrees in part with the comments. In the case of a massive transfusion, where the blood's oxygen carrying capacity must be restored and the patient must be treated for extreme hypovolemia, Whole Blood is the indicated product. In such cases, Red Blood Cells may be substituted, but suitable plasma volume expanders should be administered concurrently. Although it is ultimately the attending physician's decision as to what blood products should be administered, the product's labeling instruction circular must provide adequate instructions for the use of the product. The instructions should include information about other forms of therapy, such as the administration of suitable plasma volume expanders, that may be necessary concurrent with the administration of the product. However, FDA agrees that the proposed labeling statement incorrectly implies that the plasma volume expander should be added directly to the Red Blood Cells. Accordingly, FDA is amending § 606.122(k)(1) in the final rule to clarify that the instructions apply only when Whole Blood is the indicated product and that plasma volume expanders should be administered concurrently. FDA sees no benefit in combining the labeling provisions cited in the

comment. For clarity, each labeling provision is listed in the regulations separately. However, such required information may be associated together in the instruction circular.

50. One comment on § 606.122(l)(2) (redesignated as § 606.122(k)(2) in the final rule) recommended that a statement warning that only saline should be added to red blood cell products should replace the warning not to add Lactated Ringer's Injection (U.S.P.) solution. The comment stated that it is obvious that a strong sucrose solution should not be added to blood components, and therefore the labeling provision is unnecessary.

FDA disagrees with the comment. FDA concludes that the warning against the addition of Lactated Ringer's Injection (U.S.P.) solution remains appropriate. FDA acknowledges that most persons administering blood are aware that such a solution should not be added to a blood product. This is especially true for Lactated Ringer's Injection, which contains calcium and interferes with the function of the anticoagulant. Unfortunately, FDA is aware of several instances in which transfusion of a blood product with Lactated Ringer's Injection added was attempted. To lessen the chance of a recurrence of this error, FDA is requiring a specific warning in the instruction circular.

51. One comment on § 606.122(m)(1) (redesignated as § 605.122(l)(1) in the final rule) recommended that the provision be corrected editorially to read: "The approximate volume of plasma from which the platelets were prepared."

FDA agrees and § 601.122(l)(1) is amended in the final rule as recommended by the comment.

52. One comment on § 606.122(m)(1) (redesignated as § 606.122(l)(1) in the final rule) asked whether the volume of plasma should be stated in the labeling for platelets obtained from single units and for pooled platelets.

FDA advises that the volume of plasma from which the product was prepared is required only in the labeling for single units of platelets. The provision is clarified in the final rule accordingly.

53. One comment on § 606.122(m)(2) (redesignated as § 606.122(l)(2) in the final rule) noted that the American Association of Blood Banks (AABB) Standards Committee currently permits the use of platelets 6 hours after entering the container or pooling. The comment recommended that, because of the absence of data contradicting the recommendation, the regulations should be revised consistently. A comment on § 606.122(n)(3) (redesignated as § 606.122(m)(3) in the final rule) recommended that the provision be revised consistent with the current AABB standard that permits the storage of thawed plasma at 1 to 6 °C for a maximum of 24 hours before transfusion. Two comments on § 606.122(o)(5) (redesignated as § 606.122(n)(5) in the final rule) noted that the AABB Standards Committee currently permits the use of Cryoprecipitated AHF 6 hours after entering the container or pooling. The comments recommended that because of the absence of data contradicting the AABB recommendation, the regulation should be revised consistently.

FDA cannot accept these recommendations at this time. Proposed §§ 606.122 (m)(2), (n)(3), and (o)(5) (redesignated as §§ 606.122 (l)(2), (m)(3), and (n)(5) in the final rule) are labeling requirements formerly codified in §§ 640.26(k), 640.35(l), and 640.57(l), respectively. FDA is unaware of convincing data supporting the changes recommended by the comments. The agency believes that these changes could affect the safety and effectiveness of the products and that the changes recommended should not be implemented without notice and comment rulemaking procedures. Further, as part of FDA's retrospective review of regulations that is required by E.O. 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), FDA now is reviewing its regulations for blood and blood products. During its review of these regulations, FDA will consider the differences between its regulations and the standards issued by AABB. If FDA believes that the changes recommended by the comments have merit, FDA will include the changes in its proposed rule to be issued as part of FDA's retrospective review of the blood regulations. Interested persons will be offered an opportunity to submit comments, data, and other information at that time.

54. One comment suggested that a new labeling requirement for platelets be included under § 606.122(m) (redesignated as § 606.122(l) in the final rule) to read: "Good patient management requires monitoring treatment responses to Platelets by periodic posttransfusion platelet counts." This statement parallels a similar statement for Cryoprecipitated AHF required under § 606.122(n)(8).

FDA disagrees with the comment. It is always a sound medical practice to monitor a patient's response when undergoing an intensive form of therapy, such as a blood or blood component transfusion. When the monitoring of a patient by specific methodology has been found by scientific consensus to be necessary for assuring the effective use of a product, FDA believes such information should be included in the product labeling. FDA is not aware of a consensus as to the most appropriate means of monitoring a patient's response to Platelet transfusion. For example, monitoring may be accomplished by platelet count, testing the clotting function of the blood, or by observing the patient for reduced bleeding. Because a variety of means of monitoring the patient are acceptable, FDA will not require that the labeling recommend any specific means for monitoring a patient's progress after Platelet transfusion.

55. One comment on § 606.122(o)(1) (redesignated as § 606.122(n)(1) in the final rule) stated the potency of Cryoprecipitated AHF should be expressed as International Units of antihemophilic factor.

FDA agrees with the comment. The only potency unit currently established for measuring antihemophilic factor is obtained by measurement against the international standard (or against a standard that has been compared with the international standard). FDA is amending § 606.122(n)(1) in the final rule accordingly.

56. One comment on § 606.122(o)(2) (redesignated as § 606.122(n)(2) in the final rule) asked whether the provision is an indirect requirement to assay Cryoprecipitated AHF for fibrinogen.

The provision does not require, either directly or indirectly, the testing of Cryoprecipitated AHF for its fibrinogen content. Cryoprecipitated AHF is occasionally used to treat the hypofibrinogenemic patient; therefore, an approximation of the product's fibrinogen content should be included in the instruction circular. As an option, the instruction circular may include the statement, "Usually contains at least 150 mg of fibrinogen." The agency has found through a review of assays of a representative number of units that Cryoprecipitated AHF usually contains at least 150 milligrams of fibrinogen. No additional testing is required by manufacturers to verify this value. Recognizing that a manufacturer may want to present a more precise value in the labeling, the regulations offer the option to the manufacturer of determining the average fibrinogen content of its Cryoprecipitated AHF through the assay of a representative number of units and including the determined value in the instruction circular. In the final rule, FDA is revising § 606.122(n)(2) for clarity.

57. One comment on § 606.122(o)(4) (redesignated as § 606.122(n)(4) in the final rule) stated that 15 minutes should be the maximum time for thawing Cryoprecipitated AHF at 37 °C. Two comments stated that there is no evidence that Cryoprecipitated AHF must be thawed for no more or less than 15 minutes, and the regulation should be revised accordingly.

FDA agrees that 15 minutes should be the maximum time for thawing Cryoprecipitated AHF. The primary component of Cryoprecipitated AHF, antihemophilic factor (Factor VIII), is heat labile. Therefore, extended exposure of the product to elevated temperatures will significantly lower product yield. Accordingly, Cryoprecipitated AHF should be thawed at 37 °C for the minimum time necessary to ensure complete resuspension of the precipitate. Through practical experience, 15 minutes has been found to be ample time for the complete thawing of Cryoprecipitated AHF. FDA agrees that Cryoprecipitated AHF may be thawed in less time, although care should be taken to ensure that the precipitate is completely resuspended. Accordingly, FDA is amending the final rule to require a statement in the instruction circular that Cryoprecipitated AHF should be thawed for no more than 15 minutes at a temperature of 37 °C.

58. Two comments recommended that § 606.122(o)(6) (redesignated as § 606.122(n)(6) in the final rule) be revised by substituting the term "0.9 percent Sodium Chloride Injection U.S.P." for "saline."

FDA agrees with the comment and is amending § 606.122(n)(6) accordingly.

59. One comment on § 606.122(o)(8) (redesignated as § 606.122(n)(8) in the final rule), which requires that the instruction circular for Cryoprecipitated AHF note the importance of careful patient monitoring, argued that the required labeling statement infringes on the practice of medicine and is not authorized by section 351 of the Public Health Service Act.

FDA disagrees with the comment. FDA does not believe that the provision infringes on the practice of medicine. It is not FDA's intent to require a physician to perform certain tests to monitor the patient's response to Cryoprecipitated AHF. However, in accordance with section 502(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(f)), FDA does require that labeling provided to the physician for all prescription drugs, including biologics, contain adequate instructions for the product's use. FDA and most members of the scientific community agree that careful patient monitoring is necessary to ensure the effective use of Cryoprecipitated AHF. Accordingly, FDA is requiring that the instruction circular for Cryoprecipitated AHF note the importance of careful patient monitoring when administering Cryoprecipitated AHF.

60. FDA is amending § 606.121(e)(1)(ii) in the final rule to include the approved nomenclature for a new anticoagulant, Anticoagulant Citrate Phosphate Double Dextrose (CP2D), which FDA recently approved for the collection of Whole Blood and the preparation of various blood components.

61. FDA is amending § 606.121(e)(3) in the final rule to state that products with a dating period of 72 hours or less shall be labeled with the hour of expiration. The revised wording will provide greater flexibility if a dating period for a product should change. Indeed, Platelets collected in certain container systems are being granted dating periods of up to 5 days, in which case the hour of expiration is not required on the container label.

62. Proposed § 606.122 (m)(2), (n)(3), and (o)(5) (redesignated as § 606.122 (l)(2), (m)(3), and (n)(5) in the final rule) contains labeling requirements formerly codified in §§ 640.26(k), 640.35(l), and 640.57(l), respectively. In the final rule, FDA is adopting these provisions with a minor clarifying change. The agency advises that instruction circulars that conform to the proposed requirements and the former codified language continue to be acceptable until the effective date of this final rule. To assure uniform wording among instruction circulars in use, FDA recommends that manufacturers revise their instruction circulars to be in agreement with § 606.122 (l)(2), (m)(3), and (n)(5) when labeling is reordered.

63. In the **Federal Register** of October 31, 1980, FDA published a proposal to revise the additional standards for Whole Blood (21 CFR Part 640, Subpart A) in which FDA proposed to revise the requirements concerning the emergency issue of blood in § 640.2(f). In view of the withdrawal of the proposal (48 FR 33494; July 22, 1983), FDA, in this final rule, is amending § 640.2 in paragraph (f)(4) and (5) to delete the labeling provisions and in paragraph (f)(3) to reference the labeling requirements in § 606.121(h).

Environmental Impact

The agency has determined pursuant to 21 CFR 25.24(a)(11) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980 and 5 CFR 1320.13(g) of OMB's regulations implementing the provisions of that act, FDA has submitted the final rule to OMB for approval of the collection of information requirements contained in §§ 606.121 and 606.122 of the rule. These requirements will not be effective until FDA obtains OMB approval. In accordance with 5 CFR 1320.13(j), prior to November 29, 1985, FDA will publish in the **Federal Register** a notice of OMB's decision to approve, modify, or disapprove these requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

Various current sections of Part 606 contain collection of information requirements that were submitted to OMB for review and approval as required by section 3507 of the Paperwork Reduction Act. The requirements were approved and assigned OMB control number 0910-0116.

The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and is therefore exempt. The economic impact of this rule has been assessed in accordance with Executive Order 12291. FDA concludes that approximately 178 licensed establishments and 1,300 registered but unlicensed establishments are affected by this final rule. The assessment assumes that all establishments will adopt the uniform label described in the guideline "Guideline for the Uniform Labeling of Blood and Blood Components," although some establishments may not use an encoded unit number label. FDA estimates that the rule could result in savings of $2,400 per year for each establishment; if each establishment elected to use the least expensive uniform label. However, because many establishments are expected to use voluntarily more expensive, fully bar-coded labels, label cost may be up to $312,000 more per year ($2,000 per establishment). The anticipated costs are insufficient to warrant designation

of the rule as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291. The assessment done to make this determination is on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

List of Subjects

21 CFR Part 606

Blood, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Reporting and recordkeeping requirements.

Therefore, under the Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Administrative Procedure Act and under authority delegated to the Commissioner of Food and Drugs, Parts 606 and 640 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR Part 606 continues to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amendéd, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 701–706)); 21 CFR 5.10.

2. By revising § 606.120 to read as follows:

§ 606.120 Labeling, general requirements.

(a) Labeling operations shall be separated physically or spatially from other operations in a manner adequate to prevent mixups.

(b) The labeling operation shall include the following labeling controls:

(1) Labels shall be held upon receipt, pending review and proofing against an approved final copy, to ensure accuracy regarding identity, content, and conformity with the approved copy.

(2) Each type of label representing different products shall be stored and maintained in a manner to prevent mixups, and stocks of obsolete labels shall be destroyed.

(3) All necessary checks in labeling procedures shall be utilized to prevent errors in translating test results to container labels.

(c) All labeling shall be clear and legible.

3. By adding new §§ 606.121 and 606.122 to read as follows:

§ 606.121 Container label.

(a) The container label requirements are designed to facilitate the use of a uniform container label for blood and blood components (except Source Plasma) by all blood establishments. Single copies of an FDA guideline entitled "Guideline for the Uniform Labeling of Blood and Blood Components" are available upon request (under Docket No. 80N–0120) from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857 (copies of the guideline are available also from the American Blood Commission, 1901 North Ft. Myer Drive, Suite 300, Arlington, VA 22209).

(b) The label provided by the collecting facility and the initial processing facility shall not be removed, altered, or obscured, except that the label may be altered to indicate the proper name and other information required to identify accurately the contents of a container after blood components have been prepared.

(c) The container label shall include the following information, as well as other specialized information as required in this section for specific products:

(1) The proper name of the product in a prominent position, and modifier(s), if appropriate.

(2) The name, address, registration number, and, if a licensed product, the license number of each manufacturer.

(3) The donor, pool, or lot number relating the unit to the donor.

(4) The expiration date, including the day, month, and year, and, if the dating period for the product is 72 hours or less, the hour of expiration.

(5) If the product is intended for transfusion, the appropriate donor classification statement, i.e., "paid donor" or "volunteer donor", in no less prominence than the proper name of the product.

(i) A paid donor is a person who receives monetary payment for a blood donation.

(ii) A volunteer donor is a person who does not receive monetary payment for a blood donation.

(iii) Benefits, such as time off from work, membership in blood assurance programs, and cancellation of nonreplacement fees that are not readily convertible to cash, do not constitute monetary payment within the meaning of this paragraph.

(6) For Whole Blood, Plasma, Platelets, and partial units of Red Blood Cells, the volume of the product, accurate to within ±10 percent; or optionally for Platelets, the volume range within reasonable limits.

(7) The recommended storage temperature (in degrees Celsius).

(8) If the product is intended for transfusion, the statements:

(i) "Caution: Federal law prohibits dispensing without prescription."

(ii) "See circular of information for indications, contraindications, cautions, and methods of infusion."

(iii) "Properly identify intended recipient."

(9) The statement: "This product may transmit infectious agents."

(10) Where applicable, the name and volume of source material.

(11) The statement: "Caution: For Manufacturing Use Only", when applicable.

(12) If the product is intended for transfusion, the ABO and Rh groups of the donor shall be designated conspicuously. For Cryoprecipitated AHF, the Rh group may be omitted. The Rh group shall be designated as follows:

(i) If the test using Anti-D Blood Grouping Serum is positive, the product shall be labeled: "Rh positive."

(ii) If the test using Anti-D Blood Grouping Serum is negative but the test for D^u is positive, the product shall be labeled: "Rh positive."

(iii) If the test using Anti-D Blood Grouping Serum is negative and the test for D^u is negative, the product shall be labeled: "Rh negative."

(13) The container label may bear encoded information in the form of machine-readable symbols approved for use by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics.

(d) Except for recovered plasma intended for manufacturing use or as otherwise approved by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics, the paper of the container label shall be white and print shall be solid black, with the following additional exceptions:

(1) The Rh blood group shall be printed as follows:

(i) Rh positive: Use black print on white background.

(ii) Rh negative: Use white print on black background.

(2) The proper name of the product, any appropriate modifier(s), the donor classification statement, and the statement "properly identify intended recipient" shall be printed in solid red.

(3) The following color scheme may be used optionally for differentiating ABO Blood groups:

Blood group	Color of label [illegible]
O	Blue
A	Yellow
B	Pink
AB	White

(4) Ink colors used for the optional color coding system described in paragraph (d)(3) of this section shall be a visual match to specific color samples designated by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics.

(5) Special labels, such as those described in paragraphs (h) and (i) of this section, may be color coded using the colors recommended in the guideline (see paragraph (a) of this section), or colors otherwise approved for use by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics.

(e) Container label requirements for particular products or groups of products.

(1) Whole Blood labels shall include:

(i) The volume of anticoagulant.

(ii) The name of the applicable anticoagulant immediately preceding and of no less prominence than the proper name and expressd as follows: (*a*) ACD, (*b*) CPD, (*c*) Heparin, (*d*) CPDA–1, (*e*) CP2D, or by other nomenclature approved for use by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics.

(iii) If tests for unexpected antibodies are positive, blood intended for transfusion shall be labeled: "Contains (*name of antibody*)."

(2) Except for frozen, deglycerolized, or washed Red Blood Cell products, red blood cell labels shall include:

(i) The volume and kind of Whole Blood, including the type of anticoagulant, from which the product was prepared.

(ii) If tests for unexpected antibodies are positive and the product is intended for transfusion, the statement: "Contains (*name of antibody*)."

(3) Labels for products with a dating period of 72 hours or less, including any product prepared in a system that may compromise sterility, shall bear the hour of expiration.

(4) If tests for unexpected antibodies are positive, Plasma intended for transfusion shall be labeled: "Contains (*name of antibody*)."

(5) Recovered plasma labels shall include:

(i) In lieu of an expiration date, the date of collection of the oldest material in the container.

(ii) The statement: "Caution: For Manufacturing Use Only"; or "Caution: For Use in Manufacturing Noninjectable Products Only", as applicable.

(iii) For recovered plasma not meeting the requirements for manufacture into licensable products, the statement: "Not for Use in Products Subject to License Under Section 351 of the Public Health Service Act."

(f) Blood and blood components determined to be unsuitable for transfusion shall be prominently labeled: "NOT FOR TRANSFUSION", and the label shall state the reason the unit is considered unsuitable. The provision does not apply to recovered plasma labeled according to paragraph (e)(5) of this section.

(g) As required under § 610.40 of this chapter, labels for blood and blood components that are reactive for Hepatitis B Surface Antigen, but that are intended for further manufacturing, shall state conspicuously that the material is reactive when tested for hepatitis B surface antigen and may transmit viral hepatitis or, as applicable, that blood was collected from a donor known to be reactive for hepatitis B surface antigen and is presumed to be infectious, although confirmatory hepatitis testing has not been done.

(h) The following additional information shall appear on the label for blood or blood components shipped in an emergency, prior to completion of required tests, in accordance with § 640.2(f) of this chapter:

(1) The statement: "FOR EMERGENCY USE ONLY BY ———."

(2) Results of any tests prescribed under §§ 610.40 and 640.5 (a), (b), or (c) of this chapter completed before shipment.

(3) Indication of any tests prescribed under §§ 610.40 and 640.5 (a), (b), or (c) of this chapter and not completed before shipment.

(i) The following additional information shall appear on the label for Whole Blood or Red Blood Cells intended for autologous infusion:

(1) Information adequately identifying the patient, e.g., name, blood group, hospital, and identification number.

(2) Date of donation.

(3) The statement: "FOR AUTOLOGOUS USE ONLY."

(4) In place of the blood group label, each container of blood intended for autologous use and obtained from a donor who fails to meet any of the donor suitability requirements under § 640.3 of this chapter or who is reactive in the hepatitis tests prescribed under § 610.40 of this chapter shall be prominently and permanently labeled: "FOR AUTOLOGOUS USE ONLY."

(5) Units of blood originally intended for autologous use, except those labeled as prescribed under paragraph (i)(4) of this section, may be issued for homologous transfusion provided the container label complies with all applicable provisions of paragraphs (b) through (e) of this section. In such case, the special label required under paragraph (i) (1), (2), and (3) of this section shall be removed or otherwise obscured.

(j) A tie-tag attached to the container may be used for providing the information required by paragraph (e) (1)(iii), (2)(ii), and (4), (h), or (i)(1), (2), and (3) of this section.

§ 606.122 Instruction circular.

An instruction circular shall be available for distribution if the product is intended for transfusion. The instruction circular shall provide adequate directions for use, including the following information:

(a) Instructions to mix the product before use.

(b) Instructions to use a filter in the administration equipment.

(c) The statement "Do Not Add Medications" or an explanation concerning allowable additives.

(d) A description of the product, its source, and preparation, including the name and proportion of the anticoagulant used in collecting the Whole Blood from each product is prepared.

(e) Statements that the product was prepared from blood that was nonreactive when tested for hepatitis B surface antigen by an FDA required test and nonreactive when tested for syphilis by a serologic test for syphilis (STS).

(f) The statements: "Warning. The risk of transmitting hepatitis is present. Careful donor selection and available laboratory tests do not eliminate the hazard."

(g) The names of cryoprotective agents and other additives that may still be present in the product.

(h) The names and results of all tests performed when necessary for safe and effective use.

(i) The use of the product, indications, contradications, side effects and hazards, dosage and administration recommendations.

(j) [Reserved]

(k) For Red Blood Cells, the instruction circular shall contain:

(1) Instructions to administer a suitable plasma volume expander if Red Blood Cells are substituted when Whole Blood is the indicated product.

(2) A warning not to add Lactated Ringer's Injection U.S.P. solution to Red Blood Cell products.

(l) For Platelets, the instruction circular shall contain:

(1) The approximate volume of plasma from which a sample unit of Platelets is prepared.

(2) Instructions to begin administration as soon as possible, but not more than 4 hours after entering the container.

(m) For Plasma, the instruction circular shall contain:

(1) A warning against further processing of the frozen product if there is evidence of breakage or thawing.

(2) Instructions to thaw the frozen product at a temperature between 30 and 37 °C.

(3) When applicable, instructions to begin administration of the product within 6 hours after thawing.

(4) Instructions to administer to ABO-group-compatible recipients.

(5) A statement that this product has the same hepatitis risk as Whole Blood; other plasma volume expanders without this risk are available for treating hypovolemia.

(n) For Cryoprecipitated AHF, the instruction circular shall contain:

(1) A statement that the average potency is 80 or more International Units of antihemophilic factor.

(2) The statement: "Usually contains at least 150 milligrams of fibrinogen"; or, alternatively, the average fibrinogen level determined by assay of representative units.

(3) A warning against further processing of the product if there is evidence of breakage or thawing.

(4) Instructions to thaw the product for no more than 15 minutes at a temperature of 37 °C.

(5) Instructions to store at room temperature after thawing and to begin administration as soon as possible but no more than 4 hours after entering the container or after pooling and within 6 hours after thawing.

(6) A statement that 0.9 percent Sodium Chloride Injection U.S.P. is the preferred diluent.

(7) Adequate instructions for pooling to ensure complete removal of all concentrated material from each container.

(8) The statement: "Good patient management requires monitoring treatment responses to Cryoprecipitated AHF transfusions with periodic plasma factor VIII or fibrinogen assays in hemophilia A and hypofibrinogenemic recipients, respectively."

4. By adding a new clause regarding the OMB control number at the end of § 606.170 to read as follows:

§ 606.170 Adverse reaction file.

* * * * *

(Information collection requirements approved by the Office of Management and Budget under OMB control number 0910–0116)

PART 640—ADDITIONAL STANDARDS FOR BLOOD AND BLOOD PRODUCTS

5. The authority citation for 21 CFR Part 640 continues to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended; 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

6. In § 640.2 by revising paragraph (f) to read as follows:

§ 640.2 General requirements.

* * * * *

(f) *Issue prior to determination of test results.* Notwithstanding the provisions of § 610.1 of this chapter, blood may be issued by the manufacturer on the request of a physician, hospital, or other medical facility before results of all tests prescribed in § 640.5 and the test for hepatitis B surface antigen prescribed in § 610.40(a) of this chapter have been completed, where such issue is essential to allow time for transportation to ensure arrival of the blood by the time it is needed for transfusion: *Provided,* That (1) the blood is shipped directly to such physician or medical facility, (2) the records of the manufacturer contain a full explanation of the need for such issue, and (3) the label on each container of such blood bears the information required by § 606.121(h) of this chapter.

§§ 640.7, 640.18, 640.26, 640.35, and 640.57 [Removed]

7. By removing § 640.7 *Labeling,* § 640.18 *Labeling,* § 640.26 *Labeling,* § 640.35 *Labeling,* and § 640.57 *Labeling.*

8. In § 640.70 by revising the introductory text of paragraph (a) to read as follows:

§ 640.70 Labeling.

(a) In addition to the labeling requirements of § 610.62 of this chapter, and in lieu of the requirements in §§ 606.121, 610.60, and 610.61 of this chapter, the following information shall appear on the label affixed to each container of Source Plasma:

* * * * *

Dated: August 1, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85–20739 Filed 8–29–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Food and Drug Administration

[Docket No. 80N-0120]

Guideline for the Uniform Labeling of Blood and Blood Components; Availability of Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guideline for the uniform labeling of blood and blood components. The guideline describes in detail the specifications for a uniform container label for blood-banking use which conform with a final rule published elsewhere in this issue of the Federal Register.

ADDRESS: Written comments and requests for a copy of the guideline (identified with the docket number found in brackets in the heading of this document) to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary Ann Tourault, Center for Drugs and Biologics (HFN-830), Food and Drug Administration, 8800 Rockville Pike, Bethesda, Md 20205, 301-496-4396.

SUPPLEMENTARY INFORMATION: FDA is making available a final guideline prepared by the Office of Biologics Research and Review in the Center for Drugs and Biologics to describe the uniform container label for blood and blood components. In the Federal Register of October 31, 1980 (45 FR 72416), FDA published a proposed rule to revise the labeling requirements for blood and blood components. In the same document, FDA announced the availability of a proposed guideline entitled "Guidelines for the Uniform Labeling of Blood and Blood Components." Preparation of the guideline is part of a program supported by FDA, the American Blood Commission (ABC), and other organizations representing the blood banking industry, to encourage the use of blood container labels of a standard content and format, with certain label elements present in both eye-readable and machine-readable form. Since the time of the announcement of the proposed guideline's availability, FDA has permitted the voluntary use of uniform labeling consistent with the proposed rule and guideline.

Elsewhere in this issue of the Federal Register, FDA is publishing a final rule revising the labeling requirements for blood and blood components. In the Federal Register of January 29, 1985 (50 FR 4128), FDA published a final rule revising the proper names for certain biological products, including blood and blood component products. FDA is announcing the availability of a revised guideline which reflects the labeling requirements and new proper names established in the respective final rules. In cooperation with ABC, FDA has revised the final guideline to correct several errors found in the guideline made available in October 1980. The final guideline provides labeling information for several additional products, including additional blood components, anticoagulants, preservatives, and blood container systems. Although many of these products are not currently licensed or approved by FDA for general use in the United States, FDA expects that these additional products will gain wide acceptance and use in the next few years.

Included with the guideline as Appendix A is "Suggested Evaluation Protocol for Bar-Coded Pressure Sensitive labels" intended for use by printers of labels to determine the acceptability of their products for use in blood banks.

ABC also has made the proposed guideline of October 1980 available to its constituents, along with other instructions for the uniform labeling of blood and blood components. Base upon the practical experience gained through the use of the proposed guideline, ABC has recommended revisions to clarfiy the guideline, to provide additional information concerning the printing and use of the uniform label, and to delete certain unnecessary information. The revised final guideline incorporates ABC's recommendations.

This notice is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to outline procedures or standards of general applicability that are acceptable to FDA for a subject matter than falls within the laws administered by FDA. Although these guidelines are not a legal requirement, a person may be assured that in following an agency guideline the procedures followed and standards used will be acceptable to FDA. A person may also choose to use alternative procedures or standards for which there is scientific rationale even though they are not provided for in a guideline. A person who chooses to use procedures or standards not in a guideline may discuss the matter further with the agency to prevent an expenditure of resources for work that FDA may later determine to be unacceptable.

FDA is permitting the immediate voluntary use of container labels printed in accordance with the revised final guideline that are consistent with the final regulations published elsewhere in this issue of the Federal Register. Licensed establishments may begin using the new container label and instruction circular without their prior review and approval by FDA, provided that the label is printed in accordance with the specifications described in the guideline. As an amendment to the product license(s), a licensed establishment is required to submit the revised label and instruction circular to the Director, Office of Biologics Research and Review (HFN-800), Center for Drugs and Biologics, 8800 Rockville Pike, Bethesda, MD 20205.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping requirements in §§ 606.121 and 606.122 of the final rule on uniform blood labeling (Docket No. 80N-0120) have been submitted for approval to the Office of Management and Budget (OMB). The guideline being made available by the agency has been developed in accordance with the provisions of these sections. The requirements under §§ 606.121 and 606.122 for uniform blood labeling, as described in the final rule published elsewhere in this issue of the Federal Register, will not be effective until FDA obtains OMB approval of the recordkeeping and reporting requirements in §§ 606.121 and 606.122. Prior to November 29, 1985, FDA will publish a notice concerning OMB review of these requirements.

Single copies of the final guideline are available from the Dockets Management Branch (address above). Copies of the final guideline are available also from the American Blood Commission, 1901 N. Ft. Meyer Drive, Suite 300, Arlington, VA 22209 for $5.00 per copy. (The price of the guideline is subject to change.)

Interested persons may submit written comments on the guideline to the Dockets Management Branch. These comments will be considered in determining whether further amendments to, or revisions of, this guideline are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

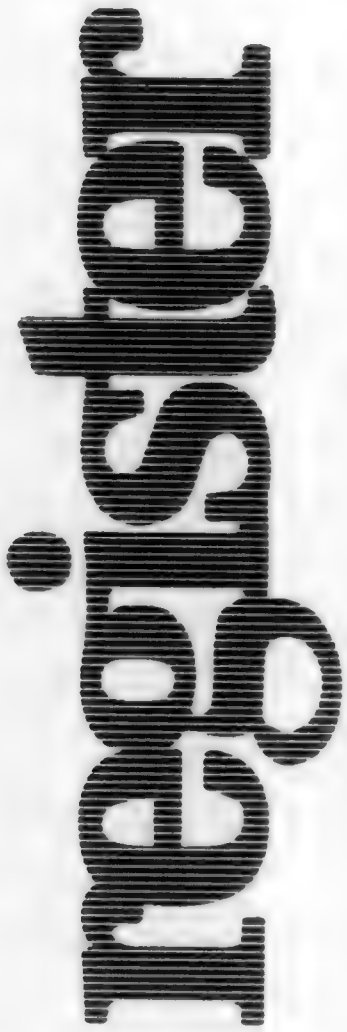
Dated: August 1, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-20734 Filed 8-29-85; 8:45 am]

BILLING CODE 4160-01-M



Friday
August 30, 1985

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 3, 7, 9, 14, 15, and 52
Federal Acquisition Regulation; Interim Rule With Request for Comments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 7, 9, 14, 15 and 52

[Federal Acquisition Circular 84-11]

Federal Acquisition Regulation

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: Federal Acquisition Circular (FAC) 84-11 amends the Federal Acquisition Regulation (FAR) with respect to the following: Unreasonable Restriction on Subcontractor Sales, Planning for Purchase of Supplies in Economic Quantities, and Qualification Requirements.

DATES:

Effective Date: August 30, 1985.

Comment Date: Comments must be received on or before September 30, 1985. Please cite FAC 84-11 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: General Services Administration, ATTN: FAR Secretariat (VRS), Room 4041, GS Building, 18th & F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR revisions in FAC 84-11 are required by the Defense Procurement Reform Act of 1984 (Title XII of the Department of Defense Authorization Act, 1985, Pub. L. 98-525), and the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Pub. L. 98-577).

B. Determination to Issue an Interim Regulation

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that the regulations in FAC 84-11 must be issued as an interim regulation in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended.

C. Regulatory Flexibility Act

(1) The Regulatory Flexibility Act of 1980, Pub. L. 96-354, specifies circumstances under which a regulatory flexibility analysis is required in connection with the issuance of a general notice of proposed rulemaking or the promulgation of a final rule, and provides that such requirements do not apply to any proposed or final rule if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Therefore, it is hereby certified that Items I and II of FAC 84-11 will not have a significant economic impact on a substantial number of small entities as follows:

FAC 84-11, Item I, Unreasonable Restriction on Subcontractor Sales, amends the FAR to implement section 1234 of Pub. L. 98-525 and section 206 of Pub. L. 98-577. Under the new coverage contractors are prohibited from restricting the sales of any item or process, of any actual or prospective subcontractor, directly to the Government under the instant contract or any follow-on production contract. This new coverage will not have significant economic impact on a substantial number of small entities because the interim coverage does not impose additional reporting requirements or add new contractual requirements to small businesses.

FAC 84-11, Item II, Planning for the Purchase of Supplies in Economic Quantities, amends the FAR to implement section 1233 of Pub. L. 98-525 and section 205 of Pub. L. 98-577. Under the new coverage, offerors are invited to state an opinion on whether the quantity of supplies to be acquired is economically advantageous to the Government, and if applicable to recommend a more advantageous quantity, including a quoted unit and total price. Since response to the invitation is entirely voluntary, and the type of information requested is of a nature that should normally be readily available in small businesses, there will be no significant economic impact on small entities as a result of the interim regulation.

(2) An initial regulatory flexibility analysis has been prepared for Item III as follows:

FAC 84-11, Item III, Qualification Requirements, may have a significant beneficial economic impact on a substantial number of small entities. Current guidance requires that an initial regulatory flexibility analysis be prepared if the interim rule will have a significant economic impact on a substantial number of small entities even if the economic impact will benefit small entities. Accordingly, an initial regulatory flexibility analysis has been prepared for Item III of this interim rule in accordance with the Regulatory Flexibility Act, Pub. L. 96-354. This initial regulatory flexibility analysis has been prepared in accordance with section 603, Title 5 of the United States Code.

Reasons for Agency Action

Congress amended Title 10 and Title 41 of the United States Code to require agencies to prescribe policies and procedures regarding qualification requirements for acquisitions that are subject to such requirements.

Objectives and Legal Basis

The interim rule implements Pub. L. 98-525 (10 U.S.C. 2319) and Pub. L. 98-577 (41 U.S.C. 253(e)) with the objective of encouraging new competitors for Government contracts. The interim rule seeks to accomplish this by requiring agencies to justify the necessity for establishing qualification requirements, assuring that the requirements are available to all offerors, and permitting offerors to demonstrate their ability to meet these requirements up to the time of award.

Description of and Estimate of Number of Small Entities to which Interim Rule Applies

The interim rule applies to all small businesses that want to contract with the Government and which will either offer a product which is listed on a qualified products list, or which will participate in an acquisition which is limited to certain manufacturers or qualified bidders that can meet established requirements prior to award. It is not feasible to estimate the number of small entities to which the interim rule applies because the number of small businesses who would participate in these types of acquisitions is unknown. Also, the number of qualification requirements which will be modified or eliminated as the result of this interim rule is unknown.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no additional projected reporting, recordkeeping or other compliance requirements likely to result from the interim rule. Small businesses who qualify for reimbursement of testing and evaluation costs by the United States are required by the law to certify to their status as a small business under section 3 of the Small Business Act. This

should not impose an additional burden on small businesses because they are already required to determine their status under Government contracts.

Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Interim Rule

There do not appear to be any relevant Federal rules which duplicate, overlap, or conflict with the interim rule.

Significant Alternatives

The Regulatory Flexibility Act requires consideration of significant alternatives to the interim rule that would accomplish the objectives of the statute and minimize any significant economic impact on small entities. These alternatives include:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements under the interim rule for such small entities;

(3) The use of performance rather than design standards; and

(4) An exemption from coverage of the interim rule, or any part thereof, for such small entities.

The interim rule does not establish reporting or recordkeeping requirements. The use of performance rather than design standards if feasible is already mandated by Part 10 of the Federal Acquisition Regulation (FAR). Qualification requirements, which must be met by manufacturers or bidders (or their products) before being awarded a contract, are necessary to assure that the Government obtains a product which meets its minimum needs. Although these requirements cannot be waived or relaxed for small entities, the interim rule extends the period offerors have to demonstrate their ability to meet the Government's requirements compared to the prior rule. This should benefit small entities. Also small entities may be reimbursed for costs of testing and evaluation in some cases which should help them to become more competitive on these types of acquisitions.

List of Subjects in 48 CFR Parts 3, 7, 9, 14, 15, and 52

Government procurement.

Dated: August 27, 1985

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84–11]

The material contained in FAC 84–11 is effective immediately (August 30, 1985).

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

Paul K. Trause,

Acting Administrator.

August 26, 1985.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–11 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Unreasonable Restrictions on Subcontractor Sales

FAR Part 3 is amended to add a new section 3.503 and a new clause at 52.203–6. Under the new coverage contractors and subcontractors are prohibited from asserting or agreeing to unreasonable restrictions on direct sales by subcontractors to the Government.

Item II—Planning for the Purchase of Supplies in Economic Quantities

FAR Subpart 7.2 and Sec. 14.212, 15.415, and 52.207–4 are added to prescribe policies, procedures, and a contract provision for gathering and using information from offerors to assist the Government in planning the most advantageous quantities in which supplies should be purchased. Under the new coverage, offerors are invited to state an opinion on whether the quantity of supplies proposed to be acquired is economically advantageous to the Government and, if applicable, to recommend a more advantageous quantity, including a quoted unit and total price.

Item III—Qualification Requirements

FAR Subpart 9.2 is amended to prescribe policies and procedures regarding qualification requirements. The solicitation provision at 52.209–1 and the contract clause at 52.209–2 are similarly revised for these purposes. The new coverage addresses how agencies will establish and enforce qualification requirements, encourage the qualification of additional sources and products, bear the costs under certain circumstances for products of small businesses to become qualified, and periodically examine the need to continue the use of each qualification requirement.

Therefore, 48 CFR Parts 3, 7, 9, 14, 15, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 3, 7, 9, 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Sections 3.503, 3.503–1, and 3.503–2 are added to read as follows:

3.503 Unreasonable restrictions on subcontractor sales.

3.503–1 Policy.

10 U.S.C. 2402 and 41 U.S.C. 253(g) require that subcontractors not be unreasonably precluded from making direct sales to the Government of any supplies or services made or furnished under a contract. However, this does not preclude contractors from asserting rights that are otherwise authorized by law or regulation.

3.503–2 Contract clause.

The clause at 52.203–6, Restrictions on Subcontractor Sales to the Government, shall be inserted in solicitations and contracts for supplies or services.

PART 7—ACQUISITION PLANNING

3. Subpart 7.2 is added to read as follows:

Subpart 7.2—Planning for the Purchase of Supplies in Economic Quantities

Sec.

7.200 Scope of subpart.
7.201 [Reserved]
7.202 Policy.
7.203 Solicitation provision.
7.204 Responsibilities of contracting officers.

Subpart 7.2—Planning for the Purchase of Supplies in Economical Quantities

7.200 Scope of subpart.

This subpart prescribes policies and procedures for gathering information from offerors to assist the Government in planning the most advantageous quantities in which supplies should be purchased.

7.201 [Reserved]

7.202 Policy.

(a) Agencies are required by 10 U.S.C. 2384(a) and 41 U.S.C. 253(f) to procure supplies in such quantity as (1) will

result in the total cost and unit cost most advantageous to the Government, where practicable, and (2) does not exceed the quantity reasonably expected to be required by the agency.

(b) Each solicitation for a contract for supplies is required, if practicable, to include a provision inviting each offeror responding to the solicitation (1) to state an opinion on whether the quantity of the supplies proposed to be acquired is economically advantageous to the Government, and (2) if applicable, to recommend a quantity or quantities which would be more economically advantageous to the Government. Each such recommendation is required to include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

7.203 Solicitation provision.

Contracting officers shall insert the solicitation provision at 52.207–4, Economic Purchase Quantity—Supplies, in solicitation for supplies; except that, for civilian agencies other than NASA, this solicitation provision is optional in connection with the acquisition of supplies unless the items of supply being acquired are individual parts, components, subassemblies, assemblies or subsystems integral to a major system, and other property which may be replaced during the service life of the system, including spare parts and replenishment spare parts, but not including packaging or labeling associated with shipment or identification of an item.

7.204 Responsibilities of contracting officers.

(a) Contracting officers are responsible for transmitting offeror responses to the solicitation provision at 52.207–4 to appropriate inventory management/requirements development activities in accordance with agency procedures. The economic purchase quantity data so obtained are intended to assist inventory managers in establishing and evaluating economic order quantities for supplies under their cognizance.

(b) In recognition of the fact that economic purchase quantity data furnished by offerors are only one of many data inputs required for determining the most economical order quantities, contracting officers should generally take no action to revise quantities to be acquired in connection with the instant procurement. However, if a significant price variation is evident from offeror responses, and the potential for significant savings is apparent, the contracting officer shall consult with the cognizant inventory manager or requirements development activity before proceeding with an award or negotiations. If this consultation discloses that the Government should be ordering an item of supply in different quantities and the inventory manager/requirements development activity concurs, the solicitation for the item should be amended or canceled and a new requisition should be obtained.

PART 9—CONTRACTOR QUALIFICATIONS

4. Subpart 9.2 is revised to read as follows:

Subpart 9.2—Qualification Requirements

Sec.

9.200 Scope of subpart.
9.201 Definitions.
9.202 Policy.
9.203 QPL's, QML's, and QBL's.
9.204 Responsibilities for establishment of a qualification requirement.
9.205 Opportunity for qualification before award.
9.206 Acquisitions subject to qualification requirements.
9.206–1 General.
9.206–2 Solicitation provision and contract clause.
9.206–3 Competition.
9.207 Changes in status regarding qualification requirements.

Subpart 9.2—Qualifications Requirements

9.200 Scope of subpart.

This subpart implements 10 U.S.C. 2319 and 41 U.S.C. 253(e) and prescribes policies and procedures regarding qualification requirements and the acquisitions that are subject to such requirements.

9.201 Definitions.

"Procuring activity," as used in this part or subpart, means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term "procuring activity" shall be synonymous with "contracting activity" as defined in Subpart 2.1.

"Qualification requirement" means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before the offeror is awarded a contract.

"Qualified bidders list (QBL)" means a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements.

"Qualified manufacturers list (QML)" means a list of manufacturers who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product.

"Qualified products list (QPL)" means a list of products which have been examined, tested, and have satisfied all applicable qualification requirements.

9.202 Policy.

(a)(1) The head of the agency or designee shall, before establishing a qualification requirement, prepare a written justification—

(i) Stating the necessity for establishing the qualification requirement and specifying why the qualification requirement must be demonstrated before contract award;

(ii) Estimating the likely costs for a potential offeror of testing and evaluation which a potential offeror will incur to become qualified.

(iii) Specifying all requirements that a potential offeror (or its product) must satisfy in order to become qualified. Only those requirements which are the least restrictive to meet the purposes necessitating the establishment of the qualification requirements shall be specified.

(2) Upon request to the contracting activity, potential offerors shall be provided—

(i) All requirements that they or their products must satisfy to become qualified;

(ii) At their expense (but see 9.204(a)(2) with regard to small businesses), a prompt opportunity to demonstrate their abilities to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned, or of another agency obtained through interagency agreements, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency).

(3) If the services in (a)(2)(ii) above are provided by contract, the contractors selected to provide testing and evaluation services shall be—

(i) Those that are not expected to benefit from an absence of additional qualified sources; and

(ii) Required by their contracts to adhere to any restriction on technical data asserted by the potential offeror seeking qualification.

(4) A potential offeror seeking qualification shall be promptly informed as to whether qualification is attained and, in the event it is not, promptly furnished specific reasons why qualification was not attained.

(b) When justified under the circumstances, the agency activity

responsible for establishing a qualification requirement shall submit to the competition advocate for the procuring activity responsible for purchasing the item subject to the qualification requirement, a determination that it is unreasonable to specify the standards for qualification which a prospective offeror (or its product) must satisfy. After considering any comments of the competition advocate reviewing the determination, the head of the procuring activity may waive the requirements of 9.202(a)(1)(ii) through (4) above for up to 2 years with respect to the item subject to the qualification requirement. A copy of the waiver shall be furnished to the head of the agency or other official responsible for actions under 9.202(a)(1). The waiver authority provided in this paragraph does not apply with respect to qualification requirements contained in a QPL, QML, or QBL.

(c) If a potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror (or its product) meets the standards established for qualification or can meet them before the date specified for award of the contract, a potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror—

(1) Is not on a QPL, QML, or QBL maintained by the Department of Defense (DOD) or the National Aeronautics and Space Administration (NASA); or

(2) Has not been identified as meeting a qualification requirement established after October 19, 1984, by DOD or NASA; or

(3) Has not been identified as meeting a qualification requirement established by a civilian agency (not including NASA).

(d) The procedures in Subpart 19.6 for referring matters to the Small Business Administration are not mandatory on the contracting officer when the basis for a referral would involve a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

(e) The contracting officer need not delay a proposed award in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification. In addition, when approved by the head of an agency or designee, a procurement need not be delayed in order to comply with 9.202(a).

(f) Within 7 years following enforcement of a QPL, QML, or QBL by DOD or NASA, or within 7 years after any qualification requirement was originally established by a civilian agency other than NASA, the qualification requirement shall be examined and revalidated in accordance with the requirements of 9.202(a). For DOD and NASA, qualification requirements, other than QPL's, QML's, and QBL's, shall be examined and revalidated within 7 years after establishment of the requirement under 9.202(a). Any periods for which a waiver under 9.202(b) is in effect shall be excluded in computing the 7 years within which review and revalidation must occur.

9.203 QPL's, QML's and QBL's.

(a) Qualification and listing in a QPL, QML, or QBL is the process by which products are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, or manufacturers or potential offerors, are provided an opportunity to demonstrate their abilities to meet the standards specified for qualification. The names of successful products, manufacturers, or potential offerors are included on lists evidencing their status. Generally, qualification is performed in advance and independently of any specific acquisition action. After qualification, the products, manufacturers, or potential offerors are included in a Federal or Military QPL, QML, or QBL. (See 9.202(a)(2) with regard to any product, manufacturer, or potential offeror not yet included on an applicable list.)

(b) Specifications requiring a qualified product are included in the following publications:

(1) Index of Federal Specifications and Standards, FPMR 101–29.1.

(2) Department of Defense Index of Specifications and Standards.

(c) Instructions concerning qualification procedures are included in the following publications:

(1) Federal Standardization Handbook, FPMR 101–29, Chapter IV.

(2) Defense Standardization Manual 4120.3–M, Chapter IV, as amended by Military Standards 961 and 962.

(d) The publications listed in paragraphs (b) and (c) above are sold to the public by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Civil agencies may obtain the publications from the General Services Administration, Specifications Section (WFSIS), Washington, DC 20407. Defense agencies may obtain the publications from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

9.204 Responsibilities for establishment of a qualification requirement.

The responsibilities of agency activities that establish qualification requirements include the following:

(a) Arranging publicity for the qualification requirements. If active competition on anticipated future qualification requirements is likely to be fewer than two manufacturers or the products of two manufacturers, the activity responsible for establishment of the qualification requirements shall—

(1) Periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification unless the contracting officer determines that such publication would compromise the national security.

(2) Bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement. However, such costs may be borne only if it is determined in accordance with agency procedures that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time, considering the duration and dollar value of anticipated future requirements. A prospective contractor requesting the United States to bear testing and evaluation costs must certify as to its status as a small business concern under section 3 of the Small Business Act in order to receive further consideration.

(b) Qualifying products that meet specification requirements.

(c) Listing manufacturers and suppliers whose products are qualified in accordance with agency procedures.

(d) Furnishing QPL's, QML's, or QBL's or the qualification requirements themselves to prospective offerors and the public upon request (see 9.202(a)(2)(i) above).

(e) Clarifying, as necessary, qualification requirements.

(f) In appropriate cases, when requested by the contracting officer, providing concurrence in a decision not to enforce a qualification requirement for a solicitation.

(g) Withdrawing or omitting qualification of a listed product, manufacturer or offeror, as necessary.

(h) Advising persons furnished any list of products, manufacturers or offerors meeting a qualification requirement and suppliers whose products are on any such list that—

(1) The list does not constitute endorsement of the product, manufacturer, or other source by the Government;

(2) The products or sources listed have been qualified under the latest applicable specification;

(3) The list may be amended without notice;

(4) The listing of a product or source does not release the supplier from compliance with the specification; and

(5) Use of the list for advertising or publicity is permitted. However, it must not be stated or implied that a particular product or source is the only product or source of that type qualified, or that the Government in any way recommends or endorses the products or the source listed.

(i) Reexamining a qualified product or manufacturer when—

(1) The manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of previous qualifications is questionable;

(2) The requirements in the specification have been amended or revised sufficiently to affect the character of the product; or

(3) It is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification.

9.205 Opportunity for qualification before award.

(a) If an agency determines that a qualification requirement is necessary, the agency activity responsible for establishing the requirement shall urge manufacturers and other potential sources to demonstrate their ability to meet the standards specified for qualification and, when possible, give sufficient time to arrange for qualification before award. The responsible agency activity shall, before establishing any qualification requirement, furnish notice to the U.S. Department of Commerce, Office of Field Operations, P.O. Box 5999, Chicago, Illinois 60680, for synopsis in the Commerce Business Daily. The notice shall include—

(1) Intent to establish a qualification requirement;

(2) The specification number and name of the product;

(3) The name and address of the activity to which a request for the information and opportunity described in 9.202(a)(2) should be submitted;

(4) The anticipated date that the agency will begin awarding contracts subject to the qualification requirement;

(5) A precautionary notice that when a product is submitted for qualification testing, the applicant must furnish any specific information that may be requested of the manufacturer before testing will begin; and

(6) The approximate time period following submission of a product for qualification testing within which the applicant will be notified whether the product passed or failed the qualification testing (see 9.202(a)(4)).

(b) The activity responsible for establishing a qualification requirement shall keep any list maintained of those already qualified open for inclusion of additional products, manufacturers, or other potential sources, including eligible products from designated countries under terms of the International Agreement on Government Procurement (see Subpart 25.4).

9.206 Acquisitions subject to qualification requirements.

9.206-1 General.

(a) Agencies may not enforce any QPL, QML, or QBL without first complying with the requirements of 9.202(a). However, qualification requirements themselves, whether or not previously embodied in a QPL, QML, or QBL, may be enforced without regard to 9.202(a) if they are in either of the following categories:

(1) Any qualification requirement established by statute prior to October 30, 1984, for civilian agencies (not including NASA); or

(2) Any qualification requirement established by statute or administrative action prior to October 19, 1984, for DOD or NASA. Qualification requirements established after the above dates must comply with 9.202(a) to be enforceable.

(b) Except when the agency head or designee determines that an emergency exists, whenever an agency elects not to enforce a qualification requirement which it established, the requirement may not thereafter be enforced unless the agency complies with 9.202(a).

(c) If a qualification requirement applies, the contracting officer need consider only those offers identified as meeting the requirement or included on the applicable QPL, QML, or QBL, unless an offeror can satisfactorily demonstrate to the contracting officer that it or its product can meet the standards established for qualification before the date specified for award.

(d) If a product subject to a qualification requirement is to be acquired by the prime contractor as a component of an end item, the contracting officer shall require the prime contractor to furnish a component that has met the qualification requirement before award of a subcontract for the component. Any delay resulting from the prime contractor's awaiting qualification approval of a component by the Government shall not constitute excusable delay if a previously qualified component could have been acquired by the prime contractor in time to meet the end item delivery schedule (see the clause at 52.209-2, Qualification Requirements—Components of End Items).

(e) In acquisitions subject to qualification requirements, the contracting officer shall take the following steps:

(1) Use presolicitation notices in appropriate cases to advise potential suppliers before issuing solicitations involving qualification requirements. The notices shall identify the specification containing the qualification requirement and establish an allowable time period, consistent with delivery requirements, for prospective offerors to demonstrate their abilities to meet the standards specified for qualification. The notice shall be publicized in accordance with 5.204. Whether or not a presolicitation notice is used, the general synopsizing requirements of Subpart 5.2 apply.

(2) Distribute solicitations to prospective contractors whether or not they have been identified as meeting applicable qualification requirements.

(3) When appropriate, request in accordance with agency procedures that a qualification requirement not be enforced in a particular acquisition and, it granted, so specify in the solicitation (see 9.206-1(b)).

(4) Forward requests from potential suppliers for information on a qualification requirement to the agency activity responsible for establishing the requirement.

(5) Allow the maximum time, consistent with delivery requirements, between issuing the solicitation and the contract award. As a minimum, contracting officers shall comply with the time frames specified in 5.203 when applicable.

9.206–2 Solictation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.209–1, Qualification Requirements, in solicitations when the acquisition is subject to a qualification requirement.

(b) The contracting officer shall insert the clause at 52.209–2, Qualification Requirements—Components of End Items, in solicitations and contracts, when components of end items are subject to a qualification requirement.

9.206–3 Competition.

(a) *Presolicitation.* If a qualification requirement applies to an acquisition, the contracting officer shall review the applicable QPL, QML, or QBL or other identification of those sources which have met the requirement before issuing a solicitation to ascertain whether the number of sources is adequate for competition. (See 9.204(a) for duties of the agency activity responsible for establishment of the qualification requirement.) If the number of sources is inadequate, the contracting officer shall request the agency activity which established the requirement to—

(1) Indicate the anticipated date on which any sources presently undergoing evaluation will have demonstrated their abilities to meet the qualification requirement so that the solicitation could be rescheduled to allow as many additional sources as possible to qualify; or

(2) Indicate whether a means other than the qualification requirement is feasible for testing or demonstrating quality assurance.

(b) *Postsolicitation.* The contracting officer shall submit to the agency activity which established the qualification requirement the names and addresses of concerns which requested copies of the solicitation but are not included on the applicable QPL, QML, or QBL or identified as meeting the qualification requirement. The activity will then assist interested concerns in meeting the standards specified for qualification (see 9.202(a) (2) and (4)).

9.207 Changes in status regarding qualification requirements.

(a) The contracting officer shall promptly report to the agency activity which established the qualification requirement any conditions which may merit removal or omission from a QPL, QML, or QBL or affect whether a source should continue to be otherwise identified as meeting the requirement. These conditions exist when—

(1) Products or services are submitted for inspection or acceptance that do not meet the qualification requirement;

(2) Products or services were previously rejected and the defects were not corrected when resubmitted for inspection or acceptance;

(3) A supplier fails to request reevaluation following change of location or ownership of the plant where the product which met the qualification requirement was manufactured (see the provision at 52.209–1, Qualification Requirements, and the clause at 52.209–2, Qualification Requirements—Components of End Items);

(4) A manufacturer of a product which met the qualification requirement has discontinued manufacture of the product;

(5) A source requests removal from a QPL, QML, or QBL;

(6) A condition of meeting the qualification requirement was violated; e.g., advertising or publicity contrary to 9.204(h)(5);

(7) A revised specification imposes a new qualification requirement;

(8) Manufacturing or design changes have been incorporated in the qualification requirement;

(9) The source is on the Consolidated List of Debarred, Suspended, and Ineligible Contractors (see Subpart 9.4); or

(10) Performance of a contract subject to a qualification requirement is otherwise unsatisfactory.

(b) After considering any of the above or other conditions reasonably related to whether a product or source continues to meet the standards specified for qualification, an agency may take appropriate action without advance notification. The agency shall, however, promptly notify the affected parties if a product or source is removed from a QPL, QML, or QBL, or will no longer be identified as meeting the standards specified for qualification. This notice shall contain specific information why the product or source no longer meets the qualification requirement.

PART 14—SEALED BIDDING

5. Section 14.212 is added to read as follows:

14.212 Economic purchase quantities (supplies).

Contracting officers shall comply with the economic purchase quantity planning requirements for supplies in Subpart 7.2. See 7.203 for instructions regarding use of the provision at 52.207–4, Economic Purchase Quantity—Supplies, and 7.204 for guidance on handling responses to that provision.

PART 15—CONTRACTING BY NEGOTIATION

6. Section 15.415 is added to read as follows:

15.415 Economic purchase quantities (supplies).

Contracting officers shall comply with the economic purchase quantity planning requirements for supplies in Subpart 7.2. See 7.203 for instructions regarding use of the provision at 52.207–4, Economic Purchase Quantity—Supplies, and 7.204 for guidance on handling responses to that provision.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.203–6 is added to read as follows:

52.203–6 Restrictions on Subcontractor Sales to the Government.

As prescribed in 3.503–2, insert the following clause:

Restrictions on Contractor Sales to the Government (Jul 1985)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract.

(End of clause)

8. Section 52.207–4 is added to read as follows:

52.207–4 Economic Purchase Quantity—Supplies.

As prescribed in 7.203, insert the following provision:

Economic Purchase Quantity—Supplies (Jul 1985)

(a) Offerors are invited to state an opinion on whether the quantity(ies) of supplies on which bids, proposals or quotes are requested in this solicitation is (are) economically advantageous to the Government.

_____

_____

_____

(b) Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a

unit price must be quoted for applicable items. An economic purchase quantity is that quantity at which a significant price break occurs and beyond which no substantial decrease would result. If there are significant price breaks at different quantity points, this information is desired as well.

OFFEROR RECOMMENDATIONS

Item	Quantity	Price quotation	Total

(c) The information requested in this provision is being solicited to avoid acquisitions in disadvantageous quantities and to assist the Government in developing a data base for future acquisitions of these items. However, the Government reserves the right to amend or cancel the solicitation and resolicit with respect to any individual item in the event quotations received and the Government's requirements indicate that different quantities should be acquired.

(End of provision)

9. Section 52.209–1 is revised to read as follows:

52.209–1 Qualification Requirements.

As prescribed in 9.206–2(a), insert the following provision:

Qualification Requirements (Jul 1985)

(a) Definition: "Qualification requirement," as used in this provision, means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) This solicitation identifies those supplies or services to which a qualification requirement applies. The Contracting Officer will make awards for those supplies or services requiring qualification only if the offered product, manufacturer, or offeror has demonstrated that it meets the standards prescribed for qualification. The product, manufacturer, or offeror must be qualified by the time of award whether or not the name of the product, manufacturer, or offeror is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name) _____

(Address) _____

(c) If an offeror or its product has already met the qualification requirement, the applicable information noted below should be provided.

Offeror's Name _____

Manufacturer's Name _____

Item Name _____

Test Number _____

(to the extent known)

(d) If an offeror or its product has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror shall submit evidence of qualification with its offer in order to receive consideration. If this is a sealed bid acquisition and the product, manufacturer or offeror that is already qualified or is to be qualified before award is not identified, either above or elsewhere in the bid, the Contracting Officer will reject the bid. Unless determined to be in the Government's interests, this acquisition will not be delayed in order to provide an offeror with an opportunity to meet the standards specified for qualification.

(e) Any change in location or ownership of the plant where a previously qualified product was manufactured requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or offeror requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of provision)

10. Section 52.209–2 is revised to read as follows:

52.209–2 Qualification Requirements—Components of End Items.

As prescribed in 9.206–2(b), insert the following clause:

Qualification Requirements—Components of End Items (Jul 1985)

(a) Definition: "Qualification requirement," as used in this clause, means a requirement for testing or other quality assurance demonstration that must be completed before award of subcontracts or before beginning manufacture of certain components of end items covered by this contract.

(b) If any of the end items to be acquired by the Government will contain one or more components that are subject to a qualification requirement, the components or their manufacturers must demonstrate their abilities to meet the standards specified for qualification before the Contractor awards any subcontract for the components. If the Contractor plans to manufacture components, the Contractor shall have demonstrated its ability to meet the standards specified for qualification before beginning to manufacture the components. The components need not be qualified before the manufacture of the prototype, preproduction model, or first article, for qualification testing.

(c) Unless required for interchangeability or compatibility, the Contractor shall not cite brand names from any qualified products list or qualified manufacturers list in any subcontractor solicitation, but shall refer to the pertinent specification in order to obtain optimum competition.

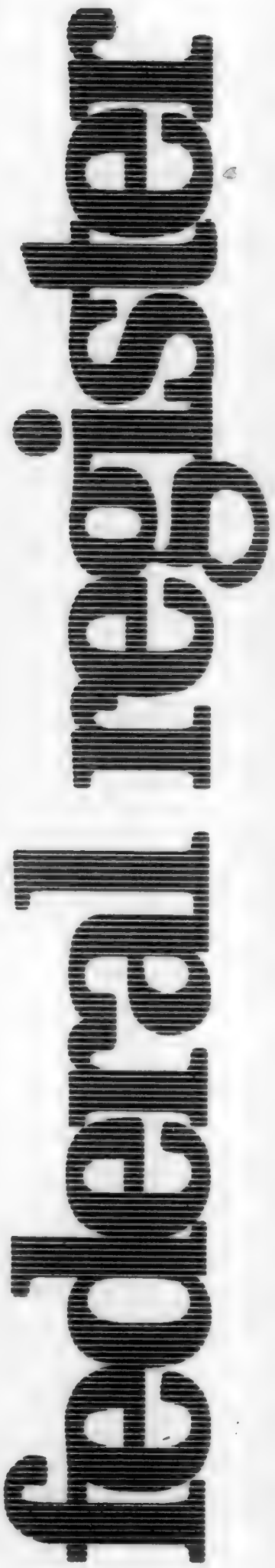
(d) Delay resulting from the Contractor's awaiting qualification approval by the Government of a component or its manufacturer shall not constitute excuseable delay when a previously qualified component could have been acquired in time to meet the end item delivery schedule.

(e) Any change in location or ownership of the plant where a previously qualified product was manufactured requires reevaluation of whether the standards specified for qualification are still met. The reevaluation must be completed before the award of any subcontract for the components or before beginning the manufacture of the components.

(End of clause)

[FR Doc. 85–20781 Filed 8–29–85; 8:45 am]

BILLING CODE 6820–61–M



Friday
August 30, 1985

Part VIII

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 327

Handicapped Special Studies Program; Final Regulations

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 327

Handicapped Special Studies Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations under Section 618 of Part B of the Education of the Handicapped Act, as amended by the Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199. This program provides support for data collection activities and studies, investigations, and evaluations to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act, and for the development, publication and dissemination of the annual report to the Congress required under Section 618 of the Act.

These final regulations include, among other things, information about the kinds of projects supported under this program, the application requirements, and the selection criteria for judging applications.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write to the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Sanchez, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511–M/S 2313), Washington, D.C. 20202; Telephone: (202) 732–1117.

SUPPLEMENTARY INFORMATION: The Handicapped Special Studies program is authorized by Section 618 of Part B of the Education of the Handicapped Act, as amended by the Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199 (20 U.S.C. 1418). Under this program, support is provided for the collection of data, as well as studies to evaluate State and local efforts to provide a free appropriate public education to handicapped children and youth. Section 618 of the Act requires that this information be included in the annual report submitted to the Congress by the Department. The activities conducted under this program are designed to provide Congress with information relevant to policymaking and to provide Federal, State and local educational agencies with information relevant to program management, administration, and the effectiveness of their special education programs. Under Section 618(c) of the Act, the Secretary is required, not later than July 1 of each year, to submit to the appropriate committees of each House of the Congress and to publish in the **Federal Register** proposed evaluation priorities for special studies to determine the impact of the Act for review and comment.

A notice of proposed rulemaking for this program was published on February 6, 1985 (50 FR 5080). Certain technical revisions have been made to the selection criteria in § 327.31. No substantive changes are intended, and no amendments to the applications are necessary. The comments received in response to this notice and the Secretary's responses are summarized below.

Comment. One commenter recommended that the regulations specify that the evaluation requirements under Section 618 of the Act also apply to the program operated by the Bureau of Indian Affairs (BIA) in the Department of Interior and its special education State plan. The commenter also recommended that the evaluations of special education programs under the jurisdiction of the States and BIA be conducted by third party evaluates who are not involved in the administration of these programs. The commenter suggested that Indian tribes be included as appropriate bodies to oversee the evaluations, or that the evaluations of the special education needs and services for those distinct minority populations be contracted for separately.

Response. No change has been made. The Bureau of Indian Affairs is treated as a State educational agency and, as such, is eligible to apply for awards under section 618 of the Act. Section 618(d)(2) of the Act requires that cooperative agreements entered into under section 618(d) be developed in consultation with the State Advisory Panel established under section 613(a)(12) of the Act, the local educational agencies, and others involved in or concerned with the education of handicapped children and youth. Indian tribes would appropriately be included among the groups consulted in developing an application by BIA for one of those awards. Under section 618(d)(1) of the Act, only State educational agencies are eligible to apply for an award for a cooperative agreement, but the recipient of an award is not precluded from contracting with third parties to conduct activities to carry out the project.

Comment. Several commenters asked that the regulations require the Secretary to notify unsuccessful applicants that they are not receiving awards, the reasons for the rejection, and the number of points earned.

Response. No change has been made. Section 75.218 of EDGAR now provides that the Secretary inform an applicant why the application was not selected in a competition. Applications received under competitions held under section 618 of the Act are covered by this requirement.

Comment. Several commenters recommended that the training and qualifications of the panel members that review and recommend the selection of the award recipients be specified, if it is not the Secretary alone who makes the selection.

Response. No change has been made. EDGAR (34 CFR 75.217) already specifies the procedures for using a group of experts to evaluate applications. These procedures apply to this program. Because of the wide variety of competitions held by the Department and the diverse areas which may be addressed within a single competition, the training and qualifications of the individuals assigned to evaluate applications are determined as priorities are established for funding.

Comment. Several commenters felt that § 327.40 is discriminatory because it identifies the State educational agency as the only potential grantee required to contribute an amount not less than 40 percent of the cost of the study, while § 327.2 indicates that eligible recipients of grants under this program include public or private agencies, institutions, organizations and other appropriate parties.

Response. A change has been made. The proposed regulations do not clearly identify the State Educational Agency/Federal Evaluation Studies projects as the activities funded under section 618(d) of the Act. Language has been added to § 327.40 to make this clear. State educational agencies are the only eligible applicants for awards under section 618(d) and by statute are required to contribute an amount not less than 40 percent of the cost of the study.

If a State educational agency were to apply for an award in competitions other than those under section 618(d) of the Act, the 40 percent contribution would not be a requirement.

Comment. Several commenters felt that the regulations should allow a State educational agency to contract with research and/or evaluation consultants

as necessary to conduct evaluation studies.

Response. No change has been made. The regulations do not prohibit a State educational agency from contracting with research and/or evaluation consultants for the purpose of assisting in conducting evaluation studies. When a State educational agency contracts with consultants for such a purpose, the EDGAR provisions at 34 CFR 75.708(b) and Part 74, Subpart P apply to the use and compensation of consultants.

Comment. Several commenters asked that there be a specific procedure for requesting additions or deletions to the grant or cooperative agreement, or a reference to other regulations. Several commenters also recommended that there be specific procedures for recipients to follow in the event of a potential or actual cost overrun.

Response. No change has been made. The EDGAR provisions at §§ 74.102 (*Prior approval procedures*), 74.103 (*Programmatic changes*), and 74.105 (*Budget revisions—nonconstruction projects*) establish the procedures to be followed for requesting changes to a grant or cooperative agreement. Section 327.3 of these regulations already specifies that the EDGAR regulations apply.

Comment. One commenter recommended that a change be made in § 327.40(a) to consider not only administrative funds under Part B of the Act as an allowable portion of the 40 percent State contribution for projects funded under Section 618(d), but also a State's allocation of the remainder of the Part B funds for direct and support services.

Response. No change has been made. The Secretary believes that evaluation of programs is an appropriate administrative activity that can be supported by that portion of a State's Part B funds that can be set aside for administrative uses. Section 300.621(a)(2) of the regulations for the Part B program specifically states that Federal funds for State administration may be used for "approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children."

A summary of these final regulations follows:

(a) Subpart A—General

Section 327.1 contains the purpose for the Handicapped Special Studies program.

Section 327.2 provides that public or private agencies, institutions, organizations, or other appropriate parties are eligible for an award under this program. The Act identifies State educational agencies as the only applicants eligible to apply to enter into a cooperative agreement with the Secretary to conduct an evaluation study under Section 618(d) of the Act.

Section 327.3 lists the regulations that apply to the Handicapped Special Studies program, including Parts 74, 75, 77, 78, and 79 of the Education Department General Administrative Regulations (EDGAR).

The Department has available the full range of funding options (grants, contracts, or cooperative agreements) for use under Section 618 in conducting projects. These final regulations apply to both grants and cooperative agreements. Contract awards are governed by 48 CFR (Federal Acquisition Regulations) and, therefore, are not addressed in these final regulations.

Section 327.4 provides definitions that apply to the program. It incorporates certain EDGAR definitions as well as the definition of "handicapped children" used in the Assistance to States for Education of Handicapped Children program (34 CFR Part 300). This definition is adopted to ensure consistency among programs under the Act.

(b) Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

Section 327.10 identifies the types of projects that the Secretary supports. This section identifies the activities authorized under Section 618 of the Act.

(c) Subpart C—[Reserved]

(d) Subpart D—How Does the Secretary Make an Award?

Section 327.30 describes the procedures used by the Secretary to select priorities for funding from among the types of projects authorized under Section 618 of the Act.

Section 327.31 contains the selection criteria the Secretary uses to evaluate applications for new awards. The Secretary uses weighted criteria that reflect the relative importance of the elements of an application in order to ensure that the most promising projects are selected.

(e) Subpart E—What Conditions Must Be Met by a Grantee?

Section 327.40(b) contains requirements that State educational agencies must meet if they enter into a cooperative agreement with the Secretary to conduct an evaluation study under Section 618(d) of the Act. These requirements include—(1) payment of not less than 40 per cent of the total cost of the study; and (2) consulting with the State advisory panel established under Part B of the Act, and others, including the local educational agencies, involved in the education of handicapped children and youth, in developing the study. *See* Section 618(d)(2) of the Act.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. The application procedures in the final regulations will not place undue burdens on small entities submitting applications under this program. The regulations do not impose other burdens that would have a significant economic impact on small entities participating in the program.

To the extent that the regulations affect States and State agencies, they will not have an impact on small entities. States and State agencies are not small entities under the Act.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and action for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 327

Education, Education of handicapped, Education—research, Grants program—education, Reporting and recordkeeping requirements, State educational agencies.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(20 U.S.C. 1418)

(Catalog of Federal Domestic Assistance No. 84.159; Handicapped Special Studies)

Dated: August 27, 1985.

William J. Bennett,

Secretary of Education.

The Secretary adds a new Part 327 to Title 34 of the Code of Federal Regulations to read as follows:

PART 327—HANDICAPPED SPECIAL STUDIES PROGRAM

Subpart A—General

Sec.

327.1 What is the Handicapped Special Studies Program?
327.2 Who is eligible to apply for an award under this program?
327.3 What regulations apply to this program?
327.4 What definitions apply to this program?
327.5–327.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

327.10 What kinds of projects are authorized under this part?
327.11–327.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

327.30 How does the Secretary establish priorities for an award?
327.31 What are the selection criteria for evaluating applications for awards?
327.32–327.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

327.40 What are the requirements for conducting projects?
327.41–327.49 [Reserved]

Authority: Sec. 618 of the Education of the Handicapped Act as amended by Pub. L. 98–199, 97 Stat. 1360–1363 (1983), (20 U.S.C. 1418), unless otherwise noted.

Subpart A—General

§ 327.1 What is the Handicapped Special Studies Program?

The purpose of this program is to support the collection of data, studies, investigations, and evaluations to assess the impact and effectiveness of programs and projects assisted under the Education of the Handicapped Act, and related activities to provide the Congress and others with this information.

(20 U.S.C. 1418)

§ 327.2 Who is eligible to apply for an award under this program?

(a) The Secretary may make awards under this program to public or private agencies, institutions, organizations, and other appropriate parties for support of the kinds of projects described in § 327.10(a)–(b), and (d)–(h).

(b) The Secretary may enter into cooperative agreements with State educational agencies to carry out the projects described in § 327.10(c).

(20 U.S.C. 1418)

§ 327.3 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under this program:

(a) The regulations in this Part 327.

(b) The Education Department General Administrative Regulations (EDGAR) in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1418)

§ 327.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Project
Secretary
State educational agency.

(20 U.S.C. 1418)

(b) *Definition in 34 CFR Part 300.* The following term used in this part is defined in 34 CFR 300.5: Handicapped children.

(20 U.S.C. 1401(a)(1))

§§ 327.5–327.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

§ 327.10 What kinds of projects are authorized under this part?

This program provides support for activities that include projects to—

(a) Collect data, and conduct studies, investigations, and evaluations, to assess progress in the implementation of the Act, the impact of the Act, and the effectiveness of State and local efforts to provide free appropriate public education to all handicapped children and youth;

(b) Obtain data, on at least an annual basis, about programs and projects assisted under the Act and under other Federal laws relating to the education of handicapped children and youth, as required under Section 618(b) of the Act;

(c) Assess the impact and effectiveness of programs assisted under the Act, in accordance with Sections 618(d) (1) and (2) of the Act, through cooperative agreements with State educational agencies;

(d) Provide technical assistance to participating State educational agencies in the implementation of the evaluation studies described under paragraph (c) of this section;

(e) Disseminate information from the studies assisted under paragraph (c) of this section to State educational agencies, and, as appropriate, others involved in or concerned with the education of handicapped children and youth;

(f) Conduct evaluation studies to determine the impact of the Act;

(g) Conduct evaluation studies, including—

(1) A longitudinal study of a sample of handicapped studies, encompassing the full range of handicapping conditions, to examine their educational progress while in special education and their status (including their occupational, educational, and independent living status) after leaving secondary school; or

(2) Obtaining and compiling current information from State and local educational agencies and other service providers regarding State and local expenditures for educational services for handicapped children in order to calculate per pupil expenditures by handicapping condition; or

(h) Assist in the development, publication, and dissemination of the annual report to the Congress required under section 618(f) of the Act.

(20 U.S.C. 1418)

§§ 327.11-327.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 327.30 How does the Secretary establish priorities for an award?

Section 618(c) of the Education of the Handicapped Act requires that not later than July 1 of each year, the Secretary submit to the appropriate committee of each House of the Congress and publish in the **Federal Register** proposed evaluation priorities for the program under this part for review and comment.

(20 U.S.C. 1418)

§ 327.31 What are the selection criteria for evaluating applications for awards?

The Secretary uses the criteria in this section to evaluate applications for awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation* (10 points).

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(iii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons, and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, Such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons, and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points).

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the ppoject.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points).

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points).

(1) The Secretary reviews each application to determine if the proposed project addresses State and national concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the issues to be addressed for both State and national audiences;

(ii) The importance of the proposed project in determining the impact and effectiveness of programs assisted under the Act;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research and evaluation findings related to the issues.

(g) *Usefulness.* (10 points).

The Secretary reviews each application to determine the usefulness of the proposed project findings in improving services to handicapped children and youth including—

(1) The contribution that the project findings or products will make to current knowledge or practice;

(2) The extent to which findings and reports will be useful in improving services for handicapped children and youth; and

(3) The extent to which findings and reports will be useful to both State and national audiences in understanding the impact and effectiveness of programs assisted under the Education of the Handicapped Act.

(h) *Technical soundness.* (40 points).

The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including, where appropriate—

(1) The design;

(2) The proposed sample;

(3) Instrumentation;

(4) Data analysis procedures; and

(5) Procedures for the development of the project report.

(20 U.S.C. 1418)

§§ 327.32-327.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 327.40 What are the requirements for conducting projects?

Each State educational agency receiving an award for a State Educational Agency/Federal Evaluation Studies project under § 327.10(c) shall—

(a) Contribute an amount not less than 40 percent of the total cost of the study, which amount may be paid from a State's allocation of funds for State administration of Part B of the Act; and

(b) Develop the study in consultation with the State advisory panel established under the Act, the local educational agencies, and others involved in or concerned with the education of handicapped children and youth.

(20 U.S.C. 1418 (c), (d)(2))

§§ 327.41-327.49 [Reserved]

[FR Doc. 85-20789 Filed 8-29-85; 8:45 am]

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Friday
August 30, 1985

Part IX

Office of Personnel Management

5 CFR Part 293 et al.

Reduction in Force; Performance Management and Recognition System; Pay Administration Under the Fair Labor Standards Act, and Personnel Folder; Final Rules and Proposed Rules

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300, 335, 351, 430, 431, 451, 531, 532, 540, 551, and 771

Reduction in Force; Performance Management System; Pay Administration Under the Fair Labor Standards Act

Cross Reference and Confirmation of Effective Date

Regulations originally published as final rules on October 25, 1983 (48 FR 49462–49498), concerning reduction-in-force (RIF), performance management, and the application of the Fair Labor Standards Act (FLSA) to the Federal workforce became effective on July 3, 1985, when the Chief Justice of the United States Supreme Court, acting as Circuit Justice, vacated an order of the United States Court of Appeals for the District of Columbia Circuit staying the effectiveness of the rules. This document confirms the effective date of these rules and refers the reader to proposed rules published also in this issue by the Office of Personnel Management.

Three of the four proposed rule documents are the final rules published on October 25, 1983, here republished, with some modifications, in notices of proposed rulemaking that afford interested parties the opportunity to consider and comment on the final rules, including on the substantive revisions to those rules that are contained in this issue. The three proposed rules contain more detailed background information concerning the publication history of these regulations.

The specific units of the Code of Federal Regulations amended by the October 25, 1983, documents which became effective July 3, 1985, and which remain effective, except where superseded by interim or final rules published subsequent to October 25, 1983, are:

Section 300.602
Section 335.104
Part 351
Part 430
Part 431
Part 451
Part 531
Part 532, Subpart H
Part 540
Section 551.102(h)
Sections 551.201–551.209
Section 771.206(c)(3)

Constance Horner,

Director.

August 27, 1985

[FR Doc. 85–20828 Filed 8–27–85; 4:35 pm]

BILLING CODE 6325–01–M

5 CFR Parts 293, 430, 530, 531, 536, 540, and 771

Performance Management and Recognition System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations implementing the Performance Management and Recognition System (PMRS) to reflect comments on interim regulations published March 25, 1985. The PMRS, mandated by Title II of the Civil Service Retirement Spouse Equity Act of 1984, replaced the Merit Pay System for Federal supervisors and managers. The new System bases supervisors' and managers' pay and awards on their performance, and provides for a more extensive performance award system than in the past.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Pokoyk, (202) 632–5653.

SUPPLEMENTARY INFORMATION: On March 25, 1985, at 50 FR 11788, OPM published interim regulations to implement title II of the Civil Service Retirement Spouse Equity Act of 1984, Pub.L. 98–615, with a 60-day comment period. Title II established the Performance Management and Recognition System, replacing the Merit Pay System for Federal Government supervisors and management officials in grades GS–13 through GS–15.

During the comment period, which ended May 24, 1985, OPM received comments from 32 Federal agency headquarters, one member of Congress, two associations, and eight individuals. The revised regulations reflect these comments, as well as technical changes that arose in considering the comments.

Following is an outline of the changes to the regulations, including a summary of comments, and discussion of OPM rationale for the changes being made.

1. Issue: Filing and Transfer of Performance Records

Summary of Comments: Of 32 agencies commenting on the PMRS regulations, 19 agencies commented on the performance records provisions. Most commenters object to maintaining performance records in both the Official Personnel Folder (OPF) and the Employee Performance File (EPF). Seven agencies prefer maintaining performance records in the EPF until the employee transfers, and then placing performance records in the OPF to be transferred to the gaining agency. Two agencies prefer to maintain records in the OPF only, and five agencies recommend abolishing the EPF system if records must be filed in the OPF. Three agencies recommend that OPM allow agencies the option to file either in the OPF or the EPF.

Five agencies object to filing more than one rating, and two agencies object to filing performance plans on which ratings are based.

Seven agencies recommend that procedures for filing and transferring performance records be the same for all employees, rather than have a separate procedure for PMRS employees.

Discussion. Most of the difficulties with this provision can be resolved by allowing agencies the option of filing performance records in either the OPF or the EPF, as long as, at the time the employee transfers, the performance ratings are placed in the OPF and forwarded to the gaining agency. Performance records filing regulations currently require that 3 years' ratings and performance plans be maintained in the EPF, but some losing agencies' workloads can be lessened by transferring only the most recent performance plan to the gaining agency.

Finally, with regard to requests that OPM require the same filing procedures for all employees' performance records, OPM did, in fact, publish proposed regulations on October 25, 1983, which would require similar procedures for non-PMRS employees. However, the Congressional prohibition on expenditure of funds on work related to those proposed regulations prevented us from finalizing them to coincide with the final regulations for the PMRS. OPM plans to issue regulations covering non-PMRS employees in this area in the near future.

Change: Agencies are allowed the option to file performance records for PMRS employees in either the OPF or the EPF, as long as they forward the records in the OPF when the employee transfers. Losing agencies are required to forward three ratings of record and the most current performance plan when the employee transfers to another agency.

2. Issue: Definition of "Rating" (§ 430.404)

Summary of co.nments: Eight agencies and one individual commented on the definition of "rating" in Part 430. Five of the agencies recommend deleting the second definition. One agency recommends that the second definition

refer to formal notice of unacceptable performance. Two agencies asked questions about the status of and procedures for the second rating.

Discussion: 5 U.S.C. 4302a (b)(6) requires that an employee be provided a written notice at any time his/her performance is unacceptable on one or more critical elements.

Change: Based on the comments, the second definition of rating has been revised and added to the definition of "rating of record." In response to these comments, as well as to comments on the definition of "rating" found in Part 540, a nomenclature change has been made: "rating" is now titled "summary rating."

3. Issue: Definition of "Performance Standard" (§ 430.404)

Summary of Comments: One agency suggests expanding the definition of "performance standards" to include the requirement that organizational goals be reflected in performance standards.

Another agency recommends clarifying the term "manner of performance" in the definition of "performance standards," to avoid the appearance of appraisal of personal traits.

Discussion: Since the provision in § 430.405 is being changed to encourage, rather than require, including accomplishment of organizational goals in individual performance plans (see discussion below in Issue 7), it is unnecessary to reflect that provision in the definition.

Assessing the manner of PMRS employees' performance is essential and is included in the Management Activities Standard that has been provided to all agencies. Also, further guidance on how to account for manner of performance will be forthcoming.

Change: No change.

4. Issue: Definition of "Appraisal" (§ 430.404)

Summary of Comments: Two agencies suggest revising the definition of "appraisal" to eliminate reference to progress reviews because appraisal is defined as a process.

Discussion: Since performance appraisal is a process done throughout the year, progress reviews should not be included in the definition.

Changes: The second sentence in the definition of "Appraisal" is deleted. Further, a new definition of "progress review" is added, providing that it is a review of the employee's progress toward achieving performance standards and not a rating in itself.

5. Issue: Definition of "Non-critical Elements" (§ 430.404)

Summary of Comments: Two agencies request further clarification that non-critical elements are optional.

Discussion: Because it is important that the use of non-critical elements is not required, adding that information to the definition would clarify the issue.

Change: The definition is revised to reflect that non-critical elements are optional and may be used at agency discretion.

6. Issue: Request for Additional Definition (§ 430.404)

Summary of Comments: One agency recommends adding a definition for "Fully Successful."

Discussion: Since the determination of "Fully Successful" performance must be at the agency's discretion, OPM does not think it would be appropriate for OPM to place a definition of "Fully Successful" in regulation.

Change: No change.

7. Issue: Inclusion of the Accomplishment of Organizational Goals in Performance Plans (§ 430.405(d)(2))

Summary of Comments: Seven agencies objected to including accomplishment of organizational goals in individual performance plans. Four agencies prefer the flexibility in the statute to include accomplishment of organizational accomplishment or not. Two agencies feel that these are inappropriate performance elements. Three agencies think this provision appears to conflict with the legal prohibition on OPM prescription of a specific performance element.

Discussion: 5 U.S.C. 4302a does allow the agency the option of including accomplishment of organizational objectives in individual performance plans. It is important to consider these accomplishments whenever possible in evaluating PMRS employees, because that makes performance a functioning part of existing basic management and supervisory responsibilities and is the key to successful management. It is important to note that requiring the inclusion of this type of element is not a violation of the statutory prohibition on OPM prescription of a specific performance element.

Change: The regulatory provision now strongly encourages, rather than requires, including accomplishment of organizational goals in individual performance plans.

8. Issue: Performance-Based Actions if Employee Doesn't Reach "Fully Successful" After an Opportunity To Improve Performance (§ 430.405(j)(3))

Summary of Comments: Eighteen agencies objected to the provisions requiring performance-based actions if an unacceptable employee does not reach "Fully Successful" after an opportunity to improve. Nine agencies believe that the law won't allow "432" actions against employees who have raised their performance to level 2 (minimally successful). Three other agencies believe agencies should have the discretion to take performance-based actions on those employees. Five agencies object to having no provisions to take actions on employees rated at level 2 for long periods of time. Three agencies comment that this provision is inconsistent with, or makes unnecessary, the Performance Improvement Plan (PIP) provisions.

Discussion: After careful consideration, OPM believes that the language and the intent of the statute mandate performance-based actions if employees do not improve their performance to the "Fully Successful" level after an opportunity to improve. (See also the discussion of the PIP provisions below in Issue 12). Further guidance will be forthcoming via the FPM System.

Provision is modified to provide that employees whose performance have not improved to "Fully Successful", if not reassigned, undergo a second opportunity period to demonstrate "Fully Successful" performance.

9. Issue: Rating When the Employee Changes Positions (§ 430.406(a))

Summary of Comments: Eight agencies commented on the requirement to rate an employee when he/she changes positions, and to take that rating into consideration in the employee's next rating of record. Three agencies question the requirement to incorporate this rating into the next rating of record. Two of them think the rating official should have the discretion for weighing this rating. Two agencies think this rating should become the rating of record. Two agencies question whether this rating can be included in the next rating of record if the employee transfers to a new agency. One agency recommends requiring such a rating when either the employee or the rating official changes positions within 90 days of the appraisal date.

Discussion: OPM continues to believe that, when an employee changes positions and has been in the position

for the minimum appraisal period, a summary rating must be prepared. Agency performance management plans must indicate procedures for including this rating in the employee's next rating of record, including the ratings for employees recently transferred from other agencies. At agency option, ratings can be prepared when rating officials transfer, but OPM would not require this for all agencies.

Change: The provision is slightly modified to indicate that performance management plans will describe how ratings will be derived when employees change positions during the appraisal period.

10. Issue: Minimum Appraisal Period (§ 430.406(b))

Summary of Comments: Six agencies commented on the requirement that the minimum appraisal period consist of 90 days. Four agencies believe agencies should have the option of a longer (120-day) minimum appraisal period. One agency requests clarification if it may be longer than 90 days. One agency thinks the minimum should be shorter.

Discussion: Some agencies currently have a minimum appraisal period of 120 days and would prefer to keep their current appraisal system intact. It would lessen the administrative workload on these agencies to retain their current minimum appraisal period.

Change: The minimum appraisal period, set by the agency, must be at least 90 days but not more than 120 days.

11. Issue: Appraisal on Details (§ 430.406(d))

Summary of Comments: Twelve agencies commented on the requirement for appraising employee performance on details. Three agencies object to the provisions as impractical and of no benefit. One agency thinks the provision should be left as an agency option. The remaining nine commenters offer the following technical suggestions:

—Make the 120-day requirement the same whether the detail is inside or outside the agency;
—Make the requirement "more than 120 days";
—Clarify whether the ratings are subject to reconsideration;
—Require this only if elements are similar/identical, if using employing agency's system;
—Make the borrowing agency responsible for the rating;
—Clarify coverage on IPA assignments and if non-Federal supervisor can rate a Federal employee; and
—Clarify that employees can't be removed for poor performance of "critical" elements on a detail.

Discussion: A detail within or out of an agency often involves an important project or assignment undertaken by the employee or the agency. For that reason it is required that a performance plan and summary rating be prepared to be used by the employing agency in deriving the rating of record. The amount of time spent by an employee on detail should not be lost as input into the rating of record; particularly on longer details.

Change: No change.

12. Issue: Performance Improvement Plan (PIP) (§ 430.406(f))

Summary of comments: Seventeen agencies commented on the PIP provisions. Six agencies think the PIP is burdensome and confusing, and feel supervisors will avoid dealing with poor performers rather than use the PIP. Two agencies think the PIP is not in the spirit of the Civil Service Reform Act of 1978, which provided for easing removal procedures. Four agencies feel that the PIP is duplicative of the opportunity period under Part 432; and three agencies think the PIP should be deleted, while another agency thinks it should be optional. Six other agencies requested clarification of the applicability of the PIP requirements.

Discussion: The objective of the PIP is met by the addition, at § 430.405(j)(2), of the requirement that employees be informed of the performance standard necessary for retention when an "Unacceptable" rating is communicated.

Change: The PIP is removed from the regulations.

13. Issue: Higher Level Review of Performance Plans and Ratings, and Higher Level Reconsideration (§§ 430.405(g), and 430.407 (c) and (e))

Summary of Comments: Seven agencies object to the prohibition on communicating an employee's rating before it is reviewed and approved at higher level(s). Reasons include: poor employee relations, adversarial situations, and increased requests for reconsideration. Six agencies expressed concern with the escalation of levels of review and approval. Some concerns were that the highest level agency officials currently rate or review ratings, and geographic separation of reviewing/approving/reconsideration officials. Three agencies think that these provisions erode the authority of the supervisor.

Discussion: It is a good management practice to review and approve (and change, if necessary) performance ratings, before communicating them to employees. Higher level involvement, from the initial review of elements and standards through all stages of the appraisal process, will strengthen the effectiveness of performance appraisal as a management tool by improving consistency and objectivity.

In some agencies there is some confusion that the reconsideration procedure was intended to replace or exclude communication between employees and individuals involved in the review and approval process. This is not the case.

Changes: The provision on higher level review of ratings is clarified so that it does not preclude communication about performance between a supervisor and an employee prior to the determination of the rating of record. Approval of performance plans and ratings of record remain the responsibility of higher level management.

The provision on reconsideration is clarified so that the reconsideration process does not preclude the involvement of officials at intermediate levels in the process.

14. Issue: Inability To Rate (§ 430.407(f))

Summary of Comments: Eight agencies commented on the provisions in Part 430 for employees who cannot be rated. Four agencies oppose giving these employees a rating just before a reduction in force (RIF), because they feel the ratings may be inflated. Two other agencies question what procedure should be followed if the employee hasn't served a minimum appraisal period before the RIF. Two agencies find the provisions confusing or inconsistent with the provisions in Part 540. Also, three agencies object to the term "unrateables", because they think it has a negative connotation.

Discussion: There are very few instances in which an employee cannot be rated. These include: (1) An employee was not in the position for the minimum appraisal period, and (2) the employees was in an opportunity period under Part 432. In other instances in which the appraisal period ends and the employee has not been in the position for the minimum appraisal period, the agency can extend the appraisal period for the amount of time necessary to achieve the minimum appraisal period at which time a rating of record shall be prepared.

Change: The provision is revised to provide that the appraisal period be extended for the amount of time necessary to meet the minimum

appraisal period when an agency cannot prepare a rating of record at the time specified in the agency performance management plan. The use of performance ratings (or their absence) is now covered in Part 351.

15. Issue: Transfer of Rating To Be Used in the Employee's Next Rating of Record (§ 430.407(g))

Summary of Comments: Nine agencies objected to the requirement for using a transferred rating to derive the employee's next rating of record. Three agencies believe that the rating prepared at the time the employee changes positions should be incorporated into the new rating of record. Two agencies object to using a previous year's rating of record to derive the current rating of record. Three agencies object to using a different agency's ratings, and another agency suggests using only ratings with elements identical/similar to those of the current position. One agency prefers the option to presume level 3.

Discussion: OPM agrees that an employee's most recent performance should be rewarded whenever possible. The summary rating prepared when the employee changes positions can be transferred to the gaining agency to be incorporated into the new rating of record.

Change: The provision for transferring a rating, to be used in the employee's next rating of record, is clarified to allow the current year's summary rating (prepared when the employee changes positions) to be transferred and used in deriving the new rating of record.

16. Issue: Size of the Performance Standards Review Board (PSRB) § 430.408)

Summary of Comments: Five agencies recommend that the PSRB consist of six or more members, as allowed by law.

Discussion: The law (5 U.S.C. 4302a(d)(1)) allows flexibility in determining the maximum number of members of a PSRB. Some agencies would prefer this flexibility to have board(s) with more than six members.

Change: The regulation now allows for six or more members on an agency's PSRB(s).

17. Issue: Discontinuing Special Rates (§ 530.306)

No comments.

Discussion: The interim regulations provided that when a special rate is discontinued for a PMRS employee, that employee retains his/her existing rate or, if the rate is less than the minimum of the regular rate range, the salary is raised to the minimum of the regular rate range. OPM has determined that, because there is no statutory authority to raise the rate to the minimum of the regular rate range, the salary of an employee whose rate is below the minimum of the regular rate range must retain his/her existing rate, in accordance with 5 U.S.C. 5405(a)(2).

Change: Paragraph 530.306(d)(4) is changed to reflect that the salary of an employee whose rate is below the minimum of the regular rate range must retain his/her existing rate, in accordance with 5 U.S.C. 5405(a)(2).

18. Issue: Exception to Rules of Setting Pay When Acquiring or Losing PMRS Status (§ 531.204(e))

Comments: No comments.

Discussion: Paragraphs 531.204 (c) and (b) provide, in effect, that an employee who acquires or loses PMRS status retains his or her existing rate of basic pay plus other possible adjustments. However, an employee against whom disciplinary action is taken should not be guaranteed his/her existing rate, but rather, the agency should be able to reduce the salary to no less than the minimum rate of the grade of the employee's new position. Similarly, an employee who is returned to a lower grade after a temporary promotion should not be entitled to keep the higher salary earned in the temporary position, but rather, should have his/her salary set based on what he/she would have earned had the temporary promotion not occurred.

Change: To correct these inequities, paragraph (e) has been added to § 531.204 to exclude such employees from the provisions of § 531.204 (c) and (d).

19. Issue: Equivalent Increase (§ 531.407(d))

Summary of Comments: Four agencies commented on the "equivalent increase" provisions for employees moved from PMRS to the General Schedule (GS). Three agencies think that a determination to give no merit increase should be considered an "equivalent increase."

Discussion: This requirement (based on statute) was intended to include no merit increase as an equivalent increase, because it would be inequitable to give a poor performer a pay increase advantage over higher level performers upon movement from the PMRS to the GS. Without this provision, upon movement to the GS, an employee rated at level 2 (Minimally Successful) or less would be eligible for a *full* within-grade increase; whereas an employee rated at level 3 (Fully Successful) or level 4 (Exceeds Fully Successful) in the upper two-thirds of the pay range who receives one-third or one-half of a merit increase respectively would not be eligible for any within-grade increase upon movement to the GS. Therefore, the less-than-Fully Successful employee would not only get back what he/she did not earn because of poor performance, but would get more than those employees performing at a Fully Successful level or even higher.

Change: Section 531.407(d) is clarified to provide that all or a portion of, or a zero merit increase made under PMRS is an equivalent increase.

20. Issue: Definition of "Rating" (§ 540.102)

Summary of Comments: Two agencies commented on the definition of "rating." One thinks that "rating" should be defined the same in both Parts 430 and 540. The other agency asked for clarification of "summary rating."

Discussion: See discussion of the definition of "rating" under Part 430.

Change: The term "rating" is changed to "summary rating" to make a clear distinction between an offical rating of record and summary ratings given at other times or for other purposes. This new term is defined in Part 430 and the same definition is incorporated in Part 540.

21. Issue: Definition of "Reference Amount" (§ 540.102)

Summary of Comments: One agency commented that the definition was differently worded than the statute.

Discussion: The definition of "reference amount" in the interim regulations did not technically and accurately reflect the statutory language, particularly in reference to certain special rates that may be established under 5 U.S.C. 5303.

Change: This definition is revised to include the statutory language, which will encompass all possible situations, but the definition retains the more easily understood explanation that the reference amount equals the fourth step of the General Schedule.

22. Issue: Definition of "Performance Pay Decisions" and Higher Level Review of Performance Pay Decisions (§ § 540.102 and 540.105(b))

Summary of Comments: Ten agencies commented on the definition of "performance pay decisions" and higher level review of performance pay decisions. Five agencies find the term "performance pay decisions" inconsistent, because they view the general and merit increases as automatic, based on the rating. They think, therefore, that only award

decisions need to be reviewed at a higher level. One agency says that performance ratings need to be managed, rather than base pay increases. Six agencies prefer that performance pay decisions be made at a lower level. One feels this erodes supervisors' authority, and another anticipates difficulties because of the agency size and geographic sparation of reviewers from employees. One agency requests clarification of the role of the approving official. The agency also suggests rewording the reason for higher level review to indicate that it is to insure fair, accurate appraisal.

Discussion: The definition of "performance pay decisions" articulates the philosophy that pay for performance can only be achieved through an integrated approach of managing both the appraisal process and the pay process. The results of the appraisal process clearly have an impact on all components of the performance pay decision (i.e., general increases, merit increases, and performance awards). Similarly, amounts spent for general and, most particularly, merit increases have an incremental impact on determining performance awards budgets based on aggregate salaries (i.e., the greater the general and merit increase amounts, the greater the aggregate salaries and, therefore, the performance award fund).

A critical aspect to achieving a viable performance management system is to require that the same managers at various levels in the organization provide review and approval of both the performance rating and all pay decisions. In this regard, if pay for performance is to be managed, the individual(s) responsible for the awards budget must be directly involved in all performance management decisions if the distribution of rewards is to be equitable across the organization. Review and approval only at lower levels could result in inaccurate appraisals and disproportionate pay and award amounts in some units within the organization, and an inability of the agency to maintain expenditures within statutory limitations. The requirement that agencies manage the appraisal process for difficulty and strictness of application to obtain equitable and appropriately sized pay amounts for each employee emphasizes the linkage of all aspects of performance management.

Clarification of the role of the approving official in the higher level review process will be handled in Federal Personnel Manual or other guidance rather than regulation.

Changes: No change.

23. Issue: Calculation of General Increase for Employees Whose Rate of Basic Pay is Below the Minimum of the Rate Range and Receives a Level 3 Rating (§ 540.106)

Comments: No comments.

Discussion: Section 540.106(c)(4)(i) specifies to calculate the general increase for an employee who receives a level 2 performance rating, including employees who have already fallen below the minimum of the rate range because of poor performance. However, the interim regulations do not specify how to calculate the general increase for an employee who has fallen below the minimum of the rate range because of poor performance, and subsequently receives a level 3 or above performance rating.

Changes: A new paragraph in § 540.106(c)(4)(ii) is added, which provides that an employee in this situation will have his/her base pay multiplied by the full amount of the general increase.

24. Issue: Eligibility Dates for Determining Merit Increases and Performance Awards (§§ 540.107 and 540.109)

Comments: No comments.

Discussion: Based on additional review of the interim regulations and informal comments received from agency personnel, OPM determined a need to clarify in the regulations when an employee is eligible for a merit increase or performance award. A great number of employees change positions throughout the year, moving within the PMRS and into and out of the PMRS, creating agency questions about what date an employee must be in a PMRS position to be eligible to receive a merit increase or performance award.

Changes: In §§ 540.107 and 540.109 of these regulations, we have specified eligibility dates. An employee is eligible for a merit increase if he/she is in the PMRS position on the effective date of the merit increase. An employee is eligible for a performance award if he/she is in the PMRS position on the last day of the agency's performance appraisal period for which awards are being paid.

25. Issue: Three-Step Process for Determining Merit Increases for Unrateable Employees (§ 540.108)

Summary of Comments: Thirteen agencies disagreed with the three-step process for determining merit increases for employees who cannot be rated. Ten agencies prefer treating these employees as if their performance rating were level 3 ("Fully Successful"), rather than attempting to determine current performance.

One agency suggests allowing agencies to use the first step (extend the rating period not to exceed September 30) for all pay purposes to assure that current performance is rated whenever possible and that all parts of the performance pay decision are based on the same current rating.

When required to use step 2 of the process, two agencies object to paying GM increases based on an extended rating of record for GS performance. Two agencies prefer, in this situation, to use the rating prepared when the employee changed positions during the performance appraisal year, to link pay decisions to current year's performance rather than a previous rating of record. One agency prefers to eliminate the second step.

Two agencies recommend extending the applicability of the three-step process to make pay determinations for employees under Intergovernmental Personnel Act (IPA) assignments. One agency recommends applying the three-step process to make pay determinations for employees after temporary promotions, and after return to the General Schedule following an unsuccessful probationary period as a supervisor or manager.

Discussion: The basic premise of the law is that *current* performance is to be accurately and fairly appraised, and that pay will be given annually in relation to current performance. The regulations are designed to assure that, whenever possible, performance during the current appraisal period is rated and that this current rating drives performance pay decisions for that year. When a current rating of performance legitimately cannot be provided, a performance pay decision is still required by statute, and the regulations attempt to ensure that the employee is not harmed by management's inability to carry out its responsibility.

If a current rating cannot be provided, OPM believes the most recent rating of record is the next best indication of the employee's performance. In this way, a high level performer who cannot be rated because he/she was assigned to a variety of important, but short-term, projects would not be penalized by management's decision to place him/her in such assignments. Only as a last resort, when a recent rating is not available, should the employee be treated as if he/she was "Fully Successful."

Additionally, OPM feels it is necessary to clarify the provision that allows agencies to extend the rating

period by indicating that agencies may, but are not required to extend the rating period to no later than September 30; and that the rating given at the end of the extended rating period will be considered a rating for the current appraisal period.

OPM agrees with those agencies that expressed concern over using an extended rating of record from a General Schedule position to make a PMRS pay determination. They believe that the PMRS was intended to reward supervisory and managerial responsibilities, which are not reflected in non-PMRS jobs. In line with the premise that, whenever possible, *current* performance should be appraised and paid for, OPM agrees with the suggestion that when an employee transfers and cannot be rated in the new position, the summary rating prepared when an employee changes position during the appraisal year (§ 430.406(a)) should be used to determine performance pay decisions.

In view of the above issues and the complexity of the performance pay decision rules, OPM has added a statement of the clear intention of the law that all parts of the performance pay decision are being paid for performance achieved in the current appraisal period and, therefore, the same current rating of record must be the basis for all parts of the performance pay decision.

OPM agrees with the suggestion to extend the applicability of the three-step process to employees under IPA assignments. However, the three-step process cannot be applied, as suggested by one agency, to employees returning to the General Schedule after temporary promotions or following an unsuccessful probationary period as a supervisor or manager, because the determination of these employees' pay is based on other statute and regulations.

Changes:

(1) The three-step process for determining merit increases for employees who cannot be rated is retained in 540.108(a)(2), with the modification that only PMRS ratings can be used as extended ratings of record in the second step.

(2) The provision is added in § 540.104(b)(2) clarifying agencies' flexibility to extend the rating period no later than September 30, to provide for current ratings of record for purposes of making performance pay decisions.

(3) A provision is added in § 540.105(a)(4) requiring that a transferred summary rating be used as a rating of record for pay purposes when the gaining agency or organization cannot give the employee a new rating of record.

(4) A provision is added to § 540.104(a)(2) clarifying that all parts of the performance pay decision must be based on the same rating of record.

(5) Application of the three-step process is extended to cover pay determinations for employees on IPA assignments, as provided in §§ 540.108(a)(1)(iii) and 540.108(c)(1)(ii).

26. Issue: Determining Eligibility for Merit Increases and Performance Awards for Employees on Leave Without Pay (LWOP) (§§ 540.108 and 540.109)

Comments: No comments.

Discussion: The interim regulations contained no provision for determining eligibility for merit increases or performance awards for employees on extended LWOP who return to their agencies between less than the minimum appraisal period or after the end of the agency's appraisal period and the effective date of the merit increase. It would be inequitable to grant rewards to employees in this situation when they have not performed during the current appraisal period.

Change: Sections 540.108(d)(1) and 540.109(i) provide that these employees are not eligible for merit increases and performance awards.

27. Issue: Determining Eligibility for Performance Awards for Newly Appointed Employees (§ 540.109)

Comments: No comments.

Discussion: The interim regulations provided for determining the eligibility for *merit increases* for employees newly appointed to the Government. However, the interim regulations did not provide for determining eligibility for *performance awards* for newly appointed employees.

Change: A requirement is established in the performance awards section of the final regulations (§ 54..109) identical to the requirement specified for merit increases.

28. Issue: Date Used To Calculate Performance Award (§ 540.109)

Comments: No comments.

Discussion: The interim regulations provide a specific date for calculating the general increases and merit increases, but do not provide a date on which to calculate the individuals' performance awards for agencies determining the amount of awards using a percentage of base pay. Many agencies have inquired informally whether OPM would establish a specific date or leave it up to agency discretion.

OPM has decided to establish a specific date. Otherwise, agencies could pay performance awards on various dates based on different amounts of base pay. This could result in, for example, two employees in the same organization with identical ratings and initial salaries, receiving different award amounts only because one of the employees received a pay increase such as a promotion or because one employee received an award before the general increase and the other employee after. This would create an inequity in the system and is inconsistent with PMRS pay-for-performance philosophy.

Change: Section 540.109(e) requires that, for agencies using a percentage of base pay to determine awards, the rate of basic pay on the last day of the agency's performance appraisal period must be used to calculate the amount of the award. This date directly links the employee's award to the period of time in which the work was performed.

29. Issue: Awards for Employees Rated at Level 4 and Level 3 (§ 540.109(d))

Summary of Comments: Nine agencies commented on the provisions for paying performance awards to employees rated at level 4 and level 3. Three agencies disagree with the requirement to pay higher awards to employees with higher ratings. One Member of Congress disagrees with this provision as well. Two agencies request the flexibility to determine these differences in terms of percentages of pay, rather than dollar amounts. One agency suggests that no level 3 performers should receive performance awards unless all level 4 performers have received them.

Discussion: A basic tenet of the pay-for-performance system is that an employee who performs at a higher level than another employee in a similar position should receive a greater reward for his/her accomplishments. Based on this principle, OPM believes it is appropriate to require that higher awards be paid to employees with higher ratings.

The regulations are designed to provide management flexibility in awards determinations, while at the same time supporting the pay-for-performance principle. For this reason, it would not be appropriate to require that no level 3 performers should receive a performance award until all level 4 performers have received them. The regulations, as currently written, already permit agencies to determine whether they want to base their performance awards on a percentage of an employee's base salary or on a specific dollar amount.

Change: No change.

30. Issue: Performance Award Funding (§§ 540.109 and 540.112)

Summary of Comments: Nine agencies commented on the performance awards funding provisions. Five agencies commented on the requirement to estimate the performance awards budget at the beginning of the fiscal year. Several requested a specific date to determine the amount available. Two agencies questioned why performance rating distributions should be considered in estimating the awards budget. An agency requested clarification on whether the awards budget estimate to be sent to OPM is a report or a request for OPM approval.

One agency suggests allowing performance awards lower than 2 percent for "Outstanding" employees if paying 2 percent to all "Outstanding" employees would exceed the 1.5 percent-of-payroll limit on the awards fund. One small agency objected to the requirement that small agencies annually request OPM approval to establish a higher level of funding for performance awards.

Discussion: The law is very clear in its requirement that agencies determine the award funds at the beginning of the fiscal year, based on an estimate of PMRS salaries for the *entire* fiscal year. The regulations restate the requirement of the law. FPM guidance will be provided as needed to clarify the procedure. No specific date for determining the amount available for awards is necessary as the statute specifically requires that salaries for the *entire* fiscal year be used to determine funds available.

OPM thinks it would be helpful to clarify that the submission of the above data is a report rather than a request for approval.

To make a prospective estimation of the award budget as required under the law, agencies should *consider* performance rating distributions for salary increase implications, which impact on aggregate salary amounts and, therefore, the awards budget amount.

The minimum 2 percent award for "Outstanding" employees is statutorily based and cannot be changed by OPM in regulation. The spending limitations specified in the law underscore and support the need for an integrated approach of managing both the appraisal process and the pay process.

The law provides that agencies with 20 or fewer employees may establish a higher level of funding, up to 10 percent, for performance awards to allow for adequate funding. The law intended that OPM approve only that level of funding that is necessary for an agency to pay adequate awards to its employees. Since requirements can change, OPM needs to review each agency's situation each year to avoid overfunding and to allow OPM to meet its regulatory oversight and reporting responsibilities.

Changes:

(1) No change in the performance award funding section of the regulations (§ 540.109(b)).

(2) In § 540.112(b) the word "submit" is changed to "report" to clarify that the estimated budget is a report, not a submission for approval.

31. Issue: Matters Excluded From the Agency Administrative Grievance System (§ 771.206(c)(1)(xii))

Summary of Comments: One agency questioned whether OPM intentionally omitted the granting of PMRS performance awards from the matters excluded from agency administrative grievance systems.

Discussion: The interim regulations provided for excluding general increases and merit increases, or the lack thereof, from the administrative grievance system, but unintentionally omitted an exclusion for the granting of, or the failure to grant, performance awards.

Change: This omission has been corrected by including performance awards, or the lack thereof, under matters excluded from the agency administrative grievance system.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees.

List of Subjects

5 CFR Part 293

Archives and records, Government employees, Privacy.

5 CFR Part 430

Government employees, Administrative practice and procedure, Reporting and recordkeeping requirements.

5 CFR Part 530

Government employees, Wages.

5 CFR Part 531

Government employees, Wages, Administrative practice and procedure.

5 CFR Part 536

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 540

Government employees, Wages.

5 CFR Part 771

Government employees, Administrative practice and procedure.

U.S. Office of Personnel Management.

Constance Horner,

Director.

The interim rule as published March 25, 1985, is confirmed as final with amendments. The final text of the interim rule, except for certain nomenclature changes, with amendments, is set forth for the convenience of the reader:

Part 293—PERSONNEL RECORDS

1. The authority citation for Part 293 is revised to read as follows:

Authority: 5 U.S.C. 552a, 4302a, and 4315; E.O. 12107 (December 28, 1978), 3 CFR 1954–1958 Comp; 5 CFR 7.2; E.O. 9830, 3 CFR 1943–1948 Comp.

2. Section 293.304 is revised to read as follows:

Subpart C—Official Personnel Folder

* * * * *

§ 293.304 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. Performance ratings of record, including the performance plan on which the most recent rating was based, may also be maintained in the Official Personnel Folder for each employee covered under the Performance Management and Recognition System under Part 540 of this chapter. The folder shall also contain long-term records affecting the employee's status and service as required by OPM's instructions and as designated in FPM Supplement 293–31.

3. Section 293.306(b) is revised to read as follows:

§ 293.306 Use of existing folders upon transfer or reemployment.

* * * * *

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the folder, except for PMRS employees'

performance ratings of record including the performance plan on which the most recent rating was based;

(2) Transfer performance ratings of record and the performance plan on which the most recent rating was based from the Employee Performance File of PMRS employees to their Official Personnel Folder, if the ratings and plans are not maintained by the agency in the Official Personnel Folder; and

(3) Ensure that all permanent documents of the folder are complete, correct, and present in the folder in accordance with FPM Supplement 293–31.

4. Section 293.402 (a) and (b) are revised to read as follows:

Subpart D—Employee Performance File System Records

* * * * *

§ 293.402 Establishment of separate employee performance record system.

(a) Copies of PMRS employees' performance ratings of record, including the performance plan on which the most recent rating was based, must be placed in either the employee's Official Personnel Folder (OPF) or in the Employee Performance File (EPF). However, ratings for all other employees, and all other performance-related documents, may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF, and removed whenever the OPF (except as required in § 293.404(b)) is transferred to another agency. PMRS performance ratings of record, including the performance plan on which the most recent rating was based, shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (long term) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by § 293.404(b)).

(b) Except for performance records maintained in the OPF consistent with paragraph (a) of this section, each agency having employees occupying a position described in § 293.401 shall provide for maintenance of performance-related records for such employees in this EPF system. The agency may elect to retain records in a separate file that is located in the same office with the OPF, or in an envelope kept in the OPF itself. If the agency determines that a separate EPF is cost-effective, such a file may be located in another designated agency office (as specified in the agency's written performance appraisal plan documentation) including with supervisors or managers (hereinafter referred to as rating officials) or with Performance Review Boards. Any supporting documents of their duties shall be kept in these files.

* * * * *

5. Sections 293.404 (a)(1) and (a)(2) are revised to read as follows:

§ 293.404 Retention schedule.

(a)(1) Except as provided in § 293.405(a), performance appraisals or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by the SES, be retained as prescribed below:

(i) Performance ratings of record, including the performance plans on which they are based, shall be retained for 3 years;

(ii) Supporting documents shall be retained for as long as the agency deems appropriate (up to 3 years);

(iii) Performance records superseded (e.g., through an administrative or judicial procedure) and performance-related records pertaining to a former employee (except as prescribed in § 293.405(a)) need not be retained for a minimum of 3 years. Rather, in the former case they are to be destroyed and in the latter case agencies shall determine the retention schedule; and

(iv) Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

(2) When an employee is reassigned within the employing agency, disposition of records in this system, including transfer with PMRS employees, shall be as agencies prescribe, consistent with § 293.405(a).

* * * * *

6. Section 293.405(a) is revised to read as follows:

§ 293.405 Disposition of records.

(a) When the OPF of a PMRS employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the "losing" servicing office shall include in the OPF all performance ratings of record that are 3 years old or less, including the performance plan on which the most recent rating was based. Also, the "losing" office will purge from the OPF all performance ratings more than 3 years old, and other performance-related records, according to agency policy established under § 293.404(a)(2) and in accordance with FPM Supplement 293–31.

* * * * *

7. In Part 430, Subparts A and C are reserved; the headings for Part 430 and Subpart A through C are revised; and Subpart D is revised to read as follows:

PART 430—PERFORMANCE MANAGEMENT

Subpart A—Performance Management System [Reserved]

Subpart B—Performance Appraisal for General Schedule and Wage Grade Employees

* * * * *

Subpart C—Performance Awards [Reserved]

Subpart D—Performance Appraisal for the Performance Management and Recognition System

Sec.

430.401 Statutory authority.
430.402 Purpose.
430.403 Coverage.
430.404 Definitions.
430.405 Agency performance appraisal systems.
430.406 Appraisal of performance.
430.407 Ratings.
430.408 Performance standards review boards.
430.409 Training and evaluation.
430.410 OPM review of performance appraisal systems.
430.411 Performance appraisal plans.
430.412 Reports.

Authority: 5 U.S.C. 4302a and 4305.

Subpart D—Performance Appraisal for the Performance Management and Recognition System

§ 430.401 Statutory authority.

Title 5, U.S. Code, section 4302a provides for the establishment of performance appraisal systems for Performance Management and Recognition System (PMRS) employees. This subpart contains regulations which the Office of Personnel Management has prescribed for performance appraisal under the Performance Management and Recognition System, and implements and supplements the provisions of 5 U.S.C. 4302a.

§ 430.402 Purpose.

It is the purpose of this subpart to ensure that performance appraisal systems for Performance Management and Recognition System employees are used as a tool for executing basic management and supervisory responsibilities by:

(a) Communicating and clarifying agency goals and objectives;

(b) Identifying individual accountability for the accomplishment of organizational goals and objectives;

(c) Evaluating and improving individual and organizational accomplishments; and

(d) Using the results of performance appraisal as a basis for adjusting base pay and determining performance awards, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

§ 430.403 Coverage.

(a) *Employees and agencies covered by statute.* This subpart applies to any supervisor or management official, as defined in 5 U.S.C. 7103 (a)(10) and (a)(11), who is in a position within grades GS–13, GS–14, or GS–15 of the General Schedule and covered by Part 540 of this chapter.

(b) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded:

(1) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(2) Positions filled by Noncareer Executive Assignments under Part 305 of this chapter.

(c) *Agency requests for exclusions.* Heads of agencies or their designees may request the Director of the Office of Personnel Management to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.404 Definitions.

In this subpart, terms are defined as follows—

"Appraisal" means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s).

"Appraisal period" means the period of time established by an appraisal system for which an employee's performance will be reviewed.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and noncritical elements, establishment of performance standards, communication of elements and standards to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

"Non-critical element" means a component of an employee's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal. Non-critical elements are optional and may be used at agency discretion.

"Performance" means an employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employee's position.

"Performance Appraisal System". (See Appraisal System).

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The performance management plan, which includes the performance appraisal plan, must be submitted to OPM for review and approval as required by § 430.411 of this subpart and § 540.111 of this chapter.

"Performance plan" means the aggregation of all of an employee's written critical and non-critical elements and performance standard(s).

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

"Progress review" means a review of the employee's progress toward achieving the performance standards and is not in itself a rating.

"Rating" (See Summary Rating).

"Rating of record" means the summary rating, under 5 U.S.C. 4302a, required at the time specified in the performance management plan or at such other times as the plan specifies for special circumstances, including written notice at any time that an employee's performance is unacceptable on one or more critical elements.

"Summary Rating" means the written record of the appraisal of each critical and non-critical element and the assignment of summary rating level (as specified in § 430.405(h) of this subpart).

§ 430.405 Agency performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for employees covered by the Performance Management and Recognition System.

(b) Under each appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in § 430.405(h), must be assigned.

(c) Each appraisal system must provide for the joint participation of the supervising official and the employee in developing performance plans. This may be accomplished by means including, but not limited to, the following:

(1) Employee and supervisor discuss and develop performance plan together;

(2) Employee provides to supervisor a draft performance plan;

(3) Employee comments on draft performance plan prepared by supervisor; and

(4) Performance plan is prepared by a group of employees occupying similar positions, with supervisor's approval. Final authority for establishing such plans rests with the supervising officials.

(d)(1) Each appraisal system shall provide for establishing performance elements and standards based on the requirements of the employees' positions, providing written performance plans to employees at the beginning of each appraisal period (normally within 30 days), and appraising employees based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives should be included in performance plans by incorporating objectives, goals, program plans, workplans, or by other similar means that account for program results.

(e) Each appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each appraisal system shall provide that performance plans shall be in writing and shall be reviewed and approved at the beginning of the appraisal period by a person at a higher

level in the organization than the appraising official.

(g) Each appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(h) Each appraisal system shall provide for five summary rating levels. The rating levels must include an "Unacceptable" level, a level between "Unacceptable" and "Fully Successful", a "Fully Successful" level, and two levels which are above "Fully Successful." For purposes of this part, "Unacceptable" is referred to as level 1, the level between "Unacceptable" and "Fully Successful" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the level two levels above "Fully Successful" is level 5.

(i) Each appraisal system shall provide for assisting employees in improving performance rated at a level below the "Fully Successful" level. Such assistance may include but is not limited to: formal training, on-the-job training, counseling, and closer supervision.

(j) Except with respect to employees occupying positions in Schedule C as authorized by § 213.3301 of this chapter,

(1) Each appraisal system shall provide for reassigning, reducing in grade, or removing any employee rated "Unacceptable," but only after affording the employee a reasonable opportunity to improve performance to the "Fully Successful" level or higher on the critical element(s) rated "Unacceptable", as required in 5 U.S.C. 4302a(b)(6).

(2) Once an "Unacceptable" rating has been communicated, the employee must be informed of the performance standards that must be reached in order to be retained.

(3) If, at the conclusion of the opportunity period referred to in paragraph (j)(1) of this section, the employee's performance is "Unacceptable", the agency must initiate reassignment, reduction in grade, or removal, subject to the provisions of 5 U.S.C. 4303. When an employee's performance improves to level 2, but not level 3, the employee, if not reassigned, shall be required to undergo an additional opportunity period in order to demonstrate performance at the "Fully Successful" level or higher, as required by 5 U.S.C. 4302a(b)(6).

(k) When an employee's position under the General Schedule is converted to PMRS with no change of duties and responsibilities in accordance with 540.103(b)(1), the employee's rating of record will be considered to have been derived from elements and standards established under 5 U.S.C. 4302a.

§ 430.406 Appraisal of performance.

(a) *Appraisal period.* Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. The appraisal period will end no earlier than June 30 nor later than September 30 of the same year. Systems shall provide for preparing a summary rating when an employee changes positions during the appraisal period, if the employee has served for the minimum appraisal period in the position from which he/she has changed; agency performance management plans must describe how these ratings will be taken into consideration in deriving the next rating of record.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days but not more than 120 days.

(c) *Appraisal of each element.* An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When employees are detailed or temporarily promoted within the same agency, and the detail or temporary promotion is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion. Ratings on critical elements must be prepared for these details and temporary promotions and must be considered in deriving an employee's next rating of record.

(2) When employees are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the employee's next rating of record.

(i) If an employee has served in the employing agency for the minimum appraisal period, the employee must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an employee has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating based on a performance plan obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each employee at least once during the appraisal period. At a minimum, employees shall be informed of their level of performance by comparison with the performance elements and standards established for their positions.

(f) *Appraising disabled veterans.* The performance appraisal and resulting rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

§ 430.407 Ratings.

(a) *Written Rating.* A written rating of record must be given to each employee as soon as practicable after the end of the appraisal period.

(b) *Appraisal of each critical and non-critical element.* Employees must be appraised on each critical element and non-critical element of the performance plan(s) on which the employee has had a chance to perform.

(c) *Higher level review.* Ratings of record and performance-based personnel actions shall be reviewed and approved by a person(s) at a higher level in the organization than the appraising official. Ratings of record may not be communicated to employees prior to approval by the final reviewer. This does not preclude communication about appraisal of performance between a supervisor and an employee prior to the determination of the rating of record. Ratings of record must be approved by the official with the responsibility for managing the performance awards budget within the agency.

(d) *Forced distribution.* An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart. However, in order to provide for the equitable distribution of merit increases and performance awards under the PMRS, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful." These procedures must be described in the agency's performance management plan.

(e) *Reconsideration process.* Upon request by the employee, his or her rating of record shall be reconsidered. The employee must be given the right to a reconsideration by a person at a higher level in the organization than the appraising, reviewing, or approving official, unless there is no one at a higher level. This does not preclude the involvement of such officials at intermediate levels in the process. The procedures for such reconsideration shall be in accordance with Part 771 of this chapter.

(f) *Inability to rate.* When an agency cannot prepare a rating of record at the time specified in the plan, the appraisal period shall be extended, for non-pay purposes, for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared. (For pay purposes refer to Part 540 of this chapter.)

(g) *Transfer of rating.* If an employee moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.405(a) of this chapter. A summary rating must be prepared which must be taken into consideration by the gaining agency when deriving the next rating of record.

§ 430.408 Performance standards review boards.

(a)(1) Each agency shall establish one or more performance standards review boards. Each board will consist of at least six members chosen by the agency head or his or her designee. One-half of the board must be composed of employees covered by the PMRS and in the competitive service. The chair of the board will be chosen by the head of the agency or his or her designee.

(2) Agency performance management plans shall set forth the composition and operating procedures for the board(s). Boards shall become operational upon OPM's approval of the agency's performance management plan and shall report to their respective agency heads or designees at least annually.

(3) The board(s) shall review representative performance plans and report to the head of the agency or his or her designee at least annually on the quality of the plans including the difficulty of the performance standards. The board shall advise the head of the agency or his or her designee on ways to improve performance plans but shall have no authority to approve or modify performance plans.

(4) Boards shall review the ratings and make recommendations to the head of the agency or his or her designee regarding improving the equitable application of standards but shall not recommend any distribution of ratings. Such reviews shall be conducted after ratings of record have been prepared and communicated.

(5) Boards are also responsible for studying the feasibility of organizational awards and providing technical assistance on any demonstration projects on performance appraisal.

§ 430.409 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and employees on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as needed.

§ 430.410 OPM review of performance appraisal systems.

(a) OPM will review performance appraisal systems to determine conformance to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter I of 5 U.S.C. 43 or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.411 Performance appraisal plans.

(a) Agencies must submit proposed performance appraisal system to OPM for approval as part of the performance management plans required at § 540.111 of this chapter. If major subcomponents of an agency propose to modify any element of the agency's system that is included in the Performance Management Plan Checklist, as provided in § 540.111(b)(1), or to develop a separate system based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval.

(b) Agencies shall submit to OPM for approval any changes to their performance appraisal plans that modify any element of the agency's system that is included in the Performance Management Plan Checklist.

§ 430.412 Reports.

So that OPM can provide the Congress and others with information regarding the operation of the Performance Management and Recognition System and performance management plans including the performance appraisal systems, each agency shall maintain such records and submit to OPM such reports as OPM may require.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

8. The authority citation for part 530 is revised to read as follows:

Authority: 5 U.S.C. 5303, and chapter 54; E.O. 11721, as amended.

9. In § 530.305, paragraph (a)(3) is revised to read as follows:

§ 530.305 Determining employee rates.

(a) * * *

(3) When a special rate range becomes initially applicable to, or increased for, a position occupied by an employee covered by the Performance Management and Recognition System, the employee's rate of basic pay shall be determined under § 540.106 of this chapter.

10. In § 530.306, paragraph (b)(4) is revised. Section 530.306(b)(4) reads as follows:

§ 530.306 Discontinuing special rates.

* * * * *

(b) * * *

(4) If the employee is receiving a rate of basic pay established under Part 540 of this chapter, the employee shall retain his or her existing rate. This rate may be lower than the minimum rate of the regular schedule as provided under § 540.106(c)(3).

* * * * *

PART 531—PAY UNDER THE GENERAL SCHEDULE

11. The authority citation for Part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5338, and Chapter 54, unless otherwise noted. Sections 531.501 to 531.516 also issued under 5 U.S.C. 5337.

12. Section 531.201 is revised to read as follows:

§ 531.201 Applicability.

This subpart and sections 5333 and 5334 of title 5, United States Code, apply to employees and positions, other than Senior Executive Service positions, to which chapter 51 of title 5 applies, including employees under the Performance Management and Recognition System (PMRS) established under chapter 54 of title 5, United States Code.

13. In § 531.203, the headings for paragraphs (c)(1) and (c)(2) are revised to read as follows:

§ 531.203 General provisions.

* * * * *

(c) * * *

(1) *For non-PMRS employees.*

* * * * *

(2) *For PMRS employees.*

* * * * *

14. In § 531.204, paragraphs (c) and (d) are revised, and paragraph (e) is added to read as follows:

§ 531.204 Special provisions.

* * * * *

(c) *Pay adjustment on acquiring PMRS status.* Except as provided in paragraph (e) of this section, when an employee acquires PMRS status, the employee shall receive his or her existing rate of basic pay plus any of the following adjustments that may be applicable, in the order specified:

(1) The amount of any statutory adjustment in the General Schedule made on that date, or in the case of an employee subject to special pay rates, the amount of any adjustment made on that date under section 5303 of title 5, United States Code, and Part 530 of this chapter;

(2) The amount of any within-grade or quality step increase to which the employee otherwise would be entitled on that date; and

(3) The amount resulting from a promotion effective on that date.

(d) *Pay adjustment on loss of PMRS status.* Except as provided in paragraph (e) of this section, when an employee loses PMRS status, the employee shall receive his or her existing rate of basic pay, plus any of the following adjustments that may be applicable, in the order specified:

(1) The amount of any general pay increases under section 5403 of title 5, United States Code, and § 540.106 of this chapter to which the employee otherwise would be entitled on that date, or in the case of an employee subject to special pay rates, the amount of any pay adjustment made on that date under section 5303 of title 5, United States Code, and Part 530 of this chapter;

(2) The amount of any merit increase under section 5404 of title 5, United States Code, and § 540.107 of this chapter to which the employee otherwise would be entitled on that date;

(3) The amount resulting from a promotion effective on that date;

(4) In the case of an employee whose resulting rate of basic pay falls between two steps of a General Schedule grade (or, in the case of an employee whose position is subject to special pay rates, between the two steps of the applicable special rate range), the amount of any increase that may be necessary to pay the employee the rate for the next higher step of that grade (or special rate range); and

(5) In the case of an employee whose resulting rate of basic pay falls below the minimum rate of a General Schedule grade (or, in the case of an employee whose position is subject to special pay rates, below the minimum of the applicable special rate range), the amount of any increase that may be necessary to pay the employee the minimum rate for that grade (or special rate range).

(e) *Special exceptions.* Paragraphs (c) and (d) of this section do not apply to an employee who acquires or loses PMRS status as the result of—

(1) An action taken for disciplinary or performance related reasons, or

(2) The expiration or termination of a temporary promotion.

15. In § 531.205, paragraphs (a)(2) and (b) are revised to read as follows:

§ 531.205 Pay schedule conversion rules at the time of a pay adjustment under 5 U.S.C. 5305 or 5 U.S.C. 5303.

(a) * * *

(2) If an employee is receiving basic pay immediately before the effective date of his or her pay adjustment at a rate determined under chapter 54 of title 5, United States Code, and part 540 of this chapter, the employee shall have his or her rate of basic pay adjusted under section 5403 of that title and § 540.106 of this chapter.

* * * * *

(b) Rates of basic pay authorized under section 5303 of title 5, United States Code, paid to an employee subject to the General Schedule shall not be adjusted by reason of a pay adjustment under 5 U.S.C. 5305.

§§ 531.305 and 531.402 [Amended]

16. Sections 531.305(a)(1) and 531.402(c)(1) are amended by removing the words "Merit Pay System" and inserting, in their place, the words "Performance Management and Recognition System."

17. In § 531.407, paragraphs (c)(1) and (d) are revised to read as follows:

§ 531.407 Equivalent increase determinations.

* * * * *

(c) * * *

(1) A statutory pay adjustment, including a general pay increase made under section 5403 of title 5, United States Code, but not including a merit increase made under section 5404 of that title;

* * * * *

(d) *Merit increases.* For the purpose of applying section 5335 of title 5, United States Code, and this subpart, all or a portion of, or a zero merit increase, made under section 5404 of title 5, United States Code, and § 540.107 of this chapter is an equivalent increase.

PART 536—GRADE AND PAY RETENTION

18. The authority citation for Part 536 continues to read as follows:

Authority: 5 U.S.C. 5361–5366, Pub. L. 95–454, 92 Stat. 1111.

19. Part 540 is revised to read as follows:

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

Sec.

540.101 General.
540.102 Definitions.
540.103 Ranges of basic pay and employee coverage.
540.104 Performance Management and Recognition System performance ratings.
540.105 Performance recognition.
540.106 General pay increases.
540.107 Merit increases.
540.108 Special provisions for pay administration.
540.109 Performance awards.
540.110 Cash award program.
540.111 Agency Performance Management Plans.
540.112 Report.

Authority: 5 U.S.C. Chapters 43 and 54.

§ 540.101 General.

Chapter 54 of title 5, United States Code (5 U.S.C. 5401 through 5410), provides for a Performance Management and Recognition System (PMRS) to recognize and reward quality performance by supervisors and management officials (as defined in 5 U.S.C. 7103(a) (10) and (11)) in positions classified in GS–13, 14, or 15. This part contains the regulations which the Office of Personnel Management (OPM) has prescribed for the Performance Management and Recognition System, and supplements the provisions of 5 U.S.C. 4302a, and 5401 through 5410.

§ 540.102 Definitions.

In this part:

"Agency" has the meaning given it in 5 U.S.C. 5102, but does not include the Office of the Architect of the Capitol, the Library of Congress, the Botanic Garden, or the Administrative Office of the United States Courts.

"Employee" means a supervisor or management official as defined in 5 U.S.C. 7103(a) (10) and (11) in positions classified in grades GS–13, GS–14 and GS–15.

"General pay increase" means that portion of the pay adjustment under 5 U.S.C. 5305 (or for special salary rate employees, any adjustment under 5 U.S.C. 5303) granted to PMRS employees based on performance.

"Merit increase" means the increase in basic pay for a PMRS employee granted under 5 U.S.C. 5404 which is equivalent to one-ninth of the difference between the maximum rate of the grade or special rate range and the minimum rate of the grade or special rate range.

"Pay adjustment period" means the period beginning on the first day of the first day period applicable to the employee starting on or after the first day of the month in which an adjustment would take effect under 5 U.S.C. 5303 or 5 U.S.C. 5305 and ending at the close of the day preceding the beginning of the following pay adjustment period.

"Performance award" means a performance-based cash payment to a PMRS employee made under 5 U.S.C. 5406. A performance award does not increase base pay.

"Performance award budget" means the amount of money allocated by an agency for distribution as performance awards to covered employees.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals.

"Performance pay decision" means the determination of the total amount of the general pay increase, merit increase, and performance award to be granted to an employee made by the officials also responsible for making the performance appraisal decisions, in accordance with OPM instructions.

"Rating" (See Summary Rating)

"Rating of record" means the summary rating, under 5 U.S.C. 4302a, required at the time specified in the performance management plan or at such other items as the plan specifies for special circumstances, including the written notice at any time that an employee's performance is unacceptable on one or more critical elements.

"Reference amount" means **the sum of the minimum rate of the grade and one-third of the difference between the maximum and the minimum rate for that grade. In the General Schedule, the reference amount equals the dollar amount of the fourth step of a General Schedule grade, in the case of a special rate range established under 5 U.S.C. 5303 and Part 530 of this chapter, the fourth step of such special rate range.

"Summary Rating" means the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.405(h) of this chapter).

§ 540.103 Ranges of basic pay and employee coverage.

(a)(1) The range of annual rates of basic pay for each grade of the Performance Management and Recognition System shall be the same as the range of annual rates of basic pay for the corresponding grade of the General Schedule, or of a special salary rate range established under 5 U.S.C. 5303, except that an employee may be paid less than the minimum rate of basic pay of the grade or special rate range of the employee's position to the extent that payment of the lesser amount is the result of a performance evaluation of less than "Fully Successful."

(2) No PMRS employee's rate of basic pay may be increased by an amount that would cause that rate of basic pay to exceed the maximum rate for the range of basic pay applicable to the employee's position as specified in paragraph (a)(1) of this section, except in connection with retained pay, as provided in 5 U.S.C. 5363.

(b)(1) In accordance with the definitions in 5 U.S.C. 7103(a)(10) and (11), the head of each agency shall identify employees who are supervisors or management officials for purposes of coverage under the Performance Management and Recognition System.

(2) Employees who were appointed on the effective date of a pay adjustment under 5 U.S.C. 5303 or 5 U.S.C. 5305, and whose pay was set in accordance with the newly adjusted pay range for their grade, are not to be considered covered by the Performance Management and Recognition System on that day for the purposes of granting general pay increases, merit increases or performance awards under sections 5403, 5404, or 5406 of title 5, United States Code.

(c)(1) The head of an agency may request that the President exclude an agency, any unit of an agency, or any class of employees within any such unit from the PMRS. Such request must be filed with the Director, Office of Personnel Management, in writing, and must set forth the reasons why the agency, unit or class should be excluded.

(2) The head of an agency may request that OPM exclude an employee from the PMRS. Such request must be filed with the Office of Personnel Management in writing, and must set forth the reasons why the employee should be excluded.

§ 540.104 Performance Management and Recognition System performance ratings.

(a)(1) Except as provided in § 540.103(a)(2) of this part, each performance pay decision shall be based on the employee's rating of record for the current appraisal period for which performance pay decisions are being made under a performance appraisal system as defined in Part 430 of this chapter, approved by the Office of Personnel Management under 5 U.S.C. 4302a, or an equivalent performance appraisal system. If the agency determines it is appropriate to do so, performance pay decisions may also take into consideration the accomplishments of the employee's organization.

(2) All parts of a performance pay decision (i.e., general increase, merit increase, and performance award) must be based on the same rating of record.

(3) If an employee cannot be given a rating of record under 5 U.S.C. 4302a:

(i) The general increase will be determined in accordance with § 540.106(d); and

(ii) The merit increase and, as appropriate, the performance award will be determined in accordance with the procedure specified in § 540.108(a)(2).

(4) Notwithstanding the definition of rating of record in § 540.102 of this part, when a summary rating is transferred with an employee as required under § 430.407(g) of this part, and the new agency or organization cannot give the employee a rating of record as required in the Performance Management Plan, the transferred summary rating will be considered the employee's rating of record for the current appraisal period only for the purpose of making performance pay decisions.

(b)(1) The performance appraisal period on which the performance pay decision is based should be as close to the pay adjustment period as the agency deems practicable, but will not end earlier than June 30 not later than September 30 of the same year, or such other dates prescribed by OPM.

(2) In accordance with § 540.108(a) of this part, agencies are allowed to extend the performance appraisal period to no later than September 30. Such extension will be considered to be part of the current appraisal period for which performance pay decisions are being

made. Agencies determining to extend the appraisal period must specify the length of such extension in the Performance Management Plan required under § 540.111 of this part.

(c) Each agency shall establish procedures to manage the performance appraisal process for employees covered by the Performance Management and Recognition System, such as reviews of standards and ratings for difficulty and strictness of application, to obtain performance pay amounts that are equitable both in the value of the award to the employee and in the relationship of award between levels.

(d) Agencies and employees subject to the Performance Management and Recognition System, but not covered by chapter 43 of title 5, U.S.C., shall meet minimal performance appraisal requirements issued by OPM. Performance appraisal systems established under this paragraph shall, for purposes of this subpart, be equivalent to performance appraisal systems established under 5 U.S.C. 4302a.

§ 540.105 Performance recognition

(a) Each agency shall establish a procedure for determining the manner by which general increases, merit increases and performance award shall be granted to PMRS employees, in accordance with instructions provided by OPM.

(b) Agency procedures for making performance pay decisions must include a requirement for an approval of each decision by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency, and also by the official(s) which responsibility for managing the performance award budget within the agency.

§ 540.106 General pay increases.

(a) General pay increases are to be made effective on the first day of the pay adjustment period.

(b) Except for paragraph (d) of this section, each general pay increase must be based on a rating of record for the current appraisal period for which performance pay decisions are being made. The following table prescribes the portion of the general pay increase employees must receive for each performance level, as defined in § 430.405(h) of this chapter.

GENERAL PAY INCREASES FOR EACH PERFORMANCE RATING LEVEL

If an employee's performance is rated at—	Then the employee receives—
Level 5, 4, or 3	The full general pay increase for the pay adjustment period.
Level 2	One-half the general pay increase for the pay adjustment period.
Level 1	No general pay increase for the pay adjustment period.

(c)(1) To determine the amount of the employee's general pay increase, the agency must use the employee's rate of basic pay on the day immediately preceding the pay adjustment period.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, the agency will determine the general pay increase for employees at performance level 3 (Fully Successful) or above as follows:

(A) Subtract the minimum rate of the rate range of the employee's position in effect on the day immediately preceding the pay adjustment period from the employee's rate of basic pay as determined under paragraph (c)(1) of this section;

(B) Subtract the minimum rate of the range in effect immediately preceding the pay adjustment period from the maximum of that rate range;

(C) Divide the result of paragraph (c)(2)(i)(A) by the result of paragraph (c)(2)(i)(B);

(D) Subtract the minimum rate of the new rate range for the grade from the maximum rate of that range;

(E) Multiply the result of paragraph (c)(2)(i)(C) by the result of paragraph (c)(2)(i)(D); and

(F) Add the result of paragraph (c)(2)(i)(E) to the minimum of the new rate range and round to the next higher whole dollar amount.

(ii) The salary of an employee which is at the minimum or maximum of the rate range in effect on the day immediately preceding the pay adjustment period will be adjusted to the minimum or maximum of the new rate range respectively.

(3) An employee whose performance is rated at level 1 or 2 and, therefore, receives less than the full general increase may be paid less than the minimum rate of the rate range for the employee's position.

(4)(i) Except as provided in paragraph (c)(4)(iii) of this section, the salary of an employee whose performance is rated at level 2, including an employee whose rate of basic pay is less than the minimum rate of the rate range for the employee's position, will be adjusted by multiplying the employee's rate of basic pay on the day immediately preceding the pay adjustment period by one-half of the amount of the general increase applicable to the rate range for the grade of the employee's position for such pay adjustment period.

(ii) The salary of an employee whose rate of basic pay is less than the minimum rate of the rate range of the employee's position, and whose performance is rated at level 3 or above, will be adjusted by multiplying the employee's rate of basic pay on the day immediately preceding the pay adjustment period by the full amount of the general increase applicable to the rate range of the grade of the employee's position for such pay adjustment period.

(iii) An employee who is receiving retained pay will receive one-half of the general increase, as required under 5 U.S.C. 5363(a), regardless of his or her summary rating level.

(d) Agencies will increase the salary of employees who cannot be rated under a performance appraisal system established under 5 U.S.C. 4302a by the amount of the full general pay increase.

§ 540.107 Merit increases.

(a)(1) Merit increases under 5 U.S.C. 5404 are to be effective on the first day of the first applicable pay period commencing on or after October 1 of each year. Merit increases may be paid retroactively but must be received by the employee no later than December 31 of the applicable year.

(2) An employee is eligible to receive a merit increase if he/she is in a Performance Management and Recognition System position on the effective date of the merit increase.

(b) PMRS employees whose performance is rated at level 3 (Fully Successful), or levels 4 or 5 above the "Fully Successful" level, as defined in § 430.405(h) of this chapter, shall receive merit increases in accordance with the following table.

MERIT INCREASES FOR EACH PERFORMANCE RATING LEVEL

Performance rating	Amount received if rate of basic pay is less than the reference amount	Amount received if rate of basic pay is equal to or greater than the reference amount
Level 5	1 merit increase	1 merit increase.
Level 4	1 merit increase	½ merit increase.
Level 3 (Fully Successful)	1 merit increase	½ merit increase.

(c) PMRS employees whose performance is rated at level 1 or 2 will receive a zero merit increase.

(d) An employee newly appointed to the Government within 90 days of the effective date (including the effective date) of the merit increase shall not be

eligible for a merit increase. For the purposes of this paragraph:

(1) A reinstated employee is considered to be a newly appointed employee;

(2) An employee reemployed under Part 351, Subpart J, of this chapter, is not considered to be a newly appointed employee; and

(3) An employee receiving a new appointment without a break in service of one or more workdays is not considered to be a newly appointed employee.

(e) If an employee moving into the PMRS *on or before* the effective date of the merit increase has received an increase to base pay (promotion, within grade increase, Quality Step Increase) within 90 days of such effective date, the employee will not receive a merit increase for that fiscal year. An increase occurring on the effective date of the merit increase is considered to be within this 90 day period. Actions covered by this rule include:

(1) Conversion to the PMRS;

(2) Reassignment to the PMRS from another Federal pay system;

(3) Promotion to the PMRS;

(4) Temporary promotion to the PMRS.

(f) When an employee's performance cannot be appraised for the agency's minimum appraisal period, merit increases will be granted in accordance with the provisions of § 540.108(a), (b), (c) or (d) of this part.

§ 540.108 Special provisions for pay administration.

(a)(1) This paragraph applies when an employee cannot be rated for the current appraisal period under elements and standards established under 5 U.S.C. 4302a, under the following circumstances:

(i) An employee who is not under elements and standards, established under 5 U.S.C. 4302a, for the agency's minimum appraisal period, except as provided in § 540.107(d) and (e) of this part; or

(ii) An employee who is unable to be rated because the supervisor has left the agency, and higher level supervisors cannot reasonably appraise the performance of the employee; or

(iii) An employee who is on long-term training or IPA assignment under sections 3371 through 3376 of title 5, United States Code.

(2) Under these circumstances, a merit increase shall be granted using one of the following rules in the order specified:

(i) The employee's rating period may be extended as provided in § 540.104(b)(2), such extension not to exceed September 30 of the same year;

(ii) The employee's rating of record under 5 U.S.C. 4302a is extended and the appropriate increase is granted, if that rating was given no earlier than the previous agency rating period; or

(iii) The employee receives an increase equivalent to that granted for a level 3 ("Fully Successful") rating.

(b) Except as provided in paragraphs (c) and (d) of this section, when an employee who cannot be rated returns to a pay status after an approved absence that would be creditable service under 5 CFR 531.406, which included one or more pay adjustments provided under 5 U.S.C. 5403 and 5404, the employee's rate of basic pay shall be set at the sum of—

(1) The employee's rate of basic pay immediately before the interruption of his or her employment with the agency; and, as appropriate,

(2) The general pay increases that would have been required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee's service has not been interrupted; and

(3) The merit increases received by an employee rated at level 3 ("Fully Successful").

(c)(1) This paragraph applies when the employee's rate of basic pay is being set because of—

(i) Service in the armed forces or non-Government service referenced in 5 U.S.C. 5405(d);

(ii) Return to a pay status after an IPA assignment under sections 3371 through 3376 of title 5, United States Code;

(iii) Other service for which an employee's advancement through the pay range is preserved by statute; or

(iv) One or more merit increases that occurred during a period for which the employee has received credit under the back pay provisions of 5 U.S.C. 5596 and Subpart H of Part 550 of this chapter.

(2) Under these circumstances, the employee's pay shall be set at the sum of—

(i) The employee's rate of basic pay immediately before the interruption of his or her duty status, and, as appropriate;

(ii) The general increases that would be required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee's service had not been interrupted; and

(iii) Merit increases, which will be granted as follows:

(A)(1) For the first merit increase during the period of such service, the employee's rating of record under 5 U.S.C. 4302a is extended and the appropriate increase is granted, if that rating was given no earlier than the previous agency rating period; or

(2) If there is no rating of record that can be extended, the employee receives an increase equivalent to that granted for a level 3 ("Fully Successful") rating.

(B) For all subsequent merit increases, the employee will receive the increase equivalent to that received for a level 3 ("Fully Successful") rating for the period involved.

(d)(1) This paragraph applies when the employee's rate of basic pay is being set because of—

(i) Leave without pay (LWOP) for a period of time such that the employee is not in a pay status for at least the agency's minimum appraisal period; and

(ii) The employee returns to pay status between either (1) a period which is less than the agency's minimum appraisal period, or (2) after the end of the agency's appraisal period, and the effective date of the merit increase.

(2) Under these circumstances the employee's pay shall be set at the sum of—

(i) The employee's rate of basic pay immediately before the effective date of the LWOP; and, as appropriate,

(ii) The general increases that would be required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee had not been on LWOP.

(3) Under these circumstances, no merit increase will be granted for the current appraisal period for which merit increases are being granted.

(e) Notwithstanding § 531.203(f) of this chapter, when an employee is promoted within or out of the PMRS on the effective date of the general increase *and* the merit increase, the employee shall receive the following, in the order specified:

(1) Any general increase to which the employee otherwise would be entitled;

(2) Any merit increase to which the employee otherwise would be entitled; and

(3) The increase resulting from the promotion.

§ 540.109 Performance awards.

(a) Section 5406 of title 5, United States Code authorizes the payment of performance awards as part of the Performance Management and Recognition System.

(b)(1) Each agency covered by the Performance Management and Recognition System shall, at the beginning of each fiscal year, determine the amount of money available for performance awards for that fiscal year in accordance with the requirements of 5 U.S.C. 5406(c) and instructions provided by OPM. Except as provided in paragraph (b)(3) of this section, the following funding requirements apply:

(i) Each agency is required to pay a minimum of .75 percent of the estimated aggregate amount of PMRS employees' basic pay for fiscal year 1985 for performance awards;

(ii) In each of the four fiscal years thereafter, the minimum percentage to be spent for performance awards will be adjusted in accordance with OPM instructions so that for fiscal year 1989 a minimum of 1.15 percent is spent;

(iii) An agency may not spend more for performance awards than 1.5 percent of the estimated aggregate amount of PMRS employees' basic pay for any fiscal year.

(2) In determining the estimated aggregate amount of PMRS employees' basic pay for a fiscal year, consideration should be given to the following factors:

(i) The number of employees covered by the PMRS during the previous year (or the Merit Pay System in FY 84);

(ii) The aggregate rates of basic pay for such employees;

(iii) Significant changes in the number of PMRS employees expected in the current fiscal year, such as by attrition, reorganization, expansion, or reduction in force; and

(iv) The distribution of performance ratings in the agency;

(v) The amount of the general increases and merit increases that will be paid to PMRS employees in the current fiscal year.

(3) Agencies having 20 or fewer employees covered by the PMRS and that have determined that the funding allowed under 5 U.S.C. 5406(c)(2)(A) is insufficient to provide an effective performance awards distribution, may submit to OPM, at the beginning of each fiscal year, a request for approval of a higher level of funding for performance awards, but not to exceed 10 percent of the aggregate amount of basic pay for PMRS employees in that fiscal year as provided in 5 U.S.C. 5406(c)(2)(B). The request shall be in writing and shall include the level of funding desired, and the reasons for and sufficient data to support funding at the higher level. Sufficient data will include, at a minimum:

(i) Number of employees;

(ii) Distribution of ratings;

(iii) Awards distribution methodology;

(iv) Award amounts that would be payable under paragraph (b)(1) of this section; and

(v) Award amounts that will be payable under the proposed level of funding.

(c)(1) Performance awards shall be paid at least annually in accordance with 5 U.S.C. 5406(c)(2) and OPM instructions, on a date or within a time period established by the agency, except that agencies should pay these awards as close to the end of the performance appraisal period as the agency deems practicable. This does not preclude agencies from granting cash awards under 5 U.S.C. 5407 and § 540.110 of this part at any time during the appraisal period.

(2) An employee is eligible to receive a performance award if he/she is in a Performance Management and Recognition System position on the last day of the current performance appraisal period for which performance pay decisions are being made.

(d)(1) Performance awards must be based on an employee's rating of record for the current appraisal period for which performance pay decisions are being made. An employee with a rating at level 5 must receive a performance award of at least 2 percent of base pay (except that no minimum shall be applicable in FY 85), but not more than 10 percent of base pay in any given year. Based upon an agency head's determination that an employee has performed at an unusually outstanding level, the agency may grant a performance award not to exceed 20 percent of base pay.

(2) An employee with a summary rating at level 4 should receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance award budget, any award granted to employees in the same grade rated at level 4 must be less than any award received by employees rated at level 5.

(3) An employee with a summary rating at level 3 may receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance award budget, any award granted to employees in the same grade rated at level 3 must be less than any award received by employees rated at level 4.

(e) If an agency determines the amount of performance awards using a percentage of base pay, the rate of basic pay on the last day of the performance appraisal period for which awards are being paid must be used to calculate the amount of the awards.

(f)(1) In granting performance awards as provided in paragraph (d) of this section, if an employee has been promoted within the preceding year, the agency head may take this into account in determining the amount of the employee's performance award that otherwise would have been specified in the agency's Performance Management Plan. However, any employee receiving a rating of "Outstanding" must receive an award of no less than 2 percent of base pay (except that no minimum shall be applicable in FY 85).

(2) Performance awards that have been adjusted because of recent promotions will not be considered in meeting the requirements of paragraph (d) of this section.

(g) The agency head will determine whether an employee who cannot be given a rating of record under 5 U.S.C. 4302a will be granted a performance award. If a determination is made to grant a performance award, the amount of such award will be determined in accordance with the procedure specified in § 540.108(a)(2), and the agency's Performance Management Plan.

(h) An employee newly appointed to the Government, as specified in § 540.107(d), within 90 days of the effective date (including the effective date) of the merit increase shall not be eligible for a performance award.

(i)(1) When an employee is—

(i) On leave without pay (LWOP) for a period of time such that the employee is not in a pay status for at least the agency's minimum appraisal period; and

(ii) The employee returns to pay status between either (1) a period which is less than the agency's minimum appraisal period, or (2) after the end of the agency's appraisal period, and the effective date of the merit increase;

(2) The employee will not be granted a performance award.

(j) Failure of an agency to pay a performance award under this section as authorized by 5 U.S.C. 5406(b) may not be appealed.

§ 540.110 Cash award program.

(a) Title 5, U.S. Code, section 5407 authorizes a cash award program for:

(1) Suggestions, inventions, superior accomplishments, or other unique personal efforts which contribute to the efficiency, economy, or other improvement of Government operations, or achieve a significant reduction in paperwork; or

(2) The performance of a special act or service in the public interest in connection with or related to the employee's Federal employment.

(b) An award for any unique or special act or service under paragraph (a) of this section may be granted for any non-recurring employee or group contribution which is highly exceptional and unusually outstanding and which is beyond normal job responsibilities and performance standards.

(c) In granting cash awards under this section, the agency must prepare a

written justification separate from the employee's performance plan or rating.

(d) Cash awards will be granted in accordance with the incentive award program provisions in Part 451 of this chapter, OPM instructions under that chapter, and the agency's incentive award program established under Part 451 of this chapter.

§ 540.111 Agency Performance Management Plans.

(a) Each agency with employees who are subject to the Performance Management and Recognition System shall establish a Performance Management Plan for administering 5 U.S.C. 4302a, 5 U.S.C. 5401 through 5410, and this part. Performance Management Plans shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Appraisal systems required under 5 U.S.C. 4302a.

(2) Performance Management and Recognition System plan(s) required by this part, including the manner by which the distribution of the funds contained in the agency's performance award budget will be made.

(3) Requirements for communication to the agency's PMRS employees of the purpose of the Performance Management and Recognition System and how it works; and

(4) Requirements for training in the operation of the Performance Management and Recognition System for employees who are subject to that System and for Senior Executive Service members and other managers supervising PMRS employees.

(b)(1) Each agency covered by Part 540 of this chapter shall submit a Performance Management Plan to the Office of Personnel Management for review and approval. OPM will provide agencies with a Performance Management Plan Checklist, containing all the components necessary for approval of the PMRS Performance Management Plan.

(2) If major subcomponents of an agency propose to modify any element of the agency's plan that is included in the Performance Management Plan Checklist, or develop separate proposed plans based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval.

(3) Agencies will be required to implement the provisions of an approved Performance Management Plan pertaining to their Performance Management and Recognition System employees not less than 150 days prior to the end of the agency's performance appraisal period.

(c) Agencies shall submit to OPM for approval any changes to their Performance Management Plans that modify any element of the agency's Plan that is included in the Performance Management Plan Checklist.

§ 540.112 Reports.

(a) So that the Office of Personnel Management can provide the Congress and others with information regarding the operation of the Performance Management and Recognition System, including performance awards under 5 U.S.C. 5406 and cash awards under 5 U.S.C. 5407, each agency shall maintain such records and submit to OPM such reports as OPM may require.

(b) Each agency shall report to OPM at the beginning of each fiscal year the estimated performance awards budget, including the funding level used, and such other data required by OPM to administer the Performance Management and Recognition System.

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

20. The authority citation for Part 771 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, and 7301; E.O. 9830, 3 CFR 1943–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 1964–1969 Comp., p. 306.

21. In § 771.206, paragraph (c)(1)(xii) is revised to read as follows:

§ 771.206 Exclusions.

* * * * *

(c) *Matters excluded.*

(1) * * *

(xii) A decision to grant or not to grant a general increase, merit increase, or performance award under the Performance Management and Recognition System, or a decision on the granting of or failure to grant cash awards or honorary recognition under 5 U.S.C. chapter 54 and Part 540 of this chapter;

* * * * *

[FR Doc. 85–20541 Filed 8–27–85; 4:36 pm]
BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 293

Personnel Records; Transfer of an Official Personnel Folder to Another Agency

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: In response to agency comments on proposed rulemaking on the performance management system, the Office of Personnel Management proposes to amend the regulations on Personnel Records. The proposed rule would require agencies to send a transferring employee's performance ratings, 3 years old or less, to his or her "gaining" agency, along with the employee's Official Personnel Folder (OPF).

DATE: To be considered, comments must be received by September 30, 1985.

ADDRESS: Send or deliver written comments to: John W. Fossum, Assistant Director for Performance Management, Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street NW., Room 7520, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Allen B. Levan (202) 632–5653.

SUPPLEMENTARY INFORMATION:

Background

Regulations published as final rules on October 25, 1983, at 48 FR 49462 through 49498, concerning reduction-in-force (RIF), performance management and the application of the Fair Labor Standards Act (FLSA) to the Federal workforce became effective on July 3, 1985. They are republished elsewhere in today's issue as a proposed rulemaking to afford interested parties the opportunity to comment on a proposed implementation schedule for the new performance management system and the FLSA regulations and to allow interested parties the opportunity to consider substantive changes to parts of the regulations. Comments on any and all aspects of the notice will be received and considered. Unlike the remainder of the PMS regulations, these regulations were proposed rules in October 1983, and are not currently in effect.

Note.—Subsequent to publication of the Performance Management System (PMS) regulations, title II of Pub. L. 98–615 established the Performance Management and Recognition System (PMRS), replacing the merit pay system. Under the authority of that statute, OPM published interim regulations on March 25, 1985, at 50 FR 11788, to implement the PMRS.

It was necessary in the March 1985 PMRS regulations to amend the same sections in Part 293 previously amended in the October 1983 Performance Management System (PMS) regulations. In all cases, wherever the March 1985 regulations differ from the October 1983 regulations, the more recently published PMRS (March 1985) regulations are in effect, and govern Federal agencies.

For the convenience of commenters, the proposed Personnel Records regulation is republished here.

On March 30 (48 FR 13342) and July 14, 1983 (48 FR 32288), OPM published proposed rules to implement a Performance Management System. Those rules are being published as proposed rulemaking elsewhere in today's issue of the **Federal Register**.

One of the key issues raised in agency comments on the proposed regulations was the transfer of employees' performance ratings to their new agency at the time employees transfer. Agencies pointed out that they need these performance ratings to make determinations about within-grade and step increases, reduction in force, and other personnel actions. Current OPM regulations prohibit agencies from transferring performance ratings on non-SES employees to another agency or to the National Personnel Records Center (NPRC) in an employee's Official Personnel Folder (OPF).

This proposed rule would require that agencies place performance ratings in an employee's OPF and forward the ratings to another "gaining" office within the employing agency, to another agency, or to NPRC. This change would only affect non-SES employees' performance ratings which are three years old or less. (Current regulations already require transferring SES ratings that are five years old or less.)

E.O. 12291 Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities because the regulation will only affect Government employees.

List of Subjects in 5 CFR Part 293

Archives and records, Government employees, Privacy.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR Part 293, as follows:

PART 293—PERSONNEL RECORDS

1. The authority citation for Part 293 is revised to read as follows:

Authority: 5 U.S.C. 522a, 4305 and 4315; E.O. 12107 (December 28, 1978); 5 U.S.C. 1103, 1104, and 1302; 3 CFR 1954–1958 Comp.; 5 CFR 7.2; E.O. 9830, 3 CFR 1943–1948 Comp.

2. Section 293.402(a) is revised to read as follows:

Subpart D—Employee Performance File System Records

* * * * *

§ 293.402 Establishment of separate employee performance record system.

(a) Copies of performance ratings must be placed in an employee's Official Personnel Folder (OPF). However, other performance-related documents may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF. Performance ratings shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (long term) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by § 293.404(b)).

* * * * *

3: Sections 293.404(a)(1) and (a)(2) are revised to read as follows:

§ 293.404 Retention schedule.

(a)(1) Except as provided in § 293.405(a), performance appraisals or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by the SES, be retained as prescribed below:

(i) Performance appraisal records (including identification of elements and standards) shall be retained for three years;

(ii) Supporting documents shall be retained for as long as the agency deems appropriate (up to 3 years);

(iii) Performance records superseded (e.g., through an administrative or judicial procedure) and performance-related records pertaining to a former employee (except as prescribed in § 293.405(a)) need not be retained for a minimum of 3 years. Rather, in the former case they are to be destroyed

and in the latter case agencies shall determine the retention schedule; and

(iv) Except when prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

(2) When an employee is reassigned within the employing agency, disposition of records in this system, including transfer with the employee, shall be as agencies prescribe and consistent with § 293.405(a).

* * * * *

4. Section 293.405(a) is revised to read as follows:

§ 293.405 Disposition of records.

(a) When the OPF of a non-SES employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the "losing" servicing office shall include in the OPF all performance ratings which are 3 years old or less. Also, the "losing" office will purge from the OPF all performance ratings more than 3 years old, and other performance-related records, according to agency policy established under § 293.404(a)(2) and in accordance with FPM Supplement 293–31.

* * * * *

[FR Doc. 85–20538 Filed 8–27–85; 4:36 pm]

BILLING CODE 6325–01–M

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5 CFR Part 351

Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management is proposing new regulations to improve the current system for crediting performance ratings in determining retention standing during reduction in force.

COMMENT DATE: Written comments will be considered if received no later than September 30, 1985.

ADDRESS: Send or deliver written comments to Richard B. Post, Associate Director for Staffing, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Donald L. Holum, (202) 632–6817.

SUPPLEMENTARY INFORMATION:

Background

Regulations published as final rules on October 25, 1983, at 48 Federal Register 49462, *et seq.*, concerning reduction-in-force (RIF), performance management, and the application of the Fair Labor Standards Act (FLSA) to the Federal workforce became effective on July 3, 1985. They are hereby republished as a proposed rulemaking to afford interested parties the opportunity to comment on a proposed implementation schedule for the new performance management system and the FLSA regulations and to allow interested parties the opportunity to consider substantive changes to parts of the regulations. Comments on any and all aspects of the notice will be received and considered. The current regulations in these areas remain in full force and effect, as they have been since July 3, 1985.

Effective Date

The supplementary information contained in the final reduction-in-force (RIF) rules published in the Federal Register on October 25, 1983 at 48 Federal Register 49462 *et seq.* provided for the delayed implementation of the regulations, as follows: "Agencies may delay implementation of these regulations if RIF plans are underway as of the date this regulation is issued *and* the RIF will take effect on or before January 16, 1984." Those final RIF rules went into effect on July 3, 1985, when the Chief Justice of the United States Supreme Court, acting as Circuit Justice, vacated an order of the United States Court of Appeals for the District of Columbia staying the effectiveness of the rules. *OPM* v. *AFGE*, No. A–5 (U.S. July 5, 1985), *aff'd*, *OPM* v. *AFGE*, ____ U.S. ____, (July 18, 1985). In a manner similar to the 120-day phase-in period utilized for the final rules published on October 25, 1983, implementation of the RIF rules which became effective on July 3, 1985, may be delayed by agencies if RIF plans were underway as of July 3, 1985, *and* the RIF will take effect on or before December 31, 1985.

Discussion of Proposed Changes

The 5 CFR Part 351 regulations which were published on October 25, 1983, and which went into effect on July 3, 1985, provide employees with additional service credit for determining retention standing on the basis of their last three annual performance ratings. Because of concerns expressed about the weight given performance in determining retention standing under these regulations, OPM is publishing a proposed change in the weighting system for public comment. Presently, an employee is entitled to receive ten additional years of service credit for each outstanding rating, seven years for each exceeds fully successful rating, and five additional years for each fully successful rating received in the last 3 years. Under the current regulation for example, an employee who had received annual performance ratings in the last three years of fully successful (5), exceeds fully successful (7) and outstanding (10), would receive 22 years of additional service credit (5+7+10=22) in determining retention standing.

Under the proposed new crediting system in this notice of proposed rulemaking, an employee would be entitled to receive additional service credit based on the *mathematical average* (rounded in the case of a fraction to the next higher whole number) of the employee's three previous annual performance ratings computed on the following basis:

—twenty (20) additional years of service for each performance rating of outstanding or equivalent;

—sixteen (16) additional years of service for each performance rating of exceeds fully successful or equivalent; or

—ten (10) additional years of service for each performance rating of fully successful or equivalent.

Under the proposed rule, for example, an employee who had received annual performance ratings in the last three years of fully successful (10), exceeds fully successful (16), and outstanding (20) would receive 16 years of additional service credit (10+16+20=46 divided by 3=15.3—rounded to 16) in determining retention standing.

With the exception of this proposed new performance weighing system in § 351.504, and minor clarifications in §§ 351.202, 351.403, and 351.701, the regulations published here, are the same as those published on October 25, 1983.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Federal agencies.

List of Subjects in 5 CFR Part 351

Government employees.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM proposes to revise Subparts A through I of Part 351 of 5 CFR as follows:

PART 351—REDUCTION IN FORCE

Subpart A—[Reserved]

Subpart B—General Provisions

Sec.
351.201 Use of regulations.
351.202 Coverage.
351.203 Definitions.
351.204 Responsibility of agency.
351.205 Authority of OPM.

Subpart C—Transfer of Function

351.301 Applicability.
351.302 Transfer of employees.
351.303 Identification of positions with a transferring function.

Subpart D—Scope of Competition

351.401 Determining retention standing.
351.402 Competitive area.
351.403 Competitive level.
351.404 Retention register.
351.405 Employees demoted because of unacceptable performance.

Subpart E—Retention Standing

351.501 Order of retention—competitive service.
351.502 Order of retention—excepted service.
351.503 Length of service.
351.504 Credit for performance.
351.505 Records.
351.506 Effective date of retention standing.

Subpart F—Release From Competitive Level

351.601 Order of release from competitive level.
351.602 Prohibitions.
351.603 Actions subsequent to release from competitive level.
351.604 Use of furlough.
351.605 Liquidation provisions.
351.606 Mandatory exceptions.
351.607 Permissive continuing exceptions.
351.608 Permissive temporary exceptions.

Subpart G—Assignment Rights (Bump and Retreat)

351.701 Assignment involving displacement.
351.702 Qualifications for assignment.
351.703 Exception to qualifications.
351.704 Rights and prohibitions.
351.705 Administrative assignment.

Subpart H—Notice of Employee

351.801 Notice period.
351.802 General and specific notices.
351.803 Content of notice.
351.804 Notice concerning consideration for reemployment.
351.805 Expiration of notice.
351.806 New notice required.
351.807 Status during notice period.

Subpart I—Appeals and Corrective Action

351.910 Appeals.
351.902 Correction by agency.

Authority: 5 U.S.C. 1302, 3502, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 351.201 Use of regulations.

(a) (1) Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated. This includes determining when there is a surplus of employees at a particular location in a particular line of work.

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment rights or restoration rights.

(b) This part does not require an agency to fill a vacant position. However, when an agency, at its discretion, chooses to fill a vacancy by an employee who has been reached for release from a competitive level for one of the reasons in paragraph (a)(2) of this section, this part shall be followed.

(c) Each agency is responsible for assuring that the provisions in this part are uniformly and consistently applied in any one reduction in force.

(d) An agency authorized to administer foreign national employee programs under section 408 of the Foreign Service Act of 1980 (22 U.S.C. 3968) may include special plans for reduction in force in its foreign national employee programs. In these special plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

§ 351.202 Coverage.

(a) *Employees covered.* Except as provided in paragraph (b) of this section, this part applies to each civilian employee in:

(1) The executive branch of the Federal Government; and

(2) Those parts of the Federal Government outside the executive branch which are subject by statute to competitive service requirements or are determined by the appropriate legislative or judicial administrative body to be covered hereunder. Coverage includes administrative law judges except as modified by Part 930 of this chapter.

(b) *Employees excluded.* This part does not apply to an employee:

(1) In a position in the Senior Executive Service; or

(2) Whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the United States Senate, except a postmaster.

(c) *Actions excluded.* This part does not apply to:

(1) The termination of a temporary or term promotion or the return of an employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.

(2) A change to lower grade based on the reclassification of an employee's position due to erosion of duties, the application of new classification standards, or the correction of a classification error.

(3) The change of an employee from regular to substitute in the same pay level in the U.S. Postal Service field service.

(4) The release from a competitive level of a National Guard technician under section 709 of title 32, United States Code.

(5) Placement of an employee serving on an intermittent, part-time, on-call, or seasonal basis in a nonpay and nonduty status in accordance with conditions established at time of appointment.

§ 351.203 Definitions.

In this part:

"Competing employee" means an employee in tenure group I, II, or III.

"Days" means calendar days.

"Function" means all or a clearly identification segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

"Local commuting area" means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

"Performance rating" means an official performance rating under a performance appraisal system approved by OPM in accordance with 5 U.S.C., chapter 43; or for an agency not subject to chapter 43, an official performance rating as provided for in the agency's appraisal system.

"Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization.

"Representative rate" means the fourth step of the grade for a position subject to the General Schedule, the prevailing rate for a position under a wage-board or similar wage-determining procedure, and for other positions, the rate designated by the agency as representative of the position. Employees covered by the Merit Pay System are General Schedule employees for purposes of determining representative rate.

"Transfer of function" means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas; or the movement of the competitive area in which the function is performed to another commuting area.

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction in force is necessary.

§ 351.205 Authority of OPM.

The Office of Personnel Management may establish further guidance and instructions for the planning, preparation, conduct, and review of reductions in force through the Federal Personnel Manual system. OPM may examine an agency's preparations for reduction in force at any stage. When OPM finds that an agency's preparations are contrary to the express provisions or to the spirit and intent of these regulations or that they would result in violation of employee rights or equities, OPM may require appropriate corrective action.

Subpart C—Transfer of Function

§ 351.301 Applicability.

This subpart is applicable when the work of one or more employees is moved from one competitive area to another, regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One a competing employee is identified with a transferring function if:

(1) The employee performs the function during all or a major part of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her working time, the function performed by the employee incudes the duties controlling his or her grade or rate of pay.

(d) Under Identification Method Two, competing employees are identified with a transferring function in the inverse order of their retention standing.

(e) (1) The competitive area losing the function may permit other employees in the competitive area to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two. However, the competitive area may permit these other employees to volunteer for transfer only if no competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of him or her to the competitive area that is gaining the function.

(2) If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area should give preference to the volunteers with the highest retention standing.

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in Subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area may consist of all or part of an agency. The minimum competitive area in the departmental service is a bureau, major command, directorate or other equivalent major subdivision of an agency within the local commuting area. In the field, the minimum competitive area is an activity under separate administration within the local commuting area. A competitive area must be defined solely in terms of an agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

§ 351.403 Competitive level.

(a) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee. Sex may not be the basis for assigning a position to a competitive level, except for a position which OPM has determined certification of eligibles by sex is justified.

(b) Each agency shall establish separate competitive levels according to the follow categories:

(1) *By service.* Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) *By appointment authority.* Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) *By pay schedule.* Separate levels shall be established for positions under different pay schedules.

(4) *By work schedule.* Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

(5) *By supervisory or nonsupervisory status.* Separate levels shall be established for positions filled by a supervisor or management official as defined in 5 U.S.C. 7103(a) (10) and (11), except that a probationary period required by Subpart I of Part 315 of this chapter for initial appointment to a supervisory of managerial position is not a basis for establishing a separate competitive level.

(6) *By trainee status.* Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all the characteristics covered in § 351.702(e)(1) through (e)(4) of this part.

(c) Competitive levels must be in effect at least 90 days prior to a reduction in force and descriptions of levels must be made readily available for review. Agencies are required to certify in advance to OPM that these requirements are met.

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

(1) In the competitive level;

(2) Temporarily promoted from the competitive level by temporary or term promotion; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b) (1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision under Part 432 of this chapter to remove him or her because of unacceptable performance.

§ 351.405 Employees demoted because of unacceptable performance.

An employee who has received a written decision under Part 432 of this chapter to demote him or her because of unacceptable performance competes under this part from the position to which he or she will be or has been demoted.

Subpart E—Retention Standing

§ 351.501 Order of retention—competitive service.

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order follows:

(1) By tenure group I, group II, group III; and

(2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and

(3) Within each subgroup by years of service as augmented by credit for performance under § 351.504, beginning with the earliest service date.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.)

(2) Group II includes each career-conditional employee and each employee serving a probationary period under Subpart H of Part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this chapter is in group II if that employee has not completed a probationary period under Subpart H of Part 315 of this chapter).

(3) Group III includes all employees serving under indefinite appointment, temporary appointment pending establishment of register, status quo appointment, and any other nonstatus nontemporary appointment.

(c) Subgroups are defined as follows:

(1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not including in subgroup AD.

(3) Subgroup B includes each nonpreference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraphs (d)(1), (2), or (3) of this section, except as limited by paragraph (d)(4) or (d)(5):

(1) The employee's military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in paragraphs (d)(1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under chapter 67 of title 10, United States Code, and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

§ 351.502 Order of retention—excepted service.

Competing employees in the excepted service shall be classified on retention registers in a way that corresponds to that under § 351.501 for employees in the competitive service having similar tenure of employment, veteran preference and performance ratings except that an employee who completes 1 year of current continuous service under a temporary appointment is in tenure group III.

§ 351.503 Length of Service.

(a) Each agency shall establish a service date for each competing employee.

(b) An employee's service date is whichever of the following dates reflects the employee's creditable service:

(1) The date the employee entered on duty, when he or she has no previous creditable service;

(2) The date obtained by subtracting the employee's total creditable previous service from the date he or she last entered on duty; or

(3) The date obtained by subtracting from the date in paragraph (b)(1) or (b)(2) of this section, the service equivalent allowed for performance ratings under § 351.504.

(c) An employee who is a retired member of a uniformed service is entitled to credit under this part for:

(1) The length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) The total length of time in active service in the armed forces if the employee is considered a preference eligible under § 351.501(d) of this part.

(d) Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

§ 351.504 Credit for performance.

(a) Performance ratings of outstanding, exceeds fully successful, fully successful, minimally successful and unacceptable are those ratings established under Part 430 of this chapter.

(b) An employee's entitlement to additional service credit for performance under this subpart shall be based on the employee's last three annual performance ratings received during the 3-year period prior to the date of issuance of specific reduction-in-force notices.

(c) The current annual performance rating shall be the last annual rating except that:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in Part 432 of this chapter shall have the improved rating considered as the current annual rating; and

(2) An employee's current annual rating shall be presumed to be fully successful when the employee had been demoted under Part 432 of this chapter because of unacceptable performance and as of the date of issuance of specific reduction-in-force notices has not received a rating for performance in the position to which demoted.

(d) Service credit for employees who do not have three previous annual ratings shall be determined as follows:

(1) An employee who has not received a rating shall receive credit for performance for three assumed ratings of fully successful of equivalent.

(2) An employee who has received at least one but fewer than three previous annual ratings shall receive credit for performance based on the actual rating(s) received and on one, or two, assumed rating(s) of fully successful or equivalent, whicheverf is needed to credit the employee with three ratings.

(e) The additional service credit an employee receives for performance under this subpart shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's three previous annual performance ratings computed on the following basis:

(1) Twenty additional years of service for each performance rating of outstanding or equivalent;

(2) Sixteen additional years of service for each performance rating of exceeds fully successful or equivalent; or

(3) Ten additional years of service for each performance rating of fully successful or equivalent.

(f) Each agency subject to Part 430 of this chapter is responsible for assuring that its application of these provisions is consistent with that part. Each agency not subject to Part 430 shall apply the provisions of its performance appraisal plan as appropriate.

§ 351.505 Records.

Each agency shall maintain the current correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of its retention registers and related records by:

(a) A representative of OPM; and

(b) An employee of the agency to the extent that the registers and records have a bearing on a specific action taken, or to be taken, against the employee.

The agency shall preserve intact all registers and records relating to an employee for at least 1 year from the date the employee is issued a specific notice.

§ 351.506 Effective date of retention standing.

Except for applying the performance factor as provided in § 351.504:

(a) The retention standing of each employee released from a competitive level in the order prescribed in § 351.601 is determined as of the date the employee is so released.

(b) The retention standing of each employee temporarily retained in a competitive level under §351.608 is determined as of the date the employee would have been released from the competitive level had temporary retention action under § 351.608 not been taken. The retention standing of each employee so retained remains fixed until the completion of the reduction-in-force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction-in-force action to accord with the employee's proper retention standing as of the effective date established by this section.

Subpart F—Release From Competitive Level

§ 351.601 Order of release from competitive level.

(a) Each agency shall select competing employees for release from a competitive level under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under § 351.606 when an employee is retained under a mandatory or under § 351.806 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.607 when an employee is retained under a permissive continuing exception or under § 351.608 when an employee is retained under a permissive temporary exception.

(b) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(a) A specifically limited temporary appointment;

(b) A specifically limited temporary or term promotion;

(c) A written decision under Part 432 of this chapter of removal or demotion

from the competitive level because of unacceptable performance.

§ 351.603 Actions subsequent to release from competitive level.

An employee reached for release from a competitive level shall be offered assignment to another position in accordance with Subpart G of this part. If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer under Subpart G, the employee shall be furloughed or separated.

§ 351.604 Use of furlough.

(a) An agency may furlough a competing employee only when it intends within 1 year to recall the employee to duty in the position from which furloughed.

(b) An agency may not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.

(c) An agency may not furlough a competing employee for more than 1 year.

(d) When an agency recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with the highest standing employee.

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 3 months, it shall release employees in subgroup order but may release them regardless of retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee shall so state and also shall give the date the liquidation will be completed. An agency may apply § 351.607 and § 351.608 in liquidation.

§ 351.606 Mandatory exceptions.

(a) When an agency applies § 351.601 or § 351.065, it shall give the following special retention priorities:

(1) Each group I or II preference eligible employee entitled under section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 459), to retention for 1 year after restoration shall be retained over other employees in the same subgroup for the retention period; and

(2) Each group I or II nonpreference eligible employee entitled under section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 459), to retention for either 6 months or 1 year after restoration shall be retained over other employees in the same subgroup for the retention period.

(b) Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601 or § 351.605.

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

(a) An agency may make exception for not more than 90 days to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee for 90 days or less after the effective date of release of a higher standing employee from the same competitive level:

(1) To continue an activity without undue interruption; or

(2) To satisfy a Government obligation to the retained employee; or

(3) When the temporary retention of the lower standing employee does not adversely affect the rights of any higher standing employee who is released ahead of the lower standing employee. The temporary retention of a lower standing employee on sick leave as a permissive exception may exceed 90 days but may not exceed the date the employee's sick leave is exhausted.

(b) When the agency retains an employee for more than 30 days after the effective date of release of a higher standing employee from the same competitive level, it shall notify in writing each higher standing employee reached for release of the reasons for the exception and the date the lower standing employee's retention will end. When the agency retains a lower standing employee, it shall list opposite the employee's name on the retention register the reasons for the exception and the date this employee's retention will end.

Subpart G—Assignment Rights (Bump and Retreat)

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a performance rating of minimally successful or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive service position which requires no reduction or the least possible reduction in representative rate. The employee must be qualified for the offered position which shall be in the same competitive area and last at least three months.

(b) *Lower subgroup—bumping.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and bump to a position that:

(1) Is held by another employee in a lower tenure group or in a lower subgroup within the same tenure group; and

(2) Is no more than two grades (or appropriate grade intervals or equivalent) below the position from which the employee was released.

(c) *Same subgroup—retreating.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and retreat to a position that:

(1) Is held by another employee with lower retention standing in the same tenure group and subgroup;

(2) Is no more than one grade (or appropriate grade interval or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent); and

(3) Is the same position, or an essentially identical one, previously held by the released employee in a Federal agency.

(d) *Limitations.* (1) An employee in a clerical position may be assigned only to a clerical position and an employee in a nonclerical position may be assigned only to a nonclerical position in an assignment made under paragraph (b) of this section.

(2) An employee with a current annual performance rating of minimally successful or equivalent may be assigned under paragraph (c) of this section only to a position held by another employee with a current annual performance rating no higher than minimally successful or equivalent.

(e) *Pay rates.* (1) The determination of equivalent grade intervals shall be based on a comparison of representative rates.

(2) Each employee's assignment rights shall be determined on the basis of the

pay rates in effect on the date of issuance of specific reduction-in-force notices, except that when it is officially known on the date of issuance of notices that new pay rates have been approved and will become effective by the effective date of the reduction in force, assignment rights shall be determined on the basis of the new pay rates.

§ 351.702 Qualifications for assignment.

(a) Except as provided in § 351.703, an employee is qualified for assignment under § 351.701 if the employee:

(1) Meets the OPM standards and requirements for the position, including any minimum educational requirement;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position;

(3) Meets any special qualifying condition which the OPM has approved for the position; and

(4) Clearly demonstrates on the basis of overall background, including recency of experience, a positive ability to successfully perform all critical elements of the specific position upon entry into it, without undue interruption to that activity and without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

(b) The sex of an employee may not be considered in determining whether an employee is qualified for a position, except for positions which OPM has determined certification of eligibles by sex is justified.

(c) An employee who is released from a competitive level during a leave of absence because of a compensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to recovery as provided by 5 U.S.C. 8151 and Part 353 of this chapter.

(d) If an agency determines, on the basis of evidence before it, that a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this part, the agency must notify the OPM of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within 15 days of the notification, to the OPM which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. The OPM shall make a final determination concerning the physical ability of the employee to perform the duties of the position. This determination must be made before the agency may select any other person for the position. When the OPM has completed its review of the proposed disqualification on the basis of physical disability, it must send its finding to both the agency and the employee. The agency must comply with the findings of the OPM. The functions of the OPM under this paragraph may not be delegated to an agency.

(e) An agency may formally designate as a trainee or developmental position a position in a program with all of the following characteristics:

(1) The program must have been designed to meet the agency's needs and requirements for the development of skilled personnel;

(2) The program must have been formally designated, with its provisions made known to employees and supervisors;

(3) The program must be developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and

(4) The program must be fully implemented, with the participants chosen through standard selection procedures. To be considered qualified for assignment under § 351.701 to a formally designated trainee or developmental position in a program having all of the characteristics covered in paragraphs (e) (1), (2), (3), and (4) of this section, an employee must meet all of the conditions required for selection and entry into the program.

§ 351.703 Exception to qualifications.

An agency may assign an employee under § 351.201(b) or § 351.701 without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

§ 351.704 Rights and prohibitions.

(a) (1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment under § 351.201(b) or § 351.705 to a position having a representative rate equal to that to which he or she would be entitled under § 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) Section 351.701 does not:

(1) Require an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

(1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with §351.701 when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(2) Permit an employee in subgroup III–AD to displace an employee in subgroup III–A or III–B, or permit an employee in subgroup III–A to displace an employee in subgroup III–B consistent with §351.701; or

(3) Provide competing employees in the excepted service with assignment rights similar to those in § 351.701 and in paragraphs (a)(1) and (2) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of an other-than-full-time employee to a full-time position;

(4) May not provide for the assignment of a full-time employee to an other-than-full-time position;

(5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and

(6) May not provide the assignment of an employee in an excepted position to a position in the competitive service.

Subpart H—Notice to Employee

§ 351.801 Notice period.

(a) Each competing employee selected for release from a competitive level

under this part is entitled to a written notice at least 30 full days before the effective date of release. When a general notice is supplemented by a specific notice, an agency may not release an employee from his or her competitive level until at least 10 days after the employee's receipt of the specific notice.

(b) The notice shall not be issued more than 90 days before release except with the prior approval of OPM.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under § 351.606 or § 351.608, the notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from the competitive level.

§ 351.802 General and specific notices.

When an agency cannot specifically determine all individual actions at the start of the notice period, it may issue general notices which shall later be supplemented by specific notices. The combined general and specific notice periods shall meet the requirements in § 351.801, and the combined contents of the general and specific notices shall meet the requirements in § 351.803.

§ 351.803 Content of notice.

(a) The notice shall state specifically the action to be taken and its effective date except as provided in paragraph (b) of this section; the employee's competitive area, competitive level, subgroup, service date, and annual performance ratings received during the last three years; the place where the employee may inspect the regulations and records pertinent to this case; the reasons for retaining a lower standing employee in the same competitive level under § 351.607 or § 351.608; the information on reemployment rights except as permitted by § 351.804; and the employee's right, as applicable, to grieve under a negotiated grievance procedure or to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) General notice shall inform the employee that action under this part may be necessary but a specific action has not yet been determined. The notice shall state that as soon as the agency determines what action, if any, will be taken under this part the employee will receive specific notice of the action to be taken. The general notice shall contain an expiration date. A general notice may also include other information specified in paragraph (a) of this section.

§ 351.804 Notice concerning consideration for reemployment.

An employee who receives a specific notice of separation under this part must also be given information concerning the right to reemployment consideration under the provisions of Subparts B and C of Part 330 of this chapter. This information should be included in or with the specific reduction-in-force notice; otherwise, a separate supplemental notice covering this information must be given to the employee.

§ 351.805 Expiration of notice.

(a) An agency may cancel an unexpired general notice, or may renew it for additional periods within maximum notice period referred to in § 351.801. A general notice expires as stated therein unless, on or before the expiration date, the employee receives a renewal of the general notice or a specific notice.

(b) A specific notice expires except when followed by the action specified, or by action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action. An agency may not take action before the effective date in the specific notice. An action taken after the specified date in the specific notice shall not be ruled invalid for that reason except when it is challenged by a higher standing employee in the competitive level who is reached out of order for reduction in force as a result of the action or when it results in a notice period longer than the maximum allowed.

§ 351.806 New notice required.

An employee is entitled to a new written notice of at least 30 full days if the agency decides to take an action more severe than first specified.

§ 351.807 Status during notice period.

When possible, the agency shall retain the employee on active duty during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, on leave without pay with his or her consent, or in a nonpay status without his or her consent.

Subpart I—Appeals and Corrective Action

§ 351.901 Appeals.

An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction-in-force action may appeal to the Merit Systems Protection Board. Unless the presiding official determines that there are material issues of fact in dispute that would require a hearing for resolution, the review of an agency action shall be confined to the written record.

§ 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

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5 CFR Parts 300, 335, 430, 431, 451, 531, 532, 771

Performance Management System

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management is reissuing proposed regulations to implement Performance Management, including a Performance Based Incentive System for the General Schedule. These regulations, initially published in October 1983, reflect major comments on earlier proposals to create a system designed to pay employees based on performance. Additionally, they reflect changes required by enactment of title II of the Civil Service Retirement Spouse Equity Act of 1984, which established the Performance Management and Recognition System.

DATE: To be considered, comments must be received by September 30, 1985.

ADDRESS: Send or deliver written comments to: John W. Fossum, Assistant Director for Performance Management, Workforce Effectiveness and Development Group, Office of Personnel Management, 1900 E Street, N.W., Room 7520, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Allen B. Levan, 202-632-5653.

SUPPLEMENTARY INFORMATION:

Background

Regulations published as final rules on October 25, 1983, at 48 FR 49462, *et seq.*, concerning reduction-in-force (RIF), performance management, and the application of the Fair Labor Standards Act (FLSA) to the Federal work force became effective on July 3, 1985. They are hereby republished as a proposed rulemaking to afford interested parties the opportunity to comment on a proposed implementation schedule for the new performance management

system and the FLSA regulations and to allow interested parties the opportunity to consider substantive changes to parts of the regulations. Comments on any and all aspects of the notice will be received and considered. The current regulations in these areas remain in full force and effect, as they have been since July 3, 1985.

The Performance Management System regulations revised 5 CFR Parts 300, 335, 430, 451, 531, 532, and 540, and added a new part 431 that would require agencies to implement a Performance Management System. OPM is republishing the full text of the October 1983 Performance Management System regulations with the following exceptions:

1. Because the implementation schedules contained in Parts 430 and 431 are out of date, these proposed rules contain new implementation schedules.

2. Subsequent to publication of the Performance Management System (PMS) regulations, title II of Pub. L. 98–615 established the Performance Management and Recognition System (PMRS), replacing the merit pay system. Under the authority of that statute, OPM published interim regulations on March 25, 1985, at 50 FR 11788, to implement the PMRS.

It was necessary in the March 1985 PMRS regulations to amend many of the same parts in Title 5, Code of Federal Regulations, previously amended in the October 1983 Performance Management System (PMS) regulations.

Note.—In all cases, wherever the March 1985 regulations differ from the October 1983 regulations, the more recently published PMRS (March 25, 1985) regulations are in effect, and govern Federal agencies. One example: Part 540, Performance Management and Recognition System, published March 25, 1985, at 50 FR 11795, supersedes provisions contained in the Part 540, Merit Pay System, regulations published October 25, 1983. Therefore, Part 540 is not addressed in these proposed regulations.

3. Wherever the text of the regulations addressed merit pay employees, changes have been made to conform to the law and regulations implementing the Performance Management and Recognition System.

For the convenience of commenters, the Supplementary Information section of the October 1983 regulations, except for those changes mentioned above, is republished here.

Comments

Comments received on an earlier proposed rulemaking (48 FR 13342) are reflected in the Supplementary Information section of the rules proposed on July 14, 1983 (48 FR 32288). During the 30-day comment period on the July 14 proposal, OPM received comments from 40 Federal agencies, 10 professional organizations, 7 labor organizations, and 83 individuals, most of whom were Federal employees. Many of the comments contained specific, constructive suggestions; OPM is adopting many of those suggestions in this document.

Overview of the Performance Management System

The new Performance Management System regulations will meet OPM's primary objectives and, we believe, will also meet agency needs and objectives. The regulations establish pay for performance system for all employees.

All General Schedule employees who earn at least a "Fully Successful" rating on all critical elements and a "Fully Successful" summary rating will be eligible to receive within-grade increases. The proposal that General Schedule employees in top pay steps of their grade be rated at least "Exceeds Fully Successful" in order to receive within-grade increases has been deleted.

A written recommendation for appropriate monetary, non-monetary, or honorary recognition must be prepared for all employees who earn an "Outstanding" summary rating.

To emphasize the connection between performance and awards, Incentive Awards regulations have been divided into two parts: Performance Awards and Special Awards. Employees can earn a Performance Award for performance that "Exceeds Fully Successful" overall or on one or more critical elements of a job. To further strengthen the link between pay and performance in the minds of employees and their supervisors, performance awards and QSI's will be provided as soon as possible after annual performance ratings are approved.

The regulations meet agency and OPM concerns about the cost, paperwork, and time requirements of Performance Management. Agencies are not required to write performance standards at three element rating levels, although they are encouraged to do so. The minimum requirement is three element rating levels with written performance standards at the "Fully Successful" level. In addition, revised performance appraisal requirements will be implemented at the beginning of an agency's new appraisal cycle, avoiding a requirement for revision of individual Performance Plans in the middle of the current appraisal cycle.

Employees will be able to seek a reconsideration if they feel that performance ratings are unfair. Additional procedures for review of a performance rating, including a grievance procedure, can be established at the discretion of the agency head. Agencies will not be able to utilize preestablished rating distributions that interfere with appraisal of actual performance against standards. Agencies are required to provide for second level review of ratings in the interest of employee equity and ensuring that ratings are consistent with organizational accomplishments. Through that process, managers can change inaccurate appraisals. It is required that critical elements, non-critical elements, and performance standards be related to an employee's assigned work. Higher level approval of elements and standards is required.

The regulations require each agency to establish a Performance Management Plan for OPM approval. Agencies will be able to tie the establishment and revision of performance elements and standards to the beginning of management planning cycles so that employee performance expectations can clearly support achievement of organizational goals and objectives. Performance ratings and performance based personnel actions can now reflect each employee's contribution during the past year to achievements in support of the organization's purposes and mission.

The regulations standardize performance ratings among agencies by requiring five summary rating levels. Agencies may consider performance of non-critical elements in deriving summary ratings but more weight must be given to performance of critical elements. The regulations also standardize performance requirements for within-grade increases, performance awards, quality step increases, and career ladder promotions. For the first time, regulations are being established for SES performance appraisal. The SES regulations parallel requirements for other employees.

Key Issues in the Regulations

The following are the key issues raised in the proposed regulations, a general summary of comments which have been received in these areas, and an explanation of the current regulations.

1. Career Ladder Promotions and Time-In-Grade Restrictions.

a. Sections 300.602, 335.104.

b. Half of the agencies who commented on these proposals noted they were very pleased that longer time-in-grade restrictions were eliminated from the proposals. Most commenters continued to support the requirement

that an employee be rated "Fully Successful" overall to receive a career ladder promotion. A number of agencies, labor organizatons, and individual commenters were concerned with the new requirement for priority consideration for career ladder promotions for employees with the highest summary ratings in situations when not all eligible employees could receive promotions. Several thought that the scope of coverage must be narrower than "all employees" and requested clarification.

c. The regulation retains the requirement for a "Fully Successful" summary rating in order to be eligible for a career ladder promotion and for ratings of "Fully Successful" or better on all critical elements that are critical to the position at the next higher grade level in the career ladder. The requirement that employees with the highest summary ratings be given first consideration in career ladder promotions is clarified to indicate that the employees concerned must be in the *same career ladder.*

d. These regulations retain the connection of performance to career ladder promotions by requiring agencies to carefully consider both summary ratings and pertinent critical element ratings in making such promotions and to promote employees with higher summary ratings when not all employees in the same career ladder can be promoted at the same time. The phrase "same career ladder" should be interpreted to mean positions in the same series and, at agency discretion, usually in the same organization.

2. *Distinguishing Between the Terms "Appraisal" and "Performance Rating."*

a. Sections 430.201(d); 430.203; 430.204(b); 431.201(d); 431.203; 431.204(b), (u).

b. Several commenters indicated that the terms "appraisal" and "rating" appeared to have the same meaning in the proposed regulations.

c. The final regulations distinguish between appraisal of performance during an appraisal period and a written performance rating provided to the employee.

d. This change permits agencies to determine whether a regulation is referring to the act or process of reviewing and evaluating performance (appraisal) or to written records of element or overall performance (ratings).

3. *Definition of a Critical Element.*

a. Sections 430.203 and 431.203.

b. Regarding the definition of "critical element," a number of agencies recommended deleting, revising, or expanding the phrase "which contributes toward accomplishing organizational goals and objectives". Several agencies and a labor organization also pointed out that the phrase "in the position" is inconsistent with identifying critical elements for details to another position. Finally, agencies stated that the word "acceptable" was not defined.

c. The definition of a "critical element" has been revised by deleting the word "acceptable" which has several possible meanings and using the word "unacceptable", which is defined in law. Specifically, the July 14 proposal stated that a critical element "is of such importance that acceptable performance on the element is necessary for acceptable performance in the position," while the final regulation states that a critical element "is of such importance that unacceptable performance on the element would result in unacceptable performance of assigned work." It should also be noted that the revised definition refers to performance "of assigned work" instead of performance "in the position".

d. The phrase "which contributes toward accomplishing organizational goals and objectives" was not changed because it provides a minimum criterion for identification of critical elements. The goals and objectives referred to would be those for the unit where the employee works, not necessarily agency-wide objectives. Identified critical elements must be consistent with the planned work of the organizational unit. Use of the phrase "performance of assigned work" will enable agencies to consider performance in more than one position when deriving a summary rating, as long as an employee served in all positions considered for the agency's minimum appraisal period and during the annual appraisal period.

4. *References to Non-critical Elements.*

a. Sections 430.203, 431.203, 430.204(b), 431.204(b).

b. A few commenters noted that reference should be made to appraisal of non-critical elements in the definitions of several terms.

c. The definitions of the following terms have been amended by adding references to non-critical elements: "Appraisal System," "Performance," "Performance Plan," "Rating," and Performance Rating." In addition, regulations on the performance appraisal process provide that employees must be appraised and rated on any non-critical elements included in individual Performance Plans.

d. Although an agency is not required to establish or identify non-critical elements, the definitions indicate that when non-critical elements are included in individual Performance Plans, a written performance rating for the non-critical elements must be prepared.

5. *Use of Non-Critical Elements.*

a. Sections 430.203, 430.204(d)(1), 431.203, 431.204(d)(1).

b. Fourteen agencies, two associations, one labor organization and six individuals stated that performance on non-critical elements should be considered in derving a summary rating of performance. Commenters felt that employees should be held accountable for the whole job. Commenters also stated that appraisal of non-critical elements would be meaningful unless performance of non-critical elements had a bearing on an employee's summary rating.

c. The prohibitions on use of non-critical elements in deriving summary ratings have been deleted from non-SES and SES performance appraisal regulations.

d. Agencies will be required to include decision tables for deriving summary ratings in their Performance Management Plans. Agency procedures for deriving summary ratings may include consideration of ratings on non-critical elements but only if the procedures give more weight to performance of critical elements.

6. *Revision of Rating Level Definitions.*

a. Sections 430.204(h); 431.204(h).

b. Several agencies and individuals commented that quantity and timeliness criteria may not be pertinent to all positions and that production of work ahead of schedule may not be desirable for some position. Some agencies also indicated that the definitions of "Minimally Successful" and "Unacceptable" performance were too much alike. One comment objected to the phase "corrective action must be taken" in the definition of "Unacceptable" or Unsatisfactory" performance. About one-fourth of agencies and a few individuals asked that the same names be used for both SES and non-SES rating levels.

c. The definitions of "Outstanding" and "Exceeds Fully Successful" have been changed by adding the phrase "as warranted" to indicate selective application of quantity, timeliness, and amount of supervision as factors differentiating levels of performance. Also, the definitions of "Minimally Successful" and "Minimally Satisfactory" have been revised to indicate that performance needs improvement, but is not "Unacceptable" or Unsatisfactory." All references to

remedial and corrective action have been deleted from the SES rating level definitions. The phrase "consistent with required procedures" has been added to the requirement for corrective action for the "Unacceptable" non-SES rating level.

d. These changes reflect the concept that quality of performance is a univerally applicable factor in measuring performance, while other factors should be applied only if appropriate to the type and level of position involved. The revised definitions also create a greater distinction between "Minimally Successful" and "Unacceptable" performance, especially if it is understood that the performance standards mentioned in the definition of the "Unacceptable" ("Unsatisfactory") rating level are those which have been written at the "Minimally Successful" ("Minimally Satisfactory") or "Unacceptable" ("Unsatisfactory") level. The standards describe a threshold of performance, below which performance is "Unaccetpable" or "Unsatisfactory."

Names of the two lowest rating levels have not been changed because of specific statutory references to "Unacceptable" performance of non-SES employees, "Satisfactory" performance as a requirement for Federal Wage System step increases and "Minimally Satisfactory" and "Unsatisfactory" summary rating levels for SES employees.

7. *Performance Rating Procedures.*

a. Sections 430.203, 430.204 (b), (c), (d), (e); 431.203, 431.204 (b), (c), (d), (e).

b. Almost one-third of agencies commenting, two labor organizations, and an individual commenter indicated a desire to continue with existing procedures using fewer than five element rating levels. Just over one-third of agencies preferred not to write performance standards at three element rating levels, many of them stating that agencies should have the flexibility to set the number of written standards. Half of those objecting saw no benefit, stated that costs would be high, and thought there would be too much paperwork and burden on supervisors. Half felt there should only be one standard, written at the "Fully Successful" level, while a few others thought there should be two.

c. Agencies are now required to have a minimum of three rating levels for all critical elements, written performance standards at the "Fully Successful" level for all elements, and five summary rating levels. At any time during the appraisal cycle when performance has been determined to be below "Fully Successful" on one or more critical elements, agencies are required to provide a Performance Improvement Plan to an employee if performance standards had not previously been established at the "Unacceptable" ("Unsatisfactory") level or the rating level immediately above the "Unacceptable" ("Unsatisfactory") level. The Performance Improvement Plan must explain employee deficiencies, explain steps to be taken in an attempt to resolve the deficiencies, and include performance standards established at the "Minimally Successful" ("Minimally Satisfactory") level. The Performance Improvement Plan must be provided to the employee at the beginning of a new appraisal period. 5 CFR Part 432 provides for an opportunity period to improve "Unacceptable" performance which is in addition to the new appraisal period described above. The length of the new appraisal period will be determined by the agency, but cannot be shorter than the agency's minimum appraisal period.

As an editorial change, the non-SES definition of the term "rating" and the SES definition of the term "performance rating" have been changed by deleting the names of rating levels.

d. The proposed regulations specify minimum requirements. Agencies are required to write performance standards at the "Minimally Successful" ("Minimally Satisfactory") level only when demonstrated performances is below "Fully Successful" on one or more critical elements. The minimum rating requirements provide a sufficient basis for within-grade increase determinations. Although these requirements are a minimum, agencies are encouraged to establish five element rating levels.

8. *Performance ratings for Reduction-In-Force.*

a. Sections 430.204 (k), (l), (m); 431.204 (l), (m), (n).

b. Agencies have asked if the annual performance ratings to be used as a basis for Reduction-In-Force could include ratings given for appraisal periods of less than one year.

c. The regulations state that agencies must take into consideration all performance ratings given during the annual appraisal period when preparing an annual rating. The regulations also state that one exception to use of annual performance ratings as a basis for RIF is when a new employee does not have a performance rating of record, but has served for the agency's minimum appraisal period. Agencies are required to rate the performance of the newly hired employee and use the rating as a basis for the RIF action.

d. These revisions provide that annual ratings used as a basis for RIF actions are not interim ratings or unscheduled ratings provided upon reassignment of a supervisor or employee, completion of a detail, because of poor performance, or for some other reason. Instead, annual ratings are prescheduled ratings given once a year.

9. *Grievance of a Performance Rating.*

a. Sections 430.204(p) and 771.206(c)(3).

b. Over half of the agencies disagreed with the July 14 proposal which stated that an "employee may not grieve or appeal a performance rating." About half of the agencies disagreeing were concerned with employees' perception of fairness and objectivity. About one-fourth were concerned with FLRA rulings and the scope of grievances. About one-fifth were concerned with potential disputes, and with employees seeking more expensive avenues of redress (such as EEO complaints), when they disagreed with their ratings. Two agencies noted that there might be inconsistent treatment of bargaining unit vs. non-bargaining unit members. Four of the 10 associations and all seven labor organizations disagreed with the proposal—as did one-fourth of the individual commenters, citing legal and FLRA issues as well as the employees' perception of fairness and objectivity in performance ratings.

c. The revised regulations require that an employee be provided an opportunity to request reconsideration of a performance rating by the supevisor or manager who approved the rating. The revised regulations also provide that an agency may, at the discretion of the agency head, establish a further review of a performance rating. The review procedure may be established under a negotiated agreement. However, SES performance evaluations are not covered by the Agency Grievance System procedures established under 5 CFR Part 771.

d. The revision will enable agencies to permit grievances of performance ratings, but agencies may determine that performance ratings will not be grievable.

10. *Performance Ratings for Details.*

a. Sections 430.204 (q), (r); 431.204 (p), (q).

b. A number of agencies stated that elements and standards cannot always be provided at the beginning of a detail within an agency because not all details are anticipated in advance. A few agencies also requested clarification of the regulations on details to other organizations.

c. The regulations provide that agencies should provide elements and standards as soon as possible but not later than 30 days after the beginning of a detail or temporary promotion within the same agency. The regulations also provide more detailed instructions on performance ratings for non-SES employees detailed to another organization. Agencies are required to prepare performance ratings if the employee had served for the minimum appraisal period in the agency. Failing that, agencies are required to make a reasonable effort to obtain appraisal information from the other organization sufficient to prepare a performance rating. If no rating can be prepared, the agency can extend an employee's rating of record for no longer than one year.

d. Regulations on details of SES employees to other organizations have not been revised because of the specific legal requirement for annual ratings based on performance during an appraisal period.

11. *Implementation.*

a. Sections 430.207, 430.301, 431.301.

b. As noted above, the implementation schedules for the PMS are out of date, due to delayed implementation of the regulations.

c. OPM proposes to add a new § 430.208 to replace § 430.301 of the October 1983 regulations (superseded by the March 1985 regulations). Section 430.208(a) would require agencies to submit Peformance Management plans to OPM by December 15, 1985. Section 430.208(b) would require performance appaisal provisions of Performance Management Plans to be implemented not later than February 1, 1986.

OPM proposes to make parallel change in Part 431. Section 431.301(a) would require submission of SES Performance Management Plans to OPM not later than December 15, 1985. Section 431.301(b) would require SES peformance appraisal provisions of Performance Management Plans to be implemented not later than February 1, 1986.

d. The regulations state that decisions based upon performance appraisal under an agency's Performance Management Plans must begin as soon as possible after performance appraisal provisions have been implemented. Also, a proposed requirement has been deleted which would have required agency reports of provisions of any negotiated agreement which conflict with Performance Management System regulations.

12. *Documentation for SES Performance Appraisals.*

a. Section 431.204 (o), (r).

b. In response to a few comments, the regulations have been revised to provide that SES employees must be provided a copy of a final performance rating. The regulations also provide that a senior executive's response to an initial rating must be provided to the official making the higher level review and to the Performance Review Board.

13. *Use of SES Appraisals as a Basis for Personnel Actions.*

a. Section 431.204 (u), (v).

b. Several commenters noted that performance appraisals would not have any impact on the base pay of SES employees.

c. The regulations provide that SES performance ratings may provide a basis for decisions to grant performance-related ES pay rate adjustments.

14. *Performance Salary Ceiling for General Schedule Employees.*

a. Section 531.404 (a).

b. Half of the agencies, individuals, and associations commenting and six labor organizations asked that the performance salary ceiling proposal for General Schedule employees be deleted. The proposal would have required a summary rating of "Exceeds Fully Successful" for within-grade increases above step 7 of each grade. Commenters cited a GAO opinion, the prospect of rating "inflation", and inconsistency with lower performance requirements for promotions.

c. The performance salary ceiling previously proposed for General Schedule employees has been deleted.

15. *Mandatory Quality Step Increases.*

a. Sections 430.204 (f), (t); 431.204 (f), (w); 531.504.

b. Seventeen agencies and two labor organizations objected to requiring quality step increases for "Outstanding" employees in steps 1–3 of their grade. Reasons for objections included reduced management flexibility, a preference for granting cash awards, concern that the QSI would be meaningless if the employee was quickly promoted, preference for treating all "Outstanding" employees the same, and concern that QSI's might not be appropriate if disciplinary or budgetary problems existed.

c. The proposed requirement for mandatory QSI's for "Outstanding" employees in steps 1–3 of each grade has been deleted.

d. The regulations require that written recommendations for appropriate monetary, non-monetary, or honorary recognition be provided for all employees with "Outstanding" summary performance ratings.

16. *Productivity Benefit Sharing Programs.*

a. Part 451, Subpart C (Reserved).

b. One agency asked whether it could continue developing and implementing specially designed Productivity Benefit Sharing Programs and like productivity programs.

c. The regulations now contain a "Reserved" Subpart for Productivity Benefit Sharing regulations, which OPM may publish in the future. In the meantime, nothing precludes agencies from continuing the development and implementation of Productivity Benefit Sharing Programs.

17. *Special Award may be granted alone or in addition to a Performance Award.*

a. Sections 451.201(b) and 541.206(c).

b. Almost one-fourth of the agency comments made evident the need for further clarification.

c. New language clarifies that a Special Award may be granted alone or in additon to a Performance Award. Presidential awards shall be granted only under Subpart B of Part 451.

18. *Definition of "Meritorious Action".*

a. Section 451.203.

b. Almost one-fourth of the agencies expressed the need for clarification of the difference between Performance Awards under Part 531, Subpart F, and Meritorious Action Awards under Part 451.

c. New language clarifies the purpose and use of Meritorious Action Awards under Part 451. Meritorious actions rewarded must be outside or beyond job responsibilities and performance standards, and must be highly exceptional and unusually outstanding. Language proposed on July 14 which stated that Special Awards "shall be in addition to a performance award" has been deleted to further clarify the distinction between awards for performance and Special Awards.

19. *Awards for One-Time Special Acts or Services.*

a. Sections 451.204 and 531.601(c).

b. Several agencies indicated a need to clarify the circumstances under which awards for special acts or services may be given.

c. One-time special acts or services within the scope of normal employee job responsibilities and performance standards shall be rewarded under the Special Awards component of the Performance Management Plan; those outside the scope of job responsibilities and performance standards shall be rewarded under the Special Awards Program.

20. *Coverage of Employees under other pay systems.*

a. Sections 531.603(a) and 541.203(a).

b. One agency and one individual comment reflected the need for further clarification.

c. New language clarifies that employees in the Senior Executive Service are not eligible for performance awards under Part 531, Subpart F, but that employees covered under the Performance Management and Recognition System (PMRS) established under Chapter 54 of Title 5, United States Code, are eligible for performance awards. The revision also clarifies that all PMRS and Senior Executive Service employees are eligible for Special Awards, but only under the agency Performance Management Plan.

21. *Definitions of Awards Terms.*

a. Sections 531.604 and 541.204.

b. A number of agencies commented on the need to aid definitions of the terms "honorary award", "monetary award", "non-monetary award", "contribution", "meritorious action" and "special act or service", and to provide a more precise definition for the terms "tangible benefits" and "intangible benefits."

c. New language provides definitions for each of these terms.

22. *Policy on Performance Awards and Special Awards.*

a. Sections 531.605(a) and 451.205(a).

b. New language provides further clarification regarding OPM policy for the Performance Awards and Special Awards Programs.

23. *Inclusion of any Within-Grade Increase and/or Quality Step Increase in the Limit of 15% of Employee Base Pay when Granting a Performance Award.*

a. Section 531.605(b)(3).

b. Several agencies and individuals and one professional association preferred that within-grade increases and QSI's not be included in the 15-percent-of-base-pay limitation on performance awards. These commenters felt the limits should be established by agencies, within OPM guidelines and agency budget limitations. Several agencies and individuals were also concerned about the possible conflict between the timing of a Performance Award and the timing of Within-Grade Increase, which could occur several months later.

c. The regulations provide that if the sum of a performance award recommended and any within-grade and/or quality step increase received by the employee during the previous twelve (12) months exceeds 20 percent, the award must be reduced to that maximum.

d. This provision is consistent with a 20 percent limitation on performance awards for SES employees.

24. *OPM Guidance to Agencies.*

a. Sections 531.608(a) and 451.208(a).

b. Earlier proposed regulations required that OPM provide guidance to agencies on honorary and non-monetary awards, including honorary Presidential awards.

c. New language requires that OPM provide guidance to agencies on how the entire Performance Awards component of the Performance Management Plan should be carried out.

d. This further reinforces the statutory requirement (5 U.S.C. 4506) that OPM provide guidance on all aspects of the awards program.

25. *Review and Approval of the Performance Award Component of the Agency Performance Management Plan.*

a. Section 531.608(b)

b. New language corrects an oversight in the earlier regulations.

c. The regulation requires that OPM review and approve the agency Performance Award component of the Performance Management Plan, as required under § 430.207.

26. *Documentation of Performance Awards and Special Awards in Official Personnel Folders.*

a. Section 531.609(a)(1) and 451.209(a)(8).

b. This requirement has been moved to "Agency Responsibilities" for purposes of clarity.

27. *Consideration of Performance Awards when Rating and Ranking an Employee for a Promotion.*

a. Sections 531.609(a)(2) and 451.209(a)(9).

b. Agencies called to our attention the need to maintain this requirement in the regulations in order to comply with a statutory requirement (5 U.S.C. 3362).

c. This provision corrects an oversight. It requires that due weight be given to a Performance Award or a Special Award when rating and ranking an employee for a promotion.

28. *Plan for determining the Performance Award Fund.*

a. Section 531.609(d)(6).

b. This provision is required under § 430.207 and should also appear in this Subpart.

c. Section 430.207(a)(4) requires that the agency Performance Management Plan include plans for determining and distributing Within-Grade Increases, Quality Step Increases, and the agency performance award fund, including previous years' and projected expenditures.

29. *Funds for Productivity Benefit Sharing Programs.*

a. Section 531.609(d)(6).

b. The regulations require that funds for awards for Productivity Benefit Sharing Programs be separate from funds for Performance Awards.

c. This provision was moved from § 531.608(b) to § 531.609(d)(6) for purposes of clarity.

30. *Labor-Management Demonstration Projects on Merit-Type Pay Systems.*

a. Section 430.207(d).

b. Before the white-collar workforce moves to a full merit-type pay system, the Office of Personnel Management (OPM) has determined that demonstration projects would first be necessary. It has determined that these would be most productive with labor organization involvement.

c. OPM has provided for up to the maximum eight demonstration projects now allowed under law, involving up to 5,000 employees each, under the demonstration projects authority of section 4703 of 5 U.S.C. The Office of Personnel Management would directly, or through agreement or contract with one or more agencies, conduct and evaluate these demonstration projects under the criteria set in the statute. The scope of such demonstration projects would cover all aspects related to a merit-type pay system for white collar employees in the demonstration project agencies.

E.O. 12291 Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Government employees.

List of Subjects

5 CFR Part 300

Government employees, Administrative practice and procedure.

5 CFR Part 335

Government employees.

5 CFR Part 430

Government employees, Administrative practice and procedure, Reporting requirements.

5 CFR Part 431

Government employees, Administrative practice and procedure, Reporting requirements.

5 CFR Part 451

Decoration, Medals, Awards, Government employees.

5 CFR Part 531

Government employees, Wages, Administrative practice and procedure.

5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 771

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the Office of Personnel Management proposes to amend Title 5, Code of Federal Regulations, as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation of Part 300 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, unless otherwise noted. Secs. 300.101–300.104 also issued under 5 U.S.C. 7151, 7154; E.O. 11478, 3 CFR, 1966–1970 Comp., p. 806, unless otherwise noted.

2. Section 300.602 will read as follows:

* * * * *

Subpart F—Time-in Grade Restrictions

* * * * *

§ 300.602 Restrictions.

The time-in-grade restrictions in this subpart are subject to the eligibility requirements based on performance in § 335.104 of this chapter.

(a) Advancement to positions at GS–12 and above. An agency may advance an employee to a position at GS–12 or above only after he or she has served a minimum of 1 year in the next lower grade.

(b) Advancement to positions at GS–6 through GS–11. An agency may advance an employee to a position at GS–6 through GS–11 only after he or she has served a minimum of:

(1) One year in a position two grades lower, when the position to which he or she is advanced is in a line of work properly classified at two-grade intervals; or

(2) One year at the next lower grade when the position to which he or she is advanced is in a line of work properly classified at one-grade intervals.

(c) Advancement to positions at GS–5 or below. An agency may advance an employee to a position at GS–5 or below which is not more than two grades above the lowest grade he or she held within the preceding year under a nontemporary appointment.

PART 335—PROMOTION AND INTERNAL PLACEMENT

3. The authority citation for Part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

4. Section 335.104 is revised to read as follows:

Subpart A—General Provisions

* * * * *

§ 335.104 Eligibility for career ladder promotion.

(a) No employee shall receive a career ladder promotion unless his or her most recent summary rating under Part 430 of this chapter is "Fully Successful" or higher. In addition, no employee may receive a career ladder promotion who has a rating below "Fully Successful" on a critical element that is also critical to performance at the next higher grade of the career ladder.

(b) Employees with the highest summary ratings must be given first consideration for career ladder promotions when it is not possible to promote all eligible employees in the same career ladder at the same time.

5. In Part 430, Subparts A and B are revised to read as follows:

PART 430—PERFORMANCE MANAGEMENT

Subpart A—Performance Management System [Reserved]

Subpart B—Performance Appraisal for General Schedule and Wage Grade Employees

Sec.

430.201 Purpose.
430.202 Coverage.
430.203 Definitions.
430.204 The performance appraisal process.
430.205 Training and evaluation.
430.206 OPM review of appraisal systems.
430.207 Performance Management Plans.
430.208 Implementation of this part.

Authority: 5 U.S.C. 4305

Subpart A—Performance Management System [Reserved]

Subpart B—Performance Appraisal for General Schedule and Wage Grade Employees

§ 430.201 Purpose.

It is the purpose of this subpart to ensure that performance appraisal systems are used as a tool for executing basic management and supervisory responsibilities by:

(a) Communicating and clarifying agency goals and objectives,

(b) Identifying individual accountability for the accomplishment of organizational goals and objectives.

(c) Evaluating and improving individual and organizational accomplishments, and

(d) Using performance ratings as a basis for rewarding employees and other personnel actions.

§ 430.202 Coverage.

(a) *Employees and agencies covered by statute.* (1) 5 U.S.C. 4301(1) lists agencies covered by this part.

(2) 5 U.S.C. 4301(2) lists employees covered by statute by this part.

(b) *Statutory exclusions.* This subpart does not apply to:

(1) Agencies or employees excluded by 5 U.S.C. 4301 (1) and (2), the United States Postal Service and the Postal Rate Commission, or

(2) Employees covered under 5 U.S.C. 4302a and Subpart D of this part.

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded:

(1) Positions in Schedule C as authorized by § 213.3301 of this chapter.

(2) Positions filled by Noncareer Executive Assignments under Part 305 of this chapter.

(3) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(d) Agency requests for exclusions. Heads of agencies or their designees may request the Director of the Office of Personnel Management to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.203 Definitions.

In this part, terms are defined as follows—

"Appraisal" means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s). This includes oral or written progress reviews.

"Appraisal period" means the period of time established by an appraisal system for which an employee's performance will be reviewed and for which a performance rating will be given.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under 5 U.S.C. 4301 and Subpart B of this part which provides for identification of critical and non-critical

elements, establishment of performance standards, communication of elements and standards to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a job consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that "Unacceptable" performance on the element would result in "Unacceptable" performance of assigned work.

"Non-critical element" means a component of an employee's job which does not meet the definition of a critical element, but is of sufficient importance to warrant appraisal and the assignment of an element rating.

"Performance" means an employee's accomplishment of assigned duties and resonsibilities as specifed in the critical and non-critical elements of the employee's position.

"Performance Plan" means the aggregation of all of an employee's written critical and non-critical elements and performance standard(s).

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

"Rating" means the written record of the appraisal of each critical and non-critical element and overall performance.

§430.204 The performance appraisal process.

(a) As required by 5 U.S.C. 4302(a), each agency shall establish one or more appraisal systems for appraising the work performance of employees during an appraisal period.

(b) Critical elements must be included and non-critical elements may be included in individual Performance Plans. An employee must be appraised and rated on each critical and non-critical element in the employee's Performance Plan, unless the employee has had no opportunity to demonstrate performance on the element. An employee must also be given a summary rating. Agency appraisal systems may not provide for assignment of performance ratings to subelements.

(c) Agency appraisal systems shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critial and non-critical elements. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level. Pass/fail elements are tasks, not true elements, and therefore cannot be used as elements in an appraisal.

(d) Agency appraisal systems shall provide for five summary rating levels. The required summary rating levels are "Outstanding", "Exceeds Fully Successful", "Fully Successful", "Minimally Successful", and "Unacceptable".

(1) Agency Performance Management Plans must include decision tables for deriving summary rating levels from performance ratings on critical elements and, at agency discretion, ratings on non-critical elements. If ratings on non-critical elements are considered in deriving summary ratings, the decision tables must show that more weight will be given to critical elements than to non-critical elements in determing an employee's summary rating.

(2) If an employee is rated "Unacceptable" on one or more critical elements, an "Unacceptable" summary rating must be given.

(e) The requirements of this paragraph apply only if performance standards have not been established at the "Unacceptable" level or at the element level immediately above the "Unacceptable" level.

(1) If at any time an employee's performance is determined to be below "Fully Successful" on one or more critical elements, agencies must start a new appraisal period which is not an opportunity period under Part 432 of this chapter.

(2) At the beginning of a new appraisal period, agencies must provide a Performance Improvement Plan (PIP) to each employee who has been determined to be below "Fully Successful" on one or more critical elements. The PIP must:

(i) Explain the employee deficiencies;

(ii) Explain steps to be taken in an attempt to resolve the deficiencies; and

(iii) Communicate performance standards at the "Minimally Successful" or "Unacceptable" level for those critical elements where performance has been determined to be below "Fully Successful."

(f) If performance standards have not been prepared at the "Outstanding" level or at the element level immediately below the "Outstanding" level, a written justification must be prepared for an "Outstanding" summary rating.

(g) An appraisal system shall not permit any preestablished distributions of expected levels of performance (such as the requirement to rate on a bell curve) that interfere with appraisal of actual performance against standards. However, agencies must provide for higher level management of the performance appraisal process in the interest of employee equity and in order to reflect organizational performance.

(h) Definitions of the five required summary rating levels follow. Performance standards and agency procedures for deriving summary ratings must be consistent with these definitions.

(1) "Outstanding" means performance of rare, very high quality. As warranted, an Outstanding performer produces an exceptional quantity of work significantly ahead of established schedules or deadlines and with very little supervision.

(2) "Exceeds Fully Successful" means performance of unusually good or excellent quality. As warranted, the employee produces a very high quantity of work ahead of established schedules or deadlines and with less than normal supervision.

(3) "Fully Successful" means performance which is of good quality. The employee produces the expected quantity of work and meets deadlines or schedules for completion of work.

(4) "Minimally Successful" means performance which is not "Unacceptable", but needs improvement to achieve the "Fully Successful" level. This may be evidenced by the need for close supervisory review, discussion, and correction of work products. When performance falls below "Fully Successful", it may be necessary to take remedial action.

(5) "Unacceptable" means performance which fails to meet established performance standards in one or more critical elements of the employee's position. When performance is "Unacceptable", corrective action must be taken consistent with required procedures.

(i) Each appraisal system shall provide for establishing performance standards based on requirements of employees' positions, providing written Performance Plans to employees at the beginning of each appraisal period, and appraising employees based on a comparison of performance with the standards established for the appraisal period. An agency shall encourage employee participation in establishing performance standards.

(j) Critical elements, non-critical elements, and performance standards must be related to the employee's assigned work.

(k) Employees shall generally be given performance ratings on an annual basis. Agencies may provide for longer appraisal periods when duties and responsibilities of a position or the tour of duty of a position so warrant. Agencies should take into consideration all performance ratings of assigned work given the employee throughout the appraisal period in arriving at the annual rating.

(l) Annual performance ratings shall be used as a basis for reduction-in-force actions, except that an employee without an annual performance rating of record shall be given a performance rating before a RIF if the employee has served for the minimum appraisal period.

(m) Agency appraisal systems shall establish a minimum appraisal period of not less than 90 calendar days. A performance rating of assigned work for the minimum appraisal period but less than one year shall constitute the annual rating only as required by paragraph (1) of this section or any other applicable provision of law or regulation. When a within-grade increase decision is not consistent with the employee's last performance rating, an additional and more current performance rating must be prepared.

(n) Critical elements, non-critical elements, and performance standards shall be in writing and shall be reviewed and approved by a supervisor or manager at a higher level than the appraising official.

(o) Periodic performance ratings and performance based personnel actions shall be reviewed and approved by a supervisor or manager at a higher level than the appraising official. Performance ratings shall be in writing and shall be provided to the employee. Performance ratings may not be communicated to employees prior to approval by a higher level reviewer.

(p) An employee must be given the right to ask for reconsideration of a performance rating by the supervisor or manager who aproved the performance rating. This reconsideration will be in the interest of insuring fairness of an individual's rating. Additional procedures for review of a performance rating may be established at the discretion of the agency head.

(q) Details within the same agency. Agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion within the same agency when the detail or temporary promotion is expected to last 120 calendar days or longer. Performance ratings on critical elements must be prepared for these details and temporary promotions and must be considered in deriving an employee's next annual summary rating.

(r) Details to another agency or organization. When an employee is or has been detailed or temporarily assigned outside of the agency, an annual performance rating must be prepared if the employee has served for the minimum appraisal period inside the agency.

(1) If an employee has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period in another organization, the agency must make a reasonable effort to obtain appraisal information from the other organization sufficient to prepare an annual performance rating.

(2) When an annual performance rating cannot be prepared, the employee's performance rating of record may be extended for no longer than one year. (An extended performance rating shall not be used as basis for a within-grade increase determination which must be waived under § 531.409(d) of this chapter).

(3) During any period of time when an agency cannot prepare a new performance rating or extend a previous rating, the agency may assume that the employee's performance is "Fully Successful."

(s) Performance appraisals and ratings shall be used:

(1) To provide employees with information on their performance and how it may be improved.

(2) As a basis for decisions to grant awards; grant or without pay increases, i.e., within-grade increases, Federal Wage System step increases, and quality step increases; reassign; promote; develop; retain in reduction in force; and reduce in grade or remove.

(t) If an employee is given an "Outstanding" summary performance rating, a written recommendation for appropriate monetary, non-monetary, or honorary recognition must be prepared.

(u) The performance rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment in accordance with Executive Order 5396.

§ 430.205 Training and evaluation.

To assure that the requirements of the law will be effectively implemented, agencies must provide appropriate training and information to supervisors and employees on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of their appraisal system(s) and to improve the system(s).

§ 430.206 OPM review of appraisal systems.

(a) The Office of Personnel Mangement will review performance appraisal systems to determine if they conform to requirements of law and OPM regulations. The Office of Personnel Management will also review appraisal systems with respect to their contribution to agency effectiveness and efficiency and appropriate use of performance information in personnel decisions.

(b) If the Office of Personnel Management determines that an appraisal system does not meet the requirements of Subchapter I of 5 U.S.C. 43 or of this part, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.207 Performance Management Plans.

(a) Agencies must submit proposed Performance Mangement Plans to the Office of Personnel Management for review and approval. Performance Management Plans; shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Appraisal Systems required under 5 U.S.C. 4302 and 4312. Submissions may either be agency-wide appraisal systems or requirements which the systems of subordinate organizations must meet.

(2) Performance Award Plans required by Part 531 of this chapter.

(3) Plans for determining and distributing Within-Grade Increases, Quality Step Increases and the agency performance award fund, including previous years' and projected expenditures.

(b) Proposed changes to approved Performance Management Plans which would have an impact on how an agency meets legal or regulatory requirements must be submitted to the Office of Personnel Management for review and approval.

(c) Each agency shall maintain records and submit reports required by OPM regarding the operation of an agency Performance Management Plan or any part of a plan.

(d) Up to eight (8) performance management plans may be submitted as demonstration projects under 5 U.S.C. 4703 which would allow for consultation or negotiation, as appropriate, by an agency and recognized labor organizations. Such plans will not be restricted by the provisions of this part but shall investigate and implement different types of merit pay plans. They

may include proposals for waiting periods for within-grade increases, when within-grades shall be granted automatically or when granted earlier or later, career ladder promotions, grievance of ratings, gain sharing and other merit pay proposals. Any such plans shall meet all of the requirements of section 4703.

§ 430.208 Implementation of this part.

(a) Each agency covered by this subpart shall submit Performance Management Plans to the Office of Personnel Management for review by December 15, 1985.

(b) Agencies will be required to implement the performance appraisal provisions of an approved Performance Management Plan not later than February 1, 1986.

(c) Decisions based on performance appraisals under the agency's Performance Management Plan must begin as soon as possible after the performance appraisal provisions have been implemented and in accordance with provisions of an agency's Performance Management Plan approved by OPM.

(d) Agencies shall implement their Performance Management Plans except where provisions of an existing negotiated agreement are in explicit conflict with these OPM regulations in which case the provisions of the negotiated agreement shall be in effect until its expiration. Agencies may request OPM approval of the following exceptions:

(1) For specific provisions of OPM regulations that are not in explicit conflict with existing provisions of a labor agreement but would cause significant inequities if implemented in combination with provisions of the labor agreement, or

(2) Where apparently conflicting provisions of negotiated agreements are consistent with the intent of OPM regulations (e.g., where an agreement calls for five rating levels with different names).

6. Part 431 is revised to read as follows:

PART 431—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

Subpart A—Statutory Authority

Sec.

431.101 General.

Subpart B—Regulatory Requirements of the Office of Personnel Management

431.201 Purpose.
431.202 Coverage.
431.203 Definitions.
431.204 The Performance Appraisal Process.
431.205 Training and Evaluation.
431.206 OPM Review of SES Appraisal Systems.
431.207 Performance Management Plans.

Subpart C—Implementation

431.301 Implementation of this part.

Authority: 5 U.S.C. 43 Subchapter II.

Subpart A—Statutory Authority

§ 431.101 General.

Chapter 43 of title 5, United States Code (5 U.S.C. 4311–4315) provides for the establishment of Senior Executive Service performance appraisal systems and appraisals of senior executives' (as defined in 5 U.S.C. 3132(a)) performance. This part contains the regulations which the Office of Personnel Management has prescribed for performance appraisal in the Senior Executive Service, and supplements the provisions of 5 U.S.C. 4311–4315.

Subpart B—Regulatory Requirements of the Office of Personnel Management

§ 431.201 Purpose.

It is the purpose of this subpart to ensure that performance appraisal systems are used as a tool for executing basic performance management responsibilities by:

(a) Communicating and clarifying organizational goals and objectives,

(b) Identifying individual accountability for the accomplishment of agency goals and objectives,

(c) Evaluating and improving individual and organizational accomplishments, and

(d) Using performance ratings as a basis for rewarding employees and other personnel actions.

§ 431.202 Coverage.

(a) All senior executives covered by Subchapter II, of Chapter 31 of title 5, United States Code are covered by this part.

(b) 5 U.S.C. 3132(a)(1) identifies agencies covered by this part.

§ 431.203 Definitions.

In this part, terms are defined as follows—

"Appointing authority" means the agency or department head or his or her designee.

"Appraisal period" means the period of time established by an appraisal system for which the senior executive's performance will be reviewed and for which a performance rating will be given.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under Subchapter II of Chapter 43 of title 5 U.S.C., and Subpart B of this part which provides for identification of critical and non-critical elements, establishment of performance standards, communication of elements and standards to senior executives, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a job consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that "Unsatisfactory" performance on the element would result in "Unsatisfactory" performance of assigned work.

"Final rating" means the rating assigned by an appointing authority after considering the recommendations of a Performance Review Board.

"Initial rating" means the rating by the senior executive's immediate supervisor, the rating official.

"Non-critical element" means a component of an employee's job which does not meet the definition of a critical element, but is of sufficient importance to warrant appraisal and the assignment of an element rating.

"Performance" means the senior executive's accomplishment of assigned duties and responsibilities as specified in the critical and non-critical elements of the executive's position.

"Performance appraisal" means the act or process of reviewing and evaluating the performance of an executive against the described performance standards. This includes oral or written progress reviews.

"Performance Plan" means the aggregation of the senior executive's written critical and non-critical elements and performance standards.

"Performance Rating" means the written record of the appraisal of each critical and non-critical element and overall performance.

"Performance requirement" means performance standard.

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, cost efficiency, timeliness, and manner of performance.

§ 431.204 The performance appraisal process.

(a) As required by 5 U.S.C. 4312(a), each agency shall establish one or more appraisal systems for appraising the individual and organizational work performance of senior executives during an appraisal period.

(b) Critical elements must be included and non-critical elements may be included in individual Performance Plans. An executive must be appraised and rated on each critical and non-critical element in the executive's Performance Plan, unless the employee has had no opportunity to demonstrate performance on the element. An executive must also be given a summary rating. Agency appraisal systems may not provide for assignment of performance ratings to subelements.

(c) Agency appraisal systems shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level. Pass/fail elements are tasks, not true elements, and therefore cannot be used as elements in an appraisal.

(d) Agency appraisal systems shall provide for five summary rating levels. The required summary rating levels are "Outstanding," "Exceeds Fully Successful," "Fully Successful," "Minimally Satisfactory," and "Unsatisfactory".

(1) Agency Performance Management Plans must include decision tables for deriving summary rating levels from performance ratings on critical elements and, at agency discretion, ratings on non-critical elements. If ratings on non-critical elements are considered in deriving summary ratings, the decision tables must show that more weight will be given to critical elements than to non-critical elements in determining an employee's summary rating.

(2) If an employee is rated "Unsatisfactory" on one or more critical elements, an "Unsatisfactory" summary rating must be given.

(e) The requirements of this paragraph apply only if performance standards have not been established at the "Unsatisfactory" level or at the element level immediately above the "Unsatisfactory" level.

(1) At the beginning of a new appraisal period, agencies must provide a Performance Improvement Plan (PIP) to each employee who has been rated below "Fully Successful" on one or more critical elements.

(2) The PIP must:

(i) Explain the employee deficiencies,

(ii) Explain steps to be taken in an attempt to resolve the deficiencies, and

(iii) Communicate performance standards at the "Minimally Satisfactory" or "Unsatisfactory" level for those critical elements which were rated below "Fully Successful".

(f) If performance standards have not been prepared at the "Outstanding" level or at the element level immediately below the "Outstanding" level, a written justification must be prepared for an "Outstanding" summary rating.

(g) An appraisal system shall not permit any preestablished distributions of expected levels of performance (such as the requirement to rate on a bell curve) that interfere with appraisal of actual performance against standards. However, agencies must provide for higher level management of the performance appraisal process in the interest of employee equity and in order to reflect organizational performance.

(h) Definitions of the five required summary rating levels follow. Performance standards and agency procedures for deriving summary ratings must be consistent with these definitions.

(1) "Outstanding" means performance of rare very high quality. As warranted, an Outstanding performer produces an exceptional quantity of work significantly ahead of established schedules or deadlines and with very little supervision.

(2) "Exceeds Fully Successful" means performance of unusually good or excellent quality. As warranted, the employee produces a very high quantity of work ahead of established schedules or deadlines and with less than normal supervision.

(3) "Fully Successful" means performance which is of good quality. The employee produces the expected quantity of work and meets deadlines or schedules for completion of work.

(4) "Minimally Satisfactory" means performance which is not "unsatisfactory", but needs improvement to achieve the "Fully Successful" level. This may be evidenced by the need for close supervisory review, discussion and correction of work products.

(5) "Unsatisfactory" means performance which fails to meet established performance standards in one or more critical elements of the executive's position.

(i) Each appraisal system shall provide for establishing performance standards based on the requirements of senior executives' positions, providing written Performance Plans to senior executives on or before the beginning of each appraisal period, and appraising senior executives based on a comparison of performance with the standards established for the appraisal period. An agency shall establish performance standards in consultation with the senior executive.

(j) Critical elements, non-critical elements, and performance standards must be related to the senior executive's assigned work and organizational performance requirements.

(k) Critical elements, non-critical elements, and performance standards shall be in writing and shall be reviewed and approved by an executive at a higher level than the appraising official or by a review committee. When elements and standards are written by the agency head, no further review is possible.

(l) Senior executives shall be given performance ratings on an annual basis. Agencies should take into consideration all performance ratings of assigned work given the employee throughout the appraisal period in arriving at the annual rating.

(m) Annual performance ratings shall be used as a basis for reduction-in-force actions, except that an employee without an annual performance rating of record shall be given a performance rating before a RIF if the employee has served for the minimum appraisal period.

(n) Agency appraisal systems shall establish a minimum appraisal period of not less that 90 calendar days. A performance rating of assigned work for the minimum appraisal period but less than one year shall constitute the annual rating only as required by paragraph (m) of this section or any other applicable provision of law or regulation.

(o) Agencies shall provide to each senior executive a copy of the following documents at the time they are prepared: the initial rating, along with notification of the right to respond in writing and to request a higher level review before the rating becomes final; any recommended changes by a higher level executive; and the final rating. Agencies must also provide a copy of critical elements, non-critical elements, and performance standards to each senior executive.

(p) Details within the same agency. Agencies shall provide written critical elements and performance standards to senior executives as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary assignment within the same agency when the detail or temporary assignment is expected to last 120 calendar days or longer. Performance

ratings on critical elements must be prepared for these details and temporary assignments and must be considered in deriving a senior executive's next annual summary rating.

(q) When a senior executive is detailed or temporarily assigned outside the agency, the agency shall obtain relevant appraisal information from the agency or organization to which the executive is detailed or temporarily assigned.

(r) Agency performance appraisal systems must provide an opportunity for senior executives to respond in writing to an initial rating and have the rating reviewed by an employee in a higher executive level than the supervisor before review by the Performance Review Board (PRB). The senior executive's reponse shall be provided to both the official making the higher level review and to the PRB.

(1) Agency performance appraisal systems may provide for a mandatory second level review.

(2) A senior executive is entitled to only one higher level review unless the agency provides otherwise.

(3) Agencies shall provide copies of the reviewer's comments and recommendations to the senior executive, the supervisory official and the PRB.

(s) As required by 5 U.S.C. 4314(c), each agency is required to establish one or more PRB's to make recommendations to the appointing authority on the performance of senior executives in the agency.

(1) Each PRB in an agency shall have three or more members appointed by the head of the agency or by another official or group acting on behalf of the head of the agency.

(2) Notice of appointment to the PRB must be published in the **Federal Register.**

(3) The members of the PRB must be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal.

(4) When appraising a career appointee, more than one-half of the membership of the PRB must be SES career appointees unless OPM determines that there exists an insufficient number of career appointees available to comply with the requirement.

(5) Each PRB will review and evaluate the initial rating, the senior executive's written response, if any, and the written comments, if any, on the initial rating by a higher level executive, and will conduct such further review as the PRB finds necessary.

(6) Individual PRB members must not take part in any PRB deliberations or appraisals involving themselves.

(7) The PRB must make a written recommendation concerning the senior executive's summary rating.

(t) Agencies are required to retain all documentation on performance appraisal decisions for no less than five years from the date of the appraisal.

(u) Final performance ratings shall provide a basis for decisions to remove senior executives from the SES.

(v) Final performance ratings may provide a basis for decisions to:

(1) Reassign or transfer senior executives within the SES;

(2) Grant performance awards to career senior executives; and

(3) Grant performance-related ES pay rate adjustments.

(w) If an employee is given an "Outstanding" summary performance rating, a written recommendation for appropriate monetary, non-monetary, or honorary recognition must be prepared.

§ 431.205 Training and evaluation.

To assure that the requirements of the law will be effectively implemented, agencies must provide appropriate training and information to supervisors and senior executives on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of their appraisal system(s) and to improve the system(s).

§ 431.206 OPM review of SES appraisal systems.

(a) SES performance appraisal systems must conform to requirements of law and OPM regulations. The Office of Personnel Management will review appraisal systems for conformance with these regulations as well as with respect to their contribution to agency effectiveness and efficiency and appropriate use of performance information in personnel decisions.

(b) If the Office of Personnel Management determines that an appraisal system does not meet the requirements of Subchapter II of Chapter 43 of title 5, United States Code or of this part, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 431.207 Performance Management Plans.

(a) Agencies must submit proposed Performance Management Plans to the Office of Personnel Management for review and approval as required by § 430.207 of this chapter.

(b) Proposed changes to approved Performance Management Plans which have an impact on how an agency meets legal or regulatory requirements must be submitted to the Office of Personnel Management for review and approval.

Subpart C—Implementation

§ 431.301 Implementation of this part.

(a) Each agency covered by this part shall submit Performance Management Plans to the Office of Personnel Management for review by December 15, 1985.

(b) Agencies will be required to implement the performance appraisal provisions of an approved Performance Management Plan not later than February 1, 1986 for employees covered under this part.

(c) Decisions based on performance appraisals under the agency's Performance Management Plan must begin as soon as possible after the performance appraisal provisions have been implemented and in accordance with provisions of an agency's Performance Management Plan approved by OPM.

7. Part 451 is revised to read as follows:

PART 451—SPECIAL AWARDS

Subpart A—[Reserved]

Subpart B—Regulatory Requirements of the Office of Personnel Management for Special Awards

Sec.
451.201 Applicability.
451.202 Purpose.
451.203 Coverage.
451.204 Definitions.
451.205 Policy.
451.206 Eligibility.
451.207 Payment.
451.208 Responsibilities of the Office of Personnel Management.
451.209 Agency responsibilities.

Subpart C—Regulatory Requirements of the Office of Personnel Management for Productivity Benefit Sharing Programs (Reserved)

Authority: 5 U.S.C. 4506, and 5407.

Subpart A—[Reserved]

Subpart B—Regulatory Requirements of the Office of Personnel Management for Special Awards

§ 451.201 Applicability.

(a) This subpart contains the regulatory requirements of the Office of Personnel Management for the establishment and conduct of the Special Awards Program for employee

suggestions, inventions, and meritorious actions.

(b) An award under this subpart may be granted alone or in addition to a performance award granted under Part 430 Subpart E, of this chapter.

(c) Refer to Part 430 Subpart E, of this chapter for the regulatory requirements on Performance Awards based on accomplishments and contributions within the scope of the employee's job responsibilities and performance standards.

§ 451.202 Purpose.

(a) The Federal Government employees' Special Awards Program is designed to improve Government operations and services. Its purpose is to motivate employees to increase productivity and creativity by rewarding those whose accomplishments and adopted ideas benefit the Federal Government.

(b) The Office of Personnel Management encourages agencies to make maximum use of their authorities under Chapters 45 and 54 of title 5, United States Code, to establish and administer special awards for suggestions, inventions, and meritorious actions that best support and enhance agency and national goals, and meet employee recognition needs.

§ 451.203 Coverage.

(a) This subpart applies to employees as defined by Section 2105 of title 5, United States Code, including those covered by the Performance Management and Recognition System established under Chapter 54 of title 5, United States Code.

(b) This subpart applies to agencies as defined in Section 4501 of title 5, United States Code.

§ 451.204 Definitions.

In this subpart, terms are defined as follows:

"Contribution" means a suggestion, an invention, a meritorious action or other personal or group effort that contributes to the efficiency, the economy, or other improvement of Government operations; or a special act or service in the public interest in connection with or related to official employment (5 U.S.C. 4503).

"Honorary award" means a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

"Intangible benefits" means benefits to the Federal Government that are very exceptional and cannot be measured or are difficult to measure in terms of dollars saved.

"Meritorious action" means any employee or group contribution which is highly exceptional and unusually outstanding and which is beyond or outside job responsibilities and performance standards.

"Non-monetary award" means an award tailored to meet special conditions and needs of an employee and/or organization. It usually has a monetary connotation for the agency but not for the employee.

"Presidential award" means an award granted by the President under Section 4504 of title 5, United States Code.

"Special act or service" under this part means a non-recurring contribution which is beyond or outside normal job responsibilities and performance standards; a single scientific achievement; or an act of heroism.

"Special award" or "award" means a monetary, an honorary, or a nonmonetary award based on the tangible savings and/or intangible benefits to Federal Government.

"Tangible savings" means savings to the Federal Government that can be measured in terms of dollars saved.

§ 451.205 Policy.

(a) The policy of the Special Awards Program shall be to:

(1) Grant recognition in keeping with the value of the contribution to the Federal Government;

(2) Consider employee contributions for application throughout the Federal Government; and

(3) Assure that awards are not used as a substitute for other personnel actions, or as a substitute for pay.

(b) A special award under this subpart shall be:

(1) Monetary, honorary, or non-monetary;

(2) Based on employee accomplishments and contributions that are clearly beyond or outside assigned job responsibilities and performance standards.

(c) Monetary awards based on tangible savings shall not exceed amounts indicated by the following scales:

(1) Awards of up to $10,000, based on tangible savings:

Tangible savings	Award
Up to $20,000	5 percent of savings.
$20,001 to $100,000	$1,000 plus 1.5 percent of savings over $20,000.
Over $100,000	$2,200 plus .25 percent of savings over $100,000 up to maximum award of $10,000.

(2) Awards over $10,000 based on tangible savings:

Savings (in millions)		Award
Savings will continue for 5 years or more. First year savings will be:	Savings that occur on a one-time basis will be:	
$5 to 7.4	$15	$15,000
7.5 to 9.9	20	20,000
10	25	25,000

(3) Presidential Awards based on tangible savings:

Savings (in millions)		Award
Savings will continue for 5 years or more. First year savings will be:	Savings that occur on a one-time basis will be:	
$20 or more	$75	$10,000 in addition to a $25,000 award, for a total of $35,000.

(d) In addition to special awards based on tangible savings under paragraphs (c)(1), (c)(2) and (c)(3) of this section, special awards may be granted for contributions having exceptional intangible benefits to the Government. OPM shall provide guidance to agencies regarding how to limit the use of monetary awards based on intangible benefits, and how they should be computed.

(e) OPM shall provide guidance to agencies regarding criteria for granting all honorary and non-monetary awards based on tangible savings and/or intangible benefits to Federal Government.

§ 451.206 Eligibility.

(a) A special award may be granted when the suggestion, invention, meritorious action or other personal or group effort:

(1) Meets the requirements under § 451.205 of this subpart;

(2) Benefits the Government as described in 5 U.S.C. 4503 and 4504;

(3) Was made while the contributor was a Government employee;

(4) Has been described in writing; and

(5) Has been approved by the benefiting organization at a management level higher than the individual who:

(i) Recommended use of the suggestion, invention, or meritorious action; or

(ii) Recommended the award.

(b) Special awards shall not be mandatory.

§ 451.207 Payment.

(a) Awards paid under this subpart do not increase the rate of basic pay.

(b) When a special award is approved for an employee of another agency, arrangements shall be made to transfer funds to the employing agency. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs.

§ 451.208 Responsibilities of the Office of Personnel Management.

(a) OPM shall provide guidance to agencies on how the Special Awards Program should be carried out (5 U.S.C. 4506)

(b) OPM shall review, and following verification of savings or benefits and relationship of contributions to job requirements, approve or disapprove recommendations for all awards in excess of $10,000 on a case-by-case basis. OPM shall limit approval of all awards to denominations of $15,000, $20,000 and $25,000.

(c) The Director, OPM, shall advise the President on monetary and honorary Presidential awards for Government employees which shall only be granted under this subpart. A monetary Presidential award granted in addition to a $25,000 award made under 5 U.S.C. 4503 shall be for $10,000.

§ 451.209 Agency responsibilities.

(a) The head of each agency shall establish an agency Special Awards Program that seeks to gain maximum benefits for the Government through improved employee motivation and productivity by providing for:

(1) The greatest motivational impact by allocating an adequate budget, staffing, and support services to assure prompt action on special award recommendations, and effective promotion and publicity activities;

(2) Delegation of authority and responsibility for approval of special awards to the appropriate management level;

(3) Special award recommendations involving the minimum amount of paperwork and processing which show that criteria are met and expenditure of appropriated funds for the award is justified;

(4) Central administration and review of the agency-wide program, including systematic evaluation, planning, and feedback reports to management officials and employees;

(5) The granting of special awards as soon as possible after an assessment of the contribution indicates that an award should be granted;

(6) Time limits for processing special award recommendations and granting of special awards;

(7) The integrity of the program by reviewing agency program results to assure that special awards are granted equitably, on the basis of the tangible savings and/or intangible benefits to the Government; that action is taken to grant special awards in a timely manner; and that information is made available concerning persons who have received special awards and the reason(s) why each award is granted;

(8) Documentation in the Official Personnel Folder to reflect the nature of a special award, including the amount of a monetary award;

(9) Due weight to a special award when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362; and

(10) Consideration of accomplishments and adopted ideas for wider application both within the agency and Governmentwide, and prompt referral when appropriate.

(b) Each agency head may delegate the responsibilities in § 451.209(a) of this subpart as deemed appropriate for his or her organization.

(c) The head of each agency shall transmit to OPM:

(1) Award recommendations over $10,000;

(2) All recommendations for Presidential awards; and

(3) An annual report on program activities for the past fiscal year.

8. The heading for Part 531 and the authority citation for Part 531, Subpart D, are revised to read as follows:

PART 531—PERFORMANCE BASED INCENTIVE SYSTEM FOR THE GENERAL SCHEDULE

* * * * *

Subpart D—Within Grade Increases

Authority: 5 U.S.C. 5301, 5335, and 5338 and E.O. 11721 as amended, § 402, unless otherwise noted.

9. Section 531.401 is revised to read as follows:

§ 531.401 Principal Authorities.

The following are the principal authorities for the regulations in this subpart:

(a) 5 U.S.C.(b)(3) provides in part that ". . . appropriate incentives and recognition should be provided for excellence in performance."

(b) 5 U.S.C. 5301(a)(2) provides that "pay distinctions be maintained in keeping with work and performance distinctions."

(c) Section 402 of E.O. 11721, as amended, provides that "The Civil Service Commission [Office of Personnel Management] shall issue such regulations and standards as may be necessary to ensure that only those employees whose work is of an acceptable level of competence receive periodic step-increases under the provisions of section 5335 of title 5, United States Code."

10. Section 531.403 is amended by revising the terms "acceptable level of competence" and "critical element", to read as follows:

§ 531.403 Definitions.

In this subpart:

"Acceptable level of competence" means fully successful performance by an employee of the duties and responsibilities of his or her assigned position which warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position, subject to the requirements of § 531.404 of this subpart.

* * * * *

"Critical Element" has the meaning given that term in § 430.203 of this chapter.

* * * * *

11. Section 531.404 is revised to read as follows:

§ 531.404 Earning within-grade increase.

An employee paid at less than step 10 of the grade of his or her position shall only earn advancement in pay to the next higher step of that grade upon meeting the three requirements established by law:

(a) To earn a within-grade increase, the employee's performance of assigned work must be at an acceptable level of competence, as defined in this subpart by authority of Section 402 of E.O. 11721, as amended. Acceptable level of competence means a level of performance of assigned work of at least "Fully Successful", as defined in Part 430 of this chapter, for each critical element. In addition, the employee's most recent summary performance rating, as defined in the agency Performance Management Plan, must be at least "Fully Successful".

(b) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position; and

(c) The employee must not have received an equivalent increase during the waiting period.

12. In Section 531.408, paragraphs (b) and (c) are revised to read as follows:

§ 531.408 Communication of performance requirements.

* * * * *

(c) *Delay in determination.* An acceptable level of competence determination must be delayed when both of the following apply:

(1) An employee has not had the minimum period of time established by the agency to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position; and

(2) The employee has not been given a performance rating in any position within 90 days before the end of the waiting period. When an acceptable level of competence determination has been delayed under this subpart, the employee shall be informed that his or her determination is postponed and of the specific requirements for performance at an acceptable level of competence. The determination shall be based on a performance rating completed at the end of the minimum appraisal period established by the agency performance appraisal plan.

(d) Waiver of requirement for determination. An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum appraisal period under an applicable agency performance appraisal system during the final 52 calender weeks of the waiting period for one or more of the following reasons:

(1) Absences that are creditable service in the computation of a waiting period or periods under § 531.406 of this subpart;

(2) Because of paid leave;

(3) Because the employee received service credit under the back pay provisions of subpart H of Part 550 of this chapter;

(4) Because of details to another agency or employer; or

(5) Because of long term training.

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum appraisal period under the applicable agency performance appraisal system.

§ 531.409 [Amended]

14. Section 531.409(e)(2)(i) is revised to read as follows:

* * * * *

(e) Notice of determination.

* * * * *

(2)* * *

(i) Set forth the reasons for the negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under § 531.411 of this subpart.

* * * * *

15. Section 531.411 is revised to read as follows:

§ 531.411 Continuing evaluation after withholding a within-grade increase.

When a within-grade increase has been withheld, an agency may, at any time thereafter, rate the employee and grant the within-grade increase when it determines that he or she has demonstrated sustained performance at an acceptable level of competence. However, the agency shall determine whether the employee's performance is at an acceptable level of competence after no more than 52 calendar weeks following the original eligibility date for the within-grade increase and, for as long as the within-grade increase continues to be denied, determinations will be made after no longer than each 52 calendar weeks.

16. In Subpart E, §§ 531.503 and 531.504 are revised to read as follows:

Subpart E—Quality Step Increases

* * * * *

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to recognize outstanding performance by granting faster than normal step increases.

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to an employee who receives a summary performance rating of "Outstanding", as defined in Part 430 of this chapter.

17. Section 531.505 is removed. Sections 531.506 through 531.508 are redesignated as §§ 531.505 through 531.507, and revised to read as follows:

§ 531.505 Restrictions on granting quality step increases.

As provided by 5 U.S.C. 5336, a quality step increase may not be granted to an employee who has received a quality step increase within the preceding 52 consecutive calendar weeks.

§ 531.506 Effective date of quality step increase.

Quality step increases shall be effective as soon as possible after annual performance appraisals are approved.

§ 531.507 Agency plans for granting quality step increases.

Each agency shall include a plan for granting quality step increases, as required by § 430.207(a)(4) of this chapter, in the agency's Performance Management Plan. The plan shall:

(a) Be as simple as practicable;

(b) Provide for delegation of authority to grant quality step increases to the lowest practicable level of management;

(c) Be reviewed and approved in accordance with § 430.207 of this chapter; and

(d) Provide for informing employees, at least annually, of the number of quality step increases granted in the agency by grade level.

18. Section 531.509 is redesignated § 531.508.

19. In Part 531, Subpart F would read as follows:

Subpart F—Performance Awards

Sec.

531.601 Applicability.
531.602 Purpose of performance awards.
531.603 Coverage.
531.604 Definitions.
531.605 Policy.
531.606 Eligibility.
531.607 Payment.
531.608 Responsibilities of the Office of Personnel Management.
531.609 Agency responsibilities.

Authority: 5 U.S.C. 4302(a) and 4506.

§ 531.601 Applicability.

(a) This subpart contains the Office of Personnel Management's regulatory requirements for establishment and conduct of the performance awards component of the Performance Management System, under the authority of title 5, United States Code, Chapters 43 and 45.

(b) An award under this subpart shall be supported by the employee's performance rating and based on accomplishments and contributions which are within the scope of the employee's assigned job responsibilities and performance standards.

(c) One-time special acts or services rewarded under this subpart shall be within the scope of job responsibilities and performance standards.

(d) Refer to Part 451 of this chapter for the regulatory requirements for granting awards to employees for suggestions, inventions, and meritorious actions.

§ 531.602 Purpose of performance awards.

(a) The purpose of performance awards is to motivate employees, and recognize and reward those who attain high levels of performance.

(b) The Office of Personnel Management encourages agencies to make maximum use of their authorities under Chapters 43 and 45 of title 5, United States Code, to establish and administer performance awards that best support and enhance agency and national goals and meet employee recognition needs.

§ 531.603 Coverage.

(a) This subpart applies to employees as defined by Section 2105, title 5, United States Code, but does not include those covered by the Performance Management and Recognition System established under Chapter 54 of title 5, United States Code, nor employees in the Senior Executive Service.

(b) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 531.604 Definitions.

In this subpart, terms are defined as follows:

"Honorary award" means a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

"Monetary award" means a cash award which is not part of an employee's basic rate of pay.

"Non-monetary award" means an award tailored to meet special conditions and needs of an employee and/or an organization. It usually has a monetary connotation for the agency but not for the employee.

"Performance award" or "award" means a monetary, honorary, or non-monetary award.

"Plan" means a written statement submitted by the head of the agency and approved by OPM, implementing law and regulation for performance awards with specific attention to the monetary component of the overall Performance Management Plan as described in §430.207 of this chapter.

§ 531.605 Policy.

(a) The policy of the Performance Awards Program shall be to:

(1) Grant recognition in keeping with the value of the contribution to the Federal Government;

(2) Consider employee contributions for application throughout the Federal Government; and

(3) Assure that awards are not used as a substitute for other personnel actions, or as a substitute for pay.

(b) A performance award under this subpart shall be:

(1) Monetary, honorary, or non-monetary;

(2) Based on employee accomplishments and contributions which are within the scope of an employee's assigned job responsibilities and performance standards; and

(3) Based on a percentage of the employee's base pay, up to a maximum of 20 percent. However, if the sum of the performance award recommended and any within-grade and/or quality step increase received by the employee during the previous 12 months exceeds 20 percent, the award shall be reduced to that maximum.

§ 531.606 Eligibility.

(a) A performance award may be granted to an employee when performance accomplishments or other contributions:

(1) Are within the scope of his or her assigned job responsibilities and performance standards;

(2) Benefit the Government as described in 5 U.S.C. 4503 and 4504;

(3) Were made while the contributor was a Government employee;

(4) Have been supported by a performance rating of at least "Exceeds Fully Successful" on one or more elements of a job or a summary performance rating of at least "Exceeds Fully Successful"; and

(5) Have been approved at a management level higher than the official who recommended the performance award.

(b) Performance awards shall not be mandatory except as required by §§ 430.204(t) and 431.204(w) of this chapter.

§ 531.607 Payment.

Awards paid under this subpart do not increase the rate of basic pay and are subject to the withholding of income taxes.

§ 531.608 Responsibilities of the Office of Personnel Management.

(a) OPM shall provide guidance to agencies on how the performance awards components of the Performance Management System should be carried out.

(b) OPM shall review and approve the agency performance award component of the Performance Management Plan, and any proposed plan revisions which have an impact on how an agency meets statutory and regulatory requirements.

§ 531.609 Agency responsibilities.

(a) The head of each agency shall establish all performance awards as a component of the Performance Management Plan. The plan must provide for:

(1) Documentation in the employee's Official Personnel Folder to reflect the nature of a performance award, including the amount of a monetary award; and

(2) Due weight to a performance award when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362.

(b) The head of each agency shall transmit to OPM:

(1) All award recommendations over $10,000;

(2) A Performance Management Plan which includes a performance awards component, and proposed plan revisions for review and approval, as required by § 430.207(a) of this chapter; and

(3) An annual report on performance awards activities for the past fiscal year.

(c) The performance awards component of the Performance Management Plan to be submitted to OPM shall include the following provisions:

(1) Use of the agency's performance rating under Part 430 of this chapter as the basis for granting monetary, honorary, and non-monetary performance awards;

(2) Delegation of authority and responsibility for approval of monetary, honorary and non-monetary performance awards to the appropriate management level;

(3) Performance award recommendations to involve the minimum amount of paperwork and processing which show that criteria are met and that expenditure of appropriated funds for the award is justified;

(4) Granting of performance awards as soon as possible after performance ratings are approved, or as soon as possible after an assessment of performance indicates that an award should be granted; and

(5) A plan for determining the performance award fund, including previous years' and projected expenditures, as required by § 430.207(a)(4) of this chapter. Funds for any agency Productivity Benefit Sharing Program shall not be included in the performance award fund, inasmuch as these are separate from performance awards.

PART 532—PREVAILING RATE SYSTEMS

20. In Part 532, Subpart H would read as follows:

* * * * *

Subpart H—Performance and Special Awards

Sec.
532.601 General

Authority: 5 U.S.C. 5343, 5346.

Subpart H—Performance and Special Awards

§ 532.801 General

(a) Performance awards for prevailing rate employees are covered under the provisions of Subpart F of Part 531 of this chapter.

(b) Awards for employee accomplishments beyond normal job responsibilities and performance standards are covered under Part 451 of this chapter.

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

21. The authority citation for Part 771 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 7310; E.O. 9830, 3 CFR, 1943–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR, 1964–1969 Comp., p. 306.

22. Section 771.206(c)(3) would read as follows:

Subpart B—General

§ 771.206 Exclusions.

* * * * *

(c) Matters excluded.

* * * * *

(3) An agency may, in its discretion, exclude performance appraisals and/or ratings (under Part 430, Subpart B, of this chapter) from coverage under this part.

[FR Doc. 85–20539 Filed 8–27–85; 4:37 pm]

BILLING CODE 6325–01–M

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5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act: Exemptions

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: On October 25, 1983, the Office of Personnel Management (OPM) published final regulations to provide modified, clarified criteria for determining a Federal employee's exemption status under the Fair Labor Standards Act (FLSA). These regulations were first published at 48 FR 49494 on October 25, 1983, and were involved in judicial and Congressional action, which delayed implementation until July 3, 1985. OPM is now republishing these regulations for readers' convenience and proposing a 120 day implementation period from July 3, 1985, before their effective date. The modifications were intended to facilitate FLSA administration in the Federal sector and to alleviate the discrepancy between OPM's exemption criteria and the exemption criteria that are applicable to employees in the private sector. They also provided criteria for applying the FLSA to employees on temporary duty and to employees who travel to or from foreign areas.

DATE: Written comments will be considered if received no later than September 30, 1985.

ADDRESS: Send or deliver written comments to Anthony Ingrassia, Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, Room 5459, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Michael Clogston, (202) 632–5691.

SUPPLEMENTARY INFORMATION:

Background

Regulations published as final rules on October 25, 1983, at 48 FR 49462, *et seq.*, concerning reduction-in-force (RIF), performance management, and the application of the Fair Labor Standards Act (FLSA) to the Federal workforce became effective on July 3, 1985. They are hereby republished as a proposed rulemaking to afford interested parties the opportunity to comment on a proposed implementation schedule for the new performance management system and the FLSA regulations and to allow interested parties the opportuity to consider substantive changes to parts of the regulation. Comments on any and all aspects of the notice will be received and considered. The current regulations in these areas remain in full force and effect, as they have been since July 3, 1985. As we did when these regulations were published as a final rule in October 1983, we are again proposing a 120 day period starting July 3, 1985, to permit agencies to complete necessary transition and review work to affect these changes. This means that with the 120 day delay, the full and final effective date is the first pay period on or after November 1, 1985. We are also providing the first 90 days of this period until October 1, 1985, for agency headquarters to submit requests for an OPM advisory opinion on exceptions to the presumption of exemption. On August 2, 1985, a memorandum was provided to Directors of Personnel notifying them that these regulations are now effective, providing the 120 day delay from July 3, 1985, and outlining procedures for requesting exception to the presumption of exemption.

Under these new regulations, it is assumed that if a position is properly classified at the GS–11 or above level (or equivalent level in other white collar salary systems), the position would properly be exempt under the provisions of the FLSA. However, we do recognize that there could exist rare occasions when there might be an exception to this presumption. For those unusual situations when an agency feels that an exception might exist, we propose a regulatory procedure for requesting a waiver (see § 551.207). We propose that these requests be made as soon as possible within the first 90 days of the 120 day implementation period. We will then make every effort to provide our advisory opinion to the agency headquarters prior to the expiration of the 120 day implementation period.

After the regulations become effective, all GS–11 and above employees (or equivalent level in other white collar salary systems) will be presumed to be exempt *unless* a waiver is granted by OPM. This means that if OPM does not grant the waiver during the 120 day period, the affected employees would be exempt when the regulations become effective. Of course, a waiver granted at a later date would have prospective effect only.

If an agency feels that it has a unique situation and seeks an advisory opinion (waiver) from OPM, the request must be submitted by the agency headquarters. These requests must be limited to specific occupational series, include copies of position descriptions and evaluation statements for the positions involved, and provide a clear, detailed analysis and explanation of why the exemption criteria are not met.

Discussion of Proposed Changes

The regulations as published in the October 25, 1983, **Federal Register**, are proposed to remain unchanged except for one minor revision in the mailing address for requesting advisory opinions in § 551.207.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it provides procedures for applying the exemption criteria of the Fair Labor Standards Act to Federal employees.

List of Subjects in 5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

It is proposed to amend Part 551 as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

1. The authority for Part 551 is revised to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93–259 enacted April 8, 1974, 88 Stat. 55; 29 U.S.C. 204f.

2. Paragraph (h) of § 551.102 would continue to read as follows:

§ 551.102 Definitions.

* * * * *

(h) "Exempt area" means any foreign country, or any territory within the jurisdiction of the United States other than the following locations:

(1) A State of the United States;
(2) The District of Columbia;
(3) Puerto Rico;
(4) The Virgin Islands;
(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
(6) American Samoa;
(7) Guam;
(8) Wake Island;
(9) Eniwetok Atoll;
(10) Kwajalein Atoll; and
(11) Johnston Island.

2. Subpart B of Part 551 would continue to read, with the exception of § 551.207, which is revised, as follows:

Subpart B—Exemptions

Sec.
551.201 Agency authority.
551.202 General principles governing exemptions.
551.203 Exemption of General Schedule employees.
551.204 Executive exemption criteria.
551.205 Administrative exemption criteria.
551.206 Professional exemption criteria.
551.207 Exceptions by OPM.
551.208 Foreign exemption.
551.209 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

Subpart B—Exemptions

§ 551.201 Agency authority

The employing agency shall exempt from the overtime provisions of the Act any employee who meets the exemption criteria of this subpart and such supplemental interpretations or instructions as shall be issued by the Office of Personnel Management.

§ 551.202 General principles governing exemptions.

In all exemption determinations, the agency shall observe the principles that:

(a) Exemption criteria shall be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(b) The burden of proof rests with the agency that asserts the exemption.

(c) All employees who clearly meet the criteria for exemption must be exempted.

§ 551.203 Exemption of General Schedule employees

(a) Any employee properly classified at GS–4 or below (or the equivalent level in other white collar pay systems) shall be nonexempt;

(b) Any employee properly classified at GS–5 through GS–10 (or the equivalent level in other white collar pay systems) shall be exempt only if the employee is an executive, administrative, or professional employee as defined in §§ 551.204, 551.205, and 551.206 of this subpart;

(c) Except as provided in § 551.207 of this subpart, any employee properly classified at GS–11 or above (or the equivalent level in other white collar pay systems) shall be presumed to be exempt under this subpart. An agency that properly classifies an employee at GS–11 or above shall be deemed to have satisfied the burden of proof for asserting exemption.

§ 551.204. Executive exemption criteria.

An "executive" employee is a supervisor, foreman, or manager who supervises at least three subordinate employees and who meets all the following criteria:

(a) The employee's primary duty consists of management or supervision. This primary duty requirement is met if:

(1) The employee is a General Schedule employee whose position is determined to be "Supervisory" or "Managerial" under the Supervisory Grade-Evaluation Guide;

(2) The employee is a Federal Wage System employee whose position fully meets or exceeds the "Foreman range of responsibility" as defined in the Job Grading Standard for Supervisors; or

(3) The employee is subject to a pay system other than the General Schedule or the Federal Wage System and the employee's position meets or exceeds the definition of Supervisor in the Supervisory Grade-Evaluation Guide or the employee's position fully meets or exceeds the "Foreman range of responsibility" as defined in the Job Grading Standard for Supervisors.

(b) In addition to the primary duty criterion that applies to all employees, Foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems) and employees classified at GS–5 or GS–6 (or the equivalent in other white collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work.

§ 551.205 Administrative exemption criteria.

An administrative employee is an advisor, assistant, or representative of management, or a specialist in a management or general business function or supporting service who meets all of the following criteria:

(a) The employee's primary duty consists of work that:

(1) Significantly affects the formulation or execution of management policies or programs; or

(2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a management official.

(b) The employee performs office or other predominantly nonmanual work which is:

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) The employee must frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS–5 or GS–6 (or the equivalent in other white collar systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions.

§ 551.206 Professional exemption criteria.

A professional employee is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) The employee's primary duty consists of:

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent

to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee.

(b) The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought process for satisfactory performance.

(c) The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS–5 or GS–6 (or the equivalent in other systems), must spend 80 percent or more of the worktime in a representative workweek in professional functions and work that is an essential part of those functions.

§ 551.207 Exceptions by OPM.

The Office of Personnel Management will provide advisory opinions on agency-proposed exceptions to the presumption of exemption for specific occupations at GS–11 or above (or the equivalent level in other white collar pay systems) which is specified in § 551.203(c) of this subpart. Exceptions may not be made before OPM consideration. Requests for advisory opinions from agencies should be sent to: Office of Personnel Management, Agency Compliance and Evaluation, 1900 E Street, NW., Washington, D.C. 20415.

§ 551.208 Foreign exemption.

(a) This section provides criteria for applying the "foreign exemption" contained in section 13(f) of the Act. An employee who is exempt under the foreign exemption is not subject to the minimum wage and overtime provisions of the Act. The exemption status of an employee to whom the foreign exemption is not applicable shall be determined under the general criteria contained in this subject.

(b) Except as provided in § 551.208(d), an agency shall apply the foreign exemption to any employee who is permanently stationed in an "exempt area" as defined in § 551.102(h).

(c) An agency shall also apply the foreign exemption on a workweek basis to an employee on temporary duty who is not permanently stationed in an exempt area, but who performs *all* hours of work in a given workweek in an exempt area.

(d) The foreign exemption is not applicable to an employee permanently stationed in an exempt area for any given workweek in which the employee performs *any* hours of work in the United States or in a territory under the jurisdiction of the United States.

§ 551.209 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

(a) This section is not applicable when an employee is detailed to an identical additional position or to a position of the same grade, series code, and basic duties as the employee is regularly assigned to. This section applies only when an employee is assigned to perform duties which are not included in the employee's representative workweek. For the period of any such temporary duty, the exemption criteria contained in §§ 551.202 through 551.207 of this subpart shall be applied using the procedures specified in this section.

(b) A nonexempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain nonexempt for the entire period of the temporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either:

(i) Classified at GS–7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other wage systems);

(3) The employee's primary duty for the period of temporary duty is exempt duty as defined in this subpart.

(c) Except as provided in § 551.209(e), an exempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt for the entire period of the temporary duty unless the following three conditions apply:

(1) The termporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either:

(i) Classified at GS–7 or above (of the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (of the equivalent level in other wage systems);

(3) The employee's primary duty for the period of temporary duty is *not* exempt duty as defined in this subpart.

(d) An employee who becomes exempt under the criteria contained in § 551.209(b) shall be considered exempt for the entire period of temporary duty. An employee who becomes nonexempt under the criteria contained in § 551.209(c) shall be considered nonexempt for the entire period of temporary duty.

(e) An exempt employee who is classified at GS–5 or GS–6 (or the equivalent level in other white collar pay systems), or who is classified below General Foreman (or the equivalent level in other wage systems) who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt *only* if the employee spends more than 80% of a given workweek performing exempt duties, in which case the employee is exempt for that workweek.

(f) Notwithstanding any other provision of this section, and regardless of an employee's grade level, the agency may determine that an emergency situation exists which threatens the life or safety of people, or serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to perform emergency duties. In such a designated emergency the exemption status of an employee shall be determined on a workweek basis and the employee shall be nonexempt for any workweek in which the employee performs more than 20% nonexempt work.

[FR Doc. 85–20540 Filed 8–27–85; 4:37 pm]
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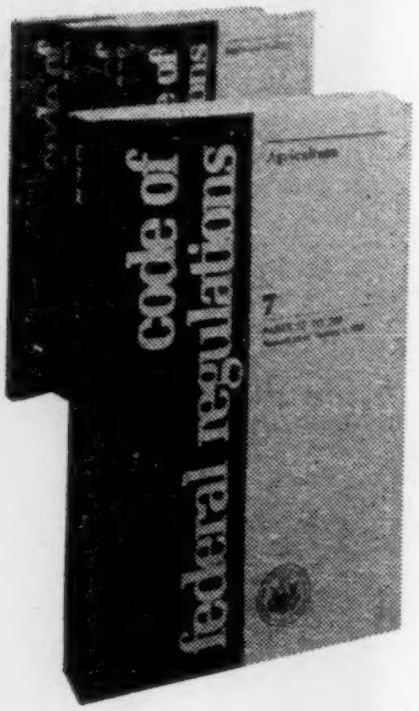
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